

Record

October 2008

Federal Election Commission

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Reporting

October Reporting Reminder

The following reports are due in October:

- All principal campaign committees of House and Senate candidates must file a quarterly report by October 15. The report covers financial activity from July 1 (or the day after the closing date of the last report) through September 30;
- Principal campaign committees of Presidential candidates must file a report by October 15, if they are quarterly filers (the report covers financial activity from July 1 through September 30), or by October 20, if they are monthly filers (the report covers activity for the month of September);
- National party committees, political action committees (PACs) following a monthly filing schedule and state, district and local party committees that engage in reportable federal election activity must file a monthly report by October 20. This report covers activity for the month of September. Other PACs and party committees must file a quarterly report by October 15; and
- Pre-General reports are due on October 23 (close of books, October 15). Candidate committees must

(continued on page 2)

Advisory Opinions

[AO 2008-4](#)

Publicly Funded Presidential Candidate May Redesignate General Election Contributions to Senate Election Within 60 Days

The authorized committee of a Presidential candidate receiving primary matching funds may issue refunds or obtain redesignations to his Senate campaign (the Senate Committee) for contributions made in connection with the general election. Additionally, the campaign may treat the costs associated with issuing the refunds or obtaining the redesignations as “winding down costs,” which are qualified campaign expenses.

Background

Chris Dodd for President, Inc. (the Presidential Committee) is the principal campaign committee of Senator Chris Dodd, who was a candidate for the nomination of the Democratic Party for President of the United States. When Senator Dodd became a candidate for President, his Presidential Committee began accepting contributions for both the primary and general elections, which were kept in separate bank accounts. Senator Dodd applied

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Reports

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file this report if their candidate is running in the general election. PACs and party committees that file quarterly must file this report if they make contributions or expenditures in connection with a federal election during the October 1-15 reporting period. PACs and party committees that file on a monthly schedule **must** file a pre-general report in lieu of the regular November 20 monthly report.

Notification of Filing Deadlines

In addition to publishing this article, the Commission notifies committees of filing deadlines on its web site, via its automated Faxline and through reporting reminders called prior notices. Since January 1, 2007,

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prior notices have been distributed exclusively by electronic mail. They are no longer sent to committees via 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. To amend Form 1, electronic filers must submit Form 1 filled out in its entirety. Paper filers should include only the committee's name, address, FEC identification number and the updated or changed portions of the form.

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 deadline 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,¹ in excess of \$50,000

¹ *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).*

in a calendar year—or have reason to expect to do so—must file all reports and statements with the FEC electronically. Reports filed electronically must be received and validated by the Commission by 11:59 p.m. Eastern Time on the applicable filing deadline. 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.

Senate committees and other committees that file with the Secretary of the Senate are not subject to the mandatory electronic filing rules.

The Commission's electronic filing software, FECFile, is free and can be downloaded from the FEC's web site. New FECFile Version 6.2.1.0 is available for download from the FEC web site at <http://www.fec.gov/elecfil/updatelist.html>. All reports filed after June 9, 2008, must be filed in Format Version 6.2 (the new version). Reports filed in previous formats will not be accepted.

Filers may also use commercial or privately developed software as long as the software meets the Commission's format specifications, which are available on the Commission's web site. Committees using commercial software should contact their vendors for more information about the Commission's latest software release.

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 or registered 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.

Overnight Mail. Reports filed via overnight mail² will be considered 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 before the Commission'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 2008 Reporting Schedule is also available on the FEC's web site (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.

Filing Frequency for Party Committees

National committees of political parties must file on a monthly schedule in all years. 11 CFR 104.5(c)(4).

State, district and local party committees that engage in reportable federal election activity must automatically switch to a monthly filing schedule. Once a committee triggers the monthly filing requirement, a committee must file the next regularly scheduled monthly report and must continue to file monthly for the remainder of the calendar year.

Political Action Committees

PACs (separate segregated funds and nonconnected committees) may file on either a quarterly or monthly

basis in election years. A committee may change its filing frequency only once a year. After giving notice of change in filing frequency to the Commission and receiving the Commission's approval, all future reports must follow the new filing frequency. 11 CFR 104.5(c).

Additional Information

For more information on 2008 reporting dates:

- See the reporting tables in the January 2008 *Record*;
- Call and request the reporting tables from the FEC at 800/424-9530 or 202/694-1100;
- Fax the reporting tables to yourself using the FEC's Faxline (202/501-3413, document 586); or
- Visit the FEC's web page at http://www.fec.gov/info/report_dates.shtml to view the reporting tables online.

—Elizabeth Kurland

Ohio Special Election Reporting: 11th District

Ohio will hold a Special Election to fill the vacant U.S. House seat in Ohio's 11th Congressional District held by the late Representative Stephanie Tubbs Jones. The Special Primary will be held on October 14, 2008, and the Special General will be held November 18, 2008.

Candidate committees involved in this election must follow the reporting schedule on page 4. Please note that the reporting period for the Post-General report spans two election cycles. For this report only, authorized committees must use the Post-Election Detailed Summary Page rather than the normal Detailed Summary Page.

PACs and party committees that file on a quarterly schedule and participate in this election must also follow this schedule. PACs and party committees that file monthly should continue to file according to their regular filing schedule.

Filing Electronically

Reports filed electronically must be received and validated by the Commission by 11:59 p.m. Eastern Time on the applicable filing deadline. 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.

Timely Filing for Paper Filers

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Overnight Mail. Reports filed via overnight mail¹ will be considered 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 before the Commission's close of business on the filing deadline. 2 U.S.C. §434(a)(5) and 11 CFR 104.5(e). Forms are available for downloading and printing at the FEC's web site (<http://www.fec.gov/info/forms.shtml>) and

(continued on page 4)

² "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.

¹ "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.

Reports

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from FEC Faxline, the agency's automated fax system (202/501-3413).

48-Hour Contribution Notices

Note that 48-hour notices are required of the participating candidate's principal campaign committee if it receives any contribution of \$1,000 or more per source between September 25 and October 11, 2008, for the Special Primary Election, and between October 30 and November 15 for the Special General Election.

24- and 48-Hour Reports of Independent Expenditures

Political committees and other persons must file 24-hour reports of independent expenditures that aggregate at or above \$1,000 between September 25 and October 12, 2008, for the Special Primary Election, and between October 30 and November 16 for the Special General Election. This requirement is in addition to that of filing 48-hour reports of independent expenditures that aggregate \$10,000 or more at other times during a calendar year.

Electioneering Communications

The 30-day electioneering communications period in connection with the Special Primary Election runs from September 14 through October 14, 2008. The 60-day electioneering communications period in connection with the Special General Election runs from September 19 through November 18, 2008.

—Elizabeth Kurland

Louisiana Rescheduled Primary Elections

On September 3, 2008, due to Hurricane Gustav, Louisiana Governor Bobby Jindal issued an executive order postponing the Congressional and local elections scheduled for September 6, 2008. On September 4, 2008, the Louisiana Governor rescheduled the party primaries to October 4, 2008. The majority

Ohio 11th District Special Election Reporting

Committees Involved in the Special Primary Must File:

	Close of Books ¹	Reg./Cert./Overnight Mailing Deadline	Filing Deadline
Pre-Primary	September 24	September 29	October 2
October Quarterly	September 30	October 15	October 15

Committees Involved in Both the Special Primary and the Special General Must File:

	Close of Books ¹	Reg./Cert./Overnight Mailing Deadline	Filing Deadline
Pre-Primary	September 24	September 29	October 2
October Quarterly	September 30	October 15	October 15
Pre-General	October 29	November 3	November 6
Post-General	December 8	December 18	December 18
Year-End	December 31	January 31	January 31 ²

¹This date indicates the end of a reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered up through the close of books for the first report due.

²Note that this filing deadline falls on a weekend. Filing deadlines are not extended when they fall on nonworking days. Reports filed by methods other than Registered, Certified or Overnight Mail, or electronically, must be received by the close of business on the last business day before the deadline.

winner of the Primary Election is declared nominated to run in the General Election on November 4, 2008, along with the qualified independent candidates. Should no candidate achieve a majority vote in the October 4, 2008, Primary Election, a Primary Runoff Election will be held on November 4, 2008, with a General Election on December 6, 2008, in these affected Congressional Districts.

Candidate committees involved in this election must follow the reporting schedule on page 5. Please note that the reporting period for the Post-General report spans two election cycles. For this report only, authorized committees must use the Post-Election Detailed Summary Page rather than the normal Detailed Summary Page.

PACs and party committees that file on a quarterly schedule and participate in this election must also follow this schedule. PACs and party committees that file monthly should continue to file according to their regular filing schedule.

Filing Electronically

Reports filed electronically must be received and validated by the Commission by 11:59 p.m. Eastern Time on the applicable filing deadline. 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.

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 or registered 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.

Overnight Mail. Reports filed via overnight mail¹ will be considered 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 before the Commission’s close of business on the filing deadline. 2 U.S.C. §434(a) (5) and 11 CFR 104.5(e). Forms are available for downloading and printing 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).

48-Hour Contribution Notices

Note that 48-hour notices are required of the participating candidate’s principal campaign committee if it receives any contribution of \$1,000 or more per source less than 20 days—but more than 48 hours—before any election in which the candidate is running.

If no Primary Runoff is necessary. 48-hour notices are required for contributions received between

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¹ “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.

Louisiana Election Reporting

Committees Involved in Only the Primary Must File:

	Close of Books ¹	Reg./Cert./Overnight Mailing Deadline	Filing Deadline
Pre-Primary	September 14	September 19	September 22 ²
October Quarterly	September 30	October 15	October 15

If Two Elections are Held, Committees Involved in Both the Primary and the General Election³ Must File:

	Close of Books ¹	Reg./Cert./Overnight Mailing Deadline	Filing Deadline
Pre-Primary	September 14	September 19	September 22
October Quarterly	September 30	October 15	October 15
Pre-General	October 15	October 20	October 23
Post-General	November 24	December 4	December 4
Year-End	December 31	January 31	January 31 ³

If Three Elections Are Held, Committees Involved in Only the Primary and Runoff Must File:

	Close of Books ¹	Reg./Cert./Overnight Mailing Deadline	Filing Deadline
Pre-Primary	September 14	September 19	September 22
October Quarterly	September 30	October 15	October 15
Pre-Runoff	October 15	October 20	October 23
Year-End	December 31	January 31	January 31 ⁴

Committees Involved in the Primary, Primary Runoff and General Must File:

	Close of Books ¹	Reg./Cert./Overnight Mailing Deadline	Filing Deadline
Pre-Primary	September 14	September 19	September 22
October Quarterly	September 30	October 15	October 15
Pre-Runoff	October 15	October 20	October 23
Pre-General	November 16	November 21	November 24
Post-General	December 26	January 5	January 5
Year-End	December 31	January 31	January 31 ⁴

¹ This date indicates the end of a reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered up through the close of books for the first report due.

² See Commission’s clarification at http://www.fec.gov/info/la_statement.pdf.

³ If a Primary Runoff Election is necessary, it will be held November 4, 2008, and the General Election will instead be held on December 6, 2008, in the affected Congressional Districts.

⁴ Note that this filing deadline falls on a weekend. Filing deadlines are not extended when they fall on nonworking days. Reports filed by methods other than Registered, Certified or Overnight Mail, or electronically, must be received by the close of business on the last business day before the deadline.

Reports

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September 15 and October 1 for the Primary and between October 16 and November 1 for the General.

If Primary Runoff is necessary. 48-hour notices are required for contributions received between September 15 and October 1 for the Primary, between October 16 and November 1 for the Primary Runoff and between November 17 and December 3 for the General.

24- and 48-Hour Reports of Independent Expenditures

Political committees and other persons must file 24-hour reports of independent expenditures that aggregate at or above \$1,000 per source during the last 20 days—up to 24 hours—before an election.

If no Primary Runoff is necessary. 24-hour reports of independent expenditures are required between September 15 and October 2 for the Primary and between October 16 and November 2 for the General.

If Primary Runoff is necessary. 24-hour reports of independent expenditures are required between September 15 and October 2 for the Primary, between October 16 and November 2 for the Primary Runoff and between November 17 and December 4 for the General.

This requirement is in addition to that of filing 48-hour reports of independent expenditures that aggregate \$10,000 or more at other times during a calendar year.

Electioneering Communications

If no Primary Runoff is necessary. The 30-day electioneering communications period in connection with the Primary Election runs from September 4 through October 4, 2008, and the 60-day electioneering communications period in connection with the General Election runs from September 5 through November 4, 2008.

If Primary Runoff is necessary. The 30-day electioneering communications period in connection with the Primary Election runs from Sep-

tember 4 through October 4, 2008, the 30-day electioneering communications period for the Primary Runoff Election runs from October 5 through November 4, 2008, and the 60-day electioneering communications period in connection with the General Election runs from October 7 through December 6, 2008.

—Elizabeth Kurland

Advisory Opinions

(continued from page 1)

for federal matching funds for the primary election and was certified by the Commission on November 27, 2007, as eligible to receive such matching funds.

On January 3, 2008, Senator Dodd withdrew from the Presidential race and later filed a Statement of Candidacy indicating his candidacy for U.S. Senate in the 2010 election. The Presidential Committee issued refunds to some contributors upon request and later sent requests via U.S. mail to remaining general election contributors (who had not received refunds) asking them to redesignate their contributions to Senator Dodd's Senate Committee. The Presidential Committee paid the costs associated with sending these redesignation requests with funds received for the Presidential primary election.

Analysis

A candidate may accept contributions for the general election prior to the primary election, or in the case of a Presidential candidate, before the candidate receives his or her party's nomination. 11 CFR 102.9(e)(1). The Commission has concluded that Presidential candidates do not waive their ability to participate in the general election public funding program by soliciting and raising general election funds before securing the party's nomination. See AO 2007-03. A Presidential candidate who accepted general election contributions before becoming the party's nominee may refund

general election funds received from contributors, or under certain circumstances, request a redesignation for a different election. 11 CFR 110.1(b)(5) and 110.2.

Commission regulations generally limit the time period in which a committee may obtain a redesignation to 60 days and require that impermissible funds be refunded within 60 days. 110.1(b)(3)(i) and (b)(5). The Commission has previously concluded that the 60-day period begins to run on the date that the committee "has actual notice of the need to obtain redesignations... or refund the contributions."

In this case, Senator Dodd withdrew from the Presidential race on January 3, 2008, which caused the 60-day period for obtaining redesignations and making refunds to run. On February 26, 2008, the Presidential committee filed an advisory opinion request, 54 days after Senator Dodd's withdrawal from the race. The Commission determined that Senator Dodd has six days (the balance of the 60-day period remaining after the advisory opinion request was filed) after the issuance of the advisory opinion to obtain redesignations and make refunds. Normally, the mere filing of an advisory opinion request does not toll any statutory or regulatory deadlines. Some Commissioners believe that the 60-day deadline for obtaining redesignations and making refunds should toll in Senator Dodd's case because he presented a novel legal question regarding two potentially conflicting regulations, as was the case in Advisory Opinion 1992-15. Other Commissioners believe that tolling is warranted here only because on January 1, 2008, and for approximately six months thereafter, a period during which Senator Dodd requested this advisory opinion and it remained pending, the Commission was unable to render any advisory opinions because it lacked a quorum of Commissioners.

Additionally, the Presidential Committee may pay costs associated with refunds and redesignations of contributions received for the general election with funds received for the primary election because such costs would qualify as “winding down costs,” which are considered “qualified campaign expenses.” 11 CFR 9034.11(a) and 9034.4(a). Winding down costs include costs associated with the termination of a Presidential candidate’s efforts to obtain his or her party’s nomination, such as the costs of complying with the post-election requirements of the Federal Election Campaign Act and the Matching Funds Act. 11 CFR 9043.11(a).

Date Issued: September 2, 2008;

Length: 5 pages.

—Myles Martin

[AO 2008-6](#)

Proposed Slate Card is Exempt Party Activity

Costs incurred by the Democratic Party of Virginia (the Committee) to prepare and distribute its proposed publications are not considered contributions or expenditures. Publications distributed by employees of the committee satisfy the “slate card exemption,” provided the content of the publications is consistent with the nature of that exemption. Publications distributed by volunteers can satisfy the “volunteer activity exemption.”

Background

The Committee is a state party that is registered as a political committee with the Commission. The Committee plans to prepare and distribute publications featuring Democratic Party candidates running for state and federal office in Virginia. The publications will include information about the general election, including the date and time of the election and how and where to cast a ballot. The Committee plans to include abstract designs and colors

in the backgrounds or on the borders of the publications in order to make them “more visually compelling,” and it also plans to include photographs of the candidates featured in the publications. The Committee plans to have its workers, both paid and volunteer, distribute the publications by mail and by hand. All costs associated with the publications will be paid by the Committee using federal funds.

Analysis

Slate Cards. The Federal Election Campaign Act (the Act) exempts from the definition of “contribution” and “expenditure” the payment by state and local political party committees of the costs incurred to prepare, display, mail or otherwise distribute a printed slate card, sample ballot or “other printed listing(s)” of three or more candidates for any public office who are to be elected in the relevant state. 11 CFR 100.80 and 100.140. The provision is generally known as the “slate card exemption.”

The Committee’s proposed publications meet the threshold requirements of the slate card exemption since the Committee will refer to at least three candidates running for election in Virginia, including at least one federal candidate.

The Commission has previously concluded that slate cards may include the following information: 1) information identifying candidates by name or by picture; 2) the office or position currently held by the candidates; 3) the elective office being sought by the candidates; 4) party affiliation; and 5) voting information, such as the time and place of an election and instructions on the method for voting a straight party ticket. Publications that provide additional biographical information, candidate positions or statements of party philosophy do not qualify for the slate card exemption. The Committee’s plan to include designs, images and extra photographs on its publications does not necessarily

provide excess biographical information about candidates or express candidate positions or statements of party philosophy. Thus, the Committee’s publications would qualify under the slate card exemption.

Additionally, the Committee’s workers are not restricted in the type of political speech they may engage in while distributing the slate cards by hand.

Volunteer Activity. If Committee volunteers distribute the Committee’s publications, the slate card exemption’s limit on content would be unnecessary. The Act and Commission regulations also include a “volunteer activity exemption,” which exempts from the definition of “contribution” and “expenditure” the costs to create, purchase and distribute campaign materials, including pins, bumper stickers, handbills, brochures, posters, party tabloids and yard signs that are used by state and local political party committees in connection with volunteer activities on behalf of that party’s nominees. 11 CFR 100.87 and 100.147.

Unlike the slate card exemption, the content of materials that are distributed under the volunteer activity exemption is not restricted, so long as they are distributed by volunteers in a manner consistent with other requirements of the exemption. The types of campaign materials covered by this exemption include all manner of publications, including those proposed by the Committee.

Date Issued: August 22, 2008;

Length: 6 pages.

—Myles Martin

[AO 2008-7](#)

Use of Campaign Funds for Legal and Media Expenses

David Vitter for U.S. Senate, the principal campaign committee of Senator David Vitter (LA) may use campaign funds to pay for, and reimburse Senator Vitter for, legal services related to a third party

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Advisory Opinions

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criminal proceeding in which he was subpoenaed as a witness.

Background

In March of 2007, Deborah Palfrey was indicted by a federal grand jury on criminal charges, including money laundering and racketeering. Senator Vitter's telephone number appeared in Ms. Palfrey's telephone records. Senator Vitter retained counsel to monitor the criminal proceedings because of the perception that Ms. Palfrey had a "strategy of dragging public figures into her legal proceedings."

In July of 2007, Ms. Palfrey released her telephone records and posted them on the Internet. Senator Vitter issued a public statement concerning the presence of his phone number in Ms. Palfrey's records. Later that month, Citizens for Responsibility and Ethics in Washington (CREW) requested that the Senate Select Committee on Ethics (Senate Ethics Committee) investigate Senator Vitter for possible violation of the Senate Rules of Conduct by allegedly soliciting for prostitution. Senator Vitter retained separate counsel to defend himself against the Senate Ethics committee complaint.

In November of 2007, Ms. Palfrey subpoenaed Senator Vitter to testify at a pre-trial hearing. In March of 2008, Ms. Palfrey subpoenaed Senator Vitter as a trial witness. Counsel hired by the Senator consulted with government attorneys and appeared in court in an attempt to quash both subpoenas. In addition to monitoring the trial, attempting to quash the subpoenas and consulting with counsel assisting Senator Vitter in the matter before the Senate Ethics Committee, counsel also consulted with Senator Vitter and his public relations professional. Counsel billed approximately \$85,322 in legal fees for work relating to quashing the subpoenas; \$31,341.25 in legal fees for consultations, including

with the Senator, the Ethics Counsel and a public relations professional; \$75,212.75 in legal fees for monitoring the Palfrey criminal proceeding; and \$15,301.50 for miscellaneous expenses such as transportation and photocopying.

Analysis

The Federal Election Campaign Act (the Act) identifies six permissible uses of federal campaign funds including campaign-related expenses; ordinary and necessary expenses incurred in connection with the duties of the individual as a federal officeholder; and any other lawful purpose that is not considered "personal use." 2 U.S.C. §439a(a) and 11 CFR 113.2.

Contributions accepted by the candidate's authorized campaign committee may not be converted to personal use by any person. "Personal use" is any use of campaign funds to fulfill a commitment, obligation or expense that would exist irrespective of the candidate's campaign of officeholder duties. 2 U.S.C. §439a(b)(2) and 11 CFR 113.1(g).

The Commission has previously recognized that if a candidate can demonstrate that expenses resulted from campaign or official duties, the Commission will not consider the use to be personal. The Commission examines the use of campaign funds for legal fees and expenses on a case by case basis. Senator Vitter asked the Commission to use campaign funds to pay for legal expenses for "(1) monitoring and participating in Ms. Palfrey's trial and quashing the subpoenas issued to him; (2) assisting in the defense of a Senate Ethics Committee complaint; and (3) making informed decisions about how to manage the case and address it publicly."

Applicability of the Use of Funds Provision

The FEC determined that Senator Vitter's principal campaign committee may use campaign funds to pay some, but not all, legal fees and ex-

penses rendered in connection with a legal proceeding against a third party. The Commission concluded that legal fees and expenses incurred in consultation with Senator Vitter's Ethics Counsel and in responding to press inquiries and news stories would not have existed irrespective of the Senator's campaign or duties as a federal officeholder and could be paid with campaign funds. The Commission further concluded that the Committee may pay miscellaneous expenses incurred in connection with assisting Ethics Counsel, and in connection with press relations, as described above, and reimburse Senator Vitter for that part of his personal payment of \$70,000 to Subpoena Counsel representing legal fees and expenses that the Commission has determined the Committee could pay with campaign funds. The Committee must maintain appropriate documentation of any disbursements made to pay permissible legal expenses and report the recipient's full name, address and purpose of payment. The Commission could not reach a conclusion regarding the use of campaign funds for quashing subpoenas or monitoring the criminal proceeding.

Date Issued: August 21, 2008;

Length: 7 pages.

— Michelle L. Ryan

AO 2008-8

Earmarked Contribution Counts Against Current Spending Limits

An earmarked contribution sent by an individual through a nonconnected political action committee (PAC) is considered "made" when the contributor gives the money to the nonconnected PAC, not when the committee eventually forwards the contribution to the final recipient. Thus, a contribution earmarked through a nonconnected PAC in 2008 will be subject to the

2008 calendar-year contribution limit and count against the contributor's 2007-2008 biennial limit, even if the contribution is not forwarded to the intended recipient until a later election cycle.

Background

On June 25, 2008, Jonathan Zucker made an on-line credit card contribution through ActBlue, a nonconnected PAC. ActBlue solicits and accepts on-line credit card contributions for candidates and party committees and forwards them to the intended recipient via check. Mr. Zucker earmarked his contribution for the 2010 Democratic nominee for the U.S. Senate in Arizona or, in the event there is no such nominee, to the Democratic Senatorial Campaign Committee (DSCC).

Usually, a person who receives a contribution of any amount for an authorized political committee, or a contribution greater than \$50 for a political committee that is not an authorized committee, must forward the contribution to the intended recipient no later than 10 days after receipt. 11 CFR 102.8(a) and (b)(1), and 110.6(c)(1)(iii) and (iv).

However, in AO 2006-30, the Commission determined that ActBlue could solicit and receive contributions earmarked for a prospective candidate and delay forwarding those contributions until no later than 10 days after the candidate had registered a campaign committee, rather than within 10 days after ActBlue's receipt of the contribution. The Commission also determined that ActBlue could forward the contribution to a named national party committee in the event the intended candidate did not register with the Commission. See also AO 2003-23.

Analysis

The Federal Election Campaign Act and Commission regulations place limits on the amount that any person can contribute to a national party committee, and this limit is indexed for inflation. For 2008, an

individual can give no more than \$28,500 to a national party committee. 11 CFR 110.1(c)(1). Individuals are additionally subject to a "biennial limit," which limits the total amount of contributions that any individual may make to all federal candidates, PACs and party committees during a two-year cycle. For the 2008 cycle, the overall biennial limit is \$108,200, which is further broken down into separate limits for candidates and other committees. The biennial limit is also indexed for inflation every two years. 11 CFR 110.1(b)(1)(ii). Inflation adjustments beyond 2008 cannot be determined at this time.

The date a contribution is "made" determines the election limit it counts against, and a contribution is considered "made" when the contributor relinquishes control over it. 11 CFR 110.1(b)(6). A credit card contribution is "made" when the credit card or number is presented because, at that point, the contributor is strictly obligated to make the payment. AO 1990-14.

In this case, Mr. Zucker's credit card has been charged for the contribution, and he is obligated to pay that amount to the credit card company. Thus, his contribution has been "made." Moreover, under Commission regulations a contribution to a candidate or committee with respect to a particular election, *including an earmarked contribution*, counts against the contribution limits in effect during the election cycle in which the contribution is actually made, regardless of the year in which the particular election is held. 11 CFR 110.5(c)(1). Accordingly, if his contribution is forwarded to a 2010 Senate nominee, it will still count against his 2007-2008 biennial limit. If there is no Democratic Senate nominee and his contribution is forwarded to the DSCC, the contribution will again count against his 2007-2008 biennial limit and against his calendar-year contribution limit to the DSCC for 2008.

The Commission further determined that, because Mr. Zucker may not know until 2010 whether his contribution was forwarded to a candidate or a political committee, the only way to ensure that he does not exceed any possible limit that may apply is to consider his contribution as if it were made to both the 2010 Democratic Senate nominee and the DSCC.

Date Issued: September 12, 2008;
Length: 4 pages.

—Isaac J. Baker

AO 2008-9

Application of Loan Repayment Provision

A provision of the Bipartisan Campaign Reform Act of 2002 (BCRA) dealing with the repayment of personal loans a candidate makes to his or her campaign committee is not affected by the Supreme Court's finding that the so-called "Millionaires' Amendment" is unconstitutional. Therefore, candidates who loan their campaign committees personal funds can still only be repaid up to \$250,000 of the loan amount using contributions raised after the date of the election. 2 U.S.C. §441a(j) and 11 CFR 116.11 and 116.12.

Background

On June 26, 2008, the Supreme Court ruled that sections 319(a) and 319(b) of the BCRA, known as the "Millionaires' Amendment" (2 U.S.C. §441a-1), unconstitutionally burden the First Amendment rights of self-financed candidates for the House of Representatives. *Davis v. Federal Election Commission*, 554 U.S. ___, 128 S. Ct. 2759 (2008). Section 304(a) of BCRA imposes analogous limitations on candidates for the Senate. In addition to the Millionaires' Amendment provisions, section 304(a) also includes a provision that limits to \$250,000 the amount of a personal candidate loan that can be repaid by the candi-

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date's committee with contributions made after the date of the election. 2 U.S.C. §441a(j); 11 CFR 116.11, 116.12. This loan repayment provision applies equally to all candidates, regardless of whether they or their opponents have triggered the increased campaign contribution limits.

New Jersey Senator Frank Lautenberg loaned his principal campaign committee, Lautenberg for Senate (the Committee), \$1.65 million in connection with his June 3, 2008, primary election campaign. The Committee has not yet repaid those loans to Senator Lautenberg. The Committee asked whether the loan repayment provision would apply to Senator Lautenberg and the Committee in light of the Supreme Court's ruling in *Davis v FEC*.

Analysis

The Supreme Court did not address the constitutionality of the loan repayment provision. Under the BCRA, the invalidation of one BCRA provision, such as the Millionaires' Amendment, does not affect the validity of any other provisions. The Commission determined that the loan repayment provision of the BCRA is not inextricably tied to the Millionaires' Amendment and the increased contribution limits.

Therefore, the loan repayment provision applies to Senator Lautenberg and the Committee's proposal to repay his loans.

Date Issued: August, 22, 2008;
Length: 3 pages.

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AOR 2008-14

Application of the media exemption to an interactive multi-channel Internet TV station featuring content about one or more federal candidates (Melothe, Inc., August 11, 2008)

Public Funding

Commission Approves Public Funds for McCain-Palin

The Commission approved payment of \$84.1 million in federal funds for the general election campaign of John McCain and Sarah Palin on Friday, September 5, 2008. Following certification of the request for funds, the FEC immediately notified the U.S. Treasury Department, which made the wire transfer to the McCain-Palin campaign.

McCain-Palin 2008 Inc. requested the funding in a letter to the Commission dated September 4, 2008. In that letter the candidates agreed to abide by the overall spending limit and to other legal requirements, including a post-campaign audit. Presidential candidates accepting the federal payment are subject to a spending limit of \$84.1 million, the amount of the payment, plus a combined personal spending limit of \$50,000 from their personal funds. (All expenditures made by or on behalf of a Vice-Presidential candidate are considered to be made on behalf of the Presidential candidate.) Additional funds may be raised, subject to the limits and prohibitions of

the Federal Election Campaign Act, for legal and accounting expenses. These are commonly referred to as GELAC accounts.

Each national party committee has an additional \$19.1 million spending limit, which it may spend in coordination with the Presidential campaign. These monies must be raised from private sources, subject to the limits and prohibitions of the statute, and must be reported by the party.

By law, 26 U.S.C. §9001, *et seq.*, the Presidential nominees of both major parties are each entitled to \$20 million, plus a cost-of-living adjustment calculated from 1974, when the federal payment program began. The following amounts were given to major party nominees for each of the eight previous federally funded Presidential elections: 2004: \$74.62 million; 2000: \$67.56 million; 1996: \$61.82 million; 1992: \$55.24 million; 1988: \$46.1 million; 1984: \$40.4 million; 1980: \$29.44 million; 1976: \$21.82 million.

—Myles Martin

Commission Approves McCain Withdrawal from Matching Payment Program

On August 21, 2008, the Commission approved Senator John McCain's request for withdrawal from public funding under the Presidential Primary Matching Payment Account Act (Matching Payment Program). The Commission also approved a letter to the Department of the Treasury indicating that it has withdrawn its certification that Senator McCain and his principal campaign committee, John McCain, 2008, Inc. (the Committee), are entitled to payments from the Matching Payment Program and that none of the matching funds the Committee was eligible to receive through the program should be disbursed. The Committee is thus not bound by the provisions of the Matching Payment Program, including the Program's spending limits

and the Commission's mandatory audit.

Background

Under the Matching Payment Program, the federal government matches up to \$250 of an individual's total contributions to an eligible Presidential primary candidate. Candidates have to establish eligibility to receive the matching funds by raising more than \$5,000 in at least 20 states. In exchange for this public financing, candidates pledge to limit national spending for primary elections and submit to an audit by the Commission. 26 U.S.C. §§9033(a) and (b); 11 CFR 9033.1 and 9033.3.

In August of 2007, the Commission accepted Senator McCain's application to participate in the Matching Payment Program and concluded he was able to receive \$100,000 in public funds for his campaign for the Republican Party's Presidential nomination. In December, the Commission certified that the McCain Committee was eligible for an additional \$5,812,197.35 in matching funds.

On February 6, 2008, the Committee notified the Commission that it intended to withdraw from the Matching Payment Program. No matching funds were disbursed by the U.S. Treasury to the Committee.

—Isaac J. Baker

Court Cases

The Real Truth About Obama, Inc. v. FEC and U.S. Department of Justice

On September 11, 2008, the U.S. District Court for the Eastern District of Virginia denied The Real Truth About Obama, Inc.'s (RTAO's/ the plaintiff's) motion for a preliminary injunction against the Federal Election Commission.

In July 2008, RTAO, a nonprofit "527" corporation, filed a complaint challenging the constitutionality of

three Commission regulations and an FEC "enforcement policy." According to the court's order denying the injunction, RTAO is unlikely to succeed on the merits of the claims that the challenged provisions are unconstitutional. The court determined that granting the injunction would cause greater harm to the government than to RTAO, and that it would "negatively impact the public."

Background

RTAO alleges that certain Commission regulations are overbroad and void for vagueness, in violation of the First and Fifth Amendments. The plaintiff further alleges that the provisions in question exceed the FEC's statutory authority and have a chilling effect on their speech. The challenged regulations relate to express advocacy, whether funds received in response to solicitations are contributions and the Commission's implementation of the Supreme Court's decision in *Wisconsin Right to Life* with regard to electioneering communications. RTAO also challenges the Commission's "enforcement policy" on political committee status. The suit was filed against the FEC and the United States Department of Justice, the entity charged with criminal enforcement of the federal laws at issue. The plaintiff seeks a declaration that the challenged regulations and "enforcement policy" are void. See the September 2008 *Record*, page 3.

—Michelle Ryan

Schneider v. FEC

On August 20, 2008, Congressional Candidate Jan Schneider (FL/13) filed a complaint pursuant to 2 U.S.C. §437g(a)(8) in the U.S. District Court for the District of Columbia alleging that the Commission had failed to act on an administrative complaint she filed against her general election opponent.

Background

According to the court complaint, Ms. Schneider filed an administrative complaint with the FEC on March 17, 2008, alleging that her opponent, Christine Jennings (FL/13), and her political committees violated the Federal Election Campaign Act (the Act) during the 2004, 2006 and 2008 election cycles. The administrative complaint alleged that Ms. Jennings and her political committees withheld payroll taxes from campaign employees and then appropriated those funds for campaign purposes. Ms. Schneider alleged that these funds constitute excessive contributions from employees to the campaign. The complaint also alleged the committees violated reporting requirements by failing to disclose tax payments accurately and in a timely manner. The complaint further alleged the violations caused "irreparable harm" to Ms. Schneider, who ran against Ms. Jennings in the 2004 and 2006 primary elections and is currently running against her in the 2008 general election.

The Act provides that the Commission has 120 days from receipt of an administrative complaint before a complainant can file suit against the Commission alleging a failure to act, and 30 days to comply with any subsequent court declaration that the Commission has unlawfully failed to act. The Commission had only two members for several months during 2008 and did not have the four affirmative votes required to take certain actions in handling an administrative complaint.

Complaint

Ms. Schneider asked the court to declare that the Commission's alleged failure to act on the administrative complaint is contrary to law; direct the FEC to rule on the merits of the complaint within thirty days; and take such further or different actions as the court may deem just and proper.

—Michelle L. Ryan

Nonfilers

Committees Fail to File Pre-Primary Reports

Four campaign committees failed to file the Pre-Primary report required by the Federal Election Campaign Act (the Act) for primary elections on September 9, 2008, in Minnesota, New York and Wisconsin; three campaign committees failed to file the Pre-Primary report required for the August 26, 2008, primary election in Florida; and two campaign committees failed to file the Pre-Primary report required for the August 19, 2008, primary election in Wyoming.

As of 5 p.m. September 5, 2008, the required disclosure report had not been received from the following committees active in the September 9 primary elections:

- Barb Davis White for Congress, principal campaign committee for Barbara Davis White, a candidate in Minnesota's 5th district. The committee treasurer is Ly'neys Rita Hill.
- Higgins for Congress, the principal campaign committee for Brian Higgins in New York's 27th district. The committee treasurer is Gary M. Kanaley.
- Friends of Graham Long, the principal campaign committee for Graham E. Long in New York's 3rd district. The committee treasurer is Anita Long.
- Stark for Congress, the principal campaign committee for Paul Stark in Wisconsin's 3rd district. The committee treasurer is John Sackett.

This report was due on August 28, 2008. If sent by registered or certified mail, the report should have been postmarked by August 25, 2008.

As of 5 p.m. on August 21, 2008, the required disclosure report had not been received from the following committees active in the August 26,

2008, primary election in Florida:

- Carol Castegnero for Congress, the principal campaign committee for Carol Castegnero, a candidate in Florida's 5th district. The committee treasurer is Carol Castegnero.
- Jay McGovern for Congress, the principal campaign committee for James Joseph "Jay" McGovern, a candidate in Florida's 4th district. The committee treasurer is Justin Spiller.
- Principal Campaign Committee James E. Bryan, the principal campaign committee for James Edward Bryan, a candidate in Florida's 1st district. The committee treasurer is James E. Bryan.

This report was due on August 14, 2008. If sent by certified or registered mail, the report should have been postmarked by August 11, 2008.

As of 5 p.m. August 14, 2008, the required disclosure report had not been received by the following committees active in the August 19, 2008, primary election in Wyoming:

- Committee to Elect Nick Carter for United States Senate, the principal campaign committee for Nicholas H. Carter. The committee treasurer is John E. Henry.
- Rothfuss for Senate, the principal campaign committee for Christopher J. Rothfuss. The committee treasurer is H. Brant Rothfuss.

This report was due on August 7, 2008. If sent by certified or registered mail, the report should have been postmarked by August 4, 2008.

The FEC notified committees involved in these primaries of their potential filing requirements. Those committees who did not file on the due date were notified that reports had not been received and that their names would be published if they did not respond within four business days.

Some individuals and their committees have no obligation to file reports under federal election law, even though their names may appear

on state ballots. If an individual raises or spends less than \$5,000, he or she is not considered a "candidate," subject to reporting under the Act.

Other political committees that support Senate and House candidates in elections, but are not authorized units of a candidate's campaign, are also required to file pre-primary reports, unless they report monthly. Those committee names are not published by the FEC.

Further Commission action against non-filers and late filers is decided on a case-by-case basis. Federal law gives the FEC broad authority to initiate enforcement actions, and the FEC has implemented an administrative fine program with provisions for assessing monetary penalties.

—Myles Martin

Statistics

Party Committee Fundraising through June 30

Republican party committees raised \$409 million from January 2007 through June 30, 2008. This represents about a one-percent increase over a similar period in 2006, but reflects a 12-percent decline in funds raised during the first six months of the 2004 Presidential campaign. Democratic party committees continued to raise more money than in previous years, with total receipts of \$351.1 million from January 2007 through June 30, 2008. This is an increase of 21 percent over a similar period in 2006 and 26 percent higher than in 2004. The charts on page 13 detail the fundraising totals over this period by all Democratic and all Republican committees, dating back to the 1998 election cycle.

Among national party committees, the Republican National Committee (RNC) and the Democratic Senatorial and Congressional Campaign committees (DSCC and

DCCC) reported the largest gains in receipts since 2006, though the RNC total remains below the comparable figure for 2004. Receipts declined during the period for the Democratic National Committee (DNC) and the Republican Senatorial and Congressional committees (NRSC and NRCC).

Individual contributions continue to be the largest source of funds for party committees. Republicans received \$324 million from individuals (79 percent of their receipts), while Democrats received \$265.6 million (76 percent of their total). All committees, except the DSCC, received more money in contributions of less than \$200 each than in any other category. The DSCC received more in contributions of over \$20,000 than in any other contribution category.

The Bipartisan Campaign Reform Act (BCRA) of 2002 changed campaign contribution limits, increasing individual contributions to national parties to \$25,000, adjusted for inflation. The inflation-adjusted limit for the 2007-2008 election cycle is \$28,500.

Political action committees (PACs) and other committees contributed \$36 million to Republican

party committees and \$63.8 million to Democratic party committees in 2007-2008. Much of this total is from House Democrats who contributed \$29.8 million from their campaign accounts to the DCCC. House Republicans contributed \$13.1 million to the NRCC.

Additional information is available in an FEC press release dated August 15, 2008. The release is available on the FEC web site at <http://www.fec.gov/press/press2008/20080814party/20080815party.shtml>.

—Myles Martin

Number of Federal PACs Increases Slightly

The number of federally registered political action committees (PACs) increased slightly during the first six months of 2008, with the number of PACs rising from 4,234 to 4,292, a 1.3 percent increase.

PACs are neither party committees nor candidate committees. Some PACs are sponsored by corporations and unions—trade, industry and labor PACs. Other PACs, often ideological, do not have a corporate or labor sponsor and are therefore

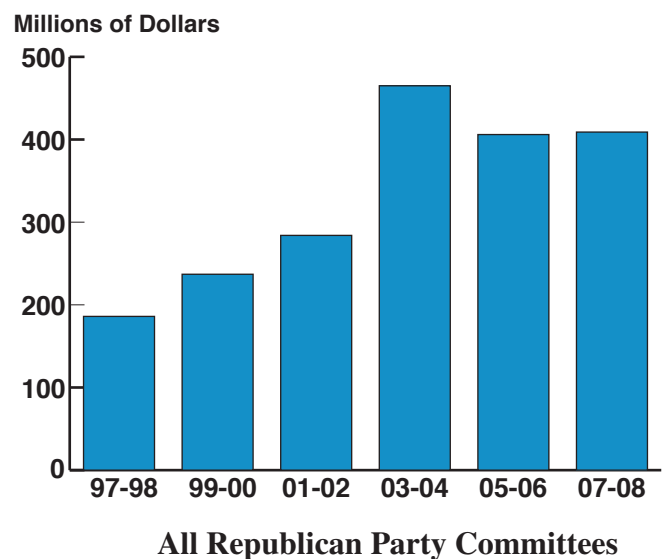
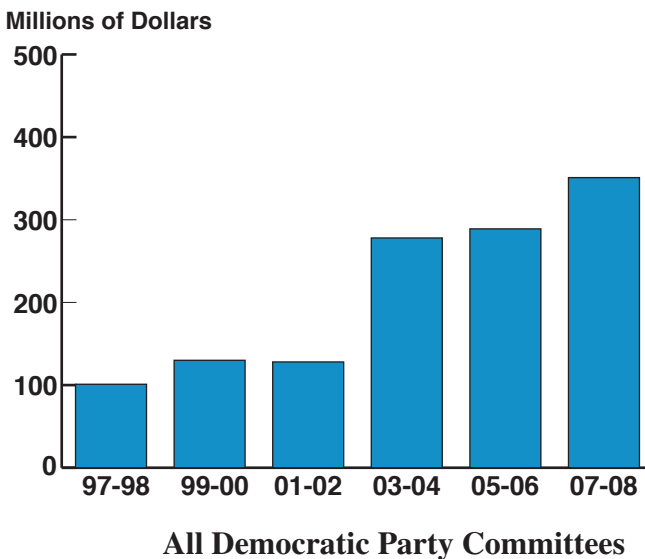
called nonconnected PACs. For more than 20 years the number of active PACs has remained in a range from approximately 3,800 to about 4,300. While the overall total has remained steady, new committees continue to register in numbers roughly equal to those who terminate their activity in each cycle. Since January 1, 2007, for example, 550 new PACs registered with the FEC, while 600 ended their federal activity and terminated.

Corporate PACs remain the largest category, with 1,578 committees, followed by nonconnected (1,377), trade/membership/health (928), labor (272), corporations without stock (96) and cooperatives (41).

PACs sponsored by corporations and labor organizations are technically referred to as “separate segregated funds” and must register within 10 days of being established. Nonconnected PACs (those which are not connected to or sponsored by a corporation or labor organization, and which are not related to a candidate’s campaign or to a political party organization) must register within 10 days after certain financial activity exceeds \$1,000 during a calendar year.

(continued on page 14)

Fundraising by All Democratic and Republican Party Committees, January Through June 30 of Election Year—1997 to 2008



Statistics

(continued from page 13)

Registration does not necessarily imply financial activity. Many PACs report making no contributions to candidates or independent expenditures on behalf of or against candidates. The chart below details the number of federal PACs in each category, dating back to January 2000.

—Myles Martin

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Semiannual PAC Count 2000-Present

	Corporate	Labor	Trade/ Member/ Health	Coop- erative	Corp. w/o Capital Stock	Non- connected ¹	Total
Jan. 00	1,548	318	844	38	115	972	3,835
Jul. 00	1,523	316	812	39	114	902	3,706
Jan. 01	1,545	317	860	41	118	1,026	3,907
Jul. 01	1,525	314	872	41	118	1,007	3,877
Jan. 02	1,508	316	891	41	116	1,019	3,891
Jul. 02	1,514	313	882	40	110	1,006	3,865
Jan. 03	1,528	320	975	39	110	1,055	4,027
Jul. 03	1,534	320	902	39	110	1,040	3,945
Jan. 04	1,538	310	884	35	102	999	3,868
Jul. 04	1,555	306	877	34	97	1,174	4,040
Jan. 05	1,622	306	900	34	99	1,223	4,184
Jul. 05 ²	1,646	302	936	37	103	1,267	4,291
Jan. 06	1,622	290	925	37	103	1,233	4,210
Jul. 06	1,621	283	935	40	105	1,233	4,217
Jan. 07	1,582	273	937	37	100	1,254	4,183
Jul. 07	1,586	273	926	37	99	1,247	4,168
Jan. 08	1,601	273	925	38	97	1,300	4,234

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

² During the second six months of 2005, 189 PACs were administratively terminated for inactivity.

Campaign Guides Available

For each type of committee, a *Campaign Guide* explains, in clear English, the complex regulations regarding the activity of political committees. It shows readers, for example, how to fill out FEC reports and illustrates how the law applies to practical situations.

The FEC publishes four *Campaign Guides*, each for a different type of committee, and we are happy to mail your committee as many copies as you need, free of charge. We encourage you to view them on our web site www.fec.gov.

If you would like to place an order for paper copies of the *Campaign Guides*, please call the Information Division at 800/424-9530.

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