



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 30, 2018

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2018-02

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Dear Mr. McBride:

We are responding to your advisory opinion request on behalf of the Alabama Academy of Radiology (“Academy”) and the Alabama Academy of Radiology PAC (“ALRAD PAC”), concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to the status of the Academy as a membership organization, the conversion of ALRAD PAC from a nonfederal committee to a federal political committee, ALRAD PAC’s plan to divest itself of any impermissible funds prior to registration, and the requestors’ proposed payroll deduction plan to solicit contributions from the Academy’s members. The Commission concludes that: (1) the Academy is a membership organization for purposes of the Act and Commission regulations, (2) ALRAD PAC may convert to a federal political committee, (3) the requestors’ proposed plan to divest impermissible funds from ALRAD PAC’s cash-on-hand balance before registration is permissible, and (4) the requestors may solicit the Academy’s members via the proposed payroll deduction plan.

Background

The facts presented in this advisory opinion are based on your letter received on February 20, 2018, and your email received on March 1, 2018 (collectively “advisory opinion request” or “AOR”).

A. *Membership of the Academy*

The Academy is incorporated in Alabama as a non-profit, non-stock corporation with members that has been recognized as an organization exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code. AOR001-002. The Academy is a local chapter of the American College of Radiology (“College”), a “national trade association for radiologists and physicists.” AOR003. The Academy was organized to advance the science of radiology, improve radiologic services to the sick, study the socio-economic aspects of the practice of radiology, encourage improved educational facilities for radiologists, and establish and maintain high medical and ethical standards in the practice of radiology. AOR002, AOR016. According to the request, “the Academy engages in political activities through ALRAD PAC,” AOR003, and, according to the Academy’s Articles of Incorporation, the Academy “may engage in any political activity germane to its tax exempt purposes so long as such political activity is not the primary purpose or activity of the [Academy].” AOR024.

All of the Academy’s current and former members are individuals, and the Academy “actively solicits” their membership in person and through its website, which “encourage[s] [prospective members] to strongly consider becoming a member” of the Academy, describes the benefits of membership, and provides an application to prospective members. AOR004; *see How to Become a Member of the AAR*, Alabama Academy of Radiology, <http://www.alarad.org/index.php?id=7> (last visited Apr. 25, 2018). To become a member of the Academy, an individual must complete a written application and meet certain professional qualifications. AOR003, AOR027-029.¹ The Academy and College use a joint system for processing membership applications and thus prospective members generally apply jointly to the Academy and the College, although individuals may apply solely to the Academy. AOR003. On joint applications, the College determines whether the individual has met the qualifications for membership in both organizations, collects the individual’s dues, and sends the Academy its portion of the dues along with the membership information for the individual. AOR003, AOR029. The College also acknowledges by email the individual’s acceptance of membership to the College and the Academy. AOR003. If the College determines that an individual has not met the qualifications for membership in both organizations, the College forwards the individual’s application materials to the Academy for further evaluation and a final decision. *Id.*

According to its bylaws, the Academy has nine classes of members: (1) Full Members, (2) State Chapter Members, (3) Associate Members, (4) Associate State Chapter Members, (5) Members in Physics, (6) Associate Members in Physics, (7) Members in Training/Members in Training in Physics, (8) Retired/Inactive Members, and (9) Affiliate Members. AOR003,

¹ All members must be involved in the practice of radiology, be certified as a physicist by the American Board of Radiology, be engaged as a physicist in the practice of radiological physics on a full-time basis, or occupy a residency or fellowship in radiology approved by the Council on Medical Education of the American Medical Association or the American Osteopathic Association (or a formal educational program in medical physics). AOR027-028. When applying for membership, an applicant must be endorsed by two active members of the Academy who must certify the applicant’s qualifications. AOR029.

AOR027-028.² All members have the right to review and receive copies of the Academy's articles of incorporation and bylaws. AOR004. The professional qualifications required for membership, as well as the rights and benefits conferred upon members, differ according to the membership class. Full Members, State Chapter Members, Members in Physics, and Affiliate Members have the right to be appointed to committees, vote, and hold office in the Academy. AOR027-028. Associate Members, Associate Members in Physics, Associate State Chapter Members, and Members in Training/Members in Training in Physics may not vote or hold office, but they may be appointed to committees. *Id.* Retired or Inactive Members may not vote or be appointed to committees. AOR028. All members, except Retired/Inactive members and Members in Training, are required to pay annual dues in the amount of \$150. AOR004, AOR034. The Academy currently has 523 members, of which 326 are Full Members, 13 are Physicist Members, 101 are Members in Training, and 83 are Retired/Inactive Members. AOR004.

The Academy is governed by its Executive Committee, which is composed of officers elected from its membership. AOR030. The Executive Committee, through its officers, appoints several "standing committees" that govern the day-to-day affairs of the Academy and other committees "as are necessary for the proper functioning of the [Academy]." AOR031-032. The Executive Committee also fills vacancies, prepares the budget, and organizes annual meetings. AOR031-034. The bylaws may be amended only by a two-thirds vote of the members with voting rights at the Academy's annual meeting. AOR034.

B. *ALRAD PAC Activities*

The Academy established ALRAD PAC in 2006 under Alabama state law. AOR004. According to its bylaws, ALRAD PAC is authorized to operate as a separate segregated fund under Alabama state law as well as under the Act and Commission regulations. AOR036. Its bylaws state that its purpose includes funding and supporting state and federal candidates, as well as donating and contributing funds to state or federal political parties or committees. *Id.* Although authorized to engage in federal election activity, ALRAD PAC's bylaws state that:

[N]othing contained [in the bylaws] shall be interpreted to require [ALRAD PAC] to register with the Federal Election Commission as a federal political action committee, to fund and support candidates for federal public office or to otherwise engage in federal election activities, it being the intent of these Bylaws not to require [ALRAD PAC] to engage in such federal election activities, but only to give the PAC the right and power to do so if it so chooses.

AOR037. The request further states that to date ALRAD PAC has engaged only in "state political activities." AOR004. ALRAD PAC has never registered nor reported any of its activity with the Commission.

² State Chapter Members are those individuals who are members of the Academy but not of the College. AOR003. None of the Academy's members are currently classified as State Chapter or Associate State Chapter Members.

The Academy solicits donations from Academy members to ALRAD PAC via a solicitation letter, and provides its members with authorization forms for payroll deduction, bank drafts, and an employer authorization form for payroll deduction. AOR005, AOR047-050. The solicitation letter and the authorization forms advise members that ALRAD PAC's purpose is to fund and support "candidates for Alabama state and local public office," AOR047-049, and the solicitation letter informs them that: (1) their donation is purely voluntary, (2) the donation amount stated in the authorization forms is merely a suggested guideline, (3) they are free to donate more or less than the suggested amount, (4) neither the Academy nor ALRAD PAC will favor or disadvantage anyone by reason of the amount of their donation or decision not to donate, and (5) they have the right to refuse to donate without reprisal. AOR047. The solicitation letter also advises members that they may make either a single donation or recurring donations to ALRAD PAC, which the member may cancel at any time. If choosing recurring donations, the member must make those recurring donations either by an employer payroll deduction plan, if the employer offers it, or via bank draft.³ *Id.* For one-time donations, the member must write a check to ALRAD PAC and deliver it to ALRAD PAC either by mail or hand delivery. AOR005.

For donations made to ALRAD PAC via payroll deduction, ALRAD PAC requires the employer to collect the donations from participating employee-members' paychecks and credit them to a dedicated account on the employer's book. AOR006, AOR050. After completing this collection process, ALRAD PAC requires the employer to promptly mail a check in the total amount of all collected donations to ALRAD PAC's treasurer. AOR006, AOR050. Employers may request reimbursement for their costs of administering the payroll deduction program by submitting to ALRAD PAC an itemized statement of expenses at the end of a calendar year. AOR006, AOR050. ALRAD PAC's Employer Instructions for Payroll Deduction explain that ALRAD PAC "will reimburse" the employer for its claimed costs for the year, AOR050, however, since ALRAD PAC's establishment in 2006, no employer has ever requested reimbursement for its costs in participating in ALRAD PAC's payroll deduction program, and ALRAD PAC correspondingly has not reimbursed any employer for such costs. AOR006.

The request states that the Academy and ALRAD PAC would change their payroll deduction program before registering ALRAD PAC as a federal political committee as follows. First, the Academy would reimburse in advance all corporations for the full cost of providing payroll deduction services to ALRAD PAC and revise the employer authorization forms accordingly. AOR014. Second, the Academy would revise its solicitation letters and authorization forms to indicate clearly that ALRAD PAC has also been formed for the purpose of contributing to and supporting federal candidates. *Id.*

Questions Presented

1. *Is the Academy a membership organization under Commission regulations?*

³ No member has ever authorized a contribution via bank draft. AOR005 n.6.

2. *May the Academy register ALRAD PAC with the Commission as a political committee and thereafter operate ALRAD PAC's existing bank account as a single federal political committee?*

3. *If the answer to question 2 is "yes," and if the Academy transfers out of ALRAD PAC's account the aggregate value of all payroll deduction services provided to ALRAD PAC by employers that are corporations, is the Academy permitted to retain all other cash on hand in ALRAD PAC's account following registration as a political committee?*

4. *May the Academy solicit future contributions using its existing payroll deduction program?*

Legal Analysis and Conclusions

1. *Is the Academy a membership organization under Commission regulations?*

Yes, the Academy is a membership organization under Commission regulations.

Commission regulations define a "membership organization" as a trade association, cooperative, or corporation without capital stock that:

- (1) Is composed of members, some or all of whom are vested with the power and authority to operate or administer the organization, pursuant to the organization's articles, bylaws, constitution or other formal organizational documents;
- (2) Expressly states the qualifications and requirements for membership in its articles, bylaws, constitution or other formal organizational documents;
- (3) Makes its articles, bylaws, constitution, or other formal organizational documents available to its members;
- (4) Expressly solicits persons to become members;
- (5) Expressly acknowledges the acceptance of membership, such as by sending a membership card or including the member's name on a membership newsletter list; and
- (6) Is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to federal office.

11 C.F.R. § 114.1(e)(1); *see also* 11 C.F.R. § 100.134(e). The Academy satisfies all six criteria and thus is a membership organization under Commission regulations.

First, the Academy is composed of members, some of whom are vested with the power and authority to operate and administer the organization. Commission regulations define "member" to include all persons who satisfy the requirements for membership in a membership

organization, affirmatively accept the membership organization's invitation to become a member, and either: (i) have some significant financial attachment to the membership organization, such as a significant investment or ownership stake, (ii) pay membership dues at least annually, of a specific amount predetermined by the organization, or (iii) have a significant organizational attachment to the membership organization. 11 C.F.R. §§ 114.1(e)(2)(i)-(iii), 100.134(f)(1)-(3). Commission regulations further permit the Commission to determine, on a case-by-basis, that persons who do not precisely meet these requirements, but who "have a relatively enduring and independently significant financial or organizational attachment to the organization," may be considered "members." 11 C.F.R. §§ 114.1(e)(3), 100.134(g).⁴ Commission regulations specifically note that "student members who pay a lower amount of dues while in school, long term dues paying members who qualify for lifetime membership status with little or no dues obligation, and retired members of the organization may be considered members for purposes of these rules." 11 C.F.R. §§ 114.1(e)(3), 100.134(g).

Four of the Academy's membership classes — Full Members, State Chapter Members, Members in Physics, and Affiliate Members — may vote for officers on the Executive Committee, which is the Academy's highest governing board, and must pay annual dues. Further, voting members approve the Academy's budget and have authority to amend the Academy's bylaws at its annual meetings. AOR034. Such voting Academy members thus have the power and authority to operate and administer the organization.

The remaining five classes of membership may not vote or hold office and thus do not have the power and authority to operate and administer the Academy. Nonetheless, individuals in these other membership classes are "members" under the Commission's definition. Associate Members, Associate Members in Physics, and Associate State Chapter Members must satisfy the Academy's professional criteria, affirmatively accept an invitation to join the Academy, and pay annual dues. These individuals thus satisfy the Commission's definition of "member" under 11 C.F.R. §§ 114.1(e)(2) and 100.134(f). In addition, individuals who are in training, retired, or whose membership status is inactive also satisfy the Commission's "membership" standard under the case-by-case approach for individuals who do not "precisely meet the requirements." Commission regulations expressly recognize that retired members of an organization may be considered as "members." 11 C.F.R. §§ 114.1(e)(3), 100.134(g); *see also* Advisory Opinion 2011-08 (American Society of Anesthesiologists) at 5 (concluding that "Retired Members" of an organization were "members" under Commission regulations). The Commission also previously concluded that an organization's "Members-in-Training" who lacked voting rights and were not required to pay dues nevertheless qualified as "members." *See* Advisory Opinion 2003-13 (American Academy of Ophthalmology) at 5. In reaching that conclusion, the Commission underscored that the individuals were "subject to sanctions" by the organization and that upon the successful completion of their training — a residency program for ophthalmologists — they were invited to join the organization. *Id.*

⁴ Commission regulations do not require that all members of an organization have the power and authority to operate or administer the organization. *See, e.g.,* Advisory Opinion 2011-08 (American Society of Anesthesiologists) at 4 (concluding that an organization qualified as a membership organization where only two of the eight types of members were vested with the authority to operate or administer the organization).

Here, individuals in training will “automatically” become members upon completion of their training, receiving professional certifications, and “appropriate review” by the Academy. AOR028. Such individuals are subject to the same disciplinary actions under the Academy’s bylaws as other members, including “censure, suspens[ion], and exp[ulsion].” AOR029. The Academy’s Members in Training also may be appointed to committees even while in training status, further indicating that their attachment to the Academy is enduring. AOR028. Members in Training thus have a sufficiently enduring and significant attachment to the Academy to be deemed “members” under Commission’s regulations.

The Commission also previously concluded that individuals who were “inactive” but retained the right to be reinstated as active members qualified as “members” even though they lacked voting rights and were not required to pay dues. *See* Advisory Opinion 2011-08 (American Society of Anesthesiologists) at 6-7. The Commission emphasized that such individuals “have a reversionary interest in that they must be reinstated as Active Members if they returned to practice and wish to maintain membership in [the organization],” and that such individuals continued to receive other membership benefits and were subject to sanction by the organization. *Id.* at 7. Like the inactive members at issue in Advisory Opinion 2011-08, the Academy’s Inactive Members are “temporarily unable to continue their practice,” AOR028, but their full rights and obligations, including the requirement to pay dues, will revert once their temporary inactive status ends. The Academy’s inactive members also continue to have access to membership resources and remain subject to the Academy’s disciplinary actions. The temporary inactive status of such individuals thus does not negate their enduring and significant attachment to the Academy.

Second, as required by section 114.1(e)(1)(ii) and described above, the Academy’s bylaws expressly state the requirements for membership. AOR027-028.

Third, the Academy makes its bylaws available to its members upon request, consistent with 11 C.F.R. § 114.1(e)(1)(iii). AOR004.

Fourth, the Academy expressly solicits individuals to become members of the Academy in person and through its website, which encourages prospective members “to strongly consider” becoming members, promotes the benefits of membership, and provides an application for membership. *See, e.g.,* Advisory Opinion 1999-40 (Action Committee for Rural Electrification) at 8 (concluding that the organization satisfied this criterion where its website promoted benefits of membership and included a membership application).

Fifth, as required by section 114.1(e)(1)(v), the acceptance of membership to the Academy is expressly acknowledged by the College, which sends an email on the Academy’s behalf welcoming each new member and provides them a receipt for the payment made. The Academy also publicizes new members, dropped members, and retired members on its website and at its annual meeting.

Sixth, consistent with 11 C.F.R. § 114.1(e)(1)(vi), the Academy is not organized primarily for the purpose of influencing the nomination or election of any individual to federal

office; it is instead organized generally for the purpose of promoting the science of radiology and protecting the interests of radiologists. AOR002.

Accordingly, because it satisfies all criteria under applicable Commission regulations, the Academy is a membership organization.

2. *May the Academy register ALRAD PAC with the Commission as a political committee and thereafter operate ALRAD PAC's existing bank account as a single federal political committee?*

Yes, the Academy may register ALRAD PAC with the Commission as a political committee and thereafter operate ALRAD PAC's existing bank account as a single federal committee, provided that all remaining funds in the existing account at the time of registration comply with the Act and Commission regulations as described in Commission's response to Question 3, below.

As an exception to the Act's general prohibition on corporate contributions, 52 U.S.C. § 30118(a), an incorporated membership organization may establish, administer, and solicit contributions to a separate segregated fund ("SSF") to be utilized for political purposes of the corporation. 52 U.S.C. § 30118(b)(2)(C); 11 C.F.R. § 114.1(j). An SSF is a political committee, 52 U.S.C. § 30101(4)(B); 11 C.F.R. § 100.5(b), and is subject to the registration, recordkeeping, and reporting requirements of the Act and Commission regulations, as described below.

The Commission concludes that ALRAD PAC may convert to a federal political committee that would finance activities in connection with federal as well as state and local elections. The Commission has previously concluded that a fund established solely for the purpose of financing state and local election activities, *see* 11 C.F.R. § 102.1(c), may convert to a federal political committee. Advisory Opinion 1985-18 (Automobile Club of Michigan PAC); *see also* Advisory Opinion 2000-25 (Minnesota House of Representatives Democratic Farmer-Labor Caucus) ("Minnesota DFL Caucus") (concluding that an organization involved exclusively in nonfederal election-related activity may "transition" to a newly created federal political committee and transfer funds from the nonfederal account to the federal committee). Although ALRAD PAC's bylaws grant it permission to finance activities in connection with federal elections, in addition to state and local elections, the bylaws expressly state that the "intent" of such permission was "only to give [ALRAD PAC] the right and power to do so if it so chooses." AOR037. Other originating documents and solicitation materials also indicate that ALRAD PAC's purpose was limited to state and local election activity, AOR044, AOR047-049, and requestors confirm that ALRAD PAC's activities since establishment have in fact been so limited. AOR004 n.3. Thus, ALRAD PAC was formed for the purpose of financing political activity only in connection with state and local elections and is not currently an SSF. *See* Advisory Opinion 1985-18 (Automobile Club of Michigan PAC) at 1-2 (concluding that despite solicitation materials indicating that funds raised "would 'also be used for federal campaign,'" organization was not an SSF because organizing meeting minutes, officers' affidavits, and activities since establishment indicated that organization was established for purpose of participating only in state and local elections).

Under the Act and Commission regulations, ALRAD PAC's treasurer must file a Statement of Organization with the Commission no later than 10 days after implementing its proposal to convert to an SSF and before making any contributions. 52 U.S.C. §§ 30103(a) (registration of political committees), 30102 (organization of committees); 11 CFR §§ 102.1(c), 102.2; *see also* Advisory Opinion 1985-18 (Automobile Club of Michigan PAC) at 2. After registering with the Commission, ALRAD PAC must begin filing periodic reports of its receipts and disbursements. 52 U.S.C. § 30104; 11 CFR § 104.5. ALRAD PAC will also be subject to the solicitation limitations and other requirements that apply to SSFs of incorporated membership organizations. 52 U.S.C. § 30118(b); *see also* 11 C.F.R. §§ 114.5, 114.7.

ALRAD PAC wishes to operate all of its activity — federal as well as nonfederal — from one account rather than through separate federal and nonfederal accounts. Under Commission regulations, political committees, including SSFs, must either conduct all of their activities from one account that is subject to the limitations and prohibitions of the Act, or establish a separate account for federal activity that accepts only funds subject to the limitations and prohibitions of the Act. 11 C.F.R. § 102.5(a). Commission regulations thus permit ALRAD PAC to operate its federal and nonfederal activities from a single federal account, but all funds received into such an account, even funds raised exclusively for nonfederal election activity, will be subject to the limits and prohibitions of the Act. 11 C.F.R. § 102.5(a)(1)(ii).

In sum, the Academy may register ALRAD PAC with the Commission as a political committee and thereafter operate ALRAD PAC's existing bank account as a single federal political committee, provided that all remaining funds in the existing account at the time of registration comply with the Act and Commission regulations as described in Commission's response to Question 3, below.

3. *If the answer to question 2 is "yes," and if the Academy transfers out of ALRAD PAC's account the aggregate value of all payroll deduction services provided to ALRAD PAC by employers that are corporations, is the Academy permitted to retain all other cash on hand in ALRAD PAC's account following registration as a political committee?*

Yes, provided the Academy complies with the requirements described below, ALRAD PAC, upon registering with the Commission as a federal political committee, may retain the remaining portions of its cash on hand that comply with the Act and Commission regulations. As explained below, these requirements include ensuring that ALRAD PAC's cash-on-hand balance excludes: (a) funds that failed to comply with the Act's source and amount restrictions, (b) funds that were solicited in a manner that does not comply with the Act and Commission regulations, and (c) an amount equal to the usual and normal charge for payroll-deduction services provided by corporations. In addition, the Academy must provide past donors with the required notice and an opportunity to object and seek a refund.

- a. *ALRAD PAC's initial cash-on-hand balance must exclude all funds that failed to comply with the Act's source and amount restrictions*

Commission regulations require political committees that have cash on hand at time of registration to disclose on their first report the sources of such funds. 11 C.F.R. § 104.12.⁵ The request indicates that ALRAD PAC holds approximately \$510,000 that have been raised exclusively for state and local election activities. Upon converting to a federal political committee, ALRAD PAC must exclude from its cash-on hand balance any portion of the funds that were not permissible under the Act. *Id.* (citing 11 C.F.R. Parts 110, 114, and 115); *see also* Advisory Opinion 2000-25 (Minnesota DFL Caucus) at 4 (stating that a “nonfederal account intend[ing] to continue operating as a Federal political committee . . . must remove any impermissible funds from its cash on hand at the time of registration”).

In particular, the Act and Commission regulations impose a \$5,000 aggregate limit on contributions to an SSF in any calendar year. 52 U.S.C. § 30116(a)(1)(C); 11 C.F.R. § 110.1(d). As the Commission has previously explained, a newly registered political committee must exclude from its initial cash-on-hand balance contributions that exceeded the \$5,000 limit. Advisory Opinion 1990-16 (Citizens for Thompson) at 2. Here, the Academy “does not believe that any single donor has given to ALRAD PAC more than \$5,000 in the aggregate” since its establishment. AOR012. To the extent the Academy determines otherwise, it must transfer out any excess funds, *i.e.*, funds that were contributed in amounts above the \$5,000 limit, before registering ALRAD PAC as a political committee, which, as explained above, must occur no later than 10 days after the Academy establishes ALRAD PAC as an SSF. *See* 11 C.F.R. §§ 102.1(c) (requiring SSFs to register no later than 10 days after establishment), 104.12 (requiring committees that have cash-on-hand “at the time of registration” to disclose on their first report the sources of such funds); *see also* Advisory Opinion 2000-25 (Minnesota DFL Caucus) at 4 (stating that a newly established political committee must remove any impermissible funds from its cash on hand “at the time of registration”); Advisory Opinion 1990-16 (Citizens for Thompson) at 3 (concluding that a newly registered political committee had to transfer out impermissible funds “within 10 days of [the state committee] becoming a political committee”).

Under Commission regulations, SSFs may only accept contributions “from persons otherwise permitted by law to make contributions.” 11 C.F.R. § 114.5(j). The Act and Commission regulations prohibit national banks, corporations, labor organizations, federal contractors, and foreign nationals from making any contribution in connection with any federal election. 52 U.S.C. §§ 30118(a), 30119, 30121; 11 C.F.R. §§ 114.2(a), (b), 115.2(a), 110.20(b). The request affirms that ALRAD PAC “has not received any contributions” from prohibited sources, including from foreign nationals, federal contractors, labor organizations, or corporations (other than the provision of payroll deduction services from certain corporate employers of Academy members, as discussed in the answer to Question 3(c), below). AOR013.

⁵ These funds must be disclosed on FEC Form 3X and itemized on Schedule A of that form. *See* 11 C.F.R. §§ 104.2(e)(3), 104.3(a)(4). The initial cash-on-hand balance should be reported on FEC Form 3X, line 6(b) (“Cash on Hand at Beginning of Reporting Period”), and the “Memo Item” box should be checked for each itemized receipt disclosed on Schedule A.

In light of the foregoing, the Commission concludes that any donations that exceeded the \$5,000 aggregate limit or that were made by a prohibited source must be transferred out of ALRAD PAC's account before it registers as an SSF. 11 C.F.R. §§ 102.1(c), 104.12.

- b. *ALRAD PAC's initial cash-on-hand balance must exclude all funds that failed to comply with the Act's solicitation restrictions*

The Act and Commission regulations impose certain restrictions on solicitations for contributions by membership organizations to their SSFs. Such organizations may solicit contributions to their separate SSFs only from the organization's members and executive or administrative personnel, and their families. 52 U.S.C. § 30118(b)(3); 11 C.F.R. § 114.7(a). Commission regulations also permit an SSF or its connected organization to suggest a guideline for contributions, but require that any person solicited is informed: (1) of the political purposes of the fund, (2) that the guidelines are merely suggestions, (3) that the person is free to contribute more or less than the suggested amount, and (4) that the organization will not favor or disadvantage a member by reason of the amount of any person's contribution or decision not to contribute. 52 U.S.C. § 30118(b)(3); 11 C.F.R. § 114.5(a)(2)-(4); *see also* 11 C.F.R. § 114.7(g) (extending provisions of section 114.5(a) to membership organizations and their SSFs); Advisory Opinion 2012-15 (American Physical Therapy Association) ("APTA") (requiring solicitations of members to include these elements).

The request indicates that ALRAD PAC's cash on hand consists of funds raised in compliance with these requirements. In particular, the request states that "the Academy has received only *cash* contributions to ALRAD PAC from individuals who are members of the Academy." AOR011. In light of the Commission's conclusion above that all of the Academy's members qualify as "members" under Commission regulations, all such individuals were permitted to be solicited for contributions. 11 C.F.R. § 114.7(a). In addition, the request includes a sample solicitation letter, which the request represents has been used to solicit donations from the Academy's members since ALRAD PAC's inception and has "not changed in any material way" since then, AOR005, advising potential donors that: (1) their donation is voluntary, (2) the donated amount stated in the solicitation is merely a suggested guideline, (3) the Academy and ALRAD PAC will not favor or disadvantage anyone for not donating, and (4) donors have the right to refuse to donate without reprisal. AOR047. Such solicitations are consistent with the voluntary contributions requirement under 11 C.F.R. § 114.5(a).

- c. *ALRAD PAC's cash-on-hand balance must exclude the fair market value of the payroll-deduction services provided by participating corporations*

The Act and Commission regulations prohibit corporations from making contributions to federal candidates and political committees that make contributions to federal candidates. 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b). The term "contribution" includes "anything of value" given by a corporation to a political committee in connection with a federal election. 52 U.S.C. § 30118(b)(2); 11 C.F.R. § 114.1(a). "[A]nything of value" includes all in-kind contributions, including the provision of services "without charge or at a charge that is less than

the usual and normal charge,” meaning “the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.” 11 C.F.R. § 100.52(d)(1)-(2).

The request acknowledges that ALRAD PAC has received a small amount of “in-kind contributions” from the employers of its members in the form of payroll-deduction services, and that some of those employers are corporations. AOR011. Because corporate contributions to SSFs are prohibited under the Act and Commission regulations, ALRAD PAC’s initial cash-on-hand balance must exclude the fair market value of such corporate services.

The requestors propose the following plan for excluding the cost of payroll-deduction services provided by corporations: (1) the requestors would “consult with each corporation to determine the fair value of these costs, including the amount of wages of personnel involved, overhead expenses, and any other costs incurred by each corporation,” and (2) the requestors would then transfer out of ALRAD PAC’s account an amount that is “at least equal to the aggregate fair market value” of these costs and place them “into a separate account to be used for Alabama state elections only.” AOR051.

So long as the requestors exclude the “usual and normal charge” for the value of the corporate payroll deduction services, the Commission finds that this plan is permissible. But if requestors plan to operate separate federal and nonfederal accounts, rather than a single account as addressed in the response to Question 2, above, then they would need to take certain additional steps to ensure their compliance with the Act and Commission regulations. First, requestors would need to ensure that all disbursements, contributions, expenditures, and transfers “in connection with any Federal election” are made from ALRAD PAC’s federal account. 11 C.F.R. § 102.5(a)(1)(i). Second, any transfers from the nonfederal account to the federal account would be prohibited except in certain limited circumstances outlined in the regulations. *Id.* Third, certain joint expenses may need to be allocated between the two accounts. *See* 11 C.F.R. § 106.6. And fourth, allocated expenses may be subject to reporting requirements. *See* 11 C.F.R. § 104.10.

d. The Academy must provide notice to donors and give them an opportunity to object and seek a refund

Commission regulations impose certain restrictions on political committees that finance activities in connection with both federal and nonfederal elections. As relevant here, such committees must maintain a federal account that may only accept contributions that meet any of the following conditions: (i) contributions designated for the federal account, (ii) contributions that result from a solicitation which expressly states that the contributions will be used in connection with a federal election, or (iii) contributions from contributors who are informed that all contributions are subject to the prohibitions and limitations of the Act. 11 C.F.R. § 102.5(a)(2). In past advisory opinions, the Commission has concluded that a state SSF converting to a federal SSF may satisfy the requirements of section 102.5(a)(2) by providing donors with notice of the proposed change in use of their funds and opportunity to object to the new intended use of such funds. Advisory Opinion 1985-18 (Automobile Club of Michigan

PAC) at 3; *see also* Advisory Opinion 2000-25 (Minnesota DFL Caucus) at 3 (concluding that a state committee converting to a federal committee may satisfy this requirement by informing the donors of the proposed change in writing and receiving a written redesignation request from the donors before depositing their funds into the federal account).

Here, the request states that the Academy will notify ALRAD PAC's past and present donors in writing that: (1) ALRAD PAC will convert to a federal political committee, (2) donors' unspent donations will be used in connection with a federal election, (3) donors' unspent donations will be subject to the Act's limits and prohibitions, and (4) donors may object to such use without reprisal and obtain a refund of the donors' unspent funds. AOR012. Such notice is consistent with 11 C.F.R. § 102.5(a)(2) and past advisory opinions applying that rule. Upon registering as a federal political committee ALRAD PAC must exclude from its initial cash-on-hand balance any refunds sought by the donors.

In sum, provided the Academy complies with the requirements described above, ALRAD PAC may, upon registering with the Commission as a federal political committee, retain the remaining portions of its cash on hand that comply with the Act and Commission regulations.

4. *May the Academy solicit future contributions using its existing payroll deduction program?*

Yes, the Academy and ALRAD PAC may solicit future contributions using its existing payroll-deduction program after the Academy implements its proposed amendments.

In addition to the prohibition on corporate contributions, Commission regulations generally prohibit corporations from facilitating the making of contributions to candidates or political committees, other than to the corporations' SSFs. 11 C.F.R. § 114.2(f)(2). "Facilitation" means using corporate resources to engage in fundraising activities in connection with any federal election. *Id.* Fundraising activity includes "[p]roviding materials for the purpose of transmitting or delivering contributions, such as stamps, envelopes addressed to a candidate or political committee other than the corporation's or labor organization's [SSF], or other similar items which would assist in transmitting or delivering contributions, but not including providing the address of the candidate or political committee." 11 C.F.R. § 114.2(f)(2)(ii).

Under the requestors' proposal, the participating corporations would use corporate resources to deduct employees' contributions from their payrolls and transmit them to ALRAD PAC. Using corporate resources to engage in fundraising activities in connection with a federal election would constitute facilitating the making of contributions to a political committee under 11 C.F.R. § 114.2(f)(1), unless the corporations receive advance payment for the fair market value of such services. 11 C.F.R. § 114.2(f)(2)(i)(A). Here, the requestors represent that the Academy will pay "in advance, on an ongoing basis, for the full value of all payroll deduction services provided by such corporations to ALRAD PAC." AOR014. Accordingly, the Commission concludes that this proposal is permissible under the Act and Commission regulations. *See* Advisory Opinion 2012-15 (APTA) (concluding that corporate employers of

members of membership organization may deduct voluntary contributions from member-employees' payroll and forward to membership organization's SSF so long as membership organization or SSF pays corporations in advance fair market value of their services).

Commission regulations also impose certain requirements on the content of SSF solicitations. *See* 11 C.F.R. § 114.5(a)(2)-(5); *see also* Advisory Opinion 2012-15 (APTA) (requiring the membership organization and its SSF instituting a similar payroll deduction plan to abide by these requirements). As described above, the solicitation must inform donors of the SSF's political purpose and of their right to refuse to contribute to the SSF without reprisal. 11 C.F.R. § 114.5(a)(3)-(5). Any suggested guidelines for contribution amounts must inform the donor that the guideline is merely a suggestion, the donor is free to contribute more or less than the guideline suggests, and that the corporation will not favor or disadvantage anyone because of the amount of their contribution or their decision not to contribute. 11 CFR § 114.5(a)(2), (5). Further, political committees generally are required to make their "best efforts" to gather information about contributors, and to include in solicitations "a clear request for the contributor's full name, mailing address and name of employer, and . . . an accurate statement of Federal law regarding the collection and reporting of individual contributor identifications." 11 CFR § 104.7(b)(1)(i). The requestors here represent that the Academy will revise its current solicitation letter and authorization forms, *see* AOR047-050, to conform to these requirements.

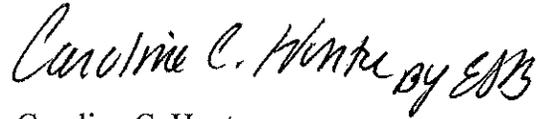
Finally, every person receiving a contribution of \$50 or less for an unauthorized political committee must forward it to the treasurer of the committee no later than 30 days after receipt; for contributions of more than \$50, the person must forward the contribution and the required information no later than 10 days after receipt. 11 C.F.R. § 102.8(b). The requestors represent that they will abide by these requirements. AOR015.

The Commission thus concludes that requestors' plan satisfies the requirements of the Act and Commission regulations concerning the proposed payroll-deduction program, and, accordingly, the Academy may use its proposed payroll-deduction program to solicit contributions.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestors may not rely on that conclusion as support for their proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes,

regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,

A handwritten signature in black ink that reads "Caroline C. Hunter" followed by a stylized signature of "EBB".

Caroline C. Hunter
Chair