

Testing the Waters

Federal Election Commission

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Introduction

Before deciding to campaign for federal office, an individual may want to “test the waters”—in other words, explore the feasibility of becoming a candidate. An individual who merely test the waters, but does not campaign for office, does not have to register or report as a candidate even if the individual raises more than \$5,000—the dollar threshold that would normally trigger registration. Nevertheless, funds raised to test the waters are subject to the Federal Election Campaign Act’s (the Act) contribution limitations and prohibitions. See Advisory Opinion [1998-18](#).

Once an individual begins to campaign or decides to become a candidate, funds that were raised or spent to test the waters apply to the \$5,000 threshold for qualifying as a candidate. [11 CFR 100.72\(a\)](#) and [100.131\(a\)](#). Once that threshold is exceeded, the individual must register with the FEC (candidates for the House of Representatives) or the Secretary of the Senate (candidates for the Senate), and begin to file reports.

Testing the Waters vs. Campaigning

An individual may conduct a variety of activities to test the waters. Examples of permissible testing-the-waters activities include polling, travel and telephone calls to determine whether the individual should become a candidate. [11 CFR 100.72\(a\)](#) and [100.131\(a\)](#).

Certain activities, however, indicate that the individual has decided to become a candidate and is no longer testing the waters. In that case, once the individual has raised or spent more than \$5,000, he or she must register as a candidate. Intent to become a candidate, for example, is apparent when individuals:

- Make or authorize statements that refer to themselves as candidates (“Smith in 2012” or “Smith for Senate”);
- Use general public political advertising to publicize their intention to campaign;
- Raise more money than what is reasonably needed to test the waters or amass funds (seed money) to be used after candidacy is established;
- Conduct activities over a protracted period of time or shortly before the election; or
- Take action to qualify for the ballot. [11 CFR 100.72\(b\)](#) and [100.131\(b\)](#).

Contribution Limits

Contribution limits apply to all the support given to an individual who is testing the waters. The limits apply, for example, to:

- Gifts of money, goods and services;
- Loans (except bank loans);
- Certain staff advances until repaid;
- Endorsements and guarantees of bank loans; and

- Funds given or personally loaned to the individual to pay for his or her living expenses during the testing-the-waters period.

For additional information on contributions, including current contribution limits, please review the FEC's [Contributions Brochure](#).

Prohibitions

An individual who is testing the waters must comply with the Act's prohibitions. The Act specifically prohibits money from:

- [Labor organizations](#) (although funds from a labor separate segregated fund are permissible);
- [Corporations](#), including nonprofit corporations (although funds from a corporate separate segregated fund are permissible);
- [Foreign nationals](#); or
- [Federal government contractors](#).

[11 CFR 114.2\(a\),\(b\)](#), and [\(d\)](#), [110.20\(a\)\(3\)](#), [115.2](#).

Recordkeeping

An individual who tests the waters must keep financial records. If the individual later becomes a candidate, the money raised and spent to test the waters must be reported by the campaign as contributions and expenditures. [11 CFR 101.3](#). The money raised and spent for testing the waters must be disclosed on the first report the principal campaign committee files.

Separate Bank Account

Although this is not a requirement, an individual who tests the waters may want to consider segregating testing-the-waters funds from personal funds by setting up a separate bank account for the deposit of receipts and the payment of expenses. If the individual later becomes a candidate, a campaign account must be established to keep campaign funds separate from anyone's personal funds. [11 CFR 102.10](#), [102.15](#), [103.2](#), [103.3\(a\)](#).

Organizing a Testing-the-Waters Committee

An individual may organize a committee for testing the waters. An exploratory committee or a testing-the-waters committee is not considered a political committee under the Act and is not required to register with the FEC or to file reports. The name of the testing-the-waters committee and statements made by committee staff must not refer to the individual as a candidate. Thus, for instance, a testing-the-waters committee may be named "Sam Jones Exploratory Committee," but not "Sam Jones for Congress."

If the committee's activities go beyond the testing the waters and the committee begins to campaign, the committee must register with the FEC. The funds raised during the testing-the-waters phase automatically become contributions, and the funds spent, including polling costs, become expenditures. These contributions and expenditures count toward the threshold that triggers candidate status. Once the contributions exceed \$5,000, the individual becomes a candidate and must register under the Act. To download registration and reporting forms, please visit the FEC webpage for "[Forms for Candidates and Authorized Committees](#)."

If an individual decides not to run for federal office, there is no obligation to report these finances, and the donations made to the testing-the-waters committee will not count as contributions.

Assistance from the Commission

Further information on organizing a campaign committee can be found in the [Campaign Guide for Congressional Candidates and Committees](#). [PDF]

The Commission operates a public information office to help campaigns and other political committees understand and comply with the campaign finance laws. You can call the office toll-free, 800/424-9530, or e-mail, info@fec.gov, if you have any questions on this brochure or other aspects of the law. FEC staff are waiting to help you.