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For meeting of April 26, 2018
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April 20, 2018

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS*
Acting General Counsel

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Acting Associate General Counsel

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Acting Assistant General Counsel

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Attorney

Subject: AO 2018-02 (Alabama Academy of Radiology and ALRAD PAC)
Draft A

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 pm (Eastern Time) on April 25, 2018.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <https://www.fec.gov/legal-resources/advisory-opinions-process/>

Attachment

1 ADVISORY OPINION 2018-02

2

3 Richard L. McBride Jr., Esq.

4 McBride Law, LLC

5 1784 Taliaferro Trail

6 Suite B

7 Montgomery, AL 36117

8

DRAFT A

9 Dear Mr. McBride:

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

22 **Background**

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

1 *Membership of the Academy*

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

14 All of the Academy’s current and former members are individuals, and the Academy
15 “actively solicits” their membership in person and through its website, which “encourage[s]
16 [prospective members] to strongly consider becoming a member” of the Academy, describes the
17 benefits of membership, and provides an application to prospective members. AOR004; *see*
18 *How to Become a Member of the AAR, Alabama Academy of*
19 *Radiology*, <http://www.alarad.org/index.php?id=7>. To become a member of the Academy, an
20 individual must complete a written application and meet certain professional qualifications.
21 AOR003, AOR027-029.¹ The Academy and College use a joint system for processing

¹ All members must be involved in the practice of radiology, be certified as a physicist by the American

1 membership applications and thus prospective members generally apply jointly to the Academy
2 and the College, although individuals may apply solely to the Academy. AOR003. On joint
3 applications, the College determines whether the individual has met the qualifications for
4 membership in both organizations, collects the individual's dues, and sends the Academy its
5 portion of the dues along with the membership information for the individual. AOR003,
6 AOR029. The College also acknowledges by email the individual's acceptance of membership
7 to the College and the Academy. AOR003. If the College determines that an individual has not
8 met the qualifications for membership in both organizations, the College forwards the
9 individual's application materials to the Academy for further evaluation and a final decision. *Id.*

10 According to its bylaws, the Academy has nine classes of members: (1) Full Members,
11 (2) State Chapter Members, (3) Associate Members, (4) Associate State Chapter Members,
12 (5) Members in Physics, (6) Associate Members in Physics, (7) Members in Training/Members
13 in Training in Physics, (8) Retired/Inactive Members, and (9) Affiliate Members. AOR003,
14 AOR027-028.² All members have the right to review and receive copies of the Academy's
15 Articles of Incorporation and Bylaws. AOR004. The professional qualifications required for
16 membership, as well as the rights and benefits conferred upon members, differ according to the
17 membership class. Full Members, State Chapter Members, Members in Physics, and Affiliate
18 Members have the right to be appointed to committees, vote, and hold office in the Academy.

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.

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.

1 AOR027-028. Associate Members, Associate Members in Physics, Associate State Chapter
2 Members, and Members in Training/Members in Training in Physics may not vote or hold office,
3 but they may be appointed to committees. *Id.* Retired or Inactive Members may not vote or be
4 appointed to committees. AOR028. All members, except Retired/Inactive members and
5 Members in Training, are required to pay annual dues in the amount of \$150. AOR004,
6 AOR034. The Academy currently has 523 members, of which 326 are Full Members, 13 are
7 Physicist Members, 101 are Members in Training, and 83 are Retired/Inactive Members.
8 AOR004.

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

16 *ALRAD PAC Activities*

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

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

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

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

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

1 member must write a check to ALRAD PAC and deliver it to ALRAD PAC either by mail or
2 hand delivery. AOR005.

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

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

1 **Questions Presented**

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

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

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

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

12 **Legal Analysis and Conclusions**

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

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

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

17 (1) Is composed of members, some or all of whom are vested with the power and
18 authority to operate or administer the organization, pursuant to the organization's articles,
19 bylaws, constitution or other formal organizational documents;

20 (2) Expressly states the qualifications and requirements for membership in its articles,
21 bylaws, constitution or other formal organizational documents;

- 1 (3) Makes its articles, bylaws, constitution, or other formal organizational documents
2 available to its members;
- 3 (4) Expressly solicits persons to become members;
- 4 (5) Expressly acknowledges the acceptance of membership, such as by sending a
5 membership card or including the member’s name on a membership newsletter list; and
- 6 (6) Is not organized primarily for the purpose of influencing the nomination for
7 election, or election, of any individual to federal office.

8 11 C.F.R. § 114.1(e)(1); *see also* 11 C.F.R. § 100.134(e). The Academy satisfies all six criteria
9 and thus is a membership organization under Commission regulations.

10 First, the Academy is composed of members, some of whom are vested with the power
11 and authority to operate and administer the organization. Commission regulations define
12 “member” to include all persons who satisfy the requirements for membership in a membership
13 organization, affirmatively accept the membership organization’s invitation to become a
14 member, and either (i) have some significant financial attachment to the membership
15 organization, such as a significant investment or ownership stake; (ii) pay membership dues at
16 least annually, of a specific amount predetermined by the organization; or (iii) have a significant
17 organizational attachment to the membership organization. 11 C.F.R. §§ 114.1(e)(2)(i)-(iii),
18 100.134(f)(1)-(3). Commission regulations further permit the Commission to determine, on a
19 case-by-basis, that persons who do not precisely meet these requirements, but who “have a
20 relatively enduring and independently significant financial or organizational attachment to the
21 organization,” may be considered “members.” 11 C.F.R. §§ 114.1(e)(3), 100.134(g).⁴

⁴ Commission regulations do not require that all members of an organization have the power and authority to

1 Commission regulations specifically note that “student members who pay a lower amount of
2 dues while in school, long term dues paying members who qualify for lifetime membership
3 status with little or no dues obligation, and retired members of the organization may be
4 considered members for purposes of these rules.” 11 C.F.R. §§ 114.1(e)(3), 100.134(g).

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

11 The remaining five classes of membership may not vote or hold office and thus do not
12 have the power and authority to operate and administer the Academy. Nonetheless, individuals
13 in these other membership classes are “members” under the Commission’s definition. Associate
14 Members, Associate Members in Physics, and Associate State Chapter Members must satisfy the
15 Academy’s professional criteria, affirmatively accept an invitation to join the Academy, and pay
16 annual dues. These individuals thus satisfy the Commission’s definition of “member” under
17 11 C.F.R. §§ 114.1(e)(2) and 100.134(f). In addition, individuals who are in training, retired, or
18 whose membership status is inactive also satisfy the Commission’s “membership” standard
19 under the case-by-case approach for individuals who do not “precisely meet the requirements.”
20 Commission regulations expressly recognize that retired members of an organization may be

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).

1 considered as “members.” 11 C.F.R. §§ 114.1(e)(3), 100.134(g); *see also* Advisory Opinion
2 2011-08 (American Society of Anesthesiologists) at 5 (concluding that “Retired Members” of an
3 organization were “members” under Commission regulations). The Commission also previously
4 concluded that an organization’s “Members-in-Training” who lacked voting rights and were not
5 required to pay dues nevertheless qualified as “members.” *See* Advisory Opinion 2003-13
6 (American Academy of Ophthalmology) at 5. In reaching that conclusion, the Commission
7 underscored that the individuals were “subject to sanctions” by the organization and that upon
8 the successful completion of their training — a residency program for ophthalmologists — they
9 were invited to join the organization. *Id.*

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

18 The Commission also previously concluded that individuals who were “inactive” but
19 retained the right to be reinstated as active members qualified as “members” even though they
20 lacked voting rights and were not required to pay dues. *See* Advisory Opinion 2011-08
21 (American Society of Anesthesiologists) at 6-7. The Commission emphasized that such
22 individuals “have a reversionary interest in that they must be reinstated as Active Members if

1 they returned to practice and wish to maintain membership in [the organization],” and that such
2 individuals continued to receive other membership benefits and were subject to sanction by the
3 organization. *Id.* at 7. Like the inactive members at issue in Advisory Opinion 2011-08, the
4 Academy’s Inactive Members are “temporarily unable to continue their practice,” AOR028, but
5 their full rights and obligations, including the requirement to pay dues, will revert once their
6 temporary inactive status ends. The Academy’s inactive members also continue to have access
7 to membership resources and remain subject to the Academy’s disciplinary actions. The
8 temporary inactive status of such individuals thus does not negate their enduring and significant
9 attachment to the Academy.

10 Second, as required by section 114.1(e)(1)(ii) and described above, the Academy’s
11 bylaws expressly state the requirements for membership. AOR0027-028.

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

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

20 Fifth, as required by section 114.1(e)(1)(v), the acceptance of membership to the
21 Academy is expressly acknowledged by the College, which sends an email on the Academy’s
22 behalf welcoming each new member and provides them a receipt for the payment made. The

1 Academy also publicizes new members, dropped members, and retired members on its website
2 and at its annual meeting.

3 Sixth, consistent with 11 C.F.R. § 114.1(e)(1)(vi), the Academy is not organized
4 primarily for the purpose of influencing the nomination or election of any individual to federal
5 office; it is instead organized generally for the purpose of promoting the science of radiology and
6 protecting the interests of radiologists. AOR002.

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

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

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

17 As an exception to the Act's general prohibition on corporate contributions, 52 U.S.C.
18 § 30118(a), an incorporated membership organization may establish, administer, and solicit
19 contributions to a separate segregated fund ("SSF") to be utilized for political purposes of the
20 corporation. 52 U.S.C. § 30118(b)(2)(C); 11 C.F.R. § 114.1(j). An SSF is a political committee,
21 52 U.S.C. § 30101(4)(B); 11 CFR § 100.5(b), and is subject to the registration, recordkeeping,
22 and reporting requirements of the Act and Commission regulations, as described below.

1 The Commission concludes that ALRAD PAC may convert to a federal political
2 committee that would finance activities in connection with federal as well as state and local
3 elections. The Commission has previously concluded that a fund established solely for the
4 purpose of financing state and local election activities, *see* 11 C.F.R. § 102.1(c), may convert to a
5 federal political committee. Advisory Opinion 1985-18 (Automobile Club of Michigan PAC);
6 *see also* Advisory Opinion 2000-25 (Minnesota House of Representatives Democratic Farmer-
7 Labor Caucus) (“Minnesota DFL Caucus”) (concluding that an organization involved
8 exclusively in nonfederal election-related activity may “transition” to a newly created federal
9 political committee and transfer funds from the nonfederal account to the federal committee).
10 Although ALRAD PAC’s bylaws grant it permission to finance activities in connection with
11 federal elections, in addition to state and local elections, the bylaws expressly state that the
12 “intent” of such permission was only to give [ALRAD PAC] the right and power to do so if it so
13 chooses.” AOR037. Other originating documents (AOR044) and solicitation materials
14 (AOR047-49) also indicate that ALRAD PAC’s purpose was limited to state and local election
15 activity, and requestors confirm that ALRAD PAC’s activities since establishment have in fact
16 been so limited (AOR004 n.3). Thus, ALRAD PAC was formed for the purpose of financing
17 political activity only in connection with state and local elections and is not currently an SSF.
18 *See* Advisory Opinion 1985-18 (Automobile Club of Michigan PAC) at 1-2 (concluding that
19 despite solicitation materials indicating that funds raised “would ‘also be used for federal
20 campaign,’” organization was not an SSF because organizing meeting minutes, officers’
21 affidavits, and activities since establishment indicated that organization was established for
22 purpose of participating only in state and local elections).

1 Under the Act and Commission regulations, ALRAD PAC’s treasurer must file a
2 Statement of Organization with the Commission no later than 10 days after implementing its
3 proposal to convert to a separate segregated fund and before making any contributions.
4 52 U.S.C. §§ 30103(a) (registration of political committees), 30102 (organization of
5 committees); 11 CFR §§ 102.1(c), 102.2; *see also* Advisory Opinion 1985-18 (Automobile Club
6 of Michigan PAC) at 2. After registering with the Commission, ALRAD PAC must begin filing
7 periodic reports of its receipts and disbursements. 52 U.S.C. § 30104; 11 CFR § 104.5. ALRAD
8 PAC will also be subject to the solicitation limitations and other requirements that apply to SSFs
9 of incorporated membership organizations. 52 U.S.C. § 30118(b); *see also* 11 C.F.R. §§ 114.5,
10 114.7.

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

20 In sum, the Academy may register ALRAD PAC with the Commission as a political
21 committee and thereafter operate ALRAD PAC’s existing bank account as a single federal
22 political committee, provided that all remaining funds in the existing account at the time of

1 registration comply with the Act and Commission regulations as described in Commission's
2 response to question 3 below.

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

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

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

18 Commission regulations require political committees that have cash on hand at time of
19 registration to disclose on their first report the sources of such funds. 11 C.F.R. § 104.12.⁵ The
20 request indicates that ALRAD PAC holds approximately \$510,000 that have been raised

⁵ These funds must be disclosed on FEC Form 3X and itemized on Schedule A of that form. 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.

1 exclusively for state and local election activities. Upon converting to a federal political
2 committee, ALRAD PAC must exclude from its cash-on hand balance any portion of the funds
3 that were not permissible under the Act. *Id.* (citing 11 C.F.R. Parts 110, 114, and 115); *see also*
4 Advisory Opinion 2000-25 (Minnesota DFL Caucus) at 4 (stating that a “nonfederal account
5 intend[ing] to continue operating as a Federal political committee . . . must remove any
6 impermissible funds from its cash on hand at the time of registration”).

7 In particular, the Act and Commission regulations impose a \$5,000 aggregate limit on
8 contributions to an SSF in any calendar year. 52 U.S.C. § 30116(a)(1)(C); 11 C.F.R. § 110.1(d).
9 As the Commission has previously explained, a newly registered political committee must
10 exclude from its initial cash-on-hand balance contributions that exceeded the \$5,000 limit.
11 Advisory Opinion 1990-16 (Thompson) at 2. Here, the Academy “does not believe that any
12 single donor has given to ALRAD PAC more than \$5,000 in the aggregate” since its
13 establishment. AOR012. To the extent the Academy determines otherwise, it must transfer out
14 any excess funds, *i.e.*, funds that were contributed in amounts above the \$5,000 limit, before
15 registering ALRAD PAC as a political committee, which, as explained above, must occur no
16 later than 10 days after the Academy establishes ALRAD PAC as an SSF. *See* 11 C.F.R.
17 §§ 120.1(c) (requiring SSFs to register no later than 10 days after establishment), 104.12
18 (requiring committees that have cash-on-hand “at the time of registration” to disclose on their
19 first report the sources of such funds); *see also* Advisory Opinion 2000-25 (Minnesota DFL
20 Caucus) at 4 (stating that a newly established political committee must remove any
21 impermissible funds from its cash on hand “at the time of registration”); Advisory Opinion 1990-

1 16 (Thompson) at 3 (concluding that a newly registered political committee had to transfer out
2 impermissible funds “within 10 days of [the state committee] becoming a political committee”).

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

12 In light of the foregoing, the Commission concludes that any donations that exceeded the
13 \$5,000 aggregate limit or that were made by a prohibited source must be transferred out of
14 ALRAD PAC’s account before it registers as an SSF. 11 C.F.R. §§ 102.1(c), 104.12.

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

17 The Act and Commission regulations impose certain restrictions on solicitations for
18 contributions by membership organizations to their SSFs. Such organizations may solicit
19 contributions to their separate SSFs only from the organization’s members and executive or
20 administrative personnel, and their families. 52 U.S.C. § 30118(b)(3); 11 C.F.R. § 114.7(a).
21 Commission regulations also permit an SSF or its connected organization to suggest a guideline
22 for contributions, but require that any person solicited is informed (1) of the political purposes of

1 the fund, (2) that the guidelines are merely suggestions, (3) that the person is free to contribute
2 more or less than the suggested amount, and (4) that the organization will not favor or
3 disadvantage a member by reason of the amount of any person's contribution or decision not to
4 contribute. 52 U.S.C. § 50118(b)(3); 11 C.F.R. § 114.5(a)(2)-(4); *see also* 11 C.F.R. § 114.7(g)
5 (extending provisions of section 114.5(a) to membership organizations and their SSFs); Advisory
6 Opinion 2012-15 (American Physical Therapy Association) ("APTA") (requiring solicitations of
7 members to include these elements).

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

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

1 The Act and Commission regulations prohibit corporations from making contributions to
2 federal candidates and political committees that make contributions to federal candidates.
3 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b). The term “contribution” includes “anything of
4 value” given by a corporation to a political committee in connection with a federal election.
5 52 U.S.C. § 30118(b)(2); 11 C.F.R. § 114.1(a). “[A]nything of value” includes all in-kind
6 contributions, including the provision of services “without charge or at less than the usual and
7 normal charge,” meaning “the hourly or piecework charge for the services at a commercially
8 reasonable rate prevailing at the time the services were rendered.” 11 C.F.R. § 100.52(d)(1)-(2).

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

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

21 So long as the requestors exclude the “usual and normal charge” for the value of the
22 corporate payroll deduction services, the Commission finds that this plan is permissible. But if

1 requestors plan to operate separate federal and nonfederal accounts, rather than a single account
2 as addressed in the response to Question 2, above, then they would need to take certain
3 additional steps to ensure their compliance with the Act and Commission regulations. First,
4 requestors would need to ensure that all disbursements, contributions, expenditures, and transfers
5 “in connection with any Federal election” are made from ALRAD PAC’s federal account. 11
6 C.F.R. § 102.5(a)(1)(i). Second, any transfers from the nonfederal account to the federal account
7 would be prohibited except in certain limited circumstances outlined in the regulations. *Id.*
8 Third, certain joint expenses may need to be allocated between the two accounts. *See* 11 C.F.R.
9 § 106.6. And fourth, allocated expenses may be subject to reporting requirements. *See* 11
10 C.F.R. § 104.10.

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

13 Commission regulations impose certain restrictions on political committees that finance
14 activities in connection with both federal and nonfederal elections. As relevant here, such
15 committees must maintain a federal account that may only accept contributions that meet any of
16 the following conditions: (i) contributions designated for the federal account; (ii) contributions
17 that result from a solicitation which expressly states that the contributions will be used in
18 connection with a federal election; or (iii) contributions from contributors who are informed that
19 all contributions are subject to the prohibitions and limitations of the Act. 11 C.F.R.
20 § 102.5(a)(2). In past advisory opinions, the Commission has concluded that a state SSF
21 converting to a federal SSF may satisfy the requirements of section 102.5(a)(2) by providing
22 donors with notice of the proposed change in use of their funds and opportunity to object to the

1 new intended use of such funds. Advisory Opinion 1985-18 (Automobile Club of Michigan
2 PAC) at 3; *see also* Advisory Opinion 2000-25 (Minnesota DFL Caucus) at 3 (concluding that a
3 state committee converting to a federal committee may satisfy this requirement by informing the
4 donors of the proposed change in writing and receiving a written redesignation request from the
5 donors before depositing their funds into the federal account).

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

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

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

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

21 In addition to the prohibition on corporate contributions, Commission regulations
22 generally prohibit corporations from facilitating the making of contributions to candidates or

1 political committees, other than to the corporations' SSFs. 11 C.F.R. § 114.2(f)(2).
2 "Facilitation" means using corporate resources to engage in fundraising activities in connection
3 with any federal election. *Id.* Fundraising activity includes "[p]roviding materials for the
4 purpose of transmitting or delivering contributions, such as stamps, envelopes addressed to a
5 candidate or political committee other than the corporation's or labor organization's [SSF], or
6 other similar items which would assist in transmitting or delivering contributions, but not
7 including providing the address of the candidate or political committee." 11 C.F.R.
8 § 114.2(f)(2)(ii).

9 Under the requestors' proposal, the participating corporations would use corporate
10 resources to deduct employees' contributions from their payrolls and transmit them to ALRAD
11 PAC. Using corporate resources to engage in fundraising activities in connection with a federal
12 election would constitute facilitating the making of contributions to a political committee under
13 11 C.F.R. § 114.2(f)(1), unless the corporations receive advance payment for the fair market
14 value of such services. 11 C.F.R. § 114.2(f)(2)(i)(A). Here, the requestors represent that the
15 Academy will pay "in advance, on an ongoing basis, for the full value of all payroll deduction
16 services provided by such corporations to ALRAD PAC." AOR014. Accordingly, the
17 Commission concludes that this proposal is permissible under the Act and Commission
18 regulations. *See* Advisory Opinion 2012-15 (APTA) (concluding that corporate employers of
19 members of membership organization may deduct voluntary contributions from member-
20 employees' payroll and forward to membership organization's SSF so long as membership
21 organization or SSF pays corporations in advance fair market value of their services).

1 Commission regulations also impose certain requirements on the content of SSF
2 solicitations. *See* 11 C.F.R. § 114.5(a)(2)-(5); *see also* Advisory Opinion 2012-15 (APTA)
3 (requireing the membership organization and its SSF instituting a similar payroll deduction plan
4 to abide by these requirements). As described above, the solicitation must inform donors of the
5 SSF’s political purpose and of their right to refuse to contribute to the SSF without reprisal.
6 11 C.F.R. § 114.5(a)(3)-(5). Any suggested guidelines for contribution amounts must inform the
7 donor that the guideline is merely a suggestion, the donor is free to contribute more or less than
8 the guideline suggests, and that the corporation will not favor or disadvantage anyone because of
9 the amount of their contribution or their decision not to contribute. 11 CFR § 114.5(a)(2), (5).
10 Further, political committees generally are required to make their “best efforts” to gather
11 information about contributors, and to include in solicitations “a clear request for the
12 contributor’s full name, mailing address and name of employer, and . . . an accurate statement of
13 Federal law regarding the collection and reporting of individual contributor identifications.”
14 11 CFR § 104.7(b)(1)(i). The requestors here represent that the Academy will revise its current
15 solicitation letter and authorization forms, *see* AOR047-AOR050, to conform to these
16 requirements.

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

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

5 This response constitutes an advisory opinion concerning the application of the Act and
6 Commission regulations to the specific transaction or activity set forth in your request. *See*
7 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or
8 assumptions presented, and such facts or assumptions are material to a conclusion presented in
9 this advisory opinion, then the requestors may not rely on that conclusion as support for their
10 proposed activity. Any person involved in any specific transaction or activity which is
11 indistinguishable in all its material aspects from the transaction or activity with respect to which
12 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.
13 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be
14 affected by subsequent developments in the law including, but not limited to, statutes,
15 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available
16 on the Commission’s website.

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On behalf of the Commission,

Caroline C. Hunter,
Chair