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Reporting

Post-General Reporting Reminder

The 30-Day Post-General Election report is due on December 4, 2014. The Post-General Election report covers activity from October 16 (or from the close of books of the last report filed) through November 24. The following committees must file this report:

- All registered PACs and party committees — even committees with little or no activity — to disclose. Monthly filers must submit this report in lieu of the December monthly report. [fn1]

Authorized committees of federal candidates who ran in the general election, including committees of unopposed candidates. Note that because the reporting period for the Post-General Election report spans two election cycles, candidate committees must use the [Post-Election Detailed Summary Page \(FEC Form 3, Pages 5-8\)](#) instead of the normal Detailed Summary Page.

The Commission will host [a reporting webinar for candidate committees on November 19](#) to help filers prepare their reports and wind down their campaigns.

Notification of Filing Deadlines

In addition to publishing this article and the online reporting tables, the Commission notifies committees of filing deadlines through reporting reminders called prior notices. Prior notices are distributed exclusively by electronic mail, so every committee should ensure that the email address on its [Statement of Organization \(FEC Form 1\)](#) is current. Each committee may list up to two email addresses. To amend Form 1, electronic filers must submit Form 1 filled out in its entirety. Paper filers should include only the committee's name, address, FEC identification number and the updated or changed portions of the form.

Treasurer's Responsibilities

The Commission provides reminders of upcoming filing dates as a courtesy to help committees comply with the filing deadlines set forth in the Federal Election Campaign Act (the Act) and Commission regulations. Committee treasurers are responsible for filing committee reports on time. Not receiving a prior notice does not excuse committee treasurers for failing to comply with any filing deadline.

Filing Electronically

Under the Commission's mandatory electronic filing regulations, individuals and organizations required to file with the FEC that receive contributions or make expenditures, including independent expenditures, aggregating in excess of \$50,000 in a calendar year — or have reason to expect to do so — must file all reports and statements electronically. [fn2] Reports filed electronically must be received and validated by the Commission by 11:59 p.m. Eastern Time on the filing date. 11 CFR 100.19(c). Electronic filers who file on paper or submit an electronic report that does not pass the Commission's validation program by the filing deadline will be considered nonfilers and may be subject to enforcement actions, including administrative fines. 11 CFR 104.18(a)(2) and (e).

Senate campaigns and other committees that file with the Secretary of the Senate must file their FEC reports on paper, but may file an additional unofficial electronic copy of their report with the Commission in order to speed up disclosure.

The Commission's electronic filing software, FECFile, is free and can be downloaded at <http://www.fec.gov/elecfil/updatelist.html>. All reports filed after March 13, 2014, must be filed in Format Version 8.1.0.1. Reports filed in previous formats will not be accepted. Filers may also use commercial or privately developed software as long as the software meets the Commission's format specifications, which are available on the Commission's website. Committees using commercial software should contact their vendors to ensure their software meets the latest specifications.

Timely Filing for Paper Filers

Registered and Certified Mail. Post-General Election Reports sent by registered or certified mail must be postmarked on or before the filing deadline to be considered timely filed. A committee sending its reports by certified or registered mail should keep its mailing receipt with the U.S. Postal Service (USPS) postmark as proof of filing because the USPS does not keep complete records of items sent by certified mail. A committee sending its report by registered mail should keep its proof of mailing. Note that a certificate of mailing from the USPS is not sufficient to prove that a report is timely filed using registered, certified or overnight mail. See 52 U.S.C. § 30104(a)(5) (formerly 2 U.S.C. § 434(a)(5)) and 11 CFR 100.19 and 104.5(e) and (i).

Overnight Mail. Reports sent via overnight mail [fn3] will be considered timely filed if the report is received by the delivery service on or before the mailing deadline. A committee sending its reports by Priority Mail Express, or by an overnight delivery service, should keep its proof of mailing or other means of transmittal of its reports. See 52 U.S.C. § 30104(a)(5) (formerly 2 U.S.C. § 434(a)(5)) and 11 CFR 100.19 and 104.5(e).

Other Means of Filing. Reports sent by other means — including first class mail and courier — must be received by the FEC (or the Secretary of the Senate) before close of business on the filing deadline. See 11 CFR 100.19 and 104.5(e).

Forms may be downloaded at <http://www.fec.gov/info/forms.shtml> and are available from FEC Faxline, the agency's automated fax system (202/501-3413). The [2014 Reporting Schedule](#) is also available on the FEC's website at http://www.fec.gov/info/report_dates_2014.shtml. For more information on reporting, call the FEC at 800/424-9530 or 202/694-1100.

State, District and Local Party Committees

State, district and local party committees that engage in reportable "federal election activity" must file on a monthly schedule. See 11 CFR 300.36(b) and (c)(1). Other committees may file on a quarterly schedule. See 11 CFR 104.5(c)(1)(i).

National Party Committees

National committees of political parties must file on a monthly schedule. 52 U.S.C. § 30104 (a)(4)(B) (formerly 2 U.S.C. § 434(a)(4)(B)) and 11 CFR 104.5(c)(4).

Political Action Committees

PACs (separate segregated funds, hybrid committees and independent expenditure-only committees, aka Super PACs, and other nonconnected committees) file on a quarterly or monthly basis. PACs may change their filing schedule, but must first notify the Commission in writing. Electronic filers must file this request electronically. A committee may change its filing frequency only once a year. 11 CFR 104.5(c).

Additional Information

For more information on 2014 reporting dates:

- Call and request the reporting tables from the FEC at 800/424-9530 or 202/694-1100;
- Fax the reporting tables to yourself using the FEC's Faxline (202/501-3413, document 586); or
- Visit the FEC's web page at http://www.fec.gov/info/report_dates_2014.shtml to view the reporting tables online.

¹ *Monthly filers file the Post-General report in lieu of a December 20 monthly report. The Year-End report covers the balance of the calendar year, and is due January 31, 2015.*

² *The regulation covers individuals and organizations required to file reports of contributions and/or expenditures with the Commission, including any person making an independent expenditure. 11 CFR 104.18(a). Disbursements for "electioneering communications" are not considered "expenditures" and thus do not count toward the \$50,000 threshold for mandatory electronic filing. See 11 CFR 104.18(a).*

³ *"Overnight mail" includes Priority Mail Express having a delivery confirmation, or an overnight service with which the report is scheduled for next business day delivery and is recorded in the service's online tracking system.*

(Posted 11/18/2014; By: Katherine Carothers)

Resources:

- [2014 Reporting Dates](#)
- [Post-Election Detailed Summary Page \(FEC Form 3, Pages 5-8\)](#) and [Instructions](#) [PDF]
- [Compliance Map](#)
- [FEC Electronic Filing](#)

Advisory Opinions

AO 2014-17: LLC Owned by Two Corporations May Authorize Solicitations by a Trade Association

A limited liability company (LLC) owned and controlled by two corporations may authorize a trade association of which it is a member to solicit its executive and administrative personnel.

Background

Berkadia Commercial Mortgage LLC (Berkadia) was formed and is wholly owned by two corporations: Berkshire Hathaway Inc. (Berkshire) and Leucadia National Corporation (Leucadia). Each corporation owns a 50 percent interest in Berkadia and shares 50 percent of its profits. Berkshire and Leucadia appoint two individuals to Berkadia's four-member Board of Managers (the Board), and all decisions of the Board require the assent of at least one Berkshire and one Leucadia appointee. The Board controls and manages Berkadia and has the authority to hire and fire its employees.

Berkadia is a member of several trade associations that administer separate segregated funds (SSFs). It asks if it may authorize any one of them to solicit its executive and administrative personnel.

Analysis

As an exception to the Federal Election Campaign Act's (the Act) corporate contributions ban, incorporated trade associations may solicit contributions to their SSF from their own executive and administrative personnel. They may also solicit individual members and members that are unincorporated entities. They may not solicit incorporated members, but they generally may, with specific written approval by the member, solicit the stockholders and executive and administrative personnel of incorporated members. 52 U.S.C. § 30118(b)(4)(D) (formerly 2 U.S.C. § 441b(b)(4)(D)); 11 CFR 114.8(c) and (d).

Contributions by an LLC that elects to be treated as a partnership for tax purposes are treated as contributions from a partnership. 11 CFR 110.1(g)(2). Partnerships are generally permitted to make contributions directly to federal candidates and political committees. 11 CFR 110.1(g)(2) and 110.1(e). However, since contributions by partnerships must be attributed both to the partnership and to its partners, a partnership consisting solely of corporate partners is prohibited from making contributions. See [AO 2001-07](#) (Nuclear Management Company PAC).

Berkadia is treated as a partnership under Commission regulations because it is an LLC that has elected to be treated as a partnership for tax purposes. Commission regulations, however, do not explicitly address trade association SSF solicitations of member partnerships that are wholly owned by corporations. A trade association may not solicit Berkadia directly for contributions because any contributions made by Berkadia must be attributed to its corporate owners (i.e., partners), who are prohibited from making contributions. Furthermore, since Berkadia is not treated as a corporation, the Commission's regulations do not explicitly allow a trade association to solicit Berkadia's executive and administrative personnel. See, e.g., [AO 2005-14](#) (Association of Kentucky Fried Chicken Franchisees). Thus, the regulations do not clearly indicate how Berkadia may lawfully participate in the SSF of a trade association of which Berkadia is a member.

In analogous situations, the Commission has recognized that partnerships wholly owned by corporations “warrant special consideration.” [AO 2010-16](#) (EmblemHealth Services). To avoid prohibiting these partnerships from making contributions and establishing and administering their own SSF, the Commission has allowed them to pay the administration and solicitation costs of their corporate owner’s SSF, but only when the partnership was wholly owned by corporations and affiliated with at least one of the corporations. *Id.*

The Act and Commission regulations state that SSFs that are established, financed, maintained or controlled by the same corporation, labor organization, person or group of persons are considered to be affiliated. 52 U.S.C. § 30116(a)(5) (formerly 2 U.S.C. § 441a(a)(5)); 11 CFR 100.5(g)(2) and 110.3(a)(1)(ii). The Commission may analyze a number of factors that examine the relationship between two or more organizations to determine if they are in fact affiliated. 11 CFR 100.5(g)(4)(i)-(ii) and 110.3(a)(3)(i)-(ii). The Commission concludes that Berkadia is affiliated with both of its corporate owners because they share equal ownership, control and profits of Berkadia.

The Commission has concluded that partnerships and LLCs that “warrant special consideration” — like Berkadia does here — may establish and administer an SSF, and the executive and administrative personnel of such entities may be solicited for contributions to their SSF or an SSF of their affiliated owners. [AO 1997-13](#) (USA PAC); [AO 2010-16](#) (EmblemHealth). The Commission finds that the same considerations warrant allowing the trade association solicitations at issue here. Thus, to avoid prohibiting Berkadia from making contributions to a trade association’s SSF and from having its executive and administrative personnel solicited for contributions to such an SSF, the Commission interprets the Act and its regulations to allow a trade association to solicit the executive and administrative personnel of partnerships (and LLCs electing tax treatment as partnerships) that are wholly owned by and affiliated with corporations. Accordingly, the Commission concludes that Berkadia may authorize a trade association of which it is a member to solicit its executive and administrative personnel, so long as Berkadia and the trade association abide by the requirements of 11 CFR 114.8.

Date Issued: 11/06/14; Length: 7 pages.

(Posted 11/18/14; By: Myles Martin)

Resources:

- [Advisory Opinion 2014-17](#) [PDF]
- [Commission Discussion of Advisory Opinion 2014-17](#) 

Regulations

Petition for Rulemaking on Candidate Debates

On November 14, 2014, the Commission published a Notice of Availability seeking public comments on a Petition for Rulemaking from Level the Playing Field. The petition requests that the agency amend its regulations on candidate debates to revise the criteria governing the inclusion of candidates in presidential and vice presidential debates. See 11 CFR 110.13(c). Specifically, Level the Playing Field has asked the Commission to prevent debate staging organizations from using polling thresholds to decide which candidates may participate. Public comments on this petition are due by December 15, 2014.

(Posted 11/18/2014; By: Alex Knott)

Resources:

- *Federal Register* [Notice of Availability: Petition for Rulemaking](#) [PDF]
- [Text of Petition for Rulemaking from Level the Playing Field](#) [PDF]