

SEC Rulemaking Update

Proposed Rescission of the Pay-to-Play Rule

On September 3, 2026, the Securities and Exchange Commission (SEC) proposed to rescind Rule 206(4)-5, the Pay-to-Play Rule under the Investment Advisers Act of 1940. The Pay-to-Play Rule prohibits an investment adviser from providing investment advisory services for compensation to a government client for two years after the adviser, or certain of its associates, makes a political contribution to specified elected officials or candidates. The rule was adopted in 2010 in response to concerns that political contributions could be used to influence, or create the appearance of influencing, the selection of investment advisers for government business. While well intended, the SEC has stated that the rule's strict-liability framework proved overly restrictive in practice; even a small donation made long after a government entity had already retained an adviser, or a contribution to an official with no authority over the entity's investment decisions, could result in forfeiture of advisory fees or SEC enforcement action.

The SEC's proposal reflects more than fifteen years of experience administering the rule. In the release, the SEC noted that market participants have described the rule as "burdensome, complex, and both lacks clarity and creates a de facto strict liability standard." The SEC also cited a 2024 industry compliance testing survey indicating that approximately 12.41% of responding advisers had adopted blanket prohibitions on all political contributions by covered personnel. The SEC pointed to additional unintended consequences, including restrictions on hiring or promoting qualified candidates because of past contributions unrelated to any government business, two-year compensation bans triggered by contributions as small as \$150, and persistent ambiguity in defined terms such as "covered associate" and "indirectly responsible," particularly as applied to supervisory relationships. The SEC also noted that government clients may lose access to their preferred or most cost-effective advisers when a covered associate's contribution triggers the compensation ban, that identifying which government officials are able to influence the award of advisory business can require a detailed analysis of a government entity's oversight structure and appointment authority, and that the rule's exemptive process for seeking relief from these prohibitions can be time-consuming and costly to pursue.

The SEC stated that a principles-based approach would better achieve the rule's original anti-corruption goals. Advisers would remain subject to the antifraud provisions of Section 206 of the Advisers Act, their fiduciary duty to clients, the Compliance Rule (Rule 206(4)-7), and the Code of Ethics Rule (Rule 204A-1), all of which the SEC views as sufficient to address pay-to-play risk without the rescinded rule's strict liability mechanics. The proposal would also eliminate the related recordkeeping requirement under Rule 204-2(a)(18), while advisers would continue to maintain records of their compliance policies, codes of ethics, and government client agreements under the general recordkeeping rule.

Advisers should note that other pay-to-play regimes would remain in effect notwithstanding rescission of Rule 206(4)-5, including the MSRB's political contribution rule for municipal advisers, FINRA Rule 2030 for broker-dealers, Exchange Act Rule 15Fh-6 for security-based swap dealers, a range of state and local pay-to-play laws, and federal anti-bribery statutes (18 U.S.C. §§ 201 and 666). Firms that also act in these other capacities, or that do business in jurisdictions with their own pay-to-play requirements, will continue to have compliance obligations even if the SEC rule is rescinded.

The proposal will be open for public comment for at least 60 days following publication in the Federal Register. The release does not include specific transition or grandfathering provisions; if adopted, the rescission would eliminate Rule 206(4)-5 and its related recordkeeping requirement in their entirety. We

will continue to monitor the status of this proposal and will update clients on further developments, including the adoption timeline and any effective or compliance dates.

Key Requirements That Would Be Eliminated

- Two-Year Compensation Ban – The prohibition on receiving compensation from a government client for two years following a triggering political contribution by the adviser or a covered associate.
- De Minimis Exception – The current carve-out permitting contributions of up to \$350 per election to officials an individual can vote for, or \$150 to other officials, without triggering the ban.
- Covered Associate Restrictions – The rule’s broad definition of covered associates, which reaches general partners, managing members, executive officers, soliciting employees, their supervisors, and controlled political action committees.
- Placement Agent / Third-Party Solicitor Ban – The prohibition on paying unregistered third parties to solicit government business on the adviser’s behalf.
- Contribution Coordination and Bundling Ban – Restrictions on coordinating or soliciting contributions to officials or political parties in jurisdictions where the adviser seeks government business.
- Covered Investment Pools – The rule treating advisers to pooled investment vehicles with government investors as directly providing advisory services to those government entities.
- Related Recordkeeping – The requirement under Rule 204-2(a)(18) to maintain records of covered associates, government clients, political contributions, and payments to solicitors.

What Would Remain in Place

- Antifraud and Fiduciary Duty – The general antifraud provisions of Section 206 of the Advisers Act and an adviser’s fiduciary duty to its clients, including government clients.
- Compliance Rule (Rule 206(4)-7) – The requirement to adopt and implement written policies and procedures reasonably designed to prevent violations, which advisers may continue to use to address pay-to-play risk directly.
- Code of Ethics Rule (Rule 204A-1) – Existing obligations to maintain a code of ethics reflecting the adviser’s fiduciary obligations.
- General Recordkeeping – Continued recordkeeping obligations under Rule 204-2 for compliance policies, codes of ethics, and client agreements.
- Other Pay-to-Play Regimes – The MSRB’s political contribution rule, FINRA Rule 2030, Exchange Act Rule 15Fh-6, applicable state and local laws, and federal anti-bribery statutes.

Fact Sheet – <https://www.sec.gov/files/ia-6994-fact-sheet.pdf>

SEC Release – <https://www.sec.gov/files/rules/proposed/2026/ia-6994.pdf>