

## MEMORANDUM

TO: NABPAC Members

FROM: Jan Witold Baran

DATE: June 2, 2000

RE: FEC Administrative Fines Program

---

The Federal Election Commission (“FEC” or “the Commission”) recently approved a rule establishing monetary penalties for campaigns and political committees that fail to file required disclosure reports in a timely manner. The fines imposed by the rule will range anywhere from a few hundred dollars for small committees that are first-time offenders and that file non-election sensitive reports a few days late to over \$16,000 for large committees that are repeat offenders and that completely neglect to file final pre-election reports. The rule is scheduled to go into effect on July 14, 2000.

Last year, Congress authorized the FEC to establish an administrative fines program. Prior to that time, the FEC could not levy penalties on its own authority, but could only seek settlements with or file civil enforcement actions against late filers. The new streamlined system is designed to impose equivalent penalties on equivalent violations and also to “free critical FEC resources for more important disclosure and enforcement efforts.”

Under the new rule, if the Commission determines, by an affirmative vote of at least four of its members, that it has reason to believe that a committee has filed a late report in violation of federal campaign finance laws, it shall send written notification of the Commission’s finding to the committee. The written notification must include: the factual and legal basis for the Commission’s finding; the applicable schedule of penalties; a statement listing any previous penalties assessed against the committee during the current or preceding two-year election cycle; the amount of the proposed monetary penalty; and an explanation of the committee’s right to challenge the Commission’s determination.

Monetary penalties are determined by a schedule that takes into account the level of activity

during a particular reporting period, the number of days a report is late, the election sensitivity of a report (i.e., whether it is the final report due prior to an election), and the existence of previous violations. The penalties are indexed according to a committee's level of activity and increase substantially if a committee neglects to file a report, especially if it is an election sensitive report. For instance, the penalty assessed against a late filer of a report that is not election sensitive whose level of activity is less than \$25,000 is calculated according to the following formula:

$$[\$100 + (\$25 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$$

A committee that receives and disburses \$20,000 during a reporting period, that files a report that is not election sensitive four days late, and that has committed one previous violation would be penalized \$250. However, if this same committee failed to file a report at all, then the base penalty amount would increase and a penalty would be calculated as follows:

$$\$900 \times [1 + (.25 \times \text{Number of violations})]$$

The total penalty would be \$1125. Had the report been election sensitive, the base penalty amount for filing late would have risen from \$100 to \$150 for a total penalty of \$312.50, while the base penalty amount for not filing at all would have gone from \$900 to \$1,000 for a total penalty of \$1,250.

On the other end of the spectrum, penalties assessed against late filers of non-election sensitive reports whose level of activity during a reporting period exceeds \$950,000 are calculated as follows:

$$[\$5,000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$$

The formula for non-filers is:

$$\$12,000 \times [1 + (.25 \times \text{Number of previous violations})]$$

A committee that receives and disburses \$1,000,000 during a reporting period and that has committed one previous violation would be penalized \$7,250 if it filed a report that is not election sensitive four days late or would be penalized \$15,000 if it failed to report at all. If the report had been election sensitive, the base penalty amount for filing late would have been raised from \$5,000 to \$7,500 for a total penalty of \$10,375, whereas the base penalty amount for not filing at all would be elevated from \$12,000 to \$16,000 for a total penalty of \$20,000.

Upon receiving a "reason to believe" finding and a proposed monetary penalty, a committee may either pay the penalty, which effectively closes the matter, or challenge the Commission's finding. If a committee decides to pay the penalty, it must remit payment to the FEC within 40 days of the Commission's "reason to believe" finding. Alternatively, if a committee decides to challenge the Commission's finding, it must submit within 40 days of the finding a written response setting forth reasons why the finding was incorrect. For instance, a committee may contend that extraordinary circumstances beyond the committee's control lasting at least 48 hours prevented the timely filing of the report. However, according to the new rule, negligence, problems with vendors or contractors, staff illnesses, and computer failures (except for failures of the Commission's computers) will not be considered extraordinary circumstances.

Each challenge will be handled by a "reviewing officer," who will analyze the "reason to believe" finding and the committee's written response. The reviewing officer will forward his or her recommendation both to the Commission and to the committee, which may file a response to the

recommendation within 10 days of the recommendation's transmittal. The Commission will then determine by an affirmative vote of at least four of its members whether it ought to assess a monetary penalty.

If the Commission decides to assess a monetary penalty, a committee must remit payment to the FEC within 30 days of the Commission's final determination, unless it decides to file an appeal in a federal district court. Throughout an appeal, a committee may only raise arguments that it has already raised before the Commission. If a committee ultimately loses an appeal, it must remit payment of the monetary penalty to the FEC within 30 days of the civil action's conclusion.

Once an enforcement matter has been completely resolved, the FEC will make the enforcement file available to the public.