CORPORATIONS AND UNIONS IN FEDERAL POLITICS: A PRACTICAL APPROACH TO FEDERAL ELECTION LAW COMPLIANCE

Curtis C. Sproul*

The current federal statutes regulating participation by corporations and unions in federal elections are the product of an evolutionary process beginning with the Tillman Act of 1907.[1] The Tillman Act's succinct prohibition on participation by corporations in federal elections has been expanded through judicial construction and legislative refinement into a matrix of regulation which greatly increases the compliance burden on corporations and unions that desire to be active politically.[2] Paralleling this growth in political action regulation has been a significant expansion in the level of corporate and union political involvement in federal elections.[3]

The establishment and administration of corporate and union political action programs has generally been left in the hands of employees or union officers having other responsibilities with their employer or union. Furthermore, the program may only be activated in national election years. As a result, familiarity with the reporting and organizational requirements and restrictions imposed by federal legislation, case law, and agency opinions and regulations may be lacking. It is therefore crucial for politically active corporations and unions to develop political action programs and procedures that will facilitate compliance and act as a "fail-safe" against inadvertent violations of the law.

This Article is designed to serve as a blueprint for the design and

* Weintraub, Genshlea, Giannoni & Sproul, Sacramento, California. A.B., 1970, University of California; J.D., 1973, Boalt Hall School of Law, University of California.

1. Pub. L. No. 59-36, ch. 420, 34 Stat. 864 (current version codified at 2 U.S.C. § 441b (1976 & Supp. III 1979)). *See generally* Bolton, *Constitutional Limitations on Restricting Corporate and Union Political Speech*, 22 ARIZ. L. REV. 373 (1980).

2. *See generally* Bolton, *supra* note 1.

3. *See generally* Adamany, *PAC's and the Democratic Financing of Politics*, 22 ARIZ. L. REV. 569 (1980).

implementation of effective corporate and union political action programs. This Article focuses on the creation of two kinds of program materials: (1) those materials to be used by the program administrators to insure informed administration in accordance with applicable laws; and (2) those materials designed to solicit and encourage program participation by corporate employees and union membership. The first category of materials, referred to herein as political action organization materials, needs to be designed as specific reference materials which will guide the personnel responsible for program administration through the maze of reporting and disclosure requirements and the technical rules imposed upon participation by corporations and unions in the federal political process. The second category, referred to as solicitation materials, is not entirely free of federal regulation as to content, but is much less technical in nature. Solicitation materials should present an accurate description of the rules for participation in the political action program, but should be more narrowly focused than the organization materials and be written for ready understanding by program participants. Finally, the solicitation materials must be designed to insure that the sponsoring corporation or union will receive from program participants the information needed by the sponsor for inclusion in the periodic federal reports.

This Article will focus on federal statutes and pertinent regulations of the Federal Election Commission [FEC] regulating corporate and union political activity. The author has prepared a comprehensive form of articles of association for use by federal political action committees [PAC's]. These articles are set forth in Appendix A. No attempt will be made to offer an analysis of state and local statutes which may prohibit or restrict the right of corporations and unions to participate in state and local elections.[4]

4. The Federal Election Campaign Act [FECA] makes it unlawful for (a) federally chartered corporations and national banks to make contributions or expenditures in connection with any election—federal, state, or local; (b) state chartered corporations (including professionals, such as doctors and lawyers, who incorporate under state law) and labor organizations to make contributions or expenditures in connection with federal elections, primaries, political conventions, or caucuses; and (c) for any person to knowingly accept or receive a prohibited contribution or for an officer or director of a corporation or national bank to consent to the making of a prohibited contribution or expenditure. 2 U.S.C. § 441b (1976 & Supp. III 1979).

As a result of amendments, FECA now specifically authorizes: (a) corporations and labor organizations to make direct partisan communications to certain specified in-house members of their corporation or union families, without the necessity of utilizing voluntary contributions derived from the activities of a separate, segregated fund, *id.* § 441b(a), (b)(2)(A); (b) direct participation by corporations and labor organizations in nonpartisan registration and get-out-the-vote campaigns aimed at these same specified in-house persons, *id.* § 441b(a), (b)(2)(B); and (c) the establishment, administration, and solicitation of contributions to a separate segregated fund (commonly referred to as a political action committee) to be utilized by the sponsoring corporation or labor organization for political purposes, *id.* § 441b(a), (b)(2)(C).

If a client intends to be active in connection with state and local elections, state laws should be examined. For instance, as of Fall 1979, twenty-eight states (including Arizona, New York,

In terms of the sequence of events that occur in the creation and implementation of a political action program, it is essential at the outset for the program organizers and their counsel to be familiar with the principal research tools that are available concerning the federal law of politics. Although the list is not extensive, there are several publications available, public and private, which will be of great assistance in designing a viable and efficient political action program that facilitates keeping abreast of changes in federal statutes, rules, and regulations. A bibliography of these research materials accompanies this Article in Appendix B. It is strongly recommended that an investment be made in these materials so that reference sources will be available and changes in the laws governing political participation will be identified promptly.

The Political Action Operations Manual

Program implementation involves the design of a Political Action Operations Manual for use by the corporate or union personnel responsible for the program administration. The political action program will, as a practical matter, be administered without the benefit of constant legal supervision. Consequently, the Operations Manual is designed to provide program administrators with a blueprint for operations. Once the political action program is properly initiated, it becomes the lawyer's duty to inform the client of recent developments and changes in case law and regulations. The specific content and organization of the Operations Manual will vary depending on the needs and objectives of the program sponsor and the type of solicitation effort utilized. Nevertheless, several common features are identifiable.

The Operations Manual should open with a comprehensive summary of the applicable law and regulations and contain an appendix setting forth necessary reporting forms, relevant statutory provisions,[5] and applicable regulations of the FEC.[6]

Following the summary of applicable law, the Manual should focus on specific problem areas under the Federal Election Campaign

Texas, New Jersey, and Connecticut) prohibit corporate political contributions and almost every state now requires disclosure (at least with respect to state and local elections) of contributions and expenditures by most organizations collecting or spending money in political campaigns. *See* Note, *First National Bank of Boston v. Bellotti: The Reopening of the Corporate Mouth—The Corporation's Right to Free Speech*, 21 ARIZ. L. REV. 841, 842 n.8 (1979).

5. Particularly 2 U.S.C. §§ 431 (definitions), 432 (organization of political committees), 433 (registration of political committees), 434 (reports of receipts and expenditures), 441a (limitations on contributions and expenditures) and 441b (contributions and expenditures by national banks, corporations, and labor organizations) (1976 & Supp. III 1979).

6. *See* 11 C.F.R. §§ 100-115 (1980). For a discussion of FEC procedures, see Baran, *The Federal Election Commission: A Guide for Corporate Counsel*, 22 ARIZ. L. REV. 519 (1980).

Act [FECA][7] which have received additional explication in both FEC advisory opinions and case law.

Content of the Manual

The balance of this portion of the Article will review those areas where significant legal developments have occurred that should be discussed in the Operations Manual. This discussion is subdivided into three general subject areas: (1) current rules regarding direct political participation by corporations and labor organizations; (2) current rules for PAC's; and (3) general rules and regulations applicable to all political committees. While the exact content of any particular Operations Manual will vary depending upon the needs and objectives of the program sponsor, the following discussion is intended as a presentation of the basic content of the Manual itself.

I. CURRENT RULES REGARDING DIRECT POLITICAL EXPRESSION AND PARTICIPATION BY BANKS, CORPORATIONS, AND LABOR ORGANIZATIONS

In any situation indicating possible corporate or labor organization participation in political activities, three questions should be asked in order to determine whether the restrictions in FECA apply: (1) does the activity involve the nomination for election or election of a candidate to federal office; (2) does the activity represent individual political expression or the efforts of a corporation or union or the PAC of either; and (3) does the activity involve a contribution or expenditure in connection with a federal election? If the activity is not connected with a federal election, FECA will generally have no application, unless the participant is a national bank, a federally chartered corporation, or the PAC of either.[8] If the activity involves purely individual expression by a person having some relation to the corporation, union, or PAC, the restrictions of section 441b will not be applicable in most cases, al-

7. 2 U.S.C. §§ 431-455 (1976 & Supp. III 1979) (originally enacted as Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3; *as amended by* Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263; Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, 90 Stat. 475; and Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, 93 Stat. 1339).

8. 2 U.S.C. § 441b(a) (1976); 11 C.F.R. §§ 102.1(c), 114.2 (1980). This statement assumes that the situation involved comes within the usual gambit of corporate and union political activity, such as communications on political subjects, registration and get-out-the-vote campaigns, use of corporate and union facilities, and the establishment and operation of PAC's. It would be possible for corporations and unions to become involved in less common forms of prohibited political activity thereby giving rise to liabilities under the federal election laws regardless of whether a federal election was involved. *See, e.g.*, 2 U.S.C. § 441e (1976). National banks, federally chartered corporations and their PAC's are prohibited from making contributions or expenditures in connecting with any election, federal, state, or local. *Id.* § 441b(a) (1976); 11 C.F.R. § 114.2(a) (1980).

though individual reporting requirements or contribution limitations may be involved. Finally, if no contribution or expenditure[9] is involved, the activity is one which the corporation or labor organization will usually be able to pursue directly (rather than through the use of a PAC), although under certain circumstances federal reporting requirements may be applicable.

Concerning the question of whether individual or corporate/union activities are involved, federal law contains no prohibitions or restrictions on political activity by individuals merely as a result of their association or affiliation with corporations and labor organizations. Therefore, corporate officers, directors, stockholders, and employees, as well as union officials, members, and employees are free to make voluntary contributions and expenditures in connection with federal elections and to otherwise express themselves on political issues to the same extent as any other individual.[10] The freedom of members of a corporation or union to engage in partisan political activities and expression without violating FECA is the foundation on which the legitimacy of the separate segregated fund is based.[11]

Not only can individual members of corporations and unions become involved in connection with federal elections to the same extent as other individuals, they can also make limited use of corporate or union facilities for such activity.[12] Stockholders and employees of a corporation, and officials, members, and employees of a labor organization may make "occasional, isolated, or incidental"[13] use of corporate and union facilities for individual volunteer activity in connection with a federal election without triggering a violation of section 441b. Persons so using the facilities are only required to reimburse the corporation or union to the extent that the overhead or operating costs of the corporation/union are increased.[14]

9. "Contribution" and "expenditure" are defined in FECA, 2 U.S.C. § 431(8)-(9) (Supp. III 1979); see text & notes 16-28 *infra*.

10. Individuals, of course, remain subject to the limitations on contributions in connection with federal elections under 2 U.S.C. § 441a (1976) and may also be subject to various reporting requirements, particularly if several individuals make their contributions as a group and thus become a political committee under 2 U.S.C. § 431(4) (Supp. III 1979).

11. *See* Pipefitters Local 562 v. United States, 407 U.S. 385, 416 (1972).

12. 11 C.F.R. § 114.9 (1980).

13. *Id.* § 114.9(a), (b). Use of a facility is considered "occasional, isolated, or incidental" if (1) when used by an employee during working hours, the use does not prevent the employee from completing the normal amount of work for which he is assigned during the period in question, or (2) when used by corporate shareholders or union members who are not employees of the subject organization, the use does not interfere with the corporation/union in carrying out normal activities. Notwithstanding the foregoing, a particular use is deemed to be "occasional, isolated, or incidental" if the activity does not exceed one hour per week or four hours per month. *Id.*

14. *Id.* § 114.9(c). If an individual makes use of the facilities of a corporation or labor organization to produce materials in connection with a federal election, that individual is required to reimburse the corporation or labor organization within a commercially reasonable time for the usual and normal charge for producing such materials in the commercial market. *Id.* The "usual

In connection with the third question posed above, if activity is related to a federal election and amounts to more than an exercise of purely individual political expression, the activity may still be of a nature that will permit direct participation by the corporation or union. As long as the activity does not constitute a contribution or expenditure in connection with a federal election (as defined by FECA), the activity may be pursued by corporations and labor organizations without fear of violating federal election laws.[15]

Activity Which Constitutes a Contribution or Expenditure

Insofar as corporations, labor organizations, and national banks are concerned, the terms "contribution" and "expenditure" are defined in FECA's general definition section[16] in section 441b and the FEC regulations.[17] The definitions of both terms go well beyond the normal donation or utilization of monies to influence federal elections. Care must therefore be taken to avoid an inadvertent violation of law.

Speaking generally, a campaign contribution involves anything of value given to, or provided on behalf of, a candidate or political committee to influence federal elections.[18] In addition to the typical cash or check contribution, the following are considered as contributions under FECA and FEC regulations: (a) the donation of services, goods, or property to a candidate or an unaffiliated committee;[19] (b) a loan, other than a bank loan,[20] to the extent it remains unpaid;[21] (c) the endorsement or guarantee of a loan, to the extent that the underlying loan remains outstanding;[22] (d) the extension of credit beyond normal business practice, unless the creditor has made a commercially reasonable attempt to collect the debt;[23] (e) proceeds received from mass collec-

and normal charge" for goods means the price of those goods in the market in which they ordinarily would have been purchased at the time of their contribution. *Id.* § 100.7(a)(1)(iii)(B).

15. *See* FEC Advisory Opinion No. 1979-37 (involving corporate and union contributions to a legal defense fund for Rep. Daniel Flood).

16. 2 U.S.C. § 431(8)-(9) (Supp. III 1979).

17. 11 C.F.R. §§ 114.1(a), 100.7, 100.8 (1980).

18. 2 U.S.C. § 431(8)(A) (Supp. III 1979).

19. 11 C.F.R. § 100.7(a) (1980). Transfers between affiliated committees are not counted as contributions, *id.* § 110.3(a), but must still be reported as transfers by the transferring and recipient committees.

20. *Id.* § 100.7(b)(ii).

21. *Id.* § 100.7(a)(1)(i).

22. *Id.* § 100.7(a)(1)(i)(C).

23. *Id.* § 100.7(a)(4). With respect to the extension of credit, the regulations make specific reference to corporate creditors by providing that corporations may only extend credit *in connection with* a federal election if such extension is (i) in the ordinary course of the corporation's business and (ii) the terms are substantially similar to extensions of credit to nonpolitical debtors which are of similar risk and size of obligation. *Id.* § 114.10(a). Any debt settled or forgiven which has not been treated in a commercially reasonable manner constitutes a prohibited corporate contribution. To treat a debt in a commercially reasonable manner means: (i) the initial extension of credit was in the ordinary course of business and consistent with terms given to nonpolitical debtors; (ii) the debtor, candidate, or committee made all reasonable efforts to retire

tions or from the sale of tickets or items;[24] and (g) the compensation of a person for the purpose of enabling that person to work for free for a candidate or political committee.[25]

As presently construed, an expenditure is the making of a purchase, payment, loan, distribution, advance, gift, or deposit of money or things of value by any person for purposes of influencing a federal election.[26] The regulations make it clear that in the case of corporations and labor organizations, an expenditure will be involved whenever any such payment or distribution is made to a candidate, political party, political committee, *or any other person*.[27]

In contrast to the more passive role of contributions as donations of funds to be applied by others in connection with elections, expenditures involve the use of money or things of value to reach the general public directly in an effort to raise funds on behalf of or to advocate the election or defeat of a federal candidate.[28]

Activity Outside the Definition of Contribution or Expenditure

While the prohibition on contributions and expenditures by corporations and labor organizations is defined broadly, it is not without

---

the debt; and (iii) the creditor pursued all remedies in a manner similar in intensity to that employed in pursuit of nonpolitical debtors. *Id.* § 114.10(c).

24. *Id.* § 100.7(a)(2).

25. *Id.* § 100.7(a)(3). The regulations specifically exclude compensation that is paid to an employee under circumstances where the employee makes up the time spent on electioneering during normal working hours, works on a commission or piecework basis, or is paid only for work actually performed. *Id.* § 100.7(a)(3)(i), (ii).

26. 2 U.S.C. § 431(9)(A) (Supp. III 1979). The use of funds, services, or other things of value in connection with a federal election by any of the following means is regarded as an expenditure under FECA and the regulations:

(a) the purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value. The term "anything of value" is defined broadly to include securities, goods, facilities, equipment, supplies, personnel, advertising, services, membership lists commonly offered or used commercially, or other in-kind contributions to a candidate or committee provided without charge (and not authorized as volunteer services under 11 C.F.R. § 100.7(b)(3) (1980)), or at a charge which is below the usual and normal charge for such items. *Id.* § 100.8(a)(1)(iv)(A). The making of unlawful expenditures through utilization or donation of things of value is clearly a trap which corporations and labor organizations must be careful to avoid;

(b) the payment of interest on an obligation or the guarantee or endorsement of a loan, *id.* § 100.8(a)(1)(i);

(c) a loan to a candidate or other committee, *id.*;

(d) "independent expenditures" expressly advocating the election or defeat of a clearly identified candidate, even though such an expenditure is, by definition, made without the cooperation or consent of, or in consultation with a candidate, his or her agents, or the candidate's authorized committees, *id.* §§ 100.8(a)(3), 109.1(a); and

(e) a written agreement or pledge to make an expenditure, *id.* § 100.8(a)(2).

27. *Id.* § 114.1(a)(1). The italicized phrase was added by the regulations to the basic definition of "contribution or expenditure" under 2 U.S.C. § 441b(b)(2) (1976) to make it clear that corporations and labor organizations may not make independent expenditures in connection with federal elections.

28. This distinction, drawn between the role of contributions and expenditures in connection with federal elections, was noted by the Supreme Court in Buckley v. Valeo, 424 U.S. 1 (1976), and formed the basis for the Court's sustaining of FECA limitations on contributions as constitutional while holding limitations on expenditures violative of the first amendment. *Id.* at 13-59.

limit. The exceptions to these terms allow considerable direct corporate/union political action.[29] For example, administration and solicitation of contributions to a separate and segregated fund to be used for political purposes is allowed.[30] Corporations and labor organizations are also permitted to participate directly, through the use of general treasury funds, in a variety of forms of political expression without making a contribution or expenditure in violation of FECA:[31]

(a) Communications on any subject by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject;[32]

(b) Nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families or by a labor organization aimed at its members and their families;[33]

(c) With the exception of national banks and federally chartered corporations, political activity of any kind by a corporation or labor organization in connection with state and local elections (unless prohibited under state law);[34]

(d) Use of corporate and union facilities and means of transportation, subject to conditions set forth in the regulations;[35]

(e) Candidate and party appearances at corporate or union facilities, subject to conditions set forth in the regulations;[36]

(f) Communication of corporate or union positions on political issues (as opposed to candidates), even if those communications are directed toward the general public.

Under FECA, a corporation is free to communicate on any subject to its shareholders and executive or administrative personnel and their families.[37]. Likewise, a labor organization is free to speak on any subject so long as the expression is directed solely to its members and their families.[38] Greater restrictions are placed on communications reaching beyond this core group to other employees or the public in general. The two principal issues presented by this in-house communications exception are the proper definition of the permissible class of commu-

29. 2 U.S.C. § 431(8)(B), (9)(B) (Supp. III 1979).
30. *Id.* § 441b(b)(2)(C) (1976); 11 C.F.R. § 114.5 (1980).
31. 2 U.S.C. § 441b(b)(2)(A), (B) (1976).
32. *Id.* § 441b(b)(2)(A) (1976); 11 C.F.R. §§ 114.3, 114.4 (1980).
33. 2 U.S.C. § 441b(b)(2)(B); 11 C.F.R. § 114.4(c) (1980).
34. 2 U.S.C. § 441b(a) (1976); 11 C.F.R. § 114.2(b) (1980).
35. 11 C.F.R. §§ 114.9, 114.12(b) (1980).
36. *Id.* §§ 114.3(c)(2), 114.4(b).
37. 2 U.S.C. § 441b(b)(2)(A) (1976).
38. *Id.* § 441b(b)(2)(B).

nications recipients (referred to collectively herein as the "members of the authorized class") and the forms of communicative activity that have been expressly sanctioned by the FEC in its advisory opinions and regulations.

Members of the Authorized Corporate and Union Class. Following adoption of the 1976 Amendments to FECA,[39] the principal controversy over the in-house communication exception has focused on the definitions of stockholder and executive or administrative personnel. A stockholder is defined by the regulations to mean a person who has (i) a vested beneficial interest in stock, (ii) the power to direct how that stock shall be voted, if it is voting stock, and (iii) the right to receive dividends.[40]

The classification that has presented the greatest definitional problem is the class consisting of executive or administrative personnel of a corporation. Obviously, the line between executive or administrative personnel and lower level employees with more ministerial or nondiscretionary responsibilities is often difficult to draw. As ultimately incorporated into FECA, the term is defined to mean "individuals employed by a corporation who are paid on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities."[41]

FEC regulations further define the phrase to specifically include individuals who run the corporation's business (officers, executives, plant, division, and section managers), and individuals following the recognized professions such as lawyers and engineers[42] (unless such professionals are represented by a labor organization[43]). Excluded from this definition are: (1) salaried foremen and other salaried lower-level supervisors having direct supervision over hourly employees;[44] (2) former or retired personnel who are not stockholders;[45] and (3) individuals who may be paid by the corporation, such as consultants,[46]

39. Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, 90 Stat. 475 (current version codified at 2 U.S.C. §§ 431-455 (1976 & Supp. III 1979)).

40. 11 C.F.R. § 114.1(h) (1980). While this definition appears fairly straightforward, a question quickly arose as to whether participants in a corporate sponsored employee stock ownership plan qualified as "stockholders."

The Explanation and Justification prepared by the Commission for presentation to Congress stated that employees who were participants in an employee stock ownership plan would be considered stockholders of the sponsoring corporation so long as the employee had a vested beneficiary interest in the stock, control over any voting rights and the right to receive dividends directly. FEC Explanation and Justification to Part 114, at 3.

41. 2 U.S.C. § 441b(b)(7) (1976).

42. 11 C.F.R. § 114.1(c)(1) (1980).

43. *Id.* § 114.1(c)(2)(i).

44. *Id.* § 114.1(c)(2)(ii).

45. *Id.* § 114.1(c)(2)(iii).

46. *Id.* § 114.1(c)(2)(iv). Consultants may be considered employees if the corporation has responsibility for the collection of, and liability for, the consultant's withholding taxes under the Internal Revenue Code. If such a consultant also has policymaking, managerial, professional, or

but who are not employees of the corporation for tax withholding purposes.[47] Employees paid on a commission basis may be within the definition if they have policymaking, managerial, professional, or supervisory responsibility.[48]

In contrast to the authorized corporate class, the definition regarding the members of a labor organization who can be reached by partisan communications has created little difficulty. "Members" are those persons who are currently satisfying the requirements for membership in a local, national, or international labor organization.[49]

Authorized Forms of Intra-Family Corporation/Union Communications. As long as corporate or union communication or activity is directed solely toward members of the authorized class, the communication may consist of any of the following forms of expression:

(a) *Distribution of Printed Material.* The corporation or union may distribute partisan printed material,[50] so long as it is produced at the expense of the corporation, union, or corporate/union PAC, and it expresses the views of the publishing organization.[51] It may not be a republication or reproduction of a candidate's campaign materials.[52]

(b) *Candidate Appearances.* The corporation or union may permit the appearance of a candidate or party representative at a meeting, convention, or other regularly scheduled function of the corporation or union before members of the authorized class, so long as the function is primarily held for other purposes.[53] In connection with any such appearance, the candidate or party representative is permitted to solicit contributions to the candidate's campaign or his political party.[54]

---

supervisory responsibilities he may be considered as executive or administrative personnel. *See* 112 CONG. REC. 56367 (daily ed. May 3, 1976) (exchange between Senators Packwood and Cannon).

47. 11 C.F.R. § 114.1(c)(2)(iv) (1980).

48. *Id.* § 114.1(c)(3).

49. *Id.* § 114.1(e).

50. Partisan material permitted by this exception clearly includes solicitation materials urging members of the authorized class to make voluntary contributions to a political action committee established and maintained by the corporation. *Id.* §§ 114.3(a), .5(g).

51. *Id.* § 114.3(c)(1).

52. *Id.* § 114.3(c)(1)(ii). *See id.* §§ 114.7(h) (communications by membership organizations), 114.8(h), 114.8(i) (communications by trade associations). The prohibition against republication and distribution of candidate materials is analogous to the statutory treatment of independent expenditures under 2 U.S.C. § 431(17) (Supp. III 1979), which permits a person to make unlimited independent expenditures expressing his or her own views on a particular federal candidate, while treating expenditures for the production and distribution of a candidate's campaign materials as a contribution to the candidate, rather than as independent expenditures. *See also* 2 U.S.C. § 441a(7)(B) (1976).

53. 11 C.F.R. § 114.3(c)(2) (1980).

54. *Id.* While recognizing that a candidate's appearance is not, in the strictest sense, a communication by the union or corporation (recall that a corporation or union is prohibited from distributing materials prepared by a candidate or his committees, see text & note 52 *supra*), the FEC nonetheless chose to permit such activity because it was such a common practice. Furthermore, since the partisan candidate appearance must be limited to members of the authorized class

(c) *Telephone Banks.* The corporation or union may establish and operate telephone banks to urge members of the authorized class to register and vote for a particular candidate or candidates.[55]

(d) *Partisan Registration and Get-Out-The-Vote Drives.* Registration and get-out-the-vote drives aimed at the authorized class which are partisan in the sense that the contacted persons are urged to register with a particular party or to vote for particular candidates are permitted.[56] The regulations prohibit any further extension of the partisan nature of such activities, such as refusing or withholding assistance in registering or voting because the contacted person wishes to take action contrary to the solicited point of view.[57] Similarly, if transportation or other services are offered, those services must be furnished on a nonpartisan basis. The intention of these restrictions on the conduct of partisan registration and get-out-the-vote drives is to restrict this exception to pure speech activity, thereby remaining with the spirit of the exception that permits corporations and unions to communicate with members of the authorized class on any subject. When the activity becomes "speech-plus," it must be conducted in a nonpartisan manner.[58]

Communications Beyond the Authorized Class. In a series of regulations, some of which raise troublesome constitutional issues in the wake of *Buckley v. Valeo*[59] and *First National Bank v. Bellotti*,[60] the FEC has placed limitations on the ability of corporations and unions to engage in nonpartisan political activity. The purpose of the bulk of these regulations is to insure that the activities remain nonpartisan, rather than to limit or control the expression of positions on nonpartisan issues.

Consistent with the in-house communications exception,[61] the regulations permit corporations and unions to make nonpartisan communications on any subject and to conduct nonpartisan registration and get-out-the-vote campaigns that are limited to members of the authorized class.[62] Nevertheless, if a corporation or union wishes to extend its

and their families, the opportunity for making an unlawful contribution or expenditure is almost nonexistent.

55. *Id.* § 114.3(c)(3). *See* 112 CONG. REC. S3555 (daily ed. Mar. 16, 1976) (comments of Sen. Packwood).

56. 11 C.F.R. § 114.3(c)(4) (1980).

57. *Id. See id.* §§ 114.7(h) (membership associations), 114.8(i) (trade associations).

58. *See* 117 CONG. REC. H11478 (daily ed. Nov. 30, 1971) (comments of Rep. Hansen).

59. 424 U.S. 1 (1976).

60. 435 U.S. 765 (1978).

61. 2 U.S.C. § 441b(b)(2)(A), (B) (1976).

62. 11 C.F.R. § 114.4(a) (1980); *see* FEC Advisory Opinion No. 1978-52, involving a congressional awareness program conducted by the Sun Company and aimed solely at shareholders, executive, and administrative personnel. The program involved the reporting of activities by congressmen in selected districts where Sun operated with the aim of building closer relationships at the district level with Congress and to lobby on issues. The fact that the congressmen whose activities were reported in the program received copies of the report did not, in the Commission's

nonpartisan activities to include employees who are not members of the authorized class, the regulations become more restrictive.[63]

Registration and Voting. With respect to nonpartisan registration and voting activity aimed beyond the authorized classes, the regulations differentiate between corporate/union efforts to disseminate information and less passive efforts such as registration and voting drives involving the transportation of individuals. The regulations permit the dissemination of posters, newsletters, and other communications urging employees to register, vote, or otherwise participate in the political process, so long as the communication does not present information concerning political candidates, parties, or political affiliation.[64] The communication must be limited to urging acts such as contributing, voting and/or registering, and describing the hours and places of registration and voting.[65] A reproduction of the entire list of names and political affiliations of candidates on the official ballot is permitted as an exception to the general rule barring information on candidates and party affiliation.[66]

If the corporation or union obtains registration and voting information produced by official election administrators for distribution to the general public, such information may be distributed or reprinted (in whole, but not in part) by the corporation or union so long as the distribution is conducted in a nonpartisan manner and without support, endorsement, or promotion of any particular political party. Similarly, a corporation or union is allowed to distribute politically neutral voter guides, official registration-by-mail forms (if permitted by state law), and other materials describing candidates and their positions which are

---

opinion, create a contribution or expenditure out of what otherwise constituted a communication within the authorized class. The FEC found no intention to influence a federal election and the materials had no value which could be consumed or utilized by the congressmen's campaigns.

63. For instance, if a corporation wishes to permit candidates or party representatives to tour the premises and meet or address company employees, the following rules must be observed:

(a) if one candidate is permitted to appear on company property to address or meet employees, all candidates for the same office must be given an opportunity to appear, 11 C.F.R. § 114.4(b)(1)(i) (1980);

(b) if the appearance is by a political party representative, appearances must also be permitted upon request by the representatives of any other political party which has one or more candidates on the ballot in the last general election or which anticipates or intends to have a candidate or candidates on the ballot in the next general election, *id.* § 114.4(b)(1)(iii);

(c) in conjunction with the appearance, a corporation, its officers, employees, and its PAC are prohibited from making endorsements or other indications of support toward any candidate and from making any written or oral solicitations of members of the audience, *id.* § 114.4(b)(1)(iv).

An identical regulatory scheme is presented for appearances by candidates or party representatives on the premises of the labor organization. *Id.* § 114.4(b)(2).

For a discussion of such activity as being permitted under federal law, see 122 CONG. REC. H3791 (daily ed. May 3, 1976) (remarks of Reps. Wiggins and Hays).

64. 11 C.F.R. § 114.4(c)(1) (1980).

65. *Id.* § 114.4(c)(1)(i).

66. *Id.* § 114.4(c)(1)(ii).

obtained from nonpartisan and unaffiliated civil or nonprofit organizations.[67]

If the corporation or union wishes to go a step farther and actually become involved as an active participant in a voter registration or get-out-the-vote campaign (such as through assistance in transporting voters, acting as a base for the drive itself, or funding radio and television broadcasts which reach the general public), it can only do so if it acts in joint sponsorship with a civic or other nonprofit organization which does not support or endorse candidates or political parties.[68] Furthermore, the activities must be conducted by the other organization.[69] The phrase last quoted suggests that the corporation or union should not be the lead or initiating organization in the drive. So long as these elements are present, the corporation or union can make its employees or facilities available to the civic or nonprofit organization to assist in the activities.

Use of Membership Lists. The regulations state that furnishing a membership list, commonly offered or used commercially, constitutes the contribution of a thing of value when made for the purpose of influencing the nomination or election of a candidate to federal office.[70] The FEC has interpreted this to mean that if a corporation, incorporated membership organization, or union has never sold or leased its membership list, the donation or sale at cost of the list to a federal candidate[71] would not constitute a contribution to the candidate's campaign.[72]

Even if the list does come within the ambit of a thing of value because it is sold commercially, no contribution will be involved if the list is sold to a candidate or political committee at a price equal to the usual and normal charge for such a list in the market from which it would ordinarily be purchased.[73] If a commercially offered list is sold at less than the usual and normal charge, a contribution results to the

67. *Id.* § 114.4(c)(2), (3).

68. *Id.* § 114.4(d). In FEC Advisory Opinion No. 1978-102, general treasury funds of a union were used to conduct a radio and television campaign encouraging members of the union to vote. Although no federal candidates were specifically identified in the ads (some state candidates were), the FEC objected to the use of treasury funds for these nonpartisan advertisements because the media used did not restrict the drive to union members and their families. If such a drive is to extend beyond the authorized class, it must be jointly sponsored by the union and a nonprofit or civic organization. A similar conclusion was reached in FEC Advisory Opinion No. 1979-48.

69. 11 C.F.R. § 114.4(d)(3) (1980).

70. *Id.* § 100.7(a)(1)(iii)(A).

71. *See id.* § 100.3 for the definition of "candidate."

72. *See* FEC Advisory Opinions Nos. 1976-31, 1978-18.

73. 11 C.F.R. § 100.7(a)(iii) (1980). FEC Advisory Opinion No. 1979-18 involved the sale of a contributor's list by a PAC. The FEC noted that if the list is sold in an arms-length business transaction in which the usual and normal charge was paid, the income thus derived would be reportable as "other income" by the committee on line 16 of FEC form 3, with appropriate itemization and explanation of the receipt. *Id.*

candidate or political committee purchasing the list in an amount equal to the difference between the price paid for the list and its normal and usual charge.[74]

Use of Corporate and Union Facilities. The following rules have been established concerning the nonpartisan use of corporate and union facilities in connection with federal elections:

(a) *Candidate Appearances.* Candidate and party representatives are permitted to address stockholders, executive or administrative personnel of the corporation, and their families on a partisan basis at meetings, conventions, or other regular corporate functions primarily held for other purposes.[75]

(b) *Commercial and Other Regular Use of Facilities by Candidates.* The regulations permit a corporation or labor organization which customarily makes its meeting rooms available to clubs, civic or community organizations, or other groups to make such facilities available to a political committee or candidate if the meeting rooms are made available on a nonpartisan basis and on the same terms given to other groups using the meeting rooms.[76] The regulations also provide that any use of corporate or labor organization facilities by most persons[77] in connection with a federal election may only be on a basis which reimburses the corporation or labor organization, within a commercially reasonable time, in the amount of the normal and usual rental charge[78] for use of the facilities.[79]

II. CURRENT RULES FOR POLITICAL ACTION COMMITTEES

Use of Political Action Committees under Present Law

The most controversial exception to the definition of contribution or expenditure under FECA is that which permits corporations and la-

74. 11 C.F.R. § 100.7(a)(1)(iii)(A) (1980). A more difficult question is presented if the organization generating the membership list has an internal policy prohibiting the marketing of its own list for cash, but nevertheless commonly exchanges its list for the lists of other organizations which do sell their lists commercially. In such a situation, will the price of the exchanged list be attributed to the membership list of the first organization? Although the FEC has never considered this issue in an advisory opinion, a pattern of list swapping in lieu of the payment of cash consideration for lists which are commonly sold may be sufficient to attribute value to the offered list.

75. *Id.* § 114.3(c)(2). Rules are also established for the sponsorship of nonpartisan candidate appearances, provided certain restrictions are observed which are designed to insure the nonpartisan nature of the appearance. *Id.* § 114.4(b).

76. *Id.* § 114.4(b).

77. Stockholders and employees of a corporation may make limited use of corporate facilities in accordance with *id.* § 114.9(a) (1980). The officials, members, and employees of a labor organization may make limited use of labor organization facilities in accordance with *id.* § 114.9(b) for individual volunteer activity with only a limited reimbursement obligation.

78. "Usual and normal charge" is a defined term under *id.* § 100.7(a)(1)(iii)(B). Special rules are established for reimbursement of corporations and labor organizations for use of corporate or union aircraft by candidates and their staff. *Id.* § 114.9(e).

79. *Id.* § 114.9(d).

bor organizations to establish, administer, and solicit contributions to a separate segregated fund to be utilized by the sponsoring organization for partisan political purposes in connection with federal elections.[80] The committee formed by the sponsoring organization pursuant to this statutory authorization[81] to administer the fund is generally referred to as a PAC. Significantly, once a PAC is established and voluntary contributions are raised through PAC solicitations, such contributions may be utilized for making partisan political communications to the general public, so long as no solicitation or contribution is made.[82]

The Issue of Voluntariness. In *Pipefitters Local No. 562 v. United States*,[83] the Supreme Court concluded that, although some element of coerciveness is almost unavoidably present when a corporation solicits its employees or a union solicits its members,[84] contributions to PAC's should be knowing, free choice donations.[85] As an additional safeguard to insure the voluntariness of contributions, the FEC, in its *Sun Oil* Advisory Opinion,[86] concluded that no superior should solicit a subordinate and that solicitors should inform solicited employees of the political nature of the fund and of the solicited employee's right to decline to contribute without reprisal.[87]

The requirement that contributions to political action committees be voluntary does not mean that the sponsoring entity cannot dictate the use to be made of the contributions once received. As the Supreme

80. 2 U.S.C. § 441b(b)(2)(C) (1976).

81. *Id.*

82. 11 C.F.R. § 114.5(i) (1980). The 1976 Amendments codify several of the rules established for the operation and use of such funds in Pipefitters Local No. 562 v. United States, 407 U.S. 385 (1972), and the Commission's *Sun Oil* Advisory Opinion. FEC Advisory Opinion No. 1975-23. They cut back, however, on the alleged solicitation advantage enjoyed by corporations as a result of *Sun Oil* by setting forth detailed guidelines concerning the classes of persons who can be solicited and the manner in which solicitations can be made. 2 U.S.C. § 441b(b)(4)(A) (1976).

83. 407 U.S. 385 (1972).

84. *Id.* at 413-14.

85. *Id.*

86. FEC Advisory Opinion No. 1975-23.

87. *Id.* In their final form, the Commission's regulations address the issue of voluntariness by providing:

(a) That corporations and labor organizations or their PAC's may suggest guidelines for contributions so long as the person soliciting or the solicitation itself informs the persons being solicited that the guidelines are merely suggestions and that the individual is free to contribute more or less than the guidelines suggest without favor or disadvantage resulting from the amount of the contribution. Guidelines, if established, must be strictly voluntary and may not be enforced by the sponsoring entity, 11 C.F.R. § 114.5(a)(2) (1980);

(b) Any person soliciting an employee or member for a contribution to a separate segregated fund must inform such employee or member of the political purpose of the fund at the time of the solicitation, *id.* § 114.5(a)(3);

(c) Any person soliciting an employee or member for a contribution to a PAC must inform the employee or member at the time of such solicitation of his or her right to refuse to contribute without any reprisal, *id.* § 114.5(a)(4). Section 114.5(a)(1) elaborates that a separate segregated fund is prohibited from accepting any contributions secured through physical force, job discrimination, financial reprisals (or the threat of any such action), or by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment.

Court confirmed in *Pipefitters*, a corporation or labor organization can dominate and control the activities of the PAC it creates.[88]

The Use of Treasury Monies to Sustain PAC Operations. Corporations, labor organizations, membership organizations, and cooperatives or corporations without capital stock are permitted to use general treasury funds, including monies obtained in commercial transactions and dues monies or membership fees, for the establishment, administration, and solicitation of contributions to the sponsoring entity's PAC.[89] If the PAC inadvertently pays for its own administrative costs, the sponsoring entity may reimburse the PAC in the exact amount of the monies expended for such costs.[90] The regulations caution, however, that it is impermissible for the sponsoring entity to use the establishment, administration, and solicitation process as a means of exchanging treasury monies for voluntary contributions.[91] For instance, a contributor may not be paid by the PAC sponsor for his or her contribution through a bonus, expense account, or other form of direct or indirect compensation.[92]

The rules that preclude a corporation or labor organization from exchanging treasury money for contributions are not intended to preclude a PAC sponsor from engaging in such time-honored fundraising activities as raffles, dances, parties, and other types of entertainment, so long as the fundraising activity is otherwise legal and the prize is not disproportionately valuable. The regulations suggest that if the cost of a raffle or entertainment utilized to raise funds exceeds one-third of the money contributed, the costs in excess of one-third should be reimbursed to the sponsoring entity by the PAC.[93]

Can the Political Action Committee Offer Memberships? Traditionally, many PAC's have designated persons who have contributed over a

88. 407 U.S. at 413-15.

89. 2 U.S.C. § 441b(b)(2)(C) (1976); 11 C.F.R. § 114.5(b) (1980).

90. FEC Advisory Opinion No. 1976-111. FECA does not require the sponsoring union or corporation to report this reimbursement; the PAC, however, should reflect the receipt of the sponsor's funds as a reimbursement for administrative costs in its next FEC report.

91. 11 C.F.R. § 114.5(b) (1980).

92. *Id.* § 114.5(b)(1). Neither is the sponsoring entity permitted to utilize the administration expenses exception to assist committees of unrelated organizations to defray their administrative costs. In FEC Advisory Opinion No. 1979-21, this issue was raised with respect to expenses incurred by the New York Telephone Company in making a payroll deduction program available to the Communications Workers of America to facilitate the collection of contributions from the union's members to its PAC. In concluding that the union was obligated to reimburse the telephone company for its expenses, the FEC noted that FECA and the Commission's Regulations only permitted a corporation or union to use general treasury funds to meet the establishment, administration, and solicitation expenses of its own PAC. *Id.*

93. 11 C.F.R. § 114.5(b)(2) (1980). Applying this guideline, a PAC could offer prizes valued at $300.00 purchased with treasury money, and if the PAC subsequently received $900.00 in voluntary contributions, the PAC would not have to replace the treasury money. If, however, the raffle only raised $600.00 in voluntary contributions, the PAC would have to use $100.00 of the voluntary contributions received to replace the treasury money, since the cost of raising the money exceeds one-third of the money contributed by $100.00.

specified dollar amount as members. The FEC regulations specifically permit PAC's to provide membership status to certain contributors, provided the PAC accepts all contributions (within FECA's general limitations on contributions) and that the member-contributor is not given any items of value in exchange for his or her contribution. The PAC is permitted to grant member-contributors intangible privileges, but cannot confer tangible benefits.[94] Use of the membership form of organization does not result in any greater rights of communication or solicitation than are permitted of PAC's generally.[95]

Applying the tangible-intangible benefit rule, it would be proper for the PAC to grant only member-contributors the right to vote on the persons who will operate the PAC or to vote on the candidates who will receive PAC contributions; such rights are considered by the FEC to be intangible benefits.[96] But it would be improper for the PAC to host a banquet open to member-contributors exclusively.

Solicitation of PAC Contributions

Generally. There are three general classes of persons who may legally be solicited to make contributions to the separate segregated fund of a corporation or union: (1) shareholders and executive or administrative personnel;[97] (2) members of labor organizations;[98] and (3) all other corporate employees.[99] With one exception,[100] a corporation can

94. *Id.* § 114.5(c)(1)(ii).
95. *Id.* § 114.5(c)(2).
96. *Id.* § 114.5(c)(1)(iii).
97. 2 U.S.C. § 441b(b)(2)(A) (1976).
98. *Id.*
99. *Id.* § 441b(b)(4)(B) (Supp. III 1979).
100. *Id.* The one exception to the general rule that a corporation or union may only solicit contributions from members of its authorized class permits a corporation to solicit contributions to its PAC from its employees, whether they be union or nonunion employees, and labor organizations to solicit shareholders, executive and administrative personnel and nonunion employees, on a twice-a-year basis. *Id.* Strict rules govern the use of this twice-a-year solicitation exception:

(a) The exception is only available to corporations, labor organizations, and their separate segregated funds, and may only be used to solicit contributions to the solicitor's PAC. 11 C.F.R. § 114.6(e)(2) (1980);

(b) Such solicitations can only be made by mail or sent to the potential contributor at his or her residence; solicitation cannot be made at work. Since the solicitation must be mailed, it follows that it must be in writing and the regulations provide that this writing must inform the recipient (i) of the existence of the custodial arrangement described in (d) below; (ii) that neither the PAC, the corporation, nor any union, may be informed of persons who do not make contributions; and (iii) that persons who, in a calendar year, make a single contribution of $50.00 or less or multiple contributions aggregating $200.00 or less may maintain their anonymity by returning their contributions to the custodian. *Id.* § 114.6(c);

(c) The solicitation must be designed so that the entity conducting the solicitation cannot determine the identity of those who fail to contribute or those who contribute $50.00 or less. Fifty dollars was used as a threshold for identification of contributors because political committees are required to keep records which permit the identification of any person contributing more than $50.00. *Id.* § 114.6(d)(2)(ii);

(d) In order to insure the anonymity of small contributors under the twice-a-year solicitation rules, the regulations provide that the PAC or its sponsoring union or corporation must establish a custodian arrangement for the collection of contributions for the benefit of persons who

only communicate regarding political matters with its shareholders[101] and executive or administrative personnel and their families.[102] Unions may only communicate on such matters with union members and their families.[103] Solicitations of contributions to the corporation's/union's PAC clearly fall within these partisan communications rules. Accordingly, as long as solicitations are confined to members of the authorized corporate/union class, there is no limit on the number of times the fund or its sponsors may direct solicitations within the class.[104]

---

do not wish to contribute and of persons who wish to respond with a single contribution of $50.00 or less or multiple contributions aggregating $200.00 or less in a calendar year. *Id.* § 114.6(d);

(e) Membership organizations, cooperatives, corporations without capital stock, and trade associations are not subject to the twice-a-year solicitation rules, but have their own special solicitation rules. See text & notes 129-35 *infra*;

(f) The regulations prohibit corporations and labor organizations from using a payroll deduction plan, a check-off system, or other similar plan that makes deductions from employee paychecks as a method of facilitating the making of contributions under the twice-a-year solicitation rules. *Id.* § 114.6(e)(1);

(g) If several labor organizations represent members employed by a single corporation (including its subsidiaries, branches, divisions or affiliates), the labor organizations are limited to a combined total of no more than two written solicitations per calendar year. Such solicitations may contain a request for contributions to each PAC maintained by the labor organizations. *Id.* § 114.6(e)(5);

(h) Once a corporation conducts a solicitation pursuant to the twice-a-year solicitation rules, it is obligated to make the same method of solicitation available to a labor organization representing employees of the corporation. *Id.* § 114.6(e)(3);

(i) A corporation intending to utilize the twice-a-year solicitation rule must notify the labor organization of its intention and of the solicitation method to be used within a reasonable time prior to the solicitation. *Id.* § 114.6(e)(4).

101. A recent advisory opinion did conclude that a PAC could deliver solicitation materials to stockholders of the sponsoring corporation through conduits (*e.g.*, brokers, dealers, banks, and other nominees) who hold stock for the beneficial owners, provided (a) the fund's solicitation is intended exclusively for and speaks only to those persons falling within the definition of "stockholder," and (b) the stockholders would otherwise be qualified to make contributions under FECA. FEC Advisory Opinion No. 1978-26.

102. The right to solicit executive and administrative personnel and their families extends to the executive and administrative personnel (and families) of the corporation's subsidiaries, branches, divisions, and affiliated companies. 11 C.F.R. § 114.5(g)(1) (1980). This regulation represents a reasonable expansion of the solicitation rules in light of the Commission's opinions preventing a corporate PAC from acting as the political arm for two distinct organizations and preventing unincorporated divisions and branches of corporations from establishing their own PAC's. Furthermore, all political committees established by a corporation, its subsidiaries, branches, divisions, and affiliates will, under the antiproliferation provisions of FECA, be subject to a single limitation on contributions. 2 U.S.C. § 441a(a)(5) (1976).

Both the FEC Explanation and Justification and FEC Advisory Opinion No. 1978-75 conclude that section 114.5(g) of the regulations also permits a corporation to solicit the *stockholders* of its subsidiaries, branches, divisions, and affiliates, even though the express wording of the section is limited to executive and administrative personnel. *See* dissent to FEC Advisory Opinion No. 1978-75, suggesting that this construction has no basis in the law and will make it difficult to account for the political activities of corporations.

103. 2 U.S.C. § 441b(b)(2)(A) (1976).

104. In FEC Advisory Opinion No. 1978-79, the Commission permitted the National Association of Postal Supervisors to solicit contributions to its PAC by means of a magazine it published which was sent primarily to Association members but did reach a small number of other persons (three percent of circulation). The FEC's conclusion was based upon (a) the small outside circulation, (b) the presence of a screening procedure to identify and return improper contributions, and (c) the presence of a statement in contrasting print accompanying the solicitation describing the permissible class of solicited persons.

What is a Solicitation? The term "solicitation," while not defined within FECA or the regulations, has received an expansive definition in FEC Advisory Opinions. Instead of restricting the term to mean a request for a contribution, the FEC has stated that an announcement or notice by a corporation or union that it has established a separate segregated fund constitutes a solicitation,[105] and distributions of information concerning any fundraising activity,[106] or the operation of a fundraising booth at a membership convention also constitute solicitations.[107]

Availability of Solicitation Methods. Congress' efforts to right the balance between the treatment of corporations and labor organizations under the federal election laws did not end with the rules regarding the classes of persons who could be solicited to contribute to separate segregated funds. The 1976 Amendments and the Commission's regulations also seek to confer equality of treatment with respect to the solicitation contribution collection methods that can be utilized by corporations and labor organizations. Section 441b(b)(5) provides that any method of soliciting voluntary contributions or of facilitating the making of voluntary contributions to PAC's established by a corporation shall also be permitted to labor organizations.[108] In addition, section 441b(b)(6) provides:

> Any corporation, including its subsidiaries, branches, divisions, and affiliates, that utilizes a method of soliciting voluntary contributions or facilitating the making of voluntary contributions, shall make available such method, on written request and at a cost sufficient only to reimburse the corporation for the expenses incurred thereby, to a labor organization representing any members working for such corporation, its subsidiaries, branches, divisions, and affiliates.[109]

The FEC's regulations[110] expand on these sections by establishing the following guidelines for their application:

(a) If a corporation utilizes a payroll deduction plan, check-off system, or other plan that deducts contributions from the dividend or payroll checks of stockholders or executive or administrative personnel, the corporation must, upon written request of the labor organization representing any members working for the corporation, make that method available to members of the labor organization working for the corporation who wish to contribute to the labor organization's PAC. The payroll deduction plan must be made available by the corporation

105. FEC Advisory Opinion No. 1976-27.
106. FEC Advisory Opinions Nos. 1976-96, 1979-13, 1976-27, 1977-44.
107. FEC Advisory Opinions Nos. 1976-96, 1978-83, 1978-17.
108. 2 U.S.C. § 441b(b)(5) (1976).
109. *Id.* § 441b(b)(6).
110. 11 C.F.R. §§ 114.5(k), .6(e) (1980).

"at a cost sufficient only to reimburse the corporation for the actual expenses incurred thereby."[111]

(b) If a corporation uses a computer for addressing envelopes or labels for a solicitation to its stockholders or executive or administrative personnel, the corporation must, upon written request, program the computer to enable the labor organization to solicit its members. The corporation is permitted to pass on to the union the actual expenses incurred in programming the computers and the allocated cost of employee time relating to the work and the materials used.[112]

(c) If a corporation uses corporate facilities for meetings of stockholders or executive or administrative personnel at which solicitations are made, the corporation must, upon written request of the labor organization, allow the labor organization to use existing, though perhaps not the same,[113] corporate facilities for meetings to solicit its members. The corporation can pass on to the union any actual expenses incurred thereby, such as any increase in the overhead or costs related to setting up the facilities.[114]

(d) If a corporation uses no method to solicit voluntary contributions from stockholders or executive or administrative personnel, it is under no obligation to assist the labor organization in its solicitation efforts, although a corporation and a union may informally agree to make solicitation methods available to the other party.[115]

(e) Corporations making a twice-yearly solicitation pursuant to section 441b(b)(4)(B)[116] must make available to labor organizations representing any members working for the corporation (or its subsidiaries) the methods which the corporation uses to solicit employees. The labor organization is entitled to use these methods in its solicitation (under the twice-a-year rules) of nonunion employees, and the executive and administrative personnel and the stockholders of the corporation and their families.[117] If the corporation does not take advantage of the twice-a-year solicitation exception (and few corporations have), it is not required to make any method or any list of shareholders or employees available to the union to enable it to conduct a twice-a-year solicitation.[118]

Intentional Solicitation Beyond the Corporate/Union Family. The

111. *Id.* § 114.5(k)(1).
112. *Id.* § 114.5(k)(2).
113. The regulation's language suggests that the union is not limited to use of the same corporate facility used for corporate solicitation purposes. *See id.* § 114.5(k)(3).
114. *Id.*
115. *Id.* § 114.5(k)(4).
116. See text & note 100 *supra.*
117. 11 C.F.R. § 114.6(e)(3)(i) (1980).
118. *Id.* § 114.6(e)(3)(iii). The corporation is not permitted to restrict the labor organization's reciprocal twice-a-year solicitation right by electing to limit the class of employees reached by the

solicitation rules in section 441b confine the permissible range of corporate/union political solicitations to persons clearly within the "family" circle: shareholders, union members, members of unincorporated associations, executive or administrative personnel, other employees (under the twice-a-year solicitation rules), and the families of shareholders, union members, and executive and administrative personnel.[119] In the *Sun Oil* Advisory Opinion,[120] the Commission ruled that a PAC could accept unsolicited contributions from sources it was generally prohibited from soliciting and that those unsolicited contributions from outside the authorized class could then be utilized by the PAC to make solicitations of sources that the corporation was prohibited from reaching.[121]

Although the regulations specifically confirm that a PAC may utilize voluntary contributions to communicate with the general public, the regulations cut back on the *Sun Oil* ruling that such contributions can be utilized to solicit monies from the general public. The regulations provide that this broad right of communication may not be used to solicit contributions from sources beyond the authorized class.[122]

Accidental, Inadvertent, and Incidental Solicitation of Unauthorized Persons. FECA requires a good faith effort at compliance with solicitation rules. If a corporation, union, or PAC solicitation reaches a prohibited class of persons, no violation of federal law will have occurred so long as the soliciting entity has used its best efforts to comply and provided further that if a prohibited solicitation occurs, an immediate correction is made in the solicitation method to protect against future violations.[123]

On several occasions, the FEC has been asked to render an opinion on whether the sponsoring organization can consciously utilize a solicitation method that will reach persons who are not members of an authorized class. For instance, FEC Advisory Opinion No. 1978-79 discussed a situation wherein the sponsoring association wished to so-

corporation's solicitation efforts. The labor organization is entitled to a list of *all* shareholders and employees. FEC Advisory Opinion No. 1977-49.

If the corporation does not wish to disclose the names and addresses of stockholders or employees as a result of engaging in a twice-a-year solicitation, the corporation may make the names and addresses of stockholders and employees available to an independent mailing service retained to make the mailing for both the corporation and the labor organization for any twice-a-year solicitation mailings. 11 C.F.R. § 114.6(e)(3)(ii) (1980).

119. 2 U.S.C. § 441b(b)(2) (1976 & Supp. III 1979).

120. FEC Advisory Opinion No. 1975-23.

121. *Id.*

122. 11 C.F.R. § 114.5(i) (1980). The regulation actually states that such communications to the general public may not solicit contributions to a PAC "unless such solicitation is permitted under paragraph (g) of [section 114.5]." Section 114.5(g) does not permit any solicitations that would reach the general public.

123. *Id.* § 114.5(h).

licit contributions to its PAC by means of its own magazine that was regularly distributed to nonmembers as well as members. Since nonmembers constituted three percent of total distributions, the association sought to protect against the receipt of contributions from such persons by implementing a contribution screening procedure. It also proposed that each solicitation be accompanied by a caveat, in contrasting print, indicating that federal law prohibited the receipt of contributions from persons other than the association's members and their immediate families. Basing its conclusion on the small number of nonmember readers and the precautionary steps noted above, the FEC found the proposed solicitation to be consistent with the Act.

The problem of restricting the solicitation to members of the authorized class becomes more pronounced with for-profit corporations which generally are restricted to soliciting stockholders, executive, and administrative personnel. In FEC Advisory Opinion No. 1979-13, a for-profit corporation published a newsletter for the information of its employees and retirees, as well as stockholders and certain other interested parties on request. The Commission concluded that the corporation could not legally utilize the newsletter as a vehicle for PAC solicitations, even if the safeguards described in FEC Advisory Opinion No. 1978-79 were employed.

Finally, the Commission has permitted corporations, membership organizations, and trade associations to maintain PAC booths at meetings or conventions hosted by the sponsoring organization, even though the maintenance of the booth is itself a solicitation and the event is attended by persons who cannot legally be solicited under FECA and the regulations.[124]

Receipt of Unsolicited Contributions from Prohibited Sources. Although section 441b prohibits the solicitation of contributions by corporations and labor organizations in contravention of the solicitation rules, a separate segregated fund may accept contributions from persons "otherwise permitted by law to make contributions."[125] Informing persons of the right to accept such contributions is, however, a solicita-

124. FEC Advisory Opinions Nos. 1978-17, 1978-97. PAC booths may be utilized, provided: (a) the booth is posted with signs clearly identifying the class of persons from whom contributions may be accepted; (b) persons operating the booth are instructed to refuse funds from any person who cannot legally be solicited (since the maintenance of the booth is itself a solicitation, it cannot be argued that a voluntary, unsolicited contribution is being made by a person who could not legally be solicited); and (c) proper records are maintained of persons making contributions. *Id.* A similar conclusion was reached in FEC Advisory Opinion No. 1978-83, involving a trade association convention, although additional safeguards were imposed by the Commission as a condition to approval of the booth solicitation in order to reflect the additional solicitation restrictions applicable to trade association PAC's. *See* 11 C.F.R. § 114.8 (1980).

125. 11 C.F.R. § 114.5(j) (1980).

tion.[126]

An FEC advisory opinion has expressly approved the receipt of an unsolicited contribution by a labor organization PAC.[127] The contribution had been received from an unincorporated organization of employees that was also represented by the labor organization. The opinion is of interest in that it interprets section 114.5 of the regulations as being aimed at excluding unsolicited contributions by national banks, corporations, labor organizations, and federal government contractors.[128]

Application of Section 441b Solicitation Rules to Membership Organizations, Cooperatives, and Corporations Without Capital Stock

An innovation introduced by the 1976 Amendment to section 441b expressly permits membership organizations, cooperatives, and corporations without capital stock (herein collectively referred to as membership organizations) to establish PAC's.[129] Specific reference to such organizations settled the issue of whether the term corporation was limited to the traditional for-profit corporate entity or whether it included other organizations doing business in a corporate or quasi-corporate form. To accomodate the unique features of membership organizations and cooperatives, section 441b(b)(4)(C) discards the solicitation rules generally applicable to corporations under section 441b in favor of permitting such organizations and their PAC to solicit contributions to the committee from all members of the membership organizations. Surprisingly, the authorized class for membership organizations does not extend to the families of members as is the case with shareholders and executive or administrative personnel.[130]

Unlike a corporation whose shareholders are readily ascertainable from stock record books, membership organizations are often organized and operated on a casual and unstructured basis, thus making a determination of membership difficult. The regulations define the membership of such organizations to include all persons who are currently satisfying the requirements for membership in a membership or-

126. FEC Explanation and Justification to Part 114, at 11.

127. FEC Advisory Opinion No. 1979-28.

128. *Id.* In FEC Advisory Opinion No. 1977-65, a PAC established by the Americans for Democratic Action [ADA] was prohibited from accepting contributions from the ADA Michigan Chapter, a connected organization, *see* 11 C.F.R. § 100.6 (1980), because the Michigan Chapter derived a portion of its funds through the sale of advertising or fundraising tickets to corporations and labor organizations. The limitation expressed in 11 C.F.R. § 114.5(j) (1980) would also extend to contributions from foreign nationals, 2 U.S.C. § 441e (1976), and contributions in the name of another. *Id.* § 441f.

129. 2 U.S.C. § 441b(b)(2)(C) (1976).

130. *Id.* This may be due to the expansive definition of members.

ganization, so long as the requirements for membership entail more than the making of a contribution to the organization's PAC.[131] The qualification that more be required for membership than a political contribution was included to avoid the creation of organizations having no other purpose than to funnel monies into federal elections.[132]

Although membership organizations are subject to the general rule that contributions to their PAC's must be voluntary,[133] there is no limitation on the number of times an organization may solicit its members or on the methods of solicitation or of facilitating the making of voluntary contributions that may be used.[134] Membership organizations and their PAC's may not, however, solicit contributions from PAC's established by their members, although if a member's PAC makes an unsolicited contribution, such a contribution may be accepted.[135]

Application of Section 441b Solicitation Rules to Trade Associations

Although trade associations are membership organizations, section 441b sets forth detailed and separate rules marking the boundaries of permissible political activity for such organizations.[136] According to FEC regulations, a trade association is a membership organization of

131. 11 C.F.R. § 114.1(e) (1980). The proper scope of the definition was an issue presented in FEC Advisory Opinion No. 1977-67 involving The Public Service Research Council [PSRC] and its political action committee [PAPAC]. PSRC presented the following four conditions of membership to the FEC and sought the Commission's approval of solicitations of persons meeting the criteria:

(a) The member must have expressed a specific and unambiguous desire to become, or join as, a member of PSRC by writing to PSRC or returning a card expressing that desire;

(b) The member must have been given the right to participate in a membership survey at least once a year;

(c) The member must have paid dues or contributions to PSRC on a regular basis; and

(d) The member must have renewed membership status in PSRC at periodic intervals.

The FEC concluded that these four conditions were sufficient indicia of a membership relationship to permit solicitation to PAPAC provided two additional conditions were met:

(a) Dues or contributions must be set at a predetermined amount; and

(b) Any waiver of dues or contributions must be made in accordance with predetermined criteria. The opinion did not address the issue of whether PSRC could continue to solicit other persons also considered by PSRC to be members (but who did not meet all the above-described criteria), nor did the opinion address the issue of membership status for any person whose dues or contributions had been waived. Nevertheless, the opinion offers little comfort to membership organizations with no organized dues structure, and results in a severe restriction on solicitation by all membership organizations.

In FEC Advisory Opinion No. 1976-79, the issue of membership was again raised, this time by the National Right to Work Committee [NRWC], a nonprofit corporation, and its separate segregated fund, the Employee Rights Campaign Committee [ERCC]. Under its charter documents, the NRWC was precluded from having members and it sought the Commission's approval of the solicitation by ERCC of supporters of NRWC's goals as members. In responding negatively, the Commission felt that the fact that NRWC had no members was dispositive of the issue raised. The Commission, however, did authorize the solicitation of NRWC executive and administrative personnel and their families.

132. FEC Explanation and Justification to Part 113, at 2.

133. 11 C.F.R. § 114.5(a) (1980).

134. *Id.* § 114.7(e), (f).

135. *Id.* § 114.7(j).

136. 2 U.S.C. § 441b(b)(4)(D) (1976).

persons engaged in a similar or related line of commerce, organized to promote and improve business conditions in that line of commerce, and not engaged in a regular business of a kind ordinarily carried on for profit, and no part of the net earnings of which inures to the benefit of any member.[137]

A trade association or a PAC established by a trade association is permitted to solicit contributions from the stockholders and executive or administrative personnel of the member corporations of such trade association and the families of such stockholders and personnel provided:

(a) the member corporation involved has separately and specifically approved the solicitation;[138] and

(b) the member corporation has not approved a solicitation by any other trade association during the calendar year during which the solicitation approval is sought.[139]

The regulations contain detailed rules regarding the meaning of separate and specific approval and the form in which such approval must be given.[140] Under these rules, the association's request for solicitation approval must be in writing and it must be directed to the representatives of the member corporation with whom the trade association normally conducts the association's activities. The request may contain a copy of solicitation material that will be used if approval is granted (for review by the corporation) and it must specifically indicate the requirement of such approval and the limitation that member corporations can only grant solicitation approval to one trade association during the calendar year. The approval must be granted to the trade association or its PAC prior to any solicitation of stockholders or executive or administrative personnel by the association, its PAC, or the approving corporation. An approval which is given simultaneously with a contribution is not lawful. A copy of each approved request

137. 11 C.F.R. § 114.8(a) (1980).

138. 2 U.S.C. § 441b(b)(4)(D) (1976); 11 C.F.R. § 114.8(c) (1980).

139. 2 U.S.C. § 441b(b)(4)(D) (1976); 11 C.F.R. § 114.8(c) (1980). Member corporations themselves cannot solicit their own shareholders or executive or administrative personnel to contribute to a PAC maintained by the trade association, although the corporation is permitted to give "incidental" assistance. See text & notes 145-47 *infra*. Since only one trade association has the right, after approval has been obtained, to solicit a member corporation, two trade associations cannot engage in a joint fundraising of the stockholders and executive or administrative personnel of a corporation which is a member of both associations.

In light of the fact that § 441b(b)(4)(D) governs solicitations by a trade association of the stockholders and executive or administrative personnel of a member corporation, the term membership organization as used in § 441b(b)(4)(C) is not intended to include a trade association which is made up of corporations. On the other hand, the special solicitation rules for trade associations set forth in § 441b(b)(4)(D) and 11 C.F.R. § 114.8 (1980) only apply to trade association solicitations of corporate members. No limitations are placed on the manner or frequency of trade association solicitations aimed at its noncorporate members. 11 C.F.R. § 114.7(c) (1980).

140. 11 C.F.R. § 114.8(d) (1980).

received by a trade association or its PAC must be maintained by the association or the PAC for a period of three years from the date the approval is granted.[141]

Once a member corporation grants a trade association solicitation approval, that approval applies throughout the calendar year in which it is obtained.[142] The Commission has required strict adherence to the one year solicitation approval requirement. For instance, the Commission has rejected a request that it permit an association to follow-up on solicitations made in November or December when the follow-up campaign would be conducted during the first months of the following calendar year.[143]

If a member corporation so desires, it may limit its trade association solicitation authorization to the executive or administrative personnel of the corporation or a limited class thereof, but not the corporation's stockholders. The trade association is also permitted to place such limitations in its request. The member corporation should bear in mind that once permission has been granted to a trade association, even if that permission is limited in extent, the corporation is precluded from approving any solicitations by another trade association or its PAC during the calendar year in which the approval applies.

By granting solicitation permission to a trade association, a member corporation in no way restricts its right to solicit its own stockholders, executive and administrative personnel, and their families to contribute to the corporation's own PAC.[144] Furthermore, the granting of solicitation rights to a trade association or trade association PAC will not trigger any corresponding solicitation rights in labor organizations representing employees of the member corporation.[145]

Solicitations conducted by a member corporation or its personnel on behalf of a trade association PAC are not permitted. The FEC has concluded that the authority of a corporation to solicit contributions to a separate segregated fund to be utilized in connection with federal elections is limited to solicitations to PAC's established by the corpora-

141. *Id.* § 114.8(d)(2).

142. *Id.* § 114.8(d)(4). The FEC Explanation and Justification to Part 114 of the regulations suggests that the corporate member's approval lasts throughout the year in which it is given and "unless withdrawn at an earlier date by the corporate member, . . . [a] corporation may withdraw an approval at any time." Section 114.8(d)(4) of the regulations does not say this and other sections of the regulations (such as § 114.8(e)(1), which states that the corporation "in its approval" may limit the number of solicitations) suggest that an early revocation right that is not contained in the approval may be proper.

143. FEC Advisory Opinion No. 1976-113.

144. 11 C.F.R. § 114.8(e)(2) (1980).

145. Unless a member corporation limits its approval, there are no limitations on the number of times a trade association or its PAC may solicit members of the approved class during the calendar year.

tion.[146] It is permissible, however, for member corporations to permit their executive or administrative employees to assist with trade PAC solicitations on a minimal time commitment basis.[147] This is referred to as the "incidental assistance" rule.

Consistent with this incidental assistance rule, member corporations are specifically prohibited from using a payroll deduction program or check-off system to aid in the solicitation of contributions to the association's fund.[148] With this exception prohibiting the use of payroll deduction programs and check-off systems, there are no limitations on the methods which may be used to solicit contributions or to facilitate the making of contributions so long as the voluntariness of the contributions is preserved.[149]

Who May a Trade Association Solicit? Section 441b(b)(4)(D) governs the solicitation rights of trade associations and their PAC's with respect to their corporate members only. The section limits both the classes of persons that may be solicited by a trade association (only stockholders, executive and administrative personnel and their families), and the right of the trade association to solicit those classes in the first instance (only after specific approval has been granted by the member corporation).[150] The twice-yearly solicitation rules that permit corporations to solicit their employees who are not shareholders or executive or administrative personnel[151] are not available to trade association PAC's. In other words, the right of a trade association PAC to solicit the executive or administrative personnel and shareholders of its member corporations under section 441b(b)(4)(D) does not extend to other employees of its member corporations. With respect to the trade association's own employees, however, the twice-yearly solicitation of nonexecutive/administrative employees is permitted.[152]

Solicitation by a trade association PAC of noncorporate members of the trade association is governed by section 441b(b)(4)(C).[153] The FEC has concluded that this section of FECA applies to trade associations that are membership organizations and permits the association to solicit individual proprietors and partnerships who are members of the association without limitation on the number or methods of solicitation allowed.[154] It should be noted that section 441b(b)(4)(C) only permits

146. A contrary implication is conveyed by the language of *id.* § 114.8(d)(1), but see FEC Advisory Opinion No. 1976-63.
147. FEC Advisory Opinion No. 1979-8.
148. 11 C.F.R. § 114.8(e)(3) (1980).
149. *Id.* § 114.8(e)(3), (4).
150. 2 U.S.C. § 441b(b)(4)(D) (1976).
151. See text & note 100 *supra.*
152. 11 C.F.R. § 114.8(i)(2) (1980).
153. See text & notes 129-35 *supra.*
154. FEC Advisory Opinion No. 1979-63.

the solicitation of members of the organization; the approval of this section does not extend to the families, executive and administrative personnel, or other employees of the organization.[155] Like other membership organizations, a trade association is prohibited from soliciting contributions from the separate segregated funds established by its members, although the trade association PAC may accept unsolicited contributions from member PAC's.[156]

Trustee Plans

The Commission's controversial *Sun Oil* Advisory Opinion[157] established not only landmark guidelines for the establishment and administration of separate segregated funds but also gave official blessing to a less structured form of corporate political participation program commonly known as employee participation plans or trustee plans. A trustee plan is simply a political contribution program in which the corporation or labor organization pays the cost of establishing and administering separate bank accounts for any employee who wishes to participate.[158]

Although the Commission was unable to find any legislative history in the 1976 Amendments to FECA dealing with the trustee plan portion of the *Sun Oil* Advisory Opinion, it included a specific authori-

155. See text & note 130 *supra*.

156. 11 C.F.R. § 114.7(j) (1980).

157. FEC Advisory Opinion No. 1975-23.

158. 11 C.F.R. § 114.11 (1980) establishes the following rules for the operation of employee participation plans:

(a) The corporation or union may pay all establishment and administration costs of the plan including the payment of costs for a payroll deduction or check-off plan and the cost of maintaining separate bank accounts for participating employees. *Id.* § 114.11(a).

(b) The plan must be made available to all employees of the corporation (including those employees who belong to unions) and each participating employee must exercise complete control and discretion over the disbursement of monies in their accounts. If the corporation (through its stockholders, directors, or employees) were to exercise any direction or control, either written or oral, over the contribution or suggest the candidate(s) or party to be supported, the plan would lose the nonpartisan quality that is its justification, and monies expended by the corporation to establish and administer the plan would constitute illegal corporate expenditures. *Id.* § 114.11(a)(1), (b).

(c) The trustee, bank, or other administrator may not provide the corporation or its PAC any report of the source or recipient of any contributions or donations into or out of any account or the amount any employee has in an account. The only information which the administrator is permitted to furnish to the corporation or its PAC is a periodic report limited to information about the total number of employees in the program, the total (aggregate) amount of funds in all accounts, and the total amount of contributions made to all candidates and committees combined. *Id.* § 114.11(a)(2), (3).

(d) No stockholder, director, or employee of the corporation or its PAC may exert pressure of any kind to induce participation in the program. *Id.* § 114.11(a)(4).

(e) The method used to transmit employee or member contributions to the candidate or political committee may not in any manner identify the corporation or labor organization which established the plan. For example, the check may not bear the sponsor's name. Any correspondence accompanying the contribution may not be under the sponsor's letterhead. This rule is designed to preserve the individual nature of the contribution and the individual is responsible for supplying any contributor identification required by FECA. *Id.* § 114.11(d).

zation[159] for such plans in the regulations on the basis that the corporate expenditure for establishing and administering the plan is nonpartisan in that the plan does not favor one candidate or party over another.[160]

The regulations also authorize a labor organization to establish and administer an employee participation plan, with the exception that all costs of the plan shall be borne by the labor organization rather than the corporation.[161] It should be noted that a plan established by a labor organization at a corporation in which it represents members is required to be made available to all employees of the corporation, including employees who are not union members.[162]

III. Regulation of Political Action Committees Generally

A PAC or separate segregated fund is little more than a bookkeeping concept and, as such, is not required to be incorporated or formally organized so long as it observes the organizational rules applicable to political committees generally. Although a governing document is not required unless the PAC is going to incorporate for liability purposes,[163] such a document is strongly recommended in order to conceptually organize PAC activities, provide a reference to PAC administrators, and inform contributors of the nature and purpose of the organization.

Appendix A to this Article is a form of articles of association for the PAC bylaws for an incorporated membership organization. While this document is fairly detailed, at a minimum the governing document should: (a) set forth the purposes of the PAC; (b) define its internal organization and the responsibilities of its officers (particularly those of the treasurer); (c) set forth crucial reporting dates under FECA, and (d) establish guidelines for the selection of recipients of contributions.

Organization Requirements

As a separate segregated fund, a PAC is a political committee under FECA.[164] As a political committee, a PAC must have a treasurer; no contribution or expenditure may be accepted or made on be-

159. *Id.* § 114.11.
160. FEC Explanation and Justification to Part 114 of the Regulations, at 22.
161. 11 C.F.R. § 114.11(c) (1980).
162. *Id.* § 114.11(b), (c).
163. Incorporation of PAC's for liability purposes is permitted without subjecting the PAC to the prohibitions on contributions and expenditures generally applicable to corporations under 2 U.S.C. § 441b (1976 & Supp. III 1979), so long as the organization qualifies as a political committee under FECA and the chairman and treasurer of the committee remain personally liable for the performance of their duties. 11 C.F.R. § 114.12(a) (1980).
164. 2 U.S.C. § 431(4)(B) (Supp. III 1979). Prior to the 1979 Amendments, a PAC was considered to be a political committee only if it received contributions or made expenditures during a

half of the PAC at a time when there is a vacancy in this office.[165] For this reason the governing documents of the PAC should provide for an assistant treasurer with authority to assume all the powers and responsibilities of the treasurer in his or her absence.[166] Each separate segregated fund is required to file a Statement of Organization with the FEC no later than 10 days after establishment.[167]

Periodic Reports of Receipts and Expenditures

Where Filed? PAC's are required to file periodic reports of receipts and expenditures.[168] All PAC reports are filed with the FEC.[169] In addition, PAC's must simultaneously file copies of their federal reports with the Secretary of State or the appropriate state elections official of the states where PAC-supported candidates are seeking election or where the PAC is headquartered.[170]

Filing Dates. The required reports must generally be filed as follows:

(a) Quarterly reports are due, in a calender year in which a regularly scheduled election is held, no later than the 15th day after the last day of each calendar quarter,[171] except that the report for the quarter ending December 31 shall be filed no later than January 31 of the following year.[172]

(b) Pre- and post-election reports are due before and after any primary or general election in which the PAC has supported candidates.[173] Pre-election reports are filed by the 12th day before the election and must cover transactions from the closing date of the last filed report through the 20th day before the election.[174]

PAC's are required to maintain copies of all statements, reports, and pertinent records for a period of at least three years after the end of the year in which the report or statement was filed.[175] During such

calendar year in an aggregate amount exceeding $1,000. 2 U.S.C. § 431(d) (1976) (amended 1979).

165. 2 U.S.C. § 432(a) (Supp. III 1979); 11 C.F.R. § 102.7(b) (1980).

166. This appointment of an assistant treasurer is specifically authorized by 11 C.F.R. § 102.7(a) (1980).

167. *Id.* § 102.1(c) (1980). Examples of establishment activities by a corporation or union that trigger PAC registration requirements include: (a) a vote by the board of directors (or comparable governing body) to create a separate segregated fund to be used wholly or in part in connection with federal elections; (b) selection of initial officers to administer such a fund; or (c) payment of the initial operating expenses of such a fund. *Id.*

168. 2 U.S.C. § 434(a) (Supp. III 1979).

169. *Id.* § 432(g)(4); 11 C.F.R. § 105.4 (1980).

170. 2 U.S.C. § 439(a)(1) (Supp. III 1979).

171. *Id.* § 434(a)(4)(A)(i).

172. *Id.*

173. *Id.* § 434(a)(4).

174. *Id.* § 434(a)(4)(A)(ii).

175. 2 U.S.C. § 432(d) (Supp. III 1979).

period, reports are available for audit, inspection, or examination by the FEC or its authorized representatives. The PAC treasurer is personally responsible for the timely and complete filing of any required statement or report and for the accuracy of any information or statements contained therein.[176] Treasurers are deemed to be in compliance with the reporting requirements if they can demonstrate to the Commission that they used their best efforts to obtain and submit the required information.[177] Obviously, the maintenance of detailed and organized PAC records will greatly aid in the demonstration that best efforts were expended.

Limitations on Contributions by Individuals to a PAC

In general, FECA limitations on individual contributions are as follows: (a) individuals are limited to $5,000 in contributions to any one political committee in a single calendar year;[178] and (b) individuals are limited to the making of aggregate contributions of no more than $25,000 in any calendar year to all candidates, committees, and other recipients, if any.[179]

In addition to these individual contribution limitations, a corporation that administers a trustee plan or permits the earmarking of PAC contributions for specific federal candidates must be aware of the limitation that prevents individuals from making contributions to any candidate or to the authorized political committee of any candidate that exceed (in the aggregate) $1,000 with respect to any election for federal office.[180] It should also be noted that this latter limitation applies on a per election basis, whereas the $5,000 political committee contribution limitation and the $25,000 limitation on aggregate contributions are measured on a calendar year basis.

Limitations on Contributions by PAC's

In the case of PAC's, and political committees in general, the distinction between contributions and expenditures[181] becomes somewhat blurred. Committees not only receive contributions from individuals and other persons but also make contributions to candidates and other

176. 11 C.F.R. § 104.14(d) (1980).
177. *Id.* § 102.9(d).
178. 2 U.S.C. § 441a(a)(1)(C) (1976); 11 C.F.R. § 110.1(c) (1980).
179. 2 U.S.C. § 441a(a)(3) (1976); 11 C.F.R. § 110.5(a) (1980). For purposes of the $25,000 annual limitation, contributions made with respect to a particular candidate and election are deemed to be made in the year in which the election is held regardless of the actual date of year of the contribution. 11 C.F.R. § 110.5(b)(1) (1980). If the contribution is to a PAC in a nonelection year and is not otherwise designated for a particular election, this rule does not apply. *Id.* § 110.5(b)(2).
180. 2 U.S.C. § 441a(a)(1)(A) (1976).
181. See text & notes 16-28 *supra*.

committees. The distinction between these two forms of contributions is important, particularly for FECA reporting purposes. Contributions received by a PAC are reported as contributions; contributions made to candidates and other committees are reported by the contributing committee as expenditures or transfers out.

Unless a PAC qualifies as a multicandidate committee[182] it is prohibited from making contributions:

> (a) to any candidate and his authorized committees with respect to any election for federal office which, in the aggregate, exceed $1,000;
>
> (b) to the political committees established and maintained by a national political party (but which are not the authorized political committees of any candidate) in any calendar year, which in the aggregate, exceed $20,000; or
>
> (c) to any other political committee in any calendar year which in the aggregate, exceed $5,000.[183]

To qualify as a multicandidate political committee, a PAC must: (a) have been registered as a political committee for a period of at least six months; (b) have received contributions from more than fifty persons; and (c) have made contributions to at least five candidates for federal office.[184] If these criteria are met, the authorized contributions that can be made by the PAC to a federal candidate or his authorized political committees with respect to any election are increased from $1,000 to $5,000.[185]

The limitations on contributions discussed above do not apply to independent expenditures by PAC's although such expenditures on account of a clearly identified candidate must be reported if they exceed $100. The reader should consult Part 109 of the FEC regulations for the rules regarding this significant spending authorization.

Affiliated Committee Rules

Prior to the 1976 Amendments, many corporations attempted to circumvent the spending limitations by conducting their political affairs through several PAC's, each of which took advantage of the maximum contribution allowable by law. To put an end to this practice, the 1976 Amendments[186] state that, for purposes of applying the contribution

182. 2 U.S.C. § 441a(a)(4) (1976).
183. *Id.* § 441a(a)(2); *see* 11 C.F.R. § 110.1 (1980).
184. 2 U.S.C. § 441a(a)(4) (1976).
185. *Id.* 2 U.S.C. § 441a(a)(2); *see* 11 C.F.R. § 110.2 (1980). Aggregate contributions per calendar year to national party political committees are reduced from $20,000 to $15,000 for multicandidate political committees, 2 U.S.C. § 441a(a)(2)(B) (1976), and the aggregate contribution to other political committees per calendar year remains $5,000, *id.* § 441a(a)(2)(C).
186. Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, 90 Stat. 475 (current version codified at 2 U.S.C. §§ 431-455 (1976 & Supp. III 1979)).

limitations, all contributions made by political committees established, financed, maintained, or controlled by any corporation, labor organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such corporation or labor organization, or by any group of persons, will be considered as having been made by a single political committee.[187] This antiproliferation rule was interpreted, in *Walther v. FEC*,[188] as establishing a *per se* rule for corporate and union PAC's: The PAC's of a labor organization and its locals, or a corporation and its subsidiaries are automatically treated as one PAC.[189] Thus, proof of control was held to be unnecessary.[190]

If affiliation is found to exist between two PAC's, a single contribution limit applies to contributions both into and out of the committees.[191] In other words, assuming the PAC qualifies as a multicandidate political committee, no candidate could receive more than $5,000 in the aggregate from the committee and its affiliates. Furthermore, no individual could contribute more than $5,000 in the aggregate to the committee and its affiliates.

A finding of affiliation does have some advantages. For instance, once an affiliated committee becomes a multicandidate committee, all PAC's within the same affiliation can take advantage of the higher contribution limitation. Furthermore, the intra-affiliate committee transfers of funds may be made without limitation.[192]

IV. THE DEVELOPMENT OF SOLICITATION MATERIALS

The Political Action Operations Manual is a technical document designed to insure accurate and complete compliance with the rules and regulations regarding corporate and union participation in federal elections through informed PAC administration. The Operations Manual is not a proper solicitation document and any attempt to utilize it as

187. 2 U.S.C. § 441a(a)(5) (1976); 11 C.F.R. § 100.5(g) (1980). It should be noted that the affiliation rule of § 441a(a)(5) is broader than a mere control concept. For instance, affiliation will be deemed to exist if seed money for two or more political committees is derived from the same source, even if the committees operate on a truly independent basis. *See* 11 C.F.R. § 110.3(a)(1)(ii) (1980). Other indicia of affiliation include:

(a) similar patterns of contributions, *id.* § 110.3(a)(1)(iii)(D);

(b) large transfers of funds between committees, *id.* § 110.3(a)(1)(iii)(E);

(c) ownership of a controlling interest in voting shares or securities, *id.* § 110.3(a)(1)(iii)(A);

(d) provisions in by-laws or other charter documents granting one entity authority, power, or the ability to direct another entity, *id.* § 110.3(a)(1)(iii)(B);

(e) the authority, power, or ability to hire, appoint, discipline, discharge, demote, or remove or otherwise influence the decisions of the officers or members of an entity, *id.* § 110.3(a)(1)(iii)(C).

188. 468 F. Supp. 1235 (D.D.C. 1979).

189. *Id.* at 1239.

190. *Id.*

191. 11 C.F.R. § 110.3(a)(1)(i) (1980).

192. *See generally id.* §§ 110.3, 102.6(a).

the principal means of seeking political action participation would no doubt be unsuccessful. Therefore, in addition to the Operations Manual, a corporation or labor organization interested in developing an effective political action program should create a body of solicitation materials that, while technically and legally accurate, is presented in a readable and readily understandable format. The materials should be specifically designed for the audience being addressed and should be restricted to the subject matter that is pertinent to the solicitation. For instance, the sponsoring corporation or union may wish to institute both a PAC and a trustee plan, or payroll deduction options may be desirable. Separate materials should be developed for each program. Furthermore, specific instructions may be necessary for the guidance of executive or administrative personnel actually responsible for direct solicitations. Finally, if the twice-a-year solicitation option is being utilized, separate materials pertaining to this expanded solicitation campaign may be desirable.

The corporation or labor organization sponsor should never lose sight of the fact that an effective political action program will necessitate some degree of salesmanship to overcome an individual's natural inclination to refrain from spending money where there is no tangible and immediate quid pro quo. The solicitation materials should be designed with this resistance in mind.

Suggested Outline for PAC Solicitation Materials

Although the form and content of PAC solicitation materials should be tailored to fit the needs and characteristics of the PAC sponsor, a typical solicitation brochure can be organized as follows:

Introduction. The brochure expresses the need for participation by the corporate/union "family" in order to protect the interests of the sponsor for the collective good of all concerned with the enterprise. This introduction may cover certain threats to or concerns of the particular industry if appropriate.

Description of Program. The next section of the brochure should inform the recipient that programs have been developed to facilitate participation by employees in the political process. This section might also give a brief and nontechnical review of the basic rules regarding corporate/union political participation under federal law.

Specific Description of the PAC. The next section can describe the PAC and its objectives. The authorized class of persons should also be clearly identified. The section could emphasize that federal law no longer permits large contributions by individuals and that many small contributions are therefore necessary to meet the rising costs of con-

ducting an effective campaign. Finally, this portion of the brochure should describe the manner in which candidates will be selected for support, and emphasize that contributions will be strictly voluntary and that the identity of contributors will be kept confidential except insofar as necessary to file required reports with the FEC.

Methods of Participation. The methods in which an employee may participate (assuming he or she is a member of the authorized class) should be described. For instance, if contributions may be made directly to the PAC by check or by payroll deduction, both of these methods should be described. The contributor should also be reminded to complete the contributor's card (which should accompany the brochure). A summary of the contribution limitations of FECA should be provided.

Questions and Answers. The balance of the brochure (other than necessary forms for the making of contributions) can be devoted to the furnishing of responses to frequently raised questions. The question and answer format is a well organized and succinct method of conveying important information to the program participants without overwhelming them with lengthy paragraphs or a "closed" format. Typical questions might be:

(1) Who may contribute?
(2) Is participation required?
(3) How much should a participant contribute?
(4) How should contributions be made?
(5) Will the amount of my contribution be disclosed?
(6) How will PAC contributions be used?
(7) Who will determine the recipients of contributions?
(8) What criteria will be applied?
(9) If I participate in the PAC, may I still make direct contributions to candidates?
(10) Will I receive reports on the use of PAC funds?

Necessary Forms. As attachments to the brochure, payroll deduction authorizations and contribution information cards should be provided. Both forms (which may be combined if so desired) must include a statement to the effect that prior to making the contribution or authorizing the payroll deduction the undersigned employee was:

(1) Advised of his/her right to refuse to contribute or participate in the program without reprisal of any kind, and that all contributions made or deductions authorized represent free choice, voluntary donations and were not made under duress, job discrimination, financial reprisals, or as a condition of employment;

(2) Informed of the political purposes of the PAC;

(3) Informed that a copy of the PAC report is filed with, and available for purchase from the FEC; and

(4) If contribution guidelines will be a program feature, informed that the guidelines for contributions are only suggestions, that the participant may contribute more or less than the guidelines, and that any contribution or failure to contribute will not result in any job discrimination or financial reprisal of any kind.

Since contributions by foreign nationals are prohibited,[193] the card should also contain a statement that the contributor is an American citizen or has been admitted to permanent United States residence. Finally, the contribution card should contain space for the contributor's full name, business and residential address, occupation, the amount of the contribution, and the contributor's signature.

CONCLUSION

The implementation of an effective corporate or union political action program requires a two-fold approach to documentation which will produce PAC administration materials that facilitate compliance with technical legal requirements of the federal election laws and PAC solicitation materials which meet legal requirements in a manner that is comprehensible and encourages employee-member participation. The present body of federal election laws has been subjected to substantial amendments in 1971, 1974, 1976 and 1979. FEC regulations have been revised with similar regularity and FEC Advisory Opinions, applying the federal law and regulations to specific factual situations, now occupy several volumes. Accordingly, it is not sufficient to design and implement a political action program without a mechanism for continual monitoring and updating as one of its essential features.

PAC's are generally most active in the heat of a political campaign when demands for contributions and political support may leave little time for adequate in-depth research and analysis. Actions taken will be examined closely by opposing groups and by the FEC, thereby making election law enforcement a very real possibility. The development of a political action manual and solicitation materials and the training of administrative personnel in advance of the election year will lead to a more effective and successful program and protect against inadvertent and often embarrassing violations of law.

193. 2 U.S.C. § 441e (1976); 11 C.F.R. § 110.4(a)(1) (1980).

Appendix A

Articles of Association of National Organization for [ ] Political Action Committee

PREAMBLE

A. The National Organization for [ ] PAC [hereinafter "[ ] PAC"] is created for the purpose of facilitating participation in politics by members of the National Organization for [ ], a corporation.

B. [ ] PAC provides a convenient method whereby voluntary contributors may accumulate funds and make them available to political candidates, political committees, or political campaigns chosen by the Board of Directors of [ ] PAC.

C. [ ] PAC is an organization established by [name of corporation] as a multicandidate committee (as defined by FEC regulations in 11 Code of Federal Regulations [hereinafter regulations] section 100.5(e)(3)) and is administered for the purpose of soliciting contributions to a separate segregated fund to be utilized for political purposes pursuant to section 441b(b)(2)(c) of the Federal Election Campaign Act [FECA] and section 114.5 of the regulations.

ARTICLE I

NAME

The name of the political action committee shall be the National Organization for [ ] PAC.*

ARTICLE II

PRINCIPAL OFFICE AND ADDRESS

The principal office of [ ] PAC shall be located in [name of city] and its address shall be [ ], or such other address as may, from time to time, be designated as the mailing address for the Treasurer of [ ] PAC.

* Federal law now requires that the name of the sponsoring corporation appear in the name of the PAC. 2 U.S.C. § 432(e)(5) (Supp. III 1979); 11 C.F.R. § 102.14(c) (1980).

ARTICLE III

PURPOSES AND POWERS

Section 1. Purposes. It shall be the purpose of [ ] PAC to further the interests of [ ] and its members as identified in Article IV hereof; to encourage the protection and enhancement of individual constitutional liberties; to promote the good citizenship of the [ ] members through personal and financial participation in the federal elective process; and [cite any additional areas of government policy or regulation which the sponsoring organization wishes to encourage or promote—for example, a progressive solar energy policy, passage of the Equal Rights Amendment, etc.]

Section 2. Collection of Contributions. To achieve the purposes enumerated herein, [ ] PAC is empowered to solicit contributions in accordance with Article VII hereof, from its members (in a for-profit corporation the reference would be to "stockholders, executive or administrative personnel and their families"), to expend or forward such contributions to further the nomination and election of candidates for federal elective public office whose views, voting record, or issue positions indicate a positive orientation toward some or all of these purposes, and to do such other things not inconsistent with the foregoing as may be necessary or desirable for the attainment of these purposes.

Section 3. Making Contributions and Expenditures. In carrying out the foregoing purposes, [ ] PAC is empowered to make or forward contributions, within the limits imposed by federal law, to candidates for federal elective office, to political committees supporting such candidates, and to national, state, and local committees of national political parties. [ ] PAC is further empowered to make independent expenditures in support of such candidates in the manner provided herein.

ARTICLE IV

MEMBERSHIP

Section 1. Members Defined. The members of [ ] PAC shall consist of its initial organizers and those members of [ ] who choose to make voluntary contributions to [ ] PAC as a separate segregated fund of [name of sponsoring corporation] pursuant to section 441b of FECA.

Section 2. Membership Designation. Membership in [ ] PAC shall be a complementary designation and shall not entitle such mem-

bers to any greater rights or privileges in [ ] or to any other rights or privileges having tangible value.

Section 3. Exclusion of Foreign Nationals. No person who is a foreign national as defined in section 441e of FECA shall be a member of, or participate in, the activities of [ ] PAC.

ARTICLE V

ORGANIZATION

Section 1. Basic Organization. [ ] PAC shall be a voluntary, nonprofit, unincorporated political association composed of those members defined in Article IV hereof, who shall be individuals. [ ] PAC shall be completely independent of and not affiliated with any political party, candidate, or other organization or person, other than [ ]. [ ] shall defray all costs and expenses incurred in the establishment and administration of, and in the solicitation of contributions to, [ ] PAC in the manner and to the extent permitted by federal law, and shall be identified as a "connected organization" of [ ] PAC (within the meaning of regulations section 100.6) when required by FECA filings and reports.

Section 2. Board of Directors. The financial affairs of [ ] PAC, including the making of any contributions, shall be supervised and directed by a Board of Directors consisting of five persons including the Chair, Treasurer, and Secretary of [ ] PAC and two additional individuals all of whom shall be appointed by the President of [ ] and shall serve at his or her sufference.

Section 3. Duties and Responsibilities of Directors. The directors appointed pursuant to Section 2 of this Article shall:

(a) serve until their successors are appointed;

(b) adopt and thereafter comply with the Articles of [ ] PAC;

(c) take such actions, consistent with federal law, as they deem appropriate to encourage membership in [ ] PAC;

(d) meet on a regular basis to select recipients for PAC contributions; and

(e) designate a time and place for the first annual meeting of the membership, pursuant to notice, to be held within twelve months after their appointment.

Section 4. Delegation of Duties. The Board of Directors may delegate to the Chair, subject to the general direction of the Board, the responsibility for managing all the financial affairs of [ ] PAC including, but not limited to, the power to determine the contributions and expenditures that shall be made by [ ] PAC.

Section 5. Officers of [ ] PAC. The officers of [ ] PAC shall be a Chair, Vice Chair, Treasurer, Assistant Treasurer and Secretary.** Each officer of the fund shall continue to serve in the office until a successor is appointed and qualified. The offices of Chair and Treasurer may be held by the same person.

Section 6. The Chair. The Chair shall be the chief executive officer of [ ] PAC and shall administer the financial affairs of the [ ] PAC and perform such other duties as may be delegated by the Board. The Chair shall preside at all meetings of [ ] PAC.

Section 7. The Treasurer. The Treasurer shall be the chief financial officer of [ ] PAC. The Treasurer, or in his stead the Assistant Treasurer, subject to the provisions of these Articles of Association, shall have general responsibility for all contributions made to or forwarded by [ ] PAC and all independent expenditures made by [ ] PAC, and shall cause all contributions to be deposited in the General Fund established by Article VI hereof, and shall cause all books of account to be maintained in accordance with applicable federal law and with the directives and in a manner authorized by [ ] PAC. The Treasurer shall also prepare, sign, file, and maintain copies of all reports required by the applicable federal law and by [ ] PAC. Reports shall be made annually to contributors; and in the event of dissolution of the [ ] PAC a final report shall be made, in such form and at such intervals as the [ ] PAC shall deem appropriate. Without limiting the generality of the foregoing, the Treasurer shall have the following duties and responsibilities:

(a) *Recordkeeping.* It shall be the duty of the Treasurer to keep a detailed and exact account of:

(1) all contributions made to or for the benefit of the [ ] PAC, or transferred out of [ ] PAC to candidates or other political committees;

(2) the full name and mailing address of every person making a contribution in excess of $50, and the date the contribution was received and the amount thereof;

(3) the identification of every person making a contribution in excess of $200 to [ ] PAC during a calendar year and the date of receipt and amount of such contribution;

(4) in the case of contributions from a political committee, the identification of the political committee, the date of receipt and the amount of the contribution;

(5) all expenditures made by or on behalf of the PAC, in-

** The only required officer is the treasurer. 2 U.S.C. § 432(a) (Supp. III 1979).

cluding independent expenditures and transfers out to other political committees and federal candidates;

(6) the full name and mailing address of every person to whom any disbursement is made, the date, amount and purpose of the expenditure. In describing the purpose, it shall be sufficient to set forth a brief description of why the disbursement was made;

(7) if the disbursement is made for a candidate, the name and office sought (including state and congressional district, if any) of the candidate on whose behalf the disbursement is made;

(8) if it is determined that [ ] PAC shall maintain a petty cash fund for the making of expenditures (not to exceed $100) to any person in connection with a single purchase or transaction, the Treasurer shall maintain a written journal disclosing the name and address of every person to whom any disbursement is made, as well as the date, amount and purpose of such disbursement. If a petty cash disbursement is made for a candidate, the journal shall include the name of that candidate and the office sought;

(9) proceeds from the sale of tickets and mass collections at each dinner, luncheon, or other fundraising event, including the date, location, and nature of the event; and

(10) such other books or records as may be required by law or by resolution of the Board in the conduct of [ ] PAC.

(b) *Preparation of Receipts.*

(1) It shall be the duty of the Treasurer to obtain and keep a receipt or invoice from the payee or a cancelled check to the payee for each disbursement in excess of $200 by or on behalf of the [ ] PAC. The Treasurer shall keep all receipts and accounts available for inspection, audit, or examination by the FEC for not less than 3 years after the report to which such records and accounts relate is filed. "Payee" means the person who provides the goods or services to [ ] PAC in return for payment except for an advance of $500 or less for travel and subsistence to an individual who will be the recipient of the goods or services, in which case the expense voucher or other expense account documentation for the advance and a cancelled check to the recipient of the advance shall be obtained and kept.

(2) Notwithstanding subparagraph (b)(1) hereof, for any credit card transaction, documentation shall include a monthly billing statement or customer receipt for each transaction and the cancelled check used to pay the credit card account.

(3) For purposes of subparagraph (b)(1) hereof, a carbon copy of a share draft or check drawn on a credit union account may be used as a duplicate record of such draft or check provided that the

monthly account statement showing that the share draft or check was paid by the credit union is also retained.

(c) *Registration.*

(1) The [ ] PAC is registered as a "multicandidate committee" under section 100.5(e)(3) of the regulations and a Statement of Organization has been filed with the Commission on FEC form 1, as required by 2 U.S.C. § 433(a) and sections 102.1(c) and 102.2 of the regulations. It shall be the duty of the Treasurer to report to the FEC any change or correction in information previously submitted in the Statement of Organization within ten days following the change or correction, by filing an amended Statement of Organization or by filing a letter noting the change(s). The amendment need list only the name of the PAC and the change or correction. Without limiting the generality of the foregoing, [ ] PAC shall report to the FEC changes in address, candidates supported, bank depositories, affiliated committees or connected organizations, if any. The identification number issued to [ ] PAC upon filing the Statement of Organization shall be entered on all subsequent reports and statements filed by [ ] PAC.

(2) If the [ ] PAC has no outstanding debts or obligations incurred on behalf of federal candidates, and [ ] PAC determines that it will no longer receive contributions or make expenditures which would otherwise qualify it as a political committee under federal law, [ ] PAC may terminate by having its Treasurer so notify the FEC by filing a Notice of Termination (FEC forms 3 or 6) containing a final report of receipts and disbursements, including a statement as to the disposition of residual funds in accordance with section 433(d)(1) of FECA and sections 102.3 and 102.4 of the regulations.

(d) *Reports.* The Treasurer shall file with the FEC reports of receipts and expenditures on FEC form 3 disclosing information concerning the political activities of [ ] PAC during the reporting period consistent with section 434(b) of FECA and section 104.3 of the regulations. Reports of receipts and expenditures shall be filed as follows:

(1) Quarterly Reports. Unless monthly reporting is elected as provided in subparagraph (4) below, in any election year the Treasurer shall cause [ ] PAC to file quarterly reports, complete as of the last day of each calendar quarter, with the FEC by April 15, July 15, and October 15 if (a) total contributions received or total expenditures made during the quarter by [ ] PAC exceed $1,000, or (b) total debts incurred or total debts extinguished exceed $1,000 during the quarter. A fourth quarter report shall be filed (due January 31) regardless of the amount received or expended by the [ ] PAC. Such re-

ports shall disclose all transactions since the last filed report (through the end of the calendar quarter) and any outstanding debts. Exemptions from quarterly reporting requirements may be available as provided in subparagraph (d)(7) below.

(2) Preelection and Postelection Reports.

(a) Preelection Reports. If [ ] PAC supports any federal candidate in a primary or general election and has not elected monthly reporting status as provided in subparagraph (4) below, it must file a preelection report unless the disbursements have been previously disclosed.

(b) Postelection Reports (General Election Only). If [ ] PAC supports a federal candidate in connection with a general election, and has not elected monthly reporting status as provided in subparagraph (4) below, [ ] PAC must file a pre- and postprimary election report with respect to each election in which they support a federal candidate.

(c) Filing Dates. Preelection reports shall be filed by [ ] PAC no later than 12 days before a primary or general election, covering transactions from the closing date of the last filed report through the 20th day before an election. If the report is filed by registered or certified mail, the report shall be postmarked by the 15th day before the election. Postelection reports must be filed (or postmarked if sent by registered or certified mail) by the 30th day after the general election, and must cover transactions from the closing date of the last report through the 20th day after the general election.

(3) Nonelection Year Reports. Unless monthly reporting has been elected as provided in subparagraph (4), [ ] PAC shall file nonelection year reports on a semiannual basis. The first such report shall cover the period commencing January 1 and ending June 30 and shall be filed no later than July 31. The second such report shall cover the period commencing July 1 and ending December 31 and shall be filed no later than January 31 of the following year.

(4) Monthly Reports. If the [ ] PAC is supporting candidates in more than one state and prefers to file monthly reports instead of quarterly and pre- and postprimary election reports, it may file a request with the FEC to report on a monthly basis. If such request is approved by the FEC, monthly reports shall be filed no later than the 20th day of the month and shall be complete as of the last day of the preceeding month. With regard to an election year, in lieu of monthly filings for the months of November, December and January, [ ] PAC shall file pre- and postgeneral election reports and a year-end report (no later than January 31 of the following calendar year).

(5) Reports of Independent Expenditures.

(a) Reporting Obligation. If during any reporting period [ ] PAC makes independent expenditures, it shall report these independent expenditures to the FEC on FEC form 3, schedule E, in accordance with sections 104.4 and 104.3(b)(3)(vii) of the regulations. If [ ] PAC makes any independent expenditures of $1,000 or more after the 20th day, but more than 24 hours before 12:01 a.m. of the day of the election, such independent expenditures shall be reported to the FEC within 24 hours after the expenditure is made. Such report shall be filed as set forth below and shall contain the information required by section 104.3(b)(3)(vii), indicating whether the independent expenditure is made in support of or in opposition to the candidate involved.

(b) Where Filed. Independent expenditure reports relating to presidential and vice-presidential candidates shall be filed with the FEC; reports relating to candidates for the Senate shall be filed with the Secretary of the Senate and reports relating to candidates for the House shall be filed with the Clerk of the House. Each such report shall also be filed with the secretary of state of the state in which the expenditure was made.

(6) Reporting Waivers and Exemptions.

(a) Quarterly Report Waiver When Filing Date is Near Election. [ ] PAC quarterly reports are automatically waived if a preelection report is required to be filed during the period beginning on the 5th day after the close of the calendar quarter and ending on the 15th day following the close of the calendar quarter.

(b) Quarterly Report Exemption-Postcard Form 3a. When neither total contributions nor total expenditures made during a quarter by [ ] PAC exceed $1,000 and total debt activity does not exceed $1,000 during the quarter, [ ] PAC shall be exempt from filing the quarterly report provided it files postcard form 3a (or a letter with the same information) with the FEC. The postcard shall be filed at the end of the first quarter in which the exemption applies and shall exempt [ ] PAC from subsequent quarterly reports provided it continues to be eligible for the exemption. [ ] PAC shall no longer be eligible for this exemption when it exceeds the $1,000 threshold during a calendar quarter. In such an instance, a regular report must then be filed covering all transactions since the last complete report (FEC form 3). If the postcard form exemption again becomes available (because the $1,000 threshold is not exceeded during a calendar quarter) a new form 3a must then be filed for the first quarter the exemption applies. Furthermore, if [ ] PAC qualifies for the 3a exemption it must file a

new 3a postcard each year, at the end of the first quarter (April), regardless of when it last filed a report or a 3a postcard.

If [ ] PAC elects to become a monthly filer as provided in subparagraph (3) above, it may not use the form 3a exemption. In addition, the form 3a exemption never applies to (i) pre- and postelection reports, (ii) the fourth quarter (year-end) reports covering the election year if [ ] PAC has outstanding campaign debts, and (iii) fourth quarter (year-end) reports covering nonelection years.

(e) *Required Notices on Solicitations and Other Communications.* Whenever [ ] PAC makes an independent expenditure for the purpose of financing communications that expressly advocate the election or defeat of a clearly identified candidate or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, the communication shall clearly and conspicuously state the name of [ ] PAC and shall further state that the communication is not authorized by the candidate or the candidate's authorized political committee. This statement shall appear or be presented in a clear and conspicuous manner so as to give the reader, observer, or listener adequate notice of the identity of the persons who paid for or authorized the communication. The disclaimer need not be on the front page or face of the material. This requirement does not apply to bumper stickers, pins, buttons, and similar small items.

(f) *Service of Process.* The Treasurer is designated as agent to receive service of process.

(g) *Seek Advisory Opinions.* The Treasurer is authorized whenever advisable to seek advisory opinions from the FEC, the Internal Revenue Service, and private counsel.

(h) *Depositories For [ ] PAC Funds.* The Treasurer shall designate a national or state bank or a depository institution whose accounts are insured by the FDIC, FSLIC, or the NCUA as the depository for PAC funds under section 441b(b)(2)(C) of FECA. All receipts by [ ] PAC shall be deposited in said account(s) within ten days of the Treasurer's receipt. The Treasurer shall be responsible for making such deposits. All [ ] PAC disbursements shall be by check or similar drafts drawn on an account at the designated depository, except for expenditures of $100 or less made from a petty cash fund maintained by [ ] PAC. Funds may be transferred from the depository for investment purposes but shall be returned to the depository before such funds are used for expenditures. The funds of [ ] PAC shall be segregated from and shall not be comingled with the funds of any other

committee or person although [ ] PAC may establish more than one account at each depository.

(i) *In General.* The Treasurer shall perform these duties and all others required of the Treasurer by all federal, state, or local laws and regulations pertaining to the [ ] PAC. The Treasurer must use his or her best efforts to obtain and report required information and shall maintain a complete record of efforts to do so. The Treasurer's acts shall be subject to audit by the Audit Committee.

Section 8. Secretary. Subject to the limitations set forth in Article VI below, the Secretary shall maintain all minutes of [ ] PAC and shall assist in the preparation and submission of all reports as may be required by the applicable federal law and by [ ] PAC.

Section 9. Vice Chair. During the absence or incapacity of the Chair, the Vice Chair shall assume the duties and exercise the powers of the Chair. The Vice Chair shall perform such other duties as may be assigned to him by these Articles or by the Chair.

Section 10. Assistant Treasurer. During the absence or incapacity of the Treasurer, the Assistant Treasurer shall perform the duties and functions and exercise the powers of the Treasurer. The Statement of Organization shall identify the person holding this office.

Section 11. Committees. Committee members and committee chairpersons shall be appointed by the Chair to conduct the committee activities of the [ ] PAC. Each committee shall be comprised of that number of persons deemed necessary by the Chair to perform the committee functions. Members of committees shall be appointed for a period of one year and until their successors are appointed. A majority of committee members present at a committee meeting shall constitute a quorum.

(a) *Membership Committee.* This committee shall organize and direct an ongoing program among those eligible for membership in [ ] PAC to assure that all members and potential members are fully informed of the purposes and activities of [ ] PAC.

(b) *Audit Committee.* That Audit Committee, at its discretion, shall periodically audit the books and records of the [ ] PAC, but not less than once per year. The activities of this committee and its audits shall be reported to the membership of the [ ] PAC at its annual meeting and may be reported to the members at such other times as it deems appropriate. The Treasurer is not eligible to serve on the Audit Committee. The audit report shall show, among other things, the names of recipients of contributions from the [ ] PAC, the aggregate funds received and disbursed, and the balance of funds held by the [ ] PAC; but such audit report shall not, under any cir-

cumstances, indicate the manner by which members have financially participated in the [ ] PAC. Audits need not be prepared in accordance with generally accepted accounting principles for nonprofit organizations.

ARTICLE VI

MEETINGS

Section I. Annual Meeting. The annual meeting of [ ] PAC shall be held at such time and place in the first calendar quarter of each year in [name of city] as is designated by the Board of Directors, in writing, and upon at least ten days prior written notice to the membership. The business of the annual meeting shall include a report of the Treasurer, a report of the Audit Committee, and such other matters as may be brought before the meeting.

Section 2. Other Meetings. Other meetings of the membership may be held from time to time upon call of the Chair, Vice Chair, or Treasurer upon at least ten days prior written notice. Attendance in person or by proxy of five percent of the membership shall constitute a quorum at all meetings provided the Treasurer or Assistant Treasurer is in attendance.

Section 3. Board meetings shall be held as necessary at the discretion of the Chair or upon the written request of two or more members of the Board. Attendance by three members of the Board of Directors shall constitute a quorum.

Section 4. At all meetings of the membership of the Board of Directors, action shall be valid when adopted by a vote of a majority of those present.

ARTICLE VII

CONTRIBUTIONS AND DISBURSEMENT OF FUNDS

Section 1. Contributions. The [ ] PAC may only solicit contributions from members of [ ]. All contributions to [ ] PAC shall be voluntary. For convenience of administration, [ ] PAC may determine the appropriate times and means of soliciting voluntary contributions from members. The accumulated funds paid to the [ ] PAC shall be disbursed as directed by the Board of Directors and in accordance with these Articles of Association.

All funds collected by the Treasurer shall be deposited in the [ ] PAC account maintained at the national or state banking institution designated as the [ ] PAC depository.

Section 2. Confidentiality of Contributions. Except as required by the applicable federal law in prescribed reports to the government, the identity of any contributor and amount and nature of any contribution to or forwarded by [ ] PAC shall be strictly confidential and shall be known only to the Treasurer and Assistant Treasurer of [ ] PAC.

Section 3. Vacancies in Office of the Treasurer of [ ] PAC. No contribution to or to be forwarded by [ ] PAC shall be accepted, and no expenditure shall be made by or on behalf of [ ] PAC at a time when there is a vacancy in the office of its Treasurer.

Section 4. Segregation of Funds. No officer of [ ] PAC, or anyone making a contribution to or for forwarding by [ ] PAC, shall have a right to share personally in any funds or assets of [ ] PAC or in any contribution to be forwarded by PAC, upon its dissolution or at any other time. Such funds shall not be commingled with funds of officers or any other person.

Section 5. Solicitation of Contributions. Solicitations of contributions to [ ] PAC—whether oral or written—shall inform the member solicited of (a) the political purposes of [ ] PAC, and (b) the member's right to decline to make a contribution without reprisal.

Section 6. Limitations on Contributions. The Treasurer or other authorized officer shall make no contributions: (i) to any candidate or such candidate's authorized political committees with respect to any election for federal office which in the aggregate exceed $5,000; (ii) to the political committees established and maintained by a national political party which are not the authorized political committees of any candidates, in any calendar year, which, in the aggregate, exceed $15,000; or (iii) to any other political committee in any calendar year which, in the aggregate, exceed $5,000.

The limitations on contributions to a candidate shall apply separately to each election, except that all elections held in any calendar year for the office of President of the United States (except a general election for such office) shall be considered to be one election.

Section 7. Disbursements. Disbursements from the funds of [ ] PAC shall be authorized by the Treasurer or, in his or her absence, by the Assistant Treasurer, and shall be made to political candidates, political campaigns, or political parties, or for other purposes as provided in these Articles. Such disbursements shall be made by check from the [ ] PAC account pursuant to directives from the Board of Directors—all in compliance with federal law. No contributions shall be received nor funds disbursed for the purposes of supporting candidates for nonfederal offices.

Section 8. [ ] PAC Earnings. Any earnings resulting from the

accumulated funds of the [ ] PAC shall be credited to the account of [ ] PAC and shall be disbursed by the Treasurer to cover the expenses of [ ] PAC and the balance disbursed pursuant to these Articles.

Section 9. Prohibited Sources and Forms of Contributions.

(a) [ ] PAC shall not knowingly accept unsolicited contributions from national banks, corporations, or federal government contractors.

(b) [ ] PAC shall not knowingly accept any contribution made by one person in the name of another person.

(c) [ ] PAC shall not receive cash contributions in excess of $100.

(d) [ ] PAC shall not knowingly receive contributions from any foreign national as defined in section 441e of FECA.

ARTICLE VIII

EXPENSES OF ADMINISTRATION

The National Organization for [ ] may use general treasury monies, including monies obtained through dues and membership fees to pay for the establishment, administration, and solicitation costs incurred by [ ] PAC including the costs of office space, phones, salaries, utilities, supplies, legal and accounting fees, fundraising, and other expenses incurred in setting up and running [ ] PAC to the extent permitted by 11 C.F.R. § 114.5(b).

ARTICLE IX

ADOPTION AND AMENDMENT

Section 1. Effective Date. These Articles of Association shall be effective as of , 19[ ].

Section 2. Amendment. These Articles may be amended at any time by the Board of Directors of the National Organization for [ ], provided, however, that no amendment shall be made or adopted at any time which will cause these Articles or the operation of [ ] PAC to violate federal law and/or the regulations of the FEC.

ARTICLE X

TAX DEDUCTIONS AND CREDITS

The affairs of [ ] PAC shall if possible be conducted in such a way that contributions to [ ] PAC will qualify for the deduction and

credit with respect to political contributions provided in sections 41 and 218 of the Internal Revenue Code.

ARTICLE XI

DISSOLUTION

[ ] PAC may be dissolved by action of the Board of Directors of the National Organization for [ ]. Upon dissolution, funds shall be disposed of in accordance with all applicable laws and regulations; in no event shall any funds inure to the benefit of the National Organization for [ ] or any member of [ ] PAC.

ARTICLE XII

DEFINITIONS

Section 1. Definitions.

(a) "Act" shall refer to FECA.

(b) "Affiliated Committees" shall mean all committees established, financed, maintained, or controlled by the same person—such as another political committee, a group of people, a corporation or one of its subsidiaries, or a labor organization.

(c) "Candidate" shall mean a candidate for federal office including the Senate, the House of Representatives, the Presidency, and Vice Presidency. Under the Act, an individual is considered a candidate if any one of the following circumstances exists:

(1) The individual has received contributions aggregating in excess of $5,000 or made expenditures aggregating in excess of $5,000.

(2) The individual has given his or her consent to another person to receive contributions or make expenditures on behalf of that individual and such person has received contributions aggregating in excess of $5,000 or made expenditures aggregating in excess of $5,000.

(3) After written notification by the Commission that any other person has received contributions aggregating in excess of $5,000 or made expenditures aggregating in excess of $5,000 on the individual's behalf, the individual fails to disavow such activity by letter to the Commission within 30 days of receipt of the notification.

(4) The aggregate of contributions received under 11 CFR § 100.3(a)(1), (2), and (3), in any combination thereof, exceeds $5,000, or the aggregate of expenditures made under 11 CFR § 100.3(a)(1), (2), and (3), in any combination thereof, exceeds $5,000.

(d) "Clearly Identified Candidate" shall mean a candidate whose

name, photograph, or drawing appears (in communications) or whose identity is apparent from unambiguous reference.

(e) "Contribution" shall mean a campaign contribution of anything of value given to a candidate or political committee to influence federal elections. Included within this broad definition are: (i) contributions of funds in the form of cash or check (cash contributions being limited to $100 per donor per campaign); (ii) contributions in kind, of services, goods and property received by (or provided on behalf of) a committee or candidate; (iii) a loan (other than a bank loan) to the extent of the loan's outstanding balance; (iv) the endorsement or guarantee of a bank loan, to the extent of the outstanding balance of the bank loan; (v) proceeds from mass collections or from the same of tickets or other fundraising items; and (vi) a written contract, pledge, or promise to make a contribution.

Not included within the meaning of contributions are: (i) transfers between affiliated committees (but remember that such transfers must be reported); (ii) transfers between political committees of funds raised through joint fundraising efforts; (iii) voluntary activities on behalf of a candidate or political committee; (iv) the rental value of an individual's residence used for campaign-related activity; (v) the use of real or personal property and the cost of invitations, foods, and beverages, voluntarily provided without charge by an individual, in rendering voluntary individual services to a candidate on the individual's residential premises—to the extent that the cumulative value of those activities by the individual on behalf of the candidate do not exceed $500 with respect to the election; and (vi) any unreimbursed payments for transportation expenses made by an individual in volunteering services to a candidate—to the extent that the cumulative value of the payments does not exceed $500 for any election. Any unreimbursed payment for a volunteer's personal funds for usual and normal living expenses incident to voluntary activity are not contributions.

(f) "Debt Activity" shall mean debts incurred or debts extinguished (see below).

(g) "Debts Extinguished" shall mean any debts which are paid, settled, or forgiven. See FEC, *Notice to All Federal Candidates and Committees Filing Quarterly Reports* (March, 1978).

(h) "Debts Incurred" shall mean any loans to a candidate or a political committee for which the proceeds have been received during the calendar quarter and any commercial obligations for which a candidate or committee has received a bill or invoice during the quarter. In calculating the total debts incurred, outstanding bills of less than $500 need not be included if they have been outstanding for less than

60 days. See FEC, *Notice to All Federal Candidates and Committees Filing Quarterly Reports* (March, 1978).

(i) "Disbursement" shall mean any purchase, payment, distribution, or gift of money or anything of value made by a political committee.

(j) "Election" shall mean any one of several processes by which an individual seeks federal office, including: a primary election; a runoff election; a party caucus or convention which has authority to select the nominee; a general election; and a special election held to fill a vacant seat.

(k) "Expenditure" shall mean a purchase, payment, or consummation of anything of value by a committee to influence federal elections. Expenditures include: (i) a transfer out of the committee, which includes the making of a monetary contribution or an in kind contribution to a candidate or other political committee; (ii) loans by a committee to candidates or other committees; (iii) independent expenditures made by a committee on behalf of or in opposition to a federal candidate; (iv) payments for operating expenses such as staff salaries, rent, travel, advertising, telephone, fundraising, and legal and accounting services; (v) a written agreement or pledge to make an expenditure; and (vi) repayments of debts, including loans or other obligations owed to another person. The following disbursements are not considered expenditures and need not be reported unless otherwise noted: (i) nonpartisan activity designed to encourage individuals to register to vote or to vote (no effort can be made to determine the party or candidate preference of individuals before encouraging them to register to vote or to vote); and (ii) any communication by [ ] to its members, except that the costs incurred that are directly attributable to a communication expressly advocating the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the expressed advocacy of the election or defeat of a clearly identified candidate) shall, if those costs exceed $2,000 per election, be reported to the FEC on FEC form 7.

(l) "Identification" shall mean, in the case of an individual, his or her full name (first name, middle name or initial, if available, and last name), mailing address, occupation, and the name of his or her employer. In the case of persons other than individuals, the term shall mean the person's full name and address.

(m) "Independent Expenditure" shall mean a disbursement for communications made expressly to advocate the election or defeat of a clearly identified candidate which is not made with the cooperation or

consent of, or in consultation with or at the request or suggestion of, any candidates or his/her agents or authorized committees.

(n) "Multicandidate Committee" shall mean a political committee with more than 50 contributors which has been registered for at least six months and, with the exception of state party committees, has made contributions to five or more federal candidates.

(o) "Person" shall mean an individual, a partnership, or any other group of persons (*e.g.*, political committee, corporation, or labor organization).

(p) "Political Committee" shall mean any committee, club, or other group or persons that receives (or anticipates receiving) contributions or makes expenditures exceeding $1,000 during a calendar year. Notwithstanding the foregoing, any separate segregated fund established pursuant to section 441b(b)(2)(C) of FECA shall be a political committee.

(q) "Receipts" shall mean any contributions of cash, goods, or services or any other funds received by a candidate or political committee.

(r) "Separate Segregated Fund" shall mean a political committee established by a national bank, corporation, labor organization, trade association, cooperative, or membership organization to accept voluntary contributions which are used to make contributions to or expenditures on behalf of federal candidates and political committees. A "separate segregated fund" is also called a political action committee or PAC.

(s) "Transfer" shall mean a contribution (of any type including, for example, contributions in kind) from a political committee or political organization to a candidate (or his/her authorized committee) or another political committee.

Appendix B

FEDERAL ELECTION COMMISSION PUBLICATIONS

1. FEC BOOKKEEPING AND REPORTING MANUAL
2. FEC, FEDERAL ELECTION CAMPAIGN LAWS
3. FEC, FEDERAL ELECTION COMMISSION REGULATIONS, in 11 CODE OF FEDERAL REGULATIONS (1980)
4. FEC RECORD
5. FEC, CAMPAIGN GUIDE FOR COMMITTEES
6. FEC, CAMPAIGN GUIDE FOR FEDERAL CANDIDATES
7. FEC, CAMPAIGN GUIDE FOR STATE AND SUBORDINATE PARTY COMMITTEES
8. FEC, CAMPAIGN GUIDE FOR THE NON-ELECTION YEAR
9. FEC JOURNAL OF ELECTION ADMINISTRATION

MATERIALS FROM PRIVATE SOURCES

1. CAMPAIGN LAW REPORTER
2. CCH, FEDERAL ELECTION CAMPAIGN FINANCING GUIDE
3. NATIONAL ASSOCIATION OF MANUFACTURERS, NAM PUBLIC AFFAIRS MANUAL
4. MADDEN & SPROUL, THE LAW OF POLITICS, CALIFORNIA CONTINUING EDUCATION OF THE BAR (1977)