

# Record

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Federal Election Commission

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## Regulations

### Final Rules on Administrative Fines Regulations

On March 6, 2003, the Commission approved final rules amending its administrative fines regulations to:

- Reduce the civil money penalties for political committees with less than \$50,000 in financial activity (total receipts plus total disbursements) in a reporting period who file reports late or not at all;
- Create two additional levels-of-activity brackets in the civil penalty schedules for such committees to make further distinctions in the amount of the civil penalty assessed; and
- Exclude certain nonfederal activity from the level-of-activity calculation on which civil penalties for unauthorized committees are based.

Additionally, the amended rules clarify how late filers and nonfilers are notified of Commission actions under these regulations and clarify what will be considered “extraordinary circumstances” when reason-to-believe findings or

## Reports

### April Reporting Reminder

All principal campaign committees of House and Senate candidates must now file quarterly in non-election years as well as in election years, and, as a result, all such committees must file a report by April 15. 11 CFR 105.4(a). Committees that file on a monthly basis, including all national party committees and certain political action committees and state, district and local party committees, have a report due on April 20. (See page 5 for a related article on monthly filing for state, district and local party committees.)

### New Reporting Forms and Software

The Commission has recently approved new and revised reporting forms and software that conform to the reporting requirements of the Bipartisan Campaign Reform Act of 2002 (BCRA). All committees, individuals and other persons must use the new and revised forms for all reports. Paper copies of these forms will be sent to registered political committees who file on

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## Regulations

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reason-to-believe penalties are challenged.

### Civil Penalties

Based on its experience with the Administrative Fine program, the Commission has decided to reduce the civil penalty schedules for committees with levels of financial activity below \$50,000 in a late or nonfiled report, and to make more refined distinctions in penalties for committees at the lowest levels of financial activity.

Accordingly, the final rules include new penalty schedules that will apply to reports that are due on or after the effective date of the rules. Under the revised penalty schedules, the bracket previously covering levels of activity under \$25,000 has been divided into three brackets. The revised penalty schedules for late and nonfiled reports that are not election sensi-

tive<sup>1</sup> and have less than \$50,000 of financial activity in the reporting period are as follows:

- For levels of activity of \$1-\$4,999.99, the base penalty is \$250 for nonfiled reports and \$25 (plus five dollars for each day late) for late reports;
- For levels of activity of \$5,000-\$9,999.99, the base penalty is \$300 for nonfiled reports and \$50 (plus five dollars for each day late) for late reports;
- For levels of activity of \$10,000-\$24,999.99, the base penalty is \$500 for nonfiled reports and \$100 (plus five dollars for each day late) for late reports; and
- For levels of activity of \$25,000-\$49,999.99, the base penalty is \$900 for nonfiled reports and \$200 (plus 20 dollars for each day late) for late reports. 11 CFR 111.43(b)(2)(iii).

For election sensitive reports,<sup>2</sup> the revised penalty schedules for reports with under \$50,000 of financial activity are as follows:

- For levels of activity of \$1-\$4,999.99, the base penalty is \$500 for nonfiled reports and \$50 (plus ten dollars for each day late) for late reports;
- For levels of activity of \$5,000-\$9,999.99, the base penalty is \$600 for nonfiled reports and \$100 (plus ten dollars for each day late) for late reports;

<sup>1</sup> These are reports that are not due to be filed immediately before an election. Non-election sensitive reports are considered nonfiled if they are not filed at all or are filed more than 30 days late.

<sup>2</sup> Election sensitive reports include reports and notices filed prior to an election, such as 12-day pre-election reports, October quarterly and October monthly reports. They are considered nonfiled if they are not filed prior to four days before an election or are not filed at all.

- For levels of activity of \$10,000-\$24,999.99, the base penalty is \$900 for nonfiled reports and \$150 (plus ten dollars for each day late) for late reports; and
- For levels of activity of \$25,000-\$49,999.99, the base penalty is \$1,400 for nonfiled reports and \$300 (plus 25 dollars for each day late) for late reports. 11 CFR 111.43(b)(2)(iii).

The Commission has also revised its method of calculating the “level of activity” on a report, and the “estimated level of activity” on a report that is not filed, to exclude certain nonfederal receipts and disbursements for unauthorized committees that report a nonfederal share of allocated federal/nonfederal activity. Thus, transfers received from the nonfederal account(s) (reported on Line 18a of new FEC Form 3X) and disbursements for the nonfederal share of operating expenditures attributable to allocated federal/nonfederal activity (reported on Line 21(a)(ii) of new FEC Form 3X) will not be considered in the penalty calculation. This regulatory change should effectively lower penalties faced by unauthorized committees that allocate expenses between federal and nonfederal accounts in accordance with 11 CFR 106.6 and 106.7, and will result in penalties that are more reflective of a committee’s level of participation in federal elections. 11 CFR 111.43(a)(2)(i)(B) and (a)(2)(ii)(B); 11 CFR 111.43(b)(2)(i) and (b)(2)(ii).

### Notification of Committees

The Commission has added new 11 CFR 111.46 to address how respondents will be notified of reason-to-believe findings, final determinations and all other communications under the administrative fines regulations. The final rule clarifies that unless a respondent has filed a statement designating counsel, all notifications or other

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communications from the Commission or the administrative fines Reviewing Officer will be sent to the political committee and its treasurer at the address listed on the committee's most recent FEC Form 1, Statement of Organization. If the committee has designated counsel, then the Commission will instead contact that counsel unless authorized in writing to do otherwise by the committee or its treasurer. See 11 CFR 111.23.

### Challenging Alleged Violations or Penalty Assessments

The administrative fines regulations list specific circumstances that the Commission will consider in determining whether to assess a civil money penalty, including the existence of "extraordinary circumstances" that were beyond the respondents' control and that lasted for at least 48 hours, which prevent the timely filing of the report. In the revised rules, the Commission has added staff "inexperience" and "unavailability"—including that of the treasurer—to the examples of circumstances that are **not** considered "extraordinary." 11 CFR 111.35(b)(4)(iii). The Commission strongly encourages political committees to name an assistant treasurer so that their financial activities and reporting duties will not be disrupted in cases where the treasurer is unavailable.

### Additional Information

The final rules, and their Explanation and Justification, were published in the March 17, 2003, *Federal Register* (68 FR 12572), and are available on the FEC web site at <http://www.fec.gov/register.htm>. These rules will take effect on April 16, 2003, and will cover reports due on or after this date. ♦

—Amy Kort

## Reports

(continued from page 1)

paper, and may also be downloaded from the Commission's web site at <http://www.fec.gov/reporting.html>. Instructions for filling out the new and revised forms are also available at this web address.<sup>1</sup>

For electronic filers, the software formats for FECFile, the FEC's free reporting software, are now available and may be downloaded at <http://www.fec.gov/electfil/electron.html>. See related article below. Electronic filers using commercial software should contact their vendors to obtain the updated format for their software. Please note that under the Commission's mandatory electronic filing regulations, individuals and organizations that receive contributions or make expenditures in excess of \$50,000 in a calendar year—or expect to do so—must file all reports and statements with the FEC electronically. Electronic filers who instead file on paper or submit an electronic report (either by direct transmission or on diskette) that does not pass the Commission's validation program will be considered nonfilers and may be subject to enforcement actions, including administrative fines.<sup>2</sup>

Senate committees and other committees that file with the Secretary of the Senate are not subject to the mandatory electronic filing rules, but may file an unofficial electronic copy of their reports with the FEC in order to speed disclosure. All reports, whether they are filed with the FEC or with the Secretary of the Senate, must be

<sup>1</sup> Paper filers should use the Commission's old reporting forms to file amendments to reports that were originally filed using these forms.

<sup>2</sup> Electronic filers should use the updated filing software to file all amendments to reports.

filed using the new and revised reporting forms and/or software.

### Additional Information

For more information on 2003 reporting dates:

- See the reporting tables in the [January 2003 Record](#);
- Call and request the reporting tables from the FEC at 800/424-9530 (press 1, then 3) or 202/694-1100;
- Fax the reporting tables to yourself using the FEC's Faxline (202/501-3413, document 586); or
- Visit the FEC's web site at [www.fec.gov/pages/charts.htm](http://www.fec.gov/pages/charts.htm) to view the reporting tables online. ♦

—Amy Kort

## Electronic Filing

### Electronic Filers Required to Update Filing Software

The Commission's electronic filing software has been updated to conform to new and revised reporting requirements under the Bipartisan Campaign Reform Act of 2002. Committees that file electronically should do so using either the new Version 5 of FECFile or other software that supports the new format. FECFile 5 may now be downloaded from the FEC web site at [www.fec.gov](http://www.fec.gov) (click on the [Electronic Filing Icon](#)). Filers who use commercial software to file electronically should contact their software vendor as soon as possible to get the latest release. ♦

—Amy Kort

## Texas Special Election Reporting

Texas has scheduled a special election on May 3, 2003, to fill the U.S. House seat in the 19th Congressional district being vacated by Representative Larry Combest. There are two possible special elections to fill this seat, but only one may be necessary. If no candidate wins a majority of votes in the Special General election, the top two vote-getters, regardless of party affiliation, will participate in a Special Runoff election on a date to be set by the Governor after May 3. If a Special Runoff is held, the Commission will notify committees of the reporting dates for that election. Note that 48-hour notices are required of authorized committees that receive contributions of \$1,000 or more for the Special General election between April 14 and April 30. Committees (including PACs) involved in this election must follow one of the two reporting schedules below.<sup>1</sup> The coordinated party expenditure limit for this election is \$36,480.

If Only the Special General Is Held, Committees Must File:

	Close of Books	Reg./Cert. Mail Date	Filing Date
<b>April Quarterly</b>		—waived—	
<b>Pre-General</b>	April 13	April 18	April 21
<b>Post-General</b>	May 23	June 2	June 2
<b>July Quarterly</b>	June 30	July 15	July 15

If Two Elections Are Held, Committees Involved Only in the Special General Must File:

	Close of Books	Reg./Cert. Mail Date	Filing Date
<b>April Quarterly</b>		—waived—	
<b>Pre-General</b>	April 13	April 18	April 21
<b>July Quarterly</b>	June 30	July 15	July 15

<sup>1</sup> The Commission has issued new reporting forms and software that allow for reporting under the Bipartisan Campaign Reform Act. All reports must be filed using the new forms or filing software, as appropriate. Reports filed electronically must be submitted by midnight on the filing date. **A committee required to file electronically that instead files on paper reporting forms will be considered a nonfiler.** Reports filed on paper and sent by registered or certified mail must be postmarked by the mailing date; reports sent by any other means (including reports sent via first class mail and overnight delivery) must be received by the Commission's close of business on the filing date.

## Court Cases

### New Litigation

#### Greenwood for Congress v. FEC

On January 22, 2003, the plaintiffs filed a complaint in the U.S. District Court for the Eastern District of Pennsylvania. The complaint seeks review of a civil money penalty assessed by the Commission under its administrative fines regulations against Greenwood for Congress, Inc., (the Committee) for failing to timely file its 2001 Year-End Report. 11 CFR 111.30-111.45.

In the complaint, the Committee alleges that it sent an electronic version of its 2001 Year-End Report on a computer disk, along with a paper copy version, to the Commission via overnight delivery on January 29, 2002. The Year-End Report was due on January 31, 2002. The Committee was required to file its report electronically under the Commission's mandatory electronic filing regulations. 11 CFR 104.18(a)(1). Reports that are required to be filed electronically but are instead submitted on paper do not satisfy a committee's filing requirement. 11 CFR 104.18(a)(2).

While the Commission received a package containing the paper version of the report on January 30, it subsequently informed the Committee that it had not received an electronic version of the report. The Committee then sent an electronic version of the report on a 3.5 inch floppy diskette, which the Commission received on February 8, eight days after the filing deadline.

On June 14, 2002, the Commission found reason to believe that the Committee and its treasurer had violated 2 U.S.C. §434(a), which requires the timely filing of reports by political committees. The Commission assessed a civil money penalty in the amount of \$3,100 in

accordance with 11 CFR 111.43. After reviewing the Committee's written response and supporting documentation to the Commission's reason-to-believe finding, the Commission's reviewing officer recommended that the Commission make a final determination that the Committee had violated 2 U.S.C. §434(a) and that the civil money penalty assessed was appropriate. On December 20, 2002, the Commission accepted the reviewing officer's recommendation and made its final determination.

In its complaint, the Committee asks that the court:

- Declare that the Commission's determination that the Committee and its treasurer violated 2 U.S.C. §434(a) and its assessment of a civil money penalty of \$3,100 were arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law;
- Modify or set aside the Commission's determination that the Committee violated 2 U.S.C. §434(a) and its assessment of the civil money penalty;
- Enjoin the Commission from enforcing or collecting the \$3,100 civil money penalty; and
- Require the Commission to pay the plaintiffs' legal fees and costs.

U.S. District Court for the Eastern District of Pennsylvania, 03-307.♦

—Jim Wilson

## Federal Register

Federal Register notices are available from the FEC's Public Records Office, on the FEC web site at <http://www.fec.gov/register.htm> and from the FEC faxline, 202/501-3413.

### Notice 2003-6

Administrative Fines Regulations, final rules (68 FR 12572, March 17, 2003)

## 800 Line

### 800 Line Monthly Filing by State, District and Local Party Committees Engaged in Federal Election Activity

In recent weeks, the Commission has received a number of questions about how the agency's new "soft money" regulations—and particularly the provisions regarding "federal election activity"—affect state, district and local party committees' filing requirements. While most of these committees have historically filed on a quarterly/semiannual schedule, they will now be required to file on a monthly schedule if they are disclosing receipts or disbursements for "federal election activity." 11 CFR 300.36(c)(1).

The information that follows offers guidance to state, district and local party committees who might be affected by this requirement by:

1. Defining federal election activity;
2. Explaining what funds may be used to pay for this activity; and
3. Providing specific examples of when and how a committee must comply with the monthly filing requirement.

### Definition of Federal Election Activity

As used in the new "soft money" regulations at 11 CFR part 300, "federal election activity" (FEA) means any of the following activities:

1. Voter registration activity during the 120 days before a regularly-scheduled federal election and ending on the day of that election;

2. Voter identification, generic campaign activities<sup>1</sup> and get-out-the-vote activities that are conducted in connection with an election in which one or more candidates for federal office appear on the ballot (regardless of whether state or local candidates also appear on the ballot);
3. A public communication<sup>2</sup> that refers to a clearly-identified federal candidate and that promotes, supports, attacks or opposes any federal candidate (This definition applies regardless of whether a nonfederal candidate is also mentioned or identified in the communication and regardless of whether the communication expressly advocates a vote for or against a federal candidate.); and
4. Services provided by an employee of a state, district or local party committee who spends more than 25 percent of his or her compensated time during that month on FEA or on activities in connection with a federal election. 11 CFR 100.24(b).

The Commission has also adopted regulations at 11 CFR 100.24(a) that define certain terms used in the above definition of FEA:

1. "In connection with an election in which a candidate for federal

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<sup>1</sup> "Generic campaign activity" means a public communication that promotes or opposes a political party and does not promote or oppose a clearly-identified federal or nonfederal candidate. 11 CFR 100.25.

<sup>2</sup> A "public communication" means any communication by means of television (including cable and satellite), radio, newspaper, magazine, billboard, mass mailing, telephone bank or any other form of general public political advertising. Communications over the Internet are not included in the definition of public communication. 11 CFR 100.26.

## 800 Line

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office appears on the ballot” means:

- In an even-numbered year, the period beginning on the day of the earliest filing deadline for primary election ballot access under state law—or on January 1 in states that do not hold primaries—and ending on the day of the general election or the general election runoff if a runoff is held; or
  - In an odd-numbered year, the period beginning on the day that the date is set for a special election in which a federal candidate appears on the ballot, and ending on the day of that election.
2. “Voter registration activity” means contacting individuals by telephone, in person or by other individualized means to assist them in registering to vote. This activity includes, but is not limited to, printing and distributing registration and voting information, providing individuals with voter registration forms and assisting individuals with completing and filing these forms.
3. “Get-out-the-vote activity” means contacting registered voters by telephone, in person or by other individualized means in order to assist them in voting (unless the activity is undertaken by state or local candidates and/or officeholders, or an organization of such candidates or officeholders, and refers only to one or more state or local candidates). This activity includes, but is not limited to:
- Providing individual voters, within 72 hours of an election, with information about when and where polling places are open; and
  - Transporting, or offering to transport, voters to polling places.
4. “Voter Identification” means creating or enhancing voter lists

by adding information about voters’ likelihood of voting in a particular election or voting for a particular candidate (unless the activity is undertaken by state or local candidates and/or officeholders, or an organization of such candidates or officeholders, and refers only to one or more state or local candidates).

### Levin Funds

Under the new rules, a state or local party committee must pay for some types of FEA with federal funds only, and may pay for other types with an allocated mix of federal and Levin funds or, in limited cases, entirely with Levin funds. Levin funds are essentially a new type of funds, with limitations, restrictions and reporting requirements explained in 11 CFR part 300. The restrictions on raising Levin funds differ from those on raising federal funds. In order to be used by a state or local party committee as Levin funds, a donation:

- Must be permissible under the laws of the state in which the party committee raising and spending the funds is organized;
- May be solicited from some sources that cannot contribute under the Act (e.g., corporations, unions and federal government contractors) so long as the donation is not from foreign nationals or from sources that are impermissible under state law;
- Is limited to \$10,000 in a calendar year from any person, including any entity established, maintained, financed or controlled by that person (if state law limits donations to an amount less than \$10,000, then the lower limit applies); and
- Must be raised using only federal funds or Levin funds to pay the direct costs of the fundraising (including expenses for the solicitation of funds and for the planning and administration of actual

fundraising activities and programs) if any portion of the funds will be used for federal election activity. 11 CFR 300.31 and 300.32(a)(4).

Each state, district and local party committee has a separate Levin fund donation limit, and such committees are not considered to be affiliated for the purposes of determining Levin fund donation limits. Levin funds spent by a given state or local party committee must be raised solely by that particular committee, and these committees cannot raise Levin funds through joint fundraising efforts or accept transfers of Levin funds from other committees. Additionally, these committees cannot accept or use as Levin funds any funds that come from, or in the name of, a national party committee, federal candidate or federal officeholder. 11 CFR 300.31 and 300.34(b).

The Bipartisan Campaign Reform Act and Commission regulations also limit how a committee may spend Levin funds for FEA. For example, each committee may spend only those Levin funds that it raises for itself, and these funds can be used only for certain types of voter registration, voter identification, get-out-the-vote activity and generic campaign activity. Levin funds may *not* be used to pay for any part of a federal election activity if:

- The activity refers to a clearly-identified federal candidate; or
  - Any portion of the funds will be used to pay for a television or radio communication, other than a communication that refers solely to a clearly-identified state or local candidate.
- Moreover, it is important to note that certain types of FEA may never be financed with Levin funds:
- Public communications that refer to a clearly-identified candidate; and
  - The services of employees who devote more than 25 percent of

their compensated time to activities in connection with a federal election. 11 CFR 300.32(c).

### Triggering Monthly Filing

State, district and local party committees that are federal political committees and that have reportable receipts and disbursements for FEA must file their FEC reports monthly. Otherwise, these committees would generally file on a quarterly schedule. Under the new rules, many of these committees may begin the calendar year filing quarterly but be required to switch to a monthly schedule as they continue to raise and spend funds for FEA. Examples of activities that would trigger monthly filing appear in the adjacent box.

A state, district or local party committee whose combined federal and Levin receipts and disbursements for FEA total less than \$5,000 in a calendar year need only disclose its federal receipts and disbursements. Once the committee's combined annual receipts and disbursements for FEA total \$5,000 or more, it must disclose all receipts and disbursements, including receipts and disbursements of Levin funds. Receipts and disbursements of Levin funds are disclosed on new Schedules L, L-A and L-B, which have been added to the revised FEC Form 3X. Allocable FEA is disclosed on new Schedules H5 and H6, which are also included in the 3X package.

Once a committee triggers the monthly filing requirement, it must file the next regularly-scheduled monthly report and must continue to file on the monthly schedule for the remainder of the calendar year. During the subsequent year, if a committee would like to return to a quarterly/semiannual filing schedule, it must file with the Commission a request to do so. 11 CFR 104.5(c)(3).◆

—Amy Kort

## Federal Election Activity (FEA) Reporting Example

In general, if a state, district or local party committee has FEA that it is required to disclose, it must file monthly. Consider, as an example, the following scenario concerning the activities of the Washington County Party Committee over a two-year period:

*The Washington County Party Committee is a political committee under the Act. During the first six months of 2003, the committee has no receipts or disbursements for FEA—federal or Levin. Since the committee is not required to file monthly, it opts to file quarterly during this period, and submits its first report covering 2003 activity on July 31 (the mid-year report).*

*In August 2003, the committee makes a salary payment to an employee who spent more than 25 percent of her compensated time during July on activities in connection with a federal election. Under FEC regulations, this payment qualifies as one of the FEAs that must be paid solely with federal funds. As a federal disbursement, the payment does not fall within the Levin fund disclosure exemption for committees with less than \$5,000 in receipts and disbursements for FEA. As a result, the committee must file the September 20 monthly report, and must continue to file monthly for the balance of calendar year 2003. In January 2004, the committee informs the Commission that it will return to a quarterly reporting schedule.*

*During the first three months of 2004, the Washington County Party Committee has no receipts or disbursements for FEA and files its first election-year report on April 15.*

*Later in April, the committee decides to conduct a series of voter registration drives in advance of the state's June 10 primary election. Under FEC regulations, voter registration drives conducted within 120 days of a federal election qualify as FEA. Typically, FEA expenses must be paid only with federal funds or with an allocated mix of federal and Levin funds, depending on the type of FEA. However, committees whose total receipts and disbursements for FEA aggregate less than \$5,000 for the calendar year may pay for certain FEA, including voter registration, entirely with Levin funds. The Washington County committee plans to keep its total FEA receipts and disbursements well below \$5,000, so it decides to raise and spend only Levin funds to finance its voter registration drive. Since Levin funds are reportable only after a committee crosses the \$5,000 threshold, the Washington County committee does not have any FEA to disclose, and need not file monthly.*

*By the end of May, the Washington County committee is running a little short on Levin funds, so it decides to make its May 28 voter registration payment using an allocated mix of federal and Levin funds. The committee's total receipts and disbursements for FEA are still slightly below \$5,000 for the calendar year, but the committee has now financed FEA with federal funds, the federal portion of which is reportable regardless of amount. As a result, the committee must file monthly, beginning with the June 20 report. The committee is still not required to disclose its Levin receipts or disbursements.*

*The Washington County Party Committee's June 5 voter registration payment pushes its total FEA receipts and disbursements over \$5,000 for the calendar year. Having crossed the \$5,000 threshold, the committee's July 20 monthly report—and every subsequent report for the year—must disclose all receipts and disbursements for FEA, including receipts and disbursements of Levin funds.*

## Advisory Opinions

### AO 2002-15 Affiliation of Trade Associations

The American Association of Clinical Urologists (AACU) and the American Urological Association, Inc., (AUA) are affiliated for the purposes of the Federal Election Campaign Act (the Act) and, as a result, may both act as the connected organizations of the American Association of Clinical Urologists Political Action Committee (UROPAC). UROPAC, in turn, may solicit the individual members of both AACU and AUA for contributions.

#### Background

AACU and AUA are both incorporated trade associations consisting primarily of individual physician members who specialize in urology. The two organizations have overlapping members, board members, officers and employees, and the organizations regularly interact. On May 28, 2002, AACU and AUA entered into a formal affiliation agreement setting forth procedures for collaboration between the two groups and addressing, among other issues, the proposed joint governance and operation of UROPAC.

Under the Act and Commission regulations, a corporation—including an incorporated trade association—that directly or indirectly establishes, administers or financially supports a separate segregated fund (SSF) is the “connected organization” of that SSF. The connected organization may use its general treasury funds to pay the administrative and solicitation costs of the SSF without making a contribution under the Act. 2 U.S.C. §441b(b)(2)(C) and 11 CFR 114.1(a)(2)(iii) and 114.5(b). A

trade association that consists of individual members and that serves as the connected organization for an SSF may solicit its individual members on behalf of the SSF, as well as the members’ families and the executive and administrative personnel of the trade association. 11 CFR 114.7.

#### Affiliation

The Act and Commission regulations provide that committees, including SSFs, are affiliated when they are established, financed, maintained or controlled by the same corporation, person or group of persons. 2 U.S.C. §441a(a)(5) and 11 CFR 100.5(g) and 110.3(a). If two trade associations are affiliated, they may jointly serve as the connected organizations for a single SSF. See AOs 1988-14 and 1980-18.

In a situation such as this one, where a trade association is not formally a subsidiary of another entity, Commission regulations provide for an examination of various factors in the context of an overall relationship to determine whether the organizations are affiliated. 11 CFR 100.5(g)(4)(i) and (ii)(A)-(J), and 110.3(a)(3)(i) and (ii)(A)-(J). These factors are also used to determine whether a connected organization is affiliated with another organization for the purposes of establishing the class of persons who may be solicited for contributions to the SSF. 11 CFR 114.5(g)(4). The relevant factors in this case are whether a sponsoring organization has:

- The authority or ability to direct or participate in the governance of another sponsoring organization through provisions of by-laws, contracts or other rules, or through formal or informal practices;
- A common or overlapping membership, or common or overlapping officers or employees, with another sponsoring organization that indicates a formal or ongoing

relationship between the two; and

- Any members, officers or employees who were members, officers or employees of another sponsoring organization that indicates a formal or ongoing relationship between the organizations. 11 CFR 100.5(g)(4)(ii)(B), and (D) through (F) and 110.3(a)(3)(ii)(B), and (D) through (F).

Given the overall relationship between AACU and AUA, considered in the context of these affiliation factors as described below, the two associations are affiliated for the purposes of the Act.

*Membership overlap.* The overlap in membership between AACU and AUA is particularly significant to the determination of affiliation in this case. Approximately 71 percent of the 3,935 AACU members are also members of AUA, and all of the individuals eligible to hold office in the AACU are also AUA members. Active members of AACU who have not already joined the AUA are formally encouraged to do so by the AACU—a practice which is codified in the AACU Bylaws.

*Participation in Governance.* The broad membership overlap between the organizations is part of the structural design that indicated each organization’s participation in the governance of the other. The AACU Bylaws establish membership in the AUA as a qualification for holding elected office in the AACU, thus mandating that all of its officers and committee members belong to both associations. Furthermore, under the AUA Bylaws and the affiliation agreement between the groups, a block of three seats on the AUA’s key Health Policy Council is reserved for the AACU. The AACU Bylaws also formally require an AUA presence on the AACU’s Government Relations Committee, and, as noted above, there is a 100 percent membership overlap with AACU members who are eligible to hold office.



*Overlap between current board members.* The overlapping board membership between the AACU and the AUA is also important. At least one person currently serves as a Board of Directors member for both organizations. Six current AACU officers and board members serve on the UAU's 14-member Health Policy Council, along with the AACU's immediate past president and president-elect. The AACU board is entirely controlled by people who must also be members of the AUA, and all of the members of the AUA board are also AACU members (although in this case such membership is not an actual requirement for holding a board position).<sup>1</sup>

*Additional indicators of affiliation.* The two organizations participate in a number of additional activities and practices that indicate an ongoing commitment to joint endeavors. For example, the fact that AACU and AUA coordinate their national lobbying efforts, including employing the same lobbyist to provide joint representation between the two associations, indicates that the organizations have a close, ongoing relationship as organizations formed for the same purpose and working together for those purposes. Additionally, the affiliation agreement provides for continuing the two associations' current practice of providing booths and/or sponsoring lectures at the other's annual convention, as well as for other forms of mutual involvement.

### Consequences of Affiliation

Given the circumstances described above, AACU and AUA are affiliated, and both may serve as the connected organizations of UROPAC. Thus, UROPAC, or

<sup>1</sup> *The regular participation of former members, officers and board members from one organization in the governance of the other also points toward an ongoing relationship between AACU and AUA.*

AACU or AUA acting on behalf of UROPAC, may solicit contributions from individual members, their families and the executive and administrative personnel of both trade associations. 11 CFR 114.7(a) and (c). In addition, UROPAC must amend its FEC Form 1, Statement of Organization, to list both AUA and AACU as its connected organizations and incorporate the full names of both organizations into the official name of the SSF. 2 U.S.C. §§433(b)(2) and (c) and 432(e)(5) and 11 CFR 102.2(a)(1)(ii) and (2), 102.14(c), 109.11 and 110.11. See also AOs 1997-13, 1996-49, 1992-17, 1998-8, 1988-42 and 1988-14.

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Length: 9 pages. ♦

—Amy Kort

### AO 2003-1 Nonconnected Committee's Payment of Expenses for Trip to Meet Members of Congress

NORPAC, a nonconnected political action committee (PAC), may not use its nonfederal account to pay the entirety of expenses for a trip to meet with Members of Congress. The costs associated with the trip are administrative expenses for the PAC and thus must be paid either from federal funds or allocated between federal and nonfederal funds. 11 CFR 106.6.

### Background

NORPAC, a nonconnected political committee, conducts an "annual mission" to Washington in order to meet with members of Congress and to discuss issues in support of Israel. The meetings do not include:

- Express advocacy or support of any Member of Congress;
- The making of contributions to any campaigns or political committees;
- Receptions or events for any Member of Congress;

- Participation or assistance in fundraising by any Member of Congress; or
- Meetings with political party officials.

The meetings may, however, affect subsequent decisions about candidate support by NORPAC.

Expenses for the trip generally include bus travel, food, meeting space rental, Congressional directories and supplies for participants, including pens, folders and informational packets about issues to be discussed. The participants in the trip pay NORPAC an attendance fee, which is intended to allow NORPAC to recover the direct costs of the mission. In past years attendance fees were placed in NORPAC's federal account, and all disbursements for the trip were made from NORPAC's federal account. In December 2001, however, NORPAC established a nonfederal account in addition to its federal account.

### Analysis

Because NORPAC has chosen to organize and operate as a political committee, it is required to report all of its receipts and disbursements with the FEC even if those receipts and disbursements are not directly in connection with a federal election.<sup>1</sup> Commission regulations stipulate that nonconnected committees making disbursements in connection with both federal and nonfederal elections may make such disbursements in one of two ways:

- Entirely from federally-permissible funds; or
  - Allocated between federal and nonfederal funds.
- 11 CFR 106.6(a) and 102.5.

If a committee elects to allocate its disbursements for federal and

(continued on page 10)

<sup>1</sup> *FEC v. GOPAC, Inc., 871 F.Supp. 1466, 1470-71 (D.D.C. 1994).*

## Advisory Opinions

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nonfederal activity, then it must allocate the following:

- Administrative expenses including rent, utilities, office supplies and salaries;
- Direct fundraising costs; and
- Voter identification, voter registration, and get-out-the-vote drives and any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue.

11 CFR 106.6(b)(2).

The expenses involved in the NORPAC trip fall under the regulatory definition of “administrative expenses” and, therefore, must be allocated between federal and nonfederal funds, unless NORPAC opts to pay the expenses solely with federal funds. See 11 CFR 106.6(b)(2)(i).

Also, the attendance fees for the trip may be deposited either in NORPAC’s federal or nonfederal account. In the former case, the fees are contributions to NORPAC, and thus are subject to the contribution limitations and prohibitions and reporting requirements of the Federal Election Campaign Act (the Act). Donations by participants to NORPAC’s nonfederal account are not subject to the Act’s contribution limitations.<sup>2</sup>

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—Gary Mullen

<sup>2</sup> If participants are merely reimbursing NORPAC at cost for specific earmarked individual expenses (i.e., room deposits) such transfers are not limited as contributions or expenditures and may pass through the nonfederal account. Similarly, funds advanced by NORPAC for such specific individual expenses need not be allocated, but may be paid from the nonfederal account.

## Advisory Opinion Requests

### AOR 2003-2

Exemption from certain reporting and disclosure provisions of the Federal Election Campaign Act (Socialist Workers Party (SWP), Socialist Workers National Campaign Committee and committees supporting SWP candidates, February 21, 2003)

### AOR 2003-3

Federal candidate’s participation in nonfederal campaigns, including attending fundraisers for and soliciting funds on behalf of state and local candidates (State Senator Bill Boling, State Delegate Bill Janis, Chesterfield County School Board Member Beth Davis and U.S. Representative Eric Cantor, February 27, 2003)

### AOR 2003-4

Corporate donations to a charity to match contributions made to the SSF by members of restricted class (Freeport-McMoRan Copper & Gold, Inc., February 25, 2003) ♦

## Outreach

### Revised Schedule for Spring Conferences

#### Conference for Candidates and Party Committees

In response to the overwhelming demand for the FEC’s conference for House and Senate candidates and political party committees, held March 12-13 in Washington, DC, the Commission has amended its conference schedule to allow for a second conference for candidates and party committees. This conference will be held May 21-22 at the Royal Sonesta Hotel in Boston, and will consist of a series of workshops conducted by Commissioners and experienced FEC staff who will explain how the federal campaign

finance law, as amended by the Bipartisan Campaign Reform Act of 2002, applies to House and Senate candidates and party committees. Workshops will specifically address new rules for fundraising, new restrictions on the use of nonfederal funds or “soft money,” new requirements for communications and revised reporting requirements. A representative from the IRS will be available to answer election-related tax questions

The registration fee for the conference is \$385, which covers the cost of the conference, materials and meals. Registrations must be

### Conference Schedule for 2003

#### **Conference for Corporations and their PACs**

April 29-30, 2003  
Washington, DC

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

May 21-22, 2003  
Boston, MA

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

June 16-17, 2003  
Washington, DC

#### **Regional Conference for House and Senate Campaigns, Political Party Committees and Corporate/Labor/Trade PACs**

September 9-10, 2003  
Chicago, IL

#### **Regional Conference for House and Senate Campaigns, Political Party Committees and Corporate/Labor/Trade PACs**

October 28-29, 2003  
San Diego, CA

received by April 27. A ten dollar late fee will be assessed after that date for late registrations. Because demand for this conference is exceptionally high, the FEC can only accept conference registrations from two attendees representing any given organization.

The Royal Sonesta Hotel is located at 5 Cambridge Parkway, Cambridge, MA. A room rate of \$179 per night is available to conference attendees who make room reservations on or before April 27.

### Conference for Corporations and Their PACs

The FEC will hold a conference for corporations and their PACs April 29-30 in Washington, DC. Commissioners and experienced FEC staff will conduct workshops to explain how the requirements of the federal campaign finance law apply to these organizations, and a representative from the IRS will be available to answer election-related tax questions.

The registration fee for this conference is \$385, which covers the cost of the conference, materials and meals. A ten dollar late fee will be assessed for registrations received after March 28. Because demand for this conference is exceptionally high, the FEC can only accept conference registrations

from two attendees representing any given corporation or other organization.

The conference will be held at the Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC. A room rate of \$189 per night is available to conference attendees who make room reservations on or before March 28.

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

The conference for trade associations, membership organizations and their PACs, originally scheduled for May 21-22, has been rescheduled. The FEC will hold a conference for trade associations, membership and labor organizations and their PACs June 16-17 in Washington, DC. (Please note that these conference dates are different from those for the previously-scheduled conference for labor organizations.) Complete information will be available in the May issue of the *Record*.

### Registration Information

Complete conference registration information is available online. Conference registrations will be accepted on a first-come, first-served basis. Attendance is limited, and FEC conferences are selling out quickly this year, so please register early. For registration information:

- Call Sylvester Management Corporation at 800/246-7277;
  - Visit the FEC web site at <http://www.fec.gov/pages/infosvc.htm#Conferences>; or
  - Send an e-mail to [toni@sylvestermanagement.com](mailto:toni@sylvestermanagement.com). ♦
- Amy Kort

## Public Appearances

April 9, 2003  
Robert Wood Johnson Executive Nurses' Seminar  
Washington, DC  
Robert Biersack

April 27-29, 2003  
Heartland Conference/Arkansas Ethics Commission  
Little Rock, AR  
Commissioner Thomas

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