

FEDERAL ELECTION COMMISSION

RECORD

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COMMISSIONERS ELECT NEW OFFICERS FOR 1990

On December 19, 1989, the Federal Election Commission unanimously elected Lee Ann Elliott as Chairman and John Warren McGarry as Vice Chairman. Their one-year terms began January 1, 1990. Mrs. Elliott succeeds Danny L. McDonald in the chairmanship, and Mr. McGarry succeeds Mrs. Elliott as Vice Chairman.

Commissioner Elliott, a Republican, has been a member of the Commission since 1981. Prior to her appointment, she was Vice President of Bishop, Bryant & Associates, Inc., a Washington, D.C., political consulting firm. From 1970 to 1979, she served as Associate Executive Director of the American Medical Political Action Committee (AMPAC), 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 United States Chamber of Commerce. In 1979, she received an Award for Excellence in Serving Corporate Public Affairs from the National Association of Manufacturers.

A native of St. Louis, Mrs. Elliott graduated from the University of Illinois and Northwestern University's Medical Association Management Executive Program. Her term as Commissioner expires in 1993.

Commissioner McGarry, a Democrat, was first appointed to the FEC in 1978, after serving as Special Counsel on Elections to the House Administration Committee.

Prior to that, he combined private law practice with service as Chief Counsel for the Special Committee to Investigate Campaign Expenditures--a special House committee established by Congress after every election until 1972. Before his work with Congress, Mr. McGarry served as Assistant Attorney General for the Commonwealth of Massachusetts.

Mr. McGarry graduated cum laude from Holy Cross College, did graduate work at Boston University and earned a J.D. from Georgetown University Law School. Recently reappointed to the Commission by President Bush, Mr. McGarry's term on the FEC expires in 1995.

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PUBLIC FUNDING

FEC REPEATS WARNING ABOUT SHRINKING PRESIDENTIAL ELECTION CAMPAIGN FUND

Updating a warning sent to Congress and the President in April, former Chairman Danny L. McDonald in November projected that, if the current taxpayer checkoff rate continues, the Presidential Election Campaign Fund will be exhausted by the end of the 1996 elections.

As Commissioner McDonald (Chairman of the Commission during 1989) pointed out in his November 1 letter to Congress and the President, the amount of money taxpayers checked off for Presidential elections on their income tax forms declined slightly in 1988. Moreover, Commissioner McDonald said, based on the returns

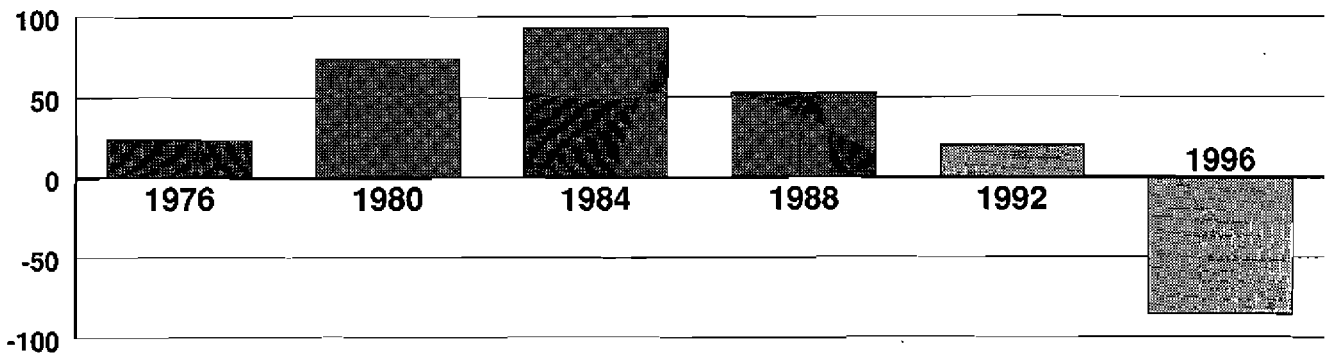
filed during the first eight months of 1989, the Commission estimates that even fewer dollars will be checked off on 1989 tax returns. "If this trend continues," Commissioner McDonald said, "by the end of the 1996 Presidential campaign, the balance [of the Presidential Campaign Fund] will be in a negative position."

Commissioner McDonald repeated his April suggestion that Congress modify the current public funding process, which was set up in the early 1970's and which has governed each Presidential election since 1976. The current law provides that private contributions may be used to make up for any shortfall in available public funds. Should that situation arise, however, the former Chairman warned that "serious distortions to the Presidential election process will occur." (For more information, see page 2 of the May Record.)

Presidential Election Campaign Fund Post-Election Balance

Actual
Projected

Millions of Dollars



FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, DC 20463

800/424-9530 202/376-3120 202/376-3136(TDD)

Lee Ann Elliott, Chairman
John Warren McGarry, Vice Chairman
Joan Aikens
Thomas J. Josefiak
Danny L. McDonald
Scott E. Thomas

Walter J. Stewart, Secretary of the Senate, Ex Officio
Donnald K. Anderson, Clerk of the House of Representatives, Ex Officio

REGULATIONS

PROHIBITION ON FOREIGN NATIONALS REVISED

The Commission has transmitted to Congress revised rules concerning expenditures by foreign nationals (11 CFR 110.4). The amendments add language to clarify that foreign nationals may not:

- o Make expenditures (including independent expenditures) in connection with any local, state or federal election; or
- o Participate directly or indirectly in the decision-making process of any person, such as a corporation, labor organization or political committee, with regard to that person's federal or nonfederal election-related activities.

Based on section 441e of the Federal Election Campaign Act, the current rules specify that contributions by foreign nationals are prohibited. Although the Act does not explicitly refer to expenditures by foreign nationals, the statute generally prohibits expenditures by persons prohibited from making contributions (such as corporations and labor organizations). The Commission has consistently understood expenditures by foreign nationals to be prohibited. The explicit prohibition against participation by foreign nationals in election-related activities is consistent with FEC advisory opinions. See AOs 1989-20, 1982-10 and 1980-100.

The final rules were published in the Federal Register on November 24, 1989, along with an Explanation and Justification. See 54 Fed. Reg. 48580. An effective date will be announced after the rules have been before Congress for thirty legislative days.

NEW REGULATIONS TAKE EFFECT

The Commission's recent amendments to sections 110.3 through 110.6 of the regulations became effective November 24, 1989, with an announcement in the Federal Register. See 54 Fed. Reg. 48580.

The final revisions to the rules on affiliation, transfers, prohibited contributions, the annual contribution limit for individuals and earmarked contributions were published August 17, 1989, in the Federal Register along with the Explanation and Justification of the new rules. See 54 Fed. Reg. 34098. For a summary of the new rules, see the October and November 1989 issues of the Record.

REPORTS

ELECTION YEAR REPORTING

Nineteen ninety is a Congressional election year. All candidates for federal office--including Presidential candidates--must file reports. Filing dates are listed on page 5-8. Reporting requirements are as follows:

CANDIDATE COMMITTEES

Congressional Candidates Active in 1990 Elections

During 1990, principal campaign committees of candidates active in 1990 elections are required to file pre-primary, pre-runoff (if held) and pre- and post-general election reports, as appropriate. They must also file quarterly reports.

In addition, any committee that receives a contribution of \$1,000 or more between 20 and 2 days before an election must notify the appropriate filing offices (see below). This notice must reach the filing offices within 48 hours after the committee's receipt of the contribution. 11 CFR 104.5(f).

If a Congressional candidate has more than one authorized committee, the principal campaign committee must also file a consolidated report on FEC Form 3Z. 11 CFR 104.3(f). For details, see page 14 of the FEC's Campaign Guide for Congressional Candidates and Committees.

(continued)

Congressional Candidates Not Active in 1990 Elections

The principal campaign committees of Congressional candidates not active in 1990 elections (e.g., committees authorized by candidates seeking election in future years or committees active in previous years that have outstanding debts) must continue to report semiannually.

Note that campaigns with more than one authorized committee must also file a consolidated report. See above.

Presidential Committees

All committees authorized by Presidential candidates must file on either a monthly or a quarterly basis during 1990.

PARTIES AND PACS

All unauthorized political committees (i.e., party committees, separate segregated funds and nonconnected committees) are required to file on either a quarterly or a monthly schedule in 1990.

Quarterly Filers

Those committees that filed semiannually in 1989 must file quarterly in 1990 (unless they switch to a monthly schedule--see below). Quarterly filers also must file a post-general election report. In addition, quarterly filers that make contributions or expenditures to support or oppose specific candidates in 1990 must also file appropriate pre-election reports (primary, runoff and general, as applicable) if their financial activity has not been previously disclosed.

Monthly Filers

Committees filing on a monthly schedule must file pre- and post-general election reports in lieu of their November and December monthly reports, and a year-end report, due January 31, 1991.

INDEPENDENT SPENDERS

Note that any independent expenditures aggregating \$1,000 or more and made between 20 and 2 days before an election must be reported

within 24 hours after the expenditures are made.

LATE FILING

The Federal Election Campaign Act does not permit the FEC to waive reporting requirements or grant extensions on filing deadlines under any circumstances. Failure to file by the dates listed in the chart could result in enforcement action by the FEC.

CHANGING FILING SCHEDULE

PACs and party committees may wish to file monthly during 1990 to avoid filing pre-primary election reports, which may be required from committees filing quarterly during an election year. (See above.) A committee that wants to change its filing schedule must notify the Commission in writing when filing a report under its current schedule. A committee may not change its filing frequency more than once a year. 11 CFR 104.5(c). The FEC requests that Presidential committees also inform the Commission in writing if they decide to change their reporting schedules.

WHERE REPORTS ARE FILED

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

Filing with the Federal Government

- o **House Candidates:** Principal campaign committees and committees supporting or opposing House candidates file with the Clerk of the House, Office of Records and Registration, 1036 Longworth House Office Building, Washington, DC 20515.
- o **Senate Candidates:** Principal campaign committees and committees supporting or opposing Senate candidates file with the Secretary of the Senate, Senate Public Records, Hart Senate Office Building, Room 232, Washington, DC 20510.
- o **All Others:** PACs, party committees and principal campaign committees of Presidential candidates file with the Federal Election Commission, 999 E Street, NW, Washington, DC 20463.

Filing with State Governments

- o **House and Senate Candidates:** The principal campaign committees of Congressional candidates must file a copy of every report and statement with the Secretary of State (or other election official, as appropriate) of the state in which the candidate is seeking office. 11 CFR 108.3.
- o **Presidential Candidates:** 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 pertaining to that state during the reporting period covered. 11 CFR 108.2
- o **All Others:** PACs and party committees making contributions or expenditures in connection with House and Senate races file reports and statements in the state in which the candidate seeks election. The law requires a copy of only that portion of the report applicable to the candidates who seek election from that state. Committees supporting Presidential candidates must file in the states in which the Presidential committee and donor committee have their respective headquarters.

CONFERENCE FOR PACS IN JANUARY

On January 17, the FEC will host a day-long conference on political activity by corporations, labor organizations and trade associations.

The conference will provide opportunities to learn how to set up a separate segregated fund (PAC) and how to comply with the rules on registration, reporting and fundraising. Special programs will also be offered for more advanced committee personnel.

The conference will be held on January 17 at the Sheraton Washington Hotel in Washington, D.C. The fee is \$112. For more information, call the FEC at 800/424-9530 or 202/376-3120.

FILING DEADLINES*

GENERAL ELECTION

Date of Election	November 6
Pre-General Report**	
Close of Books	October 17
Registered/Certified	
Mail Date	October 22
Filing Date*	October 25
Post-General Report	
Close of Books	November 26
Registered/Certified	
Mail Date	December 6
Filing Date*	December 6

MONTHLY REPORTS

Report	Period Covered	Filing Date*
February	1/1-1/31	Feb. 20
March	2/1-2/28	Mar. 20
April	3/1-3/31	Apr. 20
May	4/1-4/30	May 20
June	5/1-5/31	June 20
July	6/1-6/30	July 20
August	7/1-7/31	Aug. 20
September	8/1-8/31	Sep. 20
October	9/1-9/30	Oct. 20
Pre-General	10/1-10/17	Oct. 25**
Post-General	10/18-11/26	Dec. 6
Year-End	11/27-12/31	Jan. 31

QUARTERLY FILERS***

Quarter	Close of Books	Filing Date*
First	Mar. 31	April 15
Second	June 30	July 15
Third	Sept. 30	Oct. 15
Fourth	Dec. 31	Jan. 31

(continued)

*Reports sent by registered or certified mail must be postmarked by the filing date (except in the case of the pre-general report). Reports mailed first class or hand delivered must be received by the filing date.

**If the pre-general report is sent by registered or certified mail, it must be postmarked three days before the filing date. If sent by first class mail or hand delivered, the report must be received by the filing date.

***Committees may also have to file pre-primary and pre- and post-general reports.

CONGRESSIONAL PRIMARY ELECTION REPORTS DUE IN 1990

State or Territory	Date of Election	12-Day Pre-Election Report		
		Close of Books**	Reg./Cert. Mailing Date	Filing Date
Alabama*	June 5	May 16	May 21	May 24
Runoff	June 26	June 6	June 11	June 14
Alaska*	August 28	August 8	August 13	August 16
American Samoa	November 6	October 17	October 22	October 25
Runoff	November 20	October 31	November 8***	November 8
Arizona	September 11	August 22	August 27	August 30
Arkansas*	May 29	May 9	May 14	May 17
Runoff	June 12	May 23	May 31***	May 31
California	June 5	May 16	May 21	May 24
Colorado*	August 14	July 25	July 30	August 2
Connecticut	September 11	August 22	August 27	August 30
Delaware*	September 8	August 19	August 24	August 27
District of Columbia	September 11	August 22	August 27	August 30
Florida	September 4	August 15	August 20	August 23
Runoff	October 2	September 12	September 17	September 20
Georgia*	July 17	June 27	July 2	July 5
Runoff	August 7	July 18	July 23	July 26
Guam	September 1	August 12	August 17	August 20
Runoff	September 15	August 26	September 3****	September 3
Hawaii	September 22	September 2	September 7	September 10
Idaho*	May 22	May 2	May 7	May 10
Illinois*	March 20	February 28	March 5	March 8
Indiana*	May 8	April 18	April 23	April 26
Iowa*	June 5	May 16	May 21	May 24
Kansas*	August 7	July 18	July 23	July 26
Kentucky*	May 29	May 9	May 14	May 17
Louisiana*	October 6	September 16	September 21	September 24
General	November 6	October 17	October 22	October 25
Maine*	June 12	May 23	May 28****	May 31
Maryland	September 11	August 22	August 27	August 30

CONGRESSIONAL PRIMARY ELECTION REPORTS DUE IN 1990

State or Territory	Date of Election	12-Day Pre-Election Report		
		Close of Books**	Reg./Cert. Mailing Date	Filing Date
Massachusetts*	September 18	August 29	September 3****	September 6
Michigan*	August 7	July 18	July 23	July 26
Minnesota*	September 11	August 22	August 27	August 30
Mississippi* Runoff	June 5 June 26	May 16 June 6	May 21 June 11	May 24 June 14
Missouri	August 7	July 18	July 23	July 26
Montana*	June 5	May 16	May 21	May 24
Nebraska*	May 15	April 25	April 30	May 3
Nevada	September 4	August 15	August 20	August 23
New Hampshire*	September 11	August 22	August 27	August 30
New Jersey*	June 5	May 16	May 21	May 24
New Mexico*	June 5	May 16	May 21	May 24
New York	September 11	August 22	August 27	August 30
North Carolina* Runoff	May 8 June 5	April 18 May 16	April 23 May 21	April 26 May 24
North Dakota	June 12	May 23	May 28****	May 31
Ohio	May 8	April 18	April 23	April 26
Oklahoma* Runoff	August 28 September 18	August 8 August 29	August 13 September 3****	August 16 September 6
Oregon*	May 15	April 25	April 30	May 3
Pennsylvania	May 15	April 25	April 30	May 3
Puerto Rico	Resident Commissioner to be elected in 1992.			
Rhode Island*	September 11	August 22	August 27	August 30
South Carolina* Runoff	June 12 June 26	May 23 June 6	May 28**** June 14***	May 31 June 14
South Dakota* Runoff	June 5 June 19	May 16 May 30	May 21 June 7***	May 24 June 7
Tennessee*	August 2	July 13	July 18	July 21
Texas* Runoff	March 13 April 10	February 21 March 21	February 26 March 26	March 1 March 29

CONGRESSIONAL PRIMARY ELECTION REPORTS DUE IN 1990

State or Territory	Date of Election	12-Day Pre-Election Report		
		Close of Books**	Reg./Cert. Mailing Date	Filing Date
Utah	September 11	August 22	August 27	August 30
Vermont	September 11	August 22	August 27	August 30
Virginia*	June 12	May 23	May 28***	May 31
Virgin Islands	September 11	August 22	August 27	August 30
Washington	September 18	August 29	September 3****	September 6
West Virginia*	May 8	April 18	April 23	April 26
Wisconsin	September 11	August 22	August 27	August 30
Wyoming*	August 21	August 1	August 6	August 9

*These states are also holding U.S. Senate elections in 1990.

**This date indicates end of reporting period; the period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity in 1990.

***Committees involved in the runoff elections held in American Samoa, Arkansas, Guam, South Carolina and South Dakota may use the filing date as the mailing date for their 12-day pre-runoff report.

****The mailing date listed is a federal holiday; nevertheless, the report must be received by the filing date.

LOOKING AHEAD: WORKSHOP FOR CANDIDATES PLANNED FOR MARCH

The Commission is planning to host a day-long workshop for Congressional candidates and their campaign staff members in Washington, D.C., in early March. See next month's Record for information on registration, or call Bobby Werfel at the FEC at 800/424-9530 or 202/376-3120 for details.

ADVISORY OPINIONS

ADVISORY OPINION REQUESTS

The following chart lists recent requests for advisory opinions (AORs). The full text of any AOR is available for public inspection and comment from the FEC's Public Records Office.

AOR 1989-29

Contributions by foreign-owned corporation to state, local and federal candidates. (Date made public: November 16, 1989; Length: 29 pages, including supplement)

AOR 1989-30

Payment to Senator for teaching of law school course. (Date made public: November 16, 1989; Length: 2 pages)

ALTERNATE DISPOSITION OF ADVISORY OPINION REQUESTS

AOR 1989-23

On December 7, 1989, the Associate General Counsel sent the requesters a letter informing them that the Commission was unable to approve a draft advisory opinion by the required four votes.

AOR 1989-24

On November 22, 1989, the Associate General Counsel sent the requesters a letter informing them that the Commission was unable to approve a draft advisory opinion by the required four votes. Commissioner McDonald issued a statement explaining his votes.

ADVISORY OPINION SUMMARIES

AO 1989-21: Fundraising by Sole Proprietor in Cooperation with Candidates

Elaine Sandra Abramson, an artist and sole proprietor doing business as Create-a-Craft, may design and sell campaign-related merchandise as a fundraising effort on behalf of federal candidates and party committees. Implementation of her plan, however, will trigger several requirements of the election law, including contribution limits, disclaimer notices, recordkeeping

obligations, the establishment of special bank accounts and, on the part of the participating campaigns, reporting and recordkeeping requirements.

Proposal

Ms. Abramson is planning to enter into agreements with several candidates and committees to help them raise money by selling, at the usual and normal charge, t-shirts, posters, mugs and similar items featuring cartoon characters she has created. Each piece of merchandise will feature a design, or likeness of the candidate, with one character portrayed as advocating the candidate's election for a particular office.

Ms. Abramson plans to custom-design merchandise, hire the manufacturers, process all orders and design sales fliers for each campaign. She will give each participating campaign 10 percent of the retail price of every item she sells. Out of the remaining 90 percent, Ms. Abramson will cover her costs and make a small profit. Additionally, Ms. Abramson will sell some items at a discount directly to the campaigns involved; in those instances, no portion of the sales receipts would be turned over to the campaigns.

Sale of Merchandise to Contributors
Contributions. Any goods and services or funds that Ms. Abramson provides before selling the campaign items (e.g., deposits to the manufacturer and materials and time used in creating designs) will be considered, in effect, loans to the committee benefiting from the fundraising. Such loans will be considered contributions to the committee to the extent that Ms. Abramson remains unpaid. 11 CFR 100.7(a)(1)(i)(B). She will, accordingly, have to: (1) ensure that such outlays do not exceed the \$1,000 per candidate, per election, contribution limit, (2) keep records on the amount spent for each committee and (3) inform the committee of the outlays in time for them to file timely reports. 2 U.S.C. §441a.

(continued)

Individual purchasers will also be making contributions to the committees by buying her merchandise. The full retail price of each item will count toward each purchaser's own contribution limit and be subject to the prohibitions of the Act.

Fundraiser Rules. Based on the proposal, Ms. Abramson will be considered an agent authorized by the participating campaigns to receive contributions and make expenditures on their behalf. As an agent, Ms. Abramson will have certain obligations under FEC rules:

- o Each solicitation for the sale of the items must contain a disclaimer stating the name of the committee authorizing the activity and the person paying for the solicitation. 11 CFR 110.11(a)(1).
- o Ms. Abramson must obtain and forward to the committees the information they need to comply with the recordkeeping and reporting requirements of the Act. 11 CFR 102.9(a)(1) and (2) and 104.3(a)(4)(i).
- o Ms. Abramson must inform each committee of how much she spends from proceeds to defray her costs; these monies are considered repayments by the committee for her advances, and are reportable by the committee as operating expenditures. 11 CFR 102.9(b) and 104.3(b)(3) and (4). Such information must be forwarded in time for the committee to report the transactions in a timely manner.

Absent Ms. Abramson's adherence to these rules, the 10 percent of sales that she plans to forward to the committees will be considered contributions from her to those committees, subject to limits.

Bank Accounts

Because the election law does not allow the commingling of political committee funds with personal funds, Ms. Abramson will have to set up a separate bank account for each committee authorizing her to raise funds. The appropriate bank accounts, established at depositories designated by the committees, should be used for the deposit of

contributions received (deposits must be made within 10 days) and for disbursements to cover merchandise costs and reimbursements to Ms. Abramson for her previous advances. Such reimbursements will be considered expenditures by the committees. If funds from Ms. Abramson's personal or business accounts are used for these disbursements, however, they will count as contributions to the appropriate committees.

Sale of Merchandise to Campaigns

Ms. Abramson has not indicated that the reduced price on merchandise she plans to sell to the committees is the usual and normal charge offered to nonpolitical clients in the ordinary course of business. Thus, the amount of the discount will be an in-kind contribution from her to each committee, subject to the same \$1,000 limit (per candidate, per election) as the other possible contributions mentioned above.

Trademark

Finally, the Commission noted that, should Ms. Abramson decide to trademark her artwork, her obligations under the election law and FEC regulations would remain the same. (Date issued: November 17, 1989; Length: 7 pages)

AO 1989-25: Preemption of State Law Limiting Party Spending on Behalf of Candidates

The Federal Election Campaign Act preempts a recently enacted New Hampshire state law to the extent that the state statute sets limits on party spending on behalf of federal candidates. (Since the requester of this AO was the New Hampshire Republican State Committee, and not an authorized candidate committee or an authorized agent of a candidate, the Commission in this instance addressed only the issue of party expenditure limits under the federal and state law; the broader issue of whether the Act preempts New Hampshire's limits on candidates' own spending was not addressed.)

The New Hampshire law sets "voluntary" spending limits for candidates for local, state and federal office, and for party committees spending on their behalf. The limits apply only to candidates who obtain a waiver of required ballot filing fees and primary petition signatures. The New Hampshire law also counts coordinated party expenditures (441a(d) expenditures) against the state limit of any federal candidate who obtained a fee waiver.

The Act states that the federal law "supersedes and preempts" all state laws with respect to federal elections. 2 U.S.C. §453. Commission regulations further specify that the Act supersedes state laws concerning limits on expenditures regarding federal candidates. 11 CFR 108.7(b)(3).

In this case, by attributing coordinated party expenditures to the state limit of a federal candidate, the New Hampshire statute imposes restrictions and penalties on those party expenditures that are expressly allowed by the Act. Accordingly, to the extent that the state law limits coordinated party expenditures, it is preempted by the Act.

In addition, payments by the party that are exempt from the definition of "expenditure" under the Act (2 U.S.C. §431(9)(B)(iv) and (viii)) cannot be subject to any limitations in the New Hampshire statute. (Date issued: November 30, 1989; Length: 6 pages)

AO 1989-26: Automatic Bank Transfers from Contributor's Account to Candidate Committee's Account

The Dick Bond for Congress Committee, a principal campaign committee in Colorado, may use a system of automatic bank account transfers to collect contributions from individuals, as long as certain safeguards are met.

Proposal

The Committee plans to set up a system through an agreement with its bank whereby, after obtaining authorization from an individual

contributor, a certain amount would be transferred from the contributor's bank account to the Committee's bank account on a predesignated date each month. The Committee would keep cumulative records of contributions and would not accept any transfers from corporate accounts or from accounts of other persons prohibited by law from contributing. With respect to bank accounts held jointly by two or more individuals, the Committee would comply with the rules at 11 CFR 110.1(k) and (l) concerning joint contributions and reattributions.

Authorization Form

A form, to be signed by the contributor, would authorize the Committee and the contributor's bank to make the transfers. On the form, the contributor would specify the amount to be transferred each month. The authorization would remain in effect through November 1990, or until both the Committee and its depository received written notification from the contributor to terminate the transfers "in sufficient time and manner to afford a reasonable opportunity to act on it."

Agreement with Bank

The Committee has entered into an agreement with its campaign depository, Union Colony Bank, setting forth the terms under which transfers to the Bond account would be made from contributors' accounts maintained in member banks of the Rocky Mountain Automated Clearing House Association. (The agreement is described in the text of the advisory opinion.) These terms include the proposed authorization form and other stipulations on the conduct of the program, as well as fees charged by Union Colony for establishing and handling the program. The fees charged by the bank must be the bank's usual and normal charges for similar services; if the Bond Committee fails to pay the usual and normal charges, a prohibited contribution from the bank will result.

Recordkeeping and Reporting

The form used to obtain authorization for automatic transfers should also provide information enabling the Committee to comply with the election law's recordkeeping requirements. 2 U.S.C. §§431(13) and 432(c)(3); 11 CFR 100.12 and 102.9(a)(2). The Committee must report contributions, itemizing those that aggregate more than \$200 from one individual during a calendar year. 11 CFR 104.8(b). The date of receipt of a contribution will be the date on which the Committee's account is credited with the funds debited from the contributor's account.

Designation of Contributions

The proposed authorization form does not ask contributors to indicate whether contributions are intended for the general or the primary election. If no such designation is made by the contributor in writing, the transfers will be considered contributions for the next election. 11 CFR 110.1(b)(2)(ii).

Designations, however, may be made on the authorization form or on an amendment to the form.

Although the proposed form authorizes transfers through November 1990, the Committee may have to terminate the program prior to that date, under certain conditions. If Mr. Bond is not a candidate in the general election, all contributions made for the general election will have to be returned or refunded to the contributors. Alternatively, the contributions may be reattributed or redesignated, as appropriate, to the extent that reattributions and redesignations do not exceed the Committee's net primary debts or the contributors' contribution limits.

Revocation

As for contributors, the ability of each contributor to deduct or revoke his or her authorization must be made clear. In addition to what the proposed form and bank agreement already provide with respect to this information, the Committee should state on the authorization form what it considers to be a reasonable amount of time to cut off automatic

debits in response to a contributor's revocation of the authorization. The Committee should provide refunds to those contributors whose requests for termination are not received in enough time to stop the next automatic transfer. (Date issued: December 1, 1989; Length: 6 pages)

AUDITS**FINAL AUDIT REPORT ON
FULANI CAMPAIGN RELEASED**

On November 4, 1989, the Commission released the final audit report on Lenora B. Fulani's Committee for Fair Elections, Dr. Fulani's publicly funded 1988 Presidential campaign. The results of the audit are described below.

Copies of the final report may be obtained from the FEC's Public Records Office.

**Failure to Disclose
Matching Fund Payment Received**

The Commission's review found that the Committee had failed to properly disclose the receipt of a matching payment of \$79,482, received in July 1988. The payment, instead, was reported as part of the Committee's "unitemized contributions from individuals."

The Committee filed an amended report correcting the discrepancy on March 13, 1989.

Stale-Dated Committee Checks

As a result of the audit, the Fulani Committee repaid to the U.S. Treasury \$193, representing five stale-dated checks--i.e., checks written by the Committee but never cashed by their payees. 11 CFR 9038.6.

**Matching Funds Received
in Excess of Entitlement**

The audit revealed that the Fulani Committee had received matching funds in excess of its entitlement after Dr. Fulani's "date of ineligibility." After that date, a candidate may receive matching payments only to cover its net

outstanding campaign obligations (NOCO). 11 CFR 9033.5. Because the committee received \$15,064 above and beyond its net debts, the audit found that the Committee had received matching funds (of \$15,064) in excess of its entitlement.

Matching funds received in excess of a candidate's entitlement must be repaid to the U.S. Treasury. The Commission made an initial determination that the \$15,064 had to be repaid to the U.S. Treasury. The Committee repaid that amount prior to the Commission's determination.

Apparent Nonqualified Campaign Expenses

Public funds may only be used to defray "qualified campaign expenses." A "qualified campaign expense" is defined (in part) in FEC regulations as a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value incurred in connection with a Presidential election. If public funds are used to pay nonqualified expenses, a portion of the expenses (representing the portion defrayed with public funds) must be repaid to the U.S. Treasury.

The audit revealed that the Committee had made 41 nonqualified disbursements for, *inter alia*, penalties on state withholding tax payments and bank charges for insufficient funds. Other nonqualified expenses included a \$1,000 contribution to the Jesse Jackson Presidential campaign and a \$1,816 reimbursement for a trip to London by Dr. Fulani. Nonqualified expenses, thus, totaled \$3,444. The Commission eventually reduced this amount by \$77, representing the portion of nonqualified expenses paid with matching funds after Dr. Fulani's date of ineligibility but not recognized for NOCO purposes.

Applying the formula described at 11 CFR 9038.2(b)(2)(iii), the Commission initially determined that the Fulani Committee had to repay \$1,434, the portion of nonqualified expenses that appeared to have been defrayed with public funds. The Committee made the repayment prior to the Commission's formal determination.

COURT CASES

FEC v. FRANKLIN

On September 27, 1989, the U.S. Court of Appeals for the Fourth Circuit granted the FEC's motion for summary affirmance in FEC v. William Franklin (No. 89-1512). The appeals court remanded the case to the district court (C.A. No. 89-324-N), which on September 29 ordered Mr. Franklin to provide the Commission with "full and complete answers to the extent of his knowledge to each and every question propounded to him" by the agency in 1988 in response to a complaint from Robb for the Senate, Senator Charles Robb's principal campaign committee. In accordance with the higher court's mandate, the district court ordered Mr. Franklin to provide the answers within five days.

On the direction of the appeals court, the district court also vacated a protective order that it had imposed in July. See the September 1989 Record for a summary of the case.

COMPLIANCE

MURS RELEASED TO PUBLIC

Starting with this issue, the Record will list all publicly released summary files on MURS (Matters Under Review--FEC enforcement actions).

Publicly released MUR files, as announced in FEC press releases since November 21, 1989, are listed below. Except where noted, civil penalties resulted from conciliation agreements reached between respondents and the Commission.

The summary file for each MUR is available from the FEC's Public Records Office.

MUR 2543

Respondents: (a) John Bryant Campaign Committee and treasurer (TX); (b) R. Hayes (TX); (c) J. Hayes (TX)

(continued)

Complainant: T. Carter/Tom Carter for Congress Committee (TX)
Subject: Excessive contributions; improper use of contributor information
Disposition: (a) U.S. District Court Final Consent Order and Judgment: \$500 civil penalty; (b) and (c) Reason to believe but took no further action

MUR 2572

Respondents: (a) Royce Campaign Committee and treasurer (CA); (b) Wally Herger for Congress Committee and treasurer (CA); (c) Phil Wyman Committee and treasurer (CA)
Complainant: R. Bauer, Counsel, Democratic Congressional Campaign Committee (DC)
Subject: Excessive contribution; prohibited funds
Disposition: (a) \$750 civil penalty; (b) Re excessive contribution, reason to believe, but took no further action; re prohibited funds, no reason to believe; (c) No reason to believe

MUR 2591

Respondents: (a) Funderburk for Senate Committee and treasurer (NC); (b) G. Jacobson (CA); (c) L. Kiser (NC); (d) H. Leigeber (AL); (e) C. Sicard (MI)
Complainant: FEC initiated
Subject: Excessive contributions; failure to timely refund excessive contributions
Disposition: (a) \$7,000 civil penalty; (b), (c) and (d) Reason to believe but took no further action; (e) \$300 civil penalty

MUR 2777

Respondents: (a) U.S. Rep. E. Patterson (SC); (b) Liz Patterson for Congress 1988 and treasurer (SC); (c)-(p), et al.
Complainant: South Carolina Republican Party and chairman
Subject: Excessive contributions; failure to disclose, accurately file and timely amend information
Disposition: (a), (c)-(f), (h) and (j)-(n) No reason to believe; (b) \$800 civil penalty; (g) \$400 civil penalty; (i), (o) and (p) Reason to believe but took no further action

MUR 2855/2865

Respondents: Laborers' District Council Political Action Fund and treasurer (PA)
Complainant: FEC initiated
Subject: Failure to report on time
Disposition: \$3,375 civil penalty

MUR 2870

Respondents: Washington Teamsters Legislative League-Fund A (WA)
Complainant: FEC initiated
Subject: Failure to report on time
Disposition: \$250 civil penalty

MUR 2894

Respondent: Democratic State Committee of Delaware and treasurer
Complainant: FEC initiated
Subject: Failure to report on time
Disposition: \$1,500 civil penalty

MUR 2904

Respondents: (a) J. McCarthy (IL); (b) McCarthy Election Committee and treasurer (IL); (c) E. Menker (IL)
Complainant: FEC initiated
Subject: Excessive contribution
Disposition: (a), (b) and (c) \$750 civil penalties

MUR 2945

Respondents: Americans for the Republic, Inc. (FKA Committee for Freedom) and treasurer (VA)
Complainant: FEC initiated
Subject: Failure to report on time
Disposition: \$1,000 civil penalty

MUR 2948

Respondents: Corporation for the Advancement of Psychiatry PAC (CAPPAC) and treasurer (DC)
Complainant: FEC initiated
Subject: Failure to report on time
Disposition: \$1,100 civil penalty

MUR 2949

Respondents: Delaware Valley Leadership Fund and treasurer (PA)
Complainant: FEC initiated
Subject: Failure to report on time
Disposition: \$800 civil penalty

MUR 2951

Respondents: Electrical Construction PAC-National Electrical Contractors Association, Inc., (ECPAC) and treasurer (MD)
Complainant: FEC initiated
Subject: Failure to report on time
Disposition: \$1,000 civil penalty

MUR 2952

Respondents: First Fidelity, Inc., PAC and treasurer (NJ)
Complainant: FEC initiated
Subject: Failure to report on time
Disposition: \$350 civil penalty

MUR 2954

Respondents: General Atomics PAC and treasurer (CA)
Complainant: FEC initiated
Subject: Failure to report on time
Disposition: \$350 civil penalty

MUR 2959

Respondents: International Sanitary Supply Association PAC (ISSA Clean PAC) and treasurer (IL)
Complainant: FEC initiated
Subject: Failure to report on time
Disposition: \$500 civil penalty

MUR 2960

Respondents: Manufacturers Hanover Association for Responsible Government Fund and treasurer (NY)
Complainant: FEC initiated
Subject: Failure to report on time
Disposition: \$500 civil penalty

MUR 2961

Respondents: Marshall Political Action Committee and treasurer (PA)
Complainant: FEC initiated
Subject: Failure to report on time
Disposition: \$550 civil penalty

MUR 2966

Respondents: Northwestern Bell Telephone Company Federal PAC (NWB FED PAC) and treasurer (NE)
Complainant: FEC initiated
Subject: Failure to report on time
Disposition: \$500 civil penalty

MUR 2969

Respondents: Plasterers' and Cement Masons' Action Committee and treasurer (DC)
Complainant: FEC initiated
Subject: Failure to report on time
Disposition: \$300 civil penalty

STATISTICS

**PAC ACTIVITY, 1987-88:
 FINAL FEC REPORT ISSUED**

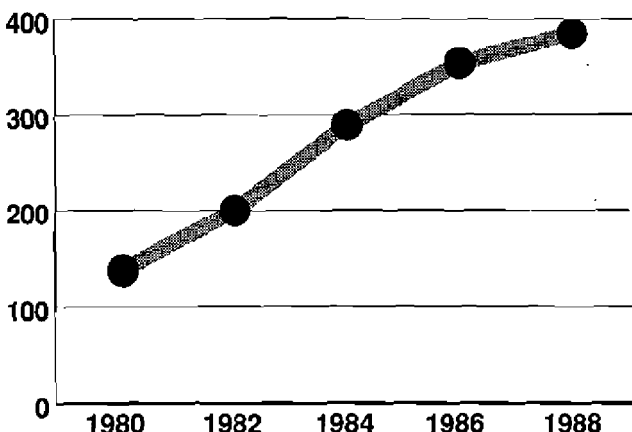
The Final Report on financial activity by nonparty political committees showed a slowdown in the growth of PAC receipts and disbursements during the 1987-88 election cycle. Analysis of reports filed during the past cycle showed increases of 8.8 percent in PAC receipts and 7.1 percent in PAC disbursements, compared with the 1985-86 election cycle. By contrast, PAC receipts in the 1986 cycle increased 22 percent from the previous election, while disbursements increased 27 percent.

The Final Report also showed that:

- o Incumbents received 74.2 percent of all PAC contributions in the 1988 cycle, up from 68.8 percent in the previous cycle.
- o Contributions to challengers represented 11.8 percent, down from 14.2 percent in 1985-86;
- o Democrats received \$98.4 million from PACs, or 62% of all PAC contributions during 1987-88. This was a 25 percent increase over the \$78.9 million given to Democrats in 1986.
- o Republicans received \$60.8 million in PAC contributions in the 1988 cycle, virtually unchanged from the \$60.9 million they received in 1985-86.

PAC Receipts, 1980-88

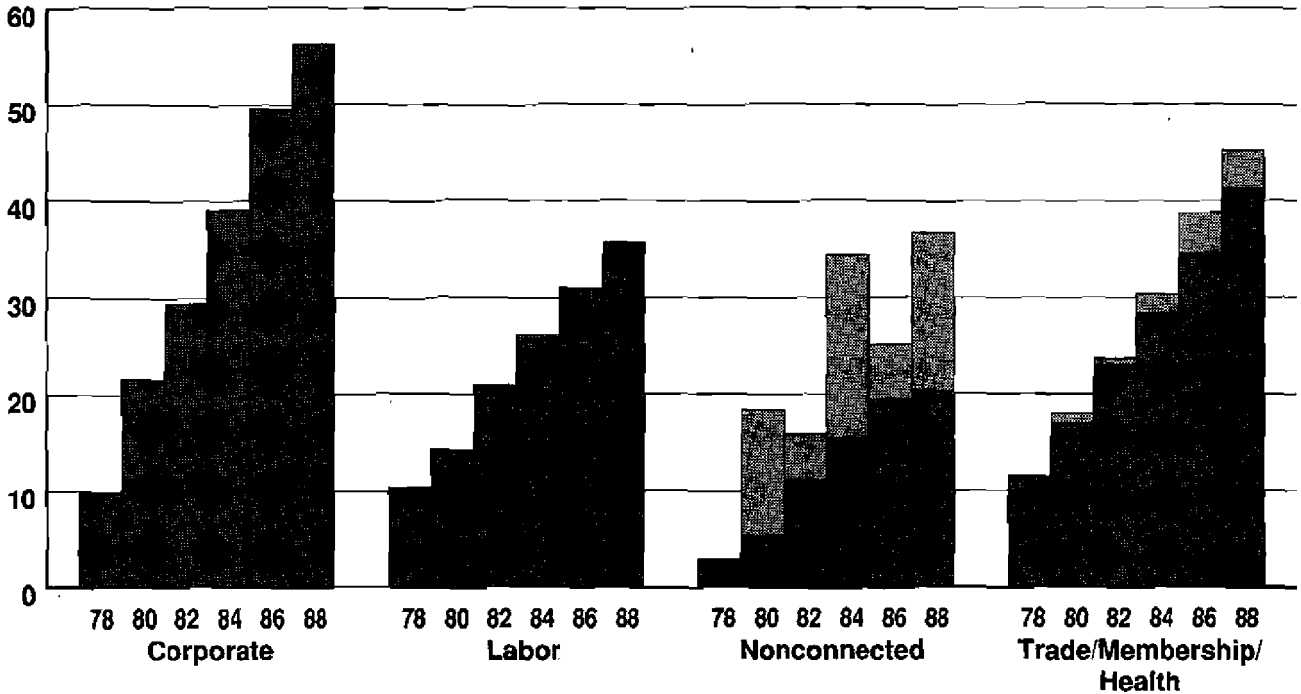
Millions of Dollars



**PAC Support of Candidates
By Election Cycle¹**

■ Independent Expenditures
■ Contributions to Candidates

Millions of Dollars



¹Chart does not include activity by PACs of cooperatives and corporations without capital stock.

**FINAL REPORT ON
FINANCIAL ACTIVITY**

The FEC recently issued FEC Reports on Financial Activity, 1987-88, Final Report. The series contains statistical information on party committees (Volumes I and II), PACs (Volumes I, III and IV) and Congressional candidates (a separate volume). Each volume is available for \$10 from the agency's Public Records Office.

In addition, computer tapes on party, PAC and Congressional activity are also available for \$50 each from the FEC's Data Systems Development Division.

COMBINED DUES/SOLICITATION STATEMENTS

A labor organization, incorporated trade association or other incorporated membership organization may include a solicitation for its federal separate segregated fund (SSF, or PAC) with the bill for dues that it sends to members who are individuals. The Commission has addressed combined dues/solicitation statements in regulations and advisory opinions (AOs).

Solicitation Rules

A dues statement that contains an SSF solicitation is subject to the same rules that apply to other SSF solicitations. Thus, a combined dues/solicitation statement may be sent only to the restricted class of the sponsoring organization. 2 U.S.C. §441b(b)(4); 11 CFR 114.5(g), 114.7(a) and 114.8(c). Incorporated trade associations and membership organizations, in particular, should note that corporate members may not be solicited for SSF contributions by any means. Under section 441b, corporations are prohibited from contributing to political committees. See AO 1985-12.

Moreover, SSF contributions must be voluntary and may not be a condition for membership. This means that members may not designate their dues (or a portion of their dues) for the SSF. Instead, a contribution designated on the combined dues/solicitation statement must be over and above the amount billed for dues. 2 U.S.C.

§441b(b)(3)(A); 11 CFR 114.5(a)(1); AOs 1980-133 and 1980-44.

Required Information

The combined dues/solicitation statement must contain a notice informing members of the political purpose of the SSF and of their right to refuse to contribute without reprisal. 2 U.S.C. §441b(b)(3); 11 CFR 114.5(a)(3)-(5). The statement may suggest an amount to contribute to the SSF, but if an amount is suggested, the statement must include a notice informing the member that:

- o The suggested amount is only a suggestion;
- o More or less than that amount may be given; and
- o The amount contributed, or the refusal to contribute, will not benefit or disadvantage the member. 11 CFR 114.5(a)(2).

An example of a permissible combined/dues solicitation statement was provided in AO 1987-17. In that opinion, the requester (a farmers' association) proposed a combined statement that suggested a \$1.00 contribution to the SSF. The statement said, "The amount of a voluntary contribution to [the fund] is merely a suggestion, and your contribution may be more or less than the suggestion. Any amount you pay on your dues notice in excess of your membership dues will be sent directly to [the fund]." The statement also informed members that the association would "not favor, disadvantage, retaliate, or take reprisal against any person's decision not to contribute to [the fund]."

An example of a combined statement that the Commission disapproved is found in AO 1987-6. In that proposal, the requester failed to indicate that the stated contribution amount was only a suggestion and did not explain how to contribute an amount different from the one specified. The statement also failed to notify the members as to the political purpose of the PAC.

(continued)

1. A chart explaining the solicitable personnel of labor organizations, incorporated trade associations and incorporated membership organizations can be found on page 56 of the FEC's Campaign Guide for Corporations and Labor Organizations.

Layout

In other opinions, the Commission stated that the layout of the information contained in the dues/solicitation statement may bear on whether it is a permissible solicitation. The layout should convey the distinction between the suggested contribution and a required dues payment. AO 1987-17 provides a good example. The statement included two lines for payments by members, as follows:

Membership Dues.....\$ _____
 (Voluntary PAC Contribution...\$ _____)

See also AOs 1987-6, 1982-61 and 1980-6.

Collection of Contributions

Although the amount contributed to the SSF must be an amount over and above the membership dues paid, a contributor may write one check to cover both the contribution and the dues. This check must be drawn on the contributor's personal checking account or a nonrepayable corporate drawing account. 11 CFR 102.6(c)(3).

The organization sponsoring the SSF (i.e., the connected organization) acts as a collecting agent and, as such, must forward the money collected within 10 days (contributions of \$50 or less must be forwarded within 30 days).² To do this, the connected organization may deposit the member's check in a transmittal account and then write a check to the SSF representing the portion of the payment that was intended for the SSF. Appropriate records of the contribution must be forwarded along with the check. 11 CFR 102.6(c)(3); AOs 1978-98 and 1978-42.

When transmitting contributions, the collecting agent may write one check to the SSF representing all the individual contributions collected. 11 CFR 102.6(c)(4)-(5) and 102.8(b).

Payroll Deduction

A labor organization may use an employer's payroll deduction system to collect both membership dues and voluntary contributions to its SSF, provided the individual members authorize the deduction beforehand. 11 CFR 114.5(k)(1); See AOs 1980-44 and 1977-37. Under a payroll deduction plan, the employer may write a single check to the union (or its agent) representing the combined dues (or other fees) and SSF contributions. The union, in turn, splits the combined payment, transmitting the contribution to the SSF within the required time. Contributions collected in this manner are considered to be direct contributions from individuals. 11 CFR 102.6(c)(3).

Transmittal Accounts

An organization that functions as the collecting agent may use one of three types of transmittal accounts:

- o A separate account used solely for the purpose of transmitting funds to the SSF;
- o The organization's general treasury account; or
- o An account used by the organization for nonfederal election activity.

If the organization uses a general treasury account or a nonfederal political account to transmit contributions, it must keep separate records for those deposits that represent SSF contributions. 11 CFR 102.6(c)(4)(ii).

Anyone with further questions about combined dues/solicitations may call the Commission's Information Services Division at 800/424-9530 or 202/376-3120.

PUBLIC APPEARANCES
 January 5 Hope College
 Washington, DC
 Chairman Lee Ann
 Elliott

2. A connected organization must directly forward to the SSF all checks made payable to the SSF. 11 CFR 102.6(c)(4)(i).

DESIGNATING A PRINCIPAL CAMPAIGN COMMITTEE

(Reprinted from the March 1989
Record.)

Under what circumstances must an individual who plans to run for federal office in 1990 or 1992 designate a principal campaign committee? Individuals running for federal office in 1990 or 1992 must designate a principal campaign committee within 15 days of becoming a candidate. 11 CFR 101.1(a). Individuals become candidates once they raise or spend more than \$5,000 to influence their future election or when someone they authorize to work on their behalf raises or spends over \$5,000 to influence their election. See 11 CFR 100.3(a).

How does a candidate designate a principal campaign committee?

Candidates designate a principal campaign committee by filing a Statement of Candidacy on FEC Form 2 or a letter containing the same information, i.e., the name and address of the principal campaign committee, the candidate's name, address and party affiliation; the office sought; and the district and state in which the office is sought. 11 CFR 101.1(a).

Does a candidate who ran in a previous election have to file a new Form 2 for a future campaign? Yes. A candidate in a previous election must file a new FEC Form 2 within 15 days after qualifying as a candidate in a future election. The candidate may either redesignate his or her previous campaign committee (if it has not terminated) or designate a new principal campaign committee. A

redesignated committee retains its original identification number; a newly designated committee receives a new one.

Does the principal campaign committee of a candidate who ran in a previous election also have to file a new Statement of Organization? If the candidate designates a new principal campaign committee, the committee must file a new Statement of Organization (FEC Form 1) within 10 days after being designated. 11 CFR 102.1(a).

If the candidate redesignates an existing committee, the committee need only amend its Statement of Organization within 10 days to reflect any new information (e.g., a change in the committee's name or address). 11 CFR 102.2(a)(2). Redesignated committees are reminded that, if outstanding debts remain from a previous election, the committee must continue to report the debts as well as contributions that have been designated by contributors to retire them. 11 CFR 104.11; 110.1(b)(3) and (4); 110.2(b)(3) and (4).

Where are Forms 1 and 2 filed? U.S. House candidates and their principal campaign committees file all statements and reports with the Clerk of the House; U.S. Senate candidates and their principal campaign committees file with the Secretary of the Senate; Presidential candidates and their principal campaign committees file with the FEC. 11 CFR Part 105.

Copies of statements and reports must also be filed with state officers. House and Senate campaigns file in the state in which the candidate seeks election; Presidential campaigns file in the states in which expenditures are made. 2 U.S.C. §439(a).



CAMPAIGN GUIDE FOR PARTY COMMITTEES UPDATED

The Commission has just published a revised Campaign Guide for Political Party Committees, a manual designed to help party committees understand and comply with the requirements of the federal election law. The revised campaign guide will be sent automatically to all registered party committees; others may request copies by using the form below.

Written in plain English, the guide provides instructions for each step of the election process--from registration to fundraising to winding down the campaign. Detailed information and illustrations are also included to help committees follow the recordkeeping and reporting rules.

CAMPAIGN GUIDES FOR OTHER COMMITTEES

In addition to the Campaign Guide for Political Party Committees, the Commission publishes guides for Congressional candidates, corporate and labor PACs and nonconnected committees. Committee treasurers, bookkeepers, volunteers and other

persons involved in running a political committee or filing reports will find the guides to be an important resource.

Copies of campaign guides can be ordered from the FEC by calling 800/424-9530 or 202/376-3120 or by mailing the form below to:

Federal Election Commission
Information Services Division
999 E Street, NW
Washington, DC 20463

CAMPAIGN GUIDE ORDER FORM	
Name	_____
Organization	_____
Address	_____
City, State, Zip	_____
<u>Campaign Guide</u>	<u>No. of Copies</u>
Congressional Candidates	_____
Corporations/Labor Organizations	_____
Party Committees (new)	_____
Nonconnected Committees	_____

FEDERAL ELECTION COMMISSION
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