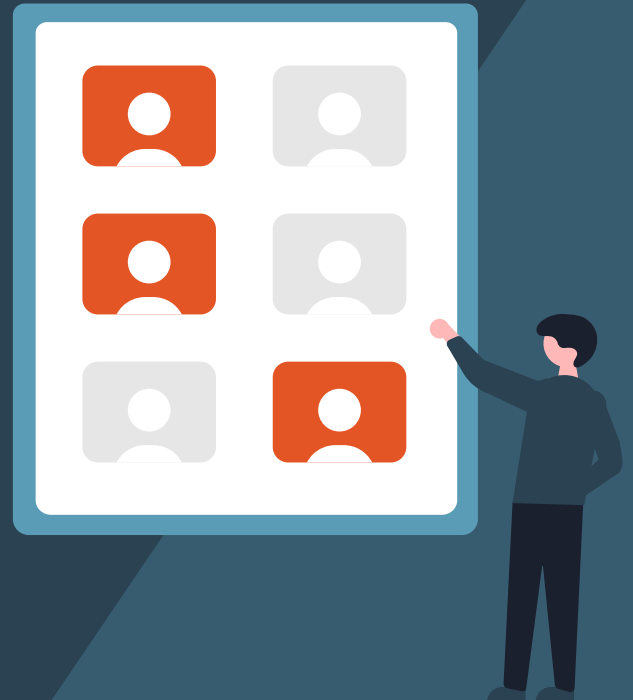


# FECA Restricted class

A corporate PAC may solicit shareholders and “executive and administrative personnel” and the immediate families of both. Membership and Trade Association PACs have different restricted class rules which are not addressed in this document.



Immediate family are persons related by blood or marriage residing in the same household. Adult children or other relatives not residing in the same home as the employee or stockholder are not solicitable.

Executive and administrative personnel are individuals employed by a corporation who are paid on a salary rather than hourly basis and who have policymaking, managerial, professional, or supervisory responsibilities.

#### This includes:

- ✓ Individuals who run the corporation’s business such as officers, other executives, and plant, division, and section managers; and
- ✓ Individuals following the recognized professions, such as lawyers and engineers.

#### It does not include:

- ✗ Professionals who are represented by a labor organization;
- ✗ Salaried foremen and other salaried lower level supervisors having direct supervision over hourly employees;
- ✗ Former or retired personnel who are not stockholders; or
- ✗ Individuals who are paid as consultants, e.g. income reported on 1099 rather than W-2. 11 CFR 144.1(c),
- ✗ Salaried employees who lack managerial, professional or supervisory responsibilities, such as some front-line sales representatives. (AO 1993-16, 1978-27 and others)

A corporation may use FLSA exempt status as a guideline but not as an absolute rule for the PAC restricted class. 11 CFR 144.1(c)(4). A typical approach to determining a corporation’s restricted class would be to start with all FLSA exempt employees and then exclude lower level supervisors and front line (consumer facing) sales employees, if any.

**Lower level supervisors** are employees for whom the supervision of hourly employees is their principal function, such as a shop foreman (AO 1976-75). This is in contrast to someone who may supervise a clerk or secretary or whose managerial duties are predominant (such as convenience store manager or cafeteria manager). AOs 2010-04 and 2012-02, Wawa Markets and 1978-27, Morrison's Cafeterias.

**Sales employees who have been ruled outside the restricted class include telephone sales representatives.** In contrast, regional sales managers who supervise agents, plan sales strategies, and maintain sales records for a region are in the restricted class. AO 1993-16, Blue Cross of California.

In identifying which salaried employees have management and supervisory responsibilities some Advisory Opinions ask whether the employees "exercise discretion and independent judgment in performing their duties." E.g. AO 2-11-25, Atlas Air.

**Compensated Board Members are solicitable as long as they are paid on a periodic (salaried basis) rather than hourly.** AO 2010-12, P&G, and opinions cited therein: "fixed compensation periodically paid to a person for regular work or services." AO 1977-18, Proprietary Industry PAC. Board Members need not be classified as employees and their compensation does not need to be subject to income tax withholding to be solicitable. AO 1985-25, Weirton. Directors may also be solicitable as stockholders.

### **NOTE REGARDING JOB OR SALARY BANDS**

Many corporations use internal job bands or pay codes to determine or assist in determining their restricted class. There are no FEC Advisory Opinions or other guidance commenting specifically on the use of job or salary bands to distinguish eligible from ineligible salaried employees. Clients can be confident that employees in the higher ranges of salaried job bands will qualify as professionals or employees who run the corporation's business. If lower job bands correspond to lower-level supervisors or to positions where exercise of discretion and independent judgment is not required, then excluding one or more lower salaried pay bands may be a valid method for identifying the restricted class.

### **NOTE REGARDING LOWER-LEVEL SUPERVISORS**

The statute and much of the FEC guidance on lower-level supervisors was written in the 1970s and premised on labor policies and practices that existed then but that may no longer fit 21st century labor and employment practices. For instance, the legislative history refers to shop foremen and "straw bosses". Positions of that sort simply do not exist in many organizations today. Some companies may have few if any employees in this category. For instance, AO 2012-02 determining that Wawa Markets store managers are solicitable effectively concluded that the lowest level supervisors at Wawa are solicitable due to the overall mix of their responsibilities. Salaried managers whose primary duty is to supervise hourly employees at, for instance, a warehouse, shipping, or production facility should be excluded from the restricted class.

### **MULTI-LEVEL ORGANIZATIONS**

In the case of a business organization with multiple US chartered entities within a family of wholly or majority owned parent and subsidiary entities all executive and administrative employees of parent, subsidiary, and sister entities are solicitable no matter what entity within the corporate family is the PAC's connected organization. This applies even if the common owner of sister US entities is a foreign corporation. AO 1999-28, Bacardi Martini.

### **FOREIGN NATIONALS**

PACs may solicit only US nationals, that is Citizens and Permanent Residents. Employees in the US on non-permanent visas, including H-1B visas, must be excluded from the restricted class. Some companies may have difficulty identifying such employees in their HR systems. In that case the company should make its best efforts to exclude foreign national employees and include a warning or even a check box on PAC solicitations indicating that contributors must be US citizens or permanent residents and that non-nationals, including H-1B visa holders should disregard the solicitation. PACs may solicit US citizen employees working abroad. PACs who have contributors in this category with foreign addresses should include an explanatory report text note on their FEC reports to avoid receiving an RFAI regarding potential foreign national contributions.