# Federal Election Commission

# Annual Report 2001

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**Federal Election Commission**
**Washington, DC 20463**

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Karl J. Sandstrom, Vice Chairman
Danny L. McDonald, Commissioner
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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OFFICE OF THE CHAIRMAN

June 1, 2002

The President of the United States
The United States Senate
The United States House of Representatives

Dear Mr. President, Senators and Representatives:

We are pleased to submit for your information the 27th Annual Report of the Federal Election Commission, pursuant to 2 U.S.C. §438(a)(9). The *Annual Report 2001* describes the activities performed by the Commission in the last calendar year.

Last year was marked by the successful implementation of mandatory electronic filing for political committees, new regulations requiring election-cycle reporting by candidates, and new OCR readable disclosure forms.

The Commission's Alternative Dispute Resolution and Administrative Fines programs, initiated in 2000, moved into full operation in 2001, contributing significantly to the Commission's enforcement objectives. The Commission released over 300 administrative fine cases in 2001, and the number of late reports declined in every reporting period.

The Commission looks forward this year to implementing the Bipartisan Campaign Reform Act recently passed by Congress and signed by the President. We will transmit legislative recommendations under separate cover since we postponed considering new recommendations pending enactment of the BCRA.

We hope that you will find this annual report to be a useful summary of the Commission's efforts to implement the Federal Election Campaign Act.

Respectfully,

David M. Mason

David M. Mason
Chairman

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# Introduction

In 2001, new programs aimed at enhancing disclosure and compliance dominated the Federal Election Commission's activities. Additionally, in the wake of the 2000 Presidential election controversy, the Commission's Office of Election Administration proposed guidelines to help state officials better administer federal elections.

In the area of disclosure, new regulations went into effect on January 1, 2001, requiring mandatory electronic filing for committees that raise or spend more than $50,000 in a calendar year. During 2001, the Commission successfully received and processed a large number of electronically-filed reports, and the program received wide praise for significantly increasing the timeliness, scope and amount of campaign finance data available to the public.

The Administrative Fine program and the Alternative Dispute Resolution program, both of which began in 2000, continued to improve and streamline the agency's processing of compliance matters, allowing the Commission to handle significantly more actions than in past years. During 2001, the FEC resolved 331 matters through the Administrative Fine and Alternative Dispute Resolution programs, and an additional 151 cases were closed as part of the Commission's regular enforcement process.

Also during 2001, the Commission's Office of Election Administration (OEA) worked to revise the national Voting Systems Standards. By year's end, 38 states had voluntarily adopted the existing standards, entirely or in part, to serve as guidelines for election officials who select and implement voting systems in federal elections. OEA is the only federal office directly involved in providing assistance to state and local officials who administer federal elections, and the controversy surrounding the Presidential election of 2000 highlighted the importance of these standards.

The material that follows details the Commission's 2001 activities. Additional information on most matters can be found in the 2001 issues of the FEC newsletter, the *Record*.

# Chapter One
# Keeping the Public Informed

The FEC's public disclosure and educational outreach programs work together to educate the electorate about the various aspects of campaign finance law. The Commission makes the financial reports of all federal political committees accessible to members of the general public, providing an incentive for the regulated community to comply with the law. Educational outreach helps committees achieve compliance by providing the information necessary to understand the requirements of the law.

As detailed below, new regulations and technical innovations went into effect during 2001, further enhancing the Commission's disclosure and educational outreach programs.

## Public Disclosure

During 2001, the disclosure of the sources and amounts of funds spent on federal campaign activity continued to be the focus of the Commission's work. The Commission received reports filed by committees, reviewed them to ensure compliance with the law, entered the data into the FEC's computer database and made the reports available to the public within 48 hours of receipt.

Continued advances in computer technology, combined with new regulations that became effective during the year, improved the disclosure process in 2001. As detailed below, these changes benefit both the public and the regulated community.

### Electronic Filing

The Commission's mandatory electronic filing program went into effect on January 1, 2001. Under the new rules, committees that raise or spend more than $50,000 in a calendar year, or who expect to do so, must file their campaign finance reports electronically.[1] Committees that are required to file electronically but who instead file on paper are considered nonfilers and could be subject to enforcement actions.

In order to file electronically, committee treasurers obtain passwords from the FEC that function as electronic signatures and then use software to fill out the reports, which they can send to the Commission via Internet connection, modem or floppy disk. The FEC's validation system verifies that the reports meet certain criteria and informs the committees of problems that need to be fixed.

The Commission has encouraged voluntary electronic filing since 1997, and the number of committees who have taken advantage of the system has risen steadily through the years. In 2000, under the voluntary system, 1,033 committees filed their reports electronically. In July 2001, under the new mandatory electronic filing rules, the number jumped to 2,898, with 1,135 committees filing electronically for the first time. For the year, 94 percent of all non-Senate transactions were filed electronically.

With the July 2001 semi-annual report, the Commission successfully received and processed the first full-scale filing of electronic reports under the new rules. Images of the reports were quickly available on the FEC web site, in compliance with the Act's requirement that reports filed electronically must appear on the Internet not later than 24 hours after receipt. 2 U.S.C. §434(a)(11)(B). In addition, the Commission processed 95 percent of the itemized data, including data from paper reports that have to be manually entered into the database, within 18 days, 42 days faster than the Commission's initial processing goal.

In an effort to ease the transition from paper to electronic filing, the FEC conducted a variety of outreach programs to inform the regulated community about electronic filing. These included a telephone hotline, roundtable discussions at the Commission and presentations at FEC conferences.

### Election Cycle Reporting

On January 1, 2001, new regulations took effect that require authorized committees of federal candidates to aggregate and report receipts and disbursements on an election-cycle basis rather than on the traditional calendar-year basis.

[1] The mandatory electronic filing rules do not apply to Senate committees.

The change to election cycle reporting is intended to simplify recordkeeping and the preparation of disclosure reports. Under the old rules, candidate committees monitored contribution limits on a per-election basis, but disclosed their financial activity on a calendar-year-to-date basis. Under the new system, committees report all of their receipts and disbursements on an election-cycle basis. 11 CFR 104.3. For example, campaigns must itemize a donor's contributions once they exceed $200 for the election cycle, rather than for the calendar year. Likewise, candidate committees must itemize disbursements to a person once they aggregate in excess of $200 within the election cycle.

Under FEC regulations, an election cycle begins the day after the general election for a seat or office and ends on the day of the next general election for that seat or office. The length of the election cycle, thus, depends on the office sought—the election cycle is two years for House candidates, six years for Senate candidates and four years for Presidential candidates. The new rules requiring election cycle reporting do not affect PACs or party committees.

**State Filing Waiver Program**

The Commission's State Filing Waiver program, which began in October 1999, continued in 2001 with the addition of Arizona and Nevada. The Commission has now certified 48 states/territories for the waiver.[2] Under the program, filers whose reports are available on the FEC web site need not file duplicate copies of their reports in states that provide adequate public access to the Commission's site. During the year, the state waiver program won recognition when it was designated a semi-finalist in the "Innovations in American Government" award competition sponsored by the Ford Foundation and administered by Harvard University's John F. Kennedy School of Government.

**New Disclosure Forms**

In 2001, the Commission issued new disclosure forms designed to be processed more quickly through the use of optical character recognition (OCR), in anticipation of the Commission's future use of this technology. The Commission made updated FEC forms 1, 2, 3, 3X, 3P, 6 and 8 available to committees filing in 2001. The updated forms require the same basic information but are reformatted so that they can be electronically read through OCR. The Commission plans to update the remaining forms in the near future.

**Imaging and Processing of Data**

The Commission scans all paper reports filed with the agency to create digital images of the documents, which it then makes accessible to the public in the FEC's Public Records Office and on the Commission's web site. In addition to the digital imaging system, the Commission codes and enters information taken from campaign finance reports into the agency's disclosure database, which contains data from 1977 to the present. Information is coded so that committees are identified consistently throughout the database.

The FEC's Data Division spent much of 2001 developing new database and document management systems. These new systems incorporate updated equipment and software and will be quicker and more user-friendly. New disclosure capabilities stemming from these systems will begin to be available Commission-wide, and online, in 2002.

**Public Access to Data**

During 2001, the expanded capabilities of the Commission's web site—www.fec.gov—continued to provide the public with wide access to campaign fi-

[2] As of December 31, 2001, the Commission had certified that the following states and territories qualify for filing waivers: Alabama, American Samoa, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Virgin Islands, Washington, West Virginia, Wisconsin and Wyoming.

**CHART 1-1**
**Size of Detailed Database by Election Cycle**

| Year | Number of Detailed Entries* |
|---|---|
| 1990 | 767,000 |
| 1991 | 444,000† |
| 1992 | 1,400,000 |
| 1993 | 472,000 |
| 1994 | 1,364,000 |
| 1995 | 570,000 |
| 1996 | 1,887,160 |
| 1997 | 619,170 |
| 1998 | 1,652,904 |
| 1999 | 840,241 |
| 2000 | 2,390,837 |
| 2001 | 661,591 |

* Figures for even-numbered years reflect the cumulative total for each two-year election cycle.
† The FEC began entering nonfederal account data in 1991.

nance data. The web site's enhanced query system offers visitors quick access to summary statistical information on candidates, PACs and political party committees. Visitors can also select to search by state, by political party or by candidate status (incumbent, challenger or open-seat) and simply click to access detailed lists of individual or PAC contributions. The query system allows visitors to access the name and contribution amount of any individual who contributed $200 or more to a federal political committee, as well as lists of PACs or party committees that contributed to specific candidates. Visitors may also view lists of candidates to whom selected PACs and parties contributed.

The Commission's disclosure database, which contains millions of transactions, allows researchers flexibility in selecting information. For example, the database can instantly produce a profile of a committee's financial activity for each election cycle. Researchers can also customize their searches for information on contributions by using a variety of elements (e.g., donor's name, recipient's name, date, amount or geographic location).

Visitors to the Public Records Office can use personal computers and computer terminals to inspect digital images of reports or to access the disclosure database and more than 25 different campaign finance indices that organize data in different ways. Visitors can also access the FEC's web site, which offers search and retrieval of more than 3 million images of report pages, dating back to 1993, and over 2 million database entries compiled since 1997. Those outside Washington, DC, can access the information via the Internet or the Direct Access Program or order it using the Commission's toll-free number.

The Public Records Office continued to make publicly available copies of all campaign finance reports, paper copies of reports from Congressional candidates and Commission documents such as press releases, audit reports, closed enforcement cases (MURs) and meeting agenda documents.

**Review of Reports**

The Commission's Reports Analysis Division (RAD) reviews all reports to track compliance with the law and to ensure that the public record provides a full and accurate portrayal of campaign finance activity. When reports analysts find that a report contains errors or suggests violations of the law, they send the reporting committee a request for additional information (RFAI). The committee treasurer can then make additions or corrections to the report, which are added to the public record. Apparent violations, however, may be referred to the Audit Division for a possible audit or to the Office of General Counsel for possible enforcement action.

During 2001, reports analysts reviewed thousands of reports and completed their inspection of those relating to the 2000 election cycle. With the advent of mandatory electronic filing, RAD worked to automate its review process and looks forward to utilizing the Commission's new database system, which will be

available in 2002. RAD also worked closely with the Office of Administrative Review to streamline the compliance process for administrative fines and was responsible for making reason-to-believe recommendations to the Commission in all administrative fine cases.

## Educational Outreach

The Commission continued to promote voluntary compliance with the law by educating committees about the law's requirements.

**Home Page (www.fec.gov)**

In its sixth year of operation, the Commission's web site continued to offer visitors a variety of resources. As in past years, committees could use the web site to obtain copies of FEC registration and reporting forms and to learn about filing schedules and requirements. Visitors could search for advisory opinions (AOs) on the web by using words, phrases or citations or by entering the year and AO number, and could access a variety of rulemaking documents, including Notices of Proposed Rulemaking and final rules. Visitors to the site could also access agency news releases and most FEC publications, including brochures on a variety of topics, the agency's monthly newsletter, the *Record*, and the campaign guides for candidates, parties and PACs. Additionally, the Commission made available on the web site national election results, voter registration and turnout statistics and the national mail voter registration form.

The site averaged approximately 3.2 million hits per month in 2001.

**Telephone Assistance**

A committee's first contact with the Commission is often through a telephone call to the agency's toll-free information hotline (800-424-9530). In order to answer questions about the law, staff members research relevant advisory opinions and litigation, as needed. Additionally, callers can request, at no charge, FEC documents, publications and forms. In 2001, the Information Division responded to 28,220 telephone inquiries.

**Faxline**

The Commission's automated Faxline (202-501-3413) continued to be a popular method for the public to obtain publications or other documents quickly and easily.

During 2001, 648 callers sought information from the 24-hour Faxline and received 845 documents.

**Reporting Assistance**

During 2001, reports analysts, assigned to review committee reports, were also available to answer complex reporting and compliance-related questions from committees calling on the toll-free line.

The Commission continued to encourage timely compliance with the law by mailing committees reminders of upcoming reporting deadlines three weeks before the due dates. The *Record*, the Commission's newsletter, and the FEC's web site also listed reporting schedules and requirements.

**Roundtables**

The FEC continued its roundtable sessions for the regulated community. The roundtables, limited to 10-12 participants per session, featured topics ranging from the electronic filing rules to candidate preparations for the next election cycle.

**Conferences**

During 2001, the agency conducted a full program of conferences to help candidates and committees understand and comply with the law. In Washington, DC, the Commission hosted individual conferences for corporations, trade associations, labor organizations and membership associations. In addition, the agency held a regional conference in Denver for all types of committees.

The conferences featured hands-on workshops detailing fundamental areas of the law as well as specialized sessions on the Commission's electronic filing program.

**Tours and Visits**

Visitors to the FEC during 2001, including 24 student groups and foreign delegations, listened to presentations about the campaign finance law and, in some cases, toured the agency's Public Records office.

**Media Assistance**

The Commission's Press Office continued to field questions from the press and to navigate reporters through the FEC's vast pool of information. Press Office staff responded to 8,772 calls and visits from media representatives and prepared 116 news releases. Many of these releases alerted reporters to new campaign finance data and illustrated the statistics in tables and graphs.

**Publications**

During 2001, the Commission produced a number of publications designed to help committees, the press and the general public understand the law and find information about campaign finance. All of the new publications were available both in print and on the FEC web site.

Among the new publications was an updated version of the *Campaign Guide for Corporations and Labor Organizations*. The guide includes descriptions of new regulations and features reporting examples on the revised FEC disclosure forms. Also during the year, the Commission published an updated edition of *Selected Court Case Abstracts, 1976-February 2001* (CCA). The CCA is a collection of summaries of court cases pertinent to the Federal Election Campaign Act. Most of the court case summaries originally appeared in the FEC's monthly newsletter, the *Record*.

As in past years, the Commission continued to provide more than 10,000 free subscriptions to the *Record*. The newsletter summarizes recent advisory opinions, compliance cases, audits, litigation and changes in regulations. It also includes graphs and charts on campaign finance statistics.

The *Combined Federal/State Disclosure Directory 2001* directs researchers to federal and state offices that provide information on campaign finance, candidates' personal finances, lobbying, corporate registration, election administration and election results. In 2001, the disclosure directory was available not only in print and on the web, but also on computer disks formatted for popular hardware and software. The web page version of the *Disclosure Directory* includes hyperlinks to the web sites of state offices and e-mail addresses for state officials.

The FEC also released *Federal Elections 2000,* a 197-page publication that provides a historical record of federal election results. This volume, the largest edition in the *Federal Elections* series to date, includes a new appendix of comparative Presidential general election statistics as well as a new chart that shows the general election votes cast for all federal races by party. As in past editions, maps and charts are included to illustrate and summarize the current election results.

## Office of Election Administration

During 2001, the Office of Election Administration (OEA) completed the current update of the Voting Systems Standards (VSS). Because of the controversy surrounding the 2000 Presidential election, the VSS received a great deal of public and legislative interest during the year. First approved in 1990, the VSS is a set of guidelines for computer-based voting systems that are voluntarily adopted by the states.[3] The VSS include functional criteria, as well as technical requirements, for hardware, software, security, quality assurance and documentation. Election administrators on the state and local levels then use these criteria to implement and maintain their voting

[3] As of December 31, 2001, 38 states had either adopted the Voting Systems Standards or required testing against the VSS before a system could be marketed within their boundaries.

systems. OEA began revising the standards in 1999 in an effort to incorporate newer technology as well as to address the needs of the disabled and changes in the voting process.

In June, the Commission unanimously approved the first draft of *Volume I: Voting Systems Performance Standards*, which details the technical and performance capabilities for electronic voting systems. The draft was published in the *Federal Register* for a 60-day public comment period, and OEA made a number of changes to the draft in response to the public comments. During this same time period, the OEA staff worked to complete the draft of *Volume II: Voting System Test Standards.* This second volume provides details of the test process for both independent test authorities and vendors of electronic voting systems.

In December, the Commission unanimously approved both volumes for a final 45-day period of public comment. The complete update of the Voting Systems Standards is scheduled for release in April 2002.

Also during the year, OEA held its annual Election Administration Advisory Panel meeting in Baltimore, MD. The meeting featured lectures and discussion on contested elections and recounts in 2000 and a review of the findings from the major national election reform taskforces. Other agenda items included an update on the VSS revisions, an examination of human interface and voting technology issues and a discussion of the future role of the OEA.

In June, the Commission forwarded to Congress OEA's semi-annual report entitled *"Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 1999-2000."* The report contained an analysis of the impact of the Act and detailed statistical information provided by state election offices. The report also listed a variety of recommendations for improving the administration of the Act.

# Chapter Two Interpreting and Enforcing the Law

As part of its mission to administer and enforce the Federal Election Campaign Act, the Commission promulgates regulations and issues advisory opinions to promote voluntary compliance with the law. The regulations state the law in detail, sometimes incorporating interpretations of the law that the Commission made in advisory opinions. Advisory opinions, in turn, clarify how the statute and regulations apply to real-life situations.

The agency's enforcement actions also promote compliance by correcting past violations and demonstrating to the regulated community that violations can result in civil penalties and remedial action. The addition of the Administrative Fine and the Alternative Dispute Resolution programs have increased the number of enforcement actions undertaken by the agency.

## Regulations

The rulemaking process generally begins when the Commission votes to publish proposed rules in the *Federal Register* and seeks public comment on them. The agency may also invite those making written comments to testify at a public hearing. The Commission considers the comments and testimony when deliberating on the final rules in open meetings. Once approved, the text of the final regulations and the accompanying Explanation and Justification are published in the *Federal Register* and sent to the U.S. House of Representatives and Senate. The Commission publishes a notice of effective date after the final rules have been before Congress for 30 legislative days.

### Rulemakings Completed in 2001

The Commission completed work on the following new rules during 2001:

- Rules extending the Administrative Fine pilot program to reporting periods covering activity through December 31, 2003. Took effect December 31, 2001.
- Rules making technical corrections to the reporting regulations at 11 CFR 104.3. Took effect December 31, 2001.

### Other Rulemakings in Progress

In addition to completing the above rules, the Commission took the following regulatory actions:

- It published a Notice of Proposed Rulemaking (NPRM) on the use of loans derived from candidates' brokerage accounts, credit cards, home equity lines of credit or other lines of credit as long as the loans were made under commercially-reasonable terms and were from a source that provides such loans in the normal course of business. The Commission also received and reviewed public comments on the NPRM.
- It published an NPRM, received and reviewed comments and considered final rules to clarify independent expenditure reporting deadlines and to allow political committees (and other persons) that make independent expenditures but do not file electronically to file their 24-hour reports by fax or email.
- It published an NPRM on the use of the Internet in federal elections and received public comments.

## Advisory Opinions

The Commission responds to questions about how the law applies to specific situations by issuing advisory opinions. When the Commission receives a valid request for an advisory opinion, it generally has 60 days to respond. If, however, a candidate's campaign submits a valid request within 60 days before an election, and the request directly relates to that election, the Commission must respond within 20 days. The Office of General Counsel (OGC) prepares a draft opinion, which the Commissioners discuss and vote on during an open meeting. A draft opinion must receive at least four favorable votes to be approved.

The Commission issued 17 advisory opinions in 2001. Of that number, five addressed the issue of personal use of campaign funds, four involved national and state party committee status and two examined party building funds. These and other advisory opinions from 2001 are discussed in Chapter Three, "Legal Issues."

## Enforcement

### The Enforcement Process

The Commission learns of possible election law violations in three ways. The first is the agency's monitoring process—potential violations are discovered through a review of a committee's reports or through a Commission audit. The second is the complaint process—anyone may file a sworn complaint alleging violations and explaining the basis for the allegations. The third is the referral process—possible violations discovered by other agencies are referred to the Commission.

Each of these can lead the Commission to open a Matter Under Review (MUR). Internally-generated cases include those discovered through audits and reviews of reports as well as those referred to the Commission by other government agencies. Externally generated cases spurred by a formal, written complaint receive a MUR number once OGC determines that the document satisfies specific criteria for a proper complaint.

The General Counsel recommends whether the Commission should find "reason to believe" and open an investigation. The Commission may find "reason to believe" if a complaint sets forth specific facts that, if proven true, would constitute a violation of the Act. In reaching a determination, the Commission considers a variety of factors, including the personal knowledge of identified sources of information, statements from the respondents and public records supplied by other sources. If the Commission finds there is "reason to believe" the respondents have committed a violation, it notifies the respondents and begins to investigate the matter. The Commission has authority to subpoena information and can ask a federal court to enforce a subpoena. At the end of an investigation, the General Counsel prepares a brief, which states the issues involved and recommends whether the Commission should find "probable cause to believe" a violation has occurred. Respondents may file briefs supporting their positions.

If the Commission finds "probable cause to believe" the respondents violated the law, the agency attempts to resolve the matter by entering into a conciliation agreement with them. (Some MURs, however, are conciliated before the "probable cause" stage.) If conciliation attempts fail, the agency may file suit in district court. A MUR remains confidential until the Commission closes the case with respect to all respondents in the matter.

### Enforcement Initiatives

During 2001, the Commission continued to use a prioritization system to focus its limited resources on more significant enforcement cases.

Now in its ninth year of operation, the Enforcement Priority System (EPS) has helped the Commission manage a heavy caseload involving thousands of respondents and complex financial transactions. The Commission instituted the system after recognizing that the agency lacked sufficient resources to pursue all of the enforcement matters that came before it. Under the system, the agency uses formal criteria to decide which cases to pursue. These criteria include the intrinsic seriousness of the alleged violation, the apparent impact the alleged violation had on the electoral process, the topicality of the activity and the development of the law and the subject matter. The Commission continually reviews the EPS to ensure that the agency uses its limited resources to its best advantage.

In addition, during 2001, OGC continued to use a computerized system to image documents and create a searchable database. Developed with help from a support contractor, the system is designed to help streamline the investigation of cases that involve large collections of documents.

Also during the year, the OGC staff entered data into a computerized case management system designed to help manage and track the agency's enforcement and litigation cases, as well as projects in OGC. OGC hopes eventually to use the system to develop an offense profile database that would inform Commissioners, policy makers and the public about emerging enforcement trends.

## Administrative Fine Program

During 2001, the Administrative Fine program proved to be a fundamental part of the Commission's effort to promote timely compliance with the law's reporting deadlines. The program began in July 2000 and was originally mandated to last only through December 31, 2001; but, as part of the FY 2002 appropriations process, Congress extended it to cover reporting periods through December 31, 2003. The program allows the Commission to assess civil money penalties for violations involving:

- Failure to file reports on time;
- Failure to file reports at all; and
- Failure to file 48-hour notices.

### How the Program Works

In the past, the FEC handled reporting violations under its regular enforcement procedures, as described above. The Administrative Fine program streamlines the process for these violations.

All administrative fine actions are initiated in the Reports Analysis Division (RAD). RAD monitors all committees for possible filing violations and recommends to the Commission those committees that appear to be in violation. If the Commission finds "reason to believe" (RTB) that a committee violated the applicable reporting provisions, RAD provides a written notification to the committee and its treasurer containing the factual and legal basis of its finding and the amount of the proposed civil money penalty. The Commission found RTB in 257 instances in 2001. The respondents have 40 days from the date of the RTB finding to either pay the civil money penalty or submit to the Commission a written response, with supporting documentation, outlining why it believes the Commission's fine and/or penalty is in error. If the

**CHART 2-1**
**Conciliation Agreements by Calendar Year**

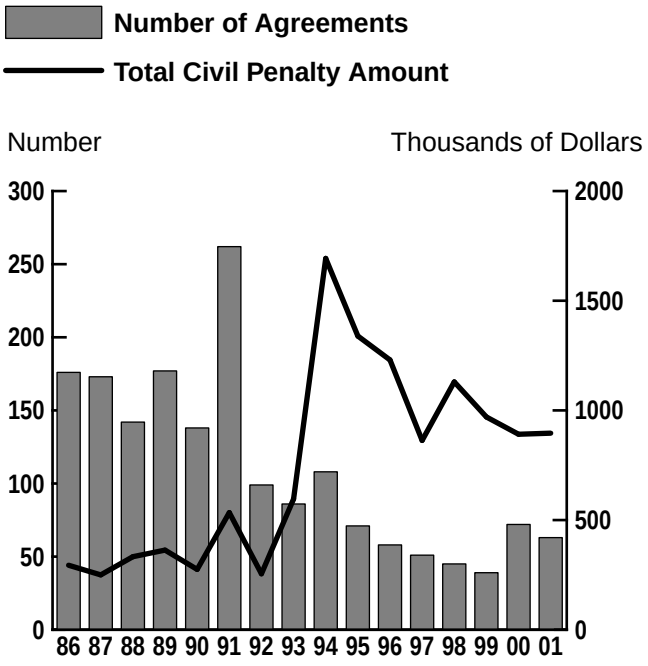



**CHART 2-2**
**Median Civil Penalty by Calendar Year**

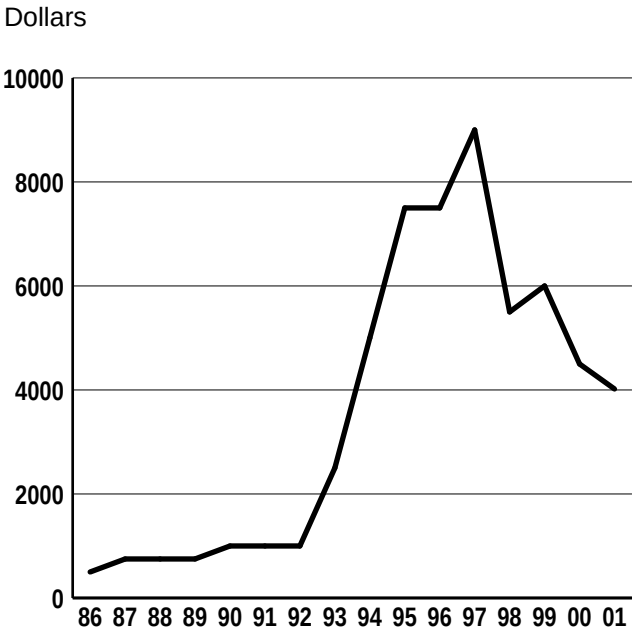


**CHART 2-3**
**Ratio of Active to Inactive Cases by Calendar Year**

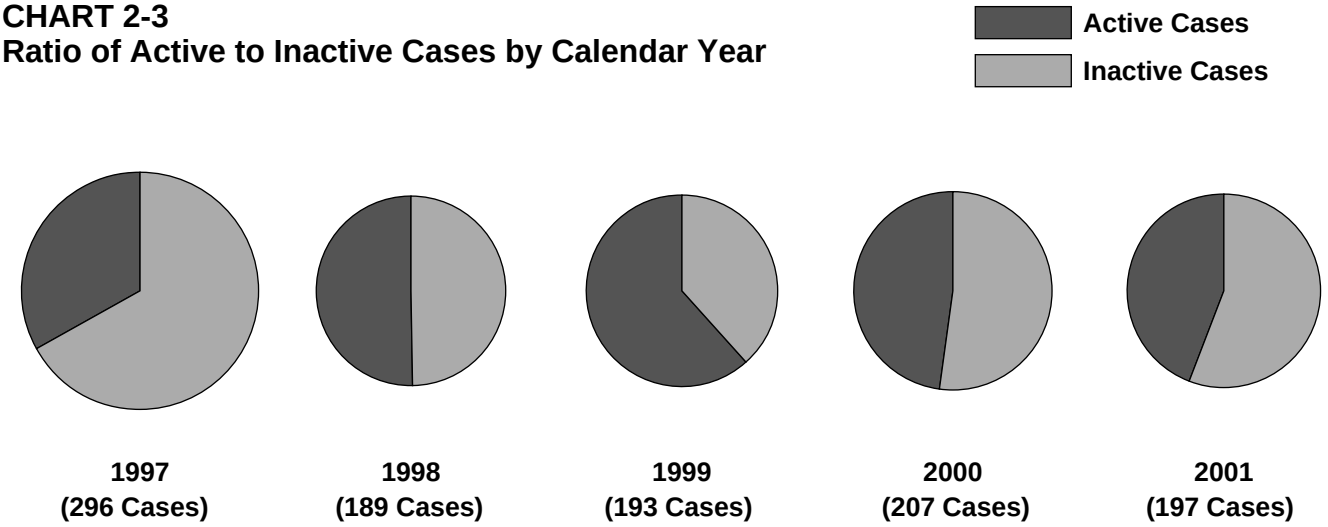



**CHART 2-4**
**Cases Dismissed Under EPS**

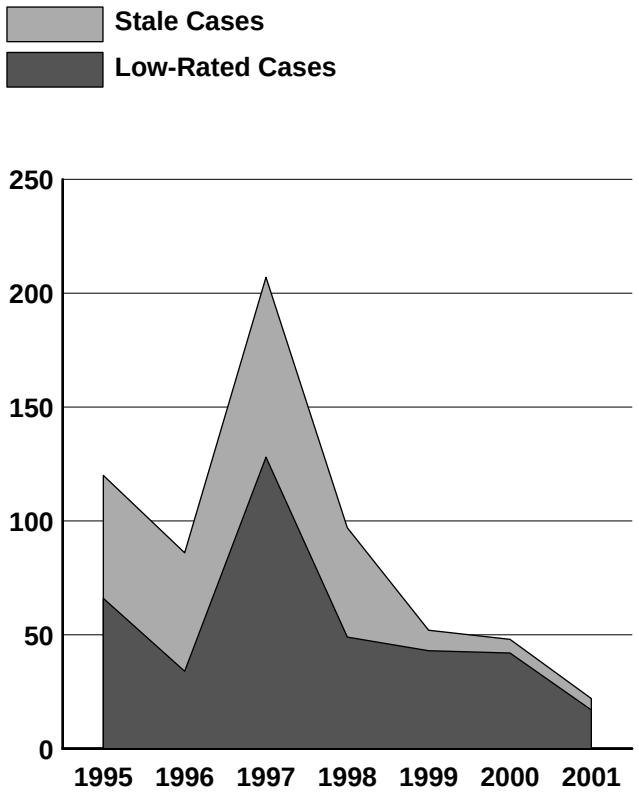
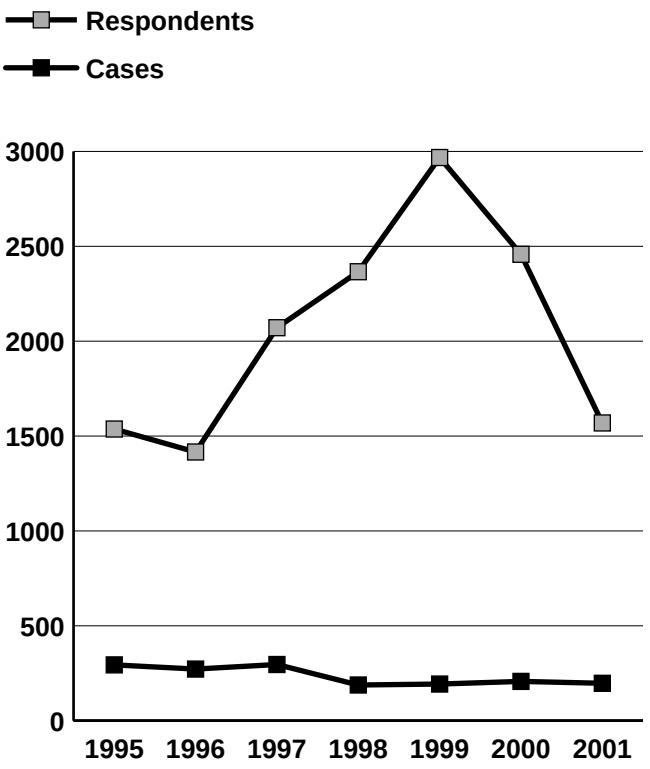



**CHART 2-5**
**Average Number of Respondents and Enforcement Cases by Calendar Year**



committee submits a response to the Office of Administrative Review, RAD forwards its information to that office for consideration by an impartial Reviewing Officer who was not involved in the original RTB recommendation.

After reviewing the Commission's RTB finding and the respondent's written response, the reviewing officer forwards a recommendation to the Commission along with all documentation. Respondents have an opportunity to respond in writing to the reviewing officer's recommendation. The Commission then makes a final determination as to whether the respondent violated the law and, if so, assesses a civil money penalty based on the appropriate schedule of penalties.

Should a respondent fail to pay the civil money penalty or submit a challenge within the original 40 days, the Commission will issue a final determination with an appropriate civil money penalty. The respondent will then have 30 days after receiving the Commission's final determination to pay the penalty or seek judicial review.

When a respondent fails either to pay the civil money penalty or to seek judicial review after the Commission makes a final determination, the Commission may transfer the case to the U.S. Department of Treasury for collection. Alternatively, the Commission may decide to file suit in the appropriate U.S. district court to collect owed civil money penalties under 2 U.S.C. §437g(a)(6).

**Calculating Penalties**

Under the program, respondents may face administrative penalties that vary depending on the interaction of several factors:

- Election sensitivity of the report;
- Whether the committee is a late filer (and the number of days late) or a nonfiler;[1]
- The amount of financial activity in the report; and
- Prior civil money penalties for reporting violations.

[1] A committee is a "nonfiler" if it files its report beyond a certain deadline or fails to file at all.

**The Administrative Fine Program in 2001**

During 2001, the Commission publicly released 300 cases, with total penalties of $484,486. The penalties per case ranged from $79 to $16,000. Also during the year, respondents in four cases filed suit against the FEC contesting either the Commission's final determination that they violated 2 U.S.C. §434(a) by filing the report late or not at all, or the assessment of the fine.

Since the Administrative Fine program began, the number of reports filed late has declined in each reporting period. So far, the largest percentage drop in the number of late filers occurred with the 2001 June monthly report—a drop of 18 percentage points from the 1999 June monthly report. The number of nonfilers continued to decline as well, with the 2001 mid-year report showing a 47 percent drop from the 1999 mid-year report.

## Alternative Dispute Resolution Program

The Commission's Alternative Dispute Resolution (ADR) program also made progress during 2001. The program began in October 2000 as a means of encouraging settlements outside the agency's regular enforcement context. Originally a one-year pilot program, the ADR pilot program has been extended for an additional year and has contributed to the significant increase in the number of compliance cases that the Commission resolved in 2001.

**Overview of the ADR Process**

The ADR program aims to bring complaints and Title 2 audit referrals to resolution expeditiously through both direct and, when necessary, mediated negotiations between the parties. The speed with which each case is settled is contingent upon:

- The willingness of respondents to engage and cooperate in the process;
- The complexity of the case in question; and
- The availability of resources.

Taking these contingencies into account, the ADR office's goal is to process a complaint or Title 2 audit referral within five months of its referral.

After OGC makes an initial determination that a case is suitable for the ADR program, it refers the matter to the ADR office. On some occasions, the Commission itself may also refer a case to the office. The office then evaluates the case to determine whether it meets the requirements for the ADR program. In order to have a case considered for treatment within the ADR program, the respondent must:

- Express a willingness to engage in the ADR process;
- Agree to set aside the statute of limitations while the complaint is pending in the ADR office; and
- Agree to participate in bilateral negotiations and, if necessary, mediation.

After the Commission concurs that the case can be dealt with through ADR procedures, the ADR office notifies the respondent and forwards an agreement to engage in bilateral negotiations and/or mediation.

**The ADR Process**

**Bilateral Negotiations**. The bilateral negotiations phase involves direct negotiations between the respondent and a representative from the ADR office. Any resolution reached in negotiations is submitted to the Commission for final approval. If a resolution is not reached in bilateral negotiations, the case may proceed, by mutual agreement, to mediation.

**Mediation**. The mediation phase begins with the selection of a mediator agreed upon by the respondents and the ADR representative. Under the pilot program, the Commission pays for all mediation costs, unless the respondents choose to share the costs with the ADR office.

The mediator meets with the parties both jointly and separately, as needed. Information disclosed in mediation remains strictly confidential. Information discussed in closed "caucus" meetings between the mediator and a single party cannot be shared with the other party unless that party has given the mediator express permission to do so. Nor can such information be used in a later enforcement proceeding, should one take place. In those instances when no agreement is reached, the case is returned to OGC for processing. If an agreement is reached in mediation, the ADR office sends the agreement to the Commission for approval.

All approved agreements are a matter of public record, but settlements cannot serve as precedents for the settlement of future cases.

**ADR in 2001**

During 2001, the ADR office dealt with a variety of violations, the majority of which involved contributions or expenditures from prohibited sources and the failure to comply with reporting requirements or contribution limits. During the year, 40 cases were assigned to the ADR office and 87.5 percent of the respondents involved chose to participate in the program. By year's end, the office had resolved a total of 29 cases, resulting in 48 separate negotiated settlement agreements. Of these cases, 76 percent arose from complaints filed with the Commission. The ADR office concluded the cases in an average of 117 days of their assignment to the office, but aims to further expedite the process in order to meet its goal of resolving cases within 77 days. Forty-three percent of the negotiated settlement agreements included civil penalties, but the ADR office also emphasized non-monetary terms of settlement that would encourage corrective action. For example, almost two-thirds of the agreements that were approved by the Commission called for respondents to attend an FEC conference or briefing or to work with staff to learn how to correct their errors.

None of the ADR cases resolved during 2001 reached the mediation stage, but the Commission is prepared to call upon FEC-trained mediators should a matter remain unresolved or raise issues that would require mediation.

# Chapter Three
# Legal Issues

As the independent regulatory agency responsible for administering and enforcing the Federal Election Campaign Act (the Act), the Federal Election Commission promulgates regulations explaining the Act's requirements and issues advisory opinions that apply the law to specific situations. The Commission also has jurisdiction over the civil enforcement of the Act. This chapter examines major legal issues confronting the Commission during 2001 as it considered regulations, advisory opinions, litigation and enforcement actions.

## Express Advocacy

The FEC's regulatory definition of express advocacy continued to receive attention in the courts and at the Commission during 2001. To understand the issue, it is necessary to examine earlier court decisions. In *FEC v. Massachusetts Citizens for Life (MCFL)* (479 U.S. 238 (1986)), the Supreme Court, citing First Amendment concerns, held that the Act's ban on corporate and labor organization independent expenditures could only be constitutionally applied in instances where the money was used to *expressly advocate* the election or defeat of a clearly identified candidate for federal office. In response to this decision, in 1995 the Commission prescribed a new regulatory definition of express advocacy. 11 CFR 100.22. The definition was based largely on two court opinions: the Supreme Court's opinion in *Buckley v. Valeo* and the Ninth Circuit Court of Appeals opinion in *FEC v. Furgatch*.

Paragraph (a) of the definition in section 100.22 includes examples of phrases that constitute express advocacy that were listed in the *Buckley* opinion—the "explicit words of advocacy of election or defeat": "vote for," "elect," "support," "cast your ballot for," "vote against," "defeat," "reject."

Paragraph (b) of section 100.22—often referred to as the "only reasonable interpretation" test—is largely based, *inter alia*, on the *Furgatch* decision. There, the court of appeals held that language may be said to expressly advocate a candidate's election or defeat if, when taken in context and with limited reference to external events, it can have no other reasonable interpretation.

Since the Commission promulgated this definition, it has faced several legal challenges, virtually all of which have focused on paragraph (b) of the definition, the "reasonable person test."[1] During 2001, one circuit court examined paragraph (b) of the FEC's express advocacy definition.

**Virginia Society for Human Life, Inc. (VSHL) v. FEC**

On September 17, 2001, the U.S. Court of Appeals for the Fourth Circuit affirmed a district court decision that 11 CFR 100.22(b) is unconstitutional. The appeals court, however, found that the district court's injunction, which had prohibited the FEC from enforcing the regulation against any party throughout the country, was too broad. Instead, the appeals court limited the injunction to bar the FEC from enforcing the regulation against the Virginia Society for Human Life, Inc. (VSHL). The appeals court also rejected the VSHL's cross-appeal, which asked the court to require the FEC to repeal the regulation. The appeals court found that ruling 11 CFR 100.22(b) unconstitutional and barring the FEC from enforcing the regulation against the VSHL gave the VSHL complete relief.

On January 4, 2000, the U.S. District Court for the Eastern District of Virginia had issued an injunction prohibiting the FEC from enforcing 11 CFR 100.22(b) "against the VSHL or against any other party in the United States of America." The district court had concluded that the regulation at 100.22(b) was unconstitutional because the *Buckley* court defined express advocacy as "communications that in express terms

[1] Three federal courts have found invalid 11 CFR 100.22(b), the FEC regulation containing the "only reasonable interpretation" test*: Maine Right to Life Committee v. FEC* (1st Circuit Court of Appeals, 1996)*; Right to Life of Dutchess County v. FEC* (NY district court, 1998)*;* and *Virginia Society for Human Life, Inc. v. FEC* (4th Circuit Court of Appeals, 2001)*.* See also*, FEC v. Christian Action Network (*4th Circuit Court of Appeals, 1996) and *Iowa Right to Life Committee, Inc. v. Williams* (8th Circuit Court of Appeals, 1999)*.* But see *FEC v. Furgatch* (9th Circuit Court of Appeals, 1987) upon which 100.22(b) was based.

advocate the election or defeat of a clearly identified candidate for federal office." The court found that by allowing the FEC to regulate advocacy based upon the understanding of the audience rather than the actual message of the advocate, the regulation at 100.22(b) failed the *Buckley* test. Moreover, the district court had concluded that the regulation empowered the FEC to regulate issue advocacy, which was "clearly forbidden by *Buckley*."

Relying on *Buckley*, the appeals court agreed with the district court that the regulation violates the First Amendment and is unconstitutional because it "shifts the focus of the express advocacy determination away from the words themselves to the overall impressions of the hypothetical, reasonable listener or viewer."

The appeals court also found that the district court had abused its discretion by issuing a nationwide injunction against the FEC's enforcement of the regulation. The appeals court found that a nationwide injunction:

- Exceeded what was necessary to give full relief to the VSHL because an injunction covering the VSHL alone adequately protected it from prosecution;
- Precluded other circuits from ruling on the constitutionality of the regulation and deprived the FEC of the opportunity to argue its case in other courts of appeals;
- Conflicted with the principle that a federal court of appeals' decision is only binding within its circuit; and
- Deprived the Supreme Court of the benefit of decisions from several courts of appeals.

The appeals court remanded the case to the district court in order to have the injunction amended so that its protection is limited to the VSHL.

## Disclaimers

Disclaimers in public political advertising also received some attention during the year. The Act states that, whenever a person makes an expenditure to expressly advocate the election or defeat of a clearly identified candidate, or to solicit contributions, the communication must disclose both the name of the person who paid for the communication and whether the communication was authorized by any candidate or candidate's committee. 2 U.S.C. §441d(a). In 2001, one court addressed the constitutionality of this provision.

**FEC v. Public Citizen, Inc., et al**

On October 10, 2001, the U.S. Court of Appeals for the Eleventh Circuit upheld the constitutionality of 2 U.S.C. §441d(a) against a challenge by Public Citizen, Inc.'s separate segregated fund, Public Citizen's Fund for a Clean Congress (the Fund), which had claimed the provision could not constitutionally be applied to express advocacy communications. The Fund had paid for television advertisements and flyers that had expressly advocated the defeat of a candidate in a primary election and had failed to include disclaimers stating that they had not been authorized by any candidate or candidate's committee. This ruling reversed the decision by the U.S. District Court for the Northern District of Georgia, which had granted summary judgment to the defendants in September 1999.

The district court had found that the disclaimer stating that the communications were paid for by the Fund, combined with the Fund's disclosure reports to the FEC, rendered the candidate authorization statement unnecessary. The district court had therefore ruled that the statute violated the First Amendment because it was broader than necessary to achieve its goal.

The appeals court disagreed and held that 2 U.S.C. §441d(a) was narrowly tailored to serve the overriding governmental interest in protecting the integrity of the electoral process by assisting the voters in evaluating the candidates. This task was accomplished by immediately informing the voters whether a political advertisement was attributable to a candidate or to other persons, including the candidate's supporters. In addition, the statute applied only to candidate elections and was limited to communications that ex-

pressly advocated the election or defeat of a clearly identified candidate. As a result, the court found that the disclaimer requirements in 2 U.S.C. §441d(a) did not "impermissibly infringe on Public Citizen's First Amendment rights to free speech."[2]

## Coordination

During 2001, new regulations took effect defining coordinated expenditures with candidates and party committees. In addition, the U.S. Supreme Court upheld the constitutionality of the coordinated party expenditure limits at 2 U.S.C. §441a(d)(3) in *FEC v. Colorado Republican Federal Campaign Committee*. 121 S.Ct. 2351.

**Regulations**

The Commission's new rules on coordination of general public political communications with candidates and party committees became effective on May 9, 2001.[3]

The new rules define what is meant by "coordinated expenditures" through the addition of new section 11 CFR 100.23. Expenditures that are coordinated with a candidate or a party are considered in-kind contributions, subject to the limits, prohibitions and reporting requirements of the Act.

Under 11 CFR 100.23(c), an expenditure for a general public political communication is considered to be coordinated with a candidate or party committee if the communication is paid for by any person other than the candidate's authorized committee or a party committee and is created, produced or distributed:

- At the request or suggestion of the candidate, the candidate's authorized committee, a party committee or their agents;
- After one of these persons or parties has exercised control or decision-making authority over the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication; or
- After substantial discussion or negotiation[4] between the purchaser, creator, producer or distributor of the communication and the candidate, the candidate committee, the party committee or their agents that results in collaboration or agreement about the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of the communication.

In addition, the definition of "independent expenditure" at 11 CFR 109.1 was revised to conform with the new coordination rules at 11 CFR 100.23.

**FEC v. Colorado Republican Federal Campaign Committee (Colorado II)**

On June 25, 2001, the U.S. Supreme Court overruled the U.S. Court of Appeals for the 10th Circuit and held that the coordinated party expenditure limits at 2 U.S.C. §441a(d)(3) are constitutional. The Court ruled that party coordinated expenditures, unlike party expenditures made independently of any candidate or campaign, may be restricted to "minimize circumvention of [individual] contribution limits."

The case involved $15,000 worth of expenditures the Colorado Republican Party (the Party) made in 1986 for advertisements critical of Democratic Senate candidate Timothy Wirth. The Commission argued that those ads contained an "electioneering message" relating to a clearly identified candidate, and represented coordinated expenditures by the Party. The Commission further maintained that these expenditures, when aggregated with previous expenditures by the Party, exceeded the statutory limits of §441(a)(d). The Party contended that the ads were not coordinated with any candidate and did not contain express advocacy, and thus they were not subject to the

[2] On January 22, 2002, the Court of Appeals for the Eleventh Circuit summarily denied Public Citizen's petitions for rehearing and rehearing en banc.

[3] Congress repealed these rules as part of the Bipartisan Campaign Reform Act, effective November 6, 2002.

[4] Under 11 CFR 100.23(c)(2)(iii), substantial discussion or negotiation may include one or more meetings, conversations or conferences about the value or importance of a communication for a particular election. The Commission clarified that whether these discussions or negotiations qualify as "substantial" depends upon their substance rather than upon their frequency.

441a(d) limits. The Party further argued that the 441a(d) limits violated its First Amendment rights.

***Colorado I.*** The U.S. Supreme Court agreed to hear the case principally to resolve the constitutional question. In its June 26, 1996, plurality decision, the Court concluded that the Party's expenditures had not been coordinated with a candidate, and were instead independent. The Court also concluded that the 441a(d) limits were unconstitutional as applied to political parties' independent spending. The Court did not rule on the constitutionality of the limits on coordinated party expenditures, but instead remanded the case to the district court for further proceedings on that issue.

***Colorado II****.* On February 23, 1999, the district court ruled that the coordinated party expenditure limits were unconstitutional. The court concluded the FEC had failed to offer evidence that there was a compelling need for limits on coordinated party expenditures. In its opinion, the court equated coordinated party expenditures with a candidate's own campaign expenditures which, based on the Supreme Court's ruling in *Buckley v. Valeo*, cannot be limited. The FEC appealed this decision to the Court of Appeals for the 10th Circuit, which affirmed the district court's decision on May 5, 2000. The FEC then appealed to the U. S. Supreme Court.

The Supreme Court upheld the constitutionality of coordinated party expenditure limits. In doing so, the Court:

- Rejected the Party's argument that unrestricted coordinated spending was essential to the nature of parties, finding that parties have functioned effectively during the previous three decades, during which the coordinated expenditure limits were in place;
- Rejected the Party's argument that parties primarily acted to elect particular candidates, finding that "parties are [also] necessarily the instrument of contributors . . . whose object is not to support the party's message or to elect party candidates, but rather to support a specific candidate for the sake of a position on one, narrow issue, or even to support any candidate who will be obliged to contributors;"
- Found that a party was not in a unique position vis-à-vis other political spenders, such as wealthy individuals, PACs and media executives, all of whom could coordinate expenditures with a candidate's campaign. Instead, precisely because political parties could efficiently amplify their members' power through aggregating contributions and broadcasting messages, they were in a position to be used to circumvent contribution limits.

## Corporate Contributions

The Act prohibits corporations and labor organizations from using their treasury funds to make contributions or expenditures in connection with federal elections. 2 U.S.C. §441b. However, based on the Supreme Court's decision in *FEC v. Massachusetts Citizens for Life (MCFL)*, Commission regulations at 11 CFR 114.10 provide that certain "qualified nonprofit corporations" may be exempt from the prohibition on corporate independent expenditures. To be considered a "qualified nonprofit corporation," a corporation must meet the following criteria:

- Its only express purpose is to promote political ideas and it does not engage in business activities;
- It does not have shareholders or other persons who have a claim on its assets or earnings, or who have other disincentives to disassociate themselves from the organization; and
- It was not established by a business corporation or labor union and has a policy of not accepting donations from such entities.

During 2001, two court cases challenged the constitutionality of that ban and related provisions of FEC regulations.

**Beaumont, et al v. FEC**

On January 24, 2001, the United States District Court for the Eastern District of North Carolina found that provisions of the Act and Commission regulations prohibiting corporate contributions and expenditures were unconstitutional as applied to North Carolina Right to Life, Inc. (NCRL), a qualified nonprofit corpo-

ration. The court found that the statute and regulations infringed on NCRL's First Amendment rights without a compelling state interest. As a result, the court permanently enjoined the Commission from relying on, enforcing or prosecuting violations of 2 U.S.C. §441b and 11 CFR 114.2(b) and 114.10—or any other parts of the Act whose restrictions flow from these provisions—against the plaintiffs.

The court did not find, however, that 2 U.S.C. §441b and its implementing regulations were unconstitutional on their face. In order to find a statute facially unconstitutional, rather than merely invalid as applied to a specific case, the court must find that its constitutional infringements are "substantial" in relation to its legitimate uses. The plaintiffs submitted a list of nonprofit, tax-exempt corporations to prove that the statute's unconstitutional infringement was "substantial" in that it reached "hundreds, if not thousands, of constitutionally protected ideological corporations." The court, however, ruled that the plaintiffs had failed to show that the statute's constitutional infringements were substantial in relation to their "plainly legitimate sweep." The court said, "In light of these numbers [4.5 million for-profit corporations] and the importance of the statute's 'plainly legitimate' purpose of regulating for-profit corporations, its inadvertent infringement on the rights of 'hundreds if not thousands' does not appear 'substantial' . . . ." The court concluded that the constitutionality of the statute should be considered on a case-by-case basis.[5]

**FEC v. NRA**

On June 29, 2001, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the National Rifle Association (NRA) and its lobbying organization, the NRA American Institute for Legal Action (ILA), violated the Act's ban on corporate contributions and expenditures during the 1978 and 1982 election cycles. 2 U.S.C. §441b(a). While the district court had ruled that the NRA also violated the ban in 1980, the appellate court determined that during 1980 the NRA qualified for the MCFL exemption from the ban. As a result, the appeals court remanded the case to the lower court in order to have civil penalties calculated based on the 1978 and 1982 violations alone.

During the 1978, 1980 and 1982 election cycles, the NRA paid $37,833 for expenses incurred by its separate segregated fund, the Political Victory Fund (the Fund), for federal election activity, including payments for newspaper advertisements, direct mailings and other materials that supported or opposed individual candidates. The Fund then distributed these materials and later reimbursed the NRA for the expenses; the Fund reported the disbursements as independent expenditures on its FEC disclosure reports.

In 1985, the Commission filed a civil suit against the NRA, the ILA and the Fund, claiming that they had violated the Act's prohibition on corporate contributions and expenditures. In response, the NRA argued that its payments on behalf of the Fund were for that committee's administrative expenses and, thus, permissible under the Act.[6] The NRA also challenged the constitutionality of the Act as applied to its activities, arguing that the organization should qualify for the *MCFL* exemption.

The district court had rejected the NRA's argument that its payments to the Fund were merely for administrative expenses. The court had also concluded that the NRA, unlike MCFL, did not qualify for the exemption from the Act's prohibition on corporate independent expenditures.

The appeals court similarly rejected the NRA's argument that its payments were administrative expenses and deferred to the Commission's interpretation of the definition of administrative expenses at 11 CFR 114.1(b), which allows corporations to cover only the overhead and start-up costs of their political action committees. The court also deferred to the Commission's interpretation that 11 CFR 114.9(c) does not allow a separate segregated fund to reimburse its connected organization for the use of facili-

[5] On January 25, 2002, the U.S. Court of Appeals for the Fourth Circuit affirmed the district court's decision that NCRL is exempt from 2 U.S.C. §441(b)'s prohibition on corporate contributions.

[6] Section 441b(b)(2)(C) permits a corporation acting as the connected organization of a political action committee to pay for the committee's "establishment, administration, and solicitation of contributions."

ties to produce materials in connection with a federal election.[7] Finally, the court held that the NRA's payments to its employees who were working for the Fund on candidates' campaigns were prohibited corporate contributions to the Fund. In reaching this conclusion, the court relied in part on a Commission advisory opinion. The court held that the agency's advisory opinions are entitled to full deference because they "not only reflect the Commission's considered judgment made pursuant to congressionally delegated lawmaking power, but [they] also have binding legal effect."

In considering whether the NRA qualified for the *MCFL* exemption, the court stated that to distinguish the NRA from the kinds of corporations exempted by the Supreme Court in *MCFL*, "the Commission must demonstrate that the NRA's political activities threaten to distort the electoral process through the use of resources that, as *MCFL* put it, reflect the organization's 'success in the economic marketplace' rather than the 'power of its ideas.'" The court found that, although the NRA sponsors seemingly non-political activities and services such as firearms competitions, training classes, accident insurance and magazines, these activities were not so distinct from its political activities that members who disagreed with the political activities would still participate in the non-political activities. The court concluded that the Commission had "failed to demonstrate that the NRA resembles a business firm more closely than a voluntary association."

The court found, however, that the large amount of corporate contributions that the NRA received in 1978 and 1982 was substantial enough to risk turning it into a "potential conduit for the corporate funding of political activity," and that there was no constitutional barrier to applying the Act's prohibitions to the NRA during those two years. In 1980, the NRA received only $1,000 in corporate contributions, and the court ruled that the NRA qualified for *MCFL* exemption during that year.

[7] Under that provision, employees must reimburse the corporation, within a commercially reasonable time, for the usual market price for producing the materials.

## Public Access to Enforcement Actions

The Act requires that all notifications and investigations undertaken by the Commission remain confidential, unless the parties involved waive their right to confidentiality in writing. 2 U.S.C. §437g(a)(4)(B). When investigations have been concluded, however, the Commission has made files available to the public through the FEC's Press Office and Public Records Office.

Occasionally, cases that the Commission pursues result in litigation in the federal courts. Despite the Act's confidentiality provision regarding Commission investigations, the public, as a general rule, has a right of access to all court documents. As a result, for the past 20 years the Commission has followed a policy of litigating cases on the public record rather than under seal when enforcing its administrative subpoenas.

On January 26, 2001, the United States Court of Appeals for the District of Columbia Circuit ruled, in *In re: Sealed Case, 237 F.3d 657*, that the Act requires subpoena enforcement actions filed during an enforcement investigation to be litigated under seal. 2 U.S.C. §437g(a)(12). The Commission decided not to seek further review in this case and, on February 15, 2001, issued a statement clarifying its subpoena enforcement policy. In part, the statement read:

The Commission has decided not to seek review of the DC Circuit's ruling, which is the first appellate decision on this issue. The Commission intends to follow this ruling in all subpoena enforcement filings, in all judicial circuits, unless directed otherwise.

The DC Circuit's concern that filing subpoena enforcement actions in public might reflect some partisan motivation on the Commission's part is not supported by the record. For 20 years the Commission followed its policy consistently, regardless of the political party or beliefs of the person being investigated, as examination of subpoena actions filed by the agency shows.

By law subpoena enforcement actions never are filed in court without a majority vote of the six Com-

missioners, no more than three of whom may be from any one party. That procedure was followed in this case, without regard to politics.

While respectfully adhering to the holding of the DC Circuit, the Commission hopes this statement will assure the public of the agency's commitment to fair and impartial administration of the campaign finance laws.

**AFL-CIO & DNC v. FEC**

In another enforcement disclosure case, on December 19, 2001, the U.S. District Court for the District of Columbia found that the FEC's decision to disclose documents obtained during an investigation of the plaintiffs was arbitrary, capricious and contrary to law. The court ruled that the confidentiality provision of the Act and an FEC regulation prohibit the Commission from making public the investigatory files of matters under review (MURs). The court also found that the Commission is required to redact names and other individual identifying information from the files prior to release under the Freedom of Information Act (FOIA).

The Commission had previously found reason to believe that the plaintiffs violated the Act during the 1995-96 election cycle (MURs 4291, *et al*.). At the conclusion of its investigation, the Commission voted to take no further action on MURs 4291, *et al*. and to close the files. In keeping with its long-standing practice of disclosing the investigatory record once a MUR is closed, the Commission planned to make public a portion of the investigatory file. 11 CFR 5.4(a)(3) and (4).

The plaintiffs claimed that public disclosure of the files would cause irreparable injury by revealing confidential information to their political opponents, the media and the public, and by chilling the plaintiffs' future efforts to engage in political activities. The plaintiffs asked the Commission not to make the documents public. The Commission denied their requests, and the AFL-CIO and DNC filed suit. On July 17, 2001, the U.S. District Court for the District of Columbia granted the plaintiffs' request for a preliminary injunction barring the Commission from publicly releasing certain documents relating to the investigation until the court made a final decision in this case.

The plaintiffs requested summary judgment from the court, arguing that disclosure of the documents would violate the confidentiality provision of the Act, which states that:

"Any notification or investigation made under [the enforcement] section shall not be made public by the Commission or by any person without the written consent of the person receiving such notification or the person with respect to whom such investigation is made." 2 U.S.C. §437g(a)(12)(A).

The plaintiffs further claimed that publicizing the MUR documents would violate:

- FOIA exemptions at 5 U.S.C. §552(b)(3) and (7)(C);
- The Privacy Act (5 U.S.C. §522a(b)); and
- The First Amendment.

The Commission argued that the Act only protects the confidentiality of ongoing investigations. Once a MUR is closed, the Act requires the Commission to make public the conciliation agreement or the Commission's determination that the Act has not been violated. 2 U.S.C. §437g(a)(4)(B)(ii). The Commission asserted that the Act's confidentiality provision was intended to protect a MUR respondent from disclosure of the fact that the respondent is under investigation. When the Commission makes public its MUR determination, it also reveals the fact that the respondent has been investigated, leaving nothing to be protected by the confidentiality provision.

The court, however, concluded that the plain language of the Act barred the Commission from publicizing investigative materials and, thus, that the Commission's interpretation of the statute ran counter to congressional intent. 2 U.S.C. §437g(a)(12)(A). The court explained that, "Had Congress intended §437g(a)(12)(A) to expire upon the conclusion of an FEC investigation, it certainly knew how to draft language to accomplish that goal." The court found that the Act's provision requiring that MUR determinations be made public was a limited exception to the Act's confidentiality provision, not a directive to end the protection of that provision. 2 U.S.C. §437g(a)(4)(b)(ii). Moreover, the court concluded that

publication of the materials would violate one of the Commission's regulations that implements the Act's confidentiality provision. 11 CFR 111.21(a).

The plaintiffs also claimed that publicizing the MUR documents would violate certain FOIA exemptions. FOIA exemption 7(C) protects information compiled for law enforcement purposes that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. §552(b)(7)(C). The plaintiffs claimed that this exemption protected the identities and personal information of all individuals named in the investigative files. The Commission argued in response that:

- Individuals named in the files had a diminished expectation of privacy resulting from the Act's reporting requirements, its administrative enforcement procedures, the Commission's public disclosure regulations and the potential for enforcement cases to be litigated in federal district court (2 U.S.C. 437g(a)(6) and (8));
- The public interest in the disclosure of the results of any FEC enforcement investigation outweighed the privacy interest of the named individuals; and
- Much of the information contained in the files was already in the public domain and could thus be disclosed despite the FOIA exemption.

The court rejected the Commission's claims concerning the public interest and individuals' expectations of privacy because the District of Columbia Circuit has established a categorical rule that an agency must exempt from disclosure the names and identifying information of individuals appearing in an agency's law enforcement files.[8] Moreover, the court found that the Commission had failed to show that the majority of the names of individuals contained in the materials were already in the public domain.

The court, having found that disclosure would violate the Act and Commission regulations, as well as FOIA exemption 7(C), did not reach the merits of the plaintiffs' First Amendment or Privacy Act claims. The court granted the plaintiffs' motion for summary judgment in this case and denied the Commission's motion for summary judgment.[9]

## Party Building Funds

Under the Act and Commission regulations, funds given or loaned to a national or state party committee are not contributions if they are specifically designated to defray the costs incurred for the construction or purchase of an office facility. However, the facility must not be acquired for the purpose of influencing any particular election of a federal candidate. 2 U.S.C. §431 (8)(B)(viii); 11 CFR 100.7(b)(12), 100.8(b)(13), and 114.1(a)(2)(ix). In the past, the Commission has permitted party committees to accept corporate and labor union donations to office building funds. In 2001, the FEC issued two advisory opinions on this topic.

### Advisory Opinions

***Use of Building Funds for Expenses.*** In AO 2001-1, the Commission determined that the North Carolina Democratic Party (the Party) could use its office building fund to pay for construction management expenses and architectural fees because they were directly related to the restoration and renovation of the Party's headquarters. The Commission noted that the architectural fees qualified as "capital expenditures" under the Internal Revenue Code. In addition, the Party could use its office building fund to pay the salary and other expenses of an employee whose

[8] Citing the DC Circuit, the court held that this rule applies unless that information is necessary to confirm or refute compelling evidence that the agency engaged in illegal activity.

[9] On February 15, 2002, the Commission appealed this case to the U.S. Court of Appeals for the District of Columbia Circuit.

sole responsibility was to raise money for the office building fund. These expenses did not have to be allocated because the fundraising was solely for the office building fund.[10]

In a related opinion, AO 2001-12, the Commission concluded that the Democratic Party of Wisconsin (the DPW) could accept corporate donations to a building fund for the purchase, renovation or construction of a headquarters facility, despite state laws prohibiting such donations. The party could also use these funds to finance capital improvements to its facility, as defined by the Internal Revenue Code, and to pay the salary of an employee whose sole responsibility was to raise money for the building fund. The DPW could not, however, use the fund to pay off the balance of the lease on its current building because such an expense does not fall under the building fund exemption.

## Personal Use of Campaign Funds

A federal candidate and the candidate's committee may use excess campaign funds for any lawful purpose but may not convert these funds to the personal use of the candidate or any other person. 2 U.S.C. §439a and 11 CFR 113.2(d). The personal use ban applies to expenses that would exist irrespective of the candidate's campaign or officeholder duties, and the regulations list specific uses of campaign funds that are considered automatic personal use expenses. For situations that fall outside of those listed, the Commission determines whether or not an expense constitutes personal use on a case-by-case basis. There were five such cases in 2001.

[10] When one fundraising program or event is held to collect funds that will be used to influence both federal and nonfederal elections, the sponsoring committee must allocate the direct costs of the activity between its federal and nonfederal accounts using the "funds received" allocation method. Under this method, the costs are allocated according to the ratio of federal funds received to total receipts for the program or event. 11 CFR 106.5(f).

**Advisory Opinions**

***Donations to Legal Defense Fund of Member of Congress.*** In AO 2000-40, the Commission ruled that various members of Congress, including Representative Jim McDermott, could donate excess campaign funds from their respective authorized committees to Rep. McDermott's legal defense fund, the Jim McDermott Legal Expense Trust (the Trust). The Trust was established to pay the expenses of a civil lawsuit that resulted from Rep. McDermott's activities as a congressman; thus, the Trust did not exist irrespective of his, or his colleagues', duties as federal officeholders. Donations to the Trust by Rep. McDermott or other members of Congress did not constitute personal use of campaign funds under the Act and were not considered contributions as long as the funds in the Trust were used lawfully and kept separate from any other campaign or personal accounts.

***Purchase of an Automobile for Campaign Staff.*** In AO 2001-3, the FEC allowed the primary campaign committee for Congressman Gregory Meeks, Meeks for Congress (the Committee), to use campaign funds to purchase an automobile that would be used primarily for campaign purposes. Unreimbursed noncampaign use of the vehicle could only be of a *de minimus* amount to comply with the ban on personal use. The Committee's intention to use the automobile five percent of the time for noncampaign activity was ruled to be *de minimus* by the FEC. The Committee was expected to keep a mileage log, updated with each use of the car, to document the campaign and noncampaign use. This log would allow the Committee to comply with the recordkeeping requirements for committee reports.

***Purchase of Candidate's Autobiography for Distribution to Contributors.*** In AO 2001-8, the Commission determined that Senator Arlen Specter's principal campaign committee, Citizens for Arlen Specter (the Committee), could use campaign funds to purchase copies of the Senator's autobiography for distribution only to campaign contributors. To assure no improper personal use, Senator Specter was precluded from receiving any royalties as a result of the Committee's purchase; instead, the royalties would be

given to charity. In addition, in order to avoid a prohibited corporate contribution from the publisher, the Committee was required to pay the usual and normal bulk rate that publishers would charge large purchasers.

***Former Candidate's Use of Campaign Funds to Pay Consulting Expenses Related to Media Inquiries.*** In AO 2001-9, the Commission ruled that former Senator J. Robert Kerrey could use funds from his principal campaign committee, Kerrey for U.S. Senate (the Committee), to pay the costs of retaining a consulting firm to respond to media inquiries concerning an incident during his military service in the Vietnam War. The media first began investigating his military activities when Mr. Kerrey was still in the Senate and continued when he was a potential presidential candidate. The Commission found that these inquiries were motivated by a desire to present important information about his fitness as a federal candidate and officeholder. Thus, the Committee's payment of consulting expenses did not violate the ban on personal use because the media interest that the public relations firm responded to would not have occurred if Mr. Kerrey had not been a prominent Senator and federal candidate. The Commission noted, however, that Mr. Kerrey's situation was unique and that the opinion did not establish any general rule regarding the use of campaign funds by former candidates or officeholders to pay for public relations expenses.

***Committee's Employment of Candidate's Wife.*** In AO 2001-10, the Commission found that Jesse L. Jackson, Jr.'s principal campaign committee, Jesse L. Jackson, Jr. for Congress (the Committee), could hire Congressman Jackson's wife as a paid consultant. In order not to violate the ban on personal use of campaign funds, the Committee had to employ Ms. Jackson on the same terms that a campaign would normally use to employ a consultant and pay her no more than the fair market value for bona fide campaign services she provided to the Committee.

## National/State Party Status

The Commission issued three advisory opinions in 2001 that addressed state party committee status and one that addressed national party committee status. These designations are important because the Act grants qualified state and national party committees certain spending rights not available to other types of committees. A state or national party, for example, may make coordinated party expenditures in support of its general election nominees, and may authorize qualified local party committees to spend against its coordinated expenditure limit. 2 U.S.C. §441a(d), 11 CFR 110.7(a)(4). In addition, state party committees may spend unlimited amounts for certain activities that benefit federal candidates but are not considered contributions. These "exempt activities" include preparing and distributing slate cards, sample ballots and campaign materials, and conducting voter drives on behalf of the party's Presidential and Vice Presidential nominees.

### State Party Status

Under the Act and Commission regulations, a state committee is defined as an organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operations of the party at the state level, as determined by the Commission. 2 U.S.C. §431(15); 11 CFR 100.14(a). In order to achieve state committee status under Commission regulations, an organization must meet two requirements. It must have:

- Bylaws or a similar document that "delineates activities commensurate with the day-to-day operation" of a party at a state level; and
- Ballot access for at least one federal candidate who has qualified as a candidate under Commission regulations.[11]

[11] An individual becomes a candidate for the purposes of the Act and Commission regulations once he or she receives contributions or makes expenditures aggregating in excess of $5,000. 2 U.S.C. §441a(d); 11 CFR 100.3(a).

During 2001, the Commission applied these criteria to determine that the United Citizens Party of South Carolina (AO 2000-27), the Green Party of Kentucky (AO 2001-02) and the Green Party of Maryland (AO 2001-6) satisfied the requirements for state party status.

**National Party Status**

The Act and Commission regulations define a national party committee as an organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of the party at the national level, as determined by the Commission. 2 U.S.C. §431(14); 11 CFR 100.13. Before an organization can become a national party committee, it must qualify as a political party under the Act.[12] In order to determine whether a political party qualifies as national party committee, the Commission looks to a variety of factors to assess the party's activity on the national level. A party can demonstrate that it operates at the national level by:

- Nominating candidates for various federal offices in numerous states;
- Engaging in activities, such as voter registration, on an ongoing basis rather than with respect to a particular election;
- Publicizing nationwide issues of importance to the party and its followers;
- Holding a national convention;
- Setting up a national office; and
- Establishing state affiliates.

During 2001, the Commission determined that the Green Party met the above criteria to qualify as a national party committee (AO 2001-13).

## Soft Money

The role of soft money—funds raised and/or spent outside the limitations and prohibitions of the Act that may be permissible under various state laws—continued to receive attention during the year. When committees have both a federal, hard money account and a nonfederal, soft money account, they are required to allocate expenses between the two accounts in certain situations. Two advisory opinions in 2001 addressed the issue of allocation and the transferring of funds between federal and nonfederal accounts.

**Advisory Opinions**

***Late Transfer from Nonfederal to Federal Account of State Party Committee.*** In AO 2001-11, the Commission ruled that, in order to resolve an apparent bank account transfer problem, the Democratic Party of Virginia (the Party) could make a one-time transfer from its nonfederal account to its federal account outside the normal 70-day window for such transfers. 11 CFR 106.5(g)(2)(ii). Commission regulations require that a state party committee with separate federal and nonfederal accounts pay the expenses of mixed federal and nonfederal activities, including administrative expenses, from its federal account or a separate allocation account. 11 CFR 106.5(g)(1). The committee may transfer funds from its nonfederal account to its federal account solely to cover the nonfederal share of the allocable expense. To prevent a prohibited contribution, such a transfer must be made no more than 10 days before, and no more than 60 days after, the payments for the allocable expense. 11 CFR 106.5 (g)(2)(ii).

The problem in this case arose when the Party's written request for a transfer from its nonfederal to its federal account was not processed by the bank. Because the Party made the request in a timely manner and because of the Party's lack of control over the means of transfer, the Commission ruled that it could have the transfer made from its nonfederal to its federal account within 15 days of receipt of the advisory opinion.

***Allocation of Payments for Employee's Salary, Benefits and Cell Phone Usage.*** In AO 2001-14, the Commission determined that the Los Angeles County Democratic Central Committee (the Committee) could use a combination of allocation ratios to allocate monthly payments for the salary, benefits and cell phone usage of an employee who managed media relations for the committee and organized multiple

[12] The Act defines a political party as any organization that nominates a candidate for election to any federal office whose name appears on the election ballot as the candidate of such organization. 2 U.S.C. §431(16).

fundraising events and projects. Normally, administrative expenses such as salary are allocated according to a “ballot composition method,” while fundraising expenses are allocated using a “funds received method”—the ratio of funds received by the federal account to the total receipts for the event or program. 11 CFR 106.5(d). Because the employee’s activities encompassed both administrative and fundraising expenses, the Committee was allowed to use a combination of both to arrive at the ratio to be used for allocation.

# Chapter Four
# The Commission

## Commissioners

During 2001, Danny L. McDonald served as Chairman of the Commission and David M. Mason as its Vice Chairman. On December 13, 2001, the Commission elected Mr. Mason to be its Chairman and Commissioner Karl J. Sandstrom to be its Vice Chairman in 2002. For biographies of the Commissioners and statutory officers, see Appendix 1.

## General Counsel

On August 20, 2001, the Commission appointed Lawrence H. Norton as the FEC's new General Counsel. Mr. Norton previously served as an Assistant Director at the Federal Trade Commission and, since 1996, as the Associate Director of the Division of Enforcement at the Commodity Futures Trading Commission. He began his duties as General Counsel on September 17, 2001.

Mr. Norton replaces Lawrence M. Noble, who served as General Counsel from 1987 through 2000. From January 1 through September 16, 2001, Lois G. Lerner served as the FEC's Acting General Counsel.

## Inspector General

Under the Inspector General Act, the Commission's Office of the Inspector General (OIG) is authorized to conduct audits and investigations of FEC programs to find waste, fraud and abuse and to promote economy, effectiveness and efficiency within the Commission. During 2001, the OIG conducted inspections and suggested improvements in a variety of areas, particularly regarding the Commission's web site privacy practices, the use of the Westlaw database service and compliance with the Federal Managers' Financial Integrity Act.

The OIG also responded to Congressional requests for information on recovery auditing and on the requirements of the Omnibus Consolidated Appropriation Act. In addition, the OIG conducted four unannounced quarterly cash counts of the FEC imprest fund.[1]

## Equal Employment Opportunity

The FEC's Office of Equal Employment Opportunity (EEO) continued its leadership in the area of Alternative Dispute Resolution (ADR) during 2001. Jointly administered by the EEO Director, Personnel Director and three EEO Counselors, the ADR program, or Early Intervention Program, works to resolve employee concerns that might otherwise result in formal EEO complaints. Employees participating in the program voluntarily agree to meet with the EEO Director or Personnel Director, an EEO Counselor and/or the party allegedly responsible for the discrimination or wrongdoing. If attempts to resolve the dispute through ADR fail, the employee may proceed with EEO counseling and may file a formal EEO complaint or grievance. In the next year, the office plans to issue an EEO Handbook on ADR, and another on Reasonable Accommodations.

During 2001, no formal complaints were brought before the EEO Director. As a result of this accomplishment, the Commission has informally resolved 100 percent of the complaints that employees have voluntarily brought to the EEO office since March 1994.

During the year, the EEO office honored three departing FEC managers, Louise Wides, Lois Lerner and Kim Leslie Bright, with the Commission's Award for Excellence in Equal Employment Opportunity and Cultural Diversity. In addition, the office held a special recognition ceremony in February 2001 to honor six women leaders in the Commission. Another ceremony in June recognized six senior managers at the FEC.

## Ethics

Staff members in the General Counsel's office serve as the Commission's ethics officials and admin-

[1] Effective October 1, 2001, federal agencies are no longer required to maintain imprest funds.

ister the Ethics in Government Act program. During 2001, the staff provided ethics orientation to all new employees and annual ethics briefings to all employees required to file public and confidential financial disclosure reports. Staff also administered the financial disclosure report system, which helps ensure that employees remain impartial in the performance of their official duties. In addition, ethics staff provided guidance to employees on the *Standards of Ethical Conduct for Employees of the Executive Branch*. Finally, the staff submitted required reports to the Office of Government Ethics, including the annual agency ethics program report, financial disclosure reports filed by presidential candidates and travel payment reports.

## Personnel and Labor/Management Relations

The Personnel Office provides policy guidance and operational support to FEC managers and staff in the area of human resources. During 2001, the Personnel Office developed agency policy for the administration of numerous federal leave programs, provided training for senior management in a variety of areas and implemented new procedures for the timely administration of security and background investigations for new employees. In addition, the Personnel Office recruited and hired over 70 new employees during the year and represented the Commission as chief negotiator in contract negotiations with the union.

## FEC's Budget

**Fiscal Year 2001**

The Commission received a $40.41 million FY 2001 appropriation, supporting a total FTE level of 357.

**Fiscal Year 2002**

In the spring of 2001, the Commission sent its FY 2002 budget proposal to Congress and the Office of Management and Budget. The Commission requested $47.67 million and 375 FTE for FY 2002, a 17.9 percent increase and 18 additional personnel over FY 2001. In testimony before the House Appropriations Subcommittee on Treasury, Postal Service and General Government, Vice-Chairman David Mason noted that the increase was needed to expand the Commission's Office of Election Administration and to support recently-developed programs, such as those regarding mandatory electronic filing, administrative fines, state filing waivers and alternative dispute resolution.

In the end, the Commission received a $43.69 million FY 2002 appropriation and 362 FTE. This appropriation represented the FEC's Current Services request, adjusted to cover the full cost of the final government-wide cost-of-livingadjustment (COLA) for federal pay. It also provided for the five additional FTE the Commission requested to complete, maintain and enhance its programs.

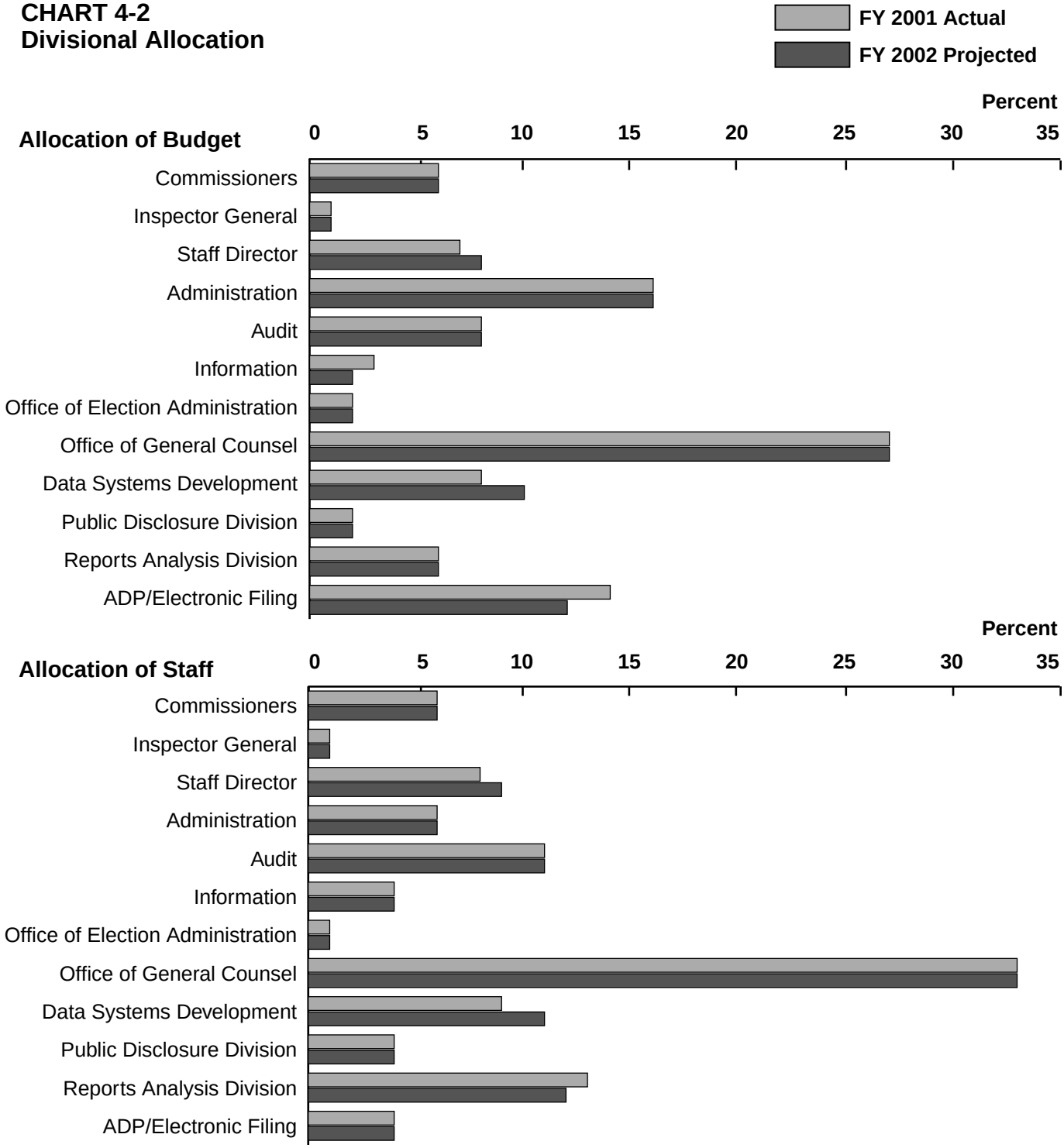
**Budget Allocation: FYs 2001 and 2002**

Budget allocation comparisons for FYs 2001 and 2002 appear in the table and charts that follow.

### CHART 4-1
### Functional Allocation of Budget

| | FY 2001 | FY 2002 |
|---|---|---|
| Personnel | $27,332,679 | 30,220,000 |
| Travel/Transportation | 376,311 | 560,500 |
| Space Rental | 3,600,509 | 3,782,500 |
| Phones/Postage | 413,940 | 455,000 |
| Printing | 265,860 | 377,000 |
| Training/Tuition | 150,664 | 335,000 |
| Depositions/Transcripts | 53,000 | 80,000 |
| Contracts/Services | 2,104,061 | 2,594,000 |
| Equipment Rental/Maint | 375,029 | 1,114,500 |
| Software/Hardware | 2,505,375 | 1,382,000 |
| Federal Agency Service | 335,640 | 350,500 |
| Supplies | 346,969 | 378,000 |
| Publications | 439,235 | 509,500 |
| Equipment Purchases | 1,939,020 | 1,337,000 |
| Other | 127,166 | 213,500 |
| **Total** | **$40,410,900** | **43,689,000** |

**CHART 4-2**
**Divisional Allocation**



# Chapter Five
# Presidential Public Funding

Public funding has been a key part of the Presidential election system since 1976. The program is funded by the $3 tax checkoff and administered by the Federal Election Commission. Through the public funding program, the federal government provides matching funds to qualified candidates for their primary campaigns and offers federal funds to major and minor parties for Presidential nominating conventions as well as to qualified Presidential nominees for their general election campaigns.

## Shortfall

During 2001, the Commission warned of a significant shortfall in the Presidential Election Campaign Fund for the 2004 Presidential elections. The forecast was based on several factors, including the fact that payments from the Fund are adjusted for inflation but Fund receipts are not, and taxpayer participation in the tax checkoff program has remained low. Preliminary FEC staff projections indicate that the balance in the Fund in January 2004 will be approximately $4.6 million, while demand is estimated to be between $23.9 and 36.2 million. Based on these estimates, candidates will receive approximately 13 to 19 cents on the dollar with the first payment. While these are unofficial projections that are subject to change, they suggest that the shortfall will extend until May 2004 and may last as long as April 2005.

For several years, the Commission has urged Congress to help alleviate the shortfall problem. Revising the "set aside" of general election funds and increasing and indexing the checkoff amount are possible solutions.

## Update on Presidential Debates Lawsuits

Under FEC regulations, certain nonprofit corporations may stage or sponsor candidate debates, exempt from the prohibition against corporate contributions, so long as the corporations follow specific rules ("safe harbor"). For example, the debates must be between at least two candidates and must be staged so as not to promote or advance one candidate over another. A debate sponsor must also use "pre-established objective criteria" for choosing which candidates will participate. 11 CFR 110.13. During the 2000 campaign, several lawsuits were filed challenging these debate regulations. In 2001, two of these cases were resolved.

***Nader v. FEC***

On April 30, 2001, the U.S. Supreme Court denied the plaintiffs' petition for a writ of *certiorari* to review a decision by the U.S. Court of Appeals for the First Circuit upholding the FEC's debate regulations. Petitioners had asked for the debate regulations to be set aside, arguing that the regulations were in excess of the FEC's statutory authority under the Federal Election Campaign Act (the Act) because they allowed corporations to help stage and fund debates that excluded independent and ballot-qualified third party candidates. This case was originally filed as *Becker v. FEC*.

***Committee for a Unified Independent Party v. FEC***

On October 10, 2001, the U.S. District Court for the Southern District of New York granted the Commission's motion to dismiss this case, finding that the Committee for a Unified Independent Party, Inc., along with the political parties and individuals who filed suit (collectively the plaintiffs), lacked standing to challenge the Commission's debate regulations. The plaintiffs had asked the court to find that the FEC's debate regulations were not authorized by the Act and violated the First and Fifth Amendments because they allowed corporate sponsorship. The court found that the plaintiffs lacked standing because they either were not injured as a result of the regulations or could not trace their injury directly to the regulations. Having found that the plaintiffs lacked standing, the court ordered the case closed without considering the merits of plaintiffs' claims.

## Audits of 2000 Presidential Campaigns

During 2001, the Audit Division completed preliminary audit reports for four of the ten publicly-funded primary candidates who ran in 2000, as well as for two host committees and two convention committees. By the end of the year, the Commission had approved all of these preliminary audit reports as well as the audit report for one of the host committees.

# Chapter 6
# Campaign Finance Statistics

**CHART 6-1**
**Number of PACs, 1974-2001**

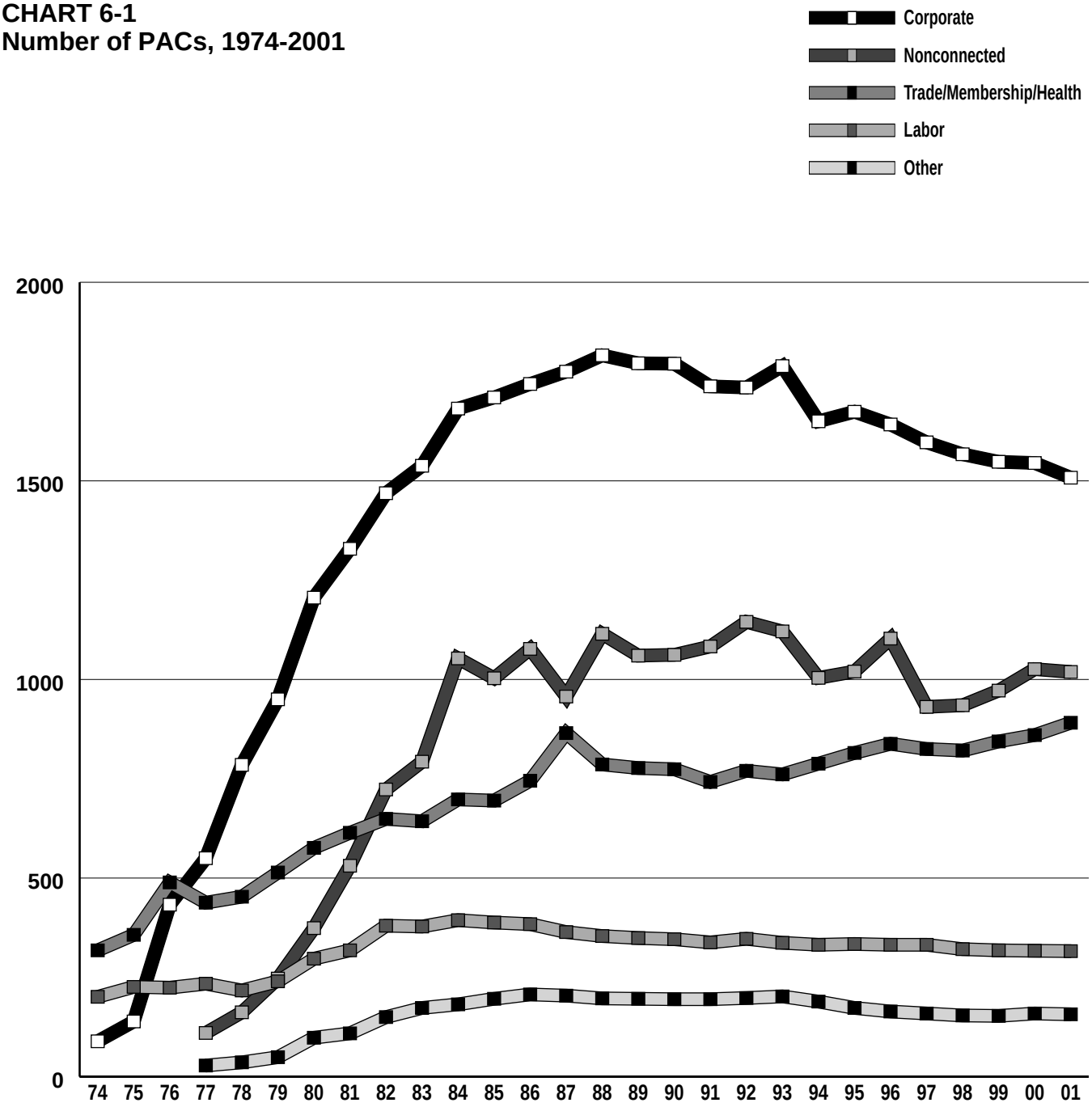


**CHART 6-2**
**Receipts of House Candidates for Each Year of Election Cycle, 1991-2001**

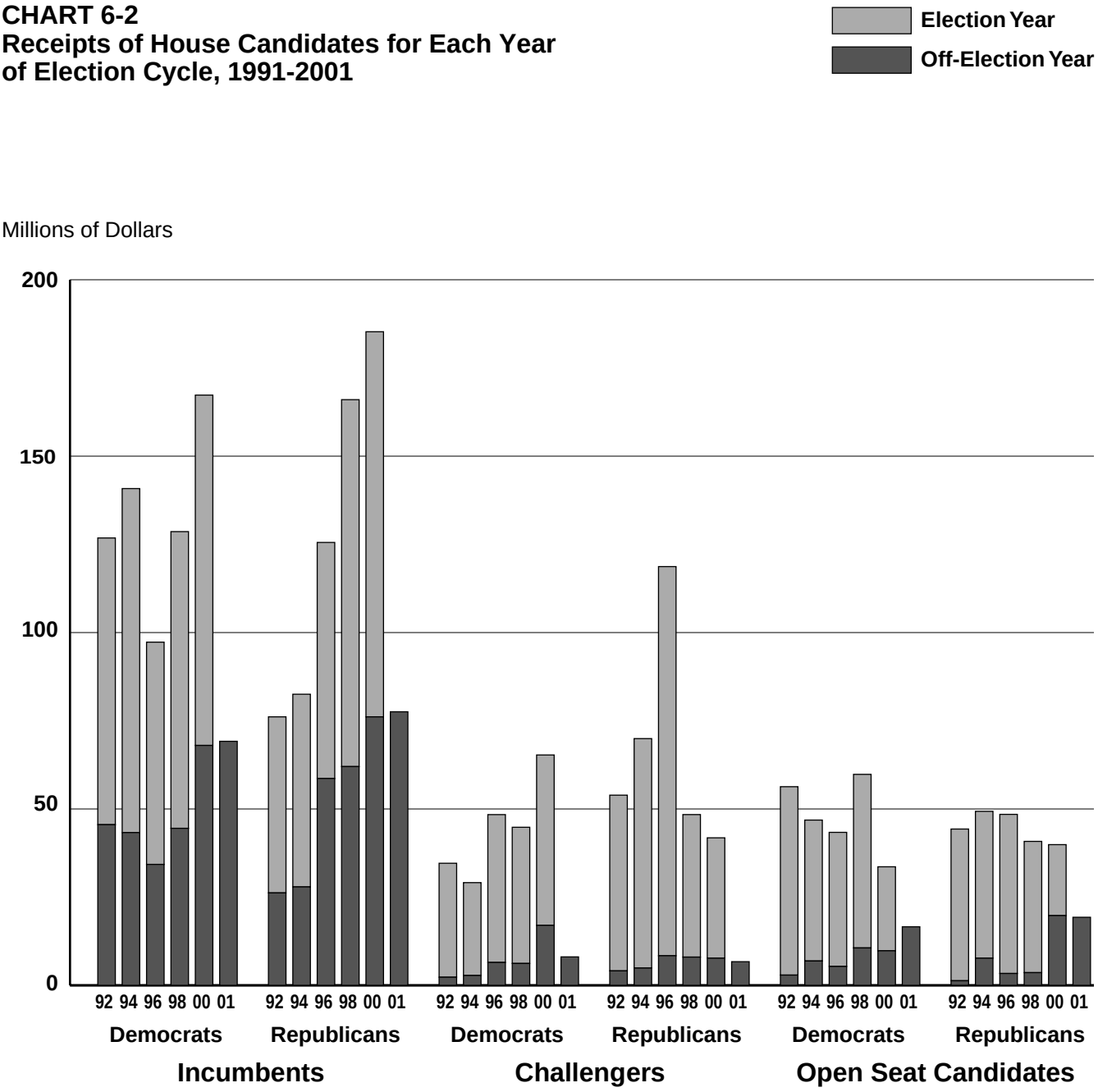


**CHART 6-3**
**House Campaign Fundraising in Nonelection Years**

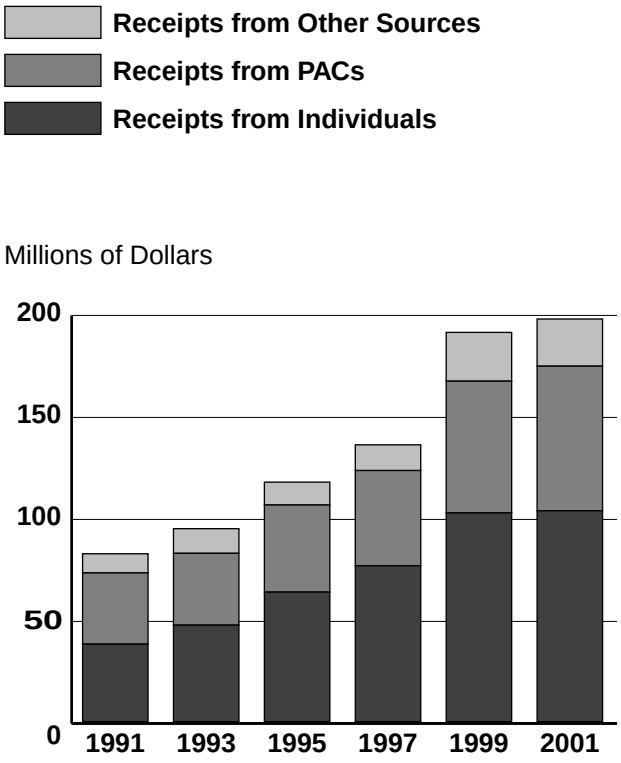



**CHART 6-4**
**Senate Campaign Fundraising in Nonelection Years**

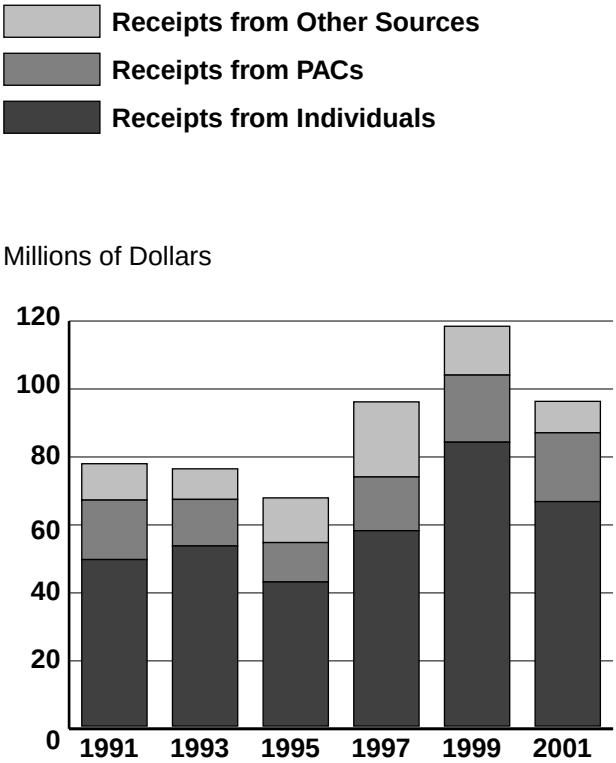
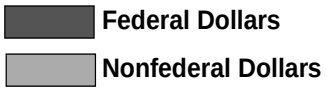
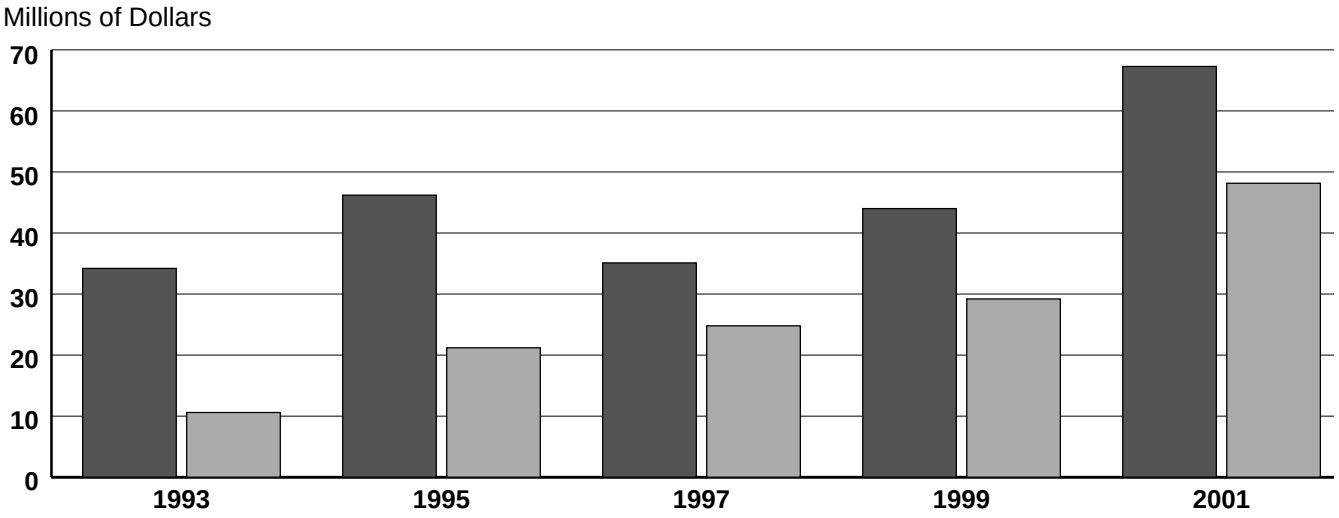


**CHART 6-5**
**Nonelection Year Fundraising by National Party Committees: Federal and Nonfederal Accounts**




**Republican National Committee**




**Democratic National Committee**

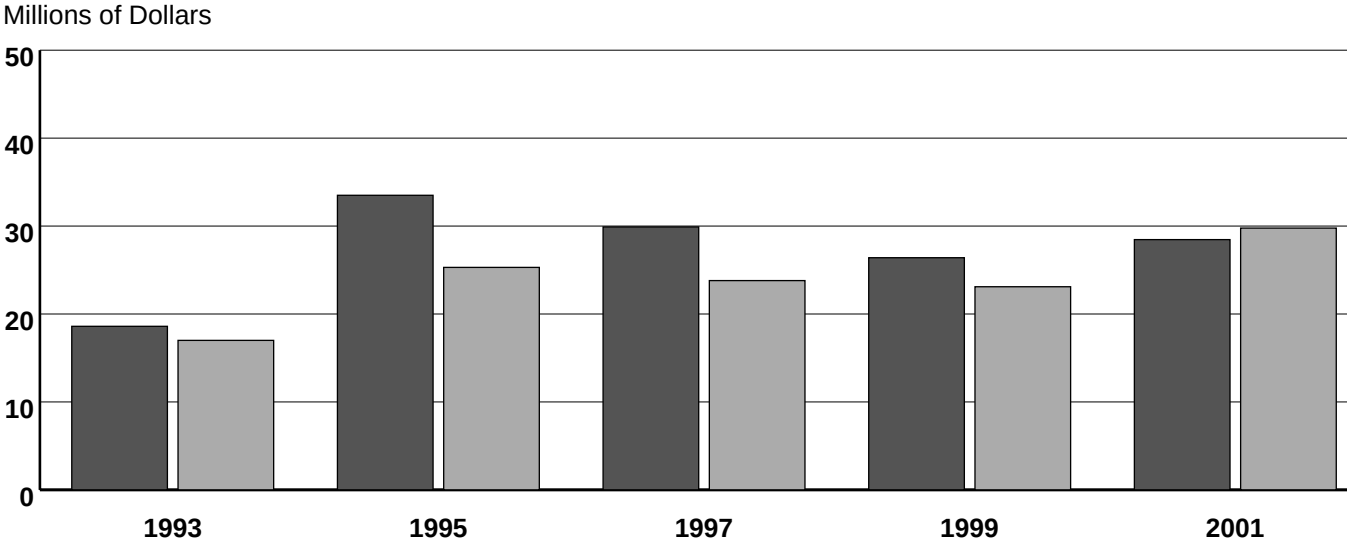
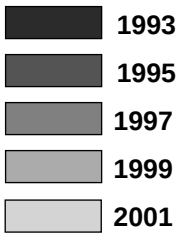
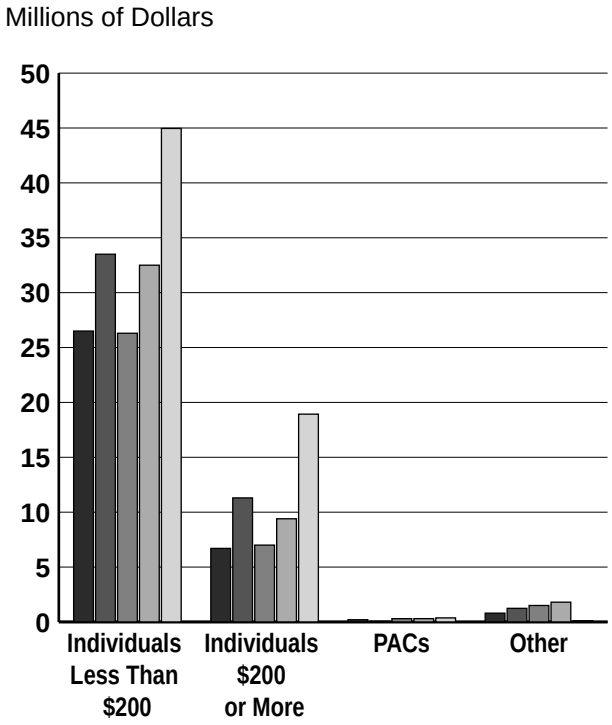


**CHART 6-6**
**Sources of National Party Committee: Federal Account Receipts in Nonelection Years**




**Republican National Committee**




**Democratic National Committee**

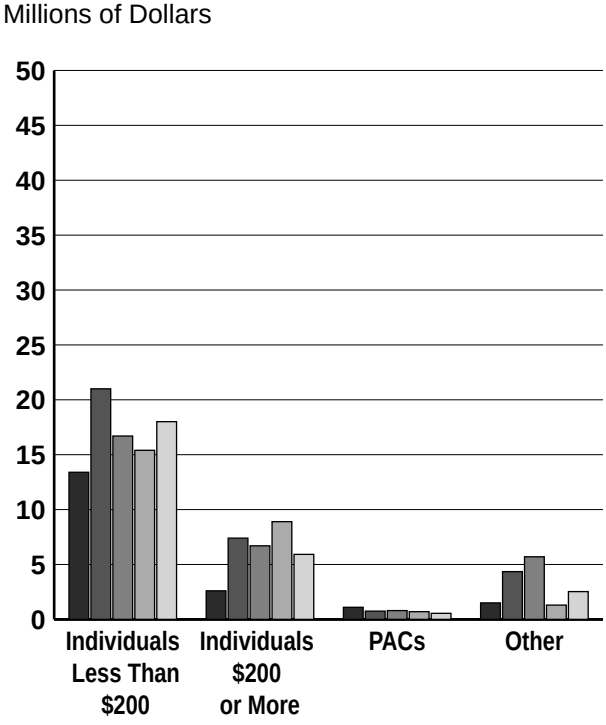
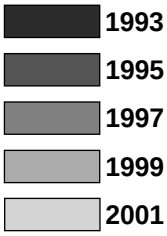
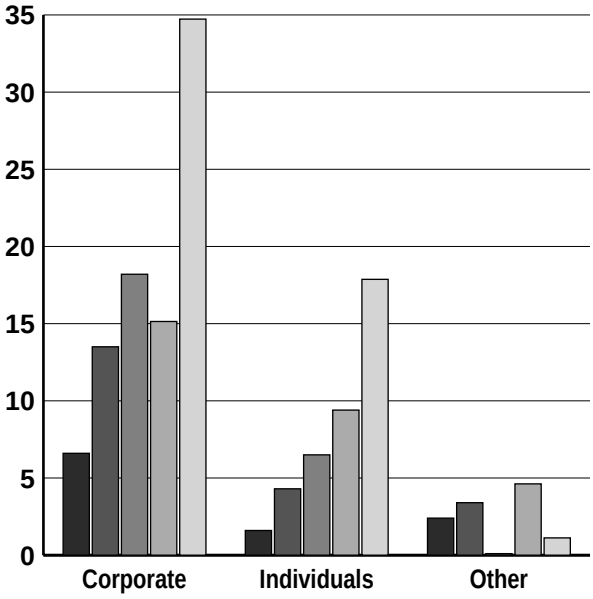


**CHART 6-7**
**Sources of National Party Committee: Nonfederal Account Receipts in Nonelection Years**



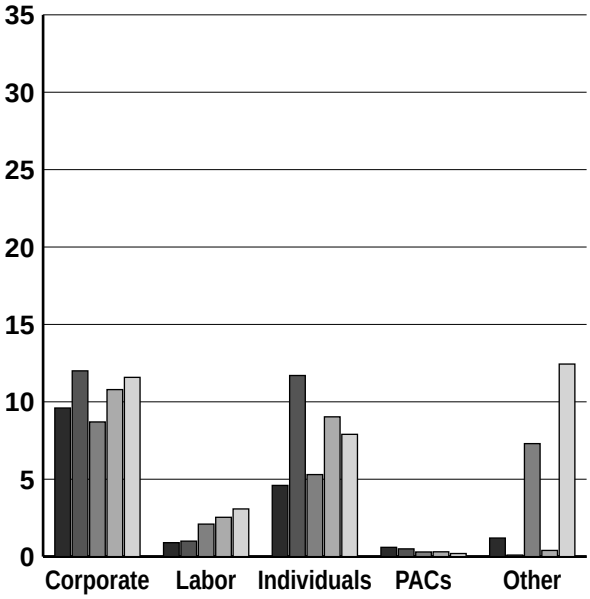

**Republican National Committee**

Millions of Dollars




**Democratic National Committee**

Millions of Dollars



# Appendix 1 Biographies of Commissioners and Officers

## Commissioners

**Danny L. McDonald, Chairman**
**April 30, 2005[1]**

Now serving his fourth term as Commissioner, Danny McDonald was first appointed to the Commission in 1981 and was reappointed in 1987, 1994 and 2000. Before his original appointment, he managed 10 regulatory divisions as the general administrator of the Oklahoma Corporation Commission. He had previously served as secretary of the Tulsa County Election Board and as chief clerk of the board. He was also a member of the Advisory Panel to the FEC's National Clearinghouse on Election Administration.

A native of Sand Springs, Oklahoma, Mr. McDonald graduated from Oklahoma State University and attended the John F. Kennedy School of Government at Harvard University. He served as FEC Chairman in 1983, 1989, 1995 and 2001.

**David M. Mason, Vice-Chairman**
**April 30, 2003**

David Mason was nominated to the Commission by President Clinton on March 4, 1998, and confirmed by the U.S. Senate on July 30, 1998. Prior to his appointment, Mr. Mason served as Senior Fellow, Congressional Studies, at the Heritage Foundation. He joined Heritage in 1990 as Director of Executive Branch Liaison. In 1995 he became Vice President, Government Relations, and in 1997 Mr. Mason was designated Senior Fellow with a focus on research, writing and commentary on Congress and national politics.

Prior to his work at the Heritage Foundation, Commissioner Mason served as Deputy Assistant Secretary of Defense and served on the staffs of Senator John Warner, Representative Tom Bliley and then-House Republican Whip Trent Lott. He worked in numerous Congressional, Senate, Gubernatorial and Presidential campaigns, and was himself the Republican nominee for the Virginia House of Delegates in the 48th District in 1982.

Commissioner Mason attended Lynchburg College in Virginia and graduated cum laude from Claremont McKenna College in California. He is active in political and community affairs at both the local and national level. He and his wife reside in Lovettsville, Virginia, with their six children.

**Karl J. Sandstrom, Commissioner**
**April 30, 2001**

Karl Sandstrom was nominated to the Commission by President Clinton on July 13, 1998 and confirmed by the U.S. Senate on July 30, 1998. Prior to his appointment, Commissioner Sandstrom served as Chairman of the Administrative Review Board at the Department of Labor. From 1988 to 1992 he was Staff Director of the House Subcommittee on Elections, during which time he also served as the Staff Director of the Speaker of the House's Task Force on Electoral Reform. From 1979 to 1988, Commissioner Sandstrom served as the Deputy Chief Counsel to the House Administration Committee of the House of Representatives. In addition, he has taught public policy as an Adjunct Professor at American University.

Commissioner Sandstrom received a B.A. degree from the University of Washington, a J.D. degree from George Washington University and a Masters of the Law of Taxation from Georgetown University Law Center.

**Bradley A. Smith**
**April 30, 2005**

Bradley Smith was nominated to the Commission by President Clinton on February 9, 2000, and confirmed by the U.S. Senate on May 24, 2000. Prior to his appointment, Commissioner Smith was Professor of Law at Capital University Law School in Columbus, Ohio, where he taught Election Law, Comparative Election Law, Jurisprudence, Law & Economics and Civil Procedure.

Prior to joining the faculty at Capital in 1993, he had practiced with the Columbus law firm of Vorys, Sater, Seymour & Pease, served as United States Vice Consul in Guayaquil, Ecuador, worked as a consultant in the health care field and served as General

[1] Term expiration date.

Manager of the Small Business Association of Michigan, a position in which his responsibilities included management of the organization's political action committee.

Commissioner Smith received his B.A. cum laude from Kalamazoo College in Kalamazoo, Michigan, and his J.D. cum laude from Harvard Law School.

**Scott E. Thomas, Commissioner**
**April 30, 2003**

Scott Thomas was appointed to the Commission in 1986 and reappointed in 1991 and 1998. He served as acting Chairman during the last four months of 1998, and as Chairman throughout 1999. He previously served as Chairman in 1987 and 1993. Prior to serving as a Commissioner, Mr. Thomas was the executive assistant to former Commissioner Thomas E. Harris. He originally joined the FEC as a legal intern in 1975 and later became an Assistant General Counsel for Enforcement.

A Wyoming native, Mr. Thomas graduated from Stanford University and holds a J.D. degree from Georgetown University Law Center. He is a member of the District of Columbia and U.S. Supreme Court bars.

**Darryl R. Wold, Commissioner**
**April 30, 2001**

Darryl Wold was nominated to the Commission by President Clinton on November 5, 1997, and confirmed by the U.S. Senate on July 30, 1998. Prior to his appointment, Commissioner Wold had been in private law practice in Orange County, California, since 1974. In addition to his own practice, he was counsel to Reed and Davidson, a California law firm, for election law litigation and enforcement defense matters. Mr. Wold's practice included representing candidates, ballot measure committees, political action committees and others with responsibilities under federal, state and local election laws. Mr. Wold's business practice emphasized business litigation and counseling closely-held companies.

Commissioner Wold graduated cum laude from Claremont McKenna College in California and earned an LL.B. from Stanford University. He is a member of the California and U.S. Supreme Court bars.

## Statutory Officers

**James A. Pehrkon, Staff Director**

James Pehrkon became Staff Director on April 14, 1999, after serving as Acting Staff Director for eight months. Prior to that, Mr. Pehrkon served 18 years as the Commission's Deputy Staff Director with responsibilities for managing the FEC's budget, administration and computer systems. Among the agency's first employees, Mr. Pehrkon is credited with setting up the FEC's data processing department and establishing the Data Systems Development Division. He directed the data division before assuming his duties as Deputy Staff Director.

An Austin, TX, native, Mr. Pehrkon received an undergraduate degree from Harvard University and did graduate work in foreign affairs at Georgetown University.

**Lawrence H. Norton, General Counsel**

Lawrence Norton became General Counsel of the FEC on September 17, 2001. Prior to joining the Commission, Mr. Norton served as an Associate Director at the Commodity Futures Trading Commission for five years. He also worked as an Assistant Director at the Federal Trade Commission and as an Assistant Attorney General in the Maryland Attorney General's office.

Mr. Norton graduated Order of the Coif from the University of Maryland School of Law.

**Lynne A. McFarland, Inspector General**

Lynne McFarland became the FEC's first permanent Inspector General in February 1990. She came to the Commission in 1976, first as a reports analyst. Later, she worked as a program analyst in the Office of Planning and Management.

A Maryland native, Ms. McFarland holds a sociology degree from Frostburg State College and is a member of the Institute of Internal Auditors.

# Appendix 2
# Chronology of Events

**January**

1 — Chairman Danny L. McDonald and Vice Chairman David M. Mason begin their one-year terms of office.
1 — Mandatory electronic filing requirements take effect.
1 — Election cycle reporting requirements take effect.
2 — Lois G. Lerner designated Acting General Counsel.
10 — FEC conducts monthly roundtable on "New Electronic Filing Rules and FEC Forms for PACs."
25 — FEC issues semiannual PAC count.
26 — U.S. Court of Appeals rules that subpoena enforcement actions filed during an enforcement investigation must be litigated under seal (*In re: Sealed Case*).
31 — 2000 year-end report due.

**February**

1 — FEC appoints two new members to the 2001 Advisory Panel of the Office of Election Administration.
2 — Commission requests supplemental funding of $3 million from Congress for enhancement to FEC's Office of Election Administration.
7 — FEC conducts monthly roundtable on "Candidate Preparations for the Next Election Cycle."
23 — FEC submits two priority legislative recommendations to Congress and the President.

**March**

1 — Commission approves Advance Notice of Proposed Rulemaking on the definition of "political committee."
2 — FEC submits 32 additional recommendations for legislative action to Congress and the President.
7 — FEC conducts monthly roundtable on "New Electronic Filing Rules and FEC Forms for PACs."
29 — FEC submits $47.67 million FY 2002 budget request to Congress.

**April**

4-6 — FEC holds conference for corporations in Washington, DC.
9-11 — FEC holds conference for trade associations in Washington, DC.
30 — Commission certifies one additional state for paper-filing waiver.

**May**

1 — FEC publishes *Combined Federal/State Disclosure and Election Directory 2001*.
3 — Commission approves Notice of Proposed Rulemaking on reporting of independent expenditures and last-minute contributions.
4-5 — Office of Election Administration's Advisory Panel meets in Baltimore.
9 — Rules on coordination of general public political communications with candidates and party committees take effect.
15 — Pennsylvania holds special election to fill House seat.
29 — Vice Chairman David Mason testifies before House Appropriations subcommittee on $47.67 million FY 2002 budget request.

**June**

1 — FEC issues *Annual Report 2000.*
5 — California holds special election to fill House seat.
11-13 — FEC holds conference for labor and membership organizations.
19 — Virginia holds special election to fill House seat.
21 — Commission approves report on the National Voter Registration Act—the "motor voter" law.
25 — U.S. Supreme Court upholds constitutionality of coordinated party expenditure limits (*FEC v. Colorado Republican Federal Campaign Committee*).
30 — FEC publishes updated *Campaign Guide for Corporations and Labor Organizations*.

**July**

15 — FEC publishes *Federal Elections 2000.*

19 — Commission approves Notice of Proposed Rulemaking on brokerage loans and lines of credit.

24 — Florida holds special election to fill House seat.

31 — Semi-annual report due.

**August**

20 — Commission names Lawrence H. Norton new General Counsel.

21 — FEC issues semiannual PAC count.

31 — Commission appoints Robert J. Costa to be agency's first Deputy Staff Director for Audit and Review.

**September**

17 — U.S. Court of Appeals rules that the definition of "express advocacy" at 11 CFR 100.22(b) is unconstitutional (*Virginia Society for Human Life v. FEC*).

27 — Commission approves Notice of Proposed Rulemaking seeking comments on proposed regulations concerning use of the Internet for campaign-related activities.

**October**

2-4 — FEC holds regional conference in Denver, CO.

3 — FEC issues Notice of Proposed Rulemaking on the use of the Internet in federal elections.

16 — Massachusetts holds special election to fill House seat.

**November**

12 — President Bush signs FY 2002 appropriations bill, extending the Administrative Fine program to cover reporting periods through December 31, 2003.

20 — Arkansas holds special election to fill House seat.

**December**

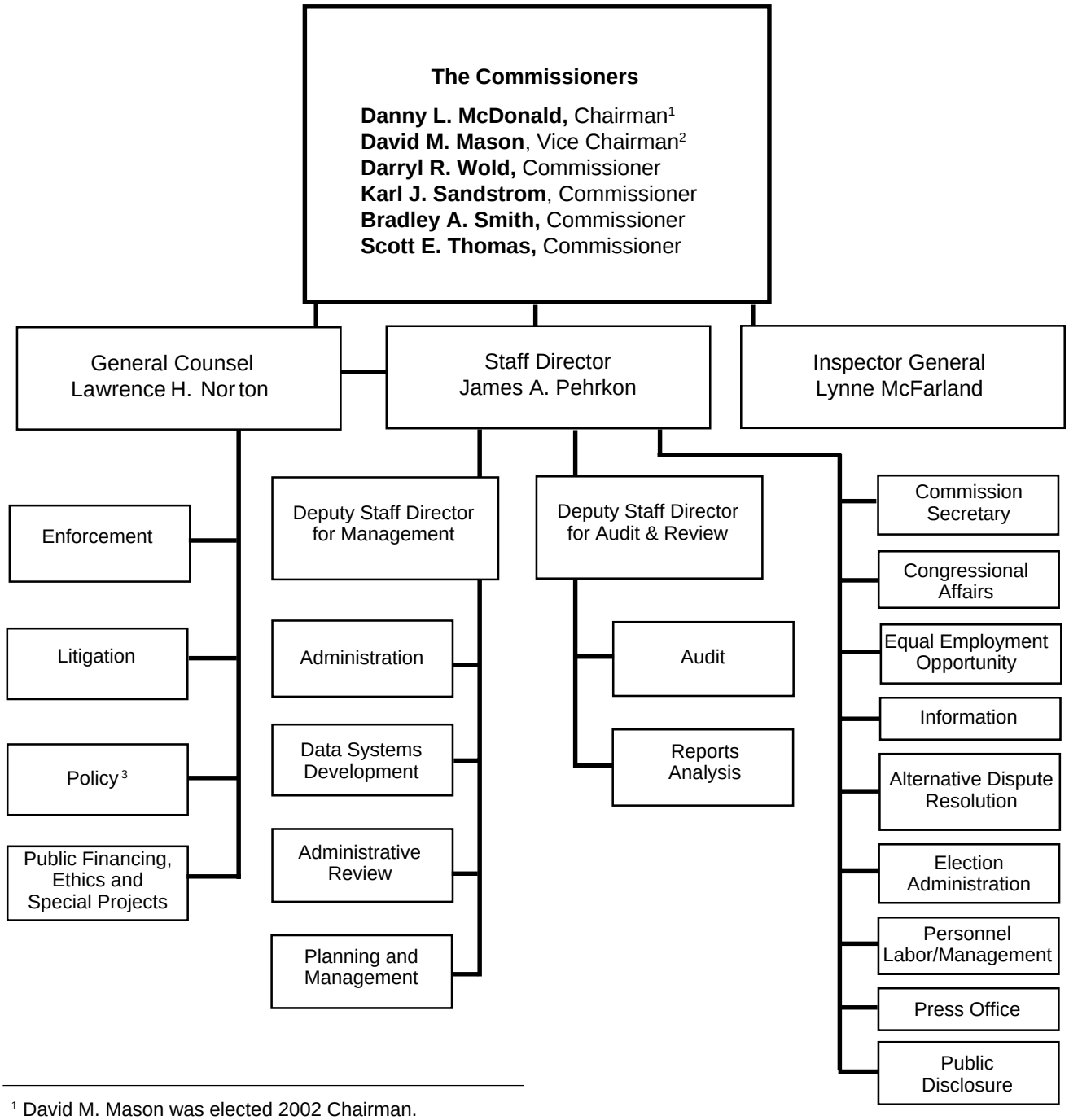
13 — Commission elects David M. Mason Chairman and Karl J. Sandstrom Vice Chairman for 2002.

13 — Commission approves for public comment two volumes of Voting Systems Standards.

18 — South Carolina holds special election to fill House seat.

19 — District court rules that FEC cannot publicly disclose documents obtained during enforcement actions (*AFL-CIO and DNC v. FEC*).

# Appendix 3
# FEC Organization Chart




[1] David M. Mason was elected 2002 Chairman.
[2] Karl J. Sandstrom was elected 2002 Vice Chairman.
[3] Policy covers regulations, advisory opinions, legal review and administrative law.

# Appendix 4
# FEC Offices

This appendix briefly describes the offices within the Commission, located at 999 E Street, NW, Washington, DC 20463. The offices are listed alphabetically, with local telephone numbers given for offices that provide services to the public. Commission offices can also be reached toll-free at 800-424-9530 and locally at 202-694-1100.

## Administration

The Administration Division consists of a Finance Office and an Administration Office. The Finance Office administers the agency's accounting and payroll programs. The Administration Office is responsible for procurement, contracting, space management, records management, telecommunications, building security and maintenance. In addition, the office handles printing, document reproduction and mail services.

## Audit

Many of the Audit Division's responsibilities concern the Presidential public funding program. The division evaluates the matching fund submissions of Presidential primary candidates and determines the amount of contributions that may be matched with federal funds. As required by law, the division audits all public funding recipients.

In addition, the division audits those committees that, according to FEC determinations, have not met the threshold requirements for substantial compliance with the law. Audit Division resources are also used in the Commission's investigations of complaints.

## Commission Secretary

The Commission Secretary is responsible for all administrative matters relating to Commission meetings, as well as Commission votes taken outside of the meetings. This includes preparing meeting agendas, agenda documents, Sunshine Act notices, meeting minutes and vote certifications.

The Secretary also logs, circulates and tracks numerous materials not related to Commission meetings, and records the Commissioners' votes on these matters. All matters on which a vote is taken are entered into the Secretary's database.

## Commissioners

The six Commissioners—no more than three of whom may represent the same political party—are appointed by the President and confirmed by the Senate.

The Commissioners serve full time and are responsible for administering and enforcing the Federal Election Campaign Act. They generally meet twice a week, once in closed session to discuss matters that, by law, must remain confidential, and once in a meeting open to the public. At these meetings, they formulate policy and vote on significant legal and administrative matters.

## Congressional, Legislative and Intergovernmental Affairs

This office serves as primary liaison with Congress and Executive Branch agencies. The office is responsible for keeping Members of Congress informed about Commission decisions and, in turn, for keeping the agency up to date on legislative developments. Local phone: 202-694-1006; toll-free 800-424-9530.

## Data Systems Development

This division provides computer support for the entire Commission. Its responsibilities are divided into two general areas.

In the area of campaign finance disclosure, the Data Systems Development Division enters information into the FEC database from all reports filed by political committees and other entities. The division is also responsible for the computer programs that sort and organize campaign finance data into indexes.

These indexes permit a detailed analysis of campaign finance activity and provide a tool for monitoring

contribution limits. The indexes are available online through the Data Access Program (DAP), a subscriber service managed by the division. The division also publishes the *Reports on Financial Activity* series of periodic studies on campaign finance and generates statistics for other publications.

Among its duties related to internal operations, the division provides computer support for the agency's automation systems and for administrative functions such as management information, document tracking, personnel and payroll systems as well as the MUR prioritization system.

Local phone: 202-694-1250; toll-free phone: 800-424-9530.

## Equal Employment Opportunity (EEO) and Special Programs

The EEO Office advises the Commission on the prevention of discriminatory practices and manages the agency's EEO Program.

The office is also responsible for developing a Special Emphasis Program tailored to the training and advancement needs of women, minorities, veterans, special populations and disabled employees. In addition, the EEO office recommends affirmative action recruitment, hiring and career advancement. The office encourages the informal resolution of complaints during the counseling stage.

Additionally, the office develops and manages a variety of agency-wide special projects. These include the Combined Federal Campaign, the U.S. Savings Bonds Drive and workshops intended to improve employees' personal and professional lives.

## General Counsel

The General Counsel's office consists of four divisions. The Policy division drafts, for Commission consideration, advisory opinions and regulations as well as other legal memoranda interpreting the federal campaign finance law. The Enforcement division investigates alleged violations of the law, negotiates conciliation agreements and recommends penalties for committees that have not met their compliance requirements. The Litigation division handles all civil litigation, including Title 26 cases that come before the Supreme Court, and represents and advises the Commission in any legal actions brought before it. The Public Funding, Ethics and Special Projects division monitors the public funding of Presidential candidates and serves as the ethics officials for the agency.

## Information

In an effort to promote voluntary compliance with the law, the Information Division provides technical assistance to candidates, committees and others involved in elections through the Internet, letters, phone conversations, publications and conferences. Responding to phone and written inquiries, members of the staff provide information on the statute, FEC regulations, advisory opinions and court cases. Staff also lead workshops on the law and produce guides, pamphlets and videos on how to comply with the law. Located on the second floor, the division is open to the public. Local phone: 202-694-1100; toll-free phone: 800-424-9530 (press 1, then 3 on a touch-tone phone).

## Inspector General

The FEC's Inspector General (IG) has two major responsibilities: to conduct internal audits and investigations to detect fraud, waste and abuse within the agency and to improve the economy and effectiveness of agency operations. The IG is required to report its activities to Congress on a semiannual basis. These reports may include descriptions of any serious problems or deficiencies in agency operations as well as corrective steps taken by the agency.

## Law Library

The Commission law library, a government document depository, is located on the eighth floor and is open to the public. The library contains a basic refer-

ence collection, which includes materials on campaign finance reform, election law and current political activity. Visitors to the law library may use its computers to access the Internet and FEC databases. FEC advisory opinions and computer indices of enforcement proceedings (MURs) may be searched in the law library or the Public Disclosure Division. Local phone: 202-694-1600; toll-free: 800-424-9530.

## Office of Administrative Review

The Office of Administrative Review (OAR) was established in 2000 after statutory amendments permitted the Commission to impose civil money penalties for violations of certain reporting requirements. Under the program, if the Commission finds "reason to believe" (RTB) that a committee failed to file a required report or notice, or filed it late, it will notify the committee of its finding and the amount of the proposed civil money penalty. Within 40 days, the committee may challenge the RTB finding. OAR reviews these challenges and may recommend that the Commission uphold the RTB finding and civil money penalty, uphold the RTB finding but modify or waive the civil money penalty, determine that no violation occurred or terminate its proceedings. OAR also serves as the Commission's liaison with the U.S. Department of the Treasury on debt collection matters involving unpaid civil money penalties under this program.

## Office of Alternative Dispute Resolution

The FEC established the Alternative Dispute Resolution (ADR) office to provide parties in enforcement actions with an alternative method for resolving complaints that have been filed against them or for addressing issues identified in the course of an FEC audit. The pilot program is designed to promote compliance with the federal campaign finance law and Commission regulations, and to reduce the cost of processing complaints by encouraging settlements outside the agency's normal enforcement track.

## Office of Election Administration

The Office of Election Administration (OEA) assists state and local election officials by responding to inquiries, publishing research and conducting workshops on all matters related to election administration. Additionally, OEA answers questions from the public and briefs foreign delegations on the U.S. election process, including voter registration and voting statistics.

Local phone: 202-694-1095; toll-free phone: 800-424-9530 (press 4 on a touch-tone phone).

## Personnel and Labor/Management Relations

The Personnel Office provides policy guidance and operational support to managers and staff in a variety of human resource management areas, including position classification, training, job advertising, recruitment and employment. The office also processes personnel actions such as step increases, promotions and leave administration. In addition, the office performs personnel records maintenance and offers employee assistance program counseling. Finally, the Personnel office administers the Commission's labor-management relations program and provides a comprehensive package of employee benefits, wellness and family-friendly programs.

## Planning and Management

This office develops the Commission's budget and, each fiscal year, prepares a management plan determining the allocation and use of resources throughout the agency. Planning and Management monitors adherence to the plan and provides monthly reports measuring the progress of each division in achieving the plan's objectives.

## Press Office

Staff in the Press Office are the Commission's official media spokespersons. In addition to publicizing

Commission actions and releasing statistics on campaign finance, they respond to all questions from representatives of the print and broadcast media. Located on the first floor, the office also handles requests under the Freedom of Information Act. Local phone: 202-694-1220; toll-free 800-424-9530 (press 1 on a touch-tone phone).

## Public Disclosure

The Public Disclosure Division processes incoming campaign finance reports from federal political committees and makes the reports available to the public. Located on the first floor, the division's Public Records Office has a library with ample work space and knowledgeable staff to help researchers locate documents and computer data. The FEC encourages the public to review the many resources available, which include computer indexes, advisory opinions and closed MURs.

The division's Processing Office receives incoming reports and processes them into formats that can be easily retrieved. These formats include paper, microfilm and digital computer images that can be easily accessed from terminals in the Public Records Office and those of agency staff.

The Public Disclosure Division also manages Faxline, an automated faxing service for ordering FEC documents, forms and publications, available 24 hours a day, 7 days a week.

Local phone: 202-694-1120; toll-free phone: 800-424-9530 (press 3 on a touch-tone phone); Faxline: 202-501-3413.

## Reports Analysis

Reports analysts assist committee officials in complying with reporting requirements and conduct detailed examinations of the campaign finance reports filed by political committees. If an error, omission or prohibited activity (e.g., an excessive contribution) is discovered in the course of reviewing a report, the analyst sends the committee a letter which requests that the committee either amend its reports or provide further information concerning a particular problem. By sending these letters (RFAIs), the Commission seeks to ensure full disclosure and to encourage the committee's voluntary compliance with the law. Analysts also provide frequent telephone assistance to committee officials and encourage them to call the division with reporting questions or compliance problems. Local phone: 202-694-1130; toll-free phone 800-424-9530 (press 2 on a touch-tone phone).

## Staff Director and Deputy Staff Directors

The Staff Director is responsible for appointing staff, with Commission approval, and for implementing agency policy. The Staff Director monitors the administration of the agency by overseeing the Commission's public disclosure activities, audit program, outreach efforts and review of reports.

Two Deputy Staff Directors assist in this supervision, one in the areas of budget, administration and computer systems and the other in the areas of audit and review.

# Appendix 5
# Statistics on Commission Operations

## Summary of Disclosure Files

| | Total Filers Existing in 2001 | Filers Terminated as of 12/31/01 | Continuing Filers as of 12/31/01 | Number of Reports and Statements in 2001 | Gross Receipts in 2001 (dollars) | Gross Expenditures in 2001 (dollars) |
|---|---|---|---|---|---|---|
| **Presidential Candidate Committees** | **237** | **34** | **203** | **320** | **11,008,246** | **19,049,688** |
| **Senate Candidate Committees** | **481** | **95** | **386** | **830** | **130,111,665** | **60,087,365** |
| **House Candidate Committees** | **2,080** | **368** | **1,712** | **3,918** | **204,687,190** | **119,534,069** |
| **Party Committees** | **684** | **83** | **601** | **1,354** | **600,497,333** | **529,810,918** |
| Federal Party Committees | 515 | 80 | 435 | 1,354 | 441,295,570 | 407,938,142 |
| Reported Nonfederal Party Activity | 169 | 3 | 166 | 0 | 159,201,763 | 121,872,776 |
| **Delegate Committees** | **8** | **4** | **4** | **41** | **15,066** | **21,199** |
| **Nonparty Committees** | **4,207** | **316** | **3,891** | **3,933** | **313,317,719** | **244,552,878** |
| Labor Committees | 323 | 7 | 316 | 315 | 76,387,511 | 56,988,612 |
| Corporate Committees | 1,632 | 124 | 1,508 | 1,572 | 90,969,390 | 70,418,226 |
| Membership, Trade and Other Committees | **2,252** | **185** | **2,067** | **2,046** | **145,960,818** | **117,146,040** |
| **Communication Cost Filers** | **271** | **1** | **270** | **34** | **0** | **160,202** |
| **Independent Expenditures by Persons Other Than Political Committees** | **309** | **24** | **285** | **53** | **21,537** | **279,494** |

## Divisional Statistics for Calendar Year 2001

| | Total |
|---|---|
| Reports Analysis Division | |
| Documents processed | 38,692 |
| Reports reviewed | 50,880 |
| Telephone assistance and meetings | 10,937 |
| Requests for additional information (RFAIs) | 8,862 |
| Second RFAIs | 4,154 |
| Data coding and entry of RFAIs and miscellaneous documents | 19,758 |
| Compliance matters referred to Office of General Counsel or Audit Division | 68 |
| Data Systems Development Division * | |
| Documents receiving Pass I coding | 24,511 |
| Documents receiving Pass III coding | 37,477 |
| Documents receiving Pass I entry | 39,020 |
| Documents receiving Pass III entry | 15,456 |
| Transactions receiving Pass III entry | |
| • In-house | 475,830 |
| • Contract | 280,984 |
| Public Records Office | |
| Campaign finance material processed (total pages) | 1,259,277 |
| Cumulative total pages of documents available for review | 18,997,981 |
| Requests for campaign finance reports | 4,507 |
| Visitors | 7,001 |
| Total people served | 20,929 |
| Information telephone calls | 9,161 |
| Computer printouts provided | 27,404 |
| Faxline requests | 648 |
| Total income (transmitted to U.S. Treasury) | $14,870 |
| Contacts with state election offices | 3,848 |
| Notices of failure to file with state election offices | 14 |

* Computer coding and entry of campaign finance information occur in two phases. In the first phase, Pass I, summary information is coded and entered into the computer within 48 hours of the Commission's receipt of the report. During the second phase, Pass III, itemized information is coded and entered.

| | Total |
|---|---|
| Administrative Division | |
| Contracting and procurement transactions | 1,034 |
| Publications prepared for print | 38 |
| Pages of photocopying | 14,500,000 |
| Information Division | |
| Telephone inquiries | 28,220 |
| Information letters | 56 |
| Distribution of FEC materials | 5,063 |
| Prior notices (sent to inform filers of reporting deadlines) | 16,647 |
| Other mailings | 39,635 |
| Visitors | 77 |
| Public appearances by Commissioners and staff | 97 |
| Roundtable workshops | 3 |
| Publications | 37 |
| Press Office | |
| News releases | 116 |
| Telephone inquiries from press | 7,790 |
| Visitors | 982 |
| Freedom of Information Act (FOIA) requests | 28 |
| Fees for materials requested under FOIA (transmitted to U.S. Treasury) | 0 |
| Office of Election Administration | |
| Telephone inquiries | 4,069 |
| National surveys conducted | 5 |
| Individual research requests | 407 |
| Materials distributed * | 4,785 |
| Election presentations/conferences | 21 |
| Foreign briefings | 70 |
| Publications | 10 |

* Figure includes National Voter Registration Act materials.

| | Total |
|---|---|
| Office of General Counsel | |
| Advisory opinions | |
| Requests pending at beginning of 2001 | 3 |
| Requests received | 20 |
| Issued | 17 |
| Not issued * | 1 |
| Pending at end of 2001 | 5 |
| Compliance cases † | |
| Pending at beginning of 2001 | 230 |
| Opened | 87 |
| Closed | 151 |
| Pending at end of 2001 | 166 |
| Litigation | |
| Cases pending at beginning of 2001 | 36 |
| Cases opened | 17 |
| Cases closed | 18 |
| Cases pending at end of 2001 | 35 |
| Cases won | 15 |
| Cases lost | 1 |
| Cases won/lost | 0 |
| Miscellaneous Cases‡ | 2 |
| Law Library | |
| Telephone inquiries | 881 |
| Visitors | 673 |

* One advisory opinion request was withdrawn by the requester.

† In annual reports previous to 1994, the category "compliance cases" included only Matters Under Review (MURs). As a result of the Enforcement Priority System (EPS), the category has been expanded to include internally-generated matters in which the Commission has not yet made reason to believe findings.

‡ One case was voluntarily withdrawn by the plaintiff prior to a dispositive motion, and one case was litigated by the Department of Justice on behalf of many federal agency defendants, in which the Commission was a nominal party.

## Audit Reports Publicly Released

| Year | Title 2 * | Title 26 † | Total |
|---|---|---|---|
| 1976 | 3 | 1 | 4 |
| 1977 | 6 | 6 | 12 |
| 1978 | 98 ‡ | 10 | 108 |
| 1979 | 75 ‡ | 9 | 84 |
| 1980 | 48 ‡ | 11 | 59 |
| 1981 | 27 ‡ | 13 | 40 |
| 1982 | 19 | 1 | 20 |
| 1983 | 22 | 0 | 22 |
| 1984 | 15 | 2 | 17 |
| 1985 | 4 | 9 | 13 |
| 1986 | 10 | 4 | 14 |
| 1987 | 12 | 4 | 16 |
| 1988 | 8 | 0 | 8 |
| 1989 | 2 | 7 | 9 |
| 1990 | 1 | 6 | 7 |
| 1991 | 5 | 8 | 13 |
| 1992 | 9 | 3 | 12 |
| 1993 | 10 | 2 | 12 |
| 1994 | 5 | 17 | 22 |
| 1995 | 12 | 0 | 12 |
| 1996 | 23 | 0 | 23 |
| 1997 | 7 | 6 | 13 |
| 1998 | 5 | 7 | 12 |
| 1999 | 20 | 7 | 27 |
| 2000 | 14 | 0 | 14 |
| 2001 | 15 | 1 | 16 |
| **Total** | **475** | **134** | **609** |

* **Audits for cause:** The FEC may audit any registered political committee: 1) whose reports do not substantially comply with the law; or 2) if the FEC has found reason to believe that the committee has committed a violation. 2 U.S.C. §§438(b) and 437g(a)(2).

† **Title 26 audits:** The Commission must give priority to these mandatory audits of publicly funded committees.

‡ **Random audits:** Most of these audits were performed under the Commission's random audit policy (pursuant to the former 2 U.S.C. §438(a)(8)). The authorization for random audits was repealed by Congress in 1979.

### Audits Completed by Audit Division, 1975 – 2001

| | Total |
|---|---|
| Presidential | 113 |
| Presidential Joint Fundraising | 12 |
| Senate | 24 |
| House | 172 |
| Party (National) | 47 |
| Party (Other) | 157 |
| Nonparty (PACs) | 84 |
| **Total** | **609** |

### Status of Audits, 2001

| | Pending at Beginning of Year | Opened | Closed | Pending at End of Year |
|---|---|---|---|---|
| Presidential | 10 | 8 | 1 | 17 |
| Presidential Joint Fundraising | 0 | 0 | 0 | 0 |
| Senate | 1 | 3 | 1 | 3 |
| House | 0 | 16 | 4 | 12 |
| Party (National) | 0 | 0 | 0 | 0 |
| Party (Other) | 12 | 0 | 10 | 2 |
| Nonparty (PACs) | 0 | 0 | 0 | 0 |
| **Total** | **23** | **27** | **16** | **34** |

# Appendix 6
# 2001 Federal Register Notices

**2001-1**
Notice of Filing Dates for the California Special Election in the 32nd Congressional District (66 FR 7763, January 25, 2001)

**2001-2**
Notice of Filing Dates for the Pennsylvania Special Election in the 9th Congressional District (66 FR 11031, February 21, 2001)

**2001-3**
Definition of Political Committee; Advance Notice of Proposed Rulemaking (66 FR 13681, March 7, 2001)

**2001-4**
Notice of Filing Dates for the Virginia Special Election in the 4th Congressional District (66 FR 21383, April 30, 2001)

**2001-5**
General Public Political Communications Coordinated with Candidates and Party Committees; Independent Expenditures; Announcement of Effective Date (66 FR 23537, May 9, 2001)

**2001-6**
Independent Expenditure Reporting; Notice of Proposed Rulemaking (66 FR 23628, May 9, 2001)

**2001-7**
Notice of Filing Dates for the Florida Special Election in the 1st Congressional District (66 FR 31237, June 11, 2001)

**2001-8**
Notice of Filing Dates for Massachusetts Special Election in the 9th Congressional District (66 FR 33962, June 26, 2001)

**2001-9**
Voluntary Standards for Computerized Voting Systems; Notice with Request for Comments (66 FR 35978, July 10, 2001)

**2001-10**
Brokerage Loans and Line of Credit; Notice of Proposed Rulemaking (66 FR 38576, July 25, 2001)

**2001-11**
Notice of Filing Dates for the Arkansas Special Election in the 3rd Congressional District (66 FR 43868, August 21, 2001)

**2001-12**
Notice of Filing Dates for the South Carolina Special Election in the 2nd Congressional District (66 FR 46635, September 6, 2001)

**2000-13**
Brokerage Loans and Lines of Credit; Cancellation of Public Hearing (66 FR 47120, September 11, 2001)

**2001-14**
The Internet and Federal Elections; Candidate-Related Materials on Websites of Individuals, Corporations and Labor Organizations; Notice of Proposed Rulemaking (66 FR 50358, October 3, 2001)

**2001-15**
Request for Comment on Draft Statement of Policy Regarding Party Committee Transfers of Nonfederal Funds for Payment of Allocable Expenses (66 FR 56247, November 7, 2001)

**2001-16**
Notice of Filing Dates for the Oklahoma Special Election in the 1st Congressional District (66 FR 56824, November 13, 2001)

**2001-17**
Final Rule on Technical Amendments to Election Cycle Reporting (66 FR 59679, November 30, 2001)

**2001-18**
Final Rule on Extension to Administrative Fines (66 FR 59680, November 30, 2001)

**2001-19**
Voluntary Standards for Computerized Voting Systems (66 FR 65708, December 20, 2001)

**2001-20**
Notice of Disposition Regarding Party Committee Transfers of Nonfederal Funds for Payment of Allocable Expenses (66 FR 66813, December 27, 2001)