



INTERACTIVE ONLINE TRAINING PROGRAM

# Corporate PAC Operations, Part 2

May 11, 2016  
3:00 – 4:30 p.m.

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2015-16 Election Cycle

Corporate PAC Operations, Part 2

## Objectives – Part 2

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- Highlight Methods for Supporting Federal Candidates
- Evaluate Communications: Audience, Message, Payment and Disclosure
- Identify and Apply Rules for Use of Corporate Facilities

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Corporate PAC Operations, Part 2

## SUPPORTING FEDERAL CANDIDATES

### Supporting Federal Candidates

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- ▣ Direct Contributions
  - Review Limits
  - Curing Excessive
  - Refunds and Returns

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

# Contribution Limits

**Review**

For 2015-16 Elections	Candidate Committee per election	PAC (SSF and Nonconnected) per year	State, District & Local Party Committee per year	National Party Committee per year	Additional National Party Committee Accounts per year
Individual	\$2,700	\$5,000	\$10,000 (combined)	\$33,400	\$100,200
Candidate Committee	\$2,000	\$5,000	Unlimited Transfers	Unlimited Transfers	
PAC: Multicandidate	\$5,000	\$5,000	\$5,000 (combined)	\$15,000	\$45,000
PAC: Nonmulticandidate	\$2,700	\$5,000	\$10,000 (combined)	\$33,400	\$100,200
National Party Committee	<b>Includes both monetary and in-kind contributions</b>				
State, District & Local Party Committee					

## 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 organization



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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

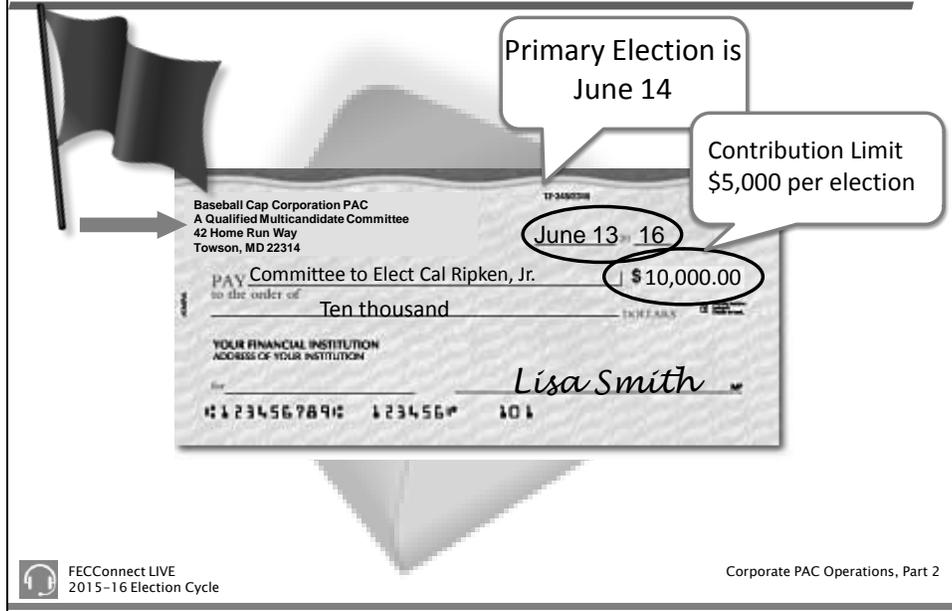
- a) Undesignated contribution counts towards the candidate's next scheduled election.
- b) PAC must designate contribution if:
  - (1) Intends contribution to count toward a future election, beyond the upcoming election.
  - (2) Making contribution to retire candidate's debt of a past election. Note: 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 Virginia 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

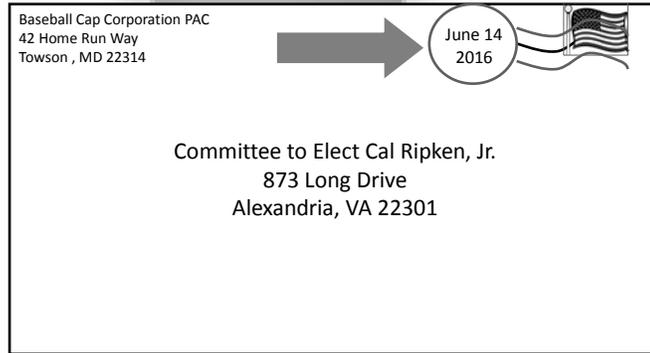


### Example, continued:

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).

## Practical Application



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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.

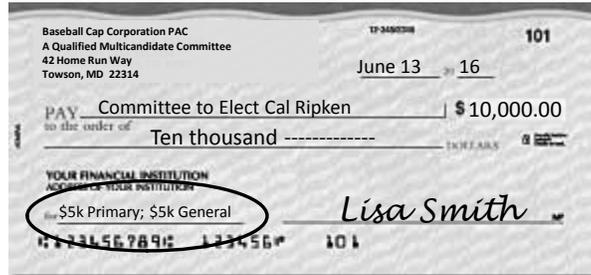
**b) Electronic Contributor Redesignations**

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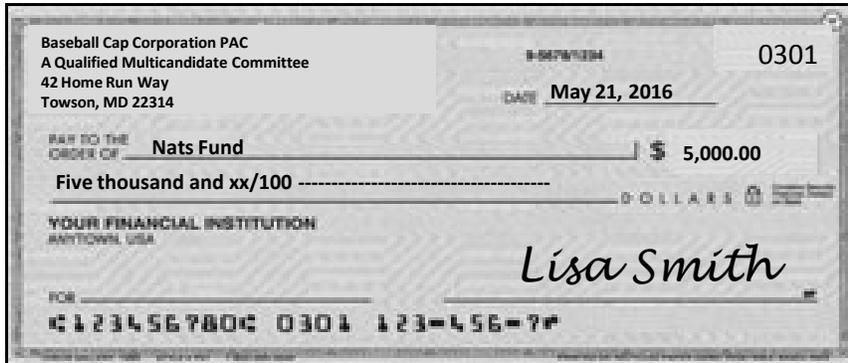
- ▣ Itemizing Monetary Contributions Made and Refunded
  - How does the SSF disclose the transaction?
  - What information do we need to disclose?

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.)

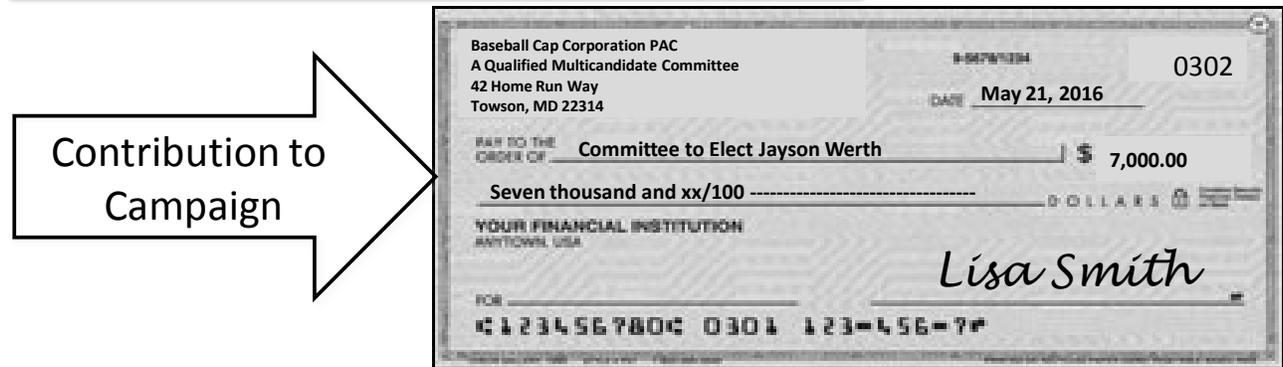
- 1. What types of transactions are these?**
- 2. How must the committee disclose the transaction(s)?**
- 3. What information from the scenario do we need to disclose this correctly?**

**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.

## Disclose Contribution to Leadership PAC on June (M6) Monthly Report

**FEC Form 3X: Schedule B, Line 23**

Contribution to Leadership PAC

<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 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	

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)

<p><b>A. Nats Fund</b></p> <p>Mailing Address <b>333 West Camden Street</b></p> <p>City <b>Vienna VA 22180</b>      State      Zip Code</p> <p>Purpose of Disbursement <b>Contribution</b></p> <p>Candidate Name</p>	<p>Date of Disbursement <b>05 / 21 / 2016</b></p> <p>Amount of Each Disbursement this Period <b>5,000.00</b></p> <p><input type="checkbox"/> Memo Item</p>
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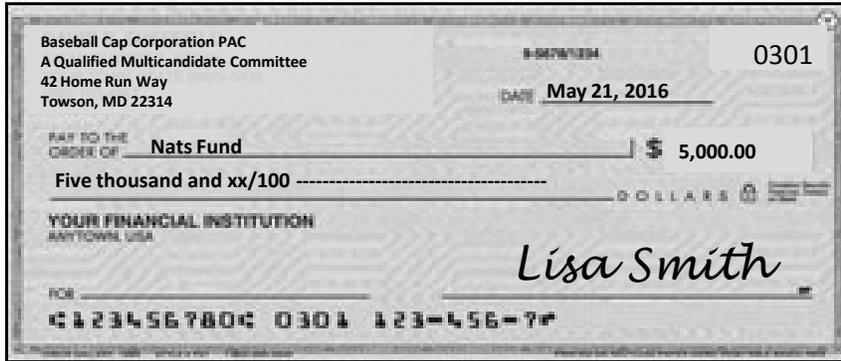
Office Sought:	House <input type="checkbox"/> Senate <input type="checkbox"/> President <input type="checkbox"/> (Party)	Disbursement For:	Primary <input type="checkbox"/> General <input type="checkbox"/> (Party)
State:	District:		

Not Applicable

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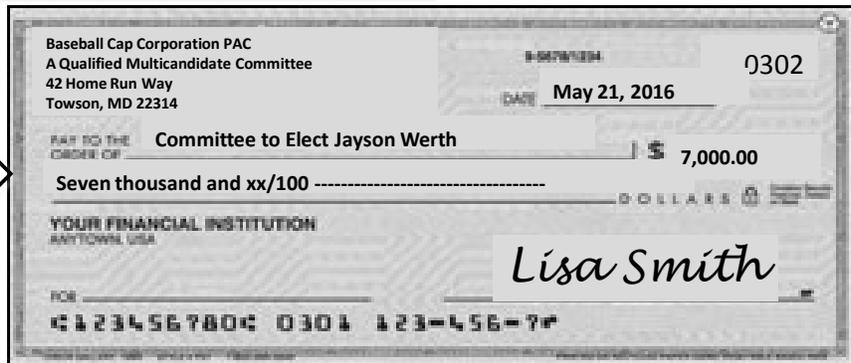
**Answers to Reporting Example #3B:  
Contribution to Federal Candidate (Check #302)**

# Contributions Made



Contribution to  
Leadership PAC

Contribution to  
Campaign



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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.

## Part 2 of 2: Disclose Redesignation on July (M7) Monthly Report

Redesignation

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"/> 27	<input type="checkbox"/> 28a	<input type="checkbox"/> 28b
		<input type="checkbox"/> 24	<input type="checkbox"/> 25	<input type="checkbox"/> 26
		<input type="checkbox"/> 28c	<input type="checkbox"/> 29	<input type="checkbox"/> 30b

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NAME OF COMMITTEE (In Full)  
**Baseball Cap Corporation PAC**

Full Name (Last, First, Middle Initial)

A. **Committee to Elect Jayson Werth** Date of Disbursement: **05 / 21 / 2016**

Mailing Address: **873 Long Drive**  
City: **Vienna VA 22180** State: Zip Code

Purpose of Disbursement: **Contribution** Category/Type: **011**

Candidate Name: **Jayson Werth**

Office Sought:  House  Senate  President  
Disbursement For:  Primary  General  Other (specify) **VA** District:

Amount of Each Disbursement this Period: **7,000.00**

Memo Item  
**As disclosed on June Monthly**

B. **Committee to Elect Jayson Werth** Date of Disbursement: **06 / 05 / 2016**

Mailing Address: **873 Long Drive**  
City: **Vienna VA 22180** State: Zip Code

Purpose of Disbursement: **Contribution** Category/Type: **011**

Candidate Name: **Jayson Werth**

Office Sought:  House  Senate  President  
Disbursement For:  Primary  General  Other (specify) **VA** District:

Amount of Each Disbursement this Period: **2,000.00**

Memo Item  
**Redesignation**

FEC Form 3X:  
Schedule B,  
Line 23



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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:

Disclose Returned Check as Negative  
Entry on August (M8) Monthly Report

Returned, Lost  
Or Voided

FEC Form 3X: Schedule B, Line 23

<b>SCHEDULE B (FEC Form 3X)</b> <b>ITEMIZED DISBURSEMENTS</b>		Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one)	PAGE    OF 26        30b
		<input type="checkbox"/> 21b <input type="checkbox"/> 27	<input type="checkbox"/> 22 <input type="checkbox"/> 28a	<input checked="" type="checkbox"/> 23 <input type="checkbox"/> 28b
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NAME OF COMMITTEE (In Full)  
**Baseball Cap Corporation PAC**

Full Name (Last, First, Middle Initial)

A. **Nats Fund**

Mailing Address  
**333 West Camden Street**

City **Vienna** State **VA** Zip Code **22180**

Purpose of Disbursement  
**Check returned – original contribution 5/21/16**

Candidate Name

Office Sought:  House  Senate  President

Disbursement For:  Primary  General  Other (specify) ▼

State: \_\_\_\_\_ District: \_\_\_\_\_

Date of Disbursement  
 07 / 10 / 2016

Amount of Each Disbursement this Period  
**- 5,000.00**

**Uncashed check from 2016  
 June Monthly**



## USE OF COMMUNICATIONS AND CORPORATE FACILITIES/ FOR ELECTION-RELATED ACTIVITIES

### Communications and Resources

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Shifting gears now to also discuss the connected organization ...

Making the most of corporate resources and communications for election-related activities



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### Prohibition

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



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## I. Use of Communications and Corporate Resources

### A. General Prohibition (11 CFR 114.2)

Corporations are generally prohibited from making contributions (direct or in-kind) to influence federal elections.

### B. Independent Expenditures and Electioneering Communications Permitted (11 CFR 114.10)

Corporations may make independent expenditures and electioneering communications to the general public using general treasury funds, provided that they do not coordinate those communications with candidates or political party committees.

- See updated FEC rules on corporate/labor communications at [79 FR 62797 \(October 21, 2014\)](#).

## Prohibition



### Key Point:

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



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## What is Permitted?

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### Corporations CAN:

- ▣ Pay for express advocacy communications to restricted class
- ▣ Coordinate communications to restricted class with campaign or party
- ▣ Allow the use of corporate facilities under certain conditions
- ▣ Pay for independent expenditures to the general public



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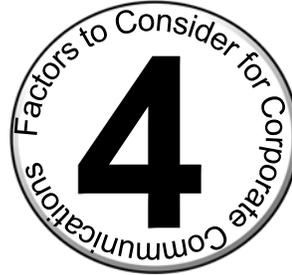
### **B. Exceptions**

1. Establishment of an SSF (as discussed in SSF Operations, Part 1)
2. Use of corporate facilities for election-related activities.
3. Financing certain election -related communications to the restricted class (coordination with candidates OK for restricted class communications)
4. Financing certain expenditures to support candidates beyond the restricted class (i.e., independent expenditures, etc.).  
See new 11 CFR 114.10.

## Evaluating Communications

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1. Audience  
Restricted Class / General Public
2. Message  
Express Advocacy / Coordinated / Independent
3. Payment  
Corporation / SSF / Campaign
4. Reporting  
Form 3X / Form 5 / Form 7



## Evaluating Communications

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- 1. Audience**  
**Restricted Class / General Public**
2. Message  
Express Advocacy / Coordinated / Independent
3. Payment  
Corporation / SSF / Campaign
4. Reporting  
Form 3X / Form 5 / Form 7

## Restricted Class: Communications



### Corporations

- ▶ Stockholders, executive/administrative personnel, families

- **Labor Organizations**

- ▶ Members, executive/administrative personnel, families

- **Membership Organizations**

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

- **Trade Associations**

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



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## II. Communications

### A. Definition: Restricted Class for Communications

#### 1. Corporations

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

## Evaluating Communications

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1. Audience?  
Restricted Class / General Public
2. **Message?**  
**Express Advocacy / Coordinated / Independent**
3. Payment?  
Corporation / SSF / Campaign
4. Reporting?  
Form 3X / Form 5 / Form 7

## Express Advocacy

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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

- B. Definition: Express Advocacy**  
**Two Part Definition of Unmistakably Urging Election or Defeat**  
**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.

## Coordination

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

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

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

1. **Why Important? Coordination = In-Kind Contribution**  
(unless exempt communication by corporation to restricted class)  
(11 CFR 109.21(b)(1))
  - a) **Connected organization** prohibited from making contributions.
  - b) **Subject to contribution limitations.**
  - c) **Appropriate disclaimer required.**
  - d) **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
  - Paid for by someone other than campaign
- ▣ Content Standard
  - Election-related message and timing
- ▣ Conduct Standard
  - Interaction/sharing of information

2. **Coordinated Communications - 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).
  - a) **Source of Payment**
    - (1) To be considered coordinated, communication must be paid for by someone other than a candidate, an authorized committee or a political party committee. (If campaign paid for it themselves, coordination wouldn't be an issue.)
    - (2) Payment prong is satisfied if communication is paid for by the PAC.

b) **“Content Standard”(11 CFR 109.21(c)(1)-(5))**

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

- (1) **Electioneering Communication;**
- (2) **Public Communication that Republishes, Disseminates or Distributes Campaign Materials;**
- (3) **Public Communication with Express Advocacy;**
- (4) **Communication that is “Functional Equivalent of Express Advocacy;”**

A communication that 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 75 Fed. Reg. 55947.

(5) **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** = 120 days before a primary or general election (presidential cycle).
- See Compliance Map for coordination dates  
<http://www.fec.gov/info/ElectionDate>.

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

Website and email communications by a PAC 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. Those type of communications did not fit into the definitions of either public communication or electioneering communication.

- c) **“Conduct Standard”**  
Test satisfied if communication meets any one of these standards:
- (1) **Request or Suggestion (11 CFR 109.21(d)(1))**
  - (2) **Material Involvement (11 CFR 109.21(d)(2))**
  - (3) **Substantial Discussion (11 CFR 109.21(d)(3))**
  - (4) **Employment of Common Vendor (11 CFR 109.21(d)(4))** Safe harbor of 120 days applies.
  - (5) **Former Employee/Independent Contractor (11 CFR 109.21(d)(5))** Safe harbor of 120 days applies.
- d) Firewall policy may be put in place in cases of common vendors, former employees or former contractors; document in writing. See 11 CFR 109.21(h).

## Coordination Equation

Source + Content + Conduct = Coordination

Coordination = Contribution

Contribution = Limits + Prohibitions

No Coordination (plus Express Advocacy) =  
Independent Expenditure



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### 3. Takeaways:

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

## Independent Expenditure

### 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

### D. **Definition: Independent Expenditure**

#### 1. **General 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.

#### 2. **Elements of Definition**

##### a) **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.”

##### b) **Express Advocacy (11 CFR 100.22)**

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

## Independent = Unlimited

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

## Evaluating Communications

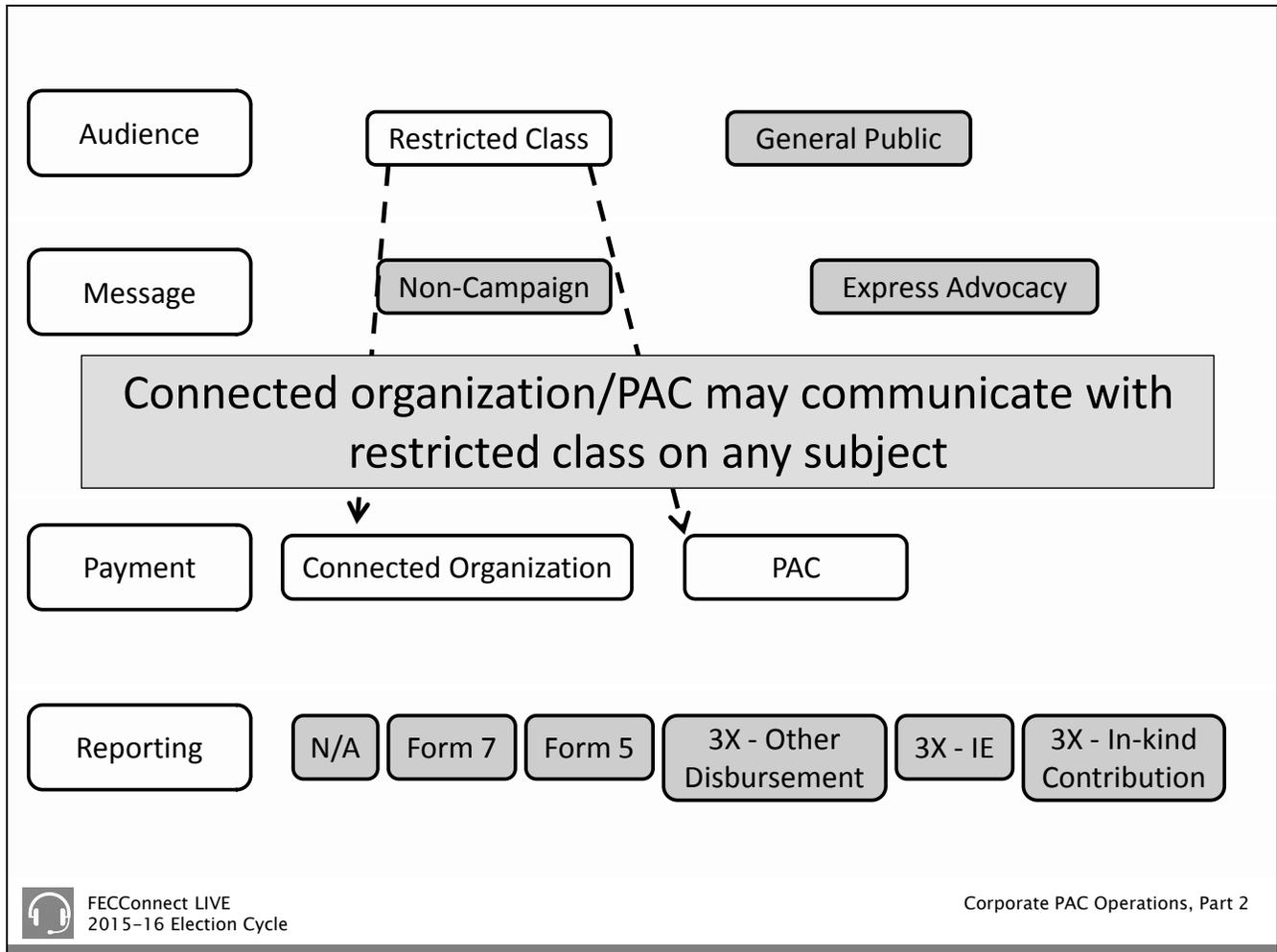
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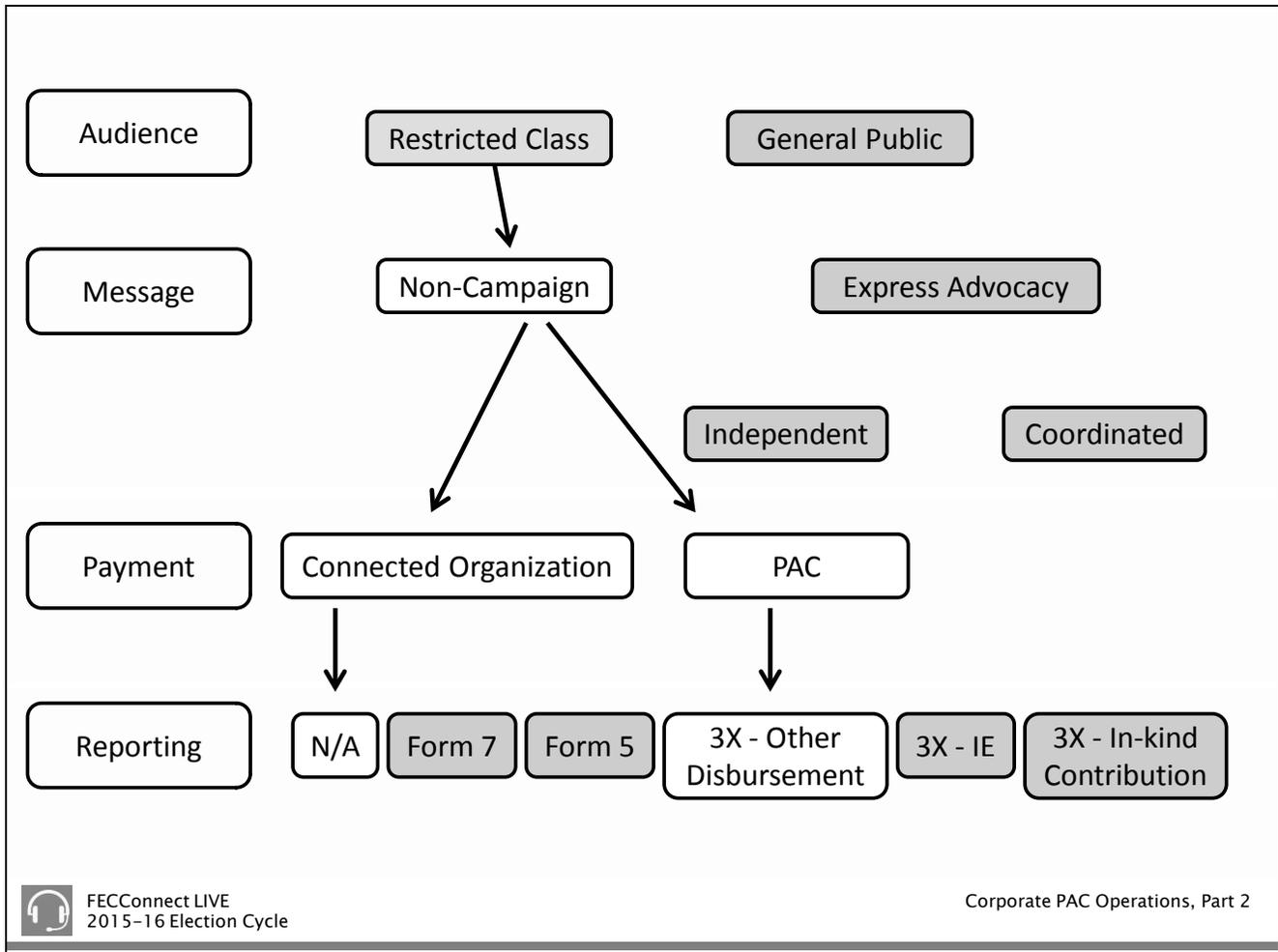
1. Audience?  
Restricted Class / General Public
2. Message?  
Express Advocacy / Coordinated / Independent
- 3. Payment?**  
**Corporation / SSF / Campaign**
- 4. Reporting?**  
**Form 3X / Form 5 / Form 7**

## COMMUNICATIONS / USE OF CORPORATE FACILITIES SCENARIOS EVALUATING COMMUNICATIONS

*As you can see, there's a lot to consider when undertaking communications and activities that support or oppose candidates. Let's work through some scenarios, starting with a communication to the corporation's restricted class for communications.*

### I. Communications to Restricted Class





**A. Reporting Non-Campaign Communications Before the Restricted Class**

**1. By Corporation - None**

**2. By SSF**

a) As a political committee registered with the FEC, the SSF must report all disbursements from its account, even if not related to federal elections.

**b) Use Form 3X**

Such costs are reported on Line 29, "Other Disbursements."

## Scenario: Candidate Appearance

Skip, the Executive Director of The Baseball Cap Corporation, invites corporate executives to a luncheon where Senate Candidate Adam Jones delivers a campaign speech.

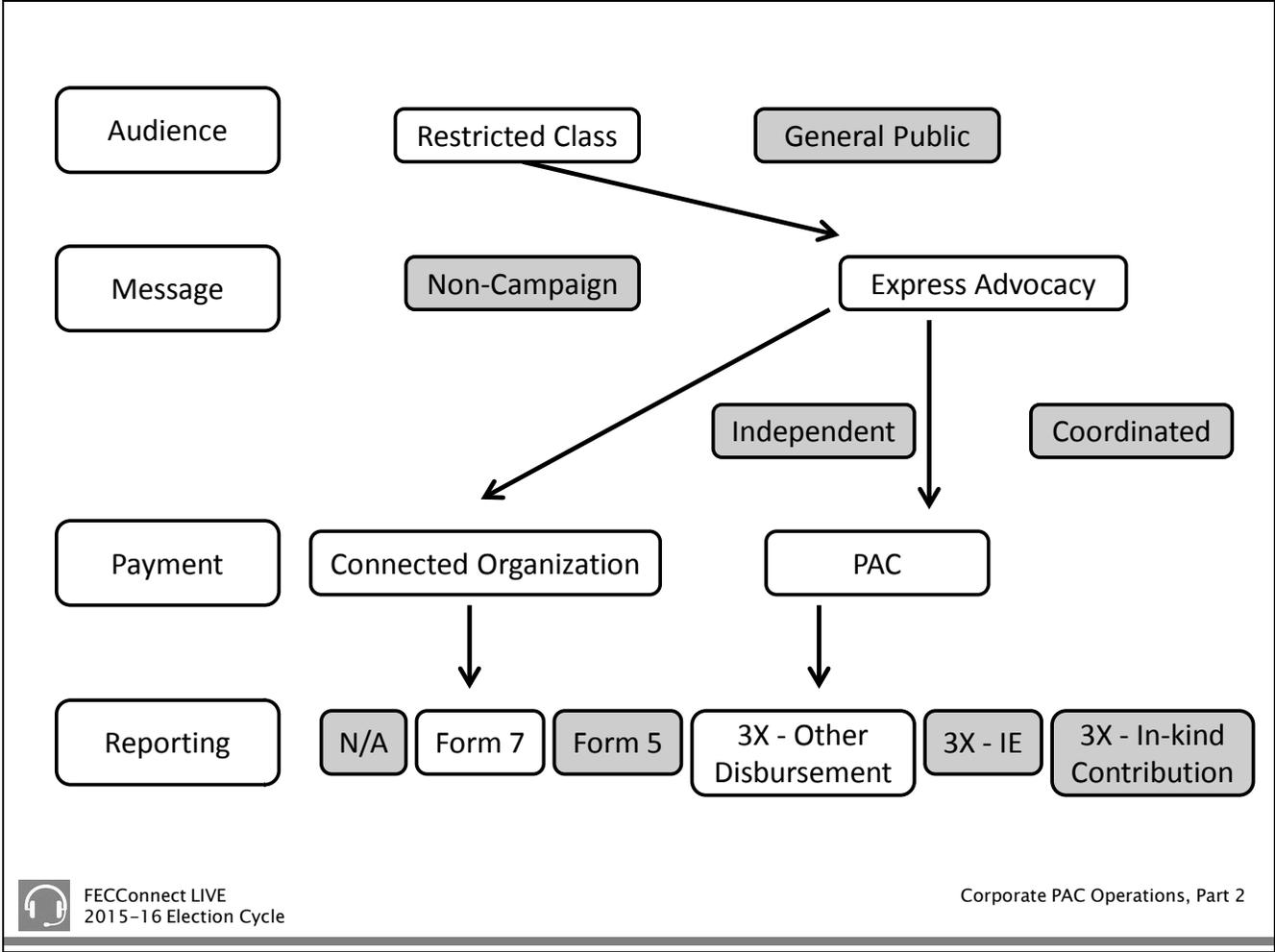


As Skip introduces the candidate, he tells all to “Vote for Adam!”

Skip, the Executive Director of the Baseball Cap Corporation wants to do all he can to help Senate Candidate Adam Jones get elected to Congress. He has a number of ideas to make this happen.

His first idea is to invite Senate Candidate Jones to meet the corporation's executives. Skip organizes a meet and greet luncheon at corporate headquarters. As the corporation's executives settle in, Skip calls Candidate Jones up to the dais to address the crowd and in his introduction, Skip tells the crowd to, “Vote for Adam!”

**What factors do we need to consider for this event?**



## 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



- B. Express Advocacy Communications Before the Restricted Class (11 CFR 114.3)**
- 1. General Guidelines for Candidate Appearance**
    - a) Candidate and corporation can expressly advocate for candidate
    - b) Both candidate and corporation can solicit contributions for candidate.
    - b) Candidate/campaign may collect contributions at event.
    - c) Corporation's SSF may collect contributions; will trigger requirements as conduit for earmarked contributions (limits count all the way around). See 11 CFR 110.6 and 114.2(f) and pages 81-82 and Appendix D in the *Campaign Guide for Corporations and Labor Organizations*.

## 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.

### 2. Reporting Express Advocacy Communications Before Restricted Class

#### a) By Corporation

Required if express advocacy communication costs exceeds \$2,000 when aggregated for all candidates running in the same election (primaries or general elections).

##### (1) Use Form 7

Download at <http://www.fec.gov/info/forms.shtml#other>

##### (2) Continuous Filing

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

#### b) By SSF

(1) If the communication costs are paid for by the SSF, they will not result in a contribution or expenditure.

##### (2) Use Form 3X

Such costs are reported on Line 29 as “Other Disbursements.” See AO 2000-03. (Note that you should reference this AO on your FEC report when itemizing such costs.)

*So because an exception to the definition of contribution covered express advocacy communications to the restricted class, no prohibited contribution was made, even though the event was coordinated. Reporting is required though.*

*Let's see how the results change when the audience changes.*

## II. Campaign-Related Communications Before the General Public (Coordinated)

### Scenario: Candidate Fundraiser

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Skip wants to contact other industry executives and invite them to a breakfast in the main reception room at the corporate headquarters to meet with Adam Jones.



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

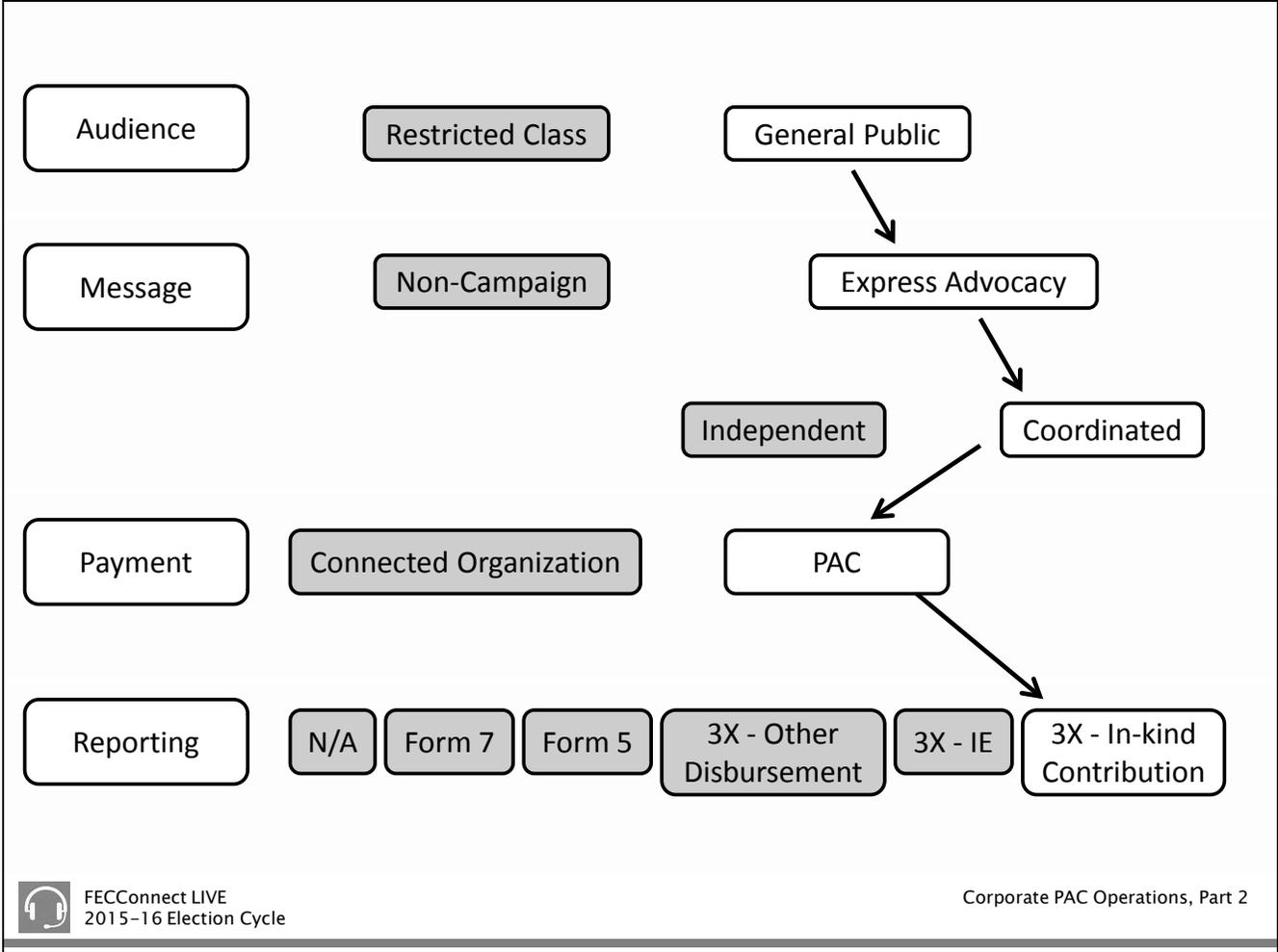
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Corporate PAC Operations, Part 2

Skip has another idea to help broaden the support base for Candidate Jones. Skip would like to have another meet and greet event at his corporation's headquarters but this time, he would like to invite other industry executives who are not affiliated with Baseball Cap Corporation. Skip discusses his idea with the Jones Campaign Manager and they agree that a mimosa breakfast held at the Baseball Cap Corporation headquarters on March 30, 2016, would work best for Candidate Jones.

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

**What factors do we need to consider for this event?**



## Use of Facilities: Campaign Event

- ❑ Corporation SSF may host fundraiser/event for candidate at organization'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 corporation facilities: fair market value

- A. 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, corporations 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.
- B. Use of Corporate/Labor Facilities**
1. **Candidate Fundraiser/Event Coordinated with Campaign**
    - a) **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.
    - b) **Advance Payment Required**
      - (1) 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;

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

## Use of Facilities: Directed Staff

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

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

Corporate officials or employees may direct subordinate staff to work on fundraising for candidate or party, using corporate 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 Facilities: 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!

- 3. Employee/Member Use of Facilities for Volunteer Activity: Incidental Use (11 CFR 114.9(a))**  
OK for employees of corporation (and members and officials of the corporation) to make "incidental use" of facilities for their own individual volunteer activity in connection with federal election.
- a) What is "Incidental Use?"**
- (1) "Incidental use" means use that does not prevent employee or corporation from completing normal work that would be completed during that period.
  - (2) Safe Harbor: 1 hour per week or 4 hours per month.
- b) Reimbursement**
- (1) Individual must reimburse corporation for any increased overhead (e.g., no need to pay for regular local phone bill, but would have to pay for long distance calls).
  - (2) If more than incidental use: Individual must reimburse corporation the entire cost of using the facilities within commercially reasonable time.
- c) Employee "Asked" to "Volunteer"**  
The "incidental use" allowance does not apply if the employee is asked by a superior to do the work as part of his/her regular duties.

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

## Use of Facilities: Lists/Food Services

Must pay 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 organization receives advance payment for fair market value of services.

## Use of Facilities: 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 organization 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 it customarily makes meeting room available to civic, community or other groups under the same conditions and if it makes it available to any other candidate or committee on the same terms, upon request.
- c) **PAC Paying for Room**  
If a PAC pays for its connected organization's meeting room for an event as an in-kind contribution, the payment must be made in advance.

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

The corporations 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.

## Scenario: Candidate Fundraiser

▣ Collection of Campaign Checks at Event

- Corporation may **NOT** collect contributions
- If PAC collects contributions, campaign and PAC will need to report earmarked contributions
- Avoid earmarking rules by having campaign representative collect contributions

**C. Campaign Event: Rules on Collecting Campaign Contributions**

**1. Corporate/Labor Organization**

Organization personnel MAY NOT collect the checks - prohibited facilitation.

**2. Corporate/Labor SSF**

Individual representing the PAC may collect campaign contributions at the event. In that instance, the PAC must follow the rules for reporting earmarked contributions. 114.2(f)(3).

**3. Campaign**

The campaign may collect checks at the event. Reported by campaign only; no reporting by association or SSF necessary.

**4. Lobbyist Bundling Disclosure (11 CFR 104.22)**

If the organization employs a registered lobbyist the requirements for lobbyist bundling disclosure could be a factor.

**a) Reporting by the Campaign**

Campaign would need to determine if the contributions raised were either (1) forwarded to the campaign by a lobbyist / registrant / registrant PAC, or (2) credited by the campaign to a lobbyist / registrant PAC through “records, designations or other means of recognizing.” If so, the event contributions would be applied toward the lobbyist bundling disclosure threshold to determine if the campaign must disclose the activity on FEC Form 3L.

**b) Reporting by Corporate/Labor Organization or SSF**  
Organization and the SSF have no reporting responsibilities under the lobbyist bundling disclosure rules. SSF must disclose on Form 1 its status as a lobbyist/registrant PAC.

**Reporting Example #6: Itemizing SSF Payment for Use of Corporate/Labor Resources for Candidate Fundraiser**

## **Example: Candidate Fundraiser**

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- ▣ Itemizing SSF Payment for Use of Corporate Resources for Candidate Fundraiser
  - How does the SSF disclose the transaction?
  - What information do we need to disclose?



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Corporate PAC Operations, Part 2

You'll recall that Skip and the Jones campaign had agreed to have a mimosa breakfast at Baseball Cap Corporation headquarters on March 30th. Skip had directed his secretary to reserve a corporate meeting room and draft an email invitation, which was done on March 14.

- 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 Example #6: Itemizing SSF Payment for Use of Corporate/Labor Resources for Candidate Fundraiser**

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

**Answer:** The payment for the use of the corporation's meeting room and staff time to organize the event represent in-kind contributions to the federal candidate, Adam Jones.

In order to avoid prohibited facilitation of contributions, corporate officials or employees may direct subordinates to plan, organize or carry out fundraising as part of their work, using corporate resources, only if the corporation receives advance payment for the fair market value of the services, including compensation, benefits and overhead. See 11 CFR 114.2(f)(2)(i)(A) and (iv). This requirement extends to the SSF. See AO 1984-24.

Also, the corporation's SSF may use the corporation's meeting rooms, with compensation. Like other resources it uses, if the SSF pays for them, it must pay in advance. See AO 1984-24.

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

**Answer:** Disclosure of this activity has two parts.

**Part 1: Disclosure of Advance Payment**

The SSF will report the advance payment on their Schedule B for Line 21b as an "Operating Expenditure." Note that the payment was made to the connected organization on March 14, 2016, as the date the room was reserved and the staff time was spent organizing the event — a couple weeks prior to the March 30th event. The SSF itemizes:

- \$1,000.00 advance payment on March 14, 2016, to the corporation for staff time and use of the meeting room.
- -\$1,000.00 contribution shown as a negative entry. The entry will use the date the candidate receives the benefit of the resources provided, which is the date of the event — March 30, 2016. The SSF reports the entry as a negative entry to negate the in-kind contribution reported on the committee's Schedule B, Line 23 (see Part 2 below). All candidate and election information for Senate Candidate Jones is noted in the appropriate boxes.

***Reporting Example Continues on Next Page***

# Report Date of Advance Payment FEC Form 3X: Schedule B, Line 21(b)

**SSF Payment for  
Facilities Use**

SCHEDULE B (FEC Form 3X) ITEMIZED DISBURSEMENTS		FOR LINE NUMBER: (check only one)	PAGE	OF
Use separate schedule(s) for each category of the Detailed Summary Page		<input checked="" type="checkbox"/> 21b		
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.		<input type="checkbox"/> 22		
NAME OF COMMITTEE (In Full)		<input type="checkbox"/> 23		
<b>Baseball Cap Corporation PAC</b>		<input type="checkbox"/> 24		
Full Name (Last, First, Middle Initial)		<input type="checkbox"/> 25		
<b>A. Baseball Cap Corporation</b>		<input type="checkbox"/> 26		
Mailing Address		<input type="checkbox"/> 27		
<b>42 Home Run Way</b>		<input type="checkbox"/> 28a		
City		<input type="checkbox"/> 28b		
<b>Towson</b>		<input type="checkbox"/> 28c		
State		<input type="checkbox"/> 29		
<b>MD</b>		<input type="checkbox"/> 30a		
Zip Code		<input type="checkbox"/> 30b		
<b>22314</b>				
Purpose of Disbursement				
<b>Use of Meeting Room/Staff Time</b>				
Candidate Name		<b>011</b>		
<b>Adam Jones</b>		Category/Type		
Office Sought:		Amount of Each Disbursement this Period		
<input type="checkbox"/> House		<b>1,000.00</b>		
<input checked="" type="checkbox"/> Senate		<input type="checkbox"/> Memo Item		
<input type="checkbox"/> President				
Disbursement For:				
<input checked="" type="checkbox"/> Primary				
<input type="checkbox"/> General				
<input type="checkbox"/> Other (specify) ▼				
State:				
<b>MD</b>				
District:				
Full Name (Last, First, Middle Initial)				
<b>B. Baseball Cap Corporation</b>				
Mailing Address				
<b>42 Home Run Way</b>				
City				
<b>Towson</b>				
State				
<b>MD</b>				
Zip Code				
<b>22314</b>				
Purpose of Disbursement				
<b>Use of Meeting Room/Staff Time (in-kind)</b>				
Candidate Name		<b>011</b>		
<b>Adam Jones</b>		Category/Type		
Office Sought:		Amount of Each Disbursement this Period		
<input checked="" type="checkbox"/> House		<b>- 1,000.00</b>		
<input type="checkbox"/> Senate		<input type="checkbox"/> Memo Item		
<input type="checkbox"/> President		<b>In-kind</b>		
Disbursement For:		<b>See Sch. B, Line 23</b>		
<input checked="" type="checkbox"/> Primary				
<input type="checkbox"/> General				
<input type="checkbox"/> Other (specify) ▼				
State:				
<b>MD</b>				
District:				



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Corporate PAC Operations, Part 2

## Part 2: Disclosure of In-Kind Contribution

For in-kind contributions, the date the contribution is “made” is the date the candidate receives the benefit of the goods or services. Here, the in-kind contribution was made on March 30, 2016, the date of the candidate fundraiser, and must be disclosed on a Schedule B for Line 23. The connected organization is listed as the payee (provider of the resources), and the purpose box includes a notation that it is an in-kind contribution. All candidate and election information for Senate Candidate Jones is noted in the appropriate boxes.

*Reporting Example Continues on Next Page*

# Report Date of Event = Contribution

## FEC Form 3X: Schedule B, Line 23

**SSF Payment for  
Facilities Use**

<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 type="checkbox"/> 21b	<input type="checkbox"/> 22	<input checked="" type="checkbox"/> 23
		<input type="checkbox"/> 27	<input type="checkbox"/> 28a	<input type="checkbox"/> 28b
		<input type="checkbox"/> 24	<input type="checkbox"/> 25	<input type="checkbox"/> 26
		<input type="checkbox"/> 28c	<input type="checkbox"/> 29	<input type="checkbox"/> 30

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)

A. <b>Baseball Cap Corporation</b>	Date of Disbursement
	MM / DD / YYYY <b>03 / 30 / 2016</b>
Mailing Address <b>42 Home Run Way</b>	Amount of Each Disbursement this Period <b>1,000.00</b>
City <b>Towson</b> State <b>MD</b> Zip Code <b>22314</b>	
Purpose of Disbursement <b>Use of Meeting Room/ Staff Time (In-Kind)</b>	Memo Item <b>See Sch. B, Line 21b</b>
Candidate Name <b>Adam Jones</b>	
Office Sought: <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President	Disbursement For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼
State: <b>MD</b> District:	



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

**Answer:** We need both the date of the advance payment to the connected organization for the use of resources and the date of the contribution (the date that the candidate benefited from the use of facilities, in this case, the date of the fundraising event. Also needed: itemization of the name/address of the entity providing the resources (the connected organization), purpose of disbursement, a notation of “in-kind” and all of the candidate and election information.

#### Points to Remember:

- Date on Schedule B, Line 21b = date on which the advance payment for the good/service is provided.
- Negative entry date on Schedule B, Line 21b = date on which the good/service is provided.
- Date on Schedule B, Line 23 = date on which good/service is provided.

- Negative entry for the amount of the good or service provided to the candidate on Schedule B, Line 21b. Electronic filers will need to contact their software providers to work through the negative entry in their software. FEC Filers contact your Analyst.
- Indicate all candidate and election information for entries on Schedule B, Line 21b and 23 in the appropriate fields.
- Remember with advance payment, there is no initial disbursement of the connected organization's treasury funds because that constitutes an illegal loan, advance, or anything of value to either the candidate or the SSF
- PAC must pay the fair market value of the services, which includes compensation, benefits and overhead. PAC must also pay the fair market value of meeting rooms, catering/food services or mailing/phone lists. All payments must be made in advance to avoid illegal facilitation by the connected organization.
- Must report each payment as an expenditure for the reporting period in which it is made and provide allocation of such expenditure (as a contribution in-kind) per candidate on Schedule B, Line 21b.

### III. Campaign-Related Communications to the General Public (Independent)

#### Scenario: Independent Expenditures

House candidate Derek Jeter would not accept PAC checks and his campaign would not speak to representatives of the Baseball Cap Corporation PAC.



Nevertheless, Baseball Cap Corporation PAC wants to support Jeter and plans a series of radio ads in support of his general election campaign.



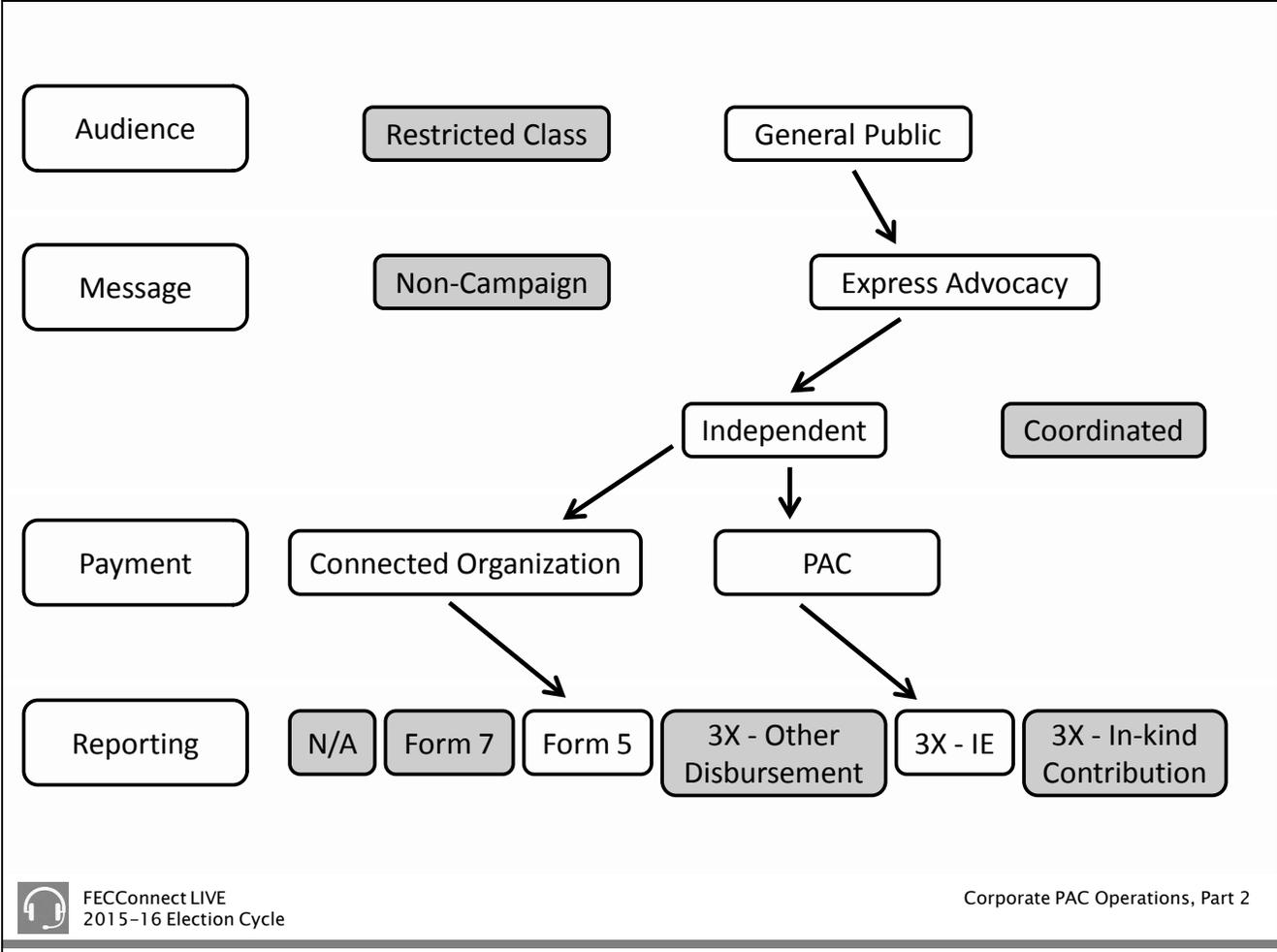
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Corporate PAC Operations, Part 2

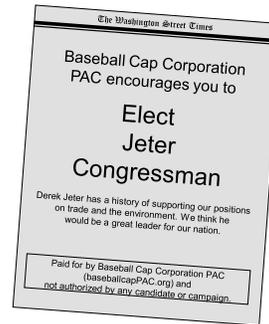
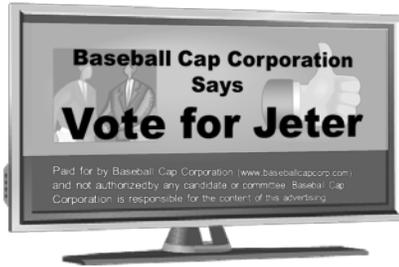
Skip would like to help Derek Jeter who is running in the general election for New York's 10<sup>th</sup> district in November 2016. The Jeter Campaign would not accept a contribution check from a PAC or would they speak to Skip or any other representative of the connected organization or the PAC.

Nevertheless, Skip would like the PAC to do something to help and decides to run a series of radio ads to support Jeter's election campaign. Just before the November 8 general election, the PAC contracts with WBAT-FM to run a \$7,500 radio ad on October 26, supporting Jeter.

**What factors do we need to consider for this communication?**



## Disclaimers - Independent Expenditures



- Paid for by
- Not authorized by
- Stand by your ad (radio and TV)

### A. Disclaimer Rules for Independent Expenditures

1. Content of disclaimer: payor, contact info, not authorized by a candidate (11 CFR 110.11(b)(3))
2. Print - box, safe harbor, color contrast (11 CFR 110.11(c)(2))
3. Stand by your ad (TV and radio ads) (11 CFR 110.11(c)(4)(i); (ii))
4. 4x4 rule 11 CFR 110.11(c)(4)(iii))
5. Resources:
  - *Special Notices* brochure:  
<http://www.fec.gov/pages/brochures/notices.shtml>
  - *Record* article on TV/Radio ads:  
<http://www.fec.gov/pages/fecrecord/2014/november/tvandradio/disclaimers.shtml>

## Reporting Independent Expenditures

- ▣ Corporation reports uses FEC Form 5;  
SSFs report using Schedule E, Form 3X
- ▣ Date made = Date disseminated
- ▣ Aggregate on per calendar year, per election,  
per office sought basis

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

1. **By the Connected Organization:** Report using FEC Form 5.
2. **By the PAC:** Report using FEC Form 3X/Schedule E during appropriate reporting period.
3. **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).)
4. **Aggregation**  
Done on a per calendar year, per election, per office sought (race) basis.

## Independent Expenditures

- ▣ 48-Hour Reports Required for IEs
  - Aggregating ≥ \$10,000
  - Made 20 days or more before an election
- ▣ 24-Hour Reports Required for IEs
  - Aggregating ≥ \$1,000 made
  - < 20 days but more than 24 hours before an election

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



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Corporate PAC Operations, Part 2

5. **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\\_2016.shtml#ie](http://www.fec.gov/info/report_dates_2016.shtml#ie).



**Reporting Example #7: Disclosing 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?



Corporate PAC Operations, Part 2

Skip would like to help Derek Jeter who is running in the general election for New York's 10<sup>th</sup> district in November 2016. The Jeter Campaign would not accept a contribution check from a PAC or would they speak to Skip or any other representative of the connected organization or the PAC.

Nevertheless, Skip would like the PAC to do something to help and decides to run a series of radio ads to support Jeter's election campaign. Just before the November 8 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 29, 2016.

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

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

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

**Answers to Example #7: Disclosing Large Last-Minute Independent Expenditures**

**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 (Post-General Report).

**Initial Reporting – 24-Hour Report**

**FEC Form 3X: Schedule E, Line 24**

**24-Hour IE Report**

SCHEDULE E (FEC Form 3X) ITEMIZED INDEPENDENT EXPENDITURES		PAGE 1 OF FOR LINE 24 OF FORM 3X	
NAME OF COMMITTEE (In Full) <b>Baseball Cap Corporation PAC</b>		FEC IDENTIFICATION NUMBER <b>C 00000004</b>	
Check <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>	<input type="checkbox"/> Memo Item	Date of Public Distribution/Dissemination <b>10 / 26 / 2016</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>	<input checked="" type="checkbox"/> Support <input type="checkbox"/> Oppose	Office Sought: <input checked="" type="checkbox"/> House <input type="checkbox"/> President <input type="checkbox"/> Senate	District: <b>10</b> 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 type="checkbox"/> Other (specify) <b>2016 General</b>	

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

**Answer:** Key facts in the scenario include the date of dissemination (10/26/16), the fact that it is an advertisement that contained express advocacy, and was not coordinated with the campaign. The PAC will also need to disclose the payee's name and address, the candidate information, the purpose of the expenditure, the amount and the calendar year-to-date per election for the office sought.

On the next report filed (Post-General report, covering activity through 11/28, and due on 12/8/16), 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.

## Disclosure on Next Regular Report

### FEC Form 3X: Schedule E, Line 24

IE Disclosed  
(Post-General)

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		
Full Name of Payee <b>WBAT-FM</b>		Date of Public Distribution/Dissemination <b>10 / 26 / 2016</b>
Mailing Address <b>12100 West Howard Avenue</b>		Amount <b>7,500.00</b>
City State Zip Code <b>Brooklyn NY 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>	<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 type="checkbox"/> Other (specify) <b>2016 General</b>



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Corporate PAC Operations, Part 2

*Reporting Example Continues on Next Page*

**Debt Owed  
(Post-General)**

<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 <input type="text" value="0.00"/>			
Amount Incurred This Period <input type="text" value="7,500.00"/>	Payment This Period <input type="text" value="0.00"/>	Outstanding Balance at Close of This Period <input type="text" value="7,500.00"/>	



*Reporting Example Continues on Next Page*

When full payment is made to the vendor on 11/29/16, it must be reflected on Schedule E supporting Line 24, as well as on Schedule D supporting Line 10 of the Year-End Report (coverage period: 11/29/16-12/31/16) due January 31, 2017. Note that the date of disbursement reflects the date of the payment to the vendor.

## Subsequent Payment

### FEC Form 3X: Schedule E, Line 24

**IE Payment  
(Year-End)**

SCHEDULE E (FEC Form 3X) ITEMIZED INDEPENDENT EXPENDITURES		PAGE 1 OF 1 FOR LINE 24 OF FORM 3X	
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			
Full Name of Payee <b>WBAT-FM</b>	<input type="checkbox"/> Memo Item	Date of Public Distribution/Dissemination <b>10 / 26 / 2016</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 <b>11 / 29 / 2016</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 <input type="checkbox"/> President <input type="checkbox"/> Senate	District: <b>10</b> 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 type="checkbox"/> Other (specify) <b>2016 General</b>	

*Reporting Example Continues on Next Page*

**Debt Owed  
(Year-End)**

<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> FOR LINE NUMBER: (check only one) <input type="checkbox"/> 9 <input checked="" type="checkbox"/> 10
NAME OF COMMITTEE (In Full) <b>Baseball Cap Makers Organization 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>7,500.00</b></div>			
Amount Incurred This Period <div style="border: 1px solid black; padding: 2px; display: inline-block;"><b>0.00</b></div>		Payment This Period <div style="border: 1px solid black; padding: 2px; display: inline-block;"><b>7,500.00</b></div>	
Outstanding Balance at Close of This Period <div style="border: 1px solid black; padding: 2px; display: inline-block;"><b>0.00</b></div>			

**Points to Remember: Reporting Last-Minute Independent Expenditures**

- **Debts**
  - Debts include ads that are contracted for but not paid for.
  - When payment for ad is made in subsequent reporting period, report payment on Schedule E, and include date of dissemination in purpose field.
  - Update Schedule D with payment; cross-reference Schedule E.
- **24-Hour Reporting**
  - Must file a **24-Hour Report** for independent expenditures aggregating (per calendar year, per election, per office) \$1,000 or more made less than 20 days but more than 24 hours before the day of an election.
  - Aggregation is done on per calendar year, per election, per office sought (race) basis.
  - Use Schedule E on Form 3X – check “24-hour” box.
  - Must be received by FEC within 24 hours after the independent expenditure is publicly distributed or otherwise publicly disseminated.
  - Must be certified (signed) by treasurer (e-filers should type the treasurers name following the certification on the report).

- For paper filers, can use overnight delivery, hand-delivery or fax to 202-219-0174 (certified or registered mail date will not be considered filed date for these).
- Last-minute independent expenditures must be disclosed again on Schedule E of the next scheduled report that the committee files.
- A 24-Hour Report is required each time an additional \$1,000 is aggregated in independent expenditures.
- The 24-Hour Report time frames are on the FEC website:
  - 2016 Primaries: [http://www.fec.gov/info/charts\\_ie\\_dates\\_2016.shtml](http://www.fec.gov/info/charts_ie_dates_2016.shtml)
  - 2016 Specials: [http://www.fec.gov/info/charts\\_ie\\_dates\\_2016.shtml#specials](http://www.fec.gov/info/charts_ie_dates_2016.shtml#specials)
- **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.

#### IV. Other Communications to the General Public (Electioneering Communications)

### Scenario: Electioneering Communications

The Baseball Cap Corporation plans to run TV ads that urge the public to contact Congressman Jeter and “Tell Him to Vote NO on the Visor Bill.”



The ads will run three weeks before the November general election and will air in Jeter’s Congressional District.



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Congressman Jeter is now up for re-election in the 2016 general election. A bill before Congress of great importance to the Baseball Cap Corporation is expected to be up for a vote in late October 2016. As such, the corporation plans to run TV ads that urge the public to contact Congressman Jeter and tell him to, “Vote NO on the Visor Bill!” The ads will run in mid-October, three weeks before the November general election, and are targeted to air primarily in Jeter’s Congressional District.

## 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

### A. Definition

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

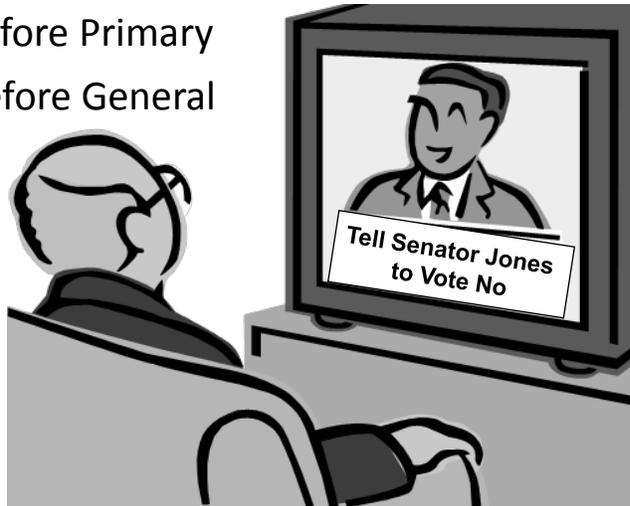
1. The communication refers to a clearly identified candidate.
2. The communication is publicly distributed (i.e., disseminated by a television station, radio station, cable television system or satellite system).
3. The communication is distributed during a certain time period before an election (i.e., 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.
  - In the case of **presidential candidates**, can be received by 50,000 or more people in a state where a presidential primary is being held within 30 days, OR within the period between 30 days before the first day of the national nominating convention and the conclusion of the convention. 11 CFR 100.29(b)(3) and (5).

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

The Federal Communications Commission (FCC) provides on its website (<http://apps.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): \_\_\_\_\_

(c) City, State and ZIP Code: \_\_\_\_\_

(d) Date: \_\_\_\_\_

(e) Name of Employer or Principal Place of Business: \_\_\_\_\_

(f) Occupation: \_\_\_\_\_

2. FEC Identification Number: \_\_\_\_\_

3. In This Statement:  New or  Amended

4. Covering Period: \_\_\_\_\_ through \_\_\_\_\_

5. (a) Date of Public Distribution(s): \_\_\_\_\_ (b) Communication Title: \_\_\_\_\_

6. Is the Filer a Qualified Nonprofit Corporation under 11 CFR 114.107? Yes  No

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

8. Corporation of Record: (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 Corporation's regulations.

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

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

NOTE: Submission of this statement or any other information may subject the person reporting the statement to the penalties of 18 U.S.C. 867g.

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## D. Disclosure Requirements

### 1. Requirement

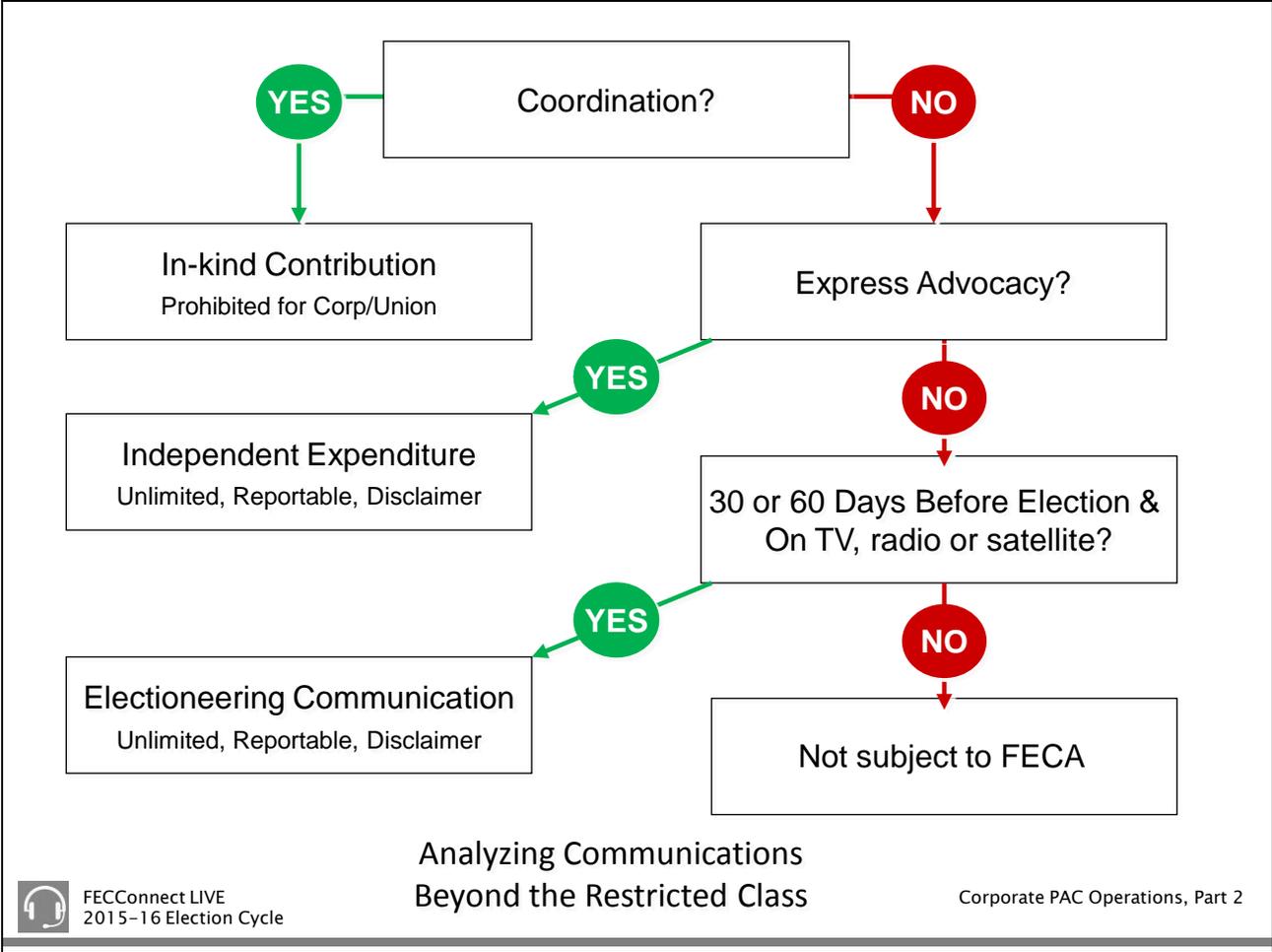
Electioneering communications made by organizations are subject to disclosure rules. Electioneering communications aggregating \$10,000 or more must be disclosed to the FEC within 24 hours of the date of public distribution.

### 2. Disclosed on FEC Form 9.

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

- [http://www.fec.gov/info/charts\\_ec\\_dates\\_2016.shtml](http://www.fec.gov/info/charts_ec_dates_2016.shtml)  
(reporting dates)
- <http://www.fec.gov/info/forms.shtml#other>  
(Form 9 and instructions)

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



## Key Point

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Corporations must avoid coordination when communicating beyond the restricted class

Coordination



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2015-16 Election Cycle

Corporate PAC Operations, Part 2

## Objectives – Part 2

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- Highlight Methods for Supporting Federal Candidates
- Evaluate Communications: Audience, Message, Payment and Disclosure
- Identify and Apply Rules for Use of Corporate Facilities



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2015-16 Election Cycle

Corporate PAC Operations, Part 2

## Workshop Evaluation

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*Help Us Help You!*

Please complete an evaluation  
of this workshop.

<https://www.surveymonkey.com/r/Y5D3KSB>



Corporate PAC Operations, Part 2

**Evaluation Link:** <https://www.surveymonkey.com/r/Y5D3KSB>