

CRS Report for Congress

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Business and Labor Spending in U.S. Elections

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Summary

Federal election law has long prohibited corporate and union spending in federal elections, but distinctions in statutes and judicial rulings have opened avenues by which these groups have been able to spend money in the electoral process. Business groups make particular use of political action committee (PAC) donations to candidates and soft money donations to parties. Unions made prominent use of issue advocacy in 1996, but labor's political strength lies in exempt activity communications with members. This report explains these tools and their use in today's elections.

There are five primary avenues for union and corporate¹ political spending. Two of these involve funding through PACs (*separate segregated funds*), which raise voluntary contributions from their restricted classes.² Labeled *hard money* because they are raised under federal law to influence federal elections directly, these contributions are aggregated and then spent in the form of (a) contributions to candidates, parties, and other PACs; and (b) independent expenditures in support of or opposition to candidates.

The three other avenues involve more indirect spending from union and corporate treasuries. These funds, which are not subject to federal law, are known as *soft money*. They include donations to national parties for use in non-federal activities, communications with their restricted classes (known as *exempt activities*), and policy communications with the public which do not expressly advocate the election or defeat of candidates (known as *issue advocacy*).

¹ While election law prohibitions specify *corporations*, this report often uses the broader term *business*, to include trade associations and other groups that are business-oriented, in order to reflect better today's political practices. In any case, as corporations, all these groups otherwise referred to as business-related are equally covered by election law regulations.

² A union's restricted class includes its members, officials, and families; a corporation's, its executive and administrative personnel, stockholders, and families.

While the law gives unions and corporations essentially the same rights to engage in political activities and while these five avenues are equally available to both sectors, there are substantial differences in the practical application of those rights.

Table 1. Hard and Soft Money Avenues for Business and Labor

Form of Spending	Limited?	Disclosed?
Hard Money → through PACs		
• Contributions to candidates, parties, and PACs	Yes	Yes
• Independent Expenditures	No ¹	Yes
Soft Money → through union treasury money and corporate revenues		
• Donations to national parties (non-federal)	No	Yes
• Exempt activity spending for restricted classes	No	No
• Issue advocacy communications to general public	No	No

¹ *Expenditures* are not subject to limits, but *contributions* to PACs that make expenditures are.

Definitions

Only money raised and spent according to the requirements and restrictions of the Federal Election Campaign Act (FECA) may be used in election campaigns for federal office. The major features of current law governing this so-called *hard money* are:

- *Prohibitions* on contributions and expenditures from corporate and union treasury funds in federal elections (since 1907 and 1943, respectively) [2 U.S.C.§441b];
- *Limitations* on contributions by individuals, PACs, and parties to federal candidates and committees: *e.g.*, for an individual, \$1,000 per candidate, per election and \$25,000 per year in all federal contributions; and for most party committees and PACs, \$5,000 per candidate, per election (Parties may also make coordinated expenditures for candidates, subject to limits.) [2 U.S.C.§441a]; and
- *Disclosure* with the Federal Election Commission (FEC) of receipts and expenditures by PACs, parties, and candidates in federal elections, with itemization of amounts above \$200 [2 U.S.C.§432-437].

In contrast, money that is outside the federal regulatory framework, but raised and spent in a manner that may indirectly affect federal elections, perhaps intentionally, is known as *soft money*. Typically, this involves funds from sources and in amounts that are impermissible under federal law, but that may be allowed under widely varying state election laws, or that are not considered to be election-related *per se*.

While the law does not clearly define the term “influencing a federal election,” a standard of *express advocacy*, based on court decisions, has gained wide acceptance in evaluating expenditures on voter communications. Under current interpretations, a

communication must contain such explicit phrases as “vote for” or “defeat” to be considered express advocacy and to trigger application of the FECA. Express advocacy communications must be funded with hard money. Public messages that promote policy issues, however, even if they refer to public officials and candidates, are known as *issue advocacy*, as long as they avoid express advocacy terminology.

Hard Money: Spending through PACs

The two avenues for direct business and labor interest spending in federal elections are through separate segregated funds (PACs). While corporations and unions may pay the overhead costs of these entities, all money raised from the restricted classes must be voluntarily contributed. Union and corporate officials may influence the disposition of those funds, but money contributed to candidates or spent on express advocacy must consist wholly of the voluntary donations. Individuals may contribute up to \$1,000 to a candidate, but most PACs may give up to \$5,000, with no aggregate annual ceiling on their contributions. The pooling of resources allows individuals to maximize their influence, while associating their money with the union or business interests. As hard money, PAC contributions and expenditures are fully subject to disclosure requirements.

Labor unions, which established the first PACs in response to the 1943 prohibition on union money in federal elections, long dominated the PAC field. When the FEC first recorded PAC activity in January 1975, 201 of the 608 PACs (one-third) were labor PACs; 89 were corporate; and an indeterminate number of the 318 others were business-related. As of January 1997, there were 332 labor PACs, only 8.6% of all 4,079 registered PACs. Business-related PACs numbered 2,555.³

The primary tool used by PACs is the contribution of money to federal candidates. In 1974, labor PACs contributed \$6.3 million, half of the \$12.5 million from all PACs; business-related PACs contributed \$4.4 million, 35% of the total.⁴ By 1996, labor PACs gave \$48.0 million, 22% of the \$217.8 million PAC total; business PACs (grouped as described in footnote 3) contributed some \$141.4 million, 65% of the total.⁵

Over the years, Labor PACs have consistently given more than 90% of their funds to Democrats. In 1996, for example, Democrats got 92% of labor donations (\$44.3 million); Republicans, 8% (\$3.4 million). However, business PAC contributions in the

³ U.S. Federal Election Commission, *FEC Releases Semi-Annual Federal PAC Count*, press release, Jan. 24, 1997. CRS calculated the 2,555 to include all PACs listed as corporate (1,642), cooperative (41), corporation without stock (123), and 749 of 838 classified as trade/membership/health. One might argue that most of the latter have a business orientation (largely trade and professional associations and groups whose missions are more economic than ideological or issue-related). Lacking hard data, and understanding the difficulty in further categorization, the author deleted such groups as the National Rifle Association and National Organization for Women and others *apparently* not business-oriented. Subjective judgement was used, but the deletion of 89 of 838 PACs conforms to most estimates.

⁴ Common Cause, Campaign Finance Monitoring Project, *1974 Congressional Campaign Finance*, vol. 5, *Interest Groups and Political Parties* (Washington: 1976), p. xii.

⁵ U.S. Federal Election Commission, *PAC Activity Increases in 1995-96 Election Cycle*, press release, Apr. 22, 1997; modifications made by CRS.

aggregate have reflected, until 1996 at least, more divided party preferences. The 51% of corporate PAC contributions and the 46% of the (largely business-oriented) trade/membership/health PAC funds going to Republicans in 1994 were typical of patterns of the past 20 years.⁶ With a Republican majority in Congress in 1996, business resources shifted more to the GOP: corporate PACs gave 73% and trade/membership/health PACs gave 65% of their money to Republican candidates. CRS-classified business PACs gave 70% of their funds to Republicans in 1996 (\$98.6 million) versus 30% to Democrats (\$42.4 million).

The second PAC tool is spending on direct communications with voters to support or oppose candidates. If there is no coordination with any affected candidates, these *independent expenditures* are not subject to limits on spending, based on the Supreme Court's *Buckley v. Valeo* decision [424 U.S. 1 (1976)]. However, because these expenditures are for express advocacy communications, they must be paid for with hard money. (Independent expenditures are often confused with *issue advocacy* because of the purported independence of both types of spending.) This form of spending has not traditionally been favored by unions or corporations, but it has been used by some large trade associations and membership groups and, in 1996, by the political parties. Of the \$21 million in independent expenditures in 1996, roughly half was spent by parties; and well more than half of the rest was spent by large membership and issue-oriented groups. Among business and labor PACs, only the National Education Association and the American Medical Association ranked among the top 20 independent spenders.⁷

Soft Money: Union and Corporate Treasury Spending

Three methods have evolved through which business and labor treasury money may affect federal elections in less direct but, one might argue, effective ways. These soft money expenditures are allowed because they are aimed (at least nominally) at non-federal races (as with donations to national parties); at restricted classes (as with exempt activities); or at the general public, without using language that would trigger the law's election advocacy standard (as with issue advocacy).

Donations to National Parties

Unions and corporations may donate unlimited amounts to national political party non-federal accounts (as can individuals, without regard to their annual \$25,000 aggregate federal limit). Funds in these accounts are kept separate from federal account money, which must be raised solely from federally-permissible sources and amounts. The non-federal monies are used for transfers to state parties to the extent allowed under particular state laws, typically for grassroots and party-building activities; administrative and overhead expenses; and other activities not expressly promoting federal candidates.

⁶ U.S. Federal Election Commission, *1994 PAC Activity Shows Little Growth Over 1992 Level, Final FEC Report Finds*, press release, Nov. 1995.

⁷ U.S. Federal Election Commission, *Congressional Fundraising and Spending Up Again in 1996*, press release, Apr. 14, 1996; *PAC Activity Increases in 1995-96 Election Cycle*; unpublished FEC data.

Party soft money has played an especially notable role in presidential election years since 1980, as party and campaign officials and candidates have increasingly been involved in raising it. The practice evolved from the 1979 FECA Amendments, which allowed a greater role for state and local parties by exempting certain grassroots and generic party-building activities, voter registration, and get-out-the-vote drives from FECA coverage. Thus the law allowed state and local parties to use soft money on activities that helped their entire slate of candidates, but still prohibited money that was not federally-permissible to benefit federal candidates. This gave rise to the concept of mixed activities, which benefit federal, state, and local candidates while requiring careful bookkeeping, so that the share of such activities benefitting federal races uses only hard money. FEC regulations since 1991 [11 C.F.R.§102, 104, 106] have required allocation of these mixed expenditures according to specified formulas. The same regulations require disclosure of receipts, transfers, and spending from non-federal accounts.

Soft money receipts by the national parties in 1996 totaled \$262.1 million, up from \$86.0 million in 1992 when first disclosed. The national Democratic committees raised \$123.9 million in 1996—36% of all Democratic party receipts; the national Republican committees, \$138.2 million—25% of GOP receipts.⁸ In a study of some \$202 million in soft money donations, the Center for Responsive Politics found \$9.5 million to have come from labor interests and \$176.8 million from business interests. While 98% of labor soft money (\$9.3 million) was given to the Democratic Party, business soft money was split 55% to Republicans (\$97.0 million) and 45% to Democrats (\$78.9 million).⁹

Spending on Exempt Activities for Restricted Classes

Federal election law [2 U.S.C.§441b(b)(2)] grants unions and corporations far greater latitude in activity aimed at a restricted class than at the general public. Three types of spending from union and corporate treasuries are exempt from FECA “contribution” and “expenditure” definitions, if spending is limited to those classes:

- Establishing, administering, and soliciting money for a PAC;
- Nonpartisan get-out-the-vote and registration drives; and
- Internal communications with members on any subject.

The last category – internal communications—often involves express advocacy, which is permitted only because of the restricted class receiving the message.

As exempt activities, sources and recipients of funds are not disclosed, the exception being internal communications of more than \$2,000 per candidate per election, but excluding those primarily devoted to other subjects. (Some argue that this exclusion is easily and often evaded.) In 1996, unions reported \$5.7 million on such activities,¹⁰ but some believe these expenditures to be far greater, although by how much is disputed.

⁸ U.S. Federal Election Commission, *FEC Reports Major Increase in Party Activity for 1995-96*, press release, Mar. 19, 1997.

⁹ Center for Responsive Politics, unpublished data. These data are not exactly comparable to those of other studies cited, as they include donations by individuals *associated with* business.

¹⁰ U.S. Federal Election Commission, *Communication Cost Index*, Mar. 8, 1997.

In the absence of solid data, some believe that the exempt activities are a far more important tool for unions than for corporations. They assert two points. First, the restricted class for unions is much larger, totaling 16.3 million union members, plus their families, in 1996.¹¹ Second, while the restricted class for corporations extends beyond executive and administrative personnel to stockholders, the restricted class for labor can be reached more effectively because its members are closer to union officials than are stockholders to corporate officials. Also, unions have an infrastructure (phone banks, office space, etc.) and a ready pool of volunteers to make their internal communications and voter drives a significant force. A 1986 analysis contained an observation that seems equally true today:

Labor's real importance to candidates, though, is not so much the PAC dollars unions contribute directly to campaigns as the expenditures they make from their treasuries to lobby among their members. In each election, labor spends millions of dollars in advocating its preferred candidates before the union rank and file, but how many millions is unknown, and estimates vary widely.¹²

Despite varying estimates, few doubt that Democrats are the primary beneficiaries.

Spending on Issue Advocacy Communications for the Public

In 1996, attention focused on interest groups and party spending that did not meet the law's criteria for election-related activity, but that some saw as having the intent to influence federal races. By not using express advocacy language, groups could communicate to the public to foster more positive or negative views of public officials, who also happened to be candidates. As "non-election" activity, this spending can be funded in any amount from any source and is not subject to uniform disclosure rules.

This method emerged on the electoral scene in the 1996 elections as media advertisements on the merits of candidates in conjunction with issue positions. AFL-CIO and Democratic National Committee ads attracted notice in 1995; and the U.S. Chamber of Commerce, the Republican National Committee, and many others followed suit in 1996.

An analysis of advertising in 1996 by the Annenberg Public Policy Center estimated that 29 parties and groups spent \$135-\$150 million on issue advocacy. One author estimated that some \$25 million of this can probably be ascribed to unions and roughly \$17 million to business interests. Most spending appears to have been by issue groups and parties.¹³ (Another form of issue advocacy, distribution of voter guides presenting candidate issue positions in a way that may reflect on the candidate, was pioneered by unions but adopted more recently by others, *e.g.*, the Christian Coalition.)

¹¹ U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Earnings*, vol. 44, Jan. 1997, p. 211.

¹² Ronald Brownstein and Maxwell Glen, "Money in the Shadows," *National Journal*, vol. 18, Mar. 15, 1986, p. 633.

¹³ Deborah Beck, Paul Taylor, Jeffrey Stanger, and Douglas Rivlin, *Issue Advocacy Advertising During the 1996 Campaign* (Washington: Annenberg Public Policy Center, 1997). [study based on self-reporting by groups]; phone conversation with Paul Taylor, Oct. 22, 1997.