Federa l Election Commission
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Regulations
Comments Sought on Changes to Enforcement Regulations
The Commission is seeking public comment on proposed changes to its enforcement regulations, 11 CFR Part 111. (Enforcement cases are called Matters Under Review or MURs.) The draft rules would revise or clarify almost every aspect of the enforcement process, from the initial filing of a complaint to the payment of penalties. The rulemaking also asks readers to comment on proposed new procedures, such as agency hearings at which respondents or their counsel could testify.

Comments must be in writing and are due September 24. Those submitting comments may also request to appear at a public hearing scheduled for October 20. Written comments and requests to testify should be addressed to Susan E. Propper, Assistant General Counsel, 999 E Street, NW, Washington, DC 20463.

FEC Chairman’s Letter to Governors Promises Help with Motor Voter Law
In a May 21 letter, FEC Chairman Scott E. Thomas assured state governors that the Commission would work with state officials to help them implement the National Voter Registration Act of 1993, which was signed by President Clinton on May 20.

Chairman Thomas announced the formation of an ad hoc discussion group to clarify issues and identify options for implementing the law. The group is composed of state and local election officials and representatives from interest groups and agencies affected by the new legislation. It held its first meeting on June 25-26.

In 1995, when the motor voter law becomes effective, states will have to:

- Permit individuals to register to vote at the same time they obtain or renew their drivers license;
- Designate public assistance agencies and certain other offices as voter registration agencies;
- Permit voter registration by mail (national mail-in form to be designed by the FEC); and
- Limit purges of voter lists.

(continued on page 2)
Motor Voter
(continued from page 1)

In closing, the Chairman reassured the governors “that the Commission recognizes the legislative, financial and technical constraints under which your State must implement the provisions of the Act, and that we take seriously our responsibility to provide your State officials with the necessary information and assistance....”

The June meeting of the ad hoc group was organized by the FEC’s National Clearinghouse on Election Administration. The Clearinghouse plans to publish a detailed summary of the law and a practical guide for implementing it. Later this year, the office plans to hold conferences with state officials.  

Compliance

MUR 3528
Amending Reports to Disclose Previously Missing Contributor Information

In MUR 3528, the Commission clearly stated that if a committee receives missing contributor information for a previously reported contribution, it must disclose the new information in an amended report.

To comply with the law, committees must use “best efforts” to “obtain, maintain, and submit” all required reporting information. To satisfy the “best efforts” standard for obtaining this information, committees must state that the reporting of the information is required by law. 11 CFR 104.7(b). To obtain this information, committees must make at least one clear request, per solicitation. The request must state that the reporting of the information is required by law.

In MUR 3528, a campaign committee used best efforts to “obtain and maintain” required information, but failed to “submit” it in amended reports.

The committee filed two consecutive reports lacking occupation and employee information for several contributors. Subsequently, the committee was successful in obtaining the missing information from 38 contributors whose contributions totaled $28,475, but it did not amend the reports until after the Commission found reason to believe that the committee had violated the reporting provisions. The committee mistakenly believed it had satisfied the “best efforts” requirement by obtaining and maintaining the information. The Commission said that the statute required the information to be “submitted” as well.

The committee agreed to pay a $2,000 civil penalty.  

MURs Released to the Public
Listed below are FEC enforcement cases (Matters Under Review or MURs) recently released for public review. The list is based on the FEC press release of May 24, 1993. Files on closed MURs are available for review in the Public Records Office.

MUR 3234
Respondents: New York State Conservative Party, Michael R. Long, chairman
Complainant: Moynihan for Senate Committee
Subject: Acceptance and use of prohibited funds; failure to register and report on time; disclaimer
Disposition: $30,000 civil penalty

MUR 3618
Respondents: TGI Friday’s Incorporated Employees Political Action Committee, Daniel Thompson Cronk, treasurer (TX)
Complainant: FEC initiated
Subject: Failure to file reports on time
Disposition: $4,225 civil penalty
Conferences

FEC to Hold Conferences in San Francisco and Washington, DC

FEC conferences offer basic and advanced workshops on the federal campaign finance law and provide the opportunity to discuss problems and questions with FEC Commissioners and staff. The agency will hold two conferences this year.¹

- A San Francisco regional conference, September 30 – October 1, for candidate committees, party committees, and corporate and labor PACs and their connected organizations. (More information given below.)
- A November conference in Washington, DC, for corporations, trade associations, labor organizations and their PACs. (Date not yet available; details to appear in future issue.)

To place your name on a mailing list to receive registration materials for either conference, call 800/424-9530 or 202/219-3420. (Registration materials will not be sent until later this year.)

San Francisco Regional Conference: September 30 – October 1

The San Francisco regional conference will offer FEC workshops for the committees and organizations listed above. Additionally, representatives of the Internal Revenue Service and the California Political Fair Practices Commission will be on hand to answer questions.

¹ The FEC will also hold three conferences in 1994: a Washington, DC, conference for candidate committees (February); a New Orleans regional conference (March); and a Pittsburgh regional conference (April). It is too early to call the FEC for dates or registration information. Look for announcements in future Record issues.

Publications

FEC's 1992 Annual Report Now Available

The FEC recently released its annual report for 1992, a year of intense activity for the agency. The report features several items of special interest:

- A recap of the unique aspects of the 1992 election year: Ross Perot's candidacy; the swelled number of Congressional candidates; the huge volume of campaign finance activity; and the record workload generated by these factors.
- A summary of the Presidential elections and the public funding program, complete with graphs.
- More campaign finance graphs on the activity of PACs, party and Congressional candidates.
- A discussion of the Commission's efforts to speed up the Presidential audit process.
- An overview of legal developments in advisory opinions, litigation and regulations.
- A complete set of the most far-reaching recommendations for legislative change ever adopted by the Commission.

The report was sent to the President and Congress on June 1, 1993; it is available to the public free of charge. Use the order form on page 7.

Clearinghouse

Updated Edition of Election Case Law Released

_Election Case Law_, an overview of election-related law as applied by federal and state appellate courts, was recently updated by the FEC's National Clearinghouse on Election Administration. _Election Case Law 93_ covers cases reported in the West Publishing Company system through the end of 1992.

Each chapter surveys the judicial treatment of an election issue. Among the topics covered are reapportionment, ballot access, voter registration and the Voting Rights Act.² The chapters open with a comprehensive summary of the current state of the law in the subject area, followed by summaries of the leading appellate court cases. Each chapter also contains synopses of other selected cases and a bibliography of selected literature.

To order the publication, send a $135 fee for the conference (1 and 1/2 days) for three meals (two continental breakfasts and a lunch) and a reception. The conference will be held at the Hotel Nikko San Francisco (415/394-1111). To receive the group rate of $120 per night, notify the hotel that you will be attending the FEC conference.

² Campaign finance matters are generally beyond the scope of the publication, although four cases are included because they bear on election regulation in general. Summaries of cases specifically related to the Federal Election Campaign Act are found in Selected Court Case Abstracts. To order a free copy, call 800/424-9530 or 202/219-3420.
Statistics
PAC Contributions Increase 19 Percent

In the 1991-92 election cycle, PAC contributions to federal candidates totaled $188.7 million, up 19 percent from the $159 million PACs gave to candidates in each of the two previous election cycles. Most of the money—$179.2 million—went to House and Senate candidates seeking election in 1992; less than $800,000 was given to 1992 Presidential contenders.

For the first time since 1977, PACs spent more than they raised. Drawing on surplus funds from previous cycles, they spent $394 million, $9 million more than they raised in the 1992 cycle. PAC spending rose more than 10 percent over the previous cycle, while fundraising increased only 4 percent.

The jump in the overall campaign finance activity of PACs and other committees may be due to an unusual set of factors at work in the 1992 cycle: Congressional redistricting; a large number of House retirements; three Senate special elections, including one in California, and another open-seat Senate race in California.

The accompanying graphs are based on an April 29 FEC press release, which provides comprehensive PAC data for the 1991-92 cycle and summary statistics for six previous cycles. The release also ranks the “top 50” PACs in terms of receipts, contributions to candidates, disbursements and ending cash on hand.

For a copy of the release, call 800/424-9530 (ask for Public Records) or 202/219-4140. A complete ranking of all PACs making contributions to candidates in the 1991-92 cycle is also available from the Public Records Office.

Distribution of PAC Contributions to Candidates 1991-92 Election Cycle

<table>
<thead>
<tr>
<th>Total Contributions</th>
<th>Corporate</th>
<th>Labor</th>
<th>Nonconnected</th>
<th>Trade/Membership/Health</th>
</tr>
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<tr>
<td></td>
<td>$68.41 Million 1</td>
<td>$41.34 Million 3</td>
<td>$18.19 Million 1</td>
<td>$53.76 Million 3</td>
</tr>
<tr>
<td>Greater Than $1,000,000</td>
<td>1,930 Committees 2</td>
<td>372 Committees</td>
<td>1,377 Committees</td>
<td>836 Committees</td>
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<td>$500,001 - $1,000,000</td>
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</tr>
<tr>
<td>$0</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Explanations
For each type of PAC, the first set of bars (dark) shows the percentage of committees whose total contributions to candidates fell within a given dollar range. For example, in the corporate category, the longest bar shows that about 35 percent of corporate PACs gave between $5,001 and $50,000 in contributions to candidates. Less than one percent of corporate PACs (too small to register on the graph) made total candidate contributions greater than $500,000 or $1 million.

The second set of bars in each category shows what percentage of total contributions to candidates were made by PACs whose candidate contributions fell within a given dollar range. In the corporate category, the longest bar shows that PACs whose contributions to candidates totaled between $100,001 and $250,000 accounted for about 30 percent of the $68.41 million contributed by all corporate PACs.

1 For each category, this figure represents the total contributions to candidates made by all PACs in the category.
2 For each category, this figure represents the total number of registered PACs in the category.
PAC Contributions to Candidates by Party Affiliation
1991-92 Election Cycle
(Millions of Dollars)

<table>
<thead>
<tr>
<th></th>
<th>Democrats</th>
<th>Republicans</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate</td>
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<td></td>
</tr>
<tr>
<td>Labor</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>Nonconnected</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Trade/Membership/Health</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>30</td>
<td>10</td>
</tr>
</tbody>
</table>

Independent Expenditures by PACs
Over Four Presidential Election Cycles
(Millions of Dollars)

1 "Other" consists of PACs formed by cooperatives and corporations without capital stock.
AO 1993-6
Use of Excess Funds by Former House Member

Although Citizens for Congress-
man Panetta, the campaign committee
of former House Member Leon E.
Panetta, may not use excess campaign
funds for Mr. Panetta’s personal use,
it may use them to pay hotel expenses
related to closing down his Congressional
office; to pay his travel ex-
penses for certain party-related
appearances; and to make charitable
donations. However, the committee
may not cover travel expenses
for days spent on personal activity or fees
for his membership in tax-exempt
organizations, as these would consti-
tute a prohibited personal use
of excess funds. In addition to making
permissible disbursements from
excess funds, the committee may use
campaign funds for operating expen-
ditures to wind down its activities.

Although formerly eligible to
convert excess campaign funds to
personal use because he was a
Member of Congress on January 8,
1980 (i.e., a “grandfathered”
Member), Mr. Panetta lost that status
when he was sworn in as a Member
of the 103d Congress on January 5,
1993. (The Ethics Reform Act of
1989 amended 2 U.S.C. §439a by
prohibiting Members of the 103d or
later Congresses from converting any excess campaign funds to personal
use.)

Mr. Panetta resigned his Congres-
sional seat on January 21 and was
sworn in to his new position, Director
of the Office of Management and
Budget (OMB), on January 22.

Hotel Expenses

During the two-week period
ending January 29, Mr. Panetta and
his family stayed at a Washington, DC, hotel. He used part of the space
as an office to wind down his Con-
gressional duties (assisted by his wife)
and to conduct OMB business.

Because the law permits the use of
excess campaign funds to defray
expenses in connection with the
individual’s duties as a federal
officeholder, the committee may pay
that portion of hotel expenses related
to Mr. Panetta’s Congressional duties.
2 U.S.C. §439a. See also AO 1978-22
(retired Congresswoman permitted to
use excess campaign funds to employ
staff and pay “incidental expenses”
for duties imposed by her status as a
former Member of Congress).

Because the term “federal office”
applies only to elected federal offices,
however, the committee may not pay
hotel expenses related to Mr.
Panetta’s duties as OMB Director, an
appointed position.2 Payment of those
expenses would constitute personal
use of excess campaign funds.

So too would the committee’s
payment of the Panetta family’s
personal living expenses, based on
AO 1980-138 (Senator-elect not
permitted to use excess campaign
funds to pay personal living expenses
incurred during the transition period,
before he assumed office, because
they would have existed regardless of
the outcome of the election).

The committee may therefore pay
a percentage of the hotel expenses
based on the time and hotel space
devoted to winding down the Con-
gressional office compared with that
devoted to OMB duties and personal
activities.

Travel Expenses for Party
Appearances

The committee may pay Mr.
Panetta’s round-trip travel costs to
appear as the invited honoree or
featured speaker at Democratic party
events held in his former California
district. This would be a permissible
use of excess campaign funds under
§439a, which allows excess campaign
funds to be transferred in unlimited
amounts to party committees. The
counter payments would qualify as
transfers in kind to the party com-
mittee, since the committee would
receive the same benefit from the
payments as from an actual transfer of
the funds.

If a trip combined both party-
related and personal activities, the
committee could pay no more than
transportation to and from the party
committee event and related lodging
and per diem costs (generally no more
than one night per event). Payment of
Mr. Panetta’s expenses for days spent
in personal activity would be a
prohibited use of excess campaign
funds.3

Payments to Tax-Exempt
Organizations

Section 439a states that excess
campaign funds “may be contributed
to any organization described in
§170(c) of title 26,” which includes
the kind of charitable nonprofit
organizations (26 U.S.C. §501(c)(3))
to which the Panetta committee would
like to make payments.

However, the charitable donations
referred to in §439a do not include
payment of dues or other membership
fees on behalf of Mr. Panetta, who is

1 Campaign contributions to maintain an
“official office account” or to defray
“official” expenses are generally barred.
2 U.S.C. §59e(d). See also House Rules
43 and 45 and Senate Rule 38.

2 Under 2 U.S.C. §431(3), the term
“federal office” is limited to the Presi-
dency, the Vice Presidency and seats in
the U.S. Congress. In this regard, the
Commission concluded that AO 1980-113
is superseded to the extent it held that
§439a permits a former federal candidate
to spend campaign funds for expenses
related to the individual’s position as a
holder of state office or any office not
defined as a federal office.

3 The campaign travel regulations at
11 CFR 106.3, which govern travel by or
on behalf of a federal candidate, do not
apply here, since Mr. Panetta is a former
candidate and the proposed travel, it
appears, would not be on behalf of any
current federal candidate.
neither a federal candidate nor a federal officeholder. Such payments would benefit him financially and thus constitute a prohibited personal use of campaign funds.  

Winding-Down Expenses
The Panetta committee’s funds may be used to hire individuals to complete the committee’s 1993 midyear report, to pay storage costs for campaign records and to pay other costs of winding down campaign activity. However, the committee may not continue to use campaign funds indefinitely; it may need to seek another advisory opinion if it intends to make campaign expenditures after July 31, the midyear report filing date.

Reporting the Payments
While the above campaign-related expenses would be reportable as operating expenditures, the other payments (hotel expenses, party travel and charitable donations) would be reportable as “other disbursements.” The purpose of the party travel payments should be described as “travel expenses/transfer (in kind) to party committee of excess funds.” 11 CFR 104.3(b)(4)(i)(A).

Tax Ramifications
The Commission expressed no opinion on the federal or state tax ramifications of the proposed payments since those issues are not within its jurisdiction. The opinion cited IRS Reg. 1.527-5(c)(1) and an IRS training manual, Exempt Organizations, 1992, at 469, 470 (principal campaign committee of former candidate not allowed to remain in existence for longer time period than reasonably necessary to wind up affairs of past campaign).

Vice Chairman Trevor Potter filed a dissenting opinion. Date Issued: May 14, 1993; Length: 10 pages (plus 3-page dissent)  

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

AOR 1993-7
Name change of connected organization and its PAC. (Pacific Power & Light Company; June 8, 1993; 4 pages)

AOR 1993-8
State law prohibiting federal and nonfederal contributions by federal committee incorporated for liability purposes only. (Congressman John J. Duncan, Jr.; June 8, 1993; 3 pages plus 5-page attachment)

AOR 1993-9
Use of party building fund to pay off land contract for existing party headquarters; use of proceeds from sale of party’s interest in contract to purchase new headquarters; preemption of state law prohibiting corporate donations to building fund. (Michigan Republican State Committee; June 22, 1993; 6 pages)  

Advisory Opinions

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Reminder: Midyear Report Due July 31

PACs and party committees (except monthly filers) and authorized committees of House and Senate candidates must file a midyear report by July 31. (Because this is a nonelection year, most committees file on a semi-annual, rather than quarterly, basis.) For more information, see the January or June issues. You can also order a 1993 reporting schedule from the Commission (800/424-9530 or 202/219-3420). Please call the Commission with your reporting questions.