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REGULATIONS

PROPOSED REVISIONS TO ALLOCATION RULES

The Commission is seeking comments on proposed changes to its regulations on the allocation of federal and nonfederal expenses at 11 CFR 106.5 and 106.6. The agency published the draft rules in a Notice of Proposed Rulemaking that appeared in the Federal Register on November 14 1991. Copies of the notice are available from the Public Records Office. Comments are due by December 16, 1991, and should be submitted in writing to Susan E. Proper, Assistant General Counsel, 999 E Street, NW, Washington, DC 20463.

Proposed Changes

The rulemaking notice seeks comments on the proposed changes described below. Please note that the third and fourth changes would apply to all committees subject to the allocation rules, including national party committees, separate segregated funds and nonconnected committees.

1. One proposed change would allow state and local party committees to add an additional nonfederal point to their ballot composition ratios computed under 11 CFR 106.5(d). (The ratio determines the allocation of administrative and generic voter drive expenses over a two-year federal election cycle.)
2. Another change to 11 CFR 106.5(d) would allow state and local party committees to include nonfederal points for local offices in their ballot ratios if partisan local candidates are expected on the ballot in any regularly scheduled election during the two-year Congressional election cycle. This change would codify the conclusion reached in AO 1991-25.
3. A third proposed change would expand from 40 days to 70 days the window during which the nonfederal account could reimburse the federal account for the nonfederal share of an allocated expense. The reimbursement window would open 10 days before the federal

account's payment of the allocated expense (as in the current rules) but would close 60 days (rather than the current 30 days) after the payment was made. This proposed revision would amend 11 CFR 106.5(g) and 106.6(e).

4. Finally, the draft rules would amend 11 CFR 106.5(f) and 106.6(d) by allowing committees 60 days after a fundraising activity to recalculate the federal/non-federal ratio and to make corresponding transfers between their federal and nonfederal accounts.

Reporting Comments Also Sought

The Commission is also seeking comments on the allocation reporting rules in
(continued)

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anticipation of future changes that may be considered after the 1991-92 cycle closes. The agency requests suggestions as to how the Schedule H forms could be modified to streamline reporting while still permitting effective monitoring of the allocation process.

Background: ASDC Petition

The proposed rulemaking responds to a petition filed by the Association of State Democratic Chairs (ASDC) on March 26, 1991. The petition sought reconsideration of the allocation regulations in three areas:

(1) the ballot composition ratio; (2) payment, recordkeeping and reporting procedures; and (3) the requirement that state party committees allocate administrative expenses throughout the two-year election cycle. The Commission published a notice seeking comments on the petition on April 24, 1991 (56 FR 18780) and received 45 comments in response.

The Commission believes it would be premature to reopen the entire allocation rulemaking before the end of the 1992 election cycle. At that time, the Commission and the regulated entities will be in a better position to evaluate what adjustments may be needed. However, after considering the petition and comments, the Commission decided to reopen the rulemaking in the limited areas described under "Proposed Changes," above.

EFFECTIVE DATE OF NEW REGULATIONS

The following revisions to FEC rules became effective on November 6, 1991:

Rules on Excess Campaign Funds

The revisions reflect amendments to 2 U.S.C. §439a under the Ethics Reform Act of 1989. Under that Act, grandfathered candidates (Members of Congress who held office on January 8, 1980) may no longer convert unlimited excess campaign funds to personal use. The revised rules make clear that the prohibition on the personal use of excess funds also applies to noncash

campaign assets. The final rules and their explanation and justification were published in the July 25, 1991, Federal Register (56 FR 34124). See also the summary in the September 1991 Record, page 5.

Rules on Resignations, Reattributions and Joint Fundraising

These revisions are contained in the rulemaking for publicly funded candidates (see below), but they apply to all committees. In addition to revising several aspects of the joint fundraising rules, the revisions require committees to retain documentation showing that a resignation or reattribution was received within 60 days of the committee's receipt of the contribution. For a summary of the revisions, see the September 1991 Record, page 2.

Rules for Publicly Funded Presidential Candidates

The final rules principally revise procedures for allocating primary election expenses to the state spending limits (see following article), although other public funding rules have been changed as well. The Commission published the final rules and their explanation and justification in the Federal Register on July 29, 1991 (56 FR 35898). See also the Record summary, September 1991, page 2.

Rules on Matching Fund Submissions and Certification Procedures

These rules apply only to Presidential candidates receiving primary matching funds. The rules were revised to bring the schedule for submissions and certifications into conformance with Department of Treasury rules. Under those rules, which were adopted to address a possible shortfall in the public funding program, Treasury will make matching fund payments only once a month. (See article on page 7.) The final matching fund rules and their explanation and justification appeared in the July 25, 1991, Federal Register (56 FR 34130). See also the Record summary in the August 1991 issue, page 2.

Federal Election Commission, 999 E Street, NW, Washington, DC 20463
800/424-9530 202/219-3420 202/219-3336 (TDD)

John Warren McGarry, Chairman
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Danny L. McDonald
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Walter J. Stewart, Secretary of the Senate,
Ex Officio Commissioner
Donald K. Anderson, Clerk of the House of
Representatives, Ex Officio Commissioner

**CLARIFICATION FOR PRESIDENTIAL CAMPAIGNS:
ALLOCATION OF INTRASTATE PHONE CALLS**

The new rules on Presidential public funding¹ contain revisions to 11 CFR 106.2, which governs state allocation of expenditures by primary election campaigns receiving matching funds. To avoid any misunderstanding, campaigns should note that charges for all intrastate phone calls are subject to allocation.

The revised rules continue to require allocation of overhead expenses of a state or regional office, including "telephone service base charges." 11 CFR 106.2(b)(2)(iii)(D). "Telephone service base charges" are defined, in turn, to include charges for intrastate phone calls other than charges related to a special telephone program under 11 CFR 106.2(b)(2)(iv).

The special telephone program regulation replaces the former exemption for interstate phone calls. The Commission's Explanation and Justification, however, states that the special program provision replaces the earlier rules for interstate and intrastate telephone calls and "requir[es] allocation only if intrastate or interstate telephone calls [are] part of a special telephone program..."² (Similar language also appeared in the Record summary of the final rules, September 1991, page 3.)

The language in the Explanation and Justification was meant to make clear that a special telephone program can include intrastate as well as interstate calls. This language does not exempt other intrastate calls from allocation; charges for those calls are still allocable as overhead expenses under paragraph (iii)(D) of the new regulations.

The Commission sent a letter clarifying this point to representatives of Presidential campaigns that have indicated an interest in the matching fund program. Campaigns that have not received the letter may request a copy. Call Susan Propper, Assistant General Counsel, at 800/424-9530 or 202/219-3690.

¹The final rules and their Explanation and Justification were published in the Federal Register on July 29, 1990 (56 FR 35898). The rules became effective on November 6, 1991.

²See 56 Federal Register at 35900.

IN MEMORIAM

Richard Clark Thomas, the FEC's Director of State Relations, died of cancer on November 2. He was 54. Memorial services were held in Washington, DC, and Rutland, Vermont. He will be missed by his coworkers at the Commission.

As state coordinator, Mr. Thomas served as liaison with secretaries of state and local election officials. He also directed the compilation of the FEC's annual Combined Federal/State Disclosure Directory and the Federal Election series of official election results.

Before coming to the FEC in 1977, Mr. Thomas was elected four times as Vermont's Secretary of State, from 1969 to 1977. He also served as the executive director of the Vermont Republican State Committee.

He worked on the campaign and Senate staffs of Senator Winston L. Prouty (R-VT) in 1964 and 1965 and was a reporter for F.W. Dodge Corporation in New York from 1960 to 1963.

Mr. Thomas was born in Maine and grew up in Rutland, Vermont. He was a 1959 graduate of Middlebury College and attended Georgetown University Law Center.

ADVISORY OPINIONS

ADVISORY OPINION REQUESTS

Recent requests for advisory opinions (AORs) are listed below. The full text of each AOR is available for review and comment in the FEC's Public Records Office.

AOR 1991-34

Sale of access to data base by party committee. (Date Made Public: October 23, 1991; Length: 6 pages)

AOR 1991-35

Application of allocation rules if non-federal account of SSF pays for its own administrative expenses. (Date Made Public: October 23, 1991; Length: 6 pages)

(Advisory Opinions continued)

ADVISORY OPINION SUMMARIES

AO 1991-22: Preemption of Minnesota Public Funding Statute

Because the Federal Election Campaign Act (the FECA or the Act) is the sole authority for the regulation of federal campaign finance activity, it preempts a Minnesota statute that provides state public funding to U.S. House and Senate candidates who agree to abide by spending limits.^{1/}

Minnesota Statute

The Minnesota Congressional Campaign Reform Act, effective January 1, 1991, authorizes the payment of state public funds to Congressional candidates who qualify for the general election ballot in Minnesota. Minn. Stat. §§10A.40-10A.51. The significant features of the statute are:

- o To be eligible to receive state public funds, U.S. House and Senate candidates must sign an agreement to limit their spending during the federal election year. Senate candidates who sign the agreement are subject to a \$3.4 million spending limit, House candidates to a \$425,000 limit, as adjusted for inflation. Eligible candidates may each receive public funds in the amount of 25 percent of the relevant expenditure limit, although the candidate must match that amount in contributions from other sources.^{2/} A federal candidate who exceeds the spending limit may be fined up to 400 percent of the amount spent over the limit.
- o If both major party federal candidates for a given office agree to the spending limit, neither is entitled to state public funds, but the candidates must still abide by the spending limit.
- o If one candidate agrees to the limit but has a major party opponent who does not, neither candidate is subject to the spending limit, but the first candidate is still entitled to the public funding grant.

¹The advisory opinion was requested by the Minnesota Independent Republican Party, three incumbent federal candidates seeking reelection in Minnesota, and three members of the Minnesota legislature who do not appear to be federal candidates.

²As an incentive to contributors, the state will refund up to \$50 of an individual's contribution to a federal candidate who has agreed to the spending limit.

Legislative History of Federal Preemption

The Act states that its provisions "supersede and preempt any provision of State law with respect to election to Federal office." 2 U.S.C. §453. In addressing this provision, the Conference Committee report specifically states that "Federal law occupies the field with respect to...limitations on campaign expenditures, the sources of campaign funds used in Federal races, the conduct of Federal campaigns,...but does not affect the States' rights" in other areas such as voter fraud and ballot theft. H.R. Rep. No. 93-1438, 93d Cong., 2d Sess. 69 (1974). FEC regulations at 11 CFR 108.7 largely incorporate the Conference Report language.

Subsequent to the enactment of the 1974 FECA amendments (which prescribed limits on expenditures by all federal candidates) and the 1976 Buckley decision^{3/} (which ruled that, absent public financing, expenditure limits were unconstitutional), Congress considered expenditure limits for all federal elections, but it has chosen to enact such limits, with concomitant public funding, for Presidential elections only.

Preemption of Minnesota Statute

By providing state revenues directly to federal candidates^{4/} and by enforcing expenditure limits, the Minnesota statute seeks to regulate an area under the sole authority of federal law. The Act therefore clearly preempts the Minnesota law as applied to federal candidates.

(Date issued: October 7, 1991; Length: 8 pages)

AO 1991-27: Exclusion of California Local Offices in Ballot Ratio

The California Democratic Party (CDP) may no longer include one nonfederal point for partisan local candidates in its ballot composition ratio due to a recent Supreme Court ruling. The effect of the ruling was to reinstate a California law that prohibits its party committees from engaging in partisan activities on behalf of local

³Buckley v. Valeo, 424 U.S. 1 (1976).

⁴Although the Commission has concluded that state revenues may be deposited in a party committee's federal account (see, for example, AOs 1991-14, 1988-33, 1983-15, 1982-17, 1980-103 and 1978-9), that is a separate issue from state regulation of federal campaign finance through a public funding mechanism.

candidates. The law had previously been invalidated by an appeals court decision, which the Supreme Court vacated.

The ballot composition method allows a state party committee to include one non-federal point for all "partisan local candidates" on the ballot. 11 CFR 106.5(d)(1)(ii). In AO 1991-6, issued to CDP in April 1991, the Commission determined that CDP could include this nonfederal point in its ratio.

The opinion explained California history concerning party support of non-partisan local offices. Under Article II, section 6(a) of the California Constitution, local offices are "nonpartisan." Until 1986, that provision had been interpreted by the courts to permit political parties to support local candidates; only party nominations were prohibited. But, in 1986, the state constitution was amended with the addition of section 6(b): "No political party...may endorse, support or oppose a candidate for nonpartisan office."

That provision, however, was rendered inoperative by a 1990 court of appeals decision.¹ Hence, in AO 1991-6, the Commission concluded that CDP could include a nonfederal point for local offices, since it was not then under any constraints to avoid partisan activity in local races. The Commission noted, however, that it might have to reconsider this conclusion, depending on the Supreme Court's decision in the case.

On June 17, 1991, the Supreme Court vacated the appeals court decision.² Section 6(b) was therefore reinstated on the date the High Court ruling became final, July 12. The Court decision prompted CDP to seek a second advisory opinion on the same issue. The Commission concluded that CDP may no longer include a point for partisan local offices in its ballot composition ratio.

CDP must recalculate its ballot composition ratio as of August 1, 1991. In its next report, CDP must file a new Schedule H-1 reflecting the adjusted ratio, which

must be applied to allocable disbursements for goods and services received after July 31.

If section 6(b) is held invalid or otherwise rendered inoperative through a future legal action, CDP may once again include a point for local candidates. The adjusted ratio would be effective retroactively from January 1, 1991.³ (Date Issued: October 25, 1991; Length: 3 pages)

AO 1991-31: Charity Donations Made in Name of Candidate

The Porter Goss Re-Election Team, a 1992 House campaign committee, does not have to report four donations to charity made in his name by an individual responding to a Committee solicitation because the Committee received nothing of value as a result of the donations.

In response to a letter soliciting contributions to Congressman Goss's 1992 campaign, Michael Tracy sent the Committee photocopies of four \$50 checks to children's charities, with a notation on each check: "Donation in name of Porter Goss - member of Congress."

The donations are not considered contributions received by the Committee because the Committee did not receive "anything of value." 2 U.S.C. §431(8)(A)(i); 11 CFR 100.7(a)(1). The Committee did not actually receive the checks. Nor did it receive the funds indirectly by exercising control over them. The Committee did not participate in Mr. Tracy's decision to make the donations or in the selection of the charities. Additionally, the Committee took no action to publicize the donations.

In these circumstances, when the use of the candidate's name was neither consented to nor ratified by the Committee, the Committee has not received a contribution and has no reporting obligations with respect to the donations.

The Commission expressed no views on the possible application of House rules or tax laws to the donations, as these areas are outside the FEC's jurisdiction. (Date issued: October 11, 1991; Length: 3 pages)

¹The court held that section 6(b) violated the first and fourteenth amendments of the U.S. Constitution. *Geary v. Renne*, 911 F.2d 280 (9th Cir. 1990)(en banc).

²Concluding that the case was not ripe for resolution, the Court did not reach the merits but, instead, remanded the case to the lower courts with instructions to dismiss without prejudice. *Renne v. Geary*, 111 S.Ct. at 2336.

³The effective date of the allocation rules. On that date, section 6(b) was inoperative by virtue of the 1990 appeals court decision.

COURT CASES

NEW LITIGATION

FEC v. Caulder

Alleging that Michael Caulder converted \$51,600 in committee funds to his own personal use, the FEC asks the court to declare that Mr. Caulder violated 2 U.S.C. §432(b)(3) by commingling the funds of a political committee, the Alerted Democratic Majority, with his personal funds. The FEC further asks the court to: assess a civil penalty for a knowing and willful violation; permanently enjoin defendant from future violations of §432(b)(3); and award the FEC its costs in the action.

U.S. District Court for the Eastern District of Pennsylvania, Civil Action No. 91-CV-5906, September 20, 1991.

Jordan v. FEC

Pursuant to 2 U.S.C. §437g(a)(8)(A), Absalom F. Jordan asks the court to declare that the FEC's dismissal of his complaint was contrary to law because:

- o His complaint did not, as the Commission had concluded, request the agency to reconsider its decisions in prior complaints, and he was not a party to those complaints; and
- o Handgun Control, Inc. (HCI) and its separate segregated fund did violate 2 U.S.C. §441b(b)(4)(A) by soliciting contributions from individuals who were not "members." (In his complaint, he had alleged that the individuals did not qualify as solicitable members because they lacked the requisite voting rights.)

Plaintiff additionally asks the court to order the FEC to conform to this declaration within 30 days by instituting enforcement proceedings against HCI.

U.S. District Court for the District of Columbia, Civil Action No. 91-2428, September 25, 1991.

FEC v. People & Politics, Inc.

The FEC asks the court to declare that defendant made corporate contributions in violation of 2 U.S.C. §441b(a) by distributing almost 16,000 free copies of its magazine, People & Politics - 1988 Minnesota Voter's Guide, to political committees and to agents of committees and candidates. The FEC also asks the court to: assess a civil penalty; permanently

enjoin defendant from further violations of §441b(a); and award the FEC its costs in the action.

U.S. District Court for the District of Minnesota, Civil Action No. 3-91-588 (EJD), September 27, 1991.

STATISTICS

ACTIVITY OF 1992 PRESIDENTIAL CAMPAIGNS

By the end of September 1991, 10 campaigns of 1992 Presidential candidates raised \$2.7 million and spent \$1.5 million. This financial activity was far below the activity of 1988 campaigns at the end of September 1987, when 17 campaigns raised \$70 million and spent \$54.5 million. That election was an open seat race, with no incumbent seeking reelection.

The 1991 activity was reported by eight Democratic and two minor party campaigns. President George Bush's reelection campaign did not report having any financial activity as of September 30. The next reports filed by the 1992 campaigns will cover activity through the end of 1991 and will be due by January 31, 1992.

An FEC press release of October 30 lists receipt and disbursement data for 1992 Presidential campaigns that reported receiving at least \$40,000 from outside sources. (Data are also provided for the campaign of one candidate who has already been nominated by his party.) To order a copy of the release, call the Public Records Office: 800/424-9530 (ask for Public Records) or 202/219-4140.

PUBLIC FUNDING

FULANI ELIGIBLE FOR PRIMARY MATCHING FUNDS

Lenora B. Fulani, a minor party candidate, became the first 1992 Presidential candidate to qualify for primary matching funds. On October 31, 1991, the Commission determined that Ms. Fulani and her campaign committee satisfied the requirements for matching fund eligibility. Ms. Fulani is seeking the nomination of five minor parties. (During her 1988 Presidential campaign, she received \$922,106 in primary matching funds.)

Under the matching fund program, eligible candidates receive matching federal

dollars for a portion of the contributions they raise. The federal government will match up to \$250 per contributor, but only contributions from individuals qualify for matching. To establish eligibility for the program, a candidate must submit documentation showing that he or she raised in excess of \$5,000 in matchable contributions in each of at least 20 states (i.e., over \$100,000). This threshold submission is reviewed by the FEC's Audit Division before the Commission makes its determination. The candidate must also submit a letter (a "9033 letter") certifying that he or she will comply with the law.

Presidential candidates may establish their eligibility for matching funds during 1991 and, once eligible, submit additional contributions for matching funds (called matching fund submissions) on specified dates. However, the U.S. Treasury will not make matching fund payments until January 2, 1992. Candidates may continue to make matching fund submissions each month through March 1, 1993. (See following article.)

FEC SETS MATCHING FUND SUBMISSION DATES

The Commission recently established the monthly deadlines by which Presidential primary campaigns must make their matching fund submissions (i.e., contributions submitted for matching funds¹). The agency also set the corresponding dates on which the FEC will certify payment of matching funds in the amount of the matchable contributions contained in a submission. The U.S. Treasury will generally make payments to campaigns within 48 hours of the FEC's certification.

The Commission sent the submission and certification schedule to Presidential campaigns and also published it in the Federal Register on November 13, 1991. The schedule is reprinted opposite.

The monthly schedule was necessitated by a Department of Treasury decision, adopted in new rules, to make matching fund payments only once a month. The Treasury rules were written to address the possibility of a shortfall in the Presidential Election Campaign Fund. (See article on shortfall projections in the October 1991 Record.)

¹The federal government will match up to \$250 per contributor, but only contributions from individuals are matchable.

Matching Fund Submission and Certification Dates for 1992 Candidates

NOTE: Payments certified on December 27, 1991, will be paid by the U.S. Treasury on January 2, 1992. Treasury will generally make payments within 48 hours of the certification date.

Submission Date ¹	FEC Certification to Treasury
1991 Dates	
October 1	December 27
November 1	December 27
December 2	December 27
1992 Dates	
January 2	January 31
February 3	February 28
March 2	March 31
April 1	April 29
May 1	May 29
June 1	June 30
July 1	July 31
August 3	August 31
September 1	September 30
October 1	October 30
November 2	November 30
December 1	December 31
1993 Dates	
January 4	January 29
February 1	February 26
March 1	March 31

¹Candidates may present one submission and one resubmission on each date. The submission and certification dates do not apply to threshold submissions, which may be submitted at any time. (A threshold submission is the first submission a campaign must make in order to establish eligibility for matching funds; it must contain in excess of \$5,000 in matchable contributions raised in each of 20 states.)

FEDERAL REGISTER NOTICES

Copies of Federal Register notices are available from the Public Records Office.

1991-16

Filing Dates for Pennsylvania Special Election (56 FR 51896, October 16, 1991)

1991-17

11 CFR Parts 9034, 9036 and 9037: Matching Fund Submission and Certification Procedures for Presidential Primary Candidates; Final Rule: Announcement of Effective Date (56 FR 56570, November 6, 1991)

1991-18

11 CFR Parts 100, 102, 106, 110, 116, 9001-9007, 9012 and 9031-9039: Public Financing of Presidential Primary and General Election Candidates; Final Rule: Announcement of Effective Date (56 FR 56570, November 6, 1991)

1991-19

11 CFR Parts 102 and 113: Use of Excess Funds; Final Rule: Announcement of Effective Date (56 FR 56570, November 6, 1991)

1991-20

Schedule of Matching Fund Submission Dates and Certification Dates for 1992 Presidential Candidates (56 FR 57644, November 13, 1991)

1991-21

11 CFR Part 106: Allocation of Federal and Non-Federal Expenses; Notice of Proposed Rulemaking (56 FR 57864, November 14, 1991)

800 LINE**NATIONAL NOMINATING CONVENTIONS: DELEGATE SELECTION RULES**

This article explains the FEC rules that apply to individuals seeking selection as delegates to a Presidential nominating convention.

Reprints of this article may be ordered from the FEC—call 800/424-9530 or 202/219-3420.

Definitions of Delegate and Delegate Committee

The term "delegate" means an individual who is seeking selection as a delegate, or who has already been selected as a delegate, at any level of the delegate selection process (local, state or national). 11 CFR 110.14(b)(1).

A "delegate committee" is a group that raises or spends funds to influence the selection of delegates. It may be a group of delegates or a group that supports certain delegates. 11 CFR 110.14(b)(2).

FEC Reporting

By Registered Delegate Committees. A delegate committee becomes a "political committee" under federal law once it receives contributions or makes expenditures exceeding \$1,000 in a calendar year. 11 CFR 100.5(a) and (e)(5), 110.14(b)(2). At that point, the committee must register with the FEC within 10 days and begin filing periodic FEC reports on committee receipts and disbursements. 11 CFR 102.1(d) and 104.1(a). All pre-registration activity must be disclosed in the committee's first report. 11 CFR 104.3(a) and (b).

Note that a delegate committee that has triggered status as a federal political committee must include the word "delegate" or "delegates" in its name. It may also include the name of the Presidential candidate it supports. 11 CFR 102.14(b)(1).

By Individual Delegates and Unregistered Delegate Committees. Individual delegates, and delegate committees that have not qualified as "political committees," are not required to register or file regular reports. But, if they make independent expenditures exceeding \$250, they must disclose the expenditures on FEC Form 5. 11 CFR 109.2(a). (Independent expenditures are discussed later in this article.)

Contributions and Expenditures

Funds raised and spent for delegate selection activity are considered contributions and expenditures made for the purpose of influencing a federal election. (A national nominating convention is a federal election. 11 CFR 100.2(e).) As such, the funds are subject to the federal law's prohibitions and limits.^{1/} 11 CFR 110.14(c)(1). For example, a delegate must use funds permissible under federal law to pay for travel to attend the national convention and related food and lodging expenses.

Contribution Prohibitions and Limits

Please note that the prohibitions and limits apply to contributions of goods and services (in-kind contributions) as well as monetary contributions. 11 CFR 100.7(a)(i) (ii) and (iii).

Prohibitions. Individual delegates and delegate committees may not accept any contributions from prohibited sources. 11 CFR 110.14(c)(2).

The following entities are prohibited from making contributions:

- o Banks and other corporations (including nonprofit corporations);
- o Labor unions;
- o Citizens of foreign countries (except "green card" holders—those admitted to the U.S. for permanent residence); and
- o Federal government contractors (such as partnerships and sole proprietors with federal contracts). 11 CFR 110.4(a), 114.2(b) and (c), and 115.2.

Limits on Contributions to Delegates:

- o Contributions to a delegate committee are subject to an aggregate limit of \$5,000 per calendar year. 11 CFR 110.14(g)(1).
- o Contributions to an individual delegate are not subject to any per delegate limit, but see entry below. Note that contributions to a delegate from the committee of a Presidential candidate receiving public funds count against the

candidate's expenditure limits.^{2/} 11 CFR 110.14(d).

- o Contributions from an individual to a delegate or delegate committee count against the donor's \$25,000 annual limit on total contributions. 11 CFR 110.5(b), 110.14(d)(1) and (g)(2).

Limits on Contributions by Delegates to Candidates. When a delegate or delegate committee makes an expenditure that benefits a Presidential or other federal candidate,^{3/} the expenditure may result in an in-kind contribution to that candidate, as explained later in this article. Such contributions—or anything of value given to the candidate—are subject to the contribution limits. 11 CFR 100.7(a)(1).

A delegate or delegate committee may contribute a maximum of \$1,000 to a federal candidate, per election. 11 CFR 110.1(b)(1). The primary and general are considered separate elections but, in the case of Presidential candidates, the entire primary season is considered only one election. 11 CFR 110.1(j)(1).

Note that contributions to candidates are reportable by the candidate's committee. For this reason, when making an in-kind contribution, the delegate or delegate committee should notify the candidate's committee of the monetary value of the in-kind contribution so the committee can report it. In-kind contributions, in addition to counting against the contribution limit, also generally count against a publicly funded candidate's expenditure limits.

Expenditures for Delegate Selection Only

Expenditures made by delegates and delegate committees solely to further their selection are not considered contributions to any candidate and are not chargeable to a publicly funded candidate's spending limits. This type of expenditure might include, for example:

- o A communication which advocates the selection of delegates only; or
 - o Travel and subsistence expenses related to the delegate selection process and the
- (continued)

¹Ballot access fees paid by a delegate or delegate committee to a political party are not considered contributions or expenditures; nor are administrative payments made by a party committee for sponsoring a convention or caucus to select delegates. Nevertheless, these fees and payments must be made from funds that comply with the limits and prohibitions. 11 CFR 110.14(c)(1)(i) and (ii).

²Publicly funded Presidential primary candidates are subject to an overall spending limit and a spending limit in each state. 11 CFR 9035.1.

³A federal candidate is a candidate seeking election to the Presidency, the Vice Presidency, the U.S. Senate or the U.S. House of Representatives. 11 CFR 100.4.

national nominating convention. 11 CFR 110.14(e)(1) and (h)(1).

Dual-Purpose Expenditures for Communications

An individual delegate or a delegate committee may pay for communications that both:

- o Advocate the selection of the individual delegate or the delegates promoted by the delegate committee; and
- o Refer to, provide information on, or expressly advocate the election of a Presidential candidate (or candidate for any public office). 11 CFR 110.14(f) and (i).

Depending on certain factors explained below, a portion of a dual-purpose expenditure may have to be allocated as an in-kind contribution or an independent expenditure on behalf of any federal candidate mentioned in the ad. (Allocation is discussed later on this page.)

Moreover, the communication may have to include an advertising notice, as explained on page 11.

Materials Distributed by Volunteers.

Dual-purpose expenditures for campaign materials such as pins, bumper stickers, handbills, brochures, posters and yard signs are not considered in-kind contributions on behalf of the federal candidate mentioned in the materials as long as the materials are used in connection with volunteer activities (i.e., are distributed by volunteers) and are not conveyed through public political advertising.⁴ 11 CFR 110.14(f)(1) and (i)(1).

Public Ads: In-Kind Contributions. A portion of a dual-purpose expenditure is considered an in-kind contribution to the referenced candidate if the communication:

- o Is conveyed through public political advertising (or is not distributed by volunteers); and
- o Is made in cooperation or consultation with, or at the request or suggestion of, the Presidential candidate (or other

federal candidate) or the candidate's campaign.

The contribution counts against a publicly funded Presidential candidate's expenditure limits. 11 CFR 110.14(f)(2)(i) and (i)(2)(i).

Public Ads: Independent Expenditures.

A portion of a dual-purpose expenditure for a communication that is conveyed through public political advertising is considered an independent expenditure (rather than an in-kind contribution) on behalf of the candidate if the communication:

- o Expressly advocates the election (or defeat) of the candidate, who is clearly identified; and
- o Is not made with the cooperation or prior consent of, or in consultation with, or at the request or suggestion of, the candidate or the candidate's campaign.

Independent expenditures are not subject to the contribution limits and are not chargeable to a publicly funded Presidential candidate's expenditure limits. 11 CFR 110.14(f)(2)(ii) and (i)(2)(ii).

Note, however, that all independent expenditures must carry an advertising notice (page 11). Note also the reporting requirements for individual delegates and unregistered delegate committees (page 8).

For more information on independent expenditures, consult Part 109 of FEC regulations or call the Commission.

Allocation of Dual-Purpose Expenditures. To determine the portion of a dual-purpose expenditure that is considered an in-kind contribution or an independent expenditure on behalf of the candidate, the expenditure must be allocated between the delegate or delegate committee and the candidate. The portion allocated to the candidate must be in proportion to the benefit reasonably expected to be derived, based on factors such as the amount of space or time devoted to the candidate in the communication. 11 CFR 106.1(a).

Expenditures to Reproduce Candidate Materials

Expenditures by an individual delegate or delegate committee to reproduce (in whole or in part) or disseminate materials prepared by a Presidential candidate's committee (or other federal candidate committee) are considered in-kind contributions to the candidate. Although subject to contribution limits, this type of contribution is not chargeable to a publicly funded Presidential candidate's spending limits as long as the expenditure was not made in consultation or coordination with,

⁴For purposes of the delegate regulations, public political advertising is conveyed through television, radio, newspapers, magazines, billboards, direct mail or similar forms of general public communication. Direct mail means mailings by commercial vendors or mailings made from lists not developed by the individual delegate or delegate committee. 11 CFR 110.14(f)(2), (f)(4), (i)(2) and (i)(4).

or at the request or suggestion of, the candidate or the candidate's campaign. 11 CFR 110.14(f)(3) and (i)(3). If the materials are conveyed through public political advertising, they must include a notice, as explained below.

Advertising Notices

A communication must clearly and conspicuously display a notice (often referred to as a disclaimer notice) if the communication:

- o Expressly advocates the election or defeat of a clearly identified federal candidate or solicits contributions; and
- o Is conveyed through public political advertising.⁵ 11 CFR 110.11(a)(1).

The wording of the notice depends on whether the communication is authorized by the candidate or the candidate's campaign.

Authorized by Candidate. If the communication is authorized by the candidate's campaign, it must display the following notice:

"Paid for by [name of delegate or delegate committee] and authorized by [name of candidate's committee]." 11 CFR 110.11(a)(1)(ii).

Not Authorized by Candidate. If the communication is not authorized by the candidate's campaign (as in the case of an independent expenditure), it must display the following notice:

"Paid for by [name of delegate or delegate committee] and not authorized by any candidate or candidate's committee." 11 CFR 110.11(a)(1)(iii).

Affiliation and Delegate Committees

Committees that are established, financed, maintained or controlled by the same person or group of persons are considered to be affiliated committees. A delegate committee may be affiliated with the committee of a Presidential candidate or with another delegate committee, as explained below.

Delegate committees need to be aware of the rules on affiliation because affiliated committees are considered one political committee for purposes of the contribution

limits: They share the same limits on contributions received and contributions made. 11 CFR 110.3(a)(1). (There is, however, no limit on funds transferred between affiliated committees. 11 CFR 102.6(a)(1)(i).)

Between Delegate and Presidential Committees. If a delegate committee—including an unregistered committee—is affiliated with the committee of a publicly funded Presidential candidate, all of the delegate committee's expenditures count against the Presidential candidate's expenditure limits.

In determining whether a delegate committee and a Presidential committee are affiliated, the Commission may consider, among other factors, whether:

- o The Presidential campaign⁶ played a significant role in forming the delegate committee;
- o Any delegate associated with a delegate committee has been or is on the staff of the Presidential committee;
- o The committees have overlapping officers or employees;
- o The Presidential committee provides funds or goods to the delegate committee in a significant amount or on an ongoing basis (not including a transfer of joint fund-raising proceeds);
- o The Presidential campaign suggests or arranges for contributions to be made to the delegate committee;
- o The committees show similar patterns of contributions received;
- o One committee provides a mailing list to the other committee;
- o The Presidential campaign provides ongoing administrative support to the delegate committee;
- o The Presidential campaign directs or organizes the campaign activities of the delegate committee; and
- o The Presidential campaign files statements or reports on behalf of the delegate committee. 11 CFR 110.14(j); see also Advisory Opinion 1988-1.

Between Delegate Committees. Factors that indicate affiliation between delegate committees are listed at 11 CFR 100.5(g). 11 CFR 110.14(k).

⁵For purposes of the advertising notice regulations, the definition of public political advertising is generally the same as the definition in footnote 4, except that posters and yard signs are also listed as examples of public political advertising. 11 CFR 110.11(a)(1).

⁶Campaign refers to the candidate, his or her committee or other persons associated with the committee.

NATIONAL NOMINATING CONVENTIONS: BUSINESS DONATIONS AND DISCOUNTS

FEC public funding rules permit businesses, including incorporated businesses, to provide funds, goods, services and discounts in connection with the national Presidential nominating conventions of the major parties. The 1992 Democratic and Republican conventions will be held, respectively, in New York City (July 13-16) and Houston (August 17-20).^{1/}

The rules generally permit business donations and discounts given to advance commercial interests. Note, however, that the scope of permissible activities is different for each of the following categories of businesses: banks,^{2/} local businesses,^{3/} retail businesses and local retail businesses.

Advisory opinions cited in this article may be ordered from the Public Records Office.

Local Business Donations to Host Committee

Local businesses (excluding banks) may donate funds, goods and services to a host committee^{4/} for the following purposes:

- o To promote the suitability of the city as a convention site;
- o To defray the host committee's administrative expenses (e.g., salaries, rent, travel, liability insurance);

¹The major parties have each received \$10.6 million in public funds for their 1992 conventions and will receive a cost-of-living adjustment in 1992.

²FEC rules define "bank" to include a state bank, a federally chartered depository institution (including a national bank) or a depository institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. 11 CFR 100.7(b)(11) and 100.8(b)(12).

³A local business is a business located within the convention city's metropolitan statistical area. 11 CFR 9008.7(c)(2)(iv) and (d)(2)(iv).

⁴A host committee is a local nonprofit organization (such as a civic association, business league, chamber of commerce or convention bureau) that encourages commerce in the convention city and wishes to project a favorable image of the city to convention attendees. 11 CFR 9008.7(d)(1). Host committees are required to register and report their receipts and disbursements with the FEC. 11 CFR 9008.12(a).

- o To welcome convention attendees (e.g., by providing information booths, receptions or tours); and
- o To facilitate commerce (e.g., by providing convention attendees with shopping or entertainment guides or with the promotional items described in the next section).^{5/} 11 CFR 9008.7(d)(2).

For example, in AO 1980-21, the Commission said that the New York Yankee Baseball Club could donate tickets to the convention host committee for distribution to delegates because the donation would assist the host committee in welcoming the delegates to New York.

Additionally, local retail businesses (excluding banks) may donate funds and services to the host committee to help defray the costs of holding a convention (e.g., facilities, transportation, accommodations) as long as the donation is proportionate to the commercial return the business reasonably expects to receive during the life of the convention (one week before the opening and three days after the closing). 11 CFR 9008.7(d)(3).

Local Business Promotional Items

Local businesses—including banks—may give convention attendees promotional items of nominal value such as maps, pens, tote bags, discount coupons or sample products that bear the business's name. (Promotional items may also be sold at nominal charge.) The items must be offered in the ordinary course of business for promotional purposes only. The business may distribute the items, or they may be distributed by the host committee or the party's convention committee. 11 CFR 9008.7(c)(2).

Discounts by Retail Businesses

Local and non-local retail businesses (excluding banks) may provide discounts to the party's national committee for the convention. A business may offer to reduce the price of its products, materials, services or space, provided that the discount is made in the ordinary course of business (i.e., the discount must be comparable to discounts offered to other kinds of conventions of similar size and duration). 11 CFR 9008.7(c)(1).

It should be noted that, in AO 1988-25, the Commission approved a General Motors

⁵Individuals and local labor unions (i.e., unions located within the city's metropolitan statistical area) may also make donations to a host committee for these purposes. 11 CFR 9008.7(d)(2).

program under which local GM dealers loaned cars at no charge to the Republican and Democratic national party committees for their 1988 nominating conventions. The Commission's permission was based on several factors, among them:

- o GM had an established practice of providing similar vehicle loan programs for nonpolitical conventions and events;
- o The services provided to the convention committees were proportionate in value to services provided in similar situations;
- o The promotional benefits to GM were not outweighed by the value of the services; and
- o The conventions offered GM unique promotional (as opposed to political) opportunities.

Corporate Donations to Convention City

Commission regulations permit a municipal corporation (a city) to help finance the costs of holding a nominating convention (e.g., the convention hall, transportation, law enforcement, hotel accommodations).⁶ The city must pay the fair market value for convention expenses unless a normal business discount applies. 11 CFR 9008.7(b)(1).

In advisory opinions, the Commission said that a city could finance such expenses through a special municipal fund created to attract and promote conventions and other events to the city—not just the nominating convention. Corporations and individuals could donate to the fund, but donations could not be designated for a particular convention. AOs 1983-29 and 1982-27.

⁶Government agencies at all levels may also defray convention costs. 11 CFR 9008.7(b)(1).

COMPLIANCE

MURS RELEASED TO THE PUBLIC

Listed below are MURs (FEC enforcement cases) recently released for public review. The list is based on the FEC press releases of October 7, 17, 21 and 28, 1991. Files on closed MURs are available for review in the Public Records Office.

Unless otherwise noted, civil penalties resulted from conciliation agreements reached between the respondents and the Commission.

MUR 2681

Respondents: Wayne Walker for Congress, and its treasurer (TX)

Complainant: Jack R. Roach (TX)

Subject: Failure to file report on time and to amend Statement of Organization; inadequate disclosure of loans and disbursements; use of improper reporting form

Disposition: Reason to believe but took no further action

MUR 3022

Respondents (all in CA): (a) Log Cabin PAC, Michael R. Tripp, treasurer (AKA Californians for Individual Rights and Civil Liberties); (b) San Diego County Log Cabin Club; (c) Richard Reinsch

Complainant: FEC initiated

Subject: Excessive and earmarked contributions; deposit of nonfederal funds in federal account

Disposition: (a) \$1,700 civil penalty; (b) no reason to believe; (c) \$350 civil penalty

MUR 3043

Respondents (both in DC): (a) Alliance of Families for Christian Values, Inc., Eugene C. Johnson, President; (b) Bradley S. O'Leary

Complainant: National Republican Congressional Committee (DC)

Subject: Improper use of contributor information on disclosure reports

Disposition: (a) and (b) Reason to believe but took no further action

MUR 3106

Respondents: Washington State Democratic Central Committee, Clay Bleck, treasurer

Complainant: FEC initiated

Subject: Contributions from unregistered organizations; corporate and union contributions

Disposition: \$2,000 civil penalty

(continued)

MUR 3112

Respondents (all in GA): (a) Sam R. Jones; (b) Friends of Sam Jones, A.S. Quinn, treasurer; (c) Harold Mays; et al. (d)-(h)
Complainant: Charles Schroder, Executive Director, Democratic Party of Georgia
Subject: Contributions in names of others; excessive contributions
Disposition: (a) No reason to believe; (b)(1) no reason to believe (contributions in names of others); (b)(2) took no action (other allegations); (c)(1) no reason to believe (excessive contributions in names of others); (c)(2) took no action (other allegations); (d)-(h) no reason to believe (contributions in names of others)

MUR 3135/3131

Respondents: (a) National Republican Senatorial Committee, James L. Hagen, treasurer (DC); (b) Republican Senatorial Inner Circle 1990, James L. Hagen, treasurer (DC); (c) Republican Senatorial Inner Circle 1990-91, James L. Hagen, treasurer (DC); (d) 57 candidate committees and treasurers
Complainants (both in DC): Common Cause (3135); Democratic Senatorial Campaign Committee (3131)
Subject: Excessive party contributions; joint fundraising
Disposition: (a)-(d) No reason to believe

MUR 3154

Respondents (all in TX): (a) John W. Bryant; (b) John Bryant for Congress, Ken Molberg, treasurer; (c) John W. Bryant Campaign Committee, Ken Molberg, treasurer
COMPLAINANT: Jerry Rucker (TX)
Subject: Transfer from nonfederal account; excessive contributions; inadequate disclosure; failure to amend Statement of Organization on time
Disposition: (a) No reason to believe; (b)(1) no reason to believe (disclosure); (b)(2) reason to believe but took no further action (amendment); (c)(1) reason to believe but took no further action (disclosure and amendment); (c)(2) no reason to believe (excessive contributions)

MUR 3198

Respondents (all in WA): (a) Thomas S. Foley; (b) Committee to Re-Elect Tom Foley, Leona W. Dexter, treasurer; (c) Inland Power & Light Company
Complainant: William Albert Johns (WA)
Subject: Corporate contribution
Disposition: (a)-(c) No reason to believe

MUR 3209

Respondents: Tom Delay Congressional Committee, Jack R. Roach, treasurer (TX)

Complainant: FEC initiated

Subject: Failure to file report on time
Disposition: \$1,100 civil penalty

MUR 3243

Respondents: Keep Hope Alive Political Action Committee, Marion O. Greene, treasurer (DC)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: \$3,400 civil penalty

MUR 3274

Respondents: Committee to Elect James McClure Clarke to Congress, James H. Lee, treasurer (NC)
Complainant: FEC initiated
Subject: Failure to file 48-hour notices
Disposition: \$750 civil penalty

MUR 3300

Respondents: NCNB Corporation Political Action Committee; J. Mark Leggett, treasurer (NC)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: \$495 civil penalty

MUR 3304

Respondents: Pennzoil Political Action Committee, Robert L. Springfield, treasurer (TX)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: \$375 civil penalty

MUR 3331

Respondents: National Democratic Policy Committee, Katherine Jenkins, treasurer (DC)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: \$500 civil penalty

MUR 3336

Respondents: Trudy Coxe for Congress Committee, Mary F. Allard, treasurer (RI)
Complainant: FEC initiated
Subject: Failure to file 48-hour notices
Disposition: \$1,500 civil penalty

MUR 3338

Respondents: Friends of Matt Matsunaga, Howard Y. Ikeda, treasurer (HI)
Complainant: FEC initiated
Subject: Failure to file 48-hour notices on time
disposition: \$2,000 civil penalty

MUR 3355

Respondents: Mike Brown for Congress Committee, Michael D. Brown, treasurer (OK)
Complainant: Thomas N. Edmonds

Subject: Failure to disclose debts
Disposition: Reason to believe but took no further action

Disposition: \$1,500 civil penalty

MUR 3357

Respondents: Frazer for Congress
 Committee, Edward M. Eddleman, treasurer (MD)
Complainant: FEC initiated
Subject: Failure to file 48-hour notices on time

MUR 3364

Respondents: Hudson Valley Political Action Committee, Marilyn Enison, treasurer (NY)
Complainant: FEC initiated
Subject: Knowingly accepting labor organization contributions
Disposition: \$750 civil penalty

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