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## CHAPTER 10

# Use of Resources and Facilities

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Under certain circumstances, corporations (including incorporated membership and trade associations) and labor organizations may allow candidates, political committees and individuals to use their resources and facilities (e.g., computers, phones, office equipment, furniture and rooms) in connection with federal elections. Described below are rules that apply to the use of facilities; note particularly when the user must reimburse the organization and when payment must be made in advance of the facility use.

This section does not apply to the use of an organization's facilities for the purpose of administering an SSF or raising funds for it. See pages ii and 8.

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## I. Individual Volunteer Activity

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### Incidental Use

Corporate employees and stockholders and *labor organization* employees, members and officials may make occasional, isolated or incidental use of corporate/*labor organization* facilities for their own individual volunteer activities in connection with a federal election. Note that the Commission has said that the use of facilities during one hour per week or four hours per month is considered "incidental use." 114.9(a)(1)(iii). Note, however, that this safe harbor does not apply when the employee is asked by a superior to do the volunteer work as a part of his/her regular duties. 114.2(f)(2)(i)(A). See Use of Staff, below.

### Reimbursement

#### Incidental Use

When the individual's use of the facilities is occasional, isolated or incidental, the individual must reimburse the organization to the extent that his/her activity increased the *corporation/labor organization's* overhead or operating costs. 114.9(a)(1) and (b)(1).

#### Activity Exceeding Incidental Use

When the individual's use of facilities exceeds the time frame of "incidental use," the individual must, within a commercially reasonable time, reimburse the *corporation/labor organization* for the usual and normal rental charge for facility use. 114.9(a)(2) and (b)(2).

#### Internet Activities

A *corporation* or *labor organization* may permit its employees, shareholders, officials and members to use its computer and Internet facilities for individual volunteer Internet activity, without making a prohibited *contribution*. Exempt Internet activities include:

- Sending or forwarding *election*-related email;
- Providing a hyperlink to a campaign or committee's web site;
- Engaging in campaign-related blogging;
- Creating, maintaining or hosting an *election*-related web site; and
- Paying a nominal fee for a web site or other forms of communication distributed over the Internet.

This exemption is contingent on the individual completing the normal amount of work for which the employee is paid, or is expected to perform, that the activity would not increase the overhead or operating costs of the organization, and that the activity is not coerced. The organization may not condition the availability of the Internet or the computer on their being used for political activity or for support for or opposition to any particular *candidate* or *political party*. 114.9(a) and (b).

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## 2. Use in Fundraising

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Corporations and labor organizations are generally prohibited from using their resources or facilities to engage in fundraising activities in connection with a federal election (except for fundraising for their own SSF—see Chapter 3. See also Appearances Before the Restricted Class, Solicitation by the Corporation or Labor Organization, page 81). There are, however, three narrow exceptions.

## Use of Staff

Corporate/labor officials or employees may direct subordinates to plan, organize or carry out fundraising as part of their work, using corporate/labor organization resources, only if the corporation or labor organization receives advance payment for the fair market value of the services, including compensation, benefits and overhead. However, using coercion to urge anyone to engage in fundraising on behalf of, or make a contribution to, a candidate or political committee is prohibited. I 14.2(f)(2)(i)(A) and (iv). See also AO 1998-16.

## Use of Customer/Client Lists

A corporation or labor organization may, in connection with a fundraiser, use the organization's lists of customers, clients or vendors or others not in the restricted class to send invitations or solicit contributions only if the organization receives advance payment for the fair market value of the lists. I 14.2(f)(2)(i)(C).

## Use of Catering or Food Services

In connection with a fundraiser, the corporation or labor organization may operate or obtain catering or other food services only if the corporation or labor organization receives advance payment for the fair market value of the services. I 14.2(f)(2)(i)(E).

## Advance Payment for Use of Resources and Facilities

SCHEDULE B (FEC Form 3X) ITEMIZED DISBURSEMENTS		Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one)	PAGE	OF
		<input checked="" type="checkbox"/> 21b	<input type="checkbox"/> 22	<input type="checkbox"/> 23	<input type="checkbox"/> 24
		<input type="checkbox"/> 27	<input type="checkbox"/> 28a	<input type="checkbox"/> 28b	<input type="checkbox"/> 28c
			<input type="checkbox"/> 25	<input type="checkbox"/> 26	<input type="checkbox"/> 30b
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.					
NAME OF COMMITTEE (In Full) Critical Reason Inc. PAC Full Name (Last, First, Middle Initial)					
A. Critical Reason Inc. Mailing Address 101 Apriori Rd. City Alexandria State VA Zip Code 33333 Purpose of Disbursement Catering services Candidate Name Gottlob Frege Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President State: District: Disbursement For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) <input type="checkbox"/>			Date of Disbursement MM / DD / YYYY 03 / 10 / 2006		Amount of Each Disbursement this Period 1000.00
Full Name (Last, First, Middle Initial) B. Frege for Congress Mailing Address 11 Sense-Reference Rd.. City Bismarck State ND Zip Code 33333 Purpose of Disbursement fundraiser/catering Candidate Name Gottlob Frege Office Sought: <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President State: ND District: 00 Disbursement For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) <input type="checkbox"/>			Date of Disbursement MM / DD / YYYY 03 / 11 / 2006		
C. Bacon in 2006 Mailing Address 101 New Organon Rd. City Albany State NY Zip Code 00000 Purpose of Disbursement fundraiser/catering Candidate Name Francis Bacon Office Sought: <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President State: NY District: 10 Disbursement For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) <input type="checkbox"/>			Date of Disbursement MM / DD / YYYY 03 / 11 / 2006		Amount of Each Disbursement this Period - 400.00

## Advanced Payment

### In Advance

"In advance" means before the staff services, the lists or the catering services are provided.

### Permissible Sources

Any person who is not otherwise prohibited from making a contribution in connection with a federal election (e.g., an individual, PAC or campaign) may make the advanced payment. For example, the candidate, the organization's separate segregated fund, the party or an individual may make the advanced payment.

### Effect on Contribution Limits

Payments by the candidate or the candidate's committee will be considered campaign expenditures. Payments by any other person will be considered in-kind contributions to the candidate, subject to limits and reporting requirements.

### 3. Use of Offices and Equipment

If a committee or individual other than an employee or *stockholder* of a *corporation*, or a *member* or *official* of a *labor organization*, uses the *corporate/labor organization facilities* in connection with a federal campaign, the user must reimburse the organization within a commercially reasonable time and at the usual and normal rental charge.<sup>1</sup> Facilities used for these purposes might include office space, telephones, computers, typewriters, copy machines and furniture. 114.9(d).

### 4. Meeting Rooms

#### At Discount or for Free

A *corporation* or *labor organization* may offer its meeting rooms to a *candidate* or a *political committee* at a discount or for free if:

- It customarily makes the meeting rooms available to clubs, civic or community organizations or other groups at a discount or for free;
- It makes the meeting rooms available on the same terms given to the other groups using the meeting rooms; and
- It makes the meeting rooms available to any other *candidate* or *political committee* upon request. 114.13.

#### At Normal and Usual Rental Charge

Alternatively, a *corporation* or *labor organization* may, at its discretion, rent its meeting rooms to a *candidate* or *political committee* provided the corpo-

<sup>1</sup> If the connected organization's SSF makes use of the organization's facilities in connection with a federal campaign, the SSF must pay for the use of the facilities in advance. AO 1984-24. However, neither reimbursement nor advance payment for the use of a corporate resource or facility is permissible in situations in which a corporate employee provides campaign-related services to federal candidates and the initial disbursement for the resource or facility is made by the corporation. AO 1984-37.

## Advance Payment for Use of Resources and Facilities (cont.)

SCHEDULE B (FEC Form 3X) ITEMIZED DISBURSEMENTS		Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one)	PAGE	OF
			21b 22 23 24 25 26 27 28a 28b 28c 29 30b		
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.					
NAME OF COMMITTEE (In Full) Critical Reason Inc. PAC					
Full Name (Last, First, Middle Initial)					
A. Frege for Congress			Date of Disbursement 03 / 11 / 2006		
Mailing Address 11 Sense-Reference Rd.					
City Bismarck State ND Zip Code 33333					
Purpose of Disbursement In-kind (fundraiser/catering)			011		
Candidate Name Gottlob Frege			Category/Type		
Office Sought: <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President			Disbursement For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)		
State: ND District: 00					
Full Name (Last, First, Middle Initial)					
B. Bacon in 2006			Date of Disbursement 03 / 11 / 2006		
Mailing Address 101 New Organon Rd.					
City Albany State NY Zip Code 00000					
Purpose of Disbursement In-kind (fundraiser/catering)			011		
Candidate Name Francis Bacon			Category/Type		
Office Sought: <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President			Disbursement For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)		
State: NY District: 10					
Full Name (Last, First, Middle Initial)					
Amount of Each Disbursement this Period 600.00					
Amount of Each Disbursement this Period 400.00					

*ration* or *labor organization* is reimbursed within a commercially reasonable time and at the usual and normal commercial rental rate. 114.2(f)(2)(B) and 114.9(d).

EXAMPLE: If Corporation XYZ allows a civic group to use its meeting rooms at a 20 percent discount from the usual and normal rental rate, Corporation XYZ may allow Candidate A to use the meeting rooms at the same 20 percent discount as is given to the civic group. If it allows Candidate A to rent the meeting rooms at the 20 percent discount, Corporation XYZ must allow any other candidates who so request to use the meeting rooms, and it must give them the same 20 percent discount.

Alternatively, if Corporation XYZ rents its meeting rooms to Candidate A at the usual and normal rental rate, it is not required to allow any other *candidate* to use the rooms.

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## 5. Transportation

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### Use of Corporate/Labor Airplane

A *candidate* or any other person traveling on behalf of the campaign or another *political committee* may use an airplane that is not licensed to offer commercial services (i.e., one that is not licensed to operate for compensation or hire under Federal Aviation Administration rules at 14 CFR parts 121, 129 or 135). In order to avoid receiving a *contribution* from the owner or lessor of the airplane (e.g., a *corporation* or *labor organization*), each campaign traveler must pay the owner or lessor within seven days of the beginning of the flight as follows:

- In the case of travel between two cities with regularly scheduled first-class airline service, the campaign must pay the lowest unrestricted and non-discounted first-class airfare available for the dates traveled or within seven calendar days thereof;
- In the case of travel between two cities served by regularly scheduled coach airline service where at least one is not served by regularly scheduled first-class airline service, the campaign must pay the lowest unrestricted and non-discounted coach airfare available for the dates traveled, or within seven calendar days thereof; and
- In the case of travel between two cities not served by regularly scheduled first-class or coach airline service, the campaign must pay the charter rate for a comparable commercial airplane of sufficient size to accommodate all of the campaign travelers, including members of the news media, and security personnel. 100.93(c).

### Other Non-Commercial Transportation

If a campaign uses other non-commercial means of transportation owned or leased by a *corporation* or *labor organization*, the campaign must reimburse the owner or lessor the usual and normal fare or rental charge for a comparable commercial conveyance capable of accommodating the same number of campaign travelers, including any members of the news media, and security personnel. Payment for the travel must be made 30 days from the *receipt* of the invoice, but no more than 60 days following the date the travel commenced. 100.93(d).

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## 6. Production of Campaign Materials

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Any person using *corporate/labor organization* facilities to produce materials in connection with a *federal election* must reimburse the *corporation* or *labor organization* within a commercially reasonable period of time for the *usual and normal charge* for producing those materials in the commercial market. 114.9(c).

## CHAPTER 11

# Other Uses of Treasury Funds

In addition to the communications described above, a *corporation* or *labor organization* may use its treasury funds for other activities affecting the political process at the federal level. These activities are not considered contributions, and they are not reportable by the organization that conducts them. Listed below are descriptions of these activities along with pertinent guidelines.

### I. Legal and Accounting Services<sup>1</sup>

A *corporation* or *labor organization* may offer free legal and accounting services to *candidate* committees, party committees and other political committees provided that:

- The *corporation* or *labor organization* paying for the services is the regular employer of the person performing the services;
- The *corporation* or *labor organization* does not hire additional employees to render the services or to enable the regular employees to provide the services;
- Any services to *candidate* committees and other nonparty political committees are provided only for the purpose of helping them comply with the federal *election* campaign laws or Chapter 95 or 96 of the Internal Revenue Code; and
- Any services provided to *political party* committees are not attributable to activities that directly further the *election* of a designated *candidate* or candidates for *federal office*. 100.85, 100.86, 114.1(a)(2)(vi) and (vii).

Because recipient committees must report the value of donated legal and accounting services, the *corporation* or *labor organization* should provide committees with the following information: the amount paid for the services, the date they were performed and the name of each individual performing them. 104.3(h).

<sup>1</sup> This section does not limit the legal and accounting services that a connected organization may provide to its SSF for administration and solicitation purposes.

### 2. Donations to Nonfederal Candidates and Committees

A *corporation* or *labor organization* may make donations to nonfederal candidates and to organizations not involved in federal elections, if permitted by state law. However, national banks, federally chartered corporations and foreign nationals are prohibited from making contributions or expenditures in connection with state and local elections. 110.20 and 114.2(a).

### 3. Donations for Party Office Building

A *corporation* or *labor organization* may donate money or anything of value to a state, district or local *party committee* specifically for the purpose of constructing or purchasing a party office building. 114.1(a)(2)(ix). Building fund donations are not considered contributions or expenditures and are not subject to limits or prohibitions, other than the prohibition against donations from foreign nationals. 100.84, 100.144, 110.20(d), 114.1(a)(2)(ix) and 300.35. (This exemption does not apply to national party committees. 100.56, 100.114, and 300.12(d)).

The building fund exemption does not cover expenditures for rent, operating costs, property taxes or other *administrative expenses* incurred by a *party committee*. See AOs 2001-12, 2001-1, 1998-8, 1998-7, 1997-14, 1988-12, and 1986-40.

In *Advisory Opinion* 2001-1, the Commission determined that the building fund exemption also covers compensation paid to a person who raises funds exclusively for the party's office building accounts.

### 4. Corporate Vendor Discounts

A corporate vendor of food and beverages may sell food and beverages at a discount, but not lower than cost, to a *candidate's* campaign or to a *political party committee*. The cumulative value of such



discounts (i.e., the difference between the normal charge and the amount paid by the committee) may not exceed \$1,000 per *candidate*, per *election*, or \$2,000 annually on behalf of all political committees of the same party. 100.78, 100.138 and 114.1(a)(2)(v). Vendor discounts given in the ordinary course of business to political and nonpolitical customers alike, however, are not subject to these limits. See AO 1989–14.

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## 5. Employee Participation Plans

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A *corporation* or *labor organization* may set up a political giving program for its employees. Such a program is often called an employee participation plan or a trustee plan.

### What the Plan Involves

The *corporation* or *labor organization* pays for the costs of establishing and administering separate bank accounts for participating employees. Any individual employee who wishes to participate diverts part of his or her payroll funds into a separate account in his or her name, from which he or she makes contributions.

### Guidelines for Establishing Plan

An employee participation plan must conform to the following guidelines:

- The *corporation* or *labor organization* must make the plan available to all its employees.
- Although the *corporation* or *labor organization* may distribute information about the plan, it may not exert pressure on employees to participate.
- The employee must exercise complete control and discretion over the disbursement of his or her funds with no direction or control from the *corporation* or *labor organization*.
- The *corporation* or *labor organization* may not be identified when contributions are transmitted to candidates or political committees.
- The administrator of the plan (e.g., a bank or trustee) may provide the *corporation* or *labor organization* with periodic reports on the plan's activity. However, reported information is limited to the following: the total number of participants, the combined total of funds in all accounts and the total amount of contributions made to all candidates and committees combined. 114.11.

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## 6. Donations by Businesses for Presidential Conventions

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Individuals, businesses (including corporations), labor organizations and other organizations may promote and support a national Presidential nominating convention through donations to a *host committee* or municipal fund in the city hosting the convention in accord with the rules described below.

### Donations to Host Committees

Businesses (including corporations), labor organizations, other organizations and individuals may donate funds, goods and services to a convention *host committee* or municipal fund for the following purposes:

- To promote the suitability of the city as a convention site;
- To welcome convention attendees (e.g., by providing information booths, receptions, tours or the promotional items described below);
- To facilitate commerce (e.g., by providing convention attendees with shopping or entertainment guides, samples, maps, pens, pencils or other items of de minimis value);
- To defray the *host committee's administrative expenses* (e.g., salaries, rent, travel or liability insurance);
- To provide the national committee use of an auditorium or convention center and to provide related services (e.g., construction of podiums, press tables, camera platforms, lighting and electrical systems; offices; office equipment; and/or decorations);
- To defray the cost of local transportation services (e.g., by providing buses and automobiles);
- To defray the cost of law enforcement services;
- To defray the cost of using central housing and reservation services;
- To provide hotel rooms at no charge or a reduced rate on the basis of number of rooms actually booked for the convention;
- To provide accommodations and hospitality for committees of the parties responsible for choosing the sites of the conventions; and
- To provide other similar convention-related facilities and services. 9008.52(b).

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## 7. Donations by Commercial Vendors for Presidential Conventions

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### Discounts, Samples and Promotional Arrangements with National Committees

Under limited circumstances, commercial vendors may provide goods and services in connection with the presidential nominating convention, without their value counting as either a *contribution* or an *expenditure*.

#### Discounts Provided to National Committees

Commercial vendors may provide goods and services to the national convention committee at a discount or for free if this arrangement is made in the ordinary course of business. “In the ordinary course of business” means:

- The vendor has an established practice of providing such discounts to nonpolitical clients; or
- The reduction is consistent with an established practice of the vendor’s trade or industry.

Permissible discounts include standard volume discounts and reduced rates for corporate, governmental or preferred customers. 9008.9(a).

#### Samples Provided to National Committees

Commercial vendors and banks may provide items of de minimis value at nominal or no charge. For example, samples, discount coupons, maps, pens, pencils or other items may be distributed to convention attendees. 9008.9(c).

#### Discounts and Samples: No Reporting

Discounts and items of de minimis value as described above do not have to be reported. 9008.9(a) and (c).

#### Promotional Arrangements

Commercial vendors also may, in the ordinary course of business (as defined above), provide the convention committee with goods and services in exchange for promotional consideration. The value of these goods and services may not exceed the commercial benefit reasonably expected to be derived from the promotional opportunity the convention presents. 9008.9(b).

An example of a promotional consideration would be an arrangement in which an automobile manufacturer loaned cars to the Democratic and Republican parties for use at their national nominating conventions. In return, the manufacturer could advertise the cars as the official cars of the Democratic and Republican conventions. See AO 1996-17. (Note, however, that these arrangements are not limited to “official providers” but include a variety of promotional arrangements.)

#### Reporting Promotional Arrangements

The convention committee must disclose, as a *memo entry*, any promotional arrangements with commercial vendors in its FEC reports. 9008.9(b).

### Discounts, Samples and Promotional Arrangements with Other Organizations

Under the same terms as those described above, commercial vendors may provide goods and services for convention use to host committees and municipal funds. The recipients must disclose the activity on reports to the FEC. 9008.52(a) and 9008.53(a).

## A. Shared Federal and Nonfederal Activities

This appendix explains rules that apply when a committee chooses to support both federal and nonfederal candidates. The rules do not apply to committees that conduct only activities related to federal elections.

As explained below, a committee engaging in both federal and nonfederal election activity has two options:

- Set up one federal account (an SSF) that supports both federal and nonfederal candidates while reporting all activity to the FEC; or
- Set up two accounts—an SSF for federal elections and a *nonfederal account* for state and local elections. 102.5(a)(1).

The second option permits the committee to maintain a *nonfederal account* that has no federal registration or reporting obligations. When conducting an activity that benefits both federal and nonfederal candidates or committees, however, the committee may have to allocate the costs between the two accounts. This means that the committee must pay for at least some of the costs from its federal account, and follow specific rules (explained below) for payment.

### I. Using One SSF Account

A committee may support both federal and nonfederal candidates and committees with one SSF account, but all funds received by the SSF are subject to the prohibitions, *contribution* limits and solicitation restrictions of the *Federal Election Campaign Act*. 102.5(a)(1)(ii) and (2).

### Reportable Nonfederal Activity

A registered SSF must file FEC reports on all its financial activity, including activity which supports nonfederal candidates. 104.10 As explained in Chapter 7, SSF disbursements for nonfederal elections should be reported as “Other Disbursements” on Line 29 of Form 3x and itemized on Schedule B once they aggregate over \$200 to the same *candidate* or committee in a calendar year.

## State Law Applies

Any SSF *contribution* or *expenditure* made in connection with a nonfederal election is subject to applicable state law. An SSF should seek guidance from state election officials before engaging in nonfederal campaign activity.

## 2. Using Two Accounts

Alternatively, a committee or *connected organization* may set up two accounts—an SSF for federal election activity and a second account (sometimes referred to as a “state PAC”) for nonfederal activity.

### Federal Account

If two accounts are used, only the federal account (the SSF) has registration and reporting obligations under the Act. 102.5(a)(1)(i) and (2).

### Nonfederal Account

An account used only for state and local elections is generally not subject to the Act’s registration and reporting requirements, nor is it subject to the Act’s *contribution* limits or solicitation rules. (Nevertheless, federal law prohibits nonfederal committees from accepting contributions from foreign nationals, national banks and federally chartered corporations. 110.20 and 114.2.)

### Transfers from the Nonfederal Account

The committee may not *transfer* funds from the *nonfederal account* to the federal account except under the circumstances described below. 102.5(a)(1)(i) and 106.6(e)(1)(i).

#### Collecting Agent Activity

A *nonfederal account* may act as a *collecting agent* for contributions to the federal account without triggering registration requirements. 102.6(b)(1) and (2). See also AOs 2003-29 and 1984-31. Collecting agent procedures are described on page 28.

#### Allocated Expense Payments

A *nonfederal account* may *transfer* funds to the federal account to cover the nonfederal portion of expenses benefiting both federal and nonfederal candidates or committees. The *transfer* must be made according to the rules described in Sections 4, 5 and 6 of this Appendix. 102.5(a)(1)(i) and 106.6(e)(1)(i).



### 3. Allocation Between Accounts

When a committee uses separate accounts for activities connected with both federal and nonfederal elections, the committee may have to allocate its expenses between the two accounts to ensure that the federal account pays its share of the costs associated with that activity. Allocation is not required, however, if shared expenses are paid entirely by the federal account or if the *connected organization* pays all administrative and solicitation expenses. AO 1991-35.

Failure to allocate expenses when required could result in a *contribution* by the *nonfederal account* to the federal account—a violation of federal law. 102.5(a)(1)(i).

The main types of activities that require allocation are described below.

#### Expenses Requiring Allocation

##### Generic Voter Drives

A generic voter drive is an activity directed at the general public that urges support for candidates of a particular party or associated with a particular issue, but does not refer to particular candidates. Generic voter drive expenses are allocated the same way as administrative expenses. See 106.6(b)(1)(iii). See section 5.

##### Generic Public Communications

Public communications that refer to a *political party* but do not refer to any *clearly identified* federal or nonfederal candidates are allocated the same way as administrative expenses. 106.6(b)(1)(iv). See section 5.

##### Direct Candidate Support

“Direct *candidate* support” activities by SSFs include both in-kind contributions and independent expenditures. Direct *candidate* support also includes public communications or voter drives that refer to both federal and nonfederal candidates, regardless of any reference to a *political party*. 106.6(f)(3).

Allocable in-kind contributions include, for example, payments for fundraising activities conducted on behalf of both federal and nonfederal candidates and payments for communications that support both federal and nonfederal candidates.

An *independent expenditure* may be allocated if it advocates the *election* or defeat of both federal and nonfederal candidates.

As explained above, an SSF may allocate direct *candidate* support expenses only if it uses separate federal and nonfederal accounts to pay for them.

See Section 4, below, for more information about allocating *candidate* fundraising activities. See Section 5 for information about allocating communication costs.

##### Administrative Expenses

Administrative expenses include, for example, rent, salaries and supplies. Such expenses must be allocated only if:

- The committee maintains separate federal and nonfederal accounts, and
- The committee pays for its own *administrative expenses* from both accounts. (Normally, the *connected organization* pays such expenses.) See Section 6 for more information.

106.6(b)(1)(i); AO 1991-35.

##### Committee Fundraising

Similarly, costs associated with soliciting contributions to the SSF are allocated only if the committee maintains two accounts, raises money for both accounts and pays for its own fundraising costs from both accounts. (Normally, the *connected organization* pays for fundraising.) 106.6(b)(1)(ii). See Section 7 for more information.

#### Non-Allocable Expenses

Generally, communications and voter drives that refer to a federal *candidate(s)* but do not reference any nonfederal candidates must be financed exclusively with federal funds, even if the communication includes a generic reference to the party. 106.6(b)(2)(i) and (iii).

Similarly, communications and voter drives that refer to a nonfederal *candidate(s)* but do not reference any federal *candidate(s)* may be financed with nonfederal funds, regardless of whether the communication refers to a party. 106.6(b)(2)(ii) and (iv).

#### Payment Options

Committees with separate federal and nonfederal accounts must use one of the following two methods to pay allocable expenses:

- **Payment from Federal Account:** The committee may pay the entire amount from its federal account (SSF), transferring funds from the *nonfederal account* to the federal account only to cover the nonfederal share of allocable expenses. 106.6(e)(1)(i).

- **Payment from Allocation Account:** The committee may establish a separate allocation account for the sole purpose of paying joint federal and nonfederal expenses. 106.6(e)(1)(ii).

Under the second option, the committee transfers funds from both the federal and nonfederal accounts to the separate allocation account in amounts equal, respectively, to the federal and nonfederal shares of each allocable expense. The allocation account is considered a federal account, and the SSF must include the account's receipts and disbursements in its FEC reports. 106.6(e)(1)(ii), 106.6(e)(2) and (3).

## Timing of Internal Transfers

The committee must *transfer* funds from the *non-federal account* to the federal account (or to the allocation account) within a 70-day “window”—not more than 10 days before or 60 days after the original payment to the vendor. 106.6(e)(2)(ii)(B). (A *transfer* from the federal account to the allocation account is permissible at any time and is not reported, because the allocation account is seen as part of the federal account for reporting purposes. 104.10(b)(3) & (4).)

Time limits also apply to adjustments of the allocation ratio and corresponding transfers, which may be required after an activity where federal and nonfederal funds are raised. See page 102.

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## 4. Allocation Ratios

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### Flat Minimum Federal Percentage

#### Used For:

- Administrative expenses (if not paid by the *connected organization*), including rent, utilities, office supplies and salaries that are not directly attributable to a *clearly identified candidate*;
- Generic voter drives including voter identification, voter registration and get-out-the-vote drives or any other activity that encourages support for a *political party* or a particular issue without mentioning any federal or nonfederal *candidate*;
- Public communications that refer to a *political party* but do not refer to any *clearly identified* federal or nonfederal *candidate*; and
- Direct fundraising costs not paid for by the *connected organization*. 106.6(b)(1)(i).

#### Calculation:

These expenses must be paid for with at least 50% federal funds. 106.6(b)(1) and (c).

## Time / Space Ratio

#### Used for:

Public communications that refer to both federal and nonfederal candidates; and

Voter drives, including voter identification, voter registration and get-out-the-vote drives that refer to *clearly identified* federal and nonfederal candidates.

#### Calculation:

Costs are allocated according to the ratio of space or time devoted to federal candidates compared with the total space or time devoted to all candidates, federal and nonfederal. In the case of a phone bank, the ratio is determined by the number of questions or statements devoted to federal candidates compared with the total number of questions or statements for all candidates. 106.6(f)(3).

## Funds Received Ratio

#### Used for:

- Direct fundraising costs for both the SSF's federal and nonfederal accounts (if not paid by the *connected organization*); and
- Direct fundraising costs of events that support both federal and nonfederal candidates.

#### Calculation:

Costs are allocated according to the ratio of funds received for the federal account (or candidates) to the total funds received through the fundraising event. 106.6(d).

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## 5. Reporting Allocated Administrative, Generic Voter Drive and Generic Public Communications Expenses

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### Required Forms

- **Schedule B**—Itemized Disbursements
- **Schedule H I**—Allocation Ratio for Administrative Expenses, Generic Voter Drive Expenses and Generic Public Communications

- **Schedule H2** – Allocation Ratios for Public Communications or Voter Drives that Refer to both Federal and Nonfederal Candidates
- **Schedule H3**—Transfers from Nonfederal to Federal Account
- **Schedule H4**—Disbursements for Allocated Activity

## Allocation Ratio

Allocation of administrative expenses, generic voter drive costs and generic public communications is governed by a flat minimum federal percentage. At least 50% of such expenses must be paid for with federal funds. 106.6(c).

PACs that opt to spend more than 50% federal funds for administrative expenses, generic voter drives or generic public communications must indicate the allocation ratio used on Schedule H1. If a different ratio is used for one or more categories, a separate H1 must be filed for each category with each report. 104.10(b)(1).

## Payments

The PAC must make all allocable payments for administrative expenses, generic voter drive and generic public communications from its federal account (or separate allocation account). 106.6(e)(1). Each payment must be itemized on Schedule H4, and the federal and nonfederal shares must be included in the total for Line 21(a) (Allocated Federal/Nonfederal Activity) of the Detailed Summary Page. 104.10(b)(4).

The “event year-to-date” figure entered for each payment represents the total spent on all allocated *administrative expenses* as of the date of payment.

## Transfers

The PAC may *transfer* the nonfederal portion of an administrative, generic voter drive or generic *public communication* expense within the 70-day window described in Section 3. 106.6(e)(2)(ii). The committee reports these transfers from the *nonfederal account* to the federal account on Schedule H3. The amount is also included on Line 18(a) (Transfers from Nonfederal Funds) of the Detailed Summary Page. 104.10(b)(3).

## 6. Allocating Committee Fundraising Expenses

### When Required

If an SSF's *connected organization* does not pay its solicitation costs and the SSF raises money for both its federal and nonfederal accounts, the costs of the fundraising event or activity must be allocated between those accounts. However, the federal account could pay 100 percent of the costs without reimbursement and avoid the need to allocate.

Note that expenses incurred in connection with activities directly supporting candidates (such as fundraising for candidates) are not considered the committee's own fundraising expenses, and the committee must report them as in-kind contributions. See Section 7.

### Required Forms

- **Schedule B**—Itemized Disbursements
- **Schedule H2**—Allocation Ratios
- **Schedule H3**—Transfers from Nonfederal to Federal Account
- **Schedule H4**—Disbursements for Allocated Activity

### Allocation Ratio

If the SSF raises money for both its federal and nonfederal accounts through the same fundraising program or event, the costs directly associated with the program or event are allocated using the “funds received” ratio, i.e., the ratio of funds received for federal activities to total funds raised through the program or event. The SSF must estimate the ratio prior to beginning the solicitation and report the ratio on Schedule H2.

The committee must also give each fundraising program a unique name or code. 104.10(b)(2) and 106.6(d).

### Payments

The SSF must pay for fundraising expenses from its federal account (or separate allocation account). 106.6(e)(1). The *nonfederal account* may *transfer* its allocable share to the federal account as described below. The federal and nonfederal shares of the payments are reported on Schedule H4 and included in the total for Line 21(a) (Allocated Federal/Nonfederal Activity) of the Detailed Summary Page. 104.10(b)(4).

The “year-to-date” figure entered for each fundraising payment represents the total spent on that particular committee fundraising event as of the date of payment.

## Transfers

The committee reports transfers from the *non-federal account* to the federal account for shared fundraising expenses on Schedule H3. The amount of the *transfer* is also reported on the Detailed Summary Page, Line 18(a). 104.10(b)(3). The *transfer* must be made within the 70-day window described in Section 3. 106.6(e)(2)(ii).

## Adjustments to Ratio

After a particular fundraising program or event, the SSF may need to adjust the allocation ratio reported for the event on Schedule H2 to reflect the federal and nonfederal shares of the actual receipts. The SSF must determine whether such an adjustment is necessary within 60 days after the date of the fundraising event. The revised ratio should be noted on a Schedule H2 filed with the PACs next report.

If an adjustment indicates that the *nonfederal account* paid more than its allocable share of expenses for the event, the PAC must *transfer* funds from its federal account to its *nonfederal account* to avoid an excessive payment by the *nonfederal account*. Any transfers from the federal account to the *nonfederal account* made as a result of the revision must be reported on Schedule H4 and included in the total for Line 21(a)(i) on the Detailed Summary Page in the committee’s next regular report. Further adjustments and transfers from the federal account may be necessary if additional federal receipts come in.

If an adjustment indicates that the federal account paid more than its share of allocable expenses, the PAC may *transfer* funds from the *nonfederal account* to make up for the excessive nonfederal payment. Such transfers, however, may only be made within 60 days after the event. 106.6(d)(2). Transfers from the *nonfederal account* are itemized on a Schedule H3 and included in the total for Line 18(a) on the Detailed Summary Page.

## 7. Allocating Costs of Fundraising for Candidates

This section explains how to allocate the costs of a direct *candidate* support activity that raises money for both federal and nonfederal candidates. The explanation is based on the following scenario:

**EXAMPLE:** Each *election* year Hapworth PAC, an SSF with separate federal and nonfederal accounts, sponsors a fundraising dinner-dance to benefit federal and nonfederal candidates in a particular state.

In 2008, the PAC plans to use the event to raise money for five candidates—a Senate *candidate*, a House *candidate* and three candidates for the state legislature. In past *election* years the committee has raised about \$5,000 for all participating candidates, and the committee has customarily divided the proceeds evenly between the federal and the nonfederal candidates. In 2008, Hapworth PAC expects the two federal candidates to split half the proceeds, while the three state candidates will evenly divide the other half.

The total cost of the event is expected to be \$1,000. The costs are in-kind contributions to the candidates.

## Required Forms

- **Schedule B:** Itemized Disbursements
- **Schedule H2:** Allocation Ratios
- **Schedule H3:** Transfers from Nonfederal to Federal Account
- **Schedule H4:** Disbursements for Allocated Activity

## Unique Identifier

Every allocable direct *candidate* support activity must be assigned a unique identifying name or code. On Schedule H2, Hapworth PAC uses “Dinner-Dance 2008” as the event’s unique identifier. When referring to the dinner-dance in subsequent schedules and reports, the committee must continue to use “Dinner-Dance 2008.” 104.10(a)(1).

## Allocation Ratio

Because the dinner-dance is a fundraising event for candidates, the committee allocates the \$1,000 expected total costs according to the “funds received ratio” (i.e., funds received by federal candidates compared with funds received by all candidates).



Since Hapworth PAC expects that half the proceeds will go to federal candidates and half to nonfederal candidates, the funds received ratio is 50/50. Expressing this ratio in percentages, Hapworth PAC enters 50 percent federal and 50 percent nonfederal in the appropriate spaces on Schedule H2. 106.1(a)(1). To indicate the purpose of the event, the committee checks the “Direct Candidate Support” box.

## Payments

Hapworth PAC pays the bills for the event from its federal account (or separate allocation account) and reports the payments on Schedule H4. (See illustration.) Because the payments are in-kind contributions, the federal share of the costs is cross-referenced to an entry on Schedule B for Line 23 and included in the total figure for Line 23 (Total Contributions to Federal Candidates) on the Detailed Summary Page.

On each page, the committee uses “Dinner-Dance 2008” (the unique identifier) as the name of the event. 104.10(a)(1). The “event year-to-date” figure represents the aggregate amount spent on the dinner-dance (to all payees) as of the date of payment. An illustration is provided here.

## Transfer of Funds

To cover the nonfederal share of the costs of the dinner-dance, Hapworth PAC transfers \$500.00 from the *nonfederal account* to the federal account. The amount transferred is one half of the \$1,000.00 total payments for the ballroom. The *transfer* is made within the 70-day window described in Section 3 (page 99). 106.6(e)(2)(ii)(B).

Hapworth PAC reports the *receipt* of the *transfer* on Schedule H3, as illustrated here. The amount is also included on Line 18(a) of the Detailed Summary Page.

## Adjustments

At a later date, Hapworth PAC may have to adjust the allocation ratio for the event if the federal candidates receive a different proportion of the actual funds raised than was originally reported on Schedule H2. The adjusted allocation ratio must be reported on a new Schedule H2 filed with the next report.

As a result of adjusting the allocation ratio, the nonfederal share of the payments for the event may

be less than the *nonfederal account* originally paid. In that case, the federal account must reimburse the *nonfederal account* for its excessive payments and report the reimbursement on Schedule H4. The reimbursement must also be included in the Line 23 total on the Detailed Summary Page and itemized on Schedule B. 106.6(d)(2).

On each page, the committee uses “Dinner-Dance 2008” (the unique identifier) as the name of the event. 104.10(a)(1). The “event year-to-date” figure represents the aggregate amount spent on the dinner-dance (to all payees) as of the date of payment.

## 8. Allocating Costs of Public Communications and Voter Drives

When a committee makes a *public communication* or conducts voter drive activity referring to both federal and nonfederal candidates, regardless of whether there is a reference to a *political party*, the costs must be allocated whether or not the activity qualifies as an *in-kind contribution* or an *independent expenditure*. This section’s explanation of the rules for allocating these costs is based on the following scenario:

EXAMPLE: Hapworth PAC, an SSF, maintains a separate *nonfederal account* for use in state and local elections. During the 2008 election year, Hapworth PAC plans to purchase several advertisements in local newspapers to urge voters to support four candidates: a *candidate* for governor, a *candidate* for state treasurer, a *candidate* for secretary of state and a *candidate* for the U.S. Senate. Equal space in the advertisements will be devoted to each *candidate*. The total cost for running the advertisements is \$4,250.

## Required Forms

- Schedule B: Itemized Disbursements (if communications are in-kind contributions)
- Schedule E: Itemized Independent Expenditures (if communications qualify)
- Schedule H2: Allocation Ratios
- Schedule H3: Transfers from Nonfederal to Federal Account
- Schedule H4: Disbursements for Allocated Activity



## Unique Identifier

Every direct *candidate* support activity must be assigned a unique identifying name or code. On Schedule H2, Hapworth PAC lists “Newspaper Campaign ‘08” as the unique identifier for the activity. The committee will use “Newspaper Campaign ‘08” to refer to the advertisements in all future reports. 104.10(a)(1).

## Allocation Ratio

Because “Newspaper Campaign ‘08” is a *public communication* that refers to both a *clearly identified* federal and a nonfederal *candidate*, the committee uses a “time and space ratio” to allocate the \$4,250 total expected cost on Schedule H2. 106.6(f)(3)(i). In this case, the ratio of space devoted to federal candidates to space used for all candidates is 1/4. (The committee would base its allocation on time if the advertisements were broadcast.)

Expressing the allocation ratio in percentages, Hapworth PAC enters 25 percent federal and 75 percent nonfederal in the appropriate spaces on Schedule H2, as illustrated above.

## Payments

Hapworth PAC makes all allocable payments from its federal account (or separate allocation account) and itemizes them on Schedule H4, as illustrated. Because the payments are independent expenditures, the federal share is itemized on Schedule E and included in the total figure for Line 24 (Independent Expenditures) of the Detailed Summary Page.

The “event year-to-date” figure represents the aggregate amount paid to all payees for “Newspaper Campaign ‘08” as of the date of payment. An illustration is provided at the right.

## Transfer of Funds

The nonfederal share is 3/4 of the \$4,250 total cost. The committee transfers \$3,187.50 from the *non-federal account* to the federal account. The *transfer* is made during the permissible 70-day window, as described in Section 3. 106.6(e)(2)(ii)(B).

Hapworth PAC reports the *receipt* of the *transfer* on Schedule H3, as illustrated above. The amount is also included on Line 18(a) of the Detailed Summary Page.

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## B. Twice-Yearly Solicitations

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Twice a year, a *corporation* or *labor organization* and its separate segregated fund (SSF) may expand its solicitation to include certain individuals outside its restricted class. Outlined below are guidelines for conducting a twice-yearly solicitation.

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### I. Who May Be Solicited Twice Yearly

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#### By Corporations: Nonmanagerial Personnel<sup>1</sup>

Twice a year, a *corporation* (or its SSF) may solicit all its employees, including those not considered executive and administrative personnel and employees represented by labor organizations. The families of employees may also be included in a twice-yearly solicitation. I 14.6(a).

Employees whose wages are not subject to income tax withholding, however, may not be solicited under this provision (or under the regular provision for soliciting executive and administrative personnel). See I 14.1(c)(3). See also AO 1999-20.

#### By Labor Organizations: Nonmembers

Twice a year, a *labor organization* (or its SSF) may solicit all employees of a *corporation* that employs members of the *labor organization*. Included are:

- Executive and administrative personnel of the *corporation*;
  - Workers who are not represented by the *labor organization*;
  - Employees of subsidiaries and other affiliated corporations;
  - The *corporation's* stockholders;
  - All the employees of the *labor organization*; and
  - The families of all those listed above.
- I 14.5(g)(2) and I 14.6(b); AOs 1990-25 and 1979-50.

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<sup>1</sup> These rules apply to all corporations, including incorporated membership organizations.

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## 2. Custodial Arrangement

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Before conducting a twice-yearly solicitation, the *connected organization* or SSF must appoint a custodian to receive contributions. The custodial arrangement preserves the anonymity of individuals who do not wish to contribute or who contribute only small amounts. I 14.6(d).

### Appointment of Custodian

For SSFs established by corporations, the custodian may not be a *stockholder*, officer or employee of the *corporation* or its SSF. In the case of labor organizations, the custodian may not be an officer, employee or *member* of the union or its SSF. I 14.6(d)(1): Exception: An individual employed as the SSF treasurer may be the custodian provided that he or she:

- Preserves the anonymity of contributors as required;
- Does not participate in the SSF's decisions regarding making contributions and expenditures; and
- Continues to fulfill the regular duties of the committee treasurer. I 14.6(d)(5).

### Custodial Duties

The custodian of an SSF is responsible for the following duties:

#### Collecting Contributions

See "Collection Methods" below.

#### Transmittal of Contributions

The custodian must deposit all contributions within 10 days of *receipt* in a separate, custodial bank account. Periodically, the custodian must withdraw funds contained in the custodial account and forward them by check to the SSF's account. Contributions that appear to be illegal must be treated as described on page 27. I 14.6(d)(2)(i), (iii) and (iv).

#### Information to the SSF

The custodian must provide the SSF with the necessary recordkeeping information identifying those who make individual contributions exceeding \$50 or whose aggregate contributions exceed \$200. (See Chapter 5.) This information must be provided to the SSF in time for it to include the contributions in its next report. Apart from this, the only information the custodian may provide to the SSF or *connected organization* is the total number

of contributions received. The custodian may not reveal any information on noncontributors or small contributions of \$50 or less.<sup>2</sup> I 14.6(d)(2)(ii) and (3).

#### Information to the Custodian

In order to accurately keep records on each donor's aggregate contributions, the custodian needs a list of previous contributors and the year-to-date total of each one's contributions to the SSF. I 14.6(d)(4).

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### 3. Collection Methods

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#### Written Solicitations

Twice-yearly solicitations must be made in writing and mailed to the solicitee's residence. The mailing must inform the solicitee of the right to refuse to contribute without reprisal and of the political purpose of the SSF. Twice-yearly solicitations must, additionally, notify the recipients of the custodial arrangement (described above). The return address on the solicitation (or enclosed return envelope) must be the custodian's address. Furthermore, the written solicitation must note that the organization will preserve the anonymity of:

- Those who do not contribute;
- Those who make a single *contribution* of \$50 or less; and
- Those who make multiple contributions aggregating \$200 or less. I 14.5(a)(5) and I 14.6(c).

#### No Payroll Deduction

Corporations and labor organizations may not use payroll deduction for twice-yearly solicitations. I 14.6(e)(1).

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### 4. Requirements for Corporations

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#### Notification to Labor Organization

A *corporation* must notify a *labor organization* representing any of the *corporation's* employees (or employees of its subsidiaries, branches, divisions or

affiliates) of its intention to conduct a twice-yearly solicitation. This must be done within a reasonable time so that the *labor organization*, if it wishes, may also make a twice-yearly solicitation at that time. I 14.6(e)(4).

#### Availability of Method to Labor Organization

A *corporation* must make available to the *labor organization* the method it uses for soliciting and collecting contributions. However, if the *corporation* does not wish to disclose the names and addresses of its employees and stockholders, it may give a mailing list to an independent mailing service which will conduct the mailing for both the *labor organization* and the *corporation*. I 14.6(e)(3).

Note that if the *corporation* does not use the twice-yearly provision, it is not required to provide the *labor organization* with a solicitation method for the *labor organization's* twice-yearly solicitations or with any names and addresses. I 14.6(e)(3)(iii).

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### 5. Requirements for Labor Organizations

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When more than one *labor organization* represents the employees of a *corporation* and its subsidiaries, the unions share a limit of two solicitations of nonmembers per year. (There is no limit on the number of solicitations each union makes of its own members.)

The unions may conduct twice-yearly solicitations independently, or they may participate in a joint solicitation mailing.

A combined mailing may contain requests for contributions to each participating union's SSF. I 14.6(e)(5).

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<sup>2</sup> Exceptions: information may, upon request, be made available to the FEC, the Secretary of State, law enforcement officials and judicial officers. I 14.6(d)(3)(i).

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## C. Solicitations by Trade Associations

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In addition to soliciting noncorporate members and its own personnel, a *trade association* may solicit the restricted class of *member corporations* (i.e., their executive and administrative personnel, stockholders and the families of both groups). Solicitation of a corporate *member's* restricted class is a two-step process. First, the *trade association* obtains the corporate *member's* written approval for solicitation; second, the association conducts the solicitation.

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### I. Request for Corporate Approval

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#### Required Information

A *trade association* must make a written request to the *member corporation* for permission to solicit the *member's* restricted class. (The request may be sent to the corporate representative with whom the association normally conducts its activities.) This request for approval must inform the *member corporation* that:

- Corporate approval is necessary before the *trade association* or its SSF may conduct a solicitation; and
- The *corporation* may not approve solicitations by another *trade association* for the same calendar year. || 4.8(d)(3).

#### Optional Information

The *trade association* may enclose a copy of proposed solicitation materials in its request for approval. Moreover, the *trade association* may note that it intends to limit the scope of the solicitation (e.g., to just executive and administrative personnel but not stockholders). || 4.8(d)(3) and (5).

#### Publication in Association's Magazine

A *trade association* may publish in its internal magazine or newsletter a form for obtaining solicitation approval from corporate members. The form must include the required information described above, and the form's wording must be sufficiently specific

so as not to be considered a solicitation for contributions. AOs 1981–41 and 1980–65. (See page 23 for rules about solicitations in internal publications.)

### Request Made at Convention

At its convention, annual meeting or similar event, a *trade association* may request solicitation approvals from corporate members and may set up a booth for this purpose. The requests must be in writing (e.g., handout forms), must include the required information and may not contain a solicitation for contributions. The *trade association* may also receive written solicitation approvals at the convention as long as they are signed by persons authorized by the corporations to make such approvals. AOs 1981–41, 1978–83 and 1978–17. (Solicitations conducted at conventions are discussed in Section 4.)

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### 2. Approval by Corporate Member

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#### Written Approval

Before a *trade association* may solicit the restricted class of one of its corporate members, the association must obtain written authorization from the *member corporation*. The *member* must designate the calendar year for which the solicitations are authorized; the authorization automatically expires on December 31 of the designated year.

There is no limit on the number of companies from which a *trade association* can obtain solicitation approvals. In a particular calendar year, however, a *corporation* may authorize only one *trade association* to solicit its restricted class. || 4.8(d).

#### Approval Extended to Affiliated Nonconnected PAC

Any solicitation approval granted by a corporate *member* of a *trade association* also covers solicitations from a nonconnected PAC affiliated with the *trade association's* SSF. AO 1996-38.

#### Approval Using the Internet and the Web

The Commission approved a proposal whereby a *trade association* distributed a “permission to

solicit” form to its members on the Internet and on a members-only web site. The Commission’s conclusion was based on the determination that the “permission to solicit” form did not otherwise constitute a solicitation. AO 2000-10.

#### Use of Electronic Signatures

In another *advisory opinion*, the Commission advised that a *trade association PAC* could accept corporate members’ electronic signatures as written authorization to solicit the restricted class of their corporate members. The *trade association* could obtain the electronic authorization through e-mail or its web site. In either case, the *trade association* had to verify that:

- The permission-to-solicit forms were available only to authorized corporate representatives; and
- Each electronic signature came from the corporate representative.

Furthermore, a copy of the electronic approval had to be maintained, in a readily available form, for three years. AO 2000-22.

### Multiple-Year Approvals

A *member corporation* may grant its approval for several years in advance; however, the company must provide the *trade association* with a separate approval for each year. For example, a *trade association* could ask a *member corporation* to approve solicitations for five consecutive years. The *corporation* would have to submit a signed statement for each year approved; the five statements and signatures could appear on one form or on five separate forms. I 14.8(d)(1) and (4); AO 1984-61.

Corporate approval of *trade association* solicitations in no way limits the *corporation’s* right to solicit contributions for its own SSF. I 14.8(e)(2).

### Content of Approval

#### Scope

A *corporation’s* authorization may limit the scope of the solicitations to particular members of the restricted class (for example, limit it to stockholders). I 14.8(d)(5). Note that trade associations may not solicit persons outside of the *member corporation’s* restricted class.

#### Frequency

The corporate approval may also limit the number of times solicitations may take place during the

calendar year. Unless otherwise specified in the approval, the *trade association* may conduct unlimited solicitations. I 14.8(e)(1).

### Records

The *trade association* must retain a copy of the written approval for three years after the year to which the approval applies. I 14.8(d)(2).

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## 3. Who May Be Solicited

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### Parent Corporation

If a *parent corporation* is a *member* of the *trade association* but its subsidiaries are not, then the *trade association* may solicit (with prior approval) the restricted class of only the parent. I 14.8(f).

### Subsidiary Corporation

Likewise, if a *subsidiary corporation* is a *member* of the *trade association* but the parent is not, then the *trade association* may (with prior approval) solicit the restricted class of the subsidiary only; the parent’s restricted class is not solicitable. I 14.8(f).

### Nonstock Corporation

A *trade association* may (with prior approval) solicit the individual members of a *member non-stock corporation*, only if the individual members have rights and interests that correspond closely to those of stockholders. AO 2000-4, 1999-16 and 1999-15.

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## 4. Solicitations at Convention

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A *trade association’s* convention or annual meeting may be the site of impermissible solicitations if the association inadvertently solicits executive and administrative personnel of corporations that have not given prior solicitation approval. To avoid making inadvertent unlawful solicitations at such conventions or meetings, trade associations should observe the following guidelines, based on several *advisory opinions*.

### Permissible Solicitations

A *trade association* may solicit SSF contributions from a booth at a convention, provided that:



- The booth is not publicized prior to the convention;
- The booth's signs inform contributors of the solicitation restrictions;
- The *trade association* maintains a list of corporate members that have approved solicitations for the current year; and
- Funds are not accepted from individuals who are not solicitable.

AOs 1995-14, 1978-83 and 1978-17.

## Impermissible Solicitations

An impermissible solicitation will occur, even if unintended, when a *trade association* provides information to employees (of a *corporation* that has not given its solicitation approval) on how to contribute to its SSF or when it encourages support of the SSF. AOs 1979-66 and 1979-13.

EXAMPLES: A pre-convention mailing that mentions an SSF fundraising event or a booth is a solicitation. A convention sign saying "Ask Us for Information About the PAC Fundraiser" or informing attendees about a fundraising booth is also a solicitation. AOs 1976-96 and 1976-27.

## Other Permissible Activities

Simply requesting a corporate *member's* approval for solicitations is not a solicitation for contributions. AO 1981-41. Moreover, providing merely factual, historical or statistical information on the SSF, or explaining the legal requirements which apply to its activities, is not a solicitation. See "What Is Not a Solicitation" on page 24.

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## 5. Member-Provided Assistance

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### Donations from Members

A *trade association* may solicit and accept donations of money, goods or services from its members to defray the operating, administrative and solicitation expenses of the association's SSF. Donations for these purposes (such as a raffle, door or lottery prize) are not contributions as long as the donor qualifies as a *member* of the association. See "Definition of Member," page 23, and "Operating Costs" page 8. See also AOs 1995-28, 1995-17, 1989-18 and 1980-59. Note, however, that when goods or services are donated for an SSF fundraising event,

the SSF must apply the "one-third rule" and reimburse the *connected organization* if the donated items are disproportionately valuable in comparison with the amount raised by the event. See "Reimbursement," page 26. See also AOs 1995-17 and 1989-18.

Funds received for an SSF's administrative, operating or solicitation expenses must be kept in a separate account from the SSF contributions. AO 1981-19.

## Donations from Nonmembers

If a *trade association* receives an unsolicited donation, to cover the SSF's administrative and solicitation expenses, from an individual who is not a *member* of the *trade association*, that donation is a *contribution* to the SSF and is subject to the donor's \$5,000 annual limit. Because goods and services donated by nonmember individuals are in-kind contributions, they are not subject to the reimbursement rules discussed above. Similar contributions by nonmember corporations are prohibited. AOs 1995-17 and 1989-18, n. 4.

## Payroll Deduction

A corporate *member* of a *trade association* may use a payroll deduction or checkoff plan as part of providing incidental services to collect and forward contributions to a *trade association's* SSF. A *corporation* using a payroll deduction must allow a *labor organization* representing any of the *corporation's* employees (or employees of its subsidiaries, branches, divisions or affiliates) to also use payroll deduction. I 14.8(e)(3).

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## 6. Trade Association Federations

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A federation of trade associations may also establish a separate segregated fund. The federation may solicit SSF contributions from the restricted class of a *member corporation* of a *trade association* that is a *member* of the federation, as explained below.

### Definition

A *trade association federation* is an organization representing trade associations involved in the same or allied line of commerce. I 14.8(g)(1). As examples, in *advisory opinions* the Commission has ruled that an organization of *affiliated trial lawyers' associations*

was a *trade association federation*, while a statewide Chamber of Commerce was not. AOs 1985–37 and 1977–44.

## Affiliation and Solicitation

When a federation and its regional, state or local associations are *affiliated*, their respective SSFs are also *affiliated* and are treated as one *political committee* for purposes of the *contribution* limits. Affiliation is based on the relationship between the organizations, analyzed in terms of the circumstances indicating affiliation on page 5. I 14.8(g)(1). See also AO 1995-12. Local corporate members or state leagues may also act as collecting agents for the SSF of an *affiliated* organization. AO 1998-19.

## Joint and Delegated Solicitations

A federation's SSF and a *member* association's SSF may also engage in joint solicitations. In addition, a *member* association may *delegate* its solicitation rights to the federation. I 14.7(k)(1) and I 14.8(g)(1)(i) and (ii).

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## D. Earmarked Contributions

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An *earmarked contribution* is one which the contributor directs (either orally or in writing) to, or spends on behalf of, a *clearly identified candidate* or *candidate's* committee through an intermediary or conduit. Earmarking may take the form of a designation, instruction or encumbrance and may be direct or indirect, express or implied. I 10.6(b)(1).

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### I. Conduits

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#### Who Is a Conduit

Anyone who receives and forwards an *earmarked contribution* to a *candidate committee* is considered a conduit or intermediary. I 10.6(b)(2). (The terms “conduit” and “intermediary” are interchangeable; “conduit” will be used in the remainder of this appendix.)

Individuals, political committees, unregistered PACs and partnerships may act as conduits for earmarked contributions.

#### Persons Not Considered Conduits

For the purposes of the earmarking rules, certain individuals and organizations are not considered conduits even though they may participate in activities to raise money for a *candidate*. These persons include:

- An employee or full-time volunteer working for a *candidate committee*;
- An individual who occupies a significant position in a *candidate's* campaign and who is expressly authorized to raise money on behalf of the *candidate*;
- A committee *affiliated* with the *candidate committee*; and
- A commercial fundraising firm retained by the *candidate committee*. I 10.6(b)(2)(i).

#### Prohibitions Apply

No *corporation*, *labor organization* or other entity prohibited from making contributions in connection with federal elections may act as a conduit for

an *earmarked contribution*. A separate segregated fund, however, may act as a conduit. I 10.6(b)(2)(ii); I 14.3(c)(2)(ii).

Furthermore, no individual may receive a *contribution* on behalf of a *candidate* (as a conduit or otherwise) while acting as the representative of a *corporation*, *labor organization* or other entity prohibited from making contributions. I 10.6(b)(2)(i)(A) and (E). See also AOs 2004-19 and 1986-4.

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## 2. Contribution Limits

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### Contributor's Limit

An *earmarked contribution* counts against the contributor's *contribution* limit for the recipient *candidate*. I 10.6(a).

### Conduit's Limit

#### Direction or Control

The conduit's *contribution* limit is affected when the conduit exercises direction or control over the contributor's choice of the recipient *candidate*. In that case, the full amount of the *contribution* counts against the limits of both the original contributor and the conduit, even though the *candidate* receives only one check. For examples of how the Commission has viewed the “direction or control” rule in specific situations, see AOs 2003-23, 1986-4, 1981-57 and 1980-46.

#### Solicited Earmarked Contributions

Note that if a committee, when making a solicitation, requests the contributor to earmark the funds for a specific *candidate*, the cost of the solicitation incurred by the committee is an *in-kind contribution* to the *candidate*, subject to the *contribution* limits. AO 1980-46.

#### Effect on Unregistered Organization

An unregistered organization acting as a conduit should be aware that conduit activity could result in a *contribution* by the organization, under the circumstances described above. In such a case, the activity may trigger registration requirements for the unregistered organization.

### 3. Forwarding Earmarked Contributions

#### 10-Day Limit

The SSF must forward an *earmarked contribution*, along with a report (see below), to the recipient *candidate committee* within 10 days of receiving the *contribution*. 102.8(a) and (c); 110.6(c)(1)(iii).

#### Transmittal Report

Along with the funds, the conduit must also forward to the recipient *candidate committee* a transmittal report containing information that the *candidate's* campaign committee will need for its own records and reports. 110.6(c)(1).

#### Contributions Exceeding \$50

When an *earmarked contribution* exceeds \$50, the accompanying report must contain the name and address of the original contributor, the date the *contribution* was received by the conduit and the amount. 102.8(b) and 110.6(c)(1)(iv). The report should also state the *election* designated by the contributor, if any. 110.1(b)(3)(i).

#### Contributions Exceeding \$200

When an *earmarked contribution* exceeds \$200, the accompanying report must contain the full name and address of the contributor, the contributor's occupation and employer, the date the *contribution* was received by the conduit and the amount. 102.8(b) and 110.6(c)(1)(iv). The report should also state the *election* designated by the contributor, if any. 110.1(b)(3)(i).

### 4. Reporting Conduit Activity

The conduit must comply with special reporting rules, which vary depending on whether the *contribution* was deposited in the conduit's bank account or was passed on directly to the campaign in the form of the original contributor's check. 110.6(c)(1)(v).

#### Report Filed with the Government

##### Separate Segregated Fund

A conduit SSF must disclose its activity on its next regularly scheduled FEC report. 110.6(c)(1)(ii).

#### Unregistered Entity

An individual or other unregistered entity acting as a conduit must disclose the activity in a letter to the FEC within 30 days after forwarding the *earmarked contribution*. 110.6(c)(1)(ii).

The letter should contain all the information listed below for SSF conduits.

### Contributions Deposited in SSF's Account

#### Schedule A

If an *earmarked contribution* passes through an SSF's account, the committee reports the following information on Schedule A:

- The name and mailing address of each person making an *earmarked contribution* (including earmarked contributions of \$200 or less) (110.6(c)(1)(iv)(A));
- The occupation and employer of each individual making an *earmarked contribution* exceeding \$200 (110.6(c)(1)(iv)(A));
- The *candidate* designated by the contributor as the recipient of the *contribution* (110.6(c)(1)(iv)(B));
- The *election* for which the *contribution* was designated, if any (see 110.1(b)(3)(i));
- The amount of the *earmarked contribution* (110.6(c)(1)(iv)(B)); and
- The date the *contribution* was received by the conduit (110.6(c)(1)(iv)(B)).

#### Schedule B

Once the SSF has forwarded the *contribution* to the *candidate* (after depositing it in its own account), the committee reports on Schedule B:

- The *candidate* designated by the contributor (110.6(c)(1)(iv)(B));
- The date the *contribution* was forwarded (110.6(c)(1)(iv)(C));
- The amount forwarded to the *candidate* (110.6(c)(1)(iv)(B));
- The *election* designated by the contributor, if any (see 110.1(b)(3)(i));
- The name of the contributor (110.6(c)(1)(iv)(A));
- A notation that the *contribution* was forwarded in the form of a check drawn on the conduit's account (110.6(c)(1)(iv)(C); and
- A statement indicating that the conduit's limit was also affected, if appropriate (110.6(d)(2)).

## Earmarked Contributions

SCHEDULE A (FEC Form 3X) ITEMIZED RECEIPTS		Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one)	PAGE	OF
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.		<input checked="" type="checkbox"/> 11a <input type="checkbox"/> 11b <input type="checkbox"/> 11c <input type="checkbox"/> 12 <input type="checkbox"/> 13 <input type="checkbox"/> 14 <input type="checkbox"/> 15 <input type="checkbox"/> 16 <input type="checkbox"/> 17			
NAME OF COMMITTEE (In Full) Unmoved Movers Inc. PAC					
Full Name (Last, First, Middle Initial) A. Joe Aristotle			Date of Receipt 08 / 19 / 2006		
Mailing Address 11 Lambda Street			Amount of Each Receipt this Period 500.00		
City: Stagira   State: NY   Zip Code: 33333			FEC ID number of contributing federal political committee: C		
Name of Employer: Unmoved Movers Inc.   Occupation: President			Earmarked for Thomas Aquinas Senate, NY.		
Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)			Aggregate Year-to-Date 500.00		

  

SCHEDULE B (FEC Form 3X) ITEMIZED DISBURSEMENTS		Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one)	PAGE	OF
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.		<input type="checkbox"/> 21b <input type="checkbox"/> 22 <input checked="" type="checkbox"/> 23 <input type="checkbox"/> 24 <input type="checkbox"/> 25 <input type="checkbox"/> 26 <input type="checkbox"/> 27 <input type="checkbox"/> 28a <input type="checkbox"/> 28b <input type="checkbox"/> 28c <input type="checkbox"/> 29 <input type="checkbox"/> 30b			
NAME OF COMMITTEE (In Full) Unmoved Movers Inc. PAC					
Full Name (Last, First, Middle Initial) A. Friends of Thomas Aquinas for Senate			Date of Disbursement 08 / 25 / 2006		
Mailing Address 12 Summa Ln.			Amount of Each Disbursement this Period 500.00		
City: Rome   State: NY   Zip Code: 33333			Purpose of Disbursement Contribution		
Candidate Name Thomas Aquinas			Category/Type 011		
Office Sought: <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President			Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)		
State:   District:			Earmarked by Joe Aristotle and transmitted by committee check.		

## 5. Earmarking Via Payroll Deduction

A member of the restricted class who contributes to the SSF through a payroll deduction program may subsequently earmark those contributions for specific candidates. The information in this section is based on AOs 1995-15 and 1991-29, in which the Commission ruled on programs designed for subsequent earmarking of payroll deductions. See also "Earmarked Contributions" on page 31.

## Obtaining Designation and Forwarding the Contribution

The SSF must obtain a signed and dated statement from each contributor designating the particular *candidate* to receive the *contribution*, and the amount to be forwarded. Contributors should also designate the *election* in which they are contributing. The SSF must forward the earmarked contribu-

tions to the named *candidate* within 10 days of the designation of the funds.

## Ledger Accounts

The SSF must keep a ledger account of each individual's payroll deduction contributions. In the case of a program set up for earmarking after the deduction is made, this assures that the funds will not be used until the contributor designates them for a specific *candidate*. In one program (AO 1995-15), funds that were left undesignated past the deadline set for designation were available for use by the SSF.

## Reporting

The committee must report all funds collected through payroll deduction as contributions to the SSF, regardless of whether contributors will have the later option of earmarking them for specified candidates.

## Undeposited Contributions

If the SSF forwards the *contribution* without depositing it first (i.e., the *transfer* is in the form of the contributor's original check), the committee must itemize the same information listed above in memo entries on Schedules A and B. 110.6(c)(1)(v). The entries should indicate that the *contribution* was passed on in the form of the contributor's original check and, if appropriate, should indicate that the conduit's limits for that *candidate* were affected. 110.6(d)(2).



When contributors subsequently designate candidates to receive funds from their ledger accounts, the SSF should report the designations as memo entries on Schedule A. (See “Contributions Deposited in SSF’s Account,” above.) The entries must also indicate that the funds were collected through payroll deduction.

The SSF must report the amount forwarded to the *candidate* on Schedule B (See “Contributions Deposited in SSF’s Account,” above), including a notation that it was an *earmarked contribution*.

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## E. Contributions from Partnerships/LLCs<sup>3</sup>

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Outlined below are special rules concerning contributions received by SSFs from partnerships. This section may be relevant to membership organizations whose members include partnerships or LLCs that are treated as partnerships for tax purposes. 110.1(e) and 110.1(g).

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### I. Contribution Limits

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Contributions received by an SSF from a partnership may not exceed \$5,000 per year. 110.1(d). A *contribution* from a partnership also counts proportionately against each contributing partner's \$5,000 per year limit for the same *political committee*. 110.1(e) and (g)(2).

Note, however, that certain partnerships and partners may be prohibited from contributing. See "Prohibited Partnership/LLC Contributions," below.

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### 2. Attribution Among Partners

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#### Formula

A portion of the partnership *contribution* must be attributed to each contributing partner.<sup>4</sup> If all partners within the organization are contributing, the partnership may attribute the *contribution* according to each partner's share of the firm's profits. However, if the partnership attributes a *contribution* on another basis agreed to by the partners, or if it attributes contributions only to certain partners, the following rules must be observed:

- The contributing partners' profits must be reduced (or their losses increased) by the amount of the *contribution* attributed to them; and
- The profits (or losses) of only the contributing partners must be affected.

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<sup>3</sup> For more information on contributions from limited liability companies, see Chapter 1, Section 13 and Chapter 2, Section 2.

<sup>4</sup> A portion of a contribution drawn on a partnership account may not be attributed to the spouse of a partner unless the spouse is also a member of the partnership. AO 1980-67.

Whatever the attribution, the portion attributed to each partner must not, when aggregated with other contributions from that person, exceed his or her *contribution* limit. 110.1(e).

### Notice to Recipient Committee

Because a *contribution* from a partnership is a *joint contribution*, the partnership must provide to the recipient committee, along with the *contribution*, a written notice listing the names of the contributing partners and the amount to be attributed to each (unless the *contribution* is attributed equally among the partners). However, unlike other joint contributions, the signature of each contributing partner is not required. 110.1(g)(5), (k)(1) and (2).

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## 3. Prohibited Partnership/LLC Contributions

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### Professional Corporations

Although law firms, doctors' practices and similar groups are often organized as partnerships, some of these groups may instead be professional corporations. Unlike a partnership, a professional *corporation* is prohibited from making any contributions because contributions from corporations are unlawful. 114.2(b).<sup>5</sup> See also 114.7(d).

### Partnerships with Corporate Members

Because contributions from corporations are prohibited, a partnership or an LLC with corporate members may not attribute any portion of a *contribution* to the corporate partners. 110.1(e), 110.1(g)(2) and 114.2(b).

A partnership or LLC composed solely of corporate partners may not make any contributions. AO 1981-56.

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<sup>5</sup> However, an individual member of a professional corporation may contribute a check drawn on his or her nonrepayable corporate drawing account since the check represents a contribution from the individual rather than the corporation. See 102.6(c)(3).

## Partnerships or LLCs with Foreign National Members

Similarly, because contributions from foreign nationals are prohibited, a partnership may not attribute any portion of a *contribution* to a partner who is a *foreign national*. 110.20(b).

## Partnerships or LLCs with Federal Government Contracts

A partnership or LLC that is negotiating a contract with the federal government or that has not completed performance of such a contract is prohibited from making contributions. However, an individual partner in such a firm may make contributions from personal funds (rather than from funds drawn on the partnership's account). 115.4. See also AO 1991-1.

## In-Kind Contributions

A committee reports the value of an itemized *in-kind contribution* received from a partnership or LLC on Schedule A in the same way it reports an itemized monetary *contribution* on Schedule A. Moreover, an *in-kind contribution* itemized on Schedule A must also be itemized on a Schedule B for operating expenditures. 104.13(a) and (b). However, any information about a partner itemized as a *memo entry* on Schedule A does not have to be reported on Schedule B.

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## 4. Reporting Partnership/LLC Contributions

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### Included in Total Figure

Partnership contributions are included in the total figure reported for “contributions from individuals/persons other than political committees” on the Detailed Summary Page of Form 3X (Line 11(a)(iii)).

### Itemization

If a single partnership/LLC *contribution* exceeds \$200, or if several contributions by the same partnership/LLC aggregate over \$200 during a calendar year, the committee must itemize the *contribution* on a Schedule A used for “Contributions from Individuals/Persons Other Than Political Committees” (Line 11(a)(i)).

Additionally, if an individual partner's share of the *contribution* exceeds \$200 when combined with other contributions received from that partner in the same calendar year, the committee must disclose, as a *memo entry*, itemized information on the partner (name, address, occupation, date *contribution* received, partner's share of *contribution* and aggregate year-to-date total of contributions made by that partner). 104.8(a) and (b).

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## F. Compliance with Other Laws

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In addition to complying with the *Federal Election Campaign Act*, SSFs must observe laws and rules outside the Commission's jurisdiction.

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### I. Tax Laws

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SSFs should be aware that they have to comply with federal and state laws on income tax. For information on federal tax laws, contact the Internal Revenue Service, Washington, DC 20224, Attention: E:EO (202/622-8100 or 1-877/829-5500) or on line at [www.irs.gov/polorgs](http://www.irs.gov/polorgs).

Committees that need to obtain a taxpayer ID number should call 1-800/TAX-FORM for information. Each regional IRS office also has a toll-free number; consult your telephone directory for the number in your state. SSFs should also consult the appropriate state agency for information on state income tax laws.

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### 2. Communications Act

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For information on rules concerning rates for purchasing broadcast time, equal access to broadcast media and procedures for filing complaints in this area, contact the Federal Communications Commission, Media Bureau, 445 12th Street SW, Washington, DC 20554 (202/418-1440) or online at [www.fcc.gov/mb/policy/political/](http://www.fcc.gov/mb/policy/political/).

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### 3. Hatch Act

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For information on the Hatch Act, which regulates political activity by federal employees, contact the Office of Special Counsel, 1730 M Street, NW, Washington, DC 20036 (1-800/854-2824 or 202/254-3650), or online at [www.osc.gov/hatchact.htm](http://www.osc.gov/hatchact.htm).

## G. Definitions

Words and phrases found in italics throughout this book are defined below.

**Act** — The *Federal Election Campaign Act of 1971* (2 U.S.C. §431 et seq.), as amended. 100.18.

**Administrative Expenses** — The costs of operating a separate segregated fund, including salaries, rent and supplies, and other operating costs. 114.1(b).

**Advisory Opinion (AO)** — A formal ruling from the Commission regarding the legality of a specific activity proposed in an advisory opinion request (AOR). Part 112. For information on requesting an AO, see page i.

**Affiliated** — Established, financed, maintained or controlled by the same organization. Affiliated political committees are considered one *political committee* for purposes of *contribution* limits. 100.5(g); 110.3(a).

**Authorized Committee** — See Candidate Committee.

**Bank** — A state bank; a federally chartered depository institution (including a national bank); or a depository institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. 100.82(a) through (d); 100.142(a) through (d); 103.2.

**Campaign-Related Activity** — Activity that involves soliciting, making or accepting contributions to the *candidate's* campaign or communications expressly advocating the nomination, *election* or defeat of any *candidate*. Note, though, that the absence of solicitation and *express advocacy* does not preclude the determination that the event is campaign related. AOs 1996-11, 1994-15, 1992-6 and 1988-27.

**Candidate** — An individual seeking nomination or *election* to *federal office* becomes a *candidate* when he or she and agents acting on his or her behalf raise contributions or make expenditures that exceed \$5,000. 100.3.

**Candidate Committee** — A *principal campaign committee* or any other *political committee* authorized in writing by a *federal candidate* to receive contributions and make expenditures on his or her behalf. 100.5(f)(1). The Act and FEC regulations refer to *candidate committees* as “authorized committees.”

**Clearly Identified Candidate** — A *candidate* is *clearly identified* when his or her name or picture appears in a communication or when his or her identity is apparent by unambiguous reference. 100.17; 106.1(d); 109.1(b)(3).

**Collecting Agent** — An organization that collects and transmits contributions to a separate segregated fund (SSF). A *collecting agent* may be the SSF's *connected organization* or an organization or committee affiliated with the SSF. 102.6(b)(1).

**Commercial Vendor** — Any persons providing goods or services to a *candidate* or *political committee* whose usual and normal business involves the sale, rental, lease or provision of those goods or services. 116.1(c).

**Connected Organization** — An organization that uses its treasury funds to establish, administer or solicit contributions to a separate segregated fund. 100.6.

**Contribution** — A payment, service or anything of value given to influence a *federal election*. 100.52(a).

**Coordinated** — 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. 109.20

**Coordinated Communication** — A communication that satisfies a three-prong test. 1) the communication must be paid for by a person other than a *federal candidate*, a *candidate's* authorized committee or *political party committee*, or any agent of any of the foregoing; 2) one or more of the four content standards set forth in 11 CFR 109.21(c) must be satisfied; and 3) one or more of the five conduct standards set forth in 11 CFR 109.21(d) must be satisfied. A payment for a communication satisfying all three prongs is an *in-kind contribution* to the *candidate* or *political party committee* with which it was *coordinated*. 109.21.



**Corporation** – Any separately incorporated entity (other than a *political committee* that has incorporated for liability purposes only). 100.8(b)(4)(vi); 114.12(a). The term covers both for-profit businesses (including C and S corporations) and nonprofit incorporated organizations, as well as corporations without capital stock, incorporated membership associations, incorporated trade associations, incorporated cooperatives and professional corporations.

**Delegate** – An individual who is or seeks to become a *delegate* to a national nominating convention or to a state or local convention, caucus or primary held to select delegates to a national nominating convention. 110.14(b)(1).

**Delegate Committee** – A group organized for the purpose of influencing the selection of delegates. The term includes a group of delegates, a group of individuals seeking to become delegates and a group of individuals supporting delegates. 110.14(b)(2).

**Direct Mail** – A communication to the general public using either a commercial mailing firm or mailing lists purchased from a *commercial vendor*. 100.87(a), 100.89(a), 100.147(a) and 100.149(a).

**Disbursement** – Any purchase or payment made by a *political committee*.

**Earmarked Contribution** – A *contribution* that the contributor directs (either orally or in writing) to a *clearly identified candidate* or *candidate committee* through an intermediary or conduit. Earmarking may take the form of a designation, instruction or incumbrance and may be direct or indirect, implied or express. 110.6(b)(1).

**Election** – Any one of several processes by which an individual seeks nomination for *election* or *election* to *federal office*. They include: a primary *election*, including a caucus or convention that has authority to select a nominee; a general *election*; a *runoff election*; and a *special election* held to fill a vacant seat. 100.2.

**Election Cycle** – The period from the end of one general *election* for a given *federal office* to the end of the following general *election* for that office. The number of years in an *election cycle* differs according to the *federal office* sought. The *election cycle* spans:

- Two years for House candidates;
- Four years for Presidential candidates; and
- Six years for Senate candidates. See 100.3(b).

**Election Year** – A year in which there are regularly scheduled elections for *federal office* (i.e., even-numbered years).

**Electioneering Communication** – Any broadcast, cable or satellite communication that 1) refers to a *clearly identified federal candidate*, 2) is publicly distributed within 60 days of a general *election* or 30 days of a primary (or preference *election*, convention or caucus of a *political party* that has authority to nominate a *candidate*), and 3) is targeted to the relevant electorate, in the case of House and Senate candidates. 100.29(a).

**Expenditure** – A purchase or payment made in connection with or for the purpose of influencing a federal *election*. A written agreement to make an *expenditure* is considered an *expenditure*. 100.111(a); 100.112; 114.1(a).

**Express Advocacy** – Unambiguously advocating the *election* or defeat of a *clearly identified federal candidate*. There are two ways that a communication can be defined as *express advocacy* (*candidate advocacy*): by use of certain “explicit words of advocacy of *election* or defeat” and by the “reasonable person” test. 100.22.

“Explicit words of advocacy of *election* or defeat”: The following words convey a message of *express advocacy* (*candidate 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 ‘96”;
- 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;

(cont.)

### Express Advocacy (cont.)

- “Defeat” accompanied by the name or photograph of the opposed *candidate* 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* (*candidate advocacy*) is found in a communication that, when taken as a whole and with limited reference to external events, 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). See page 33.

**Facilitation** – Facilitation is the use of corporate or *labor organization* resources or facilities to engage in fundraising activities in connection with any federal *election* (other than raising funds for the organization’s separate segregated fund). Facilitation results in a prohibited *contribution* to the committee that benefits from the activity. 114.2(f)(1).

**Family** – For the purposes of solicitation, a *family* includes a mother, father, sons and daughters who live in the same household. AO 1980–102.

**Federal Office** – Includes President, Vice President, Senator and the following members of the House of Representatives: Representative, Delegate (the District of Columbia, American Samoa, Guam, Virgin Islands) and Resident Commissioner (Puerto Rico). 100.4

**Foreign National** – A *foreign national* is either: (1) an individual who is not a citizen of the United States and has not been lawfully admitted to the U.S. for permanent residence, as defined in 8 U.S.C. §1101(a)(20); or (2) a foreign principal, as defined in 22 U.S.C. §611(b). 110.20(a)(3).

**Government Contractor** – A person who enters into a contract with any agency or department of the United States government and is paid for services, materials, equipment, supplies, land or buildings with funds appropriated by Congress. Part 115.

**Host Committee** – Any local organization (e.g., any local civic association, business league, chamber of commerce, real estate board, board of trade or convention bureau):

- That represents a state or city with respect to the convention;
- That is not organized for profit;
- Whose net earnings do not strengthen the benefit of any private shareholder or individual; and
- That has as its principal objective the encouragement of commerce in, and the promotion of a favorable image of, the convention city. 9008.51 and 9008.52(a).

**Independent Expenditure** – An *expenditure* for a communication, that expressly advocates the *election* or defeat of a *clearly identified candidate* and that is not made in cooperation, consultation or concert with, or at the request or suggestion of, any *candidate* or authorized committee or their agents, or a *political party committee* or its agents. 100.16; 109.20.

**In-Kind Contribution** – A *contribution* of goods, services or property offered free or at less than the *usual and normal charge*. The term also includes payments made on behalf of, but not directly to, candidates and political committees. 100.52(d).

**Joint Contribution** – A *contribution* made by more than one person on a single check or other written instrument. 110.1(k)(1).

**Labor Organization** – An employee-representative membership association that deals with employers on grievances, labor disputes, wages, working conditions, etc. 114.1(d).

**Limited Liability Company (LLC)** – a business entity that is recognized as a *limited liability company* under the laws of the State in which it is established. LLCs that are treated as partnerships under the IRS code may make contributions. LLCs that have publicly traded stock or are treated as corporations under the IRS code are prohibited from making contributions or expenditures. 110.1(g).

**Member** – With respect to a *labor organization*, a *trade association*, a cooperative or other incorporated membership organization, a *member* is an individual or other entity that:

- Satisfies the requirements for membership in a membership organization;

- Affirmatively accepts the organization's invitation to become a *member*; and
- Maintains a long-term and continuous bond with the organization by :
- Having a significant financial attachment, such as a significant investment or ownership stake;
- Paying annual dues; or
- Having direct participatory rights in the governance of the organization.

**Membership Organization** – A *labor organization* or a *trade association*, cooperative or other incorporated membership organization that:

- Is composed of members;
- Expressly states the qualifications for membership in its articles and by-laws;
- Makes its articles, by-laws and other organizational documents available to its members;
- Expressly seeks members;
- Acknowledges the acceptance of membership, such as by sending membership cards to new members or including them on a membership newsletter list; and
- Is not organized primarily for the purpose of influencing a federal *election*.
- 100.8(b)(4)(iv)(A) and 114.1(e).

**Memo Entry** – Supplemental or explanatory information on a reporting schedule. The dollar amount of a *memo entry* is not included in the total figure for the schedule. A *memo entry* is often used to disclose additional information about an itemized transaction that is included in the total receipts or disbursements for the current report or a previous report.

**Multicandidate Committee** – A *political committee* that has been registered at least 6 months, has more than 50 contributors and, with the exception of state party committees, has made contributions to at least 5 candidates for *federal office*. 100.5(e)(3).

**MUR (Matter Under Review)** – An FEC enforcement action, initiated by a sworn complaint or by an internal administrative action.

**National Party Committees** – Political committees established and maintained by a national *political party*. A party's national committee, House campaign committee and Senate campaign committee are defined as national party committees. 110.1(c)(2) 110.2(c)(2); 110.3(b)(2); 300.10(a); 300.11(a).

**Negative Entry** – A negative amount, shown in parentheses on a reporting schedule. The amount is subtracted from the total for that Schedule.

**Net Debts Outstanding** – The total of a *candidate committee's* unpaid debts with respect to a particular *election*, including estimated costs to liquidate the debts plus costs of terminating political activity (if appropriate) minus cash on hand and receivables. 110.1(b)(3)(ii); 110.2(b)(3)(ii).

**Nonconnected Committee** – A *political committee* that is not a *candidate committee*, a *party committee* or a separate segregated fund.

**Nonelection Year** – A year in which there is no regularly scheduled federal *election* (i.e., an odd-numbered year).

**Nonfederal Account or Committee** – An account or organization established solely for activity in connection with nonfederal (state and local) elections. Distinguished from *political committee*.

**Nonfederal Election** – An *election* for state or local office.

**Nonpartisan Tax-Exempt Organization** – An organization which is exempt from federal taxation under 26 U.S.C. §501(c)(3) or (4) and which does not support, endorse or oppose candidates or political parties. 110.13(a)(1); 114.4(b)(5)(ii), (c)(1)(i)(A) and (c)(4).

**Ongoing Committee** – A *political committee* that has not terminated and does not qualify as a *terminating committee*. 116.1(b).

**Operating Expenditures** – See Administrative Expenses.

**PAC** – Acronym for *political action committee*.

**Party Committee** – A *political committee* which represents a *political party* and is part of the official party structure at the national, state or local level. 100.5(e)(4).

**Permissible Funds** – Funds which do not violate the Act's limits or prohibitions.

**Political Action Committee (PAC)** – Popular term for a *political committee* that is neither a *party committee* nor a *candidate committee*. PACs sponsored by a *corporation* or *labor organization* are called separate segregated funds (SSFs); PACs without a corporate or labor sponsor are called nonconnected committees.

**Political Committee** – An entity that meets one of the following conditions:

- Any separate segregated fund upon its establishment.
- A *state party committee* or nonparty committee, club, association or other group of persons that receives contributions or makes expenditures, either of which aggregate over \$1,000 during a calendar year.
- A local unit of a *political party* that: (1) receives contributions aggregating over \$5,000 during a calendar year; (2) makes contributions or expenditures aggregating over \$1,000 during a calendar year; or (3) makes payments aggregating over \$5,000 during a calendar year for exempt party activities.
- An authorized committee of a *candidate* (see *candidate committee*). 100.5.

**Political Party** – An organization that nominates or selects a *candidate for election to federal office* whose name appears on the *election ballot* as the *candidate* of the organization. 100.15.

**Principal Campaign Committee** – A committee authorized by the *candidate* as the principal committee of his or her campaign. 100.5(e)(1).

**Prohibited Funds** – Funds from entities who are prohibited from making contributions or expenditures in connection with, or for the purpose of influencing, a *federal election* (i.e., corporations, labor organizations, foreign nationals and federal government contractors). 110.4; 114.2; 115.2. See Chapter 2.

**Public Communication** – A communication by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, Internet communications placed on another person's web site for a fee or any other form of general public political advertising. 100.26.

**Receipt** – Anything of value (money, goods, services or property) received by a *political committee*.

**Refunded Contribution** – A *contribution* is refunded when the recipient committee deposits the *contribution* and sends the contributor a check for the amount (or a portion) of the *contribution*. 103.3(a). Compare with *returned contribution*.

**Restricted Class** – Those individuals within a *corporation* or *labor organization* who may be solicited for contributions to the organization's separate segregated fund at any time and who may receive communications containing *express advocacy* from the organization. 114.3(a); 114.5(g); 114.7(a) and (h); and 114.8(c), (h) and (i). The restricted classes of different organizations are defined further in Chapter 3.

**Returned Contribution** – A *contribution* is returned when the recipient committee sends the original check (or other negotiable instrument) back to the contributor, without depositing it. 103.3(a). Compare with definition of *refunded contribution*.

**Runoff Election** – An *election* held after a primary or a general *election* when no *candidate* wins the previous *election*. 100.2(d).

**Separate Segregated Fund (SSF)** – A *political committee* established or financially supported by a *corporation* or *labor organization*; popularly called a *political action committee* or PAC. 114.1(a)(2)(iii).

**Special Election** – A primary, general or *runoff election* which is not a regularly scheduled *election* and which is held to fill a vacancy in the House of Representatives or Senate. 100.2(f).

**State Party Committee** – A *political committee* which, by virtue of the bylaws of a *political party*, is responsible for the day-to-day operation of the party at the state level. 100.14(a).

**Stockholder** – A person who has a vested beneficial interest in stock, the power to direct how that stock is voted (if it is voting stock) and the right to receive dividends. 114.1(h).

**Terminating Committee** – A *political committee* that is winding down its activities in preparation for filing a termination report. A *terminating committee* has ceased to make or receive contributions (other than to receive contributions for debt retirement

purposes) or make expenditures other than for payment of debts and obligations or for winding-down costs. 116.1(a).

**Trade Association** – A membership organization consisting of persons engaged in a similar or related line of commerce. A *trade association* is organized to promote and improve business conditions and does not engage in regular business for profit; the net earnings of a *trade association* do not accrue to the benefit of any *member*. 114.8(a).

**Trade Association Federation** – An organization representing trade associations involved in the same or allied line of commerce. 114.8(g).

**Transfer** – With regard to separate segregated funds, a payment by one committee to an *affiliated* committee. 102.6(a).

**Unauthorized Single-Candidate Committee** – A *political committee* not authorized by any *candidate*, which makes contributions or expenditures on behalf of only one *candidate*. 100.5(e)(2) and (f)(2).

**Usual and Normal Charge** – With regard to goods provided to a *political committee*, the term refers to the price of those goods in the market from which they ordinarily would have been purchased at the time they were provided. With regard to services, the term refers to the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered. 100.52(d).





# Index

## A

Accounting Services 15, 95  
 Administrative Expenses  
     allocation of 99  
     paid by connected organization 8  
     paid by member of trade association 109  
 Administrative Fines 46  
 Administrative Termination 74  
 Advisory Opinions i  
 AFL-CIO 7, 28  
 Airplane  
     candidate use of 94  
 Amendments (Statement of Organization) 3, 4  
 Anonymous Contributions 10  
 Appreciated Goods 55  
 Authorized Committee 118

## B

Best Efforts 20, 43, 45, 54  
 Board of Directors  
     restricted class 20  
 Bounced Checks 57  
 Broadcasting Laws 117  
 Bylaws 6, 22, 122

## C

Campaign-Related Activity 84, 118  
 Campaign Materials 78, 80, 83, 86  
 Candidate Appearances 81, 86  
 Candidates  
     clearly identified candidates 32, 77, 118  
     nonfederal 17, 63, 95  
     unopposed 12  
 Cash Contributions 29, 30, 42  
 Cash Disbursements 42  
 Cash on Hand 70, 71  
 Catering 92  
 Charity 26  
 Checks  
     abbreviated name of SSF 2  
     bounced checks 57  
     uncashed 61  
     undeposited 113  
 Citations i  
 Collateral 17  
 Combined Dues and Solicitation Payments 25

Commercial Vendor 73, 79, 80, 119  
 Commingling of Funds 15  
 Commissioned Employees 20  
 Communications Act 117  
 Conduit or Intermediary 16, 111  
 Connected Organization ii, 2, 3, 7, 8, 118  
 Consultant Services 80  
 Cooperatives i, 22, 119  
 Coordination 33, 77-81  
 Credit Cards 25  
 Credit Union Checks 43  
 Custodial Arrangement 105  
 Custodian of Records 4

## D

Debates 35, 84  
 Delegate Committees 13, 119  
 Depository 18, 30, 42, 64, 118  
 Direct Mail 32, 33, 82  
 Disaffiliation 7  
 Disbursements 60-72  
     defined 121  
 Disclaimer Notices 20, 34, 37, 38  
 Discounts 16

## F

Foreign Corporation 17  
 Foreign Nationals 16, 17, 28, 116, 120  
 Forms  
     Form I 2-4  
     Form IM 5-6  
     Form 3X 53  
     Form 5 36  
     Form 7 82  
     Form 8 51, 74  
     Form 9 36  
     Schedule A (Itemized Receipts) 54  
     Schedule B (Itemized Disbursements) 60  
     Schedule C (Loans) 67  
     Schedule C-I (Loans from Lending Institutions) 67  
     Schedule E (Independent Expenditures) 64  
     Summary Pages 70  
 Free Publications ii

## G

Generic Voter Drives 99  
Get-Out-the-Vote Drives 88  
GOTV 86, 88

## H

Hatch Act 117  
Host Committees 96

## I

Identification Number 3  
Immigrants 17  
In-Kind Contributions 61, 120  
Incorporation of SSF 8  
Individual Volunteer Activity 91, 111  
Internal Publications 107  
Internal Revenue Service 8, 10, 37, 85, 117  
Investment Income 64

## J

Joint Contribution 10, 55  
Joint SSFs 3

## L

Labor Organizations 21  
    corporate collection methods 26  
Legal and Accounting Services 12, 15, 95  
Letterhead  
    abbreviated SSF name on 2  
    multicandidate notice printed on 5, 31  
Liability  
    corporate/labor officer's 16  
    treasurer's 1  
Loans 17, 67

## M

Mail  
    used for SSF solicitations 23  
    used for twice-yearly solicitations 106  
Media Coverage 82, 85  
Meeting Rooms, Use of iv, 93  
Members 21, 120  
Membership Organization 21, 121  
Memo Entries 57, 121

## N

Name of SSF 2  
National Banks i, 15  
National Party Committee  
    contribution limits 10  
    defined 121

Negative Entry 57, 121  
Nonconnected Committee  
    affiliation with SSF 7  
    contribution limits 10  
Nonelection Year 49  
Nonfederal Account or Committee  
    as collecting agent of SSF 28  
    establishment of 98  
    transfers from 59  
Nonfederal Elections  
    corporate/labor SSF donations 32  
    defined 121

## O

Occupation of Contributor 41  
Office of Special Counsel 117  
Offsets to Operating Expenditures 59  
"One-Third Rule" 26  
Operating Expenditures 62

## P

PAC see Separate Segregated Fund ii, 122  
Party Committees  
    appearances 81  
    convention 97  
Payroll Deduction  
    as fundraising method 24  
    earmarked for candidates 113  
Promotional Items 26

## Q

Qualified Nonprofit Corporation 35  
Quarterly Reporting 46

## R

Raffles 26  
Reattributions 27  
    reporting 56  
Recordkeeping 41  
Resignations 61  
Refunds of Contributions 61  
Registration 1  
Reimbursement  
    by labor organization, of solicitation costs 26  
    by volunteer. See Volunteer Activity  
    for meeting rooms. See Meeting Rooms, Use of  
    of collecting agent, for solicitation costs 29  
    "One-Third Rule" 26  
Resources and Facilities 91-94  
Restricted Class 20-21

## **S**

Sale or Use Restriction 51  
Separate Segregated Fund (SSF) ii  
    contributions by 10  
    defined 122  
    incorporation of 8  
    solicitations by 19  
Solicitable Class 5, 22  
Solicitations for Candidate  
    at candidate or party appearance 81  
    facilities and resources used for 91  
    in publications 85  
Solicitations for SSF  
    accidental or inadvertent 19  
    at conventions 24  
    methods 23  
    notice requirements 19  
    one-third rule 26  
    trade association 108  
    twice-yearly 105  
Statement of Organization 2  
State Law 98  
Subsidiary Corporations  
    affiliation 5, 7  
    domestic, of foreign parent 16

## **T**

Taxes 117  
Taxpayer Identification Number 117  
Termination 73  
Trade Associations  
    administrative expenses 109  
    conventions 108  
    defined 123  
    federation of 108  
Transportation  
    candidate use of 93  
    for voter registration 88  
Treasurer 1, 43, 45  
Treasury Funds 95  
Twice-Yearly Solicitations 105

## **U**

Unauthorized Single-Candidate Committee  
    contribution limits 10  
    defined 123  
University Candidate Appearance 85  
Unregistered Committee  
    as collecting agent 28  
    as conduit for earmarked contribution 111  
Use of Staff 92  
Usual and Normal Charge 9

## **V**

Vendor  
    discounts 16, 95  
Volunteer Activity 91  
Voter Guides 86-87  
Voting Records 86





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