



THE FEDERAL ELECTION COMMISSION

RECORD

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REGULATIONS

FEC PRESCRIBES REGULATIONS GOVERNING SUSPENSION OF MATCHING FUNDS

On July 3, 1980, the Commission prescribed revised regulations governing the suspension of primary matching fund payments to Presidential primary candidates. Under the revised regulations, the Commission may suspend matching fund payments to a candidate only if he or she knowingly, willfully and substantially exceeds the spending limits for matching fund recipients. Moreover, a Presidential candidate who exceeds the spending limits will not be permitted to reestablish matching fund eligibility after matching payments have been suspended.

These Regulations, which affect provisions of 11 CFR 9033.9, were published in the *Federal Register* on April 15, 1980 (45 FR 25378).

GENERAL ELECTION REGULATIONS SENT TO CONGRESS

On June 13, 1980, the Commission transmitted to Congress revised regulations governing the public financing of Presidential general election campaigns. The revised regulations contain refinements based on the Commission's experience in administering the public funding of the 1976 general election. They also reflect the 1979 Amendments to the Act. These general election regulations have been renumbered to conform with the section of the U.S. Code on which they are based (26 U.S.C. §9001, *et seq.*). Technical conforming amendments have also been made to Commission Regulations at 11 CFR Parts 100, 106 and 110. The following paragraphs highlight the major modifications. Readers should not, therefore, rely solely on this summary. Instead, they should consult the full text of 11 CFR Parts 100, 106, 110, 140-146 and 9001-9007.

Candidate Eligibility

Deadlines for candidate agreements and certifications. 11 CFR 9003.1(b). Major party candidates must sign and submit a letter of agreement and written certifications* to

1980 EDITION OF COMMISSION REGULATIONS RELEASED

A copy of the 1980 edition of the Commission's Regulations has been sent, as an attachment to this month's *Record*, to all political committees currently registered with the Commission. The volume includes revisions prescribed by the Commission on April 1, 1980, implementing the 1979 Amendments to the Federal Election Campaign Act (Parts 100-115); and revisions to the Convention Financing Regulations (Part 9008) and the Primary Election Financing Regulations (Parts 9031-9038). Additional copies of the 1980 edition of Commission Regulations are available to the public free of charge by contacting: 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.

Starting this month, the *Record* will regularly publish a chart indicating the status of regulations proposed by the Commission after the publication of the 1980 Regulations. See Page 3.

the Commission within 14 days after receiving their party's Presidential nomination.

Minor and new party candidates must submit a letter of agreement and written certifications within 14 days after qualifying for the ballot in 10 states. Minor and new party candidates may, however, request an extension of this deadline.

Candidate's withdrawal from the campaign. When an indi-
continued

*In the letter of agreement, the candidate must agree to furnish records of campaign expenses, permit the conduct of an audit, identify the person authorized to receive payments on his/her behalf and designate a campaign depository. 11 CFR 9003.1. In the written certifications, the candidate must certify that he or she will comply with the spending limits, limits on use of contributions and personal spending limits. 11 CFR 9003.2.

vidual ceases to be a Presidential candidate,* he/she must submit a written statement to the Commission within 60 days indicating: campaign debts, cash-on-hand, estimated winding-down costs, the value of any capital assets, and debts owed to the campaign. 11 CFR 9004.8.

Personal Funds

The candidate may spend personal funds of up to \$50,000 for any qualified campaign expenditures. In addition to the candidate's personal assets and salary, "personal funds" may include funds of the immediate family over which the candidate had legal title or to which, under state law, the candidate had the right of beneficial enjoyment at the time he/she became a candidate. 11 CFR 9003.4(c)(3). When a family member contributes funds which the candidate does not control, the funds are considered contributions subject to the \$1,000 limit. They do not count against the \$50,000 limit on personal funds.

Legal and Accounting Fund

Contributions to a Legal and Accounting Compliance Fund. 11 CFR 9003.3(a)(1). Federally funded candidates may accept **private contributions** for a legal and accounting compliance fund. Contributions to the fund, which are subject to the Act's \$1,000 per election limit and to the prohibitions on contributions, must be kept in an account separate from federal funds. Federal funds may not be used to solicit contributions to this account. 11 CFR 9004.4(b). Further, solicitations to the compliance fund must clearly indicate that contributions will be used for compliance purposes.

Funds may be transferred from the candidate's primary campaign to the compliance fund, provided the candidate has sufficient funds to make any required repayments of primary matching funds. See 11 CFR 9003.3(a)(1)(ii). Contributions designated for the primary campaign, but which are made after the beginning of the general election expenditure report period, may also be deposited in the compliance fund provided the candidate committee complies with certain requirements specified in the regulations. See 11 CFR 9003.3(a)(1)(iii).

Disbursements from the Compliance Fund. Disbursements from the compliance fund (other than funds loaned to the candidate's campaign for start-up expenses) are **not** chargeable to the candidate's spending limit, but they are reportable. These funds may be used to comply with the Act; pay civil penalties resulting from violations of the Act;** make

*Any individual who is not actively conducting a campaign in more than one state for the Presidency and Vice Presidency ceases to be a candidate. 11 CFR 9002.2.

**Civil or criminal penalties resulting from violations of the Act may not be paid from federal funds. 11 CFR 9002.11(c)(3).

repayments of public funds to the U.S. Treasury, if required; pay up to 10 percent of all overhead costs allocable to the campaign's other legal and accounting compliance costs; and solicit contributions to the compliance fund. The compliance fund may **not** be used to pay debts remaining from the candidate's primary campaign, unless excess funds remain after all debts of the general election campaign are liquidated. 11 CFR 9003.3(a)(2).

Start-Up Expenses

Candidates are permitted to make disbursements to set up a basic campaign organization **before** the expenditure report period begins or before they receive public funds. Such disbursements count as qualified campaign expenditures and thus must ultimately be defrayed with public funds. In the interim before public funds are available, however, the candidate may fund such disbursements from other sources. Subject to the restrictions detailed in the regulations, the candidate may borrow from the compliance fund, from banks in the ordinary course of business, from the primary campaign and from personal funds. 11 CFR 9003.4(a) and (b).

Winding Down Costs

Payments made to terminate campaign activity after the close of the expenditure report period are considered qualified campaign expenditures. For example, rental of office space required for "winding down" activities of the campaign is a qualified campaign expenditure. Thus, candidates must use federal funds to defray this expense. 11 CFR 9004.4(a)(3).

Documentation of Expenses

The candidate has the burden of proving that all disbursements made by the candidate, or any authorized committee or agent of the candidate, are qualified campaign expenses. Minimum documentation required for qualified campaign expenses includes:

For disbursements of \$200 or less, a canceled check to the payee (unless the disbursement is from a petty cash fund) 11 CFR 9003.5(a)(2); and

For any single disbursement exceeding \$200, a receipted bill from the payee or a canceled check plus a bill, invoice, voucher or memorandum from either the candidate or the committee. 11 CFR 9003.5(a)(1).

Audits

It is the candidate's responsibility to facilitate an FEC audit by gathering records in a central location and providing the necessary space and personnel to perform the audit. All bank records and supporting documentation for expenditures of public funds must be provided by the candidate. 11 CFR 9003.7.

The RECORD is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: Max L. Friedersdorf, Chairman; John Warren McGarry, Vice Chairman; Joan D. Aikens; Thomas E. Harris; Frank P. Reiche; Robert O. Tiernan; J.S. Kimmitt, Secretary of the Senate, Ex Officio; Edmund L. Henshaw, Jr., Clerk of the House of Representatives, Ex Officio. For more information, call 202/523-4068 or toll-free 800/424-9530.

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)	Congressional approval pending
11 CFR, Parts 100, 106, 110, 140-146 and 9001-9007 Public Financing of Presidential General Election Campaign	6/13/80	6/27/80 (45 FR 43371)	Congressional approval pending

*The chart is cumulative, listing all amendments to the FEC Regulations proposed after the 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.

Reporting Requirements

General Election vs. Other Elections. The candidate's authorized campaign committee(s) must file separate reports for the general election campaign and for other elections. 11 CFR 9006.1(a).

Campaign Funds vs. Compliance Funds. With regard to the general election, the campaign must file two separate reports: one disclosing receipts and disbursements for qualified campaign expenditures, the other disclosing activity of the legal and accounting compliance fund. 11 CFR 9006.1(b).

evidence submitted and provide a statement of reasons underlying its final determination, including a summary of any investigation conducted. 11 CFR 9005.2 and 9007.2(b).

The regulations governing the public financing of Presidential general election campaigns were published in the *Federal Register* on June 27, 1980 (45 FR 43371). They will be promulgated 30 legislative days after their transmittal to Congress, provided neither the House nor the Senate disapproves them.

Disputes Procedure for Certification and Repayment

For those instances when a candidate challenges a Commission determination concerning certifications and repayments of public funds, a procedure has been standardized to conform with due process requirements. The candidate has an opportunity to respond to a Commission decision within a specified time, engage counsel if he/she so desires and submit written evidence in support of his/her position. The Commission is required to consider the

OPINIONS

ADVISORY OPINION REQUEST WITHDRAWN

AOR 1980-61 (application of contribution and expenditure limits to independent expenditure committee for the Presidential general election) was withdrawn by its requester on July 1, 1980.

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
1980-76	Exclusion of candidate's fees for television appearances from honorarium limit.	6/19/80	4
1980-77	Allocation of party expenditures for television ads on behalf of several candidates.	6/20/80	2
1980-78	Use of campaign finance information obtained from disclosure reports in candidate's fundraising letter.	6/23/80	1
1980-79	Title of unauthorized committee advocating candidate's defeat.	6/27/80	2
1980-80	Separate principal campaign committees for Congressional primary and special elections held on the same day.	7/1/80	1
1980-81	Application of 1980 annual limit to individual's 1979 contributions to draft committee.	7/3/80	2
1980-82	Individual's involvement in independent expenditure committee operating on behalf of Presidential nominee.	7/8/80	3
1980-83	Reporting requirements for inactive Presidential primary candidate.	7/8/80	4
1980-84	Committee's use of leftover stationery and checking account bearing its name prior to 1979 Amendments to the Act.	7/11/80	1
1980-85	Gift from descendant's estate as contribution to multicandidate committee.	7/15/80	2
1980-86	Abbreviated name used by corporate separate segregated fund.	7/15/80	1

ADVISORY OPINIONS: SUMMARIES

An Advisory Opinion (AO) issued by the Commission provides guidance with regard to the specific situation described in the AOR's. 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 1980-42: Fundraising Concerts Conducted for Senatorial Campaign Committee

Volunteer services provided by entertainers for fundraising concerts to be held on behalf of the Hart for Senate Campaign Committee, Inc. (the Committee) would not count as in-kind contributions to the Committee, provided the Committee reimbursed the entertainers for their expenses. 2 U.S.C. §431(8)(B). Further, the Committee could contract with a promoter who, as an agent of the Committee, would handle concert arrangements.

Under the contractual arrangements, ticket sales could be made at outlets normally used for commercial concerts, and tickets issued could be identical to those issued for non-political concerts. Advance publicity and notices at sales locations, however, would have to inform ticket purchasers that the concert would benefit the Committee.

Since ticket sales would be treated as contributions from the purchasers, the proceeds would have to be handled as contributions. The Committee would have to establish controls to ensure that purchasers did not violate the Act's dollar limits or prohibitions on contributions. The identity of contributors would have to be obtained when any person's ticket purchases exceeded \$50 at the same selling location. 2 U.S.C. §432(b); 11 CFR 102.9.

Checks for ticket purchases would not have to be made payable to the Committee, but they would have to be deposited in the special account established for the fundraiser. Proceeds deposited in the special account would then be forwarded to the campaign's treasurer within 10 days of their receipt. 2 U.S.C. §432(b)(1); 11 CFR 102.8(a). The treasurer, in turn, would have to deposit the proceeds in a designated campaign depository within 10 days of their receipt. 11 CFR 103.3(a). Alternatively, the promoter, as the Committee's agent, could transfer the proceeds from the special account directly to a designated Committee account within 10 days of their receipt. The promoter would also have to keep records for all ticket proceeds. 2 U.S.C. §432; 11 CFR 102.9.

The promoter could pay for concert expenses from ticket sale proceeds deposited in a special account established in an official campaign depository. Similarly, funds in this account could be used to pay the promoter the usual and normal fee for his services. The promoter would then forward the balance of the proceeds to the Committee. All expenses (including fees to the promoter) would be subject to the Act's recordkeeping and reporting requirements. Commissioner Frank P. Reiche issued a dissenting opinion. (Date Issued: June 25, 1980; Length, including dissenting opinion: 14 pages)

AO 1980-44: Collection Systems Proposed by Labor Organization for its Separate Segregated Fund

Two collection systems proposed by the National Education Association (NEA) to collect contributions for its political action committee, NEA-PAC, would be permissible; however, two other proposed systems would not.

Under the current system, NEA members authorize deduction of a fixed sum from their pay checks for contributions to NEA-PAC and for their unified membership dues to NEA. To ease the administrative burden imposed by a provision of the Act requiring timely transmittal of political contributions to the treasurer of a political committee (2 U.S.C. §432(b)(2)), NEA proposed four alternative payroll deduction systems, all of which would be less costly and time-consuming than NEA's current collection system.

Under the first proposed collection system, the entire NEA-PAC contribution would be deducted from the first payroll deduction check of NEA's membership year. Membership dues would then be deducted from subsequent checks. No change would be made in the members' current payroll deduction authorization form. The third proposed system is identical to the first, except that the authorization form would indicate that NEA-PAC's contribution was being drawn entirely from the first payroll deduction check.

These two collection systems would not be permissible. By deferring its receipt of membership dues in order to facilitate member contributions to NEA-PAC, NEA would be giving "something of value, if not an advance . . . to NEA-PAC." Therefore, NEA's service would constitute a prohibited contribution from NEA to NEA-PAC. 2 U.S.C. §441b (b). Even if NEA members signed authorization cards agreeing to defer their membership dues, a prohibited in-kind contribution would still result since NEA — not its individual members — would be providing the deferred receipt of dues.

Under the second proposed collection system, the NEA-PAC contribution would be deducted in one lump sum from the last payroll deduction check after all membership dues had already been deducted from previous checks. There would be no change in the authorization form. The fourth proposed system is the same as the second except that the authorization form would indicate the change in the payroll deduction system.

These collection systems would be permissible because NEA-PAC's contributions would be deferred, rather than

NEA's membership dues. Therefore, NEA would not be making a prohibited in-kind contribution to NEA-PAC. To be fully permissible, however, the second and fourth collection systems would also have to meet all legal requirements pertaining to the solicitation, collection and transmittal of contributions to NEA-PAC. (Date Issued: July 3, 1980; Length: 5 pages)

AO 1980-46: Fundraising Plan of Independent Expenditure Committee

Expenditures made by the National Conservative Political Action Committee (NCPAC) for a mass mailing that advocates a candidate's election and solicits contributions to his campaign through NCPAC (as a conduit) would be considered an in-kind contribution to the candidate's principal campaign committee, rather than an independent expenditure.

The solicitation system proposed by NCPAC for the mass mailing would consist of a letter suggesting that a contribution for the candidate be mailed to NCPAC, which would gather and transmit the contributions to the candidate's principal campaign committee. Even if no communication occurred between NCPAC and the candidate or any agents of his campaign, expenditures for the mass mailing would be an in-kind contribution to the candidate's principal campaign committee because, in accepting the earmarked contributions forwarded through NCPAC, the candidate's campaign would also be accepting the solicitation services provided by NCPAC.

continued

FEDERAL REGISTER NOTICES

The list below identifies all FEC documents which appeared in the *Federal Register* between June 27, 1980, and July 17, 1980. Copies of these notices are not available from the FEC.

Notice	Title	Federal Register Publication Date	Citation
1980-22	Public Financing of Presidential General Election Campaigns (Transmittal of Regulations to Congress)	6/27/80	45 FR 43371
1980-23	Federal Election Commission Opinion and Regulation Index (Notice of Availability)	6/24/80	45 FR 42369
1980-24	Suspension of Primary Fund Payments (Announcement of effective date for Regulations)	7/3/80	45 FR 45257
1980-25	Filing Dates for Michigan Special Primary and General Elections	7/17/80	45 FR 47919

NCPAC would be considered a conduit transmitting the contributions to the candidate's principal campaign committee. Since, however, NCPAC would exercise no control over the contributions made to the candidate, the contributions would not count as contributions by NCPAC and would not count against NCPAC's \$5,000 contribution limit. 11 CFR 110.6(d)(1). Instead, the contributions would count against the individual contributor's limits. 2 U.S.C §441a(a) and 11 CFR 110.1.

As a conduit, NCPAC would be required to report the contributions to both the candidate's principal campaign committee and to the Federal Election Commission according to reporting procedures detailed in Commission Regulations. See 11 CFR 110.6(c)(4)(i), (ii) and (iii). Chairman Max L. Friedersdorf filed a dissenting opinion. (Date Issued: June 25, 1980; Length: 6 pages)

AO 1980-53: Donation of Promotion Item to Host Committees of National Conventions

Kelly Services, Inc. may donate canvas tote bags to the host committees of the Democratic and Republican National Conventions for free distribution to delegates and convention attendees. Costs of providing the tote bags would not count against either national party's expenditure limits for the convention.

Kelly Services, Inc. may provide the tote bags, which will be inscribed with the convention's name on one side and the company's name on the other, because the bags are of nominal value, are provided solely for bona fide advertising purposes, and are provided in the ordinary course of business. 11 CFR 9008.7(c)(2). (Date Issued: June 17, 1980; Length: 2 pages)

AO 1980-54: Contributions by National Bank

The First National Bank of West Monroe may not make contributions to the Louisiana Political Action Council (LAPAC), a committee supporting candidates for state office. The Act prohibits national banks from making contributions and expenditures in connection with "any election to any political office" (2 U.S.C. §441b(a)), including donations to political committees which support candidates for state or local office as well as federal office. (Date Issued: June 17, 1980; Length: 2 pages)

AO 1980-55: Corporate Assistance for Secretary of State's Voter Registration Drive

The Office of the Secretary of State for Connecticut, which administers the state's elections, may accept corporate assistance in undertaking the following nonpartisan voter registration activities, provided these activities are permitted by state law:

Reprinting and Distributing Voter Registration Information. A corporation may use its facilities to reprint and distribute to the general public materials prepared by the Secretary of State on topics such as voter registration and party enrollment. These reprints may contain the corporation's logo, identification or a statement identifying the corporation's participation, such as: "Printed and distributed as a public service by the XYZ Corporation in conjunction with the Secretary of State of Connecticut." 11

CFR 114.4(c)(2).

Voter Registration Drives. Since the voter registration drives which the state's registrars of voters plan to undertake would be completely nonpartisan, corporations may make their facilities available for the drives. The corporations' employees may also assist in the drives as officially appointed assistant registrars. 11 CFR 114.4(d)(2) and (3). (Date Issued: June 25, 1980; Length: 4 pages)

AO 1980-56: Method of Counting Votes to Determine Minor Party Candidate's Eligibility for Public Funding

The total number of votes cast in the 1980 Presidential general election for Mr. Barry Commoner will be counted to determine his eligibility for retroactive public funds and the appropriate amount due — regardless of whether his name appears on a state ballot as an independent candidate or as the Presidential candidate of the Citizens' Party. Under the Act, a minor or new party candidate is eligible for retroactive public funding if the candidate of a political party receives five percent or more of the total number of popular votes cast for President. 11 CFR 9004(a)(3). (Date Issued: June 17, 1980; Length: 2 pages)

AO 1980-57: Fundraising to Defray Candidate's Litigation Fees

The Bexar County Democratic Party (the Committee) may solicit funds for Congressman Henry B. Gonzalez, which Mr. Gonzalez will then use to defray litigation fees he incurred while challenging the nominating petitions of a potential Republican opponent. If Mr. Gonzalez's litigation activity could influence the outcome of a federal election by preventing his opponent's name from appearing on the state ballot, funds raised by the Committee would be considered "contributions" to Mr. Gonzalez's principal campaign committee and would be subject to the reporting requirements, limitations and prohibitions of the Act.

The Committee could raise funds for Mr. Gonzalez's litigation fees by using either one of the following methods:

1. If the Committee solicited funds and contributed them to Mr. Gonzalez's principal campaign committee, the Committee would be required to register and report as a "political committee" under the Act once it had received contributions in excess of \$5,000. 2 U.S.C. §§433 and 434. Contributions to the Committee by an individual and contributions by the Committee to Mr. Gonzalez would each be subject to a \$5,000 per year limit, provided the Committee qualified as a multicandidate committee (i.e., the committee had been registered for at least six months, had received contributions from more than 50 donors and had contributed to at least five federal candidates).
2. Alternatively, Mr. Gonzalez could mail out a fundraising letter on the Committee's letterhead. In this case, the fundraising would be an activity of Mr. Gonzalez's campaign. Therefore, expenditures made for the solicitation, and any funds received, would be expenditures by and contributions to Mr. Gonzalez's principal campaign committee. As such, they would be reportable by Mr. Gonzalez's campaign. The Gonzalez campaign committee would also be required to include a statement on the solicitation authorizing the fundraising activity. 2 U.S.C. §441d. (Date Issued: June 25, 1980; Length: 4 pages)

AO 1980-58: National Bank's Contributions to State Senators' Officeholder Expense Funds

Union Bank and Trust Company (the Bank), a national bank in Grand Rapids, Michigan, may make donations payable by corporate check to the Officeholder Expense Funds of state senators. Michigan law prohibits public officials from using their officeholder expense funds to make contributions or expenditures to further their nomination or election to public office. The Act's ban on political contributions by national banks would not, therefore, apply to donations made to a state officeholder's expense fund if that fund is not utilized in connection with any election to any federal, state or local office. (Date Issued: June 25, 1980; Length: 3 pages)

AO 1980-62: Labor Union's Solicitation of Temporary Employees

The Pipefitters Local 524 Political Action Fund (the Committee), the separate segregated fund of the Pipefitters Local 524 (the Local), may solicit contributions from one category of temporary employees (travel card holders) but not from another category (permit card holders).

The Committee proposed soliciting both types of temporary employees through a voluntary payroll deduction plan. One group, the travel card holders, are not members of the Local. They are, however, members of other local unions affiliated with the Local's national organization, the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (United Association). Under Commission Regulations, the travel card holders are considered members of the United Association by virtue of being members of one of its affiliated local unions. The Committee may therefore solicit these employees because a subsidiary organization or its separate segregated fund may solicit members of its "parent organization," i.e., the United Association. (See also AO 1978-75.)

The other group of employees, the permit card holders, are not members of the Local or of the United Association. The Committee may not, therefore, solicit this group of employees. 2 U.S.C. §441b(b)(4)(A). Commissioners Thomas E. Harris and Frank P. Reiche filed concurring opinions. (Date Issued: July 3, 1980; Length: 6 pages, including concurring opinions)

AO 1980-64: Labor Organization's Payment of Members' Delegate Expenses

The National Education Association (NEA), a national labor organization, may not use its general treasury funds to pay the travel and living expenses of NEA members who will be attending the Democratic and Republican national nominating conventions as delegates.

The Act explicitly prohibits labor organizations from making contributions or expenditures in connection with federal elections. 2 U.S.C. §441b. The Commission's proposed delegate selection regulations* reinforce this prohibition by explicitly stating that "all contributions and expenditures by any delegate . . . are subject to the prohibitions of 11 CFR 110.4(a), Part 114; 2 U.S.C.

§§441b and 441e." Moreover, the delegates' expenses would not be considered the type of exempted expenditure which a labor organization may make for nonpartisan get-out-the-vote drives directed to members. 11 CFR 114.3(c)(3). (Date Issued: July 9, 1980; Length: 3 pages)

800 LINE

PRESIDENTIAL ELECTIONS

The Office of Public Communications receives numerous inquiries from the public on its toll-free line: 800/424-9530. The following questions and answers respond to questions the office has received about the public financing program for the 1980 Presidential general election.

Question: How are public funds made available to Presidential candidates for their general election campaigns?

Answer: Public funds for the Presidential general election are made available through the Presidential Election Campaign Fund, which consists of dollars voluntarily checked off by taxpayers on their Federal income tax returns.

Question: Who is eligible to receive public financing, and how much money may a candidate receive?

Answer: Each major party* Presidential nominee is eligible for a public grant of \$20 million plus the cost-of-living adjustment (or \$29.4 million in 1980) for campaigning in the general election.

Qualified minor party* candidates are eligible to receive a proportionate amount of the grant available to major party candidates. This proportionate grant is based on the number of votes the minor party candidate or his/her respective party received in the last Presidential general election. **Eligible new party* candidates** may receive a partial grant after the general election based on the number of votes they receive in the 1980 election.

Question: How do Presidential candidates obtain public funding?

Answer: Requests for public funds are reviewed for eligibility by the FEC and then certified by the FEC to the Department of Treasury, which in turn disburses the funds. To be eligible, candidates must agree in writing to:

- Limit campaign spending to the amount of the grant available to major party candidates (\$20 million plus the cost-of-living adjustment). **Note:** This spending limit applies to major, minor and new party candidates;
- Spend public funds only on qualified campaign expenditures (i.e., expenditures which influence the campaign for the Presidency);

*A major party is a political party whose nominee receives 25 percent or more of the total popular votes in the preceding Presidential election; a minor party is a political party whose nominee received between 5 and 25 percent of the total popular votes in the preceding Presidential election; and a new party is a political party whose nominee received less than 5 percent of the total votes in the preceding election.

- Repay public funds to the U.S. Treasury, if required; and
- Facilitate an FEC audit of the campaign by gathering all records in a centralized location and providing the necessary space and personnel to assist in the audit.

Question: May Presidential candidates who receive public funding also accept private contributions?

Answer: Major party candidates who accept public funding may not accept any private contributions for their general election campaigns, except for a special account maintained exclusively to pay expenses related to their complying with the election law. Minor and new party candidates who accept partial public financing may, in addition to accepting contributions for their compliance fund, accept private contribution for the campaign itself, as long as the sum of public funds and private contributions does not exceed a major party candidate's total grant.

Question: May a candidate spend any of his or her own funds, or funds of his or her family, to promote his or her candidacy?

Answer: Yes. A Presidential candidate who accepts public funding may spend up to \$50,000 in personal funds (including family funds over which the candidate had direct legal control at the time he/she became a candidate) to promote his or her campaign for the Presidency. These expenditures are not chargeable to the spending limit.

Question: Are a candidate's legal and accounting expenses chargeable to his/her spending limit for the general election?

Answer: Payments for legal and accounting fees related to compliance with the Act, which are paid from the candidate's compliance fund, are not chargeable to the candidate's spending limit; but they are reportable. (The compliance fund may also be used for other purposes, as specified in the regulations. See **Disbursements from the Compliance Fund** on page 2 of this issue of the *Record*.)

Question: Under what circumstances must a candidate repay public funds?

Answer: Repayment of public funds is required in several situations, including cases where the amount of public funds received exceeds the amount to which the candidate is entitled; where spending limits are exceeded; where public funds are used for purposes other than "qualified campaign expenditures"; or where public funds remain after debts and obligations have been paid.

Question: May a candidate dispute an FEC determination concerning certifications and repayments of public funds?

Answer: Yes. Commission Regulations provide a dispute procedure, consistent with due process requirements, whereby candidates may challenge FEC decisions concerning certifications and repayments. The FEC must respond by investigating any additional evidence provided and by submitting its findings in writing. 11 CFR 9005.2 and 9007.2(b).

REPORTS

LOUISIANA PRIMARY RESCHEDULED

The filing date for the Louisiana pre-primary report has been changed because the Louisiana primary election for Congressional candidates has been rescheduled for September 13 (instead of September 20). This change affects the authorized committees of all federal candidates in the primary election and any other political committees that support a federal candidate in the Louisiana primary (except those filing on a monthly basis). The new schedule for filing a 12-day pre-election report for the Louisiana primary is as follows:

Closing Date of Books	Mailing Date of Report (if sent by registered by certified mail)	Filing Date
August 24, 1980	August 29, 1980	September 1, 1980

THE LAW IN THE COURTS

DISTRICT COURT GRANTS SUMMARY MOTIONS IN COMMON CAUSE ET AL. V. FEC ET AL.

On April 30, 1980, the U.S. District Court for the District of Columbia granted summary judgment in two cross motions filed by parties to the suit, *Common Cause et al. v. FEC et al.* (Civil Action No. 78-2135).

Common Cause had filed its motion for summary judgment in November 1978, requesting that the Court rule the FEC had acted contrary to law in failing to take final action on Common Cause's administrative complaint within 90 days of its being filed. 2 U.S.C. §437g(a)(9)(B)(ii). In its complaint, Common Cause had asserted that the American Medical Political Action Committee (AMPAC), the separate segregated fund of the American Medical Association (AMA), and the state political action committees of AMA's state affiliates constituted a single political committee by virtue of their affiliation. 2 U.S.C. §441a(a)(5). Therefore, alleged Common Cause, AMPAC and its affiliated state PACs shared a single contribution limit of \$5,000 per candidate, per election. Common Cause's complaint listed numerous instances in the 1976 Congressional elections where the combined contribution of AMPAC and an affiliated state PAC to a candidate had exceeded the \$5,000 limit.

At the time Common Cause filed its motion for summary judgment, the Commission had entered into conciliation agreements only with AMPAC and a few of the state PACs named in the June 1978 complaint. By fall of 1979, how-

COMPLIANCE

ever, the Commission had entered into separate agreements with an additional five state PACs; between Fall 1979 and Spring 1980 the Commission entered into agreements with eleven other state PACs and was preparing to enter into 10 additional agreements. The Court also noted that in February 1977 the Commission had broadened the scope of its initial investigation to include all of the AMA's state affiliates and their PACs. Moreover, the Commission had begun investigating four additional complaints which also alleged violations of the Act's contribution limits by AMPAC and its affiliated state PACs.

Common Cause nevertheless maintained that the FEC had acted contrary to law in not taking final action on its complaint within 90 days. The FEC, on the other hand, viewed the 90-day provision as jurisdictional, giving the Court power to decide after the 90-day period whether or not the Commission had acted contrary to law.

In addition to supporting the FEC's interpretation of the 90-day provision, the Court noted that the determination of whether AMPAC and its state PACs were affiliated (i.e., whether they had been established, financed, maintained or controlled by the same entity) was a factual question requiring proof provided by extensive investigation. Therefore, the Court did not find the FEC's efforts to collect further evidence to be an abuse of discretion. Moreover, the Court found that the FEC's decision not to investigate combined contributions by state PACs affiliated with AMPAC (in addition to the combined AMPAC-State PAC contributions it had investigated) was not contrary to law since Common Cause had mentioned only one such occurrence among the 69 violations it had cited. The Court did, however, order the Commission to either enter into conciliation agreements with the ten remaining respondents named in Common Cause's complaint within 30 days of the Court's ruling or bring suit against them. The Commission did enter into conciliation agreements with the remaining respondents, and the Court issued an order on June 13, 1980, dismissing the case.

LITIGATION STATUS INFORMATION

The following is a list of new litigation involving the Commission, together with the date the suit was filed, the court involved, the docket number and a brief description of the major issue(s) involved in the case. Persons seeking additional information on a particular case should contact the court where the suit is filed or the Commission.

Felice M. Gelman and Citizens for LaRouche, Inc. v. FEC, U.S. Court of Appeals for the District of Columbia Circuit, Docket No. 80-1646, June 11, 1980.

Pursuant to 26 U.S.C. §9041, plaintiffs seek review of an FEC decision issued May 29, 1980, that Lyndon H. LaRouche had not reestablished eligibility for primary matching funds in the Michigan Democratic Presidential Primary of May 20, 1980, and that the Commission would therefore proceed with a post-primary audit of Mr. LaRouche's campaign.

FEC CHANGES LATE AND NONFILER PROCEDURES

In March and July 1980, the Commission approved new procedures for notifying authorized and unauthorized committees of their reporting obligations under the Act. These procedures reflect the 1979 Amendments to the federal election law (2 U.S.C. §§437g(b) and 438(a)(7)). The Commission will continue to notify late filers and nonfilers of their reporting requirements under the Act. However, no compliance action will be initiated until after the Commission has notified nonfiling committees of their failure to comply with reporting obligations and, in the case of authorized candidate committees, after the Commission has published the names of nonfilers. The nonfiler procedures are summarized below:

Election Year Procedures

Before each reporting deadline, a "prior notice" explaining reporting requirements for the particular type(s) of reports due will be sent to all registered committees. For the 12-day pre-primary report, this notice will be sent to all individuals who appear on the state ballot.

Note: Unauthorized committees will **not** be sent a prior notice for the pre-primary report. (Unauthorized committees include party committees, nonparty committees and unauthorized single candidate committees.) Instead, the prior notice for quarterly reports will remind unauthorized committees of their obligation to file pre-primary reports for those primary elections in which they made either contributions or expenditures (if these contributions and expenditures were not reported on a prior report).

After each reporting deadline, the Commission will send a mailgram to all registered political committees that fail to file a report, informing them that their reports have not been received.

After the mailgram has been sent, the Commission will publish the names of all *authorized candidate committees* which still have not filed their report by the particular date stated in the mailgram. The Commission will not, however, publish the names of any other types of committees which fail to file required reports, since their publication is not authorized in the 1979 Amendments to the Act. Instead, the Commission will handle such nonfilers and late filers through normal compliance procedures.

Nonelection Year Procedures

During nonelection years, the Commission will send prior notices to filers semiannually. Procedures for notifying late or nonfilers and publishing the names of authorized candidate committees that fail to file a report are the same as those for an election year.

SUMMARY OF MUR's

Selected compliance cases, which have been closed and put on the public record, are summarized in the *Record*. Compliance matters stem from possible violations of the Federal Election Campaign Act of 1971, as amended, which come to the Commission's attention either through formal complaints originating outside the Commission or by the FEC's own monitoring procedures. The Act gives the FEC the exclusive jurisdiction for the civil enforcement of the Act. Potential violations are assigned case numbers by the Office of General Counsel and become "Matters Under Review" (MUR's). All MUR investigations are kept confidential by the Commission, as required by the Act.

MUR's may be closed at any one of several points during the enforcement process, including when the Commission:

- Determines that no violation of the Act has occurred;
- Determines that there is no reason to believe or no probable cause to believe a violation of the Act has occurred;
- Enters into a conciliation agreement with the respondent;
- Finds probable cause to believe a violation has occurred and decides to sue; or
- Decides at any point during the enforcement process to take no further action.

After the MUR is closed and released by the Office of General Counsel, the Commission makes the MUR file available to the public. This file contains the complaint, the findings of the General Counsel's Office and the Commission's actions with regard to the case, including the full text of any conciliation agreement. The Commission's actions are not necessarily based on, or in agreement with, the General Counsel's analysis.

Selection of MUR's for summary is made only from MUR's closed after January 1, 1979. The *Record* article does not summarize every stage in the compliance process. Rather, the summary provides only enough background to make clear the Commission's final determination. The full text of these MUR's and others which were closed between 1976 and the present are available for review and purchase in the Commission's Public Records Office.

MUR 885: Express Advocacy, Required Authorization Notice, Federal/State Accounts

On November 21, 1979, the Commission entered into a conciliation agreement with a political committee that had violated provisions of the Act by its failure to register and file timely reports as a political committee, to include authorization/nonauthorization notices on advocacy literature and to either keep separate federal and state accounts for contributions or notify potential contributors of the Act's contribution limits.

Complaint: On November 29, 1978, a membership organization filed a complaint alleging that the political committee:

1. Had violated 2 U.S.C. §441a(1) by contributing over \$1,000 to a candidate, since the committee was ineligible for the multicandidate contribution limits (\$5,000 per candidate per election).
2. Had failed to report its affiliation with a nonprofit corporation in its Statement of Organization, despite alleged financial support from that corporation and resulting status as a separate segregated fund of the corporation. 11 CFR 100.14(c) and 100.15.
3. Had neglected to register with the Commission as a political committee when it allegedly exceeded the \$1,000 contribution or expenditure threshold that, at that time, triggered required registration. 2 U.S.C. §433(a).
4. Had failed to report alleged expenditures for its pre-primary and pre-general election brochures. 2 U.S.C. §434(b).

The Commission voted to take no action on the first allegation and, on the second allegation, found no reasonable cause to believe the Act had been violated. The Commission did, however, take action on the third and fourth allegations. The investigation also disclosed other violations, detailed below.

General Counsel Reports:

Registration and reporting violations. Although the report, submitted by the committee to state officials after the primary, disclosed donations and costs for a pre-primary brochure which exceeded the \$1,000 threshold, the committee had not registered with the FEC since it did not believe its pre-primary brochure was an endorsement of a federal candidate. The brochure urged readers to vote for candidates whose stand on a certain issue agreed with the committee's. The brochure identified federal and state candidates' positions on the issue in question. The General Counsel reported that "any reasonable person" would have known the committee was endorsing a candidate whose views agreed with the committee's and that the brochure clearly attempted to influence primary election results. Therefore, the General Counsel recommended the Commission find reasonable cause to believe the committee had violated 2 U.S.C. §433(a) by the late filing of its Statement of Organization. (The Statement had not been filed until some months after the primary.) Moreover, because the brochure endorsed a federal candidate, the expenditures and contributions connected with the brochure should have been reported to the Commission. The General Counsel recommended a reason to believe finding that the committee had violated 2 U.S.C. §434 by filing late pre- and post-election reports.

Authorization/nonauthorization statement violation. The Office of General Counsel stated in its report that the pre-general election brochure presented a "clear case of 'express advocacy.'" Similar in format to the pre-primary brochure, the pre-general election brochure pictured state and federal candidates, noted their opinions on certain issues, and encouraged readers to "vote for" and "elect" those candidates who supported the committee's stand on those issues. Since the committee neglected to include an

authorization/nonauthorization statement, the General Counsel recommended the Commission find reason to believe the committee had violated 2 U.S.C. §441d(1) and 11 CFR 110.11(c). The General Counsel also recommended a reason to believe finding that the committee had violated 11 CFR 110.11(a)(1)(ii) by not including "the name of the person who made or financed the expenditure for the communication." Although the committee responded that its name and address appeared on the brochure, the General Counsel maintained that the brochure should have stated "that it was financed by" the committee.

State/federal contribution violation. After a Commission investigation, the General Counsel recommended a reason to believe finding that the committee had violated the 11 CFR 102.6 requirement that a committee keep either separate accounts for state and federal contributions or a single account. In the latter case, all contributions must be permissible under the Act and all contributors must be informed of the Act's contribution limits. The committee indicated no separate accounting of contributions; nor did the solicitations notify potential contributors of the Act's contribution limits.

Commission Determination: On April 25, 1979, the Commission found reasonable cause to believe that the committee had violated 2 U.S.C. §§433, 434 and 441d and 11 CFR 110.11(a)(1)(ii) and 110.11(c). On September 29, 1979, the Commission found reasonable cause to believe that the committee had also violated 11 CFR 102.6. On November 21, 1979, the Commission entered into a conciliation agreement that included payment of a civil penalty.

MUR 1025: Solicitation of Members by Labor Union's Separate Segregated Fund

On December 17, 1979, the Commission found no reasonable cause to believe that a labor organization had violated 2 U.S.C. §441b(b)(3)(A) and (C) by requiring contributions to its separate segregated fund as a condition of membership and by failing to inform its members of their right to refuse to contribute without reprisal.

Complaint: On September 5, 1979, six members of a labor organization filed a complaint with the Commission alleging that the union's collective bargaining agreement established, as a condition of membership, an automatic payroll deduction for the union's separate segregated fund. The union's constitution allowed for a refund of the assessment, but only upon request. The complainants specifically referred to this assessment mechanism as a "reverse checkoff," a violation of 2 U.S.C. §441b(b)(3)(A) and 11 CFR 114.5(a)(1). The complainants also alleged that, by failing to inform its members of their right to refuse to contribute, the union had violated 2 U.S.C. §441b(b)(3)(C). Finally, by having been denied the freedom to refuse to contribute, the complainants believed their First Amendment rights of freedom of speech and association had been violated.

General Counsel Reports: Investigation by the General Counsel revealed that the complainants had misunderstood the operation of the union's separate segregated fund, which in fact comprised two funds. One fund, subsidized by the allegedly illegal checkoff deduction, was not

used to make expenditures for federal elections and was therefore termed "nonvoluntary." A second fund was used for federal elections but satisfied the Act's solicitation requirements and was therefore termed "voluntary." Also, its monies were not commingled with the other, nonvoluntary fund. Since the complainants based their allegations on the operation of the nonvoluntary fund that was not used for federal elections and was not, therefore, within the Commission's jurisdiction, the General Counsel recommended the Commission find no reasonable cause to believe the union had violated §441b(b)(3).

Commission Determination: On December 17, 1979, the Commission found no reasonable cause to believe the respondent had violated §441b(b)(3).

CLEARINGHOUSE

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PUBLIC FINANCING

The summary chart below provides cumulative information on certifications of primary matching funds made to

Presidential candidates between January 1, 1980, and July 3, 1980. The chart includes data on each candidate's total submissions (and resubmissions) of private contributions for primary matching funds, total funds certified by the Commission to each candidate and the total amount of matching funds to which the candidate is still entitled, based (where appropriate) on the candidate's estimate of new outstanding campaign obligations.

FEDERAL ELECTION COMMISSION YEAR-TO-DATE ACTIVITY FOR PRESIDENTIAL CANDIDATES RECEIVING MATCHING FUNDS

Name of Candidate	No. of Submissions	Amount Requested	No. of Contributions	No. of Resubmissions	Amount Certified by Commission To Date	Maximum Entitlement Remaining*
ANDERSON, John B.	7	2,895,483	80,744	0	2,680,347	.00
BAKER, Howard H. Jr.	11	2,440,576	53,782	0	2,383,263	557,631
BROWN, Edmund G. Jr.	14	967,443	15,126	2	857,182	95,033
BUSH, George	11	6,245,656	84,474	0	5,608,654	1,751,345
CARTER, Jimmy	16	4,821,029	54,462	0	4,329,812	3,030,187
CRANE, Philip M.	8	2,000,338	89,840	0	1,636,638	378,500
DOLE, Robert J.	5	467,117	3,752	1	446,226	108,798
KENNEDY, Edward M.	15	3,584,453	65,023	0	3,402,434	3,957,565
LAROUCHE, Lyndon H.	14	567,753	10,063	12	526,164	3,972
REAGAN, Ronald	8	7,991,331	209,341	0	7,115,168	244,831
TOTALS	109	\$31,981,183	666,607	15	\$28,985,891	

*NOTE: Maximum Entitlement Remaining is based upon candidate's statement of net outstanding campaign obligations.

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