

Record

February 1993

Federal Election Commission

Volume 19, Number 2

Table of Contents

Regulations

- 1 Possible Hearing on "Best Efforts" Rulemaking
- 6 Hearing Held on Definition of Member

Public Funding

- 1 Report on Public Funding

Information

- 4 1992 Presidential Election Results Released
- 4 Tuesday Faxing Service Available

Statistics

- 4 Post-Election National Party Statistics

- 5 Advisory Opinions

Publications

- 7 Revised Allocation Supplement

800 Line

- 7 Party Committee Allocation: Carrying Debts from Previous Election Cycle

- 8 Index

Ohio Special Elections

Ohio has scheduled a March 16 primary and a May 4 general election in the 2nd Congressional District to fill the seat formerly held by Congressman Willis D. Gradison, Jr.

Candidates, party committees and PACs who plan to participate in the elections should call the FEC for information on reporting requirements (800/424-9530 or 202/219-3420).

Regulations

Possible Hearing on "Best Efforts" Rulemaking

The Commission is considering holding a hearing on March 24, 1993, at 10:00 AM, if a sufficient number of persons are interested in testifying on proposed changes to the "best efforts" rules.

Requests to testify at the hearing are due on February 26. Persons requesting to testify must also submit written comments by February 26 if they have not submitted comments in response to the Notice of Proposed Rulemaking. Requests to testify and written comments should be sent to Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW, Washington, DC 20463.

The revisions to the "best efforts" rules (11 CFR 104.7(b)) would require political committees to make a separate and distinct follow-up request for the name, address, occupation and employer of any contributor who gave over \$200 to the committee in a calendar year,¹ even if the original solicitation had included a request for

(continued on page 6)

¹ The Federal Election Campaign Act requires committees to disclose this information as well as the date and amount of the contribution. 2 U.S.C. §434(b)(3)(A).

Public Funding

1992 Chairman Reports on Public Funding; Sounds Warning for 1996

On December 14, the 1992 FEC Chairman, Joan D. Aikens,¹ announced at a press conference that the public funding program had been successfully managed for the 1992 Presidential race, the fifth election under the program. However, she warned that the Presidential Election Campaign Fund will run out of money for the 1996 Presidential election unless Congress takes action.

1992 Elections

The Chairman said that the FEC had originally been concerned that there would be a shortage of public funds for the 1992 Presidential election. However, she explained, "candidates entered the race much later than in previous elections and raised less matchable money, thereby avoiding a potentially ruinous drain on the Fund...." The FEC's early projections had estimated that the 1992 election would cost the Fund \$177 million. By the end of 1992, just

(continued on page 2)

¹ The 1993 Chairman is Scott E. Thomas, as announced in the January 1993 Record.

Public Funding

(continued from page 1)

over \$174 million had been disbursed from the Fund.² The eleven primary candidates who qualified for matching funds received a total of \$41.8 million; the Democratic and Republican conventions received over \$22 million; and the Bush and Clinton general election campaigns each received \$55.24 million.

Chairman Aikens applauded the Commission's staff for producing high-quality work despite a considerable increase in workload generated by both the Presidential and Congressional elections. She also noted that

² The Fund balance at the end of 1992 was estimated to be \$3.7 million.

the FEC has restructured its audit program to allow more effective monitoring of 1992 publicly funded campaigns: "We have increased our audit staff and streamlined other requirements, so we expect the audits of the 1992 campaigns to flow much more smoothly and be completed much more quickly than ever before." In addition, she reported that the FEC will increase its legal enforcement staff, currently 19 attorneys, "to ease our heavy load of more than 350 cases."

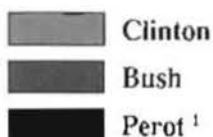
During the press conference, FEC statistician Robert Biersack presented numerous graphs on the financial activity of the 1992 Presidential campaigns. Two of those graphs appear below. His graphs also charted the

Fund balance during the 1992 election and depicted the projected shortfall for the 1996 election.

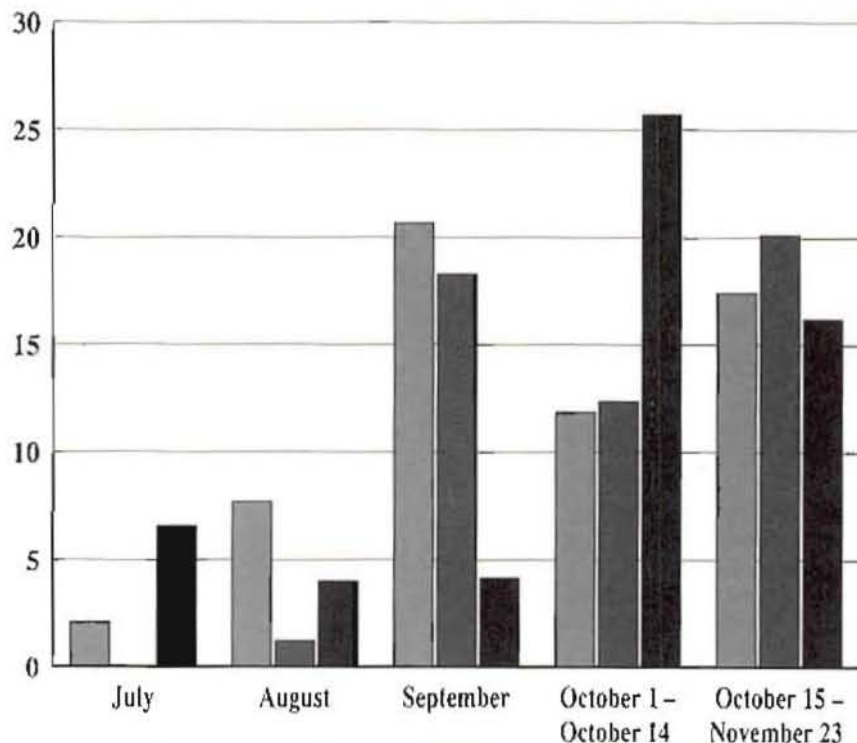
Projections for 1996

With respect to the 1996 public funding program, Chairman Aikens reported that, "under current conditions, there will not be enough money in the Fund to cover all phases. The deficit could be as much as \$100 million." The agency projects a Fund balance of \$124 million for the 1996 election, resulting in a shortfall for the general election nominees and "no money whatsoever for primary candidates." Mrs. Aikens noted that the Commission plans to renew its recommendation that Congress take

Presidential Spending by 1992 General Election Campaigns



Millions of Dollars



¹ H. Ross Perot withdrew from the race on July 15; he reentered on September 30.

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

Scott E. Thomas, Chairman
Trevor Potter, Vice Chairman
Joan D. Aikens, Commissioner
Lee Ann Elliott, Commissioner
Danny L. McDonald,
Commissioner
John Warren McGarry,
Commissioner
Walter J. Stewart, Secretary
of the Senate, Ex Officio
Commissioner
Donnald K. Anderson, Clerk
of the House of Representatives,
Ex Officio Commissioner

John C. Surina, Staff Director
Lawrence M. Noble, General
Counsel

Published by the Information
Division
Louise D. Wides, Director
Stephanie Fitzgerald, Editor
Blake Lange, Graphics Advisor

legislative steps to index the dollar checkoff for inflation³ or to appropriate funds directly to the public funding program. "Without Congressional action," Mrs. Aikens emphasized, "the public funding system will not prevail in the form we have known for the last 16 years."

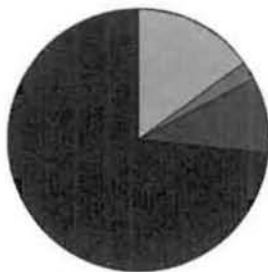
Dollar Checkoff

The sole source of money for the public funding program is the one-dollar checkoff on income tax forms. Chairman Aikens said that, in the face of a 10-year decline in taxpayer participation in the program, the agency conducted a modest nationwide education program during the 1991 and 1992 tax seasons. Two public service announcements explained how public funding works and encouraged taxpayers to make an informed choice when filling out their tax returns. "Nonetheless, participation in the checkoff continues to decline," Mrs. Aikens reported. "The participation rate reached a high of 28.7 percent for the 1980 tax returns. It has declined ever since and, this tax year, will likely be below 19 percent. Preliminary figures show that only about \$30 million was deposited in 1992; that is \$2 million less than in 1991."

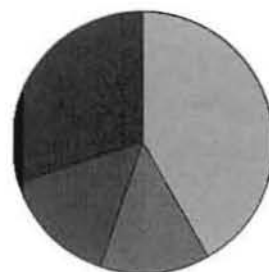
The Chairman said that, in 1993, the FEC "will not produce another public service announcement because, at this point, legislative changes are necessary if the [public funding] program is to survive. Instead, we will turn our attention to the very real possibility of Congressional action and, in anticipation of such action, prepare an extensive report on the history of the public funding process." ♦

**Presidential Fundraising by 1992 Primary Campaigns:
Contributions from Individuals by Size of Contribution**

Bush (\$27.1 million)



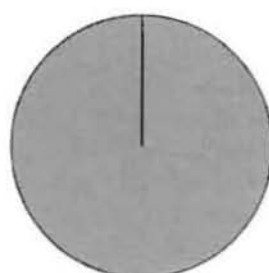
Clinton (\$25.17 million)



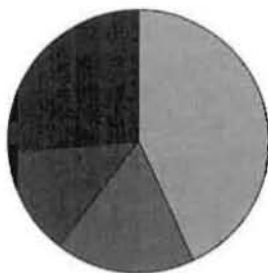
Buchanan (\$7.02 million)



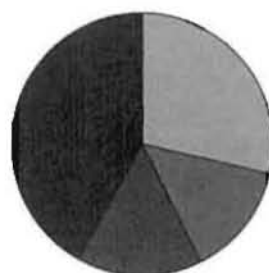
Brown (\$5.18 million)



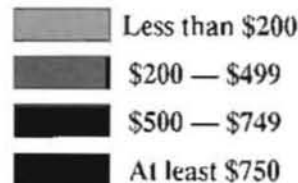
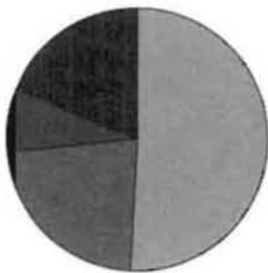
Tsongas (\$4.93 million)



Kerrey (\$3.81 million)



Harkin (\$2.95 million)



³ The checkoff has remained at one dollar since taxpayer funds were first collected for the program in 1973. By contrast, the convention and general election grants are indexed to inflation.

Information

1992 Presidential Election Results Released

A January 14 press release lists the official vote counts for the Presidential candidates on the ballot in the November 3, 1992, general election.¹ The results show that Bill Clinton received almost 43 percent of the total votes cast; George Bush, 37.4 percent; and Ross Perot, almost 19 percent. To order a copy of the press release, call 800/424-9530 (ask for Public Records) or 202/219-4140.

Based on certified results, a total of 104,552,736 Americans voted in the 1992 general election. These voters represented 55.9 percent of the estimated 187 million Americans who were 18 years or older as of July 1, 1991, the most recent voting age population (VAP) figure available from the Bureau of the Census. (There is no official record of the total number of registered voters.) According to the press release, the 1992 voter turnout percentage was the highest in a Presidential election since 1968.

Almost 13 million more Americans voted for the President in the 1992 general election than in the 1988 election, when the voter turnout was 91,594,693, a little over 50 percent of the VAP.

The press release lists the state-by-state and total votes cast for the 23 Presidential candidates who were on the ballot in one or more states. Only Bill Clinton, George Bush, Ross Perot and Andre Marrou were on the ballot in all 50 states. The release also lists the number of write-in votes.

In coming months, there may be minor changes to the voting results. The FEC will issue final results this summer when it publishes *Federal Elections 92*. The publication will include House and Senate results. ♦

¹ For the primary results, order a free copy of 1992 Presidential Primary Election Results from the Public Records Office.

Tuesday Faxing Service Now Available

The Public Records Office is now offering a Tuesday afternoon faxing service to those who wish to receive certain information on a regular basis. Each Tuesday preceding a Thursday Commission meeting, the Public Records Office will transmit the following documents (consisting of about 3 or 4 pages) after 2:00 PM:

- The agenda for the upcoming meeting;
- A list of any new advisory opinion requests made public during the week; and
- Any new press releases listing recently closed compliance cases (Matters Under Review or MURs) that have been made public.

If you request this service, please keep in mind that, in order to provide efficient service to multiple requesters, your transmission will not be addressed to a specific person. The charge is \$2.00 per transmission.

As reported in the January 1993 *Record*, the office will also fax any requested FEC documents, such as campaign finance reports, up to a 20-page limit, at a charge of \$2.00 plus the regular charge for reproducing documents.

In order to receive any fax transmissions from the Public Records Office—including the regular Tuesday transmission—you must first set up an account with the office by mailing a check or money order for at least \$25 (made out to the Federal Election Commission) to: Public Records Office, Federal Election Commission, 999 E Street, NW, Washington, DC 20463. Please include the name, address and phone number of the contact person for the account.

If you wish to sign up for the Tuesday faxing service, send a letter requesting the service and authorizing deductions from your Public Records account. Include your fax number (with area code) and an alternative fax number, if available. Mail the letter

(address given above) to the attention of Andrea Cromwell, who can also answer your questions on the service. She can be reached at 800/424-9530 (ask for Public Records) or 202/219-4140. ♦

Statistics

Post-Election National Party Statistics

As of November 23 (20 days after the November election), the Republican national committees¹ surpassed their Democratic counterparts in federal fundraising by \$85 million. At the same point during the 1990 and 1988 election cycles, the Republicans led by \$130 million and \$101 million respectively.

Between January 1, 1991, and November 23, 1992, the Republican national committees raised \$187.3 million for their federal accounts and spent \$180.6 million, while the Democratic committees raised \$102.6 million and spent \$100 million. The Republicans gave \$2.5 million in federal contributions and spent \$32 million in coordinated party expenditures (which support federal candidates running in the general election). The Democrats spent \$1.6 million in contributions and \$25.5 million in coordinated expenditures.

The graph on page 5 compares the federal receipts of the Democratic National Committee and the Republican National Committee at different points in the 1991-92 election cycle.

With respect to their nonfederal receipts, as of November 23 the Republicans had raised \$51.4 million (22 percent of their overall receipts, federal and nonfederal) and the Democrats, \$36.3 million (26 percent

¹ Each party has three national-level committees: the national committee and the House and Senate campaign committees.

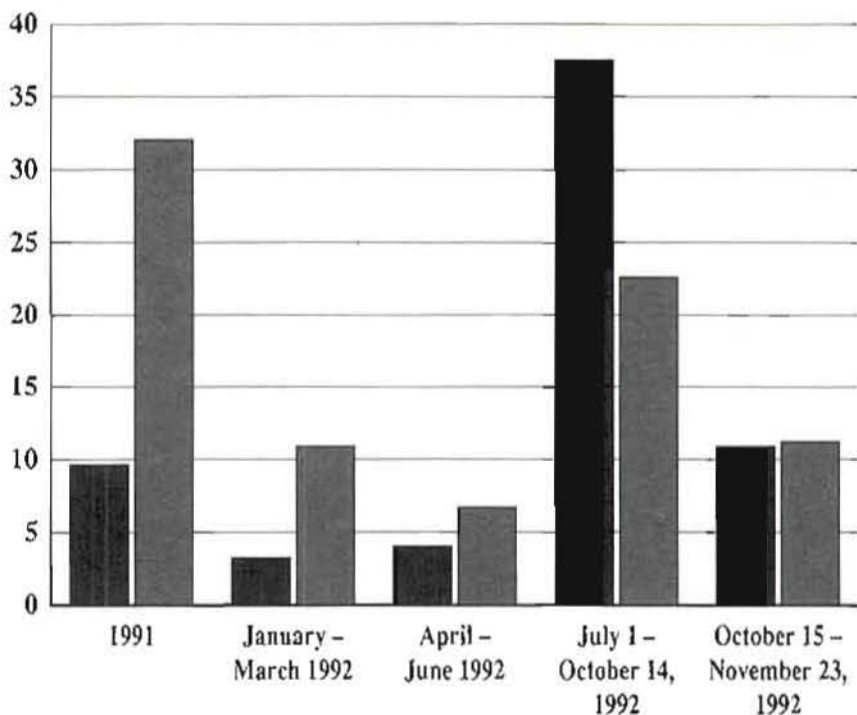
of their total receipts). The 1991-92 election cycle was the first cycle when national party committees had to report their nonfederal activity. Nonfederal accounts contain "soft money," that is, money raised outside the limits and prohibitions of the federal campaign finance law. These funds are used to influence state and local elections and to pay for the nonfederal portion of activities that influence both federal and nonfederal elections.

A press release issued December 14, 1992, provides further statistics on the federal and nonfederal activity of the national party committees as of November 23. Comparable data are given on federal activity in previous election cycles. To order the release, call 800/424-9530 (ask for Public Records) or 202/219-4140. ♦

Federal Account Receipts of DNC and RNC¹ During 1992 Election Cycle

■ DNC Federal Receipts
 ■ RNC Federal Receipts

Millions of Dollars



¹ DNC is the Democratic National Committee; RNC is the Republican National Committee.

Advisory Opinions

AO 1992-40 Commissions Earned by State Party Committees

Commissions earned by state party committees for recruiting party supporters as customers for Leading Edge Communications, Inc. (LEC), which sells discounted long-distance telephone services, would be considered prohibited corporate contributions from LEC.

Under LEC's proposal, a state party committee would sign up customers for the company, which would pay the committee a commission consisting of a percentage of each recruited customer's monthly long-distance

phone bill. Past advisory opinions have considered similar situations—the use of committee assets (in this case, party goodwill and the identification of party supporters) to generate income through ongoing business ventures. Those opinions concluded that such activities are a form of fundraising and result in contributions to the committee. See AOs 1991-34, 1990-3 and 1988-12.

In AO 1988-12 and AO 1979-17, the Commission specifically rejected proposals under which banks, in marketing credit card services, would pay commissions to party committees in exchange for access to the party's membership list and the use of the party's name and goodwill. The opinions concluded that the commissions would be prohibited contributions from the banks. LEC's proposal closely resembles those opinions, and LEC's commissions would likewise be considered prohibited corporate contributions from LEC under 2 U.S.C. §441b.

Party committees that do not have federal accounts may participate in LEC's proposal, subject to state or local law. Party committees with both federal and nonfederal accounts may also participate if the commissions are placed in their nonfederal accounts (subject to state or local law) and if the funds are not used to influence federal elections or to pay the federal share of the committees' administrative and fundraising costs. See 11 CFR 102.5(a) and 106.5(b); see also AOs 1991-34 and 1986-40.

Date Issued: December 11, 1992;
 Length: 5 pages. ♦

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 1993-1

Campaign's rental of storage unit from candidate. (Congressman Dan Burton, January 8, 1993, 1 page) ♦

Regulations

(continued from page 1)

this information. The requirement would apply to both solicited and unsolicited contributions lacking the necessary contributor information.

The proposed changes would also require treasurers to report information that was known to them but not provided by the contributor. Moreover, the revisions clarify the existing requirement that treasurers must amend reports upon obtaining missing contributor information.

The Commission is especially interested in testimony on whether the proposals would be excessively burdensome or whether they would provide a workable method of ensuring complete public disclosure of contributor information. In addition, the agency welcomes testimony on the timing of amended reports containing this information.

The Notice of Public Hearing was published in the Federal Register on January 13, 1993 (58 FR 4110). This notice and the Notice of Proposed Rulemaking (57 FR 44137, September 24, 1992) may be ordered from the Public Records Office. Call 800/424-9530 (ask for Public Records) or 202/219-4140. ♦

Hearing Held on Definition of Member

At a December 9, 1992, hearing, the Commission heard testimony from 11 membership groups and one individual on proposed revisions to the regulations that define who qualifies as a member of a membership association. The revisions would require membership associations to satisfy certain requirements in order for their individual members to be eligible to receive solicitations from the organization's separate segregated fund or to receive partisan communications from the organization. The proposed changes reflect a 1982 Supreme Court opinion, *Federal Election Commission v. National*

Right to Work Committee (NRWC), as well as several FEC advisory opinions.

In addition to comments made at the hearing, the agency received 30 written comments on the proposed rules, which would revise 11 CFR 100.8(b)(4)(iv) and 114.1(e).

A transcript of the hearing is available from the FEC's Public Records Office at a cost of \$15.20. The written comments and the Notice of Proposed Rulemaking¹ are also available. To order, call 800/424-9530 (ask for Public Records) or 202/219-4140.

Proposed Revisions

The proposed revisions would require a membership association² to specifically provide for members in its articles and bylaws. Moreover, the association would have to expressly solicit individuals to become members and expressly acknowledge a person's acceptance of membership, such as by sending a membership card or placing the person's name on a newsletter mailing list.

The member, in addition to satisfying the association's requirements for membership (current regulation), would have to affirmatively accept the membership invitation and meet one of the following three qualifications:

1. The obligation to pay dues on a regular basis coupled with the right to vote either (a) directly for a majority of the officers or directors

- or (b) for those who select a majority of the officers or directors.
2. The right to vote directly for all of the association's officers or directors.
3. A significant financial attachment to the organization (not counting dues), such as a substantial investment or ownership stake.

Testimony

The National Rifle Association of America generally agreed with the proposed rules but advocated a stricter definition of member, such as a requirement that members have nomination as well as voting rights. The witness also said that dues payments should be a mandatory element for all members, regardless of their other financial ties or organizational ties.

By contrast, witnesses representing several membership groups—the American Society of Association Executives, the National Association of Social Workers, the National Right to Life Committee, Inc., and the National Right to Work Committee—testified that the proposed definition of member was too narrow. The witnesses were generally concerned about the voting rights requirement, which they believed went beyond the requirements of the Supreme Court's ruling in *NRWC*. This view was also held by William J. Olson, an attorney whose firm advises membership groups. The National Right to Work Committee representative and some of the other witnesses proposed that each membership organization be allowed to set its own membership standards (that is, retain the current rule).

A number of cooperatives urged the Commission to change the rules to allow indirect or "third tier" members of federated cooperatives to qualify as members, in addition to the "second tier" members included in the proposed rule. Testifying on this issue were representatives of the Indiana Farm Bureau, Inc., KAMO Power, Land O'Lakes and the National Council of Farmer Cooperatives.

¹ *The Notice of Proposed Rulemaking was published in the Federal Register on October 8, 1992 (57 FR 46346).*

² *The proposed rules would define a membership association to include a membership organization, trade association, cooperative or corporation without capital stock. The proposed rules would also define a labor organization as a membership association but would continue to consider individual members of a local union as members of any affiliated national or international union and as members of any federation affiliated with the local, national or international union.*

Finally, representatives of the Chicago Board of Trade and the Chicago Mercantile Exchange supported the proposed definition of member, which they believed would confer membership status on all their members. Both of these organizations have multiple categories of owned and leased memberships, each with varying financial attachments and voting rights.

The Commission will consider the testimony and written comments when developing final rules. ♦

Publications

Revised Allocation Supplement

The Commission recently published a *Revised Supplement on Allocation*, which explains the rules for allocating expenses that jointly benefit both federal and nonfederal candidates and elections. Updating the original November 1990 supplement, the new supplement highlights the 1992 changes to the allocation regulations. These changes appear in boldface.

As the publication explains, the allocation rules apply to political committees (specifically, party committees, nonconnected committees and separate segregated funds) that maintain federal and nonfederal accounts. The rules also apply to organizations that are not political committees (as defined under the Federal Election Campaign Act) but that make disbursements in connection with both federal and nonfederal elections.

The revised supplement explains which expenses have to be allocated, how to allocate them and how to report allocated expenses. The reporting section includes samples of completed forms to illustrate the reporting rules and, like the other material, incorporates the 1992 regulatory changes.

The supplement was sent to the treasurers of registered party committees and nonconnected committees. Anyone may order a free copy using the form below. ♦

800 Line

Party Committee Allocation: Carrying Debts from Previous Election Cycle

January 1, 1993, was the start of a new two-year federal election cycle for allocation purposes. State and local party committees subject to the allocation rules had to recalculate their ballot composition ratios for the new cycle. This ratio is the allocation method used by state and local party committees to determine the federal and nonfederal shares of their administrative expenses and generic voter drive costs.¹

The ballot composition ratio is based on the number of federal offices to total federal and nonfederal offices expected on the ballot in the next general election in the state or geographic area where the committee is located. Only *categories* of federal and nonfederal offices are included in the ratio. For more information on allocation, including an explanation of how to calculate the ballot composition ratio, consult 11 CFR 106.5(d) and the *Revised Supplement on Allocation* (see previous article).

For some state and local party committees, the ballot composition ratio for the current election cycle, 1993-94, may be the same as that used in the previous cycle, 1991-92. This article, however, focuses on those committees whose ballot composition ratios changed for the current cycle. For them, the question arises: When making payments to

(continued on page 8)



Order Form: Revised Supplement on Allocation

Send your order to: Federal Election Commission
Information Division
999 E Street, NW
Washington, DC 20463

Name _____

Organization _____

Address _____

City _____

State _____

Zip Code _____

Number of Copies _____

Phone Number * _____

* If ordering more than 25 copies, please include your phone number.

¹ Committees located in states holding federal and nonfederal elections in separate years allocate generic voter drive costs according to a ballot composition ratio calculated for the year in which the election is held. Administrative costs, however, are allocated based on the ballot composition ratio calculated for the two-year federal election cycle, 11 CFR 106.5(d)(2).

800 Line*(continued from page 7)*

retire a debt incurred in the previous election cycle for an administrative expense, which ballot composition ratio should be used to allocate the payments—the ratio for the previous cycle or the ratio for the current cycle?

The answer is that committees must use the ratio for the election cycle in which the goods or services were received. AO 1991-6, note 5.

For example, a committee incurred a debt during the previous election cycle by contracting for a computer system but did not receive delivery until the start of the current cycle. Therefore, payments to retire the debt would be allocated using the ballot composition ratio for the current cycle.

If, however, the committee had received delivery before the end of the previous cycle, the ballot composition ratio for that cycle would be applied to any debt retirement

payments made during the current cycle. When reporting such payments on Schedule H4, the committee would have to note that the disbursement related to goods or services received in the previous election cycle. ♦

Index

The first number in each citation refers to the "number" (month) of the 1993 *Record* issue in which the article appeared. The second number, following the colon, indicates the page number in that issue.

Advisory Opinions

- AO 1992-38: Loan from Presidential campaign's legal and compliance fund to public funding account, 1:6
 AO 1992-40: Commissions earned by state party committees, 2:5

Court Cases

- FEC v. _____
 – International Funding Institute, 1:2
 _____ v. FEC
 – Common Cause (92-2538), 1:8
 – Lyndon H. LaRouche (92-1555), 1:8
 U.S. Senator John Seymour Committee v. Dianne Feinstein, 1:8

Reporting

Schedule for 1993, 1:3

800 Line Articles

Party committee allocation: carrying debts from previous election cycle, 2:7

FEDERAL ELECTION COMMISSION
 999 E Street, NW
 Washington, DC 20463

Official Business

First Class Mail
 Postage and Fees Paid
 Federal Election Commission
 Permit Number G-31

