

ALERT

PACs Beware: Watch Your Bank Accounts for Fraud

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Wiley wants our Election Law clients to be aware of a terrible trend we are seeing. There has been a recent spate of fraudulent withdrawals from Political Action Committee (PAC) bank accounts, only to be discovered when doing a bank reconciliation and preparing your report for filing with the Federal Election Commission (FEC). PAC fraud was common several years ago but seemed to be in remission until this year when, suddenly, client after client has been hit with PAC fraud. For the lucky ones, those that already implemented Positive Pay, the fraud was caught before the check was ever cashed or the ACH withdrawal made. But, for those who don't have Positive Pay, the checks got through, and large sums of money have been taken from PAC bank accounts, leaving behind a reporting nightmare and making the PACs go through the process of getting the money back from the banks. Fortunately, banks have generally been cooperative, returning the fraudulently cashed checks or ACH transactions, but no PAC wants to go through this headache.

How can you prevent this from happening? As mentioned above, Positive Pay really makes a difference. So, what is Positive Pay?

It depends on the bank, but the bottom line is that it is meant to detect and prevent fraud. Since the fraud has not been restricted to a single bank, we have seen several versions of Positive Pay, depending on the bank involved.

In one version, the PAC notifies the bank in advance of what checks it has issued, the payee, and the amount. The bank then compares the checks presented to it for payment against those the PAC has identified as issued, and if they don't match, the bank sends you a copy of the checks and requires you to confirm that they should be

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cashed. In another version, the bank requests the PAC to confirm any check presented to the bank for payment. If the PAC does not confirm, the check does not get cashed.

In yet a third version, the bank cashes the check and subsequently confirms with the PAC that the check was meant to be cashed. Unfortunately, this third version doesn't help the PAC because once the funds are disbursed, they need to be reported on the PAC's FEC reports. Unfortunately, the fraud has not been limited to fraudulent checks. ACH transactions have also been the target of fraudsters! You can also set up ACH Positive Pay with banks – and you should do so.

What should you do if you don't have Positive Pay? First and foremost, get it! And even if you do get it, it's a good idea to change your bank account numbers for future checks and electronic transactions. If you don't have Positive Pay in place already, check your bank statements every day if possible to uncover the fraud in a timely manner, especially now as you are sending those last-minute checks to candidates.

While we haven't been able to trace the fraud's source, we know that some of our clients cut candidate checks and put them in the mail, only to find that the checks never reached their destination. If your PAC has been the victim of fraud, Wiley is here to assist with the proper reporting of the transactions, see you through the process, and avoid an FEC enforcement action!