

# RECORD

January 1991

999 E Street NW

Washington DC

20463

Volume 17, Number 1

## PUBLIC FUNDING

### SHORTFALL IN PRESIDENTIAL CAMPAIGN FUND: 1992

In its meeting of November 29, 1990, the Commission considered revised Presidential Election Campaign Fund projections for the 1992 election cycle. The latest projections show that the Fund's deficit could reach \$6 million by the end of the 1992 election year. However, in the first three months of 1992—a critical time for campaigns—primary candidates could be short-changed approximately \$15 million, depending on how the U.S. Department of Treasury handles disbursements from the Fund. The overall projected cost for the 1992 primary candidates, conventions and general election candidates is \$187 million. These projections are based on information available as of November 25,

1990. (See Agenda Document #90-110 for further details, including the assumptions used in developing the current estimates and possible revisions to the matching fund certification process should a shortfall occur.)

The new information suggests that the volume of dollars checked off by taxpayers on their 1990 returns has remained about the same as in the previous year. Nevertheless, it appears that a shortfall of public funds will occur in the 1992 Presidential election cycle unless Congress intervenes. Due to changing economic conditions, the Consumer Price Index has increased more than originally expected. Because payments from the Fund are indexed to inflation while the one-dollar tax checkoff is not, the recent jump in inflation has caused the Commission to project a larger shortfall for the 1992 elections than previously estimated.

### Matching Fund Payments

Under the public funding law, if there is insufficient money in the Fund to cover all entitlements, the conventions and the general election nominees receive priority over primary candidates. In the event of a 1992 shortfall, the Department of the

(continued)

### ALLOCATION TRAINING FOR PARTY COMMITTEES

During January through March, the Commission will be conducting training sessions for party committees on the new allocation rules. Committee staff wishing to attend one of the training sessions listed below should call the Information Services Division, 800/424-9530 or 202/376-3120, and ask for the contact person.

New York, NY, January 22-23

Kathlene Martin

Boston, MA, January 24

Patricia Klein

Denver, CO, February 7

Dorothy Hutcheon

Des Moines, IA, February 20

Ian Stirton

Austin, TX, March 5

Greg Scott

Columbus, OH, March 19-20 (tentative)

Janet Hess

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Treasury will have to decide how to handle matching fund payments to primary candidates. In its November meeting, the Commission discussed two possible approaches.

**Set-Aside Method.** One way to handle the shortfall would be a "pay as you go" method under which Treasury would reserve--or set aside--sufficient public funds to cover the 1992 entitlements to the convention committees and the general election nominees at the beginning of the election year. If this were to happen--i.e., if Treasury were to set aside the estimated \$114 million needed to satisfy the convention and general election funding<sup>1</sup>--only \$12.6 million would be available for early January 1992 matching fund payments, currently estimated at \$19.5 million. The unpaid portion from the early January payments (\$6.9) plus the remainder of January certifications (\$5.5) would be defrayed in February on a proportional basis using January check-off deposits (estimated at \$109,562). Unpaid certification amounts would continue to carry over to the next month and, when added to that month's certifications, would be paid on a pro rata basis from check-off funds deposited that month. The Fund would probably not have a balance sufficient to pay the full amount of accumulated carryovers until spring 1993 (assuming that the Treasury Department found that the use of 1993 checkoff deposits for 1992 entitlements was an acceptable practice).

**85-Percent Method.** Under the second approach, an attempt would be made to establish an optimal percentage of payments to primary candidates, a percentage that would remain constant from January through August 1992, the date of the last convention. Thereafter, payments would be on a "pay as you go" basis. The fixed percentage would be based on estimated future checkoff deposits to the Fund through July 1992 and anticipated payments to primary candidates. Based on the FEC Audit Division's projections, the fixed percentage would be about 85 percent (90 percent minus a 5 percent cushion). In other words, 1992 primary candidates would receive 85 cents for every dollar of matchable funds certified from January through August. As with the set-aside method, discussed above, the 85-percent method would eventually result in the full payment of matching fund certifications by spring 1993.

**Comparison.** The 85-percent method differs from the set-aside method in that primary candidates would receive a greater proportion of their matching funds between January and April 1992, during the active primary season. For example, under the set-aside approach, candidates would receive approximately 67 percent of matching funds certified during those months. By contrast, under the second approach, candidates would receive 85 percent of their January-through-April certifications. The drawback to the second method is the difficulty in predicting the correct percentage, and the consequences of setting the percentage too high (with funds running out in April/May) or too low (with funds left over in August that could have been distributed during the active primary campaign period).

Beginning in June 1992, cumulative payments under the set-aside approach would exceed those under the 85 percent method. By September, cumulative payments under both methods would reach equality.

<sup>1</sup>The \$114 million represents the estimated \$112.98 million needed for the general election candidates and about \$1.08 million needed for the nominating conventions of the major parties. The major parties will receive most of their funding--an estimated \$21.52 million--in July 1991; the 1992 payment represents a cost-of-living adjustment to the convention entitlements based on the 1991 inflation factor.

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

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

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

**Department of Treasury's NPRM**

The Department of the Treasury is the agency responsible for deciding how to deal with the potential shortfall in the Fund. On December 13, 1990, the Treasury Department's Internal Revenue Service published a Notice of Proposed Rulemaking (NPRM) seeking comments on draft regulations that would establish procedures for making primary matching fund payments from the Fund in the event of a shortfall (see 55 FR 51301). The IRS proposes a set-aside method similar to the one described above. The Commission plans to comment on the rulemaking notice before the February 11, 1991, comment deadline. The Commission also plans to testify at the IRS public hearing on the proposed rules scheduled for February 11, 1991 (see 55 FR 51303).

**Commission Action**

In addition to coordinating with the Department of the Treasury, the Commission has communicated with the Internal Revenue Service on the shortfall issue and has conducted an outreach effort—including Congressional testimony, speeches, news releases and articles—to alert Congress, the press and the public to the Presidential funding shortfall. The Commission has also been researching public understanding of the Presidential checkoff on the tax forms. Using the results of this research, the agency plans to sponsor an education program to inform the public about the dollar checkoff, e.g., how it works, where the money goes, etc.

**Commission Discussion of Legislative Action**

Even with an education program, however, it now appears that a 1992 shortfall may be inevitable unless Congress intervenes. The Commission discussed possible emergency legislative recommendations that would alleviate the shortfall. Among the recommendations discussed at the November 29 meeting were:

- o An emergency appropriation of funds to compensate for the 1992 shortfall;
- o The elimination of the Presidential convention committee entitlements, thereby freeing approximately \$22.6 million that could be used to finance the primaries;
- o The adjustment of the checkoff amount by the inflation factor, thereby increasing the total amount checked off.
- o The replacement of the checkoff with an entitlement approach.

No recommendations were adopted at the meeting. (In March 1990, the agency trans-

mitted to Congress similar suggestions to remedy the Presidential Fund shortfall. See the May 1990 Record.)

**REPORTS****REPORTS DUE IN 1991****Year-End Reports Covering 1990 Activity**

All committees must file a 1990 year-end report due January 31, 1991. The coverage and reporting dates are found in a chart on page 5.

Please note that the 1990 year-end report is the last report PACs and party committees will file on the old Form 3X; see special note below.

**Reports Covering 1991 Activity**

To find out what reports your committee must file to report 1991 activity, check the Reporting Frequency Chart on page 5. Then check the accompanying Reporting Dates Charts. Please note that if any special elections are held in 1991, committees active in those elections may have to file special election reports, as explained below.

**New Form 3X: Special Note to PACs and Party Committees**

Starting with 1991 activity, PACs and party committees must file their reports on the revised Form 3X. The Detailed Summary Page of the revised form contains certain changes that correspond to the new allocation rules, which became effective January 1, 1991. In the first reporting notice sent to committees for disclosure of 1991 activity, the Commission will enclose the revised Form 3X as well the new Schedule H forms. These schedules must be used by committees reporting allocated activity. For more information on the allocation rules, including the new reporting requirements, see the November 1990 Supplement on Allocation. (Additional copies are available from the FEC.)

Please note that the new allocation reporting rules apply only to political committees that have both federal and nonfederal accounts. Committees that do not maintain nonfederal accounts must nevertheless use the revised 3X Detailed Summary Page, since the line numbers have changed.

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**Committees Active in Special Elections**

Committees authorized by candidates running in any 1991 special election must file pre- and post-special election reports, in addition to regularly scheduled reports. 11 CFR 104.5(h).

PACs and party committees supporting candidates running in special elections may also have to file special election reports, unless the committee is filing on a monthly, rather than semiannual, basis. 11 CFR 104.5(c)(3) and 104.5(h).

The Record will publish special election reporting requirements if any special elections are scheduled during 1991.

**Late Filing**

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

**Reporting Labels**

Shortly before a reporting deadline, the Commission mails each committee treasurer a reporting notice and the appropriate reporting form. Treasurers should use the peel-off label from the mailing envelope to complete Line 1 of the reporting form. Corrections to the committee's name or address should be made directly on the label, but note that the committee must also file an amended Statement of Organization to reflect a change in address or any other change in the information previously disclosed on the Statement. Such amendments must be filed within 10 days of the change. 11 CFR 102.2(a)(2).

For further information on reporting, call the FEC: 800/424-9530 or 202/376-3120.

**Where to File**

Listed below are the offices where committee treasurers must file FEC reports. Please note that a list of state filing offices is available from the Commission.

**House and Senate Candidate Committees.** Principal campaign committees of House and Senate candidates file with the Clerk of the House or the Secretary of the Senate, as appropriate. 11 CFR 105.1 and 105.2. Addresses:

o Clerk of the House, Office of Records and Registration, 1036 Longworth House Office Building, Washington, DC 20515-6612; or

o Secretary of the Senate, Office of Public Records, 232 Hart Senate Office Building, Washington, DC 20510-7116.

The principal campaign committee must also simultaneously file a copy of every report and statement with the Secretary of State (or other designated officer) of the state in which the candidate seeks (or sought) election. 2 U.S.C. §439(a)(2)(B).

Note that other authorized committees of the same candidate file their reports with the principal campaign committee, which then files these reports, along with its own, with the appropriate federal and state offices. The principal campaign committee must also file a consolidated report on Form 3Z. 11 CFR 102.1(b) and 104.3(f).

**Presidential Committees.** Principal campaign committees of Presidential candidates file with the FEC, 999 E Street, NW, Washington, DC 20463. 11 CFR 105.3. The principal campaign committee must simultaneously file a copy of each report and statement with the Secretary of State (or equivalent officer) of the each state in which the committee makes expenditures. 11 CFR 108.2. Other authorized committees of the same candidate file their reports with the principal campaign committee, which then files their reports, along with its own, with the appropriate federal and state offices. 11 CFR 102.1(b) and 104.3(f). The principal campaign committee must also file a consolidated report on Form 3P.

**PACs and Party Committees.** Generally, PACs and party committees file with the FEC, 999 E Street, NW, Washington, DC 20463. 11 CFR 105.4. There are, however, two exceptions: Committees supporting only House candidates file with the Clerk of the House; those supporting only Senate candidates file with the Secretary of the Senate. 11 CFR 105.1 and 105.2. The addresses for these offices are given under the instructions for House and Senate committees, above.

PACs and party committees must simultaneously file copies of reports and statements with the Secretary of State (or other designated officer), as follows:

o Committees making contributions or expenditures in connection with House and Senate campaigns file in the state in which the candidate seeks election. The committee is required to file only that portion of the report applicable to the candidate in that state. 2 U.S.C. §439(a)(2)(B).

- o Committees making contributions or expenditures in connection with Presidential candidates file in the states in which the Presidential committee and the donor committee have their headquarters. 11 CFR 108.4.

**1991 REPORTING FREQUENCY CHART<sup>1</sup>**

Type of Filer	Reporting Frequency		
	Semi-annual	Quarterly	Monthly
House/Senate Candidate Committees <sup>2</sup>	✓		
Presidential Candidate Committees		✓ ---or--- <sup>3</sup> ✓ (choice) <sup>3</sup>	
PACs or Party Committees	✓	---or--- <sup>4</sup>	✓

<sup>1</sup>Note: All committees must also file a 1990 year-end report, due 1/31/91.

<sup>2</sup>Including committees of candidates retiring debts from a previous election or running for a future election.

<sup>3</sup>Presidential committees wishing to change their filing frequency during 1991 should notify the Commission.

<sup>4</sup>PACs and party committees wishing to change their filing frequency during 1991 must notify the Commission in writing when filing a report under the committee's current schedule. A committee may change its filing frequency only once a year. 11 CFR 104.5(c).

**REPORTING DATES CHARTS**

**1990 Year-end Report (all committees)**

Report	Period Covered	Filing Date <sup>1</sup>
Year-end	closing date of last report through 12/31/90	1/31/91

**1991 Semiannual Reports**

Report	Period Covered	Filing Date <sup>1</sup>
Mid-year	1/1/91-6/30/91	7/31/91
Year-end	7/1/91-12/31/91	1/31/92

**1991 Monthly Reports**

Report	Period Covered	Filing Date <sup>1</sup>
February	2/1-1/31	2/20/91
March	2/1-2/28	3/20/91
April	3/1-3/31	4/20/91
May	4/1-4/30	5/20/91
June	5/1-5/31	6/20/91
July	6/1-6/30	7/20/91
August	7/1-7/31	8/20/91
September	8/1-8/31	9/20/91
October	9/1-9/30	10/20/91
November	10/1-10/31	11/20/91
December	11/1-11/30	12/20/91
Year-end	12/1-12/31	1/31/92

**1991 Quarterly Reports (option available to Presidential committees only)**

Report	Period Covered	Filing Date <sup>1</sup>
1st Quarter	1/1-3/31	4/15/91
2nd Quarter	4/1-6/30	7/15/91
3rd Quarter	7/1-9/30	10/15/91
Year-end	10/1-12/31	1/31/92

<sup>1</sup>Reports sent by registered or certified mail must be postmarked by the filing date; otherwise they must be received by that date. 11 CFR 104.5(e).

## REGULATIONS

### COMMENTS SOUGHT ON PROPOSED CHANGES TO PUBLIC FINANCING RULES

On January 2, 1991, the Commission published a Notice of Proposed Rulemaking in the Federal Register seeking comments on proposed changes to the public financing rules for Presidential primary and general election candidates. The Commission also seeks comments on a proposed change to the general regulations that would affect all types of committees. Written comments on the rulemaking notice will be due on February 19, 1991. To order a copy of the Federal Register notice, call the FEC's Information Services Division (800/424-9530; 202/376-3120).

Based on its experience in administering the 1988 public financing program, the Commission proposed several modifications to its regulations at 11 CFR Parts 9001-9007, 9012 and 9031-9039. These regulations implement 26 U.S.C. Chapters 95 and 96, the public financing statutes.<sup>1</sup> Moreover, one proposed change implementing the Federal Election Campaign Act (Title 2 of the United States Code) would also affect non-Presidential candidates and committees.

Listed below are the topics addressed in the proposed rulemaking.

#### Proposed Changes to the Presidential Public Funding Program

The Rulemaking Notice proposes substantive changes in two areas that affect primary election candidates:

- o The allocation of expenditures to the state spending limits; and
- o The fundraising exemption from the state spending limits.

Other changes are proposed in the following areas:

- o Candidate agreements;
- o Projected deficiency in the Presidential Election Campaign Fund (see article on page 1);
- o High error rates in matching fund submissions;
- o Inclusion of computer tapes or diskettes in matching fund submissions, if the committee has computerized its contributor records;
- o Matching of redesignated and reattributed contributions;
- o Application of the 10 percent rule in determining a primary candidate's date of ineligibility;
- o Contributions received by a candidate who continues to campaign after his or her date of ineligibility;
- o Documentation of qualified campaign expenses allocated to particular states;
- o Transfers and loans from a candidate's publicly funded committee to a committee authorized by the candidate for a different election;
- o Reimbursements by media personnel and the Secret Service for travel costs;
- o Joint fundraising;
- o Subpoenas issued during Commission audits;
- o Double counting of repayable amounts;
- o Repayment of interest received on public funds;
- o Repayments for exceeding both the state and the overall spending limits; and
- o Notification of repayment determinations and failure to provide needed records.

#### Proposed Change Affecting All Committees: Redesignations and Reattributions

To monitor compliance with the 60-day time period for obtaining reattributions and redesignations of contributions, a proposed change to 11 CFR 110.1(1) would require committees to retain documentation demonstrating that the redesignation or reattribution was received within the 60-day deadline.

<sup>1</sup>Please note that, on October 3, 1990, the Commission prescribed final rules regarding the format of computerized information submitted during the audit process by publicly funded Presidential candidates. See 55 FR 40377; see also the summary in the August 1990 Record. Note also that the Commission recently published a rulemaking notice seeking comments on proposed changes to the rules governing publicly funded Presidential nominating conventions. See 55 FR 34267, August 22, 1990; see also the summary in the October 1990 Record.

**COURT CASES****COMMON CAUSE v. FEC;  
NATIONAL REPUBLICAN SENATORIAL COMMITTEE,  
APPELLANT (90-5317)**

On November 13, 1990, the U.S. Court of Appeals for the District of Columbia, in a *per curiam* decision, ruled that the district court had properly denied as moot a motion to intervene filed by the National Republican Senatorial Committee (NRSC).

On August 20, 1990, NRSC filed a motion with the U.S. District Court for the District of Columbia seeking to intervene in *Common Cause v. FEC* (Civil Action No. 89-0524 (GAG)). NRSC wished to intervene in the case to oppose a motion filed by *Common Cause* seeking enforcement of a mandate issued by the court in January 1990. In its January decision, the court had declared that the Commission's dismissal of an administrative complaint filed by *Common Cause* against NRSC was contrary to law. The court remanded the case to the FEC with instructions to conform with the court's declaration.<sup>1</sup> In June 1990, *Common Cause* asked the court to enforce that mandate by requiring the FEC either to reach a conciliation agreement with NRSC or file an enforcement action against the committee. *Common Cause* withdrew its motion as moot on August 24, when the FEC filed suit against NRSC.<sup>2</sup> In light of *Common Cause's* withdrawal of its motion, the district court ruled that the case was closed and that NRSC's motion to intervene in the motion was therefore moot.

The appeals court, granting the FEC's motion for summary affirmance, upheld the district court order denying NRSC's motion to intervene. The appeals court noted that NRSC's motion, although it criticized the January order, sought to intervene only for the purpose of opposing *Common Cause's* motion, which was later withdrawn. The court also noted that "NRSC is currently able to challenge the Federal Election Commission's allegations of election violations in [*FEC v. NRSC*]..., which remains pending in district court."

<sup>1</sup>For a summary of the district court decision, see the March 1990 *Record*.

<sup>2</sup>*FEC v. NRSC*, Civil Action No. 90-2055 (GAG), August 24, 1990; see the October 1990 *Record* for a summary of this suit.

**COMMISSIONERS****FEC ELECTS NEW OFFICERS**

On December 18, 1990, the Commission unanimously elected the 1991 officers: John Warren McGarry as Chairman and Joan D. Aikens as Vice Chairman. Mr. McGarry succeeds former Chairman Lee Ann Elliott; Mrs. Aikens succeeds Mr. McGarry as Vice Chairman.

Commissioner McGarry, a Democrat, was first appointed to the Commission in 1978, after serving as Special Counsel on Elections to the House Administration Committee. Before that, he combined private law practice with service as Chief Counsel for the Special Committee to Investigate Campaign Expenditures—a House committee created every two years through 1972 to oversee House elections. Before his work with Congress, Mr. McGarry served as Assistant Attorney General for Massachusetts.

Mr. McGarry graduated cum laude from Holy Cross College, performed graduate work at Boston University and earned a J.D. degree from Georgetown University Law School. He was reappointed to the Commission in 1983 and 1989. His current term as Commissioner expires in 1995.

Commissioner Aikens, one of the original members of the Commission, was first appointed in 1975. Before her appointment, Mrs. Aikens was an executive with Lew Hodges Communications, a public relations firm in Valley Forge, Pennsylvania. She was also a member of the Pennsylvania Republican State Committee, president of the Pennsylvania Council of Republican Women and on the Board of Directors of the National Federation of Republican Women.

A native of Delaware County, Pennsylvania, Mrs. Aikens has been active in a variety of volunteer organizations. She is currently a member of the Commonwealth Board of the Medical College of Pennsylvania and a member of the Board of Directors of Ursinus College, where she received her B.A. and an honorary Doctor of Law degree. Most recently reappointed to the Commission in 1989, Mrs. Aikens' current term expires in 1995.

## ADVISORY OPINIONS

### ADVISORY OPINION REQUESTS

Recent requests for advisory opinions (AORs) are listed below. The full text of each AOR is available for public review and comment in the FEC's Public Records Office.

#### AOR 1990-26

Campaign committee's liquidation of asset (computer). (Date Made Public: December 3, 1990; Length: 1 page)

#### AOR 1990-27

Transfer to party committee's federal account of funds mistakenly deposited in nonfederal account. (Date Made Public: December 5, 1990; Length: 2 pages)

#### AOR 1990-28

Telephone service bureau's provision of 900-line fundraising services to committees. (Date Made public: December 7, 1990; Length: 16 pages)

### ADVISORY OPINION SUMMARIES

#### AO 1990-19: Vendor/Committee Relationship: Sale and Repurchase of Fundraising Items

The Suarez Corporation may sell jewelry and similar items to a campaign committee, which will resell the items for profit; Suarez may also repurchase the items, subject to certain restrictions. To ensure that a corporate contribution does not result from the transactions, certain conditions must be met: (1) The committee must pay Suarez in advance for the goods; (2) in the event the goods are repurchased by Suarez, the repurchase price must not exceed the usual and normal charge then prevailing and must be reduced by any administrative costs incurred by Suarez; and (3) Suarez must make the proposed plan available, on equal terms, to both political and nonpolitical customers.

Suarez, a mail order business, normally retails merchandise such as jewelry, coins and medals, which it obtains from suppliers at the fair market cost. In order to help a campaign committee that now owes Suarez \$82,000—a debt incurred through a division of Suarez that provides advice to candidates—Suarez proposes a new venture: It would sell merchandise at a reduced price to the political committee, which in turn

would resell the goods to raise funds.<sup>1</sup> Under the proposal, Suarez would purchase the items from the suppliers and sell them to the committee at a profit. The committee would pay Suarez for the items in advance and then sell them at a mark-up, using the profits to repay campaign debts. Suarez would repurchase any items not sold by the committee within a commercially reasonable time. Suarez would then market the repurchased items to the general public and to other political committees who contracted with Suarez for the same type of "sale-for-resale" arrangement. Although Suarez does not normally sell merchandise for resale, the corporation plans to make such arrangements with other political committees, pending Commission approval of the proposal.

Under the Federal Election Campaign Act, corporations are prohibited from making contributions or expenditures in connection with a federal election. 2 U.S.C. §441b(a). Contributions and expenditures are defined to include "anything of value" given in connection with a federal election, including goods and services provided at less than the usual and normal charge. 2 U.S.C. §441b(b)(2); 11 CFR 100.7(a)(1)(iii)(B) and 114.1(a)(1).

In determining whether vendor/committee fundraising arrangements result in contributions from the vendor, the Commission has considered whether the committee—rather than the vendor—assumes the financial risk of the venture. AOs 1990-1 and 1989-21; see also AOs 1988-17, 1979-36 and 1976-50. The Suarez proposal meets this concern, in part, because the committee will:

- o Pay for the goods in advance; and
- o Exercise complete control over the goods, including the assumption of marketing costs.

Two other conditions, however, should also be met:

- o If Suarez repurchases any items (those that the committee is unable to sell), the repurchase price may not be higher than the usual and normal charge prevailing at the time of repurchase

<sup>1</sup>The Commission noted that this advisory opinion does not reach any issues concerning the committee's debts for campaign services. The opinion also does not address the prospective conduct of the committee, as the committee is not a requester. 11 CFR 112.1(b).



(even if the original price paid by the committee was higher); and

- o The repurchase price must be reduced by the administrative costs incurred by Suarez in selling and taking back the items, costs that Suarez will not otherwise recapture from the committee.

Finally, in approving vendor/committee relationships, the Commission has also required the vendor to charge the committee the same charge offered to nonpolitical customers in the ordinary course of business. AOs 1989-14, 1985-28, 1982-30 and 1978-45. In this regard, the Suarez proposal must also meet the following conditions:

- o Suarez must make all features of the proposed plan (including the wholesale price and repurchase provisions) available to nonpolitical customers on the same terms offered to political customers; and
- o The plan must conform to the normal industry practice of companies engaged in volume sales of jewelry and similar merchandise. See AO 1979-36.

The Suarez Corporation's failure to comply with the conditions set forth in the advisory opinion will result in prohibited in-kind contributions. (Date Issued: November 15, 1990; Length: 5 pages)

#### **AO 1990-22: Blue Cross/Blue Shield's Solicitation of Member Plans' Personnel**

Blue Cross and Blue Shield Association (BCBSA), a nonprofit corporation, may solicit PAC contributions from the executive and administrative personnel of its Regular Member Plans since these Plans function as affiliated local units of BCBSA. If affiliation between BCBSA and the Plans did not exist, the Plans' executive and administrative personnel could not be solicited for contributions to BCBSA's PAC, not even under the collection agent rules.

#### **Affiliation Rules**

BCBSA is a national association that licenses Blue Cross and Blue Shield Plans throughout the United States. Currently BCBSA has 74 Regular Member Plans, each organized locally. (BCBSA has other types of Member Plans, but its advisory opinion request related only to Regular Member Plans.) Under FEC regulations, a corporation may solicit contributions to its separate segregated fund from the executive and administrative personnel (and families) of any affiliated organizations. 11 CFR

114.5(g)(1). The Federal Election Campaign Act and FEC rules treat a corporation and its "local units" as affiliated; the regulations clarify that a "local unit" may, under certain conditions, include a franchisee, licensee or state or regional association. 2 U.S.C. §441a(a)(5); 11 CFR 100.5(g)(2) and 110.3(a)(1)(ii). The regulations also provide specific factors the Commission may examine to determine whether affiliation exists between organizations--such as BCBSA and its Member Plans--that are not automatically affiliated by virtue of a parent/subsidiary relationship. Several of these factors are present in the relationship between BSBSA and its Regular Member Plans, as explained below. 11 CFR 100.5(g)(4)(ii)(B), (C), (E) and (I); see also 11 CFR 110.3(a)(3)(ii).

- o **Factor 1: The organization has the authority to direct or participate in the governance of the other organizations.** BCBSA exerts substantial control over the operations of the Member Plans by requiring adherence to all its membership standards and by subjecting the Member Plans to close scrutiny.
- o **Factor 2: The organization has the authority to hire, demote or otherwise control the officers of the other organizations.** Although BCBSA does not select the individuals to run the Plans, it does exert control over the composition of the Plans' governing boards.
- o **Factor 3: The organizations have common or overlapping officers indicative of a formal or ongoing relationship.** The composition of BCBSA's own Board of Directors--predominantly composed of Plan CEOs--denotes an overlap of officers indicative of such a relationship. See AO 1983-46.
- o **Factor 4: The organization has an active or significant role in the formation of the other organizations.** In order for Member Plans to function as Blue Cross/Blue Shield Plans, they must be admitted for membership and licensed to operate by BCMSA.

In addition to these factors that indicate affiliation, the Blue Cross and Blue Shield system appears to operate as a single corporate entity. Subscribers receive uninterrupted medical coverage regardless of the geographic area of treatment, and there are certain significant centralized operations within the system.

Therefore, based on the information presented in the request, the Regular Member Plans are affiliates of BCBSA,

(continued)

functioning in effect as local units of BCBSA. BCBSA may therefore solicit the executive and administrative personnel of Regular Member Plans for contributions to BCBSA's PAC.

#### Collecting Agent Rules

If BCBSA and the regular member Plans were not affiliated, the Plans could not function as collecting agents for contributions to BCBSA's PAC. Under 11 CFR 102.6(b)(1), a collecting agent must, by definition, be affiliated with the connected organization or with the PAC. Thus, the collecting agent regulations do not expand an organization's solicitable class.

(Date Issued: November 15, 1990;  
Length: 8 pages)

## COMPLIANCE

#### 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 releases of November 16 and 20, and December 3, 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 1818

**Respondents:** (a) Ingham County Democratic Federal Campaign Fund (MI); (b) Friends of Bob Carr, Dennis M. Ritter, treasurer (MI); (c) Riegle for Senate in '82 Committee, M.P. Patten, treasurer (MI); (d) Howard Wolpe Campaign Committee, Wayne M. Deering, treasurer (MI)

**Complainant:** FEC initiated

**Subject:** Excessive contributions; failure to file reports; failure to report complete information on contributions

**Disposition:** (a) \$2,000 civil penalty; (b) \$250 civil penalty; (c) reason to believe but take no further action; (d) \$250 civil penalty (case was closed in 1986)

#### MUR 1835

**Respondents:** National Conservative Political Action Committee, Leif E. Noren, treasurer, and Americans to Re-Elect President Reagan (VA)

**Complainant:** Referral by U.S. Department of Justice, Public Integrity Section

**Subject:** Disclaimer

**Disposition:** U.S. district court judgment: \$3,000 civil penalty (case was closed in 1987)

#### MUR 1866

**Respondents:** (a) New York State Conservative Party State Committee/1984 Victory Fund, Vincent G. Downing, Jr., treasurer; (b) Sullivan for Senate Committee, Joseph M. Sussillo, treasurer (NY)

**Complainant:** Muriel F. Siebert and Whitney North Seymour, Jr. (NY)

**Subject:** Excessive contributions; failure to disclose in-kind contribution

**Disposition:** (a) U.S. district court judgment: \$15,000 civil penalty; (b) conciliation agreement: \$5,000 civil penalty

#### MUR 2345

**Respondents:** Republican State Committee of Delaware-1984 Victory Committee, John Shopa, treasurer

**Complainant:** FEC initiated

**Subject:** Excessive contributions; excessive and unauthorized coordinated expenditures; inadequate reporting; use of non-federal account containing impermissible funds

**Disposition:** \$9,000 civil penalty

#### MUR 2638

**Respondents:** (a) National Security Political Action Committee, Elizabeth I. Fedaiy, treasurer (DC) (re: The PAC's special project, "Americans For Bush"); et al. (b)-(h)

**Complainant:** Jan W. Baran, General Counsel, George Bush for President, Inc. (DC)

**Subject:** Disclaimer; failure to report contributions accurately

**Disposition:** (a) \$6,000 civil penalty; (b)-(h) no reason to believe

#### MUR 2691

**Respondents:** (a) Dave Moss (AZ); (b) Dave Moss for U.S. Congress, Dave Moss, treasurer (AZ)

**Complainant:** John Parsons (AZ)

**Subject:** Destruction of campaign records; inaccurate reporting; failure to report on time; failure to file disclosure reports with the Office of the Arizona Secretary of State

**Disposition:** (a) No probable cause to believe; (b) \$1,500 civil penalty

#### MUR 2752

**Respondents:** (a) Jerry Yudelson (CA); (b) Yudelson for Congress, Jessica Stuart, treasurer (CA)

**Complainant:** Robert K. Doñnan (CA)

**Subject:** Disclaimer

**Disposition:** (a) No reason to believe;  
(b) \$400 civil penalty

**MUR 2771**

**Respondents:** (a) Democratic Senatorial Campaign Committee, G. Wayne Smith, treasurer (DC); (b) Committee On Letter Carriers Political Education, Florence Johnson, treasurer (DC); (c) John P. Vinich (WY); (d) John P. Vinich for U.S. Senate Committee, Mabel Vinich, treasurer (WY); (e) United Steelworkers of America Political Action Fund, Local Union 13214 (IL)

**Complainant:** Jann L. Olsten, Executive Director, National Republican Senatorial Campaign Committee (DC)

**Subject:** Disclaimer; prohibited union contributions; excessive contributions  
**Disposition:** (a) \$1,000 civil penalty;  
(b) \$750 civil penalty; (c) no reason to believe; (d) and (e) reason to believe but took no further action

**MUR 2932**

**Respondents:** (a) Terry Gaudet and Associates, Inc. (LA); (b) Terry Gaudet (LA); (c) Beverly Gaudet (LA)

**Complainant:** Referral by Defense Contract Audit Agency (VA)

**Subject:** Prohibited corporate and government contractor contributions; contributions in the name of another

**Disposition:** (a)-(c) No probable cause to believe

**MUR 2936**

**Respondents:** (a) Republican National Committee (DC); (b) Carroll County Republican Central Committee (Federal Account), Louis E. Wiser, Jr., treasurer (MD); (c) Gary W. Bauer (MD); (d) Helen Delich Bentley (MD); (e) Richard P. Taylor (MD); (f) James F. Keenan (SC)

**Complainant:** Carroll County Republican Central Committee (Federal Account), sua sponte

**Subject:** Failure to forward contributions within time limit; failure to maintain contribution records; failure to disclose contributor identities; inaccurate and incomplete reporting

**Disposition:** (a) \$1,427 civil penalty;  
(b) reason to believe but took no further action; (c) \$1,000 civil penalty; (d)-(f) reason to believe but took no further action

**MUR 3047**

**Respondents:** (a) Simon for Senate, Edward T. Joyce, treasurer (IL); et al. (b)-(d)

**Complainant:** John J. Curry, Jr. (IL)

**Subject:** Excessive contributions through a conduit; corporate contribution through improper sale of campaign assets

**Disposition:** (a)-(d) No reason to believe

**MUR 3055**

**Respondents:** Friends of Senator David Karnes Committee, Jon D. Hoffmaster, treasurer (NE)

**Complainant:** FEC initiated

**Subject:** Excessive contributions

**Disposition:** \$1,000 civil penalty

**MUR 3060/3052**

**Respondents:** (a) Scott E. Sidwell (NE); (b) Sidwell for Congress, Mary S. Berglund, treasurer (NE); et al. (c)-(e)

**Complainant:** Bill Haivala (NE)

**Subject:** Excessive contributions; failure to disclose in-kind contributions

**Disposition:** (a)-(e) No reason to believe

**MUR 3073**

**Respondents:** Voluntary Contributors for Better Government: A Program of Employees of International Paper, Arthur W. Brownell, treasurer (DC)

**Complainant:** FEC initiated

**Subject:** Failure to transfer contributions from corporate treasury account to PAC account in a timely fashion

**Disposition:** \$3,500 civil penalty

**MUR 3080**

**Respondents:** (a) Phillip Klinger (IA); (b) Klinger, Robinson, McCuskey & Ford (IA); (c) Fred P. Ertl, Jr. (IA); (d) The Ertl Company, Inc., George Volanakis, President (IA)

**Complainant:** Carolyn Seeley, Campaign Manager, Ertl for Congress (IA)

**Subject:** Corporate contributions/expenditures

**Disposition:** (a)-(c) No reason to believe; (d) reason to believe but took no further action

**MUR 3084**

**Respondents:** The Ray Ellison Industries, Inc. Political Action Committee, Walter E. Neilsen, treasurer (TX)

**Complainant:** FEC initiated

**Subject:** Excessive contributions

**Disposition:** \$1,600 civil penalty

(continued)

**MUR 3092**

**Respondents:** Kasten for Senate Committee, Inc., John Sturm, treasurer (WI)  
**Complainant:** Marvin J. Freedman (WI)  
**Subject:** Disclaimer  
**Disposition:** No reason to believe

**MUR 3094**

**Respondents:** William Lehman Campaign Fund Committee, Edward Mahler, treasurer (FL)  
**Complainant:** Earl Rodney (FL)  
**Subject:** Failure to file disclosure reports with the Florida Secretary of State  
**Disposition:** No reason to believe

**MUR 3116**

**Respondents:** Democratic Party of Oklahoma, Maxine F. McFalls, treasurer (OK)  
**Complainant:** FEC initiated  
**Subject:** Failure to report on time  
**Disposition:** \$750 civil penalty

**MUR 3120**

**Respondents:** National Republican Senatorial Committee, James L. Hagen, treasurer (DC)  
**Complainant:** Gary J. LaPaille, Chairman, Democratic Party of Illinois (IL)  
**Subject:** Disclaimer  
**Disposition:** No reason to believe

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