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May 11, 2000

Ms. Rosemary C. Smith
Assistant General Counsel
Federal Election Commission
999 E Street N.W.
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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
MAY 12 4 16 PM '00

Re: Comments on Proposed Rulemaking: Electronic Filing of Reports by Political Committees, 65 Fed. Reg. 19,339 (April 11, 2000)

Dear Ms. Smith:

The National Association of Business Political Action Committees ("NABPAC") submits these comments in response to the Notice of Proposed Rulemaking issued in the April 11, 2000 Federal Register ("Notice").

NABPAC is a professional trade association of approximately 130 corporate and trade association political action committees ("PACs"). Its diverse membership engages in business-related political activity, although NABPAC itself is not a PAC and does not engage in political activity. Its members support legislative and regulatory measures that promote political participation, communication, disclosure, and competition.

NABPAC has conducted a survey of its members for the purpose of responding to this Notice. What is clear from the survey is that the size the PAC influences the Committee's view of the member's proposed rules. The smaller the committee, the more likely the committee is to object to various proposals in the Notice of the Proposed Rulemaking. But this is not uniformly true. Those responding to the survey were also able to agree in large part on several issues posed in the Notice. These will be discussed in more detail below.

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General Discussion

1. Threshold

The Commission's Notice asks whether there should be different thresholds for different types of committees or whether there should be only one threshold, but different than the one proposed. NABPAC sees no basis for having a different threshold for different types of Committees. Indeed, this would undoubtedly lead to confusion and to a committee unwittingly failing to file electronically because it misunderstood the threshold for its "type" of committee. Moreover, with respect to the \$50,000 threshold itself, the NABPAC membership was split as to whether the \$50,000 threshold was sufficient, or whether a higher threshold would be more appropriate. For those PACs who would clearly meet a higher threshold they are resigned to the fact that they will be filing electronically. But for those members who may or may not meet the \$50,000 threshold there was concern that \$50,000 was too low. As one member remarked, the \$50,000 threshold could clearly be a burden on a small PAC that has only about \$4,000 in receipts per month. Another member noted that for a PAC that solicits only top executives, the threshold would be met if 10 contributors donated the annual maximum amount of \$5,000. Thus, NABPAC recommends that the Commission raise the threshold to \$100,000 per calendar year.¹

2. Different Threshold Levels

The Notice also asks whether separate segregated funds of corporations and labor organizations should have a lower threshold because their administrative and solicitation costs may be paid by a connected organization. The answer to this question can only be "no." The fact that a connected organization may pay for the administrative expenses of a PAC, does not mean that the PAC should be burdened with administrative costs that are higher than those of other committees. A \$50,000 per year PAC is not a very large PAC. If forced to incur higher administrative expenses a corporation or trade association may forgo paying the expenses of the PAC altogether. Lowering the threshold could well have the effect of dissuading political involvement by forcing some PACs (particularly smaller PACs) to terminate. Moreover, in the

¹ The Commission also sought comment on whether the threshold should be a calendar year or election cycle threshold. In the case of separate segregated funds, they operate on a calendar year basis. Thus, there was little support for making the threshold an election cycle threshold.

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case of trade association PACs, the administrative expenses must be paid from the fixed voluntary dues of the trade association and would therefore reduce the available funds to the association. These budgets are often so tight that any changes would severely and negatively impact the association.

3. "Reason to Expect"

The Notice next sought comments on the proposed definition of "Have Reason To Expect To Have Aggregate Contributions or Expenditures" above the threshold. First, with respect to the current proposed definition, the NABPAC members would be able to make the determination of whether they have reason to expect to have aggregate contributions or expenditures above the threshold since the definition involves objective criteria. Nonetheless, basing this determination on the preceding calendar year will cause committees who will not, in fact, meet the \$50,000 threshold to report electronically, especially when the preceding calendar year is an election year. Many committees, including separate segregated funds who do not use payroll deductions, make an election year fundraising effort. Receipts in the election year are often far greater than receipts in a non-election year. Thus, while a committee may raise \$50,000 in an election year, enthusiasm often wanes in the non-election year. As a result, we recommend that only the comparable year of the previous election cycle be used to make this determination.

The Notice also sought comment on three other possible alternatives. The first alternative was the Committee's own projections. Many committees, especially those not using payroll deduction, or those requiring prior authorization, are unable to predict their future total aggregate contributions during a calendar year. Thus, inserting a subjective alternative into the proposal could lead to inadvertent violations of the regulations. The second proposed standard is for the "similarly situated committee." No NABPAC member understood what this meant. Moreover, the Commission's view of when a committee might be similarly situated could vary vastly from a committee's view of another "similarly situated committee." Size is often irrelevant to this determination. There are too many factors which can affect a PAC's success or nonsuccess. Therefore, NABPAC recommends against such a subjective determination. The third alternative would require a committee to extrapolate annual estimates based on first quarter or first half year receipts. Again, this is not a workable standard unless a committee accepts only payroll deductions (which trade association PACs generally may not use). Committee receipts can vary greatly from quarter to quarter depending on when the committee rolls out its program for the year and when the committee launches its fundraising. Thus, NABPAC also objects to this proposed standard.

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4. Additional Comments

There are several other issues which NABPAC wishes to address through this rulemaking. First, several NABPAC members now have software programs which they have been using for years to keep committee records and from which they now report. As a technical matter, it is very important to them that the Commission expand and modify its own software so that the data can be imported from the software currently used for reporting purposes. Requiring committees to reenter data into the FEC software would duplicate effort and resources and will lead to reporting errors.

Second, the proposed regulations would require a committee to start reporting electronically immediately upon reaching the threshold or having reason to expect that it will reach the threshold pursuant to the definition. However, in the event a committee has no reason to expect to reach the threshold, but does so unexpectedly, the proposed regulations do not provide sufficient time to switch to electronic filing. In the case of a monthly filer, this requirement would impose an undue burden on the committee. The survey of NABPAC members revealed that a majority of committees do not believe they could file electronically with respect to the next regularly scheduled report if they passed the threshold unexpectedly. Thus, NABPAC recommends that the Commission adopt a 90-day period before a committee must file electronically. This is the amount of time a quarterly filer would have assuming it passed the threshold early in a quarter. This 90-day window would permit the committee to import all of its data for the year into the system for FEC reporting and ensure that all of the data was properly imported. This would also give a committee time to convert to the new electronic filing system and to work with the FEC to make sure that the data will be transmitted properly.

Third, the regulations should clarify that any threshold applies only to each individual committee. More specifically, affiliated PACs are required to aggregate contributions and expenditures for limitation purposes. The regulations should clarify that committees are only required to file electronically when the individual committee makes \$50,000 in expenditures or receives \$50,000 in contributions (if \$50,000 is the threshold), not when its makes \$50,000 in expenditures or receives \$50,000 in contributions when aggregated with the financial activity of an affiliated committee.

Further, the proposed regulations do not recognize that many PACs make both federal and non-federal expenditures (often to state candidates). However, since the purpose of the Act is the disclosure of federal activity, the Commission should clarify that the new rule applies only when a Committee makes \$50,000 in federal expenditures (or receives \$50,000 in contributions).

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Finally, requiring a committee that files electronically to amend its reports electronically rather than permitting that committee to file letter amendments as non-electronic filers may do is not equitable. As the Commission knows, letter amendments are often a more simple means of filing an amendment. In addition, letter amendments often provide more of an explanation about the amendment and thus enhance the Commission's goal of full disclosure. Thus, the Commission should develop a system whereby electronic filers can, in fact, file letter amendments electronically.

NABPAC appreciates the FEC's consideration of these Comments.

Sincerely,



Jan Witold Baran,
Counsel for the National Association of
Business Political Action Committees (NABPAC)