



FECConnect LIVE
CONNECT LIVE
INTERACTIVE ONLINE TRAINING PROGRAM

Nonconnected PAC Operations Part II

Wednesday, December 2, 2015
2:45 p.m. – 4:15 p.m.

 FECConnect LIVE
2015–16 Election Cycle

Nonconnected PAC Webinar

Objectives

- Identify types of Nonconnected PACs and review basic characteristics and organization
- Discuss fundraising rules
- **Describe methods of supporting federal candidates**
- Highlight key rules on travel and lobbyist bundling

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SUPPORT FOR FEDERAL CANDIDATES

Supporting Candidates

- ▶ **Contributions**
- ▶ **Independent Expenditures**

Supporting Candidates

- ▼ **Contributions**
 - Includes monetary and in-kind
 - Subject to limits & prohibitions

Nonconnected PAC

Hybrid PAC

I. Contributions by the PAC– 11 CFR 110.1 and 110.2

A. Made by Hybrid PACs and Traditional Federal PACs but not by Super PACs or Non-contribution Accounts.

B. Includes monetary and in-kind contributions

- **Note for leadership PACs:** If PAC pays for costs that could and should otherwise be paid for by a candidate’s authorized committee, payments are treated as in-kind contributions subject to limit. 11 CFR 100.52(d)(1) and 110.2(1).

No Contributions by Super PACs

For 2015-16 Elections	Candidate Committee per election	PAC (SSF and Nonconnected) per year	State, District & Local Party Committee per year	National Party Committee per year	Additional National Party Committee Accounts per year
Individual	\$2,700	\$5,000	\$10,000 <small>(per year)</small>	\$33,400	\$100,200 <small>(per year)</small>
Can Cor PAC mu PAC No Sta Par	Super PACs and Non-Contribution Accounts Cannot Make Contributions of Any Amount				
National Party Committee	\$5,000	\$5,000	Unlimited Transfers	Unlimited Transfers	


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Contribution Limits – Traditional PACs

For 2015-16 Elections	Candidate Committee per election	PAC (SSF and Nonconnected) per year	State, District & Local Party Committee per year	National Party Committee per year	Additional National Party Committee Accounts per year
Individual	\$2,700	\$5,000	\$10,000 (combined)	\$33,400	\$100,200 (per account)
Candidate Committee	\$2,000	\$5,000	Unlimited Transfers	Unlimited Transfers	
PAC: multicandidate	\$5,000	\$5,000	\$5,000 (combined)	\$15,000	\$45,000 (per account)
PAC: Nonmulticandidate	\$2,700	\$5,000	\$10,000 (combined)	\$33,400	\$100,200 (per account)
State, District & Local Party Committee	\$5,000 (combined)	\$5,000	Unlimited Transfers	Unlimited Transfers	
National Party Committee	\$5,000	\$5,000	Unlimited Transfers	Unlimited Transfers	



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C. Limits apply to Non-Multicandidate PACs

1. May give **\$2,700/election** to federal candidates (2015-2016 election cycle).
2. Indexed for inflation (last adjustment in 2015).

Multicandidate Status

- ▣ Registered with FEC 6 months
- ▣ Received contributions > 50 donors
- ▣ Made contributions to \geq 5 candidates
- ▣ Alternative: affiliated with one/more multicandidate committees

D. **Multicandidate PACs (11 CFR 100.5(c)(3) and 110.2)**

1. \$5,000/election to federal candidates.
2. Limit unchanged – not subject to indexing.
 - a) **Criteria**
 - Registered with FEC 6 months.
 - Received contributions from more than 50 contributors;
 - Has made contributions to at least 5 federal candidates;
OR
 - Alternative: be affiliated with multicandidate committee.
 - b) **Responsibility for Informing FEC**
 - (1) PAC must file Form 1M within 10 days of qualifying as multicandidate committee.
 - (2) Check box at end of page 2, Form 3X.
 - c) **Responsibility for Informing Campaigns**
 - (1) Multicandidate committee must inform recipients that it has qualified as multicandidate committee.
 - (2) Call FEC's Public Records Office to verify status as *qualified* multicandidate committee.

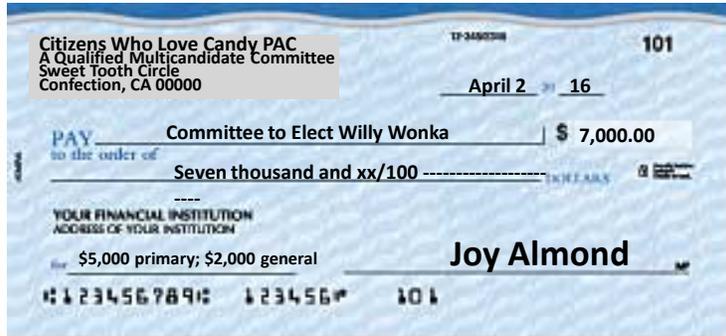
3. **Litigation: Challenge to limits on multicandidate committees: *Stop Reckless Economic Instability caused by Democrats PAC, et al. v. FEC*, _ F. Supp. 3d _, 2015 WL 867091 (E.D. Va. Feb 27, 2015).**
- On February 27, 2015, the district court rejected plaintiffs' First Amendment challenge because contribution limits do not directly restrain speech and the new PAC in the case was free to engage in independent expression and organize volunteer efforts in support of candidates. The court also rejected plaintiffs' equal protection challenge, finding that new PACs pose a greater danger of circumvention of contribution limits and are not similarly situated to older PACs. Plaintiffs appealed the decision on April 22, 2015.

Reporting Scenario #4

Itemizing Contributions Made

- ▣ What type of transaction is this?
- ▣ How must the committee disclose the transaction?
- ▣ What information from the scenario do we need to disclose this correctly?
- ▣ Tricky Issues?

Reporting Scenario #4



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Reporting Scenario #4: Itemizing Monetary Contributions Made to Federal Candidates and Committees

The Citizens Who Love Candy PAC, a monthly filer, really likes Congressman Willy Wonka from California. On April 2, 2016, it made out the check above to Congressman Wonka's campaign committee from its federal PAC. The California primary is scheduled for June 7, 2016.

1. What type of transaction(s) are these?
2. How must the committee disclose the transaction(s)?
3. What information from the scenario do we need to disclose this correctly?

Answers: Reporting Scenario #4: Itemizing Monetary Contributions Made to Federal Candidates and Committees

1. What type of transaction(s) are these?

Answer: This check represents two separate contributions made by the PAC: The check for \$7,000 represents contributions to both the primary and the general election campaign of the Committee to Elect Willy Wonka.

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

Answer: The Candy PAC must itemize each of these contributions on its monthly report covering April on a Schedule B for Line 23. It should show them as two separate contributions, \$5,000 to the Committee to Elect Willy Wonka for the primary and \$2,000 to the Committee to Elect Willy Wonka for the general.

Itemize any contributions to **nonfederal** candidates on Line 29 when they exceed \$200 to the same payee during a calendar year. Full candidate information in the purpose box is not required – simply input “nonfederal contribution.”

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

Answer: For the campaign contributions, the payee’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.

See Reporting Example on Next Page

Reporting Contributions Made

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	OF			
			<input type="checkbox"/> 21b <input type="checkbox"/> 27	<input type="checkbox"/> 22 <input type="checkbox"/> 28a	<input checked="" type="checkbox"/> 23 <input type="checkbox"/> 28b	<input type="checkbox"/> 24 <input type="checkbox"/> 28c	<input type="checkbox"/> 25 <input type="checkbox"/> 29	<input type="checkbox"/> 26 <input type="checkbox"/> 30b
NAME OF COMMITTEE (in Full) Citizens Who Love Candy PAC								
Full Name (Last, First, Middle Initial)								
A. Willy Wonka for Congress			Date of Disbursement					
Mailing Address 1971 Gobstopper Court			04 / 02 / 2016					
City Confection State CA Zip Code 00000			Amount of Each Disbursement this Period					
Purpose of Disbursement Contribution			5,000.00					
Candidate Name Willy Wonka			Category/ Type					
Office Sought: <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President			Disbursement For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼					
State: CA District: 58								
B. Willy Wonka for Congress								
Date of Disbursement								
04 / 02 / 2016								
Mailing Address 1971 Gobstopper Court								
City Confection State CA Zip Code 00000								
Amount of Each Disbursement this Period								
2,000.00								
Purpose of Disbursement Contribution								
Candidate Name Willy Wonka								
Office Sought: <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President								
Disbursement For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼								
State: CA District: 58								



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Points to Remember:

- Itemize contributions to all federal campaigns and committees on Schedule B for Line 23, regardless of amount.
- For contributions to federal campaigns, include candidate information.
- 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., “2014 general debt”)
- Treat contributions made to a leadership PAC as a contribution to a PAC, not a contribution to a campaign.

Designating Contributions

Undesignated Contributions:

- Count toward limit for candidate's next election

Designation Required:

- Contributing to a future election
- Retiring debt from a past election

E. Designation of Campaign Contributions by PAC

1. General Rule:

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

2. PAC must designate contribution if:

- Intends contribution to count toward a future election, beyond the upcoming election.
- 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.

Example (*For purposes of this example, assume the contributions illustrated in Reporting Scenario #4 had never been made.*)

The Citizens Who Love Candy Federal PAC decides to contribute \$10,000 to its local Congressman, Willy Wonka, for his re-election campaign. Willy is in a tough primary in California on June 7. The PAC treasurer, Joy Almond, issues a check to the campaign for \$10,000 on June 2.

Any Red Flags?

Designating Contributions

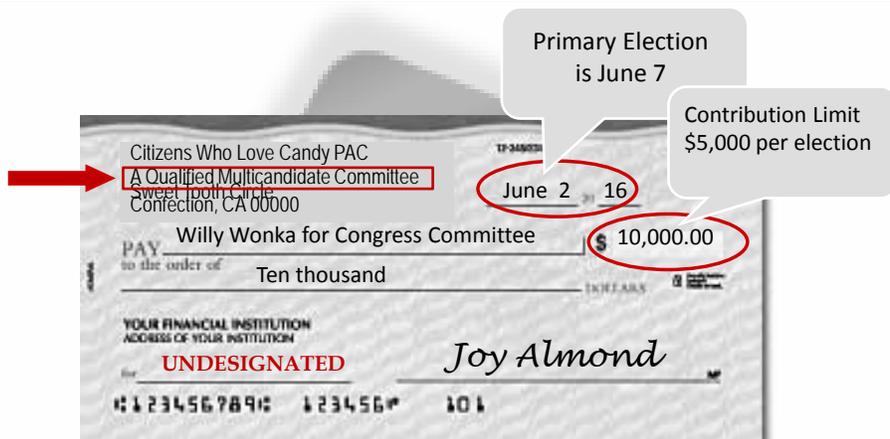


Elect Willy Wonka to Congress

Primary Election Day is June 7

Paid for by Willy Wonka for Congress Committee

Designating Contributions



EXCESSIVE CONTRIBUTION

Example, continued:

Let's work through the check. The date on the check is June 2 and the contribution is from a qualified multicandidate committee (identified as such on the check).

Since the contribution was not designated, the **date made** determines which election it counts against. To determine date made, the campaign must use the date a contribution is postmarked or hand-delivered (and NOT the date on the check).

Designating Contributions

Contribution for June 7 Primary Election

Candy PAC
Sweet Tooth Circle
Confection, CA 00000

→ June 7 2016

Willy Wonka for Congress
1971 Gobstopper Court
Confection, CA 00000

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This contribution was mailed on June 7, the primary date, and thus will count against the primary limit, because the date of the postmark is on or before the date of the primary.

However, because it was undesignated, it is a \$10,000 contribution to the primary, and therefore excessive.

How do the campaign and PAC resolve this situation?

Designating Contributions

Generally, campaigns may presumptively redesignate contributions received from an individual or nonmulticandidate committee to another election within the same election cycle.

Since Candy PAC is multicandidate, campaign must request & receive redesignation



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Designating Contributions

- ▣ **Recommended** for all contributions to federal candidates

- ▣ **Required** if contribution intended for a past or future election (beyond the upcoming election)



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F. Methods for Curing Excessive Contributions

1. Refund

2. Redesignate (11 CFR 110.1(b)(5)(ii)(B)(1)-(4))

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.

Best Practice: Avoid Excessive Contributions – Designate All Contributions!

Scenario: In-Kind Contribution: Holding Meet and Greets or Fundraisers for Candidates

Scenario: Candidate Fundraiser

Heath Bahr wants to invite his friends and associates to a breakfast in the main reception room at his partnership to meet with Senate candidate Candy Crusher.



Heath directs his secretary to reserve the room and email an invitation that asks the guests to bring their checkbooks.

Heath Bahr, a partner in the law firm of Hershey and Mars LLP, has an idea to help broaden the support base for Candidate Candy Crusher. Heath would like to host a meet and greet at his partnership's headquarters and invite all his partners and clients. Heath discusses his idea with the Crusher Campaign Manager and they agree that a coffee and donuts breakfast held at the partnership's very nice boardroom on March 30, 2016, would work best for Candidate Crusher.

On March 14th, a couple weeks prior to the scheduled event, Heath enlists his secretary to assist with event logistics. He directs her to reserve the boardroom at the partnership for March 30th and to draft the email invitation. He reviews the invitation to ensure it includes a note for the invited guests to bring their checkbooks. Heath signs off on the draft and his secretary emails the invitation out that same afternoon.

What factors do we need to consider for this event?

Answers : **Scenario: In-Kind Contribution: Holding Meet and Greets or Fundraisers for Candidates**

Events for Candidates

- ▣ Payment for costs of event = in-kind contribution to candidate (PAC or partnership may pay)
- ▣ Super PACs cannot pay for events for candidates
- ▣ Special Notes for Partnership/LLC PACs:
 - Corporate PAC exceptions do NOT apply to partnerships or LLCs that are taxed as partnerships
 - Result: Partnership may pay costs of event as in-kind contribution from partnership (\$2,700 limit) or it may have its PAC pay for costs as in-kind contribution.

What factors do we need to consider for this event?

- **Costs incurred for events held on behalf of candidates are in-kind contributions subject to limitations, prohibitions and reporting requirements.**
Costs incurred might include such items as meeting space, food and catering, invitations, staff time, and an email or mailing list.
- **Who May Pay for Such Events?**
Traditional Nonconnected PACs and the federal accounts of Hybrid PACs
- **Who May Not Pay for Such Events?**
Super PACs and Non-Contribution Accounts
- **Partnership PACs - Special Notes**
 - Either the partnership may pay for the costs of the event (\$2,700 limit; dually attributed to partnership and partners) or the PAC may pay (\$5,000 limit if PAC is multicandidate).
 - Corporate PAC rules and exceptions do not apply to partnership PACs or other types of nonconnected PACs.
- **Disclose Costs of Event as In-Kind Contribution**

Reporting Scenario #5: Itemizing PAC Payment for Candidate Fundraiser

Reporting Scenario #5: Candidate Fundraiser

- ▣ **Itemizing PAC's Payment for Use of Organization Resources for Candidate Fundraiser**
 - How does the PAC disclose the transaction?
 - What information do we need to disclose?

To pay for the arrangements for the fundraiser, Heath asks the PAC of Hershey and Mars LLP to write a check to the partnership on March 30 to cover the costs of the event.

1. How does the PAC disclose the transaction?

2. What information do we need to disclose?

Answers: Reporting Scenario #5: Itemizing PAC Payment for Candidate Fundraiser

1. What types of transactions are these?

Answer: The payment for the use of the Hershey and Mars LLP meeting room, email list and staff time to organize the event represent in-kind contributions to the federal candidate, Candy Crusher.

2. 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 March 30, 2016, the date of the candidate fundraiser, and must be disclosed on a Schedule B for Line 23. Hershey and Mars LLP is listed as the payee (provider of the resources), and the purpose box includes a notation that it is an in-kind contribution. All candidate and election information for Senate Candidate Jones is noted in the appropriate boxes.

Report Date of Event = Contribution

Payment for Facilities Use

SCHEDULE B (FEC Form 3X)	Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one)	PAGE	OF
ITEMIZED DISBURSEMENTS		<input type="checkbox"/> 21b <input type="checkbox"/> 22 <input checked="" type="checkbox"/> 23 <input type="checkbox"/> 24 <input type="checkbox"/> 25 <input type="checkbox"/> 26 <input type="checkbox"/> 27 <input type="checkbox"/> 26a <input type="checkbox"/> 26b <input type="checkbox"/> 26c <input type="checkbox"/> 29 <input type="checkbox"/> 30b		
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)				
Hershey and Mars LLP, PAC				
Full Name (Last, First, Middle Initial)			Date of Disbursement	
A. Hershey and Mars LLP			<input type="text" value="03"/> / <input type="text" value="30"/> / <input type="text" value="2016"/>	
Mailing Address			Amount of Each Disbursement this Period	
42 Sweetbar Way				
City State Zip Code			1,000.00	
Towson MD 22314				
Purpose of Disbursement			Category/Type	
Email List/Meeting Room/Staff Time (In-Kind)				
Candidate Name				
Candy Crusher				
Office Sought:		Disbursement For:		
<input type="checkbox"/> House <input checked="" type="checkbox"/> Senate <input type="checkbox"/> President		<input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)		
State: MD District:				


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Points to Remember:

- In-kind contributions for events include the fair market value of staff time, which includes compensation, benefits and overhead. It also includes the fair market value of meeting rooms, catering/food services or mailing/phone lists.
- Date on Schedule B, Line 23 = date on which good/service is provided (i.e., the date of the event)
- Indicate all candidate and election information for entries on Schedule B, Line 23 in the appropriate fields.

Scenario: Candidate Fundraiser

▣ Collecting Campaign Contributions at Event

- Partnership, partner or PAC may collect contributions
- If PAC collects contributions, campaign and PAC must report earmarked contributions on FEC reports
- If partnership or partner collects contributions, partnership must file conduit report; campaign must report earmarked contribution



Avoid earmarking rules by having campaign representative collect contributions



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Points to Remember: Collecting and forwarding money at PAC events

- Corporate rules do not apply
- If PAC collects contributions for campaign, PAC is considered conduit and both campaign and PAC must follow rules for reporting earmarked contributions.
- If partnership, partner or individual collects contributions and forwards them to campaign, earmarking rules at 11 CFR 110.6 are triggered (along with complex reporting) for both individual (or firm) and campaign
- Avoid triggering earmarking rules and reporting by having a campaign representative collect the contributions.

II. Independent Expenditures (All Nonconnected Committees)

Supporting Candidates

- ▼ Independent Expenditures
 - No coordination
 - Express advocacy
 - Unlimited
 - ▣ Made by
 - Super PAC
 - Hybrid PAC
 - Nonconnected PAC

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A. Who Makes Them and What Funds May be Used?

1. **Super PACs** – May use unlimited contributions raised from any source (except foreign nationals)
2. **Traditional Federal Nonconnected PACs** – May use funds that are raised within normal federal contribution limits and prohibitions.
3. **Hybrid PACs** – May use either its federal PAC (#2) subject to restrictions or its Non-contribution account which may use unlimited contributions raised from any source (except foreign nationals).

Independent Expenditures

Communications that:

- **Expressly advocate the election or defeat of clearly identified candidate; and**
- Are made without cooperation, consultation, request or suggestion of candidate or party committee



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B. 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.

C. Clearly Identified – 11 CFR 100.17

A candidate's name, nickname, photograph or drawing appears or identity is otherwise apparent through references.

- “The President”
- “Your Congressman”
- “The incumbent”

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

D. Express Advocacy – 11 CFR 100.22

Message unmistakably urges election or defeat of one or more clearly identified candidates.

1. 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

2. **Part A: Specific Call to Action – 11 CFR 100.22(a)**
 - a) **Explicit words of advocacy for or against a federal candidate**
 - “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**

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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3. **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.

Independent Expenditures

Communications that:

- Expressly advocate the election or defeat of clearly identified candidate; and
- **Are made without cooperation, consultation, request or suggestion of candidate or party committee**



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E. No Limits

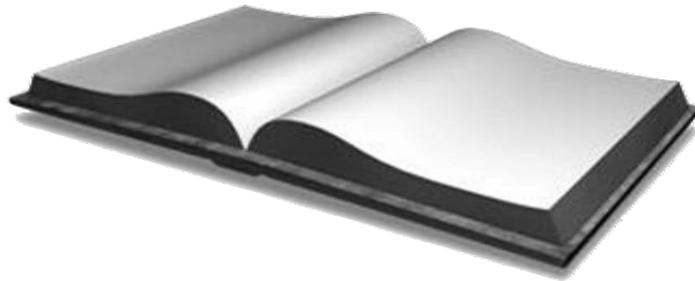
The PAC may spend an unlimited amount because the expenditure is not coordinated.

F. If Coordinated In-kind Contribution Results

Subject to coordinated communications test (see below).

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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III. Coordinated Communications

A. 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.”

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

1. Prohibited by corporation/labor organization.
2. Subject to limitations when done by individual or PAC.
3. In many cases, reportable by campaign or party committee as in-kind contribution.

Coordination Test

- ▶ Source of payment
- ▶ Content standard
- ▶ Conduct standard

C. 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.

Coordination Test

▼ Source of payment

- Paid for by someone besides the candidate, authorized committee or a party committee.

1. Source of Payment

Communication must be paid for by someone other than a candidate, an authorized committee or a political party committee. PAC pays for communication.

Coordination Test

▼ Content Standard

- Meeting one of these:
 - Electioneering Communication
 - Republication of Campaign Materials
 - Express Advocacy or the Functional Equivalent of Express Advocacy
 - Public Communication within Certain Time Frame Before Election

2. “Content Standard”

Includes republication of candidate material, express advocacy, public communication made within certain time frames that refers to a clearly identified candidate and (new) a communication that is the “functional equivalent of express advocacy.”

a) **Public Communications that are the 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.

- (1) Applies without regard to the timing of the communication or the targeted audience.
- (2) Applies outside the preelection period used for other public communications.
- (3) In its application of this test, Commission will follow Supreme Court’s reasoning in *FEC v. Wisconsin Right to Life*. For more information, see explanation and justification for this rule on FEC website:
http://www.fec.gov/law/cfr/ej_compilation/2010/notice2010-17.pdf.

- b) **Time Frames for Content Standard**
- (1) **Senate and House candidates** = 90 days before a primary or general election.
 - (2) **Presidential candidates** = Entire period from 120 days before the primary through date of general election.
 - (3) **Political parties (with no reference to candidate):**
 - **Non-presidential cycle** = 90 days before a primary or general election; or
 - **Presidential cycle** = 120 days before the date of a primary (on a state-by-state basis) through the general election.

Coordination Test

▼ **Conduct Standard**

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

3. **“Conduct Standard”**

Involves candidate’s agents in request or suggestion, material involvement or substantial discussion, or involves republication of candidate material, use of common vendor or use of prior employee or contractor.

- Safe harbor of 120 days applies to use of common vendor and use of former employee or contractor

Coordination Equation

Source + Content + Conduct = Coordination

Coordination = Contribution

Contribution = Limits + Prohibitions

No Coordination + Express Advocacy =
Independent Expenditure

Coordination Scenario



SCENARIO: Coordinated Communications

Milton Hershey, a founding member of Citizens Who Love Candy PAC, is a good friend of Kit Kat, who is running for Senate from Pennsylvania. Senator Kat is an incumbent who is facing a tough primary challenge. Hershey tells Senator Kat that he wants to help her campaign. As a result, they set up meetings between his PAC Executive Director, Joy Almond, and the Senator's Campaign Manager, Mr. Goodbar.

Almond and Goodbar met several times over the period of a month to discuss the content and timing of the ads. From these discussions emerged a plan that Citizens Who Love Candy PAC followed. The plan included two ads.

Ad #1:

First, Citizens Who Love Candy PAC paid for a radio ad to be broadcast on radio stations across the state **two weeks before the primary election**. The ad's text read:

We are at an important moment. Over the next several weeks, Congress will debate how we will take the steps to make our economy stronger. However, not all of the options are good options for Pennsylvania families. Fortunately, your Senators have always voted for legislation that helps keep our economy strong and supports working people in our state. Please call Senators Kit Kat and Peggy Parker immediately and urge them to support the American Economic Improvement Act of 2016 when it comes up for a vote in late June. Call the Capitol switchboard at 202-224-3121 and ask for your Senators. Again, that's 202-224-3121. Thank you for making your voice heard.

Ad #2:

One week before the primary election, Citizens Who Love Candy PAC airs the following ad on a cable system serving a county of 25,000 people, where polling showed Senator Kat having trouble.

In nearly 6 years as a United States Senator, Kit Kat has never missed a vote. She is putting the interests of Pennsylvania first and working hard to ensure that the voice of Pennsylvania's families are heard loud and clear in Washington. Call Senator Kat's office in Washington and let her know that you appreciate the hard work she's been doing on behalf of all of us. Let's fight to keep Senator Kat in Washington for another term. Be sure to vote on April 26!

Based on your understanding of coordination, we'll analyze both of these advertisements. Begin by answering these questions:

1. Who is paying for the communication (source of payment)?
2. What is the content and timing of the communications?
3. Is there express advocacy involved?
4. How does the conduct of the candidate's campaign and the PAC affect our analysis?

Coordination Scenario

- ▣ Who is paying for the communication (source of payment)?
- ▣ What is the content and timing of the communications?
- ▣ Is there express advocacy involved?
- ▣ How does the conduct of the candidate's campaign and the PAC affect our analysis?



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SCENARIO ANSWER KEY:

1. Who is paying for the communication?

In this case, Citizens Who Love Candy PAC is paying for both communications. Therefore, the “source of payment” standard is met for both ads.

2. What is the content and timing of the communications?

Both ads are run well within the timeframe for House/Senate candidates in the coordination rules (90 days before the election for Senate candidates). Ad #1 runs two weeks before the election and mentions Senator Kit Kat and Ad # 2 runs just one week before the election and also mentions the Senator.

3. Is there express advocacy involved?

Ad #1 cannot be construed as express advocacy, because it does not contain the explicit words of election or defeat. Even though this seems to be more of an issue advocacy communication, for purposes of coordination, we need to look further than simply express advocacy. Since it mentions Senator Kit Kat within 90 days of her primary election and runs in Pennsylvania, this meets the content standard, just as would an express advocacy communication.

Ad #2 is clearly express advocacy, as it states, “Let’s fight to keep Senator Kat in Washington for another term. Be sure to vote April 26!”

Both ads meet the “content standard” for coordinated communications.

4. How does the conduct of the candidate’s campaign and the PAC affect our analysis?

For both ads: According to our scenario, both ads were done as a result of “substantial discussion” between an agent of Senator Kat’s authorized committee (Campaign Manager Goodbar) and the PAC’s Executive Director (Almond). As such, this meets the “conduct standard” of the coordination rules.

Since we have met all three prongs of the coordination test, both of these ads would be considered coordinated communications. Therefore, any amounts spent by the PAC on these ads would be considered in-kind contributions to Senator Kit Kat’s campaign committee (subject to the applicable limits).

BONUS: Suppose Senator Kit Kat had merely asked Hershey to have his PAC air the ads, but there had been no other discussions between the PAC and the campaign, would that have changed the result?

No, in that case, they would meet a different conduct standard (request or suggestion by candidate). The communications would still be coordinated and thus in-kind contributions.

Scenario

- ▣ **Supporting Candidates**
 - Contributions *--coordinated; limited*
 - Independent Expenditures *--not coordinated; unlimited*

 Nonconnected PAC Webinar

Independent Expenditures

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

Disclaimers

- ▣ Identify who paid for a communication
- ▣ Clarify whether a campaign authorized it
- ▣ Appear on all “public communications,”
widely distributed emails, public websites

IV. **Disclaimers (11 CFR 110.11)**

Any independent expenditure (and any type of public communication) made by any type of nonconnected PAC in support of a federal candidate would require a disclaimer, as noted below.

Public Communication

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



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A. Public Communication Defined (11 CFR 100.26)

Includes communications made using the following media:

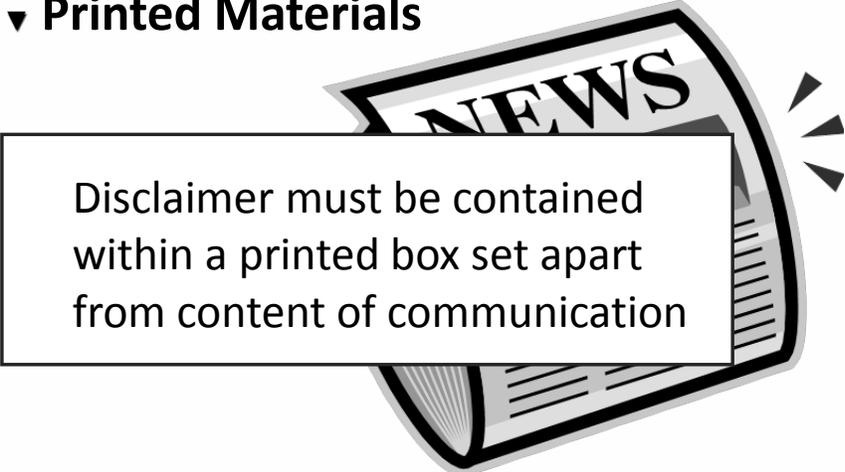
- Broadcast, cable or satellite;
- Newspaper or magazine;
- Outdoor advertising facility;
- Mass mailing (> 500 substantially similar mailings within 30 days);
- Phone bank (> 500 substantially similar calls within 30 days);
- Communications placed for a fee on another person's web page.

B. Disclaimer Also Required On:

1. Electronic mail (> 500 substantially similar communications sent by a political committee); and
2. Websites of political committees.

Clear and Conspicuous

▼ Printed Materials



Disclaimer must be contained
within a printed box set apart
from content of communication

3. **Disclaimer must be clear and conspicuous.**
4. **Special Rules for Printed Communications (11 CFR 110.11(c)(2))**
 - a) Disclaimer must be contained within a printed box set apart from content of communication.
 - b) Print must be of sufficient type size to be “clearly readable” and must have a reasonable degree of color contrast between the background and the printed statement.
 - c) **Safe Harbor:** 12 point type in newspapers, magazines, flyers, signs and other printed communications no larger than 24” x 36.”

Clear and Conspicuous

▼ Radio and Television

- Audio approval statement voiced by candidate/sponsor
- TV: Full screen view or photo of candidate or sponsor and 4 x 4 written disclaimer



5. Additional Requirements for TV and Radio Ads (11 CFR 110.11(c)(3) and (4))

Besides the paid for by and authorization statements, TV and radio ads also require:

a) **Authorized by the candidate and candidate’s committee – “Stand by Your Ad” Provision**

- (1) Candidate must deliver an audio statement identifying himself/herself, and stating that he/she has approved the communication.
- (2) **TV Only:**
 - (a) Full-screen view of the candidate making the statement; or photo of candidate that appears during candidate’s voice-over statement (**safe harbor:** 80% vertical picture height).
 - (b) “Clearly readable” written statement at end of communication: $\geq 4\%$ vertical picture height, ≥ 4 seconds, reasonable degree of color contrast between background and statement.

b) **Not authorized by the candidate’s committee (e.g., Independent Expenditures)**

- (1) There must be an audio statement by the entity responsible for the communication stating that he/she/they are responsible for the communication.
- (2) A similar statement must also appear in writing, following safe harbors above.

Disclaimer Exceptions

- ▣ Not required on small items or when impractical



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2015-16 Election Cycle

Nonconnected PAC Webinar

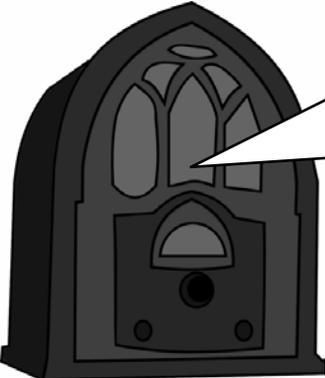
C. Disclaimer is Not Required When:

1. It cannot be conveniently printed (e.g., pens, bumper stickers, campaign pins and buttons);
2. Its display is not practical (e.g., wearing apparel, skywriting, water towers); or
3. Item is of minimal value, does not contain a political message and is used for administrative purposes (e.g., checks and receipts).

D. Wording of Disclaimer

Disclaimer Example

Coordinated Communication



Paid for by Citizens Who Love Candy PAC and authorized by the Willy Wonka for Congress Committee. The Citizens Who Love Candy PAC is responsible for the content of this advertisement. Visit us online at www.candypac.org.

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2015-16 Election Cycle

Nonconnected PAC Webinar

1. **Communications Authorized by Candidate (11 CFR 110.11(b)(2))**
 - a) If a committee pays for a communication that is authorized by a candidate or candidate's committee, it must identify the committee that paid for the communication and the name of the candidate or campaign that authorized the communication.
 - b) *"Paid for by Citizens Who Love Candy PAC, www.candypac.org and authorized by Peppermint Patty for Congress."*

Disclaimer Example

Independent Expenditure

The Washington Street Post-Times

CANDY PAC encourages you to
Elect Willy Wonka to Congress

Willy Wonka has a history of supporting candy makers and promoting candy consumption. For those reasons and others, we think he belongs in Congress.

Ad paid for by . . .
NOT authorized by candidate's campaign

Paid for by Citizens Who Love Candy PAC (www.candypac.org) and not authorized by any candidate or campaign

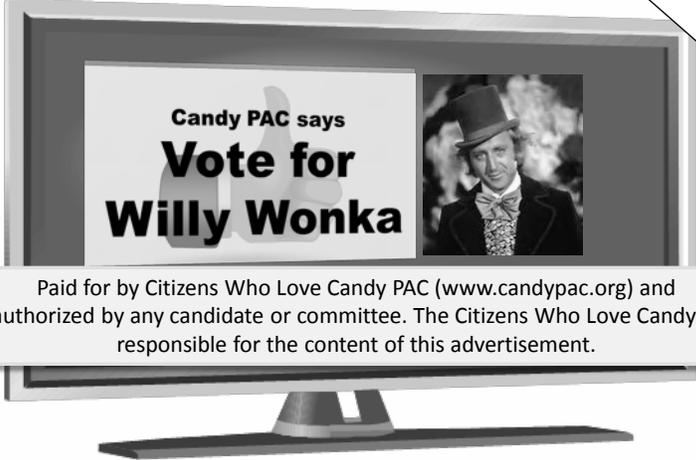
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2015-16 Election Cycle

Nonconnected PAC Webinar

2. **Communications Not Authorized by Candidate (i.e., Independent Expenditures, Public Communications lacking express advocacy) (11 CFR 110.11(b)(3))**
 - a) Communications not authorized by a candidate or his/her campaign, including any solicitation, must disclose the full name and permanent street address, telephone number or website address of the person who paid for the communication, and also state that the communication was not approved by any candidate.
 - b) *“Paid for by the Citizens Who Love Candy PAC (www.candypac.org) and not authorized by any candidate or candidate’s committee.”*

Disclaimer Example

Independent Expenditure



Paid for by Citizens Who Love Candy PAC (www.candypac.org) and not authorized by any candidate or committee. The Citizens Who Love Candy PAC is responsible for the content of this advertisement.

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2015-16 Election Cycle

Nonconnected PAC Webinar

- c) **TV/Radio Version of Wording:**
Paid for by Citizens Who Love Candy PAC (www.candypac.org) and not authorized by any candidate or committee. The Citizens Who Love Candy PAC is responsible for the content of this advertisement.

Independent Expenditures

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

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2015-16 Election Cycle

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Reporting IEs

- ❑ All PACs, including Super PACs and Hybrid PACs, report independent expenditures on Schedule E - Form 3X
- ❑ Date made = Date disseminated
- ❑ Aggregate on per calendar year, per election, per office sought basis

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2015-16 Election Cycle

Nonconnected PAC Webinar

V. Disclosure of Independent Expenditures

- A. **Report using FEC 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 the FEC's interpretive rule at 76 FR 16233 (October 4, 2011) (online at http://www.fec.gov/law/cfr/ej_compilation/2011/notice_2011-13.pdf.)
- C. **Aggregation**
Done on a per calendar year, per election, per office sought (race) basis.

Reporting IEs

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

24- and 48-Hour IE Reports

SCHEDULE E (FEC Form 3X)
ITEMIZED INDEPENDENT EXPENDITURES

NAME OF COMMITTEE (In Full) Citizens Who Love Candy PAC		PAGE OF FOR LINE 24 OF FORM 3X
FEC IDENTIFICATION NUMBER C		
Check if <input type="checkbox"/> 24-hour report <input type="checkbox"/> 48-hour report <input type="checkbox"/> New report <input type="checkbox"/> Amends report filed on		MM / DD / YYYY
Full Name of Payee		Date of Public Distribution/Dissemination MM / DD / YYYY
Mailing Address		Amount
City	State	Zip Code
Purpose of Expenditure	Category/Type	Date of Disbursement or Obligation MM / DD / YYYY
Name of Federal Candidate	<input type="checkbox"/> Support <input type="checkbox"/> Oppose	Office Sought: <input type="checkbox"/> House District: _____ <input type="checkbox"/> President <input type="checkbox"/> Senate State: _____
Calendar Year-To-Date Per Election for Office Sought		Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▶

24- and 48-Hour IE Reports

- ▣ Filed with the FEC
- ▣ Electronic filers submit reports electronically
- ▣ Paper filers:
 - FAX to (202) 219-0174
 - Email to 2022190174@fec.gov
- ▣ All filers may use online filing system



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2015-16 Election Cycle

Nonconnected PAC Webinar

- D. Additional reporting on 48- and 24- hour basis:**
- 1. 24-Hour Reporting (11 CFR 104.5(g)(2))**
 - a) 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.
 - b) A 24-Hour Report is required each time an additional \$1,000 is aggregated in independent expenditures.
 - 2. 48-Hour Reporting (11 CFR 104.5(g)(1))**
 - a) 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.
 - b) A 48-Hour Report is required each time an additional \$10,000 is aggregated in independent expenditures.
 - 3. 24-Hour and 48-Hour Reports** are filed using stand-alone Schedule Es; check appropriate box to note type of report.
 - 4. The 24-Hour Report and 48-Hour Report time frames** are located on our website at http://www.fec.gov/info/report_dates_2015.shtml#ie.
 - 5. Online filing of 24-Hour and 48-Hour reports available** at <https://webforms.fec.gov/onlinefiling/form24/login.htm>.

Reporting Scenario #6: Large Last-Minute Independent Expenditures

Reporting Scenario #6

Independent Expenditures

- ▣ What type of transaction is this?
- ▣ How must the committee disclose the transaction?
- ▣ What information from the scenario do we need to disclose this correctly?
- ▣ Tricky Issues?

Background: House candidate Peppermint Patty wouldn't accept PAC checks and her campaign would not speak to representatives of the Citizens Who Love Candy PAC. However, the PAC still wanted to lend its support to candidate Patty. On October 27, 2016, just before the November 8 general election, the PAC runs a \$7,500 radio ad on WBQW-FM supporting Patty. The bill for the ads was paid on November 27, 2016.

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 Reporting Scenario #6: Large Last-Minute Independent Expenditures

Reporting Independent Expenditures

Last-Minute Reporting:

- ☐ What type of transaction is this?
ANSWER: Last-minute independent expenditure
- ☐ How must the committee disclose transaction(s)?
ANSWER: 24-hour report; again on post-general
- ☐ What information from the scenario do we need to disclose this correctly?
- ☐ Tricky Issues?

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).

Reporting Example Continues on Next Page

Initial Reporting: 24-Hr Schedule E

**24-Hour
IE Report**

**SCHEDULE E (FEC Form 3X)
ITEMIZED INDEPENDENT EXPENDITURES**

PAGE **1** OF **1**
FOR LINE 24 OF FORM 3X

NAME OF COMMITTEE (In Full) Citizens Who Love Candy PAC		FEC IDENTIFICATION NUMBER C 00000004	
Check if <input checked="" type="checkbox"/> 24-hour report <input type="checkbox"/> 48-hour report		Check if <input checked="" type="checkbox"/> New report <input type="checkbox"/> Amends report filed on	
Full Name of Payee WBQW-FM		Date of Public Distribution/Dissemination 10 / 27 / 2016	
Mailing Address 12100 West Howard Avenue		Amount 7,500.00	
City Greenfield	State WI	Zip Code 53228	Date of Disbursement or Obligation
Purpose of Expenditure Radio Ad		Category/Type 004	
Name of Federal Candidate Peppermint Patty		<input checked="" type="checkbox"/> Support <input type="checkbox"/> Oppose	Office Sought: <input checked="" type="checkbox"/> House District: 4 <input type="checkbox"/> President <input type="checkbox"/> Senate State: WI
Calendar Year-To-Date Per Election for Office Sought		7,500.00	Disbursement For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify) ▶



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2015-16 Election Cycle

Nonconnected PAC Webinar

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

Answer: Key facts in the scenario include the date of dissemination (10/27/16), 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 10/20/16-11/28/16, and due on 12/8/16), 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.

Reporting Example Continues on Next Page

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) Citizens Who Love Candy PAC		FEC IDENTIFICATION NUMBER C 00000004	
Check if <input type="checkbox"/> 24-hour report <input type="checkbox"/> 48-hour report <input type="checkbox"/> New report <input type="checkbox"/> Amends report filed on		M M / D D / Y Y Y Y	
Full Name of Payee WBQW-FM		Date of Public Distribution/Dissemination 10 / 27 / 2016	
Mailing Address 12100 West Howard Avenue		Amount MEMO	
City Greenfield	State WI	Zip Code 53328	7,500.00
Purpose of Expenditure Radio Ad		Category/Type 004	Date of Disbursement or Obligation M M / D D / Y Y Y Y
Name of Federal Candidate Peppermint Patty		<input checked="" type="checkbox"/> Support <input type="checkbox"/> Oppose	Office Sought: <input checked="" type="checkbox"/> House District: 4 <input type="checkbox"/> President <input type="checkbox"/> Senate State: WI
Calendar Year-To-Date Per Election for Office Sought		7,500.00	
		Disbursement For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify) ▶	

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2015-16 Election Cycle

Nonconnected PAC Webinar

c

Reporting Example Continues on Next Page

**Debt Owed
(Post-General)**

SCHEDULE D (FEC Form 3X)		(Use separate schedule(s) for each numbered line)	PAGE 1 OF
DEBTS AND OBLIGATIONS			FOR LINE NUMBER: (check only one)
Excluding Loans			<input type="checkbox"/> 9 <input checked="" type="checkbox"/> 10
NAME OF COMMITTEE (In Full)			
Citizens Who Love Candy PAC			
A. Full Name (Last, First, Middle Initial) of Debtor or Creditor		Nature of Debt (Purpose):	
WBQW-FM		Radio Ad for	
Mailing Address		Peppermint Patty	
12100 West Howard Avenue			
City	State	Zip Code	
Milwaukee	WI	53328	
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

When full payment is made to the vendor on 11/27/16, 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: 11/29/16-12/31/16).

Reporting Example Continues on Next Page

Subsequent Payment

**IE Payment
(Year-End)**

**SCHEDULE E (FEC Form 3X)
ITEMIZED INDEPENDENT EXPENDITURES**

PAGE **1** OF
FOR LINE 24 OF FORM

NAME OF COMMITTEE (In Full) Citizens Who Love Candy PAC		FEC IDENTIFICATION NUMBER C 00000004	
Check if <input type="checkbox"/> 24-hour report <input type="checkbox"/> 48-hour report <input type="checkbox"/> New report <input type="checkbox"/> Amends report filed on			
Full Name of Payee WBQW-FM		Date of Public Distribution/Dissemination 10 / 27 / 2016	
Mailing Address 12100 West Howard Avenue		Amount 7,500.00	
City Greenfield	State WI	Zip Code 53328	Date of Disbursement or Obligation 11 / 27 / 2016
Purpose of Expenditure Radio Ad disseminated on 10/27/16		Category/ Type 004	
Name of Federal Candidate Peppermint Patty		<input checked="" type="checkbox"/> Support <input type="checkbox"/> Oppose	Office Sought: <input checked="" type="checkbox"/> House District: 4 <input type="checkbox"/> President <input type="checkbox"/> Senate State: WI
Calendar Year-To-Date Per Election for Office Sought 7,500.00		Disbursement For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify) ▶	



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2015-16 Election Cycle

Nonconnected PAC Webinar

Reporting Example Continues on Next Page

**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 OF 1 FOR LINE NUMBER: (check only one) <input type="checkbox"/> 9 <input checked="" type="checkbox"/> 10
NAME OF COMMITTEE (In Full) Citizens Who Love Candy PAC			
A. Full Name (Last, First, Middle Initial) of Debtor or Creditor WBQW-FM		Nature of Debt (Purpose): Radio Ad for Peppermint Patty	
Mailing Address 12100 West Howard Avenue			
City State Zip Code Milwaukee WI 53328			
Outstanding Balance Beginning This Period <div style="border: 1px solid black; padding: 5px; display: inline-block;">7,500.00</div>			
Amount Incurred This Period <div style="border: 1px solid black; padding: 5px; display: inline-block;">0.00</div>		Payment This Period <div style="border: 1px solid black; padding: 5px; display: inline-block;">7,500.00</div>	
Outstanding Balance at Close of This Period <div style="border: 1px solid black; padding: 5px; display: inline-block;">0.00</div>			

Points to Remember: 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 2015 Special Election are located on our web site at http://www.fec.gov/info/charts_ie_dates_2015.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.

How to Get Help from the FEC

FEC.gov, YouTube (FECTube)
& Twitter (@fecupdates)

FECMail (RSS) and info@fec.gov

FAXLINE: (202) 501-3413

Toll free information line:
(800) 424-9530



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Workshop Evaluation

Help Us Help You!

Please complete an evaluation
of this workshop.

<https://www.surveymonkey.com/r/W6K5BQD>



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2015-16 Election Cycle

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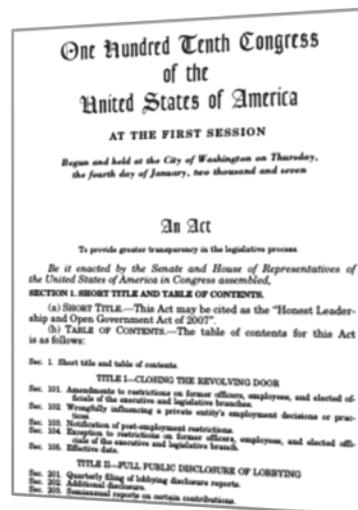
TRAVEL USING NON-COMMERCIAL AIRCRAFT AND LOBBYIST BUNDLING DISCLOSURE

Objectives

- ▣ Identify types of Nonconnected PACs and review basic characteristics and organization
- ▣ Discuss fundraising rules
- ▣ Describe methods of supporting federal candidates
- ▣ **Highlight key rules on travel and lobbyist bundling**

Rules for Leadership PACs

- ▣ Non-Commercial Air Travel
- ▣ Lobbyist Bundling



Non-Commercial Air Travel

House Leadership PACs

Travel on non-commercial aircraft is **prohibited**.

- ☐ In general, expenditures may be made for air travel only if the aircraft is operated by:
 - A commercial air carrier; or
 - Federal/state government entity.
- ☐ Prohibition may not be avoided by third-party payment as in-kind contribution.



Nonconnected PAC Webinar

I. **Travel on Behalf of Leadership PACs of House Members (11 CFR 100.93(c)(2) and 113.5(b))**

A. **Use of Non-Commercial Aircraft Prohibited**

Campaign travelers traveling on behalf of House candidates, their authorized committees **and Leadership PACs are prohibited from using non-commercial aircraft.**

1. The campaign traveler may utilize air travel only if the aircraft is operated by a (1) Commercial air carrier; or (2) Federal or state government entity.
2. Prohibition cannot be avoided by third-party payment to the service provider or third-party payments treated as an “in-kind” contribution (e.g., individual may not pay another person to take House Leadership PAC-related flight on private aircraft).
3. House Leadership PAC representative **may** travel on non-commercial aircraft when traveling on behalf of another committee (i.e. Presidential, Senate, party committees, etc.) but **may NOT** travel on non-commercial aircraft when traveling on behalf of the Leadership PAC. 74 FR 63956.

B. **Use of Government Conveyance – 11 CFR 100.93(e)**

Campaign travelers traveling on behalf of House Leadership PACs must reimburse a government entity for travel on any government-operated aircraft at either the “Per Candidate Campaign Traveler” or “Private Traveler Reimbursement” rates. (For more information, see [January 2010 issue of FEC Record newsletter](#), pp. 3-4).

Non-Commercial Air Travel

Presidential/Senate Leadership PACs and Other Nonconnected PACs

To avoid in-kind contribution, private aircraft provider must be paid (within 7 days) no less than:

- ▣ Lowest unrestricted, non-discounted fare (1st class/coach rate), if regular service is available.
- ▣ Otherwise, charter rate for comparable aircraft.

Note: Travel with candidate traveler, campaign must pay entire charter fare – PAC pays \$0.



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2015–16 Election Cycle

Nonconnected PAC Webinar

- C. **Travel on Behalf of Other Nonconnected PACs (Including Presidential or Senate Leadership PACs) (11 CFR 100.93(c)(3))**
1. Campaign traveler traveling on behalf of a **Presidential or Senate candidate's Leadership PAC**, party committee, separate segregated fund or **nonconnected PAC** must pay the service provider no less than the following to avoid receipt of in-kind contribution (formulae determined by travel cities).
 - a) **Travel between cities with regularly scheduled first-class air service:** Lowest unrestricted and non-discounted first-class air fare.
 - b) **Travel between cities served by regularly scheduled coach service but not regularly scheduled first-class airline service:** Lowest unrestricted and non-discounted coach airfare.
 - c) **Travel between cities not served by regularly scheduled commercial airline service:** Usual charter rate for comparable commercial aircraft of sufficient size to accommodate campaign travelers, and security personnel if applicable.
 2. **Date of public availability:** Payment rate must be the rate available to the general public for the dates traveled or within seven (7) calendar days thereof. 11 CFR 100.93(f).
 3. **Travel with candidate campaign traveler:** When campaign committee (Senate/Pres/VP) pays for flight on non-commercial aircraft, campaign required to pay full rate. Any non-candidate campaign traveler on flight pays \$0 – may not relieve any of campaign's payment obligation.

D. Basic Rule for Senate/Presidential Leadership PACs and Nonconnected Committees (11 CFR 100.93(b))

1. No contribution results if political committee on whose behalf the travel is conducted pays the provider the full value of the travel by all campaign travelers who **travel on behalf of** that committee.
2. Reimbursement must be provided **no later than seven (7) calendar days after the date the flight began** at one of the following rates to avoid the receipt of an in-kind contribution from service provider.

Lobbyist Bundling

- ▣ **Bundled Contributions Defined:**
 - Intermediary of a bundled contribution must be a Lobbyist / Registrant / PAC
 - Two Types of Bundled Contributions
 - Forwarded by Lobbyist
 - Received by Leadership PAC, Lobbyist given “credit” for raising \$\$
 - Exception: Lobbyist/Registrant/PAC’s own funds
- ▣ **Tracking and Crediting Includes:**
 - Records
 - Designations or other means of recognizing (i.e., titles, tracking identifiers, access or mementos)



FECConnect LIVE
2015-16 Election Cycle

Nonconnected PAC Webinar

II. Disclosure of Contributions Bundled by Lobbyists/Registrants and Lobbyist/Registrant PACs (11 CFR 104.22) (Leadership PACs)

A. Basic Rule

Generally, to be a *bundled contribution*, the intermediary between the contributor and recipient leadership PAC must be a *lobbyist, registrant or lobbyist registrant PAC*.

1. **Determining Whether a Person is Known to be a Lobbyist/Registrant or Lobbyist/Registrant PAC**
 - a) **Lobbyist/Registrant.** At the time the contribution is forwarded or received determine if the person is:
 - (1) Listed as current registrant under section 4(a) of the Lobbying Disclosure Act of 1995 (the LDA); or

- (2) An individual listed on a current registration filed under Section 4(b)(6) or current report filed under Section 5(b)(2)(C) of the LDA.
- b) **Lobbyist/Registrant PAC.** At the time the contribution is forwarded or received determine if the committee is:
 - (1) Identified as a lobbyist/registrant PAC on its FEC Form 1 (Statement of Organization); or
 - (2) Listed as a political committee established or controlled by a lobbyist or registrant on a report filed under Sec. 203(a) of HLOGA, amending the LDA.
- c) **Consult the websites maintained by:**
 - (1) Clerk of the House: <http://clerk.house.gov>
 - (2) Secretary of the Senate: http://www.senate.gov/pagelayout/legislative/g_three_sections_with_teasers/lobbyingdisc.htm
 - (3) FEC: <http://www.fec.gov>
- d) **Proof of Calculated Search**

Computer printout or screen capture showing absence of person's name on the Senate, House or FEC websites may be used to demonstrate reporting committee's efforts to determine if person in question is a lobbyist/registrant or lobbyist/registrant PAC. See 11 CFR 104.22(b)(2)(ii)

B. "Bundled" Contributions

1. Forwarded Contribution

Contribution (monetary or in-kind) delivered or transmitted by physical or electronic means to leadership PAC by lobbyist/registrant or lobbyist/registrant PAC or by any person the leadership PAC knows to be acting on behalf of a lobbyist/registrant or lobbyist/registrant PAC.

2. Received and Credited Contribution

Contribution (monetary or in-kind) received by leadership PAC from contributor and credited by leadership PAC to a lobbyist/registrant or lobbyist/registrant PAC through records, designations, or other means of recognizing that money has been raised by the lobbyist/registrant or lobbyist/registrant PAC.

a) **Track or Give Credit for Contributions: Records**

Written evidence (i.e., computer files, databases) that the leadership PAC attributes contributions received by campaign as raised by a lobbyist/registrant/PAC.

b) **Track or Give Credit for Contributions: Designations or Other Means of Recognizing.**

Benefits given by the leadership PAC to persons for raising a certain amount of contributions including, but not limited to:

- (1) **Titles** assigned by the leadership PAC;

- (2) **Tracking identifiers** assigned by the leadership PAC for the purpose of maintaining information about the amount of contributions the person raises;
 - (3) **Access** (includes offers or attendance) to leadership PAC events or activities; and
 - (4) **Mementos** given by the leadership PAC (e.g. photos with the officeholder or autographed copies of books authored by officeholder).
3. **What is NOT a “Bundled” Contribution?**
Personal funds contributions from lobbyists/registrants or spouses of individual lobbyists/registrants; and contributions made by lobbyist/registrant PAC from its own PAC funds.

Lobbyist Bundling

- ▣ **Disclosure of Bundled Contributions:**
 - 2015 Bundling Disclosure Threshold = \$17,600
 - File Form 3L with Form 3X (work with RAD analyst)
Required if Lobbyist forwards, or is credited with raising > \$17,600 during specific covered period
- ▣ **ONLY Requirement for Most Nonconnected PACs:**
 - Lobbyist/Registrant PACs amend FEC Form 1 to identify themselves - Line 5(f)

- C. **Disclosure of Lobbyist Bundling Activity**
1. **2015 Disclosure Threshold = \$17,600**
Leadership PACs that receive two or more bundled contributions from a lobbyist/registrant or lobbyist/registrant PAC aggregating in excess of \$17,600 during a specific *covered period* are required to disclose activity on FEC Form 3L.
 2. **Bundled Contributions Disclosed on Form 3L**
Form 3L is filed on the same quarterly schedule, simultaneously with Form 3X. Additional semi-annual covered period disclosure for report due in July (July Quarterly or pre-election report, if applicable) and January (Year-End Report).

3. FEC Form 3L

Leadership PACs must also file a semi-annual report for any semi-annual period for which they filed a quarterly report.

a) **Example.** A leadership PAC that filed an April Quarterly 3L Report but did not trigger the 3L filing requirement during the July Quarterly period would not be responsible for filing a July Quarterly 3L Report, but would be responsible for filing a Mid-Year Semi-Annual 3L Report to reflect its bundled contributions during the January 1 through June 30 covered period.

b) **Form 3L and Instructions:**

<http://www.fec.gov/pdf/forms/fecfrm3l.pdf> and
<http://www.fec.gov/pdf/forms/fecfrm3l.pdf>

D. Has My Leadership PAC Triggered Disclosure of Bundled Contributions?

To determine whether your leadership PAC triggers disclosure under these rules, ask the following three questions:

1. Does the leadership PAC receive forwarded contributions or give credit to fundraisers for contributions they raise?
2. If so, are contributions forwarded by, or does campaign give credit to, persons that qualify as lobbyists/registrants or lobbyist/registrant PACs?
3. If so, does the amount forwarded by, or credited to, a lobbyist/registrant or lobbyist/registrant PAC exceed \$17,600 during the covered period?

If the answer to all three questions is yes, then the leadership PAC must file a Form 3L.

E. Other Types of Nonconnected PACs

Check box on Form 1 if your PAC is a lobbyist/registrant PAC.

Workshop Evaluation

Help Us Help You!

Please complete an evaluation
of this workshop.

<https://www.surveymonkey.com/r/W6K5BQD>