



Political Transparency and Accountability Profile (2010)

Bank of America Corporation

CUSIP: 060505104

Stock Symbol: BAC Corporate Web Site: www.bankofamerica.com

Bank of America Corporation (Bank of America) is a financial holding company which provides banking and non-banking financial services and products in the United States and around the globe.¹ It is a leading bank with country's most extensive branch network, operating out of more than 6,000 locations in 30 states.² The company's core services include consumer and small business banking, credit cards, and asset management.³ Bank of America acquired Merrill Lynch in 2009.⁴

Political Activity

The January 2010 U.S. Supreme Court decision in *Citizens United v. the Federal Election Commission* overturned several long-standing restrictions on corporate political spending activities. The Court's decision struck down part of the Tillman Act of 1907 that first limited corporate political spending. Under the new ruling companies may spend unlimited corporate funds on independent expenditures to support or oppose a candidate as long as they do not coordinate their efforts with the candidates. Companies continue to be prohibited from contributing directly to federal candidates. Third-party groups such as trade associations also may use unlimited general purposes funds to the same end.

Companies may also continue to give contributions at the state and local level and to so-called 527s. These groups--named for the section of the tax code under which they are organized--may significantly impact federal, state and local elections. Companies also engage in political spending indirectly by supporting trade associations, organized as 501c6 organizations and other tax-exempt groups, which include social welfare organizations known as 501c4s. Trade associations and 501c4 groups gained popularity during the 2008 election cycle in the wake of the Federal Election Commission's crackdown on 527 groups for violating campaign finance law during 2004 elections.⁵ Another way companies can contribute to the political process is by supporting events such as Presidential inauguration celebrations and the Republican or Democratic Party conventions, a growing source of corporate support in recent years.⁶ Company funds are also used to pay for trade associations' grassroots lobbying communications.

¹ See "Bank of America Corporation Profile," available at <http://finance.yahoo.com/q/pr?s=BAC>

² See Hoover's 'Company Description,' available at http://www.hoovers.com/bank-of-america/--ID_58444--/free-co-profile.xhtml

³ Ibid

⁴ Ibid

⁵ See *Soft Money in the 2006 Election and the Outlook for 2008: The Changing Nonprofits Landscape*, Campaign Finance Institute, 2007. Approximately \$90 million in 501(c) spending on federal election activities was reported in 2006. T.W. Farnam & Brody Mullins, "Interest-Group Campaign Spending Nears Record", *Wall Street Journal*, February 5, 2008.

⁶ See *Inside Fundraising for the 2008 Party Conventions: Party Surrogates Gather Soft Money While Federal Regulators Turn a Blind Eye*, (The Campaign Finance Institute, 2008). See: *The Inauguration: Brought to you by the Few, the Wealthy* (Public Citizen; January 14, 2009 available at <http://www.citizen.org/pressroom/release.cfm?ID=2799>), and

Bank of America has been a major political spender in recent years. The company has contributed approximately \$6.7 million in corporate funds to political activities since 2002. The true figure is difficult to determine because reporting at the state-level is incomplete and can be misleading. This estimate also excludes payments Bank of America has made to trade associations or other tax-exempt organizations that fund political activities.

Bank of America does not yet publicly disclose its political contributions, its memberships in trade associations and other tax-exempt groups or the payments it makes to them that are used for political purposes. In March 2010, the company reached an agreement with the New York City Comptroller, which filed a shareholder resolution on political disclosure. Under the terms of the agreement, Bank of America will issue an annual report summarizing its donations made with corporate funds and “will also be shared regularly with Bank of America’s Board of Directors,” according to a New York City Comptroller press release.

The company did not agree to disclose its indirect spending through trade associations and other tax-exempt group. These gaps in transparency and accountability put shareholder value at risk.⁷ Bank of America’s financial industry competitors Prudential Financial, U.S. Bancorp, and American Express have adopted full disclosure of their political spending.

Election Cycle Trends

Bank of America has given significant donations to 527 groups in recent years. The company has given \$131,000 to 527s in the current 2010 election cycle. It gave \$783,000 to 527s in the 2008 election cycle, \$255,000 in the 2006 cycle, \$80,000 in the 2004 cycle and \$22,000 in the 2002 cycle. The Republican and Democratic Governors Associations are among the 527 groups in receipt of donations from the company. Bank of America has given \$439,000 to the DGA and \$415,000 to the RGA since the 2002 election cycle. The RGA was criticized in mid-2008 for raising uncapped donations in the 2008 presidential election.⁸ Other 527 groups in receipt of company donations include the Republican State Leadership Committee (\$218,000), the Democratic Legislative Campaign Committee (\$157,000), and the Democratic Attorney Generals’ Association (\$140,000).⁹

California was the largest state recipient of company funds during this time period. Bank of America has contributed more than \$1 million to candidates and committees since the 2002 election cycle. The company also gave \$450,000 to various ballot measure committees.

North Carolina was another major recipient of company funds from during the 2002-2008 election cycles. Bank of America contributed \$474,000 to Democratic candidates and committees and \$293,000 to Republican candidates and committees. In 2004, the company contributed \$100,000 to the ballot measure committee North Carolinians for Jobs and Progress, which supported a proposition to promote local economic development projects by allowing counties, cities and

Lawmakers and Lobbyists Celebrate Inauguration (The Washington Independent; January 20, 2009 available at <http://washingtonindependent.com/26340/lawmakers-celebrate-inauguration-with-lobbyists>).

⁷ *The Green Canary: Alerting Shareholders and Protecting Their Investments*, Center for Political Accountability, February 2005. See also *Hidden Rivers: How Trade Associations Conceal Corporate Political Spending, Its Threat to Companies, and What Shareholders Can do*, Center for Political Accountability, May 2006.

⁸ Brody Mullins and T.W. Farnam, *The Wall Street Journal*, “McCain Allies Find Finance-Law Holes.” Available at <http://www.politicalaccountability.net/files/CPA%20-%20Wall%20Street%20Journal%20-%20McCain%20Allies%20Find%20Finance-Law%20Holes%20-%202007-03-08.pdf>.

⁹ See CQMoneyline <http://moneyline.cq.com/pml/home.do>. The CPA used the CQ database to conduct searches on the company’s political giving. The search results do not distinguish contributions made with corporate funds from contributions made by the company PAC. Though the CPA made every effort to exclude any PAC contributions, the figure cited in this report might include donations made with employee funds.

towns to finance certain projects if they are funded by increasing tax revenues. The proposition ultimately passed.¹⁰

Trade Association Activity

Trade associations serve a variety of purposes. Some engage in political activity through contributions at the state and local level, grassroots lobbying, and issue advocacy. These activities are funded by dues and other payments from member companies. While not all trade associations are politically active, several major industry groups carry significant political weight.

A complete list of the trade associations or related groups to which Bank of America belongs is not publicly available. Most associations only disclose the companies represented on their board of directors, not their entire membership list. Shareholders also do not have access to the amount Bank of America pays to trade associations annually or the portion used for the associations' political spending.

A Center for Political Accountability review of publicly available information found that:

- Bank of America CEO Brian Moynihan is a member of the Business Roundtable (BRT).¹¹
- Brian Moynihan is a member of the Financial Services Forum (FSF).¹²
- Bank of America is a member of the American Banking Association Securities Administration, which is an affiliate of the American Bankers Association (ABA).¹³
- Bank of America is a member of the Financial Services Roundtable (FSR).¹⁴
- Bank of America Securities is a member of the Securities Industry and Financial Markets Association (SIFMA).¹⁵
- Bank of America is a member of the Consumer Bankers Association (CBA).¹⁶

Several of these organizations have been politically active in recent years. In 2008, the BRT reported payments of \$20.9 million and lobbying and political expenditures of \$13.3 million.¹⁷ For that same year, FSR reported payments of \$15.6 million and lobbying and political expenditures of \$7.6 million.¹⁸ Also in 2008, SIFMA reported payments of \$75 million and political and lobbying expenditures of \$5 million.¹⁹ In 2007, the ABA reported payments of \$25.4 million and lobbying and political expenditures of \$5.8 million.²⁰

¹⁰ Ibid

¹¹ See Business Roundtable "Members," available at <http://www.businessroundtable.org/about/members>

¹² See Financial Services Forum "Forum Members," available at <http://www.financialservicesforum.org/index.php/about-the-forum/forum-members.html>

¹³ See ABA's "Member Banks, Board of Directors, and Staff," available at http://www.aba.com/ABASA/abasa_board.htm

¹⁴ See FSR's "Member Companies," available at http://www.fsround.org/about/member_companies.htm

¹⁵ See "SIFMA Member Directory," available at <http://www.sifma.org/about/members/>

¹⁶ See CBA's "Corporate Banking Company Members," available at <http://www.cbanet.org/membership/content.cfm?ItemNumber=946&navItemNumber=1290>

¹⁷ The Business Roundtable's Form 990 ("Return of Organization Exempt from Income Tax") for the tax year 2008 indicates that the Business Roundtable received \$20,932,546 in dues, assessments and similar amounts from members (See Schedule C, Part III-B, Line 1). Of that amount, \$13,323,807 – or nearly 64% - was spent on lobbying and political expenditures. (See Schedule C, Part III-B, Line 2a)

¹⁸ FSR's Form 990 ("Return of Organization Exempt from Income Tax") for the tax year 2008 indicates that the FSR received \$15,615,942 in dues, assessments and similar amounts from members (See Schedule C, Part III-B, Line 1). Of that amount, \$7,554,314 – or nearly 48% - was spent on lobbying and political expenditures. (See Schedule C, Part III-B, Line 2a)

¹⁹ The SIFMA's Form 990 ("Return of Organization Exempt from Income Tax") for the tax year 2008 indicates that the group received \$74,464,691 in dues, assessments and similar amounts from members (See Schedule C, Part III-B, Line

A portion of the company's payments to these groups was likely used to underwrite some of this political spending. The company could face risks from the political activities of trade associations or groups to which it makes payments. Without disclosure by the company, shareholders cannot assess these risks.

Bank of America may also belong to the U.S. Chamber of Commerce, which has spent \$3 million advertising against the financial regulatory reform legislation pending in Congress.²¹ A recent study by the International Money Fund on lobbying and political activity and the current financial crisis highlighted the risks posed by political spending and how the interests of shareholders may differ from those of companies and their trade associations. The paper examined how loose oversight and regulation facilitated, in part, by political spending contributed to the collapse of some major lenders.²²

Transparency and Accountability Checklist

Publicly Disclosed Standards & Procedures Governing Corporate Political Activity

The CPA derived the following checklist from existing legal standards, best practice standards among leading corporations and policies that ensure protection of shareholder value. A company that fulfills most of the criteria listed below likely has good governance of its corporate political spending. The CPA relied on information that is disclosed on the company website and therefore publicly available to all investors. A company will not get credit for policies or procedures that are not publicly available.

Industry Comparison

Several of Bank of America's financial industry competitors, including Prudential Financial, U.S. Bancorp and American Express adopted full disclosure and accountability of their corporate political spending.

Positive Practices

Bank of America discloses the policies and procedures that regulate its political spending. The company has a policy of board oversight of its political spending. It reached an agreement with the New York City Comptroller in March 2010 to disclose a summary of its direct corporate political donations on an annual basis.

Room for Improvement

Bank of America did not agree to disclose its payments to trade associations and other tax-exempt groups that are used for political purposes.

Basic Disclosure

Is this information disclosed on the company website?

1). Of that amount, \$5,160,000— or about 7% - was spent on lobbying and political expenditures. (See Schedule C, Part III-B, Line 2a)

²⁰ ABA's Form 990 ("Return of Organization Exempt from Income Tax") for the tax year 2007 indicates that the ABA received \$25,400,254 in dues, assessments and similar amounts from members (See line 3, 85c). Of that amount, \$5,785,102 – or nearly 23% - was spent on lobbying and political expenditures. (See line 85d)

²¹ Sewell Chan. "Financial Overhaul Is Next Priority of Democrats." March 24, 2020, *The New York Times*, available at <http://www.nytimes.com/2010/03/25/business/25regulate.html?hp=&adxnnl=1&adxnnlx=1269461161-6Fo4CKfAx5P1Pf98H6dj0Q>.

²² Deniz Igan, Prachi Mishra, and Thierry Tresselt, "A Fistful of Dollars: Lobbying and the Financial Crisis," International Monetary Fund working paper, 2009.

Political contributions policies	yes ²³	Political contributions	*24	Trade association memberships and affiliations with other tax-exempt organization	no
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Standards & Oversight Procedures
Do company policies explicitly include the following items?

The use of corporate funds for political purposes is prohibited	no
Political contributions permitted only through voluntary employee funded PAC contributions	no
No contribution will be given in anticipation of, in recognition of, or in return for an official act	yes ²⁵
Company will not reimburse employees directly or indirectly for political donations or expenses	yes ²⁶
No employees will be pressured to make any personal political expenditures	yes ²⁷
Political contribution policies are included in Code of Conduct	yes ²⁸
Political contribution policies are disclosed elsewhere on the company website	yes ²⁹
Political contributions policies include specific criteria for approval of political donations	no
Prior approval required for political contributions	yes ³⁰
Officer or department must approve political contributions	? ³¹
General counsel or legal department must approve political contributions	? ³²

²³ See Bank of America “Political Contributions Policy Statement,” available at http://media.corporate-ir.net/media_files/irol/71/71595/corpgov/PoliticalContributionsPolicyStatement_3_23_06.pdf

²⁴ Bank of America committed to disclose a summary of its corporate political spending as part of an agreement it reached with the New York City Comptroller in March 2010.

²⁵ Bank of America’s “Code of Ethics” states that “You must not give or promise to give money or anything of value to any executive, official or employee of any government, agency, political party or candidate for political office if it could be seen as being intended to influence a Bank of America business relationship.” Available at <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9NzcyM3xDaGlsZEIEPS0xfFR5cGU9Mw==&t=1>

²⁶ Bank of America’s “Corporate Political Contributions Statement” states that “associate contributions are not reimbursable by Bank of America.” Available at <http://investor.bankofamerica.com/phoenix.zhtml?c=71595&p=irol-govhighlights>

²⁷ Bank of America’s “Code of Ethics” states that “Under no circumstance may you coerce or pressure other associates to make political contributions.” Available at <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9NzcyM3xDaGlsZEIEPS0xfFR5cGU9Mw==&t=1>

²⁸ See Bank of America’s “Code of Ethics,” available at <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9NzcyM3xDaGlsZEIEPS0xfFR5cGU9Mw==&t=1>

²⁹ See Bank of America’s “Corporate Political Contributions Statement,” available at <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9NzcyM3xDaGlsZEIEPS0xfFR5cGU9Mw==&t=1>

³⁰ Bank of America’s “Corporate Political Contributions Statement” states that “Each contribution is carefully reviewed for appropriateness and legality.” However, the policy does not specify who is responsible for reviewing the contributions. Available at http://media.corporate-ir.net/media_files/irol/71/71595/corpgov/PoliticalContributionsPolicyStatement_3_23_06.pdf

³¹ Ibid
³² Ibid

An executive officer of the company must approve political contributions	? ³³
Board of directors or board committee oversees political contributions	yes ³⁴
Board of directors or board committee must issue prior approval for political contributions	no
The same standards and oversight procedures apply to trade association payments	no

This checklist relies on the company's publicly disclosed information and reflects only external company standards and procedures. It does not measure compliance with the company's expressed standards and procedures. Any clear violations of the company's standards and procedures of which the CPA is aware will be included in this report.

Data last updated on March 9, 2010

³³ Ibid

³⁴ See Bank of America "Governance Guidelines," available at <http://investor.bankofamerica.com/phoenix.zhtml?c=71595&p=irol-govguidelines>. The policy states that "The Board shall annually review the Company's report on its charitable giving and political contribution programs."