

Record

September 1999

Federal Election Commission

Volume 25, Number 9

Table of Contents

Information

- 1 FEC AOs Now on the Internet

Regulations

- 1 Definition of Membership Organization and Member
- 3 Documentation for Matchable Credit/Debit Card Contributions to Presidential Candidates
- 12 Party Committee Coordinated Expenditures and Media Travel
- 13 Voter Guide Rulemaking Petition

Court Cases

- 4 FEC v. Christian Coalition

Advisory Opinions

Audits

- 10 Statements on Audits of the 1996 Presidential Campaigns

Public Funding

- 12 Dole Eligible for Matching Funds

Federal Register

Outreach

- 14 Monthly Roundtables
- 14 Public Appearances
- 15 Conferences

Election Administration

- 15 Advisory Panel Meeting
- 17 Revisions to National Mail Voter Registration Form Approved

Publications

- 1 Candidate Guide
- 15 *Campaign Finance Law Supp.*

800 Line

- 16 Earmarked Contributions

Statistics

- 18 Midyear PAC Count

Index

Information

FEC Advisory Opinions Now on the Internet

On August 15, 1999, the Commission made its advisory opinions (AOs) issued since 1977 available on its Web site. AOs are official Commission responses to questions relating to the application of the Federal Election Campaign Act to a specific, factual situation. The public can now search for AOs by using words or phrases or can retrieve an advisory opinion by entering the year and AO number. To use the AO search system, once on the FEC's Web site (<http://www.fec.gov>), click on "[Search and Retrieve Commission Advisory Opinions.](#)" For more information, call the FEC at 800/424-9530 or 202/694-1100. ♦

Regulations

Definition of Membership Organization and Member: Final Rules

On July 22, the Commission approved final rules—and the Explanation and Justification for the rules—that govern who qualifies as a "member" of a membership organization. The final rules were transmitted to Congress on July 23, 1999, and published in the July 30, 1999, *Federal Register*. Unless Congress enacts and the President signs legislation disapproving the regulations, the date the regulations take effect will be published in the *Federal Register* following the review period.

(continued on page 2)

Campaign Guide for Candidates Now Available

A revised *Campaign Guide for Congressional Candidates and Committees* is now available from the Commission. The Guide provides clear guidelines on:

- Contribution limits and prohibitions;
- Sources of candidate support;
- Campaign activity; and
- Recordkeeping and reporting.

The new Guide has been sent to every registered candidate committee. Copies are available for free by calling 800/424-9530 (press 1) or 202/694-1100. Additionally, the new Guide can be accessed from the FEC's Web site (<http://www.fec.gov>) by clicking on "[Help for Candidates, Parties and PACs.](#)" ♦

Regulations

(continued from page 1)

Definition of Membership Organizations

The Commission replaced the term “membership association” with “membership organization” at 11 CFR 100.8(b)(4)(iv)(A) and 114.1(e)(1). The replacement is the term used in the Federal Election Campaign Act (the Act).

Membership organization means an unincorporated association (for purposes of 11 CFR 100.8 only)¹, a trade association, a cooperative, a corporation without capital stock, or

¹ *Unincorporated associations fall under the regulation’s definition of membership organization for purposes of the internal communications exemption at 11 CFR 100.8 only. Unincorporated associations include entities that are not trade associations, cooperatives, corporations without capital stock or labor organizations, but that nonetheless meet the requirements for membership organizations.*

Federal Election Commission
999 E Street, NW
Washington, DC 20463

800/424-9530
202/694-1100
202/501-3413 (FEC Faxline)
202/219-3336 (TDD for the hearing impaired)
800/877-8339 (FIRS)

Scott E. Thomas, Chairman
Darryl R. Wold, Vice Chairman
Lee Ann Elliott, Commissioner
David M. Mason, Commissioner
Danny L. McDonald,
Commissioner
Karl J. Sandstrom, Commissioner

James A. Pehrkon, Staff Director
Lawrence M. Noble, General Counsel

Published by the Information Division

Louise D. Wides, Director
Cheryl Fowle, Editor

<http://www.fec.gov>

a local, national, or international labor organization that:

- Is composed of members, some or all of whom are vested with the power and authority to operate or administer the organization, according to the organization’s articles, bylaws, constitution or other formal organizational documents;²
- Expressly states the qualifications and requirements for membership in its articles, bylaws, constitution or other formal organizational documents;³
- Makes its articles, bylaws, constitution and other formal organizational documents available to its members;⁴
- Expressly solicits persons to become members;
- Expressly acknowledges the acceptance of membership, such as by sending a membership card or including the member’s name on a membership newsletter list; and

² *The Commission notes that organizations would be able to delegate administrative and related responsibilities to smaller committees or other groups of members; the new rule does not require that all members approve all organization actions. Additionally, membership organizations with self-perpetuating boards of directors will be considered to have met this requirement if all members of the board are themselves members of the organization, as long as the organization has chosen this structure and it meets all other requirements of these regulations.*

³ *The Commission notes that this provision would not preclude the board of directors or other committees from setting specific requirements, such as the amount of dues or other qualifications or requirements.*

⁴ *Organizations may impose reasonable copying and delivery fees for this service. They may also make these documents available at their headquarters or other offices, where members may consult and copy them.*

- Is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual for Federal office.

Definition of Member

Members must satisfy the requirements for membership in a membership organization, affirmatively accept the membership organization’s invitation to become a member and either:

- Have some significant financial attachment to the membership organization, such as a significant investment or ownership stake; or
- Pay annual dues set by the membership organization;⁵ or
- Have a significant organizational attachment to the membership organization that includes:
 - affirmation of membership on at least an annual basis⁶ and
 - direct participatory rights in the governance of the organization.⁷

⁵ *The regulations do not specify a minimum amount of dues. As long as organizations maintain and enforce an annual (or more frequent) dues requirement, payments within a flexible window or subject to a reasonable grace period would meet this requirement.*

⁶ *The regulations provide some flexibility in interpreting the phrase “annual affirmation.” For example, activities such as attending and signing in at a membership meeting or responding to a membership questionnaire would satisfy this requirement.*

⁷ *The regulation cites as examples of “direct participatory rights” the right to vote directly or indirectly for at least one individual on the membership organization’s highest governing board; the right to vote on policy questions where the highest governing body of the membership organization is obliged to abide by the results; the right to approve the organization’s annual budget; or the right to participate directly in similar aspects of the organization’s governance.*

The Commission will determine the membership status of retired, student and lifetime members, and other persons who do not meet the above requirements but have a relatively enduring and independently significant attachment to the organization, on a case-by-case basis through the advisory opinion process.

Other Changes

State Law Inapplicable. The determination of whether an organization has members for purposes of the Federal Election Campaign Act (the Act) will be determined under these new regulations, and not by the definitions of state law, which may either include or exclude persons as members of an organization for reasons unrelated to the Act.

- *Multitiered Organizations.* When a membership organization has a national federation structure or has several levels, including, for example, national state and/or local affiliates, a person who qualifies as a member of any entity within the federation or of any affiliate will also qualify as a member of all affiliates for purposes of these rules.
- *Definition of Membership Organization for Purposes of Corporate/Labor Activity.* Revised section 114.1(e) is identical to revised section 100.8(b)(4)(iv), except that the reference to unincorporated associations, which appears in revised 11 CFR 100.8(b)(4), applies only to Part 100 and not to Part 114, since Part 114 addresses only activities by corporations and labor organizations.

Advisory Opinions Superseded

The new rules supersede that portion of Advisory Opinion 1993-24 that requires voting rights to establish membership.

The new rules expand the options of multitiered organizations to communicate across tiers. The options were approved in AO 1991-24.

Amending Bylaws to Conform to New Regulations

The Commission recognizes that organizations may have to amend their bylaws to comply with these new requirements and that this can be a lengthy process. Consequently, the Commission will consider an organization to be in compliance with the new rules as long as the organization makes the necessary changes to come into compliance at the first opportunity available under the organization's rules, assuming that the other requirements of the rules are met.

More Information

The full text of the final rules appears in the *Federal Register* (64 FR 41266, July 30, 1999). This document is available from the FEC's Public Disclosure Office and through the FEC Faxline. Dial 202/501-3413 and request document 229.♦

Documentation for Matchable Credit/Debit Card Contributions to Presidential Candidates: Final Rules

On July 30, 1999, the Commission approved final rules providing guidance on the documentation that must be provided before credit and debit card contributions to Presidential candidates will be matched with public funds. The rules also state that more detailed guidance will be found in the Commission's Guide-line for Presentation in Good Order (PIGO).

Previously, on June 10, the Commission had approved new regulations that allow contributions made by credit or debit card, including those made over the Internet, to be matched under the Presidential Primary Matching Payment Account Act. Those rules were published in the *Federal Register* on June 17, 1999. 64 FR 32394 (June 17, 1999). (See the *July 1999 Record*, p. 4, for an article on

those regulations.) At the time the *Record* went to print, the legislative review period for those regulations had not yet expired. If they are disapproved, then the new rules on required documentation will not take effect because they are a corollary to the earlier rules.

The new documentation rules were published in the *Federal Register* (64 FR 42584, August 5, 1999) and are also before Congress for a 30-legislative day review period. Unless Congress enacts and the President signs legislation disapproving the regulations, both sets of rules will apply retroactively to contributions made on or after January 1, 1999.

Amendments to Regulations

The Commission made the following changes to its regulations:

- Add to 11 CFR 9036.1 (threshold submissions) new paragraph (b)(7) stating that, in the case of a contribution made by a credit or debit card, including one made over the Internet, the candidate must provide sufficient documentation to the Commission to insure that the contribution was made by a lawful contributor who intended to make the contribution to the campaign committee submitting it for matching fund payments. It further states that additional information on the documentation accompanying such contributions will be found in the Commission's PIGO.
- Add to 11 CFR 9036.2 (additional submissions for matching fund payments) new paragraph (b)(1)(vii) that is identical to the paragraph discussed above.

More Information

The full text of the rules appears in the *Federal Register* (64 FR 42584), which is available through the FEC Faxline. Dial 202/501 3413 and request document 240.♦

(continued on page 12)

Court Cases

FEC v. Christian Coalition

On August 2, 1999, the U.S. District Court for the District of Columbia granted in part and denied in part motions for summary judgment by both the Federal Election Commission (the “FEC” or “Commission”) and the Christian Coalition (the “Coalition”).

The Commission had alleged that the Coalition had made three expenditures for communications that expressly advocated the election or defeat of clearly identified candidates. The court held that the following two communications did not contain express advocacy and, therefore, did not violate the Federal Election Campaign Act’s (the “Act”) ban on corporate contributions and expenditures made in connection with federal elections:

- A 1992 Montana speech by Ralph Reed, then-Executive Director of the Coalition; and
- A 1994 nationwide direct mail package entitled “Reclaim America.”

The court held that a third communication, a 1994 mailing by the Georgia Christian Coalition, did expressly advocate the election of then-Speaker Newt Gingrich in violation of the Act.

The court also held that the Coalition violated the Act by making a prohibited corporate contribution to Oliver North’s Senate campaign by giving it a mailing list.

The Commission also alleged that the Coalition coordinated its voter guides during the 1990, 1992 and 1994 elections with various federal candidates. In all but one instance, the court decided that there was no coordination. In one election

campaign, Oliver North’s 1994 U.S. Senate campaign in Virginia, the court determined that there were contested issues to be resolved after a future hearing.

Background and Holding

The Christian Coalition is a nonprofit, nonstock corporation, originally incorporated in Virginia and doing business in the District of Columbia. In 1992 both the Democratic Party of Virginia and the Democratic National Committee filed complaints against the Coalition with the FEC. The two complaints were merged. The Commission found probable cause to believe the Coalition had violated the Act and attempted conciliation with the Coalition. After that attempt failed, the Commission filed this lawsuit in 1996.

The court determined that the two main issues in the litigation were:

- Whether “express advocacy” is limited to communications that use specific phrases or “magic words,” such as “Vote for Smith,” or whether a more substantive inquiry into the clearly intended effect of a communication is appropriate; and
- What level of contact between a campaign and a corporation constitutes “coordination” and thereby converts a corporate expenditure that influences an election into a prohibited contribution.

Express Advocacy. With regard to the first issue, the court concluded that an express advocacy communication is one that a reasonable person would understand contains an explicit directive—using an active verb (or its functional equivalent)—that unmistakably exhorts the audience to take electoral action to support or defeat a clearly identified candidate. The verb (or its functional equivalent) must be considered in the context of the entire communication, including temporal proximity to the election.

Corporate Coordinated Expenditure. With respect to the second issue, the district court limited its decision to “expressive coordinated expenditures” by corporations. The court explained that an “expressive coordinated expenditure” is an expenditure for a communication that (although not containing express advocacy) is “made for the purpose of influencing a federal election in which the spender is responsible for a substantial portion of the speech and for which the spender’s choice of speech has been arrived at after coordination with the campaign.” Such expenditures are coordinated if the candidate requests or suggests the expenditure, or if the spender engages in substantial discussion or negotiation with the campaign about the communication’s content, timing, location, mode, intended audience or volume.

Express Advocacy Issues

Express Advocacy Standard. The FEC alleged that in three instances the Coalition used general treasury funds to finance independent communications that contained express advocacy (i.e., expressly advocated the election or defeat of a clearly identified candidate) and thereby violated §441b of the Act, which prohibits corporations and unions from making expenditures in connection with federal elections.

Based on decisions by the Supreme Court and lower courts in other jurisdictions, the district court held that, in order for an expenditure to contain express advocacy and, if made by a corporation, violate §441b of the Act, the following attributes are necessary:

- The communication must contain an explicit directive. It must use an active verb or its functional equivalent (e.g., “Vote for Smith” or “Smith for Congress” or an unequivocal symbol).

- The “active verb or its immediate equivalent—considered in the context of the entire communication, including its temporal proximity to the election—must unmistakably exhort the [receiver] to take electoral action to support the election or defeat of a clearly identified candidate.” Electoral action includes campaigning for and/or contributing to a clearly identified candidate, as well as voting for or against the candidate.

The court said that it is a pure question of law as to whether a reasonable person would understand the communication to expressly advocate a candidate’s election or defeat. Once the identity of the speaker (organization paying for the communication) and the content of the communication are proven, a court must determine whether the communication contains express advocacy “solely as a matter of law.”

Ralph Reed’s 1992 Montana Speech. The FEC alleged that the Christian Coalition used general treasury funds to pay travel expenses and compensation to Ralph Reed, then-Executive Director of the Coalition, for a speech that expressly advocated the defeat of Pat Williams, the Democratic U.S. Representative from Montana’s First District.

The court held that, while Reed’s speech made references to the Democratic incumbent, it did not direct the audience to do anything. He predicted that “victory will be ours” and that “we’re going to see Pat Williams sent bags packing . . . in November.” The court said this was “prophecy rather than advocacy,” because Reed’s speech did not contain an explicit exhortation to the audience to take action to defeat Representative Williams. “[I]t can only be concluded that Reed exhibited precisely the ‘ingenuity and resourcefulness’ in his verb choice that the *Buckley* Court

envisioned possible to circumvent the prohibition on express advocacy. As others have acknowledged, results such as this appear unsatisfyingly formalistic, allowing precisely the sort of communications Congress sought to prohibit to remain immune from liability. . . . But the Supreme Court felt that the First Amendment required a choice between a toothless provision and one with an overbite; results such as this flow directly from that choice.”

“Reclaim America” 1994 Mailing. The FEC alleged that portions of a mass mailing called “Reclaim America” included prohibited express advocacy. The Commission argued that, when read in conjunction with the enclosed Christian Coalition scorecard (rating incumbents on specific votes), the cover letter could only be understood to urge support of those incumbents rated favorably and defeat of those rated unfavorably.

Though acknowledging that the cover letter contained explicit directives (e.g., “stand together,” “get organized”), the court concluded that a reasonable person could understand the cover letter as a directive to engage in lobbying or issue advocacy with all candidates. The scorecard did not identify which incumbents were candidates in 1994 and did not provide an electoral endorsement of any particular candidate. As a result, there was no express advocacy, and the expenditures did not violate §441b.

Georgia Mailing in 1994. The FEC alleged that a mailing by the Georgia Christian Coalition state affiliate (for which the Coalition admitted it was responsible and liable) contained a cover letter from the Coalition’s state chair expressly advocating the re-election of Congressman Newt Gingrich. The mailing also contained a copy of the Coalition’s nationwide Congressional scorecard.

The court held that, unlike the other two communications discussed above, “the Georgia mailing was expressly directed at the reader-as-voter.” The cover letter announced upcoming primary elections and enclosed two items “[to] help you prepare for your trip to the voting booth.” The second item was the congressional scorecard. The letter stated that Newt Gingrich, a Christian Coalition “100 percenter,” was the only incumbent facing a primary opponent. The letter also exhorted the voter to take the scorecard to the polls in the general election. “While marginally less direct than saying ‘Vote for Newt Gingrich,’ the letter in effect is explicit that the reader should take with him to the voting booth the knowledge that Speaker Gingrich was a ‘Christian Coalition 100 percenter’ and therefore the reader should vote for him. While the ‘express advocacy’ standard is susceptible of circumvention by all manner of linguistic artifice, merely changing the verb ‘vote’ into the noun, ‘trip to the voting booth’ is insufficient to escape the limited reach of ‘express advocacy.’”

Coordination Issues

Corporate Coordinated Expenditures. The court explained that §441b of the Act prohibits corporations from making any contributions or expenditures in connection with any federal election, and the Supreme Court, in *Buckley v. Valeo*, established that expenditures made in coordination with a campaign are contributions. The court further stated that, in *FEC v. Massachusetts Citizens For Life*, the Supreme Court “determined that Congress plainly intended the Act to reach corporate expenditures in connection with a federal election. . . .

(continued on page 6)

Court Cases

(continued from page 5)

Under that construction, it is manifest that the Coalition's expenditures on voter guides fall within Congress's intended scope for §441b."

The district court went on to distinguish "expressive coordinated expenditures" from other coordinated expenditures. According to the court, an "expressive coordinated expenditure" is an expenditure "for a communication made for the purpose of influencing a federal election in which the spender is responsible for a substantial portion of the speech and for which the spender's choice of speech has been arrived at after coordination with the campaign." The court distinguished this type of coordinated expenditure from other types such as coordinated expenditures for noncommunicative materials (e.g., food or travel expenses for campaign staff).

The court held constitutional that portion of the FEC's regulations that would treat, as contributions, "expressive coordinated expenditures" made at the request or suggestion of the campaign. In the absence of a request or suggestion from the campaign, the court explained, an expressive expenditure is still coordinated where the candidate or his agent exercises control over the communication, or where there has been substantial discussion or negotiation between the campaign and the spender about such things as the contents, timing, location, mode, intended audience, or volume of the communication. A substantial discussion, the court explained, is one from which the spender and the campaign emerge as partners (not necessarily equal partners) or joint venturers in the expressive expenditure. "This standard limits §441b's contribution prohibition on expressive coordinated expenditures to those in which

the candidate has taken a sufficient interest to demonstrate that the expenditure is perceived as valuable for meeting the campaign's needs or wants."

The court stated that, under this standard, a voter guide would be considered a coordinated expenditure if the conversation between the spender and the campaign went well beyond inquiry and included, for example, discussion or negotiation over the selection and phrasing of issues to be included in the candidate survey or voter guide. "Coordination requires some to-and-fro between corporation and campaign"

With respect to get-out-the-vote ("GOTV") telephone activity, the court held that the level of discussion must involve negotiation regarding such things as the contents of the scripts, when the calls are to be made, location or the audience—including which databases will be used to choose call recipients or the number of people to be called.

Using this standard, the court evaluated the facts surrounding the Coalition's expenditures for voter guides involving the following campaigns.

Bush/Quayle '92 Presidential Campaign. The court held that the Coalition's voter guides and GOTV expenditures, in connection with the 1992 Presidential election, did not qualify as coordinated expenditures—primarily because the court concluded that the Bush/Quayle '92 campaign staff, armed with foreknowledge of the Coalition's plans, chose not to respond to the Coalition's implicit offers to discuss those plans. Although Pat Robertson (Chairman of the Board and former President of the Coalition) and Reed had special access to the Bush/Quayle '92 campaign, and Reed had extensive discussions with campaign staff regarding the campaign's thinking on strategic issues, and the

Coalition told the campaign it intended to issue voter guides, "the Coalition did most of the talking." Moreover, there was no request or suggestion by the candidate that the Coalition make expenditures for the voter guides. The corporation's possession of "insider" knowledge from the campaign did not, in itself, establish coordination. More overt acts are required, the court said.

Helms for Senate 1990, Inglis for Congress 1992 and Hayworth for Congress 1994. With regard to three Congressional campaigns (Helms for Senate in 1990, Inglis for Congress in 1992 and Hayworth for Congress in 1994), the court found no coordination. In each case, someone was simultaneously involved in both the Coalition and the campaign, but the court said that such "insider trading" was not sufficient to establish coordination without more overt acts such as expenditures being made at the suggestion or request of the campaign.

North for Senate 1994. In one case, North for Senate in 1994, the Coalition gave to Oliver North's campaign a list of previous delegates to the Virginia Republican convention who were also supporters of the Coalition. The court determined that such lists have commercial value, and therefore the contribution of the list to the North campaign was a prohibited corporation contribution.

The Coalition also distributed voter guides in Virginia in 1994. However, there is a material question of fact as to whether North's campaign manager discussed with Reed which issues should be included in the voter guide. That issue, along with the fair market value of the mailing list, will be determined in later court proceedings.

National Republican Senatorial Campaign Committee. The FEC also had alleged that the Coalition had coordinated with the National Republican Senatorial Campaign Committee to create and distribute voter guides in several states the NRSC considered key in the 1990 elections. The NRSC had contributed \$64,000 to the Coalition but had not become a partner in the voter guides by discussing their contents or points of distribution. The court concluded, therefore, that the Coalition had not violated the Act since there had been no discussion or negotiation with regard to the contents or distribution of the voter guides.

Further Proceedings

As described above, the court intends to hold further proceedings to determine whether the Coalition coordinated its expenditures with the North campaign, the value of the list provided to the North campaign and the cost of the Georgia mailing. After these matters are decided, the court will determine the appropriate civil penalty. To avoid delaying any appeal until after the remaining issues are decided, the court entered final judgment on those matters that had been resolved, and also stated in its opinion that its decision “involves controlling questions of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.” ♦

Advisory Opinions

AO 1999-14 Testamentary Bequests in Excess of Contribution Limits

The Council for a Livable World (CLW) may not accept contributions in excess of \$5,000 that are made in testamentary bequests even if it places the excess in an escrow account and withdraws \$5,000 or less per year for political use.

CLW is a nonconnected multicandidate committee. It proposed soliciting and accepting testamentary bequests of up to \$100,000. It planned to place any funds exceeding \$5,000—the applicable annual contribution limit under the Federal Election Campaign Act (the Act)—in an escrow investment account. In the future, it would withdraw up to \$5,000 per year for political purposes.

Commission regulations state that, for purposes of contribution limits, contributions are made when the contributor gives up control over the contribution. 11 CFR 110.1(b)(6). Since the contributor (the testamentary estate) would relinquish control over all the funds at the time they were distributed by the estate, the entire amount of the bequest would be considered a contribution. CLW would have control over those funds, including those that were placed in an escrow account. For example, CLW would have the power to determine the investment strategy for those funds.

Previous FEC Advisory Opinions (AOs) held that the testamentary estate is the legal successor to the testator and would, therefore, be subject to the contribution limits for individuals. AOs 1988-8, 1986-24 and 1983-13. These AOs allowed lump sum bequests in excess of the \$5,000 per calendar year contribu-

tion limit as long as the excess funds were placed in an escrow account and were not used in any way to benefit the recipient committee. This opinion supersedes the portions of those AOs that would have permitted CLW to accept bequests in excess of \$5,000 and to place those amounts (exceeding \$5,000) in escrow.

Arrangements Based on Previous Opinions

The Commission determined that, if a committee is already drawing requested funds from such an escrow account (set up in reliance on the superseded AOs), or an individual has already died and the requested funds will be distributed to the committee pursuant to a will, such arrangements may continue as long as there is no material distinction from the situations presented in the superseded AOs, which are listed above.

Date Issued: July 16, 1999;
Length 4 pages. ♦

AO 1999-15 Membership Status of Members of Unincorporated Unit of Trade Association

Members of ARDA-ROC,¹ an unincorporated unit of ARDA,² a trade association, may be solicited for contributions to the separate segregated fund (SSF) of ARDA or to an SSF established by ARDA-ROC.

Background

ARDA is a nonprofit corporation, organized in the District of Columbia as a trade association. Its purposes include uniting people engaged or interested in the resort

(continued on page 8)

¹ American Resort Development Association-Resort Owners Coalition

² American Resort Development Association

Advisory Opinions

(continued from page 7)

development industry and timeshare issues. ARDA-ROC is an unincorporated part of ARDA, which is dedicated to protecting and enhancing the ownership of vacation resort properties and the interests of individual owners. ARDA-ROC's membership numbers 335,000. It is governed by a nine-person executive group and is subject to the bylaws of ARDA and to the ARDA-ROC policy and procedures that were written by ARDA.

Individual timeshare owners are eligible to join ARDA-ROC by paying an annual \$3 fee (solicited by ARDA and its members) to ARDA-ROC.

Proposed Changes to the Organizations' Structures

ARDA and ARDA-ROC propose the following changes to the structures of the two organizations:

- ARDA-ROC's current policy and procedures would become its articles of organization;
- Individual ARDA-ROC members would be granted a more direct role in its operations;
- Local chapters would be formally recognized;
- ARDA-ROC membership would be available only to timeshare owners who pay regular dues as set by the executive group and local chapters (if a local chapter is available);
- Individual timeshare owner members would directly elect an individual to the ARDA-ROC executive group to serve a two-year term;
- The executive group would choose one executive group member to serve on the ARDA board of directors; and
- The ARDA board of directors would increase in size by one director (the one to be chosen by the ARDA-ROC executive group).

ARDA as Membership Organization

Under Commission regulations, a "membership association" is defined as a membership organization, a cooperative or a corporation without capital stock that expressly provides for members in its bylaws, expressly solicits members and expressly acknowledges the acceptance of membership. 11 CFR 114.1(a)(1).

ARDA qualifies as a membership organization under 11 CFR 114.1(e)(1). Its bylaws provide for members, it solicits members and it acknowledges its members by sending members newsletters and other materials.

Status of ARDA-ROC Members

The term "member" is defined in Commission regulations and has been interpreted in *FEC v. National Right to Work Committee* (459 U.S. 197 (1982)) and *Chamber of Commerce v. FEC* (69 F. 3rd 600 (D.C. Cir. 1995) *petition for rehearing denied*, 76 F.3d 1234 (1996)). In *NRWC*, the U.S. Supreme Court suggested that members are to be defined, at least in part, by analogy to stockholders of business corporations and members of labor unions.

ARDA-ROC members qualify as members of ARDA under the restrictive standard in the Commission's former regulations.³

- Members of ARDA-ROC pay dues to ARDA-ROC, which is a subgroup of ARDA; and
- The members of ARDA-ROC elect at least one member of ARDA-ROC's executive group, which chooses a member to serve on ARDA's board of directors, its highest governing body.

³ See 11 CFR 114.1(e)(2). The definition contained in this provision was struck down by the court in *Chamber of Commerce v. FEC* (69 F.3d 600(D.C.Cir. 1995), *petition for rehearing denied*, 76 F.3d 1234(1996)) for being "unduly restrictive."

Affiliation

Should ARDA-ROC (as a part of ARDA) form a political committee, the committee would be considered an SSF, affiliated with ARDA PAC. The Commission based this determination on the following affiliation factors found at 11 CFR 100.5(g)(4)(ii) and 110.3(a)(3)(ii)⁴:

- ARDA-ROC was created by ARDA;
- ARDA-ROC advertised to prospective members in its solicitation materials as being part of ARDA;
- A member of the ARDA-ROC executive group serves on the highest governing body of ARDA (the board of directors);
- The president of ARDA and the chair of ARDA PAC automatically sit on ARDA-ROC's executive board;
- The president of ARDA appoints the director of ARDA-ROC and other personnel; and
- All members of ARDA-ROC are members of ARDA.

Solicitation

Under the Act, incorporated membership organizations or their SSFs may solicit voluntary contributions to the SSF from the organization's members and their families and the organization's executive and administrative personnel and their families. ARDA PAC or an SSF established by ARDA-ROC may solicit members of ARDA-ROC because they are members of ARDA.

Date Issued: July 16, 1999;
Length: 7 pages. ♦

⁴ Affiliation in this case is not based on 11 CFR 100.5(g)(3)(iv) because that provision is limited to affiliation between SSFs established by membership organizations and its related state and local units; ARDA-ROC is not a state or local chapter of ARDA.

AO 1999-16 Solicitation of Members of Regional Chapters of Trade Association

Commercial Finance Association (CFA) or its separate segregated fund (CFA-PAC) may solicit the individual members of CFA's affiliated local chapters. CFA and its local chapters are affiliated trade associations for purposes of Commission regulations.

Background

CFA is a not-for-profit tax exempt organization and is a trade group for the asset-based financial services industry. Its members include nearly all of the money center banks, small independent finance companies, and large commercial banks that are publicly held or owned by industrial companies and foreign banks. CFA members provide asset-based commercial financing and factoring products and services to small and medium sized business on an international, national, regional and local scale.

CFA has a separate segregated fund (SSF), the Commercial Finance Association PAC (CFA PAC).

CFA has established 15 regional chapters—only one of which is incorporated—to offer business forums, networking opportunities and educational programs to the employees of CFA member companies. Membership in the chapters is limited to directors, officers and employees of the CFA member companies.

CFA Status as Membership Association

Under Commission regulations, a "membership association" is defined as a membership organization, a cooperative or a corporation without capital stock that expressly provides for members in its bylaws, expressly solicits members and expressly acknowledges the acceptance of membership. 11 CFR 114.1(e)(1).

Both CFA and its local chapters qualify as membership associations under the regulations. Their bylaws provide for "members." They both solicit new members and they both acknowledge the acceptance of membership. Additionally, CFA and its local chapters qualify as trade associations under Commission regulations because they are membership organizations that engage "in a similar or related line of commerce" and are organized to promote and improve business conditions in that line of commerce. Further, they operate as nonprofit business organizations. 11 CFR 114.8(a).

Membership Status

The term "member" is defined in Commission regulations and has been interpreted in *FEC v. National Right to Work Committee*¹ and *Chamber of Commerce v. FEC*.² In *NRWC*, the U.S. Supreme Court suggested that members are to be defined, at least in part, by analogy to stockholders of business corporations and members of labor unions.

Members of CFA and the individual chapters each qualify as members of their respective organizations under the Federal Election Campaign Act. Similar to stockholders in a corporation, the members of each organization have an annual dues obligation and have participatory rights. In CFA, each member company selects its own representative on the board of directors. That representative has the right to vote for the executive committee (CFA's highest governing body) and to vote for officers. In a chapter, the individual member has the right to vote for the officers who comprise the board of directors (a chapter's highest governing body)

¹ 459 U.S. 197 (1982)

² 69 F. 3d 600 (D.C. Cir. 1995) petition for rehearing denied, 76 F.3d 1234 (1996)

and to amend the bylaws, subject to the approval of CFA.

Affiliation

Commission regulations provide that an SSF that is established by a national membership association is *per se* affiliated with the SSFs established by its related state and local entities. 11 CFR 100.5(g)(3)(iv).

The Commission found it helpful to look at the factors of affiliation at 11 CFR 100.5(g)(4)(ii) (which are typically applied when organizations are not *per se* affiliated) to determine whether the chapters were related local units of CFA. If they were, they would be *per se* affiliated. Pertinent CFA characteristics include the following:

- CFA created local chapters for the express purpose of representing it at the local level;
- CFA has the ability to direct or participate in the governance of the chapters and to exercise control over the activities of the officers; and
- Many chapter members sit on CFA's board and committees.

Commission regulations clearly contemplate affiliation between corporations and unincorporated organizations. 11 CFR 114.5(g)(1). Further, the regulations provide that the restricted class of the unincorporated organizations may be solicited for contributions to the corporation's SSF (just as the restricted class of a corporate affiliate would be). 11 CFR 114.5(g)(1). AOs 1997-13, 1996-38, 1989-8 and 1983-48.

Given the foregoing factors, the Commission determined that the local chapters are affiliated with CFA and that members of the local chapters are in the restricted class of their respective chapters. Those members are, therefore, solicitable by CFA or CFA-PAC.

Date Issued: July 26, 1999,
Length: 9 pages. ♦

(continued on page 10)

Advisory Opinions

(continued from page 9)

AO 1999-18

Use of Nonfederal Points in State Party Allocation Ratio

The San Diego County Republican Central Committee (the Committee), a local party committee, may treat the candidates it endorses and supports in local races as partisan local candidates and may, therefore, use the two additional nonfederal points in its allocation ratio for administrative expenses and generic voter drive costs.

Commission Regulations

Commission regulations require state and local party committees with separate federal and nonfederal accounts to allocate their administrative expenses and generic voter drive costs between those accounts using the “ballot composition method.” 11 CFR 106.5(d). Under this method, expenses are allocated “based on the ratio of federal offices expected on the ballot to total federal and nonfederal offices expected on the ballot in the next general election to be held in the committee’s state or geographic area.” This ratio is determined by the number of categories of federal and nonfederal offices on the ballot. 11 CFR 106.5(d)(1)(i). The regulations then list the relevant federal and state offices and how they should be counted for purposes of the ratio. 11 CFR 106.5(d)(1)(ii).

In addition, the regulations provide that local party committees may include in their ratio “a maximum of two additional nonfederal offices if any partisan local candidates are expected on the ballot in any regularly scheduled election during the two-year Congressional election cycle.” 11 CFR 106.5(d)(1)(ii).

The Committee states that it will endorse and support at least two candidates in local races who will appear on the 2000 ballot in San

Diego County. However, according to Article II, section 6(a), of the California Constitution, local elections are to be “nonpartisan.” Article II, section 6(b), provides that “(n)o political party...may endorse, support, or oppose a candidate for nonpartisan office.”

Previous Commission Decisions

Two past Advisory Opinions (AOs) have addressed a similar topic—whether state parties in California may use the one additional nonfederal point in the allocation formula for partisan local candidates on the ballot (note, however, that under the regulation, local party committees may be able to use two additional points). As explained below, the Commission’s reliance on court decisions to determine whether the state party committee was entitled to the additional points in those AOs led to differing results.

In AO 1991-6, for example, the FEC concluded that the state party committee could use the extra point(s) because the U.S. Court of Appeals for the Ninth Circuit had ruled that section 6(b) was unconstitutional.¹ In a later opinion, AO 1991-27, the FEC reversed its conclusion, based on a subsequent ruling by the Supreme Court, which had by then vacated the Ninth Circuit’s opinion.²

More recently, in 1996, a U.S. District Court ruled, once again, that section 6(b) was unconstitutional, violating the First and Fourteenth Amendments, and enjoined its

enforcement.³ The Commission concluded that, under those circumstances, the Committee could treat the candidates it endorses and supports as partisan local candidates and could, therefore, use the two additional nonfederal points in its allocation ratio.⁴ The Commission’s position may change if there are future legal developments indicating that section 6(b) can be lawfully applied or enforced.

Date issued: July 30, 1999;
Length: 3 pages. ♦

Advisory Opinion Requests

Advisory opinion requests are available for review and comment in the Public Records Office.

AOR 1999-21

Qualification of incorporated membership organization as federation of trade associations; membership categories (U.S. Apple Association Political Action Committee, July 7, 1999; 56 pages) ♦

Audits

Commissioners Issue Statements on Audits of the 1996 Presidential Campaigns

FEC Vice Chairman Darryl Wold and Commissioners Lee Ann Elliott, David Mason and Karl Sandstrom issued a Statement of Reasons on

¹ Geary v. Renne, 991 F.2d 280 (9th Cir. 1990) (en banc).

² The Supreme Court ruled that the case was not ripe for resolution and did not reach the merits of Section 6(b). It remanded the case to the lower courts with instructions to dismiss the relevant cause of action without prejudice. Renne v. Geary, 501 U.S. 312, 315 (1991).

³ California Democratic Party v. Lungren, 919 F. Supp. 1397 (N.D. Cal. 1996).

⁴ In AO 1991-6, the Commission stated that the phrase “partisan local candidates” could be read “to cover those situations in which parties actively support, endorse or oppose candidates even though the candidates are not denoted as candidates of a particular party on the ballot.”

the FEC's audits of the Clinton and Dole 1996 Presidential campaign committees. The Statement concluded that the phrase "electioneering message" should not be used to administer the Federal Election Campaign Act (the Act) or FEC regulations. This statement is noteworthy because the concurrence of four Commissioners represents the legal position of the Commission. (For a story on the completed audits, see the July 1999 *Record*, p. 10.)

Background

In auditing the Dole and Clinton committees, the FEC Audit staff and Office of General Counsel (the staff) analyzed media advertisements the Democratic and Republican National Committees ran during 1995 and 1996. The analysis concluded that the cost of the advertisements constituted in-kind contributions (or, in some instances, coordinated party expenditures) by the parties on behalf of their respective Presidential candidate's committees.

To determine whether the advertisements were made "for the purpose of influencing" or "in connection with" a federal election, the staff looked to whether the ads referred to a "clearly identified candidate" and whether they contained an "electioneering message." The staff found both factors present in the ads and concluded that the cost of the ads were in-kind contributions from the parties to their respective Presidential candidates. (Under FEC regulations, in-kind contributions are regarded as both contributions to a committee and expenditures by that committee. 11CFR 100.7(a)(1)(iii) and 100.8(a)(1)(iv).) The staff also recommended that the Commission determine that the applicable Presidential campaign spending limits for publicly funded candidates were exceeded in part because of the cost of the ads and that the Commis-

sion require a repayment of Presidential matching funds. For varying reasons, the Commissioners unanimously rejected the staff's total repayment recommendations stemming from the party ads.

Statement of Reasons by Commissioners Wold, Elliott, Mason and Sandstrom

Vice Chairman Wold and Commissioners Elliott, Mason and Sandstrom's Statement of Reasons expressed their disagreement with the use of "electioneering message" as a test to determine whether communications are "for the purpose of influencing" elections and therefore constitute expenditures or contributions under the Act. The Commissioners gave two reasons for their determination:

- "Electioneering message" cannot be used as a substantive test to determine if a communication is made "for the purpose of influencing" federal elections because it is derived from FEC Advisory Opinions (AOs) and is not found in the Act or FEC regulations; and
- "Electioneering message" cannot be used as a shorthand expression for the Commission's interpretation of the statutory standard of "for the purpose of influencing" an election because the AOs from which the phrase was taken (AOs 1985-14 and 1984-15) do not use it as a clear, consistent application of the statutory standard. Additionally, the phrase, by itself, is too vague and too broad to have a sufficiently definite meaning.

Procedural Defects with "Electioneering Message" Standard. The four Commissioners argued that "electioneering message" cannot be a rule because it is not in the regulations. They argue that the Act prohibits the FEC from creating rules of conduct in any way other than through the rulemaking process. 2 U.S.C. §§437f and 438(d).

Even if the term was used to paraphrase the Commission's reasoning in two advisory opinions, the phrase was not sufficiently defined in the AOs to give the regulated community guidance. In fact, they argue, the phrase was not defined in either AO.

Substantive Difficulties with "Electioneering Message" Standard. The Commissioners wrote that the "electioneering message" standard suffers from vagueness and overbreadth. It is vague because it does not sufficiently distinguish between issue discussion and candidate advocacy. The standard is overbroad because, given the nature of campaigning, communications inevitably encompass both.

Statement for the Record by Commissioners Thomas and McDonald

FEC Chairman Scott Thomas and Commissioner Danny McDonald filed a Statement for the Record in response to the Statement of Reasons written by the other Commissioners. They argued that the "electioneering message" phrase was used in AO 1985-14 simply as a shorthand reference to the "for the purpose of influencing" and "in connection with" tests in the statute—both central to the legal analysis of coordinated party expenditures. Commissioners Thomas and McDonald maintained that the regulated community has had long-standing notice of the underlying statutory provisions, and the Commission's use of a paraphrase in the AO neither expanded nor diminished those rules of law. They also noted that the Statement of Reasons, issued by the other four Commissioners, did not purport to supersede the conclusions in any prior AOs. Finally, they pointed out that certain regulations duly passed by the Commission still use the "electioneering message" language as a legal standard. ♦

Public Funding

Dole Eligible for Matching Funds

On July 30, 1999, Elizabeth Dole became eligible for public matching funds for her primary election race for the Republican nomination for President. Already, Democrat Bill Bradley and Republicans Gary L. Bauer, Dan Quayle and John McCain have been certified as being eligible for matching funds.

To establish eligibility, a candidate must raise \$100,000 by collecting \$5,000 in matchable contributions in at least 20 different states. Only contributions received from individuals, and only up to \$250 of a contributor's total, are matchable by the federal government.

Eligible candidates must agree to limit their spending, use funds for campaign-related expenses only, keep financial records and submit their records for an FEC audit.

Once declared eligible, candidates can submit additional contributions for matching funds on the first business day of every month. The U.S. Treasury will begin paying out the FEC-certified amounts in January 2000. A Presidential primary candidate in the 2000 election can receive a maximum of \$16.75 million in matching funds.

All matching fund submissions are available at the FEC's Web site—<http://www.fec.gov>—as downloadable FTP files. Go to "[Financial Information About Candidates, Parties and PACs](#)" and follow the links. Instructions are on the Web site.

Copies of the threshold submissions only are also available from the FEC's Public Records Office. Call 800/424-9530 or 202/694-1120. ♦

Regulations

(continued from page 3)

Party Committee Coordinated Expenditures and Media Travel: Final Rules

On July 29, 1999, the Commission approved final rules regarding two issues:

- Coordinated expenditures made by party committees on behalf of Presidential and Congressional candidates prior to nomination and
- Transportation and services provided by Presidential campaign committees to the news media covering the campaign.

The final rules were published in the *Federal Register* and transmitted to Congress for a 30-legislative day review period. Unless Congress enacts and the President signs legislation disapproving the regulations, the date the regulations take effect will be published in the *Federal Register* following the review period.

Party Committee Coordinated Expenditures Made Before Nomination

Background. Section 441a(d) of the Federal Election Campaign Act (the Act) permits national, state and local party committees to make limited general election campaign expenditures on behalf of their candidates. These expenditures are in addition to the amount of direct contributions they may make to those candidates. These 441a(d) expenditures are referred to as "coordinated party expenditures" because they may be made after extensive coordination between the party and the candidate's campaign.

Amendments to Regulations. The Commission amended 11 CFR 110.7 by adding paragraph (d) stating that party committees may make coordinated party expenditures in connection with the general election before their candidates have been nominated and that all

pre-nomination coordinated expenditures are subject to the coordinated expenditure limits, whether or not the candidate with whom they are coordinated receives the party's nomination.

This amendment is consistent with the Commission's policy of allowing pre-nomination coordinated expenditures. See Advisory Opinions (AOs) 1985-14 and 1984-15.

The new language covers all Presidential candidates, whether or not they receive federal funding, as well as Congressional candidates.

Presidential Campaign Expenditures for Transportation and Services Made Available to Media Personnel; Reimbursements

Background. Expenditures by publicly funded Presidential campaigns for transportation and other services provided to representatives of the news media covering the Presidential primary and general election campaigns are, in most cases, treated as qualified campaign expenses subject to the overall spending limitations of 2 U.S.C. §441a(b). However, committees are allowed to accept limited reimbursement for these expenses from the media, and to deduct any reimbursements received from the amount of expenditures that are subject to the overall expenditure limitation. 11 CFR 9004.6 and 9034.6.

Amendments to Regulations. The Commission made the following changes to its regulations:

- Amend 11 CFR 9004.6 (governing general election campaigns) to add a new paragraph ((a)(3)) specifying that publicly funded Presidential campaigns may seek reimbursement from the media only for the items listed in the White House Press Corps Travel Policies and Procedures issued by the White House Travel Office. These guidelines are suitable for both incumbent candidates and nonincumbent challengers in Presidential primary and general

Outreach

FEC Conducts Monthly Roundtable Sessions

The FEC is conducting monthly roundtable sessions for the regulated community at its offices in Washington. The roundtable sessions, limited to 12 participants per session, focus on a range of topics. See the table at right for dates and topics.

Registration is \$25 and will be accepted on a first-come, first-served basis. Please call the FEC before registering or sending money to be sure that openings remain in the session of your choice. Prepayment is required. The [registration form](#) is available at the FEC's Web site—<http://www.fec.gov>—and from Faxline, the FEC's automated fax system (202/501-3413, request document 590). For more information, call 800/424-9530 or 202/694-1100.

Individuals who have signed up for a roundtable but who will be unable to attend are strongly encouraged to call the FEC and cancel their registration so that the next person on the waiting list may attend in their place. ♦

Roundtable Schedule

Date	Subject	Intended Audience
September 1 9:30 - 11 a.m.	Fundraising Through Payroll Deductions (Code #999)	<ul style="list-style-type: none"> • Corporate PAC Staff • Lawyers, Accountants and Consultants to Corporate PACs
October 6 9:30 - 11 a.m.	Making Contributions to Federal Candidates: Designations, Resignations and Reattributions (Code #1099)	<ul style="list-style-type: none"> • House and Senate Campaigns • PACs • Political Party Staff • Lawyers, Accountants and Consultants to Above
November 3 9:30 - 11 a.m.	Update on New FEC Regulations • Definition of Member • Contributions from Limited Liability Companies (Code #1199)	<ul style="list-style-type: none"> • Trade/Member PACs • Recipients of Contributions from LLCs (e.g., PACs and Campaigns) • LLCs • Lawyers, Accountants and Consultants to Above



Public Appearances

September 8, 1999
American University
Washington, D.C.
Karl Sandstrom, Commissioner

September 8, 1999
George Washington University
Law School
Washington, D.C.
Scott Thomas, Chairman

September 13, 1999
Hudson Institute
Washington, D.C.
David Mason, Commissioner

September 13, 1999
American University
Washington, D.C.
David Mason, Commissioner
Kevin Salley, Deputy Assistant
Staff Director, Public Disclosure
Division

September 16, 1999
Perkins Coie LLP and Roll Call
Washington, D.C.
Scott Thomas, Chairman
David Mason, Commissioner

September 16, 1999
Practising Law Institute
Washington, D.C.
David Mason, Commissioner

September 21, 1999
The American Council of Young
Political Leaders
Washington, D.C.
Danny McDonald, Commissioner

September 21, 1999
Business Government Relations
Council
Washington, D.C.
Scott Thomas, Chairman

FEC Conference Schedule

The FEC continues its series of conferences on campaign finance this fall. See below for details. To register for any conference, call Sylvester Management at 800/246-7277 or send an e-mail to tsylvester@worldnet.att.net. For program information, call the FEC's Information Division at 800/424-9530 or 202/694-1100. A regularly updated schedule for the conferences and a downloadable invitation/registration form appear at the FEC's Web site. Go to <http://www.fec.gov/pages/infosvc.htm> for the latest information.

Regional Conference (includes candidate, corporate/labor and party workshops)

Date: September 27-29, 1999
Location: Chicago, IL
(Fairmont Hotel)
Registration: \$265

Regional Conference (includes candidate, corporate/labor and party workshops)

Date: November 15-17, 1999
Location: San Francisco
(Grand Hyatt)
Registration: \$250

Candidate Conference

Date: February 10-11, 2000
Location: Washington, DC
(Hyatt Regency Capitol Hill)
Registration: To be determined

Regional Conference (includes candidate, corporate/labor and party workshops)

Date: March 8-10, 2000
Location: Miami, FL
(Sheraton Biscayne Bay)
Registration: \$240

Corporate and Labor Conference

Date: May 2000
Location: Washington, DC
Registration: To be determined

Membership and Trade Association Conference

Date: June 2000
Location: Washington, DC
Registration: To be determined

Election Administration

Office of Election Administration Advisory Panel Meeting

On August 6-7, 1999, the FEC's Office of Election Administration Advisory Panel met in Chicago. The Agenda for the two-day meeting included lectures and discussions on the following topics:

- National Voter Registration Act Report (for a story on the NVRA Report, see the [August 1999 Record](#), p. 5)
- The Accessibility of the Election Process
- Biometrics Report/Internet Voting
- A Political Retrospective on the 20th Century
- The 2000 Census
- Recent Developments in Election Case Law
- Contested Elections
- Updating the Voting Systems Standards.

The Advisory Panel is comprised of twenty State and local election officials and two associate members from Canada and Mexico. Members are selected by the FEC for two-year terms based on geographic representation and State/local balance. The Panel provides guidance on allocating resources and helps to ensure that the Office of Election Administration's research and information gathering functions are focused to the benefit of election officials at all levels. ♦

(continued on page 17)

Publications

Campaign Finance Law '98 Supplement Available

The Commission recently published a supplement to the previously published *Campaign Finance Law '98*. The supplement summarizes the campaign finance laws of the U.S. territories and possessions of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico and the U.S. Virgin Islands.

Campaign Finance Law is published every two years as an

updated outline summary of the state campaign finance laws. Quick reference charts of the state campaign finance laws, excerpted from *Campaign Finance Law '98* and the *Supplement*, can be found on the FEC's Web site (<http://www.fec.gov>) by clicking first on "Using FEC Services" and then on "[Quick Reference Charts of State Campaign Finance Laws](#)."

Copies of *Campaign Finance Law '98 Supplement* are available for free from the FEC's Public Records Office. A limited number of copies of *Campaign Finance Law '98* are also still available. For ordering information, call 800/424-9530 (press 3) or 202/694-1120. ♦

800 Line

Earmarked Contributions to Candidates (Bundling)

An earmarked contribution is one which the contributor directs (either orally or in writing) to a clearly identified candidate or his or her authorized committee through an intermediary or a conduit. Earmarking is sometimes referred to as “bundling” because, in many cases, the conduit receives several contributions that are earmarked for a candidate and forwards them all together (in a “bundle”).

Definition of Conduit or Intermediary

Who is a Conduit. Anyone who receives and forwards an earmarked contribution to a candidate committee is considered a conduit or intermediary. 11 CFR 110.6(b)(2). Individuals, political committees, unregistered committees and partnerships may act as conduits for earmarked contributions. 11 CFR 110.6(b).

Persons Not Considered Conduits. Certain individuals and organizations are not considered conduits even though they may participate in activities to raise money for a candidate. These persons include:

- An employee or full-time volunteer working for a candidate committee;
- An individual who occupies a significant position in a candidate’s campaign and who is expressly authorized to raise money on behalf of the candidate;
- A committee affiliated with the candidate committee; and
- A commercial fundraising firm retained by the candidate committee. 11 CFR 110.6(b)(2)(i).

Prohibitions Apply. No corporation, labor organization or other entity prohibited from making contributions in connection with federal elections may act as a conduit for an earmarked contribution. A separate segregated fund (SSF),¹ however, may act as a conduit. 11 CFR 110.6(b)(2)(ii); 114.3(c)(2).

Furthermore, an individual is not permitted to receive a contribution on behalf of a candidate when acting as the representative of a prohibited entity (i.e., a corporation, labor organization, national bank, foreign national or federal government contractor). 11 CFR 110.6(b)(2)(i)(A) and (E).

Earmarking and Contribution Limits

General Rule. An earmarked contribution is considered to have been made by the original contributor, thus counting against his or her contribution limit with respect to the recipient candidate. The conduit’s own contribution limit is not affected unless the conduit exercises direction or control over the contributor’s choice of recipient candidate. In that case, the contribution is considered to have been made by both the original contributor and the conduit, and it counts against both of their respective contribution limits. 11 CFR 110.6(d)

Contribution Earmarked Through SSF. An unsolicited earmarked contribution, transmitted to a candidate through an SSF, counts against the original contributor’s limits to the recipient candidate, but not against the SSF’s own contribution limits to the candidate. However, if the earmarked contribution

was solicited from the restricted class² by a communication from the SSF’s connected organization³ and was collected by the SSF, it is considered a contribution to both the SSF and the candidate, and from both the individual contributor and the SSF. Under these circumstances, in addition to counting against the contributor’s limits, the contribution automatically counts against the SSF’s contribution limits regardless of whether the SSF exercised direction or control over the choice of recipient. 11 CFR 114.2(f)(2)(iii) and 114.2(f)(4)(iii).

Forwarding Earmarked Contributions

The conduit must forward an earmarked contribution, along with a report (described below), to the recipient authorized committee within 10 days. 11 CFR 102.8(a) and (c); 110.6(b)(2)(iii).

Reporting Earmarked Contributions

An earmarked contribution must be reported by both the conduit and the recipient authorized committee.

Reports by Political Committee Conduit. A political committee that serves as a conduit of an earmarked contribution must disclose the earmarked contribution, regardless of amount, on two separate reports: (1) the committee’s next regularly scheduled FEC report and (2) a special transmittal report sent to the recipient authorized committee. 11 CFR 110.6(c)(1).

² *The executive and administrative personnel, members and stockholders (and the families of each) of a corporation or labor organization. 11 CFR 114.3(a); 114.5(g); 114.7(a) and (h); and 114.8(c), (h) and (i).*

³ *An organization that uses its treasury funds to establish, administer or solicit contributions to a separate segregated fund. 11 CFR 100.6.*

¹ *A political committee established by a corporation or labor organization, popularly called a corporate or labor PAC. 11 CFR 114.1(a)(2)(iii).*

The conduit's next regularly scheduled report must indicate whether the earmarked contribution was:

- Transmitted through the conduit's account, in which case each contribution must be reported on the reporting schedules for itemized receipts and disbursements (Schedules A and B); or
- Transmitted in the form of the original contributor's check, in which case each earmarked contribution must be reported as a memo entry⁴ on Schedules A and B. 11 CFR 110.6(c)(1)(iv) and (v).

The report to the recipient committee must be forwarded at the same time as the earmarked contribution. 11 CFR 110.6(c)(1)(iii).

Reports by Unregistered Conduit. A conduit that is not a registered political committee (that is, the conduit is an individual, a partnership or a group) must file two reports: (1) Within thirty days of forwarding the contribution, the conduit must file a report by letter with the Federal Election Commission (not the Secretary of the Senate); and (2) The conduit must file a transmittal report by letter and attach it to the contribution that it forwards to the recipient candidate committee. 11 CFR 110.6(c)(1)(ii).

Contents of Reports by Conduit. All of the above reports filed by a conduit must contain the following information:

- The name and mailing address of the original contributor and, if the contribution is from an individual and exceeds \$200, the contributor's occupation and employer;
- The amount of the earmarked contribution;

- The date the contribution was received by the conduit;
- The recipient of the contribution, as designated by the contributor;
- The date the contribution was forwarded to the recipient; and
- Whether the contribution was passed on in cash, by the contributor's check or by the conduit's check. 11 CFR 110.6(c)(1)(iv)

Report by Recipient Committee. The recipient of an earmarked contribution may also have a special reporting obligation. If earmarked contributions received from a single conduit exceed \$200 in a calendar year, the recipient committee must file a Schedule A, where it:

- Identifies the conduit by name and address (and occupation and employer if the conduit is an individual);
- Reports the date of receipt and total amount of earmarked contributions received from that conduit; and
- Itemizes the original contributions from each individual whose total contributions to the committee aggregate over \$200 per calendar year (including the occupation and employer of the contributor, the amount earmarked and the date received by the conduit). 11 CFR 110.6(c)(2). ♦

Election Administration

(continued from page 15)

FEC Approves Revisions to National Mail Voter Registration Form

On July 19, 1999, the FEC approved a large number of revisions to the National Mail Voter Registration form, which was last updated September 1997. The mail-in registration card now incorporates the new "official election mail" postal logo to provide speedy delivery of election materials. In addition, there were substantial changes to the form's state instructions.

Because of the large number of changes in the state instructions, the Office of Election Administration recommends that users replace all previous copies of the form rather than use an addendum. In addition to providing printing instructions for the entire form, the FEC is providing separate instructions for printing only the registration card. Those cards can then be combined with [information on how to access state instructions](#) on the FEC's Web site (<http://www.fec.gov>). For additional information, call the FEC at 800/424-9530 (then press 4) or 202/694-1095. ♦

The FEC Takes Visa and Mastercard

FEC customers can pay for FEC materials with Visa or Mastercard. Most FEC materials are available free of charge, but some are sold, including financial statistical reports (\$10 each), candidate indexes (\$10) and PAC directories (\$13.25). The FEC also has a 5¢ per page copying charge for paper documents and a 15¢ per page copying charge for microfilmed documents.

Paying by credit card has its advantages. For instance, since the FEC will not fill an order until payment is received, using a credit card speeds delivery by four to five days.

Visitors to the FEC's Public Records Office may make payments by credit card. Regular visitors, such as researchers and reporters, who in the past have paid for FEC materials out of their own pockets, may make payments with a company credit card.

The credit card payment system also reduces costs and paperwork associated with check processing, enabling FEC staff to better serve the walk-in visitor.

⁴ Supplemental information on a reporting schedule. The dollar amount in a memo entry is not incorporated into the total figure.

Statistics

Midyear PAC Count Shows Slight Decrease From 1998

The FEC's semiannual PAC count reveals that the number of PACs has decreased slightly since the last count was taken in December 1998. The table at right shows the midyear and year-end PAC figures since 1991. To see a complete listing of PAC statistics dating back to 1975, visit the FEC's Web site (<http://www.fec.gov>) or request a copy of the agency's [July 20 press release](#) (call 800/424-9530 and press 3 for the Public Records Office or press 5 and ask for the Press Office). ♦

	Corporate	Labor	Trade/ Member/ Health	Coop- erative	Corp. w/o Capital Stock	Non- connected ¹	Total
Dec. '91	1,738	338	742	57	136	1,083	4,094
Jul. '92	1,731	344	759	56	144	1,091	4,125
Dec. '92	1,735	347	770	56	142	1,145	4,195
Jul. '93	1,715	338	767	55	139	1,011	4,025
Dec. '93	1,789	337	761	56	146	1,121	4,210
Jul. '94	1,666	336	777	53	138	963	3,933
Dec. '94	1,660	333	792	53	136	980	3,954
Jul. '95	1,670	334	804	43	129	1,002	3,982
Dec. '95	1,674	334	815	44	129	1,020	4,016
Jul. '96	1,645	332	829	43	126	1,058	4,033
Dec. '96	1,642	332	838	41	123	1,103	4,079
Jul. '97 ²	1,602	332	826	41	118	953	3,875
Dec. '97 ³	1,597	332	825	42	117	931	3,844
Jul. '98	1,565	325	820	43	112	897	3,762
Dec. '98	1,567	321	821	39	115	935	3,798
Jul. '99	1,540	318	826	38	115	941	3,778

¹ Nonconnected PACs must use their own funds to pay fundraising and administrative expenses, while the other categories of PACs have corporate or labor "connected organizations" that are permitted to pay those expenses for their PACs. On the other hand, nonconnected PACs may solicit contributions from the general public, while solicitations by corporate and labor PACs are restricted.

² During the first six months of 1997, 227 PACs were administratively terminated because of inactivity.

³ During the second six months of 1997, 107 PACs were administratively terminated because of inactivity.

Change of Address

Political Committees

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 or the FEC (as appropriate) and with the appropriate state office.

Other Subscribers

Record subscribers who are not registered political committees should include the following information when requesting a change of address:

- Subscription number (located on the upper left corner of the mailing label);
- Subscriber's name;
- Old address; and
- New address.

Subscribers (other than political committees) may correct their addresses by phone as well as by mail.

Index

The first number in each citation refers to the “number” (month) of the 1999 *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.

Advisory Opinions

- 1998-22: Application of expenditure definition and disclaimer requirements to web site containing express advocacy, 1:16
- 1998-23: Status as state committee of political party, 1:16
- 1998-26: Candidate committee’s acceptance of loan repayment from contested election trust fund that contains funds loaned to it by candidate, 3:5
- 1998-27: Status as state committee of political party, 3:6
- 1999-1: Use of campaign funds to pay salary to candidate, 4:5; 6:6
- 1999-2: Use of corporate treasury funds to provide meals to employees attending candidate forums, 4:6
- 1999-3: Use of digital signatures by restricted class to authorize payroll deductions, 5:5
- 1999-4: Applicability of contribution limits to local party organization conducting federal activity and affiliated with state party committee, 6:3
- 1999-5: Revising state party ballot composition ratio for new executive office, 6:4
- 1999-6: Use and publication of information about annuity allotment program permitting union member retirees to make contributions to SSF, 6:4
- 1999-7: Free hyperlinks on government web site to web sites of candidates, 6:5
- 1999-8: Investment of excess campaign funds in mutual funds, 6:6

- 1999-9: Matching credit card contributions received by Presidential primary candidates via Internet, 7:5
- 1999-10: SSF solicitation of member policyholders of mutual insurance company, 7:7
- 1999-11: Federal candidate’s use of funds from state-level account, 7:7
- 1999-12: Preemption of Pennsylvania disclosure requirements 8:4
- 1999-13: Use of Corporate Aircraft, 8:4
- 1999-14: Testamentary bequests that exceed contribution limits, 9:7
- 1999-15: Membership status of unincorporated unit of trade association, 9:7
- 1999-16: Solicitation of chapter members of trade association, 9:9
- 1999-18: Calculation of allocation ratio by local party committee, 9:10

Compliance

- MUR 4546: Failure to provide contributor information and demonstrate “best efforts,” 5:8
- MUR 4632: Untimely reports; failure to amend Statement of Organization; treasurer’s absence, 7:10
- MUR 4750: Excessive contributions, 1:13
- MUR 4751: Excessive and improper transfers of nonfederal funds, excessive contributions, corporate contributions, 2:2
- MUR 4796: Corporate contributions, contributions in the names of others, 1:13
- MUR 4797/4798: Prohibited transfers from unregistered party organization to party committees, failure to allocate, 8:6
- MUR 4834: Foreign national contribution, contribution in the name of another, 3:7
- MUR 4879: Corporate contributions in the names of others, 8:6

Court Cases

- FEC v. _____
- Al Salvi for Senate Committee (98C-4933), 4:5

- Christian Coalition, 9:4
- Colorado Republican Federal Campaign Committee, 4:1
- David Gentry for Congress Committee, 7:10
- Forbes, 4:5
- _____ v. FEC
- Judd, 1:3; 4:5
- Judicial Watch, 7:8
- Mariani, 2:1
- National Committee of the Reform Party, 4:4
- Perot ’96 (98-1022), 6:1
- RNC (98-5263), 1:2
- Other
- Burris v. Russell, 1:3
- Cincinnati v. Kruse, 1:3
- Fireman v. United States, 5:7
- USA v. Hsia, 7:9

Regulations

- Debates, 7:5
- Definition of “Member” of Membership Association, 1:10; 3:1; 5:6, 9:1
- Electronic FOIA, 4:7
- Express Advocacy, 3:2; 6:7
- Limited Liability Companies, 1:11; 8:1
- Matching Credit Card and Debit Card Contributions in Presidential Campaigns, 7:4, 9:3
- Party Committee Coordinated Expenditures and Media Travel, 9:12
- Public Financing of Presidential Primary and General Election Candidates, 1:7; 3:1; 5:6
- Soft money, 1:12
- Status of, 3:3
- Voter Guide Petition, 9:13

Reports

- Electronic filing, 1:6; 2:1
- Reports due in 1999, 1:4
- Reports due in July, 7:1
- Special election, California, 8:9
- Special election, Georgia, 2:3
- Special election, Louisiana, 4:7

Statistics

- Congressional, 2:4; 6:8
- PAC, 3:11; 7:2, 9:18
- Party, 3:4; 6:8

FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

Official Business
Penalty for Private Use, \$300



Printed on recycled paper

Bulk Rate Mail
Postage and Fees Paid
Federal Election Commission
Permit Number G-31

