

RECORD

September 1990

999 E Street NW

Washington DC

20463

Volume 16, Number 9

REPORTS

REPORTS DUE IN OCTOBER, NOVEMBER AND DECEMBER

To find out what reports your committee must file during fall 1990, check the Fall Reporting Schedule chart (page 2). Then check the Reporting Dates chart (page 3) to determine the coverage period and due date for each report.

(Committees supporting candidates in the Hawaii special elections should consult pages 4 and 5 of the August Record for reporting dates.)

The FEC will mail forms to all registered committees for their fall reports. For additional forms or information on reporting requirements, call the FEC at 800/424-9530 or 202/376-3120.

Last-Minute Independent Expenditures

Any person making independent expenditures aggregating \$1,000 or more in connection with the November 6 general election must report the expenditures within 24 hours if the expenditures are made between October 18 and November 4. The report must be filed with the Clerk of the House or the Secretary of the Senate, as appropriate, within 24 hours after the expenditures are made. A copy of the report must also be filed with the filing office of the state in which the candidate supported or opposed seeks election. 11 CFR 104.4(b) and (c) and 104.5(g).

For more information on 24-hour reports of last-minute independent expenditures, see the July 1990 Record.

Last-Minute Contributions

Authorized committees of candidates running in the November 6 general election must file special notices on contributions of \$1,000 or more received between October 18 and November 3. The notice is due within 48 hours of the committee's receipt of such a contribution and must be filed with the Secretary of the Senate or the Clerk of the House, as appropriate, and with the filing office of the state in

which the candidate seeks election. 11 CFR 104.5(f).

For more information on 48-hour notices of last-minute contributions, see the July 1990 Record. See also this issue's article on faxing reports, page 4.

Late Filing

The Federal Election Campaign Act does not permit the Commission to grant extensions of filing deadlines under any circumstances. Failure to file on time could result in enforcement action by the FEC.

Where to File Reports

Committees must file original reports with the appropriate federal office and simultaneously file copies of reports with the appropriate state filing offices. 11 CFR Parts 105 and 108. See the instructions to FEC Forms 3 and 3X. A list of state filing offices is available from the FEC.

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Fall Reporting Schedule

Type of Filer ¹	Report					
	Quarterly Oct. 15	Monthly Oct. 20	Pre- General Oct. 25	Monthly Nov. 20	Post- General Dec. 6	Monthly Dec. 20
1990 Congressional Candidate Committees ²	✓		✓ ³		✓ ³	
PACs and Party Committees: ⁴ Quarterly Filers	✓		✓ ⁵		✓	
PACs and Party Committees: ⁴ Monthly Filers		✓	✓		✓	
Presidential Candidate Committees: ⁶ Quarterly Filers	✓					
Presidential Candidate Committees: ⁶ Monthly Filers		✓		✓		✓
Corporations/Labor Organiza- tions: Reports ⁷ of Partisan Communications	✓		✓			

¹Committees supporting candidates in the Hawaii special elections should consult the August Record, pages 4-5.

²Committees of Congressional candidates not active in 1990 do not have to file any reports until January 31, 1991, when the 1990 year-end report is due.

³Required only if the candidate runs in the general election.

⁴PACs and party committees must file on either a monthly or a quarterly schedule. Committees wishing to change their schedule should consult 11 CFR 104.5(c).

⁵Required only if the committee makes contributions or expenditures in connection with the general election between October 1 and October 17. All PACs and party committees must, however, file a post-general election report.

⁶Presidential committees must file on either a monthly or a quarterly schedule in 1990.

⁷Required if an organization's aggregate costs exceed \$2,000 for internal communications expressly advocating the election or defeat of a candidate in the 1990 general election. Reports are required beginning with the first reporting period during which such costs aggregate over \$2,000 per election and for each period thereafter in which the organization makes any additional disbursements for advocacy communications in connection with the same election. See 11 CFR 104.6 and page 24 of the Campaign Guide for Corporations and Labor Organizations.

Reporting Dates¹

Report	Period Covered ²	Reg./Cert. Mail Date ³	Filing Date
October Quarterly	July 1--September 30	October 15	October 15
October Monthly	September 1--September 30	October 20	October 20
Pre-general	October 1--October 17	October 22	October 25
November Monthly	October 1--October 31	November 20	November 20
Post-general			
Pre-general filers	October 18--November 26	December 6	December 6
Other filers	October 1--November 26	same	same
December Monthly	November 1--November 30	December 20	December 20

¹Committees supporting candidates in the Hawaii special elections should consult the August Record, pages 4-5.

²If report is first report filed, then coverage period starts with date of committee's first activity, including activity that occurred before the committee registered or before the individual became a candidate.

³Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise they must be received by the filing date.

Federal Election Commission, 999 E Street, NW, Washington, DC 20463
800/424-9530 202/376-3120 202/376-3136 (TDD)

Lee Ann Elliott, Chairman
John Warren McGarry, Vice Chairman
Joan D. Aikens
Thomas J. Josefiak
Danny L. McDonald
Scott E. Thomas

Walter J. Stewart, Secretary of the Senate,
Ex Officio Commissioner
Donald K. Anderson, Clerk of the House of
Representatives, Ex Officio Commissioner

FAXING REPORTS: CLARIFICATION

Financial disclosure reports and statements filed with the federal filing offices (the FEC, the Clerk of the House and the Secretary of the Senate) must include the original signature of the committee treasurer (or, in the case of communication cost reports filed by corporations and labor organizations, the signature of the person designated to sign the report). Because of the signature requirement, the telefacsimile machine (fax machine) may not be used to transmit reports and statements to the federal filing offices.

There is one exception to this rule. In AO 1988-32, the Commission said that an authorized candidate committee could use a fax machine to submit 48-hour notices on last-minute contributions, since these notices do not require the treasurer's signature. (For the same reason, 48-hour notices may also be sent via mailgram or telegram.)

The Senate Office of Public Records recently installed a fax machine that Senate committees may use to file their 48-hour notices. The fax number is 202/224-1851. At the present time, however, the Clerk of the House does not have the facilities to accept faxed notices. Since this situation could change, House committees that wish to fax their 48-hour notices should check with the House Office of Records and Registration, 202/225-1300. For information on the use of fax machines located in Members' offices, consult House and Senate rules.

In the case of 48-hour notices filed by authorized committees of Presidential candidates, the FEC will accept notices by fax machine.

FEC ASKS TREASURY TO WRITE RULES TO HANDLE SHORTFALL IN PRESIDENTIAL FUND

On July 11, 1990, FEC Chairman Lee Ann Elliott sent a letter to the Secretary of the Treasury Nicholas F. Brady pointing out the projected shortfall in the Presidential Election Campaign Fund for the 1992 elections and suggesting that Treasury write new rules on how to allocate funding in the event of a shortfall.

A report accompanying the letter explained that, under the public funding statutes, the Commission and the Secretary of the Treasury have separate responsibilities with regard to public funding entitlements. The Commission processes the requests and certifies the amount of each entitlement, and the Treasury Department makes payments from the Fund to the three types of public funding recipients (primary candidates, national nominating convention committees and general election candidates). In funding these recipients, the Secretary of the Treasury must give priority first to the nominating conventions, second to general election candidates and last to primary candidates receiving matching funds. In the event that funds are insufficient to pay the full amount of an entitlement, the Secretary must determine the pro rata share and make the payment accordingly.

The FEC projects that, as of January 1, 1992, if the Treasury sets aside moneys for the funding of the Presidential nominating conventions and general election, the remaining funds on hand will be \$12.2 million short of the estimated \$26.6 million needed for January matching fund payments. Accordingly, primary candidates may receive only a pro-rata share of their full entitlements.

The FEC projections are based on several assumptions. First, the number of taxpayers participating in the dollar checkoff program will continue to decline. Second, payouts from the Fund to convention committees and general election candidates will increase, reflecting inflationary trends. Third, the payments to 1992 primary candidates will approximate payments made in 1984, as adjusted for inflation.

Projections for 1996 suggest that the deficit will continue to grow: The Fund may be \$169 million short of the amount needed to finance the 1996 elections.

The report noted the courses of action the Commission has taken to prepare for the impending shortfall. The agency has notified Congress of the expected shortfall and, in its 1990 legislative recommendations, the FEC suggested several statutory changes that could prevent a shortfall in 1992. (See the April and May 1990 Record issues.) The Commission is conducting a research program, in consultation with the Internal Revenue Service, on taxpayer understanding of the tax checkoff. In its most recent action--the letter to Secretary Brady--the Commission suggested that the Treasury Department begin a rulemaking in consultation with the FEC on how to allocate the Fund's limited resources for the 1992 elections.

ADVISORY OPINIONS

ADVISORY OPINION REQUESTS

The following chart lists recent requests for advisory opinions (AORs). The full text of each AOR is available for public review and comment in the FEC's Public Records Office.

AOR 1990-16

Transfer from candidate's state committee to nonconnected committee established by same candidate. (Date Made Public: August 7, 1990; Length: 3 pages)

AOR 1990-17

New fundraising by terminated 1988 campaign committee to cover attorney fees related to FEC enforcement case from 1988 campaign. (Date Made Public: August 14, 1990; Length: 2 pages)

COURT CASES

FAUCHER AND MAINE RIGHT TO LIFE COMMITTEE, INC. v. FEC (90-0112-B)

On June 29, 1990, the U.S. District Court for the District of Maine ruled that 11 CFR 114.4(b)(5), which concerns the publication and public distribution of voter guides by corporations, was invalid to the extent that the regulation makes the permissibility of corporate voter guides hinge upon the absence of "issue advocacy" in the guide's content, rather than on the narrower test of "express advocacy." The court denied, however, plaintiffs' request for injunctive relief to prevent the FEC and the U.S. Attorney General from taking enforcement action against plaintiffs' proposed 1990 publications. (Civil Action No. 90-0112-B.)

Background

Previous Suit. The Maine Right to Life Committee, Inc. (MRLC), a nonprofit membership corporation, and Sandra Faucher, an MRLC board member, filed a similar suit in the same court in 1985. (Civil Action No. 85-0244-B.) In that suit, MRLC and Ms. Faucher also challenged 11 CFR 114.4(b)(5), which permits corporations to prepare and distribute to the public nonpartisan voter

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PUBLIC APPEARANCES

- 9/12-15 Council on Governmental Ethics Laws (COGEL)
Anchorage, Alaska
Chairman Lee Ann Elliott
Vice Chairman John Warren McGarry
John C. Surina,
Staff Director
Lawrence M. Noble,
General Counsel
Kim Bright-Coleman,
Special Assistant General Counsel, Title 26 and Ethics
Kent C. Cooper,
Assistant Staff Director,
Public Disclosure
- 10/27-28 Center for the Study of the Presidency
Austin, Texas
Chairman Lee Ann Elliott

guides consisting of questions posed to candidates on campaign issues and the candidates' responses. Fearing that the proposed MRLC voter guide would not comply with the FEC's standards for nonpartisanship, plaintiffs asked the court to invalidate the regulation and issue an injunction preventing the FEC from enforcing the rule. On February 24, 1989, the court dismissed the suit on the ground that plaintiffs first needed to obtain an FEC advisory opinion on the legality of the proposed publication. (For a summary of this suit, see the April 1989 Record.)

Plaintiffs then sought an advisory opinion, which was issued on February 14, 1990 (AO 1989-28).

AO 1989-28. In AO 1989-28, the Commission concluded that MRLC could not use general treasury funds to distribute to the general public a newsletter containing a proposed voter guide.

First, because MRLC had a policy of accepting corporate contributions and had, in fact, accepted such contributions, it failed to qualify for the exemption granted to certain nonprofit corporations as a result of the Supreme Court's decision in Massachusetts Citizens for Life, Inc. (MCFL) v. FEC, 479 U.S. 238 (1986). In that decision, the Supreme Court ruled that the prohibition against corporate spending was unconstitutional as applied to nonprofit corporations that satisfied certain criteria.

Second, MRLC's proposed publication did not comply with the criteria for nonpartisan communications set forth at 11 CFR 114.5(b)(5). Specifically, the publication favored a pro-life position, although the rule states that a nonpartisan voter guide may not suggest or favor any position on the issues. 11 CFR 114.5(b)(5)(i)(C) and (D). (For a more detailed summary of this opinion, see the March 1990 Record.)

Second Suit. On April 18, 1990, MRLC and Faucher filed a second suit, again challenging 11 CFR 114.5(b)(5) on the grounds that the regulation was beyond the authority of the FEC and was unconstitutionally vague. Plaintiffs also sought a declaratory judgment that MRLC's proposed 1990 publications were permissible under the Federal Election Campaign Act. They further sought an injunction prohibiting the FEC and the U.S. Attorney General from enforcing the voter guide regulations with regard to MRLC's proposed activity.

Court Decision

In its June 29 decision, the court found that 11 CFR 114.5(b)(5) was invalid because it focused on "issue advocacy" rather than "express advocacy." The court found that plaintiffs did not have standing to challenge other aspects of the rule and denied plaintiffs' request for declaratory and injunctive relief.

Invalidity of 11 CFR 114.5(b)(5). The court first cited 2 U.S.C. §441b as the statutory basis for the regulation in question. Section 441b prohibits "any corporation whatever" from making "a contribution or expenditure in connection with any [federal] election..." The court, however, found that the Supreme Court, in its MCFL decision, limited the scope of the prohibition to expenditures that "expressly advocate" the election or defeat of a clearly identified candidate.

Under the regulation in question, 11 CFR 114.4(b)(5), a corporation may use its treasury funds to distribute a voter guide to the general public only if the guide is "nonpartisan." Included among the factors defining "nonpartisan" is that the wording does not favor any position, or express an editorial opinion, on the issues presented. 11 CFR 114.4(b)(5)(i)(C) and (D). The court found that "[t]his approach ignores the clear language of FEC v. Massachusetts Citizens for Life that issue advocacy by a corporation cannot constitutionally be prohibited and that only express advocacy...is constitutionally within the statute's prohibition."

The court therefore concluded that the regulation, "with its focus on issue advocacy, is contrary to the statute as the United States Supreme Court has interpreted it and, therefore, beyond the power of the FEC."

Other Challenges. The court ruled that MRLC did not have standing to challenge another aspect of the regulation: its failure to incorporate in explicit language the MCFL holding that the statute cannot constitutionally limit even express advocacy by a certain type of nonprofit membership corporation. MRLC lacked standing because it did not qualify as the type of corporation covered under the MCFL exemption. One of the essential factors for the exemption is that the nonprofit corporation must not receive contributions from business corporations and must have a policy against accepting such contributions. Although MRLC received "comparatively modest" amounts from corporate businesses,

without an explicit policy against accepting such contributions, organizations like MRLC could serve as a conduit for corporate contributions.

The court also did not address plaintiffs' challenge that 11 CFR 114.5(b)(5) does not explicitly incorporate the statutory "news story" exemption at 2 U.S.C. §431(9)(B)(i), which exempts news media costs from the definition of "expenditure." The court said it was "satisfied that the MRLC does not fit within this media exemption" and that therefore plaintiffs did not have standing to challenge the regulation on this score. (Another FEC regulation, 11 CFR 100.8(b)(2), parallels the statutory exemption.)

Finally, the court found that plaintiffs did not have standing to challenge 11 CFR 114.4(b)(5)(ii). Plaintiffs had asserted that the regulation was unconstitutionally vague in directing that certain publications "not favor one candidate or political party over another." Since that portion of the regulation affects only nonprofit, tax-exempt corporations that do not "support, endorse or oppose candidates or political parties," it does not apply to MRLC, which has established a separate segregated fund to engage in such activity. (In AO 1984-17, the Commission held that a tax-exempt corporation becomes an organization that supports, endorses or opposes candidates if it establishes a separate segregated fund that does so.)

Denial of Declaratory and Injunctive Relief. Finding that the issue was not ripe for consideration, the court denied plaintiffs' request for a declaratory judgment that their proposed 1990 voter guide was permissible under the Act and also denied their request for injunctive relief to prevent any enforcement action against their proposed 1990 publications. Plaintiffs said that the 1990 publications would be substantially similar to the 1988 publication, but the court was "not prepared to base declaratory and injunctive relief upon a 1988 publication, when minor changes could make that ruling wholly inapplicable to the actual 1990 publications."

The court stated: "In a context where words and nuances may be critical, I do not have the actual language and format of the publications. Given the FEC's enforcement role,...such [declaratory and injunctive] relief would unduly interfere with the overall ability of that agency to conduct investigations of alleged violations, might well delay it in gathering important

information and would interfere with the congressional goal of resolving specific election disputes through conciliation....An injunction may in fact be wholly unnecessary. Finally, any hardship to the parties in finding this issue not ripe is minimal, given the plaintiffs' historical practice of publishing despite any uncertainty."

NEW LITIGATION

Kripke v. FEC

Dr. Daniel F. Kripke asks the court to declare that the Commission's failure to act on his administrative complaint is contrary to law and to order the agency to act on his complaint within 30 days.

Dr. Kripke, a 1990 Democratic House candidate for the 41st district of California, alleged that he had filed an administrative complaint in December 1987 in which he claimed that Congressman William D. Lowery, the Republican incumbent for the 41st district, violated the Federal Election Campaign Act by accepting prohibited corporate contributions. Alleging that he has failed to hear from the Commission concerning action on his complaint, Dr. Kripke filed suit under 2 U.S.C. §437g(a)(8), which permits a complainant to petition the court if the Commission fails to act on an administrative complaint within 120 days from the date the complaint was filed.

U.S. District Court for the District of Columbia, Civil Action No. 90-1597, July 11, 1990.

FEC v. International Funding Institute, Inc., American Citizens for Political Action, Inc., and Dolan

The FEC asks the district court to declare that the International Funding Institute, Inc. (IFI), a political consulting firm, American Citizens for Political Action, Inc. (ACPA), a political committee, and Robert E. Dolan, an officer of IFI and the treasurer of ACPA, knowingly and willfully violated 2 U.S.C. §438(a)(4). That provision prohibits information on individual contributors copied from reports on file with the FEC from being sold or used for solicitation or commercial purposes.

The FEC claims that IFI subscribed to an on-line computer data base containing individual contributor information compiled from FEC disclosure reports. IFI then developed the information into two mailing lists, "Active Republican Donors" and

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"Active Democrat Donors," and contracted with a list brokerage company to rent the lists. IFI realized approximately \$9,513 in income from rentals of the Active Republican Donors list. ACPA rented the list from the brokerage company and used it to solicit contributions. The Commission therefore alleges that defendants illegally sold and used, for commercial and solicitation purposes, individual contributor information copied from reports.

The Commission asks the court to impose the penalties for knowing and willful violations (the greater of \$10,000 or 200 percent of the amount involved in the violation; see 2 U.S.C. §437g(a)(C)(6)). The Commission also asks that the court permanently enjoin the defendants from further violations of the sale and use prohibition.

U.S. District Court for the District of Columbia, Civil Action No. 90-1623, July 13, 1990.



MURS RELEASED TO THE PUBLIC

Listed below are MURS (FEC enforcement cases) recently released for public review. The list is based on the FEC press release of July 20, 1990. Files on closed MURS are available for review in the Public Records Office.

Unless otherwise noted, civil penalties resulted from conciliation agreements reached between the respondents and the Commission.

MUR 2377

Respondents: (a) Texas Republican Congressional Committee, Martha Weisend, treasurer (aka Republican Party of Texas); (b) National Republican Congressional Committee, Jack McDonald, treasurer (DC); (c) Tom Carter (TX); (d) Tom Carter for Congress, Glenn H. Gage, treasurer (TX)

Complainant: Robert F. Bauer, Counsel, Democratic Congressional Campaign Committee (DC)

Subject: (1) Prohibited expenditures from nonfederal account; (2) excessive coordinated party expenditures

Disposition: (a)(1) \$1,625 civil penalty; (a)(2) reason to believe but took no further action; (b), (c) and (d) no reason to believe

MUR 2962

Respondents: Mechanical Contractors Political Action Committee (MC-PAC), Patricia M. Fink, treasurer (MD)

Complainant: FEC initiated

Subject: Failure to report on time

Disposition: \$500 civil penalty

MUR 2968

Respondents: Oral and Maxillofacial Surgery Political Action Committee (OMSPAC), Dr. Edward R. Noble, treasurer (IL)

Complainant: FEC initiated

Subject: Failure to report on time

Disposition: \$900 civil penalty

MUR 3018

Respondents: Riverside County Republican Central Committee, Ronald Sullivan, treasurer (CA)

Complainant: FEC initiated

Subject: Failure to report on time;

failure to report change of address and treasurer within ten days

Disposition: \$1,000 civil penalty

MUR 3039

Respondents: (a) Steve Tatone (OH); (b) Citizens for Steve Tatone, Maribeth Sheehan, treasurer (OH)

Complainant: Dennis Geehan (OH)

Subject: Failure to file statements of candidacy and organization on time

Disposition: (a) and (b) No reason to believe

MUR 3059

Respondents: (a) Carl C. Perkins Election Committee, Randy A. Campbell, treasurer (KY); (b) PLUS, Inc. (Eastern Kentucky Veteran's Referral), Ira E. Branham, attorney (KY); (c) John B. Wells (KY)

Complainant: Jerry Cecil (KY)

Subject: Corporate contributions

Disposition: (a), (b) and (c) No reason to believe

FEC PUBLISHES NONFILERS

The Commission recently published the names of authorized committees that failed to file required financial disclosure reports. See chart below.

Nonfilers are published pursuant to 2 U.S.C. §438(a)(7). Enforcement actions against nonfilers are pursued on a case-by-case basis.

Nonfiler	Office Sought	Report Not Filed
Myers, Mark S.	House-GA/10	Pre-primary
Schlesinger, A.	House-CT/5	Pre-convention
Vincent, C.C.	House-MI/13	Pre-primary
Stallings, H.E.	House-MI/13	Pre-primary

REGULATIONS

REVISED ALLOCATION RULES: SUMMARY

In June 1990, the Commission sent to Congress revised regulations on the allocation of expenses for activities that jointly benefit federal and nonfederal candidates and elections (11 CFR Parts 102, 104 and 106). The Commission also sent new reporting forms to Congress. The forms—revised FEC Form 3X and new Schedules H and I—are designed to conform with additional disclosure requirements under the revised rules. The final rules and their explanation and justification were published in the Federal Register on June 26, 1990 (55 Fed. Reg. 26058).

The Record will announce the effective date of the new rules when the Commission prescribes them, following the expiration of 30 legislative days in each House of Congress. 2 U.S.C. §438(d). The revised rules are summarized below.

Who Must Allocate

New Sections 106.5(a)(1) and 106.6(a) explain that the allocation rules apply both to:

- o Political committees that maintain separate accounts for federal and non-federal activity (as opposed to political committees that conduct mixed activity from one federal account); and
- o Committees that are not "political committees" as defined under the Federal Election Campaign Act but that make disbursements for both federal and non-federal activity.

The rules specify that the following types of committees must allocate federal/nonfederal expenses, whether or not they are "political committees" under the Act:

- o National party committees;
- o The House and Senate campaign committees of national parties;
- o State and local party committees;
- o Separate segregated funds; and
- o Nonconnected committees.

(The revised rules at 11 CFR 106.6(a) define a nonconnected committee as a committee that is not a party committee, a separate segregated fund or an authorized committee of a candidate.)

What Costs Must Be Allocated

The revisions provide committees with significantly more guidance than current rules on how to allocate expenses. The revised rules at 11 CFR 106.1(a), 106.5(a)(2) and 106.6(b) describe several categories of joint federal/nonfederal activity subject to allocation:

- o Administrative expenses (e.g., rent, utilities, office supplies, salaries);
- o Generic voter drive activities (e.g., voter-identification, voter-registration and get-out-the-vote drives that do not mention specific candidates);
- o Fundraising programs or events through which one committee collects both federal and nonfederal funds;
- o "Exempt party activities" conducted by state and local party committees in conjunction with nonfederal election activity;¹ and
- o Direct support of specific federal and nonfederal candidates, and fundraising on behalf of specific federal and nonfederal candidates. (Direct support and fundraising on behalf of specific federal candidates result in in-kind contributions, independent expenditures or coordinated party expenditures (2 U.S.C. §441a(d)). 11 CFR 106.1(a)(1).)

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¹ Exempt party activities are certain election-related activities conducted by state and local party committees that are not considered contributions or expenditures on behalf of the federal candidates benefiting from the activity. The three types of exempt activities are: slate cards, campaign materials and Presidential voter drives. 11 CFR 100.7(b)(9), (15) and (17) and 100.8(b)(10), (16) and (18).

Allocation Methods

The revised rules contain several allocation methods:

- o Fixed or minimum percentage;
- o Funds expended ratio;
- o Funds received ratio;
- o Time or space (communication) ratio; and
- o Ballot composition ratio.

As explained in the paragraphs below, the specific method used to allocate an expense depends on the category of activity and the type of committee conducting the activity. See chart on next page.

Administrative Expenses/Generic Voter Drives

National Party Committees. The revised rules provide that, in Presidential election years, national party committees must allocate to their federal accounts at least 65 percent of administrative expenses and costs for generic voter drives. In other years, they must allocate at least 60 percent of such costs to their federal accounts. These are fixed percentages. 11 CFR 106.5(b)(2).

House and Senate Campaign Committees of National Parties. Under the revised rules, these committees allocate administrative expenses and costs for generic voter drives according to the funds expended method, but at least 65 percent of such costs must be allocated to the federal account. (This is a minimum percentage.) Under the funds expended method, expenses are allocated based on the ratio of federal expenditures to total federal and nonfederal disbursements made during a two-year federal election cycle. In calculating the ratio, the committee uses only amounts spent on behalf of specific federal and nonfederal candidates, excluding overhead and other generic costs.

State and Local Party Committees. The revised rules provide that state and local party committees must allocate their administrative and generic voter drive expenses using the ballot composition method: the ratio of federal offices to total federal and nonfederal offices expected to be on the ballot in the next general election to be held in the committee's state or geographic area. The ratio is determined by the number of categories of offices on the ballot. The revised rules specify the categories to be included and the number of offices that may be counted in each category.

In states that do not hold federal and nonfederal elections in the same year, state and local party committees allocate the costs of generic voter drives using the ballot composition method (described above) calculated for the current calendar year. These committees allocate their administrative expenses using the ballot composition method calculated for the two-year federal election cycle. 11 CFR 106.5(d).

Separate Segregated Funds and Non-connected Committees. Under the revised rules, these committees allocate their administrative and generic voter drive expenses using the funds expended method. (A separate segregated fund must allocate administrative expenses only if they are not paid by the connected organization.) Under this method, expenses are allocated based on the ratio of federal expenditures to total federal and nonfederal disbursements made during the two-year federal election cycle. In calculating the ratio, the committee uses only amounts spent on behalf of specific federal and nonfederal candidates, excluding overhead and other generic costs. (This is the same method used by party House and Senate campaign committees; however, separate segregated funds and nonconnected committees are not required to allocate a minimum federal percentage.) 11 CFR 106.6(c).

Exempt Activities: State and Local Party Committees

The revised rules provide that expenses for exempt party activities must be allocated according to the proportion of a communication's time or space that is devoted to federal elections as compared with the entire communication. In the case of a publication, committees apply the ratio to the space. In the case of a phone bank, committees apply the ratio to the number of questions or statements. 11 CFR 106.5(e).

Fundraising Expenses: All Committees

A committee must allocate the direct costs of each fundraising program or event in which the committee collects federal and nonfederal funds. (In the case of a separate segregated fund, fundraising costs must be allocated only if they are not paid by the connected organization.) Fundraising costs must be allocated according to the funds received method: the ratio of federal funds received to total receipts for the program or event. 11 CFR 106.5(f) and 106.6(d). See also "Party Committee Solicitations," page 12.

Expenses for Direct Support of Specific Candidates: All Committees

Under the revised rules, committees must allocate payments involving both expenditures on behalf of one or more specific federal candidates and disbursements on behalf of one or more specific nonfederal candidates according to the benefit reasonably expected to be derived. For example, in the case of a communica-

tion, the costs must be allocated in proportion to the time or space devoted to federal candidates compared with the total time or space devoted to all candidates. In the case of a fundraising program in which funds are collected by the committee for specific federal and nonfederal candidates, the allocation is based on the proportion of funds received by federal (continued)

Methods for Allocating Federal and Nonfederal Expenses

Type of Committee Type of Activity	Allocation Methods				
	Fixed or Minimum Percentage	Funds Expended	Funds Received	Time or Space (Communication)	Ballot Composition
National Party Committee					
Administrative Expenses/ Generic Voter Drives	65% federal/Presidential years; 60% federal/other years				
Fundraising			✓		
Direct Candidate Support			✓ — or — ✓		
Party House or Senate Campaign Committee					
Administrative Expenses/ Generic Voter Drives	65% federal — or — ✓ (whichever is greater)				
Fundraising			✓		
Direct Candidate Support			✓ — or — ✓		
State/Local Party Committee					
Administrative Expenses/ Generic Voter Drives					✓
Fundraising			✓		
Exempt Party Activities				✓	
Direct Candidate Support			✓ — or — ✓		
Separate Segregated Fund/ Nonconnected Committee					
Administrative Expenses/ Generic Voter Drives		✓			
Fundraising			✓		
Direct Candidate Support			✓ — or — ✓		

candidates compared with the total receipts of all candidates.² 11 CFR 106.1(a).

Note that expenditures on behalf of federal candidates result in in-kind contributions, independent expenditures or coordinated party expenditures (2 U.S.C. §441a(d)). 11 CFR 106.1(a)(1).

Payment of Allocated Expenses

Payment Options. Under the revised rules, committees that have established separate federal and nonfederal accounts (whether or not they are "political committees" under federal law) may choose one of two methods to pay for joint federal and nonfederal activities. Under the first method, a committee pays the entire amount from its federal account, transferring funds from the nonfederal account to cover the nonfederal share of an allocable expense. The second method allows a committee to establish a separate allocation account solely for the purpose of paying allocable expenses. In this case, the committee transfers funds from the federal and nonfederal accounts to the allocation account in amounts proportionate to the federal and nonfederal share of each allocable expense. The allocation account is considered a federal account, subject to federal reporting requirements. 11 CFR 106.5(g)(1) and 106.6(e)(1)).

The revised rules amend 11 CFR 102.5(a)(1)(i), which currently prohibits committees from transferring funds from a nonfederal account to a federal account. The revision permits committees to make such transfers for the limited purpose of paying the nonfederal share of allocated expenses.

Timing of Transfers. As a general rule, transfers to pay for allocable expenses (either from a nonfederal account to a federal account or from both the federal and nonfederal accounts to the allocation account) must be made after the final cost of the activity is determined. Transfers may be made in advance of this determination only if advance payment is required by the vendor and if the payment is a reasonable estimate of the activity's final cost, as determined by the committee and the vendor.

In any event, transfers must be made within a 40-day time period: no more than 10 days before or 30 days after the payment for which the funds are designated is made. 11 CFR 106.5(g)(2) and 106.6(e)(2).

Reporting Federal and Nonfederal Activity

The new reporting requirements for allocable expenses apply only to committees that qualify as federal "political committees" and that have established separate federal and nonfederal accounts. The revised rules at section 104.10 set out procedures for reporting allocation ratios and for reporting transfers and disbursements made to pay for allocable expenses.

Committees will report this information on the revised Form 3X and new Schedule H.

Additional Reporting Rules for National Party Committees

Under the revised rules, national party committees must disclose information on their nonfederal accounts and building fund accounts, as well as their federal accounts, applying the same itemization thresholds to all three types of accounts. Transfers from a national party committee's nonfederal account to the nonfederal accounts of state and local party committees are also reportable. The revised reporting rules for national party committees are located at 11 CFR 104.8(e) and (f) and 104.9(c)-(d).

National party committees will use new Schedule I to summarize the information that they have reported on each of their nonfederal accounts and building fund accounts.

Party Committee Solicitations

Revised section 102.5(a)(3) creates the presumption that funds resulting from party committee solicitations that refer to a federal candidate or a federal election are raised for the purpose of influencing a federal election and are thus subject to the limits and prohibitions of the Federal Election Campaign Act. This presumption may be rebutted by demonstrating that the funds were solicited with express notice that they would not be used for federal election purposes.

²These allocation methods (used to allocate disbursements between federal and nonfederal candidates) are also used to allocate expenditures made on behalf of federal candidates only.

NEW DEBT SETTLEMENT RULES: SUMMARY

In June 1990, the Commission sent to Congress revised regulations concerning debts owed by candidates and political committees. The new rules at 11 CFR Part 116 replace current section 114.10; sections 100.7, 104.3 and 104.11 have also been revised to reflect the new provisions. The final text and the explanation and justification were published in the Federal Register on June 27, 1990 (55 Fed. Reg. 26378). The Commission also sent to Congress new FEC Form 8, designed to implement the new requirements on the disclosure of debt settlements.

The Record will announce the effective date of the new rules when the Commission prescribes them, following the expiration of 30 legislative days in each House of Congress. The new rules are summarized below.

Eligibility for Settling Debts

Under the new rules, only "terminating committees" are permitted to settle their debts for less than the amount owed. A terminating committee is a political committee which has debts and which receives contributions and makes expenditures only for the purpose of retiring its debts and paying winding down costs. 11 CFR 116.1(a) and 116.2(a).

An "ongoing committee"—a political committee that does not qualify as a terminating committee—is not permitted to settle debts for less than the amount owed. 11 CFR 116.1(b) and 116.2(b). However, under sections 116.9 and 116.10, an ongoing committee may request a Commission determination that a debt is not payable and may resolve disputed debts. Further, a creditor may forgive the outstanding balance of a debt owed to an ongoing committee if the committee is essentially defunct and unable to pay its bills or if the committee cannot be located.

Authorized Committees: Special Rules

Settlement of Debts. The new rules include provisions that address debts owed by authorized committees of candidates. The rules prohibit an authorized committee from:

- o Settling debts, if an affiliated authorized committee for a previous or future election has funds available to pay part or all of the debts;
- o Terminating, if the committee can help pay the debts of an affiliated authorized committee that is unable to pay its debts; or

- o Transferring funds to an affiliated authorized committee, if the transferring committee has net debts outstanding. (See 11 CFR 110.1(b)(3)(ii).) 11 CFR 116.2(c)(1) and (2).

Assigning Debts to Another Committee.

Under the new rules, a terminating authorized committee may assign its debts to an authorized committee of the same candidate only if the assigning committee:

- o Has no cash on hand or assets to pay any part of the debts; and
- o Was not organized to further the candidate's campaign in a future election.

The new rules provide an additional requirement for Presidential candidate committees receiving public funds: a publicly funded committee may neither assign debts nor receive assigned debts until after the committee has made all repayments of public funds and has paid all civil penalties.

An authorized committee that has assigned its debts to another committee may terminate provided:

- o It notifies each creditor in writing of the name and address of the committee that will receive the debts no later than 30 days before the assignment takes effect; and
- o The committee that receives the assigned debts notifies the Commission in writing that it has assumed the obligation to pay the debts and to report both the debts and contributions received to retire them. 11 CFR 116.2(c)(3).

Extensions of Credit by**Commercial Vendors**

New section 116.3 generally follows previous section 114.10, which listed factors for determining the permissible extension of credit by corporations to political committees. The new section adds corresponding standards for unincorporated commercial vendors. Failure to meet these standards results in a contribution—prohibited in the case of a corporation and possibly excessive in the case of a noncorporate vendor.

Under the new rules, an extension of credit by either a corporate or noncorporate vendor is not considered a contribution to a candidate or political committee if:

- o The credit is extended in the ordinary course of business; and
- o The terms are substantially the same as extensions of credit of similar amounts

(continued)

to nonpolitical debtors of similar risk. 11 CFR 116.3(a) and (b).

The new rules at 116.3(c) list factors the Commission will consider in determining whether credit was extended in the ordinary course of business:

- o Whether the commercial vendor followed established procedures and past practice in approving the credit;
- o Whether, in the past, the commercial vendor received prompt payment from the same candidate or political committee; and
- o Whether the extension of credit conformed to the usual and normal practice in the vendor's trade or industry.

The Commission may also consider regulations prescribed by other federal agencies in determining whether extensions of credit are made in the ordinary course of business. 11 CFR 116.3(d).

Settlement of Debts Owed to Commercial Vendors

New section 116.4 addresses the forgiveness or settlement of committee debts owed to incorporated and unincorporated vendors. (Current section 114.10 covers only debts owed to corporations.) The forgiveness or settlement of such debts will not result in a contribution provided that:

- o The debt settlement is "commercially reasonable" and the parties have complied with the rules governing debt settlement plans (116.7) or debt forgiveness requests (116.8), as appropriate; or
- o The amount forgiven is exempted from the definition of contribution (e.g., a legal or accounting service under 11 CFR 100.7(b)(13) or (14)). 11 CFR 116.4(a) and (b).

Commercially Reasonable Debt Settlement. A debt settlement is commercially reasonable if it satisfies three criteria:

- o Initial Extension of Credit. Credit was initially extended in accordance with the standards of 11 CFR 116.3 (see above). 11 CFR 116.4(d)(1).
- o Committee's Efforts to Repay. The candidate or political committee undertook all reasonable efforts to satisfy the outstanding debt, such as fundraising, reducing overhead costs or liquidating assets. 11 CFR 116.4(c)(2) and (d)(2)
- o Creditor's Efforts to Collect. The commercial vendor made the same efforts to collect the debt as those made to collect from a nonpolitical debtor in similar circumstances. Remedies might include, for example, late fee charges,

referral to a debt collection agency or litigation. 11 CFR 116.4 (d)(3).

Vendor's Rights. Commercial vendors, however, are not required to forgive or settle debts owed by candidates and committees. Moreover, the explanation and justification to the new rules states that a creditor is not required to pursue activities that are unlikely to result in the reduction of the debt.

Advances to Committees by Staff and Other Individuals

New section 116.5 clarifies that payments by individuals using personal funds or personal credit cards to obtain goods or services for a political committee generally result in in-kind contributions to that committee unless the payment is a travel or subsistence expense covered by one of the exceptions explained below. For example, an in-kind contribution results if an individual pays for the transportation or subsistence expenses of others or pays for nontravel expenses. If the committee intends to reimburse the individual for such payments, the obligation must be treated and reported as a debt. 11 CFR 116.5(c) and (e). Reimbursements are treated as refunds of contributions.

Note that, in all cases, the exceptions described below do not apply to individuals who are acting as commercial vendors since they are covered by the commercial vendor rules previously discussed.

Exception: Exempt Travel and Subsistence Payments. Under 11 CFR 100.7(b)(8), payments made from an individual's personal funds for his or her transportation expenses incurred while traveling on behalf of a candidate or political party committee are not contributions if they do not exceed \$1,000 per candidate, per election, or \$2,000 per year for travel on behalf of a party committee. Section 100.7(b)(8) also exempts all payments by volunteers for subsistence expenses incidental to volunteer activity.

Exception: Reimbursed Travel and Subsistence Payments. Under the new rule at 11 CFR 116.5(b), transportation and subsistence expenses which are incurred and paid for by an individual while traveling on behalf of a candidate or party committee and which are not covered under the 100.7(b)(8) exemption are not considered contributions as long as the committee reimburses the individual within certain

time periods.¹ In the case of a credit card payment, the committee must reimburse the individual within 60 days after the closing date of the billing statement on which the charges first appear. In all other cases, the committee must reimburse the individual within 30 days after the expenses were incurred.

Salary Payments Owed to Employees

New section 116.6 clarifies that unpaid salaries owed to committee staff are not contributions. If a political committee does not pay an employee in accordance with an agreement, the unpaid amount may be treated either as volunteer services, which are exempt from the definition of contribution under 11 CFR 100.7(b)(3), or as a debt. The services may be converted to volunteer activity only if the employee signs a statement agreeing to be considered a volunteer. If the unpaid amount is treated as a debt, the amount owed must be reported as such and may be settled.

Debt Settlement Plans Filed by Terminating Committees

New section 116.7 contains guidelines concerning debt settlement plans submitted by terminating committees on new FEC Form 8. (Unlike current section 114.10, the new rules do not provide for the filing of debt settlements by creditors.) Terminating committees may file debt settlement plans once they have reached agreement with their creditors, although not all creditors need be included in one plan. The committee must postpone payment until the Commission has reviewed the debt settlement plan.

Debts Subject to Settlement. The types of debts that are subject to debt settlement requirements include:

- o Amounts owed to commercial vendors;
 - o Debts arising from advances by individuals;
 - o Salary owed to committee employees; and
 - o Loans owed to political committees or individuals, including candidates.
- 11 CFR 116.7(b).

Debts Not Subject to Settlement. The debt settlement rules do not apply to public funding repayments, which may not be settled, or to disputed debts, which are covered by other rules. 11 CFR 116.7(c).

Moreover, the explanation and justification to the rules indicates that the debt settlement rules would not apply to bank loans. Guidance on the treatment of bank loans may be provided in a separate rule-making.

Content of Debt Settlement Plan. For each debt covered by a debt settlement plan, the committee must include the information listed below on FEC Form 8. 11 CFR 116.7(e).

- o The terms of the initial extension of credit and the terms of similar amounts of credit extended to nonpolitical debtors of similar risk;
- o The committee's efforts to pay the debt;
- o The remedies pursued by the creditor to obtain payment compared with the remedies customarily pursued in similar circumstances involving nonpolitical debtors;
- o A comparison between the terms of the settlement and debt settlement terms involving nonpolitical debtors;
- o A signed statement from the creditor agreeing with the terms of the settlement;
- o A statement as to whether the terminating committee has sufficient cash to pay the amount indicated in the plan or, if not, the steps the committee will take to obtain the funds; and
- o A demonstration that the committee qualifies as a terminating committee and the date the committee expects to file a termination report.

If the plan does not include settlements for all of the committee's outstanding debts, the plan must additionally provide the following information:

- o A list of the committee's remaining debts;
- o Whether the committee intends to pay the entire amount of the remaining debts or to settle them, and, if settlement is contemplated, the terms offered to the creditors; and
- o Whether the terminating committee has sufficient cash to pay the remaining debts, and, if not, what steps the committee will take to obtain the funds.

Commission Review of Plan. The new rules list factors the Commission will examine in reviewing debt settlement plans. 11 CFR 116.7(f).

Reporting Debts Undergoing Settlement. A terminating committee must continue to report each debt or obligation included in a debt settlement plan until the Commission

(continued)

¹This exception applies to the subsistence expenses of paid campaign staff since a volunteer's subsistence expenses are covered under the 100.7(b)(8) exemption.

has completed a review of the plan. 11 CFR 116.4(f); 116.5(e); 116.6(c); and 116.7(d).

Debts Discharged in Bankruptcy. If a committee is released from debts through a bankruptcy court decree pursuant to 11 U.S.C. Chapter 7, the committee must include the court order in its debt settlement plan as well as a list of the obligations from which the committee is released. 11 CFR 116.7(g). The Commission will treat an authorized committee's debts as settled for purposes of the Federal Election Campaign Act if the candidate received a Chapter 7 discharge that applies to the committee's debts.

Creditor's Forgiveness of Debts Owed by Ongoing Committees

Under section 116.8, creditors may completely forgive the outstanding balance of debts owed by ongoing committees that cannot be located or that are clearly unable to pay their bills, provided that:

- o The debt has been outstanding for at least two years;
- o The committee has insufficient cash to pay the debt;
- o The committee's receipts and disbursements over the past two years each total less than \$1,000; and
- o The committee's debts are so large that the creditor could reasonably conclude that the debt will not be paid.

Under these circumstances, a creditor must submit for the Commission's review a letter of intent that provides the following information:

- o The terms of the initial extension of credit;
- o The committee's efforts to satisfy the debt;
- o The remedies pursued by the creditor to collect on the debt; and
- o A description of how the creditor has pursued and forgiven similar debts involving nonpolitical debtors.

Unpayable Debts

Section 116.9 sets forth procedures that allow a terminating committee or an ongoing committee to obtain a Commission determination that a debt is unpayable for purposes of the Act because the creditor cannot be located or has gone out of business. The committee must demonstrate that it made the necessary efforts to locate the creditor and must continue to report the debt until the Commission determines that the debt is unpayable.

Reporting Disputed Debts

The new rules at 11 CFR 116.1(d) define a disputed debt as a bona fide disagreement between the creditor and the committee as to the existence of a debt or the amount owed by the committee. Under section 116.10, until the creditor and committee resolve the dispute (and if the creditor did provide something of value), the committee must disclose the amount the committee admits it owes, the amount the creditor claims is owed and any amounts the committee has paid the creditor.

When filing a debt settlement plan, a committee must describe any disputed debts and the committee's efforts to resolve them.

Continuous Reporting of Debts

Several revisions have been made to 11 CFR 104.11(b), which concerns the continuous reporting of debts and obligations. The revised rule clarifies that debts exceeding \$500 must be reported as of the date the debts are incurred. (The current language says "as of the time of the transaction.") The revisions also clarify that periodic administrative costs (e.g., rent, staff salaries) need not be reported as debts if payment is not due before the end of the reporting period. However, if payment is not made on the due date, the amount outstanding must be reported as a debt. Finally, new language incorporates current policy that if the exact amount of a debt is not known, a committee must report the estimated amount of the debt and then either amend the report or include the correct figure in a later report when the exact amount is known.

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Treasurers of registered political committees automatically receive the Record. A change of address by a political committee (or any change to information disclosed on the Statement of Organization) must, by law, be made in writing on FEC Form 1 or by letter. The treasurer must sign the amendment and file it with the Secretary of the Senate, the Clerk of the House or the FEC (as appropriate) and with the appropriate state office.

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