

Separate Segregated Funds and Nonconnected PACs

Federal Election Commission

Please Note: Portions of this publication may be affected by the Supreme Court's decision in Citizens United v. FEC on January 21, 2010 (http://www.fec.gov/law/litigation/cu_sc08_opinion.pdf). Essentially, the Court's ruling permits corporations and labor organizations to use treasury funds to make independent expenditures in connection with federal elections and to fund electioneering communications. The ruling did not affect the ban on corporate or union contributions or the reporting requirements for independent expenditures and electioneering communications. The Commission is studying the Court's opinion and will provide additional guidance as soon as possible.

The press and public refer to all nonparty, noncandidate committees as PACs or political action committees. However, the Act and Commission Regulations distinguish between two types of PACs: separate segregated funds and nonconnected political committees (or nonconnected PACs). The article below discusses some of the major differences between these two types of political committees.

What is the principal difference between separate segregated funds and other PACs?

The Act prohibits corporations (profit or nonprofit), labor organizations and incorporated membership organizations from making direct contributions or expenditures in connection with federal elections. 2 U.S.C. §441b. These organizations may, however, sponsor a separate segregated fund (SSF), popularly called a PAC, which collects contributions from a limited class of individuals and uses this money to make contributions and expenditures to influence federal elections. 11 CFR 100.6. As the sponsor of the SSF (i.e., its “connected organization”), the corporation, labor organization or incorporated membership organization may absorb all the costs of establishing and operating the SSF and soliciting contributions to it. These administrative expenses are fully exempted from the Act’s definitions of “contribution” and “expenditure.” 11 CFR 114.1(a)(2)(iii).

By contrast, a nonconnected political committee, another type of PAC, is financially independent. This means that the nonconnected political committee must pay for its own administrative expenses, using the contributions it raises. Although an organization may spend funds to establish or support a nonconnected PAC, these expenditures are considered contributions to the PAC and are subject to the dollar limits and other requirements of the Act.

Do the reporting requirements vary for SSFs and nonconnected PACs?

Yes. An SSF is not required to report any fundraising or administrative expenses that are paid for by its sponsoring organization. (The SSF must, however, report these expenses if it pays for them.) On the other hand, a nonconnected PAC must report all its operating and solicitation expenses.

Are different restrictions placed on the groups of individuals who may be solicited by SSFs and nonconnected political committees?

Yes. SSFs may solicit only certain groups of individuals specifically identified in the Act and Commission Regulations, while nonconnected PACs may solicit contributions from the general

public. For example, a corporation with capital stock and its SSF may solicit only the corporation's stockholders, executive and administrative personnel and the families of both groups. 11 CFR 114.5(g)(1). A labor union and its SSF may solicit only union members and their families. 11 CFR 114.5(g)(2). Twice a year, SSFs and their sponsoring organizations may expand their solicitations to include certain individuals outside the normal restrictions; the expanded groups are also specifically limited by the law. 11 CFR 114.6.

Do SSFs have any special requirements in soliciting contributions that independent PACs do not have?

Yes. For example, under Commission Regulations, SSFs must inform their solicitees of the political purpose of the SSF and of the individual's right to refuse to contribute without reprisal. SSFs are specifically prohibited from using threats of physical force, job discrimination or financial reprisal when soliciting contributions. Moreover, if the SSF uses a guideline in soliciting contributions, the solicitees must be informed that they are free to contribute more or less than the amount stated. In addition, SSFs may not accept as contributions any dues or fees obtained as a condition of membership or employment. 11 CFR 114.5(a).

Independent political committees are not subject to these solicitation restrictions. On the other hand, solicitations by independent PACs that are made through public political advertising must include an authorization notice indicating who paid for and authorized the solicitation. This type of notice is not required on SSF solicitations. 11 CFR 110.11(a)(3).

Do the registration requirements for an SSF differ from those for independent PACs?

Yes. An SSF must register within 10 days of its establishment by its sponsoring organization. 11 CFR 102.1(c). An independent PAC, however, must register as a political committee within 10 days after it has received contributions or made expenditures aggregating in excess of \$1,000. 11 CFR 102.1(d).

Are the titles chosen for SSFs and independent PACs subject to different requirements?

Yes. The Act and Commission Regulations require an SSF to include the name of its sponsoring organization in its official title. 2 U.S.C. §432(e)(5); 11 CFR 102.14(c). The Act places no such restriction on the title that an independent PAC uses. Neither committee, however, may include the name of a candidate in its title.

May both an SSF and an independent PAC contribute up to \$5,000 to each of a candidate's election campaigns?

Yes. Provided the SSF or the independent PAC has qualified as a multicandidate committee by:

- 1) having been registered with the Commission at least six months,
 - 2) having received contributions from over 50 persons, and
 - 3) having made contributions to at least five candidates for federal office.
- 2 U.S.C. §441a(a)(5).

What other requirements of the Act and FEC Regulations apply to both SSFs and independent PACs?

Most of the basic requirements of the Act and Regulations are the same for SSFs and independent political committees. For example, the prohibitions and limits on contributions apply equally to both SSFs and independent PACs. In addition, both types of committees must fulfill the same basic recordkeeping and reporting requirements, although an SSF does not have to report operating expenses paid for by its sponsoring organization (see above). Finally, SSFs and independent PACs may support candidates in the same ways, that is, by making monetary and in-kind contributions to candidates, by contributing to their political parties and by making independent expenditures to support or oppose candidates.