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Regulations

Administrative Fines Rulemaking

On March 23, the Commission approved a Notice of Proposed Rulemaking (NPRM) that would implement a new program for assessing civil money penalties for violations involving:

- Failure to file reports on time;
- Failure to file them at all; and
- Failure to file 48-hour notices.

What Is the Administrative Fines Program?

Last fall, Congress¹ amended the Federal Election Campaign Act (the Act) to permit the FEC to impose civil money penalties, based on a fine schedule, for violations of reporting requirements that occur between January 1, 2000, and December 31, 2001. This pilot program is intended to streamline the process for enforcing and resolving reporting violations so that, among other things, FEC enforcement resources may be redirected toward resolving more complex violations.

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¹ *Treasury and General Government Appropriations Act, 2000, Pub. L. No. 106-58, 106th Cong., d640, 113 Stat. 420, 476-77 (1999).*

Proposed Rules on Mandatory Electronic Filing

On April 5, the Commission approved a Notice of Proposed Rulemaking (NPRM) seeking comments on new regulations that would require many filers to submit their campaign finance reports electronically.

The proposed rules, which implement legislation passed in 1999, would mandate electronic submissions for filers who raise or spend—or expect to raise or spend—\$50,000 or more in a calendar year.¹ To determine whether a filer has reason to expect to exceed the threshold, the proposed rules would require that filers review their financial activity from the comparable year of the previous election cycle or the previous calendar year. Though not included in the proposed rules, the NPRM also offers for comment a variety of other methods, such as projecting annual financial activity based on the committee's activity within each calendar quarter. For example, should a committee that raises or spends \$30,000 in the first quarter be required to file electronically

(continued on page 4)

¹ *Voluntary electronic filing would continue to be an option for any committee whose financial activity does not exceed the threshold.*

Regulations

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How Would the FEC Implement the Administrative Fines Program?

Under the proposed rules, if the Commission found "reason to believe" that a committee had violated the law, the Commission would provide written notification to the committee containing the factual and legal basis of its finding and the amount of the civil money penalty. Upon receipt of the Commission's written notice, the committee would have 40 days from the date of the reason-to-believe finding to either pay the civil money penalty or submit to the Commission a written response outlining the reasons why it thought the Commission's finding and/or penalty was in error. (Note that, under these circumstances, the committee would be required to submit, within 20 days after the Commission's reason-to-believe finding, a notice of intent to chal-

lenge the finding and/or penalty.) The committee's written response would then be forwarded to an impartial reviewing officer, who was not involved in the original reason-to-believe finding.

After reviewing the Commission's reason-to-believe finding and the committee's written response, the reviewing officer would forward a recommendation to the Commission, along with the original reason-to-believe finding, the committee's written response and any supporting documentation. The Commission would then make a final determination as to whether the committee had violated 2 USC d 434a and, if so, assess a civil penalty based on the schedule of penalties.

Will Committees Be Able to Challenge the Penalties?

Yes. The amendment to the Act requires that committees have "an opportunity to be heard" before the Commission makes its final determination by majority vote. The proposed rules meet this requirement by allowing committees to challenge the reason-to-believe finding of the Commission and to seek review by submitting documentation to an impartial reviewing officer, who will make a recommendation to the Commission as to the final determination.

Should a committee fail to pay the civil money penalties or submit a challenge within the original 40 days, the Commission would issue a final determination with an appropriate civil money penalty. The committee would then have 30 days to pay the civil penalty or seek judicial review through a U.S. district court in the area where the committee resided or conducted business.²

What Reports Will Be Covered?

All reports that committees are required to file will be covered under the Administrative Fines program. This includes semi-annual, quarterly, monthly, pre-election, 30-day post-general, special election reports, as well as 48-hour notices that candidate committees are required to file for elections in which the candidate participates.

What Are the Basic Factors Used to Determine the Amount of a Penalty?

The interaction of several factors will determine the size of the penalty:

1. Election sensitivity of the report;
2. Committee as late filer;
3. Committee as nonfiler;
4. The amount of financial activity in the report; and
5. Prior civil penalties for reporting violations.

One factor used to determine the amount of the civil money penalty is the *election sensitivity* of the report. Under the proposed rules, the pre-primary, pre-general, October quarterly and October monthly reports are considered to be election sensitive. All other reports are considered nonsensitive.

The Commission will also consider whether the committee is a *late filer* or a *nonfiler*. In the case of nonsensitive reports, a committee would be considered a late filer if it filed its report within 30 days after the due date, and a nonfiler if it filed its report later than that.

In the case of election-sensitive reports, a committee would be considered a late filer if it filed a report after its due date, but more than four days before the applicable election; a committee that filed later than that would be considered a nonfiler.

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² The committee may also seek judicial review if he/she disagrees with a determination made by the Commission after the committee submits a challenge.

The fourth factor is the *amount of financial activity*—that is, the total amount of receipts and disbursements in the report.

The final factor is the existence of *prior civil penalties* for reporting violations under the administrative fines program.

What Is the Schedule of Penalties?

The NPRM proposes a schedule of penalties, which takes into account the factors described above.

For Reports Other Than 48-Hour Notices

The calculation of the civil money penalties for late filers and nonfilers of reports, other than 48-hour notices, would have four components, as described below.

1. Base Amount for Late Filers.

The base amount of the civil money penalty would depend on the total amount of financial activity in the report and the election sensitivity of the report. Penalties would range from \$100 to \$5,000 for nonsensitive reports and from \$150 to \$7,500 for election-sensitive reports.

2. Amount Based on Level of Financial Activity for Late Filers.

The second component would be calculated by multiplying a set amount based on the financial activity in the report by the number of days the report is filed late (up to 30 days). Penalties would range from \$25 to \$200 per day.

3. Set Amount for Nonfilers.

The third component would be a set amount for nonfilers. It would depend on both the election sensitivity of the nonfiled report and the estimated level of activity based on average activity in the current or prior two-year election cycle. Penalties would range from \$1,600 to \$17,000 for nonsensitive reports and from \$1,650 to \$19,500 for election-sensitive reports.

4. Additional Premium for Prior Civil Money Penalties.

The fourth component would be an additional premium for prior civil money penalties assessed against a committee for failure to file timely reports. The premium would be equal to 25 percent of the civil penalty times the number of civil money penalties assessed during the previous and current two-year election cycles under the administrative fines program.

For 48-Hour Notices

The calculation of the civil money penalties for committees which fail to file timely 48-hour notices would be \$100 for each nonfiled notice plus 15 percent of the dollar amount of the contributions not timely reported. The civil money penalty would increase by 25 percent for each time a prior civil money penalty was assessed during the previous and current two-year election cycles under the administrative fines program.

What Happens if the Committee Does Not Pay the Penalty?

The FEC would transfer unpaid civil money penalties to the U.S. Department of the Treasury for collection.³ However, the Commission might decide in certain cases that, instead of transferring the unpaid amount of the civil money penalty to the U.S. Treasury, it would file suit in the appropriate U.S. district court to collect owed civil money penalties, under 2 U.S.C. §437g(a)(6).

When Does the Commission Plan to Begin This Program?

The Commission hopes to submit final rules to Congress this month in anticipation of a July 2000 effective date. If this occurs, the new fine program would begin with the July Quarterly Reports.

³ In compliance with the *Debt Collection Improvement Act of 1996* (31 U.S.C.d 3711 (g)).

Comments

The NPRM, published in the *Federal Register* on March 29, 2000, provides greater detail about the new proposal. A copy of that document is available:

- From the Public Records Office at 800/424-9530 (press 3),
- Through the FEC's Faxline at 202/501-3413 (request document 247) and
- At the FEC's web site - <http://www.fec.gov>.

All comments were to be addressed to Rosemary C. Smith, Assistant General Counsel, in either written or electronic form, by April 28, 2000. ♦

Audit Procedures, Primary/General "Bright Line" and Vice Presidential Committee Rules Take Effect

Revised regulations governing certain aspects of the public funding of Presidential primary and general election campaigns took effect April 19, 2000. See *Federal Register* Announcement of Effective Date (65 FR 20893, April 19, 2000).

The rules modify the Presidential audit procedures to include Commission approval of the Preliminary Audit Report. They also address the "bright line" between primary and general election expenses, and the formation of Vice Presidential committees prior to the nomination of the Presidential and Vice Presidential candidates.

See page 7 of the December 1999 *Record* for a more detailed description of the revised regulations. Free copies of the final rules as they appeared in the *Federal Register* (64 FR 61777, November 15, 1999) are available through the FEC Faxline. Dial 202/501-3413 and request document 245. ♦

Regulations

(continued from page 1)

since it could reasonably expect to exceed the \$50,000 threshold for the year?

Once a filer exceeds, or expects to exceed, the threshold they would begin filing electronically with their next scheduled report and would be required to continue filing electronically all reports covering financial activity occurring during the remainder of the calendar year. The proposed rules would not require filers to electronically resubmit documents that were properly filed on paper earlier in the calendar year or election cycle. For example, if an authorized committee filed its April quarterly report on paper, then exceeded the \$50,000 threshold in June, the committee would have to file its July quarterly report electronically, but would not need to resubmit its April quarterly in electronic form. Note, however, that if a committee submitted a report on paper that should have been filed electronically, the Commission would treat it as a nonfiler, possibly subject to enforcement action.

Whatever final rules the Commission adopts will take effect for reporting periods beginning on or after January 1, 2001, and will apply to all committees and other persons who file with the FEC. This excludes Senate candidates because they file their reports with the Secretary of the Senate.² The

² Senate candidates may file an unofficial copy of their reports with the FEC to expedite disclosure.

FECFile Help on Web

The manual for the Commission's FECFile 3 electronic filing software is now available on the FEC's web site. You can download a PDF version of the manual at <http://www.fec.gov/pdf/fecfile3.pdf>.

mandatory electronic filing requirements will apply not only to reports of receipts and disbursements, but also to Statements of Candidacy, Statements of Organization and any other filing required by the Federal Election Campaign Act.³

Based on analysis of filings from previous election cycles, the Commission believes that the proposed \$50,000 threshold would capture the bulk of campaign finance activity without unduly burdening smaller committees.⁴ However, the Commission welcomes suggestions for alternative threshold amounts and applications.

The NPRM is available from the Public Records Office at 800/424-9530 (press 3) or 202/694-1120; through the FEC's Faxline at 202/501-3413 (document 227); and on the FEC's Web site—<http://www.fec.gov>. The notice was published in the Federal Register on April 11. (65 FR 19339, April 11, 2000).

All comments should be addressed to Rosemary C. Smith, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. Faxed comments should be sent to 202/219-3923, with a printed copy follow-up to insure legibility.

³ Please note that the FEC's computer system can currently accept all required forms if they are properly formatted. The Commission's FECFile software, available from the FEC at no cost, currently generates Forms 3 and 3X, and soon will generate Forms 1, 2, 3P, 4, 5 and 7.

⁴ Based on data from the 1996 and 1998 election cycles, the \$50,000 threshold would capture between 85 and 99 percent of all financial activity, yet affect only between 15 and 44 percent of committees. These percentages vary depending, in part, on the type of committee.

Electronic mail comments should be sent to electronfile@fec.gov. Those sending comments by electronic mail should include their full name, electronic mail address and postal service address within the text of their comments. Comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. No oral comments can be accepted. The deadline for comments is May 11, 2000. ♦

Budget

FEC Testifies Before House Appropriations Committee

FEC Vice Chairman Danny McDonald presented the FEC's request to members of a House appropriations subcommittee for a \$40.96 million budget for fiscal year 2001, a modest 7 percent increase over the FEC's current budget. The increase is needed largely to cover inflation in operating costs, but would also provide additional resources in core program areas.

Mr. McDonald, who appeared March 22 before the House Appropriations Subcommittee on Treasury, Postal Service and General Government, noted that the Commission's request matches the Office of Management and Budget's proposed funding level of \$40.5 million and 352 personnel (full-time equivalent or FTE), plus a request for an additional \$460,000 to support four additional FTE for the Commissioners' offices.

The increased funding would, among other things, permit the agency to complete its Voting System Standards (VSS) update, to hold a national conference on the revised VSS and to continue to image and index its legal documents.

A news release about the FEC's budget request is available at <http://www.fec.gov>. ♦

Reports

Three More States Certified for Filing Waiver

On April 10, 2000, the Commission certified that Minnesota, North Carolina and South Carolina qualify for state filing waivers. This brings the total number of states certified to 43.¹

In the certified states, the public will now be able to review and copy campaign finance reports of most federal candidates by accessing the FEC's Web site on computers located in the state's campaign finance records office.

Under the State Filing Waiver Program, states that meet certain criteria set out by the Commission no longer have to receive and maintain paper copies of most FEC

reports. Additionally, most committees no longer have to file copies of their reports in the certified states. Note that the waiver does not apply to reports filed by Senate campaigns because those reports are not currently available on the FEC's Web site. ♦

¹ The Commission previously certified Alabama, American Samoa, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Virgin Islands, Washington, West Virginia, Wisconsin and Wyoming.

Public Funding

Adjusted Public Funding Payment for Conventions

On March 28, the Commission approved an additional public funding payment of \$288,000 for each of the major parties' 2000 presidential nominating conventions. This additional payment reflects an adjustment in the consumer price index. With this payment, the Democratic and Republican convention committees have each received their full public funding entitlement of \$13,512,000. ♦

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Virginia Convention Reports*

Democratic Party

	Election Day	Close of Books	Mailing Date	Filing Date	48-Hour Notice Period
House Districts 1, 5, 8, 9, 10, 11	May 20	April 30	May 5	May 8	May 1 - 17
House District 2	May 13	April 23	April 28	May 1	April 24 - May 10
House Districts 6, 7	Convention Dates Pending				

Republican Party

	Election Day	Close of Books	Mailing Date	Filing Date	48-Hour Notice Period
House Districts 3, 4, 8	May 20	April 30	May 5	May 8	May 1 - 17
House Districts 5, 6	May 13	April 23	April 28	May 1	April 24 - May 10
House District 9	May 27	May 7	May 12	May 15	May 8 - 24

* Virginia will hold a primary election on June 13 for U.S. Senate candidates and House candidates in districts other than those listed in this chart. See the January Record for reporting dates.

Advisory Opinions

AO 1999-40

Solicitation of Members of Rural Electric Cooperatives

The Action Committee for Rural Electrification (ACRE), a separate segregated fund (SSF) sponsored by the National Rural Electric Cooperative Association (NRECA), may solicit the members of NRECA's distribution cooperatives and may use the cooperatives' billing systems to collect voluntary contributions.

Background and Proposal

NRECA is a nonprofit cooperative whose members comprise rural electric systems in 46 states. Among NRECA's members are local distribution cooperatives,¹ who provide retail electricity to consumers. The consumers, most of whom are individuals, pay a membership fee to belong to the local distribution cooperative, and are billed monthly for the electrical services it provides.

NRECA proposes soliciting the local distribution cooperatives' individual members for contributions to ACRE, and to ask the local cooperatives to collect the contributions. The solicitations would take one of two forms. One would request members to pre-authorize the local cooperative to include, on the monthly bill to the member, a line item for the amount of a pre-authorized ACRE contribution. The other would ask members to authorize the cooperative to deduct an ACRE contribution from the

¹ Local distributors, the focus of this opinion, are one of three types of NRECA members, each of which pays annual dues and has voting rights. The other two categories are referred to as generation and transmission members and service members.

member's "capital credits." Capital credits are reimbursements the local cooperative pays its customers when the cooperative's income exceeds its operating costs. They are usually paid on an annual basis.

Affiliation and Membership

Under 11 CFR 114.7(k)(1),² NRECA and its local cooperatives are affiliated membership organizations. Based on an analysis of the regulatory definition of "member,"³ the local distribution cooperatives qualify as NRECA members by affirmatively deciding to become members and by paying annual pre-determined dues. In turn, the consumers who purchase electricity from the local distribution cooperatives qualify as members by affirmatively deciding to become members, affirming the membership frequently through the payment of monthly electric bills and by having the ability to vote directly for the cooperative's board of directors.

Since the distribution cooperatives are local affiliates of NRECA, their members may be solicited for contributions to ACRE, and they may act as collecting agents for these contributions. As collecting

² 11 CFR 114.7(k)(1) provides that the local, regional and state affiliates of a federated or rural cooperative are affiliated.

³ Under FEC regulations, the term "members" includes all persons who satisfy the requirements for membership in a membership organization, affirmatively accept the organization's invitation to become a member, and either:

- Have a significant financial attachment to the organization; or
- Pay dues at least annually, of a specific predetermined amount; or
- Have significant organizational attachment to the organization, including: annual affirmation of membership and voting rights.

11 CFR 114.1(e)(2)(i)-(iii).

agents, the cooperatives may pay all the costs of soliciting and transmitting the contributions to ACRE. 11 CFR 102.6(c)(2)(i).

Solicitation Programs

Under the Commission's collecting agent regulations, a contributor may combine a payment of dues or other fees with a contribution to the SSF, so long as the contribution represents the personal funds of the contributor. 11 CFR 102.6(c)(3). Given that fact, NRECA may implement the first proposal, a program for a combined payment of monthly electrical charges and a contribution to ACRE.

In implementing the program, the local cooperatives, acting as collecting agents, must transmit the contributions and contributor information to ACRE within specific time frames. They must forward contributions of \$50 or less within 30 days of receipt, and contributions of more than \$50, within 10 days. 11 CFR 102.6(c)(4). They must also provide the name and address of contributors who give more than \$50, and must additionally provide the occupation and employer for contributors who give more than \$200. 11 CFR 102.8(b)(1) and (2). Before forwarding the contributions to ACRE, the cooperatives, functioning as collecting agents, may temporarily deposit the funds in either a separate transmittal account or in their own treasury so long as they keep separate records of all receipts and deposits that represent contributions to ACRE.

With regard to the second proposal, NRECA may seek pre-authorization to deduct ACRE contributions from individual members' capital credits. The Commission conditioned its approval on several factors:

- The cooperative should explicitly solicit for this type of deduction;

- If NRECA pairs a solicitation for capital credits with a solicitation for the combined dues/payment program, it should request a separate authorization for each program; and
- The bill or other document that informs members of their capital credits must explicitly denote the deduction of their pre-authorized ACRE contribution.

The Commission further conditioned its approval of both solicitation programs on NRECA's pledge to employ safeguards to prevent ACRE from accepting corporate contributions. Among them, the local cooperatives will require donors to affirm that a check comprising both a bill payment and an ACRE contribution is made with personal funds. In addition, ACRE solicitations will inform members of the corporate prohibition and other prohibitions of federal election law. The Commission also emphasized that all solicitations must comply with the voluntariness requirements set out at 11 CFR 114.5(a)(1)-(5).⁴

Date Issued: March 20, 2000;
Length: 11 pages. ♦

AO 2000-2 Campaign Rental of Candidate-Owned Office

The Rick Hubbard for U.S. Senate committee may rent candidate-owned office space and equipment without violating the ban on the conversion of campaign funds to personal use, even though the office is located in the same building as the candidate's residence.

⁴ Contributions are considered voluntary if, among other things, the contributors have not been threatened in any way, have been informed of their right to refuse to contribute without reprisal, have been told about the political purpose of the SSF and that any contribution guideline is merely a suggestion.

For several years, Rick Hubbard has worked as an attorney in Stowe, Vermont. He rents the top 1 1/2 floors of a three-story commercial building; that space houses both his law offices and his residence.

Mr. Hubbard has consistently divided tax, utility and rental payments 50/50 between his law practice and his personal residence. The law practice owns all of the office equipment.

Mr. Hubbard is now using his office space and equipment for his U.S. Senate campaign. Aside from performing occasional legal work for existing clients, Mr. Hubbard has been—and plans to continue—working full time on his campaign.

Based on the campaign's use of his office space, Mr. Hubbard proposes that his campaign committee reimburse him for 75 percent of the rent for office space and 75 percent of the typical rental value of furnishings and equipment of comparable age and serviceability as his own. Mr. Hubbard himself will continue to pay all rent and utility costs associated with the residential portion of the property.

Although the Commission has long held that candidates have wide discretion over how they choose to spend their campaign funds, the Act and FEC regulations prohibit the conversion of those funds to the personal use of a candidate or any other person. 2 U.S.C. §439a; 11 CFR 113.2(d).

Commission regulations define "personal use" to include the use of campaign funds for any expense that would "exist irrespective of the candidate's campaign or duties as a Federal officeholder." 11 CFR 113.1(g). The regulations go on to specifically state that mortgage, rent or utility payments by the campaign for any part of a candidate's residence is a personal use. Campaign payments for use of "real or personal property that is owned by the candidate or a member of the candidate's family" is also a per-

sonal use to the extent that it exceeds "the fair market value of the property usage." 11 CFR 113.1(g)(1)(i)(E)(1) and (2).

The Commission's Explanation and Justification of these regulations explains that, while the personal use rules prevent a campaign from renting space in a candidate's residence, the campaign may rent space in other buildings owned by the candidate so long as the campaign pays no more than the fair market value.

Despite the fact that Mr. Hubbard's office space is in the same building as his residence, his campaign may nonetheless rent the space and pay utility costs as described in the proposal. The Commission based this conclusion on several factors:

- The dual use of the property, as both office space and a residence, predates Mr. Hubbard's candidacy by several years, and the premises are located in a commercial building.
- The premises serve as Mr. Hubbard's sole office space, and the tax treatment of the rent has reflected the office residence division.
- Campaign funds will apply only to the portion of rent that Mr. Hubbard previously ascribed to his law office use.

For these reasons, the Rick Hubbard for U.S. Senate campaign may pay rent, utility and equipment costs for Mr. Hubbard's office space, as long as the payments do not exceed the usual and normal charge, based on the percentages Mr. Hubbard suggests.

Date: March 17, 2000; Length: 4 pages. ♦

Advisory Opinions

(continued from page 7)

AO 2000-03 PAC's Payment for Corporate Communication

The American Society of Anesthesiologists Political Action Committee (ASAPAC), the separate segregated fund (SSF) of ASA, may pay for receptions involving partisan appearances by federal candidates before the association's members without treating the payments as contributions or expenditures.

Background

ASAPAC plans to host candidate receptions at meetings and conventions of ASA members. At these receptions, ASAPAC will expressly advocate the election of the invited House and Senate candidates, and will encourage ASA members to contribute to the candidates' campaigns. In addition, the candidates and their campaign staff will be permitted to solicit and collect contributions. ASAPAC plans to pay for the receptions.

Analysis

Although FEC regulations prohibit corporations from making contributions or expenditures in connection with federal elections, the regulations contain an exemption to the definition of contribution or expenditure that would permit ASA to host the proposed receptions. Specifically, 11 CFR 114.3(a) permits a corporation (including an incorporated trade association) to bear the costs of communicating with its restricted class on any subject, including candidate advocacy. In the case of a membership organization such as ASA, that restricted class includes the organization's executive and administrative personnel and members. Thus, under this exemption, ASA itself could defray the costs of the proposed candidate

receptions, reporting its payments on FEC Form 7 once the payments exceeded \$2,000 with respect to any election. 11 CFR 104.6(a).

Because a corporation may exercise control over its SSF,¹ any payments made by the SSF that could be made by the parent corporation are considered to be payments on behalf of, or as part of, the corporation and hence, tantamount to payments by the corporation. Consequently, ASAPAC may engage in the same exempt communications activities permitted to ASA under FEC regulations and may pay for the costs of the receptions. Despite the fact that ASAPAC, rather than ASA, will finance the receptions, the payments will fall within the communication-costs exemption and, therefore, will not be considered contributions or expenditures in support of the participating candidates.

Reporting

ASAPAC will report the payments as "other disbursements" on its FEC reports. Since the PAC rather than the association is reporting the payments, the \$2,000 reporting threshold (noted above) will not apply. If the payments to a person, such as a vendor, exceed \$200, and thus require itemization on a Schedule B, ASAPAC should describe the type of expense, name the candidate making the appearance and indicate that the purpose of the payment is an internal communication to ASA's members. ASAPAC should also make reference to this advisory opinion in any report that includes such disbursements.

Date Issued: March 17, 2000;
Length: 5 pages. ♦

AO 2000-4 Automatic Deductions for Credit Union PAC

The National Association of Federal Credit Unions (NAFCU) may solicit contributions for NAFCU/PAC from share account holders in member credit unions. The credit unions may deduct the resulting pre-authorized contributions from the donors' accounts, screen them for permissibility and transmit them to NAFCU/PAC. The costs of screening and transmitting the contributions may be treated as legal and accounting services provided by the employees of the credit union or as exempt administrative costs paid by NAFCU.

NAFCU is a trade association whose members are incorporated credit unions. While the Federal Election Campaign Act and FEC regulations permit trade associations to solicit stockholders of the corporate members for contributions to the trade association PAC (provided the members give prior approval), the law is silent on whether corporate members can solicit their own members for these contributions. In this case, however, individual account holders at these credit unions have rights of governance and equity ownership in the credit unions that qualify them not merely as members or depositors, but also as stockholders, for purposes of FEC regulations. Consequently, NAFCU may—with prior approval from the member credit unions—solicit their share account holders.

NAFCU's member credit unions do not appear to qualify as local units or affiliates of the association, under 11 CFR 100.5(g). As a result, they cannot serve as "collecting agents" for NAFCU/PAC. However, as depository institutions, the credit unions may—like any other bank—process pre-authorized deductions from their depositors' accounts, including those representing contributions to NAFCU/PAC.

¹ 11 CFR 114.5(d)

The credit unions may also screen NAFCU/PAC contributions to ensure that they are not deducted from accounts that would fall below required minimum balances and that the contributions come from accounts that are owned by persons who may lawfully contribute. These activities may be treated either as exempt legal and accounting services provided by credit union employees or as exempt administrative expenses paid by NAFCU. Under FEC regulations, legal and accounting services provided to a political committee are not considered contributions if the person paying for the services is the regular employer of the individual providing them and the services are provided solely to ensure compliance with the federal election laws. 11 CFR 100.7(b)(14). Nevertheless, the political committee must report, as a memo entry on Schedule A, the amounts the employer paid for the services, the dates the services were provided and the names of the persons providing them. 11 CFR 104.3(h). Given the number of credit unions that might provide such services for NAFCU/PAC (up to 1,100), the PAC need only report the information on its year-end report. It should include the total yearly amount spent by the credit unions and the names of the participating credit unions and, for each credit union, the employees providing the services, along with the time period in which the services were provided.

As an alternative, NAFCU may treat these expenses as exempt administrative costs under 2 U.S.C. §441b(b)(2)(C) if it pays the credit unions for them. NAFCU may periodically pay the credit unions for the actual costs they incur, or it may enter into a contract with them based on estimated costs anticipated for a specific time period.

The Commission conditioned its approval of the program on compliance with the voluntariness requirements set out at 11 CFR

114.5(a)(1)-(5). These requirements include informing the solicitee of the political purpose of the PAC, that the solicitee is free to contribute more or less than any suggested guideline, that the solicitee will not be favored or disadvantaged by reason of the amount of the contribution or decision not to contribute, and that the solicitee is free to contribute or refuse to contribute without reprisal.

Date issued: March 17, 2000;
Length: 9 pages. ♦

Advisory Opinion Requests

AOR 2000-5

Application of \$25,000 annual contribution limit to Indian tribe (Oneida Nation of New York, March 30, 2000)

AOR 2000-6

Use of public funds to develop voter base and conduct balloting prior to minor party Presidential nominating convention (Reform Party of the USA, April 18, 2000)

AOR 2000-7

Corporate PAC's use of intranet and e-mail to disseminate information and solicit contributions (Alcatel USA, Inc., April 19, 2000)

AOR 2000-8

Donations by individual to candidates solely to defray their living expenses during campaign (Philip D. Harvey, April 26, 2000) ♦

Court Cases

Reform Party of the USA v. John J. Gargan

On March 27, 2000, the U.S. District Court for the Western District of Virginia, Lynchburg Division, resolved a Reform Party leadership dispute.

The court previously had ordered the Reform Party to transfer to the registry of the court approximately \$2.5 million in public funds—funds that the Party had received to finance its 2000 Presidential nominating convention. Once the court determined the rightful leadership of the Party, the funds were to be returned to the Reform Party.

In its decision, the court concluded that members of the National Committee of the Reform Party had duly removed John J. Gargan and Ronn Young as Party Chairman and Treasurer, respectively, at a Nashville, Tennessee, meeting on February 12, 2000. The members voted to replace them with Pat Choate and Tom McLaughlin as Interim Party Chairman and Treasurer, respectively. As a result, the court enjoined Mr. Gargan and Mr. Young from acting as officers or authorized representatives of the Reform Party, including its Convention Committee.

Having resolved the leadership dispute, the court ordered that the public funds for the Party's Presidential nominating convention should be released to Gerald Moan, the duly appointed Chairman of the Party's convention committee. Based on an *amicus* brief filed by the Federal Election Commission (FEC), which took no position on the leadership dispute, the court conditioned the release of the funds on the Party's written acknowledgment of its obligations to comply with the agreements it had filed with the FEC pursuant to 11 CFR 9008.3(a)(1). The court required the Party to deposit and maintain the public funds in an account registered with the FEC, and to notify the Commission of any changes to the information the Party provided in its original application for public funds.

The court also ordered Mr. Gargan and Mr. Young to turn over all documentation regarding convention funding and disbursements made by the Convention Committee

(or on its behalf) to the Reform Party in anticipation of the required post-convention audit by the FEC.

On March 29, 2000, the court received the Party's written acknowledgment of its obligations, and the court subsequently released the public funds.

U.S. District Court for the Western District of Virginia, Lynchburg Division, No.6:00CV00014 ♦

Publications

Disclosure Directory of Federal and State Election Offices Available

The *Combined Federal/State Disclosure and Election Directory 2000*, which lists national and state agencies 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.

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. Paper copies of the 2000 edition, which are free, can be ordered from the Public Records office by calling 800/424-9530 (press 3) or 202/694-1120. ♦

Outreach

FEC Resumes Roundtables

The FEC has announced its schedule of roundtable sessions for the summer.

FEC roundtables, limited to 12 participants per session, focus on a range of subjects. See the table below for dates and topics. All roundtables are conducted at the FEC's headquarters in Washington, D.C.

Roundtable Schedule

Date	Subject	Intended Audience
June 7 9:30 - 11 a.m.	Partner/Partnership Federal Election Activity	<ul style="list-style-type: none"> Partnerships Lawyers, Accountants and Consultants to Above
August 2 9:30 - 11 a.m.	Update on New and Proposed FEC Filing Regulations <ul style="list-style-type: none"> State Filing Waiver Mandatory Electronic Filing Administrative Fines for Reporting Violations Election Cycle Reporting 	<ul style="list-style-type: none"> PACs House and Senate Campaigns Political Party Committees Lawyers, Accountants and Consultants to Above

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 (Ext. 1100) or 202/694-1100. ♦

Public Appearances

May 3, 2000
National Democratic Institute for International Affairs
Washington, D.C.
Commissioner Scott Thomas

May 3, 2000
American Society of Association Executives
Washington, D.C.
Chairman Darryl Wold

May 4, 2000
Elections Canada
Washington, D.C.
Lawrence Noble
Bob Biersack

May 7, 2000
Robert Wood Johnson Executive Nurse Fellows Program
Washington, D.C.
Vice Chairman McDonald

May 10-11, 2000
Minnesota Institute of Legal Education
Bloomington, Minnesota
N. Bradley Litchfield

Public Funding

(continued from page 5)

FEC Certifies Hagelin and Approves Additional Matching Funds

On March 31, the FEC certified John Hagelin, a candidate of the Natural Law Party, as eligible for federal matching funds, and authorized an initial payment of \$100,000 to his campaign.

The Commission approved an additional \$5,787,098.82 in matching fund payments to six other Presidential candidates. With these latest certifications, the FEC has now declared nine candidates eligible to receive a total of \$49,099,463.81 in federal matching funds for the 2000 election.

Due to a shortfall in the Presidential Election Campaign Fund, the U.S. Treasury Department has been making partial payments to the qualified candidates, based on the Commission's certifications. The chart below lists the most recent certifications and cumulative payments for each candidate. ♦

Matching Funds for 2000 Presidential Candidates: March Certification

Candidate	Certification March 2000	Cumulative Certifications
Gary L. Bauer (R) ¹	\$130,795.85	\$4,550,189.03
Bill Bradley (D) ²	\$849,553.36	\$12,112,743.27
Patrick J. Buchanan (Reform)	\$174,185.04	\$3,330,127.03
Al Gore (D)	\$718,484.81	\$13,126,047.00
John Hagelin (Natural Law)	\$100,000.00	\$100,000.00
Alan L. Keyes (R) ³	\$254,281.07	\$2,232,486.17
Lyndon H. LaRouche, Jr. (D) ⁴	\$0.00	\$901,338.93
John S. McCain (R) ⁵	\$3,659,798.69	\$10,644,007.38
Dan Quayle (R) ⁶	\$0.00	\$2,102,525.00

¹ Gary L Bauer publicly withdrew from the race on February 4, 2000.

² Bill Bradley publicly withdrew from the race on March 9, 2000.

³ Alan L. Keyes became ineligible for matching funds on April 20, 2000.

⁴ Lyndon H. LaRouche, Jr. became ineligible for matching funds on March 6, 2000.

⁵ John S. McCain publicly withdrew on March 9, 2000.

⁶ Dan Quayle publicly withdrew from the race on September 27, 1999.

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The first number in each citation refers to the "number" (month) of the 2000 *Record* issue in which the article appeared. The second number, following the colon, indicates the page number in that issue. For example, "3:4" means that the article is in the March issue on page 4.

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Administrative Fines

The Federal Election Commission plans to implement a new Administrative Fines Program.

Failure to file reports on time could result in fines ranging from **\$125 to \$19,500**.

Details on this new program are available on page 1.

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