

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

)	
	)	CIVIL ACTION NO. 02-CV-781
CONGRESSMAN RON PAUL, <i>et al.</i>,	)	(CKK, KLH, RJL)
Plaintiffs,)	
	)	Consolidated with
v.	)	CIVIL ACTION NOS.
	)	02-CV-582 (CKK, KLH, RJL) (Lead)
FEDERAL ELECTION COMMISSION, <i>et al.</i>,	)	02-CV-581 (CKK, KLH, RJL)
Defendants.	)	02-CV-633 (CKK, KLH, RJL)
	)	02-CV-751 (CKK, KLH, RJL)
	)	02-CV-753 (CKK, KLH, RJL)
	)	02-CV-754 (CKK, KLH, RJL)
	)	02-CV-874 (CKK, KLH, RJL)
	)	02-CV-875 (CKK, KLH, RJL)
	)	02-CV-877 (CKK, KLH, RJL)
	)	02-CV-881 (CKK, KLH, RJL)

REPORT OF WALTER J. OLSON

Subject Matter of Report

1. My name is Walter J. Olson, principal of Walter J. Olson & Associates, and I have been asked to prepare this report summarizing the operating, reporting, filing, and recordkeeping requirements imposed by the Federal Election Campaign Act of 1971, as amended, (“FECA”) on committees registered with the Federal Election Commission (“FEC”), including separate segregated funds (“SSFs”) and principal campaign committees of candidates for federal office, and the burdens of fulfilling the various requirements so that the overall regulatory scheme governing federal election campaigns that has now been extensively modified by the Bipartisan Campaign Reform Act of 2002 (“BCRA”) can be more clearly understood.

Background

2. I have an A.B. degree (1964) in economics and an Sc.B. degree (1964) in engineering from Brown University. I have an M.B.A. degree (1967) in finance from the Columbia University Graduate School of Business. I have studied accounting and business law at the University of Maryland (1976). I have been a Certified Public Accountant since 1977, and I am licensed in the Commonwealth of Virginia. I have held a variety of positions in the federal government, including service as Deputy Assistant Secretary of Commerce for Export Administration within the U.S. Department of Commerce for three years during the Reagan Administration (1983-1986). I am currently the principal of Walter J. Olson & Associates in McLean, Virginia, a management consulting firm.

3. I have nine years experience in working with clients of my consulting firm in the area of federal and state election law. I have attended seven training sessions involving federal campaign law, sponsored by the Federal Election Commission ("FEC"), as follows (the fees charged for attending these sessions discussed in paragraph 10 are stated here):

(i) Conference on Campaign Finance Law for Corporations, Labor Organizations and Trade Associations, \$105.00, Washington, D.C., May 21-22, 1992;

(ii) Conference on Campaign Finance Law for Trade Associations and Membership Organizations, \$175.00, Washington, D.C., January 22-23, 1996;

(iii) Conference on Campaign Finance Law for Trade and Membership Organizations, \$180.00, Washington, D.C., December 11-12, 1997;

(iv) Conference on Campaign Finance Law for Trade Associations and Membership Organizations, \$250.00, Arlington, Virginia, May 16-17, 2000;

(v) Roundtable on the New Electronic Filing Rules and FEC Forms for PACs (one hour), \$25.00, Washington, D.C., March 7, 2001;

(vi) FECFile 4 Electronic Filing Training Session (two hours), free, Washington, D.C., June 4, 2001; and

(vii) Candidate and Party Campaign Finance Law Seminar, \$325.00, Washington, D.C., March 25-26, 2002.

4. Since September 15, 1993, I have served as treasurer on behalf of Gun Owners of America Political Victory Fund, with the exception of from September 21, 1998, when I resigned to serve on the professional staff of a Select Committee of the U.S. House of Representatives, until January 21, 1999, when I returned to the private sector. Since July 15, 1994, I have served as treasurer on behalf of English First Political Victory Fund, with the exception of from September 21, 1998, when I resigned to serve on the professional staff of a Select Committee of the U.S. House of Representatives, until January 21, 1999, when I returned to the private sector. Since September 1999, I have prepared reports, statements and other documents which are filed with the FEC on behalf of Phillips 2000, Inc., the principal campaign committee of Howard Phillips's presidential campaign in 2000. Also, I have prepared reports, statements and other documents which are filed with the FEC on behalf of other separate segregated funds. For example, since October 2000, I have prepared reports, statements and other documents which are filed with the FEC on behalf of Capitol Hill Prayer Alert Committee Election Fund, an SSF. Additionally, I have provided technical election law assistance on federal election campaign law in the defense of certain Matters Under Review,

including one filed against a Congressional candidate, and I have provided technical election law assistance in connection with independent expenditures.

5. In addition, I have had occasion to research state election law matters in 35 States for my clients in the past.

6. In the preparation of this report, in addition to reviewing selected parts of “Federal Election Campaign Laws Compiled by the Federal Election Commission” (January 2001), and Title 11 of the *Code of Federal Regulations*, I reviewed FEC publications and FEC forms required to be filed by separate segregated funds and by principal campaign committees of candidates for federal office.

Among the FEC publications (which I refer to and use often in my work) include the following (copies attached):

- (i) *Campaign Guide for Corporations and Labor Organizations* (Rev. June 2001)
- (ii) *Campaign Guide for Congressional Candidates and Committees* (Rev. July 2002)
- (iii) FECFile Version 4.0 Software User’s Manual (undated, but was originally issued in 2001)
- (iv) *Record*, January 2002, Volume 28, Number 1

The FEC publishes a series of brochures on a variety of subjects to facilitate compliance by those it regulates (brochures are available on the FEC web site) (copies not attached):

- (i) *Advisory Opinions* (August 1988)
- (ii) *Alternative Dispute Resolution Program* (September 2000)
- (iii) *Availability of FEC Information* (July 1999)

- (iv) Committee Treasurers (August 1996)
- (v) Contributions (February 2000)
- (vi) Delegate Activity (June 1996)
- (vii) FEC and the Federal Campaign Finance Law (August 1996)
- (viii) Federal and State Campaign Finance Laws (October 1995)
- (ix) Filing a Complaint (July 1998)
- (x) Foreign Nationals (May 1994)
- (xi) Independent Expenditures (August 1996; Note: Only the earlier December 1995 version is available on the FEC web site)
- (xii) Local Party Activity (February 1993)
- (xiii) Partnerships (August 1997)
- (xiv) Public Funding of Presidential Elections (August 1996)
- (xv) Sale and Use of Information from FEC Reports (September 1992)
- (xvi) Special Notices on Political Ads and Solicitations (August 1997)
- (xvii) The \$3 Checkoff (December 1993)
- (xviii) The \$25,000 Annual Contribution Limit (August 1996)
- (xix) Volunteer Activity (June 1985)

The FEC forms and instructions (most of which I refer to and use in my work) include the following (copies attached, except for FEC Form 3P and the related instructions, which are used by the principal campaign committees of candidates for President of the United States):

- (i) FEC Form 1 (Statement of Organization) (Rev. 1/01)

- (ii) Instructions for Statement of Organization (FEC Form 1) (Rev. 1/01)
- (iii) FEC Form 1M (Notification of Multicandidate Status) (Rev. 1/01)
- (iv) Instructions for Notification of Multicandidate Status (FEC Form 1M) (Rev. 1/01)
- (v) FEC Form 2 (Statement of Candidacy) (Rev. 1/01)
- (vi) Instructions for Statement of Candidacy (FEC Form 2) (Rev. 1/01)
- (vii) FEC Form 3 (Report of Receipts and Disbursements For An Authorized Committee) (including related Schedule A (Itemized Receipts), Schedule B (Itemized Disbursements), Schedule C (Loans), Schedule C-1 (Loans and Lines of Credit from Lending Institutions), Schedule D (Debts and Obligations), and Form 3Z (Consolidation Report of Receipts and Disbursements)) (Rev. 1/01)
 - (viii) Instructions for FEC Form 3 and Related Schedules (Rev. 1/01)
 - (ix) Post-Election Detailed Summary Page for FEC Form 3, Pages 5-8 (Rev. 1/01)
 - (x) Instructions for Post-Election Detailed Summary Page (FEC Form 3, Pages 5-8) (Rev. 1/01)
 - (xi) FEC Form 3P (Report of Receipts and Disbursements by an Authorized Committee of a Candidate for the Office of President or Vice President) (including Schedule A-P (Itemized Receipts), Schedule B-P (Itemized Disbursements), Schedule C-P (Loans), Schedule C-P-1 (Loans and Lines of Credit from Lending Institutions), and Schedule D-P (Debts and Obligations Excluding Loans)) (Rev. 1/01)
 - (xii) Instructions for FEC Form 3P and Related Schedules (Rev. 1/01)
 - (xiii) Post-Election Detailed Summary Page for FEC Form 3P, Page 3 [no date]

(xiv) Instructions for Post-Election Detailed Summary Page (FEC Form 3P, Page 3)

(Rev. 1/01)

(xv) FEC Form 3X (Report of Receipts and Disbursements For Other Than a Authorized Committee) (including Schedule A (Itemized Receipts), Schedule B (Itemized Disbursements), Schedule C (Loans), Schedule C-1 (Loans and Lines of Credit from Lending Institutions), Schedule D (Debts and Obligations), Schedule F (Itemized Coordinated Expenditures Made by Political Party Committees or Designated Agent(s) on Behalf of Candidates for Federal Office), Schedule H1 (Method of Allocation for Shared Federal and Non-federal Administrative Expenses and Generic Voter Drive Costs), Schedule H2 (Allocation Ratios), Schedule H3 (Transfers from Non-federal Accounts), Schedule H4 (Joint Federal/non-federal Activity Schedule), and Schedule I (Aggregation Page Non-federal Accounts of National Party Committees)) (Rev. 1/01)

(xvi) Instructions for FEC Form 3X and Related Schedules (Rev. 1/01)

(xvii) Schedule E (FEC Form 3X) (Rev. 5/02)

(xviii) Instructions for Schedule E (FEC Form 3X) (Rev. 5/02)

(xix) FEC Form 5 (Report of Independent Expenditures Made and Contributions Received) (Rev. 5/02)

(xx) Instructions for FEC Form 5 (Rev. 5/02)

(xxi) FEC Form 6 (48-Hour Notice of Contributions/Loans Received) (Rev. 1/01)

(xxii) Instructions for 48-Hour Notice of Contributions/Loans Received (FEC Form 6)
(Rev. 1/01)

(xxiii) FEC Form 7 (Report of Communication Costs by Corporations and Membership Organizations) (Rev. 2/01)

(xxiv) Instructions for Report of Communication Costs by Corporations and Membership Organizations (FEC Form 7) (Rev. 2/01)

(xxv) FEC Form 8 (Debt Settlement Plan) (Rev. 1/01)

(xxvi) Instructions for Debt Settlement Plan (FEC Form 8) (Rev. 1/01)

General

7. Over the years, the FEC requirements for political committees, including separate segregated funds and candidate committees, have become more complex, and the burden of compliance has increased. As one indicator of the increased complexity, the training conferences presented by the FEC a decade ago took in a day and a half, but now such conferences take three days. These conferences, which generally include many sessions conducted by FEC commissioners and senior FEC staff, are generally well-attended and frequently “sell out.” Although the conferences are well-organized and presented, I believe that few would say that attendance at one of these conferences would provide an individual with enough training to deal with many situations regarding the rules on contributions, expenditures, reports, and recordkeeping without self-study and research. Nevertheless, the conferences are one good way that treasurers or other persons responsible for committees regulated by the FEC can become generally familiar with the complex federal reporting and filing requirements and maintain their proficiency in this ever-changing area.

Among the topics presented at the FEC's May 16-17, 2000 Conference on Campaign Finance Law for Trade Associations and Membership Organizations which I attended included the following:

- (i) Basics about Political Action Committees;
- (ii) FEC Rules on Fundraising for Political Action Committees (two sessions);
- (iii) Choice of: (a) Election-Related Communications by the Connected Organization, or (b) Basic Political Action Committee Reporting;
- (iv) Choice of: (a) Use of Facilities by the Connected Organization, or (b) Advanced Political Action Committee Reporting; and
- (v) Choice of: (a) Current Topics, or (b) Electronic Filing.

Also, the topics presented at the FEC's March 25-26, 2002 Candidate and Party Campaign Finance Law Seminar which I attended included the following:

- (i) Basics of the Law: The Big Picture;
- (ii) Basics of the Law, Part I;
- (iii) Basics of the Law, Part II;
- (iv) Federal Tax Laws for Campaigns and Party Committees;
- (v) FEC Reporting Concepts, Part I;
- (vi) FEC Reporting Concepts, Part II; and
- (vii) Electronic Filing.

Attendees at such conferences are provided with a three-ring notebook containing copies of a significant number pages of presentation materials along with copies of several FEC publications.

8. In addition to conferences, the FEC tries to educate individuals, whose responsibility it is to comply with the Federal Election Campaign Act of 1971, as amended, and the FEC regulations on behalf of committees, by publishing informational materials (*e.g.*, the Campaign Guides), and by providing a toll-free telephone line to obtain answers to questions about federal campaign finance law, and making its publications and forms available on the FEC web site. Recently, the FEC has offered to respond within 10 business days to questions about its requirements submitted by e-mail. Even though I have worked in this area for years, I have had to call this FEC information line literally scores of times. Not always do the Information Specialists in the FEC's Information Division know the answers, and frequently must call back. Additionally, the Commission has issued more than 1,500 advisory opinions ("AOs") since 1975 (also now available on the FEC web site), which are written responses to questions regarding the application of the federal campaign finance law to a specific, factual situation. However, in my experience, one does not need to work in this area very long to be confronted with a situation which has never been addressed precisely by the Commission. In such cases, the FEC staff generally suggests that the individual file an advisory opinion request ("AOR") with the Commission. The effort and costs involved in preparing and filing an acceptable AOR with the FEC, and the time that can be taken for a response, generally makes this procedure either not worth the trouble, or of no use as the response would be received too late to be acted upon. In other cases, I have been told that there is no advice available for me, and essentially I would have to act at my peril. One example which I remember is that the Commission never has ruled on whether a contribution drawn on a living trust account is legal. Also, Information Specialists in the FEC's

Information Division have access to an index of advisory opinions which I do not believe is available to the public.

9. Public Law 106-58 made electronic filing of reports and statements mandatory for all committees (except candidate committees for the office of Senator) that receive contributions or make expenditures in excess of \$50,000 in a calendar year, or expect to do so, beginning with reporting periods that started on or after January 1, 2001. (Candidate committees for the office of Senator are required to file hard copy reports with the Secretary of the Senate, and may, but are not required to, file such reports electronically with the FEC as well.) This requirement has placed an additional burden on committees in that the treasurer, or other assigned person, must become familiar with the FEC-provided software (the current version is FECFile 4) or with a software package purchased from a vendor which is acceptable to the FEC (*e.g.*, Aristotle Publishing, Gnosso Software, Inc.), often at significant cost, as well as becoming familiar with the FEC regulations. If software acceptable to the FEC from a vendor is not used, the FEC-provided software must be used for filing reports and statements by separate segregated funds and by principal campaign committees of candidates for the office of Representative (and can be used by the principal campaign committee for the office of Senator, if the candidate committee chooses to do so).¹ Also, the User's Manual for the FEC-

¹ The FEC-provided software (FEC File 4) was not designed to be used for filing reports and statements by the principal campaign committee of a candidate for the office of President of the United States. I have been told by FEC staff that there are no plans to develop FEC software for principal campaign committees of presidential candidates. The cost of purchasing electronic reporting software from an outside vendor is a significant cost for a minor party candidate for President of the United States, and will be a significant additional barrier to entry beginning with the 2004 presidential election. (I have heard that the cost of such software programs can be \$25,000 or more.)

provided software does not do a good job in informing the reader how to use the program to comply with FEC reporting requirements (attached). The FEC software is designed so that the report is found to have not met the FEC's minimum standards, the report will not be accepted electronically, and yet a committee required to file electronically is not permitted to file paper forms. Even the preparation of relatively simple reports usually requires the preparer to contact the FEC's Electronic Filing Office, or its Information Division, or both (and, in some cases, the Reports Analyst assigned to the committee in the FEC's Reports Analysis Division ("RAD")) to find out how to report other than simple transactions. (Each committee is assigned to a Reports Analyst in the FEC's Reports Analysis Division.) In my experience, the computer people in the Electronic Filing Office are not very familiar with the FEC regulations, and the Information Specialists in the Information Division are not very familiar with the FEC-provided software, creating a problem for persons handling compliance for committees regulated by the FEC, who must know both.

10. The burden for a committee of maintaining a technical proficiency of the treasurer, or other assigned individual, with the FEC regulations is significant. Although most of the FEC publications, such as the Campaign Guides and subscriptions to the monthly *Record*, are free, other costs, such as the registration fees for conferences sponsored by the FEC (*e.g.*, \$375 for June 26-28, 2002 conference for membership and labor organizations) or other organizations (*e.g.*, \$1,095 for the December 5-6 2001 election law summit sponsored by the Election Law Journal, and \$1,595 for the September 19-20, 2002 conference on complying with campaign finance, lobbying and ethics laws sponsored by the Practicing Law Institute) and the subscription costs of private-sector information sources (*e.g.*, over \$600 per year for

the Federal Campaign Financing Guide published by Commerce Clearing House), represent substantial out-of-pocket costs for committees, all in addition to the actual time spent on compliance.

11. Committees that are registered with the FEC, including separate segregated funds and candidate committees, are required to file regular reports with the FEC (or with the Secretary of the Senate, in the case of a candidate committee for the office of Senator) that account for every penny received and disbursed. For taxable years beginning after June 30, 2000, Public Law 106-230 requires that such committees, that have \$25,000 or more in gross receipts for the taxable year, file an annual Form 1120-POL (U.S. Income Tax Return for Certain Political Organizations) with the Internal Revenue Service (“IRS”), whether or not they have any taxable income. And, if such committees are required to file a Form 1120-POL, they also are required to file an annual Form 990 (Return of Organization Exempt From Income Tax) or an annual Form 990-EZ (Short Form Return of Organization Exempt From Income Tax) with the IRS. In effect, such committees are required file these reports using the same financial information to two federal agencies — in one reporting format to the FEC (or to the Secretary of the Senate, in the case of a candidate committee for the office of Senator), and in two reporting formats to the IRS.

12. Although not involving federal elections, if the connected organization of a separate segregated fund registered with the FEC decides to support or oppose candidates for state or local office in the various States, the organization also must comply with different campaign finance requirements in each State, including restrictions on contributions to a committee, limitations on disbursements by a committee to a candidate, rules regarding

independent expenditures, and registration and reporting procedures (as well as different forms to be filed). In many States, the connected organization must establish a separate committee (including a separate bank account) to support or oppose candidates for public office in the State. In my experience working helping committees comply with state campaign finance requirements, I have had occasion to research the laws of over 35 States, which change frequently and are each quite different. I have not found many similarities regarding the campaign finance requirements among the States.

13. FEC-required reporting can be quite complex. As an example of a simple transaction, suppose a campaign staff worker, volunteer, or the candidate purchases \$1,000 in postage from a Post Office for the campaign using personal funds or credit, and the individual is reimbursed \$450 by the campaign within the reporting period. In preparing the FEC Form 3 report for the reporting period, the \$1,000 purchase would be reported as a memo entry on Schedule A for Line Number 11(a)(i) since it is over \$200, and the \$450 reimbursement to the individual would be reported as an operating expenditure on Schedule B for Line Number 17 (with a cross-reference to the memo entry on the Schedule A for Line Number 11(a)(i)), since the disbursement was over \$200, and \$450 of the original purchase from the post office would be reported as a memo entry on Schedule B for Line Number 17, since the aggregate payments to the vendor (*i.e.*, the post office) would be over \$200. An addition, the unreimbursed amount of \$550 would be reported as a debt on Schedule D for Line Number 10, since it exceeds \$500. If the individual was reimbursed for the \$550 in the next reporting period, the \$550 reimbursement would be reported as an operating expenditure in the FEC Form 3 for this reporting period on Schedule B for Line Number 17 (with a cross-reference to the memo entry

on the Schedule A for Line Number 11(a)(i) from the prior reporting period), the \$550 purchase from the post office in the prior reporting period would be reported as a memo entry on Schedule B for Line Number 17, and the \$550 reimbursement would be reported as a repayment of debt on Schedule D for Line Number 10. Completely different reporting rules would apply in this example if the campaign staff worker, volunteer, or the candidate had used personal funds or credit to pay for his or her own travel expenses, rather than for nontravel expenses, such as postage.

14. After a report is filed with the FEC, it is reviewed by the Reports Analyst assigned to that committee in the FEC's Reports Analysis Division. Such a review may be conducted up to six months or more after the original report is filed. If the Reports Analyst believes there is or may be a error in the report (*e.g.*, a misspelling in the name of a federal candidate to whom a contribution was made), a letter from the Reports Analysis Division typically is sent to the treasurer of the committee, which is called a "request for additional information" ("RFAI"). The committee generally is required to file a written response within 15 days of the date of the FEC letter, which may require the filing of an amendment to the original report. If the FEC does not receive an written response from the committee by the due date, the Reports Analysis Division generally sends another letter to the treasurer threatening that an audit action may be initiated if the FEC does not receive an adequate response to its original letter to the committee by a certain date. The Reports Analysis Division refers apparent violations of federal campaign finance law to the FEC's Office of General Counsel for investigation and possibly opening a Matter under Review ("MUR")

15. In July 2000, the FEC implemented regulations for a new program, called the “Administrative Fine Program,” pursuant to Public Law 106-58, for assessing civil money penalties for violations by committees, including separate segregated funds and candidate committees, involving:

(i) failure to file a report on time;

(ii) failure to file a report at all; and

(iii) failure to file 48-hour notices (required to be filed only by candidate committees, as discussed below in paragraph 98).

Under the new regulations, if the FEC finds a “reason to believe” (“RTB”) that a committee violated the law, the FEC sends a letter to the committee containing the factual and legal basis of its finding and the amount of the proposed civil money penalty. The committee then has 40 days to either pay the fine or submit a response explaining why the FEC’s RTB and/or fine was in error. As a service to or a warning for those involved in federal election activity, the FEC has provided an automated “Administrative Fine Calculator” on its web site, which will provide the amount of the fine based on the amounts involved, number of days late, etc. Although I have not seen any statistics on this new program, it appears that it has greatly accelerated the FEC’s fine-assessing process and has ensured that a substantial fine is assessed for any and all covered violations.

16. As treasurer, I know that the FEC takes the position that I am personally liable for the payment of all FEC fines that may be assessed against the committees for which I perform this service. For example, the “Administrative Fines Program” article in the July 2000 edition

of the FEC's *Record* states, "[c]ommittee treasurers may be liable for civil money penalties if reports are not filed on time."²

Federal Election Commission Requirements for Separate Segregated Funds

17. The following describes generally the FEC requirements for separate segregated funds, which are political committees connected to other organizations which are not political committees, such as for-profit corporations, labor organizations, trade associations, and membership organizations. There are about 3,100 such committees according to the FEC web site.

18. FEC procedures require the registration of a political committee when (i) the board of directors of the connected organization votes to create the SSF, (ii) officers are selected to administer the SSF, or (iii) the SSF's initial operating expenses are paid. (2 U.S.C. §433(a) and 11 CFR 102.1(c).)

19. Nonprofit corporations establish SSFs to make contributions to, and expenditures on behalf of, candidates for federal office and to make contributions to other federally-registered political committees, such corporations being prohibited from engaging in such activity except by an SSF. (2 U.S.C. §441b(b)(2)(C).)

20. An SSF is required to include in its name the full name of its connected organization. (11 CFR 100.6(a) and 102.14(c).)

² "Administrative Fines Program," *Record*, FEC, Volume 26, Number 7, p. 3.

21. An SSF is required to appoint a treasurer of the SSF before the SSF accepts contributions or makes expenditures. (11 CFR 102.7(a) and (b).)

22. The treasurer of an SSF is required to prepare and file the initial FEC Form 1 (Statement of Organization) for the SSF, which includes the following information (11 CFR 102.2):

- (i) name and address of the SSF;
- (ii) electronic mail address if such an address exists and if the committee is required to file electronically;
- (iii) Internet address of the committee's official web site, if such a web site exists;
- (iv) name and address of the connected organization;
- (v) type of connected organization;
- (vi) name and address of the custodian of records;
- (vii) name and address of the treasurer; and
- (viii) name and mailing address of banks or other depositories.

23. The initial FEC Form 1 must be filed with the FEC. (11 CFR 105.4.)

24. A copy of the FEC Form 1 for an SSF is filed with the Secretary of State or with the other designated State officer of the State in which the organization is situated. (11 CFR 108.1.)

25. After the original, executed FEC Form 1 is filed with the FEC, the FEC assigns an Identification Number to the SSF. (11 CFR 102.2(c).)

26. An SSF is required to prepare and file an amendment to its registration statement (FEC Form 1) with the FEC within 10 days after there is any change or correction to the information contained in the registration statement. (11 CFR 102.2(a)(2).)

27. An SSF may designate as its campaign depository or depositories only state banks, federally chartered depository institutions (including national banks), or depositories insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration. (11 CFR 103.2.)

28. An SSF must maintain at least one checking account or transaction account at one of its depositories. (11 CFR 103.2.)

29. The treasurer of an SSF is responsible for ensuring that all receipts are deposited in a designated depository account identified in the SSF's registration statement within 10 days of receipt, or are returned to the contributor without being deposited within 10 days of receipt. (11 CFR 103.3(a).)

30. An SSF may not receive contributions or make expenditures when there is a vacancy in the office of treasurer if the committee does not have an assistant treasurer. (11 CFR 102.7.)

31. An SSF must make all disbursements by check or similar draft drawn on accounts established at a designated depository or depositories, except for expenditures of \$100 or less made from a petty cash fund maintained pursuant to 11 CFR 102.11. (11 CFR 102.10.)

32. The treasurer of an SSF is responsible for ensuring that excessive contributions are not deposited in an account depository of the SSF. (11 CFR 103.3(b).)

33. Before an SSF qualifies as a multicandidate committee, it can make contributions only up to \$1,000 per election to a candidate for federal office, including a candidate for the office of Representative, Senator, or President of the United States. (2 U.S.C. §441a(a).)

34. When an SSF qualifies as a multicandidate committee (*i.e.*, when it (i) receives contributions from more than 50 persons, (ii) had been registered with the FEC for at least six months, and (iii) makes contributions to at least five federal candidates), the treasurer files a completed, executed FEC Form 1M (Notification of Multicandidate Status) with the FEC. (2 U.S.C. §441a(a) and 11 CFR 100.5(e)(3) and 102.2(a)(3).)

35. After an SSF qualifies as a multicandidate committee and has filed an FEC Form 1M with the FEC, the committee can give up to \$5,000 per election to a candidate for federal office. (2 U.S.C. §441a(a) and 11 CFR 110.2(b).)

36. A qualified multicandidate committee must give a recipient federal candidate or campaign committee written notification that the SSF has qualified as a multicandidate committee when it makes a contribution to a federal candidate or campaign committee. (11 CFR 110.2(a)(2).)

37. A connected committee or its SSF may solicit contributions to the SSF at any time from its restricted class, which includes (i) its noncorporate members (such as individuals or partnerships), (ii) its executive and administrative personnel, and (iii) the families of both groups. (11 CFR 114.7.)

38. A connected committee or its SSF may solicit contributions to the SSF twice a year from employees who are nonexecutive and nonadministrative personnel and their families. (11 CFR 114.6.)

39. A connected committee or its SSF may accept contributions in amount up to, but no more than, \$5,000 in the aggregate per calendar year from a contributor. (11 CFR 110.1(d).)

40. If any contribution received by an SSF exceeds the limit, the treasurer must return or refund the excessive amount unless it follows the following procedure within 60 days of receipt of the excessive contribution by the treasurer. The excessive amount of the contribution may be retained by the SSF, if, within 60 days of receipt by the treasurer, (i) the excessive amount was reattributed to another individual, such as a joint account holder, by obtaining signed written authorizations from each person making the contribution pursuant to 11 CFR 110.1(k)(3), and (ii) the treasurer informs the individual making the contribution that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution. (11 CFR 110.1(k)(3).)

41. A connected committee or its SSF may not accept contributions made from the general treasury funds of corporations, labor organizations, or national banks. (11 CFR 114.2(a) and 114.2(b).)

42. An SSF may not accept contributions made by federal government contractors. (11 CFR 115.)

43. An SSF may not accept contributions by foreign nationals as defined in 11 CFR 110.4(a)(4). (11 CFR 110.4(a).)

44. An SSF may not accept contributions made by one person in the name of another. (11 CFR 110.4(b).)

45. An SSF may accept neither cash contributions of more than \$100, nor anonymous cash contributions of more than \$50. (11 CFR 110.4(c)(1), 110.4(c)(2) and 110.4(c)(3).)

46. The treasurer of an SSF is responsible for making his best efforts in determining the legality of a contribution. (11 CFR 103.3(b)(1).)

47. An SSF registered with the FEC must file periodic FEC Form 3X reports with the FEC until it has terminated its registration and reporting obligations by filing a termination report. (11 CFR 104.5(c).)

48. An SSF registered with the FEC must file FEC Form 3X reports on either a quarterly or monthly schedule. During a nonelection year, in which there are no regularly scheduled federal elections, a quarterly filer is required to file two semiannual FEC Form 3X reports: (i) a mid-year report (January 1 through June 30); and (ii) a year-end report (July 1 through December 31). During an election year, an SSF which is a quarterly filer is required to file the following FEC Form 3X reports (11 CFR 104.5(c)):

- (i) April 15 Quarterly;
- (ii) July 15 Quarterly;
- (iii) October 15 Quarterly;
- (iv) 12-Day Pre-General (if appropriate);
- (v) 30-Day Post-General;
- (vi) January 31 Year End; and
- (vii) 12-Day Pre-Election (*e.g.*, primary, runoff) reports (if appropriate).

49. If an SSF is a monthly filer, it is required to file the following FEC Form 3X reports (11 CFR 104.5(c)):

- (i) February 20 Monthly;
- (ii) March 20 Monthly;
- (iii) April 20 Monthly;
- (iv) May 20 Monthly;
- (v) June 20 Monthly;
- (vi) July 20 Monthly;
- (vii) August 20 Monthly;
- (viii) September 20 Monthly;
- (ix) October 20 Monthly;
- (x) 12-Day Pre-General (election years only, if appropriate);
- (xi) 30-Day Post-General (election years only);
- (xii) November 20 Monthly (nonelection years only);
- (xiii) December 20 Monthly (nonelection years only); and
- (xiv) January 31 Year End.

50. An SSF which is a multicandidate committee must indicate that it has qualified as a multicandidate committee on the summary page of each FEC Form 3X (Report of Receipts and Disbursements) report filed with the FEC.

51. When an SSF files its FEC Form 3X reports with the FEC, it is required to simultaneously file copies of the summary page, detailed summary page and the appropriate Schedule B (Itemized Disbursements) pages of a FEC Form 3X report with the Secretary of State of the appropriate State or with the other designated State officer in which the respective committee supported or opposed candidates during the reporting period, unless that State has

received a waiver from the requirement to maintain copies of FEC statements and reports. (11 CFR 108.1.)

52. An SSF may change its filing schedule (*e.g.*, monthly to quarterly) only once per calendar year. (11 CFR 104.5(c).)

53. An SSF must file a 24-hour report, signed by the treasurer under penalty of perjury, when it makes independent expenditures aggregating \$1,000 or more after the 20th day but more than 24 hours before the day of an election. The notice must be received by the FEC within 24 hours after the expenditure is made. The notice must include all the information required on the Schedule E (Itemized Independent Expenditures) of FEC Form 3X, including the name of the SSF and the FEC Identification Number of the SSF. Each independent expenditure which, by itself or when added to other independent expenditures made to the same payee during the same calendar year, exceeds \$200 must be itemized, including the following information (11 CFR 104.3(b)(3)(vii)(B), 104.4(b) and 104.5(g)):

- (i) name and address of the payee;
- (ii) date of expenditure;
- (iii) amount of expenditure;
- (iv) purpose of expenditure;
- (v) name of the federal candidate who is supported or opposed; and
- (vi) office sought by the federal candidate.

54. An SSF may file a termination report at any time, provided that (i) it no longer intends to receive contributions or make expenditures, and (ii) it does not have any outstanding debts or obligations. (11 CFR 102.3)

55. An SSF is required to file hard copy reports, such as FEC Form 3X and amendments to FEC Form 1, with the FEC, unless it receives contributions or makes expenditures in excess of \$50,000 in a calendar year, or has “reason to expect to exceed” \$50,000 in contributions or expenditures in a calendar year. (11 CFR 104.18(a).)

56. Beginning with the reporting periods that start on or after January 1, 2001, an SSF is required to file reports, such as FEC Form 3X and amendments to FEC Form 1, electronically with the FEC, if the combined total contributions or combined total expenditures exceed, or “have reason to expect to exceed,” \$50,000 in a calendar year. An SSF that is not required to file electronically may choose to file its reports in an electronic format. (11 CFR 104.18.)

57. The treasurer of an SSF is required to keep copies of each registration statement (FEC Form 1), FEC Form 3X report and other documents (*e.g.*, 24-hour report of independent expenditures) for three years after they are filed. (11 CFR 102.9(c) and 104.14(b).)

58. The treasurer of an SSF is required to keep records and accounts of all contributions received by or on behalf of the SSF, and of all disbursements made by or on behalf of the SSF, for three years after the report to which such records and accounts relate is filed. (11 CFR 102.9.)

59. The treasurer of an SSF must ensure that the contribution records identify each contribution: (i) of more than \$50 by amount, date of receipt, and donor’s name and address; and (ii) of more than \$200 by amount, date of receipt, and donor’s name, address, occupation, and employer. (11 CFR 102.9(a).)

60. The treasurer of an SSF is personally responsible for carrying out the following (11 CFR 103.3 and 104.14(d)):

- (i) filing complete and accurate reports and statements with the FEC on time;
- (ii) signing all reports and statements filed with the FEC;
- (iii) depositing receipts in the committee's designated bank within 10 days;
- (iv) authorizing expenditures or appointing an agent (either orally or in writing) to authorize expenditures;
- (v) monitoring contributions to ensure compliance with the law's limits and prohibitions; and
- (vi) keeping the required records of receipts and disbursements.

61. Although I have tried to present an overview of the key FEC requirements for separate segregated funds in the above paragraphs, it is by no means a complete listing of all of the FEC requirements applicable to SSFs. For example, I did not address the rules governing (i) contributions from partnerships, (ii) fundraising events and special promotions such as raffles, (iii) use of treasury funds of the connected organization; (iv) the use of resources and facilities of the connected organization in fundraising, (v) reporting on debts and bank loans, (vi) debt settlement procedures, (vii) the handling of earmarked contributions, (viii) disclaimer notices, and (ix) endorsements of candidates for federal office by connected organizations, to mention some. Moreover, many of the requirements I set out have subsidiary rules usually incorporated in both the FEC regulations and in the more than 1,500 advisory opinions that have been issued by the FEC since 1975.

Federal Election Commission Requirements for Candidates for Federal Office

62. The following describes generally the FEC requirements for candidates for federal office. Each candidate must have one principal campaign committee and may have other affiliated special-purpose committees.

63. An individual may conduct a number of testing the waters activities, such as polling, traveling and making telephone calls, to determine whether he or she should become a candidate for federal office, and may organize a committee for conducting testing the waters activities, without registering or filing reports with the Secretary of the Senate (regarding the office of Senator) or the FEC (regarding the office of Representative). (11 CFR 100.7(b)(1) and 100.8(b)(1).)

64. The name of a committee organized by an individual to conduct testing the waters activities may not refer to the individual as a candidate. (There are no statutes or regulations which support this limitation, but this statement is based on “Campaign Guide for Congressional Candidates and Committees” (FEC, July 2002, p. 5) and FEC Advisory Opinion (“AO”) 1981-32.)

65. An individual, or a committee organized by the individual, that is conducting testing the waters activities, may accept contributions from others, but only subject to FECA’s contribution limits and prohibitions. (11 CFR 100.7(b)(1)(i) and 100.8(b)(1)(i).)

66. An individual who is conducting testing the waters activities is responsible for keeping records on all funds which are received and on all payments made with respect to such activities. (11 CFR 100.7(b)(1)(i) and 100.8(b)(1)(i).)

67. An individual, or a committee organized by the individual, may conduct testing the waters activities, but may not engage in campaign activities exceeding \$5,000, such as (11 CFR 100.3(a), 100.7(b)(1) and 100.8(b)(1)):

(i) using general public political advertising to publicize the individual's intention to campaign for federal office;

(ii) raising funds in excess of what could reasonably be expected to be used for exploratory activities or undertaking activities designed to amass campaign funds that would be spent after the individual becomes a candidate;

(iii) making or authorizing written or oral statements that refer to the individual as a candidate for a particular office;

(iv) conducting activities in close proximity to the election or over a protracted period of time; and

(v) taking action to qualify for the ballot under State law.

68. With respect to testing the waters issues, examples of "campaign activity" include (11 CFR 100.7(b)(1) and 100.8(b)(1)):

(i) the individual uses general public political advertising to publicize his or her intention to campaign for federal office;

(ii) the individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate;

(iii) the individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office;

(iv) the individual conducts activities in close proximity to the election or over a protracted period of time; and

(v) the individual has taken action to qualify for the ballot under State law.

69. An individual is considered to be a candidate for federal office (11 CFR 100.3(a)):

(i) when the individual declares himself or herself to be a candidate for a particular office;

(ii) when campaign activity by the individual or the individual's committee exceeds \$5,000 in either contributions or expenditures;

(iii) when the individual fails to disavow unauthorized campaign activity by writing a letter to the FEC within 30 days after being notified by the FEC that another person or group has received or made expenditures of more than \$5,000 on the individual's behalf; or

(iv) when the aggregate of contributions received, or the aggregate of expenditures, made under any combination of (i), (ii) and (iii) exceeds \$5,000.

70. Within 15 days after an individual becomes a candidate for the office of Senator, he or she must file the original, executed FEC Form 2 (Statement of Candidacy) or letter with the Secretary of the Senate, and file a copy with the appropriate State officer of the State in which the candidate is running for office, which designates a principal campaign committee authorized to receive contributions and make expenditures on behalf of the candidate. (11 CFR 105.2 and 108.3.)

71. Within 15 days after an individual becomes a candidate for the office of Representative, he or she must file the original, executed FEC Form 2 or letter with the FEC, and file a copy with the appropriate State officer of the State in which the candidate is running

for office, which designates a principal campaign committee authorized to receive contributions and make expenditures on behalf of the candidate. (11 CFR 105.1 and 108.3.)

72. After the individual files the original, executed FEC Form 2 or letter with the Secretary of the Senate, in the case of a candidate for the office of Senator, or with the FEC, in the case of a candidate for the office of Representative, the FEC assigns an Identification Number to the candidate. (There are no statutes or regulations which support this fact.)

73. Within 10 days after it has been designated as a principal campaign committee by the candidate, the treasurer of the principal campaign committee must prepare, execute and file an FEC Form 1 (Statement of Organization). (11 CFR 102.1(a).)

74. An FEC Form 1 prepared by a treasurer of a principal campaign committee must contain information including (11 CFR 102.2):

- (i) name and address of the principal campaign committee;
- (ii) electronic mail address if such an address exists and if the committee is required to file electronically;
- (iii) Internet address of the committee's official web site, if such a web site exists;
- (iv) name of the candidate;
- (v) party affiliation of the candidate;
- (vi) office sought by the candidate;
- (vii) names and addresses of affiliated committees;
- (viii) name and address of the custodian of records;
- (ix) name and address of the treasurer;
- (x) name(s) and address(es) of the assistant treasurer(s); and

(xi) names and addresses of banks or other depositories.

75. A principal campaign committee may designate only state banks, federally chartered depository institutions (including national banks), or depositories insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration as its campaign depository or depositories. (11 CFR 103.2.)

76. A principal campaign committee must maintain at least one checking account or transaction account at one of its designated depositories. (11 CFR 103.2.)

77. If a candidate is campaigning for the office of Senator, the treasurer of the candidate's principal campaign committee must file the original, executed FEC Form 1 with the Secretary of the Senate, and file a copy with the appropriate State officer of the State in which the candidate is running for office. (11 CFR 108.3.)

78. If a candidate is campaigning for the office of Representative, the treasurer of the candidate's principal campaign committee must file the original, executed FEC Form 1 with the FEC, and file a copy with the appropriate State officer of the State in which the candidate is running for office. (11 CFR 108.3.)

79. After the treasurer of a principal campaign committee files the original, executed FEC Form 1 with the Secretary of the Senate, in the case of a candidate for the office of Senator, or with the FEC, in the case of a candidate for the office of Representative, the FEC assigns an Identification Number to the principal campaign committee. (11 CFR 102.2(c).)

80. If there is any change or correction of information contained in the registration statement (FEC Form 1), the principal campaign committee must prepare and file an

amendment to the registration statement within 10 days after the change. (11 CFR 102.2(a)(2).)

81. The treasurer of the principal campaign committee, or of another committee authorized by the candidate, is responsible for depositing all receipts in a designated campaign depository identified in the committee's registration statement within 10 days of receipt, or returning a contribution to the contributor without being deposited within 10 days of receipt. (11 CFR 103.3(a).)

82. The principal campaign committee must make all disbursements by check or similar draft drawn on an account at a designated campaign depository, except for expenditures of \$100 or less made from a petty cash fund maintained pursuant to 11 CFR 102.11. (11 CFR 103.3.)

83. The treasurer of the principal campaign committee is responsible for ensuring that excessive contributions are not deposited in a campaign depository. (11 CFR 103.3(b).)

84. An individual or a political committee that has not qualified as multicandidate committee may not make a contribution to a candidate for federal office in excess of \$1,000 per election. (11 CFR 110.1(a) and 110.1(b)(1).)

85. A political committee that has qualified as a multicandidate committee may not make contributions to a candidate for federal office in excess of \$5,000 per election. (11 CFR 110.2(b).)

86. If any contribution received by a principal campaign committee exceeds the limits, the treasurer must refund the excessive amount unless one of the following procedures are followed. The excessive amount of the contribution may be retained by the principal campaign

committee, if, within 60 days of receipt by the treasurer (i) the excessive amount was reattributed to another individual, such as a joint account holder, by obtaining signed written authorizations from each person making the contribution pursuant to 11 CFR 110.1(k)(3), and (ii) the treasurer informs the individual making the contribution that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution. Also, the excessive amount of the contribution may be retained by the principal campaign committee, if, within 60 days of receipt by the treasurer, the excessive amount was redesignated for a different election, by obtaining signed written authorization from each person making the contribution pursuant to 11 CFR 110.1(b)(5) or 110.2(b)(5). If these provisions for reattributions or redesignations have not been met within 60 days of receipt of the contribution by the treasurer, the treasurer is responsible for refunding the excessive amount. (11 CFR 103.3(b), 110.1(b)(5), 110.1(k)(3), and 110.2(b)(5).)

87. The treasurer of the principal campaign committee is responsible for making his or her best efforts to determine the legality of a contribution. (11 CFR 103.3(b)(1).)

88. A principal campaign committee may not accept contributions made from the general treasury funds of corporations, labor organizations, or national banks. (11 CFR 114.2.)

89. A principal campaign committee may not accept contributions made by federal government contractors. (11 CFR 115.)

90. A principal campaign committee may not accept contributions by foreign nationals as defined in 11 CFR 110.4(a)(4). (11 CFR 110.4(a).)

91. A principal campaign committee may not accept contributions made by one person in the name of another. (11 CFR 110.4(b).)

92. A principal campaign committee may not accept cash contributions of more than \$100, and anonymous cash contributions of more than \$50. (11 CFR 110.4(c)(2) and 110.4(c)(3).)

93. There are no limits on the amount of contributions which can be made by a candidate for federal office to his or her principal campaign committee from “personal funds” as defined in 11 CFR 110.10(b). (11 CFR 110.10(a).)

94. After the treasurer of a principal campaign committee files the registration statement (FEC Form 1), the principal campaign committee must file periodic reports on financial activity until the committee has retired its debts and filed a termination report. If a candidate is running for the office of Senator, the treasurer of the principal campaign committee must file the FEC Form 3 (Report of Receipts and Disbursements) reports with the Secretary of the Senate, and file a copy with the appropriate State officer of the State in which the candidate is running for office. If the candidate is running for the office of Representative, the treasurer of the principal campaign committee must file the FEC Form 3 reports with the FEC, and file a copy with the appropriate State officer of the State in which the candidate is running for office. (2 U.S.C. §434(a)11 and §439(a)(2)(B), and 11 CFR 105.1 and 105.2.)

95. In the first FEC Form 3 report which is filed after the principal campaign committee’s registration statement is filed, the committee must disclose all financial activity that occurred before the registration statement was filed and before the individual became a

candidate for federal office, including any testing-the-waters activity. (11 CFR 101.3(a), 104.3(a), and 104.3(b).)

96. During a nonelection year, a registered principal campaign committee is required to file two semiannual FEC Form 3 reports. (2 U.S.C. §434(a).)

97. During an election year, a registered principal campaign committee is required to file the following FEC Form 3 reports: (i) April 15 Quarterly report; (ii) July 15 Quarterly report; (iii) October 15 Quarterly report; (iv) Pre-Primary Election report; (v) Pre-Runoff Election report (if appropriate); (vi) Pre-General Election report; and (vii) Post-General Election report. Also, after the election year, a registered political committee is required to file a January 31 Year End FEC Form 3 report. (2 U.S.C. §434(a).)

98. A principal campaign committee must file 48-hour notices regarding contributions of \$1,000 or more that are received less than 20 days but more than 48 hours before 12:01 a.m. of the day of any election in which the candidate is running using an FEC Form 6 (48 Hour Notice of Contributions/Loans Received) or a letter containing the same information. The 48-hour notice requirement applies to all contributions of \$1,000 or more, including contributions from the candidate, loans from the candidate and other non-bank sources, and endorsements or guarantees of loans from banks. The Secretary of the Senate (regarding a candidate for Senate) or the FEC (regarding a candidate for Representative) must receive a 48-hour notice within 48 hours of the committee's receipt of a reportable contribution. (11 CFR 104.5(f).)

99. A principal campaign committee may file a termination report at any time, provided that (i) the committee no longer intends to receive contributions or make

expenditures; and (ii) neither the committee seeking to terminate nor any other authorized committee of the same candidate has any outstanding debts or obligations. (11 CFR 102.3.)

100. Beginning with the reporting periods that start on or after January 1, 2001, all committees, including the principal campaign committee, authorized by a candidate for the office of Representative, are required to file reports, such as FEC Forms 3 and 6 and amendments to FEC Form 1, electronically with the FEC, if the combined total contributions or combined total expenditures exceed, or have reason to expect to exceed, \$50,000 in a calendar year. A committee that is not required to file electronically may choose to file its reports in an electronic format. (11 CFR 104.18.)

101. All committees authorized by a candidate for the office of Senator, including the principal campaign committee, are required to file hard copy reports, such as FEC Forms 3 and 6 and amendments to FEC Form 1, with the Secretary of the Senate pursuant to 11 CFR 105.2. The principal campaign committee by a candidate for the office of Senator, as well as all other committees authorized by the candidate, are not required to electronically file reports, such as FEC Forms 3 and 6 and amendments to FEC Form 1, with the Secretary of the Senate or the FEC; however, such a candidate is encouraged also to voluntarily file electronically an unofficial copy of his or her reports with the FEC. (11 CFR 104.18.)

102. If a candidate has more than one authorized committee for the same campaign, the principal campaign committee must also file FEC Form 3Z (Consolidation Report of Receipts and Disbursements), which consolidates the information on the entire campaign. The principal campaign committee must file the FEC Form 3Z as well as its own Form 3 and those of other authorized committees. (11 CFR 104.3(f).)

103. The treasurer of a principal campaign committee and the treasurer(s) of any other committee(s) authorized by the candidate are required to keep copies of each registration statement (FEC Form 1) and report for three years after it is filed. (11 CFR 102.9(c), 104.14(b).)

104. The treasurer of a principal campaign committee and the treasurer(s) of any other committee(s) authorized by the candidate are required to keep records and accounts of all contributions received by or on behalf of the committee, and of all disbursements made by or on behalf of the committee, for three years after the report to which such records and accounts relate is filed. (11 CFR 102.9.)

105. The treasurer must ensure that the contribution records identify each contribution: (i) of more than \$50 by amount, date of receipt, and donor's name and address; and (ii) of more than \$200 by amount, date of receipt, and donor's name, address, occupation, and employer. (11 CFR 102.9(a).)

106. Using campaign funds for "personal use" is prohibited. Campaign funds are amounts received as contributions by the candidate or the candidate's principal campaign committee or other authorized committees. (11 CFR 113.2(d).)

107. The FEC uses the "irrespective test" and publishes a number of specific examples to assist committees in determining whether expenses are for "personal use" or are legitimate campaign/officeholder expenses. In 11 CFR 113.1(g), it states, "[p]ersonal use means any use of funds in the campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder." (11 CFR 113.1.)

108. The current (July 2002) FEC “Campaign Guide for Congressional Candidates and Committees” provides at page 32 the following information on the “irrespective test” regarding use of funds in a candidate’s campaign account: “if the expense would exist even in the absence of the candidacy or even if the officeholder were not in office, then the personal use ban applies.”

109. The “Explanation and Justification” section of the February 9, 1995 *Federal Register* notice regarding personal use regulations, states, “If campaign funds are used for a financial obligation that is caused by campaign activity of an officeholder, that use is not personal use. However, if the obligation would exist even in the absence of the candidacy or even if the officeholder were not in office, then the use of funds for the obligation generally would be personal use.” (*Federal Register*, Vol. 60, No. 27, Feb. 9, 1995, pp. 7863-64.)

110. The FEC regulations provide a number of specific examples of expenses which are “personal use”: “[p]ersonal use includes but is not limited to the use of funds in a campaign account for: (A) Household food items or supplies; (B) Funeral, cremation or burial expenses; (C) Clothing, other than items of *de minimis* value that are used in the campaign, such as “T-shirts” or caps with campaign slogans; (D) Tuition payments, other than those associated with training campaign staff; (E) Mortgage, rent or utility payments — (1) for any part of any personal residence of the candidate or member of the candidate’s family....” (11 CFR 113.1.)

111. For other expenses not identified in the FEC regulations, the regulations provide that, “[t]he Commission will determine, on a case-by-case basis, whether other uses of funds in a campaign account fulfill a commitment, obligation or expense that would exist irrespective of

the candidate's campaign or duties as a Federal officeholder and therefore are personal use. Examples of such other uses include: (A) Legal expenses; (B) Meal expenses; (C) Travel expenses ...; and (D) Vehicle expenses....” (11 CFR 113.1(g)(1)(ii).)

112. Examples of prior FEC case-by-case determinations of personal use are:

- (i) Tuition and travel expenses for attending a language program directly related to official responsibilities as a federal officeholder can be paid from campaign funds. However, greens fees for the use of golf courses while attending this program would be considered to be a personal expense, and cannot be paid from campaign funds. (FEC AO 1997-11.)
- (ii) Club membership dues are considered to be personal use. However, costs that are separate and distinct from membership dues and that are associated only with the use of the Club facilities for specific fundraising or other campaign events could be paid using campaign funds. (FEC AO 1995-26.)

113. The rulemaking process, which was initiated in 1993 and completed in 1995 by the FEC, regarding the conversion of campaign funds to personal was undertaken pursuant to 2 U.S.C. §438(a)(8), and was prompted, in large part, by Section 504 of the Ethics Reform Act of 1989 and by the need for a clear distinction between permissible uses of campaign funds and impermissible conversions to personal use. This rulemaking was an effort by the Commission to carry out the provisions of 2 U.S.C. §439a by more clearly defining personal use. (*Federal Register*, Vol. 60, No. 27, February 9, 1995, at pages 7862-63.)

114. The treasurer of a political committee is responsible for ensuring that campaign funds are not used for personal use by the candidate or any other person. (11 CFR 102.7.)

115. Similar to my comment above in paragraph 61, although I have tried to present an overview of the key FEC requirements for the principal campaign committees for candidates for the office of Representative and the office of Senator in the above paragraphs, it is by no means a complete listing of all of the FEC requirements applicable to principal campaign committees. For example, I did not address the rules governing (i) the reporting of endorsements or guarantees of loans, (ii) campaign staff advances, (iii) contributions of minor children, (iv) contributions from limited liability companies, (v) use of the facilities or transportation of a corporation or labor organization, (vi) transfers between committees, (vii) fundraising on the Internet, (viii) disclaimer notices, (ix) sale of campaign assets, (x) debt settlement procedures, and (xi) joint fundraising activities, to mention some.

Conclusion

116. Over the course of my years in assisting individuals and organizations with federal election campaign filing and reporting matters, I have dealt with virtually all of the forms and requirements referenced above. In my experience, the burden and costs on such individuals and organizations have been significant. Despite my own extensive experience in working in this field, I find it necessary to research constantly — including calling the FEC for advice — questions that arise in the course of attempting to assist my clients. Compliance with the federal election requirements imposes a significant cost and time-consumption burden on individuals and organizations engaged in federal election activities, and exposes them to serious penalties for violation of an extensive and complex set of operating, reporting, filing, and recordkeeping requirements.