



THE FEDERAL ELECTION COMMISSION

RECORD

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REPORTS

NONELECTION YEAR REPORTING SCHEDULE

During 1981, a nonelection year, political committees are generally required to report on a monthly, quarterly or semiannual schedule, depending on the type of political committee. The following paragraphs explain the reporting schedule for the various categories of filers.

1. 1980 Quarterly Filers

Committees that filed on a quarterly basis during 1980 are required to file two semiannual reports during 1981. The first report, covering January 1 through June 30, 1981, must be filed by July 31, 1981. The second report, covering July 1 through December 31, 1981, must be filed by January 31, 1982. 11 CFR 104.5(a)(2)(i).

2. 1980 Authorized Presidential Monthly Filers

Authorized Presidential committees that reported on a monthly basis during 1980 (i.e., committees which had received or spent in excess of \$100,000) may opt to either:

- continue filing monthly reports, filed by the 20th of each month and covering all reportable financial activity of the preceding month (e.g., the February report would cover activity from January 1 through January 31, 1981); or
- change to a quarterly reporting schedule. (The FEC's Reports Analysis Division requests that committees that change from a monthly to a quarterly reporting schedule notify the Commission of their intention in writing.) Quarterly reports must be filed by April 15, July 15 and October 15, 1981; the fourth quarter (year-end report) must be filed by January 31, 1982. 11 CFR 104.5(b)(2). The quarterly report covers all reportable financial activity for the preceding quarter.

3. 1980 Unauthorized Committee Monthly Filers

All other political committees (i.e., committees not authorized by candidates) that filed on a monthly basis during 1980 may opt to either:

- continue filing monthly reports (see above); or
- change to a semiannual reporting schedule (see above).

Note: Monthly filers that decide to file semiannual reports during 1981 must notify the Commission of their intention by a letter submitted with their 1980 year-end report (or the next report due at the time they decide to change filing frequency). A committee may not change its filing frequency more than once during 1981. 11 CFR 104.5(c).

4. 1980 Semiannual Filers

Committees that filed semiannual reports during 1980 (i.e., committees authorized by candidates seeking election in a year other than 1980 or inactive committees with outstanding campaign debts) must continue to report semiannually (see above).

5. 1981 Special Election Filers

Authorized committees of candidates running in special elections in 1981 must file pre-primary and pre-general election reports, a post-general election report and quarterly reports. All other political committees which support candidates in 1981 special elections (and which do not report on a monthly basis) must also file pre- and post-election reports in addition to their semiannual reports. The Office of Public Communications will notify authorized committees of their reporting requirements. Other committees should contact the Office for more information (see below).

Forms and additional information will be sent to all registered committees. Questions and requests for forms should be addressed to the Office of Public Communications, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463; or call 202/523-4068 or toll free 800/424-9530.

OPINIONS

ADVISORY OPINION REQUESTS

Advisory Opinion Requests (AOR's) pose questions on the application of the Act or Commission Regulations to specific factual situations described in the AOR. The following chart lists recent AOR's with a brief description of the subject matter, the date the requests were made public and the number of pages of each request. The full text of each AOR is available to the public in the Commission's Office of Public Records.

AOR	Subject	Date Made Public	No. of Pages
1980-139	Cooperative's solicitation of stockholders, executive and administrative personnel through magazine distributed to wider audience.	11/21/80	5
1980-140	Senator's income for periodic radio commentary treated as honorarium.	12/8/80	4
1980-141	Joint fundraising by trade association PAC and PACs of state and local affiliates.	12/17/80	3
1980-142	Multifunction fundraising (dues and contributions) by trade association PAC and PACs of its state and local affiliates.	12/17/80	4
1980-143	Debts of candidate's 1978 campaign committee assumed by his 1980 campaign.	12/18/80	2

ADVISORY OPINIONS: SUMMARIES

An Advisory Opinion (AO) issued by the Commission provides guidance with regard to the specific situation described in the AOR. Any qualified person who has requested an AO and acts in accordance with the opinion will not be subject to any sanctions under the Act. Other persons may rely on the opinion if they are involved in a specific activity which is indistinguishable in all material aspects from the activity discussed in the AO. Those seeking guidance for their own activity, however, should consult the full text of an AO and not rely only on the summary given here.

AO 1980-116: Independent Political Committee Aided by Paid Presidential Campaign Worker

If a person who is paid to make speeches on behalf of a Presidential committee assists Americans for a Responsible Presidency (ARP), an independent political committee, ARP may not make independent expenditures either for the Presidential candidate or against his opponents, regardless of whether:

1. ARP reimburses the campaign worker for making the speeches;
2. The campaign worker has any express or implied authority to make or direct expenditures by the Presidential candidate's authorized committees; or
3. The campaign worker has consulted with the Presidential candidate on campaign strategy.

ARP is precluded from making the independent expenditures because Commission Regulations presume an expenditure is not "independent" if it has been made by or through any "... person who is, or has been receiving ... compensation or reimbursement from the candidate." 11 CFR 109.1(a) and 109.1(b)(4)(i). (Date issued: November 14, 1980; Length: 4 pages)

AO 1980-118: Solicitation of Stockholders Who Granted Limited, Irrevocable Proxies

The Exchange Community Action II Political Action Committee, the separate segregated fund of the Exchange International Corporation (EIC), may solicit without limit EIC stockholders even though they have granted certain irrevocable, limited proxies to another individual.

Commission Regulations define as a solicitable stockholder "... a person who has a vested beneficial interest in stock, has the power to direct how that stock shall be voted, if it is voting stock; and has the right to receive dividends." (emphasis added) 11 CFR 114.1(h). Assuming the EIC stockholders meet the other requirements of 11 CFR

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114.1(h), they are solicitable stockholders because they have retained their right to vote on all but two stockholder matters. The two matters specifically delegated to the proxy holder for a four-year period are: the right to vote on procedural matters submitted for a stockholder vote at annual stockholder meetings and the right to vote for the election or removal of members of EIC's Board of Directors. Commissioners Thomas E. Harris and Robert O. Tiernan filed a dissenting opinion. (Date Issued: December 4, 1980; Length: 5 pages, including dissenting opinion)

AO 1980-120: Convention Expenses Defrayed by Host Committee with Funds Transferred from General to Separate Account

The Republican National Convention, Inc. (the Host Committee) may pay certain convention expenses of the Republican National Committee with funds it transfers from its general account to a separate account that it maintains specifically to defray convention expenses. The Host Committee may transfer the funds because, when the funds were first received, they would have qualified for deposit in the separate account: i.e., they consisted solely of donations from local retailers that were made in amounts proportional to the commercial return the retailers had reasonably expected to derive from the convention. 11 CFR 9008.7(d)(3)(ii). (Date Issued: November 14, 1980; Length: 3 pages)

AO 1980-121: Qualifying as the National Committee of a Political Party

The Socialist National Committee (the Committee) qualifies as the national committee of the Socialist Party, U.S.A. (the Party) because documentation it submitted to the Commission indicates that it has engaged in sufficient activity on the national level to satisfy the requirements for "national committee" status. 2 U.S.C. §431(14). Specifically, documentation provided by the Committee indicates:

1. The Committee has established a national office to administer the affairs of the Party.
2. The Committee is the "governing body" of the Socialist Party (a "political party" under the Act by virtue of having nominated several Presidential candidates that have appeared on state ballots as the Party's candidates) (2 U.S.C. §431(16));
3. The Committee has state and local Party affiliates;
4. The Party conducts biennial national conventions to determine policy and a national platform, elect Party officers and nominate its Presidential candidate;
5. The Party maintains a speakers bureau, disseminates information to the public and maintains communication within the Party through its publications.

As the national committee of the Party, the Committee may:

1. Receive contributions of up to \$20,000 per year from individuals (2 U.S.C. §441a); and
2. Make limited coordinated (§441a(d)) party expendi-

tures on behalf of the Party's nominees for Federal office.

The Commission did not express an opinion, however, on the applicability of public funding provisions of the Act (i.e., primary election and convention funding) to possible activities by the Party and its potential Presidential candidates since the Committee did not present any specific transaction or activity related to these provisions of the Act. (Date Issued: December 4, 1980; Length: 3 pages)

AO 1980-123: Use of Excess Campaign Funds for Christmas Thank-You Notes

Selden for Senate (the Committee) may pay the costs of Christmas thank-you notes it sends to campaign staff. If the Committee does not file a termination report before sending the notes, costs associated with the mailing would be considered reportable expenditures. 2 U.S.C. §434(b); 11 CFR 104.3(b). If the Committee files a termination report before mailing the notes, costs of the mailing would constitute a use of excess campaign funds. The use, however, would not be considered a personal use, which is prohibited under the Act, because the mailing is sufficiently campaign-related, i.e., the direct consequence of ending a campaign. In the absence of any State law to the contrary, using funds for thank-you notes to staff would constitute the spending of excess funds for a "lawful purpose" under the Act.

The Commission expressed no opinion on the possible application of tax provisions, which are not within the Commission's jurisdiction. (Date Issued: November 21, 1980; Length: 2 pages)

AO 1980-125: Receipt, Use and Reportable Value of \$100-Contribution Made in Silver Dollars

The reportable value of 100 silver dollars received by the Cogswell for Senate Committee '80 (the Committee) depends on whether the Committee treats the coins as currency (i.e., as a \$100 cash contribution) or as a commodity to be liquidated or bartered (i.e., as an in-kind contribution). If the Committee treats the coins as currency, it must deposit them in its bank account and report them as a direct contribution of \$100.

Alternatively, if the Committee treats the coins as a commodity by negotiating a campaign worker's salary in silver coins, the value of the contribution is determined by the fair market value of the coins on the day the Committee received them. 11 CFR 104.13(b). (The fair market value is based on prices established for silver coins by the silver commodities market.) If, however, the fair market value of the coins is greater than \$1,000, the in-kind contribution is in excess of the contribution limits. 2 U.S.C. §441a(a)(11). If this occurs, the Committee must return that portion of the contribution that is in excess of the limits. (Date Issued: November 21, 1980; Length: 4 pages)

continued

AO 1980-127: Conversion of Federal Committee to Federal/Nonfederal Committees

The Democratic Party of South Carolina (the Party Committee), a registered political committee with a combined federal/nonfederal account, may establish a separate account for state and local elections while continuing to use the registered account exclusively for federal elections, provided:

1. The Party Committee properly allocates outstanding debts between the federal and nonfederal accounts and keeps sufficient documentation to support the reasonableness of that allocation (11 CFR 106.1); and
2. The Party Committee's federal account reports the change in accounts as an amendment to its Statement of Organization (Form 1) and discloses the allocation of debts on its next required report (Form 3X). The federal account may not terminate its reporting obligations until its portion of the total debt has been liquidated. 11 CFR 102.3 and 102.4.

The Commission did not approve any specific method for allocating outstanding debts. (Date Issued: December 4, 1980; Length: 3 pages)

AO 1980-129: Corporation Established Pursuant to the Alaska Native Claims Settlement Act

Although the Sealaska Corporation (Sealaska) is incorporated under Alaska law, it is considered a corporation organized by authority of a law of Congress and is therefore prohibited from making contributions or expenditures in connection with any election to any political office (local, state or federal). Sealaska qualifies as a corporation organized by authority of Congress because it is incorporated pursuant to the Alaska Native Claims Settlement Act (Claims Act), an act of Congress. More specifically, the Claims Act:

1. Provides for the establishment of corporations, such as Sealaska, and requires that their articles of incorporation be consistent with the Claims Act; and
2. Regulates Sealaska's bylaws, board of directors, issuance of stock, as well as the voting rights of its stockholders and its distribution of profits. (Date Issued: December 5, 1980; Length: 3 pages)

AO 1980-130: Nonfederal Committee's Loan Repayment to Federal Committee

The Garcia for Assembly Committee (the Garcia Committee), a nonfederal committee, may repay a \$5,000 loan obtained from the Fazio for Congress Campaign Committee (the Fazio Committee), a political committee registered under the Act. The Garcia Committee may make the repayment from an account that contains contributions from corporations and labor unions, as long as it:

1. Repays the loan (and interest, if any) from funds permissible under the Act;
2. Can demonstrate, through a reasonable accounting method, that sufficient funds to pay the loan have been received from permissible sources and such funds are present in the Committee's account; and
3. Keeps records of funds received and expended and,

upon request, makes such records available for FEC examination. 11 CFR 102.5(b)(1)(ii).

Because the loan repayment is not a contribution, it is not subject to the Act's contribution limits. Nor would interest charged on the loan be a contribution to the Fazio Committee, except to the extent that the interest exceeded the commercially reasonable rate prevailing when the loan was made. 11 CFR 100.7(a)(1)(i)(D). (Date Issued: December 4, 1980; Length: 3 pages)

AO 1980-131: Application of Contribution and Expenditure Limits to Committees Supporting New Party Candidate

Because neither the National Unity Campaign for John Anderson nor the National Unity Campaign 441a(d) Committee qualifies as the national committee of a political party, neither committee may:

1. Receive contributions of up to \$20,000 from individuals (2 U.S.C. §441a(a)(1)(B)); or
2. Make coordinated party expenditures on behalf of the Anderson campaign. §441a(d).

Neither committee qualifies as the national committee of a political party because, at this time, neither one has demonstrated that its activity on a national level is such that it may be regarded as a national committee under the Act. Neither one has: nominated candidates for other federal office; conducted voter registration and get-out-the-vote drives; provided speakers; organized volunteer workers; publicized issues of importance to the party and its adherents throughout the United States; or held a national convention.

Rather than functioning as national party committees, the Anderson committees have operated as single-candidate committees active exclusively on behalf of the Presidential campaign of John Anderson and his running mate Patrick Lucey. Moreover, the Anderson 441a(d) Committee does not qualify as the national committee of the National Unity Campaign because it is not responsible for the daily activity of the National Unity Campaign. Nor is it identified as a national committee in the bylaws of the National Unity Campaign.

Because neither committee qualified as the national committee of a political party, the Commission did not decide whether either one was a "political party" under the Act. (Date Issued: November 20, 1980; Length: 5 pages)

800 LINE

SOLICITATIONS BY TRADE ASSOCIATIONS

The Public Communications Office receives numerous inquiries from the public on its toll-free line: 800/424-9530. The following explanations are offered in response to questions that trade associations frequently ask about soliciting member corporations.

May a trade association or its separate segregated fund solicit contributions from the executive and administrative personnel and stockholders of a member corporation?

Yes, as long as the trade association obtains written approval from its member corporation before conducting any solicitation. 11 CFR 114.8(c)(1).

May the trade association solicit anyone else who works for the member corporation?

No. The trade association or its separate segregated fund must limit solicitations to the member corporation's stockholders, executive and administrative personnel and their families. Moreover, the corporation may decide to restrict solicitable personnel even more. For example, the corporation may limit the solicitation to its stockholders. 11 CFR 114.8(c) and (d)(5).

How long is the trade association's written approval valid?

The written approval is only good through the calendar year in which it is obtained. A separate approval must be obtained each year. The trade association must, however, maintain a copy of the approval for at least three years. 11 CFR 114.8(d)(2) and (4).

May a corporation approve a solicitation request from more than one trade association per year?

No. A corporation may not authorize a solicitation by more than one trade association (or its separate segregated fund) during any calendar year. Moreover, once a corporation has given written approval to one trade association, the corporation's personnel may not solicit contributions for any other trade association's separate segregated fund. 11 CFR 114.8(c)(2).

How often may a trade association solicit a member corporation?

Once it has obtained written approval from the corporation, a trade association or its separate segregated fund may solicit the corporation's executive and administrative personnel and stockholders any number of times during the year. However, the corporate member may decide to limit the number of solicitations made by the trade association. 11 CFR 114.8(e).

Does the trade association's solicitation of a member corporation's executive and administrative personnel and stockholders in any way restrict solicitations the corporation or its separate segregated fund makes to the same personnel?

No. 11 CFR 114.8(e)(2).

Does the Act or FEC Regulations place any restrictions on the type of solicitation system the trade association uses?

No. The trade association or its separate segregated fund may use any method it chooses to solicit voluntary contributions, as long as the member corporation does not collect the contributions through a payroll deduction or checkoff plan. 11 CFR 114.8(a)(3).

If a parent corporation is a member of a trade association, but its subsidiary is not, may the trade association solicit the subsidiary's stockholders and executive and administrative personnel?

No. In this case, the trade association may only solicit personnel of the parent corporation because the subsidiary is not a member. Conversely, if the subsidiary corporation were a member of the trade association and the parent organization were not, the trade association could only solicit personnel of the subsidiary corporation. 11 CFR 114.8(f).

THE LAW IN THE COURTS

NATIONAL CHAMBER ALLIANCE FOR POLITICS ET AL. v. FEC

On November 30, 1980, the Supreme Court denied a petition for a writ of certiorari filed by the National Chamber Litigation Center (a legal arm of the Chamber of Commerce of the U.S.) in the suit, *National Chamber Alliance for Politics et al. v. FEC* (Civil Action No. 78-1333). Plaintiffs were seeking review of a ruling of June 10, 1980, by the U.S. Court of Appeals for the District of Columbia Circuit, which held that plaintiffs' claims were not ripe for judicial review.

In the original suit filed on July 20, 1978, plaintiffs had challenged the constitutionality of the provisions of the Act governing corporate separate segregated funds and sought injunctive relief. Plaintiffs had argued that, by enumerating those whom the corporation or its separate segregated fund may solicit (i.e., stockholders, executive and administrative personnel and their families), section 441b of the Act:

1. Limits plaintiffs' right to communicate to a more broadly based audience for the purpose of "soliciting" their financial assistance;
2. Limits plaintiffs' ability to associate with those not enumerated in the Act as potential solicitees;
3. Violates the right of the potential solicitees (not enumerated in the Act) to associate with the plaintiffs; and
4. Discriminates against plaintiffs by permitting candidates and their committees to solicit funds from any separate segregated fund but denying this same right to corporations and their separate segregated funds.

The suit is summarized in detail in the February 1979 *FEC Record*.

continued

FEC v. AFL-CIO

On November 13, 1980, the U.S. Supreme Court denied the Commission's petition for a writ of certiorari in the suit, *Federal Election Commission v. American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)* (Civil Action No. 80-368). The Commission sought review of a judgment of the U.S. Court of Appeals for the District of Columbia Circuit, which had reversed an earlier decision by the U.S. District Court for the District of Columbia, imposing a \$10,000 civil penalty against the AFL-CIO.

In filing the suit against the AFL-CIO on December 16, 1977, the Commission had sought to enjoin the organization from transferring funds from its COPE Education Fund (which contained general treasury funds) to COPE-PCC, its separate segregated fund (which contained only voluntary political contributions from individuals). The Commission had argued that the transfers violated provisions of the Act prohibiting labor organizations from using their general treasury funds to make contributions or expenditures in connection with federal elections. Between 1970 and 1977, COPE-PCC had transferred funds to the COPE Education Fund several times because COPE-PCC's funds were idle between elections. On demand of COPE-PCC, the funds were subsequently transferred from the COPE Education Fund back to COPE-PCC for its use. The COPE-PCC transfers were designated as loans to the COPE Education Fund but were interest-free. Complete records were kept, and the transactions were reported to the Office of Federal Elections of the General Accounting Office (GAO) and later to the FEC.

In 1977, after the FEC had succeeded to the GAO's authority, it notified the AFL-CIO that Section 441b of the Act permits transfers of funds from COPE-PCC to the COPE Education Fund but not transfers from the COPE Education Fund back to COPE-PCC. In an FEC enforcement action brought against the AFL-CIO, the AFL-CIO attempted to negotiate with the FEC a transfer of \$321,000 from the Education Fund to COPE-PCC for the purpose of clearing the balance between the two funds. No agreement was reached and the FEC brought a civil action against the AFL-CIO in the District Court. On June 16, 1978, the District Court granted the Commission's motion for summary judgment in the case. It ruled that past transfers from the COPE Education Fund to COPE-PCC were illegal, enjoined the AFL-CIO from making any such transfers in the future (except for a single transfer of the \$321,000 previously transferred) and assessed a \$10,000 civil penalty against the AFL-CIO. The AFL-CIO appealed the assessment of the civil penalty.

The Appeals Court, on April 1, 1980, reversed the imposition of the civil penalty, arguing that the District Court had imposed the civil penalty for a "knowing and willful" violation of the Act and that the facts of the case did not support this finding. The Court held that the AFL-CIO's belief in the legitimacy of the transfers had been reasonable; during the GAO audit no comment had been made about the routinely reported transfers, and neither the Act nor any court decision had addressed the immediate issue. (The

Appeals Court rejected the FEC's argument that *Pipefitters Local No. 562 v. United States*, 407 U.S. 385 (1972) provided specific notice that interfund transfers were prohibited by the Act.) *

In its petition to the Supreme Court for a writ of certiorari, the Commission argued that:

1. The penalty imposed by the District Court had not assumed a "knowing and willful" violation of the Act (all parties to the suit subsequently informed the Appeals Court's staff counsel that the case had not involved such a violation); and
2. The standard that the Appeals Court applied for determining a "knowing and willful" violation of the Act was erroneous.

CLEARINGHOUSE

SUBSCRIPTIONS

- *Election Law Updates* is a quarterly series which summarizes all new state and federal election legislation. \$11.00 per year.
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CHANGE OF ADDRESS

Political Committees

Registered political committees are automatically sent the *Record*. Any change of address by a registered committee must, by law, be made in writing as an amendment to FEC Form 1 (Statement of Organization) and filed with the Clerk of the House, the Secretary of the Senate or the FEC, as appropriate.

Other Subscribers

Record subscribers (who are not political committees), when calling or mailing in a change of address, are asked to provide the following information:

1. Name of person to whom the *Record* is sent.
2. Old address.
3. New address.
4. Subscription number. The subscription number is located in the upper left hand corner of the mailing label. It consists of three letters and five numbers. Without this number, there is no guarantee that your subscription can be located on the computer.

REGULATIONS

STATUS OF FEC REGULATIONS

Regulations*	Date Sent to Congress	Federal Register Publication	Date Prescribed** by the Commission
11 CFR 9033.9 Suspension of Primary Matching Fund Payments	4/10/80	4/15/80 (45 FR 25378)	7/3/80
11 CFR Part 4 Public Records and the Freedom of Information Act	Not applicable	5/13/80 (45 FR 31291)	6/12/80
11 CFR Part 5 Access to Public Disclosure Division Documents	Not applicable	5/13/80 (45 FR 31292)	6/12/80
11 CFR, Parts 100 and 110 Contributions to and Expenditures by Delegates to National Nominating Conventions	5/14/80	5/23/80 (45 FR 34865)	8/7/80
11 CFR, Parts 100, 106, 110, 140-146 and 9001-9007 Public Financing of Presidential General Election Campaigns	6/13/80	6/27/80 (45 FR 43371)	9/5/80

*The chart is cumulative, listing all amendments to the FEC Regulations proposed after the April 1980 edition of 11 CFR was published, including any technical amendments.

**The Commission may prescribe its regulations 30 legislative days after it has transmitted them to Congress, provided neither the House nor the Senate disapproves them during this period.

FEDERAL ELECTION COMMISSION
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