

Record

November 1994

Federal Election Commission

Volume 20, Number 11

Table of Contents

Reports

- 1 Post-Election Report Due
- 2 Updated Form 3 and 3X Reporting Packets

Regulations

- 1 FEC Proposes Changes to Disclaimer Rules
- 3 FEC Seeks Comments on Public Funding Rules

Compliance

- 2 Corporation and Directors Pay \$57,000 Penalty for Making Foreign National Contributions
- 2 MURs Released to the Public

Federal Register Notices

800 Line

- 5 Retiring Campaign Debts

Advisory Opinions

Audits

- 9 FEC Releases Audits on Bush-Quayle Fundraiser and Hagelin Campaign

Court Cases

- 9 FEC v. Committee of 100 Democrats

Statistics

- 10 PAC Contributions Track 1992 Levels

Index

Reports

Post-Election Report Due December 8

The 30-day post-election report for the November 8 general election must be filed by the following committees:

- All registered PACs and party committees (both quarterly and monthly filers¹) even inactive committees; and
- Authorized committees of federal candidates in the general election, including committees of unopposed candidates.

The report covers activity from the closing date of the committee's last report through November 28.

The report must reach the appropriate federal and state filing offices by Thursday, December 8. If sent by registered or certified mail, however, the report will be filed on time if postmarked by December 8. ♦

(Reports continued on page 2)

Regulations

FEC Proposes Changes to Disclaimer Rules

The FEC seeks comments from the public on proposed changes to the disclaimer regulations at 11 CFR 110.11. Written comments should be submitted by December 5, 1994, to Susan E. Propper, Assistant General Counsel, 999 E Street, NW, Washington, DC 20463. The proposed rules were published in the Federal Register on October 5 (59 FR 50708). Copies of the notice may be ordered from the FEC's Public Records Office. Call 800/424-9530 (then press 3 if using a touch tone phone) or 202/219-4140.

(continued on page 3)

Need FEC Material in a Hurry?

Use the FEC's Flashfax service to obtain FEC material fast. It operates 24 hours a day, 7 days a week. Over 300 FEC documents—reporting forms, brochures, FEC regulations—can be faxed almost immediately.

Use a touch tone phone to dial **202/501-3413** and follow the instructions. To order a complete menu of Flashfax documents, enter document number 411 at the prompt.

¹ The post-general election report is filed in lieu of the December monthly report.

Reports

(continued from page 1)

Updated Form 3 and 3X Reporting Packets

The FEC has updated the Form 3 and Form 3X packets with new cover pages briefly describing each form and schedule within.

The Form 3X packet, used by party committees, PACs and other unauthorized committees, now includes Schedule C-1, the form used to report bank loans and lines of credit.

The Form 3 packet, used by authorized candidate committees, now contains Form 6 for disclosure of 48-hour notices on contributions. (The packet already includes Schedule C-1.)

Please note that the forms and schedules themselves have not changed. The FEC will continue to distribute the old Form 3X and 3 packets (with Schedule C-1 and Form 6 as separate enclosures) until the supply is exhausted. ♦

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Compliance

Corporation and Directors Pay \$57,000 Penalty for Making Foreign National Contributions

A Hawaiian subsidiary of Japanese corporations and its Japanese directors agreed to pay a \$57,000 penalty for making \$12,652 in contributions that violated the ban on foreign national contributions. FEC Chairman Trevor Potter said that the case represented "another significant step in the Commission's enforcement of the prohibition on contributions by foreign nationals in U.S. elections." An earlier case on foreign national contributions, MUR 2892, resulted in penalties totaling \$162,225. (See the September *Record*.)

In the current case, MUR 3460, the five directors of Sports Shinko (Pukalani) Co., Ltd.—four of whom were Japanese citizens—passed a resolution authorizing a "contribution committee" to make political and charitable contributions from an account containing \$50,000. The one director who was not a foreign national was appointed as the sole member of the committee. Between 1990 and 1991, the firm's treasurer—also a foreign national—issued checks totaling \$12,500 to Hawaiian state and local campaigns and authorized the committee member/director to sign the checks. The treasurer also made an in-kind contribution of \$152 from the firm to a local candidate.

The Commission found that the decision by the foreign national directors to form and fund a committee and to appoint the committee constituted sufficient foreign-national involvement to violate the Federal Election Campaign Act as interpreted by FEC regulations and advisory opinions. Under FEC rules, foreign nationals are prohibited from participating, directly or

indirectly, in decisions concerning the making of contributions or the administration of a political committee, including the selection of individuals to operate the committee. 11 CFR 110.4(a)(3). See also AOs 1992-16 and 1990-8. ♦

MURs Released to the Public

Listed below are FEC enforcement cases (Matters Under Review or MURs) recently released for public review. They are based on the FEC press releases of September 15, 22 and 30.¹ Files on closed MURs are available for review in the Public Records Office.

MUR 3102

Respondents: (a) ACT UP(AIDS Coalition to Unleash Power)/DC; (b) ACT UP/San Francisco; (c) Dallas Gay Alliance; (d) Tarrant County Gay Alliance (TX); (e) Dallas Tavern Guild; et al. (f)-(h)

Complainant: Conservative Campaign Fund (DC)

Subject: Failure to register and report; failure to report independent expenditures; disclaimer; corporate expenditures

Disposition: (a)-(e) Reason to believe but took no further action; (f)-(g) took no action; (h) no reason to believe

MURs 3204/3087/Pre-MUR 263

Respondents: (a) National Republican Senatorial Campaign Committee, Sonya M. Vasquez, treasurer (DC); (b) Republican National Committee, William J. McManus, treasurer (DC); (c) Montana Republican State Central Committee, Shirley J. Warehime, treasurer; (d) Conrad Burns/US Senate, Jim Swain, treasurer (MT); et al. (e)-(h)

(continued on page 10)

¹ Not included here are the 39 MURs listed in the September 1 press release in which the Commission took no action or found reason to believe but took no further action.

Regulations

(continued from page 1)

The disclaimer regulations are based on 2 U.S.C. §441d(a). Under that provision, a communication that (1) expressly advocates the election or defeat of a clearly identified candidate or (2) solicits contributions must contain a disclaimer if the communication is conveyed through general public political advertising such as television, radio, newspapers, magazines and direct mailings.

Major changes in the proposed disclaimer rules are highlighted below.

Definition of Direct Mailing

The proposed rules define "direct mailing" for purposes of the disclaimer requirement to mean any mailing of over 50 substantially similar pieces of mail.

Presumption of Express Advocacy

A communication paid for by an authorized candidate committee would be presumed to contain express advocacy if it mentioned the candidate. The presumption of express advocacy would also apply to party committee advertisements that referred to a clearly identified candidate. In both cases, the presumption would be rebuttable, since certain communications—for example, newspaper ads offering sympathy on a candidate's bereavement—would clearly not convey express advocacy.

This change was proposed to enhance disclosure and to eliminate problems the Commission has encountered when trying to determine whether specific communications contained express advocacy and therefore required a disclaimer.

An alternative approach would be to require disclaimers on all publicly advertised communications by political committees, regardless of whether they include express advocacy. The Commission seeks

comments on whether the statute could be interpreted to require this.

Communications Paid for by Candidate Committees

Like the current rule, the disclaimer for a publicly advertised communication paid for by an authorized committee of a candidate would simply have to state "Paid for by [name of authorized committee]" as long as the communication referred to that candidate only.

Under a new provision, candidate committees would be required to include appropriate disclaimers on campaign materials produced and distributed under the "coattail" exemption of 11 CFR 100.8(b)(17).

Communications Paid for by Party Committees

Party committees would be required to include disclaimers in communications that qualified as exempt party activities under 11 CFR 100.8(b)(10), (16) and (18) (i.e., slate cards, campaign materials and voter drives in support of the Presidential ticket).

The proposed rules would clarify that, in the case of an advertisement made as a coordinated (§441a(d)) expenditure, the disclaimer must name the party committee that actually paid for the ad, even if the committee made the expenditure using the §441a(d) limit assigned to it by another party committee.

The Commission is seeking comments on whether the currently required authorization statement ("and authorized by...") should be dropped or modified in the case of party committee ads that refer to a clearly identified candidate before the party's candidate is nominated.

Solicitations by Unauthorized Committees

Under the proposed rules, solicitations conveyed through public political advertising by party committees, PACs and other unauthorized committees would not need an authorization statement unless

they referred to a clearly identified candidate. (The current rules require an authorization statement in such solicitations if express advocacy is present.) Under any circumstances, however, the solicitation would still require a notice stating who paid for it.

Display of Disclaimer

A disclaimer would fail to be clearly and conspicuously displayed under the proposed rules, if it appeared in small type compared with the rest of the publication, if it was otherwise difficult to read or if it was easily overlooked. Consistent with agency precedent, each item intended for separate public distribution in a package of materials would have to include a disclaimer.

Exceptions

The proposed rules would continue to exempt small items (e.g., buttons, pens) from the disclaimer requirement as well as items on which the display would be impractical (e.g., water towers, skywriting). The proposed rules would additionally exempt checks, receipts and similar items.

Comments are sought regarding how T-shirts, baseball caps and other wearing apparel should be treated for purposes of the disclaimer requirement. The proposed rules do not contain any language requiring such items to display a disclaimer. ♦

FEC Seeks Comments on Public Funding Rules

On October 6, the Commission published a notice of proposed rulemaking seeking public comment on possible changes to the regulations governing the public funding of Presidential primary and general election candidates (59 FR 51006).

Written comments are due December 5 and should be sent to: Susan E. Propper, Assistant General

(continued on page 4)

Regulations

(continued from page 3)

Counsel, 999 E Street, NW, Washington, DC 20463. The Federal Register notice can be ordered from the FEC's Public Records Office.

Listed below are some of the issues addressed in the notice of proposed rulemaking.

- *Negligent Handling of Public Funds.* The proposed rules would clarify that the cost of items lost or misplaced due to the campaign's negligence will be considered nonqualified campaign expenses, which are subject to pro-rata repayment to the U.S. Treasury. The Commission seeks comments on what factors it should consider when making repayment determinations based on negligence.
- *Closed Captioning.* In 1992, Congress amended the public funding statute to require publicly funded campaigns to use closed captioning in their television commercials. The proposed rules would incorporate this change.
- *Media Reimbursements.* The proposed rules would clarify the rules governing media and Secret Service reimbursements to the campaign for transportation and related services.
- *Use of Government Vehicles and Accommodations.* The proposed rules would address questions that have arisen in this area, such as how to determine whether a stop is campaign related (and would therefore require reimbursement to the government for the use of the vehicle or accommodation).
- *Winding-Down Costs.* The proposed rules seek comments on whether there should be a cap on winding-down costs and post-campaign bonuses and gifts paid with public funds.
- *Reporting.* The proposed rules would require canceled checks for all disbursements over \$200 and alphabetical listings of names disclosed on receipt, disbursement

and debt schedules, if generated from computer data.

- *Statistical Sampling to Project Excessive or Prohibited Contributions; Payment to Treasury.* The proposed rules would incorporate the Commission's current policy of using a statistical sampling technique to evaluate a campaign's compliance with the contribution limits and prohibitions. The regulations would clarify that the amount of excessive or prohibited contributions not resolved within the time limits will be payable to the U.S. Treasury.
- *Streamlining the Audit Process.* Streamlined procedures applied to audits of the 1992 campaigns have expedited the audit process. The rulemaking seeks comments on additional ways to speed up audits of publicly funded committees.
- *Administrative Record.* New regulations would explain which documents constitute the administrative record for court review of FEC repayment determinations and other public funding decisions.
- *Debt Collection Act (DCA).* The DCA (31 U.S.C. §3701 *et seq.*) would allow the Commission to deduct delinquent public funding repayments from any public funding entitlements the candidate qualified for in a future election cycle. However, because the DCA also has ramifications for the FEC's enforcement process, the agency plans to address DCA issues in an ongoing rulemaking on enforcement procedures. In the public funding rulemaking, the agency seeks comments on a related issue: Whether interest should be assessed on late repayments.
- *Complete Contributor Identification.* The Commission seeks comments on whether the regulations should require complete contributor identification of all matchable contributions exceeding \$200 or, in the alternative, whether to require committees to demon-

strate that they made their best efforts to obtain the information.

- *NOCO Statements.* The current regulations require campaigns of candidates who have become ineligible for matching funds to submit statements of net outstanding campaign obligations (NOCO statements). The statements are used to determine whether the candidate is entitled to receive additional matching funds to pay debts and winding-down costs. The proposed rules would require campaigns to provide a breakdown of estimated winding-down costs and to submit updated NOCO statements with post-ineligibility matching fund requests.
- *Funding General Election Expenses with Primary Funds.* The law requires that publicly funded candidates use their primary funding only for primary expenses. Questions have arisen in recent cycles concerning possible misuse of primary funding to benefit the candidate's general election campaign. In this regard, the agency seeks comments on the depreciation of primary committee assets, the treatment of local campaign offices that remain open more than 30 days after the primary election and the treatment

Federal Register

Federal Register notices are available from the FEC's Public Records Office.

1994-13

11 CFR Parts 9003—9038: Public Financing of Presidential Primary and General Election Candidates; Notice of Proposed Rulemaking (59 FR 51006, October 6, 1994)

1994-14

11 CFR Part 110: Communications Disclaimer Requirements; Notice of Proposed Rulemaking (59 FR 50708, October 5, 1994)

of travel to a state where the primary has already been held.

- **Convention Expenses of Primary Candidates.** The Commission asks for comments on whether expenses incurred by losing primary candidates to attend the national nominating convention should be considered qualified campaign expenses.
- **Repayment Ratio.** A ratio formula is used to determine the amount of matching funds (versus private contributions) that were used to pay nonqualified campaign expenses. That amount is repayable to the U.S. Treasury. The proposed rules suggest revisions to address those situations where the formula does not accurately reflect the ratio of matching funds to private contributions over the course of the campaign.
- **General Election Legal and Accounting Compliance Funds (GELAC Funds).** General election candidates receiving full public funding must limit campaign spending to the amount of their grants and must refrain from accepting private contributions. FEC regulations, however, permit these campaigns to accept private contributions for their GELAC funds—accounts used solely to pay for costs related to compliance with the federal campaign finance laws. The Center for Responsive Politics petitioned the FEC to repeal these regulations, claiming that GELAC funds interfere with achieving the statutory objective of eliminating the influence of large contributions. In March 1994, the FEC published a notice inviting comments on the petition; the agency now seeks further comment.
- **Gains on the Use of Public Funds.** The proposed rules would expand the current regulations by requiring campaigns to repay to the Treasury any income generated with the use of public funds, even if the campaign did not intend to earn income. ♦

800 Line

Retiring Campaign Debts

This article, written for authorized committees of candidates, explains the rules on retiring campaign debts after the election.

Citations are to FEC regulations and to advisory opinions (AOs) issued by the Commission. Advisory opinions can be ordered from the Public Records Office at 10¢ per page. Call Public Records at 800/424-9530 (press 3 if using a touch tone phone) or 202/219-4140.

If you have any questions after reading this article, call the Information Division at 800/424-9530 (press 1 if using a touch tone phone) or 202/219-3420.

Reminder: Keep Reporting Debts

A committee must continue to report its debts and obligations even if it has no other activity to report. It may stop reporting only after it has paid or settled all its debts and obligations, filed a termination report and received notice from the FEC that the report was acceptable. 11 CFR 102.3 and 104.11(a). (Debt settlement and termination will be discussed in a future article.)

Raising Contributions to Retire Debts: Basic Rules

When raising contributions to retire debts after the election, a *campaign*¹ must remember three general rules:

- First, the contributions are still subject to the limits and the prohibitions of the Federal Election Campaign Act (the Act), even if the candidate lost the election and does not plan to run for a future federal office. A contribu-

tion, when added to other contributions from the same donor for the same election, may not exceed the donor's contribution limit. 11 CFR 110.1(b)(1), 110.2(b)(1), 110.4(a), 110.9(a), 114.2(b) and 115.2.

- Second, the contributions must be specifically designated for the election by the contributor, who must note the election (e.g., "1994 general") on the check or in a signed statement accompanying the contribution. 11 CFR 110.1(b)(2)(i), (b)(4) and 110.2(b)(2)(i), (b)(4).
- Finally, the contributions may not exceed the campaign's *net debts outstanding* (defined below) for that election. 11 CFR 110.1(b)(3) and 110.2(b)(3).²

Calculating Net Debts Outstanding

Net debts outstanding consist of *unpaid debts* incurred with respect to the election minus *cash on hand*.

- *Unpaid debts* include all outstanding debts and obligations; the estimated cost of raising funds to liquidate outstanding debts; and, in the case of a terminating committee, estimated winding-down costs (for example, office rental, staff salaries, office supplies).
- *Cash on hand* consists of the resources available to pay the campaign's total debts, including currency, deposited funds, traveler's checks, certificates of deposit, treasury bills and amounts owed to the committee in the form of credits, refunds, returns and

(continued on page 6)

²A campaign may also raise contributions to retire debts through a joint fundraising event. Joint fundraisers, however, are subject to special regulations at 11 CFR 102.17. See also the Joint Fundraising Appendix in the Campaign Guide for Congressional Candidates and Their Committees, page 63. Presidential committees receiving public funds should consult 11 CFR 9034.8.

¹As used in this article, "campaign" means the candidate, the principal campaign committee and any other committees authorized by the candidate for the same election.

800 Line*(continued from page 5)*

receivables (or a commercially reasonable estimate of the collectible amount). 11 CFR 110.1(b)(3)(ii).

A campaign first calculates its total net debts outstanding as of the day of the election. Thereafter, it continually adjusts the total as additional funds are received and spent. 11 CFR 110.1(b)(3)(iii). For example, a campaign's net debts outstanding totaled \$30,000 on the day of the election. In the next month, the campaign received \$10,000 in additional contributions designated for that election. It also received a bill that was \$2,000 higher than the campaign previously estimated when it originally calculated its net debts outstanding. The campaign's adjusted net debts outstanding would be \$22,000, calculated as follows: \$30,000 (previous net debts) plus \$2,000 (additional debt) minus \$10,000 (additional contributions).

If, on the same day, a campaign receives several contributions that, together, exceed the amount needed to retire the total net debts outstanding, the campaign may accept a proportionate amount of each contribution and either refund or seek a redesignation of the excessive amounts. Alternatively, the campaign may accept some contributions in full and return or refund³ the others or seek redesignations for them. When seeking redesignations, the campaign must comply with the procedures and 60-day time limit at 11 CFR 110.1(b)(5) and 110.2(b)(5). See the *Campaign Guide for Candidates and Committees*, pages 9 and 10.

³ "Returned" means the contributor's check was given back to the donor; "refunded" means the contributor's check was deposited and the amount refunded by committee check. 11 CFR 103.3(a).

Selling Campaign Assets

Generally, when a committee sells its assets, the proceeds are considered contributions, subject to the limits and prohibitions. AOs 1991-34 and 1990-3. This is consistent with 11 CFR 100.7(a)(2), which provides that the full purchase price for a fundraising item or a ticket to a fundraising event is a contribution. The Commission has, however, recognized two narrow exceptions to this general rule. Under the two situations described below, the sale of a committee asset does not result in a contribution:

- The isolated sale of a committee asset if the asset was purchased or developed for the committee's own particular use, rather than for fundraising, and the asset has an ascertainable market value. AOs 1989-4 (mailing lists and computer hardware) and 1986-14 (campaign van).
- The sale of valuable campaign equipment or leftover campaign supplies by a candidate committee that wishes to terminate and plans to use the proceeds for debt retirement. AO 1992-24 (books) and AOs 1990-26 and 1985-1 (computers).

Under either of these exceptions, a contribution is avoided only if the purchaser pays no more than the "usual and normal charge"—the market value or prevailing commercial rate. 11 CFR 100.7(a)(1)(iii)(B). Any payment exceeding the "usual and normal charge" would be a contribution. It would be a prohibited one if the purchaser were a corporation or other impermissible source.

Receiving Party Support

A political party committee may make direct contributions to the campaign to retire campaign debts, as long as they are properly designated and do not exceed the party committee's contribution limit for that election. (Note that a party's state committee and local commit-

tees within that state share the same contribution limits.) Alternatively, the party committee may pay the candidate's creditors. Payments to creditors may be considered in-kind contributions to the candidate, subject to the contribution limits or, in the case of general election candidates, coordinated party expenditures, which are subject to the special limits of 2 U.S.C. §441a(d).⁴ 11 CFR 110.7.

Using Candidate's Personal Funds

House and Senate candidates are not limited in the amount of personal funds they may loan or contribute to their own campaigns. 11 CFR 110.10(a).⁵ See also the definition of personal funds at 11 CFR 110.10(b) and page 11 of the *Campaign Guide for Congressional Candidates and Committees*.

If personal funds are loaned, they must be reported as loans from the very beginning. This is necessary to distinguish future loan repayments to the candidate from what would otherwise be considered the conversion of campaign funds to the candidate's personal use, which is prohibited. If the campaign is to pay interest on the loan, the interest rate must also be reported. 2 U.S.C. §439a; 11 CFR 113.2(d); AOs 1991-9, 1986-45 and 1977-58.

Receiving Transfers

As a general rule, a candidate committee may retire debts by using funds transferred from another federal committee authorized by the same candidate for the same or a

⁴ Local party committees may not make coordinated party expenditures without the prior written authorization of the national or state committee. 11 CFR 110.7(a)(4) and (c).

⁵ A Presidential candidate receiving public funds, however, may loan or contribute no more than \$50,000 to his or her own campaign. 11 CFR 9003.2 (c) and 9035.2.

different election cycle. However, the transferring committee must not have any net debts outstanding.

11 CFR 116.2(c)(2). Also, special rules apply if the candidate is seeking election to more than one federal office. 11 CFR 110.3(c)(5).⁶

For further information, including the application of contribution limits to funds contained in such transfers, see 11 CFR 110.3(c)(4) and (5) and Chapter 8 of the *Campaign Guide for Congressional Candidates and Committees*, page 19.

Reminder: Transfers from the candidate's *nonfederal* committee are prohibited. 11 CFR 110.3(d). ♦

Advisory Opinions

AO 1994-26 Unsecured Lines of Credit Obtained Before Candidacy

Scott Douglas Cunningham, a 1994 House candidate, may draw funds for his campaign on lines of credit opened with two banks. Although the security for the credit (his personal income) does not specifically meet the criteria in FEC regulations for assuring repayment, the draws will not result in prohibited contributions from the banks because of the special circumstances in this case: The lines of credit were opened years before Mr. Cunningham's candidacy and indicate his longstanding relationship with the banks. Furthermore, the lines of credit appear to be standard, with normal rates and terms.

⁶ Publicly funded Presidential campaigns are subject to further restrictions. 11 CFR 110.3(c)(5)(iii). See also AOs 1990-11 and 1988-5.

Mr. Cunningham's campaign committee must report draws on the lines of credit as explained below.

Assurance of Repayment

A loan—including a line of credit—from a depository institution does not result in a contribution if, among other conditions, it is made in the "ordinary course of business." One criteria of the "ordinary course of business" requirement is that the loan be made on a basis which assures repayment. 11 CFR 100.7(b)(11). See 2 U.S.C. §431(8)(B)(vii).

To meet the standard for assurance of repayment in FEC regulations, a loan or line of credit must be secured by either: (1) traditional collateral with a perfected security interest; or (2) future receipts such as contributions, interest income or (in the case of Presidential candidates) public funds. If future receipts are used as collateral, special arrangements are necessary. For example, the lender must have access to the funds through the establishment of a separate account or an assignment by the candidate.

The Commission may, however, consider, on a case-by-case basis, loans that do not meet these standards in order to determine whether they were made on a basis which assures repayment. 11 CFR 100.7(b)(11)(i) and (ii).

The lines of credit issued to Mr. Cunningham were made on the basis of his future income but not under the special arrangements set forth in the regulations. Nevertheless, the lines of credit may be used for campaign purposes, based on several factors: First, they do not appear to have been obtained for Mr. Cunningham's candidacy and, in fact, predate his candidacy by at least five years. Second, they are evidence of his longstanding relationship with the banks. Third, their terms, including interest rates and other repayment provisions, do not appear to be out of the ordinary

or unduly favorable. Finally, the line of credit agreements appear to be standard ones issued to other customers.

Qualified Depository Institutions

A loan or line of credit, in order to be exempt from the definition of contribution, must be made by a state bank, a federally chartered depository institution (including a national bank) or a federally insured depository institution. 11 CFR 100.7(b)(11). Mr. Cunningham may therefore use, for his campaign, the lines of credit provided by two national banks, but he may not use a line of credit from a third provider that does not appear to be a qualified depository institution.

Reporting Lines of Credit

When a candidate or political committee first obtains a loan or establishes a line of credit, the committee must, in its next report, file a Schedule C-1 disclosing detailed information on the loan or line of credit. Because the lines of credit opened by Mr. Cunningham were not obtained for his campaign, his committee does not have to file Schedule C-1 until the reporting period during which he first makes a draw on the credit for campaign purposes. For the same reason, the lender does not have to certify the information disclosed on Schedule C-1. The committee should, however, explain that the line of credit was obtained well before candidacy, without anticipation that it would be used for the campaign. The committee must attach a copy of the original agreement with up-to-date amendments or the most recent document containing the terms at the time of the draw. If any of the terms change, the changes must be disclosed on a Schedule C-1 filed with the next report.

The amount and date of the original draw on a line of credit—and subsequent draws—must be

(continued on page 8)

Advisory Opinions

(continued from page 7)

reported on Schedule C-1 as well as Schedules A¹ and C. (Schedule C shows the total amount owed, the amount repaid and the remaining balance.) The committee must continue to file a Schedule C each reporting period for which there is still an amount owed on a line of credit. 11 CFR 104.3(d) and 104.11(a).

If Mr. Cunningham repays the bank, the committee must report the payment as an in-kind contribution to the committee on Schedule A; as an expenditure to the lender on Schedule B; and as a reduction to the amount owed on Schedule C.

Mr. Cunningham, as the candidate, may make unlimited contributions to his campaign from his personal funds. 11 CFR 110.10(a). However, any money he receives for the purpose of repaying the lender would be contributions subject to the limits and prohibitions of the federal campaign law.

Date Issued: September 16, 1994;
Length: 6 pages. ♦

AO 1994-28 Contributions by American Samoans

Individuals born in American Samoa, who are U.S. nationals but not U.S. citizens, may make contributions to Eni F. H. Faleomavaega, who is seeking reelection as the Delegate to the U.S. House of Representatives from the Territory of American Samoa. Additionally, Delegate Faleomavaega may

contribute personal funds to his own campaign.

Foreign nationals are prohibited from making contributions to candidates for U.S. elective office. The definition of foreign national includes individuals who are not U.S. citizens but specifically excludes individuals who have been granted permanent residence in the United States ("green card" holders). 2 U.S.C. §441e.¹

American Samoans, by virtue of their status as U.S. nationals, can be lawfully admitted for permanent residence in the United States at any time, without having to meet immigration requirements. Their status, therefore, is the same as that of foreigners who have been granted permanent residence in the United States. Consequently, they are exempt from the foreign national prohibition with respect to contributions to candidates for the office of U.S. Delegate from Samoa.

For the same reason, Delegate Faleomavaega, who is a U.S. national but not a U.S. citizen, may contribute personal funds to his own campaign.

Date Issued: September 16, 1994;
Length: 4 pages. ♦

AO 1994-29 One Contribution Limit for Candidate Seeking Nomination by Two Parties

David Levy, a candidate for the same House seat in the primaries held on September 13 by the Republican and Conservative Parties, has only one contribution

limit for the primary election. Additionally, should he secure the nomination of either party, Mr. Levy would have one contribution limit for the general election.

Because Mr. Levy is seeking election to only one federal office, only one limit applies to contributions made with respect to the primary. See 11 CFR 110.1(f) and 110.1(j)(3). The fact that Mr. Levy faced opposition in both parties in the primary makes no difference in determining the number of contribution limits that should be applied. See also AO 1982-47.

Date Issued: September 9, 1994;
Length: 5 pages. ♦

AO 1994-31 Disposition of Contributions When Candidate Withdraws

The Dean Gallo for Congress Committee, Congressman Gallo's 1994 reelection committee, may retain general election contributions made¹ before his withdrawal from the election on August 23, about 11 weeks after his primary victory. His situation is similar to that of primary election candidates who withdrew before the primary but were permitted to retain primary contributions made prior to the withdrawal date. AOs 1988-41 and 1986-12.

Mr. Gallo's committee may use the contributions to pay for general

¹ A contribution is considered to be "made" when the contributor relinquishes control over it. In the case of a contribution sent by mail, the postmark date is the date the contribution was made. 11 CFR 110.1(b)(6) and 110.2(b)(6). Therefore, Mr. Gallo's committee may keep contributions postmarked by August 23, but it must return those postmarked after that date. This rule would apply not only to contributions specifically designated for the general election but also to undesignated contributions made after the primary.

¹ The draw must be itemized on a Schedule A for Line 13(a), "loans made or guaranteed by the candidate." The bank—not the candidate—must be reported as the source of the loan, since the candidate received the funds as an agent of the campaign. 11 CFR 102.7(d), 104.3(a)(3)(vii)(B) and 104.3(a)(4)(iv).

¹ The definition of foreign national also includes foreign principals, as defined at 22 U.S.C. §611(b) (i.e., organizations organized under the laws of a foreign country or having their principal place of business in a foreign country, such as foreign governments, political parties, partnerships, associations and corporations).

election expenses already incurred. Any remaining funds may be used to create a multicandidate committee, since that is a permissible use of excess campaign funds.²

Date Issued: September 29, 1994; Length: 3 pages. Chairman Trevor Potter filed a dissent (2 pages).

Advisory Opinion Requests

Advisory opinion requests (AORs) are available for review and comment in Public Records.

AOR 1994-33

Use of pre-paid long-distance calling card to make contributions. (VITEL International, Inc.; October 3, 1994; 9 pages)

AOR 1994-34

Solicitation of members of corporation recently merged with another incorporated membership organization. (New York Mercantile Exchange; October 11, 1994; 7 pages plus attachments) ♦

Audits

FEC Releases Audits on Bush-Quayle Fundraiser and Hagelin Campaign

The Commission recently released final audit reports on two committees: the Republican Leadership Fund, a joint fundraising committee authorized by the Bush-Quayle '92 Primary Committee; and Dr. John Hagelin for President, the Hagelin 1992 Presidential campaign.

Audit findings are summarized below. Final audit reports are available from Public Records.

Republican Leadership Fund

The Republican Leadership Fund (the committee) conducted joint fundraising activities on behalf of the Bush-Quayle '92 Primary Committee and the Ohio Republican Party's federal and state accounts. The audit report recommended that the committee make a \$26,575 payment to the U.S. Treasury,¹ the amount of excessive contributions it accepted on behalf of Bush-Quayle '92, which received federal matching funds. The audit report additionally noted that the committee failed to allocate joint fundraising proceeds properly and failed to refund \$8,675 in earmarked contributions that were not intended for the fundraiser.

In September 1994, after the final audit report was released, the committee made the recommended payment to the Treasury and also provided documentation which indicated that it had refunded the earmarked contributions.

Dr. John Hagelin for President

The FEC's initial repayment determination required the Hagelin campaign to repay \$2,907 to the U.S. Treasury. Dr. Hagelin, the 1992 Presidential candidate of the Natural Law Party, received \$353,160 in matching funds. The repayment represented the amount of matching funds (as opposed to private contributions) used to pay \$15,215 in nonqualified campaign expenses identified in the audit. The audit also found several reporting errors, which were later corrected through amended reports. ♦

Court Cases

FEC v. Committee of 100 Democrats

In a court document filed September 13, the parties in this suit agreed to a schedule for paying the \$5,500 in total penalties owed by the three defendants: Committee of 100 Democrats, Committee to Elect Fusco to Congress (formerly, Throw the Rascals Out) and Dominick A. Fusco. (Civil Action No. 92-2245.)

The U.S. District Court for the District of Columbia, on September 30, 1993, had ordered defendants to comply with the terms of two conciliation agreements arising from an FEC enforcement action (MUR 3148). Under one agreement, Mr. Fusco and the Committee to Elect Fusco had to pay a \$3,500 penalty. The court additionally ordered each defendant to pay a \$1,000 penalty for violating the conciliation agreements. Because Mr. Fusco had signed both agreements, the court held him "jointly liable" for compliance with the conciliation agreements and payment of the additional penalties.

The September 1994 stipulation agreement requires the defendants to pay the penalties in monthly installments. If payments are late, interest will accrue on the entire unpaid balance until it is fully paid. Moreover, if defendants fail to carry out their obligations, they will be required to reimburse the FEC for costs and attorneys' fees expended on the case since the September 1993 judgment. ♦

²The simplest option available to the committee is to convert from a principal campaign committee to a multicandidate committee. See AOs 1988-41 and 1985-30; see also AO 1993-22, which discusses how the committee would change its reporting and filing status.

¹The recommended payment amount was originally \$28,901. However, that amount was reduced by a \$2,362 payment made to the U.S. Treasury by Bush-Quayle '92 in response to the initial audit report.

Statistics

PAC Contributions Track 1992 Levels

By June 30, 1994—18 months into the 1993-94 election cycle—PAC contributions to federal candidates had totaled \$109.9 million, close to the \$112.1 million contributed by PACs during the same period in the 1991-92 cycle. (See Table 1.)

Of the total contributed in the current cycle, \$100.8 was given to candidates seeking election in 1994, only a little less than the \$102.9 million contributed by PACs to 1992 candidates during the same period in the 1991-92 cycle.

Table 2 compares 18-month PAC activity over six election cycles. It is based on a September 19 FEC press release listing PAC campaign finance data by type of PAC and providing summary data over several election cycles. The release is available through Flashfax (call 202/501-3413 and enter document 629 at the prompt). For mail orders, call the Public Records Office, 800/424-9530 (press 3 on a touch tone phone) or 202/219-4140. ♦

Table 1
18-Month PAC Contributions to Candidates¹
(Millions of Dollars)

	1991-92	1993-94
Incumbents	\$91.6	\$91.1
Challengers	\$ 8.2	\$ 5.5
Open-Seat ²	\$12.3	\$13.3
Total	\$112.1	\$109.9

¹ Lists total PAC contributions made through June 30 of the election cycle to all federal candidates, not just those seeking election during the cycle.

² Open-seat candidates are those in races in which no incumbent candidate seeks election.

Compliance

(continued from page 2)

Complainants: (a) Common Cause; (b) Kelly Addy, Speaker of the Montana House of Representatives; (c) Dolores Colburg, Montana Commissioner of Political Practices
Subject: Excessive contributions; excessive coordinated expenditures; inadequate disclosure of receipts and disbursements; disclaimer; failure to file reports with state election office
Disposition: (a)-(d) Reason to believe but failed to pass motion finding probable cause; (e)-(h) no reason to believe

MUR 3460

Respondents (all in HI): (a) Sports Shinko (Pukalani) Co., Ltd.; (b) Tomio Kawaskai; (c) Takeshi Kinoshita; (d) Toshio Kinoshita (e) Koichi Soejima; et al. (f)-(p)
Complainant: Allen W. Barr (HI)
Subject: Foreign national contributions; contributions in name of another
Disposition: (a)-(e) \$57,000 penalty; (f)-(k) reason to believe but took no further action; (l)-(m) no reason to believe; (n)-(p) took no action

Table 2
18-Month PAC Activity¹
(Millions of Dollars)

Election Cycle	No. of PACs	Raised	Spent	Candidate Giving ²	Ending Cash	Debts
1983-84 ³	4,243	\$195.5	\$148.3	\$ 57.0	\$ 78.8	\$ 6.0
1985-86	4,421	\$254.3	\$205.1	\$ 78.5	\$102.8	\$11.2
1987-88 ³	4,578	\$266.7	\$215.5	\$ 95.0	\$119.3	\$11.7
1989-90	4,590	\$275.5	\$233.4	\$101.6	\$129.3	\$11.2
1991-92 ³	4,585	\$283.6	\$247.7	\$112.1	\$138.7	\$10.7
1993-94	4,513	\$285.5	\$244.3	\$109.9	\$136.1	\$10.1

¹ Covers activity from January 1, the year before the election, through June 30 of the election year.

² Includes PAC contributions to all federal candidates, not just those seeking election during the cycle.

³ Presidential election years.

MUR 3834

Respondents: Hirschfeld for Congress Citizens Committee, Rosemary Singer, treasurer (NY)
Complainant: FEC initiated
Subject: Failure to file 48-hour notices
Disposition: \$20,000 penalty

MUR 3839

Respondents: Friends of Newt Gingrich-1992, Briggs Goggans, treasurer (GA)
Complainant: FEC initiated
Subject: Failure to file 48-hour notices
Disposition: \$3,800 penalty

MUR 3851

Respondents: San Francisco Republican County Central Committee, John Sidline, treasurer
Complainant: FEC initiated
Subject: Failure to file reports on time; failure to file report
Disposition: \$9,500 penalty

MUR 3925/Pre-MUR 250

Respondent: Michael L. Keiser (IL)
Complainant: FEC initiated
Subject: Excessive contributions; \$25,000 annual limit
Disposition: \$28,000 penalty

MUR 3947

Respondents: (a) Kerrey for President, Hugh Westbrook, treasurer (FL); (b) Hugh Westbrook; (c) Barry Diller (CA)

Complainant: FEC initiated

Subject: Excessive contributions

Disposition: Reason to believe but took no further action

MUR 3999

Respondents: IMPACT, Joseph Turek, treasurer (IL)

Complainant: FEC initiated

Subject: Excessive contributions

Disposition: \$2,500 penalty ♦

Index

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

Advisory Opinions

- 1993-18: Corporate plan to foster political participation, 2:1
- 1993-19: Retiring 1984 Presidential debt, 1:13
- 1993-20: Purchase and distribution of candidate biography, 2:3
- 1993-21: Preemption of Ohio law, 2:4
- 1993-22: Use of excess funds by retired House Member, 3:5
- 1993-23: PAC disaffiliation, 3:6
- 1993-24: Definition of member, 4:6
- 1993-25: Preemption of Wisconsin law restricting contributions from lobbyists, 3:7
- 1994-2: Preemption of Minnesota law restricting contributions from lobbyists, 5:6
- 1994-3: Charitable matching plan for twice-yearly solicitations, 6:4; correction, 7:6

- 1994-5: Candidate status, 6:5; correction, 7:6
- 1994-6: Charitable matching plan for twice-yearly solicitations, 7:4
- 1994-7: Charitable matching plan for twice-yearly solicitations; treasurer as custodian, 7:4
- 1994-8: Campaign's rental of office space from candidate-owned corporation, 7:4
- 1994-9: Transfers from nonfederal PACs; effect of corporate reorganization on affiliation, 7:5
- 1994-10: Waiver of bank fees for political committee borrowers, 8:6
- 1994-11: SSF activities of federal contractor partnership, 7:6
- 1994-12: Definition of member applied to association's governing and membership structure, 8:6
- 1994-13: Video slate card listing multiple candidates, 7:6
- 1994-15: Cable series moderated by House Member seeking reelection, 8:7
- 1994-16: PAC contributions refunded to former employees, 8:7
- 1994-19: Affiliation between national membership association and state societies, 9:10
- 1994-20: Donation of campaign asset to local government, 9:11
- 1994-21: Solicitation in dues invoice sent to nonsolicitable members, 9:11
- 1994-22: Campaign's lease of property owned by candidate, 9:11
- 1994-23: Payroll deduction authorizations transferred to PAC, 9:11
- 1994-25: Corporation handling convention arrangements as political committee, 10:7
- 1994-26: Unsecured lines of credit obtained before candidacy, 11:7
- 1994-28: Contributions by American Samoans, 11:8
- 1994-29: One contribution limit for candidate seeking nomination by two parties, 11:8
- 1994-31: Disposition of contributions when candidate withdraws, 11:8

Court Cases

- FEC v. _____
- America's PAC, 8:8
 - Committee of 100 Democrats, 11:9
 - GOPAC, 6:5
 - LaRouche (94-658-A), 7:3
 - Michigan Republican State Committee, 4:7; 9:8
 - National Republican Senatorial Committee (93-1612), 1:12; 4:7
 - Political Contributions Data, Inc. (PCD), 5:4
 - Rodriguez, 6:5
 - Survival Education Fund, Inc., 3:1
 - Williams, 1:12
 - _____ v. FEC
 - Akins (92-1864), 5:4
 - Albanese, 9:9
 - Center for Responsive Politics, 1:12; 9:8
 - Freedom Republicans, Inc., 3:3
 - Froelich, 2:2; 8:9
 - Fulani (94-1593), 10:9
 - Fulani (94-4461), 8:11
 - Funk, 10:9
 - Jordan, 8:9
 - LaRouche (92-1100), 1:12
 - LaRouche (92-1555), 9:7
 - National Republican Senatorial Committee (NRSC), 5:5; 7:2
 - Republican National Committee (RNC) (94-1017), 7:3; 9:8
 - Whitmore and Quinlan, 9:9

Reports

- Schedule for 1994, 1:4; correction, 2:1
- change in Florida and South Carolina election dates, 4:6
 - reporting reminders, April, 3:1; July, 6:1; October through January, 9:6; October, 10:1; post-election report, 11:1
- Special elections
- Kentucky (2nd District), 5:9
 - Oklahoma (6th District), 3:7
 - Oklahoma (Senate), 7:2

800 Line Articles

- Help - my report is late, 6:1
- Registration by candidates and their committees, 1:14
- Retiring campaign debts, 11:5