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## Table of Contents

	<b>Contribution Limits</b>
1	Limits for 2005-2006
	<b>Court Cases</b>
1	New Litigation
	<b>Regulations</b>
3	Final Rules on Contributions by Minors
4	NPRM on Definition of Agent
5	Federal Register
6	NPRM on <i>De Minimis</i> Exemption for Levin Fund Disbursements
7	<b>Advisory Opinions</b>
	<b>Information</b>
8	Federal Income Tax Requirements for Political Committees
	<b>Statistics</b>
9	Semiannual PAC Count
9	2004 Presidential Campaign Finance Activity
	<b>Public Funding</b>
11	Matching Fund Certifications
	<b>Party Activities</b>
12	2005 Coordinated Party Expenditure Limits
	<b>Outreach</b>
14	Roundtable for Committee Treasurers
14	FEC Conferences

## Contribution Limits

### Contribution Limits for 2005-2006

Under the Bipartisan Campaign Reform Act of 2002 (BCRA), certain contribution limits are indexed for inflation every two years, based on the change in the cost of living since 2001, which is the base year for adjusting these limits.<sup>1</sup> The new inflation-adjusted limits are:

- The limits on contributions made by persons to candidates and national party committees (2 U.S.C. §§441a(a)(1)(A) and (B));
  - The biennial aggregate contribution limits for individuals (2 U.S.C. §441a(a)(3)); and
  - The limit on contributions made to U.S. Senate candidates by certain political party committees (2 U.S.C. §441a(h)).
- (See the chart on page 3 for the contribution limits applicable for 2005-2006.)

The inflation adjustments to these limits are made only in odd-numbered years, and—except for

(continued on page 3)

<sup>1</sup>The applicable cost of living adjustment amount is 1.067.

## Court Cases

### New Litigation

#### Emily's List v. FEC

On January 12, 2005, Emily's List, a nonconnected political action committee (PAC) that maintains both federal and nonfederal accounts, filed a complaint in the U.S. District Court for the District of Columbia challenging the Commission's new regulations regarding the treatment of funds received in response to certain solicitations and its amended rules regarding federal/nonfederal fund allocation ratios for PACs.<sup>1</sup> The plaintiff alleges that the Commission's rules violate the Administrative Procedure Act (APA) and the First Amendment, and asks the court to enjoin the Commission from administering or enforcing the regulations.

*Background.* On March 11, 2004, the Commission issued a Notice of Proposed Rulemaking on Political Committee Status, which proposed a number of regulatory changes concerning, among other things, the

(continued on page 2)

<sup>1</sup>The final rules were published in the November 23, 2004, Federal Register (68 FR 68056). The rules took effect on January 1, 2005. See the [December 2004 Record](#), page 1.

## Court Cases

(continued from page 1)

definition of “political committee” and the allocation ratios for PACs. On November 23, 2004, it published final rules that define as “contributions”:

- All funds received in response to a communication that indicates that any portion of the funds received will be used to support or oppose the election of a clearly identified federal candidate; and
- At least 50 percent of the funds received from such a communication if it refers to both federal and nonfederal candidates.

The new rules also provide that a PAC that maintains federal and nonfederal accounts must use at least 50 percent federal funds to pay for administrative and voter drive expenses and the costs of public communications that refer to a

political party, but not to any clearly identified candidate. Voter drives and communications that refer to a clearly identified federal candidate, but no clearly identified state candidate, must be paid for entirely with federal funds.

*Court Complaint.* The plaintiff alleges that the Commission exceeded its statutory authority in these regulations because the Federal Election Campaign Act (the Act) only regulates money spent by nonconnected committees “for the purpose of influencing any election for Federal office.” 2 U.S.C. §§431(8) and (9). According to the plaintiff, the solicitation regulations exceed the Commission’s statutory authority by requiring that funds be considered “contributions” under the Act even if they will also be used for nonfederal elections or other nonfederal activities. Similarly, the plaintiff alleges that the new allocation rules exceed the Commission’s statutory authority by requiring federal funds to be used to pay for nonfederal activities. According to the plaintiff, these allocation rules result in “a mandatory subsidization of nonfederal electoral expenses with federal funds” and restrict activities that are not for the purpose of influencing a federal election.

The plaintiff further alleges that the regulations violate the APA because the Commission failed to give proper notice of the final regulations or to give interested parties a fair and meaningful opportunity to comment. According to the plaintiff, the proposed solicitation rules only addressed express advocacy communications, and the proposed allocation rules did not suggest a “blanket” 50 percent allocation ratio, but instead focused on a “promote, support, attack, or oppose” standard for determining how a given cost should be allocated. Thus, the plaintiff alleges that the Commission’s notice of the proposed rules did not give reasonable notice of the scope or nature of

the final regulations, in violation of 5 U.S.C. §553(b).

In addition, the plaintiff claims that the regulations are arbitrary, capricious and an abuse of discretion, in violation of 5 U.S.C. §706(2)(A). The plaintiff alleges that the FEC failed to provide a rational explanation for its decisions or to take public comments into account when making its final rules. According to the plaintiff, the FEC also failed to identify for these rules “any purpose to deter corruption or the appearance of corruption, and they serve no such purpose.”

Finally, the plaintiff alleges that the challenged regulations violate its First Amendment rights. The plaintiff claims that in *Buckley v. Valeo*, 424 U.S. 1 (1976), and *McConnell v. FEC*, 540 U.S. 93 (2003), the Supreme Court prohibited the FEC from restricting the types and amounts of funds used to influence federal elections unless the restrictions are narrowly tailored to prevent corruption or the appearance thereof. According to the plaintiff, the regulations in question are unconstitutionally vague and overbroad.

*Relief.* The plaintiff asks the court to find the challenged regulations in violation of the APA, and in violation of the First Amendment, and to enjoin the FEC from enforcing or administering these regulations. Along with its complaint, the plaintiff also asked the court to issue a preliminary injunction to prevent the Commission from enforcing the challenged regulations.

U.S. District Court for the District of Columbia, 1:05CV00049.

—Amy Kort

### Federal Election Commission 999 E Street, NW Washington, DC 20463

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## Contribution Limits

(continued from page 1)

the biennial limit—the limits are in effect for the two-year election cycle beginning on the day after the general election and ending on the date of the next general election. The biennial limit covers the two-calendar-year period beginning on January 1 of the odd-numbered year and ending on December 31 of the even numbered year.

Please note, however, that these limits do not apply to contributions raised to retire debts from past elections. Contributions received to retire such debts may not exceed the contribution limits in effect on the date of the election for which those debts were incurred. 11 CFR 110.1(b)(3)(iii).

The BCRA also introduced a rounding provision for all of the amounts that are increased by the

## Contribution Limits for 2005-2006

Type of Contribution	Limit
Individuals/Non-multicandidate Committees to Candidates	\$2,100
Individuals/Non-multicandidate Committees to National Party Committees	\$26,700
Biennial Limit for Individuals	\$101,400 <sup>1</sup>
National Party Committee to a Senate Candidate	\$37,300 <sup>2</sup>

<sup>1</sup>This amount is composed of a \$40,000 limit for what may be contributed to all candidates and a \$61,400 limit for what may be contributed to all PACs and party committees. Of the \$61,400 portion that may be contributed to PACs and parties, only \$40,000 may be contributed to state and local party committees and PACs.

<sup>2</sup>This limit is shared by the national committee and the Senate campaign committee.

## FEC Accepts Credit Cards

The Federal Election Commission now accepts American Express, Diners Club and Discover Cards in addition to Via and MasterCard. While most FEC materials are available free of charge, some campaign finance reports and statements, statistical compilations, indexes and directories require payment.

Walk-in visitors and those placing requests by telephone may use any of the above-listed credit cards, cash or checks. Individuals and organizations may also place funds on deposit with the office to purchase these items. Since prepayment is required, using a credit card or funds placed on deposit can speed the process and delivery of orders. For further information, contact the Public Records Office at 800/424-9530 or 202/694-1120.

indexing for inflation.<sup>2</sup> Under this provision, if the inflation-adjusted amount is not a multiple of \$100, then the amount is rounded to the nearest \$100.

—Amy Kort

## Regulations

### Final Rules on Contributions by Minors

On January 27, 2005, the Commission approved final rules regarding contributions and donations by minors to candidates and political committees. The rules, which will take effect on March 7, 2005, conform to the Supreme Court's decision in *McConnell v. FEC*. In that decision, the Court found unconsti-

tutional a provision of the Bipartisan Campaign Reform Act (BCRA) that barred minors from making contributions to candidates or from making contributions or donations to political party committees.

The practical effect of the amended regulations is to return the rules to their pre-BCRA state. The final regulations provide that an individual under 18 years old may make contributions to candidates and party committees if:

- The decision to contribute is made knowingly and voluntarily by the minor;
- The funds, goods or services contributed are owned or controlled by the minor, such as income earned by the minor, proceeds from a trust for which he or she is a beneficiary, or funds withdrawn by the minor from a financial account opened and maintained in his or her name; and

<sup>2</sup> This provision also affects the indexing of coordinated party expenditure limits and Presidential expenditure limits. 2 U.S.C. §§441a(b) and 441a(d).

(continued on page 4)

## Regulations

(continued from page 3)

- The contribution is not made from the proceeds of a gift given for the purpose of making the contribution and is not in any other way controlled by another individual. 11 CFR 110.19.

Note that the Commission has made one substantive change from the pre-BCRA regulations by removing the requirement that a minor “exclusively” own or control the funds, goods or services contributed. The Supreme Court reaffirmed in *McConnell v. FEC* that minors have a constitutional right to contribute to federal candidates and party committees. Maintaining the exclusivity requirement would have risked effectively precluding some minors from contributing their personal funds simply because they maintained their financial accounts in a place where an adult co-signatory was required for such accounts.

The final rules and their Explanation and Justification were published in the February 3, 2005, *Federal Register* (69 FR 5565) and are available on the FEC web site at [http://www.fec.gov/law/law\\_rulemakings.shtml](http://www.fec.gov/law/law_rulemakings.shtml).

—Amy Kort

## Notice of Proposed Rulemaking Revising the Definition of “Agent”

On January 27, 2005, the Commission approved a Notice of Proposed Rulemaking (NPRM) requesting comments on proposed revisions to the definitions of “agent” used in its regulations on coordinated and independent expenditures and its regulations regarding nonfederal funds. The Commission has issued this NPRM in order to comply with the district court decision in *Shays v. FEC*.

### Background

On July 29, 2002, the Commission promulgated regulations

implementing the Bipartisan Campaign Reform Act of 2002’s (BCRA) new limitations on party, candidate and officeholder solicitation and use of nonfederal funds. On January 3, 2003, the Commission promulgated regulations implementing the BCRA’s provisions regarding payments by political committees and other persons for communications that are coordinated with a candidate, a candidate’s authorized committee or a political party committee and provisions regarding expenditures by political party committees that are made either in coordination with, or independently from, candidates. Many of the restrictions imposed by these two rulemakings apply not only to principals, such as a candidate or party committee, but also to their agents. Accordingly, in each rulemaking the Commission adopted a definition of the term “agent.” These identical definitions provide that an agent is “any person who has actual authority, either express or implied” to perform certain, specified actions. The definitions do not include persons acting only with apparent authority.

On September 18, 2004, the U.S. District Court for the District of Columbia, in its decision in *Shays v. FEC*, held that the Commission had not provided adequate explanation of its decision to exclude from the definition of agent “persons acting only with apparent authority” and therefore had not satisfied the reasoned analysis requirement of the Administrative Procedure Act. The court remanded both definitions to the Commission for further action consistent with its opinion.

Although the Commission now proposes to revise its regulations to include persons acting with apparent authority in its definitions of agent, the NPRM emphasizes that the Commission may nonetheless determine after the comment period to retain the current definitions of agent, which exclude apparent authority. Accordingly, the NPRM

## PACronyms, Other PAC Publications Available

The Commission annually publishes an alphabetical listing of acronyms, abbreviations and common names of political action committees (PACs).

For each PAC listed, the index provides the full name of the PAC, its city, state, FEC identification number and, if not identifiable from the full name, its connected, sponsoring or affiliated organization.

This index is helpful in identifying PACs that are not readily identified in their reports and statements on file with the FEC.

To order a free copy of PACronyms, call the FEC’s Disclosure Division at 800/424-9530 or 202/694-1120.

PACronyms is also available on diskette for \$1 and can be accessed free on the FEC web site at [www.fec.gov](http://www.fec.gov).

Other PAC indexes, described below, may be ordered from the Disclosure Division. Prepayment is required.

- An alphabetical list of all registered PACs showing each PAC’s identification number, address, treasurer and connected organization (\$13.25).
- A list of registered PACs arranged by state providing the same information as above (\$13.25).
- An alphabetical list of organizations sponsoring PACs showing the name of the PAC and its identification number (\$7.50).

The Disclosure Division can also conduct database research to locate federal political committees when only part of the committee name is known. Call the telephone numbers above for assistance or visit the Public Records Office in Washington at 999 E St. NW.

seeks comment both on whether apparent authority should be added to the Commission's definitions of agent and on whether there are reasons for continuing to exclude apparent authority from the definitions.

### Proposed Rules

As the *Shays* court pointed out, the common law definition of actual and apparent authority states that an agent's "actual authority is created by manifestations of consent (express or implied) made by the principal to the agent." Restatement (Second) of Agency 1958 (Restatement), §7. In contrast, apparent authority is created by manifestations the principal makes to a third party about a person's authority to act on the principal's behalf and is created only where the principal's word or conduct "reasonably interpreted,

causes the third party to believe that the principal consents to have the act done on his behalf by the person purporting to act for him" (quoting Restatement §27).

In drafting the current regulations at 11 CFR 109.3 and 300.2(b), the Commission had sought to limit a principal's liability for the actions of an agent to situations where the principal had engaged in specific conduct to create an agent's authority. The Commission had been concerned that including apparent authority in the definition of "agent" would expose principals to liability based solely on the actions of rogue or misguided volunteers and might "place the definition of 'agent' in the hands of a third party."<sup>1</sup>

However, according to the *Shays* court, the scope of the common law concept of apparent authority appears to exclude from the definition of agent precisely the types of conduct that the Commission had sought to exclude when it decided to limit its definitions of agent to persons acting with actual authority. Just as the Commission intended when it adopted its current definitions of agent, the common law definition of agent, including apparent authority, limits a principal's liability for a would-be agent's actions to situations where the principal has taken specific action to create authority, either actual or apparent, in a person.

Accordingly, in light of the *Shays* court's interpretation of the narrow scope of apparent authority, the Commission now proposes to revise its regulations at 11 CFR 109.3 and 300.2(b) by defining agent as any person acting with either actual authority, express or implied, or appar-

ent authority. By including persons acting with apparent authority, the proposed revision would ensure that when a candidate or party committee conveys through words or actions that another person has authority to act on that candidate's or committee's behalf, then the actions of that person are imputed to the candidate or party committee for purposes of determining liability under the Commission's soft money and coordination provisions.

In the NPRM, the Commission asks a number of questions relating to its proposal to include persons acting with apparent authority in the definitions of agent. For example, would the proposed revision reduce the opportunities for circumvention of the Federal Election Campaign Act and the appearance of corruption? Would the inclusion of apparent authority in the definition of "agent" affect the exercise of political activity?

Alternatively, the Commission also seeks comment on whether reasons remain to exclude apparent authority from the Commission's definitions of agent. The concept of apparent authority has generally been applied in ordinary commercial settings. The NPRM asks, among other things, whether the differences between ordinary commercial settings and political settings, where the Commission's regulations operate, provide grounds for excluding apparent authority from the Commission's definitions of agent.

In addition, the Commission seeks comments on whether, instead of either excluding apparent authority from the definitions of agent altogether or simply adding the term "apparent authority" to these definitions, it should provide a more narrowly tailored definition of agent that includes certain aspects of apparent authority

## Federal Register

*Federal Register* notices are available from the FEC's Public Records Office, on the web site at [http://www.fec.gov/law/law\\_rulemakings.shtml](http://www.fec.gov/law/law_rulemakings.shtml) and from the FEC faxline, 202/501-3413.

### Notice 2005-2

*De Minimis* Exemption for Disbursements of Levin Funds by State, District, and Local Party Committees (70 FR 5385, February 2, 2005)

### Notice 2005-3

Definition of "Agent" for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures (70 FR 5382, February 2, 2005)

### Notice 2005-4

Contributions and Donations by Minors (70 FR 5565, February 3, 2005)

<sup>1</sup> See Final Rules and Explanation and Justification for Regulations on Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money (67 FR at 49083); Final Rules and Explanation and Justification for Regulations on Coordinated and Independent Expenditures (68 FR at 425).

(continued on page 6)

## Regulations

(continued from page 5)

### Public Comments

The NPRM was published in the February 2, 2005, *Federal Register* and is available on the FEC web site at [http://www.fec.gov/law/law\\_rule-makings.shtml](http://www.fec.gov/law/law_rule-makings.shtml). All comments should be addressed to Mr. Brad C. Deutsch, Assistant General Counsel, and must be submitted in either written or electronic form by March 4, 2005. The Commission recommends that comments be submitted via e-mail. E-mail comments may be sent to [agentnprm@fec.gov](mailto:agentnprm@fec.gov) and may also be submitted through the Federal eRegulations Portal at [www.regulations.gov](http://www.regulations.gov). All electronic comments must include the full name, electronic mail address and postal service address of the commenter. Comments that do not contain this information will not be considered. No oral comments can be accepted. Faxed comments should be sent to 202/219-3923, with a printed copy follow-up to insure legibility. Mailed comments should be sent to the Federal Election Commission, 999 E. Street, NW, Washington, DC 20463. If the Commission receives sufficient requests to testify, it may hold a hearing on these proposed rules. Commenters wishing to testify must indicate this in their comments.

—Amy Pike

### Notice of Proposed Rulemaking on *De Minimis* Exemption for the Disbursement of Levin Funds by State, District and Local Party Committees

On January 27, 2005, the Commission approved a Notice of Proposed Rulemaking (NPRM) seeking comments on proposed changes to its regulations on the disbursement of Levin funds by state, district and local party committees. The proposed rules would delete Commission regulations at 11

CFR 300.32(c)(4) that allow a state, district or local committee of a political party to pay for certain types of “federal election activity” (FEA) entirely with Levin funds<sup>1</sup> under certain circumstances.

The NPRM was published in the February 2, 2005, *Federal Register* (70 FR 5385), and is open to public comments until March 4, 2005.

### Background

On July 29, 2002, the Commission promulgated regulations at 11 CFR Part 300 to implement provisions of the Bipartisan Campaign Reform Act (BCRA) concerning FEA disbursements by state, district and local party committees. The rules require that when these committees disburse more than \$5,000 on Allocable Type 1 & 2 FEA<sup>2</sup> in a calendar year, they must pay for such FEA with entirely federal funds or with a combination of federal and Levin funds. The Commission also created a *de minimis* exemption for any state, district or local party committee whose disbursements for Allocable Type 1 & 2 FEA aggregate \$5,000 or less in a calendar year, allowing such committees to pay for these expenses entirely with Levin funds. 11 CFR 300.32(c)(4).

<sup>1</sup> *Levin funds, a type of funds raised only by state, district or local political party committees, are limited to donations of \$10,000 per calendar year and may be raised from sources otherwise prohibited by the Federal Election Campaign Act (except foreign nationals). 11 CFR 300.31.*

<sup>2</sup> *“Allocable Type 1 & 2” FEA means: 1) voter registration activity 120 days before a federal election; and 2) voter identification, get-out-the-vote activity or generic campaign activity in connection with an election in which a candidate for federal office appears on the ballot. Neither type of activity may be allocated if it refers to a clearly identified federal candidate. 11 CFR 100.24.*

### District Court Ruling

In its September 28, 2004, decision, the District Court of the District of Columbia held in *Shays v. FEC* that the *de minimis* exemption was inconsistent with Congress’ clear intent because BCRA requires state, district or local party committees to pay for Allocable Type 1 &

### Visit the FEC’s Redesigned Web Site

FEC staff recently completed a significant upgrade of the Commission’s web site, [www.fec.gov](http://www.fec.gov). The redesigned site offers a wealth of information in a simple, clearly-organized format. Features include cascading menus that improve navigation and interactive pages that allow users to tailor content to their specific needs. Noteworthy among the new features is a search engine. This tool allows visitors to immediately access all pages on the site that contain a desired word or phrase. Another new feature, the Commission Calendar, helps users keep track of reporting deadlines, upcoming conferences and workshops, Commission meetings, comment deadlines and more.

The site also offers a robust new enforcement section that includes the Enforcement Query System, information on closed MURs, the Alternative Dispute Resolution and Administrative Fine programs and—for the first time—access to final audit reports issued by the Commission.

The Commission encourages the regulated community and the public to make use of this dynamic and interactive site by visiting [www.fec.gov](http://www.fec.gov).

## Enforcement Query System Now Available on FEC Web Site

The FEC recently launched its Enforcement Query System (EQS), a web-based search tool that allows users to find and examine public documents regarding closed Commission enforcement matters. Using current scanning, optical character recognition and text search technologies, the system permits intuitive and flexible searches of case documents and other materials.

Currently, the EQS contains complete public case files for all MURs closed since January 1, 2000. Users of the system can search for specific words or phrases from the text of all public case documents. They can also identify single matters under review (MURs) or groups of cases by searching additional identifying information about cases prepared as part of the Case Management System. Included among these criteria are case names and numbers, complainants and respondents, timeframes, dispositions, legal issues and penalty amounts.

The system was recently updated to offer additional case information and navigation tools, including:

- A redesigned Case Summary section that includes the name of a respondent committee treasurer and any prior committee treasurer; and
- An On-Line Tutorial to help users to utilize the system's search capabilities more fully.

The Enforcement Query System may be accessed on the Commission's web site at [www.fec.gov](http://www.fec.gov).

2 FEA with either federal funds or a mix of federal and Levin funds.

The court stated that for a regulatory *de minimis* exemption to stand, an agency has to demonstrate that following the precise language of the statute would lead to "absurd or futile results," or that the failure to create an exemption would be "contrary to the primary legislative goal."

### Proposals

Because the court found the *de minimis* exemption to be inconsistent with Congressional intent, the Commission proposes to remove it from 11 CFR 300.32(c)(4). The new rule would require state, district and local party committees to pay for Allocable Type 1 & 2 FEA with all federal funds or with an allocation of federal and Levin funds, as provided for at 11 CFR 300.33. The Commission seeks comments on the proposed regulation, and invites comments on whether following the precise language of the BCRA would lead to "absurd or futile results," absent a *de minimis* exemption.

The Commission also seeks comment on an alternative proposal for a *de minimis* exemption that would apply only to state, district and local party committees whose receipts and disbursements for Allocable Type 1 & 2 FEA aggregate less than \$5,000 in a calendar year. This exemption would only apply to state, district or local party committees that are already statutorily exempt from having to report FEA. The Commission seeks comment on whether this alternative proposal would comport with the statutory intent of 2 U.S.C. §441i(b).

The Commission has filed an appeal with the U.S. Court of Appeals for the D.C. Circuit of certain aspects of the *Shays* decision, including the court's ruling on the *de minimis* exemption. The appeal is currently pending. In the event the Commission prevails on appeal, the Commission may terminate this rulemaking prior to the adoption of final rules.

### Comments

All comments should be addressed to Mr. Brad C. Deutsch, Assistant General Counsel, and must be submitted in either written or electronic form by March 4, 2005. Written comments should be sent to the Federal Election Commission, 999 E Street NW, Washington, DC 20463. Faxed comments should be sent to 202/219-3923, with a printed copy follow-up to insure legibility. Electronic mail comments should be sent to [deminimis@fec.gov](mailto:deminimis@fec.gov) and may also be submitted through the Federal eRegulations Portal at [www.regulations.gov](http://www.regulations.gov). All electronic comments must include the full name, electronic mail address and postal service address of the commenter. Comments that do not contain this information will not be considered. No oral comments can be accepted. If the Commission receives sufficient requests to testify, it may hold a hearing on these proposed rules. Commenters wishing to testify must indicate this in their comments.

The full text of the NPRM is available on the FEC web site at [http://www.fec.gov/law/law\\_rule-makings.shtml](http://www.fec.gov/law/law_rule-makings.shtml) and from the FEC faxline, 202/501-3413

—Jim Wilson

## Advisory Opinions

### AO 2004-45

#### Accounting Method for Determining Excess Contributions Under Millionaires' Amendment

Senator Ken Salazar and his principal campaign committee, Salazar for Senate (the Committee) may use a "last-in, first-out" (LIFO) accounting method to determine whether any contributions raised under the "Millionaires' Amendment" are

(continued on page 8)

## Advisory Opinions

(continued from page 7)

“excess contributions” that must be returned to contributors. 2 U.S.C. §§441a-1 and 441a(i); 11 CFR Part 400.

### Background

During the 2004 general election cycle, the Salazar Committee raised contributions under the Millionaires’ Amendment, which allows a candidate to raise money in excess of the \$2,000 per election individual contribution limit in certain circumstances where the candidate faces a self-financed opponent. Under the Federal Election Campaign Act (the Act) and Commission regulations, candidates receiving increased contributions under the Millionaires’ Amendment must refund, within 50 days after the election, all “excess contributions” that were not spent in connection with that election. 2 U.S.C. §§441a(i)(3) and 441a-1(a)(4); 11 CFR 400.51 and 400.53. An “excess contribution” is the amount of each contribution raised over the usual \$2,000 limit that is not otherwise spent “in connection with the election” to which it relates. 11 CFR 400.50.

### 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 Faxline documents, enter document number 411 at the prompt.

### Analysis

Neither the Act nor the Commission’s regulations specify a particular accounting method that candidate committees must use to determine whether their remaining cash-on-hand after an election contains any “excess contributions.” Because LIFO is a generally accepted accounting principle, the Salazar Committee may use this method to determine whether it has “excess contributions” under the Millionaires’ Amendment.

Date Issued: January 27, 2005;  
Length: 3 pages.

—Amy Kort

## Advisory Opinion Request

### AOR 2005-1

Contributions by Indian tribe that is co-indemnitor for corporation with federal contracts (Mississippi Band of Choctaw Indians, January 24, 2005)

## Information

### Federal Income Tax Requirements for Political Organizations

Political committees and organizations that file with the FEC may also need to file a federal income tax return with the Internal Revenue Service (IRS).

If an organization has taxable income, it must file Form 1120-POL, *US Income Tax Return for Certain Political Organizations*, and pay all taxes due, by the 15<sup>th</sup> day of the third month after the close of the organization’s fiscal year (March 15<sup>th</sup> for organizations operating on a calendar year). Organizations may request a six-month extension of the filing deadline by filing Form 7004, *Application for Automatic Extension of Time to File Corporate Income Tax Return*.

Taxable income for political organizations is defined as gross income, less deductions allowed in the Internal Revenue Code, which include expenses directly connected with producing gross income and a \$100 specific deduction. Gross income is the sum of investment income and income from a trade or business (such as renting excess office space to an unrelated organization). Exempt function income—income set aside for use for an organization’s exempt purpose—is excluded from gross income if received in one of the following ways:

- Contributions of money or property; membership dues or other assessments;
- Proceeds from a political fundraising or entertainment event;
- Proceeds from the sale of campaign materials; or
- Proceeds from bingo games, as defined in §513(f)(2).

Political committees and organizations that do not file with the FEC may have additional reporting and disclosure requirements with the IRS. These can include:

- Form 8871, *Political Organization Notice of Section 527 Status*, due within 24 hours of establishment, or within 30 days of a material change;
- Form 8872, *Report of Contributions and Expenditures* (contributions and expenditures must be reported at least semi-annually in a non-election year, and quarterly in an election year); and
- Form 990, *Return of Organization Exempt from Federal Income Tax*.

To obtain copies of required forms and additional information about federal tax requirements, visit the IRS political organizations web site at [www.irs.gov/polorgs](http://www.irs.gov/polorgs). For further assistance, call Exempt Organizations **Customer Account Services at 1-877-829-5500**.

—Submitted by the IRS



## Statistics

### Semiannual PAC Count Shows Increase Throughout 2004

The number of federally registered political action committees (PACs) increased during 2004, from 4,040 on July 1, 2004, to 4,184 by January 1, 2005.

Corporate PACs remain the largest category, with 1,622 committees. Nonconnected PACs remain the second-largest group, with 1,223 committees. The chart at right, below, shows the complete mid-year and year-end PAC figures since 2000.

### Back Issues of the Record Available on the Internet

This issue of the *Record* and all other issues of the *Record* starting with January 1996 are available on the FEC web site as PDF files. Visit the FEC web site at <http://www.fec.gov/pages/record.shtml> to find monthly *Record* issues.

The web site also provides copies of the *Annual Record Index* for each completed year of the *Record*, dating back to 1996. The *Annual Record Index* list *Record* articles for each year by topic, type of Commission action and, in the case of advisory opinions, the names of individuals requesting Commission action.

You will need Adobe® Acrobat® Reader software to view the publication. The FEC's web site has a link that will take you to Adobe's web site, where you can download the latest version of the software for free.

A complete listing of PAC statistics since 1974 is available in the agency's January 25, 2005, press release. The press release is available:

- On the FEC web site at <http://www.fec.gov/press/press2005/2005news.shtml>;
- From the FEC's Public Disclosure and Press offices (800/424-9530); and
- By fax (call the FEC Faxline at 202/501-3413).

—Amy Kort

### 2004 Presidential Campaign Finance Activity

[Financial activity of 2004 Presidential candidates and national conventions](#) totaled more than \$1 billion, 56 percent more than comparable activity during the 2000 campaign. Presidential candidates in the primaries raised \$673.9 million dollars seeking nomination. The two major party nominees received \$74.6 million each in public funds to conduct their general election campaigns, and they raised an additional \$21 million for legal and accounting costs associated with the general election race. For their nominating conventions, the two parties received \$14.9 million each from the U.S. Treasury, while host committees

(continued on page 10)

### Semiannual PAC Count—2000-2005

	Corporate	Labor	Trade/ Member/ Health	Coop- erative	Corp. w/o Capital Stock	Non- connected <sup>1</sup>	Total
Jan. 00	1,548	318	844	38	115	972	3,835
Jul. 00	1,523	316	812	39	114	902	3,706
Jan. 01	1,545	317	860	41	118	1,026	3,907
Jul. 01	1,525	314	872	41	118	1,007	3,877
Jan. 02	1,508	316	891	41	116	1,019	3,891
Jul. 02	1,514	313	882	40	110	1,006	3,865
Jan. 03	1,528	320	975	39	110	1,055	4,027
Jul. 03	1,534	320	902	39	110	1,040	3,945
Jan. 04	1,538	310	884	35	102	999	3,868
Jul. 04	1,555	303	877	34	97	1,174	4,040
Jan. 05	1,622	306	900	34	99	1,223	4,184

<sup>\*</sup>Committees with no activity for the election cycle are not included in the mid-year and year-end PAC count.

<sup>1</sup>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.

**Statistics**

(continued from page 9)

from the two convention cities raised a total of \$142.5 million in support of convention activities.

In addition to spending by candidates and conventions, individuals, parties and other groups spent \$192.4 million independently advocating the election or defeat of Presidential candidates during the 2004 campaign. This spending compares with \$14.7 million in similar activity in 2000, and \$1.4 million in independent expenditures in the 1996 Presidential race. Much of the independent expenditure activity during 2004 was undertaken by national political parties. The Democratic National Committee (DNC) spent \$120 million on these independent expenditures, while the Republican National Committee (RNC) spent \$18.2 million. In addition, the RNC spent \$45.8 million on

generic media ads that included both specific campaign messages and generic party support messages for which they shared the cost of some advertising with the Bush campaign. DNC spending on similar ads totaled \$24 million. The two national parties also spent \$32.1 million in coordination with the 2004 Presidential campaigns during the general election period. Each party was permitted to spend up to \$16.25 million on this activity. In 2000 parties spent \$27.2 million on coordinated expenditures, while the total in 1996 was \$18.7 million.

For the 2004 elections, membership organizations reported \$12.3 million in communications to their members advocating the election or defeat of a Presidential candidate. This amount was little changed from the \$11.5 million these organizations reported during the 2000 campaign. Finally, in 2004 groups reported

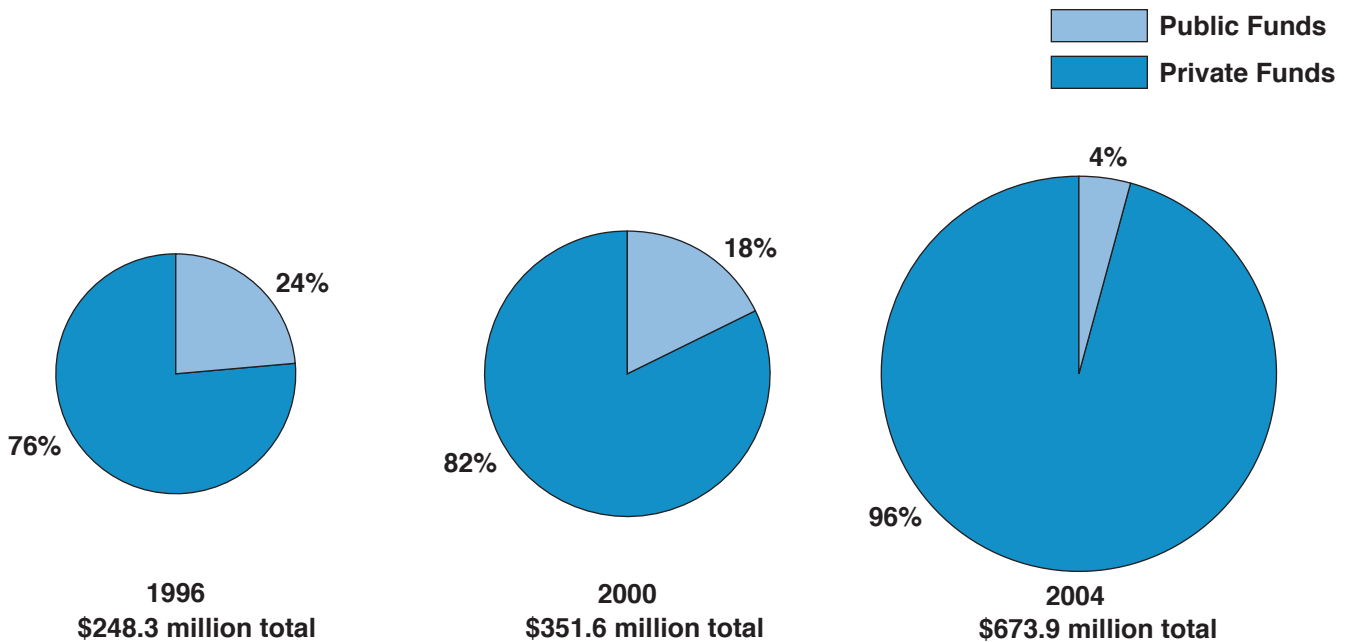
making \$40.8 million in electioneering communications that made reference to Presidential candidates.<sup>1</sup>

Presidential candidates seeking nominations raised \$611.4 million in contributions directly from individuals, \$28 million in federal matching funds, \$3.5 million from PACs and \$6.8 million in transfers from prior campaigns.

Significantly, 2004 was the first cycle in which both major party nominees declined public matching funds during the primaries, and [the \\$28 million paid in those funds was the lowest total since the first Presi-](#)

<sup>1</sup>These totals do not include certain voter registration activities, get-out-the-vote activities and other communications by unregistered groups that may not be required to disclose this activity to the FEC. Some of this activity may be disclosed to the Internal Revenue Service.

**Presidential Primary Funding: Ratio of Public to Private Funds, 1996-2004 Elections**



[dential election conducted under the system in 1976](#). The \$269.6 million raised by President Bush prior to the convention was nearly three times his fundraising total in 2000, when he also declined to accept public funds. John Kerry raised \$234.6 million, nearly six times more than had ever been raised by a Democratic nominee under the public funding program, which imposes spending limits on candidates who accept matching funds and limits the total amount of public funds available. See the charts on page 10 for details on total Presidential primary fundraising and matching fund payouts.

The extraordinary fundraising by the two nominees led to some disbursements that were unusual for candidate committees. The Kerry primary committee, for example, [transferred more than \\$40 million to Democratic party committees at both the national and state levels](#), with \$23.6 million going to the DNC. The Bush primary committee transferred \$11.3 million to the RNC in mid October.

A Press Release dated February 3, 2005, provides additional details on Presidential campaign spending for the 2004 elections, as well as for prior election cycles. The release is available on the FEC web site at <http://www.fec.gov/press/press2005/2005news.shtml>.

—Amy Kort

## Public Funding

### Commission Certifies Matching Funds for Presidential Candidates

On January 27, 2005, the Commission certified \$20,023.37 in federal matching funds to two Presidential candidates for the 2004 election. The U.S. Treasury Department made the payment on February 1, 2005. This certification raises to \$28,375,506.11 the total amount of

### Matching Funds for 2004 Presidential Primary Candidates: January Certification

Candidate	Certification January 2005	Cumulative Certifications
Wesley K. Clark (D) <sup>1</sup>	\$0	\$7,615,360.39
John R. Edwards (D) <sup>2</sup>	\$6,310.00	\$6,654,161.44
Richard A. Gephardt (D) <sup>3</sup>	\$0	\$4,104,319.82
Dennis J. Kucinich (D) <sup>4</sup>	\$0	\$3,291,962.59
Lyndon H. LaRouche, Jr. (D) <sup>5</sup>	\$0	\$1,456,019.13
Joseph Lieberman (D) <sup>6</sup>	\$0	\$4,267,796.85
Ralph Nader (I) <sup>7</sup>	\$13,713.37	\$885,885.89
Alfred C. Sharpton (D)	\$0	\$100,000.00 <sup>8</sup>

<sup>1</sup> General Clark publicly withdrew from the Presidential race on February 11, 2004.

<sup>2</sup> Senator Edwards publicly withdrew from the Presidential race on March 3, 2004.

<sup>3</sup> Congressman Gephardt publicly withdrew from the Presidential race on January 2, 2004.

<sup>4</sup> Congressman Kucinich became ineligible to receive matching funds on March 4, 2004.

<sup>5</sup> Mr. LaRouche became ineligible to receive matching funds on March 4, 2004.

<sup>6</sup> Senator Lieberman publicly withdrew from the Presidential race on February 3, 2004.

<sup>7</sup> Ralph Nader became ineligible to receive matching funds on September 2, 2004.

<sup>8</sup> On May 10, 2004, the Commission determined that Reverend Sharpton must repay this amount to the U.S. Treasury for matching funds he received in excess of his entitlement. See the July 2004 Record, page 8.

federal funds certified thus far to eight Presidential candidates under the Matching Payment Account Act.

### Presidential Matching Payment Account

Under the Presidential Primary Matching Payment Account Act, the federal government will match up to \$250 of an individual's total contributions to an eligible Presidential primary candidate. A candidate must establish eligibility to receive matching payments by raising in excess of \$5,000 in each of at least 20 states (i.e., over \$100,000). Although an individual may contribute up to

\$2,000 to a primary candidate, only a maximum of \$250 per individual applies toward the \$5,000 threshold in each state. Candidates who receive matching payments must agree to limit their committee's spending, limit their personal spending for the campaign to \$50,000 and submit to an audit by the Commission. 26 U.S.C. §§9033(a) and (b) and 9035; 11 CFR 9033.1, 9033.2, 9035.1(a)(2) and 9035.2(a)(1).

Candidates may submit requests for matching funds once each month. The Commission will certify

(continued on page 12)

## Public Funding

(continued from page 11)

an amount to be paid by the U.S. Treasury the following month. 26 CFR 702.9037-2. Only contributions from individuals in amounts of \$250 or less are matchable.

The chart on page 11 lists the amount most recently certified to each eligible candidate who elected to participate in the matching fund program, along with the cumulative amount that each candidate has been certified to date.

—Amy Kort

## Party Activities

### 2005 Coordinated Party Expenditure Limits

The 2005 coordinated party expenditure limits are now available. They are:

- \$38,300 for House nominees;<sup>1</sup> and
- A range from \$76,600 to \$2,014,900 for Senate nominees, depending on each state's voting age population.

Party committees may make these special expenditures on behalf of their nominees in any 2005 general elections that may be held. National party committees have a separate limit for each nominee, but they share their limits with their national senatorial and congressional committees. Each state party committee has a separate limit for each House and Senate nominee in its state. Local party committees do not have their own separate limit. One party committee may authorize another party committee to make an expenditure against its limit. Local com-

<sup>1</sup> In states that have only one U.S. House Representative, the coordinated party expenditure limit for the House nominee is \$76,600.

### Authority to Make Coordinated Party Expenditures on Behalf of House and Senate Nominees

<b>National Party Committee</b>	May make expenditures on behalf of House and Senate nominees. May authorize <sup>1</sup> other party committees to make expenditures against its own spending limits. Shares limits with national Congressional and Senatorial campaign committees.
<b>State Party Committee</b>	May make expenditures on behalf of House and Senate nominees seeking election in the committee's state. May authorize <sup>1</sup> other party committees to make expenditures against its own spending limits.
<b>Local Party Committee</b>	May be authorized <sup>1</sup> by national or state party committee to make expenditures against its limits.

### Calculating 2005 Coordinated Party Expenditure Limits

	<b>Amount</b>	<b>Formula</b>
<b>Senate Nominee</b>	See table on page 12	The greater of: \$20,000 x COLA or 2¢ x state VAP <sup>2</sup> x COLA <sup>3</sup>
<b>House Nominee in States with Only One Representative</b>	\$76,600	\$20,000 x COLA
<b>House Nominee in Other States</b>	\$38,300	\$10,000 x COLA
<b>Nominee for Delegate or Resident Commissioner<sup>4</sup></b>	\$38,300	\$10,000 x COLA

<sup>1</sup>The authorizing committee must provide prior authorization specifying the amount the committee may spend.

<sup>2</sup>VAP means voting age population.

<sup>3</sup>COLA means cost-of-living adjustment. The applicable COLA is 3.831.

<sup>4</sup>American Samoa, the District of Columbia, Guam and the Virgin Islands elect Delegates; Puerto Rico elects a Resident Commissioner.

## Coordinated Party Expenditure Limits for 2005 Special Election Senate Nominees

State	Voting Age Population (in thousands)	Expenditure Limit
Alabama	3,436	\$263,300
Alaska*	467	\$76,600
Arizona	4,197	\$321,600
Arkansas	2,076	\$159,100
California	26,297	\$2,014,900
Colorado	3,423	\$262,300
Connecticut	2,665	\$204,200
Delaware*	637	\$76,600
Florida	13,394	\$1,026,200
Georgia	6,497	\$497,800
Hawaii*	964	\$76,600
Idaho	1,021	\$78,200
Illinois	9,475	\$726,000
Indiana	4,637	\$355,300
Iowa	2,274	\$174,200
Kansas	2,052	\$157,200
Kentucky	3,166	\$242,600
Louisiana	3,351	\$256,800
Maine	1,035	\$79,300
Maryland	4,163	\$319,000
Massachusetts	4,952	\$379,400
Michigan	7,579	\$580,700
Minnesota	3,861	\$295,800
Mississippi	2,153	\$165,000
Missouri	4,370	\$334,800
Montana*	719	\$76,600
Nebraska	1,313	\$100,600
Nevada	1,731	\$132,600
New Hampshire*	995	\$76,600
New Jersey	6,543	\$501,300
New Mexico	1,411	\$108,100
New York	14,655	\$1,122,900
North Carolina	6,423	\$492,100
North Dakota*	495	\$76,600
Ohio	8,680	\$665,100
Oklahoma	2,664	\$204,100
Oregon	2,742	\$210,100
Pennsylvania	9,569	\$733,200
Rhode Island*	837	\$76,600
South Carolina	3,173	\$243,100
South Dakota*	580	\$76,600
Tennessee	4,510	\$345,600
Texas	16,223	\$1,243,000
Utah	1,649	\$126,300
Vermont*	487	\$76,600
Virginia	5,655	\$433,300
Washington	4,718	\$361,500
West Virginia	1,431	\$109,600
Wisconsin	4,201	\$321,900
Wyoming*	390	\$76,600

\* In these states, which have only one U.S. House Representative, the spending limit for the House nominee is \$76,600. In other states, the limit for each House nominee is \$38,300.

mittees may only make coordinated party expenditures with advance authorization from another committee.

Coordinated party expenditure limits are separate from the contribution limits; they also differ from contributions in that the party committee must spend the funds on behalf of the candidate rather than give the money directly to the campaign. Although these expenditures may be made in consultation with the candidate, only the party committee making the expenditure—not the candidate committee—must report them. (Coordinated party expenditures are reported on FEC Form 3X, line 25, and are always itemized on Schedule F, regardless of amount.)

The accompanying tables on pages 12 and 13 include:

- Information on which party committees have the authority to make coordinated party expenditures;

(continued on page 14)

### Campaign Guides Available

For each type of committee, a *Campaign Guide* explains, in clear English, the complex regulations regarding the activity of political committees. It shows readers, for example, how to fill out FEC reports and illustrates how the law applies to practical situations.

The FEC publishes four *Campaign Guides*, each for a different type of committee, and we are happy to mail your committee as many copies as you need, free of charge. We encourage you to view them on our web site ([www.fec.gov](http://www.fec.gov)).

If you would like to place an order for paper copies of the *Campaign Guides*, please call the Information Division at 800/424-9530.

**Party Activities**

(continued from page 13)

- The formula used to calculate the coordinated party expenditure limits; and
- A listing of the state-by-state coordinated party expenditure limits.

—Amy Kort

**Outreach**

**Roundtable for Committee Treasurers**

On March 23, 2005, the Commission will host a roundtable session for political committee treasurers to discuss treasurer responsibilities, including reporting, recordkeeping and compliance with the limits and prohibitions of the Federal Election Campaign Act. FEC staff will also address the Commission’s recent policy statement on treasurer liability. See the chart below for details.

The roundtable will be held at 9:30 a.m. at the FEC, 999 E. St., NW., Washington DC. Attendance is limited to 30 people per session, and registration is accepted on a first-come, first-served basis. Please call the FEC before registering or sending money to ensure that openings remain. The registration form is available on the FEC web site at <http://www.fec.gov> and from Faxline, the FEC’s automated fax system (202/501-3413, request

document 590). For more information, call the Information Division at 800/424-9530, or locally at 202/694-1100.

—Amy Kort

**FEC Campaign Finance Law Conferences in 2005**

Each year the Federal Election Commission sponsors a number of conferences where Commissioners and FEC staff conduct a variety of technical workshops on the campaign finance law. Discussion topics include fundraising, reporting and communications. Workshops are designed for those seeking an introduction to the basic provisions of the law as well as for those more experienced in campaign finance law. The schedule at right lists the dates and locations for conferences to be held in 2005. This year, conferences held in Washington, DC, will feature an opportunity for each participant to meet the FEC Campaign Finance Analyst who reviews his or her committee’s FEC reports.

**Conference for House and Senate Campaigns and Political Committees**

The conference for House and Senate Campaigns and political party committees has filled to capacity, and the FEC cannot accept any additional participants. Representatives from campaign committees and parties who would still like to attend an FEC conference this year are

encouraged to attend the upcoming conferences in San Diego, California or San Antonio, Texas. See the chart below for details.

**Conference for Corporations and their PACs**

The Commission will hold a conference for corporations and their PACs April 25 through 27, 2005, at the Loews L’Enfant Plaza Hotel in Washington, DC. The registration fee for this conference is \$375 for participants who register on or

**Conferences Schedule for 2005**

**Conference for House and Senate Campaigns and Political Party Committees**

March 15-17, 2005  
Loews L’Enfant Plaza  
Washington, DC

**Conference for Corporations and their PACs**

April 25-27, 2005  
Loews L’Enfant Plaza  
Washington, DC

**Conference for Trade Associations, Membership Organizations, Labor Organizations and their PACs**

June 1-3, 2005  
Hyatt Regency Chicago  
Chicago, IL

**Conference for Campaigns, Parties and Corporate/Labor/Trade PACs**

September 14-15, 2005  
Hyatt Regency Islandia  
San Diego, CA

**Conference for Campaigns, Parties and Corporate/Labor/Trade PACs**

October 25-26, 2005  
Crowne Plaza Hotel  
San Antonio Riverwalk  
San Antonio, TX

**Roundtable Schedule**

Date	Subject	Intended Audience
March 23 9:30-11:00	Preparing for the 2006 Elections • Basic Limits and Prohibitions; • Recordkeeping and Reporting; • New Policy on Treasurer Liability.	• Political Committee Treasurers

before March 24, and \$385 for late registrations.

Due to the high level of interest in this conference, the FEC can only accept registrations from two individuals representing any single organization. Registration is accepted on a first-come, first-served basis, and FEC conferences often fill to capacity, so please register as early as possible.

The Loews L'Enfant Plaza Hotel is located at 480 L'Enfant Plaza SW., Washington, DC. A room rate of \$189 (single or double) is available for conference participants who make reservations on or before March 24. Call 1-800/635-5065 to make room reservations. You must mention that you are attending the FEC conference in order to receive the special group rate. After March 24, room rates are based on availability. Parking is available at the hotel for a fee of \$15 per day and \$22 overnight. The hotel is located near the L'Enfant Plaza Metro and the Virginia Railway Express stations.

### **Conference for Trade Associations, Labor Organizations, Membership Organizations and their PACs**

The FEC will host a conference for trade associations, labor organizations and membership organizations (and the PACs of any of these groups) this spring. The conference will take place June 1-3 in Chicago, IL. The registration fee is \$400 per attendee, and a late fee of \$10 will be added to registrations received after May 11.

The conference will be held at the Hyatt Regency Chicago on the Riverwalk, 151 E. Wacker Drive, Chicago, IL 60601. The hotel is located one block off of Chicago's Magnificent Mile. Complete registration information will be available online soon.

### **Registration Information**

Complete registration information for FEC conferences is available on the FEC web site at

<http://www.fec.gov/info/outreach.shtml#conferences>.

Please direct all questions about conference registration and fees to Sylvester Management Corporation at 1-800/246-7277. For questions about the conference program, or to receive e-mail notification when registration begins, call the FEC's Information Division at 1-800/424-9530 (or locally at 202/694-1100) or send an e-mail to [Conferences@fec.gov](mailto:Conferences@fec.gov).

—Amy Kort

## **Index**

The first number in each citation refers to the "number" (month) of the 2005 *Record* issue in which the article appeared. The second number, following the colon, indicates the page number in that issue. For example, "1:4" means that the article is in the January issue on page 4.

### **Advisory Opinions**

- 2004-40: Status of state party as state committee of political party, 1:8
- 2004-41: Non-affiliation of SSFs, 2:4
- 2004-42: LLC as connected organization for SSF, 2:7
- 2005-45: Accounting method for determining excess contributions under Millionaires' Amendment, 3:7

### **Compliance**

- Administrative fines assessed, 2:13
- ADR program cases closed, 1:9; 2:12

### **Court Cases**

- \_\_\_\_\_ v. FEC
- Augusti and Augusti for Congress, 1:12
- Citizens for Responsibility and Ethics in Washington, 2:10
- Emily's List, 3:1

### **Regulations**

- "Agent" definition for coordinated and independent expenditures and nonfederal funds regulations, Notice of Proposed Rulemaking, 3:4
- BCRA technical amendments, final rules, 1:6
- Contributions by minors to candidates and party committees, 3:3
- "De minimis" exemption for Disbursement of Levin funds by state, district and local party committees, 3:6
- Filing by Priority Mail, Express Mail and overnight delivery, Notice of Proposed Rulemaking, 2:1
- Party committee donations to certain tax-exempt organizations and political organizations, Notice of Proposed Rulemaking, 1:7
- Payroll deductions for contributions to trade association SSF, Notice of Proposed Rulemaking, 2:2

### **Reports**

- California special election reporting, 2:3
- Due in 2005, 1:3
- Electronic filing software, FEC Form 3X, updated, 2:1

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