



To: Clients
From: Bryan Cave Election Law Group
Re: Guidelines for Establishing and Operating a Federal Independent Expenditure PAC

In the aftermath of recent court decisions, individuals are now legally permitted to form independent expenditure political action committees (“PACs”) and accept unlimited individual and corporate contributions solely to make independent expenditures supporting and opposing federal candidates.¹ Such independent expenditure PACs may make unlimited independent expenditures supporting and opposing federal candidates, but are prohibited from making monetary or in-kind contributions to federal candidates, including disseminating coordinated communications on their behalf.

Below is a general overview of the steps necessary to create a federal independent expenditure PAC and the rules and restrictions that apply to independent expenditure PAC operations and the applicable Federal Election Commission (“FEC”) reporting requirements. As always, if you have any questions, don’t hesitate to contact the Bryan Cave Election Law Group for assistance.

I. The Federal Election Campaign Act (“FECA”)

The Federal Election Campaign Act of 1971, as amended (“FECA” or “the Act”) regulates the financing of federal elections, restricts the sources and amounts of contributions in connection with federal elections, and establishes registration and reporting requirements for entities making and receiving contributions in connection with federal elections. The FEC, an independent federal agency, administers and enforces the FECA.

Forming a federal independent expenditure PAC requires an initial registration, as well as ongoing organizational and administrative responsibilities and regular filings with the FEC. These obligations are explained in more detail below.

¹ An independent expenditure is an expenditure by a person that expressly advocates the election or defeat of a clearly identified federal candidate and that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, any federal candidate, or his or her authorized committees or agents, or a political party committee or its agent. See 11 C.F.R. § 100.16. FEC regulations contain detailed guidance concerning what types of communications expressly advocate the election or defeat of a clearly identified federal candidate. See 11 C.F.R. § 100.22(a) and (b). Please let us know if you would like further guidance on the scope of express advocacy communications under FEC regulations.

II. Filing a Statement of Organization to Form an Independent Expenditure PAC

An independent expenditure PAC must register and begin filing reports with the FEC when its contributions or expenditures exceed \$1,000. The PAC is required to file a Statement of Organization (FEC Form 1) with the FEC within ten days of passing this \$1,000 threshold. For example, the Statement of Organization must be filed within ten days of:

- Opening a bank account and depositing more than \$1,000;
- Receiving contributions of more than \$1,000;
- Paying more than \$1,000 in initial operating expenses; or
- Making a contribution of more than \$1,000.

A copy of FEC Form 1 is attached to this memorandum as Attachment 1. The independent expenditure PAC should provide the following information on its Statement of Organization:

- **Name the PAC and provide a PAC address:** The PAC may select any name, but the name of a federal candidate may not be included.
- **E-Mail address and website:** The FEC sends courtesy materials, such as reminders of when FEC reports are due, via email only. The PAC must disclose an email address on its FEC Form 1 in order to receive these materials. The PAC should also disclose its web address if the PAC has a website.
- **FEC identification number:** This field can be left blank on a new Statement of Organization. The identification number will be assigned when the FEC receives the form.
- **New or amended:** Check New.
- **Typed or printed name of treasurer and treasurer's signature:** Although an Assistant Treasurer may sign an Amended Statement of Organization, the initial Statement of Organization must be signed by the Treasurer.
- **Check Box 5(f) of Line 5:** This is the appropriate selection for an independent expenditure PAC. In addition, check the box identifying the committee as a "lobbyist/registrant PAC" if an individual or entity registered under the Lobbying Disclosure Act ("LDA") controls the PAC. For further information regarding the LDA, please see the Bryan Cave Election Law Group memorandum on that topic.

- **Disclose any affiliated committees:** The PAC must disclose any affiliated PACs on Line 6. The full name and address of the affiliated PAC should be disclosed. The PAC should indicate “affiliated” in the relationship field. The type of connected organization need not be checked off for an entry in Line 6 disclosing an affiliated PAC. If the PAC is not affiliated with any other PACs, “none” should be listed on Line 6.
- **Treasurer:** The PAC must appoint a treasurer before it accepts any contributions or makes any expenditures. It is also advisable to appoint an assistant treasurer authorized to sign FEC reports in the treasurer’s absence. For example, if the treasurer is unavailable when the PAC needs to file a report, a designated assistant treasurer may sign the report. If a PAC treasurer is unavailable, the PAC must either file the report without the treasurer’s signature or file the report late, and may be subject to an FEC enforcement action. We strongly recommend that all PACs appoint assistant treasurers in order to ensure that all reports and responses can be filed in a timely manner.
- **Additional officers:** The PAC must name a custodian of records and has the option of designating one or more assistant treasurers. If the treasurer will also act as the PAC’s custodian of records, indicate “treasurer” in the custodian of records field.
- **Open a bank account:** The Statement of Organization requires that the PAC designate a depository. The depository should be identified on Line 9. If the PAC has bank accounts with multiple banks, all banks should be disclosed. If the PAC has bank accounts with more than two banks, additional banks can be disclosed using a copy of Page 4 of the form.
- **Cover Letter:** The FEC’s Statement of Organization form does not currently allow a PAC to indicate that it is an independent expenditure PAC. Accordingly, a cover letter should be included with the Statement of Organization indicating that the PAC is an independent expenditure committee. A sample cover letter for this purpose is attached to this memorandum as Exhibit 2.

Once the independent expenditure PAC has filed its Statement of Organization with the FEC, there are several other administrative matters the PAC should resolve. The PAC will need to apply for an employer identification number (“EIN”) from the Internal Revenue Service (“IRS”). Additionally, we recommend that the PAC request an electronic filing password from the FEC as soon as possible.

Finally, compliance personnel should consider whether to incorporate the PAC. A federal PAC may incorporate for liability purposes only. Incorporation of the PAC does not absolve the PAC’s treasurer of liability for noncompliance with the campaign finance laws.

III. PAC By-Laws

We recommend that an independent expenditure PAC consider adopting bylaws before making any independent expenditures. The bylaws should establish the PAC's membership and governance structure. For example, we suggest establishing a PAC board that includes an odd number of members to facilitate efficient decision-making. Please contact the Bryan Cave Election Law group if you would like assistance in drafting PAC bylaws.

IV. Contributions to Independent Expenditure PACs

An independent expenditure PAC may solicit and accept unlimited contributions from individuals, federal political committees, corporations, and labor organizations. However, as outlined below, independent expenditure PACs are prohibited from accepting contributions from foreign nationals, federal contractors, national banks, or corporations organized by an act of Congress.

A. Contributions by Foreign Nationals

Independent expenditure PACs are prohibited from accepting contributions from foreign nationals. The definition of "foreign national" does not include individuals with permanent resident status (*i.e.*, green card holders) or U.S. citizens.

B. Contributions By Federal Contractors

Federal government contractors are prohibited from contributing to independent expenditure PACs. Federal government contractors include partnerships and sole proprietors with government contracts, and the personal or business funds of an individual with a government contract.

V. Permissible Independent Expenditure PAC Communications and Activities

An independent expenditure PAC may make unlimited independent expenditures supporting and opposing federal candidates and federal committees. In addition, there are no content restrictions on the public communications that independent expenditure PACs may disseminate; even full-blown express advocacy communications are permissible. Moreover, independent expenditure PACs may disseminate public communications at any time, including in the final weeks and days before a federal election.

As was noted above, an independent expenditure PAC is prohibited from making monetary or in-kind contributions to federal candidates, including disseminating coordinated

communications on behalf of federal candidates.² A group financing independent expenditures must certify under the penalty of perjury that the expenditures were made independently of federal candidates and political party committees.

VI. Solicitations

The Act and FEC regulations allow independent expenditure PACs to engage in a wide variety of fundraising activities to solicit contributions to the PAC.

A. Disclaimers

Certain disclaimers must be included on all independent expenditure PAC solicitations. The following disclaimers must be included on all solicitations and must be clearly readable:

- A “paid for by” disclaimer, which includes the PAC’s name and mailing address or website address, and a statement that the communication was not authorized by any candidate or candidate’s committee;
- An IRS disclaimer, which should be in a separate paragraph or appear as the first disclaimer on the solicitation, informing potential contributors that contributions to the PAC are not tax deductible for federal income tax purposes.
- A disclaimer informing potential contributors that their contributions will be used in connection with federal elections.
- A statement explaining that federal law requires the PAC to use its best efforts to obtain and report the name, address, occupation, and employer information for individuals whose contributions aggregate over \$200 per year. If the contributor does not provide the requested background information with a contribution, the PAC must make a follow-up request either in writing or orally within 30 days of receipt of the contribution. For further information on the FEC’s best efforts requirements, see the Bryan Cave Election Law Group memorandum on that topic.

B. Permissible PAC Solicitation Methods

Independent expenditure PACs may use a wide variety of solicitation techniques and fundraising activities to raise funds for their PACs. Further detail on permissible solicitation methods follows.

² For detailed guidance on the FEC’s coordinated communications regulations and how best to maintain the independence of a PAC’s communications and activities, please contact the Bryan Cave Election Law Group for assistance.

1. Oral Solicitations

Oral solicitations for a PAC may be made in a speech, a meeting, or over the phone. Printed materials with PAC information may be provided or offered when soliciting contributions orally.

2. Mailed Solicitations

The PAC may mail contribution solicitations at any time. A pre-addressed, stamped return envelope may be included with the solicitation.

3. Internet Fundraising Activities

A PAC may solicit contributions through a PAC website.

4. Fundraising Events

A PAC may hold a fundraising event and accept contributions in connection with the event. However, the entire amount paid to attend the event is considered a contribution regardless of the amount the PAC originally paid for the goods or services being provided. For example, if the PAC holds a dinner and charges attendees \$100, each attendee has made a \$100 contribution to the PAC even if the PAC paid \$30 per person to hold the dinner.

Similarly, if the PAC sells fundraising items, the entire purchase price is the amount of the contribution. For example, if a PAC sells T-shirts for \$15, each person who purchases a T-shirt has made a \$15 contribution regardless of the PAC's cost of producing the shirts.

For further information on PAC fundraising rules, please see the Bryan Cave Election Law Group memorandum on Key FEC Rules Governing Fundraising.

VII. Investing PAC Funds

Independent expenditure PACs may choose to invest funds in an interest or dividend-bearing account. The bank or financial institution must be listed as a campaign depository on the PAC's Statement of Organization. Any interest or dividend receipts should be disclosed on Line 17 of FEC Form 3X.

An independent expenditure PAC must pay any federal or state taxes owed on interest or dividend income.

VIII. Independent Expenditure PAC Reporting Obligations

Independent expenditure PACs are required to file disclosure reports with the FEC on a quarterly³ or monthly basis. Quarterly filers need only submit semi-annual reports during a non-election year. Please see Attachment 3 to this memorandum for further detail on FEC reporting schedules. If an independent expenditure PAC reaches a certain level of financial activity, the PAC is required to file reports electronically. Please consult the Bryan Cave Election Law Group memorandum on reporting requirements and electronic filing rules for further information on these subjects.

Independent expenditure PACs are also subject to special FEC reporting requirements concerning independent expenditures. In addition to the required quarterly or monthly FEC reports discussed above, special independent expenditure reporting requirements may be triggered within specific time frames. If an independent expenditure PAC makes independent expenditures aggregating \$10,000 or more through the 20th day before an election, it must file a 48-hour notice with the FEC within 48 hours of the communication's dissemination. If the PAC makes independent expenditures aggregating \$1,000 or more on or after the 19th day before an election but at least 24 hours before the election, the individual must file a 24-hour notice with the FEC within 24 hours of the communication's dissemination.

For reporting purposes, independent expenditures are aggregated on a per-election, per-office-sought basis. For example, if a PAC makes an independent expenditure supporting candidate A in the 2010 primary election for the U.S. Senate in Massachusetts, the independent expenditure should be aggregated with any other independent expenditures opposing candidate B in the 2010 primary election for U.S. Senate in Massachusetts.

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Please do not hesitate to contact the Bryan Cave Election Law Group if you have any further questions on how to establish and operate a federal independent expenditure PAC.

³ Quarterly filers may also be subject to pre-primary and pre-general reporting requirements.

**FEC
FORM 1**

**STATEMENT OF
ORGANIZATION**

Office Use Only

1. NAME OF COMMITTEE (in full)

(Check if name is changed)

Example: If typing, type over the lines.

12FE4M5

ADDRESS (number and street)

(Check if address is changed)

CITY

STATE

ZIP CODE

COMMITTEE'S E-MAIL ADDRESS (Please provide only one e-mail address)

(Check if address is changed)

COMMITTEE'S WEB PAGE ADDRESS (URL)

(Check if address is changed)

2. DATE

____/____/____

3. FEC IDENTIFICATION NUMBER

C_____

4. IS THIS STATEMENT

NEW (N)

OR

AMENDED (A)

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

Type or Print Name of Treasurer _____

Signature of Treasurer _____

Date

____/____/____

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g.

ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS.

Office
Use
Only

For further information contact:
Federal Election Commission
Toll Free 800-424-9530
Local 202-694-1100

FEC FORM 1
(Revised 02/2009)

5. TYPE OF COMMITTEE

Candidate Committee:

- (a) This committee is a principal campaign committee. (Complete the candidate information below.)
- (b) This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)

Name of Candidate _____

Candidate Party Affiliation Office Sought: House Senate President State District

- (c) This committee supports/opposes only one candidate, and is NOT an authorized committee.

Name of Candidate _____

Party Committee:

- (d) This committee is a (National, State or subordinate) committee of the (Democratic, Republican, etc.) Party.

Political Action Committee (PAC):

- (e) This committee is a separate segregated fund. (Identify connected organization on line 6.) Its connected organization is a:
 - Corporation Corporation w/o Capital Stock Labor Organization
 - Membership Organization Trade Association Cooperative
 - In addition, this committee is a Lobbyist/Registrant PAC.
- (f) This committee supports/opposes more than one Federal candidate, and is NOT a separate segregated fund or party committee. (i.e., nonconnected committee)
 - In addition, this committee is a Lobbyist/Registrant PAC.
 - In addition, this committee is a Leadership PAC. (Identify sponsor on line 6.)

Joint Fundraising Representative:

- (g) This committee collects contributions, pays fundraising expenses and disburses net proceeds for two or more political committees/organizations, at least one of which is an authorized committee of a federal candidate.
- (h) This committee collects contributions, pays fundraising expenses and disburses net proceeds for two or more political committees/organizations, none of which is an authorized committee of a federal candidate.

Committees Participating in Joint Fundraiser

1. _____ FEC ID number _____
2. _____ FEC ID number _____
3. _____ FEC ID number _____
4. _____ FEC ID number _____

Write or Type Committee Name

6. Name of Any Connected Organization, Affiliated Committee, Joint Fundraising Representative, or Leadership PAC Sponsor

Two rows of grid boxes for entering the organization name.

Mailing Address

Grid boxes for entering the mailing address, including fields for city, state, and zip code.

CITY

STATE

ZIP CODE

Relationship: Connected Organization Affiliated Committee Joint Fundraising Representative Leadership PAC Sponsor

7. Custodian of Records: Identify by name, address (phone number -- optional) and position of the person in possession of committee books and records.

Full Name

Grid box for entering the full name.

Mailing Address

Grid boxes for entering the mailing address, including fields for city, state, and zip code.

Title or Position

CITY

STATE

ZIP CODE

Grid box for entering the title or position.

Telephone number

Grid boxes for entering the telephone number.

8. Treasurer: List the name and address (phone number -- optional) of the treasurer of the committee; and the name and address of any designated agent (e.g., assistant treasurer).

Full Name of Treasurer

Grid box for entering the full name of the treasurer.

Mailing Address

Grid boxes for entering the mailing address, including fields for city, state, and zip code.

CITY

STATE

ZIP CODE

Title or Position

Grid box for entering the title or position.

Telephone number

Grid boxes for entering the telephone number.

Full Name of Designated Agent

[Grid for Full Name of Designated Agent]

Mailing Address

[Grid for Mailing Address Line 1]

[Grid for Mailing Address Line 2]

[Grid for Mailing Address Line 3]

CITY

STATE

ZIP CODE

Title or Position

[Grid for Title or Position]

Telephone number

[Grid for Telephone number]

9. **Banks or Other Depositories:** List all banks or other depositories in which the committee deposits funds, holds accounts, rents safety deposit boxes or maintains funds.

Name of Bank, Depository, etc.

[Grid for Name of Bank, Depository, etc.]

Mailing Address

[Grid for Mailing Address Line 1]

[Grid for Mailing Address Line 2]

[Grid for Mailing Address Line 3]

CITY

STATE

ZIP CODE

Name of Bank, Depository, etc.

[Grid for Name of Bank, Depository, etc.]

Mailing Address

[Grid for Mailing Address Line 1]

[Grid for Mailing Address Line 2]

[Grid for Mailing Address Line 3]

CITY

STATE

ZIP CODE

Attachment 2: Statement of Organization Cover Letter

[PAC Name]
[PAC Address]

[Date]

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

Re: Form 1, Statement of Organization – Unlimited Contributions

To Whom It May Concern:

This committee intends to make independent expenditures, and consistent with the U.S. Court of Appeals for the District of Columbia Circuit decision in *Speech Now v. FEC*, it therefore intends to raise funds in unlimited amounts. This committee will not use those funds to make contributions, whether direct, in-kind, or via coordinated communications, to federal candidates or committees.

Respectfully submitted,

[Treasurer Name]
Treasurer, [PAC Name]

Attachment 3: Independent Expenditure PAC FEC Reporting Schedules

Monthly Filing-Non-Election Year

February Monthly	January 1-January 31	February 20
March Monthly	February 1-February 28	March 20
April Monthly	March 1-March 31	April 20
May Monthly	April 1-April 30	May 20
June Monthly	May 1-May 31	June 20
July Monthly	June 1-June 30	July 20
August Monthly	July 1-July 31	August 20
September Monthly	August 1-August 31	September 20
October Monthly	September 1-September 30	October 20
November Monthly	October 1-October 31	November 20
December Monthly	November 1-November 30	December 20
Year End	December 1-December 31	January 31

Monthly Filing-Election Year

February Monthly	January 1-January 31	February 20
March Monthly	February 1-February 28	March 20
April Monthly	March 1-March 31	April 20
May Monthly	April 1-April 30	May 20
June Monthly	May 1-May 31	June 20
July Monthly	June 1-June 30	July 20
August Monthly	July 1-July 31	August 20
September Monthly	August 1-August 31	September 20
October Monthly	September 1-September 30	October 20
12 Day Pre-General	October 1 st - 20 th day before the election	12 days before the election Postmarked 15 days before the election if sent by registered/certified
30 Day Post-General	19 th day before the election-20 th day after the election	30 days after the election
Year End	21 st day after the election-December 31 st	January 31 st

Quarterly Filing-Non-Election Year

Mid-Year	January 1-June 30	July 31
Year End	July 1-December 31	January 31
Pre-Election Report (Pre-Primary, Pre-General, Pre-Convention or Pre- Runoff) ¹	First day of the current reporting period through the 20 th day before the election	12 days before the election Postmarked 15 days before the election if sent by registered/certified
Post-Election Report (Post-General, Post-Runoff)	First day of the current reporting period through the 20 th day after the election	30 days after the election

Quarterly Filing-Election Year

April Quarterly	January 1-March 31	April 15
July Quarterly	April 1-June 30	July 15
October Quarterly	July 1-September 30	October 15
Year End	21 st day after the election- December 31	January 31
Pre-Election Report (Pre-Primary, Pre-General, Pre-Convention or Pre- Runoff) ¹	First day of the current reporting period through the 20 th day before the election	12 days before the election Postmarked 15 days before the election if sent by registered/certified
Post-Election Report (Post-General, Post-Runoff) ²	First day of the current reporting period through the 20 th day after the election	30 days after the election

¹ Quarterly filers need only file a pre-election report if the PAC makes an independent expenditure on behalf of a federal candidate running in that election during the pre-election reporting period.

² If the PAC is not required to file a pre-general report, the coverage dates for the pre-general report should be included in the post-general report.