

# RECORD

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999 E Street NW

Washington DC

20463

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## NEW FEC PHONE NUMBERS

Effective August 26, all of the FEC's local telephone numbers changed. New numbers for selected offices are listed below.

Note that the 800-line number (800/424-9530) remains the same.

### Local Numbers (Area Code 202)

NOTE: Out-of-town callers may also reach these offices by calling the 800 number and asking for the office needed.

Clearinghouse.....	219-3670
Congressional Affairs.....	219-4136
Information Services.....	219-3420
Library.....	219-3312
Personnel.....	219-4290
Press Office.....	219-4155
Public Records.....	219-4140
Reports Analysis.....	219-3580

### TDD Number for the

Hearing Impaired.....202/219-3336

Callers on the TDD line may reverse the charges when calling from outside the Washington, DC area.

organization's actual cost in providing the transportation and thus results in what would otherwise be an illegal contribution. Common Cause therefore proposes amending the rules to require, in all cases, payment "at the same price it would cost to charter similar aircraft."

The Commission published a Notice of Availability on the Common Cause petition in the Federal Register on August 21, 1991. The Notice summarizes the Common Cause proposal and announces that the petition is available for review and copying in the FEC's Public Records Office. Comments on the petition are due September 20 and should be addressed to Susan E. Propper, Assistant General Counsel, 999 E Street, NW, Washington, DC 20463.

(Regulations continued)

## REGULATIONS

### FEC SEEKS COMMENTS ON PETITION TO CHANGE RULES ON USE OF CORPORATE/UNION AIRCRAFT

The Commission is seeking comments on a rulemaking petition filed by Common Cause to increase the payment that candidate committees must make to corporations and labor organizations for the use of their aircraft. Under the current rules at 11 CFR 114.9(e), the committee must pay the organization either the first class airfare or, if the trip is to a location not serviced by commercial airlines, the usual charter rate. (The payment must be made in advance of the trip.)

Common Cause alleges that the first class payment rate is lower than the

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**FINAL RULES: REDESIGNATIONS AND REATTRIBUTIONS; JOINT FUNDRAISING; SUBSISTENCE EXPENSES**

On July 19, 1991, the Commission sent to Congress final revisions to the rules governing public funding of Presidential candidates. Included in that rulemaking were certain changes to the general regulations that apply to all committees. These changes are summarized below. (A summary of changes to the public funding rules appears in the following article.)

The Commission will announce the effective date of the rules after 30 legislative days have elapsed. The final rules and their explanation and justification were published in the Federal Register on July 29, 1991 (56 FR 35898).

**Redesignations and Reattributions**

To monitor compliance with the 60-day time period for obtaining reattributions and redesignations of contributions, a change to 11 CFR 110.1(1) requires committees to retain documentation showing that the redesignation or reattribution was received within 60 days of the committee's receipt of the original contribution. This documentation may be:

- o A copy of the postmarked envelope bearing the contributor's name, return address or other identifying code;
- o A copy of the written redesignation or reattribution with a date stamp showing the date of the committee's receipt; or
- o A copy of the redesignation or reattribution as dated by the contributor. 11 CFR 110.1(1)(6).

**Joint Fundraising**

The new rules revise the joint fundraising rules (11 CFR 102.17) in several respects:

- o A separate committee that serves as the fundraising representative may not act as a participant in any other joint fundraising effort. 11 CFR 102.17(a)(1)(i).
- o The allocation formula must indicate the amount or percentage of each contribution

that will be allocated to each participant. 11 CFR 102.17(c)(1).

- o The statement that participants must use the allocation formula to allocate expenses has been deleted from section 102.17(c)(1). Allocation of expenses is addressed in current section 102.17(c)(7), which remains effective. Under that paragraph, expenses must be allocated based on the percentage of total receipts allocated to each participant; this allocation may differ from the original formula.
- o Expenses for a series of fundraising activities must be allocated on a per-event basis. 11 CFR 102.17(c)(7)(i)(C).

Corresponding changes are included in the joint fundraising rules applicable to Presidential primary candidates receiving matching funds (11 CFR 9034.8).

**Definition of Subsistence Expenses**

The new rules moved the definition of "subsistence expenses" from section 106.2 (allocation of expenditures by Presidential primary candidates) to 116.5(b), the section that addresses advances for travel and subsistence expenses on behalf of a candidate or party committee. "Subsistence expenses" are defined as an individual's personal living expenses related to his or her travel on committee business (e.g., food and lodging expenses).

**FINAL RULES: PUBLIC FUNDING OF PRESIDENTIAL CANDIDATES**

On July 19, 1991, the Commission sent to Congress final revisions to the rules governing the public funding of Presidential primary and general election candidates. Certain changes were also made to regulations that apply to all committees.

The Commission will announce the effective date of the rules after 30 legislative days have elapsed. The final rules and their explanation and justification were published in the Federal Register on July 29, 1991 (56 FR 35898).

Federal Election Commission, 999 E Street, NW, Washington, DC 20463  
800/424-9530 202/219-3420 202/219-3336 (TDD)

John Warren McGarry, Chairman  
Joan D. Aikens, Vice Chairman  
Lee Ann Elliott  
Thomas J. Josefiak  
Danny L. McDonald  
Scott E. Thomas

Walter J. Stewart, Secretary of the Senate,  
Ex Officio Commissioner  
Donald K. Anderson, Clerk of the House of  
Representatives, Ex Officio Commissioner

The material below summarizes major revisions contained in the regulations that apply to publicly funded candidates. Changes that apply to all committees are summarized in the preceding article.

#### **Simplification of State Allocation by Primary Campaigns**

The revised rules simplify the process of allocating expenses to the state spending limits, a requirement for primary candidates receiving matching funds. Under the new rules, expenses are allocable only if they fall within one of the five categories listed below. By contrast, the previous rules required allocation of all expenses unless an expense was covered by a specific exemption.

**Allocable Expenses.** The following categories of expenses are subject to allocation:

1. **Media Expenses.** Expenses for campaign advertising distributed through broadcast and print media in a particular state are allocable. Excluded from allocation are production costs, commissions for media purchases and costs for advertising distributed nationwide. 11 CFR 106.2(b)(2)(i).
2. **Mass Mailings.** Costs associated with mass mailings of over 500 pieces to a particular state are allocable, as are the costs of shipping other campaign materials to a state. 11 CFR 106.2(b)(2)(ii).
3. **Overhead Expenses.** Overhead expenses of a state campaign office—including a temporary office—and a regional campaign office are allocable. Up to 10 percent of overhead expenditures for a state office may be treated as exempt compliance expenses and thus excluded from allocation. In the case of a regional office, the overhead expenses must be allocated to the next primary state in the region. 11 CFR 106.2(b)(2)(iii).
4. **Special Telephone Programs.** Section 106.2(b)(2)(iv) replaces the previous rules for interstate and intrastate telephone calls. Under the new provision, costs for telephone calls are allocable only if they are part of a special program targeted at a particular state (i.e., 10 percent or more of the calls made that month are made to that state). Special programs include voter registration, get-out-the-vote efforts, fundraising and telemarketing operations. Related allocable expenses include consultants' fees, travel costs and office rental.

5. **Public Opinion Polls.** Costs of conducting a public opinion poll are allocable, unless the poll is conducted on a nationwide basis. Related expenses, such as consultants' fees and travel costs, are also allocable. 11 CFR 106.2(b)(2)(v).

**Expenses Not Allocable.** Expenses that fall outside the categories listed above are not allocable to the state spending limits (but do count against the national spending limit). For example, national consulting fees are no longer allocable to a particular state.

**Recordkeeping.** Under a new provision, a committee must retain all documents that support (1) allocations of expenditures to particular states and (2) claims that an expense is exempt from allocation; otherwise, the expenditures will be allocated to the state holding the next primary election after the expense is incurred. 11 CFR 106.2(d).

Moreover, under new 11 CFR 9034.4(b)(7), payments for allocable expenses will not be considered qualified campaign expenses if the committee's records do not provide information necessary to allocate the payments to a particular state, such as the date on which the expense was incurred.

#### **Fundraising Exemption for Primary Candidates**

Primary committees may treat up to 50 percent of their allocable expenditures for a particular state as exempt fundraising costs and thus exclude them from the state spending limit. This revision replaces the previous 28-day rule under which a fundraising exemption could be claimed only if the activity occurred more than 28 days before the state's primary, caucus or convention. There is one exception: Committees may treat up to 100 percent of mass mailing expenditures as exempt fundraising costs, but the 28-day rule applies in this case. 11 CFR 110.8(c)(2).

Amounts excluded as exempt fundraising costs at the state level, when added to amounts excluded at the national level, may not exceed 20 percent of the national spending limit. 11 CFR 100.8(b)(21).

#### **Matching Fund Submissions**

The revised rules on matching fund submissions require committees that have computerized their contributor lists to submit them on computer tapes or diskettes in accordance with FEC magnetic media

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standards. 11 CFR 9036.1(b)(2). Submissions must also now include a list of refunded contributions. 11 CFR 9036.1(b)(6) and 9036.2(b)(1)(iv).

Note that, under a separate rule-making,<sup>1</sup> matching fund submissions will be rejected, during limited periods, if the error rate exceeds 15 percent. The rejection policy is not, however, reflected in this set of rules.

#### **Continuation of Primary Campaign After Date of Ineligibility**

After a candidate's date of ineligibility, the committee may no longer receive any matching funds to continue the campaign. At that point, matching funds must be used only to retire debts incurred before the date of ineligibility. Under the previous rules, however, private contributions raised after the date of ineligibility also had to be used to pay pre-ineligibility debts. Until those debts were retired, the contributions could not be used to pay the expenses of the continuing campaign; otherwise, the committee would have to repay matching funds. The revised rules now provide a method under which a candidate may use private contributions to continue campaigning without being penalized. Moreover, contributions received after the date of ineligibility may also be submitted for matching funds. 11 CFR 9034.4(a)(3)(ii).

#### **Repayment of Matching Funds**

The revised rules address two situations under which a committee may be subject to overlapping repayment determinations.

The first situation involves repayments for receiving matching funds in excess of the candidate's entitlement and repayments for making nonqualified campaign expenses. This would occur if a committee artificially increased the candidate's entitlement to matching funds by including nonqualified campaign expenses in its statement of net outstanding campaign obligations (NOCO). The revised regulations require the committee to repay both: (1) the entire amount that exceeds the entitlement and (2) a

portion of the nonqualified campaign expenses that were paid before the committee's accounts no longer contained any matching funds. (Nonqualified campaign expenses are subject to repayment based on the portion of matching funds—as opposed to private contributions—that were used to pay the expense.) 11 CFR 9038.2(b)(2)(iv).

The second situation concerns candidates that have exceeded both the state spending limits and the national spending limit. (Disbursements that exceed a limit are considered nonqualified campaign expenses.) The revised rules explain that, in this situation, only one repayment will be required, based on the larger of the excessive amounts. 11 CFR 9038.2(b)(2)(v).

#### **Changes to Both Primary and General Election Public Funding Rules**

In addition to the above changes, which pertain to Presidential primary candidates, the new rules contain parallel changes to the primary and general election sections of the rules.

**Candidate Agreements.** Presidential candidates seeking public funds must sign letters in which they agree to comply with certain conditions. The revised rules add two conditions to the candidate agreement provisions:

- o If the committee maintains computerized records, it must submit required materials in a computer format that complies with the FEC's magnetic media requirements. (See 11 CFR 9003.6 and 9033.12.) 11 CFR 9003.1(b)(4) and 9033.1(b)(5).
- o The campaign committee must provide documentation on funds received and spent on the candidate's behalf by other committees and organizations associated with the candidate (e.g., candidate PACs), if the Commission so requests. 11 CFR 9003.1(b)(5) and 9033.1(b)(6).

**Reimbursements for Transportation.** Primary and general election candidates receiving public funds may seek reimbursement from media personnel for the costs of providing transportation and services to media representatives accompanying the candidate on campaign trips. These provisions contain several changes, including the following:

- o Because the Treasury Department's reimbursement rates may not cover the pro rata share of costs attributable to Secret Service personnel, the committee must pay the difference. Under the revised rules, the unreimbursed amount does not count toward any expenditure

<sup>1</sup>See 56 FR 34130, July 25, 1991. This rulemaking, which was summarized in the August 1991 Record, substantially revises procedures for matching fund submissions and certifications. The revisions were necessitated by recent Treasury Department regulations that address payment procedures in the case of a shortfall in the Presidential Election Campaign Fund.

limit although it is still considered a qualified campaign expense. 11 CFR 9004.6(a) and 9034.6(a). A general election committee may pay the unreimbursed amount from its legal and accounting compliance fund.

- o In calculating each media representative's pro rata share of transportation and services, the committee may include the total number of individuals to whom the transportation and services were made available. The new rules explain that the total number may include committee staff, all media personnel, Secret Service personnel and national security staff.<sup>2</sup> 11 CFR 9004.6(b) and 9034.6(b).

#### Redesignations for Compliance Fund.

General election committees may ask contributors to redesignate their primary contributions so that they apply to the general election legal and accounting compliance fund. The current rules, however, permit such redesignations only if the contributions: (1) exceeded the primary limit or (2) were made after the party's Presidential nominee was chosen. The new rules permit general election committees to request compliance-fund redesignations of contributions that were not excessive and that were received before the primary period ended, but certain conditions must be met:

- o The redesignated contributions must represent funds in excess of amounts needed to pay remaining primary expenses;
- o The redesignations must be received within 60 days of the treasurer's receipt of the contributions and must comply with the other redesignation requirements at 11 CFR 110.1(b)(5) and (1); and
- o The contributions must not have been submitted for matching funds. 11 CFR 9003.3(a)(1)(iii).

With respect to the last condition, a parallel provision appears in the primary regulations at 11 CFR 9034.3(k). Under that regulation, contributions redesignated for a compliance fund or for a different election may not be matched.

<sup>2</sup>The Commission first approved and then rejected an approach that would have permitted a committee, when calculating a media representative's share of expenses, to include a pro rata portion of: (1) unreimbursed expenses for the Secret Service personnel and (2) expenses of committee staff whose sole purpose was to provide travel services for the media.

**Other Changes.** The revised regulations contain other changes that apply to both primary and general election candidates:

- o The rules incorporate the conclusion reached in AO 1988-5 that transfers made by a publicly funded candidate committee to another committee of the same candidate are nonqualified campaign expenses. 11 CFR 9004.4(b)(7) and 9034.4(b)(6).
- o The revised rules make clear that, in the course of conducting audits of publicly funded candidate committees, the Commission may invoke the investigative procedures set forth at 11 CFR Part 111, including the issuance of subpoenas. 11 CFR 9007.1(b)(1)(v) and 9038.1(b)(1)(v).
- o The current rules state that the Commission will notify candidates of repayment determinations no later than three years after the end of the matching payment period (primary candidates) or the expenditure report period (general election candidates). The new rules explain that the issuance of the interim audit report constitutes notification for purposes of the three-year period. 11 CFR 9007.2(a)(2) and 9038.2(a)(2).

#### FINAL RULES: USE OF EXCESS CAMPAIGN FUNDS AND NONCASH ASSETS

On July 19, 1991, the Commission sent to Congress final rules on the conversion of excess campaign funds to the candidate's personal use. The revised regulations at 11 CFR 113.1 and 113.2 apply to "grandfathered" candidates—Members of Congress who held office on January 8, 1980.

Candidates who are not grandfathered continue to be prohibited from converting excess funds to personal use. The new rules make clear that this prohibition also applies to the conversion of noncash assets to personal use. See "Other Candidates," below.

The Commission will announce the effective date of the rules after 30 legislative days have elapsed. The final rules and their explanation and justification were published in the Federal Register on July 25, 1991 (see 56 FR 34124).

The material below highlights the changes contained in the new rules.

#### Grandfathered Candidates: Personal Use of Excess Campaign Funds

Grandfathered candidates, who were previously allowed to convert unlimited excess campaign funds to personal use, may no longer do so. This change is contained in the Ethics Reform Act of 1989, enacted

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on November 30, 1989. That Act amended 2 U.S.C. §439a in two respects:

- o Grandfathered Members of Congress who serve in the 103rd or a later Congress will be unable to convert any excess funds to personal use once the 103rd Congress convenes on January 3, 1993.
- o Until then, "grandfathered" Members may convert only an amount equal to the campaign's unobligated balance as of November 30, 1989.

The revised regulations reflect the Ethics Reform Act amendments and provide alternative methods of calculating the November 30, 1989, campaign balance.

Under the first method, the campaign of a "qualified" (i.e., grandfathered) Member simply determines its cash on hand, minus outstanding debts, as of November 30, 1989. The second method permits the campaign to include noncash campaign assets and committee receivables in its November 30, 1989, balance, but additional reporting is required. These methods follow the Commission's determination in AO 1990-26.

#### Other Candidates: Personal Use of Noncash Assets

Terminating committees are already required to report how residual funds will be used. 11 CFR 102.3(a). The revised rules add a new paragraph to section 102.3 under which the committee of a non-grandfathered candidate must include in its termination report a statement that noncash committee assets will not be converted to personal use. The statement must be signed by the treasurer.

## CLEARINGHOUSE

#### NEW PUBLICATION ON FEDERAL VOTING LAWS

The National Clearinghouse on Election Administration recently released Federal Election Law 91, a summary of federal laws pertaining to registration and voting.

Although elections—including federal elections—are for the most part governed by the laws of each individual state, there are some Constitutional provisions and federal statutes that affect state election procedures. The new publication summarizes selected federal provisions on registration and voting, providing federal government sources where readers can obtain further information.

To order a free copy of Federal Election Law 91, call 800/424-9530 (ask for the Clearinghouse) or 202/219-3670.

## LEGISLATION

#### BAN ON HONORARIA NOW APPLIES TO SENATE

On August 14, 1991, President Bush signed into law an amendment to the Ethics in Government Act of 1978 that prohibits U.S. Senators and Senate officers and employees from receiving honoraria. The Legislative Branch Appropriations Act, Public Law 102-90, also repeals 2 U.S.C. §441i, the Federal Election Campaign Act's provision on honoraria. The honorarium ban became effective when the President signed the bill.

Before this recent amendment, the Ethics Reform Act of 1989 had amended the Ethics in Government Act to prohibit the receipt of honoraria by U.S. House Members and all federal officers and employees except those in the Senate. That prohibition became effective January 1, 1991.

In addition to extending the honorarium ban to the Senate, the August amendment expands the definition of honorarium under the Ethics in Government Act (5 U.S.C. §505(3)) to include stipends, that is, payments for a series of appearances, speeches or articles if the subject matter is directly related to the individual's official duties or if the payment is made because of the individual's status with the federal government. However, Senators who are currently under agreements to receive stipends may continue to receive them through the end of 1991.

Still in effect is the Ethics in Government Act provision on donating honoraria to charity (5 U.S.C. §501(c)). Under this provision, an individual will not be considered to have received an honorarium if he or she asks that it be donated to a designated charity, although the donation may not exceed \$2,000, and the individual may not receive any tax benefit.<sup>1</sup> Moreover, the charity selected may not be an organization from which the individual, or his or her family, derives any financial benefit.

Also still in effect is the provision in the Ethics in Government Act that excludes travel and subsistence expenses from the definition of honorarium (5 U.S.C. §505(3)).

<sup>1</sup>26 U.S.C. §7701(k), as amended by the 1990 amendments to the Ethics Reform Act of 1989.

## ADVISORY OPINIONS

### ADVISORY OPINION REQUESTS

Recent requests for advisory opinions (AORs) are listed below. The full text of each AOR is available for review and comment in the FEC's Public Records Office.

#### AOR 1991-26

Independent company's billing and collection services for 900-line fundraising programs. (Date Made Public: August 9, 1991; Length: 10 pages plus attachments)

#### AOR 1991-27

Effect of U.S. Supreme Court decision on inclusion of nonpartisan local offices in state party's ballot composition ratio. (Date Made Public: August 15, 1991; Length: 8 pages)

### ALTERNATE DISPOSITION OF ADVISORY OPINION REQUEST

#### AOR 1991-11: Activities to Determine Viability of New Political Party

This AOR was withdrawn by the requester on July 26, 1991.

### ADVISORY OPINION SUMMARIES

#### AO 1991-18: Telemarketing Services Provided by Corporate Vendor

The New York State Democratic Committee has entered into an agreement with an incorporated telemarketing company, Gordon and Schwenkmeyer, Inc. (GSI), to conduct two types of telephone solicitation programs to raise funds for the Committee's federal accounts. Subject to certain conditions, the Current Donor Program will not result in prohibited corporate contributions from GSI because the Committee will pay any compensation owed to GSI by the end of a short, defined time period. By contrast, the Prospecting Program could result in a long-term payment shortfall to GSI; the program must therefore be modified to avoid a prohibited advance of corporate funds in the form of unpaid compensation.

#### Agreement

Under the agreement, GSI conducts the solicitations, collects the contributions and verifies whether the contributions are

permissible under the Federal Election Campaign Act. (Impermissible contributions are either returned to the donors or forwarded to the Committee for deposit in a nonfederal account.) GSI then deposits permissible contributions in a custodial account set up in the Committee's name and pays itself compensation from the account (an hourly rate for making the calls plus an amount for each pledge). GSI also provides the Committee with required recordkeeping and reporting information.

#### Current Donor Program

**Description.** The Current Donor Program involves a series of two-and-a-half month cycles. Each cycle consists of GSI's solicitation of all the names on the donor list and the collection of the proceeds. The Committee and GSI plan to conduct three cycles in the nonelection year and four in the election year.

At the beginning of each cycle, GSI estimates the total amount to be raised and the compensation it expects to earn. These estimates, which are based on GSI's past experience, are then used to determine how much revenue GSI remits to the Committee at the end of each month. In some months, GSI may remit full payment to the Committee without paying full compensation to itself.

At the end of the cycle, adjustments are made to ensure that GSI is paid in full for the cycle. In the event that insufficient funds are raised to pay GSI in full, the shortfall converts to a debt that is immediately due. The Committee would use other funds on hand to pay the debt.

**Application of Corporate Prohibition.** Subject to certain conditions, the Current Donor Program will not result in a prohibited corporate contribution from GSI. Although the program may involve a temporary withholding of payment to GSI in some months, this does not necessarily constitute an advance of corporate funds since the Committee is obligated to pay GSI in full at the end of a short, defined period (i.e., the two-and-a-half-month cycle). See AO 1979-36.

The Commission therefore approved the Current Donor Program, subject to three conditions:

- o GSI's estimates—the basis for determining the amount remitted to the Committee each month—should be good faith projections; they should not be altered to accommodate the Committee's need for funds at certain times (e.g., close to the general election).

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- o GSI's compensation should cover all of its expenses plus a reasonable profit. Any shortfall at the end of a cycle is an immediately payable debt.
- o Under 11 CFR 116.3(b) and (c), extensions of credit by incorporated vendors must be made in the vendor's ordinary course of business and on terms substantially similar to credit extended to nonpolitical debtors. Therefore, the Commission assumes that GSI will make available similar programs to all of its customers on a nondiscriminatory basis. See AOs 1990-19, 1986-23 and 1979-36.

#### Prospecting Program

**Description.** The prospecting program actually began in the fall of 1989, when GSI made initial telephone calls to prospective donors. In spring 1990, GSI resolicited new donors who responded to the first solicitation. The agreement provides that new donors be solicited three times each nonelection year and four times in the election year.

Unlike the Current Donor Program, full compensation to GSI under the Prospecting Program is tied to long-range contingencies. In the early stages of the program, the amount raised is unlikely to cover GSI's expenses. Moreover, if the program runs its course without yielding sufficient contributions to pay GSI in full, GSI has no recourse to the Committee for payment. Instead, GSI may continue to solicit donations in the Committee's name for five years, retaining any proceeds until it recovers full payment. GSI will also receive compensation in the form of half ownership of the new donor list, which it may use on behalf of other clients.

**Application of Corporate Prohibition.** Because of the program's speculative nature and the consequent possibility of a shortfall to GSI, the Commission could not approve the Prospecting Program without some record that GSI or companies like it conduct similar programs in the ordinary course of business. In the absence of such a record, the Committee must modify the program to avoid a possible unlawful advance of corporate funds over an extended period of time. The Committee may advance funds to cover GSI's expenses or, alternatively, pay GSI full compensation at the end of short, defined periods of time. Under either alternative, the Committee would also have to satisfy the conditions that apply to the Current Donor Program, described above.

#### Other Considerations

**Custodial Account.** The custodial account set up by GSI is an account of the Committee and must therefore be established at a state bank or federally chartered or insured depository. If necessary, the Committee must amend its Statement of Organization to list the bank as a designated campaign depository. 2 U.S.C. §§432(h)(1) and 433(b)(6); 11 CFR 103.2 and 102.2(a)(vi). Each contribution is considered to be received by the Committee on the date GSI receives it. Within 10 days of receiving a contribution, GSI must deposit it in the custodial account. 11 CFR 103.3(a). The Committee must report GSI's withdrawals from the custodial account as operating expenditures. 2 U.S.C. §434(b)(5)(A).

**Outstanding Compensation Reported as Debts.** With respect to the Current Donor Program, the Committee must report as a debt (on Schedule D) any compensation earned by GSI that was not paid during the reporting period. (The same procedure would apply to the Prospecting Program if the remedies and conditions discussed above are satisfied; otherwise, the debt would constitute a prohibited contribution from GSI.) If GSI normally charges interest on unpaid balances, then the Committee must pay the usual interest to avoid a corporate contribution. 11 CFR 116.3(b) and (c). (Date issued: July 12, 1991; Length: 10 pages)

#### AO 1991-19: Employee Payroll Deductions After Corporate Merger

As a result of a corporate merger, Contel Corporation (CONTEL) is now a wholly owned subsidiary of GTE Corporation. GTE plans to consolidate the PACs of both corporations into one PAC at some future date. In the meantime, payroll deduction contributions that were previously authorized by CONTEL employees for CONTELPAC may now be remitted to GTE's PAC, but the employees must receive advance notice of the change.

GTE's proposed activity is permissible under Commission regulations, which permit a corporation to solicit the executive and administrative employees of a wholly owned subsidiary and which also permit the use of payroll deductions to collect employee contributions to the corporation's PAC. 11 CFR 114.5(g)(1) and 114.5(k)(1).

However, when providing advance notice to CONTEL employees, GTE must follow the solicitation rules at 11 CFR 114.5(a)(2)



and (3) to ensure that contributions are made on a voluntary basis. Additionally, GTE must notify employees of their right to revoke their original authorizations for payroll deduction at any time, without reprisal. 11 CFR 114.5(a)(4); AOs 1991-1 and 1981-14.

GTE does not have to obtain new authorizations from the CONTEL employees, since they will be contributing to the PAC of an affiliated corporation. That was not the case in AO 1989-16, where the Commission concluded that employees had to execute new authorizations when they became employees of a spin-off corporation not affiliated with their original employer.

(Date issued: July 26, 1991; Length: 3 pages)

## AUDITS

### FEC RELEASES KEMP AUDIT REPORT

On July 25, 1991, the Commission made an initial determination that the Jack Kemp for President committee (the Kemp Committee) must repay \$187,069 in federal matching funds. The Committee had received \$5.985 million in primary matching funds for Mr. Kemp's 1988 Presidential primary campaign.

The initial repayment determination was based on the audit of the Kemp Committee and two joint fundraising committees (Kemp/Dannemeyer and Victory '88) that had raised funds for the Kemp Presidential campaign. The repayment amount includes a \$60,259 repayment for exceeding the Iowa and New Hampshire expenditure limits (see below). The remainder of the repayment--\$126,811--is the total of stale-dated Committee checks that were never cashed by the payees. Under 11 CFR 9038.6, the total of outstanding checks must be repaid. (Should the checks be negotiated, this total will be revised accordingly.)

If the Committee does not dispute the initial determination within 30 days, the repayment amount becomes final and is payable within 90 days of the initial determination. 11 CFR 9038.2(c) and (d).

Final audit reports are available for review in the Public Records Office.

### Expenditures in Excess of the Iowa and New Hampshire Limits

**Calculation of Repayment.** The Commission determined that the Kemp Committee had exceeded the Iowa and New

Hampshire spending limits by a total of \$188,600:

	State Spend- ing Limit	Amount Spent Over Limit
Iowa	\$775,218	\$114,680
New Hampshire	\$461,000	\$ 73,920

FEC Audit staff applied a formula to the excessive amount to determine what portion of that amount was paid with public funds as opposed to private contributions in the Committee's account. (The formula is explained at 11 CFR 9038.2(b)(2)(iii).) The formula yielded a repayment amount of \$60,259.

**Allocation of Expenditures.** Based on audit findings, the Commission increased the amounts the Committee originally allocated to the Iowa and New Hampshire limits by \$135,847 and \$75,099, respectively. The material below explains why the Commission adjusted the allocations in selected categories of expenses.

- Vendor Payments.** The Committee's breakdown of allocations contained a category of expenses consisting of payments for office overhead and other expenses. In this category, the Commission allocated additional amounts to the Iowa and New Hampshire limits for the following reasons:
- o The Committee took a 10 percent compliance exemption and a 10 percent fundraising exemption on certain expenses that were not overhead expenses and therefore did not qualify for the exemptions under 11 CFR 106.2(c)(5).
  - o The Committee double counted the 10 percent compliance and fundraising exemptions for certain overhead expenditures.
  - o The Committee improperly depreciated furniture and equipment costs when calculating the allocable amount.
  - o The Committee improperly excluded certain post-primary expenses from the Iowa and New Hampshire limits: overhead expenses (e.g., rent, utilities, equipment lease payments) and a consultant's fee for time spent closing down the New Hampshire office.
  - o The Committee allocated certain expenses as regional expenses but failed to provide supporting documentation that the expenses were not entirely allocable to the New Hampshire limit.
  - o The Committee failed to allocate, as Iowa expenditures, payments to the Iowa

(continued)

Republican Party for a Presidential straw poll.

- o The Committee claimed that payments for staff to attend party-sponsored events in New Hampshire were covered by the fund-raising exemption since staff could meet potential contributors. However, the Committee failed to provide supporting documentation that solicitations took place.
- o The Committee failed to allocate the costs of producing campaign buttons for Iowa and New Hampshire, claiming the costs could be excluded as production costs for "advertising media." 11 CFR 106.2(e)(2). Campaign buttons, however, are not considered "advertising media."
- o The Committee improperly excluded interstate shipping costs for campaign materials.
- o Finally, the Commission made several miscellaneous adjustments that increased the amounts allocable to the Iowa and New Hampshire limits; the Commission also rejected a number of insufficiently documented adjustments the Committee had made to reduce allocable amounts.

**Travel.** The Commission allocated additional amounts to the Iowa spending limit for travel, subsistence and payroll expenses of campaign staff who spent five consecutive days or more in Iowa. 11 CFR 106.2(b)(2)(iii).

**Testing-the-Waters Expenditures by Campaign for Prosperity.** The Commission allocated certain amounts spent by Campaign for Prosperity (CFP), a PAC associated with Jack Kemp, to the Iowa and New Hampshire limits. CFP had paid for costs associated with events Mr. Kemp attended before he announced his candidacy. Because the events appeared to be connected with his prospective Presidential bid, the payments became campaign expenditures—allocable to the state spending limits—when Mr. Kemp became a candidate. 11 CFR 9034.4(a)(2).

## STATISTICS

### FEC RELEASES INFORMATION ON 1992 SENATE CANDIDATES

The FEC recently issued a press release providing a reference guide on the financial activity of 1992 Senate candidates. The guide includes a chart summarizing the activity of 1992 Senate candidates through the end of 1990. Divided into two-year cycles (1987-88, 1980-90), the chart lists information on total receipts, disbursements and cash on hand. The guide also ranks 1992 Senate candidates based on the size of their cash on hand at the end of 1990. Finally, the guide compares cash-on-hand totals of incumbent Senate candidates for the preceding election cycle (1984) and the current election cycle.

For a free copy of the July 26, 1991, press release, call the Public Records Office: 800/424-9530 (ask for Public Records) or 202/219-4140.

### SEMIANNUAL PAC COUNT

As of July 1, 1991, the number of registered political action committees (PACs) registered with the FEC totaled 4,123, the lowest point in four years. The number of PACs decreased by 49 since the last semiannual survey, taken on December 31, 1990. The number of corporate-sponsored PACs dropped by 50. Nonconnected PACs, however, increased by 34, as shown in the table below. For statistics on PAC counts taken semiannually since 1975, order a free copy of the FEC press release dated July 11, 1991, from the Public Records Office. Call 800/424-9530 (ask for Public Records) or 202/219-4140.

Category of PAC	Number as of 7/1/91	Gain/Loss Since 12/31/90	Percent. Change
Corporate	1,745	-50	-3%
Labor	339	-7	-2%
Trade/Member-ship/Health	749	-25	-3%
Nonconnected	1,096	+34	+3%
Other <sup>1</sup> /	194	-1	—
<b>Total</b>	<b>4,123</b>	<b>-49</b>	<b>-1%</b>

<sup>1</sup>"Other" category consists of PACs formed by corporations without capital stock and PACs formed by incorporated cooperatives.

## PUBLICATIONS

### FEC PUBLISHES OFFICIAL 1990 ELECTION RESULTS

In July 1990, the Commission released **Federal Elections 90**, which lists the official results of the U.S. House and Senate general elections held in November 1990. The results were provided by state election officials.

The Commission first published federal election results for the 1982 general elections and has continued the practice every two years to provide an accurate historical record.

Free copies may be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. The entire series is available at over 800 federal depository libraries (state, university and major metropolitan libraries).

## PUBLIC APPEARANCES

- 9/10 Washington Semester Program  
The American University  
Washington, DC  
Commissioner Thomas J. Josefiak  
Michael G. Dickerson, Chief  
Public Record Branch  
Ian H. Stirton, Public Affairs  
Specialist
- 9/12 1991 Office of Government Ethics  
Conference  
Washington, DC  
David S. Orr, Director  
Personnel and Labor Relations
- 9/20 The Journal of Law and Politics  
University of Virginia School of Law  
Charlottesville, Virginia  
Commissioner Lee Ann Elliott
- 10/1 National Association of Business  
Political Action Committees  
Washington, DC  
Patricia A. Klein, Public Affairs  
Specialist

## CONFERENCES

### FEC TO HOLD CONFERENCES IN BOSTON, CHICAGO

This fall, the FEC is holding two-day regional conferences in Boston and Chicago to assist candidates, political party organizations and PACs with their preparations for the 1992 elections.

- o The Boston conference will be held on September 11-12.
- o The Chicago conference will be held on November 14-15.

### Workshops

In addition to workshops on the federal campaign laws, the conferences will include a workshop on state campaign finance laws presented by the state election office (in Boston, the Massachusetts Office of Campaign and Political Finance; in Chicago, the Illinois State Board of Elections).

At both conferences, a representative of the Internal Revenue Service will be available to answer election-related tax questions.

### Registration Information

The \$130 registration fee for each conference covers the cost of the conference, materials and meals for both days (continental breakfast, lunch). Call the FEC to order a registration form and schedule of workshops (800/424-9530 or 202/219-3420).

Please note that, for the Boston conference, the registration form with the fee enclosed had to be postmarked by August 28 to avoid a \$10 late fee.

To avoid a late fee for the Chicago conference, the registration form (with fee enclosed) must be postmarked by October 30.

### Hotels

The Boston conference will be held at the Sheraton Boston Hotel and Towers, 39 Dalton Street, Boston, Massachusetts 02199. Call 617/236-2000 for room reservations. To receive the group rate of \$140 per night, notify the hotel that you will be attending the FEC conference.

The Chicago conference will be held at the Swissotel Chicago, 323 East Wacker Drive, Chicago, Illinois 60601-9722. Call 312/565-0565 for room reservations. To receive the group rate of \$110 per night, notify the hotel that you will be attending the FEC conference.

## INFORMATION

### 1992 PRIMARY ELECTION AND BALLOT ACCESS DATES

The FEC's Public Records Office recently compiled the accompanying chart that lists, for each state, the preliminary 1992 primary dates and filing deadlines for ballot access. The chart covers Presidential and Congressional primaries for major party candidates; it also includes deadlines for independent candidates seeking ballot access for the 1992 general election (November 3). Please consult your state office for information on ballot access requirements.

The Public Records Office has also formatted the list chronologically by date of the Presidential and Congressional primaries. To order a free copy of that list or to inquire about updates to the list shown below, call Dick Thomas or Jennifer Fitzpatrick at 800/424-9530 (ask for Public Records) or 202/219-4140.

Please note that all dates are current as of July 19, 1991, and are subject to change by state legislatures.

Note also that, in 1992, the Record will carry the pre-primary reporting dates for the Congressional primaries.

### 1992 PRIMARY DATES AND FILING DEADLINES FOR BALLOT ACCESS

As of July 19, 1991; all dates are subject to change by state legislatures.

NOTE: States with Senate elections are printed in bold.

State	Presidential Candidates		U.S. House and Senate Candidates		Independent Candidates Ballot Access for Nov. 3 Gen'l. Election
	Ballot Access	Primary	Ballot Access	Primary/ Runoff	
Alabama	4/3	6/2	4/3	6/2 6/30 runoff	4/3
Alaska			6/1	8/25	pending
American Samoa*			9/1	11/3 11/17 runoff	9/1
Arizona			6/25	9/8	9/18
Arkansas	3/31 noon	5/26	3/31 noon	5/26 6/9 runoff	5/1
California*	Dem. 3/19 Rep. 3/20	6/2	3/6	6/2	3rd Party 3/20 Ind. 8/7
Colorado	1/2	3/3	6/7	8/11	8/4 3pm
Connecticut*	2/7 4pm	3/24	pending**	9/15	9/9
Delaware			7/31	9/12	9/1
Dist. of Col.	3/6	5/5	2/26	5/5	8/26
Florida	1/14	3/10	7/10 noon	9/1 9/29 runoff	7/10 noon
Georgia	—	3/10	5/1	7/21 8/11 runoff	6/26
Guam			7/31	9/5	7/31
Hawaii			7/21	9/19	7/21
Idaho	4/27	5/26	4/3	5/26	6/24
Illinois*	Rep. 12/16/91 Dem. 1/15	3/17	12/16/91	3/17	Ind. 12/16/91 3rd Party 8/3
Indiana	2/21	5/5	2/21	5/5	7/15 noon
Iowa			3/13	6/2	8/14

\*Survey returns for these states mention possible legislative changes in primary and ballot access dates.

\*\*In Connecticut, the ballot access date for the Congressional primary is 14 days after the date on which the party (Democratic or Republican) holds its convention; convention dates will be set in late 1991.

State	Presidential Candidates		U.S. House and Senate Candidates		Independent Candidates Ballot Access for Nov. 3 Gen'l. Election
	Ballot Access	Primary	Ballot Access	Primary/ Runoff	
Kansas	2/12 noon	4/7	6/10 noon	8/4	8/6
Kentucky			1/28	5/26	8/4
Louisiana	1/10	3/10	7/24	10/3 11/3 runoff	7/24
Maine*			4/1	6/9	6/9
Maryland	Rep. 12/23/91 Dem. 1/2	3/3	12/31/91	3/3	8/3
Massachusetts	1/3	3/10	6/2	9/15	8/25
Michigan	1/10 4pm	3/17	5/12 4pm	8/4	7/16
Minnesota	**	4/7	7/21	9/15	7/21
Mississippi	1/15	3/10	1/10	3/10 3/31 runoff	1/10
Missouri*			3/31	8/6	8/3
Montana	3/19	6/2	3/19	6/2	6/1
Nebraska	3/13	5/12	2/27-3/13	5/12	8/25
Nevada			5/12	9/1	6/26
New Hampshire	12/23/91	2/18	6/12	9/8	8/19
New Jersey	4/9 4pm	6/2	4/9 4pm	6/2	4/9 4pm
New Mexico	3/15	6/2	3/3	6/2	7/14
New York*	2/6	4/7	7/12	9/15	8/20
North Carolina	2/4	5/5	2/3	5/5 6/2 runoff	7/1
North Dakota	4/10	6/9	4/10	6/9	9/4
Ohio	2/20	5/5	2/20	5/5	5/4 4pm
Oklahoma	1/15	3/10	7/8	8/25 9/15 runoff	7/8
Oregon	3/10	5/19	3/10	5/19	8/25
Pennsylvania	2/18	4/28	2/18	4/28	8/1
Puerto Rico*	pending	3/15	pending	6/14	pending
Rhode Island*	2/4	3/10	7/17	9/15	7/17
South Carolina*	Dem. 2/1 Republican pending	Dem. 3/7	4/30 noon	6/9 6/23 runoff	9/1 noon
South Dakota	12/31/91	2/25	4/7	6/2 6/16 runoff	8/4
Tennessee	1/7	3/10	5/21	8/6	8/20
Texas	1/2	3/10	1/2	3/10 4/14 runoff	1/2
Utah***			4/15	9/8	4/15
Vermont			7/20	9/8	9/17
Virginia****			4/10	6/9	8/21 noon
Virgin Islands			7/28	9/8	9/15
Washington	—	5/19	7/24	9/15	7/24
West Virginia	2/3	5/12	2/3	5/12	2/3
Wisconsin	2/18	4/7	7/14	9/8	7/14
Wyoming			6/5	8/18	8/2

\*Survey returns for these states mention possible legislative changes in primary and ballot access dates.

\*\*In Minnesota, the date for affidavits is 12/31/91; the date for petitions is 1/28/92.

\*\*\*In Utah, each political party holds a convention to select two candidates to run in the primary. The primary winner becomes the party's general election nominee. If, however, a candidate receives 70 percent of the votes at the convention, that candidate becomes the general election nominee, and the primary is not held. AO 1978-30.

\*\*\*\*In several Virginia Congressional Districts, political parties nominate candidates at conventions rather than through primary elections.

## COMPLIANCE

### MURS RELEASED TO THE PUBLIC

Listed below are MURS (FEC enforcement cases) recently released for public review. The list is based on the FEC press releases of June 27 and July 10 and 15, 1991. Files on closed MURS are available for review in the Public Records Office.

Unless otherwise noted, civil penalties resulted from conciliation agreements reached between the respondents and the Commission.

### MUR 2795

**Respondents:** (a) Dukakis/Bentzen Committee, Inc. (MA); (b) Hubert M. Leonard (NC); (c) Senator Terry Sanford (NC); (d) Madison County Democratic Executive Committee, Flossie Bell, treasurer (NC)  
**Complainant:** Larry Roger Swan (NC)

**Subject:** Disclaimer

**Disposition:** (a) No probable cause to believe; (b) and (c) took no action; (d) reason to believe but took no further action

### MUR 2935

**Respondents:** (a) District of Columbia Democratic State Committee, Jack Evans, treasurer; (b) Vesharn N. Scales (DC)  
**Complainant:** FEC initiated  
**Subject:** Excessive contribution; failure to file reports on time, maintain federal campaign depository, disclose receipts and disbursements properly, file debt settlement statement and pay federal account debt with federal account funds  
**Disposition:** (a) \$1,000 civil penalty; (b) no probable cause to believe

### MUR 3067

**Respondents:** (all located in AZ) (a) Rhodes for Congress Committee, Kent Mulkey, treasurer; (b) Craig Ahlstrom; (c) Joe Farnsworth; (d) Ross Farnsworth, Sr.; et al. (e)-(i)  
**Complainant:** John T. Wrzesinski (AZ)  
**Subject:** Excessive contributions; failure to report as conduit; contributions in name of another

**Disposition:** (a) \$250 civil penalty; (b) and (c) reason to believe but took no further action; (d)(1) no reason to believe (conduit); (2) took no action (contributions in name of another); (e)-(i) took no action

### MUR 3019

**Respondents:** (a) Intellicom of Raleigh, North Carolina (Robert Rodman, President); (b) Democratic Party of North Carolina  
**Complainant:** William B. Canfield, Legal Counsel, National Republican Senatorial Committee (DC)  
**Subject:** Failure to file Statement of Organization and reports; disclaimer  
**Disposition:** (a) \$1,000 civil penalty; (b) no reason to believe

### MUR 3025

**Respondents:** RUFF Political Action Committee, Tammy J. Lyles, treasurer (DC)  
**Complainant:** FEC initiated  
**Subject:** Failure to disclose debts accurately, itemize information, disclose activity timely and sign reports  
**Disposition:** \$7,500 civil penalty

### MUR 3162

**Respondents:** Citizens for Informed Voting in the Commonwealth (CIVIC), Glen Harold Stassen, treasurer (KY)  
**Complainant:** Larry J. Steinberg (KY)  
**Subject:** Disclaimer  
**Disposition:** No action (divided vote)

### MUR 3166

**Respondents:** Bob Lawrence for Congress, William C. Hennessy, Jr., treasurer (NY)  
**Complainant:** John Nolan, Chairman, Republican County Committee of Saratoga County (NY)  
**Subject:** Failure to disclose contributions on time;  
**Disposition:** Reason to believe but took no further action

### MUR 3174

**Respondents:** LaRocco for Congress Committee, John R. Tait, treasurer  
**Complainant:** FEC initiated

**Subject:** Failure to file 48-hour notice  
**Disposition:** \$700 civil penalty

### MUR 3203

**Respondents:** Lonsdale for Senate, Shirley Richards, treasurer (OR)  
**Complainant:** FEC initiated  
**Subject:** Failure to file 48-hour notice  
**Disposition:** \$1,200 civil penalty

### MUR 3221

**Respondents:** Friends of Frank Hutchinson, Carl Berger, treasurer (HI)  
**Complainant:** FEC initiated  
**Subject:** Failure to file report on time  
**Disposition:** Reason to believe but took no further action

### MUR 3222

**Respondents:** (a) David K. McCloud (DC); (b) Robert Watson (VA); (c) Robb for the Senate, Alton H. Smith, Jr., treasurer (VA)  
**Complainant:** Joseph Elton, Executive Director, Republican Party of Virginia  
**Subject:** Enforcement confidentiality  
**Disposition:** (a)-(c) No reason to believe

### MUR 3230/3219/3210

**Respondents:** (a) Citizens United, Floyd Brown, President; et al. (b)-(c)  
**Complainant:** Ruth Cymber, on behalf of Friends for Phil Gramm (TX)  
**Subject:** Improper solicitations based on candidate's contributor list  
**Disposition:** (a)-(c) No reason to believe

### MUR 3266

**Respondents:** Hamp Hodges for Congress Committee, Paul T. Wells, treasurer (TX)  
**Complainant:** FEC initiated  
**Subject:** Failure to file 48-hour notices on time  
**Disposition:** \$2,500 civil penalty

### MUR 3272

**Respondents:** H&R Block PAC, Sherry Van Dorn, treasurer (MO)

**Complainant:** FEC initiated  
**Subject:** Failure to file reports on time  
**Disposition:** \$3,000 civil penalty

**MUR 3279**

**Respondents:** Association of Flight Attendants PAC, R. Fred Casey, treasurer (NY)  
**Complainant:** FEC initiated  
**Subject:** Failure to file report on time  
**Disposition:** \$750 civil penalty

**MUR 3282**

**Respondents:** Committee for Good Government of Temple-Inland Forest Products Corporation, M. Richard Warner, treasurer (TX)  
**Complainant:** FEC initiated  
**Subject:** Failure to file report on time  
**Disposition:** \$565 civil penalty

**MUR 3286**

**Respondents:** Enterprise Leasing Company Political Action Committee, Van-Lear Black, III, treasurer (MO)  
**Complainant:** FEC initiated  
**Subject:** Failure to file report on time

**Disposition:** \$725 civil penalty

**MUR 3288**

**Respondents:** Gun Owners of America Campaign Committee, David Bauer, treasurer (CA)  
**Complainant:** FEC initiated  
**Subject:** Failure to file report on time  
**Disposition:** \$625 civil penalty

**MUR 3295**

**Respondents:** Lockheed Employee's Political Action Committee, Robert W. Cannon, treasurer (CA)  
**Complainant:** FEC initiated  
**Subject:** Failure to file report on time  
**Disposition:** \$375 civil penalty

**MUR 3298**

**Respondents:** Minnesota Mining & Manufacturing Company Political Action Committee (3M PAC), Scott T. Henderson, treasurer (MN)  
**Complainant:** FEC initiated  
**Subject:** Failure to file report on time  
**Disposition:** \$375 civil penalty

**MUR 3299**

**Respondents:** NAPUS PAC for Postmasters (AKA Political Education for Postmasters), Gerri Logan, treasurer (VA)  
**Complainant:** FEC initiated  
**Subject:** Failure to file report on time  
**Disposition:** \$500 civil penalty

**MUR 3305**

**Respondents:** Preston Gates Ellis & Rouvelas Meeds PAC (AKA Preston, Thorgrimson, Ellis & Holman PAC), Rosanne Phillips, treasurer (DC)  
**Complainant:** FEC initiated  
**Subject:** Failure to file report on time  
**Disposition:** \$375 civil penalty

**MUR 3308**

**Respondents:** Soft Drink PAC, Mark N. Hammond, treasurer (DC)  
**Complainant:** FEC initiated  
**Subject:** Failure to file report on time  
**Disposition:** \$375 civil penalty

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