



## 709:Lobbying & Political Activity Do's & Don'ts

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## Faculty Biographies

### Kimberly Houghton Berry

Kimberly Houghton Berry is assistant general counsel for National Wildlife Federation (NWF) in Reston, Virginia. Her responsibilities include providing general legal advice to the staff of NWF and other related organizations and affiliates involving primarily lobbying, election-related activities, contracts, copyrights, charitable solicitations, federal tax treatment of nonprofit organizations, planned giving (fundraising and estate litigation), real estate, and records management.

Prior to joining NWF, Ms. Berry left a small general law practice in Maine to obtain her LLM while clerking in the law, business, and government affairs department at National Geographic Society in Washington, DC.

Ms. Berry received her BA, cum laude, from the State University of New York at Binghamton, her JD from the University of Maine School of Law, and her Masters of Law in litigation and dispute resolution with highest honors from The George Washington University Law School.

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### Gigi Hyland

Gigi Hyland is senior vice president, general counsel of Empire Corporate Federal Credit Union in Albany, New York. Her responsibilities are to serve as Empire's primary legal representative as it relates to the delivery of Empire's products and services and to provide legal counsel to Empire's board and management to ensure compliance with applicable regulations and policies.

Before joining Empire, Ms. Hyland was executive director of the Association of Corporate Credit Unions (ACCU) and vice president, corporate credit union relations of the Credit Union National Association (CUNA). In that capacity, she represented CUNA's political action committee CULAC, for five years.

She has been a Credit Union Development Educator since 1994 and received the program's Volunteer of the Year Award in 2000. She is also a recipient of the Silver Award from the World Council of Credit Unions for her work with Latvian and Lithuanian credit unionists. Ms. Hyland is a member of the American, New York, Virginia, and DC bar associations. She serves on the advisory commission to the standing committee on election law of the ABA.

Ms. Hyland holds a BA from College of William and Mary, and received her JD from George Mason University School of Law. In addition she holds a diploma of advanced international legal studies from the McGeorge School of Law.

**Cynthia M. Lewin**

Cynthia M. Lewin is vice president and general counsel of Volunteers of America, Inc. in Alexandria, Virginia, one of the country's 20 largest charities, with 14,000 employees and 70,000 volunteers providing social services in 45 states. She is the chief legal officer of the organization and a member of the five-person executive team.

Prior to joining Volunteers of America, Ms. Lewin was a partner at Lichtman, Trister, Singer & Ross, where her practice focused exclusively on nonprofit organizations. She has broad-based experience in nonprofit tax and corporate matters, unrelated business income, charitable giving, personnel and employee benefits, contract negotiation and review, and liability issues.

Ms. Lewin is the past chair of the exempt organizations committee of the D.C. Bar Tax Section and has served on the D.C. Bar Tax Policy Task Force. She is a member of the executive committee of ACC's Nonprofit and Professional Association Committee and serves on a task force of the National Assembly of Health and Human Service Organizations reviewing the charity evaluation process.

Ms. Lewin is a graduate of Wellesley College and Yale Law School.

## ACC's 2004 Annual Meeting: The New Face of In-house Counsel

### 709 Lobbying & Political Do's & Don'ts

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#### I. Lobbying Do's & Don'ts for 501(c)(3)s

##### A. *What is lobbying and why must 501(c)(3)s report lobbying activities?*

A 501(c)(3) must report lobbying activities to the Internal Revenue Service (IRS) under the Internal Revenue Code (IRC) and to Congress, if it spends \$20,000 or more on lobbying activity during a six-month period, under the Lobbying Disclosure Act (LDA). State lobbying reporting laws vary from state to state and, thus, require that 501(c)(3)s engaging in state lobbying consult with the appropriate state office to determine whether and how to report state lobbying activity. Failure to submit accurate lobbying reports could subject a (c)(3) to penalties, including fines and loss of tax-exempt status.

When a (c)(3) reports lobbying activity to the IRS each year, the (c)(3) must use the IRC definition of "influencing legislation" to determine what it must report. When a (c)(3) registers and reports its lobbying activity to Congress, it uses the slightly broader LDA definition of "lobbying activity." More detailed explanations of each definition appear below in the sections addressing direct lobbying, grassroots lobbying, specific legislation, and the example detailing one (c)(3)'s internal lobbying reporting process.

##### B. *How can 501(c)(3)s measure lobbying activity?*

###### 1. The insubstantial part test

The IRS provides a 501(c)(3) organization with two standards from which to choose if it engages in lobbying activity and each standard limits the amount the (c)(3) can lobby. One standard – known as the insubstantial part test – is a vague standard that requires that "no substantial part" of a (c)(3)'s activities be "carrying on propaganda or otherwise attempting to influence legislation." The problem with this standard is that the IRC does not define how much activity constitutes "substantial" and provides inadequate guidance on what constitutes lobbying activity.

###### 2. The 501(h) expenditure test

The 501(h) expenditure test is an alternative to the insubstantial part standard offered by the IRS. Unlike the insubstantial part test, the 501(h) test provides (c)(3)s with specific lobbying limits and definitions further

detailed below. 501(h) limits are based on the percentage of a (c)(3)'s total exempt purpose expenditures and may not exceed \$1 million. The percentage is determined by the size of the (c)(3)'s annual budget and is calculated as follows:

**a) Calculating the expenditure limit under 501(h)**

- First, calculate what the (c)(3)'s "exempt purpose expenditures" are for the year.
- With the above figure, apply this formula:
  - A. Total Lobbying Expenditure Limit =
    - 20% of the first \$500K of exempt purpose expenditures
    - +15% of the next \$500K of exempt purpose expenditures
    - +10% of the third \$500K of exempt purpose expenditures
    - + 5% of the remaining exempt purpose expenditures
  - B. Grassroots Lobbying Expenditure Limit = 25% of total in A

**3. What to do: weighing the risks of electing or not?**

A (c)(3) that makes the 501(h) election is probably less likely to lose its tax exempt status due to exceeding its lobbying limit since the IRS considers the (c)(3)'s lobbying expenditures as a moving average over a four-year period. In addition, the IRS can only revoke the electing (c)(3)'s tax exempt status if the (c)(3) exceeds its direct or grassroots limit by 50 percent. On the other hand, a (c)(3) relying on the insubstantial part test could lose its exemption if it lobbies "substantially" in a single tax year.

Although some very large (c)(3) organizations may benefit from the insubstantial part test, most (c)(3)s have higher limits under 501(h). The limits under 501(h) are based solely on lobbying expenditures (excluding volunteer lobbying activities) while the insubstantial part standard applies to all activities (including volunteer lobbying activities) regardless of whether such activities generate expenditures.

Note: There is also talk that the IRS may eventually require that all (c)(3)s make the 501(h) election due to the ease by which a (c)(3) can measure its lobbying limits and follow specific definitions regarding what constitutes lobbying under the 501(h) standard.

***C. An example of how a 501(c)(3)'s internal lobbying report categories help it report lobbying activity to the IRS and Congress***

The best way for a (c)(3) to keep track of staff lobbying time is to create an internal lobbying report form to help report lobbying time to the IRS and Congress.

So that National Wildlife Federation (NWF), a 501(c)(3), can meet its reporting requirements on the Annual Form 990 to the IRS and semi-annual LD-2 to Congress, NWF asks its staff to track lobbying time on five different categories of activities:

LINE A: Direct Lobbying of the Federal Executive Branch on Specific Legislation

LINE B: Direct Lobbying of the Federal Legislative Branch on Specific Legislation

LINE C: Direct Lobbying of the Federal Legislative Branch – Additional LDA Covered Activities

LINE D: Direct Lobbying on Specific State, Local or Foreign Legislation

LINE E: Grassroots Lobbying on Specific Legislation

NWF calculates lobbying expenditures based on a formula of time spent multiplied by the individual employee's salary. The information requested on Lines A, B, D and E correspond to the IRC definition of "influencing legislation" and is used to prepare IRS Form 990 reports. The information requested on Lines A, B, & C corresponds to the LDA definition of "lobbying activity," slightly broadened for (c)(3) organizations, and is used to prepare the LD-2 reports to Congress. NWF also requests that "lobbyists," as defined below for LDA purposes, report the numbers of bills and/or the specific issues on which they lobby.

In addition to tracking lobbying time, NWF tracks lobbying expenses (such as mass media communications, mailing and printing costs, transportation costs, banner/sign and button costs, etc.) designated by staff as "direct" or "grassroots" lobbying activity on purchase orders, invoices and check request forms.

#### ***D. What is direct lobbying under 501(h)?***

Direct lobbying is defined generally as:

Any attempt to influence any legislation through communications with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of legislation.

#### ***E. What is grassroots lobbying under 501(h)?***

Grassroots lobbying is defined generally as:

Any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof.

#### ***F. What is specific legislation under 501(h)?***

501(c)(3)s must report direct and grassroots lobbying activities only if they make reference to specific legislation. The term "legislation" refers to an action by a legislative body, including the "introduction, amendment, enactment, defeat or repeal of Acts, bills, resolutions, or similar items." It includes federal, state, local and foreign legislation. It also includes ballot measure initiatives. Legislation includes actions by Congress, a state

legislature, a local council, a similar legislative body in another country, or any actions by the general public in a referendum question, initiative petition, or proposed constitutional amendment. In addition, legislation includes Senate confirmation of executive or judicial branch nominees and proposed treaties requiring Senate approval (from the time the President's representative begins to negotiate its position with respect to the parties to that proposed treaty). Judicial, executive and administrative bodies (which include special purpose bodies like school and zoning boards) are not legislative bodies.

### ***G. How to report direct lobbying activity under 501(h)***

501(c)(3)s must report time spent preparing and delivering:

- Direct lobbying communications with legislators, legislative staff, or executive branch officials,
- That make reference to specific legislation, and
- Express a view on that legislation.

In addition, it is also considered direct lobbying when a (c)(3) asks its members to contact legislators in support of or in opposition to specific legislation. "Members" are persons who pay dues or make contributions of time or money of more than nominal value. This includes those who are members and persons volunteering for more than 10 hours per year and persons who are members of an affiliated group.

Note: As is demonstrated in Section I(C) above, direct lobbying time would be internally reported by NWF staff on LINES A, B and D.

Certain direct lobbying communications fall under special legal exceptions, and therefore should not be reported. These include the following:

- Self-defense lobbying, i.e., lobbying with respect to the (c)(3)'s existence, specific powers and duties, tax-exempt status, or tax treatment of contributions;
- Communications in the form of nonpartisan research and analysis that do not urge action on specific legislation;
- Discussion of broad areas of social policy rather than specific legislation; and
- Responses to written requests for technical advice issued by a committee or subcommittee chair.

### ***H. How to report grassroots lobbying activity under 501(h)***

501(c)(3)s must report time spent preparing and delivering:

- Calls to action urging the general public to take action,
- That make reference to specific legislation, and
- Express a view on that legislation.

A grassroots lobbying "**call to action**," otherwise known as an "**action alert**," must either:

- State that the recipient should contact a legislator or other relevant government employee for purposes of influencing the legislation; or
- State the address, telephone number or similar information regarding a legislator or legislative body employee; or
- Provide a petition, post card or similar means for the recipient to contact a legislator or legislative body employee; or
- Specifically identify a legislator or legislators who will vote on the legislation as being: opposed to or undecided about the (c)(3)'s view on the legislation; the recipient's legislator; or a member of a legislative (sub)committee who will vote on the legislation.
- Identifying the sponsor(s) of a piece of legislation does not constitute a grassroots lobbying call to action.

In addition, certain **paid mass media communications** (i.e., commercial television, radio, magazine, newspaper, etc.) will count as grassroots lobbying even if they don't contain an action alert if the advertisement:

- Appears within two weeks of a vote on the legislation by either a legislative body or a committee, but not a subcommittee; and
- Reflects a view on the general subject of the legislation; and
- Either (a) refers to the highly publicized legislation, or (b) encourages members of the general public to contact members of the legislature about the general subject of the legislation.

Note: As is demonstrated in Section I(C) above, grassroots lobbying time would be internally reported by NWF staff on LINE E.

***I. How to report activity that is a combination of direct and grassroots lobbying under 501(h)***

If an action alert is being circulated to both the general public as well as some (c)(3) members and/or staff, and members and staff make up more than half of the recipients, then lobbying time would be allocated between direct lobbying (for alerts sent to members and staff) and grassroots lobbying (for alerts sent to the general public and non-members). For instance, if a (c)(3) prepares and delivers an action alert, and 75 percent of the mailing list is made up of members and 25 percent of the mailing list is made up of the general public. Allocate 75 percent of the time spent preparing and delivering the action alert as direct lobbying (to cover the percentage made up of members), and the other 25 percent as grassroots lobbying (to cover the percentage made up of the general public).

***J. Does the 501(c)(3) report just the time spent making the lobbying communication or other time as well under 501(h)?***

Lobbying includes not just the time spent making the lobbying communication – that call to the legislator's staffer or personal visit – but it also includes such activity as the time spent researching and preparing for the visit, creating the information for the (c)(3)'s



website that conveys the lobbying communication, and writing a direct mail piece that makes a lobbying communication. When reporting lobbying, report all of this time.

***K. Who at the 501(c)(3) should report lobbying?***

In order for a (c)(3) to report lobbying activity to the IRS and Congress, any paid person who conducts lobbying activity should be reporting internally to the (c)(3) any time they have engaged in lobbying. Paid employees include:

- Lobbyists
- Staff who aren't normally lobbyists, but who are lobbying on a particular issue
- Support staff and paid interns

Volunteers are not required to report lobbying activity under 501(h).

***L. Who is a "lobbyist" under the Lobbying Disclosure Act (LDA)?***

For LD-2 lobbying reports to Congress, (c)(3)s must list the names of its lobbyists as well as specify the bill numbers or specific issues on which their lobbyists lobby. Under the LDA, a lobbyist is an individual who (a) is either employed or retained by the (c)(3) for financial or other compensation; (b) performs services that include more than one lobbying contact; and (c) whose time spent on direct lobbying, including on additional LDA covered activities described below, constitute 20 percent or more of his or her services on behalf of the (c)(3) during a six-month reporting period. The specific six-month reporting periods during which the (c)(3) must measure the 20 percent figure is either January through June or July through December. Note that you can't use March through August.

**Reminder:** This six-month period applies to federal LD-2 reports and not to annual IRS reports submitted by (c)(3)s or to state reports that must be submitted directly to state offices.

***M. What are the additional direct lobbying activities that extend beyond the IRS requirements, and need only be reported by lobbyists (as defined above) to Congress?***

The additional LDA covered activities to be reported to Congress on the LD-2 include the following, but only if the lobbying contact is made with one or more **covered legislative branch** officials by a lobbyist (as defined above) during the semi-annual LDA reporting period:

- Preparation of nonpartisan research reports that are intended, at the time they are prepared for use in lobbying contacts;
- Self-defense lobbying;
- Preparation for and contacts with legislative officials (not executive branch officials) on policies that have not ripened into specific legislative proposals;

- Responses, other than testimony, to oral requests for technical assistance from a congressional committee or subcommittee; and
- Contacts with legislative officials about the formulation or modification of federal rules, regulations, executive orders or other policies or the negotiation, award or administration of federal programs, policies, contracts, grants, loans, permits, licenses and the like.

Covered legislative branch officials are defined as Members of Congress; staff members of Members of Congress, congressional committees or caucuses, and the congressional leadership; and certain other congressional staff. Covered legislative branch officials must identify themselves as such in response to a request by anyone making a lobbying contact. Therefore, if you are unsure whether someone you are contacting in Congress is a covered legislative branch official, you can ask the person and he or she should provide the answer.

Note: As is demonstrated in Section I(C) above, additional direct lobbying activities to be reported to Congress under the LDA, not the IRC, would be internally reported by NWF lobbyists on LINE C.

## **II. Political Activity Do's & Don'ts for 501(c)(3)s**

### ***A. Can 501(c)(3)s participate in electoral politics?***

As charitable organizations recognized as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code, (c)(3)s are prohibited from engaging in any partisan political activity or electoral politics. That is one of the requirements of Section 501(c)(3). 501(c)(3)s cannot engage in any activity that is designed to have an effect on an election.

Unlike lobbying, there is no allowance for an insubstantial amount of partisan political activity. There is a complete ban on any partisan political activity. This applies to federal, state, and local electoral politics.

### ***B. What can't a 501(c)(3) do?***

To avoid any problems, (c)(3)s should be careful not to engage in the following activities which are likely to suggest to the IRS that the (c)(3) may be engaging in electoral politics:

- Concentrate activities during peak campaign periods - a month before a primary or two months before an election;
- Target specific geographic areas (such as congressional districts) during peak campaign periods;
- Communicate with people outside of the (c)(3)'s normal audience during peak campaign periods;
- Focus communications to particular election districts during peak campaign periods; or
- Coordinate activities with those of a (c)(4), a PAC or political campaign.

501(c)(3)s are not allowed to:

- Make political contributions;
- Endorse a candidate;
- Speak in favor of or against a candidate for political office;
- Use the (c)(3)'s property (phones, faxes, office supplies, etc.) in support of or against a campaign;
- Lease space to campaigns;
- Provide volunteers to work on a campaign;
- Use the (c)(3)'s mailing lists, email lists, or other lists of members or activists for a campaign; or
- Write letters to the editor or other public communications in support of or against a candidate during an election period.

### ***C. Can a 501(c)(3) participate in issue advocacy?***

With regard to a (c)(3)'s **issue advocacy** efforts, the IRS recently published **Revenue Ruling 2004-6**, indicating that public communications that discuss an incumbent candidate's actions close to an election are more likely to violate section 501(c)(3) if such communications indicate an incumbent's position on a particular policy that distinguishes the candidate from other candidates. However, (c)(3)s are less likely to be intervening in electoral politics if the communication is part of series of similar communications on the same topic, if it times the communication to coincide with a specific policy decision that the (c)(3) is attempting to influence, and identifies the candidate solely as a government official who is in a position to act on the decision that the (c)(3) is hoping to influence.

**The Bipartisan Campaign Reform Act**, Pub. L. No. 107-15 (2002) (BCRA), and its implementing regulations which went into effect in 2002, restricts (c)(3)s from using general treasury funds to pay for broadcast, cable or satellite advertisements that include the name or likeness of a federal candidate a month before a primary or convention, and 2 months before a general election. Qualified nonprofit corporations are exempt from this provision under the implement regulations. 11 C.F.R. §114.10. Although currently being challenged by Shays v. FEC in the U.S. District Court for the District of Columbia at the time of this writing, (c)(3)s are also exempt from this provision under 11 C.F.R. § 100.29(c)(6).

### ***D. What about freedom of speech and the political process?***

A (c)(3)'s employees are entitled to exercise their rights as citizens and work in support of or against any candidate, but they must do so as private individuals on their own time and with their own resources and equipment.

501(c)(3)s should caution employees that if they exercise their rights as private citizens and get involved in a campaign, they should not use their place of employment as an identifier. The only reason to do so would be to imply that their (c)(3) employer agrees with their support of or opposition to a candidate.

### ***E. What can a 501(c)(3) do to inform voters of the issues?***

A 501(c)(3) can engage in three types of nonpartisan “voter participation” activities:

- Voter education
- Get-out-the-vote activities
- Voter registration

These activities must be done without any stated or implied endorsement of a particular candidate or particular party.

Note: The BCRA's new soft money limits may affect how (c)(3)s structure their fundraising efforts as national, state, and local political parties are prohibited from assisting (c)(3)'s in their fundraising efforts if the (c)(3) engages in get-out-the-vote or other types of election-related activity, regardless if the activity affects a federal, state or local election. 11 C.F.R. § 300.50 and 300.51. If a 501(c)(3)'s main activity is election-related, it also can't receive fundraising assistance from federal candidates or officeholders. 11 C.F.R. § 300.52.

### ***F. What counts as voter education?***

The most popular forms of voter education are candidate forums, candidate questionnaires, and voting record reports. A (c)(3) can do all of these activities as long as it follows the rules for each, which are briefly outlined as follows:

#### **1. What are the rules pertaining to candidate forums?**

Candidate forums are one of the more popular voter education activities. A (c)(3) can sponsor candidate forums (or co-sponsor with another organization or affiliate), but it has to comply with certain guidelines. The most important guideline is that the forum must be nonpartisan. All “viable” candidates must be invited to participate. The same questions should be posed to all candidates from a nonpartisan panel independent of the sponsor of the candidate forum. The moderator cannot show preference for any one candidate and should not be a spokesperson for the sponsor's views. Equal time must be allowed for each candidate to answer questions or discuss issues. The location must not show any preference for one candidate or party. The moderator should announce at the beginning of the forum that all candidates have been invited. At the beginning and end of the forum, the moderator should announce that the views expressed are those of the candidates and not of the sponsor. A (c)(3) can report on the candidate forum without editorial comment or endorsement and the report can only be circulated through the (c)(3)'s normal channels of communication.

## **2. What are the rules pertaining to candidate questionnaires?**

Candidate questionnaires may be circulated to all candidates for a particular office as long as the questions are unbiased. All candidates must be given the same amount of time to respond to the questionnaire. The candidates' responses may be compiled in a voters' guide as long as no editorial comment is added by the (c)(3). The voters' guide must not be designed to make certain candidates look better or worse than their competitors based on their answers.

## **3. What are the rules pertaining to incumbents' voting records?**

Incumbents' voting records may be publicized, but only under certain circumstances. The information publicized must not be done in such a way as to imply endorsement or opposition of any candidate. In publishing incumbents' records, the records of all members of the legislature must be published, not just those running for re-election. Candidates for re-election may not be identified as running for re-election. A broad range of issues must be covered in the voting record report. There are other strict rules that must be followed if the legislators' voting records are to be scored in any way.

### ***G. What can a 501(c)(3) do for voter registration and get-out-the-vote activities?***

A 501(c)(3) may engage in door-to-door or other voter registration, offer to transport people to the polls on election day, or canvass neighborhoods to encourage people to vote. All of this must be done without expressing any preference for or against any candidate or political party. In other words, a (c)(3) can't offer free transportation to just the Democrats or just the Republicans. The offer must be open to everyone who accepts or the (c)(3) can't make the offer.

### ***H. What else can a 501(c)(3) do?***

There are a number of activities that fall under "education" that a (c)(3) can do, such as:

- Make substantive issue-oriented presentations to platform committees, candidates, campaign staffs, the media or general public;
- Take advantage of increased media attention on issues during a campaign to focus attention on the (c)(3)'s issues;
- Conduct training on issues and organizing skills as long as the training is nonpartisan; and
- Continue the (c)(3)'s normal lobbying activity and report on lobbying and other activities in the usual ways to the usual audiences.

***I. How can a 501(c)(3) continue to conduct its normal business activities in light of all of these restrictions?***

A (c)(3) may carry on its normal business activities as long as the activities do not favor one candidate or party over another. Even when conducting normal business activities, be careful of anything that is done within a month before a primary or two months before an election.

Examples:

- If a (c)(3) normally sends out a newsletter bimonthly, it can keep doing so, but it shouldn't increase the frequency of the publication and send the newsletter out weekly during the two months before election day.
- A (c)(3) can rent its mailing list to a candidate, but it must make the list available to all candidates at the same rate and that rate must be the usual rental price for that list. The (c)(3) can't offer a special discount to candidates that support the (c)(3)'s issues.

The important thing to remember is that all of a (c)(3)'s activities must be nonpartisan.

## Bibliography/Resources

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Caplin & Drysdale, Playing by the Rules: Handbook on Voter Participation and Education Work for 501(c)(3) Organizations, (1998).

Website: [www.IndependentSector.org](http://www.IndependentSector.org)

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Website: [www.afj.org](http://www.afj.org)

Internal Revenue Service website: [www.irs.gov](http://www.irs.gov)

Congress' website (for lobbying reporting purposes): [www.clerkweb.house.gov](http://www.clerkweb.house.gov)

Clerk of the House of Representatives Legislative Resource Center B-106 Cannon Building Washington, DC 20515	Secretary of the Senate Office of Public Records 232 Hart Building Washington, DC 20510
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## LOBBYING REPORT

Lobbying Disclosure Act of 1995 (Section 5) - All Filers Are Required to Complete This Page

1. Registrant Name			
2. Address <input type="checkbox"/> Check if different than previously reported			
3. Principal Place of Business (if different from line 2)			
City:		State/zip (or Country)	
4. Contact Name	Telephone	E-mail (optional)	5. Senate ID #
7. Client Name <input type="checkbox"/> Self			6. House ID #

**TYPE OF REPORT** 8. Year \_\_\_\_\_ Midyear (January 1-June 30)  **OR** Year End (July 1-December 31)

9. Check if this filing amends a previously filed version of this report

10. Check if this is a Termination Report  ⇔ Termination Date \_\_\_\_\_ 11. No Lobbying Activity

INCOME OR EXPENSES - Complete Either Line 12 OR Line 13	
<p style="text-align: center;"><b>12. Lobbying Firms</b></p> <p><b>INCOME</b> relating to lobbying activities for this reporting period was:</p> <p>Less than \$10,000 <input type="checkbox"/></p> <p>\$10,000 or more <input type="checkbox"/> ⇔ \$ _____ Income (nearest \$20,000)</p> <p>Provide a good faith estimate, rounded to the nearest \$20,000, of all lobbying related income from the client (including all payments to the registrant by any other entity for lobbying activities on behalf of the client).</p>	<p style="text-align: center;"><b>13. Organizations</b></p> <p><b>EXPENSES</b> relating to lobbying activities for this reporting period were:</p> <p>Less than \$10,000 <input type="checkbox"/></p> <p>\$10,000 or more <input type="checkbox"/> ⇔ \$ _____ Expenses (nearest \$20,000)</p> <p><b>14. REPORTING METHOD.</b> Check box to indicate expense accounting method. See instructions for description of options.</p> <p><input type="checkbox"/> <b>Method A.</b> Reporting amounts using LDA definitions only</p> <p><input type="checkbox"/> <b>Method B.</b> Reporting amounts under section 6033(b)(8) of the Internal Revenue Code</p> <p><input type="checkbox"/> <b>Method C.</b> Reporting amounts under section 162(e) of the Internal Revenue Code</p>

Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name and Title \_\_\_\_\_



GENERAL LOBBYING ISSUE AREAS: Select those from the following list that most closely match the client's lobbying issue areas. Enter the corresponding codes on line 15.

ACC	Accounting	HOU	Housing
ADV	Advertising	IMM	Immigration
AER	Aerospace	IND	Indian/Native American Affairs
AGR	Agriculture	INS	Insurance
ALC	Alcohol & Drug Abuse	LBR	Labor Issues/Antitrust/Workplace
ANI	Animals	LAW	Law Enforcement/Crime/Criminal Justice
APP	Apparel/Clothing Industry/Textiles	MAN	Manufacturing
ART	Arts/Entertainment	MAR	Marine/Maritime/Boating/Fisheries
AUT	Automotive Industry	MIA	Media (Information/Publishing)
AVI	Aviation/Aircraft/Airlines	MED	Medical/Disease Research/Clinical Labs
BAN	Banking	MMM	Medicare/Medicaid
BNK	Bankruptcy	MON	Minting/Money/Gold Standard
BEV	Beverage Industry	NAT	Natural Resources
BUD	Budget/Appropriations	PHA	Pharmacy
CHM	Chemicals/Chemical Industry	POS	Postal
CIV	Civil Rights/Civil Liberties	RRR	Railroads
CAW	Clean Air & Water (Quality)	RES	Real Estate/Land Use/Conservation
CDT	Commodities (Big Ticket)	REL	Religion
COM	Communications/Broadcasting/Radio/TV	RET	Retirement
CPI	Computer Industry	ROD	Roads/Highway
CSP	Consumer Issues/Safety/Protection	SCI	Science/Technology
CON	Constitution	SMB	Small Business
CPT	Copyright/Patent/Trademark	SPO	Sports/Athletics
DEF	Defense	TAX	Taxation/Internal Revenue Code
DOC	District of Columbia	TEC	Telecommunications
DIS	Disaster Planning/Emergencies	TOB	Tobacco
ECN	Economics/Economic Development	TOR	Torts
EDU	Education	TRD	Trade (Domestic & Foreign)
ENG	Energy/Nuclear	TRA	Transportation
ENV	Environmental/Superfund	TOU	Travel/Tourism
FAM	Family Issues/Abortion/Adoption	TRU	Trucking/Shipping
FIR	Firearms/Guns/Ammunition	URB	Urban Development/Municipalities
FIN	Financial Institutions/Investments/Securities	UNM	Unemployment
FOO	Food Industry (Safety, Labeling, etc.)	UTI	Utilities
FOR	Foreign Relations	VET	Veterans
FUE	Fuel/Gas/Oil	WAS	Waste (hazardous/solid/interstate/nuclear)
GAM	Gaming/Gambling/Casino	WEL	Welfare
GOV	Government Issues		
HCR	Health Issues		
HOM	Homeland Security		

Registrant Name \_\_\_\_\_ Client Name \_\_\_\_\_

**LOBBYING ACTIVITY.** Select as many codes as necessary to reflect the general issue areas in which the registrant engaged in lobbying on behalf of the client during the reporting period. **Using a separate page for each code,** provide information as requested. Attach additional page(s) as needed.

15. General issue area code \_\_\_\_ \_ (one per page)

16. Specific lobbying issues

17. House(s) of Congress and Federal agencies contacted  Check if None

18. Name of each individual who acted as a lobbyist in this issue area

Name	Covered Official Position (if applicable)	New
.....	.....	<input type="checkbox"/>
.....	.....	<input type="checkbox"/>
.....	.....	<input type="checkbox"/>
.....	.....	<input type="checkbox"/>
.....	.....	<input type="checkbox"/>
.....	.....	<input type="checkbox"/>
.....	.....	<input type="checkbox"/>
.....	.....	<input type="checkbox"/>

19. Interest of each foreign entity in the specific issues listed on line 16 above  Check if None

Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name and Title \_\_\_\_\_

Registrant Name \_\_\_\_\_ Client Name \_\_\_\_\_

**Information Update Page - Complete ONLY where registration information has changed.**

20. Client new address

21. Client new principal place of business (if different from line 20)

City \_\_\_\_\_ State/Zip (or Country) \_\_\_\_\_

22. New general description of client's business or activities

**LOBBYIST UPDATE**

23. Name of each previously reported individual who is **no longer** expected to act as a lobbyist for the client

**ISSUE UPDATE**

24. General lobbying issues previously reported that **no longer** pertain

**AFFILIATED ORGANIZATIONS**

25. Add the following affiliated organization(s)

Name	Address	Principal Place of Business (city and state or country)

26. Name of each previously reported organization that is **no longer** affiliated with the registrant or client

**FOREIGN ENTITIES**


27. Add the following foreign entities

Name	Address	Principal place of business (city and state or country)	Amount of contribution for lobbying activities	Ownership percentage in client

28. Name of each previously reported foreign entity that **no longer** owns, **or** controls, **or** is affiliated with the registrant, client or affiliated organization

Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name and Title \_\_\_\_\_




**709 Lobbying & Political  
Activity Do's & Don'ts**

**Kimberly H. Berry, Assistant General  
Counsel, National Wildlife Federation**

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**Lobbying Do's & Don'ts for 501(c)(3)s**

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## 501(c)(3) Reporting Obligations

- Internal Revenue Service
  - Internal Revenue Code (IRC)
  - Annual Form 990
  - Report activity defined as “Influencing Legislation”
- US Congress
  - Lobbying Disclosure Act (LDA)
  - Semi-Annual LD-2
  - Report “Lobbying Activity” broadened for (c)(3) charitable organizations

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## 501(c)(3) Reporting Obligations (cont.)

- State Lobbying Laws
  - State reporting laws vary from state to state.
  - Consult with the appropriate state office to determine whether and how to register lobbyists and report state lobbying activity.
  - Examples of state offices to contact:
    - Alaska Public Offices Commission: [www.state.ak.us/local/akpages/ADMIN/apoc/frconten.htm](http://www.state.ak.us/local/akpages/ADMIN/apoc/frconten.htm)
    - Alabama Ethics Commission: [www.ethics.alalinc.net](http://www.ethics.alalinc.net)
    - Arizona Secretary of State Election Department: [www.sosaz.com/election/lobbyist](http://www.sosaz.com/election/lobbyist)

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## Lobbying Penalties for 501(c)(3)s

- Failure to submit accurate reports to the IRS and Congress could subject a (c)(3) to severe penalties, including fines and loss of tax-exempt status.
- In light of recent business scandals, expect the IRS to step up compliance with and enforcement of lobbying reporting laws.

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## IRS Lobbying Categories for 501(c)(3)s

- Insubstantial Part Test – Vague Standard
  - 501(c)(3)s choosing the IRS standard may devote only an “insubstantial” portion of their activities to lobbying.
- 501(h) Test – Specific Standard
  - The amount a (c)(3) can spend is a percentage of its total exempt purpose expenditures and may not exceed \$1 million; the percentage is determined by the size of the (c)(3)'s annual budget.

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## Direct or Grassroots Under 501(h)?

- To know whether a (c)(3) has anything to report to the IRS or Congress, it must first be able to make the distinction between direct and grassroots lobbying.

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## Direct Lobbying

- The IRS defines direct lobbying as any attempt to influence legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of legislation.

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## Grassroots Lobbying

- The IRS defines grassroots as any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment of the general public.

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## Legislation

- According to the IRS, legislation refers to an action by a legislative body – including the introduction, amendment, enactment, defeat or repeal of Acts, bills, resolutions or similar items.

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## Legislation Includes:

- Federal, state, local and foreign legislation.
- Ballot measure initiatives.
- Actions by Congress, a state legislature, local council, or a similar foreign legislative body.
- Actions by the general public in a referendum question, initiative petition, or proposed constitutional amendment.
- Senate confirmation of executive or judicial branch nominees and proposed treaties requiring Senate approval (from the time the President's representative begins negotiations).

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## Specific Legislation

- According to the IRS, (c)(3)s must report direct and grassroots lobbying activities only if they make reference to *specific legislation*.
- Specific legislation is generally a bill or resolution that has been introduced, or a proposal that is sufficiently specific enough that it could be readily drafted into a bill.

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## Reporting Direct Lobbying

- Under 501(h), report time spent preparing and delivering:
  - Direct lobbying communications with legislators, legislative staff, or executive branch officials,
  - That make reference to specific legislation, and
  - Express a view on that legislation.

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## What NOT to Report

- Self-defense lobbying.
- Communications in the form of nonpartisan research and analysis that do not urge action on specific legislation.
- Discussion of broad areas of social policy rather than specific legislation.
- Responses to written requests for technical advice issued by a committee or subcommittee chair.

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## Reporting Grassroots Lobbying

- Under 501(h), report time spent preparing and delivering:
  - Calls to action urging the general public to take action,
  - That make reference to specific legislation, and
  - Express a view on that legislation.

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## The “Call to Action”

- According to the IRS, a “call to action” or “action alert” must:
  - State that the recipient should contact a legislator or other relevant government employee for purposes of influencing legislation, or
  - State the address, telephone number or similar information regarding a legislator or legislative body employee, or
  - Provide a petition, post card or similar means for the recipient to contact a legislator or legislative body employee, or

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## The “Call to Action” (cont.)

- Specifically identify a legislator or legislators who will vote on the legislation as being:
  - Opposed to or undecided about the (c)(3)'s view on the legislation, or
  - The recipient's legislator, or
  - A member of a legislative (sub)committee who will vote on the legislation.
- Simply identifying the sponsor(s) of a piece of legislation does not constitute a grassroots lobbying call to action.

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## Calling Members to Action

- Action alerts sent to a broad audience outside a legislature are generally regarded as grassroots communications. However, the IRS considers it **direct lobbying** if a (c)(3) asks its members or staff to contact legislators in support of or in opposition to specific legislation.

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## How the IRS Defines “Members”

- “Members” are persons who pay dues or make contributions of time or money of more than nominal value. This includes those who are members and persons volunteering for more than 10 hours per year and persons who are members of an affiliated group.

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## Paid Mass Media Communications

- According to the IRS, certain paid mass media communications (i.e., commercial television, radio, magazine, newspaper, etc.) will count as grassroots lobbying even if they don't contain an action alert if the advertisement:
  - Appears within two weeks of a vote on the legislation by either a legislative body or a committee, but not a subcommittee; and
  - Reflects a view on the general subject of the legislation; and
  - Either (a) refers to the highly publicized legislation, or (b) encourages members of the general public to contact members of the legislature about the general subject of the legislation.

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## Who Reports Lobbying at the (c)(3)?

- Paid employees of the (c)(3), including:
  - Lobbyists
  - Staff who aren't normally lobbyists, but who are lobbying on a particular issue
  - Support staff and paid interns
- A (c)(3)'s volunteers are not required to report lobbying on behalf of the (c)(3) under 501(h).

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## Definition of a Lobbyist Under the LDA

- Employed or retained by the (c)(3) for financial or other compensation.
- Performs services that include more than one lobbying contact.
- Spends 20% or more of his/her time direct lobbying on behalf of the (c)(3).
- During a six-month period (January to June or July to December).

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## Additional Direct Lobbying Activities

For LD-2 lobbying reports to Congress, only lobbyists report contacts with one or more covered legislative branch officials regarding:

- Preparation of nonpartisan research reports that are intended, at the time they are prepared, for use in lobbying contacts.
- Self-defense lobbying.
- Preparation for and contacts with legislative officials (not executive branch officials) on policies that have not ripened into specific legislative proposals.

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## Additional Direct Lobbying Activities

- Responses, other than testimony, to oral requests for technical assistance from a congressional committee or subcommittee.
- Contacts with legislative officials about the formulation or modification of federal rules, regulations, executive orders or other policies or the negotiation, award or administration of federal programs, policies, contracts, grants, loans, permits, licenses and the like.

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Political Activity Do's & Don'ts for the 501(c)(3)

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**Can 501(c)(3)s Participate in Politics?**

- 501(c)(3)s are prohibited from engaging in ANY partisan political activity or electoral politics.
- This means that (c)(3)s cannot engage in any activity which is designed to have an effect on an election. There is a complete ban on any partisan political activity.

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## Prohibited Election-Related Activities

- Make political contributions.
- Endorse a candidate.
- Speak in favor of or against a candidate for political office.
- Use the (c)(3)'s property (phones, faxes, office supplies, etc.) in support of or against a campaign.
- Lease space to campaigns.
- Provide volunteers to work on a campaign.
- Use the (c)(3)'s mailing lists, email lists, or other lists of members or activists for a campaign.
- Write letters to the editor or other public communications in support of or against a candidate during an election period.

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## Red Flags in Peak Campaign Periods

- The following are red flags that are likely to suggest to the IRS that electioneering may be going on:
  - Concentrate activities the month before a primary or two months before an election.
  - Target specific geographic areas (such as congressional districts).
  - Communicate with people outside of the (c)(3)'s normal audience.
  - Focus communications to particular election districts.
  - Coordinate activities with those of a (c)(4), a PAC or political campaign.

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## Freedom of Speech & Political Process

- A (c)(3)'s employees are entitled to exercise their rights as citizens and work in support of or against any candidate(s), but they must do so as private individuals on their own time and with their own resources and equipment.
- If a (c)(3) employee exercises her right to campaign as a private citizen she should not use the (c)(3) employer as an identifier.

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## Permissible Election-Related Activities

- A (c)(3) can participate in three types of approved nonpartisan voter participation activities:
  - Voter education
  - Get-out-the-vote activities
  - Voter registration
- These activities must be done without any stated or implied endorsement of a particular candidate or particular party.

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## Voter Education: Candidate Forums

- Nonpartisan. All viable candidates invited.
- Same questions posed to all candidates.
- Nonpartisan panel independent of sponsor.
- Moderator must not be preferential or be sponsor's spokesperson.
- Equal time for each candidate to speak.
- Location must not show preference for any one candidate.
- Moderator must first announce that all candidates invited.
- At beginning and end, moderator must announce views expressed are not sponsor's views.

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## Voter Ed: Candidate Questionnaires

- Questionnaires must be circulated to all candidates and must be unbiased.
- All candidates must be given equal response time.
- Responses may be compiled in a voter's guide so long as no editorial comment is added by the (c)(3).
- Questionnaires must not be designed to make any candidate(s) look better or worse than the other(s).

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## Voter Ed: Incumbents' Voting Records

- Publication must not imply endorsement or opposition to any candidate.
- All members' records must be publicized, not just those running for re-election.
- Candidates for re-election may not be identified as such.
- A broad range of issues must be covered in the voting record report.
- Release must not deliberately coincide with an election.
- If the voting records are to be scored in any way, there are other strict rules that must be followed.

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## GOTV & Voter Registration Activities

- 501(c)(3)s may engage in door-to-door or other voter registration activities, offer to transport people to election polls, or canvass neighborhoods to encourage people to vote. However, this must all be done without expressing any preference for or against any candidate or political party.

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## Additional Permissible Activities

- Make substantive issue-oriented presentations to platform committees, candidates, campaign staffs, the media or general public.
- Take advantage of increased media attention on issues during a campaign to focus attention on the (c)(3)'s issues.
- Conduct training on issues and organizing skills as long as the training is nonpartisan.
- Continue the (c)(3)'s normal lobbying activity and report on lobbying and other activities in the usual ways to the usual audiences.

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## Conducting Normal Business Activities

- A (c)(3) may carry on its normal business activities as long as such activities are nonpartisan (but be especially careful if activity is conducted within a month before a primary or two months before an election).
  - For example, if the (c)(3) normally sends out a newsletter bimonthly, it can keep doing so, but it should not increase the frequency of the newsletter and sent it out weekly during the two months before election day.

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## Resources

- Alliance for Justice: [www.afj.org](http://www.afj.org)
- Congress: [www.clerkweb.house.gov](http://www.clerkweb.house.gov)
- Independent Sector:  
[www.IndependentSector.org](http://www.IndependentSector.org)
- Internal Revenue Service: [www.irs.gov](http://www.irs.gov)

SCHEDULE A (Form 990 or 990-EZ)

Organization Exempt Under Section 501(c)(3)

OMB No. 1545-0047

(Except Private Foundation) and Section 501(e), 501(f), 501(k), 501(n), or Section 4947(a)(1) Nonexempt Charitable Trust

2003

Supplementary Information—(See separate instructions.)

Department of the Treasury Internal Revenue Service

MUST be completed by the above organizations and attached to their Form 990 or 990-EZ

Name of the organization Employer identification number

Part I Compensation of the Five Highest Paid Employees Other Than Officers, Directors, and Trustees (See page 1 of the instructions. List each one. If there are none, enter "None.")

Table with 5 columns: (a) Name and address of each employee paid more than \$50,000, (b) Title and average hours per week devoted to position, (c) Compensation, (d) Contributions to employee benefit plans & deferred compensation, (e) Expense account and other allowances. Includes a shaded row for total number of other employees paid over \$50,000.

Part II Compensation of the Five Highest Paid Independent Contractors for Professional Services (See page 2 of the instructions. List each one (whether individuals or firms). If there are none, enter "None.")

Table with 3 columns: (a) Name and address of each independent contractor paid more than \$50,000, (b) Type of service, (c) Compensation. Includes a shaded row for total number of others receiving over \$50,000 for professional services.

**Part III Statements About Activities** (See page 2 of the instructions.)

	Yes	No
1 During the year, has the organization attempted to influence national, state, or local legislation, including any attempt to influence public opinion on a legislative matter or referendum? If "Yes," enter the total expenses paid or incurred in connection with the lobbying activities ▶ \$ _____ (Must equal amounts on line 38, Part VI-A, or line i of Part VI-B.) . . . . .		
Organizations that made an election under section 501(h) by filing Form 5768 must complete Part VI-A. Other organizations checking "Yes" must complete Part VI-B AND attach a statement giving a detailed description of the lobbying activities.		
2 During the year, has the organization, either directly or indirectly, engaged in any of the following acts with any substantial contributors, trustees, directors, officers, creators, key employees, or members of their families, or with any taxable organization with which any such person is affiliated as an officer, director, trustee, majority owner, or principal beneficiary? (If the answer to any question is "Yes," attach a detailed statement explaining the transactions.)		
a Sale, exchange, or leasing of property? . . . . .	2a	
b Lending of money or other extension of credit? . . . . .	2b	
c Furnishing of goods, services, or facilities? . . . . .	2c	
d Payment of compensation (or payment or reimbursement of expenses if more than \$1,000)? . . . . .	2d	
e Transfer of any part of its income or assets? . . . . .	2e	
3a Do you make grants for scholarships, fellowships, student loans, etc.? (If "Yes," attach an explanation of how you determine that recipients qualify to receive payments.) . . . . .	3a	
b Do you have a section 403(b) annuity plan for your employees? . . . . .	3b	
4 Did you maintain any separate account for participating donors where donors have the right to provide advice on the use or distribution of funds? . . . . .	4	

**Part IV Reason for Non-Private Foundation Status** (See pages 3 through 6 of the instructions.)

The organization is not a private foundation because it is: (Please check only **ONE** applicable box.)

- 5  A church, convention of churches, or association of churches. Section 170(b)(1)(A)(i).
- 6  A school. Section 170(b)(1)(A)(ii). (Also complete Part V.)
- 7  A hospital or a cooperative hospital service organization. Section 170(b)(1)(A)(iii).
- 8  A Federal, state, or local government or governmental unit. Section 170(b)(1)(A)(v).
- 9  A medical research organization operated in conjunction with a hospital. Section 170(b)(1)(A)(iii). **Enter the hospital's name, city, and state** ▶ .....
- 10  An organization operated for the benefit of a college or university owned or operated by a governmental unit. Section 170(b)(1)(A)(iv). (Also complete the **Support Schedule** in Part IV-A.)
- 11a  An organization that normally receives a substantial part of its support from a governmental unit or from the general public. Section 170(b)(1)(A)(vi). (Also complete the **Support Schedule** in Part IV-A.)
- 11b  A community trust. Section 170(b)(1)(A)(vi). (Also complete the **Support Schedule** in Part IV-A.)
- 12  An organization that normally receives: **(1) more than 33 1/3%** of its support from contributions, membership fees, and gross receipts from activities related to its charitable, etc., functions—subject to certain exceptions, and **(2) no more than 33 1/3%** of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975. See section 509(a)(2). (Also complete the **Support Schedule** in Part IV-A.)
- 13  An organization that is not controlled by any disqualified persons (other than foundation managers) and supports organizations described in: **(1)** lines 5 through 12 above; or **(2)** section 501(c)(4), (5), or (6), if they meet the test of section 509(a)(2). (See section 509(a)(3).)

Provide the following information about the supported organizations. (See page 5 of the instructions.)

(a) Name(s) of supported organization(s)	(b) Line number from above

- 14  An organization organized and operated to test for public safety. Section 509(a)(4). (See page 6 of the instructions.)



Schedule A (Form 990 or 990-EZ) 2003

**Part IV-A Support Schedule** (Complete only if you checked a box on line 10, 11, or 12.) *Use cash method of accounting.*

**Note:** You may use the worksheet in the instructions for converting from the accrual to the cash method of accounting.

Calendar year (or fiscal year beginning in) . ▶	(a) 2002	(b) 2001	(c) 2000	(d) 1999	(e) Total
15 Gifts, grants, and contributions received. (Do not include unusual grants. See line 28.) . . . . .					
16 Membership fees received . . . . .					
17 Gross receipts from admissions, merchandise sold or services performed, or furnishing of facilities in any activity that is related to the organization's charitable, etc., purpose . . . . .					
18 Gross income from interest, dividends, amounts received from payments on securities loans (section 512(a)(5)), rents, royalties, and unrelated business taxable income (less section 511 taxes) from businesses acquired by the organization after June 30, 1975 . . . . .					
19 Net income from unrelated business activities not included in line 18 . . . . .					
20 Tax revenues levied for the organization's benefit and either paid to it or expended on its behalf. . . . .					
21 The value of services or facilities furnished to the organization by a governmental unit without charge. Do not include the value of services or facilities generally furnished to the public without charge. . . . .					
22 Other income. Attach a schedule. Do not include gain or (loss) from sale of capital assets					
23 Total of lines 15 through 22. . . . .					
24 Line 23 minus line 17. . . . .					
25 Enter 1% of line 23 . . . . .					
26 Organizations described on lines 10 or 11: a Enter 2% of amount in column (e), line 24. . . . . ▶					26a
b Prepare a list for your records to show the name of and amount contributed by each person (other than a governmental unit or publicly supported organization) whose total gifts for 1999 through 2002 exceeded the amount shown in line 26a. <b>Do not file this list with your return.</b> Enter the total of all these excess amounts ▶					26b
c Total support for section 509(a)(1) test: Enter line 24, column (e) . . . . . ▶					26c
d Add: Amounts from column (e) for lines: 18 _____ 19 _____ 22 _____ 26b _____ . . . . . ▶					26d
e Public support (line 26c minus line 26d total) . . . . . ▶					26e
f <b>Public support percentage (line 26e (numerator) divided by line 26c (denominator))</b> . . . . . ▶					26f %
27 Organizations described on line 12: a For amounts included in lines 15, 16, and 17 that were received from a "disqualified person," prepare a list for your records to show the name of, and total amounts received in each year from, each "disqualified person." <b>Do not file this list with your return.</b> Enter the sum of such amounts for each year:  (2002) _____ (2001) _____ (2000) _____ (1999) _____					
b For any amount included in line 17 that was received from each person (other than "disqualified persons"), prepare a list for your records to show the name of, and amount received for each year, that was more than the larger of (1) the amount on line 25 for the year or (2) \$5,000. (Include in the list organizations described in lines 5 through 11, as well as individuals.) <b>Do not file this list with your return.</b> After computing the difference between the amount received and the larger amount described in (1) or (2), enter the sum of these differences (the excess amounts) for each year:  (2002) _____ (2001) _____ (2000) _____ (1999) _____					
c Add: Amounts from column (e) for lines: 15 _____ 16 _____ 17 _____ 20 _____ 21 _____ . . . . . ▶					27c
d Add: Line 27a total . _____ and line 27b total . _____ . . . . . ▶					27d
e Public support (line 27c total minus line 27d total). . . . . ▶					27e
f Total support for section 509(a)(2) test: Enter amount from line 23, column (e). . . . . ▶					27f
g <b>Public support percentage (line 27e (numerator) divided by line 27f (denominator))</b> . . . . . ▶					27g %
h <b>Investment income percentage (line 18, column (e) (numerator) divided by line 27f (denominator))</b> . ▶					27h %
28 Unusual Grants: For an organization described in line 10, 11, or 12 that received any unusual grants during 1999 through 2002, prepare a list for your records to show, for each year, the name of the contributor, the date and amount of the grant, and a brief description of the nature of the grant. <b>Do not file this list with your return.</b> Do not include these grants in line 15.					

Schedule A (Form 990 or 990-EZ) 2003

Schedule A (Form 990 or 990-EZ) 2003

**Part V Private School Questionnaire** (See page 7 of the instructions.)  
 (To be completed **ONLY** by schools that checked the box on line 6 in Part IV)

		Yes	No
29	Does the organization have a racially nondiscriminatory policy toward students by statement in its charter, bylaws, other governing instrument, or in a resolution of its governing body? . . . . .	29	
30	Does the organization include a statement of its racially nondiscriminatory policy toward students in all its brochures, catalogues, and other written communications with the public dealing with student admissions, programs, and scholarships? . . . . .	30	
31	Has the organization publicized its racially nondiscriminatory policy through newspaper or broadcast media during the period of solicitation for students, or during the registration period if it has no solicitation program, in a way that makes the policy known to all parts of the general community it serves? . . . . . If "Yes," please describe; if "No," please explain. (If you need more space, attach a separate statement.) ..... .....	31	
32	Does the organization maintain the following:		
a	Records indicating the racial composition of the student body, faculty, and administrative staff? . . . . .	32a	
b	Records documenting that scholarships and other financial assistance are awarded on a racially nondiscriminatory basis? . . . . .	32b	
c	Copies of all catalogues, brochures, announcements, and other written communications to the public dealing with student admissions, programs, and scholarships? . . . . .	32c	
d	Copies of all material used by the organization or on its behalf to solicit contributions? . . . . .	32d	
	If you answered "No" to any of the above, please explain. (If you need more space, attach a separate statement.) ..... .....		
33	Does the organization discriminate by race in any way with respect to:		
a	Students' rights or privileges? . . . . .	33a	
b	Admissions policies? . . . . .	33b	
c	Employment of faculty or administrative staff? . . . . .	33c	
d	Scholarships or other financial assistance? . . . . .	33d	
e	Educational policies? . . . . .	33e	
f	Use of facilities? . . . . .	33f	
g	Athletic programs? . . . . .	33g	
h	Other extracurricular activities? . . . . .	33h	
	If you answered "Yes" to any of the above, please explain. (If you need more space, attach a separate statement.) ..... .....		
34a	Does the organization receive any financial aid or assistance from a governmental agency? . . . . .	34a	
b	Has the organization's right to such aid ever been revoked or suspended? . . . . . If you answered "Yes" to either 34a or b, please explain using an attached statement.	34b	
35	Does the organization certify that it has complied with the applicable requirements of sections 4.01 through 4.05 of Rev. Proc. 75-50, 1975-2 C.B. 587, covering racial nondiscrimination? If "No," attach an explanation . . . . .	35	

Schedule A (Form 990 or 990-EZ) 2003

Schedule A (Form 990 or 990-EZ) 2003

**Part VI-A Lobbying Expenditures by Electing Public Charities** (See page 9 of the instructions.)  
 (To be completed **ONLY** by an eligible organization that filed Form 5768)

Check **a**  if the organization belongs to an affiliated group. Check **b**  if you checked "a" and "limited control" provisions apply.

<b>Limits on Lobbying Expenditures</b>		(a) Affiliated group totals	(b) To be completed for ALL electing organizations
(The term "expenditures" means amounts paid or incurred.)			
<b>36</b>	Total lobbying expenditures to influence public opinion (grassroots lobbying) . . . . .	<b>36</b>	
<b>37</b>	Total lobbying expenditures to influence a legislative body (direct lobbying) . . . . .	<b>37</b>	
<b>38</b>	Total lobbying expenditures (add lines 36 and 37) . . . . .	<b>38</b>	
<b>39</b>	Other exempt purpose expenditures . . . . .	<b>39</b>	
<b>40</b>	Total exempt purpose expenditures (add lines 38 and 39). . . . .	<b>40</b>	
<b>41</b>	Lobbying nontaxable amount. Enter the amount from the following table—		
	<b>If the amount on line 40 is—</b> <b>The lobbying nontaxable amount is—</b>		
	Not over \$500,000 . . . . . 20% of the amount on line 40 . . . . .	<b>41</b>	
	Over \$500,000 but not over \$1,000,000 . . . \$100,000 plus 15% of the excess over \$500,000		
	Over \$1,000,000 but not over \$1,500,000 . . \$175,000 plus 10% of the excess over \$1,000,000		
	Over \$1,500,000 but not over \$17,000,000 . \$225,000 plus 5% of the excess over \$1,500,000		
	Over \$17,000,000 . . . . . \$1,000,000 . . . . .		
<b>42</b>	Grassroots nontaxable amount (enter 25% of line 41) . . . . .	<b>42</b>	
<b>43</b>	Subtract line 42 from line 36. Enter -0- if line 42 is more than line 36 . . . . .	<b>43</b>	
<b>44</b>	Subtract line 41 from line 38. Enter -0- if line 41 is more than line 38 . . . . .	<b>44</b>	

**Caution:** If there is an amount on either line 43 or line 44, you must file Form 4720.

**4-Year Averaging Period Under Section 501(h)**

(Some organizations that made a section 501(h) election do not have to complete all of the five columns below.  
 See the instructions for lines 45 through 50 on page 11 of the instructions.)

Calendar year (or fiscal year beginning in) ▶	Lobbying Expenditures During 4-Year Averaging Period				
	(a) 2003	(b) 2002	(c) 2001	(d) 2000	(e) Total
<b>45</b> Lobbying nontaxable amount . . . . .					
<b>46</b> Lobbying ceiling amount (150% of line 45(e)).					
<b>47</b> Total lobbying expenditures . . . . .					
<b>48</b> Grassroots nontaxable amount . . . . .					
<b>49</b> Grassroots ceiling amount (150% of line 48(e))					
<b>50</b> Grassroots lobbying expenditures . . . . .					

**Part VI-B Lobbying Activity by Nonelecting Public Charities**  
 (For reporting only by organizations that did not complete Part VI-A) (See page 12 of the instructions.)

During the year, did the organization attempt to influence national, state or local legislation, including any attempt to influence public opinion on a legislative matter or referendum, through the use of:	Yes	No	Amount
<b>a</b> Volunteers . . . . .			
<b>b</b> Paid staff or management (Include compensation in expenses reported on lines c through h.) . . . . .			
<b>c</b> Media advertisements . . . . .			
<b>d</b> Mailings to members, legislators, or the public . . . . .			
<b>e</b> Publications, or published or broadcast statements . . . . .			
<b>f</b> Grants to other organizations for lobbying purposes . . . . .			
<b>g</b> Direct contact with legislators, their staffs, government officials, or a legislative body . . . . .			
<b>h</b> Rallies, demonstrations, seminars, conventions, speeches, lectures, or any other means . . . . .			
<b>i</b> Total lobbying expenditures (Add lines c through h.) . . . . .			

If "Yes" to any of the above, also attach a statement giving a detailed description of the lobbying activities.

Schedule A (Form 990 or 990-EZ) 2003

**Part VII Information Regarding Transfers To and Transactions and Relationships With Noncharitable Exempt Organizations** (See page 12 of the instructions.)

**51** Did the reporting organization directly or indirectly engage in any of the following with any other organization described in section 501(c) of the Code (other than section 501(c)(3) organizations) or in section 527, relating to political organizations?

		Yes	No
<b>a</b>	Transfers from the reporting organization to a noncharitable exempt organization of:		
	(i) Cash	<b>51a(i)</b>	
	(ii) Other assets	<b>a(ii)</b>	
<b>b</b>	Other transactions:		
	(i) Sales or exchanges of assets with a noncharitable exempt organization	<b>b(i)</b>	
	(ii) Purchases of assets from a noncharitable exempt organization	<b>b(ii)</b>	
	(iii) Rental of facilities, equipment, or other assets	<b>b(iii)</b>	
	(iv) Reimbursement arrangements	<b>b(iv)</b>	
	(v) Loans or loan guarantees	<b>b(v)</b>	
	(vi) Performance of services or membership or fundraising solicitations	<b>b(vi)</b>	
<b>c</b>	Sharing of facilities, equipment, mailing lists, other assets, or paid employees	<b>c</b>	

**d** If the answer to any of the above is "Yes," complete the following schedule. Column (b) should always show the fair market value of the goods, other assets, or services given by the reporting organization. If the organization received less than fair market value in any transaction or sharing arrangement, show in column (d) the value of the goods, other assets, or services received:

(a) Line no.	(b) Amount involved	(c) Name of noncharitable exempt organization	(d) Description of transfers, transactions, and sharing arrangements

**52a** Is the organization directly or indirectly affiliated with, or related to, one or more tax-exempt organizations described in section 501(c) of the Code (other than section 501(c)(3)) or in section 527?  Yes  No

**b** If "Yes," complete the following schedule:

(a) Name of organization	(b) Type of organization	(c) Description of relationship



## Lobbying Do's & Don'ts - The Basic Rules for Corporations and Trade Associations

### Sources of Law:

Depending on the issue faced by counsel, answers to election law issues can be derived from a wide and complex body of law including:

1. Federal Election Campaign Act of 1971, as amended. Found in 2 U.S.C. §§ 431-455.
2. The most recent amendment to the Act was in 2002 by the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81. ("The BCRA"). The BCRA was affirmed by the U.S. Supreme Court in *McConnell v. FEC*, 124 S.Ct. 619 (2003).
3. Regulations issued by the Federal Election Commission ("FEC"), found in 11 C.F.R. § 100 *et seq.*
4. Advisory Opinions issued by the FEC which interpret the applicability of the Act and regulations. Advisory Opinions can be found at the FEC's web site, [www.fec.gov](http://www.fec.gov).
5. Case law interpreting the Act and regulations.
6. State lobbying laws and any opinions issued by state lobbying commissions.

### General Prohibition:

1. Under federal law, corporations are generally prohibited from making a contribution or expenditure from their general treasury funds in connection with an election for federal office. 2 U.S.C. § 441b(a).
  - **What's a "contribution?":** A contribution is anything of value given to influence a federal election. It can include gifts of money, goods and services, loans and loan guarantees. See 2 U.S.C. §§ 431(8) and 441b(b)(2); 11 C.F.R. § 100.51.
  - **What's an "expenditure?":** An expenditure is a purchase or payment made in connection with or for the purpose of influencing a federal election. 2 U.S.C. § 431(9); 11 C.F.R. § 100.110.
2. National banks and corporations authorized by any law of Congress may not make a contribution or expenditure in connection with any election. 2 U.S.C. § 441b(a).
3. Certain states allow corporations to make contributions to state elections and candidates from their general treasury funds. Double-check your own state's particular provisions to see if this is the case.

4. Corporations are also prohibited from reimbursing or compensating employees for making political contributions. 11 C.F.R. § 114.5(b)(1).

### **Exceptions to the General Prohibition or What A Corporation Can Do:**

1. A corporation may establish, administer and solicit contributions to a PAC (“separate segregated fund”). 2 U.S.C. § 441b; 11 C.F.R. § 114.5.
2. PAC solicitations are governed by some general rules:
  - Contributions to the PAC must be voluntary;
  - The PAC can't accept prohibited or excessive contributions;
  - Only a limited class of individuals may be solicited;
  - Solicitation of the general public is prohibited; and
  - Special notices must be included in the solicitation. 11 C.F.R. § 114.5.
  - Some of the special notices that must be included in the solicitation are:
    - Where the money will go (i.e., to a PAC);
    - The purpose of the PAC;
    - That contributions are strictly voluntary and the contributor has the right to refuse to contribute without reprisal;
    - If a contribution amount is suggested, the amount suggested is only a suggestion. More or less than the suggested amount may be contributed; and
    - Contributions are not tax deductible for federal income tax purposes. *Id.*
  - Corporations cannot facilitate or “bundle” contributions. In other words, corporate employees cannot solicit individual contributions, then deliver them in bulk to a recipient candidate or political committee. 11 C.F.R. § 114.2(f).
3. Corporations or their PACs can solicit the “restricted class” of the corporation. This includes the corporation’s administrative and executive personnel (normally salaried employees who have managerial, policymaking, professional or supervisory responsibilities), stockholders, and the families of both groups. 2 U.S.C. § 441b(b)(4)(A); 11 C.F.R. § 114.5.
4. Twice a year a corporation or its PAC may solicit employees who do not qualify in the above categories, such as members of labor unions. Stringent rules apply. 2 U.S.C. § 441b(b)(4)(B); 11 C.F.R. § 114.6.

### **Exceptions to the General Prohibition or What a Trade Association Can Do:**

1. Trade associations or their PACs can at any time solicit their restricted class. 11 C.F.R. § 114.8.
2. A trade association’s restricted class includes:
  - Noncorporate members (i.e., individuals) of the organization;
  - The organization’s executive and administrative personnel; and

- The families of both groups.
3. Trade associations or their PACs can also get permission from a member corporation to solicit that member's restricted class for contributions to the trade association's PAC. The member corporation has to separately and specifically approve the solicitations and the member corporation cannot have approved a solicitation by any other trade association for the same calendar year. 11 C.F.R. § 114.8(c).
  4. There is no limitation on the method of soliciting voluntary contributions or the method of facilitating the making of voluntary contributions which a trade association may use. The member corporation may not use a payroll deduction or checkoff system for executive or administrative personnel contributing to the separate segregated fund of the trade association. 11 C.F.R. § 114.8(e)(3).
  5. Similar to corporations, trade association PACs can also conduct twice yearly solicitations of the association's non-executive and non-administrative personnel and families. 11 C.F.R. § 114.8(i)(2).

### Other Exceptions to the General Prohibition

1. **Payments that aren't "contributions" or "expenditures:"** Certain payments by corporations are exempted from the definition of "contribution" and "expenditure." These payments can be made using the general treasury funds of the PAC's connected organization/corporation. These include:
  - Start-up costs of forming the PAC;
  - Administration expenses (i.e., salary, phone lines, etc.) of the PAC;
    - Corporate members of a trade association can pay for the overhead costs of a trade association's PAC so long as the corporate money is transmitted and controlled by the trade association and not the PAC. FEC AO 1981-19.
  - Fundraising expenses (i.e., solicitation costs) of a PAC. 11 C.F.R. § 114.5(b).
  - The cost of partisan communications by a corporation (*see below*) by a corporation to its restricted class on any subject. 11 C.F.R. § 114.1(a)(2)(i).
  - Registration and get-out-the-vote campaigns by a corporation aimed at its restricted class. 11 C.F.R. § 114.3.
2. **Partisan Communications:** A corporation or trade association may make "partisan communications" to its stockholders and its executive or administrative personnel and their families. 2 U.S.C. §441b(b)(2)(A)-(B); 11 C.F.R. §§ 114.1(a)(2)(i)-(ii).
  - This means that corporations can communicate to their restricted class on any subject, even subjects that include expressly advocating for the election or defeat of particular candidates.

- Partisan communications can be on any topic including:
    - Information about federal candidates and elections;
    - Urging members to vote for or against a particular candidate; or
    - Urging members to provide personal contributions to select candidates or committees. 11 C.F.R. §114.3.
  
  - Limits on partisan communications:
    - Such communications can only be to the “restricted class,” not the general public;
    - Such communications may trigger reporting requirements if certain dollar thresholds are met;
    - Communications soliciting money for federal candidates should include certain disclaimers; and
    - The corporation or trade association should not provide an envelope or postage to facilitate the employee’s contributions or have an employee collect contributions.
    - Communications cannot be reproductions or replications of any candidate or political committee campaign material. *Id.*
  
  - Corporations can also engage in certain nonpartisan communications, registration, and get-out-the-vote drives to their restricted class and to the general public. 11 C.F.R. § 114.4.
3. Trade associations can also communicate to individual members or the one or two corporate representatives from each member company who normally deal with trade association matters. 11 C.F.R. § 114.8(h).

### **The Effect of the BCRA on these Basic Rules**

The most recent amendment to the Federal Election Campaign Act was in 2002 by the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81. (“The BCRA”). The BCRA was affirmed by the U.S. Supreme Court in *McConnell v. FEC*, 124 S.Ct. 619 (2003).

Amongst the provisions in the BCRA, those with particular impact on corporations and trade associations include the prohibitions on “soft-money” contributions, electioneering communications, and coordination.

#### **“Soft-money” contributions**

1. Prior to the BCRA, a corporation could use its general treasury funds when making contributions to political party committees for non-federal purposes (“soft-money” contributions). A corporation could, if state law allowed, give contributions to state political committees and state and local campaigns.



2. Post-the BCRA, corporations are prohibited from making “soft-money” contributions to national political committees. 2 U.S.C. § 441i; 11 C.F.R. § 300.10.
3. Corporations are also prohibited from making contributions to state, district, and local political party committees if the committees use the funds for “federal election activity.” 11 C.F.R. § 300.30.
4. “Federal election activity” means any of the following activities:
  - Voter registration activity during the 120 days before a regularly scheduled federal election;
  - Voter identification, generic campaign activities and get-out-the-vote activities conducted in connection with an election in which more than one candidate for federal office appears on the ballot.
  - A public communication that refers to a clearly identified federal candidate and that promotes, supports, attacks or opposes any federal candidate; or
  - Services provided by an employee of a state, district or local party committee who spends more than 25% of his/her compensated time during that month on activities in connection with a federal election. 2 U.S.C. § 431(20); 11 C.F.R. § 100.24.

### **Electioneering Communications**

1. An “electioneering communication” is any broadcast, cable or satellite communication which meets all of the following criteria:
  - Refers to a clearly identified candidate for Federal office; and
  - Is made within 60 days before a general, special or runoff election 30 days before a primary or a convention or caucus of a political party that has the authority to nominate a candidate for the office sought by the candidate; and
  - In the case of a communication which refers to a candidate for office other than President or Vice President, is targeted to the relevant electorate. 2 U.S.C. § 434(f)(3); 11 C.F.R. § 100.29(b).
2. Corporations are prohibited from making or financing “electioneering communications” to those outside of their restricted class. 11 C.F.R. § 114.2(b)(2)(iii).
3. Corporations also cannot provide funds to anyone if they know or have reason to know that the funds are for the purpose of making electioneering communications. 11 C.F.R. §§ 114.14(a) and (c).

4. Persons who make electioneering communications that aggregate more than \$10,000 must file disclosures statements with the FEC within 24 hours of the disclosure date. 2 U.S.C. § 434(f)(1); 11 C.F.R. § 104.20.
5. There are some communications which are exempted. Examples of communications that are not "electioneering communications:"
  - Communications disseminated through means other than television, satellite, cable, or radio such as print media, signs and billboards, and communications over the Internet, telephone or e-mail;
  - News stories, commentary or editorial broadcasts; and
  - Communications by 501(c)(3) organizations. 11 C.F.R. §§ 100.29(c)(1) through (6).

### Coordination

1. The BCRA repealed existing FEC regulations on "coordination" and expanded the definition to include coordination with federal, state or local party committees. 2 U.S.C. § 441a(a)(7)(B); 11 C.F.R § 109.21. If a corporation is thinking about doing public advertisements, beware. Simply put, if a corporation makes expenditures in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, authorized committees, or political committee, then such expenditures are deemed "coordinated." If the expenditures are coordinated, they will also constitute illegal corporate contributions.
2. A communication is "coordinated" with a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing when the communication:
  - Is paid for by a person other than that candidate, authorized committee, political party committee, or agent of any of the foregoing;
  - Satisfies at least one of the four content standards; and
  - Satisfies at least one of the five conduct standards. 11 C.F.R. § 109.21(a).
3. In order for a communication to be "coordinated" it must meet one of the following four content standards:
  - Electioneering communications;
  - Republication of campaign materials;
  - Express advocacy (i.e., "Elect John Kerry", "W in 04");
  - Communications within 120 days of an election. 11 C.F.R. § 109.21(c).
4. In order for a communication to be "coordinated" it must also meet one of the following conduct standards:
  - Request or suggestion by candidate, political committee or agent;
  - Material involvement by a candidate, etc. in decisions regarding the content, intended audience, etc. for one of the communications set forth in "3." above.

- Substantial discussion between person paying for a communication in "3." and the candidate prior to the creation, production, or distribution of the communication;
- Common vendor who has provided certain services (i.e., fundraising, polling, etc.) to the candidate identified in the communication and the vendor communicates such information to the person paying for the communication;
- Former employee or independent contractor applies to communications by the former employee, previously worked for the named candidate or his opponent or committee, conveys information to the person paying for the communication about the candidate, and the information must be material to the creation, production or distribution of the communication. 11 C.F.R. § 109.21(d).

### **Other BCRA Implications**

1. The BCRA also affects other activity related to federal elections.
2. The BCRA increases contribution limits for individuals and political committees. 11 C.F.R. §§ 110.1(b)(1) and (c)(1).
3. The BCRA modifies recordkeeping requirements for PAC treasurers. 11 C.F.R. § 102.9(a)(4).
4. The BCRA prohibits certain contributions/donations by minors. 11 C.F.R. §§ 110.19(a) and (b).
5. The BCRA strengthens statutory prohibitions on contributions/donations by foreign nationals. 11 C.F.R. § 110.20.
6. The BCRA specifies new requirements for disclaimers accompanying radio, television, print and other campaign communications 11 C.F.R. § 110.11.


### **The BCRA Did Not Change Some of the Basic Rules**

1. Happily, the BCRA did not change the ability of:
  - A corporation to engage in partisan communications with its executive and administrative personnel and their families; or
  - A trade association to communicate to individual members or the one or two corporate representative from each member company who normally deal with trade association matters.
2. Such communications are still subject to the general provisions and exceptions outlined above.

**Resources:**

There are several resources counsel can utilize to assist in the unsnarling of complex federal election law issues. The following resources are commended to counsel as good starting points:

1. [www.fec.gov](http://www.fec.gov)
2. "Campaign Guide for Corporations and Labor Organizations (with BCRA Supplement)"
3. State Lobbying Commission web sites (i.e., [www.nylobby.state.ny.us](http://www.nylobby.state.ny.us)).




**709 Lobbying & Political  
Activity Do's & Don'ts**

**Gigi Hyland, Esq., SVP, General Counsel,  
Empire Corporate FCU**

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**Lobbying Do's & Don'ts - The Basic  
Rules for Corporations and Trade  
Associations**

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## Sources of Law

- Federal Election Campaign Act of 1971, as amended. Found in 2 U.S.C. §§ 431-455.
- Most recent amendment was in 2002 by the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81. (“The BCRA”).
- Affirmed by the U.S. Supreme Court in *McConnell v. FEC*, 124 S.Ct. 619 (2003).
- Regulations – 11 C.F.R. § 100 *et seq.*
- State lobbying laws.

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## The General Prohibition

- Under federal law, corporations are generally prohibited from making a contribution or expenditure from their general treasury funds in connection with an election for federal office.
- National banks and corporations authorized by any law of Congress may not make a contribution or expenditure in connection with any election.
- Certain states allow corporations to make contributions to state elections and candidates from their general treasury funds.
- Corporations are also prohibited from reimbursing or compensating employees for making political contributions.

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## Some Definitions

- A “contribution” is anything of value given to influence a federal election. It can include gifts of money, goods and services, loans and loan guarantees.
- An “expenditure” is a purchase or payment made in connection with or for the purpose of influencing a federal election.

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## Exceptions to the General Prohibition – Establishing a PAC

- A corporation may establish, administer and solicit contributions to a PAC (“separate segregated fund”).
- PAC solicitations are governed by some general rules:
  - Contributions to the PAC must be voluntary;
  - The PAC can't accept prohibited or excessive contributions;
  - Only a limited class of individuals may be solicited;
  - Solicitation of the general public is prohibited; and
  - Special notices must be included in the solicitation.

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## Establishing a PAC

- Corporations or their PACs can solicit the “restricted class” of the corporation. This includes the corporation’s administrative and executive personnel, stockholders, and the families of both groups.
- Twice a year a corporation or its PAC may solicit employees who do not qualify in the above categories, such as members of labor unions. Stringent rules apply.

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## Establishing a PAC

- Trade associations or their PACs can at any time solicit their restricted class which includes:
  - noncorporate members (i.e., individuals) of the organization;
  - the organization’s executive and administrative personnel; and
  - the families of both groups.
- Trade associations or their PACs can also get permission from a member corporation to solicit that member’s restricted class for contributions to the trade association’s PAC.
- Trade association PACs can also conduct twice yearly solicitations of the association’s non-executive and non-administrative personnel and families.

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## Exceptions (cont.) – Partisan Communications

- A corporation or trade association may make “partisan communications” to its stockholders and its executive or administrative personnel and their families.
- Trade associations can also communicate to individual members or the one or two corporate representatives from each member company who normally deal with trade association matters.

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## Partisan Communications

- Partisan communications can be on any topic including:
  - information about federal candidates and elections;
  - urging members to vote for or against a particular candidate; or
  - urging members to provide personal contributions to select candidates or committees.

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## Partisan Communications

- There are certain limits to partisan communications:
  - such communications can only be to the “restricted class,” not the general public;
  - such communications may trigger reporting requirements if certain dollar thresholds are met;
  - communications soliciting money for federal candidates should include certain disclaimers;
  - the corporation or trade association should not provide an envelope or postage to facilitate the employee’s contributions or have an employee collect contributions.
  - communications cannot be reproductions or replications of any candidate or political committee campaign material.

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## Exceptions (cont.) – Non-partisan activities

- A corporation or trade association may also conduct non-partisan registration and get-out-the-vote drives with respect to its stockholders and its executive or administrative personnel and their families.

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## The Effect of The BCRA on the Basic Rules

- The most recent amendment to the Federal Election Campaign Act was in 2002 by the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81. (“The BCRA”). The BCRA was affirmed by the U.S. Supreme Court in *McConnell v. FEC*, 124 S.Ct. 619 (2003).
- Among the provisions in the BCRA, those with particular impact on corporations and trade associations include the prohibitions on “soft-money” contributions, electioneering communications, and coordination.

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## “Soft-money” Contributions

- Prior to the BCRA, a corporation could use its general treasury funds when making contributions to a political party committees for non-federal purposes (“soft-money” contributions). A corporation could, if state law allowed, give contributions to state political committees and state and local campaigns.

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## “Soft-Money” Contributions

- Post-the BCRA, corporations are prohibited from making “soft-money” contributions to national political committees.
- Corporations are also prohibited from making contributions to state, district, and local political party committees if the committees use the funds for “federal election activity.”

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## “Soft-money” Contributions

- “Federal election activity” means any of the following activities:
  - voter registration activity during the 120 days before a regularly scheduled federal election; and
  - voter identification, generic campaign activities and get-out-the-vote activities conducted in connection with an election in which more than one candidate for federal office appears on the ballot.

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## “Soft-money” Contributions

- “Federal election activity” also means:
  - a public communication that refers to a clearly identified federal candidate and that promotes, supports, attacks or opposes any federal candidate; and
  - services provided by an employee of a state, district or local party committee who spends more than 25% of his/her compensated time during that month on activities in connection with a federal election.

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## Electioneering Communications

- Electioneering Communications - An “electioneering communication” is any broadcast, cable or satellite communication which:
  - refers to a clearly identified candidate for Federal office; and
  - is made within
    - 60 days before a general, special or runoff election;
    - 30 days before a primary or a convention or caucus of a political party that has the authority to nominate a candidate for the office sought by the candidate; and
  - in the case of a communication which refers to a candidate for office other than President or Vice President, is targeted to the relevant electorate.

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## Electioneering Communications

- Corporations are prohibited from making or financing “electioneering communications” to those outside of their restricted class.
- Corporations can’t provide funds to anyone if they know or have reason to know that the funds are for the purpose of making electioneering communications.
- Persons who make electioneering communications that aggregate more than \$10,000 must file disclosures statements with the FEC within 24 hours of the disclosure date.

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## Electioneering Communications

- Examples of communications that are not “electioneering communications:”
  - communications disseminated through means other than television, satellite, cable, or radio such as print media, signs and billboards, and communications over the Internet, telephone or e-mail;
  - news stories, commentary or editorial broadcasts; and
  - communications by 501(c)(3) organizations.

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## Coordination

- The BCRA repealed existing FEC regulations on “coordination” and expanded the definition to include coordination with federal, state or local party committees.
- If a corporation is thinking about doing public advertisements, beware. Simply put, if a corporation makes expenditures in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, authorized committees, or political committee, then such expenditures are deemed “coordinated.” If the expenditures are coordinated, they will also constitute illegal corporate contributions.

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## Coordination

- A communication is “coordinated” with a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing when the communication:
  - Is paid for by a person other than that candidate, authorized committee, political party committee, or agent of any of the foregoing;
  - Satisfies at least one of the four content standards; and
  - Satisfies at least one of the five conduct standards.

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## Other Changes Imposed by The BCRA

- The BCRA changed other things too!
- The BCRA:
  - increases contribution limits for individuals and political committees;
  - modifies recordkeeping requirements for PAC treasurers;
  - prohibits certain contributions/donations by minors;
  - strengthens statutory prohibitions on contributions/donations by foreign nationals; and
  - specifies new requirements for disclaimers accompanying radio, television, print and other campaign communications

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## Other Changes (cont.)

- Happily, the BCRA did not change the ability of:
  - a corporation to engage in partisan communications with its executive and administrative personnel and their families; or a
  - trade association to communicate to individual members or the one or two corporate representatives from each member company who normally deal with trade association matters.
- Such communications are still subject to the limits outlined earlier.

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## Resources:

- [www.fec.gov](http://www.fec.gov)
- "Campaign Guide for Corporations and Labor Organizations (with BCRA Supplement)"
- State Lobbying Commission web sites (i.e., [www.nylobby.state.ny.us](http://www.nylobby.state.ny.us))

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Federal Election Commission

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# CAMPAIGN GUIDE

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**FOR CORPORATIONS  
AND LABOR  
ORGANIZATIONS**

**About this Guide**

This *Guide* replaces the August 1997 edition of the *Campaign Guide for Corporations and Labor Organizations*. It contains reporting examples using the new FEC forms, with references to the Commission's FECFile 4.0 electronic filing software. (Note: FECFile users should also consult the latest edition of the *FECFile User's Manual*, available online at [www.fec.gov/electfil/electron.html](http://www.fec.gov/electfil/electron.html).) This *Guide* also includes new information regarding Electronic Filing, Coordination, Limited Liability Companies and Use of the Internet.

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# Record

January 2003

Federal Election Commission

Volume 29

## BCRA CAMPAIGN GUIDE SUPPLEMENT

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### Introduction

This supplement summarizes the regulatory changes the Commission has made as a result of the *Bipartisan Campaign Reform Act of 2002*. The material has been excerpted from past *Record* articles.<sup>1</sup> The excerpts are arranged chronologically.

The Commission encourages readers to insert this Supplement into their *Campaign Guides* and to consult it, along with the *Guides*, until the revised *Guides* are available to the public. ♦

<sup>1</sup> The final rules on nonfederal funds or "soft money" were summarized in the [September 2002 Record](#), page 1; final rules on electioneering communications were summarized in the [November 2002 Record](#), page 3; final rules on contribution limits and prohibitions were summarized in the [December 2002 Record](#), page 8; final rules on "other provisions," coordinated and independent expenditures and BCRA reporting requirements were summarized in the [January 2003 Record](#); and interim final rules on the millionaires' amendment were summarized in the [February 2003 Record](#), page 2. Complete information on BCRA rulemakings is available on the FEC web site at [www.fec.gov](http://www.fec.gov)—click on the BCRA icon.

### Nonfederal Funds or "Soft Money"

On June 22, 2002, the Commission promulgated new and revised rules based on provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA) that restrict and, in some cases, ban the receipt, solicitation and use of nonfederal funds (sometimes called "soft money"). These rules:

- Prohibit national parties from raising or spending nonfederal funds;
- Require state, district and local party committees to fund certain "federal election activities" with federal funds and, in some cases, with money raised according to new limitations, prohibitions and reporting requirements (i.e., "Levin funds"<sup>1</sup>), or with a combination of such funds; and
- Address fundraising by federal and nonfederal candidates and officeholders on behalf of party committees, other candidates and nonprofit organizations.

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<sup>1</sup> See p. 4 for a full description of "Levin funds."

## Soft Money

(continued from page 1)

The final rules and their Explanation and Justification were published in the July 29 *Federal Register* (67 FR 49064) and are available on the FEC web site at [http://www.fec.gov/pdf/nprm/soft\\_money\\_nprm/fr67n145p49063.pdf](http://www.fec.gov/pdf/nprm/soft_money_nprm/fr67n145p49063.pdf).

### Part I: General Information and Terminology

**Organization.** In order to implement the BCRA, the Commission has revised its existing regulations and added new 11 CFR part 300, which contains most of the rules governing party committees' use of nonfederal funds and the so-called "Levin funds." New part 300 contains five subparts, which address the use of nonfederal funds by each of the following entities:

- National party committees;
- State, district and local party committees;

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- Federal candidates and officeholders;
- State and local candidates; and
- Tax-exempt organizations.

The rules applicable to each of these entities are addressed in detail below, in Part II: Application.

**Federal election activity.** Many provisions of the BCRA are framed in terms of "federal election activities." As used in 11 CFR part 300, "federal election activity" means any of the following activities:

1. Voter registration activity during the 120 days before a regularly-scheduled federal election and ending on the day of that election;
2. Voter identification, generic campaign activities<sup>2</sup> and get-out-the-vote activities that are conducted in connection with an election in which one or more candidates for federal office appear on the ballot (regardless of whether state or local candidates also appear on the ballot);
3. A public communication<sup>3</sup> that refers to a clearly-identified federal candidate and that promotes, supports, attacks or opposes any federal candidate (This definition applies regardless of whether a nonfederal candidate is also mentioned or identified in the communication and regardless of whether the communication expressly

<sup>2</sup> "Generic campaign activity" means a public communication that promotes or opposes a political party and does not promote or oppose a clearly-identified federal or nonfederal candidate. 11 CFR 100.25.

<sup>3</sup> A "public communication" means any communication by means of television (including cable and satellite), radio, newspaper, magazine, billboard, mass mailing, telephone bank or any other form of general public political advertising. Communications over the Internet are not included in the definition of public communication. 11 CFR 100.26.

- advocates a vote for or against a federal candidate.); and
4. Services provided by an employee of a state, district or local party committee who spends more than 25 percent of his or her compensated time during that month on activities in connection with a federal election. 11 CFR 100.24(b).

The Commission has also adopted regulations at 11 CFR 100.24(a) that define certain terms used in the above definition of "federal election activity":

1. "In connection with an election in which a candidate for federal office appears on the ballot" means:
  - In an even-numbered year, the period beginning on the day of the earliest filing deadline for primary election ballot access under state law—or on January 1 in states that do not hold primaries—and ending on the day of the general election or the general election runoff if a runoff is held; or
  - In an odd-numbered year, the period beginning on the day that the date is set for a special election in which a federal candidate appears on the ballot, and ending on the day of that election.
2. "Voter registration activity" means contacting individuals by telephone, in person or by other individualized means to assist them in registering to vote. This activity includes, but is not limited to, printing and distributing registration and voting information, providing individuals with voter registration forms and assisting individuals with completing and filing these forms.
3. "Get-out-the-vote activity" means contacting registered voters by telephone, in person or by other individualized means in order to assist them in voting (unless the activity is undertaken

by state or local candidates and/or officeholders, or an organization of such candidates or officeholders, and refers only to one or more state or local candidates). This activity includes, but is not limited to:

- Providing individual voters, within 72 hours of an election, with information about when and where polling places are open; and
  - Transporting, or offering to transport, voters to polling places.
4. "Voter Identification" means creating or enhancing voter lists by adding information about voters' likelihood of voting in a particular election or voting for a particular candidate (unless the activity is undertaken by state or local candidates and/or officeholders, or an organization of such candidates or officeholders, and refers only to one or more state or local candidates).

The regulations also identify activities that are *not* included in the definition of "federal election activity." These are:

1. A public communication that refers solely to one or more clearly-identified candidate(s) for state or local office and does not promote, support, attack or oppose a clearly-identified candidate for federal office. A public communication would, however, be considered a federal election activity if it constituted voter registration, generic campaign activity, get-out-the-vote activity or voter identification;
2. A contribution to a candidate for state or local office, unless the contribution is designated for voter registration, voter identification activity, generic campaign activity, get-out-the-vote activity, employee services for these activities or a public communication;

3. The costs of state, district or local political conventions, meetings or conferences; and
4. The costs of grassroots campaign materials that name or depict only a candidate for state or local office. 11 CFR 100.24(c).

*Agent.* In most cases, regulations that apply to a party committee, a federal candidate or officeholder or a state or local candidate also apply to any "agent" acting on behalf of that individual or organization. For the purposes of 11 CFR part 300, the term "agent" is defined as any person who has "actual authority, either express or implied" to engage in specifically-listed activities on behalf of another person or organization. 11 CFR 300.2(b).

*Directly or indirectly established, maintained, financed or controlled.* Most of the new regulations that apply to a party committee or a federal candidate or officeholder also apply to any entity "directly or indirectly established, maintained, financed or controlled" by the committee, candidate or officeholder. The new regulation at 11 CFR 300.2(c), which is based on the existing "affiliation" regulation at 11 CFR 100.5(g)(4), includes a series of factors that must be considered, in the context of an overall relationship, to determine whether the presence of one or more of these factors indicates that the individual or committee established, finances, maintains or controls the organization. An entity will not be considered to be directly or indirectly established, financed, maintained or controlled based solely upon activities undertaken before November 6, 2002.

## Part II: Application

### National Party Committees, Including National Congressional Campaign Committees

*General prohibitions.* Beginning on November 6, 2002, national

party committees may not solicit,<sup>4</sup> receive, direct to another person or spend nonfederal funds, that is, funds that are not subject to the limits, prohibitions and reporting requirements of the Act.<sup>5</sup> Moreover, such committees must use only federal funds to raise funds that are used, in whole or in part, for expenditures and disbursements for federal election activity. 11 CFR 300.10.

*Tax-exempt organizations.* National party committees may not solicit funds for, or make or direct donations to, tax-exempt 501(c) organizations, or an organization that has applied for this tax status, if the organization makes expenditures or disbursements in connection with federal elections, including federal election activity.<sup>6</sup> 11 CFR 300.11(a). The committee may establish whether or not the organization makes expenditures or disbursements in connection with federal elections by obtaining a signed certification from an authorized representative of the organization. The certification should state

(continued on page 4)

<sup>4</sup> For the purposes of 11 CFR part 300, to "solicit" means to "ask that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value, whether the contribution, donation, transfer of funds, or thing of value, is to be made or provided directly, or through a conduit or intermediary." Merely providing information or guidance as to the requirement of a particular law does not constitute a solicitation. 11 CFR 300.2(m).

<sup>5</sup> Commission regulations at 11 CFR 300.13(c) address interim reporting requirements between November 6 and December 31, 2002.

<sup>6</sup> In no case is a committee prohibited from responding to a request for information about a tax-exempt group that shares the party's political or philosophical goals. 11 CFR 300.11(f).



## Soft Money

(continued from page 3)

that within the current election cycle the organization has not made, and does not intend to make, such expenditures and disbursements, including payments for debts incurred in an earlier cycle. 11 CFR 300.11(c).

National party committees may solicit funds for, or make or direct donations to, so-called "527 organizations" only if these organizations are:

- Political committees under Commission regulations; or
- State, district or local party committees or authorized campaign committees of state or local candidates. 11 CFR 300.11(a)(3).

**Office Building Funds.** After November 5, 2002, national party committees may no longer accept funds into party office building accounts and may not use such funds for the purchase or construction of any office facility. Any funds remaining in an office building account on November 6 must be disgorged to the U.S. Treasury or returned to donors no later than December 31, 2002. Any refund check not cashed by February 28, 2003, must be disgorged to the Treasury by March 31. 11 CFR 300.12.

**Transition rules.** If a national party committee has nonfederal funds in its possession on November 6, 2002, it may use these funds to retire outstanding debts or other obligations relating to the 2002 elections, including runoff elections and recounts, until January 1, 2003. Any remaining nonfederal funds must be disgorged to the Treasury or returned to donors no later than December 31, 2002. Any refund checks not cashed by February 28, 2003, must be disgorged to the Treasury by March 31. The nonfederal accounts of national party committees must file termination reports with the Commission

disclosing the disposition of all funds deposited in nonfederal accounts and building fund accounts. 11 CFR 300.12 and 300.13.

### State, District and Local Party Committees and Organizations

Under the new regulations, state, district and local party committees that have receipts or make disbursements for federal election activity may maintain, as appropriate, up to four different types of accounts:

- Federal accounts, for deposit of funds that comply with the limitations, prohibitions and reporting requirements of the Act;
- Nonfederal accounts, for deposit of funds that are governed by state law;
- Allocation accounts, which may be established to make allocable expenditures and disbursements; and
- Levin accounts, for deposit of a new category of funds, called "Levin funds," that comply with some of the limits and prohibitions of the Act and are also governed by state law.<sup>7</sup>

**Levin funds.** A state, district or local party committee may spend only those Levin funds that it raises for itself, and these funds can be used only for certain types of voter registration, voter identification, get-out-the-vote and generic campaign activity. Note that certain types of federal election activities may *not* be financed with Levin funds:

<sup>7</sup> An organization may also deposit Levin funds in a nonfederal account that must function as a nonfederal and Levin account. In order to make a disbursement of Levin funds from such an account, the organization must be able to show through a reasonable accounting method approved by the Commission that the organization had received into this account sufficient federal contributions or Levin donations to make the disbursement. 11 CFR 300.30(c)(3)(ii).

- Public communications that refer to a clearly-identified candidate; and
- The services of employees who devote more than 25 percent of their compensated time to activities in connection with a federal election.

National party committees may not raise or spend Levin funds.

When a party committee receives a donation of Levin funds, this donation:

- Must be permissible under the laws of the state in which the party committee raising and spending the funds is organized;
- May be solicited from some sources that cannot contribute under the Act (e.g., corporations, unions and federal government contractors) so long as the donation is not from foreign nationals or from sources that are impermissible under state law;
- Is limited to \$10,000 in a calendar year from any person, including any entity established, maintained, financed or controlled by that person (if state law limits donations to an amount less than \$10,000, then the lower limit applies); and
- Must be raised using only federal funds or Levin funds to pay the direct costs of the fundraising (including expenses for the solicitation of funds and for the planning and administration of actual fundraising activities and programs) if any portion of the funds will be used for federal election activity. 11 CFR 300.31 and 300.32(a)(4).

Each state, district and local party committee has a separate Levin fund donation limit, and such committees are not considered to be affiliated for the purposes of determining Levin fund donation limits. Levin funds expended or disbursed by a given state, district or local party committee must be raised solely by that particular committee, and these

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committees cannot raise Levin funds through joint fundraising efforts or accept transfers of Levin funds from other committees. Additionally, these committees cannot accept or use as Levin funds any funds that come from, or in the name of, a national party committee, federal candidate or federal officeholder. 11 CFR 300.31 and 300.34(b).

*Levin fund expenditures and disbursements.* As a general rule, state, district and local party committees must use federal funds to make expenditures and disbursements for federal election activity.<sup>8</sup> 11 CFR 300.32(a)(2). However, as long as certain conditions are met, a state, district, or local party committee may use Levin funds to pay for all or part of the following types of federal election activity:<sup>9</sup>

- Voter registration activity during the period that begins 120 days before the date of a regularly-scheduled federal election and ends on the day of that election; and
- Voter identification, get-out-the vote activities or generic campaign activity conducted in connection with an election in which a federal candidate appears on the ballot (regardless of whether a state or local candidate also appears on the ballot). 11 CFR 300.32(b).

Levin funds may *not* be used, however, to pay for any part of a federal election activity if:

- The activity refers to a clearly-identified federal candidate; or

<sup>8</sup> Additionally, an association or similar group of state or local candidates or officeholders must use only federal funds to make expenditures or disbursements for federal election activity. 11 CFR 300.32(a)(1).

<sup>9</sup> Levin funds may also be used for any purpose that is not federal election activity as long as this use is lawful in the state in which the committee is organized. 11 CFR 300.32(b)(2).

- Any portion of the funds will be used to pay for a television or radio communication, other than a communication that refers solely to a clearly-identified state or local candidate. 11 CFR 300.32(c).

Levin funds may be used to pay for the entirety of permissible federal election activity disbursements only if the party committee's disbursements do not exceed \$5,000 in the aggregate in a calendar year. Disbursements and expenditures that aggregate in excess of \$5,000 per year must be paid entirely with federal funds or allocated between federal funds and Levin funds, according to the minimum allocation percentages described below. 11 CFR 300.33(a).

*Allocating expenses.* State, district and local party committees that allocate federal election activity expenses between federal and Levin funds must allocate to their federal account one of following minimum percentages, depending on the composition of the ballot for that year:

1. If a Presidential candidate, but no Senate candidate, appears on the ballot, then at least 28 percent of the expenses must be allocated to the federal account.
2. If both a Presidential candidate and a Senate candidate appear on the ballot, then at least 36 percent of the expenses must be allocated to the federal account.
3. If a Senate candidate, but no Presidential candidate, appears on the ballot, then at least 21 percent of the expenses must be allocated to the federal account.
4. If neither a Presidential nor a Senate candidate appear on the ballot, at least 15 percent of the expenses must be allocated to the federal account.

An organization must make payments for allocable expenses either from a federal account or from an allocation account. If payments are made from a federal

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account, Levin funds may be transferred to this account, during the 70-day window for such transfers, in order to cover the Levin-fund portion of the expense. 11 CFR 300.33(d).

*Expenses that may not be allocated.* Certain costs of federal election activity are not allocable:

- Expenditures for public communications that refer to a clearly-identified federal candidate and that promote, support, attack or oppose any federal candidate must be paid entirely with federal funds.
- Salaries and wages for employees who spend more than 25 percent of their compensated time per month on federal election activities, or on activities in connection with federal elections, must be paid entirely with federal funds. Salaries and wages for employees who spend 25 percent or less of their compensated time in this manner must be paid with funds that comply with state law.
- The direct costs of raising funds to be used for federal election activities must be paid with federal funds or, if Levin funds are being raised, with Levin funds. Fundraising costs may not be allocated and no nonfederal funds may be used. 11 CFR 300.33(c).

*Office buildings.* Under the amended Act and regulations, a state, district or local party committee may spend federal funds or nonfederal funds (including Levin funds) to purchase or construct a party office facility, so long as the funds are not contributed or donated by a foreign national. If a committee chooses to use nonfederal funds or Levin funds, the funds are subject to state law, and the Act will not preempt state law except to prohibit donations by foreign nationals. Moreover, if nonfederal or Levin funds are used, the office facility must not be purchased or constructed for the purpose of influenc-

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ing the election of any federal candidate in any particular election. If federal funds are used to purchase or construct the facility, the Act will preempt the limits and prohibitions of state law. 11 CFR 300.35(a) and (b).

Additionally, a state, district or local party committee may generate income by leasing out a portion of its office building at the usual and normal charge. If the building is purchased in whole or in part with nonfederal funds, then all rental income must be deposited in the committee's nonfederal account and used only for nonfederal purposes. The rental income and its use must also comply with state law. If the building is purchased entirely with federal funds, then the rental income may be deposited in the committee's federal account. Any such income must be disclosed in the committee's reports to the Commission. 11 CFR 300.35(c).

*Reporting and recordkeeping for organizations that are not political committees.* A state, district or local party committee (or an association of state or local candidates or officeholders) that is not a political committee under the Act is not required to file reports, but must be able to demonstrate through a reasonable accounting method that it has enough funds on hand that comply with the limits and prohibitions of the Act to cover any payment of federal funds (or Levin funds) that it makes for federal election activity. The organization must keep records to this effect and make these records available to the Commission upon request. Payments by such organizations for federal election activity are not "expenditures" for the purpose of determining whether an organization qualifies as a political committee with registration and reporting requirements, unless the payment otherwise qualifies as an expendi-

ture under 2 U.S.C. §431(9).<sup>10</sup> 11 CFR 300.36(a).

*Reporting and recordkeeping for political committees.*<sup>11</sup> A state, district or local party committee (or an association of state or local candidates or officeholders) that is a political committee under the Act must file on a monthly schedule and report all receipts and disbursements of federal funds for federal election activity, including the federal portion of allocated expenses. 11 CFR 300.36(b)(1) and (b)(2). See also 11 CFR 100.5.

A state, district or local party committee that is a political committee but that has less than \$5,000 of aggregate receipts and disbursements for federal election activity per calendar year—and any association of state or local candidates or officeholders that is a political committee—must report all receipts and disbursements of federal funds. (The party committee need not report receipts and disbursements of Levin funds.) Such a committee or association of candidates and officeholders should not report federal funds or Levin funds disbursed for federal election activity as "expenditures" on their reports, unless the disbursement otherwise

<sup>10</sup> Certain organizations that make "expenditures," as defined at 11 CFR 100.8(a), in excess of \$1,000 in a calendar year become political committees under the Act and must register and report with the Commission. 11 CFR 100.5. In a separate rulemaking, the Commission has reorganized 11 CFR 100.7 and 100.8. See "Reorganization of Regulations on "Contribution" and "Expenditure" (67 FR 50582, August 5, 2002).

<sup>11</sup> These requirements added by the BCRA are in addition to the Act's existing requirements to report expenditures of federal funds. 2 U.S.C. §434 and 11 CFR part 104.

qualifies as an expenditure.<sup>12</sup> 11 CFR 300.36(b)(1) and 300.36(c)(1). See also 2 U.S.C. §421(9) and 11 CFR 100.8.

A state, district or local party committee that has \$5,000 or more of aggregate receipts and disbursements for federal election activity per calendar year must disclose its activity in greater detail, including receipts and disbursements of federal funds and of Levin funds used for federal election activity. 11 CFR 300.36(b)(2) and 300.36(c)(1). Such a committee must also report the allocation percentages used.

Contributions and expenditures of federal funds for federal election activity apply toward the \$50,000 threshold for determining whether a committee must file its reports electronically under the Commission's mandatory electronic filing program. Receipts and disbursements for federal election activity that do not qualify as contributions and expenditures (including Levin fund receipts and disbursements) do not, however, count toward this threshold. 11 CFR 104.18 and 300.36(c)(2). See also 11 CFR 100.7 and 100.8.

*Tax exempt organizations.* Like national party committees, state, district and local party committees may not solicit funds for, or make or direct donations to, tax-exempt 501(c) organizations, or to organizations that have applied for tax-exempt status, if the organization makes expenditures or disbursements in connection with federal elections, including federal election activity.<sup>13</sup> Committees may solicit

<sup>12</sup> Associations, or other similar organizations, of state or local candidates may spend federally-permissible funds for federal election activity, but they cannot raise or spend Levin funds.

<sup>13</sup> In no case is a committee prohibited from responding to a request for information about a tax-exempt group that shares the party's political or philosophical goals. 11 CFR 300.37(f).

funds for, or make or direct donations to, so-called "527 organizations" only if these organizations are:

- Political committees under Commission regulations;
- State, district or local party committees;
- Authorized campaign committees of state or local candidates; or
- A political committee under state law that supports only state or local candidates and that does not make expenditures or disbursements in connection with federal elections, including expenditures or disbursements for federal election activity.

In order to establish whether or not an organization makes expenditures or disbursements in connection with federal elections, party committees may obtain a signed certification from an authorized representative of the organization. The certification should state that within the current election cycle the organization has not made, and does not intend to make, such expenditures and disbursements, including payments for debts incurred from making such expenditures and disbursements in an earlier cycle. 11 CFR 300.37.

**Contribution limit.** In addition, the new rules raise the individual contribution limit to a state party committee to \$10,000 per year.

### **Fundraising by Federal Candidates and Officeholders**

The new regulations restrict and, in some cases, prohibit the solicitation and use of nonfederal funds by federal candidates and federal officeholders,<sup>14</sup> including agents acting on their behalf and entities

that are directly or indirectly established, maintained, financed or controlled by one or more federal candidate or officeholder. 11 CFR 300.60 and 300.61.

**Federal elections.** Under the Act and regulations, federal candidates and officeholders can only solicit, receive, direct, transfer, spend or disburse federal funds in connection with a federal election or for federal election activity. 11 CFR 300.61.

**Nonfederal elections.** Federal candidates and officeholders can only solicit, receive, direct, transfer, spend or disburse funds in connection with a nonfederal election in amounts and from sources that are both consistent with state law and not in excess of the Act's limits and prohibitions. However, if a federal candidate or officeholder is also a candidate for state or local office, then he or she may raise and spend nonfederal funds that only comply with state law, so long as the solicitation, receipt and spending of funds refers only to the state or local candidate and/or another state or local candidate for that same office. Individuals simultaneously running for federal and nonfederal office may only raise and spend federal funds for the federal election. 11 CFR 300.62 and 300.63.

**Attending, speaking or appearing as a featured guest at a fundraising event.** A federal candidate or officeholder may attend, speak or be a featured guest at a fundraising event for a state, district or local committee of a political party, including a fundraising event at which nonfederal funds or Levin funds are raised. The committees may advertise, announce or otherwise publicize that a federal candidate or officeholder will attend, speak or be a featured guest at the fundraising event. Candidates and federal officeholders may speak at such an event without restriction or regulation. 11 CFR 300.64.

**Tax-exempt organizations.** A federal candidate or officeholder

may make a general solicitation on behalf of a tax-exempt organization, without limits on the source or amount of funds, if the organization does not make expenditures or disbursements in connection with federal elections, including the federal election activities listed below. Moreover, a candidate or office holder may make a general solicitation on behalf of an organization that conducts activities in connection with an election if:

- The organization's principal purpose is not to conduct election activities, including the federal election activities listed below; and
- The solicitation is not to obtain funds for election activities in connection with a federal election, including federal election activities. 11 CFR 300.65(a) and (c).

Under certain circumstances, a federal candidate or officeholder may also make a specific solicitation explicitly to obtain funds to pay for federal election activities conducted by a tax-exempt organization whose principal purpose is to undertake such activities. The federal election activities for which such a specific solicitation may be made are:

- Voter registration activity during the period that begins 120 days before the date of a regularly-scheduled federal election and ends on the day of that election; and
- Voter identification, get-out-the vote activity or generic campaign activity conducted in connection with an election in which a federal candidate appears on the ballot (regardless of whether a state or local candidate also appears on the ballot). 11 CFR 300.65(c).

Such solicitations are permissible, however, only if they are made solely to individuals and the amount solicited does not exceed

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<sup>14</sup> The new regulations at 11 CFR 300.2(o) define an "Individual holding Federal office" as an individual elected to or serving in the office of the U.S. President or Vice President, or in the U.S. Congress.

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\$20,000 during any calendar year. 11 CFR 300.65(b) and (c).

Because the BCRA permits limited solicitations by federal candidates and officeholders only for the specific federal election activities listed above, these individuals *must not* make any solicitations on behalf of a 501(c) organization, or an organization that has applied for this tax status, for other types of election activities, such as public communications promoting or supporting federal candidates.

*Determining "principal purpose."* A federal candidate or officeholder may determine a tax-exempt organization's "principal purpose" by obtaining a signed certification from an authorized representative of the organization stating that:

- The organization's principal purpose is not to conduct election activities, including the federal election activities listed above; and
- The organization does not intend to pay debts incurred from making federal election disbursements and expenditures (including debts for federal election activity) in a prior election cycle. 11 CFR 300.65(e).

## State and Local Candidates

The new regulations prohibit a state or local candidate or officeholder, or any agents acting on his or her behalf,<sup>15</sup> from spending nonfederal funds on a public communication that refers to a clearly-identified federal candidate (regardless of whether a state or local candidate is also identified) and that promotes, supports, attacks

<sup>15</sup> For example, this prohibition would apply to an individual who is both a federal office holder and a state candidate. The regulations at 11 CFR 300 subpart E do not apply to an association of state or local candidates or officeholders.

or opposes a federal candidate. This prohibition applies whether or not the communication expressly advocates a vote for or against a federal candidate.

## Tax-Exempt Organizations

The Commission has also added a subpart to 11 CFR 300, subpart C, which addresses the BCRA's limits and prohibitions on the use of soft money from the perspective of certain tax-exempt organizations. The regulations under this subpart contain the restrictions on fundraising and donations by national party committees and state, district and local party committees and fundraising by federal candidates and officeholders that are also addressed in the subparts devoted to each of these types of entity. 11 CFR 300.50, 300.51 and 300.52.

## Advisory Opinions Superseded

These new and revised rules partially supersede the following advisory opinions relating to party office building funds: AOs 2001-12, 2001-1, 1998-8, 1998-7, 1997-14, 1993-9, 1991-5 and 1986-40. Other advisory opinions may no longer be relied upon to the extent that they conflict with the BCRA. ♦

## Electioneering Communications

On October 10, 2002, the Commission approved final rules to implement provisions of the BCRA regulating television or radio communications that refer to a clearly identified federal candidate and are distributed to the relevant electorate within 60 days prior to the general election or 30 days prior to a primary.

The final rules and their Explanation and Justification were published in the October 23, 2002, *Federal Register* (67 FR 65190) and are available on the FEC web site at

[www.fec.gov/pages/bcra/rulemakings/electioneering\\_communications.htm](http://www.fec.gov/pages/bcra/rulemakings/electioneering_communications.htm).

## "Electioneering Communication" Defined

An electioneering communication is any broadcast, cable or satellite communication which fulfills **each** of the following conditions:

*The communication refers to a clearly identified candidate.* A communication refers to a clearly identified federal candidate if it contains the candidate's name, nickname or image, or makes any unambiguous reference to the person or their status as a candidate, such as "the Democratic candidate for Senate." 11 CFR 100.29(b)(2).

*The communication is publicly distributed.* Generally, a communication is publicly distributed if it is disseminated for a fee by a television station, radio station, cable television system or satellite system.

In the case of Presidential and Vice-Presidential candidates, the communication is publicly distributed if it can be received by 50,000 or more people:

- In a state where a primary election or caucus is being held within 30 days;
- Anywhere in the United States during the period between 30 days prior to the nominating convention and the conclusion of that convention; or
- Anywhere in the United States within 60 days prior to the general election. 11 CFR 100.29(b)(3)(ii).

The Commission will publish on its web site a list of the applicable event in each state that triggers the 30-day period for Presidential and Vice-Presidential candidates.

Electioneering communications are limited to paid programming. The station must seek or receive payment for distribution of the communication. Both infomercials and commercials are included within the definition. 11 CFR 100.29(b)(3)(i).

The communication is distributed during a certain time period before an election. Electioneering communications are transmitted within 60 days prior to a general election or 30 days prior to a primary election for federal office, including elections in which the candidate is unopposed. A "primary election" includes any caucus or convention of a political party which has the authority to nominate a candidate to federal office. 11 CFR 100.29(a)(2).

This condition regarding the timing of the communication applies only to elections in which the candidate referred to is running.

In the case of Congressional candidates only, the communication is targeted to the relevant electorate. The communication targets the relevant electorate if it can be received by 50,000 or more people in the district (in the case of a U.S. House candidate) or state (in the case of a Senate candidate) that the candidate seeks to represent. 11 CFR 100.29(b)(5).

The Federal Communications Commission (FCC) will provide on its web site the information necessary to determine whether a communication can be received by 50,000 people. Under interim rules promulgated by the FEC, if this information is not yet available, the person making a communication may argue that it could not have been received by 50,000 people of the relevant electorate.<sup>1</sup> To make this argument, they may:

- Use written documentation from the entity that transmitted the communication;
- Demonstrate that the communication is not distributed on a station located in a metropolitan area; or

<sup>1</sup> The interim rules were published in the October 23, 2002, Federal Register (67 FR 65212). The full text of the final rules and the Explanation and Justification is available on the FEC web site at <http://www.fec.gov/register.htm> and from the FEC faxline at 202-501-3413 (document 358).

- Demonstrate that the person possesses information which leads them to reasonably believe that the communication could not be received by 50,000 or more people in the relevant area.

### Exemptions

The regulations at 11 CFR 100.29(c)(1) through (6) exempt certain communications from the definition of "electioneering communication:"

- A communication that is disseminated through a means other than a television station, radio station, cable television system or satellite system. For example, printed media—including newspapers, magazines, bumper stickers, yard signs and billboards—are not included, nor are communications over the Internet, e-mail or the telephone;
- A news story, commentary or editorial broadcast by a television station, radio station, cable television system or satellite system. However, the facilities may not be owned or controlled by a political party, political committee or candidate, unless the communication satisfies the exemption for news stories at 11 CFR 100.132(a) and (b);
- Expenditures or independent expenditures that must otherwise be reported to the FEC;
- A candidate debate or forum or a communication that solely promotes a debate or forum. Communications promoting the debate or forum must be made by or on behalf of the sponsor;
- Communications by state or local candidates that do not promote, support, attack or oppose federal candidates; and
- Communications by 501(c)(3) organizations. However, these organizations are still barred from participating in partisan political activity by the Internal Revenue Code. Making electioneering

communications may jeopardize their tax-exempt status.<sup>2</sup>

### Application

*Corporations and Labor Organizations.* Corporations and labor organizations are prohibited from making or financing electioneering communications to those outside of their restricted class. 11 CFR 114.2(b)(2)(iii).<sup>3</sup>

Further, they may not provide funds to any person if they know, have reason to know or are willfully blind to the fact that the funds are for the purpose of making electioneering communications. 11 CFR 114.14(a) and (c).

*Qualified Nonprofit Corporations.* Qualified nonprofit corporations (QNC) may make electioneering communications. To qualify, the entity must be a nonprofit corporation incorporated under 26 U.S.C. §501(c)(4) that is ideological in nature and qualifies for exemptions under 11 CFR 114.10.

If a QNC makes electioneering communications that aggregate in excess of \$10,000 in a calendar year, it must certify that it is eligible for the QNC exemption. The certification must include the name and address of the corporation and the signature and printed name of the individual making the qualifying statement. It must also certify that the corporation meets the standards of a QNC, either by satisfying all of

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<sup>2</sup> For further information on 501(c)(3) organizations, contact the Exempt Organizations division of the IRS at 1-877-829-5500.

<sup>3</sup> Generally, the restricted class comprises the executive and administrative personnel and their families. It also includes a corporation's stockholders and their families, or a labor or membership organization's members and their families. See 11 CFR 114.1(c) and (e).

## Electioneering Communications

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the qualifications at 11 CFR 114.10(c)(1)-(5), or through a court ruling pursuant to 11 CFR 114.10(e)(1)(i)(B). The certification is due no later than when the first electioneering communications report is required to be filed. 11 CFR 100.29(e).

QNCs still may not make contributions to federal political committees, nor may they accept any funds from corporations or labor organizations. 11 CFR 114.10(d)(2) and (3). Also, these regulations do not supercede any section of the Internal Revenue Code regarding 501(c)(4) organizations. 11 CFR 100.29(i).

**"527" Organizations.** The prohibition against the use of corporate funds to make or finance electioneering communications does not apply to certain organizations incorporated under 26 U.S.C. §527.

Incorporated state party committees and state candidate committees registered as 527 organizations are exempt from the corporate prohibition provided that the committee:

- Is not a political committee as defined at 11 CFR 100.5;
- Incorporates for liability purposes only;
- Does not use any funds donated by corporations or labor organizations to fund the electioneering communication; and
- Complies with the FEC's reporting requirements for electioneering communications. 11 CFR 114.2(b)(2)(iii).

Unincorporated, unregistered "527" organizations may also make electioneering communications, subject to the disclosure requirements and the prohibition against corporate and labor funds.

**Individuals and Partnerships.** Individuals and partnerships may make or finance electioneering communications, provided that certain conditions are met. Those

that accept funds provided by corporations or labor organizations may not use those funds to pay for electioneering communications, nor may they give these funds to another to defray the costs of making an electioneering communication. 11 CFR 114.14(b).

They must be able to demonstrate through a reasonable accounting procedure that no prohibited funds were used to pay for the electioneering communication. 11 CFR 114.14(d).

### Disclosure Requirements

The BCRA requires that electioneering communications which cost more than \$10,000 must be disclosed to the FEC within 24 hours of the disclosure date. Reporting requirements for electioneering communications are included in the reporting rulemaking summarized on page 19. ♦

## Contribution Limits and Prohibitions

On October 31, 2002, the Commission approved final rules to implement provisions of the BCRA that:

- Increase the contribution limits for individuals and political committees;
- Modify recordkeeping requirements for political committee treasurers;
- Prohibit certain contributions and donations by minors; and
- Strengthen the current statutory prohibitions on contributions and donations by foreign nationals.

The final rules and their Explanation and Justification were published in the November 19, 2002, *Federal Register* (67 FR 69928) and are available on the FEC web site at [www.fec.gov/pages/bcra/rulemakings/part\\_110\\_rules.htm](http://www.fec.gov/pages/bcra/rulemakings/part_110_rules.htm).

### Contribution Limits Increased

On January 1, 2003, a number of contribution limits increased, and some of the limits became indexed for inflation.

**Contributions to candidates and political party committees.** The limits on contributions made by individuals and non-multicandidate committees increased to \$2,000 per election to federal candidates and \$25,000 per year to national party committees. 11 CFR 110.1(b)(1) and 110.1(c)(1). These limits will be indexed for inflation, as described below.

**Aggregate biennial contribution limitations for individuals.** The former \$25,000 annual limit for individuals has been replaced by a new biennial limit of \$95,000. This limit includes up to \$37,500 in contributions to candidate committees and up to \$57,500 in contributions to any other committees. The \$57,500 portion of the biennial limit contains a further restriction, in that no more than \$37,500 of this amount may be given to committees that are not national party committees. 11 CFR 110.5(b)(1).<sup>1</sup> The biennial limit will be indexed for inflation.

**Special contribution limit to Senate candidates.** The limit on contributions made to Senate candidates by the Republican and Democratic Senatorial campaign committees or the national committees of a political party, or any combination of these committees,

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<sup>1</sup> Under the so-called millionaires' amendment, individual limits to Congressional candidates increase if the candidate's opponent makes expenditures from his or her personal funds above a certain threshold. Contributions made under this provision will not be subject to the overall biennial limit. The Commission has address the millionaires' amendment in a separate rulemaking, described on page 22.

## Contribution Limits

Donors	Recipients				Special Limits
	Candidate Committee	PAC <sup>1</sup>	State, District and Local Party Committee <sup>2</sup>	National Party Committee <sup>3</sup>	
<b>Individual</b>	\$2,000* per election <sup>4</sup>	\$5,000 per year	\$10,000 per year combined limit	\$25,000* per year	Biennial limit of \$95,000* (\$37,500 to all candidates and \$57,500 <sup>5</sup> to all PACs and parties)
<b>State, District and Local Party Committee<sup>2</sup></b>	\$5,000 per election combined limit	\$5,000 per year combined limit	Unlimited transfers to other party committees		
<b>National Party Committee<sup>3</sup></b>	\$5,000 per election	\$5,000 per year	Unlimited transfers to other party committees		\$35,000* to Senate candidate per campaign <sup>6</sup>
<b>PAC Multicandidate<sup>7</sup></b>	\$5,000 per election	\$5,000 per year	\$5,000 per year combined limit	\$15,000 per year	
<b>PAC Not Multicandidate<sup>7</sup></b>	\$2,000* per election	\$5,000 per year	\$10,000 per year combined limit	\$25,000* 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> 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 multicandidate 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> 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>5</sup> No more than \$37,500 of this amount may be contributed to state and local parties and PACs.

<sup>6</sup> This limit is shared by the national committee and the Senate campaign committee.

<sup>7</sup> A multicandidate 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.



## Contribution Limits and Prohibitions

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will increase to \$35,000 per six-year cycle. 11 CFR 110.2(e)(1). This special limit will also be indexed for inflation.

**Indexing.** Under the old regulations, the coordinated party expenditure and Presidential candidate expenditure limits were indexed for inflation. The new rules extend the inflation indexing to contributions to candidates and national party committees by individuals and non-multicandidate committees, the biennial aggregate contribution limit for individuals and the limit on contributions to Senate candidates by certain national party committees. 11 CFR 110.17(a) and (b).

For the "per election" limit on contributions to candidates, the indexing changes will take effect on the day after the general election and remain in effect through the day of the next regularly-scheduled general election. 11 CFR 110.1(b)(1)(ii). For example, an increase in the limit made in January 2005 would be effective from November 3, 2004, to November 7, 2006, and would only affect elections held after November 3, 2004. On the other hand, the indexing changes for the calendar-year-based limits will affect the calendar-based period that follows, or from January 1 of the odd-numbered year through December 31 of the next even-numbered year. 11 CFR 110.1(c)(ii), 110.2(e)(2) and 110.5(b)(3). The Commission will announce the amount of the adjusted expenditure and contribution limits in the *Federal Register* and on the FEC web site at [www.fec.gov](http://www.fec.gov). These indexing provisions will first be applied in 2005. 11 CFR 110.17(e).

The applicable expenditure and contribution limits will be adjusted according to the Consumer Price Index (CPI). The limits will be adjusted in odd-numbered years, and will be increased by the percent-

age difference between the CPI during the 12 months preceding the beginning of that calendar year and the CPI during the base year, which is 2001. The rules contain a rounding provision so that the inflation-adjusted amount will be rounded to the nearest multiple of \$100. 11 CFR 110.17(c) and (d).

### Redesignations and Reattributions

The Commission has streamlined its rules for designating contributions to a particular election. When an individual or non-multicandidate committee makes an excessive contribution to a candidate's authorized committee, the committee may automatically redesignate excessive contributions to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit. 11 CFR 110.1(b)(5)(ii)(B)(1)-(4).

In the case of an authorized committee of a Presidential candidate who accepts public funding for the general election, this presumption is available only to the extent that the candidate is permitted to accept contributions to a general election legal and accounting compliance (GELAC) fund.

The redesignation presumption also includes a backward-looking provision where an undesignated, excessive contribution made after the primary, but before the general election, may be automatically applied to the primary if the campaign committee has more net debts outstanding from the primary than the excessive portion of the contribution. The redesignation, of course, may not cause the contributor to exceed any contribution limits. 11 CFR 110.1(b)(5)(ii)(C).

The candidate committee is required to notify the contributor of the redesignation by paper mail, e-mail, fax or other written method within 60 days of the treasurer's receipt of the contribution. Also, at the time of notification, the contributor must be given the opportunity to request a refund. 11 CFR 110.1(b)(5)(ii)(B)(5)-(6) and 110.1(b)(5)(ii)(C)(6)-(7).

Similarly, the Commission has also updated its rules regarding reattributions. When an excessive contribution is made via a written instrument with more than one individual's name imprinted on it, but only has *one* signature, the permissible portion will be attributed to the signer and the excessive portion may now be attributed to the other individual whose name is imprinted on the written instrument, without obtaining a second signature, so long as the reattribution does not cause the contributor to exceed any other contribution limit. 11 CFR 110.1(k)(3)(ii)(B)(1).

Political committees employing this presumption must notify all contributors in writing or via e-mail within 60 days of the committee treasurer's receipt of the check. At the time of notification, the committee must offer the contributor who signed the check a refund of the excessive portion. 11 CFR 110.1(k)(3)(ii)(B)(2) and (3).

**Recordkeeping.** To facilitate audits that determine compliance with the contribution limits, political committee treasurers are now required to maintain either a full-size photograph or a digital image of each check or written instrument by which a contribution of \$50 or more is made. 11 CFR 102.9(a)(4). Under a new section added to the rule outlining the explicit standard for acceptable accounting methods, the committee's records must demonstrate that, prior to the primary election, recorded cash on hand was at all times equal to or in excess of the sum of general elec-

tion contributions received minus the sum of general election disbursements made. 11 CFR 102.9(e)(2). In addition, for the political committee redesignations or reattributions to be effective, any signed writings from contributors that accompany the contribution and the committee's notices must be retained.

### Prohibition on Contributions and Donations by Minors

Under the new regulations, individuals who are under 18 years old are prohibited from making contributions to federal candidates and contributions or donations to committees of political parties 11 CFR 110.19(a) and (b). By including the term "donation" in this regulation, the prohibition encompasses both federal and nonfederal accounts of political party committees. Thus, this provision preempts state law to the extent that state law may permit minors to make donations to state, district and local party committees. In the Explanation and Justification for this rule, the Commission indicated that prohibiting donations by minors to all committees of state, district and local parties has a federal purpose because donations of nonfederal funds to state parties could otherwise be used, in part, to finance "federal election activities."<sup>2</sup>

The final rules make clear that individuals under 18 may, however, participate in volunteer work for federal candidates and political party committees and may continue to make contributions to unauthorized committees that are not political party committees, such as PACs, under certain conditions. See 11 CFR 110.19(c).

<sup>2</sup> "Federal election activity," is defined on page 2.

### Prohibition on Contributions, Donations, Expenditures, Disbursements by Foreign Nationals

New section 11 CFR 110.20 implements BCRA's prohibition on contributions, donations, expenditures and disbursements solicited,<sup>3</sup> accepted, received or made directly or indirectly by or from foreign nationals in connection with state and local elections as well as federal elections. This ban also applies to:

- Contributions and donations to political party committees;
- Contributions and donations to party committee building funds;
- Disbursements for electioneering communications;<sup>4</sup> and
- Expenditures, independent expenditures, and disbursements in connection with any election.<sup>5</sup>

The Commission has included a knowledge requirement and knowledge standards with regard to the solicitation, acceptance or receipt of foreign national contributions or donations, determining that this would produce a less harsh result than a strict liability standard.

*Knowledge.* The final rules contain in the definition of "knowingly" three standards of knowledge that focus on the sources of funds received. Meeting any one of these standards would satisfy the knowledge requirements of this rule.

The first standard is actual knowledge that funds have come from a foreign source. The second

<sup>3</sup> The term "solicit" at section 11 CFR 110.20 has the same meaning as in section 11 CFR 300.2(m), "to ask another person to make a contribution or donation, or transfer of funds, or to provide anything of value, including through a conduit or intermediary."

<sup>4</sup> "Electioneering communication" is defined on page 8.

<sup>5</sup> An additional ban on foreign national donations to Presidential inaugural committees will be addressed in a later rulemaking.

is an awareness on the part of the person soliciting, accepting or receiving the contribution or donation of certain facts that would lead a reasonable person to conclude that there is a substantial probability that the contribution or donation is coming from a foreign source. The third standard is an awareness on the part of the person soliciting, accepting or receiving a contribution or donation of facts that should have prompted a reasonable inquiry into whether the source of the funds is a foreign national, but the person neglected to undertake such an inquiry. 11 CFR 110.20(a)(4)(i)-(iv).

The rule further outlines the types of information that should lead a recipient to question the origin of a contribution or donation under this section. They are:

- Use by a contributor or donor of a foreign passport or passport number;
- Use by a contributor or donor of a foreign address;
- A check or other written instrument is drawn on an account or a wire transfer from a foreign bank; or
- Contributors or donors live abroad. 11 CFR 110.20(a)(5)(i)-(iv).

*Knowledge safe harbor.* The Commission has adopted a narrowly-tailored safe harbor for the knowledge standards. A person shall be deemed to have conducted a reasonable inquiry into a possible foreign national contribution if he or she seeks and obtains copies of current and valid U.S. passport papers for U.S. citizens who are contributors or donors and to whom any of the above four types of information are applicable. 11 CFR 110.20(a)(7).

*Assisting foreign national contributions or donations.* The foreign national prohibition applies to a person who knowingly provides

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## Contribution Limits and Prohibitions

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substantial assistance to foreign nationals in the making of contributions, donations, expenditures, independent expenditures and disbursements in connection with federal and nonfederal elections. This prohibition covers, but is not limited to, acting as a conduit or intermediary for foreign national contributions and donations. 11 CFR 110.20(g).♦

## Other Provisions

On November 25, 2002, the Commission approved final rules to implement provisions of the BCRA that:

- Specify new requirements for disclaimers accompanying radio, television, print and other campaign communications;
- Make changes regarding the personal use of campaign funds by candidates and federal officeholders;
- Allow non-incumbent federal candidates to pay themselves salaries from campaign funds, as described below;
- Expand the scope of the statutory prohibition on fraudulent misrepresentation; and
- Increase the civil penalties for violating the prohibition on contributions made in the name of another.

The final rules and their Explanation and Justification were published in the December 13, 2002, *Federal Register* (67 FR 76962) and are available on the FEC web site at [www.fec.gov/pages/bcra/rulemakings/other\\_provisions.htm](http://www.fec.gov/pages/bcra/rulemakings/other_provisions.htm).

### Disclaimers

The new regulations replace pre-BCRA 11 CFR 110.11 with a new

section of the same number that implements statutory changes to the disclaimer requirements. The disclaimer requirements in this new section apply to public communications, including “communications through any broadcast, cable or satellite transmission, newspaper, magazine, outdoor advertising facility, mailing or other type of general public political advertising.” See 11 CFR 100.26. These requirements also apply to political committees’ web sites, to unsolicited e-mail of more than 500 substantially-similar communications and to any “electioneering communication.” All disclaimers must be “clear and conspicuous” regardless of the medium in which the communication is transmitted. A disclaimer is not clear and conspicuous if it is difficult to read or hear, or if its placement is easily overlooked. 11 CFR 110.11(c)(1).

*Political committees.* Any communication made by a political committee—including communications that do not expressly advocate the election or defeat of a clearly-identified federal candidate or solicit a contribution—must display a disclaimer. 11 CFR 110.11(a)(1).

The disclaimer for a communication paid for and authorized by a candidate or candidate’s committee must state that the communication is paid for by the candidate’s committee. The disclaimer for a communication authorized by the candidate or candidate’s committee, but paid for by any other person, must state both who paid for the communication and that it was authorized by that candidate.

Communications not authorized by a candidate or his/her campaign committee, including any solicitation, must disclose the permanent street address, telephone number or web site address of the person who paid for the communication, and also state that the communication was not authorized by any candidate. 11 CFR 110.11(b).

*Specific requirements for radio and television communications.* For radio and television communications authorized by a candidate, the candidate must deliver an audio statement identifying himself or herself, and stating that he or she has approved the communication. For a television communication, this disclaimer must be conveyed by either:

- A full-screen view of the candidate making the statement; or
- A “clearly identifiable photographic or similar image of the candidate” that appears during the candidate’s voice-over statement. 11 CFR 110.11(c)(3)(ii)(A) and (B).

Additionally, television communications must contain a “clearly readable” written statement that appears at the end of the communication for a period of at least four seconds with a reasonable degree of color contrast between the background and the disclaimer statement. The written statement must occupy at least four percent of the vertical picture height. 11 CFR 110.11(c)(3)(iii).

For a radio or television communication that is not authorized by a candidate, the name of the political committee or other person who is responsible for the communication and, if applicable, the name of the sponsoring committee’s connected organization is required in the disclaimer.<sup>1</sup>

In the case of a televised ad, the disclaimer must also include a statement that is conveyed by a full screen view of a representative of the political committee or other person making the statement, or a voice-over by the representative. In addition, the disclaimer must appear in writing at the end of the communication in a “clearly readable”

<sup>1</sup> In addition, communications transmitted through telephone banks, as defined by 11 CFR 100.28, must carry this same disclaimer statement.

manner with a reasonable degree of color contrast to the background, and it must be shown for a period of four seconds. 11 CFR 110.11(c)(4).

The regulations include safe harbor guidelines for television communication disclaimers:

- A still picture of the candidate shall be considered “clearly identifiable” if it occupies at least 80 percent of the vertical screen height; and
- Disclaimers that are printed in black text on a white background, as well as disclaimers that have at least the same degree of contrast with the background color as the degree of contrast between the background color and the color of the largest text used in the communication, will be considered “clearly readable.” 11 CFR 110.11(c)(3)(iii)(C).

*Specific requirements for printed communications.* Printed materials must contain a printed box that is set apart from the contents in the communication. The disclaimer print in this box must be of sufficient type size to be “clearly readable” by the recipient of the communication, and the print must have a reasonable degree of color contrast between the background and the printed statement. 11 CFR 110.11(c)(2)(ii) and (iii).

The regulations contain a safe harbor that establishes a fixed, twelve-point type size as a sufficient size for disclaimer text in newspapers, magazines, flyers, signs and other printed communications that are no larger than the common poster size of 24 inches by 36 inches. 11 CFR 110.11(c)(2)(i). Disclaimers for larger communications will be judged on a case-by-case basis.

The regulations additionally provide two safe harbor examples that would comply with the color-contrast requirement:

- The disclaimer is printed in black text on a white background; or

- The degree of contrast between the background color and the disclaimer text color is at least as great as the degree of contrast between the background color and the color of the largest text in the communication. 11 CFR 110.11(c)(2)(iii).<sup>2</sup>

### Personal Use of Campaign Funds

The new rules retain the existing prohibition against the personal use of campaign funds as well as the so-called “irrespective test.” Candidates may not, therefore, use funds in a campaign account to “fulfill a commitment, obligation, or expense of any person that would exist irrespective of the candidate’s campaign or duties as a Federal officeholder.” 11 CFR 113.1(g). Personal use of campaign funds includes, but is not limited to, payment of the following: household items or supplies, clothing (except for clothing items of *de minimis* value), tuition payments, mortgage, rent or utility payments, vacations and health or country club dues. 11 CFR 113.1(g)(1)(i). The regulations have, however, been amended as follows.

*Candidate salaries.* The most notable change permits a candidate for federal office to receive a salary from his or her principal campaign committee.<sup>3</sup> According to the regulations, a salary may be received under the following conditions:

- The salary must be paid by the principal campaign committee.
- The salary must not exceed the lesser of either the minimum annual salary for the federal office sought or what the candidate

<sup>2</sup> Please note these examples do not constitute the only ways to satisfy the color contrast requirement.

<sup>3</sup> This amendment to the regulations supersedes Advisory Opinion 1999-1.

received as earned income in the previous year.<sup>4</sup>

- Individuals who elect to receive a salary from their campaign committees must provide income tax records and additional proof of earnings from relevant years upon request from the Commission.
- Payments of salary from the committee must be made on a pro-rata basis.<sup>5</sup>
- Incumbent federal officeholders may not receive salary payment from campaign funds.
- The first payment of salary shall be made no sooner than the filing deadline for access to the primary election ballot in the state in which the candidate is running for office.<sup>6</sup>

*Members of a candidate’s family.* The new regulations amend the definition of a candidate’s family at 11 CFR 113.1(g)(7). The previous regulations included as a member of a candidate’s family, “a person who has a committed relationship with a candidate, such as sharing a household and having mutual responsibility for each other’s welfare or living expenses.” 11 CFR 113.1(g)(7)(iv). This section has been removed from the new regulations and replaced with a provision that includes any person who shares a residence with the candidate.

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<sup>4</sup> Any salary paid by the campaign committee will be equal to the lesser of these two amounts. Furthermore, additional salary or wages received from other sources will count toward the limit that may be received by the candidate.

<sup>5</sup> This provision will prevent a candidate from receiving a whole year’s salary if he or she is not a candidate for an entire twelve-month period.

<sup>6</sup> The filing deadline for the primary election for federal candidates is determined by state law. In those states that do not have a primary election, candidates may not receive payment until after January 1<sup>st</sup> of each even-numbered year.

## Other Provisions

(continued from page 15)

The Commission recognized that any person living with the candidate may pay a share of his or her living expenses without making a contribution to the campaign. The Commission further noted that the personal funds of a candidate would include his or her share of a joint account held with the person(s) with whom a residence is shared. However, gifts from the campaign to family members or anyone residing with the candidate are prohibited because they may be used support personal expenses of the candidate. 11 CFR 113.1(g)(4).

**Recordkeeping of personal uses.** Recordkeeping requirements for expenses that may be partly personal in nature have been added to the regulations. Such expenses may include, but are not limited to, the costs of vehicles, travel, meals and legal services.<sup>7</sup> The new provision requires that logs of these expenses be maintained to help the Commission determine on a case-by-case basis what portion was for personal use rather than for campaign related activity or officeholder duties.

**“Any other lawful purpose.”** The BCRA deleted the phrase “for any other lawful purpose” from the list of permitted uses of campaign funds at 2 U.S.C. §439a. Therefore, the Commission has removed the section referring to “any other lawful purpose” regarding the use of campaign funds. Thus, in addition to paying expenses in connection with the campaign for federal office, campaign funds may be used only for non-campaign purposes included in an exhaustive list found at 11 CFR 113.2 (a), (b), and (c).

**Contributions to other candidates.** In a previous rulemaking, the Commission amended the regulations regarding contribution limits

(see page 10). The Commission has noted, however, that the contribution limits for authorized candidate committees has not changed as a result of the BCRA. Authorized committees may make contributions of \$1,000 or less to authorized committees of other federal candidates. They may also make contributions to state and local candidates in furtherance of the federal candidate's election. See 2 U.S.C. §439a(a)(1).

**Payment of campaign and officeholder expenses from campaign accounts.** Congress has deleted the phrase “in excess of any amount to defray” campaign expenses from 2 U.S.C. §439a. Therefore, the Commission has revised 11 CFR 113.1 and 113.2 so that officeholders may spend money from campaign accounts to pay for campaign and non-campaign expenses incurred as a consequence of holding federal office. Such expenses, according to the Commission, may be paid in any order.

### Prohibitions on Fraudulent Solicitations

The final rule prohibits a person from fraudulently misrepresenting that the person is speaking, writing or otherwise acting for, or on behalf of, a federal candidate or political party, or an employee or agent of either, for the purpose of soliciting contributions or donations. Persons are also banned from willfully and knowingly participating in, or conspiring to participate in, any scheme to do so. 11 CFR 110.6(b)(1) and (2). The regulation implementing this new provision, together with the pre-BCRA fraudulent misrepresentation regulation formerly found at 11 CFR 110.9(b), is combined in new 11 CFR 110.16.

### Civil Penalties

The BCRA amends the Federal Election Campaign Act (the Act) to impose greater penalties for knowing and willful violations of the Act regarding contributions made in the

name of another.<sup>8</sup> The Commission has amended the regulations to impose a civil penalty for such violations that is not less than 300 percent of the amount of any contribution, but is no more than \$50,000 or 1,000 percent of the amount of the contribution involved. 11 CFR 111.24. ♦

## Coordinated, Independent Expenditures

On December 5, 2002, the Commission approved final rules to implement provisions of the BCRA that:

- Define coordination between a candidate or a political party and a person making a communication; and
- Set forth requirements for political party committees regarding the permitted timing of independent and coordinated expenditures, and transfers and assignments.

Note that new reporting requirements for certain independent expenditures are included in the final rules on BCRA reporting, approved on December 12, 2002.<sup>1</sup>

The final rules and their Explanation and Justification were published in the January 3, 2003, *Federal Register* (68 FR 421) and are available on the FEC web site at [www.fec.gov/pages/bcra/](http://www.fec.gov/pages/bcra/)

<sup>8</sup> The Act's civil penalties are set forth in two tiers of monetary penalties at 2 U.S.C. §§437g(a)(5), (6), and (12). The first tier addresses violations of the Act, whereas the second tier speaks to “knowing and willful” violations of the Act. The Commission addressed changes to the second tier regarding contributions in the name of another.

<sup>1</sup> This rulemaking is summarized on page 19.

<sup>7</sup> See 11 CFR 113.1(g)(1)(ii)(A), (B), (C), and (D) and 11 CFR 113.2.

[rulemakings/](#)  
[coordinated\\_independent\\_expenditures.htm](#).

### Coordination

The BCRA repealed Commission regulations defining a “coordinated general public political communication” (old 11 CFR 100.23), and instructed the Commission to promulgate new rules on “coordinated communications paid for by persons other than candidates, authorized committees of candidates, and party committees.” Pub. L. 107-155, sec. 214(c) (March 27, 2002).

New 11 CFR 109.20(a) implements 2 U.S.C. §§441a(a)(7)(B)(i) and (ii) by defining “coordinated” to mean “made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee, or their agents, or a political party committee or its agents.”<sup>2</sup>

The rules in section 109.21 define a “coordinated communication,” which is treated as an in-kind contribution to the candidate, authorized committee or party committee the communication is coordinated with, and must be reported as such. The new regulations provide for a three-part test to determine whether a communication is coordinated. Satisfaction of all of the three specific tests justifies the conclusion that payments for the coordinated communication are for the purpose of influencing a federal election. The three parts of the test consider:

- The source of payment;
- A “content standard” regarding the subject matter of the communication; and
- A “conduct standard” regarding the interactions between the person paying for the communication and the candidate or political party committee. 11 CFR 109.21(a).

<sup>2</sup> “Agent” is defined at 11 CFR 109.3, for the purposes of part 109 only.

*Source of Payment.* A coordinated communication is paid for by someone other than a candidate, an authorized committee or a political party committee. However, a person’s status as a candidate would not exempt him or her from the coordination regulations with respect to payments he or she makes on behalf of a different candidate. 11 CFR 109.21(a)(1).

*Content Standard.* The purpose of the four content standards is to determine whether the subject matter of a communication is reasonably related to an election. A communication that meets any of these four standards meets the content requirement:

1. A communication that is an “electioneering communication”;
2. A public communication that republishes, disseminates or distributes candidate campaign materials, unless the activity meets one of the exceptions at 11 CFR 109.23(b) discussed in the conduct standards below;
3. A public communication that expressly advocates the election or defeat of a clearly identified candidate for federal office; or
4. A public communication that:
  - Refers to a clearly-identified federal candidate or political party;
  - Is publicly distributed or disseminated 120 days or fewer before a primary or general election or a convention or caucus with the authority to nominate a candidate; and
  - Is directed to voters in the jurisdiction of the clearly identified candidate or to voters in a jurisdiction where one or more candidates of the political party appear on the ballot. 11 CFR 109.21(c)(1)-(4).

*Conduct Standard.* Under the final rules, if one of the conduct standards is met, and the first two parts of the test (the content standards and the source of payment) are also met, then the communication is coordinated. 11 CFR

109.21(d). The conduct standards are as follows:

1. *Request or Suggestion.* This test has two prongs, and satisfying either satisfies the test. The first prong is satisfied if the person creating, producing or distributing the communication does so at the request or suggestion of a candidate, authorized committee, political party committee or agent of any of these. The second prong of the “request or suggestion” conduct standard is satisfied if a person paying for the communication suggests the creation, production or distribution of the communication to the candidate, authorized committee, political party committee or agent of any of the above, and the candidate or political party committee assents to the suggestion. 11 CFR 109.21(d)(1).
2. *Material Involvement.* This test is satisfied if a candidate, candidate committee, political party committee or an agent of any of these was “materially involved in decisions” regarding any of the following aspects of a public communication paid for by someone else:
  - Content of the communication;
  - Intended audience;
  - Means or mode of the communication;
  - Specific media outlet used;
  - Timing or frequency of the communication; or
  - Size or prominence of a printed communication or duration of a communication by means of broadcast, cable or satellite. 11 CFR 109.21(d)(2).
3. *Substantial Discussion.* A communication meets this standard if it is created, produced or distributed after one or more substantial discussions between the person paying for the communication, or the person’s

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## Coordinated, Independent Expenditures

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agents, and the candidate clearly identified in the communication or that candidate's committee, that candidate's opponent or opponent's committee, a political party committee, or an agent of the above. A discussion would be "substantial" if information about the plans, projects, activities or needs of the candidate or political party committee that is material to the creation, production or distribution of the communication is conveyed to the person paying for the communication. 11 CFR 109.21(d)(3).

### 4. *Employment of Common Vendor.*

This conduct standard explains what a common vendor is and provides that the use of a common vendor in the creation, production or distribution of a communication satisfies the conduct standard if:

- The person paying for the communication contracts with, or employs, a "commercial vendor" to create, produce or distribute the communication.<sup>3</sup>
- The commercial vendor, including any officer, owner or employee of the vendor, has a previous or current relationship with the candidate or political party committee that puts the commercial vendor in a position to acquire information about the campaign plans, projects, activities or needs of the candidate or political party committee. This previous relationship is defined in terms of nine specific services related to campaigning and campaign communications. Note that these services would have to have been rendered during the election cycle in which the communication is first publicly distributed.

<sup>3</sup>The term "commercial vendor" is defined at 11 CFR 116.1(c).

- The commercial vendor uses or conveys information about the campaign plans, projects, activities or needs of the candidate or political party committee, or information previously used by the commercial vendor in serving the candidate or political party committee, to the person paying for the communication, and that information is material to the creation, production or distribution of the communication. 11 CFR 109.21(d)(4).

### 5. *Former Employee/Independent Contractor.*

This standard applies to communications paid for by a person who has previously been an employee or an independent contractor of a candidate's campaign committee or a political party committee during the election cycle. The standard requires that the former employee use or convey material information about the plans, projects, activities or needs of the candidate or political party committee, or material information used by the former employee in serving the candidate or political party committee, to the person paying for the communication, and the information is material to the creation, production or distribution of the communication. 11 CFR 109.21(d)(5).<sup>4</sup>

<sup>4</sup>Under the final rules, a candidate or political party committee would not be held responsible for receiving or accepting an in-kind contribution that resulted only from conduct described in the fourth and fifth conduct standards. 11 CFR 109.21(d)(4) and (d)(5). However, the person paying for a communication that is coordinated because of conduct described in the fourth or fifth conduct standards would still be responsible for making an in-kind contribution for purposes of the contribution limitations, prohibitions and reporting requirements of the Act. 11 CFR 109.21(b)(2).

6. *Dissemination, distribution or republication of campaign material.* A communication that republishes, disseminates or distributes campaign material only satisfies the first three conduct standards on the basis of the candidate's conduct—or that of his or her committee or agents—that occurs after the original preparation of the campaign materials that are disseminated, distributed or republished. 11 CFR 109.21(d)(6).<sup>5</sup>

*Agreement or formal collaboration.* Neither agreement (defined as a mutual understanding on any part of the material aspect of the communication or its dissemination) nor formal collaboration (defined as planned or systematically-organized work) is necessary for a communication to be a coordinated communication. 11 CFR 109.21(e).

*Safe harbor for responses to inquiries about legislative or policy issues.* A candidate's or political party committee's response to an inquiry about that candidate's or party's positions on legislative or policy issues, which does not include discussion of campaign, plans, projects, activities or needs, will not satisfy any of the conduct standards. 11 CFR 109.21(f)

*Party Coordinated Communications.* Although Congress did not specifically direct the Commission

<sup>5</sup>Please note that the financing of the distribution or republication of campaign materials, while considered an in-kind contribution by the person making the expenditure, is not considered an expenditure by the candidate's authorized committee unless the dissemination, distribution or republication of campaign materials is coordinated. Additionally, republications of campaign materials coordinated with party committees are in-kind contributions to such party committees, and are reportable as such. 11 CFR 109.23(a).

to promulgate a new regulation on coordinated communications paid for by political party committees, the Commission is promulgating final rules to set forth the circumstances under which communications paid for by a party committee would be considered to be coordinated with a candidate, a candidate's authorized committee or their agents. These rules would generally apply the same coordination standards that would be applied to communications paid for by other persons. 11 CFR 109.37.

### Coordinated and Independent Expenditures by Party Committees

National, state and subordinate committees of political parties may make expenditures up to prescribed limits in connection with the general election campaigns of federal candidates without counting such expenditures against the committees' contribution limits. 2 U.S.C. §441a(d). These expenditures are commonly referred to as "coordinated party expenditures," and the limits for these expenditures can be found in new section 11 CFR 109.32.<sup>6</sup>

*When coordinated party expenditures can be made.* Political party committees can make coordinated party expenditures in connection with the general election campaign before or after the party's candidate has been nominated. All pre-nomination coordinated expenditures continue to be subject to the coordinated party expenditure limitations, whether or not the candidate on whose behalf they are made receives the party's nomination. 11 CFR 109.34.

*Restrictions on making both independent expenditures and coordinated expenditures.* In BCRA, Congress prohibits political party committees, under certain conditions, from making both

coordinated party expenditures and independent expenditures with respect to the same candidate, and from making transfers and assignments to other political party committees. 2 U.S.C. §441a(d)(4). Congress plainly intended to combine certain political party committees into a collective entity or entities for purposes of these restrictions. 2 U.S.C. §441a(d)(4)(B).

For the purposes of these restrictions only, all political parties established and maintained by a national political party (including all Congressional campaign committees), and all political committees established and maintained by a state political party (including any subordinate committee of a state committee), shall be considered to be a single political committee. 11 CFR 109.35(a).

Under the BCRA and the new regulations, a political party committee is prohibited from making any post-nomination coordinated party expenditure in connection with the general election campaign of a candidate at any time after that political party committee makes any post-nomination independent expenditure with respect to the candidate. 11 CFR 109.35(b)(1). Similarly, a political party committee is prohibited from making any post-nomination independent expenditure with respect to a candidate at any time after that political party committee makes a post-nomination coordinated expenditure in connection with the general election campaign of the candidate. 11 CFR 109.35(b)(2).

*Prohibited Transfers.* Congress provided in the BCRA that a "committee of a political party" that makes coordinated party expenditures with respect to a candidate must not, during an election cycle, transfer any funds to, assign authority to make coordinated party expenditures under 2 U.S.C. §441a(d) to, or receive a transfer of

funds from, a "committee of the political party" that has made or intends to make an independent expenditure with respect to the candidate. 2 U.S.C. §441a(d)(4)(C). The final rules generally track this statutory language. 11 CFR 109.35(c).

*National party independent expenditures on behalf of Presidential candidates.* Prior to the enactment of the BCRA, the Commission's rules prohibited a national committee of a political party from making independent expenditures in connection with the general election campaign of a Presidential candidate. See former 11 CFR 110.7(a)(5). However, section 441a(d)(4), added by the BCRA, precludes such a broad prohibition. As a result, the Commission has added a new section that specifically prohibits a national committee of a political party from making independent expenditures with respect to a Presidential candidate if it serves as the principal campaign committee or authorized committee of its Presidential candidate under 11 CFR 9002.1(c). 11 CFR 109.36. ♦

## Reporting

On December 12, 2002, the Commission approved final rules on reporting requirements related to the BCRA, including:

- Reporting of independent expenditures;
- Reporting of electioneering communications;
- Quarterly reporting by the principal campaign committees of House and Senate candidates;
- Monthly reporting by national committees of political parties; and
- Reporting funds for state and local party office buildings.

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<sup>6</sup> These limits were formerly located at 11 CFR 110.7.



## Reporting

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The final rules and their Explanation and Justification were published in the January 3, 2003, *Federal Register* (68 FR 404) and are available on the FEC web site at [http://www.fec.gov/pages/bcra/rulemakings/rulemakings\\_bcra.htm](http://www.fec.gov/pages/bcra/rulemakings/rulemakings_bcra.htm).

### Independent Expenditures

The BCRA requires political committees and other persons who make independent expenditures at any time during a calendar year—up to and including the 20<sup>th</sup> day before an election—to disclose this activity within 48 hours each time that the expenditures aggregate \$10,000 or more. This reporting requirement is in addition to the pre-BCRA requirement to file 24-hour notices of independent expenditures each time that disbursements for independent expenditures aggregate at or above \$1,000 during the last 20 days—up to 24-hours—before an election. 2 U.S.C. §§434(b), (d) and (g). The new rules address when and how such reports should be filed.

*Independent expenditures aggregating less than \$10,000.* Committees must report on Schedule E of Form 3X independent expenditures that aggregate less than \$10,000 with respect to a given election during the calendar year that are made up to and including the 20<sup>th</sup> day before an election. The report must be filed no later than the filing date of the committee's next regularly-scheduled report. 11 CFR 104.4(a) and (b)(1). Individuals other than political committees disclose on FEC Form 5 independent expenditures aggregating in excess of \$250 with respect to a given election during the calendar year that are made during this time period. The report must be filed by the filing deadline of the next report under the quarterly filing schedule. 11 CFR 109.10(b).

Both committees and individuals must file an additional report each

time that independent expenditures made less than 20 days, but more than 24 hours, before an election aggregate in excess of \$1,000. These reports must be *received* by the Commission by the end of the day following the date that the communication is publicly disseminated. All individuals and committees, even those supporting or opposing Senate candidates, must file 24-hour notices of independent expenditures with the Commission. Electronic filers must file these reports electronically, and paper filers may file by fax or e-mail. Additionally, electronic filers and paper filers may file 24-hour reports using the FEC web site's online program. 11 CFR 104.4(c), 109.10(d) and 100.19(d)(3).

*Independent expenditures aggregating \$10,000 and above.* Once an individual's or committee's independent expenditures reach or exceed \$10,000 in the aggregate at any time up to and including the 20<sup>th</sup> day before an election, they must be reported within 48 hours of the date that the expenditure is publicly distributed. All 48-hour reports must be filed with and *received* by the Commission at the end of the second day after the independent expenditure is publicly distributed. Electronic filers must file these reports electronically, and paper filers may file by fax or e-mail. 11 CFR 104.4(b)(2), 109.10(c) and 100.19(d)(3).

*Verification of independence.* All 24- and 48-hour reports must contain, among other things, a verification under penalty of perjury as to whether the expenditure was made in cooperation, consultation or concert with a candidate, a candidate's committee, a political party committee or an agent of any of these. 11 CFR 104.4(d)(1) and 109.10(e)(1)(v).

*Aggregating independent expenditures for reporting purposes.* Independent expenditures are aggregated toward the various

reporting thresholds on a per-election basis within the calendar year. Consider, as examples, the following scenarios, all of which occur outside of the 20-day window before an election when 24-hour notices are required:

- If a committee makes \$5,000 in independent expenditures with respect to a Senate candidate, and \$5,000 in independent expenditures with respect to a House candidate, then the committee is not required to file 48-hour reports, but must disclose this activity on its next regularly-scheduled report.
- If the committee makes \$5,000 in independent expenditures with respect to a clearly-identified candidate in the primary, and an additional \$5,000 in independent expenditures with respect to the same candidate in the general, then again no 48-hour notice is required and the expenditures are disclosed on the committee's next report.
- If the committee makes \$6,000 in independent expenditures supporting a Senate candidate in the primary election and \$4,000 opposing that Senate candidate's opponent in the same election, then the committee must file a 48-hour report.

The date that a communication is publicly disseminated serves as the date that a person or committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amounts of \$1,000 or \$10,000. The calculation of the aggregate amount of the independent expenditures must include both disbursements for independent expenditures and all contracts obliging funds for disbursements of independent expenditures. 11 CFR 104.4(f).

### Electioneering Communications

The BCRA requires persons who make electioneering communications that aggregate more than

\$10,000 to file disclosure statements with the Commission within 24 hours of the disclosure date. 2 U.S.C. §434(f)(1). The new regulations implement this provision, and require that the statement be *received* by the Commission by 11:59 on the day following the disclosure date. Electronic filers must file these reports electronically, and paper filers may file by fax or e-mail. 11 CFR 100.19(f).

The regulations define "disclosure date" as:

- The first date on which an electioneering communication is publicly distributed, provided that the person making the electioneering communication has made disbursement(s), or has executed contract(s) to make disbursements, for the direct costs of producing or airing<sup>1</sup> one or more electioneering communication aggregating in excess of \$10,000; or
- Any other date during the same calendar year on which an electioneering communication is publicly distributed, provided that the person making the communication has made disbursement(s) or executed contract(s) to make disbursements for the direct costs of airing one or more electioneering communication aggregating in excess of \$10,000 since the most recent disclosure date. 11 CFR 104.20(a)(1)(i).

Disbursements made at any time for the direct costs of producing or airing the publicly-distributed electioneering communication, or

<sup>1</sup> *The direct costs of producing or airing electioneering communications are defined as the costs charged by a vendor, such as studio rental time, staff salaries, costs of video or audio recording media and talent, or the cost of airtime on broadcast, cable and satellite radio and television stations, studio time, material costs and the charges for a broker to purchase the airtime. 11 CFR 104.20(a)(2).*

other unreported electioneering communications, count toward the threshold. However, costs already reported for earlier electioneering communications are not included.

Each statement must disclose:

- The identification of the person who made the disbursement, or who executed a contract to make a disbursement, and the person's principal place of business if the person is not an individual;
- The identification of any person sharing or exercising direction or control<sup>2</sup> over the activities of the person who made the disbursement or executed the contract;
- The identification of the custodian of books and accounts from which the disbursements were made;
- The amount of each disbursement or amount obligated in excess of \$200 during the period covered by the statement, the date of the transaction and the person who received the funds;
- All clearly-identified candidates referred to in the electioneering communication and the elections in which they are candidates;
- The disclosure date; and
- The name and address of each donor who, since the first day of the preceding calendar year, has donated in the aggregate \$1,000 or more to the person making the disbursements, or to the separate segregated bank account if the disbursements were paid exclusively from that bank account. 11 CFR 104.20(c).

<sup>2</sup> *Persons sharing or exercising direction or control means officers, directors, executive directors or their equivalent, partners and, in the case of unincorporated organizations, owners of the entity or person making the disbursement for the electioneering communication. 11 CFR 104.20(a)(3).*

### Filing Frequency for House and Senate Committees and National Party Committees

*House and Senate Candidates.*

The BCRA requires that all principal campaign committees of House and Senate candidates file quarterly in non-election years as well as in election years. 2 U.S.C. §434(a)(2)(B). As a result, House and Senate campaign committees may no longer file on a semi-annual basis during non-election years. 11 CFR 104.5(a).

*National party committees.* Under the BCRA, national party committees must file on a monthly basis in all years. 2 U.S.C. §434(a)(4)(B). Thus, under the new regulations a national committee of a political party, including a national Congressional campaign committee, must always file monthly and may no longer file on a quarterly basis in election years and semi-annually in non-election years. 11 CFR 104.5(c)(4).

### Funds for Party Office Buildings

Commission regulations on nonfederal funds (or "soft money") provide that donations used by a state, district or local party committee for the purchase or construction of an office building are subject to state law if they are donated to a nonfederal account. However, if funds or things of value are contributed to or used by the party's federal account to buy or build an office building, then the amounts donated are contributions. 11 CFR 300.12 and 300.35. The new rules clarify that any funds or things of value received by a federal account and used for the purchase or construction of an office facility, regardless of any specific contributor designation, are contributions and not treated any differently from other funds or goods donated to the federal account. 11 CFR 104.3(g). ♦

## Millionaires' Amendment

On December, 19, 2002, the Commission approved interim final rules that increases individual contribution limits and coordinated party expenditure limits for certain candidates running against self-financed opponents. The rules address:

- Monetary thresholds that trigger the increased individual contribution and coordinated party expenditure limits;
- Computation formulas used to determine the application of the increased limits;
- The specific amounts of the increases in individual contribution limits;
- New reporting and notification requirements; and
- Repayment restrictions for personal loans from the candidate.

### Threshold Amounts

The provisions of the BCRA's Millionaires' Amendment increase the individual contribution and coordinated party expenditure limits for House and Senate candidates whose opponents' personal spending exceeds their own by more than certain threshold amounts. The difference between the candidates' expenditures of personal funds can be reduced by a disparity in other campaign fundraising. The threshold amounts for House and Senate candidates differ. For House candidates the threshold amount is \$350,000; for Senate candidates it is two times the sum of \$150,000 plus an amount equal to the voting age population of the state in question multiplied by \$0.04.<sup>1</sup>

<sup>1</sup> Differently formulated:  $\$150,000 + (.04 \times (\text{voting age population})) = \text{Senate threshold}$ .

### Opposition Personal Funds Amount

As noted above, opposition personal spending that exceeds the threshold amounts does not by itself trigger increased contribution limits. The regulations also take into account expenditures from the personal funds of the candidate seeking increased limits under the Millionaires' Amendment as well as fundraising by the campaigns.

Campaigns must use the appropriate "opposition personal funds amount" formula to determine whether an opposing candidate has spent sufficient personal funds in comparison to the amounts raised by the campaigns to trigger increased contribution and coordinated party expenditure limits. The opposition personal funds formula takes half the difference between the gross receipts of the candidate and the gross receipts of the opponent and subtracts that from the amount by which the opponent is outspending the candidate using their personal funds.<sup>2</sup> Hence, a candidate with a significant fundraising advantage

<sup>2</sup> Depending on the date of computation, the formula is either  $a - b$ ;  $a - b - ((c - d)/2)$ ; or  $a - b - ((e - f)/2)$ , where:

- $a = \text{opponent's personal funds spending}$ ;
- $b = \text{candidate's personal funds spending}$ ;
- $c = \text{candidate's receipts (contributions not from candidate)}$ ;
- $d = \text{opponent's receipts (contributions not from opponent)}$ ;
- $e = \text{candidate's receipts (contributions not from candidate)}$ ;
- $f = \text{opponent's receipts (contributions not from opponent)}$ .

The values for  $c$  and  $d$  are determined on June 30 of the year before the election (report due on July 15), and the values for  $e$  and  $f$  are determined on December 31 of the year before the election (year-end report due on January 31). Prior to July 16 of the year before the election, values for  $c$ ,  $d$ ,  $e$ , and  $f$  are not included in the equations, and the "opposition personal funds amount" formula is  $a - b$ .

over a self-financed opponent might not receive an increased contribution limit. In this way, the new rules avoid giving increased contribution limits to candidates whose campaigns have a significant fundraising advantage over their opponents.

### Increased Contribution Limits

When a House candidate's opposition personal funds amount exceeds the \$350,000 threshold:

- The contribution limits for the candidate triple; and
- The national and state party committees may make coordinated expenditures on behalf of the candidate that are not subject to the usual 2 U.S.C. §441a(d) limits.

For Senate candidates, the extent to which a candidate's opposition personal funds amount exceeds the threshold determines the amount of the increase in contribution limits. If it exceeds:

- Twice the threshold,<sup>3</sup> then the contribution limits for the candidate are tripled;
- Four times the threshold,<sup>4</sup> then the contribution limits for the candidate are raised six-fold;
- Ten times the threshold,<sup>5</sup> then the contribution limits for the candidate are raised six-fold, and the national and state party committees may make unlimited coordinated expenditures on the candidate's behalf.

### Avoiding Excessive Contributions Under the Increased Limits

Campaigns that accept contributions under the increased limits must continually monitor the opposition personal funds amount to ensure their continued eligibility for the increased limits and to make sure that they have not accepted excessive contributions. Similarly,

<sup>3</sup>  $\$300,000 + (\$0.08 \times \text{VAP})$ .

<sup>4</sup>  $\$600,000 + (\$0.16 \times \text{VAP})$ .

<sup>5</sup>  $\$1,500,000 + (\$0.40 \times \text{VAP})$ .

national and state party committees must monitor the opposition personal funds amount for campaigns in which they are making coordinated party expenditures in excess of the regular coordinated party expenditure limits (at 11 CFR 109.32(b)).

Senate candidates (and their authorized committees) must not accept and national and state party committees making coordinated party expenditures on behalf of Senate candidates must not make any contribution or coordinated party expenditure that causes the aggregate contributions accepted and coordinated party expenditures made under the increased limits to be greater than 110 percent of the opposition personal funds amount.

Similarly, House candidates (and their authorized committees) must not accept and national and state party committees making coordinated party expenditures on behalf of House candidates must not make any contribution or coordinated party expenditure that causes the aggregate contributions accepted and coordinated party expenditures made under the increased limits to be greater than 100 percent of the opposition personal funds amount.

### Reporting and Notification

In order to facilitate this continual monitoring of fundraising and personal spending by candidates and party committees, new reporting and notification requirements have been added to the regulations.

At the outset, candidates must declare on their Statement of Candidacy (FEC Form 2) the amount by which their personal spending on the campaign will exceed the applicable threshold amount. 11 CFR 101.1(a). Also, to facilitate opposition personal funds calculations, by July 15 of the year before the election and January 31 of the year in which the election takes place, each principal campaign committee must file a report disclosing the aggregate gross receipts for

the primary and general elections, and the candidate's aggregate contributions from personal funds for the primary and general elections (FEC Form 3Z-1). 11 CFR 104.19.

Additionally, a Senate candidate's principal campaign committee must notify the Secretary of the Senate, the Commission and each opposing candidate within 24 hours when the candidate makes an expenditure from personal funds that aggregates in excess of the threshold (FEC Form 10). 11 CFR 400.21(a). A House candidate's principal campaign committee must notify the Commission, each opposing candidate and the national party committee of each opposing candidate within 24 hours when the candidate makes an expenditure from personal funds that aggregates in excess of the threshold (FEC Form 10). 11 CFR 400.21(b).

From that time on, the committee must also notify all of the above-listed entities within 24 hours whenever the candidate makes an additional expenditure from personal funds in excess of \$10,000. 11 CFR 400.22. Both the initial and additional notifications must be made by faxing or e-mailing a copy of FEC Form 10 to all of the entities mentioned above.<sup>6</sup> 11 CFR 400.24.

Within 24 hours after they become eligible, candidates who qualify for increased coordinated party expenditure limits (or their principal campaign committees) must file FEC Form 11 to inform their national and state party committees and the Commission of the opposition personal funds amount.

National or state political party committees that make coordinated

expenditures on behalf of a candidate whose limits have been raised must notify the Commission and the candidate on whose behalf the expenditure is made within 24 hours, using Schedule F. 11 CFR 400.30(c)(2).

Senate candidates operating under the increased limits (or their principal campaign committees) must file FEC Form 12 within 24 hours after the aggregate amount of contributions accepted and coordinated party expenditures made under the increased limits reaches 110 percent of the opposition personal funds amount.

House candidates operating under the increased limits (or their principal campaign committees) must file FEC Form 12 within 24 hours after the aggregate amount of contributions accepted and coordinated party expenditures made under the increased limits reaches 100 percent of the opposition personal funds amount.

### Repayment of Personal Loans from Candidate

Apart from the calculations and disclosure requirements surrounding the increased contribution limits, the new rules also restrict the repayment of loans made by the candidate to his or her committee. The new rules apply to all candidates, without regard to any of the Millionaires' Amendment provisions. For personal loans<sup>7</sup> from the candidate to his or her authorized committee that aggregate more than \$250,000, the following rules apply:

- The committee may use contributions to repay the candidate for the entire amount of the loan or loans only if those contributions were made on or before the day of the election; and
- The committee may use contributions to repay the candidate only up to \$250,000 from contributions

<sup>6</sup> Note that, for Senate candidates, the original Form 10 will be filed with the Secretary of the Senate in the manner that all forms are normally filed. Similarly, for House candidates, the original Form 10 will be filed electronically with the Commission.

(continued on page 24)

## Millionaires' Amendment

(continued from page 23)

made after the date of the election.  
11 CFR 116.11(b).

Furthermore, if the committee uses the amount of cash-on-hand as of the date of the election to repay the candidate for loans in excess of \$250,000, it must do so within 20 days of the election. 11 CFR 116.11(c). During that time, the committee must treat the portion of candidate loans that exceed \$250,000, minus the amount of cash-on-hand as of the day after the election, as a contribution by the candidate. 11 CFR 116.11(c).

### Additional Information

These rules, and their Explanation and Justification, are published in the January 27, 2003, *Federal Register* (68 FR 3970) and are available on the FEC web site at <http://www.fec.gov/pages/bcra/rulemakings/millionaire.htm>. The rules took effect on February 26, 2003. ♦

FEDERAL ELECTION COMMISSION  
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Washington, DC 20463

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# Introduction

## Using This Guide

The rules and procedures explained in this guide apply to *labor organizations* and to all types of *corporations*, including:

- Incorporated businesses;
- Incorporated *membership organizations* (including trade associations);
- National banks;
- Corporations without capital stock; and
- Incorporated *cooperatives*.

### Citations

Authorities primarily cited in this Guide include FEC regulations and *advisory opinions* (AOs).

All regulatory citations are to Title 11 of the Code of Federal Regulations, Parts 100–116 and 9001–9039 (2001).

Copies of AOs may be obtained from the FEC; in addition, each AO is summarized in the Commission's monthly newsletter, the *Record*. AOs are also reported in the *Federal Election Campaign Financing Guide*, published by Commerce Clearing House, Inc.

### Italicized Words

Terms printed in *italics* in this Guide have specific definitions under the election law. Definitions of these terms can be found in Appendix G.

## Getting More Help

### Advisory Opinions

Any person or group requiring a clarification of the election law with regard to an activity that they plan to undertake may request an AO from the FEC. Individuals and organizations involved in the activity specifically addressed in an AO (or in an activity that is materially indistinguishable) may rely on the opinion for legal guidance.

AO requests may be addressed to the Office of General Counsel at:

**Federal Election Commission**  
**999 E Street, NW**  
**Washington, DC 20463**

### Toll-Free Line

Many questions about federal campaign finance law do not require formal advisory opinions. Such questions may be addressed to trained FEC staff members by calling the FEC's 800 number, below. Persons in the Washington, DC, area may call locally. The numbers are:

**800/424-9530**

**202/694-1100**

**202/219-3336 (TDD)**

Hearing-impaired persons may reverse the charges when calling long-distance on the TDD number.

### Free Publications

In addition to this Guide, the FEC publishes a series of brochures and other publications on several aspects of campaign financing and the election law. Subscriptions to the Commission's newsletter, the *Record*, are available free of charge. Write or call the FEC for a list of publications currently available.

### FEC Web Site

Filing forms and other informational materials, such as advisory opinions and recent changes in FEC regulations are also available on the FEC web site ([www.fec.gov](http://www.fec.gov)).

## Compliance with Small Business Regulatory Enforcement Fairness Act of 1996

This guide serves as the small entity compliance guide for corporations and labor organizations, as required by section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

# ONE

## THE SEPARATE SEGREGATED FUND

**T**he Federal Election Campaign Act prohibits *corporations* and *labor organizations* from using their general treasury funds to make *contributions* or *expenditures* in connection with federal elections. 2 U.S.C. §441b(a). In spite of this broad prohibition, there are many ways in which a corporation or union may legally participate in federal election activities.

The Federal Election Commission (FEC)—the agency that administers and enforces the *Act*—has prepared this Campaign Guide to help corporations and labor organizations pursue federal campaign activities within the limits of the law.

### The SSF

While corporations and labor organizations are prohibited from making *contributions* or *expenditures* in connection with federal elections, the Act permits them to set up *political committees*, which may make contributions to and expenditures on behalf of federal candidates and other committees.

Federal election law refers to a corporate or labor political committee as a “*separate segregated fund*” (SSF), though it is more commonly called a “*political action committee*” or PAC. (Unless otherwise indicated, the terms “SSF,” and “the committee” are used interchangeably in Part 1.)

As the name implies, money contributed to a separate segregated fund is held in a separate bank account from the general corporate or union treasury.

### The Connected Organization

A corporation or union that sponsors an SSF is called the *connected organization*. The connected organization may use its general treasury funds to pay for the costs of operating and raising money for the SSF.

The connected organization may also control the committee’s management, appoint its officers and decide how to raise and spend the SSF’s funds. 114.5(d). Corporations and unions often adopt bylaws to govern their SSFs, though bylaws are not required under the law and do not have to be filed with the FEC except when requested.

## CHAPTER 1

# Getting Started

## 1. Registering with the FEC

### Registration Form

The registration form is FEC Form 1, the Statement of Organization. Blank forms can be obtained from the FEC. 102.2.

### Initial Registration

#### Who Must Register

All SSFs must register with the FEC, regardless of the size of the fund. 102.1(c). A committee established exclusively for state and local (i.e., nonfederal) activity, however, does not need to register or file reports with the FEC.

#### When to Register

An SSF must register with the FEC within 10 days of the date of its establishment—for example, the date when:

- The board of directors (or comparable governing body) votes to create the SSF;
- Officers are selected to administer the fund; or
- The SSF’s initial operating expenses are paid. 102.1(c).

#### Electronic Registration

If a committee raises or spends more than \$50,000 in a calendar year, or expects to do so, it must file electronically. For more information on electronic filing, see page 39.

## 2. Treasurer

### Treasurer Required

An SSF must have a treasurer before it accepts *contributions* or makes *expenditures*. Only a designated treasurer or assistant treasurer may sign FEC reports and statements. The Commission urges

every committee to name an assistant treasurer who may assume the treasurer’s duties when he or she is unavailable. 102.7(a) and (b).

If the SSF does not already have an assistant treasurer and the treasurer is unavailable to sign a report, the committee may appoint an assistant treasurer to sign the report. An amended Statement of Organization identifying the assistant treasurer may be filed simultaneously, but it must be filed within 10 days of the appointment. 102.2(a)(2). See Section 6 of this chapter.

### Treasurer’s Duties

The treasurer (or registered assistant treasurer) is responsible for:

- Filing complete and accurate reports and statements on time. 104.14.
- Signing all reports and statements. 102.2(a), 104.1(a) and 104.14(a).
- Depositing receipts in the committee’s designated *bank* within 10 days. 103.3(a).
- Authorizing expenditures or appointing an agent (either orally or in writing) to authorize expenditures. 102.7(c).
- Monitoring contributions to ensure compliance with the law’s limits and prohibitions. 103.3(b) and 110.1(k)(3).
- Keeping the required records of receipts and disbursements. 102.9 and 104.14.

### Treasurer’s Liability

Treasurers are personally responsible for carrying out the duties listed above and should understand these responsibilities, as well as their personal liability for fulfilling them.

When the Commission brings an enforcement action against a political committee, the treasurer is usually named as a respondent along with the committee itself. Even when an enforcement action alleges violations that occurred during the term of a previous treasurer, the Commission usually names the current treasurer as a respondent in the action.

### Vacancy in Office

The SSF may not receive contributions or make expenditures when the treasurer's office is vacant and the committee has no assistant treasurer. 102.7(b). Thus, when vacant, the treasurer's job must be filled as soon as possible. Changes in the treasurer's office must be disclosed within 10 days on an amended Statement of Organization. 102.2(a)(2). See Section 6.

## 3. Naming the SSF

### Include Full Name of Sponsor

The official name of an SSF must include the full name of the *connected organization* (including "Inc." or "Corp." if applicable). An SSF's connected organization—often called the sponsoring organization—is the organization that establishes, administers, or financially supports the SSF. 100.6(a) and 102.14(c).

In the SSF name, standard abbreviations for "Company," "Association" and similar words are acceptable. The full committee name may also include the acronym "PAC."

Thus, an acceptable name for an SSF sponsored by Acme Industries Corp. would be "Acme Industries Corp. PAC." See AOs 2000-34, 1999-20 and 1993-7.

### Joint SSFs

If an SSF is jointly sponsored by two or more organizations, the full names of both organizations must appear in the name of the SSF. See AOs 1988-42 and 1988-14.

(If a connected organization has a parent company or several subsidiaries, however, the names of those corporations do not need to be included in the name of the SSF, unless more than one company is sponsoring the SSF. 102.14(c).)

### Abbreviated Name

An SSF may use a shortened form of its official name on its checks and letterhead. The shortened name must include a clearly recognizable acronym or form of the connected organization's name.

## REGISTRATION FORM

<b>FEC FORM 1</b>	<b>STATEMENT OF ORGANIZATION</b> <small>(See instructions)</small>	<small>Office Use Only</small>
1. NAME OF COMMITTEE (in full) <input type="checkbox"/> (Check if name is changed) Example: If typing, type over the lines. <span style="float: right; border: 1px solid black; padding: 2px;">12FE4M5</span>		
Critical Reason Inc. PAC		
ADDRESS (number and street) <span style="float: right;">101 Apriori Street</span>		
(Check if address is changed) <input type="checkbox"/> <span style="float: right;">Alexandria VA 00000</span>		
<small>CITY ▲ STATE ▲ ZIP CODE ▲</small>		
COMMITTEE'S E-MAIL ADDRESS <span style="float: right;">creasonpac@yadayada.com</span>		
COMMITTEE'S WEB PAGE ADDRESS (URL) <span style="float: right;">www.creasonpac.com</span>		
2. DATE <span style="float: right;">MM / DD / YYYY</span> <span style="float: right;">10 / 04 / 2001</span>		
3. FEC IDENTIFICATION NUMBER ▶ <span style="float: right;">C 00000000</span>		
4. IS THIS STATEMENT <input checked="" type="checkbox"/> NEW (N) OR <input type="checkbox"/> AMENDED (A)		
<small>I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.</small>		
Type or Print Name of Treasurer <span style="float: right;">Gottlob Frege</span>		
Signature of Treasurer <span style="float: right;"><i>Gottlob Frege</i></span> Date <span style="float: right;">MM / DD / YYYY</span> <span style="float: right;">10 / 04 / 2001</span>		
<small>NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g. ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS.</small>		
<small>Office Use Only</small>	<small>For further information contact: Federal Election Commission Toll Free 800-424-9530 Local 202-694-1100</small>	<b>FEC FORM 1</b> <small>(Revised 1/01)</small>

The SSF must include the abbreviated name, along with the full name, on:

- The Statement of Organization;
- All reports and notices filed by the committee; and
- Any disclaimer notices used by the committee in *public political advertisements*.

102.14(c) and 110.11; AO 2000-34.

EXAMPLES: In *advisory opinions*, the Commission ruled that "United Telecom PAC" was an acceptable abbreviation for United Telecommunications, Inc. Political Action Committee. AO 1980-10. "Mid-Am PAC," on the other

hand, was not a permissible abbreviation for Mid-American Dairymen, Inc.'s SSF because it didn't clearly identify the association sponsoring it. AO 1980-23. In AO 2000-34, the Commission ruled that SAPPI PAC was an acceptable abbreviation for SAPPI Fine Paper North America/S.D. Warren Company PAC because the acronym "SAPPI" was used in various well-known financial reference sources, thus establishing that it was a clearly recognized acronym by which the connected organization was known.



# FORM 1 (PAGE 2)

FEC Form 1 (Revised 1/01) Page 2

5. TYPE OF COMMITTEE (Check One)

(a)  This committee is a principal campaign committee. (Complete the candidate information below.)

(b)  This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)

Name of Candidate \_\_\_\_\_

Candidate Party Affiliation \_\_\_\_\_ Office Sought:  House  Senate  President State \_\_\_\_\_ District \_\_\_\_\_

(c)  This committee supports/opposes only one candidate, and is NOT an authorized committee.

Name of Candidate \_\_\_\_\_

(d)  This committee is a \_\_\_\_\_ (National, State or subordinate) committee of the \_\_\_\_\_ (Democratic, Republican, etc.) Party.

(e)  This committee is a separate segregated fund.

(f)  This committee supports/opposes more than one Federal candidate, and is NOT a separate segregated fund or party committee.

---

6. Name of Any Connected Organization or Affiliated Committee

Critical Reason Inc.

101 Apriqri Street

Mailing Address \_\_\_\_\_

Alexandria VA 00000

CITY ▲ STATE ▲ ZIP CODE ▲

Relationship connected

Type of Connected Organization:

Corporation  Corporation w/o Capital Stock  Labor Organization

Membership Organization  Trade Association  Cooperative

FETAN046

## 4. Filling Out the Statement of Organization

Line-by-line instructions for filling out the Statement of Organization appear below. An example of a correctly completed Form 1 is illustrated on pages 8, 9 and 10.

### Line 1. Name and Address of the Committee

**Name**  
Enter the full, official name of the SSF. 102.14(c). Also enter any abbreviated name that the committee plans to use to identify itself. See "Naming the SSF," above, for more guidance.

**Electronic Address**  
In addition to providing the mailing address of the committee, all filers (whether electronic or paper) must include the URL for their Web site, if they maintain one. Electronic filers must also include their e-mail address, if they have one. 102.2(a)(1)(vii).

### Line 2. Date

When registering for the first time, enter the committee's date of establishment (not the date when the form is filled out). 102.1(c).  
When filing an amended Statement of Organization, enter the date on which the new information took effect (e.g., the date when a new treasurer took office). See 102.2(a)(2).

### Line 3. FEC Identification Number

The FEC assigns an ID number to a new SSF after the Commission receives the first Statement of Organization. Leave this space blank if the committee is filing its first Statement.  
Always include the ID number on reports, statements and other communications sent to the FEC after the initial registration. 102.2(c).

### Line 4. Is This Statement an Amendment?

Check "no" if the committee is registering for the first time. Check "yes" if the committee is updating information.

### Line 5. Type of Committee

Check box (e), "Separate Segregated Fund."

### Line 6. Connected Organization and Affiliated Committees

List the names and addresses of the *connected organization* and any *affiliated committees*, along with their relationship to the registering committee (i.e., "connected" or "affiliated").

**Connected Organization**  
In addition to providing the name and mailing address of the connected organization, check the box indicating the type of organization that is sponsoring the SSF—i.e., a *corporation*, a corporation without capital stock, a *labor organization*, a *membership association*, a *trade association* or a cooperative (check all boxes that apply).

**Affiliated Committees**  
List political committees that are affiliated with the SSF.  
An SSF set up by a parent organization with several subsidiaries or local units must list any SSFs established by those units. The SSF of a subsidiary or subordinate unit, however, only needs to list the SSF of the parent organization. It

# FORM 1 (PAGE 3)

FEC Form 1 (Revised 1/01) Page 3

Write or Type Committee Name  
**Critical Reason Inc. PAC**

7. **Custodian of Records:** Identify by name, address (phone number -- optional) and position of the person in possession of committee books and records.

Full Name | Herman Lotze |

Mailing Address | 101 Apriori Street |

| Alexandria | VA | 00000 |

CITY ▲ STATE ▲ ZIP CODE ▲

Title or Position ▼ | Bookkeeper | Telephone number | 703 | 000 | 0000 |

---

8. **Treasurer:** List the name and address (phone number -- optional) of the treasurer of the committee; and the name and address of any designated agent (e.g., assistant treasurer).

Full Name of Treasurer | Gottlob Frege |

Mailing Address | 101 Apriori Street |

| Alexandria | VA | 00000 |

CITY ▲ STATE ▲ ZIP CODE ▲

Title or Position ▼ | Treasurer | Telephone number | 703 | 000 | 0000 |

---

Full Name of Designated Agent | Bob Helpsalot |

Mailing Address | 101 Apriori Street |

| Alexandria | VA | 00000 |

CITY ▲ STATE ▲ ZIP CODE ▲

Title or Position ▼ | Assistant Treasurer | Telephone number | 703 | 000 | 0000 |

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is not required to list other affiliates. 102.2(b)(1)(ii). More information on affiliation is provided in Section 8.

## Line 7. Custodian of Records

All federal political committees must keep records and accounts of their financial activities and retain them for three years. 102.9(a), (b) and (c) and 104.14(b).

On line 7, enter the name and address of the person who has actual possession of those books and records. The committee's treasurer, assistant treasurer or another person (such as an accountant or bookkeeper) may serve as the custodian of records. 102.2(a)(1)(iii). The recordkeeping rules are discussed in detail in Chapter 5.

## Line 8. Treasurer and Assistant

Provide the name and mailing address of the treasurer on Line 8. The Commission also urges all political committees to name an assistant treasurer (or "designated agent") on Line 8. Only a registered assistant treasurer may sign FEC reports and statements in the treasurer's absence. 102.7(a), 104.1(a) and 104.14(a).

The treasurer's responsibilities are discussed in detail in Section 2 of this chapter.

## Line 9. Designated Campaign Depository

List the name and address of each *bank* where the committee deposits funds. The committee must have at least one checking account. 103.2.

Note that affiliated SSFs may not share the same bank account, though they may establish separate bank accounts at the same financial institution. AOs 1986-33 and 1979-53.

## Signing and Dating the Form

The treasurer or designated assistant treasurer must sign and date the form on the bottom line. 104.14(a).

The signer's name must also be typed or printed where indicated.

## 5. Filing the Form

Send the completed Statement of Organization to the appropriate filing office (usually the FEC; see "Where to File" on page 41).

# FORM 1 (PAGE 4)

FEC Form 1 (Revised 1/01) Page 4

9. **Banks or Other Depositories:** List all banks or other depositories in which the committee deposits funds, holds accounts, rents safety deposit boxes or maintains funds.

Name of Bank, Depository, etc. | First National Bank |

Mailing Address | 967 Center Street |

| Alexandria | VA | 20000 |

CITY ▲ STATE ▲ ZIP CODE ▲

# FORM 1 (PAGE 2)

FEC Form 1 (Revised 1/01) Page 2

5. TYPE OF COMMITTEE (Check One)

(a)  This committee is a principal campaign committee. (Complete the candidate information below.)

(b)  This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)

Name of Candidate \_\_\_\_\_

Candidate Party Affiliation \_\_\_\_\_ Office Sought:  House  Senate  President State \_\_\_\_\_ District \_\_\_\_\_

(c)  This committee supports/opposes only one candidate, and is NOT an authorized committee.

Name of Candidate \_\_\_\_\_

(d)  This committee is a \_\_\_\_\_ (National, State or subordinate) committee of the \_\_\_\_\_ (Democratic, Republican, etc.) Party.

(e)  This committee is a separate segregated fund.

(f)  This committee supports/opposes more than one Federal candidate, and is NOT a separate segregated fund or party committee.

---

6. Name of Any Connected Organization or Affiliated Committee

Critical Reason Inc.

101 Apriqri Street

Mailing Address \_\_\_\_\_

Alexandria VA 00000

CITY ▲ STATE ▲ ZIP CODE ▲

Relationship connected

Type of Connected Organization:

Corporation  Corporation w/o Capital Stock  Labor Organization

Membership Organization  Trade Association  Cooperative

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## 4. Filling Out the Statement of Organization

Line-by-line instructions for filling out the Statement of Organization appear below. An example of a correctly completed Form 1 is illustrated on pages 8, 9 and 10.

### Line 1. Name and Address of the Committee

**Name**  
Enter the full, official name of the SSF. 102.14(c). Also enter any abbreviated name that the committee plans to use to identify itself. See "Naming the SSF," above, for more guidance.

**Electronic Address**  
In addition to providing the mailing address of the committee, all filers (whether electronic or paper) must include the URL for their Web site, if they maintain one. Electronic filers must also include their e-mail address, if they have one. 102.2(a)(1)(vii).

### Line 2. Date

When registering for the first time, enter the committee's date of establishment (not the date when the form is filled out). 102.1(c).  
When filing an amended Statement of Organization, enter the date on which the new information took effect (e.g., the date when a new treasurer took office). See 102.2(a)(2).

### Line 3. FEC Identification Number

The FEC assigns an ID number to a new SSF after the Commission receives the first Statement of Organization. Leave this space blank if the committee is filing its first Statement.  
Always include the ID number on reports, statements and other communications sent to the FEC after the initial registration. 102.2(c).

### Line 4. Is This Statement an Amendment?

Check "no" if the committee is registering for the first time. Check "yes" if the committee is updating information.

### Line 5. Type of Committee

Check box (e), "Separate Segregated Fund."

### Line 6. Connected Organization and Affiliated Committees

List the names and addresses of the *connected organization* and any *affiliated committees*, along with their relationship to the registering committee (i.e., "connected" or "affiliated").

**Connected Organization**  
In addition to providing the name and mailing address of the connected organization, check the box indicating the type of organization that is sponsoring the SSF—i.e., a *corporation*, a corporation without capital stock, a *labor organization*, a *membership association*, a *trade association* or a cooperative (check all boxes that apply).

**Affiliated Committees**  
List political committees that are affiliated with the SSF.

An SSF set up by a parent organization with several subsidiaries or local units must list any SSFs established by those units. The SSF of a subsidiary or subordinate unit, however, only needs to list the SSF of the parent organization. It

## 8. Affiliation

### Definition

Under FEC rules, affiliation between SSFs results when committees are established, financed, maintained or controlled by the same organization. 100.5(g)(2).

### Why Important

#### Contribution Limits

When two or more committees are *affiliated*, they share a single limit on the contributions they make to *candidates* and to other *political committees*. A single limit also applies to the aggregate contributions a person makes to committees affiliated with each other. 110.3(a)(1). (Application of the contribution limits to affiliated committees is explained in Chapter 2.) See also AOs 1999-40, 1997-25, 1997-13 and 1996-38.

**EXAMPLE:** Prior to becoming affiliated, X PAC contributed \$1,000 to a candidate's general election campaign, while Y PAC contributed \$250 to the same candidate's general election campaign and \$750 to the primary campaign. After becoming affiliated, X PAC and Y PAC's total contributions could not exceed \$3,750 for the candidate's general election campaign and \$4,250 for the primary campaign. AO 1985-27.

#### Solicitable Class

Additionally, when two or more committees are affiliated, they may solicit each other's restricted class. 114.5(g)(1). AOs 1999-15 and 1995-12.

### Automatic Affiliation

When SSFs are established by different parts of one organization, they are automatically affiliated. For example:

- An SSF established by a parent corporation is affiliated with an SSF established by a subsidiary corporation. 100.5(g)(3)(i).
- An SSF established by a national or international union is affiliated with any SSFs established by local or regional units of the same union. 100.5(g)(3)(ii).
- SSFs established by a federation of national or international unions and the SSFs of the federation's state and local central bodies are affiliated (see further explanation below). 100.5(g)(3)(iii).

- An SSF of a national membership organization (including a national trade association) is affiliated with the SSFs established by its related state and local entities. 100.5(g)(3)(iv).

### Circumstances Indicating Affiliation

When committees are not automatically affiliated under the conditions described above, the Commission may nevertheless conclude that two or more committees are affiliated if one committee or its sponsoring organization:

- Owns a controlling interest in the voting stock or securities of another organization sponsoring a political committee;
- Has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through its constitution, bylaws, contracts or other rules, or through formal or informal practices or procedures;
- Has the authority or ability to hire, appoint, demote or otherwise control the officers or employees of another sponsoring organization or committee;
- Has a common or overlapping membership, or common or overlapping officers or employees, with another sponsoring organization or committee, indicating a formal or ongoing relationship between them;
- Has members, officers or employees who were members, officers or employees of another sponsoring organization or committee, indicating a formal or ongoing relationship or the creation of a successor;
- Provides or arranges for the provision of funds or goods in a significant amount or on an ongoing basis to another organization or committee, such as through payments for fundraising and administrative costs;
- Had an active or significant role in the formation of another organization or committee; or
- Makes or receives contributions in a pattern similar to that of another organization or committee, indicating a formal or ongoing relationship between them. 100.5(g)(4)(ii)(A)-(J) and 110.3(a)(3)(ii)(A)(J).

### Labor Federations and Member Unions

If a union belongs to a national or international federation of labor organizations, the SSF of the member union is not automatically affiliated with the SSF of the federation and the SSFs of other member unions.

Usually, if a union is part of the AFL-CIO, the SSFs of that union's national and state organizations are affiliated with each other, but they are not affiliated with the SSFs of the national and state divisions of the AFL-CIO.

### Registration

An SSF must list affiliated *political committees* on its Statement of Organization, as explained in Section 4.

## 9. Affiliation & Corporate Restructuring

### Disaffiliation

Occasionally, the restructuring of an organization can result in two or more affiliated SSFs becoming disaffiliated. The Commission has applied the factors listed above to determine whether two or more committees remain affiliated. Disaffiliation may occur when there is significantly diminished commonality of maintenance, finance and control among the connected organizations of affiliated SSFs. See AOs 2000-36, 2000-28, 1999-39, 1996-50, 1996-42 and 1996-23.

#### Impact of Disaffiliation

When SSFs become disaffiliated, they no longer share limits on the receipt and making of contributions, and neither of their connected organizations may solicit SSF contributions from the restricted class of the other's organization. Furthermore, when making contributions after disaffiliation, SSFs must take into account the contributions they made prior to disaffiliation. To determine the amount that each SSF may contribute to a candidate after disaffiliation, the SSF must add the amounts given by both SSFs before disaffiliation and attribute that sum to its per-election contribution limit for that same candidate.

**EXAMPLE:** If, prior to disaffiliation, X PAC gave \$2,000 to a candidate for the general election and Y PAC gave \$1,000 to the same candidate for the same election, then, after disaffiliation, the two PACs may each contribute just \$2,000 more to that candidate for the general election. AOs 2000-36, 2000-28 and 1996-42.

## Mergers and Spin-Offs

When corporations merge, their PACs become affiliated. Newly affiliated PACs must take into account the contribution history of all of their formerly affiliated and newly affiliated PACs. See example above. AO 1997-25.

## 10. SSF and Nonconnected PAC

### Nonconnected PAC Affiliated with SSF

In advisory opinion 1996-38, the Commission determined that, when a nonconnected PAC became affiliated with the SSF of a trade association, it could solicit only that SSF's restricted class and had to follow the rules governing SSF solicitations. See also Appendix C, "Solicitations by Trade Associations."

### Joint Venture Partnerships

In advisory opinion 1996-49, the Commission stated that, when a nonconnected PAC was sponsored by a joint venture partnership owned entirely by corporations and affiliated with at least one of them, the nonconnected PAC became affiliated with the SSF of any corporation affiliated with the joint venture partnership. The affiliated corporation was allowed to pay the establishment, administration and solicitation costs of the nonconnected committee; in that case, the nonconnected committee had to identify it as the connected organization on its Statement of Organization (Form 1). AO 1996-49.

### Corporate Personnel and Nonconnected PAC

Individuals associated with an incorporated entity may establish a nonconnected PAC. To do so, the individuals must demonstrate that their PAC is *financially* and *organizationally* independent of the incorporated entity by, for example:

- Reimbursing the corporation for any use of facilities associated with the nonconnected PAC within a commercially reasonable time and at the usual and normal charge;
- Paying in advance for any use of corporate staff, customer/mailling lists, catering services and any other goods and services that the corporation does not supply in the ordinary course of business (AO 1997-15); and

- Having a diversified leadership ensuring that individuals affiliated with a particular incorporated entity will not form the majority of the committee's board. Under these circumstances, the nonconnected PAC is not considered to be affiliated with the SSF of the incorporated entity. AOs 2000-20, 1997-26 and 1997-15.

## 11. Financially Supporting the SSF

### Using Treasury Funds

The costs of running the SSF (*operating expenditures*) may be defrayed with the treasury funds of the *connected organization*, that is, with funds derived from commercial activities or dues payments. 114.5(b).

Treasury money can be used, for example, to pay for office space, phones, salaries, utilities, supplies, bank charges, and fundraising activities. 114.1(b). There are no dollar limits on these disbursements, and they are not reported to the FEC.

### Methods of Payment

There are two methods that may be used for paying the costs of operating and raising money for an SSF:

#### Direct Payment

The connected organization may directly pay vendors, using its treasury funds. 114.2(a)(1).

#### Administrative Account

Alternatively, the connected organization may set up a separate administrative account to be used solely for the SSF's administrative and fundraising expenses. The funds contained in the administrative account may never be commingled with the SSF's own funds, which are derived solely from lawful contributions. AOs 1981-19 and 1980-59.

Trade associations sponsoring SSFs can solicit their members for donations to their administrative accounts under certain circumstances. See Appendix C. Regarding the payment of operating costs generally, see 114.5(b).

### SSF May Pay Its Own Expenses

Although the law permits the connected organization to pay start-up, administrative and fundraising expenses for an

SSF, the committee may use its own funds to pay those costs. (The SSF may also pay only some expenses, such as bank service charges that are automatically deducted from its account, while the connected organization pays others.) All disbursements by the SSF for these purposes are reportable as *operating expenditures*, as explained in Chapter 7.

Note that the connected organization may reimburse the SSF for those operating expenditures, provided that the reimbursement is made within 30 days of the SSF's disbursement. These reimbursements are reportable. 114.5(b)(3). See also AOs 2000-3 and 1983-22.

## 12. Incorporating the SSF

An SSF may incorporate for liability purposes. Political committees that incorporate only for liability purposes may make lawful *contributions* and *expenditures*. 114.12(a). Note that incorporation of a political committee does not diminish the treasurer's liability for the committee's compliance with campaign finance law.

## 13. Limited Liability Companies and SSFs

Under FEC regulations, a Limited Liability Company (LLC) may be treated as a corporation, depending upon its tax status. An LLC that elects to be treated as a corporation by the Internal Revenue Service (IRS) or that has publicly traded shares will be treated as a corporation under FEC regulations and, therefore, may serve as the connected organization for an SSF. 114.1-114.13.

An LLC that elects to be treated as a partnership by the IRS is treated as a partnership under FEC regulations and may make contributions and serve as the sponsoring organization for a nonconnected committee. 110.1(g)(2).

LLCs that elect to be treated neither as partnerships nor as corporations by the IRS are treated as partnerships according to FEC regulations. 110.1(g)(2). Regarding LLCs and contribution limits, see page 14 of this *Guide* and Appendix E.

## CHAPTER 2

# Understanding Contributions

## 1. What Is a Contribution

A *contribution* is anything of value given to influence a federal *election*.

100.7(a)(1). Although *corporations* and *labor organizations* are prohibited from making contributions in connection with federal elections, their *SSFs* may.

SSFs must view contributions from two different perspectives: they both make contributions and receive them. The *Act* limits the amounts that may be contributed by and to an SSF, and contributions from certain sources are prohibited altogether.

The most common types of contributions are:

- Gifts of money;
- Gifts of goods and services (*in-kind contributions*); and
- Loans and guarantees or endorsements of loans.

### Gifts of Money

Contributions exceeding \$100 must be made by check (or other written instrument). 110.4(c).

### In-Kind Contributions

#### Definition

In-kind contributions include:

- Goods and services offered free of charge;
- Goods and services offered at less than the *usual and normal charge* (discounts are not contributions if they are offered in the ordinary course of business to both political and nonpolitical clients. AOs 1989–14, 1987–24, 1986–22 and 1985–28);
- Payments by a third party for goods and services rendered to a *candidate* or *political committee*. 100.7(a)(1)(iii)(A) and (a)(3).

#### Value

The dollar value of an in-kind contribution is subject to limits and must be reported. The value of a particular in-kind gift is determined as follows:

- **Goods** (such as equipment, supplies, facilities and mailing lists) are valued at their normal purchase or rental price.
- **Services** (such as advertising, printing or consulting) are valued at the prevailing commercial rate at the time the services are rendered (i.e., the amount that was paid or would have been paid for the services).
- **Discounts** are valued at the amount discounted (i.e., the difference between the *usual and normal charge* and the amount paid by the committee). 100.7(a)(1)(iii).

### Proceeds from Fundraisers and Sales

The entire amount paid to attend a political fundraiser or to purchase a fundraising item from a committee is a contribution. 100.7(a)(2). The amount of the contribution is not affected if a portion of the money was used to defray the expenses of the fundraising program.

### Loans

A loan to a candidate or political committee is a contribution to the extent that it remains outstanding. 100.7(a)(1)(i)(B).

Repayments made on a loan reduce the amount charged against the lender's contribution limit. However, a loan that exceeds the lender's or endorser's personal limit is unlawful even if repaid in full.

Loans from banks are not contributions if they are made under certain conditions. See page 20.

### Endorsements and Guarantees of Loans

An endorsement or guarantee of a loan is a contribution. 100.7(a)(1)(i)(C). The amount guaranteed counts against the endorser's or the guarantor's limit only to the extent that the loan remains outstanding. Repayments on the loan proportionally reduce the amount charged against the guarantor's contribution limit. If a loan has more than one guarantor, and if the loan agreement does not stipulate the portion of the loan for which each guarantor is liable, then the contribution of each guarantor is determined by dividing the amount of the loan by the number of guarantors. 100.7(a)(1)(i)(C).

## 2. Limits on Contributions Received

### \$5,000 Limit

An SSF may receive up to \$5,000 per year from any one contributor. 110.1(d).

### Contributions from Spouses

A husband and wife each have separate \$5,000 limits, even if only one spouse has an income. 110.1(i)(1). A couple may make a *joint contribution* (part of which would be attributed to each), as explained below.

### Joint Contributions

A joint contribution is a contribution that is made by more than one person using a single check or other written instrument. A joint contribution represents the personal funds of each donor, so each donor must sign either the check or an accompanying statement. 110.1(k)(1).

For the purposes of the contribution limits, a joint contribution is attributed equally to each donor, unless an accompanying statement indicates that the funds should be divided differently. 110.1(k)(2).

An SSF may seek a *retribution* of an excessive contribution. See page 27 for more information.

### Contributions from Partnerships

Partnerships are permitted to make contributions according to special rules. 110.1(e) and (k)(1). For further details, see Appendix E.

### Contributions from Limited Liability Companies

#### Corporation or Partnership Status

For purposes of contribution limitations and prohibitions, a limited liability company (LLC) is treated either as a corporation or a partnership.

An LLC is considered a corporation if:

- It has chosen to file, under Internal Revenue Service (IRS) rules, as a corporation; or
- It has publicly traded shares. 110.1(g)(3).

An LLC is considered a partnership if:

- It has chosen to file, under IRS rules, as a partnership; or

## CONTRIBUTION LIMITS

Donors	Recipients					Special Limits
	Candidate Committee	SSF <sup>1</sup>	Local Party Committee <sup>2</sup>	State Party Committee <sup>2</sup>	National Party Committee <sup>3</sup>	
<b>Individual</b>	\$1,000 per election <sup>4</sup>	\$5,000 per year	\$5,000 per year combined limit		\$20,000 per year	\$25,000 per year overall limit <sup>5</sup>
<b>Local Party Committee<sup>2</sup></b>	\$5,000 per election combined limit	\$5,000 per year combined limit	unlimited transfers to other party committees			
<b>State Party Committee<sup>2</sup> (Multicandidate)<sup>6</sup></b>			unlimited transfers to other party committees			
<b>National Party Committee<sup>3</sup> (Multicandidate)<sup>6</sup></b>	\$5,000 per election	\$5,000 per year	unlimited transfers to other party committees			\$17,500 to Senate candidate per campaign <sup>7</sup>
<b>SSF<sup>1</sup> (Multicandidate)<sup>6</sup></b>	\$5,000 per election	\$5,000 per year	\$5,000 per year combined limit		\$15,000 per year	
<b>SSF<sup>1</sup> (Not Multicandidate)<sup>6</sup></b>	\$1,000 per election	\$5,000 per year	\$5,000 per year combined limit		\$20,000 per year	

1. These limits also apply to nonconnected committees. Affiliated committees share the same set of limits on contributions received and made.
2. A state party committee shares its limits with local party committees in that state unless a local committee's independence can be demonstrated.
3. 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.
4. Each of the following is considered a separate election with a separate limit: primary election, caucus or convention with authority to nominate, general election and special election.
5. A contribution to a party committee or an SSF counts against the annual limit for the year in which the contribution is made. A contribution to a candidate counts against the limit for the year of the election for which the contribution is made.
6. A multicandidate committee is a political committee that has been registered for at least 6 months, has received contributions from more than 50 contributors and—with the exception of a state party committee—has made contributions to at least 5 federal candidates.
7. This limit is shared by the national committee and the Senate campaign committee.

- It has made no choice, under IRS rules, as to whether it is a corporation or partnership. 110.1(g)(2).

If an LLC is considered a corporation, it is prohibited from making contributions to political committees, although it is permitted to establish an SSF. (See Section 6, "Prohibited Corporate and Labor Contributions"). If an LLC is considered a partnership, it is permitted to make contributions to political committees, but it is subject to the contribution limits for partnerships outlined in Appendix E. 110.1(g).

#### Single Member LLC

If a single member LLC does not elect corporate tax treatment, it may make contributions; the contributions will be attributed to the single member, not the LLC. 110.1(g)(4).

#### Notifying Recipient Committee

An LLC must, at the time it makes a contribution, notify the recipient committee:

- That it is eligible to make the contribution; and
- How the contribution should be attributed among members.

This requirement will prevent the recipient committee from inadvertently accepting an illegal contribution. 110.1(g)(5).

### Cash Contributions and Anonymous Contributions

Contributions in cash are limited to \$100. 110.4(c)(1). Anonymous contributions are limited to \$50. 110.4(c)(3).

## 3. Limits on Contributions Made

### Contributions to Candidates

The limit on contributions from an SSF to a *candidate* or *candidate's committee* depends on whether the SSF qualifies as a *multicandidate committee*.

#### Contributions from Multicandidate SSF

An SSF that has qualified as a multicandidate committee may contribute up to \$5,000 per candidate, per *election*. 110.2(b).

To qualify as a multicandidate committee, an SSF must:

- Receive contributions from at least 51 persons;
- Be registered at least 6 months;
- Contribute to at least five federal candidates. 100.5(e)(3).

As to the third qualification, there is no minimum amount that must be contributed to each of the five candidates; the five qualifying contributions may be made over more than one *election cycle*.

#### Contributions from Nonmulticandidate SSF

An SSF may contribute up to \$1,000 per candidate, per election, unless it qualifies as a multicandidate committee, as explained above. 110.1(b)(1).

### How the Candidate Limits Work

#### House and Senate Candidates

The limits on contributions to House and Senate candidates apply separately to each election in which a candidate participates. In House and Senate races, each primary election, general election, runoff and special election is considered a separate election with a separate limit. 100.2; 110.1(j)(1); 110.2(i)(1).

#### Party Caucus or Convention

A party caucus or convention constitutes a separate election only if it has the authority under state law to select a nominee for federal office. Otherwise, there is no separate limit for a caucus or convention; it is considered part of the primary election.<sup>1</sup> 100.2(c)(1) and (e); AOs 1986-21 and 1986-17.

#### Candidates Not Running in an Election

A candidate is entitled to receive contributions for a particular election only if he or she seeks office in that election. Thus, a candidate who loses the primary (or otherwise does not participate in the general election) does not have a separate limit for the general. 102.9(e); 110.1(b)(3)(i); 110.2(b)(3)(i).

#### Unopposed Candidates

A candidate has a separate contribution limit for an election in which he or she is running even if:

- The candidate is unopposed;
- A primary or general election for a particular office is not held because the candidate is unopposed; or
- The general election is not held because the candidate received a majority of votes in the previous election. (The date on which the election would have been held is considered the date of the election.) 110.1(j)(2) and (3); 110.2(i)(2) and (3).

#### Presidential Elections

All Presidential primary elections held during an election year are considered one election for the purposes of the contribution limits. 110.1(j)(1); 110.2(i)(1). A multicandidate SSF, therefore, may give only \$5,000 to a Presidential candidate's primary campaign, regardless of how many separate state Presidential primaries the candidate participates in.

In the general election, contributions to major party (Republican and Democratic) Presidential campaigns are not permitted if the candidates receive public funds. (An exception: SSFs may contribute to a publicly funded Presidential nominee's "compliance fund." A compliance fund is used solely for legal and accounting expenses incurred in complying with the election law. Gifts to compliance funds are considered contributions and are subject to usual per-candidate, per-election limits. 9003.3(a).)

### Contributions to Noncandidate Committees

Contributions to *political committees* other than candidate committees are subject to calendar-year limits.

1. For example, the states of Utah and Connecticut have convention limits, as do certain districts in Texas and Virginia.



### Contributions to National Party Committees

An SSF that qualifies as a multicandidate committee may give up to \$15,000 per year to a *national party committee*. If an SSF is not a multicandidate committee, it may give up to \$20,000 per year to a national party committee.

The Republican and Democratic parties each have three national party committees subject to these limits. Thus, there is a separate \$15,000 or \$20,000 limit for each national committee, House campaign committee and Senate campaign committee. 110.1(c) and 110.2(c).

### Contributions to Delegates and Delegate Committees

An SSF may make unlimited contributions to a *delegate* (or an individual seeking to become a delegate) attending a national party convention or to a state, district or local convention held to select delegates to a national convention, as long as the individual is not a member of a *delegate committee*. Contributions by the SSF to a delegate committee are limited to \$5,000 per calendar year. 110.1(m), 110.2(j), 110.14(d)(1) and (g).

### Contributions to Other Political Committees

Any SSF, regardless of whether it has qualified as a multicandidate committee, may make contributions of up to \$5,000 per year to any other type of political committee (e.g., a *state party committee*). 110.1(d) and 110.2(d).

### Candidate Limits May Apply

A contribution from an SSF to a committee that is not a candidate's *authorized committee* may nevertheless count against the SSF's limit for that candidate if:

- The recipient committee is an *unauthorized single-candidate committee* (i.e., a political committee that supports only one candidate);
- The SSF knows that a substantial portion of its contribution will be given to or spent on behalf of a particular candidate; or
- The SSF retains control over the funds after making the contribution. 110.1(h); 110.2(h).

## 4. Designation

### Designated Contributions

The Commission encourages SSFs, when contributing to candidates, to designate their contributions in writing for a particular *election* (for example, primary

or general). The designation may be made either on the contribution check or in a signed statement accompanying the contribution. Only the contributor—not the recipient *candidate committee*—may designate a contribution for a particular election. 110.1(b)(2)(i) and (b)(4); 110.2(b)(2)(i) and (b)(4).

### Undesignated Contributions

An undesignated contribution automatically counts against the SSF's limit for the next scheduled election. 110.1(b)(2)(ii). Therefore, if an SSF wishes to make a contribution for any election other than the next one, the contribution must be designated in writing, as explained below.

### When Designation Is Required

#### Future Elections

A written designation is required when an SSF wants a contribution to apply toward a future election other than the next one. For example, an SSF may make a contribution to a candidate's general election campaign before the primary election has taken place, but the SSF's check (or an accompanying statement) must say "General" in order to count toward the general election limit.

#### Past Elections (Debt Retirement)

When making a contribution to retire a candidate's debts from a past election campaign, an SSF must designate the contribution for the appropriate election. The SSF should also be certain that the contribution, when aggregated with other contributions from the SSF for that same election, does not exceed the committee's per-election limit.

The candidate committee may accept the contribution only if the campaign has *net debts outstanding* with respect to the designated election on the day it receives the contribution. 110.1(b)(3)(i) and (iii); 110.2(b)(3)(i) and (ii).

### Effect of Date Made

#### Designated Contributions

A candidate may always accept a designated contribution if it is made before the designated election, regardless of whether the candidate has outstanding debts from that election. However, a designated contribution is subject to the net debts outstanding rule, described above, if it is made after the election for which it is designated. 110.1(b)(3)(i) and (iii); 110.2(b)(3)(i) and (ii).

### Undesignated Contributions

An SSF may make an undesignated contribution on or before the day of the election regardless of whether the candidate has debts, even if the candidate does not receive the check until after the election has passed. See "Determining the Date Made" below. An undesignated contribution made after the election has passed, however, must be applied to the donor's limit for the next election. 110.1(b)(2)(ii); 110.2(b)(2)(ii).

For the purposes of the per-election limits, then, it is important to distinguish the date a contribution is made from the date it is received by a candidate.

### Determining the Date Made

The date a contribution from an SSF is made is the date when the committee relinquishes control of the funds. In practice this means that:

- An *in-kind contribution* is made on the date that the goods or services are provided to the recipient committee.
- A mailed contribution is made on the date of the postmark.
- A hand-delivered contribution is considered made on the date it is delivered to the campaign committee or to an agent of the campaign (such as the candidate).

110.1(b)(6); 110.2(b)(6).

### Redesignation

A candidate committee may ask an SSF to redesignate a contribution (or a portion of it) for a different election. Redesignation permits the donor to remedy an excessive contribution so that the excessive portion counts against a different election limit. 110.1(b)(5).

An SSF may comply with a request for redesignation by returning a signed statement redesignating the contribution. The candidate committee must receive the redesignation within 60 days of its receipt of the original contribution. Otherwise, the candidate must refund the excessive portion to the SSF.

The SSF may always request a refund from the candidate instead of providing the redesignation. 103.3(b)(3); 110.1(b)(5)(ii); 110.2(b)(5)(ii).

## 5. Affiliation and Contribution Limits

Two or more *affiliated* committees are treated as a single committee for the purposes of the *contribution* limits. This means that all contributions made or received by several affiliated committees count against the same limits. 110.3(a)(1).

### Affiliation and Multicandidate Status

Because affiliated committees are treated as one committee for the purposes of the limits, two or more affiliated committees may collectively satisfy the requirements for *multicandidate committee* status. AO 1980–40.

### Monitoring Limits

To facilitate reporting and to avoid exceeding contribution limits, affiliated SSFs must set up a centralized recordkeeping system to ensure that contributions made and received by all the affiliates comply with the limits.

The treasurers of each affiliate are personally responsible for monitoring contribution limits. 103.3(b). See "Affiliation & Corporate Restructuring" on page 12.

## 6. Prohibited Corporate and Labor Contributions

As explained on page 7, the election law prohibits *corporations* and *labor organizations* from making *contributions* and *expenditures* in connection with federal elections. 114.2(a) and (b). This prohibition applies to all types of incorporated organizations, except *political committees* (such as *SSFs*) that incorporate for liability purposes. 114.12(a).

The situations and actions described below result in prohibited corporate or labor contributions and therefore must be avoided.

### General Treasury Funds

Corporations and labor organizations may not use their general treasury funds to make contributions to their *SSFs* or to other types of political committees or *candidates*.

In addition, national banks and federally chartered corporations may not make contributions in connection with any U.S. election—federal, state or local.<sup>2</sup> 114.2(a) and (b). (National banks and federally chartered corporations may establish *SSFs*, however.) See AO 1997-19.

A narrow exception to the general rule prohibiting the use of treasury funds to make expenditures has been drawn for certain types of corporations. See "Independent Expenditures by Qualified Non-profit Corporations," page 32.

### Commingling of Funds

Corporations and labor organizations may not commingle their treasury funds with the funds of their *SSFs*.

Any corporate or labor funds intended to pay the *administrative* expenses of an *SSF* must be paid directly to vendors or deposited in a special administrative account used only to pay the *SSF's* establishment, solicitation and administration costs. See page 13.

Exception: As an exception to the commingling prohibition, when a *connected organization* functions as a *collecting agent* for its *SSF* (e.g., when collecting contributions via payroll deduction), it may temporarily deposit contributions in a general account before transmitting them to the *SSF*. 102.6(c)(4) and (5). See "Collecting Agents," page 28.

### Reimbursements of Contributions

A connected organization may not reimburse individuals who make contributions to an *SSF* or another political committee. 114.5(b)(1). See also AO 1986–41.

### Compensation for Services

If a corporation or labor organization pays for services rendered to a *political committee* or candidate, a prohibited contribution results. 100.7(a)(3). See also Incidental Use, page 68. Note, however, two exceptions to this general rule:

#### SSF Establishment, Administration and Fundraising Costs

A corporation or labor organization may pay expenses associated with setting up, administering and raising money for its own *SSF* (i.e., *operating expenditures*). 114.1(a)(2)(iii).

#### Legal and Accounting Services

A corporation or labor organization may provide a *party committee* with free legal and accounting services. The person rendering the services must be a regular employee of the corporation or labor organization paying for the services. The activity may not further the election of any candidate. 100.7(b)(13).

Free legal and accounting services may also be provided to authorized *candidate committees*, for the limited purpose of helping those committees comply with the *Act* and *FEC* regulations. 100.7(b)(14).

2. The prohibition does not apply to referendum-related activities. See *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978).

### Use of Corporate/Labor Facilities

Under limited circumstances, corporations and labor organizations may allow their food services and mailing lists to be used for fundraising purposes in connection with a federal election, and they may direct their employees to work on these fundraisers, provided the corporation or labor organization receives advanced payment of the fair market value of the goods or services and otherwise complies with FEC regulations. This concept is explained further on page 69. 114.2(f).

### Extensions of Credit

A corporate vendor may not extend credit to a political committee for a longer period of time than is normally practiced in the creditor's trade. (Credit is permissible only if it is extended in the ordinary course of business.)

When a political committee fails to pay a debt owed to a corporate vendor within the time specified by the vendor, a prohibited contribution by the vendor may result if:

- The vendor fails to make a commercially reasonable attempt to collect a debt from a political committee; or
- The terms of the credit were not substantially similar to similar extensions of credit by the vendor to nonpolitical clients.

100.7(a)(4) and 116.3(b).

Any settlement of a debt between a creditor and a political committee for less than the full amount owed must comply with the debt settlement procedures prescribed by FEC rules. See Chapter 8.

### Discounts

If a corporation or labor organization sells goods or services to a political committee at a price below the *usual and normal charge*, a prohibited contribution results in the amount of the discount. 100.7(a)(1)(iii)(A). A reduced price is not considered a prohibited discount, however, if it is offered by the vendor as a regular business practice to political and nonpolitical clients alike. See, e.g., AO 1989-14.

As an exception to this general rule on discounts, vendors of food and beverages may offer discounts on food and beverages sold to candidate committees and party committees (but not SSFs). 100.7(b)(7). See page 71 for details.

### Liability of Corporate/Labor Officers

An officer of a corporation or labor organization personally violates the law if he or she consents to the making of a prohibited corporate or labor contribution. 114.2(d).

## 7. Other Prohibited Contributions

### Federal Government Contractors

Committees and candidates may not accept *contributions* from federal government contractors. 115.2. The prohibition applies to contributions from:

- A partnership with a government contract;
- An individual under contract with the federal government; and
- Sole proprietors with government contracts.

Corporations that are government contractors may establish separate segregated funds. 115.3. See also AO 1985-23.

### Foreign Nationals

*Foreign nationals* are prohibited from making contributions in connection with any election—federal, state or local. 110.4(a). Thus, an *SSF* may not accept a contribution from a foreign national.

#### Definition of Foreign National

A *foreign national* is:

- An individual who is (1) not a citizen of the United States and (2) not lawfully admitted for permanent residence; or
- A foreign principal, as defined in 22 U.S.C. §611(b). Section 611(b) defines a foreign principal as an entity organized under the laws of a foreign country or having its principal place of business in a foreign country. The statute specifically mentions foreign governments, political parties, partnerships, associations and corporations.<sup>3</sup> 110.4(a)(4).

3. *Corporations and labor organizations that qualify as foreign principals are prohibited from making contributions in connection with state and local elections in states where corporate and labor contributions would otherwise be permitted.*

### Immigrants

An immigrant is eligible to make a contribution if the immigrant has a "green card" indicating that he or she has been lawfully admitted for permanent residence.

### Domestic Subsidiaries of Foreign Corporations

In *advisory opinions*, the Commission has said that a United States corporation that is a subsidiary of a foreign corporation may make contributions to nonfederal candidates (to the extent permitted by state law) and may establish an *SSF* to make contributions to federal candidates as long as:

- The foreign parent does not finance these activities (such as the payment of the *SSF*'s establishment, administration or fundraising costs) through the subsidiary;
- No foreign national (including the foreign parent) participates in the operations or administration of the committee (such as the appointment of officers) or in any decisions to make contributions or expenditures in connection with any federal or nonfederal election (see 110.4(a)(3) and AO 2000-17); and
- Neither the subsidiary nor the committee accepts contributions from foreign nationals. (See 110.4(a)(2).)

Regarding domestic subsidiaries of foreign corporations generally, see AOs 2000-17, 1999-28, 1995-15, 1992-16, 1990-8 and 1989-29.

### Contributions in the Name of Another

Contributions by one person in the name of another person are prohibited. This means that no one may make or assist someone to make a contribution in the name of another. It is also prohibited to knowingly accept a contribution in the name of another. 110.4(b). A prohibited contribution in the name of another could result, for example, if the connected organization reimburses an employee's contribution through a bonus, an expense account, or other means. (See also "Reimbursements of Contributions," above).

## 8. Bank Loans

Unlike other loans, loans to SSFs from *banks* are not considered *contributions*, provided that they satisfy the conditions set forth below. If a loan fails to meet any of these conditions, then a prohibited contribution from the lending institution results.

### Conditions

A committee may obtain a loan from a bank (including a line of credit), provided that the loan:

1. Bears the bank's usual and customary interest rate for the category of loan involved;
  2. Is evidenced by a written instrument;
  3. Is subject to a due date or amortization schedule; and
  4. Is made on a basis which assures repayment (see below).
- 100.7(b)(11).

### Methods of Assuring Repayment

A loan is made on a basis which assures repayment if it is obtained using one or more of the following authorized methods of securing the loan:

#### Traditional Methods

A committee may use one of the following traditional methods of securing the loan, or a combination of the two:

**Collateral** . A loan may be secured using assets of the committee, such as real estate, personal property, negotiable instruments and stocks, among other things. The fair market value of the assets pledged must, on the date of the

loan, equal or exceed the amount of the loan and any senior liens.  
100.7(b)(11)(i)(A)(1).

The committee must ensure that the bank has established a "perfected security interest" in the collateral (that is, taken steps to legally protect its interest in the collateral in the event that the committee defaults on the loan.)

100.7(b)(11)(i)(A)(2).

#### Guarantees or Endorsements.

An endorsement or guarantee of a bank loan is considered a contribution by the endorser or guarantor and is thus subject to the law's prohibitions and limits on contributions. 100.7(b)(11)(i)(A)(2).

#### Pledge of Future Receipts

If the committee pledges its future receipts as security for the loan, then the amount loaned by the bank may not exceed a reasonable estimate of anticipated receipts, based on documentation provided by the committee (such as cash flow charts or fundraising plans).

100.7(b)(11)(i)(B)(1) and (2). Future receipts might include, for example, anticipated contributions or interest income.

The committee must also set up a separate account for the receipt of funds pledged for the repayment of the loan. The account may be established with either the lending institution or a different depository. If the account is established at a depository other than the lending institution, then the committee must execute an assignment of the account's funds to the lending institution and notify the depository of the assignment. The loan agreement must require the committee to deposit the pledged funds into the account established for this purpose.

100.7(b)(11)(i)(B)(3) and (4).

### Other Methods of Assuring Repayment

The Commission may, on a case-by-case basis, approve methods of assuring repayment other than those described above. 100.7(b)(11)(ii). A committee should request an *advisory opinion* from the Commission before entering into an alternative repayment agreement.

## 9. Other Receipts

Like bank loans, certain other SSF receipts are specifically excluded from the definition of "contribution" and thus are not subject to the limits and prohibitions affecting contributions. Regardless of whether they are contributions, however, all SSF receipts are reported.

Reportable receipts that are not subject to contribution limits include:

### Transfers-In

An SSF may receive unlimited *transfers of permissible funds* from other *affiliated* SSFs. 110.3(c).

### Interest and Dividend Income

Interest and other earnings on invested funds are not contributions.

### Loan Repayments

While not a contribution, a repayment on a loan must come from a permissible source. 100.7(a)(1)(i)(E).

Although an SSF may loan money without limit to its *connected organization*, the organization may not use its general treasury funds to repay a loan to an SSF.

## CHAPTER 3

# Fundraising for the SSF

## 1. General Rules on Solicitations

The following general rules governing SSF solicitations are explained in this section:

- *Contributions* to the SSF must be voluntary;
- The SSF may not accept prohibited or excessive contributions;
- Only a limited class of individuals may be solicited;
- Solicitation of the general public is prohibited; and
- Special notices must be included.

### Voluntary Contributions Only

Contributions to an SSF must be voluntary; that is, they must meet the following conditions:

#### No Use of Force or Threats

Contributions may not be secured by the use or threat of physical force, job discrimination or financial reprisal. 114.5(a)(1).

#### No Fees or Dues

An SSF may not use dues or fees obtained as a condition of membership or employment in the *connected organization*, even if the dues or fees are refundable upon request. 114.5(a)(1). See also AO 1987–23.

#### No Commercial Activities

The SSF may not use money obtained as the result of a commercial transaction. 114.5(a)(1).

#### Suggesting a Contribution Amount

An SSF or connected organization may wish to suggest to a potential contributor that he or she give a specified amount. When making such a suggestion, the solicitation must also say that:

- The suggested amount is only a suggestion;
- More or less than the suggested amount may be given (i.e., no minimum contribution can be specified); and

- The amount given by the contributor, or the refusal to give, will not benefit or disadvantage the person being solicited. 114.5(a)(2).

(SSFs and their connected organizations may offer premiums or other incentives to contributors who give specified minimum amounts. See Section 6.)

#### No Prohibited or Excessive Contributions

An SSF may not accept contributions from persons who are prohibited by law from making contributions. 114.2(c).

An SSF also may not accept contributions of more than \$5,000 per calendar year from any one contributor. 110.9(a). Information on handling contributions that appear to be illegal can be found in Section 8.

### Limited Solicitees

An SSF or connected organization may solicit only a *restricted class* of persons associated with the *connected organization*. The general public may not be solicited. See Sections 2, 3 and 4.

An SSF may accept an unsolicited contribution that is otherwise lawful, but the committee may not inform individuals outside the restricted class that unsolicited contributions are acceptable. Providing that information amounts to a solicitation. See, e.g., AO 1983–38.

### Accidental or Inadvertent Solicitation

If an SSF or connected organization accidentally or inadvertently solicits a person not eligible for solicitation, no violation will result if the SSF or connected organization:

- Makes its best efforts to comply with the restrictions on who may be solicited; and
- Corrects the method of solicitation immediately. 114.5(h).

### Special Notices

#### Purpose and Rights

When the SSF or the connected organization solicits individuals for contributions, the solicitees must be informed of:

- The SSF's political purpose; and
- Their right to refuse to contribute without reprisal.

114.5(a)(3)–(5).

### “Best Efforts” Rules

When making solicitations, SSFs and their treasurers must make “best efforts” to obtain and report the name, address, occupation and employer of each contributor who gives more than \$200 in a calendar year. In order to show that the committee has made “best efforts,” solicitations must specifically request that information and inform contributors that the committee is required by law to report it. 104.7(a). For details, see “Treasurer’s Best Efforts” on page 36.

### Disclaimer Not Required

Because SSF solicitations are directed to a restricted class, and not to the general public, they do not need to carry a disclaimer notice concerning who paid for the solicitation and whether it was authorized by a candidate.

110.11(a)(1)(iv)(B). See page 34 for more information about disclaimer notices.

## 2. Corporations: Solicitable Personnel

### Restricted Class

A *corporation* or its *SSF* may solicit its *restricted class* at any time. The restricted class of a corporation consists of:

- The corporation’s executive and administrative personnel;
- The stockholders; and
- The *families* of the above two groups.

An SSF may also solicit, at any time, the restricted class of any parent, subsidiary, branch, division or affiliate of the *connected organization*. 114.5(g)(1).

### Executive and Administrative Personnel

#### Who Is Included

Executive and administrative personnel include employees who are paid on a salary (rather than hourly) basis and who have policymaking, managerial, professional or supervisory responsibilities. 114.1(c). The restricted class generally includes individuals who:

- Devote the majority of their work week to executive or administrative duties involved in running the corporation’s business (e.g., plant, division and section managers, officers and executives); or

- Follow the recognized professions, such as lawyers and engineers. The following groups might also qualify as solicitable personnel:
- Consultants and commissioned employees, if they have policymaking, managerial or supervisory responsibilities and if the organization deducts federal income tax from their paychecks under the Internal Revenue Code. 114.1(c)(3). AO 1999-20.
- Members of a board of directors who are not shareholders or employees but who receive regular compensation. AO 1985-35.
- Executive and administrative personnel of franchisees, licensees and agents. See AOs 1992-7, 1990-22, 1988-46 and 1985-31.
- Executive and administrative personnel of a partnership controlled by a corporation or its dominant shareholders. See AOs 1989-8.

None of the individuals listed above are automatically solicitable. SSFs should consult the cited *advisory opinions* and, if appropriate, request an opinion addressing their relationship with the particular individuals they wish to solicit. See page 6 for information on how to request an opinion.

Also, consult the Fair Labor Standards Act and the regulations issued pursuant to that Act, 29 CFR §541, for guidelines regarding whether individuals have policymaking, managerial, professional or supervisory responsibilities.

#### Who Is Not Included

- Professional employees represented by a labor union.
- Lawyers, consultants and other personnel employed by firms retained by the corporation and who are not employees of the corporation (AO 1984-55).
- Members of the board of directors who are not also executive and administrative personnel and who receive no compensation (AO 1977-18).
- Salaried foremen and others who supervise hourly employees.
- Former or retired personnel. 114.1(c)(2).

### Stockholders

#### Who Is Included

- In order to be considered a solicitable stockholder, a person must have:
- A vested beneficial interest in the stock;
  - The power to direct how the stock will be voted, if it is voting stock; and
  - The right to receive dividends. 114.1(h).

#### Employee Stockholders

Individuals who participate in an employee stock ownership plan (ESOP) are solicitable as stockholders, as long as they have the rights listed in the previous paragraph.

In cases where participants' dividends are automatically reinvested under the ESOP, participants are solicitable only if they actually withdraw stock or have the right to withdraw at least one share of stock without a suspension of rights or penalty. See AOs 1998-12, 1996-10, 1994-27 and 1994-36.

### Expanded Class

Twice a year, a corporation or its SSF may solicit employees who do not qualify as executive and administrative personnel, such as members of labor unions. Twice-yearly solicitations may also extend to the families of those workers. 114.6. See Appendix B for more information on twice-yearly solicitations.

## 3. Labor Organizations: Solicitable Personnel

### Restricted Class

A *labor organization* or its SSF may solicit its *restricted class* at any time. The restricted class includes the union's *members*, its executive and administrative personnel and the *families* of both groups. 114.5(g)(2).

Note that a member of a local union is also considered a member of:

- Any national or international union that the local union belongs to; and
- Any labor federation to which the local, national or international union belongs. 114.1(e).

For more information on affiliation between labor organizations, see page 12.

### Expanded Class

Twice a year, a labor organization or its SSF may solicit nonmember employees of a corporation where members of the union are employed (including executive and administrative personnel, stockholders and the families of both groups). The union or the SSF may also solicit the union's own nonexecutive and nonadministrative personnel and their families on a twice-yearly basis. 114.6(b); AO 1979-50.

Special rules apply to twice-yearly solicitations. See Appendix B.

## 4. Membership Organizations: Solicitable Personnel

### Restricted Class of Membership Organization

A membership organization or its SSF may solicit its restricted class at any time. The restricted class includes:

- Noncorporate *members* (such as individuals and partnerships) of the organization;
- The organization's executive and administrative personnel; and
- The families of both groups. 114.7(a). A member may be solicited only if the following two requirements are met:
  - The organization qualifies as a *membership organization*, as defined below; and
  - Its members qualify as *members*, as defined below.

## WHO MAY BE SOLICITED

Who May Be Solicited <sup>α</sup>	By Corporation	By Labor Organization	By Incorporated Membership Organization <sup>γ</sup>	By Incorporated Trade Association
<b>At Any Time<sup>β</sup></b>	<ul style="list-style-type: none"> <li>• Executive and Administrative Personnel and Families</li> <li>• Stockholders and Families</li> </ul>	<ul style="list-style-type: none"> <li>• Executive and Administrative Personnel and Families</li> <li>• Members and Families</li> </ul>	<ul style="list-style-type: none"> <li>• Executive and Administrative Personnel and Families</li> <li>• Noncorporate Members and Families</li> </ul>	<ul style="list-style-type: none"> <li>• Executive and Administrative Personnel and Families</li> <li>• Noncorporate Members and Families</li> <li>• With Prior Approval, Corporate Members' Executive and Administrative Personnel, Stockholders and Families of Both</li> </ul>
<b>Twice Yearly<sup>δ</sup></b>	<ul style="list-style-type: none"> <li>• Nonexecutive and Nonadministrative Personnel and Families</li> </ul>	<ul style="list-style-type: none"> <li>• Nonexecutive and Nonadministrative Personnel and Families</li> <li>• In Corporations that Employ Members of the Labor Organization, Nonmember Employees, Stockholders and Families of Both</li> </ul>	<ul style="list-style-type: none"> <li>• Nonexecutive and Nonadministrative Personnel and Families</li> </ul>	<ul style="list-style-type: none"> <li>• Association's Nonexecutive and Nonadministrative Personnel and Families</li> </ul>

α. A connected organization or its SSF may also solicit the executive and administrative personnel, stockholders and members (and the families of those persons) of the connected organization's subsidiaries, branches, divisions, affiliates and state or local units.

β. Organizations other than trade associations may also send communications containing express advocacy to persons in this category. See page 60 for more information.

γ. These rules apply, as appropriate, to corporations without capital stock and incorporated cooperatives.

δ. Individuals who may be solicited at any time may also be included in twice-yearly solicitations.

### Definition of Membership Organization<sup>1</sup>

A membership organization is a trade association, a cooperative, a corporation without capital stock or a local, national or international labor organization that meets the following qualifications:

- It is composed of members who have the authority to administer the organization according to the organization's bylaws;<sup>2</sup>

- Its bylaws state the qualifications for membership;
- It makes its bylaws available to its members;
- It expressly solicits persons to become members;
- It expressly acknowledges new members by, for example, sending a membership card or including the member's name on a newsletter list; and
- It is not organized primarily for the purpose of influencing the election of any individual for Federal office. 114.1(e)(1).

### Definition of Member

#### Regular Member

A *member* of a membership organization is an individual or other entity that:

- Satisfies the requirements for membership in a membership organization;
- Affirmatively accepts the organization's invitation to become a member; and
- Maintains a long-term and continuous bond with the organization in one of the following ways:
  1. It has a significant financial attachment, such as a significant investment or ownership stake;
  2. It pays dues on a regular basis (i.e., at least annually) as predetermined by the organization; or

1. For purposes of internal communications, the definition of membership organization is broader. See "Communications," p.60.

2. "Bylaws" includes any formal organizational document.

3. It has a significant organizational attachment, which is demonstrated by annual affirmation of membership and direct participatory rights in the governance of the organization, for example:
- The right to vote directly or indirectly for at least one individual on the membership organization's highest governing board;
  - The right to vote directly for organization officers;
  - The right to vote on policy questions where the highest governing body is obligated to abide by the results;
  - The right to approve the organization's annual budget; or
  - The right to participate directly in similar aspects of the organization's governance. 114.1(e)(2).

AOs 2000-15, 2000-4 and 1999-40.

#### Students, Lifetime Members & Retirees

The Commission will determine, on a case-by-case basis through the advisory opinion process, the membership status of individuals who do not meet the above requirements but who have a relatively enduring and independently significant attachment to the organization (e.g., students, lifetime members and retirees). 114.1(e)(3).

#### Multitiered Organizations

When an organization has a national federation structure or has affiliates at several levels (e.g., national, state, regional, local), a person who qualifies as a member of one affiliate will also qualify as a member of all affiliates within that organization. 114.1(e)(5).

#### State Law Inapplicable

Whether or not an organization has members (for purposes of the election law) will be determined by FEC regulations and not by the definitions of state law. 114.1(e)(6).

#### Corporate Members of Trade Associations

A *trade association* or its SSF may get permission from a member corporation to solicit that member's *restricted class* for contributions to the association's SSF. 114.8. (A trade association may also solicit its own restricted class at any time.) See Appendix C for more information about trade association solicitations.

#### Expanded Class

Twice a year, a membership association or its SSF may solicit the association's nonexecutive and nonadministrative personnel and their families. 114.6(a). See Appendix B for more information.

## 5. Solicitation Methods

The most common methods of soliciting SSF *contributions* from the *restricted class* are described below. Whichever method is used, the general rules on solicitations (see page 21) must be observed. 114.5(a). Moreover, the required recordkeeping information on contributors must be obtained when accepting contributions, as explained in Chapter 5.

#### Oral Solicitations

SSF solicitations may be made orally—in a speech, a meeting, or over the phone. Literature about the SSF may be offered when requesting contributions.

#### Solicitations by Mail

The *SSF* or *connected organization* may also mail its requests for contributions. A pre-addressed, stamped return envelope may be included with the solicitation.

#### Solicitations in Internal Publications

If a connected organization's in-house publication is circulated to persons outside the restricted class, the organization may generally not include an SSF solicitation in that publication.

#### What Constitutes a Solicitation

In addition to a straightforward request for contributions, an article about the SSF published in an in-house publication could constitute a solicitation if it:

- Publicizes the SSF's right to accept unsolicited contributions from any lawful contributor;
  - Provides information on how to contribute to the SSF; or
  - Encourages support for the SSF.
- AO 1984–55, n. 2; AOs 1979–66 and 1979–13.

For example, an article that commends employees who have contributed to the SSF is considered a solicitation because it encourages support.

#### What Is Not a Solicitation

In *advisory opinions*, the Commission has concluded that a communication concerning the SSF is not a solicitation if it:

- Does not encourage support for the SSF; and
- Does not facilitate the making of contributions to the SSF.

See, e.g., AOs 1991–3, 1988–2, 1983-38 and 1982–65.

Outside of its restricted class, for example, an SSF or its connected organization could:

- Announce the existence of the SSF and explain the legal requirements that apply to its activities;
- Provide information about how much the SSF has raised, the number of contributors, and the number of candidates supported;
- Identify federal candidates who have been supported by the SSF, as long as the communication does not suggest that support for the SSF would help elect or defeat those candidates; and



- Have a public relations Web site, stating the connected organization's operational support for the SSF and providing information that might lead to an inquiry about the SSF. AOs 2000-10 and 2000-7.

#### Exception

A solicitation in an in-house publication that is circulated outside the restricted class may be permissible under the following conditions:

- The article includes an explicit caveat stating that contributions will be screened and those from persons outside the restricted class will be returned; and
- Both the number and the percentage of unsolicitable persons receiving the publications are incidental.

As for what is considered "incidental," the Commission has said in advisory opinions that three percent of the circulation (representing 1,000 persons outside the restricted class) was incidental, whereas 10 percent of the circulation (representing 8,000 persons outside the restricted class) was not. In the latter case, the newsletter could not publish a solicitation. See AOs 1999-6, 1994-21, 1980-139, 1979-50, 1979-15 and 1978-97.

### Solicitations Through the Internet

In several advisory opinions, the Commission approved proposals for using a corporate Web site to provide information about the SSF or to solicit contributions for it. The various plans included measures to ensure that the Web site would not solicit persons outside the restricted class. The connected organization or the SSF:

- Confined the solicitation to areas of the Web site accessible only to the restricted class;
- Ensured that any part of the Web site accessible to those outside the restricted class included a statement that Federal law prohibits soliciting contributions from outside the restricted class and that such contributions would be returned to the donor; and
- Closely monitored contributions to prevent the receipt of contributions from outside the restricted class.

AOs 2000-10, 2000-7 and 1995-33.

### Solicitations at Conventions

Trade associations may make solicitations at a convention or annual meeting. For more information, see Appendix C.

### Payroll Deduction

A corporate payroll deduction system can be used to collect contributions to the company's own SSF, to an *affiliated* SSF, or to the SSF of a labor organization representing the company's employees, as explained in Section 7.

#### Written Authorization Required

In a payroll deduction plan, an employee authorizes the periodic deduction of SSF contributions from his or her paycheck. A written authorization for the deductions must be obtained before making the deductions. (See "No Reverse Checkoff," below.)

AOs 2000-15, 2000-11, 1999-33, 1999-31, 1999-6, 1999-3, 1998-12, 1997-25 and 1996-42.

### Electronic Signature Acceptable

Electronic signatures may be used by employees to authorize the deduction of contributions from their pay, and the connected organization or the SSF may confirm the employees' request via e-mail subject to the following conditions:

- An employee must be able to use the electronic signature or a written signature to revoke or modify the amount of the authorization at any time; and
- A record of the electronic signature, including verification that the signature came from a particular employee, must be maintained in a retrievable form available to the Commission in the event of an audit or investigation.

See AO 1999-3.

### Combined Dues and Solicitation Payments

Under a payroll deduction or checkoff plan, an individual may simultaneously authorize deductions of membership dues or fees and SSF contributions. The rules governing such combined payments are explained on page 28.

### Deductions from Annuity Payments

Membership organizations may conduct checkoff plans in which retirees instruct the organization to regularly deduct PAC contributions from their annuity payments, along with other deductions. Such plans must follow the same restrictions as payroll deduction plans. AO 1999-6.

### No Reverse Checkoff

When collecting SSF contributions, a connected organization may not use a reverse checkoff plan—i.e., a collection system whereby the contributions are automatically deducted from an individual's paycheck without his or her prior approval. Such a system results in an involuntary contribution, even if the individual can subsequently request a refund of the amount deducted. 114.5(a)(1).

### Cooperative Shareholder Payment Deductions

In AO 1986-7, the Commission ruled that noncorporate members of an agricultural cooperative could authorize deductions for SSF contributions from the cooperative's payments to members for crop proceeds.

### No Payroll Deduction for Trade Association SSFs

A corporation may not use its payroll deduction system to collect contributions for the SSF of a trade association. Permissible solicitation and collection methods for trade associations are discussed in Appendix C.

A trade association may use payroll deduction to collect contributions from the association's own executive and administrative personnel and their *families*.

## Credit Cards

Individuals may contribute to an SSF using credit cards. See, e.g., AO 1990-4. Treasurers should note the record-keeping requirements that apply to credit card receipts on page 36.

## 6. Fundraising Events and Special Promotions

This section describes rules applicable to special events and promotions commonly used to raise money for an SSF. Organizations using these events must follow the general solicitation rules described in Section 1.

### Price Paid = Contribution Amount

The full price of a fundraising item purchased (such as a T-shirt, a ticket to a fundraising event or a chance at a raffle) counts as the purchaser's contribution, even if part of the price paid is used to defray the costs of the fundraising program. 100.7(a)(2).

### Use of Treasury Funds

#### Fundraising Events

A *corporation* or *labor organization* may generally use its treasury funds to pay all costs associated with fundraising events, such as dinners, luncheons, receptions, dances and concerts. Note, however, that a portion of the costs of entertainment (other than food and drink) paid by the connected organization may need to be reimbursed by the SSF. See "The 'One-Third Rule,'" below.

#### Promotional Items and Raffles

A *connected organization* may also provide tangible premiums to encourage SSF contributions, through raffles and other promotions. The aggregate cost of the prizes, however, may not be disproportionately numerous or valuable in comparison with the contributions raised by the raffle. 114.5(b)(2). If the cost of the prizes offered is high in comparison with the amount of money raised, then the SSF will have to reimburse the connected organization for a portion of its costs, as explained below. See AOs 1989-18 and 1981-7.

### Reimbursement

#### The "One-Third Rule"

According to the "One-Third Rule," an SSF should reimburse its sponsoring organization for that portion of the cost of prizes or entertainment that exceeds one-third of the amount raised in contributions. 114.5(b)(2); See AOs 1999-31, 1989-18 and 1981-7. (FEC rules provide the "One-Third Rule" as a reasonable standard for deciding whether an SSF must reimburse the connected organization for fundraising costs. The Commission may approve other methods through *advisory opinions*.)

**EXAMPLE:** A *trade association* spends \$300 in treasury funds to purchase a TV set as a raffle prize. Sales of raffle tickets raise \$600 in SSF contributions. Since one-third of the amount raised (\$200) is less than the cost of the prize (\$300), then the SSF should reimburse the association for the \$100 difference.

On the other hand, if the SSF raises \$900 in contributions, then one-third of that amount (\$300) is equal to what the association spent on the prize, so no reimbursement is necessary.

### No Reimbursement for Usual Solicitation Costs

The "One-Third Rule" applies only to fundraising with promotional items, prizes and entertainment (other than food and drink), not to the other types of SSF fundraising activity discussed in this section. See AOs 1980-50 and 1979-72.

### Matching Contributions with Gifts to Charity

A connected organization may encourage contributions to the SSF by pledging to match all or a portion of a contributor's gift to the SSF with a donation to charity. The employee or member making the SSF contribution may designate a charity that is tax-exempt under 26 U.S.C. §501(c)(3) to receive the matching gift from the connected organization, but he or she may not personally receive any financial or tangible benefit (such as a tax deduction or a premium from the recipient charity) as a result of the connected organization's gift.

Note that the corporation may make charitable donations to match contributions to its SSF from both the restricted class and other employees (during special "twice-yearly solicitations" — See Appendix B) as long as all regulations are followed for soliciting the two groups. See Fundraising for the SSF, p.21; Appendix B, Twice-Yearly Solicitations, p. 74; and AOs 1994-7, 1994-6 and 1994-3. See also AOs 1989-9, 1989-7, 1988-48, 1987-18 and 1986-44.

## 7. Corporate Collection Methods Used by Labor Organizations

### General Rule

Any lawful method of soliciting and collecting SSF contributions (such as payroll deduction) that is used by a *corporation* may also be used by a *labor organization* that represents the corporation's employees. 114.5(l). Moreover, upon written request by a labor organization, a corporation and its subsidiaries must provide the union with the same method used by the corporation for soliciting and collecting contributions.

## Reimbursement

If the union wants to use the corporation's solicitation and collection system, it must reimburse the corporation for costs incurred in providing it to the union. The reimbursement may not be waived, since that would result in the corporation's absorption of the labor organization's solicitation costs—a prohibited contribution. 114.5(b). The Commission has considered alternative methods by which a labor organization can defray costs of payroll deduction in AOs 1981–39 and 1979–21.

## Exception

If neither a parent corporation nor its subsidiaries sponsor an *SSF*, they are not required to make any solicitation or collection method available to any labor organization, though a corporation may agree to make some system available at cost. 114.5(k).

## 8. Handling Illegal Contributions

### Depositing Questionable Contributions

If an *SSF* receives a *contribution* that appears to be excessive or prohibited, the committee may have to refund it to the donor.

Within 10 days, the treasurer must either return the questionable check to the donor or deposit it. 103.3(a). Once the contribution is deposited, the treasurer must:

- Avoid spending the questionable funds by keeping enough money in the committee's account to cover all potential refunds.
- Keep a written record explaining why the contribution may be illegal and include this explanation on Schedule A if the contribution has to be itemized before its legality is established.
- If a check appears to exceed a contributor's annual limit, seek a reattribution of the excessive portion, following the instructions below, or return it.
- If a check appears to come from a prohibited source, confirm its legality, as explained below, or return it. 103.3(b)(4) and (5).

### Excessive Contributions: Reattributions

In order to correct an excessive contribution, an *SSF* treasurer may seek a *reattribution* of the excessive portion, according to the steps described below. 110.1(k)(3).

#### Request Reattribution and Offer Refund

When requesting a reattribution, the treasurer asks:

- Whether the contribution was intended to be a joint contribution from more than one person; or, alternatively,
- Whether the amounts attributed to participants in a joint contribution should be adjusted. (The amount is split equally between the donors unless they indicate a different division in writing.)

In either case, the treasurer must inform the contributor that he or she may instead request a refund of the excessive portion. The treasurer should also inform donors that a reattribution must be signed by each participating contributor. 110.1(k)(3)(ii)(A).

### Receive Reattribution or Make Refund

A contribution is properly reattributed if the treasurer receives a statement signed by all contributors indicating the amount attributable to each donor. 110.1(k)(2) and (3)(ii)(B). The treasurer must obtain the proper reattribution or refund the excessive portion within 60 days of the receipt of the original contribution. 103.3(b).

### Retain Records

A committee must retain copies of reattributions for three years. 102.9(c) and (f); 110.1(l)(3) and (6). Rules for reporting reattributions are explained in Chapter 7.

**EXAMPLE:** An *SSF* receives a \$6,000 check that is drawn on a joint account but signed by only one account holder. The treasurer deposits the contribution and seeks a reattribution by asking the account holders whether they intended the contribution to be a joint one, partially attributable to the second account holder, or whether the treasurer should refund the excessive \$1,000. Within 60 days of receiving the original contribution, the treasurer receives a statement, signed by both contributors, reattributing \$1,000 to the second account holder. The committee may now keep the full \$6,000.

If the *SSF* had not received the reattribution, the treasurer would have had to refund the excessive amount within the 60-day period.

## Prohibited Contributions

### Questionable Source

If a committee treasurer deposits a contribution that appears to come from a prohibited source, he or she has 30 days to:

- Confirm the legality of the contribution; or
- Refund the contribution. 103.3(b)(1).

As evidence of legality, the treasurer should obtain a written statement from the contributor explaining why the contribution is legal. Alternatively, the treasurer may obtain an oral explanation by telephone and keep a record of the conversation. 103.3(b)(1).

### Contributions from Incorporated Practices of Professional Members

In *advisory opinions*, the Commission has permitted a *membership association*, under certain circumstances, to use corporate contributions to pay for the expenses of operating the association's *SSF*. In these cases, individual members

who had established corporations for their professional practices made contributions to the SSF from their corporate practice accounts. These corporate (i.e., prohibited) contributions were endorsed to the *connected organization*, which deposited them into a general treasury account or a separate administrative account for the SSF. (See "Financially Supporting the SSF" on page 13.) See, e.g., AOs 1992–20 and 1990–4.

When depositing SSF contributions into an administrative account under these circumstances, the committee may wish to inform contributors of this use of their funds and give them an opportunity to ask for a refund. See AO 1992–20.

#### Late Discovery of Prohibited Contribution

If the treasurer discovers that a previously deposited contribution came from a prohibited source, he or she must refund the contribution within 30 days of making the discovery. This situation might arise, for example, if the treasurer learned that a past contribution was made by a foreign national. 110.4(a).

If the SSF does not have sufficient funds to refund the contribution to the donor when the illegality is discovered, the treasurer must use the committee's next receipts. 103.3(b)(2).

## 9. Collecting Agents

When a corporation or labor organization raises money for its SSF, it is acting as the committee's *collecting agent* and has certain responsibilities under the election law. Other entities may also act as collecting agents, such as *affiliated* committees.

As this section explains, a collecting agent has no reporting obligations under the law, but nonetheless the agent must:

- Comply with the solicitation restrictions explained earlier in this chapter;
- Forward the contributions to the SSF on time; and
- Keep records on contributors and provide the information to the SSF for disclosure purposes.

#### Who Is a Collecting Agent

The collecting agent must be connected to or *affiliated* with the SSF. The following types of organizations may function as collecting agents:

- The SSF's connected organization;
- A parent, subsidiary, division, branch or local unit of the connected organization; and

- An affiliated committee (federal or non-federal).

In addition, a local, state, national or international union belonging to a federation of unions (such as the AFL-CIO) may act as a collecting agent for the federation's SSF. 102.6(b)(1)(i)-(iv). See also AO 1998-19.

#### Who Is Not a Collecting Agent

The collecting agent rules described in this section do not apply to the following:

- Individuals;
- Commercial fundraising firms; or
- Partnerships.

102.6(b)(3)(i). While these persons are not considered collecting agents, they must still observe the forwarding deadlines described on the next page when they accept contributions on behalf of an SSF. They also may not commingle SSF contributions with their own funds. 102.8 and 102.15.

#### SSF's Responsibility

Regardless of whether the SSF uses the connected organization or another committee as its collecting agent, the SSF remains responsible for seeing that the agent follows the rules for soliciting and depositing contributions and forwarding records. The SSF is also responsible for reporting the contributions. 102.6(c)(1).

#### Solicitations by Collecting Agent

##### Lawful Contributions Only

Like any person who solicits contributions for an SSF, a collecting agent may solicit only those individuals who are eligible for solicitation under the law (i.e., the *restricted class*) and must comply with the other rules on solicitations explained in Section 1 of this chapter. 102.6(c)(2).

##### Payment of Solicitation Expenses

A collecting agent may pay the expenses of soliciting and transmitting contributions to the SSF. These payments are not considered contributions or expenditures and do not need to be reported unless the collecting agent is a registered *political committee*. 102.6(c)(2)(i). AO 2000-4.

#### Reimbursements

If the SSF pays for the solicitation costs or other expenses which the collecting agent may pay as an administrative expense, the collecting agent may reimburse the SSF, but the reimbursement must be made within 30 days. 102.6(c)(2)(ii) and 114.5(b)(3).

#### Combined Payments

The collecting agent may include a solicitation for contributions to an SSF in a bill for another payment, such as a bill for membership dues or a conference registration fee, or in a solicitation made on behalf of the collecting agent itself.

The contributor may write a single check to cover both his or her dues (or other fee) and the contribution to the SSF. The check must be drawn on the contributor's personal checking account or on a *nonrepayable corporate drawing account*. 102.6(c)(3). AO 1999-40 and 1997-9.

#### Solicitation Materials

Collecting agents using combined payments to collect SSF contributions must ensure that their solicitation materials contain the required information described in Section 1 of this chapter. 102.6(c)(2). The solicitation materials should convey the distinction between the required dues or fees and the suggested voluntary SSF contribution. Individuals may not designate a portion of their dues or fees for the SSF. See AOs 1990–4, 1987–17, 1987–6 and 1985–12.

#### Payroll Deduction

A labor organization may use an employer's payroll deduction system to collect both dues and voluntary SSF contributions. The employer may issue a single check to the labor organization representing both union dues and SSF contributions. 102.6(c)(3). The labor organization, in turn, acting as the collecting agent for its SSF, must forward the contributions to the SSF as explained below.

### Electronic Deduction by Trade Association SSF

FEC regulations prohibit trade associations from using an employee payroll deduction or checkoff system to solicit contributions to their SSFs; however, the Commission advised that a trade association SSF may collect contributions from its restricted class through electronic transfers from contributors' personal checking accounts to a special escrow account. Such transfers are permissible provided that the electronic deduction program:

- Is utilized only by members of the trade association's restricted class; and
- Follows all other requirements regarding prior approval and voluntary contributions (see pages 21 and 76).

AO 1999-35.

### Transmitting Funds Directly

Checks payable to the SSF must be forwarded directly to the SSF by the collecting agent.

In the case of cash contributions, the collecting agent may transmit the contributions to the SSF in the form of money orders or cashier's checks made out to the SSF. 102.6(c)(4)(i) and (ii)(D).

### Depositing Funds Temporarily

Checks made out to the collecting agent and cash contributions may be temporarily deposited in any one of three types of accounts:

#### Transmittal Account

A collecting agent may establish a transmittal account used solely for the deposit and transmittal of contributions collected on behalf of the SSF. If any *expenditures* are made from the account, other than transfers to the SSF or its affiliated committees, the account automatically becomes a campaign depository of the SSF and all of the account's activity will have to be disclosed. 102.6(c)(4)(ii)(A).

#### Collecting Agent's Account

A collecting agent may also use its own account for the temporary deposit and transmittal of contributions to the SSF. The agent must keep separate records of all receipts and deposits that represent contributions to the SSF. (Recordkeeping rules are discussed in Chapter 5).

Cash contributions must be deposited separately so that separate deposit slips are retained in the committee's records. 102.6(c)(4)(ii)(B).

### Nonfederal Account

A collecting agent may deposit and temporarily hold SSF contributions in an account established for state and local political activities (see page 73). The collecting agent must keep separate records of all receipts and deposits of SSF contributions. 102.6(c)(4)(ii)(C).

### Forwarding Contributions and Records

A collecting agent (or anyone who raises money for an SSF) must forward the required recordkeeping information to the SSF along with the collected contributions. 102.6(c)(4) and (5). Individual contributions of \$50 or less must be forwarded within 30 days; contributions exceeding \$50 must be forwarded within 10 days. 102.8(a).

The recordkeeping information that must be obtained for the committee's records varies, depending on the amount of each individual contribution. See Chapter 5 for complete instructions.

### Retaining Records

A collecting agent must retain all records of SSF contribution deposits and transmittals for three years and must make the records available to the Commission upon request.

The SSF must keep records of all transmittals of contributions received from collecting agents for three years. 102.6(c)(6).

### Reporting

The SSF is responsible for reporting contributions collected through the collecting agent. The funds are reported as contributions from the original donors rather than as a transfer from the collecting agent. If a contribution must be itemized, the SSF treasurer must report, as the date of receipt, the day the collecting agent received the contribution. 102.6(c)(7) and 102.8(b)(2).

Note that merely acting as a collecting agent does not cause an unregistered organization to become a *political committee* with registration and reporting obligations under the Act. However, if an unregistered collecting agent engages in other activities that would cause it to become a political committee (such as making contributions to *candidates*), then it must register and report as a political committee. AOs 1998-25 and 1984-31.

## 10. Investing SSF Funds

In addition to collecting *contributions*, an SSF may raise money by earning interest and dividends on invested funds. For example, an SSF may invest contributions it has received in a savings account, money market fund or certificate of deposit. See, e.g., AOs 1986-18 and 1980-39.

### Registration and Reporting

If an investment by an SSF is held in a bank, the bank must be listed as a depository on the committee's Statement of Organization. See Chapter 1.

In addition, special reporting requirements apply to earned interest on invested funds, as explained in Chapter 7.

### SSF Must Pay Taxes

An SSF must use its own funds to pay taxes on interest income. Federal and state taxes on SSF funds are not considered *administrative expenses* payable by the *connected organization*. AO 1977-19.

## CHAPTER 4

# Supporting Candidates

## 1. Contributions

SSFs may make *contributions* to candidates and to their campaign committees. All contributions to federal candidates are subject to the following limits:

- **\$5,000** per candidate, per *election*, from an SSF that qualifies as a *multicandidate committee*.
- **\$1,000** per candidate, per election, from any other registered SSF.

When making a contribution to a candidate or candidate's campaign, a multicandidate SSF must give the recipient a written notification that it has qualified as a multicandidate committee. 110.2(a)(2). For convenience, the statement may be pre-printed on the committee's checks, letterhead or other appropriate materials.

For a complete explanation of the contribution limits and how they work, see Chapter 2 and the "Contribution Limits" chart, page 15.

### Gifts of Money

Monetary contributions exceeding \$100 must be made by check or other written instrument drawn on the SSF's account. 103.3(a).

### In-Kind Contributions

In addition to contributing money, an SSF may donate goods or services to candidates and their committees.<sup>1</sup> Gifts of goods or services are *in-kind contributions*. As examples, an SSF makes an in-kind contribution when it:

- Pays for consulting, polling or printing services provided to a *candidate committee*;
- Donates office supplies or mailing lists to a campaign;

1. Note that an SSF may contribute goods and services only if it has purchased them with its own funds or if an individual (not the sponsoring organization) has contributed them to the SSF. However, corporations and labor organizations may provide some goods and services that are exempt from the definitions of "contribution" and "expenditure." See Part II (Other Activities).

- Sponsors a fundraising event benefiting a candidate; or
  - Pays for a campaign advertisement on behalf of a candidate (if the advertisement does not qualify as an *independent expenditure*).
- 100.7(a)(1)(iii). See Chapter 2 for information on how to measure the value of an in-kind contribution.

### In-Kind Contributions Designated for More Than One Election

The Commission has advised that in-kind contributions may be designated for more than one election within an election cycle provided that:

- The candidate actually runs in all the elections for which the contribution is given;
  - The contributor provides a written, signed designation at the time of the contribution or provides a proper redesignation within 60 days of the contribution; and
  - The goods contributed have a long-term useful life expectancy, extending over all the elections for which the contribution was made (e.g. computer equipment).
- AO 1996-29.

### Allocation Among Candidates<sup>2</sup>

If an SSF supports more than one federal candidate through an in-kind contribution, the contribution must be allocated among the candidates so that a portion of it counts toward the committee's limit for each candidate. The value attributed to each candidate must be in proportion to the relative benefit each candidate is expected to receive.

EXAMPLE: An SSF sponsors a fundraising dance on behalf of several candidates. The portion of the costs attributed as a contribution to each candidate must be based on the ratio of funds received for each candidate to the total funds received for all the candidates. 104.10; 106.1(a) and (b).

### Opinion Polls

Special FEC regulations pertain to the allocation of contributions of opinion poll results. See 106.4.

### Earmarked Contributions

An SSF may act as a conduit for an earmarked contribution, i.e., a contribution that the individual contributor directs, either orally or in writing, to a *clearly identified candidate* or candidate's committee through the SSF. 110.6. (The connected organization may never serve as the conduit.) An earmarked contribution counts

2. See Appendix A for information about allocating expenses when supporting both federal and nonfederal candidates.

against the original contributor's contribution limits. It does not count against the limits on the SSF's own contributions to the candidate unless the SSF exercises direction or control over the contributor's choice of the recipient candidate or unless the earmarked contribution was solicited by the connected organization. 110.6(d).

If the earmarked contribution was solicited from the restricted class by a communication from the SSF's *connected organization* under 114.3 and was collected by the SSF, it is considered a contribution to both the SSF and the candidate, and from both the individual contributor and the SSF. As such, the earmarked contribution counts against several contribution limits. Note that, under these circumstances, the contribution automatically counts against the SSF's contribution limits regardless of whether the SSF exercised direction or control over the choice of recipient. 114.2(f)(2)(iii) and 114.2(f)(4)(iii). See also Candidate and Party Appearances, Solicitation by Connected Organization, page 63.

### Purchase of Fundraising Items and Tickets

An SSF may purchase tickets to a fundraising event held by a candidate's committee, or it may purchase items sold for fundraising purposes by the committee. The entire amount paid for a ticket or item is considered a contribution. 100.7(a)(2).

Note that in an *advisory opinion* the Commission ruled that the travel expenses incurred by an SSF representative to attend a fundraising event for another political committee were *administrative expenses* that could be paid by the SSF's *connected organization*. See AO 1991-36.

### Loans and Loan Endorsements

An SSF may loan money to a *candidate committee*, or it may endorse or guarantee a bank loan for the committee. The loan or the amount endorsed or guaranteed counts as a contribution to the extent that the loan remains outstanding. 100.7(a)(1)(i).

EXAMPLE: A multicandidate SSF guarantees half the value of a \$10,000 loan from a bank to a candidate's committee, thereby making a \$5,000 contribution to the candidate toward the next election. The candidate's committee makes monthly repayments on the loan in amounts of \$1,000. Those payments reduce the SSF's contribution by \$500 each month (i.e., half the repayment). As the outstanding balance is reduced, the SSF may make new

contributions to the candidate for the same election, as long as the overall \$5,000 limit is not exceeded.

## Contributions to Other Committees

In addition to contributing directly to candidate committees, an SSF may support other committees that contribute to candidates, such as *party committees*. An SSF contribution to another *political committee* may take any of the forms described in this section.

A contribution to a committee that supports more than one candidate is subject to a yearly contribution limit of \$5,000. The contribution does not count against the limit for a particular candidate unless the SSF:

- Gives to an *unauthorized single-candidate committee* (i.e., a political committee that supports only one candidate);
  - Knows that a substantial portion of its contribution will be given to or spent on behalf of a particular candidate; or
  - Retains control over the funds after making the contribution.
- 110.1(h); 110.2(h).

## Supporting Nonfederal Candidates

SSFs may contribute to nonfederal candidates using money they have raised for federal elections. Donations to nonfederal candidates are subject to state and local laws, not the Federal Election Campaign Act, but the SSF must still disclose the disbursements in its FEC reports. AOs 1986–27 and 1981–18.

SSFs active in both federal and nonfederal elections should also consult Appendix A.

## 2. Independent Expenditures

In addition to making contributions, an SSF may support (or oppose) *candidates* by making *independent expenditures*. Independent expenditures are not contributions and are not subject to limits. (However, contributions made to a committee or to another person making independent expenditures are subject to limits, as explained below.) See AOs 1999-37, 1999-17, and 1998-22.

## What Is an Independent Expenditure

An independent expenditure is an expenditure for a communication, such as a Web site, newspaper, TV or *direct mail* advertisement that:

- *Expressly advocates* the election or defeat of a *clearly identified candidate*; and
- Is not made in consultation or cooperation with, or at the request or suggestion of a candidate, candidate's committee, party committee or their agents. 100.23 and 109.1(a). See "*What Constitutes Coordination*" below.

## When Is a Candidate "Clearly Identified"

A candidate is "clearly identified" if the candidate's name, nickname, photograph or drawing appears, or the identity of the candidate is otherwise apparent. Examples include: "the President," "your Congressman," "the Democratic presidential nominee," "the Republican candidate for Senate in the State of Georgia." 100.17.

## What Is "Express Advocacy (Candidate Advocacy)"

"*Express advocacy* (candidate advocacy)" means that the communication includes a message that unmistakably urges election or defeat of one or more clearly identified candidate(s).

There are two ways that a communication can be considered *express advocacy* (candidate advocacy): by use of certain "explicit words of advocacy of election or defeat"<sup>3</sup> and by the "only reasonable interpretation" test. 100.22.

### "Explicit words of advocacy of election or defeat"

- The following words convey a message of *express advocacy* (candidate advocacy):
- "Vote for the President," "re-elect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger for the U.S. Senate in Georgia," "Smith for Congress," "Bill McKay in '96";
  - Words urging action with respect to candidates associated with a particular issue, e.g., "vote Pro-Life"/"vote Pro-Choice," when accompanied by names or photographs of candidates identified as either supporting or opposing the issue;
  - "Defeat" accompanied by a photograph of the opposed candidate, or the opposed candidate's name, or "reject the incumbent"; and

3. Referred to in previous Campaign Guides as "magic words."

- Campaign slogan(s) or word(s), e.g., on posters, bumper stickers and advertisements, that in context can have no other reasonable meaning than to support or oppose a clearly identified candidate, for example, "Nixon's the One," "Carter '76," "Reagan/Bush". 100.22(a).

### "Only Reasonable Interpretation" Test

In the absence of such "explicit words of advocacy of election or defeat," *express advocacy* (candidate advocacy) is found in a communication that, when taken as a whole and with limited reference to external events, such as the proximity to the election, can only be interpreted by a "reasonable person" as advocating the election or defeat of one or more clearly identified candidate(s). 100.22(b)(1) and (2).<sup>4</sup>

This test requires advocacy of a candidate that is unmistakable, unambiguous and suggestive of only one meaning (that being the election or defeat of a candidate). 100.22(b)(2).

Note that the author's intent is irrelevant. The test is how a "reasonable" receiver of the communication objectively interprets the message. If reasonable minds could not differ as to the unambiguous electoral advocacy of the communication, it is *express advocacy* (candidate advocacy) regardless of what the author intended.

Multiple page communications or multiple inserts in the same envelope in a direct mail piece are to be read all together as a whole. *MCFL*, 479 U.S. at 249.

## What Is Not an Independent Expenditure

When an *expenditure* is made under the circumstances described below, it results in an *in-kind contribution* to a candidate rather than an independent expenditure and therefore counts against the SSF's contribution limit for that candidate. 109.1(c).

4. Four federal courts have found invalid 11 CFR 100.22(b), the FEC regulation containing the "only reasonable interpretation" test: *Maine Right to Life Committee v. FEC (1st Circuit Court of Appeals, 1996)*; *Right to Life of Dutchess County v. FEC (NY district court, 1998)*; *FEC v. Christian Action Network (4th Circuit Court of Appeals, 1996)*; and *the Virginia Society for Human Life, Inc. v. FEC (VA district court, 2000)*. See also, *Iowa Right to Life Comm., Inc. v. Williams (8th Circuit Court of Appeals, 1999)*. The regulation (100.22(b)) was based on the 1987 9th Circuit Court of Appeals decision, *FEC v. Furgatch*. The split in the circuits remains unresolved.

**Solicitations on Behalf of a Candidate**

An expenditure by an SSF for a communication that solicits the public for contributions on behalf of a candidate is an in-kind contribution if the SSF collects and forwards the money to the candidate's committee. See AO 1980-46. See also Appendix D, "Earmarked Contributions."

**Candidate-Prepared Material**

Any expenditure to distribute or republish campaign material (print or broadcast) produced or prepared by a candidate's campaign is an in-kind contribution, not an independent expenditure. 109.1(d).

**Coordination with Candidate's Campaign**

Any expenditure that is a *coordinated general public political communication* is an in-kind contribution, not an independent expenditure. See below. 109.1(b)(4) and 100.23.

**Coordinated General Public Political Communication**

A communication is a Coordinated General Public Political Communication and is considered an in-kind contribution and not an independent expenditure if it:

- Is intended for an audience of over 100 people and is made through a broadcasting station (including a cable television operator), newspaper, magazine, outdoor advertising facility, mailing or any electronic medium, including the Internet or on a Web site;
- Is Coordinated with the candidate, party or their agents (see below);
- Mentions a Clearly Identified Federal Candidate (see below); and
- Is paid for by a person other than a candidate, a party or their agents.

**What Constitutes Coordination**

Coordination with the candidate, the party or their agents occurs when the communication is *created, produced or distributed*:

- At the request or suggestion of the candidate or party;
- After the candidate or party has exercised control or decision-making authority over the *details of the communication* (see below); or
- After substantial discussion or negotiation, resulting in collaboration or agreement, between the communicator (e.g., the creator, producer, distributor or the person paying for the communication) and the candidate or party concerning the *details of the communication* (see below).

**Details of the Communication**

Details of the communication include the content, timing, location, mode, intended audience, volume of distribution or the frequency of placement of that communication.

**Exception: Candidate's Response to Inquiry**

A candidate's or party's response to an inquiry regarding their position on legislation or policy does not alone constitute coordination.

**Internet Independent Expenditures**

Recent AOs have addressed cases involving independent expenditures over the Internet. In AO 1998-22, the Commission advised that a Web site containing express advocacy of a Federal candidate would be considered an independent expenditure only if the activity was completely independent of the campaign. If the activity was done in cooperation, consent or concert with a campaign, it would be an in-kind contribution and, thus, would be reportable by the campaign.

In AO 1999-37, a PAC generated express advocacy communications for electronic distribution through downloads and e-mail. Costs of registering and maintaining the Web site or of computer hardware and software did not count as independent expenditures unless they were directly attributed to specific express advocacy communications such as maintaining a separate Web site for or against specific candidates. On the other hand, the expenses of initially distributing an express advocacy communication through e-mail was considered an independent expenditure. The PAC was not required to collect information on those individuals who downloaded the PAC's advertisements and used them for their own political activity. See 106.1(c)(1).

**Disclaimer Notice Required**

A communication representing an independent expenditure must display a disclaimer notice. See Section 4 for more information.

**Allocation Among Candidates**

When an independent expenditure is made on behalf of more than one clearly identified candidate, the SSF must allocate the expenditure among the candidates in proportion to the benefit that each is expected to receive. For ex-

ample, in the case of a published or broadcast communication, the attribution should be determined by the proportion of space or time devoted to each candidate in comparison with the total space or time devoted to all the candidates. 104.10; 106.1(a).

**Contributing to Committees That Make Independent Expenditures**

A contribution by an SSF to a committee that makes independent expenditures is subject to the SSF's limit for that committee.

A contribution to a committee that supports only one candidate, however, is subject to the SSF's per candidate, per election limit. 110.1(h).

**Prohibitions Apply**

Note that the same persons prohibited from making contributions to candidates and political committees are also prohibited from making expenditures, including independent expenditures, in connection with federal elections. Thus, independent expenditures by *corporations, labor organizations, federal government contractors and foreign nationals* are prohibited.

**3. Independent Expenditures by Qualified Nonprofit Corporations**

Although corporations and labor organizations are prohibited under *the Act* from making contributions or expenditures in connection with federal elections, a limited exception allows certain *Qualified Nonprofit Corporations* (QNCs) to make independent expenditures (but not contributions). If a QNC makes a reportable (see Filing Reports, page 33) independent expenditure, it must demonstrate its eligibility for QNC status. The following paragraphs explain these issues in greater detail.



## Criteria for QNC Status

To qualify as a QNC, a corporation must meet the five requirements listed below:

### Nonprofit Status

The corporation is a social welfare organization as described in 26 U.S.C. §501(c)(4). 114.10(c)(5).

### Express Purpose

The corporation's organic documents, authorized agents or actual activities must indicate that its only purpose is issue advocacy, election influencing activity or research, training or educational activities tied to the corporation's political goals. 114.10(b) and 114.10(c)(1).

### Business Activities

The corporation cannot engage in business activities. Business activities include the provision of goods, services, advertising or promotional activity that results in income to the corporation, other than in the form of membership dues or donations. Note, however, that if fundraising activities are expressly described as a request for donations to be used for political purposes, such as supporting or opposing candidates, they are not business activities. 114.10(b)(3) and (c)(2).<sup>5</sup>

### Shareholder/Disincentives to Disassociate

A corporation cannot have shareholders or persons, other than employees and creditors, who:

- Have an equitable interest in the corporation or are otherwise affiliated in a way that would allow them to make a claim on the organization's assets or earnings; or
- Receive a benefit that they lose if they end their affiliation with the corporation or cannot obtain unless they become affiliated, e.g., credit cards, insurance policies, savings plans, education or business information (except that education and business information may be provided to enable the recipient to help promote the group's political ideas).

5. *In May 1997 the U.S. Court of Appeals (8th Cir.) upheld the district court in Minnesota Citizens Concerned for Life (MCCL) v. FEC, ruling that the QNC Exception regulations conflict with the 8th Circuit's prior decision in Day v. Holahan, which is controlling law in that circuit. In Day the court struck down a state law with requirements similar to those in the QNC Exception regulations. The courts found that the "no business activity" requirement violated MCCL's First Amendment rights. In July 1997, the 8th Circuit denied the Commission's petition for rehearing and suggestion for rehearing en banc of the MCCL case.*

These types of benefits are disincentives for individuals to disassociate themselves from the organization. 114.10(c)(3).

### Relationship with Business Corporations and Labor Organizations

The corporation was not established by a corporation or a labor organization, does not accept direct or indirect donations from such organizations and, if unable to demonstrate that it has not accepted such donations, has a written policy against accepting donations from them. 114.10(c)(4).<sup>6</sup>

## Certification of QNC Status

If a QNC makes independent expenditures that aggregate in excess of \$250 in a calendar year, it must certify that it is eligible for QNC status and report the independent expenditures (see below). Certification may be made by filing FEC Form 5, or by submitting a letter, by the due date of the first independent expenditure report. The form or letter must contain the following information:

- Name and address of the corporation;
- Signature and printed name of the individual filing the qualifying statement; and
- A statement certifying that the corporation meets the above five qualifications of a QNC. 114.10(e)(1).

## Filing Reports

A QNC must report the independent expenditures that exceed \$250 on FEC Form 5 or in a signed statement with the appropriate authority. 114.10(e)(2) and 109.2.

### Content

The report (or statement) must include:

- The reporting person's name, mailing address, occupation and employer (if any);
- The name and mailing address of the person to whom the expenditure was made;
- The amount, date and purpose of each expenditure;
- A statement as to whether the expenditure(s) was in support of or in opposition to a candidate and the candidate's name and office sought;
- A notarized certification under penalty of perjury as to whether the expenditure met

the standards of "independence" (see Independent Expenditures, p. 31); and

- The identification of each person who contributed more than \$200 for the purpose of making the independent expenditures. 109.2(a).

### When to File

The report is due at the end of the reporting period (see pp. 37-39) during which independent expenditures aggregating in excess of \$250 are made and at the end of each reporting period thereafter in which additional independent expenditures are made. 114.10(e)(2) and 109.2(a)(2).

## Last Minute Expenditures

There are special reporting requirements for independent expenditures made after the 20th day but more than 24 hours before the day of the election. See page 53. 109.2(b).

## Contributions Prohibited

Despite this exception for independent expenditures, the QNC is still prohibited from making monetary or in-kind contributions in connection with federal elections. 114.10(d)(2).

## Solicitation by QNC

QNCs, when soliciting contributions, must inform donors that their donations may be used for political purposes, such as supporting or opposing candidates. 114.10(f).

6. *Exception and Caution: Although a 501(c)(4) corporation may accept donations from a 501(c)(3) corporation, it must use that donation in a manner that is consistent with the 501(c)(3)'s tax exempt purpose, which, under the Internal Revenue Code, is never to make independent expenditures in support of, or in opposition to, any candidate. Tax exempt corporations are urged to consult with the Internal Revenue Code and Regulations.*

## Notice of Nonauthorization

When an independent expenditure is made to finance a communication containing *express advocacy* (candidate advocacy), the QNC must place a notice on the communication stating that the communication is paid for by the QNC and that it is not authorized by any candidate or candidate's committee. 114.10(g) and 110.11(a)(1)(iii).

## Political Committee Status

If the independent expenditures of a Qualified Nonprofit Corporation become so extensive that campaign activity becomes its "major purpose," then the organization will be deemed a political committee and will be responsible for registering with the FEC and filing the more extensive reports that are required of political committees. *MCFL* 479 U.S. at 262.

## 4. Disclaimer Notices<sup>7</sup>

A *public political advertisement* (defined below) purchased by an *SSF* must contain a disclaimer notice identifying who authorized and paid for it, under the following circumstances:<sup>8</sup>

- **Express Advocacy:** The advertisement *expressly advocates* the election or defeat of a *clearly identified candidate*; or
- **Fundraising for Candidates:** The advertisement solicits contributions to the candidate. 110.11(a)(1).

An *SSF* may not use public advertising to solicit contributions for itself. 114.5(i).

## What Is Public Political Advertising

A public political advertisement is an advertisement distributed through such advertising media as:

- TV or radio broadcasting;<sup>9</sup>
- Print media (newspapers, magazines, handbills, etc.);

7. *This section addresses only disclaimer notices required under the Federal Election Campaign Act. It does not address notices required under the Internal Revenue Code with regard to the nondeductibility of certain political contributions. (See 26 U.S.C. §6113.) For more information on those requirements, contact the Internal Revenue Service.*

8. *Note that disclaimer notices are not required when the SSF or its connected organization solicits SSF contributions from or communicates with its restricted class.*

9. *If broadcasting is used, the SSF should consult the Communications Act and the regulations and policies of the Federal Communications Commission.*

- Posters, billboards, yard signs and other outdoor advertising facilities;
- The Internet (AOs 1999-37, 1995-35 and 1995-9); and
- Direct mailings. 110.11(a)(1).

For purposes of the disclaimer requirement, direct mailing means a mailing of over one hundred (100) pieces of substantially similar pieces of mail. 110.11(a)(3). "Substantially similar" means that each piece contains the same basic communication. Each piece may, however, be personalized to include the recipient's name, address and similar variables. (Explanation and Justification to 11 CFR 110.11(a)(3), published in the Federal Register on October 5, 1995 (60 FR 52070).)

## Wording of Disclaimer

A disclaimer notice must contain the full name of the *SSF*, along with any abbreviated name used to identify the committee or the connected organization. 102.14(c).

The actual wording of the notice will vary, depending on whether the advertisement is authorized by a *candidate* or *candidate's committee*.

### Authorized by Candidate

If a candidate or candidate's campaign authorizes an advertisement purchased by the *SSF*, the disclaimer notice must identify the *SSF* that paid for the communication along with the campaign or candidate who authorized the advertisement. 110.11(a)(1)(ii).

EXAMPLE: "Paid for by the Lumber Workers' Union PAC and Authorized by the John Doe for Congress Committee."

### Authorized by Multiple Candidates

If an advertisement lists several candidates, the disclaimer may state that the advertisement was authorized by the candidates identified in the ad or, if only some candidates have authorized it, by those candidates identified with an asterisk.

EXAMPLE: "Paid for by the XYZ Corporation PAC and Authorized by the candidates marked with an asterisk." AO 1994-13.

### Not Authorized by Candidate

If an advertisement is not authorized by the candidate or the candidate's campaign, the notice must identify the *SSF* that paid for the communication and state that it was not authorized by any candidate or candidate's committee. 110.11(a)(1)(iii).

EXAMPLE: "Paid for by the Fishermen's Union PAC and Not Authorized by Any Candidate or Candidate's Committee."

## Placement of the Disclaimer

A disclaimer must be clearly and conspicuously displayed. A disclaimer is not clearly and conspicuously displayed if the print is difficult to read or if the placement is easily overlooked. 110.11(a)(5).

### Television Ad

A disclaimer in a televised advertisement must appear in letters no smaller than 4 percent of the vertical picture height. The disclaimer must be aired for at least 4 seconds. 110.11(a)(5)(iii).<sup>10</sup>

### Multiple-Paged Document

A disclaimer need not appear on the front page or cover of a multiple-paged document. 110.11(a)(5)(i).

### Package of Materials

Each communication that would require a disclaimer if distributed separately must still display the disclaimer when included in a package of materials. 110.11 (a)(5)(ii). For example, if a campaign poster is mailed with a solicitation for contributions, a separate disclaimer must appear on the solicitation and on the poster.

## Items Not Requiring Disclaimer

A disclaimer is not required:

- When it cannot be conveniently printed (e.g., on pens, bumper stickers, campaign pins, campaign buttons and similar small items);
- When its display is not practicable (e.g., on wearing apparel, on water towers and in skywriting); or
- When the item is of minimal value, does not contain a political message and is used for administrative purposes (e.g., checks and receipts). 110.11(a)(6).

10. *This requirement is based on a regulation of the Federal Communications Commission (47 CFR 73.1212(a)(2)(iii)).*

## CHAPTER 5

# Keeping Records

SSFs must keep records of their financial activities. Recordkeeping is the responsibility of the treasurer, even if the SSF appoints someone else to keep records of the committee's activity. 102.9.

## 1. Three-Year Retention of Records

A photocopy of each statement, disclosure report and notice filed by the SSF with the FEC, along with original back-up records relevant to the report or notice (such as bank statements, paid invoices, etc.), must be retained for three years after the document is filed. The SSF must make these records available to the Commission for inspection upon request. 102.9(c); 104.14(b)(2) and (3).

## 2. Receipts

### Records Needed for Reporting

With respect to receipts, the *Act* only requires that records be kept for *contributions*. Nevertheless, committees are advised to keep records for all types of receipts in order to comply with the reporting requirements, detailed in Chapter 7.

For each receipt, a committee should record the following information:

- Amount received;
- Date of receipt; and
- Name and address of source.

### Date of Receipt

The "date of receipt" of a contribution is the date on which a person receiving the contribution on behalf of the SSF obtains possession of it. This is the date used for recordkeeping and reporting. The date of receipt may be earlier than the date the SSF treasurer receives the money, since a person collecting contributions has several days in which to forward them to the treasurer. (See "Forwarding Contributions," below.)

### Credit Card Receipts

When the committee receives contributions through credit card charges, the date of receipt is the date on which the committee receives the contributor's signed authorization to charge the contribution. The treasurer should retain a copy of the authorization form in the committee's records. See, e.g., AO 1990–4. See also AO 1991–1.

### Deposit of Receipts

Once the treasurer receives a contribution, he or she must either deposit it or return it within 10 days. 103.3(a).

## 3. Recording Contributions

### Identifying Contributions

Contributions from individuals and from groups other than *political committees* must be recorded as follows:

#### Contributions Aggregating over \$200

For each contribution that exceeds \$200, either by itself or when aggregated with (i.e., added to) previous contributions from the same donor to the SSF during the same calendar year, records must identify the:

- Amount;
- Date of receipt;
- Donor's name and address; and
- Donor's occupation and employer.

102.9(a)(2).

#### Contributions of More Than \$50

Records must identify each contribution exceeding \$50 by noting the:

- Amount;
- Date of receipt; and
- Donor's name and address.

102.9(a)(1).

### Contributions of \$50 or Less

The Commission recommends two possible accounting methods:

- Keep the same records as those required for contributions that exceed \$50 (above); or
- In the case of small contributions collected at a fundraising event (such as gate receipts, cash contributions, etc.) keep a record of the name of the event, the date and the total amount of contributions received on each day of the event.

AO 1980–99; see AO 1981–48.

### Contributions from Political Committees

Although SSFs may not solicit other *political committees*, they may receive unsolicited contributions from political committees. Records must identify all contributions from political committees regardless of amount by noting the amount, date of receipt and the name and address of the contributing committee. 102.9(a)(3).

### Forwarding Contributions

A person who collects SSF contributions (including payroll deductions) must forward to the committee treasurer the contributions and the required records within certain time periods:

- Contributions of \$50 or less (and the required records) must be forwarded within 30 days of receipt.
- Contributions exceeding \$50 (and the required records) must be forwarded within 10 days of receipt.

102.8(b).

For more information on collecting contributions for SSFs, see "Collecting Agents," page 28.

### Possibly Illegal Contributions

A committee must keep a written record noting the basis for concern for each deposited contribution that:

- Requires a written reattribution from the contributor; or
- Requires confirmation that it is not from a prohibited source.

103.3(b)(5). See "Handling Illegal Contributions," page 27.

## 4. Recording Other Receipts

The FEC recommends that *SSFs* keep records on the following receipts in order to fully comply with the reporting requirements (explained in Chapter 7):

- Transfers from *affiliated* *SSFs*;
- Bank loans;
- Interest and dividends received on invested committee funds; and
- Repayments on loans made by the *SSF*.

Committee records should contain the full name of the source and the date and amount of each receipt.

## 5. Recording Disbursements

The *SSF's* records must show figures for total *disbursements* by the *SSF*.

### Disbursements by Check

All disbursements (except those made from a petty cash fund) must be made by check or similar draft drawn on an account maintained at the committee's designated campaign depository. 102.10 and 103.3(a).

### Petty Cash Disbursements

A written record of petty cash disbursements must be kept if a petty cash fund is maintained. Payments from petty cash to one person for any one purchase or transaction may not exceed \$100. 102.11.

### Recording Disbursements

#### All Disbursements

Each disbursement must be identified by:

- Date;
- Amount of the payment;
- Name and address of the payee; and
- Purpose of the disbursement (i.e., a brief explanation of why the disbursement was made, such as "dinner expenses" or "postage").

102.9(b)(1).

#### Disbursements Exceeding \$200

For each disbursement of more than \$200, the *SSF* must keep a receipt, invoice or canceled check (in addition to the information listed above).

102.9(b)(2).

#### Disbursements for a Federal Candidate

An *SSF* must keep the following records on *contributions* and *expenditures* made on behalf of *candidates*, regardless of the amount of the disbursement:

- Date;
- Amount;
- Office sought by the candidate, including the state and Congressional district (102.9(b)(1)(iii)); and
- *Election* for which disbursement was made (to facilitate reporting).

#### Credit Card Transactions

For all credit card transactions, a monthly billing statement or customer receipt for each transaction must be retained, as well as the canceled check used to pay the account. 102.9(b)(2)(ii).

#### Credit Union Checks or Share Drafts

Carbon copies of share drafts or checks drawn on credit union accounts may be used as records, provided the monthly account statement (showing that the draft or check was paid by the credit union) is also retained. 102.9(b)(2)(iii).

#### Transfers-Out

To facilitate reporting, records should identify each transfer of funds made to an *affiliated* *SSF*, regardless of amount, by the date and amount of the transfer and the name and address of the recipient committee. 104.3(b)(3)(ii).

## 6. Treasurer's Best Efforts

*SSFs* and their treasurers must make best efforts to obtain, maintain and report the information required by law with respect to itemized receipts and disbursements. When reporting information is incomplete, the committee and the treasurer will be in compliance with the law if they can demonstrate that they used "best efforts" in trying to obtain the needed information. 102.9(d) and 104.7(a). The criteria for making "best efforts" vary, depending on the type of transaction.

### Contributor Information

If an individual who has contributed more than \$200 during the calendar year fails to provide the required recordkeeping information (i.e., name, mailing address, occupation and employer), the committee must be able to show that it made "best efforts" to obtain and report that information. To demonstrate "best efforts," the

committee must be able to show that it requested the information—first, in the solicitation materials that prompted the contribution and, second, in a follow-up request. Furthermore, if requested information is not received until after the contribution has been reported, the committee must report the information using one of the procedures described under "File Amendments If Necessary," below.

#### Solicitation Materials

To satisfy the "best efforts" standard, solicitation materials must include an accurate and clear statement of the law's requirements of the collection and reporting contributor information. The following examples are acceptable wording that may be included in the solicitations (other statements of similar meaning may also be used):

- Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and the name of employer of individuals whose contributions exceed \$200 in a calendar year.
- To comply with Federal law, we must use best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 per calendar year.

The request and the statement must appear in a clear and conspicuous manner on any response material included in a solicitation. The request and statement will not be considered to be "clear and conspicuous" if:

- The request and statement are printed in smaller type than the solicitation and response materials;
- The printing is difficult to read; or
- The request and statement are placed where they may be easily overlooked. 104.7(b)(1).

#### Follow-Up Request Within 30 Days

If the contributor does not provide sufficient reporting information when making a contribution, the committee must make at least one request for the information after the contribution is received. This follow-up request must be made for any solicited or unsolicited contribution that exceeds the \$200 threshold and lacks the necessary information (see "Contributions Aggregating over \$200" on the previous page).

The request must be made within 30 days of receipt of the contribution; it may not include an additional solicitation or material on any other subject, but it may thank the contributor. The follow-up request may be made orally or in writing,

but a written request must be accompanied by a pre-addressed envelope for the response. Requests made by telephone must be documented in a memorandum. Committees must retain records of follow-up requests. 104.7(b)(1).

#### Use of Information from Prior Records and the Connected Organization

If the contributor does not respond to the follow-up request, the committee must disclose any information it possesses in its contributor records, fundraising records or prior reports filed during the same *election cycle*, or any in contributor information maintained by the connected organization. 104.7(b)(3).

#### File Amendments If Necessary

If requested information about a *contribution* is received after the contribution has been disclosed on a report, the committee must either:

- File a *memo* Schedule A with its next regularly scheduled report, listing all contributions for which new contributor information has been received; or
- File amendments to the original reports.

In either case, the entries must cross-reference to the prior reports to which they relate. However, the committee is only required to submit the information for contributions received during the current two-year election cycle. 104.7(b)(4). See "Filing Amendments" on page 57 for instructions on filing amendments.

#### Documenting a Contribution's Legality

In order to determine whether a contribution of questionable legality was made by a permissible source and was not excessive, the treasurer must make at least one written or oral request for evidence of the contribution's legality. 103.3(b)(1). See also page 27, "Handling Illegal Contributions."

#### Documenting Disbursements

If a treasurer fails to receive a receipt, invoice or canceled check (required for disbursements exceeding \$200), he or she must make at least one written effort per transaction to obtain a duplicate copy of the needed documentation. 102.9(d).

## CHAPTER 6 Filing FEC Reports

As explained in Chapter 1, a *separate segregated fund (SSF)* must register within 10 days of its establishment, regardless of how much money it raises or spends.

Once the committee has registered, the SSF must begin to file reports of receipts and disbursements according to the schedules described in this chapter. The first report filed by an SSF must disclose any financial activity that took place prior to registration. 104.3(a) and (b).

### 1. Treasurer's Duties

#### General

The treasurer of an SSF has the following responsibilities regarding filing FEC reports:

- Signing and filing complete, accurate reports and statements on time. 104.14(a) and (d).
- Making "best efforts" to obtain and report required information. See page 36 for more information. 102.9(d); 104.7.
- Continuing to file required reports until the committee has filed a termination report, as explained in Chapter 8. 102.3(a).

In the treasurer's absence, only an assistant treasurer designated on the SSF's Statement of Organization may sign reports and assume the treasurer's duties. 102.7(a). See Chapter 1 for information on appointing an assistant treasurer.

#### Electronic Filing

The treasurer must obtain a password from the FEC and use it when filing any electronic report or statement. See also 104.18(g) and page 40, "Verification Requirements" for alternatives.

### 2. Filing Deadlines

#### File on Time

SSF treasurers must file reports on time. The Commission cannot grant extensions on reporting deadlines. A report sent by U.S. mail, by private courier or hand-delivered is considered to be filed

on time if it is received on or before the date due.

When sending reports via U.S. mail, treasurers should note:

- A pre-election report sent by registered or certified mail is considered filed on time if it is postmarked at least 3 days before the due date.
- Any other type of report or statement sent by registered or certified mail is considered filed on time if it is postmarked on or before the filing date. 104.5(e).

#### Electronic Filing

An electronic report is considered "filed" when it is received and validated by the Commission's computer system on or before 11:59 p.m. (in Washington, D.C.) on the filing date. Incomplete or inaccurate reports that do not pass the FEC's validation program will not be considered filed. The Commission will notify the filer if the report is not accepted. If the report is accepted, the Commission will send the filer a receipt.

An electronic filer that files its report on paper, instead of electronically, is considered a nonfiler. 104.18(e)(2).

#### Administrative Fines for Late Filers and Nonfilers

The Commission has implemented an Administrative Fines Program, based on amendments to the Federal Election Campaign Act,<sup>1</sup> for assessing civil money penalties for violations involving:

- Failure to file reports on time;
- Failure to file reports at all; and
- Failure to file 48-hour notices.

If the Commission finds "reason to believe" (RTB) that a committee violated the law, the Commission will notify the committee in writing of its finding and the amount of the civil money penalty.<sup>2</sup> The committee will have 40 days to either pay the penalty or submit a written challenge to the Commission action. If the committee challenges the finding, the Commission will turn the case over to an independent reviewing officer. After the Commission considers the reviewing officer's recommendation and the committee's response to it, the Commission will make a final determination as to

1. *Public Law 106-58, 106<sup>th</sup> Cong., Section 640, 113 Stat. 430, 476-77 (1999). Unless the Administrative Fines Program is extended by Congress, the program will end on December 31, 2001.*

2. *In those cases where the report in question has not been filed, the civil money penalty included with the RTB finding will be based upon the estimated level of activity.*

whether the committee violated 2 U.S.C. §434(a) and, if so, will assess a civil money penalty. If the committee does not respond to the Commission's original RTB finding, the Commission will make a final determination with an appropriate civil money penalty. The committee will then have 30 days to pay the penalty or seek court review of the case.<sup>3</sup>

### Deadline Information

To ensure timely filing, treasurers should consult the FEC's monthly newsletter, the *Record*, for up-to-date information on reports required for particular elections.

## 3. Election Year Filing

Election years are years in which there are regularly scheduled federal elections (i.e., even-numbered years).

During an election year, an SSF must file on either a quarterly or a monthly filing schedule.

### Quarterly Filing

An SSF that opts to file quarterly must file a minimum of five (and possibly more) reports during an election year:

- April Quarterly
- July Quarterly
- October Quarterly
- Post-General
- Year-End; and possibly
- Pre-Election Reports

### Three Quarterly Reports

Under the quarterly schedule, an SSF must file three quarterly reports, due respectively on the 15th of April, July and October. A quarterly report covers activity that occurred after the closing date of the previous report filed through the end of the calendar quarter (i.e., through March 31, June 30 and September 30).

The Commission will waive a quarterly report if a pre-election report (see below) is due between the 5th and the 15th of the month following the close of the calendar quarter. 104.5(c)(1)(i)(C). Committees should check with the FEC to verify whether a report has been waived.

## SSF FILING

Filing Schedule	Report	Filing Date
<b>Quarterly</b> (Election Years Only)	12-Day Pre-Primary	*
	First Quarterly	April 15
	Second Quarterly	July 15
	Third Quarterly	October 15
	12-Day Pre-General	†
	30-Day Post-General	†
<b>Semiannual</b> (Nonelection Years Only)	Mid-Year (covering January through June)	July 31
	Year-End (covering July through December)	January 31
<b>Monthly</b>	February (covering January)	February 20
	March (covering February)	March 20
	April (covering March)	April 20
	May (covering April)	May 20
	June (covering May)	June 20
	July (covering June)	July 20
	August (covering July)	August 20
	September (covering August)	September 20
	October (covering September)	October 20
	November (covering October) <sup>‡</sup>	November 20
	December (covering November) <sup>‡</sup>	December 20
	12-Day Pre-General <sup>†</sup>	†
	30-Day Post-General <sup>†</sup>	†
	Year-End	January 31

\*Filing dates vary from state to state, according to the primary election dates in each state. Filing dates for all states are announced each election year in the January Record.

†Filing dates vary from year to year, according to the date of the general election. The general election is always held the Tuesday following the first Monday in November.

‡A monthly filer files November and December monthly reports only during a nonelection year. During an election year, a monthly filer files pre- and post-general election reports instead of the November and December reports.

3. For more information on the Administrative Fines Program, see 11 CFR 111.30 to 111.45, Subpart B, and the July 2000 Record.

**12-Day Pre-Primary Reports<sup>4</sup>**

An SSF must file pre-primary reports only if the committee has made previously undisclosed *contributions* or *expenditures* in connection with a primary election.

The report, due 12 days before the election, covers activity from the close of books of the previous report filed through the 20th day before the primary election. The FEC must receive the report at least 12 days before the election—unless it is sent by registered or certified mail, in which case the report must be post-marked no later than the 15th day before the election. 104.5(c)(1)(ii).

Primary election dates vary from state to state, so a quarterly filer might have to file several pre-primary reports if the SSF contributes to primary candidates in several states. Filing dates for each state's primary election are published each election year in the January *Record* and posted on the FEC Web site (<http://www.fec.gov/reporting.html>).

Note that the FEC does not automatically send committee treasurers notices and forms for pre-primary election reports. The treasurer is responsible for determining whether the SSF must file a pre-election report.

**12-Day Pre-General Election Report**

An SSF must file a pre-general election report covering activity from October 1 through the 20th day before the general election. The report is required only if the committee makes contributions or expenditures during that period; it must be received by the FEC no later than the 12th day prior to the general election—unless sent by registered or certified mail, in which case the report must be post-marked no later than the 15th day before the election. 104.5(c)(1)(ii).

**30-Day Post-General Election Report**

An SSF must file a post-general election report 30 days after the general election, regardless of activity. (Post-primary reports are not required.) A post-election report covers activity that occurred after the closing date of the last report through the 20th day after the general election. The report is due 30 days after the election. 104.5(c)(1)(iii).

**Year-End Report**

A year-end report, covering activity from the close of the post-general report through December 31, is due on January 31 of the following year.

**Monthly Filing**

SSFs contributing to federal candidates in several states may find it easier to file monthly reports, since monthly filers do not have to file pre-primary reports or special election reports.

**Monthly Filing Schedule**

During an election year, a report covering each month from January through September is due on the 20th of the following month. The last monthly report, covering September, is filed October 20. The committee also files a 12-day pre-general election report and a 30-day post-general election report (see the chart for information on filing dates). Finally, the committee files a year-end report on January 31 of the next year. 104.5(c)(3)(ii).

**Changing Filing Schedule**

During an election year, an SSF may change its filing schedule from quarterly to monthly (or vice versa). The treasurer must notify the FEC in writing before making such a change.

A committee may change its filing schedule only once per calendar year. 104.5(c).

**Last-Minute Independent Expenditure Notices**

An SSF may have to file special notices of last-minute independent expenditures in addition to the regular reports. See page 41 for more information.

**4. Nonelection Year Filing**

Nonelection years are years in which there are no regularly scheduled federal elections (i.e., odd-numbered years).

**Semiannual Reports**

During a nonelection year, quarterly filers automatically switch to a semiannual reporting schedule. Two semiannual reports are required:

- The mid-year report, covering activity from January 1 through June 30, must be filed by July 31; and
- The year-end report, covering activity from July 1 through December 31, must be filed by January 31 of the following year. 104.5(c)(2)(i).

**Monthly Reports****Monthly Filing Schedule**

Reports covering each month's activity are due on the 20th of the following month. The first monthly report, covering January, is due February 20; the final monthly report covers November and is due December 20. The committee reports December's activity in the year-end report, due the following January 31.

**Changing Filing Schedule**

An SSF that filed monthly reports during the election year continues to file monthly during the nonelection year. However, the committee may change to a semi-annual filing schedule if it first notifies the FEC of that change in writing.

An SSF may change its filing schedule only once per calendar year. 104.5(c).

**5. Electronic Filing**

As of January 2001, a committee must file all reports and statements electronically if it raises or spends more than \$50,000 in any calendar year, or expects to do so. Committees that are required to file electronically, but that file on paper or fail to file, will be considered nonfilers and may be subject to enforcement action. 104.18(a)(2). See page 37, "Administrative Fines for Late Filers and Nonfilers."

Because electronic filing is more efficient and cost effective than paper filing, even committees that do not meet the \$50,000 threshold requirement are encouraged to voluntarily file their reports electronically. Please note, however, that voluntary electronic filers must continue to file electronically for the remainder of the calendar year unless the Commission determines that unusual circumstances make continued electronic filing impractical. 104.18(b).

4. This section also applies to special and runoff elections, and to conventions that have the authority to select the nominee.

### Methods of Electronic Filing

Most committees filing electronically find it convenient to do so via an Internet connection with a password (see "Treasurer's Duties" on page 37). Committees may, however, submit their electronic reports on diskettes (either hand delivered or sent by other means such as U.S. Postal Service). Electronic filers must file *all* their reports electronically, and the reports must adhere to the FEC's Electronic Filing Specifications Requirements.<sup>5</sup> 104.18(d). Committees filing electronically on diskette must also submit a written certification—signed by the treasurer or assistant treasurer—either on paper or as a separate file with the electronic report, verifying that the treasurer has examined the documents and that, to the best of his or her knowledge, the report is correct, complete and true.

### Calculating the Threshold

Committees should use the following formulas to determine if their total expenditures or total contributions are over \$50,000 per calendar year:

$$\begin{array}{r} \text{Total Contributions Received}^6 \\ - \text{Refunds of Contributions} \\ + \text{Transfers from Affiliated} \\ \quad \text{Committees} \\ \hline = \text{Total Contributions} \end{array}$$

or

$$\begin{array}{r} \text{Total Federal Operating} \\ \text{Expenditures} \\ + \text{Federal Contributions Made} \\ + \text{Transfers from Affiliated Federal} \\ \quad \text{Committees} \\ + \text{Independent Expenditures} \\ \hline = \text{Total Expenditures} \end{array}$$

### Have Reason to Expect to Exceed the Threshold

Once committees actually exceed the \$50,000 yearly threshold, they have "reason to expect to exceed" the threshold in the following two calendar years. 104.18(a)(3)(i). Consequently, committees must continue to file electronically for the next two calendar years (January through December).

### Committees With No History

New committees with no history of campaign finance activity have reason to expect to exceed the \$50,000 yearly threshold if:

- The committee receives contributions or makes expenditures that exceed one-quarter of the threshold amount in the first calendar quarter of the calendar year (i.e., exceeds \$12,500 by the end of March); or
  - The committee receives contributions or makes expenditures that exceed one-half of the threshold amount in the first half of the calendar year (i.e., exceeds \$ 25,000 by the end of June).
- 104.18(a)(3)(ii).

### Verification Requirements

The political committee's treasurer must verify the electronically filed reports by:

- Obtaining a personal password from the FEC (see below);
- Submitting a signed certification on paper along with the diskette; or
- Submitting a digitized copy of the signed certification as a separate file in an electronic submission.

The signed verification must certify that the treasurer or assistant treasurer has examined the submitted report, and that, to the best of his or her knowledge, the report is true, correct and complete.

## Obtaining a Password

### Requesting a Password

A committee's treasurer or assistant treasurer can obtain a password by faxing a request letter to the password office at 202/219-0674. Requests may also be mailed to the Federal Election Commission, 999 E Street N.W., Washington, DC 20463. A password request must:

- Include the committee's name and nine-digit FEC identification number;
- Be signed by the treasurer and also by the assistant treasurer if the assistant treasurer is the individual requesting the password;
- Include the treasurer's phone number and, if applicable, the phone number of the assistant treasurer; and
- Be printed on the committee's letterhead (if the committee has official letterhead).

A sample request can be viewed on the FEC's Web site: <http://www.fec.gov/electfil/passreqlet.html>.

Requests sent by fax can usually be processed within a few hours. However, committees are encouraged to request a password as early as possible. Requests received near a filing deadline may not be processed in time for a committee to use the password to file a timely report.

### Assigning the Password

Once the password office receives the letter requesting a password, it will verify that the requester is listed as the treasurer (and assistant treasurer, if applicable) of that committee on that committee's Statement of Organization (FEC Form 1). Only the committee's treasurer and assistant treasurer can receive a password. If the requester is not correctly listed on the Statement, then he or she must file an amended Statement of Organization before receiving a password.

If the requester is listed on the Statement of Organization, then a representative from the password office will call the requester and ask him or her to choose a password. This password will be assigned immediately. Passwords are case sensitive and must be entered exactly as initially assigned.

### Lost or Forgotten Password

The Commission cannot provide a treasurer's password to a treasurer or committee if a treasurer forgets or loses the password because the passwords are encrypted. Instead, the treasurer must ask for a new password, repeating the process described above.

5. Available online at the FEC Web site or on paper from the FEC.

6. Including the outstanding balance of any loans.



### Special Requirements

The following documents have special signature and submission requirements:

- Schedule C1 (Loans and Line of Credit), including copies of loan agreements;
- Schedule E (Independent Expenditures); and
- Form 8 (Debt Settlement Plan).

These three forms, in addition to being included in the electronic report, must be submitted on paper or in a digitized format (submitted as a separate file in the electronic report). 104.18(h).

## 6. Special Elections

SSFs making *contributions* or *expenditures* in connection with a *special election* may be required to file special election reports, including reports of last-minute independent expenditures (if appropriate). Filing dates for special elections are published in the Federal Register and the *FEC Record*. (Committees filing on a monthly basis are not required to file special election reports.) 104.5(h).

If a regularly scheduled report is due within 10 days of the date a special election report is due, the Commission may waive the regular report. 104.5(h). Committees should check with the FEC to verify whether a report has been waived.

## 7. Where to File

Committees must file all reports and statements simultaneously with the appropriate federal and state offices.

### Federal Filing

SSFs generally file reports and statements with the Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. 105.4.

Note, however, that notices of last-minute independent expenditures supporting or opposing Senate candidates must be filed with the Secretary of the Senate. 104.4(c) and 104.5(g). The address for this office is provided in the instructions for Form 1 and Form 3X.

### State Filing

In addition to filing with the federal government, an SSF must simultaneously file copies of reports with the Secretary of State (or other designated state officer) in those states:

- In which the committee supported or opposed candidates during that reporting period; but
- That have not received an FEC waiver from the requirement to maintain copies of FEC statements and reports, as explained below.

A list of addresses of state filing offices is available from the FEC and can be accessed on the FEC web site (<http://www.fec.gov/services.html>).

### House and Senate Elections

Committees making *contributions* or *expenditures* on behalf of a House or Senate candidate file in the state in which the candidate seeks election. A copy of the entire report is not required—only the portion of the report applicable to the candidate (for example, the SSF's 3X Summary Page and the Schedule B showing a contribution to the candidate). 108.3.

### Presidential Elections

Committees making contributions or expenditures in connection with Presidential candidates file in the states in which the Presidential committee and the donor committee have their headquarters. 108.4.

### Exception: District of Columbia

SSFs are not required to file copies of their FEC reports and statements with local election officials in the District of Columbia. Filing at the federal offices is sufficient. 108.8.

### Exception: Waiver

In most states, SSFs do not have to file copies of their federal reports and statements because the states:

- Have provided the public with the means to access and duplicate the reports available on the FEC Web site; and

- Have been granted a waiver by the Commission exempting them from the requirement to receive and maintain copies of FEC reports.

See 108.1(b).

In those states that have not received the waiver, an SSF must file a report with the appropriate state authority<sup>7</sup> if it:

- Supports House or Senate candidates running in an election in that state; or
- Maintains headquarters in that state and supports Presidential candidates; or
- Supports a Presidential candidate whose headquarters are based in that state.

See 108.2, 108.3 and 108.4.

## 8. Public Review of Reports

All reports and statements filed by political committees are available for public inspection and copying in the FEC's Public Records Office and on the Commission's Web site ([www.fec.gov/finance\\_reports.html](http://www.fec.gov/finance_reports.html)). Copies of reports may also be purchased by mail.

Copies of FEC reports are also available for public review in designated state election offices.

### Sale or Use Restriction

The names and addresses of individual contributors listed on FEC reports may not be used to solicit political or charitable donations or for any commercial purpose. Information on *political committees*, however, may be used for solicitation purposes. 104.15.

### Use of Fictitious Names

To determine whether reported contributor names are being copied and used unlawfully, a political committee may use fictitious names in its reports. Such use, however, is limited; see section 104.3(e) of FEC rules.

7. A current list of states that qualify for the waiver can be accessed on the FEC Web site (<http://www.fec.gov/pages/statefiling.htm>).

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## CHAPTER 7

# Completing FEC Form 3X

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## 1. Reporting Forms

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### Paper Forms

Paper versions of FEC Forms should be typed; printing in ink is also acceptable as long as the forms are legible. Because reports will be photocopied, it is important that paper filers submit original documents (not copies) with the FEC. Committees submitting illegible documents will be required to refile.

### Form 3X

FEC Form 3X is the form used by SSFs to disclose receipts and disbursements. The same form is used for all types of reports, including quarterly reports, semi-annual reports, pre- and post-election reports and termination reports.

The Form 3X booklet contains:

- The Summary Page
- The Detailed Summary Page
- Schedule A: Itemized Receipts
- Schedule B: Itemized Disbursements
- Schedule C: Loans
- Schedule C-1: Loans and Lines of Credit from Lending Institutions
- Schedule D: Debts and Obligations
- Schedule E: Itemized Independent Expenditures
- Schedules H1–H4: Allocation of Federal and Nonfederal Expenses (See Appendix A for information on the allocation schedules.)
- Schedule I (Aggregation Page, used only by national party committees and not SSFs)

Information entered on the Summary Page and Detailed Summary Page is based on information from the schedules. The schedules, therefore, are normally filled out first. The instructions in this Chapter (starting in Section 2) begin with Schedule A.

### Electronic Filing

Committees filing with the FEC can take advantage of the electronic filing program. Reports can be filed electronically on disk, via modem or via the

Internet. For more information about the electronic filing requirement, see page 39 of this guide or contact the FEC.

### Computerized Forms

A committee may use computer-produced versions of FEC Forms, but they must first be submitted to the Commission for approval. This rule applies even if the committee is using commercial software designed for FEC reporting.

104.2(d). See AO 1992–11.

The committee should send samples of its proposed forms and schedules to the FEC's Reports Analysis Division. 104.2(d); FEC Directive 37.

### Forms Available on Faxline and FEC Web Site

#### Faxline

The reporting forms are available on the FEC Faxline 202/501-3413. Below are the document numbers of the reporting forms for SSFs:

- Form 1—Statement of Organization—#801
- Form 3X—Financial Reporting for SSFs Committees—#804
- Schedule A—Itemized Receipts—#825
- Schedule B—Itemized Disbursements—#826
- Schedule C and C-1—Loans—#827
- Schedule D—Debts and Obligations—#828
- Schedule E—Independent Expenditures—#829
- Schedule H1-H4 – Allocation — #831
- Schedule I – Aggregate Page Non-Federal Accounts — #832

#### Web site

The Forms mentioned above are also available on the FEC Web site ([www.fec.gov/reporting.html](http://www.fec.gov/reporting.html)).

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## 2. Itemized Receipts: Schedule A

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### When to Itemize Receipts

#### Regardless of Amount

Several types of receipts must be itemized on Schedule A regardless of amount. They include:

- *Contributions* from *political committees* and similar organizations;
- *Transfers* from *affiliated SSFs*;
- Loans received;
- Loan payments received; and
- Refunded contributions received from political committees.

#### \$200 Threshold

A receipt in any of the following categories must be itemized if it exceeds \$200 per calendar year, either by itself or when aggregated with other receipts from the same source:

- Contributions from individuals and groups other than political committees;
- Offsets to operating expenditures (rebates, refunds and returns of deposits), if the operating expenditures were paid by the SSF; and

- Other receipts (such as interest and dividends earned on invested funds).

Note that, although a committee only has to itemize contributions in its reports for persons (other than political committees) giving more than \$200 per year, the committee's records must identify the sources of contributions of more than \$50. See Chapter 5.

#### Itemizing Receipts When Not Required

A committee that chooses to itemize all its receipts, regardless of the \$200 threshold, should use a separate Schedule A to itemize the small contributions (i.e., receipts that do not aggregate over \$200).

## PAYROLL DEDUCTIONS

<b>SCHEDULE A (FEC Form 3X)</b>		Use separate schedule(s) for each category of the Detailed Summary Page		FOR LINE NUMBER: (check only one)		PAGE 1 OF 1	
<b>ITEMIZED RECEIPTS</b>		<input checked="" type="checkbox"/> 11a	<input type="checkbox"/> 11b	<input type="checkbox"/> 11c	<input type="checkbox"/> 12	<input type="checkbox"/> 13	<input type="checkbox"/> 14
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.							
NAME OF COMMITTEE (In Full) <b>Critical Reason Inc. PAC</b>							
Full Name (Last, First, Middle Initial) A. <b>Kant, Immanuel</b>				Date of Receipt <b>payroll deduction*</b>			
Mailing Address <b>3 Critiques Ave.</b>				M T W / D I D / Y Y Y Y Y			
City <b>Konnigsburg</b>		State <b>VA</b>		Zip Code <b>33333</b>		Amount of Each Receipt this Period <b>90.00</b>	
FEC ID number of contributing federal political committee. <b>C</b>				(\$15 biweekly) <sup>α</sup>			
Name of Employer <b>Critical Reason Inc.</b>		Occupation <b>Executive Officer</b>		Aggregate Year-to-Date <b>285.00</b>			
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼							

**\*Adding Extra Text/Explanation** : When using FECFile electronic filing software, this information can be entered using the "memo text" window. To make a "memo text" entry, select the "View" menu on the FECFile toolbar. Select "All Transactions." Single click (highlight) the transaction to which the "memo text" will be attached. Then select the "Edit" menu on the toolbar and select "memo text."

<sup>α</sup>When using FECFile electronic filing software, enter this information in the "description" field.

### Categorizing Receipts

Before beginning to itemize the committee's receipts, separate them into the different categories listed on the Detailed Summary Page ("Contributions from Individuals," "Contributions from Political Committees," etc.; an illustration of a completed Detailed Summary Page appears on pages 54-55). The receipts in each category must be itemized on a separate Schedule A designated for that category.

Indicate the type of receipt itemized on a particular Schedule A by checking the box for the corresponding line number from the Detailed Summary Page where indicated in the upper right corner of the schedule. The appropriate category of receipt may also be written at the top of each page.

Some categories may require several pages. The total for each category should be entered on the bottom line of the last page for that category.

### Itemized Information

For each itemized *contribution*, provide:

- The full name and address (including zip code) of the contributor or other source;
- The name of the contributor's employer (if the contributor is an individual);

- The contributor's occupation (if the contributor is an individual);
- The date of receipt;
- The amount; and
- The aggregate year-to-date total of all receipts (within the same category) from the same source. 104.3(a)(3). The space indicating the election for which an itemized contribution was made ("Receipt For") does not apply to SSFs; leave those boxes blank.

#### Special "Employer" Information

If a contributor is self-employed, that should be recorded in the Employer space. If a contributor is not employed, the Employer space should be left blank, but the Occupation space should always be completed (e.g., "unemployed," "retired," "homemaker").

#### Best Efforts Required

Note that committees and their treasurers must use "best efforts" to obtain and report the information listed above. See page 36 for more information.

### Payroll Deductions

Once an individual's deductions aggregate over \$200 in a calendar year, report the total amount deducted from the donor's paychecks during the reporting period on Schedule A. In parentheses indicate the amount that was deducted each pay period. Instead of stating a specific date of receipt, type "payroll deduction" under "Date." The other itemized information, including the year-to-date total, must be completed for each donor. 104.8(b).

**EXAMPLE:** During an election year, a corporate manager authorizes her employer to deduct \$15 per pay period (each pay period is two weeks) for the company's SSF. The SSF, which files FEC reports on a quarterly schedule, includes the manager's first-quarter contributions (\$90 for six pay periods) as "unitemized contributions" on Line 11(a)(ii) in the April quarterly report.

By June 30 (the closing date for the July quarterly report), 13 pay periods have passed, and the manager's aggregate contributions are \$195—still below the \$200 itemization threshold. The manager's second-quarter contributions again are included in "unitemized contributions" in the July report.

By September 30 (the closing date for the October quarterly report), 19 pay periods have passed, and the manager's contributions reach \$285. Now the committee itemizes the total contributions received from the manager during the third quarter (\$90), providing the year-to-date total in the appropriate space. (See item A in the illustration above.)

### In-Kind Contributions

When determining whether to itemize an *in-kind contribution* received, follow the same guidelines listed above under "When to Itemize Receipts." See page 14 for information on how to determine the dollar value of an in-kind contribution.

In addition, add the value of the in-kind contribution to the *operating expenditures* total on Line 21(b) (in order to avoid inflating the cash-on-hand amount). 104.13(a)(2).

If the in-kind contribution must be itemized on Schedule A, then it must also be itemized on a Schedule B for operating expenditures. See the illustration at right.

### Appreciated Goods

When a committee receives an in-kind contribution whose value may appreciate over time, such as stock or artwork, special reporting rules apply:

- Itemize the initial gift, if necessary, as a *memo entry* on Schedule A (see "When to Itemize Receipts," on page 42). Under "Amount," report the fair market value of the contribution on the date the item was received. Do not include that amount in the total for Line 11(a)(i) on the Detailed Summary Page.
- Once the item is sold, report the sale price as a contribution on Line 11(a)(i) if the purchaser is known or as an "other receipt" on Line 15 if the purchaser is unknown. Itemize the transaction on Schedule A if necessary. See also AO 1989-6.

### Joint Contributions

A *joint contribution* is made by a single check that bears two signatures. A check with one signature may also be a joint contribution if an accompanying form or letter, signed by both contributors, instructs the committee to treat it as a joint contribution. (A check drawn on a joint bank account but signed by only one person does not qualify as a joint contribution. Attribute the full amount of such a check only to the person who signed it. Alternatively, a reattribution may be sought using the procedures described below.)

## IN-KIND CONTRIBUTIONS RECEIVED

<b>SCHEDULE A (FEC Form 3X)</b>		Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one)	PAGE 1 OF 1
<b>ITEMIZED RECEIPTS</b>			<input checked="" type="checkbox"/> 11a <input type="checkbox"/> 11b <input type="checkbox"/> 11c <input type="checkbox"/> 12 <input type="checkbox"/> 13 <input type="checkbox"/> 14 <input type="checkbox"/> 15 <input type="checkbox"/> 16 <input type="checkbox"/> 17	
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.				
NAME OF COMMITTEE (In Full) <b>Critical Reason Inc. PAC</b>				
Full Name (Last, First, Middle Initial) A. <b>Hume, David</b>		Date of Receipt MM / DD / YYYY <b>08 / 19 / 2002</b>		
Mailing Address <b>1 Empirical Street</b>		Amount of Each Receipt this Period <b>3999.00</b>		
City <b>Alexandria</b>	State <b>VA</b>	Zip Code <b>00000</b>	<b>IN-KIND (RAFFLE PRIZE)*</b>	
FEC ID number of contributing federal political committee. <b>C</b>		Aggregate Year-to-Date <b>3999.00</b>		
Name of Employer <b>Critical Reason Inc.</b>		Occupation <b>Systems Analyst</b>		
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼				

<b>SCHEDULE B (FEC Form 3X)</b>		Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one)	PAGE 1 OF 1
<b>ITEMIZED DISBURSEMENTS</b>			<input checked="" type="checkbox"/> 21b <input type="checkbox"/> 22 <input type="checkbox"/> 23 <input type="checkbox"/> 24 <input type="checkbox"/> 25 <input type="checkbox"/> 26 <input type="checkbox"/> 27 <input type="checkbox"/> 28a <input type="checkbox"/> 28b <input type="checkbox"/> 28c <input type="checkbox"/> 29	
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.				
NAME OF COMMITTEE (In Full) <b>Critical Reason Inc. PAC</b>				
Full Name (Last, First, Middle Initial) A. <b>Hume, David</b>		Date of Disbursement MM / DD / YYYY <b>08 / 19 / 2002</b>		
Mailing Address <b>1 Empirical Street</b>		Amount of Each Disbursement this Period <b>3999.00</b>		
City <b>Alexandria</b>	State <b>VA</b>	Zip Code <b>00000</b>	<b>IN-KIND</b>	
Purpose of Disbursement <b>Raffle Prize</b>		Category/Type		
Candidate Name				
Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President	Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼			
State: District:				

\* When using FECFile electronic filing software, enter this information in the "description" field.

For the purposes of itemization, report a joint contribution as though the joint contributors had given separately.

A joint contribution is itemized in items A and B in the illustration at right. In this case, the committee received a \$1,000 check from a married couple, signed by both spouses. Because there were no instructions as to how to attribute the check, the committee must divide it equally between the two spouses—\$500 from each. 110.1(k)(2).

By contrast, if the committee received instructions to attribute \$100 to the husband and \$900 to the wife, the committee would itemize the wife's contribution. The husband's \$100 contribution would have to be itemized only if he had previously given more than \$100 in the same calendar year, since his total contributions would then aggregate over \$200

**Reattributions**

This section describes how to report contributions for which the committee has requested reattributions from contributors. (See Chapter 3, Section 8.)

**Receipt of Original Contribution**

When itemizing a contribution that must be reattributed to correct an excessive amount, include a statement on Schedule A noting that a reattribution has been requested. 103.3(b)(5).

**Receipt of Reattribution**

In the report covering the period during which the reattribution is received, itemize as *memo entries*:

- Information on the contribution as it was previously disclosed; and
  - Information on the contribution as it was reattributed, including the date the reattribution was received.
- 104.8(d)(3).

An example of how to report a reattribution is in the adjacent illustration (continued on the next page). The excessive contribution (\$6,000) is recorded in the reporting period in which it was received (July report). Then, in the report covering the period during which the reattribution is received (the October report) the initial contribution (\$6,000) is reported as a memo entry followed by the portions reattributed between the original contributor (William Teampayer) and his spouse (Tina Teampayer).

**JOINT CONTRIBUTIONS**

<b>SCHEDULE A (FEC Form 3X)</b>		Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one) PAGE <b>1</b> OF <b>1</b>
<b>ITEMIZED RECEIPTS</b>		<input checked="" type="checkbox"/> 11a <input type="checkbox"/> 11b <input type="checkbox"/> 11c <input type="checkbox"/> 12 <input type="checkbox"/> 13 <input type="checkbox"/> 14 <input type="checkbox"/> 15 <input type="checkbox"/> 16 <input type="checkbox"/> 17	
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.			
NAME OF COMMITTEE (In Full) <b>Absolute Spirit Inc. PAC</b>			
Full Name (Last, First, Middle Initial) <b>A. Hegel, George W.F.</b>		Date of Receipt MM / DD / YYYY <b>07 / 08 / 2001</b>	
Mailing Address <b>33 Dialectic Circle</b>		Amount of Each Receipt this Period <b>500.00</b>	
City <b>Arlington</b>	State <b>VA</b>	Zip Code <b>33333</b>	
FEC ID number of contributing federal political committee. <b>C</b>			
Name of Employer <b>Absolute Spirit Inc.</b>		Occupation <b>System Designer</b>	
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼		Aggregate Year-to-Date ▼ <b>575.00</b>	
Full Name (Last, First, Middle Initial) <b>B. Hegel, Edith</b>		Date of Receipt MM / DD / YYYY <b>07 / 08 / 2001</b>	
Mailing Address <b>33 Dialectic Circle</b>		Amount of Each Receipt this Period <b>500.00</b>	
City <b>Arlington</b>	State <b>VA</b>	Zip Code <b>33333</b>	
FEC ID number of contributing federal political committee. <b>C</b>			
Name of Employer <b>Market Street Wine Shop</b>		Occupation <b>Proprietor</b>	
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼		Aggregate Year-to-Date ▼ <b>500.00</b>	

**REATTRIBUTIONS  
JULY REPORT**

<b>SCHEDULE A (FEC Form 3X)</b>		Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one) PAGE <b>1</b> OF <b>1</b>
<b>ITEMIZED RECEIPTS</b>		<input checked="" type="checkbox"/> 11a <input type="checkbox"/> 11b <input type="checkbox"/> 11c <input type="checkbox"/> 12 <input type="checkbox"/> 13 <input type="checkbox"/> 14 <input type="checkbox"/> 15 <input type="checkbox"/> 16 <input type="checkbox"/> 17	
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.			
NAME OF COMMITTEE (In Full) <b>Absolute Spirit Inc. PAC</b>			
Full Name (Last, First, Middle Initial) <b>A. Teampayer, William</b>		Date of Receipt MM / DD / YYYY <b>06 / 14 / 2002</b>	
Mailing Address <b>22 Vessel Drive.</b>		Amount of Each Receipt this Period <b>6000.00</b>	
City <b>Jena</b>	State <b>VA</b>	Zip Code <b>22222</b>	
FEC ID number of contributing federal political committee. <b>C</b>			
Name of Employer <b>Absolute Spirit Inc.</b>		Occupation <b>Assistant Vice President</b>	
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼		Aggregate Year-to-Date ▼ <b>6000.00</b>	
<b>(Reattribution Requested)*</b>			

\* For FECFile, use "description" field.

# REATTRIBUTIONS OCTOBER REPORT

<b>SCHEDULE A (FEC Form 3X) ITEMIZED RECEIPTS</b>		Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one) <input checked="" type="checkbox"/> 11a <input type="checkbox"/> 11b <input type="checkbox"/> 11c <input type="checkbox"/> 12 <input type="checkbox"/> 13 <input type="checkbox"/> 14 <input type="checkbox"/> 15 <input type="checkbox"/> 16 <input type="checkbox"/> 17
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.			
NAME OF COMMITTEE (In Full) <b>Absolute Spirit Inc. PAC</b>			
Full Name (Last, First, Middle Initial) <b>A. Teamplayer, William</b>		Date of Receipt MM / DD / YYYY <b>06 / 14 / 2002</b>	
Mailing Address <b>22 Vessel Drive</b>		Amount of Each Receipt this Period <b>6000.00</b>	
City <b>Jena</b>	State <b>VA</b>	Zip Code <b>22222</b>	
FEC ID number of contributing federal political committee. <b>C</b>		MEMO <sup>α</sup> Originally reported 6/14/02. \$1,000 reattributed below. <sup>β</sup>	
Name of Employer <b>Absolute Spirit Inc.</b>		Occupation <b>Assistant Vice President</b>	
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼		Aggregate Year-to-Date ▼ <b>6000.00</b>	
Full Name (Last, First, Middle Initial) <b>B. Teamplayer, William</b>		Date of Receipt MM / DD / YYYY <b>07 / 11 / 2002</b>	
Mailing Address <b>22 Vessel Drive</b>		Amount of Each Receipt this Period <b>-1000.00</b>	
City <b>Jena</b>	State <b>VA</b>	Zip Code <b>22222</b>	
FEC ID number of contributing federal political committee. <b>C</b>		MEMO (retribution below)	
Name of Employer <b>Absolute Spirit Inc.</b>		Occupation <b>Assistant Vice President</b>	
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼		Aggregate Year-to-Date ▼ <b>5000.00</b>	
Full Name (Last, First, Middle Initial) <b>C. Teamplayer, Tina</b>		Date of Receipt MM / DD / YYYY <b>07 / 11 / 2002</b>	
Mailing Address <b>22 Vessel Drive</b>		Amount of Each Receipt this Period <b>1000.00</b>	
City <b>Jena</b>	State <b>VA</b>	Zip Code <b>22222</b>	
FEC ID number of contributing federal political committee. <b>C</b>		MEMO (retribution)	
Name of Employer <b>Bob &amp; Associates</b>		Occupation <b>Legal Counsel</b>	
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼		Aggregate Year-to-Date ▼ <b>1000.00</b>	

**Refund of Excessive Portion**  
If the SSF does not receive the reattribution, the committee must refund the excessive portion within 60 days of the treasurer's receipt of the contribution. Disclose the refund on the next report. 103.3(b)(3) and (5); 104.8(d)(4). See also "Refunds Made by the SSF," later in this chapter.

**Memo Entries**  
Use a memo entry on a schedule to provide information that is not included in the schedule's total dollar figure. Memo entries are used, for example, to disclose a reattribution of a contribution. Filers should exercise caution not to confuse "memo entries" with the "memo text" function used to supply additional information when filing electronically on FECFile.

**Bounced Checks**  
If a committee reports the receipt of a check and later finds it cannot be negotiated because of insufficient funds in the donor's account, the committee deducts the amount from its next report as follows:

- If the receipt was not itemized in a previous report, deduct the amount of the check from the total for unitemized contributions (Line 11(a)(ii) on the Detailed Summary Page).
- If the receipt was itemized previously, itemize the return of the check as a *negative entry* on a Schedule A for the appropriate line number.  
Checks received and returned by the bank in the same reporting period do not need to be reported.

## 3. Reporting Receipts: The Detailed Summary Page

Listed below are the categories of receipts found on the Detailed Summary Page. For each category, enter a total for the current period and for the calendar year to date. An illustration of a completed Detailed Summary Page can be found on pages 54-55.

<sup>α</sup> When using FECfile, this is entered automatically by checking the memo dialog box. For entries of more than 40 characters, use the memo text function. See the example on page 43.  
<sup>β</sup> When using FECFile electronic filing software, enter this information in the "description" field.

## CONTRIBUTION RECEIVED (BY CHECK)

<b>SCHEDULE A (FEC Form 3X)</b>		Use separate schedule(s) for each category of the Detailed Summary Page		FOR LINE NUMBER: PAGE 1 OF 1 (check only one)	
<b>ITEMIZED RECEIPTS</b>		<input checked="" type="checkbox"/> 11a	<input type="checkbox"/> 11b	<input type="checkbox"/> 11c	<input type="checkbox"/> 12
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.		<input type="checkbox"/> 13	<input type="checkbox"/> 14	<input type="checkbox"/> 15	<input type="checkbox"/> 16
NAME OF COMMITTEE (In Full) <b>Critical Reason Inc. PAC</b>					
Full Name (Last, First, Middle Initial) <b>A. Schopenhauer, Arthur</b>		Date of Receipt MM / DD / YYYY <b>01 / 19 / 2002</b>			
Mailing Address <b>50 Maya Ln.</b>		Amount of Each Receipt this Period <b>200.00</b>			
City <b>Leesburg</b>		State <b>VA</b>		Zip Code <b>00000</b>	
FEC ID number of contributing federal political committee. <b>C</b>		Aggregate Year-to-Date <b>300.00</b>			
Name of Employer <b>Critical Reason Inc.</b>		Occupation			
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼		Aggregate Year-to-Date <b>300.00</b>			

### Line 11. Contributions

#### Line 11(a). Contributions from Individuals and Other Groups

Report total monetary and in-kind contributions received, both itemized and unitemized.

Itemize contributions from individuals on a Schedule A for Line 11(a)(i). Rules concerning when to itemize contributions from individuals are explained on page 42.

#### Line 11(b). Political Party Committees

If the committee has received any unsolicited contributions from party committees, itemize them on a Schedule A for Line 11(b) and enter the total on the Detailed Summary Page.

#### Line 11(c). Other Political Committees

If the committee has received any unsolicited contributions from other types of *political committees* (including SSFs, *nonconnected committees* and committees that do not qualify as political committees), itemize them on a Schedule A for Line 11(c) and enter the total on Line 11(c) of the Detailed Summary Page.

*Transfers* of funds received from affiliated SSFs, however, are reported on Line 12.

#### Line 11(d). Total Contributions

Enter the total of Lines 11(a), (b) and (c).

## TRANSFERS

<b>SCHEDULE A (FEC Form 3X)</b>		Use separate schedule(s) for each category of the Detailed Summary Page		FOR LINE NUMBER: PAGE 1 OF 1 (check only one)	
<b>ITEMIZED RECEIPTS</b>		<input type="checkbox"/> 11a	<input type="checkbox"/> 11b	<input checked="" type="checkbox"/> 11c	<input type="checkbox"/> 12
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.		<input type="checkbox"/> 13	<input type="checkbox"/> 14	<input type="checkbox"/> 15	<input type="checkbox"/> 16
NAME OF COMMITTEE (In Full) <b>Alabama Moral Business Association PAC</b>					
Full Name (Last, First, Middle Initial) <b>A. National Moral Business Association PAC</b>		Date of Receipt MM / DD / YYYY <b>07 / 30 / 2002</b>			
Mailing Address <b>211 Fair Deal Ln.</b>		Amount of Each Receipt this Period <b>2140.30</b>			
City <b>Kingdom of Ends</b>		State <b>VA</b>		Zip Code <b>00000</b>	
FEC ID number of contributing federal political committee. <b>C 00000001</b>		Aggregate Year-to-Date <b>5695.45</b>			
Name of Employer		Occupation			
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼		Aggregate Year-to-Date <b>5695.45</b>			

### Line 12. Transfers-In

Itemize any transfers of funds received from *affiliated* SSFs on a Schedule A. See the example above. Enter the total on Line 12.

### Line 13. Loans

Itemize any loans received on a Schedule A for Line 13. Enter the total amount on Line 13. Committees receiving loans must also file Schedule C. See Section 8 for more information.

### Line 14. Loan Repayments

Itemize any repayments received on loans made by the SSF on a Schedule A for Line 14. Enter the total on Line 14. Committees receiving loan repayments must also file Schedule C. See Section 8 for information.

### Line 15. Offsets to Operating Expenditures

Refunds, rebates and returns of deposits are considered offsets to *operating expenditures*. Report them only if the SSF (not the *connected organization*) paid the original expenses.

Itemize offsets on a Schedule A for Line 15 once the committee receives more than \$200 from the same source during a calendar year. Enter the total on Line 15.

If the connected organization made the original operating expenditure with its own funds, then the offset must be given to the connected organization and is not reportable.

### Line 16. Refunds of Contributions

Itemize refunds of contributions made by the SSF on a Schedule A for Line 16 regardless of their amount. See Section 5 for more information on how to report them. Enter the total on Line 16.

### Line 17. Other Receipts

This category includes interest and dividends earned on investments. Itemize these receipts on a Schedule A once the committee receives more than \$200 from the same source during a calendar year. Enter the total under this category on Line 17. See Section 6 for more information on interest and dividends.

### Line 18. Transfers from Nonfederal Account for Joint Activity

If the committee maintains a nonfederal account for state and local election activities and pays its own *administrative expenses*, the federal account (the SSF) may accept a transfer of funds from the nonfederal account for the sole purpose of covering its share of a joint federal and nonfederal expense. 106.6(e)(1)(i). Report the total amount transferred from the nonfederal account during the period (i.e., the total from Schedule H3) on Line 18.

Other rules concerning these transfers are explained in Appendix A.

## OFFSETS TO OPERATING EXPENDITURES

<b>SCHEDULE A (FEC Form 3X)</b>		Use separate schedule(s) for each category of the Detailed Summary Page		FOR LINE NUMBER: PAGE 1 OF 1	
<b>ITEMIZED RECEIPTS</b>		<input type="checkbox"/> 11a	<input type="checkbox"/> 11b	<input checked="" type="checkbox"/> 11c	<input type="checkbox"/> 12
		<input type="checkbox"/> 13	<input type="checkbox"/> 14	<input type="checkbox"/> 15	<input type="checkbox"/> 16
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.					
NAME OF COMMITTEE (In Full) <b>Critical Reason Inc. PAC</b>					
Full Name (Last, First, Middle Initial) <b>A. Transcendental Mailing Services</b>			Date of Receipt MM / DD / YYYY <b>07 / 30 / 2002</b>		
Mailing Address <b>22 Intuition Ave.</b>			Amount of Each Receipt this Period <b>250.00</b>		
City <b>Arlington</b> State <b>VA</b> Zip Code <b>00000</b>			(refund of overcharge)*		
FEC ID number of contributing federal political committee. <b>C</b>					
Name of Employer			Occupation		
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼			Aggregate Year-to-Date ▼ <b>250.00</b>		

\* When using FECFile electronic filing software, enter this information in the "description" field.

## CONTRIBUTIONS TO CANDIDATES (BY CHECK)

<b>SCHEDULE B (FEC Form 3X)</b>		Use separate schedule(s) for each category of the Detailed Summary Page		FOR LINE NUMBER: PAGE 1 OF 1	
<b>ITEMIZED DISBURSEMENTS</b>		<input type="checkbox"/> 21b	<input type="checkbox"/> 22	<input checked="" type="checkbox"/> 23	<input type="checkbox"/> 24
		<input type="checkbox"/> 26	<input type="checkbox"/> 27	<input type="checkbox"/> 28a	<input type="checkbox"/> 28b
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.					
NAME OF COMMITTEE (In Full) <b>Critical Reason Inc. PAC</b>					
Full Name (Last, First, Middle Initial) <b>A. Citizens for Karl Popper</b>			Date of Disbursement MM / DD / YYYY <b>07 / 12 / 2002</b>		
Mailing Address <b>51 Open Society Ln.</b>			Amount of Each Disbursement this Period <b>150.00</b>		
City <b>Albany</b> State <b>NY</b> Zip Code <b>00000</b>			Purpose of Disbursement <b>011</b>		
Purpose of Disbursement <b>Contribution</b>			Candidate Name <b>Karl Popper</b>		
Candidate Name <b>Karl Popper</b>			Category/Type		
Office Sought: <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President			Disbursement For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼		
State: <b>NY</b> District: <b>21</b>					
Full Name (Last, First, Middle Initial) <b>B. Wittgenstein for Congress</b>			Date of Disbursement MM / DD / YYYY <b>08 / 01 / 2002</b>		
Mailing Address <b>5432 Duckrabbt Rd.</b>			Amount of Each Disbursement this Period <b>500.00</b>		
City <b>Alexandria</b> State <b>VA</b> Zip Code <b>00000</b>			Purpose of Disbursement <b>011</b>		
Purpose of Disbursement <b>Contribution</b>			Candidate Name <b>Ludwig Wittgenstein</b>		
Candidate Name <b>Ludwig Wittgenstein</b>			Category/Type		
Office Sought: <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President			Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input checked="" type="checkbox"/> Other (specify) ▼		
State: <b>ND</b> District: <b>00</b>			<b>2000 General debt</b>		

Itemize contributions to federal candidates regardless of amount. See page 17 for information on making post-election contributions to retire a candidate's debts.



## 4. Itemized Disbursements: Schedule B

### When to Itemize Disbursements

#### Regardless of Amount

- Several types of disbursements must be itemized regardless of amount:
- Transfers to affiliated SSFs;
  - Contributions to candidates and political committees;
  - Loan repayments; and
  - Loans made by the SSF.

Note that refunds of contributions (Line 28 on the Detailed Summary Page) must be itemized on Schedule B only if the incoming contribution had to be itemized on Schedule A, as explained earlier in this chapter.

#### Other Disbursements: \$200 Threshold

A disbursement that does not fall under one of the categories listed above (such as a donation to a nonfederal candidate) must be itemized if it exceeds \$200 when aggregated with other disbursements made to the same payee during the calendar year.

### How to Itemize Disbursements

#### Categorizing Disbursements

Before beginning to itemize the committee's disbursements, separate them into the different categories listed on the Detailed Summary Page ("Operating Expenditures," "Contributions to Federal Candidates," etc; an illustration of a completed Detailed Summary Page appears on pages 54-55). The disbursements in each category must be itemized on a separate Schedule B designated for that category.

Indicate the type of disbursement itemized on a particular Schedule B by checking the appropriate box for the corresponding line number from the Detailed Summary Page in the upper right corner of the schedule.

Some categories may require several pages. The total for each category should be entered on the bottom line of the last page for that category.

## IN-KIND CONTRIBUTIONS TO CANDIDATES

*Disclosure of In-Kind Contribution Made*

<b>SCHEDULE B (FEC Form 3X)</b>		Use separate schedule(s) for each category of the Detailed Summary Page		FOR LINE NUMBER: (check only one)		PAGE 1 OF 1	
<b>ITEMIZED DISBURSEMENTS</b>		<input type="checkbox"/> 21b	<input type="checkbox"/> 22	<input checked="" type="checkbox"/> 23	<input type="checkbox"/> 24	<input type="checkbox"/> 25	<input type="checkbox"/> 29
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.		<input type="checkbox"/> 26	<input type="checkbox"/> 27	<input type="checkbox"/> 28a	<input type="checkbox"/> 28b	<input type="checkbox"/> 28c	<input type="checkbox"/> 29
NAME OF COMMITTEE (In Full) <b>Critical Reason Inc. PAC</b>							
Full Name (Last, First, Middle Initial)							
A. <b>Grand Plush Hotel</b>				Date of Disbursement			
Mailing Address <b>19 Opulence Street</b>				MM / DD / YYYY <b>08 / 19 / 2001</b>			
City <b>Alexandria</b>		State <b>VA</b>		Zip Code <b>00000</b>		Amount of Each Disbursement this Period	
Purpose of Disbursement <b>Reception</b>		Candidate Name <b>Sam Jones</b>		Category/Type <b>011</b>		972.40	
Office Sought: <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		Disbursement For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼		State: <b>ND</b>		District: <b>00</b>	
				(in-kind) <sup>α</sup>			

*Additional Reporting of Payment to Vendor -- If Made After Goods/Services Provided.*

<b>SCHEDULE B (FEC Form 3X)</b>		Use separate schedule(s) for each category of the Detailed Summary Page		FOR LINE NUMBER: (check only one)		PAGE 1 OF 1	
<b>ITEMIZED DISBURSEMENTS</b>		<input checked="" type="checkbox"/> 21b	<input type="checkbox"/> 22	<input type="checkbox"/> 23	<input type="checkbox"/> 24	<input type="checkbox"/> 25	<input type="checkbox"/> 29
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.		<input type="checkbox"/> 26	<input type="checkbox"/> 27	<input type="checkbox"/> 28a	<input type="checkbox"/> 28b	<input type="checkbox"/> 28c	<input type="checkbox"/> 29
NAME OF COMMITTEE (In Full) <b>Critical Reason Inc. PAC</b>							
Full Name (Last, First, Middle Initial)							
A. <b>Grand Plush Hotel</b>				Date of Disbursement			
Mailing Address <b>19 Opulence Street</b>				MM / DD / YYYY <b>08 / 24 / 2001</b>			
City <b>Alexandria</b>		State <b>VA</b>		Zip Code <b>00000</b>		Amount of Each Disbursement this Period	
Purpose of Disbursement <b>Reception</b>		Candidate Name <b>Sam Jones</b>		Category/Type <b>011</b>		972.40	
Office Sought: <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		Disbursement For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼		State: <b>ND</b>		District: <b>00</b>	
				MEMO <sup>α</sup>			
				(in-kind: see Schedule B, Line 23) <sup>β</sup>			

<sup>α</sup>When using FECfile, "MEMO" is entered automatically by checking the memo dialog box.

<sup>β</sup>Using FECFile, enter information here using "memo text" field. See page 43.

#### Itemized Information

Itemized disbursement information includes:

- Name of payee;
- Address of payee;
- Purpose of disbursement (a brief but specific description of why the disbursement was made—see Schedule B instructions and 104.3(b)(3)(i)(B));
- Category Code (see Instructions for Schedules B and E);
- Date of payment; and
- Amount.  
104.3(b)(3); 104.9.

#### Additional Information on Candidates

Further information is required when itemizing a contribution to a candidate committee on Schedule B. Include the candidate's name and the office sought (including the state and, if applicable, Congressional district). When itemizing a contribution or loan to a candidate committee, specify the election for which the payment was made by checking the appropriate category in the election designation box. 104.3(b)(3)(v). See adjacent illustrations.

# REDESIGNATION ORIGINAL DESIGNATION: YEAR-END REPORT

<b>SCHEDULE B (FEC Form 3X) ITEMIZED DISBURSEMENTS</b>		Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one) <input type="checkbox"/> 21b <input type="checkbox"/> 22 <input checked="" type="checkbox"/> 23 <input type="checkbox"/> 24 <input type="checkbox"/> 25 <input type="checkbox"/> 26 <input type="checkbox"/> 27 <input type="checkbox"/> 28a <input type="checkbox"/> 28b <input type="checkbox"/> 28c <input type="checkbox"/> 29	PAGE 1 OF 1
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.				
NAME OF COMMITTEE (In Full) Stoics Incorporated PAC				
Full Name (Last, First, Middle Initial)				
A. <u>Committee to Reelect Mark Aurelius</u>		Date of Disbursement MM / DD / YYYY 12 / 30 / 2001		
Mailing Address 212 Via Sacra Road		Amount of Each Disbursement this Period 5000.00		
City Rome	State NY	Zip Code 00000	Purpose of Disbursement Contribution	
Candidate Name Mark Aurelius		Category/Type 011		
Office Sought: <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President	Disbursement For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼			
State: NY District: 23				

## Redesignations of Contributions

Use *memo entries* to show any redesignations of contributions.

If a contribution to a candidate is redesignated after the close of books, show the redesignation on the next report and indicate the report on which the original contribution was itemized.

In this illustration, the committee originally made a \$5,000 contribution to a candidate's campaign, intending it to count toward the primary election. The committee itemized the contribution in its year-end report. The following month, the campaign requested that the SSF redesignate \$4,500 to help retire debts from the previous general election campaign. The committee itemized the redesignation in its April quarterly report.

## Return or Refund of Contributions Made

If an SSF receives a refund of a *contribution* it has made, it must report the refund in one of two ways, depending on the circumstances described below.

### Contribution Made by SSF: Original Check Not Deposited

If a check to a *candidate committee* or other *political committee* is not deposited (e.g., if it is *returned* uncashed or is lost), report the amount as a *negative entry* on a Schedule B for Line 23, "Contributions to Federal Candidates and Other Political Committees." (The amount is subtracted from the total for Line 23.) An example is illustrated at right.

### Refunded by Recipient's Check

If the recipient committee deposits the contribution and then refunds it with its own check, itemize the refund, regardless of amount, on a Schedule A for Line 16, "Contribution Refunds."

### Refunds Made by the SSF

When an SSF refunds a contribution to a donor, the committee must include the disbursement in the total for the appropriate category of refund on the Detailed Summary Page (Line 28(a), (b) or (c)). If the SSF previously itemized the incoming contribution on Schedule A, then it must itemize the refund on a Schedule B for the appropriate line number. 104.8(d)(4).

(An SSF may return a contribution to the donor without depositing it, although the return must be made within 10 days of the treasurer's receipt of the contribution. 103.3(a). In this case, the committee does not have to report either the receipt or the return of the contribution.)

# REDESIGNATION: APRIL REPORT

<b>SCHEDULE B (FEC Form 3X) ITEMIZED DISBURSEMENTS</b>		Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one) <input type="checkbox"/> 21b <input type="checkbox"/> 22 <input checked="" type="checkbox"/> 23 <input type="checkbox"/> 24 <input type="checkbox"/> 25 <input type="checkbox"/> 26 <input type="checkbox"/> 27 <input type="checkbox"/> 28a <input type="checkbox"/> 28b <input type="checkbox"/> 28c <input type="checkbox"/> 29	PAGE 1 OF 1
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.				
NAME OF COMMITTEE (In Full) Stoics Incorporated PAC				
Full Name (Last, First, Middle Initial)				
A. <u>Committee to Reelect Mark Aurelius</u>		Date of Disbursement MM / DD / YYYY 12 / 30 / 2001		
Mailing Address 212 Via Sacra Road		Amount of Each Disbursement this Period 5000.00		
City Rome	State NY	Zip Code 00000	Purpose of Disbursement Contribution	
Candidate Name Mark Aurelius		Category/Type 011		
Office Sought: <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President	Disbursement For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼			
State: NY District: 23				
Full Name (Last, First, Middle Initial)				
B. <u>Committee to Reelect Mark Aurelius</u>		Date of Disbursement MM / DD / YYYY 02 / 28 / 2002		
Mailing Address 212 Via Sacra Road		Amount of Each Disbursement this Period 4500.00		
City Rome	State NY	Zip Code 00000	Purpose of Disbursement Contribution	
Candidate Name Mark Aurelius		Category/Type 011		
Office Sought: <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President	Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input checked="" type="checkbox"/> Other (specify) ▼ 2000 General debt			
State: NY District: 23				

<sup>α</sup> When using FECfile, this is entered automatically by checking the memo dialog box.

<sup>β</sup> When using FECFile on Schedule B, this information is entered using "memo text." See page 43.

## RETURNED OR VOIDED CONTRIBUTIONS

<b>SCHEDULE B (FEC Form 3X)</b>		Use separate schedule(s) for each category of the Detailed Summary Page		FOR LINE NUMBER: (check only one)		PAGE 1 OF 1	
<b>ITEMIZED DISBURSEMENTS</b>		<input type="checkbox"/> 21b	<input type="checkbox"/> 22	<input checked="" type="checkbox"/> 23	<input type="checkbox"/> 24	<input type="checkbox"/> 25	<input type="checkbox"/> 29
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.		<input type="checkbox"/> 26	<input type="checkbox"/> 27	<input type="checkbox"/> 28a	<input type="checkbox"/> 28b	<input type="checkbox"/> 28c	<input type="checkbox"/> 29
NAME OF COMMITTEE (In Full) <b>Delian League Corporation PAC</b>							
Full Name (Last, First, Middle Initial)							
A. <b>Al Cibiades for Congress</b>				Date of Disbursement 02 / 17 / 2002			
Mailing Address <b>2020 Hubris Street</b>				Amount of Each Disbursement this Period -2500.00			
City <b>Syracuse</b> State <b>NY</b> Zip Code <b>00000</b>		Purpose of Disbursement <b>Contribution</b>		Category/Type <b>011</b>		(check returned or voided) <sup>α</sup>	
Candidate Name <b>Al Cibiades</b>		Office Sought: <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		Disbursement For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼			
State: <b>NY</b> District: <b>25</b>							

<sup>α</sup>When using FECFile, this information is entered using "memo text." See Example 1.

## REFUNDED CONTRIBUTIONS

<b>SCHEDULE A (FEC Form 3X)</b>		Use separate schedule(s) for each category of the Detailed Summary Page		FOR LINE NUMBER: (check only one)		PAGE 1 OF 1	
<b>ITEMIZED RECEIPTS</b>		<input type="checkbox"/> 11a	<input type="checkbox"/> 11b	<input type="checkbox"/> 11c	<input type="checkbox"/> 12	<input type="checkbox"/> 17	<input type="checkbox"/> 17
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.		<input type="checkbox"/> 13	<input type="checkbox"/> 14	<input type="checkbox"/> 15	<input checked="" type="checkbox"/> 16	<input type="checkbox"/> 17	<input type="checkbox"/> 17
NAME OF COMMITTEE (In Full) <b>Critical Reason Inc. PAC</b>							
Full Name (Last, First, Middle Initial)							
A. <b>Rudolf Carnap in 2002 Committee</b>				Date of Receipt 07 / 17 / 2002			
Mailing Address <b>320 Verification Ln.</b>				Amount of Each Receipt this Period 1000.00			
City <b>Vienna</b> State <b>VA</b> Zip Code <b>00000</b>		FEC ID number of contributing federal political committee. <b>C 00000001</b>		Name of Employer		Occupation	
Receipt For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> Other (specify) ▼		Aggregate Year-to-Date 1000.00		(Contribution itemized in the July quarterly report) <sup>β</sup>			

<sup>β</sup>In FECFile, use "description" field.

## OPERATING EXPENDITURES

<b>SCHEDULE B (FEC Form 3X)</b>		Use separate schedule(s) for each category of the Detailed Summary Page		FOR LINE NUMBER: (check only one)		PAGE 1 OF 1	
<b>ITEMIZED DISBURSEMENTS</b>		<input checked="" type="checkbox"/> 21b	<input type="checkbox"/> 22	<input type="checkbox"/> 23	<input type="checkbox"/> 24	<input type="checkbox"/> 25	<input type="checkbox"/> 29
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.		<input type="checkbox"/> 26	<input type="checkbox"/> 27	<input type="checkbox"/> 28a	<input type="checkbox"/> 28b	<input type="checkbox"/> 28c	<input type="checkbox"/> 29
NAME OF COMMITTEE (In Full) <b>Delian League Corporation PAC</b>							
Full Name (Last, First, Middle Initial)							
A. <b>Graphos Printing</b>				Date of Disbursement 11 / 30 / 2001			
Mailing Address <b>2345 Papyrus Street</b>				Amount of Each Disbursement this Period 500.00			
City <b>Alexandria</b> State <b>VA</b> Zip Code <b>00000</b>		Purpose of Disbursement <b>PAC Letterhead</b>		Category/Type <b>001</b>			
Candidate Name		Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼			
State:		District:					

## 5. Reporting Disbursements: The Detailed Summary Page

Line-by-line instructions for filling out the Disbursements portion of the Detailed Summary Page are given below. See Section 4 for information on how to itemize disbursements on Schedule B. An example of a completed Detailed Summary Page appears on pages 54-55.

More information on reporting loans, debts and independent expenditures appears later in this chapter.

### Line 21. Operating Expenditures

Operating expenditures—also called *administrative expenses* and fundraising expenses—are only reportable if the SSF pays for them. (Normally, the *connected organization* pays these expenses.)

#### Line 21(a)

Report the federal and nonfederal shares of allocable activities on Line 21(a). These numbers will be transferred from Schedule H4 (see Appendix A). Note, however, that Line 21(a) is rarely used by SSFs. See Appendix A.

#### Line 21(b)

Report the total of operating expenditures for unshared SSF activities (i.e., activities paid for exclusively from a federal account) on Line 21(b).

Itemize them on a Schedule B for Line 21(b) once payments to any payee exceed \$200 in a calendar year.

### Line 22. Transfers-Out

Itemize transfers to *affiliated* SSFs, regardless of amount, on a Schedule B for Line 22. Enter the total from that schedule on the Detailed Summary Page.

### Line 23. Contributions to Federal Candidates and Other Political Committees

Itemize all monetary and *in-kind contributions* made to *candidate committees* and other *political committees*, regardless of amount, on a Schedule B for Line 23. Report the total from that schedule on the Detailed Summary Page. Examples of itemized contributions to candidates are provided on pages 48-49.

## NONFEDERAL CONTRIBUTIONS

<b>SCHEDULE B (FEC Form 3X)</b>		Use separate schedule(s) for each category of the Detailed Summary Page		FOR LINE NUMBER: (check only one)		PAGE 1 OF 1	
<b>ITEMIZED DISBURSEMENTS</b>		<input type="checkbox"/> 21b	<input type="checkbox"/> 22	<input type="checkbox"/> 23	<input type="checkbox"/> 24	<input type="checkbox"/> 25	<input checked="" type="checkbox"/> 29
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.							
NAME OF COMMITTEE (In Full) <b>Archon Corporation PAC</b> Full Name (Last, First, Middle Initial)							
<b>A.</b> Mailing Address <b>Larry Lycurgus for Governor</b> <b>809 S. Main Street</b> City: <b>Sparta</b> State: <b>IL</b> Zip Code: <b>00000</b>				Date of Disbursement MM / DD / YYYY <b>02 / 17 / 2002</b>		Amount of Each Disbursement this Period <b>500.00</b>	
Purpose of Disbursement <b>Nonfederal Contribution</b>				Category/Type <b>011</b>			
Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼		State: _____ District: _____			

### Line 24. Independent Expenditures

Unlike other categories of disbursements, *independent expenditures* are itemized on Schedule E, as explained on page 53. Enter the total from Schedule E, line (c), on Line 24.

### Line 26. Loan Repayments

See Section 8 for information on how to itemize the payments on Schedules B and C. Enter the total paid on loans on Line 26.

### Line 27. Loans Made

See Section 8 for information on how to report loans made by the committee on Schedules B and C. Enter the total amount loaned during the period on Line 27.

## CREDIT CARD TRANSACTIONS

<b>SCHEDULE B (FEC Form 3X)</b>		Use separate schedule(s) for each category of the Detailed Summary Page		FOR LINE NUMBER: (check only one)		PAGE 1 OF 1	
<b>ITEMIZED DISBURSEMENTS</b>		<input checked="" type="checkbox"/> 21b	<input type="checkbox"/> 22	<input type="checkbox"/> 23	<input type="checkbox"/> 24	<input type="checkbox"/> 25	<input type="checkbox"/> 29
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.							
NAME OF COMMITTEE (In Full) <b>Critical Reason Inc. PAC</b> Full Name (Last, First, Middle Initial)							
<b>A.</b> Mailing Address <b>Credit Card Corp.</b> <b>101 Charge Street</b> City: <b>Alexandria</b> State: <b>VA</b> Zip Code: <b>00000</b>				Date of Disbursement MM / DD / YYYY <b>12 / 30 / 2002</b>		Amount of Each Disbursement this Period <b>504.50</b>	
Purpose of Disbursement <b>Credit Card Payment (see below)</b>				Category/Type <b>011</b>			
Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		Disbursement For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼		State: _____ District: _____			
Full Name (Last, First, Middle Initial)							
<b>B.</b> Mailing Address <b>Prime Cut Steakhouse</b> <b>1001 Pennsylvania Ave.</b> City: <b>Washington</b> State: <b>DC</b> Zip Code: <b>00000</b>				Date of Disbursement MM / DD / YYYY <b>11 / 01 / 2002</b>		Amount of Each Disbursement this Period <b>237.25</b>	
Purpose of Disbursement <b>Fundraising Luncheon</b>				Category/Type <b>011</b>		MEMO <sup>α</sup> (See Schedule B, Line 23)	
Office Sought: <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		Disbursement For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼		State: <b>ND</b> District: <b>00</b>			
Full Name (Last, First, Middle Initial)							
<b>C.</b> Mailing Address <b>Bob's House of Cakes</b> <b>800 E. Street SW</b> City: <b>Washington</b> State: <b>DC</b> Zip Code: <b>00000</b>				Date of Disbursement MM / DD / YYYY <b>11 / 01 / 2002</b>		Amount of Each Disbursement this Period <b>267.25</b>	
Purpose of Disbursement <b>Fundraising Luncheon</b>				Category/Type <b>011</b>		MEMO (See Schedule B, Line 23)	
Office Sought: <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		Disbursement For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼		State: <b>ND</b> District: <b>00</b>			

### Line 28. Refunds of Contributions

Itemize a refund made by the committee only if the original contribution was itemized. Other rules for reporting contribution refunds made by an SSF are described in Section 5. Enter the total amount refunded during the period on Line 28.

### Line 29. Other Disbursements

"Other disbursements" include donations made by the SSF to nonfederal candidates and committees. Itemize "other disbursements" on a Schedule B for Line 29 when they exceed \$200 to the same payee during a calendar year. Enter the total of itemized and unitemized other disbursements on the Detailed Summary Page.

## 6. Investments

Funds invested in a savings account, money market fund, certificate of deposit or similar type of investment must be included in the SSF's cash-on-hand total. The committee does not report this type of investment as a disbursement because the money is still a committee asset. 104.3(a)(1). See also AO 1990-2.

<sup>α</sup> In FECFile, click "memo" in the dialog box.

# INDEPENDENT EXPENDITURES

SCHEDULE E (FEC Form 3X)		ITEMIZED INDEPENDENT EXPENDITURES	
NAME OF COMMITTEE (In Full) <b>Delian League Corporation PAC</b>		PAGE 1 OF 1 FOR LINE 24 OF FORM 3X	
FEC IDENTIFICATION NUMBER <b>C 00000001</b>		Purpose of Expenditure <b>Newspaper ad</b> Category/Type: <b>004</b>	
Full Name (Last, First, Middle Initial) of Payee <b>The Agora News</b>		Name of Federal Candidate supported or opposed by expenditure: <b>Bob Pericles</b>	
Mailing Address <b>301 Parthenon Street</b>		Office Sought: <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> Presidential	
City <b>Athens</b>	State <b>GA</b>	Zip Code <b>00000</b>	State: <b>GA</b> District: <b>03</b>
Date <b>08 / 09 / 2002</b>	Amount <b>2535.69</b>		
Full Name (Last, First, Middle Initial) of Payee <b>The Spartan Herald</b>		Purpose of Expenditure <b>Newspaper ad</b> Category/Type: <b>004</b>	
Mailing Address <b>221 Thermopylae Ave</b>		Name of Federal Candidate supported or opposed by expenditure: <b>John Lycurgus</b>	
City <b>Sparta</b>	State <b>IL</b>	Zip Code <b>00000</b>	Office Sought: <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> Presidential
Date <b>08 / 22 / 2002</b>	Amount <b>5661.19</b>		
Full Name (Last, First, Middle Initial) of Payee <b>Images R' Us Communications</b>		Purpose of Expenditure <b>Billboards</b> Category/Type: <b>004</b>	
Mailing Address <b>101 Madison Ave</b>		Name of Federal Candidate supported or opposed by expenditure: <b>Bob Eidos</b>	
City <b>Spring Mills</b>	State <b>PA</b>	Zip Code <b>00000</b>	Office Sought: <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> Presidential
Date <b>08 / 23 / 2002</b>	Amount <b>10555.00</b>		
(a) SUBTOTAL of Itemized Independent Expenditures		<b>18751.88</b>	
(b) SUBTOTAL of Unitemized Independent Expenditures			
(c) TOTAL Independent Expenditures		<b>18751.88</b>	
Under penalty of perjury I certify that the independent expenditures reported herein were not made in cooperation, consultation, concert with, or at the request or suggestion of any candidate or any authorized committee or agent of such candidate or authorized committee. Furthermore, these expenditures did not involve the financing of dissemination, distribution, or republication in whole or in part of any campaign materials prepared by the candidate, his campaign committee, or their agent.			
Signature: <i>[Signature]</i>		Subscribed and sworn to before me this <b>10</b> day of <b>10</b> / <b>2002</b>	
Date: <b>10 / 10 / 2002</b>		My Commission expires: <b>02 / 12 / 2004</b>	
		NOTARY PUBLIC: <i>[Signature]</i>	

## Income Tax

Report taxes paid by the SSF as *operating expenditures* on Line 21. Itemize income tax payments on Schedule B only if they aggregate over \$200 per year to the same payee—i.e., the local, state or federal government.

Unlike other operating expenditures, taxes on an SSF's earnings are not payable by the *connected organization*. AO 1977-19.

## 7. Independent Expenditures

### Schedule E

Itemize any *independent expenditure* which, by itself or when added to other independent expenditures made to the same payee during the same calendar year, exceeds \$200. Independent expenditures are itemized on Schedule E. A subtotal for itemized independent expenditures is entered on Line (a).

Independent expenditures of \$200 or less do not need to be itemized, though the committee must report the subtotal of those expenditures on Line (b). 104.3(b)(3)(vii)(C) and 104.4(a).

Enter the total of itemized and unitemized independent expenditures on Line (c) of Schedule E and on Line 24 of the Detailed Summary Page.

### Certification

The treasurer must sign the statement on Schedule E which certifies, under penalty of perjury, that the expenditure meets the standards of "independence" (see Chapter 4 for more information). The form must be notarized. 104.3(b)(3)(vii)(B).

## Additional Depositories

### Funds Invested with Banks

If the committee invests its funds in an account at a *bank* that was not previously identified as a campaign depository on the SSF's Statement of Organization (FEC Form 1), the SSF must file an amended Statement disclosing the name and address of the additional depository. The amendment must be filed within 10 days of opening the account. 102.2(a)(2).

### Funds Invested with Other Establishments

If committee funds are invested in an account that is not operated by a *bank* (such as a money market account operated by a brokerage firm), no amend-

ment to the Statement of Organization is required. However, before disbursing the funds in the account (principal and interest), the committee must first transfer them to a designated campaign checking account. 102.10 and 103.3(a). See also AOs 1986-18 and 1980-39.

### Investment Income

A committee must report interest income received during the reporting period in the "Other Receipts" category (Line 17) of the Detailed Summary Page. If investment income received from one source aggregates over \$200 during a calendar year, the committee must also itemize the interest on a Schedule A for Line 17. 104.3(a)(4)(vi).

## Last-Minute Independent Expenditure Notices

The SSF must file a special notice when it makes independent expenditures aggregating \$1,000 or more after the 20th day but more than 24 hours before the day of an election. The notice must be received by the filing office within 24 hours after the expenditure is made (see "Federal Filing" on page 41). The notice must include all the information required on Schedule E. (This reporting requirement applies to a written contract of more than \$1,000 which the committee has not yet paid.) 104.4(b) and 104.5(g).

The SSF must report the last-minute expenditure a second time on Schedule E, filed with its next regular report. 104.4(a).

According to a statutory change to the Federal Election Campaign Act, SSFs may file their 24-hour reports using facsimile machines or electronic mail, unless the SSF is part of the Commission's electronic filing program. (Public Law 106-346).

## THE DETAILED SUMMARY PAGE

### 8. Reporting Loans

Continuously itemize all loans received and made by the SSF until they are repaid. All repayments made or received on a loan must also be itemized. 104.3(a)(4)(iv); 104.3(b)(3)(iii) and (vi); 104.3(d); 104.11. Procedures for reporting loans and loan repayments are explained below.

Reminder: Loans are considered contributions to the extent of the outstanding balance of the loan. 100.7(a)(1)(i). Loans from banks, however, are not considered contributions if made in the ordinary course of business. Endorsements and guarantees of bank loans, however, do count as contributions. 100.7(a)(1)(i) and (b)(11).

#### Loans Received by the SSF

##### Schedule A: Initial Receipt of Loan

Itemize the receipt of a loan, regardless of amount, on a separate Schedule A for Line 13 ("Loans Received").

##### Schedule B: Interest and Principal Payments

Report the interest paid on a loan as an operating expenditure, itemizing the payment on a Schedule B for Line 21(b) ("Operating Expenditures") once interest payments to the payee aggregate over \$200 in a calendar year. 100.8(a)(1)(i) and 104.3(b)(3)(i).

Payments to reduce the principal must be itemized, regardless of amount, on a separate Schedule B for Line 26 ("Loan Repayments Made"). 104.3(b)(3)(iii).

##### Schedule C: Continuous Reporting

In addition, report both the original loan and payments made to repay the loan on Schedule C each reporting period until the loan is repaid. 104.3(d) and 104.11. Instructions on the back of Schedule C explain what information must be disclosed. Use separate Schedule C forms to itemize loans received and loans made.

The Schedule C balance of the total amount owed on loans is entered on line 10 of the Summary Page ("Debts and Obligations Owed by the Committee") or, if the committee has other debts, the bal-

DETAILED SUMMARY PAGE of Receipts		
FEC Form 3X (Revised 1/01)		Page 3
Write or Type Committee Name <u>Critical Reason Inc. PAC</u>		
Report Covering the Period: From:	MM / DD / YYYY 07 / 01 / 2002	To: MM / DD / YYYY 09 / 30 / 2002
I. Receipts	COLUMN A Total This Period	COLUMN B Calendar Year-to-Date
11. Contributions (other than loans) From:		
(a) Individuals/Persons Other Than Political Committees		
(i) Itemized (use Schedule A) .....	10562.27	
(ii) Unitemized .....	9982.57	
(iii) TOTAL (add Lines 11(a)(i) and (ii)) ▶	20544.84	97967.46
(b) Political Party Committees .....	0	0
(c) Other Political Committees (such as PACs) .....	0	0
(d) Total Contributions (add Lines 11(a)(iii), (b), and (c) (Carry Totals to Line 32, page 4)) ▶	20544.84	97967.46
12. Transfers From Affiliated/Other Party Committees .....	2156.85	5605.69
13. All Loans Received .....	0	0
14. Loan Repayments Received .....	0	0
15. Offsets To Operating Expenditures (Refunds, Rebates, etc.) (Carry Totals to Line 36, page 4) .....	250.00	250.00
16. Refunds of Contributions Made to Federal Candidates and Other Political Committees .....	1000.00	1000.00
17. Other Federal Receipts (Dividends, Interest, etc.) .....	181.69	851.88
18. Transfers from Nonfederal Account for Joint Activity .....	0	0
19. Total Receipts (add Lines 11(d), 12, 13, 14, 15, 16, 17, and 18) ▶	24133.38	105675.03
20. Total Federal Receipts (subtract Line 18 from Line 19) ▶	24133.38	105675.03

ance is carried over to Schedule D (see Section 9).

#### Schedule C-1: Additional Information for Bank Loans

A committee that obtains a loan from a bank must also file Schedule C-1 with the first report due after a new loan or line of credit has been established. 104.3(d)(1). A new Schedule C-1 must also be filed with the next report if the terms of the loan or line of credit are restructured.

Additionally, in the case of a committee that has obtained a line of credit, a new Schedule C-1 must be filed with the next report whenever the committee draws on the line of credit. 104.3(d)(1) and (3).

Line-by-line instructions for filling out the schedule appear on the back of Schedule C-1. The committee treasurer or designated assistant treasurer must sign the schedule on Line G and attach a copy of the loan agreement. 104.3(d)(2).

Finally, an authorized representative of the lending institution must sign the statement on Line I.

#### Loans Made by the SSF

##### Schedule B: Outgoing Loan

When making a loan to another organization, itemize the disbursement, regardless of amount, on a Schedule B for Line 27 ("Loans Made"). 104.3(b)(3)(vi).

## THE DETAILED SUMMARY PAGE

DETAILED SUMMARY PAGE of Disbursements		
FEC Form 3X (Revised 1/01)	Page 4	
II. Disbursements	COLUMN A Total This Period	COLUMN B Calendar Year-to-Date
21. Operating Expenditures:		
(a) Shared Federal/Non-Federal Activity (from Schedule H4)		
(i) Federal Share .....	0	0
(ii) Non-Federal Share .....	0	0
(b) Other Federal Operating Expenditures .....	1195.00	2542.91
(c) Total Operating Expenditures (add 21(a)(i), (a)(ii), and (b)) .....	1195.00	2542.91
22. Transfers to Affiliated/Other Party Committees .....	0	0
23. Contributions to Federal Candidates/Committees and Other Political Committees .....	24200.00	60975.00
24. Independent Expenditures (use Schedule E) .....	18751.88	18751.88
25. Coordinated Expenditures Made by Party Committees (2 U.S.C. §441a(d)) (use Schedule F) .....	0	0
26. Loan Repayments Made .....	0	0
27. Loans Made .....	0	0
28. Refunds of Contributions To:		
(a) Individuals/Persons Other Than Political Committees .....	120.00	120.00
(b) Political Party Committees .....	0	0
(c) Other Political Committees (such as PACs) .....	0	0
(d) Total Contribution Refunds (add Lines 28(a), (b), and (c)) .....	120.00	120.00
29. Other Disbursements .....	500.00	990.00
30. Total Disbursements (add Lines 21(c), 22, 23, 24, 25, 26, 27, 28(d), and 29) .....	50966.88	88579.79
31. Total Federal Disbursements (subtract Line 21(a)(ii) from Line 30) .....	50966.88	88579.79
<b>III. Net Contributions/Operating Expenditures</b>		
32. Total Contributions (other than loans) (from Line 11(d), page 3) .....	20544.84	97967.46
33. Total Contribution Refunds (from Line 28(d)) .....	120.00	120.00
34. Net Contributions (other than loans) (subtract Line 33 from Line 32) .....	20424.84	97847.46
35. Total Federal Operating Expenditures (add Line 21(a)(i) and Line 21(b)) .....	7395.00	8742.91
36. Offsets to Operating Expenditures (from Line 15, page 3) .....	250.00	250.00
37. Net Operating Expenditures (subtract Line 36 from Line 35) .....	7145.00	8492.91

## 9. Reporting Debts Other Than Loans

Unpaid bills and written contracts or agreements to make *expenditures* are considered debts. 100.8(a)(2). Report debts and obligations (other than loans) on Schedule D according to the following rules:

- A debt of \$500 or less is reportable once it has been outstanding 60 days from the date incurred (the date of the transaction, not the date the bill is received). The debt is disclosed on the next regularly scheduled report.
- A debt exceeding \$500 must be reported on the next report filed after the debt is incurred.<sup>1</sup> 104.3(d) and 104.11.

Use separate Schedule D forms for debts owed by the committee and debts owed to the committee. Label each schedule accordingly.

### Debts Owed by an SSF

Use Schedule D to report:

- The outstanding amount owed on a debt or obligation; and
- Payments made to reduce the debt.

Schedule D instructions explain what additional information is required.

Enter the Schedule D total of outstanding debts, plus the balance of loans owed by the committee (carried over from Schedule C, as explained above) on Line 10 of the Summary Page. Note that payments to reduce debts must also be reported under the appropriate category of disbursement on the Detailed Summary Page (for example, Line 21(b) for a payment on a bill for an operating expenditure).

### Settlement of Debts

Special rules apply to debts that are forgiven or settled for less than their full amount. See Chapter 8 for more information.

### Special Debt Reporting Problems

#### Debts of Unknown Amount

If the exact amount of a debt is not known, report the estimated amount of

### Schedule A: Interest and Principal Payments Received

Report interest received on a loan on a Schedule A for Line 17 ("Other Receipts") if the payments aggregate over \$200 from the same source during the calendar year.

Itemize payments received that reduce the principal owed on a separate Schedule A for Line 14 ("Loan Repayments Received").

### Schedule C: Continuous Reporting

The original amount loaned and repayments received on it must be itemized on Schedule C each reporting period until the loan is repaid in full. Schedule C in-

structions explain what information must be disclosed. (Note that separate Schedule C forms are used to itemize loans received and loans made.)

The Schedule C balance of the total outstanding loans owed to a committee is entered on Line 9 of the Summary Page ("Debts and Obligations Owed to the Committee") unless other types of debts are owed to the committee. In that case, the Schedule C total is carried over to Schedule D (see below).

1. Regularly recurring administrative expenses like rent and salaries, if paid by the SSF and not by the connected organization, do not have to be reported until payment is due. 104.11(b); see 116.6(c).

the debt. The committee should amend the report once a correct figure is known or include the correct figure in a later report. 104.11(b).

**Unpayable Debts**

If a debt cannot be paid because the creditor has gone out of business or cannot be located, the SSF may write to the FEC to request permission to discontinue reporting the debt. The letter must demonstrate that the debt is at least two years old and that efforts to reach the creditor have been made. The committee must continue to report the debt until the Commission determines that the debt is unpayable. See 116.9.

**Disputed Debts**

A *disputed debt* is a bona fide disagreement between the creditor and the committee as to the existence of a debt or the amount owed by the committee. 116.10. Until the creditor and committee resolve the dispute (assuming the creditor did provide something of value), the SSF must disclose:

- The amount the committee admits it owes;
- The amount the creditor claims is owed; and
- Any amounts the committee has paid the creditor.

**Debts Owed to an SSF**

Continuously report a debt owed to an SSF on Schedule D if the debt exceeds \$500 or has been outstanding 60 days. 104.3(d) and 104.11. Payments received on the debt are also reported on Schedule D until the debt is retired. The payments must also be reported on the appropriate line number of the Detailed Summary Page and itemized on Schedule A if necessary.

Enter the Schedule D total of outstanding debts owed to a committee, plus the balance of outstanding loans carried over from Schedule C, on Line 9 of the Summary Page.

**10. The Summary Page**

**Line 1. Name and Address**

Fill in the SSF's full name (including any abbreviations used) and mailing address. (See "Naming the SSF" on page 8.)

**PAGE 1, SUMMARY PAGE**

<b>FEC FORM 3X</b>		<b>REPORT OF RECEIPTS AND DISBURSEMENTS</b> For Other Than An Authorized Committee				Office Use Only	
1. NAME OF COMMITTEE (in full)		USE FEC MAILING LABEL OR TYPE OR PRINT ▼		Example: If typing, type over the lines.		12FE4M5	
		Delian League Corporation PAC					
ADDRESS (number and street)		22 Trireme Street					
<input type="checkbox"/> Check if different than previously reported. (ACC)		Delos		CT		00000 - 0000	
2. FEC IDENTIFICATION NUMBER ▼		CITY ▲		STATE ▲		ZIP CODE ▲	
C 00000001							
3. IS THIS REPORT		<input checked="" type="checkbox"/> NEW (N)		OR		<input type="checkbox"/> AMENDED (A)	
4. TYPE OF REPORT (Choose One)		(b) Monthly Report Due On:		<input type="checkbox"/> Feb 20 (M2)		<input type="checkbox"/> May 20 (M5)	
(a) Quarterly Reports:		<input type="checkbox"/> Mar 20 (M3)		<input type="checkbox"/> Jun 20 (M6)		<input type="checkbox"/> Sep 20 (M9)	
<input type="checkbox"/> April 15 Quarterly Report (Q1)		<input type="checkbox"/> Apr 20 (M4)		<input type="checkbox"/> Jul 20 (M7)		<input type="checkbox"/> Oct 20 (M10)	
<input type="checkbox"/> July 15 Quarterly Report (Q2)						<input type="checkbox"/> Nov 20 (M11) (Non-Election Year Only)	
<input checked="" type="checkbox"/> October 15 Quarterly Report (Q3)						<input type="checkbox"/> Dec 20 (M12) (Non-Election Year Only)	
<input type="checkbox"/> January 31 Year-End Report (YE)						<input type="checkbox"/> Jan 31 (YE)	
<input type="checkbox"/> July 31 Mid-Year Report (Non-election Year Only) (MY)							
<input type="checkbox"/> Termination Report (TER)							
		(c) 12-Day PRE-Election Report for the:		<input type="checkbox"/> Primary (12P)		<input type="checkbox"/> General (12G)	
		<input type="checkbox"/> Election on		<input type="checkbox"/> Convention (12C)		<input type="checkbox"/> Special (12S)	
		(d) 30-Day POST-Election Report for the:		<input type="checkbox"/> General (30G)		<input type="checkbox"/> Runoff (30R)	
		<input type="checkbox"/> Election on		<input type="checkbox"/> Special (30S)			
5. Covering Period		07 / 01 / 2002		through		09 / 30 / 2002	
I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.							
Type or Print Name of Treasurer		Joe Themistocles					
Signature of Treasurer						Date	
						10 / 13 / 2002	
NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. §437g.							
Office Use Only		FEC FORM 3X (Revised 1/01)					

**Line 2. ID Number**

Enter the committee's FEC identification number on Line 2. If the SSF is filing its first report, it may not have yet received an ID number; in that case, the committee should leave this space blank.

A committee should include its ID number in all reports, statements, notices and other written communications with the FEC.

**Line 3. New or Amended Report**

Check the appropriate box to indicate whether the report is new (N) or amended (A).

**Line 4. Type of Report**

Check the appropriate box under (a) indicating the type of disclosure report being filed (quarterly, monthly, pre-election or post-election); see Chapter 6.



## PAGE 2, SUMMARY PAGE

SUMMARY PAGE OF RECEIPTS AND DISBURSEMENTS		
FEC Form 3X (Revised 1/01)		Page 2
Write or Type Committee Name <u>Delian League Corporation PAC</u>		
Report Covering the Period: From:	M / M / Y 07 / 01 / 2002	To: M / M / Y 09 / 30 / 2002
	<b>COLUMN A This Period</b>	<b>COLUMN B Calendar Year-to-Date</b>
6. (a) Cash on Hand January 1, 2002		87820.25
(b) Cash on Hand at Beginning of Reporting Period	118894.35	
(c) Total Receipts (from Line 19)	30333.38	111875.03
(d) Subtotal (add Lines 6(b) and 6(c) for Column A and Lines 6(a) and 6(c) for Column B)	149227.73	199695.28
7. Total Disbursements (from Line 30)	57166.88	107634.43
8. Cash on Hand at Close of Reporting Period (subtract Line 7 from Line 6(d))	92060.85	92060.85
9. Debts and Obligations Owed TO the Committee (Itemize all on Schedule C and/or Schedule D)	0	
10. Debts and Obligations Owed BY the Committee (Itemize all on Schedule C and/or Schedule D)	0	
<input checked="" type="checkbox"/> This committee has qualified as a multicandidate committee. (see FEC FORM 1M)		
<b>For further information contact:</b>		
Federal Election Commission 999 E Street, NW Washington, DC 20463  Toll Free 800-424-9530 Local 202-694-1100		

### Line 5. Coverage Dates

The period covered by the report begins the day after the close of books of the last report filed by the SSF. If the reports the first one filed by a committee, then the reporting period begins with the date of the committee's first activity.

### Line 6. Cash on Hand

#### What Is Cash on Hand

Cash on hand includes funds held in checking and savings accounts, certificates of deposit, petty cash funds, traveler's checks, treasury bills and other investments valued at cost. 104.3(a)(1).

Line 6(a) On this line enter cash on hand as of January 1st of the reporting year.

Line 6(b) Cash on Hand at Beginning of Reporting Period.  
The amount entered on this line should be the same as your cash on hand at the close of books of your last report.

#### First Report

Beginning cash on hand—i.e., money that the committee had in its possession at the time of registration—is subject to the contribution limits, prohibitions and disclosure requirements of federal law. (The committee must exclude any contributions that are not

permissible under federal law.) The committee should itemize *contributions* and other receipts included in the beginning cash-on-hand balance. See "When to Itemize Receipts," on page 42. 104.12.

### Treasurer's Name and Signature

The treasurer must sign and date Form 3X at the bottom of the Summary Page. Only a treasurer or assistant treasurer designated on Form 1 (Statement of Organization) may sign the report. 104.14(a). See Chapter 1 for more information on the treasurer's responsibilities. See also, Chapter 6, Section 5, "Electronic Filing."

## 11. Filing Amendments

The committee must file an amended report if it:

- Discovers that an earlier report contained erroneous information; or
- Does not obtain required reporting information concerning a particular transaction until after the transaction has been reported.<sup>2</sup>

#### Paper Filers

When filing an amendment to an original report, complete the Summary Page (including the treasurer's signature), indicating on #3 by checking the appropriate box that the document is an amended report. In addition to the Summary Page, submit a corrected version of the schedule that contained the incomplete or incorrect itemized information in the earlier report, along with a revised Detailed Summary Page, if appropriate. Transactions originally reported correctly do not have to be itemized again. The Commission recommends that the treasurer attach a cover letter explaining the change.

#### Electronic Filers

Electronic filers must electronically re-submit the entire report, not just the amended portions. The amendments must be formatted to comply with the Electronic Filing Specifications Requirements mentioned in Chapter 6, Section 5.

2. *With respect to contributor information received after a report has been filed, the committee may, as an alternative, submit the information on a memo Schedule A attached to the next paper report filed after the information has been received. See "File Amendments If Necessary" on page 28.*

## CHAPTER 8

# Termination and Debt Settlement

## 1. Committees with No Outstanding Debts

An SSF may terminate its registration and reporting obligations by filing a termination report, provided that:

- The committee no longer intends to receive *contributions* or make *expenditures*;
- Neither the committee seeking to terminate nor any *affiliated* committee has any outstanding debts or obligations (102.3); and
- The committee is not involved in an enforcement action (*MUR*), an audit or litigation with the FEC.

### Termination Report

When filing a termination report, the treasurer checks the "Termination Report" box on Line 4(a) of the Summary Page of Form 3X.

The termination report must disclose:

- All receipts and disbursements not previously reported, including an accounting of debt retirement; and
- The purposes for which any remaining SSF funds will be used.

102.3(a). The committee's reporting obligation ends when the Commission notifies the committee that the termination report has been accepted.

### Disposal of Remaining Funds

An SSF may use its remaining funds for any lawful purposes, including turning them over to the connected organization's treasury, refunding them to their donors or giving them to charity. See AOs 1986-32, 1983-4 and 1979-42.

## 2. Committees with Outstanding Debts: Debt Settlement

### Eligibility for Debt Settlement

A committee that has outstanding debts but wants to terminate may settle its debts for less than the full amount owed to the creditors. This option is available only to a *terminating committee*—i.e., a committee which no longer intends to support candidates and which receives *contributions* and makes *expenditures* only for the purpose of paying winding-down *administrative expenses* (if any) and retiring debts. 116.1(a) and 116.2(a).

(An *ongoing committee*—i.e., an SSF that does not qualify as a terminating committee—is not eligible for debt settlement and must continuously report debts until they are extinguished. 104.3(d), 116.1(b) and 116.2(b).)



### Debt Settlement Rules

A commercial vendor (incorporated or unincorporated) may forgive or settle debts owed by an SSF without incurring a contribution if:

- Credit was initially extended in the ordinary course of business;
- The SSF undertook all reasonable efforts to satisfy the outstanding debt, such as fundraising, reducing overhead costs and liquidating assets; and
- The vendor made the same efforts to collect the debt as those made to collect debts from a nonpolitical debtor in similar circumstances. Remedies might include, for example, late fee charges, referral to a debt collection agency or litigation.

116.4(d)(1) and (2).

### Creditor's Rights

No commercial vendor or other creditor is required to forgive or settle debts owed by SSFs. 116.4(e). A creditor is also not required to pursue activities that are unlikely to result in the reduction of the debt.

### Debt Settlement Plans

Once a *terminating* SSF has reached an agreement with a creditor, the treasurer should file a debt settlement plan on FEC Form 8. The treasurer may use a separate form for each debt or may combine several debt settlements in one plan.

### Debts Subject to Settlement

The types of debts that are subject to debt settlement requirements include:

- Amounts owed to commercial vendors;
- Salary owed to SSF employees (if the SSF uses its own funds to pay salaries); and
- Loans owed to *political committees* or individuals, including *candidates*.

116.7(b).

### Debts Not Subject to Settlement

The debt settlement rules do not apply to *disputed debts*, which are covered by other rules. 116.7(c)(2). See below. The rules also do not apply to *bank* loans.

### Completing Form 8

Step-by-step instructions for completing Form 8 can be found on the back of the form. The treasurer must sign and date the first page.

## Commission Review

The Commission reviews each debt settlement plan to ensure compliance with the rules discussed above. Once the plan has been approved, the Commission sends a written notification to the committee.

The committee must postpone payment to the creditor until the Commission has completed its review of that plan. 116.7(a).

## Reporting Debts Undergoing Settlement

### General Rule

Debts undergoing settlement must be continuously reported until the Commission has completed its review of the committee's debt settlement plan. The committee may file a termination report once all debts have been paid, settled, forgiven or otherwise extinguished. Payments to creditors should be disclosed on this report. 116.4(f).

### Disputed Debts

A *disputed debt* is a bona fide disagreement between the creditor and the committee as to the existence of a debt or the amount owed by the committee. See Chapter 7 for information on how to report a disputed debt on Schedule D.

When filing a debt settlement plan, a terminating committee must describe any disputed debts and the committee's efforts to resolve them on Part III of Form 8. Disclosure of a disputed debt does not constitute an admission of liability or a waiver of any claims the SSF may have against the creditor. 116.10(a).

## 3. Committees with Outstanding Debts: Administrative Termination

An inactive SSF that wants to terminate but still has outstanding debts must make efforts to settle the debts under the procedures described above. If debt settlement efforts fail, however, such a committee may seek administrative termination by the FEC. (The Commission may also, at its own initiative, administratively terminate a committee's reporting status.)

### Criteria for Administrative Termination

When determining a committee's eligibility for administrative termination, the Commission will consider the following factors:

- The SSF is not involved in any matter before the Commission (such as a MUR or an audit).
- The SSF's aggregate reported financial activity in one year is less than \$5,000.
- The SSF's reports disclose no receipt of contributions for the previous year.
- The SSF's last report disclosed minimal expenditures.
- The SSF's primary purpose for filing its reports has been to disclose outstanding debts and obligations.
- The committee has failed to file reports for the previous year.
- The SSF's last report disclosed that the debts owed to the committee were not substantial.
- The committee's outstanding debts and obligations do not appear to present a possible violation of the *Act's* contribution prohibitions and limitations.
- The SSF's outstanding debts and obligations exceed the total of the committee's reported cash on hand balance.

102.4(a) and FEC Directive 45, available from the Public Records Office.

### Procedures for Requesting Administrative Termination

When requesting administrative termination, the SSF's treasurer should set forth the committee's eligibility in writing,

based on the factors listed above. 102.4(b). In addition, with respect to any outstanding debts, the committee's request should describe:

- The terms and conditions of the initial extension of credit;
- Steps taken by the committee to repay the debt; and
- Efforts made by the creditors to obtain payment.

Requests should be addressed to the Reports Analysis Division.

Once the Commission completes its review of the request, the committee will be sent a written notification of the Commission's approval or disapproval. Committees must continue to file regular reports until the request for administrative termination has been approved.

For more information, see FEC Directive 45.

# TWO

## OTHER ACTIVITIES

**C**orporations and labor organizations are generally prohibited from using their treasury funds to make *contributions* or *expenditures* in connection with a federal election or campaign. 2 U.S.C. §441b. (There is a limited exception for *Qualified Nonprofit Corporations*. See p. 32.) However, corporations and labor organizations may undertake other activities that, because they are outside *the Act's* definitions of contribution and expenditure, are allowed by the Act and Commission Regulations. This part discusses two broad areas of permissible activity: Communications and Use of Facilities.

### CHAPTER 9

## Communications

### 1. Introduction: Basic Terms

While *corporations* and *labor organizations* may pay for certain election-related communications, the content of those communications is determined by the audience for which they are intended. When a corporation or labor organization communicates with its *restricted class* (as defined below), it may issue communications that contain *express advocacy* (candidate advocacy) and solicitations for candidates and parties, and it may *coordinate* its communications with the candidate. However, when those organizations communicate with an audience that is beyond its restricted class, *express advocacy* (candidate advocacy) or *coordination* with the candidate (beyond that coordination specifically permitted by the Regulations) will result in a prohibited expenditure or contribution. The following paragraphs define several terms that are key to understanding corporate/labor communications.

#### Restricted Class

**Corporations and Labor Organizations**  
For purposes of sending communications, the restricted class of corporations (except trade associations) and labor organizations includes the same people who may be solicited for contributions to the corporation/labor organization's separate segregated fund. See Chart, page 61 and Chapter 3.

#### Trade Associations

For purposes of communications, the trade association's restricted class is comprised of:

- Noncorporate members and their families;
- In the case of corporate members, the individual corporate representatives

with whom the trade association normally conducts the association's activities (114.8(h)); and

- Executive and administrative personnel and their families. 114.8(l).

See Chart, page 61.

#### Express Advocacy

Express advocacy (candidate advocacy) is a communication directly advocating the election or defeat of a clearly identified federal candidate. Express advocacy (candidate advocacy) can be accomplished either by using certain "explicit words of advocacy of election or defeat" or by structuring the message in such a manner that reasonable minds could not differ as to the advocacy of the message. See page 31.

#### Coordination with Candidate

##### Communications with the Restricted Class

Communications to the restricted class may be coordinated with the candidate. 114.3(a)(1). See "What Constitutes Coordination" below. While coordination does not transform the restricted class communication into an in-kind contribution, it may jeopardize the independence of future communications to those outside the restricted class by the corporate/labor organization or its SSF. 100.23 and 114.2(c).

##### Communications Beyond the Restricted Class

When making a communication beyond the restricted class, corporations and labor organizations may consult with the candidate only to the extent expressly permitted in FEC Regulations and explained below. Coordination may result in a prohibited corporate or labor in-kind contribution. 100.23(c).

##### Coordinated General Public Political Communications

A communication is a coordinated expenditure and counts as an in-kind contribution if it:

- Qualifies as a General Public Political Communication (GPPC) (see below);
- Is Coordinated with the candidate, party or their agents (see below);

## DEFINITION OF RESTRICTED CLASS

	Corporations	Labor Organizations	Membership Organizations	Trade Associations
<b>Solicitation for SSF</b>	<ul style="list-style-type: none"> <li>• Executive and Administrative Personnel and Families</li> <li>• Stockholders and Families</li> </ul>	<ul style="list-style-type: none"> <li>• Executive and Administrative Personnel and Families</li> <li>• Members and Families</li> </ul>	<ul style="list-style-type: none"> <li>• Executive and Administrative Personnel and Families</li> <li>• Noncorporate Members and Families</li> </ul>	<ul style="list-style-type: none"> <li>• Executive and Administrative Personnel and Families</li> <li>• Noncorporate Members and Families</li> <li>• With Prior Approval, Corporate Members' Executive and Administrative Personnel and Families</li> </ul>
<b>Express Advocacy Communication or Solicitation for Candidate or Party</b>	<ul style="list-style-type: none"> <li>• Same as Above</li> </ul>	<ul style="list-style-type: none"> <li>• Same as Above</li> </ul>	<ul style="list-style-type: none"> <li>• Same as Above <sup>1</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Executive and Administrative Personnel and Families</li> <li>• Noncorporate Members and Families</li> <li>• Individuals, Representing Corporate Members, with Whom the Association Normally Conducts Association Business <sup>2</sup></li> </ul>

1. In Advisory Opinion 1996-21, the Commission allowed a membership organization (that was not a trade association) to send an express advocacy communication to the individuals, representing corporate members, with whom it normally conducted association business. The communication contained a solicitation for contributions to a candidate. The Commission allowed the communication because the average number of representatives per member was two. The Commission determined that in this case the number of employees of the corporate members who would receive the communication was reasonable and consistent with the purposes of 114.8(h).
2. Note that the association may request that the corporate representatives distribute the communication to the member's restricted class. AO 1991-24.

- Mentions a Clearly Identified Federal Candidate (see below); and
  - Is paid for by a person other than a candidate, a political party or their agents.
- 100.23

### General Public Political Communication (GPPC)

A communication qualifies as a GPPC if it is intended for an audience of over 100 people and is made through a broadcasting station (including a cable television operator), newspaper, magazine, outdoor advertising facility, mailing or any electronic medium, including the Internet or on a web site. 100.23(e)(1).

### What Constitutes Coordination

A GPPC is coordinated with the candidate, the party or their agents when it is *created, produced or distributed*:

- At the request or suggestion of the candidate, party or their agents;
- After the candidate or party has exercised control or decision-making authority over the *details of the communication* (see below); or
- After substantial discussion or negotiation, resulting in collaboration or agreement, between the communicator (e.g., the creator, producer, distributor or the person paying for the communication) and the candidate or party concerning the *details of the communication* (see below).

100.23(c)

### Exception: Candidate's Response to Inquiry

A candidate's or party's response to an inquiry regarding the candidate's or party's position on legislation or policy does not alone constitute coordination. 100.23(d).

### Details of the Communication

Details of the communication include the content, timing, location, mode, intended audience, volume of distribution or the frequency of placement of that communication.

**Clearly Identified Federal Candidate**

A communication references a clearly identified federal candidate when it contains the candidate's name, nickname, photograph, drawing or title or makes unambiguous reference to his/her status as a candidate. 100.23(e)(2).

## 2. Paying for Communications to the Restricted Class

Either the connected organization or its SSF may pay for communications to the restricted class.

**Connected Organization Pays**

When the connected organization pays for such communications, it (rather than the SSF) must report the payments on FEC Form 7, once the payments exceed \$2,000 for a particular type of election (e.g., all primary elections). The payments are not considered contributions. 100.8(b)(4)(v) and 104.6(a).

**SSF Pays**

In an advisory opinion, the Commission permitted the SSF of a membership organization to pay for a candidate appearance—a type of communication to the restricted class. The payment was not considered a contribution and the SSF had to report it as “other disbursements” on FEC Form 3x. For any payments requiring itemization on Schedule B, the SSF was to:

- Describe the type of expense;
- Name the candidate making the appearance;
- Indicate that the payment was for an internal communication; and
- Cite the advisory opinion on the report. The \$2,000 reporting threshold (for filing Form 7) did not apply. AO 2000-3.

## 3. Candidate and Party Appearances

Corporations and labor organizations may sponsor an appearance by a candidate, a candidate's representative or a party representative. The preparations and activities undertaken by the corporation or labor organization in connection with the appearance vary with the type of audience. The three types of audience are:

- The *restricted class* of the corporation or labor organization;
- Other employees and their families; and
- The general public.

The rules for candidate and party representative appearances before each type of audience are discussed below.

### Appearances Before Restricted Class

**Location of Appearance**

The corporation or labor organization may allow the appearance at a meeting, at a convention or at some other function. 114.3(c)(2)(i).

**Express Advocacy**

Both the candidate/party representative and the corporation or labor organization may expressly advocate the election or defeat of the candidate, other candidates or the party. 114.3(c).

**Coordination with the Candidate**

The corporation or labor organization may confer with the candidate/party representative on the structure, format and timing of the appearance. However, coordination with the candidate/party representative may compromise the independence of future communications to individuals beyond the restricted class by either the corporate/labor organization or its SSF. See “What Constitutes Coordination” above. 100.23(c), 114.2(c), 114.3(a) and (c)(2).

**Solicitation by the Candidate**

The candidate/party representative may solicit and accept contributions before, during or after the appearance. This includes leaving telephone numbers, addresses and mailing envelopes at the appearance site. 114.3(c)(2)(ii).

**Solicitation by the Corporation or Labor Organization**

The corporation or labor organization may, at a candidate/party representative appearance, solicit contributions for a candidate/party from the restricted class.

*Contributions Sent Directly to Candidate/Party.* The corporation or labor organization can instruct the audience to send their contributions directly to the candidate/party if they follow these guidelines:

- The corporation/labor organization's directors, officers and other representatives may not collect contributions before, during or after the appearance; and
- The corporation or labor organization may provide the address but it may not provide stamps or envelopes addressed to the candidate(s)/party(ies). 114.3(c)(2)(iii).

*Contributions Earmarked Through the SSF.* In addition to soliciting contributions to be sent directly to the candidate/party, a corporation or labor organization may solicit contributions earmarked for a particular candidate. These earmarked contributions must be collected by and forwarded through the separate segregated fund (SSF) of the corporate/labor organization and must be considered contributions both to and from the SSF. They will count, therefore, against the limits of both the contributor and the SSF. For information on SSF solicitation and collection of earmarked contributions, see page 30. 114.2(f)(2)(iii).

**Presence of People Outside the Restricted Class**

The corporation or labor organization may, to a limited degree, allow the attendance of the following individuals who are outside the restricted class:

- Employees who are outside the restricted class but who are necessary to administer the meeting;
- Other guests who are being honored, are speaking or are participating in the event; and
- News media (see Media Coverage, below). 114.3(c)(2)(i) and (iv).

**Appearances by Other Candidates/ Party Representatives**

Because the appearance is before the restricted class and express advocacy (candidate advocacy) is allowed, the corporation or labor organization may grant or deny other candidates and parties the opportunity to appear, as the organization desires. 114.3(c)(2)(i).

**Allowing Media Coverage**

If the corporation or labor organization allows more than one candidate for the same office to appear and permits the media to cover the appearance of one candidate, it must permit media coverage of the other candidate(s) for that office as well. Similarly, if one party's representative is permitted media coverage, then an appearance by any other party's representative must also be permitted media coverage. 114.3(c)(2)(iv). See also Media Coverage, page 65.

### Solicitations Made During Candidate Appearance Before Restricted Class

**Solicitations by Candidate**

The candidate/party representative may solicit and accept contributions before, during or after the appearance. This includes leaving telephone numbers, addresses and mailing envelopes at the appearance site. 114.3(c)(2)(ii).

### **Solicitations by Connected Organization: Contributions Sent Directly to Candidate/Party**

The corporation or labor organization may, at a candidate/party representative appearance, solicit contributions for a candidate/party from the restricted class. The corporation or labor organization can ask the audience to send their contributions directly to the candidate/party if they follow these guidelines:

- The corporation/labor organization's directors, officers and other representatives may not collect contributions before, during or after the appearance; and
- The corporation or labor organization may provide the address but it may not provide stamps or envelopes addressed to the candidate(s)/party(s), or other similar items that would facilitate the transmission of contributions. 114.3(c)(2)(iii) and 114.2(f)(2)(ii).

### **Solicitations by Connected Organization: Contributions Earmarked Through the SSF**

In addition to soliciting contributions to be sent directly to the candidate/party, a corporation or labor organization may solicit contributions earmarked for a particular candidate. These earmarked contributions must be collected by and forwarded through the separate segregated fund (SSF) of the corporate/labor organization (rather than through the organization itself) and must be considered contributions both to and from the SSF. They will count, therefore, against the limits of both the contributor and the SSF. For more information on SSF solicitation and collection of earmarked contributions, see page 30. 114.2(f)(2)(iii).

## **Reporting Appearances Before the Restricted Class<sup>1</sup>**

### **When Reporting Required**

Corporations and labor organizations must report disbursements for communications to the restricted class if:

- The communication (e.g., appearance) contains express advocacy (candidate advocacy) (Note, however, if the communication is primarily devoted to subjects other than express advocacy (e.g., issue advocacy), then no reporting is required.); and
- The costs for a particular type of election (e.g., all primary elections aggregate over \$2,000.

If the above two criteria are met, the cor-

poration or labor organization must report the costs of the communications on FEC Form 7. 104.6(a).

### **Frequency**

FEC Form 7 must be filed quarterly during a calendar year in which a regularly scheduled general election is held, beginning with the first reporting period the aggregate costs for a particular type of election (e.g., all primary elections) exceed \$2,000. The corporation or labor organization must continue to file quarterly and pre-general election reports if it makes additional disbursements for communications (containing express advocacy) in connection with the same primary, general, special or run-off election. 104.6(b).

### **Content of Report**

For each communication the report must contain:

- The type of communication (e.g., direct mail, telephone, telegram);
- The date(s) of the communication;
- The candidate's name, office sought and whether the communication was for a primary or a general election;
- Whether the communication was in support of, or in opposition to, a particular candidate; and
- The cost of the communication. 104.6(c).

## **Exception When SSF Pays Costs**

Note, however, that communications costs (described in this chapter) that are paid for by the SSF (instead of the con-

nected organization) do not count as contributions or expenditures. In such instances, the SSF, rather than the connected organization, reports the communications costs as "other disbursements" (Form 3X, line 29), and the connected organization does not report the expense on Form 7. AO 2000-3.

## **Appearances Before All Employees and Their Families**

### **Who May Attend**

A corporation/labor organization may sponsor candidate/party representative appearances that are attended by all corporate/labor organization employees and their families, corporate stockholders or labor organization members and their families, as well as other honored guests, speakers, participants and the news media (if invited). 114.4(b)(1).

### **Location of Appearance**

The corporation or labor organization may allow the appearance at a meeting, at a convention or at some other function. 114.4(b)(1) and (2).

### **Express Advocacy**

The candidate may expressly advocate his/her election, but the corporation or labor organization may not; nor may it encourage its employees to do so. Such express advocacy (candidate advocacy) by the corporation or labor organization to an audience beyond the restricted class will result in a prohibited corporate/labor organization contribution to the candidate or party. 114.4(b)(1)(v) and (b)(2)(ii).

### **Coordination with the Candidate**

The corporation or labor organization may coordinate with the candidate/party representative concerning the timing, structure and format of the appearance and on the candidate's position on issues. Coordination regarding the campaign's plans, projects and needs, however, will result in a prohibited in-kind contribution. See "What Constitutes Coordination" above. 100.23(c), 114.2(c) and 114.4(b)(1)(vii).

### **Solicitation by the Candidate/Party Representative**

While attending the event, the candidate/party representative may solicit but may not accept contributions before, during or after the appearance. The candidate/party representative may, however, leave

1. These reporting requirements also apply to *Distribution of Publications to Restricted Class* on page 65.

envelopes and campaign materials for members of the audience. 114.4(b)(1)(iv) and (b)(2)(i).

### **Solicitation by the Corporation or Labor Organization**

The corporation (any employees) or labor organization (any officials, members or employees) may not solicit, direct or control contributions in conjunction with any candidate or party appearance before those outside the restricted class. 114.4(b)(1)(iv) and (b)(2)(i).

### **Equal Opportunity**

The organization also must allow other candidates for the same office to appear, if they request to do so. The following guidelines apply:

- If a candidate for the House or Senate is allowed to make an appearance, all other candidates for that seat must be given a similar opportunity, upon request. 114.4(b)(1)(i).
- If a Presidential or Vice Presidential candidate is allowed to make an appearance, all candidates for that office meeting the pre-established objective criteria for candidate debates under 110.13 must be given a similar opportunity, upon request. 114.4(b)(1)(ii). See also "Public Debates," this page.
- If representatives of a political party are allowed to make an appearance, representatives of all political parties that either had a candidate on the ballot in the last general election, will have a candidate on the ballot in the next general election or are actively engaged in placing a candidate on the ballot in the next general election must be given a similar opportunity upon request. 114.4(b)(1)(iii).
- The term "similar opportunity" means similar circumstances and amount of time for the appearances, except if such similarity is clearly impractical. 114.4(b)(1)(vi).

### **Appearances Before the General Public**

Corporate/labor-sponsored appearances by a candidate or party representative before the general public are divided into three categories:

- Noncampaign-related appearances;
- Public debates; and
- Public appearances at educational institutions.

These three categories are discussed below.

### **Officeholder/Professional Appearance at Corporation or Labor Organization**

Under certain circumstances, a corporation or labor organization may sponsor an appearance by a candidate before the general public. AOs 1999-2, 1996-11 and 1992-6. This type of appearance can occur under the following circumstances:

#### **Speaker Not Appearing as Candidate**

The speaker is NOT appearing in his capacity as a Federal candidate but rather as a current Federal officeholder or as a lecturer.

#### **Issue Topics**

The speaker may speak about issues of interest to the sponsoring organization, including legislative issues, but must avoid reference to the campaign.

#### **No Express Advocacy**

Neither the speaker nor the corporation or labor organization may expressly advocate the election or defeat of a clearly identified candidate.

#### **No Solicitation**

Neither the speaker nor the corporation or labor organization may solicit contributions before, during or after the event.

#### **Similar Opportunity Not Required**

Corporations and labor organizations need not provide other candidates with similar opportunities to speak because the speaker is appearing in his/her professional capacity rather than as a candidate.

#### **Proximity to Election Day**

The appearance may occur at any time, even shortly before an election, because the speaker is not appearing to promote his/her candidacy.

#### **Press Coverage**

The speaker may participate in a press conference at or near the site of the event. The speaker may speak at the press conference regarding the issues discussed at the event under the following conditions:

- The sponsoring organization may identify—but may not use the press conference to endorse—the speaker as a candidate.
- Neither the speaker nor the sponsoring organization may expressly advocate the election or defeat of any candidate during the press conference.
- The disbursements for the press conference must be *de minimis*. That means that the sponsoring organization

may contact only those news organizations it customarily contacts when holding press conferences for other purposes.

#### **Payment of Travel Expenses**

The sponsoring organization may pay the speaker's travel expenses as long as no part of the his/her trip is campaign related. If any campaign-related activity is conducted at a stop, the entire stop is campaign related and travel expenses cannot be paid by the sponsoring organization.<sup>2</sup> AO 1996-11.

### **Public Debates**

#### **Sponsorship**

Candidate debates may be sponsored by a broadcaster, a bona fide newspaper, a magazine or other periodical publication, or a tax-exempt nonprofit organization (a 501(c)(3) or 501(c)(4) organization) that neither supports nor opposes any candidate or party. 110.13(a) and 114.4(f)(2).

#### **Corporate Donations**

A corporation or labor organization may donate funds to a tax-exempt nonprofit organization (a 501(c)(3) or 501(c)(4) organization) that neither supports nor opposes any candidate or party to defray the cost of staging a candidate debate. 114.4(f)(3) and 114.4(f)(1).

#### **Debate Structure**

The debates must be structured such that they do not promote or advance one candidate over another; and they must include at least two candidates, meeting face to face. 110.13(b).

#### **Candidate Selection**

The organization staging the debate must select the candidates based on pre-established objective criteria. For primary elections, the organization may restrict candidates to those seeking the nomination of one party. For general elections, the staging organization may not use nomination by a particular party as the sole objective criterion. 110.13.

2. In AO 1996-11, the corporation sponsoring the appearances of two officeholders who were running for re-election could not pay the officeholders' travel expenses because the organization had knowledge that the officeholders' campaigns were planning campaign-related events at the site of the appearance. Payment of their travel expenses would have constituted a prohibited corporate contribution.



## Appearance at Educational Institutions

Any school, college or university (incorporated nonprofit tax exempt "private" school<sup>3</sup> or unincorporated tax exempt "public" school ) may make its facilities available to any candidate/political committee or, in some cases, political party representatives. The institution may make its facilities available at either the usual and normal cost for campaign events or at a discount or for free for academic events. Note that if the institution makes its facilities available at a discount or for free, it must make reasonable efforts to ensure that the appearance does not constitute a campaign appearance or event. The following paragraphs further explain this concept.

### Facility Rental for Campaign Events: Usual and Normal Fee

Any school, college or university may make its facilities available to any candidate/political committee in the normal course of business for the usual and normal rental fee. 110.12 and 114.4(c)(7)(i).

### Facility Use for Academic Events: Discount or for Free

Any public or private educational institution may allow groups associated with the institution to invite candidates/political party representatives to address students, faculty, the academic community and the general public on the institution's premises for free or at a discounted cost provided it:

- Makes reasonable efforts to ensure that the appearances constitute communications in an academic setting (speeches, question and answer sessions) and are not conducted as campaign rallies or events;
- Does not expressly advocate the election or defeat of any clearly identified candidate(s) or any candidates of a clearly identified political party; and
- Does not favor any one candidate or party over any other in allowing such appearances. 110.12 and 114.4(c)(7)(ii).

### Hosting Candidate Debates

Educational institutions may also host candidate debates, as described above.

## Hosting Officeholder/Professional Appearances

Educational institutions may also host officeholder/professional appearances as described above.

## Media Coverage

Corporations and labor organizations may invite the media to cover any of the appearances discussed above. However, if any media coverage occurs, the corporation or labor organization must give equal access to all news media representatives. This means providing to its customary media contacts advance information regarding the appearance and allowing all representatives of news media to cover the event, using a pooling arrangement if necessary. 114.3(c)(2)(iv) and 114.4(b)(1)(viii). See also Endorsements, page 66.

## 4. Publications

A corporation or labor organization may distribute publications (e.g., print, broadcast, video, computer based materials) to its restricted class and to the general public. As with campaign appearances, however, the rules are more restrictive for distributing publications to the general public than to the restricted class. The rules for distributing publications to both audiences are discussed in greater detail below. See also AOs, 1999-25, 1997-16 and 1996-21.

### Distribution of Publications to Restricted Class

#### Express Advocacy

A corporation or labor organization may distribute publications to its restricted class on any subject. This includes publications expressly advocating the election or defeat of a clearly identified candidate(s) or a party's candidate. 114.3(a).

#### Coordination with Candidate or Political Party

The corporation or labor organization may discuss campaign issues at length with the candidate or political party; however, discussion concerning how to contour a communication for the benefit of the campaign would constitute coordi-

nation and may jeopardize the independence of future corporate/labor organization communications to individuals beyond the restricted class. See "What Constitutes Coordination" above. 100.23(c) and 114.3(a). See also AO 1996-1.

#### Solicitation

The material may solicit contributions for a candidate or a party. The rules for soliciting contributions from the restricted class through a publication are the same as those for soliciting during a candidate appearance before the restricted class. See page 62. 114.2(f)(4)(ii).

#### Content

The publication must communicate the views of the corporation or labor organization and must not be a republication or reproduction of the candidate's campaign materials including broadcasts and written or graphic materials. The corporation or labor organization may, however, use brief quotations from candidate materials and speeches that demonstrate the candidate's position as part of the corporation's or labor organization's expression of its own views. 114.3(c)(1)(ii).

#### Reporting Requirements

Disbursements for communications to the restricted class that aggregate over \$2,000 for a particular type of election (e.g., all primary elections) must be reported if the communications contain express advocacy (candidate advocacy) and are not primarily devoted to other subjects. See Reporting Appearances Before the Restricted Class, page 63, for specific requirements and processes. 104.6.

### Distribution of Publications to General Public: General Guidelines

#### No Express Advocacy

A corporation or labor organization may distribute certain publications to the general public as long as the publications do not expressly advocate the election or defeat of a clearly identified candidate or the candidates of a clearly identified party.

#### No Coordination

Except as discussed below, the publications may not be coordinated with any candidates or political parties. This action would result in a prohibited corporate or labor in-kind contribution. See "What Constitutes Coordination" on page 61.

3. Tax exempt nonprofit institutions are advised to review the Internal Revenue Service requirements regarding the effect of political activity and continuing nonprofit status.

### No Solicitation

Additionally, the publications may not solicit contributions for a candidate or party. This action would result in a prohibited corporate or labor contribution or expenditure.

### Voting Records of Incumbent Candidate

A corporation or labor organization may distribute the factual voting records of incumbent candidates on legislative matters.

### No Express Advocacy

Neither the voting records nor any accompanying materials may expressly advocate the election or defeat of a clearly identified candidate(s) or the candidates of a clearly identified party. 114.4(c)(4).

### No Coordination

Decisions as to content and distribution of a voting record must be made by the corporation or labor organization without coordination with the candidate or political party. See "What Constitutes Coordination" on page 61. 100.23(c) and 114.4(c)(4).<sup>4</sup>

### Voter Guides

Voter guides are publications consisting of candidates' positions on campaign issues. Corporations and labor organizations may obtain and distribute voter guides prepared by nonprofit (26 U.S.C. §501(c)(3) or (c)(4)) organizations or they may prepare and distribute their own voter guides. See also "Nonpartisan Candidate Information on the Internet" below.

There are two types of voter guides that corporations/labor organizations can develop: 114.4(c)(5).

- One is based solely on news articles, voting records or other noncampaign sources (Type 1). 114.4(c)(5)(i).
- The other is based on written answers to questions submitted in writing by the organization to the candidates (Type 2). 114.4(c)(5)(ii).

4. In June 1997, the First Circuit Court of Appeals, in *Clifton v. FEC* (114 F.3d 1309 (1st Cir. 1997)) found this portion of the voting record regulation "invalid insofar as it prohibits mere inquiries to candidates" (for example, seeking an explanation on conflicting votes).

### Rules for Preparing and Distributing Either Type of Voter Guide

- Their preparation and content may not be based on consultation or coordination with the candidates (except that receiving answers to prepared questions for Type 2 Guides is permissible). See "What Constitutes Coordination" on page 61. 100.23(c).<sup>5</sup>
- Distribution of the guides may not be coordinated with the candidate. 100.23(c).
- The guides must include at least two candidates in the same election.
- The guides cannot contain *express advocacy* (candidate advocacy).
- They may include biographical information such as education, employment, offices held and community involvement. 114.4(c)(5)(i).

### Further Rules for Preparing and Distributing Type 2 Voter Guides

Type 2 Voter Guides are subject to the following further restrictions:

- No candidate's response may receive greater prominence or substantially more space than any other candidate's response. 114.4(c)(5)(ii)(C).<sup>6</sup> All candidates for a particular Congressional seat must receive the written questions and must be given equal opportunity to respond. 114.4(c)(5)(ii)(B).<sup>6</sup>
- Questions must be sent, in the case of the primary elections, to all Presidential candidates in one party; and, for the general election, to all on the ballot in the state where the guides are distributed or to those candidates who are on the ballot in enough states to win a majority of electoral votes. All of these candidates must be given equal opportunity to respond. 114.4(c)(5)(ii)(B).
- The guides may not contain an electioneering message. 114.4(c)(5)(ii)(D).<sup>6</sup>
- The guides may not contain scores or

5. In June 1997, the First Circuit Court of Appeals, in *Clifton v. FEC* (114 F.3d 1309 (1st Cir. 1997)) found this portion of the voting record regulation "invalid insofar as it prohibits mere inquiries to candidates" (for example, seeking an explanation on conflicting votes).

6. In June 1997, the First Circuit Court of Appeals, in *Clifton v. FEC* (114 F.3d 1309 (1st Cir. 1997)) found invalid the voter guide regulation "only insofar as it limits any contact with candidates to written inquiries and replies and imposes an equal space and prominence restriction." The court remanded to the district court the issue of whether the part of the regulation prohibiting an "electioneering message" is unconstitutionally vague. The district court declared the electioneering message provision governing voter guides to be invalid because it was unseverable from those struck down by the appeals court. (96-66-P-H (D. Maine 1998)).

ratings of responses in such a way as to convey an electioneering message. 114.4(c)(5)(ii)(E).

### Nonpartisan Candidate Information on the Internet

In Advisory Opinions 1999-25 and 1999-24, the Commission allowed nonprofit corporations and a nonpartisan LLC (treated as a partnership for tax purposes and not affiliated with any political action committee, candidate or party) to place on their Web sites material containing information provided by candidates about their positions on issues. The Commission determined that the Web sites constituted exempt nonpartisan political activities designed to encourage individuals to vote or to register to vote. 2 U.S.C. §431(9)(B)(ii). The Web sites fell within the exemption because, among other factors, they gave equal time and space on the site to all qualified candidates and did not:

- Attempt to determine the party or candidate preference of the viewers;
- Score or rate the candidates or expressly advocate their election or defeat; or
- Coordinate with the candidates.

## 5. Endorsements

A corporation or labor organization may endorse a candidate and may communicate the endorsement:

### To the Restricted Class

#### At Appearance by Candidate/Party Representative or in Publication

A corporation or labor organization may announce its candidate endorsement at an appearance by a candidate or party representative or in a publication to its *restricted class* (see pages 62, 65) (no more than a *de minimis* number of copies of the publication that includes the endorsement may be distributed beyond the restricted class). 114.4(c)(6). For examples, see AOs 2000-10, 1999-16, 1997-22, 1997-16, 1996-21 and 1996-1.

#### Reporting Requirements

Disbursements for communications to the restricted class that aggregate over \$2,000 for a particular type of election (e.g., all primary elections) must be reported if the communications contain express advocacy (candidate advocacy) and are not primarily devoted to other subjects. See Reporting Appearances

Before the Restricted Class, page 63 for specific requirements and processes. 100.8(b)(4) and 104.6.

## To the Public, by Press Release or Press Conference

### Usual Media Contacts

A corporation or labor organization may publicly announce an endorsement that has already been made, and it may state the reasons for it through a press release or a press conference, as long as the press release or notice of the press conference is distributed only to the organization's usual media contacts. 114.4(c)(6)(i).

### Coordination with the Candidate

The corporation or labor organization may communicate with candidates only for the purpose of deciding which, if any, candidate to endorse. For example, the corporation or labor organization may discuss issues with the candidate in determining whether or not to make an endorsement. The actual announcement may not be coordinated with the candidate, candidate's agents or the candidate's authorized committee. 114.4(c)(6)(ii). See also 100.23(c).

## 6. Registration and Get-Out-the-Vote Drives

### To the Restricted Class

#### Express Advocacy

Corporations and labor organizations may conduct voter registration and get-out-the-vote (GOTV) drives urging the restricted class to register with a particular party or to vote for a particular candidate. 114.3(c)(4).

#### Transportation

The corporation or labor organization may provide transportation to the place of registration or to the polls but cannot condition that service on support of a particular candidate or party. 114.3(c)(4).

#### Phone Banks

A corporation or labor organization may establish and operate phone banks to communicate with its restricted class, urging them to register and/or vote for a particular candidate or candidates or to register with a particular political party. 114.3(c)(3).

## Beyond the Restricted Class

### Express Advocacy

When registration and GOTV drives are directed to people outside the restricted class (other employees, their families and the general public), the corporation or labor organization may not expressly advocate the election or defeat of a clearly identified candidate or the candidates of a clearly identified party. 114.4(d)(1).

### No Coordination

Registration and GOTV drives beyond the restricted class cannot be coordinated with any candidate or any political party. 100.23(c) and 114.4(d)(2).

### No Targeting

The corporation or labor organization may not aim the drive primarily at those voters registered with, or intending to register with, the party favored by the corporation or labor organization. 114.4(d)(3).

### Services Available to Everyone

The services and voter information must be made available regardless of the voter's political preference. 114.4(d)(4).

### Written Notification

During the drive, the corporation or labor organization must provide written notice of the nonpreferential nature of the service to those who receive the information or assistance. 114.4(d)(6).

### Payments to Individuals Conducting the Activity

The corporation or labor organization may not pay the individuals conducting the drive based on the number of persons assisted who support a particular candidate or political party. 114.4(d)(5).

## 7. Voter Education

In addition to providing rules on voter drives, Commission Regulations apply to the dissemination of voter information.

### Voter Advertisements

A corporation or labor organization may pay for public advertisements urging voter registration and voting as long as they do not expressly advocate the election or defeat of a clearly identified candidate or party's candidate. The advertisement may not be coordinated with any candidate or political party. 100.23(c), 114.4(c)(2) and (3).

## Distribution of Official Voter Information

A corporation or labor organization may distribute voter information produced by official election administrators, as described below.

### Types

- Absentee ballots, if permitted by state law;
- Registration-by-mail forms; and
- Instructional materials. 114.4(c)(3)(i) and (ii).

### No Express Advocacy

The voter information may not contain express advocacy (candidate advocacy) and may not encourage registration with a particular party. 114.4(c)(3)(iv).

### No Coordination

Corporations and labor organizations may not coordinate the content, reproduction or distribution of the information with any candidate or political party. 100.23(c) and 114.4(c)(3)(v).

## Donations for Official Publications

The corporation or labor organization may make a donation to State and local government agencies administering the elections to help defray the costs of printing or distributing registration or voting information and forms. 114.4(c)(3)(iii).

## 8. Exception: Independent Expenditures by Qualified Nonprofit Corporations

There is one very limited exception to the Act's prohibition on corporate and labor organization independent expenditures. A Qualified Nonprofit Corporation (QNC) may make independent expenditures that support (or oppose) clearly identified federal candidates. Such independent expenditures by QNCs are not subject to the prohibition on corporate expenditures in 2 U.S.C §441b. 114.10 and 114.2(b). This very limited exception is explained on page 32.

# CHAPTER 10 Use of Resources and Facilities

Under certain circumstances, corporations (including incorporated membership and trade associations) and labor organizations may allow candidates, political committees and individuals to use their resources and facilities (e.g., computers, phones, office equipment, furniture and rooms) in connection with federal elections. Described below are rules that apply to the use of facilities; note particularly when the user must reimburse the organization and when payment must be made in advance of the facility use.

This section does not apply to the use of an organization's facilities for the purpose of administering an SSF or raising funds for it. See pages 13 and 24.

## 1. Individual Volunteer Activity

### Incidental Use

Corporate employees and stockholders and labor organization employees, members and officials may make occasional, isolated or incidental use of corporate/labor organization facilities for their own individual volunteer activities in connection with a federal election. Note that the Commission has said that the use of facilities during one hour per week or four hours per month is considered "incidental use" Note, however, that this safe harbor does not apply when the employee is asked by a superior to do the volunteer work as a part of his/her regular duties. 114.2(f)(2)(i)(A). See Use of Staff, this page.

### Reimbursement

#### Incidental Use

When the individual's use of the facilities is occasional, isolated or incidental, the individual must reimburse the organization to the extent that his/her activity increased the corporate/labor organization's overhead or operating costs. 114.9(a)(1) and (b)(1).

### Activity Exceeding Incidental Use

When the individual's use of facilities exceeds the time frame of "incidental use," the individual must, within a commercially reasonable time, reimburse the corporation/labor organization for the usual and normal rental charge for facility use. 114.9(a)(2) and (b)(2).

## 2. Use in Fundraising

Corporations and labor organizations are generally prohibited from using their resources or facilities to engage in fundraising activities in connection with a federal election (except for fundraising for their own SSF—see Chapter 3. See also Appearances Before the Restricted

Class, Solicitation by the Connected Organization, page 63). There are, however, three narrow exceptions.

### Use of Staff

Corporate/labor officials or employees may direct subordinates to plan, organize or carry out fundraising as part of their work, using corporate/labor organization resources, only if the corporation or labor organization receives advance payment for the fair market value of the services, including compensation, benefits and overhead. However, using coercion to urge anyone to engage in fundraising on behalf of, or make a contribution to, a candidate or political committee is prohibited. 114.2(f)(2)(i)(A) and (iv). AO 1998-16.

## ADVANCE PAYMENT FOR USE OF RESOURCES AND FACILITIES

SCHEDULE B (FEC Form 3X) ITEMIZED DISBURSEMENTS		Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one)	PAGE 1 OF 1
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.		<input checked="" type="checkbox"/> 21b <input type="checkbox"/> 22 <input type="checkbox"/> 23 <input type="checkbox"/> 24 <input type="checkbox"/> 25 <input type="checkbox"/> 26 <input type="checkbox"/> 27 <input type="checkbox"/> 28a <input type="checkbox"/> 28b <input type="checkbox"/> 28c <input type="checkbox"/> 29		
NAME OF COMMITTEE (In Full) <b>Gold Nugget Corporation PAC</b>				
A. Full Name (Last, First, Middle Initial) <b>Gold Nugget Corporation</b>		Date of Disbursement MM / DD / YYYY <b>03 / 10 / 2002</b>		
Mailing Address <b>101 Commerce Road</b>		Amount of Each Disbursement this Period ----- <b>1000.00</b> -----		
City <b>Alexandria</b> State <b>VA</b> Zip Code <b>00000</b>		Purpose of Disbursement <b>Catering services</b> <b>011</b>		
Candidate Name <b></b>		Category/Type <b></b>		
Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		Disbursement For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼		
State: <b></b> District: <b></b>		Full Name (Last, First, Middle Initial) <b>Gold Nugget Corporation</b>		
B. Mailing Address <b>101 Commerce Road</b>		Date of Disbursement MM / DD / YYYY <b>03 / 11 / 2002</b>		
City <b>Alexandria</b> State <b>VA</b> Zip Code <b>00000</b>		Amount of Each Disbursement this Period ----- <b>-600.00</b> -----		
Purpose of Disbursement <b>Fundraiser (catering)</b> <b>011</b>		Candidate Name <b>Karl Midas</b>		
Office Sought: <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		Disbursement For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼		
State: <b>NY</b> District: <b>23</b>		Full Name (Last, First, Middle Initial) <b>Gold Nugget Corporation</b>		
C. Mailing Address <b>101 Commerce Road</b>		Date of Disbursement MM / DD / YYYY <b>03 / 11 / 2002</b>		
City <b>Alexandria</b> State <b>VA</b> Zip Code <b>00000</b>		Amount of Each Disbursement this Period ----- <b>-400.00</b> -----		
Purpose of Disbursement <b>Fundraiser (catering)</b> <b>011</b>		Candidate Name <b>John Rutherford</b>		
Office Sought: <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		Disbursement For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼		
State: <b>MN</b> District: <b>03</b>				

### Use of Customer/Client Lists

A corporation or labor organization may, in connection with a fundraiser, use the organization's lists of customers, clients or vendors or others not in the restricted class to send invitations or solicit contributions only if the organization receives advance payment for the fair market value of the lists. 114.2(f)(2)(i)(C).

### Use of Catering or Food Services

In connection with a fundraiser, the corporation or labor organization may operate or obtain catering or other food services only if the corporation or labor organization receives advance payment for the fair market value of the services. 114.2(f)(2)(i)(E).

### Advance Payment

#### In Advance

"In advance" means before the staff services, the lists or the catering services are provided.

#### Permissible Sources

Any person who is not otherwise prohibited from making a contribution in connection with a federal election (e.g., an individual, PAC or campaign) may make the advance payment. For example, the candidate, the organization's separate segregated fund, the party, or an individual may make the advance payment.

#### Effect on Contribution Limits

Payments by the candidate or the candidate's committee will be considered campaign expenditures. Payments by any other person will be considered in-kind contributions to the candidate, subject to limits and reporting requirements.

## 3. Use of Offices and Equipment

If a committee or individual other than an employee or stockholder of a corporation, or a member or official of a labor organization, uses the corporate/labor organization facilities in connection with a federal campaign, the user must reimburse the organization within a commercially reasonable time and at the usual and normal rental charge. Facilities used

## ADVANCE PAYMENT FOR USE OF RESOURCES AND FACILITIES (continued)

SCHEDULE B (FEC Form 3X) ITEMIZED DISBURSEMENTS		Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one)	PAGE 1 OF 1
<input type="checkbox"/>	21b	<input type="checkbox"/>	22	<input checked="" type="checkbox"/>
<input type="checkbox"/>	26	<input type="checkbox"/>	27	<input type="checkbox"/>
<input type="checkbox"/>		<input type="checkbox"/>	23	<input type="checkbox"/>
<input type="checkbox"/>		<input type="checkbox"/>	24	<input type="checkbox"/>
<input type="checkbox"/>		<input type="checkbox"/>	28a	<input type="checkbox"/>
<input type="checkbox"/>		<input type="checkbox"/>	28b	<input type="checkbox"/>
<input type="checkbox"/>		<input type="checkbox"/>	25	<input type="checkbox"/>
<input type="checkbox"/>		<input type="checkbox"/>	28c	<input type="checkbox"/>
<input type="checkbox"/>		<input type="checkbox"/>	29	<input type="checkbox"/>

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full)  
**Gold Nugget Corporation**

Full Name (Last, First, Middle Initial)  
**Committee to Elect Karl Midas**

Mailing Address  
**189 Victory Road**

City  
**Alexandria** State  
**VA** Zip Code  
**00000**

Purpose of Disbursement  
**In-kind (fundraiser/catering)** Category/Type  
**011**

Candidate Name  
**Karl Midas**

Office Sought:  House  Senate  President Disbursement For:  Primary  General  Other (specify) ▼

State: **NY** District: **23**

Date of Disbursement  
**03 / 11 / 2002**

Amount of Each Disbursement this Period  
**600.00**

---

NAME OF COMMITTEE (In Full)  
**John Rutherford 2002 Committee**

Full Name (Last, First, Middle Initial)  
**John Rutherford 2002 Committee**

Mailing Address  
**435 Monument Ave.**

City  
**St. Paul** State  
**MN** Zip Code  
**00000**

Purpose of Disbursement  
**In-kind (fundraiser/catering)** Category/Type  
**011**

Candidate Name  
**John Rutherford**

Office Sought:  House  Senate  President Disbursement For:  Primary  General  Other (specify) ▼

State: **MN** District: **03**

Date of Disbursement  
**03 / 11 / 2002**

Amount of Each Disbursement this Period  
**400.00**

for these purposes might include office space, telephones, computers, typewriters, copy machines and furniture. 114.9(d).

## 4. Meeting Rooms

### At Discount or for Free

A corporation or labor organization may offer its meeting rooms to a candidate or a political committee at a discount or for free if:

- It customarily makes the meeting rooms available to clubs, civic or community organizations or other groups at a discount or for free;
- It makes the meeting rooms available on the same terms given to the other groups using the meeting rooms; and
- It makes the meeting rooms available to any other candidate or political committee upon request. 114.13.

### At Normal and Usual Rental Charge

Alternatively, a corporation or labor organization may, at its discretion, rent its meeting rooms to a candidate or political committee provided the corporation or labor organization is reimbursed within a commercially reasonable time and at the usual and normal commercial rental rate. 114.2(f)(2)(B) and (D) and 114.9(d).

EXAMPLE: If Corporation XYZ allows a civic group to use its meeting rooms at a 20 percent discount from the usual and normal rental rate, Corporation XYZ may allow Candidate A to use the meeting rooms at the same 20 percent discount as is given to the civic group. If it allows Candidate A to rent the meeting rooms at the 20 percent discount, Corporation XYZ must allow any other candidates who so request to use the meeting rooms, and it must give them the same 20 percent discount.

Alternatively, if Corporation XYZ rents its meeting rooms to Candidate A at the usual and normal rental rate, it is not required to allow any other candidate to use the rooms.

## 5. Transportation

### Use of Corporate/Labor Airplane

A candidate, a candidate's agent or someone traveling on behalf of a candidate may, in connection with a federal election, use an airplane owned or leased by a labor organization or corporation that is not licensed to offer commercial service (i.e., that is not an "air carrier" under the Federal Aviation Administration rules). The user must pay the corporation or labor organization in advance of the trip according to the following rules:

#### Travel to City Regularly Served by Commercial Service

When traveling to a city with regularly scheduled commercial airline service, the campaign must pay the first class air fare rate; and

#### Travel to City Not Regularly Served by Commercial Service

When traveling to a city with no regularly scheduled commercial airline service, the campaign must pay the usual charter rate. 114.9(e)(1). See also AO 1999-13.

### Use of Other Transportation

If a candidate's campaign uses other means of transportation owned or leased by a corporation or labor organization, the campaign must reimburse the organization within a commercially reasonable time and at the usual rental charge. 114.9(e)(2).

## 6. Production of Campaign Materials

Any person using corporate/labor organization facilities to produce materials in connection with a federal election must reimburse the corporation or labor organization within a commercially reasonable period of time for the usual and normal charge for producing those materials in the commercial market. 114.9(c).

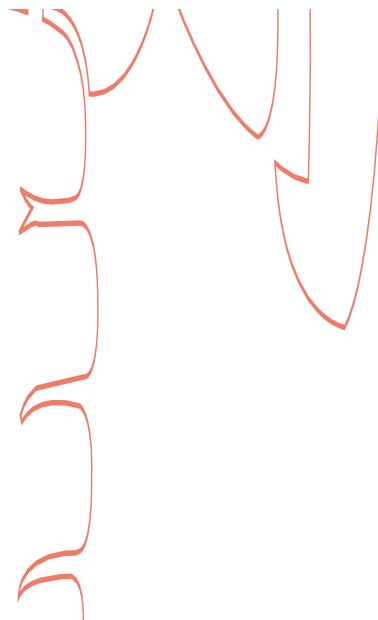
## CHAPTER 11 Other Uses of Treasury Funds

In addition to the communications described above, a *corporation or labor organization* may use its treasury funds for other activities affecting the political process at the federal level. These activities are not considered contributions, and they are not reportable by the organization that conducts them. Listed below are descriptions of these activities along with pertinent guidelines.

### 1. Legal and Accounting Services<sup>1</sup>

A *corporation or labor organization* may offer free legal and accounting services to *candidate committees, party committees* and other *political committees* provided that:

- The individual who performs the service is a regular employee of the organization;



1. This section does not limit the legal and accounting services that a connected organization may provide to its SSF for administration and solicitation purposes.

- The organization does not hire additional employees to enable the regular employees to provide the services;
- The services to candidate committees and other nonparty political committees are provided only for the purpose of helping them comply with the federal election campaign laws; and
- The services provided to political party committees do not directly further the election of candidates for federal office. 114.1(a)(2)(vi) and (vii).

Because recipient committees must report the value of donated legal and accounting services, the corporation or labor organization should provide committees with the following information: the cost of the services, the date they were performed and the name of the individual performing them. 104.3(h).

### 2. Donations to Nonfederal Candidates and Committees

A *corporation or labor organization* may make donations to nonfederal candidates and to organizations not involved in federal elections, if permitted by state law. However, national banks, federally chartered corporations and *foreign nationals* are prohibited from making *contributions* or *expenditures* in connection with state and local elections. 110.4(a) and 114.2(a).

### 3. Donations for Party Office Building

A *corporation or labor organization* may donate money or anything of value to a national or state *party committee* specifically for the purpose of constructing or purchasing a party office facility (but not for influencing a particular federal election). 114.1(a)(2)(ix). Building fund donations are not considered *contributions* and are not subject to limits. 100.7(b)(12). Also, the FECA allowance for corporate donations for party office buildings supersedes any state prohibition in these matters. AOs 1998-8, 1998-7 and 1997-14.

Building fund donations to national party committees that aggregate more than \$200 per year must be reported by the recipient committee. 104.8(f). See also AO 1991–5.

The building fund exemption does not cover expenditures for rent, operating costs, property taxes or other *administrative expenses* incurred by a party committee. See AOs 1998-8, 1998-7, 1997-14, 1988–12 and 1986–40.

In Advisory Opinion 2001-1, the Commission determined that the building fund exemption also covers compensation paid to a person who raises funds exclusively for the party's office building accounts.

## 4. Corporate Vendor Discounts

A corporate vendor of food and beverages may sell food and beverages, at cost, to a *candidate's* campaign or to a political *party committee*. The cumulative value of such discounts (i.e., the difference between the normal charge and the amount paid by the committee) may not exceed \$1,000 per *candidate*, per *election*, or \$2,000 annually on behalf of all *political committees* of the same party. 114.1(a)(2)(v).

Note that this rule does not apply to vendor discounts given in the ordinary course of business to political and non-political customers alike. There are no limits on such discounts. See AO 1989–14.

## 5. Employee Participation Plans

A *corporation* or *labor organization* may set up a political giving program for its employees. Such a program is often called an employee participation plan or a trustee plan.

## What the Plan Involves

The corporation or labor organization pays for the costs of establishing and administering employee bank accounts and for operating a payroll deduction or checkoff plan. Any individual employee who wishes to participate diverts part of his or her payroll funds into a separate account in his or her name, from which he or she makes *contributions*.

## Guidelines for Establishing Plan

An employee participation plan must conform to the following guidelines:

- The organization must make the plan available to all its employees.
- Although the organization may distribute information about the plan, it may not exert pressure on employees to participate.
- An employee must exercise complete control and discretion over his or her funds with no direction from the organization.
- The organization may not be identified when contributions are transmitted to candidates or political committees.
- The administrator of the plan (e.g., the bank or trustee) may provide the organization with periodic reports on the plan's activity. However, reported information is limited to the following: the total number of participants, the combined total of funds in the accounts and the total amount of contributions made. 114.11.

## 6. Donations by Local Businesses for Presidential Conventions

Local businesses and local labor organizations may promote and support a national Presidential nominating convention held in their city, according to the rules described in this section.

To be considered "local," the business or labor organization must operate in the metropolitan area surrounding the convention site. The term "local business" includes local branches of national chains, local franchisees and licensed dealers in the area.

A business or labor organization outside the metropolitan area may, however, qualify as a local business or local labor organization if it can show that the volume of its business or activity outside the metropolitan area would be directly affected by the presence of the convention. 9008.52(c)(2).

Readers should note that banks are not included in the "local business" term and are treated differently from other local businesses under these rules. See AOs 1997-19, 1995-32 and 1995-31 regarding donations by banks and individuals associated with banks.

## Donations to Host Committees

Local businesses (other than banks), local labor organizations and other local organizations or local individuals may donate funds, goods and services to a convention host committee for the following purposes:

- To promote the suitability of the city as a convention site;
- To welcome convention attendees (e.g., by providing information booths, receptions, tours or the promotional items described below);
- To facilitate commerce (e.g., by providing convention attendees with shopping or entertainment guides, samples, maps, pens, pencils or other items of *de minimis* value);
- To defray the host committee's administrative expenses (e.g., salaries, rent, travel or liability insurance);
- To provide the national committee use of an auditorium or convention center and to provide related services (e.g., construction of podiums, press tables, camera platforms, lighting and electrical systems; offices; office equipment; and/or decorations);



- To defray the cost of local transportation services (e.g., by providing buses and automobiles);
- To defray the cost of law enforcement services;
- To defray the cost of using central housing and reservation services;
- To provide hotel rooms at no charge or a reduced rate on the basis of number of rooms actually booked for the convention;
- To provide accommodations and hospitality for committees of the parties responsible for choosing the sites of the conventions; and
- To provide other similar convention-related facilities and services. 9008.52(c)(1).

### Donations to Government Agency or Municipality

Local businesses, local labor organizations and other local organizations or local individuals may donate money, goods or services to a separate fund or account of a government agency or municipality to pay for the expenses listed above if:

- The use of the fund or account is not restricted to any particular convention; and
- Donations to the fund or account are unrestricted and are not solicited or designated for use with any particular convention, event or activity. 9008.53.

## 7. Donations by Commercial Vendors for Presidential Conventions

### Discounts, Samples and Promotional Arrangements with National Committees

Under limited circumstances, commercial vendors may provide goods and services in connection with the presidential nominating convention, without their value counting as either a contribution or an expenditure.

### Discounts Provided to National Committees

Commercial vendors may provide goods and services to the convention committee at a discount or for free if this arrangement is made in the ordinary course of business. "In the ordinary course of business" means:

- The vendor has an established practice of providing such discounts to nonpolitical clients; or
- The reduction is consistent with an established practice of the vendor's trade or industry.

Permissible discounts include standard volume discounts and reduced rates for corporate, governmental or preferred customers. 9008.9(a).

### Samples Provided to National Committees

Commercial vendors and banks may provide items of *de minimis* value at nominal or no charge. For example, samples, discount coupons, maps, pens, pencils or other items may be distributed to convention attendees. 9008.9(c).

**Discounts and Samples: No Reporting**  
Discounts and items of *de minimis* value as described above do not have to be reported. 9008.9(a) and (c).

### Promotional Arrangements

Commercial vendors also may, in the ordinary course of business (as defined above), provide the convention committee with goods and services in exchange for promotional consideration. The value of these goods and services may not exceed the commercial benefit reasonably expected to be derived from the promotional opportunity the convention presents.

An example of a promotional consideration would be an arrangement in which an automobile manufacturer loaned cars to the Democratic and Republican parties for use at their national nominating conventions. In return, the manufacturer could advertise the cars as the official cars of the Democratic and Republican conventions. See AO 1996-17. (Note, however, that these arrangements are not limited to "official providers" but include a variety of promotional arrangements.)

### Reporting Promotional Arrangements

The convention committee must disclose, as a memo entry, any promotional arrangements with commercial vendors in its FEC reports. 9008.9(b).

### Discounts, Samples and Promotional Arrangements with Other Organizations

Under the same terms as those described above, commercial vendors may provide goods and services for convention use to government agencies, municipal corporations and the host committee. Host committees must disclose the activity on reports to the FEC, and the city must file a post-convention statement giving the total amount of private donations. 9008.9, 9008.51(c), 9008.52(b) and 9008.53(a).





As explained above, an SSF must allocate direct candidate support expenses only if it uses separate federal and non-federal accounts to pay for them.

#### Administrative Expenses

Administrative expenses include, for example, rent, salaries and supplies. Such expenses must be allocated only if:

- The committee maintains separate federal and nonfederal accounts, and
- The committee pays for its own administrative expenses from both accounts. (Normally, the connected organization pays such expenses.) 106.6(b)(1)(i); AO 1991–35.

#### Committee Fundraising

Similarly, costs associated with soliciting contributions to the SSF are allocated only if the committee maintains two accounts, raises money for both accounts and pays for its own fundraising costs from both accounts. (Normally, the connected organization pays for fundraising.) 106.6(b)(1)(ii).

#### Generic Voter Drives

A generic voter drive is an SSF activity directed at the general public to urge support for a particular party, but not for particular candidates. Any generic voter drive activity must be allocated if the SSF maintains both federal and nonfederal accounts. See 106.6(b)(1)(iii). Generic voter drive expenses are allocated like administrative expenses.

#### Payment Options

Committees with separate federal and nonfederal accounts must use one of the following two methods to pay allocable expenses:

##### • Payment from Federal Account:

The committee may pay the entire amount from its federal account (SSF), transferring funds from the nonfederal account to the federal account only to cover the nonfederal share of allocable expenses. 106.6(e)(1)(i).

##### • Payment from Allocation Account:

The committee may establish a separate *allocation account* for the sole purpose of paying joint federal and nonfederal expenses. 106.6(e)(1)(ii).

Under the second option, the committee transfers funds from both the federal and nonfederal accounts to the separate allocation account in amounts equal, respectively, to the federal and nonfederal shares of each allocable expense. The allocation account is considered a federal account, and the SSF must include the account's receipts and disbursements in its FEC reports. 106.6(e)(1)(ii).

#### Timing of Internal Transfers

The committee must transfer funds from the nonfederal account to the federal account (or to the allocation account) within a 70-day "window"—not more than 10 days before or 60 days after the original payment to the vendor. (A transfer from the federal account to the allocation account is permissible at any time and is not reported.) 106.6(e)(2)(ii)(B).

Time limits also apply to adjustments of the allocation ratio and corresponding transfers, which may be required after an activity where federal and nonfederal funds are raised.

For more information on allocation, consult the *Campaign Guide for Nonconnected Committees*.

## B. Twice-Yearly Solicitations

Twice a year, a *corporation* or *labor organization* and its *separate segregated fund* (SSF) may expand its solicitation to include certain individuals outside its *restricted class*. Outlined below are guidelines for conducting a twice-yearly solicitation.

### 1. Who May Be Solicited Twice Yearly

#### By Corporations: Nonmanagerial Personnel<sup>1</sup>

Twice a year, a *corporation* (or its SSF) may solicit all its employees, including those not considered executive and administrative personnel and employees represented by *labor organizations*. The families of employees may also be included in a twice-yearly solicitation. 114.6(a).

Employees whose wages are not subject to income tax withholding, however, may not be solicited under this provision (or under the regular provision for soliciting executive and administrative personnel). AO 1999-20.

#### By Labor Organizations: Nonmembers

Twice a year, a *labor organization* (or its SSF) may solicit all employees of a *corporation* that employs members of the *labor organization*. Included are:

- Executive and administrative personnel of the corporation;
- Workers who are not represented by the labor organization;
- Employees of subsidiaries and other *affiliated* corporations;
- The corporation's stockholders;
- All the employees of the labor organization; and
- The families of all those listed above. 114.5(g)(2) and 114.6(b); AOs 1990–25 and 1979–50.

1. These rules apply to all corporations, including incorporated membership organizations.

## 2. Custodial Arrangement

Before conducting a twice-yearly solicitation, the *connected organization* or *SSF* must appoint a custodian to receive contributions. The custodial arrangement preserves the anonymity of individuals who do not wish to contribute or who contribute only small amounts. 114.6(d).

### Appointment of Custodian

For SSFs established by corporations, the custodian may not be a *stockholder*, officer or employee of the corporation or its SSF. In the case of labor organizations, the custodian may not be an officer, employee or member of the union or its SSF. 114.6(d)(1). Exception: An individual employed as the SSF treasurer may be the custodian provided that he or she:

- Preserves the anonymity of contributors as required;
- Does not participate in the SSF's decisions regarding making contributions and expenditures; and
- Continues to fulfill the regular duties of the committee treasurer. 114.6(d)(5).

### Custodial Duties

The custodian of an SSF is responsible for the following duties:

#### Collecting Contributions

See "Collection Methods" below.

#### Transmittal of Contributions

The custodian must deposit all contributions within 10 days of receipt in a separate, custodial bank account.

Periodically, the custodian must withdraw funds contained in the custodial account and forward them by check to the SSF's account. Contributions that appear to be illegal must be treated as described on page 27. 114.6(d)(2)(i), (iii) and (iv).

#### Information to the SSF

The custodian must provide the SSF with the necessary recordkeeping information identifying those who make individual contributions exceeding \$50 or whose aggregate contributions exceed \$200. (See Chapter 5.) This information must be provided to the SSF in time for it to include the contributions in its next report. Apart from this, the only information the custodian may provide to the SSF or connected organization is the total number of contributions received. The custodian may not reveal any information on

noncontributors or small contributions of \$50 or less.<sup>2</sup> 114.6(d)(2)(ii) and (3).

#### Information to the Custodian

In order to accurately keep records on each donor's aggregate contributions, the custodian needs a list of previous contributors and the year-to-date total of each one's contributions to the SSF. 114.6(d)(4).

## 3. Collection Methods

### Written Solicitations

Twice-yearly solicitations must be made in writing and mailed to the solicitee's residence. The mailing must inform the solicitee of the right to refuse to contribute without reprisal and of the political purpose of the SSF. Twice-yearly solicitations must, additionally, notify the recipients of the custodial arrangement (described above). The return address on the solicitation (or enclosed return envelope) must be the custodian's address. Furthermore, the written solicitation must note that the organization will preserve the anonymity of:

- Those who do not contribute;
- Those who make a single contribution of \$50 or less; and
- Those who make multiple contributions aggregating \$200 or less. 114.5(a)(5) and 114.6(c).

### No Payroll Deduction

Corporations and labor organizations may not use payroll deduction for twice-yearly solicitations. 114.6(e)(1).

## 4. Requirements for Corporations

### Notification to Labor Organization

A *corporation* must notify the *labor organization* of its intention to conduct a twice-yearly solicitation. This must be done within a reasonable time so that the labor organization, if it wishes, may also make a twice-yearly solicitation at that time. 114.6(e)(4).

2. *Exception: Information may, upon request, be made available to the FEC, the Clerk of the House, the Secretary of the Senate, law enforcement officials and judicial officers. 114.6(d)(3)(i).*

### Availability of Method to Labor Organization

A corporation must make available to the labor organization the method it uses for soliciting and collecting contributions. However, if the corporation does not wish to disclose the names and addresses of its employees and stockholders, it may give a mailing list to an independent mailing service which will conduct the mailing for both the labor organization and the corporation. 114.6(e)(3).

Note that if the corporation does not use the twice-yearly provision, it is not required to provide the labor organization with a solicitation method for twice-yearly solicitations or with any names and addresses. 114.6(e)(3)(iii).

## 5. Requirements for Labor Organizations

When more than one *labor organization* represents the employees of a *corporation* and its subsidiaries, the unions share a limit of two solicitations of non-members per year. (There is no limit on the number of solicitations each union makes of its own members.)

The unions may conduct twice-yearly solicitations independently, or they may participate in a joint solicitation mailing. A combined mailing may contain requests for contributions to each participating union's SSF. 114.6(e)(5).



## C. Solicitations by Trade Associations

In addition to soliciting noncorporate members and its own personnel, a *trade association* may solicit the *restricted class of member* corporations (i.e., their executive and administrative personnel, stockholders and the *families* of both groups). Solicitation of a corporate member's restricted class is a two-step process. First, the trade association obtains the corporate member's written approval for solicitation; second, the association conducts the solicitation.

### 1. Request for Corporate Approval

#### Required Information

A trade association must make a written request to the member corporation for permission to solicit the member's restricted class. (The request may be sent to the corporate representative with whom the association normally conducts its activities.) This request for approval must inform the member corporation that:

- Corporate approval is necessary before the trade association or its SSF may conduct a solicitation; and
- The corporation may not approve solicitations by another trade association for the same calendar year.

#### Optional Information

The trade association may enclose a copy of proposed solicitation materials in its request for approval. Moreover, the trade association may note that it intends to limit the scope of the solicitation (e.g., to just executive and administrative personnel). 114.8(d)(3) and (5).

#### Publication in Association's Magazine

A trade association may publish in its internal magazine or newsletter a form for obtaining solicitation approval from corporate members. The form must include the required information described

above, and the form's wording must be sufficiently specific so as not to be considered a solicitation for contributions. AOs 1981-41 and 1980-65. (See page 24 for rules about solicitations in internal publications.)

#### Request Made at Convention

At its convention, annual meeting or similar event, a trade association may request solicitation approvals from corporate members and may set up a booth for this purpose. The requests must be in writing (e.g., handout forms), must include the required information and may not contain a solicitation for contributions. The trade association may also receive written solicitation approvals at the convention as long as they are signed by persons authorized by the corporations to make such approvals. AOs 1981-41, 1978-83 and 1978-17. (Solicitations conducted at conventions are discussed in Section 4.)

### 2. Approval by Corporate Member

#### Written Approval

Before a trade association may solicit the *restricted class* of one of its corporate *members*, the association must obtain written authorization from the member corporation. The member must designate the calendar year for which the solicitations are authorized; the authorization automatically expires on December 31 of the designated year.

There is no limit on the number of companies from which a trade association can obtain solicitation approvals. In a particular calendar year, however, a corporation may authorize only one trade association to solicit its restricted class. 114.8(d).

#### Approval Extended to Affiliated Nonconnected PAC

Any solicitation approval granted by a corporate member of a trade association also covers solicitations from a nonconnected PAC affiliated with the trade association's SSF. AO 1996-38.

#### Approval Using the Internet and the Web

The Commission approved a proposal whereby a trade association distributed a "permission to solicit" form to its mem-

bers on the Internet and on a members-only Web site. The Commission's conclusion was based on the determination that the "permission to solicit" form did not otherwise constitute a solicitation. AO 2000-10. See also AO 2000-22 for use of electronic signatures to grant prior approval.

#### Use of Electronic Signatures

In another advisory opinion, the Commission advised that a trade association PAC could accept corporate members' electronic signatures as written authorization to solicit the restricted class of their corporate members. The trade association could obtain the electronic authorization through e-mail or its Web site. In either case, the trade association had to verify that:

- The permission-to-solicit forms were available only to authorized corporate representatives; and
- Each electronic signature came from the corporate representative.

Furthermore, a copy of the electronic approval had to be maintained, in a readily available form, for three years. AO 2000-22.

#### Multiple-Year Approvals

A member corporation may grant its approval for several years in advance; however, the company must provide the trade association with a separate approval for each year. For example, a trade association could ask a member corporation to approve solicitations for five consecutive years. The corporation would have to submit a signed statement for each year approved; the five statements and signatures could appear on one form or on five separate forms. 114.8(c)(2); 114.8(d)(1) and (4); AO 1984-61.

Corporate approval of trade association solicitations in no way limits the corporation's right to solicit contributions for its own SSF. 114.8(e)(2).

#### Content of Approval

##### Scope

A corporation's authorization may limit the scope of the solicitations to particular members of the restricted class (for example, limit it to stockholders). 114.8(d)(5). Note that trade associations may not solicit persons outside of the member's restricted class.

##### Frequency

The corporate approval may also limit the number of times solicitations may take place during the calendar year. Unless

otherwise specified in the approval, the trade association may conduct unlimited solicitations. 114.8(e)(1).

## Records

The trade association must retain a copy of the written approval for three years after the year to which the approval applies. 114.8(d)(2).

## 3. Who May Be Solicited

### Parent Corporation

If a parent corporation is a member of the trade association but its subsidiaries are not, then the trade association may solicit (with prior approval) the *restricted class* of only the parent. 114.8(f).

### Subsidiary Corporation

Likewise, if a subsidiary corporation is a member of the trade association but the parent is not, then the trade association may (with prior approval) solicit the restricted class of the subsidiary only; the parent's restricted class is not solicitable. 114.8(f).

### Nonstock Corporation

A trade association may (with prior approval) solicit the individual members of a member non-stock corporation, only if the individual members have rights and interests that correspond closely to those of stockholders. AO 2000-4, 1999-16 and 1999-15.

## 4. Solicitations at Convention

A trade association's convention or annual meeting may be the site of impermissible solicitations if the association inadvertently solicits executive and administrative personnel of corporations that have not given prior solicitation approval. To avoid making inadvertent unlawful solicitations at such conventions or meetings, trade associations should observe the following guidelines, based on several *advisory opinions*.

### Permissible Solicitations

A trade association may solicit SSF contributions from a booth at a convention, provided that:

- The booth is not publicized prior to the convention;
- The booth's signs inform contributors of the solicitation restrictions;
- The trade association maintains a list of corporate members that have approved solicitations for the current year; and
- Funds are not accepted from individuals who are not solicitable.

AOs 1995-14, 1978-83 and 1978-17.

### Impermissible Solicitations

An impermissible solicitation will occur, even if unintended, when a trade association provides information to employees (of a corporation that has not given its solicitation approval) on how to contribute to its SSF or when it encourages support of the SSF. AOs 1979-66 and 1979-13.

EXAMPLES: A pre-convention mailing that mentions an SSF fundraising event or a booth is a solicitation. A convention sign saying "Ask Us for Information About the PAC Fundraiser" or informing attendees about a fundraising booth is also a solicitation. AOs 1976-96 and 1976-27.

### Other Permissible Activities

Simply requesting a corporate member's approval for solicitations is not a solicitation for contributions. AO 1981-41. Moreover, providing merely factual, historical or statistical information on the SSF, or explaining the legal requirements which apply to its activities, is not a solicitation. See "What Is Not a Solicitation" on page 24.

## 5. Member-Provided Assistance

### Donations from Members

A trade association may solicit and accept donations of money, goods or services from its members to defray the operating, administrative and solicitation expenses of the association's SSF. Donations for these purposes (such as a raffle, door or lottery prize) are not contributions as long as the donor qualifies as a member of the association. See "Definition of Member," page 23, and "Financially Supporting the SSF," page 13. See also AOs 1995-28, 1995-17, 1989-18

and 1980-59. Note, however, that when goods or services are donated for an SSF fundraising event, the SSF must reimburse the connected organization if the donated items are disproportionately valuable in comparison with the amount raised by the event. See "Reimbursement," page 27. See also AOs 1995-17 and 1989-18.

Funds received for an SSF's administrative, operating or solicitation expenses must be kept in a separate account from the SSF contributions. AO 1981-19.

### Donations from Nonmembers

If a trade association receives an unsolicited donation, to cover the SSF's administrative and solicitation expenses, from an individual who is not a member of the trade association, that donation is a contribution to the SSF and is subject to the donor's \$5,000 annual limit. Because goods and services donated by nonmember individuals are in-kind contributions, they are not subject to the reimbursement rules discussed above.

Similar contributions by nonmember corporations are prohibited. AOs 1995-17 and 1989-18, n. 4.

### No Payroll Deduction

A corporate member may not use a payroll deduction or checkoff plan for collecting contributions to a trade association's SSF. 114.8(e)(3). This prohibition applies even where employees are also stockholders. AO 1989-3.

## 6. Trade Association Federations

A federation of trade associations may also establish a separate segregated fund. The federation may solicit SSF contributions from the *restricted class* of a member corporation of a trade association that is a member of the federation, as explained below.

### Definition

A *trade association federation* is an organization representing trade associations involved in the same or allied line of commerce. 114.8(g)(1). As examples, in advisory opinions the Commission has ruled that an organization of affiliated trial

lawyers' associations was a trade association federation, while a statewide Chamber of Commerce was not. AOs 1985-37 and 1977-44.

### Affiliation and Solicitation

When a federation and its regional, state or local associations are affiliated, their respective SSFs are also affiliated and are treated as one political committee for purposes of the contribution limits. Affiliation is based on the relationship between the organizations, analyzed in terms of the circumstances indicating affiliation on page 12. 114.8(g)(1). See also AO 1995-12.

### Cooperative Efforts

A federation's SSF and a member association's SSF may also engage in joint solicitations. In addition, a member association may delegate its solicitation rights to the federation. 114.8(g)(1)(i) and (ii).

## D. Earmarked Contributions

An *earmarked contribution* is one which the contributor directs (either orally or in writing) to a *clearly identified candidate* or *candidate's committee* through an intermediary or conduit. Earmarking may take the form of a designation, instruction or encumbrance and may be direct or indirect, express or implied. 110.6(b)(1).

### 1. Conduits

#### Who Is a Conduit

Anyone who receives and forwards an earmarked contribution to a candidate committee is considered a conduit or intermediary. 110.6(b)(2). (The terms "conduit" and "intermediary" are interchangeable; "conduit" will be used in the remainder of this appendix.)

Individuals, *political committees*, unregistered PACs and partnerships may act as conduits for earmarked contributions.

#### Persons Not Considered Conduits

For the purposes of the earmarking rules, certain individuals and organizations are not considered conduits even though they may participate in activities to raise money for a *candidate*. These persons include:

- An employee or full-time volunteer working for a *candidate committee*;
  - An individual who occupies a significant position in a candidate's campaign and who is expressly authorized to raise money on behalf of the candidate;
  - A committee *affiliated* with the candidate committee; and
  - A commercial fundraising firm retained by the candidate committee.
- 110.6(b)(2)(i).

#### Prohibitions Apply

No *corporation*, *labor organization* or other entity prohibited from making contributions in connection with federal elections may act as a conduit for an earmarked contribution. A *separate segregated fund*, however, may act as a conduit. 110.6(b)(2)(ii); 114.3(c)(2).

Furthermore, no individual may receive a contribution on behalf of a candi-

date (as a conduit or otherwise) while acting as the representative of a corporation, labor organization or other entity prohibited from making contributions. 110.6(b)(2)(i)(A) and (E). See also AO 1986-4.

### 2. Contribution Limits

#### Contributor's Limit

An earmarked contribution counts against the contributor's contribution limit for the recipient *candidate*. 110.6(a).

#### Conduit's Limit

##### Direction or Control

The conduit's limit is affected when the conduit exercises direction or control over the contributor's choice of the recipient candidate. In that case, the full amount of the contribution counts against the limits of both the original contributor and the conduit, even though the candidate receives only one check. For examples of how the Commission has viewed the "direction or control" rule in specific situations, see AOs 1986-4, 1981-57 and 1980-46.

##### Solicited Earmarked Contributions

Note that if a committee, when making a solicitation, requests the contributor to earmark the funds for a specific candidate, the cost of the solicitation incurred by the committee is an *in-kind contribution* to the candidate, subject to the contribution limits. AO 1980-46.

##### Effect on Unregistered Organization

An unregistered organization acting as a conduit should be aware that conduit activity could result in a contribution by the organization, under the circumstances described above. In such a case, the activity may trigger registration requirements for the unregistered organization.

### 3. Forwarding Earmarked Contributions

#### 10-Day Limit

The SSF must forward an earmarked contribution, along with a report (see below), to the recipient *candidate committee* within 10 days of receiving the contribution. 102.8(a) and (c); 110.6(c)(1)(iii).

### Transmittal Report

Along with the funds, the conduit must also forward a transmittal report containing information that the candidate's campaign committee will need for its own records and reports. 110.6(c)(1).

#### Contributions Exceeding \$50

When an earmarked contribution exceeds \$50, the accompanying report must contain the name and address of the original contributor, the date the contribution was received by the conduit and the amount. 102.8(b). The report should also state the *election* designated by the contributor, if any. 110.1(b)(3).

#### Contributions Exceeding \$200

When an earmarked contribution exceeds \$200, the accompanying report must contain the name and address of the contributor, the contributor's occupation and employer, the date the contribution was received by the conduit and the amount. 102.8(b). The report should also state the election designated by the contributor, if any. 110.1(b)(3).

## 4. Reporting Conduit Activity

The conduit must comply with special reporting rules, which vary depending on whether the contribution was deposited in the conduit's bank account or was passed on directly to the campaign in the form of the original contributor's check. 110.6(c)(1)(v).

### Report Filed with the Government

#### Separate Segregated Fund

A conduit SSF must disclose its activity on its next regularly scheduled FEC report. 110.6(c)(1)(ii).

#### Unregistered Entity

An individual or other unregistered entity acting as a conduit must disclose the activity in a letter to the FEC within 30 days after forwarding the earmarked contribution. 110.6(c)(1)(ii).

The letter should contain all the information listed below for SSF conduits.

## EARMARKED CONTRIBUTIONS

<b>SCHEDULE A (FEC Form 3X)</b>		Use separate schedule(s) for each category of the Detailed Summary Page		FOR LINE NUMBER: (check only one)		PAGE 1 OF 1				
<b>ITEMIZED RECEIPTS</b>		<input checked="" type="checkbox"/> 11a	<input type="checkbox"/> 11b	<input type="checkbox"/> 11c	<input type="checkbox"/> 12	<input type="checkbox"/> 13	<input type="checkbox"/> 14	<input type="checkbox"/> 15	<input type="checkbox"/> 16	<input type="checkbox"/> 17
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.										
NAME OF COMMITTEE (In Full) <b>Unmoved Movers Incorporated PAC (UMPAC)</b>										
Full Name (Last, First, Middle Initial) A. <b>Joe Aristotle</b>										
Mailing Address <b>11 Lambda Street</b>										
City <b>Stagira</b>			State <b>NY</b>		Zip Code <b>00000</b>					
FEC ID number of contributing federal political committee. <b>C</b>										
Name of Employer <b>Unmoved Movers Inc.</b>				Occupation <b>Vice President</b>						
Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼				Aggregate Year-to-Date <b>500.00</b>						
				Date of Receipt M / D / Y <b>08 / 19 / 2002</b>		Amount of Each Receipt this Period <b>500.00</b>				
Earmarked for <b>Tom Aquinas, Senate, NY.<sup>α</sup></b>										

<b>SCHEDULE B (FEC Form 3X)</b>		Use separate schedule(s) for each category of the Detailed Summary Page		FOR LINE NUMBER: (check only one)		PAGE 1 OF 1						
<b>ITEMIZED DISBURSEMENTS</b>		<input type="checkbox"/> 21b	<input type="checkbox"/> 22	<input checked="" type="checkbox"/> 23	<input type="checkbox"/> 24	<input type="checkbox"/> 25	<input type="checkbox"/> 26	<input type="checkbox"/> 27	<input type="checkbox"/> 28a	<input type="checkbox"/> 28b	<input type="checkbox"/> 28c	<input type="checkbox"/> 29
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.												
NAME OF COMMITTEE (In Full) <b>Unmoved Movers Incorporated PAC</b>												
Full Name (Last, First, Middle Initial) A. <b>Committee to Elect Tom Aquinas</b>												
Mailing Address <b>12 Summa Ln.</b>												
City <b>Rome</b>			State <b>NY</b>		Zip Code <b>00000</b>							
Purpose of Disbursement <b>Contribution</b>												
Candidate Name <b>Tom Aquinas</b>											Category/Type <b>011</b>	
Office Sought: <input checked="" type="checkbox"/> House <input checked="" type="checkbox"/> Senate <input type="checkbox"/> President			Disbursement For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼									
State: <b>NY</b>			District:									
											Date of Disbursement M / D / Y <b>08 / 25 / 2002</b>	
											Amount of Each Disbursement this Period <b>500.00</b>	
Earmarked by <b>Joe Aristotle</b> and transmitted by committee check. <sup>β</sup>												

<sup>α</sup> On FECFile, use "description" field.

<sup>β</sup> When using FECFile, this information is entered using "memo text." See example on page 43.

### Contributions Deposited in SSF's Account

#### Schedule A

If an earmarked contribution passes through an SSF's account, the committee reports the following information on Schedule A:

- The name and mailing address of each person making an earmarked contribution (including earmarked contributions of \$200 or less)(110.6(c)(1)(iv)(A));
- The occupation and employer of each individual making an earmarked contribution exceeding \$200 (110.6(c)(1)(iv)(A));
- The candidate designated by the contributor as the recipient of the contribution (110.6(c)(1)(iv)(B));

- The *election* for which the contribution was designated, if any (see 110.1(b)(3)(i));
- The amount of the earmarked contribution (110.6(c)(1)(iv)(B)); and
- The date the contribution was received by the conduit (110.6(c)(1)(iv)(C)).

#### Schedule B

Once the SSF has forwarded the contribution to the candidate (after depositing it in its own account), the committee reports on Schedule B:

- The candidate designated by the contributor (110.6(c)(1)(iv)(A));
- The date the contribution was forwarded (110.6(c)(1)(iv)(C));

- The amount forwarded to the candidate (110.6(c)(1)(iv)(B));
- The election designated by the contributor, if any (see 110.1(b)(3)(i));
- The name of the contributor (110.6(c)(1)(iv)(A));
- A notation that the contribution was forwarded in the form of a check drawn on the conduit's account (110.6(c)(1)(iv)(C)); and
- A statement indicating that the conduit's limit was also affected, if appropriate. (110.6(d)(2)).

## Undeposited Contributions

If the SSF forwards the contribution without depositing it first (i.e., in the form of the contributor's original check), the committee must itemize the same information listed above in *memo entries* on Schedules A and B. The entries should indicate that the contribution was passed on in the form of the contributor's original check and, if appropriate, should indicate that the conduit's limits for that candidate were affected.

## 5. Earmarking Via Payroll Deduction

A member of the restricted class who contributes to the SSF through a payroll deduction program may subsequently earmark those contributions for specific candidates. The information in this section is based on AOs 1995-15 and 1991-29, in which the Commission ruled on programs designed for subsequent earmarking of payroll deductions. See also "Earmarked Contributions" on page 30.

### Obtaining Designation and Forwarding the Contribution

The SSF must obtain a signed and dated statement from each contributor designating the particular candidate to receive the contribution, and the amount to be forwarded. Contributors should also designate the election in which they are contributing. The SSF must forward the earmarked contributions to the named candidate within 10 days of the designation of the funds.

### Ledger Accounts

The SSF should keep a ledger account of each individual's payroll deduction contributions. In the case of a program set up for earmarking after the deduction

is made, this assures that the funds will not be used until the contributor designates them for a specific candidate. In one program (AO 1995-15), funds that were left undesignated past the deadline set for designation were available for use by the SSF.

### Reporting

The committee must report all funds collected through payroll deduction as contributions to the SSF, regardless of whether contributors will have the later option of earmarking them for specified candidates.

When contributors subsequently designate candidates to receive funds from their ledger accounts, the SSF should report the designations as memo entries on Schedule A. (See "Contributions Deposited in SSF's Account," page 79.) The entries should also indicate that the funds were collected through payroll deduction.

The SSF should report the amount forwarded to the candidate on Schedule B (See "Contributions Deposited in SSF's Account," above), including a notation that it was an earmarked contribution.



## E. Partnership Contributions<sup>1</sup>

Outlined below are special rules concerning contributions received by SSFs from partnerships. This section may be relevant to membership organizations whose members include partnerships or LLCs that are treated as partnerships for tax purposes. 110.1(e) and 110.1(g).

### 1. Contribution Limits

Contributions received by an SSF from a partnership may not exceed \$5,000 per year. A contribution from a partnership also counts proportionately against each contributing partner's \$5,000 per year limit for the same political committee. 110.1(b)(1) and (e).

Note, however, that certain partnerships and partners may be prohibited from contributing. See "Prohibited Partnership Contributions," below.

### 2. Attribution Among Partners

#### Formula

A portion of the partnership contribution must be attributed to each contributing partner.<sup>2</sup> If all partners within the organization are contributing, the partnership may attribute the contribution according to each partner's share of the firm's profits. However, if the partnership attributes a contribution on another basis agreed to by the partners, or if it attributes contributions only to certain partners, the following rules must be observed:

- The contributing partners' profits must be reduced (or their losses increased) by the amount of the contribution attributed to them; and
- The profits (or losses) of only the contributing partners must be affected.

1. For more information on contributions from limited liability companies, see Chapter 1, Section 13, and Chapter 2, Section 2.

2. A portion of a contribution drawn on a partnership account may not be attributed to the spouse of a partner unless the spouse is also a member of the partnership. AO 1980-67.

# PARTNERSHIP CONTRIBUTIONS

SCHEDULE A (FEC Form 3X) ITEMIZED RECEIPTS		Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one) PAGE 1 OF 1
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.			
NAME OF COMMITTEE (In Full) <b>Social Contracts Incorporated PAC</b>			
A. Full Name (Last, First, Middle Initial) <b>Hobbes, Locke &amp; Rousseau</b> Mailing Address <b>101 Modernity Ave.</b> City <b>Fairfax</b> State <b>VA</b> Zip Code <b>00000</b>		Date of Receipt M M / D D / Y Y Y Y <b>08 / 04 / 2002</b> Amount of Each Receipt this Period _____ <b>750.00</b>	
FEC ID number of contributing federal political committee. <b>C</b> Name of Employer <b>Partnership</b> Occupation _____ Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼ Aggregate Year-to-Date ▼ _____ <b>750.00</b>		See attribution below. <sup>α</sup>	
B. Full Name (Last, First, Middle Initial) <b>Hobbes, Thomas</b> Mailing Address <b>01 Sovereign Ave.</b> City <b>Bellum</b> State <b>VA</b> Zip Code <b>00000</b>		Date of Receipt M M / D D / Y Y Y Y <b>08 / 04 / 2002</b> Amount of Each Receipt this Period _____ <b>250.00</b>	
FEC ID number of contributing federal political committee. <b>C</b> Name of Employer <b>Hobbes et al.</b> Occupation <b>Accountant</b> Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼ Aggregate Year-to-Date ▼ _____ <b>250.00</b>		MEMO. <sup>β</sup>	
C. Full Name (Last, First, Middle Initial) <b>Locke, John</b> Mailing Address <b>180 Property Street</b> City <b>Luckets</b> State <b>VA</b> Zip Code <b>00000</b>		Date of Receipt M M / D D / Y Y Y Y <b>08 / 04 / 2002</b> Amount of Each Receipt this Period _____ <b>250.00</b>	
FEC ID number of contributing federal political committee. <b>C</b> Name of Employer <b>Hobbes et al.</b> Occupation <b>Accountant</b> Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼ Aggregate Year-to-Date ▼ _____ <b>250.00</b>		MEMO.	
A. Full Name (Last, First, Middle Initial) <b>Rousseau, Jean Jacques</b> Mailing Address <b>101 General Will Road</b> City <b>Front Royal</b> State <b>VA</b> Zip Code <b>00000</b>		Date of Receipt M M / D D / Y Y Y Y <b>08 / 04 / 2002</b> Amount of Each Receipt this Period _____ <b>250.00</b>	
FEC ID number of contributing federal political committee. <b>C</b> Name of Employer <b>Hobbes et al.</b> Occupation <b>Accountant</b> Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼ Aggregate Year-to-Date ▼ _____ <b>250.00</b>		MEMO.	

Whatever the attribution, the portion attributed to each partner must not, when aggregated with other contributions from that person, exceed his or her contribution limit. 110.1(e).

## Notice to Recipient Committee

Because a contribution from a partnership is a *joint contribution*, the partnership must provide to the recipient committee, along with the contribution, a written notice listing the names of the contributing partners and the amount to be attributed to each. However, unlike other joint contributions, the signature of each contributing partner is not required. 110.1(k)(1) and (2).

## 3. Prohibited Partnership/LLC Contributions

### Professional Corporations

Although law firms, doctors' practices and similar groups are often organized as partnerships, some of these groups may instead be professional corporations. Unlike a partnership, a professional corporation is prohibited from making any contributions because contributions from corporations are unlawful. 114.2.<sup>3</sup>

### Partnerships with Corporate Members

Because contributions from corporations are prohibited, a partnership or an LLC with corporate members may not attribute any portion of a contribution to the corporate partners. 110.1(e), 110.1(g)(2) and 114.2.

A partnership or LLC composed solely of corporate partners may not make any contributions. *Advisory Opinion (AO) 1981-56.*

<sup>α</sup>FECFile "description" field.

<sup>β</sup>In FECFile, click "memo" in the dialog box.

3. However, an individual member of a professional corporation may contribute a check drawn on his or her nonrepayable corporate drawing account since the check represents a contribution from the individual rather than the corporation. 102.6(c)(3).



## Partnerships or LLCs with Foreign National Members

Similarly, because contributions from *foreign nationals* are prohibited, a partnership may not attribute any portion of a contribution to a partner who is a foreign national. 110.4(a).

## Partnerships or LLCs with Federal Government Contracts

A partnership or LLC that is negotiating a contract with the federal government or that has not completed performance of such a contract is prohibited from making contributions. However, an individual partner in such a firm may make contributions from personal funds (rather than from funds drawn on the partnership's account). 115.4. See also AO 1991-1.

## 4. Reporting Partnership/LLC Contributions

### Included in Total Figure

Partnership contributions are included in the total figure reported for "contributions from individuals/persons other than political committees" on the Detailed Summary Page of Form 3X (Line 11a).

### Itemization

If a single partnership/LLC contribution exceeds \$200, or if several contributions by the same partnership/LLC aggregate over \$200 during a calendar year, the committee must itemize the contribution on a Schedule A used for "Contributions from Individuals/Persons Other Than Political Committees" (Line 11a).

Additionally, if an individual partner's share of the contribution exceeds \$200 when combined with other contributions received from that partner in the same calendar year, the committee must disclose, as a *memo entry*, itemized information on the partner (name, address, occupation, date contribution received, partner's share of contribution and aggregate year-to-date total of contributions made by that partner). 104.8 and 110.1(e).

## In-Kind Contributions

A committee reports the value of an itemized *in-kind contribution* received from a partnership or LLC on Schedule A in the same way it reports an itemized monetary contribution on Schedule A. Moreover, an in-kind contribution itemized on Schedule A must also be itemized on a Schedule B for operating expenditures. 104.13 and 110.1(e). However, any information about a partner itemized as a *memo entry* on Schedule A does not have to be reported on Schedule B.

## F. Compliance with Other Laws

In addition to complying with the Federal Election Campaign Act, SSFs must observe laws and rules outside the Commission's jurisdiction.

### 1. Tax Laws

SSFs should be aware that they have to comply with federal and state laws on income tax. For information on federal tax laws, contact the Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, Attention: E:EO (202/622-7352 or 622-8100).

Committees that need to obtain a taxpayer ID number should call 800/TAX-FORM for information. Each regional IRS office also has a toll-free number; consult your telephone directory for the number in your state. SSFs should also consult the appropriate state agency for information on state income tax laws.

### 2. Communications Act

For information on rules concerning rates for purchasing broadcast time, equal access to broadcast media, and procedures for filing complaints in this area, contact the Federal Communications Commission, 2025 M Street, NW, Washington, DC 20554.

### 3. Hatch Act

For information on the Hatch Act, which regulates political activity by federal employees, contact the Office of Special Counsel, 1730 M Street, NW, Washington, DC 20036 (800-854-2824 or 202-653-7143).

## G. Definitions

Words and phrases found in *italics* throughout this book are defined below.

**Act** – The Federal Election Campaign Act of 1971 (2 U.S.C. §431 *et seq.*), as amended. 100.18.

**Administrative Expenses** – The costs of operating a *separate segregated fund*, including salaries, rent and supplies, and other operating costs. 114.1(b).

**Advisory Opinion (AO)** – A formal ruling from the Commission regarding the legality of a specific activity proposed in an advisory opinion request (AOR). Part 112. For information on requesting an AO, see page 6.

**Affiliated** – Established, financed, maintained or controlled by the same organization. Affiliated *political committees* are considered one political committee for purposes of contribution limits. 100.5(g); 110.3(a).

**Authorized Committee** – See *Candidate Committee*.

**Bank** – A state bank; a federally chartered depository institution (including a national bank); or a depository institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. 100.7(b)(11); 100.8(b)(12); 103.2.

**Campaign-Related Activity** – Activity that involves soliciting, making or accepting contributions to the candidate's campaign or communications expressly advocating the nomination, election or defeat of any candidate. Note, though, that the absence of solicitation and express advocacy does not preclude the determination that the event is campaign related. AOs 1996-11, 1994-15, 1992-6 and 1988-27.

**Candidate** – An individual seeking nomination or election to *federal office* becomes a candidate when he or she and agents acting on his or her behalf raise *contributions* or make *expenditures* that exceed \$5,000. 100.3.

**Candidate Committee** – A *principal campaign committee* or any other politi-

*cal committee* authorized in writing by a federal candidate to receive *contributions* and make *expenditures* on his or her behalf. 100.5(f)(1). The Act and FEC regulations refer to candidate committees as "authorized committees."

**Clearly Identified Candidate** – A *candidate* is clearly identified when his or her name or picture appears in a communication or when his or her identity is apparent by unambiguous reference. 100.17; 106.1(d); 109.1(b)(3).

**Collecting Agent** – An organization that collects and transmits *contributions* to a *separate segregated fund* (SSF). A collecting agent may be the SSF's *connected organization* or an organization or committee *affiliated* with the SSF. 102.6(b)(1).

**Commercial Vendor** – Any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services. 116.1(c).

**Connected Organization** – An organization that uses its treasury funds to establish, administer or solicit contributions to a *separate segregated fund*. 100.6.

**Contribution** – A payment, service or anything of value given to influence a federal *election*. 100.7(a)(1).

**Coordinated General Public Political Communication** – A communication:

- Intended for an audience of over 100 people and made through a broadcasting station (including a cable television operator), newspaper, magazine, outdoor advertising facility, mailing or any electronic medium, including the Internet or on a Web site;
- Coordinated with the candidate, party or their agents;
- Mentioning a Clearly Identified Federal Candidate; and
- Paid for by a person other than a candidate, a party or their agents.

**Corporation** – Any separately incorporated entity (other than a political committee that has incorporated for liability purposes only). 100.8(b)(4)(vi); 114.12(a). The term covers both for-profit businesses (including C and S corporations) and nonprofit incorporated organi-

zations, as well as corporations without capital stock, incorporated *membership associations*, incorporated *trade associations*, incorporated cooperatives and professional corporations.

**Delegate** – An individual who is or seeks to become a delegate to a national nominating convention or to a state or local convention, caucus or primary held to select delegates to a national nominating convention. 110.14(b)(1).

**Delegate Committee** – A group organized for the purpose of influencing the selection of *delegates*. The term includes a group of delegates, a group of individuals seeking to become delegates and a group of individuals supporting delegates. 110.14(b)(2).

**Direct Mail** – A communication to the general public using either a commercial mailing firm or mailing lists purchased from a commercial vendor. 100.7(b)(15)(i); 100.8(b)(16)(i).

**Disbursement** – Any purchase or payment made by a *political committee*.

**Earmarked Contribution** – A *contribution* that the contributor directs (either orally or in writing) to a *clearly identified candidate* or *candidate committee* through an intermediary or conduit. Earmarking may take the form of a designation, instruction or incumbrance and may be direct or indirect, implied or express. 110.6(b)(1).

**Election** – Any one of several processes by which an individual seeks nomination for election, or election, to *federal office*. They include: a primary election, including a caucus or convention that has authority to select a nominee; a general election; a runoff election; and a *special election* held to fill a vacant seat. 100.2.

**Election Cycle** – The period from the end of one general election for a given federal office to the end of the following general election for that office. The number of years in an election cycle differs according to the federal office sought. The election cycle spans: two years for House candidates; four years for Presidential candidates; and six years for Senate candidates. See 100.3(b).

**Election Year** – A year in which there are regularly scheduled *elections* for *federal office* (i.e., even-numbered years).

**Expenditure** – A purchase or payment made in connection with or for the purpose of influencing a federal *election*. A written agreement to make an expenditure is considered an expenditure. 100.8(a)(1) and (2); 114.1(a).

**Express Advocacy** – Unambiguously advocating the election or defeat of a clearly identified federal candidate. There are two ways that a communication can be defined as express advocacy (candidate advocacy): by use of certain “explicit words of advocacy of election or defeat” and by the “only reasonable interpretation” test. 100.22.

“Explicit words of advocacy of election or defeat”: The following words convey a message of express advocacy (candidate advocacy):

- “Vote for the President,” “re-elect your Congressman,” “support the Democratic nominee,” “cast your ballot for the Republican challenger for the U.S. Senate in Georgia,” “Smith for Congress,” “Bill McKay in ‘96”;
- Words urging action with respect to candidates associated with a particular issue, e.g., “vote Pro-Life”/ “vote Pro-Choice,” when accompanied by names or photographs of candidates identified as either supporting or opposing the issue;
- “Defeat” accompanied by the name or photograph of the opposed candidate or “reject the incumbent”; and
- Campaign slogan(s) or word(s), e.g., on posters, bumper stickers and advertisements, that in context can have no other reasonable meaning than to support or oppose a clearly identified candidate, for example, “Nixon’s the One,” “Carter ‘76,” “Reagan/Bush.” 100.22(a).

“Only Reasonable Interpretation” Test: In the absence of such “explicit words of advocacy of election or defeat,” express advocacy (candidate advocacy) is found in a communication that, when taken as a whole and with limited reference to external events, can only be interpreted by a “reasonable person” as advocating the election or defeat of one or more clearly identified candidate(s). 100.22(b). See also footnote 4 on page 31.

**Facilitation** – Facilitation is the use of corporate or labor organization resources or facilities to engage in fundraising activities in connection with any federal election (other than raising funds for the organization’s separate segregated fund). Facilitation results in a prohibited contribution to the committee that benefits from the activity. 114.2(f)(1).

**Family** – For the purposes of solicitation, a family includes a mother, father, sons and daughters who live in the same household. AO 1980–102.

**Federal Office** – Includes President, Vice President, Senator and the following members of the House of Representatives: Representative, Delegate (the District of Columbia, American Samoa, Guam, Virgin Islands) and Resident Commissioner (Puerto Rico). 100.4

**Foreign National** – A foreign national is either: (1) an individual who is not a citizen of the United States and has not been lawfully admitted to the U.S. for permanent residence, as defined in 8 U.S.C. §1101(a)(20); or (2) a foreign principal, as defined in 22 U.S.C. §611(b). 110.4(a)(4).

**General Public Political Communication (GPPC)** – A communication with an intended audience of over 100 people, made through a broadcasting station (including cable television operator), newspaper, magazine, outdoor advertising facility, mailing or any electronic medium, including the Internet or a web site. 100.23(e)(1).

**Government Contractor** – A person who enters into a contract with any agency or department of the United States government and is paid for services, materials, equipment, supplies, land or buildings with funds appropriated by Congress. Part 115.

**Host Committee** – Any local organization (e.g., any local civic association, business league, chamber of commerce, real estate board, board of trade or convention bureau):

- That represents a state or city with respect to the convention;
- That is not organized for profit;
- Whose net earnings do not strengthen the benefit of any private shareholder or individual; and
- That has as its principal objective the encouragement of commerce in, and the promotion of a favorable image of, the convention city. 9008.51 and 9008.52(a).

**Independent Expenditure** – An expenditure for a communication which expressly advocates the election or defeat of a clearly identified candidate and which is not made with the cooperation or prior consent of, or in consultation with

or at the request or suggestion of, any candidate or authorized committee or agent of a candidate. 100.16; 109.1(a).

**In-Kind Contribution** – A contribution of goods, services or property offered free or at less than the usual and normal charge. The term also includes payments made on behalf of, but not directly to, candidates and political committees. 100.7(a)(1)(iii).

**Joint Contribution** – A contribution made by more than one person on a single check or other written instrument. 110.1(k)(1).

**Labor Organization** – An employee-representative membership association that deals with employers on grievances, labor disputes, wages, working conditions, etc. 114.1(d).

**Limited Liability Company (LLC)** – a business entity that is recognized as a limited liability company under the laws of the State in which it is established. LLCs that are treated as partnerships under the IRS code may make contributions. LLCs that have publicly traded stock or are treated as corporations under the IRS code are prohibited from making contributions or expenditures. 110.1(g).

**Member** – With respect to a labor organization, a trade association, a cooperative or other incorporated membership organization, a member is an individual or other entity that:

- Satisfies the requirements for membership in a membership organization;
- Affirmatively accepts the organization’s invitation to become a member; and
- Maintains a long-term and continuous bond with the organization by :
  - Having a significant financial attachment, such as a significant investment or ownership stake;
  - Paying annual dues; or
  - Having direct participatory rights in the governance of the organization.

114.1(e)(2)

**Membership Organization** – A labor organization or a trade association, cooperative or other incorporated membership organization that:

- Is composed of members;
- Expressly states the qualifications for membership in its articles and by-laws;
- Makes its articles, by-laws and other organizational documents available to its members;
- Expressly seeks members;

- Acknowledges the acceptance of membership, such as by sending membership cards to new members or including them on a membership newsletter list; and
- Is not organized primarily for the purpose of influencing a federal election. 100.8(b)(4)(iv)(A) and 114.1(e).

**Memo Entry** – Supplemental or explanatory information on a reporting schedule. The dollar amount of a memo entry is not included in the total figure for the schedule. A memo entry is often used to disclose additional information about an itemized transaction that is included in the total receipts or disbursements for the current report or a previous report.

**Multicandidate Committee** – A *political committee* that has been registered at least 6 months, has more than 50 contributors and, with the exception of state party committees, has made contributions to at least 5 candidates for federal office. 100.5(e)(3).

**MUR (Matter Under Review)** – An FEC enforcement action, initiated by a sworn complaint or by an internal administrative action.

**National Party Committees** – *Political committees* established and maintained by a national political party. A party's national committee, House campaign committee and Senate campaign committee are defined as national party committees. 110.1(c)(2).

**Negative Entry** – A negative amount, shown in parentheses on a reporting schedule. The amount is subtracted from the total for that Schedule.

**Net Debts Outstanding** – The total of a *candidate committee's* unpaid debts with respect to a particular *election*, including estimated costs to liquidate the debts plus costs of terminating political activity (if appropriate) minus cash on hand and receivables. 110.1(b)(3)(ii); 110.2(b)(3)(ii).

**Nonconnected Committee** – A *political committee* that is not a *candidate committee*, a *party committee* or a *separate segregated fund*.

**Nonelection Year** – A year in which there is no regularly scheduled federal *election* (i.e., an odd-numbered year).

**Nonfederal Account or Committee** – An account or organization established solely for activity in connection with nonfederal (state and local) elections. Distinguished from *political committee*.

**Nonfederal Election** – An election for state or local office.

**Nonpartisan Tax-Exempt Organization** – An organization which is exempt from federal taxation under 26 U.S.C. §501(c)(3) or (4) and which does not support, endorse or oppose candidates or political parties. 110.13(a)(1); 114.4(b)(5)(ii), (c)(1)(i)(A) and (c)(4).

**Nonrepayable Corporate Drawing Account** – An account established to allow a corporate employee to make personal draws against salary, profits or commissions. See, for example, AO 1980–6.

**Ongoing Committee** – A *political committee* that has not terminated and does not qualify as a *terminating committee*. 116.1(b).

**Operating Expenditures** – See *Administrative Expenses*.

**PAC** – Acronym for *political action committee*.

**Party Committee** – A *political committee* which represents a *political party* and is part of the official party structure at the national, state or local level. 100.5(e)(4).

**Permissible Funds** – Funds which do not violate the *Act's* limits or prohibitions.

**Political Action Committee (PAC)** – Popular term for a *political committee* that is neither a *party committee* nor a *candidate committee*. PACs sponsored by a *corporation* or *labor organization* are called *separate segregated funds* (SSFs); PACs without a corporate or labor sponsor are called *nonconnected committees*.

**Political Committee** – An entity that meets one of the following conditions:

- Any *separate segregated fund* upon its establishment.
- A *state party committee* or nonparty

committee, club, association or other group of persons that receives *contributions* or makes *expenditures*, either of which aggregate over \$1,000 during a calendar year.

- A local unit of a political party that: (1) receives contributions aggregating over \$5,000 during a calendar year; (2) makes contributions or expenditures aggregating over \$1,000 during a calendar year; or (3) makes payments aggregating over \$5,000 during a calendar year for exempt party activities.
- An authorized committee of a *candidate* (see *candidate committee*). 100.5.

**Political Party** – An organization that nominates or selects a *candidate* for election to *federal office* whose name appears on the election ballot as the candidate of the organization. 100.15.

**Principal Campaign Committee** – A committee authorized by the *candidate* as the principal committee of his or her campaign. 100.5(e)(1).

**Prohibited Funds** – Funds from entities who are prohibited from making *contributions* or *expenditures* in connection with, or for the purpose of influencing, a federal *election* (i.e., *corporations*, *labor organizations*, *foreign nationals* and *federal government contractors*). 110.4; 114.2; 115.2. See Chapter 2.

**Public Political Advertisement** – A communication aimed at the general public through print or broadcast media, posters, yard signs, billboards, direct mailing or other means. 110.11(a)(1).

**Receipt** – Anything of value (money, goods, services or property) received by a *political committee*.

**Refunded Contribution** – A contribution is refunded when the recipient committee deposits the contribution and sends the contributor a check for the amount (or a portion) of the contribution. 103.3(a). Compare with *returned contribution*.

**Restricted Class** – Those individuals within a *corporation* or *labor organization* who may be solicited for *contributions* to the organization's *separate segregated fund* at any time and who may receive communications containing express advocacy from the organization. 114.3(a);

114.5(g); 114.7(a) and (h); and 114.8(c), (h) and (i). The restricted classes of different organizations are defined further in Chapter 3.

**Returned Contribution** – A contribution is returned when the recipient committee sends the original check (or other negotiable instrument) back to the contributor, without depositing it. 103.3(a). Compare with definition of *refunded contribution*.

**Runoff Election** – An election held after a primary or a general election when no candidate wins the previous election. 100.2(d).

**Separate Segregated Fund (SSF)** – A *political committee* established or financially supported by a *corporation* or *labor organization*; popularly called a *political action committee* or PAC. 114.1(a)(2)(iii).

**Special Election** – A primary, general or runoff election which is not a regularly scheduled election and which is held to fill a vacancy in the House of Representatives or Senate. 100.2(f).

**State Party Committee** – A *political committee* which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of the party at the state level. 100.14(a).

**Stockholder** – A person who has a vested beneficial interest in stock, the power to direct how that stock is voted (if it is voting stock) and the right to receive dividends. 114.1(h).

**Terminating Committee** – A *political committee* that is winding down its activities in preparation for filing a termination report. A terminating committee has ceased to make or receive *contributions* (other than to receive contributions for debt retirement purposes) or make *expenditures* other than for payment of debts and obligations or for winding-down costs. 116.1(a).

**Trade Association** – A *membership organization* consisting of persons engaged in a similar or related line of commerce. A trade association is organized to promote and improve business condi-

tions and does not engage in regular business for profit; the net earnings of a trade association do not accrue to the benefit of any member. 114.8(a).

**Trade Association Federation** – An organization representing *trade associations* involved in the same or allied line of commerce. 114.8(g).

**Transfer** – With regard to *separate segregated funds*, a payment by one committee to an *affiliated committee*. 102.6(a).

**Unauthorized Single-Candidate Committee** – A *political committee* not authorized by any *candidate*, which makes *contributions* or *expenditures* on behalf of only one candidate. 100.5(e)(2) and (f)(2).

**Usual and Normal Charge** – With regard to **goods** provided to a political committee, the term refers to the price of those goods in the market from which they ordinarily would have been purchased at the time they were provided. With regard to **services**, the term refers to the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered. 100.7(a)(1)(iii)(B).

# **Non-Federal Section 527 Political Organizations**

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## **What Is “527”?**

- **Internal Revenue Code provision exempting ALL political organizations from federal tax**
- **Enacted in 1975 to confirm longstanding IRS practice after IRS started to tax interest earned by political groups**
- **Current popular usage of “527” applies to small subset of actual 527 entities: independent, non-federal political organizations**

## **527s Aren't New**

- They've been around since, well, 1975
- Dust-up in 2000 about "Stealth PACs"
- Congress amended Internal Revenue Code to require financial disclosure
- BCRA produced predicted increase in 527 activity

## **527s In the Public Eye**

- America Coming Together
- Media Fund
- America Votes
- Progress for America Voter Fund
- Swift Boat Veterans for Truth
- Leadership Forum

## **527s Aren't "Shadowy" or "Stealth" Groups**

- **Regular, detailed public disclosure requirements since 2000**
- **Reports available instantly on Internet**
- **Far more public disclosure than 501(c) (3), 501(c) (4), and 501(c) (6) groups; and less than and different disclosure from 501(c) (5) labor organizations**

## **Independent "Non- Connected" Section 527 Committees**



## **Permissible Activities**

- **Influence the nomination, election, selection and appointment of federal, state and local public officials and political party officials**
- **Where state law permits, contribute to state and local candidates and party committees and communicate express advocacy messages about state and local candidates**

## **Permissible Activities**

- **Contribute to other 527 committees**
- **Undertake voter registration, voter identification and GOTV activities**
- **Communicate non-express advocacy messages to the general public concerning federal, state and local candidates, officeholders and political party committees (“issue advocacy”)**
- **Partisan candidate ratings, voter guides**

## **Impermissible Activities**

- **Communicate express advocacy messages concerning federal candidates**
- **Contribute to federal candidates, national party committees or other federal political committees**

## **Impermissible Activities**

- ***Where State law restricts*, contribute to state and local candidates and party committees, or communicate express advocacy messages**
- **If incorporated, undertake “electioneering communications” – paid broadcasts referring to clearly identified federal candidates within 60 days of general election or 30 days of primary, caucus or convention that can reach 50,000 in candidate’s electorate**

## **Contributions to a 527 Committee**

- **Contributions are not tax-deductible**
- **Contributions are not subject to the federal gift tax**

## **Contributions to a 527 Committee**

- **Lawful:**
  - **U.S. citizens and lawful permanent residents; for-profit corporations; U.S. subsidiaries of foreign corporations; unions; limited liability companies; partnerships; unincorporated associations; non-profit corporations; other non-political federal 527 committees; federal political committees; national party committees**

## **Contributions to a 527 Committee**

- **Unlawful:**
  - **Foreign nationals (individuals, corporations, unions, etc.); federally chartered banks and corporations; federal government contractors; state and local party committee non-federal accounts**
- **Unwise:**
  - **501(c) (3) organizations**

## **Dealings with Others**

- **Because national party committees can't solicit, receive, direct or otherwise deal with soft money, a 527 committee can't be established, maintained, financed or controlled by them or coordinate activities with them**

- **Federal candidates and officeholders can't solicit or direct funds for a 527 committee that engages in activities in connection with federal elections. And, a 527 committee can't coordinate its activities with them**

- **State law governs a 527 committee's relationship with state and local candidates, officeholders and political party committees, except that state and local party committees can't solicit or direct non-federal funds to a 527 committee**

- **A 527 committee can coordinate its activities with unions and for-profit corporations. But it cannot be a conduit for union or corporate financing of “electioneering communications”**
- **A 527 committee can coordinate its activities with other 527 committees and 501(c)(4) advocacy organizations. But it cannot be a conduit for activities they finance that they could not pay for themselves**

## **Public Disclosure**

- **A 527 committee must file four different kinds of reports with the IRS**
  - **An initial registration;**
  - **Periodic reports of receipts and disbursements;**
  - **An annual information return; and**
  - **An annual tax return**
- **All these reports except the tax return (and parts of the information return) are publicly available**

- **Initial registration: Form 8871**
  - By committees expecting \$25,000/year in gross receipts
  - Prerequisite for tax-exempt status
  - Due within 24 hours of creation
  - Must be filed electronically
  - Includes name, address, purpose, officers, directors, 5 highly compensated employees over \$50,000, related entities
  - Needs EIN separate from sponsor or affiliate
  - Report material changes within 30 days
  - Available at [www.irs.gov/pub/irs-fill/f8871.pdf](http://www.irs.gov/pub/irs-fill/f8871.pdf)

- **Periodic Financial Reports: Form 8872**
  - By committees expecting \$25,000/year in gross receipts
  - May be filed electronically or by mail
  - Amount, purpose and recipients of payments by 527 aggregating \$500/year
  - Amount and sources of contributions to 527 aggregating \$200/year
  - Due quarterly (or monthly) in election year
  - Due semi-annually (or monthly) in other years
  - Pre-election reports also due if spend for elections
  - Post-election reports also due from all
  - Taxes, interest and penalties due on sums not timely reported
  - Available at [www.irs.gov/pub/irs-fill/f8872.pdf](http://www.irs.gov/pub/irs-fill/f8872.pdf)

- **“Qualified state or local political organizations” (QSPOS) are exempt from 8872 requirement**
  - Established and used solely for contributions and expenditures regarding state and local elections
  - Complies with state law that requires publicly disclosed reports of at least \$800-level receipts and \$500-level contributions
  - No federal candidate or officeholder controls or materially participates in 527 committee
  - Must claim 8872 exemption on form 8871
  - Available at [www.irs.gov/pub/irs-fill/f8872.pdf](http://www.irs.gov/pub/irs-fill/f8872.pdf)

- **Annual Information Return: Form 990**
  - By committees with \$25,000/year gross receipts
  - By QSPOs with \$100,000/year gross receipts
  - Due by 15<sup>th</sup> day of 5<sup>th</sup> month after taxable year (for CY organizations, May 15)
  - Same form as for 501 filers
  - Failure to file: \$20/day penalty up to lesser of \$10,000 or 5% of annual gross receipts
  - Available at [www.irs.gov/pub/irs-pdf/f990.pdf](http://www.irs.gov/pub/irs-pdf/f990.pdf)



- **Annual Tax Return: Form 1120-POL**
  - Only due if 527 has over \$100 in taxable income
  - Due by 15<sup>th</sup> day of third month after taxable year (for CY organizations, March 15)
  - Not publicly available, unlike 8871, 8872 and 990
  - Failure to file: additional 5%/month of tax due up to 25%
  - Available at [www.irs.gov/pub/irs-pdf/1120pol.pdf](http://www.irs.gov/pub/irs-pdf/1120pol.pdf)

- **State Campaign Finance Laws May Apply**
  - If 527 makes state and local candidate contributions
  - If 527's advocacy about state or local elections triggers reporting and other requirements

## **Section 527 Committees Connected with Section 501(c) Organizations**

## **Sponsored By a 501(c) Organization**

- **Advocacy organizations under 501 (c) (4) (e.g., Sierra Club and National Rifle Association)**
- **Labor organizations under 501 (c) (5) (e.g., AFL-CIO and Laborers' International Union)**
- **Business leagues under 501 (c) (6) (e.g., U.S. Chamber of Commerce; National Restaurant Association)**
- **But not 501 (c) charities/educational groups - connection with 527 prohibited**

## **Reasons For 501(c) to Establish a 527 Account**

- **If 501(c) directly spends for 527 activity, the 501(c) is taxed on that spending**
- **Tax is highest corporate rate – now 35% - on lesser of 527 spending or investment income**
- **If 501(c) mostly spends on 527 activity, the 501(c) itself should be a 527**

## **Important Exemptions**

- **501(c) 's can use regular treasury for political communications to FECA "restricted class": members, executive and administrative personnel and their families**
- **501(c) 's can use regular treasury for costs of solicitation, fundraising and administration for the 527 itself and for a federal PAC**
- **Reason: In 1980, IRS regulations "reserved" on whether 501(c) must use 527 account for these expenses; "reservation" now approaching silver anniversary**

## **Funding a 527 Account**

- **Best to deposit incoming receipts directly into 527 account**
- **Can establish holding account to disburse receipts to various accounts**
- **Passive source of these deposits doesn't become "contributor" to the 527**
- **Deposits into 527 account aren't supposed to be used to earn interest for 501(c) sponsor because 501(c)'s interest isn't taxable and 527's interest is**

## **Funding a 527 Account**

- **But IRS accepts some 501(c) interest-earning due to prevalence of interest-earning checking accounts, if transfers from 501(c) to 527 are prompt and regular**
- **Once deposited in 527 account, money can't be returned to 501(c) without risking tax on 527 or loss of 527 tax exemption**

## **501(c) s with Federal PACs and soft 527 accounts**

- **FEC regulations say must “allocate” expenses for “generic voter drives” between federal and non-federal accounts**
  - **Voter identification**
  - **GOTV**
  - **Other activities**
- **That urge registration, voting or support for candidates of particular party or associated with particular issue**
- **FEC says less than 2% of potential allocators actually do so**

## **New FEC Allocation Regulations**

- **Adopted in August 2004**
- **Text and explanation not finalized as of September**
- **Apply to both independent and 501(c) - connected 527s**
- **“Generic voter drives” must be paid with at least 50% federal money**
- **Public communications and voter drives referring to party and federal (but not non-federal) candidates: 100% federal payment**

## **New FEC Allocation Regulations**

- **Public communications and voter drives referring to non-federal (but not federal) candidates: can be 100% non-federal payment**
- **Public communications and voter drives referring to both federal and non-federal candidates: time/space method determines payment ratio**

**Major current issue under FECA: What is a “federal political committee” anyway?**

- **FECA: Political committee is any group that receives “contributions” or makes “expenditures” over \$1,000/year**
- **For 30 years, “express advocacy” considered the public communications that qualify as “expenditures”**
- **Buckley v. Valeo (1976): “major purpose” must be to nominate or elect a federal candidate**
- **FEC has never sought to define “major purpose”; rulemaking started in 2001, then suspended**

## **Are the “New 527s” Political Committees?**

- **Campaign finance “reformers”, Republican party and President Bush say “yes”**
- **527s and 501(c) groups across political spectrum say “no”**
- **FEC rulemaking in 2004 explored issue again, but FEC rejected new regulations in August**
- **FEC complaints against numerous 527s allege they are**
- **September 2004 Shays/Meehan lawsuit seeks to force FEC to issue regulations saying they are**
- **Legislation introduced in September 2004 would classify most 527s as political committees**

## **What's at Stake?**

- **Freedom of speech and association**
- **Ability of 501(c)'s to engage in political activity**
- **Distribution of political power among individuals, candidates, political parties, unions, corporations, non-profit groups, news media**