

# Pre-Election Communications



August 28, 2012  
9:30 – 11:00 AM

[http://www.fec.gov/info/  
roundtable\\_materials/workshopmaterials.shtml](http://www.fec.gov/info/roundtable_materials/workshopmaterials.shtml)



## Objectives

---

- Identify categories of communications
- Explain rules associated with each
- Highlight recent changes due to litigation
- Review special reporting requirements for pre-election communications

2012 FEC Information Division



## Communications

---

### Types Covered in this Workshop:

1. Public Communication
2. Coordinated Communication
3. Independent Expenditure
4. Electioneering Communication

2012 FEC Information Division



## Communications

---

### **Disclosed within 48- or 24-hours during Pre-Election Period**

2. Coordinated Communication
3. Independent Expenditure
4. Electioneering Communication

2012 FEC Information Division

- I. **Types of Pre-Election Communications Covered in this Workshop**
- **Public Communications and Basic Disclaimer Requirements**
  - **Coordinated Communications**
  - **Independent Expenditures**
  - **Electioneering Communications**



## Public Communication

---

- Cable, satellite or broadcast communication;
- Newspaper or magazine;
- Mass mailing (> 500 pieces);
- Outdoor advertising facility;
- Phone bank (> 500 calls w/same info);
- Communications placed for a fee on another person's web site (but not any other Internet or e-mail activity); or
- Any other form of general public political advertising

2012 FEC Information Division

## II. Public Communication Defined (11 CFR 100.26)

### A. Definition includes:

- **Cable, satellite or broadcast communication;**
- **Newspaper;**
- **Magazine;**
- **Mass mailing (> 500 pieces);**
- **Outdoor advertising facility;**
- **Phone bank (> 500 calls w/same info);**
- **Communications placed for a fee on another person's web site (but not any other Internet or e-mail activity); or**
- **Any other form of general public political advertising**



## Disclaimers Required

---

### For Political Committees:

- On all “public communications,” widely distributed e-mails and public web sites.

### For Other Persons/Entities:

- On any public communication that expressly advocates the election or defeat of a clearly identified candidate or solicits funds in connection with a federal election.

2012 FEC Information Division

### **B. Disclaimer Required (11 CFR 110.11)**

- 1. Political Committees:** On all public communications
- 2. Individuals/Groups/Other Entities:** On any public communication expressly advocating or soliciting contributions
- 3. Radio/television communications that are not authorized by a candidate** (i.e. independent) must contain the following audio statement: “XYZ is responsible for the content of this advertising.”
- 4. Printed communications not authorized by a candidate** must state the following: “Paid for by XYZ and not authorized by any candidate or candidate’s committee.”



## Coordination

---

- **Basic Definition of Coordination:**  
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 party committee or its agents
- Treated as in-kind contribution, subject to limitations and prohibitions

2012 FEC Information Division

### III. Coordinated Communications

#### A. The Basics:

##### 1. Definition of Coordination (11 CFR 109.20)

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



## Coordinated Communications

---

### Who May Make Them:

- Individuals
- Political Committees
- Any entity not prohibited from making a contribution

2012 FEC Information Division

2. **Who May Make Them?**
  - a) Individuals
  - b) Political committees
  - c) Anyone who may legally make a contribution



## Coordinated Communications

---

### Prohibited from Making Them:

- Corporations
- Labor Organizations
- Federal Contractors
- Foreign Nationals

2012 FEC Information Division

### 3. **Who is Prohibited from Making Them?**

Any entity prohibited from making contributions in connection with federal elections, including:

- a) Corporations
- b) Labor organizations
- c) Federal contractors
- d) Foreign nationals



## Coordinated Communications

---

### Key Points:

- Considered in-kind contribution, subject to limitations and prohibitions
- Reportable by committees making and receiving the contribution
  - Recipient campaign must file 48-hour notice if  $\geq \$1,000$  made between 10/18/12 – 11/3/12

2012 FEC Information Division

### **B. Why Important? Coordinated Communication = In-Kind Contribution (11 CFR 109.21(b)(1))**

1. **Prohibited** by entities prohibited from making contributions
2. **Subject to contribution limitations**
3. **Disclaimer required**
4. **Reporting**
  - a) In many cases, reportable by campaign or party committee as in-kind contribution received (and by PAC if in-kind contribution made by PAC).
  - b) **Last-Minute Coordinated Communications:**  
If \$1,000 or more, made between **Oct. 18 – Nov. 3, 2012**, recipient campaign must file 48-hour notice (FEC Form 6) to disclose in-kind contribution received.



## Three-Part Coordination Test

---

- ▶ Source of payment
  
- ▶ Conduct standard
  
- ▶ Content standard

2012 FEC Information Division

**C. Three Part Test to Determine if Coordinated Communication  
(11 CFR 109.21)**

Three-part test; all three must be satisfied to justify conclusion that payments for a coordinated communication are for the purpose of influencing a federal election.

1. **Source of Payment**
2. **“Conduct Standard”**
3. **“Content Standard”**



## Three-Part Coordination Test

---

- ▼ Source of payment
  - Paid for by someone besides the candidate, authorized committee or a party committee.

2012 FEC Information Division

### **D. Source of Payment**

To be considered coordinated, communication must be paid for by someone other than a candidate, an authorized committee or a political party committee. (If they paid for it themselves, coordination wouldn't be an issue.)



## Three-Part Coordination Test

---

- ▼ **Conduct Standard**
  - Request or Suggestion
  - Material Involvement
  - Substantial Discussion
  - Common Vendor
  - Former Employee/Independent Contractor

2012 FEC Information Division

### **E. Conduct Standard**

Must meet any one of these standards, plus content and payment standards, for the communication to be considered “coordinated.”

#### **1. Request or Suggestion (11 CFR 109.21(d)(1))**

Communication is created at the request or suggestion of candidate, candidate committee, party committee or agents if:

- a) The person creating, producing or distributing the communication does so at the request or suggestion of candidate or party; or
- b) The person paying for the communication suggests the creation, production or distribution of the communication to the candidate or party, and the candidate or party assents.

#### **2. Material Involvement (11 CFR 109.21(d)(2))**

Candidate, authorized committee or party committee is “materially involved in decisions” regarding the content, intended audience, means or mode of the communication, specific media outlet used, or size or prominence of a printed communication or duration of a communication by means of broadcast, cable or satellite.

3. **Substantial Discussion (11 CFR 109.21(d)(3))**
  - a) Communication is created, produced or distributed after one or more substantial discussions between the person paying for the communication and:
    - 1) The candidate clearly identified (or his/her campaign); or
    - 2) The opponent of the candidate clearly identified (or his/her campaign); or
    - 3) A political party committee; or
    - 4) An agent of any of the above.
  - b) **Substantial discussion** means that information about the plans, projects, activities or needs of the candidate or political party committee that is material to the creation, production or distribution of the communication is conveyed to the person paying for the communication.
4. **Employment of Common Vendor (11 CFR 109.21(d)(4))**

Use of common vendor to create, produce or distribute communication satisfies standard if:

  - a) The person paying for the communication contracts with or employs a commercial vendor to create, produce or distribute the communication;
  - b) The commercial vendor has a previous or current relationship with the candidate or political party committee that puts the vendor in a position to acquire information about the campaign plans, projects, activities or needs of the candidate or political party committee;
  - c) The vendor uses or conveys information about the plans or needs of the candidate or political party, or information previously used by the vendor in serving the candidate or party, and that information is material to the creation, production or distribution of the communication.
5. **Former Employee/Independent Contractor (11 CFR 109.21(d)(5))**

A person who has previously been an employee or an independent contractor of a candidate's campaign committee or a political party committee during the current election cycle satisfies this standard if:

  - a) The former employee/contractor uses or conveys information about the plans or needs of the candidate or political party committee, or information used by the former employee in serving the candidate/party, to the person paying for the communication; and
  - b) The information is material to the creation, production or distribution of the communication.

6. **Safe Harbors for Vendors/Former Employees or Contractors**
  - a) **Time Limit on Usefulness of Materials/Information.**  
120-day temporal limit.
  - b) **Firewall.** Firewall may be established.
7. **Safe Harbor for Candidate Endorsements/Solicitations (11 CFR 109.21(g))**
  - a) Federal candidate may endorse another candidate (federal or nonfederal) in public communication; not contribution to endorsing candidate unless communication promotes, attacks, supports or opposes (PASOs) him or her.
  - b) Federal candidate may solicit funds for another candidate, committee or nonprofit organization in public communication; not contribution to soliciting candidate unless communication PASOs him or her.
  - c) Time frames irrelevant.



## Three-Part Coordination Test

### ▼ Content Standard

- Meeting one of these:
  - Electioneering Communication
  - Republication of Campaign Materials
  - Express Advocacy or its Functional Equivalent
  - Public Communication within Certain Time Frame before Election

2012 FEC Information Division

#### F. “Content Standard”

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

1. **“Electioneering Communication”**
2. **Public Communication that Republishes, Disseminates or Distributes Campaign Materials**
3. **Public Communication with Express Advocacy**
4. **Public Communication Within Certain Time Frame Before Election (no express advocacy required)**
  - a) Refers to clearly identified candidate.
  - b) 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.
  - c) **Time Frames**
    - **Senate and House candidates** = 90 days before a primary or general election. (For 2012 general election: **Aug. 8 – Nov. 6, 2012**).
    - **Presidential candidates** = 120 days before the state primary (on a state-by-state basis) through the date of the general election.
    - **Political parties** = 120 days before a primary or general election.
    - Time frames for each state are available at the FEC’s Compliance Map at <http://www.fec.gov/info/ElectionDate/>.

**5. Public Communications That are the 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.



## Coordination Equation

---

Source of payment  
+ “Conduct standard”  
+ “Content standard”

---

= Coordinated Communication  
= In-Kind Contribution Subject to  
Limits and Prohibitions

2012 FEC Information Division

Communication must meet all three prongs to be considered a coordinated communication.

- G. Safe Harbor For Certain Commercial Transactions 11 CFR 109.21(i)**  
Content prong includes a safe harbor for certain commercial and business communications, in those cases where a candidate is clearly identified as an owner or operator of a business that existed prior to candidacy, so long as the communication does not PASO (promote, attack, support or oppose) any candidate and is consistent with other business communications prior to candidacy.



## Reporting Example Answer Key: Coordinated Communications

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



### Applying Coordination Test

- ▶ Source of payment  
The PAC
- ▶ Conduct standard  
Request or suggestion
- ▶ Content standard  
Public communication within time frame that refers to candidate and is directed to voters in district

2012 FEC Information Division

This transaction is a coordinated communication because it meets all three parts of the coordination test.

- **Source of payment:** The PAC is paying for the communication, not the candidate committee
- **Conduct Standard:** Request of suggestion of the candidate's campaign manager
- **Content Standard:** Although it's not clear from our example if the communication technically contains "express advocacy," the proximity of the communications to the election is key here. Since the ads will refer to Congressman Torres within the 90 day timeframe before the election and will be directed to voters in the jurisdiction of the candidate, we have met the content standard.

As a result of this communication being coordinated, the amount the PAC spends on the communications must be counted as an in-kind contribution to the Torres campaign.

2. **How does the PAC report that it has made an in-kind contribution?**



## PAC/Party Reporting Coordinated Communications

### Disclosing Coordinated Communications

- What type of transaction is this?  
**In-Kind contribution made by PAC and received by campaign**
- How must the transaction be disclosed by the campaign?  
**Campaign shows as receipt on Schedule A and disbursement on Schedule B, and also files 48-hour notice**
- How must the transaction be disclosed by the PAC?  
**PAC discloses contribution made on Schedule B**

2012 FEC Information Division

The PAC reports the payment on its Post-General election report. (Note that if it had made the payment during the pre-election period and was a quarterly filer, it would have triggered the requirement to file the Pre-General report.) No special last minute notices are required from the PAC.

The payment is itemized on Schedule B for Line 23 (Contributions to Federal Candidates). Note that it reports the consulting firm which received the payment as the payee. Candidate information is also noted.

***See Reporting Example on next page***



# In-Kind Contribution Made

Reported by PAC

|  |  |  |                              |  |                              |   |                              |
|--|--|--|------------------------------|--|------------------------------|---|------------------------------|
| <b>SCHEDULE B (FEC Form 3X)</b>  |  | Use separate schedule(s) for each category of the Detailed Summary Page  |                              | FOR LINE NUMBER: (check only one)      |                              | PAGE 1 OF 1                             |                              |
| <b>ITEMIZED DISBURSEMENTS</b>  |  | <input type="checkbox"/> 21b   | <input type="checkbox"/> 22  | <input checked="" type="checkbox"/> 23 | <input type="checkbox"/> 24  | <input type="checkbox"/> 25             | <input type="checkbox"/> 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)<br><b>Sand and Sea PAC</b>   |  |  |                              |  |                              |   |                              |
| Full Name (Last, First, Middle Initial)<br><b>A. Media Ads Consultants, Inc.</b>   |  |  |                              | Date of Disbursement<br>10 / 30 / 2012 |                              |   |                              |
| Mailing Address<br><b>76 Balboa Drive</b>  |  |  |                              |  |                              |   |                              |
| City<br><b>Philadelphia,</b>   |  | State<br><b>PA</b>   |                              | Zip Code<br><b>00000</b>               |                              |   |                              |
| Purpose of Disbursement<br><b>In-Kind: Cable TV Advertising</b>  |  |  |                              | Category/Type                          |                              | Amount of Each Disbursement this Period |                              |
| Candidate Name<br><b>Andrew Torres</b>   |  |  |                              |  |                              | <b>5,000.00</b>                         |                              |
| Office Sought:<br><input checked="" type="checkbox"/> House<br><input type="checkbox"/> Senate<br><input type="checkbox"/> President   |  | Disbursement For:<br><input type="checkbox"/> Primary<br><input checked="" type="checkbox"/> General<br><input type="checkbox"/> Other (specify) |                              |  |                              |   |                              |
| State: <b>NY</b>   |  | District: <b>08</b>  |                              |  |                              |   |                              |
|  |  |  |                              |  |                              | 2012                                    |                              |

2012 FEC Information Division

3. **Since the contribution was received so close to the general election date, does it trigger last-minute disclosure (48-Hour Notice)? If so, how should the committee disclose the last-minute contribution?**



## Campaign Reporting Coordinated Communications

### Disclosing Coordinated Communications

- What type of transaction is this?  
**In-kind contribution made by PAC; received by campaign**
- How must the transaction be disclosed by the campaign?  
**Campaign shows as receipt on Schedule A and disbursement on Schedule B, and also files 48-hour notice**

2012 FEC Information Division

Yes, campaign committees must file special notices (48-Hour Notices) regarding any contribution of \$1,000 or more received less than 20 days but more than 48 hours before 12:01 a.m. on the day of any election in which the candidate is running (whether or not the candidate has opposition in the election). The expedited disclosure requirements apply to all types of contributions received, including in-kind contributions. This contribution is considered to be received on the day the committee received the services (i.e. the date that the PAC paid the company); thus, a 48-hour notice is required.

*See reporting example on next page*



# 48-Hour Notice

## 48 HOUR NOTICE OF CONTRIBUTIONS/LOANS RECEIVED

(See Reverse Side for Instructions)

To be used to report all contributions (including loans) of \$1000 or more, received within 20 days of the election.

|   |   |  |   |   |
|---|---|--|---|---|
| 1. NAME OF COMMITTEE IN FULL<br><b>Andrew Torres for Congress Committee</b>                                     |   | <b>Includes In-Kind<br/>Contributions</b>        |   |   |
| ADDRESS (number and street)<br><b>129 West 81st Street Suite 5B</b>   |   |  |   |   |
| CITY, STATE, and ZIP CODE<br><b>New York, NY 10024</b>  |   |  |   |   |
| 2. NAME OF CANDIDATE<br><b>Andrew Torres</b>  | 3. OFFICE BOUGHT (State and District)<br><b>NY / 08</b> | 4. FEC IDENTIFICATION NUMBER<br><b>C00320000</b> |   |   |
| A. Full Name, Mailing Address and ZIP Code<br><b>Sand and Sea PAC<br/>1500 Bayside Road<br/>Lewes, DE 00000</b> |   | Name of Employer<br><br>Occupation               | Date (month,<br>day, year)<br><b>10/30/12</b>   | Amount<br><b>\$5,000.00</b><br>(in-kind;<br>cable ad) |
| SIGNATURE (optional)<br><i>Elizabeth Newman</i>   |   | DATE<br><b>11/1/12</b>                           | For further information contact:<br>Federal Election Commission<br>999 E Street, NW, Washington, DC 20463<br>Toll Free 800-424-9690, Local 202-694-1100 |   |
|   |   | <b>FEC FORM 6</b>                                |   |   |

2012 FEC Information Division

**4. How does the campaign committee disclose the PAC's payment for the cable advertising?**

An in-kind contribution is disclosed both as a receipt and a disbursement to avoid inflating cash-on-hand totals.

Report an in-kind contribution on the campaign's Post-General report, both on Schedule A for Line 11(c) (contributions from Other Political Committees (such as PACs)) AND as a disbursement on Schedule B for Line 17 (Operating Expenditures). The itemization on both Schedule A (Date of Receipt box) and Schedule B (Purpose of Disbursement box) should include a notation indicating the contribution is "in-kind").

*See reporting example on next page*



# In-Kind Received

Receipt: Schedule A, Line 11(c)

In-Kind Contribution  
PAC to Campaign

| SCHEDULE A (FEC Form 3)<br>ITEMIZED RECEIPTS |                              | Use separate schedule(s)<br>for each category of the<br>Detailed Summary Page | FOR LINE NUMBER<br>(check only one) | PAGE<br>OF                   |
|--|------------------------------|---|-------------------------------------|------------------------------|
| <input type="checkbox"/> 11a                 | <input type="checkbox"/> 11b | <input checked="" type="checkbox"/> 11c                                       | <input type="checkbox"/> 11d        | <input type="checkbox"/> 11e |

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)  
**Andrew Torres for Congress Committee**

Full Name (Last, First, Middle Initial)  
A. **Sand and Sea PAC**

Mailing Address  
**1500 Bayside Road**  
City: **Lewes** State: **DE** Zip Code: **00000**

Date of Receipt: **10** / **30** / **2012**

FEC ID number of contributing federal political committee: **C 00000088**

Amount of Each Receipt this Period: **5,000.00**

Name of Employer: \_\_\_\_\_ Occupation: \_\_\_\_\_

Receipt For:  Primary  General  Other (specify) \_\_\_\_\_

Election Cycle-to-Date: **2012** Amount: **5,000.00**

**In-kind**

Disbursement: Schedule B, Line 17

**Post-General  
Report**

| SCHEDULE B (FEC Form 3)<br>ITEMIZED DISBURSEMENTS |                              | Use separate schedule(s)<br>for each category of the<br>Detailed Summary Page | FOR LINE NUMBER<br>(check only one) | PAGE<br>OF                   |
|---|------------------------------|---|-------------------------------------|------------------------------|
| <input type="checkbox"/> 17a                      | <input type="checkbox"/> 17b | <input checked="" type="checkbox"/> 17c                                       | <input type="checkbox"/> 17d        | <input type="checkbox"/> 17e |

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)  
**Andrew Torres for Congress Committee**

Full Name (Last, First, Middle Initial)  
A. **Sand and Sea PAC**

Mailing Address  
**1500 Bayside Road**  
City: **Lewes** State: **DE** Zip Code: **00000**

Date of Disbursement: **10** / **30** / **2012**

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

Purpose of Disbursement  
**In-kind: Cable TV Advertising**

Office Sought:  House  Senate  President

Disbursement For:  Primary  General  Other (specify) \_\_\_\_\_

2012

2012 FEC Information Division

5. **Key issues:**
- **House Committees– file with the FEC**
    - E-filers: must file 48-hour notices electronically.
    - Paper filers:
      - Form 6 or similar memo
      - FEC’s web-based forms: [www.fec.gov/electfil/online.shtml](http://www.fec.gov/electfil/online.shtml)
      - Fax: 202-219-0174
  - **Senate Committees – file with the Secretary of the Senate**
    - Form 6 or similar memo
    - Fax: 202-224-1851
  - **Campaigns:** Any in-kind contribution disclosed on the 48-Hour Notice must be disclosed again as a receipt and an operating expenditure on next scheduled report.
  - **PACs:**
    - No 48-Hour Notice is required.
    - Disclose coordinated communication as in-kind contribution on Schedule B for Line 23.



## Independent Expenditure

---

Expenditure for communication that:

- Expressly advocates the election or defeat of a clearly identified candidate AND
- Is not made in cooperation, consultation or in concert with, or at the request or suggestion of, the candidate or his/her campaign, or a political party committee or the agents of either.

2012 FEC Information Division

### **IV. Independent Expenditures – 11 CFR 100.16**

#### **A. Definition**

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



## Independent Expenditure

---

- No Limits on amounts that may be expended, provided that the communication(s) are not coordinated
- Corporations and labor organizations may make IEs, but prohibited in-kind contribution results if coordinated

2012 FEC Information Division

1. **No Limits if Definition Met**  
One may spend an unlimited amount because the expenditure is not coordinated (and thus, a contribution).
2. **If Coordinated, In-kind Contribution Results (See 11 CFR 109.21 and Section I).**  
Prohibited if made by corporation or labor organization.



## Disclaimer Required

---

- “Paid for by X (202-333-3333) and not authorized by any candidate or candidate’s committee.”
- If Radio/TV: “X is responsible for the content of this advertising.”

2012 FEC Information Division

### 3. Disclaimer required

- a) “Paid for by (Name of Payor) (web address/phone number or street address) and not authorized by any candidate or candidate’s committee.”
- b) Add if on radio/TV (both oral and in writing): “(Name of Payor) is responsible for the content of this advertising.”



## Who Makes IEs?

---

- PACs, including Super PACs and Hybrid PACs
- Party Committees
- Individuals
- Corporations and Unions

2012 FEC Information Division

### **B. Who Makes Them**

#### **1. Who May Make Them**

- a) Individuals
- b) Federal PACs
- c) Party Committees
- d) Corporations, labor organizations, membership organizations and trade associations: Now permitted as a result of *Citizens United v. FEC* (2010).
- e) Independent Expenditure-Only Political Committees (i.e. “Super PACs”). See Advisory Opinions (AOs) 2010-09 and 2010-11.



## Super PACs

---

- No limit on contributions received
- May accept corporate/union donations
- Registers and files reports with FEC
- Identifies status by letter with Form 1
- See, e.g., AOs 2010-09 and 2010-11

2012 FEC Information Division

2. **Independent Expenditure-Only Political Committees**  
(AOs 2010-11 and 2010-09)
  - a) **Based on decisions in *Citizens United v. FEC* (2010) and *SpeechNow.org v. FEC* (2010)**
  - b) **Advisory Opinions:**
    - 1) AO 2010-09: the Commission ruled that a corporation may “establish and administer a political committee that makes only independent expenditures.”
    - 2) AO 2010-11: the Commission explained guidelines applicable to an independent-expenditure only political committee.
  - c) **Guidelines from AOs:**
    - 1) No contribution limits or solicitation restrictions are imposed on independent expenditure-only political committees.
    - 2) May accept donations from corporations and unions.
    - 3) Independent Expenditure-only political committees must still register with FEC and disclose contributions received and independent expenditures made.
    - 4) To register, include letter with Form 1 clarifying that it intends to accept unlimited contributions for purpose of making independent expenditures.  
[http://www.fec.gov/pdf/forms/ie\\_only\\_letter.pdf](http://www.fec.gov/pdf/forms/ie_only_letter.pdf).



## Hybrid PACs

- Nonconnected PAC with a separate “non-contribution account” that raises unlimited funds to spend on independent expenditures\*
- May accept corporate/union donations
- All activity reported on FEC Form 3X
- Identifies status by letter with Form 1

\* Pending litigation regarding SSF's ability to maintain a non-contribution account. See *Stop This Insanity, Inc. v. FEC*. See also, AOR 2012-01.

2012 FEC Information Division

### 3. Hybrid PACs

#### a) *Carey v. FEC*

- 1) Traditional nonconnected PACs (i.e. PACs that make contributions and adhere to the \$5,000 per calendar year contribution limit) may establish a separate “non-contribution” account which may accept unlimited contributions from individuals, corporations and labor organizations.
  - 2) “Non-contribution” account may only be used to make independent expenditures and not to make contributions.
- b) All activity for both accounts is reported on one FEC report.
- c) Notify the FEC either with initial Form 1 (Statement of Organization) filing that the PAC intends to establish a “Non-Contribution Account,” or for PACs already registered, file notification with the FEC that the PAC intends to establish a “Non-Contribution Account.”
- d) Additional Resources:
- 1) FEC has issued detailed guidance on reporting for hybrid PACs:  
<http://www.fec.gov/law/recentdevelopments.shtml>

- 2) Pending litigation seeks ruling on whether a Separate Segregated Fund (PAC sponsored by corporation, union, trade or membership organization) may also maintain a non-contribution account.

*Stop This Insanity, Inc. v. FEC:*

<http://www.fec.gov/law/litigation/stopthisinsanity.shtml>.

See also Advisory Opinion Request (AOR) 2012-01.



## Disclosure

- Super PACs, Hybrid PACs and other registered committees report using Schedule E (FEC Form 3X)
- IEs aggregated on per calendar year, per election, per office sought basis

2012 FEC Information Division

### C. Disclosure of Independent Expenditures

1. **Independent Expenditure Only Political Committees and PACs**  
Report using Schedule E/FEC Form 3X.
2. **Individuals/Unregistered Groups**  
Report using FEC Form 5 if more than \$250 spent in aggregate (note that amount spent by groups counts towards registration threshold).
3. **Aggregation**  
Done on per calendar year, per election, per office sought (race) basis.



## Independent Expenditures

- **24-Hour Reports:**
  - IE's aggregating  $\geq$  \$1,000 made  $<$  20 days but  $>$  24 hours before an election
    - ▶ 2012 General: 10/18/12 – 11/4/12
- **48-Hour Reports:**
  - IE's aggregating  $\geq$  \$10,000 made during the calendar year up to and including the 20<sup>th</sup> day before an election
    - ▶ 2012 General: 1/1/12 – 10/17/12
- Date made = date disseminated
- Disclose again on next regular report

2012 FEC Information Division

4. **Additional reporting on 24- and 48-hour basis:**
  - a) **24-Hour Reporting**
    - 1) 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.
    - 2) **For 2012 General: Oct. 18 – Nov. 4, 2012.**
  - b) **48-Hour Reporting**
    - 1) 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.
    - 2) An independent expenditure is considered made when it is publicly distributed or otherwise publicly disseminated.
    - 3) Last-minute independent expenditures must be disclosed again on Schedule E of the next scheduled report that the committee files.

- 4) Aggregation is done on a per calendar year, per election, per office sought (race) basis.
  - (a) 24-Hour report is required each time an additional \$1,000 is aggregated in independent expenditures.
  - (b) 48-Hour report is required each time an additional \$10,000 is aggregated in independent expenditures.
- 5) The 24-Hour and 48-Hour report time frames for each state are located on our web site at [http://www.fec.gov/info/report\\_dates.shtml#ie](http://www.fec.gov/info/report_dates.shtml#ie).
- 6) **For 2012 General: Jan. 1 – Oct. 17, 2012**



## Reporting Example Answer Key: Large Last-Minute Independent Expenditures

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



## PAC/Party Reporting Independent Expenditures

---

### Last-Minute Independent Expenditures

- What type of transaction is this?  
**Last-minute independent expenditure**
- How must the committee disclose the transaction(s)?  
**24-hour report, then on post-general**
- What information from the scenario do we need to disclose this correctly?
- Tricky Issues?

2012 FEC Information Division

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, a candidate or his/her campaign or its agents, or a political party committee or its agents.

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

An independent expenditure is considered made when it is publicly distributed or otherwise publicly disseminated. If it aggregates \$1,000 or more and is made less than 20 days but more than 24 hours before the day of an election, as this expenditure did, the PAC must file a 24-Hour Report on Schedule E disclosing the independent expenditure. The PAC must disclose the independent expenditure again, on Schedule E, for the next regular FEC report (30-Day Post General Report).



# 24 Hour IE Report

| SCHEDULE E (FEC Form 3X)<br>ITEMIZED INDEPENDENT EXPENDITURES   |                             | PAGE 1 OF 1<br>FOR LINE 24 OF FORM 3X  |  |
|---|-----------------------------|--|--|
| NAME OF COMMITTEE (In Full)<br><b>XYZ Political Action Committee</b>  |                             | FEC IDENTIFICATION NUMBER<br><b>C 00000004</b>   |  |
| Check if <input checked="" type="checkbox"/> 24-hour report <input type="checkbox"/> 48-hour report <input type="checkbox"/> New report <input type="checkbox"/> Amends report filed on |                             | M M / D D / Y Y - Y Y  |  |
| Full Name (Last, First, Middle Initial) of Payee<br><b>Local News 9</b>   |                             | Date<br><b>10 / 27 / 2012</b>  |  |
| Mailing Address<br><b>1010 Cavalier Drive</b>   |                             | Amount<br><b>8,000.00</b>  |  |
| City<br><b>City, ST 00000</b>   |                             | State<br><b>VA</b>   |  |
| Purpose of Expenditure<br><b>Cable Ad</b>   | Category/Type<br><b>004</b> | Office Sought:<br><input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President<br>District: _____      |  |
| Name of Federal Candidate Supported or Opposed by Expenditure:<br><b>Al Daniels</b>   |                             | Check One: <input checked="" type="checkbox"/> Support <input type="checkbox"/> Oppose   |  |
| Calendar Year-To-Date Per Election for Office Sought<br><b>8,000.00</b>   |                             | Disbursement For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General<br><input type="checkbox"/> Other (specify) <b>2012</b> |  |

2012 FEC Information Division

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

Key facts in the scenario include the date of dissemination (10/27/12), the fact that it is an advertisement that contained express advocacy, and was not coordinated with the campaign. The PAC will also need to disclose the payee's name and address, the candidate information, the purpose of the expenditure, the amount and the calendar year-to-date per election for the office sought.

On the next report filed (30 Day Post-General covering 10/18/12-11/26/12), the PAC must report the same information disclosed on the 24-hour Notice on Schedule E as a MEMO entry because the payment has not been made yet. Accordingly, the PAC must report a debt on Schedule D to "Local 9 News" until it is settled.



## IE Disclosed Next Report (30G)

| SCHEDULE E (FEC Form 3X)<br>ITEMIZED INDEPENDENT EXPENDITURES  |                             | PAGE 1 OF 1<br>FOR LINE 24 OF FORM 3X  |  |
|--|-----------------------------|--|--|
| NAME OF COMMITTEE (In Full)<br><b>XYZ Political Action Committee</b>   |                             | FEC IDENTIFICATION NUMBER<br>C <b>00000004</b>   |  |
| Check if <input type="checkbox"/> 24-hour report <input type="checkbox"/> 48-hour report <input type="checkbox"/> New report <input type="checkbox"/> Amends report filed on |                             | M M / D D / Y Y Y Y  |  |
| Full Name (Last, First, Middle Initial) of Payee<br><b>Local News 9</b>  |                             | Date<br>M M / D D / Y Y Y Y<br><b>10 / 27 / 2012</b>   |  |
| Mailing Address<br><b>1010 Cavalier Drive</b>  |                             | Amount <b>MEMO</b>   |  |
| City State Zip Code<br><b>City, ST 00000</b>   |                             | <b>8,000.00</b>  |  |
| Purpose of Expenditure<br><b>Cable Ad</b>  | Category/Type<br><b>004</b> | Office Sought: <input type="checkbox"/> House State: <b>VA</b><br><input checked="" type="checkbox"/> Senate District:<br><input type="checkbox"/> President |  |
| Name of Federal Candidate Supported or Opposed by Expenditure:<br><b>Al Daniels</b>  |                             | Check One: <input checked="" type="checkbox"/> Support <input type="checkbox"/> Oppose   |  |
| Calendar Year-To-Date Per Election for Office Sought<br><b>8,000.00</b>  |                             | Disbursement For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General<br><input type="checkbox"/> Other (specify) <b>2012</b>       |  |

2012 FEC Information Division

*See reporting example on next page*



# Reporting Debt to Vendor on Next Report (30G)

**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)

9  
 10

NAME OF COMMITTEE (In Full)

**XYZ Political Action Committee**

A. Full Name (Last, First, Middle Initial) of Debtor or Creditor

**Local News 9**

Nature of Debt (Purpose):

**Cable Ad for Al Daniels**

Mailing Address

**1010 Cavalier Drive**

City

State

Zip Code

**City, ST 00000**

Outstanding Balance Beginning This Period

**0.00**

Amount Incurred This Period

**8,000.00**

Payment This Period

**0.00**

Outstanding Balance at Close of This Period

**8,000.00**

When full payment is made to the vendor on 11/27/12, 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: 11/26/12-12/31/12).



# IE Payment Disclosed on Year End

|  |  |  |  |
|--|--|--|--|
| <b>SCHEDULE E (FEC Form 3X)</b><br>ITEMIZED INDEPENDENT EXPENDITURES   |  | PAGE <b>1</b> OF <b>1</b><br>FOR LINE 24 OF FORM 3X  |  |
| NAME OF COMMITTEE (In Full)<br><b>XYZ Political Action Committee</b>   |  | FEC IDENTIFICATION NUMBER<br><b>C 00000004</b>   |  |
| Check if <input type="checkbox"/> 24-hour report <input type="checkbox"/> 48-hour report <input type="checkbox"/> New report <input type="checkbox"/> Amends report filed on |  | M M / D D / Y - Y - Y Y  |  |
| Full Name (Last, First, Middle Initial) of Payee<br><b>Local News 9</b>  |  | Date<br><b>11 / 27 / 2012</b>  |  |
| Mailing Address<br><b>1010 Cavalier Drive</b>  |  | Amount<br><b>8,000.00</b>  |  |
| City State Zip Code<br><b>City, ST 00000</b>   |  | Office Sought: <input type="checkbox"/> House State: <b>VA</b><br><input checked="" type="checkbox"/> Senate District: _____<br><input type="checkbox"/> President |  |
| Purpose of Expenditure<br><b>Cable Ad</b>  |  | Category/Type <b>004</b>   |  |
| Name of Federal Candidate Supported or Opposed by Expenditure:<br><b>Al Daniels</b>  |  | Check One: <input checked="" type="checkbox"/> Support <input type="checkbox"/> Oppose   |  |
| Calendar Year-To-Date Per Election for Office Sought <b>8,000.00</b>   |  | Disbursement For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General<br><input type="checkbox"/> Other (specify) <b>2012</b>             |  |

2012 FEC Information Division

*See reporting example on next page*



# Reporting Debt to Vendor on Year End

|   |  |   |  |
|---|--|---|--|
| <b>SCHEDULE D (FEC Form 3X)</b>   |  | PAGE <b>1</b> OF <b>1</b>   |  |
| <b>DEBTS AND OBLIGATIONS</b>  |  | (Use separate schedule(s) for each numbered line)   |  |
| Excluding Loans   |  | FOR LINE NUMBER: (check only one) <input type="checkbox"/> 9 <input checked="" type="checkbox"/> 10 |  |
| NAME OF COMMITTEE (In Full)<br><b>XYZ Political Action Committee</b>                    |  |   |  |
| A. Full Name (Last, First, Middle Initial) of Debtor or Creditor<br><b>Local News 9</b> |  | Nature of Debt (Purpose):<br><b>Cable Ad for Al Daniels</b>   |  |
| Mailing Address<br><b>1010 Cavalier Drive</b>   |  |   |  |
| City State Zip Code<br><b>City, ST 00000</b>  |  |   |  |
| Outstanding Balance Beginning This Period<br><b>8,000.00</b>                            |  |   |  |
| Amount Incurred This Period<br><b>0.00</b>  | Payment This Period<br><b>8,000.00</b> | Outstanding Balance at Close of This Period<br><b>0.00</b>  |  |

2012 FEC Information Division

4. **Tricky Issues:**

- **24-Hour Reporting**
  - 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
  - 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 notice).
  - 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).
  - **The 24-hour report period for the general election: Oct. 18 - Nov. 4, 2012.**
- **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.
  - 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 notice).
  - 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 Notice is required each time an additional \$10,000 is aggregated in independent expenditures.
  - The 48-Hour Notice time frames for each state are located on our web site at [http://www.fec.gov/info/report\\_dates.shtml#ie](http://www.fec.gov/info/report_dates.shtml#ie).
  - **The period for 48-hour reports of independent expenditures for the general election runs through October 17, 2012.**



## Non-Committee Reporting of Independent Expenditures

---

- Individuals, corporations, and unions report independent expenditures on FEC Form 5.
- Same filing requirements as PACs/Parties reporting independent expenditures.

2012 FEC Information Division



## Reporting Example Answer Key: FEC Form 5

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

An independent expenditure by an individual.



### Non-Committee Reporting of Independent Expenditures

---

#### Last-Minute Independent Expenditures

- What type of transaction is this?  
**Last-minute independent expenditure by individual**
- How must the transaction be disclosed?  
**24-hour report, then on Year-End**
- What information from the scenario do we need to disclose this correctly?
- Tricky Issues?

2012 FEC Information Division

**2. How is this transaction reported?**

Because it is over \$1,000 and within 20 days of the general election (October 30), Jill must file Form 5 within 24 hours of the public distribution of the ad (i.e., by October 31).

She also must file it a second time on a January 31 Year-End filing.



# Completing Form 5

| <b>FEC FORM 5</b>   |  |
|---|--|
| <b>REPORT OF INDEPENDENT EXPENDITURES MADE AND CONTRIBUTIONS RECEIVED</b>   |  |
| To Be Used by Persons (Other than Political Committees)   |  |
| 1. (a) Name of Individual, Organization or Corporation<br><b>Jill Citizen</b>   |  |
| (b) Address (number and street) <input type="checkbox"/> check if different than previously reported<br><b>123 Main Street</b>  |  |
| (c) City, State and ZIP Code<br><b>City, State, Zip</b>   | 3. FEC Identification Number<br><b>C</b> |
| 2. <b>Corporate filers only</b> Is the filer a qualified nonprofit corporation? <input type="checkbox"/> Yes <input type="checkbox"/> No  |  |
| <b>Individual filers only</b> Name of Employer <b>City Art Gallery</b> Occupation <b>Director</b>   |  |
| 4. TYPE OF REPORT (check appropriate boxes):<br>(a) <input type="checkbox"/> April 15 Quarterly Report<br><input type="checkbox"/> July 15 Quarterly Report<br><input type="checkbox"/> October 15 Quarterly Report<br><input type="checkbox"/> January 31 Year-End Report<br><input checked="" type="checkbox"/> 24-Hour Report<br><input type="checkbox"/> 48-Hour Report |  |

2012 FEC Information Division

*See reporting example on next page*



# Detailed Information

| SCHEDULE 5-E<br>ITEMIZED INDEPENDENT EXPENDITURES              |               | PAGE   | OF               |
|--|---------------|--|------------------|
| NAME OF FILER (In Full)  |               | FOR LINE 7 OF FORM 5   |                  |
| <b>Jill Citizen</b>  |               |  |                  |
| Full Name (Last, First, Middle Initial) of Payee               |               | Date   |                  |
| <b>Local Gazette</b>   |               | 10 / 30 / 2012   |                  |
| Mailing Address  |               | Amount   |                  |
| <b>1355 Maple Avenue</b>                                       |               | 3,000.00   |                  |
| City   | State         | Zip Code   |                  |
| <b>City, State, Zip</b>  |               |  |                  |
| Purpose of Expenditure   | Category/Type | Office Sought:   | State: <b>NY</b> |
| <b>Newspaper Ad</b>  |               | <input type="checkbox"/> House   | District: _____  |
| Name of Federal Candidate Supported or Opposed by Expenditure: |               | <input checked="" type="checkbox"/> Senate   |                  |
| <b>Jonathan Cooke</b>  |               | <input type="checkbox"/> President   |                  |
| Calendar Year-To-Date Per Election for Office Sought           |               | Check One: <input checked="" type="checkbox"/> Support <input type="checkbox"/> Oppose         |                  |
| 3,000.00   |               | Disbursement For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General | 2012             |
|  |               | <input type="checkbox"/> Other (specify) ▶   |                  |

2012 FEC Information Division

### 3. Tricky Issues

- Form 5 filed on quarterly basis if aggregate independent expenditures are in excess of \$250.
- Form 5 filed on 24-hour or 48-hour basis according to time frames above.
- Label Form 5 as 24-Hour Report or 48-Hour Report accordingly.
- Corporate filers no longer need to certify that they are “qualified nonprofit corporations”
- Disclose contributions received on Form 5-A and expenditure on Form 5-B



## Electioneering Communication

---

Any broadcast, cable or satellite communication that:

- Refers to clearly ID'ed candidate;
- Is publicly distributed;
- Is distributed during certain time period before election (General 2012: 9/7/12 – 11/06/12)  
and
- Is targeted to the relevant electorate

2012 FEC Information Division

### IV. “Electioneering Communication” Defined (11 CFR 100.29)

#### A. The Basics

##### 1. Definition

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

- **The communication refers to a clearly identified candidate** (but no express advocacy).
- **The communication is publicly distributed.**
- **The communication is distributed during a certain time period before an election. (For general election 2012, period is Sept. 7 – Nov. 6, 2012.)**
- **The communication is targeted to the relevant electorate.**



## Electioneering Communication

---

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

2012 FEC Information Division

### **B. Elements of an Electioneering Communication**

#### **1. Clearly Defined Candidate**

Same definition as for independent expenditure. 100.29(b)(2).



## Electioneering Communication

---

- ▶ **Publicly Distributed:**
  - Disseminated by TV or radio station or cable or satellite system
  - Includes both infomercials and commercials

2012 FEC Information Division

2. **Publicly Distributed**
  - a) A communication is publicly distributed if it is disseminated by a television station, radio station, cable television system or satellite system.
  - b) Includes infomercials and commercials.



## Electioneering Communication

---

- ▶ Proximity to Election:
  - Transmitted within 60 days prior to a general election or 30 days prior to a primary election
  - General election: 9/7/12 – 11/6/12
  - Includes elections where candidate is unopposed
  - Includes caucuses/conventions that nominate candidates

2012 FEC Information Division

### 3. Distributed During a Certain Time Period Before an Election

#### a) Time Period

Electioneering communications are transmitted within 60 days prior to a general election or 30 days prior to a primary election to federal office.

#### b) Application

- 1) Period for 2012 General Election is **Sept. 7 – Nov. 6, 2012.**
- 2) This includes elections in which the candidate is unopposed.



## Electioneering Communication

---

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**

2012 FEC Information Division

#### 4. Targeted to the Relevant Electorate

##### a) Definition of "targeted to the relevant electorate"

The communication targets the relevant electorate if it can be received by 50,000 or more people in the district (in the case of a U.S. House candidate) or State (in the case of a Senate candidate) that the candidate seeks to represent.

11 CFR 100.29(b)(5).

**FEDERAL ELECTION COMMISSION**  
UNITED STATES OF AMERICA

# Electioneering Communication

**FC** Federal Communications Commission

**Electioneering Communications Database (ECD)**  
[Media Bureau Home](#)

### The Electioneering Communications Database

Welcome to the Electioneering Communications Database. To determine whether a communication sent via a broadcast station, network, cable system and/or satellite system can or cannot reach 50,000 or more people in a particular Congressional District or State, please enter the information requested below and click on search. If the communication can reach 50,000 or more people in a particular Congressional District or State, it may qualify as an "electioneering communication," as defined in Section 304 of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 434, which requires that every person who spends more than \$10,000 on an electioneering communication during any calendar year file a statement with the Federal Election Commission that includes certain information regarding the communication. In addition, pursuant to Section 316 of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 441b, certain entities are prohibited from paying for certain electioneering communications. The information in the Electioneering Communications Database is current as of September 2007.

If you have questions regarding this database, please contact the Federal Communications Commission via e-mail at [campaignlaw@fcc.gov](mailto:campaignlaw@fcc.gov). If you have questions regarding the rules upon which the database is based, please contact the Federal Election Commission by calling 1.800.424.9530, pressing 1, then 3, or calling 202.694.1100.

#### Search the Database

Enter the search parameters and press the "Search" button.

Which type of election are you investigating?

- Presidential Primary
- Federal Senate Race
- Federal House Race

Which location do you want to search?

- b) **FCC Database for determining who can receive communication**  
The Federal Communications Commission (FCC) provides on its web site (at <http://gullfoss2.fcc.gov/ecd/>) the information necessary to determine whether a communication can be received by 50,000 people.
- c) **Application to Presidential/Vice-Presidential Candidates**  
In the case of Presidential and Vice-Presidential candidates, the rules apply and the communication is considered “publicly distributed” if the communication can be received by 50,000 or more people:
- In a State where a primary election or caucus is being held within 30 days;
  - Anywhere in the United States during the period between 30 days prior to the start of nominating convention and the conclusion of that convention; or
  - Anywhere in the United States within 60 days prior to the general election. 11 CFR 100.29(b)(3)(ii).



## Who May Make ECs?

---

- Individuals/Persons
- Corporations and Labor Organizations

NOTE: PACs, parties and campaigns that make same type of communications report them as expenditures on Form 3 or 3X, rather than as ECs

2012 FEC Information Division

### **C. Who May Make Electioneering Communications?**

- Individuals/Persons
- Corporations and labor organizations
- NOTE: PACs, parties and campaigns may make communications of a similar nature, but they are considered reportable expenditures on Form 3X.



## Who May Not Make ECs?

---

- Federal Government Contractors
- Foreign Nationals

2012 FEC Information Division

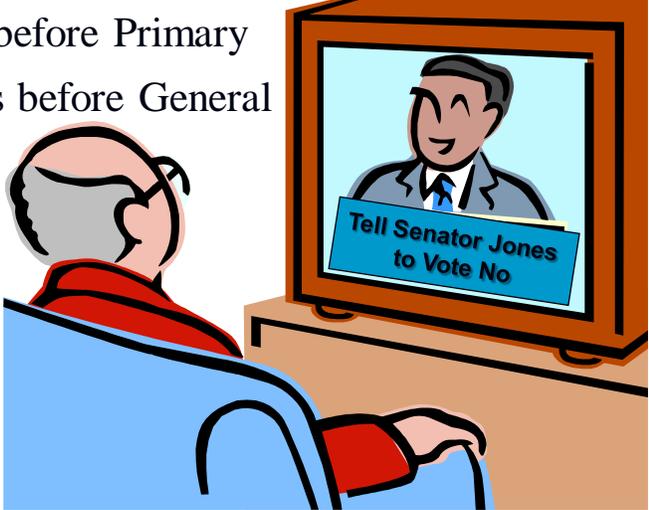
### **D. Who is Prohibited from Making/Funding Them**

- Federal Contractors
- Foreign Nationals



## Lobbying/Issue Ads

≤30 day before Primary  
≤60 days before General



2012 FEC Information Division

The illustration shows a man with glasses and a red jacket sitting in a blue chair, watching a television. The television screen displays a man in a suit and tie, with a blue banner below him that reads "Tell Senator Jones to Vote No".

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

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



## Disclaimers Required

---

- “Paid for by X (202-333-3333) and not authorized by any candidate or candidate’s committee.”
- “X is responsible for the content of this advertising.”

2012 FEC Information Division

### F. Disclaimer Required

#### 1. Paid for By

“Paid for by (Name of Payor) (web address/phone number/ mailing address) and not authorized by any candidate or candidate’s committee.” (Note: generally will not be coordinated because amount will usually exceed contribution limit. If coordinated, alter to say “authorized by (Name of candidate’s committee).”

#### 2. Stand by Your Ad

Because on radio/TV: “(Name of Payor) is responsible for the content of this advertising.” – both in writing and verbalized.



## Not an Electioneering Communication

- Communication disseminated through means other than TV, satellite or radio
- News story, commentary or editorial
- Candidate debate or forum
- Communication by state or local candidate that does not promote, support, attack or oppose a federal candidate

2012 FEC Information Division

### G. What is Not an Electioneering Communication?

The regulations at 11 CFR 100.29(c)(1) through (5) exempt certain communications from the definition of “electioneering communication”:

1. **A communication disseminated through a means other than a television station, radio station, cable television system or satellite system.** (e.g., newspapers, magazines, bumper stickers, yard signs, and billboards, internet, e-mail, or telephone);
2. **A news story, commentary or editorial broadcast by a television station, radio station, cable television system or satellite system;**  
However, the facilities may not be owned or controlled by a political party, political committee or candidate, unless the communication satisfies the exemption for news stories at 11 CFR 100.132(a) and (b).
3. **Expenditures or independent expenditures** that must otherwise be reported to the Commission (see section C above);
4. **A candidate debate or forum** or a communication that solely promotes a debate or forum; and
5. **Communications by State or local candidates** provided that the communication does not promote, support, attack or oppose federal candidates.



## Disclosing Electioneering Communications

---

- Electioneering communications aggregating  $\geq$ \$10,000 must be disclosed to FEC within 24 hours of the date of public distribution
- Disclosed on 24-Hour Notices using FEC Form 9
  - Note: Quarterly reports not required
- *Van Hollen v. FEC* requires disclosure of all donors who gave  $>$  \$1,000

2012 FEC Information Division

### H. Disclosure Requirements

#### 1. Requirement

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

#### 2. Disclosed on FEC Form 9

Links to Form 9 (and the web form), its instructions and reporting dates are available online at

[http://www.fec.gov/pages/bcra/rulemakings/Electioneering\\_Communications.shtml](http://www.fec.gov/pages/bcra/rulemakings/Electioneering_Communications.shtml).



## Disclosing Electioneering Communications

---

- Commission issued Statement on July 27, 2012;  
**Effective March 30, 2012**
- Person making EC should disclose **donors of \$1,000 or more** aggregating since Jan. 1 of preceding year
- Excludes customers paying for good/services, dues paid for membership and investors who purchase shares of stock

2012 FEC Information Division

### 3. *Van Hollen v. FEC*

U.S. Court of Appeals for the District of Columbia Circuit issued a decision on March 30, 2012 in *Van Hollen v. FEC*. The court found that the Commission's regulation on electioneering communication reporting was contrary to law and that the FECA plainly required every person who makes ECs to disclose all contributors of \$1,000 or more during the reporting period.

### 4. **Commission Statement on *Van Hollen v. FEC* (July 27, 2012)**

- a) Effective March 30, 2012, persons making disbursements for electioneering communications should report the name and address of each donor who donated an amount aggregating \$1,000 or more to the person making the disbursement, aggregating since the first day of the preceding calendar year.
- b) Dues paid in return for the benefits of membership are not "donations."
- c) Investors who pay for shares of stock are not "donors," nor are customers who pay for goods and services.
- d) Commission statement available at <http://www.fec.gov/press/pressReleases.shtml>.

### **Reporting Example: Electioneering Communications**

Jane Olson, the president of ABC Corporation, a health care company, is a good friend of Sam Collins, a Senator running for re-election in Florida (where the corporation is located). Jane told Sam that she wanted to help his campaign, but Sam, being familiar with campaign finance rules, told Jane he really could not talk to her about that. Without further input or discussion, ABC Corporation used a \$15,000 donation of funds from Jane's friend, Clayton Mayer, for the purpose of creating a radio ad to be broadcast on radio stations in Florida beginning October 26, a little less than two weeks before the general election. The ad's text read:

*Our country stands at the crossroads – at the intersection of how health care will be defined for future generations. We must safeguard health care for all by writing it into the U.S. Constitution. Fortunately, your senators voted for the Health Care Protection Amendment two years ago. Please call Senators Sam Collins and Peggy Parker immediately and urge them to support the Health Care Protection Amendment when it comes to a vote. Call the Capitol switchboard at 202-224-3121 and ask for your senators. Again, that's 202-224-3121. Thank you for making your voice heard.*

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

**2. When would Form 9 be due?**

**3. What should be reported?**

## Reporting Example Answer Key: Electioneering Communications

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

The ad is an electioneering communication because it refers to Sam and is publicly distributed within the last 30 days before the election. (It would not be considered coordinated because it did not meet the “conduct prong” of the coordination test – a good thing, because a corporation paid for it.).

ABC Corporation must report this on FEC Form 9 within 24 hours of dissemination.



## Reporting ECs

---

### Disclosing ECs

- What type of transaction is this?  
**Electioneering Communication**
- How must the corporation disclose the transaction?  
**FEC Form 9, filed on October 27, 2012**
- What information from the scenario do we need to disclose this correctly?

2012 FEC Information Division

### 2. When would Form 9 be due?

Form 9 would be due on October 27, 24 hours from the date of dissemination.

3. What should be reported?

ABC Corporation must file FEC Form 9, covering the period from the first date of financial activity relating to the disbursements/obligation through the date of public distribution. Note that the corporation discloses the communication title and the date of public distribution—i.e. the date of dissemination. Filers also check a box to indicate the type of filer that they are.



# Form 9 Example

---

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

**1. Person Making the Disbursements/Obligations**

(a) Name  
**ABC Corporation**

(b) Address (number and street)  check if different than previously reported  
**456 Main Street**

(c) City, State and ZIP Code  
**Orlando, FL 00000**

(d) Name of Employer or Principal Place of Business  
**N/A**

(e) Occupation  
**N/A**

**2. FEC Identification Number**  
C

**3. Is This Statement**  New or  Amended

**4. Covering Period** 10 / 25 / 2012 through 10 / 26 / 2012

**5. (a) Date of Public Distribution(s)** 10 / 26 / 2012 **(b) Communication Title** **Health Bill Ad**

**6. The filer is a(n):** (a)  Individual (b)  Unincorporated Organization (c)  Qualified Nonprofit Corporation (11 CFR 114.10)  
(d)  Corporation, Labor Organization or Qualified Nonprofit Corporation making communications under 11 CFR 114.15  
(e)  Other, specify: **Corporation**

**7. If the filer is an individual, unincorporated organization or qualified nonprofit corporation, were the disbursements made exclusively from donations to a segregated bank account?** Yes  No

2012 FEC Information Division

Also, ABC Corporation must disclose the identities of those who shared or exercised control over the communication (in this example, Jane Olson).

The corporation must disclose on Schedule 9-A the identities of those who donated funds to further the electioneering communication (in this example, Clayton Mayer).

On Schedule 9-B, the details of disbursements and obligations are disclosed, including the purpose, title of communication, date of disbursement/obligation, payee information and candidate information.



# Form 9 Example

**List of Person(s) Sharing/Exercising Control**  
(use additional pages as necessary)

PAGE OF

**11. Person(s) Sharing/Exercising Control**

|  |   |
|--|---|
| <b>A. (a) Name</b><br><b>Jane Olson</b>  |   |
| <b>(b) Address (number and street)</b><br><b>456 Main Street</b>                     |   |
| <b>(c) City, State and ZIP Code</b><br><b>Orlando, FL 00000</b>                      |   |
| <b>(d) Name of Employer or Principal Place of Business</b><br><b>ABC Corporation</b> | <b>(e) Occupation</b><br><b>President</b> |

**SCHEDULE 9-A**  
**Donation(s) Received**

PAGE OF

|   |  |
|---|--|
| <b>A. Full Name of Donor</b><br><b>Clayton Mayer</b>            | <b>Date of Receipt</b><br>10 / 25 / 2012 |
| <b>Mailing Address of Donor</b><br><b>789 Palmetto Lane</b>     | <b>Amount</b><br>15,000.00               |
| <b>City</b> <b>State</b> <b>Zip</b><br><b>Orlando, FL 00000</b> |  |

2012 FEC Information Division

*See reporting example on next page*



# Form 9 Example

**SCHEDULE 9-B**

PAGE **1** OF **1**

**Disbursement(s) Made or Obligation(s)**

|   |   |  |   |
|---|---|--|---|
| <b>A. Full Name (Last, First, Middle Initial) of Payee</b><br><b>MediaWise Buys</b>   |   | <b>Date of Disbursement or Obligation</b><br>MM / DD / YYYY<br><b>10 / 25 / 2012</b> |   |
| <b>Mailing Address of Payee</b><br><b>888 Sunshine Drive</b>  |   | <b>Amount</b><br>\$ <b>15,000.00</b>   |   |
| <b>City</b><br><b>Orlando, FL 00000</b>   | <b>State</b><br>FL  | <b>Zip Code</b><br>00000   | <b>Communication Date</b><br>MM / DD / YYYY<br><b>10 / 26 / 2012</b>  |
| <b>Name of Employer</b><br>_____  |   | <b>Occupation</b><br>_____   |   |
| <b>Purpose of Disbursement (Including title(s) of communication(s))</b><br><b>Television Advertisement – Health Bill Ad</b> |   |  |   |
| <b>Name of Federal Candidate</b><br><b>Sam Collins</b>  | <b>Office Sought:</b><br><input type="checkbox"/> House<br><input checked="" type="checkbox"/> Senate<br><input type="checkbox"/> President | <b>State:</b> <b>FL</b><br><b>District:</b> _____                                    | <b>Disbursement/Obligation For:</b><br><input type="checkbox"/> Primary <input checked="" type="checkbox"/> General<br><input type="checkbox"/> Other (specify) ▶ _____ |
| <b>Name of Federal Candidate</b><br>_____   | <b>Office Sought:</b><br><input type="checkbox"/> House<br><input type="checkbox"/> Senate<br><input type="checkbox"/> President            | <b>State:</b> _____<br><b>District:</b> _____  | <b>Disbursement/Obligation For:</b><br><input type="checkbox"/> Primary <input type="checkbox"/> General<br><input type="checkbox"/> Other (specify) ▶ _____            |
| <b>Name of Federal Candidate</b><br>_____   | <b>Office Sought:</b><br><input type="checkbox"/> House<br><input type="checkbox"/> Senate<br><input type="checkbox"/> President            | <b>State:</b> _____<br><b>District:</b> _____  | <b>Disbursement/Obligation For:</b><br><input type="checkbox"/> Primary <input type="checkbox"/> General<br><input type="checkbox"/> Other (specify) ▶ _____            |

2012 FEC Information Division

**Points to Remember:**

- Must be received within 24 hours of the date of public distribution.
- If faxed, fax to 202-219-0174.
- May use FEC Form 9 webform.



## 48- or 24-Hour Filing

### Electronic Options:

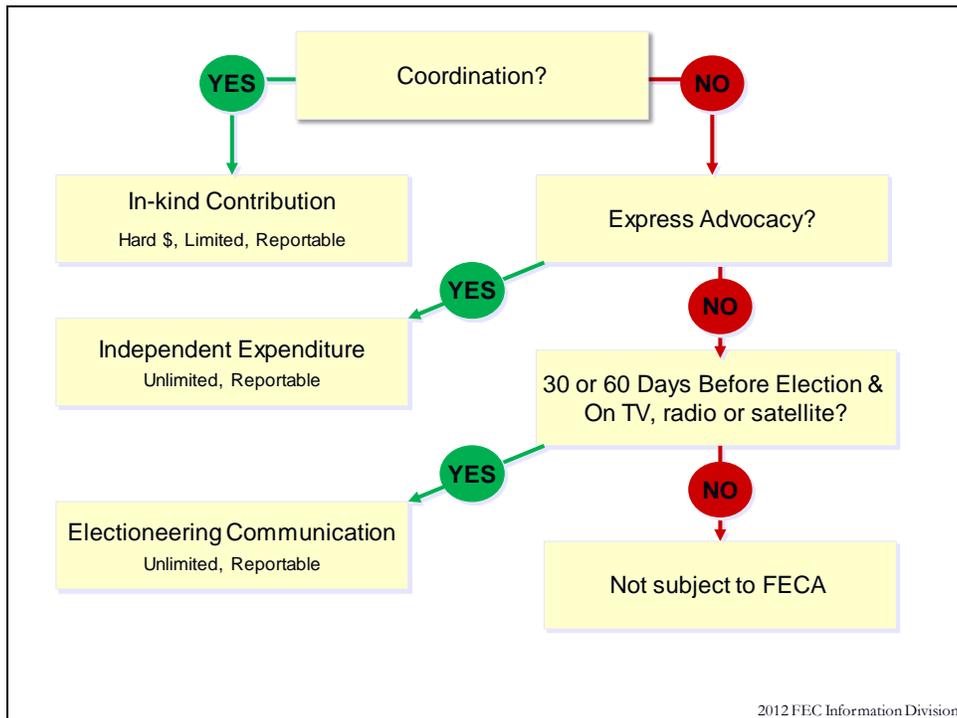
Mandatory if >\$50,000 in contributions or expenditures in calendar year

- FECFile or other e-filing software \*encouraged\*
- Online webforms for Form 5 and Form 9 – [www.fec.gov/electfil/online.shtml](http://www.fec.gov/electfil/online.shtml)

### Paper Options:

- FAX: 202-219-0174
- E-Mail: [2022190174@fec.gov](mailto:2022190174@fec.gov)

2012 FEC Information Division



2012 FEC Information Division



## Workshop Evaluation

---

**Help Us Help You!**  
Please complete an evaluation  
of this workshop.

*Thank you for attending!*

2012 FEC Information Division