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REGULATIONS**TRAVEL EXPENSE EXEMPTION AND
ACTIVITY BY FOREIGN NATIONALS:
NOTICE OF PROPOSED RULEMAKING**

On June 7, 1989, the Commission published in the Federal Register a Notice of Proposed Rulemaking seeking comments on proposed changes in the regulations governing political activity by foreign nationals in federal elections. See 54 Fed. Reg. 24351. The notice also included possible alternatives to a rulemaking proposal published in September 1988 regarding the travel expense exemption.

The current 11 CFR 110.4(a), based on 2 U.S.C. §441e, prohibits foreign nationals from making contributions in connection with any election to local, state or federal office and prohibits other persons from soliciting or accepting their contributions. (Under the Act, permanent resident aliens are not considered foreign nationals.) Since the Commission has consistently interpreted prohibitions in the Act against contributions by certain persons as also prohibiting expenditures by them, the proposed revision would add language to section 110.4(a) explicitly prohibiting foreign nationals from making expenditures and from participating in certain election-related activities. Such activities would include election-related decisions by corporations, labor organizations or political committees.

With respect to the travel expense exemption, the Commission supplemented its original Notice of Proposed Rulemaking by offering three alternative amendments to 11 CFR 100.7(b)(8) and 100.8(b)(9). Under those sections, an individual's unreimbursed payments for personal travel expenses incurred on behalf of a candidate are exempt from the definition of "contribution" and "expenditure" as long as such expenses do not exceed \$1,000. Similarly, travel expenses incurred by individuals on behalf of a party committee are not "contributions" or "expenditures" until they exceed \$2,000, after which the contribution limitations apply to that amount spent in excess of \$2,000. These exemptions are based on section 431(8)(B)(iv) of the Act.

The first alternative the Commission proposed would retain the current regulation as written. Section 100.7(b)(8) separates personal travel expenses into two categories: transportation ex-

penses and subsistence (meals and lodging) expenses. The regulations apply the dollar limitations specified in the Act only to unreimbursed transportation expenses incurred by individuals for travel on behalf of a candidate or political party. No dollar limitations apply to unreimbursed payments by volunteers for usual and normal subsistence expenses that are incidental to the volunteer's activities; these payments are neither contributions nor expenditures, regardless of their aggregate value. The current regulations do not exempt unreimbursed subsistence expenses by paid campaign and party workers.

The second alternative would also differentiate between exempt transportation expenses and exempt subsistence expenses. Unlike the first alternative, however, it would include within the subsistence exemption unreimbursed payments for food and lodging expenses incurred by campaign and party workers while traveling under the exemption at their own expense on behalf of a candidate or political party. Volunteers would still be permitted to incur unlimited subsistence

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REGULATIONS

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expenses at any time. In substance, this alternative is the same as the one proposed in the September rulemaking notice.

A third alternative offers a new approach to the travel exemption. Under this revision, there would be no distinction between expenses incurred by paid campaign and party staff and expenses incurred by volunteers. The dollar limitations of the statutory travel exemption would apply not only to an individual's unreimbursed transportation expenses but also to his or her unreimbursed lodging expenses. The two kinds of expenses would be aggregated, with the total counted against the pertinent dollar limitations. The individual's own unreimbursed expenses for meals, however, would be subject to no dollar limitations; they would be totally exempt.

The Commission welcomes comments from all interested persons regarding these proposed changes in the regulations. Comments must be made in writing and addressed to Susan E. Propper, Assistant General Counsel, FEC, 999 E Street, NW, Washington, DC 20463.

SPECIAL ELECTIONS

FLORIDA SPECIAL ELECTION

Florida has scheduled a special election to fill the 18th Congressional District seat of Congressman Claude Pepper, who died in May.

Major party nominees for the seat will be selected in a **primary election** scheduled for **August 1**. The nominees will run in a **general election** scheduled for **August 29**.

If, in either party, no candidate wins a majority of the votes in the August 1 primary, a **runoff election** between the two top vote-getters in that party's primary will be held on **August 15**.

Reporting requirements for the special election are explained below. Note that committees may file a consolidated Pre-Primary and Mid-Year Report, provided that the report is filed by July 20.

Further information on reporting or other requirements of federal election law can be obtained by calling the FEC at 800/424-9530.

Candidates' Authorized Committees

Authorized committees of candidates who participate in these elections must file reports according to the schedules given in the table below. Committee treasurers should consult the table that corresponds to the candidate's situation.

Note that an authorized committee must also file notices on contributions of \$1,000 or more received after the closing date of books but more than 2 days before an election. The notice must reach the Clerk of the House and the Florida Secretary of State with 48 hours of the committee's receipt of the contribution. 11 CFR 104.5 (f). See also AO 1988-32.

Party committees and PACs

Party committees and PACs that make contributions or expenditures in connection with the special elections during the coverage dates listed in the table must file the appropriate reports. Monthly filers, however, do not file special pre- and post-election reports.

Any PAC (including a monthly filer) that makes independent expenditures in connection with a special election may have to file last-minute reports on independent expenditures. Independent expenditures aggregating \$1,000 or more that are made after the closing date of books but more than 24 hours before an election must be reported within 24 hours after the expenditure is made. 11 CFR 104.4(b) and 104.5(g).

Contribution Limits

The limits on contributions to candidates apply separately to the primary election, the runoff election (if held) and the general election. 100.2, 110.1(j) and 110.2(i). A candidate must participate in an election to qualify for the limit in that election.

Where to File

Authorized committees file with the Clerk of the House (see Form 3 for address). Party committees and PACs file with the appropriate federal office (usually, the FEC; see Form 3X for details).

All committees must simultaneously file copies of special election reports with the Florida Secretary of State, Division of Elections, the Capitol, Room 1801, Tallahassee, FL 32399-0250.

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)

**FILING DATES FOR
FLORIDA SPECIAL ELECTIONS**

Reports sent by registered or certified mail must be postmarked by the mailing date given in the third column. Otherwise, they must be received by the filing date.

Committees may file a consolidated Pre-Primary and Mid-Year Report, as long as the report is received by July 20.

Chart I: Committees involved only in the August 1 special primary

Report	Period Covered	Reg./ Cert. Mailing Date	Filing Date
Pre-Primary & Mid-Year	* - 7/12	7/17	7/20
Year-End	7/13 - 12/31	1/31	1/31

Chart II: Committees involved in only the August 1 primary and the August 29 general elections

Report	Period Covered	Reg./ Cert. Mailing Date	Filing Date
Pre-Primary & Mid-Year	* - 7/12	7/17	7/20
Pre-General	7/13 - 8/9	8/14	8/17
Post-General	8/10 - 9/18	9/28	9/28
Year-End	9/19 - 12/31	1/31	1/31

Chart III: Committees involved in both the August 1 primary and the August 15 runoff (if held)

Report	Period Covered	Reg./ Cert. Mailing Date	Filing Date
Pre-Primary & Mid-Year	* - 7/12	7/17	7/20
Pre-Runoff	7/13 - 7/26	8/3**	8/3
Year-End	7/27 - 12/31	1/31	1/31

*The close of books of the last report filed, or the date of the committee's first activity, if no previous reports have been filed

**Committees involved in the runoff may use the August 3 filing date as the mailing date for their Pre-Runoff Report.

Chart IV: Committees involved in the August 1 primary, the August 15 runoff (if held) and the August 29 general elections

Report	Period Covered	Reg./ Cert. Mailing Date	Filing Date
Pre-Primary & Mid-Year	* - 7/12	7/17	7/20
Pre-Runoff	7/13 - 7/26	8/3**	8/3
Pre-General	7/27 - 8/9	8/17***	8/17
Post-General	8/10 - 9/18	9/28	9/28
Year-End	9/19 - 12/31	1/31	1/31



FEC DELEGATION VISITS USSR

A 12-member delegation from the Federal Election Commission visited the Soviet Union from June 5 to June 14 at the invitation of the FEC's Soviet counterpart, the Central Electoral Commission of the USSR.

"The Federal Election Commission has come to the Soviet Union for the purpose of facilitating the greater understanding of the political systems of both the U.S. and the USSR," said FEC Chairman Danny Lee McDonald. The invitation was issued through Soviet Ambassador to the United States, Yuri Dubinin. A delegation of Soviet electoral officials is planning to visit the U.S. during the Congressional elections in 1990.

The six Commissioners, accompanied by six FEC staff members, conducted extensive meetings with the Central Electoral Commission, Soviet Vice President Anatoliy Lukyanov, Boris Yeltsin and other newly elected deputies to the People's Congress, the Presidium of the Supreme Soviet of the Ukrainian SSR, the executive committees of the Kiev Soviet, the Leningrad Soviet, and a Moscow district Soviet. The Commissioners also met with professors of law and political science. Discussions focused on nomination procedures, campaign financing, balloting and the Commissions' respective roles in elections in the two countries.

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***Committees involved in the runoff and the general elections may use the August 17 filing date as the mailing date for their Pre-General Report.

"We have found that while the experiences and frameworks within which our two countries hold elections are different, we have many common concerns which have been advanced by our meetings," Chairman McDonald said at the conclusion of the trip.

All costs for the trip were covered by the Soviet hosts and by a private American organization, the International Foundation for Electoral Systems, whose Executive Director, Richard Sudriett, accompanied the FEC on its Soviet trip.

ADVISORY OPINIONS

AO 1989-4: Federal Committee's Sale of Assets to State Committee

Senator Pete Wilson's federal campaign committee, Californians for Pete Wilson, may sell its property to the Senator's state committee, Pete Wilson for Governor, provided that the sale is based on an objective appraisal of the "usual and normal charge" for the assets. The transaction would be considered a sale--not a contribution or a transfer. The state committee may make the purchase with funds that are not subject to the federal election law's limits and prohibitions. The federal committee may also repurchase the assets after the 1990 gubernatorial election, as long as that purchase is also made at the "usual and normal charge."

The federal committee had proposed selling computer hardware, mailing lists and used furniture to Senator Wilson's state committee, established to support his 1990 campaign for governor of California. The assets would be sold at the "usual and normal charge," as determined by an independent evaluation of their market value. The committee also planned to repurchase the assets at a later date, should the gubernatorial campaign be unsuccessful. (At the time of the request, Senator Wilson's contributions received toward a possible 1994 Senatorial reelection campaign were approaching the \$5,000 candidacy threshold.)

The sale or commercial use of committee assets by a principal campaign committee or other political committee usually results in a contribution to the committee from the purchaser. As an exception, however, the Commission has said that the sale of committee assets does not result in a contribution when the committee has purchased or developed the assets for its own use rather than for fundraising and when the materials have an ascertainable market value. If the purchase price does not exceed the usual and normal charge for the asset, the payment is not considered a contribution to the committee

and is therefore not subject to the law's prohibitions or limits.

With regard to the proposed repurchase of the assets, the Commission has usually not favored "lease-back" situations, in which the committee sells the equity in an asset but retains possession and pays rent for its use. Likewise, the Commission has also not favored "repurchase" situations, in which the committee may receive the equity value of an asset long enough to use the funds for other purposes but retains the right to buy back the asset at any time. (See AO 1986-14.) The proposed sale and repurchase is distinguishable from these situations, and would therefore be permissible, assuming the federal committee fully divests itself of the ownership and use of the assets, retains no legal right to repurchase them and does not attempt to repurchase them until after Senator Wilson's 1990 gubernatorial campaign.

When itemizing the sale proceeds in its report as "other receipts," the federal committee may wish to note that the funds represent the purchase price paid for the assets. (Date issued: May 26, 1989; Length: 5 pages)

AO 1989-5: Refund of Contribution Made in the Name of Another

Congressman Richard Ray and his committee must refund to the original contributor a \$1,000 contribution made in the name of another. The illegal contribution, received from Joseph Edmund Hill, was actually made by the Unisys Corporation.

In May 1988, the committee received and deposited the \$1,000 from Joseph Edmund Hill. The check was drawn on Mr. Hill's personal bank account. Later, in January 1989, the committee learned that Mr. Hill had pleaded guilty in federal court to four counts of making contributions in the name of another. Since 1982, Mr. Hill had been acting as a conduit for contributions originating from the Sperry Corporation and its successor, Unisys. Court documents in Mr. Hill's case indicated that Congressman Ray was one of the recipients of Mr. Hill's contributions.

The making of contributions in the name of another or the knowing acceptance of such contributions is prohibited by the Act, as is the making or knowing acceptance of corporate contributions. 2 U.S.C. §§441f and 441b.

Commission regulations require that contributions that are discovered to be illegal be refunded to the contributor. In the case of a contribution in the name of another, the recipient must return the money to the original source of the contribution. In Congressman Ray's case, the money must be refunded to Unisys, the corporation that provided the funds to Mr. Hill. 11 CFR 103.3(b)(2). (Date issued: May 26, 1989; Length: 3 pages)

AO 1989-6: Contribution of Stock to Congressional Candidate

Congressman Sherwood Boehlert's campaign committee may accept a contribution of shares in a corporation, valued at \$540. The contribution is subject to the Act's limitations, and special reporting rules also apply.

If the stock has not been liquidated by the close of the reporting period, the Committee should report the fair market value of the shares on the date received. Because the stock came from an individual and is valued in excess of \$200, the committee must itemize the contribution on Schedule A, including the contributor's name, address, occupation and employer. 11 CFR 104.13(b)(1). The contribution should be reported as a memo entry and should not be included in the total of contributions for the period.

When the stock is sold, the committee should itemize the proceeds on the next report due. If the purchaser of the stock is known, the committee should identify the purchaser by name, address and—if the purchase price exceeds \$200—occupation and employer. The purchase is considered a contribution from the purchaser. The committee should also include the identification of the original contributor. 11 CFR 104.13(b)(2). The sale of the stock, like the original contribution, should be reported on Schedule A; the amount of the sale should be included in the total of contributions for the period. The value of the original donation of the stock should be reported as a memo entry and should not be included in that period's contribution total.

If the committee sells the stock through an established market mechanism whereby it does not know the identity of the purchaser, then the purchaser will not be considered to be making a contribution to the committee. The committee, accordingly, does not need to report the identification of the purchaser. The other requirements of section 104.13(b)(2) still apply; the purchase price should be itemized as an "Other Receipt."

Expenses incurred in connection with the sale of the stock, such as postage, commissions and other fees, should be reported as operating expenditures. If such expenditures exceed \$200 to the same payee during a calendar year, they should be itemized. 11 CFR 104.3(b)(2)(i). (Date issued: June 1, 1989; Length: 6 pages)

AUDITS**FINAL AUDIT REPORT FOR BABBITT CAMPAIGN RELEASED**

In May the Commission released the final audit report for Babbitt for President, the 1988 Presidential primary campaign committee of former Arizona Governor Bruce Babbitt. The Babbitt audit is the second audit of the 1988 campaigns to have been completed; the FEC released the final audit report for the Pete du Pont for President committee in March.

The Commission is required by law to audit the campaign finances of all committees receiving public funds to ensure that the money has been used only to pay for "qualified campaign expenses," as defined in 26 U.S.C. §9032(9). See 26 U.S.C. §§9008(g) and 9038. For the 1988 elections, the Commission certified matching payments of individual contributions to 15 Presidential primary candidates. The Commission also authorized full financing of the two major parties' nominating conventions and of the general election campaigns of the two parties' Presidential nominees. Apart from the du Pont and the Babbitt campaigns, these committees are all in various stages of the audit process.

Each committee's activity is reviewed to determine its compliance with the Act, FEC regulations and the Presidential public funding statutes of the Internal Revenue Code. At the conclusion of each audit, the Commission compiles a final audit report and places it on the public record.

In the Babbitt report, the Commission determined that the committee had failed to provide adequate documentation for six expenditures, in accordance with 11 CFR 9033.11. The insufficiently documented disbursements totalled \$3,545.99. Under section 9038.2(b)(3) of the regulations, the Commission may determine that improperly documented disbursements are not qualified campaign expenses and, therefore, require the committee to repay part of that amount to the U.S. Treasury. The amount of the repayment—representing the portion of the unqualified expenses defrayed with public funds—is determined by a formula set forth in 11 CFR 9038.2(b)(2)(iii). Based on that formula, the Commission made an initial determination on May 25, 1989, that the Babbitt committee had to repay \$1,004.57 to the Treasury pursuant to 26 U.S.C. §9038(b)(2).

Copies of the report are available from the FEC's Public Records Office.

PUBLICATIONS

1988 ANNUAL REPORT SENT TO CONGRESS AND THE PRESIDENT

In June the FEC issued its 14th Annual Report, reviewing the agency's role in administering the 1988 Presidential public funding program and in monitoring compliance with federal campaign finance laws for more than 8,000 candidates and political committees. Copies of the Report have been sent to the President and the two houses of Congress.

The Report examines the major issues that were raised during the last election through advisory opinions, compliance matters and litigation. The controversy over the role of "soft money" in the past election cycle is discussed, along with dual candidacy and the political activities of nonprofit corporations.

The full text of the Commission's 1989 legislative recommendations is included; with those recommendations for changes in the election law, the Commission also expressed concern for the future viability of the Presidential Election Campaign Fund.

In addition, the Report contains statistical summaries of 1988 political activity, an overview of the agency's budget and a chronology of events for 1988.

A copy of the Report can be obtained from the FEC's Information Services Division by calling 800/424-9530 or 202/376-3120.

FEDERAL ELECTIONS - 1988

In June the FEC sent Federal Elections 88 to state election offices throughout the country. The volume shows up-to-date official state results for all 1988 federal races, including state-by-state Presidential and Senatorial results and district-by-district Congressional results. Federal Elections 88 is the fourth in a series of publications designed to provide an accurate and comprehensive historical record of federal election results.

The compilation shows, for example, that 91,594,809 Americans voted in the 1988 Presidential election, a figure representing 50.15 percent of the voting-age population. That number represents a decline of one million voters in comparison with the last Presidential election in 1984. That year 92,652,842 voters participated in the Presidential general election, representing 53.27 percent of the eligible voters. Of the 19 candidates appearing on Presidential ballots nationwide, George Bush received 53.37 percent (48,886,097) of the vote; Michael S. Dukakis received 45.65 percent (41,809,074) of the total.

Because the FEC compilation is from official state election sources, the counts are based on individual states' definitions of a valid vote cast. The compilation includes write-in votes, where reported, as well as votes for minor party candidates.

Federal Elections 88 can be ordered from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. A limited number of copies are also available free of charge from the FEC's Public Records Office. Inquiries should be addressed to Dick Thomas, Director of State Relations.

CLEARINGHOUSE

ADVISORY PANEL CHARTER RENEWED

On May 12, 1989, the Commission approved the biennial renewal of the Clearinghouse Advisory Panel Charter for the two years beginning in July 1989.

Composed of state and local election officials from throughout the country, the Advisory Panel of the the FEC's National Clearinghouse on Election Administration advises the Commission on ways to improve the administration of elections. Drawing upon the expertise of its members, the panel makes recommendations regarding possible topics of Clearinghouse research efforts, as well as suggestions for other means of assisting election administrators in the performance of their duties.

This year's revised charter raised the number of panel members from 16 to 20. The members are nominated by the Clearinghouse Director, Penelope Bonsall, through the Commission's Staff Director; the members are appointed by the Commission.

COURT CASES

FEC v. CITIZENS PARTY (87-CV-1577)

On May 1, 1989, the U.S. District Court for the Northern District of New York entered a consent order and judgment in FEC v. Citizens Party (No. 87-CV-1577). The judgment declared that the Citizens Party, a political committee, and its treasurer, Kirby Edmonds, knowingly and willfully violated the election law by failing to file four reports in a timely manner: a 1985 year-end report and three 1986 quarterly reports (April, July and October). The consent order and judgment also assessed a civil penalty of \$10,000 against the committee. Mr. Edmonds was personally assessed a \$500 penalty.

FEC v. FURGATCH (88-6047)

On May 10, 1989, the U.S. Court of Appeals for the Ninth Circuit issued an order denying both the FEC's petition for rehearing and its suggestion for rehearing en banc in FEC v. Furgatch. The agency had requested the rehearing following a March 1989 ruling from the appeals court that vacated a permanent injunction imposed by a district court against Mr. Furgatch and remanded it to the lower court with instructions to limit its duration. For a summary of that decision, see the May 1989 Record.

FEC v. NOW

On May 11, 1989, the U.S. District Court for the District of Columbia issued a memorandum opinion granting the defendant's motion for summary judgment in FEC v. National Organization for Women (NOW). The court found that the election law's prohibitions against corporate political expenditures did not apply to a series of direct mailings sent as part of a NOW membership drive because the materials did not contain express advocacy.

Background

The agency filed suit against NOW, a non-profit corporation, in August 1987 after failing to reach a conciliation agreement with the organization in a compliance matter generated by a 1984 complaint from the National Conservative Political Action Committee.

The FEC charged that three direct mailings sent by NOW during the 1984 election cycle contained communications connected with several U.S. Senate elections. The letters mentioned several Senators who were running for reelection in 1984, including Jesse Helms and Strom Thurmond. Although NOW had established a separate segregated fund for political activities, the ex-

penditures for the mailings were made with money from its general treasury. The FEC charged that these expenditures constituted violations of 2 U.S.C. §441b, which prohibits all corporations from making expenditures in connection with federal elections.

District Court Decision

In finding that NOW's financing of the preparation and distribution of the letters in question with money from its corporate treasury did not constitute a violation of the election law, the court primarily addressed the issue of express advocacy.

Citing the Supreme Court's 1986 ruling in FEC v. Massachusetts Citizens for Life, Inc. (MCFL),¹ the court reasoned that section 441b's prohibition against expenditures made "in connection with" federal elections did not broaden the general definition of "expenditure" given in section 431(9)(A)(i) of the Act, i.e., disbursements, gifts and other types of payments made "for the purpose of influencing" federal elections. The court determined that section 441b's prohibition against expenditures made "in connection with" federal elections could only be interpreted as prohibiting expenditures made "for the purpose of influencing" federal elections. Further citing MCFL and other Supreme Court decisions, the district court concluded that this interpretation of the definition of "expenditure" required that the communication expressly advocate the election or defeat of a candidate. Express advocacy, in the court's view, had to include "an explicit and unambiguous reference" to a candidate, as well as a clear exhortation to vote for or against that candidate. Using this interpretation of express advocacy—based on MCFL, the appeals court ruling in FEC v. Furgatch,² and other decisions—the court found that NOW's letters did not contain any language that expressly advocated the election or defeat of any candidate.

The court found that the central purpose of each of the mailings was apparently to expand the organization's membership, not to tell recipients how to vote. While the letters named some Senators who were candidates, they also mentioned some who were not running for reelection in 1984. Moreover, Senators were named mainly in the context of their opposition to causes embraced by NOW. The letters called for a variety of actions by the recipients in support of the organization and its causes. Such actions included, for example, communicating support for

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¹FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238 (1986). See the February 1987 Record for a summary.

²FEC v. Furgatch, 807 F.2d 857 (9th Cir. 1987). See the March 1987 Record for a summary.

the Equal Rights Amendment to the recipients' own Senators, and making contributions to NOW. The letters "fail[ed] to expressly tell the reader to go to the polls and vote against particular candidates." Since the letters were "suggestive of several plausible meanings...NOW's letters fail the express advocacy test proposed by the Ninth Circuit in *Furgatch*."

The district court added that, since the actual distribution of the letters was conducted by an outside direct mail contractor that did not inform NOW of where the mailings would be sent, NOW "clearly lacked the intent to influence" any particular Senatorial election.

The court decided that the NOW mailings constituted discussion of political issues, protected by the First Amendment, rather than an attempt to influence the election or defeat of any candidates because the letters did not contain express advocacy.



POLITICAL ACTIVITY AND THE WORKPLACE

This article answers questions on how the federal campaign finance law applies to political activities conducted at one's place of business. (Of course, such activity is also subject to the rules and practices of the employer.)

Please note that government employees may be barred from participating in partisan activities, as explained later in this article.

Compensation

May I perform federal campaign work on the job, during working hours? Maybe. As a general rule, any compensation paid to an employee for time spent on federal political activity is considered a contribution from the employer to the political committee benefiting from the activity. 11 CFR 100.7(a)(3). (Exceptions to this rule are discussed later.) Your activity might result in an illegal contribution if you are employed by a corporation (profit or nonprofit), labor organization, federal government contractor or foreign national. Even if your employer may legally make contributions, the value of the contribution might exceed the law's limit.

Suppose I make up the time I spend on campaign activities—will my activity still result in a contribution? No, not if you do so within a reasonable time. This rule applies to employees who are paid on a salaried or hourly basis and who are expected to work a set number of hours a week. 11 CFR 100.7(a)(3)(i).

What if my income is not tied to the number of hours worked? Employees who are paid on a commission or piecework basis for work actually performed and who are free to use their time as they see fit may engage in campaign activity during what would otherwise be normal working hours without their employers making a contribution. 11 CFR 100.7(a)(3)(ii).

In a related advisory opinion (AO), the Commission said a senior partner in a law firm could conduct on-the-job political activity without his firm making a contribution because he had discretionary use of his time and his compensation was not based on the amount of work he performed. AO 1980-107. See also AO 1979-58.

Does a contribution result if I conduct political activity during compensated leave time? No, not if you use earned leave time such as bona fide vacation time. 11 CFR 100.7(a)(3)(iii).

If I take leave-without-pay to participate in federal campaign activity, may my employer continue to pay any share of my health insurance or other fringe benefits? No. If you work for a corporation, labor organization or federal government contractor, your employer may not pay any share of the cost of any fringe benefits you receive while on leave-without-pay. You or the committee you are helping, however, may cover the cost of continuing your fringe benefits. Payment by any other person for such employment benefits during your absence would result in a contribution to the committee. 11 CFR 114.12(c).

As a candidate for federal office, may I continue to receive compensation from my employer? Yes, as long as:

- o A bona fide employment relationship exists between you and your employer that is genuinely independent of your candidacy;
- o Any compensation paid to you is exclusively in consideration of the services you perform; and
- o The compensation does not exceed that which would be paid to a similarly qualified person for the same work. 11 CFR 110.10(b)(2); AOs 1980-115, 1979-74, 1978-6 and 1977-68.

Of course, if your income is dependent on the number of hours worked, and you spend less time at work in order to conduct your campaign, your employer must reduce your compensation accordingly in order to avoid making a contribution.

Use of Employer's Facilities

May I use my office phone to make long-distance calls in connection with political activity? As a general rule, the use of an employer's facilities for federal political activity results in a contribution from the employer. To avoid this, you or the committee you are helping must reimburse your employer "the usual and normal charge" for the use of facilities. If you make the

reimbursement, the payment is considered a contribution from you to the committee. 11 CFR 100.7(a)(1)(iii)(A). (Exceptions to this general rule are explained later.)

What is the "usual and normal charge"? A commercially reasonable rate or the current market price. 11 CFR 100.7(a)(1)(iii)(B). For example, the reimbursable amount for a long-distance call made on an office phone would be the actual amount billed to the employer.

Is there any time limit for making reimbursements for the use of facilities? Yes, they must be made within a commercially reasonable time after the use, or the outstanding amount could become a contribution from the employer. 11 CFR 100.7(a)(4) and 114.9. In most instances, 30 days is considered a reasonable time for making reimbursements. See 11 CFR 102.6(c)(3) and 103.3(b)(1).

Exception—Exempt Legal/Accounting Services

What is the exception for legal and accounting services? Employees may provide free legal or accounting services to a political committee without their employer making a contribution if certain conditions are met:

- o Only regular employees may perform the services (not outside consultants). Moreover, the employer may not hire additional personnel to free-up the time of regular employees.
- o The donated legal or accounting services must be conducted solely to help the committee comply with the federal campaign finance law, except that services may be provided to a party committee for any purpose other than directly furthering the election of a federal candidate.
- o The recipient committee must report the value of the services and the identification of the employees who provided them. 11 CFR 100.7(b)(13) and (14); 100.8(b)(14) and (15); 104.3(h); and 114.1(a)(2)(vi) and (vii).

What if an employee, in providing exempt legal or accounting services, uses the employer's computer—would such use result in a contribution? No. Use of the employer's resources and facilities is covered by the exemption, if all the other conditions are met. AO 1980-137.

Exception—Incidental Activity

What is the exception for "incidental activity"? An employee of a corporation or labor organization may conduct "incidental" volunteer political activity at the work place without the employer making a contribution. Activity is considered "incidental" if it does not exceed one hour a week or four hours a month, regardless if it is

undertaken during working hours or not. 11 CFR 114.9(a)(1) and (b)(1).

Do I have to reimburse my employer for the use of facilities if my activity is "incidental"? Reimbursement is required only for any increase in overhead or operating costs, unless you produce materials in connection with a federal election. In that case, the employer must be paid the usual and normal charge within a commercially reasonable time. 11 CFR 114.9(a), (b) and (c).

For example, if you make a few local calls on your office phone, reimbursement is not necessary as long as the calls do not increase your employer's phone bill. But, if you use the office photocopier to make some copies of a committee's solicitation letter, reimbursement is required at the commercial, per-copy rate.

I work for a partnership. Does the "incidental activity" exception apply to my political activities? Yes. In AO 1979-22, the Commission said that the incidental activity provision would be applicable to an employee of a partnership.

Acting as Agent of Employer

In performing on-the-job volunteer activity, is a corporate executive officer permitted to ask employees and business associates to contribute to a particular candidate? This activity may result in a prohibited corporate contribution if it is conducted in a manner that indicates the individual is acting in his or her official capacity. In an enforcement case, MUR 1690, the Commission determined that solicitations by corporate officers had violated the contribution prohibitions. In reaching this decision, the Commission considered certain aspects of the solicitations, including: the use of subordinates to help carry out the activity; the use of corporate stationery; the use of the executive's title in connection with the activity; and the use of solicitation language that implied corporate sponsorship. For a summary of MUR 1690, see the September 1988 Record, p. 9.

Government Employees and the Hatch Act

I work for a government agency. May I conduct on-the-job political activity? If you are a federal employee, you are probably covered by the Hatch Act, which bars certain partisan political activities, both on and off the job. The Hatch Act applies to most federal employees and to certain state and local government employees, who may also have to comply with nonfederal laws regulating political conduct. Finally, your government agency may have its own rules in this area. For more information, call the U.S. Merit Systems Protection Board, Office of Special Counsel (202/653-7143 or 800/872-9855).

MULTICANDIDATE COMMITTEES

The FEC frequently receives questions about how much a PAC or a party committee may contribute to a federal candidate. The answer is based on whether it is a multicandidate committee. This article answers several commonly asked questions about multicandidate committees.

How much can a multicandidate committee give to a federal candidate? A multicandidate committee may contribute up to \$5,000 per candidate, per election, whereas a PAC or party committee that has not qualified as a multicandidate committee may only contribute \$1,000 per candidate, per election. 2 U.S.C. §441a(a)(1)(A) and (2)(A); 11 CFR 110.1(b) and 110.2(b).

Does multicandidate status affect any other contribution limits? Yes. A multicandidate committee may contribute \$15,000 per year to a national party committee, whereas a PAC that has not qualified as a multicandidate committee may contribute up to \$20,000 per year. 2 U.S.C. §441a(a)(1)(B) and (2)(B); 11 CFR 110.1(c) and 110.2(c).

If our political committee supports more than one candidate, is it automatically considered a multicandidate committee? No. There are other requirements that must be met in order for a committee to "qualify" for multicandidate status.

A multicandidate committee must:

- o Be registered as a political committee for at least six months;
- o Have received contributions for federal elections from more than 50 persons; and
- o Have made contributions to at least five federal candidates.

Note: State party committees may become multicandidate committees without meeting the third criteria--making contributions to five candidates. 2 U.S.C. §441a(a)(4); 11 CFR 100.5(e)(3).

Do we have to contribute a certain minimum amount to each candidate or receive a specific amount from each person in order to meet the multicandidate qualifications? No. Any contribution made to a federal candidate, regardless of amount contributed, will count towards the standard of five contributions. Likewise, any contributor to the committee, regardless of the amount donated, counts towards the threshold of 50 contributors.

We are a newly registered political committee, affiliated with a multicandidate committee. Must we satisfy all three criteria before we can contribute \$5,000 to a federal candidate? No. A political committee affiliated with a multicandidate committee automatically qualifies as a multicandidate committee. AO 1980-40.

Does that mean that each affiliated committee could contribute \$5,000 to the same federal candidate? No. Affiliated multicandidate committees share a common contribution limit of \$5,000 per federal candidate, per election. 2 U.S.C. §441a(a)(5); 11 CFR 110.3.

Can an authorized candidate committee be converted into a multicandidate committee? Yes. A retiring candidate can convert his or her authorized campaign committee into a nonconnected political committee, which may then qualify as a multicandidate committee, once it satisfies the three criteria stated above. The converting authorized committee must amend its Statement of Organization to redesignate itself as a nonconnected political committee within 10 days after the date of the change in status. 2 U.S.C. §433(c); AOs 1988-41, 1985-30 and 1978-86.

Is a campaign responsible for verifying whether the contributor has qualified as a multicandidate committee? Yes. The campaign treasurer is responsible for ensuring that the campaign does not accept excessive contributions. 2 U.S.C. §441a(f); 11 CFR 103.3(b) and 110.9(a). In several enforcement cases, the Commission has held that treasurers should verify the contributor's status. See MURs (Matters Under Review) 1100 and 1075.

How can a campaign make sure that a contributing committee is a multicandidate committee? Campaigns should check the multicandidate status of contributors by calling the FEC's Public Records Office at 202/376-3140 or 800/424-9530.

If a committee is not on the FEC's list of multicandidate committees, does that mean a campaign should not accept a contribution from that committee that is higher than \$1,000 per election? If a committee is not on the FEC's list, a campaign should check directly with the committee to ensure that it had satisfied the qualifications for multicandidate status. The campaign committee should keep records noting their efforts to verify the contributing committee's status. The committee might also recommend that the contributor inform the FEC of its multicandidate status.

Are committees supposed to inform the FEC when they become multicandidate committees? Yes. Once a committee has satisfied the criteria for becoming a multicandidate committee, the treasurer should, on the next required report, check off box #3 on Form 3X and fill in the date on which the committee qualified.

Can a committee inform the FEC of its multicandidate status right away, rather than waiting until the next report? Yes, provided the committee provides supporting documentation to

show that it has met the qualifications for multi-candidate committee status. The notification and supporting documentation should be addressed to the Reports Analyst assigned to the committee and sent to the Reports Analysis Division of the FEC, 999 E Street, NW, Washington, DC 20463.

Once a committee has qualified, does it have to requalify every year in order to retain its status as a multicandidate committee? No. Once a committee has met the criteria for becoming a multicandidate committee, it remains qualified until the committee terminates. This holds true regardless of the committee's level of activity.



REPRINTS OF RECORD ARTICLES AVAILABLE

Many of the Record's 800 Line articles have been transformed into handouts for quick and easy reference. These articles answer frequently asked questions about specialized topics relating to the election law.

For convenience, handouts are grouped in the list at the right according to their intended audience. The Commission offers the handouts free of charge. Multiple copies are also available. To order, indicate the number of copies requested beside each title and send the form to the FEC, Information Services Division, 999 E Street, NW, Washington, DC 20463. Orders can also be made by phone by calling 800/424-9530.

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- Concert Fundraisers
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- Reporting Internal Communications by Corporations, Labor Organizations and Other Membership Organizations
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