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December 1998

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Regulations

Electronic Filing Requirements for Presidential Candidates Go Into Effect

New regulations mandating electronic filing of reports by Presidential campaign committees that receive public funding and have computerized campaign finance records became effective November 13, 1998. The new regulations require Presidential committees to file reports with the FEC by either mailing a diskette with the information on it or transmitting the data via the Internet.

The new regulations can be found at 11 CFR 9003.1(b)(11) and 9033.1(b)(13). See the October 1998 *Record*, p. 3, for a summary of the new regulations. The final rules were published in the August 27 *Federal Register* (63 FR 45679). For a copy of the final rules:

- Call the FEC's Public Records Office (800/424-9530, press 3); or
- Dial the FEC's automated Faxline (202/501-3413, request document 234). ♦

Compliance

MUR 4340/4685 Missing Disclaimers on Web Site and Corporate Contributions

Dal LaMagna, his 1996 campaign committee and the corporation he owns, TWEEZERMANN, have paid a \$16,000 civil penalty for violating the Federal Election Campaign Act (the Act).

The Commission found that LaMagna for Congress and TWEEZERMANN failed to include a disclaimer on campaign advertisements, including one that appeared on a web site, and that the corporation and Mr. LaMagna made several impermissible contributions to the campaign. In addition, the campaign failed to file a 48-hour notice disclosing the receipt of a \$100,000 last-minute campaign contribution. Mr. LaMagna was a candidate for Congress from New York in 1996.

Disclaimers

The committee ran campaign advertisements in two magazines—*Self* and *Nails*—without disclaimers. Web sites for both the committee and TWEEZERMANN contained campaign messages, yet neither of the sites initially included a disclaimer. The Act requires that a communication paid for and autho-

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Compliance

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ized by a candidate or his or her authorized committee include a disclaimer stating who paid for the ad. 2 U.S.C. §441d(a).

Corporate Contributions

TWEEZERMAN bought nine magazine advertisements that included a campaign advertisement at the bottom. The committee reimbursed TWEEZERMAN for what it considered its portion of the ad space. Additionally, the corporation's web site included a link to the campaign web site, and the Commission concluded that that link had some value. TWEEZERMAN also displayed a banner at a trade show that read "Dal LaMagna/TWEEZERMAN for Congress." Finally, TWEEZERMAN rented a fax machine to the committee at a rate that was at least \$350 below the market rate for renting similar

machines. All of these actions resulted in impermissible corporate contributions from TWEEZERMAN to the committee, in violation of 2 U.S.C. §441b(a). With reference to the fax machine, if goods or services are provided at less than the usual and normal charge, the difference between the normal charge and the amount charged to the political committee is considered an in-kind contribution. 11 CFR 100.7(a)(1)(iii).

Forty-Eight Hour Notice

Mr. LaMagna loaned his committee \$100,000 near the end of the election and reported it improperly. When a campaign committee receives a contribution totaling

\$1,000 or more after the 20th day, but more than 48 hours before an election, it must report it within 48 hours of receipt. 2 U.S.C. §434(a)(6)(A). Mr. LaMagna's donation to his committee fell within this time frame, but his committee did not report it until its next scheduled report after the election.

This compliance matter resulted from complaints filed against the parties by the National Republican Congressional Committee and by the FEC. Prior to finding probable cause to believe that Mr. LaMagna, his corporation and his committee had violated the Act, the Commission entered into a conciliation agreement with the parties. ♦

Nonfilers

The campaign committees of the candidates listed below failed to file required campaign finance disclosure reports. The list is based on recent FEC news releases. The FEC is required by law to publicize the names of nonfiling candidate committees. 2 U.S.C. §438(a)(7). The agency pursues enforcement actions against nonfilers on a case-by-case basis. ♦

Federal Election Commission 999 E Street, NW Washington, DC 20463

800/424-9530
202/694-1100
202/501-3413 (FEC Faxline)
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Published by the Information
Division

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<http://www.fec.gov>

Candidate	Office Sought	Report Not Filed
Ansari, Eileen	House CA/41	Pre-General
Condodemetraky, George	Senate NH	Pre-General
Cozzi, Robert A. Jr.	House IL/14	Pre-General
Crane, Philip M.	House IL/08	Pre-General
Ferguson, Peter D.	House OH/16	Pre-General
Golding, David R.	House FL/15	Pre-General
Groom, Asuncion Cecy R.	House CA/39	Pre-General
Jones, Charlies U.	House TX/23	Pre-General
Lewis, John H. Sr.	House GA/05	Pre-General October Quarterly
Martinez, Matthew G. Jr.	House CA/31	Pre-General
McLeod, Gary M.	House SC/06	Pre-General
Meeks, Gregory W.	House NY/06	Pre-General
Munsell, Susan G.	House MI/08	Pre-General October Quarterly
Payne, Donald M.	House NJ/10	Pre-General
Petyo, Michael	House IN/01	Pre-General
Schulstad, Carol S.	House MN/04	Pre-General
Starky, Stuart M.	House AZ/03	Pre-General
Telano, Lou	House NY/09	Pre-General
Weiner, Anthony D.	House NY/09	Pre-General

Statistics

Fundraising by National Party Committees Continued Surge Toward Election Day '98

Just weeks before the November 1998 elections, the three Republican national committees had bested their three Democratic counterparts with a 73 percent lead in fundraising.

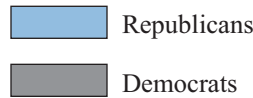
Between January 1, 1997, and October 14, 1998, Republican national committees raised \$184.6 million and spent \$177.5 million to get their candidates elected to office. The Democratic national committees raised \$106.9 million and spent \$105.5 million on similar efforts. The Republicans entered the count-down season of the election with \$10.7 million in cash on hand; the Democrats reported \$5.1 million in cash on hand for the same period.

Comparing these fundraising statistics with those from the previous comparable election cycle in 1993-1994, the Democrats increased their funding by 40 percent, while the Republicans increased funding by only 16 percent.

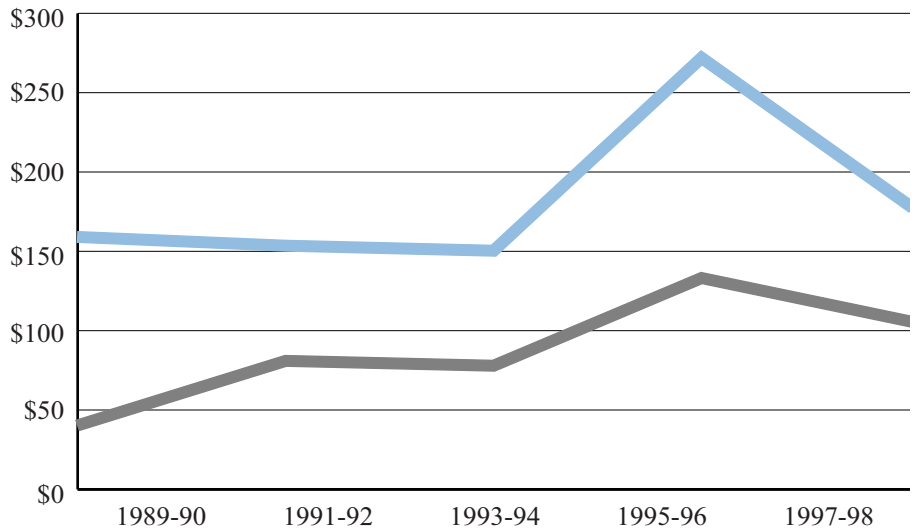
In supporting its federal candidates, Democrats gave \$715,788 directly to candidates and spent \$6.7 million in coordinated expenditures and \$380,000 in independent expenditures. Republican committees gave \$1.6 million directly to candidates and spent \$4.3 million in coordinated expenditures. Democrats transferred \$13.6 million to states; Republicans transferred \$9.5 million to states.

The national party committees also showed huge gains in raising soft money, funds raised outside federal limitations and prohibitions. Republicans increased their take of soft money over the 1993-1994 election cycle by 144 percent, posting \$93.7 million in their nonfederal accounts. Democratic committees showed a 84 percent

What They Spent: National Party Committee Disbursements, January 1—Mid-October



Millions



increase in the soft money donations they received, ending the reporting period with \$78.8 million.

The Democrats transferred \$17.9 million in soft money to various states. The Republicans transferred \$25.9 million in soft money to states.

The Republican national committees are the National Republican Senatorial Committee, National Republican Congressional Committee and Republican National Committee. The Democratic national committees are the Democratic Senatorial Campaign Committee, Democratic Congressional Campaign Committee and Democratic National Committee.

This article and the accompanying chart (see chart above) are based on data taken from an October 27 news release. The release is available:

- At the FEC's web site, <http://www.fec.gov> (click "News Releases and Media Advisories");

- From the Public Records Office and the Press Office (call 800/424-9530); and
- By fax (call FEC Faxline at 202/501-3413 and request document 609). ♦

Candidate Fundraising Posts Negligible Increase from Two Years Ago

Candidates in this year's general election raised \$575.3 million and spent \$480 million between January 1, 1997, and October 14, 1998. While those totals showed an increase over the same period in 1996—\$13 million more raised and \$11 million more spent—they still amounted to only a modest 2 percent increase in financial activity. Candidates began the last 20 days of the campaign with \$179 million cash-on-hand.

Factors that may have influenced the slowdown in growth include

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Statistics

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fewer open-seat races and fewer competitive districts. Activity in open-seat races, which are typically the most competitive and most expensive, was down by nearly half when compared with the last election. There were only five open-seat Senate races this year, compared with the record-setting 13 in 1996, and only 32 open-seat House races, compared with 51 two years ago.

In the 34 Senate races, 83 candidates raised \$215 million and spent \$195 million. This activity represents a 14 percent increase in fundraising over 1996 levels and a 16 percent increase in spending. Individuals contributed \$135 million, PACs \$40 million and candidates \$23 million. Senate candidates entered the last days of the campaign with \$46 million cash-on-hand.

In House races, 928 candidates raised \$361 million and spent \$285 million. This represents a decline of 3 percent in receipts and 5 percent in spending, compared with the last

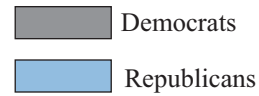
election cycle. The breakdown of funds shows \$195 million from individuals, \$128 million from PACs and \$22 million from candidates. House candidates had \$133 million on hand for the final weeks before the election.

Fifty-seven percent of the funding for this year's general election candidates came from individual contributions (\$329 million), 29 percent from PACs (\$167 million) and 8 percent from candidates themselves (\$46 million), mostly in the form of loans.

This article and the accompanying charts (see charts at bottom and right) are based on data taken from an October 29 news release. The release is available:

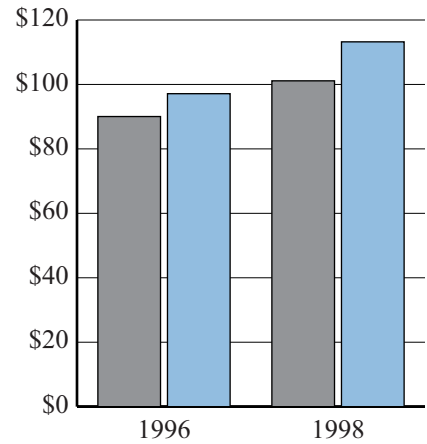
- At the FEC's web site, <http://www.fec.gov> (click "News Releases and Media Advisories");
- From the Public Records Office and the Press Office (call 800/424-9530); and
- By fax (call FEC Faxline at 202/501-3413 and request document 610). ♦

Candidate Receipts, January 1—Mid-October



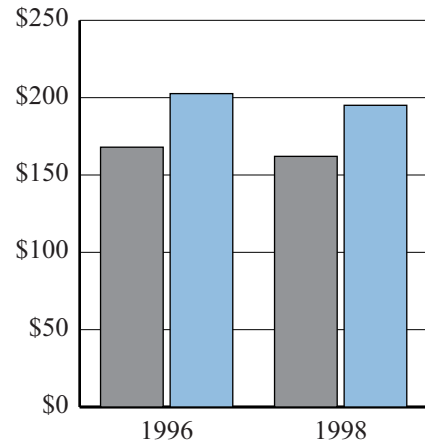
Senate Candidates

Millions

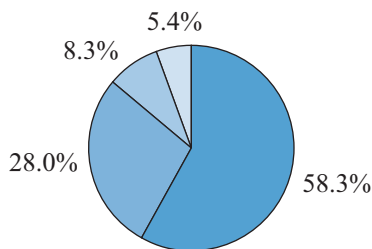
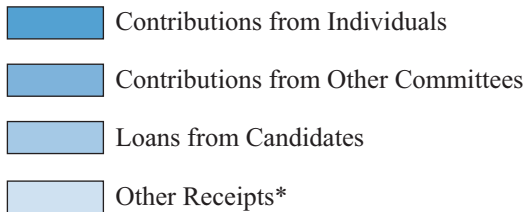


House Candidates

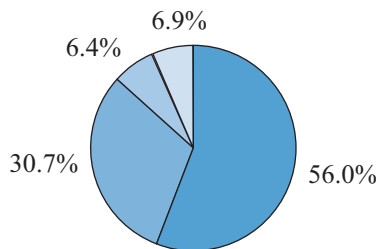
Millions



Receipts of 1998 General Election Candidates by Source, January 1997—October 1998



Republicans
\$308.29 million



Democrats
\$263.18 million

* This category includes candidate contributions, loans other than those from candidates and other types of receipts.

Advisory Opinions

AO 1998-19 Permissibility of Solicitations by Federation of Trade Associations

The Credit Union Legislative Action Committee (CULAC), a separate segregated fund of a federation of credit union trade associations, may solicit contributions from individual account holders who are members of credit unions of the Credit Union National Association (CUNA). The various state leagues and member credit unions under CUNA may serve as collecting agents for CULAC and the state league PACs. Additionally, an automatic account deduction program, known as Deduct-A-Buck, can be used to solicit contributions from members of member credit unions to CULAC and the state league PACs.

Commission Regulations

An incorporated trade association may solicit its executive and administrative personnel, their families and its unincorporated members. 11 CFR 114.7(a). It may also solicit the restricted class of its member corporations where the solicitation has been approved and where the corporation has not approved a solicitation by another trade association for the same calendar year. 11 CFR 114.8(c).

Solicitations

Individual shareholders (share account holders) who are members of CUNA's member credit unions may be solicited for contributions to CULAC provided they otherwise comply with the rules governing solicitations for trade association PACs. 11 CFR 114.8(d). This conclusion is based on the reasoning of several previous FEC advisory opinions.

CUNA is a bona fide membership organization, and the individual credit union members of CUNA are considered members under Commission regulations. AO 1991-24. Shareholders of a credit union possessing a "relatively enduring and independently significant financial or organizational attachment" qualify as members and can therefore be solicited for contributions to a credit union's PAC. AO 1990-18. The individual shareholders of member credit unions of CUNA meet these benchmarks and thus qualify as members of a membership association.

Additionally, there is a close parallel between shareholders of a savings and loan association and stockholders within a corporate structure. See AO 1984-63. In this case, the analogy between a share account holder of a credit union and a stockholder in a corporation is close enough to permit the SSF of a trade association to solicit the shareholders of member credit unions under 11 CFR 114.8(c).

Collecting Agents

CUNA is a bona fide federation of trade associations based on several factors. It has overlapping membership with the state leagues; the state leagues and credit unions may participate in CUNA's governance; and there are significant financial interactions between CUNA, the state leagues and the state league credit unions.

Although, in AO 1989-3, the Commission concluded (without explanation) that corporate members of a trade association could not act as collecting agents for the trade association, that conclusion can be distinguished from the situation here, involving a federation of trade associations. A federation of trade associations presents an integrated structure with multiple tiers of membership and governance powers linking the member organizations with the principal organization.

Therefore, the state leagues of CUNA and credit union members of those state leagues may be considered a branch, division or local unit of CUNA. Consequently, they may act as collecting agents in receiving and transmitting contributions to CULAC. 11 CFR 102.6(b)(1)(iii).

Deduct-A-Buck

CUNA may use its account deduction plan to collect contributions. The plan, dubbed the Deduct-A-Buck program, will not violate the Commission's prohibition on payroll deduction plans by member corporations of a trade association because it does not involve a payroll deduction. Nonetheless, a brochure CUNA plans to send to credit union members to request that they allow the deduction must be amended to state that an employee or member who refuses to contribute may do so without fear of reprisal. 11 CFR 114.5(a)(4). The brochure already states that contributions to the PAC are voluntary.

Date Issued: November 2, 1998;
Length: 11 pages. ♦

AO 1998-20 Exceeding Contribution Limit to Repay Entitlement

Dr. Lenora B. Fulani and Lenora B. Fulani for President, her authorized campaign committee, may not accept contributions from individuals in excess of the \$1,000 limit per election in order to repay the U.S. Treasury for excess public funds they received during the 1992 presidential campaign.

In March 1997, the Commission issued a final repayment determination to Dr. Fulani and her committee for \$117,269.54 after determining that some expenditures by her committee were not qualified campaign expenses and that the committee had received matching funds in excess of its entitlement. The U.S. Court of Appeals for the

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Advisory Opinions

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District of Columbia Circuit denied a petition by the committee that asked for a review of the repayment determination. Thus, the repayment determination stands.

Dr. Fulani states that she and her committee can no longer engage in the type of “grass roots” fundraising that they used during her presidential campaign. Instead, she proposes tapping a few close supporters who are wealthy enough to make contributions or loans in excess of \$1,000, and receiving personal gifts or personal loans in excess of \$1,000. The Commission concluded that neither of these strategies for repayment was permissible.

The Federal Election Campaign Act (the Act) limits contributions by individuals to \$1,000 per election. 2 U.S.C. §441a(a)(1)(A). The definition of contribution includes loans made to influence a federal election. 2 U.S.C. §431(8)(A)(i) and (B)(vii). Further, a contribution by an individual to retire debts must be aggregated with contributions from that same individual for the same election. The same \$1,000 limit would apply. Thus, contributions—even in the form of loans—that exceed the Act’s limits are impermissible.

Commission regulations list the personal funds of a candidate among several sources of funds that may be used to repay matching funds to the Treasury. A candidate can donate his or her personal funds to the campaign without limit for this purpose.

Permissible sources of personal funds—other than the candidate’s assets at the time he or she became a candidate—include “gifts of a personal nature which had been customarily received prior to candidacy.” The proposed personal monetary gifts would not be part of a regular pattern of gift-giving to Dr. Fulani by the gift-givers.

Furthermore, while the gifts might not be earmarked for the campaign, Dr. Fulani acknowledged that she planned to accept them for that purpose. The proposal for the receipt of the gifts would evade the contribution limits (2 U.S.C. §441a) and would be impermissible under the Act.

Date Issued: November 4, 1998;
Length: 6 pages. ♦

AO 1998-21 Adjustment to Allocation Ratio

The National Republican Senatorial Committee (NRSC) may not deviate from the minimum federal allocation percentage found at 11 CFR 106.5(c)(2) for its administrative and get-out-the-vote drive expenses incurred during the 1998 election cycle. The regulations state that Senate and House campaign committees must pay for administrative and generic voter drive expenses with at least 65 percent in federal funds. The committees may pay for no more than 35 percent of those expenses with nonfederal funds.

The NRSC planned to promote a number of nonfederal candidates during the 1998 election cycle with funds from its nonfederal account. It anticipated that more than 35 percent of its total candidate-specific disbursements during this time would be on behalf of nonfederal candidates. The NRSC asserted that, if it adhered to the minimum federal percentage, it would end up paying a disproportionate share of its total administrative and generic voter drive expenses from its federal accounts.

The NRSC proposed that, when allocating its expenses prior to November 3, it would use the Commission’s allocation ratio, subject to the minimum federal percentage. After the election, however, it would calculate the actual ratio of federal candidate-

specific expenditures to total candidate-specific disbursements. If the actual nonfederal portion exceeded 35 percent, the committee would make a transfer from its nonfederal to its federal account so that the amount spent on administrative and generic voter expenses reflected the actual ratio of federal and nonfederal candidate disbursements.

The plain language of the regulation prohibits Senate and House campaign committees from paying more than 35 percent of administrative and generic voter drive expenses with nonfederal funds. The NRSC’s plan to delay the transfer of funds from its federal account to its nonfederal account until after the election would not change the fact that more than 35 percent of those expenses would be paid with nonfederal funds.

The Commission believes that any reassessment of a provision of the regulations is most appropriately made in the rulemaking process, rather than in an advisory opinion. The Commission will have an opportunity to reexamine 11 CFR 106.5(c)(2) as part of its rulemaking on soft money. See the July 13 *Federal Register* (63 FR 37721) for more details about this rulemaking. A copy of the publication is available at <http://www.fec.gov> and from the FEC’s automated Faxline (202/501-3413, document 230).

Date Issued: November 2, 1998;
Length: 5 pages. ♦

AO 1998-24 Status of State Party as State Committee of Political Party

The American Heritage Party in Washington meets both of the Commission’s requirements for state committee status because it is a bona fide state committee under FEC laws and regulations. This means the committee may make coordinated expenditures on behalf of its federal candidates.

The Federal Election Campaign Act (the Act) defines a state committee as “the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission.” 2 U.S.C. §431(15).

The definition of a state committee requires the existence of a political party. A political party is “an association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization.” 2 U.S.C. §431(16).

In a number of Advisory Opinions, the Commission has identified two requirements necessary for state political committee status. First, the organization must have a state affiliate agreement that “delineates activities commensurate with the day-to-day operation” of a party at a state level. Second, the state affiliate must gain ballot access for its Presidential and other federal candidates. See AOs 1998-2, 1997-7, 1996-51 and 1996-27.

The Commission has made clear that a state political party can qualify as a state party committee without an affiliation with any national political party. The state party’s candidate must qualify as a candidate under FEC regulations in order for the party to satisfy the second requirement.

The American Heritage Party meets both requirements. In addressing the first requirement, the party’s bylaws set out a comprehensive organizational structure for the party from the statewide level down through local levels. These bylaws do indeed delineate activity commensurate with the day-to-day functions and operations of a political party on the state level.

The second requirement of ballot access for a federal candidate also has been satisfied. Both of the

party’s candidates for federal office in the 1998 election cycle attained ballot access, and their FEC reports indicate they have satisfied the requirements for becoming a federal candidate under 2 U.S.C. §431(2).

The Act states that state and national committees may make coordinated expenditures in connection with the general election of their party’s congressional candidates. 2 U.S.C. §441a(d). Therefore, the American Heritage Party in Washington may make coordinated expenditures on behalf of its federal candidates.

Date Issued: October 28, 1998;
Length: 4 pages. ♦

AO 1998-25 PAC Contributions Held in Escrow Account

The Mason Tenders District Council of Greater New York (District Council), an intermediate body composed of locals of the Laborers International Union of North America (LIUNA), may forward contributions it collected from local union members—and held in escrow for many months by order of a federal court-appointed monitor—to its separate segregated fund, the New York State Laborers’ Political Action Committee (NYS Laborers’ PAC). The time period during which the contributions must be forwarded to and reported by the PAC begins to run on the date that the District Council receives this advisory opinion.

The District Council, as well as other locals of the New York State Laborer’s Union, formed the NYS Laborers’ PAC. This PAC, in turn, is affiliated with the PAC of LIUNA and lists the international union as its connected organization.

In 1994, the United States filed a civil suit against the District Council and appointed a federal monitor to oversee its activities. Until certain issues concerning the PAC could be resolved, the monitor, in early 1997,

Federal Register

Federal Register notices are available from the FEC’s Public Records Office.

Notice 1998-16

Electronic Filing of Reports by Publicly Financed Presidential Primary and General Election Candidates: Final Rule; Announcement of Effective Date (63 FR 63388, November 13, 1998)

directed the District Council to place member contributions to the PAC in an escrow account, rather than forward them. In September 1998, following resolution of the issues, the monitor ordered the release of the funds so that they could be forwarded to the PAC.

While it is permissible for the District Council, as an intermediate unit of LIUNA, to act as a collecting agent for contributions from its members to the PAC, it must transmit individual contributions of \$50 or less to the PAC within 30 days of receipt and contributions of greater than \$50 within 10 days of receipt. 11 CFR 102.6(c)(4) and 102.8(b)(1). The PAC, then, is responsible for reporting the contributions received by the collecting agent. 11 CFR 102.6(c)(7).

Although the District Council held contributions longer than 10 or 30 days, it was doing so by order of a federal monitor. Based on the representation that the funds in the escrow account were not commingled with any other funds, and assuming that they were lawfully solicited and collected, the District Council may forward the contributions to the PAC. The time periods for transmittal of contributions will begin to run the day the District Council receives this advisory opinion.

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Advisory Opinions

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Reporting Contributions

The date a PAC uses in its reports to record a contribution forwarded to it by a collecting agent is the date when the contribution was received by the collecting agent. 11 CFR 102.8(b)(2). Due to the unusual nature of the circumstances and because the escrow account did not make expenditures and thereby become an account of the PAC, the PAC may file a memo entry to the next report due, instead of filing amended reports for each of the periods in which contributions were received in the escrow account. A separate schedule for each of the two years affected would be required, and those memos must disclose all required information about the contributions held in escrow. The detailed summary page of the next report should add the contribution figures to the PAC's cash-on-hand total. Finally, the PAC should submit a cover letter with the next report, making reference to this advisory opinion.

Date Issued: November 6, 1998;
Length: 4 pages. ♦

Back Issues of the Record Available on the Internet

This issue of the *Record* and all other issues of the *Record* from 1996, 1997 and 1998 are available through the Internet as PDF files. Visit the FEC's World Wide Web site at <http://www.fec.gov> and click on "What's New" for this issue. Click "Help for Candidates, Parties and PACs" to see back issues. Future *Record* issues will be posted on the web as well. You will need Adobe® Acrobat® Reader software to view the publication. The FEC's web site has a link that will take you to Adobe's web site, where you can download the latest version of the software for free.

Information

FEC Faxline Menu

FEC Faxline documents may be ordered 24 hours a day, 7 days a week, by calling **202/501-3413** on a touch tone phone. You will be asked for the numbers of the documents you want, your fax number and your telephone number. The documents will be faxed shortly thereafter.

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