

# Record

June 1994

Federal Election Commission

Volume 20, Number 6

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## 800 Line

### Help – My Report Is Late!

When reporting deadlines approach, the FEC gets numerous calls from individuals who, for one reason or another, are not going to be able to file their committee's report on time.

### No Extensions of Time

Many ask for an extension of time, but the FEC does not grant filing extensions. (In fact, the FEC does not have the legal authority to do so.)

### Penalties

Understandably, the individuals are worried about penalties. The Commission does not have fixed penalties but pursues late filers on a case-by-case basis. A committee

that repeatedly files late, however, is at greater risk of a serious enforcement action than a committee that misses one reporting deadline by a few days. (See summaries of MURs 3248 and 3728, pages 2 and 3.)

### What to Do?

File your report as soon as you can.

Do not delay filing a report because the treasurer is unavailable to sign it or because you are waiting for some records to complete it. In the interest of public disclosure, file the report anyway, but attach a cover letter explaining that the committee will file an amended report to correct the deficiency. Then file the amendment as soon as possible.

### Tips for Reporting on Time

- *Appoint an assistant treasurer.* An assistant treasurer can sign reports in the treasurer's absence. Be sure to amend the Statement of Organization to include the name of the assistant treasurer. This can be done through a letter signed by the treasurer or by filing a Form 1 amendment.
- *Watch for FEC reporting notices.* These notices, which include blank reporting forms, are sent to committee treasurers about three weeks before a reporting due date. Treasurers who rely on someone else to complete the committee's

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## July Reporting Reminder

Committees filing on a quarterly basis must file their second quarterly report by July 15. Those filing on a monthly schedule have a report due on July 20.

Please note that, in addition to filing quarterly reports, committees of candidates active in 1994 primary and runoff elections must file pre-election reports and may have to file 48-hour notices. PACs and party committees filing on a quarterly basis may also have to file pre-election reports.

For more information on 1994 reporting, including reporting dates and when to file 48-hour notices, order the 1994 reporting handout (call 800/424-9530 or 202/219-3420).

Reporting dates for the Kentucky special election were published in the May issue.

**800 Line***(continued from page 1)*

reports should immediately forward reporting notices to that person.

- *Read the Record.* The January issue lists upcoming reporting deadlines for the year, and subsequent issues include reporting reminders. The *Record* also publishes reporting information for special elections. Committee treasurers automatically receive the *Record*. Free subscriptions are also available—and recommended—for other individuals involved in reporting.
- *Highlight reporting deadlines on your calendar.* You can also note your own deadlines for updating committee records in time to prepare reports.
- *Keep an extra set of FEC forms.* Although forms are sent with reporting notices, keep a back-up set of forms, just in case. Call the FEC to order the forms you need. Note that you can file reports on legible photocopies of FEC forms.

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**999 E Street, NW**  
**Washington, DC 20463**

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 202/219-3420  
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**Candidate Committees –  
48-Hour Notices**

Candidate committees should not overlook filing 48-hour notices on contributions. Committees neglecting to file 48-hour notices have paid thousands of dollars in penalties. (See, for example, MURs 3816, 3854 and 3924, page 7.)

**Party Committees and PACs –  
Pre- and Post-Election Reporting**

Unless your party committee or PAC files on a monthly basis (see below), you must file pre-election reports—including pre-primary, pre-runoff and pre-general election reports—if your committee has made any contributions or expenditures to influence the election during the coverage dates for the report.<sup>1</sup> Regardless of your activity, however, you must file a post-election report after the November general election.

Party committees and PACs filing monthly do not have to file pre-primary or pre-runoff reports but *do* have to file a pre-election report before the November general election and a post-election report afterwards. (The two reports are filed in lieu of the November and December monthly reports.)

**PACs Only –  
24-Hour Reports**

Whatever your filing schedule, your PAC may have to file 24-hour reports on independent expenditures made shortly before an election. ♦

<sup>1</sup> Please note that the FEC does not send pre-primary or pre-runoff reporting notices to PACs and party committees. Nevertheless, treasurers of these committees are responsible for filing any pre-election reports that may be required.

**Compliance****MUR 3248  
\$45,000 Penalty for Late  
Filing and Expenditure  
Reporting Violations**

A conciliation agreement between the New York Democratic Party and the FEC included a \$45,000 penalty against the committee for several violations of the law.

With respect to reporting violations, the party committee filed four consecutive reports between 8 and 42 days late. Additionally, in one report disclosing over \$850,000 in 280 itemized operating expenditures, the committee omitted the “purpose” for almost 75 percent of the entries and failed to include the mailing addresses for 94 percent of the entries.

The party committee (a federal account) also accepted a \$5,000 contribution that may have contained prohibited union funds because it was made by an unregistered union PAC. This was a violation of 2 U.S.C. §441b(a) and 11 CFR 102.5(a), which prohibit a political committee (including the federal account of a state party committee) from accepting funds that are impermissible under federal law. Under 11 CFR 103.3(b)(1), a committee has 30 days from the receipt of a questionable contribution to verify its legality or refund it, but the party committee retained the contribution for six months before transferring it to a nonfederal account. ♦

**MUR 3728**  
**\$15,000 Penalty for Failure to File Reports**

The Nevada State Democratic Party agreed to pay a \$15,000 civil penalty for filing its 1992 October quarterly report 144 days late and for failing to file the 1992 pre-general, post-general and year-end reports. In each case the Commission had sent the usual prior notice alerting the party committee of the upcoming reporting deadline. After the deadlines, the agency sent nonfiler notices warning the party committee that failure to file the reports could result in an audit or an enforcement action.

(Because a pre-general election report is not automatically required of all unauthorized committees filing quarterly, the nonfiler notice was not sent for the 1992 pre-general report. However, it appears the party committee had general election activity during the coverage dates for that report and therefore was obligated to file it.)

Under the terms of the conciliation agreement, the party committee had 60 days to file the missing reports and to make the first \$1,000 monthly installment payment on the \$15,000 civil penalty. ♦

**Nonfilers Published**

The candidate committees listed below failed to file required campaign finance reports. The list is based on the FEC press releases of April 29 and May 6 and 11. The Commission is required by law to publicize the names of nonfiling authorized committees. 2 U.S.C. §438(a)(7). The agency pursues enforcement action against nonfilers on a case-by-case basis. ♦

Candidate Committee	Office Sought	Report Not Filed
Larry Fowler for Congress	House, CA/03	April quarterly
John Larson for Northwest Indiana	House, IN/01	Pre-primary
Traylor for Congress	House, IN/02	April quarterly
Marvin Scott for Congress	House, IN/10	Pre-primary
Norman for Congress	House, NC/02	April quarterly
Bill Damsel for Congress	House, OH/18	Pre-primary
Peglow for Congress	House, PA/04	Pre-primary
Byrnie for Congress	House, VA/11	Pre-convention

**MURs Released to the Public**

Listed below are FEC enforcement cases (Matters Under Review or MURs) recently released for public review. They are based on the FEC press releases of April 22 and May 16. Files on closed MURs are available for review in the Public Records Office.

**MUR 3248**

**Respondents:** New York Democratic Party, Rosemary Conway, treasurer

**Complainant:** FEC initiated  
**Subject:** Failure to report on time; contribution from unregistered union PAC; failure to itemize disbursements in full  
**Disposition:** \$45,000

**MUR 3365**

**Respondents:** Studds for Congress Committee, Anne-Marie Litchfield, treasurer (MA)

**Complainant:** Jon Bryan (MA)  
**Subject:** Failure to disclose debts  
**Disposition:** \$1,400 civil penalty

**MUR 3382**

**Respondents:** Friends of Sam Beard for the U.S. Senate, Howard Simon, treasurer (DE)

**Complainant:** FEC initiated  
**Subject:** Failure to file 48-hour

notices; excessive contributions; contributions in the names of others  
**Disposition:** \$10,000 civil penalty

**MUR 3467**

**Respondents:** (a) George Bush for President Committee, Stan Huckaby, treasurer (VA); (b) H & G Political Action Committee, Thomas R. Kelsey, treasurer (TX); (c) F.H. Prince & Co. Political Action Committee, Sarah A. Loeffler, treasurer (IL); (d) Murray Liebowitz (FL); (e) Walter Thayer (NY)

**Complainant:** FEC initiated  
**Subject:** Expenditures in excess of the Iowa and New Hampshire limits (Bush Committee); excessive contributions (all respondents)  
**Disposition:** (a) \$40,000 civil penalty; (b) \$500 civil penalty; (c) \$1,000 civil penalty; (d) reason to believe but took no further action; sent admonishment letter; (e) reason to believe but took no further action

**MUR 3667**

**Respondents** (all in AK): (a) Stand Up America; (b) Roy Jones; (c) Reginald Hamman; (d) David Howell  
**Complainant:** Democratic National Committee (DC)

**Subject:** Failure to file Statement of Organization; failure to report; failure to report independent expenditures  
**Disposition:** (a) – (d) Reason to believe but took no further action

**MUR 3678**

**Respondents:** Clyde Evans, Evans Cabinet Corporation (GA)

**Complainant:** Maryscott Greenwood, Executive Director, Democratic Party of Georgia  
**Subject:** Corporate contributions; disclaimer; failure to file independent expenditure reports  
**Disposition:** \$2,500 civil penalty

**MUR 3790**

**Respondents:** Committee to Elect Tony Valencia for Congress, Walter Ludlow, treasurer (CA)

**Complainant:** FEC initiated

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## Legislation

### FEC Recommends Changes to Election Law

On April 28, the Commission sent 62 recommendations for legislative action to the President and the Congress. In an accompanying letter, FEC Chairman Trevor Potter noted that most of the recommendations had been proposed in past years but without result, since the federal campaign finance laws have not been significantly amended since 1979. He expressed hope that the recommendations would be especially helpful this year, when Congress is considering major campaign finance legislation.

The Chairman highlighted five proposals among those that "would ease the burden on political committees and streamline the process for the Commission."

1. Eliminate state expenditure limits for publicly financed Presidential primary campaigns, an outdated provision that places an expensive burden on both the FEC and the campaigns.
2. Combine the fundraising limit for publicly financed Presidential primary campaigns with the overall spending limit in order to reduce accounting and reporting burdens.
3. Give the Commission authority to waive unnecessary reporting and to adjust filing requirements when warranted (e.g., when the close of books date for a pre-runoff report falls on the day after the primary).
4. Replace the current separate limits for primary and general election contributions to candidates with a single, election-cycle limit in order to simplify record-keeping and reporting.
5. Require disclaimer notices on all communications by political committees to the general public, regardless of the content, to

simplify the rule and to eliminate difficulties in interpreting "public political advertising" and "express advocacy."

The Commission proposed two new recommendations this year to enhance disclosure of campaign finance information. One would require party committees to file 48-hour notices on coordinated party expenditures, and another would require Presidential committees to group together all itemized contributions raised at a major event.

A third new proposal asks Congress to review who is liable for payment of civil penalties—the current treasurer, the treasurer at the time of the violation or the candidate.

The Chairman said that the 62 recommendations, if adopted, "would improve the clarity and administration of the federal campaign finance laws." ♦

## Advisory Opinions

### AO 1994-3 Charitable Matching Plan for Twice-Yearly Solicitations

EnviroSource, Inc. (Enviro) may use corporate funds to match contributions to its PAC with donations to charities selected by contributors participating in twice-yearly solicitations. The Commission has approved similar charitable matching plans for solicitations directed to executive and administrative employees (i.e., the restricted class). AOs 1990-6, 1989-9 and 1989-7. The plans were permissible because the contributors did not receive any financial benefit from the arrangement. The Commission therefore viewed the corporate costs as permissible solicitation expenses rather than as a prohibited exchange of

corporate funds for PAC contributions.<sup>1</sup> 2 U.S.C. §441b(b)(2)(C); 11 CFR 114.5(b).

On the same basis, Enviro's plan to match PAC contributions from nonexecutive and nonadministrative employees (i.e., the expanded class) is permissible provided that Enviro complies with the requirements for twice-yearly solicitations. Those requirements include the use of a custodian to preserve the anonymity of expanded class employees who contribute small amounts (\$50 or less or total calendar-year contributions of \$200 or less). 11 CFR 114.6(d). In particular, the anonymity of those employees must be safeguarded when Enviro PAC's administrative board reviews the selected charities.

With respect to Enviro's proposal to send letters to the charities selected by employees, the letters may not identify employees who contributed small amounts; additionally, those letters must be prepared and sent only by the custodian.

FEC regulations prohibit certain individuals from acting as custodian for twice-yearly solicitations: stockholders, officers, executive/administrative personnel and other employees of the corporation or its PAC. 11 CFR 114.6(d)(1). An individual employed as the PAC treasurer may, however, act as custodian if he or she does not hold one of the listed positions and does not participate in deciding how PAC funds are spent. 11 CFR 114.5(d)(5). The treasurer of Enviro PAC, because he *does* participate in selecting recipients of PAC contributions, may serve as custodian.

Date Issued: April 18, 1994;  
Length: 5 pages. ♦

<sup>1</sup> The IRS has concluded that charitable matching plan donations do not result in compensation to the employees and are not tax deductible by the corporation.

## AO 1994-5 Candidate Status

Although William A. White, an independent candidate for the U.S. Senate in Pennsylvania, has voluntarily filed a Statement of Candidacy and a Statement of Organization, he is not a "candidate" under the Federal Election Campaign Act because he has not raised or spent over \$5,000 for his campaign. 2 U.S.C. §431(2); 11 CFR 104.1(b). Congress adopted the \$5,000 threshold "to relieve individuals who do not meet the definition of candidate of any registration and reporting requirements under the Act even if such individuals appear on the ballot..."<sup>1</sup>

An individual's candidate status under the Act has no bearing on whether that individual qualifies for ballot access, which is subject to state law. Furthermore, the Federal Communications Commission (not the FEC) has jurisdiction over Communications Act provisions governing access to broadcast time by "a legally qualified candidate."

Date Issued: April 18, 1994;  
Length: 5 pages. ♦

## Advisory Opinion Requests

Advisory opinion requests (AORs) are available for review and comment in the FEC's Public Records Office.

### AOR 1994-12

Definition of "member": clarification of "highest governing body" with respect to voting rights; organizational attachments of nonvoting members. (American Medical Association.; April 22, 1994; 16 pages plus attachments)

### AOR 1994-13

Disclaimer for television ad produced by corporate vendor when ad

lists multiple candidates and ballot measures and features get-out-the-vote message. (Voter Education Project; April 26, 1994; 5 pages plus 10-page attachment)

### AOR 1994-14

Campaign's reimbursement to candidate for use of his personal frequent flyer miles; ownership of frequent flyer miles earned by charging campaign expenses to candidate's personal credit card. (Tsakanikas for U.S. Congress; May 3, 1994; 3 pages)

### AOR 1994-15

Incumbent candidate as host of cable public affairs program televised in her district. (Representative Leslie L. Byrne; May 16, 1994; 4 pages) ♦

## Court Cases

### FEC v. Rodriguez

A U.S. district court in Florida recently held Cesar Rodriguez in contempt of court and ordered him to pay \$100 a day until he pays a \$5,000 civil penalty, with interest dating back to October 1988, when the penalty was imposed. Civil Action No. 86-687-CIV-T-10.

On October 28, 1988, the U.S. District Court for the Middle District of Florida ruled that Mr. Rodriguez knowingly assisted in making contributions in the names of others, a violation of 2 U.S.C. §441f. He was ordered to pay the \$5,000 penalty within 15 days.

Four years later, in November 1992, the penalty was still unpaid. At a December 1992 contempt hearing, the FEC and the defendant told the judge that they had reached a tentative settlement under which Mr. Rodriguez was to pay \$300 per month while the FEC looked into his financial position. But he later

refused to make the payments or to provide information on his finances.

In February 1994, the FEC again requested that the court hold him in contempt. In granting that request on March 31, 1994, the court ordered Mr. Rodriguez to pay the \$5,000 penalty, plus interest, and \$100 per day until the penalty is repaid. The court also ordered him to reimburse the FEC for its costs in the contempt proceeding. ♦

## New Litigation

### FEC v. GOPAC

The FEC asks the court to find that GOPAC failed to register and report as a political committee and failed to include a disclaimer notice on solicitations (violations of 2 U.S.C. §§433(a), 434(a) and 441d(a)).

The agency alleges that GOPAC became a federal political committee with reporting obligations in June 1989, when it raised and spent over \$1,000 in contributions and expenditures. That June, GOPAC embarked on a direct mail project that solicited funds to elect Republicans to the U.S. House of Representatives and to defeat Democratic House incumbents. The FEC maintains that the funds spent on the solicitation, and the funds received in response, constituted expenditures and contributions to influence federal elections. The FEC further contends that, between June 1989

*(continued on page 6)*

## Federal Register

Copies of Federal Register notices are available from the Public Records Office.

### 1994-6

Filing Dates for the Kentucky Special Election (59 FR 22161, April 29, 1994)

<sup>1</sup> H.R. Rep. No. 96-422, 96th Cong., 1st Sess. 5, (1979).

## Court Cases

(continued from page 5)

and August 1990, GOPAC failed to report receipts and disbursements totaling over \$500,000.

(GOPAC, which is chaired by Congressman Newt Gingrich, registered and began reporting as a political committee in May 1991, one day after the FEC voted to investigate a complaint against the committee filed by the Democratic Congressional Campaign Committee.)

The FEC also claims that additional GOPAC solicitations mailed in July and August 1991 failed to include the required disclaimer stating who paid for the communication.

The FEC asks the court to impose a civil penalty for each violation; order GOPAC to file reports for 1989 and 1990; and permanently enjoin the PAC from committing similar violations of the law.

U.S. District Court for the District of Columbia, April 14, 1994, Civil Action No. 94-0828. ♦

## Audits

### FEC Releases Audit Reports on '92 Wilder and Fulani Presidential Campaigns

The Commission recently released audit reports on the 1992 Presidential primary campaigns of former Virginia Governor Doug Wilder and minor party candidate Lenora Fulani. This brings to 8 the number of completed public funding audits for the 1992 Presidential cycle; audits of the remaining 10 committees are still ongoing.

The final audit reports contain the Commission's initial determinations concerning the amount of public funds a committee must repay to the U.S. Treasury. The determination

becomes final unless the campaign disputes the repayment. Final audit reports are available from the FEC's Public Records Office.

#### Wilder Campaign

The Wilder for President Committee received \$289,027 in federal matching funds. (Governor Wilder withdrew early in the race, in January 1992.) The Commission determined that the campaign had to pay the U.S. Treasury a total of \$40,242, consisting of the following amounts:

- \$5,200 in excessive contributions accepted by the campaign;<sup>1</sup>
- \$3,984, the projected amount of prohibited contributions accepted by the campaign;<sup>1</sup>
- \$12,026, the pro-rata portion of \$42,224 spent on nonqualified campaign expenses,<sup>2</sup> including inadequately documented payments to employees, undocumented disbursements and noncampaign-related plane trips; and
- \$19,032 in matching funds received in excess of the candidate's entitlement.

Additionally, the campaign must reimburse a total of \$30,848 to the Commonwealth of Virginia: \$27,977 to make up the difference between first class airfare and the smaller amount charged by the Commonwealth for the use of its aircraft; and \$2,871 in phone charges.

<sup>1</sup> The Wilder campaign, like the Harkin campaign, disputed the Commission's authority to require payment of excessive and prohibited amounts to the U.S. Treasury. (See the May 1994 issue for the Harkin audit summary.)

<sup>2</sup> Because the campaign account contains a mixture of federal matching funds and private contributions, a ratio formula is used to determine the amount of matching funds that were spent on nonqualified campaign expenses.

#### Fulani Campaign

The Lenora B. Fulani for President committee received a little over \$2 million in federal matching funds. The Commission determined that the campaign had to repay \$1,394, the pro-rata portion of \$3,235 in lost money orders. The campaign had originally purchased \$28,440 in money orders to sell to contributors who would otherwise have made cash contributions, which could not be matched with federal funds.

The report also found that the campaign:

- Accepted \$107,072 in excessive contributions resulting from staff advances made by individuals charging apparent campaign expenses on their personal credit cards;
- Failed to disclose \$98,209 in debts owed to a law firm but subsequently amended its reports to correct the omissions;
- May have accepted a contribution from the law firm since the committee did not satisfactorily demonstrate that the credit was extended in the ordinary course of business; and
- Failed to disclose donors' occupations and employers for several itemized contributions, although amended reports later corrected most of the omissions. ♦

## Compliance

(continued from page 3)

**Subject:** Failure to file report on time; failure to amend Statement of Organization

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

### MUR 3797

**Respondents:** (a) Clinton for President Committee, Robert A. Farmer, treasurer (AK); (b) Thomason Aircraft Corporation (AK); (c) Thomas, Richland & Martens, Inc. (OH); (d) Truman Arnold Companies (TX); (e) TAC Air (TX)

**Complainant:** National Legal & Policy Center, Peter T. Flaherty, President (VA)

**Subject:** Corporate contributions

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

### MUR 3816

**Respondents:** Gwen Margolis Campaign Fund, Ann J. Gordon, treasurer (FL)

**Complainant:** FEC initiated

**Subject:** Failure to file 48-hour notices

**Disposition:** \$20,000 civil penalty

### MUR 3844

**Respondents:** Libertarian National Committee, Hugh Butler, treasurer (DC)

**Complainant:** FEC initiated

**Subject:** Failure to file reports on time

**Disposition:** \$10,500 civil penalty

### MUR 3853

**Respondents:** Studds for Congress Committee, Anne-Marie Litchfield, treasurer (MA)

**Complainant:** FEC initiated

**Subject:** Failure to file 48-hour notices

**Disposition:** Reason to believe but took no further action

### MUR 3854

**Respondents:** Coloradans for Considine, Marjory B. Saunders, treasurer

**Complainant:** FEC initiated

**Subject:** Failure to file 48-hour notices

**Disposition:** \$16,000 civil penalty

### MUR 3919

**Respondents:** (a) Joint Council No. 73 Political Action Committee, Anthony Carracino, treasurer (NJ); (b) Joint Council No. 73

**Complainant:** FEC initiated

**Subject:** Union contributions

**Disposition:** (a) \$2,200 civil penalty; (b) \$800 civil penalty

### MUR 3924

**Respondents:** Re-Elect Albert Wynn to Congress, Delphine Hall-Anderson, treasurer (MD)

**Complainant:** FEC initiated

**Subject:** Failure to file 48-hour notices

**Disposition:** \$3,900 civil penalty

### MUR 3940

**Respondents:** FAIR PAC, James Barnes, treasurer (NY)

**Complainant:** FEC initiated

**Subject:** Excessive contributions

**Disposition:** \$1,750 civil penalty ♦

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The first number in each citation refers to the "number" (month) of the 1994 *Record* issue in which the article appeared. The second number, following the colon, indicates the page number in that issue. For example, "1:4" means that the article is in the January issue on page 4.

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