

# RECORD

May 1985

1325 K Street NW Washington DC 20463

Volume 11, Number 5

## REGULATIONS

### CONTRIBUTION LIMITS: NOTICE OF PROPOSED RULEMAKING

On April 17, 1985, the Commission published a notice of proposed rulemaking in the Federal Register (50 Fed. Reg. 15169), which seeks comments on suggested revisions to FEC regulations governing contribution limits. 11 CFR 110.1 and 110.2. The proposed rules address several issues which have emerged since the regulations were first prescribed in 1977. The draft amendments also clarify the scope of these rules.

Written comments on the proposed rules should be submitted, by May 17, 1985, to Ms. Susan E. Propper, Assistant General Counsel, FEC, 1325 K Street, N.W., Washington, D.C. 20463. Ms. Propper may also be contacted at 202/523-4143 or toll free 800/424-9530. Major revisions contained in the proposed rules and related issues are highlighted below.

#### Contributions by Persons Other Than Multicandidate Committees. 11 CFR 110.1

The proposed rules would clarify that the contribution limits described in this provision (110.1) apply only to individuals, partnerships, unincorporated associations and political committees other than multicandidate committees.

#### Designation of Contributions for Particular Elections. 11 CFR 110.1(b)(2)

The election law establishes separate contribution limits for primary and general elections. Under current regulations, to determine the election for which a contribution should be attributed, the Commission either: 1) relies on the contributor's written statement designating a specific election or 2) in the absence of a designation, presumes that the contribution is for the next election.

Different problems have arisen with regard to designated and undesignated contributions. For example, under current rules, a contribution designated for a primary, caucus or convention but received after the date of the designated election may be accepted by the campaign only to the extent that net outstanding debts remain for that election. However, the current rule does not indicate what should be done with the designated

contributions if the campaign has no outstanding primary debts.

- o Should a committee be required to return any portion of a contribution that exceeds its net outstanding debts or may the committee ask the contributor to redesignate the contribution for another election?
- o Should committees receiving designated contributions be permitted to deposit them until they can determine whether they have outstanding debts?
- o How much time should the committee be allowed to calculate debts?
- o If a committee has no debts, how much time should the committee be allowed before it returns the contribution or asks for a redesignation?
- o Should a committee be allowed to consolidate its primary debts with its general election funds and use general election contributions to retire primary debts? How would such a rule affect the contribution limits for both elections?
- o Should the scope of these suggested rules be expanded to cover contributions designated for a general election, runoff or special election? (Current rules apply only to contributions designated for primary campaigns.)

*continued*

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**Calculating Net Debts Outstanding.****11 CFR 110.1(b)(3)**

Current rules do not define a campaign's "net debts outstanding," important for purposes of determining whether a campaign could receive designated contributions after an election. (See discussion above.) The Commission therefore seeks comments on whether the rules should be revised to:

- o Incorporate the formula for determining net debts outstanding that is spelled out in AO 1984-32\* and include other items in this formula; or
- o Incorporate other approaches that would avoid the net debts outstanding formula. (See pages 15170-15171 of the statement accompanying the proposed rules.)

**Determining When a Contribution is Made and Received; and Who is an Agent.****11 CFR 110.1(b)**

The current rules do not define when a contribution is "made" by a donor or "received" by a committee. Nor do the rules define "agents" eligible to receive contributions on the campaign's behalf. Such definitions would help clarify how to attribute contributions to particular elections, for purposes of both contribution limits and reporting. This becomes important, for example, when a campaign receives a check shortly after the election, but dated before the election. Although the proposed rules do not contain specific definitions, the explanation accompanying the rules sets forth several alternatives, discussing the merits of each. (See pages 15171-15172 of the notice of proposed rulemaking.)

**Procedure for Designating Contributions.****11 CFR 110.1(b)(4)**

The proposed rule would promote greater uniformity in the reporting of contributions by recipient and donor committees. The rule would encourage contributors to clearly designate contributions for particular elections on either: a) the written instrument used to make the contribution (e.g., a check) or b) a written statement accompanying the contribution, which bears the contributor's signature.

Under this rule, a committee could not obtain written redesignations for contributions that appeared to exceed the contributor's limits for that

election. Other provisions, however, would permit redesignations when contributions were originally designated for former campaigns with no outstanding debts. (See above.) The Commission seeks comments on whether redesignations should be allowed at all and, if so, under what circumstances.

**Contributions to Political Parties.****11 CFR 110.1(c)**

Under the current rules, donors other than multicandidate committees may contribute no more than a total of \$20,000 per year to the political committees of a national political party. The proposed rules would clarify that the national committee of a political party could accept up to \$20,000 in contributions, even if it was the authorized committee of a publicly funded Presidential nominee.

**Contributions by Partnerships.****11 CFR 110.1(e)**

Under the current rules, partnership contributions must be attributed to both individual partners and the partnership. This rule may, however, be unnecessarily burdensome for large partnerships because the amount of the contribution attributed to each partner may be nominal. The Commission therefore solicits suggestions for methods that would prevent evasion of the limits without imposing unnecessary requirements on large partnerships.

Since a partnership is not a corporation, it may not establish or pay the administrative costs of a separate segregated fund. It may, however, establish a contribution plan for partners, and associate itself with a nonconnected political committee to which partners may contribute. The Commission seeks comments on the following issues raised by these political activities:

- o Should partnerships that sponsor contribution plans be considered conduits or intermediaries subject to the reporting requirements\* and other FEC rules?
- o Would a partnership that establishes such a contribution plan become a political committee, subject to the Act?
- o Should a nonconnected political committee with which a partnership is associated be permitted to establish a checkoff contribution plan? The Commission is concerned that the administra-

\*For a summary of AO 1984-32, see p. 6 of the October 1984 Record.

\*See 11 CFR 110.6.

The Record is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: John Warren McGarry, Chairman; Joan D. Aikens, Vice Chairman; Lee Ann Elliott; Danny Lee McDonald; Thomas E. Harris; Frank P. Reiche; Jo-Anne L. Coe, Secretary of the Senate, Ex Officio; Benjamin J. Guthrie, Clerk of the House of Representatives, Ex Officio. For more information, call 202/523-4068 or toll-free 800/424-9530.

tive expenses for a checkoff plan may inevitably be attributed to corporate partners or result in excessive contributions by the partnership to the nonconnected committee.

- o Should partnership contributions be attributed exclusively to the individual partners and be unlimited as to the partnership itself?

#### **Contributions to Candidates for More Than One Federal Office. 11 CFR 110.1(f)**

The proposed rules would follow the current rules concerning contributions to an individual who is running for more than one office. Additionally, the proposed rules would make clear that a candidate's authorized committee for one office (e.g., a Senate primary) could not make transfers, loans, contributions or expenditures on behalf of the candidate's committee for another office (e.g., a House primary) if the transaction resulted in excessive contributions by contributors to the first campaign.

#### **Aggregation of Contributions. 11 CFR 110.1(h)**

Under the current rules, if a donor contributes to both a candidate's authorized committee and an unauthorized committee which supports or anticipates supporting that candidate, under certain circumstances, the contributions are subject to a single, per election limit. The rule is designed to prevent circumvention of the limits in the event an unauthorized committee: 1) solicits contributions to support a candidate or 2) receives contributions earmarked for a particular candidate. The Commission seeks comments on whether the purpose of the provision is more clearly stated in the current regulations or in the proposed rules.

The proposed rules would list factors indicating whether contributors have "knowledge or belief" that their contributions to unauthorized committees would, in turn, be contributed to a specific candidate or used to make independent expenditures on his/her behalf. The proposed rules would make clear that this provision applied to unauthorized committees (including multicandidate committees) making direct contributions to candidates and to committees making independent expenditures on behalf of these candidates.

#### **Contributions by Spouses and Minors. 11 CFR 110.1(i)**

Under the current rules, when spouses in a single income family contribute to candidates, both spouses must either a) sign the contributor check or b) include a statement with the check signed by both spouses, which specifies the amount of the contribution attributed to each spouse. The Commission seeks comments on whether:

- o To delete the reference to contributions by spouses in a "single income family" in light of the suggested changes to the rules on "attribution of joint contributions" (see discussion of Section 110.1(k) below); or
- o Alternatively, to expand the provision to include contributions by spouses to political committees.

The current rules also permit minors to make contributions to federal candidates, provided certain requirements are met. (See 11 CFR 110.1(i)(2).) The Commission seeks comments on whether the rules should be revised to permit contributions by minors to political committees.

#### **Contribution Limits for Certain Elections. 11 CFR 110.1(j)**

The proposed rules would make clear that a separate limit applied to contributions made for each kind of election enumerated in the Act, i.e., a primary, general, runoff, special election and a caucus or convention. The Commission seeks comments on:

- o Whether or not a general election which is not held because a candidate received a majority of votes in the previous election would nevertheless constitute a separate election for purposes of the contribution limits and reporting requirements. (This statement follows the FEC's conclusion in AO 1984-54.\*)
- o Whether a separate contribution limit should apply to a primary that is not held because a candidate was nominated through a caucus or convention. (In AO 1982-49, the Commission ruled that a separate limit did not apply.\*\*)

#### **Attribution of Joint Contributions. 11 CFR 110.1(k)**

The proposed rules would require that a joint contribution be accompanied by a written statement specifying the portion of the contribution attributable to each donor. The requirement would be dropped, however, for spouses in a single income family who made joint contributions. Instead, the recipient could presume that one half of the contribution was attributable to each spouse. The notice further asks whether the presumption of equal contributions should be extended to contributions drawn on any type of joint account. The proposed rules would not, however, alter the current requirement that all contributors sign the contribution check.

\*For a summary of AO 1984-54, see page 5 of the January 1985 Record.

\*\*For a summary of AO 1982-49, see page 2 of the November 1982 Record.

### Contributions by Multicandidate Committees. 11 CFR 110.2

Multicandidate committees face many of the same issues that arise with regard to contributions made by other persons. The proposed rules for multicandidate committee contributions would therefore follow those proposed for contributions by other persons (highlighted above). The Commission nevertheless welcomes comments on whether different rules should be adopted for multicandidate committee contributions, as well as comments on the proposed reorganization of various sections of this provision. (These changes are discussed on page 15173-15174 of the statement accompanying the proposed rules.)

## ADVISORY OPINIONS

### ADVISORY OPINION REQUESTS

The following chart lists recent requests for advisory opinions (AORs). The full text of each AOR is available to the public in the Commission's Office of Public Records.

#### AOR Subject

- 1985-12 Trade association solicitation plan; dues/solicitation statement; state affiliates as collecting agents; solicitability of member facilities. (Date made public: March 14, 1985; Length: 2 pages, plus 14-page supplement)
- 1985-13 Transfer of campaign funds between former and new candidates seeking same office. (Date made public: April 2, 1985; Length: 2 pages)
- 1985-14 Democratic national committee's negative media program against Republican Congressional incumbents. (Date made public: April 12, 1985; Length: 6 pages, plus 7-page supplement)

### ADVISORY OPINIONS: SUMMARIES

An Advisory Opinion (AO) issued by the Commission provides guidance with regard to the specific situation described in the AOR. Any qualified person who has requested an AO and acts in accordance with the opinion will not be subject to any sanctions under the Act. Other persons may rely on the opinion if they are involved in a specific activity which is indistinguishable in all material aspects from the activity discussed in the AO. Those seeking guidance for

their own activity, however, should consult the full text of an AO and not rely only on the summary given here.

### AO 1984-62: Campaign Firm's Expenditures For Slate Mail Program\*

B.A.D. Campaigns (the firm), an incorporated campaign consulting firm, would make prohibited contributions or expenditures on behalf of federal candidates it endorsed and listed on slates mailed to the general public if the firm: 1) provided advertising or feature space to the candidates at less than the normal or usual charge or 2) endorsed candidates who did not pay for a listing on a slate. 11 CFR 100.7(a)(1)(iii)(B) and 100.8(a)(1)(iv)(B).

Under its proposed plan, in early 1986, the firm would decide which candidates to endorse on slates mailed to the general public. The firm would then negotiate with the endorsees for their purchase of feature or advertising space on the slates. Endorsed candidates would, however, be listed even if they did not purchase special publicity. The program would be financed exclusively from the proceeds of these sales.

In the Commission's view, unless the firm were paid by the candidates, the firm's distribution of the slates would represent contributions or expenditures for campaign advertising on behalf of the candidates because the endorsements would be part of a general electioneering message. Specifically, in each slate mail piece, the firm planned to take a "clear overall political position" and "endorse positions on all or virtually all candidates and propositions appearing on a particular voter's ballot." Since the election law prohibits the firm (a corporation) from making such election-influencing contributions and expenditures, the Commission did not address the issue of whether the firm should file reports disclosing the activity. (Date issued: March 21, 1985; Length: 5 pages)

### AO 1985-7: Solicitation of Personnel of Corporation's Wholesalers

Anheuser-Busch Companies, Inc. (A-BC) may not solicit contributions to its separate segregated fund from the executive and administrative personnel of wholesale distributors who have equity agreements with A-BC's wholly owned subsidiary, Anheuser-Busch, Inc. (Anheuser-Busch). The wholesaler equity agreement, which details mutual rights and obligations of each party, does not provide sufficient evidence of affiliation with Anheuser-Busch.

Under the election law, a corporation may solicit contributions to its separate segregated

\*See also *FEC v. Californians for Democratic Representation*, p. 7.

fund from the solicitable personnel of an affiliate. 2 U.S.C. §441b(b)(6); 11 CFR 114.5(g)(1). Evidence of affiliation includes: 1) documents which indicate that the corporation has the authority or power to direct another entity, and 2) evidence that the corporation has the authority to hire, discipline, discharge or otherwise influence personnel decisions of the other entity. 2 U.S.C. §441a(a)(5); 11 CFR 100.5(g)(2) and 110.3(a)(1)(iii).

The equity agreements between Anheuser-Busch and its wholesalers do not indicate that Anheuser-Busch exercises sufficient influence over the wholesalers to meet the affiliation standard. The independence of the wholesalers is not significantly impaired by their contractual relationships with Anheuser-Busch. For example, although Anheuser-Busch has a limited right to approve each wholesaler's designation of a successor-manager, the equity agreement clearly states that the wholesaler retains responsibility for the management of its own business. As another example of independence, the wholesale distributor may market the products of other brewers along with those of Anheuser-Busch.

The Commission distinguished this opinion from AOs 1977-20, 1978-61 and 1979-38. In those opinions, the Commission found that various corporations could solicit the solicitable personnel of their franchisees or licensees because the relationship between the corporation and the franchisees (and licensees) satisfied the criteria for affiliation. (Date made public: March 15, 1985; Length: 3 pages)

#### **AO 1985-8: Fundraising to Cover Refund of Illegal Contributions**

In Advisory Opinion 1984-52, issued to the Russo for Congress Committee (the Committee) in December 1984, the Commission stated that the Committee had to refund illegal corporate contributions received by Representative Russo's 1982 Congressional campaign immediately upon receiving the FEC's opinion. (For a summary of AO 1984-52, see p. 4 of the January 1985 Record.) However, since the Committee's debts exceeded its cash on hand at the time it received the opinion and since the Committee had to use available funds to pay those debts, in this second opinion, the Commission determined that the refunds would be timely if made within a reasonable time after the Committee's April 1985 fundraiser. If, however, before the April fundraiser, the committee received sufficient funds to retire its debts, it had to begin refunding the illegal contributions at that time.

Undesignated contributions which the Committee used to refund the illegal contributions would count against each donor's limits for Representative Russo's 1986 reelection campaign. Contributions designated in writing for the refunds would count against the donor's limit for Repre-

sentative Russo's 1982 general election campaign. 11 CFR 110.1(a)(2) and 110.1(g)(2).

#### **Reporting Requirements**

The Committee should itemize the refunds on the first report filed with the FEC after the refunds have been made. 11 CFR 104.3(b)(4)(v). Moreover, since the unpaid refunds constituted an outstanding Committee obligation at the time the Commission issued its first opinion (i.e., in December 1984), the Committee should amend its 1984 year-end report to disclose the obligation. 11 CFR 104.3(d) and 104.11. (Date issued: March 7, 1985; Length: 3 pages)

#### **AO 1985-9: Excess Campaign Funds Used to Establish University Scholarship Fund or Professional Chair**

Representative John H. Quillen's principal campaign committee (the Committee) may donate its excess campaign funds to East Tennessee State University for the establishment of either a professorial chair or an endowed scholarship. The election law expressly sanctions the contribution of excess campaign funds to qualified charitable and educational organizations. See 2 U.S.C. §439a, 26 U.S.C. §170(c) and 11 CFR 113.2.

#### **Reporting Requirements**

Although the donation is not intended to influence elections, the committee must report it as a disbursement. See 2 U.S.C. §434(b)(6)(A) and 11 CFR 104.3(b). Moreover, the Committee must itemize the funds if one or several donations to the University exceed \$200 for the year. See 11 CFR 104.3(b)(4)(vi). (Date made public: March 15, 1985; Length: 2 pages)

#### **AO 1985-10: Deceased Candidate's Loan to Campaign Liquidated by Estate**

Mr. Paul Cantrell, a 1982 Congressional candidate, died in December 1984. His estate may forgive personal loans which Mr. Cantrell made to his 1982 Congressional campaign, Citizens for Cantrell Committee (the Committee), thereby permitting the Committee to terminate, provided:

- o The Committee meets all other requirements for termination spelled out in FEC Regulations (11 CFR 102.3); and
- o The Committee files an amended Termination Report disclosing the estate's forgiveness of the debt. (The Committee initially filed a termination report in February 1985.) (Date made public: March 29, 1985; Length: 2 pages)

## COURT CASES

### FEC v. NCPAC

On March 18, 1985, the Supreme Court handed down a ruling in *FEC v. National Conservative Political Action Committee (NCPAC)* (CA No. 83-1032), which affirmed a Pennsylvania district court's decision that 26 U.S.C. §9012(f) was unconstitutional on its face because the provision violated First Amendment rights of free speech and association.\* However, the Court reversed the district court's holding that the Democratic Party and the Democratic National Committee (the Democrats) had standing to file a suit regarding Section 9012(f)'s constitutionality and instructed the lower court to dismiss the Democrats' suit.

### Background

Section 9012(f) of the Presidential Election Campaign Fund Act (the Fund Act) prohibits unauthorized committees (i.e., those not authorized by a candidate) from making expenditures exceeding \$1,000 to further the election of a publicly funded Presidential nominee in the general election. In an effort to obtain a final ruling by the Supreme Court on the constitutionality of Section 9012(f),\*\* the FEC filed suit on June 14, 1983, against NCPAC and Fund for a Conservative Majority (FCM), two unauthorized multicandidate committees that had planned to spend large sums during 1984 on behalf of President Reagan's publicly funded general election campaign. (*FEC v. NCPAC and FCM*, U.S. District Court for the Eastern District of Pennsylvania, CA 83-2823) The FEC's suit was consolidated with another suit, *Democratic National Committee (DNC) v. NCPAC*, which had been filed on May 1, 1983. (CA 83-2329) The FEC had intervened in that suit as a defendant and had argued that the Democrats lacked statutory and constitutional standing to bring the action. In the consolidated suits, plaintiffs had asked that a three-judge panel of the court be convened to declare that:

- o Expenditures (in excess of \$1,000) that NCPAC and FCM each intended to make on behalf of the publicly funded Republican Presidential

\*In January 1982, an equally divided Supreme Court had affirmed a September 1980 ruling by the U.S. District Court for the District of Columbia that Section 9012(f) was unconstitutional. However, since the Court's vote on the suit had been equally divided, the affirmation had no precedential value. For a summary of this decision, see page 1 of the March 1982 *Record*.

\*\*See also the April 1985 *Record*, page 1.

nominee in 1984 were prohibited by, and in violation of, 26 U.S.C. §9012 (f); and  
o Section 9012(f), as applied to the defendant committees, was constitutional.

On December 12, 1983, the Pennsylvania district court initially ruled that the Democrats had standing to bring suit. The court then held that Section 9012(f) was unconstitutional on its face because it violated First Amendment rights of free speech and association.

On December 16, 1983, the FEC filed an appeal of this decision with the Supreme Court.

### The Supreme Court's Ruling

#### The Democrats Lack Standing to Bring Suit.

In reversing the lower court's ruling that the Democrats had standing to bring suit, the Supreme Court noted that, while the Fund Act authorized the Democratic National Committee to bring suit,\* such private suits "to construe or enforce the Act are inappropriate interference" with the FEC's "responsibilities for administering and enforcing the Fund Act."

**Section 9012(f) Violates the First Amendment.** The Court noted initially that "the expenditures at issue are squarely prohibited by §9012(f)." Nevertheless, since the committees' allegedly independent expenditures on behalf of President Reagan's campaign "produc[ed] speech at the core of the First Amendment and implicat[ed] the freedom of association, they [were] entitled to full protection under that Amendment." The Court stated that in a Presidential election, "allowing the presentation of [political] views while forbidding the expenditure of more than \$1,000 to present them is much like allowing a speaker in a public hall to express his views while denying him the use of an amplifying system."

The Court therefore concluded that "Section 9012(f)'s limitation on independent expenditures by political committees is constitutionally infirm, absent any indication that such expenditures have a tendency to corrupt or to give the appearance of corruption. But even assuming that Congress could fairly conclude that large-scale political action committees have a sufficient tendency to corrupt, §9012(f) is a fatally overbroad response to that evil. It is not limited to multimillion dollar war chests, but applies equally to informal discussion groups that solicit neighborhood contributions to publicize views about a particular Presidential candidate."

\*Under Section 9011(b)(1) of the Fund Act, the national committee of a political party, the FEC and individuals eligible to vote for President may file appropriate actions which seek to implement or construe provisions of the Fund Act.

Finally, the Court held that "section 9012(f) cannot be upheld as a prophylactic measure deemed necessary by Congress. The groups and associations in question here, designed expressly to participate in political debate, are quite different from the traditional organizations organized for economic gain [e.g., corporations and labor organizations] that may properly be prohibited from making contributions to political candidates."

## NEW LITIGATION

### FEC v. Californians for Democratic Representation

The Commission filed action against Californians for Democratic Representation (CDR), a nonprofit organization, for violations of the election law incurred in distributing slate mailings that endorsed federal candidates, in addition to nonfederal candidates and ballot measures. Specifically, the FEC petitioned the court to declare that CDR violated the law by:

- o Financing political activity in connection with federal and nonfederal elections, but failing either to establish a separate federal account or to accept only those contributions which are lawful under the Act. (11 CFR 102.5(a)(1) and (2));
- o Failing to file a Statement of Organization with the Commission within 10 days of becoming a political committee or otherwise complying with the law's reporting requirements (2 U.S.C. §§433 and 434);
- o Failing to specify whether its mailings were authorized and paid for by federal candidates (§441d);
- o Making excessive contributions to federal candidates and their authorized committees (§441a(a)(1)(A)); and
- o Accepting excessive and corporate contributions (§§441a(f) and 441b).

The FEC further asked the court to:

- o Order CDR to file a Statement of Organization and required reports; and
- o Assess a civil penalty against CDR equal to the greater of \$5,000 or 100 percent of the amounts involved in the violations.

U.S. District Court for the Central District of California, Civil Action No. 85-2086, March 27, 1985.

### FEC v. Mortgage Attorneys PAC

Pursuant to 2 U.S.C. §437g(a)(4)(A)(i), the Commission filed an action against Mortgage Attorneys Political Action Committee, Inc. (MAPAC), a multicandidate committee, and MAPAC's assistant treasurer, Anna Atchley, for violations of the law's reporting requirements. Specifically, the FEC petitions the court to declare that defendants violated section

434(a)(4)(B) of the law by failing to meet the statutory deadlines for filing the following reports: a 1981 mid-year report, six 1982 monthly reports and a 1982 pre-election report.

The FEC asks the court to:

- o Assess a civil penalty against the respondents equal to the greater of \$5,000 or 100 percent of the amounts involved in the violations; and
- o Permanently enjoin the respondents from further violations of the law.

U.S. District Court for the Eastern District of Louisiana, Civil Action No. 85-0943, March 4, 1985.

## FEDERAL REGISTER

### FEDERAL REGISTER NOTICES

Copies of notices are available in the Public Records Office.

#### Notice Title

- 1984-20 11 CFR Parts 2 and 3: Sunshine Act Regulations; Scope and Definitions; Meetings; Notice of Proposed Rule-making (49 Fed. Reg. 49306, December 19, 1984)
- 1984-21 Rulemaking Petition: Notice of Availability; Re: Issues Raised by the Use of "Soft Money" in Elections (50 Fed. Reg. 477, January 4, 1985)
- 1984-22 Filing Dates for Louisiana Special Election (50 Fed. Reg. 5132, February 6, 1985)
- 1985-1 Repayments by Publicly Financed Presidential Candidates; Second Transmittal of Proposed Rules (50 Fed. Reg. 9421, March 8, 1985)
- 1985-2 11 CFR Parts 100 and 101: Payments Received for Testing-the-Waters Activities; Transmittal of Proposed Rules to Congress (50 Fed. Reg. 9992, March 13, 1985)
- 1985-3 11 CFR Parts 2 and 3: Sunshine Act Regulations: Scope and Definitions; Meeting; Second Notice of Proposed Rulemaking and Announcement of Hearing Date (50 Fed. Reg. 10066, March 13, 1985)


**FOREIGN NATIONALS\***

Section 441e of the Act prohibits foreign nationals from making contributions in connection with any United States elections, including federal, state and local elections. The Office of Public Communications has received numerous questions on how this prohibition applies in specific cases. The following questions are typical of those received.

**Political Activity by Individuals  
Who are Foreign Nationals**

**Who is a foreign national?** The Federal Election Campaign Act (the Act) defines a foreign national as an individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence. A foreign national also includes a foreign principal (e.g. a foreign corporation, government or political party). See 2 U.S.C. §441e.

**May a foreign national make contributions to federal candidates?** No, the Act prohibits direct or indirect contributions from foreign nationals in any election.

**May foreign nationals support candidates in state and local elections?** No. The Act prohibits contributions by foreign nationals in connection with any American election, including a federal, state or local election. See 2 U.S.C. §441e; 11 CFR 110.4(a).

**May foreign nationals who are green card holders support candidates in U.S. elections?** Yes. Green card holders (i.e., those individuals who are lawfully admitted for permanent residence in the United States) may make contributions to federal, state and local candidates.

**May foreign nationals volunteer their time to assist candidates with fundraising activities?** The FEC stated in an advisory opinion that a foreign artist could not volunteer his services free of charge to create an original work of art which would be used by a Senate candidate for fundraising. AO 1981-51. Other kinds of volunteer services performed by foreign nationals have not been addressed in advisory opinions.

*\*At its March 14, 1985, meeting, the Commission approved a recommendation that Congress reexamine legislation concerning political activity by foreign nationals. In previous years, the Commission has submitted a similar recommendation to the President and Congress.*

**PAC Activity Involving  
Foreign Nationals**

**If a U.S. corporation has an office in a foreign country, may the corporation establish a PAC and solicit corporate executives who are stationed abroad?** As long as the corporate executives are U.S. citizens, a PAC may solicit contributions from its executives who are stationed abroad. AO 1979-59.

**May an American subsidiary of a foreign corporation pay for the administrative expenses of its own PAC and solicit contributions to it?** The FEC has permitted American subsidiaries of foreign corporations to establish and administer PACs as long as the following conditions are met:

- o The principal place of business of the subsidiary is within the United States;
- o The PAC is administered only by U.S. citizens, and foreign nationals do not play a decision-making role in the PAC or exercise control over the PAC; and
- o U.S. citizens and green card holders are the only employees allowed to contribute to the PAC. AOs 1980-100 and 1983-19.

**May a PAC established by an American subsidiary of a foreign corporation make contributions on behalf of state and local candidates?** Yes, as long as the conditions listed above are met. AOs 1982-10 and 1983-31.

**May an incorporated trade association whose membership includes foreign corporations establish a PAC?** Yes. As long as the association's principal place of business is in the U.S. and the PAC is not administered by foreign nationals, the trade association may establish a PAC. It may neither solicit nor accept contributions from foreign nationals. Moreover, solicitations must comply with all other provisions of the Act and Commission Regulations. AOs 1980-111 and 1981-36.

**Corporate Activity Involving  
Foreign Nationals**

**May an American subsidiary of a foreign corporation make contributions to state and local candidates in the United States?** The American subsidiary (rather than the PAC) may make corporate contributions to state and local candidates as long as the subsidiary's principal place of business is within the U.S., none of the funds are provided by the parent foreign corporation and the parent corporation exercises no control over the contributions. Of course, relevant state law governs the acceptability of corporate contributions in any given state. See AOs 1982-10 and 1985-3.



## LEGISLATION

### FEC'S 1985 LEGISLATIVE RECOMMENDATIONS

On April 16, 1985, the Commission transmitted to Congress and the President 24 legislative recommendations concerning the FEC's administration of the Federal Election Campaign Act (the Act). The Commission is statutorily mandated to submit recommendations each year "for any legislative or other action the Commission considers appropriate...." 2 U.S.C. §438(a)(9).

Among the 24 proposals submitted this year, four were aimed at enhancing public disclosure and reducing some of the bookkeeping requirements for campaigns and political committees. They included suggestions that Congress:

- o Require House and Senate campaigns to report their financial activity for an entire campaign cycle. (The current practice of reporting activity on a calendar-year basis makes it difficult to determine total amounts raised and spent on campaigns spanning more than one year.)
- o Require monthly filers to file their reports closer to the closing date of a reporting period in order to make information more timely.
- o Clarify the statutory provision requiring political committees to report their operating expenses. (Under the current law, it is unclear whether a committee must report only initial payments to contractors, vendors and other payees or whether the committee must also report payments that the initial payees, in turn, make to subcontractors, agents and others.)
- o Apply the contribution limits to a campaign cycle, rather than to individual elections (e.g., primary, general, special or runoff). (This amendment would reduce burdensome record-keeping requirements for committees, while maintaining current contributions limits.)

Included among the Commission's remaining 20 recommendations were suggestions that Congress:

- o Give the FEC the express power to initiate immediate civil suit for injunctive relief in matters involving substantial violations of the law.\*
- o Reaffirm its intent that draft committees are "political committees" subject to the reporting requirements, prohibitions and limits of the Act.
- o Make the FEC the sole point of entry for all documents filed by federal candidates and political committees.

\*One member of the Commission dissented from this recommendation.

- o Eliminate state-by-state limits for publicly funded Presidential primary candidates.
- o Define the extent to which foreign nationals may participate, if at all, in any American election.

The full text of the recommendations will be published this summer in the Commission's 1984 Annual Report.

## COMPLIANCE

### FEC MUR INDEX UPDATED

During April, the Commission announced the availability of an updated edition of the FEC MUR Index, a computerized document summarizing information on compliance cases (i.e., matters under review or MURs). The Commission updates the MUR Index semiannually in bound form and daily through its computer access system.

The MUR Index includes closed MURs from 1975 to the present. (Under the election law, a compliance case must be kept confidential until the Commission reaches a final determination and closes the file. Subsequently, the MUR is placed on the public record. See 11 CFR 4.4(a)(3).)

Based on a computerized information system developed by the FEC, the MUR Index enables the user to identify closed compliance cases related to a particular subject, to a provision of the election law or to a complainant or respondent involved in a compliance action. The MUR Index includes four volumes. Volumes I, II and III, MUR Summary Reports, contain a brief report on each MUR. Volume IV contains three indexes:

- o **The Complainant/Respondent Index** lists each MUR by its number and alphabetically by the person who either filed the complaint or was named as a respondent in the compliance action.
- o **The Citation Index** cites all compliance cases pertaining to a particular section of the election law and FEC Regulations.
- o **The Subject Index** identifies MURs by key words and phrases.

The FEC MUR Index may be reviewed in the FEC's Public Records Office, located at 1325 K Street, N.W., Washington, D.C. 20463. Readers may order the entire MUR Index for \$120 or each volume separately as follows:

- o Volumes I, II and III--\$33 each.
- o Volume IV--\$21.

Checks, made payable in advance to the FEC, should be sent care of the Public Records Office. For more information, contact the Public Records Office at 523-4181 or toll free 800/428-9530.

continued

## SUMMARY OF MURs

The Act gives the FEC exclusive jurisdiction for its civil enforcement. Potential violations are assigned case numbers by the Office of General Counsel and become "Matters Under Review" (MURs). All MUR investigations are kept confidential by the Commission, as required by the Act. (For a summary of compliance procedures, see 2 U.S.C. §§437g and 437(d)(a) and 11 CFR Part 111.)

This article does not summarize every stage in the compliance process. Rather, the summaries provide only enough background to make clear the Commission's final determination. Note that the Commission's actions are not necessarily based on, or in agreement with, the General Counsel's analysis. The full text of these MURs is available for review and purchase in the Commission's Public Records Office.

### **MUR 1530: Union's In-Kind Contributions Reimbursed by PAC**

On May 21, 1984, the Commission entered into a conciliation agreement with a labor organization that had made prohibited in-kind contributions, later reimbursed by the union's PAC.

#### **Complaint**

The Commission's Reports Analysis Division, in the course of reviewing the union PAC's reports, had questioned payments to the PAC's connected organization, which had been disclosed as reimbursements for in-kind contributions made on behalf of federal candidates. The union's counsel, who met with Division personnel on September 8, 1982, stated that the reimbursements were for phone bank campaigns operated to support federal candidates. Phone calls had been made not only to the union's membership but also to the general public. (Under 11 CFR 114.3(c)(3), a labor organization may use its treasury funds to pay for phone banks operated to urge support of specific candidates, but the phone calls may be made only to the union's restricted class -- i.e., its members, its executive/administrative personnel and the families of both groups.) The reimbursements represented payments for calls made to those outside the union's restricted class.

When questioned by Division staff about the time gap between the use of phone banks and the PAC's reimbursements, the union said the delay was caused by billing cycles and the time necessary to allocate contributions among the candidates benefiting from the phone banks.

#### **General Counsel's Report**

The General Counsel recommended that the Commission find reason to believe that the union had violated 2 U.S.C. §441b by making prohibited contributions to candidates. In his report to the

Commission, the General Counsel noted that these in-kind contributions did not even appear on the public record as reimbursements from the PAC until months after the elections were over.

Although Commission Regulations provide that persons may use labor union facilities in connection with federal elections if the union is reimbursed the usual charge within a commercially reasonable time (11 CFR 114.9(d)), the report stated that this provision does not nullify the prohibition on direct or indirect contributions from a union's treasury funds. The report went on to say that when reimbursement is made to a union for a contribution, "the Commission may consider...its timeliness as a mitigating factor." In this case, the PAC's reimbursements to the union did not begin until two months after the phone banks were used, and the PAC's debts to the union for phone bank expenses were reported as outstanding for nearly nine months. Because of the delayed reimbursements, the activity clearly represented a §441b violation.

#### **Commission Determination**

The Commission found reason to believe the union had violated the Act and, on May 21, 1984, entered into a conciliation agreement with the union. The agreement stated that the union had violated §441b by:

- o Making prohibited in-kind contributions for the 1980 election totaling \$20,541.23, which were later reimbursed by the PAC; and
- o Making in-kind contributions for the 1982 election totaling \$58,020.04, later reimbursed by the PAC.

The Union also agreed to pay a civil penalty of \$3,500 and to implement a system in which bills for expenditures by the PAC would be sent directly to the PAC. In situations where it would not be possible to arrange separate billings to the union and the PAC, the PAC would no longer reimburse the union for its portion of the bill. Instead, the union and the PAC would each make separate, timely payments to the vendor for their portions of a bill.

#### **FEC PUBLISHES PRESIDENTIAL NONFILERS**

On February 15, 1985, as required by the election law, the Commission published the names of two Presidential campaigns (one authorized by a Presidential candidate, the other by a Vice-Presidential candidate) that had failed to file their 1984 year-end report, due by January 31, 1985. Neither campaign supported a major party candidate. The year-end report should have disclosed each committee's financial activity for December 1984, as well as summary figures for the campaign to date.

Commission compliance actions against non-filers are decided on a case-by-case basis. The

election law gives the Commission broad authority to initiate enforcement actions resulting from infractions of the law, including civil court enforcement and imposition of civil penalties.

## INDEX

This cumulative index lists advisory opinions, court cases and 800 Line articles published in the Record during 1985. The first number in the citation refers to the "number" (month) of the Record issue; the second number, following the colon, indicates the page number in that issue.

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### CHANGE OF ADDRESS

Registered political committees are automatically sent the Record. Any change of address by a registered committee must, by law, be made in writing as an amendment to FEC Form 1 (Statement of Organization) and filed with the Clerk of the House, the Secretary of the Senate, or the FEC, as appropriate.

Record subscribers (who are not political committees), when calling or mailing in a change of address, are asked to provide the following information:

1. Name of person to whom the Record is sent.
2. Old address.
3. New address.
4. Subscription number. The subscription number is located in the upper left hand corner of the mailing label. It consists of three letters and five numbers. Without this number, there is no guarantee that your subscription can be located on the computer.

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