

Record

August 1999

Federal Election Commission

Volume 25, Number 8

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Public Funding

Adjustment to Estimated Public Funding Available for 2000 Primaries

FEC staff has revised the estimated public funding available for the 2000 primary elections based on the recent announcement by Texas Governor George W. Bush that he will forego the federal matching funds. In May 1999, the Record (May 1999 Record, p. 1) reported the estimated payout for the 2000 election cycle to be \$98.7 million. In light of Governor Bush's announcement, that estimate has been revised to \$81.9 million.

While the shortfall in funds will still be significant, FEC staff now estimates that all certified funds will be paid by July 20, 2000. The initial payout, to occur on January 2, 2000, is estimated to be 39 cents on the dollar.

As with the previous estimates, these figures do not take into consideration reported fundraising proceeds or other indicators, which could result in a different estimate.

For previous articles about the shortfall, see the May 1999 Record, p. 1, and July 1998 Record, p. 1. ♦

Regulations

Final Rules Governing Contributions by LLCs Before Congress

On June 24, 1999, the FEC approved final rules and an explanation and justification governing contributions to federal campaigns by limited liability companies (LLCs). The final rules were published in the July 12, 1999 Federal Register and transmitted to Congress for a 30-day legislative review period on June 25, 1999. Unless Congress and the President disapprove the regulations, they will go into effect after the review period. The new regulations can be found at 11 CFR 110.1(g), and they supersede Advisory Opinions (AOs) 1998-15, 1998-11, 1997-17, 1997-4, 1996-13 and 1995-11.

The new rules follow to the Internal Revenue Service's "check the box" approach in classifying LLCs. IRS rules allow LLCs to decide whether to be treated as partnerships or corporations for federal tax purposes. If an LLC selects neither option, and is not traded publicly, it is automatically treated as a partnership. All publicly-traded LLCs are treated as corporations.

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Public Funding

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McCain Eligible for Matching Funds

On July 1, 1999, John McCain became eligible for public matching funds for his primary election race for the Republican nomination for President. Already, Democrat Bill Bradley and Republicans Gary L. Bauer and Dan Quayle have been certified as being eligible for matching funds.

To establish eligibility, a candidate must raise \$100,000 by collecting \$5,000 in matchable contributions in at least 20 different states. Only contributions received from individuals, and only up to \$250 of a contributor's total, are matchable by the federal government.

Eligible candidates must agree to limit their spending, use funds for campaign-related expenses only, keep financial records and submit their records to an FEC audit.

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Once declared eligible, candidates can submit additional contributions for matching funds on the first business day of every month. The U.S. Treasury will begin paying out the FEC-certified amounts in January 2000. Currently, the maximum amount a 2000 Presidential primary candidate can receive in matching funds is calculated at \$16.75 million.

Matching fund submissions are available at the FEC's Web site — <http://www.fec.gov>—as downloadable FTP files. Go to "Financial Information About Candidates, Parties and PACs" and follow the links. Instructions are on the Web site.

Copies of submissions are also available from the FEC's Public Records Office. Call 800/424-9530 or 202/694-1120. ♦

Preliminary Spending Limits for 2000 Presidential Election

The FEC has released preliminary spending limits for publicly funded Presidential candidates running in the 2000 election. These limits are not final. Nevertheless, campaigns in their formative stages may wish to use the figures to help them plan for the future.

- Primary election candidates may spend up to \$39.67 million, \$6.61 million of which may only be used for fundraising expenses;
- General election candidates may each spend up to \$66.12 million on their campaigns; and
- The two major parties, the Democratic and Republican national committees, may each spend \$13.25 million in coordinated expenditures in behalf of their nominees. See story about convention funding for the two major parties on p. 3.

Presidential campaigns that decline federal funding are not subject to these limits and may spend unlimited amounts of money

on their campaigns. Note, however, that these campaigns must adhere to federal contribution limits.

In addition to the limits described above, campaign spending for Presidential primary elections is restricted by state-by-state limits. These state limits are calculated by adding a cost-of-living adjustment to either the state's voting age population multiplied by 16 cents or to the base limit of \$200,000, whichever is greater. These state limit estimates, which range from a low of \$661,200 in small-population states like New Hampshire to a high of \$12.57 million in California, are available at the FEC's Web site—<http://www.fec.gov>. Copies are also available from the FEC's Public Records Office at 800/424-9530 or 202/694-1120.

Under the public funding program, eligible Presidential primary candidates receive dollar-for-dollar federal funds for matchable contributions; only contributions from individuals, and only up to \$250 of a contributor's total, are matchable.

Additionally, each major party nominee in 2000 may accept a federal grant equal to the general election spending limit. A nominee accepting the grant will not be able to use private contributions to conduct campaign activity.

The spending limits for nominees do not apply to certain legal and accounting costs, for which candidates may spend an unlimited amount. (Nominees may solicit private contributions to a special fund set up to cover these expenses.)

The overall spending limits for the primary and general elections were established in 1974, and are increased each election cycle by a cost-of-living adjustment. Since the cost-of-living adjustment and voting age populations of each state fluctuate, the actual 2000 spending limits will not be available until early next year. Watch for an announcement in the Record and at <http://www.fec.gov>. ♦

Convention Funding for Major Parties Certified at \$13.22 Million

On June 29, the Commission approved convention public funding for the Democratic and Republican parties after both met the requirements set out at 26 U.S.C. §9008(g) and 11 CFR 9008.3(a)(3) and (4).

The 2000 Democratic National Convention Committee and the Committee on Arrangements for the 2000 Republican National Convention are each certified to receive \$13.22 million, with an adjusting amount, based on the 1999 consumer price index, to be certified in 2000. The Democrats will hold their convention in Los Angeles, and the Republicans will hold theirs in Philadelphia.

Federal election law permits eligible national parties to receive public funds to pay the official costs of their Presidential nominating conventions. Committees accepting public funding must agree to certain conditions, including abiding by spending limits, filing periodic disclosure reports and undergoing a detailed FEC audit.

The public funding program, which also includes funding for the Presidential primary and general elections, is financed by the Presidential Election Campaign Fund Act. The money in this fund comes from taxpayers who designate \$3, on their federal income tax returns, for the fund. ♦

Regulations

(continued from page 1)

The FEC has decided to adopt this approach with its rules. An LLC will be treated as a partnership under the Federal Election Campaign Act (the Act) unless it opts to be treated as a corporation for tax purposes.¹ LLCs that choose corporate tax treatment and those that are publicly traded will be treated as corporations under the Act. The Commission views the approach

taken in these rules as a narrow exception to its general practice of relying on state law to determine corporate status of any given entity.

Background

LLCs—creations of state law that have characteristics of both partnerships and corporations—are not addressed in the Act or previous Commission regulations. In a series of advisory opinions, however, the Commission viewed LLCs as distinct entities, different from corporations or partnerships. The agency determined that LLCs qualify as “any other organization or group of persons” under 2 U.S.C. 431(11) and, therefore, were allowed to contribute up to \$1,000 to a candidate, per election, and \$20,000 to a national party committee and \$5,000 to any other political committee per year. See 2 U.S.C. 441a(a). The new rules reject this view.

For a summary of the Notice of Proposed Rulemaking (NPRM), see the January 1999 Record, p. 11. For the full text of the NPRM, see the December 18, 1998, Federal Register (63 FR 70065).

Additions to Regulations

The new rules, which move the Commission from a state-by-state approach of regulating LLC contributions to a nationwide approach, are summarized below.

- Section 110.1(g)(1) defines an LLC as a business entity recognized as an LLC under the laws of the state in which it was established.
- Section 110.1(g)(2) states that a contribution from an LLC that either chooses to be treated as a

partnership under IRS rules, or makes no choice at all, is considered a partnership contribution.

- Section 110.1(g)(3) states that an LLC that chooses to be treated as a corporation under IRS rules, or that has shares that are traded publicly, is considered a corporation (and is therefore barred from making contributions or expenditures in connection with federal elections).
- Section 110.1(g)(4) states that a contribution by a single-member LLC that does not elect corporate tax treatment will be attributed only to that member.
- Section 110.1(g)(5) requires an LLC, when making a contribution, to tell the recipient committee how the contribution should be attributed among LLC members and to affirm that the LLC is eligible to make the contribution.

Subchapter S Corporations

The original NPRM sought comments as to whether Subchapter S corporations should be allowed to make contributions in federal elections. Because these corporations are considered corporations under all states' laws, this final rule does not address Subchapter S corporations. They will, therefore, continue to be barred from making contributions in federal elections.

More Information

The full text of the final rules appears in the Federal Register (64 FR 37397). This document is available from the FEC's Public Disclosure Office and through the FEC Faxline. Dial 202/501-3413 and request document 236. ♦

¹ Contributions by a partnership are subject to the limits contained in 2 U.S.C. §441a(a). In addition, partnership contributions are attributed proportionately against each contributing partner's limit for the same candidate and election. 11 CFR 110.1

Advisory Opinions

AO 1999-12 Preemption of Pennsylvania Disclosure Requirements

The Federal Election Campaign Act (the Act) preempts the application of Pennsylvania's charitable-purposes disclosure law to Campaign for Working Families (CWF) with respect to solicitations for contributions to its federal account, provided CWF is raising funds for its federal account only.

CWF is a multicandidate political committee with both a federal and a nonfederal account. It does not specifically solicit contributions to the nonfederal account, but states in solicitations that it deposits funds that would be impermissible in federal elections into that account.

Pennsylvania's Department of State is attempting to get CWF to register with it under the Solicitation of Funds for Charitable Purposes Act. This state law requires charitable organizations, professional fundraisers and professional solicitors that solicit in Pennsylvania to complete extensive registration and disclosure requirements. The term charitable organization is defined broadly to include, among other things, organizations whose objective is social welfare or advocacy. Pennsylvania maintains that, because CWF's solicitations have a "social welfare or advocacy objective," the disclosure requirements apply to those CWF solicitations that do not name a specific candidate.

The Act governs CWF's solicitations because CWF is a registered political committee and because it solicits contributions to be used for the purpose of influencing federal elections. Consequently, CWF must comply with the Act's mandates, such as regular disclosure of contri-

butions and expenditures and the use of disclaimers on contribution solicitations. The Act also states that its provisions and rules preempt state laws with respect to federal elections. 2 U.S.C. §453. Regulations at 11 CFR 108.7 make clear that federal law supersedes state law with respect to committee registration and reporting.

Based on this statutory framework and numerous advisory opinions, the Commission concludes that the Act preempts application of the Pennsylvania registration, reporting and disclaimer provisions to the federal account and to those solicitations that seek contributions to the federal account only. See AO 1986-27. The Act would not, however, preempt application of the Pennsylvania law to the nonfederal account or to the materials mentioned in the advisory opinion request, which solicit funds for both the federal and nonfederal accounts. Specifically, the Act would not preempt the following provisions of Pennsylvania's disclosure law:

- Disclaimer requirements on CWF solicitations sent to state residents soliciting donations to the nonfederal account;
- Registration and reporting requirements applicable to CWF's nonfederal account, including those that might apply to professional fundraising counsels or professional solicitors raising funds for the nonfederal account; or
- Requirements that financial statements filed by the CWF nonfederal account include any amounts spent by the federal account for the nonfederal portion of shared federal/nonfederal fundraising expenses.

Date Issued: June 25, 1999;
Length: 9 pages. ♦

AO 1999-13 Use of Corporate Aircraft

The National Republican Congressional Committee (NRCC) may compensate corporations for aircraft used by a candidate's campaign at the first class rate when the candidate's destination is served by regularly scheduled commercial air service whether or not the airport is located within the city limits of the candidate's destination. The airport must, however, be designated in published sources as serving the destination city.

Commission regulations permit a candidate, in connection with a federal election, to use an airplane owned or leased by a corporation or labor organization that is not licensed to offer commercial service. The user must pay the corporation or labor organization in advance, using the following guidelines:

- When traveling to a city with regularly scheduled commercial airline service, the advance payment must equal the first class air fare rate.
- When traveling to a city with no regularly scheduled commercial airline service, the advance payment must equal the usual charter rate. 11 CFR 114.9(e)(1).

It is reasonable to use published sources, such as the Federal Aviation Administration's directory of public use airports and the charter industry's standard reference for airports, in determining whether a particular city is served by regularly scheduled commercial service.

The NRCC described several locations where this analysis is relevant, including Cincinnati, Ohio; Hartford, Connecticut; New Orleans, Louisiana, and Chicago, Illinois. All qualify as cities with regularly scheduled commercial service, even though each city has more than one airport that serves the city and not all of those airports are within the city limits.

The Commission notes that the NRCC's advance payments to corporations or unions for candidates' use of their aircraft would constitute in-kind contributions from the NRCC to the various campaigns.

Date Issued: June 25, 1999;
Length: 4 pages. ♦

Advisory Opinion Requests

Advisory opinion requests are available for review and comment in the Public Records Office.

AOR 1999-18

Calculation of allocation ratio by local party committee (San Diego County Republican Central Committee, June 22, 1999; 2 pages)

AOR 1999-19

Contributions from a living trust (Andrea Ellis, June 23, 1999; 1 page)

AOR 1999-20

SSF name change and solicitation of employee life insurance agents (EQUIPAC, June 25, 1999; 4 pages) ♦

Back Issues of the Record Available on the Internet

This issue of the *Record* and all other issues of the *Record* starting with January 1996 are available through the Internet as PDF files. Visit the FEC's World Wide Web site at <http://www.fec.gov> and click on "What's New" for this issue. Click "Help for Candidates, Parties and PACs" to see back issues. Future *Record* issues will be posted on the web as well. You will need Adobe® Acrobat® Reader software to view the publication. The FEC's web site has a link that will take you to Adobe's web site, where you can download the latest version of the software for free.

Electronic Filing

FECFile Classes Set for August

In an effort to ease the transition from paper to electronic filing, the FEC's Electronic Filing Office is offering classes in electronic filing with FECFile 3, the Commission's free electronic filing software. The classes will cover FECFile basics, data entry requirements for all types of transactions and procedures for reviewing and filing reports.

The first class will be held on August 17 from 9 a.m. to noon at the FEC's offices at 999 E St., NW, in Washington, DC. The class will be repeated on August 24 and 31 at the same time and location. To register, call 202/694-1321 or 800/424-9530. Space is limited, so please register as soon as possible. ♦

Election Administration

New Members Named to Advisory Panel

Four new members have joined the Office of Election Administration's 1999 Advisory Panel.

J. Kenneth Blackwell, Ohio Secretary of State; Gilberto B. Hoyos, Elections Director for Pinal County, AZ; Gary McIntosh, Director of Elections for Washington; and Lance D. Ward, Secretary of the Oklahoma State Election Board were appointed to the panel by the Commission in June. In addition, Mexico's Fernando Franco returned to the panel to serve with Canada's Jean-Pierre Kingsley as associate members.

The Advisory Panel is comprised of twenty state and local election officials from around the country and two associate members from

Canada and Mexico, whose counsel helps ensure that the research and informational needs of all election officials are best served. These latest appointments maintain the advisory panel's geographic representation and balance according to jurisdictional size, partisanship and state/local representation.

The four new panel members replaced John Y. Brown of Kentucky, Brenda Caldwell of Maine, Lonna Hooks of New Jersey and Ralph Munro of Washington.

The Commission also renewed the Advisory Panel's charter for an additional two years through July 15, 2001. Under the renewed charter, the Commission officially changed the panel's name from the Clearinghouse Advisory Panel to the Election Administration Advisory Panel. ♦

Impact of National Voter Registration Act in 1997-98

On June 18, the FEC approved a report to Congress documenting the impact of the National Voter Registration Act (NVRA) during 1997 and 1998, and reiterating three recommendations to improve the administration of elections. *The Impact of The National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 1997-1998* covers the NVRA's third and fourth years in effect.

Based on surveys from 43 states and the District of Columbia, the report found that between 1994 and 1998 active voter registration in states covered by the NVRA rose by 3.72 percent, (nearly 7.1 million people). The report also found that in 1998, 70.15 percent of the voting age population (nearly 141 million people) was registered to vote. Despite this figure—the highest since Congressional elections in 1970—the number of people who

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Election Administration

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actually voted in 1998 declined by more than 2.38 percent over the same period of time.

Among the highlights in the report for 1997-98:

- About 35.4 million registration applications were processed nationwide, and nearly half, or 17.6 million, of those registrants represented new registrations to that particular locality.
- The registration duplication rate was 6.46 percent.
- Just over 9 million names were deleted from registration rolls under the new list verification procedures in the NVRA, and 14.6 million registrants were declared inactive and will be removed from registration lists after 2000 if they fail to vote in that year's elections or do not contact their local registrar to change their status.
- Mail-in voter registration caused relatively few problems and accounted for nearly 25 percent of all voter registration applications.
- Motor vehicle agencies produced the highest volume of registration applications—42.9 percent of total voter registration applications—among the various agencies mandated by the NVRA to offer this service. Following behind motor vehicle offices in registration applications were public assistance agencies (4.37 percent), state designated agencies (3.09 percent), disability services agencies (.7 percent) and armed services recruitment offices (.06 percent).

The report offers recommendations in three broad categories. Among them, the report:

- Urges states to request only partial social security numbers from registration applicants and current voters;

- Urges states to employ technology that computerizes all voter registration offices and links them throughout the respective states; and
- Urges the U.S. Postal Service to create a new class of mail with a reduced postage rate for "official election material" required for the NVRA and to provide free space in postal lobbies for state and local voter registration materials.

The report is available from the FEC's Office of Election Administration by calling 800/424-9530. ♦

Compliance

MUR 4879 Corporate Contributions in the Names of Others Net \$200,000 Civil Penalty

Beaulieu of America, Inc., has paid a \$200,000 civil penalty for using corporate funds to reimburse employees and their spouses for contributions they made to Alexander for President (the Committee), Lamar Alexander's 1996 campaign committee. The civil penalty is one of the largest civil penalties paid by a respondent.

Beaulieu CEO Carl M. Bouckaert served as a national co-chair of the Committee, and was a co-chair of a March 1995 fundraiser held in Dalton, Georgia, where the corporation is based. At the request of corporate officers, 36 persons, consisting of Beaulieu employees and their spouses, made \$36,000 in contributions to the Committee by purchasing tickets to the fundraiser. All but two contributors were later reimbursed with corporate funds by Beaulieu executives, who disguised the money as bonuses or expense reimbursements. The two contributors who did not receive a corporate reimbursement were reimbursed with personal funds of two of the company's executives.

It is unlawful for a corporation to make contributions or expenditures in connection with any federal election. 2 U.S.C. § 441b(a). It is also unlawful for any person to make a contribution in the name of another or to knowingly permit his or her name to be used to effect such a contribution. 2 U.S.C. § 441f. Beaulieu, which accepted the responsibility for the actions of its managers, knowingly and willfully violated both of these provisions in the Federal Election Campaign Act.

This matter was referred to the FEC by the Department of Justice. Prior to finding probable cause that violations had occurred, the FEC entered into a conciliation agreement with Beaulieu. ♦

MURS 4797/4798 Prohibited Transfers from Unregistered Party Organization to Party Committees, Failure to Allocate

Violations of the Federal Election Campaign Act (the Act) occurred when an unregistered party organization transferred prohibited funds to two registered party committees just prior to election day, November 3, 1996. Additional violations included failure to allocate and failure to accurately report transfers.

Interparty Transfers

Just prior to the 1996 elections, the Randolph County Republican Executive Committee (Randolph Committee), an unregistered party organization in North Carolina, transferred \$32,425 to the Sixth Congressional District (Sixth District Committee) and \$13,925 to the Buncombe County Republican Party (Buncombe Committee)—both registered federal political

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Outreach

FEC Conducts Monthly Roundtable Sessions

The FEC is conducting monthly roundtable sessions for the regulated community at its offices in Washington. The roundtable sessions, limited to 12 participants per session, focus on a range of topics. See the table below for dates and topics.

Registration is \$25 and will be accepted on a first-come, first-served basis. Please call the FEC before registering or sending money to be sure that openings remain in the session of your choice. Prepayment is required. The registration form is available at the FEC's Web site—<http://www.fec.gov>—and from Faxline, the FEC's automated fax system (202/501-3413, request document 590). For more information, call 800/424-9530 or 202/694-1100.

Individuals who have signed up for a roundtable but who will be unable to attend are strongly encouraged to call the FEC and cancel their registration so that the next person on the waiting list may attend in their place. ♦

Federal Register

Federal Register notices are available from the FEC's Public Records Office.

Notice 1999-10

Treatment of Limited Liability Companies Under the Federal Election Campaign Act; Final Rules and Transmittal of Regulations to Congress (64 FR 37397, July 12, 1999)

Notice 1999-11

Candidate Debates; Extension of Comment Period (64 FR 39095, July 21, 1999)

FEC Conference Schedule

The FEC is sponsoring a series of conferences on campaign finance. See below for details. To register for any conference, call Sylvester Management at 800/246-7277 or send an e-mail to tsylvester@worldnet.att.net. For program information, call the FEC's Information Division at 800/424-9530 or 202/694-1100. A regularly updated schedule for the conferences and a downloadable invitation/registration form appear at the FEC's Web site. Go to <http://www.fec.gov> and click on "Help for Candidates, Parties and PACs" for the latest information.

Regional Conference (includes candidate, corporate/labor and party workshops)

Date: September 27-29, 1999
Location: Chicago, IL (Fairmont Hotel)
Registration: \$265

Regional Conference (includes candidate, corporate/labor and party workshops)

Date: November 15-17, 1999
Location: San Francisco (Grand Hyatt)
Registration: To be determined

Candidate Conference

Date: February 2000
Location: Washington, DC
Registration: To be determined

Regional Conference (includes candidate, corporate/labor and party workshops)

Date: March 2000
Location: Miami, FL
Registration: To be determined

Corporate and Labor Conference

Date: May 2000
Location: Washington, DC
Registration: To be determined

Membership and Trade Association Conference

Date: June 2000
Location: Washington, DC
Registration: To be determined

Roundtable Schedule

Date	Subject	Intended Audience
August 4 9:30 -11 a.m.	Corporate Mergers and Spin-Offs — Effect on the SSF (Code #899)	<ul style="list-style-type: none"> • Corporate PAC Staff • Lawyers, Accountants and Consultants to Corporate PACs
September 1 9:30 -11 a.m.	Fundraising Through Payroll Deductions (Code #999)	<ul style="list-style-type: none"> • Corporate PAC Staff • Lawyers, Accountants and Consultants to Corporate PACs



Compliance

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committees in North Carolina. The Randolph Committee made the transfers so that the other two committees could purchase public communications. Although most of the communications appeared to be designed to support local candidates, one Buncombe County mailing had a federal component. The Randolph Committee asked the Sixth District Committee and Buncombe Committee to pay for the mailings because it wanted to avoid questions that would be raised by being identified as the sponsor of the communications.

The Act requires a state or local party organization that finances activity in connection with both federal and nonfederal elections to either establish a separate federal account (from which all disbursements in connection with federal elections are made) or establish one political committee that receives only contributions that are permissible under the Act, regardless of whether the funds are used in connection with federal or nonfederal elections. 11 C.F.R. §102.5(a)(1). Federal committees and federal accounts may not accept any funds that exceed the federal contribution limits. 11 CFR 102.5(a). In this case, the Sixth District Committee maintained only one account—a federal account—and, at the time of the transfers at issue in 1996, the Buncombe Committee also only maintained a federal account.

The Act also states that an organization that does not qualify as a federal political committee, but wants to influence federal elections, must either establish a federal account that receives only funds subject to the limitations of the Act or be able to demonstrate through a reasonable accounting method that it has sufficient funds permissible under federal law to cover the amount of the federal disbursement

at the time the contribution is made. 11 C.F.R. §102.5(b)(1). In this case, the Randolph Committee had done neither. Moreover, the Randolph Committee did accept donations that, while being legal under North Carolina law, exceeded the limits of the Act.

The Randolph Committee violated 2 U.S.C. § 441a and 11 C.F.R. §102.5(a) by transferring impermissible funds to the federal accounts of the Sixth District Committee and the Buncombe Committee. Those two political committees, in turn, violated 2 U.S.C. § 441a(f) and 11 C.F.R. §102.5(a) by accepting impermissible funds into their federal accounts from an unregistered committee.

Allocation & Misreporting

Party committees that maintain separate federal and nonfederal accounts are required to allocate their disbursements between the two accounts. 11 CFR 106.5(a). The Buncombe Committee maintained both federal and nonfederal accounts from July of 1997 through January of 1998. However, the Buncombe Committee did not allocate any of the disbursements made during the period during which it maintained the two accounts.

The Buncombe Committee also misreported the dates and amounts of transfers in violation of 2 U.S.C. § 434(b).

The Commission entered into conciliation agreements with the three committees prior to a finding of probable cause to believe that they had violated the Act and Commission regulations. Each committee agreed to pay a \$6,000 civil penalty. ♦

800 Line

Testing the Waters

Before deciding to campaign for federal office, an individual may “test the waters,” or explore the feasibility of becoming a candidate. Testing-the-waters activity does not trigger candidate registration even if the individual raises or spends more than \$5,000 (the dollar threshold that would normally trigger registration and reporting). Nevertheless, funds raised to test the waters are subject to the Act’s limitations and prohibitions.

Once an individual begins to campaign or decides to become a candidate, funds that were raised or spent to test the waters apply to the \$5,000 threshold for qualifying as a candidate. Once that threshold is exceeded, the individual must register with the FEC (candidates for the House of Representatives) or the Secretary of the Senate (candidates for the Senate), and begin to file reports.

Testing the Waters vs. Campaigning

Testing the Waters. Examples of testing-the-waters activities include polling, travel and telephone calls to determine whether the individual should become a candidate. 11 CFR 100.7(b)(1) and 100.8(b)(1).

Campaigning. Examples of campaigning include situations where individuals:

- Make or authorize statements that refer to themselves as candidates (“Smith in 2000” or “Smith for Senate”);
- Use general public political advertising to publicize their intention to campaign;
- Raise more money than what is reasonably needed to test the waters or amass funds (seed money) to be used after candidacy is established;

- Conduct activities over a protracted period of time or shortly before the election; or
- Take action to qualify for the ballot. 11 CFR 100.7(b)(1) and 100.8(b)(1).

Contribution Limits and Prohibitions

Limits. Contribution limits apply to all the support given to an individual who is testing the waters. The limits apply, for example, to:

- Gifts of money, goods and services;
- Loans (except bank loans);
- Certain staff advances until repaid;
- Endorsements and guarantees of bank loans; and
- Funds given or personally loaned to the individual to pay for his or her living expenses during the testing-the-waters period. 11 CFR 100.7(a)(1).

Prohibitions. An individual who is testing the waters may not accept money from:

- Labor organizations (although funds from a labor separate segregated fund—also called a PAC—are permissible);
- Corporations, including nonprofit corporations (although funds from a corporate separate segregated fund—also called a PAC—are permissible);
- Foreign nationals; or
- Federal government contractors.

Recordkeeping and Accounting

Recordkeeping. An individual who tests the waters must keep financial records of the name of contributors, the date of receipt and amount of contributions, and all expenditures made. If he or she later becomes a candidate, the money raised and spent to test the waters must be reported by the campaign as contributions and expenditures. 11 CFR 101.3.

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California Special General Election Reporting

Committees¹ involved in the September 21 special general election and/or the November 16 special runoff election to fill the 42nd Congressional District seat that was held by the late Congressman George E. Brown, Jr. must follow the reporting schedules below. Note that 48-hour notices are required of authorized committees that receive contributions (including loans) of \$1,000 or more between September 2 and September 18 in the special general election and between October 28 and November 13 in the special runoff election (if the runoff is required).

For Committees Involved Only in Special General When No Runoff is Held:

	Close of Books	Certified/ Registered Mail Date	Filing Date
Pre-General	September 1	September 7	September 9
Post-General	October 11	October 21	October 21

For Committees Involved in Special General And Special Runoff:

	Close of Books	Certified/ Registered Mail Date	Filing Date
Pre-General	September 1	September 7	September 9
Pre-Runoff	October 27	November 1	November 4
Post Runoff	December 6	December 16	December 16

For Committees Involved Only in Special General When Both Special General And Runoff Elections Are Held:

	Close of Books	Certified/ Registered Mail Date	Filing Date
Pre-General	September 1	September 7	September 9
Mid-Year	December 31	January 31	January 31

For Committees Involved Only in the Special Runoff:

	Close of Books	Certified/ Registered Mail Date	Filing Date
Pre-Runoff	October 27	November 1	November 4
Post-Runoff	December 6	December 16	December 16

¹These committees include authorized committees of candidates running in the election and other political committees that support these candidates and do not file monthly.

800 Line

(continued from page 9)

Separate Bank Account. Although this is not a requirement, an individual who tests the waters may want to consider segregating testing-the-waters funds from personal funds by setting up a separate bank account for the deposit of receipts and the payment of expenses. If the individual later becomes a candidate, a campaign account must be established to keep campaign funds separate from anyone's personal funds. 11 CFR 102.10, 102.15, 103.2 and 103.3(a).

Organizing a Testing-the-Waters Committee

An individual may organize an "exploratory committee" or "testing-the-waters committee" for exploring the feasibility of becoming a candidate. Such a committee is not considered a political committee and does not have to register or file reports as long as its activities are limited to testing the waters and it does not engage in campaigning. The name of the committee, and statements by committee staff, must not refer to the individual as a candidate. For example, an exploratory committee could not be called "Sam Jones for the House," which would indicate that Jones had already decided to run for federal office. Instead, the committee could be called "Sam Jones Congressional Exploratory Committee."

If the potential candidate decides to run for federal office and becomes a candidate under the Act, then he or she may designate the exploratory committee as the principal campaign committee.

Becoming a Candidate

Once an individual decides to become a candidate for federal office, the funds raised during the testing-the-waters phase automatically become contributions, and the funds spent, including polling costs, become expenditures. These

contributions and expenditures count toward the threshold that triggers candidate status. Once the contributions or expenditures exceed \$5,000, the individual becomes a candidate and must register under the Act. The money raised and spent for testing the waters must be disclosed on the first report that the principal campaign committee files.

If an individual decides not to run for federal office, there is no obligation to report these finances, and the donations made to the testing-the-waters committee will not count as contributions. ♦

Information

Guidelines Modified for Presidential, Vice Presidential Candidates Filing Personal Disclosure Statements

On July 2, the Commission approved several modifications to Directive 21, which outlines procedures that implement the FEC's duties and responsibilities under the Ethics in Government Act with respect to candidates for federal office.

The FEC's general responsibility under the Ethics Act is to receive filings from Presidential and Vice Presidential candidates (incumbent President, Vice President and Members of Congress excluded) and forward copies of their filings to the Office of Government Ethics.

Directive 21, among other things, requires the FEC to notify Presidential and Vice Presidential candidates of their obligation to file personal financial disclosure forms and to follow up those notifications with additional requests if the candidates do not comply or do not accurately fill out the forms.

The changes came after a review of Directive 21 in light of some 1996 Presidential and Vice Presidential candidates who failed to file personal financial disclosure forms or filed incomplete forms. The changes, recommended in conjunction with the Office of Government Ethics, are intended to promote higher compliance with the filing requirements.

- The initial notification letter informing candidates of their personal financial disclosure filing obligation currently advises them to file the form—SF 278—within 30 days of becoming a candidate as defined by the Federal Election Campaign Act (Act). This letter has been revised to include the definition of candidate found at 2 U.S.C. §431(2).¹
- A follow-up letter to candidates who fail to file the SF 278 or file an incomplete form has been revised to state that candidates who fail to file within 30 days may request that the \$200 filing fee be waived. The revised letter also now warns late filers that they may be referred to the Department of Justice for civil action.
- The FEC also will now provide additional information to the Office of Government Ethics regarding the type of delinquent report (i.e., initial or subsequent annual).
- The Data Systems Development Division will send the General Counsel's Office a list of all candidates on a weekly basis and will continue to send the list to the Public Records Office on a weekly (election year) or monthly (nonelection year) basis.

¹ The Act defines a candidate as an individual who has received contributions or made expenditures aggregating in excess of \$5,000, or who has given consent to another to receive contributions and make expenditures on his or her behalf and the financial activity has exceeded \$5,000.

So far in the 2000 Presidential election cycle, only one of the 20 Presidential candidates notified of the filing requirement has failed to file the personal financial statement. Nevertheless, since more than 100 Presidential candidates have filed a Statement of Candidacy and/or a Statement of Organization, the agency anticipates it might be required to send notification letters to additional candidates during 1999 and 2000. ♦

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Electronic Filing Survey

REMINDER! If you have not done so already, please fill out and return the FEC Electronic Filing survey. This will help us improve the services we provide to the filing community. If you have misplaced the survey or did not receive it, download it from the FEC web site electronic filing page, <http://www.fec.gov/elecfil/New/electron.htm> (or follow the links to "Electronic Filing at the FEC" on www.fec.gov) and click on "SURVEY." If you do not have access to the web site, call 202/694-1321 or 800/424-9530 and press 1.

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