

# Corporate/Labor/Trade PAC Operations Part 1



February 22, 2012  
11:15 a.m. – 12:45 p.m.  
Tab 3 – SSF



## Objectives – Parts 1 & 2

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- Review the basic guidelines for establishing and administering a federal PAC.
- Identify who may be solicited for contributions to the federal PAC.
- Specify guidelines for raising funds for the federal PAC.
- Evaluate various fundraising techniques to determine their permissibility.

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## Prohibition

Review

- Corporations, labor unions, trade associations and incorporated membership organizations are prohibited from making contributions.
- Exception: Create and Administer SSF



### Key Point:

Most permissible corporate/labor activity in connection with federal elections is a result of exceptions to the corporate ban.

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## I. Introduction

- A. **Prohibition on Corporate/Labor Contributions (11 CFR 114.2)**  
Federal law bans contributions by corporations and labor organizations to influence federal elections. That ban covers incorporated trade associations and other membership organizations.
- B. **Exception: Separate Segregated Fund (SSF) (11 CFR 114.5)**  
Corporations (including trade associations and membership organizations) and labor organizations may use treasury funds to create and run a separate segregated fund (sometimes called an SSF or PAC) to support federal candidates.



## Characteristics of SSF

- Registers upon Formation
- Has Connected Organization
- Connected Organization Pays Administrative and Fundraising Costs
- May Only Solicit Restricted Class

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## II. Organizing the PAC

### A. Characteristics of Separate Segregated Fund (SSF)

#### 1. Registration upon Formation (11 CFR 100.5(b) and 102.1(c))

Becomes political committee and must register within 10 days when formed.

#### 2. Has Connected Organization (11 CFR 100.6)

- a) Corporation = includes incorporated membership organization, incorporated trade association, corporation without capital stock and incorporated cooperatives.
- b) Labor Organization
- c) Trade Association (11 CFR 114.8(a))
  - 1) Defined as a membership organization of persons engaging in similar or related line of commerce, organized to promote and improve business conditions in that line of commerce and not to engage in a regular for-profit business, and no part of the net earnings of which inures to the benefit of any member.
  - 2) Subject to special solicitation rules at 11 CFR 114.8.
- d) Incorporated Membership Organization

#### 3. Administrative/Fundraising Costs (11 CFR 114.1(b) and 114.5(b))

- a) Connected organization (or its affiliates and members) may pay administrative/fundraising costs; not reportable.

- b) Costs that may be paid include office space, phones, salaries, utilities, supplies, legal and accounting fees and fundraising expenses (including prizes/entertainment, covered in Part II, and credit card service fees)
  - c) The corporation may pay for liability insurance for the officers of its SSF (AO 1979-42).
  - d) Exemption does not include income taxes (AO 1977-19) and contributions (including in-kind contributions) to candidates (we'll cover this in Part III tomorrow).
4. **Solicitation of Limited Class Only (11 CFR 114.5(g)(1), 114.7(a) and (j) and 114.8(e))**



## Federal v. State PACs

Review

Options for Fundraising:

- One Account
  - All funds subject to federal law
- Two Accounts
  - Nonfederal account subject to state law
  - Federal account subject to federal law

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**B. Federal v. State PACs**

**1. Options for Fundraising (11 CFR 102.5(a))**

A PAC that finances activity in connection with both federal and nonfederal elections has two options.

**a) Option 1: One Account**

- (1) PAC may choose to have only one account to use for both federal and nonfederal elections.
- (2) All funds deposited are subject to federal limitations and restrictions.
- (3) Also subject to state laws regarding its nonfederal activity.

- b) **Option 2: Two Accounts: Federal and Nonfederal**
- (1) **Federal Account**  
Used for federal activity; Funds deposited into federal account subject to federal limits and prohibitions.
  - (2) **Nonfederal Account**  
Subject to state law; Nonfederal account may not finance any federal activity.



## Deposits into Federal PAC

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### **Must meet one of these conditions:**

1. Designated for Federal Account
2. Solicited for Federal Account
3. Contributors Informed that Contribution is Subject to Federal Limits/Prohibitions

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- C. **What Can Be Deposited into Federal PAC (11 CFR 102.5(a)(2))**  
All funds deposited into any federal PAC must meet one of the following conditions:
1. Funds must be expressly designated or solicited for use in connection with federal elections; or
  2. Contributors must be informed that contribution is subject to federal limits and prohibitions.



## What is a Solicitation?

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- Straightforward request for contributions
- Information on how to contribute
- Publicizing PAC's right to accept unsolicited contributions
- Statements encouraging support for PAC

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### III. What is a Solicitation?

#### A. **Solicitation = Communication that Contains:**

1. Straightforward request for contributions;
2. Information on how to make a contribution;
3. Publicizing PAC's right to accept unsolicited contributions; or
4. Statements encouraging support for the PAC. (For example, see AO 1979-13.)

#### B. **Importance of Knowing When Communication = PAC Solicitation**

Must be able to recognize solicitation in order to avoid it reaching individuals outside restricted class for solicitation purposes.

#### IV. Basic Solicitation Rules



## Basic Rules Apply

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1. **Restricted Class Only**
2. Solicitation Notices Always
3. Forward Contributions and Records On Time

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## Restricted Class

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- **Corporations**
- Membership & Labor Organizations
- Trade Associations

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## Restricted Class: Corporation

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### Corporation/PAC May Solicit:

- Executive/Administrative Staff
- Stockholders
- Families of both

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### A. At Any Time: Restricted Class Only

#### 1. Who is in Restricted Class of a Corporation's PAC? (11 CFR 114.1(c), (h) and (j); 114.5(g))

##### a) Executive and administrative personnel

- (1) Employees paid on salary (but **not** hourly) basis who have managerial, professional, policy-making or supervisory responsibilities.
  - Professionals e.g. - includes Lawyers, Engineers, Doctors, Pilots and Nurses but no one represented by union
  - Insurance agents – NO unless they have supervisory or managerial responsibilities
  - Good AOs: AO 2011-25, 2010-04, 2004-32, 1999-20 and 1993-16
- (2) Members of the board of directors, if they are compensated via salary or stipend. AOs 2010-12, 2000-10 and 1985-35 (compare with AO 1977-18).

##### b) Stockholders (including ESOP): Individuals with:

- (1) Vested interest in stock;
- (2) Power to vote stock;
- (3) Right to withdraw stock without incurring suspension period; and

- (4) Right to receive dividends.  
Good AOs: AO 1998-12 and AOs cited within.
- c) **Families of both**



## Beyond Restricted Class: Corporation

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### Corporation/PAC May Not Solicit:

- General Public
- Clients, Vendors, etc.
- Other PACs
- Employees who are neither executives nor stockholders

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- d) **Not solicitable:**
- (1) Clients, vendors, etc. and their PACs
  - (2) Employees who are neither executives nor stockholders; or
  - (3) Former employees (unless they are stockholders).



## Restricted Class

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- Corporations
- **Membership & Labor Organizations**
- Trade Associations

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## Definition of Member

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- Satisfies requirements for membership; AND
- Affirmatively accepts invitation to join;  
AND
- Has significant financial attachment; OR
- Pays annual dues; OR
- Has significant organizational attachment.

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**2. Definition of Member (for Labor/Trade/Membership PACs)  
(11 CFR 114.1(e)(2))**

Person (i.e., individual or company) who satisfies requirements for membership in organization, affirmatively accepts organization's invitation to become member and:

- a) **Has significant financial attachment to organization**, or  
Example: Owner of seat on commodities exchange (AO 2008-21)
- b) **Pays annual dues set by organization**, or
- c) **Has significant organizational attachment to organization** that includes:
  - (1) Affirmation of membership on annual basis (e.g., meeting or responding to survey); and
  - (2) Direct participatory rights in governance of organization (e.g., right to vote directly or indirectly for at least one individual on highest governing board; right to vote on policy questions; or right to approve organization's annual budget).
  - (3) In AO 2003-13, members "in training" who had none of the above situations, but who were subject to professional sanctions and were likely to become dues paying members in the future, were considered to have a significant organizational attachment.



## Restricted Class: Membership/Labor

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Membership/Labor Organization/PAC May Solicit:

- Executive/Administrative Staff
- Noncorporate Members
- Families of both

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- 3. Who is in Restricted Class of a Membership/Labor Organization PAC? (11 CFR 114.5(g)(2) and 114.7(a))**
- a) Executive and administrative personnel of the organization and their families.
  - b) Noncorporate members and their families.
  - c) Students, lifetime members and retirees:
    - (1) Case-by-case determination by the Commission.
    - (2) Individuals who do not meet the above requirements but have a relatively enduring and independently significant financial or organizational attachment to the membership organization may be solicitable. 11 CFR 114.1(e)(3).
    - (3) See AOs 2011-08, 2007-19, 2003-13 and 1999-06.



## Beyond Restricted Class: Membership/Labor

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### Organization/PAC May Not Solicit:

- General Public
- Clients, Vendors, etc.
- Other PACs
- Employees or stockholders of incorporated members

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- d) Not Solicitable:**
- (1) Other PACs/SSFs.
  - (2) Employees of membership organization who are not executives, nor organization members.
  - (3) Employees or stockholders of incorporated members. See AOs 2011-22 and 2005-17.



## Restricted Class

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- Corporations
- Membership & Labor Organizations
- **Trade Associations**

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## Restricted Class

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### Trade Association/PAC May Solicit:

- Association Executive/Administrative Staff
- Individual and Unincorporated Members
- Executives of Corporate Members That Have Signed Prior Approval

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**4. Who is in Restricted Class of Association PAC for Solicitation Purposes? (11 CFR 114.5(g)(1), 114.7(a) and 114.8(e))**

**a) Solicitable**

- Executive and administrative personnel and their families
- Noncorporate members (including individuals and unincorporated businesses such as partnerships) and their families
- With prior corporate approval (discussed below), corporate members' restricted class and their families



## Outside Restricted Class

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### Trade Association/PAC May Not Solicit:

- PACs of Corporate Members
- Executives of Corporate Members That Have NOT Signed Prior Approval
- General Public

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**b) Not Solicitable:**

- Other PACs, including PACs of association members (11 CFR 114.7(j)).
- Employees or stockholders of corporate members that have not given prior approval or that have given prior approval to another trade association for the same calendar year (11 CFR 114.8(d) and (e)).
- General public



## Corporate Members: Prior Approval Needed

- Provide written notice that:
  - Approval by corporation is necessary before solicitation; and
  - Corporation may not authorize more than one association per year.
- Electronic approval OK
- Multiyear approval OK if separate approval is given for each year.

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### c) **Prior Approval by Corporate Members of Trade Association (11 CFR 114.8(d) and (e))**

#### (1) **Application**

Applies only to trade association PACs and not to other types of connected organizations

#### (2) **Requirements:**

- Approval must be in writing and addressed to corporate representative with whom association normally conducts activities.
- Approval must state that:
  - Corporate approval is necessary before association or PAC conducts a solicitation.
  - Corporation may not authorize any other request by a different trade association to solicit its restricted class that calendar year.
- Electronic form of written approval OK. AO 2000-22.
- Executive signs as “[the signature], for ABC Corp.” AO 2000-22.
- Multiyear approval ok, but with a separate signature line for each year. AO 1984-61.
- Corporation may limit scope and frequency of solicitations of its restricted class.
- Corporation may withdraw approval at any time.



## Twice Yearly Solicitations

- Twice a year, SSFs may solicit limited group outside restricted class
- Must preserve anonymity
  - ▶ Custodial arrangement
  - ▶ Mail solicitation to individual's home

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### 5. Twice Yearly Solicitations (11 CFR 114.6)

- a) Twice a year, a PAC may solicit:
  - (1) **Corporation:** Rank and file employees.
  - (2) **Membership Organization:** Rank and file organization employees.
  - (3) **Labor Organization:** All non-union employees of corporations that employ union's members.
  - (4) **Trade Association:** Rank and file association employees.
- b) Must use custodial arrangement to preserve anonymity.
- c) Must mail solicitation to employee's home.
- d) **Labor Organizations:**
  - (1) If corporation wants to conduct a twice-yearly solicitation for its PAC, it must notify the union of its intention and provide similar opportunity.
  - (2) If other unions represent employees at that corporation, they share a limit of two solicitations of non-members per year.



## Campaign Guide Chart

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## Campaign Guide Chart

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Who May Be Solicited <sup>a</sup>	By Corporation	By Labor Organization	By Incorporated Membership Organization <sup>c</sup>	By Incorporated Trade Association
<b>At Any Time<sup>b</sup></b>	Executive and Administrative Personnel and Families  Stockholders and Families	Executive and Administrative Personnel and Families  Members and Families	Executive and Administrative Personnel and Families  Noncorporate Members and Families	Executive and Administrative Personnel and Families  Noncorporate Members and Families  With Prior Approval, Corporate Members' Executive and Administrative Personnel, Stockholders and Families of Both
<b>Twice Yearly<sup>d</sup></b>	Nonexecutive and Nonadministrative Personnel and Families	Nonexecutive and Nonadministrative Personnel and Families  In Corporations that Employ Members of the Labor Organization, Nonmember Employees, Stockholders and Families of Both	Nonexecutive and Nonadministrative Personnel and Families	Association's Nonexecutive and Nonadministrative Personnel

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# Affiliation

Review

- Presumed in parent/subsidiary
  - › Exception – see AOs on spin-offs
- Presumed for national/state/local organizations or associations
  - › Exception – see AO 2002-11
- Consequences for Affiliates:
  - › PACs may solicit each other’s restricted class.
  - › Organizations may pay administrative costs for each other.
  - › PACs share contribution limits.

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6. **Affiliation (11 CFR 100.5(g)(2) and (3) and 110.3(a))**
  - a) **Presumption of Affiliation (“Per Se” Affiliation)**

FEC regulations at 11 CFR 110.3(a)(2)(iv) presume affiliation between national/state/local organizations or associations.
  - b) **Other Relationships Determined through Factors Analyzed in AO Process**

**Example:** Two trade associations that did not have common ownership were not per se affiliated; but were affiliated based on factors including common membership, governance of each other, overlapping current and former board members and evidence of an ongoing commitment to joint endeavors. AO 2005-03.
  - c) **Must have Significant Factors Present to be Deemed Not Affiliated:**
    - (1) **Example for Corporations:** In AO 2007-16, the Commission ruled that a corporation spun off from another corporation were no longer affiliated as of the date of the spin-off. Although the two companies had a large common shareholder base, factors indicating disaffiliation were stronger, including lack of ownership by one company in the other, the minimal personnel overlap between the companies (including the companies’ subsidiaries), the lack of any plan for personnel of one of the companies or its subsidiaries

to serve in the future in either of the other companies or its subsidiaries (other than the two currently overlapping individuals), and the fact that a majority of the two companies' respective board members did not serve on the board of, and were not officers of, any pre-spin-off corporate entities.

(2) **Example for Trade Associations:** In AO 2002-11, the Commission ruled that a national trade association federation was not affiliated with state associations due to the presence of many factors, including a lack of overlap in governance, a lack of a traditional federated structure, a lack of dues consolidation, a lack of involvement by the national organization in the state associations and state PACs' activities, and significantly, a small overlap in membership.

(3) **Example for Membership Organizations:** In AO 2007-13, the Commission ruled that although an association with state labor organization members originally had the authority to manage, finance and staff a second labor organization, due to the fact that the labor organization later had become autonomous with its own finances, governance, staff and direction, the two organizations are not affiliated under an analysis of the affiliation factors, including a separation of the staffs, treasuries and functions of the two organizations, the minimal overlap in governance and the minimal direct overlap in membership.

(4) **Exception for Labor Organizations:** If union is part of AFL-CIO, its PAC is not affiliated with the AFL-CIO's PACs.

d) **Consequences of Affiliation:**

- (1) The connected organization or PAC may solicit the restricted class of any parent, subsidiary, branch, division or other affiliate. AO 2007-16.
- (2) Affiliated organizations may pay each others' administrative expenses. See AOs 1997-13, 1996-26 and 1983-19.
- (3) Contributions received and made by affiliated federal PACs are subject to one limit. 11 CFR 110.3(a). Each committee is responsible for monitoring this to ensure compliance with contribution limits.



## Objectives – Part 1

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- Identify who may be solicited for contributions to the federal PAC.
- **Specify guidelines for raising funds for the federal PAC.**
- Evaluate various fundraising techniques to determine their permissibility.

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## Basic Rules Apply

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1. Restricted Class Only
2. **Solicitation Notices Always**
3. Forward Contributions and Records On Time

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## Solicitation Notices

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Contributions must be voluntary:

- No Threats
- No Dues or Fees

Must provide notice every time:

- Political Purpose of SSF
- Right to Refuse to Contribute
- Guideline = Suggestion

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**B. Voluntary Contributions and Solicitation Notices (11 CFR 114.5(a))**

**1. Contributions Must Be Voluntary**

- a) No threat of physical force, job discrimination or financial reprisal.
- b) No dues or fees.

**2. Required Notices**

Every solicitation must state:

- a) Political purpose of PAC
- b) Solicitee's right to refuse without reprisal
- c) Guideline on amount is merely suggestion; no minimum may be specified.

**3. Good AOs**

See AOs 2006-17, 2003-06 and 1997-25, and MURs 5681 and 5337.

**BERKELEY ELECTRIC COOPERATIVE, INC.  
 VOLUNTARY EMPLOYEE DONATION FORM**

**Option 1** \_\_\_\_\_  
 I, the undersigned, do hereby certify my desire to voluntarily donate to the organizations listed below. The purpose of these organizations is for the benefit of political candidates and activities on a state and national level that support rural electric cooperatives. I authorize Berkeley Electric Cooperative, Inc. to deduct the following designated amounts per pay period from my paycheck. I understand that this authorization will remain in effect perpetually, unless and until rescinded by me in writing. I am also fully aware that should I elect not to participate I may do so without any concern of retaliation.

**RECOMMENDED AMOUNTS PER PAY PERIOD**

	Authorized Amount	HOURLY		SALARIED		
		NON-SUPERVISOR	SUPERVISOR	NON-SUPERVISOR	SUPERVISOR	STAFF
AMOUNT PPD		\$3.00	\$5.00	\$7.00	\$7.00	\$9.00
<i>ACRE</i> (Action Committee for Rural Electrification)	0.96	0.96	0.96	0.96	0.96	3.85
<i>ECHO</i> (Electric Cooperatives Help Organization)	0.42	0.42	0.42	0.42	0.42	0.42
<i>EMPL FUND</i> (State Candidate Support)	0.66	1.47	2.23	2.23	2.23	1.88
<i>BEC PAC</i> (Federal Candidate Support)	0.96	2.15	3.39	3.39	3.39	2.85

*The recommended contribution amounts listed above are merely suggestions. Employees may choose to give more or less than those stated. BEC will not favor nor disfavor employees according to pledged donations.*

**Option 2** \_\_\_\_\_  
 I am providing a one time contribution in the amount of \$ \_\_\_\_\_ to be distributed as designated above.

**Option 3** \_\_\_\_\_  
 I elect not to participate at this time.

**Example  
 AO 2006-17**

4. Examples from AO 2006-17:

- **Statement of Political Purpose:**  
*"...for the benefit of political candidates and activities on a state and national level that support rural electric cooperatives."*
- **Statement of Voluntary Nature and Suggested Guideline:**  
 See BEC proposed solicitation form (Exhibit 1). The form offers three options for contributing. It notes that the first option contains *"merely suggestions,"* and that employees may choose to give *"more or less than those stated."* The form further states, *"BEC will not favor nor disfavor employees according to pledged donations."* *Id.* An additional statement reads, *"I am also fully aware that should I elect not to participate I may do so without any concern of retaliation."* *Id.* Taken together, these statements comply with 11 CFR 114.5(a)(2) and (a)(4).



## Basic Rules Apply

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1. Restricted Class Only
2. Solicitation Notices Always
3. **Forward Contributions and Records On Time**

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## Collection Rules

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- PAC money may be collected by:
  - Connected organization
  - Affiliated local/state organization
  - State PAC of connected organization or affiliate
- Collecting Agent rules apply

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- C. Collecting and Forwarding Contributions to PAC (11 CFR 102.6(b))**  
Connected organization, affiliated organizations or state or local PAC of organization may act as “collecting agent” by collecting and forwarding PAC contributions under guidelines below:
- 1. Checks Payable to PAC**  
Connected organization must forward checks payable to PAC directly to PAC.



## Collection Rules

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- **Collecting Agents:**
  - ▶ Temporarily deposit funds
  - ▶ Forward funds in timely manner
    - ≤\$50 within 30 days
    - >\$50 within 10 days
  - ▶ Retain records of SSF \$
- PAC ultimately responsible

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- 2. Checks Payable to Collecting Agent**
  - a) May be Temporarily Deposited in:**
    - (1) Separate transmittal account
    - (2) Collecting agent's account
    - (3) Nonfederal account (e.g. state PAC)
  - b) How to Transmit Funds**

Collecting agent may write one check to PAC representing all individual contributions collected within specific time period.
- 3. Time Frames for Forwarding Contributions and Records (11 CFR 102.8(b))**
  - a) Contributions of \$50 or less:** within 30 days
  - b) Contributions over \$50:** within 10 days
  - c) Recordkeeping**

Collecting agent retains records 3 years.

4. **PAC Remains Responsible:**
  - a) Reports original sources; date of receipt = date collecting agent receives check. (See 11 CFR 102.8(b)(2).)
  - b) Ensures that collecting agent follows rules.
5. **Corporations Acting as Members of Trade Associations**  
Corporate members may collect and forward contributions for trade association PAC. See AO 2003-22.



## Objectives – Part 1

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- Identify who may be solicited for contributions to the federal PAC.
- Specify guidelines for raising funds for the federal PAC.
- **Evaluate various fundraising techniques to determine their permissibility.**

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## VI. Solicitation Techniques



### Solicitation Techniques

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#### ➔ Payroll Deduction

- Combined Dues/Solicitation Notices
- Conventions and Meetings
- Prizes and Entertainment
- Communications
- Matching Charitable Contributions

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### Payroll Deduction

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#### Basic Rules Apply:

1. Restricted Class Only
2. Solicitation Notices Always
3. Forward Contributions and Records  
(Date of receipt = Date deducted)

#### Written Authorization Required:

- No reverse checkoff
- Electronic deductions approved
- Retain for three years after last reported contribution from employee

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- A. Payroll Deduction (11 CFR 102.6(b) and (c), 102.8(b) and 114.5(a))**
- 1. Basic Rules Apply:**
    - a) Restricted class only
    - b) Use solicitation notices
    - c) Forward contributions and records – Connected organization is acting as the collecting agent here.
    - d) Date of receipt for reporting purposes = Date deducted from paycheck. AOs 2000-11 and 1999-33.
  - 2. No Reverse Checkoff**

Illegal to automatically deduct PAC contributions from paycheck, even if individual is allowed to request refund. 11 CFR 114.5(a); See AO 2001-04 (fn. 4).
  - 3. Electronic Deductions OK**

In various opinions, the Commission has approved:

    - a) Electronic deduction/transfer of PAC contributions to membership organization PAC. AO 1997-09.
    - b) The use of a digital electronic signature to authorize payroll deductions for a corporate PAC. AO 1999-03.
    - c) The use of a standard “click through” process, in which the contributor enters an ID number that is checked against a database, to authorize deductions for a corporate PAC. AO 2001-04.
    - d) Key in these AOs:**
      - **Passwords**
      - **Email confirmations**
      - **Ability to modify/revoke authorization**
      - **Retention of authorization**
      - **Notices worked into presentation**
  - 4. Written Authorization Required**
    - a) Employee gives written authorization for periodic deduction of PAC contributions from paycheck; may revoke any time.



## Payroll Deduction

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July 2006 Policy Statement clarifies that signed payroll deduction authorizations are not the only way committees can satisfy recordkeeping requirements for resulting contributions

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- b) Retain employee's authorization for three years from the date the committee last reports receiving a contribution from that employee (rather than three years from the date the employee signed the authorization). 11 CFR 104.14(b).
- c) For suggested methods for how to keep these records, see 7/7/06 policy statement online at [http://www.fec.gov/law/policy/notice\\_2006-11.pdf](http://www.fec.gov/law/policy/notice_2006-11.pdf)



## Payroll Deduction

### Rules for Labor Organization PACs:

- ▶ Corporation must make available upon request if used for corporation's or affiliate's PAC
- ▶ Union must reimburse costs
- ▶ Vacation fund/Annuity fund deductions OK

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**5. Labor Organization Use of Corporation's Payroll System (11 CFR 114.5(k))**

- a) Corporation or affiliate that uses payroll system to collect PAC contributions must make system available upon request to labor organization with members employed by corporation (for union to collect PAC contributions from those employees).
- b) Labor organization must reimburse corporation for costs.

**6. Labor Organization PAC: Vacation Funds**

A portion of a union member's deductions to vacation fund jointly administered by employer and labor organization can be transferred to labor organization's PAC as contribution from the member, provided that:

- a) All requisite notices are given; and
- b) Union member has the right to revoke.
- c) See AOs 1980-74, 1980-69 and 1979-60.

**7. Deductions from Annuity Payments (AO 1999-06)**

- a) Membership organizations may conduct check-off plans in which retired members instruct the organization to regularly deduct PAC contributions from their annuity payments.
- b) Must follow same restrictions as payroll deduction.



## Payroll Deduction

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### Corporate Members of Trade Association PACs:

- Corporate members may provide payroll deduction for trade association PAC
  - Member must first grant prior approval
- Corporate member must permit use of payroll deduction by union for its PAC
- Union must reimburse costs

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- 8. Corporate Members of Trade Association PACs**  
FEC rules at 114.8(e)(4) permit payroll deduction by corporate members for contributions to trade association PAC, as long as corporation permits use of payroll deduction by union representing its employees.



## Reporting Example

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### Itemizing Contributions via Payroll Deduction & Fundraising Events

- How must the committee disclose the transactions?
- What information from the scenario do we need to disclose this correctly?
- Tricky Issues?

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#### **Reporting Example #1:**

#### **Reporting Contributions Raised Through Fundraising Events and Payroll Deduction**

The XYZ Organization PAC has received authorization from Jim Teamplayer, a company Vice-President, to deduct \$20 from his biweekly paycheck as a contribution to the PAC. The first deduction was taken out of Jim's paycheck on 1/21/12. The payroll department forwarded the money on 2/4/12 to the PAC's treasurer, who had arranged for an electronic transfer into the PAC's account on the same day.

On May 27, Jim reached an aggregate total of \$200 exactly. On June 10, he reached \$220. By June 24, he had an aggregate year-to-date total of \$240.

As a big supporter of the PAC, Jim, in addition to his payroll deductions totaling \$240 as of June 24, also contributed \$150 by buying a silent auction prize at a PAC event on June 30. Assume for this example that XYZ Organization PAC files its FEC reports on a monthly schedule.

**1. How must the committee disclose the transaction(s)?**

**2. What information from the scenario do we need to disclose this correctly?**

**Reporting Example #1 – Answers**

**1. How must the committee disclose the transaction(s)?**

**Answer:** Itemize them on Schedule A for the appropriate Line (11(a)(i) for individuals) once the contributions from an individual aggregate more than \$200 (including contributions received through payroll deduction) for the calendar year.

Jim’s initial contribution in January does not require itemization as Jim has not yet contributed \$200 for the calendar year. Further, the contributions with an aggregate calendar year to date amount  $\leq$  \$200 must be included on Line 11(a)(ii) (*unitemized contributions from individuals*) of the appropriate reporting periods. However, on June 10, he will reach \$220 in contributions for the calendar year. Since XYZ PAC files monthly, the report covering June (due on July 20) would be the report on which they would need to begin itemizing Jim’s contributions on Schedule A for Line 11(a)(i).

**Here is an example of the payroll deduction itemization:**

The image shows a sample of a Schedule A, Line 11a form from the Federal Election Commission. The form is titled "Payroll Deduction – July Monthly (M7)". It is for the "XYZ Organization Political Action Committee". The contributor is "Teamplayer, Jim". The form shows a "Payroll Deduction" of \$40.00 for the period, which is itemized as "\$20.00 biweekly". The aggregate year-to-date amount is \$240.00. The form includes fields for the contributor's name, address, employer, and occupation. A red circle highlights the "Payroll Deduction" field, and a red arrow points to the "\$20.00 biweekly" amount.

All of Jim’s subsequent contributions during that calendar year will also require itemization on Schedule A. Thus, Jim’s silent auction contribution via purchase of a \$150 fundraising

item must also be itemized. Since he was already over the \$200 itemization threshold for the calendar year, itemize the silent auction contribution on Schedule A for Line 11(a)(i) but separately from his payroll deductions. The aggregate year-to-date total for the June 24 contribution must include the payroll deduction contributions received previously in the calendar year.

**Here is an example of the contribution made in the form of a silent auction purchase:**

**Itemizing Contributions**

Schedule A, Line 11a

**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)  
 11a  11b  11c  12  
 13  14  15  16  17

PAGE 1 OF 2

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)  
**XYZ Organization Political Action Committee**

A. Full Name (Last, First, Middle-Initial)  
**Teamplyer, Jim**

Mailing Address  
**123 4<sup>th</sup> Street**

City **City, ST 00000** State Zip Code

Date of Receipt  
**06 / 30 / 2012**

FEC ID number of contributing federal political committee  
**C**

Amount of Each Receipt this Period  
**150.00**

Name of Employer  
**XYZ Organization** Occupation  
**Vice-President**

Receipt For:  
 Primary  General  
 Other (specify)

Aggregate Year-to-Date  
**390.00**

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**2. What information from the scenario do we need to disclose this correctly?**

**Answer:**

- Aggregate \$200 and under, need the amount of the contribution and the date that it was deducted from the individual’s paycheck. (For recordkeeping, need the individual’s name, address and payroll deduction authorization). See 11 CFR 104.8(b) and AOs 2000-11 and 1999-33.
- Aggregate more than \$200, need identification of contributor, total amount deducted during reporting period, frequency of deduction and amount per deduction.

## Tricky Issues

### Points to Remember

- Itemize contributions from an individual or other person/entity on Schedule A, Line 11(a)(i), once aggregate calendar year to date received exceeds \$200.
- **Required Information in Itemizing Receipts:**
  - Full name and address of contributor or source
  - Occupation/employer – if contributor is an individual
  - Date of receipt
  - Amount
  - Aggregate year-to-date total of all receipts from the same source
  - Optional, but encouraged: Committee ID# where applicable
- Itemization (including payroll deductions) required on Schedule A once an individual's aggregate year-to-date total exceeds \$200.
- Date reported is the date of receipt, not the date of deposit, or the date on the check.
- Date reported for payroll deduction contribution is the date that the contribution was deducted from the contributor's paycheck. See 11 CFR 104.8(b) and AOs 2000-11 and 1999-33. The "date of receipt" under FEC rules at 102.8 is the date that the collecting agent obtains possession of the funds (in other words, deducts the contribution).
- Separately itemize payroll deduction contributions from those raised using other methods.
- If collecting agent writes a check/transmits funds to PAC, do not report as transfer from collecting agent. Instead, report as contributions from original individual contributors.
- Payroll department, as the collecting agent, must forward money **within collecting agent timeframes**. The PAC treasurer would then have 10 days to deposit the contribution. The PAC treasurer will need to work closely with the payroll department in order to make these timeframes work for FEC reporting, given that date of deduction is the date used for reporting.
- Itemize payroll deductions once they have aggregated more than \$200 for the calendar year from a contributor.
- For paper filers, instead of stating each date of receipt, type "payroll deduction."
- FECFile users will need to itemize a date (recommended to use last day of reporting period) and enter "payroll deduction" in description field.
- Report the total amount deducted from paycheck during reporting period (regardless of when PAC receives funds) and indicate the amount that was deducted each pay period and the frequency of the deduction.



## Instructions for Activity

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- ✓ Read through the scenarios.
- ✓ Work with your neighbors.
- ✓ Jot down notes about legal ramifications of activity in scenarios.
- ✓ You have 5-10 minutes for this activity.

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### Scenario #1:

#### **PAC SOLICITATION MEETING**

You are the administrator for your connected organization's PAC. You would like to see more individuals from your restricted class contribute to the PAC. To help motivate contributors, you have developed the following plan for a series of informational meetings about the PAC. The meetings are intended for executives/members of your organization but you will not turn away anyone interested in learning about the PAC.

#### **Employee Meeting**

The first step would be to hold a lunch-hour meeting for your restricted class and any other individual interested in learning more about the PAC. At this meeting, you would ask your biggest contributor to explain why supporting the PAC is important to the organization's goals. Since the meeting is during lunch-hour, you will serve a light lunch.

To encourage attendance, your materials announcing the meeting will ask potential attendees who are employees of your organization to RSVP to their boss. As the administrator, you would track who attended the meeting and who skipped it. This information will be useful in performance reviews as a measure of the employees' commitment to the organization.



## Scenario #1 Answers:

### **1. Would a meeting to explain the importance of the PAC be viewed as a PAC solicitation? Why or why not?**

**Answer:** Generally, yes. In AO 1980-50, a corporation held a meeting to discuss the structure, philosophy and purpose of its PAC. While the event was not promoted as a fundraiser, the corporation expected that PAC contributions would result. The Commission thus concluded that the expenses for such a meeting “were of a character traditionally associated with ‘fundraising’.” See also AO 1983-24.

Moreover, in this case, the speaker will encourage support for the PAC by explaining why making a contribution helps the organization’s goals; that in itself is considered a solicitation. See AO 1979-13.

### **2. May anyone attend the meeting?**

**Answer:** No. Because the purpose of the meeting is to solicit PAC contributions, the organization may only invite and admit those within its restricted class. For a corporation, that includes executive and professional staff and stockholders. For a membership/labor organization, that includes executive and professional staff and members. (Note for a trade association, the restricted class also includes executives/stockholders of corporate members who have already given prior approval.

### **3. What must your speaker say at the meeting?**

**Answer:** Because he will be conveying a solicitation message, your speaker must indicate that contributions are voluntary and employees have the right to refuse to contribute. He also must explain the political purpose of the PAC. This information also must be clear in any written or oral communication inviting attendees to the meeting. 11 CFR 114.5(a)(3) and (4).

### **4. What special requirements, if any, does serving lunch trigger?**

**Answer:** None. In AOs, the Commission has ruled that exempt solicitation costs include expenses for food, drink and the facilities where a fundraising event is held. See AOs 1995-17, 1983-24 and 1980-50. Moreover, the one-third rule that is applied to prizes and entertainment does not apply to a luncheon because the lunch does not “fall within the meaning of a ‘raffle or other fundraising device which involves a prize’ or ‘other type of entertainment.’” AO 1980-50.

### **5. What do you think about the plan to track attendance and use that information in performance reviews?**

**Answer:** Section 114.5(a)(1) prohibits a PAC from making a contribution or expenditure by using money secured by job discrimination, financial reprisals, or as a condition of employment.

Although asking attendees to RSVP to their boss may be permissible, the materials inviting them to the meeting must convey the political purpose of the PAC and that they have the

right to refuse to contribute. 114.5(a)(3) and (4). Supervisors should not favor or disadvantage an employee based on a decision to attend or not attend the meeting. See 114.5(a)(2)(ii).

Moreover, using employee participation information in future performance reviews is an indication that the organization may be treating a PAC contribution as a “condition of employment” and may be using threats of job discrimination or financial reprisal in securing PAC contributions.

**6. How about the follow-up peer-to-peer visit? Is there anything important to keep in mind?**

**Answer:** The follow-up peer-to-peer visit is a solicitation in itself that triggers the voluntary notice provisions of 114.5(a). The person doing the solicitation must again explain the political purpose of the PAC, that the contribution is voluntary and that the person being solicited has the right to refuse to contribute. If an amount is suggested as a donation, the solicitor must explain that it is only a suggestion and any amount may be given without any benefit or disadvantage.

Any funds collected must be forwarded to the PAC according to the timelines prescribed by the law.



## Activity – Key Points

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Meeting to “explain PAC”:

- Meeting is solicitation
- Only invite restricted class to PAC fundraiser
- Always remember solicitation notices on invitations, in speeches/presentations and in one-on-one solicitations

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**KEY POINTS:**

- PAC presentation is a solicitation
- Only invite restricted class
- Always use notices in all of your written and oral solicitations.

**Scenario #2:**

**Email Newsletter Articles**

As part of its government affairs/PAC operations, your organization sends out an email newsletter (edited by you) to its restricted class to update them on issues important to the organization. As you know you can not solicit individuals beyond your restricted class, this is sent only to the restricted class. For the next issue, the PAC director has ideas for two articles:

Article 1:

First, the director wants to include a list of the name of each member of the restricted class who has not yet contributed. To make it eye-catching, the PAC logo and the heading “Have you made your contribution?” would be added.

Article 2:

Second, the PAC director wants to include an article summarizing Congressional legislation on your organization’s main issue and thanking the PAC’s biggest donor. The end of the article as submitted reads:

“This bill is representative of your PAC dollars at work to improve our industry’s working environment and protect our customers and clients. Have you given the PAC your fair share? Stephanie Lemon did and the PAC thanks her for her support.”

As the newsletter editor, you must review each article submitted for compliance with the federal election law among other things.

- 1. What is the main problem with Article #1?**
  
- 2. What is the main problem with Article #2?**
  
- 3. How could you, as editor, edit both articles to make them effective, yet legal, solicitations?**

**Scenario #2 Answers:**

Both articles are solicitations that are directed only to the restricted class, but have other problems. Let's analyze further:

**1. What is the main problem with Article #1?**

**Answer:** The article is a solicitation, and thus must include a notice informing the solicitees that they have a right to refuse to make the contribution. 11 CFR 114.5(a)(4). Also, it must include notice of the political purpose of the PAC. 11 CFR 114.5(a)(3). Both notices are required on every solicitation by the Act and regulations. The article, as drafted, is missing both notices.

**2. What is the main problem with Article #2?**

**Answer:** This article follows a similar article used by a PAC in MUR 5681. Again, while a solicitation article may appear in a newsletter directed only to the restricted class, the requisite notices must appear in the article. This article as drafted, possibly could be construed as having a statement of a political purpose: "This bill is representative of your PAC dollars at work to improve our industry's working environment and protect our customers and clients." In MUR 5681, however, the Commission footnoted that this language was not an explicit political purpose statement, and that even if construed as one, the language was still in violation of the Act because it lacked the explicit statement that one could refuse to make a contribution.

**3. How could you, as editor, edit both articles to make them effective, yet legal, solicitations?**

**Answer:** You could (and must) add a paragraph to each article explaining explicitly the political purpose of the PAC and the right to refuse to contribute. For example, a sentence reading "The purpose of (the soliciting PAC) is for the benefit of political candidates and activities on a state and national level that support (connected organization)" was approved in AO 2006-17 as explicitly stating the political purpose of the PAC.

In AOs regarding the right to refuse to contribute, the FEC has recommended tracking the language of the regulation at 114.5(a)(4); See AOs 2003-06 and 1997-25. Thus, you would just state, "You have the right to refuse to contribute to [Name of Organization's PAC] without fear of reprisal."



## Activity – Key Points

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Newsletter/Email Solicitation:

- Always state “right to refuse to contribute”
- Always use clear statement of political purpose:

*“The purpose of (name of PAC) is for the benefit of political candidates and activities on a state and national level that support (connected organization)”*

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**KEY POINTS:**

- All solicitations must include statement of the “right to refuse to contribute” and a clear statement of the political purpose of the PAC.

**Important Points – Part 1:**

No matter what technique is used to raise Federal PAC funds, the basic rules apply:



## Basic Rules Apply

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1. Restricted Class Only
2. Solicitation Notices Always
3. Forward Contributions and Records On Time

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## Workshop Evaluation

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*Help Us Help You!*

Please complete an evaluation  
of this workshop.

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## Break For Lunch

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### Lunch in Concerto Ballroom B

Next Workshop:  
PAC Operations  
Part 2

2:00 – 3:30 PM

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