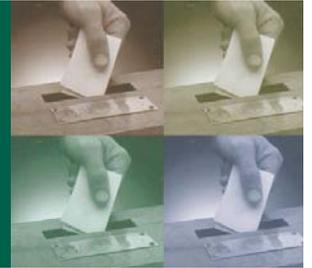




May 2005

# Election Law News

A Publication of the WRF Election Law Practice Group



## Special Report

### Gift and Travel Rules for Lobbyists

Press reports in Washington and elsewhere have been replete with stories about travel taken by members of Congress that is paid for by non-governmental entities. As a general matter, privately sponsored travel by members of Congress for officially-related purposes is permissible but is subject to a variety of rules regarding the specific parameters of the travel.

There is, however, a clear prohibition on travel that is sponsored by a registered lobbyist, a lobbying firm, or an agent of a foreign principal (e.g., a lobbyist for a foreign government or foreign political party). This prohibition applies even if the lobbyist, lobbying firm, or agent of a foreign principal is to be later reimbursed by a non-lobbyist client. A non-lobbyist client may, nonetheless, pay for the expenses directly assuming the travel is otherwise permissible.

The Congressional gift rules contain other lobbyist-specific prohibitions, including:

- Gifts to an entity that is maintained or controlled by a Member of Congress.
- Charitable donations made at the direction or recommendation of a Member of Congress.
- Contributions to a legal defense fund of a Member of Congress.
- Financial contributions relating to a conference, retreat, or similar event, sponsored by or affiliated with an official congressional organization, for or on behalf of a Member of Congress.
- Gifts of personal hospitality to a Member of Congress.

Lobbyists and their clients should be aware of these rules to minimize the risk of negative press and possible penalties directed toward their friends in Congress and themselves. Additional details about the lobbyist gift prohibition and other Congressional gift rules can be found at the Congressional ethics committees at [www.ethics.senate.gov](http://www.ethics.senate.gov) and [www.house.gov/ethics](http://www.house.gov/ethics). ■

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### Company and CEO Pay Big Penalty for Reimbursing Political Contributions

The Federal Election Commission (FEC) recently made public a conciliation agreement in which APEX Healthcare, Inc. and its president agreed to pay a civil penalty of \$275,000 for violations of federal campaign finance law. Although the company president, James Chao, “neither admits nor denies [the] conclusions” of several of the FEC’s findings, the FEC details a wide-ranging contribution reimbursement scheme in the conciliation agreement.

According to the conciliation agreement, Chao used APEX corporate funds to reimburse several APEX employees for certain 2002 campaign contributions. In 2003, Chao again used APEX corporate funds to reimburse many individuals for contributions to the 2004 U.S. Senate campaign of Daniel Hynes from Illinois. The total of these 2003 reimbursements was \$69,500.

Under federal campaign finance laws, corporations are prohibited from making contributions to federal candidates, and all persons are prohibited from making contributions in the name of another. In the conciliation agreement, the FEC states that it “found reason to believe that these violations were knowingly and willfully made.”

The conciliation agreement can be found on the FEC’s Enforcement Query System under MUR 5405 at <http://eqs.nictusa.com/eqs/searcheqs>. ■

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- 3 2005 - 2006 Election Cycle Contribution Limits
- 5 Changes in the States
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## Comments on Internet Regulations Due

Comments are due on June 3, 2005, in the pending Federal Election Commission (FEC) rulemaking on the regulation of the Internet. This rulemaking, involving such topics as blogging, paid Internet advertising, paid bloggers, Internet advertising rates, and the occasional and isolated use of employer computers, has generated much press and online activity from all sides. The FEC has scheduled a public hearing on June 28 and 29, 2005, and those wishing to testify at this hearing should so indicate in their comments by the due date. The Notice of Proposed Rulemaking (NPRM) can be found at [www.fec.gov/pdf/nprm/internet\\_comm/notice\\_2005-10.pdf](http://www.fec.gov/pdf/nprm/internet_comm/notice_2005-10.pdf).

The proposed rules, as written, attempt to follow a court ruling from the U.S. District Court for the District of Columbia and regulate at least some Internet activity. One aspect of the proposed rules regulates paid Internet advertising on another person's web site but goes no further and does not otherwise touch most other Internet activities. A second proposal affects state, district, and local party web sites. A third proposal attempts to clarify what type of mass emails are covered by the FEC's disclaimer regulation.

The rest of the proposed rules and related discussion covers the Internet generally, with lots of questions and unresolved issues (as is the case with many NPRMs). The discussion covers bloggers paid by candidates, the media exemption and its application to the Internet, and what type of Internet activity constitutes coordinated activity, resulting in a contribution. At the March 24, 2005, FEC meeting at which the FEC approved the NPRM, the commissioners all had seemingly diverging views on the necessary scope of any new rules and, on one issue, diverging views on the application of old regulations to the Internet. This means that the results of the rulemaking will be hard to predict. ■

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## Former FHFB Chairman Pleads Guilty to Making False Statements

According to a Department of Justice press release (dated Apr. 7, 2005) available at [www.usdoj.gov/opa/pr/2005/April/05\\_crm\\_171.htm](http://www.usdoj.gov/opa/pr/2005/April/05_crm_171.htm), John Korsmo, the former chairman of the Federal Housing Finance Board (FHFB), pled guilty on April 7 to making false statements to a Senate committee investigating Korsmo's participation in a 2002 campaign fundraiser. When asked in writing by then-Banking Committee Chairman Paul Sarbanes about his involvement with the fundraiser, Korsmo denied having any knowledge of how the congressional campaign obtained contact information to send invitations to a number of banking officials, many of whom Korsmo regulated. According to various press reports, however, Korsmo had actually asked an FHFB employee to forward him the contact information for these officials. Korsmo subsequently sent this information on to his wife, who later forwarded her husband's email directly to the campaign.

Under a plea agreement reached with the Department of Justice and described in the press release, Korsmo acknowledged making false statements in his letter to Senator Sarbanes and admitted knowing beforehand that his wife had provided the contact information to the campaign. Korsmo, who is scheduled to be sentenced in July, faces a maximum penalty of five years in prison and a \$250,000 fine. ■

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## WRF Attorney News

### Speeches



Jan Witold Baran, Co-Chair  
Corporate Political Activities 2005:  
Complying with Campaign Finance,  
Lobbying & Ethics Laws

Practicing Law Institute Program  
Washington, DC

[www.pli.edu/product/program\\_detail.asp?ptid=511&stid=3&id=EN00000000021125](http://www.pli.edu/product/program_detail.asp?ptid=511&stid=3&id=EN00000000021125)

# 2005 - 2006 Election Cycle Contribution Limits

## Candidate Committees and PACs

Donors	Recipients	
	Candidate Committee	PAC <sup>1</sup>
Individual	\$2,100* per election <sup>2</sup>	\$5,000 per year
State, District and Local Party Committee <sup>3</sup>	\$5,000 per election combined limit	\$5,000 per year combined limit
National Party Committee <sup>4</sup>	\$5,000 per election	\$5,000 per year
PAC (Multi-candidate) <sup>5</sup>	\$5,000 per election	\$5,000 per year
PAC (Not Multi-candidate) <sup>5</sup>	\$2,100* per election	\$5,000 per year

\* These limits will be indexed for inflation.

<sup>1</sup> These limits apply to both separate segregated funds (SSFs) and political action committees (PACs). Affiliated committees share the same set of limits on contributions made and received.

<sup>2</sup> Each of the following is considered a separate election with a separate limit: primary election, caucus or convention with the authority to nominate, general election, runoff election and special election.

<sup>3</sup> A state party committee shares its limits with local and district party committees in that state unless a local or district committee's independence can be demonstrated. These limits apply to multi-candidate committees only.

<sup>4</sup> A party's national committee, Senate campaign committee and House campaign committee are each considered national party committees, and

each have separate limits, except with respect to Senate candidates—see Special Limits column (see chart on page 4).

<sup>5</sup> A multi-candidate committee is a political committee that has been registered for at least six months, has received contributions from more than 50 contributors and—with the exception of a state party committee—has made contributions to at least five federal candidates. ■

*If you have any questions or would like any additional information, please contact a member of Wiley Rein & Fielding's Election Law & Government Ethics Group at 202.719.7000 or visit the website at [www.wrf.com](http://www.wrf.com). We welcome the opportunity to discuss any matter of specific concern to you or to tell you more about our practice and our capabilities.*

# 2005 - 2006 Election Cycle Contribution Limits

## State, District, Local and National Party Committees

Donors	Recipients		
	State, District and Local Party Committee	National Party Committee	Special Limits
Individual	\$10,000 per year combined limit	\$26,700* per year	Biennial limit of \$101,400* (\$40,000 to all candidates and \$61,400 <sup>1</sup> to all PACs and parties)
State, District and Local Party Committee <sup>2</sup>	Unlimited transfers to other party committees		
National Party Committee <sup>3</sup>	Unlimited transfers to other party committees		\$37,300* to Senate candidate per campaign <sup>4</sup>
PAC (Multi-candidate) <sup>5</sup>	\$5,000 per year combined limit	\$15,000 per year	
PAC (Not Multi-candidate) <sup>5</sup>	\$10,000 per year combined limit	\$26,700* per year	

\* These limits will be indexed for inflation.

<sup>1</sup> No more than \$40,000 of this amount may be contributed to state and local parties and PACs.

<sup>2</sup> A state party committee shares its limits with local and district party committees in that state unless a local or district committee's independence can be demonstrated. These limits apply to multi-candidate committees only.

<sup>3</sup> A party's national committee, Senate campaign committee and House campaign committee are each considered national party committees, and each have separate limits, except with respect to Senate candidates—see Special Limits column.

<sup>4</sup> This limit is shared by the national committee and the Senate campaign committee.

<sup>5</sup> A multi-candidate committee is a political committee that has been registered for at least six

months, has received contributions from more than 50 contributors and—with the exception of a state party committee—has made contributions to at least five federal candidates. ■

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# Changes in the States

## New Jersey

### New Jersey Codifies “Pay-to-Play” Ban

On March 22, 2005, Acting New Jersey Governor Richard Codey signed into law a statute that supersedes Acting Governor Codey’s Executive Order No. 123 and codifies a parallel “pay-to-play” prohibition on certain campaign contributions. The main part of the new law is retroactive to the original effective date of Executive Order No. 123, October 15, 2004, and applies to all contracts awarded and to all contributions made on or after this date.

The pay-to-play prohibition contained in the new statute is very similar to Executive Order No. 123. Basically, if a business entity, its subsidiary, a 10 percent or greater principal, or a PAC or 527 political organization controlled by the business entity, solicits or makes a contribution to a campaign for a candidate for Governor of New Jersey or to an incumbent Governor or to a state or county political party committee that nominates a candidate for Governor, the business entity is prohibited from being awarded certain state contracts. The contract ban applies for at least 18 months but may be significantly longer.

The prohibition applies to business entities having or seeking contracts with all agencies of the state’s executive branch, including independent state authorities, boards, commissions, instrumentalities, and agencies, for the provision of materials, supplies, or equipment or to acquire, sell, or lease land. The prohibition does not apply in emergency situations, in situations when the federal government says the prohibition violates federal law or regulation, or in certain other situations. The contributions that are affected are those that are required to be reported by the recipients under New Jersey law.

No business entity with a contract or agreement with the state may make a covered contribution prior to completing the contract or work under the agreement. It is a breach of the contract to make or solicit a contribution contrary to the law or to conceal a contribution that has been solicited or made contrary to law. Among other things, the new statute also codifies certain anticircumvention

provisions and certification processes related to state contractors. For more information on the underlying details of Executive Order 123, see [www.wrf.com/publication\\_newsletters.cfm?sp=newsletter&year=2005&ID=16&publication\\_id=11882&keyword=](http://www.wrf.com/publication_newsletters.cfm?sp=newsletter&year=2005&ID=16&publication_id=11882&keyword=).

## Rhode Island

### Rhode Island Lowers Gift Limits

Effective April 12, 2005, the Rhode Island Ethics Commission lowered the single gift and calendar-year gift limits applicable to elected and appointed state officials, state employees, elected and appointed municipal officials, and municipal employees. The per gift limit for gifts from “interested persons” to these officials and employees is now \$25 per gift, down from \$75. The aggregate calendar-year gift limit for gifts from interested persons has been lowered from \$450 per year to \$75 per year.

## Virginia

### Virginia Changes PAC Reporting

On March 14, 2005, Governor Mark Warner of Virginia signed into law former HB 2539, which changes the state’s reporting requirements for political committees, including federal PACs registered with the state. Effective with the Governor’s signature, PAC reports are now due on a quarterly basis (as opposed to semi-annually). The due dates are April 15 (covering the period from January 1 to March 31); July 15 (April 1 to June 30); October 15 (July 1 to September 30); and January 15 (October 1 to December 31).

In addition, the new statute eliminates the previous eight-day pre-election reports for political committees and instead institutes year-round reporting of large contributions. PACs now must report, within three days of receipt, any contribution or loan received of \$10,000 or more. ■

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## Upcoming Dates to Remember

May	5/15/05	IRS Form 990 due from “national” nonfederal political organizations and from qualified state and local political organizations with taxable year gross receipts in excess of \$100,000.
	5/20/05	May monthly FEC report due for federal PACs filing monthly.
	5/20/05	May monthly IRS Form 8872 due for nonfederal PACs filing monthly. *
June	6/20/05	June monthly FEC report due for federal PACs filing monthly.
	6/20/05	June monthly IRS Form 8872 due for nonfederal PACs filing monthly. *

Deadlines are not extended if they fall on a weekend.

\* Qualified state and local political organizations are not required to file IRS Form 8872 with the IRS.

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