

Contributing to Inaugurals, Transitions, or Candidate Debt Retirement This Year? Here's How to Reduce Your Legal Risk.

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While this November's election is over, many organizations remain politically active in between the general election and the time that newly elected and re-elected officials take office. In fact, many individuals and organizations will donate to inaugural events and transition teams during this period and contribute toward campaign debt retirement. Each of these options presents a variety of compliance risks at the federal, state, and local levels, but proper knowledge and due diligence will reduce these risks.

Inaugurals

Federal Inaugural Donations. After a presidential election, the President-elect appoints an inaugural committee to manage the inauguration ceremony and other associated activities. 2024 is no different, and the Trump Vance Inaugural Committee, Inc. has announced it is accepting donations to finance inaugural events such as the parade, opening ceremonies, and galas. Similar to a political committee, the inaugural committee must register and report with the Federal Election Commission (FEC) and disclose the donations it receives. As with other federal political contributions, foreign nationals are prohibited from contributing to the inaugural committee. However, unlike other federal committees, the inaugural committee is not subject to any monetary limits and may accept donations from corporations and labor organizations.

Keep in mind that, for entities and individuals registered under the federal Lobbying Disclosure Act (LDA) as federal lobbyists or lobbyist employers, donations to the presidential inaugural committee will be

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Practice Areas

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reportable on the applicable semi-annual LDA Form LD-203. (The next LD-203 is due January 30, 2025, covering expenses incurred between July 1 and December 31, 2024.)

State and Local Inaugural Committees. At the state and local levels, the rules surrounding donations to inaugurals vary depending on each jurisdiction's law and the type of entity that is receiving the donation. Inaugural entities may be organized as political committees, charities, or 501(c)(4) social welfare organizations, and the rules for donations to each type of entity may differ significantly. Donations may be subject to state or local political contribution limits, pay-to-play rules, restrictions on donations from lobbyists or lobbyist employers, and various potential reporting obligations. Further, some jurisdictions may prohibit inaugural donations entirely. When considering donations to state and local inaugural entities, it is essential to know the type of entity that will receive the donation and the rules that surround the donation for each specific jurisdiction.

For those persons in the financial services industry covered by the U.S. Securities and Exchange Commission's (SEC) investment adviser pay-to-play rule – and the similar rules of the Municipal Securities Rulemaking Board (MSRB), Commodity Futures Trading Commission (CFTC), and Financial Industry Regulatory Authority (FINRA) – inaugural donations can be an issue. Such state and local inaugurals are covered by the potential two-year time-out on investment advisory business, etc. Thus, employers' pay-to-play preclearance policies must be followed, and, often, the de minimis contribution levels will need to be observed. (Note that the pay-to-play rules do not apply to the Trump Vance Inaugural Committee.)

Transitions

Federal Transition Committee. Another option to remain politically active during this time is to donate to presidential transition-related expenses. Unlike the historical practice over the past several cycles and unlike the Trump 1.0 transition committee, the Trump 2.0 transition committee, Trump Vance 2025 Transition, Inc., is operating according to rules where donations are not limited to \$5,000 per contributor and contributors will not be publicly reported. Those wishing to donate and those wishing to assist with the transition need to undertake special due diligence.

State and Local Transition Committees. States and localities may also permit (or prohibit) donations to fund gubernatorial, legislative, or local administration transition efforts. As with contributions to state and local inaugural entities, it is imperative to know the type of entity that will receive transition-related donations and the specific rules for such donations in each jurisdiction. As in the inaugural context, the federal pay-to-play rules will apply to potential state and local transition donors who are covered associates or otherwise subject to the SEC and other pay-to-play rules. These donations must be precleared per the employers' usual pay-to-play processes. (Note that the pay-to-play rules do not apply to the Trump Vance 2025 Transition.)

Contributions for Debt Retirement

Finally, it is common after an election to contribute to campaigns that have outstanding election-related debt. At the federal level, such contributions will be designated for the same election (often the general) and, as such, subject to the same applicable contribution limit. This means that all contributions made for the general election and to retire debts after the general election may not exceed the current federal contribution limit of \$3,300 per election for individuals or \$5,000 per election for multicandidate PACs. Moreover, the contributor should receive written assurances from the committee that it has net debt outstanding at the time of the contribution. Additionally, all of the usual restrictions and reporting obligations that apply to regular pre-election contributions will also apply to post-election debt retirement contributions. (Remember that the Harris-Walz campaign is subject to the federal pay-to-play rules because Walz is still the Governor of Minnesota.)

Many states and localities follow similar rules regarding campaign debt retirement – i.e., the same contribution limits, restrictions, and reporting obligations that apply before the election will apply to debt retirement contributions after the election. However, it is not uncommon for jurisdictions to prohibit contributions after an election. In this case, contributions following an election may count toward a candidate's next election or may be prohibited entirely until the next election cycle begins. And, in addition, some jurisdictions apply their contribution limits across a calendar year or an election cycle, so due diligence is key (along with the usual pay-to-play, lobbyist, lobbyist employer, and other compliance checks necessary with regular contributions).

In sum, when considering making donations to inaugural entities or transition teams or for campaign debt retirement, the most important way to reduce your organization's risk is to know the rules before making such a donation.

Wiley's Election Law & Government Ethics Practice is equipped to provide guidance at the federal, state, and local levels to ensure your donations are compliant.