



INTERACTIVE ONLINE TRAINING PROGRAM

Member/Labor PAC Operations, Part 1

June 8, 2016
1:15 – 2:45 p.m.

 FECCONNECT LIVE
2015-16 Election Cycle

Member/Labor PAC Operations, Part 1

Objectives – Part 1

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

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Member/Labor PAC Operations, Part 1

Prohibition

Review

Contributions from:

- Corporations
- Labor unions
- Trade associations
- Incorporated membership organizations



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Member/Labor PAC Operations, Part 1

I. Introduction

A. **Prohibition on Corporate/Labor Contributions (11 CFR 114.2)**

Federal law bans contributions by corporations and labor organizations to influence federal elections. That ban covers incorporated trade associations and other membership organizations.

Prohibition



Key Point:

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

Exception: Create and Administer SSF

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

PAC Solicitations

What is a solicitation?



Please give
to our PAC...



Why does it matter?

What is a Solicitation?

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

II. What is a Solicitation?

A. Solicitation = Communication that Contains:

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

Example: Language from AO 1979-13:

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

What is NOT a Solicitation?

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



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B. Communication is Not a Solicitation if it:

1. Does not encourage support for the PAC.
2. Does not facilitate the making of contributions.
3. Merely announces existence of PAC and explains legal requirements that apply to a PAC.
4. Provides statistical information about the PAC's receipts and contributions.
5. Identifies candidates supported by the PAC (but does not suggest that supporting the PAC will help elect those candidates).
6. See AOs 1991-03, 1983-38 and 1982-65.

Example: Language from AO 1982-65:

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

Why does it matter?

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



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

III. Basic Solicitation Rules

Basic Rules Apply

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



Restricted Class

- ▣ Membership/Labor Organization PAC
May Solicit:
 - Executive/Administrative Staff
 - Noncorporate Members
 - Families of both

- A. Who is in Restricted Class of a Membership/Labor Organization PAC? (11 CFR 114.5(g)(2) and 114.7(a))**
- 1. Executive and administrative personnel** of the organization and their families.
 - a) Definition: Employees paid on salary (but **not** hourly) basis who have managerial, professional, policy-making or supervisory responsibilities.
 - b) See AOs 2012-02, 2011-25, 2010-04, 2004-32, 1999-20 and 1993-16
 - 2. Noncorporate members**
 - 3. Students, Lifetime Members and Retirees**
 - a) Case-by-case determination by the Commission.
 - b) Individuals who do not meet the above requirements but have a relatively enduring and independently significant financial or organizational attachment to the membership organization may be solicitable. 11 CFR 114.1(e)(3).
 - c) See AOs 2013-08, 2011-08, 2007-19, 2003-13 and 1999-06.
 - 4. Families of the above groups**
See AOs 2013-06 and 1980-102.

Definition of Member

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



**B. Definition of Member (for Labor/Trade/Membership PACs)
(11 CFR 114.1(e)(2))**

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

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

Beyond Restricted Class

- ▣ Organization /PAC may NOT solicit:
 - General Public
 - Clients, Vendors, etc.
 - Other PACs
 - Organization employees who are not executives or members
 - Employees or stockholders of incorporated members

C. Who is Not Solicitable?

1. General public;
2. Clients, vendors, etc. and their PACs;
3. Other PACs/SSFs;
4. Employees of membership/labor organization who are not executives, nor organization members; or
5. Employees or stockholders of incorporated members of membership organization. See AOs 2011-22 and 2005-17.

Twice Yearly Solicitations

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



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D. Twice Yearly Solicitations (11 CFR 114.6)

1. **Twice a year, a PAC may solicit:**
 - a) **Membership Organization:** Rank and file employees of the membership organization.
 - b) **Labor Organization:** All non-union employees of corporations that employ union's members.
 - c) Must use custodial arrangement to preserve anonymity.
 - d) Must mail solicitation to employee's home.
2. **Application to Labor Organizations:**
 - a) If a corporation that employs union members wants to conduct a twice-yearly solicitation for its PAC, it must notify the union of its intention and provide similar opportunity.
 - b) If other unions represent employees at that corporation, the unions share a limit of two solicitations of non-members per year.

Campaign Guide Chart

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



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Objectives – Part 1

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

Basic Rules Apply

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

Remember!

Solicitation Notices

- ▣ Contributions must be voluntary:
 - No Threats
 - No Dues or Fees
- ▣ Must provide notice every time:
 - Political Purpose of SSF
 - Right to Refuse to Contribute
 - Guideline = Suggestion

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

1. Contributions Must Be Voluntary

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

2. Required Notices

Every solicitation must state:

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

3. Examples:

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

**Example
AO 2006-17**

BERKELEY ELECTRIC COOPERATIVE, INC.
VOLUNTARY EMPLOYEE DONATION FORM

Option 1 _____

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

RECOMMENDED AMOUNTS PER PAY PERIOD

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

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

Option 2 _____

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

Option 3 _____

I elect not to participate at this time.



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4. Examples from AO 2006-17:

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

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

Basic Rules Apply

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



Collection Rules

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

- F. Collecting and Forwarding Contributions to PAC (11 CFR 102.6(b))**
Connected organization, affiliated organizations or state or local PAC of organization may act as “collecting agent” by collecting and forwarding PAC contributions under guidelines below:

1. **Checks Made Payable to PAC**
Connected organization must forward checks payable to PAC directly to PAC.

Collection Rules

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

2. **SSF Contributions Collected by Collecting Agent:**
 - a) **May be Temporarily Deposited in:**
 - (1) Separate transmittal account
 - (2) Collecting agent's account
 - (3) Nonfederal account (e.g. state PAC)
 - b) **How to Transmit Funds**
Collecting agent may write one check to PAC representing all individual contributions collected within specific time period.
3. **Time Frames for Forwarding Contributions and Records (11 CFR 102.8(b))**
 - a) **Contributions of \$50 or less:** within 30 days
 - b) **Contributions over \$50:** within 10 days
 - c) **Recordkeeping**
Collecting agent retains records 3 years.
4. **PAC Remains Responsible:**
 - a) Reports original sources; date of receipt = date collecting agent receives check. (See 11 CFR 102.8(b)(2).)
 - b) Ensures that collecting agent follows rules.
5. **Corporations Acting as Members of Trade Associations**
Corporate members may collect and forward contributions for trade association PAC. See AO 2003-22.

Objectives – Part 1

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

IV. Solicitation Techniques

Solicitation Techniques

- ▣ Payroll Deduction
- ▣ Combined Dues and PAC Solicitation
- ▣ Prizes and Entertainment
- ▣ Communications

Payroll Deduction

Basic Rules Apply:

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



Member/Labor PAC Operations, Part 1

- A. Payroll Deduction (11 CFR 102.6(b) and (c), 102.8(b) and 114.5(a))**
- 1. Basic Rules Apply:**
 - a) Restricted class only
 - b) Use solicitation notices
 - c) Forward contributions and records – connected organization is acting as the collecting agent here.
 - d) Date of receipt for reporting purposes = date deducted from paycheck. AOs 2000-11 and 1999-33.

Payroll Deduction

☐ Payroll Deduction Authorization Required:

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



2. **Authorization Required**

- a) Employee gives payroll deduction authorization (PDA) for periodic deduction of PAC contributions from paycheck; may revoke any time.
- b) Note that “written” may be electronic or telephone-recorded.

3. **No Reverse Checkoff**

Illegal to automatically deduct PAC contributions from paycheck, even if individual is allowed to request refund. 11 CFR 114.5(a).

- See AO 2001-04 (fn. 4)

4. **Electronic Authorizations OK (AOs 2001-04, 1999-03 and 1997-09)**

a) **Elements to include:**

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

b) **Formats approved via AOs:**

- The use of a digital electronic signature to authorize payroll deductions for a corporate PAC. AO 1999-03.
- The use of a standard “click through” process, in which the contributor enters an ID number that is checked against a database, to authorize deductions for a corporate PAC. AO 2001-04.
- The use of telephone recorded conversations to obtain and maintain authorization for payroll deductions for an organization’s PAC. AO 2013-12.

5. Recordkeeping Requirements

- a) Retain PDA for three years from the date the committee last reports receiving a contribution from that employee (rather than three years from the date the employee signed the authorization). 11 CFR 104.14(b).
- b) **Note:** Signed PDA is not the only way to satisfy recordkeeping requirement. For suggested methods for how to keep PDA records, see Commission Policy Statement online at http://www.fec.gov/law/policy/notice_2006-11.pdf

Payroll Deduction

If corporate SSF uses . . .

- Must allow union to use payroll deduction for its PAC, upon request
- Union must reimburse costs
- Vacation / annuity fund deductions OK

6. Labor Organization Use of Corporation's Payroll System (11 CFR 114.5(k))

- a) Corporation or affiliate that uses payroll system to collect PAC contributions must make system available upon request to labor organization with members employed by corporation (for union to collect PAC contributions from those employees).
- b) Labor organization must reimburse corporation for costs.
- c) Vacation/annuity fund deductions permitted.

7. Application to Membership Organization

AO 2012-15: Corporations owned by members of a membership organization (e.g., a doctor's office that employs members of a medical membership organization) may provide payroll deduction to enable member-employees to contribute to the membership organization's SSF. The membership organization must pay the corporations in advance for their services, because the corporations themselves are not affiliates.

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

Reporting Example

Itemizing Contributions via Payroll Deduction & Fundraising Events

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



Member/Labor PAC Operations, Part 1

The Tropical Fruit Pickers Union PAC (TFPU-PAC) has received authorization from Amanda Pomegranate, an organization Vice-President, to deduct \$20 from her bi-weekly paycheck as a contribution to the PAC. The first deduction was taken out of Amanda's paycheck on January 20, 2016. The payroll department forwarded the money on February 4 to the PAC's treasurer, who had arranged for an electronic transfer into the PAC's account on the same day.

Planning ahead, on May 25, Amanda will reach an aggregate total of \$200 exactly. On June 8, she will reach \$220. By June 22, she will have an aggregate year-to-date total of \$240.

As a big supporter of the PAC, Amanda, in addition to her payroll deductions totaling \$240 as of June 22, also contributed \$150 by buying a silent auction prize at a PAC event on June 30.

TFPU-PAC files its FEC reports on a monthly schedule.

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

All of Amanda’s subsequent contributions during that calendar year will also require itemization on Schedule A. Thus, Amanda’s silent auction contribution via purchase of a \$150 fundraising item must also be itemized. Since she was already over the \$200 itemization threshold for the calendar year, itemize the silent auction contribution on Schedule A for Line 11(a)(i) but separately from her payroll deductions. The aggregate year-to-date total for the June 22 contribution must include the payroll deduction contributions received previously in the calendar year.

Example of the contribution made in the form of a silent auction purchase:

Disclose Contribution to SSF on July Monthly (M7) Report

Itemizing Contributions

FEC Form 3X: Schedule A, Line 11(a)

SCHEDULE A (FEC Form 3X)		Use separate schedule(s) for each category of the Detailed Summary Page		FOR LINE NUMBER: (check only one)		PAGE OF	
ITEMIZED RECEIPTS				<input checked="" type="checkbox"/> 11a <input type="checkbox"/> 11b <input type="checkbox"/> 11c <input type="checkbox"/> 12 <input type="checkbox"/> 13 <input type="checkbox"/> 14 <input type="checkbox"/> 15 <input type="checkbox"/> 16 <input type="checkbox"/> 17			
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.							
NAME OF COMMITTEE (In Full)							
Tropical Fruit Pickers Union PAC							
Full Name (Last, First, Middle Initial)				Date of Receipt			
A. Amanda Pomegranate				MM / DD / YYYY			
Mailing Address				06 / 30 / 2016			
401 Manatee Avenue				Amount of Each Receipt this Period			
City		State	Zip Code	150.00			
Bradenton		FL	34205	<input type="checkbox"/> Memo Item			
FEC ID number of contributing federal political committee.				Aggregate Year-to-Date ▼			
C				390.00			
Name of Employer		Occupation					
Tropical Fruit Pickers Union		Regional Manager					
Receipt For:							
<input type="checkbox"/> Primary <input type="checkbox"/> General							
<input type="checkbox"/> Other (specify) ▼							

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

Answer:

- **Contributions that aggregate \$200 and under** – need the amount of the contribution and the date that it was deducted from the individual’s paycheck. (For recordkeeping, need the individual’s name, address and payroll deduction authorization). See 11 CFR 104.8(b) and AOs 2000-11 and 1999-33.
- **Contributions that aggregate more than \$200** – need name, address, occupation and employer information of contributor, total amount deducted during reporting period, frequency of deduction and amount per deduction.

3. Tricky Issues?

Points to Remember

- Itemize contributions from an individual or other person/entity on Schedule A, Line 11(a)(i), once aggregate calendar year to date received exceeds \$200.
- **Required Information in Itemizing Receipts:**
 - Full name and address of contributor or source
 - Occupation/employer – if contributor is an individual
 - Date of receipt
 - Amount
 - Aggregate year-to-date total of all receipts from the same source.
 - Optional, but encouraged: Committee ID# where applicable
- Itemization (including payroll deductions) required on Schedule A once an individual's aggregate year-to-date total exceeds \$200.
- Date reported is the date of receipt, not the date of deposit, or the date on the check.
- Date reported for payroll deduction contribution is the date that the contribution was deducted from the contributor's paycheck. See 11 CFR 104.8(b) and AOs 2000-11 and 1999-33. The "date of receipt" under FEC rules at 102.8 is the date that the collecting agent obtains possession of the funds (in other words, deducts the contribution).
- Separately itemize payroll deduction contributions from those raised using other methods.
- If collecting agent writes a check/transmits funds to PAC, do not report as transfer from collecting agent. Instead, report as contributions from original individual contributors.
- Payroll department, as the collecting agent, must forward money **within collecting agent timeframes**. The PAC treasurer would then have 10 days to deposit the contribution. The PAC treasurer will need to work closely with the payroll department in order to make these timeframes work for FEC reporting, given that date of deduction is the date used for reporting.
- Itemize payroll deductions once they have aggregated more than \$200 for the calendar year from a contributor.
- For paper filers, instead of stating each date of receipt, type "payroll deduction."
- FECFile users will need to itemize a date (recommended to use last day of reporting period) and enter "payroll deduction" in description field.
- Report the total amount deducted from paycheck during reporting period (regardless of when PAC receives funds) and indicate the amount that was deducted each pay period and the frequency of the deduction.

Combined Dues/Solicitation Statements

Basic Rules Apply:

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

- B. Combined Dues/Solicitation Statements (11 CFR 102.6(c)(2) and AOs)**
An organization may include a solicitation for its PAC with the bill for membership dues sent to noncorporate members.

1. **Basic Solicitation Rules Apply**

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

a) **Restricted Class Only (Non-corporate Members)**

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

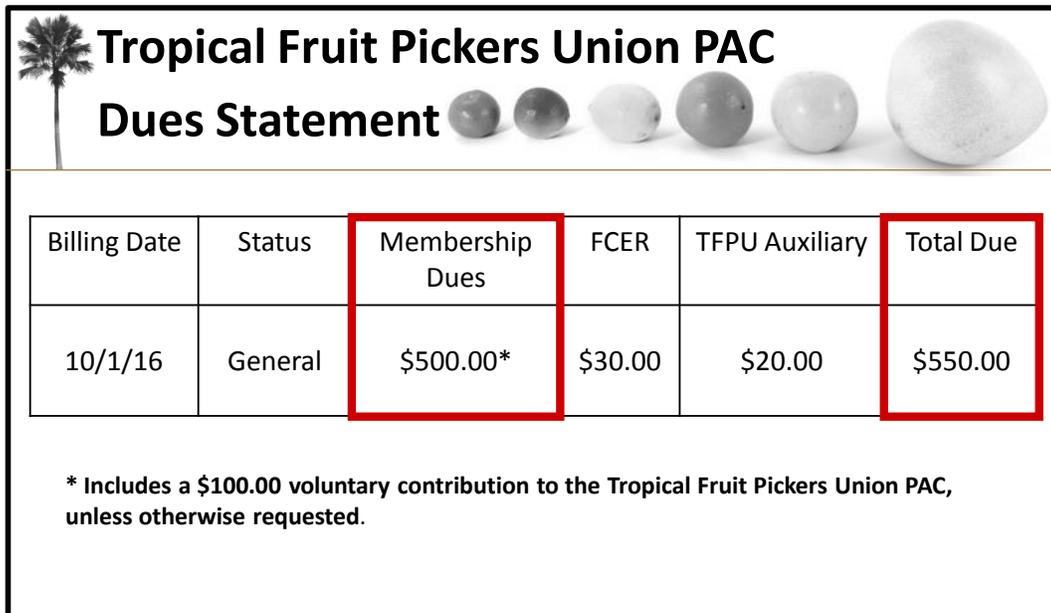
b) **Rules on Voluntary Contributions and Solicitation Notices**

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

2. **Permissible Combined Statements**

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

Combined Dues/Solicitation Statements



The graphic shows a header with a palm tree icon, the text "Tropical Fruit Pickers Union PAC", and "Dues Statement" next to several pieces of fruit. Below this is a table with columns: Billing Date, Status, Membership Dues, FCER, TFPU Auxiliary, and Total Due. The "Membership Dues" and "Total Due" columns are highlighted with red boxes. Below the table is a footnote: "* Includes a \$100.00 voluntary contribution to the Tropical Fruit Pickers Union PAC, unless otherwise requested."

Billing Date	Status	Membership Dues	FCER	TFPU Auxiliary	Total Due
10/1/16	General	\$500.00*	\$30.00	\$20.00	\$550.00

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

WRONG



Combined Dues/Solicitation Statements



Tropical Fruit Pickers Union PAC

Dues Statement



Membership Dues	\$400.00
FCER	\$30.00
TFPU Auxiliary	\$20.00
Total Due	\$450.00
Voluntary PAC Contribution	\$100.00*
Total Amount Enclosed	\$ ____

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

RIGHT

3. **Collection Rules Apply**
Contributions must be separated from dues payments, collected and forwarded according to collecting agent rules.
4. **Electronic Deductions OK**
 - a) In AO 1997-09, Commission approved electronic deduction/transfer.
 - b) In AO 1999-03, Commission approved use of digital electronic signature.

Instructions for Scenario

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



Scenario #1:

FUNDRAISING BY A COLLECTING AGENT

As chair of the Tropical Fruit Pickers Union PAC, you are conducting your committee's annual fundraising planning meeting. Your goal, this year, is to raise \$200,000 for TFPU-PAC. On the agenda are proposals submitted by members of your committee for fundraising activities during the year. Your committee must decide whether to adopt any of the following proposals.

PROPOSAL 1

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

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

Proposal 1 Questions:

1. How do you feel about the plan to have local chapters transmit the proceeds of their fundraising events?

- Permissible
- Not permissible

2. How do you feel about allowing the local chapters to retain a portion of the funds collected for its own use?

- Permissible
- The full amount of each contribution must be forwarded

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

- 30 days to forward all contributions
- 10 days to forward contributions greater than \$50; 30 days for contributions of \$50 or less

4. What registration or reporting responsibilities apply to the local chapter in its role as a collecting agent?

- Collecting agent has no registration or reporting requirements; federal PAC responsible for reporting
- Collecting agent must register and report in addition to the federal PAC reporting

PROPOSAL 2

Allow individual members the opportunity to have \$1 of their dues automatically transferred to the PAC as an opt-out voluntary contribution. Under this proposal, union dues payments would be collected by the locals and deposited into their treasury accounts. The portion designated for the PAC would be separated and transferred by the local units to the PAC.

Proposal 2 Questions:

- 1. How do you feel about the suggestion to transfer \$1 of dues paid as a contribution to the PAC?**
 - Permissible
 - Impermissible

- 2. Assuming the PAC revises the plan to solicit contributions over and above the amount of dues and with express written authorization of the contributor, what are the concerns about the deposit of the contributions in the account of the local?**
 - Permissible; Forward contributions to federal PAC within 10 or 30 days, as needed
 - Permissible; Forward contributions within 60 days
 - Impermissible

Proposal 1 Answers:

1. How do you feel about the plan to have local chapters transmit the proceeds of their fundraising events?

- Permissible
- Not permissible

Answer: It's OK, because the local chapters may act as collecting agents. They must follow the rules at 11 CFR 102.6 (as discussed on the outline).

2. How do you feel about allowing the local chapters to retain a portion of the funds collected for its own use?

- Permissible
- The full amount of each contribution must be forwarded**

Answer: The full amount of each contribution collected by a collecting agent on behalf of the federal PAC must be transferred to the federal PAC. See 11 CFR 102.6(c)(4). If the federal PAC or its connected organization wants to bear the costs for the solicitation, it may write a check to the local chapter. Note that it is permissible for state/local affiliates to use general treasury money to defray the administrative/solicitation costs for the federal PAC. See AO 1983-46.

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

- 30 days to forward all contributions
- 10 days to forward contributions greater than \$50; 30 days for contributions of \$50 or less**

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

4. What registration or reporting responsibilities apply to the local chapter in its role as a collecting agent?

- Collecting agent has no registration or reporting requirements; federal PAC responsible for reporting**
- Collecting agent must register and report in addition to the federal PAC reporting

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

The only exception to this rule is the receipt of contributions of \$50 or less, e.g., mass collections. In this instance, a record should nevertheless be kept of the date, the total amount collected and the name of the function at which the collection was made. Collecting agents must also retain all records of contribution deposits and transmittals for 3 years.

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

Scenario – Key Points

Collecting Agent Fundraising - Proposal 1

- ▣ Local units may act as collecting agent
 - May deposit \$\$ in Local Chapter or State PAC Account
 - Full amount of contribution must be transferred and counts towards contributor's limit to SSF
 - Timely transfer of all funds AND records

- ▣ SSF ultimately responsible for compliance and proper disclosure

KEY POINTS– Proposal 1

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

Proposal 2 Answers:

1. How do you feel about the suggestion to transfer \$1 of dues paid as a contribution to the PAC?

- Permissible
- Impermissible**

Answer: Under the law, PAC contributions cannot be derived from dues payments. 11 CFR 114.5(a). Such a transaction would actually result in a transfer of general treasury funds to the federal PAC, which is illegal. See also AO 1980-133. Moreover, contributions have to be voluntary; it is illegal to automatically deduct a contribution without prior written authorization.

2. Assuming the PAC revises the plan to solicit contributions over and above the amount of dues and with express written authorization of the contributor, what are the concerns about the deposit of the contributions in the account of the local?

- Permissible; Forward contributions to federal PAC within 10 or 30 days, as needed**
- Permissible; Forward contributions within 60 days
- Impermissible

Answer: This is permissible under the collecting agent rules. Local chapters must follow these rules for the timely recordkeeping and transmittal of the funds.

Scenario – Key Points

Collecting Agent Fundraising - Proposal 2

- ▣ NO membership dues may be used as contributions to SSF
- ▣ Any contributions deducted must be on a voluntary basis, and over and above the amount of dues charged

KEY POINTS – Proposal 2

- NO membership dues may be used as contributions to SSF.
- Any contributions deducted must be on a voluntary basis, and over and above the amount of dues charged.

Prizes/Entertainment

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



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Member/Labor PAC Operations, Part 1

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

Membership/labor organization and its affiliates may provide prizes and entertainment to encourage PAC contributions (e.g., raffles if permitted by state law, silent auction, golf tournament). The aggregate costs of prizes/entertainment may not be disproportionately valuable in comparison with contributions raised. Otherwise PAC must reimburse the organization for a portion of the costs.

1. One-Third Rule

PAC reimburses organization for that portion of the costs of prizes or entertainment donated by the organization and its affiliates that exceed one-third of the amount raised in contributions.

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

Prizes/Entertainment: One-Third Rule



\$700



\$1,200

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

2. Example – Reimbursement Required

Organization spends \$700 in treasury funds to purchase an iPad as a raffle prize. Sales of raffle tickets raise \$1200 in PAC contributions. Since one-third of the amount raised (\$400) is less than the cost of the prize (\$700), then the PAC must reimburse the organization for the \$300 difference.

Prizes/Entertainment: One-Third Rule

Raise \geq 3x Cost of Prize



\$700



\$2,100

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

3. Example – No Reimbursement Required

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

Prizes/Entertainment

Basic Rules Apply

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

▣ Note: For ongoing events, assign end date



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Member/Labor PAC Operations, Part 1

4. **Basic Rules Apply:**

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

5. **Ongoing Events**

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

Reporting Example #2: Reimbursements

Reporting Example

Itemizing Reimbursement to Connected Organization under 1/3 Rule

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



Member/Labor PAC Operations, Part 1

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

How is this reimbursement reported?

Reporting Example #2 – Answer

How is this reimbursement reported?

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

Disclose 1/3 Rule Reimbursement on November Monthly (M11) Report

FEC Form 3X: Schedule B, Line 21(b)

Reporting
Reimbursement

**SCHEDULE B (FEC Form 3X)
ITEMIZED DISBURSEMENTS**

Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER: (check only one)

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

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)

Tropical Fruit Pickers Union PAC

Full Name (Last, First, Middle Initial)

A. Tropical Fruit Pickers Union

Mailing Address: **1100 9th Street West**

City: **Bradenton** State: **FL** Zip Code: **34205**

Purpose of Disbursement: **Reimb. for Raffle Prizes (1/3 Rule)**

Office Sought: House Senate President
 Disbursement For: Primary General Other (specify) ▼

State: _____ District: _____

Date of Disbursement: **10 / 20 / 2016**

Amount of Each Disbursement this Period: **300.00**

Memo Item

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Member/Labor PAC Operations, Part 1

What is a Solicitation?

Review

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

D. Communications (AOs Cited in Outline)

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

1. What Constitutes a Solicitation

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

Example: Language from AO 1979-13:

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

What is NOT a Solicitation?

Review

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



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Member/Labor PAC Operations, Part 1

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

Online Fundraising

Guidelines:

1. Restricted Class Only:
 - Use password protected page for all solicitations
 - Link page includes caveats
2. Ensure contributions from permissible sources
3. May accept contributions via credit card, electronic check or online banking service
4. PAC must follow basic rules



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Member/Labor PAC Operations, Part 1

3. **Internet and E-mail Solicitations (AOs 2006-03 and 2000-07)**
 - a) **Web Pages (AOs 2006-03 and 2000-07)**
 - (1) **Limit access to restricted class.**

Use password protection or otherwise only allow access to restricted class.
 - (2) Intranet page could link to separate, password-protected page accessible only by restricted class.
 - b) **Caveats Required**

The link page introducing PAC Web site must state that:

 - (1) Federal law prohibits PAC from soliciting outside restricted class; and
 - (2) Contributions received from outside restricted class will be returned to donors.
 - c) **Contributor Screening and Vetting**

PAC treasurer is responsible for ensuring that online contributions come from permissible sources. See AO 2011-13 for suggested language to use as safeguard.
 - d) **Collecting Online Contributions via Credit Cards / Electronic Checks / Online Banking Services**
 - (1) Online contributions may be made via credit card or electronic checks, or electronic authorization of payroll deduction. AOs 1999-36, 1999-09 and 1999-03.

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

Contributions by Text

Advisory Opinions have held:

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

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

AOs state:

- (1) Contribution is received when user confirms that he or she intends to make contributions and certifies eligibility under Act and FEC regulations to make contributions.

- (2) Recipient SSF (and not service provider) is solely responsible for ensuring legality of contributions collected.
- (3) None of the AOs addressed SSF restrictions specifically but they should be taken into consideration.
- (4) See article at <http://www.fec.gov/pages/fecrecord/2012/october/txtmessage.shtml>

Internet, Intranet and Email

Basic Rules Apply

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

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

Scenario #2:

Email Newsletter Articles

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

Article 1:

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

Article 2:

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

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

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

1. Is Article #1 OK because it was only sent to the restricted class?

- Yes.
- No, because it lacks the required solicitation notices.
- No, because it is too heavy-handed and coercive.

2. Does Article #2 provide a clear political purpose of the PAC?

- Yes
- No

3. When must the solicitation notices be used?

- Every single time a solicitation is made.
- The first time a solicitation is made.

Scenario #2 Answers:

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

1. Is Article #1 OK because it was only sent to the restricted class?

- Yes.
- No, because it lacks the required solicitation notices.**
- No, because it is too heavy-handed and coercive.

Answer: The article is a solicitation, and even if properly limited to the restricted class, it must include the required notices informing the solicitees that they have a right to refuse to make the contribution and of the political purpose of the PAC. 11 CFR 114.5(a)(3) and (4). Both notices are required on every solicitation by the Act and regulation. As drafted, Article #1 is missing both notices.

2. Does Article #2 provide a clear political purpose of the PAC?

- Yes
- No**

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

3. When must the solicitation notices be used?

- Every single time a solicitation is made.**
- The first time a solicitation is made.

Answer: Every solicitation requires the notices. In this case (MUR 5681) each article was considered to be a separate solicitation that required the notices. Thus, each article must explicitly explain the political purpose of the PAC and the right to refuse to contribute.

Scenario – Key Points

Newsletter/Email Solicitation

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

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

KEY POINTS:

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

Basic Rules Apply

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



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