Pre-Election Communications

August 21, 2014
1:00 – 2:30 PM

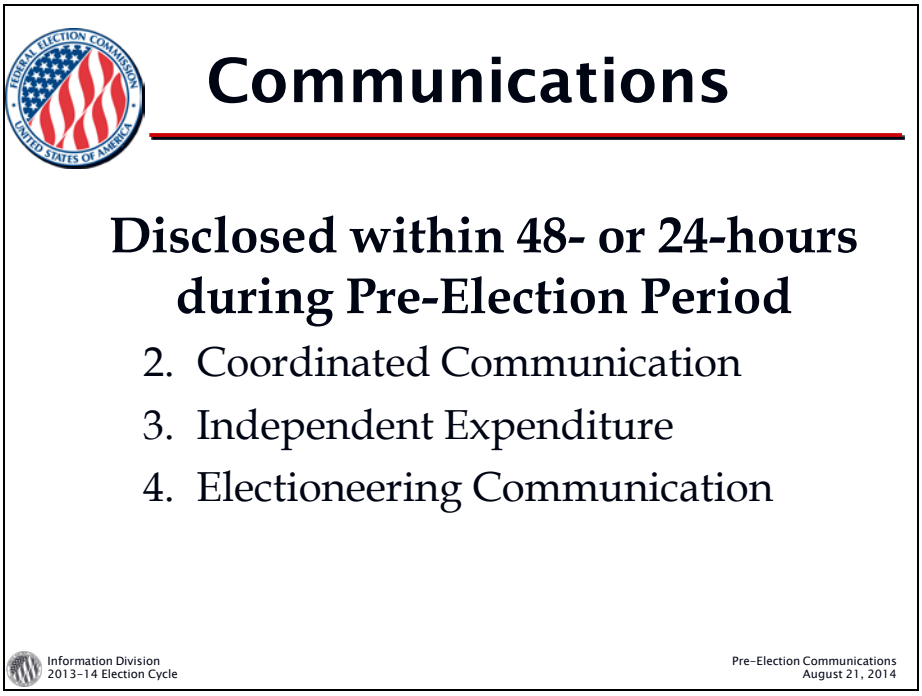
www.fec.gov/info/roundtable_materials/workshopmaterials.shtml

Objectives

- Identify categories of communications
- Explain rules associated with each
- Highlight recent developments
- Review special reporting requirements for pre-election communications

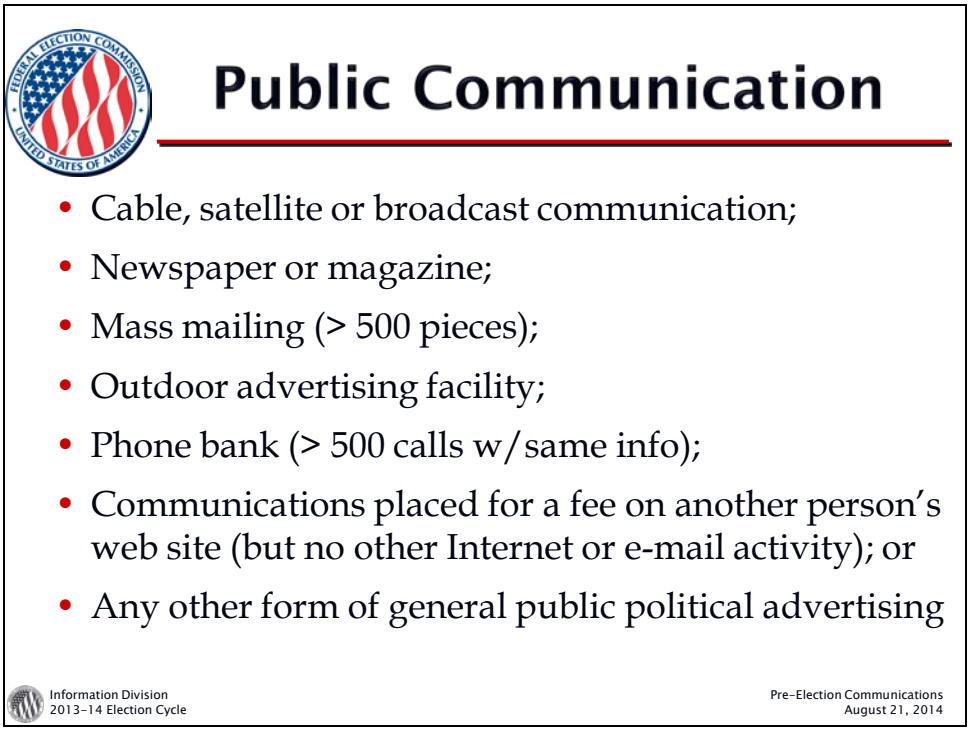
Information Division
2013-14 Election Cycle

Pre-Election Communications
August 21, 2014



I. Types of Pre-Election Communications Covered in this Workshop

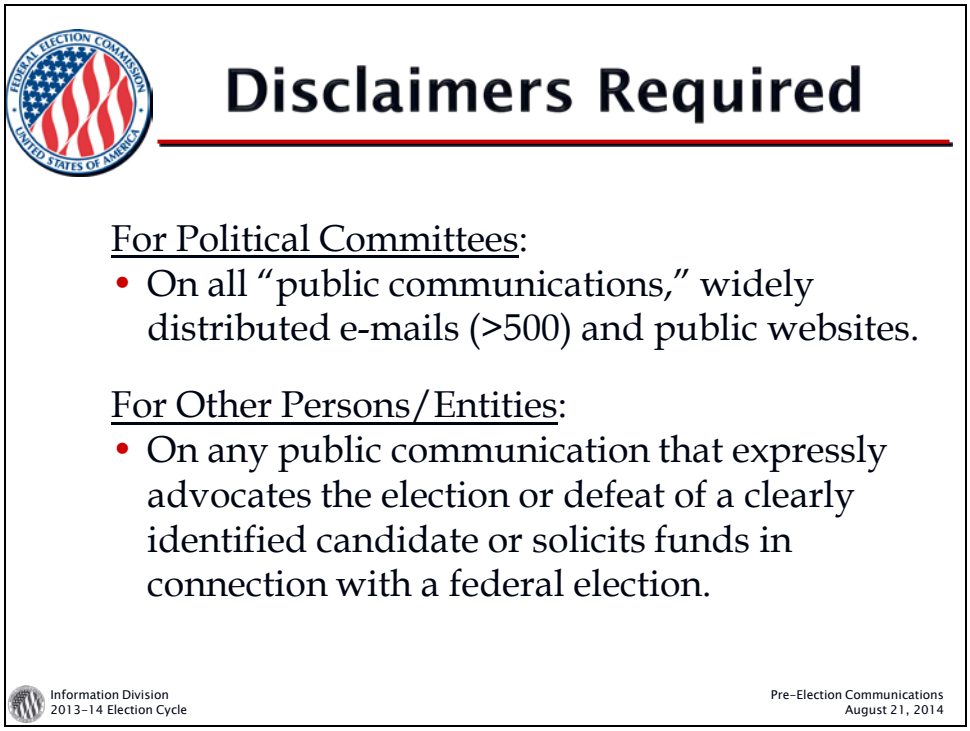
- **Public Communications and Basic Disclaimer Requirements**
- **Coordinated Communications**
- **Independent Expenditures**
- **Electioneering Communications**



II. Public Communication Defined (11 CFR 100.26)

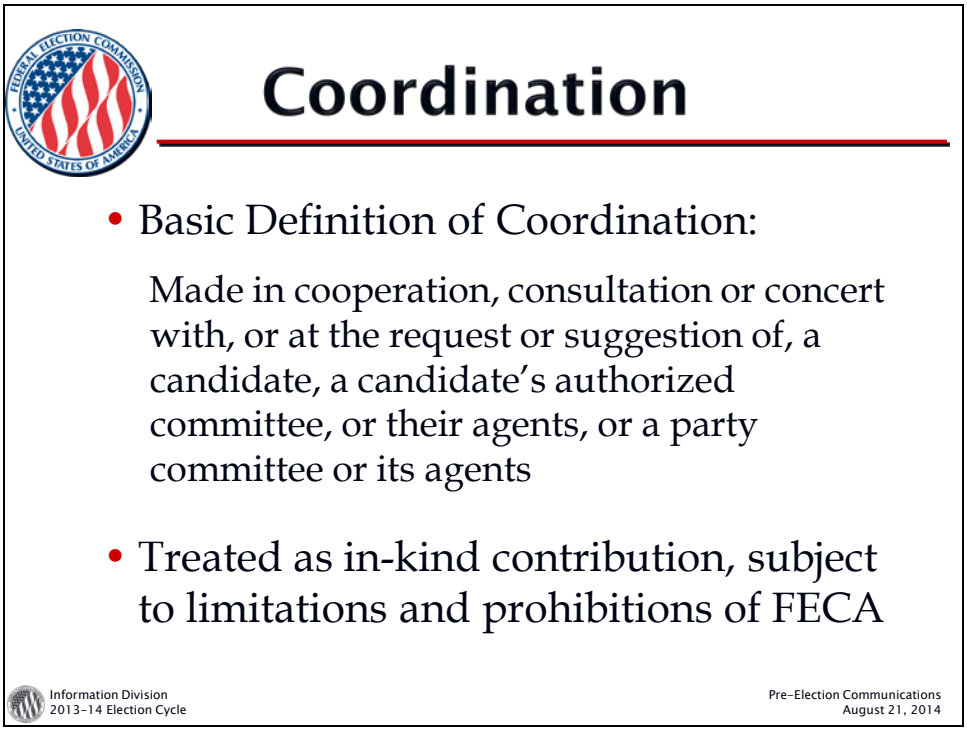
A. Definition includes:

- **Cable, satellite or broadcast communication;**
- **Newspaper;**
- **Magazine;**
- **Mass mailing (> 500 pieces w/in 30-day period);**
- **Outdoor advertising facility;**
- **Phone bank (> 500 calls w/same info w/in 30-day period);**
- **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**



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 and on any electioneering communication.
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." Disclaimers on printed communications must be contained in a box.



III. Coordinated Communications

A. The Basics:

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

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."

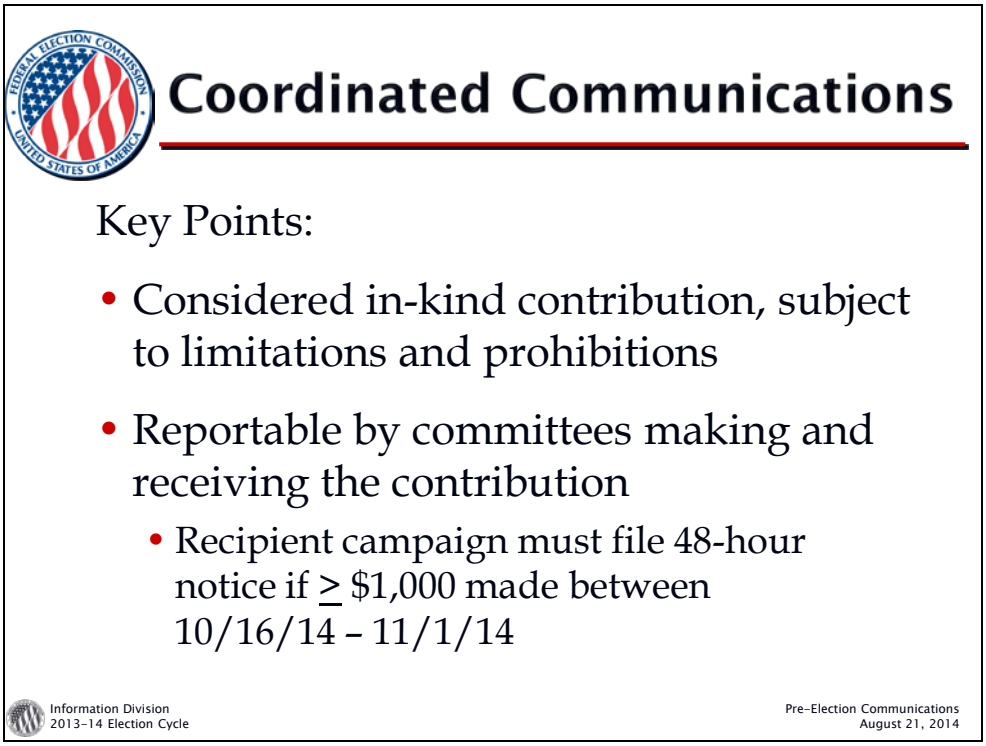
2. Who May Make Them?

a) Individuals
b) Political committees (PACs and party committees)
c) Anyone who may legally make a contribution

3. Who is Prohibited from Making Them?

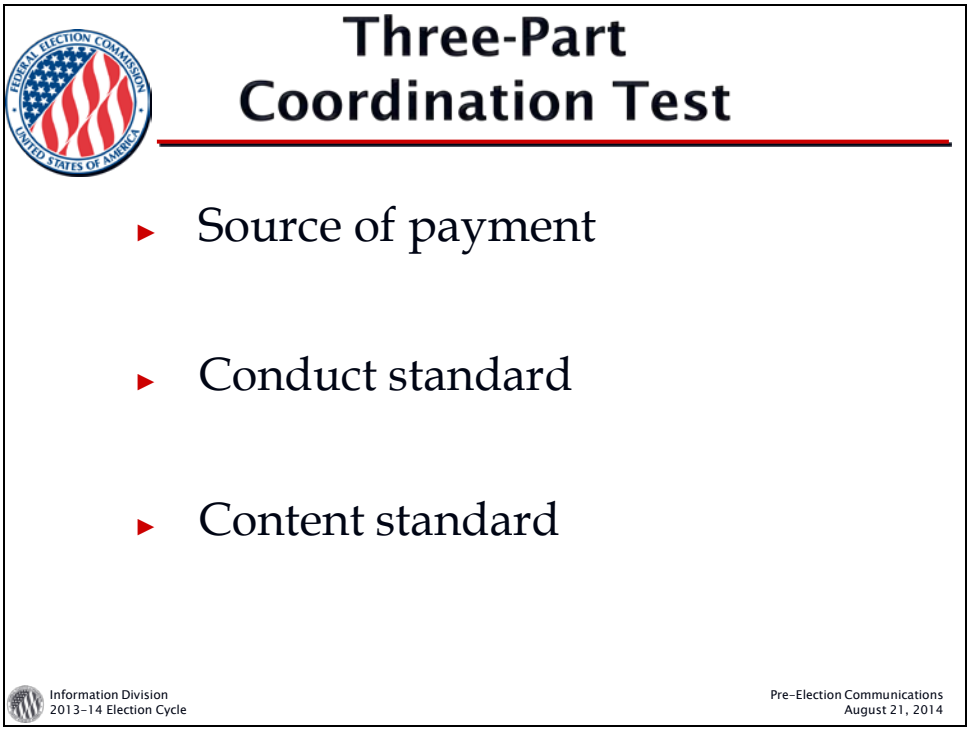
Any entity prohibited from making contributions in connection with federal elections, including:

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



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

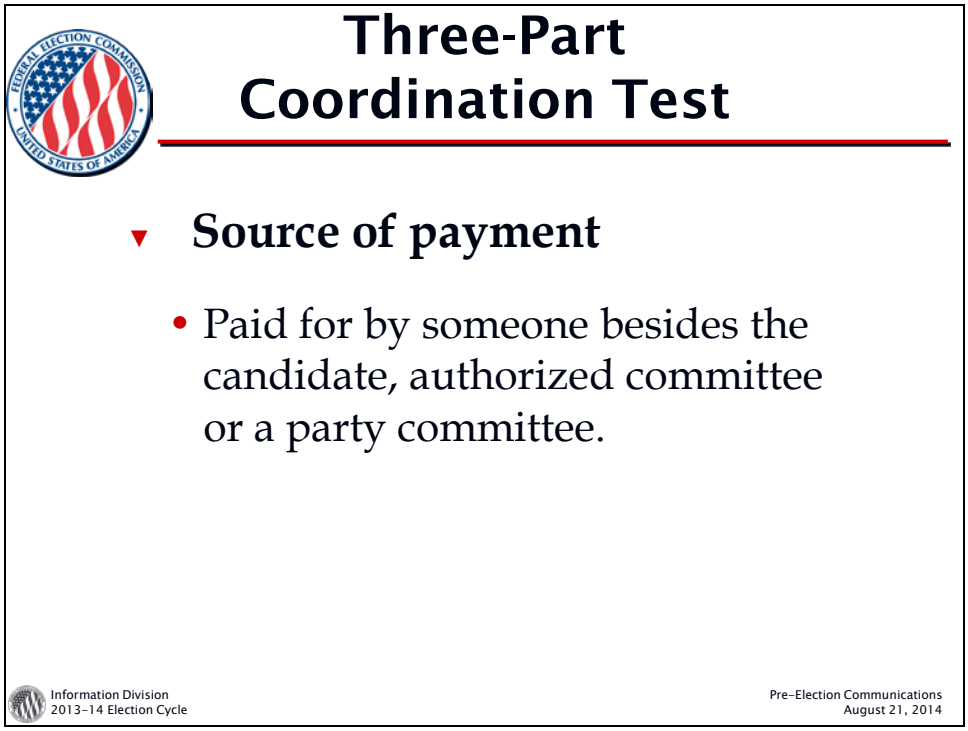
1. **Prohibited** by entities prohibited from making contributions
2. **Subject to contribution limitations**
3. **Disclaimer required**
4. **Reporting**
   a) In many cases, reportable by campaign or party committee as in-kind contribution received (and by PAC if in-kind contribution made by PAC).
   b) **Last-Minute Coordinated Communications**:
   If $1,000 or more, made between **Oct. 16 – Nov. 1**, **2014**, recipient campaign must file 48-hour notice (FEC Form 6) to disclose in-kind contribution received.
   Note: If a coordinated communications qualifies as a "coordinated party expenditure" (also known as a 441a(d) expenditure), the political party committee making the expenditure will report it on Schedule F of Form 3X; ***no reporting by the candidate committee is required in this circumstance***, because coordinated party expenditures do not qualify as in-kind contributions.



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

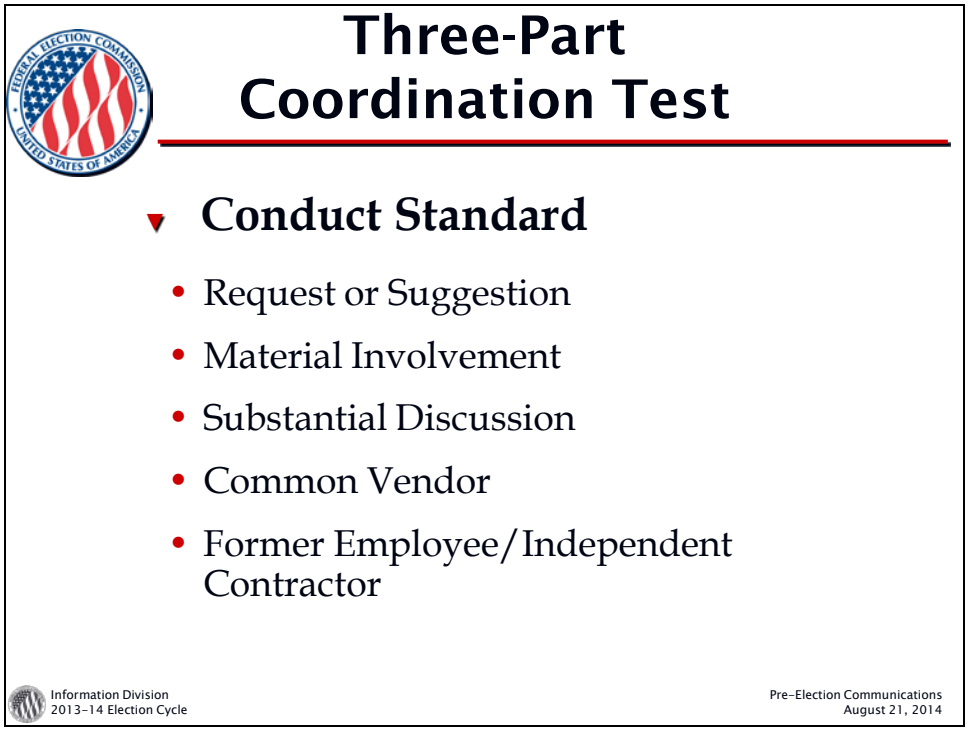
Three-part test; all three must be satisfied to justify conclusion that payments for a coordinated communication are for the purpose of influencing a federal election.

1. **Source of Payment**
2. **"Conduct Standard"**
3. **"Content Standard"**



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 the candidate or party committee paid for it themselves, coordination wouldn't be an issue.)



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.

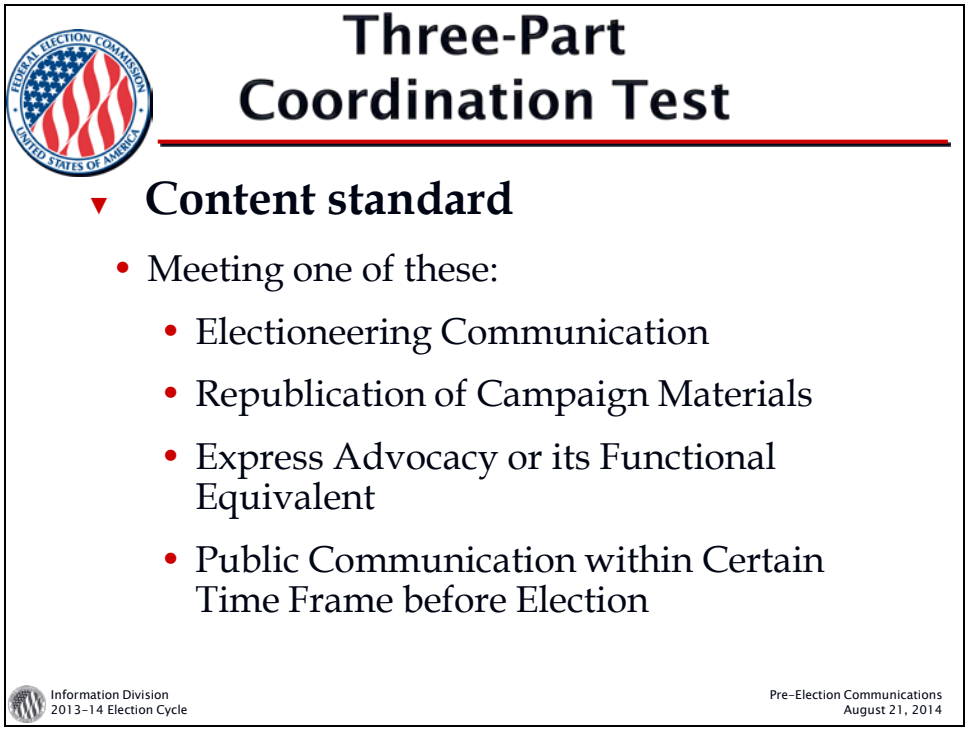
b) Firewall. Firewall may be established.

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.



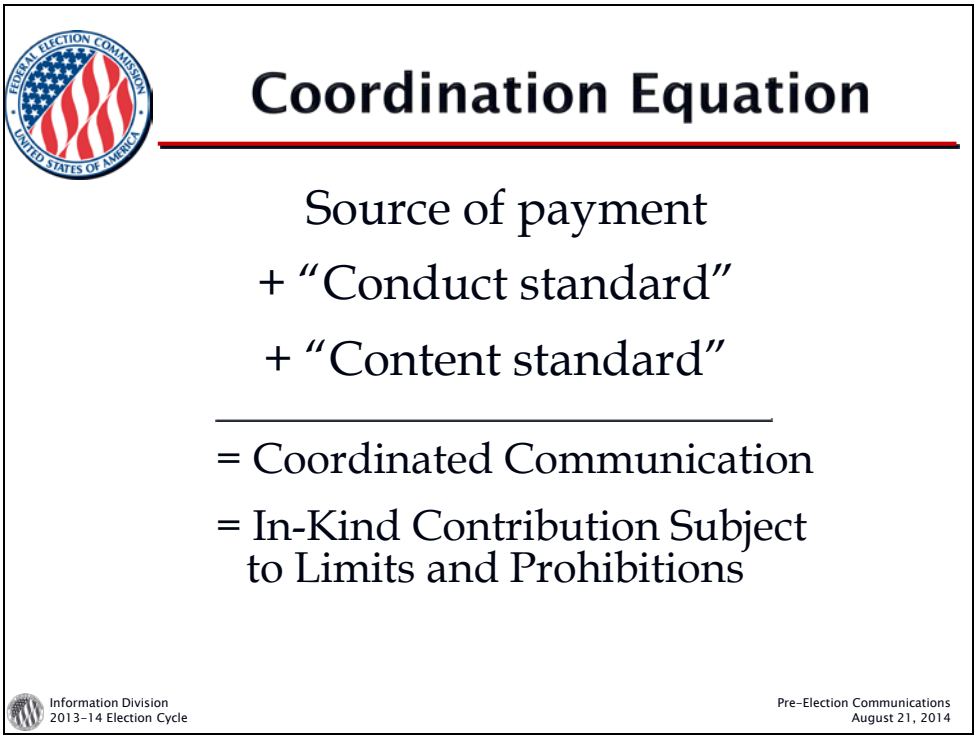
F. "Content Standard"

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 2014 general election: **Aug. 6 – Nov. 4, 2014**).
     - **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.



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: Coordinated Communications

In early October, the PAC Director for the Ocean Resort PAC (a qualified multicandidate committee) spoke with the Amanda Newman for Congress campaign manager at a meet-and-greet with Congresswoman Newman in her district. The Ocean Resort PAC Director discussed with the campaign manager the possibility of running several radio ads on a local station to support Ms. Newman's reelection bid for the 8th Congressional District of New York. The campaign manager agreed and suggested that the ads begin running on October 28, the week before the general election. On October 28, 2014, the PAC pays $5,000 to UBS Broadcasting, Inc. and the ads begin running that same day.

1. What type of transaction is this?

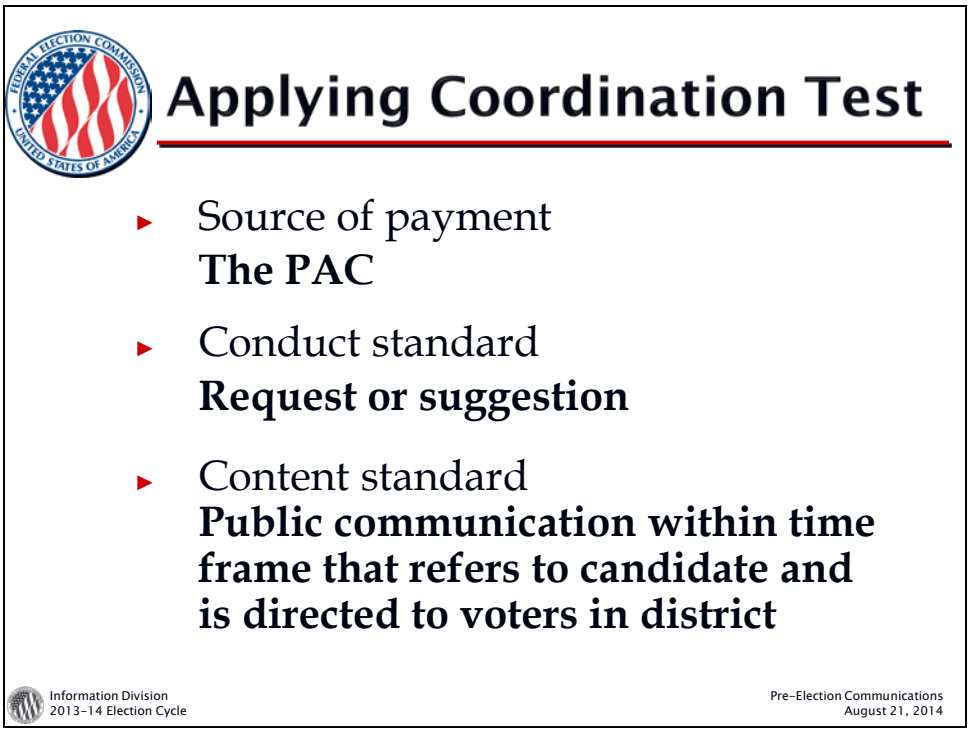
2. How does the campaign committee disclose the PAC's payment for the cable advertising?

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

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

Reporting Example Answer Key: Coordinated Communications

1. What type of transaction is this?

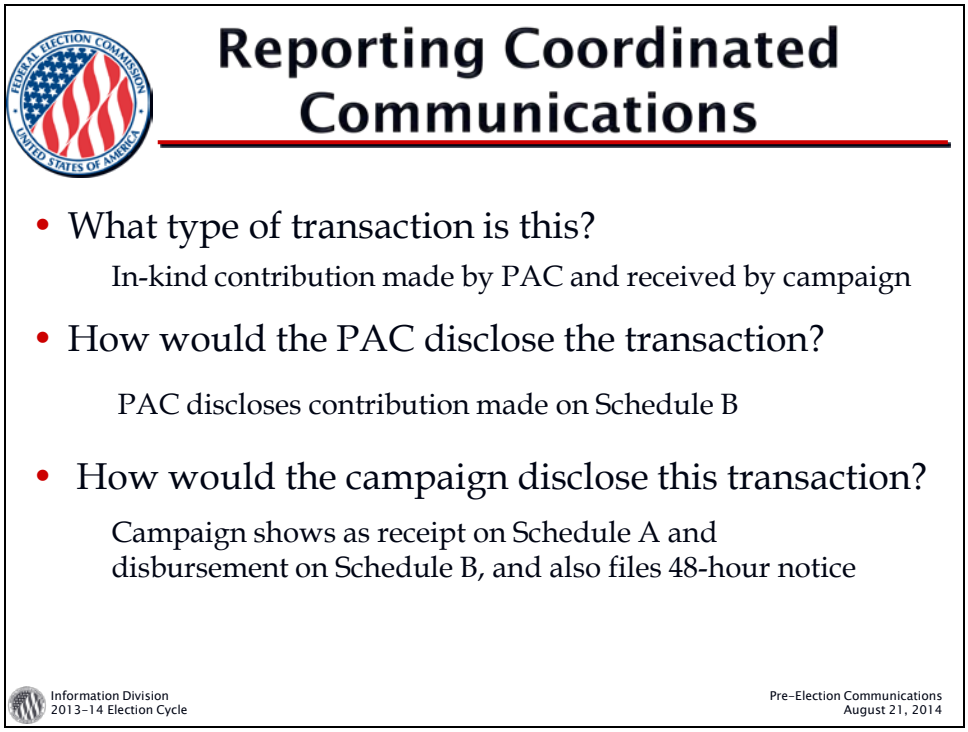


This transaction is a coordinated communication because it meets all three parts of the coordination test.

- **Source of payment**: The PAC is paying for the communication, not the candidate committee
- **Conduct Standard:** 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 Congresswoman Newman 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 Newman campaign.

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



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

PAC's Post-General Report

SCHEDULE B (FEC Form 3X)
ITEMIZED DISBURSEMENTS

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

FOR LINE NUMBER: (check only one)
☐ 21b ☐ 22 ☒ 23 ☐ 24 ☐ 25 ☐ 26
☐ 27 ☐ 28a ☐ 28b ☐ 28c ☐ 29 ☐ 30b

PAGE 1 OF 1

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)
Ocean Resort PAC

A. Full Name (Last, First, Middle Initial)
UBS Broadcasting, Inc.

Mailing Address
1000 Seaway Blvd.

City: Massena State: NY Zip Code: 00000

Purpose of Disbursement
In-Kind: Cable TV Advertising

Candidate Name
Amanda Newman

Office Sought: ☒ House ☐ Senate ☐ President
State: NY District: 08

Disbursement For: ☐ Primary ☒ General ☐ Other (specify) 2014

Date of Disbursement: 10 / 28 / 2014

Amount of Each Disbursement this Period: 5,000.00

Category/Type

Information Division
2013-14 Election Cycle

Pre-Election Communications
August 21, 2014

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

Yes, campaign committees must file special notices (48-Hour Notices) disclosing **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 in-kind contribution (i.e. the date that the PAC paid the company); thus, a 48-hour notice is required. **For the 2014 general election, candidate committees must report all contributions of $1,000 or more received from 10/16/14 – 11/1/14.**

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
Amanda Newman for Congress Committee

ADDRESS (number and street)
1700 Snow Hill Ave.

CITY, STATE, and ZIP CODE
Massena, NY 00000

2. NAME OF CANDIDATE
Amanda Newman

3. OFFICE SOUGHT (State and District)
NY / 08

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or or commercial purposes other than using the name and address of any political committee to solicit contributions from such committee.

4. FEC IDENTIFICATION NUMBER
C00320000

A. Full Name, Mailing Address and ZIP Code	Name of Employer / Occupation	Date (month, day, year)	Amount
Ocean Resort PAC 1500 Seafoam Drive Dewey Beach, DE 00000		10/28/14	$5,000.00 (in-kind; cable ad)

SIGNATURE (optional): *Leah Ryan*

DATE: 10/30/14

For further information contact:
Federal Election Commission
999 E Street, NW, Washington, DC 20463
Toll Free 800-424-9530, Local 202-694-1100

FEC FORM 6

Campaign files within 48 hours of receipt.

Information Division
2013-14 Election Cycle

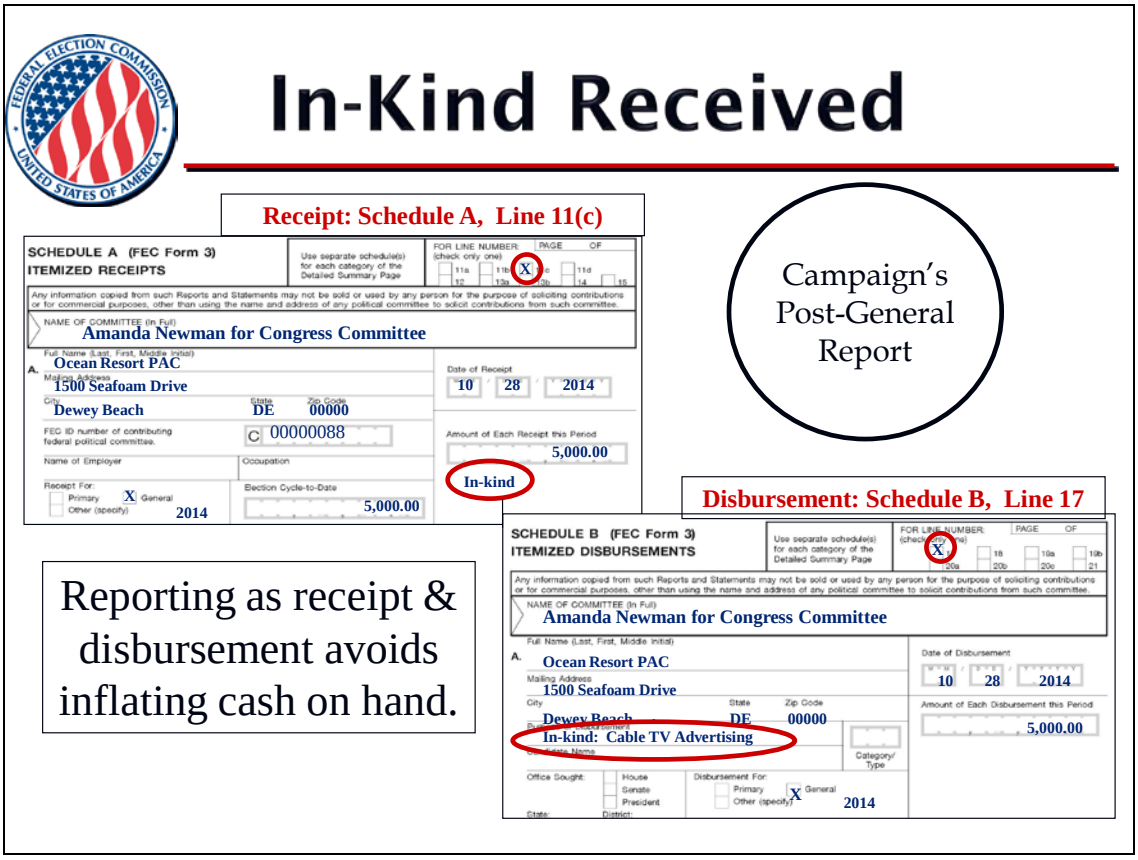
Pre-Election Communications
August 21, 2014

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.

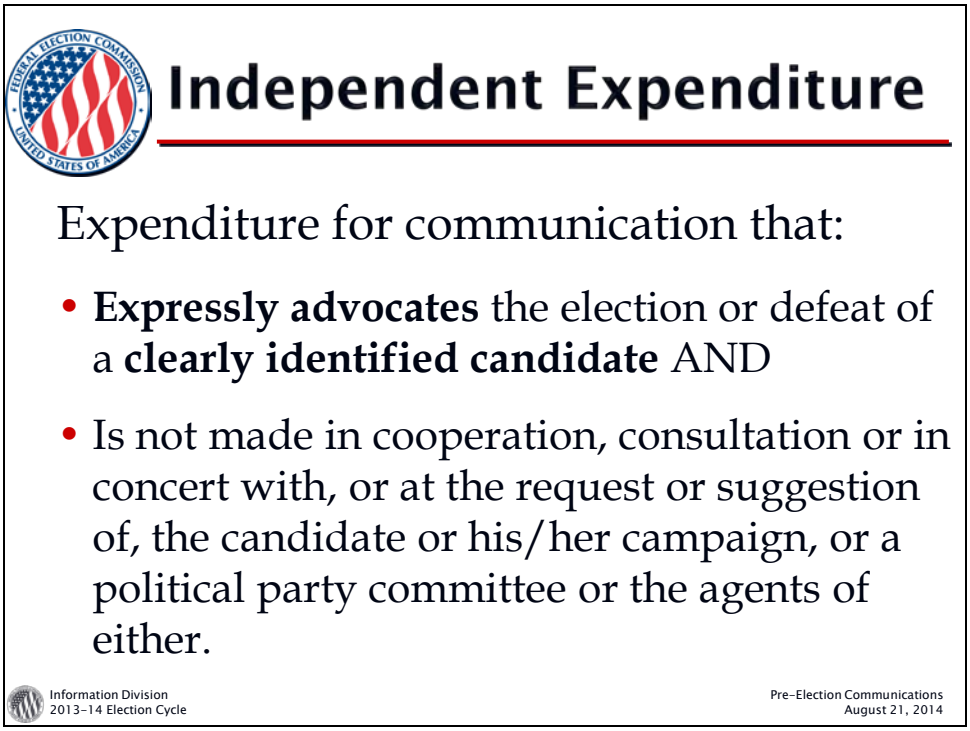
Report an in-kind contribution on the campaign's Post-General report, both on Schedule A for Line 11(c) (Contributions from Other Political Committees (such as PACs)) AND as a disbursement on Schedule B for Line 17 (Operating Expenditures). The itemization on both Schedule A (Date of Receipt box) and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

See reporting example on next page



5. **Key issues:**

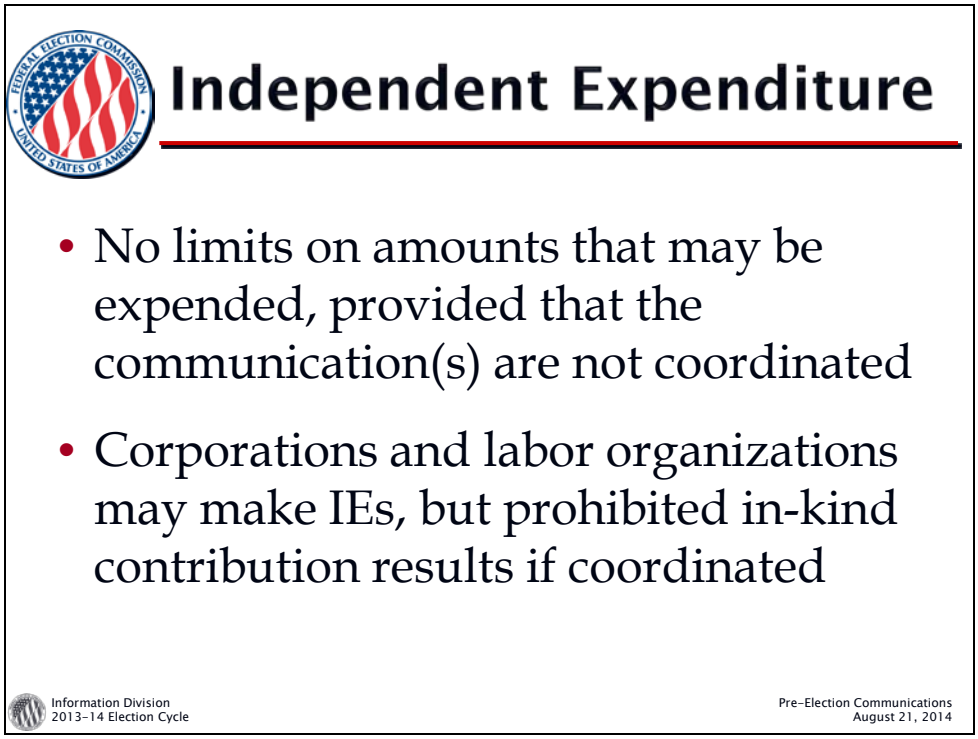
- **House Committees– file with the FEC**
  - E-filers: must file 48-hour notices electronically.
  - Paper filers:
    - Form 6 or similar memo
    - FEC's web-based forms: www.fec.gov/elecfil/online.shtml
    - Fax: 202-219-0174
- **Senate Committees – file with the Secretary of the Senate**
  - Form 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.



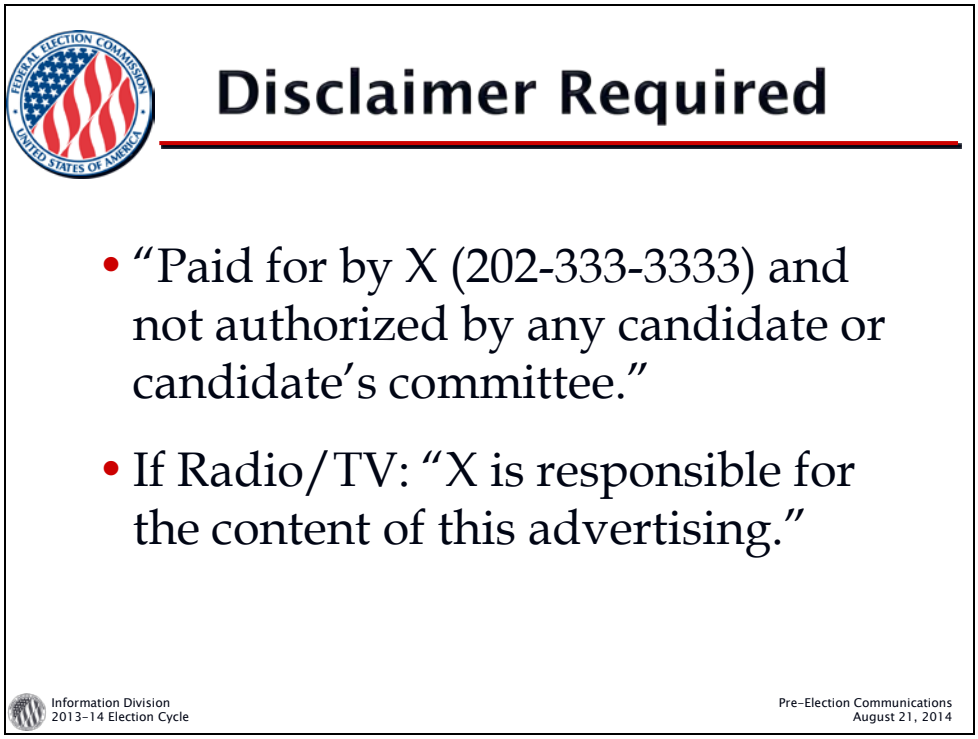
IV. Independent Expenditures – 11 CFR 100.16

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.



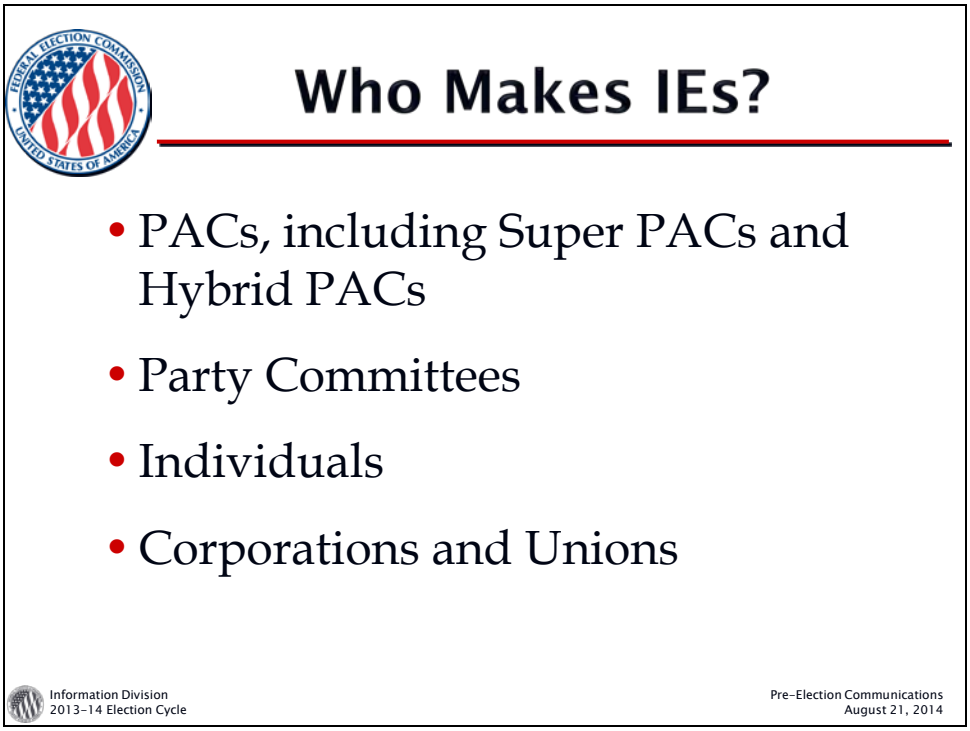
1. **No Limits if Definition Met**
   One may spend an unlimited amount because the expenditure is not coordinated (and thus, not a contribution).
2. **If Coordinated, In-kind Contribution Results (See 11 CFR 109.21 and Section I).**
   Prohibited if made by corporation or labor organization.



3. Disclaimer required

a) "Paid for by (Name of Payer) (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 Payer) is responsible for the content of this advertising."



B. Who Makes Independent Expenditures?

1. Who May Make Them

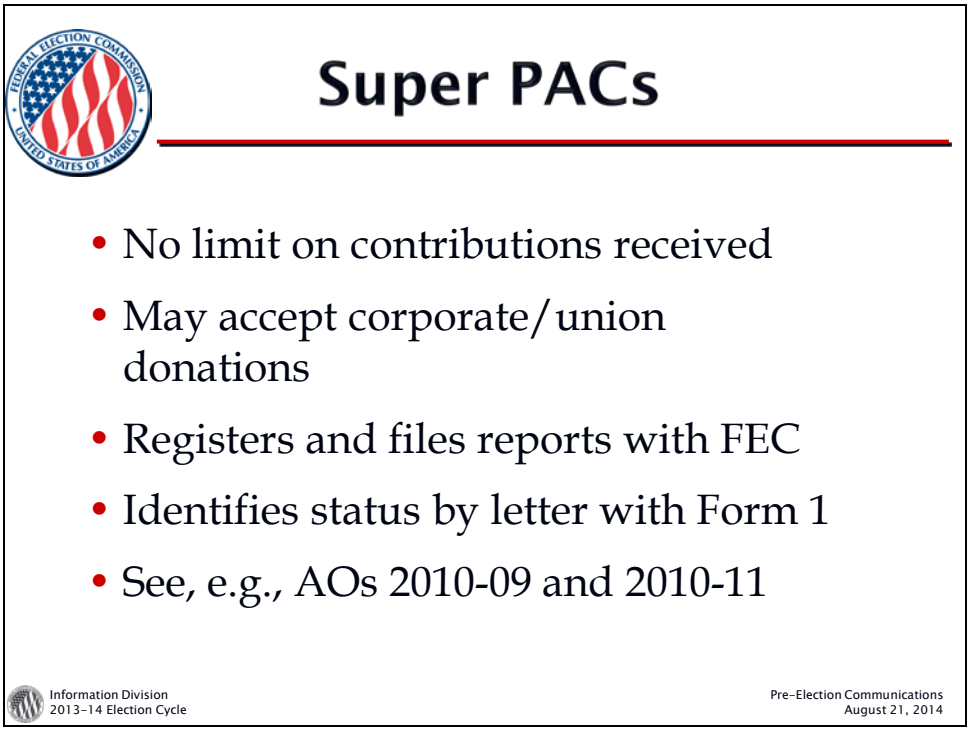
a) Individuals

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.



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.

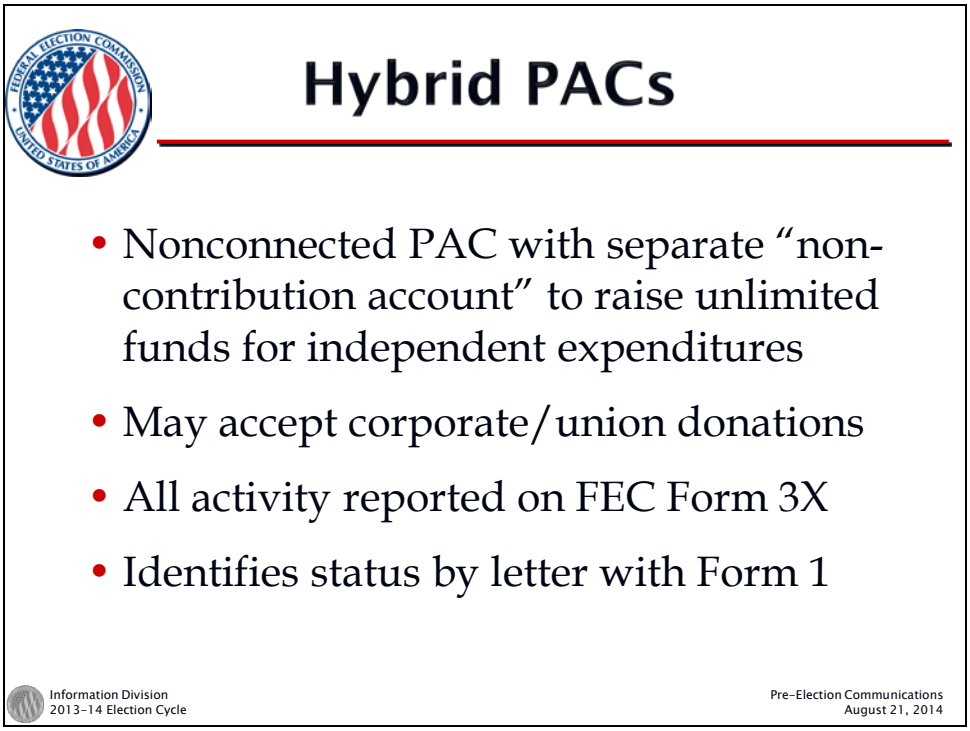
c) Guidelines from AOs:

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.



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.

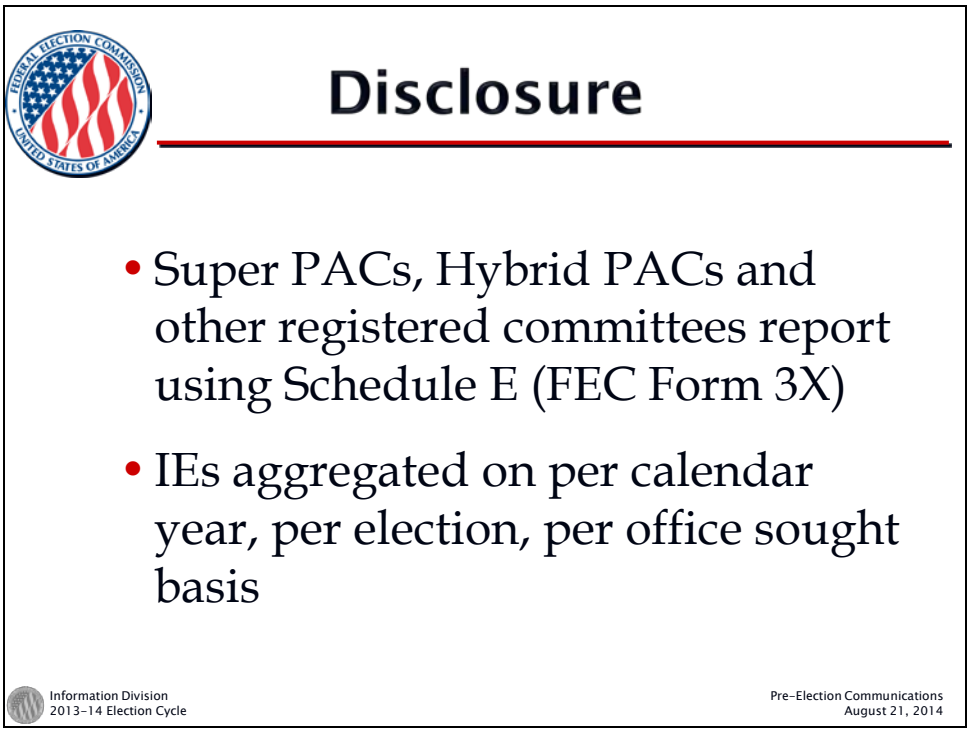
b) All activity for both accounts is reported on one FEC report.

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.

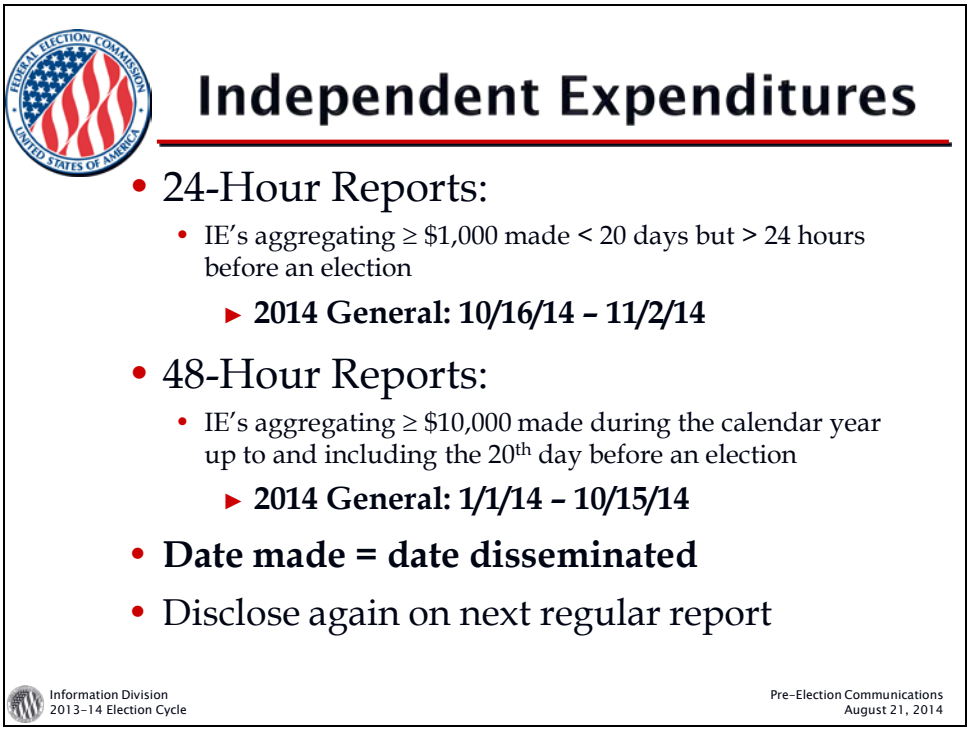


C. Disclosure of Independent Expenditures

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.



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 2014 General: Oct. 16 – Nov. 2, 2014.**

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) <u>An independent expenditure is considered made when it is publicly distributed or otherwise publicly disseminated</u>.

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.
6) **For 2014 General: Jan. 1 – Oct. 15, 2014**

Reporting Example: Large Last-Minute Independent Expenditures

Senate Candidate Al Daniels doesn't accept PAC checks and his campaign won't speak to PAC representatives. Still, the XYZ PAC wants to support him because of his strong stance on issues of importance to the company. XYZ PAC decides to buy local radio ads costing $8,000 expressly advocating the election of Al Daniels. The ads will air on October 27, just before the November 4 General Election. The bill will be paid on November 25, 2014.

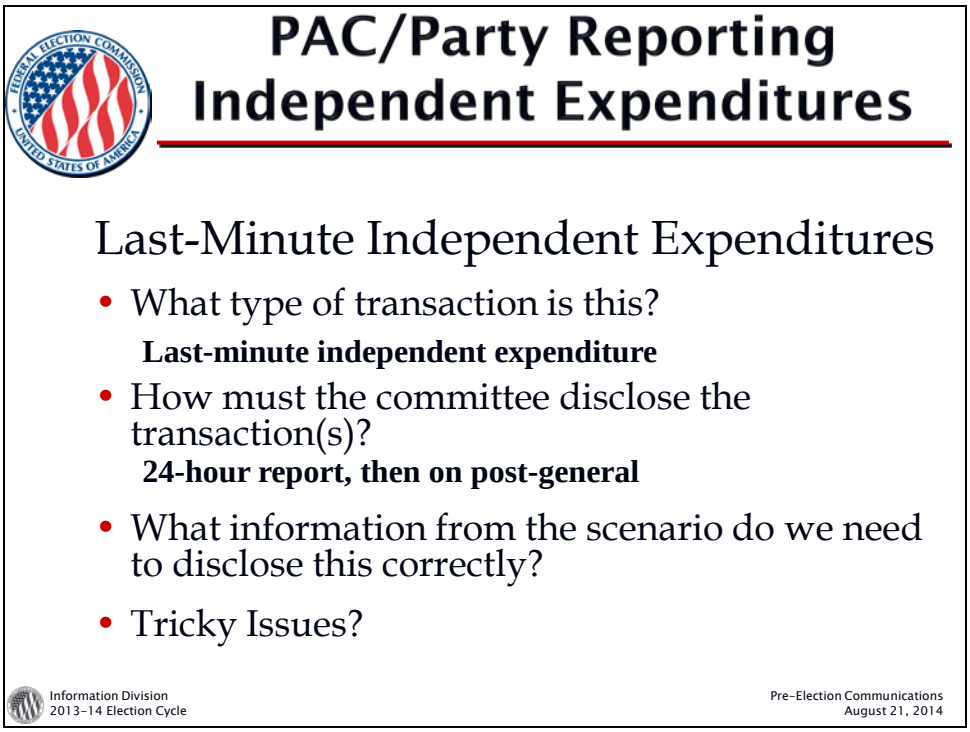
1. What type of transaction is this?

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

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

Reporting Example Answer Key: Large Last-Minute Independent Expenditures

1. What type of transaction is this?



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 (in this case, the next regular report for the PAC is the 30-Day Post General Report).

24 Hour IE Report

SCHEDULE E (FEC Form 3X)
ITEMIZED INDEPENDENT EXPENDITURES

PAGE 1 OF 1
FOR LINE 24 OF FORM 3X

NAME OF COMMITTEE (In Full): XYZ Political Action Committee

FEC IDENTIFICATION NUMBER ▼: C 00000004

[X] 24-hour report [ ] 48-hour report [ ] New report [ ] Amends report filed on M M / D D / Y Y Y Y

Full Name of Payee: KRLY Radio, Inc.

Mailing Address: 1010 Cavalier Drive

City: City, State: ST Zip Code: 00000

Purpose of Expenditure: Radio Ad

Category/Type: 004

Date of Public Distribution/Dissemination: 10 / 27 / 2014

Amount: 8,000.00

Date of Disbursement or Obligation: M M / D D / Y Y Y Y

Name of Federal Candidate: Al Daniels

[X] Support [ ] Oppose

Office Sought: [ ] House [ ] President [X] Senate District: ____ State: TX

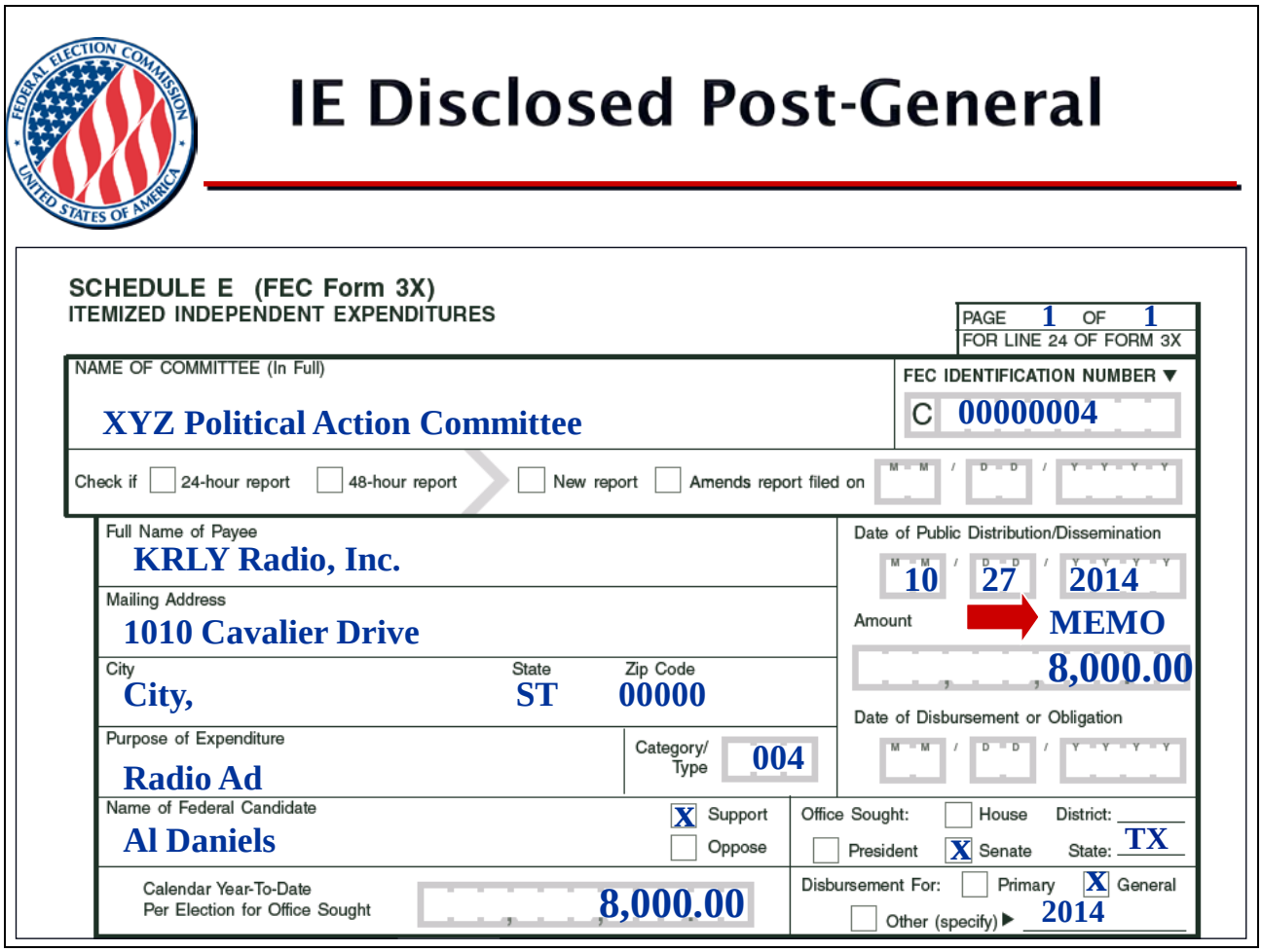
Calendar Year-To-Date Per Election for Office Sought: 8,000.00

Disbursement For: [ ] Primary [X] General [ ] Other (specify) ▶ 2014

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

Key facts in the scenario include the date of dissemination (10/27/14), 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 10/16/14-11/24/14), 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 "KRLY Radio, Inc." until it is settled.



IE Disclosed Post-General

SCHEDULE E (FEC Form 3X)
ITEMIZED INDEPENDENT EXPENDITURES

PAGE 1 OF 1
FOR LINE 24 OF FORM 3X

NAME OF COMMITTEE (In Full): XYZ Political Action Committee

FEC IDENTIFICATION NUMBER ▼: C 00000004

Check if ☐ 24-hour report ☐ 48-hour report ☐ New report ☐ Amends report filed on M M / D D / Y Y Y Y

Full Name of Payee: KRLY Radio, Inc.

Mailing Address: 1010 Cavalier Drive

City: City, State: ST Zip Code: 00000

Purpose of Expenditure: Radio Ad

Category/Type: 004

Date of Public Distribution/Dissemination: 10 / 27 / 2014

Amount: MEMO

8,000.00

Date of Disbursement or Obligation: M M / D D / Y Y Y Y

Name of Federal Candidate: Al Daniels

☒ Support ☐ Oppose

Office Sought: ☐ House District: ____ ☐ President ☒ Senate State: TX

Calendar Year-To-Date Per Election for Office Sought: 8,000.00

Disbursement For: ☐ Primary ☒ General ☐ Other (specify) ▶ 2014

See reporting example on next page

Reporting Debt to Vendor

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
[X] 10

NAME OF COMMITTEE (In Full)
XYZ Political Action Committee

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

Mailing Address
1010 Cavalier Drive

City: City, State: ST Zip Code: 00000

Nature of Debt (Purpose):
Radio Ad for Al Daniels

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

Information Division
2013-14 Election Cycle

Pre-Election Communications
August 21, 2014

When full payment is made to the vendor on 11/25/14, 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: 11/25/14-12/31/14).

IE Payment on Year-End

SCHEDULE E (FEC Form 3X)
ITEMIZED INDEPENDENT EXPENDITURES

PAGE 1 OF 1
FOR LINE 24 OF FORM 3X

NAME OF COMMITTEE (In Full): XYZ Political Action Committee

FEC IDENTIFICATION NUMBER ▼: C 00000004

Check if ☐ 24-hour report ☐ 48-hour report ☐ New report ☐ Amends report filed on M M / D D / Y Y Y Y

Full Name of Payee: KRLY Radio, Inc.

Mailing Address: 1010 Cavalier Drive

City: City, State: ST Zip Code: 00000

Purpose of Expenditure: Radio Ad

Category/Type: 004

Date of Public Distribution/Dissemination: 10 / 27 / 2014

Amount: 8,000.00

Date of Disbursement or Obligation: 11 / 25 / 2014

Name of Federal Candidate: Al Daniels

☒ Support ☐ Oppose

Office Sought: ☐ House District: ____ ☐ President ☒ Senate State: TX

Calendar Year-To-Date Per Election for Office Sought: 8,000.00

Disbursement For: ☐ Primary ☒ General ☐ Other (specify) ▶ 2014

See reporting example on next page

Reporting Debt to Vendor on Year End

SCHEDULE D (FEC Form 3X)
DEBTS AND OBLIGATIONS
Excluding Loans

(Use separate schedule(s) for each numbered line)

PAGE 1 OF 1

FOR LINE NUMBER: (check only one)
☐ 9
☒ 10

NAME OF COMMITTEE (In Full)
XYZ Political Action Committee

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

Mailing Address
1010 Cavalier Drive

City **City,** State **ST** Zip Code **00000**

Nature of Debt (Purpose):
Radio Ad for Al Daniels

Outstanding Balance Beginning This Period: **8,000.00**

Amount Incurred This Period: **0.00**

Payment This Period: **8,000.00**

Outstanding Balance at Close of This Period: **0.00**

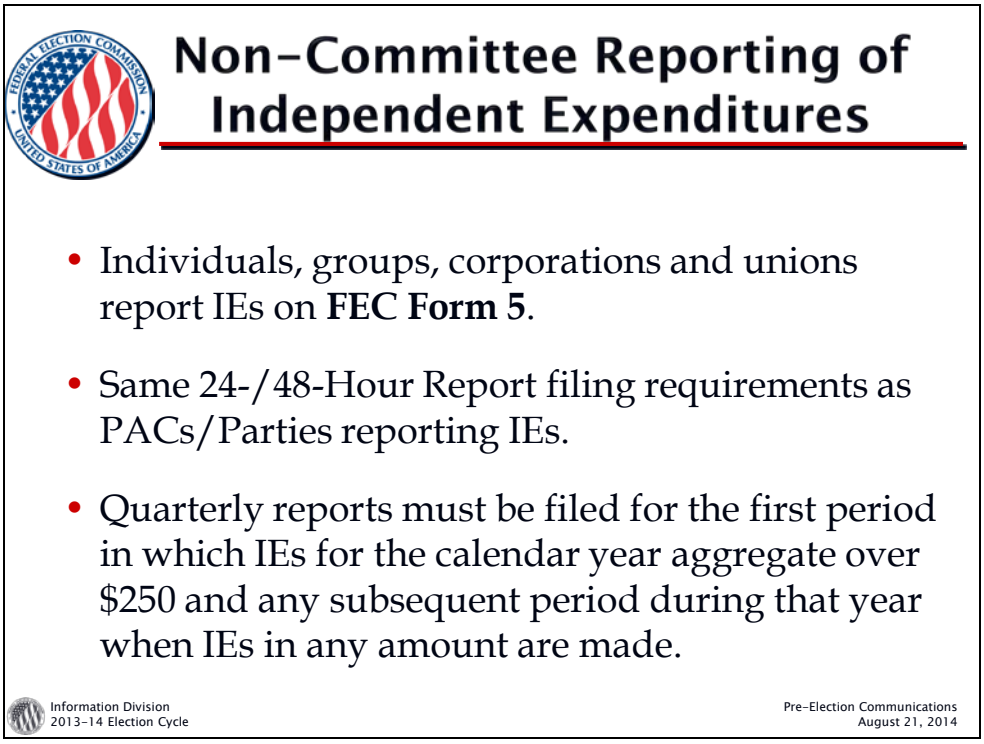
Information Division
2013-14 Election Cycle

Pre-Election Communications
August 21, 2014

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 treasurers 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. 16 - Nov. 2, 2014.**

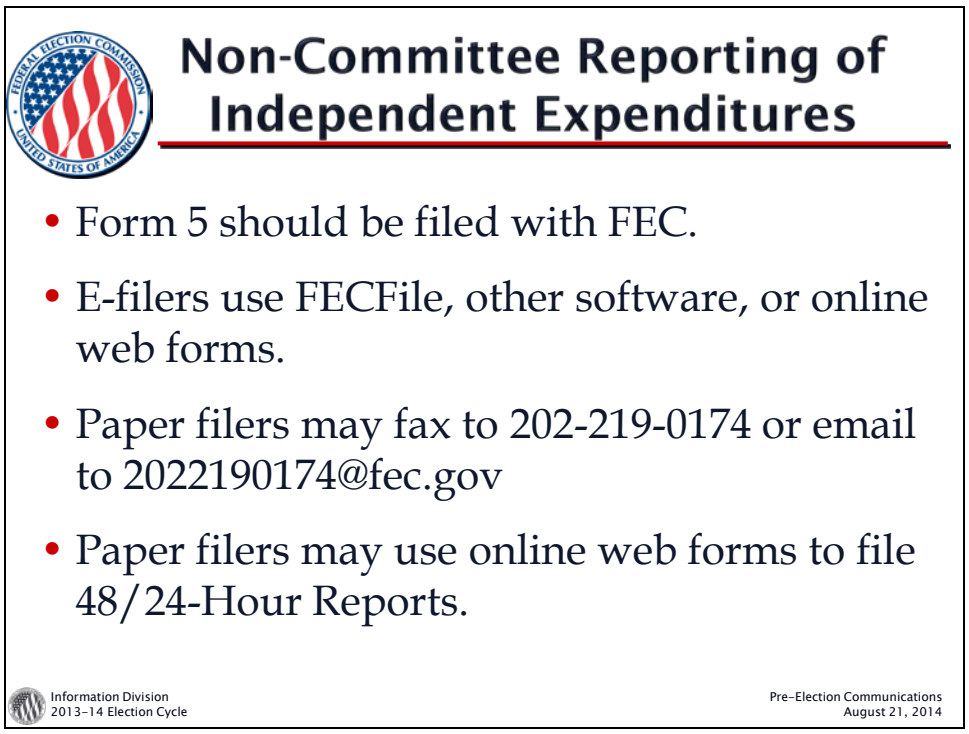
- **48-Hour Reporting**
  - In addition, must file a **48-Hour Report** for independent expenditures that aggregate $10,000 or more, anytime during a calendar year up to and including the 20th day before an election.
  - Check "48-Hour" box
  - Must be received by FEC within 48 hours after expenditure 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.
  - **The period for 48-hour reports of independent expenditures for the general election runs through October 15, 2014.**



D. Non-Committee Reporting of Independent Expenditures – 11 CFR 109.10

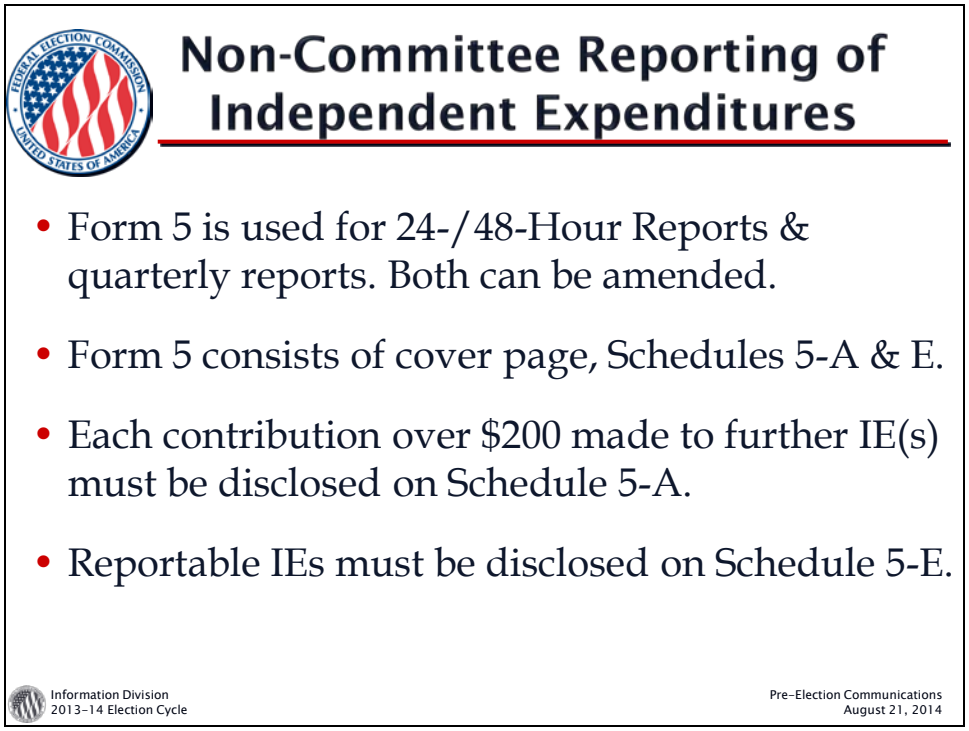
1. When to File Reports

- **Quarterly Reports:** Entities must file a quarterly report (April Quarterly, July Quarterly, October Quarterly, Year-End) on FEC Form 5 at the end of the first reporting period in which independent expenditures ("IEs") for a given election aggregate more than $250 in a calendar year, and in any succeeding period during the same year in which additional IEs of any amount are made.
- **48-Hour Notices:** Entities that make IEs aggregating $10,000 or more for a given election during the calendar year up to and including the 20th day before an election must report them within 48 hours. Additional 48-Hour Reports are due every time subsequent IEs aggregate $10,000 or more for the same election.
- **24-Hour Reports:** Entities that make IEs aggregating $1,000 or more for a given election after the 20th day but more than 24 hours before 12:01a.m. of the day of the election must file 24-Hour Reports. Additional 24-Hour Reports are due every time subsequent IEs aggregate $1,000 or more for the same election.
- **Aggregation is done on a per calendar year, per election, per office sought (race) basis.**



2. Where and How to File Reports

- FEC Form 5 should be filed with the Commission.
- Electronic filers use FECFile or the online web forms. Mandatory e-filing threshold applies to entities making IEs totaling over $50,000 in a calendar year.
- Paper filers may fax to 202-219-0174 or email to 2022190174@fec.gov.
- Paper filers may still use the on-line web forms to file 48/24-Hour Reports (due to time sensitivity).
- 1st time paper filers will be assigned FEC ID# when their first form is processed.
- 1st time e-filers obtain FEC ID # by clicking on-line web forms & choosing Form 5 "For Non-Registered Entity or Person(s) without FEC-Assigned ID)." Once FEC ID # has been obtained, the entity may use FECFile or other software, or continue with the Form 5 web forms by choosing "For Registered Entity or Person(s) with FEC-Assigned ID."



3. Reporting on Form 5 Quarterly Report

- Contributions over $200 made for the purpose of furthering the independent expenditures must be itemized on Schedule 5-A.
- To prevent Requests for Additional Information (RFAIs), filers should include memo text on the report or on Form 99 if they did not receive any contributions over $200 for the purpose of furthering IEs during the applicable period. The statement should indicate that no contributions were solicited or received for the purpose of furthering the disclosed IEs. Filers should include this statement with each applicable report.
- Report independent expenditures on Schedule 5-E, providing the following:
  - Name and address of the payee;
  - Purpose of the expenditure;
  - Date the IE was made (date of public distribution/dissemination);
  - Amount of the expenditure;
  - Name of the candidate;
  - Whether the candidate was supported or opposed by the expenditure;
  - Candidate's office sought and election; and
  - Aggregate calendar year-to-date total per election for office sought.

Reporting Example: FEC Form 5

Without consulting anyone else, Jill Citizen spends $3,000 of her personal funds to purchase a full page newspaper ad expressly advocating the election of her favorite Senate candidate, Jonathan Cooke. The ad appears in the paper on October 30, 2014, and Jill pays the newspaper on the same day.

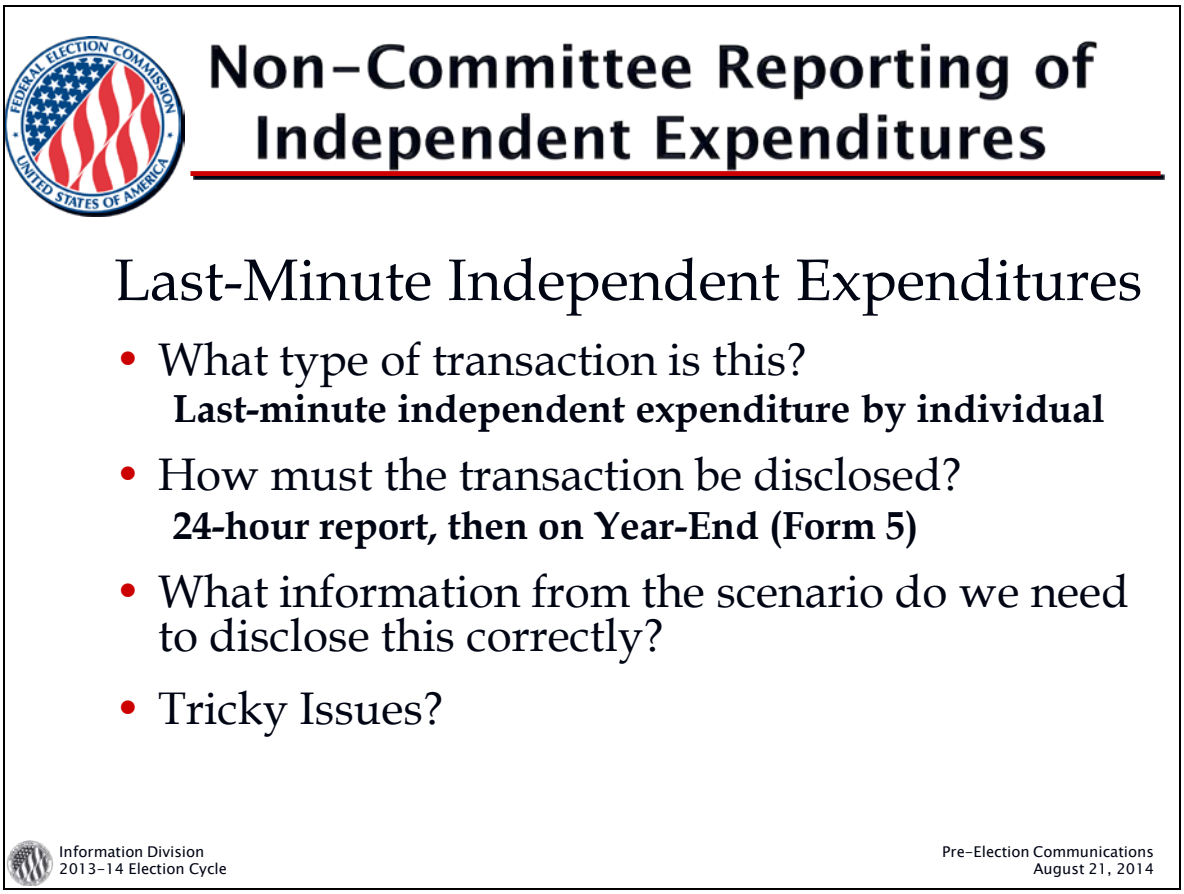
1. What type of transaction is this?

2. How is this transaction reported?

Reporting Example Answer Key: FEC Form 5

1. What type of transaction is this?

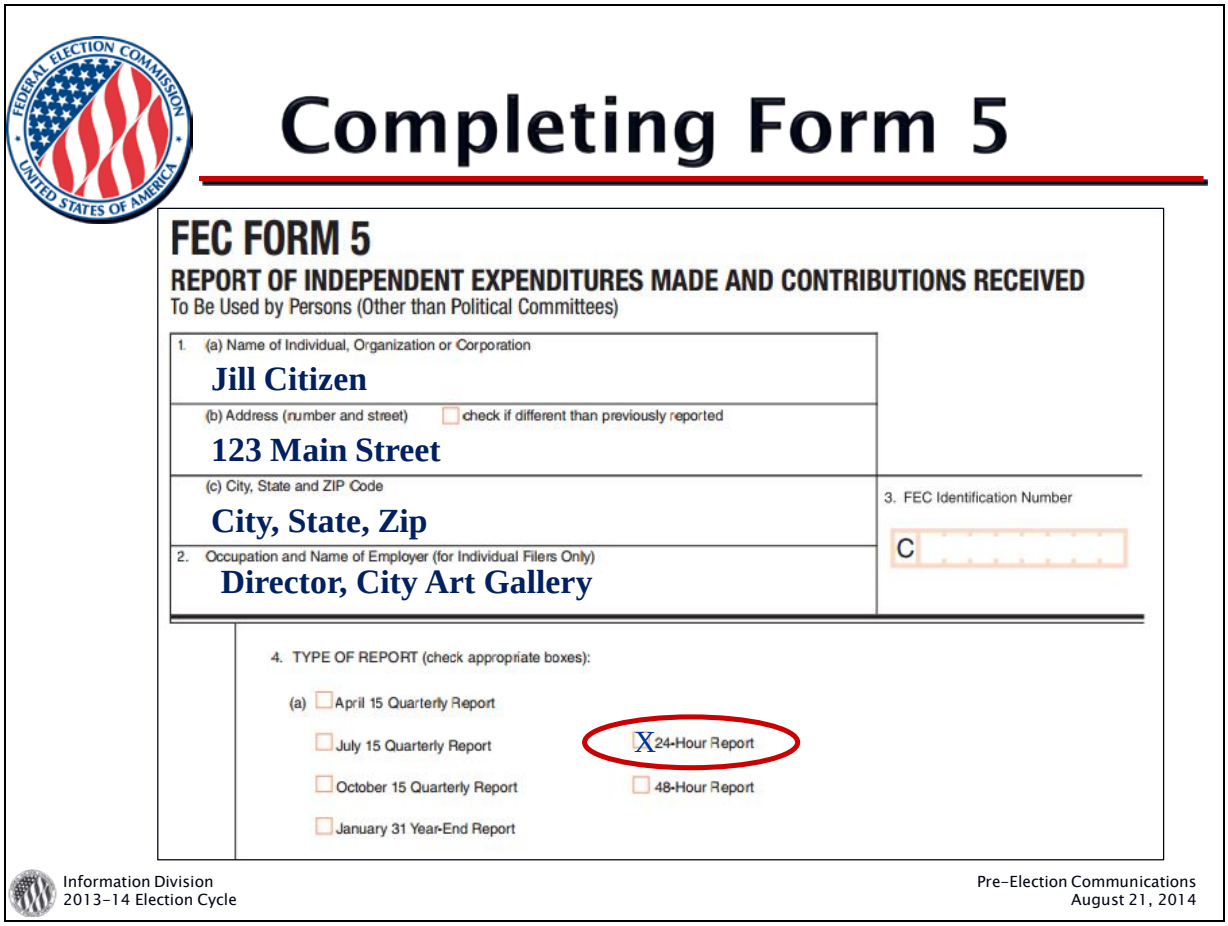
An independent expenditure by an individual.



2. How is this transaction reported?

Since the expenditure is over $1,000 and occurs 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 (Form 5).



See reporting example on next page

Form 5 – Expenditures

SCHEDULE 5-E
ITEMIZED INDEPENDENT EXPENDITURES

PAGE OF
FOR LINE 7 OF FORM 5

NAME OF FILER (In Full)
Jill Citizen

Full Name (Last, First, Middle Initial) of Payee
Local Gazette

Mailing Address
1355 Maple Avenue

City State Zip Code
City, State, Zip

Date of Public Distribution/Dissemination
MM / DD / YYYY
10 30 2014

Amount
3,000.00

Purpose of Expenditure
Newspaper Ad

Category/Type

Office Sought: House Senate X President State: NY District:

Name of Federal Candidate Supported or Opposed by Expenditure:
Jonathan Cooke

Check One: X Support Oppose

Calendar Year-To-Date Per Election for Office Sought
3,000.00

Disbursement For: Primary X General
Other (specify) ▶ 2014

3. Tricky Issues

- Form 5 filed on quarterly basis if aggregate independent expenditures are in excess of $250; <u>and</u>
- 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 any contributions over $200 received for the purpose of furthering the reported independent expenditures on Form 5-A, and expenditure on Form 5-B.

Upcoming Deadlines for IEs: PACs and Parties

- October Quarterly: Covers thru 9/30; Due 10/15; **OR** October Monthly: Due 10/20;
- Pre-General: Covers 10/1 - 10/15; Due 10/23 (Required for all monthly filers; quarterly filers that make contributions/expenditures during period);
- Post-General: Covers activity thru 11/24; Due 12/4 (Required for all committees).
- 48- or 24-hour IE reports required, if triggered

Information Division
2013-14 Election Cycle

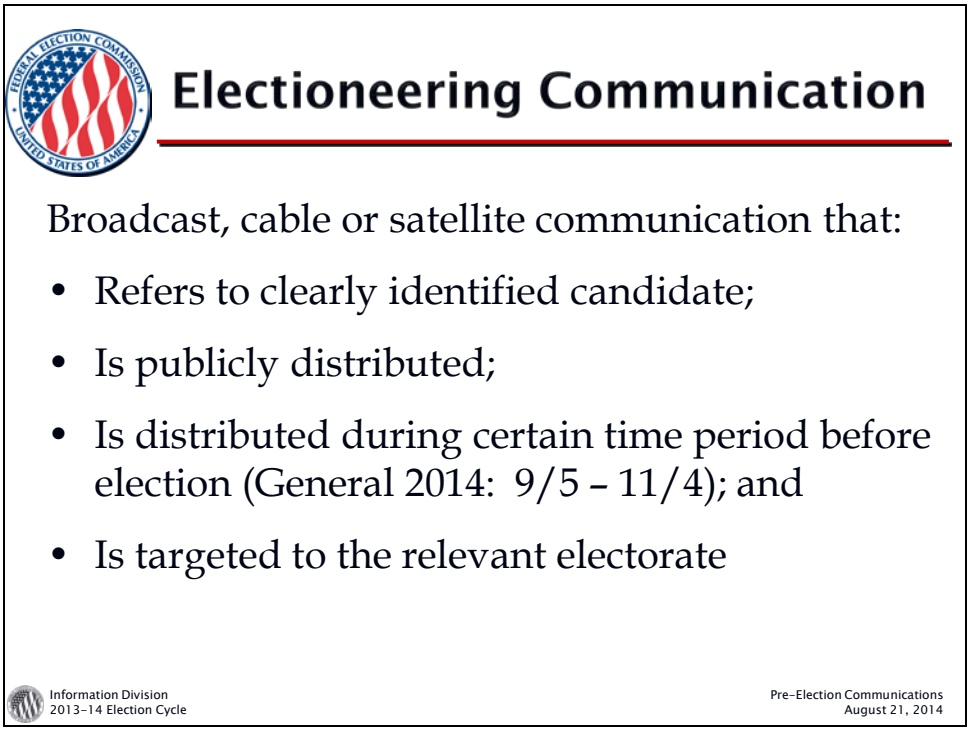
Pre-Election Communications
August 21, 2014

Upcoming Deadlines for IEs: Other Filers

- Form 5 covering activity thru 9/30; Due 10/15, if IEs >$250
- Form 5 covering activity 10/1 - 12/31; Due 1/31/15, if IEs >$250
- 48-hour reports (if ≥ $10,000 >20 days before election) and 24-hour reports (if ≥ $1,000 <20 days before election)
- No Pre- or Post-General reports required for Form 5 filers

Information Division
2013-14 Election Cycle

Pre-Election Communications
August 21, 2014



V. "Electioneering Communication" Defined (11 CFR 100.29)

A. The Basics

1. Definition

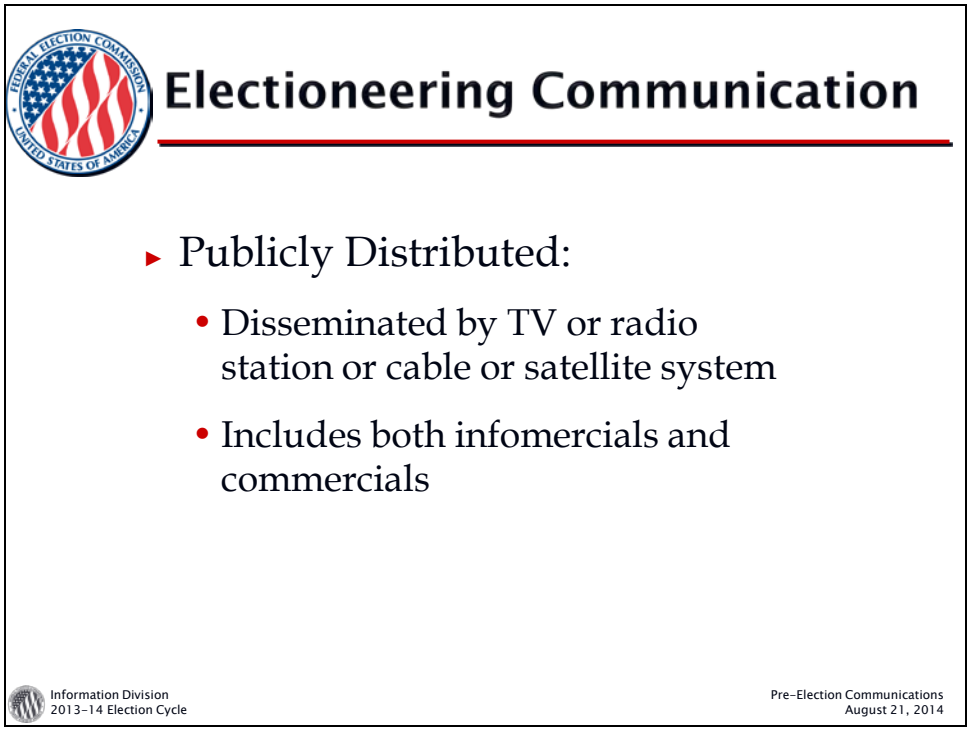
An electioneering communication is any broadcast, cable or satellite communication which fulfills **each** of the following conditions:

- **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 2014, period is Sept. 5 – Nov. 4, 2014.)**
- **The communication is targeted to the relevant electorate.**

B. Elements of an Electioneering Communication

1. Clearly Defined Candidate

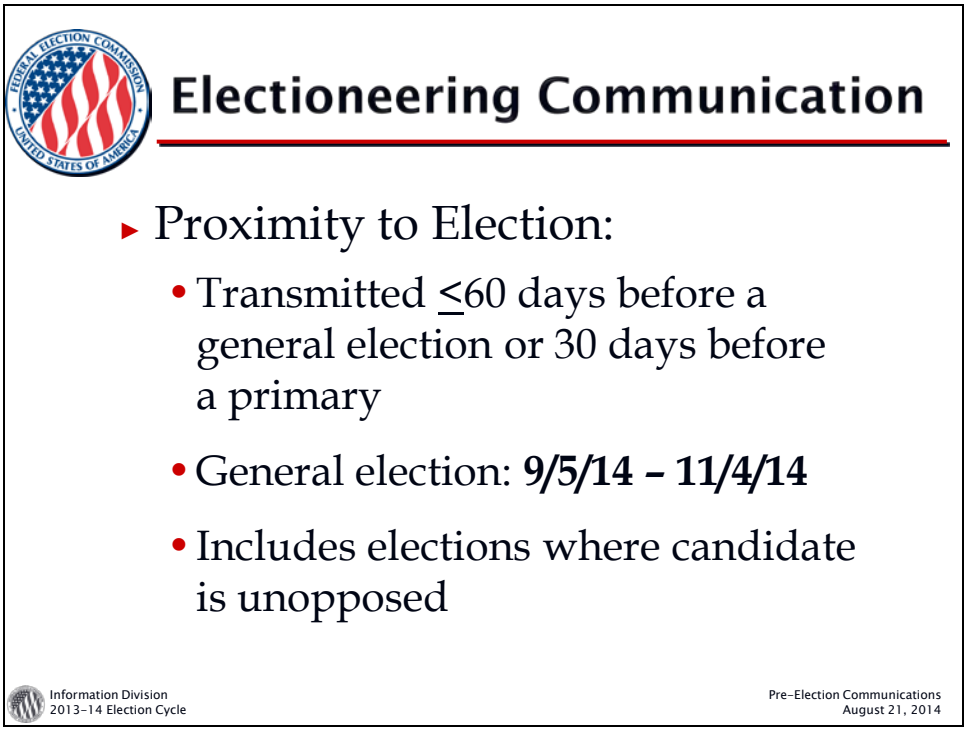
Same definition as for independent expenditure. 100.29(b)(2).



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.



3. Distributed During a Certain Time Period Before an Election

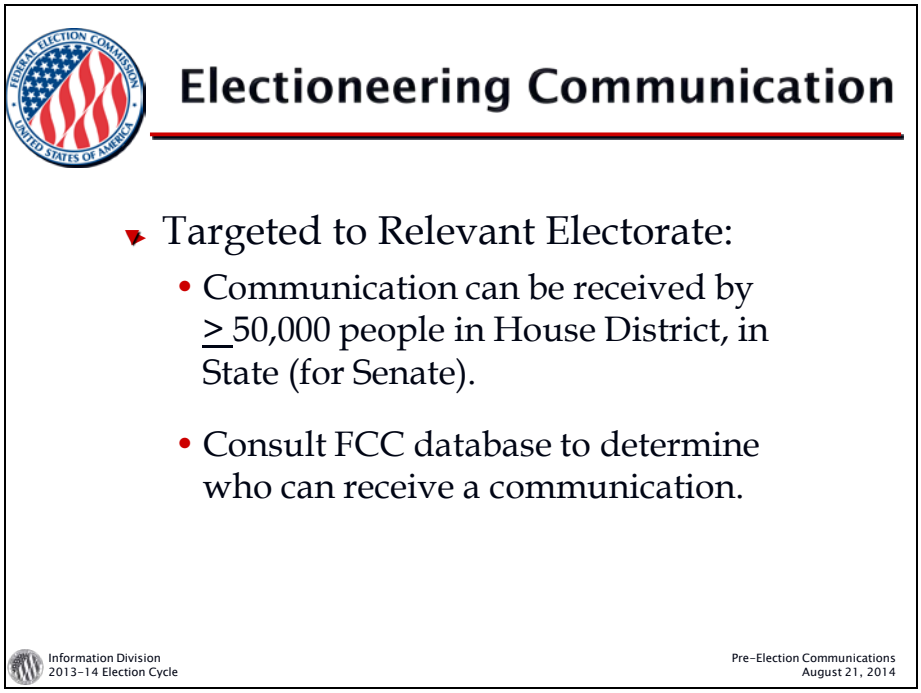
a) Time Period

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 2014 General Election: **Sept. 5 – Nov. 4, 2014**.

2) This includes elections in which the candidate is unopposed.



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).

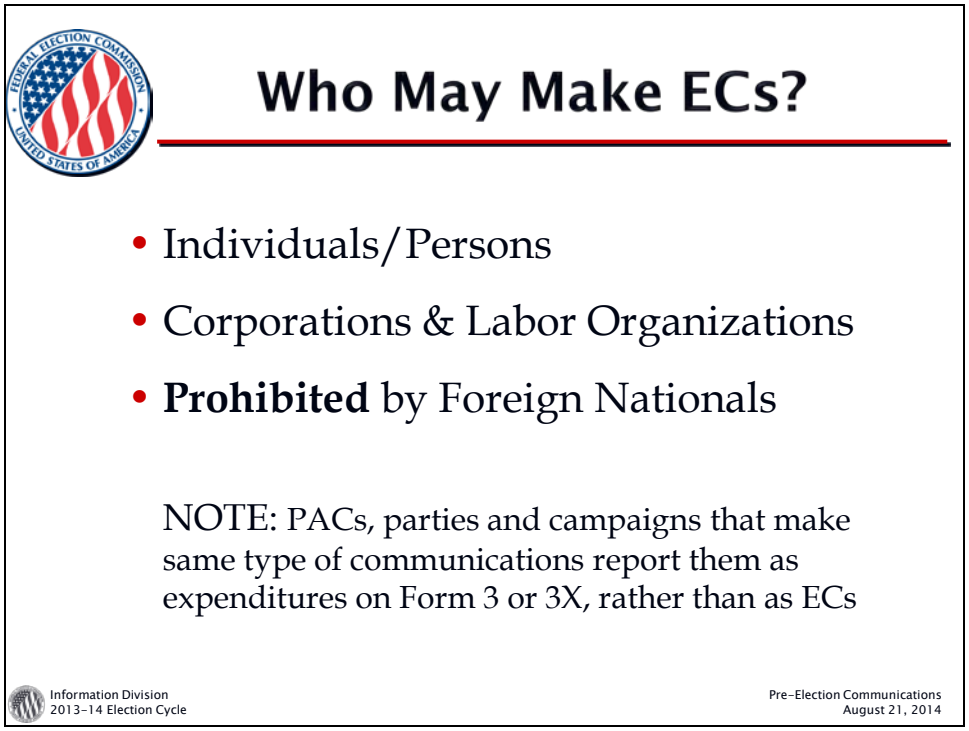
b) FCC Database for determining who can receive communication

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).

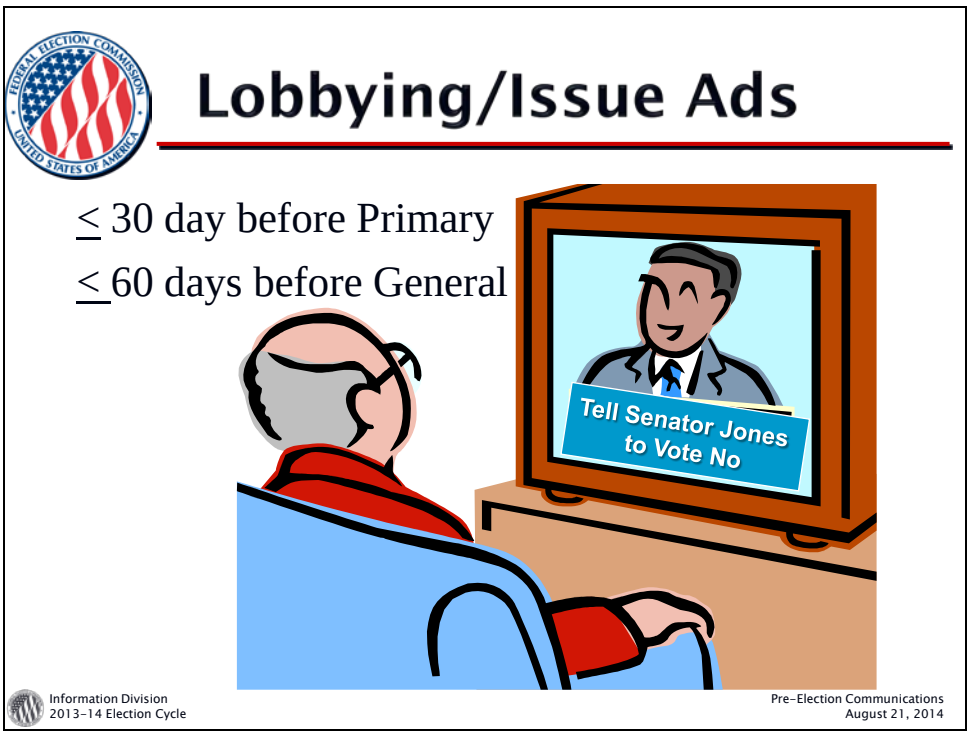


C. Who May Make Electioneering Communications ("ECs")?

- 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 3 or 3X.

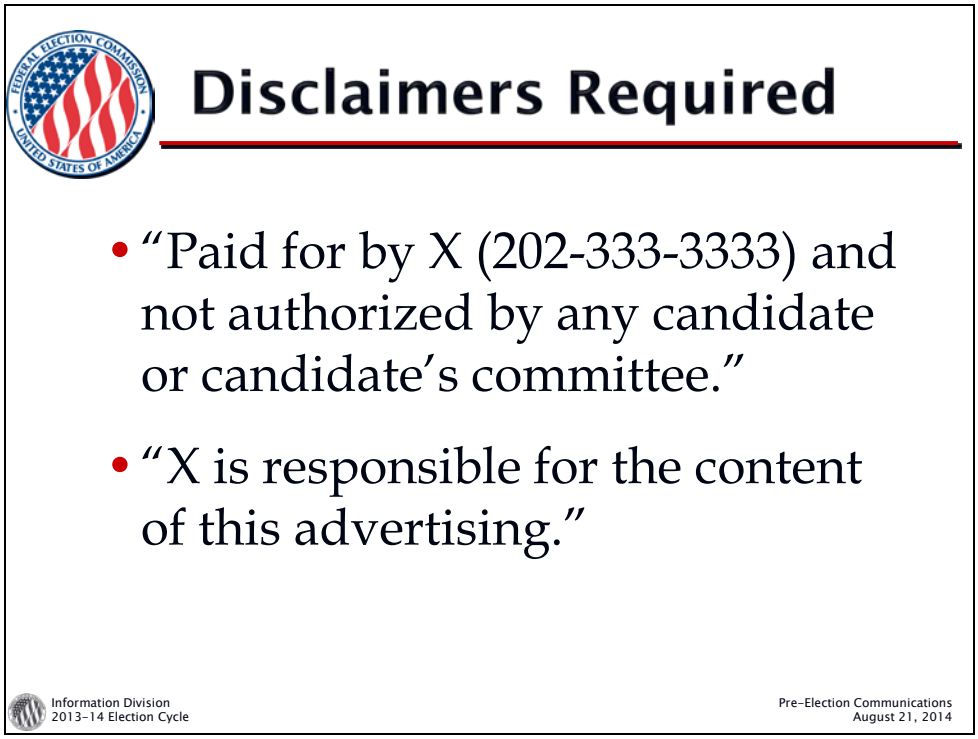
D. Who is Prohibited from Making/Funding ECs?

- Foreign Nationals



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 may fall within the definition of an electioneering communication above and thus be subject to FEC rules.



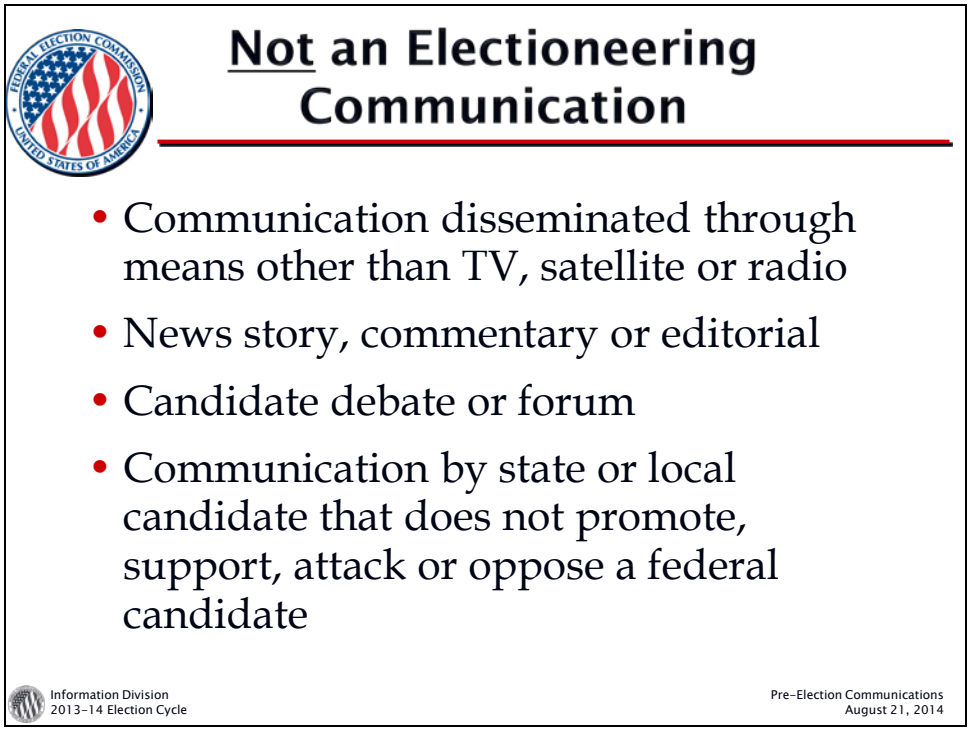
F. Disclaimer Required for ECs (Must Include <u>Both</u> Disclaimers Below)

1. Paid for By

"Paid for by (Name of Payer) (web address/phone number/mailing address) and not authorized by any candidate or candidate's committee." (Note: generally must not be coordinated because amount will usually exceed contribution limit. If coordinated, alter to say "authorized by (Name of candidate's committee)." 11 CFR 110.11(b)

2. Stand by Your Ad

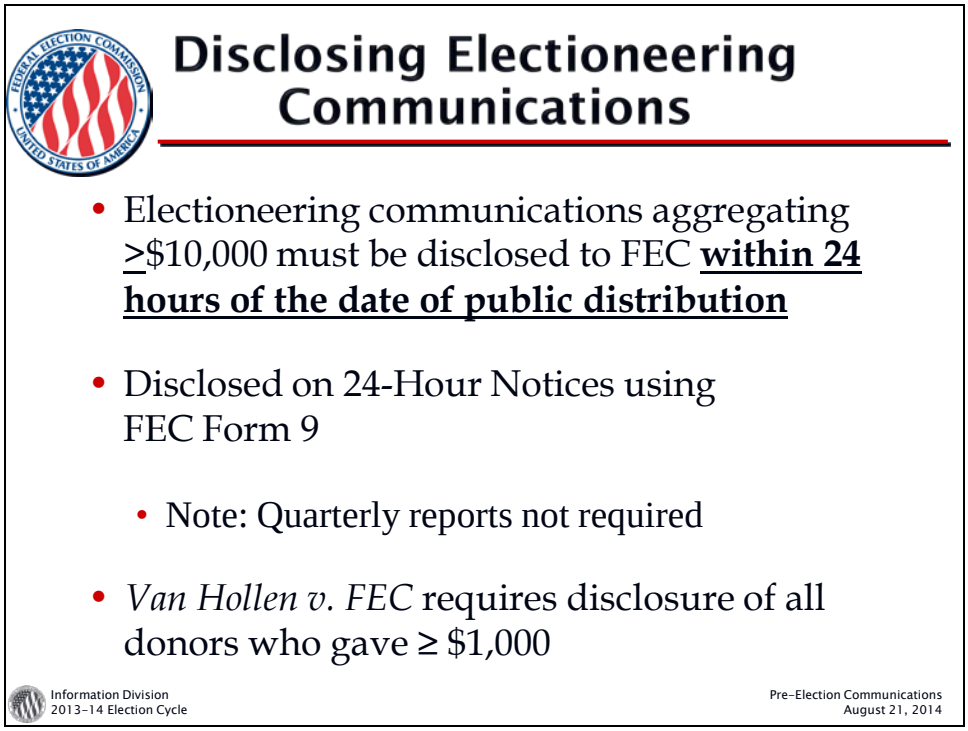
"(Name of Payer) is responsible for the content of this advertising." – both in writing and verbalized.
11 CFR 110.11(c)(4)



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;
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.



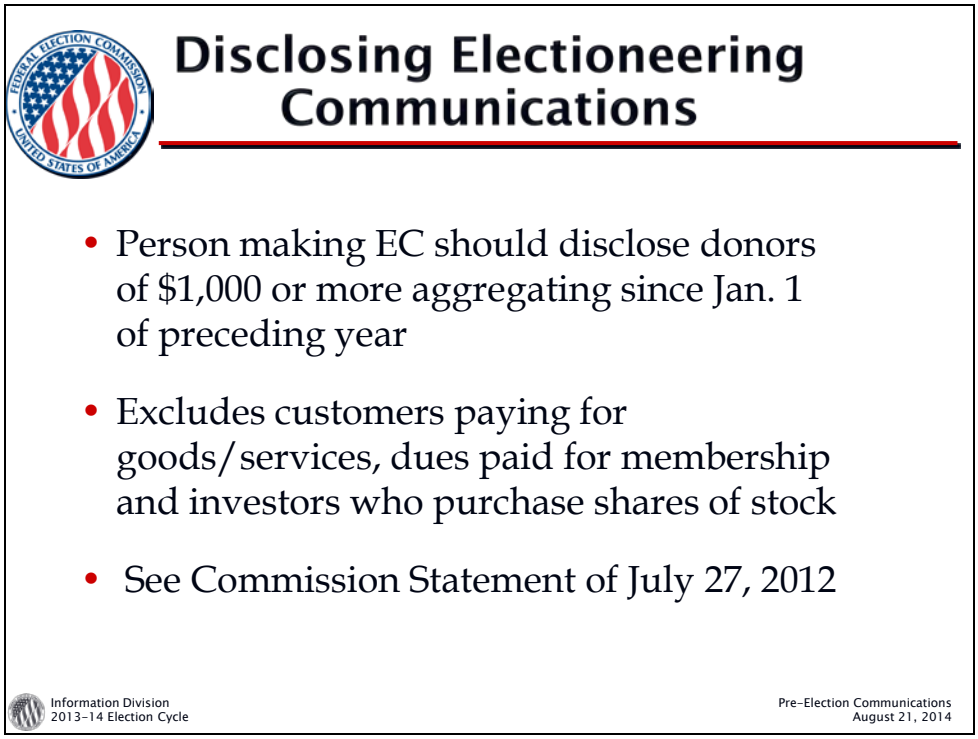
H. Disclosure Requirements

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/info/charts_ec_dates_2014.shtml.



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/press2012/20120727_VanHollen_v_FEC.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 made on October 25 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?

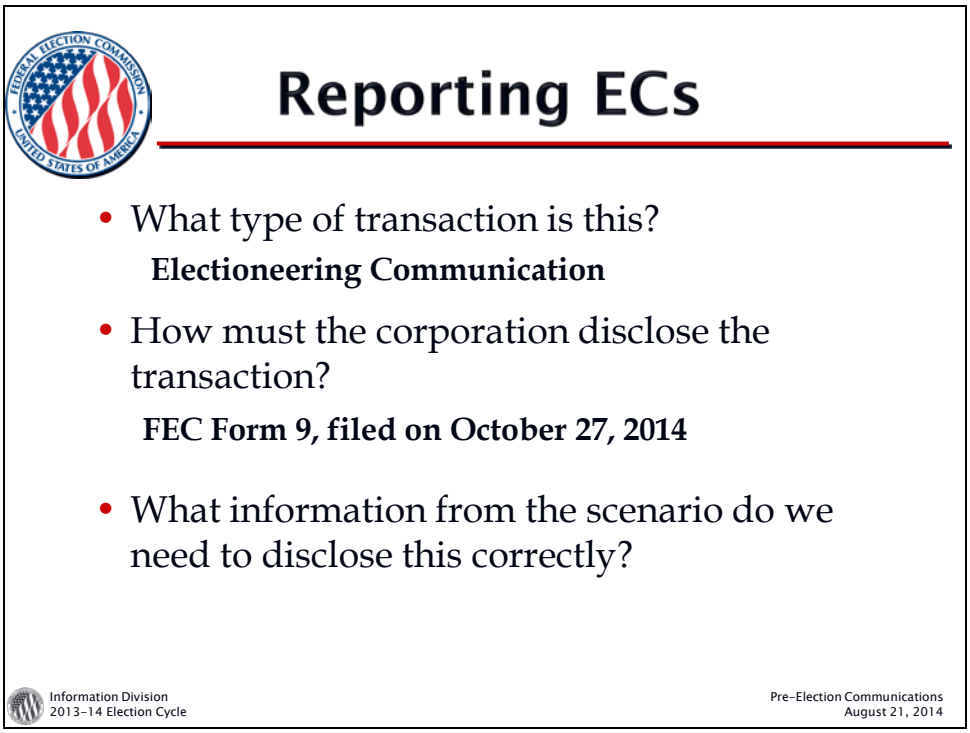
3. What should be reported?

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 the ad being disseminated to the public.



2. When would Form 9 be due?

Since the ad began airing on October 26, the FEC 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

2. FEC Identification Number
C

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

(e) Occupation
N/A

3. Is This Statement [X] New or [ ] Amended

4. Covering Period 10 / 25 / 2014 through 10 / 26 / 2014

5. (a) Date of Public Distribution(s) 10 / 26 / 2014 **(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) [X] Corporation, Labor Organization or Qualified Nonprofit Corporation making communications under 11 CFR 114.15
(e) [ ] Other, specify: _____

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 [ ]

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 1 OF 1

11. Person(s) Sharing/Exercising Control

A. (a) Name
Jane Olson

(b) Address (number and street)
456 Main Street

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

(d) Name of Employer or Principal Place of Business
ABC Corporation

(e) Occupation
President

SCHEDULE 9-A
Donation(s) Received

PAGE 1 OF 1

A. Full Name of Donor
Clayton Mayer

Mailing Address of Donor
789 Palmetto Lane

City State Zip
Orlando, FL 00000

Date of Receipt
M M / D D / Y Y Y Y
10 / 25 / 2014

Amount
15,000.00

See reporting example on next page

Form 9 Example

SCHEDULE 9-B
Disbursement(s) Made or Obligation(s)

PAGE 1 OF 1

A. Full Name (Last, First, Middle Initial) of Payee
MediaWise Buys

Mailing Address of Payee
888 Sunshine Drive

City: **Orlando, FL 00000** State: Zip Code:

Name of Employer: Occupation:

Date of Disbursement or Obligation: MM 10 / DD 25 / YYYY 2014

Amount: 15,000.00

Communication Date: MM 10 / DD 26 / YYYY 2014

Purpose of Disbursement (Including title(s) of communication(s))
Television Advertisement – Health Bill Ad

Name of Federal Candidate: **Sam Collins**
Office Sought: [ ] House [X] Senate [ ] President
State: FL District:
Disbursement/Obligation For: [ ] Primary [X] General [ ] Other (specify)

Name of Federal Candidate:
Office Sought: [ ] House [ ] Senate [ ] President
State: District:
Disbursement/Obligation For: [ ] Primary [ ] General [ ] Other (specify)

Name of Federal Candidate:
Office Sought: [ ] House [ ] Senate [ ] President
State: District:
Disbursement/Obligation For: [ ] Primary [ ] General [ ] Other (specify)

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

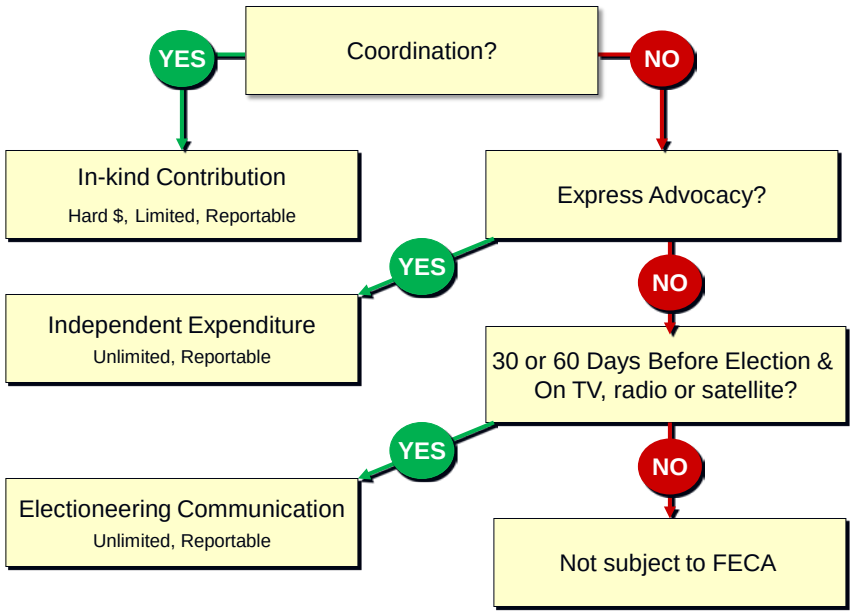
- FECFile or other e-filing software *encouraged*
- Online webforms for Form 5 and Form 9 – www.fec.gov/elecfil/online.shtml

Paper Options:

- FAX: 202-219-0174
- E-Mail: 2022190174@fec.gov

Information Division
2013-14 Election Cycle

Pre-Election Communications
August 21, 2014



Objectives

- Identify categories of communications
- Explain rules associated with each
- Highlight recent developments
- Review special reporting requirements for pre-election communications

Information Division
2013-14 Election Cycle

Pre-Election Communications
August 21, 2014

Workshop Evaluation

Help Us Help You!

Please complete an evaluation of this workshop.

Thank you for attending!

Information Division
2013-14 Election Cycle

Pre-Election Communications
August 21, 2014