

Types of Nonconnected Committees (PACs)

Quick Reference Guide 2019 edition¹

Separate Segregated Fund (SSF) – established and administered by corporations, labor unions, membership organizations or trade associations. May solicit contributions only from individuals associated with a connected or sponsoring organization.

Super PAC (independent expenditure only political committees) – may receive unlimited contributions from individuals, corporations, labor unions, and other PACs for the purpose of financing independent expenditures and other independent political activity.

- **Hybrid PAC (political committees with non-contribution accounts)** – solicit and accept unlimited contributions from individuals, corporations, labor organizations and other political committees to a segregated bank account for the purpose of financing independent expenditures, other ads that refer to a federal candidate, and generic voter drives in federal elections, while maintaining a separate bank account, subject to all the statutory amount limitations and source prohibitions, that is permitted to make contributions to federal candidates.

Nonconnected PAC – not a party committee, an authorized committee of a candidate, or a SSF. 100.5(a), 106.6(a). Not sponsored by or connected to any of the aforementioned entities; does not have a “connected organization.” However, may receive limited financial and administrative support from a sponsoring organization that is not a corporation or labor organization, such as a partnership or an unincorporated association. Also may solicit contributions from anyone in the general public who may lawfully make a contribution in connection with a federal election. A nonconnected PAC cannot use a candidate's name in its own name or in the name of a special project (e.g. fundraising or advertising project) unless the name clearly shows opposition to the identified candidate. 102.14(b)(3). (*see page 14 of FEC's Campaign Guide for Nonconnected Committees*).

Types of Nonconnected PACs:

Leadership PAC – directly or indirectly established, financed, and maintained by Members of Congress and other political leaders in order to support candidates for various federal or nonfederal offices. These PACs are *not* authorized by the candidate or officeholder or their authorized committees.

Unauthorized Single-Candidate Committee – may only support one specific candidate. Contributions given to these committees count against the contributor's per-candidate, per-election limit for the candidate.

Multicandidate Committee – may give a candidate up to \$5,000 per election (rather than \$2,300). 110.2(b). The Treasurer of a nonconnected committee must register as a multicandidate committee by filing FEC Form IM, “Notification of Multicandidate Status” [102.2(a)] within 10 days of meeting the following criteria:

- has been registered with the FEC at least six months.

¹ Compiled by Wild Willpower PAC (www.WildWillpower.org) using the Federal Election Commission Campaign Guide for Nonconnected Committees (2008) and www.FEC.gov. ©2019

- has received contributions (for any amount) from at least 51 persons.
 - has made contributions (for any amount) to at least five federal candidates.
- 100.5(e)(3) (these may have been made over more than one election cycle).

Form IM must indicate on the Summary Page that the committee has qualified as a multicandidate committee, and all contributions to candidates or committees *must* indicate to the receiving party that the organization has multicandidate status (for convenience, usually committees include this on checks, letterhead, and other appropriate materials). A nonconnected committee that is *affiliated with* multicandidate committee automatically qualifies as a multicandidate committee and shares the \$5,000 per-candidate limit. AO 1990-16, 1993-23, 1991-13. If a political committee has multicandidate committee status, all of its affiliated committees share that status. Moreover, two or more affiliated committees may collectively satisfy the requirements for multicandidate committee status. AOs 1993-23, 1991-13, 1990-16, 1986-42, 1980-40. Each affiliated committee must file its own Form IM.

Affiliated Committees – when two or more committees are affiliated, they share a single limit on the contributions they make to candidates and other PACs. A single limit also applies to the aggregate contributions a person may make to committees affiliated with each other. 110.3(a)(1). Two or more affiliated committees are treated as a single committee for the purpose of the contribution limits (made by *or* to either committee). 110.3(a)(1). A committee may receive unlimited transfers of permissible funds from other affiliated committees. 110.3(c)(1) and 102.6(a)(1)(i).

Two Types of Affiliation:

- **Per Se (Automatic) Affiliation** – committees are affiliated “per se” when they are established, financed, maintained, or controlled by a single entity or by the same person or group of persons. 100.5(g)(2) – (3), 110.3(a)(1), AOs 1991-12, 1990-16.
- **Non Per Se Affiliation** – The FEC looks to the following criteria to determine if two or more committees are affiliated:
 - Has the authority or ability to direct or participate in the governance of another committee or its sponsoring organization through provisions of formal documents, or formal or informal practices or procedures;
 - Has the authority or ability to hire, appoint, demote, or otherwise control the officers or other decision-making employees of another committee or its sponsoring organization.
 - Has common or overlapping officers or employees with another committee or its sponsoring organization in a manner which indicates a formal or ongoing relationship between them;
 - Has officers or employees who were officers or employees of another committee or its sponsoring organization in a manner which indicates a formal or ongoing relationship, or in the creation as a successor;
 - Provides or arranges for the provision of funds or goods in significant amount or on an ongoing basis to another committee (or its sponsoring organization), such as through payments for fundraising and administrative costs;
 - Has an active or significant role in the formation of another committee or its sponsoring organization; or
 - Makes or receives contributions in a pattern similar to that of another committee or its sponsoring organization, indicating a formal or ongoing relationship between them. 100.5(g)(4)(ii)(B)-(J), 110.3(a)(3).

Types of Nonconnected PACs *continued*:

Lobbyist/Registrant Committee — established or controlled by a person who is a current registrant under Lobbying Disclosure Act of 1995 (2 U.S.C. § 1601), or an individual who is named on a current registration or report filed under the act. The act requires all federal lobbyists to register with the Clerk of the U.S. House of Representatives and the Secretary of the U.S. Senate, with anyone failing to do so being punishable by a civil fine of up to \$50,000. The clerk and secretary must refer any acts of non-compliance to the U.S. Attorney for the District of Columbia. The Lobbying Disclosure Act, which aimed at bringing a level of accountability to federal lobbying practices in the U.S., was amended substantially by the Honest Leadership and Open Government Act of 2007 (Pub.L. 110–81, 121 Stat. 735).

- **Criticism and Concerns** – the act does not include lobbyists whose "activities constitute less than 20 percent of the time engaged in services", thus failing to regulate grassroots (small donors) lobbying. The LDA includes a number of other "thresholds" that define what must be recorded. Any organization that contributes more than \$10,000 towards lobbying activities must also be registered. Amounts below this threshold are exempt from reporting. The outline for registration includes "name, address, business telephone number, and principal place of business of the registrant, and a general description of its business or activities," as well as for the client. The registrant must also include a statement of what issues they expect to lobby or what may have already been lobbied.

After recording, the records are maintained by the Clerk of the House and the Secretary of the Senate. Due to severe under-staffing, these two offices are unable to check for illegal activities or corrupt practices, which is the most glaring shortcoming of the legislation. During a hearing before the Senate Committee on Rules and Administration, Senator Christopher Dodd stated that "[S]ince 2003, the Office of Public Records has referred over 2,000 cases to the Department of Justice, and nothing's been heard from them again."²

² "Lobbying Reform: Background and Legislative Proposals, 109th Congress" (PDF). *Order Code RL33065*. The Library of Congress, Congressional Research Service. 2006-03-23.

Wild Willpower PAC

The first “Civil PAC” in the Country

On March 28, 2018 Wild Willpower PAC's founder (current Treasurer and Custodian of Records) Alexandra “Distance Everheart” Wilson registered with the Federal Election Commission (“FEC”) as the first “Civil PAC” in the country (indicated within their Statement of Organization). Although this type of *issues-based* (as opposed to candidate-based) PAC is not officially recognized *yet* by the FEC, Wild Willpower PAC is DBA (“doing business as”) while awaiting an Advisory Opinion from the FEC.³

Civil PAC – performs certain activities in accord with a *Peaceable Assembly of Citizens* (“Assembly”) in order to promulgate an *issue(s)* or *specific plan* (as opposed to operating *in favor of* or *against* a specific candidate or party). Generally established by grassroots organizers to serve as a *central committee* to which members of the Assembly report to (e.g. contributions, operating expenses, and other campaign-related issues), and to handle administrative filings (e.g. registration, finances, FEC reports) related to the campaign. Civil PACs and Assemblies work to inform the public about their issue(s), disseminate campaign materials (including media broadcasts), gather petition signatures, hold rallies, compile data and gather evidence, and perform other activities related to their campaign. Most Civil PACs are established *before* the Assembly exists, at which time they're used to organize and grow a specific campaign(s) and recruit members into the Assembly. Powers vested in these PACs are specified in the First Amendment:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people Peaceably to Assemble, and to **Petition the Government for a **Redress** of **Grievances**.”**

Definitions:

petition – a formal written request presented to a court or other official body.

redress – the receiving **satisfaction** for an **injury** sustained.

satisfaction – the act of satisfying a party by paying what is due to him.

injury – any wrong or damage done to another, either in his person, rights, reputation, or property.

personal injury – a bodily injury or non physical injury (e.g. wrongful eviction, slander, false arrest, violating a right).

grievance – a **complaint** due to injury, injustice, or wrong.

complaint – “A civil action is commenced by filing a complaint with the court.”
– Rule 3, Federal Rules of *Civil* Procedure.

redress of grievances – A matter of constitutional right of assembly and petition. The demand, made by people in assembly, of the legislative body to obtain a change in the laws, the enactment of new laws, or for anything else connected with the powers or duties of government.⁴

³ FEC official website, “Advisory Opinions”: www.fec.gov/press/resources-journalists/advisory-opinions/

⁴ Ballantine’s Law Dictionary with Pronunciations Third Edition by James A. Ballantine (*James Arthur 1871-1949*). Edited by William S. Anderson. © 1969 by THE LAWYER’S CO-OPERATIVE PUBLISHING COMPANY. Library of Congress Catalog Card No. 68-30931.

Campaign Contributions

Quick Reference Guide 2019 edition⁵

Contribution – anything of value given to influence a federal election. 100.52(a). *Donations* to a political committee or candidate *are* considered contributions and must be reported.

If a communication indicates that any portion of the funds received will be used to support or oppose the election or defeat of a clearly identified federal candidate, funds received in response to that communication are contributions 100.57(a). Alternately:

- If the solicitation refers to one or more clearly identified federal candidates and a political party, but does not refer to any clearly identified nonfederal candidates, 100% of the funds received are contributions. 100.57(b)(1).
- If the solicitation refers to one or more clearly identified federal candidates and also refers to one or more clearly identified nonfederal candidates, then at least 50% of the funds received are contributions, whether or not the communication mentions a political party. 100.57(b)(2).

Support from Sponsoring Organizations – *All* forms of support (money and things of value) received from a sponsoring organization are *contributions*.

Solicitation Methods:

Oral Solicitations – made orally (e.g. in a speech, a meeting, or over the phone).

General Public Political Advertising – print or broadcast advertisements, telephone banks, mass mailings, and communications placed for a fee on another person's web site. 100.26.

Mail – via using the committee's own mailing lists.

Events and Items – selling fundraising items (e.g. t-shirts, raffle tickets) or tickets to fundraising events. The full price counts as the amount of the purchaser's contribution, even if part is used to defray the costs of the fundraising program. 100.53. A nonconnected committee may purchase tickets for a fundraising event held by a candidate's committee, or it may purchase items sold for fundraising purposes by the committee. 100.53.

General Rules for Solicitations:

In order to deposit undesignated contributions into its federal account, a committee must inform donors that their contributions will be used in connection with a federal election or that they are subject to the limitations and prohibitions of the Federal Election Campaign Act. 102.5(a)(2)(ii) and (iii). This requirement may be fulfilled by including this information in solicitation materials. Solicitations must include a notice identifying who paid for the solicitation. 110.11(a)(1).

“Best Efforts” Rule – solicitations must specifically request the name, address, occupation and employer of each contributor who gives more than \$200 in a calendar year [102.9(d)], and inform contributors that the committee is required by law to undertake “best efforts” to report this information. 104.7(a).

Political Committees raising > \$100,000/yr annually – § 6113 of the Internal Revenue Code requires inclusion of a **special notice on solicitations informing solicitees that their contributions are not tax deductible.**

⁵ Compiled by Wild Willpower PAC (www.WildWillpower.org) using the Federal Election Commission Campaign Guide for Nonconnected Committees (2008) and www.FEC.gov. ©2019

Types of Contributions:

Cash Contributions – Gifts of money - **limited to \$100 or less; otherwise must be made by check or other written instrument.** 110.4(c).

- **anonymous contributions** – limited to \$50 or less. 110.4(c)(3).
- **monetary contributions exceeding \$100** – must be made by check or other written instrument drawn on the nonconnected committee's account. 102.10, 103.3(a) and 110.4(c).

Credit Cards – Treasurers should note the recordkeeping requirements. AO 1978-68. (*page 41 of FEC's Campaign Guide for Nonconnected Committees*).

In-kind Contributions – subject to limits and must be reported; *types include:*

- **gifts of goods** (i.e. equipment, supplies, facilities, mailing lists) **and services** (i.e. advertising, printing, consulting) **offered free of charge**, but **not volunteer activity**. Goods are valued at normal purchase or rental price, and services at the prevailing commercial rate at the time the services are rendered.
- **goods or services offered at less than usual and normal charge** 100.52(d). Discounts offered in the ordinary course of business to both political and nonpolitical clients are not contributions. AOs 1989-14, 1987-24, 1986-22 and 1985-28; see also 116.3. Discounts are valued at the amount saved. 100.52(d).
- **payments by a third party for goods and services rendered** to a political committee (or candidate). When someone pays for a nonconnected committee's use of corporate/labor facilities, the payment is considered a reportable in-kind contribution to the committee. 100.52(a). (See “*Ways Nonconnected PACs may Raise Money (& receive other Aid) besides Donations Quick Reference Guide*”: § “*Use of Corporate/Labor Facilities and Resources*”.)
 - **when a nonconnected committee pays for a communication that is coordinated with a candidate or party committee** – the communication is an in-kind contribution to that candidate or party committee. *Coordinated* means “made in cooperative, consultation or concert with, or at the request or suggestion of, a candidate, their authorized committee, or their agents, or a party committee or its agents.” 109.20. ⁶ **Neither agreement (mutual understanding on any part of the material aspect of the communication or its dissemination) nor formal collaboration (planned or systematically organized work) is necessary for a communication to be classified as a coordinated communication.** 109.21(a). To determine if a communication is coordinated (and thus count against contribution limits) see pages 31–35 in the FEC's Nonconnected Committees Campaign Guide.
- **advances of personal funds** (or personal credit) by an individual (e.g. committee staff member volunteer or third party) for a committee expense (e.g. postage, office supplies, campaign materials). 100.52(a), 116.5(b). Non-travel advances that are later reimbursed are considered contributions so long as they're outstanding. An advance is *not* considered a contribution if its for campaign travel expenses and its reimbursed within 30 days. Or, if a credit card is used, within *60 days of the closing date of the billing statement on which the charges first appear.* 116.5(b). See page 58.

⁶ For the purposes of 11 CFR part 109 only, “agent” is defined at 11 CFR 109.3.

Types of Contributions *continued*:

Loans and Guarantees or Endorsements of Loans – considered contributions so long as they're outstanding. 100.52(b)(2). The amount guaranteed counts against the endorser's or the guarantor's limit only to the extent that the loan remains outstanding. Repayments made on a loan proportionally reduce the amount charged against the lender's (or endorser's) contribution limit. However, a loan that exceeds the lender's or endorser's personal limit is unlawful even if repaid in full. 100.52(b)(1). If a loan has more than one guarantor and if the loan agreement does not stipulate the portion of the loan for which each guarantor is liable, the contribution of each guarantor is determined by dividing the amount of the loan by the number of guarantors. 100.52(b)(3). A borrower must use federally permissible funds when repaying such loan.

- **Loans from banks are not contributions if...** they're made under certain conditions. 100.82. *See page 20.*
- **A Nonconnected Committee may Loan Money to or Endorse or Guarantee a Bank Loan to, a Candidate's Committee** – the amount counts as a contribution to the extent that the loan remains outstanding. 100.52(b). *See page 26.*

Contribution Limits:

Each of the following is considered a separate election with a separate limit: *primary election, caucus or convention with the authority to nominate, general election, runoff election, and special election.*

PACs and SSFs – may receive \$5,000 from any contributor *per calendar year*. 110.1(d). *Types of contributors* include:

- Individuals;
- State, District, and Local party Committees – *shared* \$5,000 contribution limit;
- National Party Committee;
- PAC Multicandidate;
- PAC Non-Multicandidate.

Federal Candidates – *from a nonconnected, multicandidate committee*: \$5,000 per candidate, per election. 110.2(b). When making the contribution, must provide a written notification that the committee has qualified as a multicandidate committee. 110.2(a)(2). For convenience the committee may pre-print the statement on its checks, letterhead, or other appropriate materials. – *from any other PAC*: \$2,300 per candidate, per election. 110.1(b). – *in-kind contributions to candidates, from nonconnected PACs*: *see page 25.*

Nonfederal Candidates – *from a nonconnected committee*: a nonconnected committee may use money raised for federal elections to make contributions to nonfederal candidates, subject to state and local laws (*not* the Federal Campaign Finance Act). The committee must disclose such contributions (as “Other Disbursements”) in its FEC reports. Committees active in federal *and* nonfederal elections *see Chapter 10.* – *from a multicandidate committee*: When making the contribution, must provide a written notification that the committee has qualified as a

Contribution Limits *continued*:

multicandidate committee. 110.2(a)(2). For convenience the committee may pre-print the statement on its checks, letterhead, or other appropriate materials.

- **For rules concerning Specific Types of Candidates** – see page 27.
- **When Nonconnected Committees Donate to Candidates** – the FEC encourages designating contributions in writing, either on the contribution check or in a signed statement accompanying the contribution, for a particular election (e.g. primary or general). Only the contributor – not the recipient candidate committee – may designate a contribution for a particular election. 110.1(b)(2)(i) and (b)(4); 110.2(b)(2)(i) and (b)(4). Undesignated contributions automatically count against the limits for the next scheduled election. 110.1(b)(2)(ii) and 110.2(b)(2)(ii). A candidate committee may ask a nonconnected committee to redesignate a contribution (or a portion of it) for a different election in order to remedy an excessive contribution so that it counts against a different election limit. 110.1(b)(5). *See pages 28-29 for additional required information regarding designation.*
- **Contributions count against a contributor's per-candidate, per-election limit for a candidate if –**
 - The contribution is to a *unauthorized, single-candidate committee*.
 - The contributor knows that a substantial portion of their contribution will be given to or spent on behalf of a particular candidate; or
 - The contributor retains control over the funds after making the contribution (e.g. the amount to a particular candidate). 110.1(h); 110.2(h).

Delegates and Delegate Committees – a nonconnected committee may make unlimited contributions to a delegate (or an individual seeking to become a delegate) attending a national party convention or a state, district, or local convention held to select delegates to a national convention, as long as the individual is not a member of a delegate committee. Such contributions are limited to \$5,000 per calendar year. 110.1(m); 110.2(j); 110.14(d)(1) and (g).

Candidate Committees – *from individuals*: \$2,300. – *from State, District, and Local Party Committees sharing Multicandidate status*: \$5,000 per election combined limit. When making the contribution, must provide a written notification that the committee has qualified as a multicandidate committee. 110.2(a)(2). For convenience the committee may pre-print the statement on its checks, letterhead, or other appropriate materials. – *from National Party Committees*: \$5,000 per election. – *from Non-Multicandidate PACs*: \$2,300 per election, except for other federal candidates' authorized committee(s) which may contribute no more than \$2,000 per election to another *federal candidate's authorized committee(s)*. 2 U.S.C. § 432(e)(3) (B) and 11 C.F.R. 102.12(c)(2) and 102.13(c)(2). – *From Multicandidate PACs*: \$5,000 per election.

State, District, and Local Party Committees sharing Multicandidate status – *from individuals*: \$10,000 per year combined limit shared with affiliated PACs. – *State, District, Local, and National party Committees*: unlimited transfers between each other. – *From Multicandidate PACs*: \$5,000 per year combined limit shared with affiliated PACs. – *From Non-Multicandidate PACs*: \$10,000 per year combined limit shared with affiliated PACs.

Contribution Limits *continued*:

National Party Committees – *from Individuals*: \$28,500 per year. – *State, District, Local, and National party Committees*: unlimited transfers between each other. – *from Multicandidate PACs*: \$15,000 per year. – *From Non-Multicandidate PACs*: \$28,500 per year.

- **The Republican and Democratic parties each have Three National Party Committees** - each having a separate \$15,000 or \$28,000 limit (depending on whether or not the contributing committee has multicandidate status) for each national committee, House campaign committee, and Senate campaign committee. 110.1(c) and 110.2(c).

Other PACs – any nonconnected committee, regardless of whether it has qualified as a multicandidate committee, may make contributions of up to \$5,000 per year to any other type of political committee. 110.1(d) and 110.2(d).

Contributions from Individuals – Biennial limit of \$108,200 (\$42,700 to all candidates and \$65,500 to all PACs and parties, with *no more than \$42,700 of this amount* being contributed to state and local parties and PACs).

Contribution Limits – Special Rules:

Earmarked Contribution – is a contribution the contributor directs to a clearly identified candidate or candidate's committee *through* a *conduit* (aka *intermediary*) in the form of a designation, instruction or encumbrance. May be done directly or indirectly, express or implied, written or oral. 110.6(b)(1). Individuals, political committees, unregistered PACs, and partnerships may serve as a conduit in this manner. Earmarked contributions count against the original contributor's contribution limits, but not the conduit's limits unless the conduit exercises direction or control over the contributor's choice of the recipient candidate. 110.6(d). Earmarked contributions require additional disclosure to the FEC – *see page 113 and Appendix D*.

Affiliated Committees – are treated as a single committee for the purposes of the contribution limits; all contributions made or received by affiliated committees count against the same limits. 110.3(a)(1). Affiliated committees should set up a centralized recordkeeping system to ensure contributions made and received by all affiliates comply with limits. The treasurer of each affiliate is personally responsible for monitoring contribution limits. 103.3(b).

Contributions to a Committee that is not a Candidate's Authorized Committee may Count Against the Contributor's Limit if –

- the recipient committee is an unauthorized single-candidate committee;
- the contributor knows that a substantial portion of its contribution will be given to or spent on behalf of a particular candidate; or
- the contributor retains control over the contribution. 110.1(h) and 110.2(h).

Contributions from Spouses – each spouse has a separate \$5,000 limits, even if only one spouse has an income. 110.1(a). A couple may make a joint contribution (part of which would be attributed to each).

Contribution Limits – Special Rules *continued*:

Joint Contributions – made by more than one person using a single check or other written instrument. A joint contribution represents the personal funds of each donor, so each donor must sign either the check or an accompanying statement. 110.1(k)(1). A joint contribution is attributed to each donor unless an accompanying statement indicates that the funds should be divided differently. 110.1(k)(2). A committee may seek *retribution* of an excessive contribution: see *Excessive Contributions in the “Recordkeeping & Reports Quick Reference Guide”*.

Contributions from Partnerships – special rules apply. 110.1(e). *See Appendix E.*

Contributions from LLCs – Contribution limits and prohibitions are treated:

- **as a corporation** – if it has chosen to file, under IRS rules, as a corporation; *or* if it has publicly traded shares (no matter how it elects to file under IRS rules). 110.1(g)(3).
- **as a partnership** – if it has chosen to file, under IRS rules, as a partnership; or it has made no choice, under IRS rules, as to whether it is a corporation or partnership. 110.1(g)(2).
- **as an individual** – if it is a single member LLC that does not elect corporate tax treatment, in which case contributors are attributed to the single member; not the LLC. 110.1 (g)(4).

To prevent the recipient committee from inadvertently accepting an illegal contribution, at the time it makes a contribution, an LLC must notify the committee:

1. that the LLC *is* eligible to make the contribution; and
2. how the contribution should be attributed among members. 110.1(g)(5). *See Appendix C, “Information on Partnership Contribution Attribution”* pages 109-111 in the FEC's *Nonconnected Committees Campaign Guide*.

Prohibited Contributions:

Corporations, Labor Organizations (and all incorporated organizations)

– may not make contributions or expenditures in connection with federal elections. 114.1(a)(2). This does not apply to political committees that incorporate only for liability purposes. 114.12(a). The following transactions are explicitly prohibited:

- **No using the general treasury funds** – for contributions to political committees or candidates, *however certain types of “qualified nonprofit corporations” (QNCs) may make independent expenditures and electioneering communications* provided they meet certain criteria – see *page 35 in Campaign Guide for Corporations and Labor Organizations*.
- **No contributions by National Banks or Federally Chartered Corporations** in connection with federal, state, or local U.S. elections. This **does not apply to referendum-related activities**. *See First national Bank of Boston v Bellotti*, 435 U.S. 765(1978). 114.2(a) and (b).
- **No reimbursing individuals** – who make contributions to a political committee. 114.2(b), 110.4(b), AO 1986-46.
- **Corporate vendors may not extend credit to a PAC for a longer than is normally practiced within their trade** – credit is permissible only if it is extended in the ordinary course of business: stipulations include:

Prohibited Contributions *continued*:

- When a PAC fails to pay a debt owed to a corporate vendor within the time specified by the vendor, a prohibited contribution by the vendor may result if:
 1. The vendor fails to make a commercially reasonable attempt to collect a debt from the committee; or
 2. The terms of the credit were not substantially similar to similar extensions of credit by the vendor to nonpolitical clients. 100.55 and 116.3(b).
- Any settlement of debt between a creditor and the PAC for less than the full amount owed must comply with debt settlement procedures prescribed by FEC rules. *See page 93.*
- **No selling goods or services at a price below the usual or normal charge** (see “In-Kind Contributions” under *Types of Contributions*) or a prohibited contribution results in the amount of the discount. 100.52(d). A reduced price is not a contribution if it is offered by the vendor in the ordinary course of business at the same amount charged to nonpolitical clients. AOs 2006-1 and 1989-14.
- **No paying for services rendered to a nonconnected committee** [100.52(a)] **except for legal and accounting services**. *See page 22.*

Federal Government Contractors – cannot make contributions to PACs or candidates. 115.2. This applies to contributions from:

- a partnership with a government contract;
- personal or business funds of an individual under contract with the federal government; and
- sole proprietors with government contracts.

Exception – Stockholders, officers, members, or employees of an entity that is a federal contractor may make contributions from their personal funds. 115.6.

Foreign Nationals – contributions, donations, expenditures, etc. prohibited in connection with any election. May not donate to any building fund or fund relating to electioneering communications. 110.20. Knowingly soliciting, accepting, or receiving contributions or donations from foreign nationals is prohibited, including having any suspicion and failing to inquire. Providing substantial assistance to foreign nationals making contributions or donations in connection with any U.S. election is unlawful. 110.20(a)(4)(i), (ii), (iii), and (a)(5). **Exceptions:**

- **Individuals with foreign citizenship who have “green cards” or valid U.S. passports aren’t foreign nationals.** 110.20(a).
- **A PAC may accept contributions from the SSF of a U.S. Corporation that is a subsidiary of a foreign corporation, but only if:**
 - the foreign parent does not finance the PAC's activities through the subsidiary; and
 - no individual foreign national participates in the in the operation of the PAC, including the selection of persons to run the PAC) or makes any decisions regarding PAC contributions or expenditures. 110.20(i). AOs 2000-17, 1990-8, 1989-29, and 1989-20.

Contributions by One Person in the Name of Another – parties who knowingly participate in this are liable. 110.4(b) – *see “Best Efforts Rule” under General Rules for Solicitations.*

Ways Nonconnected PACs can Raise Money (& receive other aid) besides Donations

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Bank Loans:

A bank may offer a loan (or extend a line of credit) to a nonconnected committee, provided that the loan:

- bears the bank's usual and customary interest rate for the category of loan involved;
- is evidenced by a written instrument;
- is subject to a due date or amortization schedule; and
- is made on a basis which assures repayment. 100.82.

Otherwise, the loan will be considered a contribution, and is prohibited.

Methods for Assuring Repayment – one or more of the following authorized methods must be used to secure the loan, or a combination of the two:

- **Collateral** – a loan may be secured using assets of the committee (e.g. real estate, personal property, negotiable instruments and stocks, etc.). The fair market value of the assets pledged must, on the date of the loan, equal or exceed the amount of the loan and any senior liens. 100.82(e)(1)(i). The committee must ensure the bank has established a “perfected security interest” in the collateral (that is, taken steps to legally protect its interest in the collateral in the event the committee defaults on the loan.) 100.82(e)(1)(i).
- **Endorsement or Guarantee of a Bank Loan** – considered a contribution by the endorser or guarantor, and is thus subject to the law's prohibitions and limits on contributions. 100.82(c).
- **Pledge of Future Receipts** – if the committee pledges future receipts (e.g. anticipated contributions or interest income) as security for a loan, the amount loaned may not exceed a reasonable estimate of anticipated receipts, based on documentation provided by the committee (such as cash flow charts or fundraising plans). 100.82(e)(2)(ii). The committee must set up a separate account for the receipt of funds pledged for the repayment of the loan, either with the lending institution or with a different depository. If established at a different depository, the committee must execute an assignment of the account's funds to the assignment. The loan agreement must require the committee to deposit the pledged funds into the account established for this purpose. 100.82(e)(2)(iii).
- **Other Methods of Assuring Repayment** – the FEC may, on a case-by-case basis, approve other methods of assuring repayment. 100.82(e)(3). Request an advisory opinion⁸ before entering into an alternative repayment agreement.

⁷ Compiled by Wild Willpower PAC (www.WildWillpower.org) using the Federal Election Commission Campaign Guide for Nonconnected Committees (2008) and www.FEC.gov. ©2019

⁸ FEC *official website*, “Advisory Opinions”: www.fec.gov/press/resources-journalists/advisory-opinions/

Interest and Dividends:

A nonconnected committee may raise money by earning interest and dividends on invested funds. 103.3(a). For example, a committee may invest contributions it has received in a savings account, a money market fund, or a certificate of deposit. Interest and dividends are not contributions (and are therefore not subject to limits) but they must be reported. 104.3(a)(4)(vi).

Investments at Banks – any bank where the committee deposits funds must be listed on Line 9 of the committee's Statement of Organization (Form 1) – see *Creating a PAC* and *Recordkeeping & Reporting* Quick Reference Guides.

Other Investments – committee investments that are not held by banks (e.g. stocks, bonds) are not required to be listed at depositories on the committee's Statement of Organization. Before disbursing the funds earned from such investments, the committee must first transfer them to a checking account maintained at one of the committee's campaign depositories. 102.10 and 103.3(a). AOs 1986-18 and 1980-39.

Committee Must Pay Taxes – a nonconnected committee generally must pay taxes on interest and dividend income. Contact the IRS and state tax collection agencies for more info – see page 117.

Other Receipts:

Transfers from Affiliated Parties – a committee may receive unlimited transfers of permissible funds from other affiliated committees. 110.3(c)(1) and 102.6(a)(1)(i).

Overdrafts – if a bank honors a check written by a committee with insufficient funds in its checking or savings account, no contribution from the bank results if the overdraft:

- is made on an account subject to automatic overdraft protection;
- is subject to a definite interest rate which is the usual and customary rate; and
- is subject to a definite repayment schedule. 100.82(d).

An overdraft that does not meet the above conditions is a prohibited contribution. 114.2. If the overdraft protection is based on a line of credit extended by the bank, draws on that line of credit must be disclosed on Schedule C-1 (see page 22).

Offsets of Operating Expenditures (e.g. returns by vendors of deposits, refunds, and rebates) – not considered contributions. However, rebates to campaigns must be offered in the ordinary course of business and on the same terms and conditions as those offered to nonpolitical entities. Otherwise, the rebate may be considered a contribution – a *prohibited* contribution if a corporation pays the rebate. *For example, see* AOs 1996-02, 1987-24, and 1986-22.

Loan Repayments – not considered contributions, although they *are* considered contributions so long as they're outstanding – see the “Loans and Guarantees or Endorsements of Loans” section under *Types of Contributions* in the “Campaign Contributions Quick Reference Guide”.

Free Legal and Accounting Services – the value of such services provided to a nonconnected committee solely to ensure compliance with the act is not a contribution if the regular employer of the individual performing the services is the one who is paying for the services. 100.86. The value of the services, however, must be reported as a memo entry on Schedule A. 104.3(h) – see page 100.

Volunteer Activity:

An individual may volunteer his or her own uncompensated personal services to a nonconnected committee without making a contribution. 100.74.

Uncompensated Internet Activity – if an individual or group of individuals, acting independently or in coordination with, any candidate, authorized committee, or political party committee, engages in internet activities for the purpose of influencing a federal election, neither of the following is a contribution:

- the individual's personal service related to such internet activities; or
- the individual's use of equipment or services (e.g. computers, software, internet domain names) for internet activities regardless of who owns the equipment and services. 100.94(a) and (c).

Such internet activities include, but are not limited to, sending or forwarding e-mail, providing a hyperlink to another person's web site, blogging, or creating, hosting, or maintaining a web site. 100.94(b).

Please note that the following are not exempt from the definition of contribution:

- payment (other than a normal fee) for a public communication placed for a fee on another person's website (See ch. 6 and 11 CFR 100.26.)
- payment for the purchase or rental of an e-mail address list made at the direction of any political committee; and
- Payment for an e-mail address list that is transferred to a committee. 100.94(e).

Use of Corporate/Labor Facilities and Resources:

Corporate/Labor Volunteers – an employee, stockholder, or member of corporation or labor organization may make occasional, isolated, or incidental use of the organization's facilities for volunteer work on behalf of a nonconnected committee, subject to the rules and practices of the organization. The volunteer *may* have to reimburse the corporation or labor organization in certain cases. 114.9(a)(3) and (b)(3).

When making use of the facilities and resources of a corporation or labor organization, individuals acting on behalf of the nonconnected committee must make required reimbursements and advance payments according to the following guidelines. Otherwise, the activity results in a prohibited in-kind contribution from the corporation or labor union to the nonconnected committee. Also, when someone pays for a nonconnected committee's use of corporate/labor facilities, the payment is considered a reportable in-kind contribution to the committee. 100.52(a) – *see Types of Contributions in the “Campaign Contributions Quick Reference Guide”*.

- **Use of Facilities by Employees, Stockholders, and Members as Volunteers** – when an employee, stockholder, or member of a corporation or labor organization uses the organization's facilities for volunteer work in connection with federal elections (e.g. using office computers and printers for political work), the volunteer may need to reimburse the organization for the use of the facilities. A corporation or labor organization may not condition the availability of its facilities on their being used for political activity in support of or in opposition to any particular candidate or political party. 114.9(a)(1) and (b)(1).

Use of Corporate/Labor Facilities and Resources *continued*:

- **Limited Reimbursement Required for “Occasional, Isolated or Incidental” Use of Facilities** – employees, stockholders, and members of the corporation or labor organization may (subject to the rules and practices of the corporation or labor organization) make occasional, isolated or incidental use of the organization's facilities for volunteer activity in connection with a federal election *and* be required to reimburse the corporation or labor organization only to the extent that these activities increase the overhead or operating costs of the corporation or labor organization. When use of the facilities exceeds occasional, isolated, or “incidental use,” the volunteer must reimburse the organization the usual and normal charge for the facilities used (rather than merely for the increase in overhead or operating costs) within a commercially reasonable time. 114.9(a)(3) and (b)(3).

“Occasional, isolated or incidental use” generally means the following:

- **when used by employees during working hours** – an amount of activity which does not prevent the employee from completing the normal amount of work that employee usually carries out during such work period; or
- **when used by stockholders or members other than employees during the working period** – such use that does not interfere with the corporation or labor organization in carrying out its normal activities. 114.9(a)(1) and (b)(1). **Exception:** see *Use of Facilities to Produce Materials* under *Use of Facilities by Others* on the following page.
- **“Safe Harbor” for one hour per week and four hours per month** – any individual volunteer activity in connection with a federal election that does not exceed one hour per week for four hours per month (regardless of whether the activity is undertaken during or after normal working hours) is considered “occasional, isolated, or incidental”. 114.9(a)(2)(i) and (b)(2)(i).
- **additional “Safe Harbor” No Time Restrictions for Voluntary Internet Activities** – for employees and stockholders who use the corporation or labor organization's computer and related equipment and facilities for voluntary internet activity in connection with a federal election, there are no specific restrictions on the number of hours used for his activity. The safe harbor applies to internet activities conducted during or after normal working hours. Generally, individual Internet activity will fall within the safe harbor and be considered occasional, isolated, or incidental provided that:
 1. the activity does not prevent the employee from completing the work the employee is expected to perform;
 2. the activity does not increase the overhead or operating cost of the corporation or the labor organization, and
 3. the work is not performed under coercion. 119.9(a)(2)(ii) and (b)(2)(ii).

Internet activities covered by this safe harbor include, but are not limited to, sending or forwarding e-mail, providing hyperlinks or other direct access to another person's web site, blogging, creating or maintaining a web site, paying a nominal fee for the use of another person's web site or any other form of communication distributed over the Internet. 100.94(b).

Use of Corporate/Labor Facilities and Resources *continued*:

- **Use of Facilities by Others** – if a person other than an employee, stockholder, or member uses the facilities of a corporation or labor organization in connection with a federal election, the user must reimburse the organization within a commercially reasonable time and at the usual and normal charge. Facilities used for these purposes might include office space, telephones, computers, and furniture. 114.9(d).
 - **Meeting Rooms** – treated the same way as other facilities (e.g., reimbursement at the usual and normal charge within a commercially reasonable time) unless the corporation or labor organization customarily makes its meeting rooms available to clubs, civic organizations, or other groups. In that case, the organization may make the rooms available to political committees on the same terms given to other groups (including free use of the facilities). The rooms must also be made available to any other candidates or political committees, upon request, on the same terms. 114.13.
 - **Use of Facilities to Produce Materials** – **if anyone (*including an employee, stockholder, or member*)** uses the facilities of a corporation or labor organization to produce materials in connection with a federal election, the individual must reimburse the organization within a commercially reasonable time at the usual and normal charge for producing such materials. 114.9(c).

Media & Communications

Quick Reference Guide 2019 edition⁹

Independent Expenditures:

Defined: an expenditure for a communication, such as a website, newspaper, TV or direct mail advertisement, that:

- **expressly advocates** (*the communication includes a message that unmistakably urges election or defeat of one or more clearly identified candidate(s) – the election or defeat of a **clearly identified candidate** (if a candidate's name, nickname, or image appears, or their identity is otherwise apparent. 100.17) “Republicans in Congress” would not, by itself, constitute a reference to a clearly identified candidate. AO 2004-33. See pages 35–36 in the FEC's *Nonconnected Committees Campaign Guide* for more on determining if a communication qualifies as “express advocacy.”*
- is **not made in cooperation**, consultation or concert **with**, or at the request or suggestion of, **a candidate, their authorized committee or agents, or a party committee or its agents.** 100.16(a). **Neither agreement** (*mutual understanding on any part of the material aspect of the communication or its dissemination*) **nor formal collaboration** (*planned or systematically organized work*) **is necessary for a communication to be a coordinated communication.** 109.21(a). To determine whether or not a communication is coordinated (and thus count against contribution limits) see pages 31–35 in the FEC's *Nonconnected Committees Campaign Guide*.

PACs may support (or oppose) candidates by making independent expenditures, which are *not* contributions (unless paid for by a third party as an *in-kind contribution*), and they must be paid for with federally permissible funds.

Disclaimer Notice Required: a public communication qualifying as an independent expenditure must show a disclaimer notice – see pages 36–38 in the FEC's *Nonconnected Committees Campaign Guide*.

When made on behalf of more than one clearly identified candidate – see “Allocation Among Candidates” on page 36 of the FEC's *Nonconnected Committees Campaign Guide*.

Communications:

See pages 31-39 for “Coordinated Communications,” “Disclaimer Notices,” and “Electioneering Communications.”

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Creating a PAC

Quick Reference Guide *2019 edition*¹⁰

Primary Filings:

Statement of Organization – Every PAC must file a Statement of Organization with the FEC within 10 days of raising its first \$1000. Whenever any of the information disclosed on the Statement of Organization (Form 1) changes, the committee must report the change within 10 days by filing an amended Form 1 with the FEC *and* with the appropriate state officer if the committee is headquartered in a state that has not qualified for a waiver. 108.1 If amending by paper, the committee need only to provide:

- Full name and address of the committee;
- FEC ID number;
- The changed information;
- The date the change took effect; and
- The treasurer's name and signature.
- The rest of the form may be left blank.

The committee may also amend its Statement of Organization by sending the FEC a letter containing the above information, signed by the Treasurer or Assistant Treasurer, or Form 1 may be amended electronically, in which case the entire form must be resubmitted.

Incorporating a Nonconnected Committee – When a nonconnected committee incorporates for liability purposes only, its contributions to political committees are not subject to the Act's prohibition on corporate contributions and expenditures. 114.12(a). Regardless of incorporation, the treasurer remains liable for the committee's compliance with the Act. 114.12(a). Liability for debts is generally governed by state law. AOs 1995-10, 1990-11, 1989-2, 1975-102.

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Recordkeeping & Reports

Quick Reference Guide 2019 edition¹¹

Treasurer's Duties:

When the Federal Election Commission brings an action against a committee, both the treasurer and the committee are named; the treasurer may be found liable in his/her official and/or personal capacity depending upon the circumstances. The treasurer (or assistant treasurer) is responsible for:

- Filing complete and accurate reports and statements on time. 104.14(d).
- Signing all reports and statements. 102.2(a), 104.1(a) and 104.14(a).
- Depositing receipts in the committee's designated bank within 10 days of receipt. 103.3(a).
- Authorizing expenditures or appointing an agent (orally or in writing) to authorize expenditures. 102.7(c).
- Monitoring contributions to ensure compliance with the Act's limits and prohibitions. 103.3(b); 110.1(k)(3).
- Keeping the required records of receipts and disbursements. 102.9, 104.7 and 104.14(b).
- Filing an amended Statement of Organization (Form 1) within 10 days whenever information within the original statement changes. 102.2(a)(2).
- All contributions, regardless of amount, must be deposited in a committee bank or credit union account within 10 days of the treasurer's receipt. 103.3(a)(1).

Handling Contributions:

A person who collects contributions on behalf of a nonconnected committee must not commingle them with personal funds. 102.15.

Instead, he or she must forward the contributions, together with the appropriate recordkeeping information about the contributors, to the committee treasurer within:

- Contributions of \$50 or less – within 30 days after receiving the funds.
- Contributions of more than \$50 – within 10 days after receiving the funds. 102.8(b).

Handling Illegal Contributions:

Questionable Contributions – if a contribution is excessive or prohibited, the committee may have to refund it to the donor. Within 10 days, the treasurer must return a questionable check to the donor or deposit it 103.3(a). Once deposited, the treasurer must:

- Avoid spending the questionable funds by keeping enough money in the committee's account to cover all potential refunds.
- Keep a written record explaining why the contribution may be illegal and include the explanation on its report if the contribution has to be itemized before its

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legality is established.

- If a check appears to exceed a contributor's annual limit, seek a reattribution or the excessive portion, following the instructions below, or return it; and
- If a check appears to come from a prohibited source, confirm its legality, or return it. 103.3(b)(4) and (5).

The treasurer has 30 days to confirm the legality of the contribution by obtaining a written statement from the contributor explaining *why* the contribution is legal, or by obtaining an oral explanation by telephone and keeping a record of the conversation. 103.3(b)(1). Otherwise, the treasurer must refund the contribution. If a treasurer discovers that a previously deposited contribution came from a prohibited source (e.g. a foreign national), s/he must issue a refund within 30 days of making the discovery. 110.20. If funds are lacking, the treasurer must use the next receipts. 103.3(b)(2).

Excessive Contributions – a treasurer may seek a reattribution of the excessive portion to another contributor, by asking a contributor the following 110.1(k)(3):

- Whether the contribution was intended to be a joint contribution from more than one person (see *Joint Contributions* in the *Contribution Limits – Special Rules* section of the "*Campaign Contributions Quick Reference Guide*"); or alternately
- Whether the amounts attributed to participants in a joint contribution should be adjusted. (the amount is split equally between the donors unless they indicate a different division in writing.)

In either case, the treasurer must inform the contributor that s/he may instead request a refund of the excessive portion. The treasurer should also inform donor(s) that a reattribution must be signed by each participating contributor. 110.1(k)(3)(ii)(A). *See pages 13-14 for more information.*

Prohibited Contributions –