

# Record

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## Compliance

### MUR 5390: Chartered Corporation Pays Record \$3.8M Civil Penalty

The Commission has entered into a conciliation agreement with Federal Home Loan Mortgage Corporation (Freddie Mac), a federally chartered corporation, concerning its use of corporate resources to host campaign fundraising events and to collect and forward political contributions to federal candidates. The \$3.8 million civil penalty Freddie Mac has agreed to pay for these violations of the Federal Election Campaign Act (the Act) is the highest civil penalty in FEC history.

#### Background

The Act prohibits corporations from making contributions or expenditures from their general treasury funds in connection with any election of a federal candidate. 2 U.S.C. 441b(a). A corporation may send a communication that solicits contributions for a particular candidate or committee only to its restricted class. A corporation and its agents may not facilitate an individual's contribution to a candidate or act as a conduit for individual contributions. 2 U.S.C. 441b(b)(2)(A), 11 CFR 114.2(f)(1) and 114.3. Examples of this would include:

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## Court Cases

### Shays v. FEC II

On March 29, 2006, the U.S. District Court for the District of Columbia issued a ruling in *Shays and Meehan/Bush-Cheney '04, Inc. v. FEC* (04-1597 and 04-1612) that granted in part and denied in part the plaintiffs' motion for summary judgment.

#### Background

On March 11, 2004, the Commission issued a Notice of Proposed Rulemaking asking for comments regarding possible changes to the definition of "political committee" that would require certain groups not currently registered with the FEC to do so. In November 2004, the Commission issued final rules that require organizations to treat more of their receipts as contributions and to use a greater percentage of federal funds for certain allocable expenses. While these rules could trigger registration for some groups, the Commission did not directly modify its definition of "political committee." Instead the Commission decided that it would continue to construe the definition of "political committee" on a case-by-case basis. See the April 2004 Record, page 1; September 2004 Record, page 1; and November 2004 Record, pages 3 and 4.

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## Compliance

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- Officials or employees ordering staff to plan, organize or carry out a fundraising project as part of their work responsibilities using corporate resources; or
- Providing materials for the purpose of transmitting or delivering contributions, such as stamps, envelopes addressed to a candidate or committee other than the corporation or labor organization's separate segregated fund.

Corporations organized by the authority of any law of Congress—like Freddie Mac—are also prohibited from raising or spending funds to influence state or local elections.

*Campaign Fundraising Events.* From 1999 to 2002, Robert Mitchell Delk, senior vice president of Freddie Mac's Government Rela-

tions department, retained Epiphany Productions, Inc., to plan and organize campaign fundraisers for federal candidates. Freddie Mac retained Progressive Strategies LLC in 2001 and The Leger Company in 2002 to assist Clarke Camper, the head of the Congressional Relations group within Government Relations, with these fundraisers. From October 2000 through May 2003, Mr. Delk hosted 70 campaign fundraisers and raised about \$1.7 million for federal candidates. Additionally, Leland Brendsel, Freddie Mac's chairman and CEO, hosted a campaign fundraising lunch in 2001 for a former member of Freddie Mac's board of directors, who was also a federal candidate.

Freddie Mac contends that it paid monthly retainers to compensate the firms for services unrelated to fundraising events, such as providing political and legislative advice, organizing non-fundraising events honoring current and former officials, advising Mr. Delk and Mr. Camper in their personal capacities on fundraising and advising Freddie Mac regarding fundraising for the building fund accounts of national political parties.<sup>1</sup>

*Solicitation and Collection of Contributions.* Mr. Delk was responsible for advising Freddie Mac executives of congressional candidates to whom they should consider making campaign contributions. Mr. Delk and Mr. Camper contacted executives and solicited contributions, including specific amounts and whether the executives, their spouses or both should write checks. Mr. Delk or Mr. Camper either personally picked up the checks or requested that the executive send the contribution to the Government Relations office. Mr. Brendsel's secretary handled approximately \$55,000 in contributions

to federal committees from 2000 to 2004.

*RGA Contribution.* In 2002, the chairman of the Republican Governors Association (RGA), who was also a consultant hired by Freddie Mac, approached Mr. Delk and asked Freddie Mac to make a \$250,000 donation to the RGA for the Republican National Committee's Eisenhower Building Fund. The chairman also suggested that Freddie Mac divide the donation into two parts. The first check, in the amount of \$100,000, was payable to the Republican Governors Association Eisenhower Building Fund.

Freddie Mac sent the second check after the passage of BCRA, but before its effective date. The check was payable to the RGA allegedly with a letter asking that the contribution be used for building fund purposes. However, RGA deposited the check in its operating account. This constituted an impermissible corporate contribution. Freddie Mac asked for a refund eight months later.

### Conciliation Agreement

Freddie Mac agrees to pay a civil penalty of \$3.8 million for its violations of the Act. It also agrees to cease and desist from engaging in activities that violate 2 U.S.C. 441b(a). The Commission has determined to take no further action with respect to the former corporate executives and Epiphany Productions.

—Carlin E. Bunch

### MUR 5388: Accepting Excessive Contributions

The Commission has entered into conciliation agreements with James Treffinger, the James Treffinger for Senate Committee and Robert A. Mathers, in his personal capacity and as treasurer, regarding excessive contributions and improper use of campaign funds. The respondents have agreed to pay civil penalties totaling \$171,000.

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<sup>1</sup> Some of the violations occurred before the passage of the Bipartisan Campaign Reform Act of 2002 (BCRA). Since its enactment, corporations have been banned from making any donations to national party committees.

## Background

Before the passage of Bipartisan Campaign Reform Act of 2002 (BCRA), a person contributing to a federal candidate could only donate \$1,000 for each election, e.g. for both the primary and general elections.<sup>1</sup> 2 U.S.C. 441a(a)(1)(A). Although it is permissible to accept contributions designated for the general election before the primary is held, the committee must employ an acceptable accounting method to ensure that general election funds are distinguishable from those raised for the primary.

If the candidate does not participate in the general election, the committee must reattribute, redesignate or refund all contributions designated for that election within 60 days; otherwise, the contributions will be considered excessive and impermissible. 11 CFR 110.1(b)(5), 110.1(k), 102.9(e).

*Excessive Contributions.* During Mr. Treffinger's 2000 campaign, he received \$227,080 in contributions designated for the general election. During the primary campaign, the committee impermissibly spent \$50,000 of the general election funds for primary election expenses. When Mr. Treffinger lost in the primary, the committee did not redesignate or refund the general election contributions within 60 days of the general election as required by FEC regulations. Additionally, the \$50,000 spent on the primary election was not available to be refunded. In fact, at the time the conciliation agreement was signed, the campaign had refunded only \$6,400 of the general election contributions it had received.

Additionally, the committee received \$10,550 in excessive primary election contributions from individuals who had already met their \$1,000

limit for the primary election. The committee failed to disclose any reattribution or refund of the excessive funds.

On two occasions in 2002, the FEC provided detailed notification to the committee and Mr. Mathers indicating that they had an obligation to refund the contributions. To date, the committee has refunded only \$7,650 of the \$237,630 in excessive contributions.

*Improper Use of Campaign Funds.* Due to Mr. Treffinger's guilty plea to criminal charges in connection with other conduct relating to his 2000 campaign, the committee asked the Commission for an advisory opinion on the ability of the committee to use campaign funds for Mr. Treffinger's legal fees. On July 25, 2003, the Commission issued AO 2003-17, which notified the committee that it had to meet any remaining refund obligations before it could pay any of Mr. Treffinger's legal fees. Despite the explicit language of the advisory opinion, the committee used campaign funds to pay for Mr. Treffinger's legal fees without meeting its refund obligations.

## Conciliation Agreements

The Treffinger committee and Mr. Treffinger each agreed to pay \$57,000 in civil penalties and cease from violating 2 U.S.C. 441a(f). Mr. Mathers agreed to pay \$57,000 and cease from violating 2 U.S.C. § 441a(f) and 11 CFR 102.9(e).

## Court Cases

(continued from page 1)

The plaintiffs, Christopher Shays, Martin Meehan and Bush-Cheney '04, Inc., argued that the Commission's 2004 decision to continue deciding case-by-case whether a group is a "political committee," as defined in the Federal Election Campaign Act, was arbitrary and capricious. They also argued that the Commission should be compelled to issue a new rule.

## Court Decision

The district court rejected plaintiffs' contention that selecting adjudication rather than rulemaking was an abuse of discretion. Nevertheless, the court ruled that the Commission had failed to articulate a reasoned basis for its decision to continue case-by-case determinations of political committee status. Although the Commission had explained that a rulemaking would be complex and potentially over-inclusive, the court noted that the Commission did not explain why case-by-case adjudication would solve these problems. Additionally, the Commission did not address how unregistered groups' due process or First Amendment rights would be protected without a clear rule to rely upon. Lastly, the Commission did not address how the enforcement process would be timely enough to prove effective.

The court denied the plaintiffs' motion to compel the FEC to promulgate a new rule. It remanded the case to the FEC, however, ruling that it must either provide further explanation and justification for its decision to review the political committee status of unregistered organizations on a case-by-case basis or issue a new rule.

—Carlin E. Bunch

## CCL v. FEC

On May 9, 2006, the U.S. District Court for the District of Columbia denied the Christian Civic League of Maine's (CCL) motion for a preliminary injunction.

The court cited the Supreme Court finding in *McConnell v. FEC* that the government had a compelling interest in limiting the expenditure of corporate treasury funds via the electioneering communication (EC) provision contained in the Federal Election Campaign Act. It also restated from *McConnell* that the EC provision is not a ban on expression, but rather a requirement that corpo-

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<sup>1</sup> These incidents occurred before the implementation of BCRA. Today, the limit for individual contributions to candidate committees is \$2,100 per election.

## Court Cases

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rations fund certain advertisements through their separate segregated funds. The court found that the communication CCL intended to air was functionally equivalent to the “sham issue advertisements” that the *McConnell* court identified.

Although the court found that the CCL had several different options in communicating its message that would avoid violating the electioneering communication provision, CCL chose not to exercise these options. Therefore, the court found that CCL had not established the likelihood of irreparable harm and that granting a preliminary injunction would harm the interest of the Commission and the public by preventing the enforcement of an Act of Congress.

On May 12, CCL filed an appeal with the U.S. Supreme Court and moved for expedited consideration and consolidated briefing of the matter. On May 15, the Court rejected CCL’s motion to expedite and consolidate. The Court has not ruled on the appeal itself.

For more information on this case, see the May 2006 *Record*, page 7.

—Carlin E. Bunch

## Campaign Guides Available

For each type of committee, a *Campaign Guide* explains, in clear English, the complex regulations regarding the activity of political committees. It shows readers, for example, how to fill out FEC reports and illustrates how the law applies to practical situations.

The FEC publishes four *Campaign Guides*, each for a different type of committee, and we are happy to mail your committee as many copies as you need, free of charge. We encourage you to view them on our web site [www.fec.gov](http://www.fec.gov).

## Advisory Opinions

### Advisory Opinion 2006-7: Committee May Promote Candidate’s Book on Web Site

A campaign committee may incur *de minimis* costs to post on its web site material promoting the candidate’s book, without violating the ban on personal use of campaign funds.

#### Background

J.D. Hayworth for Congress seeks to place information on its web site promoting the candidate’s book, *Whatever It Takes*. The committee proposed two alternatives. The first would alert visitors to the book release and invite them to purchase copies at either a bookstore or an online bookstore, such as Amazon.com. The second would provide a link to Amazon.com.

#### Analysis

While a candidate’s campaign committee has wide discretion on the use of campaign funds, neither the candidate nor any other person may use contributions for personal use. 11 CFR 113.2 and 113.1(g). A personal use occurs when a “contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal office.” 2 U.S.C. 439a(b)(2). The expense of marketing a book exists irrespective of a candidate’s campaign, thus a committee cannot ordinarily use campaign contributions to pay the expense. In this situation, however, the committee may promote the book using either alternative because the cost of doing so is *de minimis*. Compare 11 CFR 113.1(g)(1)(ii)(D) permitting *de minimis* vehicle expenses for personal activities.

The Commission expressed no opinion as to the application of House rules or tax law, as those areas fall outside its jurisdiction.

Length: 4 pages

Date: April 20, 2006

—Meredith E. Metzler

### Advisory Opinion 2006-8: Corporation Collecting and Forwarding Contributions from Individuals to Political Committees

A for-profit corporation may collect and forward contributions from individual clients to political committees and candidates. Also, the corporation may provide information about candidates and solicitations from political committees and candidates to its clients at their request.

#### Background

Mr. Matthew Brooks intends to form a for-profit corporation that would provide individual “subscribers” interested in making political contributions with information about candidates and committees that fit the subscriber’s political giving profile. The corporation plans to accept funds from subscribers who will, at a later date, direct those funds as contributions to candidates and political committees or as donations to other non-profit organizations. Subscribers will pay a fee to the corporation, which will be deposited into the corporation’s treasury. The money allocated by the subscriber for future contributions will be kept in a separate merchant account until the subscriber designates a recipient of the funds or asks for the funds to be returned. When the subscriber indicates a certain candidate or committee as a recipient, the corporation will forward the designated amount within 10 days. In addition, the corporation will screen subscribers and their contributions to ensure that all the monies forwarded to candidates and political committees are within the limits and prohibitions

of federal law. Other than refusing to forward contributions that do not comply with federal law, the corporation will not place any limits on how a subscriber disburses his or her funds. Furthermore, the corporation will not advocate on behalf of any causes, nor will it engage in any federal election activity.

The corporation will be funded entirely from subscriber service fees. The recipient committees and organizations will not pay a fee to the corporation, nor will they have any contractual relationship with the corporation.

The corporation also intends to provide commentary and analyses regarding various officeholders, candidates, organizations and events to its subscribers. This information may include biographical sketches, voting records, ratings of a candidate by different organizations, reelection percentages, campaign contribution position, party loyalty and any relevant media articles.

The corporation will forward information and solicitations from candidates, committees and organizations relevant to the subscriber's stated interests and preferences. The corporation will not author any of the information or analyses forwarded to its subscribers.

### Analysis

The Commission determined that the corporation may collect and forward contributions for its subscribers to political committees, candidates and other organizations. In doing so, the corporation would be providing a service for its subscribers analogous to corporations that provide delivery services, bill paying services, or check writing services. The subscribers would compensate the corporation as an incidental cost in making contributions.

The corporation may also forward information and analyses regarding candidates and committees to its subscribers at their request for an additional fee. This service is a part of the corporation's overall busi-

ness plan to assist subscribers in the making of contributions. In order to prevent a contribution by the corporation to any political committee or candidate, it must use a separate merchant account for funds that will be dispersed as contributions. See 2 U.S.C. §441b; 11 CFR 114.2(b). The merchant account must be entirely segregated from the corporation's general treasury to ensure that the funds are not commingled.

The corporation may forward contribution suggestions from political committees to its subscribers so long as the cost is paid for entirely by the subscribers' fees. The corporation will not exercise any discretion in determining which contribution suggestions to forward, but will only match the contribution suggestions to the subscriber's stated interests and pattern of giving.

The corporation may recruit individuals to serve on its Board of Directors who may also be officers of political committees. If these individuals are acting on behalf of a candidate or committee while participating on the corporation's Board, the corporation might be considered affiliated with a federal candidate, officeholder or party committee and thus be subject to the applicable limitations and prohibitions. 2 U.S.C. §§ 441i(a) and (b), and 441i(e)(1)(A) and (B); see AOs 2005-2 and 2003-10.

Date: May 5, 2006

Length: 6 pages

—Gary Mullen

### Advisory Opinion 2006-9

On April 20, 2006, the Commission considered, but did not approve an advisory opinion concerning the American Institute of Certified Public Accountants Political Action Committee's treatment of checks received from partnerships. Unable to reach a consensus, the Commission concluded its consideration of the request and mailed copies of the draft opinions it considered to the requester.

### Advisory Opinion 2006-11: Allocation of Payment for Mass Mailings

At least half the cost of a mass mailing that expressly advocates the election of one clearly identified federal candidate as well as the election of other generically referenced candidates must be attributed to the clearly identified federal candidate.<sup>1</sup> If the space devoted to the clearly identified federal candidate exceeds the space devoted to the generically referenced candidates, then the costs attributed to the clearly identified federal candidate must exceed 50 percent and reflect at least the relative proportion of the space devoted to that candidate.

### Background

The Washington Democratic State Central Committee proposes to prepare and distribute one or more mass mailings that will expressly advocate the election of one clearly identified federal candidate as well as the election of other generically referenced party candidates. The mailings will not contain any solicitations. In accordance with the rules for this type of FEA, only federal funds will be used to pay for each mailing. The party would like to split the costs equally with the federal candidates campaign.

Under the Federal Election Campaign Act (the Act), a mass mailing is a form of public communication. A state party committee that makes a public communication that promotes, supports, attacks or opposes a clearly identified federal candidate is engaging in federal election activity (FEA). This type of FEA must be paid for only with federal funds. 11 CFR 100.24(b)(3), 300.32(a)(2) and (b)(2). These regulations apply even if the communication refers to nonfederal candidates or does

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<sup>1</sup> On example of such message would be: "Vote for John Doe and our great Democratic team."

## Advisory Opinions

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not expressly advocate the federal candidate's election or defeat. See also 11 CFR 300.61

Neither the Act nor FEC regulations directly address the attribution of funds spent for this particular type of communication. The rules that apply to communications benefiting more than one federal candidate require attribution based on "the benefit reasonably expected to be derived." To determine benefit, the rules compare the relative amount of space devoted to each candidate in relation to the total space devoted to all the candidates. 11 CFR 106.1(a). Other rules governing party committee phone banks that reference a clearly identified federal candidate and other party candidates generically, and that do not solicit funds, require that a flat 50 percent of the costs be attributed to the federal candidate and that the other 50 percent be attributed to the party committee, regardless of the amount of time devoted to each. 11 CFR 106.8. However, the Commission's Explanation and Justification stated that the scope of 11 CFR 106.8 is specifically limited to phone banks.

### Analysis

While neither of these regulations applies directly to the party's proposed mailings, some of the concepts in these regulations are applicable. The Commission concluded that "the benefit reasonably expected to be derived" by the clearly identified federal candidate from the mass mailing is sufficient to require that at least half the cost of the mailings must be attributed to him, even if the space attributable to him is less than that attributable to the generically referenced party candidates.

If the space devoted to the clearly identified federal candidate exceeds the space devoted to the generically referenced party candidates, then the benefit reasonably expected to be derived is measured by determin-

ing the amount of space devoted to the clearly identified candidate as compared to the amount of space devoted to the generically referenced party candidates. Since no part of the cost of the mailing may remain unattributed to either the clearly identified federal candidate or the generically referenced party candidates, the percentage of the cost attributed to the federal candidate is equal to the amount of space devoted to the federal candidate as compared to the total space devoted to both that candidate and the generically referenced party candidates. 11 CFR 106.1(a).

The state party committee would not make a contribution or coordinated expenditure as long as the candidate's principle campaign committee pays its proportionate share of the cost of the mass mailing. The cost of a mass mailing that is attributable to the clearly identified candidate can be either:

- An in-kind contribution, subject to the limitations set forth in 11 CFR 110.2;
- A coordinated expenditure, subject to the limitations, restrictions and requirements of 11 CFR 109.32 and 109.33; or
- Reimbursed by the federal candidate or the candidate's authorized committee.

Date: April 25, 2006

Length: 5 pages

—Carlin E. Bunch

### Advisory Opinion 2006-12: Labor Organization Affiliation During Merger

Two labor organizations that have signed a merger agreement are affiliated for purposes of the Federal Election Campaign Act (the Act) and Commission regulations during the transition period pending their full merger. As a result, the organizations' separate segregated funds (SSFs) must share contribution limits and may undertake other

activities typical of affiliated entities, including merging into one SSF.

### Background

Under the Act, committees and sponsoring organizations that are established, financed, maintained or controlled by the same labor organization are affiliated. 11 CFR 100.5(g)(2) and (4).

If the sponsoring organizations are not affiliated *per se*, the Commission considers several factors in the context of the overall relationship between the organizations to determine whether they are affiliated, such as governance; common officers, employees or members; financing and the formation of organizations. 11 CFR 100.5(g)(3) and (4).

### Analysis

In July 2005, the International Association of Machinists and Aerospace Workers (IAM) and the Transportation Communications International Union (TCU) entered into a merger agreement that will culminate in a full merger no later than January 1, 2012.

While the two organizations may not meet the *per se* affiliation criteria until their merger is complete, there is sufficient evidence to conclude that are affiliated with one another during the transition period.

The merger agreement itself and the actions taken by IAM and TCU during the transition period demonstrate a formal and ongoing relationship between the two organizations. For example:

- IAM has chartered TCU/IAM as a new "affiliate," effectively folding the former TCU into its own structure;
- TCU/IAM pays a significant monthly per capita tax to IAM; and
- IAM and TCU/IAM have overlapping employees. IAM has hired some former TCU employees to further the integration of the two organizations.

Since both organizations maintain SSFs, those committees are also affiliated. As a result, they must share limits on contributions they make and receive. 11 CFR 110.3(a)(1). Both organizations may use general treasury funds to pay for the costs of establishing, administering and soliciting contributions to both SSFs. The SSFs may solicit contributions from and may make express advocacy communications to the restricted classes of both IAM and TCU/IAM. As affiliated committees, the SSF's may transfer unlimited funds from one to the other and may actually merge into one SSF.

Date: April 25, 2006

Length: 6 pages

—Carlin E. Bunch

### Advisory Opinion 2006-13: Candidate's Compensation Not a Contribution

Compensation paid to a partner of a law firm in accordance with his firm's long-standing compensation plan is not considered a contribution to his campaign for Congress.

#### Background

Dennis Spivack is a candidate for Congress in Delaware. He is an equity partner in a law firm and intends to continue working for the firm during his campaign. He does not plan to take a leave of absence from the firm, but the time he spends on his campaign may diminish his productivity.

The firm's equity partner compensation plan consists of three types of income: (1) "basic compensation," which is based on a six-year look-back at each partner's productivity level and is reset every odd-numbered year, along with an upward adjustment of a partner's basic compensation based on participation in firm leadership and marketing; (2) "individual incentive compensation" ("IIC"), which is based on the partner's productivity during the current year as determined by percentages of fees from clients obtained by the partner and work actually performed by the partner; and (3)

"firm incentive compensation," which is distributed to each equity partner in the proportion that his "basic compensation" bears to the aggregate basic compensation of all equity partners.

Under the plan, each partner will receive approximately 80 percent of his or her 2006 income in the form of basic compensation and firm incentive compensation. Reduced productivity during the year will not affect these forms of compensation during the 2005-2006 period but will affect the reset of "basic compensation"—and hence "firm incentive compensation"—for the 2007-2008 period. The remaining portion of the 2006 income, reflecting IIC, will be distributed in January and April of the next year and will be affected by reduced 2006 productivity. Regardless of whether he is elected, Mr. Spivack will continue to receive monthly and other periodic payments of basic and firm incentive compensation through 2006 and will receive his payments for 2006 IIC, if any, in January and April 2007.

#### Analysis

A "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office." 2 U.S.C. 431(8)(A)(1). A partnership may not make a contribution of more than \$2,100 per election to a federal candidate. 11 CFR 110.1(e). Under FEC regulations barring personal use of campaign funds, a third party's payment of a candidate's expenses is considered a contribution, unless the payment would have been made "irrespective of the candidacy." 11 CFR 113.1(g)(6). Compensation payments are considered "irrespective of the candidacy" if the compensation:

- Results from *bone fide* employment that is genuinely independent of the candidacy;
- Is exclusively in consideration of services provided by the employee as part of this employment; and

- Does not exceed the amount that would be paid to any other similarly qualified person for the same work over the same period of time. 11 CFR 113.1(g)(6)(iii).

Mr. Spivack has maintained *bone fide* employment as an equity partner at the firm for five years and intends to continue working, although perhaps at a reduced level, during his candidacy. The firm's compensation plan is designed to handle this potential reduction in service, and the firm historically has reduced compensation for equity partners under the plan. Thus, Mr. Spivack's compensation will result from *bone fide* employment independent of his campaign.

The compensation plan will also ensure that Mr. Spivack is compensated solely for services performed as part of his employment. 11 CFR 113.1(g)(6)(iii)(B). Productivity calculations for determining an equity partner's "basic compensation" and "firm incentive compensation" are based on objective criteria unrelated to his candidacy, and his candidacy will not result in any upward adjustment to "basic compensation." Although these two types of compensation will not be reduced during 2006 because of reduced 2006 productivity, they will be affected by the 2007 reset if he remains with the firm. In addition, his IIC for 2006 will be affected by his reduced 2006 productivity regardless of whether he remains with the firm after 2006.

Finally, Mr. Spivack's compensation satisfies the third requirement of 11 CFR 113.1(g)(6)(iii)(C) because he will be paid the same as any other equity partner in his position. Although "basic compensation" and "firm incentive compensation" paid to him in 2006 will not be reduced during calendar year 2006, he will be paid the same as any equity partner with the same past productivity and upward adjustment factors. In addition, he will be subjected to the effects of reduced productivity on

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his IIC for 2006 and the reset of his “basic compensation” in 2007 in the same manner as any other equity partner with similarly decreased productivity for 2006.

If he is paid in accordance with the firm’s compensation plan, Mr. Spivack’s compensation will fulfill all three requirements of 11 CFR 113.1(g)(6)(iii) and thus be considered “irrespective of his candidacy.” As such, it will not result in a contribution from the partnership to his campaign.

Length: 6 pages

Date: May 5, 2006

—Meredith E. Metzler

### Advisory Opinion 2006-16: Misappropriated Funds

A candidate committee whose former treasurer misappropriated funds may accept reimbursement from that individual’s parents without considering the receipt a contribution. Funds returned by the former treasurer may be treated in the same manner. The committee should report the misappropriated funds as an “Other Disbursement” and the returned funds and reimbursement as “Other Receipts.”

#### Background

In early April 2006, Randy Maddox, who was the treasurer of the Campaign to Elect Nancy Detert at the time, misappropriated \$94,616.90 from the Detert Committee to his personal bank account. Soon thereafter, Mr. Maddox withdrew the funds and left for Argentina. Several days later, Mr. Maddox returned to the United States with \$67,450 in cash, which was then deposited into a bank account. On that same date, Randy Maddox’s parents, applied for a home equity loan. The next day, Mr. Maddox’s mother obtained a bank check for \$94,616.90, consisting of the \$67,450 deposited on the previous day and \$27,166.90

in funds drawn from the parent’s home equity loan, and delivered the check to her son’s attorney, who placed the funds in his client trust account where the disposition of the funds was within Mr. Maddox’s sole discretion. Subsequently, the Detert Committee accepted the \$67,450 from the trust account and deposited it into the committee account, but requested Commission guidance with respect to the remaining \$27,616.90.

#### Analysis

The committee may accept and deposit the \$27,616.90, even though the funds are not directly traceable back to the misappropriated funds.<sup>1</sup> Mr. Maddox’s parents provided the funds to their son solely in an effort to mitigate his potentially severe criminal liability and financial jeopardy, not for the purpose of influencing a federal election. As such, the funds will not constitute a contribution by Mr. Maddox’s parents to the Detert Committee. The parents are only interested in aiding their son, and the fact that the ultimate recipient of the reimbursement is the victimized Detert Committee is merely incidental to the parents providing the funds to their son.

The committee should report the misappropriation as an “Other Disbursement” on its July Quarterly Report, with the name and address of Mr. Maddox as the recipient, along with the amount and date of the misappropriation and a brief description of the circumstances. The receipt of both the \$67,450 and \$27,616.90 should be reported separately as “Other Receipts.” The committee should itemize these receipts by disclosing the name and address of

<sup>1</sup> Although the Detert Committee had already accepted the \$67,450 reimbursement (which as past activity was not the subject of the advisory opinion), the Commission noted that such acceptance was permissible because the returned \$67,450 was directly traceable to the very funds misappropriated by Mr. Maddox.

Mr. Maddox as the source, and the amounts and dates of the receipts. It should also provide a brief description of the circumstances, including a cross-reference to the “Other Disbursement” entry.

Length: 4 pages.

Date: May 10, 2006.

—Carlin E. Bunch

## Advisory Opinion Requests

### AOR 2006-14

SSF’s ability to make independent expenditures expressly advocating and soliciting contributions for clearly identified federal candidates in communications with the general public; SSF’s ability to solicit the general public to send contributions earmarked for candidates to the SSF and for the SSF to then collect and transmit contributions to the designated candidates (National Restaurant Association, April 6, 2006)

### AOR 2006-15

Canadian-owned US corporations’ ability to donate funds for state and local elections (TransCanada Corporation, Gas Transmission Northwest Corporation and TransCanada Hydro Northeast Inc., April 11, 2006)

### Need FEC Material in a Hurry?

Use FEC Faxline to obtain FEC material fast. It operates 24 hours a day, 7 days a week. Hundreds of FEC documents—reporting forms, brochures, FEC regulations—can be faxed almost immediately.

Use a touch tone phone to dial 202/501-3413 and follow the instructions. To order a complete menu of Faxline documents, enter document number 411 at the prompt.



## Reports

### FEC Form Instructions Revised

The Commission has made technical revisions to the instructions for two FEC forms to reflect various changes in the FEC's regulations made as a result of the court decision in *Shays v. FEC*. No forms were revised. The changes include:

- Modifying the instructions for FEC Form 3X, Report of Receipts and Disbursements for Other than an Authorized Committee, to reflect recent changes in the allocation regulations and federal election ac-

tivity definitions that affect political party committees.

- Modifying the instructions for FEC Form 9, 24-Hour Notice of Disbursements for Electioneering Communications, to reflect recent updates to the regulations governing those disbursements.

The revised form instructions were transmitted to Congress on April 18, 2006 and took effect on May 18, 2006. As of that date, older versions of these instructions are obsolete and should not be used. The revised form instructions are available on the FEC's web site at <http://www.fec.gov/info/forms.shtml> or by calling, toll-free, 800/424-9530, press 6.

—Dorothy Yeager

### Alabama Primary Runoff Delayed

The Alabama legislature has voted to delay the state's primary runoff to July 18, 2006 instead of June 27, in order to give those serving abroad in the military a chance to cast absentee ballots. As a result, the filing deadline, electioneering communication period, independent expenditure windows and 48-hour notice dates for the runoff have changed:

- Close of Books<sup>1</sup>- May 28, 2006
- Mailing Date<sup>2</sup>- July 3, 2006
- Filing Date<sup>2</sup>- July 6, 2006
- 48-Hour Notices (for candidates only)<sup>3</sup>- June 29 through July 15, 2006

(continued on page 10)

### 2006 Connecticut Conventions Reporting Dates

State	Election Date	Close of Books <sup>1</sup>	Mailing Date <sup>2</sup>	Filing Date <sup>2</sup>	48-Hour Notices (candidates only) <sup>3</sup>
Connecticut House—Democratic Party Convention	5/15	4/25	4/30 <sup>4</sup>	5/3	4/26 – 5/12
Connecticut Senate—Democratic Party Convention	5/20	4/30	5/5	5/8	5/1 – 5/17
Connecticut Republican Party Convention [District 1]	5/10	4/20	4/25	4/28	4/21 – 5/7
Connecticut Republican Party Convention [District 2]	5/21	5/1	5/6 <sup>4</sup>	5/9	5/2 – 5/18
Connecticut Republican Party Convention [District 3&4]	5/13	4/23	4/28	5/1	4/24 – 5-10
Connecticut Republican Party Convention [District 4]	5/15	4/25	4/30 <sup>4</sup>	5/3	4/26 – 5/12
Connecticut Senate—Republican Party Convention	5/20	4/30 <sup>4</sup>	5/5	5/8	5/1 – 5/17

<sup>1</sup> This date indicates the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the Committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered.

<sup>2</sup> Reports sent by registered or certified mail must be postmarked by the mailing date. Committees should keep the mailing receipt with its postmark as proof of filing. If using overnight mail, the delivery service must receive the report by the mailing date. "Overnight mail" includes priority or express mail which has a delivery confirmation or an online tracking system and is scheduled for next business day delivery. Reports filed by any other means must be received by the Commission (or Secretary of the Senate for Senate committees) by the filing date.

<sup>3</sup> Filed by candidate committees only. 48-Hour Notices are required if the campaign committee receives contributions (including in-kind gifts or advances of goods or services; loans from the candidate or other non-bank sources; and guarantees or endorsements of bank loans to the candidate or committee) of \$1,000 or more, during the applicable period.

<sup>4</sup> Notice that the registered/certified & overnight mailing date falls on a weekend or federal holiday. The report should be post-marked before that date.

## Reports

(continued from page 9)

- Electioneering Communications 24-Hour Notice Period- June 18 through July 18, 2006
- Independent Expenditures 48-Hour Notice Period- January 1 through June 28, 2006
- Independent Expenditures 24-Hour Notice Period- June 29 through July 16, 2006

Candidates participating in the Alabama primary have received notices to remind them of the revised dates.

—Carlin E. Bunch

## Publications

### Now Available: 2006 Combined Federal/State Disclosure and Election Directory

The Combined Federal/State Disclosure and Election Directory for 2006 is available on the FEC web site at <http://www.fec.gov/pubrec/cfsdd/cfsdd.shtml>. This publication identifies the state and federal agencies responsible for the disclosure of campaign finances, lobbying, personal finances, public financing, candidates on ballots, election results, spending on state initiatives and other

financial filings. It also includes contact information for national and international associations that deal with campaign finance and elections.

The online version is updated periodically and contains hyperlinks that allow users to access the official home pages of the agencies listed in the publication. The directory is also available as a PDF or Word file, either of which can be downloaded and printed in its entirety.

A printed version of the directory is also available from the Public Records Office, 202/694-1120.

—Carlin E. Bunch

## Roundtable Workshops: What's New for 2006

Date & Time	Subject	Intended Audience
June 7, 2006 9:30–11:00 a.m.	Rule changes and other legal developments affecting <b>nonconnected committees</b> active in 2006 federal elections.	This group includes PACs sponsored by partnerships, unincorporated groups of citizens, leadership PACs and other political organizations as defined in §527 of the Internal Revenue Code.
June 14, 2006 9:30–11:00 a.m. <b>Sold Out!</b>	Rule changes and other legal developments affecting <b>SSFs</b> active in 2006 federal elections and their connected organizations.	This group includes PACs sponsored by corporations, labor organizations, membership organizations and trade associations.
June 21, 2006 9:30–11:00 a.m.	Rule changes and other legal developments affecting <b>federal candidates</b> and their campaign committees.	Federal candidates and their committees' representatives.
June 28, 2006 9:30–11:00 a.m.	Rule changes and other legal developments affecting <b>party committees</b> active in 2006 federal elections.	The national party committees and state and local committees involved in federal elections.

To register, contact the FEC at 800/424-9530 (press 6)  
or visit <http://www.fec.gov/info/outreach.shtml#roundtables>.

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