

# Record

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Federal Election Commission

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## Regulations

### BCRA Requirements for Louisiana Runoff Election

On December 7, 2002, Louisiana will hold a general election runoff for Senate candidates and House candidates in the 5<sup>th</sup> District. Although the Bipartisan Campaign Reform Act of 2002 (BCRA) took effect on November 6, certain provisions of the law do not apply to runoff elections resulting from the 2002 elections. The following information provides guidance on those provisions that do and do not apply to the Louisiana runoff.

### Provisions that Apply to the Louisiana Runoff

*National Party Committees.* The BCRA bans national party committees from soliciting, receiving, directing, transferring or spending nonfederal funds after November 5, 2002. However, in November and December national party committees may use nonfederal funds that they have in their accounts to pay expenses or retire outstanding nonfederal debts that were incurred solely in connection with a 2002 runoff election. After December 31, national party committees may not

## Reports

### Policy Statement: Interim Reporting Procedures

On November 21, 2002, the Commission approved the following policy statement on reporting requirements during the transition period following the effective date of the Bipartisan Campaign Reform Act of 2002 (BCRA). The Commission intends to exercise its discretion by not pursuing the political committees and other persons and entities addressed below for possible violations of the reporting statutes and regulations covered by the instructions set out in this policy statement if they fully adhere to those instructions and timely file the described reports. The limitations on the scope and duration of the policy are discussed in detail below.

### Policy Statement

Congress established a 90-day period during which the Commission was required to promulgate regulations implementing Title I of BCRA regarding certain national, state, and local party committee activities, including reporting of Federal election activity and certain allocable expenses. This period ended on June 25, 2002. Congress

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## Reports

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also required the Commission to complete the remaining BCRA rulemakings, including those regarding other reporting requirements, in 270 days—by December 22, 2002. The Commission adopted final rules implementing Title I on June 25, 2002. *Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Final Rule*, [67 FR 49064](#) (July 29, 2002) (“Soft Money Final Rules”). The Commission has also completed four other rulemakings to implement BCRA:

1. Final Rules on Electioneering Communications ([67 FR 65190](#), published Oct. 23, 2002);
2. Interim Final Rules Regarding FCC Database on Electioneering Communications ([67 FR 65212](#), published Oct. 23, 2002);
3. Final Rules on Reorganization of Regulations on Contributions and Expenditures ([67 FR 50582](#), published Aug. 5, 2002); and

4. Final Rules on Contribution Limitations and Prohibitions ([67 FR 69928](#), published Nov. 19, 2002).

The Commission notes that other BCRA-related reporting rules (e.g. electioneering communications, independent expenditures) are not yet finalized, but are expected to be before December 22, 2002, including the [Consolidated Reporting Rulemaking](#), which the Commission is scheduled to complete on December 12, 2002. Issuance of new and revised reporting forms, software and instructions is dependent upon the finalization of all the reporting rules. However, BCRA’s reporting requirements became effective on November 6, 2002. The Commission is in the process of updating its reporting forms, software, and instructions to incorporate all the new regulations, and will need a period of time after December 22, 2002, to complete this process. In the interim, filers will continue to use existing disclosure forms and software for their December 5<sup>th</sup> Post General Election Report, January 31<sup>st</sup> Year End Report and, for monthly filers only, the February Monthly Report, which covers January 2003.

BCRA introduced new reporting responsibilities for political party committees and other reporting entities and significantly changed certain existing requirements. Among the significant changes introduced by BCRA are the reporting by State, district, and local party committees of Federal election activities (“FEA”), including the allocation of some of those activities between Federal funds and “Levin” funds, and revisions in those committees’ allocations of payments between Federal and non-Federal funds. See 11 CFR 300.2(i), 300.36, 106.7, and 104.17. In addition, BCRA introduced provisions for

Federal candidates and their committees with respect to candidate funding of his or her own campaign in the form of the “millionaires provision” and provisions for reporting by individuals and entities making electioneering communications.” See 2 U.S.C. §§434(a)(6)(B), 434(f), and 441a-1(b).

As new forms are now being developed to meet the new requirements, the Commission concludes that a period of transition and adjustment with respect to reporting is needed, including allowance for the continued use of the ballot composition formula in the Post-General and Year End Reports. To assist filers during this transition period, the Commission has developed the interim disclosure procedures set forth below.<sup>1</sup> These procedures address BCRA-related transactions not contemplated by the existing reporting forms and filing software. Questions concerning these procedures may be directed to the FEC’s Information Division, Reports Analysis Division or Electronic Filing Office, as appropriate.

Hence, the Commission intends to exercise its discretion by not pursuing the committees and other persons and entities addressed below for possible violations of the reporting statutes and regulations covered by the instructions set out in this policy statement if the filers fully adhere to those instructions and timely file the reports.

<sup>1</sup> *These procedures also apply to filers involved in special elections held during this period, including the November 30 and January 4 special elections in Hawaii. Those filers should pay special attention to the instructions for disclosing “Federal Election Activity” (defined in 11 CFR 100.24) and “Electioneering Communications” (defined in 11 CFR 100.29), since both are triggered by proximity to an election. See 11 CFR 300.33, 300.36, and proposed 104.20.*

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## Interim Reporting Procedures Interim Disclosure Procedures for State, District and Local Party Committees:

### 1. Reporting allocable administrative and generic voter drive expenses (that are not Federal Election Activity (FEA)) for November and December 2002

For the December 5<sup>th</sup> Post General Election report and the January 31<sup>st</sup> Year End report *only*, state, district and local party committees may continue to allocate administrative and generic voter drive expenses according to the ballot composition ratio for the 2001-2002 election cycle. Committees should report this activity just as they always have: payments should be disclosed on Schedule H4, and transfers from the nonfederal account should appear on Schedule H3. Committees need not submit a new Schedule H1.

### 2. Reporting allocable exempt activities (that are not FEA) for November and December 2002

For the December 5<sup>th</sup> Post General Election report and the January 31<sup>st</sup> Year End report *only*, state, district and local party committees may continue to allocate payments for exempt activities based on the time or space devoted to federal candidates, as compared to the time or space of the entire communication. Committees should report this activity just as they always have: payments should be disclosed on Schedule H4, and transfers from the nonfederal account should appear on Schedule H3.

### 3. Reporting receipts of "Levin funds"

#### *Paper Filers*

- Using a separate Schedule A, itemize each receipt (regardless of amount) as a memo entry. Do not include these receipts in totals or on the Detailed Summary Page.

- **IMPORTANT:** Label the Schedule A "Levin funds."
- Disclose total "Levin fund" receipts as a lump sum in a cover memo attached to the report.

#### *E-Filers*

- On a Schedule A, itemize each receipt (regardless of amount) as a memo entry. These receipts will not be included in totals or on the Detailed Summary Page.
- **IMPORTANT:** Use the text entry description field to label the receipt as "Levin funds."
- Disclose total "Levin fund" receipts as a lump sum using a text record.

Note: During the transition period, the Commission will allow committees to amend reports to disclose as Levin funds, receipts that were not initially disclosed as such. The Commission plans to address this issue more broadly when it finalizes the reporting and filing procedures for BCRA in 2003.

### 4. Reporting disbursements for non-allocable (100% federal) "Federal Election Activities" (i.e., public communications and certain salary payments)

#### *Paper Filers*

- Use a separate Schedule B labeled "FEA-100% Federal" to disclose each disbursement, regardless of amount.
- Adjust the totals on the *completed* Detailed Summary Page by adding the total "FEA-100% Federal" to line 31 "Total Federal Disbursements."

#### *E-Filers*

- Using Schedule B as a model, submit a Form 99 (miscellaneous text submission) labeled "FEA-100% Federal" disclosing for each disbursement, regardless of amount:
  - the name of the committee;

## BCRA on the FEC's Web Site

The Commission has added a new section to its web site ([www.fec.gov](http://www.fec.gov)) devoted to the Bipartisan Campaign Reform Act of 2002 (BCRA).

The new page provides links to:

- The Federal Election Campaign Act, as amended by the BCRA;
- Summaries of major BCRA-related changes to the federal campaign finance law;
- Summaries of current litigation involving challenges to the new law;
- *Federal Register* notices announcing new and revised Commission regulations that implement the BCRA; and
- Information on educational outreach offered by the Commission, including upcoming Roundtable sessions and the Commission's tentative 2003 conference schedule.

The new section also allows individuals to view the Commission's calendar for rulemakings, including projected dates for the Notices of Proposed Rulemaking, public hearings, final rules and effective dates for regulations concerning:

- Soft money;
- Electioneering Communications;
- Contribution Limitations and Prohibitions;
- Coordinated and Independent Expenditures;
- The Millionaires' Amendment;
- Consolidated Reporting rules; and
- Other provisions of the BCRA.

The BCRA section of the web site will be continuously updated. Visit [www.fec.gov](http://www.fec.gov) and click on the BCRA icon.

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## Reports

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- the name, mailing address, city, state and zip code for each payee;
  - the date and amount; and
  - the purpose of the disbursement.
- To account for these disbursements on your regular report (e.g., 2002 Year End Report), adjust the cash on hand figure on line 8 of the Summary Page.

Examples of these transactions in FECFile are available on the Commission’s BCRA web page at [http://www.fec.gov/pages/bcra/bcra\\_update.htm](http://www.fec.gov/pages/bcra/bcra_update.htm).

### 5. Reporting the allocation formula for paying allocable “Federal Election Activities,” if any, conducted in 2002

Use the table below to determine the appropriate formula for allocating “Federal Election Activities,” if any, conducted between November 6, 2002, and December 31, 2002.

#### Paper Filers

- Attach a cover letter, labeled “H1-FEA,” to disclose the applicable federal percentage for allocable “federal election activity.”

#### E-Filers

- Add a text record, labeled “H1-FEA,” to disclose the applicable federal percentage for allocable “federal election activity.”

### 6. Reporting the allocation formula used for paying allocable “Federal Election Activities” and for administrative expenses and the cost of generic voter drives, as of January 1, 2003

Use the table on page 5 to determine the appropriate allocation formula to use on or after January 1, 2003. On the first report disclosing 2003 activity (e.g., February 20<sup>th</sup> Monthly Report):

#### Paper Filers

- Attach a cover letter, labeled “H1-FEA,” to disclose the applicable federal percentage for allocable “federal election activity.”
- Do *not* use the current version of Schedule H-1.

#### E-Filers

- Add a text record, labeled “H1-FEA,” to disclose the applicable federal percentage for allocable “federal election activity.”

### 7. Reporting disbursements for “Federal Election Activities” allocated between federal funds and “Levin funds”

#### Paper Filers

- Using Schedule H4 as a model, submit a cover letter labeled “H6-Shared FEA,” disclosing:
  - the name of the committee;
  - the name, mailing address, city, state and zip code for each payee;
  - the date of each transaction;
  - the category of federal election activity (e.g., voter registration);
  - the year-to-date total for the activity;
  - the purpose of disbursement;
  - the federal share of each expense;
  - the “Levin fund” share of each expense; and
  - the combined federal/Levin total for each entry.
- As on Schedule H4, multiple entries may appear on each page, and should be subtotaled by page and totaled on the last page.
- Adjust the totals on the *completed* Detailed Summary Page by:
  - Adding the combined federal and Levin fund total from the last page to the total for line 30 “Total Disbursements;” and
  - Adding the total federal share from the last page to the total for line 31 “Total Federal Disbursements.”

#### E-Filers

- Using Schedule H4 as a model, submit a Form 99 (miscellaneous text submission) labeled “H6-Shared FEA,” disclosing:
  - the name of the committee;
  - the report to which the activity relates (e.g., 2002 Year End Report);
  - the name, mailing address, city, state and zip code for each payee;
  - the date of each transaction;
  - the category of federal election activity (e.g., voter registration);
  - the year-to-date total for the activity;

## Formula for Allocating “Federal Election Activities” in 2002

2002 Races on General Election Ballot	Federal Percentage
A Senate candidate was on the ballot in my state in the 2002 General election	21% Federal
A Senate candidate was not on the ballot in my state in the 2002 General election	15% Federal

- the purpose of disbursement;
- the federal share of each expense;
- the “Levin fund” share of each expense; and
- the combined federal/Levin total for each entry.
- As on Schedule H4, multiple entries may appear on each page of the H6, and should be subtotaled by page and totaled on the last page.
- To account for these disbursements on your regular report (e.g., 2002 Year End Report), adjust the cash on hand figure on line 8 of the Summary Page.
- Examples of these transactions in FECFile are available on the Commission’s BCRA web page at [http://www.fec.gov/pages/bcra/bcra\\_update.htm](http://www.fec.gov/pages/bcra/bcra_update.htm).

**8. Reporting transfers of “Levin funds” into the federal account for shared “Federal Election Activity”**

*Paper Filers*

- Using Schedule H3 as a model, submit a cover letter labeled “H5-Transfers of Levin Funds for Shared FEA,” disclosing:

- the name of the committee;
- the name of the account (i.e., “Levin”);
- the date of the transfer; and
- the categorical breakdown of the transfer received on that date (e.g., total voter registration, total GOTV, etc.).
- As on Schedule H3, transfers must be segregated by date on the H5. It is permissible, however, to include transfers occurring on multiple dates on each page, as long as they are segregated by date.
- Aggregate transfers by category should appear at the bottom of the last page of H5.
- Adjust the totals on the *completed* Detailed Summary Page by adding the combined Levin fund transfers to the total for line 19 “Total Receipts.”
- Do *not* adjust the total for line 20 “Total Federal Receipts.”

*E-Filers*

- Using Schedule H3 as a model, submit a Form 99 (miscellaneous text submission) labeled “H5-Transfers of Levin Funds for Shared FEA,” disclosing:
  - the name of the committee;

- the name of the account (i.e., “Levin”);
- the report to which the activity relates (e.g., 2002 Year End Report);
- the date of the transfer; and
- the categorical breakdown of the transfer received on that date (e.g., total voter registration, total GOTV, etc.).
- As on Schedule H3, transfers must be grouped by date on the H5. However, unlike H3, it is permissible to include transfers occurring on multiple dates on a single page, so long as the transfers remain grouped by date.
- Total Levin fund transfers by category should appear at the bottom of the last page of H5.
- To account for these receipts on your regular report (e.g., 2002 Year End Report), adjust the cash on hand figure on line 8 of the Summary Page.
- Examples of these transactions in FECFile are available on the Commission’s BCRA web page at [http://www.fec.gov/pages/bcra/bcra\\_update.htm](http://www.fec.gov/pages/bcra/bcra_update.htm).

**Formula for Allocating “Federal Election Activities” as of January 1, 2003**

2004 Races on General Election Ballot	Federal Percentage
Presidential and Senate candidates will <i>both</i> be on the ballot in my state in the next regular federal general election	36% Federal
A Presidential candidate, but not a Senate candidate, will be on the ballot in my state in the next regular federal general election	28% Federal

**Interim Disclosure Procedures for Federal Candidates and Campaign Committees**

**1. Additional registration information pursuant to the “millionaires provision”**

All candidates seeking election to federal office on/after January 1, 2003, must provide an e-mail address, a fax number and a declaration of intent to expend personal funds.

*Paper Filers*

- Attach a cover memo to FEC Form 2, Statement of Candidacy, disclosing an e-mail address, a fax number and a declaration of intent to expend personal funds.

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## Reports

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- The declaration should read: “With respect to this election, I intend to expend personal funds totaling [fill in amount].”

### E-Filers

- Include with Form 2, Statement of Candidacy, a text record disclosing an e-mail address, a fax number and a declaration of intent to expend personal funds.
  - The declaration should read: “With respect to this election, I intend to expend personal funds totaling [fill in amount].”

## Interim Disclosure Procedures for Other Types of Filers

### 1. 24-Hour Notice of “Electioneering Communications”

- E-mail or fax a report to the FEC disclosing:
  - Name, address, occupation and name of employer or principal place of business of the individual or person making the communication;
  - Name, address, occupation and name of employer or principal place of business of any person sharing or exercising control over the person making the communication;
  - Name, address, occupation and name of employer or principal place of business of the custodian of the books and accounts from which the

disbursements for the communication was made;

- If the person making the communication pays for it exclusively from a segregated bank account, the name and address of persons who donate \$1,000 or more to that account, including the date and amount of those donations;
- If the person making the communication does not pay for it exclusively from a segregated bank account, the name and address of persons who donate \$1,000 or more to the person making the communication (regardless of whether those funds are used to finance the communication), including the date and amount of those donations;
- Disbursements of more than \$200, including the name and address of the payee, date, amount and purpose of the disbursement, the name of the federal candidate, and the election identified in the communication;
- Total donations received and disbursements made in this report;
- Aggregate disbursements year-to-date;
- The disclosure date (i.e., the date when the communication was first publicly distributed); and
- The following statement: “Under penalty of perjury, I certify that this report is true, correct and complete.” followed by the name signature of the person making that statement and the date.<sup>2</sup>◆

<sup>2</sup> Submission of false, erroneous or incomplete information may subject the person signing this report to the penalties of 2 U.S.C. §437g.

## Regulations

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spend nonfederal funds for any purpose. 2 U.S.C. §441i and 11 CFR 300.12. As in the past, these funds may not be used to pay for any expense that is an expenditure under 2 U.S.C. §431(9).<sup>1</sup>

*State Candidates and Officeholders.* Under the BCRA, state candidates and officeholders must use federal funds for a public communication that promotes, supports, attacks or opposes a federal candidate, regardless of whether the communication expressly advocates a vote for or against a federal candidate. This provision applies to activity in connection to the Louisiana runoff. 2 U.S.C. §441i(f)(1) and 11 CFR 300.71.

*Federal Candidates and Officeholders.* The BCRA also restricts certain spending and fundraising activities by federal candidates and officeholders. Under the BCRA and Commission regulations, federal candidates and officeholders can only solicit, receive, direct, transfer, spend or disburse federal funds in connection with a federal election. 2 U.S.C. §441i(e)(1)(A) and 11 CFR 300.61.

Additionally, federal candidates and officeholders can only solicit, receive, direct, transfer, spend or disburse funds in connection with a nonfederal election in amounts and from sources that are consistent with both state law and with the Act’s limits and prohibitions. However, if a federal candidate or officeholder is also a candidate for state or local

<sup>1</sup> Additionally, while national party committees cannot raise nonfederal funds after November 5, they may use these funds until January 1, 2003, to retire outstanding debts or obligations that were incurred solely in connection with an election held prior to November 6, including any runoff election, recount or election contest. 2 U.S.C. §§441i(a)(1) and 431 note.

## Public Appearance

December 4, 2002  
American University  
Washington, D.C.  
Michelle Ryan

office, then he or she may raise and spend nonfederal funds that only comply with state law, so long as the solicitation, receipt and spending of funds refers only to the state or local candidate and/or another state or local candidate. Individuals simultaneously running for federal and nonfederal office may only raise and spend federal funds for the federal election. 11 CFR 300.62 and 300.63.

Finally, a federal candidate or officeholder may attend, speak or be a featured guest at a fundraising event for a state, district or local committee of a political party. The committees may advertise, announce or otherwise publicize that a federal candidate or officeholder will attend, speak or be a featured guest at the fundraising event. Candidates and federal officeholders may speak at such an event without restriction or regulation. 11 CFR 300.64.

#### *Tax-Exempt Organizations.*

Because the BCRA permits limited solicitations by federal candidates and officeholders only for the specific federal election activities listed below, these individuals *must not* make any solicitations on behalf of a 501(c) organization, or an organization that has applied for this tax status, for other types of election activities, such as public communications promoting or supporting federal candidates.

A federal candidate or officeholder may make a general solicitation on behalf of a tax-exempt organization, without limits on the source or amount of funds, if the organization does not make expenditures or disbursements in connection with federal elections, including the federal election activities listed below. Moreover, a candidate or office holder may make a general solicitation on behalf of an organization that conducts activities in connection with an election if:

- The organization's principal purpose is not to conduct election activities, including the federal election activities listed below; and
- The solicitation is not to obtain funds for election activities in connection with a federal election, including federal election activities. 11 CFR 300.65(a) and (c).

Under certain circumstances, a federal candidate or officeholder may also make a specific solicitation explicitly to obtain funds to pay for federal election activities conducted by a tax-exempt organization whose principal purpose is to undertake such activities. The federal election activities for which such a specific solicitation may be made are:

- Voter registration activity during the period that begins 120 days before the date of a regularly-scheduled federal election and ends on the day of that election; and
- Voter identification, get-out-the vote or generic campaign activity conducted in connection with an election in which a federal candidate appears on the ballot (regardless of whether a state or local candidate also appears on the ballot). 11 CFR 300.65(c).

Such solicitations are permissible, however, only if they are made solely to individuals and the amount solicited from any individual does not exceed \$20,000 during any calendar year. 11 CFR 300.65(b) and (c).

*Other Provisions.* Additional BCRA provisions apply to the Louisiana runoff that:

- Strengthen the Act's prohibitions on contributions, expenditures, independent expenditures and disbursements for electioneering communications by foreign nationals (2 U.S.C. §441e);
- Codify several aspects of the current regulatory test for the

permissible use of campaign funds by candidates and officeholders (2 U.S.C. §439a);

- Increase the civil penalties for violations of the ban on contributions in the name of another and expand the prohibition on fraudulent misrepresentation (2 U.S.C. §§437g and 441h).

#### **Provisions that Do Not Apply to the Louisiana Runoff**

The following BCRA provisions do not apply to the Louisiana runoff:

- Increases in contributions limits;<sup>2</sup>
- Prohibition of contributions by minors;
- New rules on disclaimers;
- New rules on coordinated and independent expenditures;
- Requirements for the funding and reporting of Electioneering Communications;
- New rules affecting state and local parties defining and governing Federal Election Activity.

#### **Additional Information**

The FEC web site ([www.fec.gov](http://www.fec.gov)) now has a BCRA section, which provides links to:

- The Federal Election Campaign Act, as amended by the BCRA;
- Summaries of major BCRA-related changes to the federal campaign finance law;
- Summaries of current litigation involving challenges to the new law;
- *Federal Register* notices announcing new and revised Commission regulations that implement the BCRA, including Notices of Proposed Rulemaking;

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<sup>2</sup>The increased contribution limits do not take effect until January 1, 2003, and thus do not apply to this December 7, 2002, runoff election. See related article, page 8.

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- Information on educational outreach offered by the Commission; and
- The Commission's calendar for rulemakings.

Visit [www.fec.gov](http://www.fec.gov) and click on the BCRA icon.

—George Smaragdis  
and Amy Kort

## Final Rules on Contribution Limitations and Prohibitions

On October 31, 2002, the Commission approved final rules to implement provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA) that:

- Increase the contribution limits for individuals and political committees;
- Modify recordkeeping requirements for political committee treasurers;
- Prohibit certain contributions and donations by minors; and
- Strengthen the current statutory prohibitions on contributions and donations by foreign nationals.

The final rules and their Explanation and Justification were published in the November 19, 2002, *Federal Register* (67 FR 69928) and are available on the FEC web site at [www.fec.gov/pages/bcra/rulemakings/part\\_110\\_rules.htm](http://www.fec.gov/pages/bcra/rulemakings/part_110_rules.htm). These rules take effect January 1, 2003.

### Contribution Limits Increased

Beginning on January 1, 2003, a number of the contribution limits will increase and some of the limits will be indexed for inflation.

*Contributions to candidates and political party committees.* The limits on contributions made by individuals and non-multicandidate committees will increase to \$2,000 per election to federal candidates and \$25,000 per year to national

party committees. 11 CFR 110.1(b)(1) and 110.1(c)(1). These limits will be indexed for inflation.

*Aggregate bi-annual contribution limitations for individuals.* The former \$25,000 annual limit for individuals has been replaced by a new bi-annual limit of \$95,000. This limit includes up to \$37,500 in contributions to candidate committees and up to \$57,500 in contributions to any other committees. The \$57,500 portion of the bi-annual limit contains a further restriction, in that no more than \$37,500 of this amount may be given to committees that are not national party committees. 11 CFR 110.5(b)(1).<sup>1</sup> The bi-annual limit will be indexed for inflation.

*Special contribution limit to Senate candidates.* The limit on contributions made to Senate candidates by the Republican and Democratic Senatorial campaign committees or the national committees of a political party, or any combination of these committees, will increase to \$35,000 per six-year cycle. 11 CFR 110.2(e)(1). This special limit will also be indexed for inflation.

*Indexing.* Currently, the coordinated party expenditure and Presidential candidate expenditure limits are indexed for inflation. The new rules extend the inflation indexing to contributions to candidates and national party committees by individuals and non-multicandidate committees, the bi-annual aggregate contribution limit for individuals

and the limit on contributions to Senate candidates by certain national party committees. 11 CFR 110.17(a) and (b).

For the "per election" limit on contributions to candidates, the indexing changes will take effect on the day after the general election and remain in effect through the day of the next regularly-scheduled general election. 11 CFR 110.1(b)(1)(ii). For example, an increase in the limit made in January 2005 would be effective from November 3, 2004, to November 7, 2006, and would only affect elections held after November 3, 2004. On the other hand, the indexing changes for the calendar-year-based limits will affect the calendar-based period that follows, or from January 1 of the odd-numbered year through December 31 of the next even-numbered year. 11 CFR 110.1(c)(ii), 110.2(e)(2) and 110.5(b)(3). The Commission will announce the amount of the adjusted expenditure and contribution limits in the *Federal Register* and on the FEC web site at [www.fec.gov](http://www.fec.gov). These indexing provisions will first be applied in 2005. 11 CFR 110.17(e).

The applicable expenditure and contribution limits will be adjusted according to the Consumer Price Index (CPI). The limits will be adjusted in odd-numbered years, and will be increased by the percentage difference between the CPI during the 12 months preceding the beginning of that calendar year and the CPI during the base year, which is 2001. The rules contain a rounding provision so that the inflation-adjusted amount will be rounded to the nearest multiple of \$100. 11 CFR 110.17(c) and (d).

### Resignations and Reattributions

The Commission has streamlined its rules for designating contributions to a particular election. When an individual or non-multicandidate committee makes an excessive

<sup>1</sup> Under the so-called millionaires amendment, individual limits to Congressional candidates increase if the candidate's opponent makes expenditures from his or her personal funds above a certain threshold. Contributions made under this provision will not be subject to the overall bi-annual limit. The Commission will address the millionaires amendment in greater detail in a future rulemaking.

contribution to a candidate's authorized committee, the committee may automatically redesignate excessive contributions to the general election if the contribution:

- Is received before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit. 11 CFR 110.1(b)(5)(ii)(B)(1)-(4).

In the case of an authorized committee of a Presidential candidate who accepts public funding for the general election, this presumption is available only to the extent that the candidate is permitted to accept contributions to a general election legal and accounting compliance (GELAC) fund.

The redesignation presumption also includes a backward-looking provision where an undesignated, excessive contribution received after the primary, but before the general election, may be automatically applied to the primary if the campaign committee has more net debts outstanding from the primary than the excessive portion of the contribution. The redesignation, of course, may not cause the contributor to exceed any contribution limits. 11 CFR 110.1(b)(5)(ii)(C).

The candidate committee is required to notify the contributor of the redesignation by paper mail, e-mail, fax or other written method within 60 days of the treasurer's receipt of the contribution. Also, at the time of notification, the contributor must be given the opportunity to request a refund. 11 CFR 110.1(b)(5)(ii)(B)(5)-(6) and 110.1(b)(5)(ii)(C)(6)-(7).

Similarly, the Commission has also updated its rules regarding reattributions. When an excessive contribution is made via a written instrument with more than one

individual's name imprinted on it, but only has *one* signature, the permissible portion will be attributed to the signer and the excessive portion may now be attributed to the other individual whose name is imprinted on the written instrument, without obtaining a second signature, so long as the reattribution does not cause the contributor to exceed any other contribution limit. 11 CFR 110.1(k)(3)(ii)(B)(1).

Political committees employing this presumption must notify all contributors in writing or via e-mail within 60 days of the committee treasurer's receipt of the check. At the time of notification, the committee must offer the contributor who signed the check a refund of the excessive portion. 11 CFR 110.1(k)(3)(ii)(B)(2) and (3).

**Recordkeeping.** To facilitate audits that determine compliance with the contribution limits, political committee treasurers are now required to maintain either a full-size photograph or a digital image of each check or written instrument by which a contribution of \$50 or more is made. 11 CFR 102.9(a)(4). Under a new section added to the rule outlining the explicit standard for acceptable accounting methods, the committee's records must demonstrate that, prior to the primary election, recorded cash on hand was at all times equal to or in excess of the sum of general election contributions received minus the sum of general election disbursements made. 11 CFR 102.9(e)(2). In addition, for the political committee redesignations or reattributions to be effective, any signed writings from contributors that accompany the contribution and the committee's notices must be retained.

#### **Prohibition on Contributions and Donations by Minors**

Under the new regulations, individuals who are under 18 years old are prohibited from making

contributions to federal candidates and contributions or donations to committees of political parties 11 CFR 110.19(a) and (b). By including the term "donation" in this regulation, the prohibition encompasses both federal and nonfederal accounts of political party committees. Thus, this provision preempts state law to the extent that state law may permit minors to make donations to state, district and local party committees. In the Explanation and Justification for this rule, the Commission indicated that prohibiting donations by minors to all committees of state, district and local parties has a federal purpose because donations of nonfederal funds to state parties could otherwise be used, in part, to finance "federal election activities."<sup>2</sup>

The final rules make clear that individuals under 18 may, however, participate in volunteer work for federal candidates and political party committees and may continue to make contributions to unauthorized committees that are not political party committees, such as PACs, under certain conditions. See 11 CFR 110.19(c).

#### **Prohibition on Contributions, Donations, Expenditures, Disbursements by Foreign Nationals**

New section 11 CFR 110.20 implements BCRA's prohibition on contributions, donations, expenditures and disbursements solicited,<sup>3</sup>

(continued on page 10)

<sup>2</sup> For the definition of "federal election activity," see the Federal Register Notice at [67 FR 49110](#) and the [September 2002 Record](#), page 1.

<sup>3</sup> The term "solicit" at section 11 CFR 110.20 has the same meaning as in section 11 CFR 300.2(m), "to ask another person to make a contribution or donation, or transfer of funds, or to provide anything of value, including through a conduit or intermediary."

## Regulations

(continued from page 9)

accepted, received or made directly or indirectly by or from foreign nationals in connection with state and local elections as well as federal elections. This ban also applies to:

- Contributions and donations to political party committees;
- Contributions and donations to party committee building funds;
- Disbursements for electioneering communications;<sup>4</sup> and
- Expenditures, independent expenditures, and disbursements in connection with any election.<sup>5</sup>

The Commission has included a knowledge requirement and knowledge standards with regard to the solicitation, acceptance or receipt of foreign national contributions or donations, determining that this would produce a less harsh result than a strict liability standard.

*Knowledge.* The final rules contain in the definition of “knowingly” three standards of knowledge that focus on the sources of funds received. Meeting any one of these standards would satisfy the knowledge requirements of this rule.

The first standard is actual knowledge that funds have come from a foreign source. The second is an awareness on the part of the person soliciting, accepting or receiving the contribution or donation of certain facts that would lead a reasonable person to conclude that there is a substantial probability that the contribution or donation is coming from a foreign source. The third standard is an awareness on the part of the person soliciting,

<sup>4</sup> For the definition of electioneering communication, see the Federal Register Notice at [67 FR 65190](#) and the [November 2002 Record](#), page 3.

<sup>5</sup> An additional ban on foreign national donations to Presidential inaugural committees will be addressed in a later rulemaking.

accepting or receiving a contribution or donation of facts that should have prompted a reasonable inquiry into whether the source of the funds is a foreign national, but the person neglected to undertake such an inquiry. 11 CFR 110.20(a)(4)(i)-(iv).

The rule further outlines the types of information that should lead a recipient to question the origin of a contribution or donation under this section. They are:

- Use by a contributor or donor of a foreign passport or passport number;
- Use by a contributor or donor of a foreign address;
- A check or other written instrument is drawn on an account or a wire transfer from a foreign bank; or
- Contributors or donors live abroad. 11 CFR 110.20(a)(5)(i)-(iv).

*Knowledge safe harbor.* The Commission has adopted a narrowly-tailored safe harbor for the knowledge standards. A person shall be deemed to have conducted a reasonable inquiry into a possible foreign national contribution if he or she seeks and obtains copies of current and valid U.S. passport papers for U.S. citizens who are contributors or donors and to whom any of the above four types of information are applicable. 11 CFR 110.20(a)(7).

*Assisting foreign national contributions or donations.* The foreign national prohibition applies to a person who knowingly provides substantial assistance to foreign nationals in the making of contributions, donations, expenditures, independent expenditures and disbursements in connection with federal and nonfederal elections. This prohibition covers, but is not limited to, acting as a conduit or intermediary for foreign national contributions and donations. 11 CFR 110.20(g).◆

—Elizabeth Kurland

## Alternative Dispute Resolution

### ADR Program Update

The Commission’s Alternative Dispute Resolution Office recently resolved an additional case, reaching agreement with the Gejdenson Reelection Committee and its treasurer, Sally Cini. In response to the Commission’s audit finding that the committee and its treasurer accepted excessive contributions, the respondents agreed to pay a \$3,000 civil penalty and to terminate the committee. See the April 2002 *Record*, page 8. (ADR 069)◆

—Amy Kort

## Compliance

### Nonfilers

The campaign committees of the candidates listed in the chart on page 11 failed to file required campaign finance reports. The Federal Election Campaign Act requires the Commission to publish the names of principal campaign committees if they fail to file 12 day pre-election reports or the quarterly report due before the candidate’s election. 2 U.S.C. §§437g(b) and 438(a)(7). The agency may also pursue enforcement actions against nonfilers and late filers under the Administrative Fine program on a case-by-case basis.◆

—Amy Kort

## Nonfilers

Candidate	Office Sought	Report Not Filed
Ada, Joseph F. <sup>1</sup>	GU/00	Pre-General
Anderson, Roger C.	OH/05	Pre-General
Baker, Biff L.	CO/05	Pre-General
Behrens-Benedict, Heidi <sup>2</sup>	WA/08	October Quarterly
Bordallo, Madeleine Z.	GU/00	Pre-General
Camacho, Randy R.	AZ/02	Pre-General
Christian-Christensen, Donna <sup>1</sup>	VI/00	Pre-General
Clark, Steven J.	OH/04	Pre-General
Coleman, Aumua A.	AS/00	October Quarterly
Coleman, Aumua A.	AS/00	Pre-General
Crawford, Russell C.	TX/31	Pre-General
Cripe, Kevin H.	CA/18	October Quarterly
Cripe, Kevin H.	CA/18	Pre-General
Daugherty, Ronald T. <sup>1</sup>	NC/10	October Quarterly
Daugherty, Ronald T. <sup>1</sup>	NC/10	Pre-General
Dority, Greg	NC/01	Pre-General
Ellen, Joseph L.	NC/02	Pre-General
Glick, Ted	NJ Senate	Pre-General
Hooper, Don	MI/01	October Quarterly
Hooper, Don	MI/01	Pre-General
Hornberger, Jacob G., Jr	VA Senate	Pre-General
Langkilde, Fagafaga Daniel	AS/00	Pre-Runoff
Lapere, David G.	CA/21	Pre-General
Laurie, Charles L. III	FL/23	October Quarterly
Laurie, Charles L. III	FL/23	Pre-General
Lawrence, Robert I.	WA/06	October Quarterly
Levy, Robert M.	CA/27	Pre-General
Mattsson, Arne	NY/13	Pre-General
McLeod, Gary M.	SC/06	Pre-General
Meek, Kendrick	FL/17	October Quarterly
Meeks, Gregory W.	NY/06	Pre-General
Miller, Michael C. Sr	DE/00	October Quarterly
Miller, Michael C. Sr	DE/00	Pre-General
Monica, Monica L. <sup>1</sup>	LA/01	Pre-General
Moore, James R. C.	MN Senate	Pre-General
Petersen, John S.	TX/31	Pre-General
Raczkowski, Andrew E.	MI Senate	Pre-General
Rosenstein, Charles B.	NY/21	Pre-General
Smith, Mark C.	MA/06	October Quarterly
Snyder, Victor F.	AR/02	Pre-General
Stevens, John	VA/10	Pre-General
Van Auken, Cynthia L. <sup>1</sup>	GA/04	Pre-General
Velasco, Oscar A.	CA/37	Pre-General
Woodside, Nancy J.	UT/03	Pre-General
Xuna, John "Juan"	FL/22	Pre-General

<sup>1</sup> A paper copy of the report has been filed. However, the candidate's committee was required to file electronically.

<sup>2</sup> Summary and Detailed Summary pages were submitted without supporting schedules.

## Statistics

### Party and Congressional Financial Activity, 2002 Election Update

During the 2002 election cycle, financial activity by national parties increased while Congressional activity decreased, compared to recent election cycles. The Commission compiled the following statistics based on political committees' financial disclosure reports covering the period between January 1, 2001, and October 16, 2002.

#### Party Activity

The national parties raised \$416.5 million in federal funds, representing a 43 percent increase over the 1997-98 campaign. The parties spent \$409.9 million in federal funds, up 45 percent since 1998.

The Republican National Committee, National Republican Senatorial Committee and National Republican Congressional Committee raised and spent more than their Democratic counterparts, continuing a long-standing pattern. Republicans raised a total of \$289 million in federal funds, just over twice the Democratic Party total of \$127.4 million.

Nonfederal (or "soft money") activity by the national parties has been greater in the 2002 campaign than during the 2000 Presidential cycle. Republican committees reported soft money receipts of \$221.7 million, up 5 percent over their 2000 efforts and more than twice the soft money receipts for these committees during the 1998 campaign.

Democrats raised \$199.6 million, slightly more than their 2000 total and 2 1/2 times their comparable 1998 soft money receipts. The Senatorial and Congressional campaign committees of both

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## Statistics

(continued from page 11)

parties have shown the largest increases.

### Congressional Activity

Congressional candidates running in 2002 raised \$727.9 million and spent \$617.4 million, representing a decline of 9 percent in receipts and 10 percent in disbursements over the comparable period in 2000.

Senate candidates raised \$257.6 million and spent \$225.9 million. These totals represent declines of 21 percent in receipts and 24 percent in spending since 2000, despite the intense competition between the two major parties for control of the Senate. In contrast to the 2000 elections, competitive Senate campaigns in this cycle tended to be in smaller-population states, and specific campaigns did not attain the extraordinary levels of spending reached by some candidates in 2000.

The financial activity of House candidates is little changed overall from the 2000 election cycle, with general election candidates raising \$470.3 million (less than 1 percent below 2000 totals) and spending \$391.5 million (2 percent higher than in 2000). Increases were limited to the 45 open seat races.

### Additional Information

Press releases dated November 1, 2002, provide detailed information about the financial activity of the Democratic and Republican parties and Congressional candidates. The press releases are available:

- On the FEC web site at [www.fec.gov/news.html](http://www.fec.gov/news.html);
- From the Public Records office (800/424-9530, press 3) and the Press Office (800/424-9530, press 2); and
- By fax (call the FEC Faxline at 202/501-3413 and request documents 615 and 616).◆

—Amy Kort

## Hawaii Special Election Reporting

The Special General Election to fill the U.S. House seat in the Second Congressional District, won in the November 5 election by the late Representative Patsy T. Mink, will be held on January 4, 2003. Authorized committees that receive contributions of \$1,000 or more between December 16 and January 1 must file 48-hour notices to disclose these contributions. Committees (including PACs) involved in this election must follow the reporting schedule below.<sup>1</sup> Please note that the 2002 Year-End report is waived for committees that file on this schedule.

### Committees Involved in the Special General Must File:

	Close of Books	Reg./Cert. Mail Date	Filing Date
<b>Pre-General Report</b>	December 15	December 20	December 23
<b>Year-End Report</b>		—Waived—	
<b>Post-General Report</b> <sup>2</sup>	January 24	February 3	February 3
<b>April Quarterly Report</b>	March 31	April 15	April 15

<sup>1</sup> Reports filed electronically must be submitted by midnight on the filing date. A committee required to file electronically that instead files on paper reporting forms will be considered a nonfiler. Reports filed on paper and sent by registered or certified mail must be postmarked by the mailing date; reports sent by any other means (including reports sent via first class mail and overnight delivery) must be received by the Commission's close of business on the filing date.

<sup>2</sup> The reporting period for the Post-General Election report spans two election cycles. For this report only, candidate committees should use the Post-Election Detailed Summary Page (FEC Form 3, Pages 5-8) instead of the normal Detailed Summary Page.

## Information

### Revised Tax Filing Requirements

Congress passed new legislation, Pub. L. 107-276, November 2, 2002, that scales back the tax law filing requirements for political committees. These requirements, originally enacted two years ago, principally affect nonfederal committees and organizations that do not otherwise disclose contributions and expenditures. While the most significant changes relate to state and local political organizations, the new law also limits filings required for

federal political committees that file under the Federal Election Campaign Act (FECA).

Effective retroactive to the original enactment in 2000, political committees need not file an income tax return (Form 1120-POL, *U.S. Income Tax Return for Certain Political Organizations*), unless they have taxable income in a year (after taking into account allowable deductions, including the \$100 specific deduction). The new law also provides that neither the IRS nor the committee filing this form is required to disclose it to the public. This revision effectively repeals a provision enacted in 2000. In addition, federal political commit-

tees required to report under the FECA will not have to file an annual information return (Form 990, *Return of Organization Exempt from Income Tax*), effective retroactive to the original enactment in 2000.

The new law contains a provision that may impact federal officeholders' and candidates' involvement in activities conducted by state and local political organizations. Most state and local political organizations are now exempt from certain federal tax filing requirements. This exemption does not apply, however, if a federal officeholder or candidate:

- Controls or participates in directing the organization;
- Solicits more than *de minimis* contributions for the organization; or
- Directs disbursements by the organization.

For more information, see:

- IRS web site: [www.irs.gov](http://www.irs.gov);
- Information on filing requirements and downloading forms: [www.irs.gov/polorgs](http://www.irs.gov/polorgs); and
- IRS toll free number: 1-877-829-5500. Staff at this number answer questions about tax law filing requirements for political committees, and are available from 8:00 a.m. to 6:30 p.m., Eastern time, Monday through Friday. ♦

—Submitted by the Internal Revenue Service

## Court Cases

### RNC v. FEC (98-CV-1207)

On August 27, 2002, in light of the recent enactment of the Bipartisan Campaign Reform Act of 2000 (BCRA), the plaintiffs and defendants agreed to the dismissal of this case. The Republican National Committee (RNC) had asked the U.S. District Court for the District

of Columbia to enjoin the Commission from applying its allocation regulation at 11 CFR 106.5 to the RNC's "issue ads." The RNC claimed that the regulation was unconstitutional because it required party committees to allocate expenses between their federal and nonfederal accounts for communications that did not expressly advocate the election or defeat of a clearly-identified candidate.

The BCRA bars national party committees from raising and spending nonfederal funds. As a result, the Commission has promulgated a new regulation at 11 CFR 106.5, which states how national party committees may spend nonfederal funds for limited purposes during the transition period between November 6, 2002, when the BCRA took effect, and December 31, 2002, after which national party committees may no longer spend nonfederal funds.<sup>1</sup> See the January 1999 *Record*, p. 2.

U.S. District Court for the District of Columbia, 98-CV-1207 (WBB) and U.S. Court of Appeals for the District of Columbia Circuit, 98-5263. ♦

—Amy Kort

### New Litigation

#### Cannon v. FEC

On September 24, 2002, Peter J. Cannon, the treasurer for the Joe Grimaud for Congress Committee (the Committee), filed a complaint in the U.S. District Court for the District of South Carolina.

The complaint appeals a \$5,500 civil money penalty the Commission imposed on the Committee and Mr.

Cannon for failure to file the Committee's 2001 Year-End Report. Although the Committee filed the report on paper, they were required to file electronically. 11 CFR 104.18(a)(1)-(2). Therefore, the report was not considered to have been filed. Mr. Cannon alleges that the Committee's computer system was infected with a virus, destroying their records and preventing them from filing electronically.

U.S. District Court for the District of South Carolina, Civil Action 02-MC-165. ♦

—Phillip Deen

#### Shays and Meehan v. FEC

On October 8, 2002, Representatives Christopher Shays and Martin Meehan filed a complaint in the U.S. District Court for the District of Columbia challenging Commission regulations that implement the "soft money" provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA).

The complaint charges that the FEC regulations "contravene the language" of the BCRA and "will frustrate the purpose and intent of the BCRA by allowing soft money to continue to flow into federal elections and into the federal political process." The plaintiffs ask that the court invalidate the FEC regulations on the grounds that they are:

- Arbitrary and capricious;
- An abuse of discretion;
- In excess of the FEC's statutory jurisdiction or authority; and
- Otherwise not in accordance with law.

*Court Complaint.* On May 20, 2002, the FEC published for public comment draft regulations implementing Title I of the BCRA, which contains the statutory ban on soft money. The final rules were pub-

<sup>1</sup> *The Commission's new regulations, "Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money," were published in the July 29, 2002, Federal Register (67 FR 49064). See the September 2002 Record, p. 1, for a summary.*

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## Court Cases

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lished in the July 29, 2002, *Federal Register* (67 FR 49064). The plaintiffs allege that these rules contain amendments that were not made available for public comment and that “undermined the letter and [the] purpose of the BCRA.” The plaintiffs contend that these regulations contravene the BCRA’s soft money ban in each of the three areas that, according to the complaint, Congress legislated to address:

- The activities of the national parties;
- The activities of the state parties; and
- The activities of federal candidates and officeholders.

*“Sham Party Entities.”* The BCRA prohibits national party committees and any entity “directly or indirectly established, financed, maintained or controlled” by a national party committee from raising or spending soft money. 2 U.S.C. §323(a)(1) and (2). The plaintiffs charge that “without any basis” the Commission created a “grandfather” provision in its regulations. According to the plaintiffs, the “grandfather” or “safe harbor” provision in the regulations will take into account the relationship between the party committee and other entities only after November 6, 2002. The plaintiffs claim that this provision will permit the creation of “sham party entities” that can raise and spend soft money after the effective date of the BCRA, notwithstanding their establishment by, and affiliation with, the national party committee prior to that date.

*Definitions of “Solicit and Direct” and “State Party” Fundraisers.* The BCRA prohibits federal candidates and officeholders from soliciting, directing or receiving soft money. 2 U.S.C. §323(a) and (e). According to the com-

plaint, Commission regulations narrow the definitions for the terms “solicit” and “direct” to mean “ask.” 11 CFR 300.2(m). These definitions, the plaintiffs allege, will permit federal candidates and officeholders, as well as the national party officials, to continue to solicit and direct soft money as long as they do not explicitly “ask” for soft money contributions. The plaintiffs further contend that the FEC regulations allow federal candidates and officeholders to explicitly solicit and direct soft money at state fundraising events “without regulation or restriction,” contrary to the intent of the BCRA. 11 CFR 300.64.

*Definition of Agent.* The BCRA prohibits any “agent” acting on behalf of a national party committee or federal candidate or officeholder from raising or spending soft money. The complaint describes FEC regulations as limiting the definition of “agent” to those who have “actual” authority to act on behalf of the party, and excluding those who have “apparent” authority. 11 CFR 300.2(b). The plaintiffs argue that the regulation creates the opportunity to circumvent the BCRA by allowing national or state party agents, or agents of a federal candidate or officeholder, with apparent authority to engage in activities that are otherwise prohibited under BCRA.

*Leadership PACs.* The BCRA prohibits any entity “directly or indirectly” controlled by a federal candidate or officeholder from raising or spending soft money. The plaintiffs claim that this prohibition was intended to prohibit “Leadership PACs” from raising and spending soft money. According to the complaint, the FEC has adopted regulations, contrary to the intent of the law, that allow Leadership PACs established and controlled by federal officeholders to continue raising and spending soft money. 11 CFR 300.2(c)(2).

*Definition of “Federal Election Activity.”* Under the BCRA, state parties are prohibited from using soft money for “federal election activities.” The plaintiffs argue that FEC regulations constrict the definition of “federal election activity” to allow the continued spending of soft money. The complaint contends that the FEC departed significantly from its past regulatory definitions of “get-out-the-vote activity,” “voter identification,” “generic campaign activity,” “voter registration” and other key terms to allow activities that influence federal elections to be paid for with soft money.

*Other Provisions.* The plaintiffs additionally allege, among other things, that FEC regulations:

- Allow the solicitation costs for raising so-called “Levin funds” to be paid with those funds, while the BCRA stipulates that those costs must be paid with federal funds;
- Extend the use of state party building funds to office equipment and furniture, while the BCRA meant to limit the use of such funds to the purchase or construction of an office building; and
- Improperly define “state,” “district” or “local” party committees by requiring that such committees be part of “the official party structure.” 11 CFR 100.14.

*Relief.* The plaintiffs ask the court to declare the referenced soft money regulations contrary to law, arbitrary and capricious and otherwise unlawful, and to enjoin the Commission from enforcing them.

U.S. District Court for the District of Columbia,  
1:02CV01984. ♦

—Gary Mullen

## Advisory Opinions

### AO 2002-7 Political Fundraising Services Provided by Internet Service Provider

Careau & Co. and Moher Communications (the Companies) may require Internet service provider (ISP) subscribers to pay a monthly service fee that includes up to \$2.00 per month in contributions to political committees or donations to charities. This activity will not result in prohibited contributions to recipient political committees because:

- The corporations providing services will receive a commercially-reasonable payment;
- The contributions will be forwarded to the political committees through a separate merchant account rather than through the Companies' corporate treasury funds; and
- The contributors will be screened to ensure that they may permissibly contribute to federal political committees. 2 U.S.C. §441b(a).

#### Background

The Companies, both of which are incorporated, operate an Internet site and propose allowing visitors to the site to subscribe to an ISP service they will provide. To receive the service, subscribers must use their debit or credit cards (or other electronic means) to make two types of monthly payments:

- One for the cost of the ISP service (\$15.76); and
- Another in the form of a contribution to a federal political committee or a donation to a charity (up to \$2.00 divided among as many as five political committees and/or charities).

The federal committees that will receive contributions will be determined by where the subscriber lives. The political committees participating in the plan, called the America Plan, will direct their supporters to the registration web site in the hopes that they will both sign up for the ISP service and choose the option of making a contribution to political committees. Additionally, in order to subscribe, individuals must answer a series of questions intended to ensure that those who participate in that part of the program can make contributions to federal committees.

When a subscriber makes his or her monthly payments, the funds representing payment for the ISP services will be transferred directly to the Companies, and any amount representing the contribution to a political committee will go directly to a separate merchant account. Following the deduction of the usual and normal service charges of the credit card issuers and other processing expenses, the political committee will receive the contributions. Moreover, a portion of these contributions will also go to the Companies as payment for services to the political committees participating in the America Plan.

#### Analysis

The Federal Election Campaign Act (the Act) and Commission regulations ban corporations from making contributions and expenditures in connection with any federal election and ban federal candidates and committees from accepting such contributions. 2 U.S.C. §441b(a). In several past advisory opinions, the Commission has permitted transactions involving a *bona fide* commercial relationship between political committees and service providers, so long as the vendor receives the usual and normal charge for its services, including an adequate profit. These arrangements do not result in contributions from the

service providers to the political committees. AOs 1999-22, 1995-33, 1994-33 and 1990-14.

The Companies' proposal closely follows these commercially-reasonable relationships. First, no corporate contributions will result from the transactions—vendors providing processing services will be compensated with contributed funds and the Companies will be compensated by the federal political committees for creating the web site and arranging for the processing services. Second, the funds contributed will be forwarded, minus processing fees, to the political committees or charities through the use of a merchant account and, thus, will not become corporate treasury funds of the Companies. Finally, the screening procedure for the electronic payment of contributions is well within the "safe harbor" for determining whether individuals can contribute to federal political committees, as discussed in previous advisory opinions. AOs 1999-9 and 1999-22. Thus, the Companies' proposed activity is permissible under the Act and Commission regulations.

Length: 9 pages; Date Issued: October 10, 2002. ♦

—Amy Kort

### AO 2002-11 Nonaffiliation of Trade Association SSFs

The Mortgage Bankers Association of America Political Action Committee (MBAA PAC) and the Texas Mortgage Bankers Association Political Action Committee (TMBA PAC) are not affiliated for the purposes of the Federal Election Campaign Act (the Act). The Mortgage Bankers Association (MBAA), a national trade association, and its member state associations, including the Texas Mortgage Bankers Association (TMBA), do not have an overall relationship that

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## Advisory Opinions

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indicates that they are affiliated. As a result, MBAA PAC and TMBA PAC do not need to aggregate their contributions for the purposes of the Act's limits. 2 U.S.C. §441a.

### Background

MBAA is a trade association that represents the real estate finance industry. It is composed of 2,174 "Regular Members" and "Associate Members," which are business organizations and financial institutions. It also has "Adjunct Members," which include state mortgage bankers associations such as TMBA. These 46 state association members pay annual dues but do not have voting power, including the power to elect the chairman, vice chairman and chairman-elect of the MBAA.

### Commission Regulations

*Federation of trade associations.* Commission regulations define a federation of trade associations as "an organization representing trade associations involved in the same or allied line of commerce." 11 CFR 114.8(g)(1). In past advisory opinions, the Commission has determined that certain national trade associations with component state organizations were federations of trade associations. Typically, these national associations have component state organizations that are officially recognized as such through the national association's interconnections with each state association. For example, a federation of state associations might entail:

- A significant portion of the national association's board consisting of representatives of the state association;
- Membership in the local or state entity as either a requirement for membership in the national association or providing automatic

membership in the national association;

- Dues for the higher level of the organization that are collected at the lower level; or
- Prescription by the national association of major portions of a state association's bylaws (AOs 1998-19, 1995-17, 1994-19 and 1991-24).

When a national trade association has these features or other close connections to the state associations, the Commission has considered these features when determining both federation status and whether there is affiliation between the organizations. Features that lead the Commission to conclude that an association is a federation of trade associations will very likely lead to a conclusion that the national and state or local organizations are affiliated under Commission regulations. A federation's ability to solicit the restricted class of the corporate members of a state trade association is dependent on whether the federation's PAC is affiliated with that of the state association. See 11 CFR 114.8(g) and 100.5(g)(4).

*Affiliation.* Committees that are affiliated are considered a single committee under the Act and must share contribution limits. Certain groups are considered *per se* affiliated under Commission regulations. 11 CFR 100.5(g)(3) and 110.3(a)(2). When entities are not *per se* affiliated, the regulations provide for an examination of various factors, considered in the context of an overall relationship, to determine affiliation. In this case, the relevant factors to be examined are whether the sponsoring organization or committee:

- Has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through provisions of constitutions, bylaws, contracts or other rules;

- Has the authority to hire, appoint, demote or otherwise control the officers or other decision making employees or members of another sponsoring organization or committee;
- Has a common or overlapping membership with another sponsoring organization or committee that indicates a formal or ongoing relationship;
- Has a common or overlapping officers or employees with another sponsoring organization or committee that indicates a formal or ongoing relationship;
- Provides funds or goods in a significant amount or on an ongoing basis to another sponsoring organization or committee;
- Causes or arranges for funds to be provided in a significant amount or on an ongoing basis to another sponsoring organization or committee;
- Had an active or significant role in the formation of another sponsoring organization or committee; and
- Has a pattern of contributions or contributors similar to that of another sponsoring organization or committee indicating a formal or ongoing relationship. 11 CFR 100.5(g)(4)(ii) and 11 CFR 110.3(a)(3)(ii)(B), (C), (E), (G), (H), (I) and (J).

### MBAA as a Federation of Trade Associations

MBAA does not have the traditional features of a federated structure, such as multi-tiered membership, dues collection, board representations or prescription of major bylaws. TMBA bylaws also make no reference to MBAA. Additionally, the organizations do not have other connections that have led the Commission to determine in past advisory opinions that a national association is a federation. For example, MBAA's board is not organized on the basis of any state division, and its board members do not act as liaisons between MBAA

and the state associations. See AO 1995-12.

MBAA may represent the state associations to a certain extent with respect to the policy interests of those associations before governmental entities, and it also has a number of other contacts with the state associations.<sup>1</sup> In the sense that MBAA is a representative of the state trade associations and has a relationship with these organizations, it may be construed as a federation of trade associations. Nevertheless, the Commission's conclusion that MBAA is a loose federation of trade associations does not answer the question of whether MBAA and TMBA are affiliated under 11 CFR 100.5.

#### **Affiliation of MBAA and TMBA**

TMBA is not affiliated with MBAA under Commission regulations. Although the state associations as a group have a seat on the MBAA Board of Directors, this seat constitutes only one of 20 directors. Also, state association bylaws do not provide for other official links between the national board and the state association boards, such as state association board seats held by national board members. MBAA's Boards of Governors, which are the subordinate governing bodies, do not include official representation of the state associations. Moreover, there is a lack of overlap of directors, governors, officers and employees between MBAA and TMBA. Significantly, the membership overlap is also small between the national and state organizations. See, for comparison, AO 1995-12.

<sup>1</sup> According to the requesters, groups of other MBAA members (for example businesses) have similar types of contacts and interactions with MBAA, and cooperation between the state associations and MBAA is voluntary and may, at times, not occur because of disagreements.

The conclusion that the national and state associations are not affiliated is further supported by:

- The lack of a more traditional federated structure (11 CFR 110.3(a)(3)(ii)(B), (C), (D) and (E));
- The lack of dues consolidation<sup>2</sup> (11 CFR 110.3(a)(3)(ii)(G), (H));
- The fact that neither MBAA nor MBAA PAC were involved in the formation of the state associations or any state association PACs; and
- The lack of personnel overlap or control between MBAA PAC and the state associations' PACs, and the PACs' lack of shared discussion about their activities on a federal or nonfederal level. (11 CFR 100.5(g)(4)(ii) and 110.3(a)(3)(ii)(I) and (J)).

Based on all of these factors, considered in the context of the overall relationship between MBAA and TMBA (and the relationship between their PACs), TMBA is not an affiliate of MBAA under Commission regulations, and MBAA PAC and TMBA PAC are not affiliated. As a result, the two PACs do not share contribution limits. 2 U.S.C. §441a. Additionally, TMBA's corporate members may not give prior approval to MBAA to solicit their restricted class, and MBAA PAC may not solicit the restricted class of TMBA's corporate members, unless those corporate members are also members of MBAA in their own right and have given prior approval. 11 CFR 114.(c) and (d). Similarly, the restricted class of MBAA's corpo-

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<sup>2</sup> According to the advisory opinion request, MBAA has a program that involves some arrangement for state associations to receive funds from MBAA disbursements, but these amounts are an insignificant portion of the budgets of the associations involved.

### **PACronyms, Other PAC Publications Available**

The Commission annually publishes *PACronyms*, an alphabetical listing of acronyms, abbreviations and common names of political action committees (PACs).

For each PAC listed, the index provides the full name of the PAC, its city, state, FEC identification number and, if not identifiable from the full name, its connected, sponsoring or affiliated organization.

The index is helpful in identifying PACs that are not readily identified in their reports and statements on file with the FEC.

To order a free copy of *PACronyms*, call the FEC's Disclosure Division at 800/424-9530 (press 3) or 202/694-1120. *PACronyms* also is available on diskette for \$1 and can be accessed free at [www.fec.gov/pages/pacronym.htm](http://www.fec.gov/pages/pacronym.htm).

Other PAC indexes, described below, may be ordered from the Disclosure Division. Prepayment is required.

- An alphabetical list of all registered PACs showing each PAC's identification number, address, treasurer and connected organization (\$13.25).
- A list of registered PACs arranged by state providing the same information as above (\$13.25).
- An alphabetical list of organizations sponsoring PACs showing the PAC's name and identification number (\$7.50).

The Disclosure Division can also conduct database research to locate federal political committees when only part of the committee name is known. Call the telephone numbers above for assistance or visit the Public Records Office in Washington at 999 E St., NW.

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rate members may not be solicited for contributions to TMBA PAC, unless they are members of TMBA in their own right and have given TMBA prior approval.

Date Issued: October 10, 2002;  
Length: 16 pages. ♦

—Amy Kort

## Advisory Opinion Requests

### [AOR 2002-13](#)

Financing 2002 election recounts under Bipartisan Campaign Reform Act of 2002 and its implementing regulations (Democratic Senatorial Campaign Committee, Democratic Congressional Committee, National Republican Senatorial Campaign Committee and National Republican Congressional Committee, October 31, 2002)

The committees withdrew this request on November 13, 2002.

### [AOR 2002-14](#)

Permissibility of national party committee commercial revenue under the Bipartisan Campaign Reform Act of 2002 (Libertarian National Committee, Inc., October 25, 2002) ♦

## Federal Register

Federal Register notices are available from the FEC's Public Records Office, on the FEC web site at <http://www.fec.gov/register.htm> and from the FEC faxline, 202/501-3413.

### [Notice 2002-22](#)

Final Rules on Contribution Limitations and Prohibitions (67 FR 69928, November 19, 2002).

## Outreach

### FEC Roundtables

On January 8, 2003, the Commission will host a roundtable session on the FEC's new regulations governing contribution limits and prohibitions. This roundtable is limited to 35 participants, and will be conducted at the FEC's headquarters in Washington, DC. The roundtable will begin at 9:30 a.m. and last until 11:00. Please arrive no later than 9:15, in order to allow for security screening.

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. Prepayment is required. The registration form is available at the FEC's web site at <http://www.fec.gov/pages/infosvc.htm> and from Faxline, the FEC's automated fax system (202/501-3413, request document 590). For more information, call 800/424-9530 (press 1, then 3) or 202/694-1100. ♦

### FEC Conferences in 2003

The Commission will hold a conference March 12-13, 2003, for candidates and party committees, and a conference April 29-30, 2003, for corporations and their political action committees (PACs). Both conferences will be in Washington, DC. These conferences will consist of a series of interactive workshops presented by Commissioners and FEC staff, who will explain how the requirements of the federal campaign finance law apply to federal candidates and officeholders, House and Senate campaigns and political party committees, at the March conference, and to corporations and their PACs at the April conference. Many workshops will specifically focus on new requirements under the recently-enacted Bipartisan Campaign Reform Act of 2002 (BCRA).

Details about these conferences, including registration information, will be available in the January issue of the *Record*. For more information about FEC conferences, please visit the FEC web site at <http://www.fec.gov/pages/infosvc.htm#Conferences>. ♦

## Roundtable Schedule

Date	Subject	Intended Audience
January 8 9:30 - 11 a.m.	<b>Contribution Limits and Prohibitions</b> <ul style="list-style-type: none"> <li>• Increased limits for individuals and political committees</li> <li>• Reattributions and redesignations</li> <li>• Recordkeeping requirements</li> <li>• Prohibitions on contributions by minors</li> <li>• Prohibitions on contributions and expenditures by foreign nationals</li> </ul>	<ul style="list-style-type: none"> <li>• Individuals</li> <li>• Treasurers</li> <li>• Political committees</li> <li>• Attorneys and consultants to above</li> </ul>

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