

# Record

January 2007

Federal Election Commission

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## Commission

### Message from the Chairman

I look forward to an exciting year at the FEC. My hope is that we will have as much success this year as we had in 2006.

It is hard to deny that last year was among the most successful in the agency's history. By almost any measure, the FEC achieved more than it ever has.

In enforcement, the agency closed cases with higher penalties than ever before (including the largest penalty in FEC history, \$3.8 million against Freddie Mac) and we did it faster (over 30% faster) than four years ago. In the policy arena, the agency was similarly busy, handling six major rulemakings and over 30 advisory opinions, including some of the most difficult issues left over from the *Shays* litigation and BCRA.

The Commission processed over 80,000 reports last year that detailed over \$2.4 billion in receipts and \$2.7 billion in disbursements.

The Audit Division worked its way through the most difficult issues in the presidential audits and is now in the process of revising the way Title 2 audits are conducted in order to reduce unnecessary delay.

The FEC began 2006 with the very difficult decision to cancel its regional conferences to help balance the

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## Compliance

### 527 Organizations Pay Civil Penalties

Three 527 organizations active in the 2004 Presidential election have entered into conciliation agreements and paid civil penalties totaling \$630,000 to settle violations of the Federal Election Campaign Act (the Act). The Swift Boat Veterans and POWs for Truth, the League of Conservation Voters 527 and League of Conservation Voters 527 II, and MoveOn.org Voter Fund each paid civil penalties and agreed to cease violating the Act, to file reports disclosing their 2004 election cycle activity and to register with the Commission as political committees if they engage in similar conduct.

The Act and Commission regulations require a group whose major purpose is to influence federal elections to file a Statement of Organization with the Commission within ten days of receiving contributions or making expenditures to influence federal elections that exceed \$1,000 per calendar year. All political committees must file regular reports with the Commission disclosing the committee's receipts and disbursements. Additionally, political committees may not accept any contributions from corporations and, in the case of a political action committee (PAC),

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## Commission

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budget for the year. Faced with this challenge, the Information Division adapted its outreach program to train almost as many people as it would in a typical year. At the same time, the Information Division has led the agency in developing innovative improvements in how we communicate with the public. These changes include moving from first-class mail to e-mail to deliver courtesy documents and targeting communications to certain types of committees that frequently commit inadvertent violations of the law.

While we had many measurable successes last year, the thing that I am most proud of, and the thing I know we will continue with, is a rigorous look at how we provide services to the public and a search for ways we can be more effective, given the

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limited resources we have. We must constantly ask ourselves if we are fulfilling our mission and be willing to change in order to improve.

One example, though it is one of many, stands out. In April, we learned that the campaign manager for a House candidate fled to South America with almost all of the campaign's cash. When the campaign manager's parents offered to pay back the missing money to the campaign, the committee contacted the agency to ask whether the parent's payment would be an illegal contribution because the repayment would have been well in excess of the contribution limits. The committee was in dire straits. They were without funds but did not want to accept an illegal contribution to keep their campaign going. While it traditionally would have taken months for us to provide an answer, the Office of General Counsel revised the advisory opinion process to ensure that we could provide a timely answer both in that case and other time sensitive matters in the future. As a result, the agency was able to give the committee an answer less than three weeks after the request. While in some ways this was a simple and minor change, it is a good example of how the FEC staff is willing to reconsider and alter our practices to improve the quality of the services we deliver.

Technological changes have been and will continue to be an important part of the agency's reform efforts. I am very excited about the new technologies the agency put in place last year, such as podcasting, Treasurers' Tips, and the advisory opinion searchable database that is near completion. I look forward to the Information Technology Division rolling out further improvements in the year ahead.

These are all examples of the increasingly dynamic and innovative way in which the agency is approaching its responsibilities.

While I am certain the year ahead will hold many unexpected chal-

lenges, I am also confident that with a lot of hard work and focus, we can look back next year at this time and again feel proud of how much we have achieved.

—*Robert D. Lenhard*  
FEC Chairman

## New Chairman and Vice Chairman Elected

On December 14, 2006, the Commission elected Robert D. Lenhard as its Chairman and David M. Mason as Vice Chairman for 2007.

Chairman Lenhard, a Democrat from Maryland, was appointed to the Commission on January 4, 2006, by President George W. Bush. Prior to his appointment, Chairman Lenhard served as an Associate General Counsel with the American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME). At AFSCME, he was responsible for legal issues related to federal and state election laws. His work included counseling the union on federal and state campaign finance issues, litigating enforcement actions before the FEC and state agencies, and providing training to field staff on federal and state election law issues.

Prior to his work at AFSCME, Chairman Lenhard was an associate at the law firm of Kirschner, Weinberg & Dempsey where he represented AFSCME and other labor unions. He has also worked for the United Mine Workers of America (UMWA), the Amalgamated Clothing and Textile Workers Union (ACTWU), and the Los Angeles law firm of Grace, Neumeyer & Otto.

Chairman Lenhard earned his bachelor's degree with honors from Johns Hopkins University in 1981. He graduated from the University of California, Los Angeles School of Law in 1984. He is currently an active member of the District of Columbia Bar.

Vice Chairman Mason, a Republican, was appointed to the Commission by President William Clinton

on March 4, 1998, and confirmed by the U.S. Senate on July 30, 1998. He was nominated for a second term by President George W. Bush on December 19, 2005.

Prior to joining the Commission, Vice Chairman Mason was a Senior Fellow in Congressional Studies at the Heritage Foundation. He joined the Heritage Foundation in 1990 and served at various times as Director of Executive Branch Liaison, Director of the Foundation's U.S. Congress Assessment Project, and Vice President, Government Relations.

Vice Chairman Mason also served as Deputy Assistant Secretary of Defense, where he managed the Pentagon's relations with the U.S. House of Representatives. One of his major accomplishments was guiding the base closing legislation to a successful conclusion.

Vice Chairman Mason served on Capitol Hill as a Legislative Assistant to Senator John Warner, Legislative Director to Representative Tom Bliley, and Staff Director to then-House Republican Whip Trent Lott. He was active in many Congressional, Senatorial, Gubernatorial and Presidential campaigns, and was himself the Republican nominee for the Virginia House of Delegates in the 48<sup>th</sup> District in 1982.

Vice Chairman Mason attended Lynchberg College in Virginia and graduated *cum laude* from Claremont McKenna College in California.

—Meredith Metzler

## Compliance

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may accept no more than \$5,000 per calendar year from an individual or another PAC.

The following three summaries describe the specific violations and penalties paid by each of the groups.

### MURs 5511 and 5525: Swift Boat Veterans and POWs for Truth

The Commission entered into a conciliation agreement with Swift Boat Veterans and POWs for Truth (Swift Boat Vets) for failing to register with the Commission as a political committee, failing to report its contributions and expenditures and knowingly accepting excessive and prohibited corporate contributions. Swift Boat Vets agreed to pay a civil penalty of \$299,500.

*Failure to file and report.* Swift Boat Vets raised more than \$25 million in the 2004 election cycle. The group's fundraising solicitations clearly stated that funds would be used to target a particular candidate for defeat in the upcoming federal elections. The funds received for this purpose were contributions that triggered the \$1,000 political committee registration threshold.

Swift Boat Vets also spent \$22.6 million during the 2004 cycle on television advertisements and direct mail pieces targeted to presidential battleground states that criticized Senator John Kerry's military record, questioned his ability to be Commander-in-Chief, and expressly advocated his defeat in the 2004 general election. While the communications did not include the words "vote for" or "vote against", they did constitute express advocacy under the "unmistakable, unambiguous, and suggestive of only one meaning" standard set forth in the Commission's regulations at 11 CFR 100.22(b). As a result, payments for the communications constituted expenditures that formed a separate basis for triggering the \$1,000 political committee registration threshold.

*Corporate and Excessive Contributions.* Swift Boat Vets accepted more than \$715,000 in receipts from corporations and \$12.5 million from individuals who contributed more than the \$5,000 per calendar year PAC contribution limit.

### MUR 5753: League of Conservation Voters 527 I and II

The Commission entered into a conciliation agreement with the League of Conservation Voters 527 and the League of Conservation Voters II (LCV 527s) for failure to register as a political committee and report contributions and expenditures and for accepting excessive contributions. The LCV 527s are distinct entities related to the League of Conservation Voters, Inc., a 501(c)(4) organization, and the League of Conservation Voters Action Fund, a federally registered PAC. The LCV 527s agreed to pay a civil penalty of \$180,000.

*Failure to File.* The LCV 527s raised \$6.7 million in the 2004 election cycle. The group's fundraising solicitations clearly stated that funds would be used to target particular candidates for election or defeat in the upcoming federal elections, thus the funds received counted as contributions towards the \$1,000 political committee registration threshold.

The LCV 527s spent more than \$850,000 to fund the Environmental Victory Project, a door-to-door canvass of swing voters in key Presidential election battleground states. Paid workers used scripts and talking points that expressly advocated the election of John Kerry and the defeat of George W. Bush and distributed fliers and door hangers, produced with funds provided by LCV Inc. and its PAC, which also contained express advocacy. One of these scripts read, "we think it's dangerous to have George Bush in office another four years. So we encourage you to consider which candidate has the right priorities for health and safety of our families and vote for John Kerry in November." [Emphasis in original.]

In addition, the LCV 527s made more than \$1,000 in expenditures for a mailer expressly advocating the defeat of Senate candidate Pete Coors. The mailer depicted a beer can

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## Compliance

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labeled “Pete Coors for Senate” along with the candidate’s picture, accompanied by text intended to resemble the Surgeon General’s warning label stating: “Warning: This candidate cares more about his bottom line than our kids’ safety. *Elect at your own risk.*” [Emphasis in original.]

### Federal Register

*Federal Register* notices are available from the FEC’s Public Records Office, on the web site at [www.fec.gov/law/law\\_rulemakings.shtml](http://www.fec.gov/law/law_rulemakings.shtml) and from the FEC Faxline, 202/501-3413.

#### Notice 2006-18

Filing Dates for the Texas Special Election in the 23<sup>rd</sup> Congressional District (71 FR 70766, December 6, 2006)

#### Notice 2006-19

Proposed Policy Statement Establishing a Pilot Program for Probable Cause Hearings (71 FR 71088, December 8, 2006)

#### Notice 2006-20

Proposed Policy Regarding Self-Reporting of Campaign Finance Violations; (*Sua Sponte* Submissions) (71 FR 71090, December 8, 2006)

#### Notice 2006-21

Proposed Statement of Policy Regarding Treasurer’s Best Efforts To Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act (71 FR 71084, December 8, 2006)

#### Notice 2006-22

Best Efforts in Administrative Fines Challenges; Notice of Proposed Rulemaking (71 FR 71093, December 8, 2006)

By funding activities expressly advocating the defeat of George W. Bush or the election of John Kerry, the LCV 527s made expenditures under the Act that formed a separate basis for triggering the \$1,000 political committee registration threshold.

*Excessive Contributions.* Almost \$6 million of the \$6.7 million in total contributions received by the LCV 527s comprised contributions from individuals in excess of the Act’s limits.

### MUR 5754: MoveOn.org Voter Fund

The Commission entered into a conciliation agreement with MoveOn.org Voter Fund (MOVf) regarding findings that it failed to register with the Commission as a political committee, failed to disclose its contributions and expenditures in reports filed with the Commission, and accepted excessive contributions. MOVf agreed to pay a civil penalty of \$150,000 and agreed that the organization, its officers, principals, agents, representatives, successors and assigns would cease and desist violating the Act. In addition, MOVf will file disclosure reports with the Commission for the relevant periods containing all information that must be disclosed by federal political committees.

*Failure to File.* MOVf exceeded the \$1,000 committee registration threshold by receiving contributions through solicitations that clearly indicated the funds received would be targeted to the election or defeat of a clearly identified candidate. MOVf reported receipts of \$12.6 million to the IRS, although that number did not represent its total receipts, as MOVf made \$21.3 in disbursements and had \$150,000 cash on hand at the end of the 2004 election cycle.

MOVf also spent \$14.6 million on television advertisements in battleground states shortly before the 2004 Presidential election that opposed President Bush and criticized his leadership. The remainder of MOVf’s spending went towards

fundraising, administrative expenses and \$724,000 in grants to other political organizations.

The Commission made its findings without concluding that any of the MOVf communications expressly advocated the election or defeat of a clearly identified federal candidate.

*Excessive Contributions.* MOVf received \$9.8 million in excessive contributions, with three contributions of \$1 million or more.

—Meredith Metzler

### MUR 5634: Express Advocacy Leads to Prohibited Corporate Expenditure

The Commission settled an enforcement matter with Sierra Club, Inc., regarding a pamphlet the corporation financed that expressly advocated the election and defeat of federal candidates and thus qualified as a prohibited corporate independent expenditure. The Sierra Club agreed to pay a civil penalty of \$28,000.

#### Background

Under the Act, a corporation may not use its treasury funds to make a contribution or expenditure in connection with a federal election. 2 U.S.C. 441b(a). Commission regulations specifically prohibit a corporation from making an expenditure for a communication that expressly advocates the election or defeat of a clearly identified federal candidate and is distributed beyond the corporation’s restricted class. 11 CFR 114.2(b)(2)(ii).

*Independent Expenditure.* Prior to the 2004 general election, the Sierra Club, a 501(c)(4) corporation, distributed a pamphlet in Florida comparing the environmental records of President Bush and Senator John Kerry, as well as U.S. Senate candidates Mel Martinez and Betty Castor, through checkmarks and written narratives. Kerry received checkmarks in every box on all three environmental issues addressed in the pamphlet; Bush received only one checkmark in a

single category, and in that category, Kerry received two checkmarks. In the Senate race, Castor received checkmarks in all three categories, while Martinez received none. The accompanying narratives made clear that a checkmark represented a favorable environmental record in the Sierra Club's view. Wording in large capital letters on the front of the pamphlet urged the reader to "Let Your Conscience Be Your Guide," accompanied by various nature scenes. The heading of the interior of the pamphlet, again in large capital letters, directed the reader, "And Let Your Vote Be Your Voice."

The settlement follows the Commission's determinations, after a probable cause finding, that the pamphlet contained express advocacy, not only because it "in effect" explicitly directed readers to vote for Kerry and Castor, but because the ban on corporate independent expenditures applies not only to communications containing so-called "magic words," such as "vote for" or "vote against," but also to a broader set of communications, that are "unmistakable, unambiguous, and suggestive of only one meaning," and can "only be interpreted by a reasonable person as containing advocacy of the defeat of one or more candidates." 11 CFR 100.22(b).

This settlement with the Sierra Club represents the first major Commission case to consider the reach of the express advocacy test in light of the landmark Supreme Court case, *McConnell v. FEC*. Prior to the Supreme Court's decision in that case, which upheld most of the Bipartisan Campaign Reform Act of 2002, two federal appeals courts had held that, as a constitutional matter, only communications containing the so-called "magic words" could be subject to federal campaign finance law. In *McConnell*, however, the Supreme Court made clear that "express advocacy" was not a constitutional boundary "that forever fixed the permissible scope of provisions regulating campaign-related speech."

Because the Sierra Club used corporate treasury funds to pay for the pamphlet containing express advocacy, it violated federal law that prohibits corporations from using treasury funds to make independent expenditures.

—Meredith Metzler

### Comments Sought on Proposed Probable Cause Hearings

The Commission requests public comment on a proposed pilot program that would permit respondents in enforcement matters to request a Commission hearing before it considers whether there is probable cause to believe that a violation of the Federal Election Campaign Act or the Commission regulations has occurred. The Commission designed the pilot program to address concerns within the regulated community regarding the transparency of agency actions and the limited opportunities to challenge accusations of wrongdoing. Comments on the proposal must be submitted on or before January 5, 2007.

Under the proposed pilot program, any respondent who reaches the "probable cause determination" stage of the enforcement process may submit a request for a hearing with his or her brief to the Commission. The request would state why the hearing was being requested and what issues the respondent expects to address. The request for a hearing is optional and the respondent's decision as to whether or not to request a hearing will not influence the Commission's decision as to a probable cause finding. The Commission will grant a request for an oral hearing if at least two Commissioners conclude that a hearing would help resolve significant legal issues, or significant questions about the application of the law to the facts. At the hearing, the respondent, or the respondent's counsel, may directly present his or her arguments to the Commission, and

the Commission may ask questions of the respondent.

Once approved, the pilot program would last for eight months, but could be extended by a Commission vote. The program can be modified or terminated at any time during the eight month period by the approval of a majority of the Commission.

The Commission asks that members of the regulated community and other interested persons submit comments on this proposed program to Mark D. Shonkwiler, Assistant General Counsel, Enforcement Division, either by e-mail to [probablecausehearings@fec.gov](mailto:probablecausehearings@fec.gov), by fax to 202/219-3923 with a follow-up paper copy, or in written form to Federal Election Commission, 999 E Street, NW, Washington, DC 20463. The Commission strongly encourages commenters to use e-mail to ensure timely receipt and consideration. All e-mails must include the full name, e-mail address, and postal address of the commenter in order to be considered and all e-mail attachments must be formatted either in Adobe Acrobat (.pdf) or Microsoft Word (.doc). The proposed policy regarding the probable cause hearings is available on the Commission's web site at [http://www.fec.gov/law/policy/probable-cause/notice\\_2006-19.pdf](http://www.fec.gov/law/policy/probable-cause/notice_2006-19.pdf).

—Meredith Metzler

### Comments Sought on Sua Sponte Proposal

The Commission requests public comment on a proposed enforcement policy designed to encourage committees and other persons to self-report possible violations of the Federal Election Campaign Act (the Act). These self-reported violations—also known as "sua sponte" submissions—are generally resolved more quickly and result in lower civil penalties than matters arising by other means, such as complaints or the Commission's own review of reports.

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## Compliance

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The Commission's proposed policy seeks to increase the number of *sua sponte* submissions in order to expedite the enforcement process and decrease the number of litigation and enforcement matters that the Commission must address. The proposal details the various factors the Commission may consider in deciding how to proceed regarding *sua sponte* submissions. The factors include the nature of the violation, the extent of corrective action and new self-governance measures taken by the respondent, and the level of cooperation and disclosure with the Commission once the violation has been reported.

Based on its consideration of these factors, the Commission may choose to reduce the amount of the civil money penalty it would otherwise have sought in the enforcement process. The respondent would have to meet several criteria in order to receive such a reduction. The amount of reduction would be decided by the Commission and generally would not be available to respondents whose violations already were the subject of a criminal or other government investigation.

Additionally, a limited number of cases of self-reported violations may be subject to an expedited "Fast-Track Resolution," (FTR) which may be granted at the Commission's discretion. These FTR cases would allow respondents an opportunity to resolve certain matters short of the Commission finding that there is reason to believe a violation of the Act has occurred. Respondents eligible for the FTR process may negotiate a conciliation agreement before the Commission makes any formal findings in the matter.

The Commission asks that members of the regulated community and other interested persons submit comments either by e-mail or written letter. E-mail comments should be sent to [selfreportpolicy@fec.gov](mailto:selfreportpolicy@fec.gov) and must include the full name,

e-mail address and mailing address of the commenter. Written comments should be sent to the Federal Election Commission, 999 E Street, NW, Washington, DC 20463, ATTN: Mark Shonkwiler. Comments must be received by January 29, 2007. The proposed policy regarding the self-reporting of violations is available on the Commission's web site at [http://www.fec.gov/law/policy/suasponete/notice\\_2006-20.pdf](http://www.fec.gov/law/policy/suasponete/notice_2006-20.pdf).

—Myles Martin

## Regulations

### Proposed Rules and Policy Statement on Best Efforts

The Commission requests public comments on both a proposed policy statement and a notice of proposed rulemaking (NPRM) regarding the so-called "best efforts" defense. Under section 432(i) of the Federal Election Campaign Act (the Act), if a committee treasurer demonstrates that best efforts were made to obtain, maintain and submit the required information, the committee's report or records will be considered in compliance.

### Background

Historically, the Commission has interpreted the best efforts defense to apply only to treasurers' efforts to obtain, maintain and submit the required name, address, occupation and employer information for individual donors who contribute more than \$200 in a calendar year. The proposed policy and companion rulemaking would expand application of this defense to include other reporting and recordkeeping requirements.

The proposals respond to the U.S. District Court for the District of Massachusetts' decision in *Lovely v. FEC*. (See the [May 2004 Record](#), page 4.) That case involved a political committee's challenge to an administrative fine the Commission assessed for late filing. The committee argued that

it had made best efforts to file the report on time and that this constituted a valid and complete defense against the fine. The court concluded that the statutory language at 432(i) requires the Commission to entertain a best efforts defense in the administrative fines context, and that it was unclear from the record in the case whether the Commission had considered the committee's best efforts defense. The court remanded the case to the Commission for further proceedings.<sup>1</sup> On remand, the Commission determined that the committee had failed to show best efforts and left the administrative fine in place.

The Commission has determined that, despite the limited breadth of the *Lovely* decision, implementing the court's interpretation of best efforts more accurately reflects the language of the Act and the intent of Congress.

### Proposed Policy and NPRM

The Commission's proposed policy statement would apply the best efforts defense to obtaining, maintaining and submitting all required information, not just contributor identification. The policy covers respondents in FEC Matters Under Review (MURs) and Alternative Dispute Resolution cases. The proposed policy includes a list of possible reasons for a committee's failure to obtain, maintain or submit information or reports that the Commission may consider as indicating that the best efforts defense is met.

The NPRM proposes adding a best efforts defense for Administrative Fine cases that result from a committee's failure to file disclosure reports in a timely manner.

<sup>1</sup> *The Lovely case did not involve a challenge to the validity of the administrative fines program rules, and those rules have continued in full force and effect since the district court order. However, the court stated that the Commission could "refine by regulation what best efforts means in the context of submitting a report."* *Lovely*, 307 F. Supp. 2d at 300.



Currently, Commission regulations set forth three permissible grounds upon which to challenge a reason to believe (RTB) finding in an Administrative Fine case. Respondents are permitted to challenge administrative fines on the basis of “factual errors,” improper calculation of a penalty or “extraordinary circumstances” beyond the respondent’s control that lasted at least 48 hours and prevented the respondent from filing the report on time. See 11 CFR 111.35(b)(1).

The proposed rules would clarify that the “factual errors” defense applies only if the Commission relied upon those erroneous facts in its RTB finding. The rules would also replace the “extraordinary circumstances” defense with the best efforts defense. To show that it made best efforts to file in a timely manner, a respondent would need to demonstrate that (i) unforeseen circumstances beyond the respondent’s control caused the tardiness, and (ii) the respondent filed the report within 24 hours after those circumstances were resolved. The proposed regulations list examples of circumstances that will be considered “unforeseen” and beyond the control of the respondent, including a failure of Commission computers, Commission-provided software or the internet and severe weather or other disaster-related incidents. The proposed regulations also list examples of circumstances that will not be considered as qualifying for the best efforts defense.

The Commission requests comments on these and other proposed changes by January 8, 2007.

### Comments

Both the proposed policy and the NPRM were published in the Federal Register (See 71 FR 71084 and 71 FR 71093, respectively) and are available on the FEC web site at <http://www.fec.gov/law/policy.shtml> and [http://www.fec.gov/law/law\\_rulemakings.shtml](http://www.fec.gov/law/law_rulemakings.shtml) and from the FEC faxline, 202/501-3413. All comments should be addressed to Mr. J. Duane Pugh Jr., Acting Assistant General

Counsel, and must be submitted in either written or electronic form by January 8, 2007.

The Commission recommends that comments be submitted via e-mail to [bepolicy@fec.gov](mailto:bepolicy@fec.gov) or [afbestefforts@fec.gov](mailto:afbestefforts@fec.gov) or through the Federal eRegulations Portal at [www.regulations.gov](http://www.regulations.gov). Comments must include the full name and postal address of the commenter or they will not be considered. Faxed comments must be sent to 202/219-3923, with a printed copy follow-up to ensure legibility. Mailed comments should be sent to the Federal Election Commission, 999 E Street, NW, Washington, DC 20463. No oral comments can be accepted.

—Kathy Carothers

## Reports

### Reports Due in 2007

This article on filing requirements for 2007 is supplemented by the reporting tables on the following pages.

#### Notification of Filing Deadlines

In addition to publishing this article and its accompanying charts, the Commission notifies committees of filing deadlines on its web site, via its automated Faxline and through mailed reporting reminders called prior notices. Beginning on January 1, 2007, prior notices will be sent exclusively by electronic mail and will no longer be sent to committees using U.S. mail. See *December 2006 Record*, page 1. For that reason, it is important that every committee update its Statement of Organization (FEC Form 1) to disclose a current e-mail address.

#### Treasurer’s Responsibilities

The Commission provides reminders of upcoming filing dates as a courtesy to help committees comply with the filing deadlines set forth in the Act and Commission regulations. Committee treasurers must comply with all applicable filing deadlines established by law, and the lack of

prior notice does not constitute an excuse for failing to comply with any filing deadline.

Please note that filing deadlines are not extended in cases where the filing date falls on a weekend or federal holiday. Accordingly, reports filed by methods other than Registered, Certified, or Overnight Mail, or electronically, must be received by the Commission’s (or the Secretary of the Senate’s) close of business on the last business day before the deadline.

#### Filing Electronically

Under the Commission’s mandatory electronic filing regulations, individuals and organizations that receive contributions or make expenditures, including independent expenditures,<sup>1</sup> in excess of \$50,000 in a calendar year—or have reason to expect to do so—must file all reports and statements with the FEC electronically. Electronic filers who instead file on paper or submit an electronic report that does not pass the Commission’s validation program by the filing deadline will be considered nonfilers and may be subject to enforcement actions, including administrative fines. Reports filed electronically must be received and validated by 11:59 p.m. Eastern Time on the applicable filing deadline.

Senate committees and other committees that file with the Secretary of the Senate<sup>2</sup> are not subject to the mandatory electronic filing rules.

The Commission’s electronic filing software, FECFile 5, can be downloaded from the FEC’s web site at <http://www.fec.gov/electfil/electron.shtml>. Filers may also use commer-

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<sup>1</sup> The regulation covers individuals and organizations required to file reports of contributions and/or expenditures with the Commission, including any person making an independent expenditure. Disbursements for “electioneering communications” do not count toward the \$50,000 threshold for mandatory electronic filing. 11 CFR 104.18(a).

<sup>2</sup> See “Where to File” on page 9.

## Guide to 2007 Reporting

Type of Filer	Required Reports			
	2006 Year-End	Semi-Annual	Quarterly	Monthly
House and Senate Campaign Committees <sup>1</sup>	X		X	
Presidential Candidate Committees	X		X or <sup>2</sup>	X
National Party Committees	X			X
State, Local & District Party Committees	X	X	or <sup>3</sup>	X
Political Action Committees	X	X	or <sup>4</sup>	X

<sup>1</sup> This category includes committees of candidates retiring debts from a previous election or running for a future election.

<sup>2</sup> Presidential committees may file on either a quarterly or a monthly basis. Those wishing to change their filing frequency should notify the Commission in writing. Electronic filers must file this request electronically. All reports filed after such notification must follow the new filing schedule.

<sup>3</sup> State, district and local party committees that engage in reportable “federal election activity” must file on a monthly basis. 11 CFR 300.36(c)(1). Other state, district and local party committees may file on a semi-annual basis.

<sup>4</sup> Political action committees (PACs) may file on either a semi-annual or a monthly basis. Committees wishing to change their filing frequency must notify the Commission in writing when filing a report under the committee’s current schedule. Electronic filers must file this request electronically. A committee may change its filing frequency only once per calendar year and all reports filed after a change in filing frequency must follow the new filing schedule. 11 CFR 104.5(c).

## Reports

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cial or privately-developed software as long as the software meets the Commission’s format specifications, which are available on the Commission’s web site.

### Timely Filing for Paper Filers

#### *Registered and Certified Mail.*

Reports sent by registered or certified mail must be postmarked on or before the mailing deadline to be considered timely filed. A committee sending its reports by certified mail should keep its mailing receipt with the U.S. Postal Service (USPS) postmark as proof of filing because the USPS

does not keep complete records of items sent by certified mail. A committee sending its reports by registered mail should keep its proof of mailing. Please note that a Certificate of Mailing from the USPS is not sufficient to prove that a report is timely filed using Registered, Certified, or Overnight Mail.

*Overnight Mail.* Reports filed via overnight mail<sup>3</sup> will be considered

<sup>3</sup> “Overnight mail” includes Priority or Express Mail having a delivery confirmation, or an overnight service with which the report is scheduled for next business day delivery and is recorded in the service’s on-line tracking system.

timely filed if the report is received by the delivery service on or before the mailing deadline. A committee sending its reports by Express or Priority Mail, or by an overnight delivery service, should keep its proof of mailing or other means of transmittal of its reports.

*Other Means of Filing.* Reports sent by other means—including first class mail and courier—must be received by the FEC (or the Secretary of the Senate for Senate committees and political committees supporting only Senate candidates) before the Commission’s (or the Secretary of the Senate’s) close of business on the filing deadline. 2 U.S.C. §434(a)(5) and 11 CFR 104.5(e).

Paper forms are available at the FEC’s web site (<http://www.fec.gov/info/forms.shtml>) and from FEC Faxline, the agency’s automated fax system (202/501-3413). The 2007 Reporting Schedule is also available on the FEC’s web site ([http://www.fec.gov/info/report\\_dates.shtml](http://www.fec.gov/info/report_dates.shtml)), and from Faxline. For more information on reporting, call the FEC at 800/424-9530 or 202/694-1100.

### Year-End Reports Covering 2006 Activity

All committees must file a 2006 year-end report due January 31, 2007. The coverage and reporting dates are found on page 10.

### Reports Covering 2007 Activity

To find out which reports your committee must file in 2007, check the Guide to 2007 Reporting on this page. Then check the tables on page 10 for reporting dates. Please note that committees active in special elections in 2007 may have to file additional special election reports, as explained on page 10.

### Authorized Committees of Candidates

#### *House and Senate Candidates.*

All campaigns that have a reporting obligation must file quarterly reports in 2007. Generally, an individual becomes a candidate for federal of-



office, thus triggering registration and reporting obligations, when his or her campaign exceeds \$5,000 in either contributions received or expenditures made. If the campaign has not exceeded the \$5,000 threshold, it is not required to file reports. See also 11 CFR 100.3(a)(2) and (3).

Committees that wish to terminate must continue filing reports until notified in writing that their termination report has been accepted by the Commission.

Principal campaign committees of candidates running in 2008 must file FEC Form 3Z-1 as part of their 2007 July Quarterly and Year-End reports. 11 CFR 104.19. The information provided on Form 3Z-1 allows opposing candidates to compute their "gross receipts advantage," which is used to determine whether a candidate is entitled to increased contribution and coordinated party expenditure limits under the "Millionaires' Amendment." 2 U.S.C. §§441a(i) and 441a-1. Form 3Z-1 is included in the FEC Form 3 package, and need only be filed with the July 15 quarterly report and year-end report for the year preceding the general election for the office the candidate seeks.

*Presidential Candidates.* All committees authorized by Presidential candidates must file on either a monthly or a quarterly schedule in 2007. A Presidential committee wishing to change its filing schedule should notify the Commission in writing. 11 CFR 104.5(b)(2). Electronic filers must file this request electronically. After filing a notice of change in filing frequency with the Commission all future reports must follow the new filing schedule.

### **State, District and Local Party Committees**

State, district and local party committees that engage in reportable "federal election activity" must file on a monthly schedule. 11 CFR 300.36(c)(1). Committees that do not engage in reportable "federal election activity" may file on a semiannual basis in 2007. A committee that filed

monthly in 2006 due to its federal election activity must notify the Commission in writing if it wishes to file semiannually in 2007. 11 CFR 104.5(b)(2). Electronic filers must file this request electronically. After filing a notice of change in filing frequency with the Commission all future reports must follow the new filing schedule.

### **National Party Committees**

National committees of political parties must file on a monthly schedule in all years and may no longer choose to change their filing schedule in non-election years. 2 U.S.C. §434(a)(4)(B).

### **Political Action Committees**

PACs (separate segregated funds and nonconnected committees) that filed on a quarterly basis during 2006 will file on a semiannual basis in 2007. Monthly filers continue on the monthly schedule. PACs may change their filing schedule, but must first notify the Commission in writing. Electronic filers must file this request electronically. A committee may change its filing frequency only once a year and after giving notice of change in filing frequency to the Commission, all future reports must follow the new filing frequency. 11 CFR 104.5(c).

### **Where to File**

Committee treasurers must file FEC reports with the appropriate federal office. State filing requirements also apply to reports filed by the principal campaign committees of candidates seeking office in Guam and Puerto Rico and to reports filed by PACs and party committees who support these candidates. 2 U.S.C. §439(a)(2)(B).

*House Candidate Committees.* Principal campaign committees of House candidates file with the FEC. 11 CFR 105.1.

*Senate Candidate Committees.* Principal campaign committees of Senate candidates file with the Secretary of the Senate. 11 CFR 105.2.

*Presidential Committees.* Principal campaign committees of Presidential candidates file with the FEC. 11 CFR 105.3.

*Candidate Campaigns with More Than One Authorized Committee.* If a campaign includes more than one authorized committee, the principal campaign committee files, with its own report, the reports prepared by the other authorized committees as well as a consolidated report (FEC Form 3Z). 11 CFR 104.3(f).

*PACs and Party Committees.* Generally, PACs and party committees file with the FEC. 11 CFR 105.4. However, committees supporting only Senate candidates, and the national senatorial campaign committees, file with the Secretary of the Senate. 11 CFR 105.2.

### **Waiver of State Filing**

Under the Commission's State Filing Waiver program, qualified states are relieved of the requirement to make paper copies of FEC reports available to the public. As a result, political committees no longer have to file copies of their federal reports at the state or territory level except in Guam and Puerto Rico. Committees in Guam and Puerto Rico must continue to file copies of their reports with the appropriate election office in the territory. A list of state and territory filing offices is available from the Commission.

### **Late Filing**

The Federal Election Campaign Act does not permit the Commission to grant extensions of filing deadlines under any circumstances. Filing late reports may result in enforcement action by the Commission.

The Commission pursues compliance actions against late-filers and nonfilers under the Administrative Fine program and on a case-by-case basis. For more information on the Administrative Fine program, visit the FEC web site at <http://www.fec.gov/af/af.shtml>.

(continued on page 10)

## 2007 Year-End Report

Note: All committees file this report.

Report	Period Covered	Filing Deadline <sup>1</sup>
Year-End	Closing date of last report through 12/31/06	January 31, 2007

## 2007 Monthly Reports

Note: All national party committees and any state, district or local party committee that engages in “federal election activity” (FEA) must file monthly reports.

Report	Period Covered	Filing Deadline <sup>1</sup>
February	January 1-31	February 20
March	February 1-28	March 20
April	March 1-31	April 20
May	April 1-30	May 20 *
June	May 1-31	June 20
July	June 1-30	July 20
August	July 1-31	August 20
September	August 1-31	September 20
October	September 1-30	October 20 *
November	October 1-31	November 20
December	November 1-30	December 20
Year-End <sup>2</sup>	December 1-31	January 31, 2008

## 2007 Quarterly Reports

Note: All principal campaign committees must now file on a quarterly schedule in non-election years as well as in election years. Presidential committees may choose to file quarterly, rather than monthly, in non-election years.

Report	Close of Books	Filing Deadline <sup>1</sup>
April Quarterly	March 31	April 15 *
July Quarterly	June 30	July 15 *
October Quarterly	September 30	October 15
Year-End <sup>2</sup>	December 31	January 31, 2008

## 2007 Semiannual Reports

Note: PACs that file quarterly in an election year will file on a semiannual schedule in non-election years.

Report	Close of Books	Filing Deadline <sup>1</sup>
Mid-Year	June 30	July 31
Year-End <sup>2</sup>	December 31	January 31, 2008

\* Note that this filing date falls on a weekend. Filing dates are not extended for weekends or federal holidays. Accordingly, reports filed by methods other than Registered, Certified, or Overnight Mail, or electronically, must be received by the Commission's (or the Secretary of the Senate's) close of business on the last business day before the deadline.

<sup>1</sup> Reports sent by registered or certified mail, by Express or Priority Mail with delivery confirmation or by overnight delivery service with an online tracking system must be postmarked, or deposited with the mailing service, by the filing deadline. Reports sent by other means—including first class mail—must be received before the Commission's (or the Secretary of the Senate's) close of business on the filing deadline. 2 U.S.C. §434(a)(5) and 11 CFR 104.5(e).

<sup>2</sup> Authorized committees of candidates in the 2008 general election file Form 3Z-1.

## Reports

(continued from page 9)

### Independent Expenditures

Political committees and other persons who make independent expenditures at any time during the calendar year—up to and including the 20th day before an election—are required to disclose this activity within 48 hours each time that the expenditures aggregate \$10,000 or more. This reporting requirement is in addition to the requirement to file 24-hour reports of independent expenditures each time disbursements for independent expenditures aggregate or exceed \$1,000 during the last 20 days—up to 24 hours—before an election. 2 U.S.C. §§434(b), (d) and (g). Political committees must report independent expenditures that do not trigger the 48- or 24-hour reporting thresholds on their regularly-scheduled disclosure reports. Other persons report these expenditures once the expenditures exceed \$250 in connection with an election. 11 CFR 104.4(b)(1) and 109.10(b).

All individuals, persons and committees, including Senate committees, must file their 24- and 48-hour reports of independent expenditures with the Commission. 11 CFR 104.4, 109.10, 105.1 and 105.2.

### Committees Active in Special Elections

Committees authorized by candidates running in any 2007 special election must file pre- and post-election reports in addition to regularly scheduled reports. 11 CFR 104.5(h). They are also required to comply with the 48-hour notice requirement for contributions of \$1,000 or more (including loans) received shortly before an election. See 11 CFR 104.5(f).

PACs and party committees supporting candidates running in special elections may also have to file pre- and post-election reports—unless they file on a monthly basis. 11 CFR 104.5(c)(3) and 104.5(h). All PACs are subject to 48- and 24-hour report-

ing of independent expenditures made before an election. See 11 CFR 104.4(b) and (c) and 104.5(g).

Additionally, individuals and other persons who make “electioneering communications” that aggregate in excess of \$10,000 must file disclosure statements with the Commission within 24 hours of distribution of the communications to the public. See 11 CFR 100.29. When timing permits, the *Record* will alert committees to special election reporting dates.

—Elizabeth Kurland

## Outreach

### Reporting and FECFile Help

On January 17, 2007, the Commission will host reporting and electronic filing workshops. See the chart on page 12 for details. The reporting workshops will address common filing problems and respond to questions committees may have as they prepare to file their year-end report. The workshops will be followed by a half-hour “meet and greet” at which each attendee will have an opportunity to meet the campaign finance analyst who reviews his or her committee’s reports. The electronic filing sessions will provide hands-on instruction for committees that use the Commission’s FECFile software and will address questions filers may have concerning electronic filing.

Attendance is limited to 30 people per session for reporting workshops, and 16 people per session for the electronic filing workshops. Registration is accepted on a first-come, first-served basis. The registration is available on the FEC web site at <http://www.fec.gov/info/outreach.shtml#roundtables> and from Faxline, the FEC’s automated fax system (202/501-3414, request document 590). For more information, call the Information Division at 800/424-9530, or locally at 202/694-1100.

—Kathy Carothers

## Advisory Opinions

### Advisory Opinion Requests

#### AOR 2006-34

Corporate plan to offer new wireless phone service customers derived from political committee’s mailing list the option of contributing billing rebates to the political committee (Working Assets, Inc., November 15, 2006)

#### AOR 2006-35

Federal officeholder’s use of campaign funds for legal fees and press expenses resulting from inquiries into allegations regarding improper conduct involving Members of Congress and House Pages (Kolbe for Congress, November 28, 2006)

#### AOR 2006-36

Whether the Green Senatorial Campaign Committee qualifies as a national party committee (November 20, 2006)

#### AOR 2006-37

Whether a candidate may be repaid when personal funds from the candidate were reported by the committee as contributions, not loans to the committee (December 1, 2006)

## Information

### Telephone Excise Tax Refunds from IRS

Committees, parties, and other tax-exempt political organizations are eligible to request a refund of federal excise tax paid on long-distance or bundled service from March 2003 through July 2006. The telephone excise tax refund is a one-time payment available on the 2006 income tax return, designed to refund the previously collected long-distance taxes.

Refunds can be requested on 2006 federal income tax returns. An orga-

nization that files Form 1120-POL (<http://www.irs.gov/pub/irs-pdf/f1120pol.pdf>) may request its refund on that form by completing Line 23d and attaching Form 8913 (<http://www.irs.gov/pub/irs-pdf/f8913.pdf>) *Credit for Federal Telephone Excise Tax Paid*. Other organizations must use Form 990-T (<http://www.irs.gov/pub/irs-pdf/f990t.pdf>), the unrelated business income tax return for tax-exempt organizations, attaching Form 8913.

Visit <http://www.irs.gov> for details about the telephone tax refund and information about how to calculate the amount of the refund.

## Index

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- Proposed Rules and Policy Statement on Best Efforts, 1:6

### Reports

- Reports Due in 2007, 1:7



## Roundtable Workshops:

Date & Time	Subject	Intended Audience
January 17, 2007 9:30–11:00 a.m. Meet & Greet 11–11:30 a.m.	<b>Reporting for PACs and Party Committees</b> , plus Talk to Your Analyst One-On-One	Individuals responsible for filing FEC reports for PACs and Party Committees. <b>Sold Out!</b>
January 17, 2007 1:00–2:30 p.m.	Hands-on Help with <b>FECFile and E-filing for PACs and Party Committees</b> .	PACs and Party Committees that use FECFile and/or have questions about electronic filing. <b>Sold Out!</b>
January 17, 2007 1:30–3 p.m. Meet & Greet 3–3:30 p.m.	<b>Reporting for Candidates and Their Committees</b> , plus Talk to Your Analyst One-On-One	Individuals responsible for filing FEC reports for Candidate Committees. Up to 30 may attend.
January 17, 2007 9:30–11:00 a.m.	Hands-on Help with <b>FECFile and E-filing for Candidates and their Committees</b>	Campaigns that use FECFile and/or have questions about electronic filing. Up to 16 may attend.

To register, contact the FEC at 800/424-9530 (press 6)  
or visit <http://www.fec.gov/info/outreach.shtml#roundtables>.

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