# Record

*September 1994* *Federal Election Commission* *Volume 20, Number 9*

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## Regulations

### FEC Seeks Comments on Revised Personal Use Rules

The Commission seeks public comment on a revised version of proposed regulations implementing the prohibition on the personal use of campaign funds (2 U.S.C. §439a). The agency redrafted the rules, reflecting comments made on the first set of proposed regulations, published in August 1993, and testimony presented at a January 1994 public hearing.

The revised proposed rules were published in the Federal Register on August 17 (59 FR 42183). Comments must be submitted in writing by October 3. They should be sent to Susan E. Propper, Assistant General Counsel, 999 E Street, NW, Washington, DC 20463.

The Commission expects to approve final personal use regulations in time for them to become effective early in the 1995-96 election cycle.

#### Definition of Personal Use (11 CFR 113.1(g))

Under the revised rules, personal use would be any use of campaign funds conferring a benefit on a candidate or a member of the candidate's family—a benefit that was not primarily related to the

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## Compliance

### Foreign National Donors Pay $160,000 in Penalties

At an August 3 press conference, FEC Chairman Trevor Potter announced that an investigation into campaign contributions by foreign nationals resulted in civil penalties totaling $162,225 against 26 contributors. The investigation uncovered more than $300,000 in illegal donations made to over 140 Hawaiian state and local campaigns during four election cycles. The FEC sent out letters of admonishment to recipient campaigns and party committees telling them to refund the illegal donations or otherwise rid their accounts of the money. The investigation stemmed from three complaints eventually merged into Matter Under Review (MUR) 2892.

"For many years," the Chairman explained, "it has been illegal for any foreign national, whether an individual, corporation or government, to make a contribution of money or any other thing of value to any U.S. candidate. This is one of the few prohibitions in the federal election laws that applies to candidates at every level of government in this country—state and local as well as federal."

The illegal donors in MUR 2892 were, for the most part, U.S. corpo-

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## Regulations

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candidate's campaign or, in the case of an incumbent, to the ordinary and necessary duties of a federal officeholder. ( "Federal officeholder," in this context, means a Member of Congress, the President or the Vice President. 2 U.S.C. §431(3); 11 CFR 113.1(c).)

Under the proposed rules, the Commission would use the same definition in determining whether the use of campaign funds to confer a benefit upon someone other than the candidate or the candidate's family would result in personal use.

The proposed rules apply the personal use definition to several situations, highlighted below.

- *Campaign Salary Paid to Candidate or Family Member.* The rules would prohibit the payment of a campaign salary to the candidate but would permit a member of the candidate's family to be paid a campaign salary not exceeding the fair market value of the services provided.
- *Campaign's Rental of Candidate-Owned Property.* A campaign could rent property owned by the candidate or a member of the candidate's family if the payments did not exceed fair market value and if the property were not being used as the personal residence of the candidate or one of his or her family members.
- *Candidate's Personal Living Expenses.* Use of campaign funds to pay the candidate's personal living expenses (e.g., mortgage or rent, groceries, clothing, tuition, legal expenses) would be prohibited unless the expenses were primarily related to the campaign or to federal officeholder duties.
- *Third-Party Payment of Candidate's Personal Expenses.* If someone other than the campaign were to pay such expenses, the payments would be considered contributions, subject to the contribution limits, unless: (1) the payments were made from an account held jointly by the candidate and a family member; or (2) the payments were made irrespective of candidacy and had been made before the individual became a candidate; or (3) the payments were donations to a legal expense trust fund established under House or Senate rules.
- *Candidate's Purchase of Campaign Assets.* A candidate or a member of his or her family could purchase campaign assets at fair market value plus an allocated portion of any depreciation.
- *Definition of Family Member.* For purposes of the personal use rules, members of a candidate's family would include his or her spouse, children, parents, grandparents, siblings and in-laws. An individual having a committed relationship with the candidate would also be considered a family member.
- *Combined Personal and Campaign Travel.* The rules would require a person who combined personal travel with campaign or officeholder travel to reimburse the campaign for personal expenses within 30 days.
- *Personal Use of Campaign Vehicle.* Reimbursement for personal use of a campaign vehicle would also have to be made within 30 days (but no reimbursement would be necessary if the expenses were *de minimis).*
- *Donations to Charity.* A campaign would be permitted to donate funds to a section 170(c) charity unless the candidate received compensation from the charity before it had spent the donation for expenses unrelated to the candidate's personal benefit.
- *Expenses Under House and Senate Rules.* The rules would permit the campaign to pay "political expenses" under U.S. House rules or "officially connected expenses" under U.S. Senate rules as long as the expenses were expenditures under 11 CFR 100.8 or ordinary and necessary expenses incurred in connection with federal officeholder duties.

### Officeholder's Use of Excess Campaign Funds (11 CFR 113.2)

The proposed rules would permit the use of *excess* campaign funds to defray officeholder expenses, including the expenses of travel related to officeholder duties and the costs of winding down the Congressional office of a former Member.

### Additional Comments Sought on Recordkeeping and Reporting

The Commission received comments and testimony suggesting that more complete disclosure of campaign expenditures would be useful in enforcing the personal use ban. The FEC invites comments on how the reporting requirements or, alternatively, the recordkeeping requirements could be amended to promote compliance without unduly burdening campaign committees. ✦

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## Compliance

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rations owned by Japanese parent companies[1] or by Japanese and Korean individuals. The donations violated the foreign national prohibition because they were financed by the foreign parent/owner or because individual foreign nationals were involved in making decisions concerning the contributions. In addition to these contributions, foreign funds were donated by Japanese corporations and foreign individuals.

Chairman Potter said that the FEC highlighted this case, not to target a particular state or nationality—the FEC is pursuing foreign contribution allegations in other states—but to focus attention on the foreign national prohibition, which "is not as widely known and understood as it should be...especially in the foreign business community." He announced the publication of a new FEC brochure on the foreign national prohibition (see box). The brochure was sent to state election offices, U.S. subsidiaries of foreign corporations, foreign-owned U.S. corporations and Washington embassies. ✦

[1] *Hawaii law permits corporations to contribute to nonfederal campaigns.*

## FEC Targets Higher-Priority Enforcement Cases

On July 6, the Commission announced that it had closed 29 lower-priority enforcement cases[1] in order to focus resources on more significant cases placed on a fast track. In a related development, the agency released figures showing a surge in the amount of civil penalties respondents have agreed to pay in FEC enforcement cases.

(FEC enforcement cases are also called MURs or Matters Under Review. They are initiated by the FEC and through outside complaints and referrals.)

In December 1993, the Commission adopted an enforcement prioritization system to come to grips with a burgeoning caseload involving multiple respondents and complex financial transactions. Previously, the agency had pursued all cases but found that it was taking too long to resolve them. Under the new system, the FEC targets its limited investigative resources on cases that are considered higher priority. Some of the factors the Commission considers in rating cases are:

- Whether there was knowing and willful intent to violate the law;
- The apparent impact of the alleged violation on the election process;
- The amount of money involved;
- The age and timing of the violation; and
- Whether the case involved a particular area of the law that needs attention (such as foreign national contributions).

Based on these and other factors, the Commission pursues a wide range of cases, both large and small, in different areas of the law. Lower-priority cases may be pursued as time and resources permit, or the Commission may decide—as it did in the 29 cases recently closed—that some cases do not warrant the time and expense of an investigation. The net benefit of the new approach is to resolve the significant cases as quickly as possible.

The Commission adopted the new system to provide for more effective enforcement and thus deter violations of the campaign finance law. To this end, the agency has also toughened its policy on civil penalties, as reflected in the table. ✦

*(Compliance continued on page 4)*

[1] *The 29 cases are listed in a July 6 FEC press release available from the Public Records Office. Call 800/424-9530 (press 3 if using a touch tone phone) or 202/219-4140.*

## Foreign Nationals, a New Brochure

The FEC recently published *Foreign Nationals,* an easy-to-read brochure that explains the foreign national prohibition. That prohibition applies to contributions and expenditures made by foreign nationals in connection with any United States election to political office, local state or federal. The brochure discusses:

- Contributions from PACs sponsored by foreign-owned U.S. businesses and U.S. subsidiaries of foreign corporations;
- Nonfederal contributions made directly by those corporations and businesses; and
- Foreign-national involvement in ballot issues and other political activity not connected with any election to political office.

To order a free copy, use the form on page 15. Or, you can have the brochure faxed to you through Flashfax. Call 202/501-2413 from a touch tone phone and enter 324, the document number of the brochure.

## Penalties Imposed in MURs

| Fiscal Year | Number of Cases[1] | Amount |
|---|---|---|
| FY 1986 | 161 | $175,830 |
| FY 1987 | 145 | $301,165 |
| FY 1988 | 168 | $271,780 |
| FY 1989 | 157 | $428,225 |
| FY 1990 | 161 | $227,900 |
| FY 1991 | 220 | $429,862 |
| FY 1992 | 165 | $265,403 |
| FY 1993 | 87 | $572,599 |
| FY 1994[2] | 62 | $695,804 |

[1] *Includes only those cases that resulted in civil penalties.*

[2] *Through July 1994.*

## Compliance

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### MUR 3418
### '84 Glenn Presidential Campaign to Pay $65,000 for Failing to Report Interest

The 1984 John Glenn Presidential Campaign agreed to pay a $65,000 civil penalty for failing to report accumulated interest on bank loans made in connection with his 1984 Presidential campaign. The penalty was included in a conciliation agreement signed by the campaign on June 6, 1994. The violations came to the Commission's attention through a complaint filed in September 1991.

In February 1984, the campaign received loans totaling $2 million from four Ohio banks. Between 1986 and 1991 the unpaid interest on the loans had accrued to $779,594, but the campaign failed to disclose the interest as outstanding debts in its FEC reports file during that period. 2 U.S.C. §434(b)(8).

The campaign should have reported the accrued interest owed to each bank on Schedule D-P, the debt schedule for Presidential campaigns. The law requires continuous reporting of debts each reporting period until they are repaid. 11 CFR 104.11(a) and (b).

In addition to payment of the $64,000 penalty, the conciliation agreement required the campaign to file amended forms to report the accrued interest owed to the four Ohio banks. ✦

### MUR 3816
### Failure to File 48-Hour Notices on Candidate Loans Results in $20,000 Penalty

The Gwen Margolis Campaign Fund agreed to pay a $20,000 civil penalty for failing to file 48-hour notices disclosing $200,000 in contributions in the form of loans from the candidate.

Gwen Margolis, a 1992 candidate for Congress, loaned her campaign committee $75,000 on October 19, 1992, and another $125,000 on October 29. Both loans were subject to 48-hour reporting. The committee reported the loans in its 30-day post-general report but failed to file a 48-hour notice for either loan.

The federal campaign finance law requires candidate committees to file 48-hour notices on contributions of $1,000 or more—including loans[1]—if the contributions are received after the 20th day but more than 48 hours before the election. The notice must reach the state and federal filing offices within 48 hours after the committee's receipt of the contribution. 2 U.S.C. §434(a)(6)(A). (See "48-Hour Notices," page 6.)

Under the terms of the conciliation agreement, the committee agreed to pay $5,000 of the penalty initially and to complete payment in 20 monthly installments. ✦

## Nonfilers Published

The candidate committees listed below failed to file required campaign finance reports. The list is based on the FEC press releases of May 20, June 3, June 24, July 15 and July 29. The Commission is required by law to publicize the names of nonfiling authorized committees. 2 U.S.C. §438(a)(7). The agency pursues enforcement action against nonfilers on a case-by-case basis. ✦

| Candidate | Office Sought | Report Not Filed |
|---|---|---|
| Bush, James | House, GA/02 | Pre-Primary |
| Carroll, Steven | Senate/MO | Pre-Primary |
| Curtis, Ronald L. | House, CA/41 | Pre-Primary |
| Dinsmore, Robert | House, CA/05 | April Quarterly<br>Pre-Primary |
| Farrell-Donaldson, Marie | House, MI/14 | Pre-Primary |
| Hollowell, Jr., Melvin | House, MI/14 | Pre-Primary |
| Hume, Joe | House, KS/02 | Pre-Primary |
| Kelly, John | Senate, MI | July Quarterly |
| Lesser, Roger | House, MD/08 | July Quarterly |
| McFarland, Douglas | Senate, MN | July Quarterly |
| McInnish, Hugh | House, AL/05 | Pre-Runoff |
| Olson, Gen | Senate, MN | July Quarterly |
| Rappaport, Jon | House, CA/29 | Pre-Primary |
| Todd, Gary | Senate, MA | July Quarterly |
| Wills, Matthew | House, KY/06 | Pre-Primary |

## MURS Released to the Public

Listed below are FEC enforcement cases (Matters Under Review or MURs) recently released for public review. They are based on the FEC press releases of May 31 and June 3, 21 and 24, and July 11. Files on closed MURs are available for review in the Public Records Office.

### MUR 3175

**Respondents:** (a) Mary C. Bingham (KY); (b) DNC Services Corporation/Democratic National Committee, Robert T. Matsui, treasurer (DC); (c) Democratic Senatorial Campaign Committee, G. Wayne Smith, Treasurer (DC)

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[1] *Bank loans, however, are not considered contributions if made in the ordinary course of business, but endorsements and guarantees of bank loans are considered contributions.*

# Letters

## Commission Asks Parties to Inform Contributors About $25,000 Limit

On July 21, the Chairman and Vice Chairman of the Federal Election Commission sent a letter to the chairs of the national committees of the two major parties,[1] asking for their assistance in helping contributors avoid exceeding their $25,000 annual limit. Under the election law, individuals may not give more than $25,000 annually in total contributions to candidates and political committees. 2 U.S.C. §441a(a)(3).

### Application of Annual Limit

The letter asked the committees to inform individual donors that when they contribute to a candidate, the contribution counts against the contributor's annual limit for the year in which the candidate seeks election, regardless of the year in which the contribution is made. The letter goes on to explain that, by contrast, an individual's contribution to a party committee or a PAC counts against the annual limit for the year in which the contribution is actually made (provided that the contribution has not been earmarked for a particular candidate whose election falls in a different calendar year).

### Joint Contributions

With regard to joint contributions (using a single check or other written instrument), the letter pointed out that both donors must sign the check or an accompanying written statement in order for the contribution to be split between them. Without both signatures, the entire amount of the contribution counts against the annual limit of the individual who signs the check or equivalent instrument.

### Contributions to Federal and Nonfederal Accounts

The letter further explained that when a political committee deposits, into its federal account, contributions that were intended for the nonfederal account, such deposits will be aggregated with other contributions made by the same donor during the same calendar year to federal committees. If the total amount exceeds $25,000, the misdeposits can create the appearance that the contributor exceeded his or her annual limit.

To avoid this situation, the Commission alerted committees to the rules governing deposits into federal accounts. 11 CFR 102.5(a)(2) and (3). The letter also suggested that political committees encourage their contributors to indicate the intended purpose of their contributions—federal or nonfederal—on the check or in an accompanying note. ✦

[1] *The letters were sent to the Democratic and Republican national committees, House campaign committees and Senate campaign committees.*

# Information

## New Service for TDD Users Broadens Telephone Access to Federal Agencies

Individuals with speech and hearing impairments now have greater access to federal agencies through a new telephone service called the Federal Information Relay System (FIRS). The new service allows individuals using TDDs (telecommunication devices for the deaf)[1] to call federal agencies and employees—or receive calls from them—by means of an intermediary "agent" who relays the conversation between the TDD user and the voice user.

TDD and voice users can call FIRS at 800-877-8339 from 8 AM to 8 PM, Monday through Friday.

The system works this way: A TDD user calls FIRS and gives the agent the phone number of the federal employee to be called. The agent makes the call on a separate line. The conversation can then begin. The agent reads aloud the words of the TDD user and keyboards the words of the voice user.

Here are some tips about using FIRS. Before calling, make sure you have the phone number you want (including area code) ready to give to the agent. When the agent connects your call, direct your conversation to the other party as if the agent were absent. Do not make comments to the agent during your conversation because they will be relayed to the other party. Voice users should speak in a slow and clear manner. If you have to leave a message, you may want to note that you are calling through FIRS.

The system enables federal employees to conduct business more effectively with the hearing and speech impaired community and broadens access for community members to federal government jobs and advancement opportunities.

To order a brochure on FIRS, call the FEC's Information Division, 800/424-9530 (press 1 if using a touch tone phone) or 202/219-3420. The FEC is open from 9 AM to 5:30 PM. ✦

*(Information continued on page 14)*

[1] *A TDD user communicates using a keyboard and screen.*

# Reports

## Upcoming Reports

To find out your committee's reporting obligations from October 1994 through January 1995, refer to the accompanying table and chart.

To assist committee treasurers—who must sign reports and are held responsible for filing reports on time—the FEC sends them notices of upcoming deadlines. Treasurers who rely on someone else to complete the committee's reports should immediately forward reporting notices (with enclosed forms) to that person.

For further information, call the Information Division: 800/424-9530 (press 1 if using a touch tone phone) or 202/219-3420.

### Where to File

Treasurers must file original reports with the appropriate federal office (FEC, Clerk of the House or Secretary of the Senate) and simultaneously file copies with the appropriate state filing offices. See the instructions on the back of FEC forms. A list of state filing offices is available through the FEC's Flashfax service. Call 202/501-3413 and enter document code 303.

### 48-Hour Notices on Contributions

- *Who Must File.* Authorized committees of candidates in the November 8 general election, including unopposed candidates.
- *When Filing Is Required.* When the committee receives a contribution of $1,000 or more **between October 20 and November 5**. The requirement applies to all types of contributions, including in-kind, personal loans, endorsements and guarantees of bank loans and contributions (of any type) made by the candidate.
- *When to File.* The notice must reach federal and state filing offices within 48 hours of the committee's receipt of the contribution. 11 CFR 104.5(f). Forty-eight hour notices (but **not** other reports) may be faxed. Fax numbers: Clerk of the House–202/225-7781; Secretary of the Senate–202/224-1851.
- *What to File.* Form 6 or a statement containing the same information.
- *Subsequent Reporting.* Contributions must be disclosed a second time in the 30-day post-general election report.

## What Reports to File, October 1994 Through January 1995

| | Quarterly | Monthly | 12-Day Pre-General | 30-Day Post-General | Year-End |
|---|---|---|---|---|---|
| **House and Senate Campaigns of 1994 Candidates** *(see "48-Hour Notices")* | ✓ (October) | | ✓ and ✓ required if candidate runs in November 8 general election, even if unopposed | | ✓ |
| **Other House and Senate Campaigns** | | | | | ✓ |
| **Presidential Campaigns**[1] | ✓ (October) or | ✓ (Oct. – Dec.) | | | ✓ |
| **PACs and Party Committees Filing Monthly** *(see "24-Hour Reports")* | | ✓ (October) | ✓ and ✓ filed in lieu of November and December monthly reports | | ✓ |
| **PACs and Party Committees Filing Quarterly** *(see "24-Hour Reports")* | ✓ (October) | | ✓ required if committee makes contributions or expenditures to influence the November 8 election during the pre-general reporting period[2] | ✓ must be filed regardless of activity | ✓ |

[1] *Presidential committees that wish to change their filing frequency during 1994 should notify the Commission in writing.*

[2] *The reporting period extends from the closing date of the last report through October 19. If the last report was the October quarterly, the reporting period would cover October 1 though October 19.*

### 24-Hour Reports on Independent Expenditures

- *Who Must File.* PACs and other persons who make independent expenditures supporting or opposing candidates in the November 8 election.
- *When Filing Is Required.* When the committee or person makes an independent expenditure of $1,000 or more (by itself or aggregated with other independent expenditures made to the same payee) **between October 20 and November 6.** The requirement also applies to written contracts to make independent expenditures, even if unpaid.
- *When to File.* Information must be reported within 24 hours after the independent expenditure is made. The report must be filed with the appropriate federal and state filing offices. See 11 CFR 104.4(c). (Twenty-four hour reports may **not** be faxed.)
- *What to File.* Committees file Schedule E; other persons use Form 5. Alternatively, the committee or person may file a statement disclosing the same information as that reported on the schedule or form.
- *Subsequent Reporting.* Expenditures must be disclosed a second time in the 30-day post-general election report. ✦

## Court Cases

### LaRouche v. FEC (No. 92-1555)

On July 8, the U.S. Court of Appeals for the D.C. Circuit[1] upheld an FEC determination ordering the 1988 LaRouche Presidential campaign to return $109,149 in federal matching funds to the U.S. Treasury.[2]

At issue was the entitlement of a candidate to matching funds after his date of ineligibility (DOI). On May 26, 1988, after receiving less than 10 percent of the vote in two consecutive primaries, Lyndon LaRouche became ineligible to receive matching funds to continue his campaign but was still entitled to matching funds to help defray preexisting net campaign debts of about $330,000. On that basis, the campaign continued to receive matching fund payments through October 1988. However, an FEC audit later found that, by July 22, the campaign had received sufficient post-DOI matching funds and private contributions to satisfy the debt. The agency therefore ordered the campaign to return $109,149 in matching fund payments made after that date. This repayment determination was based on an FEC regulation, 11 CFR 9034.1(b), which states that a candidate can receive post-DOI matching funds to the extent that, on the date of payment, the sum of matching funds and contributions "received on or *after* the date of ineligibility" [emphasis added] does not exceed remaining net debts.

The LaRouche campaign challenged the FEC regulation as unreasonable and contrary to the intent of the public funding statute to encourage participation in the political system. Specifically, the campaign argued that, under a fair reading of the statute and FEC regulations, the campaign was entitled to collect matching funds for contributions received after the DOI without having to credit the contributions against the net debts figure. Otherwise, the campaign said, the candidate would be limited in his ability to continue the campaign.

The court, however, found that the FEC's interpretation of its own regulation was "compelling" and its interpretation of the statute, reasonable. The statute "make[s] clear," the court said, "that Congress wished to restrict the availability of matching payments to candidates it considered viable."

The court rejected several other arguments made by the LaRouche campaign, including the claim that the FEC's repayment determination had improperly created a new rule to address post-DOI matching fund entitlements when the candidate continues to campaign. The court said that the Commission had merely concluded that "the existing rule was not affected by Mr. LaRouche's decision, in 1988, to continue the good fight rather than to wind up his campaign...." ✦

*(Court Cases continued on page 8)*

*[1] Petitions challenging FEC repayment determinations are filed with this court.*

*[2] The entire repayment was $151,260; only $109,149 was contested.*

### When to Report

| Report | Period Covered<br>closing date of last report through | Filing Date[1] |
|---|---|---|
| October Quarterly | September 30 | October 15 |
| October Monthly[2] | September 30 | October 20 |
| 12-Day Pre-Election | October 19 | October 27[3] |
| 30-Day Post-Election | November 28 | December 8 |
| Year-End | December 31 | January 31, 1995 |

*[1] Reports sent by registered or certified mail must be postmarked by the filing date (except in the case of the pre-general election report; see footnote 3). Reports sent by other means must be received by the filing date. 11 CFR 104.5(e).*

*[2] Presidential committees filing monthly must also file the November and December monthly reports.*

*[3] If sent by registered or certified mail, the 12-day pre-general election report must be postmarked by October 24.*

## Court Cases

(continued from page 7)

### Center for Responsive Politics v. FEC

This case was voluntarily dismissed as moot when the Commission took action on three complaints the Center had filed with the agency in 1990 and 1991 (MURs 3175, 3249 and 3325). The Center had filed suit to force the FEC to take action but, in March 1994, agreed to suspend the litigation for four months while the FEC worked to resolve the MURs, which concerned excessive contributions.

The U.S. District Court for the District of Columbia dismissed the case on July 11, 1994. (No. 92-2250(SSH)). ✦

### FEC v. Michigan Republican State Committee

The FEC and the defendant committee agreed to settle two counts of a complaint and to litigate the third. Under the terms of a July 18, 1994, consent order, the Michigan Republican State Committee, the federal committee of the Michigan Republican Party, agreed to pay a $12,500 penalty for knowingly accepting $5,550 in excessive contributions and for depositing into its account $35,655 in impermissible, nonfederal contributions, a violation of 11 CFR 102.5.

With respect to the misdeposit of nonfederal funds, the contributions were contained in a transfer from the Republican National Committee. The deposit was impermissible because the contributions were not specifically designated for the federal account. See 11 CFR 102.5(a)(2)(i). The committee agreed to transfer the funds to the state party's nonfederal account.

The consent order was entered by the U.S. Court for the Western District of Michigan, Southern Division (No. 5:94-CV-27).

Litigation is pending on the third FEC claim—that the committee had exceeded the §441a(d) coordinated party expenditure limit on behalf of the party's nominee in the 1984 U.S. Senate race. ✦

### RNC v. FEC (94-1017)

Granting summary judgment to the FEC on July 22, the U.S. District Court for the District of Columbia rejected a challenge to the FEC's revised "best efforts" regulations.

The revised rules, which became effective March 3, 1994, explain what steps a committee treasurer must take in order to demonstrate that he or she has used best efforts to obtain and report required information on individual contributors whose aggregate contributions to the committee exceed $200 in a calendar year. See 11 CFR 104.7(b). The Federal Election Campaign Act (FECA) allows committees to retain contributions lacking required information only if the treasurer can show "best efforts." 2 U.S.C. §432(i).

The FEC first promulgated regulations interpreting the best efforts provision of the FECA in 1980. Recently, however, the agency became concerned by the failure of many committees to provide complete contributor information for a substantial percentage of their contributions. The agency adopted the 1994 revisions to strengthen the rules, adding two new requirements. First, committees must clearly display the following statement in solicitations for contributions: "Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate over $200 in a calendar year." Second, committees must make a follow-up request for missing information; the request may not include an additional solicitation or material on any other subject.

The plaintiffs in the case—the Republican National Committee, the National Republican Senatorial Committee and the National Republican Congressional Committee—argued that these requirements violated free speech rights by impermissibly limiting the language and subject matter of solicitations. The court said that the committees' arguments failed because the best efforts regulations are not compulsory but "merely [provide] a 'safe harbor' for any committee that is unable to obtain all of the required information."

In a related argument, the committees contended that the requirement for a follow-up request would curtail free speech by imposing additional costs on committees, leaving less money for political speech. The committees claimed that this infringement was not justified by a compelling government interest because compliance with the disclosure requirements had been sufficiently high under the old rules.

Noting that the committees did not introduce any evidence on the overall level of compliance, the court said that the added costs to the committees—estimated at $1.50 to $6.00 per letter—was a "minimal burden" given the strong government interest in disclosure of contributor information. "This information," the court said, "provides an 'essential means' to uncover violations of the FECA, is critical to informing the electorate..., and deters corruption or even the appearance of corruption in the political system."

In another line of argument, the committees claimed that the revised regulations contradicted legislative intent, citing a statement in a 1979 House committee report that the best efforts provision in the FECA (2 U.S.C. §432(i)) did not require

committees to make multiple requests for information. Describing the 1979 report as merely one Congressional committee's post-enactment opinion that provided little assistance on how to interpret the intent of Congress in 1976, the court found it insufficient to overturn the FEC's interpretation of best efforts.

The committees have filed an appeal. ✦

## New Litigation

### Whitmore and Quinlan v. FEC

Joni Whitmore, a Green Party candidate for the House of Representatives, and James Quinlan, a voter in the at-large Congressional district in Alaska,[1] challenge provisions in federal election law that allow persons who are not residents of Alaska's Congressional district to make contributions, either individually or through a PAC, to candidates seeking election as Alaska's representative in the House. Plaintiffs argue that allowing contributions from nonresidents of the district violates their constitutional rights to equal protection of the laws, to vote, to politically associate and to be governed by a republican form of government.[2]

Plaintiffs claim that successful candidates who receive contributions from nonresidents are not exclusively answerable to the voters in their district. They further claim that nonresident contributors exercise undue influence over election outcomes in the Alaska at-large district, thus denying Alaskan residents equal representation in their government. Ms. Whitmore decided to refuse any contributions from persons who are not residents of the Alaska district, and she requested the other candidates running in the primary and general elections to do the same. The candidates named as defendants in this suit declined Ms. Whitmore's request.

Plaintiffs argue that these candidates, by accepting money from nonresidents, will cause Ms. Whitmore's campaign irreparable harm. As a result, plaintiffs request a permanent injunction prohibiting the defendant candidates from soliciting or accepting out-of-district contributions.

Plaintiffs also seek a declaratory judgment from the court stating that the Federal Election Campaign Act violates Article I and the First and Fifth Amendments of the Constitution by allowing these contributions.

U.S. District Court for the District of Alaska, Civil Action No. A94-289 CIV, June 30, 1994.

### Albanese v. FEC

Sal Albanese, an unsuccessful Democratic candidate in a 1992 House race, and a group of New York voters, ask the court to find that the federal electoral system unconstitutionally excludes potential candidates who do not have sufficient funds to mount a competitive campaign against an incumbent.

The plaintiffs contend that, by participating in this system, defendants Federal Election Commission and Susan Molinari, Member of Congress from New York's 13th Congressional District and Mr. Albanese's opponent in the 1992 election, have denied plaintiffs the following constitutional rights: (1) equal protection rights under the Fifth and Fourteenth Amendments—specifically, equal participation the electoral and legislative process; (2) electoral rights under Article I, which requires that the U.S. House of Representatives "shall be composed of Members chosen...by the people of the several States"; and (3) the First Amendment right to speak and associate freely in the electoral process. Additionally, plaintiffs claim that the Federal Election Campaign Act violates the constitutional rights listed above. To remedy these alleged inequities, Mr. Albanese asks the court to order Congress to establish a public financing system for Congressional elections and to rule that the current campaign finance system is unconstitutional.

Mr. Albanese argues that the current system favors incumbents, wealthy candidates and candidates backed by monied interests. He claims that incumbents, especially, receive public subsidies not available to other office seekers.

He specifically claims that the defendant Member of Congress unfairly subsidized her campaign with her public salary, Congressional franking privilege and use of office staff for reelection activities.

He further contends that his opponent enjoyed significant name recognition as a result of her incumbency and that his inability to raise sufficient funds to purchase media advertising impeded him from gaining sufficient name recognition to compete effectively.

He claims that an additional advantage of incumbency in general is the ability to raise money from interests who have benefited from the incumbent's legislative efforts.

Mr. Albanese concludes that the current campaign finance system

*(continued on page 10)*

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[1] *Mr. Quinlan files the suit on his own behalf and as a class action suit on behalf of registered voters in Alaska's at-large district who do not make contributions to any candidates for the House.*

[2] *Plaintiffs explain: "The government of the United States of America...is not a democracy—it is a republic....The republican form of government...requires each member of the United Staes House of Representatives to represent the interests of, and to be accountable for their legislative acts to, an equal and discrete number of United States residents."*

## Court Cases

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discriminates against him and candidates like him—those without the personal wealth to compensate for the alleged sources of support available only to incumbents—and therefore violates their constitutional right to equal participation in the electoral process.

U.S. District Court for the Eastern Division of New York, Civil Action No. 94-3299, July 18, 1994. ✦

# Clearinghouse

### Updated Summary of State Campaign Finance Laws Released

The FEC's National Clearinghouse on Election Administration recently published *Campaign Finance Law 94,* the latest edition. The publication summarizes the campaign finance laws in each state and includes state code citations.

For quick reference, a series of charts list each state's reporting requirements, contribution and solicitation restrictions and expenditure limits.

This publication would be particularly valuable for PACs whose nonfederal election activity requires them to comply with laws in several states.

*Campaign Finance Law 94* is priced at $40 and is available from the U.S. Government Printing Office. To order, list the title and stock number (052-006-00054-6), enclose a check payable to the Superintendent of Documents, and send the order to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

For information on this and other Clearinghouse publications, call 800/424-9530 (press 4 if using a touch tone phone) or 202/219-3670. ✦

# Advisory Opinions

### AO 1994-19
### Affiliation Between National Membership Association and State Societies

The separate segregated fund (SSF) established by the American Society of Anesthesiologists, Inc. (ASA) is affiliated with the SSFs established by ASA component societies in North Carolina and Florida. Contributions made and received by the three SSFs are subject to the limits for a single committee.

ASA, a national medical society, is a not-for-profit membership association with 30,000 members. Generally, an individual's membership in ASA is contingent upon prior membership in one of the 48 state component societies chartered by ASA's Board of Directors. To be chartered, these state societies must submit articles of incorporation and bylaws, a list of officers and members, and a declaration of intent to comply with ASA guidelines for ethical practice.

The Commission concluded that, for purposes of determining whether the SSFs of ASA and the state societies are affiliated, ASA may be categorized as both a trade association[1] and a federation of trade associations.[2]

ASA can be considered a trade association by virtue of its membership, its purpose and its tax status. ASA bylaws characterize the 48 state entities as "state component societies" chartered by ASA. Committees that are established, financed, maintained or controlled by a membership organization, including related state and local entities of that organization, are considered *per se* (or automatically) affiliated under FEC regulations. 11 CFR 110.3(a)(2)(iv). The Commission concluded that the state component societies qualify as state entities of ASA. The SSFs of the state component societies are therefore automatically affiliated with ASA's SSF and with each other.

ASA may also be considered a federation of trade associations for purposes of determining affiliation. FEC regulations indicate that, while a federation's state entities are not *per se* affiliated, they may be affiliated if they satisfy certain criteria listed in 11 CFR 100.5(g)(4). 11 CFR 114.8(g)(1). Applying those criteria, the Commission concluded that the state entities are affiliated with ASA. While ASA's overlapping membership with the state entities is one obvious factor indicating affiliation, the most prominent factor is ASA's authority to charter the state societies, to revoke their charters and to establish certain membership and governance requirements.

Affiliated committees share a common set of limits on contributions received and made. Transfers between affiliated committees, however, may be made without limit. 11 CFR 102.6(a)(1).

Date Issued: July 21, 1994; Length: 5 pages. ✦

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[1] *A trade association is a membership organization composed of persons engaged in a similar or related line of commerce, and organized to promote and improve business conditions in that line of commerce but not to engage in business for profit. 11 CFR 114.8(a).*

[2] *A federation of trade associations is an organization representing trade associations involved in the same line of commerce. 11 CFR 114.8(g).*

## AO 1994-20
## Donation of Campaign Asset to Local Government

The Committee for Congressman Charlie Rose may donate the recreational vehicle (RV) that served as the committee's mobile campaign office to the Health Department of Cumberland County, North Carolina, for use as a health clinic. The committee purchased the RV during the 1992 election cycle but no longer uses it.

### Noncash Assets

In several advisory opinions, the Commission has concluded that noncash assets of a candidate's campaign are covered by the phrase "excess campaign funds" at 11 CFR 113.1(e). Under 2 U.S.C. §439a, excess campaign funds may be donated to any charitable organization described in 26 U.S.C. §170(c). Section 170(c) provides that a gift to any political subdivision of a state is a "charitable contribution" if made for "exclusively public purposes." The Commission concluded that the use of the vehicle as a mobile health clinic was an exclusively public purpose and that the gift was therefore expressly permitted under §439a.

### Reporting

The donation will not be an expenditure by the committee because it will not be made to influence Mr. Rose's reelection, and the committee will not receive any benefit from making the gift. The fair market value of the RV (i.e., the "blue book" price) should therefore be reported as a memo entry "other disbursement" on Schedule B. (If the committee were to deliver the vehicle as a part of a campaign event, then the gift would be viewed as a campaign expenditure and would have to be reported as such.)

Date Issued: July 15, 1994; Length: 4 pages. ✦

## AO 1994-21
## Solicitation in Dues Invoice Sent to Nonsolicitable Members

The American Pharmaceutical Association may include a solicitation for contributions to its separate segregated fund on a standard membership renewal invoice sent to all 30,000 members even through about 1,000 members are not eligible for solicitation under the definition of "member" (11 CFR 114.1(e)(2)). The proposed solicitation outside the solicitable class meets the conditions set forth in past advisory opinions: (1) the percentage of nonsolicitable persons—3 percent—is relatively small *(de minimis);* (2) the invoice states that contributions received from ineligible members will be returned; and (3) the Association (the Commission assumes) will screen and return such contributions.

The Commission has specifically rejected proposals to solicit outside the restricted class—even with the precautions in (2) and (3)—when nonsolicitable persons composed 10 to 20 percent of the total solicitation and, in another instance, 15 percent or 8,000 persons. AOs 1980-139 and 1979-50. By contrast, the Commission approved solicitations sent to 1,000 nonsolicitable persons representing 3 percent of the total solicitation (AO 1978-97) and 3,200 nonsolicitable persons or .16 percent of the total solicitation (AO 1981-7).

These last two opinions involved solicitations published in an organization's newsletter or magazine. The Associations's solicitation involves a similar situation in that the special printing of a small number of invoices without the solicitation would be impractical and unduly cumbersome.

Date Issued: July 29, 1994; Length: 4 pages. ✦

## AO 1994-22
## Candidate Committee's Lease of Property Owned by Candidate

The Patrick Combs for United State Congress committee may lease a mobile home for campaign purposes, at fair market rate, from a business the candidate owns with his father, provided that the lease agreement conforms in all respects to normal business practices. The candidate and his father are the sole owners of Woody Combs Auto Sales and Leasing.

Goods and services provided at the usual and normal charge are not considered contributions and are not subject to the limits of the Federal Election Campaign Act. 11 CFR 100.7(a)(1)(iii). If the committee were to pay less than that amount to lease the mobile home, it would be receiving a contribution from Woody Combs Auto Sales and Leasing, which, as a partnership, is subject to the $1,000 per candidate, per election limit. On the other hand, if the committee were to pay more than the usual and normal charge, the excess amount would augment the earnings of a candidate-owned asset (the partnership) and thus violate the ban on the personal use of campaign funds. 2 U.S.C. §439(a).

The use of "dealer plates" by the campaign would be permissible if the use were consistent with normal business practice and if the committee paid fair market value for the benefit. Date Issued: July 28, 1994; Length: 4 pages. ✦

## AO 1994-23
## Payroll Deduction Authorizations Transferred to New PAC

Northrop Grumman, a new corporation created through the merger of the Northrop and Grumman Corporations, currently main-

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## Advisory Opinions

(continued from page 11)

tains two separate segregated funds (SSFs) previously established by the former companies. In consolidating the two into a new SSF, Northrop Grumman does not have to seek reauthorizations from employees who had authorized payroll deductions of contributions to either of the two SSFs.

Northrop Grumman plans to send participants a letter notifying them of the change in SSFs. The letter will include a form for modifying or cancelling a deduction. The corporation must send the letter before implementing the payroll deduction transfer. The letter must remind participants of their continuing right to revoke a payroll deduction authorization without reprisal and must include statements on the political purpose of the SSF and the voluntary nature of SSF contributions. 11 CFR 114.5(a)(2)-(5). AO 1991-19. Date Issued: July 29, 1994; Length: 3 pages. ✦

## Advisory Opinion Requests

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

**AOR 1994-25**
Nonprofit corporation formed by four members of the Libertarian Party for purpose of staging national nominating convention. (FEE Enterprises, Inc.; July 22, 1994; 7 pages plus attachments)

**AOR 1994-26**
Bank line of credit to candidate approved before candidacy established. (Scott Douglas Cunningham; July 22, 1994; 9 pages)

**AOR 1994-27**
Solicitation of employees enrolled in corporation's stock ownership plan. (Consumer Power Company Employees for Better Government–Federal; August 11, 1994; 4 pages plus 42-page attachment)

**AOR 1994-28**
Application of foreign national definition to U.S. nationals living in American Samoa. (Congressman Eni F. H. Faleomavaega; August 12, 1994; 2 pages plus 10-page attachment) ✦

## Alternate Disposition of Advisory Opinion Requests

**AOR 1994-18**
The Commission could not reach agreement, by the required four-vote majority, on whether various membership classes of the International Council of Shopping Centers qualified as "members" eligible to receive contribution solicitations and partisan communications from the Council. See Agenda Document #94-81.

**AOR 1994-24**
This request was closed without issuance of an opinion because it did not qualify as an advisory opinion request. The facts related to activity that had already taken place rather than to ongoing or future activity, as required under 11 CFR 112.1(b).

Submitted by Chattem, Inc., the request asked whether the corporations's severance payment to a company executive running for Congress, and the continued payment of his medical benefits when he converted to hourly employment, were permissible. ✦

## Compliance

(continued from page 4)

**Complainant:** Ellen S. Miller, Executive Director, Center for Responsive Politics (DC)
**Subject:** Excessive contributions; $25,000 annual limit
**Disposition:** (a) $15,000 civil penalty (excessive contributions; $25,000 annual limit); (b) $500 civil penalty (excessive contributions); (c) reason to believe but took no further action

**MUR 3360**
**Respondents:** (a) Jack Kemp for President, Scott B. Mackenzie, treasurer (VA); (b) Victory '88, Scott B. Mackenzie, treasurer (VA); (c) Dannemeyer for Congress, John T. Poortinga, treasurer (CA); (d) 48 other respondents
**Complainant:** FEC initiated
**Subject:** Corporate contributions; prohibited in-kind contributions; excessive contributions; expenditures in excess of the Iowa and New Hampshire limits; calculation of media transportation costs; record-keeping and reporting; joint fund-raising notice
**Disposition:** (a) $100,000 civil penalty; (b) and (c) $20,000 civil penalty; (d) reason to believe but took no further action

**MUR 3418**
**Respondents:** Friends of John Glenn (formerly known as John Glenn Presidential Committee), Lyn Glenn, treasurer (OH)
**Complainant:** Robert T. Bennett, Chairman, Ohio Republican State Central and Executive Committee
**Subject:** Failure to report debts (accrued interest on bank loans)
**Disposition:** $65,000 civil penalty

**MUR 3538/3526/Pre-MUR 257**
**Respondents** (all in FL): (a) Lawrence J. Smith; (b) Larry Smith for Congress Committee, Joseph A. Epstein, treasurer
**Complainants:** Lawrence J. Smith (sua sponte); Earl Rodney (FL)

**Subject:** Knowing and willful conversion of campaign funds to personal use; failure to report disbursements in full; failure to deposit receipts into designated campaign depository in timely manner
**Disposition:** (a) $20,000 civil penalty; due to unusual circumstances in this case, FEC accepted payment of $5,000 (personal use); (b) $5,000 civil penalty (reporting; deposits)

**MUR 3616**
**Respondents** (all in NY): (a) Nita Lowey; (b) Nita Lowey for Congress, Aaron Eidelman, treasurer
**Complainant:** Sandra Monteiro (NY)
**Subject:** Failure to file report on time; disclaimer; failure to report in-kind contributions
**Disposition:** (a) No reason to believe (disclaimer); (b) reason to believe but took no further action; sent admonishment letter (disclaimer)

**MUR 3627**
**Respondents:** (a) Ross the Boss Committee, Jack W. McGrath, treasurer (CA); (b) 1-800-GO-PEROT (CA)
**Complainant:** Loron William Knowlon (CA)
**Subject:** Failure to report debt
**Disposition:** (a) Reason to believe but took no further action; sent admonishment letter; (b) no reason to believe

**MUR 3679**
**Respondents:** (a) Perot '92 (formerly known as Perot Petition Committee), Mike Poss, treasurer (TX); (b) Orville H. Brettman (IL)
**Complainant:** Orville Brettman (IL)
**Subject:** Failure to reimburse campaign expenses; failure to register and report
**Disposition:** (a) No reason to believe (reimbursement); (b) reason to believe but took no further action (registration, reporting); sent admonishment letter

**MUR 3726**
**Respondents:** (a) Perot '92 (formerly known as Perot Petition Committee), Mike Poss, treasurer (TX); (b) Denis L. Hemmerle (CA)
**Complainant:** Denis L.Hemmerle (CA)
**Subject:** Failure to disclose disputed debts; excessive contributions
**Disposition:** (a–b) Reason to believe but took no further action; sent admonishment letters

**MUR 3741**
**Respondents:** Perot '92 (formerly known as Perot Petition Committee), Mike Poss, treasurer (TX)
**Complainant:** Charles S. Turpin (OK)
**Subject:** Failure to report financial activities
**Disposition:** Reason to believe but took no further action; sent admonishment letter

**MUR 3757**
**Respondents:** Huffington for Congress, Eleanor F. Wyatt, treasurer (CA)
**Complainant:** FEC initiated
**Subject:** Failure to file 48-hour notice
**Disposition:** $20,000 civil penalty

**MUR 3825**
**Respondents:** Mike Kreidler for Congress Committee, Krista Bunch, treasurer (WA)
**Complainant:** FEC initiated
**Subject:** Failure to file 48-hour notices
**Disposition:** $2,250 civil penalty

**MUR 3833**
**Respondents:** Committee to Elect Demar Dahl to the United States Senate, Theodore N. McPhee, treasurer (NV)
**Complainant:** FEC initiated
**Subject:** Failure to file 48-hour notices
**Disposition:** $4,500 civil penalty

**MUR 3840**
**Respondents:** (a) New York '92 Host Committee, Inc., Henry Miller, treasurer; (b) Foundation of Jewish Philanthropics of Greater Miami Federation, Inc.; (c) Steptoe & Johnson
**Complainant:** FEC initiated
**Subject:** Impermissable contributions
**Disposition:** (a)-(c) Reason to believe but took no further action

**MUR 3899/Pre-MUR 296**
**Respondent:** D. Lloyd Wilson (NE)
**Complainant:** FEC initiated; Ellen S. Miller, Executive Director, Center for Responsive Politics (DC)
**Subject:** Excessive contributions; $25,000 annual limit
**Disposition:** $15,000 civil penalty

**MUR 3927**
**Respondent:** Mrs. Stanley Stone (WI)
**Complainant:** FEC initiated
**Subject:** $25,000 annual contribution limit
**Disposition:** $8,000 civil penalty

**MUR 3928**
**Respondent:** Roy H. Cullen (TX)
**Complainant:** FEC initiated (*Los Angeles Times* article 9/25/91)
**Subject:** $25,000 annual contribution limit
**Disposition:** $9,000 civil penalty

**MUR 3931**
**Respondents:** (a) Luis V. Gutierrez (IL); (b) Gutierrez for Congress, Raul Vega, treasurer (IL); (c) CBS, Inc. (NY)
**Complainant:** Juan M. Soliz (IL)
**Subject:** In-kind corporate contribution; press exemption
**Disposition:** (a)-(c) No reason to believe

**MUR 3961**
**Respondents:** Friends of Connie Mack, Robert I. Watkins, treasurer (FL)
**Complainant:** FEC initiated
**Subject:** Excessive contributions
**Disposition:** Reason to believe but took no further action; sent admonishment letter ✦

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