CORPORATE PAC OPERATIONS PART 2

April 24, 2013
1:45 p.m.
Tab 4

Information Division
2013-14 Election Cycle

Corp PAC Operations

Objectives – Part 2

- Methods For Supporting Federal Candidates
- Types of PAC Communications
- RAD Review & Referral Policy

Information Division
2013-14 Election Cycle

Corp PAC Operations

I. Making Contributions (11 CFR 110.1 and 110.2)

Supporting Federal Candidates

- Direct Contributions
- Earmarked Contributions

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Corp PAC Operations

Contribution Limits

Review

For 2013-14 Elections	Candidate per election	National Party per year	State, District & Local Party per year	Any PAC per year	Special Limits
Individual	$2,600	$32,400	$10,000 (combined)	$5,000	$123,200 biennial limit
National Party	$5,000	No Limit	No Limit	$5,000	$45,400 per Senate campaign
State, District & Local Party	$5,000 (combined)	No Limit	No Limit	$5,000 (combined)	None
PAC: multicandidate	$5,000	$15,000	$5,000 (combined)	$5,000	None
PAC: not multicandidate	$2,600	$32,400	$10,000 (combined)	$5,000	None

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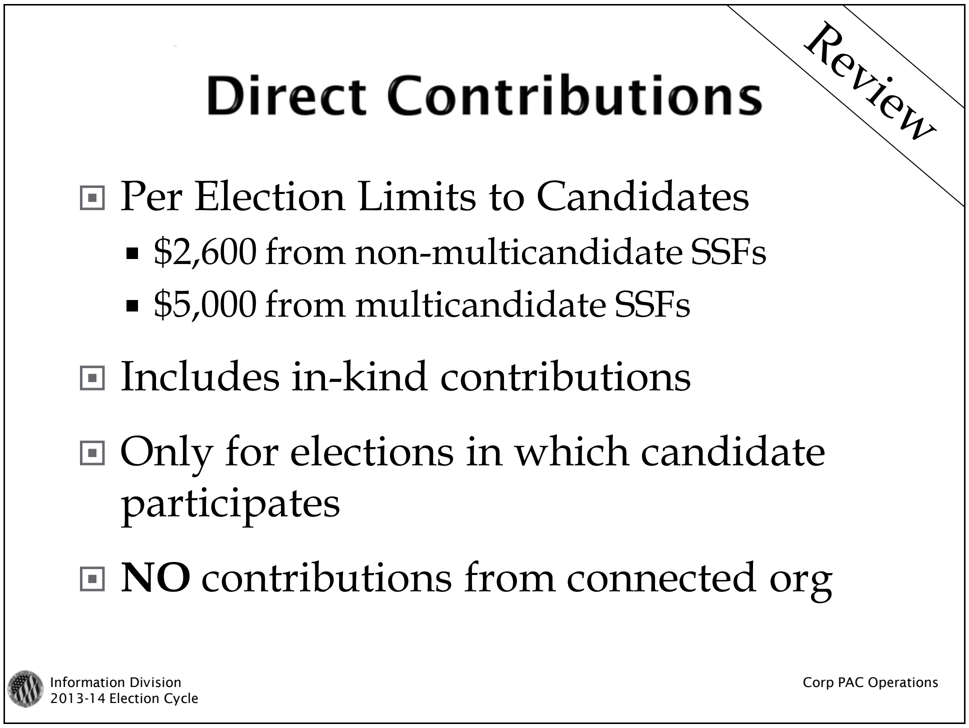
Corp PAC Operations



A. Limitations Apply: REVIEW

1. **Non-multicandidate PACs**
   a) Indexed for inflation.
   b) May give $2,600 per election to federal candidates for 2013-2014 elections.
2. **Multicandidate PACs**
   May give $5,000 per election to federal candidates for 2013-2014 elections (limits unchanged).
3. **Both in-kind and monetary contributions count against limits.**
4. **Connected organization may not make contributions.**

Per Election Limits

Undesignated Contributions:

- Count toward limit for candidate's next election

Designation Required:

Contributing to a future election

Retiring debt from a past election

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Corp PAC Operations

5. Designation of Campaign Contributions by PAC

a) Undesignated contribution counts towards the candidate's next scheduled election.

b) PAC must designate contribution if:

(1) Intends contribution to count toward a future election, beyond the upcoming election.

(2) Making contribution to retire candidate's debt of a past election. Note: This is permissible only if:

- Candidate has net debt outstanding from that election; and
- Contribution, when aggregated with previous contributions to same candidate for same election, does not exceed limit.

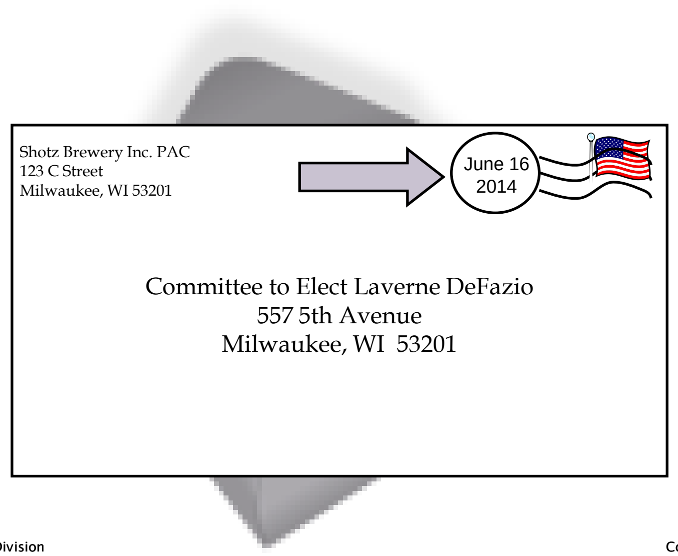
Practical Application

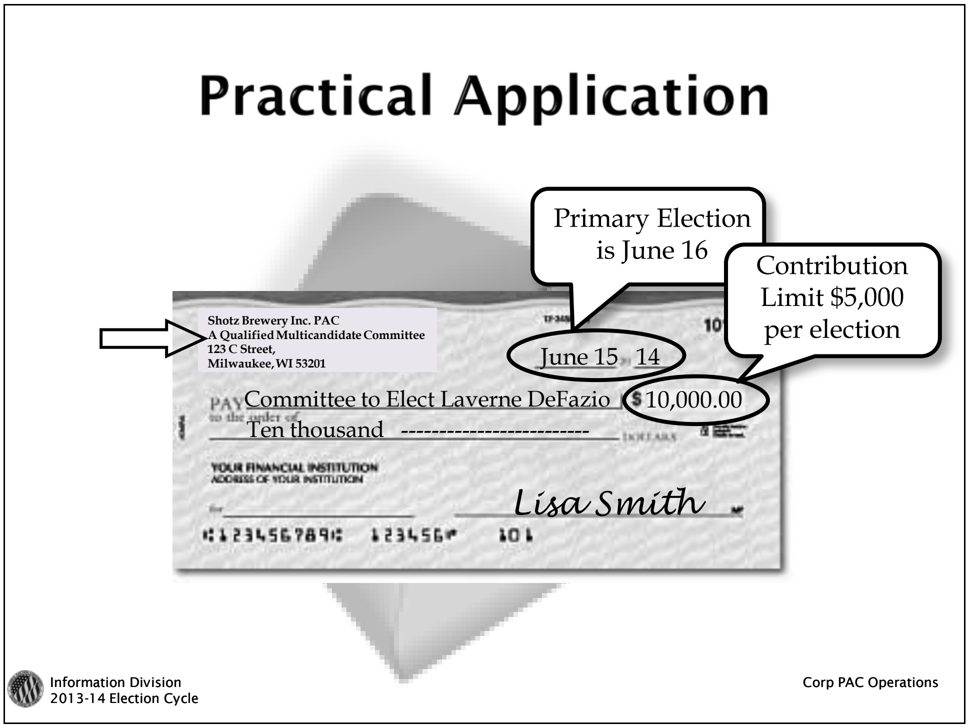
Laverne DeFazio
for U.S. Senate

Primary Election Day is June 16

Paid for by the Committee to Elect Laverne DeFazio.

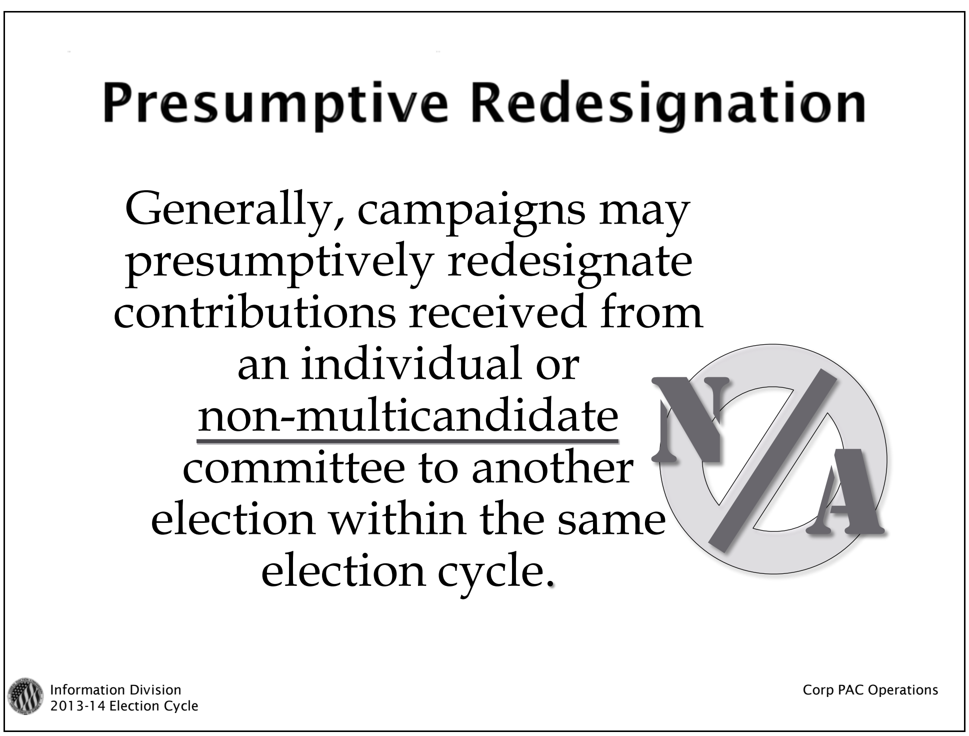
Practical Application





B. **Methods for Curing Excessive Contributions**

1. **Refund**
2. **Redesignate** – (11 CFR 110.1(b)(5)(ii)(B)(1)-(4)); (*Guide*, pp. 61-62)



Standard Redesignation

Campaign Requests Redesignation:

1. Campaign must offer refund option when requesting redesignation
2. Signed redesignation authorization must be received by campaign within 60 days of its receipt of the contribution
3. If redesignation process is not completed within 60 days, campaign must refund excessive portion to PAC

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a) Procedures for Redesignation Request

(1) Campaign must offer refund option when asking PAC for redesignation.

(2) Signed redesignation authorization must be received by campaign within 60 days of their receipt of original contribution.

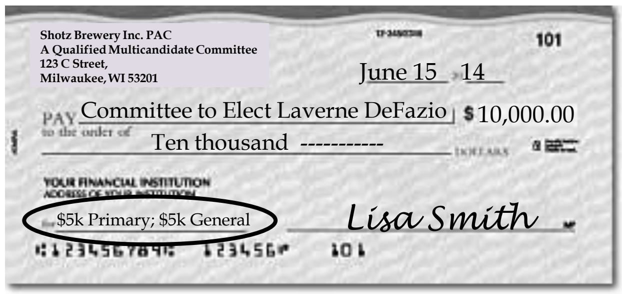
(3) If redesignation process not completed within 60 day window, campaign must refund the excessive portion back to the PAC.

b) Electronic Contributor Redesignations

The Commission acknowledged that, in certain circumstances, an online process can provide a sufficient level of assurance as to the contributor's identity and intent such that it satisfies the written signature requirements. See Interpretive Rule Regarding Electronic Contributor Redesignations, 76 FR 16233 (March 23, 2011). Available on FEC website at: http://www.fec.gov/law/cfr/ej_compilation/2011/notice_2011-02.pdf

FEC Recommended

Designate all contributions to candidates



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Corp PAC Operations

C. Avoiding Excessive Contributions

1. **Designate election for all contributions – highly recommended.**
2. **Designation Required if:**
   a) PAC intends contribution to count toward a future election, beyond the upcoming election.
   b) Making debt retirement contribution for past election.

Reporting Example #3A & B: Itemizing Monetary Contributions Made to Federal Candidates and Committees

Reporting Example

- Itemizing Monetary Contributions Made and Refunded
  - How does the SSF disclose the transaction?
  - What information do we need to disclose?
  - Tricky Issues?

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Corp PAC Operations

The Shotz Brewery, Inc. PAC, a multicandidate committee based in Wisconsin, really likes Senator Laverne DeFazio, a former company employee now representing its home state. On May 21, 2014, the PAC made out two checks; one to Senator DeFazio's campaign committee, and one to her leadership PAC, the Wood Violet Fund. (Note: The PAC had not previously contributed to the Senator or to the leadership PAC.)

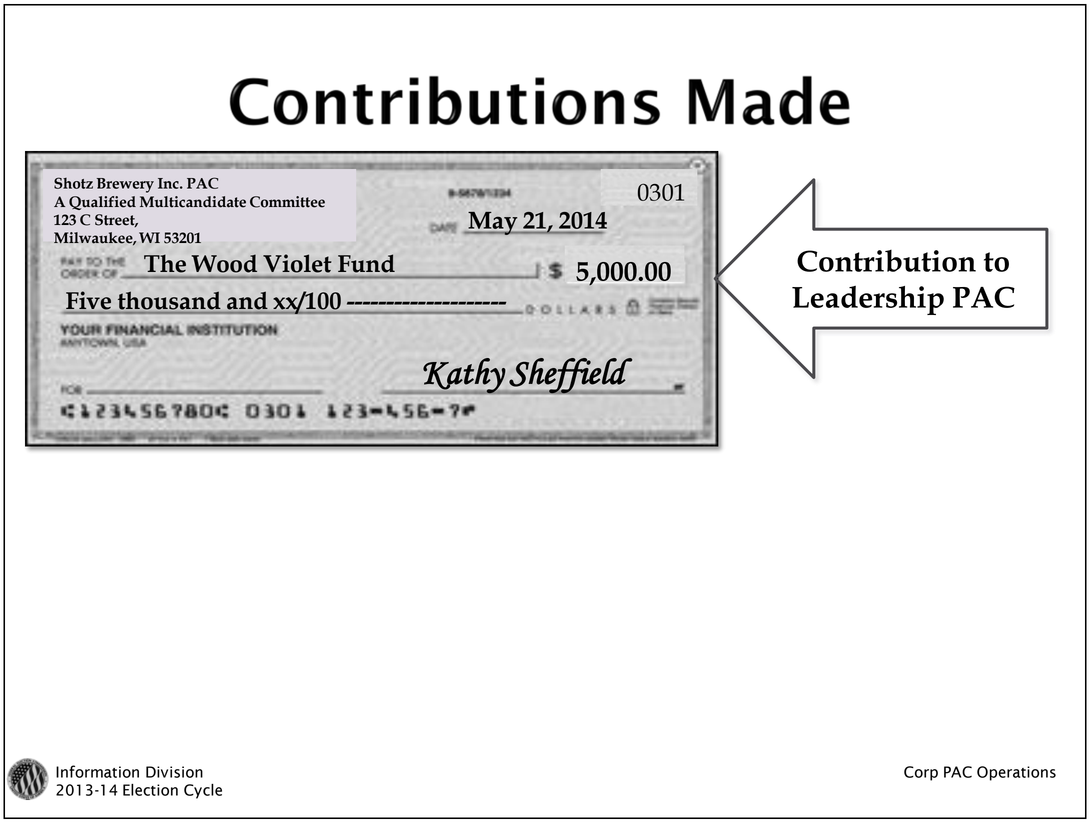
1. What types of transactions are these?

2. How must the committee disclose the transaction(s)?

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

4. Tricky Issues?

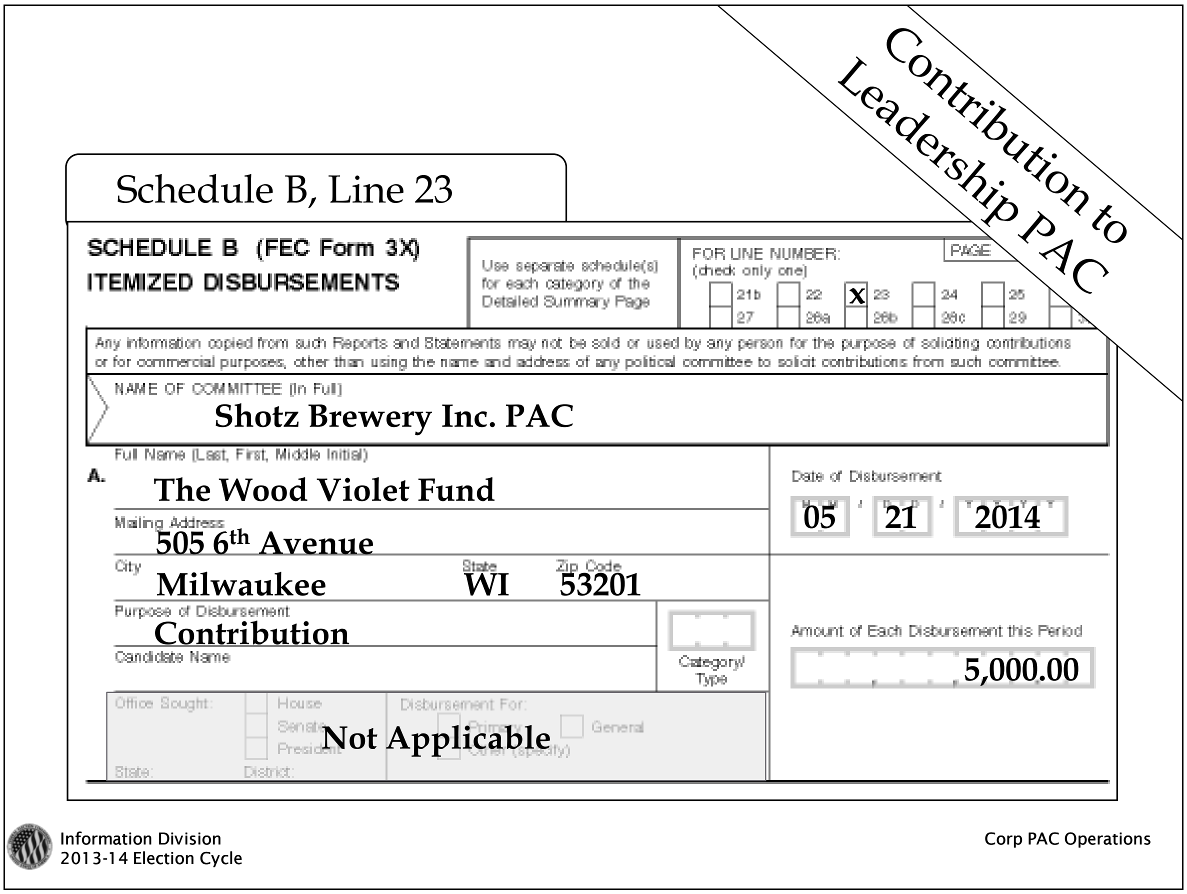
Answers to Example #3A: Monetary Contribution to Federal PAC (Check #301)



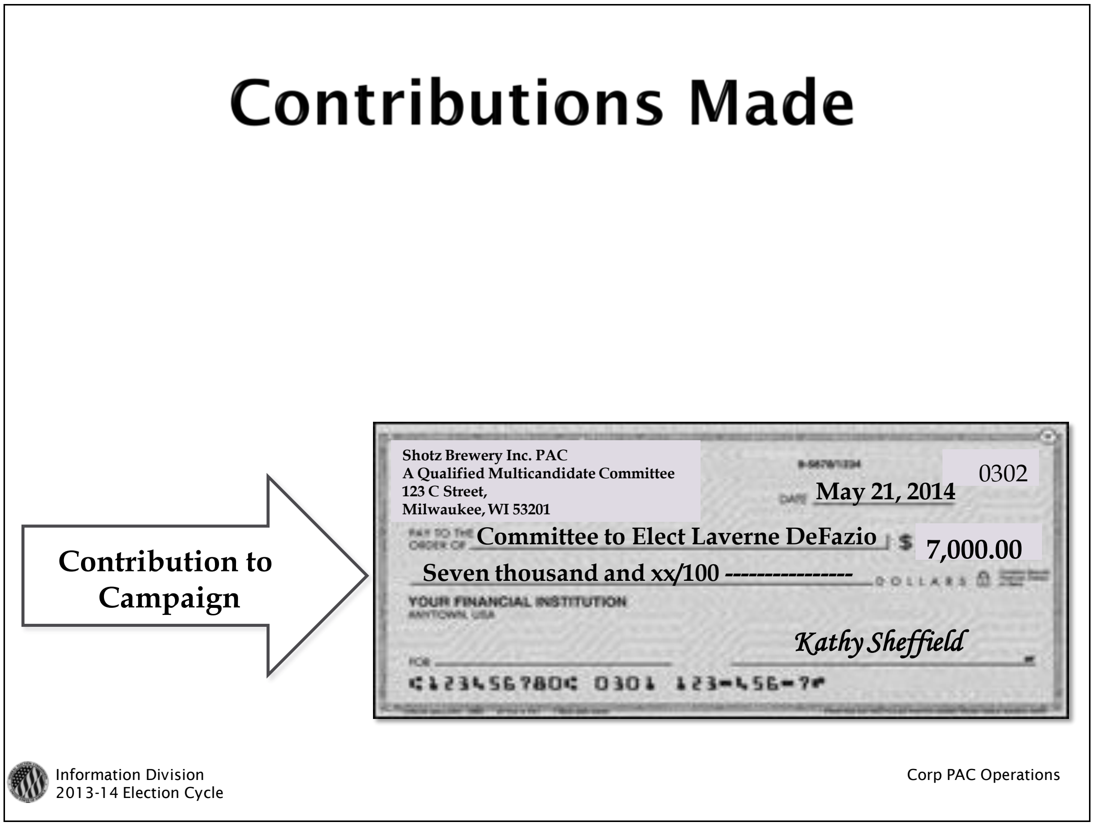
1. **What type of transaction is this?**
   Answer: This check represents a contribution made by the Shotz Brewery Inc. PAC. The $5,000 check is a contribution to a Senate Leadership PAC. Note that the Leadership PACs and the campaign committee of the Leadership PAC sponsor are not considered affiliated.

2. **How must the committee disclose the transaction(s)?**
   Answer: The Shotz Brewery Inc. PAC must itemize the contribution on its June Monthly report (covering the month of May) on a Schedule B for Line 23.

3. **What information from the scenario do we need to disclose this correctly?**
Answer: Disclose the Leadership PAC's name and address, the date made and the amount. For purpose, note "contribution." The candidate and election information is not required because the leadership PAC is not an authorized committee that is affiliated with the campaign.



Answers to Example #3B: Contribution to Federal Candidate (Check #302)

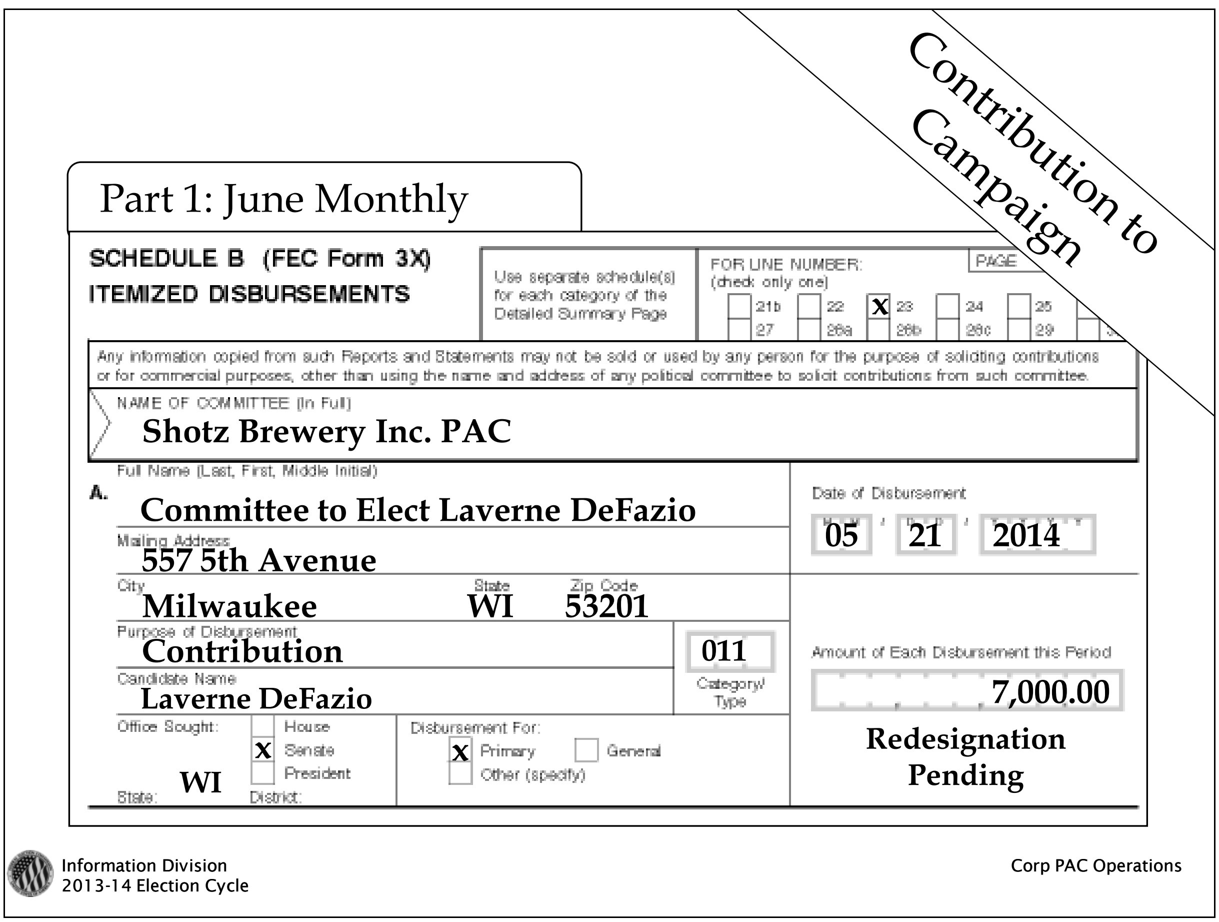


The Laverne DeFazio campaign receives the PAC check on May 24, 2014, and notes that the undesignated $7,000 check is an excessive contribution. As such, the campaign sends Shotz Brewery Inc. PAC a redesignation request. As a big supporter of the Senator, the PAC does not want a refund. On June 2, the PAC treasurer sends the campaign a redesignation letter which is received by the campaign treasurer on June 5.

1. **What type of transaction is this?**
   Answer: This check represents two separate contributions made by the Shotz Brewery Inc. PAC. The check for $7,000 represents contributions to both the primary and the general election campaign of the Committee to Elect Laverne DeFazio. However, as an undesignated contribution, it's an excessive primary contribution. To remedy this, the campaign has asked the PAC to redesignate the excessive portion ($2,000) to the general election.

2. **How must the committee disclose the transaction(s)?**
   Answer: The PAC is required to disclose the original disbursement since the close of books for the June Monthly report (covering the month of May) falls before the redesignation letter is sent by the PAC. Then PAC then must disclose the redesignation on the July Monthly report (covering the month of June) since the redesignation occurred during that reporting period.

3. **What information from the scenario do we need to disclose this correctly?**
   Answer: Report original disbursement (June Monthly) - show reporting on Schedule B for Line 23. The itemization information includes candidate committee's name and address, the date made, amount, the candidate's name and office sought (including state and Congressional district), the election (including year) for which the contribution was made (check appropriate box). For purpose, note "contribution." Note that FECFile allows users to get the committee's information from a database. Include notation "Redesignation pending"


Contribution to Campaign

Part 1: June Monthly

SCHEDULE B (FEC Form 3X)
ITEMIZED DISBURSEMENTS

Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER: (check only one)
21b 22 X 23 24 25
27 28a 28b 28c 29

PAGE

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NAME OF COMMITTEE (In Full)
Shotz Brewery Inc. PAC

A. Full Name (Last, First, Middle Initial)
Committee to Elect Laverne DeFazio

Mailing Address
557 5th Avenue

City: Milwaukee State: WI Zip Code: 53201

Purpose of Disbursement
Contribution

Category/Type: 011

Candidate Name
Laverne DeFazio

Office Sought: House / X Senate / President

State: WI District:

Disbursement For: X Primary / General / Other (specify)

Date of Disbursement: 05 / 21 / 2014

Amount of Each Disbursement this Period: 7,000.00

Redesignation Pending

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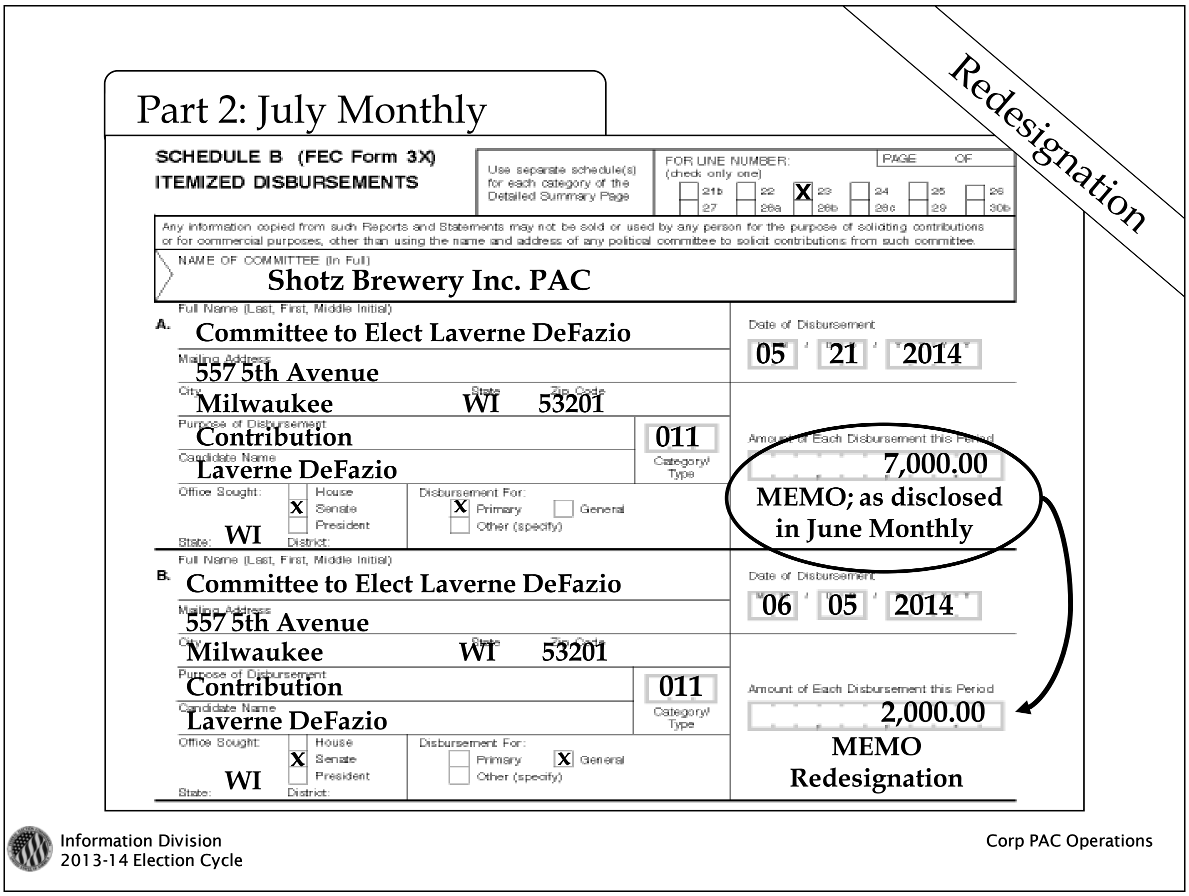
Reporting Example Continues on Next Page

Report Redesignation (July Monthly): show reporting on Schedule B for Line 23. There will be two separate entries.

a. $7,000 contribution as disclosed on June monthly; MEMO entry.
b. $2,000 contribution shown with general checked – REDESIGNATION; MEMO entry

Disclosed as MEMO entries since this is not new money leaving the PAC account, but new information on a pervious disbursement



4. Tricky Issues:

- Itemize contributions to all federal campaigns and committees on Schedule B for Line 23, regardless of amount.
- For contributions to federal campaign committees, include candidate information.
- Use memo entries to note previously reported information – do not add them again to the totals.
- If redesignated after the close of books, show the redesignation on the next report and indicate the report on which it was previously itemized.
- Previous report should <u>not</u> be amended.

- Strongly recommended that PACs designate contributions to campaigns for particular elections (use year and type of election to properly designate).
- If designating for prior election, also note “debt” (e.g., “2012 general debt”).
- Treat contributions to a leadership PAC as a contribution to a PAC, not a contribution to a campaign.

Returned vs. Refunded

- Returned, Lost or Voided Checks
  - Negative entry on line number transaction was originally disclosed (Schedule B)
- Refunded
  - Refund check from another committee appears on Schedule A for Line 16

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Reporting Example #3C: Itemizing Refunded, Lost and Returned Contributions Made to Federal Candidates and Committees

On July 10, the Shotz Brewery Inc. PAC treasurer realizes that the check to the Wood Violet Fund never cleared the bank, and decides to void the check and add the money back into the PAC's checking account.

On the same day, the PAC receives a refund check from the DeFazio Campaign for $2,000. Senator DeFazio lost in the June 16 primary and has refunded the PAC's general election contribution.

1. **What types of transactions are these?**

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

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

4. **Tricky Issues?**

Answers to Example #3C: Itemizing Refunded, Lost and Returned Contributions Made to Federal Candidates and Committees

1. **What types of transactions are these?**
   Answer: The uncashed check to the Wood Violet Fund that was voided by the Shotz Brewery Inc. PAC treasurer represents a lost, voided or returned contribution (in this case lost/voided) and thus, a negative expenditure. The check containing the refund from the Committee to Election Laverne DeFazio represents a refund, and thus, a receipt.

2. **How must the committee disclose the transaction(s)?**
   Answer: Voided or returned/uncashed checks should be disclosed as negative entries on the Line number the transaction was originally disclosed (in this case, Schedule B for Line 23). On the other hand, when a refund check is actually received from another committee and deposited into the federal account, it should be disclosed on Schedule A for Line 16 as a receipt.

3. **What information from the scenario do we need to disclose this correctly?**
   Answer: The committee will need the information that was originally disclosed on a previous report regarding the transaction and will also need to reference that report on its disclosure. The committee should also reference the original contribution date in the “purpose” section of the report.

Reporting Example Continues on Next Page

Report Lost/Voided/Returned Contribution:

Returned, Lost Or Voided

Negative Entry, Schedule B, Line 23

SCHEDULE B (FEC Form 3X)
ITEMIZED DISBURSEMENTS

Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER: (check only one)
[ ] 21b [ ] 22 [X] 23 [ ] 24 [ ] 25
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NAME OF COMMITTEE (In Full)
Shotz Brewery Inc. PAC

A. Full Name (Last, First, Middle Initial)
Wood Violet Fund

Mailing Address
505 6th Avenue

City **Milwaukee** State **WI** Zip Code **53201**

Purpose of Disbursement
Check voided – original contribution 5/21/14

Candidate Name

Category/ Type

Office Sought: [ ] House [ ] Senate [ ] President
State: District:

Disbursement For: [ ] Primary [ ] General [ ] Other (specify)

Date of Disbursement
M M / D D / Y Y Y Y
07 / 10 / 2014

Amount of Each Disbursement this Period
- 5,000.00

Uncashed check from 2014 June Monthly

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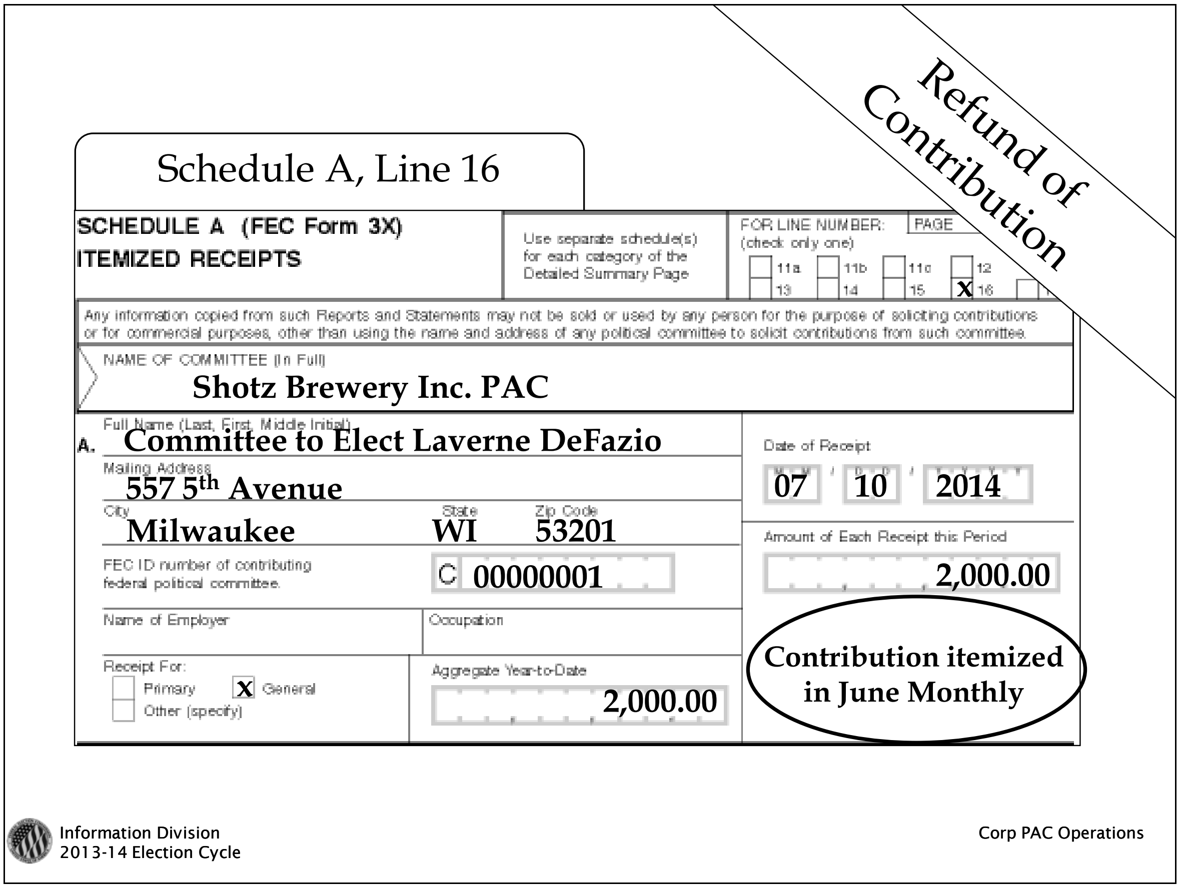
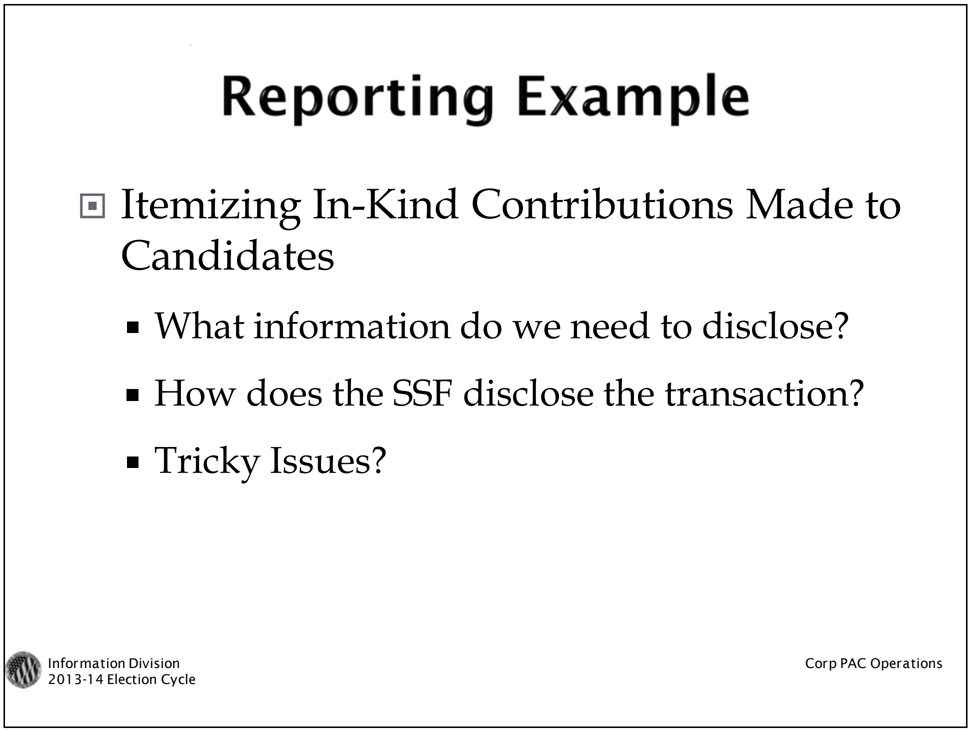
Reporting Example Continues on Next Page

Report Refunded Contribution Received:



4. **Tricky Issues:**
   - If SSF receives its original check, not deposited (or if its check is lost or otherwise not deposited)
     - Report amount as negative entry on Schedule B for Line 23.
     - Subtract from the total amount for that schedule.
     - Note that check is lost, voided, etc. (FECFile users: use description field).
   - If SSF receives refund check issued by candidate,
     - Itemize on Schedule A for Line 16 (check appropriate election designation box).
     - Reference previous report of contribution made. (FECFile users: use description field).

Reporting Example #3D: Itemizing In-Kind Contributions Made to Candidates (*Guide*, pp. 60-61)



The Shotz Brewery Inc. PAC decides to throw a posh event for Senator DeFazio at the hottest address in town, 123 Worth Avenue, aka the Grand Plush Hotel. The fundraiser takes place on June 22, 2014. The bill is paid to the Grand Plush Hotel on July 17, 2014.

1. **What type of transaction is this?**

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

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

4. **Tricky Issues?**

Answers to Example #3D: Itemizing In-Kind Contributions Made to Candidates

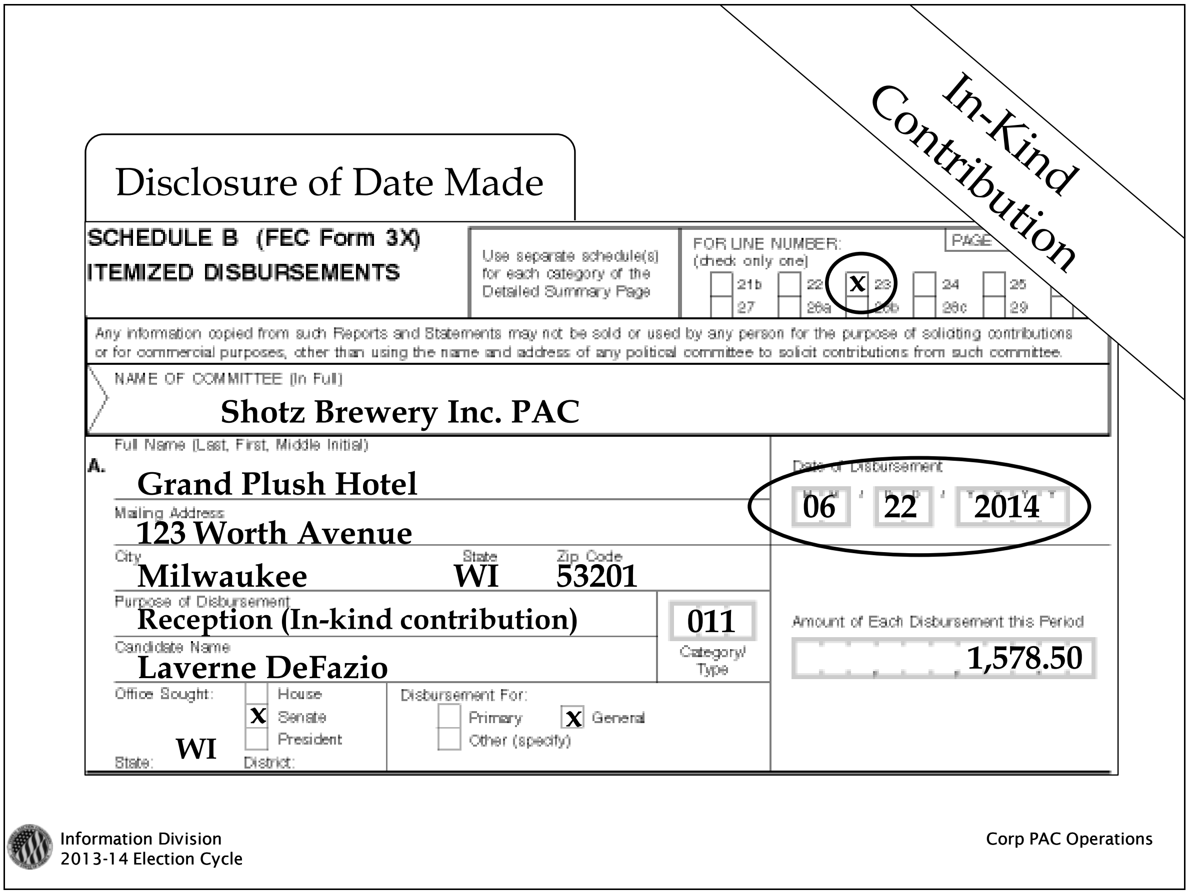
1. **What type of transaction is this?**
   Answer: The costs of the event represent an in-kind contribution to a candidate, but also a payment made to a vendor on a different date than the contribution. Both are reportable events.

2. **What information from the scenario do we need to disclose this correctly?**
   Answer: We need both the date of the contribution (the date that the good/service was provided) and the date of payment to the vendor. Also needed: The payee's name/address, the purpose, a notation of "in-kind" and all of the candidate and election information.

3. **How must the committee disclose the transaction(s)?**
   Answer: For in-kind contributions, the date the contribution is "made" is the date the candidate receives the benefit of the goods or services. Here, the in-kind contribution was made on June 22, the date of the fundraiser, and must be disclosed on a Schedule B for Line 23. The Grand Plush Hotel is listed as the actual payee, and the purpose box includes a notation that it is an in-kind contribution. All candidate and election information for Senator DeFazio is noted in the appropriate boxes.

See Reporting Example on Next Page

Report In-Kind Contribution (July Monthly):


Disclosure of Date Made

In-Kind Contribution

SCHEDULE B (FEC Form 3X)
ITEMIZED DISBURSEMENTS

Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER: (check only one)
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NAME OF COMMITTEE (In Full)
Shotz Brewery Inc. PAC

A. Full Name (Last, First, Middle Initial)
Grand Plush Hotel
Mailing Address
123 Worth Avenue
City: Milwaukee State: WI Zip Code: 53201
Purpose of Disbursement
Reception (In-kind contribution)
Category/Type: 011
Candidate Name
Laverne DeFazio
Office Sought: House / X Senate / President
State: WI District:
Disbursement For: Primary / X General / Other (specify)

Date of Disbursement
06 / 22 / 2014

Amount of Each Disbursement this Period
1,578.50

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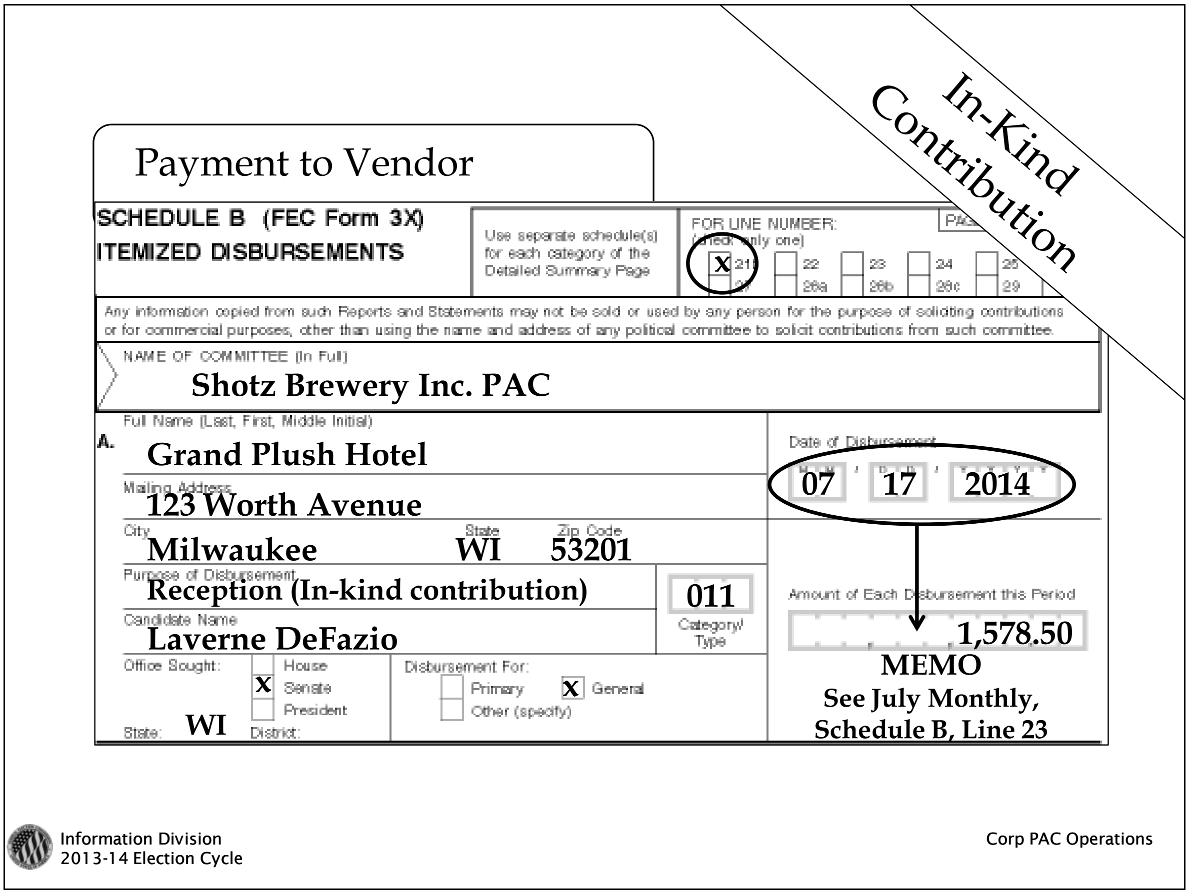
The committee must also disclose the payment to the vendor as that normally occurs on a different date than the day that the good/service is provided to the campaign.

Report Payment to Vendor (August Monthly):
Since the contribution was already reported on the July Monthly report, this payment is noted on the August Monthly report as a MEMO entry on Schedule B for Line 21b (Other Federal Operating Expenditures) and cross-references the other entry.

See Reporting Example on Next Page



4. Tricky Issues:

- Itemize vendor of good/service as payee.
- Indicate candidate information in appropriate fields.
- Label as in-kind. (FECfile users: use description field)
- Date on Schedule B, Line 23 = date on which good/service is provided.
- If payment made on date after good/service provided, itemize again as memo entry on Schedule B for Line 21b (Operating Expenditures). (FECFile users: use “memo entry” box.)

Earmarked Contributions

- **Definition**

  Contribution to a candidate that donor directs (orally or in writing) through intermediary or conduit

- **Conduit**

  Anyone who receives and forwards earmarked contribution to a candidate (including SSF)
  - Corporation may not be a conduit
  - Subject to special reporting obligations

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D. Earmarked Contributions (11 CFR 110.6 and 114.2(f)(3)(ii))

1. Definition

A contribution to a candidate that the contributor directs (either orally or in writing) though an intermediary or conduit.

2. Conduit/Intermediary

a) Definition: Anyone who receives and forwards an earmarked contribution to a candidate.
This includes individuals, political committees (such as the organization's PAC), unregistered committees and partnerships. *Special reporting required. See details below.

b) Associations, corporations, unions and other prohibited sources are prohibited from acting as conduits; only the PAC may collect and forward earmarked contributions. 11 CFR 114.2(f)(3)(ii) and (4)(iii).

c) Persons exempt from requirements at 110.6 for conduits:

(1) Employee or full time volunteer working for campaign committee; and

(2) Individual expressly authorized to raise money on behalf of the candidate. (Note: This is the **situation most likely to apply to an organization executive**.)

(3) Committee affiliated with campaign committee; and

(4) Commercial fundraising firm retained by campaign committee.

Effect on Contribution Limits

An earmarked contribution counts against:

- The <u>contributor's limit</u> for the recipient candidate AND
- The PAC's limit IF:
  - Direction or control exercised over recipient
  - Deferred earmarking done through PAC via payroll deduction program
  - Solicitation for earmarked contribution:
    - Sent by organization to restricted class
    - Collected by PAC

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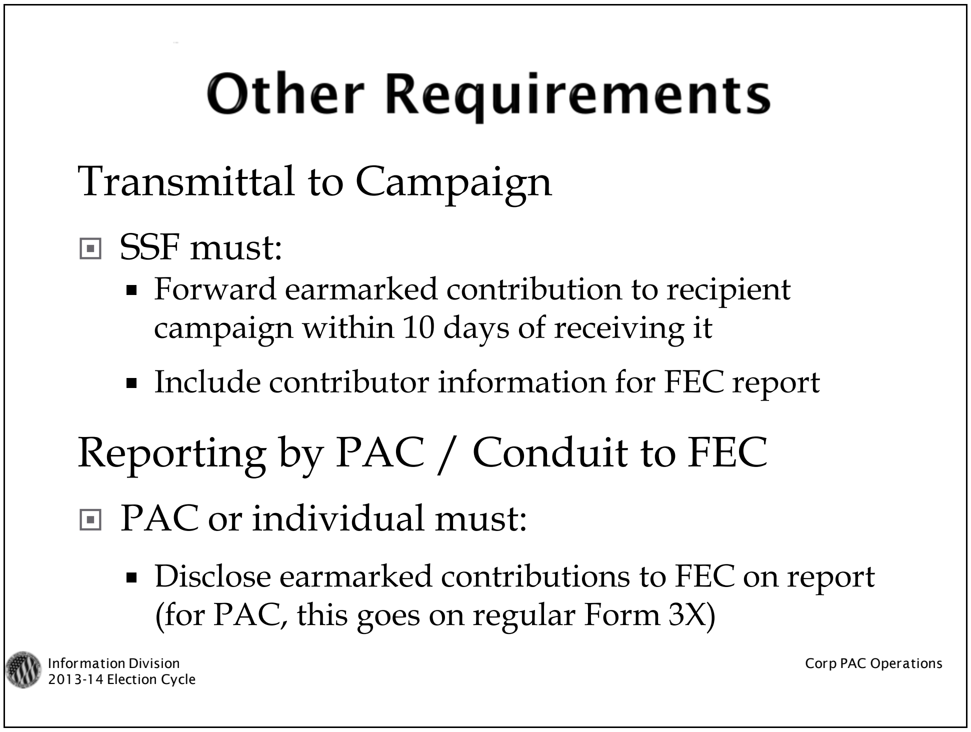
3. Effect on Contribution Limits

a) An earmarked contribution always counts against the original contributor's limit for the recipient candidate.

b) **An earmarked contribution may count against PAC's limits for the recipient candidate in these situations:**

- Exercised direction or control over <u>the contributor's choice</u> of the recipient candidate. 11 CFR 110.6.
- Deferred earmarking done through PAC via payroll deduction program. AO 1995-15.
- Solicitation for an earmarked contribution to a candidate sent by organization to restricted class and collected by PAC. 11 CFR 114.2(f)(4)(iii);
  See Tab 5/Campaign Activity by Corporations, Labor Unions & Others



4. Older Requirements Still in Effect

a) Transmittal to Campaign

The conduit must forward an earmarked contribution to the recipient campaign committee within 10 days of receiving the contribution **along with** the contributor information needed to disclose on FEC report.

b) Disclosure

PAC or individual must disclose earmarked contributions to FEC on report (for PAC, this goes on regular report).

c) Reporting

Reporting differs whether PAC deposits the check or forwards original check.

Earmarked Contribution

If Deposited by PAC . . .

SCHEDULE A (FEC Form 3X)
ITEMIZED RECEIPTS

Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER: (check only one) PAGE
[X] 11a [ ] 11b [ ] 11c [ ] 12
[ ] 13 [ ] 14 [ ] 15 [ ] 16

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NAME OF COMMITTEE (In Full): Shotz Brewery Inc. PAC

A. Full Name (Last, First, Middle Initial): Andrew Squigman
Mailing Address: 1111 Down Road, NW
City: Milwaukee State: WI Zip Code: 53201
FEC ID number of contributing federal political committee: C
Name of Employer: Shotz Brewery
Occupation: Chief Executive Officer
Receipt For: [ ] Primary [X] General [ ] Other (specify)
Aggregate Year-to-Date

Date of Receipt: 10 / 20 / 2013
Amount of Each Receipt this Period: 500.00

Earmarked for Carmine Ragusa, House, WI

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Corp PAC Operations

Earmarked Contribution

Forwarded by PAC Check

SCHEDULE B (FEC Form 3X)
ITEMIZED DISBURSEMENTS

Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER: (check only one) PAGE
[ ] 21b [ ] 22 [X] 23 [ ] 24 [ ] 25
[ ] 27 [ ] 28a [ ] 28b [ ] 28c [ ] 29

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NAME OF COMMITTEE (In Full): Shotz Brewery Inc. PAC

A. Full Name (Last, First, Middle Initial): Committee to Elect Carmine Ragusa
Mailing Address: 557 5th Avenue
City: Milwaukee State: WI Zip Code: 53201
Purpose of Disbursement: Earmarked contribution by Andrew Squigman
Category/Type
Candidate Name: Carmine Ragusa
Office Sought: [X] House [ ] Senate [ ] President
State: WI District: 4
Disbursement For: [ ] Primary [X] General [ ] Other (specify)

Date of Disbursement: 10 / 20 / 2013
Amount of Each Disbursement this Period: 500.00

Transmitted w/ PAC check; PAC limit unaffected

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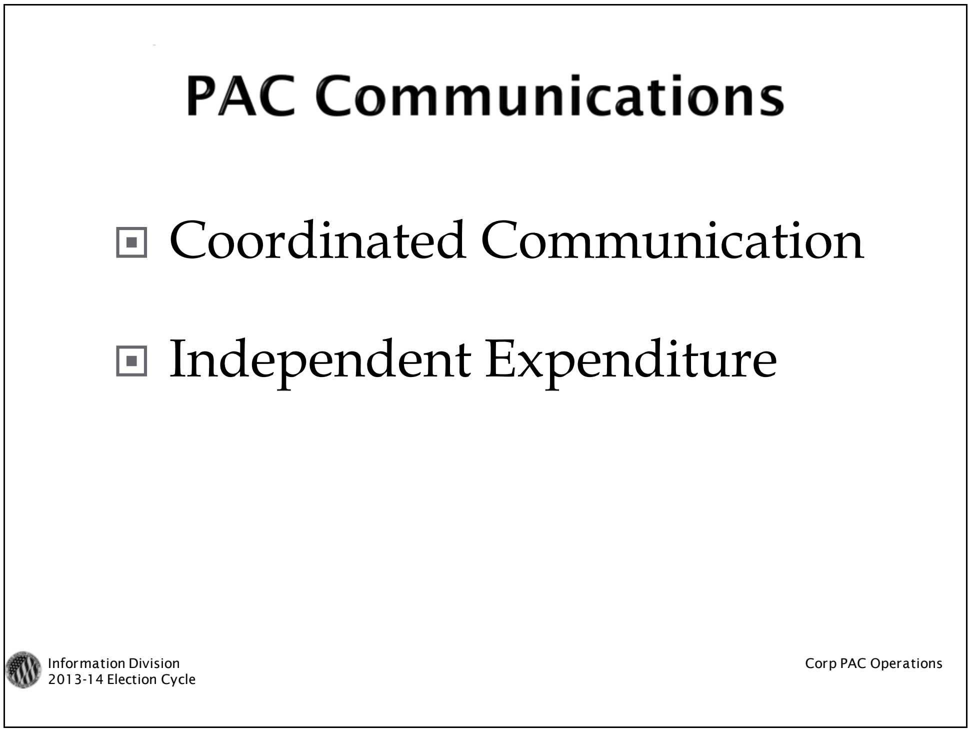
(1) If Check Deposited:

- Itemize receipt on Schedule A for Line 11(a)(i) regardless of amount.
- Note on Schedule A the candidate designated as the recipient of the contribution;
- Itemize forwarding of contribution to candidate on Schedule B for Line 23. (Forward within 10 days.)
- Note on Schedule B: That a PAC check was used to transmit and whether the PAC limit is affected (e.g., direction or control; deferred earmarking programs; see AO 1995-15; facilitation rules of 114.2(f)).

(2) If Check Not Deposited

- Report the **same information as above** on Schedules A and B, **but as memo entries**; do not include in totals.
  - **Memo entries** are transactions that are itemized, but the dollar total is excluded from the committee's total receipts or expenditures.
  - **For example**, committees would use memo entries when itemizing a credit card bill on a Schedule B. The lump sum payment for the bill is itemized as a regular expenditure. The committee would use memo entries to list any specific charges that meet the itemization threshold. By using memo entries, the specific charges are not included in calculations for total expenditures.
- Note on Schedule B that contributions were forwarded using contributor checks.



II. PAC Communications

A. What PAC May Do:

1. **Communicate**
   Under FEC rules at 114.5(i), an SSF may communicate with the general public using PAC funds on any subject (except soliciting funds for the PAC), including express advocacy.
2. **Coordinate**
   SSF may coordinate communications with a candidate or party; however; in-kind contribution results.

B. Types of Communications

1. **Coordinated Communications**
   In-kind contribution results, subject to limitations
2. **Independent Expenditure**
   No contribution results; no limitations

Coordination

Basic Definition

- Made in cooperation, consultation or concert with or at the request/suggestion of:
  - Candidate
  - Candidate's authorized committee or agents
  - Party committee or its agents

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C. Definition of Coordination (11 CFR 109.20)

Coordination means "made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents."

Coordination

- Treated as in-kind contribution
  - Subject to limitations and prohibitions
- Reportable by committees making and receiving the contribution

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D. Why Important? Coordination = In-Kind Contribution (11 CFR 109.21(b)(1))

1. **Connected organization** prohibited from making contributions
2. **Subject to contribution limitations**
3. **Disclaimer required**
4. **Reporting**
   In many cases, reportable by campaign or party committee as in-kind contribution received (and by PAC if in-kind contribution made by PAC).

Three-Part Coordination Test

- Source of Payment
  - Paid for by someone other than the candidate/party (e.g., a PAC)

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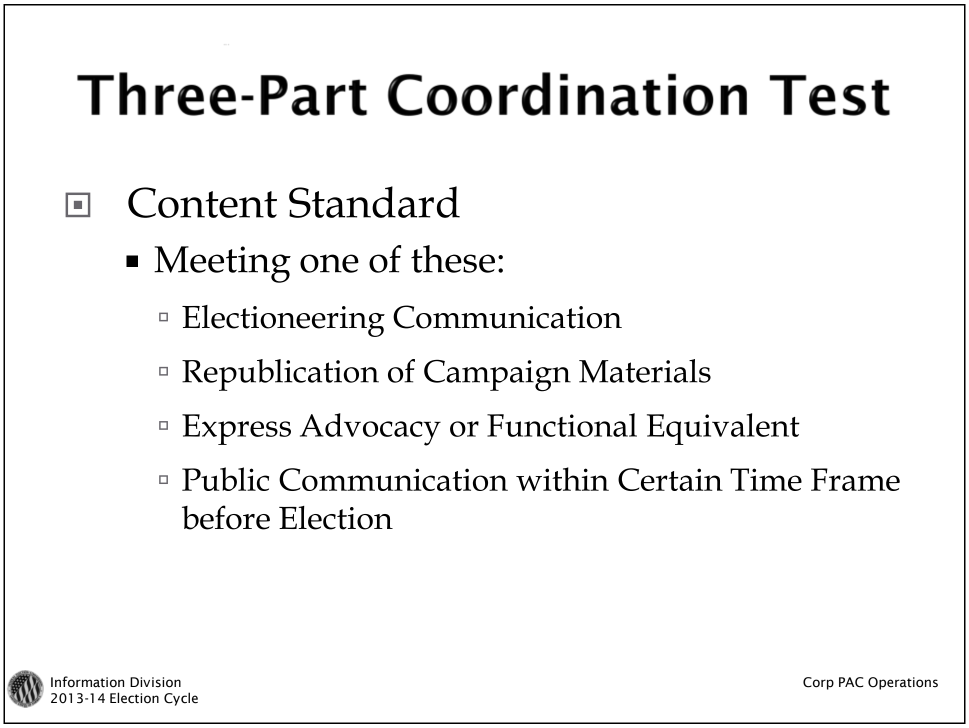
E. Three-Part Test (11 CFR 109.21(d)):

All three parts must be satisfied to justify conclusion that payments for a coordinated communication are for the purpose of influencing a federal election (and that costs incurred are in-kind contributions).
See AO 2011-14 (Utah Bankers Association – Project did not meet content prong and thus was not coordinated in-kind contribution to referenced candidates).

1. Source of Payment

Will satisfy payment prong if communication is paid for by PAC**.**



2. **"Content Prong"**
   Will satisfy the content prong if communication meets any one of these five standards:
   a) **Electioneering Communication (11 CFR 109.21(c)(1));**
   b) **Public Communication that Republishes, Disseminates or Distributes Campaign Materials (11 CFR 109.21(c)(2));**
   c) **Public Communication with Express Advocacy (11 CFR 109.21(c)(3));**
   d) **Communication that is "Functional Equivalent of Express Advocacy" (11 CFR 109.21(c)(5))**
      A communication is the "functional equivalent of express advocacy" if it is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified Federal candidate.
      - Applies without regard to the timing of the communication or the targeted audience.
      - In its application of this test, Commission will follow Supreme Court's reasoning in *FEC v. Wisconsin Right to Life*. See explanation and justification at 75 FR 55947.

Time Frames

- House or Senate candidates
  - ≤90 days before primary/general election
- Presidential candidates
  - Entire period from 120 days before the primary through date of general election
- Political parties
  - Presidential election cycle, 120 days before the primary through the general election
  - Midterm election cycle, 90 days before the primary or the general

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e) Public Communication Referring to Candidate within Certain Time Frame Before Election (No express advocacy required) (11 CFR 109.21(c)(4))

- **Senate and House candidates** = 90 days before a primary or general election.
- **Presidential candidates** = entire period from 120 days before the clearly identified candidate's primary in the jurisdiction where disseminated up through the date of the general election.
- **Political parties** = 90 days before a primary or general election (midterm cycle).
- See Compliance Map for coordination periods at http://www.fec.gov/info/ElectionDate/

Three-Part Coordination Test

- Conduct Standard
  - Request or Suggestion
  - Material Involvement
  - Substantial Discussion
  - Common Vendor
  - Former Employee/Independent Contractor

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3. “Conduct Prong”

Will satisfy prong if communication meets any one of these five standards:

a) Request or Suggestion (11 CFR 109.21(d)(1))

b) Material Involvement (11 CFR 109.21(d)(2))

c) Substantial Discussion (11 CFR 109.21(d)(3))

d) Employment of Common Vendor (11 CFR 109.21(d)(4))
Safe harbor of 120 days applies.

e) Former Employee/Independent Contractor (11 CFR 109.21(d)(5))
Safe harbor of 120 days applies.

Three-Part Coordination Test

Source of payment
+"Content standard"
+"Conduct standard"

= Coordinated Communication

= In-Kind Contribution or 441a(d) Expenditure, Subject to Limits and Prohibitions

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PAC Communications

- Coordinated Communication
- Independent Expenditure

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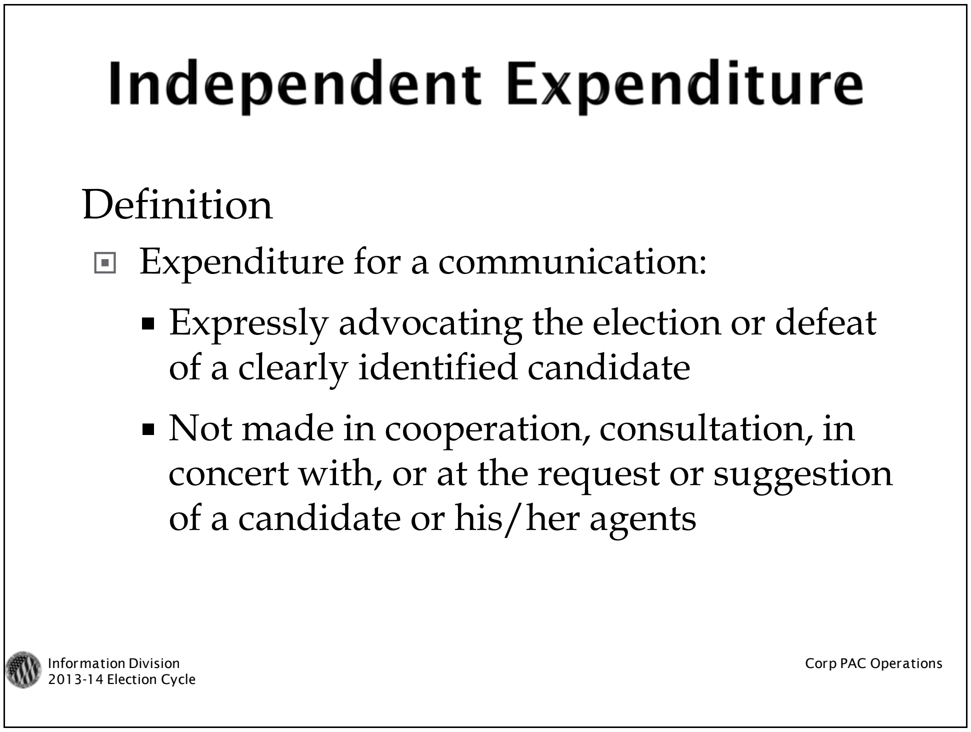


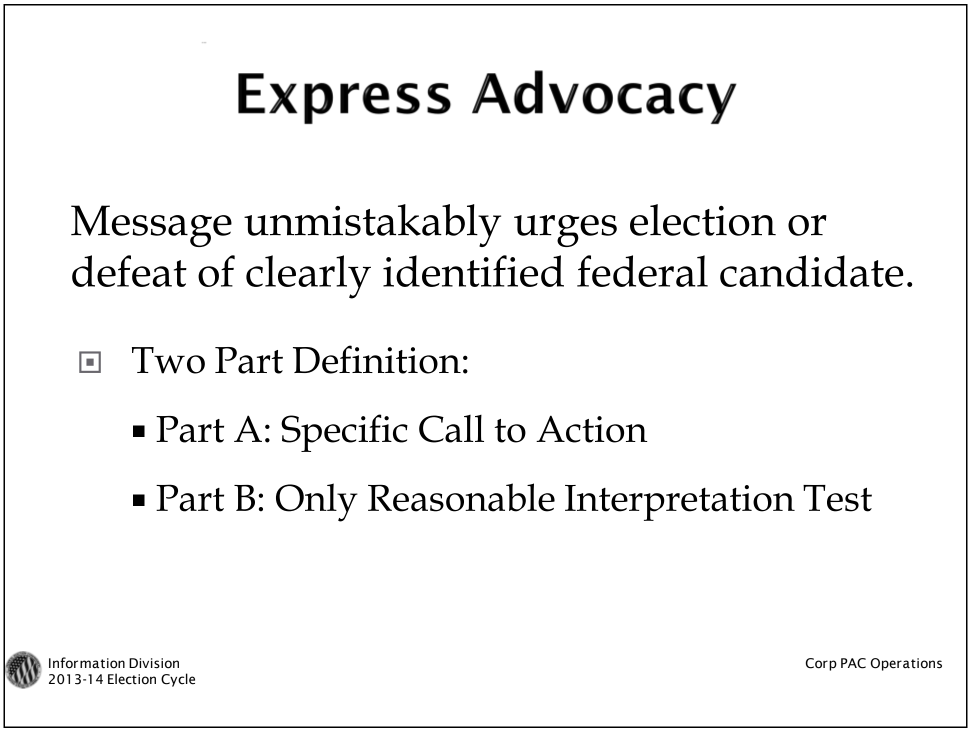
III. Independent Expenditures – 11 CFR 100.16

A. Definition

Expenditure for communication that "expressly advocates" the election or defeat of a clearly identified candidate and that is not made in cooperation with, or at the suggestion of, the candidate or his/her campaign or its agents, or a political party or its agents.

B. Elements of Definition

1. **Clearly Identified (11 CFR 100.17)**
   A candidate's name, nickname, photograph or drawing appears or identity is otherwise apparent through references such as "the President," "your Congressman," "the incumbent."
2. **Express Advocacy (11 CFR 100.22)**
   Message unmistakably urges election or defeat of one or more clearly identified candidates.



C. Two Part Definition of Unmistakably Urging Election or Defeat

- Part A: Specific Call to Action
- Part B: “Only Reasonable Interpretation Test”

1. Part A: Specific Call to Action (11 CFR 100.22(a))

a) Explicit Words of Advocacy for or against a Federal Candidate

Examples: "Re-elect your Congressman," "support your Democratic nominee," "reject the incumbent."

b) Urging Action with Respect to Candidates Associated with a Particular Issue

Example: “Vote Pro-Environment,” when accompanied by names or photographs of candidates identified as supporting the issue.

c) Campaign Slogan or Words (e.g., on bumper stickers & ads) that can have No Other Reasonable Meaning than to Support or Oppose Candidate

Examples: “Bush/Cheney!”; “Obama for America!”

2. Part B: Express Advocacy by Context – “Only Reasonable Interpretation Test” (11 CFR 100.22(b))

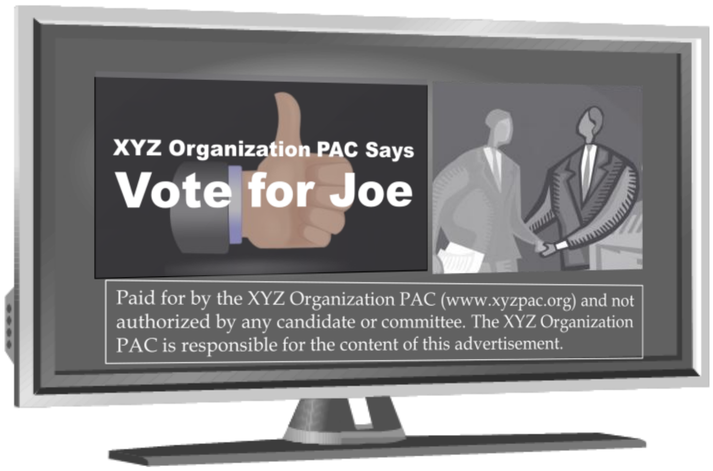
Absent explicit words of advocacy for or against a candidate, the communication, when taken as whole and with limited reference to context, can only be interpreted by reasonable person as “encouraging action to elect or defeat” federal candidate.

D. The Basics

1. **No Limits if Definition Met**
   One may spend an unlimited amount because the expenditure is not coordinated (and thus, a contribution).
2. **If Coordinated, In-kind Contribution Results (See 11 CFR 109.21 and Section II).**
3. **Disclaimer required (See 11 CFR 110.11 and Tab1/Basics)**

Example

Independent Expenditure



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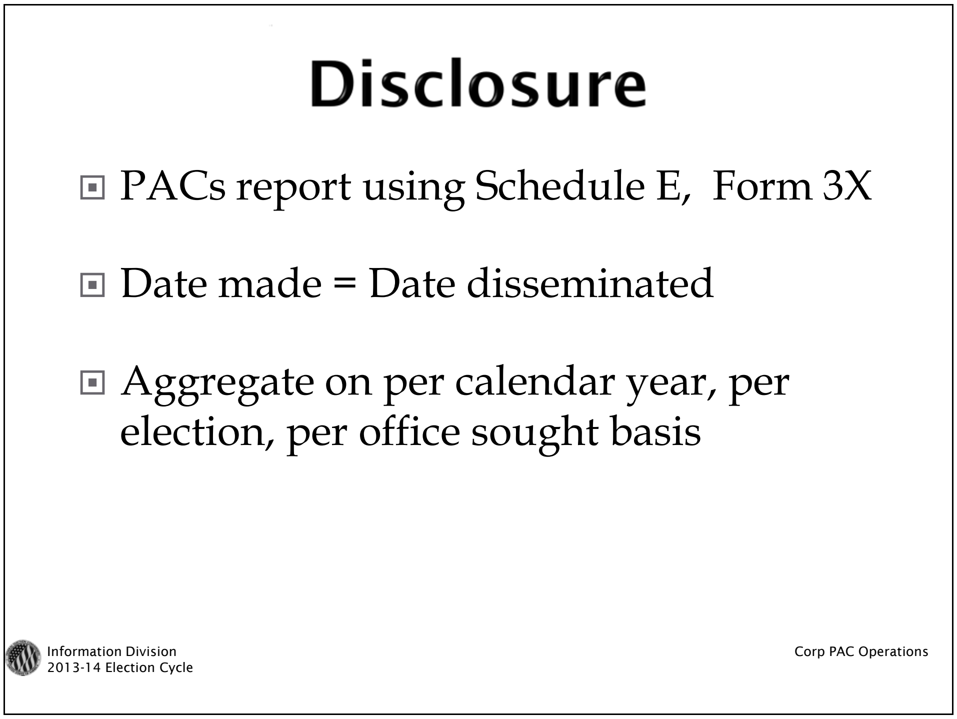

4. Disclosure of Independent Expenditures

a) Report using Form 3X/Schedule E during appropriate reporting period

b) Date Made = Date Disseminated

- An independent expenditure is considered made when it is publicly distributed or otherwise publicly disseminated.
- See FEC interpretive rule at 76 FR 16233 (Oct. 4, 2011) (http://www.fec.gov/law/cfr/ej_compilation/2011/notice_2011-13.pdf) and Tab 2/Recent Developments.

c) Aggregation

Done on a per calendar year, per election, per office sought (race) basis.

Disclosure

48-Hour Reports

- Required for IEs
  - Aggregating ≥ $10,000
  - Made 20 days or more before an election

24-Hour Reports

- Required for IEs
  - Aggregating ≥ $1,000 made
  - < 20 days but more than 24 hours before an election

Disclose again on next regular report

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5. **Additional reporting on 48- and 24- hour basis:**

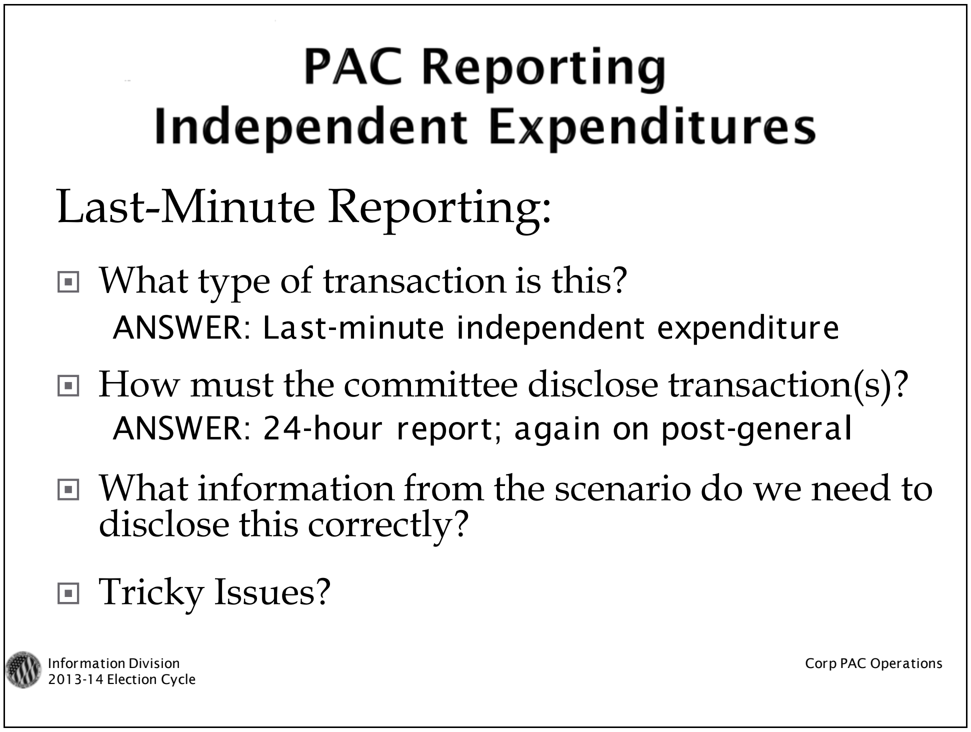
   a) **24-Hour Reporting (11 CFR 104.5(g)(2))**
   - Must file a **24-Hour Report** for independent expenditures aggregating $1,000 or more made less than 20 days but more than 24 hours before the day of an election.
   - A 24-Hour Report is required each time an additional $1,000 is aggregated in independent expenditures.

   b) **48-Hour Reporting (11 CFR 104.5(g)(1))**
   - Must file a **48-Hour Report** for independent expenditures aggregating $10,000 or more, anytime during a calendar year up to and including the 20th day before an election.
   - A 48-Hour Report is required each time an additional $10,000 is aggregated in independent expenditures.

   c) **24-Hour and 48-Hour Reports** are filed using stand-alone Schedule Es; check appropriate box to note type of report.

   d) **Time frames for 24-Hour and 48–Hour IE Reports** are located on our website at http://www.fec.gov/info/report_dates.shtml.

Reporting Example #4: Large Last-Minute Independent Expenditures



Background: House candidate Arthur Fonzarelli wouldn't accept PAC checks and his campaign would not speak to representatives of the Arnold's Inc PAC. However, the PAC still wanted to lend its support to candidate Fonzarelli. On October 27, just before the November 5 special general election, Arnold's Inc. PAC runs a $7,500 radio ad on WBQW-FM supporting Fonzarelli. The bill for the ads was paid on November 27, 2013.

1. What type of transaction is this?

2. How must the committee disclose the transaction(s)?

3 What information from the scenario do we need to disclose this correctly?

Answers to Example #4: Large Last-Minute Independent Expenditures

1. **What type of transaction is this?**
Answer: The PAC is making an independent expenditure, defined as an expenditure for a communication that "expressly advocates" the election or defeat of a clearly identified candidate and that is not made in cooperation with, or at the request or suggestion of, the candidate or his/her campaign or its agents, or a political party or its agents.

2. **How must the committee disclose the transaction(s)?**
Answer: An independent expenditure is considered made when it is publicly distributed or otherwise publicly disseminated. If it aggregates $1,000 or more and is made less than 20 days but more than 24 hours before the day of an election, as this expenditure did, the PAC must file a 24-Hour Report on Schedule E disclosing the independent expenditure. The PAC must disclose the independent expenditure again, on Schedule E, for the next regular FEC report (30-Day Post General Report).

24-Hour IE Report

Initial Reporting – 24-hour Schedule E

SCHEDULE E (FEC Form 3X)
ITEMIZED INDEPENDENT EXPENDITURES

PAGE 1 OF
FOR LINE 24 OF FORM 3X

NAME OF COMMITTEE (In Full): Arnold's Inc. PAC
FEC IDENTIFICATION NUMBER: C 00000004

Check if: X 24-hour report ☐ 48-hour report X New report ☐ Amends report filed on MM / DD / YYYY

Full Name (Last, First, Middle Initial) of Payee: WBQW-FM
Mailing Address: 12100 West Howard Avenue
City: Greenfield State: WI Zip Code: 53228
Date: 10 / 27 / 2013
Amount: 7,500.00
Purpose of Expenditure: Radio Ad
Category/Type: 004
Office Sought: X House ☐ Senate ☐ President State: WI District: 4
Name of Federal Candidate Supported or Opposed by Expenditure: Arthur Fonzarelli
Check One: X Support ☐ Oppose
Calendar Year-To-Date Per Election for Office Sought: 7,500.00
Disbursement For: ☐ Primary ☐ General X Other (specify) 2013 Special General

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3. What information from the scenario do we need to disclose this correctly?
Answer: Key facts in the scenario include the date of dissemination (10/27/13), the fact that it is an advertisement that contained express advocacy, and was not coordinated with the campaign. The PAC will also need to disclose the payee's name and address, the candidate information, the purpose of the expenditure, the amount and the calendar year-to-date per election for the office sought.

On the next report filed (30 Day Post-General covering 10/17/13-11/25/13, and due on 12/5/13), the PAC must report the same information disclosed on the 24-Hour Notice on Schedule E as a MEMO entry because the payment has not been made yet. Accordingly, the PAC must report a debt on Schedule D to "WBQW-FM" until it is settled.

Disclosure on Next Regular Report

IE Disclosed (Post-General)

SCHEDULE E (FEC Form 3X)
ITEMIZED INDEPENDENT EXPENDITURES

PAGE 1 OF 1
FOR LINE 24 OF FORM 3X

NAME OF COMMITTEE (In Full): Arnold's Inc. PAC
FEC IDENTIFICATION NUMBER: C 00000004

Check if [ ] 24-hour report [ ] 48-hour report [ ] New report [ ] Amends report filed on MM / DD / YYYY

Full Name (Last, First, Middle Initial) of Payee: WBQW-FM
Mailing Address: 12100 West Howard Avenue
City: Greenfield State: WI Zip Code: 53328
Date: 10 / 27 / 2013
Amount: MEMO 7,500.00
Purpose of Expenditure: Radio Ad
Category/Type: 004
Office Sought: [X] House [ ] Senate [ ] President
State: WI District: 4
Name of Federal Candidate Supported or Opposed by Expenditure: Arthur Fonzarelli
Check One: [X] Support [ ] Oppose
Calendar Year-To-Date Per Election for Office Sought: 7,500.00
Disbursement For: [ ] Primary [ ] General [X] Other (specify) 2013 Special General

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Reporting Example Continues on Next Page

Debt Owed (Post-General)

Other Reporting - Debt

SCHEDULE D (FEC Form 3X)
DEBTS AND OBLIGATIONS
Excluding Loans

(Use separate schedule(s) for each numbered line)

PAGE 1 OF

FOR LINE NUMBER: (check only one)
[ ] 9
[X] 10

NAME OF COMMITTEE (In Full)
Arnold's Inc. PAC

A. Full Name (Last, First, Middle Initial) of Debtor or Creditor
WBQW-FM

Mailing Address
12100 West Howard Avenue

City	State	Zip Code
Milwaukee	**WI**	**53328**

Nature of Debt (Purpose):
Radio Ad for Arthur Fonzarelli

Outstanding Balance Beginning This Period
0.00

Amount Incurred This Period	Payment This Period	Outstanding Balance at Close of This Period
7,500.00	**0.00**	**7,500.00**

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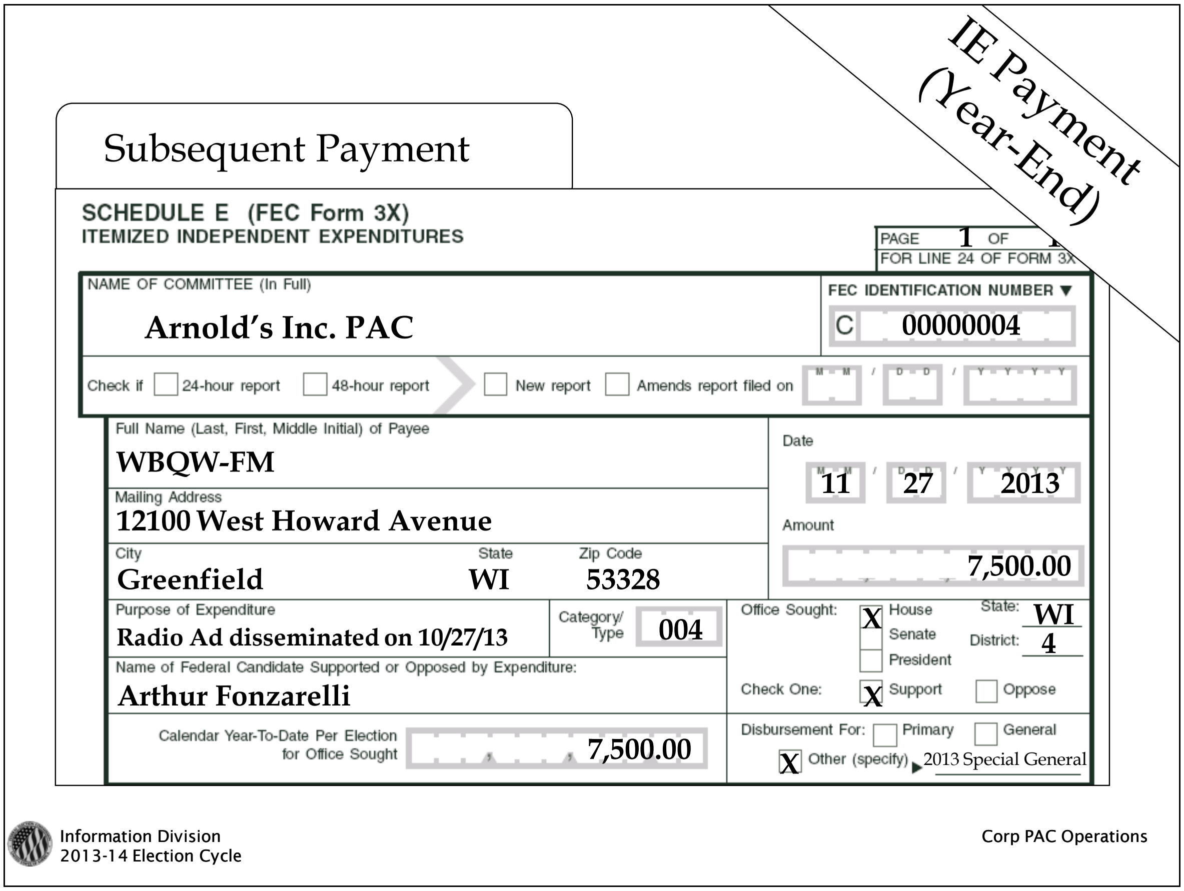
When full payment is made to the vendor on 11/27/13, it should be reflected on Schedule E supporting Line 24, as well as Schedule D supporting Line 10 of the Year End Report (coverage period: 11/26/13-12/31/13).

Reporting Example Continues on Next Page



Subsequent Payment

IE Payment (Year-End)

SCHEDULE E (FEC Form 3X)
ITEMIZED INDEPENDENT EXPENDITURES

PAGE 1 OF 1
FOR LINE 24 OF FORM 3X

NAME OF COMMITTEE (In Full): Arnold's Inc. PAC

FEC IDENTIFICATION NUMBER: C 00000004

Check if: ☐ 24-hour report ☐ 48-hour report ☐ New report ☐ Amends report filed on MM / DD / YYYY

Full Name (Last, First, Middle Initial) of Payee: WBQW-FM

Mailing Address: 12100 West Howard Avenue

City: Greenfield State: WI Zip Code: 53328

Date: 11 / 27 / 2013

Amount: 7,500.00

Purpose of Expenditure: Radio Ad disseminated on 10/27/13

Category/Type: 004

Office Sought: X House ☐ Senate ☐ President State: WI District: 4

Name of Federal Candidate Supported or Opposed by Expenditure: Arthur Fonzarelli

Check One: X Support ☐ Oppose

Calendar Year-To-Date Per Election for Office Sought: 7,500.00

Disbursement For: ☐ Primary ☐ General X Other (specify) 2013 Special General

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Reporting Example Continues on Next Page

Paying Off Debt

Debt to Vendor (Year-End)

SCHEDULE D (FEC Form 3X)
DEBTS AND OBLIGATIONS
Excluding Loans

(Use separate schedule(s) for each numbered line)

PAGE 1

FOR LINE NUMBER: (check only one)
[ ] 9
[X] 10

NAME OF COMMITTEE (In Full)
Arnold's Inc. PAC

A. Full Name (Last, First, Middle Initial) of Debtor or Creditor
WBQW-FM

Mailing Address
12100 West Howard Avenue

City	State	Zip Code
Milwaukee	WI	53328

Nature of Debt (Purpose):
Radio Ad for Arthur Fonzarelli

Outstanding Balance Beginning This Period: **7,500.00**

Amount Incurred This Period	Payment This Period	Outstanding Balance at Close of This Period
0.00	7,500.00	0.00

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Tricky Issues: Reporting Last-Minute Independent Expenditures

- **Debts**
  - Debts include ads that are contracted for but not paid for
  - When payment for ad is made in subsequent reporting period, report payment on Schedule E, and include date of dissemination in purpose field.
  - Update Schedule D with payment; cross-reference Schedule E.
- **24-Hour Reporting**
  - Must file a **24-Hour Report** for independent expenditures aggregating (per calendar year, per election, per office) $1,000 or more made less than 20 days but more than 24 hours before the day of an election.
  - Aggregation is done on per calendar year, per election, per office sought (race) basis.
  - Use Schedule E on Form 3X – check "24-hour" box.
  - Must be received by FEC within 24 hours after the independent expenditure is publicly distributed or otherwise publicly disseminated.

- Must be certified (signed) by treasurer (e-filers should type the treasurers name following the certification on the report).
- For paper filers, can use overnight delivery, hand-delivery or fax to 202-219-0174 (certified or registered mail date will not be considered filed date for these).
- Last-minute independent expenditures must be disclosed again on Schedule E of the next scheduled report that the committee files.
- A 24-Hour Report is required each time an additional $1,000 is aggregated in independent expenditures.
- The 24-Hour Report time frames for each 2013 Special Election are located on our web site at http://www.fec.gov/info/charts_ie_dates_2013.shtml.

- **48-Hour Reporting**
  - In addition, must file a **48-Hour Report** for independent expenditures that aggregate $10,000 or more, anytime during a calendar year up to and including the 20th day before an election.
  - Use Schedule E on Form 3X – check “48-hour” box.
  - Must be received by FEC within 48 hours after expenditure is publicly distributed or otherwise publicly disseminated.
  - Must be certified (signed) by treasurer (e-filers should type the treasurer’s name following the certification on the Report).
  - For paper filers, can use overnight delivery, hand-delivery or fax to 202-219-0174 (certified or registered mail date will not be considered filed date for these).
  - Last-minute independent expenditures must be disclosed again on Schedule E of the next scheduled report that the committee files.
  - Aggregation is done on a per calendar year, per election, per office sought (race) basis.
  - A 48-Hour Report is required each time an additional $10,000 is aggregated in independent expenditures.

RAD:
Review and Referral Policy

- Categories of review include:
  - Mathematical discrepancies
  - Failure to provide supporting schedules
  - Failure to properly itemize contributions from individuals
  - Prohibited, excessive and impermissible contributions
  - Improper itemization of disbursements
- RFAI threshold
- Thresholds are confidential and policy is approved by the Commission

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IV. RAD Review and Referral Policy

A. RAD Review of Reports

1. RAD Review and Referral Policy

a) Internal policy contains categories of review the analyst checks, such as: Prohibited, Excessive and Impermissible Contributions, Mathematical Discrepancies, Failure to Provide Supporting Schedules and Failure to Properly Itemize Contributions from Individuals and Disbursements, to name a few.

b) Policy has established thresholds for making determination on whether to send a Request for Additional Information (RFAI).

c) Thresholds are confidential and policy is approved by the Commission.

Review of Reports

- Thresholds are applied on a <u>per report basis.</u>
  - If reoccurring reporting issues exist on multiple reports, a committee may receive multiple RFAIs identifying the same issue
  - RAD does not consider previous responses to RFAIs
    - Exception: Responses relating to best efforts procedures apply for the two year election cycle
- It's possible to see an issue questioned on one report, but not on another

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d) Review is conducted on a <u>per report basis</u>, meaning the thresholds are applied to each report reviewed.

(1) This means a committee may receive a RFAI which includes the same issue already addressed in response to a RFAI referencing a different report.

- Exceptions include outlining Best Efforts procedures which would apply to the two-year cycle.

(2) There may be several issues that are aggregated together to meet a single threshold, so it's possible to see an issue questioned on one report that isn't included in an RFAI on for another report**.**

e) Policy is reassessed every election cycle and revisions/changes made based on input from RAD and other offices (such as OGC), and Commissioners.

Request for Additional Info

- If internal thresholds are met:
  - Analyst sends RFAI with response due date in upper right corner
- No extensions
- Responses assessed by analysts, team leaders
- Analysts do not reply to committee responses

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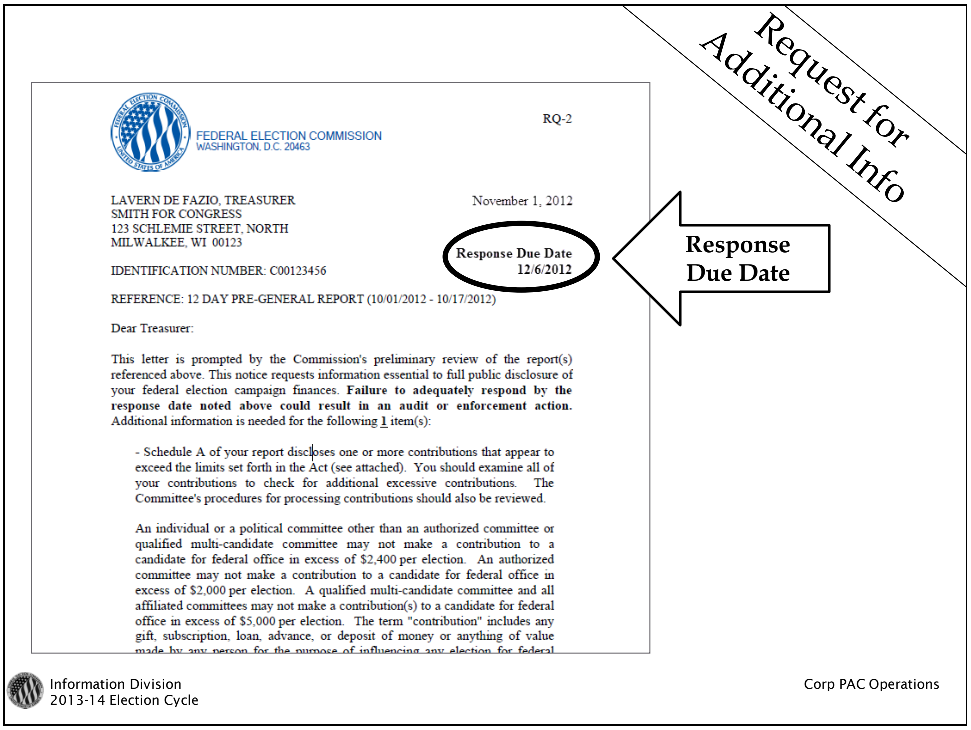
B. Request for Additional Information (RFAI)

1. **If internal thresholds are met, an RFAI is sent**, with a Response Due Date in the upper right hand corner of the letter, extensions are not granted. The committee analyst’s name and contact telephone number are also provided in the letter.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-2

LAVERN DE FAZIO, TREASURER
SMITH FOR CONGRESS
123 SCHLEMIE STREET, NORTH
MILWALKEE, WI 00123

November 1, 2012

Response Due Date
12/6/2012

IDENTIFICATION NUMBER: C00123456

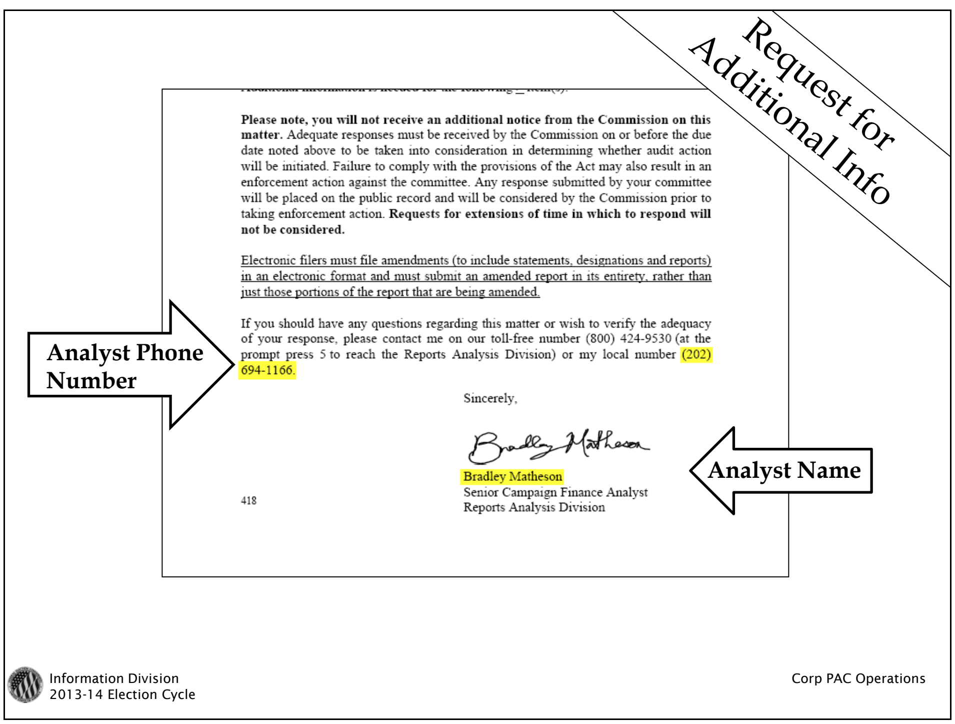
REFERENCE: 12 DAY PRE-GENERAL REPORT (10/01/2012 - 10/17/2012)

Dear Treasurer:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. This notice requests information essential to full public disclosure of your federal election campaign finances. **Failure to adequately respond by the response date noted above could result in an audit or enforcement action.** Additional information is needed for the following 1 item(s):

- Schedule A of your report discloses one or more contributions that appear to exceed the limits set forth in the Act (see attached). You should examine all of your contributions to check for additional excessive contributions. The Committee's procedures for processing contributions should also be reviewed.

An individual or a political committee other than an authorized committee or qualified multi-candidate committee may not make a contribution to a candidate for federal office in excess of $2,400 per election. An authorized committee may not make a contribution to a candidate for federal office in excess of $2,000 per election. A qualified multi-candidate committee and all affiliated committees may not make a contribution(s) to a candidate for federal office in excess of $5,000 per election. The term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal



Please note, you will not receive an additional notice from the Commission on this matter. Adequate responses must be received by the Commission on or before the due date noted above to be taken into consideration in determining whether audit action will be initiated. Failure to comply with the provisions of the Act may also result in an enforcement action against the committee. Any response submitted by your committee will be placed on the public record and will be considered by the Commission prior to taking enforcement action. **Requests for extensions of time in which to respond will not be considered.**

Electronic filers must file amendments (to include statements, designations and reports) in an electronic format and must submit an amended report in its entirety, rather than just those portions of the report that are being amended.

If you should have any questions regarding this matter or wish to verify the adequacy of your response, please contact me on our toll-free number (800) 424-9530 (at the prompt press 5 to reach the Reports Analysis Division) or my local number (202) 694-1166.

Sincerely,

Bradley Matheson
Senior Campaign Finance Analyst
Reports Analysis Division

418

Responding to RFAIs

- Analysts do not contact committees in every case when a response is not sufficient
- Committee should contact its analyst before and/or after filing a response
- Analysts do not make legal conclusions
- Analysts cannot categorize your activity
- In some cases, RAD consults OGC before sending an RFAI and when assessing a committee’s response

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2. Responses are assessed by the analysts and in some cases, team leaders.

a) Analysts do not reply to responses.

b) Contact is not made with committees in every case when a response is not sufficient. <u>Further explanation below</u>.

c) Committees are encouraged to contact their assigned analyst prior to responding if unsure about how to respond or after a response is filed to ensure an adequate response is received.

d) Keep in mind that analysts can’t make legal conclusions or give guidance on a legal conclusion being made by a committee. In addition, they cannot determine what category your activity falls under (i.e., independent expenditures or coordinated party expenditures).

e) In some cases, RAD consults with OGC before sending a RFAI and when making a response assessment.

Responding to RFAIs

- File amendment to:

  Add, Change or Delete actual entries on FEC report

- Use miscellaneous text submission (Form 99) for:

  Narrative responses that do not affect actual entries within a report

  (e.g., demonstrating best efforts)

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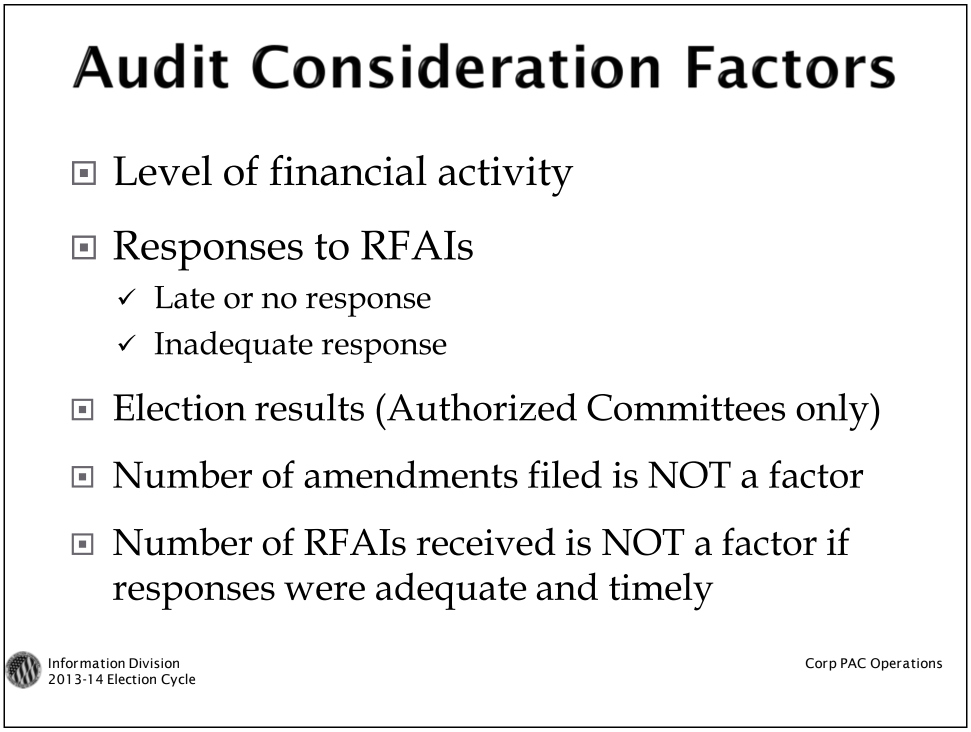
3. **Must amend report when changing information that affects actual entries on a report.** This would include additions, changes or deletions.
4. **Miscellaneous Text Submission (Form 99)**
   Used for narrative responses that do not affect actual entries within a report. (For example: when outlining procedures for “Best Efforts” in obtaining contributor information.)



C. **Referrals to the Audit Division**

1. **Factors for making referrals to the Audit Division:**
   a) Level of financial activity;
   b) Responses to RFAIs:
      (1) Late or no response.
      (2) Inadequate response.
2. **The number of amendments filed is not a factor.**
3. **The number of RFAIs is not a factor** if responded to adequately and on time.

OGC & ADRO Referrals

- Policy includes referral thresholds
- RAD calls committee before referring to OGC or ADRO to explain RFAI and request response
- Adequate and timely response may prevent referral

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D. Referrals to OGC (Office of General Counsel) and ADRO (Alternative Dispute Resolution Office)

1. Internal policy includes thresholds for determining whether a matter should be referred to OGC or ADRO.
2. Committee will receive a phone call from RAD prior to a referral to ADRO or OGC to explain RFAI and request a response.
3. An adequate response is required by the timeframe given to prevent the matter from being referred.

Contact Information

- RAD's process for sending RFAIs has changed
  - Most RFAIs are now sent via email to:
    Committee's official email address (as listed on the Statement of Organization)
- Ensure Statement of Organization (FEC Form 1) has the committee's most current:
  - Mailing address
  - Email address
  - Phone number

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4. RAD's process for sending RFAIs has changed. Most RFAIs are now sent via email to the committee's official email address, as disclosed on the Statement of Organization (FEC Form 1). Committees will have the option to continue to receive RFAIs on paper through the mail.
5. Committees should ensure that they have provided the most current mailing address, email address and phone numbers on their Statement of Organization (FEC Form 1). Often RFAIs are returned by the Post Office due to an incorrect mailing address.

Workshop Evaluation

Help Us Help You!

Please complete an evaluation of this workshop.

http://www.surveymonkey.com/

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Campaign Activity by Corporations, Unions & Others

9th Floor
http://fec.adobeconnect.com/connect9

Electronic Filing

5th Floor
http://fec.adobeconnect.com/connect5

3:30 p.m. – 4:30 p.m.

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