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Regulations

Commission Approves Revised Personal Use Rules

On February 2, 1995, the Commission approved new rules defining the personal use ban: the Federal Election Campaign Act (the Act) prohibits the use of excess campaign funds to pay for personal expenses. 2 U.S.C. §439a. These rules, accompanied by an Explanation and Justification, were published in the Federal Register on February 9, 1995 (60 FR 7862).¹ The Commission will publish an Announcement of Effective Date in the Federal Register after the rules have been before Congress for 30 legislative days.

The new rules provide a test to differentiate legitimate campaign and officeholder expenses from personal expenses and include a list of specific expenses that are considered personal use (they are listed below under the subhead "Per Se Personal Use"). Candidates may reimburse their committees for certain disbursements that involve "mixed uses," but such disburse-

(continued on page 2)

¹ These rules supersede the following advisory opinions: 1976-17, 1976-53, 1980-49, 1982-64, 1983-1, 1985-22, 1985-42 and 1988-13.

Legislation

FEC Recommends Changes to Election Law

On February 2, the Commission sent 63 recommendations for legislative action to the President and the Congress. The recommendations were submitted in two parts.

Part one contained 20 recommendations focused on improving the efficiency and effectiveness of the current law. These recommendations included:

- *Waiver authority.* Give the Commission the authority to grant reporting waivers to eliminate unnecessary reporting, and to adjust the filing requirements when warranted.
 - *Campaign-cycle reporting.* Eliminate reporting provisions that require campaigns to track contributions on both a calendar-year basis and a pre-election basis.
 - *Election period limitations.* Replace separate contribution limits for primary and general elections with a single annual limit.
 - *Commission as sole point of entry for disclosure documents.* Eliminate the requirement for House and Senate candidates to file reports with the Clerk of the House and the Secretary of the Senate,
- (continued on page 4)*

Regulations

(continued from page 1)

ments must be itemized in the committee's reports and accompanied by a brief description of the activity for which reimbursement will be made.

Defining Personal Use: The Irrespective Test

Personal use is any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or responsibilities as a federal officeholder. The Commission will rely on this "irrespective test" to identify personal use expenses. 11 CFR 113.1(g).

If an expense is the result of campaign or officeholder activity, then it falls outside of the personal use ban. On the other hand, if the expense would exist even in the absence of the candidacy or even if the officeholder were not in office, then the personal use ban applies.

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Under this standard, then, the use of campaign funds to pay for a candidate's personal living expenses is impermissible since the candidate would incur such expenses even if he or she were not running for federal office.

Per Se Personal Use

The new rules contain the following list of expenses that are personal use per se. 11 CFR 113.1(g)(1)(i). Campaign funds may not be used to pay for:

Household food items and supplies. This includes food purchased for day-to-day consumption in the home, and any supplies purchased to maintain the household. It does not include food and supplies for fundraising activities (even if they take place in the candidate's home) and refreshments for campaign meetings. Meal expenses incurred outside the home and subsistence travel expenses are addressed elsewhere in the rules.

Funeral, cremation and burial expenses. This includes expenses other than gifts and donations of nominal value to persons who are not members of the candidate's family.² Campaign funds may be used, for instance, to send flowers to a constituent's funeral.

Clothing. This includes specialized attire for political functions, but it does not include clothing of de minimis value such as T-shirts or caps imprinted with a campaign slogan.

Tuition payments. The only exceptions are tuition costs for the training of campaign staff to perform campaign tasks.

² Under the Act, the candidate's family includes: members of the immediate family, regardless of whether they are whole or half blood; relatives through adoption and marriage; the candidate's grandparents; and any person who has a committed relationship with the candidate, such as sharing a household and mutual responsibility for each other's welfare or living expenses.

Mortgage, rent and utility payments. This includes such payments with respect to a personal residence of the candidate or his or her family, even if part of the residence is being used by the campaign. It does not include such payments with respect to office space owned by the candidate so long as the committee pays no more than fair market value. Nor does it include payments for long distance calls made for campaign purposes from a residence of the candidate or his or her family.

Entertainment. This includes admission to sporting events, concerts, theater and other forms of entertainment. It does not include such admission if the entertainment is part of a specific campaign or officeholder activity.

Dues, fees and gratuities. This includes payments to a country club, health club, recreational facility or other nonpolitical organization unless the payments are made in connection with a fundraising event that takes place on the organization's premises. It does not include membership dues in an organization that may offer political contacts, such as community or civic organizations.

Salary payments to the candidate's family. Such payments will be considered personal use expenses unless they reflect the fair market value of bona fide services rendered to the campaign.

Legal, Meal, Travel, Vehicle and Mixed-Use Expenses

Under the new rules, the Commission will address payments for legal services, meals, travel, vehicles and mixed-use expenses on a case-by-case basis. 11 CFR 113.1(g)(1)(ii). The rules and the Explanation and Justification provide some guidance in these areas, as discussed below:

Legal expenses. The Commission recognizes the potential for the legitimate use of campaign funds to pay for legal expenses incurred via campaign or officeholder activities.

Meal expenses. Campaign funds may be used to pay for meals during face-to-face fundraising. In contrast, a candidate may not use campaign funds to take his or her family out to dinner.

Travel expenses. The new rules prohibit the use of campaign funds for personal expenses collateral to campaign- or officeholder-related travel, unless the committee is reimbursed.

Vehicle expenses. De minimis expenses for the personal use of a vehicle may be paid for with campaign funds. The committee must be reimbursed for personal use costs if such use exceeds this amount.

Mixed use. In the event of travel or vehicle expenses that commingle personal and campaign or officeholder activity, the benefactor of the personal use expenses must reimburse the committee the amount in excess of what the trip would have cost had it been purely campaign or officeholder related. This reimbursement does not constitute a contribution. See the section on "New Reporting Requirement" on this page.

Other Personal Use Issues

Candidate's salary. The Commission could not determine whether the use of campaign funds to pay a salary to a candidate was permissible under the personal use ban. The new rules do not address this matter. Third party salary payments, however, are permissible under certain circumstances. See the section on third party payments on this page.

Charitable donations. Gifts to charity are not considered personal use expenses so long as the candidate does not receive compensation from the recipient organization before it has expended the entire amount donated for purposes unrelated to the candidate's personal benefit. 11 CFR 113.1(g)(2).

Transfer of campaign assets. The sale or transfer of a campaign

asset—either to the candidate or a third party—does not constitute personal use as long as the transaction is made at the fair market value. 11 CFR 113.1(g)(3).

Gifts. On special occasions, campaign funds may be used to purchase gifts or make donations of nominal value to persons other than the members of the candidate's family. 11 CFR 113.1(g)(4).

Third-party payments of personal use expenses. Generally, when an entity other than the candidate or the candidate's committee pays for personal use expenses, that entity makes a contribution, subject to the restrictions and limitations of the Act. No contribution will result, however, if the payment would have been made irrespective of the candidacy. A third party may make the following payments without making a contribution: payments to a legal expense trust fund established under House and Senate rules, payments made from the candidate's personal funds or from an account the candidate holds jointly with a family member, and payments that were made prior to candidacy. The new rules also state that compensation payments made to a candidate by a third party as a continuance of payments made prior to candidacy are not considered contributions so long as such payments result from bona fide employment independent of the candidacy, are exclusively in consideration of the services provided as part of this employment, and represent just pay comparable to that normally received for such services. 11 CFR 113.1(g)(6).

New Reporting Requirement

When committees itemize a disbursement for which partial or total reimbursement is expected under the new personal use rules, they must include in the report a brief explanation of the activity for which reimbursement will be made. 11 CFR 104.3(b)(4)(i)(B).

This information is to be included on schedule B of Form 3, and reimbursements will be reported as "other receipts" on the detailed summary page.

A reimbursement by an individual who benefited from the personal use of campaign funds will not constitute a contribution under the Act. However, if the reimbursement is made by a third party, then a contribution by that person may result.

Candidate's Routine Living Expenses

Routine living expenses fall under the personal use ban. Campaign funds may not be used to pay for them. Since living expenses are not considered expenditures under the Act, they need not be reported, provided that they are paid with:

- The candidate's personal funds;
- Funds from an account the candidate holds jointly with a family member; or
- A family member's funds, provided that the family member paid for these expenses prior to the campaign. 11 CFR 100.8(b)(22).

Permissible Use of Excess Campaign Funds

The new rules add the following expenses to the list of permissible uses of excess campaign funds:

- Travel expenses for a federal officeholder and an accompanying spouse, provided that the travel is undertaken to participate in a function that is connected to the officeholder's official responsibilities; and
- Winding down costs of a federal officeholder's office for a period of six months after leaving office. 11 CFR 113.2(a)(1) and (2). ♦

Legislation

(continued from page 1)

respectively. This would eliminate wasted government resources and delays in public disclosure.

- *FEC independent authority in all litigation.* Ensure nonpartisan enforcement of the law by explicitly authorizing the FEC to petition the Supreme Court for certiorari under Title 2. The FEC has independently argued Title 2 cases before the Supreme Court in the past, but the recent Supreme Court ruling in *FEC v. NRA Political Victory Fund* (see page 1 of the February 1995 *Record* for a summary of the decision) requires a rewording of the legislation in order for this practice to continue.

The second part includes 43 recommendations concerning areas of the law that have been problematic. These recommendations focus on the areas of disclosure, contribution and expenditure limitations, enforcement and public financing. In these cases, the Commission asked Congress to clarify the law or undertake more comprehensive reforms. ♦

Need FEC Material in a Hurry?

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

Audits

LaRouche in '92 Final Audit

On November 30, 1994, the Commission released the final audit report on the Democrats for Economic Recovery—LaRouche in '92 committee. The report included an initial determination that the committee repay \$130,227 to the U.S. Treasury. This determination became final on January 10, 1995.¹ Prior to the report's release, the committee issued the U.S. Treasury a \$132,300 check, anticipating that its repayment obligation would not exceed this amount. The Commission notified the Treasury to remit a \$2,073 refund to the committee.

The findings of the report are summarized below.

Surplus Repayment

The committee received public monies totaling \$568,435.² An evaluation of the committee's assets and obligations revealed a surplus of \$477,816. The Commission determined that \$129,027 of this amount represented public monies. 26 U.S.C. §9038(b)(3).

¹ *The committee did not dispute the initial determination of the repayment within 30 days, and so the repayment amount became final.* 11 CFR 9038.2(c)(1).

² *The committee received these monies in 1994, after the 1992 election. On February 17, 1994, the FEC complied with a court mandate to certify Mr. LaRouche as eligible to receive matching funds.* *LaRouche v. FEC*, 996 F.2d 1263 (D.C. Cir. 1993), cert. denied, *U.S.*, 114 S. Ct. 550 (1993). See page 3 of the September 1993 *Record* for a summary of the appellate court ruling. See also page 3 of the April 1994 *Record* for a summary of the Commission's certification of federal matching funds to Mr. LaRouche.

Interest Earned on Investment of Federal Funds

The committee invested \$468,435 of its public matching fund payment; \$129,027 of this amount represented surplus public funds. The interest earned on public monies amounted to \$1,200, after taxes. The Commission added this amount to the committee's repayment obligation. 11 CFR 9038.2(b)(4). ♦

Public Funding

1992 Jerry Brown Campaign Required to Repay Treasury

On November 30, 1994, the Commission made a final determination that Edmund G. Brown and his 1992 Presidential campaign must repay \$179,049 in public funds to the U.S. Treasury, representing \$171,136 in excess of the committee's entitlement and \$7,913 in surplus funds. Additionally, the committee had to make a payment of \$12,757 to the U.S. Treasury for excessive travel reimbursements received from the media and for stale-dated checks. 11 CFR 9034.6(b) and 9038.6.

The final repayment figure is based on the committee's Statement of Net Outstanding Campaign Obligations. 11 CFR 9034.5(a). This document is a self evaluation of the committee's financial position on the candidate's date of ineligibility, as depicted by the fair market value of its capital assets, estimated winding down costs, amounts owed to the committee, and amounts it owed to vendors and other payees. ♦

Court Cases

New Litigation

Condon, et al. v. U.S.A. et al.

Plaintiffs in this case ask the court to declare that the National Voter Registration Act (NVRA) is an unfunded federal mandate that is unconstitutional, and to enjoin the defendants from enforcing it.

The State of South Carolina and its attorney general, Charles Condon, allege that the NVRA violates the Tenth Amendment by impinging upon the state's sovereign right to allocate its budgetary resources as it determines. The Tenth Amendment states that powers not delegated to the federal government and not prohibited to the states by the Constitution are reserved to the states.

The plaintiffs estimate that the costs of implementing the NVRA in South Carolina during the first half of 1995 will exceed \$560,000. Nearly all of these costs are recurring costs associated with the preparation of a National Voter Registration Form, the processing and distribution of this form, assistance to citizens in completing the form, and other obligations imposed upon state agencies by the NVRA. Plaintiffs state that there has been no offer or promise of federal funds to help South Carolina implement the NVRA's mandates.

Plaintiffs further argue that, as it would be ineffective and wasteful to establish one set of forms and rules for state elections and another for federal elections, the NVRA in effect establishes the election procedure and voter registration process for all elections held in South Carolina.

South Carolina would need to repeal a portion of its constitution and several statutes in order to enforce the NVRA.

The Governor of South Carolina has demonstrated a good faith at-

tempt to comply with the NVRA by issuing an executive order directing state agencies to implement those mandates of the NVRA that incur a minimal cost to the state.

U.S. District Court for the District of South Carolina, Columbia Division, No. 3-95-192-0, January 24, 1995. ♦

Advisory Opinions

AO 1994-33 Calling Card Solicitations

VITEL International, Inc., may offer political committees a calling card service through which solicitable individuals can make contributions and receive political communications. Special considerations apply, however, to trade associations, convention committees and convention city host committees.

Background

VITEL proposes the following arrangement. A client committee's potential contributors would be offered prepaid calling cards to be used for making telephone calls and making contributions to the committee. Participation in the calling card plan would be strictly voluntary, in compliance with 11 CFR 114.5(a). Each calling card holder would have a unique PIN number. Card holders would buy time on their cards by calling a telephone number assigned to the committee; each committee would have a separate line. This would be a toll-free call and the card holder would be connected to a live operator contracted by VITEL. The card holder's name, address, employer and credit card number would be obtained on the first purchase. The PIN number would be used for subsequent purchases. After a purchase, the card holder

would have the opportunity to designate a percentage of the newly purchased dollar amount as a contribution, with the telephone time being reduced correspondingly. The telephone time and any contribution would be immediately debited against the caller's credit card in separate transactions by a merchant bank used by VITEL.

Client committees could purchase additional services for their potential contributors. For instance, after entering the PIN number on a touch tone phone, the caller could access a menu of options, including a chance to hear a weekly message recorded by the committee or to leave a message for the committee.

In-kind Corporate Contribution

If a vendor does not receive the normal and usual charge for services, an illegal in-kind corporate contribution results. 11 CFR 100.7 (a)(1)(iii)(A).

VITEL intends to secure a long distance rate below the commercial rate by purchasing telephone time at a volume discount. VITEL will negotiate a per minute contract rate with each client committee for its calling-card holders. Client committees would shoulder upfront expenses and the contract rate would cover all of VITEL's expenses, plus yield a reasonable profit. Assuming that this profit is comparable to the profit realized from transactions with nonpolitical customers, and that the contract rate guarantees a profit regardless of the success of the transaction with a particular political committee, VITEL's arrangement will not constitute an in-kind corporate contribution.

Use of Corporate Funds to Process Credit Card Transactions

VITEL intends to utilize its own fulfillment and merchant bank services to process credit card transactions. Costs for these services will be passed on to VITEL clients (either the committee or, in the case

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Advisory Opinions

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of separate segregated funds, the committee's connected organization) through the contract rate. This arrangement avoids the impermissible use of corporate funds to process the credit card transactions.

Impermissible Solicitations and Political Communications

A corporation or labor organization may use its general treasury funds to pay for the solicitation of contributions for its political committee and for the distribution of political communications, as long as both are made only to each organization's restricted class.¹ 11 CFR 114.5(g)(1) and (2). 2 U.S.C. §441b(b)(2)(A) and (4)(A); 11 CFR 114.1(a)(2)(i) and (c), 114.5(g)(1) and 114.3(a).

Since VITEL's arrangement allows a card holder to contribute only to the committee which issued him or her the card, this system prevents connected organizations from paying the costs of solicitation services in support of a political committee that is not their own, or is not affiliated with their own committee. Additionally, the assignment of a unique PIN number to each solicitable class member avoids the unlawful distribution of political communications, since a caller will not be able to access another committee's message without a corresponding PIN number.

However, a trade association's use of this system to distribute political messages is problematic. Unlike other corporate entities, a trade association may not communicate election advocacy messages to

precisely the same group that it can solicit for contributions to its separate segregated fund. Trade associations providing the message option, therefore, may issue calling cards only to individuals who are eligible to receive both solicitations and candidate advocacy communications. That group would include its executive and administrative personnel, members who are individuals and the families of both groups. A trade association may also send partisan communications to its representatives at member corporations. Such communications, however, may not be sent to a member corporation's restricted class, although that class may be solicited provided the corporation grants the trade association written permission to do so. For this reason, trade associations may opt to omit election advocacy communications from the VITEL menu so as to allow a corporate member's restricted class to participate in the calling-card service.

Recording Contributor Information

Political committees are required to disclose the names, addresses, occupations and employers of their contributors, along with the date and amount of each contribution. 11 CFR 104.8(a) and (b).

VITEL's plan to have live operators obtain contributor information will aide committees in fulfilling their recordkeeping and reporting obligations. VITEL, however, will have to ensure that this information is provided to client committees in a timely fashion so that they can meet FEC reporting deadlines. Further, VITEL should suggest to client committees and corporations that their solicitations include cautions against impermissible contributions.

Special Considerations: Party Convention Committees and City Host Committees

Party convention committees that are publicly funded in full may not accept private contributions. Those that do not receive full public funding may accept private contributions subject to the limits and prohibitions of Title 2. 11 CFR 9008.6(a)(2) and (3). Any agreement between VITEL and a party convention committee should take into account the limits on the amounts that may be raised.

Host committees may only receive private contributions from local sources. 11 CFR 9008.52(c)(1) and (2). VITEL's arrangements with host committees should include operator screening of the donor's address.

Additional Cautions

Different fundraising methods, such as telephone fundraising, may have different special requirements (see advisory opinions 1991-26, 1991-20 and 1991-18).

Additionally, in a footnote in its advisory opinion request, VITEL noted that it also anticipated offering this service as a means of raising "soft money."² VITEL assumed that "soft money" transactions were outside the jurisdiction of the FEC and therefore did not provide details on them. The Commission cautioned that this assumption was incorrect. "Soft money" issues are addressed

² "Soft money" is money that cannot be used in connection with a federal election. "Soft money" sources include corporations, labor organizations and federal contractors. "Soft money" also includes funds received from lawful contributors in excess of the contribution limits. The use of these funds may be legal in connection with nonfederal elections, depending on state and local laws. But it is a violation of federal election law to use such monies for federal election purposes. 2 U.S.C. §441a and b.

¹ A corporation's restricted class includes its executive and administrative personnel, its stockholders, and the families of both groups. A labor organization's restricted class includes its executive and administrative class, its members, and the families of both groups.

at 11 CFR 106.5 and 106.6 and in advisory opinions 1992-33 and 1992-20.

Date Issued: January 27, 1995;
Length: 10 pages. ♦

AO 1994-34 **Consolidating Membership** **Association PACs Following** **a Merger**

Because the New York Mercantile Exchange (NYMEX) has acquired the Commodities Exchange (COMEX) as a subsidiary, their PACs are affiliated. Consequently, COMEX PAC can be dissolved and its monies transferred to NYMEX PAC. Moreover, NYMEX and its PAC can solicit contributions from former COMEX PAC contributors classified as "COMEX division regular members." COMEX division regular members are natural persons who hold COMEX exchange seats; these members hold 507 of the 772 seats on the COMEX exchange.

COMEX's Membership

Membership associations and their PACs can only solicit contributions from their members. To be considered a "member" under federal election law, a person must:

- Have a significant financial attachment to the association in addition to the mere payment of dues;
- Be entitled to vote directly either for at least one member who has full participatory voting rights on the association's highest governing body, or for those who select at least one member of that body; or
- Be entitled to vote directly for all of those on the association's highest governing body. 11 CFR 114.1(e)(2).

COMEX regular members hold seats on the COMEX exchange—currently sold for approximately \$125,000 each—which entitles them to trading rights in commodity ex-

change contracts. Their trading rights have been expanded since the merger with NYMEX to include trading privileges in NYMEX itself.

Additionally, as a result of the merger, these members have gained other monetary interests, including "deferred cash payments" estimated at \$25,000 per member, and the right to receive pro rata shares of \$20 million in deferred payments on the first four merger anniversaries.

These interests constitute a sufficient financial attachment to COMEX to qualify regular members as solicitable members of COMEX under federal election law.

This status can be affected, however, if the regular member leases his or her seat on the COMEX exchange. If the lessee has trading rights but no ownership rights, the "member" is the party which holds the obligation to pay the dues, fees and other charges assessed during the term of the lease. If the lessee is a corporation, however, it should be noted that a membership association or its PAC can not solicit a corporate member or its PACs. 11 CFR 114.7(b) and (j).

Affiliation of COMEX PAC and NYMEX PAC

Following the merger, COMEX became a subsidiary and division of NYMEX. Under the law, all PACs controlled by the same organization are affiliated. 11 CFR 100.5(g)(2). Consequently, COMEX and COMEX PAC are affiliated with NYMEX and NYMEX PAC. This permits:

- The unlimited transfer of funds between the PACs (11 CFR 110.3(c)(1)); and
- The solicitation of COMEX members, as discussed, by NYMEX PAC.

In view of this affiliation, the issue of whether NYMEX can solicit COMEX members on the basis of their membership interests need not be addressed.

Date Issued: January 13, 1995;
Length: 11 pages. ♦

AO 1994-37 **Allocating Between Federal** **and Nonfederal Campaigns**

New York Congressman Charles Schumer must abide by FEC allocation rules with regard to expenses shared by his federal committee and his nonfederal exploratory committee. The Congressman wishes to establish a 1996 reelection to Congress committee (the federal committee) and an exploratory committee to test the waters for a possible 1998 gubernatorial bid (the nonfederal committee).

Congressman Schumer proposes having separate chairpersons, treasurers and bank accounts for the two committees. The committees will share, however, certain paid employees and, for some time at least, the same office space. Congressman Schumer proposes allocating the expenses between the two campaigns according to a formula based on a ratio of each committee's receipts to the total receipts.

Federal regulations stipulate that a candidate with both federal and state committees must keep them separate, and that no funds, goods or services may be transferred between or jointly used by the separate committees. 11 CFR 110.8(d)(1) and (2), and 110.3(c)(5). Personnel and facilities may be shared by the committees, however, so long as the expenses are allocated properly. 11 CFR 110.8(d)(3). The arrangement Congressman Schumer proposes, therefore, is acceptable. The method of allocation, however, is not.

Allocation Rules

Congressman Schumer's proposed allocation method would be appropriate if all expenses were the direct costs of fundraising events. See 11 CFR 106.5(a)(2)(ii) and advisory opinions 1992-27 and 1992-2. It appears, however, that the committees at hand will have significant expenses for other

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Advisory Opinions

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purposes as well. The method for determining the proper allocation of expenses must reasonably reflect the benefit derived by each campaign and varies with respect to the type of expenditure. 11 CFR 106.1(a)(1). With respect to Congressman Schumer's committees:

- The expense of shared office space, furniture and equipment may be allocated based on the time used by each committee;
- Shared telephone charges unrelated to fundraising may be allocated on a time-based division of the monthly base charge and the actual long-distance charges incurred by each committee;
- Payments to shared personnel for time not spent on fundraising activity may be allocated based on the actual time worked on each campaign; and
- Shared travel expenses should be allocated by a specific method explained at 11 CFR 106.3(b).

Payments

There are three suggested methods of payment for shared expenses. First, each committee may issue a check to the payee for its share of the expense. The federal committee must report the recipient of each payment for shared services or goods.

Alternatively, a separate allocation account can be used. Each committee transfers its share of the expense into the allocation account, which then issues a single check to the payee. The nonfederal committee may transfer funds into the allocation account to cover only its portion of shared expenses. These transfers are reportable. Funds in the allocation account may be used only to pay for shared expenses.

A third option involves transfers from the state committee to the federal committee's regular operating account. Such transfers may not exceed the state committee's portion of the shared expenditure and may not improperly advance any federal election costs. Under this arrangement, the federal committee would then issue the payee a single check. In addition to reporting this disbursement, the federal committee must also report all transfers received from the state committee.

Additional Cautions: Determining What Is Nonfederal

Congressman Schumer proposed that the following activities be considered nonfederal and thus payable by his state committee: travel outside his Congressional district, the making of contributions to candidates seeking office outside his Congressional district, and statewide polling.

It can not be assumed that such activities are undertaken strictly for nonfederal purposes. In the absence of specific information, a determination can not be made.

Date Issued: January 13, 1994;
Length: 11 pages. ♦

AO 1994-39 Solicitation of Affiliates by a Membership Organization

The National Association of Surety Bond Producers (NASBP), and its separate segregated fund, SuretyPAC, may not solicit its affiliates. Even though these affil-

iates pay greater fees than members do, they are not solicitable based on NASBP bylaws.

NASBP is a membership organization with 560 members and 105 fee paying affiliates who are mostly the surety companies that underwrite the surety bonds sold by NASBP members. These affiliates pay as much as \$5,000 in annual dues, which is double the maximum annual dues paid by members. NASBP argued that these significantly greater fees represented a serious financial investment in NASBP, thereby qualifying the affiliates as members.¹

Before considering whether the affiliates satisfied the FEC's regulatory criteria for membership, the Commission concluded the affiliates were not members because NASBP itself did not treat them as members. In a letter to the FEC, NASBP's executive vice president stated that the "affiliates are not a class of membership." NASBP bylaws state that "the Association shall have one class of member." Not only are affiliates not included in the definition of this sole class of member, but they were "intentionally . . . not made a membership category because of concerns of several potential affiliates of antitrust issues." Further, although NASBP bylaws grant its board of directors

¹To be considered a "member" under federal election law, a person or organization must satisfy one of the following conditions: (1) have a significant financial attachment to the association beyond the payment of dues; (2) pay dues and be entitled to vote directly either for at least one member who has full participatory voting rights on the association's highest governing body, or for those who select at least one member of that body; or (3) be entitled to vote directly for all of those on the association's highest governing body. 11 CFR 114.1(e)(2).

Federal Register

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

1995-5

11 CFR Parts 100, 104 and 113:
Contribution and Expenditure
Limitations and Prohibitions:
Personal Use of Campaign Funds;
Final Rule (60 FR 7862, February
9, 1995)

the power to waive the conditions of membership, the board has chosen not to exercise this power with regard to the affiliates.

Given NASBP's treatment of its affiliates as nonmembers, the affiliates cannot be considered members for purposes of federal election law. They can not, therefore, be solicited.² Nor can NASBP solicit any of the affiliates' employees or stockholders.

In view of this determination, the Commission did not address the question of whether the affiliates would otherwise qualify as members by virtue of having a "significant investment" in NASBP, as represented by the fees they pay to the organization.

Date Issued: January 13, 1995;
Length: 8 pages. ♦

AO 1994-40 Storing Records on Microfilm

The Alliance for American Leadership, a nonconnected multi-candidate PAC, may preserve its records on microfilm.

The PAC proposes the conversion of its paper records to microfilm in order to save storage space and preserve records more effectively against fire loss and degradation over time. Once placed on microfilm, the paper originals would be destroyed but paper copies of the records could be reproduced from the microfilm.

All political committees must keep records of all contributions received and disbursements made by or on the behalf of the committee. 2 U.S.C. §432(c); 11 CFR 102.9(a) and (b)(1). Committees must also

maintain receipts and invoices from (or canceled checks issued to) the payee of any committee disbursement in excess of \$200. 11 CFR 102.9(b)(2). Additionally, a committee must preserve bank records, vouchers, worksheets, receipts, bills and any other documentation that may be used to verify the above information. 11 CFR 104.14(b)(1). All of these records must be preserved for at least three years from the filing of the report to which the documentation relates. 2 U.S.C. §432(d); 11 CFR 102.9(c) and 104.14(b)(3).

In a previous similar advisory opinion, a committee was permitted to maintain records on magnetic media, including computer disks, diskettes and tapes. Advisory Opinion 1993-4.

The committee must ensure that the microfilm copies are legible and complete; they must include any writing on the front or back or in the margins of the original document, and any attachments. The committee must also provide a usable indexing and retrieval system.

Date Issued: January 27, 1995;
Length: 5 pages. ♦

Advisory Opinion Requests

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

AOR 1995-5

Use of FEC contributors list for mailing of voting record bulletins featuring members of Congress. (14th District TRIM Committee; January 19, 1995; 1 page plus 4-page attachment)

AOR 1995-6

Publicly traded partnership seeks waiver of partnership allocation requirements at 11 CFR 110.1(e). (Red Lion Inns Limited Partnership; February 14, 1995; 2 pages plus 133-page attachment) ♦

Compliance

MURs Released to the Public

Listed below are summaries of FEC enforcement cases (Matters Under Review or MURs) recently released for public review. This listing is based on the FEC press releases of December 30 and January 13. Files on closed MURs are available for review in the Public Records Office.

MUR 2602

Respondents (all in AZ):

(a) Rhodes for Congress Committee, John J. Rhodes, III, treasurer; (b) Courtland Silver; (c) Anne Lorenzo O'Neill; et al. (d)-(h)

Complainant: U.S. Attorney, District of Arizona

Subject: Contributions in names of others; corporate contributions; excessive contributions; failure to report receipts and in-kind contributions; failure to report receipts and loan accurately; contribution from national bank

Disposition: (a) \$108,000 civil penalty (because of unusual circumstances, respondent to pay only \$25,000 penalty); (b) \$4,000 civil penalty; (c) \$1,000 civil penalty; (d)-(h) reason to believe but took no further action

MUR 3020

Respondents: (a) Friends of Gary Hart-88, Inc., Stephen D. Alfors, treasurer (CO); (b) Albert H. Gersten, Jr. (CA); (c) The Gersten Companies, Inc. (CA); (d) Colorado Democratic State Central Committee (federal and nonfederal accounts), Albert C. Gonzales, treasurer (CO); (e) YCS Investments, Inc. (CA); et al. (f)-(o)

Complainant: FEC initiated

Subject: Excessive contributions; corporate contributions; knowing and willful acceptance of corporate contributions in name of another
(continued on page 10)

²Note that NASBP is a membership association and as such may only solicit its executive and administrative personnel, its noncorporate members, and the families of both groups. 11 CFR 114.7(a).

Change of Address

Political Committees

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

Other Subscribers

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

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

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

Compliance

(continued from page 9)

and failure to report the source correctly; failure to report disbursement accurately; use of nonfederal funds

Disposition: (a) \$30,000 civil penalty; (b) and (c) \$8,000 civil penalty; (d) \$4,000 civil penalty (e) \$250 civil penalty; (f)–(o) reason to believe but took no further action

MUR 3164

Respondents (all in ID): (a) Sean D. McDevitt; (b) McDevitt for Congress, Bruna M. McDevitt, treasurer; (c) Thomas J. McDevitt; (d) Bruna M. McDevitt; (e) Draft McDevitt for Congress, Thomas J. McDevitt, treasurer; (f) Little Red Hen Inc.; (g) First Interstate Bank of Idaho, N.A.; et al. (h)–(j)

Complainant: Conley D. Ward, Chairman, Idaho State Democratic Party

Subject: Excessive contributions; in-kind corporate contributions; failure to register and report on time; failure to report contribution; bank loan

Disposition: (a)–(f) \$10,000 civil penalty; (b) also required to refund \$3,400 in excessive contributions and reimburse \$2,220.91 of corporate contribution; (a) & (g) no probable cause to believe [re: bank loan]; (h)–(j) no reason to believe

MUR 3848 (see MUR 4054)

Respondents (all in CA): (a) Anti-Defamation League of B'nai B'rith; (b) Milken Family Foundation; et al. (c)–(d)

Complainant: Ted J. Andromidas (CA)

Subject: Corporate contributions; failure to register and report

Disposition: No reason to believe

MUR 3932

Respondents: United Republican Finance Committee of Contra Costa, Paul R. Dickey, treasurer (CA)

Complainant: FEC initiated

Subject: Failure to file reports

Disposition: \$2,500 penalty

MUR 3997

Respondents: Olive Parker for Congress Committee, Clifford Lengel, treasurer (FL)

Complainant: FEC initiated

Subject: Failure to file 48-hour notices (candidate loans)

Disposition: \$2,000 penalty

MUR 4054 (see MUR 3848)

Respondents: (a) Anti-Defamation League of B'nai B'rith (NY); (b) Mira Boland (DC)

Complainant: Committee to Reverse the Accelerating Global-Economic and Strategic Crisis: A LaRouche Exploratory Committee, Kathy A. Magraw, treasurer (VA)

Subject: Corporate contributions; failure to register and report

Disposition: No reason to believe

MUR 4085

Respondents: Hiram Walker & Sons, Inc. Political Action Committee, L.C. Cuddeback, treasurer (MI)

Complainant: FEC initiated

Subject: Failure to file report on time; failure to amend Statement of Organization

Disposition: \$1,000 civil penalty

MUR 4154

Respondents: Roth Senate Committee, Thomas P. Sweeney, treasurer (DE)

Complainant: Sua sponte

Subject: Disclaimer

Disposition: No reason to believe ♦

Statistics

1994 Year-End PAC Count

At the end of 1994, there were 3,954 federally registered PACs. This figure represents an increase of 21 PACs since midyear 1994. Over the course of the year, however, the number of federally registered PACs declined by 256.

The table below shows that year-end PAC counts have remained relatively stable over the last 10 years. The 1994 figure is the lowest since 1984, when PACs numbered 3,803.

The number of PACs does not necessarily correspond with financial activity, since many registered PACs have little or no activity.

A January 9, 1995, FEC press release includes statistics on semiannual PAC counts taken since the end of 1974. To order this press release, call the Public Records Office: 800/424-9530 (press 3 on a touch tone phone) or 202/219-4140. ♦

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Year-End PAC Counts, 1984-1993

Year	Corporate	Labor	Trade/ Member/ Health	Coop- erative	Corp. w/o Capital Stock	Non- connected ¹	Total
1985	1,710	388	695	54	142	1,003	3,992
1986	1,744	384	745	56	151	1,077	4,157
1987	1,775	364	865	59	145	957	4,165
1988	1,816	354	786	59	138	1,115	4,268
1989	1,796	349	777	59	137	1,060	4,178
1990	1,795	346	774	59	136	1,062	4,172
1991	1,738	338	742	57	136	1,083	4,094
1992	1,735	347	770	56	142	1,145	4,195
1993	1,789	337	761	56	146	1,121	4,210
1994	1,660	333	792	53	136	980	3,954

¹ Nonconnected PACs must use their own funds to pay fundraising and administrative expenses, while the other categories of PACs have corporate or labor "connected organizations" that are permitted to pay those expenses for their PACs. On the other hand, nonconnected PACs may solicit contributions from the general public, while solicitations by corporate and labor PACs are restricted.