Campaign Activity by Corporations, Unions & Others

March 20, 2013
Tab #

Objectives

- Highlight key court decisions
- Define relevant terms
- Discuss corporate/labor activities no longer subject to restriction
- Review rules on other types of campaign activity by corporations & unions

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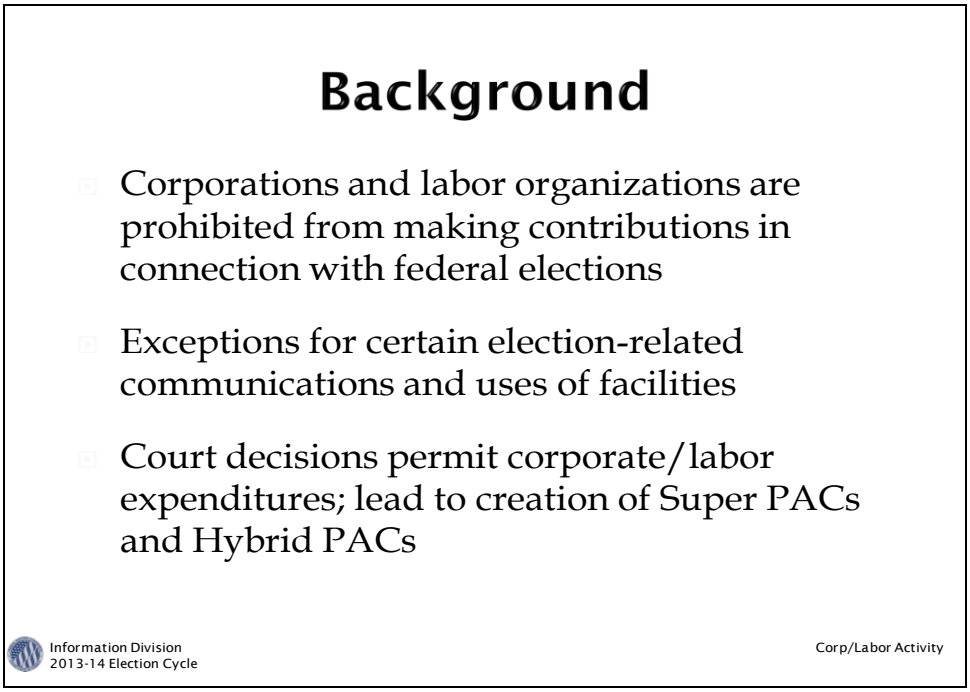
CAMPAIGN ACTIVITY BY CORPORATIONS, UNIONS & OTHERS



Background: Basic Prohibition
Corporations and labor organizations are prohibited from making contributions in connection with federal elections.

- Exception for certain election-related communications and uses of facilities.
- Recent court decisions permit corporate/labor expenditures, creation of Super PACs and Hybrid PACs.

Citizens United v. FEC

- Supreme Court's ruling:
  - Permits corporations/unions to use treasury funds to make independent expenditures
  - Upholds reporting requirements
  - No effect on contribution ban

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I. Key Court Decisions

A. Key Court Decision: *Citizens United v. FEC*

1. The Court's ruling permits corporations and labor organizations to use treasury funds to make independent expenditures in connection with federal elections and to fund electioneering communications.
2. The Supreme Court upheld the reporting requirements for independent expenditures and electioneering communications.
3. The court did not rule on the ban on corporate or union contributions.

SpeechNow v. FEC

- Appeals Court ruling:
  - Permits independent expenditure-only groups to accept unlimited contributions
  - Upholds the Act's "organizational and reporting requirements"

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B. Key Court Decision: *SpeechNow.org v. FEC*

1. Contribution limits unconstitutional as applied to contributions received by independent expenditure-only groups
2. Upholds the Act's "organizational and reporting requirements" for political committees.

RESULT: Independent Expenditure-Only Committee / Super PAC

- Political committees that make independent expenditures, but do not make contributions.
- May solicit and accept unlimited contributions from individuals, corporations, labor organizations and other political committees.
- May not accept contributions from foreign nationals, federal government contractors, national banks or federally chartered corporations.
- Must register with the FEC and comply with all applicable reporting requirements under the Act.

IE Committees / Super PACs

FEC Advisory Opinions:

- 2011-12: Majority PAC
- 2011-11: Stephen Colbert
- 2010-11: Commonsense Ten
- 2010-09: Club for Growth

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RESULT: Independent Expenditure-Only Committee / Super PAC (cont.)

- **AO 2011-12 (Majority PAC)**
  Federal officeholders, candidates, and officers of national party committees can solicit funds for IE-only committees, but only up to $5,000.
- **AO 2011-11 (Stephen Colbert)**
  TV host may establish and operate an IE-only committee and solicit and accept unlimited contributions from individuals, political committees, corporations and labor organizations. Costs incurred to cover the committee on the TV show and to produce and air IEs during that coverage fall under the "press exemption." However, if IEs are provided to the committee to be distributed outside of the show, or if the corporate owner pays administrative costs associated with running the committee, the costs constitute reportable in-kind contributions
- **AO 2010-11 (Commonsense Ten)**
  An IE-only committee can accept unlimited contributions from individuals, other political committees, corporations and labor organizations.
- **AO 2010-09 (Club for Growth)**
  A corporation may establish, administer, and pay the costs of an IE-only committee that solicits and accepts funds from only individuals for independent expenditures. Corporate payments for the administration and solicitation costs would be a contribution to the IE-only committee.

IE Committees / Super PACs

- Must Register and Report
  - FEC Form 1 + IE-Only Letter
- Unlimited Contributions
  - Federal candidates may solicit for IE-Only Committee, but funds subject to federal limits

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Takeaways: Independent Expenditure-Only Committees/Super PACs

- **Must Register/Report**
  - Form 1 and IE-Only Letter
- **May Accept Unlimited Contributions**
  - From individuals, political committees, corporations and labor organizations
  - Federal candidates may solicit funds for IE-Only Committees, subject to $5,000 limit

AOR 2010-20

National Defense PAC submitted an advisory opinion request asking if it could use separate bank accounts to operate as both a regular nonconnected PAC and as a Super PAC.

None of the draft responses received the necessary four affirmative votes.

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C. Key Court Decision: *Carey v. FEC*

1. Stemmed from AO 2010-20 (National Defense PAC). PAC wanted to use separate bank accounts to:
   - Accept unlimited contributions to finance independent expenditures; and
   - Accept FECA-limited contributions to be used to make contributions.
2. After the Commission failed to reach a consensus, the issue was taken up in the U.S. District Court for the District of Columbia.

Carey v. FEC

Negotiated final judgment allows nonconnected PACs to open separate bank accounts to receive:

1. FECA-limited funds used for contributions to federal candidates and committees
2. Unlimited contributions used to finance independent expenditures

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3. The parties negotiated a final resolution of the case and asked the court to enter a stipulated judgment and consent decree:
   - FEC agreed that it would not enforce 2 U.S.C. §§441a(a)(1)(C) and 441a(a)(3) against Plaintiffs with regard to contributions NDPAC receives to make independent expenditures.
   - NDPAC must maintain separate bank accounts 1) to receive such contributions for independent expenditures, and 2) to receive source-and amount-limited contributions for the purpose of making candidate contributions.
   - Each account must pay a percentage of administrative expenses that closely corresponds to the percentage of activity for that account.
   - The Commission issued a Statement on *Carey v. FEC* on October 5, 2011, which provides reporting guidance for committees that maintain a non-contribution account. Statement is available at http://www.fec.gov/press/Press2011/20111006postcarey.shtml

Hybrid PACs

Interim Guidance:

- Notify FEC by letter or electronic submission
- Report all receipts and disbursement for both accounts
- Allocate administrative expenses based on activity for each account

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RESULT: Hybrid PACs / Carey Accounts

- Nonconnected political committees may maintain a "non-contribution" account
- Non-contribution account is a separate account for contributions for the purpose of financing independent expenditures
  - May solicit and accept unlimited contributions from individuals, corporations, labor organizations and other political committees.
  - May not accept contributions from foreign nationals, federal government contractors, national banks or federally chartered corporations.
- Non-contribution account must remain segregated from any accounts that receive source-restricted and amount-limited contributions for the purpose of making contributions to candidates
- Each account must pay a percentage of administrative expenses that closely corresponds to the percentage of activity for that account.
- Must register with the FEC and comply with all applicable reporting requirements under the Act.
- *See also, Stop this Insanity, Inc. Employee Leadership Fund,* et al. v. *FEC*

EMILY's List v. FEC

- Appeals Court orders that allocation rules be vacated; opinion had broad language about nonconnected PACs' First Amendment rights
- Commission vacates rules that specified allocation methods for PACs

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D. Key Court Decision: *EMILY's List v. FEC*

1. PAC challenge to solicitation and allocation rules at 11 CFR 100.57 and 106.6.
2. The opinion includes a broad discussion of the First Amendment rights of nonconnected PACs.
3. On 11/30/09, the United States District Court for the District of Columbia ordered that the following regulations be vacated:
   - 11 CFR 100.57, concerning funds received in response to solicitations;
   - 11 CFR 106.6(c), concerning the method for allocating administrative expenses, costs of generic voter drives, and certain public communications; and
   - 11 CFR 106.6(f), concerning payments for public communications and voter drives that refer to one or more clearly identified federal or non-federal candidates.
4. In March 2010, the Commission adopted rules that removed the vacated regulations (75 FR 13223, March 19, 2010).

Key Results

- Corporations & unions can spend treasury funds on independent expenditures and electioneering communications
- SuperPACs & Hybrid PACs can use corporate/union funds to finance independent expenditures

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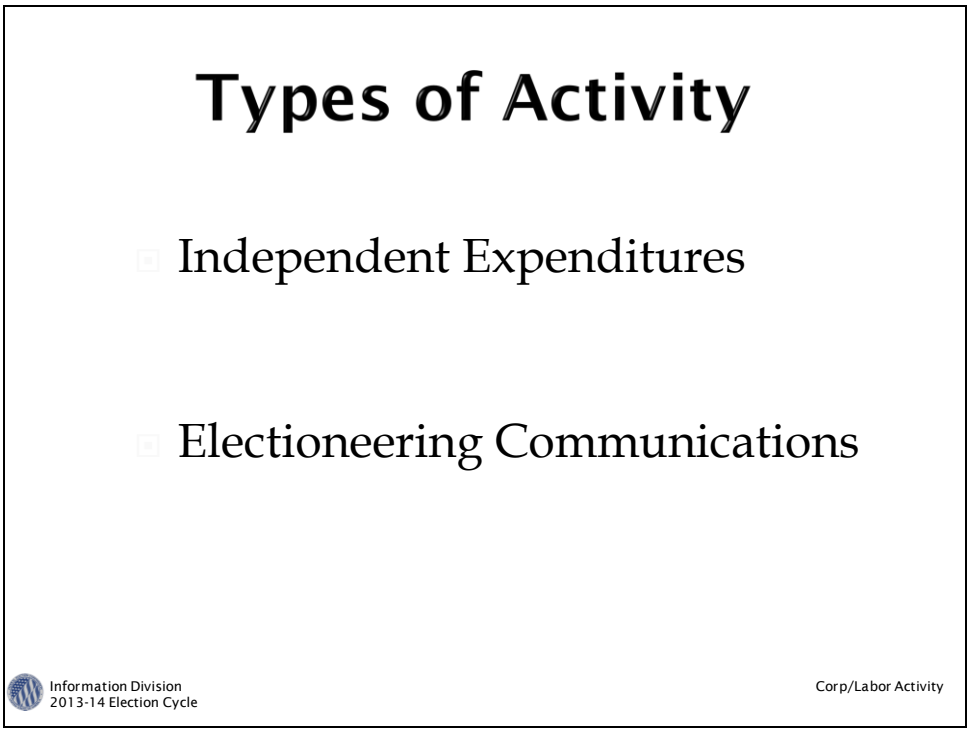
KEY RESULTS:

- Corporations and unions can spend treasury funds on independent expenditures and electioneering communications.
- Super PACs and Hybrid PACs can use corporate/union funds to finance independent expenditures.



II Activity No Longer Subject to Restriction: Independent Expenditures and Electioneering Communications

Independent Expenditures and Electioneering Communications:
Both permitted, but require:

- Disclaimers
- Disclosure

Types of Activity

- Independent Expenditures

Communications that expressly advocate the election or defeat of clearly identified candidate made without cooperation, consultation, request or suggestion of candidate or party committee

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A. Independent Expenditure (11 CFR 100.16)

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.

Express Advocacy

Message unmistakably urges election or defeat of clearly identified federal candidate.

Two Part Definition:

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

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1. **Express Advocacy – Definition (11 CFR 100.22)**
   Message unmistakably urges election or defeat of one or more clearly identified federal candidates or the candidates of a clearly identified political party.

   Two Part Definition of Unmistakably Urging Election or Defeat
   - **Part A: Specific Call to Action**
   - **Part B: "Only Reasonable Interpretation Test"**

Express Advocacy

- Specific Call to Action
  - Explicit words of advocacy for or against a federal candidate
  - Urging action with respect to candidates associated with a particular issue
  - Campaign slogan or words

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

1) Explicit Words of Advocacy for or against a Federal Candidate
Examples: "Re-elect your Congressman," "support your Democratic nominee," "reject the incumbent."

2) 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.

3) 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 2012"

Express Advocacy

Only Reasonable Interpretation Test:

When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates.

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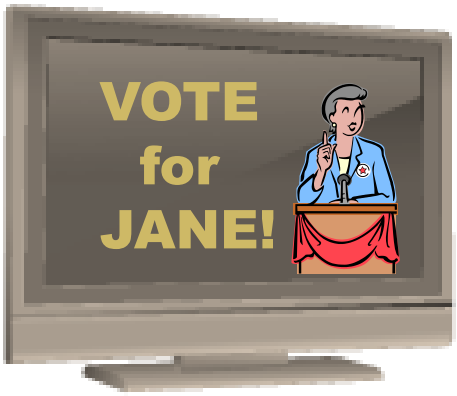
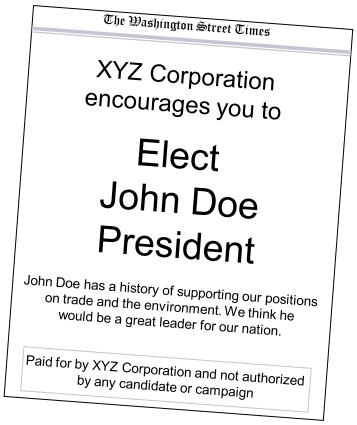
b. Part B: "Only Reasonable Interpretation Test" (11 CFR 100.22(b))

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

Express Advocacy

Message that unmistakably urges election or defeat of clearly identified federal candidate.




The Washington Street Times

XYZ Corporation encourages you to

Elect
John Doe
President

John Doe has a history of supporting our positions on trade and the environment. We think he would be a great leader for our nation.

Paid for by XYZ Corporation and not authorized by any candidate or campaign

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Types of Activity

- Independent Expenditures

Communications that expressly advocate the election or defeat of clearly identified candidate made without cooperation, consultation, request or suggestion of candidate or party committee

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Coordination

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 party committee or its agents

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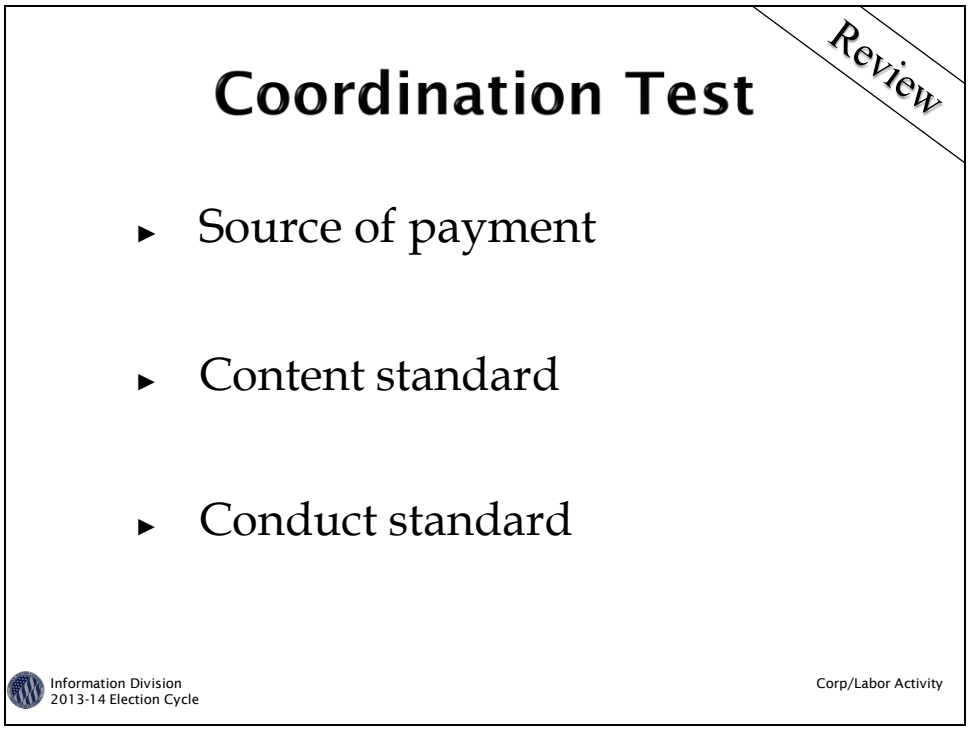
B. Coordination (11 CFR 109.20)

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."

1. Coordinated Communication = In-Kind Contribution (11 CFR 109.21(b)(1))

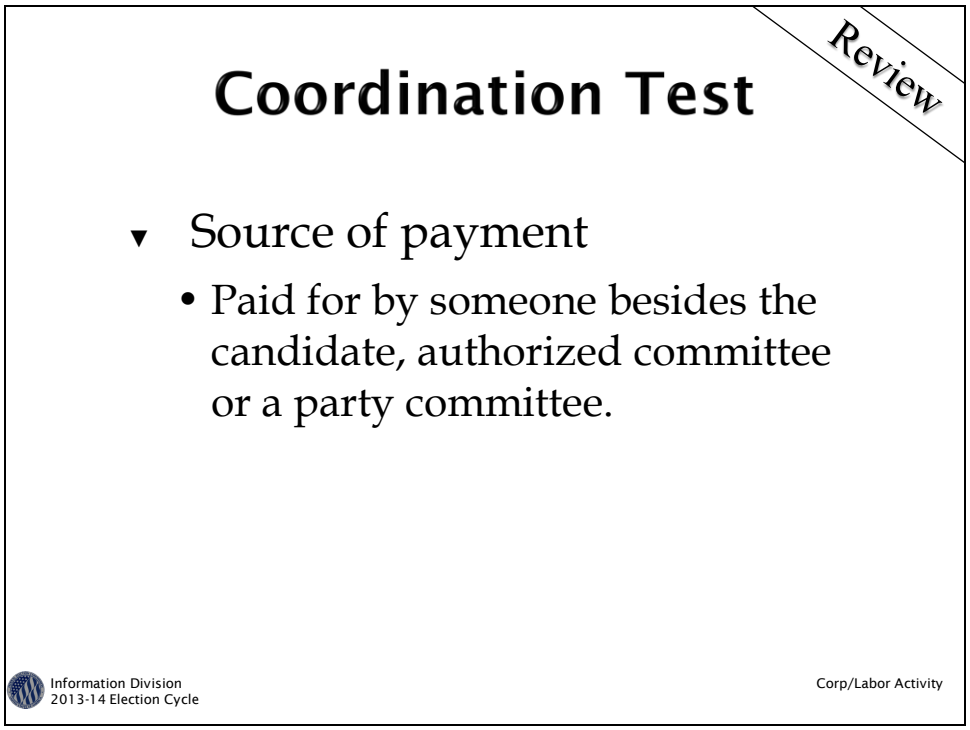
a. Prohibited by corporation/labor organization
b. Subject to limitations when done by individual or PAC
c. Typically, reportable by campaign or party committee as in-kind contribution.



2. Three Part Test to Determine if Coordinated Communication (11 CFR 109.21)

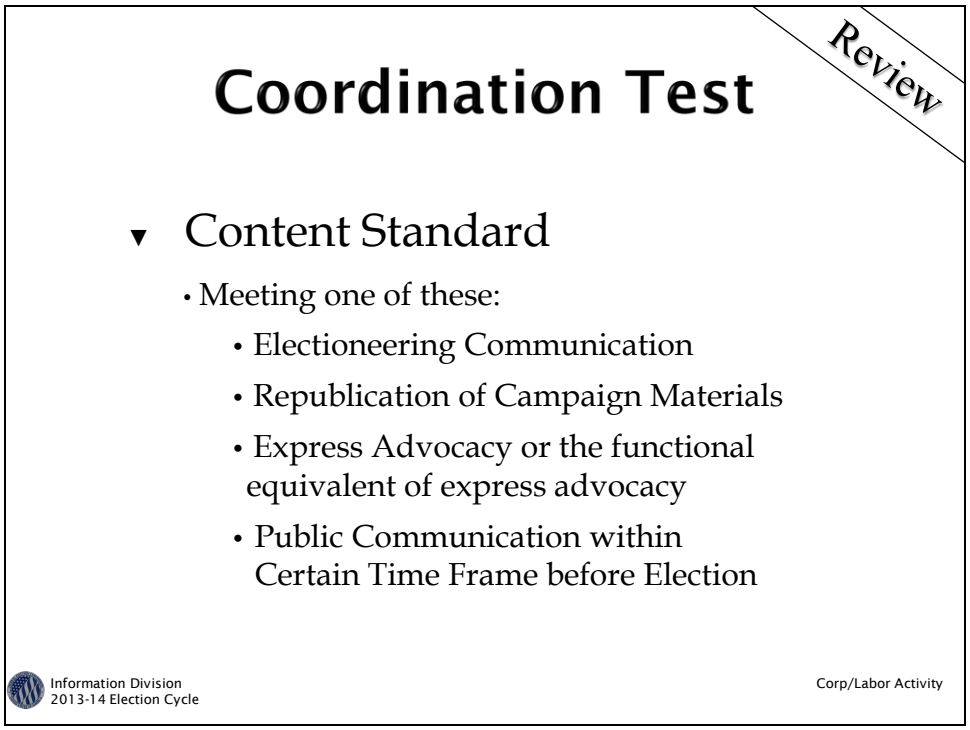
Three-part test; all three must be satisfied to justify conclusion that payments for a coordinated communication are for the purpose of influencing a federal election.

- **Source of Payment**
- **"Content Standard"**
- **"Conduct Standard"**



a. Source of Payment

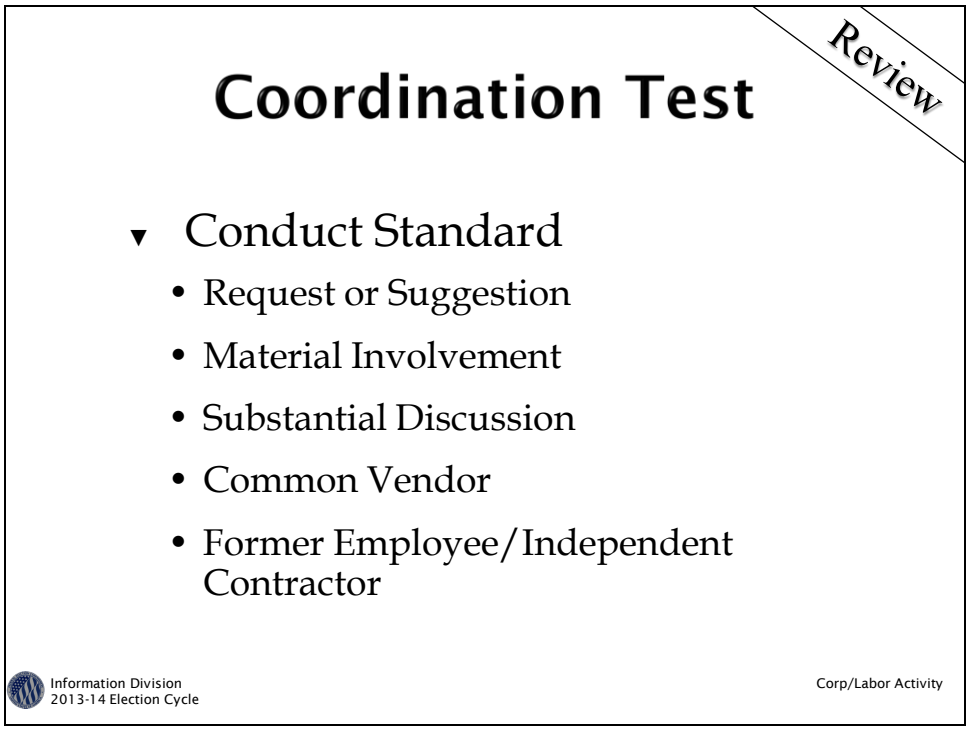
To be considered coordinated, communication must be paid for by someone other than a candidate, an authorized committee or a political party committee. (Obviously, if they paid for it themselves, coordination wouldn't be an issue.)



b. Content Standard

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

- "Electioneering Communication" (11 CFR 100.29)
- Public Communication that Republishes, Disseminates or Distributes Campaign Materials;
- Public Communication with Express Advocacy
- Public Communication Within Certain (Revised) Time Frame Before Election (No express advocacy required)
- Communication that is "Functional Equivalent of Express Advocacy"



c. Conduct Standard

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

- Request or Suggestion (11 CFR 109.21(d)(1))
- Material Involvement (11 CFR 109.21(d)(2))
- Substantial Discussion (11 CFR 109.21(d)(3))
- Employment of Common Vendor (11 CFR 109.21(d)(4))
- Former Employee/Independent Contractor (11 CFR 109.21(d)(5))

Coordination Equation

Source + Content + Conduct = Coordination

Coordination = Contribution

Contribution = Limits + Prohibitions

No Coordination = Independent Expenditure

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Takeaways:

- **Source + Content + Conduct = Coordination**
- **No Coordination = Independent Expenditure**
  - **Unlimited**
  - **Disclosure Required**

Independent Expenditures

- No limit on amount of expenditures
- Disclosure required:
  - Disclaimer on message
  - Report to FEC

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Independent Expenditures

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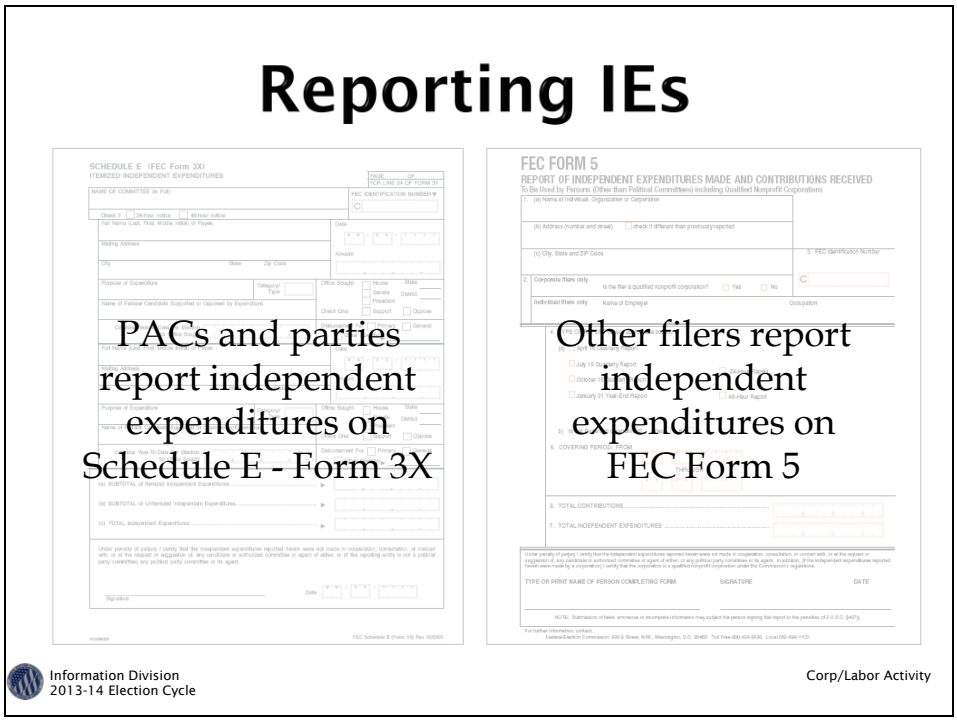

C. Disclosure of Independent Expenditures

1. **PACs and Parties report IEs using Schedule E/FEC Form 3X during appropriate reporting period.**
2. **Other filers use FEC Form 5**
3. **Date Made = Date Disseminated**
   - An independent expenditure is considered made when it is publicly distributed or otherwise publicly disseminated.
   - See the FEC's interpretive rule at 76 FR 16233 (10/4/11) (http://www.fec.gov/law/cfr/ej_compilation/2011/notice_2011-13.pdf)
4. **Aggregation**
   Done on a per calendar year, per election, per office sought (race) basis.

Reporting IEs

- 48-Hour Notices
  Required for IEs aggregating ≥ $10,000 made ≥20 days before an election
- 24-Hour Notices
  Required for IEs aggregating ≥ $1,000 made < 20 days but >24 hours before an election.
- Disclose again on next regular report

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

- 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.
- 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.
- **24-Hour and 48-Hour Reports** are filed using stand-alone Schedule Es; check appropriate box to note type of report.
- **Must be disclosed again on next regularly scheduled report.**
- **The 24-Hour Report and 48–Hour Report time frames** for 2013 special elections are located on our website at http://www.fec.gov/info/charts_ie_dates_2013.shtml.

Electioneering Communications

Any broadcast, cable or satellite communication that:

- Refers to clearly ID'ed candidate;
- Is publicly distributed;
- Is distributed during certain time period before election; and
- Is targeted to the relevant electorate

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D. Electioneering Communications

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

- The communication refers to a clearly identified candidate.
- The communication is publicly distributed.
- The communication is distributed during a certain time period before an election.
- The communication is targeted to the relevant electorate.

1. Elements of an Electioneering Communication

a. Clearly Defined Candidate

Same definition as in express advocacy

b. Publicly Distributed

A communication is publicly distributed if it is disseminated by a television station, radio station, cable television system or satellite system.

(1) Both infomercials and commercials are included within the definition. 11 CFR 100.29(b)(3)(i).

(2) Changes to rules (effective 1/20/06) eliminated the phrase "for a fee." 70 FR 75713 (12/21/05).

c. Distributed During a Certain Time Period before an Election

(1) Time Period

Electioneering communications are transmitted within 60 days prior to a general election or 30 days prior to a primary election to federal office.

(2) Application

(a) This includes elections in which the candidate is unopposed.

(b) A "primary election" includes any caucus or convention of a political party which has the authority to nominate a candidate to federal office. 11 CFR 100.29(a)(2).

(c) The condition regarding the timing of the communication applies only to elections in which the candidate referred to is running.

d. Targeted to the Relevant Electorate

(1) Definition of "targeted to the relevant electorate"

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

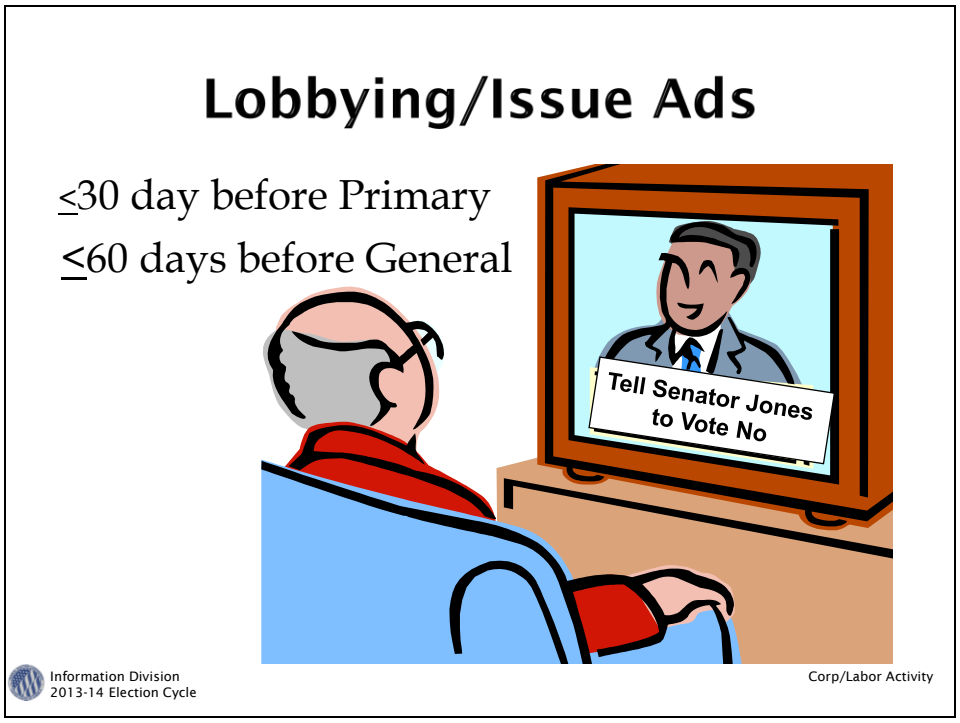
(2) FCC Database for determining who can receive communication

The Federal Communications Commission (FCC) provides on its web site (http://gullfoss2.fcc.gov/ecd/) the information necessary to determine whether a communication can be received by 50,000 people.

2. Application to Presidential/Vice-Presidential Candidates

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

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



3. May Affect Lobbying/Issue Ads

In addition to express advocacy communications, some organizations develop messages designed to urge action for/against a particular issue or certain legislation. Depending upon how/when the message is conveyed (among other factors), such a message fall within the definition of an electioneering communication above and thus be subject to FEC rules.

Electioneering Communications

- Electioneering communications aggregating $10,000 or more must be disclosed to FEC within 24 hours of public distribution
- Disclosed on FEC Form 9

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4. Disclosure Requirements

a. Requirement

Electioneering communications made by corporations and labor organizations are subject to disclosure rules. Electioneering communications aggregating $10,000 or more must be disclosed to the FEC within 24 hours of the date of public distribution.

b. Disclosed on FEC Form 9.

Links to Form 9, its instructions and reporting dates are available online at

- http://www.fec.gov/info/report_dates_2013.shtml#ec (reporting dates)
- http://www.fec.gov/info/forms.shtml#other (Form 9 and instructions)

c. Disclaimer under 11 CFR 110.11 required.

Sources of ECs

- Individuals
- Corporations, Unions and Other Organizations

- PACs report as operating expenditure, rather than electioneering communication

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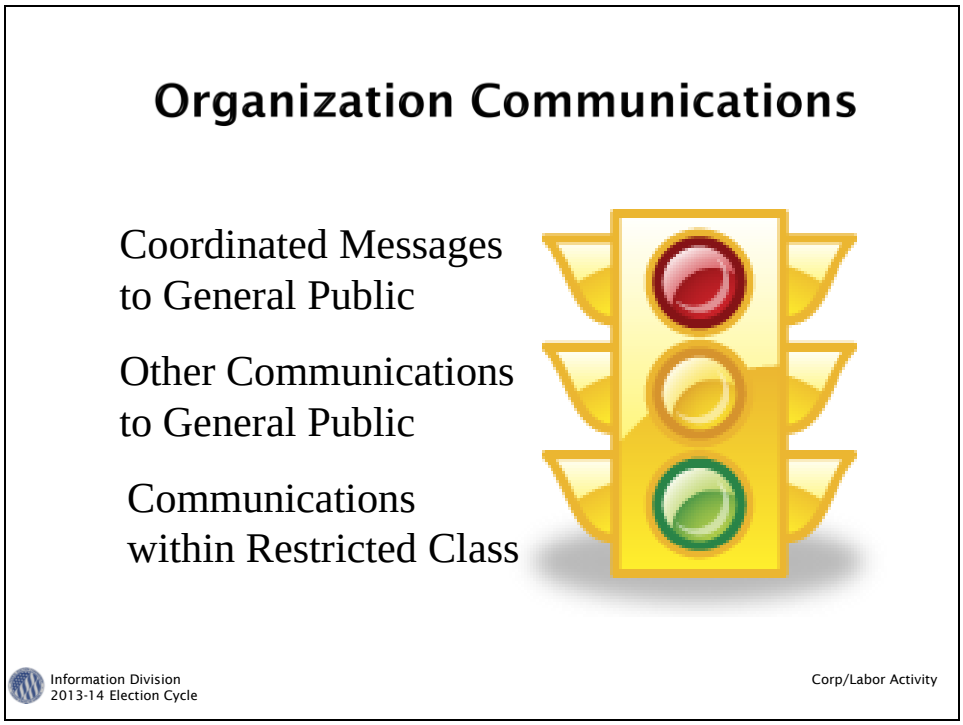

III. Other Permissible Campaign Activity

A. Organization Communications

In general, corporate/labor communications are limited as follows:

- **Red Light:** Coordinated messages to public prohibited
- **Caution**: Other types of communications are not prohibited, but certain requirements apply (e.g., disclaimers)
- **Green Light**: Communications with the restricted class are unrestricted

Restricted Class Message

A corporation, labor organization, trade or membership organization may communicate to its restricted class on any subject, without restriction.

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B. Within the Restricted Class

- **Express advocacy is OK on any subject without restriction.**
- **Coordination with candidate or party is OK.**

Restricted Class

- **Corporations**
  - Stockholders, executive/administrative personnel, families
- **Labor Organizations**
  - Members, executive/administrative personnel, families
- **Membership Organizations**
  - Noncorporate members, representatives of corporate members, executive/administrative personnel, family of all three groups
- **Trade Associations**
  - Executive/administrative personnel and noncorporate members
  - Representatives of corporate members with whom association normally conducts business

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1. Definition of Restricted Class for Communications

a. Corporations

Stockholders, executive and administrative personnel, and families of both groups.

b. Labor Organizations

Members, executive and administrative personnel of organization, and family of both groups.

c. Membership Organizations

(1) Who is Included

Noncorporate members, representatives of corporate members, executive and administrative personnel, and family of all three groups.

(2) AO 1996-21:

(a) Membership organization could send express advocacy communications to member representatives with whom member organization usually did organization business.

(b) Not more than 2 or so representatives per corporate member.

d. Trade Associations

(1) Restricted class, defined for purposes of receiving communications, is not identical to group that can be solicited for contributions to the Trade Association's PAC.

(2) Who is Included

(a) Executive and administrative personnel and noncorporate members,

(b) Representatives of corporate members with whom association normally conducts business.

(c) AO 1991-24: Representatives of member corporations could distribute communication to corporation's restricted class.

Restricted Class Message

Message	Restricted Class
Express Advocacy	Okay
Coordinated	Okay
Reporting	Form 7

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2. Reporting Express Advocacy Communications to Restricted Class

Required if express advocacy communication costs exceeds $2,000 when aggregated for primaries or general elections.

a. Use Form 7

b. Continuous Filing

If additional express advocacy communication expenses for primaries or general elections.

Restricted Class Appearance

- Candidate and organization may expressly advocate
- Candidate and organization may solicit contributions
- Candidate may collect contributions
- Organization's SSF may act as conduit for earmarked contributions; special rules apply

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3. Restricted Class Appearance

- Candidate <u>and</u> organization can expressly advocate for candidate
- Candidate and organization can solicit contributions;
- Candidate may collect contributions at event;
- Organization's SSF may act as conduit for earmarked contributions (special rules apply). See, 11 CFR 110.6 and 114.2(f).

Reporting Costs

- If guidelines followed, no prohibited contribution results.
- Organization files FEC Form 7 if it spends more than $2,000 for election.
- PAC may pay for expenses; no contribution results.

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4. Reporting Costs

a. Communication costs must be reported on FEC Form 7 once costs for all candidates running in the same election aggregate over $2,000.

b. If the communication costs are paid for by the SSF, they will not result in a contribution or expenditure. Such costs are reported on FEC Form 3X as "other disbursements."

Restricted Class Message

- Summary:
  - ✓Candidate and Organization can Expressly Advocate and Solicit Funds
  - ✓Campaign can Collect Contributions
  - ✓Organization can Coordinate with Campaign on Plans, Projects, Needs

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5. Restricted Class Communications – Summary

When the communication is made to the restricted class:

- Campaign/party and organization can expressly advocate for candidate and solicit contributions;
- Campaign/party may collect contributions at event;
- Organization's SSF may act as conduit for earmarked contributions (special rules apply) can coordinate with campaign/party regarding its plans, projects and needs

Key Point

Corporations and labor organizations must avoid coordination when communicating beyond the restricted class

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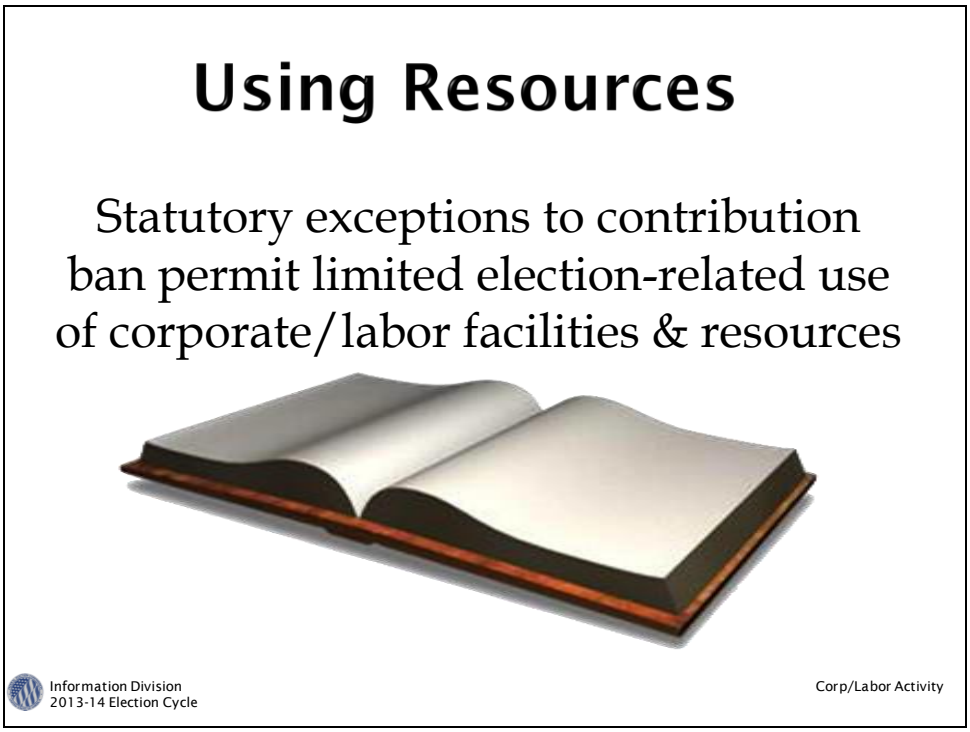
Key Point: Avoid Coordination of Messages to General Public
If communication goes beyond the restricted class, avoid coordination between organization and campaign/party to avoid making a prohibited contribution.



B. Prohibition on Use of Facilities/Resources in Candidate/Party Fundraising (11 CFR 114.2(f) and 114.9)

- As part of the broad prohibition on corporate and labor contributions, corporate, labor and membership organizations are generally prohibited from providing goods or services at less than the usual or normal charge.
- This includes permitting the use of their facilities or other resources for fundraising or other activities in connection with federal elections. However, the regulations contain a number of narrow exceptions to this prohibition. The organization's facilities and resources may be used in prescribed ways in connection with election-related activities:

Campaign/Party Use of Facilities

- Advance payment for:
  - Staff
  - Mailing list
  - Food service
  - Everything, if PAC pays
- Reimbursement for other facilities

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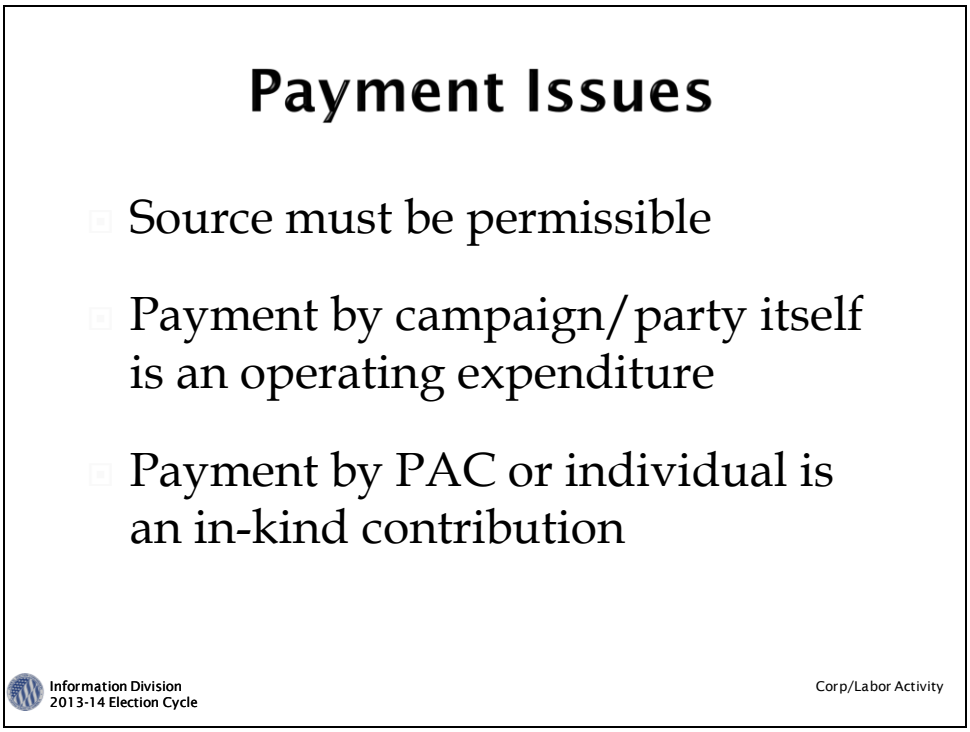
1. **Use of Corporate/Labor Facilities by Individual, Campaign, Party or SSF (11 CFR 114.2(f)(2), 114.9 and 114.13)**
   A candidate or party federal event to which the general public is invited may take place at the organization's facilities, provided that a permissible source (such as an individual, campaign, party committee or the organization PAC) pays for the event, as follows:
   a. The organization must receive **advance** payment for the use of its staff, mailing list and/or food services;
   b. **Advance** payment if SSF is paying for use of other facilities (e.g., meeting rooms, phones); and
   c. **Reimbursement** (payment after the fact) for the use of its facilities in other situations (i.e., individual, party or campaign pays for meeting rooms, phones).



2. Payment Issues

a. "Advance Payment"

Means payment is made before services are provided.

b. Source of Payment

Payment must be made by one of following sources: candidate, organization's SSF, party, individual or some other permissible source.

c. Result of Payment

(1) Payment by candidate or party is operating expenditure.

(2) Payment by others is in-kind contribution to candidate or party.

Use of Directed Staff

- Advance payment for value of services, including salary, benefits and overhead
- No coercion
- No collecting or forwarding of contributions by staff

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3. Use of Directed Staff

Organization officials or employees may direct subordinate staff to work on fundraising for candidate or party, using organization's resources, provided that the following rules are observed:

a. Advance Payment

Organization must receive advance payment for value of staff services, including benefits and overhead.

b. No Coercion

No threats of force, detrimental job actions or financial reprisal if employee refuses to engage in fundraising.

c. Collection and Forwarding Prohibited

Employees may not collect or forward contributions to candidate or party.

Use of Lists and Food Services

Must pay organization fair market value in advance for:

- Use of customer/client lists
- Use of food services or catering arrangements

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4. Use of Customer/Client Lists

a. Organization May Permit Use with Advance Payment

Organization may allow use of the organization's lists of members, employees, vendors or others to send invitations or solicit the contributions, provided that the organization receives advance payment for fair market value of lists.

b. Application to E-Mail Address Lists of Corporation

(1) Advance payment required under 114.2(f).

(2) Counts as in-kind contribution by payee.

(3) Not exempt from definition of contribution:

(a) Payment for e-mail list made at direction of political committee; or

(b) E-mail list that is transferred to political committee. 11 CFR 100.94(e)(2) and (3) and 100.155(e)(2) and (3).

c. Use of Catering or Food Services

In connection with fundraising for candidate or party's federal account, the organization may operate or arrange for catering or other food services, provided that the organization receives advance payment for fair market value of services.

Use of Meeting Rooms

- General Rule:
  Reimburse at the fair market value within commercially-reasonable time
- Exception:
  Free/discounted rate if normally offered to civic groups under same conditions and available to any other political committee upon request

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5. Use of Meeting Rooms (11 CFR 114.9 and 114.13)

a. General Rule

Campaigns and political parties may rent meeting rooms of an organization if they reimburse the organization at the normal rental charge, within a commercially reasonable time.

b. Exception

An organization may offer meeting room to candidate or party at discount or for free if organization customarily makes meeting room available to civic, community or other groups under the same conditions and if it makes it available to any other candidate or committee on the same terms, upon request.

c. PAC Paying for Room

If a PAC pays for its connected organization's meeting room for an event as an in-kind contribution, the payment must be made in advance.

Other Uses of Facilities

- General Rule:
  Campaign or party must reimburse at the usual/normal charge within a commercially-reasonable time
- If PAC pays as in-kind contribution, it must pay in advance

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6. Other Campaign/Party Use of Organization's Facilities and Resources

Use of Facilities: General Rule: Campaigns and political parties may use the organization's offices and equipment provided they reimburse the organization at the usual and normal charge within a commercially reasonable time.

a. If Campaign/Party Pays:
Campaign or Party must reimburse the usual and normal charge within a commercially reasonable time – generally 30 days.

b. If PAC Pays
If organization's SSF is paying as in-kind contribution, must pay in advance.

Examples

- Reproducing materials:
  Use current market rate for comparable materials
- Office Space/Equipment:
  Use current market rental fees
- Phone Banks:
  Use current market rate for phone bank set up

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7. Examples (11 CFR 114.9(c) and (d))

a. Reproducing Materials
Use current market rate for reproducing comparable materials.

b. Office Space and Other Equipment
Use current market rental fees

c. Phone Banks
Use current market rate when using phone bank set-up of organization.

Employee Volunteer Activity

- Incidental Use
  - Work that doesn't prevent normal work
  - Safe Harbor: One hour/week or four hours/month
- Reimbursement
  - For increased overhead; or
  - If more than incidental use, reimburse entire cost of using facilities
- Employee "Asked" to Volunteer – Incidental Use Exceptions do NOT apply!

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8. Employee/Member Use of Facilities for Volunteer Activity: Incidental Use (11 CFR 114.9(a))

OK for employees of organization (and members and officials of organization) to make "incidental use" of facilities for their own individual volunteer activity in connection with federal election.

a. What is "Incidental Use?"

(1) "Incidental use" means use that does not prevent employee or organization from completing normal work that would be completed during that period.

(2) Safe Harbor: 1 hour per week or 4 hours per month.

b. Reimbursement

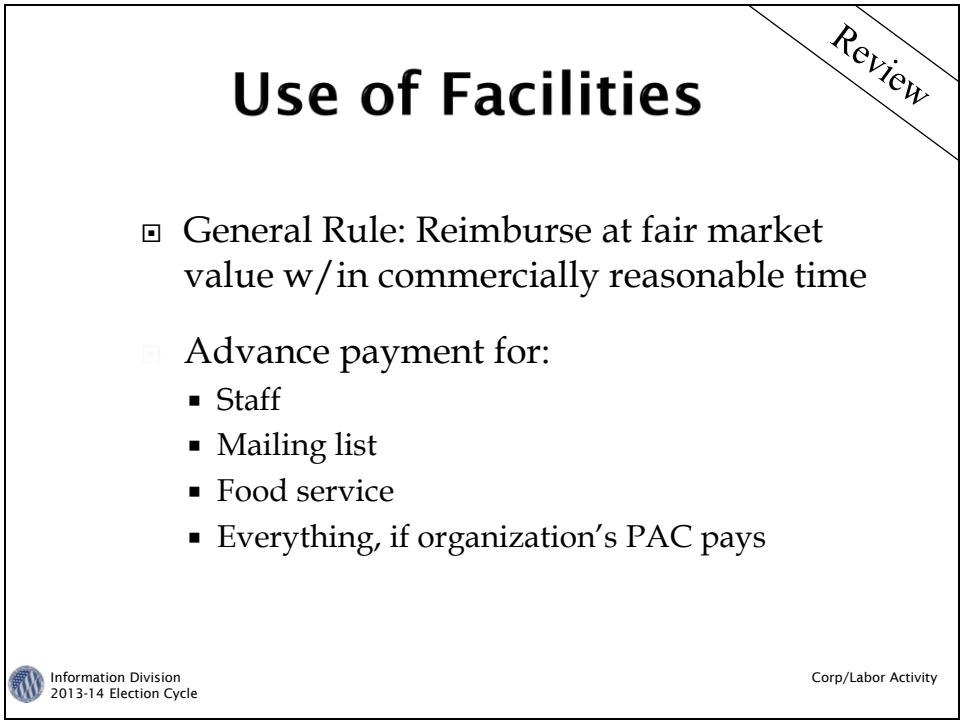
(1) Individual must reimburse organization for any increased overhead (e.g., no need to pay for regular local phone bill, but would have to pay for long distance calls).

(2) If more than incidental use - individual must reimburse organization the entire cost of using the facilities within commercially reasonable time.

c. Employee "Asked" to "Volunteer"

The "incidental use" allowance does not apply if the employee is asked by a superior to do the work as part of his/her regular duties.

Example: In MUR 5573, corporate executives that collected contributions intended for specific candidates claimed that they were doing so as individual volunteers. The Commission rejected this claim, as the evidence indicated that the executives "solicited, collected and bundled the contributions … using corporate resources" at the direction of the corporation, without any indication that they "devised the contribution plans on their own or that, absent their employment, they would have solicited contributions" from other corporate executives.



Workshop Evaluation

Help Us Help You!

Please complete an evaluation of this workshop.

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Next Workshop

Meet Your Campaign Finance Analyst

4:30 – 5:00 pm