Federal Election Commission

Annual Report 1995

Federal Election Commission
Washington, DC 20463

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OFFICE OF THE CHAIRMAN

June 1, 1996

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 21st Annual Report of the Federal Election Commission, pursuant to 2 U.S.C. §438(a)(9). The Annual Report 1995 describes the activities performed by the Commission in the last calendar year. The report also includes the legislative recommendations the Commission has adopted and transmitted to the President and the Congress for consideration. Most of these have been recommended by the Commission in previous years. It is our belief that these recommendations, if enacted, would assist the Commission in carrying out its responsibilities in a more efficient manner.

This report documents the rapidly increasing demands on Commission resources brought about by record numbers of federal candidates and campaign expenditures. Despite new Commission initiatives to handle filings, audits, and enforcement matters more efficiently, the Commission remains overwhelmed by a growing enforcement case load and by massive amounts of data flowing from record election activity.

The current system of reporting requirements and contribution prohibitions and limitations, and the resulting audit and enforcement mechanisms required to administer these provisions, are complex. The Commission remains in urgent need of additional resources to meet those responsibilities.

Respectfully,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Table of Contents

Introduction 1

Chapter One
Keeping the Public Informed 3
Public Disclosure 3
Educational Outreach 5
National Clearinghouse on Election Administration 7

Chapter Two
Interpretation and Enforcement of the Law 9
Regulations 9
Advisory Opinions 9
Enforcement 10

Chapter Three
Legal Issues 13
Massachusetts Citizens for Life Rulemakings 13
Coordinated Party Expenditures 17
National Committee Status 17
Disclaimers 17
Definition of Member 18
Personal Use of Campaign Funds 19
Major-Purpose Test 20
Corporate Reimbursement Schemes 21
Campaign Loans 21
Earmarking 22
Constitutionality of Commission 22
Five-Year Statute of Limitations 23
Prosecutorial Discretion 24
Litigation vs. Legislation 24
Federal Preemption 25

Chapter Four
Presidential Public Funding 27
Shortfall in Fund 27
Certification of Matching Funds 27
CD ROM Technology 28
New Public Funding Regulations 28
Rulemaking Petition on Electoral College Expenditures 30
Repayment of Public Funds 30

Chapter Five
The Commission 33
Commissioners 33
Office of Equal Employment Opportunity and Special Programs 33
Ethics 33
Inspector General 33
Computer Upgrade 33
The FEC's Budget 34

Chapter Six
Legislative Recommendations 39

Chapter Seven
Campaign Finance Statistics 63

Appendices 75
1. Biographies of Commissioners and Officers 75
2. Chronology of Events 79
3. FEC Organization Chart 83
4. FEC Offices 85
5. Statistics on Commission Operations 89
6. 1995 Federal Register Notices 93
7. Corporate and Labor Communications and Facilities 95

Introduction

During its 20th anniversary year, the Commission continued to safeguard the integrity of federal elections. Established in the wake of the Watergate scandal to administer and enforce the Federal Election Campaign Act, the Commission marked its anniversary by publishing a 40-page report that explored key campaign finance issues, trends and statistics. Two major rulemakings distinguished the anniversary year, as did the agency's response to government-wide budget cuts and a shortfall in the Presidential Election Campaign Fund.

Foremost among the Commission's accomplishments during 1995 were two new rulemakings. The first, precipitated by the Supreme Court's 1986 decision in *FEC v. Massachusetts Citizens for Life, Inc. (MCFL)*, clarified the meaning of "express advocacy"[1] and exempted certain nonprofit corporations from the ban on corporate expenditures. The definition is based on the 1976 landmark case, *Buckley v. Valeo*, and a 1986 court of appeals case, *FEC v. Furgatch*. In *Buckley*, the Supreme Court gave specific examples of words that constitute express advocacy. The revised regulatory definition of express advocacy continues to treat this explicit wording as per se express advocacy. It also incorporates language from the *Furgatch* opinion, which urged taking into account all elements of a communication and, to a limited degree, the context of external events, in determining the existence of express advocacy.

With regard to the exemption for certain nonprofit corporations, the *MCFL* decision permitted certain nonprofit corporations, whose only purpose is promoting political ideas, to make independent expenditures without violating the ban on corporate expenditures. The new rules incorporate that decision by providing specific criteria for determining which corporations qualify for the exemption.

The other rulemaking clarified the statutory ban on candidates' use of excess campaign funds to pay for personal expenses.[2] The new regulations differentiate legitimate campaign and officeholder expenses (which may be paid for with campaign funds) from personal use expenses, which are those expenses that would exist irrespective of campaign or officeholder duties. Personal use expenses may not be paid for with campaign funds. The new regulations also list examples of personal use expenses.

In the public funding arena, the Commission certified initial payments of public matching funds for 10 eligible 1996 Presidential candidates.[3] The total, $37.4 million, was the highest amount ever certified for January payments. Candidates raised more money earlier in their campaigns than their predecessors had in past Presidential election cycles partly because the primaries were held earlier in 1996 than in past Presidential election cycles. Earlier primaries, coupled with low reserves in the Presidential Election Campaign Fund, caused a cash flow problem in the Fund. The result was that campaigns would receive only 60 percent of their January certifications.[4]

As the agency prepared for a Presidential election cycle, it suffered a 5 percent or $1.4 million rescission of its FY 1995 budget. Spending restraints imposed earlier in the year, when the FEC feared losing 10 percent of its budget, cushioned the adverse impact of the cut. The net effect of the rescission, however, was a reduction in outreach programs and a program designed to expedite work.

Although shut down in November because of the government-wide furlough, the FEC was one of several agencies that received their FY 1996 appropriations later that month. Because the 1996 appropriation of $26.5 million was only $800,000 more than the agency's FY 1995 appropriation and because Congress earmarked funds for computerization, the agency began to reduce its staff

[1] "Express advocacy" refers to a communication that expressly advocates the election or defeat of a clearly identified candidate for federal office.

[2] 2 U.S.C. §439a.

[3] In 1996, an eleventh candidate, Alan Keyes, also qualified for public matching funds.

[4] By April 1996, however, the replenished Fund provided candidates with their full entitlement, including sums that had been temporarily held back in January through March.

and severely cut nonpersonnel expenses as it headed into the Presidential election cycle. The cuts meant further reductions in service and backlogs in agency work.

The chapters that follow document the Commission's work during calendar year 1995.

Chapter One
Keeping the Public Informed

"Dedicated to keeping the public informed." This was the Commission's motto to mark its twentieth year. Since its inception, the Commission has provided information to both the general public and the regulated community. "Keeping the public informed" serves two purposes. It helps to create an educated electorate, and it promotes compliance with the campaign finance law.

Both the public disclosure program and the agency's educational outreach efforts promote compliance. Public scrutiny of campaign finance records encourages the regulated community to comply with the law, while educational outreach to the regulated community helps promote compliance by fostering understanding of the law. The Commission's public disclosure and educational outreach programs are described below.

Public Disclosure

Disclosing the sources and amounts of funds spent on federal campaign activity continued to be at the heart of the Commission's work during 1995. This process is complex, as it involves receiving the reports filed by committees, reviewing them, entering the data into the FEC's computer database and making the reports and database available to the public.

New Legislation: Point of Entry and Electronic Filing

A new law significantly affected the agency's public disclosure process, which begins with the campaign finance reports filed by political committees, including candidate committees, party committees and political action committees (PACs). Committees file at least two times a year (more frequently in election years). Reports are put on the public record within 48 hours of the Commission's receipt.

On December 28, President Clinton signed Public Law 104-79, officially changing the point of entry for House candidates' reports and allowing for future electronic filing. Candidates had previously filed their reports with the Clerk of the House, but on January 1, 1996, they began filing them with the FEC. (The law did not affect the point of entry for reports from Senate candidates.)

With regard to electronic filing, the new law authorizes the Commission to permit committees to file reports by means of computer disk or other electronic format on a voluntary basis. Since electronic filing will be done on a voluntary basis, some committees will choose to continue to file their reports on paper. The FEC will also make computerized images of these reports. The information from these reports and those filed electronically will be entered into the FEC's database, as was done before the new law. Once the FEC establishes communications links with the Clerk of the House and individual state elections offices, those offices will also be able to retrieve computerized images of reports filed with the Commission.

In September 1995, the Commission began work on the electronic filing project when it invited several committees to participate in a pilot program. Committees were selected on the basis of their proximity to the FEC and the complexity of their reports. Practical information gleaned from the study—such as how committees maintain records and prepare reports—will help the Commission develop a uniform electronic filing system that preserves the rigorous standards of the current database and also eases committees' transition to the new system.

See page 35 for information regarding funding of electronic filing.

Review of Reports

The Commission reviews the reports to make sure that they provide full and accurate disclosure of campaign finance activity, thus preserving the integrity of the public record. If a report contains errors or suggests violations of the law, the Commission sends the committee a request for additional information. The committee treasurer can then make additions or corrections to the report. Apparent violations, however, may lead to an enforcement action.

Campaign finance activity increased during 1995 in preparation for the 1996 Presidential and Congressional elections. As the number and length of reports increased, so did reports analysts' workload. The table below compares 1995 figures with those of 1991, the year prior to the last Presidential elect year.

CHART 1-1

Increases in Campaign Data Processed

	1991	1995	Increase*
Reports Reviewed	34,649	44,390	28%
Total Pages Reviewed	342,178	556,346	63%
Average Pages Per Report	10	13	27%
Number of Reports Analysts	22	26	17%
Average Number of Reports Per Analyst	1,589	1,744	10%

* Figures rounded off to nearest whole number

To handle its burgeoning workload, Reports Analysis staff found new ways to work more efficiently. First, they used more computers with imaging capability so that they could view reports at their own desks. Second, staff employed refined computer programming tools that helped them identify possible compliance problems more quickly.

Additionally, changes to Form 3P for Presidential committees made it easier for committees to fill out their reports and for the Commission to process them.

Processing Campaign Finance Data

The Commission codes and enters information 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. Consistency is crucial to maintaining records of which committees received contributions from individuals and which PACs made contributions to a specific candidate. For example, if a PAC's report states that it made a contribution to the Smith for Congress committee with a Washington address, staff must determine which candidate committee, among those with the same name, the report referred to.

Maintenance of the database and proper coding is especially important as the FEC develops an electronic filing system. The goal of the agency's electronic filing pilot program is to devise a way for filers to present information in accordance with the database's high standards for clarity and consistency. Once this goal is achieved, everyone involved in the disclosure process will be able to take full advantage of electronic filing.

As committees' financial activity increases each election cycle, the number of entries also increases. For example, the number of entries from Presidential reports in 1995 was 28 percent higher than in 1991 (the year prior to the previous Presidential election year), and the number of entries from House and Senate reports was 21 percent higher in 1995 than in 1993 (the year prior to the previous Congressional election). Chart 1-2 lists detailed entries by election cycle.

CHART 1-2

Size of the Detailed Database

Election Cycle	No. of Detailed Entries*
1985	180,000
1986	526,000
1987	262,000
1988	698,000
1989	308,000†
1990	767,000
1991	444,000‡
1992	1,400,000
1993	472,000
1994	1,364,000
1995	570,000

* Numbers are cumulative for each two-year election cycle.
† The entry threshold for individual contributions was dropped from $500 to $200 in 1989.
‡ Nonfederal account data was first entered in 1991.

Public Access to Campaign Data

The Commission's disclosure database, which contains millions of transactions, offers researchers the power of the computer to search for and select information in a flexible way. For example, the database can instantly produce a profile of a committee's financial activity for each election cycle. As another example, researchers can 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).

During 1995, members of the public had access to this data in a number of ways. Visitors to the Public Records Office used computer terminals to access the disclosure database and more than 25 different campaign finance indices that organize the data in different ways. Those outside Washington, DC, could order such information using the Commission's toll-free number.

Visitors could also inspect images of committee reports on the two-year-old electronic imaging system installed on the personal computers in the Public Records Office. Available for viewing were reports filed by Presidential committees, party committees and PACs from 1993 through 1995. In 1995, for the first time, the system included a graphics program to present new statistics.

The Public Records Office continued to make available microfilmed copies of all campaign finance reports, paper copies of reports from 1996 Congressional candidates and Commission documents such as press releases, audit reports, closed enforcement cases (MURs) and agenda documents.

The FEC also continued to offer on-line computer access to the disclosure database to 1,075 subscribers to the ten-year-old Direct Access Program (DAP) for a small fee. Subscribers included journalists, political scientists, campaign workers and other interested citizens. DAP saved time and money for the Commission because providing information on-line is more efficient than processing phone orders for data. During 1995, the Commission's State Access Program gave 29 state election offices free access to the database. In return, state offices helped the Commission track candidate committees that had failed to file copies of their FEC reports with the appropriate state, as required under federal law.

Also new was the Commission's arrival on the Internet. Data Division staff developed mechanisms that enabled the FEC to provide large quantities of campaign finance information about committees over the Internet. Additionally, the Data Division began work on an FEC home page on the World Wide Web. The Commission anticipated putting on the Web various publications on the campaign finance law, Clearinghouse documents, recent press releases and statistical summaries. It also planned to include descriptions of how to use FEC services, statistical overviews of election cycles and links to the Internet site for file download.

Educational Outreach

During 1995, the Commission maintained its commitment to educating committees about the law's requirements, thereby helping them avoid violations. A budget rescission, however, forced the agency to scale back some of its outreach efforts.

Telephone Assistance

A committee's first contact with the Commission is often a telephone call to the agency's toll-free information hotline. In answering questions about the law, staff will research relevant advisory opinions and litigation, as needed. Callers receive, at no charge, FEC documents, publications and forms. In 1995, the Information Division responded to 17,456 callers with compliance questions.

Flashfax

When committees need a publication or other document—including informational brochures, texts of regulations, reporting forms, and texts of advisory opinions—they can call the agency's automated "Flashfax" system at any time and quickly receive the information by fax. Use of this free service grew rapidly in 1995 as 6,621 callers sought information and received 10,328 documents.

Reporting Assistance

During 1995, 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, also published reporting schedules and requirements.

Assistance to Presidential Campaigns

FEC auditors assigned to Presidential committees helped them understand the requirements of the public funding law. The Commission also publishes handbooks and manuals for these committees.

Conferences

The Commission conducted two regional conferences in San Antonio and San Francisco to help the regulated community prepare for the 1996 elections. Conference participants attended workshops for candidate committees, party committees and corporate and labor PACs and their sponsoring organizations. Also held in Washington was a conference specifically designed for corporations and labor unions.

Due to a budget rescission, however, the agency was no longer able to continue an informal outreach program whereby one or two staff members met with candidates, parties and PACs in different cities. (See discussion of the FEC's fiscal year 1995 budget, page 34.)

Tours and Visits

Visitors to the FEC during 1995, including 21 student groups and 32 foreign delegations, listened to presentations about the campaign finance law and toured the agency's Public Records office. Additionally, staff gave tours to participants in September's Conference on Governmental Ethics Laws, which was hosted by the FEC and the Office of Government Ethics.

Media Assistance

The Commission's Press Office continued to field questions from the press and navigate reporters through the FEC's vast pool of information. Press Office staff answered 13,844 calls from media representatives and prepared 147 news releases. These releases alerted reporters to new campaign finance data, illustrating the statistics in tables and graphs.

Publications

To mark its 20th anniversary, the FEC, in June 1995, issued the *Twenty Year Report.* The report was not so much a chronicle of the FEC's history as a current snapshot of the agency, exploring recent events, issues, trends and statistics related to campaign finance. The report covered the continuing debate over campaign finance reform and the growing costs of campaigning. It also analyzed key issues before the Commission, including soft money and express advocacy.

A completely revised edition of *Federal and State Campaign Finance Laws* explains rules on federal preemption of state laws and rules on supporting nonfederal and federal candidates.

During 1995, the Commission additionally published several documents to help committees, the

press and the general public find information about campaign finance.

The *Combined Federal/State Disclosure Directory 1995* directs researchers to federal and state offices that have information from reports on campaign finance, candidates' personal finances, lobbying, corporate registration and election results. The 1995 directory was made available on computer disks formatted for popular hardware and software.

The Commission also published a new edition of *Pacronyms*, an alphabetical list of acronyms, abbreviations, common names and locations of federal PACs. The publication lists PACs' connected, sponsoring or affiliated organizations and helps researchers identify PACs not readily identifiable in their reports and statements on file with the Commission.

Federal Elections 94: Election Results for the U.S. Senate and U.S. House of Representatives, a free publication, became the seventh in a series of reports on official results of House and Senate elections. The compilation lists the general election result for every House and Senate race and, for the first time, includes primary and runoff election results. The publication also contains maps showing, for example, Republican gains in the House by state and the makeup of the 1994 Senate class by candidate type (incumbent, challenger or open seat).

During 1995, the Commission also provided 11,755 free subscriptions to its award-winning monthly newsletter, the *Record.* The newsletter summarizes recent advisory opinions, litigation, changes in regulations, audit reports and compliance cases. It also includes graphs and charts on campaign finance statistics.

National Clearinghouse on Election Administration

The Clearinghouse responded to inquiries from state and local election officials, published research, answered questions from the public and briefed foreign delegations on the U.S. election process.

The office helped states implement the National Voter Registration Act of 1993 (NVRA), also known as the "motor voter" law. NVRA, which became effective in most states at the beginning of 1995, requires states to allow voters to register at state offices handling motor vehicle registration, state welfare and disability benefits and at armed forces recruiting offices. The Clearinghouse also submitted to Congress the required report on the impact of NVRA on the administration of federal elections and the measures states took to implement the law. [1]

Additionally, the Clearinghouse published the National Voter Registration Form as required by the law. Working with a contractor, the Clearinghouse translated the form into Vietnamese, Chinese, Japanese, Tagalog and Spanish in accordance with the minority language provisions of the Voting Rights Act. Staff also assisted various publishers and organizations who wished to include copies of the form in their publications or use them in voter registration drives. IDG Books, for example, inserted a copy of the national form in their recently released reference work, *Politics for Dummies.*

The Clearinghouse also released several other publications, including updates to the Ballot Access volumes for congressional candidates, Presidential candidates and political parties. Additionally, the Clearinghouse added three new titles to its *Innovations in Election Administration* series. The new volumes discussed ballot security and accountability, all-mail ballot elections and the electronic submission of election materials. Finally, the Clearinghouse published the 1995 edition of the *Election Directory.*

An agency-wide budget rescission of 5 percent affected research, education and outreach and forced the Clearinghouse to cancel its annual Advisory Panel meeting. Instead, it held a much smaller meeting in Washington, DC, for the purpose of discussing how the Clearinghouse might prioritize activities and become more efficient given budgetary constraints.

Finally, the Clearinghouse was FEC host for Shinji Hirai, deputy director of the office that administers Japanese elections. While at the FEC, he researched the administration of the U.S. electoral system.

[1] On January 22, 1996, the U.S. Supreme Court refused to hear a challenge to the constitutionality of NVRA from the State of California. California had appealed to the Supreme Court after the United States Circuit Court of Appeals for the 9th District upheld the law in *Wilson v. United States.*

Chapter Two Interpretation and Enforcement of the Law

One of the ways the Commission promotes voluntary compliance with the campaign finance law is by explaining and clarifying the law through regulations and advisory opinions. FEC regulations explain the law in detail, often incorporating conclusions reached in previous advisory opinions. Advisory opinions, in turn, explain how the statute and regulations apply to real-life situations. In 1995, for example, several advisory opinions dealt with questions concerning the new rules on the personal use of campaign funds.

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.

Regulations

During 1995, the Commission adopted new rules and revised existing regulations in four major areas. (Three other technical rulemakings were also adopted.) The rulemaking process generally begins when the Commission votes to seek public comment on proposed rules by publishing the rules in the Federal Register. The agency may also invite those making written comments to testify at a public hearing. The Commission considers all comments when deliberating on the final rules in open meetings. Once approved, the text of the final regulations and the explanation and justification are published in the Federal Register and sent to the U.S. House and Senate. The Commission publishes a notice of effective date after the final rules have been before Congress for 30 legislative days.

In 1995, the agency adopted a "direct final rule procedure"—a timesaving measure that allows the Commission to skip the "proposed" phase of a rulemaking and proceed directly to a "final rule with request for comments." The procedure is used when the Commission anticipates no adverse public comments. The agency used this shortcut in 1995 to repeal three obsolete regulations.

Rulemakings Completed in 1995

New and revised rules in the following areas became effective in 1995:

- Use of disclaimers (see page 17);
- New definition of express advocacy and qualified nonprofit corporations based on the Supreme Court's ruling in *Massachusetts Citizens for Life v. FEC (MCFL)* (see page 13);
- Personal use of excess campaign funds (see page 19);
- Regulations governing publicly funded Presidential campaigns (see page 28);
- Correcting amendments to regulations governing Presidential campaigns;
- Rules for the FEC Inspector General regarding the Privacy Act of 1974; and
- Repeal of obsolete regulations.

Other Rulemakings in Process

In addition to completing the above rules, the Commission also:

- Reached agreement on rules addressing election-related activities of corporations and labor organizations (see page 16); and
- Declined to initiate a rulemaking to address whether Presidential candidate receipts and disbursements regarding the Electoral College process are governed by the Act (see page 30).

Advisory Opinions

The Commission's advisory opinions clarify the law for people with questions about how the law applies to specific situations set forth in their advisory opinion requests. When the Commission receives such a request, it generally has 60 days to respond. The Office of General Counsel prepares a draft opinion, which the Commissioners discuss and vote upon during an open meeting. A draft opinion must receive at least four favorable votes to be approved.

The Commission issued 43 advisory opinions in 1995. Of that number, 9 dealt with membership issues, 8 dealt with application of new personal use rules and 5 dealt with issues related to using computers and other technology in campaign fundraising. Several 1995 advisory opinions are discussed in Chapter Three, "Legal Issues."

Enforcement

The Enforcement Process

Possible violations of the law are usually brought to the Commission's attention 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 complaint alleging violations and explaining the basis of the allegations. The third is the referral process—possible violations discovered by other agencies are referred to the Commission.

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

The General Counsel recommends whether there is "reason to believe" the respondents have committed a violation. If the Commission finds there is "reason to believe," it sends letters of notification to the respondents and investigates 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 and releases the information to the public.

Details of some enforcement cases released to the public are mentioned in Chapter Three, "Legal Issues."

Prioritization

The Commission continued during 1995 to use a comprehensive system of case management, called the "prioritization system," to focus its limited resources on more significant cases.

The Commission adopted the system in 1993 to manage a heavy caseload involving thousands of respondents and complex financial transactions. The Commission believed it would never have enough resources to pursue all enforcement matters, so it adopted formal criteria to decide which cases to pursue. Among those criteria are: the presence of knowing and willful intent, the apparent impact the alleged violation had on the electoral process, the amount of money involved, the age and timing of the violation, and whether a particular legal area needs special attention.

In 1995, the FEC focused on four areas of enforcement: corporate facilitation, earmarking schemes, failure to report transactions and campaign involvement in purported independent expenditures.

Civil Penalties

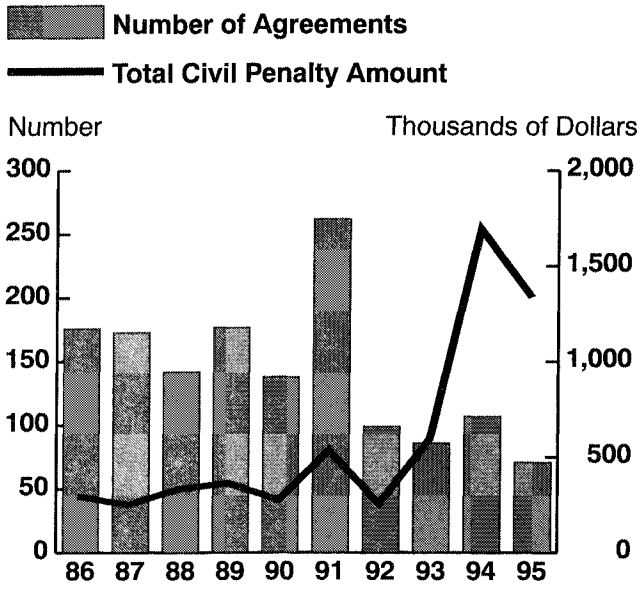
The Commission continued to impose high civil penalties for serious violations of the law. In 1995, penalties from conciliation agreements totaled $1,339,300.

The first graph in Chart 2-1 (page 11) compares civil penalties negotiated in 1995 conciliation agreements with those of previous years. In the second graph, the median of civil penalties negotiated in 1995 is compared with the median civil penalties of previous years.

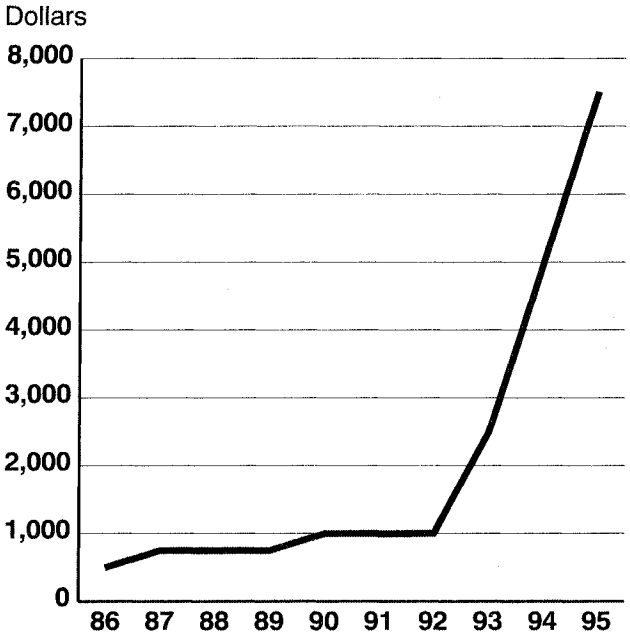
CHART 2-1

Enforcement Statistics

Conciliation Agreeements by Calendar Year



Median Civil Penalties by Calendar Year



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 1995 as it considered regulations, advisory opinions and enforcement actions.

Massachusetts Citizens for Life Rulemakings

On June 28, 1995, the Commission approved new rules, which were precipitated by the Supreme Court's decision in *FEC v. Massachusetts Citizens for Life, Inc. (MCFL).* 479 U.S. 238 (1986). In that decision, the Supreme Court ruled that communications must contain express advocacy[1] in order to be subject to the prohibition on corporate or union independent expenditures[2] at 2 U.S.C. §441b. The Court also ruled that the §441b prohibition impinged upon the First Amendment rights of certain nonprofit corporations formed to promote political ideas by precluding them from expressly advocating the election or defeat of clearly identified candidates through independent expenditures.

Subsequently, the Commission undertook a rulemaking to implement this decision. The rules update what constitutes "express advocacy" in a revised definition (11 CFR 100.22) and also exempt "qualified nonprofit corporations" from the ban on corporate independent expenditures (11 CFR 114.10). The new rules became effective on October 5, 1995.

In a second *MCFL* rulemaking approved in December 1995, the Commission modified the regulations on communications and other election-related activities by corporations and labor organizations to conform with *MCFL* and later court decisions.

Express Advocacy Regulations

Because, under *MCFL,* the definition of express advocacy is applied to a new category of communications, the Commission revised the definition of the term.[3]

In the 1976 landmark case, *Buckley v. Valeo,* the Supreme Court gave specific examples of words that constitute express advocacy, for example, "vote for," "elect," "support," "vote against," "defeat" and "reject." 424 U.S. 1, 44 n. 52 (1976). The FEC's revised definition of express advocacy (11 CFR 100.22) continues to treat this type of explicit wording as *per se* (automatic) express advocacy.

The FEC's definition also incorporates a 1986 court of appeals opinion on express advocacy, *FEC v. Furgatch,* by taking the approach that, in the absence

[1] "Express advocacy" refers to a communication that expressly advocates the election or defeat of a clearly identified candidate for federal office.

[2] Independent expenditures are expenditures made without coordination with a candidate's campaign for a communication which expressly advocates the election or defeat of a clearly identified candidate for federal office.

[3] Section 100.22 reads as follows:

Expressly advocating means any communication that—

(a) Uses phrases such as "vote for the President," "reelect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger for U.S. Senate in Georgia," "Smith for Congress," "Bill McKay in '94," "vote Pro-Life," or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Hickory," "defeat" accompanied by a picture of one or more candidates(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Nixon's the One," "Carter in '76," "Reagan/Bush" or "Mondale!"; or

(b) When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because—

(1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and

(2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.

of the *per se* words, express advocacy can be determined by viewing all elements of a communication collectively and, to a limited degree, in the context of external events. Express advocacy exists when a communication is found to contain a message that unmistakably urges the election or defeat of one or more clearly identified federal candidates. The focus, it should be noted, is on the audience's reasonable interpretation of the message and not on the sender's intent. For example, in the absence of *per se* advocacy language, a communication that comments on a candidate's character, qualifications or accomplishments may be considered express advocacy if, in context, it has no other reasonable meaning than to encourage the election or defeat of the candidate.

Express Advocacy Litigation

During 1995, the definition of express advocacy was also an issue in two court cases. One case challenged the new definition, while the other ended with a court decision emphasizing the importance of wording over the communication as a whole.

Maine Right to Life Committee v. FEC. The Maine Right to Life Committee (MRLC), a nonprofit membership corporation established for the purpose of advocating pro-life stances, asked the U.S. District Court, District of Maine, to declare part of the new express advocacy definition unconstitutional.

MRLC claimed that the express advocacy regulations conflicted with the Supreme Court's ruling in *Buckley v. Valeo.* Among other arguments, MRLC claimed that FEC regulations looked to the communication "as a whole" to determine the presence of express advocacy, while *Buckley* looked only to the presence of explicit "advocacy" wording. MRLC also contended that the regulations did not draw a distinct line between what the FEC would deem legal in a corporate communication, and what it would consider a prohibited corporate expenditure containing express advocacy, thus chilling free speech.

MRLC filed suit on November 22, 1995; the case was still pending at the end of 1995.[4]

FEC v. Christian Action Network. The U.S. District Court for the Western District of Virginia also relied on *Buckley* and subsequent court decisions in examining newspaper and television ads paid for by the Christian Action Network (CAN), a corporation. The ads, which were run during the weeks preceding the November 1992 Presidential election, focused on Presidential candidate Bill Clinton and Vice Presidential candidate Al Gore, using gay rights images to portray them negatively. The district court stated that courts since *Buckley* "have adopted a strict interpretation of the 'express advocacy' standard" and have generally been "disinclined to entertain arguments . . . that focus on anything other than the actual language used in an advertisement." Focusing on the words of the ads, the court found no explicit call for electoral action and, on June 28, 1995, ruled that the ads did not contain express advocacy, as the FEC had alleged.

The FEC had relied upon *FEC v. Furgatch* to argue that, in addition to wording, the timing and context of the ads had to be considered in determining the presence of express advocacy. The FEC had also relied upon the explicit imagery in the ads, and had argued that the ads had to be viewed collectively. Based on those considerations, the FEC had concluded that the ads contained express advocacy and that CAN had therefore violated the ban on corporate expenditures.

The court recognized the validity of *Furgatch* but determined that the *Furgatch* court had said that timing and context were peripheral to the words themselves and should be given limited weight when determining whether an ad contains express advocacy.[5]

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[4] On February 13, 1996, the U.S. District Court, District of Maine, granted the plaintiffs a declaratory judgment that paragraph (b) of the new express advocacy definition at 11 CFR 100.22 is beyond the Commission's statutory authority. The court agreed with the FEC that the regulations come from the *Furgatch* decision, but found that paragraph (b) of the Commission's definition was contrary to the express advocacy requirement set forth in *Buckley* and *MCFL*, as interpreted by the First Circuit in *Faucher v. FEC*.

[5] The FEC appealed this decision on August 25, 1995.

Regulations on Qualified Nonprofit Corporations

As previously explained, the Supreme Court's *MCFL* decision permits certain nonprofit corporations to make independent expenditures without violating the ban on corporate expenditures (2 U.S.C. §441b). The Court found that MCFL, a nonprofit corporation, had several characteristics that made it "more akin to voluntary political associations than business firms."

Under the new rules, which closely follow this decision and the 1990 Supreme Court decision in *Austin v. Michigan Chamber of Commerce* (494 U.S. 652, (1990)), a nonprofit corporation is qualified to make independent expenditures only if it meets all of the criteria described below. The corporation must be a social welfare organization under the Internal Revenue Code, whose only purpose is the promotion of political ideas. It may not engage in business activities, be established by a business corporation or labor union, or accept donations from such organizations. No shareholders or other affiliated persons may have a claim on the corporation's assets or earnings or receive some benefit that is a disincentive for them to disassociate themselves from the organization (for example, credit cards, insurance policies, savings plans, education or business information).

For reporting purposes, qualified nonprofit corporations are treated like individuals and must abide by the reporting requirements pertaining to independent expenditures in excess of $250[6] and by the disclaimer regulations pertaining to the making of all express advocacy communications through general public political advertising.

Additionally, the rules confer two new responsibilities on qualified nonprofit organizations. First, the corporation must certify on a report to the FEC that it meets the criteria for qualified nonprofit corporations upon making its first independent expenditure. Second, the corporation must include language in its solicitations informing donors that their contributions may be used for political purposes, including the support or opposition of federal candidates.

Litigation on Qualified Nonprofits

During 1995, the MCFL ruling on nonprofit organizations and the new regulations stemming from that decision were at issue in two court cases involving nonprofit, tax-exempt membership corporations advocating pro-life stances. In one case, a plaintiff corporation that did not meet the criteria for a "qualified nonprofit corporation" challenged the new regulations and maintained that they exceeded the agency's statutory authority. In the other case, an appeals court decision held that a corporation met the criteria for "qualified nonprofit corporation" even though it had no policy against accepting donations from business corporations.

Minnesota Citizens Concerned for Life, et al. v. FEC, et al. On December 13, 1995, plaintiffs asked the U.S. District Court for the District of Minnesota to find that the regulations which govern "qualified nonprofit corporations" exceeded the agency's statutory authority and violated MCCL's constitutional rights.

MCCL did not meet the criteria for qualifying as a qualified nonprofit corporation because it accepted corporate contributions, engaged in business activities, offered its members credit cards and was involved in charitable causes in addition to its promotion of pro-life stances. Consequently, MCCL claimed it could not make independent expenditures without the risk of entering into an enforcement matter with the FEC. MCCL maintained that the regulation infringed on its First Amendment rights because its restriction on speech was not narrowly tailored to serve the government's overriding interest—to safeguard against corruption in the electoral process.

MCCL also argued that two of the regulation's requirements exceeded the agency's authority and allegedly forced qualified nonprofit corporations to misrepresent themselves as political committees. The first is the requirement that nonprofit corporations making independent expenditures submit to the FEC a letter certifying that they meet the criteria for qualified nonprofit organizations. The second requirement is that the organization place disclaimers on solicita-

[6] In *MCFL*, the Supreme Court ruled that a qualified nonprofit organization that makes extensive independent expenditures may have adopted campaign activity as its major purpose, causing the corporation to become a political committee subject to further reporting requirements.

tions informing potential donors that their donations may be used for political purposes.

FEC v. Survival Education Fund. In this case, decided on September 12, 1995 (before the new rules became effective), the U.S. Court of Appeals for the Second Circuit held that SEF met the *MCFL* criteria and therefore was allowed to make independent expenditures even though it did not have a policy against accepting donations from business corporations and had in fact accepted such donations. The FEC had argued that such a policy was a required element under *MCFL*, but the appellate court said that the core concern of the *MCFL* court was the amount of corporate funding a nonprofit received rather than the existence of a policy against accepting such donations. The court concluded that it was enough that SEF did not receive a significant amount of business donations.

The *SEF* decision (Second Circuit) and the conclusion reached in *Day v. Holahan* (U.S. Court of Appeals for the Eighth Circuit) contradicted the position taken in FEC rules on the "no corporate donations" issue. However, the agency believed that its rules correctly interpreted the Supreme Court's decisions on nonprofit corporations in *MCFL* and *Austin v. Michigan State Chamber of Commerce,* which have national applicability. The agency did not believe that the *SEF* and *Day* opinions should dictate the FEC's interpretation of *MCFL* and *Austin* for the entire country.

Corporate and Labor Organization Communications and Facilities[7]

In December, the Commission sent to Congress new regulations on corporate and labor communications and the use of corporate/labor facilities and resources.[8] These new and revised rules, which represented the second part of the Commission's MCFL rulemaking, reflect recent judicial and Commission interpretations of 2 U.S.C. §441b. This section of the law prohibits corporations (including incorporated membership organizations) and labor organizations from using treasury funds to make contributions or expenditures in connection with federal elections.

The new rules modify FEC regulations in five significant ways:

- They substitute a new "express advocacy" standard for the partisan/nonpartisan standard that previously determined which communications must be limited to the restricted class[9];
- They offer specific examples of how this new standard would apply to communications by corporations and labor organizations;
- They clarify that coordination between a corporation (or labor organization) and a candidate generally results in an illegal contribution to the candidate;
- They provide guidelines on the permissible uses of corporate and labor facilities and resources for election-related activity; and
- They clarify that corporate and labor facilitation of contributions to candidates and committees is prohibited.

Application of New Standard. The new rules also specify how the "express advocacy" standard should be applied to various corporate and labor communications, including:

- Candidate appearances and speeches at corporate/labor events;
- Endorsements of candidates;
- Candidate appearances and speeches on college campuses;
- Candidate debates;
- Written political communications, including voter guides, voting records and press releases;
- Voter registration and get-out-the-vote drives; and
- Voting information.

Coordination with Candidate. A new provision in the revised rules addresses the topic of coordination between a candidate and the corporate or labor sponsor of an election-related communication. In some cases, coordination may result in an in-kind contribution.

[7] See Appendix 7 for a more detailed summary of the rules and a convenient summary chart.

[8] These rules became effective on March 13, 1996.

[9] The restricted class includes members of an incorporated membership organization or labor organization, stockholders, executive and administrative personnel, and the families of each group.

Permissible Use of Corporate and Labor Facilities. The new regulations reaffirm that, if a candidate or committee uses the facilities of a corporation or labor organization, the organization must be reimbursed within a commercially reasonable time.

Facilitation of Contributions. Additionally, the rules clarify that corporations and labor organizations are prohibited from facilitating contributions to candidates or political committees (other than the organization's separate segregated fund). Facilitation means using corporate or labor facilities or resources to raise funds in connection with any federal election.

Coordinated Party Expenditures

In 1995 litigation, the issue of express advocacy was raised again, this time as it related to party spending. National and state party committees may make special expenditures in connection with the general election campaigns of federal candidates. These coordinated party expenditures are governed by special limits in the statute. These expenditures are also called §441a(d) expenditures because they are provided for in 2 U.S.C. §441a(d).

In *FEC v. Colorado Republican Federal Campaign Committee,* a Colorado party committee sought to narrow the definition of coordinated expenditures, arguing that an expenditure had to expressly advocate the election or defeat of a candidate in order to count against the coordinated party expenditure limit for a party's nominee.

The U.S. Court of Appeals for the Tenth Circuit, however, concluded that express advocacy was not a defining feature of coordinated party expenditures. In making this determination on June 23, 1995, the court deferred to the Commission's interpretation of Section 441a(d) in AOs 1984-15 and 1985-14: An expenditure for a communication counts against a §441a(d) limit if it clearly identifies a candidate and conveys an electioneering message; the presence of express advocacy is not required.

The court of appeals also ruled that the Act's limitations on party spending do not violate the First Amendment rights of party committees.[10]

National Committee Status

The Commission addressed another party-related question in a 1995 advisory opinion: When does a group qualify as a "national party committee"? Under the Act, national party committees have a higher limit on contributions received than other committees and can support candidates by making coordinated party expenditures in addition to contributions. In AO 1995-16, the Commission said that placement of federal candidates on the ballot and party building activities were crucial components in obtaining national committee status. The Commission determined that the National Committee of the U.S. Taxpayers Party qualified as a national party committee under the Act because it had sufficiently done both.

The U.S. Taxpayers Party had previously sought national status in AO 1994-44. There, the Commission concluded that the Party had not yet reached a level of activity to qualify as a national committee. Since then, the Party had shown significant development. Most importantly, the Party had made progress in obtaining ballot access for non-Presidential candidates. Additionally, it had held a voter registration drive and several national committee meetings throughout the nation.

Disclaimers

December 20, 1995, was the effective date of revisions to the FEC disclaimer regulations (11 CFR 110.11). The Act requires a disclaimer on general public political advertising that expressly advocates the election or defeat of a candidate or that solicits contributions. The disclaimer must state who paid for the communication and, in most cases, whether it was authorized by any candidate. General public political advertising includes media such as television and

[10] The Supreme Court heard oral arguments in this case on April 15, 1996.

radio, newspapers, bill boards, yard signs and "direct mailings."

Changes prescribed by the final rules include a new definition of "direct mailing" as a mailing of more than 100 substantially similar pieces of mail, and clarification of the disclaimer requirements for coordinated party expenditures and exempt party activities. The new rules also set size and air time specifications for disclaimers in television ads, consistent with Federal Communications Commission rules.

Definition of Member

Under the Act, only "members" of an incorporated membership organization (and the organization's executive and administrative personnel and the families of both groups) may be solicited for contributions to the organization's separate segregated fund, commonly called a political action committee or PAC. Additionally, only these persons are allowed to receive the organization's communications which expressly advocate the election or defeat of candidates. In November 1993, the Commission prescribed new regulations specifying the criteria for qualifying as a member. 11 CFR 114.1(e). During 1995, these rules were the subject of litigation and advisory opinions.

To qualify as a member of a membership association under FEC rules, a member must:

- Pay regular dues and be entitled to vote for at least one member of the association's "highest governing body" or for those who choose at least one member of that body; or
- Have a significant financial attachment to the association in addition to the payment of dues; or
- Have the right to vote directly for all those on the association's highest governing board; or
- Have an organizational and financial attachment to the association that is significant enough to confer membership status, as determined by the Commission on a case-by-case basis.

Legal Challenge

The U.S. Court of Appeals for the District of Columbia, on November 14, 1995, found a portion of the membership rules unconstitutional in *Chamber of Commerce of the U.S.A., et al. v. FEC.*

The Chamber of Commerce and the American Medical Association (AMA) had filed suit against the Commission in 1994, claiming that the rules on the definition of member violated their constitutional rights of free speech and association by preventing them from sending partisan communications (candidate endorsements) to large segments of their memberships.

The U.S. District Court for the District of Columbia dismissed the case in 1994, ruling that the associations lacked standing to bring suit and that the regulations were within the Commission's discretion to construe the Act. Because the Commission had deadlocked on whether all the organizations' supporters were members, the court said that the regulations did not pose any threat of enforcement against the groups. For similar reasons, the court concluded that the matter was not ripe for review.

Reversing the district court's decision, the court of appeals found that the Chamber and the AMA did have standing to argue their case before the court for three reasons. First, the membership regulations had caused both the Chamber and the AMA harm by discouraging them from sending advocacy communications to those constituents who did not qualify as "members" under FEC rules. Second, there was a credible threat of enforcement if they had chosen to ignore the regulation. Third, even if the FEC had not voted to enforce the regulations against the organizations, their political competitors might have challenged the legality of their actions and the Commission's failure to pursue administrative complaints against them. Finally, there was a possibility that their First Amendment rights had been chilled by the FEC's regulations.

The court found that the FEC rules presented "serious constitutional difficulties" because they precluded "appellants from communicating on political subjects with thousands of persons, heretofore regarded by the Commission as members." In these circumstances, the Court stated, the FEC's interpretation of the FECA embodied in the new regulations was not entitled to deference.

At issue here, in the court's view, was whether the FEC's membership rules accorded with the Supreme

Court's opinion in *FEC v. National Right to Work Committee (NRWC).* 459 U.S. 197 (1982). There, the Court ruled that "members of nonstock corporations were to be defined . . . by analogy to stockholders of business corporations and members of labor unions . . . . [which] suggest[ed] that some relatively enduring and independently significant financial or organizational attachment is required . . . ."

The court of appeals concluded that the FEC's new rules did not square with the Supreme Court's opinion in NRWC: "[I]mplicit in the Commission's view is that dues, no matter how high, are not by themselves a manifestation of significant financial attachment." The court said that FEC rules interpreted the disjunctive "or" between "financial" and "organizational" as if the Supreme Court had used the conjunctive "and." The court also concluded that the voting requirements in the new membership rules "ignored other indications of organizational attachment."

The court noted that the membership rules treated some labor unions and federated rural electric cooperatives differently, exempting them from certain provisions of the new definition of "member." Not satisfied with the FEC's claim that the separate treatment was consistent with the Act's legislative history, the court stated that these exemptions made the regulation arbitrary and capricious.[11]

Advisory Opinions

Prior to the *Chamber of Commerce* decision, the Commission received several advisory opinion requests from persons seeking guidance on the definition of member. In two opinions, AOs 1995-13 and 1995-14, the Commission concluded that two incorporated associations could solicit members who paid dues and had sufficient voting rights but could not solicit members who lacked both dues obligations and voting rights. In AO 1995-14, the association's "life" and "retired" members could also be solicited because, even though they no longer paid dues, they had done so for many years in the past. "Life" and "retired" members also retained voting rights and therefore qualified as members under the case-by-case rule.

The Commission was unable, however, to reach a majority decision on whether members who paid dues and had certain participatory rights but no voting rights qualified as members under FEC rules. At issue was whether these members had a sufficient financial and organizational attachment to qualify as members even without voting rights.

Personal Use of Campaign Funds

New Regulations

The Federal Election Campaign Act prohibits the use of excess campaign funds to pay for personal expenses. 2 U.S.C. §439a. New rules, effective April 5, 1995, clarify what is meant by "personal use" of campaign funds The regulations differentiate campaign and officeholder expenses from unlawful personal use expenses.

Under 11 CFR 113.1(g), the personal use ban applies to expenses that would exist irrespective of the campaign or of officeholder duties. The regulations list specific expenses that are considered *per se* (or automatic) personal use expenses, not payable with campaign funds:

- Household food items and supplies;
- Funeral, cremation and burial expenses;
- Clothing;
- Tuition payments except for the training of campaign staff to perform campaign tasks;
- Mortgage, rent and utility payments including the candidate's personal residence, even if part of the residence is being used by the campaign;
- Entertainment, including admission to all events which are not part of a specific campaign or officeholder activity;
- Dues, fees and gratuities at a health club, country club or other nonpolitical organization; and
- Salary payments to the candidate's family, unless they are compensation for *bona fide* services to the campaign.

The new rules state that the Commission will address payments for legal services, meals, travel, vehicles and mixed-used expenses on a case-by-case basis.

[11] On March 1, 1996, the Court of Appeals declined to reconsider the *Chamber of Commerce* decision, *en banc* or otherwise.

Advisory Opinions

In several 1995 advisory opinions, the Commission determined how the new personal use rules applied to specific situations:

- A candidate could not use campaign funds to pay membership dues at a health club where he had regularly held campaign fundraising events during previous campaigns. The new rules specifically prohibit use of campaign funds for such dues unless they are part of the costs of a specific fundraising event. Payments to maintain unlimited access to such a facility—even when access is maintained to facilitate fundraising activity—are considered personal use expenses. AO 1995-26.
- An incumbent could use campaign funds to pay for an airline ticket for his 2-year-old son when traveling from Washington, DC, to his home district with his wife, who was also his campaign advisor. The child's expenses were campaign-related because they were necessitated by the campaign trips of the parents. AO 1995-20.
- A campaign's rental of office space and equipment from a candidate, his wife and his incorporated law firm would not constitute personal use if the property was rented at the fair market rate and if it was not the personal residence of the candidate or his family. AO 1995-8.
- House members could donate their excess campaign funds to commission an official portrait of a former committee chairman. This did not constitute personal use because the portrait was to be donated to the U.S. House of Representatives. The Act specifically permits making donations of excess funds to charitable organizations described in 26 U.S.C. §170(c). Section 107(c) considers the U. S. Government a charitable organization when a donation is exclusively for public purposes. AO 1995-18.
- A campaign's use of a $1,500 court award to pay the attorney who worked on the case was not personal use because the lawsuit arose from circumstances clearly attributable to the campaign. AO 1995-21.
- A Congressman could use campaign funds to pay the legal costs of a lawsuit brought against him by one of his opponents because the costs directly arose from his candidacy and campaign activity. AO 1995-23.

Major-Purpose Test

The Act defines a political committee as any group of persons that either receives contributions or makes expenditures exceeding $1,000 per year for the purpose of influencing a federal election. 2 U.S.C. §431(4). In interpreting this definition, the Commission has considered whether a group's major purpose is the nomination or election of candidates.

On September 29, 1995, the U.S. Court of Appeals for the District of Columbia, in *Akins et al. v. FEC,* affirmed that the FEC's use of a "major-purpose test" to narrow the definition of political committee was reasonable.

In 1989, James E. Akins and his colleagues had filed a complaint with the FEC alleging that the American Israel Public Affairs Committee (AIPAC), a nonprofit corporation, qualified as a political committee under the Federal Election Campaign Act (the Act) because AIPAC had made expenditures and contributions in excess of $1,000 a year for the purpose of influencing federal elections. Therefore, Mr. Akins had argued, AIPAC was subject to the Act's financial disclosure requirements.

After its investigation, the FEC had concluded that AIPAC did not qualify as a political committee because its campaign-related activities constituted only a small portion of its overall activities and were not its major purpose. Rather, the FEC determined that AIPAC was primarily a lobbying organization and was therefore not subject to the Act's requirements for political committees.

Mr. Akins challenged the legality of the major-purpose test in the U.S. District Court for the District of Columbia. In a 1994 decision, the court upheld the FEC's conclusions, ruling that the major-purpose standard was a valid interpretation of the Act. Mr. Akins and the other plaintiffs filed an appeal.

The court of appeals, in upholding the lower court decision, cited Supreme Court precedent *(Buckley v. Valeo)* for limiting the definition of political committee to groups whose major purpose was the nomination or election of a candidate.[12] Referring to the major-

[12] This decision was vacated on January 29, 1996, with an order granting a rehearing by the *en banc* court of appeals.

purpose test, the appeals court said: "Under this narrow interpretation, gleaned from case law, an organization is not a political committee unless, in addition to crossing the $1,000 threshold, it is under the control of a candidate or its major purpose is the nomination or election of a candidate. *Buckley*, 424 U.S. at 79 . . . . A more expansive definition would be constitutionally dangerous due to interference with 'fundamental First Amendment interests.'" *Buckley*, 424 U.S. at 23. (Another aspect of this case is discussed under "Prosecutorial Discretion," page 24.)

The major-purpose test was also central to an advisory opinion issued in 1995. The Commission, in AO 1995-11, determined that a limited liability company—a form of business distinct from a corporation or partnership—could make contributions in excess of $1,000 per year without triggering political committee status and attendant reporting obligations because influencing elections was not "a major purpose" of the company.[13]

Corporate Reimbursement Schemes

The Act prohibits a corporation from making a contribution in connection with the election of a candidate for federal office. 2 U.S.C. §441b. In addition, a corporation may not circumvent the corporate contribution prohibition by paying or reimbursing an individual for his or her contribution through a corporate bonus, expense account or other form of direct or indirect compensation. 11 CFR 114.5(b). Such devices are commonly referred to as corporate reimbursement schemes. In addition to violating the Act's prohibition against corporate contributions, these schemes also violate the Act's prohibition against making contributions in the name of another at 2 U.S.C. 441f. In such instances, the corporation makes a contribution in the name of the individual whose contribution it reimbursed.

Examples of corporate reimbursement schemes were brought to light in an enforcement case, MUR 3508. In that case, two corporations, through their officers and directors, reimbursed contributions made by employees and their spouses to a particular candidate. The reimbursements were made either through cash payments from a special fund or through year-end bonuses. The Commission determined that eight respondents had made knowing and willful violations of 2 U.S.C. §§441b and 441f, and subsequently approved two separate conciliation agreements totaling $157,000 in civil penalties on May 19, 1995.

In a separate matter, *FEC v. Williams,* decided on January 31, 1995, the U.S. District Court for the Central District of California ordered the defendant to pay $10,000 in civil penalties for making contributions in the names of others. Larry R. Williams, who was a fundraiser for a 1988 Presidential campaign, had reimbursed employees and friends for their $1,000 contributions to the candidate. The Commission reported the matter to the House Ethics Committee for apparent violation of House rules. It was the Commission's first-ever report to the committee. (Another aspect of the *Williams* case is discussed on page 23.)

Campaign Loans

Loans made to and by campaigns were at issue in two advisory opinions, one enforcement case and one court case during 1995.

The Act allows candidates to assume personal liability for repaying campaign loans they secure. Because FEC debt settlement procedures do not relieve candidates from this legal liability , the Commission ruled in AO 1995-7 that Key Bank of Alaska could pursue its claim against a 1992 House candidate who defaulted on a $40,573 loan from the bank. The Commission rejected the candidate's argument that regulations at 11 CFR 116.7 prevented him from repaying the loan until the Commission approved his committee's debt settlement plan. These regulations did not apply to this case, the Commission noted, because bank loans are not subject to the debt settlement process.

[13] The major-purpose test also figured prominently in another court opinion, handed down in early 1996. On February 28, 1996, the U.S. District Court for the District of Columbia denied the FEC's motion for summary judgment in *FEC v. GOPAC*, ruling that, under *Buckley v. Valeo*, a political committee's major purpose must be the nomination and election of a specific, identified federal candidate.

Under the Act, campaign committees are required to continuously report loans, including those secured by the candidate. The Commission ruled in AO 1994-35, also issued in 1995, that a 1992 House candidate committee was responsible for continuously reporting payments on a 30-year mortgage used by the candidate to repay a campaign loan. However, the Commission noted that the candidate might in the future seek relief from reporting obligations under FEC Directive 45, which establishes criteria for the administrative termination of an insolvent committee, at its own request or Commission initiative.

In MUR 3972, a Congressional campaign committee agreed to pay a $90,000 civil penalty for failing to report four loans totaling $26,500 and a $10,000 advance it had made to the candidate.[14] By omitting this loan activity from its reports, the committee had violated various requirements at 2 U.S.C. §434(b). The case had been referred to the FEC by the Justice Department's House Bank Task Force. The FEC, in turn, reported the matter to the House Ethics Committee. It was the first time the agency made such a report.

Earmarking

An earmarked contribution is one that a contributor gives to a conduit (such as a political committee) with a designation or instruction (express or implied) that the funds be forwarded to a candidate's committee or spent on his or her behalf. Earmarked contributions were the focus of a 1995 enforcement case, MUR 3620, and a court decision.

The MUR concerned a Democratic Senatorial Campaign Committee (DSCC) program which encouraged contributors to certain candidates to make additional contributions to the DSCC that were "tallied" for those candidates. The amount tallied for a given candidate was a significant factor in DSCC decisions on how much it would spend in coordinated party expenditures on behalf of that candidate.

The Commission believed that the tallied contributions were earmarked contributions and that the DSCC and three candidate committees had violated the earmarking provisions at 11 CFR 110.6. Specifically, the DSCC failed to transmit the contributions to the candidates' campaign within 10 days of receipt and failed to report the contributions as earmarked, while the candidate committees failed to report the receipt of the contributions. In a conciliation agreement signed in August 1995, the DSCC agreed to pay a $75,000 civil penalty for violating the law and to take measures to comply with the law in future tally programs.

In *FEC v. National Republican Senatorial Committee* (NRSC), the U.S. District Court for the District of Columbia found on June 12, 1995, that, in carrying out an earmarking program, NRSC had exceeded its contribution limits and failed to report the activity properly. The court case arose from a 1986 election earmarking scheme in which the NRSC, having exhausted its contribution and coordinated party expenditure limits, asked contributors to redesignate a portion of their NRSC contributions to the principal campaign committee of Republican Senate candidate Jim Santini.

Constitutionality of the Commission

During 1995, parties in two cases argued that past FEC enforcement and repayment decisions were invalid because the agency's structure was unconstitutional when the decisions were made.

These arguments were based on the Supreme Court's decision in *FEC v. National Rifle Association Victory Fund (NRA).* 115 S. Ct. 537 (Dec. 6, 1994). The late 1994 ruling curtailed the FEC's ability to bring cases before the Supreme Court and left standing an October 1993 appellate court ruling that the composition of the agency was unconstitutional. That court had ruled that the presence of the Clerk of the House and the Secretary of the Senate as *ex officio*, nonvoting members of the FEC—an independent agency with executive power—violated the Constitution's separation of powers doctrine. The court said that, because the FEC's composition was

[14] Since January 1993, all members of Congress have been prohibited from using campaign funds for any personal purpose. See page19 for discussion of the new personal use regulations.

unconstitutional, the agency could not pursue a case against the NRA Political Victory Fund. However, the Court also found that the provision for *ex officio* members could be severed from the remainder of the federal election law. Consequently, after that ruling, the Commission reconstituted itself as a six-member body, without the *ex officios,* and ratified past actions it had taken in enforcement cases (MURs) and audits. (See the *Annual Report 1993,* pages 3-4, and the *Annual Report 1994,* pages 3-4, for more details on the *NRA* court decisions.)

Robertson v. FEC

In one case, the campaign of 1988 Presidential candidate Marion (Pat) Robertson challenged an FEC determination that it repay federal matching funds. The campaign argued that FEC repayment proceedings were invalid because they took place when the agency's composition was unconstitutional.

On February 3, 1995, the U.S. Court of Appeals for the District of Columbia Circuit concluded that the Robertson campaign was estopped from challenging the constitutionality of the Commission's composition because he had already accepted $10 million in public funds authorized by the very Commission he now argued was unconstitutional. (For another aspect of the Robertson case, see also page 31 of Chapter Four, "Presidential Public Funding.")

FEC v. Williams

In another case, the U.S. District Court for the Central District of California rejected the defendant's argument that the presence of *ex-officio* members on the Commission rendered the agency's enforcement action against him unconstitutional. Disagreeing with the appellate court opinion in *NRA,* the district court, on January 31, 1995, ruled that the presence of the *ex officios* did not render the Commission's actions unconstitutional. The court based its ruling on the grounds that the *ex officios* did not "hold an 'Office Under the United States'" and could not vote on Commission actions. The court said that the *ex officios* merely exercised an advisory role.

The court also found, however, that even if the *ex-officios* had been unconstitutional, any defect in the case was corrected when the reconstituted Commission ratified its prior actions in this case.[15] This decision has been appealed to the U.S. Court of Appeals for the Ninth Circuit.

Five-Year Statute of Limitations

Certain legal proceedings for the enforcement of a civil fine or penalty must begin within five years from the date when the claim arose. 28 U.S.C. §2462. This statute does not apply, however, to those proceedings involving statutes in which Congress has specified another time limitation.

In *FEC v. National Republican Senate Committee (NRSC),* the U.S. District Court for the District of Columbia found that the five-year limit under Section 2462 applied to enforcement actions stemming from violations of the Federal Election Campaign Act. Accordingly, on February 24, 1995, the court held that the FEC was precluded from recovering monetary penalties from the NRSC for an alleged violation because the agency had filed the court case more than five years after the violations took place. The Court maintained, however, that Section 2462 did not apply to injunctive and declaratory relief.[16]

In *FEC v. Williams*, however, the district court rejected, without opinion, a motion to dismiss based on Section 2462. The case has been appealed to the U.S. District Court of Appeals for the Ninth District.

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[15] In a similar fashion, on February 16, 1996, the U.S. Court of Appeals for the District of Columbia overturned the district court's dismissal of *FEC v. Legi-Tech, Inc.*, ruling that the Commission's reconstitution as a constitutionally structured agency was valid.

[16] On February 15, 1996, another judge in the District Court for the District of Columbia dismissed *FEC v. National Right to Work Committee*, ruling that the five-year statute of limitations had expired in this case. This ruling, which conflicted in certain respects with that of the *NRSC* and *Williams* courts on how the statute applies to FEC actions, held that the statute of limitations precluded awarding injunctive relief as well as civil penalties.

Prosecutorial Discretion

In *Branstool, et al. v. FEC* and *Akins, et al. v. FEC,* courts upheld the FEC's prosecutorial discretion in investigating alleged violations of the law.

In *Branstool*, the U.S. District Court for the District of Columbia on April 4, 1995, sustained the Commission's dismissal of an administrative complaint filed by Eugene Branstool and others. They claimed that a PAC had coordinated with the 1988 Presidential campaign of George Bush in sponsoring a television ad critical of his opponent, Michael Dukakis. The alleged coordination would have negated the independence of the expenditures and consequently resulted in illegal contributions.

Following a limited investigation, the Commission lacked the four votes needed to support the General Counsel's recommendation that a full investigation be conducted. The Commission then voted to take no further action in the matter.

The court saw no reason to depart from the general policy of giving broad deference to agency prosecutorial decisions. It ruled that the factual conclusions underpinning the Commission's decision were "sufficiently reasonable" to warrant the court's deference.

In the second case, decided on September 29, 1995, the U.S. Court of Appeals for the District of Columbia Circuit determined that the FEC had conducted a fairly extensive inquiry into allegations made by James E. Akins and his colleagues, who had challenged the adequacy of the investigation. The court also ruled that the agency had arrived at a reasonable conclusion in the matter. This opinion was vacated when the court agreed to rehear the case *en banc*.

(In their complaint filed with the Commission, James E. Akins and his colleagues had alleged that a nonprofit corporation, the American Israel Public Affairs Committee (AIPAC), was a political committee subject to the Act's requirements. These allegations are discussed earlier under "Major-Purpose Test.")

Litigation vs. Legislation

In 1995 litigation, three courts said that sweeping changes to the public funding law must be accomplished through the legislative and executive branches of the government rather than through the judicial system.

In *Albanese et al. v. FEC,* plaintiffs sought to eliminate all private contributions and expenditures in all federal elections. They also attempted to enjoin incumbents' franking privileges and other benefits of officeholder status, arguing that they financially handicapped challengers and rendered the electoral system unconstitutional. Plaintiffs specifically challenged the constitutionality of the Federal Election Campaign Act, on the grounds that it authorized private contributions, as well as the statutes authorizing the franking privileges enjoyed by incumbents. On April 20, 1995, the U.S. District Court for the Eastern District of New York dismissed the case because plaintiffs lack standing to bring suit. The court also noted that addressing plaintiffs' grievance was outside its jurisdiction and that they had to seek relief through the legislative and executive branches of government. [17]

In *Froelich et al. v. FEC,* Francis E. Froelich and other individuals challenged the constitutionality of out-of-state contributions to a U.S. Senate campaign in Virginia, arguing that nonresident contributions created the appearance that an elected senator was answerable to nonresident contributors. The U.S. Court of Appeals for the Fourth Circuit, on June 14, 1995, affirmed the district court's decision to dismiss the case. The district court had ruled that the plaintiffs lacked standing to bring suit because their claims were too general. The lower court commented that if it were to uphold the claims, it would be making legislative policy and interfering with the legislative branch.

Out-of-state contributions withstood a third constitutional challenge. On October 26, 1995, the U.S. Court of Appeals for the Ninth Circuit affirmed the district court's decision to dismiss *Whitmore and Quinlan v. FEC*. The court found that even if the plaintiffs had been able to show they were injured by out-of-state contributions, those contributions resulted from the individual actions of private citizens, not from the Act. Plaintiffs have filed a petition for *certiorari* with the Supreme Court.

[17] The U.S. Court of Appeals for the Second Circuit affirmed this decision on March 12, 1996.

Federal Preemption

When the Federal Election Campaign Act and state law both regulate matters pertaining to the financing of federal elections, the Act takes precedence. Federal preemption was the issue in AO 1995-10, which addressed ownership of a federal campaign's records. The Commission ruled that the Act preempted North Carolina law with regard to this issue, determining that the financial records of the Helms for Senate Committee belonged to the committee, not to a former treasurer who refused to surrender the records. The Commission noted that, under the Act, only the committee and its duly designated treasurer had legal title and control over all of the committee's records, and that the Act preempted North Carolina law to the extent that the state law would grant ownership of campaign records to any person other than the committee and its treasurer.

Chapter Four
Presidential Public Funding

Public funds have financed every Presidential election since 1976. The Presidential Election Campaign Fund, composed of money from the $3 tax form checkoff, provides grants to qualified Presidential candidates for their primary and general campaigns and to parties for their Presidential nominating conventions. The Federal Election Commission administers the public funding program and certifies payments to qualified candidates and committees; the U.S. Treasury makes those payments.

Shortfall in Fund

A cash flow problem in the Presidential Election Campaign Fund caused by low reserves and record-breaking demand resulted in partial matching fund payments to Presidential primary candidates in early 1996.

The Fund's overall balance in January 1996 was $146.7 million—enough to cover the $37 million in first-round matching fund certifications to the 10 candidates participating in the program. However, the U.S. Treasury required that $124 million be set aside to cover the grants to general election candidates and the payments to party nominating conventions, leaving only $22.4 million available for matching funds at the start of 1996. The 10 matching fund candidates therefore received a pro rata amount—60 cents on the dollar—in January matching fund payments. The remaining entitlements were to be paid out to candidates during 1996 as the Fund was replenished with tax checkoff deposits. (See "Certification of Matching Funds" for the amounts certified and paid to the 1996 candidates.)

The required set aside was one of three factors causing the shortfall. The second was that the Fund had benefited from only two years of the tax checkoff increase from $1 to $3, which took effect in 1994—too late to replenish the Fund for the 1996 elections. The third factor was that many states held their primaries earlier than in the past, forcing campaigns to raise significantly more early money than in previous Presidential cycles. (For example, in the 1992 cycle, the first matching fund certifications to the eight participating candidates totaled $6.4 million, compared with the $37 million in first-round certifications to the 10 participating candidates in the 1996 cycle.)

The Commission expected that as the Treasury received tax returns and checkoff funds during 1996, it would have more than adequate receipts to fund all aspects of the Presidential elections.

Certification of Matching Funds

Presidential candidates eligible to participate in the matching fund program receive matching federal dollars for a portion of the contributions they raise. The federal government will match up to $250 per contributor, but only contributions from individuals qualify for matching. To establish eligibility, each candidate must submit copies of contributor checks and other documentation showing that he or she raised in excess of $5,000 in matchable contributions in each of at least 20 states (i.e., over $100,000). This threshold submission undergoes FEC review to determine whether the candidate has met the eligibility requirements. The candidate must also agree to comply with the law in a letter of agreement and certification.

Presidential candidates may establish their eligibility during the year before the election (i.e., in 1995 for the 1996 primaries) and, once eligible, may submit additional contributions for matching funds (called matching fund submissions) on specified dates.

Chart 4-1 lists the 1996 Presidential primary candidates who qualified for matching funds and the total amount of matching funds certified and actually paid to each as of January 1996.

CHART 4-1

Matching Fund Certifications and Payments, January 1996

Candidate*	Amount Certified (millions)	Amount Paid †
Lamar Alexander (R) ‡	$3.23	$1.93
Pat Buchanan (R)	$3.98	$2.38
Bill Clinton (D)	$9.01	$5.40
Bob Dole (R)	$9.27	$5.55
Phil Gramm (R) ‡	$6.65	$3.99
John Hagelin (NLP) **	$0.10	$0.06
Lyndon LaRouche (D)	$0.26	$0.16
Richard Lugar (R) ‡	$2.28	$1.36
Arlen Specter (R) ***	$0.99	$0.59
Pete Wilson (R) ****	$1.59	$0.95

* An additional candidate, Alan Keyes, was certified eligible in February 1996.

† Candidates received only 60 percent of their January payments due to a shortfall in the Fund. They received the remainder of their January certifications later in 1996.

‡ Senator Gramm, Senator Lugar and Governor Alexander withdrew from the race in February 1996.

** Natural Law Party.

*** Senator Specter withdrew from the race in November 1995.

**** Governor Wilson withdrew from the race in September 1995.

CD ROM Technology

Before certifying matching funds, the Commission reviews each submission to verify that the contributions qualify for matching funds and are properly documented. (The agency uses a statistical sampling technique to select contributions for review.) In 1995, CD ROM technology accelerated the review process for matching funds requests submitted on CD ROM disks by the Clinton and Dole campaigns. The disks contained images of the contribution checks submitted for matching funds and the other required documents.

The impetus for CD ROM submissions came from a formal request by the Dole campaign in March 1995. In July 1995, the campaign submitted its first CD ROM disk containing matching fund submissions. The campaign estimated that it would save $1 million by using this medium.

For the FEC, receiving submissions on CD ROMs shortened by two-thirds the time needed to verify the 1995 matching fund requests from the two participating campaigns. Time savings largely resulted from faster searches for particular contribution checks. A manual search through approximately 40,000 checks included in a typical monthly submission—some 20 boxes—could take longer than 30 minutes. Using CD ROMs, staff could access an image of a check in 3 seconds.

While submitting matching fund information on CD ROMs is voluntary, it is expected to become more popular with campaigns in future Presidential elections. The technology will vastly decrease the amount of paper that committees must submit and the agency must process. During the 1992 election cycle, the FEC accumulated 5 tons of paper records in processing $42 million in matching funds.

New Public Funding Regulations

Over the years, the Commission has developed and refined the regulations explaining the complicated requirements and procedures for public funding. After each Presidential cycle, the agency revises the regulations to clarify the law and address problems brought to light in the previous cycle. Revised rules for 1996 candidates became effective on August 16, 1995.[1] They are highlighted below.

Streamlined Audit Process

The public funding statutes require the FEC to audit each committee that receives public funds. The new rules streamline the audit process by eliminating the interim audit report, which should save time and money for both the Commission and participating committees.

Under the old rules, after completing fieldwork, FEC auditors would hold an exit conference to dis-

[1] Revisions to the public funding rules governing party nominating conventions became effective in August 1994 and are discussed on page 20 of *Annual Report 1994.* Technical and correcting amendments to these regulations were published in the Federal Register on November 16, 1995.

cuss preliminary findings with each committee. Those findings were later incorporated into an interim audit report. Later, after the campaign had responded to the interim report, the Commission would issue a final audit report containing an initial repayment determination. After reviewing responses to the final audit report, the agency would make a final determination.

The elimination of the interim audit report reduces the process to the following stages:

- An expanded exit conference with findings documented in a memo to the committee;
- An audit report that includes the Commission's repayment determination and constitutes notification for purposes of the three-year statute of limitations under 26 U.S.C. §9038);
- The opportunity for an FEC administrative review of the audit report, including, upon the committee's request, a public presentation with respect to specified repayment issues; and
- A post-review repayment determination accompanied by a Statement of Reasons.

General Election Legal and Compliance (GELAC) Funds

Revised Rules. A GELAC fund is a special account used by Presidential nominees of the major parties to pay legal and accounting expenses incurred solely to comply with the campaign finance law and to pay other specified expenses. While publicly funded nominees agree to limit their campaign spending to the amount of their grants, FEC regulations permit them to solicit and spend GELAC funds.

Under the revised regulations, solicitations for contributions to a GELAC fund must state that the committee may not pay campaign expenses with GELAC contributions and must instruct donors on how to designate a contribution to the GELAC fund. Only contributions clearly designated in writing for the GELAC fund may be deposited into a GELAC account.

The new rules also describe when a primary committee must secure redesignations from contributors before transferring the contributions to the GELAC fund. In all cases, the primary committee must settle its debts before making the transfer. Similarly, all GELAC expenses must be paid before GELAC monies may be used to retire primary election debts.

Finally, the new rules reduce from 70 to 50 the percentage of computer-related costs that may be paid with GELAC monies.

Rulemaking Petition. In revising the GELAC fund regulations, the Commission rejected a petition urging the repeal of those regulations. Filed by the Center for Responsive Politics (CFRP) in March 1994, the petition argued that GELAC funds should be banned because they allowed campaigns to evade the prohibition against private contributions and the limits on expenditures. CFRP further argued that the FEC lacked authority to create the regulations because GELAC funds were not provided for in the statute. In response, the Commission pointed out that the GELAC regulations were approved by Congress when they underwent legislative review in 1980. The agency also noted that Congress had never responded to subsequent FEC requests for clarifying legislation on compliance-related costs.

When the FEC rejected the rulemaking petition, the CFRP asked the U.S. Court of Appeals for the District of Columbia Circuit to overrule the Commission. On September 7, 1995, the court dismissed the case, ruling that the Center did not have standing to bring suit.

Paying General Election Expenses with Primary Funds

In past Presidential elections, the nominees sometimes had trouble determining whether an expense should be attributed to the primary or general election spending limits and, therefore, which funds—primary or general—should have been used to cover the expense. To solve this problem, the new regulations establish criteria to help distinguish between primary and general election expenses. For example, attribution of overhead and salary costs is based on the date of the candidate's nomination. Expenses incurred prior to that date are attributable to the primary limits while those incurred after are general election expenses. As another example, the production costs of advertising and other communications aired or pub-

lished both before and after the nomination date are split equally between the primary and general election limits.

Other Revisions

The new regulations address several other areas, including disgorgement of illegal contributions to the U.S. Treasury; reimbursement for use of government aircraft; documentation of disbursements; and submission of Statements of Net Outstanding Qualified Campaign Expenses (financial profiles of committee's finances). Most of the changes served to clarify the law and fine-tune certain provisions.

Rulemaking Petition on Electoral College Expenditures

The Commission decided on November 2, 1995, not to address a petition for rulemaking submitted by Anthony F. Essaye and William Josephson. Their petition asked the Commission to revise the public funding regulations to address campaign activity conducted after the Presidential general election and directed toward the electoral college or the U.S. House of Representatives in the event of an inconclusive general election vote.

Pointing out that the situation in question had not occurred during the history of the Act, the Commission found it difficult to anticipate all the potential issues that should be addressed in such a rulemaking. The better approach, the Commission maintained, was to deal with these issues on a case-by-case basis.

Repayment of Public Funds

Committees receiving matching funds are subject to an FEC audit to determine whether they must repay public funds to the Treasury. Public funds must be repaid if, for example, the campaign incurred nonqualified expenses, received more than its entitlement or had surplus funds remaining at the end of the campaign.

During 1995, the Commission issued final repayment determinations for several 1992 campaigns and conducted an investigation into alleged fraud by another. With respect to 1988 campaigns, the agency defended itself in litigation on the three-year statute of limitations that applies to repayment determinations.

Final Determinations: 1992 Campaigns

By the end of 1994, the Commission had completed audits of all of the 1992 Presidential campaigns and had issued 6 final repayment determinations. In 1995, the Commission essentially wrapped up the audit and repayment process by issuing final determinations for all the remaining campaigns except Dr. Lenora B. Fulani's primary campaign committee. The Commission authorized an investigation of the committee after receiving information alleging fraud.

Fulani Repayment

Based on a preliminary investigation[2] into Dr. Fulani's 1992 primary campaign, the Commission determined on August 3, 1995, that the campaign had to repay over $600,000. The investigation was based on allegations that Dr. Fulani's committee was involved in a fraudulent scheme to overpay a network of vendors used by her campaign manager and that the campaign reported salary payments and reimbursements to individuals who allegedly did not receive them.

The initial repayment determination included $381,172 in misspent matching funds, $98,096 in nonqualified campaign expenses and $133,289 received in excess of the candidate's entitlement.

At the end of 1995, the investigation was still ongoing. During 1996, the FEC will finish the investigation and issue a final repayment determination.[3]

Statute of Limitations

In 1995, the courts resolved repayment issues raised by candidates who received matching funds for

[2] In *Fulani v. FEC*, Dr. Fulani had asked the court to review the FEC's decision to conduct the investigation, but the U.S. District Court for the Southern District of New York on April 12, 1995, dismissed the case on procedural grounds.

[3] Dr. Fulani's committee challenged the Commission's initial repayment determination in a February 7, 1996, public hearing.

the 1988 Presidential primaries. The major issue was the timeliness of FEC repayment determinations.

Under the matching fund statute, the Commission has three years after a party nominates its Presidential nominee to notify the party's primary candidates of the amount they must repay the U.S. Treasury. 26 U.S.C. §9038(c). Three 1995 court cases addressed whether the Commission had missed the notification deadline.

Dukakis and Simon. In May 1995, the U.S. Court of Appeals for the District of Columbia Circuit ruled that two 1988 Democratic party candidates were not obligated to make public funding repayments totaling almost $1 million because the FEC had failed to notify them of the repayment amounts within the three-year deadline. The agency made the initial repayment determinations for the candidates in question—Governor Michael Dukakis and Senator Paul Simon—in December and October 1991, respectively, but the three-year statute of limitations had expired in July 1991 (three years after the July 1988 nomination of Governor Dukakis).

The FEC claimed that the interim audit report—issued, in both cases, within three years of the nomination date—was sufficient notice to satisfy the statute of limitations. The court disagreed because the preliminary repayment calculation included in the interim audit report did not purport to impose an obligation to repay the amount stated. The court found that the FEC was required to state that obligation within three years.

The court also dismissed the FEC's reliance on a 1991 amendment to its regulations, 11 CFR 9038.2(a)(2), which explicitly stated that the interim audit report constituted notification for purposes of the three-year statute of limitations. "[No] such administrative action by the Commission can override the plain mandate of the legislation," said the court. (The cited regulation was revised in 1995, when the Commission decided to eliminate the interim audit report from the process.)

Robertson. Marion (Pat) Robertson, a 1988 Republican Presidential candidate, also based his repayment challenge, in part, on the three-year statute of limitations. On February 3, 1995, however, the U.S. Court of Appeals for the District of Columbia Circuit upheld the Commission's decision that the Robertson campaign had raised the issue too late for consideration.

The Robertson campaign did not raise the three-year deadline issue until the public hearing on the initial repayment determination. The court found that the FEC was within its rights in enforcing its own procedures, which require campaigns to raise such issues earlier in the process.

Chapter Five
The Commission

Commissioners

During 1995, Danny L. McDonald served as Chairman of the Commission, and Lee Ann Elliott served as Vice Chairman of the Commission and Chairman of the Finance Committee.

In October, Trevor Potter resigned from the Commission after having served almost four years as a Commissioner. He gave up the post in order to teach at Oxford University in England. His departure left three openings on the Commission. The other two were caused by the expiration in April 1995 of the appointments of Commissioners Joan D. Aikens and John Warren McGarry. Under the law, however, Commissioners may continue to hold office until new appointments are made by the President and confirmed by the Senate. In the absence of new appointments, Commissioners Aikens and McGarry continued to serve.

On December 7, 1995, the Commission elected Ms. Elliott to be its 1996 Chairman and Mr. McGarry to be its 1996 Vice Chairman. For biographies of the Commissioners and statutory officers, see Appendix 1.

EEO and Special Programs

The Office of Equal Employment Opportunity and Special Programs assumed responsibility for several programs designed to improve employees' professional and personal lives. These programs included guest speakers and panel discussions addressing varied topics such as income tax return preparation, civil rights, cultural diversity training, communications skills, career advancement, domestic violence, personal financial management, weight management, support staff issues and sexual harassment. The EEO office also invited speakers as part of the agency's observance of cultural diversity and equal opportunity programs.

The agency's 1995 Combined Federal Campaign and U.S. Savings Bond Drive were managed by the EEO office.

The office, in its second year of operation, continued to help employees resolve issues informally by using the Early Intervention Program. As a result of this process, only one formal EEO complaint was filed during 1995.

Ethics

The Ethics staff trained managers and other staff on the rules and regulations concerning the payment of travel-related expenses for Federal employees by nonfederal sources. Ethics staff also submitted required reports with the Office of Government Ethics, including the annual agency ethics report, the financial disclosure reports filed by presidential and vice presidential candidates and semiannual travel payment reports.

Inspector General

The Commission's Office of the Inspector General (OIG) conducted audits and investigations of FEC programs to find waste, fraud and abuse. In 1995, OIG conducted a financial audit of the FEC's payroll system and a peer review of the inspector general's office at another agency.

New rules, which became effective in February 1995, protect OIG investigative files from access by individuals under investigation. The rules, which exempt those files from certain provisions of the Privacy Act of 1974, safeguard the office's enforcement of criminal and civil laws.

A peer review conducted by the National Labor Relations Board's Office of Inspector General found that the Commission's OIG had an effective quality control system and that its audits included appropriate assessments of compliance with applicable laws and internal controls.

Computer Upgrade

During 1995, the agency began switching from network-based computer terminals to personal computers. The project involved improving the agency's computer infrastructure so that it had adequate space to store both new documents and those created on the old network. Staff in the Staff Director's, General Counsel's, Inspector General's and Commissioners'

offices, equipped with 143 personal computers, enjoyed easy access to both groups of documents by the end of 1995. In 1996, the agency expected to install more personal computers.

The FEC's Budget

Heading into the 1995-96 Presidential election cycle, the FEC experienced a 5 percent rescission of its fiscal year 1995 budget and received an FY 1996 appropriation that was $2.5 million less than what the Office of Management and Budget (OMB) had recommended. Faced with a tight budget for the 1996 election cycle—when the agency expected an unprecedented level of campaign finance activity—the Commission recognized that it could not continue to operate as it had in previous fiscal years. Staffing shortages and program cuts would reduce the timeliness of some FEC services and eliminate others.

Fiscal Year 1995

The Commission's FY 1995 appropriation of $27.1 million was reduced to $25.7 million, a rescission of over $1.4 million (or 5 percent of the original appropriation). The budget cut was part of an overall $17.2 billion rescissions package that became effective July 1995. The rescission meant that the originally-approved full-time equivalent (FTE) staffing level of 327 had to be cut to 314.8 by the end of the year. Coming as late in the fiscal year as it did, the impact could have been devastating if the Commission had not anticipated the rescission by imposing spending restraints early in March, when it feared that its appropriation would be cut by as much as 10 percent. At that time, the FEC froze hiring and most nonpersonnel spending (e.g., travel, training, printing).

These measures reduced the impact of the rescission, but at a cost. Due to the hiring freeze, the agency lost ground in processing workloads and in implementing a computer enhancement program. To save funds, the agency also had to cancel a state outreach program designed to help candidates and committees understand and comply with the campaign finance law. The Clearinghouse on Election Administration was hardest hit by the funding cut—it had to postpone research projects, cut back National Voter Registration Act activities and cancel the annual Advisory Panel meeting.

The spending cuts allowed the agency to withstand the rescission. The Commission used some of the savings to fund critical programs, such as the computer enhancement program.

A multiyear project, the computer enhancement program was implemented to replace existing terminal-based equipment with a personal-computer-based system that would allow the agency to take fuller advantage of digital imaging and other new technologies. The project's objective is to accelerate responses to information requests from the public, streamline staff research and drafting, improve workload management and reduce copying and distribution of paper documents. The agency was able to devote $972,000 to its computer enhancement program. The FEC was also able to perform limited work on the electronic filing program. (See page 35 for more details).

Fiscal Year 1996

Because President Clinton and the Congress could not reach agreement on the federal budget for FY 1996, the FEC and all other government agencies began the fiscal year operating on a continuing resolution that funded agencies at FY 1995 levels. When that resolution expired on November 12, government employees were furloughed until November 18. While some agencies resumed operations by means of another continuing resolution and experienced yet another furlough in December, the FEC was among those agencies which received their FY 1996 appropriations in late November and thus were able to continue operating for the rest of the fiscal year.

The FEC's appropriation was enacted at $26.5 million, $2.5 million less than OMB had recommended and a nominal $800,000 above the agency's FY 1995 appropriation. Of the 26.5 million budgeted for the 1996 fiscal year, Congress mandated that $1.5 million be set aside for computer enhancements, electronic filing and point-of-entry costs. (See next section for more information).

With respect to other programs, the Commission had to change course by reducing planned staffing and other costs to stay within the appropriation. The agency planned to cut staff to 313 FTE (from the 321 FTE on board in December 1995 and from the 327 authorized before the 1995 rescission). Severe cuts were made to nonpersonnel expenses, such as training and outreach programs, as well.

Funding for Electronic Filing

Electronic filing was a major issue in FY 1996, especially with the passage of new legislation. Effective December 28, 1995, new legislation officially changed where House candidates file their reports and directed the FEC to make electronic filing an option for committees for reporting periods that begin in 1997. (See page 3 for more information.)

The House Appropriations and Authorization Committees first encouraged the FEC to seek adequate funding for electronic filing and the computer upgrade in the spring of 1993. That fall, the agency asked for additional funds in its FY 1995 budget request. Because actual 1995 funding was below the FEC's original request, the agency focused its FY 1995 efforts on the computer system upgrade.

The FEC again requested funding for electronic filing in its FY 1996 budget request and received $1.5 million earmarked for both electronic filing and an agency-wide computer upgrade in the final 1996 appropriation. Congress also directed the agency to hire an independent contractor to analyze the requirements and cost benefits of electronic filing and the agency's computer system upgrade. In December 1995, the contractor provided detailed technical guidance for beginning effective electronic filing at the FEC, and recommended several enhancements in the agency's ADP capability.

Impact of Budget Constraints on FEC Operations

Given the experience of the 1992 and 1994 election cycles—recordbreaking levels of campaign finance activity coupled with static or marginally increased staffing levels in most divisions—the Commission expected that its processing of the 1996 election cycle workload could be seriously hampered by inadequate resources.

During the 1992 election cycle, the FEC lost ground in processing campaign finance activity compared with the two previous cycles (1988 and 1990). The sheer volume of activity swamped FEC resources despite gains in productivity. That trend continued early in the 1994 cycle, when a backlog of remaining 1992 cycle activity still had to be processed. Later in the 1994 cycle, however, the agency regained lost ground due to greater productivity and small increases in disclosure and informational staff.

The agency had hoped to maintain or, in some cases, increase staffing levels to keep pace with the record level of activity projected for the 1996 Presidential and Congressional races. Instead, due to the FY 1995 rescission and the reduced FY 1996 appropriation, the agency had to reduce planned staffing and program costs.

As a result, the agency anticipated backlogs and delays in review of reports, coding and entry of campaign finance data into the FEC's database, responses to public requests for data and enforcement of the law. With respect to educational programs, the agency expected that there would be delays in responding to public inquiries on the law and orders for publications. Additionally, because printing costs were cut, some educational publications would not be available.

Budget Allocation: FYs 1995 and 1996

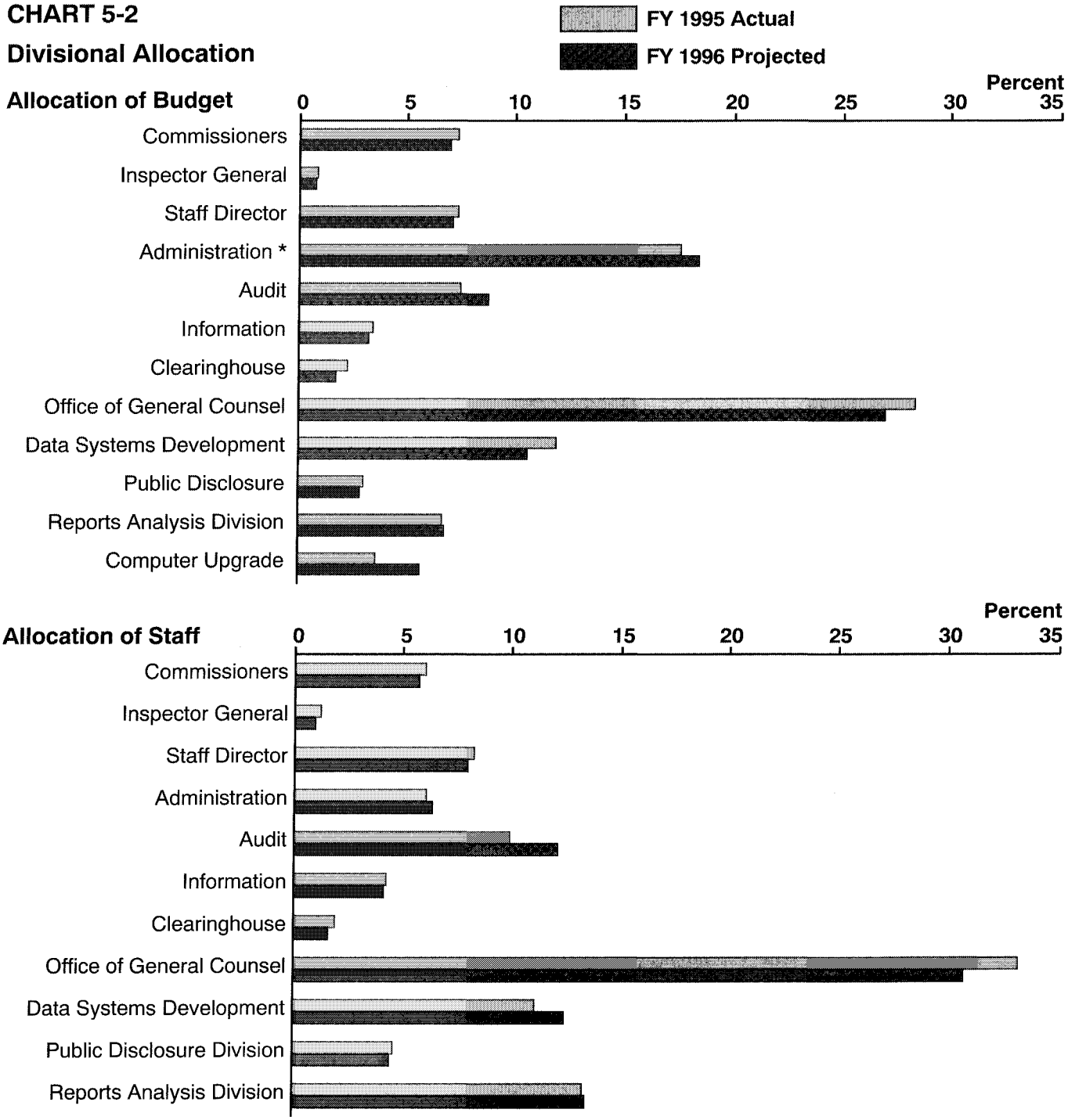
Budget allocation comparisons for FYs 1995 and 1996 appear in the table and charts that follow.

CHART 5-1
Functional Allocation of Budget

	FY 1995	FY 1996
Personnel	$18,495,303	$19,180,500
Travel/Transportation	285,992	367,500
Space Rental	2,295,469	2,660,000
Phones/Postage	487,931	479,000
Printing	398,261	291,100
Training/Tuition	99,397	64,900
Contracts/Services	983,615	976,400
Maintenance/Repairs	373,251	329,500
Software/Hardware	339,386	336,000
Federal Agency Service	270,697	271,000
Supplies	456,880	224,000
Publications	253,623	246,100
Equipment Purchases	888,678	1,095,000
Total	**$25,628,483**	**$26,521,000**

CHART 5-2

Divisional Allocation



* The Administrative Division pays for agency-wide housekeeping expenses such as telephones, photocopies and office supplies.

Chapter Six Legislative Recommendations

On April 4, 1996, the Commission submitted 50 legislative recommendations to the President and Congress in a three-part package. The first part, entitled "Legislative Recommendations to Improve the Efficiency and Effectiveness of Current Law," contained 18 administrative recommendations designed to ease the burden on political committees and streamline the administration of current law. The second part, "General Legislative Recommendations," contained 23 recommendations concerning areas of the law which have been problematic. In each case, the Commission described the problem and asked Congress to consider clarification or more comprehensive reform of the law.

Finally, the third part, "Conforming Legislative Recommendations," contained 9 additional recommendations that seek to correct outdated or inconsistent portions of the law.

The complete set of recommendations follows. As in the past, each recommendation is followed by an explanation of the need for and expected benefits from the change. Parenthetical references to 1996 indicate new recommendations or recommendations that were revised in 1996.

Part I Legislative Recommendations to Improve Efficiency and Effectiveness of Current Law

Disclosure

Waiver Authority (revised 1996)
***Section:* 2 U.S.C. §434**

Recommendation: The Commission recommends that Congress give the Commission the authority to adjust the filing requirements or to grant general waivers or exemptions from the reporting requirements of the Act.

Explanation: In cases where reporting requirements are excessive or unnecessary, it would be helpful if the Commission had authority to suspend the reporting requirements of the Act. For example, the Commission has encountered several problems relating to the reporting requirements of authorized committees whose respective candidates were not on the election ballot. The Commission had to consider whether the election-year reporting requirements were fully applicable to candidate committees operating under one of the following circumstances:

- The candidate withdraws from nomination prior to having his or her name placed on the ballot.
- The candidate loses the primary and therefore is not on the general election ballot.
- The candidate is unchallenged and his or her name does not appear on the election ballot.

Unauthorized committees also face unnecessary reporting requirements. For example, the Act requires monthly filers to file Monthly reports on the 20th day of each month. If sent by certified mail, the report must be postmarked by the 20th day of the month. The Act also requires monthly filers to file a Pre-General election report 12 days before the general election. If sent by certified or registered mail, the Pre-General report must be postmarked by the 15th day before the election. As a result of these specific due dates mandated by the law, the 1996 October Monthly report, covering September, must be postmarked October 20. Meanwhile the 1996 Pre-General report, covering October 1 -16, must be postmarked October 21, one day after the October Monthly. A waiver authority would enable the Commission to eliminate the requirement to file the monthly report, as long as the committee includes the activity in the Pre-General Election Report and files the report on time. The same disclosure would be available before the election, but the committee would only have to file one of the two reports.

In other situations, disclosure would be served if the Commission had the authority to adjust the filing requirements, as is currently allowed for special elections. For example, runoff elections are often scheduled shortly after the primary election. In many instances, the close of books for the runoff pre-election report is the day after the primary—the same day that candidates find out if there is to be a runoff and who will participate. When this occurs, the 12-day pre-election report discloses almost no runoff activity. In

such a situation, the Commission should have the authority to adjust the filing requirements to allow for a 7-day pre-election report (as opposed to a 12-day report), which would provide more relevant disclosure to the public.

Granting the Commission the authority to waive reports or adjust the reporting requirements would reduce needlessly burdensome disclosure demands.

Campaign-Cycle Reporting
Section: 2 U.S.C. §434

Recommendation: The Commission recommends that Congress revise the law to require authorized candidate committees to report on a campaign-to-date basis, rather than a calendar year cycle, as is now required.

Explanation: Under the current law, authorized committees must track contributions received in two different ways. First, to comply with the law's reporting requirements, the committee must track donations on a calendar year basis. Second, to comply with the law's contribution limits, the committee must track contributors' donations on a per-election basis. Simplifying the law's reporting requirement to allow reporting on a campaign-to-date basis would make the law's recordkeeping requirements less burdensome to committees. (Likewise, the Commission recommends that contribution limits be placed on a campaign-cycle basis as well. See the recommendation entitled "Election Period Limitations.")

This change would also benefit public disclosure of campaign finance activity. Currently, contributions from an individual are itemized only if the individual donates more than $200 in the aggregate during a calendar year. Likewise, disbursements are itemized only if payments to a specific payee aggregate in excess of $200 during a calendar year. Requiring itemization once contributions from an individual or disbursements to a payee aggregate in excess of $200 during the campaign would capture information of interest to the public that is currently not available. Moreover, to determine the actual campaign finance activity of a committee, reporters and researchers must compile the total figures from several year-end reports. In the case of Senate campaigns, which may extend over a six-year period, this change would be particularly helpful.

Monthly Reporting for Congressional Candidates
Section: 2 U.S.C. §434(a)(2)

Recommendation: The Commission recommends that the principal campaign committee of a Congressional candidate have the option of filing monthly reports in lieu of quarterly reports.

Explanation: Political committees, other than principal campaign committees, may choose under the Act to file either monthly or quarterly reports during an election year. Committees choose the monthly option when they have a high volume of activity. Under those circumstances, accounting and reporting are easier on a monthly basis because fewer transactions have taken place during that time. Consequently, the committee's reports will be more accurate.

Principal campaign committees can also have a large volume of receipts and expenditures. This is particularly true with Senatorial campaigns. These committees should be able to choose a more frequent filing schedule so that their reporting covers less activity and is easier to do.

Reporting Deadlines for Semiannual, Year-End and Monthly Filers
Section: 2 U.S.C. §§434(a)(3)(B) and (4)(A) and (B)

Recommendation: The Commission recommends that Congress change the reporting deadline for all semiannual, year-end and monthly filers to 15 days after the close of books for the report.

Explanation: Committees are often confused because the filing dates vary from report to report. Depending on the type of committee and whether it is an election year, the filing date for a report may fall on the 15th, 20th or 31st of the month. Congress should require that monthly, quarterly, semiannual and year-end reports are due 15 days after the close of books of each report. In addition to simplifying reporting procedures, this change would provide for more timely dis-

closure, particularly in an election year. In light of the increased use of computerized recordkeeping by political committees, imposing a filing deadline of the fifteenth of the month would not be unduly burdensome.

Commission as Sole Point of Entry for Disclosure Documents (revised 1996)
Section: 2 U.S.C. §432(g)

Recommendation: The Commission recommends that it be the sole point of entry for all disclosure documents filed by federal candidates and political committees. This would affect Senate candidate committees only. Under current law, those committees alone file their reports with the Secretary of the Senate, who then forwards microfilmed copies to the FEC.

Explanation: The Commission has offered this recommendation for many years. Congress recently passed Public Law 104-79, effective December 28, 1995, which changed the point of entry for reports filed by House candidates from the Clerk of the House to the FEC. However, Senate candidates still must file their reports with the Secretary of the Senate, who then forwards the copies on to the FEC. A single point of entry is desirable because it would conserve government resources and promote public disclosure of campaign finance information.

For example, Senate candidates sometimes file reports mistakenly with the FEC, rather than with the Secretary of the Senate. Consequently, the FEC must ship the reports back to the Senate. Disclosure to the public is delayed and government resources are wasted.

Public Law 104-79 eliminates the requirements for a candidate to file copies of FEC reports with his or her State, provided that the State has electronic access to reports and statements filed with the FEC. In order to eliminate the State filing requirement for Senate candidates, it would be necessary for a State to have electronic access to reports filed with the Secretary of the Senate, as well as to reports filed with the Federal Election Commission. In other words, unless the FEC becomes the point of entry for reports filed by Senate candidates, either the States will need to have the technological and financial capability to link up electronically with two different federal offices, or Senate candidates must continue to file copies of their reports with the State.

We also reiterate here the statement we have made in previous years because it remains valid. A single point of entry for all disclosure documents filed by political committees would eliminate any confusion about where candidates and committees are to file their reports. It would assist committee treasurers by having one office where they would file reports, address correspondence and ask questions. At present, conflicts may arise when more than one office sends out materials, makes requests for additional information and answers questions relating to the interpretation of the law. A single point of entry would also reduce the costs to the federal government of maintaining two different offices, especially in the areas of personnel, equipment and data processing.

The Commission has authority to prepare and publish lists of nonfilers. It is extremely difficult to ascertain who has and who has not filed when reports may have been filed at or are in transit between two different offices. Separate points of entry also make it difficult for the Commission to track responses to compliance notices. Many responses and/or amendments may not be received by the Commission in a timely manner, even though they were sent on time by the candidate or committee. The delay in transmittal between two offices sometimes leads the Commission to believe that candidates and committees are not in compliance. A single point of entry would eliminate this confusion.

Finally, the Commission notes that the report of the Institute of Politics of the John F. Kennedy School of Government at Harvard University, *An Analysis of the Impact of the Federal Election Campaign Act, 1972-78,* prepared for the House Administration Committee, recommended that all reports be filed directly with the Commission (Committee Print, 96th Cong., 1st Sess., at 122 (1979)).

Facsimile Machines
Section: 2 U.S.C. §434(b)(6)(B)(iii) and (c)(2)

Recommendation: The Commission recommends that Congress modify the Act to provide for the acceptance and admissibility of 24-hour notices of independent expenditures via telephone facsimiles.

Explanation: Independent expenditures that are made between 20 days and 24 hours before an election must be reported within 24 hours. The Act requires that a last-minute independent expenditure report must include a certification, under penalty of perjury, stating whether the expenditure was made "in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such committee." This requirement appears to foreclose the option of using a facsimile machine to file the report. The next report the committee files, however, which covers the reporting period when the expenditure was made, must also include the certification, stating the same information. Given the time constraint for filing the report, the requirement to include the certification on the subsequent report, and the availability of modern technology that would facilitate such a filing, Congress should consider allowing such filings via telephonically transmitted facsimiles ("fax" machines). This could be accomplished by allowing the committee to fax a copy of the schedule disclosing the independent expenditure and the certification. The original schedule would be filed with the next report. Acceptance of such a filing method would facilitate timely disclosure and simplify the process for the filer.

State Filing for Presidential Candidate Committees
Section: 2 U.S.C. §439

Recommendation: The Commission recommends that Congress consider clarifying the state filing provisions for Presidential candidate committees to specify which particular parts of the reports filed by such committees with the FEC should also be filed with states in which the committees make expenditures. Consideration should be given to both the benefits and the costs of state disclosure.

Explanation: Both states and committees have inquired about the specific requirements for Presidential candidate committees when filing reports with the states. The statute requires that a copy of the FEC reports shall be filed with all states in which a Presidential candidate committee makes expenditures. The question has arisen as to whether the full report should be filed with the state, or only those portions that disclose financial transactions in the state where the report is filed.

The Commission has considered two alternative solutions. The first alternative is to have Presidential candidate committees file, with each state in which they have made expenditures, a copy of the entire report filed with the FEC. This alternative enables local citizens to examine complete reports filed by candidates campaigning in a state. It also avoids reporting dilemmas for candidates whose expenditures in one state might influence a primary election in another.

The second alternative is to require that reports filed with the states contain all summary pages and only those receipts and disbursements schedules that show transactions pertaining to the state in which a report is filed. This alternative would reduce filing and storage burdens on Presidential candidate committees and states. It would also make state filing requirements for Presidential candidate committees similar to those for unauthorized political committees. Under this approach, any person still interested in obtaining copies of a full report could do so by contacting the Public Disclosure Division of the FEC.

Contributions and Expenditures

Election Period Limitations for Contributions to Candidates
Section: 2 U.S.C. §441a

Recommendation: The Commission recommends that limits on contributions to candidates be placed on an

election cycle basis, rather than the current per election basis.

Explanation: The contribution limitations affecting contributions to candidates are structured on a "per election" basis, thus necessitating dual bookkeeping or the adoption of some other method to distinguish between primary and general election contributions. The Commission has had to adopt several rules to clarify which contributions are attributable to which election and to assure that contributions are reported and used for the proper election. Many enforcement cases have been generated where contributors' donations are excessive *vis-a-vis* a particular election, but not *vis-a-vis* the $2,000 total that could have been contributed for the cycle. Often this is due to donors' failure to fully document which election was intended. Sometimes the apparent "excessives" for a particular election turn out to be simple reporting errors where the wrong box was checked on the reporting form. Yet, substantial resources must be devoted to examination of each transaction to determine which election is applicable. Further, several enforcement cases have been generated based on the use of general election contributions for primary election expenses or *vice versa.*

Most of these complications would be eliminated with adoption of a simple "per cycle" contribution limit. Thus, multicandidate committees could give up to $10,000 and all other persons could give up to $2,000 to an authorized committee at any point during the election cycle. The Commission and committees could get out of the business of determining whether contributions are properly attributable to a particular election, and the difficulty of assuring that particular contributions are used for a particular election could be eliminated.

It would be advisable to clarify that if a candidate has to participate in more than two elections (e.g., in a post-primary runoff as well as a primary and general), the campaign cycle limit would be $3,000. In addition, because at the Presidential level candidates might opt to take public funding in the general election and thereby be precluded from accepting contributions, the $1,000/5,000 "per election" contribution limits should be retained for Presidential candidates.

A campaign cycle contribution limit may allow donors to target more than $1,000 toward a particular primary or general election, but this would be tempered by the tendency of campaigns to plan their fundraising and manage their resources so as not to be left without fundraising capability at a crucial time.

Application of $25,000 Annual Limit
Section: 2 U.S.C. §441a(a)(3)

Recommendation: The Commission recommends that Congress consider modifying the provision that limits individual contributions to $25,000 per calendar year so that an individual's contributions count against his or her annual limit for the year in which they are made.

Explanation: Section 441a(a)(3) now provides that a contribution to a candidate made in a nonelection year counts against the individual donor's limit for the year in which the candidate's election is held. This provision has led to some confusion among contributors. For example, a contributor wishing to support Candidate Smith in an election year contributes to her in November of the year before the election. The contributor assumes that the contribution counts against his limit for the year in which he contributed. Unaware that the contribution actually counts against the year in which Candidate Smith's election is held, the contributor makes other contributions during the election year and inadvertently exceeds his $25,000 limit. By requiring contributions to count against the limit of the calendar year in which the donor contributes, confusion would be eliminated and fewer contributors would inadvertently violate the law. The change would offer the added advantage of enabling the Commission to better monitor the annual limit. Through the use of our data base, we could more easily monitor contributions made by one individual regardless of whether they were given to retire the debt of a candidate's previous campaign, to support an upcoming election (two, four or six years in the future) or to support a PAC or party committee. Such an amendment would not alter the per candidate, per election

limits. Nor would it affect the total amount that any individual could contribute in connection with federal elections.

Certification of Voting Age Population Figures and Cost-of-Living Adjustment
Section: 2 U.S.C. §441a(c) and (e)

Recommendation: The Commission recommends that Congress consider removing the requirement that the Secretary of Commerce certify to the Commission the voting age population of each Congressional district. At the same time, Congress should establish a deadline of February 15 for supplying the Commission with the remaining information concerning the voting age population for the nation as a whole and for each state. In addition, the same deadline should apply to the Secretary of Labor, who is required under the Act to provide the Commission with figures on the annual adjustment to the cost-of-living index.

Explanation: In order for the Commission to compute the coordinated party expenditure limits and the state-by-state expenditure limits for Presidential candidates, the Secretary of Commerce certifies the voting age population of the United States and of each state. 2 U.S.C. §441a(e). The certification for each Congressional district, also required under this provision, is not needed.

In addition, under 2 U.S.C. §441a(c), the Secretary of Labor is required to certify the annual adjustment in the cost-of-living index. In both instances, the timely receipt of these figures would enable the Commission to inform political committees of their spending limits early in the campaign cycle. Under present circumstances, where no deadline exists, the Commission has sometimes been unable to release the spending limit figures before June.

Enforcement

Ensuring Independent Authority of FEC in All Litigation (revised 1996)
Section: 2 U.S.C. §§437c(f)(4) and 437g

Recommendation: Congress has granted the Commission authority to conduct its own litigation independent of the Department of Justice. This independence is an important component of the statutory structure designed to ensure nonpartisan administration and enforcement of the campaign financing statutes. The Commission recommends that Congress make the following four clarifications that would help solidify the statutory structure:

1. Congress should clarify that the Commission is explicitly authorized to petition the Supreme Court for *certiorari* under Title 2, i.e., to conduct its Supreme Court litigation.
2. Congress should amend the Act to specify that local counsel rules (requiring district court litigants to be represented by counsel located within the district) cannot be applied to the Commission.
3. Congress should give the Commission explicit authorization to appear as an *amicus curiae* in cases that affect the administration of the Act, but do not arise under it.
4. Congress should require the United States Marshal's Service to serve process, including summonses and complaints, on behalf of and at no expense to the Federal Election Commission.

Explanation: The first recommendation states explicitly that the Commission is authorized to petition the Supreme Court for a writ of *certiorari* in cases relating to the Commission's administration of Title 2 and to independently conduct its Supreme Court litigation under that Title. The Commission explicitly has this authority under Title 26 and had a long-standing practice of doing so under Title 2, until the Supreme Court ruled that Title 2 does not grant the Commission such authority. See *FEC v. NRA Political Victory Fund, cert. dismissed for want of jurisdiction,* 115 S.Ct. 537 (December 6, 1994). Under this ruling, the Commission must now obtain permission from the Solicitor General before seeking *certiorari* in a Title 2 case.

The Solicitor General may decline to authorize this action in cases where the Commission believes Supreme Court review is advisable. Even where acting in accordance with the Commission's recommendation to seek *certiorari* in a given case, the Solicitor General would still control the position taken in the case and the arguments made on behalf of the Commission. This transfer of the Commission's Supreme Court litigation authority to the Solicitor General, who is an appointee of and subject to removal by the President, misconstrues Congressional intent in establishing the Commission as a bipartisan and independent civil enforcement agency. Pertinent provisions of Title 2 should be revised to clearly state the Commission's exclusive and independent authority on all aspects of Supreme Court litigation in all cases it has litigated in the lower courts.

With regard to the second of these recommendations, most district courts have rules requiring that all litigants be represented by counsel located within the district. The Commission, which conducts all of its litigation nationwide from its offices in Washington, D.C., is unable to comply with those rules without compromising its independence by engaging the local United States Attorney to assist in representing it in courts outside of Washington, D.C. Although most judges have been willing to waive applying these local counsel rules to the Commission, some have insisted that the Commission obtain local representation. An amendment to the statute specifying that such local counsel rules cannot be applied to the Commission would eliminate this problem.

Concerning the third recommendation, the FECA explicitly authorizes the Commission to "appear in and defend against any action instituted under this Act," 2 U.S.C. §437c(f)(4), and to "initiate...defend...or appeal any civil action...to enforce the provisions of this Act and chapter 95 and chapter 96 of title 26," 2 U.S.C. §437d(a)(6). These provisions do not explicitly cover instances in which the Commission appears as an *amicus curiae* in cases that affect the administration of the Act, but do not arise under it. A clarification of the Commission's role as an *amicus curiae* would remove any questions concerning the Commission's authority to represent itself in this capacity.

Concerning the final recommendation, prior to its amendment effective December 1, 1993, Rule 4(c)(B) of the Federal Rules of Civil Procedure provided that a summons and complaint shall be served by the United States Marshal's Service on behalf of the United States or an officer or agency of the United States. Rule 4, as now amended, requires all plaintiffs, including federal government plaintiffs such as the Commission, to seek and obtain a court order directing that service of process be effected by the United States Marshal's Service. Given that the Commission must conduct litigation nationwide from its offices in Washington, D.C., it is burdensome and expensive for it to enlist the aid of a private process server or, in the alternative, seek relief from the court, in every case in which it is a plaintiff. Returning the task of serving process for the Commission to the United States Marshal's Service would alleviate this problem and assist the Commission in carrying out its mission.

Enhancement of Criminal Provisions
Section: 2 U.S.C. §437g(a)(5)(C) and (d)

Recommendation: The Commission recommends that it have the ability to refer appropriate matters to the Justice Department for criminal prosecution at any stage of a Commission proceeding.

Explanation: The Commission has noted an upsurge of §441f contribution reimbursement schemes, that may merit heavy criminal sanction. Although there is no prohibition preventing the Department of Justice from initiating criminal FECA prosecutions on its own, the vehicle for the Commission to bring such matters to the Department's attention is found at §437g(a)(5)(C), which provides for referral only after the Commission has found probable cause to believe that a criminal violation of the Act has taken place.[1]

[1] The Commission has the general authority to report apparent violations to the appropriate law enforcement authority (see 2 U.S.C. §437d(a)(9)), but read together with §437g, §437d(a)(9) has been interpreted by the Commission to refer to violations of law unrelated to the Commission's FECA jurisdiction.

Thus, even if it is apparent at an early stage that a case merits criminal referral, the Commission must pursue the matter to the probable cause stage before referring it to the Department for criminal prosecution. To conserve the Commission's resources, and to allow the Commission to bring potentially criminal FECA violations to the Department's attention at the earliest possible time, the Commission recommends that consideration be given to explicitly empower the Commission to refer apparent criminal FECA violations to the Department at any stage in the enforcement process.

Random Audits
Section: 2 U.S.C. §438(b)

Recommendation: The Commission recommends that Congress consider legislation that would require the Commission to randomly audit political committees in an effort to promote voluntary compliance with the election law and ensure public confidence in the election process.

Explanation: In 1979, Congress amended the FECA to eliminate the Commission's explicit authority to conduct random audits. The Commission is concerned that this change has weakened its ability to deter abuse of the election law. Random audits can be an effective tool for promoting voluntary compliance with the Act and, at the same time, reassuring the public that committees are complying with the law. Random audits performed by the IRS offer a good model. As a result of random tax audits, most taxpayers try to file accurate returns on time. Tax audits have also helped create the public perception that tax laws are enforced.

There are many ways to select committees for a random audit. One way would be to randomly select committees from a pool of all types of political committees identified by certain threshold criteria such as the amount of campaign receipts and, in the case of candidate committees, the percentage of votes won. With this approach, audits might be conducted in many states throughout the country.

Another approach would be to randomly select several Congressional districts and audit all political committees in those districts (with the exception of certain candidates whose popular vote fell below a certain threshold) for a given election cycle. This system might result in concentrating audits in fewer geographical areas.

Such audits should be subject to strict confidentiality rules. Only when the audits are completed should they be published and publicized. Committees with no problems should be commended.

Regardless of how random selections were made, it would be essential to include all types of political committees—PACs, party committees and candidate committees—and to ensure an impartial, evenhanded selection process.

Public Financing

State Expenditure Limits for Publicly Financed Presidential Primary Campaigns (revised 1996)
Section: 2 U.S.C. §441a

Recommendation: The Commission recommends that the state-by-state limitations on expenditures for publicly financed Presidential primary candidates be eliminated.

Explanation: The Commission has now administered the public funding program in five Presidential elections. Based on our experience, we believe that the limitations could be removed with no material impact on the process.

Our experience has shown that, in past years, the limitations have had little impact on campaign spending in a given state, with the exception of Iowa and New Hampshire. In most other states, campaigns have been unable or have not wished to expend an amount equal to the limitation. In effect, then, the administration of the entire program has resulted in limiting disbursements in these two primaries alone.

In 1996, however, many larger states (such as New York, California and Texas) moved their primaries to February and March. Consequently, a campaign had to diversify its resources among more states in the early primaries in order to secure the nomination, and was far less likely to exceed the spending limit for any particular state.

With an increasing number of primaries vying for a campaign's limited resources, however, it would not be possible to spend very large amounts in these early primaries and still have adequate funds available for the later primaries. Thus, the overall national limit would serve as a constraint on state spending, even in the early primaries. At the same time, candidates would have broader discretion in the running of their campaigns.

Our experience has also shown that the limitations have been only partially successful in limiting expenditures in the early primary states. The use of the fundraising limitation, the compliance cost exemption, the volunteer service provisions, the unreimbursed personal travel expense provisions, the use of a personal residence in volunteer activity exemption, and a complex series of allocation schemes have developed into an art which, when skillfully practiced, can partially circumvent the state limitations.

Finally, the allocation of expenditures to the states has proven a significant accounting burden for campaigns and an equally difficult audit and enforcement task for the Commission. For all these reasons, the Commission decided to revise its state allocation regulations for the 1992 Presidential election. Many of the requirements, such as those requiring distinctions between fundraising and other types of expenditures, were eliminated. However, the rules could not undo the basic requirement to demonstrate the amount of expenditures relating to a particular state. Given our experience to date, we believe that this change to the Act would still be of substantial benefit to all parties concerned.

Fundraising Limitation for Publicly Financed Presidential Primary Campaigns
Section: 2 U.S.C. §§431(9)(B)(vi) and 441a

Recommendation: The Commission recommends that the separate fundraising limitation provided to publicly financed Presidential primary campaigns be combined with the overall limit. Thus, instead of a candidate's having a $10 million limit (plus COLA[2]) for campaign expenditures and a $2 million (plus COLA) limit for fundraising (20 percent of overall limit), each candidate would have one $12 million (plus COLA) limit for all campaign expenditures.

Explanation: Campaigns that have sufficient funds to spend up to the overall limit usually allocate some of their expenditures to the fundraising category. These campaigns come close to spending the maximum permitted under both their overall limit and their special fundraising limit. Hence, by combining the two limits, Congress would not substantially alter spending amounts or patterns. For those campaigns which do not spend up to the overall expenditure limit, the separate fundraising limit is meaningless. Many smaller campaigns do not even bother to use it, except in one or two states where the expenditure limit is low, e.g., Iowa and New Hampshire. Assuming that the state limitations are eliminated or appropriately adjusted, this recommendation would have little impact on the election process. The advantages of the recommendation, however, are substantial. They include a reduction in accounting burdens and a simplification in reporting requirements for campaigns, and a reduction in the Commission's auditing task. For example, the Commission would no longer have to ensure compliance with the 28-day rule, i.e., the rule prohibiting committees from allocating expenditures as exempt fundraising expenditures within 28 days of the primary held within the state where the expenditure was made.

Eligibility Threshold for Public Financing
Section: 26 U.S.C. §9033

Recommendation: The Commission recommends that Congress raise the eligibility threshold for publicly funded Presidential primary candidates.

Explanation: The Federal Election Commission has administered the public funding provisions in five Presidential elections. The statute provides for a cost-of-living adjustment (COLA) of the overall primary spending limitation. There is, however, no corresponding adjustment to the threshold requirement. It remains exactly the same as it was in 1974. An ad-

[2] Spending limits are increased by the cost-of-living adjustment (COLA), which the Department of Labor calculates annually.

justment to the threshold requirement would ensure that funds continue to be given only to primary candidates who demonstrate broad national support. To reach this higher threshold, the Commission recommends increasing the number of states in which the candidate had to raise the qualifying amount of matchable contributions; and/or increase the total amount of qualifying matchable contributions that had to be raised in each of the states.

Eligibility Requirements for Public Financing (revised 1996)
Section: 26 U.S.C. §§9002, 9003, 9032 and 9033

Recommendation: The Commission recommends that Congress amend the eligibility requirements for publicly funded Presidential candidates to make clear that candidates who have been convicted of a willful violation of the laws related to the public funding process or who are not eligible to serve as President will not be eligible for public funding.

Explanation: Neither of the Presidential public financing statutes expressly restricts eligibility for funding because of a candidate's prior violations of law, no matter how severe. And yet public confidence in the integrity of the public financing system would risk serious erosion if the U.S. Government were to provide public funds to candidates who had been convicted of felonies related to the public funding process. Congress should therefore amend the eligibility requirements to ensure that such candidates do not receive public financing for their Presidential campaigns. The amendments should make clear that a candidate would be ineligible for public funds if he or she had been convicted of fraud with respect to raising funds for a campaign that was publicly financed, or if he or she had failed to make repayments in connection with a past publicly funded campaign or had willfully disregarded the statute or regulations. See *LaRouche v. FEC*, 992 F.2d 1263 (D.C. Cir. 1993) *cert. denied*, 114 S. Ct. 550 (1993). In addition, Congress should make it clear that eligibility to serve in the office sought is a prerequisite for eligibility for public funding.

Deposit of Repayments
Section: 26 U.S.C. §9007(d)

Recommendation: The Commission recommends that Congress revise the law to state that: All payments received by the Secretary of the Treasury under subsection (b) shall be deposited by him or her in the Presidential Election Campaign Fund established by §9006(a).

Explanation: This change would allow the Fund to recapture monies repaid by convention-related committees of national major and minor parties, as well as by general election grant recipients. Currently the Fund recaptures only repayments made by primary matching fund recipients.

Part II: General Legislative Recommendations

Disclosure

Candidates and Principal Campaign Committees

Section: 2 U.S.C. §§432(e)(1) and 433(a)

Recommendation: The Commission recommends that Congress revise the law to require a candidate and his or her principal campaign committee to register simultaneously.

Explanation: An individual becomes a candidate under the FECA once he or she crosses the $5,000 threshold in raising contributions or making expenditures. The candidate has 15 days to file a statement designating the principal campaign committee, which will subsequently disclose all of the campaign's financial activity. This committee, in turn, has 10 days from the candidate's designation to register. This schedule allows 25 days to pass before the committee's reporting requirements are triggered. Consequently, the financial activity that occurred prior to the registration is not disclosed until the committee's next upcoming report. This period is too long during an election year. For example, should a report be due 20 days after an individual becomes a candidate, the unregistered committee would not have to file a report on that date and disclosure would be delayed. The next report might not be filed for 3 more months. By requiring simultaneous registration, the public would be assured of more timely disclosure of the campaign's activity.

PACs Created by Candidates

Section: 2 U.S.C. §441a(a)

Recommendation: The Commission recommends that Congress consider whether PACs created by candidates should be deemed affiliated with the candidate's principal campaign committee.

Explanation: A number of candidates for federal office, including incumbent officeholders, have created PACs in addition to their principal campaign committees. Under current law, such PACs generally are not considered authorized committees. Therefore, they may accept funds from individuals up to the $5,000 limit permitted for unauthorized committees in a calendar year and may make contributions of up to $5,000 per election to other federal candidates once they achieve multicandidate status. In contrast, authorized committees may not accept more than $1,000 per election from individuals and may not make contributions in excess of $1,000 to other candidates.

The existence of PACs created by candidates can present difficult issues for the Commission, such as when contributions are jointly solicited with the candidate's principal campaign committee or the resources of the PAC are used to permit the candidate to gain exposure by traveling to appearances on behalf of other candidates. At times the operations of the two committees can be difficult to distinguish.

If Congress concludes that there is an appearance that the limits of the Act are being evaded through the use of PACs created by candidates, it may wish to consider whether such committees are affiliated with the candidate's principal campaign committee. As such, contributions received by the committees would be aggregated under a single contribution limit and subjected to the limitations on contributions to authorized committees. The same treatment would be accorded to contributions made by them to other candidates.

Require Monthly Filing for Certain Multicandidate Committees

Section: 2 U.S.C. §434(a)(4)

Recommendation: The Commission recommends that multicandidate committees which have raised or spent, or which anticipate raising or spending, over $100,000 be required to file on a monthly basis during an election year.

Explanation: Under current law, multicandidate committees have the option of filing quarterly or monthly during an election year. Quarterly filers that make contributions or expenditures on behalf of primary or general election candidates must also file pre-election reports.

Presidential candidates who anticipate receiving contributions or making expenditures aggregating $100,000 or more must file on a monthly basis. Congress should consider applying this same reporting requirement to multicandidate committees which have raised or spent, or which anticipate raising or spending, in excess of $100,000 during an election year. The requirement would simplify the filing schedule, eliminating the need to calculate the primary filing periods and dates. Filing would be standardized—once a month. This change would also benefit disclosure; the public would know when a committee's report was due and would be able to monitor the larger, more influential committees' reports. Although the total number of reports filed would increase, most reports would be smaller, making it easier for the Commission to enter the data into the computer and to make the disclosure more timely.

Reporting of Last-Minute Independent Expenditures
Section: 2 U.S.C. §434(c)

Recommendation: The Commission recommends that Congress clarify when last-minute independent expenditures must be reported.

Explanation: The statute requires that independent expenditures aggregating $1,000 or more and made after the 20th day, but more than 24 hours, before an election be *reported* within 24 hours after they are made. This provision is in contrast to other reporting provisions of the statute, which use the words "shall be filed." Must the report be received by the filing office within 24 hours after the independent expenditure is made, or may it be sent certified/registered mail and postmarked within 24 hours of when the expenditure is made? Should Congress decide that committees must report the expenditure within 24 hours after it is made, committees should be able to file via facsimile (fax) machine. (See Legislative Recommendation titled "Facsimile Machines.") Clarification by Congress would be very helpful.

Reporting and Recordkeeping of Payments to Persons Providing Goods and Services
Section: 2 U.S.C. §§432(c), 434(b)(5)(A), (6)(A) and (6)(B)

Recommendation: The current statute requires reporting "the name and address of each...person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure." The Commission recommends that Congress clarify whether this is meant, in all instances, to require reporting committees to disclose only the payments made by the committee or whether additional reporting is required, in some instances, when a payment is made to an intermediary contractor or consultant who, in turn, acts as the committee's agent by making expenditures to other payees. If Congress determines that disclosure of secondary payees is required, the Act should require that committees maintain the name, address, amount and purpose of the disbursement made to the secondary payees in their records and disclose it to the public on their reports. Congress should limit such disclosure to secondary payments above a certain dollar threshold or to payments made to independent subcontractors.

Explanation: The Commission has encountered on several occasions the question of just how detailed a committee's reporting of disbursements must be. See, e.g., Advisory Opinion 1983-25, 1 Fed. Election Camp. Fin. Guide (CCH), ¶ 5742 (Dec. 22, 1983) (Presidential candidate's committee not required to disclose the names, addresses, dates or amounts of payments made by a general media consultant retained by the committee); Advisory Opinion 1984-8, 1 Fed. Election Camp. Fin. Guide (CCH), ¶ 5756 (Apr. 20, 1984) (House candidate's committee only required to itemize payments made to the candidate for travel and subsistence, not the payments made by the candidate to the actual providers of services); Financial Control and Compliance Manual for Presidential Primary Election Candidates Receiving Public Financing, Federal Election Commission, pp. 123-130 (1992)

(distinguishing committee advances or reimbursements to campaign staff for travel and subsistence from other advances or reimbursements to such staff and requiring itemization of payments made by campaign staff only as to the latter). Congressional intent in the area is not expressly stated, and the Commission believes that statutory clarification would be beneficial. In the area of Presidential public financing, where the Commission is responsible for monitoring whether candidate disbursements are for qualified campaign expenses (see 26 U.S.C. §§9004(c) and 9038(b)(2)), guidance would be particularly useful.

Excluding Political Committees from Protection of the Bankruptcy Code
Section: 2 U.S.C. §433(d)

Recommendation: The Commission recommends that Congress clarify the distribution of authority over insolvent political committees between the Commission's authority to regulate insolvency and termination of political committees under 2 U.S.C. §433(d), on one hand, and the authority of the bankruptcy courts, on the other hand.

Explanation: In 2 U.S.C. §433(d), the Commission is given authority to establish procedures for "the determination of insolvency" of any political committee, the "orderly liquidation of an insolvent political committee," the "application of its assets for the reduction of outstanding debts," and the "termination of an insolvent political committee after such liquidation..." However, the Bankruptcy Code, 11 U.S.C. §101 *et seq.,* generally grants jurisdiction over such matters to the bankruptcy courts, and at least one bankruptcy court has exercised its jurisdiction under Chapter 11 of the Bankruptcy Code to permit an ongoing political committee to compromise its debts with the intent thereafter to resume its fundraising and contribution and expenditure activities. *In re Fund for a Conservative Majority,* 100 B.R. 307 (Bankr. E.D.Va. 1989). Not only does the exercise of such jurisdiction by the bankruptcy court conflict with the evident intent in 2 U.S.C. §433(d) to empower the Commission to regulate such matters with respect to political committees, but permitting a political committee to compromise debts and then resume its political activities can result in corporate creditors effectively subsidizing the committee's contributions and expenditures, contrary to the intent of 2 U.S.C. §441b(a). The Commission promulgated a regulation generally prohibiting ongoing political committees from compromising outstanding debts, 11 CFR 116.2(b), but the continuing potential jurisdiction of the bankruptcy courts over such matters could undermine the Commission's ability to enforce it. Accordingly, Congress may want to clarify the distribution of authority between the Commission and the bankruptcy courts in this area. In addition, Congress should specify whether political committees are entitled to seek Chapter 11 reorganization under the Bankruptcy Code.

Fundraising Projects Operated by Unauthorized Committees (revised 1996)
Section: 2 U.S.C §432(e)

Recommendation: The Commission recommends that Congress specifically require that contributions solicited by an unauthorized committee (i.e., a committee that has not been authorized by a candidate as his/her campaign committee) be made payable to the registered name of the committee and that unauthorized committees be prohibited from accepting checks payable to any other name.

Explanation: Unauthorized committees are not permitted to use the name of federal candidate in their name of in the name of a fundraising project they sponsor unless, in the case of a fundraising project, the name selected clearly indicates opposition to the named candidate(s). The Commission adopted this latter prohibition after a rulemaking where the record clearly established that contributors were sometimes confused or misled into believing that they were contributing to a candidate's authorized committee (when, for example, the project's name was "Citizens for X"), when in fact they were giving to the nonauthorized committee that sponsored the event. This confusion sometimes led to requests for refunds, allegations of coordination, inadequate disclaimers, and inability to monitor contribution limits. While recent revisions to the Commission's rules at 11 CFR 102.14(b)(3) have

now reduced this possibility, the Commission believes that contributor awareness might be further enhanced if Congress were to modify the statute by requiring that all checks intended for an unauthorized committee be made payable to the registered name of the unauthorized committee, and by prohibiting unauthorized committees from accepting checks payable to any other name.

Disclaimer Notices (revised 1996)
Section: 2 U.S.C. §441d

Recommendation: The Commission recommends that Congress revise the FECA to require registered political committees to display the appropriate disclaimer notice (when practicable) in any communication issued to the general public, regardless of its content or how it is distributed. Congress should also revise the Federal Communications Act to make it consistent with the FECA's requirement that disclaimer notices state who paid for the communication.

Explanation: Under 2 U.S.C. §441d, a disclaimer notice is only required when "expenditures" are made for two types of communications made through "public political advertising": (1) communications that solicit contributions and (2) communications that "expressly advocate" the election or defeat of a clearly identified candidate. The Commission has encountered a number of problems with respect to this requirement.

First, the statutory language requiring the disclaimer notice refers specifically to "expenditures," possibly leading to an interpretation that the requirement does not apply to disbursements that are exempt from the definition of "expenditure" such as "exempt activities" conducted by local and state party committees under, for example, 2 U.S.C. §431(9)(B)(viii). Believing that Congress intended such activities to be exempt only from the definitions of "contribution" and "expenditure," the Commission recently amended its rules at 11 CFR 110.11 to require that covered "exempt activity" communications include a statement of who paid for the communication. See 60 FR 61199 (October 5, 1995), effective December 20, 1995 (60 FR 65515). However, it would be helpful if Congress were to clarify that all types of communications to the public should carry a disclaimer.

Second, the Commission has encountered difficulties in interpreting "public political advertising," particularly when volunteers have been involved with the preparation or distribution of the communication.

Third, the Commission has devoted considerable time to determining whether a given communication in fact contains "express advocacy" or "solicitation" language. The recommendation here would erase this need.

The Commission considered expanding the general disclaimer requirements in the course of the recently-completed rulemaking, *supra*, but this was not included in the final rules, which rather clarify the scope of some of the subordinate requirements. Most of these problems would be eliminated, however, if the language of 2 U.S.C. §441d were simplified to require a registered committee to display a disclaimer notice whenever it communicated to the public, regardless of the purpose of the communication and the means of preparing and distributing it. The general public would benefit by being aware of who has paid for a particular communication. Moreover, political committees and the Commission would benefit because they would no longer have to examine the content of communications or the manner in which they were disseminated to determine whether a disclaimer was required.

This proposal is not intended to eliminate exemptions for communications appearing in places where it is inconvenient or impracticable to display a disclaimer.

Fourth, Congress might want to consider adding disclaimer requirements for so-called "push poll" activity. This term generally refers to phone bank activities or written surveys that seek to influence voters, such as by providing false or misleading information about a candidate. This practice appears to be growing. The Commission considered requiring disclaimers on push poll communications in the course of the recent rulemaking, but declined to do so for a number of reasons, including difficulty in defining push polls and the fact that many such polls do not appear to expressly advocate the election or defeat of a clearly identified

candidate. If Congress enacted the general disclaimer requirement proposed above, this would encompass push poll communications by political committees. However, Congress might also wish to require disclosure by other groups engaging in this practice.

Finally, Congress should change the sponsorship identification requirements found in the Federal Communications Act to make them consistent with the disclaimer notice requirements found in the FECA. Under the Communications Act, federal political broadcasts must contain an announcement that they were furnished to the licensee, and by whom. See FCC and FEC Joint Public Notice, FCC 78-419 (June 19, 1978). In contrast, FECA disclaimer notices focus on who authorized and paid for the communication. The Communications Act should be revised to ensure that the additional information required by the FECA is provided without confusion to licensees and political advertisers. In addition, the FECA should be amended to require that the disclaimer appear at the end of all broadcast communications.

Fraudulent Solicitation of Funds
Section: 2 U.S.C. §441h

Recommendation: The current §441h prohibits fraudulent misrepresentation such as speaking, writing or acting on behalf of a candidate or committee on a matter which is damaging to such candidate or committee. It does not, however, prohibit persons from fraudulently soliciting contributions. The Commission recommends that a provision be added to this section prohibiting persons from fraudulently misrepresenting themselves as representatives of candidates or political parties for the purpose of soliciting contributions which are not forwarded to or used by or on behalf of the candidate or party.

Explanation: The Commission has received a number of complaints that substantial amounts of money were raised fraudulently by persons or committees purporting to act on behalf of candidates. Candidates have complained that contributions which people believed were going for the benefit of the candidate were diverted for other purposes. Both the candidates and the contributors were harmed by such diversion. The candidates received less money because people desirous of contributing believed they had already done so. The contributors' funds were used in a manner they did not intend. The Commission has been unable to take any action on these matters because the statute gives it no authority in this area.

Draft Committees
Section: 2 U.S.C. §§431(8)(A)(i) and (9)(A)(i), 441a(a)(1) and 441b(b)

Recommendation: The Commission recommends that Congress consider the following amendments to the Act in order to prevent a proliferation of "draft" committees and to reaffirm Congressional intent that draft committees are "political committees" subject to the Act's provisions.

1. Bring Funds Raised and Spent for Undeclared but Clearly Identified Candidates Within the Act's Purview. Section 431(8)(A)(i) should be amended to include in the definition of "contribution" funds contributed by persons "for the purpose of influencing a clearly identified *individual* to seek nomination for election or election to Federal office...." Section 431(9)(A)(i) should be similarly amended to include within the definition of "expenditure" funds expended by persons on behalf of such "a clearly identified *individual*."

2. Restrict Corporate and Labor Organization Support for Undeclared but Clearly Identified Candidates. Section 441b(b) should be revised to expressly state that corporations, labor organizations and national banks are prohibited from making contributions or expenditures "for the purpose of influencing a clearly identified *individual* to seek nomination for election or election..." to federal office.

3. Limit Contributions to Draft Committees. The law should include explicit language stating that no person shall make contributions to *any* committee (including a draft committee) established to influence the nomination or election of a clearly identified *individual* for any federal office which, in the aggregate, exceed that person's contribution limit, per candidate, per election.

Explanation: These proposed amendments were prompted by the decisions of the U.S. Court of Appeals for the District of Columbia Circuit in *FEC v. Machinists Non-Partisan Political League* and *FEC v. Citizens for Democratic Alternatives in 1980* and of the U.S. Court of Appeals for the Eleventh Circuit in *FEC v. Florida for Kennedy Committee.* The District of Columbia Circuit held that the Act, as amended in 1979, regulated only the *reporting requirements* of draft committees. The Commission sought review of this decision by the Supreme Court, but the Court declined to hear the case. Similarly, the Eleventh Circuit found that "committees organized to 'draft' a person for federal office" are not "political committees" within the Commission's investigative authority. The Commission believes that the appeals court rulings create a serious imbalance in the election law and the political process because a nonauthorized group organized to support someone who has not yet become a candidate may operate completely outside the strictures of the Federal Election Campaign Act. However, any group organized to support someone who has in fact become a candidate is subject to the Act's registration and reporting requirements and contribution limitations. Therefore, the potential exists for funneling large aggregations of money, both corporate and private, into the federal electoral process through unlimited contributions made to nonauthorized draft committees that support a person who has not yet become a candidate. These recommendations seek to avert that possibility.

Contributions and Expenditures

Candidate's Use of Campaign Funds (revised 1996)
Section: 2 U.S.C. §439a

Recommendation: Congress may wish to examine whether the use of campaign funds to pay a salary to the candidate is considered to be a "personal use" of those funds.

Explanation: Under §439a of the Act, excess campaign funds cannot be converted by any person to personal use. The Commission has promulgated final rules on what would constitute "personal use" of excess funds. See 60 FR 7862 (February 9, 1995), effective April 5, 1995 (60 FR 17193). It was unable, however, to decide whether excess campaign funds may be used to pay a salary to the candidate. In the past, some have argued before the Commission that candidate salary payments are legitimate campaign expenditures, while others have felt that such payments constitute a personal use of excess funds prohibited by §439a. Congressional guidance on this issue would be helpful.

Disposition of Excess Campaign Funds
Section: 2 U.S.C. §439a

Recommendation: In those cases where a candidate has largely financed his campaign with personal funds, the Commission recommends that Congress consider limiting the amount of excess campaign funds that the campaign may transfer to a national, state or local committee of any political party to $100,000 per year.

Explanation: Under current law, a candidate may transfer unlimited amounts of excess campaign funds to a political party. This makes it possible for a candidate to contribute unlimited personal funds to his campaign, declare these funds excess and transfer them to a political party, thus avoiding the limit on individual contributions to political parties.

Distinguishing Official Travel from Campaign Travel
Section: 2 U.S.C. §431(9)

Recommendation: The Commission recommends that Congress amend the FECA to clarify the distinctions between campaign travel and official travel.

Explanation: Many candidates for federal office hold elected or appointed positions in federal, state or local government. Frequently, it is difficult to determine whether their public appearances are related to their official duties or whether they are campaign related. A similar question may arise when federal officials who are not running for office make appearances that

could be considered to be related to their official duties or could be viewed as campaign appearances on behalf of specific candidates.

Another difficult area concerns trips in which both official business and campaign activity take place. There have also been questions as to how extensive the campaign aspects of the trip must be before part or all of the trip is considered campaign related. Congress might consider amending the statute by adding criteria for determining when such activity is campaign related. This would assist the committee in determining when campaign funds must be used for all or part of a trip. This will also help Congress determine when official funds must be used under House or Senate Rules.

Coordinated Party Expenditures
Section: 2 U.S.C. §441a(d)

Recommendation: The Commission recommends that Congress clarify the number of coordinated party expenditure limits that are available to party committees during the election cycle.

In addition, Congress may want to clarify the distinction between coordinated party expenditures made in connection with general elections and generic party building activity.

Explanation: Section 441a(d) provides that national and state party committees may make expenditures in connection with the general election campaigns of the party's nominees for House and Senate. The national party committees may also make such expenditures on behalf of the party's general election Presidential and Vice Presidential nominees. The Commission has interpreted these provisions to permit party committees to make nearly any type of expenditure they deem helpful to their nominees short of donating the funds directly to the candidates. Expenditures made under §441a(d) are subject to a special limit, separate from contribution limits.

The Commission has been faced several times with the question of whether party committees have one or two coordinated party expenditure limits in a particular election campaign. In particular, the issue has been raised in special election campaigns. Some state laws allow the first special election either to narrow the field of candidates, as a primary would, or to fill the vacancy if one candidate receives a majority of the popular vote. If a second special election becomes necessary to fill the vacancy, the question has arisen as to whether the party committees may spend against a second coordinated party expenditure limit since both special elections could have filled the vacancy. In a parallel manner, the Commission has been faced with the question of whether party committees have one or two coordinated party expenditure limits in a situation that includes an election on a general election date and a subsequent election, required by state law, after the general election. Although in the latter situation, a district court has concluded that only one coordinated party expenditure limit would apply (see *Democratic Senatorial Campaign Committee v. FEC* (No. 93-1321) (D.D.C., November 14, 1994)), broader Congressional guidance on this issue would be helpful.

Party committees may also make expenditures for generic party-building activities, including get-out-the-vote and voter registration drives. These activities are not directly attributable to a clearly identified candidate. In contrast to coordinated party expenditures, these activities are not subject to limitation.

When deciding, in advisory opinions and enforcement matters, whether an activity is a §441a(d) expenditure or a generic activity, the Commission has considered the timing of the expenditure, the language of the communication, and whether it makes reference only to candidates seeking a particular office or to all the party's candidates, in general. However, the Commission still has difficulty determining, in certain situations, when a communication or other activity is generic party building activity or a coordinated party expenditure. Congressional guidance on this issue would be helpful.

Volunteer Participation in Exempt Activity
Section: 2 U.S.C. §§431(8)(B)(x) and (xii); 431(9)(B)(viii) and (ix)

Recommendation: The Commission recommends that Congress clarify the extent to which volunteers must

conduct or be involved in an activity in order for the activity to qualify as an exempt party activity.

Explanation: Under the Act, certain activities conducted by state and local party committees on behalf of the party's candidates are exempt from the contribution limitations if they meet specific conditions. Among these conditions is the requirement that the activity be conducted by volunteers. However, the actual level of volunteer involvement in these activities has varied substantially.

Congress may want to clarify the extent to which volunteers must be involved in an activity in order for that activity to qualify as an exempt activity. For example, if volunteers are assisting with a mailing, must they be the ones to stuff the envelopes and sort the mail by zip code or can a commercial vendor perform that service? Is it sufficient involvement if the volunteers just stamp the envelopes or drop the bags at the post office?

Contributions from Minors
Section: 2 U.S.C. §441a(a)(1)

Recommendation: The Commission recommends that Congress establish a presumption that contributors below age 16 are not making contributions on their own behalf.

Explanation: The Commission has found that contributions are sometimes given by parents in their children's names. Congress should address this potential abuse by establishing a minimum age for contributors, or otherwise provide guidelines ensuring that parents are not making contributions in the name of another.

Application of Contribution Limitations to Family Members (revised 1996)
Section: 2 U.S.C. §441a

Recommendation: The Commission recommends that Congress examine the application of the contribution limitations to immediate family members.

Explanation: Under the current posture of the law, a family member is limited to contributing $1,000 per election to a candidate. This limitation applies to spouses and parents, as well as other immediate family members. (See S. Conf. Rep. No. 93–1237, 93d Cong., 2d Sess., 58 (1974) and *Buckley v. Valeo*, 424 U.S. 1, 51 (footnote 57)(1976).) This limitation has caused the Commission substantial problems in attempting to implement and enforce the contribution limitations.[3]

Problems have arisen in enforcing the limitations where a candidate uses assets belonging to a parent. In some cases, a parent has made a substantial gift to his or her candidate-child while cautioning the candidate that this may well decrease the amount which the candidate would otherwise inherit upon the death of the parent.

Problems have also occurred in situations where the candidate uses assets held jointly with a spouse. When the candidate uses more than one-half of the value of the asset held commonly with the spouse (for example, offering property as collateral for a loan), the amount over one-half represents a contribution from the spouse. If that amount exceeds $1,000, it becomes an excessive contribution from the spouse.

The Commission recommends that Congress consider the difficulties arising from application of the contribution limitations to immediate family members.

Lines of Credit and Other Loans Obtained by Candidates (revised 1996)
Section: 2 U.S.C. §431(8)(B)(vii)

Recommendation: The Commission recommends that Congress provide guidance on whether candidate committees may accept contributions which are derived from advances on a candidate's brokerage account, credit card, or home equity line of credit, and, if so, Congress should also clarify how such extensions of credit should be reported.

[3] While the Commission has attempted through regulations to present an equitable solution to some of these problems (see Explanation and Justification, Final Rule, 48 Fed. Reg. 19019, April 27, 1983, as prescribed by the Commission on July 1, 1983), statutory resolution is required in this area.

Explanation: The Act currently exempts from the definition of "contribution" loans that are obtained by political committees in the ordinary course of business from federally-insured lending institutions. 2 U.S.C. §431(8)(B)(vii). Loans that do not meet the requirements of this provision are either subject to the Act's contribution limitations, if received from permissible sources, or the prohibition on corporate contributions, as appropriate.

Since this aspect of the law was last amended in 1979, however, a variety of financial options have become more widely available to candidates and committees. These include a candidate's ability to obtain advances against the value of a brokerage account, to draw cash advances from a candidate's credit card, or to make draws against a home equity line of credit obtained by the candidate. In many cases, the credit approval, and therefore the check performed by the lending institution regarding the candidate's creditworthiness, may predate the candidate's decision to seek federal office. Consequently, the extension of credit may not have been made in accordance with the statutory criteria such as the requirement that a loan be "made on a basis which assures repayment." In other cases, the extension of credit may be from an entity that is not a federally-insured lending institution. The Commission recommends that Congress clarify whether these alternative sources of financing are permissible and, if so, specify standards to ensure that these advances are commercially reasonable extensions of credit.

Enforcement

Audits for Cause

Section: 2 U.S.C. §438(b)

Recommendation: The Commission recommends that Congress expand the time frame, from 6 months to 12 months after the election, during which the Commission can initiate an audit for cause.

Explanation: Under current law, the Commission must initiate audits for cause within 6 months after the election. Because year-end disclosure does not take place until almost 2 months after the election, and because additional time is needed to computerize campaign finance information and review reports, there is little time to identify potential audits and complete the referral process within that 6-month window.

Modifying Standard of "Reason to Believe" Finding

Section: 2 U.S.C. §437g

Recommendation: The Commission recommends that Congress modify the language pertaining to "reason to believe," contained at 2 U.S.C. §437g, so as to allow the Commission to open an investigation with a sworn complaint, or after obtaining evidence in the normal course of its supervisory responsibilities. Essentially, this would change the "reason to believe" standard to "reason to open an investigation."

Explanation: Under the present statute, the Commission is required to make a finding that there is "reason to believe a violation has occurred" before it may investigate. Only then may the Commission request specific information from a respondent to determine whether, in fact, a violation has occurred. The statutory phrase "reason to believe" is misleading and does a disservice to both the Commission and the respondent. It implies that the Commission has evaluated the evidence and concluded that the respondent has violated the Act. In fact, however, a "reason to believe" finding simply means that the Commission believes a violation may have occurred if the facts as described in the complaint are true. An investigation permits the Commission to evaluate the validity of the facts as alleged.

It would therefore be helpful to substitute words that sound less accusatory and that more accurately reflect what, in fact, the Commission is doing at this early phase of enforcement.

In order to avoid perpetuating the erroneous conclusion that the Commission believes a respondent has violated the law every time it finds "reason to believe," the statute should be amended.

Protection for Those Who File Complaints or Give Testimony
Section: 2 U.S.C. §437g

Recommendation: The Commission recommends that the Act be amended to make it unlawful to improperly discriminate against employees or union members solely for filing charges or giving testimony under the statute.

Explanation: The Act requires that the identity of anyone filing a complaint with the Commission be provided to the respondent. In many cases, this may put complainants at risk of reprisals from the respondent, particularly if an employee or union member files a complaint against his or her employer or union. This risk may well deter many people from filing complaints, particularly under §441b. *See, e.g., NLRB v. Robbins Tire & Rubber Company,* 437 U.S. 214, 240 (1978); *Brennan v. Engineered Products, Inc.,* 506 F.2d 299, 302 (8th Cir. 1974); *Texas Industries, Inc. v. NLRB,* 336 F.2d 128, 134 (5th Cir. 1964). In other statutes relating to the employment relationship, Congress has made it unlawful to discriminate against employees for filing charges or giving testimony under the statute. *See, e.g.*, 29 U.S.C. §158(a)(4) (National Labor Relations Act); 29 U.S.C. §215(3) (Fair Labor Standards Act); 42 U.S.C. §2000e-3(a) (Equal Employment Opportunity Act). The Commission recommends that Congress consider including a similar provision in the FECA.

Public Financing

Supplemental Funding for Publicly Funded Candidates
Section: 26 U.S.C. §§9003 and 9004

Recommendation: The Commission recommends that Congress consider whether to modify the general election Presidential public funding system in instances where a nonpublicly funded candidate exceeds the spending limit for publicly funded candidates.

Explanation: Major party Presidential candidates who participate in the general election public funding process receive a grant for campaigning. In order to receive the grant, the candidate must agree to limit expenditures to that amount. Candidates who do not request public funds may spend an unlimited amount on their campaign. Congress may want to consider whether the statute should ensure that those candidates who are bound by limits are not disadvantaged.

Miscellaneous

Funds and Services from Private Sources (revised 1996)
Section: 2 U.S.C. §437c

Recommendation: The Commission recommends that Congress give the Commission authority to accept funds and services from private sources to enable the Commission to provide guidance and conduct research on election administration and campaign finance issues.

Explanation: The Commission has been very restricted in the sources of private funds it may accept to finance topical research, studies, and joint projects with other entities because it does not have statutory gift acceptance authority. In view of the Commission's expanding role in this area, Congress should consider amending the Act to provide the Commission with authority to accept gifts from private sources. Permitting the Commission to obtain funding from a broader range of private organizations would allow the Commission to have more control in structuring and conducting these activities and avoid the expenditure of government funds for these activities. If this proposal were adopted, however, the Commission would not accept funds from organizations that are regulated by or have financial relations with the Commission.

Part III
Conforming Legislative Recommendations

Disclosure

Point of Entry for Pseudonym Lists (1996)
Section: 2 U.S.C. §438(a)(4)

Recommendation: The Commission recommends that Congress make a technical amendment to section 438(a)(4) by deleting the reference to the Clerk of the House.

Explanation: Section 438(a)(4) outlines the processing of disclosure documents filed under the Act. The section permits political committees to "salt" their disclosure reports with 10 pseudonyms in order to detect misuse of the committee's FEC reports and protect individual contributors who are listed on the report from unwanted solicitations. The Act requires committees who "salt" their reports to file the list of pseudonyms with the appropriate filing office.

Public Law No. 104-79 (December 28, 1995) changed the point of entry for House candidate reports from the Clerk of the House to the FEC, effective December 31, 1995. As a result, House candidates must now file pseudonym lists with the FEC, rather than the Clerk of the House. To establish consistency within the Act, the Commission recommends that Congress amend section 438(a)(4) to delete the reference to the Clerk of the House as a point of entry for the filing of pseudonym lists.

Contributions and Expenditures

Broader Prohibition Against Force and Reprisals (revised 1996)
Section: 2 U.S.C. §441b(b)(3)(A)

Recommendation: The Commission recommends that Congress revise the FECA to make it unlawful for a corporation, labor organization or separate segregated fund to use physical force, job discrimination, financial reprisals or the threat thereof to obtain a contribution or expenditure on behalf of any candidate or political committee.

Explanation: Current §441b(b)(3)(A) could be interpreted to narrowly apply to the making of contributions or expenditures by a separate segregated fund which were obtained through the use of force, job discrimination, financial reprisals and threats. Thus, Congress should clarify that corporations and labor organizations are prohibited from using such tactics in the solicitation of contributions for the separate segregated fund. In addition, the FEC has recently revised its rules to clarify that it is not permissible for a corporation or a labor organization to use coercion, threats, force or reprisal to urge any individual to contribute to a candidate or engage in fundraising activities. See 60 FR 64260 (December 14, 1995). However, Congress should include language to cover such situations.

Nonprofit Corporations and Express Advocacy (revised 1996)
Section: 2 U.S.C. §441b

Recommendation: In light of the decision of the U.S. Supreme Court in *FEC v. Massachusetts Citizens for Life, Inc. (MCFL),* the Commission recommends that Congress consider amending the provision prohibiting corporate and labor spending in connection with federal elections in order to incorporate into the statute the text of the court's decision. Congress may also wish to include in the Act a definition for the term "express advocacy."

Explanation: In the Court's decision of December 15, 1986, the Court held that the Act's prohibition on corporate political expenditures was unconstitutional as applied to independent expenditures made by a narrowly defined type of nonprofit corporation. The Court determined, however, that these nonprofit corporations had to disclose some aspect of their financial activity—in particular, independent expenditures exceeding $250 and identification of persons who contribute over $200 to help fund these expenditures. The Court further ruled that spending for political activity could, at some point, become the major purpose

of the corporation, and the organization would then become a political committee. The Court also indicated that the prohibition on corporate expenditures for communications is limited to communications expenditures containing express advocacy.

Since the Court decision and subsequent related decisions (e.g., *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990)), the Commission has concluded a rulemaking proceeding to implement changes necessitated by the current case law. See 60 FR 35293 (July 6, 1995). However, the Commission believes that statutory clarification would also be beneficial.

Congress should consider whether statutory changes are needed: (1) to exempt independent expenditures made by certain nonprofit corporations from the statutory prohibition against corporate expenditures; (2) to specify the reporting requirements for these nonprofit corporations; and (3) to provide a definition of express advocacy.

Honorarium
Section: 2 U.S.C. §431(8)(B)(xiv)

Recommendation: The Commission recommends that Congress should make a technical amendment, deleting 2 U.S.C. §431(8)(B)(xiv), now contained in a list of definitions of what is not a contribution.

Explanation: The 1976 amendments to the Federal Election Campaign Act gave the Commission jurisdiction over the acceptance of honoraria by all federal officeholders and employees. 2 U.S.C. §441i. In 1991, the Legislative Branch Appropriations Act repealed §441i. As a result, the Commission has no jurisdiction over honorarium transactions taking place after August 14, 1991, the effective date of the law.

To establish consistency within the Act, the Commission recommends that Congress make a technical change to §431(8)(B)(xiv) deleting the reference to honorarium as defined in former §441i. This would delete honorarium from the list of definitions of what is not a contribution.

Acceptance of Cash Contributions
Section: 2 U.S.C. §441g

Recommendation: The Commission recommends that Congress modify the statute to make the treatment of 2 U.S.C. §441g, concerning cash contributions, consistent with other provisions of the Act. As currently drafted, 2 U.S.C. §441g prohibits only the *making* of cash contributions which, in the aggregate, exceed $100 per candidate, per election. It does not address the issue of *accepting* cash contributions. Moreover, the current statutory language does not plainly prohibit cash contributions in excess of $100 to political committees other than authorized committees of a candidate.

Explanation: Currently this provision focuses only on persons making the cash contributions. However, these cases generally come to light when a committee has accepted these funds. Yet the Commission has no recourse with respect to the committee in such cases. This can be a problem, particularly where primary matching funds are received on the basis of such contributions.

While the Commission, in its regulations at 11 CFR 110.4(c)(2), has included a provision requiring a committee receiving such a cash contribution to promptly return the excess over $100, the statute does not explicitly make acceptance of these cash contributions a violation. The other sections of the Act dealing with prohibited contributions (i.e., §§ 441b on corporate and labor union contributions, 441c on contributions by government contractors, 441e on contributions by foreign nationals, and 441f on contributions in the name of another) all prohibit both the making and accepting of such contributions.

Secondly, the statutory text seems to suggest that the prohibition contained in §441g applies only to those contributions given to candidate committees. This language is at apparent odds with the Commission's understanding of the Congressional purpose to prohibit any cash contributions which exceed $100 in federal elections.

Public Financing

Applicability of Title VI to Recipients of Payments from the Presidential Election Campaign Fund
Section: 26 U.S.C. §§9006(b), 9008(b)(3) and 9037.

Recommendation: The Commission recommends that Congress clarify that committees receiving public financing payments from the Presidential Election Campaign Fund are exempt from the requirements of Title VI of the Civil Rights Act of 1964, as amended.

Explanation: This proposed amendment was prompted by the decision of the U.S. District Court for the District of Columbia in *Freedom Republicans, Inc., and Lugenia Gordon v. FEC,* 788 F. Supp. 600 (1992), *vacated,* No. 92-5214 (D.C. Cir. January 18, 1994). The Freedom Republicans' complaint asked the district court to declare that the Commission has jurisdiction to regulate the national parties' delegate selection process under Title VI. It also requested the court to order the Commission to adopt such regulations, direct the Republican Party to spend no more of the funds already received for its 1992 national nominating convention, and seek refunds of moneys already disbursed if the Republican Party did not amend its delegate selection and apportionment process to comply with Title VI. The district court found that the Commission "does have an obligation to promulgate rules and regulations to insure the enforcement of Title VI. The language of Title VI is necessarily broad, and applies on its face to the FEC as well as to both major political parties and other recipients of federal funds." 788 F. Supp. at 601.

The Commission appealed this ruling on a number of procedural and substantive grounds, including that Title VI does not apply to the political parties' apportionment and selection of delegates to their conventions. However, the court of appeals overruled the district court decision on one of the non-substantive grounds, leaving the door open for other lawsuits involving the national nominating conventions or other recipients of federal funds certified by the Commission. No. 92-5214, slip op. at 15.

In the Commission's opinion, First Amendment concerns and the legislative history of the public funding campaign statutes strongly indicate that Congress did not intend Title VI to permit the Commission to dictate to the political parties how to select candidates or to regulate the campaigns of candidates for federal office. Nevertheless, the potential exists for persons immediately prior to an election to invoke Title VI in the federal courts in a manner that might interfere with the parties' nominating process and the candidates' campaigns. The recommended clarification would help forestall such a possibility.

For these reasons, Congress should consider adding the following language to the end of each public financing provision cited above: "The acceptance of such payments will not cause the recipient to be conducting a 'program or activity receiving federal financial assistance' as that term is used in Title VI of the Civil Rights Act of 1964, as amended."

Enforcement of Nonwillful Violations
Section: 26 U.S.C. §§9012 and 9042

Recommendation: The Commission recommends that Congress consider amending the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act to clarify that the Commission has authority for civil enforcement of nonwillful violations (as well as willful violations) of the public funding provisions.

Explanation: Section 9012 of the Presidential Election Campaign Fund Act and §9042 of the Presidential Primary Matching Payment Account Act provide only for "criminal penalties" for knowing and willful violations of the spending and contribution provisions and the failure of publicly funded candidates to furnish all records requested by the Commission. The lack of a specific reference to nonwillful violations of these provisions has raised questions regarding the Commission's ability to enforce these provisions through the civil enforcement process.

In some limited areas, the Commission has invoked other statutes and other provisions in Title 26

to carry out its civil enforcement of the public funding provisions. It has relied, for example, on 2 U.S.C. §441a(b) to enforce the Presidential spending limits. Similarly, the Commission has used the candidate agreement and certification processes provided in 26 U.S.C. §§9003 and 9033 to enforce the spending limits, the ban on private contributions, and the requirement to furnish records. Congress may wish to consider revising the public financing statutes to provide explicit authority for civil enforcement of these provisions.

Contributions to Presidential Nominees Who Receive Public Funds in the General Election
Section: 26 U.S.C. §9003

Recommendation: The Commission recommends that Congress clarify that the public financing statutes prohibit the making and acceptance of contributions (either direct or in-kind) to Presidential candidates who receive full public funding in the general election.

Explanation: The Presidential Election Campaign Fund Act prohibits a publicly financed general election candidate from accepting private contributions to defray qualified campaign expenses. 26 U.S.C. §9003(b)(2). The Act does not, however, contain a parallel prohibition against the *making* of these contributions. Congress should consider adding a section to 2 U.S.C. §441a to clarify that individuals and committees are prohibited from making these contributions.

Miscellaneous

Ex Officio Members of Federal Election Commission (1996)
Section: 2 U.S.C. §437c(a)(1)

Recommendation: The Commission recommends that Congress amend section 437c by removing the Secretary of the Senate, the Clerk of the House, and their designees from the list of the members of the Federal Election Commission.

Explanation: In 1993, the U.S. Court of Appeals for the District of Columbia ruled that the ex officio membership of the Secretary of the Senate and the Clerk of the House on the Federal Election Commission was unconstitutional. (*FEC v. NRA Political Victory Fund*, 6 F.3d 821 (D.C. Cir. 1993), *cert. dismissed for want of jurisdiction*, 115 S. Ct. 537 (12/6/94).) This decision was left in place when the Supreme Court dismissed the FEC's appeal on the grounds that the FEC lacks standing to independently bring a case under Title 2.

As a result of the appeals court decision, the FEC reconstituted itself as a six-member body whose members are appointed by the President and confirmed by the Senate. Congress should accordingly amend the Act to reflect the appeals court's decision by removing the references to the ex officio members from section 437c.

Chapter 7
Campaign Finance Statistics

CHART 7-1

Receipts of House Candidates for Each Year of Election Cycle, 1990-1996

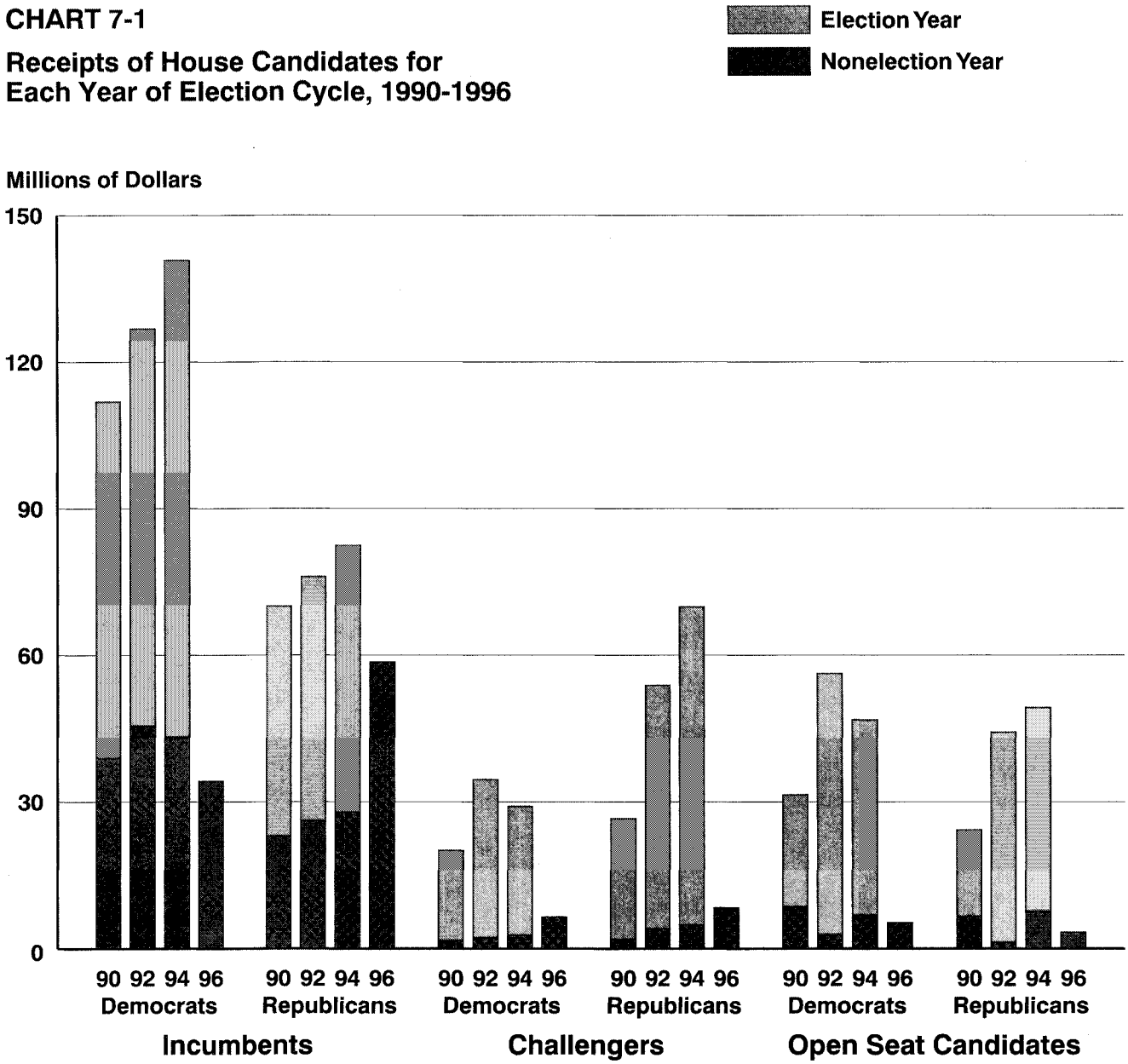
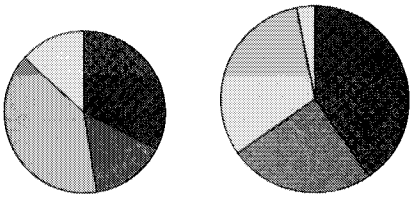


Chart 7-1 shows the impact of the 1994 change in party membership on early campaign fundraising for the 1996 election cycle. Generally, most funds are raised during election years. During the first year of the 1996 cycle, however, there was a sharp rise in receipts owing to several factors, including greater numbers of Republican members, their majority status and competitive races in many districts. Competitive races also help explain increased receipts of challengers from both parties during 1995.

CHART 7-2

Contributions in Off-Election Years Received by Winners of the 1992 and 1994 House Elections

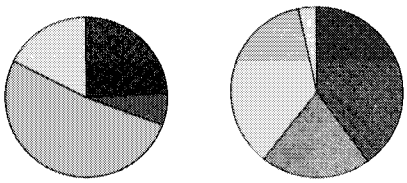
Contributions from Individuals



1993 $36.1 Million

1995 $47.9 Million

Contributions from Committees



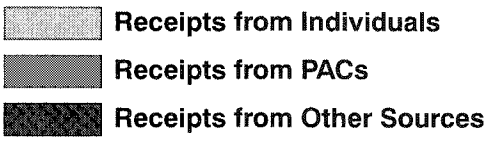
1993 $35.8 Million

1995 $40.5 Million

Charts 7-2 tracks changes in the primary sources of receipts for House members during the off years, 1993 and 1995. Between 1993 and 1995, contributions from individuals increased much more than did contributions from committees. However, shifts in the type of campaign receiving contributions from committees were more pronounced than shifts in the type of committees receiving individual contributions.

CHART 7-3

Senate Campaign Fundraising in Off-Election Years



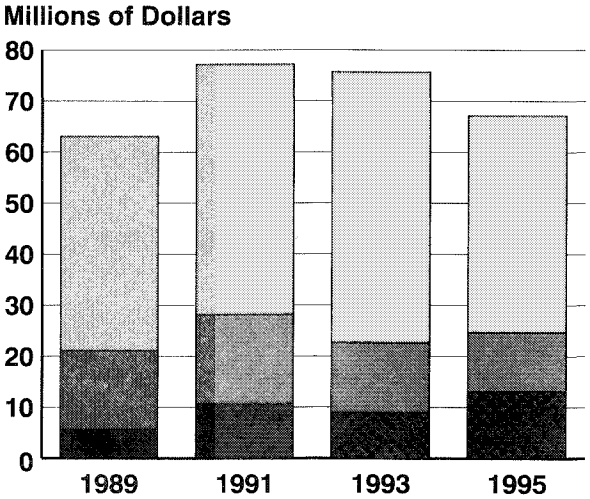
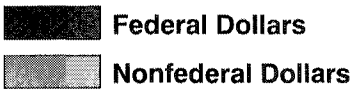


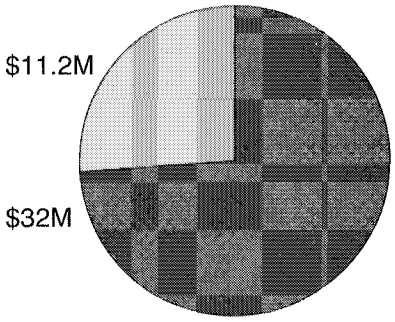
Chart 7-3 shows that Senate campaigns raised somewhat less in 1995 than they did in the first year of the previous two election cycles. Comparisons between Senate election cycles are difficult because different groups of states are involved in each election cycle. Additionally, the small number of races makes comparisons difficult because one or two unusual campaigns have a big impact on totals for a given campaign cycle. Receipts in 1995 were somewhat larger than those in 1989, when the same seats were last contested.

CHART 7-4

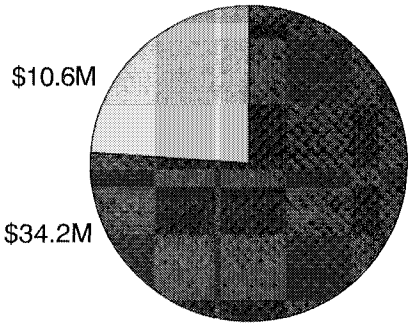
Off-Year Fundraising by National Committees, Federal and Nonfederal Accounts



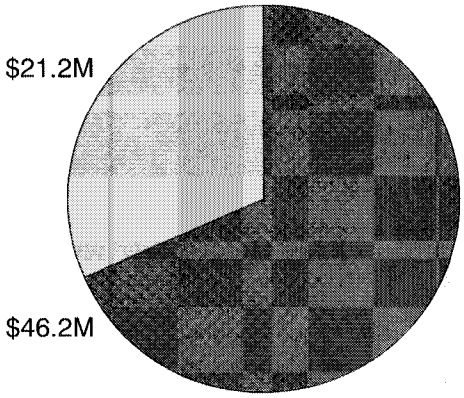
Republican National Committee



1991
$43.2 Million

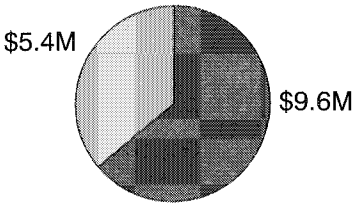


1993
$44.8 Million

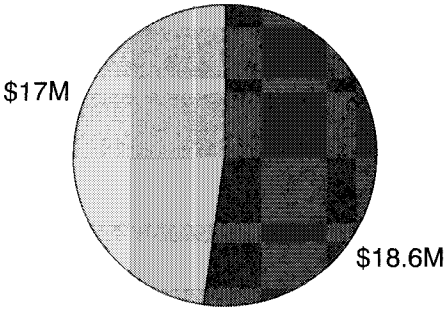


1995
$67.4 Million

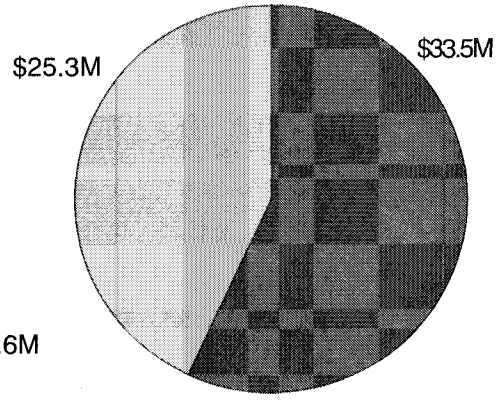
Democratic National Committee



1991
$15 Million



1993
$35.6 Million

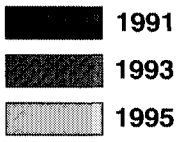


1995
$58.8 Million

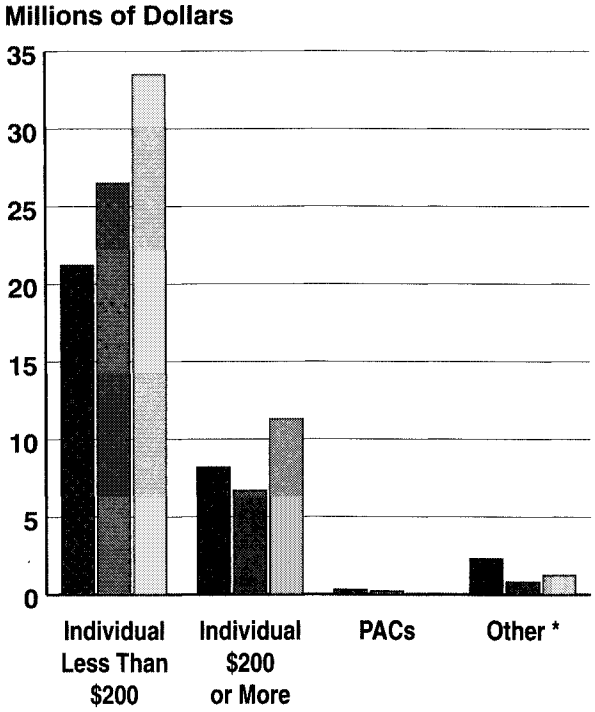
Chart 7-4 compares the federal and nonfederal fundraising of the two major national party committees in off-election years since 1991, when the Commission first required full reporting of nonfederal fundraising. For both parties, fundraising has increased. The Democratic National Committee has reported more rapid growth in both its federal and nonfederal accounts and somewhat larger proportions of total activity in nonfederal funds than the Republican National Committee during the last two election cycles.

CHART 7-5

Sources of National Committee: Federal Account Receipts in Off-Election Years



Republican National Committee



Democratic National Committee

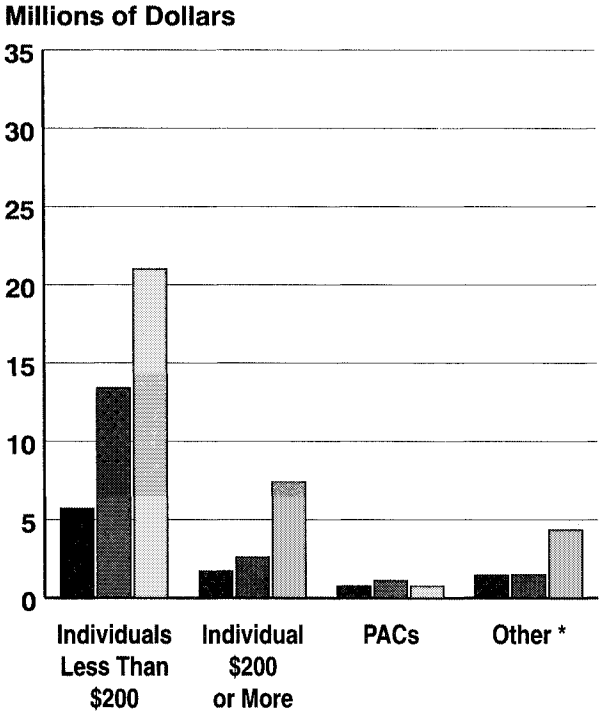
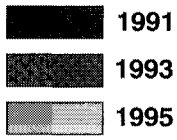


Chart 7-5 shows that both national party committees are significantly more dependent on small contributions (less than $200 each) from individuals than on any other source of federal funds. During 1995, the first year of the 1996 cycle, both parties also experienced significant growth in individual contributions.

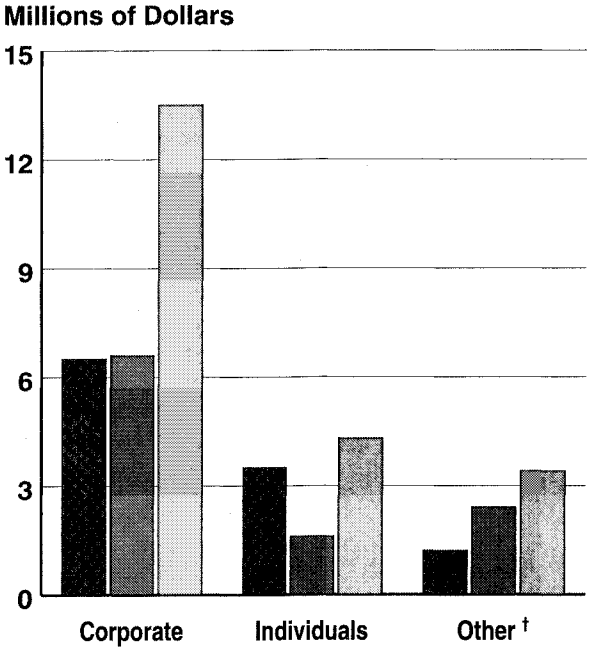
* Includes loans, receipts from local and state party committees and offsets to operating expenditures.

CHART 7-6

Sources of National Committee: Nonfederal Account Receipts* in Off-Election Years



Republican National Committee



Democratic National Committee

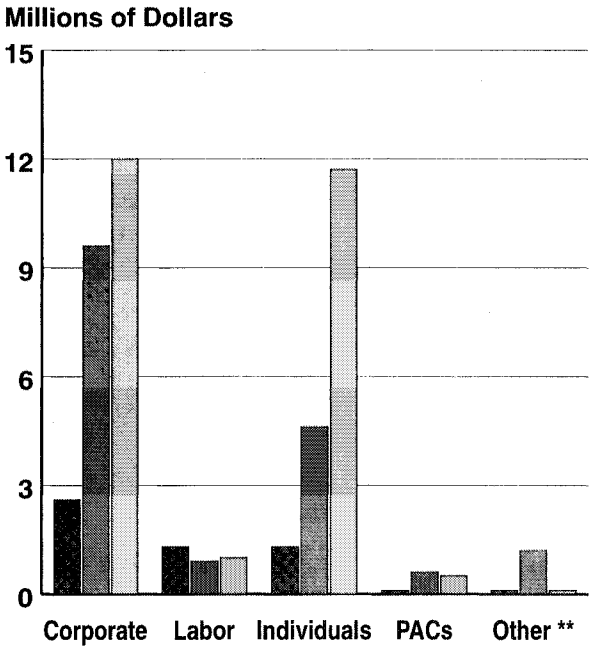


Chart 7-6 shows that during 1995, the first year of the 1996 cycle, both parties experienced substantial growth in nonfederal receipts from both individuals and corporations.

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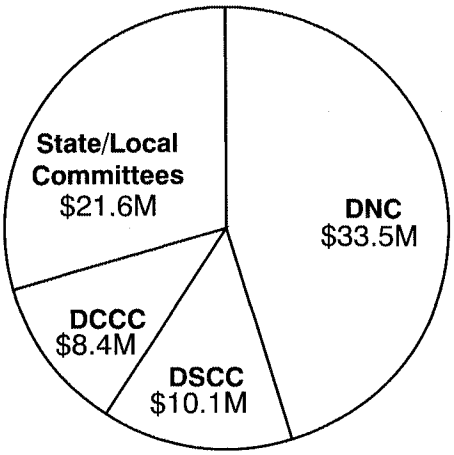
* The Democratic National Committee maintains separate accounts for specific sources of nonfederal funds, as shown in the chart. The Republican National Committee does not report different sources in different accounts, so a broader breakdown is shown in that chart.

† Includes PACs and any unitemized receipts, bank loans, transfers from other party organizations, interest earnings and offsets to expenditures.

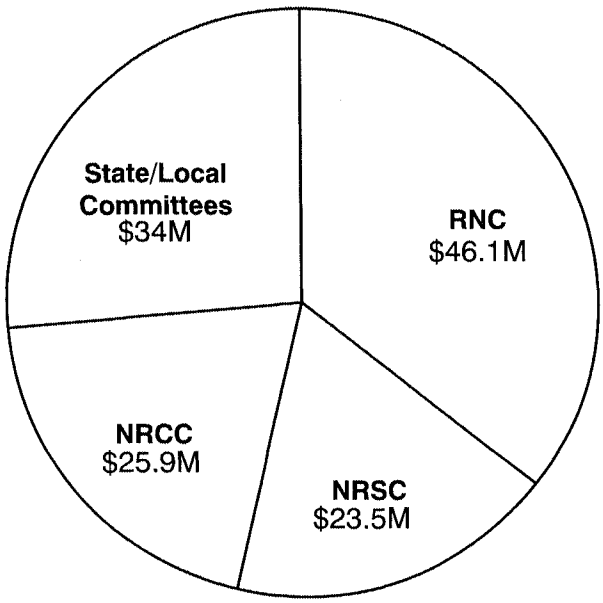
** Includes any unitemized receipts, bank loans, transfers from other party organizations, interest earnings and offsets to expenditures.

CHART 7-7

Major Party Federal Account Receipts: 1995



Democrats
$73.6 Million



Republicans
$129.5 Million

DNC: Democratic National Committee
DSCC: Democratic Senatorial Campaign Committee
DCCC: Democratic Congressional Campaign Committee

RNC: Republican National Committee
NRSC: National Republican Senatorial Committee
NRCC: National Republican Congressional Committee

Chart 7-7 shows that Democrats' and Republicans' national, congressional, state and local committees raised funds in similar relative proportions during 1995. The National Republican Congressional Campaign Committee raised a larger share of that party's federal account total than did its Democrat counterpart, while the Democratic National Committee raised a larger portion of federal funds than did its Republican counterpart.

CHART 7-8

Major Party Federal Receipts Broken Down by Committee and by Source: 1995

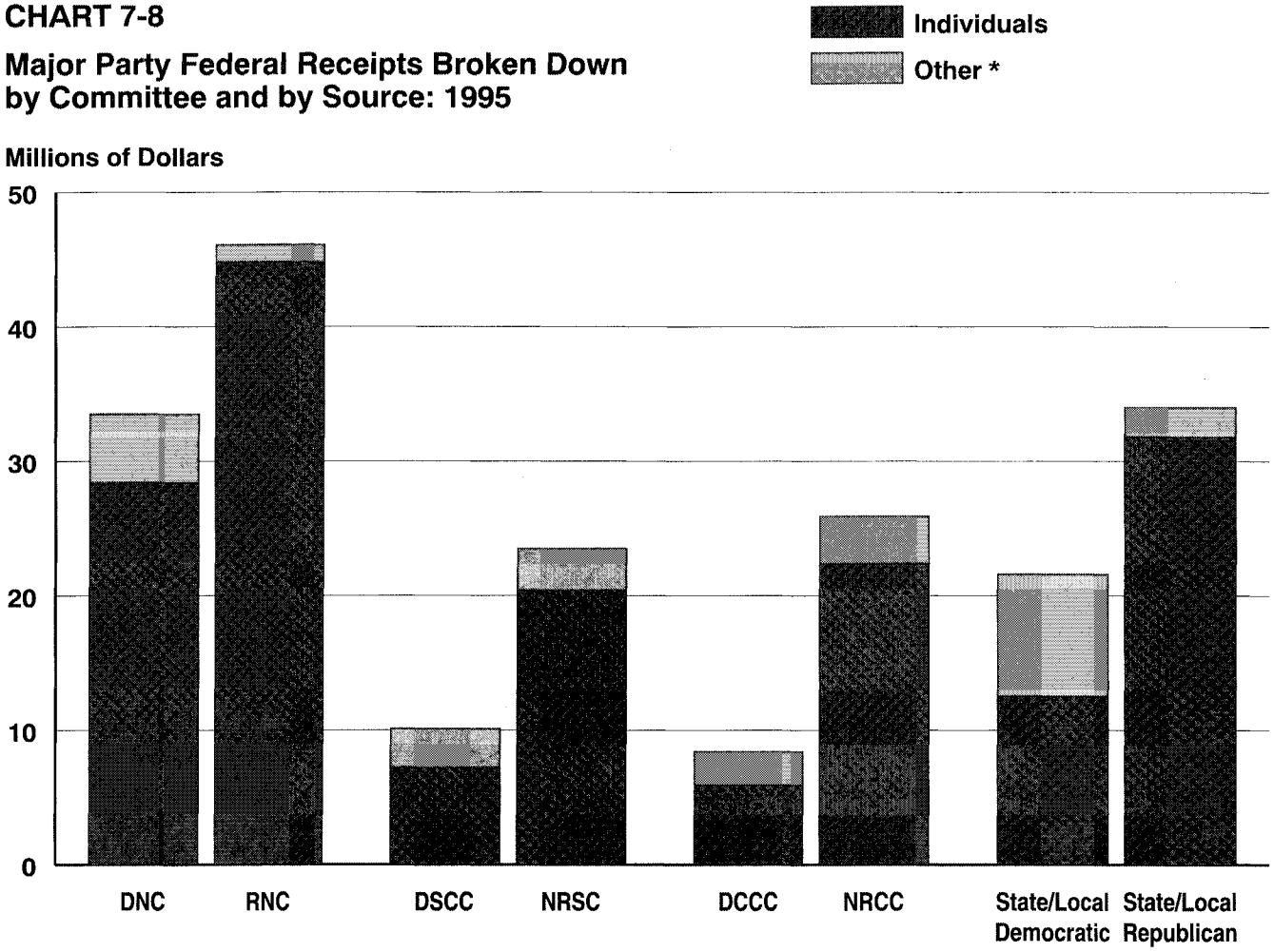


Chart 7-8 reveals that Republican committees at all levels raised more than their Democratic counterparts during 1995. Individual contributions were the dominant source of federal receipts for both Democratic and Republican party committees regardless of their geographic or jurisdictional focus.

* Includes contributions from PACs and other party committees, loans, refunds and rebates.

CHART 7-9

Number of PACs, 1975-1995

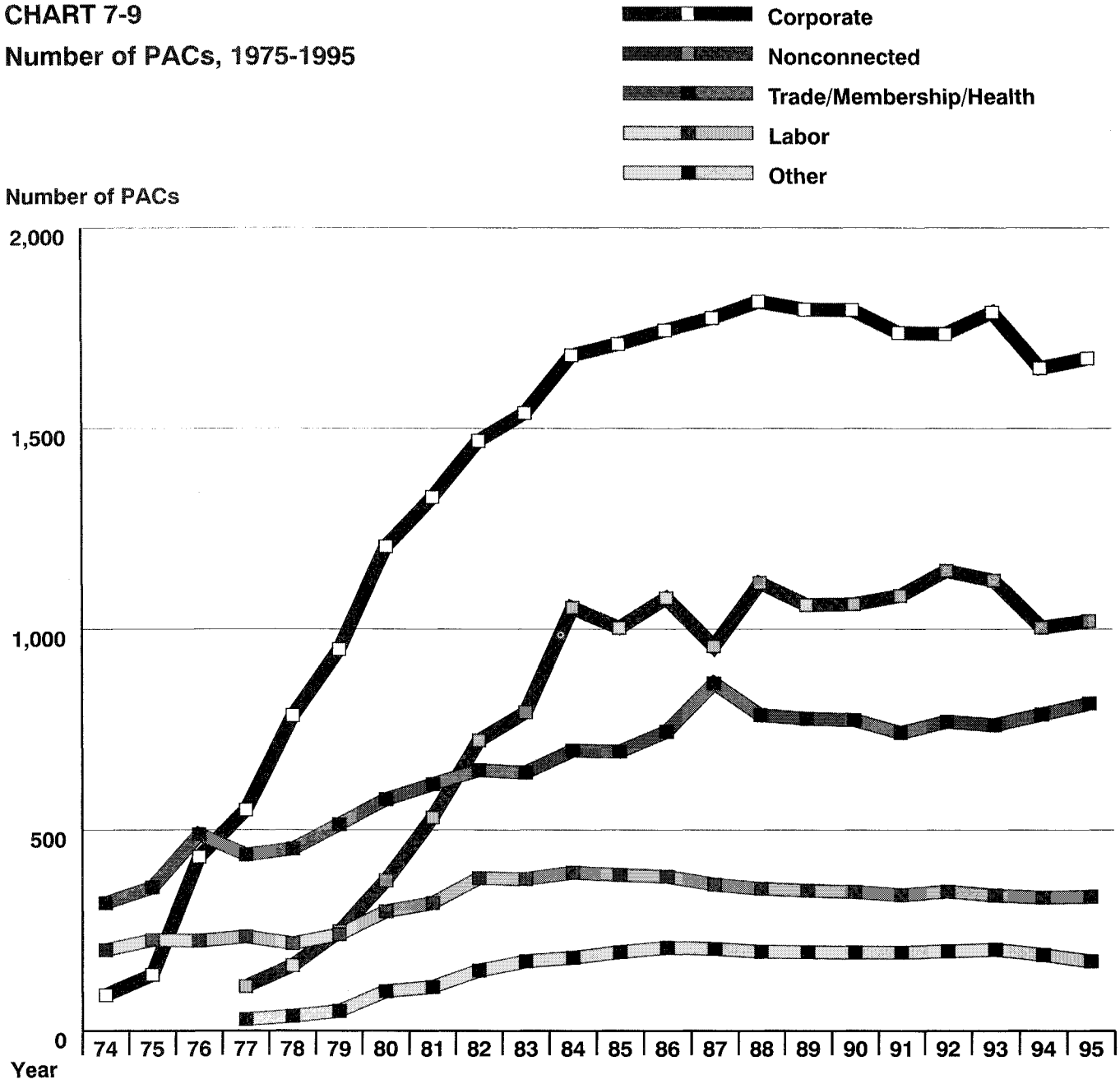


Chart 7-9 shows that the number of PACs has remained relatively stable over the last ten years. The decline in the number of corporate and nonconnected PACs was reversed somewhat in 1995, while a gradual increase in the number of trade/membership/health PACs continued.

CHART 7-10

Overall Presidential Primary Election Spending Limit

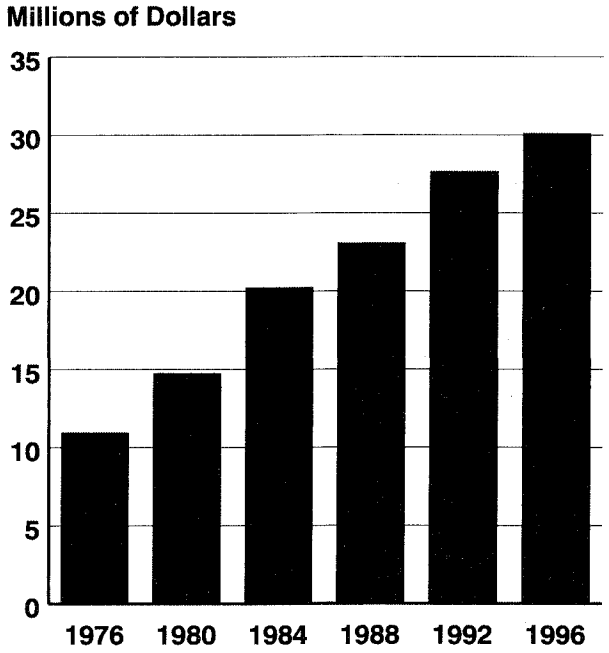


Chart 7-10 shows how inflation has affected the primary spending limit for Presidential candidates who accept public matching funds. The limit for 1996 is nearly three times the limit for the 1976 campaign.

CHART 7-11

Matching Funds Certified to Publicly Funded Presidential Primary Candidates on January 1 of ElectionYear

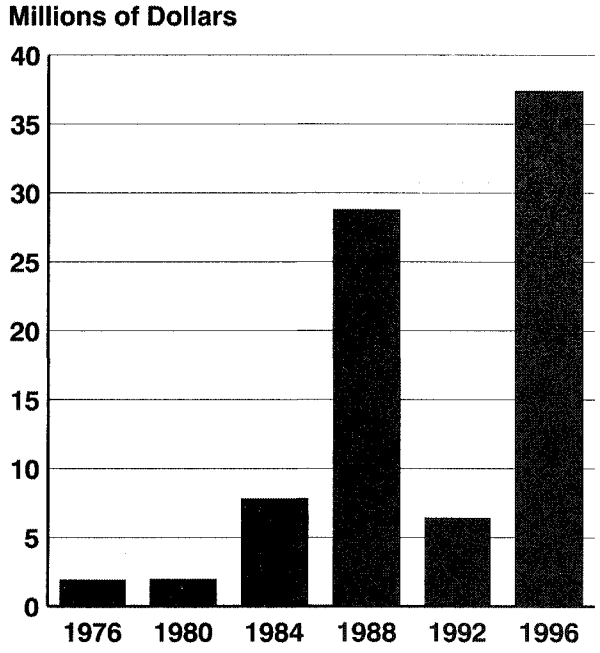
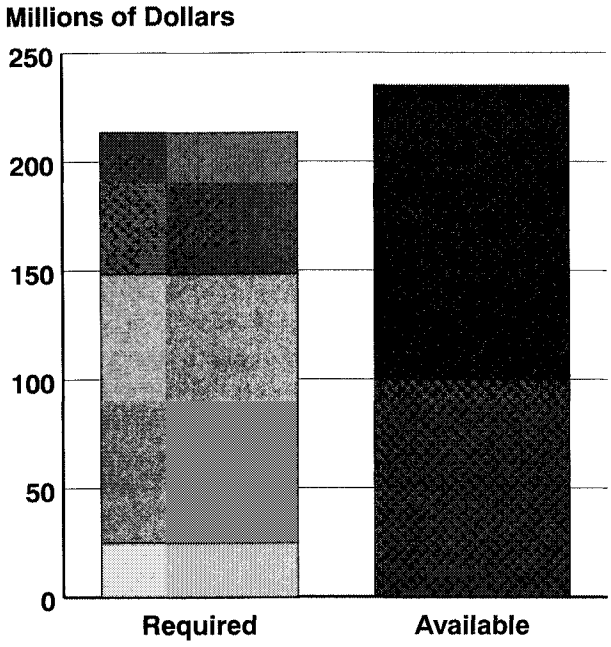


Chart 7-11 shows that the amount of matching funds certified for payment on January 1, 1996, was much larger than that certified on January 1, 1988, when both parties had competitive races for their nominations. Two factors contributed to the large amount of funds certified. The first was the competitive race for the Republican nomination during 1995, while the second was the extraordinarily early fundraising during 1995. Early fundraising resulted from the fact that several state primaries were held earlier in 1996 than they had been in previous election years.

CHART 7-12

Presidential Campaign Fund Status: Projections for 1996



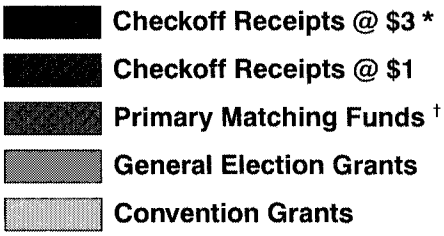


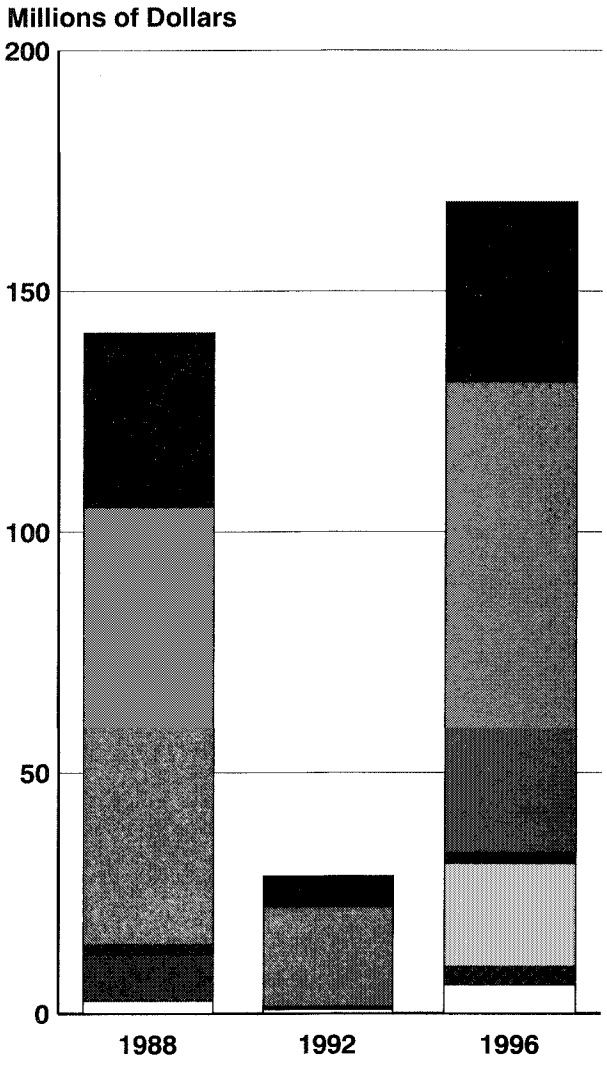
Chart 7-12 shows the importance of the $3 tax checkoff, which funds the Presidential Campaign Fund. Without the change in amount of the checkoff, from $1 to $3, the funds available would not have supported the 1996 general election grants for the two major party nominees. Moreover, no primary campaign matching funds would have been available.

* The voluntary tax checkoff, which funds the Presidential Public Funding System, was changed from $1 to $3 in 1994 to account for inflation since 1973, when the program began.

† The estimate of the primary matching fund total is based on certifications from early periods of past cycles relative to the actual total of matching funds received by candidates in those cycles.

CHART 7-13

Receipts of Presidential Primary Candidates on January 1 of Election Year



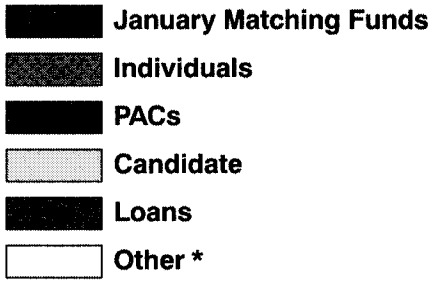


Chart 7-13 shows the total amount raised by Presidential primary campaigns as of January 1 of the election year, during three election cycles. The total includes contributions received in the year before the election plus the matching funds certified early in January of each election year. Contributions from individuals were the largest source of funds for primary campaigns, followed by public matching funds. PACs represented a very small share of receipts for these campaigns, while other sources (e.g. loans or the candidates' own funds) were sometimes important, depending on the specific candidate.

* Includes transfers from previous campaigns, investment income and other miscellaneous sources.

CHART 7-14

Fundraising by 1996 Presidential Candidates

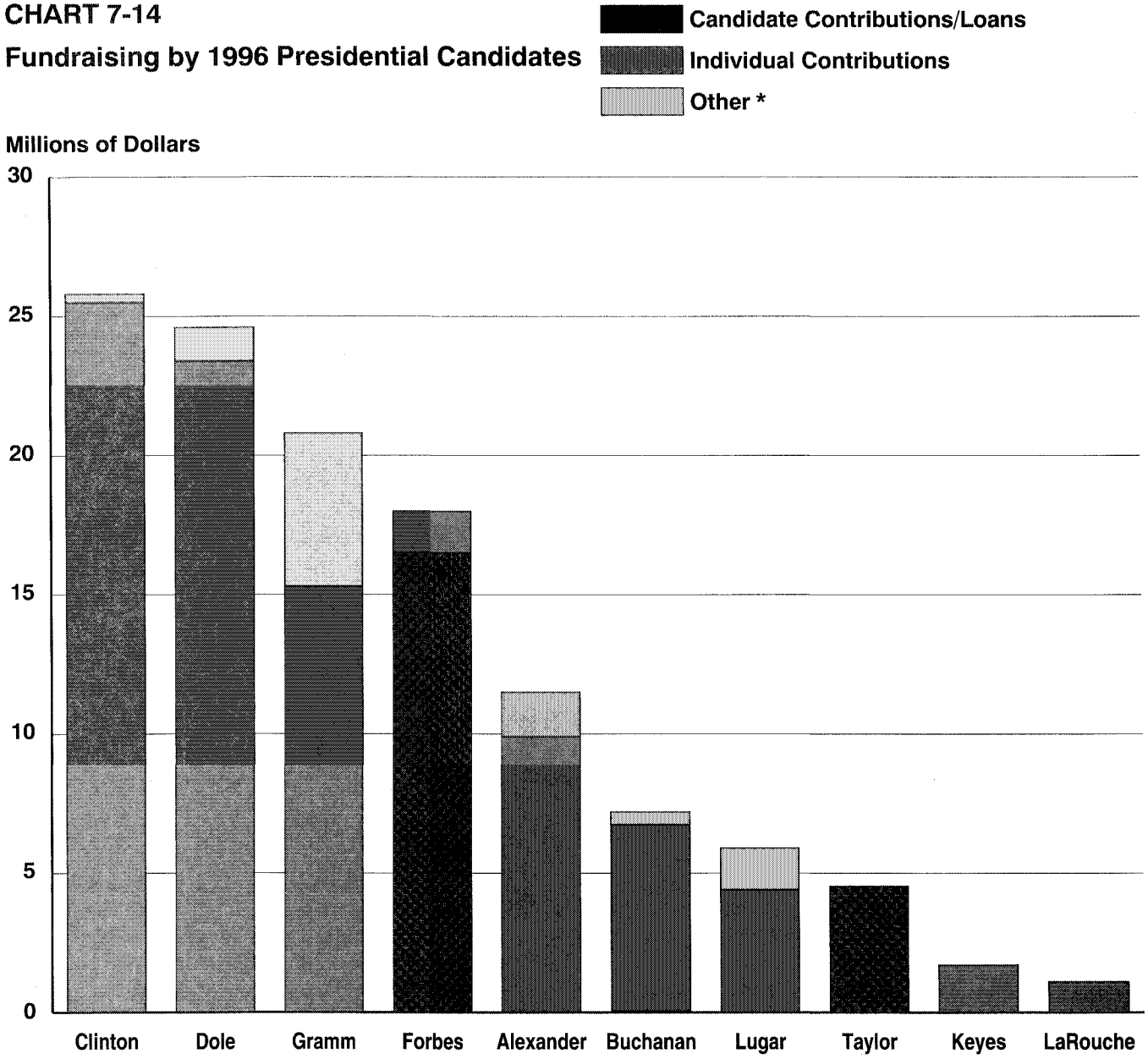


Chart 7-14 provides a breakdown of record-breaking Presidential primary fundraising during 1995 by specific candidates. Individual contributions were generally important, while candidates' personal funds played a major role in some campaigns.

* Includes contributions from PACs and party committees, transfers from other committees and miscellaneous sources.

Appendix 1 Biographies of Commissioners and Officers

Commissioners

Danny L. McDonald, Chairman
April 30, 1999[1]

Now serving his fourth term as Commissioner, Mr. McDonald was first appointed to the Commission in 1981 and was reappointed in 1987 and 1994. 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 and 1989.

Lee Ann Elliott, Vice Chairman
April 30, 1999

Commissioner Elliott was first appointed in 1981 and reappointed in 1987 and 1994. She served as Chairman in 1984 and 1990. Before her first appointment, Commissioner Elliott was vice president of a political consulting firm, Bishop, Bryant & Associates, Inc. From 1961 to 1979, she was an executive of the American Medical Political Action Committee. Commissioner Elliott was on the board of directors of the American Association of Political Consultants and on the board of the Chicago Area Public Affairs Group, of which she is a past president. She was also a member of the Public Affairs Committee of the U.S. Chamber of Commerce. In 1979, she received the Award for Excellence in Serving Corporate Public Affairs from the National Association of Manufacturers.

A native of St. Louis, Commissioner Elliott graduated from the University of Illinois. She also completed Northwestern University's Medical Association Management Executive Program and is a Certified Association Executive.

[1] Term expiration date.

Trevor Potter
April 30, 1997 (resigned October 1995)

Mr. Potter resigned from the Commission in October 1995 to teach at Oxford University in England and, subsequently, to return to the law firm Wiley, Rein and Fielding. He began as a Commissioner in November of 1991, serving as vice chairman of the Commission's Finance Committee and chairman of its Regulations Task Force during 1992. He was elected Commission Vice Chairman for 1993 and Chairman for 1994.

Before his appointment, Mr. Potter specialized in campaign and election law as a partner in a Washington, DC, law firm. His previous experience in government included serving as assistant general counsel at the Federal Communications Commission from 1984 to 1985, and as a Department of Justice attorney from 1982 to 1984.

Mr. Potter was a graduate of Harvard College. He earned his J.D. degree at the University of Virginia School of Law, where he served as editor-in-chief of the *Virginia Journal of International Law* and was a member of the Order of the Coif.

Joan D. Aikens
April 30, 1995

One of the original members of the Commission, Commissioner Aikens was first appointed in 1975. Following the reconstitution of the FEC that resulted from the Supreme Court's *Buckley v. Valeo* decision, President Ford reappointed her to a five-year term. In 1981, President Reagan named Commissioner Aikens to complete a term left open because of a resignation and, in 1983, once again reappointed her to a full six-year term. Most recently, Commissioner Aikens was reappointed by President Bush in 1989. She served as FEC Chairman in 1978, 1986 and 1992.

Before her 1975 appointment, Commissioner Aikens was an executive with Lew Hodges Communications, a public relations firm in Valley Forge, Pennsylvania. She was also a member of the Pennsylvania Republican State Committee, president of the Pennsylvania Council of Republican Women and on the

board of directors of the National Federation of Republican Women. A native of Delaware County, Pennsylvania, Commissioner Aikens has been active in a variety of volunteer organizations and was a member of the Commonwealth Board of the Medical College of Pennsylvania and a past President of Executive Women in Government. She is currently a member of the board of directors of Ursinus College, where she received her B.A. degree and an honorary Doctor of Law degree.

John Warren McGarry
April 30, 1995

First appointed to the Commission in 1978, Commissioner McGarry was reappointed in 1983 and 1989. He served as FEC Chairman in 1991, 1985 and 1981. Before his 1978 Commission appointment, Commissioner McGarry served as special counsel on elections to the House Administration Committee. He previously combined private law practice with service as chief counsel to the House Special Committee to Investigate Campaign Expenditures, a special committee established by Congress every election year through 1972. Before his work with Congress, Commissioner McGarry was the Massachusetts assistant attorney general.

After graduating cum laude from Holy Cross College, Commissioner McGarry did graduate work at Boston University and earned a J.D. degree from Georgetown University Law School.

Scott E. Thomas
April 30, 1997

Mr. Thomas was appointed to the Commission in 1986 and reappointed in 1991. He was the 1993 Chairman, having earlier been Chairman in 1987. He previously served as executive assistant to former Commissioner Thomas E. Harris and succeeded him as Commissioner. Joining the FEC as a legal intern in 1975, Mr. Thomas eventually 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.

Statutory Officers

John C. Surina, Staff Director

Before joining the Commission in 1983, John Surina was assistant managing director of the Interstate Commerce Commission, where he was detailed to the "Reform 88" program at the Office of Management and Budget. In that role, he worked on projects to reform administrative management within the federal government. He was also an expert-consultant to the Office of Control and Operations, EOP-Cost of Living Council-Pay Board and on the technical staff of the Computer Sciences Corporation. During his Army service, Mr. Surina was executive officer of the Special Security Office, where he supported senior U.S. delegates to NATO's civil headquarters in Brussels. Mr. Surina served as 1991 chairman of the Council on Government and Ethics Laws (COGEL).

A native of Alexandria, Virginia, Mr. Surina holds a degree in Foreign Service from Georgetown University. He also attended East Carolina University and American University.

Lawrence M. Noble, General Counsel

Lawrence Noble became General Counsel in 1987, after serving as Acting General Counsel. He joined the Commission in 1977, becoming the Deputy General Counsel in 1983. He previously served as Assistant General Counsel for Litigation and as a litigation attorney. Before his FEC service, he was an attorney with the Aviation Consumers Action Project.

A native of New York, Mr. Noble holds a degree in Political Science from Syracuse University and a J.D. degree from the National Law Center at George Washington University. He is a member of the bars for the U.S. Supreme Court, the U.S. Court of Appeals for the D.C. Circuit and the District of Columbia. He is also a member of the American and District of Columbia Bar Associations.

Lynne 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 and then 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 Lee Ann Elliott begin their one-year terms of office.
— National mail voter registration form becomes available.
9 — Commission releases 1994 year-end PAC count.
20 — FEC institutes new system of records under the Privacy Act of 1974.
31 — U.S. district court rejects dismissal of case based on constitutional challenge to former Commission structure (*FEC v. Williams*)
— 1994 year-end report due.

February

2 — Commission sends 63 recommendations for legislative action to President and Congress.
3 — U.S. appeals court estops a 1988 Presidential candidate from challenging constitutionality of Commission composition because he had already accepted public funds (*Robertson v. FEC*).
— Commission sends to Congress new rules clarifying ban on personal use of campaign funds.
9 — U.S. appeals court dismisses 1992 Presidential candidate's challenge to FEC investigation of her campaign (*Fulani v. FEC*).
13 — Commission makes final repayment determination for President Bill Clinton and his 1992 primary election campaign.
15 — FEC holds public hearing on proposed changes to regulations governing public funding of Presidential candidates.
24 — U.S. district court precludes FEC from recovering civil penalties because five-year statute of limitations expired before suit was filed (*FEC v. National Republican Senatorial Committee*).

March

1 — Vice Chairman Elliott testifies before House Appropriations Subcommittee on $29 million FY 1996 budget request and proposed FY 1995 $1.4 million budget rescission.
2 — U.S. district court upholds constitutionality of National Voter Registration Act (*Wilson v. United States*).
— Commission holds public hearing on initial repayment determination for Patrick Buchanan's 1992 primary committee.
3 — FEC releases preliminary spending limits for publicly funded 1996 Presidential candidates.
8 — FEC holds hearing on proposed changes to disclaimer regulations for campaign communications.
20 — FEC declares Phil Gramm eligible to receive public funds.
13 — FEC releases *1995 Federal/State Disclosure Directory*.
31 — FEC releases statistics on PAC contributions to federal campaigns from 1990 through 1994.

April

4 — U.S. district court sustains Commission's dismissal of complaint alleging campaign coordination in an independent expenditure (*Branstool, et al. v. FEC*).
— Vice Chairman Elliott testifies before House Oversight Committee on $29 million FY 1996 budget request and FY 1995 rescission.
5 — Regulations on personal use of campaign funds take effect.
13 — FEC releases statistics on major party financial activity during 1994 election cycle.
19 — U.S. Supreme Court rules that Ohio regulation prohibiting anonymous political literature violated First Amendment (*McIntyre v. Ohio*).
20 — U.S. district court dismisses case calling for total public funding of all federal elections (*Albanese et al. v. FEC*).
24 — FEC issues report marking agency's 20th anniversary.
28 — FEC releases statistics on 1994 Congressional finance campaign activity.

May

1 — FEC releases *Federal Elections 94: Election Results for the U.S. Senate and the U.S. House of Representatives*.

4 — Commission makes final repayment determination for Governor L. Douglas Wilder and the Wilder for President Committee.

5 — U.S. appeals court rules FEC is time-barred from imposing repayment obligations on two 1988 Presidential campaigns because 3-year statute of limitations had expired (*FEC v. Dukakis, FEC v. Simon*).

17 — Commission holds public hearing for George Bush's 1992 Presidential campaign's challenge to initial repayment determination.

18 — Vice Chairman Elliott testifies before Senate subcommittee in support of $29 million FY 1996 budget request and against FY 1995 rescission.

31 — FEC declares Lamar Alexander, Patrick Buchanan and Robert Dole eligible to receive public funds.

June

1 — Commission determines final repayment for President Clinton's 1992 general election committee.

— FEC publishes *Annual Report 1994*.

12 — Commission submits to Congress new rules governing publicly funded Presidential campaigns.

— U.S. district court finds national party senatorial committee failed to properly report earmarked contributions (*FEC v. National Republican Senatorial Committee*).

14 — U.S. appeals court rejects challenge to constitutionality of out-of-state contributions to U.S. Senate campaigns (*Froelich v. FEC*).

15 — Vice Chairman Elliott defends agency's $29 million FY 1996 budget and argues against FY 1995 $1.4 million rescission in front of Senate Committee on Rules and Administration.

23 — U.S. appeals court concludes that express advocacy is not a defining feature of coordinated party expenditures (*FEC v. Colorado Republican Federal Campaign Committee*).

— U.S. appeals court rules that corporate advertisements critical of candidate Bill Clinton were permissible because the wording did not contain express advocacy (*FEC v. Christian Action Network*).

30 — Commission presents Congress with status report on implementation of National Voter Registration Act.

— Commission sends to Congress new rules defining express advocacy and exempting qualified nonprofit corporations from ban on independent expenditures by corporations and labor organizations.

July

27 — President Clinton signs bill that rescinds $1.4 million of the FEC's FY 1995 appropriation.

29 — Democratic and Republican 1996 convention committees each receive $12 million in public funds.

31 — 1995 midyear report due.

August

1 — Commission determines final repayment for Patrick Buchanan's 1992 presidential campaign.

2 — FEC releases mid-year PAC count.

3 — Commission makes initial repayment determination for Lenora B. Fulani's 1992 Presidential primary campaign.

16 — New public funding regulations, including streamlined audit process, become effective.

17 — FEC publishes eleventh edition of *Selected Court Case Abstracts*.

— Commission determines final repayment for President George Bush's 1992 reelection campaign.

18 — Commissioner Trevor Potter announces his resignation.

— FEC invites selected PACs, party committees and candidate committees to participate in voluntary pilot program for electronic filing.

— FEC releases statistics on financial activity of 1996 Senate candidates.
30 — FEC declares Richard Lugar and Pete Wilson eligible to receive public funds.
31 — FEC declares Arlen Specter eligible to receive public funds.

September

1 — FEC releases statistics on campaign finance activity of party committees during first six months of 1995.
7-8 — FEC holds regional conference in San Antonio, TX.
8 — Commission offers *Combined Federal State Disclosure Directory 1995* on computer disk.
— FEC publishes 1995 edition of *Pacronyms*, an alphabetical compilation of acronyms, abbreviations and common names of PACs.
12 — U.S. appeals court sustains FEC's disclaimer regulation and **also** rules that nonprofit corporation meets criteria which allow it to make independent expenditures although it has no policy against accepting donations from business corporations (FEC *v. Survival Education Fund, Inc. et al.*).
29 — U.S. appeals court upholds FEC's use of "major-purpose test" to narrow the definition of "political committee" (*Akins, et al. v. FEC*).

October

2 — FEC sends revisions to disclaimer rules to Congress.
5 — New rules defining "express advocacy" and "qualified nonprofit corporation" take effect.
23-24 — FEC holds regional conference in San Francisco, CA.
31 — FEC declares President Clinton eligible to receive matching funds.

November

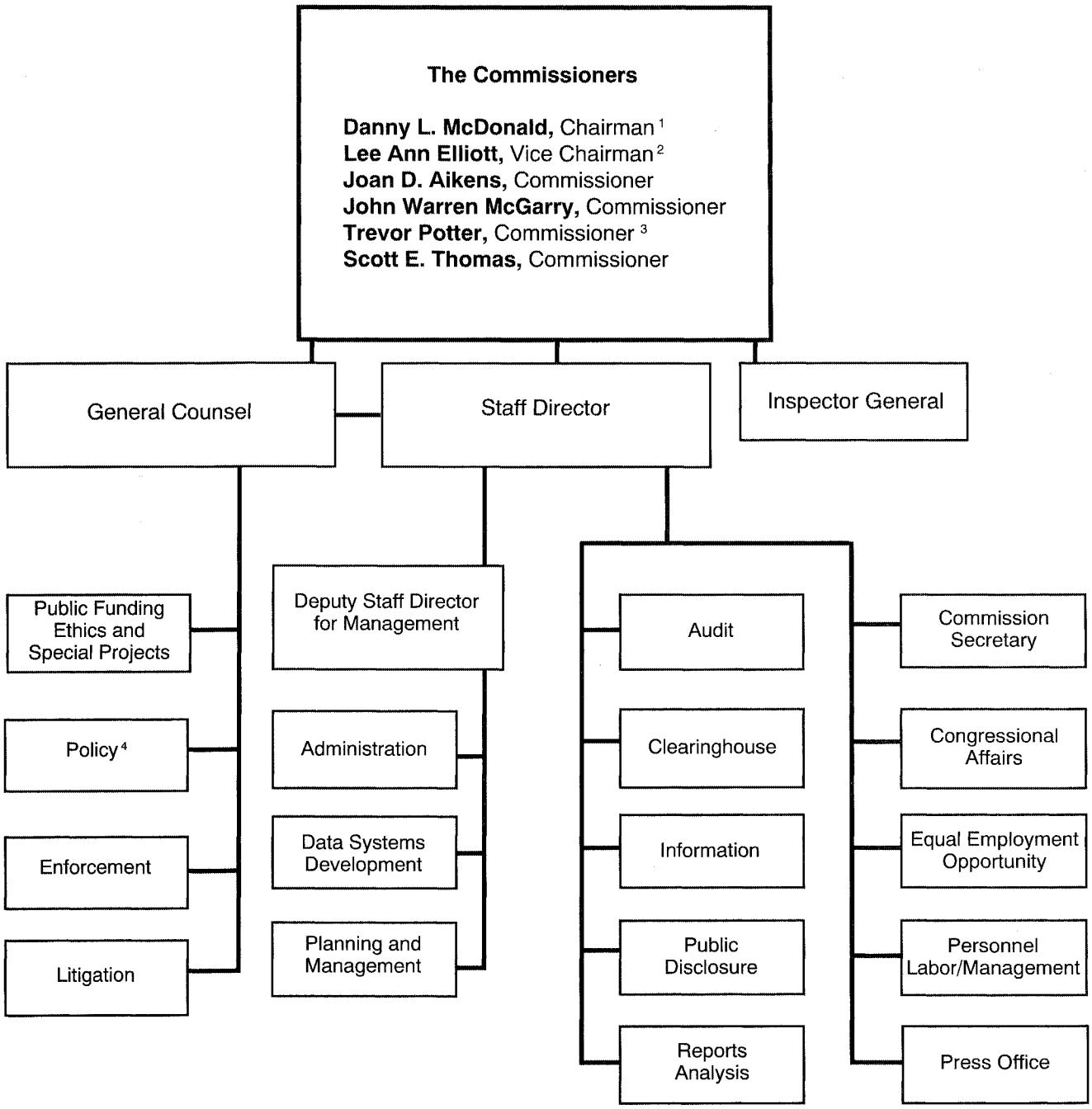
2 — FEC declares Lyndon LaRouche, Jr., eligible to receive matching funds.
— Commission decides not to address a petition for rulemaking concerning campaign activity conducted after an inconclusive vote in Presidential election.
9 — U.S. appeals court dismisses case challenging FEC regulations that permit publicly funded Presidential candidates to accept private contributions for general election legal and compliance funds (*Center for Responsive Politics v. FEC*).
— Commission repeal of obsolete rules becomes effective.
14 — U.S. appeals court finds regulatory definition of "member" in conflict with the First Amendment (*Chamber of Commerce of the U.S.A., et al. v. FEC*).
28 — Illinois holds special primary election in 2nd Congressional District.

December

1 — FEC announces partial payments of federal matching funds to Presidential candidates.
5 — Oregon holds special primary election for Senate seat.
— FEC sends to Congress report analyzing FEC computer program and electronic filing.
7 — Commission elects Lee Ann Elliott as 1996 Chairman and John Warren McGarry as 1996 Vice Chairman.
8 — Commission sends to Congress final rules on communications by corporations and labor organizations and use of corporate/labor facilities and resources.
11-12 — FEC holds conference for corporate and labor PACs in Washington, DC.
12 — California holds special general election in 15th Congressional District.
— Illinois holds special general election in 2nd Congressional District.

20 — Revisions to disclaimer regulations become effective.
— Reports on financial activity from 1994 cycle become available in print and on the Internet.
22 — FEC declares John S. Hagelin eligible to receive matching funds.
28 — President Clinton signs legislation changing point-of-entry for House candidates and allowing for future electronic filing of reports.

Appendix 3
FEC Organization Chart



[1] Lee Ann Elliott was elected 1996 Chairman.
[2] John Warren McGarry was elected 1996 Vice Chairman.
[3] Trevor Potter resigned from the Commission in October 1995.
[4] 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, D.C. 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 on 800-424-9530 and locally on 202-219-3420.

Administration

The Administration Division is the Commission's "housekeeping" unit and is responsible for accounting, procurement and contracting, space management, payroll, travel and supplies. In addition, several support functions are centralized in the office such as printing, document reproduction and mail services. The division also handles records management, telecommunications, inventory control and building security and maintenance.

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 which, 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.

Clearinghouse

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

Local phone: 202-219-3670; toll-free phone: 800-424-9530 (press 4 on a touch-tone phone).

Commission Secretary

The Secretary to the Commission handles all administrative matters relating to Commission meetings, including agenda documents, Sunshine Act notices, minutes and certification of Commission votes. The office also circulates and tracks numerous materials not related to meetings, and records the Commissioners' tally votes on these matters.

Commissioners

The six Commissioners—three Democrats and three Republicans—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: 202-219-4136; 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, additionally, 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: 202-219-3730; 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; and recommending 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 directs the agency's enforcement activities, represents and advises the Commission in any legal actions brought before it and serves as the Designated Agency Ethics Official. The Office of General Counsel handles all civil litigation, including Title 26 cases that come before the Supreme Court. The office also drafts, for Commission consideration, advisory opinions and regulations as well as other legal memoranda interpreting the federal campaign finance law.

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. Responding to phone and written inquiries, members of the staff conduct research based on the statute, FEC regulations, advisory opinions and court cases. Staff also direct 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: 202-219-3420; toll-free phone: 800-424-9530 (press 1 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 files reports notifying Congress of any serious problems or deficiencies in agency operations and of any corrective steps taken by the agency.

Law Library

The Commission law library, part of the Office of General Counsel, is located on the eighth floor and is open to the public. The collection includes materials on campaign finance reform, election law and current

political activity. Visitors to the law library can use automated legal research and gateway services via computer. The librarian and legal staff also maintain computer indices of enforcement proceedings (MURs) and advisory opinions, which may be searched in the Law Library or the Public Disclosure Division. Local phone: 202-219-3312; toll-free: 800-424-9530.

Personnel and Labor/Management Relations

This office provides policy guidance and operational support to managers and staff in a variety of human resource management areas. These include position classification, training, job advertising, recruitment and employment. The office also processes personnel actions such as step increases, promotions, leave administration, awards and discipline, personnel records maintenance and employee assistance program counseling. Additionally, Personnel administers the Commission's labor-management relations program and 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, providing monthly reports measuring the progress of each division in achieving the plan's objectives.

Press Office

Staff of 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: 202-219-4155; toll-free 800-424-9530.

Public Disclosure

The Public Disclosure Division processes incoming campaign finance reports from political committees and candidates involved in federal elections and makes their 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 also include computer indexes, advisory opinions and closed MURs.

The division's Processing Section receives incoming reports and processes them for formats which can be easily retrieved. These formats include paper, microfilm and electronic computer images that can be easily accessed from the library's terminals and those of agency auditors.

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

Local phone: 202-219-4140; toll-free phone: 800-424-9530 (press 3 on a touch-tone phone); Flashfax: 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: 202-219-3580; toll-free phone 800-424-9530 (press 2 on a touch-tone phone).

Staff Director and Deputy Staff Director

The Staff Director carries the responsibilities of appointing staff, with the approval of the Commission, and implementing Commission policy. The Staff Director oversees the Commission's public disclosure activities, outreach efforts, review of reports and the audit program, as well as the administration of the agency.

The Deputy Staff Director has broad responsibility for assisting in this supervision, particularly in the areas of budget, administration and computer systems.

Appendix 5
Statistics on Commission Operations

Summary of Disclosure Files

	Total Filers Existing in 1995	Filers Terminated as of 12/31/95	Continuing Filers as of 12/31/95	Number of Reports and Statements in 1995	Gross Receipts in 1995	Gross Expenditures in 1995
Presidential Candidate Committees	**535**	**28**	**507**	**576**	**$146,036,196**	**$127,745,067**
Senate Candidate Committees	**819**	**90**	**729**	**1,367**	**$113,112,983**	**$67,191,560**
House Candidate Committees	**3,366**	**365**	**3,001**	**4,971**	**$128,847,101**	**$78,595,271**
Party Committees	**525**	**34**	**491**	**1,800**	**$335,924,282**	**$285,696,632**
Federal Party Committees	464	34	430	1,502	$264,062,180	$222,433,238
Reported Nonfederal Party Activity	61	0	61	298	$71,862,102	$63,263,394
Delegate Committees	**73**	**70**	**3**	**5**	**$54,500**	**$54,500**
Nonparty Committees	**4212**	**196**	**4,016**	**17,384**	**$196,148,006**	**$152,543,549**
Labor Committees	348	14	334	1,632	$47,392,009	$30,621,313
Corporate Committees	1,761	87	1,674	8,648	$62,052,506	$50,130,763
Membership, Trade and Other Committees	2,103	95	2,008	7,104	$86,703,491	$71,791,473
Communication Cost Filers	**207**	**0**	**207**	**27**	**N/A**	**$216,645**
Independent Expenditures by Persons Other Than Political Committees	**282**	**13**	**269**	**76**	**N/A**	**$326,007**

Divisional Statistics for Calendar Year 1995

	Total
Reports Analysis Division	
Documents processed	44,984
Reports reviewed	44,390
Telephone assistance and meetings	8,149
Requests for additional information (RFAIs)	8,019
Second RFAIs	3,234
Data coding and entry of RFAIs and miscellaneous documents	16,777
Compliance matters referred to Office of General Counsel or Audit Division	159
Data Systems Development Division*	
Documents receiving Pass I coding	35,048
Documents receiving Pass III coding	38,317
Documents receiving Pass I entry	35,566
Documents receiving Pass III entry	38,921
Transactions receiving Pass III entry	
• In-house	156,999
• Contract	492,322
Public Records Office	
Campaign finance material processed (total pages)	1,158,534
Requests for campaign finance reports	11,459
Visitors	14,043
Total people served	25,502
Information telephone calls	18,638
Computer printouts provided	77,361
Total income (transmitted to U.S. Treasury)	$80,886
Cumulative total pages of documents available for review	13,303,344
Contacts with state election offices	3,342
Notices of failure to file with state election offices	397
Flashfax requests	6,621

*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	2,174
Publications prepared for print	48
Pages of photocopying	10,854,188
Information Division	
Telephone inquiries	59,325
Information letters	47
Distribution of FEC materials	11,681
Prior notices (sent to inform filers of reporting deadlines)	22,357
Other mailings	17,683
Visitors	189
Public appearances by Commissioners and staff	172
State workshops	3
Publications	25
Press Office	
News releases	147
Telephone inquiries from press	13,884
Visitors	1,786
Freedom of Information Act (FOIA) requests	703
Fees for materials requested under FOIA (transmitted to U.S. Treasury)	$38,233
Clearinghouse on Election Administration	
Telephone inquiries	5,867
National Surveys Conducted	10
Individual Research Requests	85
Materials Distributed *	13,200
Election Presentations/Conferences	25
Foreign briefings	59
Publications	9

* Figure includes National Voter Registration Act materials.

	Total
Office of General Counsel	
Advisory opinions	
Requests pending at beginning of 1995	8
Requests received	49
Issued	43
Not Issued*	4
Pending at end of 1995	10
Compliance cases†	
Pending at beginning of 1995	320
Opened‡	177
Closed	246
Pending at end of 1995	251
Litigation	
Cases pending at beginning of 1995	45
Cases opened	33
Cases closed	31
Cases pending at end of 1995	47
Cases won	17
Cases lost	3
Cases settled	11
Law Library	
Telephone inquiries	693
Visitors	1,443

* Two advisory opinions were withdrawn, one resulted in a 3-3 split vote and one did not present sufficient facts.

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

‡ This number includes 27 Public Financing, Ethics and Special Projects enforcement cases that were opened prior to 1995 but were excluded from the 1994 Annual Report Divisional Statistics.

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
Total	**391**	**113**	**504**

Audits Completed by Audit Division, 1975 – 1995

	Total
Presidential	93
Presidential Joint Fundraising	11
Senate	19
House	140
Party (National)	46
Party (Other)	120
Nonparty (PACs)	75
Total	**504**

* **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(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.

Status of Audits, 1995

	Pending at Beginning of Year	Opened	Closed	Pending at End of Year
Presidential	0	0	0	0
Presidential Joint Fundraising	0	0	0	0
Senate	4	0	3	1
House	0	12	4	8
Party (National)	0	0	0	0
Party (Other)	11	12	5	18
Nonparty (PACs)	0	2	0	2
Total	**15**	**26**	**12**	**29**

Appendix 6
1995 Federal Register Notices

1995-1
11 CFR Part 110: Communications Disclaimer Requirements; Notice of Public Hearing (60 FR 4114, January 20, 1995)

1995-2
11 CFR Parts 9003-9038: Public Financing of Presidential and General Election Candidates; Notice of Public Hearing (60 FR 4114, January 20, 1995)

1995-3
11 CFR Part 1: Privacy Act of 1974; New and/or Revised Systems of Records; Notice of Effective Date (60 FR 4165, January 20, 1995)

1995-4
11 CFR Part 1: Privacy Act; New Exempt System of Records; Final Rule (60 FR 4072, January 20, 1995)

1995-5
11 CFR Parts 100, 104 and 113: Contribution and Expenditure Limitations and Prohibitions: Personal Use of Campaign Funds; Final Rule and Transmittal to Congress (60 FR 7862, February 9, 1995)

1995-6
11 CFR Parts 100, 104 and 113: Personal Use of Campaign Funds; Final Rules: Announcement of Effective Date (60 FR 17193, April 5, 1995)

1995-7
Schedule of Matching Fund Submission and Certification Dates for 1996 Presidential Candidates (60 FR 21522, May 2, 1995)

1995-8
11 CFR Parts 104, 110 and 114: Repeal of Obsolete Rules (60 FR 31381, June 15, 1995)

1995-9
11 CFR Parts 106, 9002-9039: Public Financing of Presidential Candidates (60 FR 31854, June 16, 1995)

1995-10
11 CFR Parts 100, 106, 109 and 114: MCFL Rulemaking; Final Rules on Express Advocacy, Independent Expenditures and Corporate and Labor Organization Expenditures (60 FR 35292, July 6, 1995)

1995-11
11 CFR Parts 106, 9002–9004, 9006–9008, 9032–9034, 9036–9039: Public Financing of Presidential Primary and General Election Candidates; Final Rule, Announcement of Effective Date (60 FR 42429, August 16, 1995)

1995-12
Filing Dates for the Illinois Special Elections (60 FR 50623, September 29, 1995)

1995-13
11 CFR Parts 100, 106, 109 and 114: Express Advocacy, Independent Expenditures, Corporate and Labor Organization Expenditures; Final Rule, Announcement of Effective Date (60 FR 52069, October 5, 1995)

1995-14
11 CFR Part 110: Disclaimers; Final Rule (60 FR 52069, October 5, 1995)

1995-15
Filing Dates for the Oregon Special Elections (60 FR 53374, October 13, 1995)

1995-16
Filing Dates for the California Special Elections (60 FR 55377, October 31, 1995)

1995-17
11 CFR Part 9002: Electoral College Expenditures; Notice of Disposition of Petition for Rulemaking (60 FR 56268, November 8, 1995)

1995-18
11 Parts CFR 104, 110 and 114: Repeal of Obsolete Rules; Final Rule and Announcement of Effective Date (60 FR 56506, November 9, 1995)

1995-19
11 CFR Parts 9034 and 9038: Public Financing of Presidential Primary and General Election Candidates; Final Rule and Correcting Amendments (60 FR 57538, November 16, 1995)

1995-20
11 CFR Parts 106, 9002-9008, 9032-9034 and 9036-9039: Public Financing of Presidential Primary and General Election Candidates; Corrections (60 FR 57537, November 16, 1995)

1995-21
11 CFR Part 110: Communications Disclaimer Requirements; Final Rule Correction (60 FR 61199, November 29, 1995)

1995-22
Schedule of Submission Dates for Statements of Net Outstanding Campaign Obligations Required of 1996 Presidential Candidates Post Date of Ineligibility (60 FR 61700, December 1, 1995)

1995-23
11 CFR Parts 100, 102, 109, 100 and 114: Corporate and Labor Organization Activity; Express Advocacy and Coordination with Candidates; Final Rule and Transmittal to Congress (60 FR 64260, December 14, 1995)

1995-24
11 CFR Part 110: Communication Disclaimer Requirements; Final Rule and Announcement of Effective Date (60 FR 65515, December 20, 1995)

Appendix 7 Corporate and Labor Communications and Facilities

In December, the Commission sent to Congress new regulations on corporate and labor communications and the use of corporate/labor facilities and resources.[1] These new and revised rules, which represented the second part of the Commission's MCFL rulemaking, reflect recent judicial and Commission interpretations of 2 U.S.C. §441b. This section of the law prohibits corporations and labor organizations from using treasury funds to make contributions or expenditures in connection with federal elections.

The new rules modify FEC regulations in five significant ways:

- They provide a new standard for the partisan/nonpartisan standard that previously determined which communications must be limited to the restricted class;[2]
- They offer specific examples of how this new standard would apply to communications by corporations and labor organizations;
- They clarify that coordination between a corporation (or labor organization) and a candidate generally results in an illegal contribution to the candidate;
- They provide guidelines on the permissible uses of corporate and labor facilities and resources; and
- They clarify that corporate and labor facilitation of contributions to candidates and committees is prohibited.

New Standard for Identifying Communications Appropriate for Restricted Class

The new rules substitute a new "express advocacy"[3] standard for the partisan/nonpartisan standard previously used for deciding which communications had to be limited to the restricted class and which could be distributed to a broader audience, including the general public and sometimes all employees. Under this new standard, corporate and labor communications that contain express advocacy may be sent only to the restricted class.

Application of New Standard

The new rules also specify how the "express advocacy" standard should be applied to various corporate and labor communications, including:

- Candidate appearances and speeches at corporate/labor events;
- Endorsements of candidates;
- Candidate appearances and speeches on college campuses;
- Candidate debates;
- Written political communications, including voter guides, voting records and press releases;
- Voter registration and get-out-the-vote drives; and
- Voting information. (Consult the chart for details.)

Coordination with Candidate

A new provision in the revised rules addresses the topic of coordination between a candidate and the corporate or labor sponsor of an election-related communication. When communicating with its restricted class, a corporation or labor organization may coordinate with candidates concerning their campaign plans, projects and needs. That coordination, however, may compromise the independence of future communications to the general public by the organization or its separate segregated fund.

When communicating beyond the restricted class, coordination with the candidate concerning campaign plans, projects and needs may result in a prohibited in-kind contribution to the candidate. (However, the new regulations permit certain types of other coordination. See the chart for details). Additionally, coordination with the candidate may compromise the independence of future communications to the general public by the organization or its separate segregated fund.

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[1] The rules became effective on March 13, 1996.

[2] The restricted class includes members of an incorporated membership organization, stockholders, executive and administrative personnel, and the families of each group.

[3] "Express advocacy" means that a communication expressly advocates the election or defeat of a clearly identified candidate for federal office.

Permissible Use of Corporate and Labor Facilities

The new regulations reaffirm that, if a candidate or committee uses the facilities of a corporation or labor organization, the organization must be reimbursed within a commercially reasonable time. Reimbursement is not required for the use of meeting rooms if the organization normally makes such rooms available to other groups and if it makes the room available to any other candidate (running for the same office) who requests to use it.

Facilitation of Contributions

Additionally, the rules clarify that corporations and labor organizations are prohibited from facilitating contributions to candidates or political committees (other than the organization's separate segregated fund). Facilitation means using corporate or labor facilities or resources to raise funds in connection with any federal election. The new rules provide several examples. The rules also explain that, in a few specific cases, use of a corporation's or labor organization's resources in connection with a fundraising activity is not facilitation if someone pays the organization in advance for the use of the facilities or resources. This principle applies to three situations:

- Directing staff to work on the fundraiser;
- Using the corporate or labor organization's mailing list; and
- Using the organizations's food services.

Corporate/Labor Communications

Candidate Appearances[1]	Restricted Class	Other Employees[2]
Campaign-Related Appearance at Corporation or Labor Organization *11 CFR 114.3(c)(2) and 114.4(b)(1) and (2)*	Organization and candidate may expressly advocate election or defeat of candidate.	Candidate may advocate his/her election, but the organization and its SSF may not; nor may they encourage employees to do so.
	Organization may solicit for candidate, but may not collect contributions.	Candidate may solicit funds, but neither the organization nor its SSF may solicit, direct or control contributions to candidate, in connection with the appearance.
	Candidate may solicit and accept contributions before, during or after appearance.	Candidate may not accept contributions at event, but may leave return envelopes and campaign materials for audience.
	Organization may bar other candidates from addressing restricted class.	Organization must, upon request, give opportunity to all candidates seeking the same office. Unless impractical, organization must make equal time and location available to all candidates who wish to appear.
	Organization may consult candidate on structure, format and timing of appearance, and on campaign plans, projects or needs.[3]	Organization may consult candidate on structure, format and timing of appearance, but not on candidate's campaign plans, projects or needs.
	If organization allows more than one candidate to appear, and permits news coverage, it must allow media to cover appearances by other candidate(s) for same office.	(Same as the adjacent restricted class rules.)
	Organization must provide news media equal access.	(Same as the adjacent restricted class rules.)
	De minimus number outside restricted class may attend: employees who facilitate the meeting, news media, guests being honored or participating.	In addition to restricted class and other employees, news media and guests being honored or participating may attend.
	Organization must file reports if communication contains express advocacy and costs exceed $2,000 per election.	

[1] These rules also apply to appearances by party representatives.
[2] Communications directed to employees outside the restricted class may also go to those within the restricted class.
[3] That consultation, however, may compromise the independence of future communications to the general public by the organization or its separate segregated fund.

Candidate Appearances	General Public
Noncampaign-Related Appearance at Corporation or Labor Organization *AO 1980-22*	Candidate may speak about issues of interest to industry or union.
	Candidate must avoid reference to campaign—no solicitation and no advocacy of election.
	No requirement to offer other candidates equal opportunity.
	Proximity to election day is not relevant.
Public Debates *11 CFR 114.4(f)*	Any corporation or labor organization may donate funds to support debate conducted by nonprofit organization.
	Debate may be sponsored by nonprofit organization—501(c)(3) and 501(c)(4)—that does not support or oppose any candidate or party, or by a broadcaster, newspaper, magazine or other general circulation periodical publication.
	Debate must include at least two candidates, meeting face to face, and may not promote one candidate over another.
	Organization staging debate must select debate participants on the basis of preestablished objective criteria: • In primary election, may restrict candidates to those seeking nomination of one party. • In general election, may not use nomination by a particular party as sole criterion.
Public Appearance at a College or University[3] *11 CFR 114.4(c)(7)*	Tax-exempt educational institution—either incorporated or not—may rent facilities to candidate or political committee in normal course of business and at usual and normal charge.
	Tax-exempt educational institution—either incorporated or not—may make facilities available to candidate or party for free or at discount if it: • Makes reasonable efforts to avoid campaign event and to ensure that appearance constitutes communication in academic setting; • Does not make express advocacy communication; and • Does not favor one candidate or party over another.
	College or university may host noncampaign appearance under above guidelines.
	College or university may host candidate debates under above guidelines.

[3] Consult IRS or applicable state rules regarding tax-exemption for state colleges and universities, and private tax-exempt schools.

Publications	Restricted Class	General Public
General Rule *11 CFR 114.3(a), (b) and (c)(1), and 114.4(c)(1)*	Organization may expressly advocate election or defeat of candidate or a party's candidates.	Organization may not expressly advocate election or defeat of candidate or a party's candidates.
	Organization may solicit contributions for candidate or party.	No solicitations.
	Organization may use brief quotations from candidate, but may not republish candidate materials.	
	Organization must file reports if communication contains express advocacy and costs exceed $2,000 per election.	
	General Public	
Voting Records of Incumbent Candidates *11 CFR 114.4(c)(4)*	Organization may publish factual record of votes on legislative matters.	
	Voting record may not include express advocacy.	
	Decision on content and distribution may not be coordinated with candidate or party.	
Voter Guides *11 CFR 114.4(c)(5)*	Type 1: Based on prepared written questions submitted to candidates. Type 2: Not based on written questions. Characteristics Common to Both Types of Guides: • Guide consists of at least two candidates' positions on campaign issues. • Guide may include biographical information. • Organization may not coordinate with candidates concerning content (other than by sending prepared questions) or distribution. • Guide may not contain express advocacy.	
	Characteristics of Voter Guide Based on Written Questions (Type 1): • Questions may be directed in writing to all candidates for a particular House or Senate seat and candidates may respond in writing. • Questions may be directed in writing to Presidential candidates (all in one party for primary or all on general election ballot in state where guide is distributed or in enough states to win majority of electoral votes). • No candidate may receive greater prominence than another. • Guide may not contain an electioneering message. • Guide may not score or rate responses in such a way as to convey an electioneering message.	
Press Releases/Endorsements *11 CFR 114.4(c)(6)*	Organization (except 501(c)(3) nonprofit organization) may announce at a press conference or in a press release sent to regular press contacts that it made a candidate endorsement to its restricted class, as long as costs are de minimis and the announcement is not coordinated with candidate.	

Voting Information	Restricted Class	General Public
Voter Drives: Registration and Get-Out-the-Vote *11 CFR 114.4(d)*	Organization may expressly advocate election/defeat of candidate/party.	Organization may not expressly advocate election/defeat of candidate/party.
	Organization may use phone bank to encourage registration and voting for particular party and candidate.	
	Organization may provide transportation to registration place and to polls, but cannot condition service on support of particular candidate or party.	(Same as the adjacent restricted class rules.)
		Organization must give persons receiving services written notice of the nonpartisan nature of the services.
		No coordination with candidate or party is permitted.
		Organization may not pay individuals conducting drive based on number of persons (registered or transported) who support particular candidate or party.
		Organization may not target people it believes will support its favored candidate or party.
	General Public	
Voter Advertisements *11 CFR 114.4(c)(2)*	Organization may pay for ads (posters, billboards, broadcasting, print or direct mail) urging public to register to vote and to vote.	
	The advertisement may not contain express advocacy.	
	The advertisement may not be coordinated with candidate.	
Distribution of Official Voter Information *11 CFR 114.4(c)(3)*	Organization may distribute voter information produced by official election administrators, including registration-by-mail forms and absentee ballots.	
	Voter information may not contain express advocacy.	
	Voter information may not be coordinated with candidate.	
	Organization may give funds to state and local governments to defray costs of voter registration, voting information and forms.	

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