



## New Disclaimers for PAC Public Communications, Public Emails and Public Websites

Implementing section 311 of the Bipartisan Campaign Reform Act of 2002 (BCRA), the Federal Election Commission issued final rules regarding, among other things, disclaimers on November 25, 2002. For PACs, the disclaimers apply to communications to the general public—by means of broadcast, newspapers, billboards, mass mailings, telephone banks, etc.—and to electioneering communications. An amendment to the rules made by Commissioner Thomas makes the new disclaimer requirements applicable to unsolicited emails of more than 500 substantially similar communications and to the websites of political committees, including PACs, accessible by the general public. The new rules do not affect PAC or corporate communications to, or websites available only to, the restricted class of a corporation or trade association. Such disclaimers would apply to independent expenditures and to coordinated communications by PACs that are considered to be contributions to candidates or parties.

For persons other than PACs, the disclaimers apply to public communications that expressly advocate the election or defeat of a clearly identified candidate, electioneering communications, and solicitations for contributions.

The new disclaimer requirements pertinent to PACs are as follows:

- ◆ If the communication is authorized by a candidate, his or her authorized committee, or an agent thereof but is paid for by any other person, the disclaimer must clearly state that the communication is paid for by such other person and is authorized by the candidate, committee, or agent.
- ◆ If the communication is not authorized by a candidate, his or her committee, or an agent thereof, the disclaimer must state the full name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication and that the communication is not authorized by any candidate or candidate's committee.

The disclaimer must appear in a printed box set apart from the other contents of the communication. Other specific disclaimer requirements, which vary by the medium used for the communication (*e.g.*, printed matter, television, radio) also appear in the final rules, which will be published shortly in the Federal Register. ◆

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### Upcoming Filing Dates

#### FEC (for federal PACs)

- ◆ 2002 Year End Report .....January 31, 2003

#### IRS (for nonfederal PACs)

- ◆ 2002 Year Form 8872 .....January 31, 2003

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## Post-Bipartisan Campaign Reform Act Contribution Chart

The Bipartisan Campaign Reform Act of 2002 (BCRA) became effective on November 6, 2002. This new law changes the political arena in many ways. Below is a contribution chart to help corporations, trade associations, and their federal PACs navigate the new political landscape.

Type of Organization	From Corporations to:		From Federal PACs to:	
	Permitted?	Limit	Permitted?	Limit
<b>Leadership PACs<sup>1</sup></b>				
Federal Account	No	N/A	Yes	\$5,000/year <sup>2</sup>
Nonfederal Account	No <sup>3</sup>	N/A	Yes	\$5,000/year <sup>4</sup>
<b>National Political Party Committees</b>	No	N/A	Yes	\$15,000/year <sup>5</sup>
<b>State, District &amp; Local Party Committees</b>				
Federal Account	No	N/A	Yes	\$5,000/year <sup>6</sup>
Nonfederal Account	Per state law	Per state law	Per state law	Per state law
Levin Account <sup>7</sup>	Per state law	\$10,000 or per state law, whichever is lower <sup>8</sup>	Per state law	\$10,000 or per state law, whichever is lower <sup>9</sup>
Building Fund	Per state law	Per state law	Per state law	Per state law
<b>527 PACs<sup>10</sup></b>				
Nonfederal 527 PACs	Yes	Unlimited	Yes	Unlimited
State 527 PACs	Per state law	Per state law	Per state law	Per state law
<b>501(c)(4) Social Welfare Organizations</b>	Yes <sup>11</sup>	Unlimited	Yes	Unlimited <sup>12</sup>
<b>501(c)(6) Trade Associations</b>	Yes	Unlimited	Yes	Unlimited

<sup>1</sup> An account, whether federal or nonfederal, directly or indirectly established, financed, maintained, or controlled by a federal candidate or officeholder that is not his or her campaign committee.

<sup>2</sup> If a federal leadership PAC has both federal and nonfederal accounts, a corporate PAC may only contribute a total of \$5,000 per year to both accounts combined. 67 Fed. Reg. 49,064, 48,107 (July 29, 2002) (Explanation and Justification of Final Rules on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money).

<sup>3</sup> 11 CFR 300.62; *see also* 67 Fed. Reg. 49,064, 48,107 (July 29, 2002) (Explanation and Justification of Final Rules on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money).

<sup>4</sup> 11 CFR 300.62 (prohibiting a candidate or officeholder from soliciting, receiving, directing, transferring, spending, or disbursing funds in excess of the Federal Election Campaign Act's (Act) limitations).

<sup>5</sup> 11 CFR 300.10 (prohibiting parties from soliciting or receiving any funds not subject to the Act's limitations).

<sup>6</sup> 11 CFR 300.30(b)(3)(i) (“[o]nly contributions that are permissible pursuant to the limitations and prohibitions of the Act may be deposited into any Federal account”).

<sup>7</sup> An account at a campaign depository established by a state, district, or local committee of a political party pursuant to 11 CFR 300.30, for purposes of making expenditures or disbursements for “federal election activity” or nonfederal activity (subject to state law) under 11 CFR 300.32. 11 CFR 300.2(h). Federal election activity includes: (1) voter registration activities within 120 days of a regularly scheduled federal election; (2) voter identification conducted in connection with

an election for a federal office; and (3) “issue advertising” that refers to and “promotes, supports, attacks or opposes” a clearly identified candidate for federal office. BCRA § 101 (2 U.S.C. § 431(20)).

<sup>8</sup> The FEC's new regulations apply the \$10,000 calendar year limit to “any person (including any entity established, financed, maintained, or controlled by such person),” 11 CFR 300.31(d)(1). Thus the limit would seem to apply to a corporation and its PAC cumulatively.

<sup>9</sup> *See* footnote 8, *supra*, as to the aggregation of contributions from a corporation and its federal PAC for purposes of the \$10,000 limit.

<sup>10</sup> An organization exempt from taxation under section 527 of the Internal Revenue Code and not filing with the Federal Election Commission (FEC). A “state 527” is registered with a state. A “nonfederal 527” is not registered with the FEC or with any state.

<sup>11</sup> According to the BCRA, incorporated 501(c)(4) organizations are prohibited from making “electioneering communications.” In addition, unincorporated 501(c)(4) organizations may not use funds from accounts that receive corporate contributions to make “electioneering communications.”

<sup>12</sup> To the extent that contributions from a federal PAC to 501(c)(4) and 501(c)(6) organizations become large, it is important to note that the PAC's exemption from taxation under section 527 is based upon “exempt functions” or political activities being its primary purpose. The PAC would not want to place this exemption in jeopardy. *See* I.R.C. § 527(e)(1) (definition of “political organization”). ♦

## Interim Electioneering Communication Reporting

Pursuant to the Bipartisan Campaign Reform Act of 2002, any individual or group that makes electioneering communications in excess of \$10,000 must report to the FEC within 24 hours. Sec. 201. The FEC issued an Interim Reporting Policy on November 21, 2002 to cover any reportable activity occurring before the FEC issues its final reporting rules and makes the new reporting forms available for use. The Interim Reporting Policy applies to the special election in Hawaii for the state's Second Congressional District, which is to be held on January 4, 2003.

According to the Interim Reporting Policy, the individual or person making the electioneering communications must fax or email a report to the FEC within 24 hours. The electioneering communication reports must disclose the following information:

- ◆ The name, address, occupation and name of employer or principal place of business of the individual or person making the communication;
- ◆ The name, address, occupation and name of employer or principal place of business of any person sharing or exercising control over the person making the communication;
- ◆ The name, address, occupation and name of employer or principal place of business of the custodian of the books and accounts from which the disbursements for the communication was made;

- ◆ If the person making the communication pays for it exclusively from a segregated bank account, the name and address of persons who donate \$1,000 or more to that account, including the date and amount of those donations;
- ◆ If the person making the communication does not pay for it exclusively from a segregated bank account, the name and address of persons who donate \$1,000 or more to the person making the communication, including the date and amount of those donations;
- ◆ Disbursements of more than \$200, including the name and address of the payee, date, amount and purpose of the disbursement, the name of the federal candidate, and the election identified in the communication;
- ◆ The total donations received and disbursements made in the report;
- ◆ The aggregate disbursements year-to-date;
- ◆ The disclosure date (*i.e.*, the date when the communication was first publicly distributed); and
- ◆ The following statement: "Under penalty of perjury, I certify that this report is true, correct and complete" followed by the name/signature of the person making the statement and the date. ◆

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## FEC Approves Final Coordination Rules

In final rules promulgated on December 5, 2002, the Federal Election Commission defined the parameters of coordination in light of the mandates contained in the Bipartisan Campaign Reform Act of 2002. Under the new rules, both content and conduct standards must be implicated in order for the FEC to find that a communication was impermissibly coordinated with a candidate, an authorized committee, or a political party committee. This definition of coordination is important because, if coordination is found, a communication by a third party such as a PAC or a corporation becomes an in-kind contribution to a candidate or party and subject to the limitations and prohibitions of the Federal Election Campaign Act. In short, a coordinated corporate communication becomes an illegal corporate contribution.

Under the content prong of the FEC's two-part test, a communication must be one of the following types in order to be subject to the coordination analysis:

- ◆ An electioneering communication
- ◆ Express advocacy
- ◆ Republication, redistribution, and dissemination of campaign materials

- ◆ A public communication that refers to a political party or a clearly identified candidate for federal office and is disseminated within 120 days of an election, convention or caucus

If the content of the communication is covered by one of the categories above, then the communication will be considered to be coordinated if any of the following types of conduct has occurred:

- ◆ The covered communication was created, produced, or distributed *at the request or suggestion of* a candidate, authorized committee, political party committee or agent of any of the foregoing.
- ◆ A candidate, authorized committee, political party committee, or agent of any of the foregoing was *materially involved* in decisions regarding the content, intended audience, size, prominence, duration, timing, or frequency of the covered communication, the means or mode of communication or the specific media outlet used for the covered communication.
- ◆ The covered communication was created, produced, or distributed *after one or more substantial discussions* about the covered communication between the person paying for the communication (or its employees or agents) and the candidate

*continued on page 7*

# Contribution Limits – Effective January 1, 2003

## To Candidates, PACs & Local Party Committees

Donors	Recipients		
	Candidate Committee	SSF <sup>1</sup>	Local Party Committee <sup>2</sup>
Corporation or Union	Contributions prohibited	Contributions prohibited	\$10,000 maximum per year in “Levin money” subject to state law
Individual <sup>3 4</sup> (Election & Yearly Limits)	\$2,000 per election	\$5,000 per year	Generally shares \$10,000 per year state party committee limit; additional \$10,000 maximum per year in “Levin money” subject to state law
Individual <sup>3 4</sup> (Aggregate Limits)	\$37,500 two-year aggregate limit on contributions to federal candidates	\$37,500 two-year aggregate limit <sup>6</sup> on contributions to state party committees, PACs and other non-national party political committees	\$37,500 two-year aggregate limit <sup>6</sup> on contributions to state party committees, PACs and other non-national party political committees
Local Party Committee <sup>2</sup>	\$5,000 per election combined limit	\$5,000 per election combined limit	Unlimited transfers to other party committees
State Party Committee <sup>2</sup> (Multi-candidate) <sup>7</sup>	\$5,000 per election combined limit	\$5,000 per election combined limit	Unlimited transfers to other party committees
National Party Committee <sup>3</sup> (Multi-candidate) <sup>8</sup>	\$5,000 per election	\$5,000 per year	Unlimited transfers to other party committees
SSF <sup>1</sup> (Multi-candidate) <sup>8</sup>	\$5,000 per election	\$5,000 per year	Generally shares \$5,000 per year state party committee limit
SSF <sup>1</sup> (Not Multi-candidate) <sup>8</sup>	\$2,000 per election	\$5,000 per year	Generally shares \$10,000 per year state party committee limit

<sup>1</sup> “Separate Segregated Funds” or federal PACs. These limits also apply to nonconnected committees. Affiliated committees share the same set of limits on contributions received and made.

<sup>2</sup> A state party committee shares its limits with local party committees in that state unless a local committee’s independence can be demonstrated.

<sup>3</sup> A party’s national committee, Senate campaign committee and House campaign committee are each considered national party committees, and each have separate limits, except with respect to Senate candidates. See Special Limits column.

<sup>4</sup> The limits on individual contributions to candidate and party committees and on individual aggregate contributions are indexed for inflation starting in 2003.

<sup>5</sup> Contributions by minors 17 years old and younger are prohibited.

<sup>6</sup> Aggregate two-year individual contribution limits are applicable to time periods beginning on January 1 of odd-numbered years and extending to December 31 of even-numbered years.

<sup>7</sup> A multi-candidate committee is a political committee that has been registered for at least 6 months, has received contributions from more than 50 contributors and – with the exception of a state party committee – has made contributions to at least 5 federal candidates.

<sup>8</sup> This limit is shared by the national committee and the Senate campaign committee. ♦

*If you have any questions or would like any additional information, please contact a member of Wiley Rein & Fielding’s Election Law & Government Ethics Group at 202.719.7000 or visit the website at [www.wrf.com](http://www.wrf.com). We welcome the opportunity to discuss any matter of specific concern to you or to tell you more about our practice and our capabilities.*

# Contribution Limits – Effective January 1, 2003

## To State & National Party Committees

Donors	Recipients		
	State Party Committee <sup>2</sup>	National Party Committee <sup>1</sup>	Special Limits
Corporation or Union	\$10,000 maximum per year in “Levin money” subject to state law	Contributions prohibited	
Individual <sup>3 4</sup> (Election & Yearly Limits)	\$10,000 per year, additional \$10,000 maximum per year in “Levin money” subject to state law	\$25,000 annual aggregate limit on all national party committees combined	
Individual <sup>3 4</sup> (Aggregate Limits)	\$37,500 two-year aggregate limit <sup>6</sup> on contributions to state party committees, PACs and other non-national party political committees		\$57,500 two-year aggregate limit to non-candidate political committees; \$95,000 overall aggregate two-year hard money contribution limit
Local Party Committee <sup>2</sup>	Unlimited transfers to other party committees		
State Party Committee <sup>2</sup> (Multi-candidate) <sup>7</sup>	Unlimited transfers to other party committees		
National Party Committee <sup>3</sup> (Multi-candidate) <sup>8</sup>	Unlimited transfers to other party committees		\$35,000 to Senate candidates per campaign <sup>5</sup>
SSF <sup>1</sup> (Multi-candidate) <sup>8</sup>	\$5,000 per year	\$15,000 per year	
SSF <sup>1</sup> (Not Multi-candidate) <sup>8</sup>	\$10,000 per year	\$25,000 annual aggregate limit on all national party committees combined	

<sup>1</sup> “Separate Segregated Funds” or federal PACs. These limits also apply to nonconnected committees. Affiliated committees share the same set of limits on contributions received and made.

<sup>2</sup> A state party committee shares its limits with local party committees in that state unless a local committee’s independence can be demonstrated.

<sup>3</sup> A party’s national committee, Senate campaign committee and House campaign committee are each considered national party committees, and each have separate limits, except with respect to Senate candidates. See Special Limits column.

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## Developments in the States

### Colorado—Campaign Finance

On November 5, Colorado voters approved Amendment 27 by a margin of 66% to 34%. This ballot measure amends the state's constitution in several ways, some of which are discussed below, and became effective on December 6, 2002.

First, Amendment 27 prohibits corporations and labor organizations from making contributions to candidates and parties. Sec. 3(4)(a). The term "contribution," however, does not include, among other things, the cost of establishing, administering and soliciting funds from employees for a PAC. Sec. 2(5)(b).

Second, Amendment 27 prohibits corporations and labor organizations from making "expenditures expressly advocating the election or defeat of a candidate." Sec. 3(4)(a). This includes funding for "electioneering communications." Sec. 6(2).

"Electioneering communications" under this new Colorado law means "any communication broadcast by television or radio, printed in a newspaper or on a billboard, directly mailed or delivered by hand to personal residences or otherwise distributed that: (I) unambiguously refers to any candidate; (II) is broadcast, printed, mailed, delivered or distributed within thirty days before a primary election or sixty days before a general election; and (III) is broadcasted to, printed in a newspaper distributed to, mailed to, delivered by hand to, or otherwise distributed to an audience that includes members of the electorate for such public office." Sec. 2(7)(a). The definition for "electioneering communications" under the ballot measure does not include, among other things, "any communication by persons made in the regular course and scope of their business," "any communication made by a membership organization solely to members of such organization and their families" and "any communication that refers to any candidate only as part of the popular name of a bill or statute." Sec. 2(7)(b).

Third, Amendment 27 lowers to \$500 the limits for contributions from individuals and PACs to candidates for:

- ◆ Governor
- ◆ Lieutenant Governor
- ◆ Governor and Lieutenant Governor jointly for the general election
- ◆ Secretary of State
- ◆ State Treasurer
- ◆ Attorney General

Sec. 3(1)(a). The limit is lowered to \$200 per election for contributions to candidates for the following offices:

- ◆ State Senate
- ◆ State House of Representatives
- ◆ State Board of Education
- ◆ Regent of the University of Colorado
- ◆ District Attorney

Sec. 3(1)(b). There are different and higher limits for "small donor committees."

Fourth, state PACs in Colorado may not receive more than \$500 per House of Representatives election cycle (2 years) from any person. Sec. 3(5)

Fifth, state parties are prohibited from receiving more than \$2,500 per year at the state level and \$3,000 per year at the state, county, district and local level combined from any person. Sec. 3(b)(3). All limits will be adjusted for inflation on a four-year cycle starting in 2007. Sec. 3(13).

Finally, there are new reporting requirements for persons making independent expenditures and electioneering communications of \$1,000 or more per calendar year. Secs. 5 & 6.

### Pennsylvania—Lobbying

On October 23, the Pennsylvania Supreme Court issued a *per curiam* order denying reargument in the case of *Gmerek v. State Ethics Commission*. Because of this action, the earlier decision of the Commonwealth Court stands, which held that the state's Lobbying Disclosure Act was void. (The Pennsylvania Supreme Court had previously split 3-3 on the merits of the appeal on August 23.) Accordingly, the Pennsylvania State Ethics Commission now considers the Lobbying Disclosure Act to be void. The Commission is no longer administering the Lobbying Disclosure Act and is not accepting filings or registration fees under the Act. ◆

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## BCRA Rulemaking at the FEC

Since the Bipartisan Campaign Reform Act of 2002 became law on March 27, 2002, the Federal Election Commission has been working, under statutory mandates, to issue regulations regarding the operation of the new law. The FEC has finalized rules in many of the areas, but several areas, including coordination, remain unresolved.

### Completed Rulemakings

The final rules that have been issued, and the websites on which they can be found, are as follows:

- ◆ **Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money;** final rules published on July 29, 2002 with an effective date of November 6, 2002, available at [http://www.fec.gov/pdf/nprm/soft\\_money\\_nprm/fr67n145p49063.pdf](http://www.fec.gov/pdf/nprm/soft_money_nprm/fr67n145p49063.pdf).
- ◆ **Electioneering Communications;** final rules published on October 23, 2002 with an effective date of November 22, 2002, available at [http://www.fec.gov/pdf/nprm/electioneering\\_comm/fr67n205p65189.pdf](http://www.fec.gov/pdf/nprm/electioneering_comm/fr67n205p65189.pdf).
- ◆ **Contribution Limitations and Prohibitions;** final rules published on November 19, 2002 with an effective date of January 1, 2003, available at [http://www.fec.gov/pdf/nprm/contribution\\_lim\\_pro/fr67n223p69927.pdf](http://www.fec.gov/pdf/nprm/contribution_lim_pro/fr67n223p69927.pdf).
- ◆ **Disclaimers, Fraudulent Solicitations, Civil Penalties and Personal Use of Campaign Funds;** approved by the FEC on November 25, 2002 (The final rule has not been published in the Federal Register).

- ◆ **Coordinated and Independent Expenditures;** Notice of Proposed Rulemaking (NPRM) of September 24, 2002 available at [http://www.fec.gov/pdf/nprm/coord\\_and\\_ind\\_expenditures/fr67n185p60041.pdf](http://www.fec.gov/pdf/nprm/coord_and_ind_expenditures/fr67n185p60041.pdf) (The final rules were approved on December 5, 2002 and are not yet available online).
- ◆ **Consolidated Reporting;** NPRM of October 21, 2002 available at [http://www.fec.gov/pdf/nprm/consolidated\\_reporting/fr67n203p64555.pdf](http://www.fec.gov/pdf/nprm/consolidated_reporting/fr67n203p64555.pdf). (The final rules were approved on December 12, 2002 and are not yet available online).

### Pending Rulemakings

The following rulemaking proceeding is ongoing at the FEC:

- ◆ **Leadership PACs;** NPRM of December 12, 2002; (The NPRM has not yet been published in the Federal Register).

### Upcoming Rulemakings

The following rulemaking proceeding is planned by the FEC:

- ◆ **Millionaire's Amendment;** an interim final rule is to be published on December 19, 2002 according to the FEC's Rulemaking Calendar (rev. 7/17/02). ◆

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## FEC Approves Final Coordination Rules

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- who is clearly identified in the communication, his or her authorized committee, his or her opponent or opponent's authorized committee, a political party committee or an agent of any of the foregoing.
- ◆ A *political or media vendor common*, during the current election cycle, to the person paying for the communication and the candidate who is clearly identified in the covered communication, his or her opponent or the opponent's authorized committee, or a political party committee or an agent of any of the foregoing *uses or conveys to the person paying for the covered communication:* i) information about the clearly identified candidate's campaign plans, projects, activities, or needs or his or her opponent's campaign plans, projects, activities or needs; or ii) information used previously by the common vendor in providing services to the candidate who is clearly identified in the covered communication or his or her authorized committee, opponent or opponent's authorized committee, a political party committee or agent of any of the foregoing. *This information must be material to the creation, production or distribution of the covered communication.*
  - ◆ A *former employee or independent contractor* of the candidate who is clearly identified in the covered communication, his or her opponent or the opponent's authorized committee, or a political party committee or an agent of any of the foregoing *uses or conveys to the person making the covered communication:* i) information about the clearly identified candidate's campaign plans, projects, activities, or needs or his or her opponent's campaign plans, projects, activities or needs; or ii) information used by the former employee or independent contractor in providing services to the candidate who is clearly identified in the covered communication or his or her authorized committee, or opponent, or opponent's authorized committee, political party committee or agent of any of the foregoing. *This information must be material to the creation, production or distribution of the covered communication.* ◆

*For more information on the new coordination rules, contact Jan Baran (202.719.7330 or [jbaran@wrf.com](mailto:jbaran@wrf.com)) or Mark Renaud (202.719.7405 or [mrenaud@wrf.com](mailto:mrenaud@wrf.com)).*

# Current IRS Reporting Requirements

As was reported in Wiley, Rein & Fielding's November 8 *Election Law News ALERT*, a recent federal statute changed the IRS reporting requirements for PACs and other political organizations that are exempt from taxation under section 527 of the Internal Revenue Code.

In short, what Public Law No. 108-276 (Nov. 2, 2002) defines as "qualified state or local political organizations" (QSLPOs) are no longer required to file the periodic IRS Form 8872 and must file the annual information return, Form 990, only if they have more than \$100,000 in gross receipts for a taxable year.

A QSLPO is a state or local PAC that (1) focuses solely on state and local offices, (2) reports with a state, which makes the reports publicly available, and (3) makes its own reports available for public inspection per IRS rules.

In addition, federal PACs are no longer required to file IRS Form 990, and all political organizations need to file the annual tax return, IRS Form 1120-POL, only if they have more than \$100 in taxable income.

More information on the details of the above changes as well as other amendments to the reporting law can be found in the November 8 *Election Law News ALERT* at <http://www.wrf.com/publications/publication.asp?id=1041591182002>. See also the IRS publications on the changes at <http://www.irs.gov/pub/irs-news/ir02-123.pdf> and <http://www.irs.gov/pub/irs-news/fs-02-13.pdf>.

Below is a chart of the current IRS reporting requirements. ♦

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Type of Political Organization	Type of IRS Form			
	Form 8871	Form 8872	Form 990 or 990-EZ	Form 1120-POL
Federal PACs	No	No	No	If taxable income is more than \$100.
Qualified State or Local Political Organizations (QSLPOs)	Yes	No	If gross receipts are more than \$100,000.	If taxable income is more than \$100.
Nonfederal PACs and state PACs that are not QSLPOs	Yes	Yes	Yes	If taxable income is more than \$100.

For past issues of *Election Law News*, please visit <http://www.wrf.com/publications/industrylisting.asp?id=16>

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