

***WE'VE MOVED OFF H STREET!** As we settle in to our new location (and new name), we hope you will continue to find value in *The Strategist*. For more information about DB Capitol Strategies, or to discuss any of the information below, feel free to contact us at [dbacker@DBCapitolStrategies.com](mailto:dbacker@DBCapitolStrategies.com).*

## *The First Quarter Report:*                      **Common FEC Reporting Errors You Can Avoid**

### **The easiest error to avoid is not filing on time**

First quarterly reports are due April 15 and March monthly reports are due April 20. Failure to file or filing late generates automatic administrative fines. Avoid these fines and make sure you complete your reports on time. Smaller PACs that rely largely on volunteers are particularly susceptible to missed deadlines.

### **Include "all things of value"**

While most PACs think in terms of dollars received and spent, "anything of value given or loaned for the purpose of influencing a federal election" contributed to the PAC or expended by the PAC must be reported. This includes direct or in-kind monetary, goods, and services contributions, among other items. Be sure to include all appropriate items in both receipts and disbursements to ensure proper reporting.

### **Online processing may lead to 'hangover' transactions**

Online banking has revolutionized PAC fundraising. Today, supporters can give from anywhere at any time. But, internet giving has also introduced new challenges. Online checks can take time to clear. Third party vendors that process PAC contributions may sweep donations just once a week, which can slow the system. The end result is that an online contribution made Monday may not be transferred to a PAC bank account until Friday. To avoid reporting errors, PAC's should know that FEC regulations consider online transactions received when they are made by the contributor, even if the funds are not immediately received by the PAC. By contrast, in person contributions are considered received when handed over, and mailed contributions are considered made on the date of the postmark. As we move into April and the second quarter, PAC fundraisers should be meticulous. Donations made before the border (on or before March 31) are first quarter contributions, even if they were received in the second quarter. The same principle applies to monthly filers for their March monthly report.

A similar and often less noticed problem occurs with the processing costs of online transactions. All online transaction processors charge a per-transaction fee which is considered earned when the transaction is made. PACs report these transaction costs, normally aggregated for the entire reporting period rather than on a per transaction basis, in their regular reports. Using the above example, a contribution is made on Monday and swept into the PAC's account on Friday with the amount of the transaction fee subtracted. Even though the fee is not functionally subtracted from the contribution until Friday, it should be reported as paid on Monday.

Two examples illustrate these transactions:

A supporter contributes \$100 on Monday, March 29, via a PAC's PayPal account (or a similar self-controlled interface). PayPal charges 2.9% + \$0.30 per transaction. The PAC immediately acts to deposit the resulting \$96.80 from PayPal to its own bank account, and the funds enter the account on Friday, April 2. Even though the PAC actually receives the funds (less the cost) in the new reporting period, both the contribution and the expense are properly reported in the prior period.

A supporter contributes \$100 on Monday, March 29, via a PAC's online processing vendor, which aggregates contributions and makes a single weekly transfer each Friday, less fees. This vendor charges 5% per transaction and a monthly fee of \$25 the first of the month (deducted from any pending transfers). On Friday, April 2, the vendor transfers \$70 to the PAC. The PAC should report the \$100 contribution in its first quarter (or March monthly) report, a \$5 cost in that same report, and a \$25 cost in the next periodic report.

Even a very active PAC is unlikely to regularly have a large dollar amount, or a large number of individual contributions and fees, involved in these sorts of 'hangover transactions.' Also, there is generally no advantage in delayed reporting, so, mistakes are likely inadvertent. Still, there is a right way and a wrong way to report - a way that is FEC compliant and a way that is not. If a PAC should face an FEC inquiry, the added appearance of even inadvertent errors certainly raises concerns.

## **Wash transactions**

PACs sometimes incur wash transactions – expenses incurred and then reversed. Automatic monthly payments can be cancelled and refunded, and accidental charges can be reversed. Even if transactions result in a complete wash (\$100 charge, \$100 refund), occur almost simultaneously (e.g. noticing and reversing an automatic charge), and have no real impact, both the expense and refund must still be reported to the FEC. It may seem unnecessary to report a wash transaction, particularly an accidental one, but proper reporting requires it. FECFile memo text should be added to each part of the transaction and on the report itself to bring attention to the error and correction. When wash transactions occur across reporting periods, both reports should include memo text on the report and at each part of the transaction. Wash transactions are likely inadvertent and non-material, but, reporting them properly when they occur avoids having to explain them later.

## **Contributor duplication and aggregation errors**

Active supporters of a PAC may make more than a single contribution across multiple reporting periods. Normally, these contributions are aggregated automatically in FECFile to insure that contributions are properly reported and that contributors do not exceed the FEC's contribution limit. Large, active PACs need to pay special attention to the risks of inadvertent duplication or derivation of contributor names through FECFile. Such changes may lead to aggregation errors and corrupted report data, which place PACs in danger of accepting more from a single contributor than is allowed.

Remember the guidelines; PACs may not accept more than \$5000 per contributor (\$10,000 for married couples contributing jointly) in a calendar year. The task of prospectively monitoring your contributor records for un-aggregated entries can be less than desirable. However, it is generally preferable to retroactively identifying, curing, and subsequently reporting on such excessive contributions.

### **Caveats and final thoughts**

While reference was made to PayPal above, The Strategist does not endorse or recommend any third party or online transaction processing vendor. Each PAC has unique needs and should independently select the right suite of services. However, PACs should pay particular attention to data capture when selecting a platform. The FEC requires that PACs “make their best effort” to capture, among other information, the address, employer, and occupation of contributors. Even smaller PACs with limited donors should proactively pursue this information from the outset. Attempting to collect it retroactively adds an unnecessary level of complexity to your operations.

### **About DB Capitol Strategies and Dan Backer, Esq.**

DB Capitol Strategies provides legal & operational guidance to political committees with a focus on PAC treasury and FEC reporting and compliance through its lead attorney Dan Backer. Mr. Backer is a graduate of the University of Massachusetts Amherst and George Mason University School of Law. In 2009, Mr. Backer earned the Professional Lobbying Certification (PLC) from the American League of Lobbyists. He is admitted to practice law in Virginia, DC pending, and before the U.S. District Court for both the Eastern & Western Districts of Virginia. Mr. Backer has extensive experience with public policy & advocacy programs, grassroots organizations, and political committees. Mr. Backer is Treasurer or Assistant Treasurer of several PACs.

For questions, please contact Dan Backer at [DBacker@DBCapitolStrategies.com](mailto:DBacker@DBCapitolStrategies.com) or 202-210-5431.