



Compliance: Message from the Reports Analysis Division (RAD) – Process Change Notification

The Reports Analysis Division (RAD) will begin sending Requests for Additional Information (RFAIs) via e-mail in October 2011. RFAIs are sent when an apparent violation or discrepancy is identified on a campaign finance report filed with the FEC and affords an opportunity to correct or clarify the public record. Please note that you will no longer receive paper RFAIs through the mail once this process begins.

To provide an e-mail address or update your current e-mail address, please file an amended Statement of Organization (FEC Form 1).

If you would prefer to continue to receive RFAIs on paper, please file a miscellaneous document (Form 99 for electronic filers), to indicate this preference.

Should you have any questions, please contact your Campaign Finance Analyst on our toll-free number (800) 424-9530 (at the prompt press 5 to reach the Reports Analysis Division) or our local number (202) 694-1130.

(Posted 9/1/2011; By: Debbie Chacona)

Resources:

- [FEC Forms and Instructions](#)
- [Form 99 for Electronic Filers](#)
- [Office of Compliance](#)

Reporting: Electronic Filing Update

A new version of the electronic filing specifications (v.8) was implemented today (September 26, 2011). As of September 26, reports filed electronically must be formatted in Version 8 in order to be accepted.

FECFile Users

Current FECFile users need only open their software (after September 26) and accept the automatic update. Those wishing to download FECFile for the first time may do so at <http://www.fec.gov/electfil/updatelist.html>.

Commercial Software Users

The FEC has been working with software vendors to prepare them for the revised specifications. Political committees using commercial filing software should contact their vendors for more information about the latest release. Vendors may access tools and the revised specifications at <http://www.fec.gov/electfil/vendors.shtml>.

If you have any questions about the revised electronic filing specifications, please call the FEC's Electronic Filing Office at: (202) 694-1307 or (800) 424-9530 ext. 1307 or visit <http://www.fec.gov/electfil/electron.shtml>.

(Posted 9/26/2011; By: Dorothy Yeager)

Resources:

- [Electronic Filing Office](#)
- [FECFile Filing Software](#)
- [Software Choices](#)

Litigation: *Carey v. FEC*

On August 19, 2011, the United States District Court for the District of Columbia entered a Stipulated Order and Consent Judgment whereby the Commission agreed that it would not enforce 2 U.S.C. §§441a(a)(1)(C) and 441a(a)(3) against the National Defense PAC (NDPAC) with regards to contributions it receives to make independent expenditures.

Background

NDPAC is a nonconnected political committee registered with the FEC that raises and spends funds to support candidates for federal office who are military veterans and who agree with NDPAC's goals. Retired Rear Admiral James Carey is the founder and treasurer of NDPAC. Kelly Eustis is a registered voter who resides in Sacramento, California.

On August 11, 2010, NDPAC submitted an advisory opinion (AO) request to the FEC asking whether, based on court decisions in [Citizens United](#) and [SpeechNow](#), and the Commission's conclusions in [AOs 2010-09](#) (Club for Growth) and [2010-11](#) (Commonsense Ten), it could raise unlimited contributions from individuals, political committees, corporations and unions for the purpose of making independent expenditures. Simultaneously, NDPAC would raise additional contributions from individuals and political committees subject to the \$5,000 per calendar year contribution limit under 2 U.S.C. §441a(a) in order to make contributions to federal candidates. NDPAC proposed recording and segregating its contributions by type into separate bank accounts. The Commission considered draft responses to the request, but was unable to approve an AO by the required four affirmative votes.

On January 31, 2011, Retired Rear Admiral Carey, Kelly Eustis and NDPAC (collectively, "the Plaintiffs") filed suit against the FEC. The lawsuit sought a declaratory judgment that the contribution limits in 2 U.S.C. §§441a (a)(1)(C) and 441a(a)(3) violate the First Amendment to the extent such laws prohibit a nonconnected political committee from soliciting and accepting unlimited contributions to one bank account designated for independent expenditures, while maintaining a second, separate bank account designated for source- and amount-limited contributions to candidates and their authorized political committees. Plaintiffs also sought injunctive relief enjoining the Commission from enforcing the above-mentioned provisions as applied to Plaintiffs and any supporters who wish to make contributions to NDPAC for its independent expenditures.

Preliminary Injunction

On June 14, 2011, the U.S. District Court for the District of Columbia granted a limited preliminary injunction to Plaintiffs enjoining the Commission from enforcing 2 U.S.C. §§441a(a)(1)(C) and 441a(a)(3) against the Plaintiffs with regard to independent expenditures so long as NDPAC maintains separate bank accounts for its “hard money” and “soft money,” proportionately pays related administrative costs and complies with the applicable limits for the PAC account that is used to make contributions directly to federal candidates.

Stipulated Order and Consent Judgment

On August 19, 2011, the Court issued a Stipulated Order and Consent Judgment in which the FEC agreed that it would not enforce 2 U.S.C. §§441a(a)(1)(C) and 441a(a)(3) against Plaintiffs with regard to contributions NDPAC receives to make independent expenditures, as long as NDPAC maintains separate bank accounts 1) to receive such contributions for independent expenditures, and 2) to receive source-and amount-limited contributions for the purpose of making candidate contributions. Further, each account must pay a percentage of administrative expenses that closely corresponds to the percentage of activity for that account, and must comply with the applicable limits for the contributions it receives for the purpose of making candidate contributions.

U.S. District Court for the District of Columbia, 11-259-RMC.

(Posted 9/1/2011; By: Zainab Smith)

Resources:

- [Carey v. FEC: Ongoing Litigation Page](#)
- [Independent Expenditure Committees](#)

Litigation: Herron for Congress v. FEC

On August 12, 2011, Herron for Congress filed suit against the FEC. The lawsuit seeks declaratory judgment and injunctive relief for the dismissal of an administrative complaint filed by the plaintiff for a violation of the Federal Election Campaign Act (FECA). The plaintiff argues that the dismissal was arbitrary, capricious, an abuse of discretion and contrary to law.

Background

Plaintiff Herron for Congress is the authorized campaign committee of Roy Herron, the Democratic nominee in 2010 for the 8th Congressional District of Tennessee. Steven Fincher for Congress is the authorized campaign committee of Steven Fincher, the incumbent Republican Representative for the 8th Congressional District of Tennessee.

On September 29, 2010, the plaintiff filed an administrative complaint with the FEC against Steven Fincher for Congress. The complaint alleged that there was reason to believe that Steven Fincher for Congress had improperly obtained a loan for \$250,000 and subsequently reported the loan incorrectly to the Commission. The complaint noted that Steven Fincher for Congress initially reported the \$250,000 loan as a personal loan from the candidate when, in fact, the loan had been obtained from a local Tennessee

bank. The complaint also alleged that there was reason to believe that the loan was not obtained in the ordinary course of business as the loan had been improperly collateralized with both insufficient assets and assets already in lien, and thus, the bank did not establish a perfected security interest in the collateral.

Commission staff investigated the complaint and issued a report and recommendations to the Commission. The General Counsel's Report found that the committee had improperly reported the loan, a violation of 2 U.S.C. §434(b)(3)(E) and 11 CFR 104.3(d)(4). The staff report did not find any wrongdoing in the terms of the loan. The staff report did not find the violation to be knowing or willful. The staff recommended negotiating a civil fine settlement of the violation.

On June 14, 2011, the Commission considered the General Counsel's Report and was unable to reach a consensus on whether to seek a civil money penalty. The Commission then voted 5-1 to close the file.

The Plaintiff finds fault with the Commission's dismissal of the administrative complaint. The Plaintiff alleges that the Commission had reason to find that Steven Fincher for Congress had knowingly and willfully violated FECA.

Complaint

The plaintiff asks the Court to find the Commission's dismissal of the administrative complaint against Steven Fincher arbitrary, capricious, an abuse of discretion and contrary to law. The Plaintiff asks the Court to remand the administrative complaint to the Commission with an Order to conform to the Court's declaration.

(Posted 9/11/2011; By: Stephanie Caccomo)

Resources:

- [Herron v. FEC: Ongoing Litigation Page](#)

Advisory Opinions: AO 2011-17 Use of Campaign Funds for Home Security Measures

Representative Gabrielle Giffords may use campaign funds to pay for additional security measures at her home. These costs are not considered personal use of campaign funds because the need for ongoing security measures would not exist were Representative Giffords not a federal officeholder or candidate.

Background

Representative Giffords is a member of the U.S. House of Representatives from Arizona's 8th Congressional District. On January 8, 2011, Representative Giffords was shot and severely wounded at an event sponsored by her Congressional office. She has been undergoing medical and rehabilitative treatment in Houston, Texas, and, when she is not receiving treatment, resides in the family home in the Houston area.

At the request of the U.S. House of Representatives' Sergeant at Arms, the U.S. Capitol Police conducted a security assessment of Representative Giffords' family home and the general threat to her. The U.S. Capitol Police made several recommendations to increase the home's security, including installing improved exterior lighting, improved locks and a duress alarm button. The estimated cost of the improvements is \$2,200. Representative Giffords' principal campaign committee, Giffords for Congress, asks whether it may use campaign funds to pay the costs of installing the recommended security measures to Representative Giffords' home.

Analysis

Under the Federal Election Campaign Act (the Act) and Commission regulations, contributions accepted by a candidate may not be converted to personal use by any person. 2 U.S.C. §439a(b)(1); 11 CFR 113.2(e). Conversion to personal use occurs when a contribution or amount is used to fulfill any commitment, obligation or expense of a person that would exist irrespective of a candidate's campaign or an individual's duties as a federal officeholder. 2 U.S.C. §439a(b)(2); 11 CFR 113.1(g). For items not listed in the regulations as examples of personal use, the Commission determines on a case-by-case basis whether an expense would constitute personal use. 11 CFR 113.1(g)(1)(i)(A)-(J), 11 CFR 113.1(g)(1)(ii); See also 2 U.S.C. §439a(b)(2)(A)-(I).

The Commission has previously stated that if a candidate "can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use." [Explanation and Justification for Final Rules on Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7867](#) (Feb. 9, 1995). The Commission has also previously concluded that payments for, or upgrades to, a home security system, under circumstances similar to the present case, do not constitute personal use under the Act and Commission regulations. See [AOs 2011-05 \(Terry\)](#) and [2009-08 \(Gallegly\)](#).

In this case, Representative Giffords was shot and severely wounded while engaging in her duties as a federal officeholder. The Commission determined that the expenses for the security upgrades recommended by the U.S. Capitol Police would not exist irrespective of Representative Giffords' duties as a federal officeholder or as a candidate for re-election. Therefore, the Committee may use campaign funds to pay the costs of installing the recommended additional security measures to Representative Giffords' home, and the costs will not constitute personal use of campaign funds under 2 U.S.C. §439a(b).

Date: September 1, 2011; Length: 4 pages

(Posted 9/7/2011; By: Zainab Smith)

Resources:

- [Advisory Opinion 2011-17](#) [PDF; 4 pages]
- [Commission's consideration of AOR 2011-17](#) 

Advisory Opinions: AO 2011-15 Naturalized Citizen as Presidential Candidate

A naturalized citizen is not prohibited by the Federal Election Campaign Act (the Act) from becoming a "candidate" as defined under the Act. However, a naturalized citizen is not eligible to receive Federal matching funds under the Presidential Primary Matching Payment Account Act (the Matching Payment Act). The individual will not violate the Act's prohibition against "fraudulent misrepresentation" if he solicits and receives contributions for his presidential campaign. However, he must comply with the Act's provisions regarding expenditures, contributions, recordkeeping and reporting.

Background

Abdul Karim Hassan is a naturalized U.S. citizen who announced his Presidential candidacy in March 2008 on his website. He has used his website to communicate to voters and purchased web advertisements regarding his candidacy. Mr. Hassan indicated that he satisfies all of the constitutional requirements for serving as President, except the natural born citizen requirement in Article II, Section 1, Clause 5 of the U.S. Constitution.

Mr. Hassan sought the Commission's opinion on several questions revolving around the impact of his status as a naturalized citizen and the Act's definition of candidate.

Analysis

Mr. Hassan asked first if he would be considered a "candidate" or "person" under the Act's definitions of those terms. The Act defines "candidate" as "an individual who seeks nomination for election, or election, to Federal office." An individual becomes a candidate for purposes of the Act when he or she receives contributions or makes expenditures aggregating in excess of \$5,000. 2 U.S.C. §431(2); 11 CFR 100.3.

The Act and FEC regulations do not address a candidate's citizenship or any other qualifications for office. As a result, the above definition of candidate does not turn on whether the individual in question is a natural born citizen or a naturalized citizen, as long as the person meets the other criteria for the Act's definition of candidate.

In regard to the definition of "person," the Act defines that term as including "an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons," excluding the Federal Government. There is no reference to natural born or naturalized citizens. 2 U.S.C. §431(11); 11 CFR 100.10. As an individual, Mr. Hassan is a "person" under the Act.

Mr. Hassan also inquired about his eligibility to receive presidential matching funds. Although the Matching Payment Act does not specifically address citizenship requirements for serving as President, it sets forth the eligibility requirements to receive primary matching funds. 26 U.S.C. §9033; 11 CFR 9033.2. As the agency charged under the Matching Payment Act with administering the matching funds program, the Commission has some discretion when certifying eligibility for matching funds. A clear and self-avowed constitutional ineligibility for office is an instance where the Commission may choose to withhold matching funds even if the Act's formal eligibility criteria are satisfied. Thus, because Mr. Hassan has clearly stated that he is a naturalized citizen and not a natural born citizen under the Constitutional requirement for holding the office of President, the Commission concluded that Mr. Hassan is not eligible to receive matching funds.

In regard to the Act's prohibition at 2 U.S.C. §441h(b) against fraudulent misrepresentation, the Commission concluded that Mr. Hassan would not violate this provision if he solicits and receives contributions for his presidential campaign. Although Mr. Hassan is a naturalized citizen, nothing in the Act requires a candidate to be eligible for the office he or she seeks. Moreover, Mr. Hassan does not intend to falsely represent or solicit funds for a campaign that is not his own.

Finally, Mr. Hassan must comply with the Act's provisions regarding expenditures, contributions, recordkeeping, and reporting. Once Mr. Hassan has received more than \$5,000 in contributions, or made more than \$5,000 in expenditures, he will become a "candidate" under the Act and therefore subject to the statutes and regulations applicable to all candidates. 2 U.S.C. §431(2); 11 CFR 100.3.

Date: September 2, 2011; Length: 6 pages

(Posted 9/13/2011; By Dorothy Yeager)

Resources:

- [Advisory Opinion 2011-15](#) [PDF; 6 pages]
- [Commission's consideration of AOR 2011-15](#) 
- [Candidate Registration \(brochure\)](#)
- [U.S. Constitution](#)

Advisory Opinions: Alternative Disposition of AOR 2011-16

On September 22, 2011, the Commission considered, but was unable to approve a response by the required four votes, an advisory opinion request from Dimension4, Inc. PAC regarding whether a corporation could repay a loan made by its separate segregated fund (SSF).

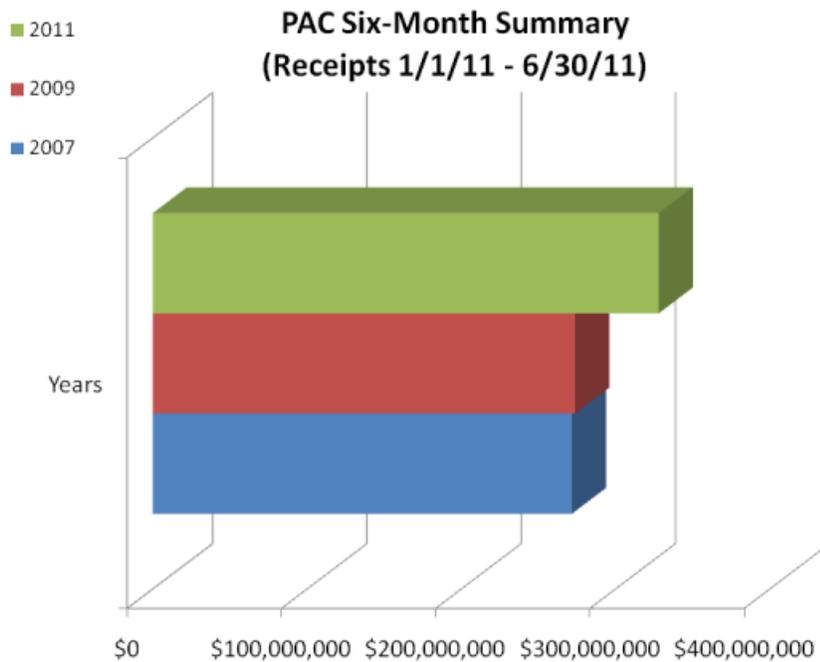
(Posted 9/29/2011; By: Myles Martin)

Resources:

- [Disposition of Advisory Opinion Request 2011-16](#) [PDF; 2 pages]
- [Agenda Document No. 11-55 \(Drafts A and B\)](#)
- [Commission's consideration of AOR 2011-16](#) 

Statistics: PAC Activity Increases in First Six Months of 2011

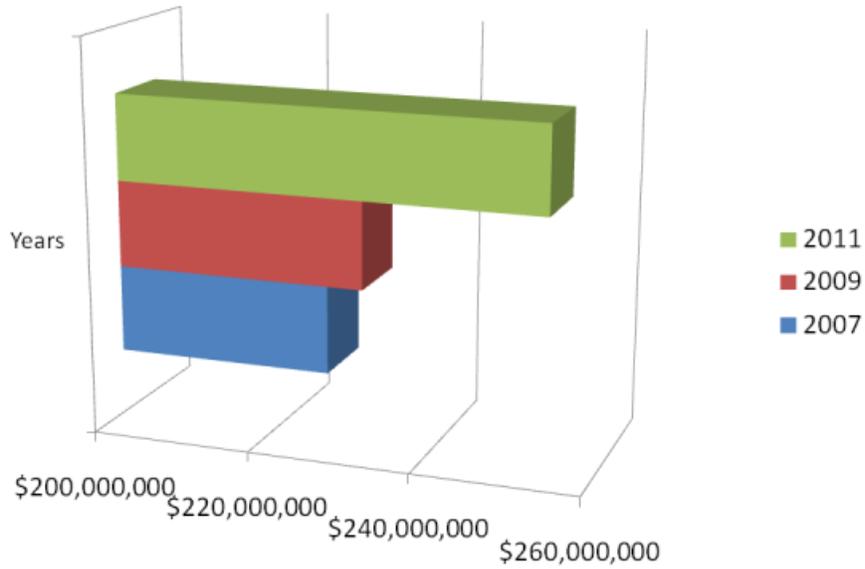
Federal political action committees (PACs) registered with the Federal Election Commission reported raising a combined \$328 million, spending \$253.7 million, and contributing \$148.3 million* to candidates, parties, and other committees from January 1 through June 30, 2011. These sums represent increases of 19.8 percent in receipts, 9.6 percent in disbursements, and 8.9 percent in contributions to candidates and other committees over the totals of the first half of 2009, and increases of 20.7 percent, 11.8 percent, and 9.8 percent, respectively, over the same period in 2007, the first six months of the last presidential election cycle.



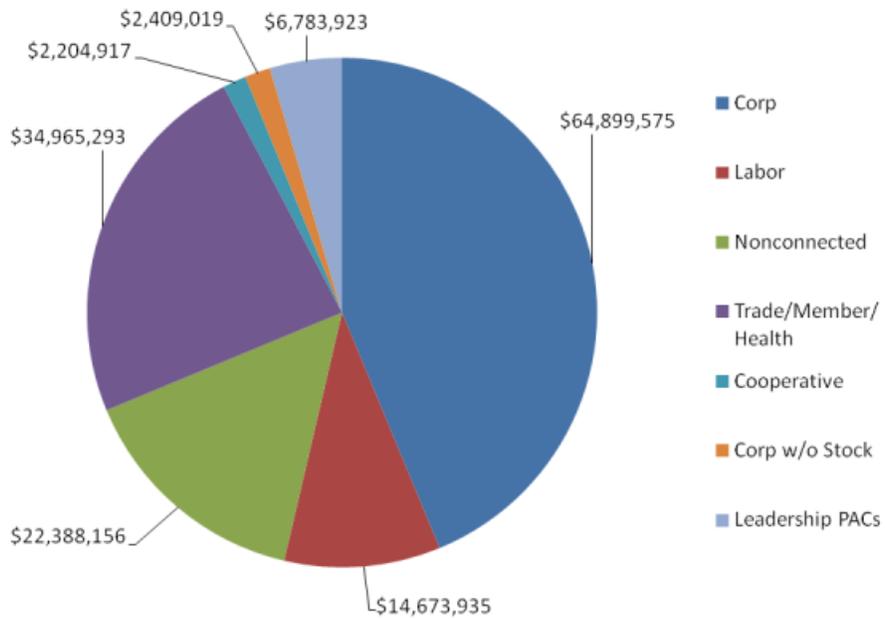
From January through June 2011, PACs contributed \$92 million to candidates, representing an increase of 2.2 percent compared to 2009 six-month totals, and a decrease of 1.7 percent from the same period in 2007. Party committees received a combined \$16.7 million from PACs, an increase of 10.4 percent and 3.1 percent over 2009 and 2007 figures, respectively. PACs made \$22.8 million in contributions to other PACs between January 1 and June 30, 2011, an increase of 22.9 percent and 25.7 percent, respectively, when compared to 2009 and 2007 six-month contribution summary data.

* This figure, which represents data reported in PACs' summary filings, includes PAC contributions to state and local candidates and other groups not registered with the Federal Election Commission. This figure is therefore larger than the sum of the contributions to federal committees.

**PAC Six-Month Summary
(Disbursements 1/1/11 - 6/30/11)**



**PAC Contributions Made to Candidates,
January-June 2011**



The tables included with the Commission's press release provide summaries of PAC financial activity for the first six months of each election cycle beginning with 2001, including the number of PACs registered, a summary of PAC contributions by recipient, and a list of the top 50 PACs for 2011-2012 in terms of receipts, disbursements, and contributions to candidates and other committees.

The press release also includes data for committees that engage in only independent spending, which are also sometimes referred to as "Super PACs," that have registered or filed a statement consistent with the language recommended in [Advisory Opinion 2010-09 \(Club for Growth\)](#) or [Advisory Opinion 2010-11 \(Commonsense Ten\)](#). As of June 30, 2011, filings submitted to the Commission show that these groups raised \$26.6 million and spent \$6.6 million.

For additional information, the full text of the Commission's press release as well as downloadable data in Excel and PDF formats are available at http://www.fec.gov/press/Press2011/20110909_6mthPAC.shtml.

(Posted 9/16/2011; By: Dorothy Yeager)

Resources:

- [September 9, 2011 Press Release with links to data tables](#)
- [Campaign Finance Reports and Data](#)
- [Availability of FEC Information \(brochure\)](#)

Outreach: New Congressional Campaign Guide Available Online



A new edition of the *Campaign Guide for Congressional Candidates and Committees* is now available on the FEC website at <http://www.fec.gov/info/publications.shtml#guides>

The *Campaign Guide* explains, in plain language, the complex regulations governing the financing of campaigns for federal office and serves as a compliance manual for the authorized committees of House and Senate candidates. Among other things, the *Campaign Guide* shows readers how to fill out FEC reports and illustrates how the law applies to practical situations.

Printed copies will be available later this year, and we will announce their arrival in the *Record*.

(Posted 9/16/2011; By Dorothy Yeager)

Resources:

- [Campaign Guide for Congressional Candidates and Committees](#)
- [All FEC Campaign Guides and Supplements](#)
- [Resources for Committee Treasurers](#)

Outreach: DC Seminar for Nonconnected Political Committees

On November 16, the Commission will host a one-day seminar for nonconnected political committees at its headquarters in Washington, DC. The seminar is recommended for:

- Treasurers of Leadership PACs, Partnership PACs and other Nonconnected Political Action Committees (i.e., committees that are NOT sponsored by corporations, unions, trade associations or nonprofit membership organizations)
- Staff of the above organizations who have responsibilities for compliance with campaign finance laws
- Attorneys, accountants and consultants who have clients that are nonconnected PACs or unregistered 527 organizations
- Anyone who wants to gain in-depth knowledge of federal campaign finance laws.

The seminar will address fundraising and reporting rules, as well as recent changes to the law. Specific workshops are designed for those seeking an introduction to the basic provisions of the law, as well as those with more experience in campaign finance law. Experienced FEC staff and Commissioners will conduct the workshops.

The registration fee for this seminar is \$100 per attendee, which includes a \$25 non-refundable transaction fee. Payment is required prior to the seminar. The FEC recommends waiting to make hotel and air reservations until you have received confirmation of your registration. A full refund will be made for all cancellations received before 5 p.m. EST on November 11, 2011. Complete information is available on the FEC website at <http://www.fec.gov/info/conferences/2011/nonconnectedseminar.shtml>, along with the seminar agenda and a list of hotels located near the FEC. Attendance is limited and registration will be accepted on a first-come, first-served basis.

FEC Seminar Questions

Please direct all questions about seminar registration and fees to Sylvester Management Corporation (Phone: 1-800/246-7277; email: rosalyn@sylvestermanagement.com). For questions about the seminar and workshops, call the FEC's Information Division at 1-800/424-9530, or send an email to Conferences@fec.gov.

(Posted 9/20/2011; By Kathy Carothers)

Resources:

- [SSFs and Nonconnected PACs](#) [Handout]
- [Campaign Guide for Nonconnected Committees and Supplements](#)
- [FEC San Diego Conference, October 25-26, 2011](#)
- [FEC Educational Outreach Opportunities](#)