

Record

May 1999

Federal Election Commission

Volume 25, Number 5

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Staff

New FEC Staff Director Appointed

On April 14, the FEC announced the appointment of James A. Pehrkon as Staff Director. Mr. Pehrkon had been serving as Acting Staff Director since August 1998. With this new appointment, he officially replaces John M. Surina, who left the agency last year for a position at the Department of Agriculture.

Before becoming Acting Staff Director, Mr. Pehrkon served 18 years as the Commission's Deputy Staff Director with responsibilities for managing the FEC's budget, administration and computer systems. Among the agency's first employees, Mr. Pehrkon is credited with setting up the FEC's data processing department and establishing the Data Systems Development Division. He directed the data division before assuming his duties as Deputy Staff Director.

Most recently, Mr. Pehrkon has overseen the FEC's response to PricewaterhouseCooper's performance audit and management review of the agency. The FEC's Commissioners have directed Mr. Pehrkon to continue to recommend and implement improvements in the FEC's operations, saying his

(continued on page 2)

Public Funding

Estimated Public Funding Available for 2000 Primaries Shrinks Further

FEC staff has revised its estimate for the amount of public funds that will be available to Presidential primary candidates at the start of 2000. Previously, qualified Presidential candidates were expected to receive approximately 40 percent of their full entitlement on January 2, 2000. Now the estimate is roughly 32 percent.

Total deposits for calendar year 1998 to the Presidential Election Campaign Fund, which is funded by the \$3 checkoff box on tax forms, are approximately \$3 million less than the average amount deposited in the previous three years. If this trend continues through 1999, the FEC staff forecast \$6 million less available on January 2, 2000, than what it had previously estimated.

As required by the U.S. Treasury, the primary funding amount is calculated after setting aside the amounts needed for the general election (estimated at \$147.2 million for 2000) and conventions (estimated at \$28.9 million for 2000) for the Democratic, Republican and Reform parties.

Depending on their number and the amount of matchable contribu-

(continued on page 2)

Staff

(continued from page 1)

experience and knowledge will be invaluable in this regard.

An Austin, TX, native, Mr. Pehrkon received an undergraduate degree from Harvard University and did graduate work in foreign affairs at Georgetown University. ♦

Public Funding

(continued from page 1)

tions they raise, primary Presidential candidates will be eligible to receive an estimated \$98.7 million in public funds, but only an estimated \$20.4 million of that amount will be available in the fund on January 2, 2000.

If a significant number of candidates remain eligible for matching funds throughout the Presidential primaries, subsequent entitlements may not be fully funded until new checkoff moneys are received in

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

800/424-9530
202/694-1100
202/501-3413 (FEC Faxline)
202/219-3336 (TDD for the
hearing impaired)
800/877-8339 (FIRS)

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2001. That would mean that, based on these projections, primary candidates may not get their full share of the fund until after the general election is decided. See graph on p. 3.

During the last Presidential election cycle in 1996, the first payment to qualified primary candidates on January 1, 1996, represented 60 percent of what they were entitled to receive. Most candidates were able to secure bridge loans until checkoff receipts for 1996 overcame the shortfall in April.

For previous articles about the shortfall, see the [July 1998 Record](#), p. 1, and the [January 1998 Record](#), p. 13. ♦

Bradley Eligible for Matching Funds

On March 25, Democrat Bill Bradley became the first 2000 Presidential candidate eligible for public matching funds.

To establish eligibility, a candidate must raise \$100,000 by collecting \$5,000 in matchable contributions in at least 20 different states. Only contributions received from individuals, and only up to \$250 of a contributor's total, are matchable by the federal government.

Eligible candidates must agree to limit their spending, use funds for campaign-related expenses only, keep financial records and submit their records to an FEC audit.

Once declared eligible, candidates can submit additional contributions for matching funds on the first business day of every month. The U.S. Treasury will begin paying out the FEC-certified amounts in January 2000. Currently, the maximum amount a Presidential primary candidate can receive in matching funds is calculated at \$16.75 million.

Matching fund submissions are available at the FEC's web site—

<http://www.fec.gov>—as downloadable FTP files. Go to "Financial Information About Candidates, Parties and PACs" and follow the links. Instructions are on the web site. Copies of submissions are also available from the FEC's Public Records Office. Call 800/424-9530 (press 3) or 202/694-1120. ♦

Publications

Disclosure Directory of Federal and State Election Offices Available

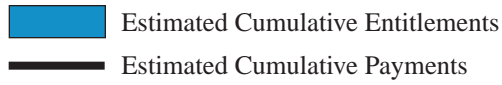
The *Combined Federal/State Disclosure and Election Directory 1999*, which lists national and state offices responsible for public disclosure of financial- and election-related filings for candidates and officeholders, is now available.

The publication contains information concerning state responsibilities in the areas of campaign finances, candidates on the ballot, election results, lobbying, personal finances, public financing, spending on state initiatives and other financial filings. It also includes e-mail and home page addresses for agencies that have a presence on the Internet. Agencies with on-line access to the FEC's database are noted.

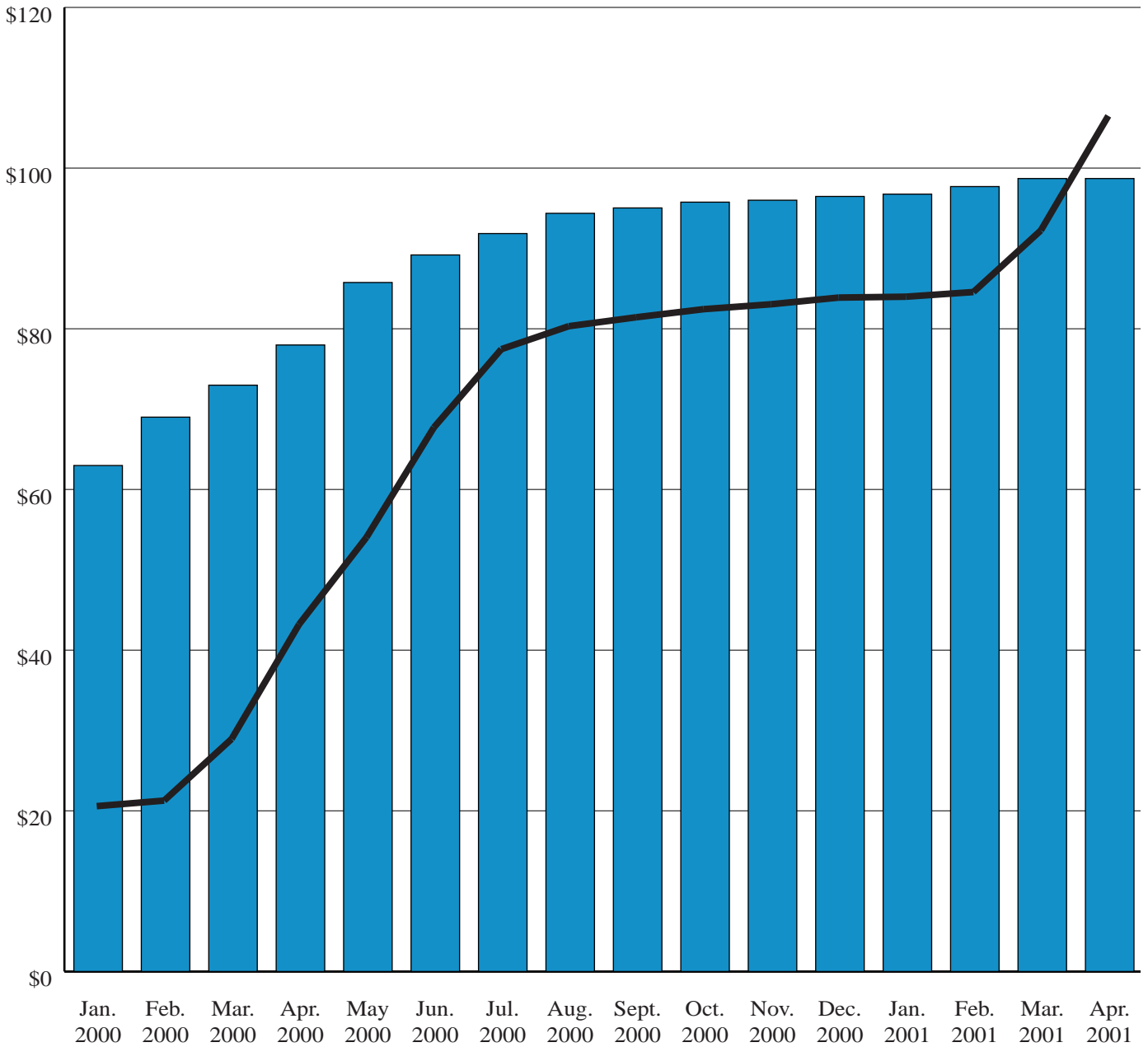
The directory is available at the FEC's web site—<http://www.fec.gov>—and includes links to many of the other agencies listed in the publication. The web edition of the directory will be updated periodically throughout the year. The directory is also available on 3.5 inch diskettes for \$3. Paper copies of the 1999 edition, which are free, can be ordered from the Public Records Office by calling 800/424-9530 (press 3) or 202/694-1120. ♦

Presidential Election Campaign Fund: Estimated Entitlements and Payments

The estimated cumulative entitlements in the graph below reflect the amount of public funds the Commission expects qualified candidates to be eligible to receive. The estimated cumulative payments show the amount of public funds projected to be available to fulfill those entitlements.



Millions



Electronic Filing

Free Filing Software Available on the Web

The FEC's electronic filing software, FECFile 3, is now only a few clicks away.

To access the software, just follow the links to electronic filing from the FEC's home page (<http://www.fec.gov>), fill out an on-line form and download the software.

FECFile 3, the latest version of the FEC's free electronic filing software, has been available since the first week of March. It is faster and easier to use than the previous version, and the FEC anticipates many committees will use it to file their reports during the current cycle.

The growth of the electronic filing system during the last year has been smooth and impressive. In April 1998, 50 committees had filed electronically. Now, more than a year later, that number has increased to 266 committees. Electronic filers have transmitted more than 1,600 reports to the Commission disclosing over \$37 million in transactions. Careful planning has ensured that this growth, and the rapid expansion expected throughout the current cycle, will not stress the electronic filing system.

To help pave the way for larger committees, the FEC has entered into agreements with commercial software vendors Aristotle Publishing and Gnosso Software, companies whose products are used by many medium to large federal political committees. Working closely with the FEC, they have added electronic filing capability to their software products, obviating the need for separate filing software. The FEC is beginning to see the impact of these efforts with monthly filings from a number of large, nonparty committees. Other software companies may also have

incorporated electronic filing capability into their products. You should check with your vendor to find out if your software offers this option.

The Commission will be sending a questionnaire to all committees soon asking about their computer capabilities and attitudes toward filing electronically. The agency hopes committees will take a few minutes to respond and help develop a system that best meets their needs. ♦

Legislation

Legislative Recommendations Submitted to President and Congress

The Commission has submitted 41 recommendations for legislative action to President Bill Clinton and the U.S. Congress.

The recommendations were submitted in batches. The [first group](#)—three priority recommendations—was sent to Congress and the President on March 8. The three recommendations were:

- *Electronic Filing.* The recommendation would require committees that reach a certain threshold of financial activity to file their reports electronically with the Commission. Among the benefits: faster processing of reports by the FEC, standardized presentation of reports on the FEC web site for all committees of a certain threshold, enhanced public disclosure of campaign finance information and easier filing for committees. The Commission has facilitated electronic filing, on a voluntary basis, since 1997 and has designed software that accommodates many committees.
 - *Campaign Cycle Reporting.* This proposal would place committee reporting on a campaign-cycle basis. It would simplify recordkeeping and reporting for authorized committees. Currently, they must track contributions on a calendar-year basis to comply with the Federal Election Campaign Act's (the Act's) reporting requirements and track contributions on a per-election basis to comply with the Act's contribution limits. Moving to election-cycle reporting would also enhance disclosure of aggregate totals for contributions and disbursements.
 - *\$25,000 Annual Limit.* This proposal would help eliminate confusion among some contributors who inadvertently exceed their annual limit when making contributions to a candidate in a nonelection year. Current law states that these contributions count against the annual limit for the year in which the candidate's election is held—not the nonelection year during which the contribution was made. The proposed change to the law would also allow the Commission to better monitor the annual contribution limit for individuals through its computer database.
- The [second batch](#)—a supplemental set of 38 recommendations transmitted to the Hill and the White House April 1—is divided into two parts: those that would ease burdens for political committees and streamline the administration of current campaign finance laws and those that are primarily technical in nature. This supplemental included recommendations covering:
- An administrative fine schedule
 - A shortfall in the Presidential Election Campaign Fund
 - Contributor information
 - Fraudulent solicitations
 - Draft committees
 - Contributions by foreign nationals
 - Travel
 - Contributions from minors
 - Loans from non-banking institutions

- Use of force and reprisals
- Audits for cause
- “Reason to Believe” terminology
- Threshold eligibility for primary matching funds
- State expenditure limits for Presidential primary candidates
- Eligibility for public funding

Each recommendation is followed by an explanation of the need for it and the expected benefits. To view the entire list of 1999 legislative recommendations, go the FEC’s web site—<http://www.fec.gov>—and click on “What’s New!” ♦

Advisory Opinions

AO 1999-3 Use of Electronic Signatures Authorizing Payroll Deductions to Corporate PAC

The Microsoft Corporate Political Action Committee (Microsoft PAC) may accept digital electronic signatures from Microsoft Corp. employees who authorize payroll deduction of contributions to the PAC. An electronic signature constitutes a valid written authorization for the deductions as required by law.

Microsoft currently uses electronic signatures for other company-wide purposes and attests that the practice is secure. Microsoft ensures this security by requiring employees to periodically change their passwords, to protect their passwords from disclosure and to secure their work stations whenever they step away.

In addition, Microsoft proposes a confirmation process for employees who wish to use payroll deduction to contribute to its PAC. When the PAC receives an electronically

signed payroll deduction form by e-mail, it will send an e-mail reply to notify the employee of its receipt of the form and to request a second confirmation of the employee’s choice to participate in the payroll deduction program.

Commission regulations permit a corporate PAC to use a payroll deduction plan to solicit and collect contributions from the corporation’s restricted class (executive and administrative personnel, and their families). 11 CFR 114.1(f) and 114.5(k)(1). In soliciting the restricted class, corporations and PACs must follow FEC rules that ensure that contributions are voluntarily given. 11 CFR 114.5(a)(1)-(5). Further, when using payroll deduction, a PAC must first secure an affirmative written authorization from the contributor. This is often accomplished by a combination solicitation and payroll deduction form sent to the employee. This form allows an employee to designate the amount to be deducted during the pay period and to indicate his or her authorization via a signature.

This signature required by Commission recordkeeping regulations is necessary as a unique identifier of the employee. 11 CFR 104.14(b)(1). An authorization form signed by a contributor becomes part of a committee’s records, which must be preserved for at least three years after the related report or statement is filed. 11 CFR 104.14(b)(3) and 102.9(c).

The Commission has, in the past, interpreted its regulations in such a way as to accommodate technological innovations where the use of technology does not compromise the intent of the Federal Election Campaign Act or FEC regulations. See AOs 1995-9, 1994-40 and 1993-4.

An electronic signature, like a written signature, functions as a unique identifier of the authorizing employee. In view of Microsoft PAC’s stated procedures and

safeguards for the payroll deduction plan, electronic signatures may be used by employees to authorize such transactions provided that the following conditions are met.

- An employee must be able to use the electronic signature or a written signature to revoke or modify the amount of the authorization at any time; and
- A record of the electronic signature, including verification that the signature came from a particular employee, must be maintained in a retrievable form available to the Commission in the event of an audit or investigation.

Date Issued: March 18, 1999;
Length: 4 pages. ♦

Advisory Opinion Requests

Advisory opinion requests are available for review and comment in the Public Records Office.

AOR 1999-8

Investment of excess campaign funds in mutual funds (Citizens for Arlen Specter, March 16, 1999; 5 pages)

AOR 1999-9

Matching credit card contributions received by Presidential primary candidates via Internet (Bill Bradley for President, Inc., March 18, 1999; 9 pages)

AOR 1999-10

SSF solicitation of member policyholders of mutual insurance company who are independent contractor agents (Nationwide Political Participation Committee, March 29, 1999; 2 pages plus 44-page attachment)

AOR 1999-11

Federal candidate’s use of funds from state-level campaign account to advertise forum for discussing state matters (Dianne Byrum, April 8, 1999; 6 pages) ♦

Regulations

Proposed "Member" Regulations Draw More Discussion at Second Public Hearing

On March 17, the Commission held a public hearing regarding revisions to regulations that govern who qualifies as a member of a membership organization.

The public hearing was the second the Commission has held in the past 12 months as it attempts to craft revisions to the member regulations found at 11 CFR parts 100 and 114. The first hearing, in April 1998, produced no consensus on which of the Commission's alternative proposals would best implement the requirements of the law. The second Notice of Proposed Rulemaking (NPRM) was published in the *Federal Register* on December 16, 1998.

Laurence E. Gold, Associate General Counsel for the AFL-CIO, called the suggested revisions in the NPRM an improvement, but said more is needed to establish a standard for "member." The standard must be meaningful and not subject to manipulation, he and other union officials stressed. One suggestion: a minimum dues payment of \$50 or a smaller dues payment plus a meaningful organizational attachment to the organization. Mr. Gold also told Commissioners that its regulations should not hold union retirees to the same membership requirements as the general membership, but should recognize anyone the union calls a retiree as a bona fide member.

Robert D. Lenhard, of the American Federation of State, County and Municipal Employees, also noted union concerns about the disclosure of their organizing documents to members, arguing that any regulation requiring this would

be potentially burdensome and carry "significant" consequences if violated.

Professional and advocacy groups, on the other hand, told Commissioners not to set a minimum dues amount, and said that such decisions should be left to individual organizations. The Commission must take the diversity of organizations into account as well, added Jerald A. Jacobs, of the American Society of Association Executives. Mr. Jacobs and others urged that lifetime, student and honorary members and members who are retirees be treated the same as all other members even if their dues have been waived or are lower than those paid by full members. Other organizational attachments should be sufficient for these members, speakers argued.

James Bopp, Jr., speaking on behalf of the James Madison Center for Free Speech, told Commissioners that the agency's suggestion for an annual affirmation of membership was burdensome and unnecessary—an opinion backed up by a number of those testifying at the hearing. National Education Association attorney Richard B. Wilkof said the recommendation for an annual affirmation would be unconstitutional, preventing unions from effectively communicating with their members. He and other witnesses also noted that some membership organizations do not collect dues annually, yet members of those groups display organizational attachments that should prove sufficient to qualify them as members under Commission regulations.

A majority of speakers told the Commission that its proposed requirement for membership organizations to make their formal organizational documents (articles, bylaws and the like) available to members could be burdensome, as could any regulation that would require an organization to amend its governing documents.

For more information about the member NPRM or public hearing:

- Request a transcript of the hearing testimony from the Public Records Office (800/424-9530, press 3, or 202/694-1120).
- Read the NPRM (63 FR 69224), which is available from Faxline (call 202/501-3413, document 229) and at the FEC's web site (<http://www.fec.gov>, click "What's New!"). ♦

Public Funding Hearing Touches on Party Ads, Internet Contributions

On March 24, the Commission held a public hearing on public financing of Presidential primary and general election candidates.

The Notice of Proposed Rulemaking (NPRM) on this issue (63 FR 69524, Dec. 16, 1998) covers a number of topics, but speakers at the public hearing focused on just a few issues, including party committee ads and other types of expenditures coordinated with Presidential candidates, host committee expenditures, Internet contributions to Presidential candidates, services provided to media representatives and the Commission's procedures for auditing federally financed Presidential committees.

Thomas J. Josefiak, a former FEC Commissioner who spoke on behalf of the Republican National Committee, said that the Commission's proposal to make party committee issue ads clearly identifying a Presidential nominee count against a party's general election coordinated spending limit would be unconstitutional since the ads would not contain express advocacy.

Democratic National Committee counsel Joseph E. Sandler said that the FEC's proposed three-part test for determining whether an ad was a coordinated expenditure was too subjective. The test would not count

an ad against a party's expenditure limit if the ad focused on legislative or public policy issues, addressed an audience that would be affected by the legislation being discussed, or mentioned the candidate only incidentally or only as a proponent or opponent of the subject being presented.

Lyn Utrecht, of the law firm Ryan, Phillips, Utrecht & MacKinnon, added that the Commission "should not interfere with the relationship between the party and their candidate" and cautioned Commissioners not to do anything that discourages compliance with the election law.

Parties are not simply election machines for federal candidates, but have a much wider agenda, argued James Bopp, Jr., who testified at the hearing on behalf of the James Madison Center for Free Speech.

David Eisner, Vice President for Corporate Affairs for America Online, Inc., told Commissioners that the current regulation prohibiting public matching funds for credit card contributions to Presidential candidates was a stumbling block to an increasingly computer-savvy community that already uses the World Wide Web to register to vote, e-mail congressional representatives and sign-up to volunteer in political campaigns.

"We obviously face a rapidly changing legal environment in this area," added Trevor Potter, a former FEC Commissioner who was representing AOL. He said the Commission should consider not only credit card contributions eligible for matching funds, but also contributions made with debit cards, electronic funds transfers and cyber cash.

George Condon, Washington bureau chief for Copley News Service, told the Commissioners that "some guidelines are sorely needed" to instruct Presidential campaigns about what they can charge the media for the costs of

providing transportation and ground services to those covering the campaigns. During the last two Presidential campaigns, Mr. Condon said, a breakdown of the unwritten rules between the campaigns and the media meant confusion over when the media should pay and how much they should be charged.

Mr. Condon and Kim Hume, of Fox News, represented the concerns of 29 news organizations that were asking for rules to describe allowable expenses more explicitly, require itemized bills from campaigns and limit abuse by Presidential committees of media representative's personal credit cards.

For more information about the public funding NPRM and public hearing:

- Request a transcript of the hearing testimony from the Public Records Office (800/424-9530, press 3, or 202/694-1120).
- Read the NPRM in the December 16, 1998, *Federal Register*. The document is available from FEC Faxline (202/501-3413, document 235) and at <http://www.fec.gov>.
- See the January 1999 *Record*, p. 7, for a summary of the NPRM. ♦

Court Cases

New Litigation

Fireman v. United States

Simon C. Fireman asks the U.S. Court of Federal Claims to compel the FEC to refund \$69,000 in illegal contributions he made to two 1996 Presidential campaign committees of former Senator Bob Dole.

Faced with a 73-count information, Mr. Fireman in 1996 pleaded guilty to making contributions in the names of others and making excessive contributions. The U.S. District

Court for the District of Massachusetts ordered him to pay a \$1 million fine and sentenced him to one year of probation. Upon learning that the contributions were likely impermissible, Mr. Dole's primary and compliance committees disgorged the \$69,000 to the U.S. Treasury.

Fireman alleges that FEC regulations mandate that a contribution that does not appear impermissible at the time it is made, but later is found to be from a prohibited source, be refunded to the contributor within 30 days. 11 CFR 103.3(b)(2). He also alleges that Commission advisory opinions concluding that a campaign committee could also refund impermissible contributions to the U.S. Treasury are beyond the Commission's authority and contrary to its regulations.

U.S. Court of Federal Claims, 99-17, January 8, 1999. ♦

Back Issues of the Record Available on the Internet

This issue of the *Record* and all other issues of the *Record* starting with January 1996 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.

Compliance

MUR 4546 Failure to Follow “Best Efforts” Rules Results in Civil Penalty

Friends of Jack Metcalf, the principal campaign committee of 1996 Republican congressional hopeful Jack Metcalf, has paid a \$7,000 civil penalty for failing to use “best efforts” to obtain missing contributor information.

The Federal Election Campaign Act (the Act) requires committees to identify each person making aggregate contributions of more than \$200 in a calendar year by name, mailing address, occupation and employer. 2 U.S.C. §§434(b)(3)(A) and 431(13). In order to comply with the Act, a committee must make its “best efforts” to obtain, maintain and submit the required identifying information. A committee demonstrates “best efforts” by making at least one follow-up, stand-alone request for the missing information within 30 days of receiving a contribution and amending succeeding reports to disclose the complete identification of contributors.

The campaign committee here failed to report complete contributor information on its three quarterly reports due in 1996 by a rate of between 63 and 74 percent. Although the committee sent follow-up letters seeking the omitted information, it did not do so within 30 days of receipt of the contribution. Further, the Committee did not file amendments containing complete information about its contributors in the three reports until more than a year after the 1996 election.

The Commission entered into a conciliation agreement with the Committee after finding probable cause to believe that it had violated the Act and Commission regulations. ♦

Outreach


FEC Conducts Monthly Roundtable Sessions

The FEC is conducting monthly roundtable sessions for the regulated community at its offices in Washington. The roundtable sessions, limited to 12 participants per session, focus on a range of topics. See the table below for dates and topics.

Registration is \$25 and will be accepted on a first-come, first-served basis. Please call the FEC before registering or sending money

to be sure that openings remain in the session of your choice. Prepayment is required. The registration form is available at the FEC’s web site (<http://www.fec.gov>) and from Faxline, the FEC’s automated fax system (202/501-3413, request document 590). For more information, call 800/424-9530 (press 1) or 202/694-1100.

Individuals who have signed up for a roundtable but who will be unable to attend are strongly encouraged to call the FEC and cancel their registration so that the next person on the waiting list may attend in their place. ♦

Date	Subject	Intended Audience
May 5 9:30 -11 a.m.	 Fundraising Through Payroll Deductions and Combined Dues/PAC Solicitations (Code #599)	<ul style="list-style-type: none"> • Corporate/Labor/Trade PAC Staff • Lawyers, Accountants and Consultants to Above PACs
June 2 9:30 -11 a.m.	Candidate Reporting Basics (Code #699)	<ul style="list-style-type: none"> • House and Senate Candidates
July 7 9:30 -11 a.m.	Using Prizes or Entertainment to Raise SSF Funds (Code #799)	<ul style="list-style-type: none"> • Corporate/Labor/Trade PAC Staff • Lawyers, Accountants and Consultants to Above PACs
August 4 9:30 -11 a.m.	Corporate Mergers and Spin-Offs — Effect on the SSF (Code #899)	<ul style="list-style-type: none"> • Corporate PAC Staff • Lawyers, Accountants and Consultants to Corporate PACs

Public Appearances

May 4	Association Management and Public Affairs Consulting Washington, DC Dorothy Yeager, Senior Public Affairs Specialist
May 4	National Association of Business Political Action Committees Washington, DC Scott Thomas, Chairman

FEC Conference Schedule

The FEC will sponsor a series of conferences on campaign finance in 1999 and 2000. See list at right for details. To register for any conference, call Sylvester Management at 800/246-7277 or send an e-mail to tsylvester@worldnet.att.net. For program information, call the FEC's Information Division at 800/424-9530 (press 1) or 202/694-1100. A regularly updated schedule for the conferences and a downloadable invitation/registration form for the June conference appear at the FEC's web site. Go to <http://www.fec.gov> for the latest information.

Membership and Trade Association Conference
Date: June 7-8, 1999
Location: Washington, DC (Doubletree Hotel Pentagon City)
Registration: \$225

Partnership Conference
Date: July 1999
Location: Washington, DC
Registration: To be determined

Regional Conference (includes candidate, corporate/labor and party workshops)
Date: September 1999
Location: Chicago, IL
Registration: To be determined

Regional Conference (includes candidate, corporate/labor and party workshops)
Date: November 15-17, 1999
Location: San Francisco
Registration: To be determined

Candidate Conference
Date: February 2000
Location: Washington, DC
Registration: To be determined

Regional Conference (includes candidate, corporate/labor and party workshops)
Date: March 2000
Location: Miami, FL
Registration: To be determined

Corporate and Labor Conference
Date: May 2000
Location: Washington, DC
Registration: To be determined

Membership and Trade Association Conference
Date: June 2000
Location: Washington, DC
Registration: To be determined

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.

Federal Election Commission

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