Record

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PARTY GUIDE SUPPLEMENT

Using this Supplement

The purpose of this supplement is to offer a summary of the most recent developments in the Commission's administration of federal campaign finance law relating to political party committees. The following is a compilation of articles from the FEC's monthly newsletter covering changes in legislation, regulation and advisory opinions that affect the activities of political party committees. It should be used in conjunction with the FEC's August 2007 *Campaign Guide for Political Party Committees*, which provides more comprehensive information on compliance for these organizations.

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Advisory Opinions

AO 2007-17 Contributor Signature Not Required on Contributions Made Through Online Banking Services

The Democratic Senatorial Campaign Committee (DSCC) may collect contributions from individuals using online banking services, which often take the form of electronic payments or bank-issued checks that are signed by bank officials. The DSCC is not required to collect a signature from the individual contributor as long as the check was executed by a bank official in accordance with the individual contributor's instructions and clearly indicates the personal account from which the check is drawn.

Background

The DSCC collects a number of contributions from individuals who use online banking services. This involves a bank customer registering his or her account online and scheduling payments to any person or entity he or she wishes to pay by transmitting this information to the bank via the Internet. The bank will either issue payment to the payee electronically or by means of a written check. Checks produced

in this manner typically contain the account holder's name, checking account number and other identifying information.

Contribution checks issued to the DSCC by individual contributors through this method are frequently signed by a bank official rather than the account holder. The DSCC typically sends a follow-up letter to the contributor to obtain a written signature. The DSCC proposes to cease this follow-up procedure in cases where it has all of the necessary contributor information.

Legal Analysis

The Federal Election Campaign Act (the Act) and Commission regulations require that all contributions be properly attributed to the actual contributor. Any contribution made by check, money order or other written instrument must be reported as a contribution by the last person signing it prior to delivery to the candidate or committee, "absent evidence to the contrary." 11 CFR 104.8(c).

In cases where the individual contributor directs a contribution to be made to a political committee, if the check is drawn from the contributor's account and signed by a bank official at the direction of the account holder, then the check itself would provide adequate evidence that the account holder is the actual contributor (and consequently the person to whom the contribution must be attributed).

Accordingly, the DSCC is not required to send a follow-up letter to obtain a written signature from the contributor, as long as the DSCC has received all necessary contributor information. In the event that the DSCC does not have all necessary contributor information, they must use "best efforts" to obtain, maintain and report such information. 11 CFR 102.9(d).

In the case of a check drawn on a joint checking account, the DSCC must contact the individuals to ascertain their intent if the account holders do not specify how the contribution is to be attributed. 11CFR 110.1(k)(3)(ii)(A). However, if there is only one way to attribute the contribution consistent with the Act's contribution limits and prohibitions, then the DSCC may attribute the contribution according to the rules for "presumptive reattribution," and would not need to obtain a written attribution from the contributors. 11 CFR 110.1(k)(3)(ii)(B).

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—Myles Martin

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AO 2007-23
State Party Committee Status for Independence Party of New York

The Independence Party of New York (IPNY) satisfies the requirements for state party committee status.

Background

The Federal Election Campaign Act (the Act) defines a "state committee" as "the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission." 2 U.S.C. §431(15). *See also* 11 CFR 100.14(a).

In order for an organization to achieve state party committee status under FEC regulations, the Commission must first determine whether the organization qualifies as a "political party" under the Act and Commission regulations. See AO 2007-6. Commission regulations define a "political party" as an "association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization." 11 CFR 100.15; 2 U.S.C. §431(16).

Secondly, the organization must, by virtue of its bylaws, be responsible for the day-to-day operations of the political party at the state level. See 2 U.S.C. §431(15). A state party organization need not be affiliated with a national political party to obtain state party committee status; in such cases, the Commission considers whether the party's rules "set out a comprehensive organizational structure for the party" and "clearly identify the role of the party" in administering the operations of the party at a state level. See AO 2000-21 and 2000-14.

Analysis

IPNY meets all of the requirements for state party committee status. IPNY has successfully placed candidates for federal office on the ballot in New York. Thus, IPNY satisfies the definition of "political party." Additionally, IPNY's bylaws (called "Rules" by IPNY) establish a comprehensive organizational structure for the party from the state level down to the local level and clearly identify the role of the party organization. The Rules address the day-to-day operations of a political party on the state level and are similar to the bylaws examined in past advisory opinions in which the Commission has recognized state party committee status. Also, under New York Election Law, IPNY has achieved ballot access status in New York as the official "Independence Party of the State of New York."

Date Issued: December 10, 2007
Length: 4 pages

—Meredith Metzler

AO 2007-33 "Stand-By-Your-Ad" Disclaimer Required for Brief Television Advertisements

A series of 10- and 15-second independent expenditure television ads Club for Growth Political Action Committee (Club for Growth PAC) plans to air in support of a federal candidate must contain the full, spoken "stand-by-your-ad" disclaimer in addition to meeting other disclaimer requirements.

Background

Under the Federal Election Campaign Act (the Act) and Commission regulations, when express advocacy ads are paid for by a political committee, such as Club for Growth PAC, and are not authorized by any candidate, the disclaimer must clearly state the full name, permanent address, telephone number or web address of the person who paid for the communication and indicate that the communication is not authorized by any candidate or candidate's committee. 11 CFR 110.11(b)(3). For televised ads, this disclaimer must appear in writing equal to or greater than four percent of the vertical picture height for at least four seconds. 11 CFR 110.11 (c)(3)(iii). Radio and television ads must also include an audio statement identifying the political committee or other person responsible for the content of the ad. 11 CFR 110.11(c)(4)(i).

In this case, Club for Growth PAC intends to pay for 10- and 15-second television ads that expressly advocate the election of a federal candidate. It plans to include the required written disclaimer indicating that it is responsible for the content and that the ads are not authorized by any candidate or candidate's committee.

However, Club for Growth PAC requested it be allowed to omit or truncate the required spoken disclaimer. Since the ads are shorter than most other political ads, which run for 30 to 60 seconds, Club for Growth PAC argued the spoken disclaimer would limit the ad's ability to get its message to viewers.

Analysis

In previous advisory opinions, the Commission has recognized that in certain types of communications it is impracticable to include a full disclaimer as required by the Act and Commission regulations. For example, in AO 2004-10, the Commission found that the specific physical and technological limitations of ads read during live reports broadcast from a helicopter made it impracticable for a candidate to read the required disclaimer himself or herself.

Likewise, in AO 2002-09, the Commission determined that certain candidate-sponsored text messages were eligible for the "small items" exception from the disclaimer requirements. Under this exception, bumper stickers, pins and other small items are not required to carry a printed disclaimer because their size would make doing so impracticable. 11 CFR 110.11(f)(l)(i).

However, Club for Growth PAC's plan presents facts that are materially different from those presented in these advisory opinions. AO 2004-10 did not dispense with the spoken disclaimer, but rather allowed the broadcaster, rather than the candidate, to read it. Moreover, the 10- and 15-second ads proposed by Club for Growth PAC do not present the same physical or technological limitations as those described in previous advisory opinions.

Likewise, the "small items" exception does not apply to the spoken disclaimer requirements for televised ads. Under Commission regulations, the "small items" exception applies only to "bumper stickers, pins, buttons, pens and other similar items upon which the disclaimer cannot be conveniently printed." 11 CFR 110.11(f)(1)(i). Thus, it does not apply to the *spoken* disclaimer for the television ads that Club for Growth PAC plans to sponsor. Additionally, the Commission noted that the Act provides no exemptions from the spoken disclaimer requirement simply because the ads are only 10 or 15 seconds long. Thus, Club for Growth PAC must include the full spoken disclaimer in its 10- and 15-second television ads.

Date Issued: July 29, 2008;
Length: 4 pages.

—Isaac J. Baker

AO 2008-8 Earmarked Contribution Counts Against Current Spending Limits

An earmarked contribution sent by an individual through a nonconnected political action committee (PAC) is considered "made" when the contributor gives the money to the nonconnected PAC, not when the committee eventually forwards the contribution to the final recipient. Thus, a contribution earmarked through a nonconnected PAC in 2008 will be subject to the 2008 calendar-year contribution limit and count against the contributor's 2007-2008 biennial limit, even if the contribution is not forwarded to the intended recipient until a later election cycle.

Background

On June 25, 2008, Jonathan Zucker made an on-line credit card contribution through ActBlue, a nonconnected PAC. ActBlue solicits and accepts on-line credit card contributions for candidates and party committees and forwards them to the intended recipient via check. Mr. Zucker earmarked his contribution for the 2010 Democratic nominee for the U.S. Senate in Arizona or, in the event there is no such nominee, to the Democratic Senatorial Campaign Committee (DSCC).

Usually, a person who receives a contribution of any amount for an authorized political committee, or a contribution greater than $50 for a political committee that is not an authorized committee, must forward the contribution to the intended recipient no later than 10 days after receipt. 11 CFR 102.8(a) and (b)(1), and 110.6(c)(1)(iii) and (iv).

However, in AO 2006-30, the Commission determined that ActBlue could solicit and receive contributions earmarked for a prospective candidate and delay forwarding those contributions until no later than 10 days after the candidate had registered a campaign committee, rather than within 10 days after ActBlue's receipt of the contribution. The Commission also determined that ActBlue could forward the contribution to a named national party committee in the event the intended candidate did not register with the Commission. See also AO 2003-23.

Analysis

The Federal Election Campaign Act and Commission regulations place limits on the amount that any person can contribute to a national party committee, and this limit is indexed for inflation. For 2008, an individual can give no more than $28,500 to a national party committee. 11 CFR 110.1(c)(1). Individuals are additionally subject to a "biennial limit," which limits the total amount of contributions that any individual may make to all federal candidates, PACs and party committees during a two-year cycle. For the 2008 cycle, the overall biennial limit is $108,200, which is further broken down into separate limits for candidates and other committees. The biennial limit is also indexed for inflation every two years. 11 CFR 110.1(b)(1)(ii). Inflation adjustments beyond 2008 cannot be determined at this time.

The date a contribution is "made" determines the election limit it counts against, and a contribution is considered "made" when the contributor relinquishes control over it. 11 CFR 110.1(b)(6). A credit card contribution is "made" when the credit card or number is presented because, at that point, the contributor is strictly obligated to make the payment. AO 1990-14.

In this case, Mr. Zucker's credit card has been charged for the contribution, and he is obligated to pay that amount to the credit card company. Thus, his contribution has been "made." Moreover, under Commission regulations a contribution to a candidate or committee with respect to a particular election, *including an earmarked contribution*, counts against the contribution limits in effect during the election cycle in which the contribution is actually made, regardless of the year in which the particular election is held. 11 CFR 110.5(c)(1). Accordingly, if his contribution is forwarded to a 2010 Senate nominee, it will still count against his 2007-2008 biennial limit. If there is no Democratic Senate nominee and his contribution is forwarded to the DSCC, the contribution will again count against his 2007-2008 biennial limit and against his calendar-year contribution limit to the DSCC for 2008.

The Commission further determined that, because Mr. Zucker may not know until 2010 whether his contribution was forwarded to a candidate or a political committee, the only way to ensure that he does not exceed any possible limit that may apply is to consider his contribution as if it were made to both the 2010 Democratic Senate nominee and the DSCC.

Date Issued: September 12, 2008; Length: 4 pages.

—Isaac J. Baker

AO 2008-18 Drug Discount Card Program Would Result in Prohibited Corporate Contributions

A proposed affinity program involving payments to political party committees for the provision of prescription drug discount cards to their supporters (or other interested persons) would result in prohibited corporate contributions being made to national political party committees or to the federal accounts of state or local party committees.

Background

Mid-Atlantic Benefits (MAB) is a limited liability company (LLC) that elects to be treated as a partnership, rather than a corporation, for income tax purposes. MAB takes part in a program that involves recruitment of entities such as banks, religious

organizations, unions, charities and local government sponsors to create, promote and distribute prescription drug discount cards. MAB partners with Agelity, Inc., a Delaware-based corporation that maintains the program and has contractual relationships with pharmacy networks that honor the cards. MAB wished to make Agelity, Inc.'s prescription drug discount program available to Democratic and Republican political party committee sponsors. The party committee sponsors would, in turn, offer the program to supporters or other interested persons without charge.

Under the planned program, the party committee sponsor would agree to manufacture the cards and pay for their promotion and distribution. The party committee sponsor would develop its own promotion materials, which would be approved by Agelity, Inc. and MAB before the party committee sponsor could disseminate them. MAB and Agelity, Inc. would scrutinize the proposed materials to make sure they focused on promoting the drug cards themselves and that the materials did not solicit political contributions or otherwise promote the party committee sponsor.

Cardholders would use the cards they received from the party committee sponsors to obtain discounts on drugs at participating pharmacies. The participating pharmacy networks would pay Agelity, Inc. a negotiated fee for each purchase of a single medication with the card. For each purchase, Agelity, Inc. would pay a transaction fee of $.70 to MAB, a fee that is derived from the fee that the pharmacy networks would pay to Agelity, Inc. MAB, in turn, would pay a transaction fee, out of what it received from Agelity, Inc., of $.25 to the party committee sponsor. Thus, the payments to the party committee sponsor would flow from Agelity, Inc.'s revenues. MAB's profit would be the difference between the fee it receives and the fee it disburses, while the party committee sponsors would receive a $.25 fee per transaction.

Analysis

The Federal Election Campaign Act (the Act) and Commission regulations prohibit corporations from making contributions in connection with a federal election. U.S.C. §441b(a) and 11 CFR 114.2(b)(1). 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)(i) and 11 CFR 100.52(a). "Anything of value" includes in-kind contributions, including the provision of goods or services without charge or at a charge that is less than the normal charge. 11 CFR 100.52(d)(1).

The Commission concluded that MAB's proposal would amount to prohibited corporate contributions from Agelity, Inc. to the federal account of the participating political party committee sponsor. The proposed program is impermissible because the transaction fees the political committees would receive are from Agelity, Inc.'s corporate funds, and not from individual funds. While MAB is not a corporation, all the funds it would provide to the party committee sponsors would consist of Agelity, Inc.'s general treasury funds. Therefore, the political party committees participating in the program would receive corporate contributions.

MAB's proposal is almost identical to a plan from Leading Edge Communications, which the Commission found impermissible in AO 1992-40. In that case, the corporation planned to recruit political party committees to market and distribute long-distance telephone discount cards to party members. In exchange for these services, the corporation proposed to pay the parties a percentage of the revenue it collected from long-distance telephone charges. The plan, therefore, involved a corporation's use of a political committee's assets to generate income through an ongoing business venture.

In this situation, MAB and Agelity, Inc. furnish access to Agelity, Inc.'s discount card program by recruiting sponsors to perform marketing and distribution services on Agelity, Inc.'s behalf in exchange for a portion of the revenues Agelity, Inc. generates from the participating pharmacy networks. As was the case in AO 1992-40, in this proposal party committee sponsors would lend their resources in promoting and distributing the cards. That distribution would, in turn, generate revenue for Agelity, Inc., for MAB and the party committee sponsors. Thus, MAB and Agelity, Inc.'s program, by contracting with national committees of political parties, or with state or local committees of political parties using their federal accounts, would result in prohibited corporate contributions.

The Commission noted that nothing would preclude MAB and Agelity, Inc. from implementing their proposal with respect to the nonfederal accounts of state or local committees provided that the transaction fees received by state or local committees are placed into nonfederal accounts and that the party committees' participation in the program is permitted under state and local law.

Date Issued: January 16, 2009;
Length: 6 pages.

—Isaac J. Baker

AO 2009-01
Renewal of Socialist Workers Party's Partial Disclosure Exemption

The Federal Election Commission has renewed the partial reporting exemption for the Socialist Workers Party, the Socialist Workers Party National Campaign Committee, other Socialist Workers Party committees and authorized committees of Socialist Workers Party federal candidates (collectively "the SWP" or "SWP committees") until December 31, 2012. The Commission has extended the exemption for the next four years, as opposed to the six years that it has granted in previous advisory opinions on this matter.

Background

The Federal Election Campaign Act (the Act) requires that political committees file reports with the Commission that identify individuals and other persons who make contributions over $200 during the calendar year. 2 U.S.C. §§434(b)(3), (5) and (6). According to FEC regulations, identification, in the case of an individual, includes his or her full name, mailing address, occupation and the name of his or her employer.[1]

In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court recognized that, under certain circumstances, the Act's disclosure requirements as applied to a minor party would be unconstitutional because the threat to their First Amendment rights resulting from disclosure would outweigh the interest in disclosure. According to the Court's opinion, "minor parties must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim [for a reporting exemption]…The evidence offered need only show a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either the government or private parties." 424 U.S. at 74.

The SWP was first granted a partial reporting exemption in 1979 in a consent decree that resolved *Socialist Workers 1974 National Campaign Committee v. Federal Election Commission*, Civil Action No. 74-1338 (D.D.C. 1979). In that case, the SWP brought an action for declaratory, injunctive and affirmative relief, alleging that specific disclosure sections of the Act deprived the SWP and their supporters of their First Amendment rights because of the likelihood of harassment resulting from mandatory disclosure of contributors and vendors. The consent decree exempted the SWP from the Act's requirements to disclose the identification of contributors to the SWP (including lenders, endorsers and guarantors of loans) and the identification of persons receiving expenditures from the SWP. At the same time, however, the decree required the SWP to maintain records in accordance with the Act and to file reports in a timely manner.

SWP's first partial disclosure exemption was extended through 1984. The decree established a procedure for the SWP committees to apply for a renewal of the exemptions. The court granted a renewal in 1985; however the SWP missed the deadline for reapplication for the exemption through the courts in 1988.[2] Subsequently, they have sought extension of this exemption through the FEC's advisory opinion process, which has renewed SWP's partial reporting exemption since 1990 (see AOs 2003-02, 1996-46 and 1990-13). Each of the FEC's prior renewals covered periods of approximately six years up until December 31, 2008.

Request for Renewal

In AOs 2003-02, 1996-46 and 1990-13, the Commission noted that, in granting and renewing the exemption, it considered both current and historical harassment. These renewals were based, in part, on the evidence of harassment since 1985, 1990 and 1997, respectively. The very nature of the periodic extensions indicates that, after a number of years, it is necessary to reassess the SWP's situation to see if the reasonable probability of harassment still exists.

The current request for renewal demonstrates that the SWP has been a minor party since it was established. No SWP candidate has ever been elected to public office in a partisan election. Data from the 2004, 2006 and 2008 elections show very low vote totals for the SWP Presidential and other federal candidates. FEC records and facts provided by the SWP also show a low level of financial activity by the SWP political committees. Furthermore, unlike committees of several other minor parties, the SWP National Campaign Committee has never qualified, or even applied, for national committee status.

The SWP's request also must be evaluated in the context of the relationship between the SWP and various federal, state and local law enforcement authorities and private parties. The previous AOs extending the partial reporting exemption describe FBI activities targeted at disrupting SWP activities between 1941 and 1976 and also referred to statements made in affidavits submitted by federal governmental officials in several agencies expressing the need for information about the SWP based on the officials' unfavorable perceptions of the SWP. The advisory opinions also discussed the statements of SWP workers and candidates and media reports,

[1] *11 CFR 100.12 includes this definition for an individual, and also defines "identification" for any other person as the person's full name and address.*

[2] *The 1985 agreement also exempted the SWP from reporting the identification of persons providing rebates, refunds or other offsets to operating expenditures and persons providing any dividends, interest or other receipts.*

among other sources, describing incidents of private threats and acts of violence and vandalism, harassment by local police and difficulties with other governmental authorities experienced by the SWP and those associating with it from 1985 through 2002.

In addition, the recent request included numerous statements dated from late 2002 to 2008 attesting to incidents of harassment or intimidation that add to SWP's long history of harassment and intimidation. The statements provided by the requestor fall into the four following categories:

- Statements attesting to the fear that potential SWP supporters have of being identified as an SWP supporter;
- Statements and materials attesting to alleged hostility from private parties to SWP activities;
- Statements and materials attesting to alleged hostility from local government law enforcement sources to SWP activities; and
- Statements attesting to other alleged governmental intimidation.

Analysis

As a threshold issue, in applying the standard established by the court cases and court decrees described above, the Commission must determine whether the SWP continues to maintain its status as a minor party. See *Buckley,* 424 U.S. at 68-74. Based on the facts presented, the Commission concluded that, as evidenced by the low vote totals for SWP candidates, the lack of success in ballot access and the small total amounts contributed to SWP committees, the SWP continues to maintain its status as a minor party.

Next, the Commission must weigh three factors in making its determination:

- The history of violence, harassment and threats against the SWP;
- Evidence of violence, harassment and threats since 2002; and
- How these factors balance against the governmental interest in disclosure by the SWP committees of the identifications of contributors and recipients of expenditures.

The Commission concluded that the long history of threats, violence and harassment against the SWP and its supporters still had some relevance and that the evidence covering the end of 2002 through 2008 indicated that there is still a reasonable probability that contributors to, and vendors doing business with, the SWP would face threats, harassment or reprisals if their identifications were disclosed. The Commission concluded that, due to the very small total amounts of contributions and the very low vote totals for its candidates in partisan elections, the activities of the SWP have little if any impact on federal elections and thus the governmental interest in obtaining the identifying information of contributors to and vendors doing business with the SWP continues to be outweighed by the reasonable probability of threats, harassment or reprisals resulting from such disclosure.

The Commission therefore granted the SWP committees a continuation of the partial reporting exemption. Although the evidence presented by the SWP demonstrated some continued incidents of violence and harassment since the granting of the last exemption renewal, the Commission concluded that those incidents appear to be of lesser magnitude than those referenced in court opinions and in prior advisory opinions granting the exemption. Thus, the Commission granted a four-year, rather than a six-year, extension. The shorter exemption period will allow the Commission to reassess the conditions presented by requestors against the interest of disclosure at that time.

As provided since AO 1996-46, the partial reporting exemption requires the SWP to assign a code number to each individual or entity from whom it receives one or more contributions aggregating in excess of $200 in a calendar year or applicable election cycle. That code number must be included in FEC reports filed by each committee in the same manner that full contributor identification would otherwise be disclosed. The committee's records must correlate each code number with the name and other identifying data of the contributor who is represented by that code in order to comply with the Act's recordkeeping requirements.

The SWP may submit a new advisory opinion request seeking a renewal of the exemption up to sixty days prior to December 31, 2012. If a request is submitted, the Commission will consider the factual information then presented as to harassment after December 31, 2008, or lack thereof, and will make a decision at that time as to renewal.

The partial reporting exemption will apply to the following sections of the Act: 2 U.S.C. §§434(b)(3) (receipts of a political committee), 434(b)(5) and (6) (expenditures and disbursements by a political committee), 434(e) (reporting by political committees), 434(f) (electioneering communication disclosure) and 434(g) (independent expenditure reporting). Please note that the SWP and the committees supporting SWP candidates must still comply with all other reporting obligations such as electronic filing and reporting their independent expenditures while omitting the names and identifications of contributors, donors and vendors.[3] In addition, the Commission declined to rule on whether or not to grant an exemption from the

[3] *The Commission noted that the partial exemption does not extend to individual SWP supporters who, as individuals, engage in activity that might require them to file reports of their own, such as electioneering communications under 2 U.S.C. §434(f) and independent expenditures under 2 U.S.C. §434(g).*

new lobbyist bundling disclosure reporting requirements since the SWP has established that is has not and does not anticipate receiving such bundled contributions, thus rendering the question purely hypothetical. 2 U.S.C. §434(i) and 11 CFR 104.22.

The SWP committees must still comply with all of the remaining requirements of the Act and Commission regulations.

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—Paola Pascual-Ferrá

AO 2009-04 Recount and Election Contest Funds

A national party committee may establish a recount fund subject to the Federal Election Campaign Act's (the Act) amount limits, source prohibitions and reporting requirements to pay expenses incurred in connection with recounts and election contests of federal elections.

Background

Al Franken was the Democratic candidate for the U.S. Senate for Minnesota in 2008, facing Republican Senator Norm Coleman. The close outcome of the general election led to a mandatory recount that gave a 225-vote lead to Mr. Franken. In January 2009, Mr. Coleman filed a lawsuit to contest the recount, which has resulted in a protracted legal battle with no final winner yet being determined or seated in the Senate.

The Democratic Senatorial Campaign Committee (DSCC), a national committee of the Democratic Party, wishes to establish a recount fund, separate from its other accounts and subject to a separate limit on amounts received, to pay expenses incurred in connection with the 2008 Senatorial recount and election contest in Minnesota. Donations to the proposed separate recount fund would be subject to the limits, prohibitions and reporting requirements of the Act.

In addition, Mr. Franken's principal campaign committee, Al Franken for U.S. Senate (the Committee), established a recount fund to pay for expenses incurred in connection with the recount, and has used the fund for expenses related to the election contest. The Committee wishes to establish a separate election contest fund that would be subject to the Act's limits, prohibitions and reporting requirements, but would have a limit separate from its recount fund on amounts received. This proposed fund would be used to pay expenses incurred only in connection with the election contest.

Analysis

In AO 2006-24, the Commission concluded that "because election recount activities are in connection with a Federal election, any recount fund established by either a Federal candidate or the State Party must comply with the amount limitations, source prohibitions, and reporting requirements of the Act." The advice provided by AO 2006-24 applies to a national party committee as well. Thus, the DSCC may establish a recount fund subject to the Act's amount limits, source prohibitions and reporting requirements to be used for expenses incurred in connection with recounts and election contests of federal elections, such as the 2008 Senatorial recount and election contest in Minnesota. The contribution limits for a national party committee for 2009 ($30,400 per calendar year from an individual and $15,000 per calendar year from a multicandidate political action committee) apply for any recounts and election contests during 2009. Donations to recount funds are not aggregated with contributions from those same individuals for purposes of the calendar-year and aggregate biennial contribution limits of 2 U.S.C. §§441a(a)(1)(B) and (a)(3).

The Commission could not approve a response by the required four affirmative votes with regard to whether Al Franken for U.S. Senate may establish an election contest fund, separate from its existing recount fund, and subject to a separate donation limit.

Date Issued: March 20, 2009; Length: 4 pages.

—Zainab Smith

AO Search System Available

The FEC has an Advisory Opinion Search System available on its web site at www.fec.gov. This search function allows users to search for advisory opinions (AOs) by the AO number or name of requestor, or to enter search terms or perform an advanced search for documents.

The system quickly provides relevant AOs, along with all related documents including advisory opinion requests, comments and any concurring or dissenting opinions issued by Commissioners. The search function also provides summary material and links to other AOs cited in the opinion.

When the search system was first launched, it included AOs issued from 1997 to the present. The system has now been updated to include AOs dating back to 1977. The AO search system is available at http://saos.nictusa.com/saos/searchao.

Party Activities

2009 Coordinated Party Expenditure Limits

The 2009 coordinated party expenditure limits are now available.

The limits are:

- $87,300 for House nominees in states that have only one U.S. House Representative;
- $43,700 for House nominees in states that have more than one U.S. House Representative; and
- A range from $87,300 to $2,392,400 for Senate nominees, depending on each state's voting age population.

Party committees may make these special expenditures on behalf of their 2009 general election nominees. National party committees have a separate limit for each nominee.[1] Each state party committee has a separate limit for each House and Senate nominee in its state. Local party committees do not have their own separate limit. One party committee may authorize another committee of that party to make an expenditure against the authorizing committee's limit. Local committees may only make coordinated party expenditures with advance authorization from another committee within the party.

Coordinated party expenditure limits are separate from the contribution limits; they also differ from contributions in that the party committee must spend the funds on behalf of the candidate rather than give the money directly to the campaign. Although these expenditures may

[1] *The national Senatorial and Congressional committees do not have separate coordinated party expenditure limits, but may receive authorization to spend against the national limit or state party limits.*

Authority to Make Coordinated Party Expenditures on Behalf of House and Senate Nominees

National Party Committee	May make expenditures on behalf of House and Senate nominees. May authorize[1] other party committees to make expenditures against its own spending limits. National Congressional and Senatorial campaign committees do not have separate limits.
State Party Committee	May make expenditures on behalf of House and Senate nominees seeking election in the committee's state. May authorize[1] other party committees to make expenditures against its own spending limits.
Local Party Committee	May be authorized[1] by national or state party committee to make expenditures against its limits.

Calculating 2009 Coordinated Party Expenditure Limits

	Amount	Formula
Senate Nominee	See table on page 7	The greater of: $20,000 x COLA or 2¢ x state VAP[2] x COLA[3]
House Nominee in States with Only One Representative	$87,300	$20,000 x COLA
House Nominee in Other States	$43,700	$10,000 x COLA
Nominee for Delegate or Resident Commissioner[4]	$43,700	$10,000 x COLA

[1] *The authorizing committee must provide prior authorization specifying the amount the committee may spend.*

[2] *VAP means voting age population.*

[3] *COLA means cost-of-living adjustment. The applicable COLA is 4.36663.*

[4] *American Samoa, the District of Columbia, Guam, the Virgin Islands and the Northern Mariana Islands elect Delegates; Puerto Rico elects a Resident Commissioner.*

Coordinated Party Expenditure Limits for 2009 General Election Senate Nominees

State	Voting Age Population (in thousands)	Expenditure Limit
Alabama	3,540	$309,200
Alaska*	506	$87,300
Arizona	4,793	$418,600
Arkansas	2,153	$188,000
California	27,392	$2,392,400
Colorado	3,732	$326,000
Connecticut	2,689	$234,900
Delaware*	667	$87,300
Florida	14,324	$1,251,100
Georgia	7,137	$623,300
Hawaii	1,003	$87,600
Idaho	1,111	$97,000
Illinois	9,722	$849,100
Indiana	4,792	$418,500
Iowa	2,290	$200,000
Kansas	2,102	$183,600
Kentucky	3,261	$284,800
Louisiana	3,303	$288,500
Maine	1,042	$91,000
Maryland	4,293	$375,000
Massachusetts	5,071	$442,900
Michigan	7,613	$664,900
Minnesota	3,966	$346,400
Mississippi	2,172	$189,700
Missouri	4,490	$392,200
Montana*	747	$87,300
Nebraska	1,336	$116,700
Nevada	1,932	$168,700
New Hampshire	1,023	$89,300
New Jersey	6,635	$579,500
New Mexico	1,482	$129,400
New York	15,082	$1,317,300
North Carolina	6,979	$609,500
North Dakota*	498	$87,300
Ohio	8,756	$764,700
Oklahoma	2,736	$239,000
Oregon	2,923	$255,300
Pennsylvania	9,686	$846,000
Rhode Island	822	$87,300
South Carolina	3,414	$298,200
South Dakota*	606	$87,300
Tennessee	4,736	$413,600
Texas	17,601	$1,537,300
Utah	1,887	$164,800
Vermont*	492	$87,300
Virginia	5,946	$519,300
Washington	5,008	$437,400
West Virginia	1,428	$124,700
Wisconsin	4,314	$376,800
Wyoming*	404	$87,300

** In these states, which have only one U.S. House Representative, the spending limit for the House nominee is $87,300. In other states, the limit for each House nominee is $43,700.*

be made in consultation with the candidate, only the party committee making the expenditure—not the candidate committee—must report them. (Coordinated party expenditures are reported on FEC Form 3X, line 25, and are always itemized on Schedule F, regardless of amount.)

The accompanying tables on pages 6 and 7 include:

- Information on which party committees have the authority to make coordinated party expenditures;
- The formula used to calculate the coordinated party expenditure limits; and
- A listing of the state-by-state coordinated party expenditure limits.

—Elizabeth Kurland

800 Line

FEC Rules for National Convention Delegates

In recent weeks, the Commission has received a number of questions concerning the application of campaign finance laws to national convention delegates and individuals seeking selection as a delegate. The material that follows offers answers to frequently asked questions about FEC rules governing delegates to national nominating conventions.

To whom do these rules apply?

These rules apply to any individual who is seeking selection as a delegate, or who has already been selected as a delegate, at any level of the delegate selection process (local, state or national). 11 CFR 110.14(b)(1).

Do delegates have to file reports with the FEC?

No. Individual delegates are not required to register or file regular reports of the funds they raise and spend for their personal delegate activity. 11 CFR 110.14(d)(3) and

(e)(2). However, delegates acting as a group may have to file reports as a delegate committee. See "Do delegate committees have to file FEC reports?" below.

How are funds raised and spent for delegate activity treated under federal campaign finance law?

Funds raised and spent for delegate selection are considered "contributions" and "expenditures" made for the purpose of influencing a federal election[1] and are therefore subject to the federal law's prohibitions.[2] 11 CFR 110.14(c)(1) and (2). Although the law generally does not limit contributions per delegate (see 11 CFR 110.1(m)(1) and 110.14(d)), certain other contribution limits apply. See, e.g., 11 CFR 110.5(e). Please note that these prohibitions and limits apply to contributions of goods and services (in-kind contributions) as well as to monetary contributions. 11 CFR 100.52(d).

Who is prohibited from contributing to a delegate?

Individual delegates may not accept any contributions from sources prohibited from making contributions in connection with federal elections. 11 CFR 110.14(c)(2). These sources include:

- Corporations (including banks and nonprofit corporations);
- Labor organizations;
- Foreign nationals or businesses (except "green card" holders—those admitted to the United States for permanent residence); and
- Federal government contractors (such as partnerships and sole proprietors with federal contracts).

11 CFR 110.20; 114.2; 115.2, 115.4 and 115.5.

What are the limits on contributions to delegates?

Although contributions to an individual delegate are not subject to any per delegate limit, they do count against an individual contributor's biennial contribution limit of $108,200. 11 CFR 110.1(m); 110.5(e) and 110.14(d)(1).[3]

Do these rules apply if I, as a delegate, am only raising money to pay for travel to the convention?

Yes. Travel and subsistence expenses related to the delegate selection process and the national nominating convention are considered "expenditures." 11 CFR 110.14(e). Thus, a delegate may not use prohibited funds to pay for travel to attend the national convention and related food and lodging expenses. Advisory Opinions 2000-38 and 1980-64.

I'm a federal officeholder who will serve as a delegate. May I use my campaign funds to pay for my travel to the convention?

Special rules apply to federal candidates or officeholders who attend the convention as delegates. While campaign funds may not be used to pay for anyone's personal expenses (i.e., expenses that would exist irrespective of the candidate's campaign or his/her duties as a federal officeholder), candidates who attend the convention as delegates may use campaign funds to pay for their own convention-related travel, food and lodging expenses. 11 CFR 110.14(c) and (e); Advisory Opinion 1995-47 n.4. The Commission has issued advisory opinions clarifying that such candidates may also use campaign funds to pay the travel and subsistence expenses of other individuals (e.g., spouse, child, Congressional staff person) in connection with the convention if the individual will be engaging in significant campaign-related or officeholder-related activity on the candidate's behalf during the convention. 11 CFR 113.1(g); Advisory Opinions 1996-20, 1996-19 and 1995-47.

Although the use of campaign funds to pay someone's personal expenses is a violation of the personal use prohibition, when travel involves both personal activities and campaign (or officeholder) activities, campaign funds may be used to pay the personal portion of travel and subsistence costs if the individual reimburses the campaign within 30 days. 11 CFR 113.1(g)(1)(ii)(C); Advisory Opinion 2000-12.

Do expenditures I, as a delegate, make for my own selection and travel count as contributions to a candidate?

No. Expenditures made by delegates or delegate committees solely to further their selection are not considered contributions to any candidate and are not chargeable to a publicly funded candidate's spending limits. Examples of such expenditures include, for example:

- A communication which advocates the selection of delegates only; and
- Travel and subsistence expenses related to the delegate selection process and the national nominating convention. 11 CFR 110.14(e)(1) and (h)(1).

May delegates join together to raise and spend funds?

Yes. Under FEC regulations, they would be acting as a delegate committee. A delegate committee is a group that raises or spends funds to influence the selection of one or

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[1] A national nominating convention is considered a federal election. 11 CFR 100.2(e).

[2] Ballot access fees paid by an individual delegate to a political party are not considered contributions or expenditures; nor are administrative payments made by a party committee (including an unregistered organization) for sponsoring a convention or caucus to select delegates. Nevertheless, the funds used to pay these expenses are subject to the law's prohibitions and limits. 11 CFR 110.14(c)(1)(i) and (ii) and (c)(2).

[3] Presidential primary candidates receiving public funding must comply with an overall spending limit and a spending limit in each state. 11 CFR 9035.1.

more delegates. A delegate committee may be a group of delegates or a group that supports delegates. 11 CFR 110.14(b)(2).

Do delegate committees have to file FEC reports?

Possibly. A delegate committee becomes a "political committee" under federal law once it receives contributions or makes expenditures exceeding $1,000 in a calendar year. 11 CFR 100.5(a) and (e)(5); 110.14(b)(2). At that point, the committee must register with the FEC within 10 days and begin filing periodic FEC reports to disclose its receipts and disbursements. 11 CFR 102.1(d) and 104.1(a). All pre-registration activity must be disclosed in the first report. 11 CFR 104.3(a) and (b). Note that a delegate committee that has triggered status as a federal political committee must include the word "delegate" or "delegates" in its name. It may also include the name of the Presidential candidate it supports. 11 CFR 102.14(b)(1).

Do contribution prohibitions and limits apply to delegate committees?

The same sources that are listed above as prohibited from making contributions to a delegate are also prohibited from making contributions to a delegate committee. 11 CFR 110.14(c)(2). The following limits apply to contributions made to delegate committees:

- Contributions from permissible sources to a delegate committee are subject to an aggregate limit of $5,000 per calendar year. 11 CFR 110.1(d) and (m)(2); 110.14(g)(1). Note, however, that if the delegate committee is affiliated with a Presidential campaign, it will share the limit applicable to the Presidential campaign. 11 CFR 110.3(a).
- Contributions by individuals to delegate committees count against an individual contributor's biennial contribution limit of $108,200. 11 CFR 110.5(e).

Supporting Presidential Candidates

May a delegate or delegate committee make contributions to candidates?

A delegate or delegate committee may contribute a maximum of $2,300 to a federal candidate, per election.[4] 11 CFR 110.1(b)(1). The primary and general are considered separate elections but, in the case of Presidential candidates, the entire primary season is considered only one election. 11 CFR 100.2 and 11 CFR 110.1(j)(1).

Note that a contribution to a candidate must be reported by the candidate's committee. 11 CFR 104.1(a) and 104.3(a). For this reason, when making an in-kind contribution, a delegate or delegate committee should notify the candidate's committee of the monetary value. 11 CFR 104.13(a)(1). Note also that in-kind contributions generally count against a publicly funded Presidential candidate's expenditure limits. 11 CFR 9035.1(a)(3).

May a delegate or delegate committee put out a communication that promotes both the delegate(s) and the Presidential candidate supported?

Yes. An individual delegate or a delegate committee may pay for communications that both:

- Advocate the selection of that individual delegate or of the delegates promoted by the delegate committee; and
- Refer to, provide information on or expressly advocate the election or defeat of a Presidential candidate (or candidate for any public office). 11 CFR 110.14(f) and (i).

If such a communication meets the federal campaign finance law's definition of a "public communication," it will trigger certain election law provisions.[5] 11 CFR 100.26. Moreover, depending on the circumstances, a portion of a dual-purpose expenditure may have to be allocated as an in-kind contribution or an independent expenditure on behalf of any federal candidate mentioned in the ad. 11 CFR 110.14(f)(2) and (i)(2). Finally, the communication must include a disclaimer notice. 11 CFR 110.11.

May delegates undertake some small grassroots dual-purpose communications that do not trigger contribution limits?

Dual-purpose expenditures for campaign materials such as pins, bumper stickers, handbills, brochures, posters and yard signs are not considered in-kind contributions on behalf of the federal candidate mentioned in the materials as long as the materials are used in connection with volunteer activities (i.e., are distributed by volunteers) and are not conveyed through public politi-

[4] A federal candidate is a candidate seeking election to the Presidency, the Vice Presidency, the U.S. Senate or the U.S. House of Representatives. 11 CFR 100.4.

[5] A public communication is a communication by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing (more than 500 pieces of mail or faxes of an identical or substantially similar nature within any 30-day period), telephone bank to the general public (meaning more than 500 telephone calls of an identical or substantially similar nature within any 30-day period) or any other form of general public political advertising. The term "general public political advertising" does not include communications over the Internet, except for communications placed for a fee on another person's web site. 11 CFR 100.26; 100.27 and 100.28.

cal advertising.[6] 11 CFR 110.14(f)(1) and (i)(1).

When would a dual-purpose expenditure count against contribution limits to a candidate?

A portion of a dual-purpose expenditure is considered an in-kind contribution to the referenced candidate if the communication:

- Is conveyed through public political advertising (or is not distributed by volunteers); and
- Is a coordinated communication under 11 CFR 109.21.

11 CFR 110.14(f)(2)(i) and (i)(2)(i).

When would a dual-purpose expenditure be considered an independent expenditure?

A portion of a dual-purpose expenditure for a communication that is conveyed through public political advertising is considered an independent expenditure (rather than an in-kind contribution) on behalf of the candidate if the communication:

- Expressly advocates the election (or defeat) of a clearly identified candidate; and
- Is not a coordinated communication under 11 CFR 109.21.

11 CFR 110.14(f)(2)(ii) and (i)(2)(ii).

Note that an independent expenditure, whether done by a delegate or a delegate committee, must carry a disclaimer notice and is subject to reporting requirements. For more information on independent expenditures, consult 11 CFR Part 109. For more information on disclaimers, consult 11 CFR 110.11.

How do you determine what amount of a dual-purpose expenditure to allocate to the Presidential candidate?

The amount of a dual-purpose expenditure allocated as an in-kind contribution or independent expenditure on behalf of a candidate must be in proportion to the benefit the candidate receives, based on factors such as the amount of space or time devoted to the candidate compared with total space or time. 11 CFR 106.1(a)(1).

What if a delegate or delegate committee simply distributes materials prepared by the Presidential campaign?

Expenditures by a delegate or delegate committee to reproduce (in whole or in part) or to disseminate materials prepared by a Presidential candidate's committee (or other federal candidate's committee) are considered in-kind contributions to the candidate. Although subject to contribution limits, this type of contribution is not chargeable to a publicly funded Presidential candidate's spending limits as long as the expenditure is not a coordinated communication under 11 CFR 109.21. 11 CFR 110.14(f)(3) and (i)(3). The materials must include a disclaimer notice. 11 CFR 110.11.

Affiliation

Is a delegate committee considered an affiliate of the Presidential campaign? If yes, what rules apply?

Possibly. Delegate committees—including unregistered committees—need to determine whether they are affiliated with another delegate committee or a candidate's committee because affiliated committees are considered one political committee for purposes of the contribution limits, and thus, share the same limits on contributions received and made. 11 CFR 110.3(a)(1). (Affiliated committees, may, however, make unlimited transfers to one another. 11 CFR 102.6(a)(1)(i).) If a delegate committee is affiliated with the committee of a Presidential candidate receiving public funds, then all of the delegate committee's expenditures count against the Presidential candidate's expenditure limits.

What are the factors indicating affiliation?

In determining whether a delegate committee and a Presidential committee are affiliated, the Commission may consider, among other factors, whether:

- The Presidential campaign[7] played a significant role in forming the delegate committee;
- Any delegate associated with a delegate committee has been or is on the staff of the Presidential committee;
- The committees have overlapping officers or employees;
- The Presidential committee provides funds or goods to the delegate committee in a significant amount or on an ongoing basis (not including a transfer of joint fundraising proceeds);
- The Presidential campaign suggests or arranges for contributions to be made to the delegate committee;
- The committees show similar patterns of contributions received;
- One committee provides a mailing list to the other committee;
- The Presidential campaign provides on going administrative support to the delegate committee;
- The Presidential campaign directs or organizes the campaign activities of the delegate committee; and/or

[6] For purposes of the delegate selection regulations, public political advertising means political advertising conveyed through broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication. 11 CFR 110.14(f)(2) and (i)(2). Direct mail means mailings by commercial vendors or mailings made from lists not developed by the individual delegate or delegate committee. 11 CFR 110.14(f)(4) and (i)(4).

[7] Campaign refers to the candidate, his or her authorized committee and other persons associated with the committee.

- The Presidential campaign files statements or reports on behalf of the delegate committee. 11 CFR 110.14(j). See also, for example, Advisory Opinion 1988-1.

Do affiliation rules apply to delegate committees that have a relationship with each other?

Possibly. Delegate committees established, financed, maintained or controlled by the same person or group are affiliated. Factors that indicate affiliation between delegate committees are found at 11 CFR 100.5(g)(4). 11 CFR 110.14(k).

Additional Information

For additional information on delegates and delegate committees, contact the FEC's Information Division at 1-800/424-9530 or 202/694-1100.

—Dorothy Yeager

Court Cases

Shays v. FEC (III)

On June 13, 2008, a three-judge panel of the U.S. Court of Appeals for the District of Columbia affirmed in part and reversed in part the district court's judgment in the *Shays III* case. Specifically, the appeals court agreed with the district court in finding deficient regulations regarding the content standard for coordination, the 120-day coordination window for common vendors and former campaign employees and the definitions of "GOTV activity" and "voter registration activity." The appeals court reversed the district court's decision to uphold the provision allowing federal candidates to solicit funds without restriction at state and local party events. These regulations were remanded to the FEC to issue "regulations consistent with the Act's text and purpose." The court did not vacate the regulations, so they remain in effect, pending further action. The appeals court upheld the FEC's regulations regarding the firewall safe harbor for coordination by former employees and vendors, which the district court had found deficient.

Background

In response to the court decisions and judgment in *Shays I*, the FEC held rulemaking proceedings during 2005 and 2006 to revise a number of its Bipartisan Campaign Reform Act (BCRA) regulations. On July 11, 2006, U.S. Representative Christopher Shays and then-Representative Martin Meehan (the plaintiffs) filed another complaint in district court. The complaint challenged the FEC's recent revisions to, or expanded explanations for, regulations governing coordinated communications, federal election activity (FEA) and solicitations by federal candidates and officeholders at state party fundraising events. The plaintiffs claimed that the rules did not comply with the court's judgment in *Shays I* or with the BCRA. The complaint also alleged the FEC did not adequately explain and justify its actions.

On September 12, 2007, the district court granted in part and denied in part the parties' motions for summary judgment in this case. The court remanded to the FEC a number of regulations implementing the BCRA, including:

- The revised coordinated communications content standard at 11 CFR 109.21(c)(4);
- The 120-day window for coordination through common vendors and former employees under the conduct standard at 11 CFR 109.21(d)(4) and (d)(5);
- The safe harbor from the definition of "coordinated communication" for a common vendor, former employee, or political committee that establishes a "firewall" (11 CFR 109.21(h)(1) and (h)(2)); and
- The definitions of "voter registration activity" and "get-out-the-vote activity" (GOTV) at 11 CFR 100.24(a)(2)-(a)(3).

On October 16, 2007, the Commission filed a Notice of Appeal seeking appellate review of all of the adverse rulings issued by the district court. On October 23, 2007, Representative Shays cross-appealed the district court's judgment insofar as it denied the plaintiff's "claims or requested relief."

Appeals Court Decision

The appellate court upheld the majority of the district court's decision, including the remand of the content standard for coordination, the 120-day common vendor coordination time period and the definitions of GOTV activity and voter registration activity. While the district court had held the firewall safe harbor for coordination by former employees and vendors invalid, the court of appeals reversed the district court and upheld the safe harbor provision. The court of appeals reversed the district court's decision to uphold the provision permitting federal candidates to solicit funds without restriction at state or local party events.

Coordination Content Standard. The court of appeals held that, while the Commission's decision to regulate ads more strictly within the 90- and 120-day periods was "perfectly reasonable," the decision to regulate ads outside of the time period only if they republish campaign material or contain express advocacy was unacceptable. Although the vast majority of communications are run within the time periods and are thus subject to regulation as coordinated communications, the court held that the current regulation allows "soft money" to be used to make election-influencing communications outside of the time periods, thus frustrating the purpose of the BCRA. The appellate court remanded the regulations

to the Commission to draft new regulations concerning the content standard.

Coordination by Common Vendors and Former Employees. The appellate court affirmed the district court's decision concerning the 120-day prohibition on the use of material information about "campaign plans, projects, activities and needs" by vendors or former employees of a campaign. The court held that some material could retain its usefulness for more than 120 days and also that the Commission did not sufficiently support its decision to use 120 days as the acceptable time period after which coordination would not occur.

Firewall Safe Harbor. Contrary to the decision of the district court, the court of appeals approved the firewall safe harbor regulation to stand as written. The safe harbor is designed to protect vendors and organizations in which some employees are working on a candidate's campaign and others are working for outside organizations making independent expenditures. The appellate court held that, although the firewall provision states generally as to what the firewall should actually look like, the court deferred to the Commission's decision to allow organizations to create functional firewalls that are best adapted to the particular organizations' unique structures.

Definitions of GOTV and Voter Registration Activity. The court of appeals upheld the district court's decision to remand the definitions of "GOTV" and "voter registration activity." The court held that the definitions impermissibly required "individualized" assistance directed towards voters and thus continued to allow the use of soft money to influence federal elections, contrary to Congress' intent.

Solicitations by federal candidates at state party fundraisers. While the district court had upheld the regulation permitting federal candidates and officeholders to speak without restriction at state party fundraisers, the court of appeals disagreed. The court stated that Congress did not explicitly state that federal candidates could raise soft money at state party fundraisers; rather, Congress permitted the federal candidates to "appear, speak, or be a featured guest." Congress set forth several exceptions to the ban on federal candidates raising soft money, and state party events were not included in the exceptions. Thus, the court found the regulation impermissible.

U.S. District Court of Appeals for the District of Columbia Circuit, 07-5360.

—Meredith Metzler

Davis v. FEC

On June 26, 2008, the Supreme Court ruled that provisions of the Bipartisan Campaign Reform Act (BCRA) known as the "Millionaires' Amendment" (2 U.S.C. §319(a) and (b)) unconstitutionally burden the First Amendment rights of self-financed candidates. The decision overturned an earlier ruling by the U.S. District Court for the District of Columbia that the Millionaires' Amendment posed no threat to self-financed candidates' First Amendment or Equal Protection rights.

Background

On March 30, 2006, Jack Davis, a candidate for the House of Representatives in New York's 26th District, filed a Statement of Candidacy with the FEC declaring his intent to spend over $350,000 of his own funds on his campaign.

On June 6, 2006, Davis asked the U.S. District Court for the District of Columbia to declare the Millionaires' Amendment provisions unconstitutional on their face, and to issue an injunction barring the FEC from enforcing those provisions. Mr. Davis argued that the Millionaires' Amendment violates the First Amendment by chilling speech by self-financed candidates, and violates the Equal Protection Clause of the Fifth Amendment by giving a competitive advantage to self-financed candidates' opponents.

Under the Millionaires' Amendment, candidates who spend more than certain threshold amounts of their own personal funds on their campaigns may render their opponents eligible to receive contributions from individuals at an increased limit. 2 U.S.C. § 441a-1. For House candidates, the threshold amount is $350,000. This level of personal campaign spending could trigger increased limits for the self-financed candidate's opponent depending upon the opponent's own campaign expenditures from personal funds and the amount of funds the candidate has raised from other sources in the year prior to the year of the election. If increased limits are triggered, then the eligible candidate may receive contributions from individuals at three times the usual limit of $2,300 per election and may benefit from party coordinated expenditures in excess of the usual limit.

District Court Decision

The district court held that Mr. Davis's First Amendment challenge failed at the outset because the Millionaires' Amendment did not "burden the exercise of political speech."

According to the district court, the Millionaires' Amendment "places no restrictions on a candidate's ability to spend unlimited amounts of his personal wealth to communicate his message to voters, nor does it reduce the amount of money he is able to raise from contributors. Rather, the Millionaires' Amendment accomplishes its sponsors' aim to preserve core First Amendment values by protecting the candidate's ability to enhance his participation in the political marketplace." In particular, the

court cited the fact that Mr. Davis himself has twice chosen to self-finance his campaign. The court found that Mr. Davis failed to show how his speech had been limited by the benefits his opponents receive under the statute.

Mr. Davis additionally alleged that the disclosure requirements for self-financed candidates under the Millionaires' Amendment imposed an unfair burden on his right to speak in support of his own candidacy. The district court found that the Millionaires' Amendment reporting requirements are no more burdensome than other BCRA reporting requirements that the Supreme Court has already upheld.

The court also rejected the second prong of Mr. Davis's facial challenge, regarding the Equal Protection provision of the Fifth Amendment. In order to argue that a statute violates the Equal Protection Clause of the Fifth Amendment, a plaintiff must show that the statute treats similarly situated entities differently.

The district court found that the Millionaires' Amendment did not violate the Equal Protection Clause of the Fifth Amendment because Mr. Davis could not show that the statute treated similarly situated entities differently. The district court held that self-funded candidates, who can choose to use unlimited amounts of their personal funds for their campaigns, and candidates who raise their funds from limited contributions are not similarly situated. According to the court, "the reasonable premise of the Millionaires' Amendment is that self-financed candidates are situated differently from those who lack the resources to fund their own campaigns and that this difference creates adverse consequences dangerous to the perception of electoral fairness." Thus, the court found no violation of the Fifth Amendment.

The District court granted the FEC's request for summary judgment in this case and denied Mr. Davis's request for summary judgment.

Supreme Court Decision

On June 26, 2008, the Supreme Court issued an opinion reversing the district court's decision. The Court held that the Millionaires' Amendment unconstitutionally violated self-financed candidates' First Amendment or Equal Protection rights. The Court also rejected the FEC's arguments that Davis lacked standing and that the case was moot.

Standing. The FEC argued that Davis lacked standing to challenge the unequal contribution limits of the Millionaires' Amendment, 2 U.S.C. §319(a), because Davis' opponent never received contributions at the increased limit and therefore, Davis had suffered no injury. The Court rejected this argument, noting that a party facing prospective injury has standing whenever the threat of injury is real, immediate and direct. The Court further noted that Davis faced such a prospect of injury from increased contribution limits at the time he filed his suit.

Mootness. The FEC also argued that Davis' argument was moot because the 2006 election had passed and Davis' claim would be capable of repetition only if Davis planned to self-finance another election for the U.S. House of Representatives. The FEC also argued that Davis' claim would not evade review as he could challenge the Amendment in court should the Commission file an enforcement action regarding his failure to file personal expenditure reports. Considering that Davis had subsequently made a public statement expressing his intent to run for a House seat and trigger the Millionaires' Amendment again, the Court concluded that Davis' challenge is not moot.

First Amendment and Equal Protection. In considering Davis' claim that imposing different fundraising limits on candidates running against one another impermissibly burdens his First Amendment right to free speech, the Court noted that it has never upheld the constitutionality of such a law. The Court referred to *Buckley v. Valeo*, in which it rejected a cap on a candidate's expenditure of personal funds for campaign speech and upheld the right of a candidate to "vigorously and tirelessly" advocate his or her own election. While the Millionaires' Amendment did not impose a spending cap on candidates, it effectively penalized candidates who spent large amounts of their own funds on their campaigns by increasing their opponents' contribution limits. The Court determined that the burden thus placed on wealthy candidates is not justified by any governmental interest in preventing corruption or the appearance of corruption, and that equalizing electoral opportunities for candidates of different personal wealth was not a permissible Congressional purpose.

The Court remanded the matter for action consistent with its decision. On June 26, 2008, the Commission issued a public statement outlining the general principles the Commission will apply to conform to the Court's decision. The full statement is printed on page 3.

U.S. Supreme Court, No. 07-320.

—Gary Mullen

Commission

Commission Statement on Davis v. FEC

On June 26, 2008, the Supreme Court issued its decision in *Davis v. FEC*, 554 U.S. __, No. 07-320, and found Sections 319(a) and 319(b) of the Bipartisan Campaign Reform Act of 2002[1]—the so-called "Millionaires' Amendment" (the "Amendment")—unconstitutional because they violate the First Amendment to the U.S. Constitution.[2] The Court's analysis in *Davis* precludes enforcement of the House provision and effectively precludes enforcement of the Senate provision as well.

This public statement outlines the general principles the Commission will apply to conform to the Court's decision.

- The Commission will no longer enforce the Amendment and will initiate a rulemaking shortly to conform its rules to the Court's decision.
- As of June 26, 2008, any FEC disclosure requirements related solely to the Amendment need not be followed. There is no longer a need to file the Declaration of Intent portion of the Statement of Candidacy (Lines 9A and 9B of Form 2), FEC Form 10, Form 11, Form 12, or Form 3Z-1.
- All other filing obligations unrelated to the Amendment remain the same. For example, contributions a candidate makes to his or her own campaign must still be reported.
- As of June 26, 2008, opponents of self-financed candidates who triggered the Amendment may not accept increased contributions.
- As of June 26, 2008, political parties may no longer make increased coordinated expenditures on behalf of opponents of self-financed candidates whose personal expenditures would have triggered the Amendment.

Regarding pending FEC matters that have not reached a final resolution, the Commission intends to proceed as follows:

- The Commission is reviewing all pending matters involving the Amendment and will no longer pursue claims solely involving violations of the Amendment. Moreover, the Commission will no longer pursue information requests or audit issues solely concerning potential compliance with the Amendment. However, not all activity related to the Amendment was affected by the *Davis* decision. If, for example, someone accepted a contribution *above* the amount allowed under the Amendment's increased limits, or accepted increased contributions without being eligible, the Commission will consider such matters as part of its normal enforcement process.
- The Commission will not require that candidates who received increased contributions in accordance with the Amendment before June 26, 2008, return those funds so long as the funds are properly expended in connection with the election for which they were raised. Similarly, the Commission will not request that political parties, if any, that made increased coordinated expenditures before June 26 consistent with the Amendment take any remedial action. Additionally, the Commission will not pursue individual contributors who made increased contributions, that were in accordance with the Amendment, before June 26, 2008.

Campaigns or party organizations with specific questions regarding their reporting obligations may contact the Reports Analysis Division at (800) 424-9530.

[1] *2 U.S.C. § 441a-1.*

[2] *Under the "Millionaires' Amendment," when a candidate's personal expenditures exceeded certain thresholds, that candidate's opponent(s) became eligible to receive contributions from individuals at an increased limit and to benefit from enhanced coordinated party expenditures.*

Regulations

Final Rules on Repeal of Millionaires' Amendment

On December 18, 2008, the Commission approved final rules that remove regulations on increased contribution limits and coordinated party expenditure limits for Senate and House of Representative candidates facing self-financed opponents. The rules implemented provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA) known as the "Millionaires' Amendment." In *Davis v. Federal Election Commission (Davis)*, the Supreme Court held that the Millionaires' Amendment provisions relating to House of Representatives elections were unconstitutional. The Commission retained and revised certain other rules that were not affected by the *Davis* decision. The final rules were published in the December 30, 2008, *Federal Register* and took effect February 1, 2009.

Background

On June 26, 2008, the Supreme Court ruled in *Davis* that the Millionaires' Amendment provisions of BCRA relating to House of Representatives elections unconstitutionally burden the First Amendment rights of self-financed candidates. Under those provisions, Senate and House candidates facing opponents who spent personal funds above certain threshold amounts were eligible for increased contribution and coordinated party expenditure limits.

On July 25, 2008, the Commission issued a public statement

announcing that the *Davis* decision precluded the enforcement of the House provisions and effectively precluded the enforcement of the Senate provisions. The statement noted that, as of June 26, 2008, the increased contribution limits and reporting requirements of the Millionaires' Amendment were no longer in effect, and political party committees were no longer permitted to make increased coordinated party expenditures under these provisions. See August 2008 *Record*, page 3. The Commission published a Notice of Proposed Rulemaking (NPRM) on October 20, 2008, seeking comment from the public on proposed rules implementing the *Davis* decision.

Removal of 11 CFR Part 400 — Increased Limits for Candidates Opposing Self-Financed Candidates

Part 400 of FEC regulations implemented the statutory provisions of the Millionaires' Amendment. The Supreme Court's decision in *Davis* invalidated the entire BCRA section 319 relating to House elections, including the increased limits in 319(a) and its companion disclosure requirements in 319(b). While the *Davis* decision struck down only the BCRA sections 319(a) and (b) governing House elections, the Commission concluded that the Supreme Court's analysis in *Davis* also precludes enforcement of the parallel provisions applicable to Senate elections. Therefore, the Commission decided to delete the regulations found at 11 CFR Part 400 in their entirety.

Amendments to Other Provisions

The deletion of the rules at 11 CFR Part 400 affects several other Commission regulations, as noted below.

Definition of File, Filed or Filing. Section 100.19 specifies when a document is considered timely filed. The Commission deleted paragraph (g), which had described the candidate's notification of expenditures of personal funds under 400.21 and 400.22.

Definition of Personal Funds. The Commission revised the definition of "personal funds" in 11 CFR 100.33 by deleting the cross-reference to section 400.2, which the Commission removed. The Commission retained the remaining language of section 100.33.

Candidate Designations. The Commission deleted the sentence in paragraph (a) of 11 CFR 101.1 that required Senate and House of Representatives candidates to state, on their Statements of Candidacy on FEC Form 2 (or, if the candidates are not required to file electronically, on their letters containing the same information), the amount by which the candidates intended to exceed the threshold amount as defined in 11 CFR 400.9. The *Davis* decision invalidated the statutory foundation for this requirement.

Statement of Organization. Section 102.2(a)(1)(viii) requires principal campaign committees of House and Senate candidates to provide an e-mail address and fax number on their Statement of Organization (FEC Form 1). This regulation was promulgated to aid with the expedited notifications required by the Millionaires' Amendment under Part 400. The Commission retained the requirement that these committees provide e-mail addresses because it facilitates the exchange of information between the Commission and committees for other purposes under the Act. However, the Commission deleted the requirement that committees provide their facsimile numbers because it does not routinely communicate with committees via facsimile machine.

Calculation of "Gross Receipts Advantage." Section 104.19 had required principal campaign committees of House and Senate candidates to report information necessary to calculate their "gross receipts advantage." This calculation was then used to determine the "opposition personal funds amount" under 400.10. With the Commission's deletion of Part 400, the reporting under section 104.19 is no longer required. Therefore, the Commission removed section 104.19.

Biennial Limit. The Commission deleted paragraph (b)(2) of section 110.5 because the statutory foundation for this provision was invalidated by the Supreme Court's decision in *Davis*. Paragraph (b)(2) stated the circumstances under which the biennial limits on contributions by individuals did not apply to contributions made under 11 CFR Part 400.

Retention of Certain Other Regulations

Repayment of candidates' personal loans. The BCRA added a new provision limiting to $250,000 the amount of contributions collected after the date of the election that can be used to repay loans made by the candidate to the campaign. When promulgating regulations to enforce this statutory provision, the Commission added new sections 116.11 and 116.12 to the regulations rather than including them in Part 400 with the other Millionaires' Amendment provisions. Unlike other aspects of the Millionaires' Amendment, this statutory provision applies equally to all federal candidates, including Presidential candidates. The personal loan repayment provision was not challenged in *Davis*, nor did the Supreme Court's decision address the validity of this provision. Therefore, the Commission retained sections 116.11 and 116.12.

Net debts outstanding calculation. Section 110.1(b)(1)(i) states that candidates and their committees cannot accept contributions after the election unless the candidate still has net debts outstanding from that election and only up to the amount of that net debts calculation. This rule was in place before BCRA added the loan repayment restriction. However, to conform with the fundraising con-

straints put in place with the BCRA by section 116.11, the Commission added language to 110.1(b)(3)(ii) to exclude the amount of personal loans that exceed $250,000 from the definition of net debts outstanding. For the same reasons stated above, the Commission retained paragraph (b)(3)(ii)(C).

Additional Information

The full text of the rules was published in the December 30, 2008, *Federal Register* and is available on the FEC web site at http://www.fec.gov/law/cfr/ej_compilation/2008/notice_2008-14.pdf.

—Isaac J. Baker

Final Rules on Reporting Contributions Bundled by Lobbyists, Registrants and Their PACs

On December 18, 2008, the Commission approved final rules regarding disclosure of contributions bundled by lobbyists/registrants and their political action committees (PACs). These rules implement Section 204 of the Honest Leadership and Open Government Act of 2007 (HLOGA) by requiring "reporting committees" (authorized committees of federal candidates, Leadership PACs and political party committees) to disclose certain information about any lobbyist/registrant or lobbyist/registrant PAC that forwards, or is credited with raising, two or more bundled contributions aggregating in excess of the reporting threshold within a "covered period" of time. These requirements apply to both in-kind and monetary contributions. The reporting threshold for 2009 is $16,000 and is indexed annually for inflation.

Lobbyist/Registrants and Their PACs

The rules define a lobbyist/registrant as a current registrant (under section 4(a) of the Lobbying Disclosure Act of 1995 (the LDA)) or an individual listed on a current registration or report filed under sections 4(b)(6) or 5(b)(2)(C) of the LDA. 11 CFR 104.22(a)(2). A lobbyist/registrant PAC is any political committee that a lobbyist/registrant "established or controls." 11 CFR 100.5(e)(7) and 104.22(a)(3). For the purposes of these rules, a lobbyist/registrant "established or controls" a political committee if he or she is required to make a disclosure to that effect to the Secretary of the Senate or Clerk of the House of Representatives. 11 CFR 104.22(a)(4)(i). If the political committee is not able to obtain definitive guidance from the Senate or House regarding its status, then it must consult additional criteria in FEC regulations. Under these criteria, a political committee is considered a lobbyist/registrant PAC if:

- It is a separate segregated fund whose connected organization is a current registrant; (11 CFR 104.22(a)(4)(ii)(A)); or
- A lobbyist/registrant had a primary role in the establishment of the committee *or* directs the governance or operations of the committee. (Note that the mere provision of legal compliance services or advice by a lobbyist/registrant would not by itself meet these criteria.) (11 CFR 104.22(a)(4)(ii)(B)(1) and (2)).

Disclosure is triggered based on the activity of persons "reasonably known" by the reporting committee to be lobbyist/registrants or lobbyist/registrant PACs. In order for reporting committees to determine whether a person is reasonably known to be a lobbyist/registrant or lobbyist/registrant PAC, the rules require reporting committees to consult the Senate, House and FEC web sites. 11 CFR 104.22(b)(2)(i). The Senate and House web sites identify registered lobbyists and registrants, while the FEC web site identifies whether a political committee is a lobbyist/registrant PAC. A computer printout or screen capture showing the absence of the person's name on the Senate, House or FEC web sites on the date in question may be used as conclusive evidence demonstrating that the reporting committee consulted the required web sites and did not find the name of the person in question. 11 CFR 104.22(b)(2)(ii). Nevertheless, the reporting committee is required to report bundled contributions if it has actual knowledge that the person in question is a lobbyist/registrant or lobbyist/registrant PAC even if the committee consulted the Senate, House and FEC web sites and did not find the name of the person in question. 11 CFR 104.22(b)(2)(iii).

Covered Periods

An authorized committee, Leadership PAC[1] or party committee (collectively "reporting committees") must file new FEC Form 3L when it receives two or more bundled contributions aggregating in excess of $16,000 from a lobbyist/registrant or lobbyist/registrant PAC during a specified time period. That time period, called a "covered period," is defined in HLOGA as January 1 through June 30, July 1 through December 31 and any reporting period applicable under the Federal Election Campaign Act (the Act). 2 U.S.C. §434(i)(2); 11 CFR 104.22(a)(5). As a result, covered periods will typically coincide with a committee's regular FEC reporting periods, except that bundling reports filed in July and January will also cover the

[1] A Leadership PAC is defined as a political committee that is directly or indirectly established, financed, maintained or controlled by a candidate or individual holding federal office but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual, except that Leadership PAC does not include a political committee of a political party. 11 CFR 100.5(e)(6).

preceding six months. One exception, noted below, permits monthly filers to file Form 3L on a quarterly basis, if they choose.

Semi-annual Covered Period. All reporting committees with bundled contributions to disclose must file a report covering the semi-annual periods of January 1 through June 30 and July 1 through December 31. 11 CFR 104.22(a)(5)(i). Totals for the first six months of the year will appear on quarterly filers' July 15 report and on monthly filers' July 20 report.[2] All reporting committees will disclose totals for the second half of the year on their January 31 Year-End Report.

Quarterly Covered Period. The covered period for reporting committees that file campaign finance reports on a quarterly schedule in an election year includes the semi-annual periods above and also the calendar quarters beginning on January 1, April 1, July 1 and October 1, as well as the pre- and post-election reporting periods (including runoff or special elections), if applicable. 11 CFR 104.22(a)(5)(ii) and (v). Authorized committees of House and Senate candidates have the same quarterly covered period for a non-election year as in an election year. However, Leadership PACs or party committees that file quarterly in an election year file campaign finance reports semi-annually in a non-election year. Therefore, in a non-election year, these reporting committees must file lobbyist bundling disclosure only for the semi-annual covered periods, and the pre- and post-special election reporting periods, if applicable. Some authorized committees of Presidential candidates may also file quarterly reports.

Monthly Covered Period. For reporting committees that file campaign reports on a monthly basis, the covered period includes the semi-annual periods above and each month in the calendar year, except that in election years they file for the pre- and post-general election reporting periods in lieu of the November and December reports. 11 CFR 104.22(a)(5)(iii).

As noted above, reporting committees that file campaign finance reports monthly may elect to file their lobbyist bundling disclosure on a quarterly basis. 11 CFR 104.22(a)(5)(iv). Reporting committees wishing to change their lobbyist bundling disclosure from monthly to quarterly must first notify the Commission in writing. Electronic filers must file this request electronically.

A reporting committee may change its filing frequency only once in a calendar year. 11 CFR 104.22(a)(5)(iv).

Bundled Contributions

The disclosure requirements apply to two distinct types of bundled contributions: those that are forwarded to the reporting committee by a lobbyist/registrant or lobbyist/registrant PAC and those that are received directly from the contributor and are credited by the reporting committee to a lobbyist/registrant or lobbyist/registrant PAC.

A forwarded contribution is one that is delivered, either physically or electronically, to the reporting committee by the lobbyist/registrant or lobbyist/registrant PAC, or by any person that the reporting committee knows to be forwarding a contribution on behalf of a lobbyist/registrant or lobbyist/registrant PAC. These contributions count toward the bundling disclosure threshold regardless of whether the committee awards any credit to the lobbyist/registrant or lobbyist/registrant PAC.[3] 11 CFR 104.22(a)(6)(i).

Bundled contributions also include those received from the original contributor when the contributions are credited by the reporting committee to a lobbyist/registrant or lobbyist/registrant PAC through records, designations or other means of recognizing that a certain amount of money has been raised by that lobbyist/registrant or lobbyist/registrant PAC. 11 CFR 104.22(a)(6)(ii). The final rules outline ways that a reporting committee may be considered to "credit" a lobbyist/registrant or lobbyist/registrant PAC for raising contributions.

For example, a reporting committee may credit lobbyist/registrants or lobbyist/registrant PACs through records (written evidence, including writings, charts, computer files, tables, spreadsheets, databases or other data or data compilations stored in any medium from which information can be obtained). 11 CFR 104.22(a)(6)(ii)(A).

Designations or other means of recognizing that a lobbyist/registrant or lobbyist/registrant PAC has raised a certain amount of money include, but are not limited to:

- Titles given to persons based on their fundraising;
- Tracking identifiers assigned by the reporting committee and included on contributions or contribution-related material that may be used to maintain information about a person's fundraising;

[2] *In a non-election year, committees that file only semi-annually will file Form 3L on July 31 and January 31.*

[3] *These rules do not affect the existing recordkeeping and reporting provisions that require each person who receives and forwards contributions to a political committee to forward certain information identifying the original contributor and, for contributions received and forwarded to an authorized committee, the reporting and recordkeeping requirements by persons known as "conduits" or "intermediaries." See 11 CFR 102.8 and 110.6.*

- Access, for example through invitations to events, given to lobbyist/registrants or lobbyist/registrant PACs as a result of their fundraising levels; or
- Mementos given to persons who have raised a certain amount of contributions. 11 CFR 104.22(a)(6)(ii)(A)(1)-(4).

Note, however, that the rules exclude from the definition of "bundled contribution" any contribution made from the personal funds of the lobbyist/registrant or his or her spouse, or from the funds of the lobbyist/registrant PAC. 11 CFR 104.22(a)(6)(iii).

Disclosure Requirements

As noted above, the Commission has created new FEC Form 3L, Report of Contributions Bundled by Lobbyists/Registrants and Lobbyist/Registrant PACs, to accommodate the new disclosure requirements. Reporting committees must use the form to disclose:

- Name of each lobbyist/registrant or lobbyist/registrant PAC;
- Address of each lobbyist/registrant or lobbyist/registrant PAC;
- Employer of each lobbyist (if an individual); and
- The aggregate amount of bundled contributions forwarded by or received and credited to each.

Electronic filers are required to file Form 3L electronically. A new release of FECFile will be available from the FEC.

Reporting committees must maintain records of any bundled contributions that aggregate in excess of the reporting threshold and are reported on Form 3L. Reporting committees must keep sufficient documentation of the information contained in the reports to check their accuracy and completeness and must keep those records for three years after filing FEC Form 3L. 11 CFR 104.22(f).

The Commission has additionally revised FEC Form 1, Statement of Organization, to allow political committees to identify themselves as Leadership PACs or lobbyist/registrant PACs. As of March 29, 2009, political committees that meet the definition of "lobbyist/registrant PAC" or Leadership PAC must identify themselves as such when filing FEC Form 1 with the Commission. Political committees that meet the definition of "lobbyist/registrant PAC" or Leadership PAC that have already filed FEC Form 1 must amend their FEC Form 1 no later than March 29, 2009, to identify themselves as such.

Additional Information

The new rules will take effect on March 19, 2009, and recordkeeping requirements begin on this date. Reporting committees must also begin tracking their bundled contributions as of this date. Compliance with the reporting requirements for reporting committees is required after May 17, 2009. Reports filed in accordance with these rules need not include contributions bundled by lobbyist/registrants if the contributions are received before March 19. Contributions bundled by lobbyist/registrant PACs need not be reported if they are received by April 18.

The final rules and their Explanation and Justification were published in the *Federal Register* on February 17, 2009, and are available on the FEC web site at http://www.fec.gov/law/cfr/ej_compilation/2009/notice_2009-03.pdf.

—Elizabeth Kurland

Contribution Limits

Contribution Limits for 2009-2010

Under the Bipartisan Campaign Reform Act of 2002 (BCRA), certain contribution limits are indexed for inflation every two years, based on the change in the cost of living since 2001, which is the base year for adjusting these limits.[1] The inflation-adjusted limits are:

- The limits on contributions made by persons to candidates and national party committees (2 U.S.C. §441a(a)(1)(A) and (B));
- The biennial aggregate contribution limits for individuals (2 U.S.C. §441a(a)(3)); and
- The limit on contributions made by certain political party committees (2 U.S.C. §441a(h)).

Please see the chart on the next page for the contribution amount limits applicable for 2009-2010. The inflation adjustments to these limits are made only in odd-numbered years, and—except for the biennial limit—the limits are in effect for the two-year election cycle beginning on the day after the general election and ending on the date of the next general election. The biennial limit covers the two-calendar-year period beginning on January 1 of the odd-numbered year and ending on December 31 of the even-numbered year.

Please note, however, that these limits do not apply to contributions raised to retire debts from past elections. Contributions may not exceed the contribution limits in effect on the date of the election for which those debts were incurred. 11 CFR 110.1(b)(3)(iii).

[1] *The applicable cost of living adjustment amount is 1.216.*

Contribution Limits for 2009-2010

Type of Contribution	Limit
Individuals/Non-multicandidate Committees to Candidates	$2,400
Individuals/Non-multicandidate Committees to National Party Committees	$30,400
Biennial Limit for Individuals	$115,500[1]
National Party Committee to a Senate Candidate	$42,600[2]

[1] This amount is composed of a $45,600 limit for what may be contributed to all candidates and a $69,900 limit for what may be contributed to all PACs and party committees. Of the $69,900 portion that may contributed to PACs and parties, only $45,600 may be contributed to state and local party committees and PACs.

[2] This limit is shared by the national committee and the Senate campaign committee.

The BCRA also introduced a rounding provision for all of the amounts that are increased by the indexing for inflation.[2] Under this provision, if the inflation-adjusted amount is not a multiple of $100, then the amount is rounded to the nearest $100.

—Elizabeth Kurland

[2] This provision also affects the indexing of coordinated party expenditure limits and Presidential expenditure limits in 2 U.S.C. §§441a(b) and 441a(d), as well as the disclosure threshold for lobbyist bundled contributions in 2 U.S.C. §434(i)(3)(A).