



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Rosemary C. Smith
Assistant General Counsel

Mai T. Dinh
Attorney

AGENDA ITEM
For Meeting of: 11-2-00

SUBJECT: Notice of Disposition of Petition for Rulemaking Filed by the Project on Government Oversight

On September 20, 1999, the Commission received a Petition for Rulemaking from the Project on Government Oversight. The Commission published a Notice of Availability ("NOA") on the Petition on October 13, 1999, 64 *Fed. Reg.* 55440, and received 25 comments in response. After reviewing these comments and other information and in accordance with the Commission's rulemaking priorities set out in Agenda Doc. #00-66 approved on July 13, 2000, the Office of General Counsel recommends that the Commission decline to open a rulemaking in response to this Petition.

A draft Notice of Disposition and a letter to the Petitioner advising it of the Commission's action are attached. The reasons for declining to open a rulemaking are explained in the Notice of Disposition.

Recommendation

The Office of General Counsel recommends that the Commission:

1. Decline to open a rulemaking in response to the Petition for Rulemaking filed on September 20, 1999, by the Project on Government Oversight;
2. Approve the attached Notice of Disposition for publication in the *Federal Register*; and

3. Approve the attached letter to Ms. Brian.

Attachments

1 **SUPPLEMENTARY**

2 **INFORMATION:** On September 20, 1999, the Commission received a Petition for
3 Rulemaking from POGO. The Petition urged the Commission to take six actions with regard to
4 reports filed by PACs by revising various sections in 11 CFR parts 100, 102, and 104.

5 The Commission published a Notice of Availability ("NOA") on the Petition on
6 October 13, 1999, 64 Fed. Reg. 55440. The NOA stated that several of the recommended
7 actions address Commission internal procedures that are not properly the subject of rulemaking.
8 Therefore, the Commission sought comments only on the four suggested actions that can be
9 addressed through rulemaking.

10 The Commission received twenty-one timely comments and four late comments in
11 response to the NOA from twenty-four commenters. Detailed comments were submitted by
12 Congresswoman Carolyn B. Maloney; Democracy Advocate, U.S. Public Interest Research
13 Group; Money and Politics Iowa; Institute for Social Justice; University of Maryland
14 Department of Government and Politics; Michigan Citizen Action; Ohio Citizen Action;
15 Common Cause; Center for Responsive Government; University of Akron's Ray C. Bliss
16 Institute of Applied Politics; and Project on Government Oversight. In addition to these
17 comments, the Commission received comments expressing general support for the Petition
18 from two individuals and substantially similar comments from eleven commenters including
19 Colby College, Illinois Legislative Studies Center Sunshine Project, and Government
20 Accountability Project. On November 2, 2000, the Commission voted to decline to open a new
21 rulemaking in response to the Petition at this time for reasons stated below.

1 A. Issues on Which Comments Were Sought in the NOA

2 In the NOA, the Commission identified four recommendations in the Petition that were
3 appropriate for rulemaking and sought comments on these recommendations. The issues on
4 which comments are sought include (1) revising 11 CFR 100.6 to require PACs to list, as an
5 affiliated organization on their Statement of Organization, any soft money account to which
6 they forward checks; (2) revising 11 CFR 102.9(a)(3) to require candidates who receive PAC
7 contributions to maintain records that list each PAC's full name and Commission identification
8 number, and revising 11 CFR 100.12 to require them to include this information on their FEC
9 reports; (3) revising 11 CFR 104.8(d)(4) to require PACs to notify the Commission within ten
10 days of receiving a returned contribution; and (4) revising 104.13(a)(2) to require PACs to
11 notify candidates within ten days of any in-kind contribution.

12 All of the commenters expressed support for the Petition and encouraged the
13 Commission to adopt all six of POGO's recommendations through rulemaking. The
14 commenters who submitted the substantially similar comments stated that the Commission
15 should initiate a new rulemaking project to correct problems with reporting by PACs because
16 "proper disclosure is at the core of what the Commission should be doing, making these
17 reforms vital to the continued integrity of the FEC." Other commenters characterized the
18 recommendations as "common-sense," "simple bookkeeping procedures," "minor," or
19 "technical", that would improve the Commission's operations and the reporting and disclosure
20 procedures resulting in more accurate information. Three commenters also supported these
21 recommendations because they would make campaign finance information more
22 understandable to the public. Three commenters made detailed comments on one specific
23 recommendation. Their comments are discussed below.

1 1. Soft Money Accounts

2 The Petition suggested that the Commission amend section 100.6 to require “federal
3 PACs [to] list as an affiliated organization on their statement of organization or amendment
4 thereto, any soft money account(s) to which it forwards checks.” The Commission has
5 concluded that it would be more appropriate to address this issue, if at all, in the context of the
6 soft money rulemaking project rather than in a separate rulemaking project.

7 2. Eliminate Irregular PAC Names

8 The Petition recommended that the FEC require PACs and political committees to use
9 the PACs’ full names and PAC FEC identification numbers when making, receiving, or
10 reporting PAC contributions. POGO pointed to the FEC’s PACRONYMS publication, a guide
11 to PAC names, as illustrative of the need for use of uniform names. The Petition suggested that
12 amendments to sections 102.9(a)(3), 102.10, and 100.12 would achieve this result. The
13 Commission has amended its forms and electronic filing software to allow all political
14 committees to include the names and FEC identification numbers of political committees on
15 Schedule A on a voluntary basis.

16 3. Candidates Report Returned Contributions

17 The Petition urged the Commission to amend section 104.8(d)(4) to require PACs to
18 notify the Commission of a returned contribution within ten days of the PAC’s receipt of the
19 returned contribution. Three commenters included comments specific to this recommendation.
20 They expressed concerns about the impact of the lack of such notice on candidates who refuse
21 to accept PAC contributions. The commenters argued that these candidates may be unfairly
22 challenged by the press or the public on their assertions that they do not accept PAC

1 contributions if a PAC reports making a contribution but does not report in a more timely
2 manner that the contribution was returned.

3 Generally, the Federal Election Campaign Act ("FECA") requires unauthorized
4 committees to file their reports to the Commission on a monthly basis, or on a quarterly basis
5 during an election year, and on a semi-annual basis during a non-election year. See 2 U.S.C.
6 434(a)(4), 11 CFR 104.5(c). Nothing in the FECA requires unauthorized committees to report
7 returned contributions within ten days of receipt. Therefore, an amendment to the FECA would
8 be necessary before the Commission could amend its rules to require reporting returned
9 contributions within ten days.

10 4. Notify Candidates of All "In-Kind" Contributions

11 The Petition suggested that the Commission amend section 104.13(a)(2) to require
12 PACs to notify candidates of all "in-kind" services provided to the candidate within ten days of
13 providing the services. Nothing in the FECA requires unauthorized committees to notify
14 candidates when they make in-kind contributions. Consequently, a statutory amendment would
15 be needed before the Commission could impose a new ten day reporting requirement on
16 unauthorized committees.

17 B. Issues Not Appropriate for Rulemaking

18 The Petition also contains three recommendations that the Commission concluded could
19 not be implemented through rulemaking.¹ See NOA, 64 Fed. Reg. 55440 (October 13, 1999).
20 Further discussion of these recommendations follows below.

¹The Petition's first recommendation actually contained two separate recommendations - first, to compare PAC disbursements with candidate receipts and second, to require PACs to list soft money accounts as affiliated organizations. The second recommendation was included among the list of recommendations on which the Commission sought comments in the NOA.

1 1. Compare PAC Disbursements with Candidate Receipts

2 The Petition recommended that the FEC compare PAC disbursements with candidate
3 receipts and adopt procedural steps to trigger Requests for Additional Information ("RAI") if
4 there are discrepancies above a certain dollar amount. While the Commission recognizes the
5 POGO's concerns, this recommendation goes to internal procedures and is not an appropriate
6 subject for rulemaking.

7 2. Group FEC Data by Two and Six-year Campaign Cycles

8 The Petition recommended that the FEC's system in the Public Record Office and on
9 the Internet allow users to list contributions by individuals and PACs on an election-cycle basis.
10 The recent amendment to FECA contained in the Treasury and General Government
11 Appropriations Act, 2000, Public Law 106-58, 106th Cong., Section 640, 113 Stat. 430 (1999),
12 mandating election-cycle reporting provided the authorization for the Commission to amend its
13 regulations to implement election-cycle reporting. The Commission has published final rules at
14 11 CFR part 104, 65 Fed. Reg. 42619 (July 11, 2000), and has revised its forms to implement
15 election-cycle reporting for authorized committees. See id. at 42620 - 42623 (Explanation and
16 Justification of the final rules for Election Cycle Reporting by Authorized Committees). It is
17 also in the process of converting to election-cycle reporting, which should allow retrieval of
18 information on an election-cycle basis.

19 3. Eliminate Duplicate Entries

20 POGO stated that its report highlighted the problem of duplicate entries in the
21 Commission's databases. To address this problem, the Petition suggested that the
22 Commission's systems identify transactions that appear to be duplicates and that the Reports
23 Analysis Division send out request for additional information notices to clarify the duplication.

1 As stated above, the Commission's internal procedures, including RFAI notices, are not an
2 appropriate subject for rulemaking. However, the Commission notes that the upcoming
3 expansion of its electronic filing program may eliminate many duplicate entries.
4

5 C. Additional Issues Not Included in the Petition

6 Two commenters included three additional suggestions in their comments on the
7 Petition. They are: (1) implement better enforcement tools such as random audits, the
8 publication of a list of committees who file incomplete reports, and a schedule of fees for non-
9 compliance; (2) require electronic filing for all committees; and (3) require Senate candidates to
10 file reports directly with the FEC. One of these commenters also added another
11 recommendation requiring multi-candidate entities to issue separate checks to each separate
12 recipient. Because these suggestions are beyond the scope of the Petition for Rulemaking, the
13 Commission will not initiate a new rulemaking project in response to these additional
14 recommendations. In addition, some of the suggestions, such as random audits, are beyond the
15 Commission's statutory authority.

16 However, the Commission has implemented or is about to implement new programs and
17 procedures since the publication of the NOA that address several of these issues. The new
18 Administrative Fines program, 65 Fed. Reg. 31787 (May 19, 2000) (to be codified at 11 CFR
19 part 111, subpart B), that went into effect in July, 2000, will assess civil money penalties in
20 accordance with the schedules of penalties on political committees who fail to file their reports
21 in a timely manner. The Commission will also require political committees whose annual
22 contributions or expenditures exceed or are expected to exceed \$50,000 to file their reports
23 electronically beginning in January, 2001. 65 Fed. Reg. 38415 (June 21, 2000) (to be codified

1 at 11 CFR 104.18). However, electronic filing cannot be extended to all political committees
2 absent further amendments to the FECA. A legislative change would also be needed for
3 senatorial candidates to file directly with the FEC. However, the Secretary of the Senate has
4 automated the transfer of information from the Senate Public Records' Office to the FEC and
5 the information can be viewed in electronic form on the Commission's website at
6 www.FEC.gov.

7 While the Commission has decided not to initiate a new rulemaking in response to this
8 petition, changes the Commission is making to its operations, computer systems, forms, and
9 regulations, as described above, will further POGO's goal of enhancing timely and accurate
10 dissemination of campaign finance information to the public. Accordingly, no further action on
11 the Petition for Rulemaking will be taken at this time. See 11 CFR 200.4.

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Darryl R. Wold
Chairman
Federal Election Commission

DATED: _____
BILLING CODE: 6715-01-M

Danielle Brian
Executive Director
Project on Government Oversight
1900 L Street, N.W., Suite 314
Washington, D.C. 20036-5027

Dear Ms. Brian:

On ____, 2000, the Commission decided not to initiate a rulemaking at this time to revise 11 CFR parts 100, 102, 104 regarding reporting requirements of political action committees, as proposed in the Petition for Rulemaking you filed on September 20, 1999.

While the Commission remains interested in some the proposals detailed in your Petition, the Commission is addressing them in other rulemaking projects and programs such as election cycle reporting, new forms, and changes in the Commission's systems.

Enclosed for your information are the Notice of Disposition approved by the Commission and the General Counsel's recommendations on which the Commission's decision was based.

Sincerely,

Darryl R. Wold
Chairman

Enclosures

