



# Corporate PAC Operations, Part 2

February 18, 2015  
3:00 – 4:30 p.m.

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2015–16 Election Cycle

Corporate PAC Operations, Part 2

## Objectives – Part 2

- ▣ **Highlight Methods for Supporting Federal Candidates**
- ▣ Identify Types of Communications and Applicable Rules
- ▣ Discuss Options for Connected Organization Involvement

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Corporate PAC Operations, Part 2

## SUPPORTING FEDERAL CANDIDATES

### I. Making Contributions (11 CFR 110.1 and 110.2)

#### Supporting Federal Candidates

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- ▣ **Direct Contributions**
- ▣ **In-Kind Contributions**
  - **Events for Candidates**



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# Contributions Limits

Review

For 2015-16 Elections	Candidate per election	National Party per year	State, District & Local Party per year	Any PAC per year	Special Limits
Individual	\$2,700	\$33,400	\$10,000 (combined)	\$5,000	None
National Party	<b>Includes both monetary and in-kind contributions</b>				\$46,800 per Senate campaign
State, District & Local Party					\$5,000 (combined)
PAC: multicandidate	\$5,000	\$15,000	\$5,000 (combined)	\$5,000	None
PAC: not multicandidate	\$2,700	\$33,400	\$10,000 (combined)	\$5,000	None



## Direct Contributions

Review

- ▣ Per Election Limits to Candidates
  - \$2,700 from non-multicandidate SSFs
  - \$5,000 from multicandidate SSFs
- ▣ Includes in-kind contributions
- ▣ Only for elections in which candidate participates
- ▣ **NO** contributions from connected org

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### A. **Limitations Apply: REVIEW**

#### 1. **Non-multicandidate PACs**

- a) Indexed for inflation.
- b) May give \$2,700 per election to federal candidates for 2015-2016 elections.

#### 2. **Multicandidate PACs**

May give \$5,000 per election to federal candidates for 2015-2016 elections (limits unchanged).

#### 3. **Both in-kind and monetary contributions count against limits.**

#### 4. **Connected organization (e.g., corporation, union, association) may not make contributions.**

## Per Election Limits

- ▣ Undesignated Contributions:
  - Count toward limit for candidate's next election
- ▣ Designation Required:
  - Contributing to a future election
  - Retiring debt from a past election

### 5. Designation of Campaign Contributions by PAC

- a) Undesignated contribution counts towards the candidate's next scheduled election.
- b) PAC must designate contribution if:
  - (1) Intends contribution to count toward a future election, beyond the upcoming election.
  - (2) Making contribution to retire candidate's debt of a past election. Note: This is permissible only if:
    - Candidate has net debt outstanding from that election; and
    - Contribution, when aggregated with previous contributions to same candidate for same election, does not exceed limit.

#### Example:

The Baseball Cap Corporation PAC decides to contribute \$10,000 to Senator Cal Ripken, Jr., for his re-election campaign. Cal is in a tough primary in Maryland on June 14. The PAC treasurer, Lisa Smith, issues a check to the campaign for \$10,000 on June 13.

#### Any Red Flags?

# Practical Application



**Vote Cal  
for U.S. Senate**

**Primary Election Day is  
June 14**

**Paid for by the Committee to Elect Cal Ripken, Jr.**

# Practical Application



Primary Election is June 14

Contribution Limit \$5,000 per election

June 13, 2016

\$10,000.00

Baseball Cap Corporation PAC  
A Qualified Multicandidate Committee  
42 Home Run Way  
Towson, MD 22314

PAY Committee to Elect Cal Ripken, Jr.  
to the order of  
Ten thousand DOLLARS

YOUR FINANCIAL INSTITUTION  
ADDRESS OF YOUR INSTITUTION

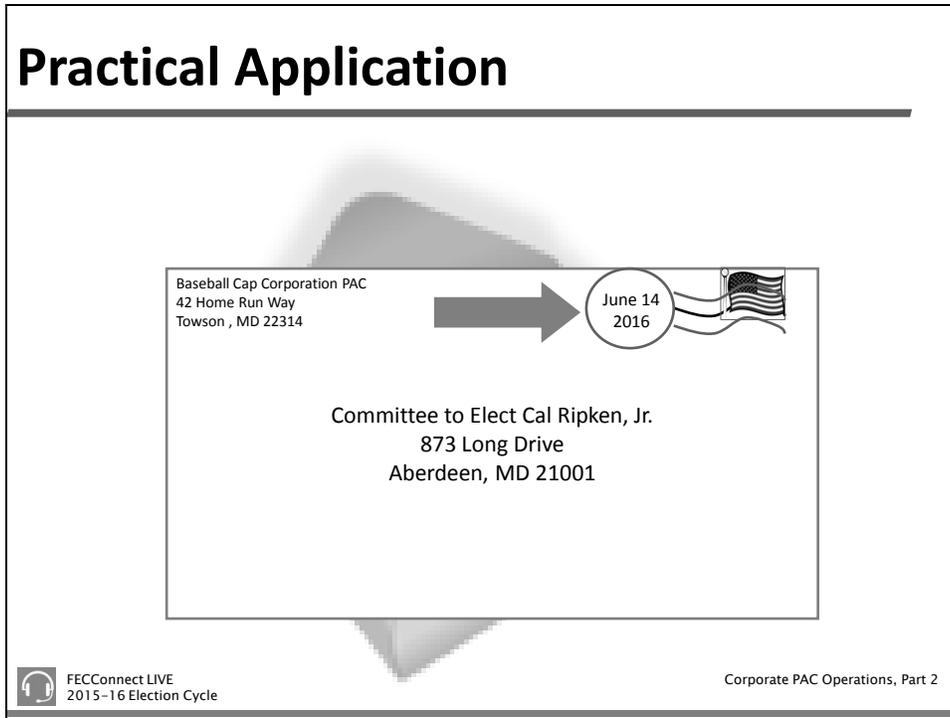
*Lisa Smith*

⑆ 23456789⑆ 123456 101

**Example, continued:**

Let's work through the check. The date on the check is June 13 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).



This contribution was mailed on June 14, the primary date, and thus will count against the primary limit.

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?**

**B. Methods for Curing Excessive Contributions**

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

## Redesignation Procedures

### Campaign Requests Redesignation:

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



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**a) Procedures for Redesignation Request**

- (1) Campaign must offer refund option when asking PAC for redesignation.
- (2) Signed redesignation authorization must be received by campaign within 60 days of their receipt of original contribution.
- (3) If redesignation process not completed within 60 day window, campaign must refund the excessive portion back to the PAC.

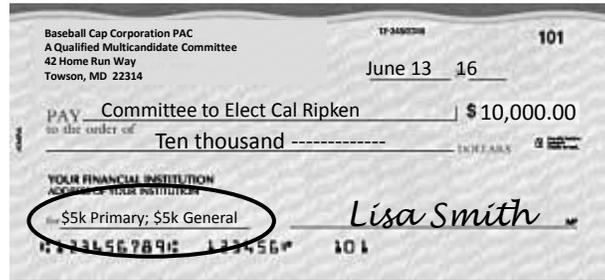
**b) Electronic Contributor Redesignations**

The Commission acknowledged that, in certain circumstances, an online process can provide a sufficient level of assurance as to the contributor's identity and intent such that it satisfies the written signature requirements. See Interpretive Rule Regarding Electronic Contributor Redesignations, 76 FR 16233 (March 23, 2011). Available on FEC website at: [http://www.fec.gov/law/cfr/ej\\_compilation/2011/notice\\_2011-02.pdf](http://www.fec.gov/law/cfr/ej_compilation/2011/notice_2011-02.pdf).

## FEC Recommended



Designate all contributions to candidates



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

**Best Practice: Avoid Excessive Contributions – Designate All Contributions!**

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

## Reporting Example

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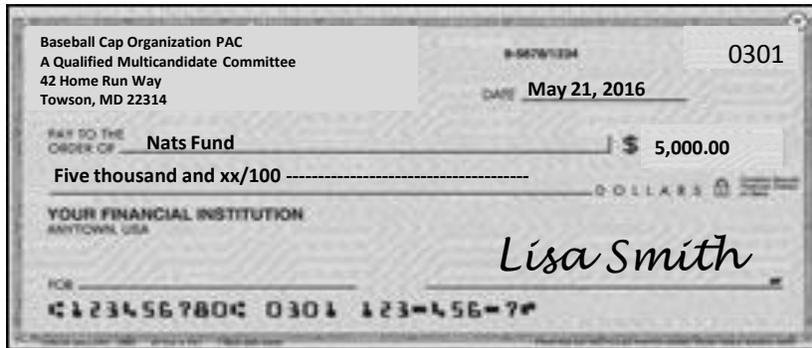
- ▣ Itemizing Monetary Contributions Made and Refunded
  - How does the SSF disclose the transaction?
  - What information do we need to disclose?

The Baseball Cap Corporation PAC, a multicandidate committee based in Maryland, really likes Senator Jayson Werth, a former professional baseball player now representing the state of Virginia. On May 21, 2016, the PAC made out two checks; one to Senator Werth's campaign committee, and one to his leadership PAC, the Nats Fund. (Note: The PAC had not previously contributed to the Senator or to the Leadership PAC.)

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

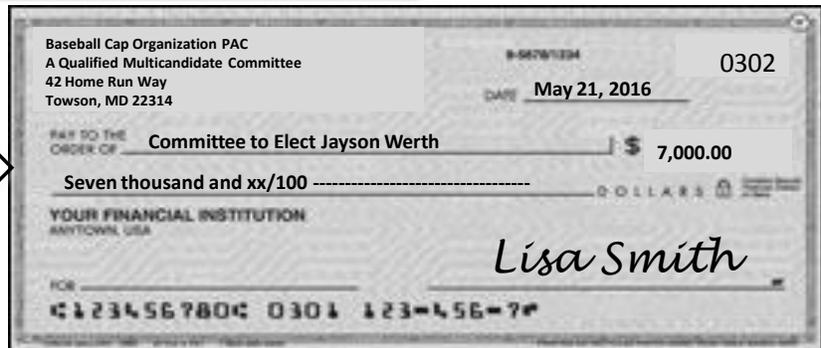
**Answers to Reporting Example #3A:  
Monetary Contribution to Federal PAC (Check #301)**

# Contributions Made



Contribution to  
Leadership PAC

Contribution to  
Campaign



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

**Answer:** This check represents a contribution made by the Baseball Cap Corporation PAC (Baseball Cap PAC). The \$5,000 check is a contribution to a Senator’s Leadership PAC. Note that the Leadership PACs and the campaign committee of the Leadership PAC sponsor are not considered affiliated.

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

**Answer:** The Baseball Cap PAC must itemize the contribution on its June Monthly report (covering the month of May) on a Schedule B for Line 23.

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

**Answer:** Disclose the Leadership PAC’s name and address, the date made and the amount. For purpose, note “contribution.” The candidate and election information is not required because the Leadership PAC is not an authorized committee that is affiliated with the campaign.

Contribution to Leadership PAC

## Schedule B, Line 23

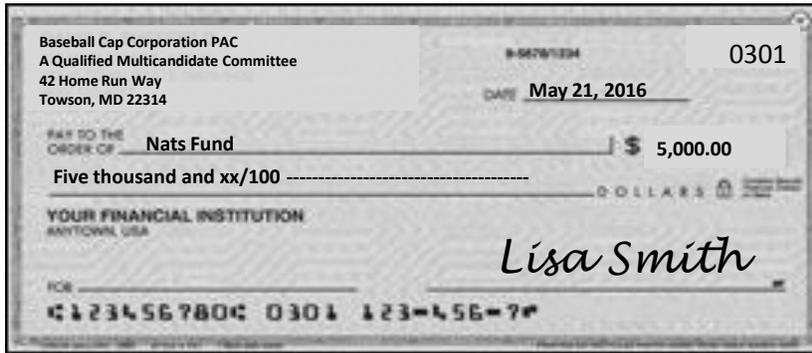
<b>SCHEDULE B (FEC Form 3X)</b>	Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one)	PAGE
<b>ITEMIZED DISBURSEMENTS</b>		<input type="checkbox"/> 21b <input type="checkbox"/> 22 <input checked="" type="checkbox"/> 23 <input type="checkbox"/> 24 <input 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)			
Baseball Cap Corporation PAC			
Full Name (Last, First, Middle Initial)		Date of Disbursement	
A. Nats Fund		<input type="text" value="05"/> / <input type="text" value="21"/> / <input type="text" value="2016"/>	
Mailing Address		Amount of Each Disbursement this Period	
333 West Camden Street			
City State Zip Code		5,000.00	
Vienna VA 22180			
Purpose of Disbursement		Category/Type	
Contribution			
Candidate Name		Not Applicable	
Category/Type			

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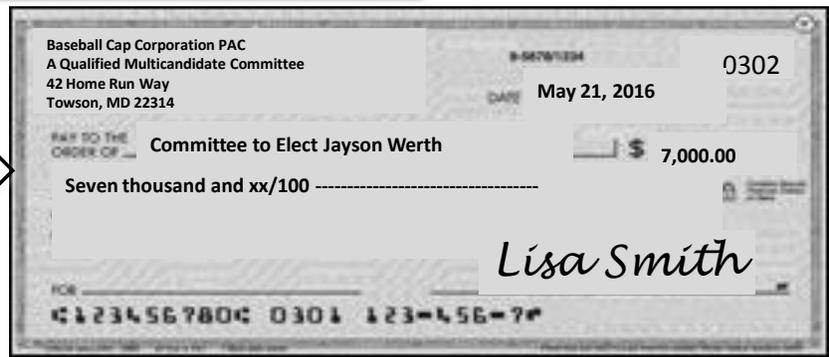
**Answers to Reporting Example #3B:  
Contribution to Federal Candidate (Check #302)**

# Contributions Made



Contribution to  
Leadership PAC

Contribution to  
Campaign



The Werth campaign receives the PAC check on May 24, 2016, and notes that the undesignated \$7,000 check is an excessive contribution. As such, the campaign sends the Baseball Cap Corporation PAC a redesignation request. As a big supporter of the Senator, the PAC does not want a refund. On June 2, the PAC treasurer sends the campaign a redesignation letter which is received by the campaign treasurer on June 5, 2016.

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

**Answer:** This check represents two separate contributions made by the Baseball Cap Corporation PAC. The check for \$7,000 represents contributions to both the primary and the general election campaign of the Committee to Elect Jayson Werth. However, as an undesignated contribution, it's an excessive primary contribution. To remedy this, the campaign has asked the PAC to redesignate the excessive portion (\$2,000) to the general election.



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

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

Disclose both entries as MEMO entries since this is not new money leaving the PAC account, but new information on a previous disbursement.

Redesignation

## Part II: July Monthly

SCHEDULE B (FEC Form 3X) ITEMIZED DISBURSEMENTS		FOR LINE NUMBER: (check only one)	PAGE OF
		<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"/> 28a <input type="checkbox"/> 28b <input type="checkbox"/> 28c <input type="checkbox"/> 29 <input type="checkbox"/> 30b	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9 <input type="checkbox"/> 10
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>Baseball Cap Corporation PAC</b>			
<b>A. Committee to Elect Jayson Werth</b> Full Name (Last, First, Middle Initial) Mailing Address <b>873 Long Drive</b> City: <b>Vienna VA 22180</b> State   Zip Code		Date of Disbursement <b>05 / 21 / 2016</b>	
Purpose of Disbursement <b>Contribution</b> Candidate Name <b>Jayson Werth</b> Office Sought: <input type="checkbox"/> House <input checked="" type="checkbox"/> Senate <input type="checkbox"/> President <b>VA</b> State   District		Disbursement For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) Amount of Each Disbursement this Period <b>7,000.00</b> <b>MEMO; as disclosed in June Monthly</b>	
<b>B. Committee to Elect Jayson Werth</b> Full Name (Last, First, Middle Initial) Mailing Address <b>873 Long Drive</b> City: <b>Vienna VA 22180</b> State   Zip Code		Date of Disbursement <b>06 / 05 / 2016</b>	
Purpose of Disbursement <b>Contribution</b> Candidate Name <b>Jayson Werth</b> Office Sought: <input type="checkbox"/> House <input checked="" type="checkbox"/> Senate <input type="checkbox"/> President <b>VA</b> State   District		Disbursement For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify) Amount of Each Disbursement this Period <b>2,000.00</b> <b>MEMO Redesignation</b>	

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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 campaign committees, include candidate information.
- **Memo entries** are transactions that are itemized, but the dollar total is excluded from the committee's total receipts or expenditures.

- **For example**, committees would use memo entries when itemizing a credit card bill on a Schedule B. The lump sum payment for the bill is itemized as a regular expenditure. The committee would use memo entries to list any specific charges that meet the itemization threshold. By using memo entries, the specific charges are not included in calculations for total expenditures.
- If redesignated after the close of books, show the redesignation on the next report and indicate the report on which it was previously itemized.
- Previous report should not be amended.
- Strongly recommended that PACs designate contributions to campaigns for particular elections (use year and type of election to properly designate).
- If designating for prior election, also note “debt” (e.g., “2014 General Debt”).
- Treat contributions to a leadership PAC as a contribution to a PAC, not a contribution to a campaign.

## Returned vs. Refunded

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

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

On July 10, the Baseball Cap Corporation PAC treasurer realizes that the check to the Nats Fund never cleared the bank, and decides to void the check and add the money back into the PAC's checking account.

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

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

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

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

**Answer:** The uncashed check to the Nats Fund that was voided by the Baseball Cap Corporation PAC treasurer represents a lost, voided or returned contribution (in this case lost/voided) and thus, a negative expenditure. The check containing the refund from the Committee to Elect Jayson Werth represents a refund, and thus, a receipt.

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

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

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

**Answer:** The committee will need the information that was originally disclosed on a previous report regarding the transaction and will also need to reference that report on its disclosure. The committee should also reference the original contribution date in the “purpose” section of the report.

*Reporting Example Continues on Next Page*

**Report Lost/Voided/Returned Contribution:**

**Negative Entry, Schedule B, Line**

Returned, Lost  
Or Voided

<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) <input type="checkbox"/> 21b <input type="checkbox"/> 22 <input checked="" 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 <input type="checkbox"/> 30	PAGE
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>Baseball Cap Corporation PAC</b>				
Full Name (Last, First, Middle Initial)				
A. <b>Nats Fund</b>		Date of Disbursement MM / DD / YYYY <b>07 / 10 / 2016</b>		
Mailing Address <b>333 West Camden Street</b> City State Zip Code <b>Vienna VA 33629</b>		Amount of Each Disbursement this Period <b>- 5,000.00</b>		
Purpose of Disbursement <b>Check lost in mail – orig. contribution 5/21/16</b>		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:				

**Report Refunded Contribution Received:**

Refund of Contribution

## Schedule A, Line 16

<b>SCHEDULE A (FEC Form 3X)</b> <b>ITEMIZED RECEIPTS</b>	Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one) <input 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 checked="" 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>Baseball Cap Corporation PAC</b>		
A. Full Name (Last, First, Middle Initial) <b>Committee to Elect Jayson Werth</b>		Date of Receipt <b>07 / 10 / 2016</b>
Mailing Address <b>873 Long Drive</b> City <b>Vienna VA 22180</b> State Zip Code		Amount of Each Receipt this Period <b>2,000.00</b>
FEC ID number of contributing federal political committee. <b>C 00000001</b>		<b>Contribution itemized in June Monthly</b>
Name of Employer	Occupation	
Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)	Aggregate Year-to-Date <b>2,000.00</b>	



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**Points to Remember:**

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

## Supporting Federal Candidates

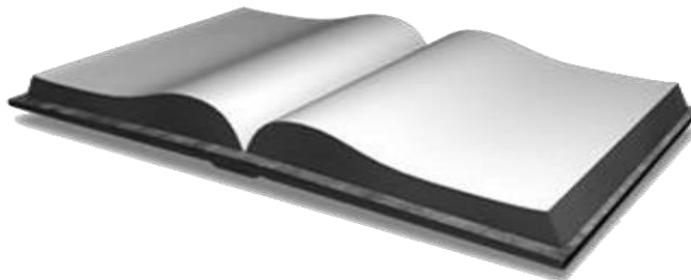
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- ▣ Direct Contributions
  
- ▣ **In-Kind Contributions**
  - Events for Candidates

## Using Resources

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Statutory exceptions to contribution ban  
permit limited election-related use of  
corporate/labor facilities & resources



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

1. As part of the broad prohibition on corporate and labor contributions, corporate, labor and membership organizations are generally prohibited from providing goods or services at less than the usual or normal charge.
2. This includes permitting the SSF's use of their facilities or other resources for fundraising or other activities in connection with federal elections, without proper payment made in advance.

## Event for Campaign

- ▣ Corporation's SSF may host fundraiser/event for candidate at corporation's facilities
- ▣ Costs Incurred by SSF = In-Kind Contribution
- ▣ Advance payment is required for:
  - Staff: fair market value of salary and benefits
  - Mailing list: fair market value
  - Catering or food services: fair market value
  - Meeting room/other org. facilities: fair market value

**E. In-Kind Contributions (11 CFR 114.2(f)(2), 114.9 and 114.13)**  
**Example: PAC-Sponsored Fundraiser/Event Coordinated with Campaign**

1. **Results in In-Kind Contribution**  
An SSF may hold a fundraiser or other event for a campaign and invite the general public (e.g., other SSFs and PACs, individuals outside its restricted class); however, any costs incurred are in-kind contributions, including personnel, invitations, food, equipment, etc.
2. **Advance Payment Required**
  - a) The connected organization of the SSF must receive **advance** payment for the use of its staff, mailing list and/or food services (regardless of who is paying for them). See AOs 1984-37 and 1984-24;

- b) **Advance** payment to connected organization also required if SSF is paying for use of other connected organization facilities (e.g., meeting rooms, phones); and
- c) **Payment by SSF counts as an in-kind contribution (reported by campaign and SSF).**

## Use of Directed Staff

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

### 3. Use of Directed Staff for SSF Events on Behalf of Candidates

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

- a) **Advance Payment**  
Corporation must receive advance payment for value of staff services, including benefits and overhead.
- b) **No Coercion**  
No threats of force, detrimental job actions or financial reprisal if employee refuses to engage in fundraising.
- c) **Collection and Forwarding Prohibited (Except Through SSF)**  
Employees may not collect or forward contributions to candidate or party. If the corporation wishes to collect and forward contributions, this must be done using the SSF.

## Use of Lists and Food Services

Must pay corporation fair market value in advance for:

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

#### 4. Use of Customer/Client Lists

##### a) Corporation May Permit Use with Advance Payment

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

##### b) Application to Email Address Lists of Corporation

- (1) Advance payment required under 114.2(f).
- (2) Counts as in-kind contribution by payee.
- (3) Not exempt from definition of contribution:
  - (a) Payment for email list made at direction of political committee; or
  - (b) Email list that is transferred to political committee. 11 CFR 100.94(e)(2) and (3) and 100.155(e)(2) and (3).

##### c) Use of Catering or Food Services

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

## Use of Meeting Rooms

- ▣ **General Rule:**  
Reimburse at the fair market value within commercially-reasonable time
- ▣ **Exception:**  
Free/discounted rate if normally offered to civic groups under same conditions and available to any other political committee upon request
- ▣ **If PAC pays:**  
Must pay in advance unless civic group exemption applies

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

#### a) **General Rule**

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

#### b) **Exception**

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

#### c) **PAC Paying for Room**

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

## Other Uses of Facilities

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

### 6. Other Uses (e.g., office equipment)

The corporation's office equipment and other resources may be used for an SSF event on behalf of a candidate/party, provided the corporation is reimbursed as follows:

- a) **If Campaign/Party Pays:**  
Campaign or Party must reimburse the usual and normal charge within a commercially reasonable time – generally 30 days.
- b) **If PAC Pays**  
If corporation's SSF is paying as in-kind contribution, must pay in advance.

## PAC Fundraiser for Campaign

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- ▣ If PAC collects contributions, campaign and PAC will need to report earmarked contributions
  
- ▣ Avoid earmarking rules by having campaign representative collect contributions

7. **Earmarking Rules may Apply to Fundraising**
  - a) **If PAC collects contributions,** campaign and PAC will need to report earmarked contributions. Campaign must also determine if bundling disclosure thresholds tripped.
  - b) **If campaign representative collects contributions,** earmarking rules do not apply.
  - c) See Appendix D in the Campaign Guide on earmarked contributions for more guidance.

## Reporting Example #4: Itemizing In-Kind Contributions Made to Candidates

### Reporting Example

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- ▣ Itemizing In-Kind Contributions Made to Candidates
  - What information do we need to disclose?
  - How does the SSF disclose the transaction?



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Corporate PAC Operations, Part 2

The Baseball Cap Corporation PAC decides to throw a posh event for Congressman Stephen Strasburg at the hottest address in town, 1000 South Capitol Street S.E., aka the Grand Plush Hotel, located just around the corner from Nationals Park. The fundraiser takes place on June 22, 2016. The bill is paid to the Grand Plush Hotel on July 17, 2016.

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

## **Answers to Reporting Example #4: Itemizing In-Kind Contributions Made to Candidates**

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

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

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

**Answer:** We need both the date of the contribution (the date that the good/service was provided) and the date of payment to the vendor. Also needed: Itemization of the payee name/address, purpose of disbursement, a notation of “in-kind” and all of the candidate and election information.

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

**Answer:** For in-kind contributions, the date the contribution is “made” is the date the candidate receives the benefit of the goods or services. Here, the in-kind contribution was made on June 22, the date of the fundraiser, and must be disclosed on a Schedule B for Line 23. The Grand Plush Hotel is listed as the actual payee, and the purpose box includes a notation that it is an in-kind contribution. All candidate and election information for Congressman Strasburg is noted in the appropriate boxes.

*See Reporting Example on Next Page*

**Report In-Kind Contribution (July Monthly):**

In-Kind Contribution

## Disclosure of Date Made

<b>SCHEDULE B (FEC Form 3X)</b>	Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one)	<table style="font-size: 0.8em;"> <tr> <td><input type="checkbox"/> 21b</td> <td><input type="checkbox"/> 22</td> <td><input checked="" type="checkbox"/> 23</td> <td><input type="checkbox"/> 24</td> <td><input type="checkbox"/> 25</td> </tr> <tr> <td><input type="checkbox"/> 27</td> <td><input type="checkbox"/> 28a</td> <td><input type="checkbox"/> 28b</td> <td><input type="checkbox"/> 28c</td> <td><input type="checkbox"/> 29</td> </tr> </table>	<input type="checkbox"/> 21b	<input type="checkbox"/> 22	<input checked="" 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
<input type="checkbox"/> 21b	<input type="checkbox"/> 22	<input checked="" 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>Baseball Cap Corporation PAC</b>													
A. <b>Grand Plush Hotel</b>		Date of Disbursement											
Mailing Address: <b>1000 South Capitol Street, SE</b>		<table style="border: 1px solid black; padding: 5px;"> <tr> <td style="width: 30px; text-align: center;">06</td> <td style="width: 30px; text-align: center;">22</td> <td style="width: 30px; text-align: center;">2016</td> </tr> </table>		06	22	2016							
06	22	2016											
City: <b>Washington</b> State: <b>DC</b> Zip Code: <b>20003</b>													
Purpose of Disbursement: <b>Reception (In-kind contribution)</b>		011											
Candidate Name: <b>Stephen Strasburg</b>		Amount of Each Disbursement this Period <b>1,578.50</b>											
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: <b>VA</b> District:													

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

**Report Payment to Vendor (August Monthly):**

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

*See Reporting Example on Next Page*

## Payment to Vendor

In-Kind  
Contribution

<b>SCHEDULE B (FEC Form 3X)</b>		Use separate schedule(s) for each category of the Detailed Summary Page		FOR LINE NUMBER: (check only one)	
<b>ITEMIZED DISBURSEMENTS</b>				<input checked="" type="checkbox"/> 21 <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"/> 29c <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>Baseball Cap Corporation PAC</b>					
A. <b>Grand Plush Hotel</b>			Date of Disbursement		
Mailing Address <b>1000 South Capitol Street, SE</b>			MM / DD / YYYY <b>07 / 17 / 2016</b>		
City <b>Washington DC 20003</b>			Amount of Each Disbursement this Period		
Purpose of Disbursement <b>Reception (In-kind contribution)</b>			<b>1,578.50</b>		
Candidate Name <b>Stephen Strasburg</b>			MEMO <b>See July Monthly, Schedule B, Line 23</b>		
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: <b>VA</b> District: <b>11</b>					

### Points to Remember:

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

## TYPES OF PAC COMMUNICATIONS

### Objectives – Part 2

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- ▣ Highlight Methods for Supporting Federal Candidates
- ▣ **Identify Types of Communications and Applicable Rules**
- ▣ Discuss Options for Connected Organization Involvement

### PAC Communications

---

- ▣ **Coordinated Communication**
- ▣ Independent Expenditure

## I. PAC Communications

### A. What PAC May Do:

#### 1. Communicate

Under FEC rules at 114.5(i), an SSF may communicate with the general public using PAC funds on any subject (except soliciting funds for the PAC), including express advocacy.

**Example:** Inviting other non-affiliated PACS to a PAC-sponsored fundraising event for a candidate.

#### 2. Coordinate

SSF may coordinate communications with a candidate or party; however, in-kind contribution results.

### B. Types of Communications

#### 1. Coordinated Communications

In-kind contribution results, subject to limitations

#### 2. Independent Expenditure

No contribution results; no limitations

## Coordination

### Basic Definition

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

**C. Definition of Coordination (11 CFR 109.20)**

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

## Coordination

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



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

- 1. Connected organization** prohibited from making contributions.
- 2. Subject to contribution limitations.**
- 3. Appropriate disclaimer required.**
- 4. Reporting**

In many cases, reportable by campaign or party committee as in-kind contribution received (and by PAC if in-kind contribution made by PAC).

## Three-Part Coordination Test

---

- ▣ Source of Payment
- ▣ Content Standard
- ▣ Conduct Standard

**E. Three-part test (11 CFR 109.21(d)):**

All three parts must be satisfied to justify conclusion that payments for a coordinated communication are for the purpose of influencing a federal election (and that costs incurred are in-kind contributions).

- **Source of Payment**
- **“Content Standard”**
- **“Conduct Standard”**

## Three-Part Coordination Test

---

- ▣ **Source of Payment**
  - **Paid for by someone other than campaign**
- ▣ **Content Standard**
- ▣ **Conduct Standard**

- 1. Source of Payment**
  - a) To be considered coordinated, communication must be paid for by someone other than a candidate, an authorized committee or a political party committee. (Obviously, if they paid for it themselves, coordination wouldn't be an issue.)
  - b) Will satisfy payment prong if communication is paid for by the PAC.

## Three-Part Coordination Test

- ☐ Source of Payment
  - Paid for by someone other than campaign
- ☐ **Content Standard**
  - **Election-related message and timing**
- ☐ Conduct Standard



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### 2. “Content Standard”(11 CFR 109.21(c)(1)-(5))

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

- a) **Electioneering Communication;**
- b) **Public Communication that Republishes, Disseminates or Distributes Campaign Materials;**
- c) **Public Communication with Express Advocacy;**
- d) **Communication that is “Functional Equivalent of Express Advocacy;”**

A communication is the “functional equivalent of express advocacy” if it is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified Federal candidate.

- Applies without regard to the timing of the communication or the targeted audience.
- In its application of this test, Commission will follow Supreme Court’s reasoning in *FEC v. Wisconsin Right to Life*. See explanation and justification for this rule for more information at 75 FR 55947.

e) **Public Communication Referring to Candidate within Certain Time Frame before Election (No Express Advocacy required);**

Communication meets content standard, even without express advocacy if it:

- Refers to clearly identified candidate
- Is directed to voters in the jurisdiction of the clearly identified candidate or to voters in a jurisdiction where one or more candidates of the political party appear on the ballot; and
- Is publicly disseminated during certain time frames:
- **Senate and House candidates** = 90 days before a primary or general election.
- **Presidential candidates** = entire period from 120 days before the clearly identified candidate's primary in that jurisdiction where disseminated up through the date of the general election.
- **Political parties** = 90 days before a primary or general election (midterm cycle).
- See Compliance Map for coordination dates <http://www.fec.gov/info/ElectionDate>.

**Example: Not Meeting the Content Prong from AO 2011-14**

The Project's website and email communications to the general public soliciting contributions to certain Federal candidates did not result in a "coordinated communications" to those referenced candidates because the content prong was not satisfied. This is because the Project's communications appeared only on the Project's own website and by email, so the communications did not fit into the definitions of either public communications or electioneering communications.

## Three-Part Coordination Test

- ▣ Source of Payment
  - Paid for by someone other than campaign
- ▣ Content Standard
  - Election-related message and timing
- ▣ **Conduct Standard**
  - **Interaction/sharing of information**



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### 3. “Conduct Standard”

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

- a) **Request or Suggestion (11 CFR 109.21(d)(1))**
- b) **Material Involvement (11 CFR 109.21(d)(2))**
- c) **Substantial Discussion (11 CFR 109.21(d)(3))**
- d) **Employment of Common Vendor (11 CFR 109.21(d)(4))**  
Safe harbor of 120 days applies.
- e) **Former Employee/Independent Contractor (11 CFR 109.21(d)(5))**  
Safe harbor of 120 days applies.

## Coordination Equation

---

Source + Content + Conduct = Coordination

Coordination = Contribution

Contribution = Limits + Prohibitions

No Coordination (plus Express Advocacy) =  
Independent Expenditure



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#### 4. Takeaways:

- **Source + Content + Conduct = Coordination**
  - **Coordination = In-kind Contribution**
  - **Subject to Limits and Prohibitions**
  
- **No Coordination (plus Express Advocacy) = Independent Expenditure**
  - **Unlimited**
  - **Disclosure Required**

## PAC Communications

---

- ▣ Coordinated Communication
- ▣ **Independent Expenditure**

## Independent Expenditures

---

### Definition

- ▣ Expenditure for a communication:
  - Expressly advocating the election or defeat of a clearly identified candidate
  - Not made in cooperation, consultation, in concert with, or at the request or suggestion of a candidate or his/her agents

## II. Independent Expenditures (11 CFR 100.16)

### A. Definition

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

## Independent = Unlimited

- ▣ No limit on amount of expenditure if communication meets definition (express advocacy + not coordinated)
- ▣ Disclaimer required
- ▣ Reporting required

### B. The Basics

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

### C. Elements of Definition

1. **Clearly Identified (11 CFR 100.17)**  
A candidate's name, nickname, photograph or drawing appears or identity is otherwise apparent through references such as "the President," "your Congressman," "the incumbent."

2. **Express Advocacy (11 CFR 100.22)**  
Message unmistakably urges election or defeat of one or more clearly identified candidates.

## 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. **Two Part Definition of Unmistakably Urging Election or Defeat**
- Part A: Specific Call to Action
  - Part B: “Only Reasonable Interpretation Test”
1. **Part A: Specific Call to Action (11 CFR 100.22(a))**
- a) **Explicit Words of Advocacy For or Against a Federal Candidate**  
Examples: "Re-elect your Congressman," "support your Democratic nominee," "reject the incumbent."
  - b) **Urging Action with Respect to Candidates Associated with a Particular Issue**  
Example: “Vote Pro-Environment,” when accompanied by names or photographs of candidates identified as supporting the issue.
  - c) **Campaign Slogan or Words (e.g., on bumper stickers & ads) that can have No Other Reasonable Meaning than to Support or Oppose Candidate**  
Examples: “Bush/Cheney!”; “Obama 2012!”

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

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

# Independent Expenditures

Example

Baseball Cap Corporation  
PAC Says

**Vote for  
Angela**

Paid for by the Baseball Cap Corporation PAC ([www.baseballcapcorp.org](http://www.baseballcapcorp.org)) and not authorized by any candidate or committee. The Baseball Cap Corporation PAC is responsible for the content of this advertisement.

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Corporate PAC Operations, Part 2

## Disclosure

- ▣ PACs report using Schedule E, Form 3X
- ▣ Date made = Date disseminated
- ▣ Aggregate on per calendar year, per election, per office sought basis



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Corporate PAC Operations, Part 2

### **E. Disclosure of Independent Expenditures by PACs**

- 1. PACs report using FEC Form 3X/Schedule E during appropriate reporting period.**
- 2. Date made = Date disseminated**
  - a) An independent expenditure is considered made when it is publicly distributed or otherwise publicly disseminated.
  - b) 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](http://www.fec.gov/law/cfr/ej_compilation/2011/notice_2011-13.pdf)).
- 3. Aggregation**

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

## Independent Expenditures

### 48-Hour Reports

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

### 24-Hour Reports

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

**\*\*Disclose again on next regular report\*\***



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4. **Additional reporting on 48- and 24- hour basis:**
  - a) **24-Hour Reporting (11 CFR 104.5(g)(2))**
    - Must file a **24-Hour Report** for independent expenditures aggregating \$1,000 or more made less than 20 days but more than 24 hours before the day of an election.
    - A 24-Hour Report is required each time an additional \$1,000 is aggregated in independent expenditures.
  - b) **48-Hour Reporting (11 CFR 104.5(g)(1))**
    - Must file a **48-Hour Report** for independent expenditures aggregating \$10,000 or more, anytime during a calendar year up to and including the 20th day before an election.
    - A 48-Hour Report is required each time an additional \$10,000 is aggregated in independent expenditures.
  - c) **24-Hour and 48-Hour Reports** are filed using stand-alone Schedule Es; check appropriate box to note type of report.
  - d) **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](http://www.fec.gov/info/report_dates_2015.shtml#ie).

## Reporting Example #5: Large Last-Minute Independent Expenditures

# Scenario

---

## Reporting Independent Expenditures

Corporate PAC Operations, Part 2

**Background:** House candidate Derek Jeter wouldn't accept PAC checks and his campaign would not speak to representatives of the Baseball Cap Corporation PAC. However, the PAC still wanted to lend its support to candidate Jeter. Just before the November 3 special general election, the PAC contracts with WBAT-FM to run a \$7,500 radio ad on October 26, supporting Jeter. The bill for the ads was paid on November 26, 2015.

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 Example #5: 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?

#### 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).

*See Reporting Example on Next Page*

24-Hour IE Report

## Initial Reporting – 24-Hour Schedule E

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

PAGE **1**  
FOR LINE 24 OF

NAME OF COMMITTEE (In Full) <b>Baseball Cap Corporation PAC</b>		FEC IDENTIFICATION NUMBER <b>C 00000004</b>	
Check (f) <input checked="" type="checkbox"/> 24-hour report <input type="checkbox"/> 48-hour report		<input checked="" type="checkbox"/> New report <input type="checkbox"/> Amends report filed on	
Full Name of Payee <b>WBAT-FM</b>		Date of Public Distribution/Dissemination <b>10 / 26 / 2015</b>	
Mailing Address <b>12100 West Howard Avenue</b>		Amount <b>7,500.00</b>	
City <b>Brooklyn</b>	State <b>NY</b>	Zip Code <b>11228</b>	Date of Disbursement or Obligation
Purpose of Expenditure <b>Radio Ad</b>		Category/Type <b>004</b>	
Name of Federal Candidate <b>Derek Jeter</b>		Office Sought: <input type="checkbox"/> House <input checked="" type="checkbox"/> Senate <input type="checkbox"/> President <input type="checkbox"/> Other	
Calendar Year-To-Date Per Election for Office Sought <b>7,500.00</b>		District: <b>10</b> State: <b>NY</b> Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input checked="" type="checkbox"/> Other (specify) <b>2015 Special General</b>	



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- 3. What information from the scenario do we need to disclose this correctly?**  
**Answer:** Key facts in the scenario include the date of dissemination (10/26/15), 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 10/15/15-11/23/15, and due on 12/03/15), the PAC must report the same information disclosed on the 24-Hour Report on Schedule E as a MEMO entry because the payment has not been made as of the close of books for the Post-General report. Accordingly, the PAC must report a debt on Schedule D to “WBAT-FM” until it is settled.

*Reporting Example Continues on Next Page*

IE Disclosed  
(Post-General)

### Disclosure on Next Regular Report

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

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

NAME OF COMMITTEE (In Full) <b>Baseball Cap Corporation PAC</b>		FEC IDENTIFICATION NUMBER <b>C 00000004</b>
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 <b>WBAT-FM</b>	Date of Public Distribution/Dissemination <b>10 / 26 / 2015</b>	
Mailing Address <b>12100 West Howard Avenue</b>	Amount <b>MEMO</b>	
City <b>Brooklyn</b> State <b>NY</b> Zip Code <b>11228</b>	<b>7,500.00</b>	
Purpose of Expenditure <b>Radio Ad</b>	Category/Type <b>004</b>	Date of Disbursement or Obligation M - M / D - D / Y - Y - Y - Y
Name of Federal Candidate <b>Derek Jeter</b>	<input checked="" type="checkbox"/> Support <input type="checkbox"/> Oppose	Office Sought: <input checked="" type="checkbox"/> House District: <b>10</b> <input type="checkbox"/> President <input type="checkbox"/> Senate State: <b>NY</b>
Calendar Year-To-Date Per Election for Office Sought	<b>7,500.00</b>	Disbursement For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input checked="" type="checkbox"/> Other (specify) <b>2015 Special General</b>

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*Reporting Example Continues on Next Page*

**Debt Owed  
(Post-General)**

**Other Reporting - Debt**

<b>SCHEDULE D (FEC Form 3X)</b> <b>DEBTS AND OBLIGATIONS</b> <b>Excluding Loans</b>		(Use separate schedule(s) for each numbered line)	PAGE <b>1</b> OF _____ FOR LINE NUMBER: (check only one) <input type="checkbox"/> 9 <input checked="" type="checkbox"/> 10
NAME OF COMMITTEE (In Full) <b>Baseball Cap Corporation PAC</b>			
A. Full Name (Last, First, Middle Initial) of Debtor or Creditor <b>WBAT-FM</b>		Nature of Debt (Purpose): <b>Radio Ad for Derek Jeter</b>	
Mailing Address <b>12100 West Howard Avenue</b>			
City <b>Brooklyn</b>	State <b>NY</b>	Zip Code <b>11228</b>	
Outstanding Balance Beginning This Period <div style="border: 1px solid black; padding: 2px; display: inline-block;"><b>0.00</b></div>			
Amount Incurred This Period <div style="border: 1px solid black; padding: 2px; display: inline-block;"><b>7,500.00</b></div>		Payment This Period <div style="border: 1px solid black; padding: 2px; display: inline-block;"><b>0.00</b></div>	
Outstanding Balance at Close of This Period <div style="border: 1px solid black; padding: 2px; display: inline-block;"><b>7,500.00</b></div>			

When full payment is made to the vendor on 11/26/15, 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: 11/24/15-12/31/15). Note that the date of disbursement reflects the date of the payment to the vendor.

*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) <b>Baseball Cap Corporation PAC</b>		FEC IDENTIFICATION NUMBER <b>C 00000004</b>	
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 <b>WBAT-FM</b>		Date of Public Distribution/Dissemination M - M / D - D / Y - Y - Y <b>10 / 26 / 2015</b>	
Mailing Address <b>12100 West Howard Avenue</b>		Amount <b>7,500.00</b>	
City <b>Brooklyn</b>	State <b>NY</b>	Zip Code <b>11228</b>	Date of Disbursement or Obligation M - M / D - D / Y - Y - Y <b>11 / 26 / 2015</b>
Purpose of Expenditure <b>Radio Ad</b>		Category/Type <b>004</b>	
Name of Federal Candidate <b>Derek Jeter</b>		<input checked="" type="checkbox"/> Support <input type="checkbox"/> Oppose	Office Sought: <input checked="" type="checkbox"/> House District: <b>10</b> <input type="checkbox"/> President <input type="checkbox"/> Senate State: <b>NY</b>
Calendar Year-To-Date Per Election for Office Sought <b>7,500.00</b>		Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input checked="" type="checkbox"/> Other (specify) <b>2015 Special General</b>	

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Corporate PAC Operations, Part 2

*Reporting Example Continues on Next Page*

Debt Owed  
(Post-General)

## Other Reporting - Debt

<b>SCHEDULE D (FEC Form 3X)</b> <b>DEBTS AND OBLIGATIONS</b> <b>Excluding Loans</b>		(Use separate schedule(s) for each numbered line)	PAGE <b>1</b> OF FOR LINE NUMBER: (check only one) <input type="checkbox"/> 9 <input checked="" type="checkbox"/> 10
NAME OF COMMITTEE (In Full) <b>Baseball Cap Corporation PAC</b>			
A. Full Name (Last, First, Middle Initial) of Debtor or Creditor <b>WBAT-FM</b>		Nature of Debt (Purpose): <b>Radio Ad for Derek Jeter</b>	
Mailing Address <b>12100 West Howard Avenue</b>			
City <b>Brooklyn</b>	State <b>NY</b>	Zip Code <b>11228</b>	
Outstanding Balance Beginning This Period <b>7,500.00</b>			
Amount Incurred This Period <b>0.00</b>	Payment This Period <b>7,500.00</b>	Outstanding Balance at Close of This Period <b>0.00</b>	

### 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 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.
- 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 primary are on the FEC website at [http://www.fec.gov/info/report\\_dates\\_2014.shtml#ie](http://www.fec.gov/info/report_dates_2014.shtml#ie).
- **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 20<sup>th</sup> 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.

## OPTIONS FOR CONNECTED ORGANIZATIONS

### Objectives – Part 2

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- ▣ Highlight Methods for Supporting Federal Candidates
- ▣ Identify Types of Communications and Applicable Rules
- ▣ **Discuss Options for Connected Organization Involvement**

### Use of Corporate Treasury Funds

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Shifting gears now away from the SSF and to the connected organization...

What can **corporations** do to support or oppose candidates using their treasury funds?

## Prohibition

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Corporations are prohibited from using treasury funds to make contributions in connection with federal elections.



## Prohibition

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### Key Point:

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

### Exceptions:

Communications and Use of Facilities

## Corporate IE's and EC's

- ▣ Independent Expenditures and Electioneering Communications:
  - Corporations/unions may use treasury funds
  - Reporting is required
  - No effect on contribution ban

### I. Independent Expenditures and Electioneering Communications

#### A. Final Rules in Response to the Supreme Court's Decision in *Citizens United v. FEC* (Revised 11 CFR 114.2)

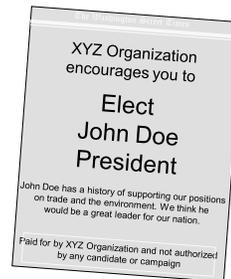
1. Corporations and labor organizations are permitted to use treasury funds to make independent expenditures in connection with federal elections and to fund electioneering communications.
2. Required to report independent expenditures and electioneering communications.
3. Need to include a disclaimer on independent expenditures and electioneering communications.
4. Super PACs and Hybrid PACs can use corporate/union funds to finance independent expenditures.
5. The court did not rule on the ban on corporate or union contributions.
6. See Final Rules on Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations, 79 FR 62797 (October 21, 2014). Available on the FEC website at: <http://sers.fec.gov/fosers/showpdf.htm?docid=305685>

**So let's examine the options that are now available for corporations (as well as labor and membership organizations and trade associations)...**

## Options for Connected Organizations

- ▣ Independent Expenditures
- ▣ Electioneering Communications
- ▣ Restricted Class Communications
- ▣ Candidate Appearances
- ▣ Use of Facilities and Resources

## Independent Expenditures



- ▣ Express Advocacy Message
- ▣ No Coordination with Candidate/Party
- ▣ Disclaimer and Disclosure Required



## Options for Connected Organizations

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- ▣ Independent Expenditures
- ▣ **Electioneering Communications**
- ▣ Restricted Class Communications
- ▣ Candidate Appearances
- ▣ Use of Facilities and Resources

## Electioneering Communications

Any broadcast, cable or satellite communication that:

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

### III. Electioneering Communications

#### A. Definition

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

1. The communication refers to a clearly identified candidate.
2. The communication is publicly distributed (i.e., disseminated by a television station, radio station, cable television system or satellite system).
3. The communication is distributed during a certain time period before an election (i.e., within 60 days prior to a general election or 30 days prior to a primary election to federal office).
4. The communication is targeted to the relevant electorate; i.e., it can be received by 50,000 or more people in the district (in the case of a U.S. House candidate) or State (in the case of a Senate candidate) that the candidate seeks to represent. 11 CFR 100.29(b)(5).

#### B. FCC Database for determining who can receive communication

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

## Lobbying/Issue Ads

≤ 30 days before Primary  
≤ 60 days before General



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### C. **May Affect Lobbying/Issue Ads**

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

# Electioneering Communications

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

**FEC FORM 9**  
24 HOUR NOTICE OF DISBURSEMENTS/OBLIGATIONS FOR  
ELECTIONEERING COMMUNICATIONS

1. Individual, Organization or Qualified Nonprofit Corporation Making the Disbursements/Obligations

(a) Name

(b) Address (number and street)  Check if different than previously reported

(c) City, State and ZIP Code

2. FEC Identification Number

(a) Name of Employer or Principal Place of Business (b) Occupation

3. Is This Statement  New or  Amended

4. Covering Period From [ ]/[/] Through [ ]/[/]

5. (a) Date of Public Distribution(s) [ ]/[/] [ ]/[/] (b) Communication Title

6. Is the Filer a Qualified Nonprofit Corporation under 11 CFR 114.10? Yes  No

7. Were the disbursements for the electioneering communication made exclusively from donations to a segregated bank account? Yes  No

8. Custodian of Records (a) Name (b) Address (number and street) (c) City, State and ZIP Code (d) Name of Employer or Principal Place of Business (e) Occupation

9. Total Donations This Statement [ ]

10. Total Disbursements/Obligations This Statement [ ]

Under penalty of perjury, I certify that this statement is true, correct and complete. In addition, if the electioneering communications reported herein were made by a corporation, I certify that the corporation is a qualified nonprofit corporation under the Commission's regulations.

TYPE OR PRINT NAME OF PERSON COMPLETING FORM \_\_\_\_\_ DATE \_\_\_\_\_

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

NOTE: Submission of false, erroneous or incomplete information may subject the person signing this statement to the penalties of 18 U.S.C. 847(b).

FEC FORM 9 PDF FEC FORM 9 (REV. 02/2015)

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## D. Disclosure Requirements

### 1. Requirement

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

### 2. Disclosed on FEC Form 9.

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

- [http://www.fec.gov/info/report\\_dates\\_2015.shtml#ec](http://www.fec.gov/info/report_dates_2015.shtml#ec) (reporting dates)
- <http://www.fec.gov/info/forms.shtml#other> (Form 9 and instructions)

### 3. Disclaimer under 11 CFR 110.11 required.

## Options for Connected Organizations

- ▣ Independent Expenditures
- ▣ Electioneering Communications
- ▣ **Restricted Class Communications**
- ▣ **Candidate Appearances**
- ▣ Use of Facilities and Resources



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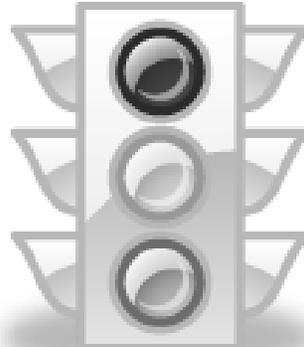
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## Corporation's Communications

Coordinated Messages  
to General Public

Other Communications  
to General Public

Communications  
within Restricted Class



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Corporate PAC Operations, Part 2

### IV. Other Permissible Campaign Activity by Connected Organizations

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

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

## Restricted Class Message

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A corporation may communicate to its restricted class on any subject, without restriction.

- B. Within the Restricted Class**
- **Express advocacy is OK on any subject without restriction.**
  - **Coordination with candidate or party is OK.**

## Restricted Class: Communications

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### ★ Corporations

- ▶ Stockholders, executive/administrative personnel, families

- **Labor Organizations**

- ▶ Members, executive/administrative personnel, families

- **Membership Organizations**

- ▶ Noncorporate members, representatives of corporate members, executive/administrative personnel, family of all three groups

- **Trade Associations**

- ▶ Executive/administrative personnel and noncorporate members
- ▶ Representatives of corporate members with whom association normally conducts business

1. **Definition of Restricted Class for Communications**
  - a) **Corporations**

Stockholders, executive and administrative personnel, and families of both groups.
  - b) **Labor Organizations**

Members, executive and administrative personnel of organization, and family of both groups.
  - c) **Membership Organizations**
    - (1) **Who is Included**

Noncorporate members, representatives of corporate members, executive and administrative personnel, and family of all three groups.
    - (2) **AO 1996-21:**
      - (a) Membership organization could send express advocacy communications to member representatives with whom member organization usually did organization business.
      - (b) Not more than 2 or so representatives per corporate member.
  - d) **Trade Associations**
    - (1) Restricted class, defined for purposes of receiving communications, is not identical to group that can be solicited for contributions to the Trade Association's PAC.
    - (2) **Who is Included**
      - (a) Executive and administrative personnel and noncorporate members,
      - (b) Representatives of corporate members with whom association normally conducts business.
      - (c) AO 1991-24: Representatives of member corporations could distribute communication to corporation's restricted class.

## Restricted Class Message

Message	Restricted Class
Express Advocacy	Okay
Coordinated	Okay
Reporting	Form 7

2. **Reporting Express Advocacy Communications to Restricted Class**  
Required if express advocacy communication costs exceeds \$2,000 when aggregated for primaries or general elections.
  - a) **Use Form 7**  
Download at <http://www.fec.gov/info/forms.shtml#other>
  - b) **Continuous Filing**  
If additional express advocacy communication expenses for primaries or general elections.

## Restricted Class Appearance

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



### 3. **Restricted Class Appearance**

- Candidate and corporation can expressly advocate for candidate.
- Candidate and corporation can solicit contributions.
- Candidate may collect contributions at event.
- Corporation's SSF may act as conduit for earmarked contributions (limits count all the way around). See 11 CFR 110.6 and 114.2(f), as well as preceding section on SSF.

## Reporting Costs

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

REPORT OF COMMUNICATION COSTS BY CORPORATIONS AND MEMBERSHIP ORGANIZATIONS					
1. NAME OF ORGANIZATION:			2. IDENTIFICATION NUMBER (Assigned by FEC)		
3a. ADDRESS (Number and Street)			3. TYPE OF ORGANIZATION (Check appropriate Box)		
4. CITY, STATE AND ZIP CODE			<input type="checkbox"/> Corporation <input type="checkbox"/> Labor Organization <input type="checkbox"/> Membership Organization <input type="checkbox"/> Trade Association <input type="checkbox"/> Cooperative <input type="checkbox"/> Corporation without capital stock		
4. TYPE OF REPORT (Check One):					
<input type="checkbox"/> 10 Day Pre-General Election Report held on _____ in the State of _____ <input type="checkbox"/> April 15 Quarterly Report <input type="checkbox"/> July 15 Quarterly Report <input type="checkbox"/> October 15 Quarterly Report <input type="checkbox"/> January 31 Year-End Report					
5. Is this Report an Amendment? <input type="checkbox"/> YES <input type="checkbox"/> NO					
6. THIS REPORT COVERS THE PERIOD _____ THROUGH _____					
SUMMARY OF COMMUNICATION COSTS					
Type of Communication	Class or Category of Communication	Method of Communication	Check One		Cost of Communication (per Candidate)
			Report	Expense	
<input type="checkbox"/> Direct Mail	<input type="checkbox"/> Seminar <input type="checkbox"/> Appearance <input type="checkbox"/> Personal				
<input type="checkbox"/> Telephone	<input type="checkbox"/> Booklet <input type="checkbox"/> Booklet				
<input type="checkbox"/> Newspaper	<input type="checkbox"/> Newsitem				
<input type="checkbox"/> Other	<input type="checkbox"/> Newsitem				
NOTE: For additional communications, attach separate sheets containing the same information as above.					
TOTAL COMMUNICATION COSTS FOR THIS PERIOD: \$ _____					
I certify that I have examined this report and, to the best of my knowledge and belief, it is true, correct and complete.					
Type or Print Name _____			Signature and Title of Person Designated to Sign This Report _____		
Title _____			Title _____		
NOTE: Submission of false, erroneous, or incomplete information may subject the person signing the report to penalties of 2 U.S.C. 5472g.			FOR FURTHER INFORMATION CONTACT: Federal Election Commission 743 P Street, N.W. Washington, D.C. 20543 Local: 202-462-1100		



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4. **Reporting Costs of Restricted Class Appearance/Communications**
  - a) Communication costs must be reported by the corporation on FEC Form 7 once costs for all candidates running in the same election aggregate over \$2,000.
  - b) If the communication costs are paid for by the SSF, they will not result in a contribution or expenditure. Such costs are reported on FEC Form 3X as “other disbursements.” AO 2000-03.

## Restricted Class Message

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### ▣ Summary:

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

### 5. **Restricted Class Communications – Summary**

When the communication is made to the restricted class:

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

## Key Point

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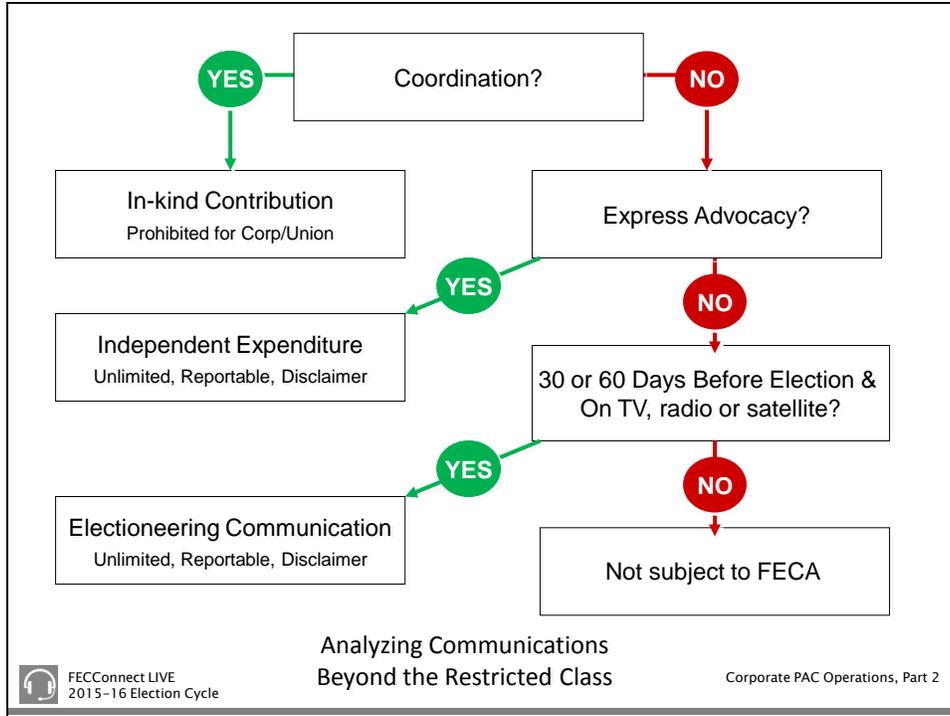


Corporations must avoid coordination when communicating beyond the restricted class

**6. Key Point: Avoid Coordination of Messages to General Public**

If communication goes beyond the restricted class, avoid coordination between organization and campaign/party to avoid making a prohibited contribution.

Note: If an SSF wants to hold a fundraiser or event for candidate and invite individuals and PACs beyond connected organization's restricted class, it may do so, but must follow the advance payment rules in this outline for SSFs (pages 20-26).



## Options for Connected Organizations

- ▣ Independent Expenditures
- ▣ Electioneering Communications
- ▣ Restricted Class Communications
- ▣ Candidate Appearances
- ▣ **Use of Facilities and Resources**

## Campaign Use of Corporate Facilities

### General Rule: Payment Required

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

## V. Use of Organization's Facilities and Resources

### A. General Rule:

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

#### 1. If Campaign/Party Pays:

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

#### 2. If PAC Pays

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

## Employee Volunteer Activity

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

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

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

#### **1. What is "Incidental Use?"**

- a) "Incidental use" means use that does not prevent employee or organization from completing normal work that would be completed during that period.
- b) Safe Harbor: 1 hour per week or 4 hours per month.

#### **2. Reimbursement**

- a) Individual must reimburse organization for any increased overhead (e.g., no need to pay for regular local phone bill, but would have to pay for long distance calls).
- b) If more than incidental use: Individual must reimburse organization the entire cost of using the facilities within commercially reasonable time.

#### **3. Employee "Asked" to "Volunteer"**

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

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

## Objectives – Part 2

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- ▣ Highlight Methods for Supporting Federal Candidates
- ▣ Identify Types of Communications and Applicable Rules
- ▣ Discuss Options for Connected Organization Involvement



## Workshop Evaluation

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*Help Us Help You!*

Please complete an evaluation  
of this workshop.

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



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