



INTERACTIVE ONLINE TRAINING PROGRAM

Trade Association PAC Operations, Part 2

May 25, 2016
3:00 – 4:30 p.m.

 FECCONNECT LIVE
2015-16 Election Cycle

Trade Association PAC Operations, Part 2

Objectives

- ▣ Highlight Methods of Support for Federal Candidates
- ▣ Discuss Disclosure of SSF Disbursements
- ▣ Evaluate Communications: Audience, Message, Payment and Disclosure
- ▣ Identify and Apply Rules for Use of Association Facilities

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SUPPORTING FEDERAL CANDIDATES

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	<div style="border: 1px solid black; padding: 5px; text-align: center;"> <p>Includes both monetary and in-kind contributions</p> </div>				
Candidate Committee					
PAC: multicandidate	\$5,000	\$5,000	\$5,000 (combined)	\$15,000	\$45,000 (per account)
PAC: Nonmulticandidate	\$2,700	\$5,000	\$10,000 (combined)	\$33,400	\$100,200 (per account)
State, District & Local Party Committee	\$5,000 (combined)	\$5,000	Unlimited Transfers	Unlimited Transfers	
National Party Committee	\$5,000	\$5,000	Unlimited Transfers	Unlimited Transfers	

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



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5. Designation of Campaign Contributions by PAC

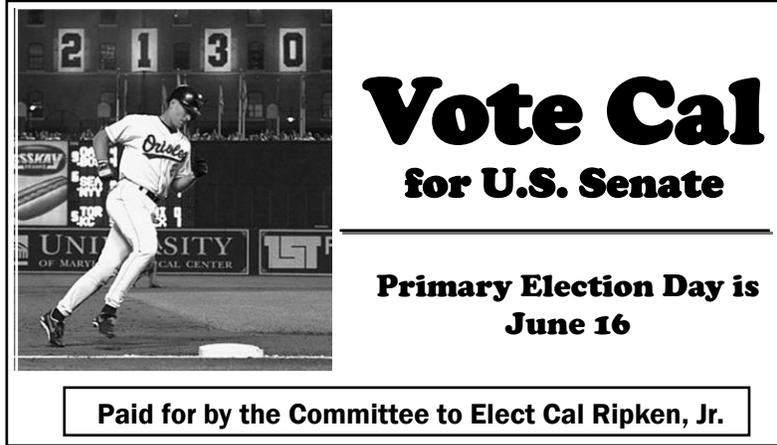
- a) Undesignated contribution counts towards the limit for the candidate's next scheduled election.
- b) PAC **must** designate contribution if:
 - (1) Intends contribution to count toward a future election, beyond the upcoming election.
 - (2) Making contribution to retire candidate's debt of a past 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 Makers Association PAC, a multicandidate committee based in Maryland, 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 16. The PAC treasurer, Lisa Smith, issues a check to the campaign for \$10,000 on June 15.

Any Red Flags?

Practical Application



Vote Cal
for U.S. Senate

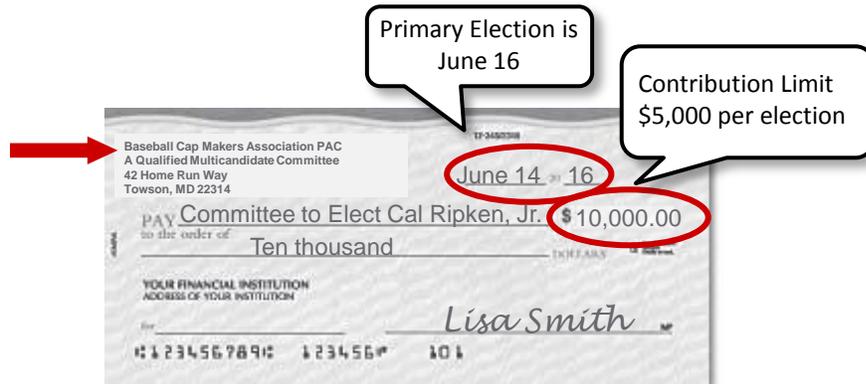
Primary Election Day is
June 16

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

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Practical Application



Primary Election is June 16

Contribution Limit \$5,000 per election

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

PAY Committee to Elect Cal Ripken, Jr. \$10,000.00
to the order of Ten thousand

YOUR FINANCIAL INSTITUTION
ADDRESS OF YOUR INSTITUTION

For Lisa Smith

⑆ 123456789⑆ 123456⑆ 101

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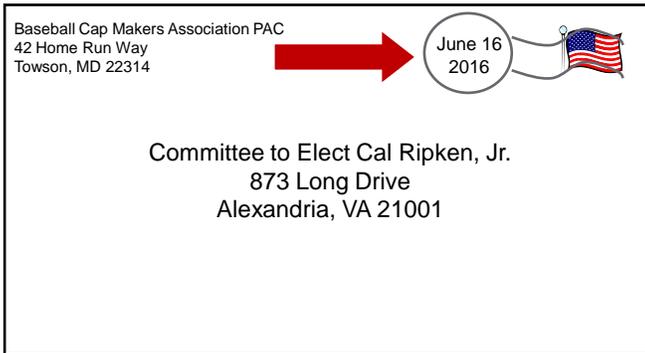
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Example, continued:

Let's work through the check. The date on the check is June 15 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 16, 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

a) Procedures for Redesignation Request

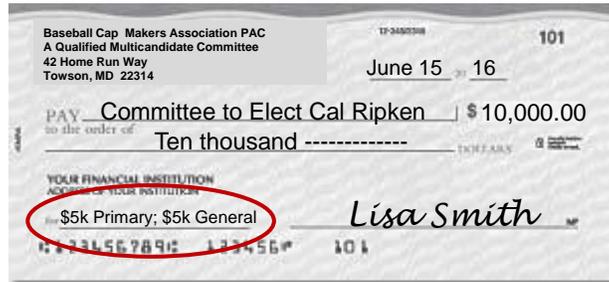
- (1) Campaign must offer refund option when asking PAC for redesignation.
- (2) Signed redesignation authorization must be received by campaign within 60 days of their receipt of original contribution.
- (3) If redesignation process not completed within 60 day window, campaign must refund the excessive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

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

Example: SSF Contributions Made

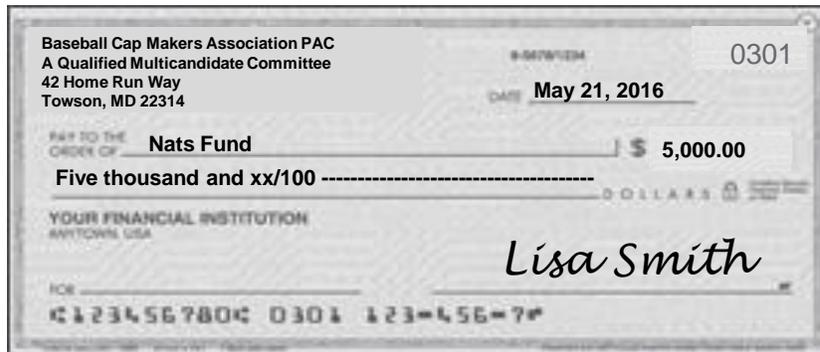
- ▣ Itemizing Monetary Contributions Made and Refunded
 - How does the SSF disclose the transaction?
 - What information do we need to disclose?

The Baseball Cap Makers Association PAC 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?**

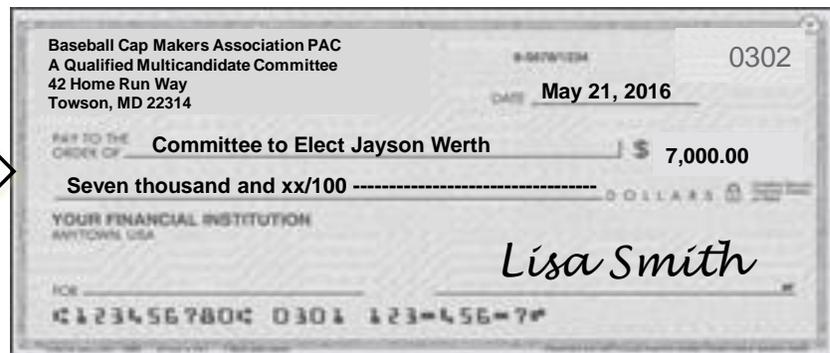
**Answers to Reporting Example #3A:
Monetary Contribution to Federal PAC (Check #301)**

Example: SSF Contributions Made



Contribution to
Leadership PAC

Contribution to
Campaign



1. What type of transaction is this?

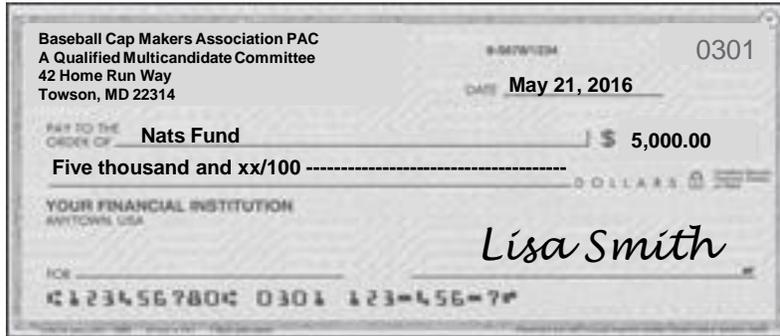
Answer: This check represents a contribution made by the Baseball Cap Makers Association PAC (Baseball Cap PAC). The \$5,000 check is a contribution to a Senator's Leadership PAC. Note that the Leadership PACs and the campaign committee of the Leadership PAC sponsor are not considered affiliated.

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.

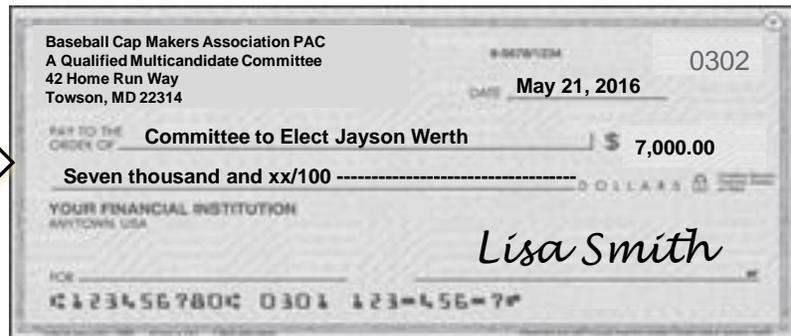
**Answers to Reporting Example #3B:
Contribution to Federal Candidate (Check #302)**

Example: SSF 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 Makers Association 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.

1. What type of transaction is this?

Answer: This check represents two separate contributions made by the Baseball Cap Makers Association 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.

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

Answer: The PAC is required to disclose the original disbursement since the close of books for the June Monthly report (covering the month of May) falls before the redesignation letter is sent by the PAC. Then the PAC then must disclose the redesignation on the July Monthly report (covering the month of June) since the redesignation occurred during that reporting period.

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

Answer: Report original disbursement (June Monthly) - show reporting on Schedule B for Line 23. The itemization information includes candidate committee’s name and address, the date made, amount, the candidate’s name and office sought (including state and Congressional district), the election (including year) for which the contribution was made (check appropriate box). For purpose, note “contribution.” Note that FECFile allows users to get the committee’s information from a database. Include notation “Redesignation pending.”

Part 1 of 2: Disclose Contribution on June (M6) Monthly Report

FEC Form 3X: Schedule B, Line 23

Contribution to Campaign

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 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	PAGE OF
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. Committee to Elect Jayson Werth		Date of Disbursement 05 / 21 / 2016	
Mailing Address 873 Long Drive		Amount of Each Disbursement this Period 7,000.00	
City State Zip Code Vienna VA 22180			
Purpose of Disbursement Contribution		Category/Type 011	
Candidate Name Jayson Werth			
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: VA District:		<input type="checkbox"/> Memo Item Redesignation Pending	

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Trade Association PAC Operations, Part 2

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		Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one) <input type="checkbox"/> 21b <input type="checkbox"/> 22 <input checked="" type="checkbox"/> 23 <input type="checkbox"/> 24 <input type="checkbox"/> 25 <input type="checkbox"/> 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	PAGE OF
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 Makers Association 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		Amount of Each Disbursement this Period 7,000.00		
Candidate Name Jayson Werth		Category/Type 011		
Office Sought: VA	<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: District:		<input checked="" type="checkbox"/> Memo Item As disclosed on June Monthly		
Full Name (Last, First, Middle Initial) 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		Amount of Each Disbursement this Period 2,000.00		
Candidate Name Jayson Werth		Category/Type 011		
Office Sought: VA	<input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President	Disbursement For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)		
State: District:		<input checked="" type="checkbox"/> Memo Item Redesignation		

FEC Form 3X: Schedule B, Line 23

NEW

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Trade Association PAC Operations, Part 2

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 Makers Association 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 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 Makers Association 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

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 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	PAGE OF
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 Makers Association PAC				
Full Name (Last, First, Middle Initial)				
A. Nats Fund		Date of Disbursement MM / DD / YYYY 07 / 10 / 2016		
Mailing Address 333 West Camden Street		Amount of Each Disbursement this Period - 5,000.00		
City Vienna State VA Zip Code 22180		Purpose of Disbursement Check returned – original contribution 5/21/16		
Candidate Name		Category/Type		
Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President	Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼			
State: District:				

USE OF COMMUNICATIONS AND TRADE ASSOCIATION FACILITIES/ FOR ELECTION-RELATED ACTIVITIES

Communications and Resources



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

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

Prohibition

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



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Trade Association PAC Operations, Part 2

I. Use of Communications and Trade Association Resources

A. General Prohibition

Trade associations are generally prohibited from making contributions (direct or in-kind) to influence federal elections. They 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 trade association activity at the federal level is a result of exceptions to the ban on corporate contributions.

Exceptions:

Communications and Use of Facilities

What is Permitted?

Trade Associations CAN:

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

Evaluating Communications

1. Audience

Restricted Class / General Public

2. Message

Express Advocacy / Coordinated / Independent

3. Payment

Association / 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

II. Communications

A. Definition: Restricted Class for Communications

1. Trade Associations

- a) Restricted class, defined for purposes of receiving communications, is **not** identical to group that can be solicited for contributions to the Trade Association's PAC.
- b) **Who is Included**
 - (1) Executive and administrative personnel and non-corporate members,
 - (2) Representatives of corporate members with whom association normally conducts business.
 - (3) AO 1991-24: Representatives of member corporations could distribute communication to corporation's restricted class.

Evaluating Communications

1. Audience

Restricted Class / General Public

2. Message

Express Advocacy / Coordinated / Independent

3. Payment

Association / SSF / Campaign

4. Reporting

Form 3X / Form 5 / Form 7



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Trade Association PAC Operations, Part 2

Express Advocacy

Message unmistakably urges election or defeat of clearly identified federal candidate.

- ▣ Two Part Definition:
 - Part A: Specific Call to Action
 - Part B: Only Reasonable Interpretation Test



Trade Association PAC Operations, Part 2

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



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Trade Association PAC Operations, Part 2

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 exemption applies) (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



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Trade Association PAC Operations, Part 2

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

- Applies without regard to the timing of the communication or the targeted audience.

- In its application of this test, Commission will follow Supreme Court’s reasoning in *FEC v. Wisconsin Right to Life*. See explanation and justification for this rule for more information at 75 FR 55947.
- (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

A PAC’s website and email communications to the general public soliciting contributions to certain federal candidates did not result in “coordinated communications” to those referenced candidates because the content prong was not satisfied. This is because the Project’s communications appeared only on the Project’s own website and by email, so the communications did not fit into the definitions of either public communications or electioneering communications.

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.

Coordination Equation

Source + Content + Conduct = Coordination

Coordination = Contribution

Contribution = Limits + Prohibitions

No Coordination (plus Express Advocacy) =
Independent Expenditure

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Trade Association PAC Operations, Part 2

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

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

Evaluating Communications

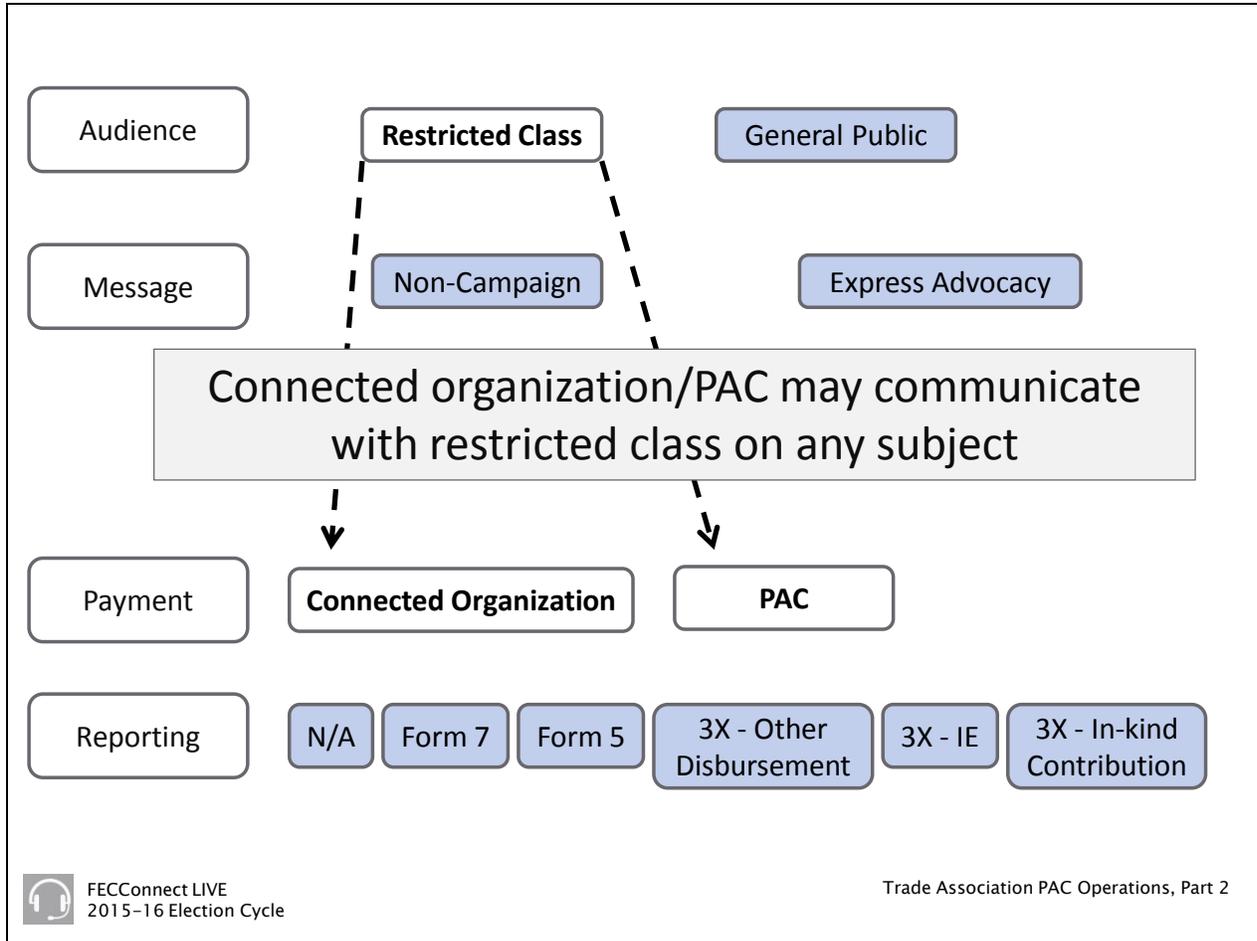
1. Audience?
Restricted Class / General Public
2. Message?
Express Advocacy / Coordinated / Independent
- 3. Payment?**
Association / SSF / Campaign
- 4. Reporting?**
Form 3X / Form 5 / Form 7

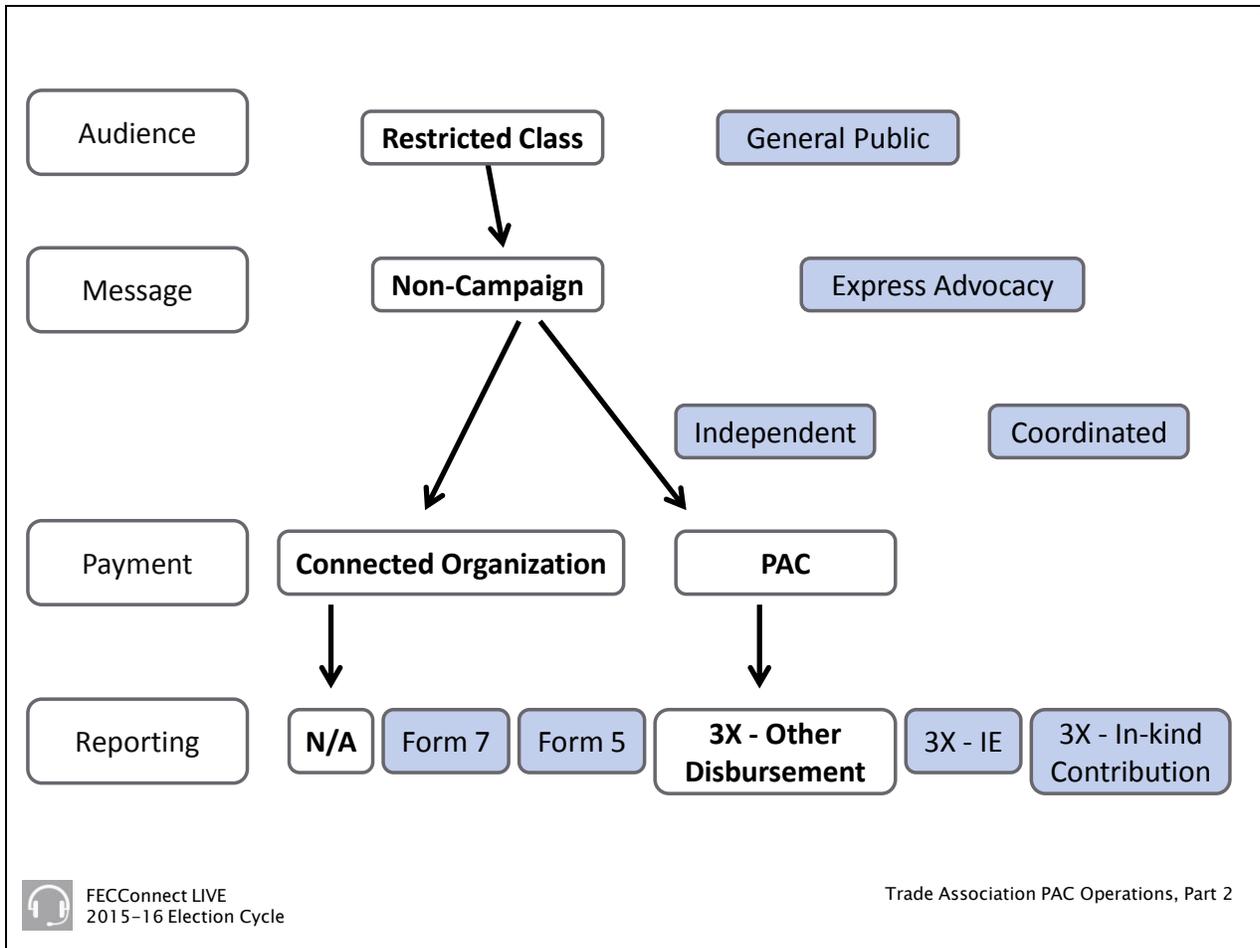


COMMUNICATIONS / USE OF TRADE ASSOCIATION FACILITIES SCENARIOS EVALUATING COMMUNICATIONS

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 association's restricted class for communications.

I. Communications to Restricted Class





A. Reporting Non-Campaign Communications Before the Restricted Class

1. By Association - 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, Executive Director of The Baseball Cap Makers Association, invites all association members to a luncheon where Senate Candidate Adam Jones delivers a campaign speech.



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



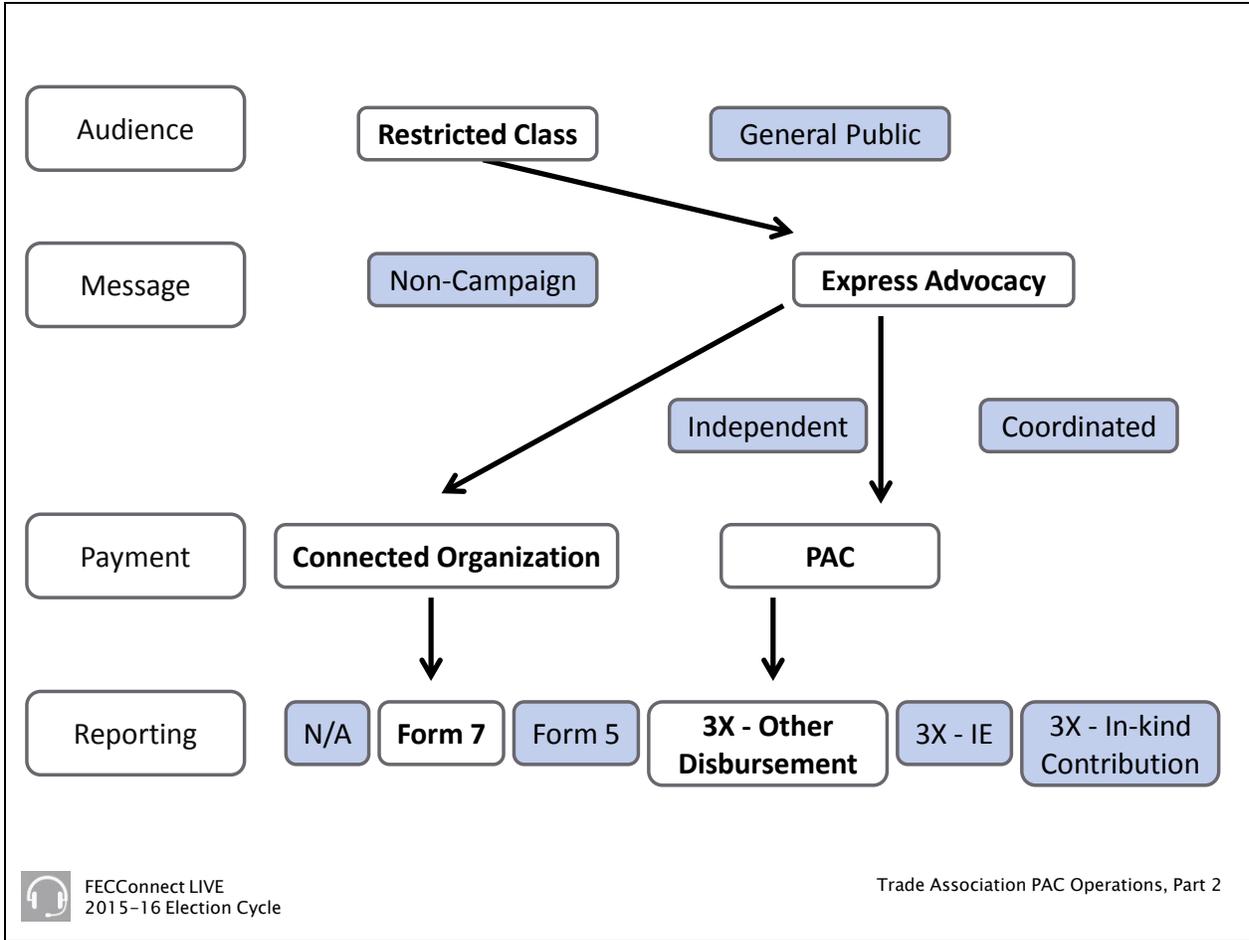
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2015-16 Election Cycle

Trade Association PAC Operations, Part 2

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

His first idea is to invite Senate Candidate Jones to meet the trade association members. Skip organizes a meet and greet luncheon at the BCMA Headquarters. As the members 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 association may expressly advocate
- ❑ Candidate and association may solicit contributions
- ❑ Candidate may collect contributions
- ❑ Association's SSF may act as conduit for earmarked contributions; special rules apply



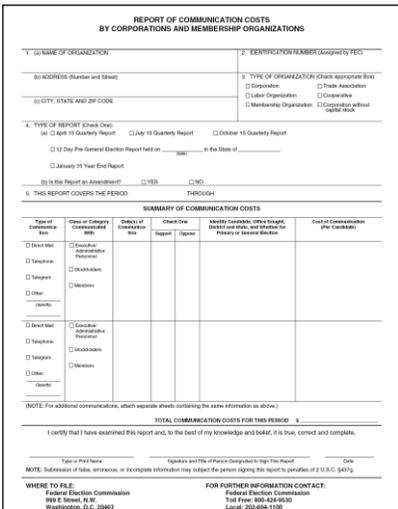
B. Express Advocacy Communications Before the Restricted Class

1. General Guidelines for Candidate Appearance

- a) Candidate and trade association can expressly advocate for candidate and both can solicit contributions.
- b) Candidate/campaign may collect contributions at event.
- c) Trade association's SSF may act as conduit for earmarked contributions (limits count all the way around). See 11 CFR 110.6 and 114.2(f), as well as preceding section on SSF.

Reporting Costs

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




Trade Association PAC Operations, Part 2

2. Reporting Express Advocacy Communications Before Restricted Class

a) By Trade Association

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

Reported on Line 29 as “Other Disbursements.”
See AO 2000-03.

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

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

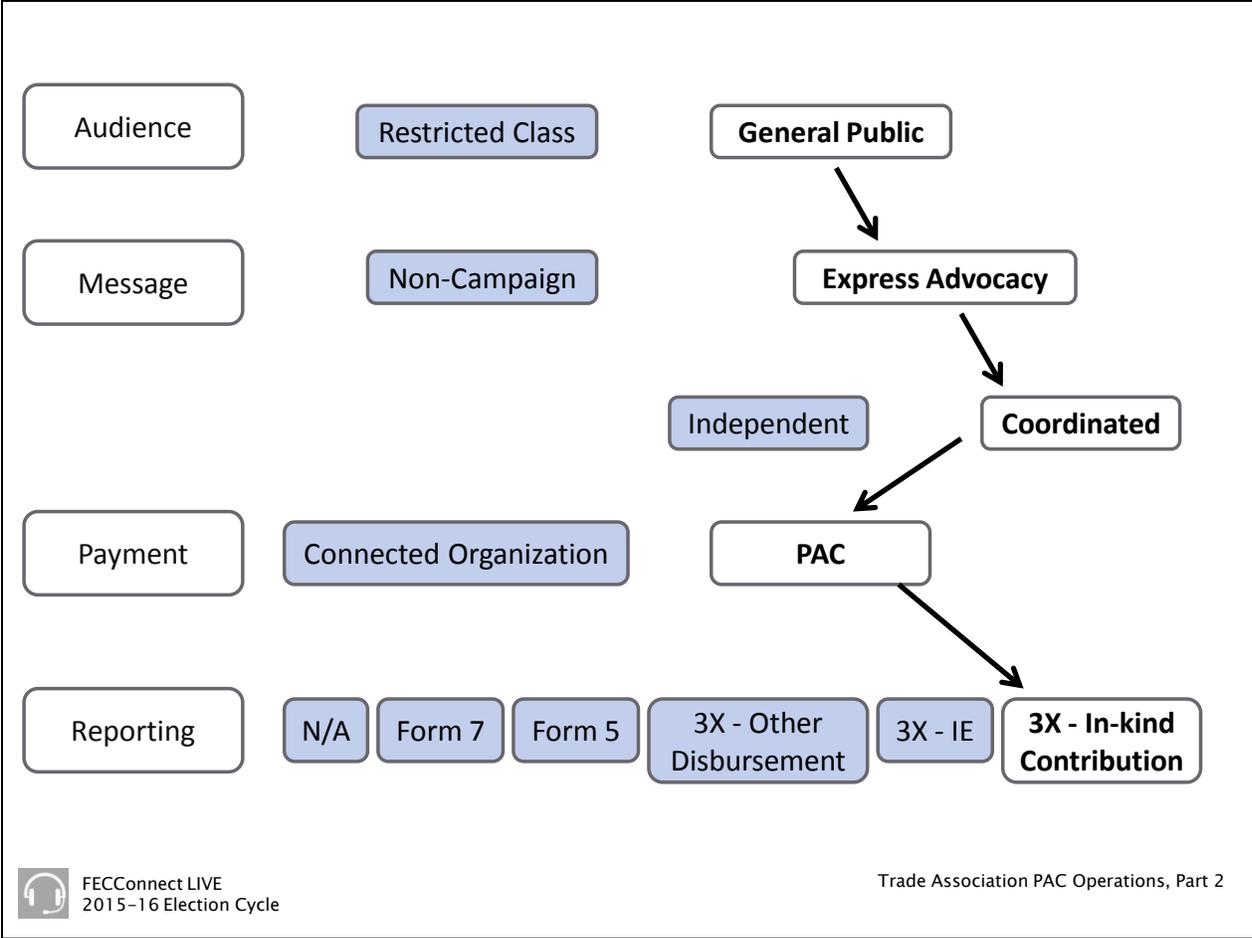


Skip directs his secretary to reserve the room and email the invitation that asks the guests to bring their checkbooks.

Skip has another idea to help broaden the support base for Candidate Jones. Skip would like to have another meet and greet event at the BCMA Headquarters but this time, he would like to invite other industry executives who are not affiliated with the BCMA. Skip discusses his idea with the Jones Campaign Manager and they agree that a mimosa breakfast held at the BCMA 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 BCMA Headquarters 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

- ☐ Association 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 assn. facilities: fair market value



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2015-16 Election Cycle

Trade Association PAC Operations, Part 2

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, corporate, labor and membership organizations (including trade associations) 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 Trade Association's 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**
Association officials or employees may direct subordinate staff to work on fundraising for candidate or party, using association's resources, provided that the following rules are observed:
 - a) **Advance Payment**
Association 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 association 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!



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2015-16 Election Cycle

Trade Association PAC Operations, Part 2

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

OK for employees of association (and members and officials of the association) 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 association 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 association 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 association 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) Association May Permit Use with Advance Payment

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

b) Application to Email Address Lists of Association

- (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 association may operate or arrange for catering or other food services, provided that the association 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 an association if they reimburse the association at the normal rental charge, within a commercially reasonable time.

b) **Exception**

An association may offer meeting room to candidate or party at discount or for free if the association 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 association's office equipment and other resources may be used for an SSF event on behalf of a candidate/party, provided the association 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 the association's SSF is paying as in-kind contribution, must pay in advance.

Candidate Fundraisers

□ Collection of Campaign Checks at Event

- Association 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. Trade Association

Association personnel MAY NOT collect the checks - prohibited facilitation.

2. Trade Association 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. See 11 CFR 110.6 and 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.

Reporting Example #4: Itemizing SSF Payment for Use of Association Resources for Candidate Fundraiser

Example: Candidate Fundraiser

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



Trade Association PAC Operations, Part 2

Skip has another idea to help broaden the support base for Candidate Jones. Skip would like to another meet and greet event at the BCMA Headquarters but this time, he would like to invite other industry executives who are not affiliated with the BCMA. Skip discusses his idea with the Jones Campaign Manager and they agree that a mimosa breakfast held at the BCMA 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 BCMA Headquarters 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.

- 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 #4: Itemizing SSF Payment for Use of Association Resources for Candidate Fundraiser

1. What types of transactions are these?

Answer: The payment for the use of the Baseball Cap Makers Association's (BCMA'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, association officials or employees may direct subordinates to plan, organize or carry out fundraising as part of their work, using association resources, only if the association 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, trade associations may use trade association meeting rooms. Like other resources, 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

BCMA PAC will report the advance payment on their Schedule B for Line 21b as an "Operating Expenditure." Note that the payment was made to BCMA 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 association 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
Use separate schedule(s) for each category of the Detailed Summary Page		<input checked="" type="checkbox"/> 21b	
		<input type="checkbox"/> 22	
		<input type="checkbox"/> 23	
		<input type="checkbox"/> 24	
		<input type="checkbox"/> 25	
		<input type="checkbox"/> 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 Makers Association PAC

Full Name (Last, First, Middle Initial)

A. Baseball Cap Makers Association Date of Disbursement: **03 / 14 / 2016**

Maining Address: **42 Home Run Way**

City: **Towson** State: **MD** Zip Code: **22314**

Purpose of Disbursement: **Use of Meeting Room/Staff Time** Category/Type: **011**

Candidate Name: **Adam Jones** Amount of Each Disbursement this Period: **1,000.00**

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

B. Baseball Cap Makers Association Date of Disbursement: **03 / 30 / 2016**

Maining Address: **42 Home Run Way**

City: **Towson** State: **MD** Zip Code: **22314**

Purpose of Disbursement: **Use of Meeting Room/Staff Time (in-kind)** Category/Type: **011**

Candidate Name: **Adam Jones** Amount of Each Disbursement this Period: **- 1,000.00**

Office Sought: House Senate President Disbursement For: Primary General Other (specify) **MD** State: **MD** District: **See Sch. B, Line 23**



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2015-16 Election Cycle

Trade Association PAC Operations, Part 2

Part 2: Disclosure of In-Kind Contribution

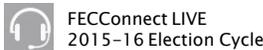
For in-kind contributions, the date the contribution is “made” is the date the candidate receives the benefit of the goods or services. Here, the in-kind contribution was made on March 30, 2016, the date of the candidate fundraiser, and must be disclosed on a Schedule B for Line 23. BCMA is listed as 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**

SCHEDULE B (FEC Form 3X)		Use separate schedule(s) for each category of the Detailed Summary Page		FOR LINE NUMBER: (check only one)		PAGE	
ITEMIZED DISBURSEMENTS		<input type="checkbox"/> 21b	<input type="checkbox"/> 22	<input checked="" type="checkbox"/> 23	<input type="checkbox"/> 24	<input type="checkbox"/> 25	<input type="checkbox"/> 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 Makers Association PAC							
A. Baseball Cap Makers Association				Date of Disbursement			
Mailing Address 42 Home Run Way				MM / DD / YYYY 03 / 30 / 2016			
City Towson		State MD		Zip Code 22314		Amount of Each Disbursement this Period 1,000.00	
Purpose of Disbursement Use of Meeting Room/ Staff Time (In-Kind)				Category/Type			
Candidate Name Adam Jones				Memo Item See Sch. B, Line 21b			
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: MD		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 (BCMA), 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 trade association's treasury funds because that constitutes an illegal member/labor 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.

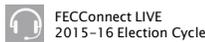
III. Campaign-Related Communications to the General Public (Independent)

Scenario: Independent Expenditures

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



Nevertheless, BCMA PAC wants to support Jeter and plans a series of radio ads in support of his special election campaign.

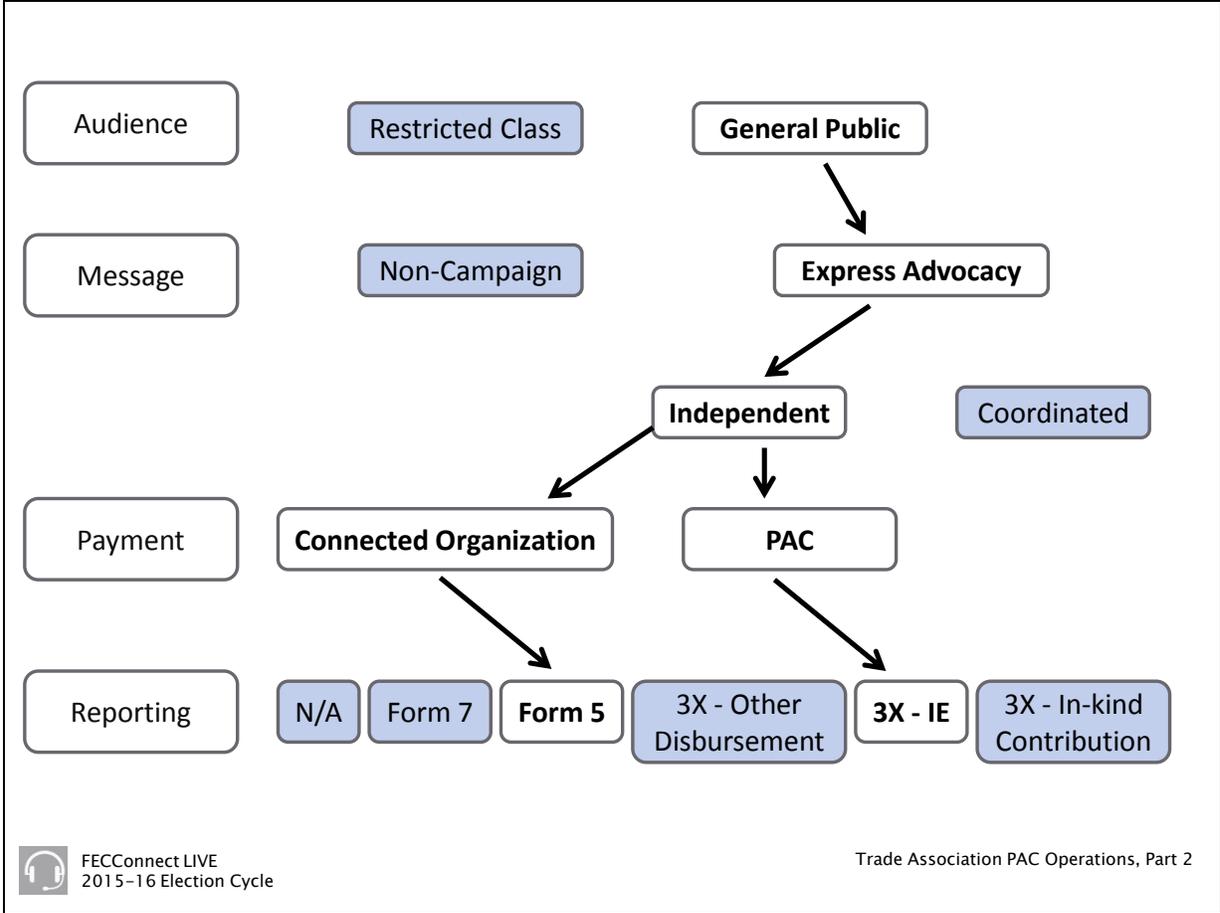


Trade Association PAC Operations, Part 2

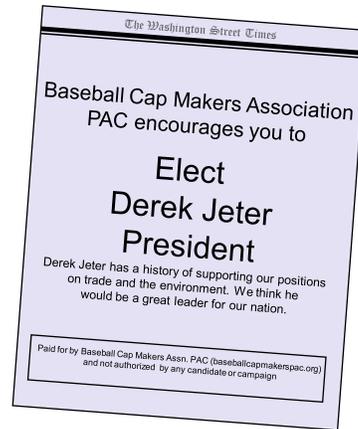
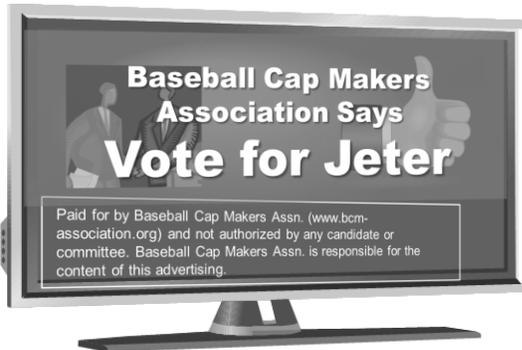
Skip would like to help Derek Jeter who is running in the general election for New York's 10th district in November 2016. The Jeter Campaign would not accept a contribution check from the BCMA PAC, nor would they speak to Skip or any other representative of BCMA or the PAC.

Nevertheless, Skip would like BCMA 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 BCMA 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 (TV/Radio)



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

- ☐ Association 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



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2015-16 Election Cycle

Trade Association PAC Operations, Part 2

B. Disclosure of Independent Expenditures by PACs

1. **By the Trade Association:** 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.)
4. **Aggregation**
Done on a per calendar year, per election, per office sought (race) basis.

Reporting 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 ****

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/charts_ie_dates_2016.shtml

Reporting Independent Expenditures

Connected Organization:

- ▣ Reports using FEC Form 5
- ▣ Files on quarterly basis
- ▣ Files 48-Hour and 24-Hour Reports, as required

FEC FORM 5
REPORT OF INDEPENDENT EXPENDITURES MADE AND CONTRIBUTIONS RECEIVED
To Be Used by Persons (Other than Political Committees) Including Qualified Nonprofit Corporations
(For Name of Individual, Corporation or Company)

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

(B) City, State and ZIP Code

(C) FEC#/FEDID/RECID#

(D) Corporation (Name only) Is the filer a qualified nonprofit corporation? Yes No

(E) Individuals (Name only) Name of Employee Occupation

4. TYPE OF REPORT (check appropriate box(es))
 April 15 Quarterly Report
 July 15 Quarterly Report
 October 15 Quarterly Report
 January 31 Year-End Report
 24-Hour Report
 48-Hour Report

(F) Is this Report an amendment? Yes No

5. COVERING PERIOD: FROM [] THROUGH []

6. TOTAL CONTRIBUTIONS: []

7. TOTAL INDEPENDENT EXPENDITURES: []

Under penalty of perjury, I certify that the independent expenditures reported hereon were made or made by someone, individually or jointly with, or at the request or direction of, me, or someone acting on my behalf or under my direct or indirect control, and that the expenditures were made for the purpose of influencing the outcome of an election, referendum, initiative, or ballot measure, or for the purpose of influencing the nomination or election of a candidate for federal office, or for the purpose of influencing the nomination or election of a candidate for state or local office, or for the purpose of influencing the outcome of a ballot measure, or for the purpose of influencing the nomination or election of a candidate for state or local office, or for the purpose of influencing the outcome of a ballot measure.

TYPE OR PRINT NAME OF PERSON COMPLETING FORM SIGNATURE DATE

NOTE: Submission of this, or any other, electronic filing subject to the provisions of 11 C.F.R. 101.11. For more information, contact the Federal Election Commission, 1101 E. Street, N.W., Washington, D.C. 20543. Toll-Free 800-426-6900. Local 202-696-1100.

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C. Reporting Independent Expenditures Made by Connected Organization

1. Reported Using FEC Form 5

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

2. Filed on Quarterly Basis

No pre- or post- election reports for connected organization.

3. Must File 24-Hour and/or 48-Hour Reports as Needed

Same guidelines as for SSF; for deadlines see

http://www.fec.gov/info/report_dates_2016.shtml#ie

Reporting Example #5: Disclosing Large Last Minute Independent Expenditures

Example: 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?



Trade Association PAC Operations, Part 2

Skip would like to help Derek Jeter who is running in the general election for New York's 10th district in November 2016. The Jeter Campaign would not accept a contribution check from the BCMA PAC, nor would they speak to Skip or any other representative of BCMA or the PAC.

Nevertheless, Skip would like BCMA 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 BCMA 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 #5: 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) Baseball Cap Makers Association PAC		FEC IDENTIFICATION NUMBER C 00000004
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 WBAT-FM	<input type="checkbox"/> Memo Item	Date of Public Distribution/Dissemination 10 / 26 / 2016
Mailing Address 12100 West Howard Avenue		Amount 7,500.00
City Brooklyn	State NY	Zip Code 11228
Purpose of Expenditure Radio Ad	Category/Type 004	Date of Disbursement or Obligation
Name of Federal Candidate Derek Jeter	<input checked="" type="checkbox"/> Support <input type="checkbox"/> Oppose	Office Sought: <input checked="" type="checkbox"/> House District: 10 <input type="checkbox"/> President <input type="checkbox"/> Senate State: NY
Calendar Year-To-Date Per Election for Office Sought 7,500.00		Disbursement For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify) ▶ 2016 General

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

Answer: Key facts in the scenario include the date of dissemination (10/26/16), 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 10/20/16-11/28/16, 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 3X
NAME OF COMMITTEE (In Full) Baseball Cap Makers Association PAC		FEC IDENTIFICATION NUMBER C 00000004
Check if <input type="checkbox"/> 24-hour report <input type="checkbox"/> 48-hour report <input type="checkbox"/> New report <input type="checkbox"/> Amends report filed on		
Full Name of Payee WBAT-FM		<input checked="" type="checkbox"/> Memo Item
Mailing Address 12100 West Howard Avenue		Date of Public Distribution/Dissemination 10 / 26 / 2016
City State Zip Code Brooklyn NY 11228		Amount 7,500.00
Purpose of Expenditure Radio Ad		Date of Disbursement or Obligation
Name of Federal Candidate Derek Jeter		Category/Type 004
Name of Federal Candidate Derek Jeter		Office Sought: <input checked="" type="checkbox"/> House District: 10 <input type="checkbox"/> President <input type="checkbox"/> Senate State: NY
Calendar Year-To-Date Per Election for Office Sought 7,500.00		Disbursement For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify) 2016 General

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Reporting Example Continues on Next Page

Other Reporting - Debt

FEC Form 3X: Schedule D, Line 10

**Debt Owed
(Post-General)**

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



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Reporting Example Continues on Next Page

When full payment is made to the vendor on 11/29/16, it should be reflected on Schedule E supporting Line 24, as well as Schedule D supporting Line 10 of the Year-End Report (coverage period: 11/29/16-12/31/16) 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
FOR LINE 24 OF FORM 3X

NAME OF COMMITTEE (In Full) Baseball Cap Makers Association PAC		FEC IDENTIFICATION NUMBER C 00000004
Check if <input type="checkbox"/> 24-hour report <input type="checkbox"/> 48-hour report <input type="checkbox"/> New report <input type="checkbox"/> Amends report filed on		
Full Name of Payee WBAT-FM	<input type="checkbox"/> Memo Item	Date of Public Distribution/Dissemination 10 / 26 / 2016
Mailing Address 12100 West Howard Avenue		Amount 7,500.00
City Brooklyn	State NY	Zip Code 11228
Purpose of Expenditure Radio Ad disseminated on 10/26/16	Category/Type 004	Date of Disbursement or Obligation 11 / 29 / 2016
Name of Federal Candidate Derek Jeter	<input checked="" type="checkbox"/> Support <input type="checkbox"/> Oppose	Office Sought: <input checked="" type="checkbox"/> House District: 10 <input type="checkbox"/> President <input type="checkbox"/> Senate State: NY
Calendar Year-To-Date Per Election for Office Sought 7,500.00	Disbursement For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify) ▶ 2016 General	

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Reporting Example Continues on Next Page

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Other Reporting - Debt

FEC Form 3X: Schedule D, Line 10

**Debt Owed
(Year-End)**

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



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Points to Remember: Reporting Last-Minute Independent Expenditures

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

- Must be certified (signed) by treasurer (e-filers should type the treasurer's name following the certification on the report).
- For paper filers, can use overnight delivery, hand-delivery or fax to 202-219-0174 (certified or registered mail date will not be considered filed date for these).
- Last-minute independent expenditures must be disclosed again on Schedule E of the next scheduled report that the committee files.
- A 24-Hour Report is required each time an additional \$1,000 is aggregated in independent expenditures.
- The 24-Hour Report time frames are on the FEC website:
http://www.fec.gov/info/charts_ie_dates_2016.shtml
- **48-Hour Reporting**
 - In addition, must file a **48-Hour Report** for independent expenditures that aggregate \$10,000 or more, anytime during a calendar year up to and including the 20th day before an election.
 - Use Schedule E on Form 3X – check “48-hour” box.
 - Must be received by FEC within 48 hours after expenditure is publicly distributed or otherwise publicly disseminated.
 - Must be certified (signed) by treasurer (e-filers should type the treasurer's name following the certification on the Report).
 - For paper filers, can use overnight delivery, hand-delivery or fax to 202-219-0174 (certified or registered mail date will not be considered filed date for these).
 - Last-minute independent expenditures must be disclosed again on Schedule E of the next scheduled report that the committee files.
 - Aggregation is done on a per calendar year, per election, per office sought (race) basis.
 - A 48-Hour Report is required each time an additional \$10,000 is aggregated in independent expenditures.

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

Scenario: Electioneering Communications

The Baseball Cap Makers Association 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.



Trade Association PAC Operations, Part 2

Congressman Jeter is up for re-election in the 2016 general election. A bill before Congress of great importance to the Baseball Cap Makers Association is expected to be up for a vote in late October 2016. As such, the BCMA 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.

What factors do we need to consider for this communication?

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



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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, or 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**

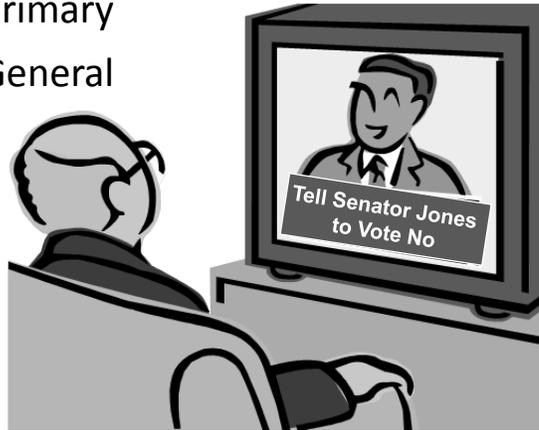
The Federal Communications Commission (FCC) provides on its website (<http://apps.fcc.gov/ecc/>) the information necessary to determine whether a communication can be received by 50,000 people.

Electioneering Communications

Lobbying/Issue Ads

≤ 30 days before Primary

≤ 60 days before General



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

Some associations 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.

Reporting 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 Disbursement/Obligations
(a) Name _____
(b) Address (number and street) check if different than previously reported _____
(c) City, State and ZIP Code _____

2. FEC Identification Number _____

3. Is This Statement New or Amended

4. Covering Period _____

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

9. Total Donations This Statement _____

10. Total Disbursements/Obligations This Statement _____

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

TYPE OR PRINT NAME OF PERSON COMPLETING FORM _____ DATE _____

NOTE: Submission of false, erroneous or incomplete information may subject the person signing this statement to the penalties of 2 U.S.C. 3875.

FEC FORM 9 (REV. 10/2009)

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D. Disclosure Requirements

1. Requirement

Electioneering communications made by trade associations are subject to disclosure rules. Electioneering communications aggregating \$10,000 or more during a calendar year 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
(reporting dates)
- <http://www.fec.gov/info/forms.shtml#other>
(Form 9 and instructions)

3. Cable/Satellite:

In determining whether televised advertisements reach enough viewers to qualify as “electioneering communications,” a broadcaster may exclude its cable and satellite customers who cannot receive a communication because they do not subscribe to a cable or satellite package that carries the network on which the communication is distributed may be excluded from the calculation of the number of persons who can receive the communication. AO 2015-10.

4. Disclaimer under 11 CFR 110.11 required.

Key Point

Trade associations must avoid coordination when communicating beyond the restricted class



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Trade Association PAC Operations, Part 2

Objectives

- ▣ Highlight Methods of Support for Federal Candidates
- ▣ Discuss Disclosure of SSF Disbursements
- ▣ Evaluate Communications: Audience, Message, Payment and Disclosure
- ▣ Identify and Apply Rules for Use of Association Facilities



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Trade Association PAC Operations, Part 2

Workshop Evaluation

Help Us Help You!

Please complete an evaluation
of this workshop.

<https://www.surveymonkey.com/r/7HS6QGS>



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Evaluation Link: <https://www.surveymonkey.com/r/7HS6QGS>