

# Record

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Federal Election Commission

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## Compliance

### FEC Imposes Civil Penalties for Violations of the \$25,000 Annual Limit

On March 17, the FEC announced that ten individuals agreed to pay \$64,000 in civil penalties for violating the \$25,000 annual limit on contributions and for other violations of the contribution limits. Most of the violations took place in 1988. (See table, page 3.)

The civil penalties were included in conciliation agreements signed by the individuals. The agreements included admissions of the violations, but noted when refunds had been obtained by the contributors.

FEC Chairman Scott E. Thomas commented: "The message from this case is that the FEC does enforce contribution limits. Those making political contributions should be knowledgeable of the limits enacted by Congress."

Under federal law, an individual's total contributions to influence federal elections may not exceed \$25,000 in one calendar year. (See 800 Line article, page 2.)

At the direction of the Commissioners, the General Counsel launched an investigation two days after an April 1990 *Los Angeles Times* article reported that several individuals had

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## Regulations

### Ban on Nonfederal Campaign Transfers Effective July 1

The Commission decided to delay until July 1, 1993, the effective date of a new rule that will prohibit transfers of funds from a candidate's nonfederal campaign to his or her federal campaign (11 CFR 110.3(d)). This means that the prohibition will likely not apply to the campaigns of candidates running in the special elections scheduled thus far. Those campaigns are subject to the current rule, 11 CFR 110.3(c)(6).

If a federal campaign committee has received transfers of funds from the candidate's nonfederal committee, it will have to identify any nonfederal funds remaining in its account as of July 1. These funds will have to be removed before July 31 or the committee will be in violation of the new rule. To identify nonfederal funds, the committee should use the method described in 11 CFR 110.3(c)(5)(ii) (i.e., consider the cash on hand as of July 1 to be composed of funds most recently received by the federal committee).

The Commission originally intended to set April 1 as the effective date for the new rule. However, the required legislative review period (30 legislative days) took longer than

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## 800 Line

### \$25,000 Annual Limit

Under federal law, an individual may contribute a maximum of:

- \$1,000 per election—primary, general or runoff—to a candidate or the candidate's authorized committee.
- \$5,000 per calendar year to a PAC (political action committee) or to a state or local party committee.<sup>1</sup>

<sup>1</sup> Because local party committees within a state are presumed to be affiliated with the party's state committee, a contribution to a local party committee counts against the \$5,000 limit for the state party committee. 11 CFR 110.3(b)(3).

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- \$20,000 per calendar year to a national party committee. 11 CFR 110.1(b)(1), (c)(1) and (d)(1).

However, an individual is also subject to an overall annual limit on total contributions: The individual's aggregate contributions to influence federal elections may not exceed \$25,000 in a calendar year. 11 CFR 110.5(b).

This article answers common questions concerning the \$25,000 annual limit.

**If, in 1993, I contribute \$250 to a candidate's 1994 primary campaign, will that contribution count against my \$25,000 annual limit for 1993 or 1994?**

If you make a contribution to a candidate in a nonelection year (such as 1993) for the candidate's future election (in this case, the 1994 primary), the contribution is considered to be made in the year in which that election will be held. 11 CFR 110.5(c)(2). Therefore, even if you contribute the money in 1993, the contribution counts against your \$25,000 annual limit for 1994.

**My husband and I would like to make a \$2,000 joint contribution to a Senator who will not be up for reelection until 1996. How would this affect our \$25,000 annual limit?**

First of all, you and your husband each have separate contribution limits: a separate annual limit and a separate \$1,000 per-election limit for the candidate. 11 CFR 110.1(i)(1) and 110.5(b).

Assuming that the \$2,000 joint contribution is split equally between you and your husband,<sup>2</sup> your \$1,000

<sup>2</sup> If the contributors do not indicate how a joint contribution should be attributed, the recipient committee must attribute an equal amount to each participating contributor. Note, however, that a joint contribution must be signed by both contributors, either on the check or in an attached writing. 11 CFR 110.1(k)(1) and (2).

contribution—and your husband's—each count against your respective annual limits for 1996, the year in which the Senator's next election (the primary) will be held. (Each \$1,000 contribution also counts against your respective limits for the Senator's 1996 primary; you and your husband have now contributed the maximum amount for that election.)

**I plan to buy a \$500 ticket to a fundraiser that's going to be held to retire a candidate's leftover debt from his 1992 general election. How would the \$25,000 annual limit apply in this situation?**

A contribution for a candidate's past election counts against the limit for the year in which the election was held, in this case, 1992. Therefore, your \$500 contribution (the full purchase price of the ticket) to help retire the debt<sup>3</sup> counts against your 1992 overall annual limit, even if you write the check in 1993.

Remember that contributions to retire debts are still subject to the \$1,000 per-election contribution limit, so any previous contributions you made to the candidate's 1992 general election campaign, plus the \$500 contribution, may not exceed \$1,000.

**I know I can contribute up to \$5,000 per year to a state party committee. Last year, in 1992, I contributed \$2,500 to my state party committee. May I now contribute another \$2,500 and apply it against my 1992 limit for the party committee and my 1992 overall annual limit?**

No. Unlike contributions to candidate committees (which are made on a per-election basis),

<sup>3</sup> A contribution to retire a candidate's past campaign debt must be designated in writing for that election. Without that designation, the contribution will automatically count against the limit for the candidate's next election and against the overall annual limit for the year of that election. 11 CFR 110.1(b)(2)(ii).



contributions to party committees and PACs count against the limit for the year in which they are made. 11 CFR 110.5(c)(3). Therefore, once 1992 ended, your 1992 contribution limit for the party committee expired, even though you didn't contribute the maximum amount. Any contributions you make to the committee in 1993 will count against your 1993 limit for the committee and your 1993 \$25,000 annual limit. ♦

## Legislation

### FEC Requests \$2.6 Million Budget Increase

In testimony before Congressional subcommittees, Vice Chairman Trevor Potter said that the Commission is "now virtually overwhelmed by the rapidly growing enforcement case load and by the wave of data flowing from the 1992 election" and is in "dire need" of a 1994 fiscal year budget of \$23.6 million. The Vice Chairman emphasized that this amount—representing an increase of \$2.6 million and 44 full-time employees over current levels—is the "bare minimum needed for acceptable functioning of the FEC given its current responsibilities."

The amount of political money tracked by the Commission has increased by \$1 billion since 1980. During the 1992 election cycle, the agency monitored almost \$2 billion in federal campaign activity and more than 7,100 committees. The enforcement workload has also grown: the number of respondents has more than tripled in four years. Each of the enforcement attorneys currently handles upwards of 20 ongoing matters involving an average of more than 100 respondents. Vice Chairman Potter said that the agency is "deeply concerned that there are entire areas of the election laws that we currently

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## Compliance

*(continued from page 1)*

exceeded the \$25,000 contribution ceiling during the 1988 election cycle. The case against one individual was initiated in 1991, the result of a complaint based on another *Los Angeles Times* story.

While the FEC maintains the contribution records relied upon by the newspaper for its articles, the Federal Election Campaign Act does not give the Commission authority to open investigations prior to finding "reason to believe" the law was violated. Because of the complexities involved in determining if someone has exceeded the annual limit, a simple review of computerized records may not show conclusively that a violation occurred. A more thorough, preliminary investigation, such as that conducted by the newspaper, is required. The agency is, however, reviewing its capabilities (in terms of resources and priorities) to use computer records to monitor annual limits. ♦

## MURs Released to the Public

Listed below are FEC enforcement cases (Matters Under Review or MURs) recently released for public review. The list is based on the FEC press release of March 17, 1993. 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 3161/3104

**Respondents:** (a) Dwayne and Dorothy Andreas (IL); (b) Caroline Rose Hunt (TX); (c) Henry Kravis (OK); (d) Raymond Kravis (OK); (e) Ronald Perelman (NY); (f) Ira Riklis (NY); (g) Meshulam Riklis (NY); (h) Harold Simmons (TX); (i) Donald Trump (NY)

**Complainant:** Initiated by directive from Commissioners (After the FEC's investigation began, Common Cause filed a similar complaint.)

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## Excessive Contributions and Resulting Civil Penalties

Individual	Amount Over \$25,000 Annual Limit <sup>1</sup>	Amount Over \$1,000 Limit on Candidate Contributions <sup>2</sup>	Civil Penalty
Dwayne O. Andreas	\$13,680		\$ 8,000 <sup>3</sup>
Dorothy Inez Andreas	\$ 4,680		
Caroline Rose Hunt	\$ 3,150		\$ 800
Henry Kravis	\$36,961	\$2,000	\$ 8,000
Raymond Kravis	\$ 6,250		\$ 1,000
William Lerach	\$26,232 <sup>4</sup>	\$2,000	\$ 7,100
Ronald Perelman	\$ 7,500	\$1,000	\$ 1,800
Ira Riklis	\$ 6,500	\$3,000	\$ 2,500
Harold Simmons <sup>5</sup>	\$46,176 <sup>6</sup>	\$6,000	\$19,800
Donald Trump	\$47,050		\$15,000

<sup>1</sup> Unless otherwise noted, the amounts exceeded the annual limit for 1988.

<sup>2</sup> An individual's contributions to a candidate may not exceed \$1,000 per election.

<sup>3</sup> This was a joint civil penalty shared between Mr. and Mrs. Andreas.

<sup>4</sup> This amount exceeded the annual limit for 1990.

<sup>5</sup> Mr. Simmons also made \$5,000 in excessive contributions to PACs.

<sup>6</sup> Of this amount, \$1,250 exceeded the annual limit for 1989.



## Legislation

(continued from page 3)

lack the resources to monitor or enforce appropriately."

Reminding panel members that President Clinton has placed campaign finance reform near the top of his agenda, the Vice Chairman stated: "There is no point in maintaining campaign finance laws on the books, or in adding to them, if they cannot be administered and enforced in a timely manner."

He pointed out that the passage of the National Voter Registration Act (the "motor voter" law; see next article) and any new campaign reform legislation would place additional administrative burdens on the agency. Even without them, however, the Commission projects an extremely heavy workload for the 1994 election cycle.

Vice Chairman Potter, who heads the FEC's finance committee, appeared with Chairman Scott E. Thomas and Commissioner Danny L. McDonald. They testified on February 24 before the House Appropriation's Subcommittee on Treasury, Postal Service and General Government, and on March 16 before the House Administration's Subcommittee on Elections. ♦

## Clearinghouse

### Advisory Panel Discusses "Motor Voter" Law at Annual Meeting

The FEC's National Clearinghouse on Election Administration and its Advisory Panel recently met with nearly 200 election officials from around the country to discuss issues in election administration, including the pending "motor voter" law. The Advisory Panel is made up of 20 state and local election officials from

different states. Also attending the March 24-26 meeting in Savannah, Georgia, were FEC Chairman Scott E. Thomas, Vice Chairman Trevor Potter and Commissioner John Warren McGarry.

The "motor voter" law, officially called the National Voter Registration Act of 1993, is expected to be enacted in the near future. The law would significantly alter the registration systems of most states. It would also assign new responsibilities to the FEC, thereby affecting the agency's budget. (See previous article, page 3.) The Clearinghouse would be largely responsible for the FEC's duties under this Act. In anticipation of the law's passage, the office has already begun planning cooperative activities with the states.

The Clearinghouse was created under the Federal Election Campaign Act to serve as a central exchange for research and information on the administration of elections. During 1992, the office responded to over 8,000 phone calls, a four-fold increase over 1991. The office also introduced a series of research guides describing recent technological and administrative innovations in state and local election offices. In preparation for a long-term project—a training program for local election officials—the Clearinghouse began to assess their educational needs.

A number of Clearinghouse publications are available for order, such as a summary of state election laws (*Campaign Finance Law '92*) and an essay on the Electoral College that generated over 14,000 orders in 1992. The office also publishes the *Journal on Election Administration*. The next issue of the *Journal* will offer advice to election officials on how to serve voters in special populations, such as the homeless, the disabled and minority groups who do not speak English. For information on Clearinghouse publications, call 800/424-9530 (ask for the Clearinghouse) or 202/219-3670. ♦

## Statistics

### 1992 House and Senate Campaign Spending Jumps 52 Percent

A March 4 press release reports that House and Senate campaigns in the 1991-92 election cycle spent 52 percent more and raised 40 percent more than campaigns in the previous election cycle (1989-90).

The jump in House and Senate campaign activity was influenced by Congressional redistricting, an unusual number of House incumbent departures, and three special Senate elections (California had both a regular and a special Senate election). These circumstances, in turn, led to a 68 percent increase in the number of candidates (see Table 1), more open seat races and more nonincumbent campaigns with competitive funding.

Comparing 1991-92 House campaign activity with the previous cycle, spending went up 53 percent to \$407 million, while receipts rose 39 percent to \$396 million. Incumbent House candidates accounted for 93 percent of the \$48 million total closing cash on hand for all 1992 House candidates. Nevertheless, incumbents' closing cash represented a 42 percent drop from the 1990 figure and left the smallest incumbent "war chests" since the end of 1984.

The press release, available from the FEC's Public Records Office, contains numerous tables on House and Senate financial activity, including summary data for the 1992 cycle, comparison figures for previous election cycles, statistics on individual 1992 candidates and median financial activity of House campaigns. One table lists, for each state, Senate spending per voter (i.e., spending divided by the voting age population of the state).

The tables opposite are based on the press release. ♦

**Table 1: Money Raised and Spent by House and Senate Campaigns<sup>1</sup>  
Election Cycles 1980-1992<sup>2</sup>**

(millions of dollars)

	1979-80	1981-82	1983-84	1985-86	1987-88	1989-90	1991-92
<b>Receipts</b>	\$248.8	\$354.7	\$397.2	\$472.0	\$477.6	\$471.7	\$658.6
<b>Disbursements</b>	\$239.0	\$342.4	\$374.1	\$450.9	\$459.0	\$466.3	\$678.3
<b>Number of Candidates</b>	2,288	2,240	2,036	1,873	1,792	1,759	2,956

<sup>1</sup> Table includes special election activity.<sup>2</sup> An election cycle is a two-year period, the year before the election and the election year itself.**Table 2: Median Disbursements<sup>1</sup> of New House Members and Their Opponents**

Democratic New Members and Opponents	1989-90 Cycle		1991-92 Cycle	
	New Members Elected <sup>2</sup>	Median Disbursements	New Members Elected <sup>3</sup>	Median Disbursements
Democrats Who Defeated... Republican Incumbents	8	\$469,107 \$707,951	6	\$260,223 \$716,536
Democrats Who Defeated... Republican Opponents in Open Seat Races	19	\$638,361 \$297,348	47	\$420,227 \$166,756
Democrats Who Defeated... Democratic Incumbents (Primary) and Republican Opponents (General)			8	\$394,424 \$346,407 \$ 35,848
<b>Republican New Members and Opponents</b>				
Republicans Who Defeated... Democratic Incumbents	6	\$259,503 \$608,496	13	\$439,718 \$924,384
Republicans Who Defeated... Democratic Opponents in Open Seat Races	11	\$581,625 \$378,537	28	\$452,420 \$341,107
Republicans Who Defeated... Democratic Challengers Who Had Defeated Incumbents in Primary			2	\$325,034 \$476,981
Republicans Who Defeated... Republican Incumbents (Primary) and Democratic Opponents (General)	1	\$732,765 \$ 52,562 \$114,852	3	\$364,915 \$767,425 \$336,418

<sup>1</sup> Median means that an equal number of candidates had activity above and below the amounts shown.<sup>2</sup> In 1990, 45 new House Members were elected.<sup>3</sup> In 1992, 110 new House Members were elected. Note, however, that this table does not reflect the three new Members who were elected after the incumbent primary winners either died or withdrew from the race (New Jersey/7, New York/8 and Ohio/1).



## Regulations

(continued from page 1)

expected and would have resulted in the effective date falling sometime in mid-April.<sup>1</sup> The Commission wanted to avoid setting an effective date in the middle of the special election activity and therefore decided on a July 1 effective date.

The agency announced its plan to change the effective date in a Federal Register notice published on March 17 (58 FR 14310). ♦

## Rulemaking Petition on Use of Candidate Names

The Commission recently sought comments on a rulemaking petition filed by Citizens Against David Duke, who requested that the agency amend its regulation on the use of candidate names in special fundraising projects (11 CFR 102.14(a)). This rule, which became effective on November 4, 1992, prohibits the use of a candidate's name in the title of a fundraising project or other communication sponsored by an unauthorized committee (i.e., a party committee, PAC or other committee not authorized by any candidate).

The Commission adopted the regulation to minimize the potential for fraud and abuse. In the past, the use of a candidate's name in a project title has misled the public into believing that they were contributing to the named candidate or that their contributions would be used on the candidate's behalf, when that was not the case.

Citizens Against David Duke, which identified itself as a "proposed project of a political committee,"

challenged the constitutional validity of the entire regulation. Contending that its chosen name was constitutionally protected political speech, the petitioner in particular questioned the rule's application to projects that oppose a candidate, since "[t]here is no danger of confusion or abuse" in those situations.

Comments on the rulemaking petition were due April 2. The petition and comments are available for review in the Commission's Public Records Office. See 58 FR 12189, March 3, 1993. ♦

## Proposed Rules on Multicandidate Committee Status

The Commission has proposed new regulations that would make it easier for candidate committees and the Commission to identify political committees that have qualified as multicandidate committees<sup>1</sup> and are therefore entitled to give up to \$5,000, per election, to a candidate. Non-qualified committees are subject to a \$1,000 per-candidate, per-election limit.

Two of the proposed regulations would apply to newly qualified multicandidate committees, while a third regulation would apply to all multicandidate committees.

The Notice of Proposed Rulemaking was published in the Federal Register on March 3, 1993 (58 FR 12189). Comments were due April 2.

### New Multicandidate Committees

Under current practice, a committee notifies the Commission that it has qualified as a multicandidate committee by checking a box on its regularly filed report (Form 3X) once it has

satisfied the qualifying criteria. However, there can be a delay of several months between the date the committee qualifies and the date the Commission receives notice in the report. This is especially true in an off-election year, when committees file on a semiannual basis. For example, if a committee qualified shortly after filing a mid-year report, the Commission would not receive notice of the committee's multicandidate status until six months later, when the committee filed its year-end report. During that time, the committee would not be listed in the Commission's Multicandidate Committee Index, making it difficult for a candidate committee to verify the legality of a contribution from the committee in excess of \$1,000.

The proposed regulations would solve this problem by requiring a newly qualified committee to report its multicandidate status in an amended Statement of Organization filed within 10 days following the qualifying date (proposed 11 CFR 102.2(a)(1)(vii)).

Under the proposed rules, at the time the amended Statement was filed, the Commission would not have sufficient information to verify that the committee had, in fact, qualified. Therefore, the committee would also be required to submit the following data along with the amended Statement of Organization (proposed 11 CFR 102.2(a)(3)):

- The date it first registered with the Commission;
- A certification that it had received contributions from more than 50 donors; and
- A list of the federal candidates it had supported, if unavailable from its previous reports.

### All Multicandidate Committees

All multicandidate committees would be required to provide written notice of their multicandidate status to candidate committees when making contributions to them (proposed 11 CFR 110.2(a)(2)). The Notice of

<sup>1</sup> Legislative days are those days when the House or Senate is in session. 2 U.S.C. §438(d)(3). The 30-day legislative review period expired on March 18, 1993. On April 1, the Commission is expected to approve an announcement of the July 1 effective date for publication in the Federal Register.

<sup>1</sup> A committee qualifies as a multicandidate committee when it has been registered at least 6 months, has received contributions from more than 50 persons and has made contributions to at least 5 federal candidates. (The last requirement does not apply to state party committees.) 11 CFR 100.5(e)(3).



Proposed Rulemaking sought comments on how this might be done, suggesting, for example, that committees could satisfy this requirement by printing the notice on their checks or stationery. ♦

## Special Elections

### Party Spending Limits

This article provides updated information on the coordinated party expenditure limits (§441a(d) limits) for the special elections in Mississippi, California and Texas.

For reporting dates and other information on the 1993 special elections scheduled to date, see the March 1993 *Record*. In this issue, see the reporting articles that follow and the front page article on the July 1 effective date of the new regulation prohibiting transfers from nonfederal campaign committees.

### Special Runoff Elections

Mississippi, California and Texas will hold special runoff elections if no candidate wins a majority of the votes in the first special election. As a result of a Commission decision in a recent advisory opinion, there is no separate coordinated party expenditure limit for these runoff elections; one limit applies to both the first election and the runoff. There is, however, a separate contribution limit for each election. See the summary of AO 1993-2, page 9.

### Texas Special Senate Election

The coordinated party expenditure limit for the May 1 special Senate election in Texas is \$716,281, based on the following formula:  $2\epsilon \times 12,584,000$  (1992 Texas voting age population), multiplied by 2.846 (1992 cost of living adjustment). See 11 CFR 110.7(b)(i) and 110.9(c). ♦

## Reporting

### Last-Minute Contributions: 48-Hour Reporting

Authorized committees of federal candidates must file special notices if they receive contributions of \$1,000 or more shortly before the election. 2 U.S.C. §434(a)(6); 11 FR 104.5(f). These notices are called "48-hour notices" because they are due within 48 hours of the committee's receipt of the contribution.

### What Triggers 48-Hour Reporting

A candidate committee must file a 48-hour notice if it receives a contribution of \$1,000 or more after the close of books for the pre-election report but more than 48 hours before the election.

This requirement applies to any type of election in which the candidate participates (primary, runoff, general or special), including an election in which the candidate is unopposed.

The 48-hour notice requirement also applies to all types of contributions of \$1,000 or more, including:

- In-kind contributions;
- Loans (other than bank loans);
- Guarantees and endorsements of bank loans;
- Contributions and personal loans from the candidate; and
- The candidate's guarantees and endorsements of bank loans. 2 U.S.C. §431(8)(A); 11 CFR 100.7(a).

### What to Report

The notice must disclose the following:

- The name of the candidate and the office sought;
- The complete identification of the contributor (name, address and, if the contributor is an individual, occupation and employer); and
- The date and amount of the contribution.

### Reporting on Time

A 48-hour notice must be received by the appropriate federal and state filing offices within 48 hours of the campaign's receipt of the contribution.

Because 48-hour notices do not have to be signed by the treasurer, they may be sent by mailgram, telegram or telefacsimile (fax) machine in order to meet the 48-hour requirement. AO 1988-32. The fax number for the Clerk of the House is 202/225-7781; the fax number for the Secretary of the Senate is 202/224-1851. *Note:* Other reports and statements may not be faxed because of the original signature requirement.

Certified, registered and first-class mail are also acceptable methods of sending a notice, provided the notice is received at the appropriate filing office by the 48-hour deadline. In the case of a 48-hour notice, a postmark date is not significant for purposes of filing on time. AO 1988-32.

### Where to File

Authorized committees of House and Senate candidates file with the Clerk of the House or the Secretary of the Senate, as appropriate. 2 U.S.C. §432(g)(1) and (2); 11 CFR 105.1 and 105.2.

House and Senate committees must simultaneously file copies of 48-hour notices with the Secretary of State (or equivalent filing officer) in the state in which the candidate is seeking election. 2 U.S.C. §439(a)(2)(B).

### Reporting Contributions a Second Time

The committee must itemize contributions disclosed in a 48-hour notice a second time on the next regularly scheduled report. 2 U.S.C. §434(a)(6)(B); 11 CFR 104.5(f). ♦

*(Reporting continued on page 8)*



## Reporting

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### Letter to New Candidates on Reporting Problems

In 1992, the Commission began sending a letter from the Chairman to newly registered candidates to alert them to reporting problems common to candidate committees. The Commission recently revised the letter to include another area of concern: the "best efforts" requirement for contributor information. The revised letter continues to provide guidance in other problem areas as well.

#### Best Efforts

The letter underlines the need for committees to obtain the required contributor information—name, address, occupation and employer—from individuals whose aggregate contributions exceed \$200 in a calendar year. Under the "best efforts" standard, treasurers must make at least one effort per solicitation—and one effort for each unsolicited contribution—to obtain the required information from the contributor. The request for the information, either written or oral (though an oral request must be documented), must inform the contributor that the reporting of such information is required by law. The letter gives examples of acceptable and unacceptable requests:

- **Acceptable:** Federal law requires that our committee report the full name, address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year.
- **Unacceptable:** Federal law requires that we ask you for the following information.

If the committee used an unacceptable "best efforts" request in its solicitation materials, the committee must make an *additional* request to obtain any missing information.

Missing contributor information that becomes available after a report

has been filed must be disclosed in an amended report.

### Candidate Contributions and Loans

Explaining that candidates are not bound by the \$1,000 limit when they give or loan personal funds or other assets to their own campaigns, the letter points out three problem areas:

First, the funds or assets must belong to the candidate personally. Funds or assets from spouses, family members, friends and other individuals are subject to the \$1,000 per election limit. In the case of property jointly owned with a spouse, such as stock that is liquidated or a home used to secure a home equity loan, the candidate may use his or her personal share of the asset; use of the spouse's share is a contribution subject to the \$1,000 limit.

Second, the funds must be reported as a direct contribution or a loan from the candidate. But note that a candidate cannot make a direct contribution and then later call the gift a loan, expecting repayment. If the funds are loaned, the report must make this clear from the very beginning. This is necessary to distinguish future loan repayments to the candidate from what would otherwise look like personal enrichment, which is prohibited.

Third, if the candidate obtains a bank loan for campaign-related purposes, the committee must report the bank—not the candidate—as the source of the loan, although the candidate must be reported as the endorser or guarantor.

### Contributions that Appear Excessive

The letter warns candidates that any check from an individual that exceeds \$1,000 is suspect. If the check is drawn on a joint account, the full amount counts against the contribution limit of the person signing the check. If the contribution is to be divided between the joint account holders, both signatures must

appear on the check or in an accompanying letter.

If a contribution exceeds the \$1,000 limit, the excessive portion must be: refunded to the contributor; reattributed to a joint contributor; or redesignated for a different election. Until the problem is resolved, the committee may *not* use the money. (Many candidates have found it helpful to place the excessive funds in a separate account.) The full amount of the contribution must be reported, but the committee should note that the donor is being contacted to resolve the problem. Unless the committee receives a reattribution or redesignation signed by the contributor(s), the committee must refund the excessive amount within 60 days after receipt of the original check. (The Commission sends treasurers of candidate committees both a copy of the letter and a *Record* supplement explaining the redesignation and reattribution process in more detail.)

### 48-Hour Reporting

The letter reminds candidate committees that they must comply with this reporting requirement; see previous article, page 7. ♦

## Advisory Opinions

### AO 1993-1 Campaign's Rental of Storage Unit from Candidate

Congressman Dan Burton proposed using personal funds to build a storage shed on his property and then to rent the unit to his campaign committee for storage of campaign materials, charging rent equivalent to that charged by commercial storage firms in the area. The Commission has previously concluded that this type of arrangement is permissible. See AO 1988-13 (campaign's



payment of rent to the candidate for storage space in a building owned by the candidate); see also AOs 1985-42, 1983-1 and 1978-80. The rental payments would be reportable as operating expenditures. See 11 CFR 104.3(b)(2). Quoting AO 1988-13, the Commission noted that "[i]f such rental payments by a candidate's campaign committee represent more than the usual and normal charge for the use of the facilities in question, the amount in excess of the usual and normal charge would be subject to the personal use ban of 2 U.S.C. §439a."<sup>1</sup>

The Commission expressed no opinion on the application of House rules or tax laws to the proposed activity, since those issues are outside its jurisdiction.

Vice Chairman Trevor Potter wrote a concurring opinion. Date Issued: February 4, 1993; Length: 2 pages, plus 1-page concurrence. ♦

## AO 1993-2 Application of Party Spending Limits to Texas Special Runoff

The Democratic Senatorial Campaign Committee (DSCC), acting as the agent for the Democratic National Committee and the State Democratic Committee of Texas, plans to make coordinated party (§441a(d)) expenditures for the party's candidate in the May 1 special Senate election in Texas. (The national committee and the state committee are each entitled to a separate §441a(d) limit on behalf of the party's general election candidate.) If no candidate wins a majority vote in that election, the top two vote getters will compete in a special runoff election. The runoff election will not be considered a separate general election for purposes of the §441a(d) limit. Therefore, the DSCC

has a single set of §441a(d) limits (the national committee's limit and the state committee's limit) covering both elections. However, the runoff election, if held, will be considered a separate election for purposes of the contribution limits.

The Commission saw no practical difference between the Texas situation and the situation in AO 1983-16, where a special runoff election for a California House seat would have been held if no candidate had received a majority of the votes in the first special election. In that opinion, the Commission concluded that the first election was a "general election" under 11 CFR 100.2(b)(2) because it was intended to result in the final selection of a single individual. The runoff election was not considered a separate general election with a separate §441a(d) limit. One §441a(d) limit applied to both elections.

As noted in AO 1983-16, a runoff election is considered a separate election for purposes of the contribution limits, which apply with respect to "any election" or "each election." By contrast, coordinated party expenditure limits apply to a "general election campaign." Compare 2 U.S.C. §441a(a)(1), (2) and (6) to §441a(d).

The Conference Report for the 1976 amendments to the Act supports the separate treatment of expenditure limits (§441a(d)) and contribution limits (§441a(a)). The Report explains that the "limited permission [in §441a(d)] allows the political parties to make contributions in kind by spending money for certain functions to aid the individual candidates who represent the party during the election process."<sup>1</sup> The Report's language indicates that §441a(d), unlike §441a(a), addresses the "election process" rather than specific stages within the process.

Vice Chairman Trevor Potter filed a dissenting opinion; Commissioners Joan D. Aikens and Lee Ann Elliott filed a joint concurring opinion. Date Issued: March 5, 1993; Length: 4 pages, plus 3-page dissent and 7-page concurrence. ♦

## 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 1993-3

Transfer from nonfederal account to correct overpayment by federal account of 1991 and 1992 expenses. (Democrats 2000; March 3, 1993; 8 pages)

### AOR 1993-4

Electronic payment of campaign expenditures. (Christopher Cox Congressional Committee; March 9, 1993; 2 pages plus attachment)

### AOR 1993-5

Contributions made in 1992 misplaced at post office and discovered in January 1993. (Fields for Congress; March 12, 1993; 6 pages plus attachments)

### AOR 1993-6

Use of campaign funds by former Member of 103d Congress. (Citizens for Congressman Panetta, March 18, 1993; 3 pages) ♦

<sup>1</sup> As a Member of the 103d Congress, Congressman Burton is prohibited from converting campaign funds to personal use. 2 U.S.C. §439a.

<sup>1</sup> H.R. Rep. No. 1057, 94th Cong., 2d Sess. 59 (1976).

## Compliance

(continued from page 3)

**Subject:** Contribution limits

**Disposition:** (a) \$8,000 joint civil penalty; (b) \$800 civil penalty; (c) \$8,000 civil penalty; (d) \$1,000 civil penalty; (e) \$1,000 civil penalty; (f) \$2,500 civil penalty; (g) reason to believe but took no further action; (h) \$19,800 civil penalty; (i) \$15,000 civil penalty

### MUR 3456

**Respondents:** (a) William Lerach (CA); et al. (b)-(e)

**Complainant:** Walter Palmer (CA)

**Subject:** Contribution limits

**Disposition:** (a) \$7,100 civil penalty; (b)-(e) reason to believe but took no further action ♦

## Court Cases

### FEC v. America's PAC

In a default judgment entered on January 14, 1993, the U.S. District Court of the Central District of California ordered America's PAC (a state committee) and Neil Barry Rincover, as executive director and acting treasurer, to pay a \$25,000 civil penalty for violating the Federal Election Campaign Act. (Civil Action No. CV-92-2747-LGB (Tx).)

The FEC had alleged that America's PAC had altered an earmarked contribution received from the Physicians Interindemnity/PAC (PI/PAC) by changing the notation on the check from "Bill Press for U.S. Senate" to "political contribution." The FEC claimed that, because America's PAC converted and deposited the \$2,000 contribution, it became a political committee with attendant registration and reporting obligations that were never fulfilled. The FEC further claimed that defendants knowingly accepted a prohibited contribution from PI/PAC,

whose check contained corporate funds.

The court granted the FEC's motion for default judgment, ordering defendants to pay a \$5,000 civil penalty for each of five violations:

- Failing to forward an earmarked contribution (2 U.S.C. §432(b));
- Failing to forward the requisite information on the earmarked contribution (§432(b));
- Failing to file a Statement of Organization (§433);
- Failing to file periodic FEC reports (§434); and
- Knowingly accepting a contribution that contained prohibited funds (§441b(a)).

The court also ordered defendants to refund the \$2,000 contribution to PI/PAC and to file a Statement of Organization and the required reports within 15 days.

Furthermore, given defendants' default in the litigation, the Court found there was a likelihood that defendants would repeat the violations and therefore enjoined them from further violations of the provisions cited above. ♦

### National Rifle Association of America v. FEC (92-5078)

On February 25, 1993, the U.S. Court of Appeals for the District of Columbia Circuit, in a per curiam judgment, affirmed the district court's ruling in *NRA v. FEC*. The lower court had rejected the NRA's challenge to the FEC's dismissal of an administrative complaint.

The district court ruled that it lacked jurisdiction to review the FEC's decision to dismiss the complaint since the agency had considered the same issues in a previous complaint, which it had also dismissed, and the NRA had failed to challenge that decision within the 60 days allowed by law. (Civil Action No. 89-3011.) The NRA's administrative complaints had contended that,

because the members of Handgun Control, Inc. (HCI) lacked the necessary organizational rights to qualify as "solicitable members," HCI's solicitations violated the law. (The district court decision was summarized in the April 1992 *Record*.)

The court of appeals found that the district court had "correctly concluded that appellant's fourth administrative complaint raised issues 'substantially similar' to those resolved in a previous complaint, and that appellant's petition for judicial review was therefore untimely." ♦

### Common Cause v. FEC (92-0249 (JHG))

On March 3, 1993, the U. S. District Court for the District of Columbia dismissed this suit by agreement of both parties. Common Cause had asked the court to order the FEC to take action on an administrative complaint but agreed to drop its claim because the agency had completed the investigation and entered into conciliation agreements with the respondents. In its administrative complaint, Common Cause had alleged that seven individuals had each exceeded the \$25,000 annual limit on aggregate federal contributions. (See Compliance articles, pages 1 and 3.) ♦

## Public Funding

### Final Repayment Determinations for Dukakis and Simon 1988 Primary Campaigns

The Commission has approved final repayment determinations requiring the 1988 Presidential primary campaign of Michael Dukakis to return \$491,282 in public funds to the U.S. Treasury and Senator Paul Simon's 1988



Presidential campaign to return \$412,163.<sup>1</sup> The Dukakis for President Committee had received over \$9 million in primary matching funds, while the Paul Simon for President Committee had received almost \$3.8 million.

The repayments were due within 30 days of the committees' receipt of the final determinations. (The Commission accepted a \$485,000 check from the Dukakis committee in April 1991, which left only \$6,282 outstanding on the repayment.)

The Commission issued Statements of Reasons to support these final repayment determinations. The Statements responded to the committees' challenges to the agency's earlier initial repayment determinations. Both committees took the position that the agency had failed to notify them of their repayment obligations within the statutory three-year deadline, which expired July 20, 1991.<sup>2</sup>

### Committees' Position on Three-Year Notification

The committees believed that they received valid notification only when they were notified of the initial repayment determinations contained in the final audit reports, which were approved after the July 1991 deadline. (The final audit reports on the Dukakis and Simon campaigns were issued December 1991 and October 1991, respectively.)

The Dukakis committee, citing *Reagan-Bush Committee v. FEC* and *Carter/Mondale Presidential Committee, Inc. v. FEC*, said that "the courts have recognized that a repayment determination is made only

when the final audit report is released to the public." The committee further cited a 1981 letter quoted in *Reagan-Bush* in which then Chairman McGarry stated that a preliminary repayment calculation "should not be interpreted as a Commission determination." The committee believed that it was not required to make any repayment because the Commission failed to meet the notification deadline.

The Simon committee, while it did not specifically conclude that no repayment was required because of the alleged late notification, nevertheless contended that the three-year period was a statute of limitations similar to the timely notice of tax assessments under the Internal Revenue Code. The committee also said that two letters it had received from the Commission (dated January 1991 and July 1991) were in apparent contradiction as to what constituted notification for purposes of the statutory time limit.

### Commission's Position

The Commission said that it had satisfied the three-year notification requirement by providing the committees with preliminary repayment calculations that were approved before the three-year period had expired. The preliminary calculations were included in the Dukakis and Simon interim audit reports issued in February 1990 and July 1990, respectively.

The Commission explained that a preliminary repayment calculation satisfies the notification requirement because it is similar to an initial repayment determination: Both procedures require preparation by the Audit Division, legal review by the Office of General Counsel and approval by a majority vote of the Commissioners. "Thus," the Commission stated, "the preliminary calculation supplies adequate notice of a committee's repayment obligations, even though the exact figure may be modified." The agency pointed out

that it had recently revised its regulations to make this clear.

The Commission said that the language from the court cases cited by the Dukakis committee was inapplicable because the cases were decided before the agency's 1983 promulgation of regulations that made the interim audit report a formal part of the audit process. Furthermore, the agency explained, the purpose of the 1981 Chairman's letter quoted in *Reagan-Bush* was to inform committees that a preliminary repayment calculation was not considered a final agency determination *that was ripe for judicial review*. The notice requirement in the statute, by contrast, "requires only a notification of a repayment, not a final agency determination," the Commission stated.

Addressing the Simon committee's contention that two Commission letters were contradictory, the agency said that, although the earlier letter (January 1991) referred to the three-year requirement, it did not specify what constituted sufficient repayment notification. However, the second letter (July 1991) specifically informed the committee that its receipt of the interim audit report satisfied the notification requirement.

Emphasizing that both the Dukakis and Simon committees were "repeatedly notified, both formally and informally, that a repayment would be due," the Commission said that "the public funding system would be undermined" if the committees' arguments prevailed, since a campaign could "avoid its repayment obligation entirely merely by using stalling tactics to delay the conclusion of the Commission's audit."

The Commission pointed out that the committees' arguments "essentially amount to a justification for [their] retaining thousands of taxpayer dollars to which [they] were not entitled or which [they] spent in violation of the law." ♦

<sup>1</sup> The Commission approved the final determinations and their supporting statements of reasons on February 25 (Dukakis) and March 4 (Simon).

<sup>2</sup> Repayment notifications must be made within three years following the end of the matching payment period. 26 U.S.C. §9038(c). The matching payment period for 1988 Democratic candidates ended July 20, 1988.

## Federal Register

Copies of Federal Register notices are available from the Public Records Office.

### 1993-7

Filing Dates for the California Special Election (58 FR 8959, February 18, 1993)

### 1993-8

11 CFR Parts 102 and 110: Multi-candidate Political Committees; Notice of Proposed Rulemaking (58 FR 12189, March 3, 1993)

### 1993-9

11 CFR Part 102: Rulemaking Petition: Citizens Against David Duke; Notice of Availability (58 FR 12189, March 3, 1993)

### 1993-10

Filing Dates for the Wisconsin Special Elections (58 FR 12966, March 8, 1993)

### 1993-11

11 CFR Part 110: Transfers of Funds from State to Federal Campaigns; Revised Implementation Plan for New Rule (58 FR 14310, March 17, 1993)

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