

# Campaign Operations, Part 3: Use of Campaign Funds



February 23, 2012

Tab #4



## Objectives – Part 3

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- Discuss Use of Campaign Funds
  - Reporting Disbursements – Operating Expenditures
  - Campaign Travel
  - Reimbursement of Staff Advances of Funds
  - Personal Use / Application of the Irrespective Test
- Examine Restrictions on Candidate Involvement Outside Federal Elections
  - Fundraising for Nonfederal Elections
  - Appearance at Nonfederal Fundraisers
  - Fundraising for Nonprofit Organizations

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## Reporting Disbursements

### How to Itemize Disbursements

Itemize regardless of amount:

- ✓ Transfers to affiliated committees
- ✓ Loan repayments
- ✓ Loans made
- ✓ Contributions made to other federal candidates

All other disbursements:

Itemize once payments to the same payee exceed \$200 when aggregated with other payments to same source during an election cycle

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#### I. Reporting Disbursements – Operating Expenditures – 11 CFR 104.3(b)

##### A. How to Itemize (*Guide*, pp. 99-100)

###### 1. Itemize regardless of amount:

- a) Transfers to affiliated committees;
- b) Loan repayments;
- c) Loans made; and
- d) Contributions made to other federal candidates.

###### 2. All other disbursements:

Itemize once payments to the same payee exceed \$200 when aggregated with other payments to same source during an election cycle

###### 3. Itemization Information

Include following information for each payee:

- a) Name and mailing address;
- b) Purpose of disbursement (a brief description of why the disbursement was made);
- c) Date of disbursement; and
- d) Amount of disbursement.



## Purpose of Disbursement

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- Rule of thumb: Could reader discern why a payment was made simply by reading the description provided?
- Non-exhaustive list available online at <http://www.fec.gov/law/policy.shtml#purpose>

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### **B. Purpose of Disbursement** (*Guide*, p. 99)

1. FEC regulations require that the “purpose of disbursement” entry for each disbursement be sufficiently specific, when considered with the identity of the recipient, to provide a clear reason for the payment. 11 CFR 104.3(b)(3) and (4).
2. Policy statement includes non-exhaustive lists of acceptable and unacceptable “purpose of disbursement” descriptions intended to provide additional guidance to the regulated community and to foster consistency among filers.
3. **Rule of thumb**  
The statement suggests that filers consider whether a person unaffiliated with the campaign/committee could discern why a payment was made by reading the description they have provided.
4. List is updated periodically and made available online at <http://www.fec.gov/law/policy.shtml#purpose>.

**SCENARIO #6: *Reporting Disbursements – Operating Expenditures* (Guide, pp. 99-100); *Credit Card Transactions* (Guide, pp. 100-101)**

*Mr. Newman, Candidate Cosmo Kramer's Treasurer, decided the smartest way for the campaign committee to pay its expenses was for the campaign to have its own credit card. During the period covered by the April Quarterly Report, the card (issued by Citibank VISA, 301 10<sup>th</sup> Street, Suite 4500, New York, NY 10001) has been used to pay the following expenses:*

- 1. \$150 paid to Poppy's Restaurant (located at Broadway and 112<sup>th</sup> Street, New York, NY 10025) for food brought in for the January 15, 2012 monthly fundraising strategy luncheon. (The campaign has not used this restaurant before in the current election cycle.)*
- 2. \$3,000 paid to Skyway Airlines for a charter flight Candidate Kramer took on February 13, 2012. Skyway is based out of Newark Airport (address: 301 Airport Way, Newark, NJ 07114).*

*By not paying the credit card bill for a few months, the campaign has incurred an additional \$24.50 in finance charges. On April 29, 2012, the campaign paid off the entire \$3,174.50.*

**1. How should the committee disclose credit card debt?**

**2. How should the committee properly disclose the credit card payment?**

**3. Key issues:**

**SCENARIO #6 – ANSWERS:**

**1. How should the committee disclose credit card debt?**

Debts and obligations (other than loans) are reported 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 (date of transaction, not date bill is received). The debt is disclosed on the next regularly scheduled report.
- A debt exceeding \$500 must be reported in the report covering the date on which the debt was incurred.

**Schedule D (outstanding debt):** The debt to the credit card company should be disclosed on Schedule D in the same way as any other debts. List the credit card company as the debtor; be sure to reflect the outstanding debt amount at the close of the reporting period.

Please note: no memo entries for specific credit card transactions should be listed on Schedule D.



## Credit Card Transaction: Debt

<p><b>Schedule D, Line 10</b></p> <ul style="list-style-type: none"> <li>• Report amt. owed as debt until reimbursed if &gt;\$500 or outstanding &gt;60 days</li> <li>• Do not use MEMO entries on Schedule D – vendors listed on Schedule B when disclosing payment</li> </ul>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2"><b>SCHEDULE D (FEC Form 3 )</b></td> <td style="font-size: small;">(Use separate schedule(s) for each numbered line)</td> <td style="font-size: small;">PAGE OF</td> </tr> <tr> <td colspan="2"><b>DEBTS AND OBLIGATIONS</b></td> <td colspan="2" style="font-size: small;">FOR LINE NUMBER: (check only one) <input type="checkbox"/> 9 <input checked="" type="checkbox"/> 10</td> </tr> <tr> <td colspan="4"><b>Excluding Loans</b></td> </tr> <tr> <td colspan="4" style="font-size: small;">NAME OF COMMITTEE (In Full)</td> </tr> <tr> <td colspan="4" style="text-align: center;"><b>Cosmo Kramer for Congress Committee</b></td> </tr> <tr> <td colspan="2" style="font-size: small;">A. Full Name (Last, First, Middle Initial) of Debtor or Creditor</td> <td colspan="2" style="font-size: small;">Nature of Debt (Purpose)</td> </tr> <tr> <td colspan="2">Citibank VISA</td> <td colspan="2" style="text-align: center;">Credit card debt</td> </tr> <tr> <td colspan="4" style="font-size: small;">Mailing Address</td> </tr> <tr> <td colspan="4">301 10<sup>th</sup> Street, Suite 4500</td> </tr> <tr> <td style="font-size: small;">City</td> <td style="font-size: small;">State</td> <td colspan="2" style="font-size: small;">Zip Code</td> </tr> <tr> <td>New York</td> <td>NY</td> <td colspan="2">10001</td> </tr> <tr> <td colspan="4" style="font-size: small;">Outstanding Balance Beginning This Period</td> </tr> <tr> <td colspan="4" style="text-align: center;">0.00</td> </tr> <tr> <td colspan="2" style="font-size: small;">Amount Incurred This Period</td> <td style="font-size: small;">Payment This Period</td> <td style="font-size: small;">Outstanding Balance at Close of This Period</td> </tr> <tr> <td colspan="2" style="text-align: center;">3,150.00</td> <td style="text-align: center;">0.00</td> <td style="text-align: center;">3,150.00</td> </tr> </table>	<b>SCHEDULE D (FEC Form 3 )</b>		(Use separate schedule(s) for each numbered line)	PAGE OF	<b>DEBTS AND OBLIGATIONS</b>		FOR LINE NUMBER: (check only one) <input type="checkbox"/> 9 <input checked="" type="checkbox"/> 10		<b>Excluding Loans</b>				NAME OF COMMITTEE (In Full)				<b>Cosmo Kramer for Congress Committee</b>				A. Full Name (Last, First, Middle Initial) of Debtor or Creditor		Nature of Debt (Purpose)		Citibank VISA		Credit card debt		Mailing Address				301 10 <sup>th</sup> Street, Suite 4500				City	State	Zip Code		New York	NY	10001		Outstanding Balance Beginning This Period				0.00				Amount Incurred This Period		Payment This Period	Outstanding Balance at Close of This Period	3,150.00		0.00	3,150.00
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**Schedule B (debt payments):** As the committee pays off the debt, report partial or full payments on Schedule B – include MEMO entries to show original transactions making up the amount that is being repaid to the credit card company directly below the entry for payment to the credit card company (or, for electronic filers, link these). See reporting example above.

**Note for Electronic Filers:** Certain types of electronic filing software may not allow you to include a portion of memo entries underlying each partial payment on a credit card debt on each report where your committee is showing a repayment. For example, your software may only allow you to include all memo entries on the first report where you show a partial payment, but may not allow you to include any memo entries on the next report(s) where you show subsequent repayment(s). In this case, please note so using Memo Text on each report where this applies to avoid Requests for Additional Information from the Reports Analysis Division of the FEC.

**2. How should the committee properly disclose the credit card payment?**

The committee needs to disclose the payment of charges on the campaign credit card as an operating expenditure.

**How to Report:**

- **Report credit card payment** on Schedule B for Line 17. Campaign should disclose total payment to the credit card with the Date of Disbursement as the date the committee pays credit card bill.
- **Report itemization of vendor (Skyway Airlines)** on Schedule B for Line 17 as a MEMO entry. The Date of Disbursement is the date of the charter flight; in the Amount of Each Disbursement this Period box, include notation, “Citibank VISA” as a cross-reference to the credit card payment.
- The \$150 payment to Poppy’s Restaurant does not require itemization, as the committee’s payments to this vendor did not aggregate over \$200 in the election cycle.

*See Reporting Example on Next Page*



# Credit Card Transaction

July  
 Quarterly  
 Report

SCHEDULE B (FEC Form 3) ITEMIZED DISBURSEMENTS		FOR LINE NUMBER: (check only)	PAGE	OF
Use separate schedule(s) for each category of the Detailed Summary Page		<input checked="" 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>Cosmo Kramer for Congress Committee</b>				
Full Name (Last, First, Middle Initial)				
A. <b>Citibank VISA</b>		Date of Disbursement		
Mailing Address <b>301 10<sup>th</sup> Street, Suite 4500</b>		<b>04 / 29 / 2012</b>		
City <b>New York</b> State <b>NY</b> Zip Code <b>10001</b>		Amount of Each Disbursement this Period		
Purpose of Disbursement <b>Credit card payment</b>		<b>3,174.50</b>		
Candidate Name		Category/Type		
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:				
Full Name (Last, First, Middle Initial)				
B. <b>Skyway Airlines</b>		Date of Disbursement		
Mailing Address <b>301 Airport Way</b>		<b>02 / 13 / 2012</b>		
City <b>Newark</b> State <b>NJ</b> Zip Code <b>07114</b>		Amount of Each Disbursement this Period		
Purpose of Disbursement <b>Travel Expense – May Fundraiser</b>		<b>3,000.00</b>		
Candidate Name		Category/Type <b>MEMO</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:				

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### 3. Key issues:

- Pay attention to the itemization threshold. Take into account previous disbursements to same vendor – keep good records.
- Use MEMO entry for any payee that exceeds the itemization threshold for operating expenses (in excess of \$200 for election cycle). Also include a notation that refers back to the credit card payment as cross-reference.
- Debts owed to credit card company are reflected on Schedule D in the period in which the debt was incurred if amount owed is in excess of \$500; or once it has been outstanding for 60 days if \$500 or less. No MEMO entries on Schedule D.
- When paying credit card debt, disclose payment to credit card company on Schedule B for Line 17, including MEMO entry for any payees making up the amount being repaid to the credit card company.



## Travel by Aircraft

### General Guidelines

- Basic framework for campaign use of non-commercial aircraft:
  - Presidential/Vice-Presidential/Senate Candidates – only if charter rate paid
  - House Candidates + House Leadership PACs – prohibited
  - Other Leadership PACs – 1<sup>st</sup> class/coach/charter (based upon origin/destination cities – no change)
- Exceptions for use of government-operated and candidate/family-owned aircraft.

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## II. Campaign Travel (*Guide*, pp. 67-71)

### A. General Guidelines

1. The rules governing the use of non-commercial aircraft by campaign travelers differ depending on whether an individual is traveling on behalf of:
  - a) Senate / Presidential / Vice Presidential candidate.
  - b) House candidate or the Leadership PAC of a House candidate.
  - c) Any other political committee (i.e., party committee, separate segregated fund, nonconnected PAC, or Leadership PAC of a Senate or Presidential candidate).
2. **Exceptions / Separate Rules for:**
  - a) Government operated aircraft.
  - b) Candidate or immediate family member owns or leases aircraft.



## Travel by Aircraft

### Key Terms

- “Aircraft” now includes helicopters.
- “Campaign Traveler” - individual traveling in connection with federal election on behalf of candidate or committee (includes media/security)
- “Commercial Travel” - aircraft operated by air carrier or commercial operator under FAA air carrier safety rules

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- 3. Commercial Travel – 11 CFR 100.93(a)(3)(iv)**
  - a) Aircraft operated by an air carrier or commercial operator conducted under FAA air carrier safety rules.
  - b) When usual and normal charge available (i.e., specified fee by route, mileage or date and time of use) travel is generally considered “commercial travel.”
- 4. Non-Commercial Travel – 11 CFR 100.93(a)(3)(v)**

Travel aboard any conveyance that is not “commercial” as defined above.



## Travel by Aircraft

### House/Leadership PACs

Travel on non-commercial aircraft is prohibited.

- In general, expenditures may be made for air travel only if the aircraft is operated by:
  - A commercial air carrier; or
  - Federal/state government entity.
- Prohibition may not be avoided by third-party payment as in-kind contribution.

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#### B. House Candidates/Leadership PACs of House Members (*Guide*, p. 68)

##### 1. Use of Non-Commercial Aircraft Prohibited

Campaign travelers traveling on behalf of House candidate, their authorized committees and Leadership PACs **are prohibited from using non-commercial aircraft**. 11 CFR 100.93(c)(2) and 113.5(b).

- a) The campaign traveler may travel only on aircraft operated by a:
  - (1) Commercial air carrier; or
  - (2) Federal or state government entity.
- b) Prohibition cannot be avoided by candidate personal funds payment to the service provider or third-party payments treated as an “in-kind” contribution. (e.g., individual may not pay for House candidate to take campaign-related flight on private aircraft).
- c) House candidates **may** travel on non-commercial aircraft when traveling on behalf of another committee (i.e. Presidential, Senate, party committees, etc.) but **may NOT** travel on non-commercial aircraft when traveling on behalf of their own campaigns or Leadership PACs. 74 FR 63956.

##### 2. Use of Government Conveyance (*Guide*, pp. 69-70)

Campaign travelers traveling on behalf of a candidate, their authorized committee or House Leadership PAC must reimburse a government entity for travel on any government-operated aircraft at either the “Per Candidate Campaign Traveler” or “Private Traveler Reimbursement” rates.

11 CFR 100.93(e). See January 2010 issue of *FEC Record* newsletter, pp. 3-4.



## Travel by Aircraft

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### Basic Rule

No contribution results if political committee on whose behalf the travel is being conducted pays service provider the full value of the travel by all campaign travelers who travel on behalf of that committee.

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- C. **Use of Non-Commercial Aircraft** (*Guide*, pp. 67-68)
  - 1. **Basic Rule**
    - a) No contribution results if political committee on whose behalf the travel is conducted pays the provider the full value of the travel by all campaign travelers who travel on behalf of that committee. 11 CFR 100.93(b).



# Travel by Aircraft

## Basic Rule

Payment must be made within commercially reasonable time, i.e., no later than seven (7) calendar days after the flight began.

15	16	17	18	19	20	21
						
22	23	24	25	26	27	28
						
29	30	31				

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- b) Reimbursement must be provided **no later than seven (7) calendar days after the date the flight began** at one of the following rates to avoid the receipt of an in-kind contribution from service provider.



## Travel by Aircraft

### Presidential/Senate

Non-commercial aircraft provider must be reimbursed at the *pro rata share* per campaign traveler at the normal and usual charter fare for *comparable aircraft* of comparable size.

- *Pro rata share*: based upon # of campaign travelers on flight and # of candidates represented
- *Comparable aircraft*: aircraft of similar make, model and amenities to plane actually used
- Attribution reflects benefit derived by each candidate
- Travel with non-candidate traveler: candidates must pay cost of entire charter fare (except media/security)

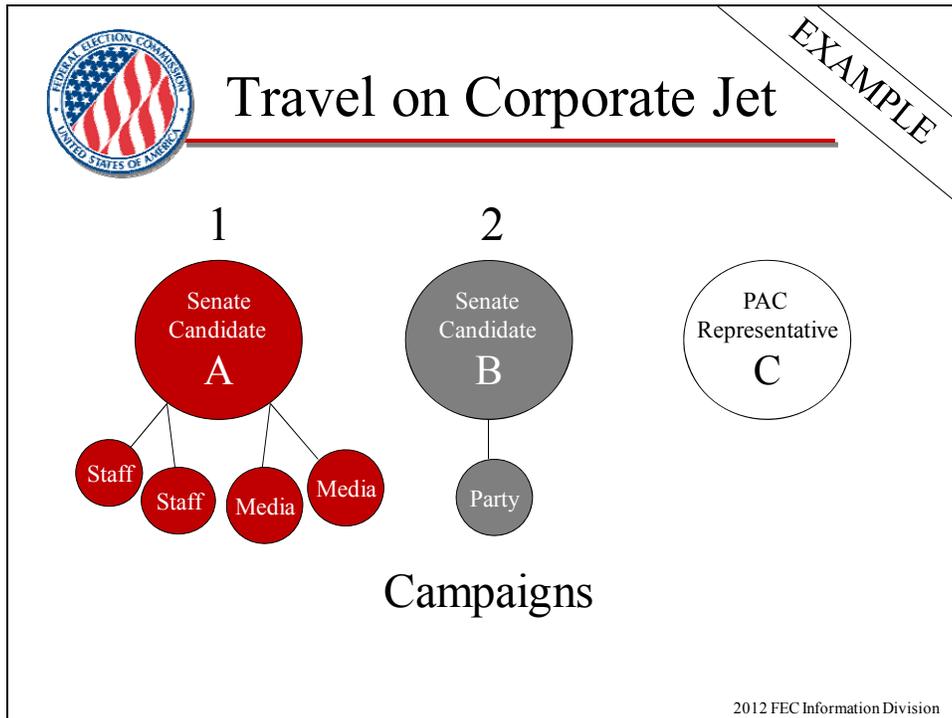
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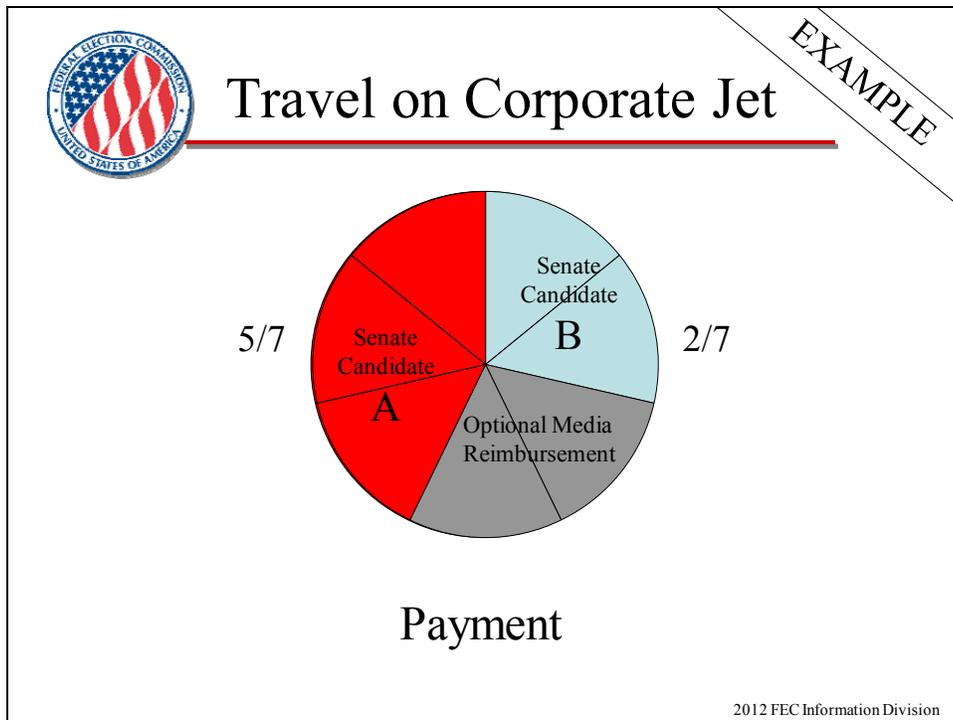
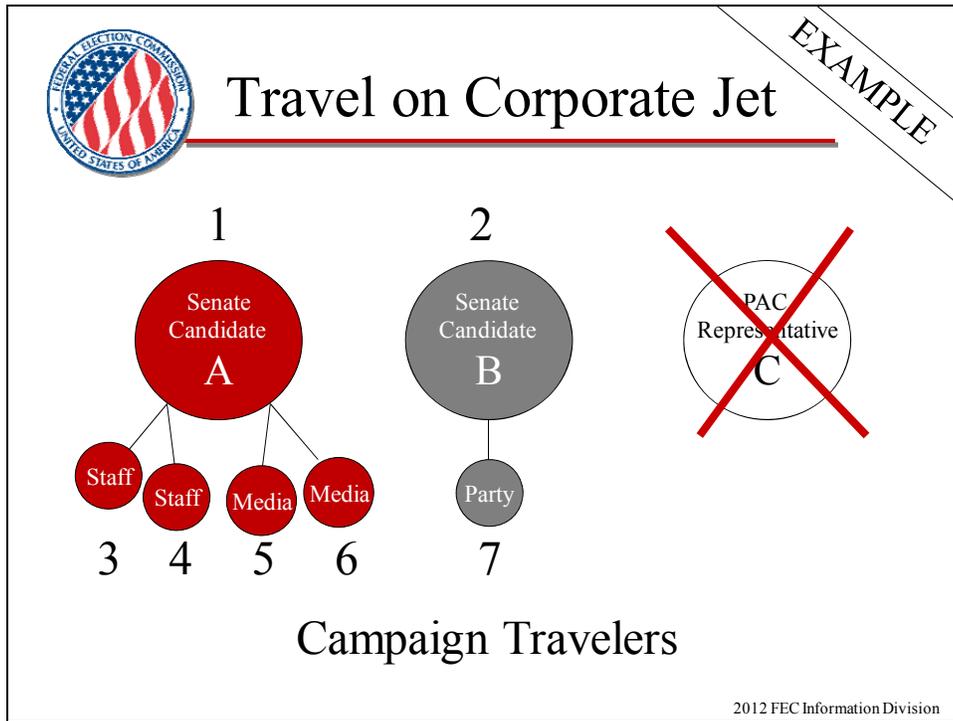
#### 2. **Presidential/Senate Candidates** (*Guide*, p. 68)

Campaign travelers using non-commercial aircraft to travel on behalf of Presidential and Senate candidates and their authorized committees (including the candidate) must reimburse the provider of the aircraft at the *pro rata share* of normal and usual charter fare for comparable aircraft of comparable size. 11 CFR 100.93(c)(1) and 113.5(a).

- a) ***Pro rata share***: Determine *pro rata share* by dividing the normal and usual charter rate by the number of campaign travelers who represent candidates or authorized committees.
  - (1) Includes all campaign travelers (including candidate & security).
  - (2) Candidate need not be on flight.
  - (3) If more than one campaign represented on flight, determine how many are traveling on behalf of each.
- b) **“Comparable aircraft of comparable size”**: An aircraft of similar make and model with similar amenities to the plane actually used.
- c) **Attribution** reflects proportion of benefit derived by each candidate (not necessarily equal).

- d) **Travel with non-candidate campaign traveler:**
- (1) Generally, candidate(s) must pay the cost of the entire charter fare. Non-candidate campaign travelers – such as PAC or party committee representatives – may not relieve any of the candidate’s payment obligation.
  - (2) **News media or government-provided security personnel** may pay, but not more than their *pro rata share* of the travel cost. Reimbursement may be made to service provider or campaign committee and does not result in an in-kind contribution.
- e) **Note:** these rules do not apply to Presidential/Senate Leadership PACs (see section on “Other Political Committees” below).







## Travel by Aircraft

### Other Political Committees (incl. Presidential/Senate Leadership PACs)

Private aircraft provider must be paid no less than the following to avoid an in-kind contribution:

- City served by regularly scheduled air service:  
Lowest unrestricted, non-discounted fare (1<sup>st</sup> class/coach rate)
- City not served by regularly scheduled air service:  
Usual charter rate for comparable aircraft of sufficient size for all campaign travelers (incl. media/security if applicable)

\*\* Old Rule (2003) \*\*

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### 3. Other Political Committees (i.e., Presidential/Senate Leadership PACs) (*Guide*, p. 68)

- a) No payment is required if campaign travelers are traveling on behalf of a Presidential or Senate candidate's Leadership PAC, party committee, separate segregated fund or nonconnected PAC if a Presidential or Senate campaign committee pays for flight on non-commercial aircraft.
  - (1) No in-kind contribution by the aircraft operator occurs because it will be fully compensated by the Presidential or Senate campaign committee paying for the flight.
  - (2) Any payment made to relieve the costs paid for by the Presidential or Senate campaign committee would be an in-kind contribution to the candidate committee.
- b) Otherwise, campaign traveler traveling on behalf of a Presidential or Senate candidate's Leadership PAC, party committee, separate segregated fund or nonconnected PAC must pay the service provider no less than the following to avoid receipt of in-kind contribution (formulae determined by travel cities). 11 CFR 100.93(c)(3).

- (1) **Travel between cities with regularly scheduled first-class air service:** Lowest unrestricted and non-discounted first-class air fare.
  - (2) **Travel between cities served by regularly schedule coach service but *not* regularly scheduled first-class airline service:** Lowest unrestricted and non-discounted coach airfare.
  - (3) **Travel between cities not served by regularly scheduled commercial airline service:** Usual charter rate for comparable commercial aircraft of sufficient size to accommodate campaign travelers, and security personnel if applicable.
- c) **Date of public availability:** Payment rate must be the rate available to the general public for the dates traveled or within seven (7) calendar days thereof. 11 CFR 100.93(f).



## Travel by Aircraft

### Candidate/Family-Owned Aircraft

#### Exception for House Candidate/Leadership PAC Use

- Shared ownership, travel within ownership share:  
Campaign reimburses (or receives an in-kind contribution) for cost of travel
- Shared ownership, travel exceeds share:
  - Senate/President: excess treated like other non-commercial travel (reimbursed at *pro rata share* of usual/normal charter rate)
  - House: prohibited
- Wholly owned aircraft:  
Campaign reimburses (or receives an in-kind contribution for) *pro rata share* of trip costs

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#### D. **Exception for Aircraft Owned by Candidate or Candidate's Immediate Family** (*Guide*, p. 69)

Prohibitions on expenditures for use of non-commercial aircraft do not apply if candidate or "immediate family member" owns/leases aircraft and candidate's use is equal to or less than proportionate ownership share. 11 CFR 100.93(g) and 113.5(c).

1. **"Immediate Family Member"** = husband, wife, father, mother, son, daughter, brother, sister, father-in-law, mother-in-law of the candidate.
2. **"Proportional Ownership Share"** = amount of use to which candidate/family is entitled under ownership/lease agreement.
3. **Reimbursement Rates – Shared Ownership Aircraft**
  - a) **If travel use is within candidate/family share:** Reimburse at hourly, mileage or other applicable rate charged to the candidate for the costs of the travel.
  - b) **If travel use is in excess of candidate/family share:**
    - (1) **Senate/Presidential candidates:** Excess flight time reimbursed at the *pro rata share* of the charter rate for the flight (like any other non-commercial flight).
    - (2) **House candidates:** Prohibited.
4. **Reimbursement Rate -- Wholly Owned by Candidate/Family**  
Reimburse the *pro rata share* of the costs associated with the trip (or report as in-kind, to extent within individual's limit).



## Travel: Other Than Aircraft

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### Use of Other Transportation

Payment at usual & normal rental charge due w/in 30 days of invoice receipt, but no more than 60 days after travel began.

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- E. Other Means of Transportation** (*Guide*, p. 69)
1. Campaign travelers' use of transportation other than aircraft (i.e., limo, train, boat, bus).
  2. Reimbursement rate at usual and normal rental charge for a comparable conveyance of sufficient size to accommodate all campaign travelers, including members of the news media traveling with a candidate, and security personnel, if applicable.
  3. Payment must be made within 30 calendar days after the date of receipt of the invoice for the travel, but not later than 60 calendar days after date travel began. 11 CFR 100.93(d).



## Reimbursing Staff Advances

Advances of Personal Funds count as contributions until reimbursed

- ▶ Unreimbursed travel  
Exempt up to \$1,000/election, per candidate
- ▶ Reimbursed travel  
Exempt if repaid on time (cash/check: w/in 30 days;  
credit card: w/in 60 days of billing statement  
closing date)
- ▶ Application to official staff

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### III. Reimbursements for Advances of Personal Funds by Campaign Staff and Volunteers (*Guide*, pp. 15-16)

Use of personal funds by candidate, staff or volunteers is an in-kind contribution until reimbursed by committee.

#### A. \$1,000 Unreimbursed Transportation Exemption (*Guide*, p. 41) (Covered in Basics Workshop)

1. Individuals (including the candidate, paid staff member or volunteer) may voluntarily spend up to \$1,000 for transportation expenses on behalf of campaign without making contribution.
2. Payments exceeding \$1,000 per candidate, per election, are considered contributions, subject to limit.

#### B. Exception for Reimbursed Travel (*Guide*, pp. 41-42)

Exempt if reimbursed within specific time limit.

1. Paid with cash, reimburse within 30 days.
2. Paid with personal credit card, reimburse within 60 day of closing date on billing statement.

#### C. Application to Official Staff (*Guide*, p. 16)

1. Prohibits member of a Representative's or Senator's official staff from making contributions to his employing Member. 18 U.S.C. §603 (criminal statute under jurisdiction of the Department of Justice)
2. Official staff should not advance personal funds (unless for travel per rules above) even if intending to be reimbursed later.

**SCENARIO #7: *Staff Advances for Travel Expenses (Guide, pp. 97-98) and Non-Travel Expenses (Guide, pp. 95-96)***

*Susan Ross, the Communications Manager for the Cosmo Kramer for Congress Committee, used her personal credit card on April 3, 2012, to purchase a \$550 airline ticket to represent the committee at the campaign event on Flag Day (June 14, 2012). The committee will reimburse her, but not for at least 6 months, until more contributions for the primary election are received. (Note: Susan resides at 715 West 79<sup>th</sup> Street, New York, NY 10024).*

*Another campaign volunteer, Jackie Chiles (460 West End Avenue, Suite 2500, New York, NY 10024), wrote a personal check for \$750 on April 20, 2012, to pay for office supplies at his neighborhood Staples (900 West 79<sup>th</sup> Street, New York, NY 10024). He submitted the receipt to the committee treasurer that same day. The committee reimbursed him in full with campaign funds on April 30, 2012.*

- 1. How should the committee disclose the first transaction (airline ticket)? Since the committee has not yet made the reimbursement, what issues must they consider when deciding how to disclose it?**
  
- 2. Any additional disclosure necessary?**
  
- 3. How should the committee disclose the second transaction (office supplies)? Since it has been reimbursed by the end of the reporting period, do they need to disclose the advance and/or the reimbursement?**
  
- 4. Does the advance result in a contribution from Jackie Chiles? If so, does the resulting contribution need to be disclosed?**
  
- 5. Key Issues:**

**SCENARIO #7 – ANSWERS:**

**1. How should the committee disclose the first transaction (airline ticket)? Since the committee has not yet made the reimbursement, what issues must they consider when deciding how to disclose it?**

When a staff member advances funds in connection with travel expenses, no contribution results when the committee makes the reimbursement either within 30 days of when expenses was incurred (for advances by cash or check); or within 60 days of the closing date on the credit card billing statement (for advances by credit card) – unlike a non-travel advance which is considered an in-kind contribution, regardless if it is reimbursed at a later time.

Susan used a credit card for her travel and since the campaign is not reimbursing her within the 60 day period of the credit card statement closing date, a contribution from Susan results.

- **Report the advance as a contribution:** show reporting on Schedule A for Line 11(a)(i) as a MEMO entry (since no money went into the campaign account). The Date of Receipt is the date the funds are advanced (the date Susan uses her credit card to purchase the ticket); also, include a notation indicating, “Travel advance to be reimbursed.”



## Staff Advance – Travel

<b>SCHEDULE A (FEC Form 3)</b>		Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one)	PAGE OF
<b>ITEMIZED RECEIPTS</b>			<input checked="" type="checkbox"/> 11a <input type="checkbox"/> 11b <input type="checkbox"/> 11c <input type="checkbox"/> 11d <input type="checkbox"/> 12 <input type="checkbox"/> 13a <input type="checkbox"/> 13b <input type="checkbox"/> 14 <input type="checkbox"/> 15	
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>Cosmo Kramer for Congress Committee</b>				
Full Name (Last, First, Middle Initial) <b>Susan Ross</b>		Date of Receipt <div style="display: flex; justify-content: space-around;"> <span>04</span> <span>03</span> <span>2012</span> </div>		
Mailing Address <b>715 West 79<sup>th</sup> Street</b>		Amount of Each Receipt this Period <b>550.00</b>		
City State Zip Code <b>New York NY 10024</b>		FEC ID number of contributing federal political committee. <b>C</b>		
Name of Employer <b>Cosmo Kramer for Congress</b>		Occupation <b>Communications Manager</b>		
Receipt For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)		Election Cycle-to-Date <b>0.00</b>		
<b>Travel advance to be reimbursed</b> <span style="border: 2px solid red; border-radius: 50%; padding: 5px; display: inline-block;">MEMO</span>				

Schedule A, Line 11a

Used for:

- **Travel advances not reimbursed within 30 or 60 days**

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**2. Any additional disclosure necessary?**

Yes. Until the campaign reimburses Susan, it must disclose the outstanding advance as a debt. When the Committee eventually pays off the advance/debt to the staff member, the payment should be reflected on Schedule D and as an operating expense on Schedule B for Line 17.

- **Report Initial Debt:** show reporting on Schedule D for Line 10. Include a notation indicating, “travel advance – to be reimbursed.”



## Staff Advance – Travel

---

Schedule D, Line 10

Used for:

- Advances not made and reimbursed within the same reporting period
- Reporting as debt until reimbursed if >\$500 or outstanding >60 days

SCHEDULE D (FEC Form 3)		PAGE OF
<b>DEBTS AND OBLIGATIONS</b>		FOR LINE NUMBER: <input type="checkbox"/> 9
<b>Excluding Loans</b>		<input checked="" type="checkbox"/> 10
NAME OF COMMITTEE (In Full)		
<b>Cosmo Kramer for Congress Committee</b>		
A. Full Name (Last, First, Middle Initial) of Debtor or Creditor	Nature of Debt (Purpose):	
<b>Susan Ross</b>	<b>Travel advance – To be reimbursed</b>	
Mailing Address		
<b>715 West 79<sup>th</sup> Street</b>		
City State Zip Code		
<b>New York NY 10024</b>		
Outstanding Balance Beginning This Period		
<b>0.00</b>		
Amount Incurred This Period	Payment This Period	Outstanding Balance at Close of This Period
<b>550.00</b>	<b>0.00</b>	<b>550.00</b>

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- **Report Advance/Debt Payment:** On Schedule B for Line 17 (Operating Expenditures), the payment should be disclosed. The payment amount would also be disclosed on Schedule D for Line 10 in the field for “Payment this Period.”

Please note that if the total amount of the travel advance reimbursed to the staff member exceeded \$500 and payments to any one vendor used for the expenses totaled over \$200 for the election cycle, the payment to the vendor would need to be itemized as a MEMO entry linked to the staff member advance reimbursement.



## Staff Advance – Travel

SCHEDULE B (FEC Form 3) ITEMIZED DISBURSEMENTS		Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one)	PAGE	OF
			<input checked="" type="checkbox"/> 17	<input type="checkbox"/> 18	<input type="checkbox"/> 19a
			<input type="checkbox"/> 20a	<input type="checkbox"/> 20b	<input type="checkbox"/> 21
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>Cosmo Kramer for Congress Committee</b>					
Full Name (Last, First, Middle Initial)					
A. <b>Susan Ross</b>			Date of Disbursement		
Mailing Address <b>715 West 79<sup>th</sup> Street</b>			10 / 03 / 2012		
City: <b>New York</b> State: <b>NY</b> Zip Code: <b>10024</b>			Amount of Each Disbursement this Period		
Purpose of Disbursement <b>Reimbursement for airline ticket</b>			550.00		
Candidate Name			Category/Type		
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>Skyway Airlines</b>			Date of Disbursement		
Mailing Address <b>301 Airport Way</b>			04 / 03 / 2012		
City: <b>Newark</b> State: <b>NJ</b> Zip Code: <b>07114</b>			Amount of Each Disbursement this Period		
Purpose of Disbursement <b>Airline Ticket</b>			550.00		
Candidate Name			Category/Type		
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:		<b>MEMO</b>			

ion Division

**3. How should the committee disclose the second transaction (office supplies)? Since it has been reimbursed by the end of the reporting period, do they need to disclose the advance and/or the reimbursement?**

When a member of the campaign staff advances their own money to pay for a non-travel expense on behalf of the campaign, the advance is considered a contribution and counts against the individual’s limit until reimbursed.

When the reimbursement is made in the same reporting period, if the total amount of the advance exceeds \$500, and payments to that person are over \$200 for the election cycle, then the committee must:

- 1) Report the staff member as payee, and
  - 2) Itemize any payment aggregating over \$200 to any one vendor.
- **Report reimbursement to staff member:** show reporting on Schedule B for Line 17. The Date of Disbursement is the date the campaign reimburses the staff member.
  - **Report itemization to vendor:** show reporting on Schedule B for Line 17 as MEMO entry. The Date of Disbursement is the date the staff member pays the vendor (here, it is the date the check was written).



## Staff Advance – Non-Travel

SCHEDULE B (FEC Form 3) ITEMIZED DISBURSEMENTS		Use separate schedule(s) for each category of the Detailed Summary Page		FOR LINE NUMBER: (check only one)		PAGE	OF
				<input checked="" type="checkbox"/>	17	<input type="checkbox"/>	18
				<input type="checkbox"/>	20a	<input type="checkbox"/>	20b
				<input type="checkbox"/>	19a	<input type="checkbox"/>	20c
				<input type="checkbox"/>	21	<input type="checkbox"/>	21

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>Cosmo Kramer for Congress Committee</b>	
Full Name (Last, First, Middle Initial) <b>A. Jackie Chiles</b>	Date of Disbursement <b>04 / 30 / 2012</b>
Mailing Address <b>460 West End Avenue, Suite 2500</b>	Amount of Each Disbursement this Period <b>750.00</b>
City <b>New York</b> State <b>NY</b> Zip Code <b>10024</b>	Purpose of Disbursement <b>Reimbursement for office supplies</b>
Candidate Name <b>Jackie Chiles</b> Category/Type	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:	State: District:
Full Name (Last, First, Middle Initial) <b>B. Staples</b>	Date of Disbursement <b>04 / 20 / 2012</b>
Mailing Address <b>900 West 79th Street</b>	Amount of Each Disbursement this Period <b>750.00</b>
City <b>New York</b> State <b>NY</b> Zip Code <b>10024</b>	Purpose of Disbursement <b>Office supplies</b>
Candidate Name <b>Staples</b> Category/Type	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:	State: District:

Made and Reimbursed in Same Period: Schedule B, Line 17

Division

**4. Does the advance result in a contribution from Jackie Chiles? If so, does the resulting contribution need to be disclosed?**

Yes, the advance results in a contribution until the advance is reimbursed. Any non-travel advance is considered an in-kind contribution at the time it is made – unlike a travel advance which only results in a contribution if it is not reimbursed within the appropriate timeframe. The advance affects contribution limits to the extent that the advance remains outstanding – any reimbursement made will reinstate the individual’s limit accordingly.

For example, if Jackie Chiles had already contributed the full \$2,500 to the campaign for the primary, his \$750 payment for office supplies would have resulted in an excessive contribution at the moment the funds were advanced, even if the campaign reimbursed him an hour later and thus remedied the excessive contribution.

On the other hand, if the non-travel advance was the first time Jackie Chiles provided any monetary support to the campaign, the payment to Staples would have resulted in a \$750 in-kind contribution – decreasing the amount he could then contribute to, or advance on behalf of, the campaign to \$1,750 (while her reimbursement was outstanding). Once Jackie received his full \$750 reimbursement from the campaign, he could again contribute or advance up to the \$2,500 limit.

No, the resulting contribution **does not need to be disclosed**. The original advance is reported as a contribution *only if* the total advanced from the staff member, minus any reimbursements made as of the end of the reporting period, aggregate over \$200 for the election cycle (i.e., previous contributions + the advance – the reimbursement > \$200). Since the amount outstanding to Jackie Chiles at the end of the reporting period is \$0, the advance is not disclosed as a contribution on Schedule A.

**5. Key Issues:**

**TRAVEL ADVANCES:**

- A travel advance is not considered a contribution if repaid within the appropriate timeframe:
  - Within 30 days from when the expense was incurred (for advances of cash or check);  
or
  - Within 60 days of the closing date on the credit card billing statement (for advances by credit card).
- When a travel advance remains unpaid by the campaign committee outside the prescribed 30 or 60 day timeframe, it must be reported as BOTH a contribution and as a debt. Report as debt if the amount of the advance exceeds \$500, or has been outstanding for more than 60 days.
- Remember to use a MEMO entry for Schedule A (since no money went into the campaign account as a result of the advance).
- Include notations on both Schedules A & D to cross-reference the transactions.

**NON-TRAVEL ADVANCES:**

- A non-travel advance is considered a contribution at the moment the funds are advanced and counts against the contributor's limits until reimbursed.
- Only report the advance as a contribution, using a MEMO entry on Schedule A, if the amount of advanced funds outstanding (i.e., unreimbursed) for the staff member at the end of the reporting period > \$200 for the election cycle.
- When the amount of the advance reimbursement exceeds \$500, and payment to any one vendor exceeds \$200 for the election cycle, report the staff member as the payee using a disbursement entry on Schedule B for Line 17. In addition, itemize any vendor using a MEMO entry on Schedule B once payments to that vendor aggregate in excess of \$200 for the election cycle. Include notations as cross-references.

(Note: if each vendor payment making up the advance aggregates to less than \$200 for the election cycle, make a notation on Schedule B to that effect to avoid a Request for Additional Information from the Reports Analysis Division of the FEC.)



## Use of Campaign Funds

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- Wide discretion allowed
- Personal use is prohibited
  - ✓ Irrespective Test: If expense would exist absent candidacy or holding office, personal use ban applies.

2012 FEC Information Division

#### IV. Other Permissible Uses of Campaign Funds (*Guide*, pp. 51-54)

##### A. The Irrespective Test

If the expense would exist even in the absence of the candidacy or even if the office holder were not in office, then the personal use ban applies.



## Use of Campaign Funds

### Other Permissible Uses

- ✓ Gifts of nominal value
- ✓ Charitable donations
- ✓ Candidate Salary
  - Not to exceed lesser of the minimum annual salary for office sought or candidate's previous year's income
  - Other income of candidate considered
  - Incumbents not eligible
  - First salary payment no earlier than ballot deadline or January 1 of even-numbered year

2012 FEC Information Division

**B. Gifts of Nominal Value**

Only if given to persons – other than members of the candidate's family – on special occasions.

**C. Charitable Donations**

Not personal use as long as the candidate does not receive a personal benefit from the donation, or compensation from the organization before it has expended entire amount donated.

**D. Salary Payments to the Candidate** (*Guide*, pp. 53-54)

Candidate salary may be paid with campaign funds under certain conditions. 11 CFR 113.1(g)(1)(i)(I).

1. It must be paid from the principal campaign committee.
2. It must not exceed the lesser of either the minimum annual salary for the federal office sought or what the candidate received as income in previous year.
3. Any income earned during the campaign will count toward the salary limit.
4. Incumbent, federal officeholders not eligible.
5. First salary payment shall be made no earlier than the filing deadline for ballot access for the primary election or, for candidates who do not have a primary, January 1<sup>st</sup> of the even numbered year is the controlling date.



## Prohibited Personal Use

- ✗ Household food and supplies
- ✗ Clothing
- ✗ Tuition (except relevant training)
- ✗ Mortgage, rent & utility payments on residence
- ✗ Entertainment
- ✗ Expenses not meeting irrespective test
- ✗ Dues, fees and gratuities
  - ✓ Exception: payment for campaign event
- ✗ Funeral expenses
  - ✓ Exception: death in course of campaigning
- ✗ Salary payments to candidate's family
  - ✓ Exception: *bona fide* service at fair market rate

2012 FEC Information Division

### V. Automatic (“*per se*”) Personal Use of Campaign Funds (*Guide*, pp. 54-55)

#### A. Household Food Items and Supplies

#### B. Clothing

Campaign may not pay for attire for political functions, but it may pay for clothing of *de minimis* value used in the campaign such as t-shirts or caps imprinted with campaign slogan.

#### C. Tuition Payments

#### D. Mortgage, Rent and Utility Payments

A candidate who owned office space that was part of a personal residence was permitted to lease it to campaign provided fair market value was paid. See AOs 2000-02 and 1995-08.

#### E. Entertainment

#### F. Dues, Fees and Gratuities

1. **Examples:** Country club dues, health clubs, nonpolitical organizations.
2. **Exception:** Payments in connection with campaign fundraiser on premises.

**G. Funeral Expenses**

Campaign funds may not be used to cover expenses related to deaths within candidate's family. However, they may be used to cover funeral, cremation or burial expenses for a candidate or campaign worker whose death arises out of, or in the course of, campaign activity.

**H. Salary Payments to Candidate's Family**

1. Only if family member provides bona fide service and payment is fair market value. AO 2001-10.
2. Revised definition of family now includes an individual with whom the candidate shares a residence or domicile (nature of relationship immaterial).

**Use of Campaign Funds**

Case by Case Determination

- Meal Expenses
- Travel Expenses
- Vehicle Expenses
- Legal Expenses

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**VI. Case-by-Case Determination – Applying Irrespective Test** (*Guide*, pp. 55-56)

**A. Meal Expenses**

**B. Travel Expenses**

Prohibition on use of campaign funds for personal expenses collateral to travel—either by candidate or officeholder—unless personal funds are used to reimburse the committee. See AOs 2002-05 and 2000-37.

**C. Vehicle Expenses**

Campaign Funds may be used to pay for a vehicle that is used for campaign-related purposes, as long as costs related to personal use of the vehicle are *de minimis*. See AOs 2001-03, 1992-12.

**D. Mixed Use for Travel and Vehicle Expenses**

1. Travel or vehicle expenses that commingle personal and campaign/officeholder activity must be reimbursed to the campaign within 30 days for the entire amount associated with the personal activities.
2. Reimbursement for personal aspect of mixed use does not result in a contribution.
3. Any item that is used for both personal and campaign/officeholder use, a log or other record must be kept to document the dates and expenses related to the personal use of the campaign funds. 11 CFR 113.1(g)(8).

**E. Legal Expenses**

1. Campaign funds could be used for legal services needed to respond to press allegations of wrongdoing related to campaign or official duties.
2. Advisory Opinions: 2011-01, 2009-20, 2009-12, 2009-10, 2008-07, 2006-35, 2005-11, 2003-17, 2001-11, 2000-40, 1998-01, 1997-27 and 1997-12.



## Use of Campaign Funds

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### Non-Campaign Uses

- ✓ Officeholder expenses
- ✓ Charitable donations
- ✓ Political contributions
- ✓ Unlimited Transfers to Party
- ✓ “Any Lawful Purpose”

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**VII. Permissible Uses of Campaign Funds – Non-Campaign Related Expenses**  
(*Guide*, pp. 52-53)

Campaign funds may be used for the following purposes that are not related to the candidate's campaign for federal office: 11 CFR 113.2

**A. Officeholder Expenses**

House and Senate rules may apply. See AOs 2010-26, 2007-18, 2001-09 and 2000-37.

**B. Charitable Donations**

Organizations defined in 2 U.S.C. §170(c) of the IRS Code. See 2005-06 (and those cited within).

**C. Political Contributions**

**1. Subject to applicable federal or state limit.** See AOs 2007-26, 2004-29, 1993-10 and 1988-41.

**2. Reporting Tips** (*Guide*, p. 100)

**a) Report on Line 21, not Line 17**

Contributions to other committees reported on Line 21 ("Other Disbursement") not Line 17 ("Operating Expenditures") since the money is not being disbursed for the campaign's day-to-day expenses (i.e., rent, administration, equipment).

**b) Itemization Information**

**(1) Contribution to another federal candidate**

Include candidate information – Candidate Name, Office Sought, State, District (if applicable) and Disbursement for (primary, general, other).

**(2) Contribution to nonfederal candidate/committee**

Only need to note purpose of disbursement (i.e., "Nonfederal Contribution"). Do not fill out candidate information.

**D. Unlimited Transfers to National, State or Local Party Committee**

See AO 2004-22.

**E. Any Lawful Purpose**



## Candidate Involvement in Nonfederal Races

### Permissible Activity

Federal candidates and officeholders may solicit, receive, direct, transfer, spend, or disburse only funds in accordance with the Act and state law

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## FUNDRAISING ACTIVITIES OF THE CANDIDATE/OFFICEHOLDER OUTSIDE OF FEDERAL ELECTIONS

- I. **Participation by Federal Candidates and Officeholders at Nonfederal Fundraising Events** (*Guide*, Appendix E, pp. 151-154)
  - A. **Fundraising for Federal Funds is Permissible** (*Guide*, p. 151)
    1. **For Federal Elections – 11 CFR 300.61**

Federal candidates and officeholders may solicit, receive, direct, transfer, spend or disburse only federal funds in connection with a federal election or Federal Election Activity (FEA).
    2. **For Nonfederal Elections – 11 CFR 300.62**

Federal candidates and officeholders may solicit, receive, direct, transfer, spend or disburse only federal funds for elections other than federal elections.
    3. **Application – 11 CFR 300.60**

The fundraising restrictions apply to the following:

      - a) Federal candidates;
      - b) Individuals holding federal office;
      - c) Agents acting on behalf of federal candidate or individual holding federal office. AO 2003-10; and
      - d) Entities directly or indirectly established, financed, maintained or controlled by, or acting on behalf of, one or more federal candidates or individuals holding federal office (e.g., a Leadership PAC). AO 2003-12.



## Candidates Involvement in Nonfederal Races

---

### Prohibited Activity

- Generally, federal candidates and officeholders cannot solicit, receive, direct, transfer, spend or disburse funds outside of Federal limits or from prohibited sources
- Special consideration for state ballot measure fundraising

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- B. Fundraising for Nonfederal Funds is Prohibited** (*Guide*, p. 151)
1. Generally, federal candidates, officeholders, their agents and entities established, maintained, financed or controlled by them cannot solicit, receive, direct, transfer, spend or disburse nonfederal funds.
  2. Prohibition includes not soliciting unlimited contributions from individuals, corporations or labor organizations on behalf of independent expenditure-only political committees. See AO 2011-12.
  3. Special considerations apply for fundraising for ballot measures depending on whether it is for pre-ballot qualification.
    - a) See AOs 2006-04 and 2003-12 (concluding that above prohibition applies to a ballot measure committee that was established by a federal candidate/officeholder).
    - b) But compare, AOs 2010-07 and 2007-28 (concluding the above prohibition does not apply for ballot measure during the period before the initiative qualifies for the ballot. During post-qualification period, solicitations of funds within the amount limitations and source prohibitions of the Act, as well as solicitations up to \$20,000 from individuals for ballot measure allowed).



## Candidate Involvement in Nonfederal Races

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### Exceptions to Prohibition

- If federal candidate/officeholder is also nonfederal candidate; or
- If federal candidate/officeholder is appearing as guest at state/local party or candidate fundraiser.

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**3. Exception: If Federal Candidate/Officeholder is also a Nonfederal Candidate** (*Guide*, p. 152)

- a) In connection with his or her nonfederal race, a federal candidate or officeholder, may raise and spend nonfederal funds that 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 state or local office. 11 CFR 300.63. See AOs 2005-12 and 2005-02. See also 2009-06, 2007-01 (federal officeholder may raise nonfederal funds to retire debt of former nonfederal committee).
- b) Individuals simultaneously running for federal and nonfederal office may raise and spend only federal funds for the federal election.



## Candidate Attending Nonfederal Fundraisers

### Candidate/Officeholder may:

- Attend, speak or be a featured guest at event where nonfederal or Levin funds are raised
- Solicit funds at event only if solicitation limited to Federal funds
  - Written notice limiting solicitation to federal funds OR
  - Oral statement limiting solicitation to federal funds
  - Must be clear and conspicuous; Not clear and conspicuous if difficult to read or hear or if placement is easily overlooked

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### C. **Attendance at Nonfederal Fundraising Event** (*Guide*, pp. 152-153) **11 CFR 300.64(b)**

A federal candidate or officeholder may:

1. Attend, speak at, or be a featured guest at a nonfederal fundraising event.
2. Solicit funds at a nonfederal fundraising event, provided that the solicitation is limited to funds that comply with the amount limitations and source prohibitions of the Act and that are consistent with State law.
  - a) A Federal candidate or officeholder may limit such a solicitation by displaying at the fundraising event a clear and conspicuous written notice, or making a clear and conspicuous oral statement, that the solicitation is not for Levin funds (when applicable), does not seek funds in excess of \$[federally permissible amount], and does not seek funds from corporations, labor organizations, national banks, federal government contractors, or foreign nationals.
  - b) A written notice or oral statement is not clear and conspicuous if it is difficult to read or hear or if its placement is easily overlooked.



## Candidate in Publicity for Nonfederal Fundraisers

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Candidate/Officeholder name/likeness in publicity:

- No solicitation - **OKAY**
- Solicits only federal funds - **OKAY**
- Solicits nonfederal or Levin funds - **CONDITIONAL**

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**D. Publicity for Nonfederal Fundraising Events (Permissible Activity)**  
(*Guide*, pp. 152-153) – **11 CFR 300.64(c)**

Publicity for a nonfederal fundraising event includes, but is not limited to, advertisements, announcements, or pre-event invitation materials, regardless of format or medium of communication.

**1. Publicity That Does Not Contain a Solicitation**

A federal candidate or officeholder or an agent of either may approve, authorize, agree to, or consent to the use of his or her name or likeness in publicity for a nonfederal fundraising event that does not contain a solicitation.

**2. Publicity Containing Solicitation Limited to Federal Funds**

A federal candidate or officeholder or an agent of either may approve, authorize, agree to, or consent to the use of his or her name or likeness in publicity for a nonfederal fundraising event that solicits only funds that comply with the amount limitations and source prohibitions of the Act.



## Candidate in Publicity for Nonfederal Fundraisers

May use Candidate/Officeholder name or likeness in publicity that solicits nonfederal funds only if:

- Candidate/Officeholder is identified in manner not specifically related to fundraising (featured guest, honored guest, special guest, featured speaker or honored speaker) AND
- Publicity includes disclaimer that solicitation is not being made by the Candidate/Officeholder

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### 3. **Publicity Containing Solicitation of Nonfederal Funds** (*Guide*, pp. 152-153) **11 CFR 300.64(c)(3)**

A federal candidate or officeholder or an agent of either may approve, authorize, agree to, or consent to the use of his or her name or likeness in publicity for a nonfederal fundraising event that contains a solicitation of funds outside the amount limitations and source prohibitions of the Act or Levin funds only if:

- a) The federal candidate or officeholder is identified as a featured guest, honored guest, special guest, featured speaker, or honored speaker, or in any other manner not specifically related to fundraising; **AND**
- b) The publicity includes a clear and conspicuous disclaimer that the solicitation is not being made by the Federal candidate or officeholder. 11 CFR 300.64(c)(3)(i)(B).

### E. **Disclaimers on Publicity** (*Guide*, p. 152) – **11 CFR 300.64(c)(3)(ii), (iii) & (iv)**

#### 1. **Clear and Conspicuous**

##### a) **On Written Publicity**

The clear and conspicuous disclaimer required (i.e., contained in a box set apart from the rest of the communication) if the publicity is written. **Disclaimer requirements were discussed in the Basics for Beginners workshop.**

**b) On Non-written Publicity**

Where publicity is disseminated by non-written means, the clear and conspicuous disclaimer is required only if the publicity is recorded, or follows any form of written script, or is part of a structured or organized fundraising program.

**c) Examples**

Examples of clear and conspicuous disclaimers include, but are not limited to:

- “[Name of federal candidate/officeholder] is appearing at this event only as a featured speaker. [federal candidate/officeholder] is not asking for funds or donations”; or
- “All funds solicited in connection with this event are by [name of nonfederal candidate or entity], and not by [federal candidate/officeholder].”



## Candidate in Publicity for Nonfederal Fundraisers

May NOT use Candidate/Officeholder name or likeness in publicity that solicits nonfederal funds if:

- Candidate/Officeholder serves in a position specifically related to fundraising, or is extending an invitation to the event, even if the communication contains a written disclaimer; OR
- The Candidate/Officeholder signs the communication, even if the communication contains a written disclaimer

2012 FEC Information Division

**F. Publicity for Nonfederal Fundraising Events (Prohibited Activity)**  
(*Guide*, pp. 152-153) – **11 CFR 300.64(c)(3)(v) & (vi)**

1. A federal candidate or officeholder or an agent of either may not approve, authorize, agree to, or consent to the use of his or her name or likeness in publicity for a nonfederal fundraising event that contains a solicitation of funds outside the amount limitations and source prohibitions of the Act or Levin funds if:
  - a) The federal candidate or officeholder is identified as serving in a position specifically related to fundraising, such as honorary chairperson or member of a host committee, or is identified in the publicity as extending an invitation to the event, even if the communication contains a written disclaimer; OR
  - b) The federal candidate or officeholder signs the communication, even if the communication contains written disclaimer.
2. A federal candidate, officeholder, or an agent of either, may not disseminate publicity for a nonfederal fundraising event that contains a solicitation of funds outside the amount limitations and source prohibitions of the Act or Levin funds by someone other than the federal candidate or officeholder.



**SCENARIO #8 – ANSWERS:**

**1. How should the publicity materials for this fundraising event be worded?**

Specific wording depends on whether the materials contain a solicitation for the nonfederal account or not.

- **If the publicity does not contain a solicitation**, federal candidates may be identified in any role or manner and no additional disclaimer is required other than any existing applicable federal or state disclaimer. Here is an example:



## Example: Permissible

The Freedom Party (nonfederal account)  
cordially invites you  
to a fundraising event with

**HONORARY CHAIR**  
**U.S. REPRESENTATIVE JANE DOE**

Saturday, June 5, 7 P.M.  
Hotel California  
1234 Maine Avenue

Paid for by the Freedom Party and not authorized by any  
candidate or candidate's committee.  
[www.freedomparty.com](http://www.freedomparty.com)

*Note: Federal candidates and officeholders may be identified in any role or manner on publicity that does not contain a solicitation*

*Because this example does not contain a solicitation, no additional disclaimer is required other than any existing applicable federal disclaimer.*

*(This example does not address any other applicable requirement under State law.)*

**No solicitation**

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- On the other hand, **if the publicity contains a solicitation**, federal candidates and officeholders may be identified in any role or manner as long as the publicity contains a solicitation of funds within the federal amount limitations and source prohibitions. No additional disclaimer is required other than any existing applicable federal or state disclaimer. Here is an example:



## Example: Permissible

The Freedom Party (nonfederal account) cordially invites you to a fundraising event with

**EVENT CHAIRMAN**  
**U.S. SENATOR JOHN SMITH**

*Saturday, June 5, 7 P.M.*  
*Hotel California*  
*1234 Maine Avenue*

*Please RSVP with your \$500 contribution (no corporations, labor organizations, national banks, federal contractors or foreign nationals, please) to (123) 456-7890.*  
*Make checks payable to the Freedom Party (nonfederal account) and mail to: 222 Central Avenue, Union, ST 12346*

Paid for by the Freedom Party and not authorized by any candidate or candidate's committee. [www.freedomparty.com](http://www.freedomparty.com)

*Contains a solicitation within the federal amount limits and source prohibitions*

*Note: Federal candidates and officeholders may be identified in any role or manner on publicity that contains solicitation of funds within the federal amount limitations and prohibitions.*

*Because this example contains solicitation that complies with the federal limits and prohibitions, no additional disclaimer is required other than any existing applicable federal disclaimer.*

*(This example does not address any other applicable requirement under State law.)*

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**2. Would the answer change if the federal officeholders were featured guests or speakers at a nonfederal fundraiser, and if yes, how?**

The answer depends on if there is a solicitation outside the federal limits and prohibitions. If only funds within the federal limits were solicited, then no. However, if the funds solicited were outside the federal limits and/or source prohibitions, then the wording would vary. Specifically, a clear and conspicuous disclaimer must be placed on solicitations, stating that the solicitation is not being made by the federal officeholder. Here are examples:

The image shows a sample invitation for a fundraiser. At the top left is the Federal Election Commission logo. The main text of the invitation reads: "Jonas Merryman for Governor cordially invites you to a fundraiser with: FEATURED GUEST U.S. SENATOR JANE SMITH. Saturday, June 5, 7 P.M. Hotel California 1234 Maine Avenue. Please RSVP with your \$25,000 donation to (123) 456-7890. Make checks payable to Jonas Merryman for Governor and mail to: 333 Central Avenue, Union, ST 12346. All solicitations of funds in connection with this event are by Jonas Merryman for Governor and not by Senator Smith. Paid for by Jonas Merryman for Governor". There are four red-bordered boxes with arrows pointing to specific parts of the invitation, each containing a note about federal regulations. The notes are: 1. "Federal officeholder must be identified in a non-fundraising role because this contains a solicitation outside the federal amount limitations" (points to the name of the officeholder). 2. "Contains a solicitation outside the federal amount limits and source prohibitions" (points to the donation request). 3. "Because this contains a solicitation outside the federal limits and prohibitions, it requires a clear & conspicuous disclaimer that the solicitation is not being made by the federal officeholder." (points to the disclaimer box). 4. "Any disclaimers required under state law should not be placed inside the box for the federal disclaimer. This is just an example. State disclaimer requirements vary by state." (points to the disclaimer box). The text "2012 FEC Information Division" is at the bottom right of the invitation graphic.

**Example: Permissible**

*Federal officeholder must be identified in a non-fundraising role because this contains a solicitation outside the federal amount limitations*

Jonas Merryman for Governor cordially invites you to a fundraiser with:

**FEATURED GUEST**  
**U.S. SENATOR JANE SMITH**

Saturday, June 5, 7 P.M.  
Hotel California  
1234 Maine Avenue

Please RSVP with your \$25,000 donation to (123) 456-7890.  
Make checks payable to Jonas Merryman for Governor and mail to: 333 Central Avenue, Union, ST 12346

All solicitations of funds in connection with this event are by Jonas Merryman for Governor and not by Senator Smith.

Paid for by Jonas Merryman for Governor

*Because this contains a solicitation outside the federal limits and prohibitions, it requires a clear & conspicuous disclaimer that the solicitation is not being made by the federal officeholder.*

*Any disclaimers required under state law should not be placed inside the box for the federal disclaimer. This is just an example. State disclaimer requirements vary by state.*

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*See another example of permissible publicity on next page*



## Example: Permissible

*Federal officeholder must be identified in a non-fundraising role because this contains a solicitation outside the federal amount limitations*

The Freedom Party (nonfederal account) cordially invites you to a fundraiser with:

**HONORED SPEAKER  
U.S. SENATOR JANE SMITH**

*Saturday, June 5, 7 P.M.  
Hotel California  
1234 Maine Avenue*

*Please RSVP with your \$25,000 donation to (123) 456-7890.  
Make checks payable to the Freedom Party and mail to: 222  
Central Avenue, Union, ST 12346*

All solicitations of funds in connection with this event are by the Freedom Party and not by Senator Smith. Paid for by the Freedom Party and not authorized by any candidate or candidate's committee. [www.freedomparty.com](http://www.freedomparty.com)

*Because this contains a solicitation outside the federal limits and prohibitions, it requires a clear & conspicuous disclaimer that the solicitation is not being made by the federal officeholder.*

*The solicitation disclaimer may be placed in the same box as any other applicable federal disclaimer requirement. Any other applicable disclaimer requirement under state law, which this example does not address, should be placed outside of the federal box.*

*Contains a solicitation outside the federal amount limits and source prohibitions*

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### 3. What are some examples of incorrect wording?

If the publicity contains a solicitation for funds outside the federal limits and source prohibitions, the committee must not identify the federal officeholder in a role specifically related to fundraising and must not use wording which makes it appear the federal officeholder is extending the invitation to the event. The problem is not averted by including a disclaimer that the solicitation is not being made by the federal officeholder. Here are some examples of incorrect wording:

*See examples of impermissible publicity on next page*



## Example: Impermissible

*Contains a solicitation outside the federal amount limits and source prohibitions*

U.S. Senator John Smith cordially invites you to a fundraising event for the Freedom Party (nonfederal account).

Saturday, June 5, 7 P.M.  
Hotel California  
1234 Maine Avenue

Please RSVP with your \$25,000 contribution to (123) 456-7890.  
Make checks payable to the Freedom Party (nonfederal account)  
and mail to: 222 Central Avenue, Union, ST 12346

All solicitations of funds in connection with this event are by the Freedom Party and not by Senator Smith.  
Paid for by the Freedom Party and not authorized by any candidate or candidate's committee. [www.freedomparty.com](http://www.freedomparty.com)

*In this example, the federal officeholder impermissibly is extending the invitation on publicity containing a solicitation for funds outside the federal limits and prohibitions.*

*This problem cannot be "cured" by including a disclaimer that the impermissible solicitation is not being made by the federal officeholder.*

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*See examples of impermissible publicity on next page*



## Example: Impermissible

*Contains a solicitation outside the federal amount limits and source prohibitions*

Join Honorary Chair U.S. Senator John Smith  
at a fundraiser for the  
Freedom Party (nonfederal account).

*Saturday, June 5, 7 P.M.  
Hotel California  
1234 Maine Avenue*

*Please RSVP with your \$25,000 contribution to (123) 456-7890.  
Make checks payable to the Freedom Party (nonfederal account)  
and mail to: 222 Central Avenue, Union, ST 12346*

All solicitations of funds in connection with this event are by the  
Freedom Party and not by Senator Smith.  
Paid for by the Freedom Party and not authorized by any candidate  
or candidate's committee. [www.freedomparty.com](http://www.freedomparty.com)

*In this example, the federal officeholder impermissibly is identified in a role specifically related to fundraising on publicity containing a solicitation for funds outside the federal limits and prohibitions.*

*This problem cannot be "cured" by including a disclaimer that the impermissible solicitation is not being made by the federal officeholder.*

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## Candidate Involvement with Nonprofits

### General Solicitations

Federal candidate/officeholder may solicit without regard to source or limit if nonprofit:

- Does not engage in election activity (i.e., voter registration, voter ID & GOTV); or
- Engages in election activity, but --
  - ✓ It is not their *principal purpose*; and
  - ✓ Solicitation is not to obtain funds for election activity.

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## II. Soliciting for Tax-exempt Organizations *Guide*, Appendix E, pp. 153-154)

### A. General Solicitations – 11 CFR 300.65

1. A federal candidate or officeholder may make a general solicitation on behalf of a tax-exempt organization if the organization does not make expenditures or disbursements in connection with federal elections.
2. If the nonprofit does engage in certain activities in connection with an election (listed below), a federal candidate or officeholder may still make a general solicitation if:
  - a) The organization's *principal purpose* is not to conduct election activities, including the federal election activities listed below; and
  - b) The solicitation is not to obtain funds for election activities in connection with a federal election, including federal election activities.
3. **No limit on the source or amount of funds.**
4. See AOs 2004-14, 2003-20.



## Candidate Involvement with Nonprofits

### Specific Solicitations

Federal candidate/officeholder may explicitly solicit for funds to pay for certain types of federal election activity if organization's *principal purpose* is to conduct these activities.

- ✓ Individuals only
- ✓ \$20,000 per year limit

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#### **B. Specific Solicitations for Federal Election Activity**

1. A federal candidate or officeholder may make a specific solicitation explicitly for funds to pay for certain types of federal election activities conducted by a tax-exempt organization whose *principal purpose* is to undertake such activities.
2. The specific federal election activities for which such a specific solicitation may be made are:
  - a) 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
  - b) Voter identification, get-out-the vote 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).
3. **Limit on source and amount:** Individuals only. \$20,000 per calendar year.

#### **C. Safe Harbor: 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:

1. The organization's principal purpose is not to conduct election activities, including the federal election activities listed above; and
2. 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.



## Candidate Involvement with Nonprofits

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### Prohibited Solicitations

Federal candidates/officeholders may *not* solicit funds for a 501(c) organization (or one that has applied for this tax status) for election activities outside of voter registration, voter identification & GOTV [such as public communications promoting or supporting federal candidates].

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#### **D. General Prohibition**

Federal candidates and officeholders may *not* make any solicitations on behalf of a 501(c) organization, or an organization that has applied for this tax status, for election activities other than those described above (B.2), such as public communications promoting or supporting federal candidates.

#### **III. Spending of Nonfederal Funds by State and Local Candidates**

A State or local candidate or officeholder, or any agents acting on his/her behalf, is prohibited 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 or opposes a federal candidate. This prohibition applies whether or not the communication expressly advocates a vote for or against a federal candidate.



## Workshop Evaluation

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*Help Us Help You!*

Please complete an evaluation  
of this workshop.

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## Next Workshop

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Best Practices for  
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