CORPORATE/LABOR/TRADE PAC OPERATIONS PART 1

October 23, 2013
11:15 a.m.

Information Division
2013-14 Election Cycle

SSF Operations

Objectives – Parts 1 & 2

- Guidelines for establishing and administering federal PAC
- Identify who may be solicited
- Specify fundraising guidelines for federal PAC
- Evaluate fundraising techniques

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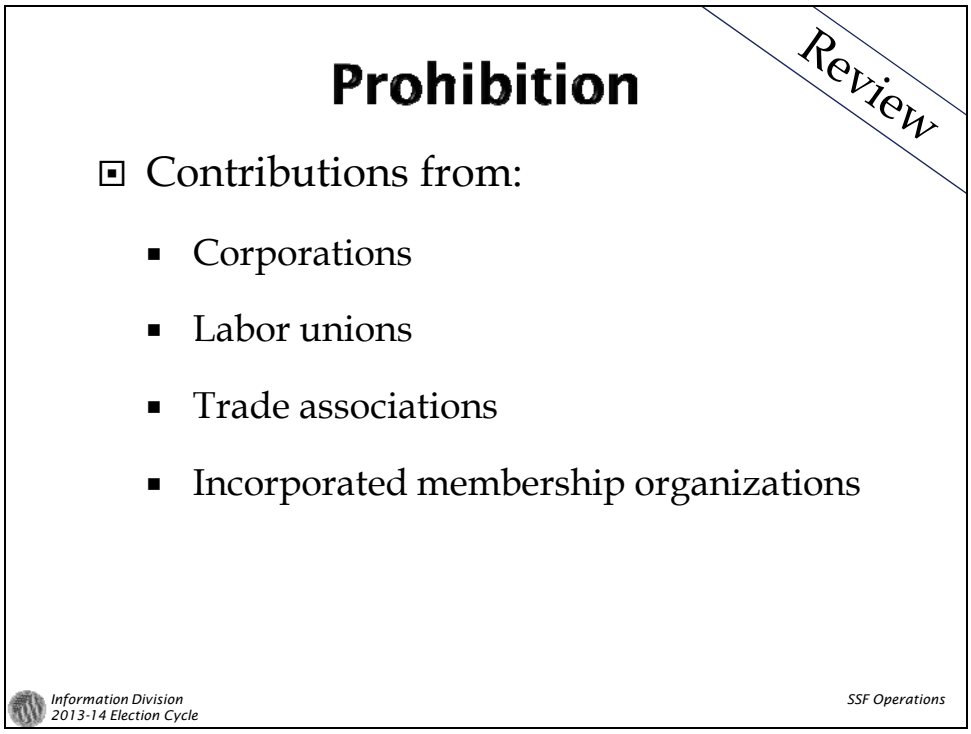
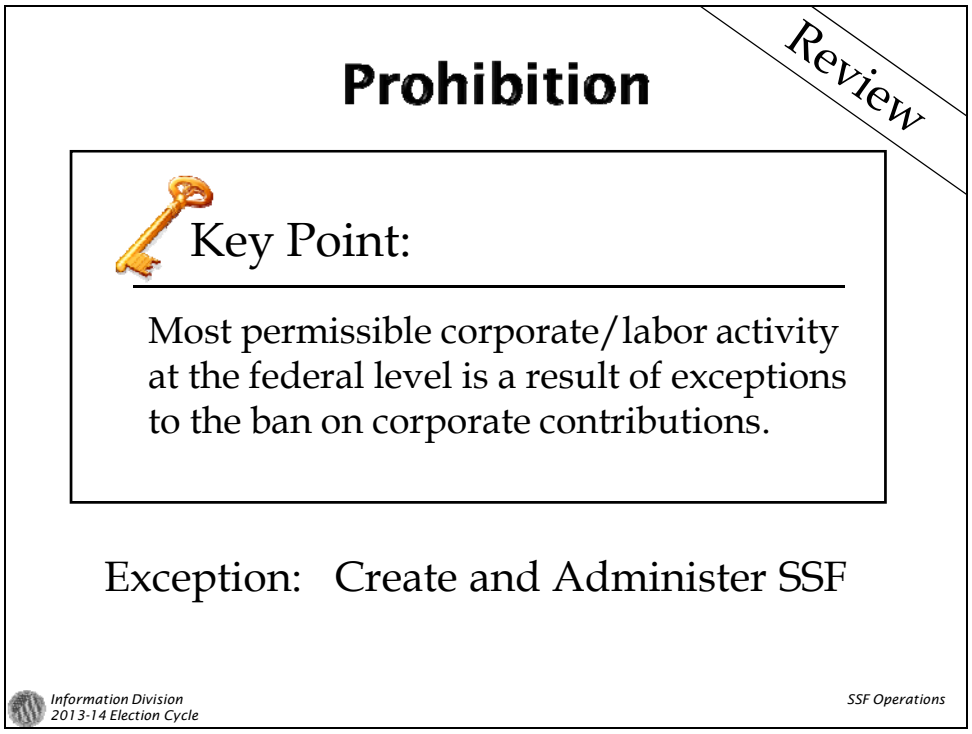


I. Introduction

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

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



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.

II. Organizing the PAC

A. Characteristics of Separate Segregated Fund (SSF)

1. **Registration upon Formation (11 CFR 100.5(b) and 102.1(c))**
   Becomes political committee and must register within 10 days when formed.
2. **Has Connected Organization (11 CFR 100.6)**
   a) **Corporation** = includes incorporated membership organization, incorporated trade association, corporation without capital stock and incorporated cooperatives.
   b) **Labor Organization**
   c) **Trade Association** (11 CFR 114.8(a))
      1) Defined as a membership organization of persons engaging in similar or related line of commerce, organized to promote and improve business conditions in that line of commerce and not to engage in a regular for-profit business, and no part of the net earnings of which inures to the benefit of any member.
      2) Subject to special solicitation rules at 11 CFR 114.8.
   d) **Incorporated Membership Organization**

3. Administrative/Fundraising Costs (11 CFR 114.1(b) and 114.5(b))

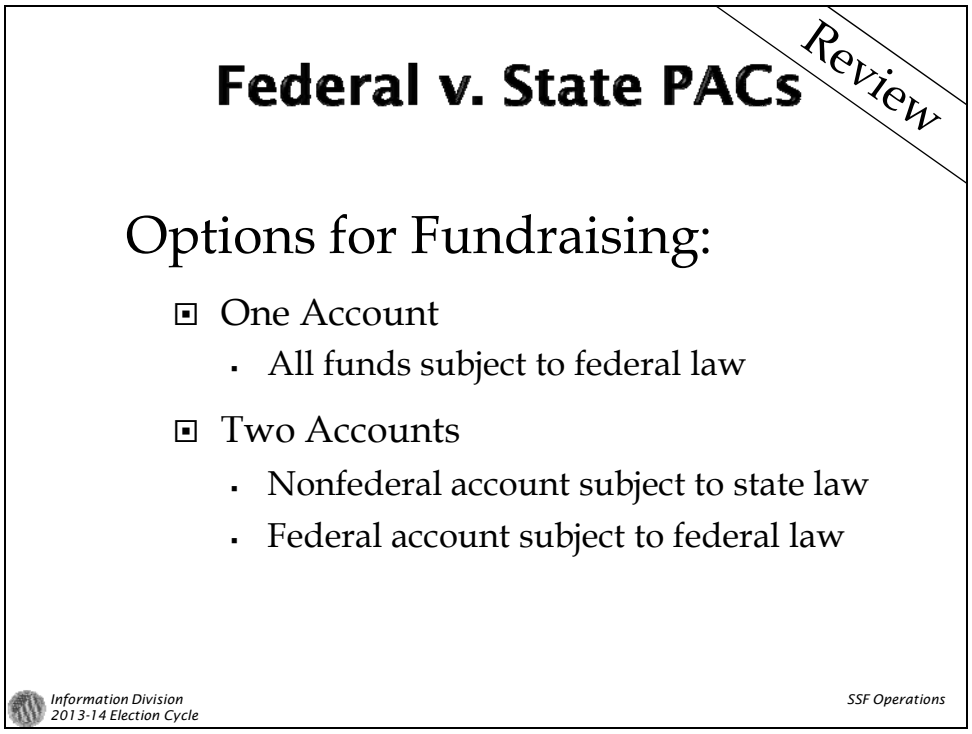
a) Connected organization (or its affiliates and members) may pay administrative/fundraising costs; not reportable.

b) Costs that may be paid include office space, phones, salaries, utilities, supplies, legal and accounting fees and fundraising expenses (including prizes/entertainment, covered in Part 2, and credit card service fees).

c) The corporation may pay for liability insurance for the officers of its SSF (AO 1979-42).

d) Exemption does not include income taxes (AO 1977-19) and contributions (including in-kind contributions) to candidates (we'll cover this in Part 3 tomorrow).

4. Solicitation of Limited Class Only (11 CFR 114.5(g)(1), 114.7(a) and (j) and 114.8(e))



B. Federal v. State PACs

1. Options for Fundraising (11 CFR 102.5(a))

A PAC that finances activity in connection with both federal and nonfederal elections has two options.

a) Option 1: One Account

(1) PAC may choose to have only one account to use for both federal and nonfederal elections.

(2) All funds deposited are subject to federal limitations and restrictions.

(3) Also subject to state laws regarding its nonfederal activity.

b) Option 2: Two Accounts: Federal and Nonfederal

(1) Federal Account

Used for federal activity; Funds deposited into federal account subject to federal limits and prohibitions.

(2) Nonfederal Account

Subject to state law; Nonfederal account may not finance any federal activity.

Deposits into Federal PAC

Must meet one of these conditions:

1. Designated for Federal Account
2. Solicited for Federal Account
3. Contributors Informed that Contribution is Subject to Federal Limits/Prohibitions

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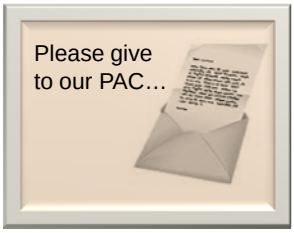
C. What Can Be Deposited into Federal PAC (11 CFR 102.5(a)(2))

All funds deposited into any federal PAC must meet one of the following conditions:

1. Funds must be expressly designated or solicited for use in connection with federal elections; or
2. Contributors must be informed that contribution is subject to federal limits and prohibitions.

PAC Solicitations

What is a solicitation?



Why does it matter?

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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

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III. Solicitations

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?

- Does not encourage support for PAC
- Does not 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. What is Not a Solicitation:

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.

IV. Basic Solicitation Rules

Basic Rules Apply

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

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Restricted Class

- **Corporations**
- Membership & Labor Organizations
- Trade Associations

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A. At Any Time: Restricted Class Only

1. Who is in Restricted Class of a Corporation's PAC? (11 CFR 114.1(c), (h) and (j); 114.5(g))

a) Executive and administrative personnel

(1) Employees paid on salary (but **not** hourly) basis who have managerial, professional, policy-making or supervisory responsibilities.

- Professionals e.g. - includes Lawyers, Engineers, Doctors, Pilots and Nurses but no one represented by union.
- Insurance agents – NO unless they have supervisory or managerial responsibilities.
- **See AOs 2012-02, 2011-25, 2010-04, 2004-32, 1999-20 and 1993-16**
- **See *Recent Developments Workshop* materials**

(2) Members of the board of directors, if they are compensated via salary or stipend. AOs 2010-12, 2000-10 and 1985-35 (compare with AO 1977-18).

b) **Stockholders** (including ESOP): Individuals with:
(1) Vested interest in stock;
(2) Power to vote stock;
(3) Right to withdraw stock without **incurring suspension period**; and
(4) Right to receive dividends.
See AO 1998-12 and AOs cited within.

c) **Families of both**
See AOs 2013-06 and 1980-102

Beyond Restricted Class

- Corporation/PAC may NOT solicit:
  - General Public
  - Clients, Vendors, etc.
  - Other PACs
  - Employees who are not executives or stockholders

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d) **Who is Not Solicitable?**
(1) Foreign Nationals (11 CFR 110.20(g));
(2) General Public;
(3) Clients, vendors, etc. and their PACs;
(4) Employees who are neither executives nor stockholders; or
(5) Former employees (unless they are stockholders).

Definition of Member

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

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2. **Definition of Member (for Labor/Trade/Membership PACs) (11 CFR 114.1(e)(2))**
   Person (i.e., individual or company) who satisfies requirements for membership in organization, affirmatively accepts organization's invitation to become member and:
   - **a)** **Has significant financial attachment to organization**, or (i.e., Owner of seat on commodities exchange. (AO 2008-21))
   - **b)** **Pays annual dues set by organization**, or
   - **c)** **Has significant organizational attachment to organization** that includes:
     - (1) Affirmation of membership on annual basis (e.g., meeting or responding to survey); and
     - (2) Direct participatory rights in governance of organization (e.g., right to vote directly or indirectly for at least one individual on highest governing board; right to vote on policy questions; or right to approve organization's annual budget).
     - (3) In 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.

Restricted Class

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

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3. **Who is in Restricted Class of a Membership/Labor Organization PAC? (11 CFR 114.5(g)(2) and 114.7(a))**
   a) **Executive and administrative personnel** of the organization and their families.
   b) **Noncorporate members**
   c) **Students, Lifetime Members and Retirees:**
      (1) Case-by-case determination by the Commission.
      (2) 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).
      (3) See AOs 2013-08, 2011-08, 2007-19, 2003-13 and 1999-06.
   d) **Families of the above groups**
      See AOs 2013-06 and 1980-102

Beyond Restricted Class

- Membership/Labor Organization/PAC may NOT solicit:
  - General Public
  - Clients, Vendors, etc.
  - Other PACs
  - Organization employees who are not executives or members

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e) Who is Not Solicitable?

(1) Foreign Nationals (11 CFR 110.20(g));
(2) Other PACs/SSFs;
(3) Employees of membership organization who are not executives, nor organization members; or
(4) Employees or stockholders of incorporated members. See AOs 2011-22 and 2005-17.

Restricted Class

- Trade Association/PAC May Solicit:
  - Association Executive/Admin. Staff
  - Individual and Noncorporate Members
  - Executives of Corporate Members with signed Prior Approval
  - Families of the above groups

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4. Who is in Restricted Class of a Trade Association PAC for Solicitation Purposes? (11 CFR 114.5(g)(1), 114.7(a) and 114.8(e))

a) Executive and administrative personnel

(1) Employees paid on salary (but **not** hourly) basis who have managerial, professional, policy-making or supervisory responsibilities.

- **See AOs 2012-02, 2011-25, 2010-04, 2004-32, 1999-20 and 1993-16.**
- **See *Recent Developments Workshop* materials**

(2) Members of the board of directors, if they are compensated via salary or stipend. AOs 2010-12, 2000-10 and 1985-35 (compare with AO 1977-18).

b) Noncorporate members (including individuals and unincorporated businesses such as partnerships).

c) With prior corporate approval (discussed below)**, corporate members' restricted class** and their families.

d) Families of the above groups
See AOs 2013-06 and 1980-102

Beyond Restricted Class

Trade Association/PAC may NOT solicit:

- PACs of Corporate Members
- General Public
- Executives of Corporate Members that have NOT signed Prior Approval

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e) Who is Not Solicitable?

(1) Foreign nationals (11 CFR 110.20(g));
(2) Other PACs, including PACs of association members (11 CFR 114.7(j));
(3) Employees or stockholders of corporate members that have not given prior approval or that have given prior approval to another trade association for the same calendar year (11 CFR 114.8(d) and (e)); or
(4) General public.

Corporate Members: Prior Approval Needed

- Provide written notice that:
  - Approval is necessary before solicitation AND
  - Corporation may not authorize > 1 association per year
- Approval given as "Jane Doe, for XYZ Corp."
- Electronic approval OK
- Multiyear approval OK if separate approval is given for each year
- May include sample materials with request

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f) Prior Approval by Corporate Members of Trade Association (11 CFR 114.8(d) and (e))

(1) Application

Applies only to trade associations and their PACs and not to other types of connected organizations/PACs.

(2) Requirements:

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

- Request for approval may contain a copy of the solicitation materials to be used. (11 CFR 114.8(d)(3)).
- Corporation may limit scope and frequency of solicitations of its restricted class.
- Corporation may withdraw approval at any time.

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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5. Twice Yearly Solicitations (11 CFR 114.6)

a) Twice a year, a PAC may solicit:
   (1) **Corporation:** Rank and file employees.
   (2) **Membership Organization:** Rank and file organization employees.
   (3) **Labor Organization:** All non-union employees of corporations that employ union's members.
   (4) **Trade Association:** Rank and file association employees.

b) Must use custodial arrangement to preserve anonymity.

c) Must mail solicitation to employee's home.

d) **Labor Organizations:**
   (1) If corporation wants to conduct a twice-yearly solicitation for its PAC, it must notify the union of its intention and provide similar opportunity.
   (2) If more than one union represent employees at that corporation, they share a limit of two solicitations of non-members per year. 11 CFR 114.6(e)(5).

Restricted Class 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 Stockholders and Families	Executive and Administrative Personnel and Families Members and Families	Executive and Administrative Personnel and Families Noncorporate Members and Families	Executive and Administrative Personnel and Families Noncorporate Members and Families With Prior Approval, Corporate Members' Executive and Administrative Personnel, Stockholders and Families of Both
Twice Yearly[d]	Nonexecutive and Nonadministrative Personnel and Families	Nonexecutive and Nonadministrative Personnel and Families In Corporations that Employ Members of the Labor Organization, Nonmember Employees, Stockholders and Families of Both	Nonexecutive and Nonadministrative Personnel and Families	Association's Nonexecutive and Nonadministrative Personnel

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Affiliation

- Presumed in parent/subsidiary
  - Exception – see AOs on spin-offs
- Presumed for national/state/local organizations or associations
  - Exception – see AO 2002-11
- Consequences for Affiliates:
  - PACs may solicit each other's restricted class.
  - Organizations may pay administrative costs for each other.
  - PACs share contribution limits.

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6. Affiliation (11 CFR 100.5(g)(2) and (3) and 110.3(a))

a) Presumption of Affiliation ("Per Se" Affiliation")
FEC regulations at 11 CFR 110.3(a)(2)(iv) presume affiliation between national/state/local organizations or associations.

b) Other Relationships Determined through Factors Analyzed in AO Process
Example: Two trade associations that did not have common ownership were not per se affiliated; but were affiliated based on factors including common membership, governance of each other, overlapping current and former board members and evidence of an ongoing commitment to joint endeavors. AO 2005-03.

c) Must have Significant Factors Present to be Deemed Not Affiliated:

(1) Example for Corporations: In AO 2007-16, the Commission ruled that a corporation spun off from another corporation were no longer affiliated as of the date of the spin-off. Although the two companies had a large common shareholder base, factors indicating disaffiliation were stronger, including lack of ownership by one company in the other, the minimal personnel overlap between the companies (including the companies' subsidiaries), the lack of any plan for

personnel of one of the companies or its subsidiaries to serve in the future in either of the other companies or its subsidiaries (other than the two currently overlapping individuals), and the fact that a majority of the two companies' respective board members did not serve on the board of, and were not officers of, any pre-spin-off corporate entities.

(2) **Example for Trade Associations:** In AO 2002-11, the Commission ruled that a national trade association federation was not affiliated with state associations due to the presence of many factors, including a lack of overlap in governance, a lack of a traditional federated structure, a lack of dues consolidation, a lack of involvement by the national organization in the state associations and state PACs' activities, and significantly, a small overlap in membership.

(3) **Example for Membership Organizations:** In AO 2007-13, the Commission ruled that although an association with state labor organization members originally had the authority to manage, finance and staff a second labor organization, due to the fact that the labor organization later had become autonomous with its own finances, governance, staff and direction, the two organizations are not affiliated under an analysis of the affiliation factors, including a separation of the staffs, treasuries and functions of the two organizations, the minimal overlap in governance and the minimal direct overlap in membership.

(4) **Exception for Labor Organizations:** If union is part of AFL-CIO, its PAC is not affiliated with the AFL-CIO's PACs.

d) **Consequences of Affiliation:**

(1) The connected organization or PAC may solicit the restricted class of any parent, subsidiary, branch, division or other affiliate. AO 2007-16.

(2) Affiliated organizations may pay each others' administrative expenses. See AOs 1997-13, 1996-26 and 1983-19.

(3) Contributions received and made by affiliated federal PACs are subject to one limit. 11 CFR 110.3(a). Each committee is responsible for monitoring this to ensure compliance with contribution limits.

Objectives – Part 1& 2

- Guidelines for establishing and administering federal PAC
- Identify who may be solicited
- **Specify fundraising guidelines for federal PAC**
- Evaluate fundraising techniques

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Basic Rules Apply

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

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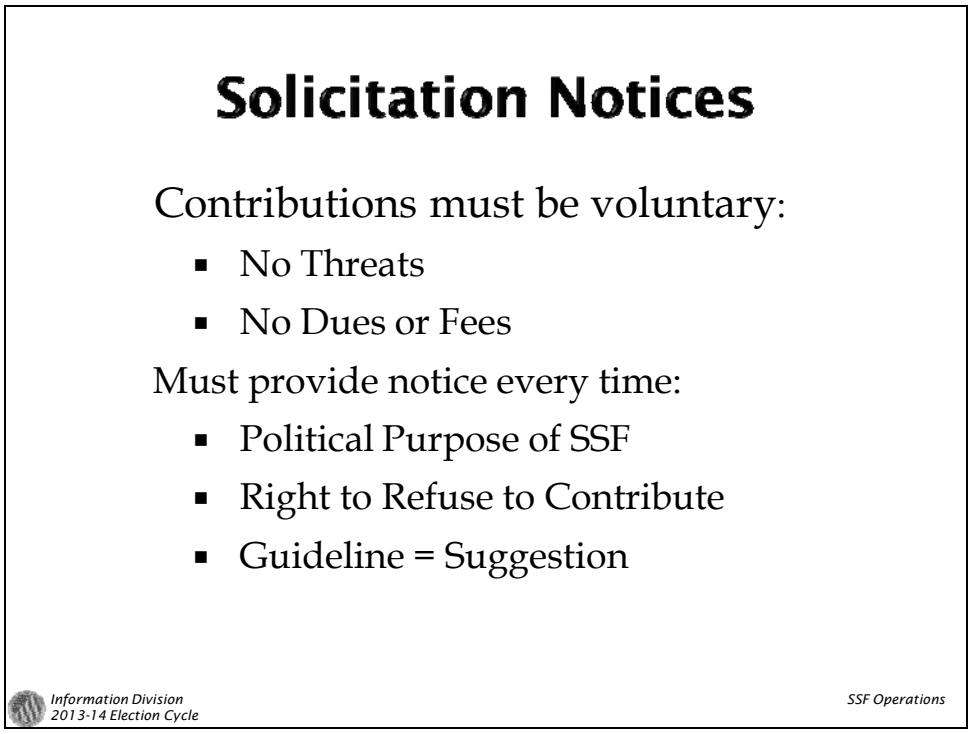

B. Voluntary Contributions and Solicitation Notices (11 CFR 114.5(a))

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; and

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 organi 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

		HOURLY		SALARIED		
	Authorized Amount	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." Id.*** 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." Id.*** 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 and Records On Time**

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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

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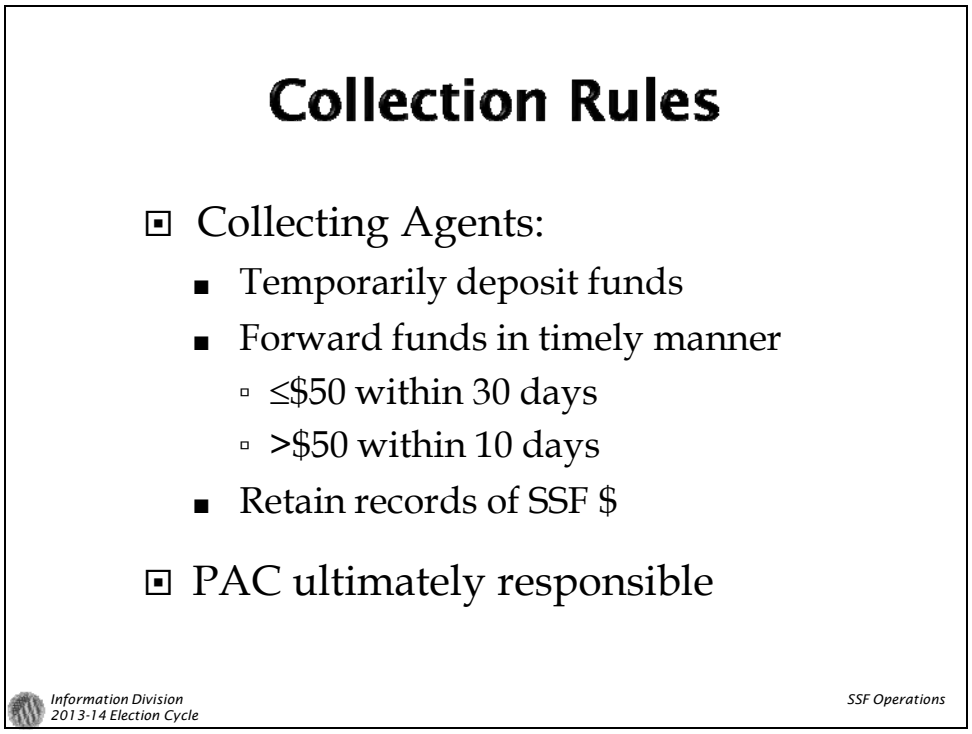
C. Collecting and Forwarding Contributions to PAC (11 CFR 102.6(b))

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 Payable to PAC

Connected organization must forward checks payable to PAC directly to PAC.



2. Checks Payable to 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/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 – Parts 1& 2

- Guidelines for establishing and administering federal PAC
- Identify who may be solicited
- Specify fundraising guidelines for federal PAC
- **Evaluate fundraising techniques**

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V. Solicitation Techniques

Solicitation Techniques

- **Payroll Deduction**
- Combined Dues/Solicitation Notices
- Conventions and Meetings
- Prizes and Entertainment
- Communications
- Matching Charitable Contributions

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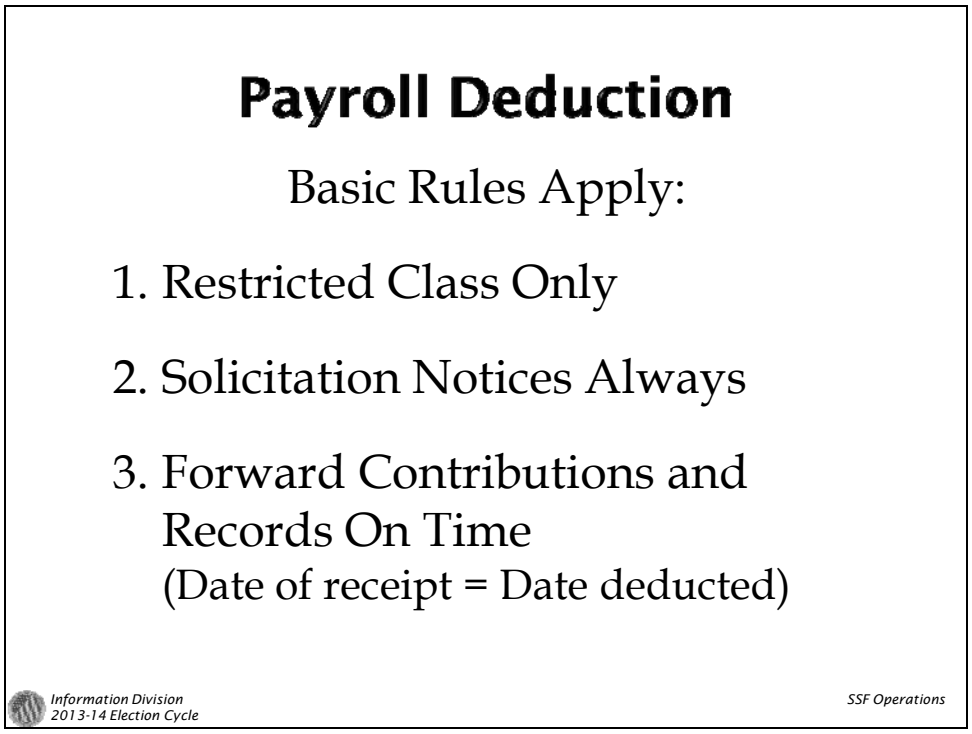

A. Payroll Deduction (11 CFR 102.6(b) and (c), 102.8(b) and 114.5(a))

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

- Written Payroll Deduction Authorization Required :
  - No reverse checkoff
  - Electronic deductions okay
  - Retain for 3 years after last reported contribution from employee
  - Signed authorization not only way to satisfy recordkeeping requirement

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2. **No Reverse Checkoff**
   Illegal to automatically deduct PAC contributions from paycheck, even if individual is allowed to request refund. 11 CFR 114.5(a).
   - **See AO 2001-04 (fn. 4)**
3. **Electronic Deductions OK**
   In various opinions, the Commission has approved:
   a) Electronic deduction/transfer of PAC contributions to membership organization PAC. AO 1997-09.
   b) The use of a digital electronic signature to authorize payroll deductions for a corporate PAC. AO 1999-03.
   c) 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.
   d) Key in these AOs:
   - **Passwords**
   - **Email confirmations**
   - **Ability to modify/revoke authorization**
   - **Retention of authorization**
   - **Notices worked into presentation**
4. **Telephone Recorded Conversations OK**
   The use of telephone recorded conversations to obtain and maintain authorization for payroll deductions for an organization's PAC. AO 2013-12.

5. Written Authorization Required

a) Employee gives written (electronic or telephone recorded) authorization for periodic deduction of PAC contributions from paycheck; may revoke any time.

b) Retain employee's authorization for three years from the date the committee last reports receiving a contribution from that employee (rather than three years from the date the employee signed the authorization). 11 CFR 104.14(b).

c) Note: Retaining the signed authorization is not the only way to satisfy recordkeeping requirement. For suggested methods for how to keep these records, see Commission Policy Statement online at http://www.fec.gov/law/policy/notice_2006-11.pdf.

Payroll Deduction

- Rules for Labor Organization PACs:
  - Must allow union to use payroll deduction for its PAC, upon request
  - Union must reimburse costs
  - Vacation / Annuity fund deductions OK

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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.

7. Labor Organization PAC: Vacation Funds

A portion of a union member's deductions to vacation fund jointly administered by employer and labor organization can be transferred to labor organization's PAC as contribution from the member, provided that:

a) All requisite notices are given; and
b) Union member has the right to revoke.
c) See AOs 1980-74, 1980-69 and 1979-60.

8. Deductions from Annuity Payments (AO 1999-06)

a) Membership organizations may conduct check-off plans in which retired members instruct the organization to regularly deduct PAC contributions from their annuity payments.
b) Must follow same restrictions as payroll deduction.

Payroll Deduction

- Corporate Members of Trade Association PACs:
  - May use payroll deduction for trade association's PAC
    - Must first grant prior approval
  - Corporate members must allow union to use payroll deduction for its PAC, upon request
  - Union must reimburse costs

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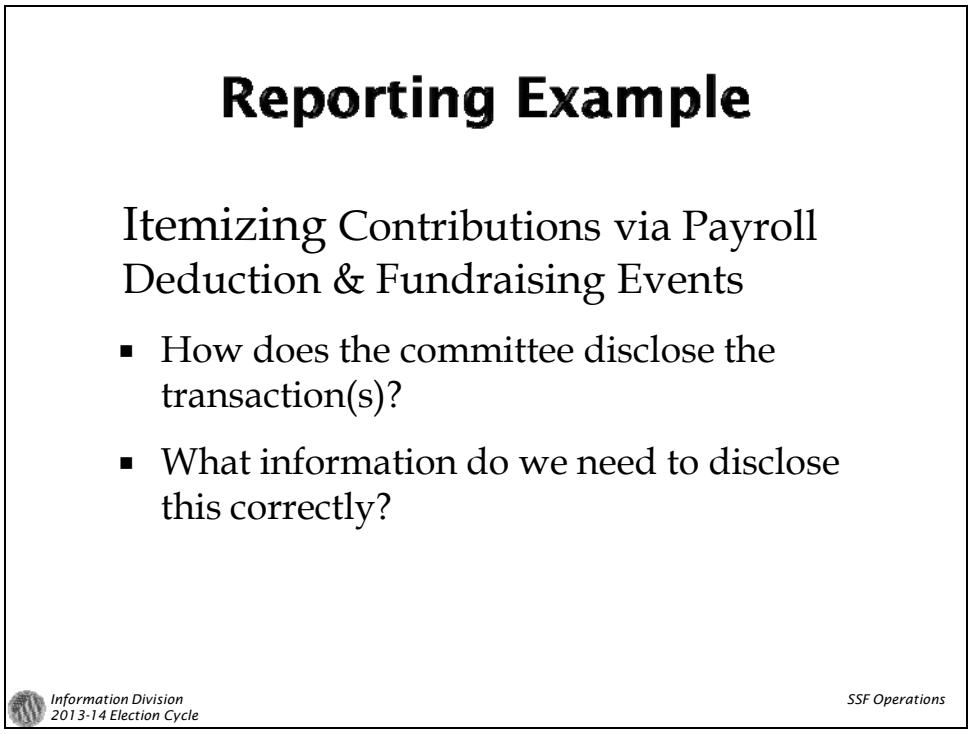
9. Corporate Members of Trade Association PACs

a) Member corporation may provide incidental services (including payroll deduction or checkoff system) to collect and transmit voluntary contributions from its restricted class to a trade association PAC upon written request of the trade association. 11 CFR 114.8(e)(4).
b) Corporations that provide these services must make the same services available to a labor organization representing any members working for the corporation upon written request of the labor organization. 11 CFR 114.8(e)(4).
c) **AO 2012-15:** Corporations owned by individual members of a membership organization (that also qualifies as a trade association) may provide payroll deduction to enable employees of the member-owned corporations to contribute to the membership organization's SSF. The membership organization must pay the member-owned corporations in advance for their services.



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

The Shotz Organization PAC has received authorization from Shirley Feeney, a company Vice-President, to deduct $20 from her biweekly paycheck as a contribution to the PAC. The first deduction was taken out of Shirley's paycheck on January 20, 2013. 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 27, Shirley reached 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, Shirley, 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.

Assume for this example that Shotz Organization PAC files its FEC reports on a monthly schedule.

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

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

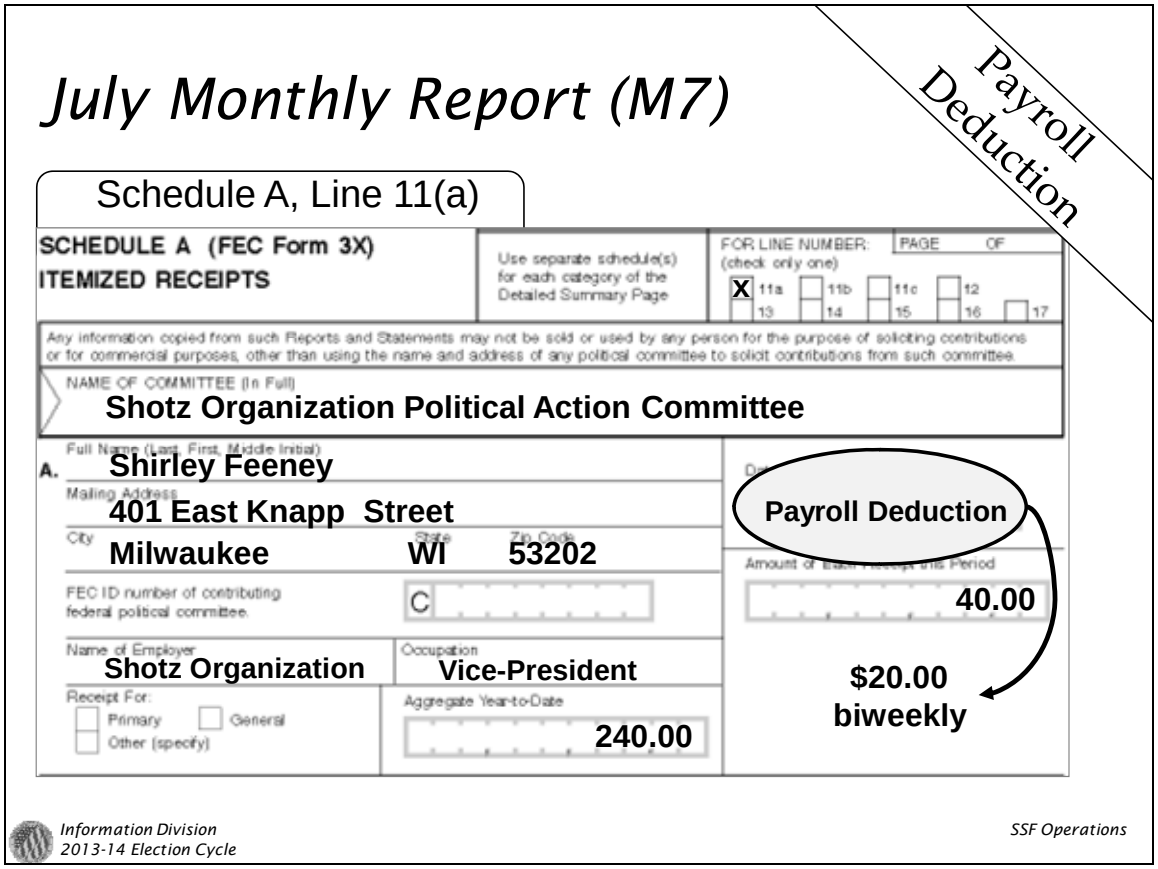
Reporting Example #1 – Answers

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

Answer: Itemize them on Schedule A for the appropriate Line (11(a)(i) for individuals) once the contributions from an individual aggregate more than $200 (including contributions received through payroll deduction) for the calendar year.

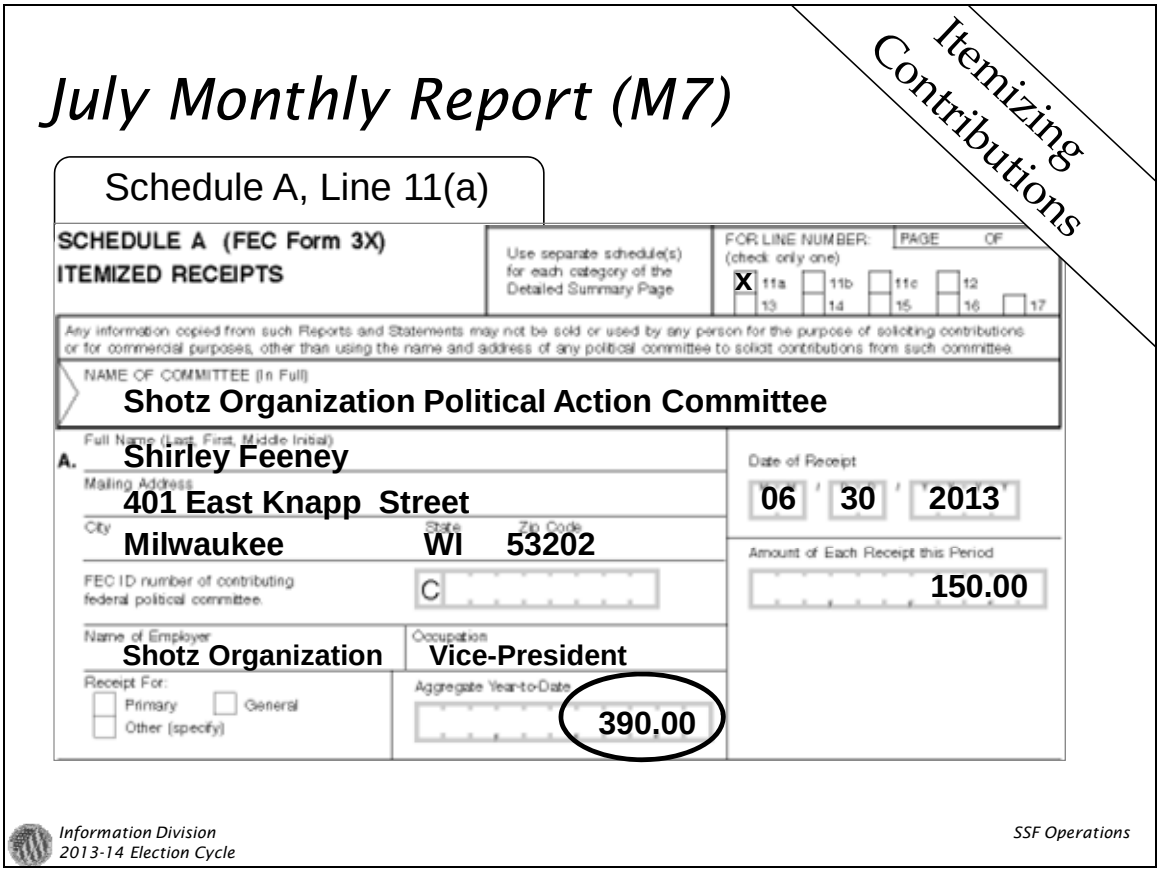
Shirley's initial contribution in January does not require itemization as Shirley has not yet contributed over $200 for the calendar year. Further, the contributions with an aggregate calendar year to date amount ≤ $200 must be included on Line 11(a)(ii) *(unitemized contributions from individuals)* of the appropriate reporting periods. However, on June 8, she will reach $220 in contributions for the calendar year. Since the PAC files monthly, the report covering June (due on July 20) would be the report on which they would need to begin itemizing Shirley's contributions on Schedule A for Line 11(a)(i).

Here is an example of the payroll deduction itemization:



All of Shirley's subsequent contributions during that calendar year will also require itemization on Schedule A. Thus, Shirley'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.

Here is an example of the contribution made in the form of a silent auction purchase:



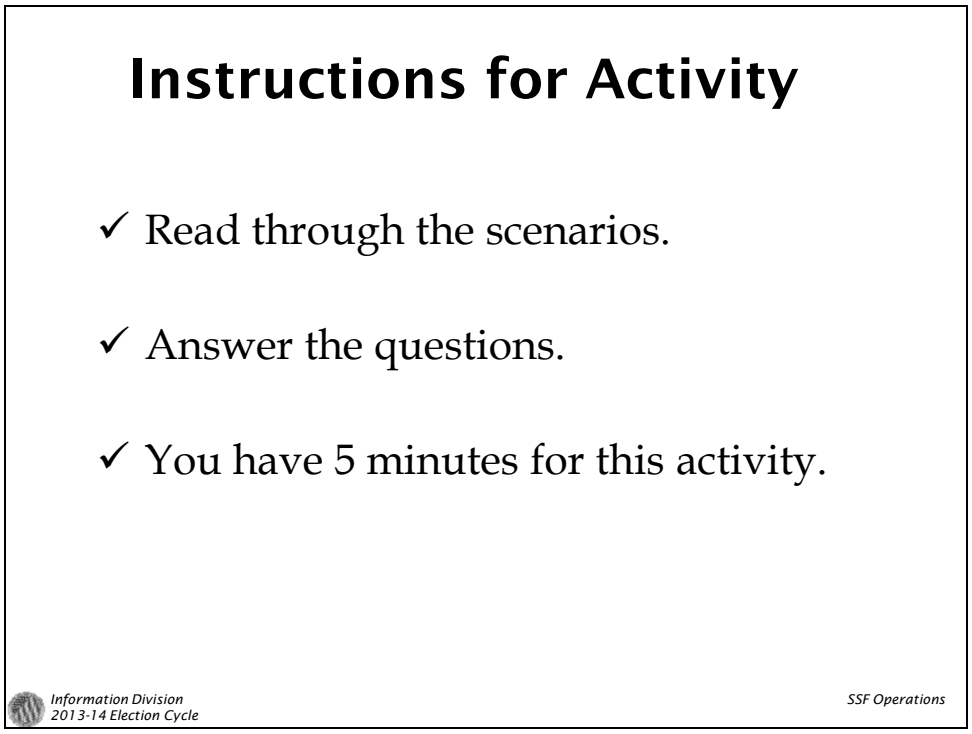
2. **What information from the scenario do we need to disclose this correctly?**

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.

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.



Scenario #1:

PAC Solicitation Meeting

You are the administrator for your connected organization's PAC. You would like to see more individuals from your restricted class contribute to the PAC. To help motivate contributors, you have developed the following plan for a series of informational meetings about the PAC. The meetings are intended for executives/members of your organization but you will not turn away anyone interested in learning about the PAC.

Employee Meeting

The first step would be to hold a lunch-hour meeting for your restricted class and any other individual interested in learning more about the PAC. At this meeting, you would ask your biggest contributor to explain why supporting the PAC is important to the organization's goals. Since the meeting is during lunch-hour, you will serve a light lunch.

To encourage attendance, your materials announcing the meeting will ask potential attendees who are employees of your organization to RSVP to their boss. As the administrator, you would track who attended the meeting and who skipped it. This information will be useful in performance reviews as a measure of the employees' commitment to the organization.

One-on-One Peer Visits

As a follow-up to the meeting, the biggest contributor in each division will personally visit the other restricted class members who also work in that division and remind them of what was said in the meeting. They will leave a payroll deduction sign-up card with each employee they visit and return at a future date to pick up the card.

1. **Would a meeting to explain the importance of the PAC be viewed as a PAC solicitation? Why or why not?**

2. **May anyone attend the meeting?**

3. **What must your speaker say at the meeting?**

4. **What special requirements, if any, does serving lunch trigger?**

5. **What do you think about the plan to track attendance and use that information in performance reviews?**

6. **How about the follow-up peer-to-peer visit? Is there anything important to keep in mind?**

Scenario #1 Answers:

1. **Would a meeting to explain the importance of the PAC be viewed as a PAC solicitation? Why or why not?**

   Answer: Generally, yes. In AO 1980-50, a corporation held a meeting to discuss the structure, philosophy and purpose of its PAC. While the event was not promoted as a fundraiser, the corporation expected that PAC contributions would result. The Commission thus concluded that the expenses for such a meeting "were of a character traditionally associated with 'fundraising'." See also AO 1983-24.

   Moreover, in this case, the speaker will encourage support for the PAC by explaining why making a contribution helps the organization's goals; that in itself is considered a solicitation. See AO 1979-13.

2. **May anyone attend the meeting?**

   Answer: No. Because the purpose of the meeting is to solicit PAC contributions, the organization may only invite and admit those within its restricted class. For a corporation, that includes executive and professional staff and stockholders. For a membership/labor organization, that includes executive and professional staff and members. (Note for a trade association, the restricted class also includes executives/stockholders of corporate members who have already given prior approval.)

3. **What must your speaker say at the meeting?**

   Answer: Because he will be conveying a solicitation message, your speaker must indicate that contributions are voluntary and employees have the right to refuse to contribute. He also must explain the political purpose of the PAC. This information also must be clear in any written or oral communication inviting attendees to the meeting. 11 CFR 114.5(a)(3) and (4).

4. **What special requirements, if any, does serving lunch trigger?**

   Answer: None. In AOs, the Commission has ruled that exempt solicitation costs include expenses for food, drink and the facilities where a fundraising event is held. See AOs 1995-17, 1983-24 and 1980-50. Moreover, the one-third rule that is applied to prizes and entertainment does not apply to a luncheon because the lunch does not "fall within the meaning of a 'raffle or other fundraising device which involves a prize' or 'other type of entertainment.' " AO 1980-50.

5. What do you think about the plan to track attendance and use that information in performance reviews?

Answer: Section 114.5(a)(1) prohibits a PAC from making a contribution or expenditure by using money secured by job discrimination, financial reprisals, or as a condition of employment.

Although asking attendees to RSVP to their boss may be permissible, the materials inviting them to the meeting must convey the political purpose of the PAC and that they have the right to refuse to contribute. CFR 114.5(a)(3) and (4). Supervisors should not favor or disadvantage an employee based on a decision to attend or not attend the meeting. See 114.5(a)(2)(ii).

Moreover, using employee participation information in future performance reviews is an indication that the organization may be treating a PAC contribution as a "condition of employment" and may be using threats of job discrimination or financial reprisal in securing PAC contributions.

6. How about the follow-up peer-to-peer visit? Is there anything important to keep in mind?

Answer: The follow-up peer-to-peer visit is a solicitation in itself that triggers the voluntary notice provisions of 114.5(a). The person doing the solicitation must again explain the political purpose of the PAC, that the contribution is voluntary and that the person being solicited has the right to refuse to contribute. If an amount is suggested as a donation, the solicitor must explain that it is only a suggestion and any amount may be given without any benefit or disadvantage.

Any funds collected must be forwarded to the PAC according to the timelines prescribed by the law.

Activity – Key Points

Meeting to "explain PAC"

- Meeting is solicitation
- Only invite restricted class to PAC fundraiser
- Always remember solicitation notices on invitations, in speeches/presentations and in one-on-one solicitations

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KEY POINTS:

- PAC presentation is a solicitation.
- Only invite restricted class.
- Always use notices in all of your written and oral solicitations.

Scenario #2:

Email Newsletter Articles

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

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

1. **What is the main problem with Article #1?**

2. **What is the main problem with Article #2?**

3. **How could you, as editor, edit both articles to make them effective, yet legal, solicitations?**

Scenario #2 Answers:
Both articles are solicitations that are directed only to the restricted class, but have other problems. Let's analyze further:

1. **What is the main problem with Article #1?**

   Answer: The article is a solicitation, and thus must include a notice informing the solicitees that they have a right to refuse to make the contribution. 11 CFR 114.5(a)(4). Also, it must include notice of the political purpose of the PAC. 11 CFR 114.5(a)(3). Both notices are required on every solicitation by the Act and regulations. The article, as drafted, is missing both notices.

2. **What is the main problem with Article #2?**

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

3. **How could you, as editor, edit both articles to make them effective, yet legal, solicitations?**

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

   In AOs regarding the right to refuse to contribute, the FEC has recommended tracking the language of the regulation at 114.5(a)(4); See AOs 2003-06 and 1997-25. Thus, you would just state, "You have the right to refuse to contribute to [Name of Organization's PAC] without fear of reprisal."

Activity – 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)"

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KEY POINTS:

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

Important Points – Part 1:
No matter what technique is used to raise Federal PAC funds, the basic rules apply:

Review

Basic Rules Apply

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

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