

# Record

July 1999

Federal Election Commission

Volume 25, Number 7

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## Reports

### July Reporting Reminder

Several different types of reports are required in July.

Committees filing semiannually with the Commission this year have a report due on July 31. The reports cover financial activity from January 1 (or the day after the closing date of the last report) through June 30.

Presidential committees filing on a quarterly basis have a report due to the Commission on July 15. These reports cover financial activity from April 1 through June 30. Monthly filers have a report due on July 20. These reports cover financial activity for the month of June.

### Receipt of Reports

Reports sent by registered or certified mail must be **postmarked** by the filing date.

Reports sent by other means must be **received** by federal and state filing offices by the filing date.

Other means of delivering reports could include standard mail delivery, Express Mail service or shipping through one of the nongovernment services, such as Federal Express.

Electronically filed reports must be **received** by federal and state filing offices by the filing date. E-filers will receive e-mail or fax

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### July Conference for Partnerships and LLCs

The FEC has expanded the scheduled partnership conference by a half a day and will now include information pertaining to political activity by limited liability companies (LLCs) that are considered partnerships under the U.S. tax code.

The conference will be held July 28-29 at the Westin Hotel in Washington, DC. The registration fee is \$230 and the registration deadline is July 15.

The conference will be presented by Commissioners and FEC staff, who will explain federal election rules governing partnership PACs, partnership support for PACs and federal candidates, and individual partner involvement in federal elections. Upcoming changes to FEC regulations concerning LLCs will also be discussed. In addition, the seminar will offer a workshop on the FEC enforcement process.

To register, call Sylvester Management at 800/246-7277 or send an e-mail to [tsylvester@worldnet.att.net](mailto:tsylvester@worldnet.att.net). For program information, call the FEC's Information Division at 800/424-9530 or 202/694-1100.

## Reports

(continued from page 1)

confirmation that their report has been received by the Commission. E-filers should note that they must still send a copy of their reports to applicable state election offices by the filing deadline.

### Filing Schedules

To view a copy of the 1999 reporting dates:

- See the [January 1999 Record](#), p. 4;
- Log on to <http://www.fec.gov> and click on “Help for Candidates, Parties and PACs”;
- Request a copy from FEC Faxline by calling 202/501-3413 (request document 586); or
- Call 800/424-9530 and ask that the 1999 reporting schedule handout be mailed to you. ♦

## Statistics

### PAC Activity Increases

During the 1997-98 election cycle, political action committees (PACs) raised \$502.6 million, a 15 percent increase over their 1995-96 statistics. PACs spent \$470.8 million during the most recent election cycle, posting a 10 percent increase over 1995-96. PACs ended 1998 with \$138 million in cash on hand.

Just under half of total PAC spending—about \$219.9 million—went to federal candidates, and all but \$13.1 million of that total was for candidates running in 1997-98. The remainder, or about \$13.1 million, was contributed to candidates running for office in the future or for debt retirement.

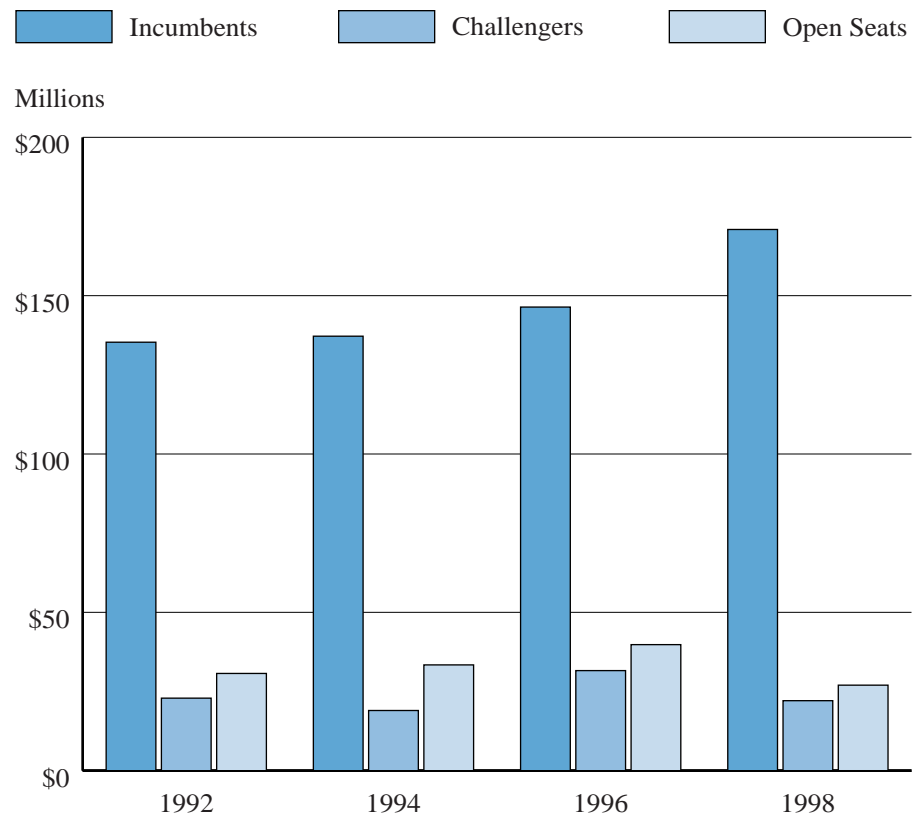
As in previous elections, the bulk of PAC contributions went to incumbents, while contributions to

challengers and open-seat candidates trailed behind. Republicans also edged out Democrats for the most PAC contributions. Republican candidates received \$108 million from PACs, while Democrats reported \$98.3 million from PACs. In addition, PACs made \$9.3 million in independent expenditures.

This article and the accompanying graph are based on data taken from a June 8 news release. The release covers the full cycle from January 1, 1997, through December 31, 1998, and includes a number of statistical tables and “Top 50” lists for PACs. It is available at the following places:

- FEC Web site (<http://www.fec.gov>; select “News Releases and Media Advisories”);
- FEC Public Records and Press offices (800/424-9530); and
- FEC Faxline (202/501-3413, document 611). ♦

### Distribution of PAC Contributions for '92—'98 Election Cycles



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

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

**Scott E. Thomas**, Chairman  
**Darryl R. Wold**, Vice Chairman  
**Lee Ann Elliott**, Commissioner  
**David M. Mason**, Commissioner  
**Danny L. McDonald**, Commissioner  
**Karl J. Sandstrom**, Commissioner

**James A. Pehrkon**, Staff Director  
**Lawrence M. Noble**, General Counsel

Published by the Information Division

**Louise D. Wides**, Director  
**Angela Rucker**, Editor

<http://www.fec.gov>

# Outreach

## FEC Conducts Monthly Roundtable Sessions

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

Registration is \$25 and will be accepted on a first-come, first-served basis. Please call the FEC before registering or sending money to be sure that openings remain in the session of your choice. Prepayment is required. The registration form is available at the FEC's Web site (<http://www.fec.gov>) and from Faxline, the FEC's automated fax system (202/501-3413, request document 590). For more information, call 800/424-9530 or 202/694-1100.

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

### Public Appearances

July 16  
 American Bankers Association  
 Long Beach, CA  
 Dorothy Yeager, Senior Public Affairs Specialist

July 19  
 George Washington University  
 Washington, DC  
 Scott Thomas, Chairman

## FEC Conference Schedule

The FEC is sponsoring a series of conferences on campaign finance. See below for details. To register for any conference, call Sylvester Management at 800/246-7277 or send an e-mail to [tsylvester@worldnet.att.net](mailto:tsylvester@worldnet.att.net). For program information, call the FEC's Information Division at 800/424-9530 or 202/694-1100. A regularly updated schedule for the conferences and a downloadable invitation/registration form appear at the FEC's Web site. Go to <http://www.fec.gov> and click on "Help for Candidates, Parties and PACs" for the latest information.

### Partnership and Limited Liability Company (LLC) Conference

Date: July 28-29, 1999  
 Location: Washington, DC (Westin Hotel)  
 Registration: \$230

### Regional Conference (includes candidate, corporate/labor and party workshops)

Date: September 27-29, 1999  
 Location: Chicago, IL (Fairmont Hotel)  
 Registration: \$265

### Regional Conference (includes candidate, corporate/labor and party workshops)

Date: November 15-17, 1999  
 Location: San Francisco (Grand Hyatt)  
 Registration: To be determined

### Candidate Conference

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

### Regional Conference (includes candidate, corporate/labor and party workshops)

Date: March 2000  
 Location: Miami, FL  
 Registration: To be determined

### Corporate and Labor Conference

Date: May 2000  
 Location: Washington, DC  
 Registration: To be determined

### Membership and Trade Association Conference

Date: June 2000  
 Location: Washington, DC  
 Registration: To be determined

## Roundtable Schedule

Date	Subject	Intended Audience
July 7 9:30 -11 a.m.	<b>Using Prizes or Entertainment to Raise SSF Funds</b> (Code #799)	<ul style="list-style-type: none"> <li>• Corporate/Labor/Trade PAC Staff</li> <li>• Lawyers, Accountants and Consultants to PACs</li> </ul>
August 4 9:30 -11 a.m.	<b>Corporate Mergers and Spin-Offs — Effect on the SSF</b> (Code #899)	<ul style="list-style-type: none"> <li>• Corporate PAC Staff</li> <li>• Lawyers, Accountants and Consultants to Corporate PACs</li> </ul>
September 1 9:30 -11 a.m.	<b>Fundraising Through Payroll Deductions</b> (Code #999)	<ul style="list-style-type: none"> <li>• Corporate PAC Staff</li> <li>• Lawyers, Accountants and Consultants to Corporate PACs</li> </ul>



## Regulations

### Final Rules for Matching Credit Card Contributions Sent to Congress

On June 8, the Commission approved final rules that allow certain kinds of contributions made by credit or debit card to be matched under the Presidential Primary Matching Payment Account Act. The new rules will allow candidates to receive matching funds for the first \$250 of an individual's contribution made by credit card over the Internet.

The final rules were published in the June 17, 1999, *Federal Register* and transmitted to Congress for a 30-legislative day review period. Unless Congress and the President disapprove the regulations, they will be applicable retroactively to credit and debit card contributions made on or after January 1, 1999.

### Commission Regulations and Advisory Opinions

Under the Matching Payment Act, the first \$250 of each eligible contribution—from an individual—is matched by the federal government as long as certain conditions are met. A Presidential candidate must raise at least \$100,000, collecting \$5,000 in matchable contribu-

tions in at least 20 different states, and must agree to other conditions found in the Matching Payment Act. 26 U.S.C. §§9033, 9034.

For purposes of federal matching payments, a contribution is considered a gift of money made by a written instrument that identifies the person making the contribution. 11 CFR 9034.2. The regulations go on to define "written instrument" to mean "a check written on a personal escrow or trust account representing or containing the contributor's personal funds; a money order; or any similar negotiable instrument." Current regulations at 11 CFR 9034.3(c) list credit card transactions among several types of nonmatchable contributions.

The Commission has authorized the use of credit cards for unmatched contributions since 1978 (AO 1978-68), and has allowed corporations to reimburse their political action committees for service charges incurred by credit card contributions (AO 1984-45). The Commission has also approved advisory opinions that allow: automatic fund transfers from contributors' bank accounts to committee accounts (AO 1989-26); contributions and membership dues paid to a PAC with a credit card (AO 1990-4); and contributions to campaign committees made by advance authorization of credit card charges (AO 1991-1).

In AO 1995-9, the Commission authorized non-matchable contributions made with a credit card over the Internet, but stipulated that appropriate safeguards were needed to screen out excessive and prohibited contributions. AO 1995-35 gave the requester permission to solicit matchable contributions over the Internet, where contributors were asked to make their contributions via personal check and mail them to the campaign. And, most recently, the Commission approved AO 1999-9, which, pending the enactment of the rules discussed below, would allow contributions made by

credit cards over the Internet to be matched. See next page for a summary of this advisory opinion.

Before AO 1999-9, the Commission had declined to match credit card contributions to primary Presidential candidates, stating that contributions submitted for matching funds require a higher documentation standard to prevent fraud than credit card transactions provide.

The Commission has now concluded that, with proper safeguards, credit card contributions can be matchable. It cited these reasons:

- The use of credit cards has expanded dramatically since the issue was last considered by the FEC in 1983.
- Credit and debit card contributions present no greater danger of fraud than do other contributions so long as adequate precautions are taken.
- This policy would make it possible to solicit and receive contributions over the Internet, consistent with the Commission's interest in using the medium where appropriate.

### Amendments to Regulations

The Commission is making the following changes to its regulations:

- Amend 11 CFR 9034.2(b) to clarify that the term "written instrument" also means a transaction slip or other writing signed by a credit or debit cardholder, or, in the case of the Internet, an electronic record of the transaction made by credit or debit card that can be maintained electronically and reproduced in written form by the recipient candidate committee.
- Revise 11 CFR 9034.2(c) to clarify that the term "signature" includes an actual signature by the cardholder/contributor on a transaction slip or other writing, or, in the case of the Internet, the full name and card number of the cardholder/contributor entered and transmitted by the cardholder.
- Amend 11 CFR 9034.2(c)(8)(i) to state that credit card and debit card contributions are matchable

### Federal Register

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

#### Notice 1999-8

Presidential Debates; Notice of Availability of Petition for Rulemaking (64 FR 31159, June 10, 1999)

#### Notice 1999-9

Matching Credit Card and Debit Card Contributions in Presidential Campaigns; Final rules and transmittal of regulations to Congress (64 FR 32394, June 17, 1999)



provided that the written instrument and signature requirements are satisfied. New rules at (c)(8)(ii) state that credit and debit card contributions will be matched if the requesting committee provides evidence that the contributor has affirmed that the contribution is from personal funds and not from any prohibited source.

- Delete credit card transactions from the definition of nonmatchable contributions found at 11 CFR 9034.3(c).

As with other contributions, committees will be required to exercise “best efforts” to report all contributions and to identify contributors whose aggregate contributions exceed \$200 in a calendar year. Committees may send a follow-up request via e-mail for contributions received over the Internet. AO 1995-9. Additionally, the Commission states that the costs associated with processing credit and debit card contributions are an allowable fundraising expense.

Additional documentation requirements may be addressed in the Commission’s final rules regarding the public funding process, and will be included in *Guideline for Presentation in Good Order*, where the FEC spells out requirements for submitting contributions for matching funds.

### **Certain Credit Card Contributions Taken by Telephone Not Included**

Credit card transactions conducted solely by telephone are not matchable under the new rules because they do not meet the statutory “signature” requirement. However, if a committee receives written verification of a credit card phone contribution from the contributor, then the contribution may be matched.

### **More Information**

The full text of the final rules appears in the *Federal Register* (64 FR 32394), which is available through FEC Faxline. Dial 202/501-3413 and request document 240. ♦

## **FEC Seeks Comments on Petition Urging Changes to Debate Regulations**

On June 3, the Commission approved a Notice of Availability in response to a petition that it amend its rules for debates by Presidential and Vice Presidential candidates. The deadline for comments is July 12.

The petition, from William T. and Mary Clare Wohlford and Martin T. Mortimer, all members of their respective state Reform Party organizations (Virginia and Pennsylvania), urges the Commission to establish objective criteria for debate participants, rather than leaving it to the discretion of the debate-staging organizations.

The debate regulations state that staging organizations must use pre-established objective criteria to determine which candidates can participate in a debate. 11 CFR 110.13(c). The petition recommends that the Commission change its regulations to allow debates to be open to any candidate who has a mathematical potential to win the election (is on the ballot in enough states to earn the requisite 270 electoral votes) and has spent at least \$500,000 on the campaign by the end of the month preceding the date of the first scheduled debate held on or after September 1 of the election year. The petition recommends that candidates have equal access to debates held before September 1 without regard to ballot access and financial considerations.

The Notice of Availability seeks comments on whether the FEC should initiate a rulemaking in response to the petition. The Commission routinely provides an opportunity for comments on rulemaking petitions before the agency considers the merits of the petition.

The notice, published in the June 10, 1999, *Federal Register* (64 FR 31159), is available from the following sources:

- Public Records at 800/424-9530;
- FEC Faxline at 202/501-3413 (request document 239); and
- FEC’s Web site—<http://www.fec.gov> (select “What’s New!”).

Public comments must be submitted in either written or electronic form to Rosemary C. Smith, Senior Attorney. Written comments should be mailed to the Federal Election Commission, 999 E St., NW, Washington, DC 20463. Faxed comments should be transmitted to 202/219-3923, with a copy mailed to the preceding address to ensure legibility. Comments also may be sent by e-mail to [debates@fec.gov](mailto:debates@fec.gov). Electronic submissions must include the commenter’s full name, e-mail address and postal mail address. ♦

## Advisory Opinions

### **AO 1999-9 Matching Credit Card Contributions Received Over the Internet**

Bill Bradley for President, Inc., may request matching funds for credit and debt card contributions it receives over the Internet. This advisory opinion has been approved by the Commission on a provisional basis. The Commission on June 11 submitted a final regulation to Congress and the President that would permit matching payments for credit card transactions. See previous page for a summary of the regulations.

The Commission’s regulation at 11 CFR 9034.3(c) lists contributions that cannot be matched, and includes credit card transactions. Nonetheless, the Commission, after studying the legal and policy issues

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## Advisory Opinions

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involved with credit card transactions, has now determined that such contributions should be matchable and has amended the applicable regulations. Unless Congress and the President disapprove the new regulation, it will be applicable retroactively to credit card contributions made on or after January 1, 1999.

### Bradley Plan

Bill Bradley, who has announced a run for President in 2000, has qualified for federal matching funds for the first \$250 of primary election contributions received from individuals. See the [May 1999 Record](#), p. 2. The Committee plans to solicit and accept contributions from supporters through its Web site—<http://www.billbradley.com>—and would like to match those contributions as well. Prospective contributors would contribute by filling out and submitting an electronic form found on the campaign Web site. The form would include a place for the contributor to type in a credit or debit card number, or to provide information to facilitate an electronic fund transfer to the Committee. The Committee would pay all applicable processing fees.

### Screening Procedures

The Committee intends to use an Internet credit card processing company, which can compare contributor information submitted to the Committee with records on file with the issuer of the credit card. This should allow the Committee to more confidently identify its contributors. Listed below are other measures the Committee intends to take to ensure compliance with the Federal Election Campaign Act (the Act) and FEC regulations.

- The Web page that contains the contribution solicitation form would post language in a clear and conspicuous manner regarding

prohibited sources of contributions and contribution limits in federal elections.

- Contributors would have to successfully complete the electronic form and decide to transmit it to the Committee before a contribution was made. This form would require information about the contributor (name, name as it appears on the credit card, billing address, residential address, credit card number and amount of contribution). If the contributor failed to provide the requested information or left a field blank on the electronic form, the Web site would prompt the contributor to provide the missing information.
- If the residential and billing addresses typed into the electronic form were different, the Web site would display a message reminding the prospective contributor that the Committee cannot accept corporate contributions. The Web site would then prompt the prospective contributor to correct inaccurate or missing information or cancel the transaction.
- The Web site would require contributors to check a series of boxes attesting that their contribution was made with funds from permissible sources and was in compliance with the Act's contribution limits. The Web site would prompt the prospective contributor to correct inaccurate or missing information or cancel the transaction.

Once the form was completed and transmitted to the Committee, a credit card processing company would cross-check the contributor information against its own records. The Committee would then send a message to the contributor either alerting him or her that the contribution had been rejected by the processing company or informing the contributor that it had been approved. The Committee also intends to follow all other procedures for receiving contributions,

such as verifying that contributors have not exceeded their limits.

### Commission Regulations

For purposes of federal matching payments, a contribution is a gift of money made by a written instrument that identifies the person making the contribution. 11 CFR 9034.2. As stated above, credit card contributions do not, under current regulations, qualify as a written instrument. In previous advisory opinions, however, the Commission has concluded that credit card transactions solicited through the Internet are permissible. AOs 1995-35 and 1995-5. In these and other advisory opinions, the Commission has attempted to interpret the Act and FEC regulations in a manner consistent with technological innovations where the use of such technology would not compromise campaign finance laws.

In fact, in a recent advisory opinion, AO 1999-3, the Commission approved Microsoft Corporate Political Action Committee's request to accept electronic signatures to authorize payroll deductions to the PAC. The Commission reasoned that the electronic signature, coupled with safeguards to guarantee its authenticity, functioned as a unique identifier of the authorizing employee and did not run contrary to any specific rule. See the [May 1999 Record](#), p. 5.

The same type of analysis is applicable to the Committee's request. The Commission notes the numerous safeguards built into the proposal, relating to both contributor identification and screening for impermissible contributions. The screening procedures would "allow the Committee to verify the identity of those who contribute via credit card with the same degree of confidence that political committees generally accept checks via direct mail and other forms of solicitation that are consistent with Commission regulations."

The Commission has concluded, however, that committees should delete all credit card expiration dates from any matching fund submission documents—both electronic and paper—that are provided to the Commission to prevent that information, in conjunction with a credit card number, from being misused.

With the checkoff questions, the electronic contributor form is the functional equivalent of a written instrument. The contributor's response to the questions on the form would be tantamount to a written signature on that form. The Commission notes that the Committee must retain the electronic records in a form that can be printed on paper as needed. The Commission further notes that the screening procedures detailed by the Committee provide a "safe harbor" for other Presidential committees that elect to seek federal matching payments for credit card contributions they receive over the Internet, but the Commission does not mandate the use of the safeguards specifically mentioned in this advisory opinion.

Date Issued: June 10, 1999;  
Length: 8 pages. ♦

### **AO 1999-10 Solicitation of Mutual Insurance Company Policyholders**

The Nationwide Political Participation Committee may solicit contributions from member policyholders of its connected organizations, Nationwide Mutual Insurance Company and Nationwide Mutual Fire Insurance Company. The policyholders—including those who are independent contractor agents—are considered members for purposes of Commission regulations.

The Federal Election Campaign Act (the Act) states that an incorporated membership organization or a separate segregated fund established

by such an organization may solicit voluntary contributions to its SSF from the organization's members and their families, as well as the executive and administrative personnel and their families. 2 U.S.C. §441b(b)(4)(C). Commission regulations use the term "membership association" to describe entities covered by this section and define it as a membership organization, cooperative or corporation without capital stock that provides for members in its bylaws, expressly solicits members and acknowledges the acceptance of membership. 11 CFR 114.1(e)(1).

The term "member" is defined in Commission regulations and has been interpreted in *FEC v. National Right to Work Committee* and *Chamber of Commerce v. FEC*. In *NRWC*, the U.S. Supreme Court suggested that members are to be defined, at least in part, by analogy to stockholders of business corporations and members of labor unions.

The Nationwide companies qualify as membership associations under Commission regulations. The bylaws of the companies, which are mutual insurance companies, provide for members, who are the policyholders. The companies solicit new members, or policyholders, as a matter of doing business. Finally, the companies acknowledge the acceptance of membership in the policy documents they issue to policyholders.

Similar to stockholders in a corporation, the Nationwide companies' policyholders have both a financial attachment to and participatory rights in the companies. Policyholders are considered owners of a mutual insurance company and they pay significant premiums. In addition, each policyholder has a right to vote at the Nationwide companies' annual and special meetings, including the right to vote for the companies' governing bodies.

Therefore, the Committee may solicit policyholders for contributions so long as the policyholders are not otherwise prohibited by the Act from making contributions.

Date Issued: May 14, 1999;  
Length: 5 pages. ♦

### **AO 1999-11 Federal Candidate's Use of State Campaign Account**

Dianne Byrum, a member of the Michigan State Senate and a Congressional candidate for the 2000 election cycle, may continue to advertise weekly coffees using billboards paid by her Michigan State Senate campaign account.

For about seven years, Ms. Byrum has conducted weekly "coffees" in restaurants located in the districts she has represented to allow constituents to discuss items of state interest or pending state legislation. The coffees have been advertised on billboards located in her state legislative district, paid with state campaign funds. The billboards have a picture of Ms. Byrum and invite the public to join her for coffee and conversation. The billboards list her State senate phone number and advise the public to call there for time and location.

During her candidacy for the U.S. House of Representatives, Ms. Byrum will continue to serve in the Michigan State Senate and intends to continue her weekly coffees. She also plans to continue advertising the coffees through billboards.

Commission regulations define "contribution" and "expenditure" to include any gift, loan or payment of money or anything of value made for the purpose of influencing a federal election.

In the past, when determining whether expenses incurred for events involving federal candidates were made "for the purpose of influencing a federal election," the Commission examined the stated

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## Advisory Opinions

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purpose of the activities. In several advisory opinions, the Commission concluded that events in which federal officeholders participated in their capacities as officeholders were not “for the purpose of influencing a federal election” simply because the officeholders might be candidates for election to federal office.<sup>1</sup> Thus, payments for the expenses of such events were not contributions to that officeholder’s campaign, absent any campaign activity at that event.

In this case, based on the facts listed below, the costs related to the coffees (including the billboards) are neither contributions nor expenditures. They may, therefore, be paid for with state campaign funds.

- The purpose of these disbursements is to support Ms. Byrum in her State legislative capacity.
- Neither she nor her representatives will solicit contributions or expressly advocate her election to federal office during the course of the coffees.
- Discussion at the events will be limited to issues relating to her constituents’ needs and issues affecting her state senatorial district.
- No advertising of the events will take place outside her state senate district.
- The scope of advertising and the frequency of the events will be unchanged from previous years.
- Information relating to participants at the events will not be provided to nor made available for use by her Congressional campaign committee.

Date Issued: May 21, 1999;  
Length: 4 pages. ♦

<sup>1</sup> See AOs 1994-15, 1992-5, 1991-17, 1988-27, 1981-37 and 1980-89.

## Advisory Opinion Requests

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

### AOR 1999-13

Valuation of air transportation provided to candidate on aircraft not licensed for commercial use (National Republican Congressional Committee, May 11, 1999; 3 pages plus 30-page attachment)

### AOR 1999-14

Solicitations for bequests that exceed individual’s annual contribution limit to nonconnected PAC held in escrow (Council for a Livable World, May 25, 1999; 2 pages)

### AOR 1999-15

Membership status of timeshare owner members (American Resort Development Association, June 3, 1999; 2 pages plus 60-page attachment)

### AOR 1999-16

Solicitation of chapter members by trade group PAC (Commercial Finance Association, June 4, 1999; 3 pages plus 37-page attachment)

### AOR 1999-17

Use of the Internet in 2000 Presidential election (Governor George W. Bush for President Exploratory Committee, Inc., June 7, 1999; 4 pages) ♦

### Need FEC Material in a Hurry?

Use FEC Faxline to obtain FEC material fast. It operates 24 hours a day, 7 days a week. More than 300 FEC documents—reporting forms, brochures, FEC regulations—can be faxed almost immediately.

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

## Court Cases

### Judicial Watch v. FEC

On May 7, the U.S. Court of Appeals for the District of Columbia Circuit reversed a lower court ruling and dismissed this case. The appeals court found that Judicial Watch lacked standing to challenge the FEC’s decision to dismiss an administrative complaint it filed with the agency.

That complaint, filed in August 1996, alleged that the White House, the Democratic National Committee (DNC), the Department of Commerce and the Clinton administration had sold seats on foreign trade missions in exchange for campaign contributions to the DNC and Clinton/Gore 1996. In its district court complaint, filed in February 1998, Judicial Watch alleged that the respondents had violated 18 U.S.C. §600, which makes it unlawful to promise any special benefit or treatment as a reward for political activities in support of or opposition to a candidate, election or political event. See the [April 1998 Record](#), p. 4.

The FEC moved for dismissal of the case for lack of standing. In July 1998, the U.S. District Court for the District of Columbia denied that motion and granted summary judgment to Judicial Watch, remanding the case to the FEC to allow the agency to decide whether to pursue the administrative complaint. See the [September 1998 Record](#), p. 3. The FEC appealed this ruling.

### Appeals Court Decision

In order to establish standing, Judicial Watch had to show that it had suffered an injury in fact, that there was a causal connection between the injury and the conduct being complained about, and that it was likely that the injury would be redressed by a favorable decision.



In its memorandum opinion, the appellate court concluded that Judicial Watch failed to show that it suffered an injury stemming from the FEC's dismissal of its administrative complaint. The court said it was too late for Judicial Watch now to argue that its complaint should be read to allege reporting violations, and that the FEC's dismissal deprived the group and its members of information to which they are entitled. In *Common Cause v. FEC*, the appeals court had found that, if an organization has simply been "deprived of the knowledge as to whether a violation of the law has occurred," then its injury is no more than a general "interest in enforcement of the law" and not sufficient for standing.<sup>1</sup>

The court noted that Judicial Watch failed to make even a nominal allegation of reporting violations in its complaint. If, however, Judicial Watch has a viable claim of reporting violations, the court stated that it should file a new complaint with the FEC asserting those violations.

The appellate court also agreed with the FEC that the district court erred in granting summary judgment for Judicial Watch on the merits before the FEC had answered the complaint.

U.S. Court of Appeals for the District of Columbia Circuit, 98-5355; U.S. District Court for the District of Columbia, 98-0386. ♦

## USA v. Hsia

On May 18, the U.S. Court of Appeals for the District of Columbia Circuit reversed a district court decision to dismiss five counts of a six-count criminal indictment charging Maria Hsia, a Democratic fundraiser, with collecting and disguising impermissible contributions in the 1995-96 election cycle.

The five counts of the indictment that have now been reinstated accuse Ms. Hsia of causing the Clinton/Gore '96 Primary Committee, the Democratic National Committee and The Friends of Patrick J. Kennedy '96 to make false statements in their reports filed with the FEC. The appellate court also denied Ms. Hsia's cross-appeal of the remaining count in the indictment, which accuses her of conspiracy to defraud the FEC and the Immigration and Naturalization Service.

The court remanded the case to the U.S. District Court for the District of Columbia for further proceedings.

The Department of Justice (DOJ), which filed this suit, alleges that Ms. Hsia and the International Buddhist Progress Society (IBPS), an incorporated, tax-exempt religious organization in California, funneled money through straw donors to various campaigns. The indictment alleges that Ms. Hsia and IBPS asked nuns, monks and others with ties to IBPS to make contributions to Democratic campaigns, and later reimbursed them with IBPS funds. Ms. Hsia is also accused of using straw donors to funnel money from two clients of her Los Angeles immigration consultant business to Democratic campaigns.

The Federal Election Campaign Act (the Act) prohibits corporations from making contributions in connection with any federal election. 2 U.S.C. §441b(a). The Act also prohibits any person from making a contribution in the name of another. 2 U.S.C. §441f. Additionally, the U.S. tax code bars certain organizations, such as IBPS, from participating in any political campaigns. 26 U.S.C. §501(c)(3). Finally, under 18 U.S.C. §§2 and 1001, it is unlawful to willfully cause an offense by another person against the United States.

## Appeals Court Decision

The appeals court first addressed the willful nature of Ms. Hsia's alleged conduct. The district court had concluded that Ms. Hsia's actions were not willful because the DOJ failed to show that she knew her conduct was unlawful. The appellate court, however, stated that the government need not prove that Ms. Hsia knew that her conduct was unlawful; only that she knew that the information provided to the political committees regarding the sources of contributions was false and that she intentionally caused false statements to be made by another.

The appeals court also rejected the district court's finding that the causal link between Ms. Hsia's conduct and the false statements in the political committees' reports was too "attenuated." In fact, the appeals court concluded the conduit scheme together with the names on the checks caused false statements to be made by the political committees. The appellate court pointed to several cases where the courts previously upheld applying the "false statement prohibition" to conduit contribution schemes. In those cases, defendants used straw donors to conceal their own contributions. Here, Ms. Hsia did not funnel her own money to straw donors: instead, the money belonged to immigration clients or to IBPS. Hsia, however, arranged for the conduits to do their part. The distinction of whose money was used is irrelevant to this situation, the appeals court found. FEC regulations state that a contribution made by check should be reported as a contribution by the last person signing it. 11 CFR 104.8(c). "The simple interposition of conduits to sign the checks is certainly enough to 'cause' a committee to make false statements in its report," the appeals court wrote in its decision.

<sup>1</sup> *Common Cause v. FEC*, 108 F.3d 413 (D.C. Cir. 1997).

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## Court Cases

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The appeals court also rejected the lower court's finding that the contributor information filed with the Commission by the three committees was "literally true." The district court had reasoned that, because the indictment did not allege that the committees' treasurers had any wrongful knowledge about the true contributors, the statements in their reports had to be considered in compliance with the Act, and therefore not false.

This reasoning assumes that the safe harbor provision protecting treasurers of political committees who use "best efforts" to report all required information, 11 CFR 104.7, modifies the substantive reporting requirements of the Act. However, the court added, "it would make no sense for Congress to allow treasurers to rely on the provision of information by others while at the same time giving others a virtual carte blanche to provide inaccurate information."

U.S. Court of Appeals for the District of Columbia Circuit, 98-3114 and 98-3125. ♦

## New Litigation

### FEC v. David Gentry for Congress Committee

The FEC asks the court to find that the David Gentry for Congress Committee and its treasurer failed to file on time five reports it was required to disclose to the FEC during the 1995-96 election cycle. 2 U.S.C. §§434(a)(2)(A)(i), (ii) and (iii) and 434(a)(2)(B)(ii).

The Commission contends that the Committee, which supported the primary and general election efforts of Raymond Davis Gentry, Jr., a candidate for Florida's 5<sup>th</sup> congressional district, filed late its 1995 year-end report, April and July 1996 quarterly reports, 1996 pre-primary report and 1996 post-general report.

Attempts to reach a conciliation agreement with the Committee over the alleged violations failed.

In addition to finding that the Committee and its treasurer violated the Federal Election Campaign Act, the FEC asks the court to assess a civil penalty against both, permanently enjoin them from similar violations and award the FEC its costs in this court action.

U.S. District Court for the Middle District of Florida, Orlando Division, 99-435-CIV-ORL-22A, April 12, 1999. ♦

## Compliance

### MUR 4632

#### Committee to Pay \$50,000 for Late Reports, No Designated Treasurer

The Nevada State Republican Central Committee will pay a \$50,000 civil penalty for failing to file most of its 1995-96 reports on time, failing to amend its Statement of Organization following a vacancy in the treasurer position and receiving contributions and making expenditures without a treasurer's authorization.

The Federal Election Campaign Act (the Act) requires all political committees to file disclosure reports with the Commission on either a monthly or quarterly basis. 2 U.S.C. §434(a)(4)(B). The Act also requires that every political committee have a treasurer, and that no contribution or expenditure be accepted or made by or on behalf of a political committee when the treasurer position is vacant. A treasurer must authorize any expenditure made for or on behalf of a political committee. 2 U.S.C. §432(a). The Act goes on to require committees to report any change in information previously submitted to the FEC in a Statement

of Organization no later than 10 days after the date of the change. 2 U.S.C. §433(c).

The Nevada committee violated all of these provisions. Between February 1995 and April 1996, it filed nearly all of its reports late—from as few as 23 days to as many as 245 days after the due dates. In all, the committee was tardy in disclosing more than \$725,000 in receipts and more than \$650,250 in disbursements for the 14-month period.

The Nevada committee also had no treasurer for several months in 1995, yet it continued to receive contributions and make expenditures. In addition, when a former treasurer resigned from the committee in March 1995, the committee failed to notify the FEC of this change within the required time period.

The Commission entered into a conciliation agreement with the committee after finding probable cause to believe that it had violated the Act. This is not the first conciliation agreement signed between the Nevada committee and the FEC. Previously, in April 1996, the committee paid a \$1,200 civil penalty for its failure to file a disclosure report timely. ♦

## Audits

### Commission Completes Audits of Clinton, Dole '96 Campaigns

The FEC has determined that the Clinton and Dole primary and general election Presidential campaigns must repay the U.S. Treasury for public funds they used during the 1996 election. The Commission made its determinations after conducting audits of the committees, which is required for any

authorized candidate committee that receives federal funds under the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act. 26 U.S.C. §§9007.1(a) and 9038.1(a).

### Clinton Committees

President Bill Clinton's 1996 primary committee, Clinton/Gore '96 Primary Committee, Inc., must repay \$126,680 to the Treasury. The Commission found that the primary committee paid for \$114,450 in nonqualified campaign expenses—among the expenses were catering services, equipment, staff salaries, office overhead and consulting work—that should have been paid for with general election funds. The Commission also found \$12,230 in stale-dated checks.

Clinton/Gore '96 General Committee, Inc., and Clinton/Gore '96 General Election Legal and Accounting Compliance Fund must repay \$16,412 to the Treasury. Here, the Commission cited \$12,427 in apparent nonqualified campaign expenses related to air travel to the Democratic National Convention and \$3,985 in interest earned on federal funds.

### Dole Committees

Former Senator Bob Dole's 1996 primary committee, Dole for President, Inc., must repay \$515,272 to the Treasury. The Commission noted a surplus repayment of \$283,481 resulting from amounts due from the general election campaign for winding-down expenses paid on its behalf, \$6,255 in nonqualified campaign expenses and \$225,536 in stale-dated checks.

Dole/Kemp '96, Inc., and Dole/Kemp '96 Compliance Committee, Inc., must repay \$3.2 million to the Treasury. The Dole committees exceeded the 1996 Presidential general election expenditure limit (\$61.82 million), which accounts for the bulk of the repayment. The largest factor in the excessive

spending related to overbilling the press and Secret Service for travel on the campaign. The Commission also cited \$574,158 in nonqualified campaign expenses related to expenses that should have been paid by Dole for President; \$46,510 in interest income earned by the two committees; and \$44,046 in stale-dated checks. The Commission also determined that Dole/Kemp '96 should refund \$1.15 million to press representatives and \$65,754 to the Secret Service for overcharging them for campaign travel.

The four audit reports are available from the FEC's Public Records Office by calling 800/424-9530 or 202/694-1120. ♦

## Public Funding

### Bauer, Quayle Eligible for Matching Funds

On May 27, both Republican Presidential candidates Gary L. Bauer and Dan Quayle became eligible for public matching funds for their primary election races. They join Democrat Bill Bradley, who became eligible for matching funds on March 25.

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

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

Once declared eligible, candidates can submit additional contributions for matching funds on the first business day of every month.

The U.S. Treasury will begin paying out the FEC-certified amounts in January 2000. Currently, the maximum amount a 2000 Presidential primary candidate can receive in matching funds is calculated at \$16.75 million.

Matching fund submissions are available at the FEC's Web site—<http://www.fec.gov>—as downloadable FTP files. Go to "Financial Information About Candidates, Parties and PACs" and follow the links. Instructions are on the Web site.

Copies of submissions are also available from the FEC's Public Records Office. Call 800/424-9530 or 202/694-1120. ♦

## Budget

### Thomas, Wold Present Budget Request on Hill

FEC Chairman Scott E. Thomas and Vice Chairman Darryl R. Wold, who chairs the FEC's Finance Committee, presented the Commission's FY 2000 budget request to the Committee on House Administration on May 18.

Mr. Wold said the FEC is seeking \$38.6 million and 356.5 staff members for FY 2000, a net increase of \$1.7 million (4.5 percent) and 9.5 staff members over FY 1999. The Vice Chairman noted that the majority of the requested budget increase was due to inflation, while the remainder was for additional staff resources, primarily in enforcement programs.

He said that three of the requested additional staff would be added to the FEC's Audit Division "to handle the anticipated increase in the number of funding requests in the Presidential matching fund program in the 2000 elections," and

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## Budget

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that six of the additional requested staff would be added in the General Counsel's Office "to improve our compliance efforts, both in regular enforcement matters and in the Presidential public funding program."

Mr. Wold added: "We believe that our budget request, including the modest increase over the current fiscal year, is consistent with, and justified by, the PwC [PricewaterhouseCoopers] Report and the recommendations it contains."

Mr. Thomas briefed committee members on the status of various recommendations contained in the PwC management and performance audit of the FEC, which was completed earlier this year. "The FEC has made substantial progress in responding to the PwC recommendations," he said. "Already the FEC has undertaken concrete action on 19 of the 21 recommendations [contained in the report]." ♦

## Electronic Filing

### Electronic Filing Survey

Last month many political committees received a survey from the Electronic Filing Office requesting information that will be used to help improve and promote the electronic filing process. The FEC would like to thank those who responded promptly.

Due to an intermittent fax line problem, however, it is possible that some faxed surveys were only partially received or were not received at all. Consequently, if your committee returned the survey via fax, the Commission would appreciate your faxing it again.

If your committee has not yet responded to the survey, the agency requests that you do so now, as the FEC would like to receive as many responses as possible even though the suggested deadline has passed. If your committee needs a copy of the survey, please e-mail a request with a fax number to [electronic@fec.gov](mailto:electronic@fec.gov) or call 202/694-1321 (toll free: 800/424-9530 and ask for the Electronic Filing Office) and a survey form will be sent to you. ♦

## Information

### Meeting Documents Now Available Via E-Mail

The Commission will now send draft advisory opinions and agendas for open meetings to your electronic mailbox. Those with standing requests to receive these documents and anyone else who requests draft advisory opinions or meeting agendas from the Public Records Office may now opt for either e-mail or paper delivery.

Previously, these documents were only available to the public as paper copies.

Any person may submit written comments concerning advisory opinion requests made public at the Commission. In order to be considered by the Commission, the comments must be submitted within the 10-day comment period (or any extension of the comment period). 11 CFR 112.3. This comment period begins with the public release of advisory opinion drafts.

Draft advisory opinions will be e-mailed on the Thursday preceding the Thursday morning meeting at which the draft will be on the agenda for Commission consideration. Meeting agendas will be e-mailed on the Tuesday prior to the Thursday meeting. If the Public

Records Office receives any draft advisory opinions or meeting agendas after the scheduled e-mail date, that office will send them out as well. The documents will appear as attachments to the e-mail.

The Public Records Office is contacting requesters who currently receive meeting documents on paper to inform them of the new service. If you have not been contacted and wish to change your delivery from paper to e-mail, or, if you wish to sign up to receive draft advisory opinions and meeting agendas by e-mail, call the Public Records Office at 800/424-9530 or 202/694-1120. ♦

## Publications

### FEC Issues '98 Annual Report

The FEC's *Annual Report 1998* is now available. The report describes the FEC's actions during the last calendar year and includes the legislative recommendations the Commission recently transmitted to the President and Congress for consideration.

The report discusses some of the issues with which the Commission has recently grappled, including independent expenditures by party committees and nonprofits, express advocacy and soft money. New to the report this year is a listing of all recipients of public funding since the program began in 1976, how much each candidate received and how much each repaid the U.S. Treasury.

The report also documents the rapidly increasing demands on the Commission's limited resources brought about by record-level campaign finance activity during the 1997-98 election cycle. In addition, the report contains the latest figures on what is predicted to be a severe



shortfall in public funding for the 2000 Presidential election. A number of statistical tables and charts are included in the report as well.

Free copies are available by calling the FEC's Information Division at 800/424-9530 or 202/694-1100. The report is also available at the FEC's Web site—<http://www.fec.gov>. Click "Help for Candidates, Parties and PACs." ♦

## Results of 1998 Federal Elections Published

The FEC has released *Federal Elections 98*, a 130-page publication containing the official primary, runoff and general election results for the 1998 Congressional elections. This is the ninth edition of this biennial series, and it is designed to provide an historical record of federal election results.

For each state, the publication lists the names of candidates on the ballot, write-in candidates, party affiliations and the number and percentage of votes each candidate received, as provided by state election officials. New this year are a chart showing the state-by-state votes cast for the House members by party, designation of incumbents who sought reelection and statistics on the partisan makeup of Congress after the election.

The publication is available at the FEC's Web site—<http://www.fec.gov>. Click on "What's New!" or look for it under "About Elections and Voting." To obtain a copy of *Federal Elections 98*, or for more information, call the Public Records office at 800/424-9530 or at 202/694-1120. ♦

## 800 Line

### \$25,000 Annual Limit

Individuals are subject to a \$25,000 annual limit on the total contributions they make to federal candidates, party committees and political action committees. An individual also has separate limits for contributions to candidate committees, national party committees, state party committees and PACs.

Here is a review of the basic rules for contributions by individuals:

- An individual may contribute a maximum of \$1,000 per election to a candidate. Typically, that would allow an individual to give \$1,000 to a candidate's primary race and \$1,000 to the candidate's general election run.
- An individual may contribute up to \$20,000 to each national party committee per year. Note that this limit applies to contributions to a national committee's federal, or hard money, account only.
- An individual may contribute up to \$5,000 per year to a state party committee (including local committees subordinate to the committee). Again, this contribution would be deposited in a committee's federal account.
- An individual may contribute up to \$5,000 per year to a PAC (a corporate or labor separate segregated fund or a nonconnected PAC).

### How the \$25,000 Limit Works

*Contributions to Candidates.* A contribution to a federal candidate counts against an individual's annual limit for the year in which the candidate's election is held, regardless of the year in which the contribution is made. 11 CFR 110.5(c). Put another way, any contribution to a candidate's 2000 campaign, regardless of whether it is made in 1999, 2000 or 2001 (desig-

nated to retire a 2000 campaign debt), would count against a contributor's \$25,000 annual contribution limit for 2000.

This also holds true when an individual earmarks a contribution for a 2000 candidate, and those contributions are transmitted by a conduit or intermediary. Similarly, contributions made in 1999 to an individual who is "testing the waters" for a 2000 election, and who later decides to declare his or her candidacy, count against the contributor's \$25,000 annual limit for 2000.

*PACs and Party Committees.* In contrast to a contribution to a candidate, a contribution made to a federal PAC or party committee counts against the contributor's annual limit for the year in which the contribution is actually made. 11 CFR 110.5(c)(3). If, for example, an individual makes a \$20,000 contribution to a national committee in 1999, it counts against the contributor's \$25,000 annual limit for 1999.

Occasionally, contributors inadvertently exceed their annual \$25,000 contribution limit when they make contributions to a candidate in a nonelection year. Here is a typical scenario: a contributor wishes to support Candidate Smith in her 2000 election and contributes to her campaign in November 1999—the year before the election. The contributor assumes that the contribution counts against his limit for the year in which he contributed, 1999. Unaware that the contribution actually counts against the year in which Candidate Smith's election is held, 2000, the contributor makes other contributions during the election year and inadvertently exceeds his \$25,000 limit for 2000.

### Other Transactions to Watch Out For

Caution should be taken not to exceed the \$25,000 annual limit. Violations can occur when contribu-

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## 800 Line

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tors are making joint contributions and contributions to political committees with federal and nonfederal accounts.

**Joint Contributions.** A joint contribution typically occurs when a contributor and another individual each make a contribution using a single check. The key here is to inform the recipient committee how the contribution is to be attributed to each individual. A contributor can do this by including a letter with the contribution or by noting a preference on the check (or other written instrument). If both individuals sign the check or a letter sent along with the check, but provide no direction for the distribution of the funds, the money will be attributed equally between the individuals. If, however, only one individual signs the check (or letter), then the entire amount is attributed to that one person. This could be a problem, especially if the contributor is about to reach the \$25,000 limit. If, for example, a married couple intends to contribute a combined amount of \$5,000 to a state party, but only one spouse signs the check (or covering letter), then the entire amount counts against the signer's annual \$25,000 limit.

**Contributions to Committees with Federal and Nonfederal Accounts.** Some PACs maintain separate accounts for federal and nonfederal activity. If an individual intends to give money to the nonfederal account, but the committee inadvertently deposits it into the federal account, there could be a problem if the deposit causes the contributor to go over his or her annual \$25,000 limit. To avoid this, contributors should specify the account into which they want their funds placed. A contributor can do this by including a letter with the contribution or by noting a preference on the check (or other written instrument).

## Exceeding the \$25,000 Annual Contribution Limit

Exceeding the \$25,000 annual limit is a violation of federal law and can result in civil penalties of as much as twice the amount of the contributions involved. The contributor and the committees receiving the contributions are legally responsible for making sure that contributions do not exceed the limits. 11 CFR 110.5(b), 110.9(a).

Contributors who inadvertently exceed the \$25,000 annual limit for the year 2000 should take immediate corrective action by following one of the options listed below. The Commission might view a corrective action by the contributor as a mitigating circumstance and decrease a potential penalty accordingly.

- Obtain a refund from committees that received the excess contributions.
- Reattribute the excess portion of a joint contribution to a joint contributor (for example, a spouse), if his or her limits have not yet been exhausted.
- Redesignate the excess portion of a contribution for another election in a year other than 2000.
- Request a transfer of the excess contributions to a PAC or party committee's nonfederal accounts.

## FEC Efforts to Modify the Regulation

In its latest legislative recommendations to Congress, the FEC asked lawmakers to consider modifying the provision that limits individual contributions to \$25,000 per calendar year so that an individual's contributions to candidates count against his or her annual limit for the year in which they are made. See the [May 1999 Record](#), p. 4. Congress has not yet taken any action on the FEC's proposal.

## Information

For more information about the \$25,000 annual limit, see "The

\$25,000 Annual Contribution Limit" brochure. To obtain a copy:

- Go to <http://www.fec.gov> (select "Help for Candidates, Parties and PACs" and then click "Brochures Index");
- Dial the FEC's automated fax system, FEC Faxline, at 202/501-3413 (request document 728); or
- Call 800/424-9530 and request a copy be mailed to you. ♦

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## Change of Address

### Political Committees

Treasurers of registered political committees automatically receive the *Record*. A change of address by a political committee (or any change to information disclosed on the Statement of Organization) must, by law, be made in writing on FEC Form 1 or by letter. The treasurer must sign the amendment and file it with the Secretary of the Senate or the FEC (as appropriate) and with the appropriate state office.

### Other Subscribers

*Record* subscribers who are not registered political committees should include the following information when requesting a change of address:

- Subscription number (located on the upper left corner of the mailing label);
- Subscriber's name;
- Old address; and
- New address.

Subscribers (other than political committees) may correct their addresses by phone as well as by mail.

FEC will hold Conference for Partnerships and LLCs in July.  
For story, see p. 1.

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