

# PARTY OPERATIONS PART 2: LEVIN FUNDS, FEDERAL ELECTION ACTIVITY AND NONFEDERAL FUNDRAISING



August 20, 2013  
2:00 – 3:30 p.m.  
Tab #4

## Objectives

- ▣ Define Levin Funds and Federal Election Activity (FEA)
- ▣ Examine financing of FEA
- ▣ Review restrictions on nonfederal fundraising by candidates and officeholders

## Three Types of Funds

With respect to federal elections . . .



Nonfederal Funds

**Levin Funds**

Federal Funds

## What Are Levin Funds?

- ▣ Available to state/local party committees **ONLY**
- ▣ Subject to all state campaign finance laws
- ▣ Donor cannot give more than \$10,000
- ▣ No foreign national contributions
- ▣ Deposited in separate Levin account or in nonfederal account
- ▣ Used for certain “Federal Election Activity” (FEA)

**I. Levin Funds (11 CFR 300.30, 300.31 and 300.32) (Guide, pp. 50-51)**

**A. What Are Levin Funds?**

**1. Raised by State, District or Local Committee**

May only be raised and spent by state, district or local party committees.

**2. Funds Must Comply With State Law**

- a) Must be permissible under the laws of the state in which the party committee raising and spending the funds is organized;
- b) May be solicited from some sources that may not contribute under the Act (e.g., corporations, unions and federal government contractors) so long as the donation is not from foreign nationals or from sources that are impermissible under state law.

**3. \$10,000/Year Limit**

Limited to \$10,000 in a calendar year from any person (separate from federal limit), including any entity established, maintained, financed or controlled by that person (if state law limits donations to an amount less than \$10,000, then the lower limit applies). 11 CFR 300.31(d)(1)-(2).

**4. Separate Account Not Required**

Committees that do not have a separate Levin account may keep Levin-eligible funds in the non-federal account. The committee is not required to report them as Levin funds until it characterizes them as such. When reporting these funds, the date of receipt is the date that the committee received them under state law, even though they are itemized on Schedule L-A in a later reporting period.

**5. Limit Not Shared**

Each state, district and local party committee has a separate Levin fund donation limit, and committees are not considered to be affiliated under federal law for the purposes of determining Levin fund donation limits. 11 CFR 300.31(b)(3). (Affiliation rules may exist under state law, however.)

**6. No Transfer of Levin Funds**

Levin funds may not be transferred among state, district or local party committees. Each party committee that uses Levin funds must raise their own Levin funds. 11 CFR 300.34(b).

**7. Costs of Raising Levin Funds**

Must use only federal funds or Levin funds to pay the direct costs of the fundraising (including expenses for the solicitation of funds and for the planning and administration of actual fundraising activities and programs) if any portion of the funds will be used for federal election activity. 11 CFR 300.31 and 300.32(a)(4).

**B. How are Levin Funds used?**

1. Levin funds are used to pay a portion of certain allocable Federal Election Activity (FEA).
2. FEA are specific activities defined by BCRA and are discussed in detail in the next section.

## Scenario #5

### Reporting Donations of Levin Funds

#### **Reporting Scenario #5: Reporting Receipt of Levin Funds**

The Freedom Party determines that it wants to begin raising Levin funds and sets up a separate account for this purpose. To generate Levin funds, the party mails out a solicitation letter on March 1, 2014. The fundraising letter was persuasive and, as a result, the party raised \$6,000 in donations of \$100 apiece from various individuals. In addition, a big party donor, Mr. Carmine Ragusa, made a \$10,000 donation to the party's Levin account on March 20.

#### **How do we report Levin Funds raised?**

**Scenario Answer: How do we report the Levin funds raised?**

**Step 1: Report the itemized donation.** Show Schedule L-A to itemize Carmine’s donation because it is \$200 or more. **Remember, this threshold for itemization is slightly different from regular itemizations.**

## Levin Funds: Itemization

Receipt of Levin Funds

<b>SCHEDULE L-A (FEC Form 3X)</b> <b>ITEMIZED RECEIPTS OF LEVIN FUNDS</b>		Use separate schedule(s) for each category of the Aggregation Page	PAGE 1 OF 1 FOR LINE NUMBER: (check only one) <input checked="" type="checkbox"/> 1a <input type="checkbox"/> 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) <div style="border: 1px solid black; padding: 2px;">The Freedom Party</div>			
Full Name (Last, First, Middle Initial) / Full Organization Name <b>A. Carmine Ragusa</b>		Date of Receipt <div style="border: 1px solid black; padding: 2px;">03 / 20 / 2014</div>	
Mailing Address 123 Bank Road Milwaukee WI 53202		Amount of Each Receipt this Period <div style="border: 1px solid black; padding: 2px;">\$10,000.00</div>	
Name of Employer or Principal Place of business The Big Ragu Dance Studio Occupation Dance Instructor		Aggregate Year-to-Date <div style="border: 1px solid black; padding: 2px;">\$10,000.00</div>	

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**Step 2: Report the unitemized donations.** The other donations are not required to be itemized because they were less than \$200 from any person. Show the total of the unitemized donations on Line 1(b) of Schedule L.

*See Reporting Example on Next Page*

# Levin Funds: Aggregation

## Aggregate Levin Fund Receipts

SCHEDULE L (FEC Form 3X)

AGGREGATION PAGE: LEVIN FUNDS

NAME OF COMMITTEE (In Full)

The Freedom Party

NAME OF ACCOUNT

The Freedom Party Levin Account

	COLUMN A TOTAL THIS PERIOD	COLUMN B YEAR-TO-DATE
1. RECEIPTS FROM PERSONS		
(a) Itemized ..... (Use Schedule L-A)	\$10,000.00	\$10,000.00
(b) Unitemized .....	\$6,000.00	\$6,000.00
(c) Total .....	\$16,000.00	\$16,000.00
2. OTHER RECEIPTS .....	\$0.00	\$0.00
3. TOTAL RECEIPTS .....	\$16,000.00	\$16,000.00
(Add Lines 1c and 2)		

## II. Federal Election Activity (FEA) (11 CFR 100.24) (Guide, pp. 49-50)

### What is FEA?

#### Type 1

Voter registration conducted  
 ≤120 days before an election

#### Type 3

Public communication that  
 promotes, attacks,  
 supports or opposes  
 (PASOs) a clearly  
 identified federal  
 candidate

#### Type 2

Voter ID, GOTV, generic campaign  
 activity conducted in connection  
 with election in which federal  
 candidate is on the ballot

#### Type 4

Salary of a state or local party  
 employee who spends more  
 than 25% of time on federal  
 elections in one month

A. Activities that are FEA

## Type 1 Voter Registration

Time Frame:  
≤ 120 days from regularly  
scheduled federal election



FEA

□ Definition:

- Contacting individuals **by any means** to assist them in registering to vote
  - Specific list of activities
  - Excludes brief, incidental exhortations to vote

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1. **Type 1 FEA: “Voter registration activity”**

a) **Definition (11 CFR 100.24(a)(2))**

- (1) Rules cover activities that assist, encourage or urge potential voters to register to vote.
- (2) Definition covers contacting voters by any means.
- (3) Rules provide a specific list of activities that constitute voter registration activity, including:
  - Encouraging or urging potential voters to register to vote by mail (including direct mail), e-mail, in person or by telephone (including pre-recorded telephone calls, phone banks and messaging such as SMS and MMS);
  - Preparing and distributing information about registration and voting;
  - Distributing voter registration forms and instructions;
  - Answering questions about how to complete or file a voter registration form;
  - Assisting individuals with completing or filing voter registration forms;
  - Submitting or delivering completed voter registration forms;

- Offering or arranging to transport, or actually transporting potential voters to a board of election or county clerk’s office for them to fill out voter registration forms; OR
  - Any other activity that assists potential voters to register to vote.
- b) **Exemption for Brief Incidental Exhortation**
- (1) An activity does not qualify as “voter registration activity” solely because it includes a brief exhortation to register to vote, as long as that exhortation is both brief and incidental.
  - (2) Example of activity that is NOT voter registration:  
A mailer praises the public service record of mayoral candidate X. The mailer concludes by reminding recipients, “Don’t forget to register to vote for X by October 1<sup>st</sup>!”
  - (3) Example of activity that is NOT voter registration:  
A phone call for a state party fundraiser gives listeners information about the event, solicits donations and concludes by reminding listeners, “Don’t forget to register to vote.”
- c) **Time Period:** Within 120 days of a regularly scheduled federal election.

▣ Voter ID definition:

- Creating/enhancing voter lists by adding info about:
  - Voters’ likelihood of voting OR
  - Likelihood of voting for a particular candidate

**Type 2**  
Voter ID

**FEA**

Time Frame:

In connection with an election in which a federal candidate is on the ballot



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2. **Type 2 FEA: “Voter Identification” (“Voter I.D.”) (11 CFR 100.24(a)(4))**

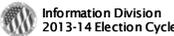
a) **Definition:**

- (1) Creating or enhancing voter lists by adding information about voters’ likelihood of voting in a particular election or voting for a particular candidate.
- (2) The purchase of a voter list constitutes “voter identification” if purchased during the FEA time period.
- (3) Subsequent use of a voter list during the FEA period will not be considered a separate FEA cost unless the committee is also enhancing the voter list by verifying or adding information.

## FEA Time Frame

“In connection with an election in which a federal candidate appears on the ballot” means:

<b>For a regularly scheduled election:</b>	<b>For a special election:</b>
<ul style="list-style-type: none"><li>• <b>Primary ballot access deadline (or January 1st) until the general election</b></li></ul>	<ul style="list-style-type: none"><li>• <b>The day a special election is set until the special election takes place</b></li></ul>

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b) **Time Period:** “In connection with an election in which a federal candidate appears on the ballot”

- (1) Regularly Scheduled Election: During the period beginning on the day of the earliest federal office filing deadline for primary election ballot access under state law—or on January 1 in states that do not hold primaries—and ending on the day of the general election, or the general election runoff, if a runoff is held; or
- (2) Special Election: During the period beginning on the day that the date is set for a special election in which a federal candidate appears on the ballot and ending on the day of that election. 11 CFR 100.24(a)(1).
- (3) Time frames for Type 2 FEA are calculated on a state-by-state basis and posted on the FEC’s website.

▣ GOTV definition:

- Encouraging individuals **by any means** to vote
  - Specific list of activities
  - Excludes brief AND incidental exhortations to vote

**FEA**

**Type 2** Time Frame:  
**GOTV**

In connection with an election in which a federal candidate is on the ballot



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3. **Type 2 FEA: “Get-out-the-vote activity” (“GOTV”)**

a) **Definition (11 CFR 100.24(a)(3))**

- (1) Rules cover activities that assist, encourage or urge potential voters to vote.
- (2) Definition covers contacting voters by any means to urge or encourage them to vote.
- (3) Rules provide a specific list of activities that constitute voter registration activity, including:
  - Encouraging or urging potential voters to vote, whether by mail (including direct mail), e-mail, in person, by telephone (including pre-recorded telephone calls, phone banks and messaging such as SMS and MMS) or by other means;
  - Informing potential voters about times when polling places are open, location of particular polling places or early voting or voting by absentee ballot;
  - Offering or arranging to transport, or actually transporting potential voters to the polls; OR
  - Any other activity that assists potential voters to vote.

b) **Examples of Activity that IS GOTV:**

- (1) Driving sound truck through neighborhood playing a message urging listeners to “Vote next Tuesday at the Main Street Community Center.”
- (2) Making robocalls or other calls reminding recipients of the times during which polls are open.

- c) **Exemption for Brief Incidental Exhortation**
- (1) An activity does not qualify as “get-out-the-vote activity” solely because it includes a brief exhortation to vote, as long as that exhortation is both brief and incidental.
  - (2) Example of activity that is NOT GOTV: A mailer praises the public service record of mayoral candidate X. The mailer concludes by reminding recipients, “Vote for X on November 4<sup>th</sup>.”
  - (3) Example of activity that is NOT GOTV: A phone call for a state party fundraiser gives listeners information about the event, solicits donations and concludes by reminding listeners, “Don’t forget to vote on November 4th.”
- d) **Time Period**: In connection with an election in which a federal candidate appears on the ballot.

## Exceptions to FEA Rules

Certain costs during FEA time period are NOT subject to FEA funding restrictions:

- Voter ID
  - Conducted solely for nonfederal election (not used in subsequent federal election)
- GOTV activity
  - Conducted solely for nonfederal election
  - Communications must ONLY refer to:
    - Nonfederal candidates, ballot referenda, polling hours or locations
- *De minimus* costs incurred for:
  - Certain internet activities
  - Placing forms or absentee ballots in party offices

4. **Exemptions from Type 1 FEA (Voter Registration Activity) and Type 2 FEA (Voter ID and GOTV) Funding Restrictions:**
- a) Voter ID conducted solely in connection with nonfederal election during FEA time period, but on which no federal election is held and which is not used in subsequent election in which a Federal candidate appears on the ballot (100.24(c)(5)).

- b) GOTV activity conducted solely in connection with nonfederal election during FEA time period, but on which no federal election is held, provided communications made refer exclusively to:
  - (1) Nonfederal candidates on the ballot on the date of the nonfederal election;
  - (2) Ballot referenda on the ballot scheduled for the date of the nonfederal election; or
  - (3) The date, polling hours and locations of the nonfederal election (11 CFR 100.24(c)(6)).
- c) *De minimus* costs associated with the following:
  - (1) On the website of a party committee or an association of State or local candidates, posting a hyperlink to a state or local election board's web page containing information on voting or registering to vote;
  - (2) On the website of a party committee or an association of State or local candidates, enabling visitors to download a voter registration form or absentee ballot application;
  - (3) On the website of a party committee or an association of State or local candidates, posting information about voting dates and/or polling locations and hours of operation; or
  - (4) Placing voter registration forms or absentee ballot applications obtained from the board of elections at the office of a party committee or an association of State or local candidates (11 CFR 100.24(c)(7)).

▣ **Generic Campaign Activity definition:**

- A public communication that:
  - ▣ Promotes or opposes a political party AND
  - ▣ DOES NOT promote or oppose a clearly identified federal/nonfederal candidate

**Type 2**  
**Generic Campaign Activity**

**FEA**

**Time Frame:**  
In connection with an election in which a federal candidate is on the ballot



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**5. Type 2 FEA: “Generic Campaign Activity” (11 CFR 100.25)**

**a) Definition**

**A public communication that promotes or opposes a political party** and does not promote or oppose a clearly identified federal candidate or a nonfederal candidate. 11 CFR 100.25.

**b) Time Period:** In connection with an election in which a federal candidate appears on the ballot.

## Public Communication

- ▣ Cable, satellite or broadcast communication
- ▣ Newspaper or magazine
- ▣ Mass mailing (> 500 pieces)
- ▣ Outdoor advertising facility
- ▣ Phone bank (> 500 calls w/same info)
- ▣ Communications placed for a fee on another person's website (but not any other Internet or email activity) or
- ▣ Any other form of general public political advertising

- c) **Public Communication Defined (11 CFR 100.26)**  
Includes communications made using the following media:
- Broadcast, cable or satellite;
  - Newspaper or magazine;
  - Outdoor advertising facility;
  - Mass mailing (>500 substantially similar mailings w/in 30 days);
  - Phone bank (>500 substantially similar calls w/in 30 days);
  - Communications placed for a fee on another person's web page;
  - Any other form of general public political advertising.

**Type 3  
PASO Candidate**

Time Frame:  
At any time during a  
calendar year



- ❑ Public Communication that Promotes, Attacks, Supports or Opposes
- ❑ Clearly Identified Federal Candidate  
Regardless of whether the communication mentions a nonfederal candidate

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6. **Type 3 FEA: Public Communications that “PASOs” federal candidate**
- a) **Definition:** “A public communication that promotes, attacks, supports or opposes (PASOs) a Federal candidate.”  
See 11 CFR 100.26 for definition of public communication.
  - b) **Time Period:** At any time during a calendar year.

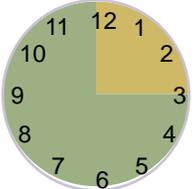
▣ **Definition:**  
Salary/wages of state/local party employee who:

- ▣ Spends >25% of monthly time on federal elections
- ▣ Includes fringe benefits
- ▣ Committees should keep a monthly log of employee time spent on federal elections

**FEA**

**Type 4 Staff Salaries**

Time Frame:  
At any time during a calendar year



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7. **Type 4 FEA: Employee Salaries**
- a) **Definition:** The salaries and wages of an employee of a state, district or local party committee who spends more than 25% of his or her compensated time on federal activity, including FEA.
  - b) **Time Period:** At any time during a calendar year. See AO 2010-24.

## Not Considered FEA

- ▣ Public Communications referring solely to nonfederal candidates
- ▣ Contributions to state/local candidates
- ▣ Costs of party conventions and meetings
- ▣ Grassroots materials for nonfederal candidates (i.e., buttons, pins, bumper stickers, etc.)

### **B. Activities That Are Not FEA (11 CFR 100.24(c))**

#### **1. Public Communications Referring Solely To Nonfederal Candidates**

- a) A public communication that refers solely to one or more clearly-identified candidate(s) for state or local office and does not promote, support, attack or oppose a clearly-identified candidate for federal office is not FEA.
- b) A public communication would, however, be considered FEA if it constituted voter registration, generic campaign activity, get-out-the-vote activity or voter identification.  
11 CFR 100.24(c)(1).

#### **2. A Contribution to a Candidate for State or Local Office**

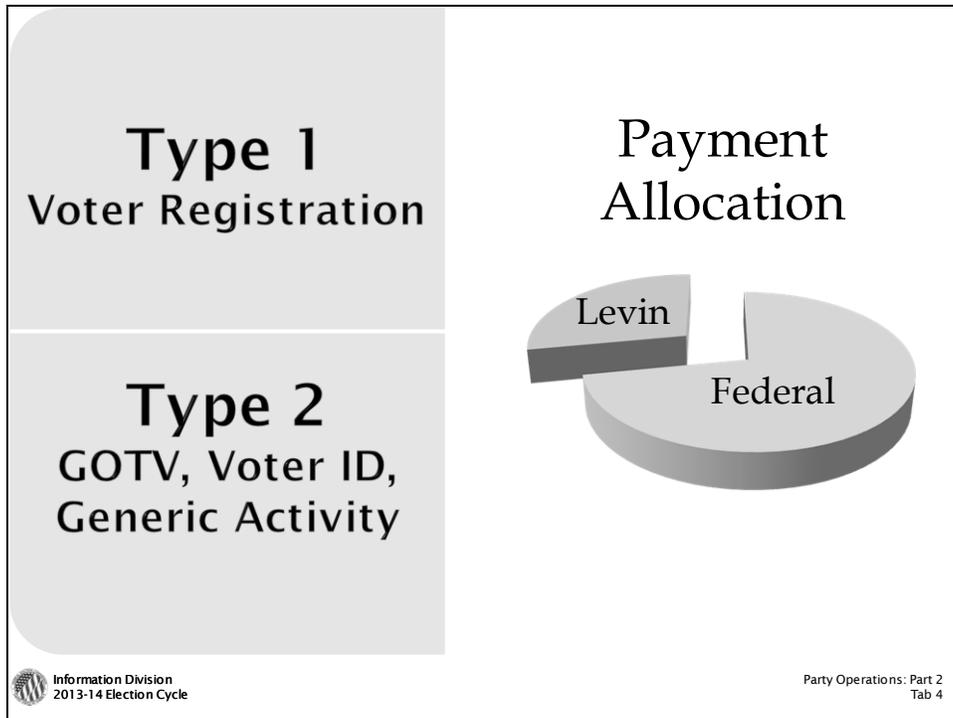
Unless the contribution is designated for voter registration, voter identification activity, generic campaign activity, get-out-the vote activity, employee services, or a public communication that qualifies as FEA. 11 CFR 100.24(c)(2).

#### **3. Party Meetings and Conventions**

The cost of state, district or local political conventions, meetings or conferences. 11 CFR 100.24(c)(3).

#### **4. Grassroots Materials for Nonfederal Candidates**

The costs of grassroots campaign materials (buttons, bumper stickers, yard signs, handbills, brochures and posters) that name or depict only candidates for state or local office. 11 CFR 100.24(c)(4).

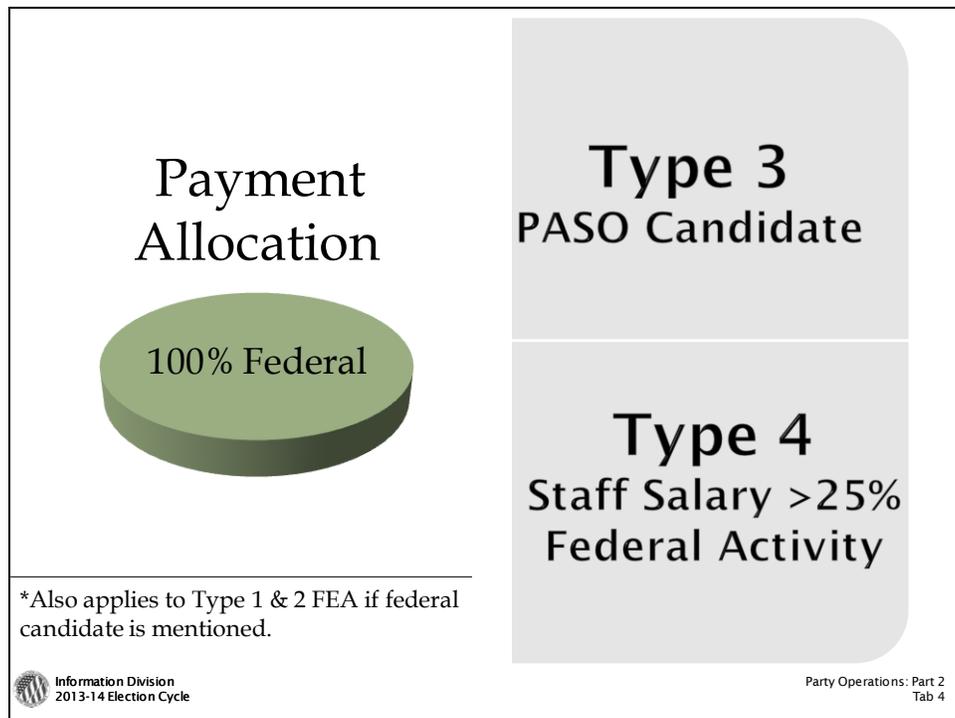


**C. Financing FEA**

**1. Financing FEA with Levin Funds**

Levin funds may be used to pay the nonfederal portion of allocable expenses relating to:

- a) **Type 1:** 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.
- b) **Type 2:** Voter identification, GOTV or generic campaign activity conducted in connection with an election in which a federal candidate appears on the ballot (regardless of whether a state or local candidate also appears on the ballot). 11 CFR 300.32(b).
- c) **BUT** if expenditure for above activity mentions a federal candidate, it must be paid with 100% federal funds. 11 CFR 300.32(c)(1).



2. **100% Federal Funds Used for Certain FEA, including:**
  - a) **Type 3:** A public communication that promotes, supports, attacks or opposes (PASOs) any federal candidate; and
  - b) **Type 4:** Salaries, wages and fringe benefits of any employees who spend more than 25 percent of their compensated time in a given month on FEA or on activities in connection with a Federal election. 11 CFR 106.7(d)(1)(ii) and 300.33(d)(2) and AO 2010-24.
  - c) **Type 1 or Type 2 FEA that refers to a clearly identified Federal candidate.** 11 CFR 300.32(c)(1).
3. **Monthly Filing**

A state or local party committee that has had any federal receipts or disbursements for FEA – or any reportable Levin receipts and disbursements – must file monthly. 11 CFR 300.36(c)(1).

## Scenario #6

### Reporting Federal Election Activity (FEA)

#### **Reporting Scenario #6: Disbursements for Public Communications**

**Background:** On November 17, 2013, the *Regal Beagle Daily News* runs an article on Congressman Jack Tripper's declining job approval ratings as the House prepares to vote on a budget bill. The article notes that Congressman Tripper potentially faces a tough 2014 general election challenge from state Attorney General Stanley Roper. Rushing to take advantage of this good press, on November 20, 2013, the Freedom Party, without speaking to the Tripper campaign, pays upfront for a billboard thanking Congressman Tripper for his recent votes on the budget and pledging their support for him on Election Day.

**How must the state party committee categorize and report this disbursement?**

**Scenario Answer:**

**1. How must the state party committee categorize and report this disbursement?**

**Answer:** While neither an independent expenditure (no express advocacy) nor a coordinated party expenditure (no coordination), the disbursement is still a public communication that supports Congressman Tripper – thus, it is a type of FEA. This type of FEA is 100% federal, so it is itemized on Schedule B supporting Line 30b, with the identity of the candidate disclosed. *Since the party has made a disbursement for FEA, it must now also file monthly.*

Payment for Non-Allocable FEA		FOR LINE NUMBER: (check only one) <input type="checkbox"/> 21b <input type="checkbox"/> 22 <input type="checkbox"/> 23 <input type="checkbox"/> 24 <input type="checkbox"/> 25 <input type="checkbox"/> 26 <input type="checkbox"/> 27 <input type="checkbox"/> 28a <input type="checkbox"/> 28b <input type="checkbox"/> 28c <input type="checkbox"/> 29 <input checked="" type="checkbox"/> 30b	
SCHEDULE B (FEC Form 3X) ITEMIZED DISBURSEMENTS			
Use separate schedule(s) for each category of the Detailed Summary Page			
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>Freedom Party</b>			
<small>Full Name (Last, First, Middle Initial)</small>			
A. <b>Billboards by Chrissy Snowe</b>		Date of Disbursement <input type="text" value="11"/> / <input type="text" value="20"/> / <input type="text" value="2013"/>	
Mailing Address <b>342 Janet Drive</b>		Amount of Each Disbursement this Period <input type="text" value="\$1,500.00"/>	
City State Zip Code <b>Santa Monica CA 90401</b>		Category/Type <input type="text"/>	
Purpose of Disbursement <b>Billboard</b>		Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼	
Candidate Name <b>Jack Tripper</b>		Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President	
State: District:			

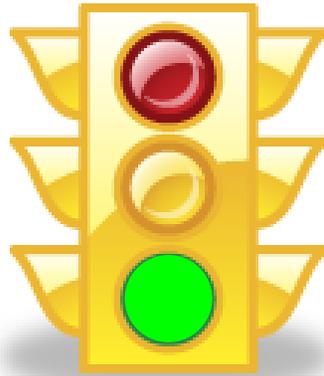
Paying for FEA

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## Three Types of Funds

With respect to federal elections . . .



**Nonfederal Funds**

Levin Funds

Federal Funds

## State/Local Party Accounts

Nonfederal Account

- ▣ Funds governed by applicable state law
  - ▣ Used to support candidates for state and local office



# Party Fundraising by Candidates/ Officeholders

## Prohibited Activity

Generally, federal candidates and officeholders cannot solicit, receive, direct, transfer, spend or disburse funds outside of federal limits or from prohibited sources in connection with elections.

### III. Participation by Federal Candidates and Officeholders at Non-Federal Fundraising Events (11 CFR 300.60 – 300.65)

#### A. Fundraising Restrictions

##### 1. In Connection with Federal Elections

The persons described below may not solicit, receive, direct, transfer, spend or disburse funds in connection with Federal elections unless the amounts consist of Federal funds that are subject to the limitations, prohibitions, and reporting requirements of the Act. 11 CFR 300.61.

##### 2. In Connection with Nonfederal Elections

In addition, the persons described below may solicit, receive, direct, transfer spend or disburse funds in connection with any nonfederal election, only in amounts and from sources that are consistent with State law, and that do not exceed the Act's contribution limits or come from prohibited sources under the Act. 11 CFR 300.62.

#### B. Application

The fundraising restrictions apply to the following:

1. **Federal candidates;**
2. **Individuals holding federal office;**
3. **Agents acting on behalf of federal candidate or individual holding federal office.** AO 2003-10; and
4. **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 and 11 CFR 300.60.

## Party 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

### C. **Attendance at Non-Federal Fundraising Event (11 CFR 300.64(b))**

A Federal candidate or officeholder may:

1. Attend, speak at, or be a featured guest at a non-Federal fundraising event.
2. Solicit funds at a non-Federal 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.

## Publicity for Nonfederal Fundraisers

Party committee may use candidate/officeholder name/likeness in publicity that:

- ☐ Does not contain a solicitation
- ☐ Solicits only federal funds
- ☐ Solicits nonfederal or Levin funds, IF . . .
  - The candidate/officeholder is identified in manner not specifically related to fundraising (featured guest, honored guest, special guest, featured speaker, or honored speaker)  
AND
  - The publicity includes disclaimer that solicitation is not being made by the candidate/officeholder

**D. Publicity for Nonfederal Fundraising Events (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 non-Federal 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 non-Federal fundraising event that solicits only funds that comply with the amount limitations and source prohibitions of the Act.

## Publicity for Nonfederal Fundraisers

Even if the communication includes a disclaimer . . .

- ▣ MAY NOT use candidate/officeholder name or likeness in publicity that solicits nonfederal funds if he/she:
  - Serves in a position specifically related to fundraising;
  - Is extending an invitation to the event; OR
  - Signs the communication
  
- ▣ Candidate/officeholder may not disseminate publicity for nonfederal fundraiser that includes a solicitation of nonfederal/Levin funds by someone other than the candidate/officeholder.

### 3. **Publicity Containing Solicitation of Nonfederal 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 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**

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

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

The clear and conspicuous disclaimer required by 11 CFR 300.64(c)(3)(i)(B) must meet the existing requirements in 11 CFR 110.11(c)(2) (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.

**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 non-Federal candidate or entity], and not by [Federal candidate/officeholder].”

**d) Use of Fundraising Titles/Candidate Signature**

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 non-Federal fundraising event that contains a solicitation of funds outside the amount limitations and source prohibitions of the Act or Levin funds if:

- (1) 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 as described in paragraph (c)(3)(i)(B) of this section; OR
- (2) The Federal candidate or officeholder signs the communication, even if the communication contains written disclaimer as described in paragraph (c)(3)(i)(B) of this section.

**e) Dissemination By Federal Candidate or Agents**

A Federal candidate, officeholder, or an agent of either, may not disseminate publicity for a non-Federal 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 #7

### Publicity for Nonfederal Fundraising Events

#### **Scenario #7: Publicity for Nonfederal Fundraising Events**

**Background:** The Freedom Party is planning a fundraising event for its nonfederal account on November 15 to be co-chaired by U.S. Representative Jane Doe and U.S. Senator John Smith.

1. **How should the publicity materials for this fundraising event be worded?**
  
  
  
  
  
  
  
  
  
  
2. **Would the wording change if the federal officeholders were featured guests or speakers at a nonfederal fundraiser, and if yes, how?**
  
  
  
  
  
  
  
  
  
  
3. **What are some examples of incorrect wording?**

**Scenario Answers:**

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

**Answer:** 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

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

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

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

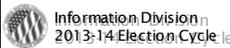
Friday, November 15, 7 P.M.  
Hotel California  
1234 Maine Avenue

Paid for by the Freedom Party and not authorized by any candidate or candidate's committee.  
www.freedomparty.com

*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

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

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

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

*Friday, November 15, 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*

*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?**

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

**Answer:** 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 is an example:

**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 JOHN SMITH**

*Friday, November 15, 7 P.M.  
Hotel California  
1234 Maine Avenue*

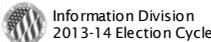
*Please RSVP with your \$25,000 donation to (123) 456-7890.  
Make checks payable to the Freedom Party and mail to: 222  
Central Avenue, Union, ST 12346*

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?**

**Answer:** 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 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).

Friday, November 15, 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

*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.*

## 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).

Friday, November 15, 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

*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.*

## Workshop Evaluation

*Help Us Help You!*

Please complete an evaluation  
of this workshop.

**NEXT WORKSHOP  
FEC JEOPARDY  
3:45 – 4:30**