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FEDERAL ELECTION COMMISSION

11 CFR Part 104

[Notice 1997–7]

Recordkeeping and Reporting by Political Committees: Best Efforts

AGENCY: Federal Election Commission.

ACTION: Final Rule; Transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is revising its regulations implementing the requirement of the Federal Election Campaign Act ("FECA") that treasurers of political committees exercise best efforts to obtain, maintain and report the complete identification of each contributor whose contributions aggregate more than $200 per calendar year. The new rules change the required statement that must accompany solicitations for contributions. The revisions also state that separate segregated funds must report contributor information in the possession of their connected organizations. Further information is provided in the supplementary information which follows.

DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d). A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rosemary C. Smith, Senior Attorney, 999 E Street N.W., Washington, D.C. 20463, (202) 219–3690 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the text of revisions to its regulations at 11 CFR 104.7(b)(1) and (b)(3), which set forth steps needed to ensure that political committees use their best efforts to obtain, maintain and submit the names, addresses, occupations and employers of contributors whose donations exceed $200 per year. These regulations implement section 432(i) of the Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA"). 2 U.S.C. 432(i).

On October 9, 1996 the Commission issued a Notice of Proposed Rulemaking (NPRM) in which it sought comments on proposed revisions to these regulations. 61 F.R. 52901 (Oct. 9, 1996). The comment period was subsequently extended to January 31, 1997. 61 F.R. 68688 (Dec. 30, 1996). Written comments were received from the Center for Responsive Politics (CRP), the Republican National Committee (RNC), Washington State Coalition Against Violent Crime (WSCAV), the Internal Revenue Service (IRS), Hervey W. Herron, and a joint comment from Seafarers Political Activity Donation (SPAD) and Seafarers International Union (SIU).

Since these rules are not major rules within the meaning of 5 U.S.C. 804(2), the FECA controls the legislative review process. *See* 5 U.S.C. 801(a)(4), Small Business Regulatory Reform Enforcement Fairness Act, Public Law 104–121, section 251, 110 Stat. 857, 869 (1996). Section 438(d) of Title 2, United States Code, requires that any rules or regulations prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on April 25, 1997.

Explanation and Justification

The FECA specifies that reports filed by political committees disclose "the identification of each * * * person (other than a political committee) who makes a contribution to the reporting committee * * * whose contribution or contributions [aggregate over $200 per calendar year] * * * together with the date and amount of any such contribution." 2 U.S.C. 434(b)(3)(A). For an individual, "identification" means his or her full name, mailing address, occupation and employer. 2 U.S.C. 431(13). Treasurers of political committees must be able to show they have exercised their best efforts to obtain, maintain and report this information. 2 U.S.C. 432(i).

The Commission's regulations at 11 CFR 104.7(b), which implement these requirements of the FECA, are being revised to resolve two issues. The first concerns the phrasing of the request for contributor identifications and other information which must be included in all political committee solicitations. The second concerns the measures separate segregated funds should take if they do not receive the necessary information from contributors.

Section 104.7(b)(1)

The Commission's current regulations at 11 CFR 104.7(b)(1) require the inclusion of the following statement on all solicitations: "Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of $200 in a calendar year." Recently, the Court of Appeals for the D.C. Circuit concluded that this mandatory statement is inaccurate and misleading. *Republican National Committee* v. *Federal Election Commission*, 76 F.3d 400, 406 (D.C. Cir. 1996), *cert. denied*, 117 S.Ct. 682 (1997). The court pointed out that the FECA only requires committees to use their best efforts to collect the information and to report whatever information donors choose to provide. Other provisions of the "best efforts" regulations were upheld by the court.

Consequently, the NPRM proposed revising paragraph (b)(1) of section 104.7 by requiring political committees to include in their solicitations an accurate statement of the statutory requirements. The notice indicated that either of the following two examples would satisfy this requirement, but would not be the only allowable statements: (1) "Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 in a calendar year." (2) "To comply with Federal law, we must use best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 per calendar year." Alternatively,

comments were also sought on whether it would be preferable to simply require all political committees to use one or the other of these two formulations.

The public comments reflected a variety of reactions to this proposed rule. Two commenters misunderstood the proposed rule in that they believed political committees would be penalized if they fail to use one of the FEC-prescribed statements. As explained, below, that would not be the case, as long as political committees use an accurate statement of the law. One commenter expressed concerns as to the statutory authority and constitutionality of the Commission's proposed rule. These considerations have already been resolved in *Republican National Committee* v. *Federal Election Commission*, 76 F.3d 400, 406 (D.C. Cir. 1996), *cert. denied*, 117 S.Ct. 682 (1997). Another commenter expressed general concerns regarding the impact of contributions in political campaigns and urged various legislative changes. The Internal Revenue Service found no conflict between the FEC's proposed rules and the Internal Revenue Code or IRS rules promulgated thereunder.

Another commenter urged the adoption of stronger measures, such as notifying contributors that their contributions will not be deposited and must be returned if they do not provide complete contributor identifications. This commenter believes that differences in reporting rates are attributable to variations in the seriousness of different committees' efforts to comply with the statutory requirements. It is concerned that the Commission's present best efforts rules are inadequate in ensuring sufficient disclosure. The Commission has previously considered and rejected this approach because it is beyond the statutory authority granted to the Commission at this time. *See* Explanation and Justification 58 F.R. 55727–28 (Oct. 27, 1993). The commenter also urged the Commission to prohibit the use of "vague" descriptions of occupations such as "business owner," "chairman," "administrator," "manager," and "self-employed." The Commission is reluctant to bar the use of the titles the commenter believes to be vague because many of them are commonly-used official titles which provide meaningful information in combination with the name of the contributor's employer.

In the final rules which follow, paragraph (b)(1) of section 104.7 states that solicitations must contain an accurate statement, and provides two examples of statements that will be acceptable. However, for the reasons raised by the commenters, the Commission has decided not to require political committees to use only the statements listed. Consequently, the final regulations have been revised to allow for the use of other accurate statements of federal law regarding best efforts. Thus, the Commission has made every effort to ensure that committees have as much flexibility as possible. Nevertheless, please note that statements such as "Federal law requires political committees to ask for this information," without more, do not provide contributors with a complete statement regarding Federal law, and hence, do not meet the requirements of revised 11 CFR 104.7(b)(1).

Section 104.7(b)(3)

The NPRM proposed revising paragraph (b)(3) of section 104.7 to indicate that separate segregated funds are expected to report contributor information in the possession of their connected organizations. This includes corporations (including corporations without capital stock), labor organizations, trade associations, cooperatives and membership organizations. In some situations, it may be more efficient for separate segregated funds to obtain the missing contributor information from their connected organizations than from the contributors.

One commenter supported this proposal. The Internal Revenue Service found no conflict between the FEC's proposed rules and the Internal Revenue Code or IRS rules promulgated thereunder. Another commenter expressed concerns that this proposal would alter the resolution reached by the Commission in Advisory Opinion 1996–25, issued to the Seafarers Political Activity Donation and its connected organization, the Seafarers International Union.

The Commission has decided to add the proposed new language to 11 CFR 104.7(b)(3). This will ensure that contributor identifications are reported as accurately and as completely as possible. Since many separate segregated funds are already reporting most, if not all, of this information, the effect of this provision should be minimal. Given that connected organizations establish, administer and financially support their separate segregated funds, it is reasonable for them to provide necessary information in their records when the contributors do not do so. Please note that it is not the Commission's intention at this time to modify or supersede AO 1996–25. Thus, the procedures described in A0 1996–25 will continue to satisfy the revised best efforts regulations for those entities entitled to rely on that opinion.

Certification of no Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that a portion of the attached rules will provide any small entities affected with greater flexibility in complying with the best efforts requirements of the Act by giving them new options as to the statement to be included in their solicitations. Small entities will be affected by the remaining portion of the attached rules only if they are separate segregated funds. Experience has shown that the large majority of these separate segregated funds are already in compliance with the requirements on reporting contributor information. Thus, obtaining missing contributor information from their connected organizations will not have a significant economic effect on a substantial number of these small entities.

List of Subjects in 11 CFR Part 104

Campaign funds, Political candidates, Political committees and parties, Reporting requirements.

For the reasons set out in the preamble, Subchapter A, Chapter I of Title 11 of the *Code of Federal Regulations* is amended as follows:

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

1. The authority citation for Part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8), 438(b).

2. Section 104.7 is amended by revising paragraphs (b)(1) and (b)(3) to read as follows:

§ 104.7 Best efforts (2 U.S.C. 432(i)).

* * * * *

(b) * * *

(1) All written solicitations for contributions include a clear request for the contributor's full name, mailing address, occupation and name of employer, and include an accurate statement of Federal law regarding the collection and reporting of individual contributor identifications. The following are examples of acceptable statements, but are not the only allowable statements: "Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose

contributions exceed $200 in a calendar year;" and "To comply with Federal law, we must use best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 per calendar year." The request and statement shall appear in a clear and conspicuous manner on any response material included in a solicitation. The request and statement are not clear and conspicuous if they are in small type in comparison to the solicitation and response materials, or if the printing is difficult to read or if the placement is easily overlooked.

* * * * *

(3) The treasurer reports all contributor information not provided by the contributor, but in the political committee's possession, or in its connected organization's possession, regarding contributor identifications, including information in contributor records, fundraising records and previously filed reports, in the same two-year election cycle in accordance with 11 CFR 104.3; and

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Dated: April 25, 1997.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 97-11183 Filed 4-29-97; 8:45 am]

BILLING CODE 6715-01-P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule modifies the examination fees charged to small business investment companies (SBICs). The revised fee schedule eliminates the disproportionate burden on certain classes of licensees (particularly those with the largest amount of total assets) and results in fee assessments that more closely reflect the level of effort and time associated with the examination process.

DATES: This final rule is effective April 30, 1997.

FOR FURTHER INFORMATION CONTACT: Leonard W. Fagan, Investment Division, at (202) 205-7583.

SUPPLEMENTARY INFORMATION: On January 31, 1996, the Small Business Administration (SBA) published final regulations which, among other things, increased the examination fees charged to SBICs. See 61 FR 3177. Fees continued to be assessed based on total assets of the licensee, but at higher rates. The new fee schedule was designed to produce total revenue sufficient to cover the current direct costs to SBA of conducting examinations. In response to concerns raised by a number of SBICs, SBA proposed on February 11, 1997 to modify the examination fee schedule. See 62 FR 6147. This proposed rule is hereby adopted in final form.

The proposed rule was intended to respond to concerns that the existing fee schedule resulted in unreasonably high examination fees for the group of SBICs with the largest amount of total assets. Many of the largest SBICs are bank-owned and do not use federal leverage funds, so that fees computed on the basis of total assets do not appropriately reflect the level of effort and risk associated with the examination process. Similarly, larger SBICs which are not bank-owned and do rely on federal funds to supplement private capital have been required to pay fees that substantially exceed the amount they pay for financial audits, which are generally more extensive than the compliance examinations performed by SBA.

To address these concerns, SBA proposed to revise § 107.692 by establishing "base fees" for examinations. The base fee increases as a licensee's total assets increase, but is capped at $14,000. The base fee would be adjusted upward in circumstances where the Agency incurs additional cost or burdens in the process because of circumstances solely related to the licensee to be examined. Similarly, the base fee would be adjusted downward where circumstances solely related to the licensee to be examined are such that the Agency's level of effort and time are minimized.

SBA received two comments on the proposed rule, both of which were generally supportive. One commenter agreed with the concept of capping the base fee, but suggested a $10,000 cap instead of the proposed $14,000. The commenter considered the lower fee to be more in line with rates charged by independent auditors. The other comment dealt with the proposed adjustments to the base fee, suggesting that SBA consider additional discounts for those licensees which do not use SBA leverage and those with only a limited number of investments which SBA must review. The commenter also suggested elimination of the 5 percent additional charge for licensees organized as partnerships or limited liability companies. The commenter stated that these changes would further the goal of tying SBIC examination fees to the level of effort and resources expended by SBA in performing the examinations.

SBA believes that the proposed maximum base fee of $14,000 is reasonable relative to the size of the SBICs which will be required to pay it (those with total assets greater than $60,000,000). The $14,000 base represents a significantly reduced rate for most of these larger SBICs. For these reasons, SBA has not adopted this suggested change.

SBA generally supports the concept of linking fees to the risk and complexity of the examination. However, the Agency believes that the introduction of additional criteria for discounts would result in an overly complex fee structure. SBA also believes that the additional charge for partnerships is justified because of the complexity of most partnership agreements and the need to perform certain examination procedures at the level of the general partner as well as the SBIC itself.

SBA is making one editorial change to the table in § 107.692(d), so that the language concerning records kept in multiple locations is the same in that paragraph as in § 107.692(c)(5). In all other respects, the rule is adopted as proposed.

Compliance With Executive Orders, 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this final rule will not be a significant regulatory action for purposes of Executive Order 12866 because it will not have an annual effect on the economy of more than $100 million, and that it will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The purpose of the rule is to modify the existing regulatory guidance related to SBIC examination fees. The rule will provide for more reasonable and equitable examination fees. The revised fee structure will more properly reflect the level of effort and Agency resources expended to conduct an examination, will encourage continued compliance with program regulations, and will continue to allow for efficient and effective program administration.

The regulation will have some economic effect. The base fee for examinations will continue to be based on total assets of a licensee and, for the most part, at the rates previously prescribed. However, no licensee will have a base fee greater than $14,000. The regulation will provide for