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**JOHN H. MERRILL**  
SECRETARY OF STATE

Dear Citizens of Alabama:

I am pleased to present the 16<sup>th</sup> edition of our Elections Division's publication, the *Candidate Filing Guide*. This new, up-to-date edition will continue to serve as an instructive guide on the topic of Elections, providing detailed and in-depth information on the Alabama Fair Campaign Practices Act. If you have any questions, please call our Elections Division at 334-242-7210.

We're honored to serve you and our wonderful state.

Sincerely,

A handwritten signature in black ink that reads "J. H. Merrill". The signature is written in a cursive, flowing style.

John H. Merrill  
Secretary of State

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## **For General Questions and Obtaining Forms**



*Contact the Office of the Secretary of State*

Mailing Address:        Elections Division  
                                 Office of the Secretary of State  
                                 P.O. Box 5616  
                                 Montgomery, Alabama 36103-5616

Telephone:                (334) 242-7210 or 1 (800) 274-8683

General FAX:             (334) 242-2444

FAX for Reporting:     (334) 353-2295

World Wide Web:        alabamavotes.gov

E-mail:                     alavoter@vote.alabama.gov

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## **For Online Filing Questions**



World Wide Web:        fcpa.alabamavotes.gov

Help Desk Telephone: (888) 864-8910

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## **For Ethics Act Compliance Questions**



*Contact the Alabama Ethics Commission*

Telephone:                (334) 242-2997

World Wide Web:        ethics.alabama.gov

## SPECIAL NOTE FOR FEDERAL CANDIDATES

This filing guide applies to candidates for state, county, and municipal offices. Federal candidates must follow reporting guidelines and deadlines administered by the Federal Elections Commission (FEC). For more information, please contact the FEC at:

Federal Elections Commission  
999 E Street Northwest  
Washington, D.C. 20463  
1 (800) 424-9530  
[www.fec.gov](http://www.fec.gov)



## PUBLICATION NOTES

### ***FCPA CANDIDATE FILING GUIDE—SIXTEENTH EDITION***

Prepared by the Office of the Secretary of State

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#### **Legal Disclaimer**

This document is not a substitute for the *Code of Alabama 1975*. It is provided as a guide and is not intended to be an authoritative statement of law. For further legal information, please consult the *Code of Alabama 1975*, other appropriate legal resources, or your attorney.

# CHAPTER ONE

## GETTING STARTED



The Fair Campaign Practices Act (FCPA), the state's campaign finance law, is found in the *Code Of Alabama 1975*, at **§17-5-1 through §17-5-21**. It sets the rules for how and when candidates can raise and spend money. The law also specifies how campaign finance activities are reported.



### **MANDATORY CAMPAIGN FINANCE COMMITTEE**

The law requires every candidate to organize a campaign finance committee and file an **APPOINTMENT OF PRINCIPAL CAMPAIGN COMMITTEE** form, which lists who serves on the committee. [§17-5-4]

The committee form must be filed within *five (5) days* of becoming a candidate. For purposes of the FCPA, the law defines two ways to become a candidate, the first of either [see §17-5-2(a) (1)]:

1. Reaching the disclosure threshold by either receiving contributions in excess of \$1,000 or making expenditures in excess of \$1,000, regardless of office sought.
2. Qualifying as a candidate with a political party or by filing a petition as a minor party or independent candidate.

All legislative, state school board, and statewide candidates who receive *\$5,000* or more in contributions during an election cycle *must* file their **APPOINTMENT OF PRINCIPAL CAMPAIGN COMMITTEE** form *online* at [fcpa.alabamavotes.gov](http://fcpa.alabamavotes.gov).

Commencing with the 2018 election cycle, all principal campaign committees and political action committees that previously filed with the judge of probate, other than candidates for municipal office, shall file electronically with the Secretary of State. [§17-5-9(e)]

A candidate may either serve as the sole member of his or her principal campaign committee or may appoint from two to five

persons. If a candidate serves as his or her own principal campaign committee, he or she shall designate a **COMMITTEE DISSOLUTION DESIGNEE**, a person responsible for dissolving that principal campaign committee in the event of death or incapacity. If the designated person is unable to serve in this capacity at the time of death or incapacity, the principal campaign committee shall be dissolved by the candidate's personal representative as appointed by the judge of probate. [§17-5-4(c)]

A candidate may also select a **DESIGNATED FILING AGENT** when appointing his or her campaign finance committee. That agent will be authorized to file all required reports for the candidate during the election cycle.



## **STATEMENT OF ECONOMIC INTERESTS**

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Except for federal candidates and office holders with a current **STATEMENT OF ECONOMIC INTERESTS** on file, candidates at every level of government must file a **STATEMENT OF ECONOMIC INTERESTS** form with the State Ethics Commission no more than five days after the date such candidate files his or her qualifying papers with the appropriate election official. [§36-25-15] This form covers the previous calendar year. A candidate who has a current **STATEMENT OF ECONOMIC INTERESTS** form on file with the Ethics Commission does not have to file a duplicate form. For questions about filing the **STATEMENT OF ECONOMIC INTERESTS** form electronically, please visit [ethics.alabama.gov](http://ethics.alabama.gov) or contact them at (334) 242-2997.

If the individual becomes a candidate by qualifying with a political party, the **STATEMENT OF ECONOMIC INTERESTS** must be submitted to the State Ethics Commission no more than five days after the date such candidate files his or her qualifying papers with the appropriate political party. [Ethics Commission Advisory Opinion 2016-17]

If the individual is seeking ballot access by submitting a petition for independent candidacy, the **STATEMENT OF ECONOMIC INTERESTS** must be submitted to the State Ethics Commission no more than five days after the date such candidate files his or her petition to the appropriate election official: the Secretary of State for state candidates or the judge of probate for county candidates. [§36-25-15(a)] [Ethics Commission Advisory Opinion 2016-17]

Each election official who receives a declaration of candidacy or petition to appear on the ballot shall, within five days of receipt, notify the State Ethics Commission of the name of the candidate and the date on which the person became a candidate. The State Ethics Commission shall, within five business days of receipt of such notification, notify the election official whether the candidate has complied with the requirement to submit a **STATEMENT OF ECONOMIC INTERESTS**. [§36-25-15(b)]

A filing that is properly addressed, postage prepaid, postmarked, and mailed on the date the candidate qualifies complies with the statute. A candidate may file a **STATEMENT OF ECONOMIC INTERESTS** form online. [Ethics Commission Advisory Opinion 2016-02]

If a candidate does not submit a **STATEMENT OF ECONOMIC INTERESTS** in accordance with the requirements of §36-25-15, his or her name shall not appear on the ballot, and he or she shall be deemed not qualified as a candidate in that election. The appropriate election official shall remove the name of that candidate from the ballot. [AG's Opinion 98-00200]



## **AFTER THE MANDATORY COMMITTEE FILING**

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While every candidate must appoint a principal campaign committee, candidates who have not reached the \$1,000 threshold are exempt from filing the monthly, weekly and daily FCPA reports until the threshold is reached. [AG's Opinion 90-00343] Otherwise, these reports are due prior to an election. [§17-5-8]

Though not required to file, candidates who have not reached their threshold may still choose to file the optional **WAIVER OF REPORT** form if they are concerned about the appearance of noncompliance.

After reaching the threshold, a candidate files each FCPA report at the required times. All contributions and expenditures, including those received or spent to reach the threshold, are reported. **It is important to note that the payment of any qualifying fee or other cost associated with qualifying to run for office is considered an expenditure of the campaign; therefore, it should be reported as**

**such. If a candidate spends their own money on their campaign, each transaction must be reported as an in-kind contribution. [§17-5-2(a)(7)]**

Contributions from a single source and expenditures made to a single recipient that are greater than \$100 must be itemized on these reports. Therefore, it is important for a candidate to maintain some type of internal record for contributions of \$100 or less, since an additional donation from the same contributor could bring the total to more than \$100 and result in a need to itemize that contributor's contributions. The same is true for expenditures of \$100 or less.

All candidates for all legislative, state school board, and statewide offices who receive more than \$5,000 in contributions during an election cycle must file their FCPA reports online. [§17-5-8(g)] The online FCPA reporting system contains everything a candidate needs to record contributions and expenditures and to file the required reports.

A municipal candidate may request forms for filing these reports from either the Office of the Secretary of State or from the local probate judge. The forms are also available on [alabamavotes.gov](http://alabamavotes.gov). Forms and FCPA educational materials, such as this book, are supplied at no charge to the candidate. However, a candidate is not required to use the forms developed by the Office of the Secretary of State, as long as the information required by the FCPA is included in the report. [AG's Opinion 90-00211]

Electronic filing has been required since the beginning of the 2014 election cycle. State campaign committees and PACs receiving \$5,000 or less in an election cycle are exempt from filing FCPA reports electronically. [§17-5-8(g)] However, these campaign committees are still required to file disclosure forms on paper. These reports may be submitted by FAX, mail, or hand-delivery. [AG's Opinion 2012-028] Beginning with the 2018 election cycle, county candidates and PACs must file electronically with the Office of Secretary of State. They can no longer file with the Judge of Probate.

Candidates who spend more than \$1,000 on an "electioneering communication" will have met the filing threshold for campaign finance reporting. Therefore, the candidate must disclose their contributions and expenditures relating to the electioneering communication in accordance with Code of Alabama 1975, §17-5-8. However, the candidate is not required to duplicate any reporting. See also CHAPTER THREE, CAMPAIGN ADVERTISING, for further information on electioneering communication.



## FILING LOCATIONS

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### 1. Reports for County, District, Circuit, Legislative, and Statewide Offices

These candidates must submit their campaign finance reports and forms online at [fcpa.alabamavotes.gov](http://fcpa.alabamavotes.gov). District, Circuit, Legislative, and Statewide candidates who raise or spend less than \$5,000 may submit paper reports to the Office of the Secretary of State. [§17-5-8 (g)] The mailing address is:

**Office of the Secretary of State  
P.O. Box 5616  
Montgomery, Alabama 36103-5616**

Candidates hand-delivering reports should bring them to the Elections Division located at 600 Dexter Avenue, Suite E-204, Montgomery, Alabama. Suite E-204 is located on the second floor of the State Capitol, which is in the east wing (just off the rotunda on the 2nd floor).

For state campaign committees and state political action committees eligible to submit reports on paper by fax the Secretary of State's fax number is (334) 242-2444.

If you have questions, call the Elections division at (334) 242-7210 or at 1 (800) 274-8683.

**Please note that county candidates must file electronically with the Office of the Secretary of State. County candidates may not file on paper.**

### 2. Reports for Municipal Offices

Municipal reports are submitted to the office of the probate judge in the county where that municipality's city hall is located. **Municipal candidates may not file electronically.**



## DEADLINES

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According to the FCPA, forms that are submitted electronically, hand-delivered, or sent by regular United States mail must be received on or before the due date.

In order for disclosure reports sent by certified or registered United States mail to be deemed timely filed, they must be postmarked no later than the required filing date. [§17-5-10(b)]



## FILING SCHEDULE

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During the election cycle, but no earlier than 12 months prior to an election, campaign finance disclosure reports are filed at specific times before the election.

The FCPA filing calendar for the current election year is available from the Secretary of State's Office and is published on its website. Please take careful note of all deadlines as they may be subject to change.

The online FCPA reporting system contains a filing calendar for each election cycle; each candidate should select his or her election cycle and the system will automatically generate the correct calendar for the candidate to follow.

Additionally, principal campaign committees and political action committees must disclose the receipt of any single contribution of \$20,000 or more within ***two (2) business days*** of receiving the contribution if the contribution is not reported in a monthly, weekly, or daily report. [§17-5-8.1(c)]



## PRE-ELECTION REPORTS

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### 1. Monthly Report

Monthly reports are due no later than the second business day of the following month and must include all reportable transactions for the previous full month. [§17-5-8(a)(1)] The candidate's first monthly report must include all unreported activity to date.

### 2. Weekly Report

Weekly reports are due on the Monday of the following week for each of the four weeks before the election date; a week is defined as running from a Saturday to a Friday. The first weekly report shall include all reportable transactions

that occurred since the most recently filed prior report. [§17-5-8(a)(2)]

### 3. Daily Report (if applicable)

Daily reports apply only to candidates for state legislature, state school board, and statewide offices. Daily reports do not apply to candidates for county and city offices or to candidates for district or circuit court, circuit clerk, or district attorney.

In some instances, campaign committees for state offices and political action committees are required to file daily reports. Beginning on the 8<sup>th</sup> day prior to the election, daily reports are due for principal campaign committees or PACs that receive or spend \$5,000 or more on that day with a view toward influencing the election. [§17-5-8(a)(3)] To clarify, daily reports would only be due on those days that the \$5,000 daily threshold is met.

Daily reports are due each filing day by 11:59 PM, *including Saturday and Sunday*. The last daily report, if applicable, is due by 12:01PM on the day before the election. [§17-5-8(a)(3)(a)]

### 4. Major Contribution Report (if applicable)

Principal campaign committees must disclose the receipt of any single contribution of \$20,000 or more within ***two (2) business days*** of receiving the contribution if it is not included in a monthly, weekly, or daily report. [§17-5-8.1(c)] The term “contribution” includes monetary and in-kind contributions, as well as loans and other transfers to the principal campaign committee or political action committee.

If not included on a monthly, weekly, or daily report, the contribution is to be filed on a **MAJOR CONTRIBUTION REPORT** form available in the electronic filing system or from the Secretary of State’s Election Division.

### 5. Duplicate Reports

No duplicate reports are required by the law. A political action committee or principal campaign committee that is required to file a daily report is not required to also file

a weekly report for the week preceding an election. A committee required to file a weekly report is not required to also file a monthly report in the month in which the election is held. A committee required to file a monthly report is not required to also file an annual report in the year in which the election is held. [§17-5-8(k)]



## **ANNUAL REPORTS**

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An annual report covering each calendar year is due no later than January 31<sup>st</sup> of the succeeding year. [§17-5-8(b)]

Each principal campaign committee, political action committee, and elected state and local official subject to the requirements of the FCPA who has not closed his or her principal campaign committee, shall annually file with the Secretary of State or judge of probate. [§17-5-8(b)]

No annual report is required to be filed by a person who holds office because he or she was appointed to serve the remainder of a term vacated by another person, until the person serving has created a principal campaign committee. [§17-5-8(b)]



## **PENALTIES**

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The 2013 revisions to the FCPA expanded the penalties for noncompliance.

A candidate who intentionally violates a reporting requirement in §17-5-4, §17-5-5 or §17-5-8 is guilty, upon conviction, of a Class A misdemeanor. [§17-5-19(b)]

A candidate who intentionally violates any section other than §17-5-7 of the FCPA is guilty of a Class A misdemeanor. [§17-5-19(a)]

Any person who intentionally violates §17-5-7, which addresses limits on candidates receiving campaign contributions and spending campaign money, is guilty, upon conviction, of a Class B felony. [§17-5-19(c)] See CHAPTER TWO, CAMPAIGN FUNDS, for further information on this section of the law.

The FCPA prohibits any candidate from accepting more than \$1,000 from a principal campaign committee of a federal candidate. [§17-5-15.1(a)] A candidate who violates this provision is guilty,

upon conviction, of a Class C felony. [§17-5-15.1(b)]

Commencing June 5, 2017, the appropriate election official, based on the location of filing, shall levy an administrative penalty against any person who fails to timely file a required report and who does not remedy the filing of the required report. The State Ethics Commission shall have the authority to levy an administrative penalty against any person who files a materially inaccurate report and who does not remedy the filing of the report. [§17-5-19.1(a)]

Failure to file a timely report shall not be considered an offense or subjected to a civil penalty so long as it is the first failure by that candidate or political action committee for the election cycle and the report is filed within 48 hours of the time it was due. [§17-5-19.1 (h)]

Civil penalties levied shall be paid to the appropriate filing official within 45 days of the finality of any review. All penalties collected by a judge of probate shall be distributed to that county's general fund, and all penalties collected by the Secretary of State shall be distributed to the State General Fund. [§17-5-19.1(e) and (f)]

The schedule of civil penalties is as follows [§17-5-19.1(b)(1-3)]:

- ⇒ the lesser of \$300 or 10% of the amount not properly reported for a first offense in an election cycle;
- ⇒ the lesser of \$600 or 15% of the amount not properly reported for a second offense in an election cycle; or
- ⇒ the lesser of \$1,200 or 20% of the amount not properly reported for a third and all subsequent offenses in an election cycle.

A fourth failure to properly file a required FCPA report creates a rebuttable presumption that the candidate is intentionally violating the reporting requirements. The Secretary of State or judge of probate shall notify the Attorney General or the appropriate district attorney of all persons who violate the filing requirements four or more times in an election cycle. [§17-5-19.1(c)]

Any penalties assessed may be paid with campaign funds. [§17-5-19.1(i)]

Any person upon whom a civil penalty has been imposed may seek a review by filing written notice with the Secretary of State or judge of probate within 14 days after notification of the imposed penalty. The Secretary of State or judge of probate shall refer such review to the State Ethics Commission. [§17-5-19.2(a)]

The commission may set aside or reduce a civil penalty upon a showing of good cause. The person seeking review shall bear the burden of proof. [§17-5-19.2(b)]

Any candidate who voluntarily files an amended report to correct an error without being prompted by the filing official will not be subjected to the civil penalty. In the case of a candidate, the correction must be filed prior to the election at issue. In the case of a political action committee, the correction must be filed prior to the close of the calendar year. [§17-5-19.1(g)]



## FORMS

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FCPA candidate forms fall into two categories: 1) committee forms and 2) disclosure filings. Disclosure filings are submitted as pre-election reports (i.e. monthly, weekly, daily, a major contribution reports), annual reports (due each January, except for the year in which a candidate participates in an election), and termination reports (filed upon dissolution of a committee).

As noted previously, candidates who are required to file electronically will have access to all the forms online, and after registering with the online FCPA reporting system, will no longer file paper forms for any reason.

### **COMMITTEE FORMS**

Candidates have two committee filings, the **APPOINTMENT OF PRINCIPAL CAMPAIGN COMMITTEE** form, used to set up the committee, and the **STATEMENT OF DISSOLUTION**, filed when the committee is closed.

The importance of the mandatory committee filing has already been discussed on pages 4 and 5. Once a committee is formed and the threshold reached, a candidate continues filing disclosure reports until the committee is dissolved.

**CHANGES/UPDATES.** Whenever a change takes place in the committee, such as the addition or removal of officers or members, change of phone number or address, or change of name for the political committee, candidates may provide the new information online by updating their **COMMITTEE REGISTRATION** or by filing a new **APPOINTMENT OF PRINCIPAL CAMPAIGN COMMITTEE** form as discussed on pages 4 and 5. [§17-5-5(c)]

**STATEMENT OF DISSOLUTION.** Once a candidate determines that he or she will no longer receive contributions or make expenditures, a **STATEMENT OF DISSOLUTION** form may be filed. [§17-5-5(d)] This form should be accompanied by a **TERMINATION REPORT**, which itemizes all contributions/expenditures of more than \$100 received or made since the last itemized report. The **TERMINATION REPORT** is filed using **FORMS 1A-6**, discussed under the **ANNUAL REPORT** and pre-election report forms sections on this and the following pages. If the **TERMINATION REPORT** is not filed with the **STATEMENT OF DISSOLUTION**, then the candidate must file the requisite **ANNUAL REPORT** covering the last year of activity.

The candidate must also disclose how any excess funds will be used. See pages 21 and 22 for information on the law and excess funds.

### **FCPA DISCLOSURE FILINGS**

Upon reaching the disclosure threshold by either raising or spending \$1,000, a candidate is responsible for filing the following disclosure reports, itemizing contributions or expenditures of more than \$100:

- ⇒ **Monthly Reports** — due no later than the second business day of the following month and must include all reportable transactions for the previous full month.
- ⇒ **Weekly Reports** — due on the Monday of the following week for each of the four weeks before the election date; for reporting purposes, a week is defined as running from a Saturday to a Friday.
- ⇒ **Daily Reports** — beginning on the 8<sup>th</sup> day prior to the election, daily reports are due for principal campaign committees and PACs that receive or spend \$5,000 or more on that day with a view toward influencing the election. [§17-5-8(a)(3)] To clarify, daily reports would only be due on those days that the \$5,000 daily threshold is met. **Daily reports do not apply to circuit, district, county, and city candidates.**
- ⇒ **Major Contribution Report.** Principal campaign committees and PACs must file a report disclosing

the receipt of any single contribution of \$20,000 or more within ***two (2) business days*** of receiving the contribution if the contribution has not already been reported in a finance disclosure report.

## **FCPA REPORT FORMS (FORMS 1-6)**

### **Form 1:** Summary of Contributions and Expenditures.

This FCPA form must be signed by the candidate or elected official and notarized. However, for electronically filed reports, the form is electronically signed and does not require notarization.

### **Form 2:** Cash Contributions.

The FCPA requires that cash contributions of more than \$100 be itemized. If they choose to do so, candidates may itemize contributions of \$100 or less, but this is not required by law. However, if contributions of \$100 or less are not itemized, the law does require that they be totaled and reported. They may be reported as “non-itemized” contributions on **FORM 1**.

As mentioned earlier, some type of campaign bookkeeping system should be used to track contributors making small donations of \$100 or less per contribution. If the combined contributions from any one contributor total more than \$100, an itemized entry on **FORM 2** is then required.

For purposes of reporting contributions, the date of receipt of a contribution shall be the first date the recipient of the contribution is able to make use of the contribution. In the case of a contribution in the form of a check, the date of the receipt is the earlier of: 1) ten days from the date that the check came within the recipient’s control; or 2) the date that the check was deposited into the recipient’s account. [§17-5-2(a)(3)(c)]

A political action committee and a principal campaign committee shall maintain a checking account, money market account, or other similar banking account. [§17-5-6]

### **Form 3:** In-kind Contributions.

An “in-kind” contribution is made when equipment, furniture, office space,

or some other item of value other than money is contributed or used. A reasonable market value should be listed.

**Form 4:** *Receipts from Other Sources.* Receipts from other sources are usually funds received through interest payments on a political committee bank account, loans made to the committee, or refunds.

**Form 5:** *Expenditures.* The FCPA requires that expenditures of more than \$100 be itemized. Candidates may itemize expenditures of \$100 or less, but this is not required by law. However, if the expenditures of \$100 or less are not itemized, the law does require that they be totaled and reported. They may be reported as “non-itemized” expenditures on **FORM 1**.

As with contributions, some type of campaign bookkeeping system should be used to track small expenditures. If expenditures to the same vendor total more than \$100, an itemized entry on **FORM 5** is then required.

For purposes of reporting expenditures, the date an expenditure is made is the date the instrument authorizes the expenditure. In the case of an expenditure made by check or electronic payment, the date of expenditure is the date of the check or electronic payment. [§17-5-2(a)(7)(c)]

No expenditure of funds may be made by any such committee except by check drawn on such account, electronic transfer from such account, a credit card, the balance of which is paid from such account, or petty cash fund from which it may make expenditures not in excess of \$100 to any person in connection with a single purchase transaction. [§17-5-6]

**Form 6:** *Expenditures on Line of Credit:* Committees may utilize a credit card or other line of credit to pay for expenditures, the balance of which must be paid from the committee checking account, money market account, or other similar banking account. [§17-5-6]

Expenditures paid with a line of credit must be entered on **FORM 6**. These expenditures will not affect the committee account balance. A debt total must be entered on the applicable line on the **ANNUAL REPORT SUMMARY FORM 1A** and must be updated to reflect any expenditures on line of credit and any payments on the amount owed. Interest charges on the line of credit balance must be entered on this form.

## **ANNUAL REPORT**

The FCPA requires candidates and elected officials to file an **ANNUAL REPORT** by January 31<sup>st</sup>, which covers all contributions and expenditures for the campaign committee for the preceding calendar year. Each principal campaign committee, political action committee, and elected state and local official who has not closed his or her principal campaign committee shall annually file with the Secretary of State or judge of probate for municipal candidates. [§17-5-8(b)]

Persons who have been appointed to a public office are not required to file an **ANNUAL REPORT** until they become a candidate by either running for the same office or another office.

The **ANNUAL REPORT** is comprised of the same forms as the other FCPA disclosure reports discussed in the previous section with one exception.

**FORM 1** of the disclosure reports is replaced by **FORM 1A**, a form specifically designed for the purposes of the **ANNUAL REPORT**. **FORM 1A** is designed with two sections.

*Section I* summarizes totals of contributions/expenditures since the last filing.

In the itemized sections of the **ANNUAL REPORT (FORMS 2-6)**, candidates include those entries of more than \$100 that have been received or spent since the last itemized report.

*Section II* is a **summary** of contributions/expenditures for January 1 – December 31 of the previous year. [**FORM 1A** must be notarized if filed on paper.]

## **WAIVER OF REPORT (OPTIONAL FORM)**

Those principal campaign committees that have not reached the contribution/expenditure threshold are not required to file reports. However, an optional **WAIVER OF REPORT** form is provided for those who wish to place a record of their status in a formal FCPA report.

A **WAIVER OF REPORT** form may not be used by: 1) candidates who have a principal campaign committee that has met the contribution/expenditure threshold in any election cycle; 2) elected officials who have not dissolved their principal campaign committee.



### **PUBLIC ACCESS**

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The FCPA requires the Secretary of State and probate judges to make the campaign finance reports available for public inspection and copying during regular office hours.

However, the law specifies that information copied from the reports may not be sold or used by any political party or any political committee to solicit contributions or for commercial purposes, without the express written permission of the candidate or political committee reporting the information. [§17-5-11(2)]



### **POINTS TO NOTE**

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**Campaign Activities.** The FCPA contains other provisions, in addition to those dealing with campaign finance reporting. The Office of the Secretary of State recommends a complete reading of the act, which is contained in the Code of Alabama 1975, §17-5-1 through §17-5-21.

**Prohibitions.** Candidates should note the statutes on conduct that are contained in §17-17-33 and §17-17-34 of the *Code of Alabama*. Among the prohibited activities are: making a contribution in someone else's name, buying votes, interfering with a person's right to freely cast a vote, soliciting money or anything of value by physical force, job discrimination, financial reprisal, or threats, or

fraudulently misrepresenting oneself as acting for a candidate.

Other sections of state law also address campaign behavior; see pages 20 through 24 for highlights of those statutes.

# CHAPTER TWO

## CAMPAIGN FUNDS



The FCPA has strict controls on the purposes for which a candidate may solicit campaign funds, how the funds can be spent, and when candidates can raise money. In the 2010 special legislative session, the Legislature, through Act of Alabama 2010-765, enacted new rules regarding from whom a candidate may receive funds and to whom a candidate may make contributions.

Additionally, Act 2013-311 and Act 2015-495 revised a number of provisions relating to fundraising and contribution limits.



## FUNDRAISING

### 1. Limitations on Campaign Committees

It is unlawful for one candidate's campaign committee to contribute to another candidate's campaign. However, a candidate is permitted to conduct a transfer of anything of value from one campaign committee to another campaign committee when the committees are for the same person. Political action committees (PACs) are permitted to make contributions to principal campaign committees (PCCs). [§17-5-15(b)]

State and local campaign committees are prohibited from receiving more than \$1,000 from a principal campaign committee of a federal candidate. [§17-5-15.1(a)]

<b>PAC</b> <i>Political Action Committee</i>
<b>PCC</b> <i>Principal Campaign Committee</i>

<b><i>At-a-Glance Contribution Guide*</i></b>			
<b>PAC</b>	→	<b>PCC</b>	<input checked="" type="checkbox"/>
<b>PAC</b>	→	<b>PAC</b>	<input type="checkbox"/>
<b>PCC</b>	→	<b>PCC</b>	<input type="checkbox"/>
<b>PCC</b>	→	<b>PAC</b>	<input type="checkbox"/>

\*Note—this guide is for general illustrative purposes only. Please refer to *Section 1* above for special circumstances.

## 2. Accepting and Spending Campaign Funds

The law states that a candidate may only accept campaign contributions for three purposes [§17-5-7(b)(1)-(4)], namely to:

- ☛ Influence the outcome of an election.
- ☛ Pay off a campaign debt or to reach the \$1,000 qualifying threshold or both.
- ☛ Pay all expenses associated with an election challenge, including quo warranto challenges.

Campaign funds, including excess funds left after the election, may be spent only for the following purposes [§17-5-7(a)(1)-(7)]:

- ☛ Expenditures of the campaign.
- ☛ Expenditures that are reasonably related to performing the duties of the office held [does not include personal and legislative living expenses].
- ☛ Donations to the State General Fund, the Education Trust Fund, or equivalent county or municipal funds.
- ☛ Donations to an organization to which a federal income tax deduction is permitted under subparagraph (A) of paragraph (1) of subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended, or any other charitable, educational, or eleemosynary cause of Section 501 of Title 26 of the U.S. Code.
- ☛ Inaugural or transitional expenses. [Warning: the Ethics Act prohibits converting to personal use contributions from an inaugural or transitional fund (§36-25-6).]
- ☛ Donations to a legislative caucus organization registered with the Clerk of the House, Secretary of the Senate, or both in the case of a bicameral caucus, which does not operate as a political action committee. [§17-5-5.1]
- ☛ Legal fees and costs associated with any civil action,

criminal prosecution, or investigation related to conduct reasonably related to performing the duties of the office held.

### 3. Use of Excess Campaign Funds While in Office

The FCPA permits a campaign committee, during a two-year period beginning on the day after each general election and ending on the day of the next regularly scheduled general election, to pay qualifying fees to a political party and pay up to a cumulative total of \$5,000 to the political party for any tickets to party functions, and state or local party dues. Campaign committees for independent candidates or write-in candidates can pay for similar expenses. [§17-5-7(d)]



## FUNDRAISING PERIOD

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Candidates may begin raising money 12 months prior to the election in which they intend to be on the ballot [§17-5-7(b)(2)]. However, FCPA provision §17-5-7(b)(2) prohibits candidates for legislative and statewide offices from *raising* money while the Alabama Legislature is in session, except within 120 days of a primary, primary runoff, or general election. [§17-5-7(b)(2)] These restrictions do not apply to loans candidates make to their own committee. [§17-5-7(b)(2)]

The fundraising prohibition does not affect expenditures. Candidates may spend campaign funds more than 12 months prior to their election. State candidates may continue to spend campaign funds while the Alabama Legislature is in session.

The fundraising prohibition does not apply to candidates for county or city offices. They may continue raising money when the Legislature is in session.



## CONTRIBUTION LIMITS

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State law limits state and local campaign committees from receiving more than \$1,000 from a principal campaign committee of a federal candidate. [§17-5-15.1(a)]

Act 2013-311 specifically repealed previous statutes that limited corporate contributions to \$500 per candidate per election. [§17-5-14(a)]

State law prohibits contributions, transfers of funds, or expenditures to any political action committee, or 527 political organization, from any political action committee, 527 political organization, or a principal campaign committee. [§17-5-15(b)]

It also prohibits contributions from one campaign committee to another campaign committee, except where an individual is giving from his or her campaign committee for one office to his or her campaign committee for another office. [§17-5-15(b)]

A utility regulated by the Alabama Public Service Commission may not make any contribution to a candidate for the Public Service Commission. [17-5-14 (c)]



## **CAMPAIGN DEBT**

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Candidates should take particular note that the FCPA limits the fundraising period to clear campaign debts up to 120 days after the election. They are limited to raising only up to the amount of the debt plus the entire amount of the qualifying threshold for that office. [AG’s Opinion 99-00090]

If no debt, candidates can only raise up to the entire amount of the qualifying threshold for that office.

All contributions received after the election to retire any debt must be reported in the next regular report the campaign files:

*“Under the FCPA, all contributions...by candidates, their principal campaign committees, and other political committees are to be reported regardless of the time when the contributions are received.”* [AG’s Opinion 96-00120]



## **BRIBES AND CORRUPT INFLUENCE**

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The FCPA prohibits a candidate or campaign finance committee from accepting, soliciting, or receiving a contribution as a bribe or for the intention of corruptly influencing the official actions of a public official or a candidate for public office. [§17- 5-7(c)]



## **PENALTY**

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Any person who intentionally violates the section that governs how and when money can be raised [§17-5-7] is guilty, upon conviction, of a Class B felony. [§17-5-19(c)] A Class B felony carries a penalty of up to \$30,000 and/or not less than two and not more than 20 years imprisonment. [§§ 13A-5-6, 13A-5-11]

In general, the statute of limitations for a violation of the Fair Campaign Practices Act (Title 17, Chapter 5 of the Code of Alabama) is two years from the commission of the offense. However, the statute of limitations for a violation of §17-5-7 is 4 years. [§17-5-19(e)]

Violators can be prosecuted by either a district attorney or the Attorney General. [§17-5-19(d)]

# CHAPTER THREE

## CAMPAIGN ADVERTISING



The FCPA specifies that campaign advertising and electioneering communications appearing in print, broadcast, and electronic media must clearly and distinctly identify the entity responsible for paying for the advertisement or electioneering communication. [§17-5-12(a)]

Campaign literature and advertisements must carry this information and broadcast materials must be identified at the beginning, during, or the end of the radio or television spot. [§17-5-12(a)]

Act 2011-697 created the definition of “electioneering communication”. Electioneering communication involves any of the following types of communication:

1. Any communication circulated through federally regulated broadcast media;
2. Any mailing or other distribution;
3. Any electronic communication;
4. Any phone bank; or
5. Any publication. [§17-5-2(a)(5)]

These types of communication must also fulfill all of the four (4) following elements in order for it to meet the “electioneering communication” definition.

1. It must contain the name or image of a candidate;
2. It is made within 120 days of an election in which the candidate’s name appears on the ballot;
3. The only reasonable conclusion from the presentation and content of the communication is that it is intended to influence the outcome of the election; and
4. The expenditure exceeds one thousand dollars (\$1,000). [§17-5-2(a)(5)]



## ELECTIONEERING COMMUNICATION DISCLOSURE REPORTS

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Any person, including a candidate, who spends more than \$1,000 on an electioneering communication is required to file a disclosure report. The reports must identify the source or sources of the funds used for the electioneering communication and the recipients of expenditures related to the electioneering communication. [§17-5-8(h)]



## DISCLAIMER REQUIREMENT

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The FCPA does not give a specific format for wording the disclaimer. However, the FCPA does state that political advertisements or electioneering communication must clearly and distinctly identify the entity responsible for paying for the advertisement or electioneering communication. The disclaimer must also be displayed on printed advertisements. Disclaimers for broadcasts must occur at the beginning, during, or end of a radio or television spot, stating that the communication was a paid advertisement and identifying the paying entity. [§17-5-12(a)]

Such words as “paid advertisement by,” “paid for by,” and “paid political ad” meet the requirements of the act; however, an advertiser is not limited to just those phrases. The attorney general has advised that:

*“...words which indicate that the advertisement is a paid political advertisement meet the requirements of the law.”* [AG’s Opinion 94-00227]

In addition, the disclaimer must contain the identification of the person, nonprofit corporation, principal campaign committee, or entity placing the ad. Under the FCPA, the term “identification” means full name and complete address [§17-5-2(a)(7)]. The attorney general has stated that a complete address includes the street or post office box, city, and state. [AG’s Opinion 94-00227]

Refer to page 27 for sample illustrations of typical political advertisements with disclaimers.



## SAMPLE DISCLAIMER ADVERTISEMENTS

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**Elect  
John Doe**

Paid for by the  
Committee to Elect John Doe  
PO Box 5551212  
Inacounty, AL 99999

Figure 1: Example of a political advertisement with a disclaimer.

*Elect  
Jane Doe to  
Public Office*

Paid political advertisement by  
Committee to Elect Jane Doe  
PO Box 1212555  
Ourfair City, Alabama 99999

Figure 2: Example of a political advertisement with a disclaimer.



## DISCLAIMER EXCEPTIONS

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1. Act of Alabama 2011-697 lists (9) types of paid political advertisements and electioneering communications that

are excluded from the identification requirement. The disclaimer requirements do not apply if the advertisement is:

- a. Designed to be worn by a person; [§17-5-12(b)(1)]
  - b. Placed as a paid link on an Internet website, if the message does not exceed 200 characters in length, and the link directs to another Internet website that has a disclaimer; [§17-5-12(b)(2)]
  - c. Placed as a graphic or picture link where a disclaimer is not practical due to the size of the picture, and the link directs to another Internet website that has a disclaimer; [§17-5-12(b)(3)]
  - d. Placed at no cost on an Internet website where there is no cost to post content for public users; [§17-5-12(b)(4)]
  - e. Placed on an unpaid profile account available to the public without charge or a social networking Internet website if the source of the message is obvious from the content or format of the message; [§17-5-12(b)(5)]
  - f. Distributed as a text message or other message via Short Messages Service if the message does not exceed 200 characters in length or requires the recipient sign up or opt in to receive it; [§17-5-12(b)(6)]
  - g. Connected with or included in software application where the user actively chooses to access the application from or through a website that has a disclaimer; [§17-5-12(b)(7)]
  - h. Sent by a third-party from or through a campaign website that has a disclaimer; [§17-5-12(b)(8)]
  - i. Contained in or distributed through any other form of technology where a disclaimer is not practical due to its size or nature. [§17-5-12(b)(9)]
2. *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995)

A U.S. Supreme Court ruling in *McIntyre v. Ohio Elections Commission* seems to provide one very limited exception for advertising identification. In that case, the court

upheld the right of an individual to distribute anonymous leaflets opposing a proposed school tax levy. The impact on the FCPA disclaimer requirements, however, is minimal. Alabama’s Attorney General has written that the ruling:

*“...is limited to individuals who distribute anonymous written material (particularly leaflets) in a non-candidate election.”* [AG’s Opinion 95-00218]

In all other circumstances, the advertising must carry identification.



## **APPLICATION OF DISCLAIMER**

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The advertising disclaimer must be on all types of non-excluded advertising, such as billboards, yard signs, bumper stickers, and pencils.



## **ROBOCALL DISCLOSURE**

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Every automated or pre-recorded communication made through an automated telephone dialing service (often referred to as a robocall) must contain a clear notice at the end of the communication stating that it is a paid political advertisement and identifying the person or other entity that paid for the communication. [§17-5-16(b)]



## **PENALTY**

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The Attorney General or a district attorney may prosecute any person who violates the FCPA. [§17-5-19(d)] Failure to comply with the advertising requirements is a Class A misdemeanor and, upon conviction, is subject to a fine of not more than \$6,000 and/or imprisonment of not more than one year. [§13A-5-7; §13A-5-12; §17-5-19(a)]



## **CAMPAIGN ADVERTISING AT THE POLLING PLACE**

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The FCPA requires that all campaign advertising must be clearly marked. Another section of law, §17-9-50, prohibits anyone from campaigning within 30 feet of the polling place. Generally, that distance is interpreted as 30 feet from the door of the building in which the polling place is located. [AG's Opinion 82-00113]

Candidates frequently ask if supporters may wear campaign T-shirts or buttons when they go to the polling place to vote or when campaign workers are asked to accompany a voter who has requested assistance. AG's Opinion 93-00118 states that there is no provision that specifically prohibits an elector from wearing campaign buttons, badges, or T-shirts while inside the polling place to vote or assist another voter.

Also, nothing prohibits a voter from taking a sample ballot into the polling place, but a sample ballot should not be left in the polling place.

It should be noted that poll watchers, who can be appointed by the candidate or a political party, are prohibited from campaigning while inside the polling place, and the Attorney General has held that wearing buttons, badges, or T-shirts suggests, either directly or indirectly, how a citizen should vote and therefore, constitutes campaigning. [AG's Opinions 93-00118 and 84-00020]



## **OTHER CODE SECTIONS OF INTEREST**

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### **MISCELLANEOUS OFFENSES**

### **SECTIONS 17-17-36 through 17-17-45**

This section of law prohibits such illegal voting as casting more than one ballot for the same office or knowingly attempting to vote when not entitled to do so.

Citizens are prohibited from bribing or attempting to influence voters, buying or selling votes, altering or changing the vote of an elector, or disturbing an elector on election day.

A candidate convicted of bribing or attempting to influence a voter is not allowed to hold the office to which he or she was elected for that term.

**RIGHTS OF CITY, COUNTY, STATE EMPLOYEES**  
**SECTION 17-1-4**

City, county, and state employees have the right to participate in city, county, or state political activities to the same extent as any other citizen of the state, including endorsing candidates and contributing to campaigns. City, county, and state employees also have the right to join local political clubs and organizations and state and national political parties. They may also publicly support issues of public welfare.

**IMPROPER USE OF STATE PROPERTY, TIME, ETC.**  
**FOR POLITICAL ACTIVITIES**  
**SECTION 17-17-5**

No state, county, or city employee shall use public funds, property, or time for any political activity.

It is unlawful for any officer or public employee to solicit any type of political campaign contributions from other employees who work for the officer or employee in a subordinate capacity.

It is unlawful for an officer or public employee to coerce or attempt to coerce a subordinate employee to work in a political campaign or cause.

**USE OF STATE-OWNED PROPERTY**  
**SECTIONS 36-12-60 through 64**

It is unlawful for any state officer or employee to use or to permit to be used any state-owned property including stationery, stamps, office equipment, office supplies, or automobiles for political activity.

State employees are also prohibited from transporting campaign literature in either a state vehicle or in a private vehicle while mileage is being paid for by the state.

# CHAPTER FOUR

## FREQUENTLY ASKED QUESTIONS



The Elections Division receives many questions from candidates regarding the FCPA and how it relates to a particular situation or set of circumstances. The following is a discussion of some of those questions that are asked most frequently.

Should you have a question that is not addressed in this section, please contact the Elections Division for further assistance.

### ***What is the difference between a “state office” and a “statewide office?”***

The term “state office” refers to any elected position that is an official in Alabama *state government*. The term includes constitutional officers, legislative members, state school board members, and circuit and district judges, to name a few. The term does not include those positions in *county or municipal government*, such as county commissioner, county school board member, mayor, or city council member.

The term “statewide office” refers to any state office that is elected in a statewide vote, such as Governor, Lieutenant Governor, Secretary of State, Treasurer, and Attorney General, to name a few.

“Statewide office” does not include any state offices that are elected by district, such as members of the Legislature, circuit or district judges, or state school board members.

### ***I am a candidate and have met the filing threshold for the office I want to hold. However, I do not have any opposition in my election. Do I have to file a campaign finance report?***

Yes. In 2009, the Alabama Legislature amended the FCPA to require all candidates who have reached the filing threshold to file all campaign finance reports, even if the candidate has no opposition. See page 46 for additional information.

***Must I set up a separate bank account for my principal campaign committee?***

Yes. The FCPA specifies that principal campaign committee funds must be segregated and that there can be no commingling of personal funds with campaign funds. [§17-5-6]

A political action committee and principal campaign committee shall maintain a checking account, money market account, or other similar banking account and shall deposit any contributions received by such committee into such account. No expenditure of funds may be made by any such committee except by check drawn on such account, electronic transfer from such account, a credit card the balance of which is paid from such account, or out of a petty cash fund from which it may make expenditures not in excess of \$100 to any person in connection with a single purchase transaction. [§17-5-6]

***Am I allowed to campaign before I qualify for candidacy for an office?***

Alabama's elections laws do not place a restriction on when a candidate can begin campaigning for office. As a practical matter, the FCPA provides that a campaign can raise or receive funds only for a period of twelve (12) months prior to an election. This restriction does not apply to a loan from a candidate to his or her own campaign committee. [§17-5-7(b)(2)]

***I am running for a federal office. Do I have to report under the FCPA?***

No. Alabama participates in the FEC State Filing Waiver program that waives the requirement that campaign finance reports filed with the FEC also be filed with the state election office, provided that the state has an adequate system to serve the public with electronic access to and duplication of reports and statements.

***Do I have to keep receipts for the expenditures made during the campaign?***

Yes. The FCPA states that the political committee treasurer

must keep a receipted bill or canceled check for every expenditure greater than \$100 and for expenditures of \$100 or less, if the aggregate amount of such expenditures to the same person during a calendar year is greater than \$100. The receipts should be kept for a period of two years from the date of the expenditure.

***I charge many of my campaign expenses on a credit card. Can I itemize only the total amount I pay to the credit card company?***

No. The FCPA requires itemization and identification (full name and complete address) of:

*each person to whom expenditures have been made... within the calendar year in an aggregate amount greater than \$100.00, the amount, date and purpose of each expenditure...[§17-5-8(c)(7)]*

This issue is also addressed in AG's Opinion 95-00132 that says:

*Several expenditures should not be lumped together under a general heading of credit card expenses.*

If a candidate could legally enter only the name and full identification of the credit card company, many expenditures of more than \$100 could be hidden.

Credit card expenditures to any person or entity in an aggregate that exceeds \$100 must be itemized on **FORM 6**: Expenditures on Line of Credit. Any payments to the credit card company must be reported as an expenditure on **FORM 5**.

***Do I have to file an APPOINTMENT OF PRINCIPAL CAMPAIGN COMMITTEE form even if I do not reach the campaign finance contribution/expenditure threshold of \$1,000?***

Yes. All candidates must file an **APPOINTMENT OF PRINCIPAL CAMPAIGN COMMITTEE** form within five days of qualifying (with a political party or as an independent candidate) or within five days of reaching the campaign finance contribution/expenditure threshold.

***I paid my qualifying fee out of my personal checking account. Does the qualifying fee go towards my filing threshold?***

Yes. Any money paid on behalf or for the campaign from your personal checking account or credit card (In-Kind Contributions) and any money paid by someone else outside the campaign account all go toward the filing threshold amount of \$1,000.00. Once the filing threshold has been met, you must continue filing your campaign finance reports as long as you are a candidate or on the ballot. All active committees must file an Annual Report by January 31<sup>st</sup> of the succeeding year.

***I currently have money in my campaign account from a previous election for the same office. I have not received any contributions, but I paid my qualifying fee and some other campaign expenses in excess of \$1,000.00 out of my campaign account. Do I have to start filing reports?***

Yes. You have met the threshold amount of \$1,000.00. Once the filing threshold has been met, you must continue filing your campaign finance reports as long as you are a candidate or on the ballot. All active committees must file an Annual Report by January 31<sup>st</sup> of the succeeding year.

***I loaned my campaign committee \$20,000.00. Is this considered a major contribution?***

Yes. Committees must disclose the receipt of any single contribution in excess of \$20,000.00 within two business days of receiving the contribution; if this transaction is not already included on a monthly, weekly, or daily report. [§17-5-8.1 (c)] The term “Contribution” includes monetary and In-Kind contributions, as well as loans and other transfers to the principal campaign committee or political action committee.

***I received an unwanted, unsolicited check from a PAC, and I returned it. Must I report that as a contribution?***

Act 2013-311 specifically amended the FCPA to authorize the return or refund of any lawful campaign contribution. A refund is permitted so long as the original contribution was reported in an itemized manner and the refund is also itemized in a report. [§17-5-7.1(a)] If the contribution is not deposited in the committee's bank account, it may be returned without any reporting requirement. The new provision requires candidates or PACs to refund or return any unlawful contribution within 10 days of receipt. [§17-5-7.1(b)]

***Does the FCPA require that I put the address of my political committee on a campaign button?***

§17-5-12(b)(1) provides that disclaimer requirements do not apply if the advertisement is designed to be worn by a person. If the campaign button is designed to be worn by a person, a disclaimer is not required.

***Is there any prohibition against my borrowing money from my campaign account, provided that I pay back the money plus the prevailing rate of interest?***

The Ethics Act states in §36-25-6:

*Contributions to an office holder, a candidate, or to a public official's inaugural or transitional fund **shall not be converted to personal use.***

The Office of Secretary of State further believes that such action is also prohibited by these sections:

§17-5-7(b)(1) of the FCPA —

*...a candidate, public official, or principal campaign committee may only accept, solicit, or receive contributions: **to influence the outcome of an election.***

§36-25-5(a) of the Ethics Act —

*No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain.*

§17-5-7(a) of the FCPA —

...A candidate, public official, or treasurer of a principal campaign committee as defined in this chapter, may only use campaign contributions, and any proceeds from investing the contributions that are in excess of any amount necessary to defray expenditures of the candidates, public official, or principal campaign committee, for the following purposes:

1. Necessary and ordinary expenditures of the campaign.
2. Expenditures that are reasonably related to performing the duties of the office held. For purposes of this section, expenditures that are reasonably related to performing the duties of the office held do not include personal and legislative living expenses, as defined in this chapter.
3. Donations to the State General Fund, the Education Trust Fund or equivalent county or municipal funds.
4. Donations to an organization to which a federal income tax deduction is permitted under subparagraph (A) of paragraph (1) of subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended, or any other charitable, educational, or eleemosynary cause of Section 501 of Title 26 of the U.S. Code.

5. Inaugural or transitional expenses.
6. Donations to a legislative caucus organization registered under this chapter which does not operate as a political action committee.
7. Legal fees and costs associated with any civil action, criminal prosecution, or investigation related to conduct reasonably related to performing the duties of the office held.

***Does a write-in candidate have to comply with the FCPA?***

Yes, if the candidate has received contributions or made expenditures with a view toward bringing about his or her election. As with other candidates, the contributions or expenditures must reach the filing threshold of \$1,000 to trigger the **APPOINTMENT OF PRINCIPAL CAMPAIGN COMMITTEE** form and the reporting requirements. [AG's Opinion 91-0084]

***I have several groups, such as the Young Republicans or the Democratic Women, who want to work in my campaign. May I use campaign funds to donate to a group in return for its members' help?***

No. A candidate may not transfer campaign funds to any political action committee or 527 political organization, which generally covers most political groups except county and state parties, which are recognized as political action committees under the FCPA. [§17-5-15(b)] Candidates can only transfer funds to a political party, as a political action committee, within the restrictions of §17-5-7(d).

However, candidates are not prohibited from paying individuals directly who assist with the campaign.

***I have several volunteers who work in my campaign. Must I assess a fair labor wage and report that as an in-kind contribution?***

No. The FCPA lists in §17-5-2(a)(3)(b) several services that are not considered contributions, including:

- ⇒ Value of services provided by individuals who volunteer

their time on behalf of a candidate.

- ⇒ The use of real or personal property and the cost of invitations, food, or beverages, voluntarily provided by an individual to a candidate when the voluntary personal service is on the individual's residential or business premises.
- ⇒ Any unreimbursed payment for travel expenses made by an individual who volunteered on behalf of a candidate.
- ⇒ The amount spent by a state or local political party for the preparation, display, mailing, or other distribution of a printed slate card or sample ballot, or other printed listing of two or more candidates for any public office. [Note: this exemption does not extend to the costs incurred by the committee when such a listing is placed on broadcasting stations, or in newspapers, magazines, or similar types of general public political advertising.]
- ⇒ The value or cost of polling data and voter preference data and information, if provided to a candidate or political committee, unless the information was compiled with the advance knowledge of and approval of the candidate or the political committee.

***I am a member of the Alabama Legislature and am considering renting an apartment in Montgomery. Can I pay the rental expense from my campaign account?***

No. The FCPA prohibits using campaign funds for personal or legislative living expenses. The Act lists such prohibited expenses as:

*Household supplies, personal clothing, tuition payments, mortgage, rent, or utility payments for a personal residence; admission to an entertainment event or fees for a country club or social club, unless tied to a specific campaign event or functions involving constituents; and any other expense, excluding food and beverages, that would exist irrespective of the candidate's campaign or duties as a legislator. Personal and legislative living expenses shall not include expenses for food, beverages, travel, or communication incurred by the legislator in the performance of the office held. [§17-5-2(a)(11)]*

***Can I pass out campaign materials on private property, such as an apartment complex, if there is a “no soliciting” sign?***

That’s a question that must be addressed with the property owner. Any enforcement of “no soliciting” would be between the owner and an individual who wishes to campaign. [AG’s Opinion 96-00306]

***Is it legal to pass out sample ballots at the polling place?***

Yes, provided that those handing out the sample ballots are at least 30 feet from the door of the building in which the polling place is located. Also, those individuals distributing sample ballots should not in any manner attempt to intimidate or harass voters. Voters may take marked sample ballots into the polling place for personal use but should not leave them in the polling place.

***May a candidate assist a voter?***

Yes. Under the *Harris v. Siegelman* federal court order, a voter may request assistance from anyone other than those persons prohibited by federal law. [700 F. Supp. 1083 (1988)] Federal law prohibits assistance from the voter’s employer or an agent of the employer or from an officer or agent of the voter’s union. §17-9-13 was revised to incorporate this language and bring the text of this section into compliance with the terms of *Harris v. Siegelman*.

However, candidates should note that they may assist only if the voter requests the help. The voter is then required to sign the poll list in a designated column showing that assistance is requested, and the person providing the assistance must also sign the poll list.

***At the end of the campaign, what must I do to dispose of campaign property?***

Property purchased by or contributed to a principal campaign committee with a value of \$500 or more shall be liquidated at fair market value or donated to a qualified entity not more than 120 days following the election. Any funds generated by the liquidation of the property shall be deposited in the candidate’s principal campaign committee account. [§17-5-7.2(a)]

Property purchased by or contributed to a principal campaign committee that can be used by the person in the performance of his or her duties of the office he or she was elected to hold need not be liquidated as long as he or she holds office. [§17-5-7.2(b)]

# CHAPTER FIVE

## ELECTED OFFICIALS



The Secretary of State congratulates each candidate who wins his or her election! Before getting immersed in the details of the job, each elected official should take a few minutes to note the information in this chapter.



### COMMISSIONS

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Certain state and county officials must be commissioned by the Secretary of State and Governor before assuming office. County officials who meet certain requirements may also receive commissions. For more information, please consult §36-2-6.

The law dictates what documents must be filed and where for obtaining a commission. Generally, an elected official must file an oath and/or a bond at the state or county level, depending upon the office. County officials must also have a certification from their probate judge. The law requires the Office of the Secretary of State to charge everyone a \$5.00 commissioning fee.

Information packets providing the specific requirements for each office are available from the Government Support Division in the Office of the Secretary of State. You may contact the Government Support Division at (334) 242-7224.



### FILING REQUIREMENTS

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#### ***FCPA***

All elected officials who have not closed their principal campaign committee must file an **ANNUAL REPORT** by January 31<sup>st</sup> each year, even if they have had no activity. [§17-5-8(b)] Remember, an **ANNUAL REPORT** is due not just for the year you are elected but for every year you are in office if your principal campaign committee has not been closed.

No annual report is required to be filed by a person who holds office because he or she was appointed to serve the remainder of a term vacated by another person, until the person serving has created a principal campaign committee. [§17-5-8(b)]

### **STATEMENT OF ECONOMIC INTERESTS**

All elected officials must file a **STATEMENT OF ECONOMIC INTERESTS** with the Ethics Commission every year by April 30<sup>th</sup>. For more information, contact the State Ethics Commission, (334) 242-2997.

### **JUDICIAL REPORTS**

Judges have additional requirements and should consult Canons 6C and 7 of the Canons of Judicial Ethics relating to filing requirements and campaign conduct in general.

The requirement previously set forth in §12-24-2(a) to file a statement of disclosure two weeks prior to the commencement of the term of office for any judge or justice was repealed during the 2014 legislative session.

# APPENDIX A

## INDEPENDENT CANDIDACY



Those not qualifying through a political party may obtain ballot access by submitting a petition on or before 5:00 PM on the date of the statewide primary election. [§17-9-3(a)(3)] In 2020, the statewide primary is scheduled for March 3<sup>rd</sup>.

The petition must contain the required number of signatures of registered voters in the jurisdiction in which ballot access is sought (i.e., statewide, countywide, a district). The petition must be submitted to the Secretary of State, if seeking a state or federal office, or to the probate judge for a county office.

The appropriate election official will then verify the petition signatures and subsequently notify the petitioner as to whether he or she gained ballot access.

No qualifying fee is required.



## SIGNATURES

### **FEDERAL CANDIDATES**

A congressional candidate must submit a petition with enough signatures to meet or to exceed three percent of the qualified electors who cast ballots for the office of governor in the last general election for the district in which he/she is running. [§17-9-3(a)(3)] For the number of signatures needed in each district, call the Office of Secretary of State's Elections Division at (334) 242-7210. Candidates seeking a U.S. Senate seat would need the number of signatures for statewide candidacy.

### **STATE OR COUNTY CANDIDATES**

The number of signatures on the petition must equal or exceed at least three percent of the qualified electors who cast ballots for the

office of governor in the last general election in the county, district, or other political subdivision for which he/she is seeking ballot access. For the number of signatures needed for a particular state office, call the Office of Secretary of State's Elections Division at (334) 242-7210. For the number of signatures needed for a particular county office, call the judge of probate in the county in which the office is located.



## **FAIR CAMPAIGN PRACTICES ACT**

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Independent candidates, except for federal candidates, should be aware of their obligation to file an **APPOINTMENT OF PRINCIPAL CAMPAIGN COMMITTEE** form at the time they submit their petition or within five (5) days of exceeding the monetary threshold amount set forth by the FCPA. Act 2013-311 established a uniform \$1,000 threshold amount for all candidates in all races throughout the state.



## **ETHICS**

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Independent candidates must file a **STATEMENT OF ECONOMIC INTERESTS** with the State Ethics Commission no more than five days after the date he or she files the ballot access petition to be a candidate. For information on filing the **STATEMENT OF ECONOMIC INTERESTS**, call the Alabama Ethics Commission at (334) 242-2997 or visit its website at [www.ethics.alabama.gov](http://www.ethics.alabama.gov).



## **PETITION REQUIREMENTS & SUGGESTIONS**

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A sample petition is available from the Secretary of State's office. It may be downloaded from the website at [alabamavotes.gov](http://alabamavotes.gov). The sample petition may be photocopied.

Each petition must include the following information:

- ⇒ A statement that includes the name of the independent candidate, the date of the general election for which ballot access is sought, and the name of the office sought, including district number, if applicable. Petitions for the establishment of independent candidacy in a special election shall not be required to include the date of the special election at the top of each page. [Alabama Administrative Code, Rule 820-2-4-.05(1)]
- ⇒ Numbered pages.
- ⇒ Requested information for each person signing, which includes: name, residential address, date of birth and signature. A signature is required but shall not be deemed invalid for lacking any portion of the requested information if the disclosed information is sufficient for determining the validity of the signature and that the voter is a qualified elector for the jurisdiction the petition covers.

The following are suggestions for the petition:

- ⇒ Have the voter sign in ink and write legibly.
- ⇒ Obtain signatures in excess of required number, as some signatures may not be valid or identifiable.
- ⇒ Keep a copy of the petition.

# APPENDIX B

## CHANGES IN LAW



### **ACT OF ALABAMA 2009-751**

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In the 2009 session, the Alabama Legislature approved Senate Bill 205. The bill was signed by Governor Bob Riley on May 22, 2009, and subsequently assigned Act number 2009-751. The new law was precleared by the U.S. Department of Justice on November 16, 2009.

Act 2009-751 requires a candidate participating in an election to file all scheduled campaign finance reports once the candidate meets the filing threshold for the office for which he or she is running, even if the candidate has no opposition in the pending election. (See page 4 for more information on filing thresholds.)

Under Act 2009-751, if you are a candidate and have reached the filing threshold for the office you are seeking, you must file all campaign finance reports even if you have no opposition in your primary, special, or general election.



### **ACT OF ALABAMA 2010-765**

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In the 2010 Special Session, the Alabama Legislature approved House Bill 9. The bill was signed by Governor Bob Riley on December 20, 2010, and subsequently assigned Act number 2010-765.

Act 2010-765 bans any PAC, 527 organization, or private foundation from contributing to any other PAC, 527 organization, or private foundation. Act 2010-765 also makes it unlawful for principal campaign committees to contribute to any other principal campaign committee. However, the Act permits a transfer from one principal campaign committee to another principal campaign committee when committees are for the same person. Act 2010-765 permits PACs to contribute to principal campaign committees.

Act 2010-765 limits state and local campaign committees from receiving more than \$1,000 from a principal campaign committee of

a federal candidate.

Act 2010-765 permits a principal campaign committee, while the candidate is in office, to pay qualifying fees to a political party. Additionally, the principal campaign committee may pay dues to a political party and purchase tickets to political party functions or dinners, up to a maximum of \$5,000. Campaign committees for independent candidates or write-in candidates can pay for similar expenses.



## **ACT OF ALABAMA 2011-687**

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In the 2011 session, the Alabama Legislature approved Senate Bill 136. The bill was signed by Governor Robert Bentley on June 14, 2011 and subsequently assigned Act number 2011-687. The new law was precleared by the U.S. Department of Justice on September 26, 2011.

Act 2011-687 changes the timing of filing FCPA campaign finance disclosure forms. The Act eliminates the 50/45 day and 10/5 day pre-election disclosure reports. The Act requires monthly disclosure reports beginning 12 months prior to the election. Monthly reports are due on the last day of each month. Act 2011-687 also requires weekly reports beginning on the month prior to the election. The weekly reports are due on the Friday of each week.

Beginning on the 8<sup>th</sup> day prior to the election, Act 2011-687 also requires daily reports for principal campaign committees and PACs that receive or spend \$5,000 or more on any day with a view toward influencing the election. Daily reports do not apply to elections involving county and city offices. Candidates for circuit and district offices are also exempt from daily reporting.

Principal campaign committees and PACs must disclose the receipt of any single contribution of \$20,000 or more within 2 business days of receiving the contribution if it is not included in a monthly, weekly, or daily report.

Principal campaign committees and PACs must close their books 2 days prior to the specified reporting dates in order to complete the reports.

Act 2011-687 mandates electronic filing of disclosure reports beginning in the 2014 election cycle.



## **ACT OF ALABAMA 2011-697**

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In the 2011 session, the Alabama Legislature approved Senate Bill 284. The bill was signed by Governor Robert Bentley on June 14, 2011 and subsequently assigned Act number 2011-697. The new law was precleared by the U.S. Department of Justice on September 26, 2011.

Act 2011-697 provides that all paid political advertisements and “electioneering communications” appearing in print media or broadcast must clearly and distinctly identify the entity responsible for paying for the political advertisements and electioneering communication. Act 2011-697 defines the new “electioneering communications” term. The Act also lists nine types of paid political advertisements and electioneering communications that are excluded from the identification requirement.

Act 2011-697 eliminates the requirement notice on the front page of printed campaign literature. Instead, the Act requires that printed political advertisements and electioneering communication must have a clear and unmistakable identification of the entity responsible for directly paying for the advertisements or electioneering communication. For paid broadcasts, Act 2011-697 gives the paying person or entity the option of placing an identification statement on the broadcast at the beginning, during, or at the end of the radio or television spot.

Act 2011-697 requires any person or entity, including candidates, that spends more than \$1,000 on an electioneering communication to file disclosure reports. The reports must identify the source or sources of the funds used for the electioneering communication and the recipients of expenditures related to the electioneering communication. However, the candidate is not required to duplicate any reporting.



## **ACT OF ALABAMA 2012-173**

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In the 2012 session, the Alabama Legislature approved Senate Bill 133. The bill was signed by Governor Robert Bentley on April 2, 2012 and was subsequently assigned Act number 2012-173. The new law was precleared by the U.S. Department of Justice on May 30, 2012.

Act 2012-173 amends the Code of Alabama, §17-8-1 to authorize the appointment of alternate election officials including additional inspectors and clerks to serve if an appointed inspector or clerk is unable to perform his or her duties.



## **ACT OF ALABAMA 2012-461**

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In the 2012 session, the Alabama Legislature approved Senate Bill 11. The bill was signed by Governor Robert Bentley on May 15, 2012 and was subsequently assigned Act number 2012-461. The new law was precleared by the U.S. Department of Justice on August 17, 2012.

Act 2012-461 adds a provision to §17-5-16 to require that all campaign-related automated or pre-recorded telephone calls contain a clear notice at the end of the call that the communication was a paid political advertisement and to clearly identify the entity that paid for the call.



## **ACT OF ALABAMA 2012-477**

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In the 2012 session, the Alabama Legislature approved Senate Bill 497. The bill was signed by Governor Robert Bentley on May 15, 2012 and was subsequently assigned Act number 2012-477. The new law was precleared by the U.S. Department of Justice on February 6, 2013.

Act 2012-477 changes the timing of filing FCPA campaign disclosure reports to standardize the monthly and weekly periods for candidates and PACs and to eliminate certain duplicate filings during an election cycle.



## **ACT OF ALABAMA 2013-311**

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In the 2013 session, the Alabama Legislature approved Senate Bill 445. The bill was signed by Governor Robert Bentley on May 23, 2013 and was subsequently assigned Act number 2013-311. The new law was returned by the U.S. Department of Justice in July 2013 as not needing preclearance under the holding of the recent U.S. Supreme Court decision in *Shelby County v. Holder*. The effective date of the Act was August 1, 2013.

This Act repeals the corporate campaign contribution limit, authorizes candidates and PACs to appoint designated filing agents, institutes a progressive administrative fine system for failing to comply with the Act, clarifies which duplicate reports were removed from the reporting schedule, and makes certain editorial changes throughout the Act.



## **ACT OF ALABAMA 2014-455**

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In the 2014 session, the Alabama Legislature approved House Bill 543. The bill was signed by Governor Robert Bentley on April 10, 2014 and subsequently assigned Act number 2014-455.

Act 2014-455 repealed §12-24-2(a), Code of Alabama 1975, which removed the requirement for any judge or justice to file a statement of disclosure two weeks prior to the commencement of their term of office.



## **ACT OF ALABAMA 2015-239**

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In the 2015 session, the Alabama Legislature approved Senate Bill 240. The bill was signed by Governor Robert Bentley on May 27, 2015 and subsequently assigned Act number 2015-239.

Act 2015-239 sets the date for the presidential preference primary as the first Tuesday in March. The statewide primary primary will also be held on the first Tuesday in March in the years in which a presidential preference primary is held.

The presidential delegates will also be elected at this time.



## **ACT OF ALABAMA 2015-477**

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In the 2015 session, the Alabama Legislature approved Senate Bill 148. The bill was signed by Governor Robert Bentley on June 11, 2015 and subsequently assigned Act number 2015-477.

Act 2015-477 changes deadlines for the filing of certain notices and petitions relating to candidacies and the electing of delegates for presidential and vice presidential elections.



## **ACT OF ALABAMA 2015-495**

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In the 2015 session, the Alabama Legislature approved Senate Bill 241. The bill was signed by Governor Robert Bentley on June 12, 2015 and subsequently assigned Act number 2015-495.

Act 2015-495 clarifies when campaign contributions and expenditures are made and clarifies the disposition of a campaign committee and its assets upon its dissolution or termination.

Act 2015-495 also clarifies that legal costs associated with a civil action, criminal prosecution, or investigation that is reasonably related to the performance of duties can be paid using campaign funds. The Act decreases the civil penalties for failure to properly report contributions and expenditures and provides for the payment of civil penalties with campaign funds.

The Act authorizes the State Ethics Commission to affirm, reduce, or set aside civil penalties and to take investigative actions of potential criminal violations. The Act allows for the issuance of advisory opinions, as well as to provide a criminal penalty for disclosing information relating to a filed complaint.

Act 2015-495 requires that county officials who submit their campaign finance disclosure forms to their probate judge must submit their documents to the Office of the Secretary of State using the electronic system at [fcpa.alabamavotes.gov](http://fcpa.alabamavotes.gov) beginning with the 2018 Election Cycle.

The effective date for Act 2015-495 is September 1, 2015.



## **ACT OF ALABAMA 2019-318**

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In the 2019 session, the Alabama Legislature approved House Bill 247. The bill was signed by Governor Kay Ivey on May 29, 2019 and subsequently assigned Act number 2019-318.

Act 2019-318 changes the date of the statewide primary from the first Tuesday in June to the fourth Tuesday in May. The Act also changes the date of the runoff election from six weeks after the primary to four weeks after the primary. The presidential preference primary will still be held on the first Tuesday in March and in years in which a presidential preference primary is held, the statewide primary will be held at the same time.



## **ACT OF ALABAMA 2019-529**

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In the 2019 session, the Alabama Legislature approved House Bill 259. The bill was signed by Governor Kay Ivey on June 10, 2019 and subsequently assigned Act number 2019-529.

Act 2019-529 allows candidates to submit their STATEMENT OF ECONOMIC INTERESTS with the Ethics Commission no more than five (5) days after the candidate qualifies with party or files ballot access petitions with the appropriate election official.

The effective date of Act 2019-529 is September 1, 2019.

# APPENDIX C

## ONLINE FILING SYSTEM QUICK OVERVIEW



### ONLINE SYSTEM REGISTRATION

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1. Visit website: [fcpa.alabamavotes.gov](http://fcpa.alabamavotes.gov)
2. Click Committee Registration
3. Committee Registration Documents:
  - Candidates select ***Appointment of Principal Campaign Committee (PCC)***
  - Political Action Committees (PACs) select ***Statement of Organization***
4. Original committee document **signed by every committee member, copied for your records, and** should be mailed to: **Office of the Secretary of State Elections Division, PO Box 5616, Montgomery, Alabama 36103**
5. Upon receipt of the signed *original* committee registration document, the Elections Division will activate the FCPA account. After activation, the registered user will receive two emails: 1) an email with a registration confirmation with their username; 2) an email with a link to the website to change the PIN to one of the user's choosing.

Note: if an FCPA report is due within 5 days, an emergency activation can be granted. In this circumstance, a committee should fax a signed copy of the committee registration document to 334-242-2444 so that the account can be immediately activated. However, the signed *original* committee document should be simultaneously mailed to the Elections Division.



## SYSTEM TABS

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The FCPA online filing system is operated by the use of a series of tabbed topic sections located at the top of the screen. This guide will give an overview of the contents within each section, as well as a brief description regarding the most frequently used functions in the individual tabbed sections. For special circumstances or specific guidance, please call the Elections Division at 334-242-7210 or 1-800-274-8683. To reach the FCPA filing system HELP DESK, call **1-888-864-8910**.

### 1. **Overview Tab**

- ☞ Account Status—gives an overview of account ending balance and pending transaction balances
- ☞ Transaction History Overview—gives an overview of ending balances by transaction
- ☞ Reports Due—lists upcoming reports with the function to view and file sequential reports
- ☞ Document Images—contains function to save report images and add supplemental documents

### 2. **Contributions/In-Kind Tab**

- ☞ Contribution History—listing of posted contributions with the function to add new contributions or update existing contributions
- ☞ Contribution Maintenance—contains function to search by contributor and perform contributor informational changes

### 3. **Other Receipts Tab**

- ☞ Receipt History—listing of posted receipts with the function to add new receipts or update existing receipts (i.e., loans/interest/other)
- ☞ Receipt Maintenance—contains function to search receipts and perform receipt source informational changes

### 4. **Expenditures Tab**

- ☞ Expenditure History—listing of posted expenditures, only used for money spent out of campaign account, with the function to

add new expenditures or update existing expenditures

- ☞ Payee Maintenance—contains function to search by payee and perform payee informational changes

## 5. **File Reports Tab**

- ☞ Filing History—listing of FILED reports with the function to view and amend filed reports
- ☞ Reports Due—lists upcoming reports with the function to view and file sequential reports
- ☞ Supplemental Forms—contains function to add WAIVER OF REPORT and STATEMENT OF DISSOLUTION reports

## 6. **Search Tab**

- ☞ Transaction Search—contains function to quick-search posted transactions

## 7. **Administration Tab**

- ☞ Committee—contains function to update or perform committee informational changes

**Note:** if making committee changes or updates, print and have each member sign the amended Principal Campaign Committee or Statement of Organization document and mail it to the Elections Division at PO Box 5616, Montgomery, AL 36103.

- ☞ Officers—listing of current committee officers with the function to update or perform informational changes
- ☞ Campaign—contains function to add an election cycle’s filing schedule
- ☞ Filing Schedule—listing of all reports for an election cycle (includes all FILED reports and REPORTS DUE)

Import Data Files—contains function to import data files from other computer applications



## **ADDING REPORTS NOT FOUND IN THE REPORTS DUE LIST**

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The option to add reports not found in the Reports Due list can be accessed in two of the tabbed sections of the online filing system—see OVERVIEW or FILE REPORTS tabbed sections for access to this function. In the top center portion of these section pages, there is a bordered note which reads, “*Need to begin filing reports that are not*”

shown in the Reports Due list below? [click here.](#)” Click the link to begin the process of adding additional reports not listed.



## **AMENDING REPORTS**

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For necessary amendments that are related to the need to update or delete a posted CONTRIBUTION/OTHER RECEIPT/EXPENDITURE entry, go to the relevant tab and perform the update/deletion activity by accessing the listed transaction in the transaction HISTORY section of the corresponding tabbed section.

Users may add any *omitted* transactions by clicking the add button in the corresponding transaction tabbed section.

Users should make all required additions/deletions/updates to transaction entries prior to amending the previously FILED report. Once that task is completed, go to the FILE REPORTS tab and to the FILING HISTORY section to locate the report, which should be amended due to the changes that were implemented. Click AMEND so that the new adjustments will be populated into the amended report. Click REVIEW to access the amended report. Lastly, click FILE to submit the amended report once you are satisfied that all necessary changes are reflected.

Important— The system will automatically amend any other reports that were affected by an amendment to an individual transaction. The original report remains intact as it was initially filed; to reflect an accurate beginning balance.



## **PASSWORD RESET**

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If a user is unable to access the account due to an expired or lost PASSWORD/PIN, please call the Elections Division at 334-242-7210 or 1-800-274-8683. To reach the FCPA filing system HELP DESK, call **1-888-864-8910**.