

TRADE ASSOCIATION PAC OPERATIONS PART 1



May 22, 2013
11:15 a.m.
Tab 3

Objectives – Part 1

- ▣ Identify who may be solicited
- ▣ Specify fundraising guidelines for federal PAC
- ▣ Evaluate fundraising techniques

Prohibition

Review

- ▣ Contributions from:
 - Corporations
 - Labor unions
 - Trade associations
 - Incorporated membership organizations

- ▣ Exception: Create and Administer SSF

 Information Division
2013-14 Election Cycle

Trade PAC Operations

I. Introduction

- A. **Prohibition on Corporate/Labor Contributions (11 CFR 114.2)**
Federal law bans contributions by corporations and labor organizations to influence federal elections. That ban covers incorporated trade associations and other membership organizations.

Prohibition

Review



Key Point:

Most permissible corporate/labor activity
at the federal level is a result of exceptions
to the ban on corporate contributions.



Information Division
2013-14 Election Cycle

Trade PAC Operations

- B. Exception: Separate Segregated Fund (SSF) (11 CFR 114.5)**
Corporations (including trade associations and membership organizations) and labor organizations may use treasury funds to create and run a separate segregated fund (sometimes called an SSF or PAC) to support federal candidates.

What is a Solicitation?

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

II. What is a Solicitation?

A. Solicitation = Communication that Contains:

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

Why does it matter?

- ▣ SSFs may only solicit contributions from a restricted class of individuals
- ▣ Solicitations must include certain notices
- ▣ Resulting contributions must be forwarded in a timely manner

- B. Importance of Knowing When Communication = PAC Solicitation**
Must be able to recognize solicitation in order to avoid it reaching individuals outside restricted class for solicitation purposes.

III. Basic Solicitation Rules

Basic Rules Apply

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

Definition of Member

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

A. At Any Time: Restricted Class Only

1. Definition of Member (for Trade Association PACs) (11 CFR 114.1(e)(2))

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

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

Restricted Class

Trade Association/PAC May Solicit:

- ▣ Association Executive/Admin. Staff
- ▣ Individual and Noncorporate Members
- ▣ Executives of Corporate Members with signed prior approval

2. **Who is in Restricted Class of a Association PAC for Solicitation Purposes? (11 CFR 114.5(g)(1), 114.7(a) and 114.8(e))**
 - a) **Executive and administrative personnel**
 - (1) Employees paid on salary (but **not** hourly) basis who have managerial, professional, policy-making or supervisory responsibilities.
 - See AOs 2012-02, 2011-25, 2010-04, 2004-32, 1999-20 and 1993-16.
 - See Tab 2/Recent Developments
 - (2) Members of the board of directors, if they are compensated via salary or stipend. AOs 2010-12, 2000-10 and 1985-35 (compare with AO 1977-18).
 - b) **Noncorporate members** (including individuals and unincorporated businesses such as partnerships) and their families.
 - c) **With prior corporate approval** (discussed below), **corporate members' restricted class** and their families.

Beyond Restricted Class

- ▣ Trade Association/PAC may NOT solicit:
 - Foreign Nationals
 - PACs of Corporate Members
 - General Public
 - Executives of Corporate Members that have NOT signed Prior Approval

d) Not solicitable:

- (1) Foreign nationals (11 CFR 110.20(g));
- (2) Other PACs, including PACs of association members (11 CFR 114.7(j));
- (3) Employees or stockholders of corporate members that have not given prior approval or that have given prior approval to another trade association for the same calendar year (11 CFR 114.8(d) and (e)); or
- (4) General public.

Corporate Members: Prior Approval Needed

- ☐ Provide written notice that:
 - Approval is necessary before solicitation AND
 - Corporation may not authorize > 1 association per year
- ☐ Approval given as “Jane Doe, for XYZ Corp.”
- ☐ Electronic approval OK
- ☐ Multiyear approval OK if separate approval is given for each year
- ☐ May include sample materials with request

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

a) **Application**

Applies only to trade associations and their PACs and not to other types of connected organizations/PACs.

b) **Requirements:**

- (1) Approval must be in writing and addressed to corporate representative with whom association normally conducts activities.
- (2) Approval must state that:
 - Corporate approval is necessary before association or PAC conducts a solicitation.
 - Corporation may not authorize any other request by a different trade association to solicit its restricted class that calendar year.
- (3) Approval must be given as “[Signature], for [Name of Corporation].” AO 2000-22.
Example: “Jane Doe, for XYZ Corporation”
- (4) Electronic form of written approval OK. AO 2000-22.
- (5) Multiyear approval OK, but with a separate signature line for each year. AO 1984-61.

- (6) Request for approval may contain a copy of the solicitation materials to be used. (11 CFR 114.8(d)(3)).
- (7) Corporation may limit scope and frequency of solicitations of its restricted class.
- (8) Corporation may withdraw approval at any time.

Twice Yearly Solicitations

- ▣ Twice a year SSFs may solicit:
 - Limited group outside restricted class
- ▣ Must preserve anonymity
 - Custodial arrangement
 - Mail solicitation to individual's home

- 4. Twice Yearly Solicitations (11 CFR 114.6)**
 - a) Twice a year, a trade association PAC may solicit the rank and file employees of the trade association.
 - b) Must use custodial arrangement to preserve anonymity.
 - c) Must mail solicitation to employee's home.

Restricted Class Chart

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

Objectives – Part 1

- ▣ Identify who may be solicited
- ▣ Specify fundraising guidelines for federal PAC
- ▣ Evaluate fundraising techniques

Basic Rules Apply

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

Solicitation Notices

Contributions must be voluntary:

- No Threats
- No Dues or Fees

Must provide notice every time:

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

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

1. Contributions Must Be Voluntary

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

2. Required Notices

Every solicitation must state:

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

3. Examples:

See AOs 2006-17, 2003-06 and 1997-25, and Matters Under Review (MURs) 5681 and 5337.

BERKELEY ELECTRIC COOPERATIVE, INC.
 VOLUNTARY EMPLOYEE DONATION FORM

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

RECOMMENDED AMOUNTS PER PAY PERIOD

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

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

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

Option 3 _____
 I elect not to participate at this time.

Information Division
 2013-14 Election Cycle

Trade PAC Operations

Example
 AO 2006-17

4. Examples from AO 2006-17:

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

Basic Rules Apply

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

Collection Rules

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

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

Collection Rules

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

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

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

Collecting agent retains records 3 years.
4. **PAC Remains Responsible:**
 - a) Reports original sources; date of receipt = date collecting agent receives contribution. (See 11 CFR 102.8(b)(2).)
 - b) Ensures that collecting agent follows rules.
5. **Corporations Acting as Members of Trade Associations**

Corporate members may collect and forward contributions for trade association PAC. AO 2003-22.

Objectives - Part 1

- ▣ Identify who may be solicited
- ▣ Specify fundraising guidelines for federal PAC
- ▣ Evaluate fundraising techniques

IV. Solicitation Techniques

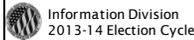
Solicitation Techniques

- ▣ Payroll Deduction
- ▣ Combined Dues Statement and Solicitation Notice
- ▣ Prizes and Entertainment
- ▣ Communications

Payroll Deduction

Basic Rules Apply:

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



Trade PAC Operations

A. Payroll Deduction (11 CFR 102.6(b) and (c), 102.8(b) and 114.5(a))

1. Basic Rules Apply:

- a) Restricted class only
- b) Use solicitation notices
- c) Connected organization or corporate member processing deductions must forward contributions and records in timely manner.
- d) Date of receipt for reporting purposes = Date deducted from paycheck. AOs 2000-11 and 1999-33.

Payroll Deduction

□ Written Payroll Deduction Authorization Required :

- No reverse checkoff
- Electronic deductions okay
- Retain for 3 years after last reported contribution from employee
- Signed authorization not only way to satisfy recordkeeping requirement



 Information Division
2013-14 Election Cycle

Trade PAC Operations

2. **No Reverse Checkoff**

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

3. **Electronic Deductions OK**

In various opinions, the Commission has approved:

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

4. Written Authorization Required

- a) Employee gives written (or electronic) authorization for periodic deduction of PAC contributions from paycheck; may revoke any time.
- b) Retain employee's authorization for three years from the date the committee last reports receiving a contribution from that employee (rather than three years from the date the employee signed the authorization). 11 CFR 104.14(b).
- c) Note: Retaining the signed authorization is not the only way to satisfy recordkeeping requirement. For suggested methods for how to keep these records, see Commission Policy Statement online at http://www.fec.gov/law/policy/notice_2006-11.pdf.

Payroll Deduction

- ▣ Corporate members may use payroll deduction for trade association's PAC
 - Must first grant prior approval
- ▣ Corporate members must allow union to use payroll deduction for its PAC, upon request
 - Union must reimburse costs

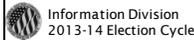
5. Trade Association's Use of Member's Payroll System

- a) Member corporation may provide incidental services (including payroll deduction or checkoff system) to collect and transmit voluntary contributions from its restricted class to a trade association PAC upon written request of the trade association. 11 CFR 114.8(e)(4).
- b) Corporations that provide these services must make the same services available to a labor organization representing any members working for the corporation upon written request of the labor organization. 11 CFR 114.8(e)(4).
- c) **AO 2012-15:** Corporations owned by individual members of a membership organization (that also qualifies as a trade association) may provide payroll deduction to enable employees of the member-owned corporations to contribute to the membership organization's SSF. The trade association must pay the member-owned corporations in advance for their services.

Solicitation Statements

Basic Rules Apply:

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



Trade PAC Operations

B. Combined Dues/Solicitation Statements (11 CFR 102.6(c)(2) and AOs)

A trade association may include a solicitation for its PAC with the bill for membership dues sent to noncorporate members.

1. Basic Solicitation Rules Apply

Combined statements are subject to all the rules that apply to other PAC solicitations.

a) Restricted Class Only (Noncorporate Members)

In AO 1999-40, the FEC stated that the PAC must inform the solicitees of the corporate prohibition and ask donors to include a statement that they are not incorporated.

b) Rules on Voluntary Contributions and Solicitation Notices

In AO 1987-06, the FEC found a proposed statement impermissible because it did not explain how to contribute an amount other than the suggested guideline.

2. Permissible Combined Statements

The layout of the combined statement must make a distinction between a suggested PAC contribution and the required dues payment.

Example: Using two lines on the statement.

Membership dues.....\$ _____

Voluntary PAC contribution.....\$ _____

Solicitation Statements

Wrong

Statement
Tropical Fruit Association

10/1/13	General	Membership Dues	FCER	XYZ Auxiliary	Total Due
		\$500.00*	\$30.00	\$20.00	\$550.00

* Includes a \$100.00 voluntary contribution to the Tropical Fruit Association PAC, unless otherwise requested.

Solicitation Statements

Right

Statement
Tropical Fruit Association

→	Membership Dues	\$400.00
	FCER	\$30.00
	XYZ Auxiliary	\$20.00
	Total Due	\$450.00
→	Voluntary PAC Contribution	100.00*
	Total Amount Enclosed	\$ _____

* This is merely a suggested voluntary contribution amount. You have the right to refuse to contribute. Members are free to contribute more, less or nothing at all without reprisal. Tropical Fruit Association PAC uses member donations to help elect individuals to Congress who will support our organization's goals.

3. Collection Rules Apply

Contributions must be separated from dues payments, collected and forwarded according to collecting agent rules.

4. Electronic Deductions OK

- a) In AO 1997-09, Commission approved electronic deduction/transfer.
- b) In AO 1999-03, Commission approved use of digital electronic signature.

Reporting Example

Reporting Contributions raised through Fundraising Techniques

- How does the committee disclose the transaction(s)?
- What information do we need to disclose this correctly?

Reporting Example #1: Reporting Contributions Raised Through Fundraising Techniques

The Tropical Fruit Association sent out its annual dues statement to its individual members to bill them for \$150 in annual dues, and suggested that those members also make an additional \$200 contribution to the association's PAC (TFA PAC). In response, Amanda Pomegranate sent the association a check for \$350, which the PAC received on May 24.

As a big supporter of the PAC, Amanda, in addition to her original contribution in response to the combined dues/solicitation statement as of May 24, also contributed \$150 by buying a silent auction prize at a PAC event on June 30.

Amanda had such a good time at the auction, she decided to sign up for payroll deduction. Her first deduction of \$50 every two weeks was deducted on July 14.

Assume for this example that PAC files its FEC reports on a monthly schedule.

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

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

Reporting Example #1 – Answers

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

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

Amanda's initial contribution in May does not require itemization as Amanda has not yet contributed **more than** \$200 for the calendar year. Further, the contributions with an aggregate calendar year to date amount of \$200 or less must be included on Line 11(a)(ii) (*unitemized contributions from individuals*) of the appropriate reporting periods.

Since the PAC files monthly, the report covering June (due on July 20) would be the report on which they would need to begin itemizing Amanda's contributions on Schedule A for Line 11(a)(i), because the additional contribution of \$150 brought her over the \$200 aggregate year to date itemization threshold.

Amanda's silent auction contribution via purchase of a \$150 fundraising item must be itemized. (See below.) The aggregate year-to-date total for the June 30 contribution must include the contribution received previously on May 24. All of Amanda's subsequent contributions during that calendar year will also require itemization on Schedule A, including her payroll deduction contributions beginning in July. Note, however, that her payroll deduction contributions must be itemized separately from any other type of contributions she makes.

See Reporting Example on Next Page

July Monthly Report (M7)

**Itemizing
 Contributions**

Schedule A, Line 11(a)

SCHEDULE A (FEC Form 3X)		Use separate schedule(s) for each category of the Detailed Summary Page		FOR LINE NUMBER: (check only one)		PAGE OF	
ITEMIZED RECEIPTS				<input checked="" type="checkbox"/> 11a		<input type="checkbox"/> 12	
				<input type="checkbox"/> 11b		<input type="checkbox"/> 13	
				<input type="checkbox"/> 11c		<input type="checkbox"/> 14	
				<input type="checkbox"/> 11d		<input type="checkbox"/> 15	
				<input type="checkbox"/> 11e		<input type="checkbox"/> 16	
				<input type="checkbox"/> 11f		<input type="checkbox"/> 17	
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.							
NAME OF COMMITTEE (In Full)							
Tropical Fruit Association Political Action Committee							
Full Name (Last, First, Middle Initial)				Date of Receipt			
A. Amanda Pomegranate				MM / DD / YYYY			
Mailing Address				06 / 30 / 2013			
401 Manatee Avenue				Amount of Each Receipt this Period			
City		State		Zip Code		150.00	
Bradenton		FL		34205			
FEC ID number of contributing federal political committee.							
C							
Name of Employer				Occupation			
Tropicana, Inc.				Vice-President			
Receipt For:				Aggregate Year-to-Date			
<input type="checkbox"/> Primary <input type="checkbox"/> General				350.00			
<input type="checkbox"/> Other (specify)							

Reporting Example Continues on Next Page

August Monthly Report (M7)

Payroll Deduction

Schedule A, Line 11(a)

SCHEDULE A (FEC Form 3X)	Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one)
ITEMIZED RECEIPTS		<input checked="" type="checkbox"/> 11a <input type="checkbox"/> 11b <input type="checkbox"/> 11c <input type="checkbox"/> 12 <input type="checkbox"/> 13 <input type="checkbox"/> 14 <input type="checkbox"/> 15 <input type="checkbox"/> 16 <input type="checkbox"/> 17
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.		
NAME OF COMMITTEE (In Full) Tropical Fruit Association Political Action Committee		
Full Name (Last, First, Middle Initial) A. Amanda Pomegranate		Date of Receipt 8/15/2013
Mailing Address 401 Manatee Avenue		Payroll Deduction
City Bradenton	State FL	
	Zip Code 34205	Amount of Each Receipt this Period 50.00
FEC ID number of contributing federal political committee. C	Name of Employer Tropicana, Inc.	\$25.00 bi-weekly
	Occupation Vice-President	
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Aggregate Year-to-Date 400.00	

Information Division
2013-14 Election Cycle

Trade PAC Operations

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

Answer:

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

Points to Remember

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

Instructions for Activity

- ✓ Read through the scenarios.
- ✓ Answer the questions.
- ✓ You have 5 minutes for this activity.

Scenario #1:

FUNDRAISING BY A COLLECTING AGENT

As chairman of the Tropical Fruit Association PAC, you are conducting your committee's annual fundraising planning meeting. Your goal this year is to raise \$200,000 for TFA-PAC. Your committee must decide whether to adopt the following proposal.

Proposal:

Ask local chapters to raise funds for TFA-PAC by holding grapefruit mimosa brunches for the restricted class of their corporate members. As an incentive to participate, local chapters would be allowed to retain 10% of the funds raised for TFA-PAC to cover their administrative costs.

Contributions that are raised from the fundraising events would be deposited directly into the local chapters' accounts or into the locals' state PACs. Each local chapter would transfer the TFA-PAC contributions (minus 10%) to the federal PAC within 30 days of receipt. This plan would be feasible because there would be no undue administrative burden on the local chapters, and there would not be any recordkeeping or reporting responsibilities for them.

- 1. What does the PAC need to do first before it allows local chapters to proceed with invitations to the fundraising brunches?**
- 2. How did you feel about the plan to have local chapters transmit the proceeds of the fundraising brunches?**
- 3. What do you think about the proposed time frame for transferring the collected contributions to the SSF?**
- 4. What registration or reporting responsibilities apply to the local chapter in its role as a collecting agent? To the federal PAC?**

Proposal Answers:

1. What does the PAC need to do first before it allows local chapters to proceed with invitations to the fundraising brunches?

Answer: Because the brunches are for the restricted class of incorporated members, the PAC must first secure prior approval from those members. 11 CFR 114.8. The request for prior approval must follow all the guidelines for that as discussed in this outline and in 11 CFR 114.8.

2. How did you feel about the plan to have local chapters transmit the proceeds of the fundraising brunches?

Answer: Basically, it's OK for the local chapters to transmit the proceeds, because the local chapters may act as collecting agents. They must follow the rules at 11 CFR 102.6 (as discussed in the outline). The **full amount of each contribution**, however, must be transferred, and cannot be retained by the local chapter. This is because all contributions collected by a collecting agent on behalf of the federal PAC must be transferred to the federal PAC. See 11 CFR 102.6(c)(4).

If the federal PAC or its connected organization wants to bear the costs for the solicitation, it may write a check to the local chapter. State/local affiliates may use general treasury monies to defray the administrative/solicitation costs for the federal PAC. See AO 1983-46.

3. What do you think about the proposed time frame for transferring the collected contributions to the SSF?

Answer: It is OK for small contributions (\$50 or less). Collecting agents have to transfer a contribution within 10 or 30 days depending on the size of the contribution. 11 CFR 102.8(b)(1) and (2). Contributions in excess of \$50 must be forwarded within 10 days of receipt, while smaller contributions must be forwarded within 30 days.

5. What registration or reporting responsibilities apply to the local chapter in its role as a collecting agent? To the federal PAC?

Answer: Collecting agents do not have to register as political committees. However, when they transfer funds collected for the PAC, they must also provide the PAC with records on contributor information. These records enable the PAC to file reports on contributions. Collecting agents must also retain all records of contribution deposits and transmittals for three years.

The PAC will report the receipt of funds from collecting agent as contributions from the original contributors. Date of receipt is reported as the date the collecting agent received the contributions.

Activity – Key Points

Collecting Agent Fundraising

- ▣ Local units may act as collecting agent
 - Timely transfer of all funds AND records
 - Full amount of contribution must be transferred and counts towards contributor's limit to PAC
- ▣ SSF ultimately responsible for compliance and proper disclosure

KEY POINTS – Proposal

- Local units may act as collecting agent.
 - Timely transfer of all funds AND records
 - Full amount of contribution must be transferred and counts towards contributor's limit to PAC (even if PAC reimburses collecting agent)
- SSF ultimately responsible for compliance and proper disclosure.

Solicitation Techniques

- ▣ Payroll Deduction
- ▣ Combined Dues Statement
and Solicitation Notice
- ▣ Prizes and Entertainment
- ▣ Communications

Prizes/Entertainment

- ▣ Connected organization may pay for prizes and entertainment to encourage PAC contributions BUT...
 - Prizes/entertainment may not be too valuable relative to funds raised



 Information Division
2013-14 Election Cycle

Trade PAC Operations

C. Prizes and/or Entertainment: The One-Third Rule (11 CFR 114.5(b)(2))

Association and its members and affiliates may provide prizes and entertainment, such as raffles (if permitted by state law), silent auctions, and golf tournaments, to encourage PAC contributions. The aggregate costs of prizes/entertainment may not be disproportionately valuable compared to the amount of contributions raised. Otherwise PAC must reimburse association for a portion of the costs.

1. One-Third Rule

PAC reimburses association for that portion of the costs of prizes or entertainment donated by the association (including those donated by members/affiliates) that exceed one-third of the amount raised in contributions.

- a) Cost of prize to organization is what is used. See AOs 2003-33 and 1995-17.
- b) Food and drink expenses do not count. See AOs 1999-31, 1995-17 and 1980-50.

One-Third Rule

Organization Cost:	\$ 700
- 1/3 amount raised:	\$ 400
PAC Reimbursement:	\$ 300

Information Division
2013-14 Election Cycle

Trade PAC Operations

- 2. Example**
Association spends \$700 in treasury funds to purchase an iPad as a raffle prize. Sales of raffle tickets raise \$1,200 in PAC contributions. Since one-third of the amount raised (\$400) is less than the cost of the prize (\$700), then the PAC must reimburse the association for the \$300 difference.

One-Third Rule

Raise \geq 3x Cost of Prize

Organization Cost: \$700
- 1/3 amount raised: \$700
PAC Reimbursement: \$ 0

Information Division
2013-14 Election Cycle

Trade PAC Operations

On the other hand, if the PAC raises \$2,100 in contributions, then one-third of that amount (\$700) is equal to what the association spent on the prize, so no reimbursement is necessary.

Member-Provided Assistance



- ▣ Member Donations of Prizes/Entertainment OK
 - Count as donations to association (instead of contributions to PAC)
- ▣ One-Third Rule Applies
 - Include prizes/entertainment donated by members in one-third rule calculation of association costs

 Information Division
2013-14 Election Cycle

Trade PAC Operations

C. Member-Provided Assistance for Trade Associations

1. Permissible (AOs 1995-17 and 1989-18)

- a) Association may solicit and accept donations of money, goods or services from its members (both corporate and non-corporate) to defray administrative and fundraising expenses of PAC, including prizes.
- b) Donations are not contributions as long as donor qualifies as association member under FEC regulations.

2. Application of One-Third Rule

- a) Include prizes/entertainment donated by members in one-third rule calculation.
- b) Any required reimbursement goes to association (who may distribute it to member if it chooses).

Prizes/Entertainment

Basic Rules Apply

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

▣ Note: For ongoing events, assign end date

3. Basic Rules Apply:

- a) Restricted class only may be invited to participate.
- b) Remember to use solicitation notices.
- c) Forward money on time.

4. Ongoing Events

For events that are ongoing (e.g., a payroll deduction sign-up drive that lasts several months), the PAC must assign an end date in order to determine the amount raised for purposes of the one-third rule. AO 1999-31.

Solicitation Techniques

- ▣ Payroll Deduction
- ▣ Combined Dues Statement
and Solicitation Notice
- ▣ Prizes and Entertainment
- ▣ Communications

What is a Solicitation?

Review

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

D. Communications (AOs Cited in Outline)

As a general rule, if a communication is circulated beyond the restricted class, the communication must not include a solicitation. Therefore, it is important to consider what the communication will say and who the audience will be.

1. What Constitutes a Solicitation

- a) Straightforward request for contributions
- b) Information on how to make a contribution
- c) Publicizing PAC's right to accept unsolicited contributions
- d) Statements encouraging support for the PAC – context is key.
- e) See MURs 6100R (2010) and 5681 (2007) and AOs 1979-66 and 1979-13 for examples.

Example: Language from AO 1979-13:

"I was glad to see that Raymond has so many employees who realize that the welfare of us all is tied very closely to government policies and attitudes toward business. RAYPAC is one way we can make the voice of business people and our industry heard in this country. I hope we continued [sic] to have such an enthusiastic group."

What is NOT a Solicitation?

- ▣ Communications that:
 - Don't encourage support for PAC
 - Don't explain how to make contributions
 - Announce existence of PAC
 - Explain laws applying to PAC
 - Provide statistical info about PAC
 - List candidates supported w/o suggesting PAC contributions help elect those candidates

2. **A Communication is Not a Solicitation if it:**
 - a) Does not encourage support for the PAC.
 - b) Does not facilitate the making of contributions.
 - c) Merely announces existence of PAC and explains legal requirements that apply to a PAC.
 - d) Provides statistical information about the PAC's receipts and contributions.
 - e) Identifies candidates supported by the PAC (but does not suggest that supporting the PAC will help elect those candidates).
 - f) See AOs 1991-03, 1983-38 and 1982-65.

Example: Language from AO 1982-65:

"The Union Carbide Corporation supports the operation of the Union Carbide Corporation Political Action Committee as authorized by and in accordance with, federal law. Shareholders desiring additional information about the activities of the Committee may write to the Secretary, Union Carbide Corporation, Section D4, Old Ridgebury Road, Danbury, CT 06817."

Online Fundraising

Guidelines:

1. Restricted Class Only:

- Use password protected page for all solicitations
- Link page includes caveats



2. Ensure contributions from permissible sources

3. May accept contributions via credit card, electronic check or online banking service

4. PAC must follow basic rules

3. Internet and Email Solicitations (AOs 2006-03 and 2000-07)

a) Web Pages (AOs 2006-03 and 2000-07)

(1) Limit access to restricted class.

Use password protection or otherwise only allow access to restricted class.

(2) Intranet page could link to separate, password-protected page accessible only by restricted class.

b) Caveats Required

The link page introducing PAC website must state that:

(1) Federal law prohibits PAC from soliciting outside restricted class; and

(2) Contributions received from outside restricted class will be returned to donors.

c) Contributor Screening and Vetting

PAC treasurer is responsible for ensuring that online contributions come from permissible sources. See AO 2011-13 for suggested language to use as safeguard.

- d) **Collecting Online Contributions via Credit Cards/Electronic Checks/Online Banking Services**
- (1) Online contributions may be made via credit card or electronic checks, or electronic authorization of payroll deduction. AOs 1999-36, 1999-09 and 1999-03.
 - (2) Date of contribution is date authorized by contributor. AO 1995-09. (Note: For credit card contributions, date of receipt for reporting is the date contributor authorized the charge. See AOs above.)
 - (3) Check generated via online banking service acceptable with all required contributor information.
 - (a) If complete information not available, committee must contact contributor.
 - (b) If drawn on joint account, contact account holders using reattribution procedures to ascertain who the contribution is from. AO 2007-17.
- e) **Email Solicitations (AOs 2000-07 and 1995-33)**
- (1) Organization could maintain email list serve (i.e., mailing list) to send PAC solicitations to restricted class. AO 2000-07.
 - (2) Email could be sent through secretaries to member of restricted class, provided that a cover note or some other mechanism is used to ensure solicitation is directed exclusively to restricted class. AO 1995-33.

Internet, Intranet and Email

Basic Rules Apply

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

4. **Basic Rules Apply**
 - a) Restricted class only (as set out above)
 - b) Voluntary contributions/solicitation notice requirements
 - c) Forward money on time.

Instructions for Activity

- ✓ Read through the scenarios.
- ✓ Answer the questions.
- ✓ You have 5 minutes for this activity.

Scenario #2:

Email Newsletter Articles

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

Article 1:

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

Article 2:

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

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

Scenario #2 Answers:

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

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

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

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

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

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

Answer: Add a paragraph to each article explaining the political purpose of the PAC and the right to refuse to contribute. Example: "The purpose of TFA PAC is for the benefit of political candidates and activities on a state and national level that support the Tropical Fruit Association. You have the right to refuse to contribute to TFA PAC without fear of reprisal." See 11 CFR 114.5(a)(4) and AOs 2006-17, 2003-06 and 1997-25.

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

Activity – Key Points

Newsletter/Email Solicitation

- ▣ Always state right to refuse to contribute
“You have the right to refuse to contribute to (name of PAC) without fear of reprisal.”

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

KEY POINTS:

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

Basic Rules Apply

Review

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

Objectives – Part 1

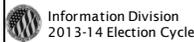
- ▣ Identify who may be solicited
- ▣ Specify fundraising guidelines for federal PAC
- ▣ Evaluate fundraising techniques

Workshop Evaluation

Help Us Help You!

Please complete an evaluation
of this workshop.

<http://www.surveymonkey.com/>



Trade PAC Operations

Trade Association PAC Operations Part 2

1:45 p.m. – 3:15 p.m.

9th Floor Hearing Room

<http://fec.adobeconnect.com/connect1>



Trade PAC Operations

**AO Quick Reference Guide
for
Trade Association PACs**

(All AOs can be located on the FEC's website at <http://saos.nictusa.com/saos/searchao>)

Part One:

What is a Solicitation?

AO 1979-13 Raymond International Inc. Employees' PAC

Definition of Member (for Labor/Trade/Membership PACs)

AO 2008-21 CME Group, Inc.
AO 2003-13 OPHTHPAC

Who is in the Restricted Class of a Trade Association PAC

AO 2012-02 Wawa, Inc.
AO 2011-25 Atlas Air
AO 2010-12 Procter & Gamble
AO 2010-04 Wawa, Inc.
AO 2008-21 CME Group, Inc.
AO 2004-32 Spirit
AO 2003-13 OPHTHPAC
AO 2000-10 America's Community Bankers
AO 1999-20 EQUI-PAC
AO 1993-16 Blue Cross of California
AO 1985-35 Weirton
AO 1977-18 Proprietary Industry PAC

Prior Approval by Corporate Members of Trade Association

AO 2000-22 Trade Associations
AO 1984-61 Society of American Florists

Voluntary Contributions and Solicitation Notices

AO 2006-17 Berkeley
AO 2003-06 PSE
AO 1997-25 Hughes Electronic

Collecting Funds: Corporations Acting as Members of Trade Associations

AO 2003-22 American Bankers

Payroll Deduction

AO 2000-11 Georgia-Pacific
AO 1999-33 MediaOne PAC

No Reverse Checkoff

AO 2001-04 MSDW PAC

Electronic Deductions

AO 2001-04 MSDW PAC
AO 1997-09 Chicago Board of Trade
AO 1999-03 Microsoft PAC

Trade Association's Use of Member's Payroll System

AO 2012-15 American Physical Therapy Association

Combined Dues/Solicitation Notices

AO 1999-40 NRECA
AO 1987-06 American Chiropractic Association

Electronic Deductions OK

AO 1997-09 Chicago Board of Trade
AO 1999-03 Microsoft PAC

Scenario: Fundraising by a Collecting Agent

AO 1983-46 American Association of Nurse Anesthetists

Prizes/Entertainment and One-Third Rule

AO 2003-33 Anheuser-Busch
AO 1999-31 Oshkosh
AO 1995-17 National Association of Realtors PAC
AO 1980-50 United Merchants and Manufacturers, Inc. Manufacturing Division
Committee for Responsible Government

Member-Provided Assistance

AO 1995-17 National Association of Realtors PAC
AO 1989-18 AICSPAC

Ongoing Events

AO 1999-31 OTCEPAC

What Constitutes a Solicitation

AO 1979-66 Associated General Contractors

AO 1979-13 RAYPAC

When a Communication is Not a Solicitation

AO 1991-03 TEX/CON PAC

AO 1983-38 DuPont Good Government Fund

AO 1982-65 UCCPAC

Internet and Email Solicitations

AO 2011-13 DSCC

AO 2006-03 WCPAC

AO 2000-07 Alcatel USA, Inc.

Collecting Online Contributions via Credit Cards/Electronic Checks/Online Banking Services

AO 2007-17 DSCC

AO 1999-36 Campaign Advantage

AO 1999-09 Bill Bradley for President, Inc.

AO 1999-03 Microsoft PAC

AO 1995-33 Coastal Employee Action Fund

AO 1995-09 NewtWatch PAC

Email Solicitations

AO 2000-07 Alcatel USA, Inc.

AO 1995-33 Coastal Employee Action Fund

Scenario: Email Newsletter Articles

AO 2003-06 PSE

AO 1997-25 Hughes Electronic

Part Two:

Earmarked Contributions

AO 1995-15 Allison Engine Company Political Action Committee

Three-Part Test for Coordination

AO 2011-14 Utah Bankers Association