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## Reporting

### **First Class and Parcel Mail Delivery Suspended**

Due to an equipment malfunction at its New Jersey irradiation facility, the U. S. Postal Service (USPS) has temporarily suspended first class and parcel mail delivery to the Federal Election Commission (FEC) and other government agencies in the 202xx to 205xx zip code areas. The USPS is working to resolve the issue, but there will be a temporary interruption in deliveries to the affected agencies.

During this disruption, time-sensitive documents -- such as FEC reports -- should be sent to the Commission by some means other than first class mail. Alternative methods include hand delivery, USPS Express Mail and overnight delivery services. Please note, the Secretary of the Senate's post office box is located outside the affected area, so Senate filers may continue to submit their FEC reports by first class mail.

The Commission will post updates on this situation online at [www.fec.gov](http://www.fec.gov). For additional information, please call the FEC's Information Division at 800-424-9530 (press 6 when prompted).

*(Posted 6/21/13)*

### **New Jersey Special Election Reporting: Senate**

New Jersey will hold Special Primary and General elections to fill the U.S. Senate seat of the late Senator Frank R. Lautenberg. The Special Primary will be held on August 13, 2013, and the Special General will be held October 16, 2013.

Candidate committees involved in these elections must follow the reporting schedule posted at [http://www.fec.gov/pages/report\\_notices/2013/njsen.shtml](http://www.fec.gov/pages/report_notices/2013/njsen.shtml). That schedule also applies to PACs and party committees that file on a semi-annual basis in 2013 and participate in these elections. PACs and party committees that file monthly should continue to file according to their regular filing schedule.

## **Filing Electronically**

U.S. Senate committees file with the Secretary of the Senate and are not subject to the FEC's mandatory electronic filing rules, but may file an unofficial copy of their reports with the Commission in order to speed disclosure. For other political committees, reports filed electronically must be received and validated by the Commission by 11:59 p.m. Eastern Time on the applicable filing deadline. Electronic filers who instead file on paper or submit an electronic report that does not pass the Commission's validation program by the filing deadline will be considered nonfilers and may be subject to enforcement actions, including administrative fines.

## **Timely Filing for Paper Filers**

*Registered and Certified Mail.* Reports sent by registered or certified mail must be post-marked on or before the mailing deadline to be considered timely filed. A committee sending its reports by certified mail should keep its certified mailing receipt with the U.S. Postal Service (USPS) postmark as proof of filing because the USPS does not keep complete records of items sent by certified mail. A committee sending its report by registered mail should keep its proof of mailing. Note that a certificate of mailing from the USPS is not sufficient to prove that a report is timely filed using registered, certified or overnight mail. 2 U.S.C. §434(a)(5) and 11 CFR 100.19 and 104.5(e) and (i).

*Overnight Mail.* Reports filed via overnight mail [fn1] will be considered timely filed if the report is received by the delivery service on or before the mailing deadline. A committee sending its reports by Express or Priority Mail, or by an overnight delivery service, should keep its proof of mailing or other means of transmittal of its reports. 2 U.S.C. §434(a)(5) and 11 CFR 100.19 and 104.5(e).

*Other Means of Filing.* Reports sent by other means—including first class mail and courier—must be received before the Secretary of the Senate Public Records Office's or the Commission's close of business on the filing deadline. 11 CFR 100.19 and 104.5(e).

Forms are available for downloading and printing at the FEC's website (<http://www.fec.gov/info/forms.shtml>) and from FEC Faxline, the agency's automated fax system (202/501-3413).

## **48-Hour Contribution Notices**

A participating candidate's principal campaign committee must file a 48-hour notice each time it receives a contribution of \$1,000 or more between July 25 and August 10 for the Special Primary and between September 27 and October 13 for the Special General.

## **24- and 48-Hour Reports of Independent Expenditures**

Political committees and other persons must file 24-hour reports of independent expenditures that aggregate at or above \$1,000 between July 25 and August 11 for the Special Primary and between September 27 and October 14 for the Special General. This requirement is in addition to that of filing 48-hour reports of independent expenditures that aggregate \$10,000 or more during the calendar year up to and including the 20th day before an election. The 48-hour reporting requirement applies to independent expenditures that aggregate at or above \$10,000 prior to July 25 for the Special Primary. For the Special

General, the 48-hour reporting requirement applies to independent expenditures that aggregate at or above \$10,000 prior to September 27.

### **Electioneering Communications**

The 30-day electioneering communications period in connection with the Special Primary runs from July 14 through August 13. The 60-day electioneering communications period in connection with the Special General runs from August 17 through October 16.

### **Disclosure of Lobbyist Bundling Activity**

Campaign committees, party committees and leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from any lobbyist/registrant or lobbyist/registrant PAC that aggregate in excess of \$17,100 during the special election reporting periods. 11 CFR 104.22(a)(5)(v) and (b). For more information on these requirements, see the [March 2009 Record](#).

*1/ "Overnight mail" includes Priority or Express Mail having a delivery confirmation, or an overnight service with which the report is scheduled for next business day delivery and is recorded in the service's on-line tracking system.*

*(Posted 06/26/13; By: Katherine Carothers)*

### **Resources:**

- [New Jersey Senate Special Election Prior Notice](#)
- [2013 Reporting Dates](#)
- [New Jersey Senate Special Election Compliance Page](#)
- [Federal Register notice](#)

## **Litigation**

### ***Wagner Ruling Holds Constitutional Questions Must Be Heard En Banc***

On May 31, 2013, a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit concluded that the Federal Election Campaign Act (the Act) denied the district court and that panel jurisdiction to consider the constitutional questions in *Wagner v. FEC*. The court vacated the lower court's judgment and remanded the case to the district court to comply with the Act's judicial review provision at 2 U.S.C. § 437h.

### **Background**

The Act prohibits federal government contractors from making contributions, either directly or indirectly, to any political party, committee or candidate for public office, or to

any person for any political purpose or use. 2 U.S.C. § 441c. In *Wagner v. FEC*, three federal contractors challenge § 441c as violating the First Amendment and the Equal Protection guarantee of the Fifth Amendment. On November 2, 2012, the U.S. District Court for the District of Columbia upheld the federal contractor ban and concluded that Congress had the authority to prohibit contributions from all federal contractors.

## **Analysis**

On appeal, the U.S. Court of Appeals for the District of Columbia Circuit noted a potential jurisdictional infirmity. The amended complaint had invoked ordinary federal question jurisdiction, but the Court questioned whether 2 U.S.C. § 437h, one of the Act's judicial review provisions, vests exclusive jurisdiction over constitutional claims such as those made by plaintiffs in the *en banc* court of appeals, thereby stripping the panel of jurisdiction. Under § 437h, the FEC, national party committees and individual voters may institute an action in a federal district court to construe the constitutionality of any provision of the Act, and the district court must certify all questions of the Act's constitutionality to the U.S. Court of Appeals, "which shall hear the matter sitting *en banc*."

In the end, the court determined that the text of § 437h is a grant of exclusive jurisdiction to the *en banc* court of appeals for any constitutional challenge initiated by a party in one of the three categories enumerated in the statute. It concluded that § 437h, when read within the context of its underlying legislative purpose (the vindication of the public's interest in the expeditious resolution of constitutional challenges to the Act), makes clear that the enumerated parties may bring actions challenging the Act's constitutionality only under that section.

The Court therefore held that both the district court and the panel lacked jurisdiction to decide the constitutional questions and that the district court's role was simply to find facts and certify any non-frivolous constitutional questions to the *en banc* court of appeals. It *sua sponte* vacated and remanded the case to the district court to comply with the judicial review procedures set forth in § 437h.

On June 5, 2013, the district court entered an order issuing its findings of fact and certifying constitutional questions to the *en banc* court of appeals.

*(Posted 06/12/13; By: Zainab Smith)*

## **Resources:**

- [Wagner v. FEC \(Case 12-5365\) litigation page](#)
- [Appeals court opinion](#) [PDF]
- [Per curiam judgment](#) [PDF]

# Outreach

## Trade Association Solicitations

This article answers frequently asked questions regarding FEC rules for trade associations and their PACs.

### Trade Associations and the Restricted Class

#### ***What is a trade association?***

An organization is a trade association under FEC regulations if it is a membership organization whose members are engaged in a similar or related line of commerce or business (i.e., all the members of the organization are in the same industry) and if the organization promotes and tries to improve the business conditions of its membership. 11 CFR 114.8(a).

#### ***Who is a member?***

Generally, a member of a trade association is an individual or other entity that:

- Satisfies the requirements for membership by the trade association;
- Affirmatively accepts the association's invitation to become a member; and
- Maintains a relationship with the trade association in one of the following ways:
- Has a significant financial attachment to the association; or
- Pays annual dues set by the association; or
- Has significant organizational attachment to the association that includes:
  - Affirmation of membership on annual basis (e.g., meeting or responding to a survey); for example, direct participatory rights in the governance of the association (e.g., right to vote directly or indirectly for at least one individual on the highest governing board; right to vote on policy questions; or the right to approve the association's annual budget. See, e.g., [Advisory Opinion \(AOs\) 2003-13](#) (American Academy of Ophthalmology), [2000-15](#) (Credit Union National Association, Inc., the New York State Credit Union League, Inc., and the Credit Union Legislative Action Committee, [2000-04](#) (National Association of Federal Credit Unions) and [1999-40](#) (National Rural Electric Cooperative Association and the Action Committee for Rural Electrification).

11 CFR 114.1(e)(2).

Note that the Commission may determine, on a case-by-case basis, that individuals or other entities who do not precisely meet the requirements of the general rule above, but who have a relatively enduring and independently significant financial or organizational attachment to the organization, may be considered members of the association. For example, 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. 11 CFR 114.1(e)(3).

### ***Who is in the restricted class for PAC solicitations?***

A trade association's PAC may solicit:

- Noncorporate members (such as individuals and partnerships) of the association;
- The association's executive and administrative personnel and their families; and
- Executive and administrative personnel and stockholders of member corporations, and their families (with prior approval).

11 CFR 114.5(g)(1), 114.7(a) and 114.8(e).

### **Prior Approval**

#### ***What is prior approval?***

Before soliciting the executive or administrative staff and stockholders of a corporate member, a trade association must request and receive the member corporation's permission to do so. This written request for "prior approval" is sent to the corporate representative with whom the association normally conducts its activities. The approval form on which the representative enters his/her signature should also indicate that the signatory is doing so on behalf of the specific named corporation, e.g., "[the signature], for ABC Corp." [1](#) See [AO 2000-22](#) (Air Transportation Association of America, the American Land Title Association, the Council of Insurance Agents and Brokers, the Independent Insurance Agents of America, and the Society of Independent Gasoline Marketers of America). The corporate member may only approve solicitations by one trade association per calendar year, and approval is necessary before the trade association or its PAC may conduct a solicitation. 11 CFR 114.8(d)(3).

#### ***Can a sample solicitation be included with a request for prior approval?***

Yes, the request for approval may contain a sample of the solicitation materials the PAC will use if approval is granted, but the sample must specifically indicate that approval is required before the PAC can solicit the corporation's restricted class. 11 CFR 114.8(c) and (d)(3).

#### ***Can approval be requested via the Internet?***

Yes, a trade association can distribute a "permission to solicit" form to its members on a members-only website. The form must include all the required information for obtaining approval and its wording must be sufficiently specific so as not to be considered a solicitation for contributions. See [AO 2000-10](#) (America's Community Bankers).

#### ***Do you need prior approval from individual and noncorporate members?***

No, for individual and noncorporate members (e.g., partnerships) prior approval is not required; however, they do need to be members of the association before they may be solicited for contributions. See 11 CFR 114.8(c).

## **Solicitations**

### ***Can you include a PAC solicitation in a dues statement sent to members?***

The trade association may include a request for voluntary PAC contributions in a bill for another payment, such as membership dues, so long as only those who are legally solicitable receive it, and it meets all of the qualifications of a proper solicitation. 11 CFR 102.6(c)2).

### ***May the PAC post a solicitation on the association's website?***

The association's PAC must confine the solicitation to areas of the association's website that are accessible only to the restricted class via a password. See [AOs 2006-03](#) (Whirlpool Corporation Political Action Committee), and [2000-10](#).

### ***Can a PAC solicitation be included in a membership packet sent to potential new members?***

No. Potential new members do not yet satisfy the conditions for membership in the association and are thus not within the restricted class for PAC solicitations. See 11 CFR 114.1(e)(2).

### ***Can a PAC solicitation be included in internal publications?***

The association or its PAC may solicit contributions through a publication that is directed only to members of its restricted class. If the trade association's publication is circulated to persons outside the restricted class, the association may generally not include a PAC solicitation in that publication. 11 CFR 114.5(g)(1).

As an exception to this rule, a solicitation in a publication that is circulated outside the restricted class may be permissible if:

- The article includes an explicit caveat stating the contributions will be screened and those from persons outside the restricted class will be returned; and
- Both the number and the percentage of unsolicitable persons receiving the publications are incidental.

As for what is considered "incidental," the Commission has said in advisory opinions that three percent of the circulation (representing 1,000 persons outside the restricted class) was incidental, whereas 10 percent of the circulation (representing 8,000 persons outside the restricted class) was not. See [AOs 1979-15](#) (Independent Insurance Agents of America, Inc.) and [1978-97](#) (National Association of Postal Supervisors); See also [AOs 1999-06](#) (National Rural Letter Carriers Association), [1994-21](#) (American Pharmaceutical Association Political Action Committee) and [1980-139](#) (Agway, Inc.).

## **Special Notices**

### ***Is any sort of disclaimer required for solicitations?***

While the "paid for by..." disclaimer for public communications is not necessary, certain notices are required on all solicitations (oral or written) undertaken by the trade association's

PAC. These notices include:

- A statement of the PAC's political purpose;
- A statement informing solicitees of their right to refuse to contribute without reprisal; and
- A statement on a guideline for an amount is merely a suggestion; no minimum may be specified.

11 CFR 114.5(a)(2)-(5).

### **Additional Information**

For additional information on trade associations and their PACs, contact the FEC's Information Division at 1-800/424-9530 (press 6) or 202/694-1100.

*1/ In [AO 2000-22](#) (Air Transportation Association of America, the American Land Title Association, the Council of Insurance Agents and Brokers, the Independent Insurance Agents of America, and the Society of Independent Gasoline Marketers of America) the Commission approved the use of an electronic signature, so long as security measures are taken to verify that the permission-to solicit forms are only available to authorized corporate representatives, and so long as the associations have the ability to verify that each electronically signed authorization came from the corporate representative.*

*(Posted 6/21/2013; By: Kathy Carothers)*

### **Resources:**

- [Campaign Guide for Corporations and Labor Organizations](#) [PDF]
- [FEC Regulations \(11 CFR\)](#)

### **FEC to Host Austin Conference in August**

The Commission will hold a regional conference in Austin, Texas, on August 20-21, 2013. Commissioners and staff will conduct a variety of technical workshops on the federal campaign finance laws affecting federal candidates, parties and PACs. Workshops are designed for those seeking an introduction to the basic provisions of the law as well as for those more experienced in campaign finance law. To view the conference agenda or to register for the conference, please visit the conference website at <http://www.fec.gov/info/conferences/2013/austin.shtml>.

*Hotel Information.* The conference will be held at the Hilton Austin Hotel, located in the downtown entertainment district. To make hotel reservations and reserve the group rate of \$169 per night (for single or double occupancy), visit the hotel website at <https://resweb.passkey.com/go/2013FederalElectionCommission> by July 19, 2013. Please wait to make hotel and air reservations until you have received confirmation of your conference registration from our contractor, Sylvester Management Corporation.

*Registration Information.* The registration fee is \$525 per attendee, which includes a \$30 nonrefundable transaction fee. A late charge of \$50 will be added for registrations received after 5 p.m. EDT, July 19, 2013. A refund (minus the transaction fee) will be

made for all cancellations received by Friday, July 19; no refund will be made for cancellations received after that date. Complete registration information is available online at <http://www.fec.gov/info/conferences/2013/austin.shtml>.

*Workshop Materials.* Attendees may elect to receive electronic copies of workshop materials in advance for use on their personal electronic devices. Alternatively, conference attendees may elect to receive a binder with printed materials at the conference.

### **FEC Conference Questions**

Please direct all questions about conference registration and fees to Sylvester Management Corporation (Phone: 1-800/246-7277; email: [Rosalyn@sylvestermanagement.com](mailto:Rosalyn@sylvestermanagement.com)). For other questions about the conference and workshops, call the FEC's Information Division at 1-800/424-9530, or send an email to [Conferences@fec.gov](mailto:Conferences@fec.gov).

*(Posted 6/25/13; By: Molly Niewenhous)*