



Federal Election Commission Campaign Guide

Corporations and Labor Organizations

January 2007

About this Guide

This *Guide* replaces the June 2001 edition of the *Campaign Guide for Corporations and Labor Organizations*. It summarizes the federal campaign finance laws applicable to corporations, labor organizations and their separate segregated funds as of January 2007. For updated information, please consult the monthly *Record* supplements to this *Guide* at www.fec.gov/info/publications.shtml#guides.

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Introduction

Using This Guide

The rules and procedures explained in this guide apply to labor organizations and to all types of corporations, including:

- Incorporated businesses;
- Incorporated membership organizations (including trade associations);
- National banks;
- Corporations without capital stock; and
- Incorporated cooperatives.

Citations

Authorities primarily cited in this Guide include FEC regulations and advisory opinions (AOs). All regulatory citations are to Title 11 of the Code of Federal Regulations, Parts 100–116 and 9001–9039 (2001). Copies of AOs may be obtained from the FEC; in addition, each AO is summarized in the Commission's monthly newsletter, the *Record*. AOs are also reported in the Federal Election Campaign Financing Guide, published by Commerce Clearing House, Inc.

Italicized Words

Terms printed in italics in this Guide have specific definitions under the election law. Definitions of these terms can be found in Appendix G.

Getting More Help

Advisory Opinions

Any person or group requiring a clarification of the election law with regard to an activity that they plan to undertake may request an AO from the FEC. Individuals and organizations involved in the activity specifically addressed in an AO (or in an activity that is materially indistinguishable) may rely on the opinion for legal guidance. AO requests may be addressed to the Office of General Counsel at:

Federal Election Commission
999 E Street, NW
Washington, DC 20463.

Toll-Free Line

Many questions about federal campaign finance law do not require formal advisory opinions. Such questions may be addressed to trained FEC staff members by calling the FEC's 800 number, below. Persons in the Washington, DC, area may call locally.

The numbers are:

800/424-9530

202/694-1100

202/219-3336 (TDD)

Hearing-impaired persons may reverse the charges when calling long-distance on the TDD number.

Free Publications

In addition to this Guide, the FEC publishes a series of brochures and other publications on several aspects of campaign financing and the election law. Subscriptions to the Commission's newsletter, the *Record*, are available free of charge. Write or call the FEC for a list of publications currently available.

FEC Web Site

Filing forms and other informational materials, such as advisory opinions and recent changes in FEC regulations are also available on the FEC web site (www.fec.gov).

Compliance with Small Business Regulatory Enforcement Fairness Act of 1996

This guide serves as the small entity compliance guide for corporations and labor organizations, as required by section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

The Law

The *Federal Election Campaign Act* (the Act) prohibits corporations and labor organizations from using their general treasury funds to make contributions or expenditures in connection with federal elections. 2 U.S.C. §441b(a). In spite of this broad prohibition, there are many ways in which a corporation or union may legally participate in federal election activities.

The Federal Election Commission (FEC)—the agency that administers and enforces the Act—has prepared this Campaign Guide to help corporations and labor organizations pursue federal campaign activities within the limits of the law.

The SSF

While corporations and labor organizations are prohibited from making contributions or expenditures in connection with federal elections, the Act and Commission regulations permit them to set up political committees, which may make contributions to and expenditures on behalf of federal candidates and other committees.

Federal election law refers to a corporate or labor political committee as a “separate segregated fund” (SSF), though it is more commonly called a “political action committee” or PAC. (Unless otherwise indicated, the terms “SSF,” and “the committee” are used interchangeably in this Guide.)

As the name implies, money contributed to a separate segregated fund is held in a separate bank account from the general corporate or union treasury.

The Connected Organization

A corporation or union that sponsors an SSF is called the connected organization. The connected organization may use its general treasury funds to pay for the costs of operating and raising money for the SSF.

The connected organization may also exercise control over its committee. 114.5(d). Corporations and unions often adopt bylaws to govern their SSFs, though bylaws are not required under the law and do not have to be filed with the FEC except when requested.

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CHAPTER I

Getting Started

I. Registering with the FEC

Registration Form

The registration form is FEC Form 1, the Statement of Organization. Blank forms can be obtained from the FEC. 102.2.

Initial Registration

Who Must Register

All SSFs must register with the FEC, regardless of the size of the fund. 102.1(c). A committee established exclusively for state and local (i.e., nonfederal) activity, however, does not need to register or file reports with the FEC.

When to Register

An SSF must register with the FEC within 10 days of the date of its establishment—for example, within 10 days of the date when:

- The board of directors (or comparable governing body) votes to create the SSF;
- Officers are selected to administer the fund; or
- The SSF's initial operating expenses are paid. 102.1(c).

Electronic Registration

If a committee raises or spends more than \$50,000 in a calendar year, or expects to do so, it must file electronically. For more information on electronic filing, see page 49.

2. Treasurer

Treasurer Required

An SSF must appoint a treasurer within 10 days of its establishment and may not raise or spend any funds when there is a vacancy in that office. Only a designated treasurer or assistant treasurer may sign FEC reports and statements. The Commission urges every committee to name an assistant treasurer who may assume the treasurer's duties when he or she is unavailable. 102.7(a) and (b).

If the SSF does not already have an assistant treasurer and the treasurer is unavailable to sign a report, the committee may appoint an assistant treasurer to sign the report. An amended Statement of Organization identifying the assistant treasurer may be filed simultaneously, but it must be filed within 10 days of the appointment. 102.2(a)(2). See Section 6 of this chapter.

Treasurer's Duties

The treasurer (or registered assistant treasurer) is responsible for:

- Filing complete and accurate reports and statements on time. 104.14(d).
- Signing all reports and statements. 102.2(a) and 104.14(a).
- Depositing receipts in the committee's designated bank within 10 days. 103.3(a).
- Authorizing expenditures or appointing an agent (either orally or in writing) to authorize expenditures. 102.7(c).
- Monitoring contributions to ensure compliance with the Act's limits and prohibitions. 103.3(b) and 110.1(k)(3).
- Keeping the required records of receipts and disbursements for three years after the transaction is last reported in FEC filings. 102.9(c) and 104.14(b).

Treasurer's Liability

Treasurers are personally responsible for carrying out the duties listed above and should understand these responsibilities, as well as their personal liability for fulfilling them.¹

When the Commission brings an enforcement action against a *political committee*, the treasurer is usually named as a respondent along with the committee itself. In December 2004, the Commission approved a Statement of Policy² to clarify when, in the course of an enforcement proceeding, a treasurer is subject to Commission action in his or

¹ Liability for payment of debts is generally governed by state law. See, generally, AOs 1990-11, 1989-2 and 1975-102.

² 70 FR 3 (January 3, 2005).

her official or personal capacity, or both. The policy explains that in an enforcement action where a *political committee* is a respondent, the committee's treasurer will typically be subject to Commission action only in his or her official capacity. However, when information indicates that a treasurer has knowingly and willfully violated the Act, recklessly failed to fulfill duties specifically imposed by the Act, or intentionally deprived himself or herself of facts giving rise to the violation, the Commission will consider the treasurer subject to action in a personal capacity and make findings accordingly.

If a committee changes treasurers, the Commission may substitute the new treasurer as a respondent in the enforcement proceeding in his or her official capacity because an official capacity action is an action against the treasurer's position. If an outgoing treasurer is personally liable, the Commission may pursue that predecessor treasurer individually (therefore not substituting the incoming successor in a personal capacity). The successor treasurer would, however, be named in the official capacity.

Vacancy in Office

The SSF may not receive contributions or make expenditures when the treasurer's office is vacant and the committee has no assistant treasurer. 102.7(b). Thus, when vacant, the treasurer's job must be filled as soon as possible. Changes in the treasurer's office must be disclosed within 10 days on an amended Statement of Organization. 102.2(a)(2). See Section 6.

3. Naming the SSF

Include Full Name of Sponsor

The official name of an SSF must include the full name of the *connected organization* (including "Inc." or "Corp." if applicable). An SSF's *connected organization*—often called the sponsoring organization—is the organization that establishes, administers, or financially supports the SSF. 100.6(a) and 102.14(c). In the SSF name, standard abbreviations for "Company," "Association" and similar words are acceptable. The full committee name may also include the acronym "PAC."

Thus, an acceptable name for an SSF sponsored by Acme Industries Corp. would be "Acme Industries Corp. PAC." See AOs 2000-34, 1999-20 and 1993-7.

Joint SSFs

If an SSF is jointly sponsored by two or more organizations, the full names of both organizations must appear in the name of the SSF. See AOs 1988-42 and 1988-14.

(If a *connected organization* has a parent company or several subsidiaries, however, the names of those corporations do not need to be included in the name of the SSF, unless more than one company is sponsoring the SSF. 102.14(c).)

Abbreviated Name

An SSF may use a shortened form of its official name on its checks and letterhead. The shortened name must include a clearly recognizable acronym or form of the *connected organization's* name.

The SSF must include the abbreviated name, along with the full name, on:

- The Statement of Organization;
- All reports and notices filed by the committee; and
- Any disclaimer notices used by the committee in public political advertisements. 102.14(c) and 110.11; AOs 2004-4, 2000-34, 1980-23 and 1980-10.

EXAMPLES: In AO 2000-34, the Commission ruled that SAPPI PAC was an acceptable abbreviation for SAPPI Fine Paper North America/S.D. Warren Company PAC because the acronym "SAPPI" was used in various well-known financial reference sources, thus establishing that it was a clearly recognized acronym by which the *connected organization* was known. In AO 1980-23, "Mid-Am PAC" was not a permissible abbreviation for Mid-American Dairy-men, Inc.'s SSF because it did not clearly identify the association sponsoring it.

4. Filling Out the Statement of Organization

Line-by-line instructions for filling out the Statement of Organization appear below. See the adjacent example of a correctly completed Form I.

Registration Form

FEC FORM 1		STATEMENT OF ORGANIZATION		Office Use Only	
1. NAME OF COMMITTEE (in full)		<input type="checkbox"/> (Check if name is changed)	Example: If typing, type over the lines.		12FE4M5
Critical Reason Inc. PAC					
ADDRESS (number and street)		101 Apriori Street			
<input type="checkbox"/> (Check if address is changed)		Alexandria		VA	00000
CITY ▲ STATE ▲ ZIP CODE ▲					
COMMITTEE'S E-MAIL ADDRESS					
creasonpac@creason.com					
COMMITTEE'S WEB PAGE ADDRESS (URL)					
www.creasonpac.com					
COMMITTEE'S FAX NUMBER					
- - - - -					
2. DATE		08 / 09 / 2005			
3. FEC IDENTIFICATION NUMBER ▶		C			
4. IS THIS STATEMENT		<input checked="" type="checkbox"/> NEW (N) OR <input type="checkbox"/> AMENDED (A)			
I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.					
Type or Print Name of Treasurer Immanuel Kant					
Signature of Treasurer		Date 01 / 09 / 2005			
NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g. ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS.					
Office Use Only		For further information contact:		FEC FORM 1	
		Federal Election Commission		(Revised 02/2003)	
		Toll Free 800-424-9530			
		Local 202-694-1100			

Fax Number

The committee is encouraged to provide a facsimile number, but is not required to do so.

Line 2. Date

When registering for the first time, enter the committee's date of establishment (not the date when the form is filled out). 102.1(c).

When filing an amended Statement of Organization, enter the date on which the new information took effect (e.g., the date when a new treasurer took office). See 102.2(a)(2).

Line 3. FEC Identification Number

The FEC assigns an ID number to a new SSF after the Commission receives the first Statement of Organization. Leave this space blank if the committee is filing its first Statement.

Always include the ID number on reports, statements and other communications sent to the FEC after the initial registration. 102.2(c).

Line 4. Is This Statement an Amendment?

Check "new" if the committee is registering for the first time. Check "amended" if the committee is updating information.

Line 1. Name and Address of the Committee

Name

Enter the full, official name of the SSF. 102.14(c). Also enter any abbreviated name that the committee plans to use to identify itself. See "Naming the SSF," above, for more guidance.

Electronic Address

In addition to providing the mailing address of the committee, all filers (whether electronic or paper) must include the URL for their web site, if they maintain one. Electronic filers must also include their e-mail address, if they have one. 102.2(a)(1)(vii).

Line 5. Type of Committee

Check box (e), "Separate Segregated Fund."

Line 6. Connected Organization and Affiliated Committees

List the names and addresses of the *connected organization* and any *affiliated* committees, along with their relationship to the registering committee (i.e., "connected" or "affiliated").

Connected Organization

In addition to providing the name and mailing address of the *connected organization*, check the box

indicating the type of organization that is sponsoring the SSF—i.e., a *corporation*, a *corporation* without capital stock, a *labor organization*, a membership association, a *trade association* or a cooperative (check all boxes that apply).

Affiliated Committees

List political committees that are *affiliated* with the SSF.

An SSF set up by a parent organization with several subsidiaries or local units must list any SSFs established by those units. The SSF of a subsidiary or subordinate unit, however, only needs to list the SSF of the parent organization. It is not required to list other affiliates. 102.2(b)(1)(ii)(A) and (B). More information on affiliation is provided in Section 8.

Line 7. Custodian of Records

All federal political committees must keep records and accounts of their financial activities and retain them for three years after the relevant transaction is last reported in FEC filings. 102.9(a), (b) and (c) and 104.14(b).

On Line 7, enter the name and address of the person who has actual possession of those books and records. The committee's treasurer, assistant treasurer or another person (such as an accountant or bookkeeper) may serve as the custodian of records. 102.2(a)(1)(iii). The recordkeeping rules are discussed in detail in Chapter 5.

Line 8. Treasurer and Assistant

Provide the name and mailing address of the treasurer on Line 8. The Commission also urges all political committees to name an assistant treasurer (or "designated agent") on Line 8. Only a registered assistant treasurer may sign FEC reports and statements in the treasurer's absence. 102.7(a), 104.1(a) and 104.14(a).

The treasurer's responsibilities are discussed in detail in Section 2 of this chapter.

Line 9. Designated Campaign Depository

List the name and address of each bank where the committee deposits funds. The committee must have at least one checking account. 103.2.

Note that *affiliated* SSFs may not share the same bank account, though they may establish separate bank accounts at the same financial institution. AOs 1986–33 and 1979–53.

Signing and Dating the Form

The treasurer or designated assistant treasurer must sign and date the form on the bottom line. 104.14(a).

The signer's name must also be typed or printed where indicated.

5. Filing the Form

Send the completed Statement of Organization to the appropriate filing office (usually the FEC; see "Where to File" on page 51).

Only committees based in Puerto Rico and Guam are required to file copies of FEC reports and statements with the appropriate officer of the territory in which they are headquartered. All other states, territories, and the District of Columbia have received a waiver from the requirement to maintain copies of FEC statements and reports. See page 51 for details.

6. Updating Registration Information

Whenever any of the information disclosed on the Statement of Organization (Form 1) changes, the committee must report the change within 10 days by filing an amended Form 1 or, if the committee is not an electronic filer, by letter. 102.2(a)(2).

Amending Form 1

Electronic Filers

Committees filing electronically must make amendments to Form 1 electronically. The committee must complete the entire report, not just the sections requiring amendments.

Paper Filers

Committees filing on paper may either submit an amended Form 1 or report the changes by letter as described below.

Submitting the Amended Form 1

When submitting an amended Form 1, the committee needs to provide only:

- The full name and address of the SSF;
- The FEC ID number;

- The changed information;
- The date the change took effect; and
- The treasurer's name and signature.

The rest of the form may be left blank.

Reporting Changes by Letter

Instead of filing a new Form 1, a committee that files on paper may amend its Statement of Organization by sending the FEC a letter containing the information listed above. The treasurer or assistant treasurer must sign the letter.

7. Notification of Multicandidate Status

As the next chapter explains, a qualified *multicandidate committee* may give a *candidate* up to \$5,000 per *election* (rather than \$2,300). 110.2(b). An SSF generally qualifies as a *multicandidate committee* once it has:

- Received contributions from at least 51 persons;
- Been registered for at least 6 months; and
- Made contributions to at least five federal candidates. 100.5(e)(3).

An SSF that is *affiliated* with a committee that has met these criteria is automatically qualified to share that committee's \$5,000 per-candidate limit. AOs 2001-18, 1997-25, 1997-13, 1986-42 and 1980-40. See below for more information on affiliation.

Once a committee qualifies as a *multicandidate committee*, the treasurer must file FEC Form 1M, "Notification of Multicandidate Status" within 10 days of satisfying the criteria for multicandidate status.³ 100.5(e)(3) and 102.2(a)(3). It is important to note that the committee must operate under the *contribution limits* for a *multicandidate committee* as soon as the criteria for multicandidate status are met. The treasurer must also indicate that the committee has qualified as a *multicandidate committee* on the Summary Page of each report filed (see page 71).

When making contributions to candidates, a multicandidate SSF must give the recipient *candidate* or campaign committee a written notification that it has qualified as a *multicandidate committee*.

³ Committees that notified the Commission of their multicandidate status on Form 3X prior to January 1, 1994, do not have to file Form 1M.

110.2(a)(2). For convenience, the statement may be pre-printed on the committee's checks, letterhead or other appropriate materials.

8. Affiliation

Definition

Under FEC rules, affiliation between SSFs results when committees are established, financed, maintained or controlled by the same organization. 100.5(g)(2).

Why Important

Contribution Limits

When two or more committees are *affiliated*, they share a single limit on the contributions they make to candidates and to other political committees. A single limit also applies to the aggregate contributions a person makes to committees *affiliated* with each other. 110.3(a)(1). (Application of the *contribution limits* to *affiliated* committees is explained in Chapter 2.) See also AOs 2004-32, 2004-23, 2001-18, 1999-40, 1997-25, 1997-13 and 1996-38.

EXAMPLE: Prior to becoming *affiliated*, X PAC (a *multicandidate committee*) contributed \$1,000 to a *candidate's* general election campaign, while Y PAC contributed \$250 to the same *candidate's* general election campaign and \$750 to the primary campaign. After becoming *affiliated*, X PAC and Y PAC's additional contributions could not exceed \$3,750 for the *candidate's* general election campaign and \$4,250 for the primary campaign. See AO 1985-27.

Solicitable Class

Additionally, when two or more committees are *affiliated*, they may solicit each other's restricted class. 114.5(g)(1). AOs 2004-32, 1999-15 and 1995-12.

Automatic Affiliation

When SSFs are established by different parts of one organization, they are automatically *affiliated*. For example:

- An SSF established by a parent *corporation* is *affiliated* with an SSF established by a subsidiary *corporation*. 100.5(g)(3)(i).
- An SSF established by a national or international union is *affiliated* with any SSFs established by local or regional units of the same union. 100.5(g)(3)(ii).

Multicandidate Status Notification

NOTIFICATION OF MULTICANDIDATE STATUS

(See reverse side for instructions)

This form should be filed after the Committee qualifies as a multicandidate committee.

1. (a) NAME OF COMMITTEE IN FULL Critical Reason Inc. PAC		2. FEC IDENTIFICATION NUMBER 00000001
(b) Number and Street Address 101 Apriori Street		3. TYPE OF COMMITTEE (check one) STATE PARTY <input checked="" type="checkbox"/> OTHER
(c) City, State and ZIP Code Alexandria, VA 00000		

I certify that **one** of the following situations is correct (complete line 4 or 5)

4. **STATUS BY AFFILIATION:** The committee submitted its Statement of Organization (FEC FORM 1) on _____ and simultaneously qualified as a multicandidate committee through its affiliation with:

Committee Name: _____

FEC Identification Number: _____

5. **STATUS BY QUALIFICATION:**

(a) **Candidates:** The committee has made contributions to the five (5) federal candidates listed below (ONLY State party committees may leave this blank.):

	Name	Office Sought	State/District	Date
(i)	Marcus Aurelius	House	NY/23	2/2/05
(ii)	Thomas Hobbes	House	VA/3	2/9/05
(iii)	Giadorno Bruno	Senate	CA	4/2/05
(iv)	Scott Erugina	Senate	ND	5/5/05
(v)	Tom Aquinas	House	MI/7	6/4/05

(b) **Contributors:** The committee received a contribution from its 51st contributor on: 7/1/2005

(c) **Registration:** The committee has been registered for at least 6 months. FEC FORM 1 was submitted on: 1/9/2005

(d) **Qualification:** The committee met the above requirements on: 7/9/2005

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

TYPE OR PRINT NAME OF TREASURER Immanuel Kant	SIGNATURE OF TREASURER 	DATE 7/11/2005
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NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g. ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS.

For further information contact: Federal Election Commission, Washington, DC 20463 Toll-free 800-424-9530 Local 202-694-1100	FEC FORM 1M (Revised 1/2001)
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- SSFs established by a federation of national or international unions and the SSFs of the federation's state and local central bodies are *affiliated* (see further explanation below). 100.5(g)(3)(iii).
- An SSF of a national membership organization (including a national *trade association*) is *affiliated* with the SSFs established by its related state and local entities. 100.5(g)(3)(iv).

Circumstances Indicating Affiliation

When committees are not automatically *affiliated* under the conditions described above, the Com-

mission may consider the following factors to determine whether two or more committees are *affiliated*. If one committee or its sponsoring organization:

- Owns a controlling interest in the voting stock or securities of another organization sponsoring a *political committee*;
- Has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through its constitution, bylaws, contracts or other rules, or through formal or informal practices or procedures;
- Has the authority or ability to hire, appoint, demote or otherwise control the officers or employees of another sponsoring organization or committee;
- Has a common or overlapping membership, or common or overlapping officers or employees, with another sponsoring organization or committee, indicating a formal or ongoing relationship between them;
- Has members, officers or employees who were members, officers or employees of another sponsoring organization or committee, indicating a formal or ongoing relationship or the creation of a successor;

- Provides or arranges for the provision of funds or goods in a significant amount or on an ongoing basis to another organization or committee, such as through payments for fundraising and administrative costs;
- Had an active or significant role in the formation of another organization or committee; or
- Makes or receives contributions in a pattern similar to that of another organization or committee, indicating a formal or ongoing relationship between them. 100.5(g)(4)(ii)(A)-(J), 110.3(a)(3).

Labor Federations and Member Unions

If a union belongs to a national or international federation of labor organizations, the SSF of the member union is not automatically *affiliated* with the SSF of the federation and the SSFs of other member unions.⁴

Usually, if a union is part of the AFL-CIO, the SSFs of that union's national and state organizations are *affiliated* with each other, but they are not *affiliated* with the SSFs of the national and state divisions of the AFL-CIO.

Registration

An SSF must list *affiliated* political committees on its Statement of Organization, as explained in Section 4.

9. Affiliation & Corporate Restructuring

Disaffiliation

Occasionally, the restructuring of an organization can result in two or more *affiliated* SSFs becoming disaffiliated. The Commission has applied the factors listed above to determine whether two or more committees remain *affiliated*. Disaffiliation may occur when there is significantly diminished commonality of maintenance, finance and control among the connected organizations of *affiliated* SSFs. See AOs 2004-41, 2003-21, 2002-12, 2000-36, 2000-28, 1999-39, 1996-50, 1996-42 and 1996-23.

Impact of Disaffiliation

When SSFs become disaffiliated, they no longer share limits on the receipt and making of contributions, and neither of their connected organizations may solicit SSF contributions from the restricted class of the other's organization. Furthermore, when making contributions after disaffiliation, SSFs must take into account the contributions they made prior to disaffiliation. To determine the amount that each SSF may contribute to a *candidate* after disaffiliation, the SSF must add the amounts given by both SSFs before disaffiliation and attribute that sum to its per-election contribution limit for that same *candidate*. AOs 2004-41, 2003-21, 2002-12, 2000-36, 2000-28 and 1996-42.

⁴ *FEC v. Sailors Union of the Pacific Political Fund*, 624 F.Supp. 492 (N.D. Cal. 1986) *aff'd* 828 F.2d 502 (9th Cir. 1987). See also MUR 1605.

EXAMPLE: If, prior to disaffiliation, X PAC (a multicandidate PAC) gave \$2,000 to a *candidate* for the general election and Y PAC gave \$1,000 to the same *candidate* for the same election, then, after disaffiliation, the two PACs may each contribute just \$2,000 more to that *candidate* for the general election.

Mergers and Spin-Offs

When corporations merge, their PACs become *affiliated*. Newly *affiliated* PACs must take into account the contribution history of all of their formerly *affiliated* and newly *affiliated* PACs. See example above. AOs 2001-18 and 1997-25.

10. SSF and Nonconnected PAC

Nonconnected PAC Affiliated with SSF

In *advisory opinion* 1996-38, the Commission determined that, when a nonconnected PAC became *affiliated* with the SSF of a *trade association*, it could solicit only that SSF's restricted class and had to follow the rules governing SSF solicitations. See also page 107, "Solicitations by Trade Associations."

Joint Venture Partnerships/LLCs

The Commission has stated that, when a PAC is sponsored by a joint venture partnership or LLC owned entirely by one or more corporations and *affiliated* with at least one of them, the nonconnected PAC becomes *affiliated* with the SSF of any corporation *affiliated* with the joint venture partnership. The *affiliated* corporation is allowed to pay the establishment, administration and solicitation costs of the *nonconnected* committee; in that case, the *nonconnected* committee has to identify it as the *connected* organization on its Statement of Organization (Form 1). AOs 2004-42, 2003-28, 2001-18, 2001-7, 1997-13 and 1996-49.

Corporate Personnel and Nonconnected PAC

Individuals associated with an incorporated entity may establish a nonconnected PAC. To do so, the individuals must demonstrate that their PAC is financially and organizationally independent of the incorporated entity by, for example:

- Reimbursing the corporation for any use of facilities associated with the nonconnected PAC within a commercially reasonable time and at the *usual and normal* charge;

- Paying in advance for any use of corporate staff, customer/mailling lists, catering services and any other goods and services that the *corporation* does not supply in the ordinary course of business (AO 1997-15); and
- Having a diversified leadership ensuring that individuals *affiliated* with a particular incorporated entity will not form the majority of the committee's board.

Under these circumstances, the nonconnected PAC is not considered to be *affiliated* with the SSF of the incorporated entity. AOs 2000-20, 1997-26 and 1997-15.

11. Operating Costs

Using Treasury Funds

The costs of running the SSF (operating expenditures) may be defrayed with the treasury funds of the *connected organization*, that is, with funds derived from commercial activities or dues payments. 114.5(b).

Treasury money can be used, for example, to pay for office space, phones, salaries, utilities, supplies, bank charges and fundraising activities. 114.1(b). There are no dollar limits on these disbursements, and they are not reported to the FEC.

The *connected organization* may either pay these costs directly or establish a separate administrative account to be used solely for the SSF's administrative and fundraising expenses. The funds contained in the administrative account may never be commingled with the SSF's own funds, which are derived solely from lawful contributions. AOs 1981-19 and 1980-59.

Trade associations sponsoring SSFs can solicit their members for donations to their administrative accounts under certain circumstances. See Appendix C. Regarding the payment of operating costs generally, see 114.5(b).

Using the SSF's Own Funds

Although the law permits the *connected organization* to pay start-up, administrative and fundraising expenses for an SSF, the committee may use its own funds to pay those costs. (The SSF may also pay only some expenses, such as bank service charges that are automatically deducted from its account,

while the *connected organization* pays others.) All disbursements by the SSF for these purposes are reportable as operating expenditures, as explained in Chapter 7.

Note that the *connected organization* may reimburse the SSF for those operating expenditures, provided that the reimbursement is made within 30 days of the SSF's disbursement. These reimbursements are reportable. 114.5(b)(3). See also AOs 2000-3 and 1983-22.

12. Incorporating the SSF

An SSF may incorporate for liability purposes. 114.12(a). Political committees that incorporate only for liability purposes may make lawful contributions and expenditures. Note that incorporation of a *political committee* does not diminish the treasurer's liability for the committee's compliance with campaign finance law.

13. Limited Liability Companies and SSFs

Under FEC regulations, a *limited liability company (LLC)* may be treated as a *corporation*, depending upon its tax status. An LLC that elects to be treated as a *corporation* by the Internal Revenue Service (IRS) or that has publicly traded shares will be treated as a *corporation* under FEC regulations and, therefore, may serve as the *connected organization* for an SSF. 114.1-114.13.

An LLC that elects to be treated as a partnership by the IRS is treated as a partnership under FEC regulations and may make contributions and serve as the sponsoring organization for a *nonconnected committee*.⁵ 110.1(g)(2).

LLCs that elect to be treated neither as partnerships nor as corporations by the IRS are treated as partnerships according to FEC regulations. 110.1(g)(2). Regarding LLCs and *contribution* limits, see page 10 of this Guide and Appendix E.

⁵ See the *Campaign Guide for Nonconnected Committees*

CHAPTER 2

Understanding Contributions

I. What Is a Contribution

A *contribution* is anything of value given to influence a federal election. 100.52(a).

Although corporations and labor organizations are prohibited from making contributions in connection with federal elections, their SSFs may.

SSFs must view contributions from two different perspectives: they both make contributions and receive them. The Act limits the amounts that may be contributed by and to an SSF, and contributions from certain sources are prohibited altogether.

The most common types of contributions are:

- Gifts of money;
- Gifts of goods and services (in-kind contributions);
- Loans and guarantees or endorsements of loans; and
- Advances of funds.

Gifts of Money

Contributions exceeding \$100 in the aggregate must be made by check (or other written instrument). 110.4(c).

In-Kind Contributions

Definition

In-kind contributions include:

- Goods and services offered free of charge;
- Goods and services offered at less than the *usual and normal charge* (discounts are not contributions if they are offered in the ordinary course of business to both political and nonpolitical clients. AOs 1989–14, 1987–24, 1986–22 and 1985–28);
- Payments by a third party for goods and services rendered to a *candidate or political committee*.

100.52(d)(1) and 100.54.

Value

The dollar value of an *in-kind contribution* is subject to limits and must be reported. The value of a particular in-kind gift is determined as follows:

- **Goods** (such as equipment, supplies, facilities and mailing lists) are valued at their normal purchase or rental price.

- **Services** (such as advertising, printing or consulting) are valued at the prevailing commercial rate at the time the services are rendered (i.e., the amount that was paid or would have been paid for the services).
- **Discounts** are valued at the amount discounted (i.e., the difference between the *usual and normal charge* and the amount paid by the committee). 100.52(d)(1) and (2).

Proceeds from Fundraisers and Sales

The entire amount paid to attend a political fundraiser or to purchase a fundraising item from a committee is a *contribution*. 100.53. The amount of the *contribution* is not affected if a portion of the money was used to defray the expenses of the fundraising program.

Loans

A loan to a *candidate or political committee* is a *contribution* to the extent that it remains outstanding. 100.52(b)(2).

Repayments made on a loan reduce the amount charged against the lender's *contribution* limit. However, a loan that exceeds the lender's or endorser's personal limit is unlawful even if repaid in full. 100.52(b)(1).

Loans from banks are not contributions if they are made under certain conditions. See page 17.

Endorsements and Guarantees of Loans

An endorsement or guarantee of a loan is a *contribution*. 100.52(b)(3). The amount guaranteed counts against the endorser's or the guarantor's limit only to the extent that the loan remains outstanding. Repayments on the loan proportionally reduce the amount charged against the guarantor's *contribution* limit.

If a loan has more than one guarantor, and if the loan agreement does not stipulate the portion of the loan for which each guarantor is liable, then the *contribution* of each guarantor is determined by dividing the amount of the loan by the number of guarantors. 100.52(b)(3).

2. Limits on Contributions Received by the SSF

\$5,000 Limit

An SSF may receive up to \$5,000 per year from any one contributor. 110.1(d).

Contributions from Spouses

A husband and wife each have separate \$5,000 limits, even if only one spouse has an income.

110.1(i). A couple may make a *joint contribution* (part of which would be attributed to each), as explained below.

Joint Contributions

A *joint contribution* is a *contribution* that is made by more than one person using a single check or other written instrument. A *joint contribution* represents the personal funds of each donor, so each donor must sign either the check or an accompanying statement. 110.1(k)(1).

For the purposes of the *contribution* limits, a *joint contribution* is attributed equally to each donor, unless an accompanying statement indicates that the funds should be divided differently. 110.1(k)(2).

An SSF may seek a reattribution of an excessive *contribution*. See page 27 for more information.

Contributions from Partnerships

Partnerships are permitted to make contributions according to special rules. 110.1(e) and (k)(1). For further details, see Appendix E.

Contributions from Limited Liability Companies

Corporation or Partnership Status

For purposes of *contribution* limitations and prohibitions, a *limited liability company (LLC)* is treated either as a *corporation* or a *partnership*.

An LLC is considered a *corporation* if:

- It has chosen to file, under Internal Revenue Service (IRS) rules, as a *corporation*; or
- It has publicly traded shares. 110.1(g)(3).

An LLC is considered a *partnership* if:

- It has chosen to file, under IRS rules, as a *partnership*; or

- It has made no choice, under IRS rules, as to whether it is a *corporation* or *partnership*. 110.1(g)(2).

If an LLC is considered a *corporation*, it is prohibited from making contributions to political committees, although it is permitted to establish an SSF. (See Section 6, “Prohibited Corporate and Labor Contributions”). If an LLC is considered a *partnership*, it is permitted to make contributions to political committees, but it is subject to the *contribution* limits for partnerships outlined in Appendix E. 110.1(g).

Single Member LLC

If a single *member* LLC does not elect corporate tax treatment, it may make contributions; the contributions will be attributed to the single *member*, not the LLC. 110.1(g)(4).

Notifying Recipient Committee

An LLC must, at the time it makes a *contribution*, notify the recipient committee:

- That it is eligible to make the *contribution*; and
- How the *contribution* should be attributed among members.

This requirement will prevent the recipient committee from inadvertently accepting an illegal *contribution*. 110.1(g)(5).

Cash Contributions and Anonymous Contributions

Contributions in cash are limited to \$100 in the aggregate. 110.4(c)(1). Anonymous contributions are limited to \$50. 110.4(c)(3).

3. Limits on Contributions Made by the SSF

Contributions to Candidates

The limit on contributions from an SSF to a *candidate* or *candidate's* committee depends on whether the SSF qualifies as a *multicandidate committee*.

Contributions from Multicandidate SSF

An SSF that has qualified as a *multicandidate committee* may contribute up to \$5,000 per *candidate*, per *election*. 110.2(b).

To qualify as a *multicandidate committee*, an SSF must:

Contribution Limits for 2007–08

	To each candidate or candidate committee per election	To national party committee per calendar year	To state, district & local party committee per calendar year	To any other political committee per calendar year ¹	Special Limits
Individual <i>may give</i>	\$2,300*	\$28,500	\$10,000 (combined limit)	\$5,000	\$108,200* overall biennial limit: - \$42,700* to all candidates - \$65,500* to all PACs and parties ²
National Party Committee <i>may give</i>	\$5,000	No limit	No limit	\$5,000	\$39,900* to Senate candidate per campaign ³
State, District & Local Party Committee <i>may give</i>	\$5,000 (combined limit)	No limit	No limit	\$5,000 (combined limit)	No limit
PAC (multicandidate)⁴ <i>may give</i>	\$5,000	\$15,000	\$5,000 (combined limit)	\$5,000	No limit
PAC (non-multicandidate) <i>may give</i>	\$2,300*	\$28,500*	\$10,000 (combined limit)	\$5,000	No limit
Authorized Campaign Committee <i>may give</i>	\$2,000 ⁵	No limit	No limit	\$5,000	No limit

*These contribution limits are increased for inflation in odd-numbered years.

1 A contribution earmarked for a candidate through a political committee counts against the original contributor's limit for that candidate. In certain circumstances, the contribution may also count against the contributor's limit to the PAC.

11 CFR 110.6. See also 11 CFR 110.1(h).

2 No more than \$42,700 of this amount may be contributed to state and local party committees and PACs.

3 This limit is shared by the national committees and the Senate campaign committee.

4 A multicandidate committee is a political committee with more than 50 contributors which has been registered for at least 6 months and, with the exception of state party committees, has made contributions to 5 or more candidates for federal office. 11 CFR 100.5(e)(3).

5 A federal candidate's authorized committee(s) may contribute no more than \$2,000 per election to another federal candidate's authorized committee(s). 2 U.S.C. 432(e)(3)(B).

- Receive contributions from at least 51 persons;
- Be registered with the FEC for at least six months; and
- Contribute to at least five federal candidates.

100.5(e)(3).

As to the third qualification, there is no minimum amount that must be contributed to each of the five candidates; the five qualifying contributions may be made over more than one *election cycle*.

An SSF that is *affiliated* with another SSF that has met these criteria also qualifies as a *multicandidate committee* and shares that committee's \$5,000 per-candidate limit.

Contributions from Nonmulticandidate SSF

During the 2007-08 *election cycle*, an SSF may contribute up to \$2,300 per *candidate*, per *election*, unless it qualifies as a *multicandidate committee*, as explained above. 110.1(b)(1).

How the Candidate Limits Work

House and Senate Candidates

The limits on contributions to House and Senate candidates apply separately to each *election* in which a *candidate* participates. In House and Senate races, each *primary election*, *general election*, runoff and *special election* is considered a separate *election* with a separate limit. 100.2; 110.1(j)(1); 110.2(i)(1).

Party Caucus or Convention

A party caucus or convention constitutes a separate *election* only if it has the authority under state law to select a nominee for *federal office*. Otherwise, there is no separate limit for a caucus or convention; it is considered part of the *primary election*.¹ 100.2(c)(1) and (e); AOs 2004-20, 1986-21 and 1986-17.

Candidates Not Running in an Election

A *candidate* is entitled to receive contributions for a particular *election* only if he or she seeks office in that *election*. Thus, a *candidate* who loses the *primary* (or otherwise does not participate in the *general election*) does not have a separate limit for the *general*. 102.9(e); 110.1(b)(3)(i); 110.2(b)(3)(i).

Unopposed Candidates

A *candidate* has a separate *contribution* limit for an *election* in which he or she is running even if:

- The *candidate* is unopposed;
- A *primary election* is not held because the *candidate* was nominated in an earlier caucus or convention. 110.1(j)(4);
- A *primary* or *general election* for a particular office is not held because the *candidate* is unopposed; or
- The *general election* is not held because the *candidate* received a majority of votes in the previous *election*. (The date on which the *election* would have been held is considered the date of the *election*.) AO 1978-65.

110.1(j)(2) and (3); 110.2(i)(2) and (3).

Presidential Elections

All Presidential primary elections held during an *election year* are considered one *election* for the purposes of the *contribution* limits. 110.1(j)(1); 110.2(i)(1). A multicandidate SSF, therefore, may give only \$5,000 to a Presidential *candidate's* primary campaign, regardless of how many separate state Presidential primaries the *candidate* participates in.

In the *general election*, contributions to major party (Republican and Democratic) Presidential campaigns are not permitted if the candidates receive public funds. (An exception: SSFs may contribute to a publicly funded Presidential nominee's "compliance fund." A compliance fund is used solely for legal and accounting expenses incurred in complying with the *election law*. Gifts to compliance funds are considered contributions and are subject to usual per-candidate, per-election limits. 9003.3(a)(1)(B).)

Contributions to Noncandidate Committees

Contributions to political committees other than *candidate* committees are subject to calendar-year limits.

Contributions to National Party Committees

An SSF that qualifies as a *multicandidate committee* may give up to \$15,000 per year to a *national party committee*. If an SSF is not a *multicandidate committee*, it may give up to \$28,500 per year to a *national party committee* during the 2007-08 *election cycle*.

The Republican and Democratic parties each have three national party committees subject to

¹ For example, the states of Utah and Connecticut have convention limits, as do certain districts in Texas and Virginia.

these limits. Thus, there is a separate \$15,000 or \$28,500 limit for each national committee, House campaign committee and Senate campaign committee. 110.1(c) and 110.2(c).

Contributions to Delegates and Delegate Committees

An SSF may make unlimited contributions to a *delegate* (or an individual seeking to become a *delegate*) attending a national party convention or to a state, district or local convention held to select delegates to a national convention. Contributions by the SSF to a *delegate committee* (a committee formed by a group of delegates or a group of people seeking to become delegates) are limited to \$5,000 per calendar year. 110.1(m), 110.2(j), 110.14(d)(1) and (g).

Contributions to Other Political Committees

Any multicandidate SSF may make contributions of up to \$5,000 per year to any other type of *political committee* (e.g., a *state party committee*). 110.2(d). A non-multicandidate committee may make contributions of up to \$5,000 per year to another PAC and \$10,000 to a *state party committee* and its registered local affiliates. 110.1(d) and 110.1(c)(5).

Candidate Limits May Apply

A *contribution* from an SSF to a committee that is not a *candidate's* authorized committee may nevertheless count against the SSF's limit for that *candidate* if:

- The recipient committee is an unauthorized single-candidate committee (i.e., a *political committee* that supports only one *candidate*);
- The SSF knows that a substantial portion of its *contribution* will be given to or spent on behalf of a particular *candidate*; or
- The SSF retains control over the funds after making the *contribution*.

110.1(h); 110.2(h).

4. Designation

Designated Contributions

The Commission encourages SSFs, when contributing to candidates, to designate their contributions in writing for a particular *election* (for example, primary or general). The designation may be made either on the *contribution* check or in a signed statement accompanying the *contribution*. Only the contributor—not the recipient *candidate committee*—may designate a *contribution* for a particular *election*. 110.1(b)(2)(i) and (b)(4); 110.2(b)(2)(i) and (b)(4).

tee—may designate a *contribution* for a particular *election*. 110.1(b)(2)(i) and (b)(4); 110.2(b)(2)(i) and (b)(4).

Undesignated Contributions

An undesignated *contribution* automatically counts against the SSF's limit for the next scheduled *election*. 110.1(b)(2)(ii) and 110.2(b)(2)(ii). Therefore, if an SSF wishes to make a *contribution* for any *election* other than the next one, the *contribution* must be designated in writing, as explained below.

When Designation Is Required

Future Elections

A written designation is required when an SSF wants a *contribution* to apply toward a future *election* other than the next one. For example, an SSF may make a *contribution* to a *candidate's* general *election* campaign before the primary *election* has taken place, but the SSF's check (or an accompanying statement) must say "General" in order to count toward the general *election* limit.

Past Elections (Debt Retirement)

When making a *contribution* to retire a *candidate's* debts from a past *election* campaign, an SSF must designate the *contribution* for the appropriate *election*. The SSF should also be certain that the *contribution*, when aggregated with other contributions from the SSF for that same *election*, does not exceed the committee's per-*election* limit.

The *candidate committee* may accept the *contribution* only if the campaign has net debts outstanding with respect to the designated *election* on the day it receives the *contribution*. 110.1(b)(3)(i), (ii) and (iii); 110.2(b)(3)(i) and (ii).

Effect of Date Made For Contributions Made by SSF

Designated Contributions

A *candidate* may always accept a designated *contribution* if it is made before the designated *election*, regardless of whether the *candidate* has outstanding debts from that *election*. However, a designated *contribution* is subject to the net debts outstanding rule, described above, if it is made after the *election* for which it is designated. 110.1(b)(3)(i), (ii) and (iii); 110.2(b)(3)(i) and (ii).

Undesignated Contributions

An SSF may make an undesignated *contribution* on or before the day of the *election* regardless of whether the *candidate* has debts, even if the *candidate* does not receive the check until after the *election* has passed. See “Determining the Date Made” below. An undesignated *contribution* made after the *election* has passed, however, must be applied to the donor’s limit for the next *election*. I 10.1(b)(2)(ii); I 10.2(b)(2)(ii).

For the purposes of the per-election limits, then, it is important to distinguish the date a *contribution* is made from the date it is received by a *candidate*.

Effect of Date Made For Contributions Received by SSF

Determining the Date Made

The date a *contribution* is made is the date when the contributor relinquishes control of the funds. In practice this means that:

- An *in-kind contribution* is made on the date that the goods or services are provided to the recipient committee.
- A mailed *contribution* is made on the date of the postmark.
- A hand-delivered *contribution* is considered made on the date it is delivered to the *political committee* or to an agent of the committee.

I 10.1(b)(6); I 10.2(b)(6).

The date made is significant for determining what *contribution* limit applies. For instance, if a *contribution* is postmarked 12/31/2007 but received on 1/3/2008, the *contribution* would count against the contributor’s 2007 limit.

Redesignation of Contributions Made by SSF

Request by Recipient

A *candidate committee* may ask an SSF to redesignate a *contribution* (or a portion of it) for a different *election*. Redesignation permits the donor to remedy an excessive *contribution* so that the excessive portion counts against a different *election* limit. I 10.1(b)(5).

An SSF may comply with a request for redesignation by returning a signed statement redesignating the *contribution*. The *candidate committee* must receive the redesignation within 60 days of its receipt of the original *contribution*. Otherwise, the *candidate* must refund the excessive portion to the SSF. I 10.1(b)(5)(ii) and I 10.2(b)(5)(ii).

The SSF may always request a refund from the *candidate* instead of providing the redesignation. I 03.3(b)(3); I 10.1(b)(5)(ii)(A)(1); I 10.2(b)(5)(ii).

Automatic Redesignation By Recipient Committee

When a non-multicandidate committee makes an excessive *contribution* to a *candidate*’s authorized committee, the recipient committee may automatically redesignate excessive contributions to the general *election* if the *contribution*:

- Is received before that *candidate*’s primary *election*;
- Is not designated in writing for a particular *election*;
- Would be excessive if treated as a primary *election contribution*; and
- As redesignated does not cause the contributor to exceed any other *contribution* limit. I 10.1(b)(5)(ii)(B)(1)-(4).

Also, an undesignated excessive *contribution* received after the primary, but before the general *election* may be automatically applied to the primary if the campaign committee has more net debts outstanding from the primary than the excessive portion of the *contribution*. I 10.1(b)(5)(ii)(C). Note that multicandidate committees do not have the option of automatic redesignation.

5. Affiliation and Contribution Limits

Two or more *affiliated* committees are treated as a single committee for the purposes of the *contribution* limits. This means that all contributions made or received by several *affiliated* committees count against the same limits. I 10.3(a)(1).

Affiliation and Multicandidate Status

Because *affiliated* committees are treated as one committee for the purposes of the limits, two or more *affiliated* committees may collectively satisfy the requirements for *multicandidate committee* status. AO 1980–40.

Monitoring Limits

To facilitate reporting and to avoid exceeding *contribution* limits, *affiliated* SSFs must set up a centralized recordkeeping system to ensure that contributions made and received by all the affiliates comply with the limits.

The treasurers of each affiliate are personally responsible for monitoring *contribution* limits. 103.3(b). See “Affiliation & Corporate Restructuring” on page 7.

6. Prohibited Corporate and Labor Contributions

As explained on page ii, the *election* law prohibits corporations and labor organizations from making contributions and expenditures in connection with federal elections. 114.2(a) and (b). This prohibition applies to all types of incorporated organizations, except political committees (such as SSFs) that incorporate for liability purposes. 114.12(a).

The situations and actions described below result in prohibited corporate or labor contributions and therefore must be avoided.

General Treasury Funds

Corporations and labor organizations may not use their general treasury funds to make contributions to their SSFs or to other types of political committees or candidates.

In addition, national banks and federally chartered corporations may not make contributions in connection with any U.S. *election*—federal, state or local.² 114.2(a) and (b). See also AO 1997-19. (National banks and federally chartered corporations may establish SSFs, however.)

A narrow exception to the general rule prohibiting the use of treasury funds to make expenditures has been drawn for certain types of corporations. See “Independent Expenditures by Qualified Non-profit Corporations,” page 35.

Commingling of Funds

Corporations and labor organizations may not commingle their treasury funds with the funds of their SSFs.

Any corporate or labor funds intended to pay the *administrative expenses* of an SSF must be paid directly to vendors or deposited in a special administrative account used only to pay the SSF’s establishment, solicitation and administration costs. See page ii.

² The prohibition does not apply to referendum-related activities. See *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978).

As an exception to the commingling prohibition, when a *connected organization* functions as a *collecting agent* for its SSF (e.g., when collecting contributions via payroll deduction), it may temporarily deposit contributions in a general account before transmitting them to the SSF. 102.6(c)(4) and (5). See Collecting Agents, page 28.

Reimbursements of Contributions

A *connected organization* may not reimburse individuals who make contributions to an SSF or another *political committee*. 114.5(b)(1). See also AO 1986-41.

Compensation for Services

If a *corporation* or *labor organization* pays for services rendered to a *political committee* or *candidate*, a prohibited *contribution* results. 100.54. See also Incidental Use, page 91. Note, however, two exceptions to this general rule:

SSF Establishment, Administration and Fundraising Costs

A *corporation* or *labor organization* may pay expenses associated with setting up, administering and raising money (i.e. operating expenditures) for its own SSF 114.1(a)(2)(iii). Other organizations *affiliated* with the *connected organization* (e.g., corporate subsidiaries) may help to pay the administrative costs of the SSF. AOs 1997-13, 1996-29 and 1983-19.

Legal and Accounting Services

A *corporation* or *labor organization* may provide a *party committee* with free legal and accounting services. The person rendering the services must be a regular employee of the *corporation* or *labor organization* paying for the services. The activity may not further the *election* of any *candidate*. 100.85.

Free legal and accounting services may also be provided to authorized *candidate* committees, or any other *political committee*, for the limited purpose of helping those committees comply with the Act and FEC regulations. The individual providing the legal and accounting services must be a regular employee of the *corporation* or *labor organization* paying for the services. 100.86.

Use of Corporate/Labor Facilities

Under limited circumstances, corporations and labor organizations may allow their food services and mailing lists to be used for fundraising purposes in connection with a federal *election*, and they may direct their employees to work on these fundrais-

ers, provided the *corporation* or *labor organization* receives advanced payment of the fair market value of the goods or services and otherwise complies with FEC regulations. This concept is explained further on page 91. 114.2(f) and 114.3(c)(2).

Extensions of Credit

A corporate vendor may not extend credit to a *political committee* for a longer period of time than is normally practiced in the creditor's trade. (Credit is permissible only if it is extended in the ordinary course of business.)

When a *political committee* fails to pay a debt owed to a corporate vendor within the time specified by the vendor, a prohibited *contribution* by the vendor may result if:

- The vendor fails to make a commercially reasonable attempt to collect a debt from a *political committee*; or
- The terms of the credit were not substantially similar to similar extensions of credit by the vendor to nonpolitical clients.

100.55 and 116.3(b).

Any settlement of a debt between a creditor and a *political committee* for less than the full amount owed must comply with the debt settlement procedures prescribed by FEC rules. See Chapter 8.

Discounts

If a *corporation* or *labor organization* sells goods or services to a *political committee* at a price below the *usual and normal charge*, a prohibited *contribution* results in the amount of the discount. 100.52(d)(1). A reduced price is not considered a prohibited discount, however, if it is offered by the vendor as a regular business practice to political and nonpolitical clients alike. See, e.g., AO 1989 14.

As an exception to this general rule on discounts, vendors of food and beverages may offer discounts on food and beverages sold to *candidate* committees and party committees (but not SSFs). 100.78. See page 93 for details.

Liability of Corporate/Labor Officers

An officer of a *corporation* or *labor organization* personally violates the law if he or she consents to the making of a prohibited corporate or labor *contribution*. 114.2(e).

7. Other Prohibited Contributions

Federal Government Contractors

Committees and candidates may not accept contributions from federal government contractors.

115.2. The prohibition applies to contributions from:

- A partnership with a government contract;
- An individual under contract with the federal government; and
- Sole proprietors with government contracts.

115.4 and 115.5.

Corporations that are government contractors may establish separate segregated funds. 115.3. See also AO 1985-23.

Foreign Nationals

An SSF may not solicit or accept a *contribution* from a *foreign national*. Federal law prohibits contributions, donations, expenditures and disbursements solicited, directed, received or made directly or indirectly by or from foreign nationals in connection with any *election* federal, state or local. Accordingly, it is a violation of federal law to knowingly provide substantial assistance to foreign nationals in the making of contributions, donations, expenditures, independent expenditures and disbursements in connection with federal and nonfederal elections. 110.20. This prohibition includes, but is not limited to, acting as a conduit or intermediary for *foreign national* contributions and donations. 110.20(h).

Definition of Foreign National

A *foreign national* is:

- An individual who is (1) not a citizen of the United States and (2) not lawfully admitted for permanent residence; or
- A foreign principal, as defined in 22 U.S.C. §611(b). Section 611(b) defines a foreign principal as an entity organized under the laws of a foreign country or having its principal place of business in a foreign country. The statute specifically includes foreign governments, political parties, partnerships, associations and corporations.³ 110.20(a)(3).

³ Corporations and labor organizations that qualify as foreign principals are prohibited from making contributions in connection with state and local elections in states where corporate and labor contributions would otherwise be permitted.

Immigrants

An immigrant is eligible to make a *contribution* if the immigrant has a green card indicating that he or she has been lawfully admitted for permanent residence. See 8 U.S.C. § 1101(a)(20)

Domestic Subsidiaries of Foreign Corporations

In *advisory opinions*, the Commission has said that a United States *corporation* that is a subsidiary of a foreign *corporation* may make contributions to non-federal candidates (to the extent permitted by state law) and may establish an SSF to make contributions to federal candidates as long as:

- The foreign parent does not finance these activities (such as the payment of the SSF's establishment, administration or fundraising costs) through the subsidiary;
- No *foreign national* (including the foreign parent) participates in the operations or administration of the committee (such as the appointment of officers) or in any decisions to make contributions or expenditures in connection with any federal or nonfederal *election* (see 110.20(i) and AO 2000-17); and
- Neither the subsidiary nor the committee solicits or accepts contributions from foreign nationals. (See 110.20(g).)

Regarding domestic subsidiaries of foreign corporations generally, see AOs 2006-15, 2000-17, 1999-28, 1995-15, 1992-16, 1990-8 and 1989-29.

Contributions in the Name of Another

Contributions by one person in the name of another person are prohibited. This means that no one may make or assist someone to make a *contribution* in the name of another. It is also prohibited to knowingly accept a *contribution* in the name of another. 110.4(b). A prohibited *contribution* in the name of another could result, for example, if the *connected organization* reimburses an employee's *contribution* through a bonus, an expense account, or other means. (See also Reimbursements of Contributions, above).

8. Bank Loans

Unlike other loans, loans to SSFs from banks are not considered contributions, provided that they satisfy the conditions set forth below. If a loan fails to meet any of these conditions, then a prohibited *contribution* from the lending institution results.

Conditions

A committee may obtain a loan from a bank (including a line of credit), provided that the loan:

1. Bears the bank's usual and customary interest rate for the category of loan involved;
2. Is evidenced by a written instrument;
3. Is subject to a due date or amortization schedule; and
4. Is made on a basis which assures repayment (see below). 100.82(a)(1) through (4).

Methods of Assuring Repayment

A loan is made on a basis which assures repayment if it is obtained using one or more of the following authorized methods of securing the loan:

Traditional Methods

A committee may use one of the following traditional methods of securing the loan, or a combination of the two:

Collateral. A loan may be secured using assets of the committee, such as real estate, personal property, negotiable instruments and stocks, among other things. The fair market value of the assets pledged must, on the date of the loan, equal or exceed the amount of the loan and any senior liens. 100.82(e)(1)(i).

The committee must ensure that the bank has established a perfected security interest in the collateral (that is, taken steps to legally protect its interest in the collateral in the event that the committee defaults on the loan.) 100.82(e)(1)(i).

Guarantees or Endorsements. An endorsement or guarantee of a bank loan is considered a *contribution* by the endorser or guarantor and is thus subject to the law's prohibitions and limits on contributions. 100.82(e)(1)(ii).

Pledge of Future Receipts

If the committee pledges its future receipts as security for the loan, then the amount loaned by the bank may not exceed a reasonable estimate of anticipated receipts, based on documentation provided by the committee (such as cash flow charts or fundraising plans). 100.82(e)(2)(i) and (ii). Future receipts might include, for example, anticipated contributions or interest income.

The committee must also set up a separate account for the *receipt* of funds pledged for the repayment of the loan. The account may be established with either the lending institution or a

different depository. If the account is established at a depository other than the lending institution, then the committee must execute an assignment of the account's funds to the lending institution and notify the depository of the assignment. The loan agreement must require the committee to deposit the pledged funds into the account established for this purpose. 100.82(e)(2)(iii) and (iv).

Other Methods of Assuring Repayment

The Commission may, on a case-by-case basis, approve methods of assuring repayment other than those described above. 100.82(e)(3). A committee should request an *advisory opinion* from the Commission before entering into an alternative repayment agreement.

9. Other Receipts

Like bank loans, certain other SSF receipts are specifically excluded from the definition of *contribution* and thus are not subject to the limits and prohibitions affecting contributions. Regardless of whether they are contributions, however, all SSF receipts are reported.

Reportable receipts that are not subject to *contribution* limits include:

Transfers-In from Affiliated SSFs

An SSF may receive unlimited transfers of *permissible funds* from other *affiliated SSFs*. 104.3(c)(1).

Interest and Dividend Income

Interest and other earnings on invested funds are not contributions. See AOs 1999-8, 1997-6 and 1990-2 n.3. See also 104.3(a)(1), (a)(3)(x) and (a)(4)(vi).

Loan Repayments

While not a *contribution*, a repayment on a loan must come from a permissible source. 100.52(b)(5). For example, although an SSF may loan money without limit to its *connected organization*, the organization may not use its general treasury funds to repay a loan to an SSF.

CHAPTER 3

Fundraising for the SSF

I. General Rules on Solicitations

The following general rules governing SSF solicitations are explained in this section:

- Contributions to the SSF must be voluntary;
- The SSF may not knowingly accept prohibited or excessive contributions;
- Only a limited class of individuals may be solicited;
- Solicitation of the general public is prohibited; and
- Special notices must be included.

Voluntary Contributions Only

Contributions to an SSF must be voluntary; that is, they must meet the following conditions:

No Use of Force or Threats

Contributions may not be secured by the use or threat of physical force, job discrimination or financial reprisal. 114.5(a)(1).

No Fees or Dues

An SSF may not use dues or fees obtained as a condition of membership or employment in the *connected organization*, even if the dues or fees are refundable upon request. 114.5(a)(1). See also AO 1987–23.

No Commercial Activities

The SSF may not use money obtained as the result of a commercial transaction. 114.5(a)(1).

No Knowing Acceptance of Prohibited or Excessive Contributions

An SSF may not accept contributions from persons who are prohibited by law from making contributions. 114.2(d).

An SSF also may not accept contributions of more than \$5,000 per calendar year from any one contributor. 110.9.

Information on handling contributions that appear to be illegal can be found in Section 8.

Limited Solicitees

An SSF or *connected organization* may solicit only a restricted class of persons associated with the *con-*

nected organization. The general public may not be solicited. See Sections 2, 3 and 4 below.

An SSF may accept an unsolicited *contribution* that is otherwise lawful, but the committee may not inform individuals outside the restricted class that unsolicited contributions are acceptable. 114.5(j). Providing that information amounts to a solicitation. See, e.g., AO 1983–38.

Accidental or Inadvertent Solicitation

If an SSF or *connected organization* accidentally or inadvertently solicits a person not eligible for solicitation, no violation will result if the SSF or *connected organization*:

- Makes its best efforts to comply with the restrictions on who may be solicited; and
- Corrects the method of solicitation immediately.

114.5(h).

Special Notices

Purpose and Rights

When the SSF or the *connected organization* solicits individuals for contributions, the solicitees must be informed of:

- The SSF's political purpose; and
- Their right to refuse to contribute without reprisal.

114.5(a)(3)–(5).

Suggesting a Contribution Amount

An SSF or *connected organization* may wish to suggest to a potential contributor that he or she give a specified amount. When making such a suggestion, the solicitation must also say that:

- The suggested amount is only a suggestion;
- More or less than the suggested amount may be given (i.e., no minimum *contribution* can be specified); and
- The amount given by the contributor, or the refusal to give, will not benefit or disadvantage the person being solicited. 114.5(a)(2) and (5).

(SSFs and their connected organizations may offer premiums or other incentives to contributors who give specified minimum amounts. See Section 6.)

“Best Efforts” Rules

When making solicitations, SSFs and their treasurers must make “best efforts” to obtain and report the name, address, occupation and employer of each contributor who gives more than \$200 in a calendar year. In order to show that the committee has made “best efforts,” solicitations must specifically request that information and inform contributors that the committee is required by law to make its best efforts to obtain and report it. 104.7. For details, see “Treasurer’s Best Efforts” on page 43.

Disclaimer Not Required

Because SSF solicitations are directed to a restricted class, and not to the general public, they do not need to carry a disclaimer notice concerning who paid for the solicitation and whether it was authorized by a *candidate*. 110.11(f)(2). See page 37 for more information about disclaimer notices.

2. Corporations: Solicitable Personnel

Restricted Class

A *corporation* or its SSF may solicit its restricted class at any time. The restricted class of a *corporation* consists of:

- The *corporation*’s executive and administrative personnel;
- The stockholders; and
- The families of the above two groups.

An SSF may also solicit, at any time, the restricted class of any parent, subsidiary, branch, division or affiliate of the *connected organization*. 114.5(g)(1).

Executive and Administrative Personnel

Who Is Included

Executive and administrative personnel include employees who are paid on a salary (rather than hourly) basis and who have policymaking, managerial, professional or supervisory responsibilities.

114.1(c). The restricted class generally includes individuals who:

- Devote the majority of their work week to executive or administrative duties involved in running the *corporation*’s business (e.g., plant,

division and section managers, officers and executives); or

- Follow the recognized professions, such as lawyers, physicians, nurses and engineers.

114.1(c)(1)(ii). AO 2004-23.

The following groups might also qualify as solicitable personnel:

- Consultants and commissioned employees, if they have policymaking, managerial or supervisory responsibilities and if the organization deducts federal income tax from their paychecks under the Internal Revenue Code. 114.1(c)(3). AO 1999-20.
- Members of a board of directors who are not shareholders or employees but who receive regular compensation. AO 1985-35.
- Executive and administrative personnel of franchisees, licensees and agents. See AOs 1992-7, 1990-22, 1988-46 and 1985-31.
- Executive and administrative personnel of a partnership or LLC controlled by, or controlling, a *corporation* or its dominant shareholders. See AOs 2004-32, 2001-18 and 1989-8.

None of the individuals listed above are automatically solicitable. SSFs should consult the cited *advisory opinions* and, if appropriate, request an opinion addressing their relationship with the particular individuals they wish to solicit. See page i for information on how to request an opinion.

Also, consult the Fair Labor Standards Act and the regulations issued pursuant to that Act, 29 CFR §541, for guidelines regarding whether individuals have policymaking, managerial, professional or supervisory responsibilities.

Who Is Not Included

- Professional employees represented by a labor union.
- Lawyers, consultants and other personnel employed by firms retained by the *corporation* and who are not employees of the *corporation*. AO 1984-55.
- Members of the board of directors who are not also executive and administrative personnel and who receive no compensation. AO 1977-18.
- Salaried foremen and others who supervise hourly employees.
- Former or retired personnel.

114.1(c)(2).

Exception: If any of the persons mentioned above are stockholders or *family* members of stockholders, then they would be included in the restricted class. 114.5(g)(1).

Stockholders

Who Is Included

In order to be considered a solicitable *stockholder*, a person must have:

- A vested beneficial interest in the stock;
- The power to direct how the stock will be voted, if it is voting stock; and
- The right to receive dividends. I 14.1(h).

Employee Stockholders

Individuals who participate in an employee stock ownership plan (ESOP) are solicitable as stockholders, as long as they have the rights listed in the previous paragraph.

In cases where participants' dividends are automatically reinvested under the ESOP, participants are solicitable only if they actually withdraw stock or have the right to withdraw at least one share of stock without a suspension of rights or penalty. See AOs 1998-12, 1996-10, 1994-36 and 1994-27.

Expanded Class

Twice a year, a *corporation* or its SSF may solicit employees who do not qualify as executive and administrative personnel, such as professionals represented by a labor union. Twice-yearly solicitations may also extend to the families of those workers. I 14.6. See Appendix B for more information on twice-yearly solicitations.

3. Labor Organizations: Solicitable Personnel

Restricted Class

A *labor organization* or its SSF may solicit its restricted class at any time. The restricted class includes the union's members, its executive and administrative personnel and the families of both groups. I 14.5(g)(2).

Note that a *member* of a local union is also considered a *member* of:

- Any national or international union that the local union belongs to; and
- Any labor federation to which the local, national or international union belongs.

I 14.1(e)(5).

For more information on affiliation between labor organizations, see page 5.

Expanded Class

Twice in each calendar year, a *labor organization* or its SSF may solicit nonmember employees of a *corporation* where members of the union are employed (including executive and administrative personnel, stockholders and the families of both groups). The union or the SSF may also solicit the union's own nonexecutive and nonadministrative personnel who are not members and their families on a twice-yearly basis. I 14.6(b); AO 1979-50.

Special rules apply to twice-yearly solicitations. See Appendix B.

4. Membership Organizations: Solicitable Personnel

Restricted Class of Membership Organization

A membership organization or its SSF may solicit its restricted class at any time. The restricted class includes:

- Noncorporate members (such as individuals and partnerships) of the organization;
- The organization's executive and administrative personnel; and
- The families of both groups. I 14.7(a).

A *member* may be solicited only if the following two requirements are met:

- The organization qualifies as a membership organization, as defined below; and
- Those it labels as "members" qualify as members, as defined by the Act and Commission regulations.

Definition of Membership Organization¹

A membership organization is a *trade association*, a *cooperative*, a *corporation* without capital stock or a local, national or international *labor organization* that meets the following qualifications:

- It is composed of members who have the authority to administer the organization according

¹ For purposes of internal communications, the definition of membership organization is broader. See "Communications," p. 77.

Who May Be Solicited

Who May Be Solicited ^a	By Corporation	By Labor Organization	By Incorporated Membership Organization ^c	By Incorporated Trade Association
At Any Time^b	Executive and Administrative Personnel and Families <hr/> Stockholders and Families	Executive and Administrative Personnel and Families <hr/> Members and Families	Executive and Administrative Personnel and Families <hr/> Noncorporate Members and Families	Executive and Administrative Personnel and Families <hr/> Noncorporate Members and Families <hr/> With Prior Approval, Corporate Members' Executive and Administrative Personnel, Stockholders and Families of Both
Twice Yearly^d	Nonexecutive and Nonadministrative Personnel and Families	Nonexecutive and Nonadministrative Personnel and Families <hr/> In Corporations that Employ Members of the Labor Organization, Nonmember Employees, Stockholders and Families of Both	Nonexecutive and Nonadministrative Personnel and Families	Association's Nonexecutive and Nonadministrative Personnel

a. A connected organization or its SSF may also solicit the executive and administrative personnel, stockholders and members (and the families of those persons) of the connected organization's subsidiaries, branches, divisions, affiliates and state or local units.

b. Organizations other than trade associations may also send communications containing express advocacy to persons in this category. See Chapter 9 for more information.

c. These rules apply, as appropriate, to corporations without capital stock and incorporated cooperatives.

d. Individuals who may be solicited at any time may also be included in twice-yearly solicitations.

to the organization's bylaws;²

- Its bylaws state the qualifications for membership;
- It makes its bylaws available to its members;
- It expressly solicits persons to become members;

- It expressly acknowledges new members by, for example, sending a membership card or including the *member's* name on a newsletter list; and
- It is not organized primarily for the purpose of influencing the nomination for *election*, or the *election*, of any individual to *federal office*. 114.1(e)(1).

² Bylaws includes any formal organizational document.

Definition of Member

Regular Member

A *member* of a membership organization is an individual or other entity that:

- Satisfies the requirements for membership as specified by the membership organization;
- Affirmatively accepts the organization's invitation to become a *member*; and
- Maintains a relationship with the organization in one of the following ways:
 - It has a significant financial attachment, such as a significant investment or ownership stake;
 - It pays dues at least annually as predetermined by the organization; or
 - It has a significant organizational attachment, which is demonstrated by annual affirmation of membership and direct participatory rights in the governance of the organization, for example:
 - The right to vote directly or indirectly for at least one individual on the membership organization's highest governing board;
 - The right to vote directly for organization officers;
 - The right to vote on policy questions where the highest governing body is obligated to abide by the results;
 - The right to approve the organization's annual budget; or
 - The right to participate directly in similar aspects of the organization's governance. 114.1(e)(2).

AOs 2003-13, 2000-15, 2000-4 and 1999-40.

Students, Lifetime Members & Retirees

The Commission will determine, on a case-by-case basis through the *advisory opinion* process, the membership status of individuals who do not meet the above requirements but who have a relatively enduring and independently significant financial or organizational attachment to the membership organization (e.g., students, lifetime members and retirees). 114.1(e)(3).

Multitiered Organizations

When an organization has a national federation structure or has affiliates at several levels (e.g., national, state, regional, local), a person who qualifies as a *member* of one affiliate will also qualify as

a *member* of all affiliates within that organization. 100.134(i), 110.3(a)(2)(iv) and 114.1(e)(5). AOs 2002-11 n.2 and 1998-19. See also, 100.5(g)(2), (3), and (4)

State Law Inapplicable

Whether or not an organization has members (for purposes of the *election law*) will be determined by FEC regulations and not by the definitions of state law. 114.1(e)(6).

Corporate Members of Trade Associations

A *trade association* or its SSF must get permission from a *member corporation* in order to solicit that *member's* restricted class for contributions to the association's SSF. 114.8(d). (A *trade association* may also solicit its own restricted class at any time.) See Appendix C for more information about *trade association* solicitations.

Expanded Class

Twice a year, a membership association or its SSF may solicit the association's non-executive and non-administrative personnel and their families. 114.6(a). See Appendix B for more information.

5. Solicitation Methods

The most common methods of soliciting SSF contributions from the restricted class are described below. Whichever method is used, the general rules on solicitations (see page 19) must be observed. 114.5. Moreover, the required recordkeeping information on contributors must be obtained when accepting contributions, as explained in Chapter 5.

Oral Solicitations

SSF solicitations may be made orally—for example, in a speech, a meeting, or over the phone. Literature about the SSF may be offered when requesting contributions.

Solicitations by Mail

The SSF or *connected organization* may also mail its requests for contributions. A pre-addressed, stamped return envelope may be included with the solicitation.

Solicitations in Internal Publications

If a *connected organization's* in-house publication is circulated to persons outside the restricted class, the organization may generally not include an SSF solicitation in that publication. See I 14.5(g)(1) and AO 1979-13.

EXCEPTION: A solicitation in an in-house publication that is circulated outside the restricted class may be permissible under the following conditions:

- The article includes an explicit caveat stating that contributions will be screened and those from persons outside the restricted class will be returned; and
- Both the number and the percentage of unsolicited 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. In the latter case, the newsletter could not publish a solicitation. See AOs 1999-6, 1994-21, 1980-139, 1979-50, 1979-15 and 1978-97.

What Constitutes a Solicitation

In addition to a straightforward request for contributions, an article about the SSF published in an in-house publication could also constitute a solicitation if it:

- Publicizes the SSF's right to accept unsolicited contributions from any lawful contributor;
- Provides information on how to contribute to the SSF; or
- Encourages support for the SSF.

AO 1984-55, n. 2; AOs 1979-66 and 1979-13.

For example, an article that commends employees who have contributed to the SSF is considered a solicitation because it encourages support.

What Is Not a Solicitation

In *advisory opinions*, the Commission has concluded that a communication concerning the SSF is not a solicitation if it:

- Does not encourage support for the SSF; and
- Does not facilitate the making of contributions to the SSF.

See, e.g., AOs 2003-14, 2000-7, 1991-3, 1988-2, 1983-38 and 1982-65. But see also, AOs 1999-6 and 1979-13.

Outside of its restricted class, for example, an SSF or its *connected organization* could:

- Announce the existence of the SSF and explain the legal requirements that apply to its activities;
- Provide information about how much the SSF has raised, the number of contributors and the number of candidates supported;
- Identify federal candidates who have been supported by the SSF, as long as the communication does not suggest that support for the SSF would help elect or defeat those candidates; and
- Have a public relations web site, stating the *connected organization's* operational support for the SSF and providing information that might lead to an inquiry about the SSF. AOs 2000-10 and 2000-7.

Solicitations Through the Internet

In several *advisory opinions*, the Commission approved proposals for using a corporate web site to provide information about the SSF or to solicit contributions for it. The various plans included measures to ensure that the web site would not solicit persons outside the restricted class. The *connected organization* or the SSF:

- Confined the solicitation to areas of the web site accessible only to the restricted class;
- Ensured that any part of the web site accessible to those outside the restricted class included a statement that Federal law prohibits soliciting contributions from outside the restricted class and that such contributions would be returned to the donor; and
- Closely monitored contributions to prevent the receipt of contributions from outside the restricted class.

AOs 2000-10, 2000-7 and 1995-33.

Solicitations at Conventions

Trade associations may make solicitations at a convention or annual meeting. For more information, see Appendix C.

Payroll Deduction

A corporate payroll deduction system can be used to collect contributions to the company's own SSF, to an *affiliated* SSF, or to the SSF of a *labor organization* representing the company's employees, as explained in Section 7 of this chapter.

Written Authorization Required

In a payroll deduction plan, an employee authorizes the periodic deduction of SSF contributions from his or her paycheck. A written authorization for the deductions must be obtained before making the deductions. The SSF is advised to retain a copy of the written authorization for three years from the date of the report disclosing the employee's last deduction. Other evidence of authorization, such as records of the transmittal of funds from employers or collecting agents in the form of spreadsheets, wire transfer records or other written electronic records will satisfy the recordkeeping requirement for payroll deduction authorization. (See "No Reverse Checkoff," below.) AOs 2000-15, 2000-11, 1999-33, 1999-31, 1999-6, 1999-3, 1997-25 and 1996-42. The FEC published a Statement of Policy on this subject in the *Federal Register*. 71 FR 38513 (7/7/06).

Electronic Signature Acceptable

Electronic signatures may be used by employees to authorize the deduction of contributions from their pay, and the *connected organization* or the SSF may confirm the employees' request via e-mail subject to the following conditions:

- An employee must be able to use the electronic signature or a written signature to revoke or modify the amount of the authorization at any time; and
- A record of the electronic signature, including verification that the signature came from a particular employee, must be maintained in a retrievable form available to the Commission in the event of an audit or investigation. See AOs 2001-4 and 1999-3.

Combined Dues and Solicitation Payments

Under a payroll deduction or checkoff plan, an individual may simultaneously authorize deductions of membership dues or fees and SSF contributions. The rules governing such combined payments are explained on page 29.

Deductions from Annuity Payments

Membership organizations may conduct checkoff plans in which retirees instruct the organization to regularly deduct PAC contributions from their annuity payments, along with other deductions. Such plans must follow the same restrictions as payroll deduction plans. AO 1999-6.

No Reverse Checkoff

When collecting SSF contributions, a *connected organization* may not use a reverse checkoff plan—i.e., a collection system whereby the contributions are automatically deducted from an individual's paycheck without his or her prior approval. Such a system results in an involuntary *contribution*, even if the individual can subsequently request a refund of the amount deducted. See, e.g. AO 2001-4 n.4. See generally 114.5(a)(1).

Cooperative Shareholder Payment Deductions

In AO 1986-7, the Commission ruled that non-corporate members of an agricultural cooperative could authorize deductions for SSF contributions from the cooperative's payments to members for crop proceeds.

Trade Association SSFs

A *trade association* may use payroll deduction to collect contributions from the association's own executive and administrative personnel and their families. Also, corporate members may use a payroll deduction system to collect contributions for the SSF of a *trade association*. Permissible solicitation and collection methods for trade associations are discussed in Appendix C.

Credit Cards

Individuals may contribute to an SSF using credit cards. See, e.g., AO 1990-4. Treasurers should note the recordkeeping requirements that apply to credit card receipts on page 41.

6. Fundraising Events and Special Promotions

This section describes rules applicable to special events and promotions commonly used to raise money for an SSF. Organizations using these events must follow the general solicitation rules described in Section 1.

Price Paid = Contribution Amount

The full price of a fundraising item purchased (such as a T-shirt, a ticket to a fundraising event or a chance at a raffle) counts as the purchaser's *contribution*, even if part of the price paid is used to defray the costs of the fundraising program. 100.53.

Use of Treasury Funds

Fundraising Events

A *corporation* or *labor organization* may generally use its treasury funds to pay all costs associated with fundraising events, such as dinners, luncheons, receptions, dances and concerts. Note, however, that a portion of the costs of entertainment (other than food and drink) paid by the *connected organization* may need to be reimbursed by the SSF. See “The ‘One-Third Rule,’” below. AO 1980-50.

Promotional Items, Entertainment and Raffles

A *connected organization* may also provide tangible premiums to encourage SSF contributions, through raffles and other promotions. The aggregate cost of the prizes, however, may not be disproportionately numerous or valuable in comparison with the contributions raised by the raffle. 114.5(b)(2). If the cost of the prizes offered is high in comparison with the amount of money raised, then the SSF will have to reimburse the *connected organization* for a portion of its costs, as explained below. See AOs 1989-18 and 1981-7.

An SSF may not accept prizes donated by corporations other than the *connected corporation*. See, for example, AO 1991-23.

Reimbursement

The “One-Third Rule”

According to the “One-Third Rule,” an SSF must reimburse its sponsoring organization for that portion of the cost of prizes or entertainment that exceeds one-third of the amount raised in contributions. 114.5(b)(2); See AOs 2003-33, 1999-31, 1995-17, 1989-18 and 1981-7. (FEC rules provide the “One-Third Rule” as a reasonable standard for deciding whether an SSF must reimburse the *connected organization* for fundraising costs. The Commission may approve other methods through *advisory opinions*.)

EXAMPLE: A trade association spends \$300 in treasury funds to purchase a TV set as a raffle prize. Sales of raffle tickets raise \$600 in SSF contributions. Since one-third of the amount raised (\$200) is less than the cost of the prize (\$300), then the SSF should reimburse the association for the \$100 difference.

On the other hand, if the SSF raises \$900 in contributions, then one-third of that amount (\$300) is equal to what the association spent on the prize, so no reimbursement is necessary.

No Reimbursement for Usual Solicitation Costs

The “One-Third Rule” applies only to fundraising with promotional items, prizes and entertainment (other than food and drink), not to the other types of SSF fundraising activity discussed in this section. See AOs 1980-50 and 1979-72.

Matching Contributions with Gifts to Charity

A *connected organization* may encourage contributions to the SSF by pledging to match all or a portion of a contributor’s gift to the SSF with a donation to charity. The employee or *member* making the SSF *contribution* may designate a charity that is tax-exempt under 26 U.S.C. §501(c)(3) to receive the matching gift from the *connected organization*, but he or she may not personally receive any financial or tangible benefit (such as a tax deduction or a premium from the recipient charity) as a result of the *connected organization’s* gift.

Note that the *connected organization* may make charitable donations to match contributions to its SSF from both the restricted class and other employees (during special “twice-yearly solicitations” — See Appendix B) as long as all regulations are followed for soliciting the two groups. See Fundraising for the SSF, p. 19; Appendix B, Twice-Yearly Solicitations, p. 105; and AOs 2003-39, 2003-33, 2003-4, 1994-7, 1994-6 and 1994-3. See also AOs 1989-9, 1989-7, 1988-48, 1987-18 and 1986-44.

7. Corporate Collection Methods Used by Labor Organizations

General Rule

Any lawful method of soliciting and collecting SSF contributions (such as payroll deduction) that is used by a *corporation* may also be used by a *labor organization* that represents the *corporation’s* employees. 114.5(l). Moreover, upon written request by a *labor organization*, a *corporation* and its subsidiaries must provide the union with the same method used

by the *corporation* for soliciting and collecting contributions for its own SSF or for a *trade association's* SSF. 114.5(k) and 114.8(e)(4).

Reimbursement

If the union wants to use the *corporation's* solicitation and collection system, it must reimburse the *corporation* for costs incurred in providing it to the union. The reimbursement may not be waived, since that would result in the *corporation's* absorption of the *labor organization's* solicitation costs—a prohibited *contribution*. 114.5(b). The Commission has considered alternative methods by which a *labor organization* can defray costs of payroll deduction in AOs 1981–39 and 1979–21.

Exception

If neither a parent *corporation* nor its subsidiaries sponsor an SSF, they are not required to make any solicitation or collection method available to any *labor organization*, though a *corporation* may agree to make some system available at cost. 114.5(k)(4).

8. Handling Illegal Contributions

Depositing Questionable Contributions

If an SSF receives a *contribution* that appears to be excessive or prohibited, the committee may have to refund it to the donor.

Within 10 days, the treasurer must either return the questionable check to the donor or deposit it. 103.3(a) and (b)(1). Once the *contribution* is deposited, the treasurer must:

- Avoid spending the questionable funds by keeping enough money in the committee's account to cover all potential refunds.
- Keep a written record explaining why the *contribution* may be illegal and include this explanation on Schedule A if the *contribution* has to be itemized before its legality is established.
- If a check appears to exceed a contributor's annual limit, seek a reattribution of the excessive portion, following the instructions below, or return it.
- If a check appears to come from a prohibited source, confirm its legality, as explained below, or return it. 103.3(b)(1), (4) and (5).

Excessive Contributions: Reattributions

Presumptive Reattribution

In some cases, an SSF may correct an excessive *contribution* by presumptively reattributing the excessive portion as described below.

When an SSF receives an excessive *contribution* made via a written instrument with more than one individual's name imprinted on it, but only one signature, the SSF may attribute the permissible portion to the signer. The SSF may make a presumptive reattribution of the excessive portion to the other individual whose name is imprinted on the written instrument without obtaining a second signature, so long as the reattribution does not cause the contributor to exceed any other *contribution* limit.

The SSF is required to notify the contributors of the reattribution within 60 days of the treasurer's *receipt* of the *contribution*, and must offer the contributors the option to receive a refund instead. 110.1(k)(3)(ii)(B)(1)–(3).

Requested Reattribution

In other situations, the treasurer may request a reattribution by asking:

- Whether the *contribution* was intended to be a *joint contribution* from more than one person; or, alternatively,
- Whether the amounts attributed to participants in a *joint contribution* should be adjusted. (The amount is split equally between the donors unless they indicate a different division in writing.)
- In either case, the treasurer must inform the contributor that he or she may instead request a refund of the excessive portion. The treasurer should also inform donors that a reattribution must, within 60 days of the treasurer's *receipt* of the *contribution*, be signed by each participating contributor and provided to the treasurer. 110.1(k)(3)(ii)(A).

Receive Reattribution or Make Refund

A *contribution* is properly reattributed if the treasurer receives a statement signed by all contributors indicating the amount attributable to each donor. 110.1(k)(2) and (3)(ii)(B). The treasurer must obtain the proper reattribution or refund the excessive portion within 60 days of the *receipt* of the original *contribution*. 103.3(b).

Retain Records

A committee must retain copies of reattributions for three years. 102.9(c) and (f); 110.1(l)(3) and (6). Rules for reporting reattributions are explained in Chapter 7.

EXAMPLE: A multicandidate SSF receives a \$6,000 check that is drawn on a joint account but signed by only one account holder. The treasurer deposits the *contribution* and seeks a reattribution by asking the account holders whether they intended the *contribution* to be a joint one, partially attributable to the second account holder, or whether the treasurer should refund the excessive \$1,000. Within 60 days of receiving the original *contribution*, the treasurer receives a statement, signed by both contributors, reattributing \$1,000 to the second account holder. The committee may now keep the full \$6,000.

If the SSF had not received the reattribution, the treasurer would have had to refund the excessive amount within the 60-day period.

Prohibited Contributions

Questionable Source

If a committee treasurer deposits a *contribution* that appears to come from a prohibited source, he or she has 30 days to:

- Confirm the legality of the *contribution*; or
- Refund the *contribution*.

103.3(b)(1).

As evidence of legality, the treasurer should obtain a written statement from the contributor explaining why the *contribution* is legal. Alternatively, the treasurer may obtain an oral explanation by telephone and keep a record of the conversation. 103.3(b)(1).

Contributions from Incorporated Practices of Professional Members

In *advisory opinions*, the Commission has permitted a membership organization, under certain circumstances, to use corporate contributions to pay for the expenses of operating the organization's SSF. In these cases, individual members who had established corporations for their professional practices made contributions to the SSF from their corporate practice accounts. These corporate (i.e., prohibited) contributions were endorsed to the *connected organization*, which deposited them into a general treasury account or a separate administrative account for the SSF. (See "Operating Costs" on page 8.) See, e.g., AOs 1992-20 and 1990-4.

When depositing SSF contributions into an administrative account under these circumstances, the committee may wish to inform contributors of this use of their funds and give them an opportunity to ask for a refund. See AO 1992-20.

Late Discovery of Prohibited Contribution

If the treasurer discovers that a previously deposited *contribution* came from a prohibited source, he or she must refund the *contribution* within 30 days of making the discovery. This situation might arise, for example, if the treasurer learned that a past *contribution* was made by a *foreign national*. 103.3(b)(2). See also 110.20.

If the SSF does not have sufficient funds to refund the *contribution* to the donor when the illegality is discovered, the treasurer must use the committee's next receipts. 103.3(b)(2).

9. Collecting Agents

When a *connected organization* raises money for its SSF, it is acting as the committee's *collecting agent* and has certain responsibilities under the *election law*. Other entities may also act as collecting agents, such as *affiliated committees*.

As this section explains, a *collecting agent* has no reporting obligations under the law, but nonetheless the agent must:

- Comply with the solicitation restrictions explained earlier in this chapter;
- Forward the contributions to the SSF on time; and
- Keep records on contributors and provide the information to the SSF for disclosure purposes.

Who Is a Collecting Agent

The *collecting agent* must be connected to, or *affiliated* with, the SSF. The following types of organizations may function as collecting agents:

- The SSF's *connected organization*;
- A parent, subsidiary, division, branch or local unit of the *connected organization*; and
- An *affiliated committee* (federal or nonfederal).

In addition, a local, state, national or international union belonging to a federation of unions (such as the AFL-CIO) may act as a *collecting agent* for the federation's SSF. Also, local, state or national chapters of membership organizations may serve as collecting agents for the national organization's SSF. 102.6(b)(1)(i)-(iv). See also AOs 2003-39 and 1998-19.

Who Is Not a Collecting Agent

The *collecting agent* rules described in this section do not apply to the following:

- Individuals
- Partnerships, or
- Commercial fundraising firms.

102.6(b)(3).

While these persons are not considered collecting agents, they must still observe the forwarding deadlines described on the next page when they accept contributions on behalf of an SSF. They also may not commingle SSF contributions with their own funds. 102.8 and 102.15.

SSF's Responsibility

Regardless of whether the SSF uses the *connected organization* or another committee as its *collecting agent*, the SSF remains responsible for seeing that the agent follows the rules for soliciting and depositing contributions and forwarding records. The SSF is also responsible for reporting the contributions. 102.6(c)(1).

Solicitations by Collecting Agent

Lawful Contributions Only

Like any person who solicits contributions for an SSF, a *collecting agent* may solicit only those individuals who are eligible for solicitation under the law (i.e., the restricted class) and must comply with the other rules on solicitations explained in Section I of this chapter. 102.6(c)(2).

Payment of Solicitation Expenses

A *collecting agent* may pay the expenses of soliciting and transmitting contributions to the SSF. These payments are not considered contributions or expenditures and do not need to be reported unless the *collecting agent* is a registered *political committee*. 102.6(c)(2)(i). AO 2000-4.

Reimbursements

If the SSF pays for the solicitation costs or other expenses which the *collecting agent* may pay as an administrative expense, the *collecting agent* may reimburse the SSF, but the reimbursement must be made within 30 days. 102.6(c)(2)(ii) and 114.5(b)(3).

Combined Payments

The *collecting agent* may include a solicitation for contributions to an SSF in a bill for another payment,

such as a bill for membership dues or a conference registration fee, or in a solicitation made on behalf of the *collecting agent* itself. 102.6(c)(2)

The contributor may write a single check to cover both his or her dues (or other fee) and the *contribution* to the SSF. The check must be drawn on the contributor's personal checking account or on a nonrepayable corporate drawing account. 102.6(c)(3). AOs 1999-40 and 1997-9.

Solicitation Materials

Collecting agents using combined payments to collect SSF contributions must ensure that their solicitation materials contain the required information described in Section I of this chapter. 102.6(c)(2). The solicitation materials should convey the distinction between the required dues or fees and the suggested voluntary SSF *contribution*. Individuals may not designate a portion of their dues or fees for the SSF. See AOs 1990-4, 1987-17, 1987-6 and 1985-12.

Payroll Deduction

A *labor organization* may use an employer's payroll deduction system to collect both dues and voluntary SSF contributions. The employer may issue a single check to the *labor organization* representing both union dues and SSF contributions. 102.6(c)(3). The *labor organization*, in turn, acting as the *collecting agent* for its SSF, must forward the contributions to the SSF as explained below.

Deductions for Trade Association SSFs

Corporate members of a *trade association* may provide incidental services, including the use of an employee payroll deduction or checkoff system, to collect and forward contributions by their restricted class to the *trade association's* SSF. If a *corporation* provides these services for a *trade association* SSF, the *corporation* and its subsidiaries, branches, divisions and affiliates must also, upon written request, provide the same services at cost for a *labor organization* representing employees of the *corporation*. 114.8(e). The process must satisfy all other requirements regarding prior approval and voluntary contributions (see pages 19 and 107).

Transmitting Funds Directly

Checks payable to the SSF must be forwarded directly to the SSF by the *collecting agent*. In the case of cash contributions, the *collecting agent* may transmit the contributions to the SSF in the form of money orders or cashier's checks made out to the SSF. 102.6(c)(4)(i) and (ii)(D).

Depositing Funds Temporarily

Checks made out to the *collecting agent* and cash contributions may be temporarily deposited in any one of three types of accounts:

Transmittal Account

A *collecting agent* may establish a transmittal account used solely for the deposit and transmittal of contributions collected on behalf of the SSF. If any expenditures are made from the account, other than transfers to the SSF or its *affiliated* committees, the account automatically becomes a campaign depository of the SSF and all of the account's activity will have to be disclosed. 102.6(c)(4)(ii)(A).

Collecting Agent's Account

A *collecting agent* may also use its own account for the temporary deposit and transmittal of contributions to the SSF. The agent must keep separate records of all receipts and deposits that represent contributions to the SSF. (Recordkeeping rules are discussed in Chapter 5).

Cash contributions must be deposited separately so that separate deposit slips are retained in the committee's records. 102.6(c)(4)(ii)(B).

Nonfederal Account

A *collecting agent* may deposit and temporarily hold SSF contributions in an account established for state and local political activities (see page 98). The *collecting agent* must keep separate records of all receipts and deposits of SSF contributions. 102.6(c)(4)(ii)(C).

Forwarding Contributions and Records

A *collecting agent* (or anyone who raises money for an SSF) must forward the required recordkeeping information to the SSF along with the collected contributions. 102.6(c)(4) and (5). Individual contributions of \$50 or less must be forwarded within 30 days; contributions exceeding \$50 must be forwarded within 10 days. 102.8(b).

The recordkeeping information that must be obtained for the committee's records varies, depending on the amount of each individual *contribution*. See Chapter 5 for complete instructions.

Retaining Records

A *collecting agent* must retain all records of SSF *contribution* deposits and transmittals for three years and must make the records available to the Commission upon request.

The SSF must keep records of all transmittals of contributions received from collecting agents for three years. 102.6(c)(6). The SSF must also keep written authorization for electronic deductions for three years from the date of the report disclosing the last deduction. 102.9(c).

Reporting

The SSF is responsible for reporting contributions collected through the *collecting agent*. The funds are reported as contributions from the original donors rather than as a *transfer* from the *collecting agent*. If a *contribution* must be itemized, the SSF treasurer must report, as the date of *receipt*, the day the *collecting agent* received the *contribution*. 102.6(c)(7) and 102.8(b)(2).

Note that merely acting as a *collecting agent* does not cause an unregistered organization to become a *political committee* with registration and reporting obligations under the Act. However, if an unregistered *collecting agent* engages in other activities that would cause it to become a *political committee* (such as making contributions to candidates), then it must register and report as a *political committee*. See, for example, AOs 2003-29 and 1984-31.

10. Investing SSF Funds

In addition to collecting contributions, an SSF may raise money by earning interest and dividends on invested funds. For example, an SSF may invest contributions it has received in a savings account, money market fund or certificate of deposit. See, e.g., AOs 1986-18 and 1980-39.

Registration and Reporting

If an investment by an SSF is held in a bank, the bank must be listed as a depository on the committee's Statement of Organization. See Chapter 1.

In addition, special reporting requirements apply to earned interest on invested funds, as explained in Chapter 7.

SSF Must Pay Taxes

An SSF must use its own funds to pay taxes on interest income. Federal and state taxes on SSF funds are not considered *administrative expenses* payable by the *connected organization*. AO 1977-19.

CHAPTER 4

Supporting Candidates

I. Contributions

SSFs may make contributions to candidates and to their campaign committees. All contributions to federal candidates during the 2007-08 election cycle are subject to the following limits:

- **\$5,000** per candidate, per election, from an SSF that qualifies as a *multicandidate committee*.
- **\$2,300** per candidate, per election, from any other registered SSF.

When making a *contribution* to a candidate or candidate's campaign, a multicandidate SSF must give the recipient a written notification that it has qualified as a *multicandidate committee*. 100.2(a)(2). For convenience, the statement may be pre-printed on the committee's checks, letterhead or other appropriate materials.

For a complete explanation of the *contribution* limits and how they work, see Chapter 2 and the "Contribution Limits" chart, page 11.

Gifts of Money

Monetary contributions exceeding \$100 must be made by check or other written instrument drawn on the SSF's account. 103.3(a).

In-Kind Contributions

In addition to contributing money, an SSF may donate goods or services to candidates and their committees.¹ Gifts of goods or services are in-kind contributions. As examples, an SSF makes an *in-kind contribution* when it:

- Pays for consulting, polling or printing services provided to a *candidate committee*;
- Donates office supplies or mailing lists to a campaign;
- Sponsors a fundraising event benefiting a *candidate*; or

- Pays for a campaign advertisement on behalf of a *candidate* (if the advertisement does not qualify as an *independent expenditure*).

100.52(d)(1). See Chapter 2 for information on how to measure the value of an *in-kind contribution*.

In-Kind Contributions Designated for More Than One Election

The Commission has advised that in-kind contributions may be designated for more than one *election* within an *election cycle* provided that:

- The goods contributed have a long-term useful life expectancy, extending over all the elections for which the *contribution* was made (e.g. computer equipment);
- The *candidate* actually runs in all the elections for which the *contribution* is given; and,
- The contributor provides a written, signed designation at the time of the *contribution* – or provides a proper redesignation within 60 days of the *contribution*. AO 1996-29.

Allocation Among Candidates²

If an SSF supports more than one federal *candidate* through an *in-kind contribution*, the *contribution* must be allocated among the candidates so that a portion of it counts toward the committee's limit for each *candidate*. The value attributed to each *candidate* must be in proportion to the relative benefit each *candidate* is expected to receive.

EXAMPLE: An SSF sponsors a fundraising dance on behalf of several candidates. The portion of the costs attributed as a *contribution* to each *candidate* must be based on the ratio of funds received for each *candidate* to the total funds received for all the candidates. 104.10; 106.1(a) and (b).

Opinion Polls

Special FEC regulations pertain to the allocation of contributions of opinion poll results. See 106.4.

Earmarked Contributions

An SSF may act as a conduit for an *earmarked contribution*, i.e., a *contribution* that the individual

¹ Note that an SSF may contribute goods and services only if it has purchased them with its own funds or if an individual (not the sponsoring organization) has contributed them to the SSF. However, corporations and labor organizations may provide some goods and services that are exempt from the definitions of "contribution" and "expenditure." See Chapter 9 "Communications."

² See Appendix A for information about allocating expenses when supporting both federal and nonfederal candidates.

contributor directs, either orally or in writing, to a *clearly identified candidate* or *candidate's* committee through the SSF. 110.6. (The *connected organization* may never serve as the conduit. 110.6(b)(2)(ii).) An *earmarked contribution* counts against the original contributor's *contribution* limits. It does not count against the limits on the SSF's own contributions to the *candidate* unless the SSF exercises direction or control over the contributor's choice of the recipient *candidate* or unless the *earmarked contribution* was solicited by the *connected organization*. 110.6(d).

If the *earmarked contribution* was solicited from the restricted class by a communication from the SSF's *connected organization* under 114.3 and was collected by the SSF, it is considered a *contribution* to both the SSF and the *candidate*, and from both the individual contributor and the SSF. As such, the *earmarked contribution* counts against several *contribution* limits. Note that, under these circumstances, the *contribution* automatically counts against the SSF's *contribution* limits regardless of whether the SSF exercised direction or control over the choice of recipient. 114.2(f)(2)(iii) and 114.2(f)(4)(iii). See also Candidate and Party Appearances, Solicitation by the Corporation or Labor Organization, page 81.

Purchase of Fundraising Items and Tickets

An SSF may purchase tickets to a fundraising event held by a *candidate's* committee, or it may purchase items sold for fundraising purposes by the committee. The entire amount paid for a ticket or item is considered a *contribution*. 100.53.

Loans and Loan Endorsements

An SSF may loan money to a *candidate committee*, or it may endorse or guarantee a bank loan for the committee. The loan or the amount endorsed or guaranteed counts as a *contribution* to the extent that the loan remains outstanding. 100.52(b).

EXAMPLE: A multicandidate SSF guarantees half the value of a \$10,000 loan from a bank to a *candidate's* committee, thereby making a \$5,000 *contribution* to the *candidate* toward the next election. The *candidate's* committee makes monthly repayments on the loan in amounts of \$1,000. Those payments reduce the SSF's *contribution* by \$500 each month (i.e., half the repayment). As the outstanding balance is reduced, the SSF may make new contributions to the *candidate* for the same election, as long as the overall \$5,000 limit is not exceeded.

Contributions to Other Committees

In addition to contributing directly to *candidate* committees, an SSF may support other committees that contribute to candidates, such as party committees. Contributions to these committees do not count against the SSF's *contribution* limits for a *candidate*, unless the SSF:

- Gives to an unauthorized single-candidate committee (i.e., a *political committee* that supports only one *candidate*);
- Knows that a substantial portion of its *contribution* will be given to or spent on behalf of a particular *candidate*; or
- Retains control over the funds after making the *contribution*. 110.1(h); 110.2(h).

Supporting Nonfederal Candidates

SSFs may contribute to nonfederal candidates using money they have raised for federal elections. Donations to nonfederal candidates are subject to state and local laws, not the *Federal Election Campaign Act*, but the SSF must still disclose disbursements to state and local candidates, and must itemize the disbursements when the aggregate amount in a calendar year exceeds \$200 in its FEC reports. 104.3(b)(3)(ix); AOs 1986–27 and 1981–18.

SSFs active in both federal and nonfederal elections should also consult Appendix A.

2. Independent Expenditures

In addition to making contributions, an SSF may support (or oppose) candidates by making independent expenditures. Independent expenditures are not contributions and are not subject to limits (However, contributions made to a committee or to another person making independent expenditures are subject to limits, as explained below.).

Part 109; see AOs 2003-40, 2003-23 and 1999-37.

What Is an Independent Expenditure

An *independent expenditure* is an *expenditure* for a communication, such as a web site, newspaper, TV or *direct mail* advertisement that:

- Expressly advocates the *election* or defeat of a *clearly identified candidate*; and
- Is not made in consultation or cooperation with, or at the request or suggestion of a *candidate*, *candidate's* committee, *party committee* or their agents. 104.4 and 109.20(a). See below.

When Is a Candidate “Clearly Identified”

A *candidate* is “clearly identified” if the *candidate’s* name, nickname, photograph or drawing appears, or the identity of the *candidate* is otherwise apparent. Examples include: “the President,” “your Congressman,” “the Democratic presidential nominee,” “the Republican *candidate* for Senate in the State of Georgia.” 100.17.

What Is “Express Advocacy”

“Express advocacy” means that the communication includes a message that unmistakably urges *election* or defeat of one or more *clearly identified candidate(s)*.

There are two ways that a communication can be considered *express advocacy* (*candidate advocacy*): by use of certain “explicit words of advocacy of *election* or defeat” and by the “only reasonable interpretation” test. 100.22.

“Explicit words of advocacy of election or defeat”

The following words convey a message of *express advocacy* :

“Vote for the President,” “re-elect your Congressman,” “support the Democratic nominee,” “cast your ballot for the Republican challenger for the U.S. Senate in Georgia,” “Smith for Congress,” “Bill McKay in ‘06”;

- Words urging action with respect to candidates associated with a particular issue, e.g., “vote Pro-Life”/ “vote Pro-Choice,” when accompanied by names or photographs of candidates identified as either supporting or opposing the issue;
- “Defeat” accompanied by a photograph of the opposed *candidate*, or the opposed *candidate’s* name, or “reject the incumbent”; and
- Campaign slogan(s) or word(s), e.g., on posters, bumper stickers and advertisements, that in context can have no other reasonable meaning than to support or oppose a *clearly identified candidate*, for example, “Nixon’s the One,” “Carter ‘76,” “Reagan/Bush”. 100.22(a).

“Only Reasonable Interpretation” Test

In the absence of such “explicit words of advocacy of *election* or defeat,” *express advocacy* is found in a communication that, when taken as a whole and

with limited reference to external events, such as the proximity to the *election*, can only be interpreted by a “reasonable person” as advocating the *election* or defeat of one or more *clearly identified candidate(s)*. 100.22(b)(1) and (2).

This test requires advocacy of a *candidate* that is unmistakable, unambiguous and suggestive of only one meaning (that being the *election* or defeat of a *candidate*). 100.22(b).

Note that the author’s intent is irrelevant. The test is how a “reasonable” receiver of the communication objectively interprets the message. If reasonable minds could not differ as to the unambiguous electoral advocacy of the communication, it is *express advocacy* regardless of what the author intended.

Multiple page communications or multiple inserts in the same envelope in a *direct mail* piece are to be read all together as a whole. MCFL, 479 U.S. at 249.

What Is Not an Independent Expenditure

When an *expenditure* is made under the circumstances described below, it results in an *in-kind contribution* to a *candidate* rather than an *independent expenditure* and therefore counts against the SSF’s *contribution* limit for that *candidate*. 109.21 (b).

Solicitations on Behalf of a Candidate

An *expenditure* by an SSF for a communication that solicits the public for contributions on behalf of a *candidate* is an *in-kind contribution* if the SSF coordinates with the *candidate’s* committee. AO 2003-23. See Appendix D, “Earmarked Contributions.”

Candidate-Prepared Material

Any *expenditure* to distribute or republish campaign material (print or broadcast) produced or prepared by a *candidate’s* campaign is an *in-kind contribution*, not an *independent expenditure*. 109.23.

Coordination with Candidate’s Campaign

Any *expenditure* that is *coordinated* with the *candidate’s* campaign is an *in-kind contribution*, not an *independent expenditure*. 109.20 and 109.21 (b).

Coordination

A communication is *coordinated* if it is made in cooperation, consultation or concert with, or at the request or suggestion of, a *candidate*, a *candidate’s*

authorized committee or their agents, or a *political party committee* or its agents.³ 109.20(a).

In order for a communication to be considered *coordinated*, it must satisfy three criteria or “standards”: source of payment, content and conduct. Only a communication that satisfies all three criteria is considered *coordinated*. 109.21. See the discussion in Chapter 9, Section 1.

Disclaimer Notice Required

A communication representing an *independent expenditure* must display a disclaimer notice. See Section 4 for more information.

Allocation Among Candidates

When an *independent expenditure* is made on behalf of more than one *clearly identified candidate*, the SSF must allocate the *expenditure* among the candidates in proportion to the benefit that each is expected to receive. For example, in the case of a published or broadcast communication, the attribution should be determined by the proportion of space or time devoted to each *candidate* in comparison with the total space or time devoted to all the candidates. 104.10 and 106.1(a).

Contributing to Committees That Make Independent Expenditures

A *contribution* by an SSF to a committee that makes independent expenditures is subject to the SSF’s limit for that committee.

A *contribution* to a committee that supports only one *candidate*, however, is subject to the SSF’s per *candidate*, per *election* limit. 110.1(h).

Prohibitions Apply

Note that the same persons prohibited from making contributions to candidates and political committees are also prohibited from making expenditures, including independent expenditures, in connection with federal elections. Thus, independent expenditures by corporations, labor organizations, federal government contractors and foreign nationals are prohibited.

³ For the purposes of 11 CFR part 109 only, agent is defined at 11 CFR 109.3

3. Electioneering Communication

Any broadcast, cable or satellite communication that is publicly distributed within 30 days of a primary or 60 days of a general *election*, refers to a *clearly identified federal candidate* and is targeted to the relevant electorate is an *electioneering communication*. 100.29(a).

Clearly Identified Candidate

A *candidate* is *clearly identified* if his or her name, nickname, photograph or drawing appears in the ad, or if the ad contains unambiguous reference to the *candidate* through titles such as “the President,” “your Representative” or “the incumbent.” 100.29(b)(2).

Public Distribution

A communication is “publicly distributed” when it is aired, broadcast, cablecast or otherwise disseminated through the facilities of a radio or television station, cable television system, or a satellite system. 100.29(b)(3).

Targeted to the Relevant Electorate

A communication is “targeted to the relevant electorate” when it is receivable by 50,000 or more persons in the *candidate’s* district (for a House *candidate*) or state (for a Senate *candidate*). 100.29(b)(5).⁴

What is not an Electioneering Communication?

A communication is not an *electioneering communication* if it:

- Is publicly disseminated through means other than broadcast, cable or satellite media. 100.29(c)(1);
- Appears in a news story, commentary or editorial that is publicly distributed by broadcast, cable or satellite facilities not owned or controlled by any *political party*. 100.29(c)(2);
- Is a bona fide news story distributed by facilities owned and controlled by a party or *candidate*. 100.29(c)(2) and 100.132(a) and (b);

⁴ In the case of Presidential and Vice-Presidential candidates, the communication is publicly distributed if it can be received by 50,000 or more people in a state where a primary election or caucus is being held within 30 days or anywhere in the United States 30 days prior to the nominating convention or 60 days prior to the general election. 100.29(b)(3)(ii).

- Constitutes an *expenditure* or *independent expenditure*. 100.29(c)(3); or
- Constitutes a *candidate* debate or forum. 100.29(c)(4) and 110.13.

Prohibition on Corporations and Labor Organizations Making Electioneering Communications

Corporations and labor organizations are prohibited from making payments for an *electioneering communication* to those outside the restricted class. Accordingly, corporations and labor organizations may not provide funds for an *electioneering communication*. A *corporation* or *labor organization* will be considered to have provided funds if it knows, or has reason to know, that the person to whom it has provided funds intended to use them to pay for an *electioneering communication*. 114.14(a)(2). Also, persons who accept funds provided by a *corporation* or *labor organization* may not:

- Use those funds to pay for electioneering communications; or
- Provide any portion of those funds to any person for the purpose of defraying the cost of an *electioneering communication*.

Exceptions

The above prohibition does not apply to funds disbursed by a *corporation* or *labor organization* in the usual and normal course of business such as:

- Salary, royalties or income from bona fide employment;
- Interest earnings, stock or other dividends, or proceeds from the sale of investments; and
- Receipt of payments for the fair market value of goods provided or services rendered.

114.14(c).

Persons who receive funds from corporations or labor organizations for purposes that do not meet the exceptions mentioned above must be able to demonstrate through a reasonable accounting method that no portion of the funds were used to pay for an *electioneering communication*. 114.14(d).

4. Independent Expenditures and Electioneering Communications by Qualified Nonprofit Corporations

Although corporations and labor organizations are prohibited under the Act from making contributions or expenditures in connection with federal elec-

tions, a limited exception allows certain Qualified Nonprofit Corporations (QNCs) to make independent expenditures and electioneering communications (but not contributions). If a QNC makes a reportable (see Filing Reports, page 45) *independent expenditure* or *electioneering communication*, it must demonstrate its eligibility for QNC status. The following paragraphs explain these issues in greater detail.

Criteria for QNC Status

To qualify as a QNC, a *corporation* must meet the five requirements listed below:

Nonprofit Status

The *corporation* is a social welfare organization as described in 26 U.S.C. §501(c)(4). 114.10(c)(5).

Express Purpose

The *corporation's* organic documents, authorized agents or actual activities must indicate that its only purpose is issue advocacy, *election* influencing activity or research, training or educational activities tied to the *corporation's* political goals. 114.10(b) and (c)(1).

Business Activities

The *corporation* cannot engage in business activities. Business activities include the provision of goods, services, advertising or promotional activity that results in income to the *corporation*, other than in the form of membership dues or donations. Note, however, that if fundraising activities are expressly described as a request for donations to be used for political purposes, such as supporting or opposing candidates, they are not business activities. 114.10(b)(3) and (c)(2).⁵

Shareholder/Disincentives to Disassociate

A *corporation* cannot have shareholders or persons, other than employees and creditors, who:

- Have an equitable interest in the *corporation* or are otherwise *affiliated* in a way that would allow them to make a claim on the organization's assets or earnings; or

⁵ In May 1997 the U.S. Court of Appeals (8th Cir.) upheld the district court in *Minnesota Citizens Concerned for Life (MCCL) v. FEC*, ruling that the QNC Exception regulations conflict with the 8th Circuit's prior decision in *Day v. Holahan*, which is controlling law in that circuit. In *Day*, the court struck down a state law with requirements similar to those in the QNC Exception regulations. The courts found that the "no business activity" requirement violated MCCL's First Amendment rights. In July 1997, the 8th Circuit denied the Commission's petition for rehearing and suggestion for rehearing en banc of the MCCL case.

- Receive a benefit that they lose if they end their affiliation with the *corporation* or cannot obtain unless they become *affiliated*, e.g., credit cards, insurance policies, savings plans, education or business information (except that education and business information may be provided to enable the recipient to help promote the group's political ideas). These types of benefits are disincentives for individuals to disassociate themselves from the organization. 114.10(c)(3).

Relationship with Business Corporations and Labor Organizations

The *corporation* was not established by a *corporation* or a *labor organization*, does not accept direct or indirect donations from such organizations and, if unable to demonstrate that it has not accepted such donations, has a written policy against accepting donations from them. 114.10(c)(4).⁶

Certification of QNC Status

If a QNC makes independent expenditures that aggregate in excess of \$250 in a calendar year or electioneering communications that aggregate in excess of \$10,000 in a calendar year, it must certify that it is eligible for QNC status and report the independent expenditures and electioneering communications (see below). Certification may be made by filing FEC Form 5 (for independent expenditures) or FEC Form 9 (for electioneering communications), or by submitting a letter, by the due date of the first *independent expenditure* or *electioneering communication* report. The form or letter must contain the following information:

- Name and address of the *corporation*;
- Signature and printed name of the individual filing the qualifying statement; and
- A statement certifying that the *corporation* meets the above five qualifications of a QNC. 114.10(e)(1).

Filing Reports - QNC

A QNC must report the independent expenditures that exceed \$250 on FEC Form 5 or in a

⁶ Exception and Caution: Although a 501(c)(4) corporation may accept donations from a 501(c)(3) corporation, it must use that donation in a manner that is consistent with the 501(c)(3)'s tax exempt purpose, which, under the Internal Revenue Code, is never to make independent expenditures in support of, or in opposition to, any candidate. Tax exempt corporations are urged to consult with the Internal Revenue Code and Regulations.

signed statement with the appropriate authority. 114.10(e)(2) and 109.10(b), (c) and (d). QNCs must also report electioneering communications that aggregate in excess of \$10,000 in a calendar year on FEC Form 9. 114.10(e)(2).

Content of Independent Expenditure Report

The report (or statement) must include:

- The reporting person's name, mailing address, occupation and employer (if any);
- The name and mailing address of the person to whom the *expenditure* was made;
- The amount, date and purpose of each *expenditure*;
- A statement as to whether the *expenditure(s)* was in support of or in opposition to a *candidate* and the *candidate's* name and office sought; and
- The identification of each person who contributed more than \$200 for the purpose of making the independent expenditures. 109.10(e).

When to File Independent Expenditure Reports

The report is due at the end of the quarterly reporting period (see page 47) during which independent expenditures aggregating in excess of \$250 are made and at the end of each reporting period thereafter in which additional independent expenditures are made. 109.10(b) and 114.10(e)(2).

48-Hour Independent Expenditure Notices

QNCs that make independent expenditures at any time during a calendar year – up to and including the 20th day before an *election* – must disclose this activity within 48 hours each time that the expenditures aggregate \$10,000 or more for the same *election*. This reporting requirement is in addition to the requirement to file 24-hour notices of independent expenditures each time that disbursements for independent expenditures aggregate at or above \$1,000 for the same *election* during the last 20 days – up to 24 hours – before an *election*. 2 U.S.C. §§434(b), (d) and (g). 109.10(d). See Chapter 6, "Filing FEC Reports."

Reporting Electioneering Communications

QNCs that make electioneering communications that aggregate more than \$10,000 in the calendar year must file the "24 Hour Notice of Disbursements/Obligations for Electioneering Communications" (FEC Form 9) with the Commission within 24 hours of the disclosure date. FEC Form 9 must be received by the Commission by 11:59 p.m. on the day following the disclosure date. 104.20(b).

Disclosure Date

The disclosure date is:

- The first date on which an *electioneering communication* is publicly distributed, provided that the person making the *electioneering communication* has made disbursement(s), or has executed contract(s) to make disbursements, for the direct costs of producing or airing one or more *electioneering communication* aggregating in excess of \$10,000; or
- Any other date during the same calendar year on which an *electioneering communication* is publicly distributed, provided that the person making the communication has made disbursement(s) or executed contract(s) to make disbursements for the direct costs of airing one or more electioneering communications aggregating in excess of \$10,000 since the most recent disclosure date. 104.20(a)(1)(i) and (ii).

Continuous Reporting of Electioneering Communications

Accordingly, the definition of “disclosure date” requires continuous reporting. After the first disclosure report, each time the direct costs of electioneering communications aggregate in excess of \$10,000, an additional disclosure report is due within 24 hours of the public distribution of an *electioneering communication*.

Disbursements made at any time for the direct costs of producing or airing the publicly-distributed *electioneering communication*, or other unreported electioneering communications, count toward the threshold. However, costs already reported for earlier electioneering communications are not included. 104.20(a)(1)(ii).

Last-Minute Expenditures

There are special reporting requirements for independent expenditures made after the 20th day but more than 24 hours before the day of the *election*. See page 67. 109.10(d).

Contributions Prohibited

Despite this exception for independent expenditures, the QNC is still prohibited from making monetary or in-kind contributions in connection with federal elections. 114.10(d)(3).

Solicitation by QNC

QNCs, when soliciting contributions, must inform donors that their donations may be used for political purposes, such as supporting or opposing candidates. 114.10(f).

Notice of Nonauthorization

When an *independent expenditure* is made to finance a communication containing *express advocacy* (*candidate advocacy*), the QNC must place a notice on the communication stating that the communication is paid for by the QNC and that it is not authorized by any *candidate* or *candidate's* committee. The notice must also include the permanent street address, telephone number or world wide web address of the QNC. 114.10(g) and 110.11(b)(3).

Political Committee Status

If the independent expenditures of a Qualified Nonprofit Corporation become so extensive that campaign activity becomes its “major purpose,” then the organization will be deemed a *political committee* and will be responsible for registering with the FEC and filing the more extensive reports that are required of political committees. MCFL 479 U.S. at 262.

5. Disclaimer Notices⁷

Any *public communication* made by a *political committee*, even those that do not contain a solicitation or *express advocacy*, must include a disclaimer. 110.11. Note that disclaimer notices are not required when the SSF or its *connected organization* solicits SSF contributions from, or communicates with, its restricted class. 110.11(f)(2).

Wording of Disclaimer

A disclaimer notice must contain the full name of the SSF, along with any abbreviated name used to identify the committee or the *connected organization*. 102.14(c).

⁷ This section addresses only disclaimer notices required under the *Federal Election Campaign Act*. It does not address notices required under the Internal Revenue Code with regard to the non-deductibility of certain political contributions. (See 26 U.S.C. § 6113.) For more information on those requirements, contact the Internal Revenue Service.

The actual wording of the notice will vary, depending on whether the advertisement is authorized by a *candidate* or *candidate's* committee.

Authorized by Candidate

If a *candidate* or *candidate's* campaign authorizes an advertisement purchased by the SSF, the disclaimer notice must identify the SSF that paid for the communication along with the campaign or *candidate* who authorized the advertisement. 110.11(b)(2).

EXAMPLE: "Paid for by the Lumber Workers' Union PAC and authorized by the John Doe for Congress Committee."

Authorized by Multiple Candidates

If an advertisement lists several candidates, the disclaimer may state that the advertisement was authorized by the candidates identified in the ad or, if only some candidates have authorized it, by those candidates identified with an asterisk.

EXAMPLE: "Paid for by the XYZ Corporation PAC and authorized by the candidates marked with an asterisk." AOs 2004-37 and 1994-13.

Not Authorized by Candidate

If an advertisement is not authorized by the *candidate* or the *candidate's* campaign, the notice must identify the SSF that paid for the communication, provide the permanent street address, telephone number or web site of the SSF, and state that it was not authorized by any *candidate* or *candidate's* committee. 110.11(b)(3).

EXAMPLE: "Paid for by the Fishermen's Union PAC (www.fishunion.org) and Not Authorized by Any Candidate or Candidate's Committee."

Clear and Conspicuous Placement of the Disclaimer

A disclaimer must be clearly and conspicuously displayed. A disclaimer is not clearly and conspicuously displayed if the print is difficult to read or if the placement is easily overlooked. 110.11(c)(1).

Television and Radio Ads

Authorized by Candidate's Committee

For both radio and television ads, the *candidate* must deliver an audio statement identifying himself or herself and stating that he or she has approved of the communication. In a television ad, the disclaimer must be conveyed by:

- A full-screen view of the *candidate* making the statement; or
- A voiceover with an image of the *candidate* occupying no less than 80% of the vertical screen height.

110.11(c)(3)(ii).

Additionally, television communications must contain a similar, clearly readable written statement that appears at the end of the communication for a period of at least four seconds with a reasonable degree of color contrast between the background and the disclaimer statement. The written statement must occupy at least four percent of the vertical picture height. 110.11(c)(3)(iii)(A) through (C).

Not Authorized by Candidate's Committee

For a radio or television communication that is not authorized by the *candidate's* committee, the disclaimer must include the name of the SSF responsible for the communication and the name of the committee's *connected organization*. In televised ads, the disclaimer must be accompanied by a full-screen view of the representative of the SSF, responsible for the communication stating the disclaimer on video or in voiceover. 110.11(c)(4).

Printed Communications

In printed communications, the disclaimer must be contained within a printed box set apart from the contents of the communication. The print size of the disclaimer must be of sufficient type size to be "clearly readable" by the recipient of the communication, and the print must have a reasonable degree of color contrast between the background and the printed statement. 110.11(c)(2)(i) and (iii).

Multiple-Paged Document

A disclaimer need not appear on the front page or cover of a multiple-paged document as long as it appears within the communication. 110.11(c)(2)(iv).

Package of Materials

Each communication that would require a disclaimer if distributed separately must still display the disclaimer when included in a package of materials. 110.11(c)(2)(v). For example, if a campaign poster is mailed with a solicitation for contributions, a separate disclaimer must appear on the solicitation and on the poster.

Items Not Requiring Disclaimer

A disclaimer is not required:

- When it cannot be conveniently printed (e.g., on pens, bumper stickers, campaign pins, campaign buttons and similar small items);
- When its display is not practicable (e.g., on wearing apparel, on water towers and in sky-writing);
- When the item is of minimal value, does not contain a political message and is used for administrative purposes (e.g., checks and receipts). 110.11(f)(1); or
- In SSF solicitations and communications to the restricted class. 110.11(f)(2).