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COMMISSIONERS

FEC ELECTS NEW OFFICERS

On December 15, 1988, the Federal Election Commission unanimously elected Danny L. McDonald as Chairman and Lee Ann Elliott as Vice Chairman. They will serve one-year terms commencing January 1, 1989. Mr. McDonald succeeded Commissioner Thomas J. Josefiak in the chairmanship. Mrs. Elliott succeeded Commissioner McDonald as Vice Chairman.

Commissioner McDonald, a Democrat, has been a member of the Commission since December 17, 1981. Prior to his appointment to the Commission, he served as General Administrator of the Oklahoma Corporation Commission, responsible for the management of 10 regulatory divisions. He was Secretary of the Tulsa County Election Board from 1974 to 1979, and served as Chief Clerk of the Board in 1973. He has also served on the Advisory Panel to the FEC's National Clearinghouse on Election Administration. A native of Sand Springs, Oklahoma, Mr. McDonald graduated from Oklahoma State University and attended the John F. Kennedy School of Government at Harvard University. His term as FEC Commissioner is scheduled to expire on April 30, 1993.

Commissioner Elliott, a Republican, has been a member of the Commission since December 17, 1981. Prior to her appointment to the Commission, she was Vice President of Bishop, Bryant & Associates, Inc. of Washington, D.C. From 1970 to 1979, she served as Associate Executive Director of the American Medical Political Action Committee, having served as Assistant Director from 1961 to 1970. Commissioner Elliott also served on the Board of Directors of the American Association of Political Consultants and on the Board of the Chicago Area Public Affairs Group, of which she is a past president. She has been a member of the Public Affairs Committee of the Chamber of Commerce of the U.S. In 1979, she received the Award for Excellence in Serving Corporate Public Affairs from the National Association of Manufacturers. A native of St. Louis, Missouri, Commissioner Elliott graduated from the University of Illinois and the Northwestern Medical Association Management Executives Program. Her term as FEC Commissioner expires on April 30, 1993.

REPORTS

1989 REPORTING SCHEDULE

The accompanying charts list filing dates for reports required during the 1989 nonelection year. Since special elections may occur during a nonelection year, the reporting schedule below also explains the filing requirements for committees active in these elections. Note that a political committee may not terminate its registration and reporting obligations during 1989 until all its debts have been extinguished.

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Committees should use the peel-off label provided on the FEC reporting packet when completing their forms. The Commission asks that committees place this peel-off label on line 1 of the reporting form, the space provided for identifying the committee's name and address. Any corrections should be made directly on the label. Committees should also file an amended Statement of Organization to reflect any name or address changes.

All Committees: Year-End Report

All political committees must file a year-end report due January 31, 1989.

Congressional Candidate Committees

All committees authorized by Congressional candidates must report semiannually: July 31, 1989, and January 31, 1990. Semiannual filers include the authorized committees of candidates retiring campaign debts or running in future elections.

Presidential Candidate Committees

All committees authorized by Presidential candidates must file on either a monthly or a quarterly basis during 1989. The FEC's Reports Analysis Division requests that Presidential committees which change their reporting schedule during 1989 notify the Commission of their intention in writing.

PACs and Party Committees

PACs and party committees are required to file on either a semiannual or a monthly schedule in 1989. Any committee that wishes to change its reporting schedule (for example, from monthly to semiannual reports) must notify the Commission of its intention. For procedures, see "Looking Ahead" below.

Committees Active in Special Elections

All committees authorized by candidates running for Congress in special elections held in 1989 must file a pre-primary report and pre- and post-general election reports, as well as the semiannual reports described above. PACs and party committees that support candidates in special elections (and that do not file monthly reports) must also follow this reporting schedule.*

*A PAC or party committee does not have to file a pre-election report if this activity has been previously disclosed.

YEAR-END REPORT 1988

Report	Period Covered	Filing Date*
Year-End	11/29**-12/31	1/31/89

MONTHLY REPORTS 1989

Report	Period Covered	Filing Date*
February	1/1 - 1/31	2/20/89
March	2/1 - 2/28	3/20/89
April	3/1 - 3/31	4/20/89
May	4/1 - 4/30	5/20/89
June	5/1 - 5/31	6/20/89
July	6/1 - 6/30	7/20/89
August	7/1 - 7/31	8/20/89
September	8/1 - 8/31	9/20/89
October	9/1 - 9/30	10/20/89
November	10/1 - 10/31	11/20/89
December	11/1 - 11/30	12/20/89
Year-End	12/1 - 12/31	1/31/90

SEMIANNUAL REPORTS 1989

Report	Period Covered	Filing Date*
Mid-Year	1/1 - 6/30	7/31/89
Year-End	7/1 - 12/31	1/31/90

QUARTERLY REPORTS 1989

Report	Period Covered	Filing Date*
First Q	1/1 - 3/31	4/15/89
Second Q	4/1 - 6/30	7/15/89
Third Q	7/1 - 9/30	10/15/89
Fourth Q (Year-End)	10/1 - 12/31	1/31/90

*Reports sent by registered or certified mail must be postmarked by the filing date. 11 CFR 104.5(e).

**Or from the closing date of the last report, if that date occurred before 11/29/88.

LOOKING AHEAD: CHANGE IN FILING FREQUENCY

PACs and party committees that plan to change their reporting schedule in 1989 (e.g., from monthly to semiannually) must notify the Commission by submitting a letter. A committee may not change its filing frequency more than once a year. 11 CFR 104.5(c).

WHERE REPORTS ARE FILED

Committees must file all reports and statements simultaneously with the appropriate federal and state officials. 11 CFR 108.5.

Filing with the Federal Government

1. The principal campaign committees of House candidates and committees supporting or opposing only House candidates file with the Clerk of the House, Office of Records and Registration, 1036 Longworth House Office Building, Washington, D.C. 20515. 11 CFR 104.4(c)(3) and 105.1.
2. The principal campaign committees of Senate candidates and committees supporting or opposing only Senate candidates file with the Secretary of the Senate, Senate Public Records, Senate Hart Office Building, Room 232, Washington, D.C. 20510. 11 CFR 104.4(c)(2) and 105.2.
3. All other committees, including the principal campaign committees of Presidential candidates, file with the Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. 11 CFR 105.3 and 105.4.

Filing with State Governments

1. The principal campaign committees of Congressional candidates must file a copy of every report and statement with the Secretary of State or the appropriate elections official of the state in which the candidate seeks federal office. 11 CFR 108.3.
2. The principal campaign committees of Presidential candidates must file copies of reports and statements with the Secretary of State or the appropriate elections official of the state in which the committee makes campaign expenditures. These reports must contain all financial transactions which apply to that state during the reporting period covered. 11 CFR 108.2.

3. PACs and party committees making contributions or expenditures in connection with House and Senate races file in the state in which the candidate seeks election. The law requires a copy only of that portion of the report applicable to the candidate(s) being supported. Committees supporting Presidential candidates must file in the state(s) in which the Presidential committee and donor committee have their respective headquarters.

HOW TO OBTAIN MORE INFORMATION

The Commission regularly mails reporting forms and additional information to registered committees. Instructions and forms for the year-end report were mailed out in December 1988.

Questions and requests for additional forms should be addressed to Information Services, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463; or call 202/376-3120 or toll free 800/424-9530.

FEC PUBLISHES NONFILERS

During November and December 1988, the Commission published the names of two federal campaigns that had failed to file a disclosure report required by the election law. See the chart below.

The election law requires the agency to publish the names of nonfiling candidates. Compliance actions against nonfilers are decided on a case-by-case basis. The 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.

Nonfilers

Candidate	Office Sought	State	Report Not Filed
Fernandez, B.	President		Monthly
Tuffle, F.	House	American Samoa	Pre-runoff

The Record is published by the Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. Commissioners are: Danny L. McDonald, Chairman; Lee Ann Elliott, Vice Chairman; Joan Aikens; Thomas J. Josefiak; John Warren McGarry; Scott E. Thomas; Walter J. Stewart, Secretary of the Senate, Ex Officio; Donald K. Anderson, Clerk of the House of Representatives, Ex Officio. For more information, call 202/376-3120 or toll-free 800/424-9530. (TDD For Hearing Impaired 202/376-3136)

REGULATIONS

DEBTS OWED BY CANDIDATES AND POLITICAL COMMITTEES: NOTICE OF PROPOSED RULEMAKING

On December 6, 1988, the Commission published a notice of proposed rulemaking in the Federal Register which seeks comments on proposed rules governing debts owed by federal candidates and political committees. 53 Fed. Reg. 49193. The notice also announces that, on February 15, the Commission plans to hold a public hearing on the proposed rules.

The FEC's notice of proposed rulemaking seeks comments on:

- o A proposed new Part 116 of FEC rules which would govern: (1) extensions of credit to federal candidates and political committees and (2) procedures for settling their debts. The new Part 116 would replace debt settlement procedures contained in section 114.10 of the FEC's current rules;
- o Possible revisions to the definition of "excess campaign funds" contained in section 113.1(e) of the current rules; and
- o Related issues for which no regulatory language has been proposed, such as settlement of debts owed by publicly funded Presidential campaigns and disclosure thresholds for debts that must be continuously reported by political committees.

Written comments on the FEC's notice of proposed rulemaking should be submitted to Ms. Susan E. Propper, Assistant General Counsel, by January 27, 1989. Those interested in testifying at the public hearing should so indicate on their written comments. Ms. Propper may be contacted at: FEC, 999 E Street, N.W., Washington, D.C. 20463 or by calling 202/376-5690 or, toll free, 800/424-9530.

Debt Settlement Procedures

11 CFR Part 116

The proposed new Part 116 would address a broad range of topics concerning debts owed by federal candidates and political committees. The proposed new rules, together with revisions to debt settlement procedures contained in FEC Directive No. 3,¹ would establish a new system whereby:

- o An indebted political committee could settle its debts only when the committee was preparing to terminate. However, the creditors of a committee that was not terminating could forgive

the committee's debts if the committee was essentially defunct and was clearly unable to pay its creditors;

- o An indebted political committee would be required to submit a comprehensive debt settlement plan for Commission review prior to termination. The committee's plan would have to include all debts owed by the committee and provide for the disposition of the committee's remaining funds and assets.

The proposed debt settlement procedures at new Part 116 would also cover debts owed by a candidate with multiple committees, that is, a candidate with campaign committees established for different elections or offices. The proposed rules would address situations in which some of the candidate's committees might be in debt while others might have surplus funds.

Finally, the new Part 116 would cover several specific types of debts not mentioned in the FEC's current rules, such as debts owed to unincorporated commercial vendors, campaign employees and other individuals. However, the proposed rules would not apply to bank loans obtained by federal candidates and committees because this form of debt is governed by other FEC rules at 11 CFR 100.7(b)(11) and 100.8(b)(12).²

Definition of Excess Campaign Funds

11 CFR: 113.1(e)

Under a proposed revision to the definition of "excess campaign funds," a candidate's campaign committee could not declare excess campaign funds until after the campaign had ended and the committee had determined that it had no remaining debts. By contrast, under the current provision, a candidate's committee may declare excess campaign funds at any time and use those funds for a variety of purposes other than making payments to creditors for bona fide campaign debts.

¹These procedures became effective on July 22, 1982. See FEC agenda document #82-110, available for review and copying in the FEC's Public Records Office.

²These rules are currently under review in a separate rulemaking. See the Advance Notice of Proposed Rulemaking published in the August 5, 1988, issue of the Federal Register. 51 Fed. Reg. 28154

FEC HOLDS PUBLIC HEARING ON MCFL RULEMAKING

On November 16, 1988, the Commission held a public hearing on what regulatory changes might be appropriate in light of the Supreme Court's opinion in *FEC v. Massachusetts Citizens for Life (MCFL)*,¹ 479 U.S. 238, 107 S.Ct. 616(1986). The issues had been outlined in an Advance Notice of Proposed Rulemaking concerning Parts 109 and 114 of the Commission's regulations. See 53 *Fed. Reg.* 416.

During the hearing² presided over by FEC Chairman Thomas J. Josefiak, the Commissioners heard testimony from two witnesses: Mr. Rex Weil, an attorney appearing on behalf of Citizen Action, People for the American Way Action Fund, SANE/Freeze, Inc. and the Sierra Club, and Mr. Philip S. Neal, an attorney with the law firm of Miller and Chevalier.

Before drafting final proposed revisions to Parts 109 and 114 of the regulations, the Commission will review the testimony from the public hearing, as well as written comments received in response to the advance notice.³

Issues

The FEC's Advance Notice of Proposed Rulemaking had asked witnesses to focus their testimony on the following issues:

- o How should the Commission determine when a nonprofit organization is an MCFL-type entity?
- o What are the appropriate reporting and disclosure requirements for an MCFL-type organization?
- o When does an MCFL-type organization become a political committee?
- o Should the Commission adopt an "express advocacy" standard for determining when a prohibited corporate or union expenditure is made under section 441b of the election law?

¹In its *MCFL* decision, the Court said that, under a narrow exception to the ban on corporate expenditures, an incorporated nonprofit membership organization could make independent expenditures if, among other things, the organization: (1) was formed for the purpose of promoting political ideas and did not engage in business activities, (2) had no shareholders and (3) was not established by a corporation or labor organization and had a policy of not accepting corporate or union donations.

²A transcript of the hearing is available for review and copying in the FEC's Public Records Office.

³The Commission received over 17,000 comments in response to its advance notice of proposed rulemaking. Almost all exclusively addressed the express advocacy issue.

Testimony

In testimony presented at the public hearing, Mr. Weil, representing several organizations, said that associational rights form "the underlying gist" of the *MCFL* decision. The Court recognized that *MCFL*'s incorporated status was merely a convenience for purposes of the tax code; the primary purpose of the organization was political—not business—activity.

Mr. Weil testified that the FEC should not preclude a nonprofit organization from status as an MCFL-type entity if it received "marginal or minimal corporate or labor support." The organization could establish a separate account to receive corporate or labor union money. Alternatively, the Commission could establish a "safe harbor" standard, that is, an exception that would allow the organization to receive a small portion of its funds from corporate or labor sources without jeopardizing its ability to make independent expenditures.

To ensure that an MCFL-type organization did not use impermissible funds for making independent expenditures, Mr. Weil suggested that the Commission adopt a disclosure rule that would apply once the organization's independent expenditures exceeded a certain amount. The organization would disclose only those contributions earmarked for independent expenditures.

To determine whether an MCFL-type organization was a political committee, Mr. Weil suggested that the Commission use a "primary purpose" test similar to that provided in the tax code; that is, the agency would determine whether the organization was primarily engaged in political activities. Alternatively, if the Commission applied the election law's monetary threshold, the organization's expenditures for communications that were not express advocacy should not count toward the threshold.

Mr. Neal, speaking on his own as a practicing lawyer, said that the Supreme Court's *MCFL* decision used an "express advocacy" standard for determining when an MCFL-type organization made a prohibited expenditure.⁴ The Commission's rulemaking notice explained that, since the Court found that *MCFL*'s communications contained express advocacy, the Court's discussion of express advocacy in the decision can be viewed as "dicta"—that is, it [was] unnecessary to the holding of the Court and thus [did] not represent a final resolution of that issue." Mr. Neal disagreed with this view, asserting that the Court's holding was not dicta but "resolved the issue" of when a prohibited expenditure was made.

continued

⁴The FEC's current regulations interpret the election law's prohibition on corporate expenditures "in connection with federal elections" as a ban encompassing more than expenditures for communications containing express advocacy.

In response to the Commissioners' questions, Mr. Neal said that, if a corporation or labor organization provided certain goods or services to a candidate (e.g., the use of the organization's airplane for campaign travel), the Commission could view such services as prohibited "contributions for advocacy purposes." He added that, if the organization's goods or services were provided by an individual acting on behalf of the organization, they would still constitute a prohibited contribution by the corporation or labor organization.

Mr. Neal recognized that his approach would necessitate focusing on what activities constituted "express advocacy." In response to the Commissioners' questions, he suggested that a good starting point would be the express advocacy standard applied by the U.S. appeals court in its FEC v. Furgatch decision.⁵

ADVISORY OPINIONS

AO 1988-37: Affiliated Status of Two Corporate PACs After Leveraged Buy-Out

WARDPAC, the separate segregated fund of the Montgomery Ward Corporation, and GEPAC, the separate segregated fund of the General Electric Corporation (GE), are affiliated political committees by virtue of the affiliated relationship between the two sponsoring organizations. Accordingly:

- o WARDPAC and GEPAC are subject to a single contribution limit on both contributions they make and receive; and
- o WARDPAC and GEPAC must identify each other as affiliated committees on their respective statements of organization.

Under the Act and FEC regulations, political committees are considered affiliated if they are established, financed, maintained or controlled by the same corporation. In applying this principle, the Commission may conclude that political committees established by two organizations are affiliated if one organization has the power: (1) to direct the other organization through provisions of by-laws, a constitution or other documents or (2) to otherwise influence the decisions of the organization's officers. 11 CFR 100.5(g)(2)(ii) and 110.3(a)(1)(iii); AOs 1978-39, 1979-56, 1983-19, 1986-42 and 1987-21.

⁵The express advocacy standard applied by the appeals court in its Furgatch decision (Civil Action No. 85-5524) is summarized on page 6 of the March 1987 Record.

The separate segregated funds of affiliated organizations are subject to a single contribution limit on both contributions they make and contributions they receive. 2 U.S.C. §441a(a)(5); 11 CFR 100.5(a)(2) and 110.3(a)(1)(i).

Specifically in July 1988, with the help of the General Electric Capital Corporation (GECC), the BFB Acquisition Corporation acquired the Montgomery Ward Corporation. After this leveraged buy-out, the BFB Acquisition Corporation became the Montgomery Ward Holding Corporation (MWHC). MWHC owns Montgomery Ward, and Montgomery Ward's Directors are drawn from MWHC's Board of Directors.

Two GE subsidiaries, GECC and Kidder-Peabody, Inc., own 50 percent of the common stock, and all the preferred stock, in MWHC. GECC has the power to appoint six of MWHC's 13 board directors. Although the GECC-appointed board directors do not constitute a voting majority, their concurrence is needed for the two-thirds majority votes required when MWHC's board votes on certain important MW management decisions. GE, therefore, through its subsidiary GECC, has power and authority to direct Montgomery Ward. Consequently, their PACs are affiliated. (Date issued: November 7, 1988; Length: 5 pages)

AO 1988-47: Publisher's Donation of Free Magazines to Candidate Prohibited

People and Politics, Inc., the publisher of People and Politics, could not donate 2,000 free copies of the September issue of the magazine to Congressman Bruce F. Vento's 1988 reelection campaign. A corporation may not make contributions in connection with a federal election; nor may a federal candidate accept such contributions. 2 U.S.C. §§441b(a).

The publisher's donation of 2,000 free copies of the magazine would have constituted a prohibited corporate contribution to the Vento campaign because:

- o It represented "something of value" (\$2.10 to \$3.00 each issue); and
- o It was made "in connection with" a federal election in as much as the magazine discussed and evaluated Vento's candidacy and would have been distributed during his campaign. (Date issued: November 8, 1988; Length: 3 pages)



DEBT RETIREMENT BY CANDIDATE COMMITTEES

After the election is over, an authorized candidate committee may want to terminate. To do so, a committee must no longer intend to receive contributions or make expenditures, and it must be free of outstanding debts and obligations. 2 U.S.C. §433(d)(1); 11 CFR 102.3. This article examines how a committee can retire its debts. Note that several methods are permissible, including:

- o Accepting post-election contributions;
- o Selling assets;
- o Receiving party support;
- o Receiving candidate help; and
- o Using funds from a past campaign.

Should you have any questions after reading this article, please call the FEC's Information Services Division at 800/424-9530 or 202/376-3120.

Accepting Post-Election Contributions

May our authorized committee accept contributions to retire debts for a particular election after that election has been held? Yes. Candidates may receive contributions after the election to retire debts provided the contributions satisfy four general rules:

- o The contributions must be specifically designated in writing for that election by the contributor;¹
- o The contributions may not exceed the campaign's net debts outstanding;²
- o The contributions must come from permissible sources; and
- o Each contribution, when added to other contributions from the same donor, may not exceed the donor's contribution limit for that election. 11 CFR 110.1(b)(3), (b)(4) and 110.9(a).

May our committee join with other committees in an effort to retire debts? Yes. Committees that want to retire their debts may form a joint fundraising committee. 11 CFR 102.17(a) and 9034.8(a). Such committees should refer to the joint fundraising regulations at 11 CFR 102.17. Publicly funded Presidential campaign committees should follow joint fundraising regulations at 11 CFR 9034.8.

¹A contributor's written designation may include a card printed by the committee which (1) notes the election and (2) is signed and returned by the contributor.

²A campaign's net debts outstanding consist of unpaid debts incurred with respect to the election minus cash on hand. 11 CFR 110.1(b)(3)(ii).

May a corporation pay for a fundraising event designed to retire a debt from a past campaign? No. Payments to sponsor a fundraising event for a candidate are considered contributions to the candidate. Contributions and expenditures by corporations are prohibited regardless of when they are made. See, for example, AO 1982-16.

Selling Assets

When a campaign sells a committee asset, does the purchaser make a contribution? Generally, yes. In advisory opinions, the Commission has concluded that the sale of fundraising items or uniquely developed campaign materials (such as art work, opinion polls and candidate-advocacy advertisements) results in contributions, subject to the limits and prohibitions of the Act. 11 CFR 100.7(a)(2); AOs 1980-70, 1980-34 and 1980-19. Presidential primary candidates receiving matching funds should see 11 CFR 9034.9.

The Commission also views the sale or use of committee assets in a business or commercial venture as simply another form of fundraising, the proceeds of which are also subject to the prohibitions and limits. AO 1983-2.

The Commission has, however, recognized narrow exceptions to the general rule that the sale of committee assets results in contributions.

What are these exceptions? Under the circumstances described below, the sale of an asset does not result in a contribution, and the proceeds are not subject to limits or prohibitions, as long as the item is sold at the "usual and normal charge." 11 CFR 100.7(a)(1)(iii).

- o A campaign committee that wishes to terminate may liquidate equipment and leftover supplies in order to retire debts or, in the case of a campaign in a surplus situation, in anticipation of promptly terminating after liquidation. AOs 1985-1 and 1979-24.
- o A committee may sell a mailing list or contributor list of unique value, developed by the committee primarily for its own use. AOs 1982-41 and 1981-53.
- o A committee may liquidate obsolete or depreciated equipment if it is sold outright in a single, isolated transaction without any expectation of committee repurchase or lease-back. AO 1986-14.

Remember that under each of these exceptions a contribution is avoided only if the purchaser pays no more than the "usual and normal" charge.

continued

Receiving Party Support

May a party committee help pay a candidate's campaign debts? Yes, a party committee may help in the following ways:

- o It may make contributions designated to retire debts, subject to the contribution limits. 11 CFR 110.1(b)(3) and 110.2(b)(3).
- o It may make payments to the candidate's creditor as in-kind contributions, subject to the contribution limits.
- o In the case of general election candidates, the party committee may make payments directly to the candidate's creditors as coordinated party expenditures on behalf of the candidate, subject to the special limits of 2 U.S.C. §441a(d). 11 CFR 110.7; AOs 1979-30 and 1979-9.³

Receiving Candidate Help

May House and Senate candidates make unlimited loans to their authorized committees? Yes. Because Congressional candidates are not limited in the amount of personal funds they may spend on their campaigns, they may make unlimited contributions and loans using their personal funds. 11 CFR 110.10.

May House and Senate candidates forgive personal loans made to their campaigns? Yes, for the reason given above. 11 CFR 110.10.

May House and Senate candidates use personal funds to pay off the debts of their committees? Yes. However, when Congressional candidates donate their personal funds to their committees, as distinct from lending them, the contributions cannot be refunded to the candidates later. Such payments would represent the conversion of excess campaign funds to the candidate's personal use, which is prohibited unless the candidate was a member of Congress on January 8, 1980. 2 U.S.C. §439a; 11 CFR 113.2.

Using Funds from Another Campaign

May a candidate transfer excess funds from his or her nonfederal campaign committee to his or her federal campaign committee to retire debts? Yes. Because the two committees are considered to be affiliated, such transfers are not limited, provided none of the funds transferred include contributions which would be in violation of the Act. 11 CFR

102.6(a)(1)(i). However, the transfers may trigger registration and reporting obligations for the non-federal campaign committee.⁴ See AOs 1984-46 and 1982-52.

May a candidate committee retire debts by using excess funds from another federal committee authorized by the same candidate in a different election cycle? Yes. Excess funds may be transferred without limit between committees authorized by the same candidate for different election cycles. 11 CFR 110.3(a)(2)(iv); AOs 1987-4 and 1981-9. Presidential campaigns with excess funds who accepted federal funding are subject to other restrictions. See AO 1988-5.

Transferring Debts

May a 1990 campaign committee assume the debts of a 1988 campaign committee, so that the older committee may terminate? Yes, a House or Senate candidate's campaign committee from a previous election may transfer its debts and obligations to that same candidate's current Congressional campaign committee. See AOs 1980-143, 1980-43 and 1977-52. Once the debts and cash on hand (if any) are transferred to the current 1990 committee, the 1988 committee may terminate. Different rules apply to Presidential candidates receiving public funds. See AO 1988-5.

Failure to Pay Debts

What happens if our efforts to raise funds are not sufficient to fully repay all of our campaign debts? If a political committee fails to pay a debt in a timely fashion consistent with normal business practice, the debt becomes a contribution by the creditor unless the creditor has made a commercially reasonable attempt to collect the debt. 11 CFR 100.7(a)(4) and 114.10. Contributions made under such circumstances may violate the prohibitions and limits of the Act (e.g., if the creditor is a corporation). Note debt settlement procedures at 11 CFR 114.10.

May the candidate, treasurer or committee members be held personally liable for debts owed by the committee? The Act and regulations do not govern personal liability for payment of committee debts. Debt claims and liabilities are generally governed by state law. AOs 1979-1 and 1975-102.

³A party committee that does not have its own coordinated party expenditure limit may make such expenditures only with the prior, written authorization of the national or state committee. 11 CFR 110.7.

⁴Several rules apply to such transfers. See the chapter on transfers in the Campaign Guide for Congressional Committees.

COURT CASES

FEC v. TED HALEY CONGRESSIONAL COMMITTEE

On November 22, 1988, the U.S. District Court for the Western District of Washington at Tacoma issued an amended judgment in FEC v. Ted Haley Congressional Committee. (Civil Action No. 85-1185) The district court's amended judgment responded to a July 1988 remand order issued in the suit by the U.S. Court of Appeals for the Ninth Circuit. In its amended judgment, the district court:

- o Reversed its February 1987 decision in the suit in favor of plaintiff Federal Election Commission;
- o Ordered that no civil penalties be assessed against defendants; and
- o Vacated its order awarding attorneys' fees to defendants.

The district court's first decision in the suit is summarized on page 6 of the May 1987 Record and the appeals court's decision, on page 7 of the September 1988 Record.

FEC v. CALIFORNIANS FOR A STRONG AMERICA

On November 14, 1988, the U.S. District Court for the Central District of California granted the FEC's motion for a default judgment against Californians for a Strong America (CSA), a nonconnected political committee, and CSA's treasurer Albert J. Cook. (Civil Action No. 88-1554-AWT)

In the judgment, the court declared that the defendants had violated 2 U.S.C. §§434(a)(4)(a)(i) and (iv) by failing to file reports covering 1986 activity, that is, two quarterly reports and a year-end report.

Accordingly, the court:

- o Ordered defendants to pay a \$15,000 civil penalty, together with \$28.20, to cover the FEC's court costs in the case; and
- o Enjoined defendants from similar violations of the election law in the future.

USDC v. FEC

In a decision of November 7, 1988, the U.S. Court of Appeals for the Second Circuit held that the United States Defense Committee's (USDC's) complaint against the FEC was not ripe for the court's review. (See USDC v. FEC, Civil Action No. 88-6127.) The appeals court therefore remanded the case to the U.S. District Court for the Northern District of New York with instructions for the district court to dismiss the case.

Background

In a complaint¹ filed with the U.S. District Court for the Northern District of New York, USDC challenged the Commission's conclusion in Advisory Opinion (AO) 1987-7 that USDC's distribution of two letters to the general public could not be financed with USDC's treasury funds. The complaint asked for declaratory and injunctive relief.

In upholding the FEC's conclusion in the advisory opinion, the district court found that USDC's proposed expenditures were prohibited by the election law's ban on corporate contributions in connection with federal elections. (See 2 U.S.C. §441b.) The court further concluded that the Supreme Court's decision in FEC v. Massachusetts Citizens for Life (MCFL)² did not "apply to USDC's case because USDC, unlike MCFL, accepts contributions from business corporations."

Appeals Court Ruling

In deciding that USDC's case was not ripe for judicial review, the appeals court said that nothing in the legislative history indicated that Congress thought advisory opinions were reviewable. Further, the appeals court explained that an FEC advisory opinion was not "final or binding...." In this regard, the court noted that "if a person proceeded to act contrary to an FEC advisory opinion, [that person] would be entitled to all of the enforcement protections, including conciliation, conference, persuasion and the like, provided under 2 U.S.C. §437g."

continued

¹The complaint was submitted as an amendment to a complaint originally filed in March 1984 and amended the same year. In the original complaint and in the 1984 amendment, USDC had challenged the validity of advisory opinions 1983-43 and 1984-14 on statutory and constitutional grounds. For a summary of the district court's decision, see p.6 of the July 1988 Record.

²The Supreme Court's decision in FEC v. MCFL drew a narrow exception which permits certain types of nonprofit incorporated organizations to make independent expenditures on behalf of or in opposition to federal candidates. For a summary of the court's decision, see p. 4 of the February 1987 Record.

The appeals court further noted that AO 1987-7 was "particularly inappropriate for judicial resolution at this time. As a consequence of the Supreme Court's decision in FEC v. Massachusetts Citizens for Life the Commission is engaged in a rulemaking proceeding which could alter the very regulations applied in the opinion."³

On November 22, 1988, USDC filed a petition with the appeals court which requested a rehearing and a rehearing en banc of its case.

FEC v. HARRY BRAUN FOR CONGRESS COMMITTEE

On October 3, 1988, the U.S. District Court for the District of Arizona, Phoenix Division, issued a consent order in a suit the FEC filed against the Harry Braun for Congress Committee (the Committee), the principal campaign committee for Mr. Braun's 1986 House campaign, and Mary Irene Moore, the Committee's treasurer. (FEC v. Harry Braun for Congress Committee, Civil Action No. CIV 88-1174 (PHY) CLH)

In the consent order, the court decreed that defendants had violated the election law by failing to meet the filing deadlines for two 1986 quarterly reports and two 1986 pre-election reports. (See 2 U.S.C. §§434(a)(2)(A)(i) and (iii).)

The court ordered defendants to pay a \$300 civil penalty within 20 days of the court's entry of the consent order.

Finally, the court enjoined defendants from future, similar violations of the election law.

FEC v. DIETL FOR CONGRESS

On July 18, 1988, the U.S. District Court for the Eastern District of New York issued a consent order in a case that the FEC brought against Dietl for Congress, Richard B. Dietl's principal campaign committee for his 1986 House campaign, and Alan J. Dietl, the campaign's treasurer. (FEC v. Dietl for Congress; Civil Action No. CV-88-1143)

In the consent order, the court decreed that defendants had violated the election law's reporting requirements for the 1986 election year by failing to meet the filing deadlines for an October quarterly report and a pre-election report. (See 2 U.S.C. §§434(a)(2)(A)(iii) and (i) respectively.)

The district court ordered defendants to comply with certain actions within 20 days after

the court entered its consent judgment. Specifically, defendants had to:

- o File the 1986 pre-election report; and
- o Pay a \$3,000 civil penalty.

Finally, the court permanently enjoined defendants from future, similar violations of the election law.

FEC v. TAYLOR CONGRESSIONAL COMMITTEE

On June 22, 1988, the U.S. District Court for the District of Columbia issued a default judgment in a suit that the FEC brought against the Taylor Congressional Committee, the principal campaign committee for Clarence Taylor's 1984 House campaign, and the Committee's treasurer Richard L. Smith. (FEC v. Taylor Congressional Committee; Civil Action No. 88-0453 (SSH))

In the default judgment, the district court decreed that:

- o Defendants had violated the terms of a conciliation agreement that they had entered into with the FEC in February 1988. (In the agreement, the defendants had agreed to pay a \$1,500 civil penalty in two equal installments.)
- o Defendants had to pay the \$1,500 penalty, an additional \$500 penalty for violating the terms of the conciliation agreement and a small fee to cover the FEC's court costs in the case. These penalties had to be paid within 15 days from the date the court entered the default judgment against defendants.

Finally the court enjoined defendants from future, similar violations of the election law.

FEC v. CESAR RODRIGUEZ

On October 28, 1988, the U.S. District Court for the Middle District of Florida granted the FEC's motion for a default judgment in a case that the FEC had reopened against Mr. Cesar Rodriguez in June 1988.¹ (FEC v. Rodriguez; Civil Action No. 86-687-CIV-T-10). The case concerned certain contributions that Mr. Rodriguez had solicited on behalf of Alan Wolfson for the 1984 Carter/Mondale Presidential Committee.

In the default judgment, the court decreed that:

- o Mr. Rodriguez violated 2 U.S.C. §441f by knowingly assisting in the making of contributions in the name of another.
- o Mr. Rodriguez must pay, within 15 days of the court's entry of the judgment, a \$5,000 civil penalty, together with \$22.95, to cover costs incurred by the FEC in the suit.

Finally, the court enjoined Mr. Rodriguez from future, similar violations of the election law.

³The FEC held a public hearing on the proposed MCFL rulemaking on November 16, 1988. For a summary of the proposed rulemaking and related issues, see the January and November 1988 issues of the FEC Record and this issue, page 5.

¹For a summary of the court's prior actions in the case, see p.6 of the August 1988 Record.

NEW LITIGATION**FEC v. AFSCME-PQ**

The FEC asks the district court to declare that the American Federation of State, County and Municipal Employees-P.E.O.P.L.E., Qualified (AFSCME-PQ), the separate segregated fund of AFSCME, and AFSCME-PQ's treasurer William Lucy violated section 434(b) of the election law by failing to report in-kind contributions AFSCME-PQ had made to the 1982 and 1984 Indiana House campaigns of Francis McCloskey.

Specifically, during the 1982 general election period, AFSCME-PQ established telephone banks which advocated Mr. McCloskey's election. Instead of reporting this in-kind contribution to the McCloskey campaign on its 1982 pre-general election report, AFSCME-PQ did not report the contribution (amounting to \$4,814.92) until May 1983. Again, during the 1984 general election period, AFSCME-PQ provided the same service to the McCloskey campaign and did not report the value of this in-kind contribution (amounting to \$1,362.81) until February 1985.

The FEC further asks the court to:

- o Assess an appropriate civil penalty against AFSCME-PQ and treasurer William Lucy; and
- o Permanently enjoin defendants from future violations of the election law.

U.S. District Court for the District of Columbia, Civil Action No. 88-3208, November 7, 1988.

FEC v. Californians for a Strong America

The FEC asks the district court to declare that Californians for a Strong America (CSA), a nonconnected political committee, and CSA's treasurer Albert J. Cook violated the election law by:

- o Failing to file a 1987 mid-year report on time (2 U.S.C. §434(a)(4)(A)(iv));
- o Failing to properly report independent expenditures (i.e., fundraising letters and tv and radio ads) which advocated the defeat of Senator Alan Cranston in his 1986 reelection bid (2 U.S.C. §434(b)(6)(B)(iii)); and
- o Failing to include a disclaimer notice on the fundraising letters in which CSA requested financial help to "retire" or "defeat" Senator Cranston.

The FEC further asks the court to order defendants to:

- o File CSA's overdue reports and to file amended reports which properly disclose CSA's independent expenditures against Senator Cranston;
- o Assess an appropriate civil penalty against defendants; and
- o Permanently enjoin defendants from future, similar violations of the election law.

U.S. District Court for the Central District of California, Civil Action No. 88-06449-JGD (KX), October 28, 1988.

FEC v. Life Amendment Political Action Committee

The FEC asks the district court to declare that:

- o The Life Amendment Political Action Committee (LIFE PAC), a nonconnected political committee, and Rick Woodrow, LIFE PAC's treasurer, violated the election law by failing to meet filing deadlines for the 1985 and 1987 mid-year reports, a 1986 pre-general election report and a 1986 year-end report (2 U.S.C. §§434(a)(4)(A)(i)(ii) and (iv)).
- o Citizens Organized to Replace Kennedy (C.O.R.K.), a political committee, and Rick Woodrow, C.O.R.K.'s treasurer, violated the election law by failing to itemize debts and obligations disclosed on C.O.R.K.'s 1986 quarterly, post-general election and year-end reports (2 U.S.C. §434(b)(8)).

The FEC further asks the court to:

- o Assess appropriate civil penalties against each defendant;
- o Order C.O.R.K. and its treasurer to file reporting schedules which provide itemized information on the debts and obligations the committee disclosed on its 1986 reports (see above); and
- o Permanently enjoin the defendants from similar, future violations of the election law.

U.S. District Court for the Western District of Washington, Civil Action No. C88-860Z, July 6, 1988.

FEC v. Chipman C. Bull for Congress

The FEC asks the district court to find that Chipman C. Bull for Congress (the campaign), the principal campaign committee for Mr. Bull's 1984 House campaign, and the campaign's treasurer Denise M. Deshane violated the election law by:

- o Knowingly accepting excessive contributions from three individuals in the form of loan guarantees and interest payments they made with regard to a bank loan obtained by the campaign (2 U.S.C. §441a(f));
- o Knowingly accepting direct contributions from two of the loan guarantors (2 U.S.C. §441a(f));
- o Failing to disclose these contributions in its 1984 post-general election and year-end reports (2 U.S.C. §434(b)(3)(E)); and
- o Failing to meet the filing deadlines for two reports due in the 1985 nonelection year (2 U.S.C. §§434(a)(2)(B)(i) and (ii)).

The FEC further asks the court to:

- o Assess an appropriate civil penalty against defendants; and

continued

- o Enjoin defendants from future violations of the election law.

U.S. District Court for the District of Maine, Civil Action No. 88-37B (Cyr., J.), February 16, 1988.

FEC v. Populist Party, et al.

In this suit, the FEC asks the court to declare that:

- o The Populist Party, a nonconnected political committee, and Blayne E. Hutzel, acting as the Party's treasurer, failed to meet the filing deadlines for two 1985 reports and four 1986 reports (in violation of 2 U.S.C. §§434(a)(4)(A)(i), (iii) and (iv)).
- o The Populist Party and Mr. Hutzel failed to file an amended Statement of Organization disclosing changes in: (a) the name of the Party's treasurer and (b) the Party's campaign depositories (in violation of 2 U.S.C. §433(e)).
- o The Populist Party and Mr. Hutzel failed to disclose the purpose of certain operating expenditures (in violation of 2 U.S.C. §434(b)(5)(A)).
- o The Populist Party and Mr. Hutzel failed to disclose certain outstanding debts and obligations owed two corporations, Liberty Lobby, Inc. and Cordite Fidelity, Inc. (in violation of 2 U.S.C. §434(b)(8)).
- o The Populist Party and Mr. Hutzel failed to itemize a contribution in excess of \$200 (in violation of 2 U.S.C. §434(b)(3)(A)); and
- o The Populist Party and Mr. Hutzel failed to disclose certain loans, debts and obligations which exceeded \$500 by reporting them: (a) at the time they were transacted and (b) until they were extinguished (in violation of 11 CFR 104.11).

The FEC further asks the court to declare that the following defendants violated 2 U.S.C. §441b(a) by making or knowingly receiving prohibited corporate contributions to the Populist Party:

- o Liberty Lobby, Inc., by making a \$7,500 contribution;
- o Cordite Fidelity, Inc., by making a \$10,478.55 contribution through its newspaper, The Spotlight;
- o Mr. Hutzel and Willis Carto, who in their respective roles as officers and directors of Liberty Lobby, Inc. and Cordite Fidelity, Inc., consented to the contributions made by their corporations; and
- o The Populist Party and Mr. Hutzel by knowingly accepting aggregate corporate contributions of \$17,978.55.

Finally the FEC asks the court to:

- o Assess appropriate civil penalties against each defendant; and
- o Permanently enjoin each defendant from future, similar violations of the election law.

U.S. District Court for the District of Columbia, Civil Action No. 88-0127 (RCL), January 20, 1988.

FEC v. Citizens Party

The FEC asks the district court to declare that the Citizens Party, a national party committee, and the Citizens Party's treasurer Kirby Edmonds willfully violated sections 434(a)(4)(A)(i) and (iv) of the election law by failing to meet the filing deadlines for the 1985 year-end report and two 1986 quarterly reports.

The FEC further asks the court to:

- o Assess an appropriate civil penalty against defendants; and
- o Enjoin defendants from any future, similar violations of the election law.

U.S. District Court for the Northern District of New York, Civil Action No. 87-CV-1577, December 16, 1987.

STATISTICS

CONGRESSIONAL CAMPAIGN ACTIVITY: 1987-88

Pre-general election data released by the FEC on November 4, 1988, showed that total spending by Congressional campaigns (House and Senate) from January 1987 through mid-October 1988 increased only three per cent over Congressional spending during the same period in the 1985-86 election cycle.

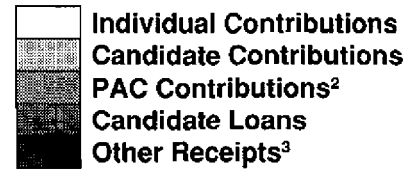
General election candidates for the House spent \$166.2 million—a six percent increase over spending by House candidates in 1985-86 races. This increase occurred despite the unusually small number of open seat races, which often account for the largest spending in Congressional races.

The proportion of PAC contributions received by 1988 House campaigns increased approximately five percent over the proportion of PAC contributions received by 1986 House campaigns.

The pie charts on the opposite page provide detailed information on the sources of receipts for all 1988 Congressional candidates (i.e., primary losers and candidates who went on to campaign in the general election).

More detailed information may be obtained from the FEC's November 4, 1988, press release. For copies of the release, contact the FEC's Public Records Office locally at 376-3140 or toll-free at 800/424-9530.

CHART I
SOURCES OF RECEIPTS¹
All Congressional Candidates
January 1987 — September 1988



	Incumbent	Challenger	Open Seat ⁴
SENATE			
Democratic	\$45 million 	\$22.2 million 	\$21.1 million
Republican	\$38.8 million 	\$21.4 million 	\$11.1 million
HOUSE			
Democratic	\$81.1 million 	\$21.8 million 	\$23.1 million
Republican	\$57 million 	\$14.4 million 	\$16.6 million

¹ Charts do not reflect funds received prior to 1987—88.

² PAC contributions include contributions from other candidate committees and from any other political committees that are not part of national or state party organizations.

³ Other receipts include, for example, party committee contributions, interest and dividends earned on investments, and offsets to expenditures.

⁴ Herbert Kohl's contributions to his Wisconsin Senatorial campaign account for 98 percent of the contributions made by Democratic Senatorial candidates to their open seat races.

NATIONAL PARTY ACTIVITY: 1987-88

From January 1987 through mid-October 1988, Republican party committees at the national level raised \$171 million and spent \$152 million. The Republican committees' overall activity declined 10 percent, as compared with their activity during the same period in the 1985-86 election cycle.

Democratic party committees at the national level raised \$68 million and spent \$58 million — approximately double their overall activity in the last election cycle.

National Republican party committees contributed \$2.2 million to federal candidates through mid-October 1988. They made coordinated expenditures¹ of approximately \$12 million

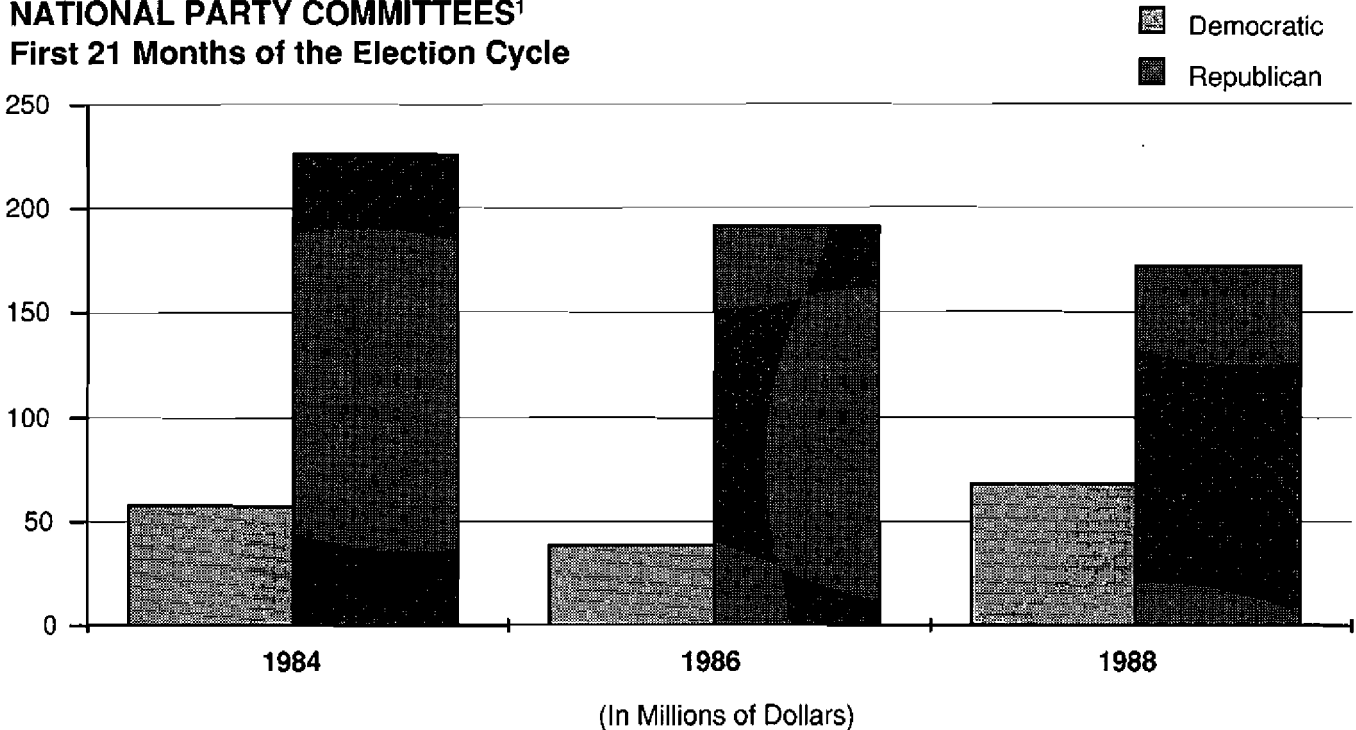
on behalf of the party's general election nominees. Democratic national party committees contributed \$1.1 million to federal candidates during the same period. They spent almost \$14 million on behalf of the party's general election nominees.

PACs (i.e., nonparty, noncandidate political committees) gave approximately twice as much money to the national party committees of both major parties during the current cycle (i.e., \$10 million) as compared with PAC contributions to the committees during the same period in the last election cycle. The chart below depicts major party receipts over three election cycles.

More detailed information may be obtained from the FEC's November 3, 1988, press release. For copies of the release, contact the FEC's Public Records Office locally at 376-3140 or toll-free at 800/424-9530.

¹Limited expenditures made by party committees on behalf of federal candidates in general election campaigns. ² U.S.C. section 441a(d).

**CHART II
RECEIPTS OF
NATIONAL PARTY COMMITTEES¹
First 21 Months of the Election Cycle**



¹ National party committees include, for each of the two major parties, the national party committee, the Senatorial campaign committee and the Congressional campaign committee.

PUBLICATIONS

REPRINTS OF RECORD ARTICLES AVAILABLE

Callers inquiring about different aspects of the law often ask whether the Commission has materials on their topic of interest. In response to these requests, many previously published 800 Line articles have been transformed into handouts for quick and easy reference. Periodically appearing in the Record, the 800 Line articles answer frequently asked questions about specialized topics relating to election law, such as fundraisers or transfers of funds.

Other handouts on specific topics, not previously published, are available as well.

For convenience, handouts have been grouped in the list below according to their intended audience. For each handout taken from the Record, a parenthetical reference indicates the month and year when the article was originally published.

Readers will find the handouts to be a valuable resource. The Commission provides them free of charge. To order, call the FEC's Information Services Division at 800/424-9530 or 202/376-3120.

For All Committees

- o Computerized Format for Reporting (11:80)
- o Contribution Limits
- o Joint Fundraising
- o Overall Annual Limit on Contributions for Individuals (7:83)
- o Public Records Fee Schedule
- o State Filing Offices
- o 1988 Filing Dates

For Authorized Candidate Committees

- o Concert Fundraisers (12:82)
- o Disposal of Campaign Property (1:83)
- o Presidential and Congressional Primary Dates (1:88)
- o Termination Procedures/Winding Down the Campaign
- o Transfer of Candidate Funds to Federal Committee (1:86)

For Unauthorized Committees

- o Delegates/Delegate Committees (11:87)
- o Partnerships (6:83)
- o Reporting Internal Communications by Corporations, Labor Organizations and other Membership Organizations
- o Single Candidate Committees (10:87)
- o SSF & Nonconnected Committees (10:82)

For Teachers, Students and Researchers

- o Dear Educator Letter (Describes FEC resources and services available to educators)
- o Dear Librarian Letter (Describes available research materials and FEC resources)
- o Educational Materials and Services (5:84)
- o Legislative History Reference Information
- o Presidential Election Campaign Fund Chart

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