CREW
CITIZENS FOR RESPONSIBILITY & ETHICS IN WASHINGTON

November 6, 2026

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Via online portal

Comment from Citizens for Responsibility and Ethics in Washington in response to Proposed Rule "Political Contributions by Certain Investment Advisors."

For Submission to File Number S7-2026-31.

Citizens for Responsibility and Ethics in Washington ("CREW") is a nonpartisan nonprofit organization committed to fighting corruption and building an ethical and accountable government. CREW respectfully submits this comment to express our concerns regarding the Securities and Exchange Commission's (SEC) proposal to rescind rule 206(4)-5, also known as the political contribution rule.[1] The proposed rescission, as published in the Federal Register on September 10, 2026, would remove a critical federal backstop aimed at curbing state and local pay-to-play corruption schemes.[2]

The SEC attempts to justify the proposed rescission of the political contribution rule with the suggestion that the rule has inhibited political contributions, is overly burdensome for investment advisors to implement and imposes a *de facto* strict liability standard under which small donations can potentially trigger severe penalties.[3] However, the SEC has not adequately shown that the rule has led to such unintended consequences. Instead, the SEC relies on anecdotal feedback from investment advisers and fails to quantify the negative impacts that could arise from rescinding the political contribution rule.

[1] Political Contributions by Certain Investment Advisers, 91 Fed. Reg. 57698 (Sept. 10, 2026).
[2] *SEC Makes Buying Politicians Great Again*, Better Markets (Sept. 3, 2026), https://bettermarkets.org/newsroom/sec-makes-buying-politicians-great-again/.
[3] Political Contributions by Certain Investment Advisers, 91 Fed. Reg. at 57699.

The political contribution rule was adopted in response to a series of high-profile scandals that implicated public officials and private investors across the country.[4] The growing number of pay-to-play schemes in the early 2000s was a result of ineffective federal, state and local laws that struggled to police quid pro quo agreements.[5] The SEC previously acknowledged that prosecuting quid pro quo arrangements is difficult because they are "rarely explicit and often hard to prove."[6] This is especially true in the case of public pension funds because "management decisions over these investment pools, some of which are quite large, are typically made by one or more trustees who are (or are appointed by) elected officials."[7] Because of the difficulty in proving quid pro quo corruption, and because evidence of such illegal dealings, generally, is not apparent until after the harm has been inflicted on the public, the SEC rightly decided that a prophylactic rule was needed to stop these dealings at their onset.

The political contribution rule provides an important federal backstop

The SEC now takes the position that the rule implemented to address these problems is no longer necessary. In a statement supporting the rescission proposal, SEC Chairman Atkins argued that "matters involving political contributions are more properly governed by local ordinances, state laws, and federal election regulations."[8] The Chairman also suggested that the Investment Advisers Act's antifraud provisions and fiduciary duty requirements provides sufficient protection against pay-to-play schemes.[9] However, the Investment Advisers Act, which was passed in 1940, did little to stop the scandals that played out in the early 2000s.[10] The SEC came to this conclusion in 2010 when they found that broad antifraud

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[4] *See* Hannah Levintova, *The SEC Wants to Scrap a Key Anti-Corruption Rule Targeting Private Equity*, Mother Jones (Sept. 24, 2026), https://www.motherjones.com/politics/2026/09/sec-pay-to-play-rule-private-equity-apollo-carlyle-quadrangle-pension-funds/.

[5] *See id.* (noting that the Investment Advisers Act "did little to prevent the schemes that played out in the early 2000s"); Dan Primack, *SEC wants to end pay-to-play prohibition for private equity*, Axios (Sept. 8, 2026), https://www.axios.com/2026/09/08/sec-pay-to-play-private-equity ("state and local prosecutors often had difficulties proving quid pro quo, and believed the federal ban was the best way to stop slippery actors").

[6] Political Contributions by Certain Investment Advisers, 75 Fed. Reg. 41018, 41022 (July 14, 2010).

[7] *Id*. at 41019.

[8] Paul S. Atkins, Chairman, SEC, Statement on Proposal to Rescind "Pay-to-Play" Rule (Sept. 3, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-statement-proposal-rescind-pay-play-rule-090326.

[9] *Id*.

[10] *See* Stephen Grocer, *Here's the Release on Broidy's Guilty Plea in Pay-to-Play Probe*, Wall St. J. (Dec. 3, 2009), https://www.wsj.com/articles/BL-DLB-17938; Press Release, DOJ, Former CalPERS CEO Pleads Guilty To Corruption Conspiracy (July 11, 2014), https://www.justice.gov/usao-ndca/pr/former-calpers-ceo-pleads-guilty-corruption-conspiracy; Rebecca Moore, *Ohio Bribery Investigation Turns to State Pension Funds*, Plansponsor (Mar. 6, 2007), https://www.plansponsor.com/ohio-bribery-investigation-turns-to-state-pension-funds/; Fred Schneyer, *Former Conn. Treasurer Gets More Jail Time*, Plansponsor (Sept. 11, 2004), https://www.plansponsor.com/former-conn-treasurer-gets-more-jail-time/.

provisions[11] and internal codes of ethics[12] may be ineffective at keeping political influence out of pension fund management. The current rescission proposal fails to explain how returning to the regulatory regime that existed in 2010 would not repeat the same failure. More succinctly, the proposal fails to articulate how historical evidence of conduct prior to the rule would support the rule's rollback.[13] Additionally, handing responsibility to state and local officials would return to a compliance system that varies from state to state and includes jurisdictions that have no restrictions on political contributions.[14] The political contribution rule rejected that approach in favor of a clear, universal standard regarding political contributions. It did so for good reason. As one compliance firm stated, the rule "gave firms a clear, testable standard, and … a defensible answer when a portfolio manager asked whether a donation was permitted."[15]

The SEC also makes conflicting statements regarding the effectiveness of the political contribution rule. Between 2000 and 2009, there were thirteen enforcement actions brought against investment advisers related to alleged pay-to-play schemes.[16] Since the rule's compliance date, the SEC has not brought a similar enforcement action.[17] While the SEC notes that the political contribution rule could have caused that decline, it also says that there are "many possible explanations for the decline in enforcement actions relative to the pre-rule state, and it is unclear to what extent such decline in enforcement actions also reflects a decline in pay-to-play practices overall."[18] The SEC theorizes that the pre-rule enforcement actions under the Investment Advisers Act could have successfully deterred pay-to-play practices,[19] but the SEC's 2010 analysis cited those enforcement actions as why it needed a strong *ex-ante* rule to curb pay-to-play schemes at the onset.[20] The SEC appears to

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[11] *See* Political Contributions by Certain Investment Advisers, 75 Fed. Reg. at 41022.
[12] *See id*. at 41027.
[13] *See* Genna Garver & David Madrazo, *In the Wake of CLARITY Act's Failure, Agencies Move Forward Without Congressional Action or Certainty*, Troutman Pepper Locke (Sept. 25, 2026), https://www.troutman.com/insights/in-the-wake-of-clarity-acts-failure-agencies-move-forward-without-congressional-action-or-certainty/ (describing the proposed rescission of the political contribution rule as "a change in policy philosophy, not a change in the underlying facts or statute").
[14] *See* Political Contributions by Certain Investment Advisers, 91 Fed. Reg. at 57711.
[15] *SEC Moves to Scrap the Pay-to-Play Rule. Do Not Delete Your Policy Yet*, Fintech Law (Sept. 10, 2026), https://fintechlaw.ai/blog/sec-pay-to-play-rule-rescission-ria-compliance-impact.
[16] Political Contributions by Certain Investment Advisers, 91 Fed. Reg. at 57714.
[17] *Id*.
[18] *Id*.
[19] *Id*.
[20] *See* Political Contributions by Certain Investment Advisers, 75 Fed. Reg. at 41019-20; *see also* Brooke Southall, *SEC seeks to rescind 2010 'pay-to-play' rule, paving the way for investment advisors to again bid for public pension contracts while making political donations to officials with influence over pension awards*, RIABiz (Sept. 3, 2026), https://riabiz.com/a/2026/9/4/sec-seeks-to-rescind-2010-pay-to-play-rule-paving-the-way-for-investment-advisors-to-again-bid-for-public-pension-contracts-while-making-political-donations-to-officials-with-influence-over-pension-awards ("[F]ormer regulators argue that relying on generalized anti-fraud statutes after the fact guts enforcement, because proving an explicit quid pro quo between an investment allocation and a campaign check is exceedingly rare").

view the lack of enforcement actions since the rule's compliance date as justification for the rule's rescission, but one could just as easily make the opposite conclusion. If a rule is aimed at stopping pay-to-play schemes before any enforcement (or public harm) occurs, the lack of enforcement actions strongly supports the inference that the rule has been successful.

The SEC has not provided current quantitative analysis of the actual costs related to compliance with the political contribution rule

In support of rescinding the rule, the SEC cites the 2010 Adopting Release estimation of costs related to complying with the political contribution rule.[21] Relying on the 2010 analysis, the SEC stated that firms would save approximately $416 million in funds related to monitoring employee contributions, compliance training, recordkeeping, and related expenses.[22] However, as one law firm noted, "much of the compliance framework that has been implemented to ensure compliance with the SEC [political contribution rule] would likely need to stay in place for many investment advisers, so those advisers are unlikely to realize the cost savings estimated by the SEC."[23]

Additionally, the SEC's analysis of how the political contribution rule has distorted the investment adviser labor market is limited to anecdotal feedback by market participants and the SEC admits that they do "not have data on measures indicating the extent of adviser competition that would allow [them] to quantify the magnitude of any such distortions."[24] Similarly, the SEC claims that the rule "may also have made government contracts less appealing,"[25] and "might also deter some advisers, particularly smaller advisers, from competing for government contracts,"[26] without providing concrete data to support those conclusions. While feedback from investment advisers is important, the SEC should have more robust quantitative analysis of the actual costs related to complying with the political contribution rule before making the decision to rescind the rule.

Rescinding the political contribution rule would further weaken public confidence

At a time when 89% percent of U.S. adults believe that government corruption is widespread,[27] rescinding a rule combating pay-to-play schemes would send the wrong

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[21] Political Contributions by Certain Investment Advisers, 91 Fed. Reg. at 57712.
[22] *Id.*
[23] Gregory Thomas Larkin et al., *SEC Rescission of the Pay-to-Play Rule: How Much Better Off Are Investment Advisers?*, Cleary Gottlieb (Sept. 22, 2026), https://www.clearygottlieb.com/news-and-insights/publication-listing/sec-rescission-of-the-pay-to-play-rule-how-much-better-off-are-investment-advisers.
[24] Political Contributions by Certain Investment Advisers, 91 Fed. Reg. at 57713.
[25] *Id.*
[26] *Id.*
[27] Benedict Vigers, *Record-High 89% in U.S. Say Government Corruption Widespread*, Gallup (Sept. 2, 2026), https://news.gallup.com/poll/713933/record-high-say-government-corruption-widespread.aspx.

message to the public. Public pensions in the United States totaled over $6 trillion dollars[28] in 2025 and this administration has signaled an intention to ease access to private equity in 401(k)s.[29] There is a significant risk that states and municipalities will decide to entrust the public's retirement with whoever gives the biggest campaign donation. At the very least, rescinding the political contribution rule could further erode public trust in government officials and the individuals chosen to manage funds. The political contribution rule also provides cover for honest advisers, who base their dealings on merit instead of connections, not to feel pressured to pay-to-play in order to compete with others in their industry.[30] Rescinding the rule could thus lead to what the SEC called a "collective action" problem, where government officials have "an incentive to continue to accept contributions to support their campaigns for fear of being disadvantaged relative to their opponents … [and] advisers may have an incentive to participate out of concern that they may be overlooked if they fail to make contributions."[31]

The SEC acknowledges these concerns, but argues that the savings from no longer complying with the political contribution rule could go towards establishing more efficient and profitable funds.[32] However, there is evidence to support the theory that any savings would be shifted to political contributions. The SEC itself points to a study showing that "a $500 increase in contributions was associated with roughly $200,000 more in contracting revenue."[33] The study also found a correlation showing that "firms whose political action committees (PACs) donate to federal officeholders receive more, and larger, federal contracts."[34] An investment adviser could rationally decide that the best way to allocate savings is towards political donations, not client experience.

Conclusion

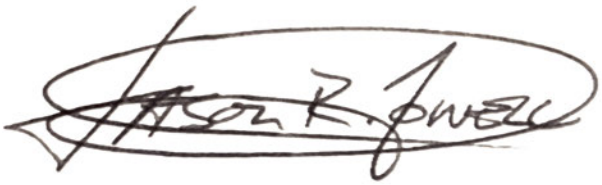
For the reasons described above, the SEC must withdraw its proposal to rescind the political contribution rule. The rule has been a successful deterrent in combating

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[28] Press Release, Census Bureau, Census Bureau Releases 2025 Annual Survey of Public Pensions (May 14, 2026), https://www.census.gov/newsroom/press-releases/2026/2025-aspp.html.
[29] Loukia Gyftopoulou, *The 401(k) Takeover: Private Equity Muscles In on Retirement*, Bloomberg (Feb. 18, 2026), https://www.bloomberg.com/news/features/2026-02-18/how-private-equity-is-targeting-your-401-k-plan.
[30] Joseph DiStefano, *SEC plans to end limits on campaign donor practice that fed pension corruption*, Philadelphia Inquirer (Oct. 5, 2026), https://www.inquirer.com/business/sec-pension-funds-political-contributions-pay-to-play-scandal-20261005.html.
[31] Political Contributions by Certain Investment Advisers, 75 Fed. Reg. at 41022.
[32] Political Contributions by Certain Investment Advisers, 91 Fed. Reg. at 57712.
[33] Nicholas Stephanopoulos, *Campaign Finance and "Real" Corruption*, *in* Money, Politics, and the First Amendment: Fifty Years of Supreme Court Decisions and Campaign Finance Reforms 159, 164 (Lee C. Bollinger & Geoffrey R. Stone eds., 2026).
[34] *Id*. at 159.

pay-to-play schemes and its rescission would send a negative message to the millions who rely on pension funds free from political mismanagement.

Sincerely,



Jason Powell
Policy Director, Citizens for Responsibility
and Ethics in Washington (CREW)