



# Trade Association PAC Operations, Part 1

April 29, 2015  
1:15 – 2:45 p.m.

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## Objectives

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

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# Prohibition

**Review**

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



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## 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



### Key Point:

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

Exception: Create and Administer SSF



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- 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.

## PAC Solicitations

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What is a solicitation?

Please give  
to our PAC...



Why does it matter?

## What is a Solicitation?

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- ▣ 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.)

#### **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

### B. Communication is Not a Solicitation if it:

1. Does not encourage support for the PAC.
2. Does not facilitate the making of contributions.
3. Merely announces existence of PAC and explains legal requirements that apply to a PAC.

4. Provides statistical information about the PAC's receipts and contributions.
5. Identifies candidates supported by the PAC (but does not suggest that supporting the PAC will help elect those candidates).
6. 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."*

## 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



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- C. Importance of Knowing When Communication = PAC Solicitation**  
Must be able to recognize solicitation in order to know when solicitation rules are triggered and to avoid it reaching individuals outside restricted class for solicitation purposes.

### III. Basic Solicitation Rules

## Basic Rules Apply

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1. Restricted Class Only
2. Solicitation Notices Always
3. Forward Contributions, 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



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### A. At Any Time Solicitation of Only Restricted Class

#### 1. Definition of Member (for Labor/Trade/Membership 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 AOs 2013-08 and 2003-13, student members 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/Administrative Staff
  - Individual and Noncorporate Members
  - Executive/Admin. Staff of Corporate/Partnership/LLC Members With Prior Approval



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2. **Who is in Restricted Class of a Trade 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.**
    - (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).
  - c) **With prior corporate approval** (discussed below), **corporate members' restricted class** and their families.
    - **NEW!** Member partnerships and LLCs that are wholly owned by corporations may now authorize the trade association to solicit their executive/administrative personnel, following the prior approval rules. AO 2014-17.
  - d) **Families of the above groups**  
See AOs 2013-06 and 1980-102.

## **Prior Approval for Corporate/Partnership/LLC Members**

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



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### **3. Prior Approval by Corporate/Partnership/LLC 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:**

- Approval must be in writing and addressed to representative of member with whom association normally conducts activities.
- Approval must state that:
  - Corporate/partnership/LLC approval is necessary before association or PAC conducts a solicitation.
  - Corporation/partnership/LLC may not authorize any other request by a different trade association to solicit its restricted class that calendar year.
- Approval must be given as “[Signature], for [Name of Corporation].” AO 2000-22.  
Example: “Jane Doe, for XYZ Corporation”
- Electronic signature of written approval OK. AO 2000-22.
- Request for approval placed on the association’s “member-only” web page OK. AO 2000-10.
- Multiyear approval OK, but with a separate signature line for each year. AO 1984-61.
- May include sample. 11 CFR 114.8(d)(3).

## Beyond Restricted Class

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- ▣ Trade Association/PAC may NOT solicit:
  - Foreign Nationals (even if member)
  - PACs of Corporate Members
  - Executives of Corporate/Partnership/LLC Members that have NOT signed Prior Approval
  - General Public



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4. **Who is Not Solicitable?**
  - a) Foreign nationals (including those who are members of association)
  - b) Corporate members and their PACs
  - c) Executives and stockholders of corporate/partnership/LLC members that have not signed the prior approval request.
  - d) General public

## Twice Yearly Solicitations

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- ▣ Twice a year SSFs may solicit:
  - Limited group outside restricted class (i.e., rank and file association employees)
  
- ▣ Must preserve anonymity
  - Custodial arrangement
  - Mail solicitation to individual's home



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**B. Twice Yearly Solicitations (11 CFR 114.6)**

1. Twice a year, a trade association PAC may solicit rank and file (i.e., non-executive or non-administrative) association employees.
2. Must use custodial arrangement to preserve anonymity.
3. Must mail solicitation to employee's home.

# Campaign Guide Chart

Who May Be Solicited				
Who May Be Solicited <sup>a</sup>	By Corporation	By Labor Organization	By Incorporated Membership Organization <sup>c</sup>	By Incorporated Trade Association
<b>At Any Time<sup>b</sup></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
<b>Twice Yearly<sup>d</sup></b>	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

From page 22 of the *Campaign Guide for Corporations and Labor Organizations*, available online at <http://www.fec.gov/pdf/colagui.pdf>

## Objectives – Part 1

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

## Basic Rules Apply

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



## Solicitation Notices

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- ▣ 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

### C. **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
- c) Guideline on amount is merely suggestion; no minimum may be specified.

#### 3. **Examples:**

See AOs 2006-17, 2003-06 and 1997-25, and MURs 5681 and 5337.

**Example**  
**AO 2006-17**

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 org. 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

	<u>HOURLY</u>		<u>SALARIED</u>			
	<u>Authorized Amount</u>	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	0.96	3.85
ECHO (Electric Cooperatives Help Organization)	0.42	0.42	0.42	0.42	0.42	0.42
EMPL FUND (State Candidate Support)	0.66	0.66	1.47	2.23	2.23	1.88
BEC PAC (Federal Candidate Support)	0.96	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.



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**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."* 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."* Taken together, these statements comply with 11 CFR 114.5(a)(2) and (a)(4).

## Basic Rules Apply

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1. Restricted Class Only
2. Solicitation Notices Always
- 3. Forward Contributions, Records On Time**



## Collection Rules

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

**D. 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 Made 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. SSF Contributions Collected by 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 or make one electronic transfer 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 check. (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. See AO 2003-22.

## Objectives – Part 1

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

### IV. Solicitation Techniques

## Solicitation Techniques

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- ▣ **Payroll Deduction**
- ▣ Prizes and Entertainment
- ▣ Communications

## Payroll Deduction

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Basic Rules Apply:

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

- 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) Forward contributions and records – connected organization is acting as the collecting agent here.
    - d) Date of receipt for reporting purposes = date deducted from paycheck. AOs 2000-11 and 1999-33.

## Payroll Deduction

### ▣ Payroll Deduction Authorization Required:

- No reverse checkoff
- Written, electronic or telephone-recorded
- Retain for 3 years after last reported contribution from employee
- Signed authorization not only way to satisfy recordkeeping requirement



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### 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 2001-4 (fn. 4).

### 3. **Electronic Deductions OK (AOs 2001-04, 1999-03 and 1997-09)**

#### a) **Elements to include:**

- **Passwords**
- **Email confirmations**
- **Ability to modify/revoke authorization**
- **Retention of authorization**
- **Notices worked into presentation**

#### b) **Formats approved via AOs:**

- The use of a digital electronic signature to authorize payroll deductions for a corporate PAC. AO 1999-03.
- 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.
- The use of telephone recorded conversations to obtain and maintain authorization for payroll deductions for an organization’s PAC. AO 2013-12.

4. **Written Authorization Required**
- a) Employee gives written 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) For suggested methods for how to keep these records, see 7/7/06 policy statement online at [http://www.fec.gov/law/policy/notice\\_2006-11.pdf](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 any costs

5. **Corporate Members of Trade Association (11 CFR 114.8(e)(4) and (5))**
- a) FEC rules permit payroll deduction by corporate members for contributions to trade association PAC.
  - b) If corporation allows trade association PAC to use its payroll deduction system, corporation shall permit use of payroll deduction by union representing its employees, upon request.
  - c) **Application to Trade Associations**  
**AO 2012-15:** Corporations owned by members of a trade association may provide payroll deduction to enable member-employees to contribute to the association's SSF. The membership organization must pay the corporations in advance for their services.

## Reporting Example

### Itemizing Contributions via Payroll Deduction & Fundraising Events

- How does the committee disclose the transaction?
- What information do we need to disclose this correctly?
- Tricky Issues?

### **Reporting Example #1: Reporting Contributions Raised Through Fundraising Events and Payroll Deduction**

Avery and Associates has received authorization from Donald Olson, a company executive, to deduct \$20 from his biweekly paycheck as a contribution to a trade association PAC, the Creative Minds Association PAC. (Assume that Avery and Associates is a corporate member of the trade association and has granted prior approval to the trade association PAC.) The first deduction was taken out of Donald's paycheck on January 24, 2015. The payroll department forwarded the money on February 4 to the Creative Minds Association PAC's treasurer, who had arranged for an electronic transfer into the PAC's account on the same day.

Planning ahead, on May 27, Donald reached an aggregate total of \$200 exactly. On June 13, he will reach \$220. By June 27, he will have an aggregate year-to-date total of \$240.

As a big supporter of the PAC, Donald, in addition to his payroll deductions totaling \$240 as of June 27, also contributed \$150 by buying a silent auction prize at a PAC event on June 30.

Assume for this example that the Creative Minds Association 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.

Donald’s initial contribution in January does not require itemization as Donald has not yet contributed over \$200 for the calendar year. Further, the contributions with an aggregate calendar year to date amount ≤ \$200 must be included on Line 11(a)(ii) (*unitemized contributions from individuals*) of the appropriate reporting periods. However, on June 13, he will reach \$220 in contributions for the calendar year. 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 Donald’s contributions on Schedule A for Line 11(a)(i).

**Here is an example of the payroll deduction itemization:**

## July Monthly Report (M7)

Payroll Deduction

**Schedule A, Line 11(a)**

<b>SCHEDULE A (FEC Form 3X) ITEMIZED RECEIPTS</b>	Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one) <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) <b>Creative Minds Association PAC</b>		
Full Name (Last, First, Middle Initial) <b>A. Olson, Donald</b>		Date of Receipt Payroll Deduction
Mailing Address <b>401 East 67<sup>th</sup> Street</b>		
City <b>New York</b>	State <b>NY</b>	Amount of Each Receipt this Period <b>40.00</b>
Zip Code <b>18501</b>	FEC ID number of contributing federal political committee. C	
Name of Employer <b>Avery &amp; Associates</b>	Occupation <b>Copywriting Director</b>	<b>\$20.00 biweekly</b>
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Aggregate Year-to-Date <b>240.00</b>	

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- **Contributions that aggregate more than \$200** – need name, address, occupation and employer information of contributor, total amount deducted during reporting period, frequency of deduction and amount per deduction.

### 3. Tricky Issues

#### Points to Remember

- Itemize contributions (including payroll deduction 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.
- 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. The "date of receipt" under FEC rules at 102.8 is the date that the collecting agent obtains possession of the funds (in other words, deducts the contribution).
- Separately itemize payroll deduction contributions from those raised using other methods.
- 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 would then have 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.
- For paper filers, instead of stating each date of receipt, type "payroll deduction."
- FECFile users will need to itemize a date (recommended to use last day of reporting period) and enter "payroll deduction" in description field.
- 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.

## Solicitation Techniques

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- ▣ Payroll Deduction
- ▣ **Prizes and Entertainment**
- ▣ Communications

## Prizes/Entertainment

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



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

Association and its members may provide prizes and entertainment to encourage PAC contributions (e.g., raffles if permitted by state and tax law, silent auction, golf tournament). The aggregate costs of prizes/entertainment may not be disproportionately valuable in comparison with 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 and its members 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

Association Cost:	\$ 700
<u>1/3 amount raised:</u>	<u>\$ 400</u>
PAC Reimbursement:	\$ 300

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**2. Example – Reimbursement Required**

Association spends \$700 in treasury funds to purchase an iPad as a raffle prize. Sales of raffle tickets raise \$1200 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



\$700



\$2,100

Association Cost:	\$700
- <u>1/3 amount raised:</u>	<u>\$700</u>
PAC Reimbursement:	\$ 0

### 3. Example – No Reimbursement Required

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

4. **Member-Provided Assistance**
  - a) **Permissible (AOs 1995-17 and 1989-18)**
    - (1) 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.
    - (2) Donations are not contributions as long as donor qualifies as association member under FEC regulations.
  - b) **Application of One-Third Rule**
    - (1) Include prizes/entertainment donated by members in one-third rule calculation.
    - (2) Any required reimbursement goes to association (who may distribute it to member if it chooses).

## Prizes/Entertainment

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### Basic Rules Apply

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

▣ Note: For ongoing events, assign end date



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**5. Basic Rules Apply:**

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

**6. Ongoing Events**

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

## Reporting Example

- Itemizing Reimbursement to Connected Organization under 1/3 Rule
  - How does the committee disclose the transaction?
  - What information do we need to disclose this correctly?
  - Tricky Issues?



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### Reporting Example #2: Reimbursements

In our first One-Third Rule example, the association spent \$700 of its treasury funds on an iPad, but only raised \$1,200 in contributions for its PAC. So, the PAC had to reimburse the organization for the \$300 difference between 1/3 of the amount raised (\$400) and the cost of the prize (\$700).

### How is this reimbursement reported?

**Reporting Example #2 – Answer**

**How is this reimbursement reported?**

**Answer:** The reimbursement must be reported on Line 21(b) as an “Other Federal Operating Expense” and itemized on Schedule B for that Line once the aggregate payments by the PAC to the organization exceed \$200 per calendar year.

**Schedule B, Line 21(b)**

**Reporting Reimbursement**

<b>SCHEDULE B (FEC Form 3X) ITEMIZED DISBURSEMENTS</b>		Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one)					PAGE
			<input checked="" type="checkbox"/> 21b	<input type="checkbox"/> 22	<input type="checkbox"/> 23	<input type="checkbox"/> 24	<input type="checkbox"/> 25	
			<input type="checkbox"/> 27	<input type="checkbox"/> 28a	<input type="checkbox"/> 28b	<input type="checkbox"/> 28c	<input type="checkbox"/> 29	
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.								
NAME OF COMMITTEE (In Full) <b>Creative Minds Association PAC</b>								
Full Name (Last, First, Middle Initial) <b>A. Creative Minds Association</b>						Date of Disbursement <b>10 / 20 / 2015</b>		
Mailing Address <b>1700 FDR Drive</b>								
City <b>New York,</b>		State <b>NY</b>	Zip Code <b>18501</b>					
Purpose of Disbursement <b>Reimb. for Raffle Prizes (1/3 Rule)</b>						Amount of Each Disbursement this Period <b>300.00</b>		
Candidate Name		Category/Type						
Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼						
State: District:								

## Instructions for Activity

- ✓ Read through the scenarios
- ✓ Answer questions via chat or pop-up box



### Scenario #1:

#### **Payroll Deduction and Fundraising Events by Trade Association**

You are the PAC director for your trade association. The VP for government affairs calls you into his office to discuss political activities. He explains that he wants the trade association's PAC to raise more funds in the next cycle from its restricted class and has come up with an idea for offering incentives to encourage the association's executives to sign up for payroll deduction as well as encourage members to make a one-time contribution.

"I understand from our PAC Treasurer," the VP continues, "that our average PAC donor contributes only \$2 a year. Can't we get them to increase that amount?" he asks. "What about giving away pens, mugs or gift cards to those who sign up for payroll deduction totaling \$25, \$50 or \$100 per year?"

The VP also suggested that, to make it easier, each pay period, a dollar automatically be deducted from each executive's wages. The executives could stop the deduction by providing written notice to the PAC treasurer.

Finally, he suggests holding brunches in key regions to raise both federal and state PAC funds from members. A VIP at the brunch will make the case for why PAC contributions are important and contributions raised from these events will be collected at the event by a representative of the association's state PACs in that region. The state PACs will deposit the contributions, keep their share and transfer the federal PAC's contributions to the federal PAC treasurer within 30 days of receipt.

The VP asks you to find a way to legally put his suggestions into action.

**QUESTIONS:**

- 1. How do you feel about the idea to give small gifts in exchange for PAC contributions?**
- 2. What is the proper way to implement a payroll deduction plan for PAC contributions?**
- 3. How must your association structure the regional brunches?**
- 4. How will you apply the collecting agent rules to these programs?**

**Scenario #1 Answers:**

**1. How do you feel about the idea to give small gifts in exchange for PAC contributions?**

**Answer:** This is permissible under the one-third rule (11 CFR 114.5(b)(2)) as long as the items are not disproportionately valuable. See also AOs 1981-40 and 1981-33, which apply the one-third rule to small items

**2. What is the proper way to implement a payroll deduction plan for PAC contributions?**

**Answer:** Reverse check-offs are prohibited. Instead, the contributions must be voluntary; the employee's authorization must first be requested and received (either electronically, in writing or recorded via telephone); and the solicitation must inform the employee of the political purpose of the PAC and of his right to refuse to contribute without reprisal. 11 CFR 114.5(a)(1), (3) and (4). If a guideline is suggested (as the \$25, \$50 or \$100 guidelines in the scenario), the solicitation must inform the solicitee that the guideline is merely a suggestion; that the individual is free to contribute more or less than the suggested amount; and that the amount of the contribution, or the refusal to contribute, will not benefit or disadvantage the solicitee. 11 CFR 114.5(a)(2). Money collected through payroll deduction must be forwarded according to the collecting agent rules, and the record of the authorization must be kept from 3 years from the date of the last report of an employee's deduction. 11 CFR 102.6(c)(4) and (6).

**3. How must your association structure the regional brunches?**

**Answer:** The brunches would be considered a solicitation because the purpose is to encourage support for the federal (and state) PAC. AO 1980-50. Thus, only those individuals who qualify as members of the restricted class (i.e., executive/administrative personnel of the association and members) may be invited. 11 CFR 114.1(j) and 114.5(g)(1). The speaker and the invitation both must include the requisite solicitation notices that inform the attendees of the political purpose of the PAC and of their right to refuse to contribute without reprisal. 11 CFR 114.5(a)(3) and (4). (Note, it is permissible to use a VIP as a speaker, even if he or she is not in the restricted class. AO 2003-05.) Because both federal and state PAC contributions are being sought, however, the SSF must clarify how much is being solicited for the federal account and explain that those contributions are subject to federal limits and prohibitions. See 11 CFR 102.5(a)(2).

#### 4. How will you apply the collecting agent rules to these programs?

**Answer:** When a connected organization administers a payroll deduction program, basically it means that the connected organization serves as the collecting agent and separates out the intended PAC contribution deduction from other deduction in order to transmit it to the SSF. Similarly, in the case of the brunches, it is permissible for the state PACs to deposit the contributions, separate out the federal contributions and transmit the proceeds, because the State PACs may act as collecting agents.

In both programs, the collecting agents must follow the rules at 11 CFR 102.6 (as discussed in the outline). This means that the proposed timeframe for transmitting the brunch proceeds must be altered for contributions exceeding \$50. Collecting agents have to transfer the full amount of each 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.

When the collecting agents transfer funds collected for the federal 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, or in the case of payroll deduction, the date it is deducted from the paycheck.

### Activity – Key Points

#### Incentives and Payroll Deduction

- ▣ One-third rule is applied to small items
- ▣ Reverse check-offs are prohibited
- ▣ Meeting to “explain PAC” = solicitation
- ▣ For payroll deduction and meetings, always remember:
  - Restricted class only AND
  - Solicitation notices AND
  - Collecting agent rules

**KEY POINTS:**

- If offering small item premiums as incentives, remember the one-third rule.
- Reverse check-offs are prohibited.
- Meetings or events to explain PAC and requests to sign up for payroll deduction are considered solicitations and subject to basic rules.
- Always use notices in all of your written and oral solicitations.
- Collecting agent rules apply:
  - Connected organization acts as a “collecting agent” when collecting SSF contributions via payroll deduction; timelines and recordkeeping requirements apply.
  - When holding event at which contributions are collected, connected organization, affiliate or affiliated PAC may act as collecting agent; timelines and recordkeeping apply.
    - Timely transfer of all funds AND records
    - Full amount of contribution must be transferred and counts towards contributor’s limit to PAC
    - If both federal and state funds are collected, make sure contributors are aware of how much is solicited for federal PAC.
  - SSF ultimately responsible for compliance and proper disclosure.

## Solicitation Techniques

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- ▣ Payroll Deduction
- ▣ 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



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### C. **Communications (AOs Cited in Outline)**

If a communication is circulated beyond the restricted class, the organization may generally not include a solicitation. Thus, you must look at what your communication is going to say, and to which audience it is going.

#### 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?

Review

- ▣ 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. **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.

## 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



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3. **Internet and E-mail 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 Web site 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.
    - If complete information not available, committee must contact contributor
    - If drawn on joint account, must contact account holders using reattribution procedures to ascertain from whom contribution is intended. 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.

## Contributions by Text

### Advisory Opinions have held:

- Contribution is received when donor authorizes and confirms eligibility
- Committee liable for ensuring contributions are permissible and contributors are eligible
- Caution: None of the AOs involved issues specific to SSFs



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- f) **Solicitations via Text Message (AOs 2012-35, 2012-31, 2012-30, 2012-28, 2012-26 and 2012-17)**  
AOs state:

- (1) Contribution is received when user confirms that he or she intends to make contributions and certifies eligibility under Act and FEC regulations to make contributions.
- (2) Recipient SSF (and not service provider) is solely responsible for ensuring legality of contributions collected.
- (3) None of the AOs addressed SSF restrictions specifically but they should be taken into consideration.
- (4) See article at <http://www.fec.gov/pages/fecrecord/2012/october/txtmessage.shtml>

## Internet, Intranet and Email

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### Basic Rules Apply

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

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

## Instructions for Activity

- ✓ Read through the scenarios
- ✓ Answer questions via chat or pop-up box



### Scenario #2:

#### Email Newsletter Articles

As part of its government affairs/PAC operations, the association sends out an email newsletter (edited by you) to its restricted class to update them on issues important to the organization. Since you can not solicit individuals beyond your restricted class, the email 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 the association’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 to protect our customers and clients. Have you given Creative Minds Assn. PAC your fair share? Stephanie Puckerman did and the PAC thanks her for her support.”

As the newsletter editor, you must review each article submitted for compliance with the federal election law among other things.

- 1. What is the main problem with Article #1?**
  
- 2. What is the main problem with Article #2?**
  
- 3. How could you, as editor, edit both articles to make them effective, yet legal, solicitations?**

## **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, 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:** You could (and must) add a paragraph to each article explaining explicitly the political purpose of the PAC and the right to refuse to contribute. For example, a sentence reading "The purpose of (the soliciting PAC) is for the benefit of political candidates and activities on a state and national level that support (connected organization)" was approved in AO 2006-17 as explicitly stating the political purpose of the PAC.

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 the Creative Minds Association PAC without fear of reprisal."

## Activity – Key Points

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### 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)”*



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### 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

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



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