

# Federal Election Commission

## Annual Report 2000



# Federal Election Commission

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20543

OFFICE OF THE CHAIRMAN

June 1, 2001

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

Dear Mr. President, Senators and Representatives:

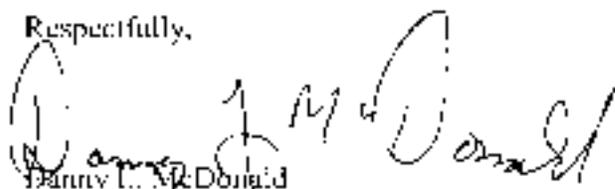
We are pleased to submit for your information the 26th Annual Report of the Federal Election Commission, pursuant to 2 U.S.C. §4384a(9). The *Annual Report 2000* describes the activities performed by the Commission throughout the last calendar year.

As documented in the pages that follow, the Commission focused particularly on enhancing its disclosure and compliance programs during the year 2000. Regulations on mandatory electronic filing, election-cycle reporting, and an expansion of the state waiver program were finalized and will significantly improve the disclosure of campaign finance data. In the area of compliance, the Commission implemented an alternative dispute resolution program as well as a system of administrative fines for late filers and nonfilers.

This report also includes the legislative recommendations the Commission recently adopted and transmitted to the President and the Congress for consideration. We believe these recommendations, if enacted, both would benefit the regulated community and assist the Commission in carrying out its responsibilities in a more efficient, effective manner.

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

Respectfully,

  
Danny L. McDonald  
Chairman

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The Federal Election Commission introduced a number of innovations during the year designed to improve disclosure, promote compliance and streamline agency operations.

With respect to disclosure, new electronic filing regulations, effective January 1, 2001, require filers to submit their campaign finance reports electronically if they raise or spend over \$50,000 in a calendar year, or expect to do so. Since reports filed electronically are publicly available almost instantaneously, the new regulations will result in more timely disclosure of campaign finance data.

During the 2000 campaign, all Presidential candidates who received public funding were required to file their reports electronically. This process permitted immediate comprehensive disclosure of information from these reports. In addition, more than 1,000 other committees voluntarily filed electronically during 2000.

Other disclosure rules that take effect in 2001 require candidates to disclose their campaign activity on an election-cycle basis, rather than the calendar-year basis used in the past. The change makes it easier for campaigns, the public and the Commission to track candidates' aggregate receipts and disbursements.

The Commission's new Administrative Fines program streamlines the agency's processing of violations involving committees that file reports late or fail to file. Like the Commission's enforcement process, the Administrative Fines program encourages compliance and, thereby, should improve disclosure. The rules implementing the program took effect July 14, 2000.

Another compliance-related initiative, the Commission's new Alternative Dispute Resolution (ADR) program, encourages settlements outside the traditional enforcement and litigation processes. The Commission anticipates that the pilot program will help reduce the agency's burgeoning enforcement workload.

These innovations, combined with the Commission's oversight of the financing of the Presidential and Congressional elections, made 2000 a busy and productive year at the FEC.

The material that follows details the Commission's activities during the year. Additional information concerning most matters may be found in the monthly issues, published in 2000, of the FEC newsletter, the *Record*.

# Chapter One

## Keeping the Public Informed

The FEC's disclosure and educational outreach programs work hand-in-hand to help educate the electorate and promote compliance with the campaign finance law. Public knowledge about who contributes and how candidates and committees spend their money helps to create an informed electorate. At the same time, 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.

As detailed below, new regulations and other innovations introduced during 2000 promise to enhance and streamline the disclosure and educational outreach programs.

### Public Disclosure

Disclosing the sources and amounts of funds spent on federal campaign activity continued to be the centerpiece of the Commission's work during 2000. The Commission received the reports filed by committees, reviewed them to ensure compliance with the law, entered the data into the FEC's computer database and made the reports available to the public within 48 hours of receipt.

New disclosure regulations, combined with continued advances in computer technology, greatly enhanced the disclosure process during 2000. As detailed below, these changes are expected to benefit both the public and the regulated community.

### New Regulations

During 2000, the Commission promulgated regulations to implement four disclosure-related legislative amendments. The first mandates electronic filing for filers whose financial activity exceeds a certain threshold. The second requires authorized candidate committees to report on an election-cycle (rather than calendar-year) basis. The third relieves committees of the obligation to file copies of their FEC reports with state election offices in certain states. The fourth expands the Freedom of Information Act (FOIA) to include electronic records.

### *Electronic Filing*

Beginning with the reporting periods that start on or after January 1, 2001, all persons required to file reports with the FEC who receive contributions or make expenditures in excess of \$50,000 in a calendar year, or who expect to do so, must submit their campaign finance reports electronically. Any filers who are required to file electronically, but who file on paper, will be considered nonfilers and may be subject to enforcement action.

The new rules, approved by the Commission on June 15, will provide faster disclosure of filed reports and streamline operations for both filers and the Commission. The Commission estimates, based on data from the 1996 and 1998 election cycles, that, with the \$50,000 threshold, 96 to 98 percent of all financial activity reported to the FEC will be available almost immediately on the FEC's Web site.

Mandatory electronic filing comes on the heels of the Commission's successful voluntary electronic filing program. Launched in January 1997, the voluntary program permitted filers to submit reports to the Commission by modem and via the Internet, using the agency's free FECFile software or compatible commercial software applications.

The growth of voluntary electronic filing has been smooth and impressive. In April 1998, 50 committees had filed electronically. Now, just two years later, that number has increased to 1,033 committees, more than half of whom began filing electronically in 2000. To date, electronic filers have transmitted reports to the Commission disclosing over \$1 billion in transactions. Careful planning has ensured that this growth, and the rapid expansion that will occur when mandatory electronic filing begins, will not stress the electronic filing system.

Building on this success, the Commission introduced an additional on-line filing system in October 2000. In order to reduce the number of faxed, mailed and hand-delivered 48-hour notices (disclosing last-minute contributions of \$1,000 or more), the Commission developed a Web-based filing system to enable candidate committees to create and submit their 48-hour notices entirely on line. Using the new system, even campaigns that do not file electronically and those that use software that does not generate the

48-Hour disclosure form (FEC Form 6) can file their 48-Hour Notices on line.

As part of the Commission's effort to ease the transition from paper to electronic filing, the FEC's Electronic Filing Office conducted classes in electronic filing. The classes covered FECFile basics, data entry requirements for all types of transactions and procedures for reviewing and filing reports. In addition to the classes, which were held at the Commission, staff also presented information on electronic filing at FEC conferences throughout the country.

A complete summary of the new electronic filing regulations appears in Appendix 7.

### ***Election Cycle Reporting***

On July 5, 2000, the Commission approved new regulations requiring authorized committees of federal candidates to aggregate and report receipts and disbursements on an election-cycle basis rather than on the traditional calendar-year basis. These revised regulations affect reports covering periods that begin on or after January 1, 2001. The new rules do not affect PACs or party committees.

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

Under FEC regulations, an election cycle typically begins the day after the general election for a seat or office and ends on the day of the next general election for that seat or office. The length of the election cycle, thus, depends on the office sought: the election cycle is two years for House candidates, six years for Senate candidates and four years for Presidential candidates.

A complete summary of the new regulations appears in Appendix 7.

### ***State Filing Waivers***

On March 16, 2000, the Commission approved revisions to its rules governing the filing of campaign finance reports with state officers and the duties of state officers concerning the reports. The regulations, which took effect June 7, 2000, codify the Commission's state waiver program that began in October 1999.

Under the program, filers whose reports are available on the FEC Web site need not file duplicate copies of their reports in states that provide adequate public access to the Commission's site.

Initially, the waiver did not apply to Senate committees because their reports—which are filed with the Secretary of the Senate—were not available on the FEC Web site. Thanks to a joint effort by the Commission and Secretary of the Senate, the Commission was able to extend the State Filing Waiver Program to include campaigns for U.S. Senate and other political committees that support only U.S. Senate candidates.

At the close of 2000, 46 states/territories had qualified for the state filing waiver.<sup>1</sup>

### ***EFOIA***

In another disclosure-related regulatory project, on February 17, 2000, the Commission approved rules implementing the Electronic Freedom of Information Act Amendments of 1996 (EFOIA). The Freedom of Information Act (FOIA) provides public access to all federal agency records except those that are protected from release by specified exemptions. The EFOIA extends that access to electronic records and

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<sup>1</sup> As of December 31, 2000, the Commission had certified that the following states and territories qualify for filing waivers: Alabama, American Samoa, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Virgin Islands, Washington, West Virginia, Wisconsin and Wyoming.

makes other changes in FOIA procedures that are designed to expedite and streamline the process by which agencies disclose information generally. The EFOIA requires each agency to make reasonable efforts to ensure that its records can be reproduced and searched electronically, except when such efforts would significantly interfere with the operation of the agency's automated information system. The Commission has amended its FOIA rules to apply these statutory changes to its electronic records and procedures.

**New Disclosure Forms for 2001**

In light of the new electronic filing and election cycle reporting requirements, the Commission updated its campaign finance disclosure forms during 2000. Some of the forms were reformatted so that staff could process them faster and more easily and so that they could eventually be read electronically through optical character recognition (OCR), in anticipation of the Commission's future use of this technology. The Commission plans to make the new forms available for use in the first reporting periods covering activity in 2001.

**Imaging and Processing Campaign Finance Data**

For several years, the Commission has scanned all of the paper reports filed with the agency to create digital images of the documents. Since Senate committees file with the Secretary of the Senate rather than the FEC, their reports have not been scanned. In September 2000 that changed, thanks to a joint effort of the Commission and the Secretary's office. Now, the Secretary of the Senate scans all of the paper reports it receives and makes the images available to the FEC. As a result, the public can view digital images of all types of reports in the FEC's Public Records Office or on the Commission's Web site.

In addition to the digital imaging system, the Commission codes and enters information taken from campaign finance reports into the agency's disclosure database, which contains data from 1977 to the present. Information is coded so that committees are identified consistently throughout the database. 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 name Smith and operating in Washington, the report referred to.

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

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

\* Figures for even-numbered years reflect the cumulative total for each two-year election cycle.

† The FEC began entering nonfederal account data in 1991.

**Public Access to Campaign Data**

During 2000, the Commission continued to expand access to campaign finance data via its Web site—www.fec.gov. In September, the agency enhanced the site's query system by offering visitors quick access to summary statistical information on candidates, PACs and political party committees. Visitors could select by state, by political party or by candidate status (incumbent, challenger or open-seat), then simply click to access detailed lists of individual or PAC contributions. These new features supplement the site's

existing query system, which allows visitors to access the name and contribution amount of any individual who contributed \$200 or more to a federal political committee; to access lists of PACs or party committees that contributed to specific candidates; and to view lists of candidates to whom selected PACs and parties contributed.

The Commission's disclosure database, which contains millions of transactions, enables researchers to 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).

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

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

### Review of Reports

The Commission's Reports Analysis Division (RAD) reviews all reports to ensure that the public record provides a full and accurate portrayal of campaign finance activity and to track compliance with the statute and regulations. When reports analysts find that a report contains errors or suggests violations of the law, they send the reporting committee a request for additional information (RFAI). The committee treasurer can then make additions or corrections to the

report, which are added to the public record. Apparent violations, however, may be referred to the Audit Division or to the Office of General Counsel for possible enforcement action.

During 2000, reports analysts reviewed thousands of reports, which disclosed significantly more financial activity than was reported in 1998. Although several hundred committees voluntarily filed electronically, most committees continued to file paper reports. With the advent of mandatory electronic filing, the Commission will be able to further automate its review process. During 2000, RAD staff worked with a contractor to develop such a program.

## Educational Outreach

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

### Home Page ([www.fec.gov](http://www.fec.gov))

In its fifth year of operation, the Commission's Web site continued to offer visitors a variety of resources. On February 1, 2000, the FEC added agenda documents for its public meetings to the site. In addition, visitors could continue to search for advisory opinions (AOs) on the Web by using words or phrases or by entering the year and AO number, and could access a variety of rulemaking documents, including Notices of Proposed Rulemaking and final rules. Visitors could also access brochures on a variety of topics, read agency news releases, review national election results and voter registration and turnout statistics, look up reporting dates and download the national mail voter registration form, FEC registration and reporting forms, copies of the *Record* newsletter, the Campaign Guides for PACs, parties and candidates and other agency publications.

The site averaged about 2 million hits per month in 2000, but logged more than 10 million hits in October, the highest monthly usage ever.

### Telephone Assistance

A committee's first contact with the Commission is often a telephone call to the agency's toll-free infor-

mation hotline. In answering questions about the law, staff research relevant advisory opinions and litigation, as needed. Callers receive, at no charge, FEC documents, publications and forms. In 2000, the Information Division responded to 54,178 callers with compliance questions.

### **Faxline**

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

During 2000, 1,714 callers sought information from the 24-hour Faxline and received 2,319 documents.

### **Reporting Assistance**

During 2000, reports analysts, assigned to review committee reports, were also available to answer complex reporting and compliance-related questions from committees calling on the toll-free line.

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

### **Roundtables**

The FEC continued its roundtable sessions for the regulated community. The roundtables, limited to 10-12 participants per session, focused on a range of topics from soliciting funds via the Web to completing FEC reports.

### **Conferences**

During 2000, the agency conducted a full program of conferences to help candidates and committees understand and comply with the law. The Commission hosted conferences in Washington, DC, for candidates, corporations and labor organizations, and membership and trade associations. In addition, the agency held a regional conference in Miami for all types of committees.

The conferences featured hands-on workshops on the fundamental areas of the law and specialized sessions on the Commission's electronic filing pro-

gram and on the impact of recent court decisions on the federal election law.

### **Tours and Visits**

Visitors to the FEC during 2000, including student groups and foreign delegations, listened to presentations about the campaign finance law and, in some cases, toured the agency's Public Records office.

### **Media Assistance**

The Commission's Press Office continued to field questions from the press and navigate reporters through the FEC's vast pool of information. Press Office staff responded to 16,714 calls and visits from media representatives and prepared 84 news releases. Many of these releases alerted reporters to new campaign finance data and illustrated the statistics in tables and graphs.

### **Publications**

During 2000, the Commission published several documents to help committees, the press and the general public understand the law and find information about campaign finance. All of the new publications were available both in print and on the FEC Web site.

Among the new publications was a brochure on the Commission's new Alternative Dispute Resolution (ADR) Program (discussed in Chapter Two). The brochure offers a step-by-step description of the ADR process.

As in past years, the Commission continued to provide more than 10,000 free subscriptions to its monthly newsletter, the *Record*. The newsletter summarizes recent advisory opinions, compliance cases, audits, litigation and changes in regulations. It also includes graphs and charts on campaign finance statistics. During 2000, the Commission published a special *Record Supplement* summarizing regulatory changes since 1995.

The *Combined Federal/State Disclosure Directory 2000* directs researchers to federal and state offices that provide information on campaign finance, candi-

dates' personal finances, lobbying, corporate registration, election administration and election results. 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 and locate their reports. Both the disclosure directory and PAC listing were available not only in print and on the Web, but also on computer disks formatted for popular hardware and software. The Web page version of the *Disclosure Directory* includes hyperlinks to the Web pages of state offices and e-mail addresses for state officials.

The Commission also published a supplement to *Campaign Finance Law 2000*—a summary of state campaign finance laws—and posted “quick reference charts” from it on the FEC Web site. The report summarizes the campaign finance laws of the U.S. territories and possessions of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico and the U.S. Virgin Islands.

## Office of Election Administration

In 2000, the Office of Election Administration (OEA) continued its work in updating the *Voting Systems Standards*. During the first half of the year, staff attended three public meetings with the members of the National Association of State Election Directors (NASED) Voting Systems Board, vendors of voting systems and team members from American Management Systems (AMS), contractors to the FEC on *Standards*, to discuss pertinent issues, to listen to concerns from the vendor community, and to refine and review initial drafts of the *Standards*.

OEA staff also assisted the National Taskforce on Election Accessibility in its study of polling place accessibility for the elderly and disabled; it mailed survey forms to approximately 8,000 local election officials across the U.S.

On August 10, 2000, the OEA convened a one day meeting of its Advisory Panel of state and local election officials in Washington, DC. The meeting featured

lectures and discussion on the Supreme Court ruling in *California Democratic Party v. Jones* and its effect on blanket primaries. Other agenda items included a review of legislation concerning polling place accessibility, internet voting and a briefing on the status of the Voting Systems Standards update.

Over the course of the year, staff also worked to make a significant amount of new information available through the FEC Web site ([www.fec.gov](http://www.fec.gov)). This information included:

- Answers to frequently asked questions about voter registration, state election day and voting procedures, and absentee voting;
- Voter registration and turnout demographics from the 1998 general election;
- Constitutional provisions relating to elections;
- Statutory provisions relating to elections;
- The administrative structure of state election offices; and
- Updates to the National Mail Voter Registration form.

During the hectic pre-election season, OEA staff conducted briefings on U.S. election procedures for over 1,100 foreign journalists, legislators and election officials.

## Chapter Two Interpreting and Enforcing the Law

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

The agency's enforcement actions also promote compliance by correcting past violations and demonstrating to the regulated community that violations can result in civil penalties and remedial action. During 2000, the Commission introduced two new programs—Administrative Fine and Alternative Dispute Resolution—that should similarly foster compliance.

### Regulations

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

#### Rulemakings Completed in 2000

The Commission completed work on the following new rules during 2000:

- Rules mandating electronic filing for committees whose financial activity exceeds \$50,000 per year. Took effect January 1, 2001. (See page 3.)
- Rules changing the reporting aggregation requirements for candidate committees from a calendar-year to an election-cycle basis. Took effect January 1, 2001. (See page 4.)

- Rules granting certain states a waiver from the requirement to receive and maintain copies of reports and statements filed by federal committees. Took effect June 7, 2000. (See page 4.)
- Rules implementing an Administrative Fine Program for committees that fail to file reports or file late. Took effect July 14, 2000. (See page 11.)
- Amendments to the FEC's Freedom of Information Act regulations to comply with the Electronic Freedom of Information Act Amendments of 1996 (EFOIA), which were enacted to make government documents available by electronic means. Took effect March 27, 2000. (See page 4.)
- Rules governing coordinated communications made in support of or in opposition to clearly identified candidates by persons other than candidates, authorized committees and party committees. Approved November 30, 2000. (See page 24.)

#### Other Rulemakings in Process

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

- It reviewed and analyzed more than 1,200 comments received in response to a Notice of Inquiry regarding the use of the Internet to conduct campaign activity. (See page 26.)
- It began consideration of final rules on allocation of expenses between federal and nonfederal accounts. (Soft Money, see page 28.)
- It declined to act on a rulemaking petition filed by the Project on Government Oversight (POGO) that recommended changes to the rules governing reporting by political action committees.

### Advisory Opinions

The Commission responds to questions about how the law applies to specific situations by issuing advisory opinions. When the Commission receives a valid request for an advisory opinion, it generally has 60 days to respond. If, however, a candidate's campaign submits a valid request within 60 days before an election, and the request directly relates to that election, the Commission must respond within 20 days. The

Office of General Counsel 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 41 advisory opinions in 2000. Of that number, seven involved use of the Internet, and at least one examined party committees' use of "soft money." These and other 2000 advisory opinions are discussed in Chapter Four, "Legal Issues."

## Enforcement

### The Enforcement Process

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

Each of these can lead 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 (OGC) determines whether the document satisfies specific criteria for a proper complaint.

The General Counsel recommends whether the Commission should find "reason to believe" and open an investigation. If the Commission finds there is "reason to believe" the respondents have committed a violation, it notifies the respondents and begins to investigate the matter. The Commission has authority to subpoena information and can ask a federal court to enforce a subpoena. At the end of an investigation, the General Counsel prepares a brief, which states the issues involved and recommends whether the

Commission should find "probable cause to believe" a violation has occurred. Respondents may file briefs supporting their positions.

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

### Enforcement Initiatives

During 2000, the Commission continued to use a prioritization system to focus its limited resources on more significant enforcement cases.

Now in its eighth year of operation, the Enforcement Priority System (EPS) has helped the Commission manage a heavy caseload involving thousands of respondents and complex financial transactions. The Commission instituted the system after recognizing that the agency did not have sufficient resources to pursue all of the enforcement matters that came before it. Under the system, the agency uses formal criteria to decide which cases to pursue. Among those criteria are: the intrinsic seriousness of the alleged violation, the apparent impact the alleged violation had on the electoral process, the topicality of the activity and the development of the law and the subject matter. The Commission continually reviews the EPS to ensure that the agency uses its limited resources to best advantage.

In addition, during 2000, OGC continued to use a computerized system to image documents and create a searchable database. Developed with help from a support contractor, the system is designed to help streamline the investigation of cases that involve large collections of documents.

Also during the year, the Counsel's office entered data into a computerized case management system designed to help manage and track the agency's enforcement and litigation cases, as well as other

projects in OGC. OGC hopes eventually to use the system to develop an offense profile database that would inform Commissioners, policy makers and the public about emerging enforcement trends.

**Statistics: Civil Penalties, Active/Inactive Cases and Number of Respondents**

Chart 2-1 compares civil penalties negotiated in 2000 conciliation agreements with those of previous years. In Chart 2-2, the median civil penalty negotiated in 2000 is compared with the median civil penalty of previous years. Chart 2-3 (next page) tracks the ratio of active to inactive enforcement cases over the last three years. Chart 2-4 examines the number and types of cases dismissed under the EPS over the last seven years. Chart 2-5 tracks the monthly average number of respondents and pending enforcement actions during each of the last six years.

**Administrative Fine Program**

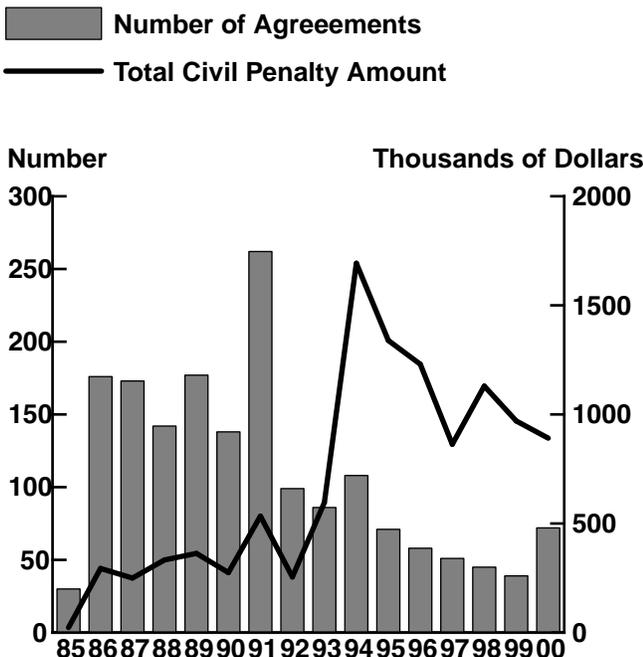
Beginning with the July 15, 2000, quarterly reports, the Commission implemented a new program for assessing civil money penalties for violations involving:

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

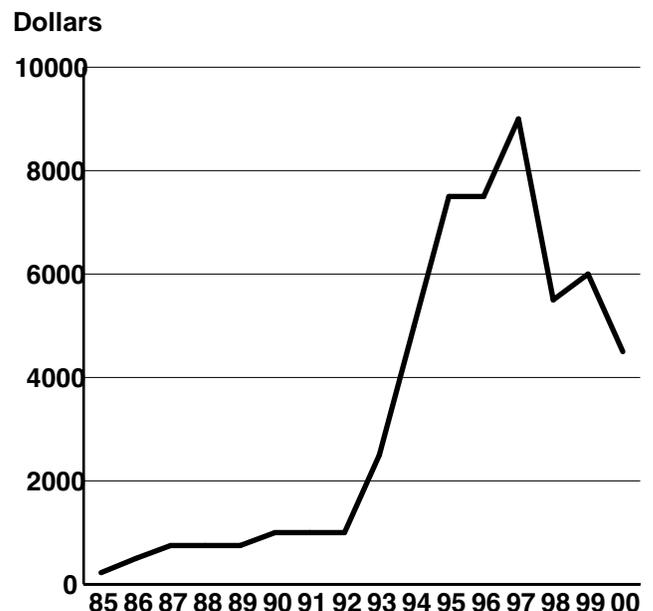
The regulations implementing the Administrative Fine program are based on legislative amendments that permit the FEC to impose civil money penalties, based on schedules of penalties, for violations of reporting requirements that occur between January 1, 2000, and December 31, 2001.

The July 2000 Quarterly Report was the first report filed under the new program, and the number of late filers dropped significantly. While 30 percent of filers were late for the April 2000 quarterly filing, only 18

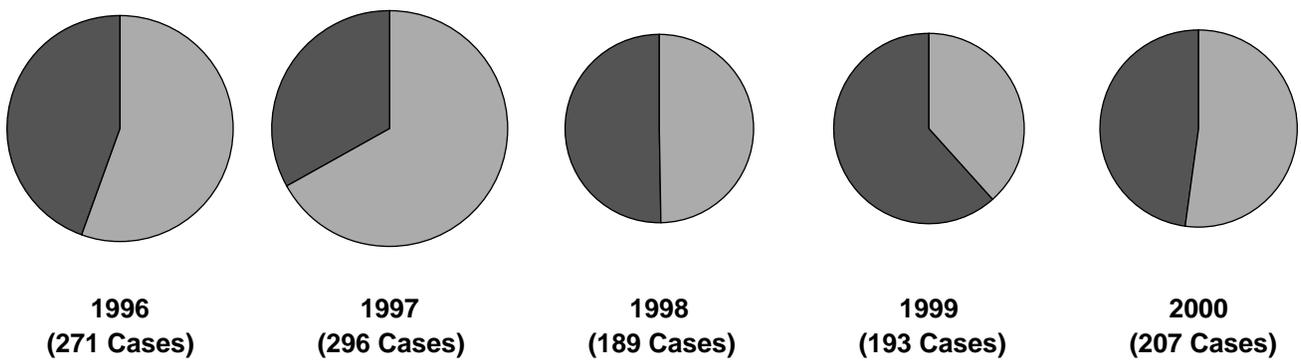
**CHART 2-1  
Conciliation Agreements  
by Calendar Year**



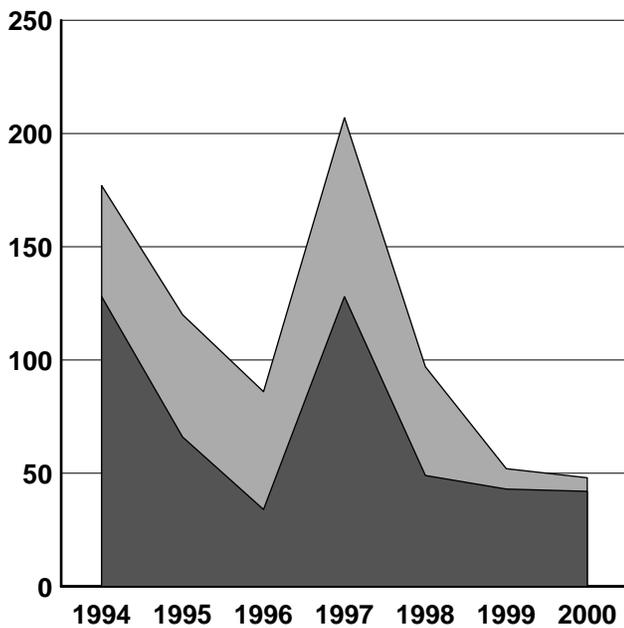
**CHART 2-2  
Median Civil Penalty  
by Calendar Year**



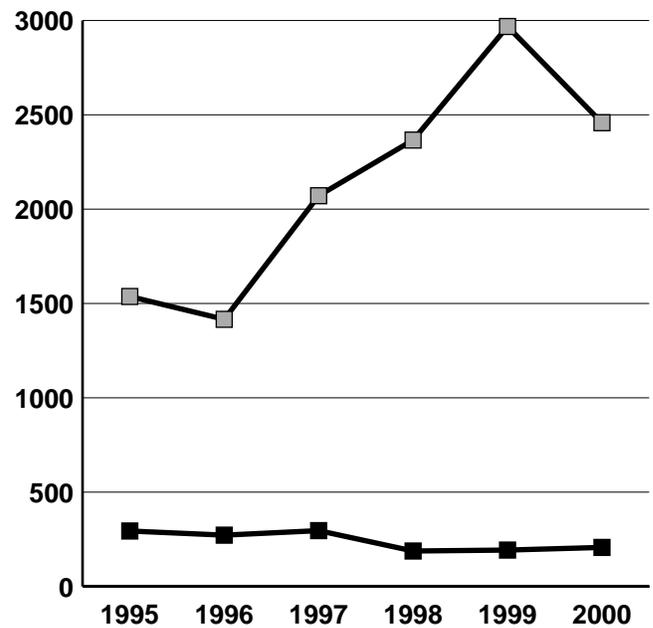
**CHART 2-3**  
Ratio of Active to Inactive Cases by Calendar Year



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



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



percent of filers were late for the July report. A similar trend emerges when comparing the 2000 reports to those filed in previous years. As illustrated in Chart 2-6, the percentage of reports filed late in the latter stages of the election cycle decreased in 2000 as compared with the previous two election cycles.

**Chart 2-6**  
**Percentage of Reports Filed Late**

Type of Report	1996	1998	2000
July Quarterly	25%	25%	18%
October Quarterly	25%	24%	22%
12-Day Pre-General	18%	17%	13%
30-Day Post-General	22%	22%	17%

### How the Program Works

In the past, the FEC handled reporting violations (late filers, nonfilers and committees that failed to file 48-hour notices) under its regular enforcement procedures, described above. Under the new rules, if the Commission finds “reason to believe” that a committee violated the applicable reporting provisions, the Commission provides written notification to the committee and its treasurer (the respondents) containing the factual and legal basis of its finding and the amount of the proposed civil money penalty. The respondents have 40 days from the date of the reason-to-believe finding to either pay the civil money penalty or submit to the Commission a written response, with supporting documentation, outlining the reasons why it believes the Commission’s finding and/or penalty is in error. If the committee submits such a response, it is forwarded to the Office of Administrative Review, for consideration by an impartial reviewing officer who was not involved in the original reason-to-believe recommendation.

After reviewing the Commission’s reason-to-believe finding and the respondent’s written response, the reviewing officer forwards a recommendation to the Commission, along with the original reason-to-believe finding, the respondent’s written response and any supporting documentation. Respondents have an opportunity to submit a written response to the re-

viewing officer’s recommendation. The Commission then makes a final determination as to whether the respondent violated the law and, if so, assesses a civil money penalty based on schedules of penalties.

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

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

### Calculating Penalties

Under the program, respondents may face administrative penalties ranging from \$125 to \$16,000 (or more for repeat late- and nonfilers). The interaction of several factors determines the size of the penalty:

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

For more detailed information on the Administrative Fine Program, see Appendix 7.

### Alternative Dispute Resolution Program

On July 25, 2000, the Commission approved a pilot Alternative Dispute Resolution (ADR) program, designed to promote compliance by encouraging settlements outside the agency’s regular enforcement context. By expanding the tools for resolving complaints and Title 2 audit referrals, the program aims to:

- Resolve complaints and audit referrals faster;
- Increase the number of complaints and referrals processed;

- Reduce costs for respondents;
- Ensure greater satisfaction for the respondents involved; and
- Enhance FEC enforcement efforts by freeing up resources from less compelling complaints and Title 2 audit referrals.<sup>1</sup>

### Overview of the ADR Process

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

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

Taking these contingencies into account, the ADR office expects to process complaints and Title 2 audit referrals within five months following the receipt of the complaint or the referral.

After OGC makes an initial determination that certain cases are suitable for the ADR program, it—or the Commission—refers them to the ADR office. That office then evaluates the cases to determine whether they meet the requirements for the ADR program. In order to have a case considered for treatment within the ADR program, the respondent must:

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

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

### The ADR Process

***Bilateral Negotiations.*** The bilateral negotiation phase involves direct negotiations between the respondent and a representative from the ADR office of the FEC. Any resolution reached in negotiations is submitted to the Commission for final approval. If a resolution is not reached in bilateral negotiations, the case proceeds to mediation.

***Mediation.*** The mediation phase begins with the selection of a mediator agreed upon by the respondent and the representative from the ADR office. Under the pilot program, the Commission pays for all mediation costs, unless the respondent wants to split them with the ADR Office.

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

If an agreement is reached in mediation, the ADR office sends the agreement to the Commission for approval. All approved agreements are a matter of public record. Settlements cannot serve as a precedent for the settlement of future cases.

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<sup>1</sup> In its first four months of operation (October 2000 through January 2001), the ADR office resolved six complaints. All of those settlements were negotiated directly with the respondents or their attorneys.

## Chapter Three

# Presidential Public Funding

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

### Shortfall

A shortfall in the Presidential Election Campaign Fund resulted in partial matching fund payments to Presidential primary candidates during the first six months of 2000. The temporary shortfall was the result of several factors:

- Payments from the Fund are adjusted for inflation, but Fund receipts are not.
- Three parties participated in the public funding program in 2000.
- Open races for the 2000 nomination occurred in both major parties.
- Taxpayer participation in the tax checkoff remained low. On 1999 tax returns, the participation rate for the checkoff was only 11.83 percent.
- Under Treasury rules, funds must be set aside for general election and convention financing before any monies can be used for primary matching payments. This year, \$147.2 million was set aside for use by the general election candidates and \$28.9 million was set aside for convention grants.

Early projections for 2000 had indicated that primary candidates might initially receive as little as 32 percent of their entitlement in January 2000, and that the shortfall might persist until early 2001. (See *Annual Report 1999*.) However, Texas Governor George W. Bush announced that he would forego federal matching funds, and Republican candidate Elizabeth Dole rejected matching funds after withdrawing from the race. Both of these events decreased the severity of the shortfall, although it remained significant.

The actual payment process began at the end of 1999. On December 22, 1999, the Commission certified eight primary candidates as being eligible to receive a total of more than \$34 million in federal matching funds.<sup>1</sup> With the amounts previously set aside for the general election and convention committees, however, only \$16.9 million remained in the Fund. As a result, the Treasury Department's January 3, 2000, payments to the candidates amounted to roughly 50 cents on the dollar. Eligible candidates did not receive 100 percent of the matching funds they were due until June 2000.

For several years, the Commission has urged Congress to help alleviate the shortfall problem. Possible solutions include a revision of the "set aside" provisions and an increase in the checkoff amount. Even assuming that one major party nominee does not take federal matching funds in the primaries, FEC projections indicate that initial payments to eligible candidates in the 2004 election cycle could be less than 20 percent of that certified. In addition, the Commission projects that, although payments would reach 90 percent of that certified by the close of 2004, the shortfall of payments due would not be made whole until April of 2005.

### Certification of Public Funds

#### Primary Matching Funds

Presidential candidates eligible to participate in the matching fund program receive matching federal dollars for a portion of the contributions they raise. To establish eligibility, a candidate must submit documentation showing that he or she has raised more than \$5,000 in matchable contributions in each of at least 20 states (i.e., over \$100,000). The FEC reviews this threshold submission 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. Once the Commission has determined a candidate to be eligible, the

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<sup>1</sup> Two additional candidates, John Hagelin and Ralph Nader, were later certified to receive matching funds.

federal government will match up to \$250 per contributor, but only contributions from individuals qualify for matching.

Presidential candidates may establish their eligibility during the year before the election (i.e., in 1999 for the 2000 primaries) and, once eligible, they may submit additional contributions for matching funds (called matching fund submissions) on specified dates.

Chart 3-1 lists the 2000 Presidential primary candidates who qualified for matching funds and the total amount of matching funds certified to each.

### Convention Funds

Federal election law permits all eligible national committees of major and minor parties to receive public funds to pay the official costs of their Presidential nominating conventions.

Under the statute, major party conventions are fully funded at \$4 million, plus an adjustment for inflation since 1974. On June 28, 1999, the 2000 Democratic National Convention Committee, Inc., and the Com-

mittee on Arrangements for the 2000 Republican National Convention each received payments of \$13,224,000.

On March 28, 2000, the Commission approved an additional payment of \$288,000 to each of the major parties' convention committees to reflect an adjustment in the consumer price index, bringing the total received by each committee to \$13,512,000.

The Presidential Election Campaign Fund Act also allows a minor party to receive some federal funding to run its convention, based on its Presidential candidate's performance in the previous election. In 2000, the National Committee of the Reform Party, USA, and its convention committee qualified as a minor party for purposes of convention financing and eligibility. A minor party is defined as a political party whose candidate for the Presidency in the preceding Presidential election received more than 5 percent, but less than 25 percent, of the total popular votes cast. In the 1996 general election, the Reform Party candidate, Ross Perot, received 8.4 percent of the popular vote. Accordingly, the Reform Party was

## CHART 3-1 Matching Fund Certifications

Candidate	Cumulative Certifications through 12/31/00
Gary L. Bauer (R)*	\$4,925,216.40
Bill Bradley (D)**	\$ 12,462,047.69
Patrick J. Buchanan (Reform)	\$ 4,407,422.64
Al Gore (D)	\$ 15,456,083.75
John Hagelin (NL)	\$690,477.06
Alan L. Keyes (R)	\$ 4,871,773.88
Lyndon H. LaRouche, Jr. (D)	\$ 1,422,014.83
John S. McCain (R)**	\$14,635,685.69
Ralph Nader (G)	\$723,307.60
Dan Quayle (R)†	\$2,102,525.00

\*Gary Bauer withdrew from the race in February 2000.

\*\* John McCain and Bill Bradley withdrew from the race in March 2000.

† Dan Quayle withdrew from the race in September 1999 and actually received only \$2,087,749.86.

entitled to partial convention funding for 2000. In 1999, the FEC certified \$2,468,921 to the Reform Party 2000 Convention Committee, and in 2000 added an additional cost-of-living payment (\$53,769), bringing the total amount to \$2,522,690.<sup>2</sup>

### General Election Grants

The Presidential nominee of each major party may become eligible for a public grant of \$20 million (plus a cost-of-living adjustment (COLA)) for the general election campaign. In addition, minor and new party candidates may qualify for partial general election funding based on their party's electoral performance. Minor party candidates (nominees of parties whose Presidential candidates received between 5 and 25 percent of the vote in the preceding election) may receive public funds based on the ratio of their party's vote in the previous Presidential election to the average vote for the major party candidates in that election. New party candidates may receive public funds after the election if they receive 5 percent or more of the vote. The amount is based on the ratio of the new party candidate's vote to the average vote for the two major party candidates in the election.

In 2000, the general election committees of the two major party candidates, George W. Bush and Al Gore, each received \$67.56 million in federal funds to run their campaigns for the general election. In doing so, each campaign agreed to abide by the overall spending limit and other legal requirements, including a post-campaign audit. Additionally, as major party candidates, they agreed to limit campaign spending to the amount of the public funding grant and not to accept private contributions for their campaign.

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<sup>2</sup> The Reform Party's convention funds were deposited and held in a United States district court registry pending the outcome of a leadership dispute within the Party. In *Reform Party of the United States v. Gargan* (89 F.Supp.2d 751 (W.D.Va. 2000)), the court ruled that the rightful Party Chairman and Treasurer were Pat Choate and Tom McLaughlin, respectively, and that the Party had duly removed John Gargan and Ronn Young from those positions at a meeting on February 12, 2000. Having resolved the leadership dispute, the court released the public funds to Gerald Moan as the duly appointed Chairman of the Party's convention committee.

Reform Party Presidential candidate Patrick J. Buchanan received \$12,613,452 in federal funds to run his general election campaign.<sup>3</sup> Mr. Buchanan was eligible to receive funds as the candidate of a minor party because the Reform Party's 1996 candidate, Ross Perot, had won more than 5 percent of the popular vote. In order to receive funding in a given election, a minor party's nominee must provide evidence showing that he or she has qualified to appear on the ballot as the candidate of that party in at least 10 states. Pre-election minor party funding has occurred only once before, in 1996, when Ross Perot received \$29,055,400 based on the popular vote for him in the 1992 election.

## Use of Public Funds

### Use of Federal Convention Funds

In AO 2000-06, the Commission determined that the Reform Party could use federal convention funds to pay for the development of a voter data base and balloting system to choose the party's presidential nominee. The data base included the names of all members of the Reform Party as well as others who wanted to participate in the Reform Party's primary process. A national vote was scheduled to take place when those voters cast their ballots by telephone, mail or e-mail, and the party planned to announce the results at the Reform Party National Convention in

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<sup>3</sup> A controversy took place between two factions of the Reform Party, one led by John Hagelin and the other by Pat Buchanan, as to which of them was the official Reform Party Presidential candidate. On September 12, 2000, the Commission, after reviewing documents submitted by Mr. Buchanan and Mr. Hagelin, made an initial determination that Mr. Buchanan was the official Reform Party candidate entitled to receive federal funds. The next day, September 13, 2000, a California superior court enjoined Mr. Hagelin and his running mate, Nat Goldhaber, from representing themselves to the public as the Reform Party's Presidential and Vice-Presidential nominees. (*Reform Party of the United States v. Hagelin*, No. NC 028469 (Cal.Super.Ct., L.A.County)) The Commission confirmed its decision with a final determination on September 14, 2000.

August 2000. The Commission found that both the data base and balloting system were integral to the process of choosing the party's nominee, and thus the costs associated with them were permissible convention expenses. As a result, the Reform Party could pay for them with federal convention funds.

### Using Campaign Funds to Pay Convention Expenses of Former Candidates

In AO 2000-12, the Commission allowed former Presidential candidates Bill Bradley and John McCain to use federal matching funds to pay for travel and other expenses associated with their parties' national conventions, so long as their convention expenses were "qualified campaign expenses" directed toward fundraising efforts to pay down their campaigns' outstanding obligations. Under the Matching Fund Act, a committee may use matching funds to pay for "qualified campaign expenses," which include any lawful purchases, payments or anything of value incurred by the candidate or committee in connection with his campaign for nomination. 26 U.S.C. §9032(9). For example, Mr. Bradley and Senator McCain could use federal matching funds to pay for travel to the convention and for activities at the convention that were a part of their committees' "winding down" expenses, such as gifts and "thank-you" receptions for committee employees, consultants and volunteers. They could also use federal funds to pay the costs of fundraising to retire debts from their campaigns.

## Public Funding Regulations

Over the years, the Commission has developed and refined its regulations explaining the requirements and procedures for public funding. After each Presidential cycle, the agency revises the regulations to clarify the law and address problems that arose in the previous cycle. During 2000, regulations in the following areas became effective:

- **Bright Line Between Primary and General.**

Amendments establish a "bright line" between primary and general election expenses and apply to candidates who accept public funds in either the primary or general election, or both. Under the revised rule, the "exclusive use" exception only applies

if the expenses in question do not fit into the specific categories listed in the regulations. The amendments also establish that salary and overhead costs incurred between June 1 of the Presidential election year and the date of the nomination are treated as primary expenses. However, Presidential campaign committees have the option of attributing to the general election an amount of salary and overhead expenses incurred during this period of up to 15 percent of the primary election spending limit. 11 CFR 9034.4(e)(1) and (e)(3).

- **Aggregating Presidential and Vice Presidential Candidate Spending.** New FEC rules require a Vice Presidential committee to begin aggregating its contributions and expenditures with those of the Presidential nominee on the date that either the future Presidential or Vice Presidential nominee publicly indicates that the two candidates intend to run on the same ticket. Alternatively, aggregation of contributions would begin when the Vice Presidential candidate accepts an offer to be the running mate, or when the committees of these two candidates become affiliated. 11 CFR 9035.3.
- **Preliminary Audit Report.** Amended rules modify the Presidential audit process to include Commission approval of the Preliminary Audit Report before it is provided to the audited committee following the exit conference. This preliminary audit report replaces the exit conference memorandum. 11 CFR 9007.1(b)(2)(iii), (c) and (d)(1), and 9038.1(b)(2)(iii), (c) and (d)(1).

## Presidential Debate Lawsuits

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

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

These two cases primarily challenged FEC regulations at 11 CFR 114.4(f), which allow corporate sponsorship of the debates.

In *Becker v. FEC*, the U.S. District Court for the District of Massachusetts rejected a challenge to the Commission's debate regulations filed by independent voter Heidi Becker, candidate Ralph Nader, the Green Party and others (collectively, "Becker"). The plaintiffs had argued that the debate regulations:

- Exceed the FEC's statutory authority by permitting corporations to help stage debates; and
- Allow corporations to fund debates (between the major party candidates) that exclude independent and ballot-qualified third party candidates.

The court found that the regulations did not exceed the FEC's statutory authority. The court also found that, while Mr. Nader and his political party had standing to challenge the debate regulations, the individual-voter plaintiffs did not. The plaintiffs appealed, but the First Circuit Court of Appeals affirmed the district court's decision on November 1, 2000. *230 F.3d 381.A.1 (Mass.), 2000*.

In the other case, the Committee for a Unified Independent Party and other plaintiffs filed a lawsuit contending that the debate regulations permitted corporations and labor unions to make prohibited contributions to the major party candidates by allowing them to stage partisan debates. On December 15, 2000, a Magistrate Judge in the Southern District of New York ruled in favor of the FEC, concluding that the FEC's regulations reflected a reasonable interpretation of the statute.

***Patrick J. Buchanan, et al. v. FEC and Natural Law Party v. FEC***

These cases primarily challenged the Commission's dismissal of complaints concerning the candidate-selection criteria chosen by the Commission on Presidential Debates (CPD), the not-for-profit corporation that has staged all of the presidential debates since 1988. In 2000, the CPD included only those candidates who had at least a 15 percent level of support in the national electorate, as indicated in nationwide polls.

On July 25, 2000, Presidential candidate Patrick Buchanan, Buchanan Reform (his principal campaign committee) and Angela Buchanan asked the U.S. District Court for the District of Columbia to require the FEC to reconsider its dismissal of their March 2000 administrative complaint against the CPD. Plaintiffs argued that the CPD's staging of presidential debates did not fall within the Act's "safe harbor" for corporate sponsorship of nonpartisan candidate debates because:

- It was a bipartisan organization, organized by and supporting the Democratic and Republican parties, and therefore did not qualify as a nonpartisan organization; and
- Its criterion of including only those candidates who demonstrated at least a 15 percent level of support in the national electorate, as measured by the average of 5 national polls, was subjective rather than objective because it was designed to exclude third party candidates.

The Natural Law Party filed a lawsuit making similar claims. In both cases, the U.S. District Court for the District of Columbia ruled in favor of the FEC and stated that, although the plaintiffs had standing to challenge the FEC's dismissal of their administrative complaint against the CPD, they failed to show that the FEC's interpretation of the debate regulations was arbitrary and capricious. The U.S. Court of Appeals for the District of Columbia Circuit affirmed the district court's decisions in both cases. *112 F.Supp.2d 58 (D.D.C., 2000) (Buchanan)*, *111 F.Supp.2d 33 (D.D.C., 2000) (Natural Law Party)*.

**Repayment of Public Funds—1996 Election**

Once a Presidential election is over, the Commission audits all of the candidates and committees that received public funds to ensure that they used those funds only for qualified campaign expenses and that they maintained proper records and filed accurate reports. These audits are mandated under the Presidential Election Campaign Fund Act. Sometimes an audit finds that a candidate or committee exceeded its expenditure limits, spent public funds on nonqualified

expenses or ended the campaign with a surplus. In those cases, the Commission may require the candidate or committee to make a repayment to the U.S. Treasury.

Repayments may also stem from Commission determinations that contributions that were initially thought to be matchable were later determined to have been nonmatchable. Such determinations may or may not result from the FEC's audit of the committee. During 2000, the Commission made final determinations that two 1996 campaigns had to make repayments.

#### **Dole Committees**

The Commission determined that former Senator Bob Dole's 1996 primary committee, Dole for President, Inc. (the Committee), had to repay \$6,255 to the Treasury. This amount represented public funds that the Committee used to pay for nonqualified campaign expenses. These expenses included \$1,237 for the "refund" of an unpaid contribution, \$930 for payment for services to prepare financial statements and \$4,088 for unchallenged nonqualified campaign expenses. In addition, the Commission found that the Committee had to repay the Treasury \$225,536 for stale-dated checks.

The Commission also made a repayment determination that Senator Dole's general election committee, Dole/Kemp '96, Inc., had to repay a total of \$1,416,093 to the Treasury. This amount represented \$1,369,583 for expenses incurred in excess of the expenditure limit for 1996 (\$61.82 million) and \$46,510 received in interest income. The Commission found that a major factor in the excessive spending related to overbilling the press for many expenses, including those for events and airline travel.

#### **Buchanan Committee**

The Commission made a determination, upon administrative review, that Patrick J. Buchanan's 1996 primary committee, Buchanan for President, Inc. (the Committee), had to make repayments of \$63,750 and \$29,328 to the Treasury. The first amount represented matching funds received by the Committee for contributions that were later determined to be

nonmatchable—\$62,116 for improperly reattributed contributions and \$1,634 for contributions that the Committee later refunded. The second amount represented \$12,159 for inadequately documented disbursements and \$17,169 for duplicate payments and noncampaign-related expenditures. In addition, the Commission found that the Committee owed \$27,431 for stale-dated checks.

## Chapter Four 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 2000 as it considered regulations, advisory opinions, litigation and enforcement actions.

### Express Advocacy

The FEC's regulatory definition of express advocacy continued to receive attention in the courts and at the Commission during 2000. To understand the issue, it is necessary to examine earlier court decisions. In *FEC v. Massachusetts Citizens for Life (MCFL)* (479 U.S. 238 (1986)), the Supreme Court, citing First Amendment concerns, held that the Act's ban on corporate and labor organization independent expenditures could only be constitutionally applied in instances where the money was used to *expressly advocate* the election or defeat of a clearly identified candidate for federal office. In response to this decision, in 1995 the Commission prescribed a new regulatory definition of express advocacy. 11 CFR 100.22. The definition was based largely on two court opinions: the Supreme Court's opinion in *Buckley v. Valeo* and the Ninth Circuit Court of Appeals opinion in *FEC v. Furgatch*.

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

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

Since the Commission promulgated this definition, it has faced several legal challenges, virtually all of

which have focused on paragraph (b) of the definition, the "reasonable person test." During 2000, one district court examined paragraph (b) of the FEC's express advocacy definition, another court evaluated a political committee's flyers to determine if they contained express advocacy and the Commission declined to open a rulemaking on the subject.

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

In its January 4, 2000, ruling on this case, the U.S. District Court for the Eastern District of Virginia found 11 CFR 100.22(b) to be "blatantly unconstitutional" under *Buckley*, and issued an order prohibiting the FEC from enforcing it "against the VSHL or against any other party in the United States of America."

VSHL—a nonprofit, tax-exempt membership corporation, which accepts corporate contributions—planned to distribute voter guides to the general public in connection with federal elections. The guides would outline VSHL's stance on abortion-related issues and tabulate candidates' positions on those issues. Although VSHL contended that the guides would not expressly advocate the election or defeat of a particular candidate, it acknowledged that recipients of the voter guide could reasonably determine VSHL's preference for one of the candidates over the others.

The district court said that the *Buckley* court defined express advocacy as "communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office," and thus funds spent on such advocacy could be regulated by the FEC. On the other hand, the district court said, funds spent on issue advocacy could not be regulated by the FEC because "discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution." According to the district court, the *Buckley* court stated that, although the distinction between express advocacy and issue advocacy could be "fuzzy," express advocacy should not be classified "according to an audience's reasonable interpretations of the communication at issue."

The district court held that, by allowing the FEC to regulate advocacy based upon the understanding of the audience rather than the actual message of the advocate, the regulation at 100.22(b) fails the *Buckley*

test. Moreover, the district court concluded, the regulation empowers the FEC to regulate issue advocacy, which was “clearly forbidden by *Buckley*.” The district court also pointed out that even the Ninth Circuit’s decision in *Furgatch* “acknowledges that express advocacy must contain a ‘clear plea for action,’ but the regulation contains no such requirement—it in fact is broader than *Furgatch*, which itself runs afoul of *Buckley*.”

Finally, concluding that “First Amendment protections do not cease at the boundaries of the Eastern District,” the court stated that it is “unwilling to perpetuate the state of uncertainty faced across the land by potential participants in the public arena” and therefore enjoined the FEC from enforcing paragraph (b) “against VSHL or any other party in the United States of America.”

In February, the Commission voted to appeal the court’s decision that the VSHL had standing to sue the FEC and the court’s order prohibiting the FEC from enforcing 11 CFR 100.22(b) against any party in the United States.

### **FEC v. Freedom’s Heritage Forum**

On April 28, 2000, the U.S. District Court for the Western District of Kentucky handed down its latest ruling in the FEC’s suit against the Freedom’s Heritage Forum political committee, its President and a candidate the Forum supported. The FEC had alleged that seven flyers the Forum had distributed in connection with federal elections contained express advocacy, but lacked the disclaimers required by 2 U.S.C. §441d(a).

As in its September 1999 decision in this case (see *Annual Report 1999*), the court stated that, “although a communication does not have to contain specific ‘magic words’ to constitute express advocacy, it will ordinarily contain some functional equivalent of an exhortation, directive, or imperative for it to expressly advocate the election or defeat of a candidate.” Additionally, the court distinguished between a message that urges the reader to vote for or against a candidate and a message that merely urges the reader to contribute time or money to the candidate. Only the former, in the court’s view, constitutes express advocacy.

Applying these standards, the court concluded that, in sum, three of the seven flyers the Forum distributed contained express advocacy. The parties continue to litigate other issues in this case.

### **Rulemaking Proposal**

On February 9, the Commission failed to approve a motion by Commissioner David Mason that the agency initiate a rulemaking to repeal paragraph (b) of the express advocacy definition. Commissioner Mason made the motion in connection with the Commission’s discussion on whether or not to appeal the decision in *Virginia Society for Human Life, Inc. v. FEC*. He reasoned that, if the Commission were to repeal paragraph (b), there would be no need to appeal the decision. As noted above, the Commission subsequently decided to appeal the case.

## **Corporate Contributions**

The Act prohibits corporations and labor organizations from using their treasury funds to make contributions or expenditures in connection with federal elections. 2 U.S.C. §441b. During 2000, a number of lawsuits challenged the constitutionality of that ban and related provisions of FEC regulations. Two of the cases are described below.

### **Christine Beaumont, et al. v. FEC**

On October 3, 2000, the U.S. District Court for the Eastern District of North Carolina, Northern Division, found that provisions of the Act and FEC regulations prohibiting corporate independent expenditures and contributions on behalf of federal candidates violated the plaintiffs’ First Amendment rights. On October 26, 2000, the court imposed a preliminary injunction barring the FEC from enforcing the provisions against the plaintiffs.<sup>1</sup>

The suit, brought by the North Carolina Right to Life, Inc. (NCRL), members of its board of directors and an unaffiliated individual, challenged not only

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<sup>1</sup> On January 24, 2001, the court permanently enjoined the Commission from enforcing this provision against the plaintiffs.

Section 441b's ban on corporate contributions and expenditures (and the comparable regulations at 11 CFR 114.2(b)), but also an FEC regulation that creates an exemption from the ban on corporate expenditures for certain nonprofit corporations, pursuant to the Supreme Court's decision in *FEC v. Massachusetts Citizens for Life*. 11 CFR 114.10.

Commission regulations at 11 CFR 114.10 provide that certain "qualified nonprofit corporations" may be exempt from the prohibition on corporate independent expenditures. To be considered a "qualified nonprofit corporation," a corporation must meet the following criteria:

- Its only express purpose is the promotion of political ideas;
- It does not engage in business activities;
- It has no shareholders or other individuals who receive a benefit that might discourage an individual from disassociating from the corporation on the basis of that corporation's political positions; and
- It was not established by a business corporation or labor organization and does not accept direct or indirect donations from business corporations.

NCRL argued that it failed to meet this exemption only because it accepted a small amount of corporate contributions and participated in "minor business activities incidental and related to its advocacy of issues." NCRL further argued that, even though the FEC had conceded that a Fourth Circuit decision in an earlier case between NCRL and North Carolina over a similar provision in a North Carolina statute barred enforcement of the Act's prohibition against NCRL, its officers remained subject to criminal liability and, as a result, their First Amendment rights were censored.

NCRL also argued that, in this case, the Act's ban on corporate contributions to political candidates infringed on the organization's right to association. While the FEC argued that NCRL's ability to contribute through a separate segregated fund minimized this infringement, NCRL contended that the maintenance of such a fund was a burden.

The court found no compelling justification for denying NCRL (a nonprofit, ideological organization) the right to make contributions and independent expenditures solely because it was an incorporated entity.

Moreover, the court was not persuaded by the FEC's argument that a ban on corporate contributions was constitutional, as applied to NCRL, while a ban on corporate independent expenditures might not be.<sup>2</sup> The court found the distinction between contributions and independent expenditures immaterial.

The court declared that the provisions in question were unconstitutional as applied to NCRL.

On December 21, 2000, the Commission appealed the district court's preliminary injunction to the U.S. Court of Appeals for the Fourth Circuit.

#### **Renato P. Mariani v. USA**

In another challenge to the ban on corporate contributions, on May 18, 2000, the U.S. Court of Appeals for the Third Circuit rejected Renato P. Mariani's constitutional challenge to §441b.<sup>3</sup>

Mr. Mariani—who was the subject of criminal prosecution concerning the very provisions he challenged in this case—argued that the development of issue advocacy and the increasing role of unregulated "soft money" in the electoral process have "so eroded the theoretical distinction between hard and soft money" that §441b's prohibition against corporate contributions has become "fatally underinclusive." As such, he asserted, it should be struck down. He also challenged the ban as a violation of corporations' First Amendment rights.

In response, the court acknowledged that "[t]he practical distinctions between hard and soft money may have diminished in the past decade with the rise of issue advocacy, but not to such an extent that there is no practical distinction between the two." The court went on to note, "If hard and soft money were equivalent, it would be hard to imagine why Mariani would have gone to the lengths he allegedly went to in order to give hard money instead of soft." Noting that Congress can act incrementally—and referencing legal

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<sup>2</sup> The Supreme Court's decision in *FEC v. Massachusetts Citizens for Life*, permitting qualified nonprofit corporations to make independent expenditures, extends only to corporate expenditures and not to corporate contributions.

<sup>3</sup> The court also rejected Mr. Mariani's challenge to §441f's ban on contributions in the names of others.

precedents—the court concluded that the corporate ban “is not fatally underinclusive.”

The court also rejected the First Amendment challenge, citing the U.S. Supreme Court’s decisions in *FEC v. National Right to Work Committee*, *FEC v. National Conservative PAC* and *Austin v. Michigan Chamber of Commerce*. Though the court stated that none of these cases directly addressed the constitutionality of the corporate ban, their “strong implications” led the court “to reject Mr. Mariani’s facial challenge to §441b(a).”

## Coordination

During 2000, the Commission approved new regulations regarding coordination between campaigns and persons making communications that influence federal elections.<sup>4</sup> Coordination was also an issue in a court decision handed down in 2000—*FEC v. Colorado Republican Federal Campaign Committee*. 236 F.3d 1174 (10<sup>th</sup> Cir. 2000).

Coordination is important because, in its landmark *Buckley v. Valeo* decision, the Supreme Court ruled that expenditures made in coordination with a campaign are in-kind contributions. As such, coordinated expenditures are subject to the Act’s contribution limits and prohibitions. By contrast, independent expenditures—while generally subject to the prohibitions of the Act—are not limited.

## Regulations

On November 30, 2000, the Commission approved new rules addressing coordinated communications made to the general public that refer to clearly identified candidates and are paid for by persons other than candidates, candidates’ authorized committees or party committees.<sup>5</sup>

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<sup>4</sup> The rules do not apply to coordination between a candidate and a party committee.

<sup>5</sup> The Commission notes that coordinated communications are not the only type of coordinated expenditure. In fact, coordinated expenditures can include many other types of expenses incurred by candidates, including costs for staff, polling and other services.

The new rules at 11 CFR 100.23 apply only to “general public political communications,” i.e., communications made through a broadcasting station, newspaper, magazine, outdoor advertising facility, mailing or any electronic medium and that are intended for an audience of more than 100 people.

Other than the requirement that covered communications include a clearly identified candidate, the rules do not establish a content standard.<sup>6</sup> Instead, the new regulations generally define “coordinated general public political communications” according to the standard set by the district court in *FEC v. The Christian Coalition* (see *Annual Report 1999*). 52 F.Supp.2d 45, 85 (D.D.C.1999).<sup>7</sup>

Under the new rules, an expenditure for a general public political communication is considered to be coordinated with a candidate or party committee if the communication is paid for by any person other than the candidate’s authorized committee or a party committee and is created, produced or distributed:

- At the request or suggestion of the candidate, the candidate’s authorized committee, a party committee or their agents;
- After one of these persons or parties has exercised control or decision-making authority over the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication; or

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<sup>6</sup> The Commission may revisit the issue of a content standard for all coordinated communications when it considers the other portion of this rulemaking—dealing with coordination between a candidate and his/her political party—which is being held in abeyance until the Supreme Court addresses the dollar limits on the amount party committees may spend in coordination with their candidates in *FEC v. Colorado Republican Federal Campaign Committee (Colorado II)*.

<sup>7</sup> The Commission uses the phrase “expenditures for general public political communications” in place of “expressive expenditure,” the term used by the *Christian Coalition* court, because it more precisely describes the types of communications covered by these rules. See 11 CFR 100.23(a)(1).

- After substantial discussion or negotiation between the purchaser, creator, producer or distributor of the communication and the candidate, the candidate committee, the party committee or their agents that results in collaboration or agreement about the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of the communication.

The regulations define “substantial discussion or negotiation” to include one or more meetings, conversations or conferences about the value or importance of a communication for a particular election. The Commission clarified that whether these discussions or negotiations qualify as “substantial” depends upon their substance—whether they contain specific information about how to communicate an issue in a way that is valuable to the campaign—rather than upon their frequency or duration.

As part of this rulemaking, the Commission also revised its definition of “independent expenditure” at 109.1(b)(4) to conform with the new coordination standard, and it stated that the rulemaking superseded several advisory opinions that relied on a broader definition of coordination than that stated in the new rules.

The remaining portion of this rulemaking, involving coordinated party expenditures, was on hold pending the Supreme Court’s decision in *FEC v. Colorado Republican Campaign Committee*.

### **FEC v. Colorado Republican Federal Campaign Committee**

On May 5, 2000, the U.S. Court of Appeals for the 10<sup>th</sup> Circuit affirmed a district court decision that the coordinated party expenditure limits at 2 U.S.C. §441a(d)(3) are unconstitutional.

The case—on remand from the U.S. Supreme Court—involves \$15,000 worth of expenditures the Colorado Republican Party made in 1986 for advertisements critical of Democratic Senate candidate Tim Wirth. The Commission argued that the ads, which contained an “electioneering message” related to a clearly identified candidate, represented coordinated expenditures by the party. (The Commission further maintained that these expenditures, when aggregated

with previous coordinated expenditures by the party, exceeded the statutory limits of 441(a)(d).) The party contended that the ads did not contain express advocacy and were not coordinated party expenditures subject to the 441a(d) limits. The party further argued that the 441a(d) limits violated its First Amendment rights.

**Colorado I.** In the first ruling on this case, the U.S. District Court for the District of Colorado concluded that the ads were not subject to the 441a(d) limits because they did not contain express advocacy. Having already ruled in the party’s favor, the court did not address the party’s constitutional challenge.

On appeal, the U.S. Court of Appeals for the 10<sup>th</sup> Circuit, agreeing with the FEC that a 441(a)(d) expenditure need only depict a clearly identified candidate and convey an electioneering message, reversed the district court’s decision. The appeals court also held that the 441a(d) limits did not violate the party’s First Amendment rights.

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

**Colorado II.** On remand, the district court ruled that the coordinated expenditure limits were unconstitutional. The court concluded that the FEC had failed to offer evidence that there was a compelling need for limits on coordinated party expenditures. In its opinion, the court equated coordinated party expenditures with a candidate’s own campaign expenditures which, based on the Supreme Court’s ruling in *Buckley*, cannot be limited.

**Court of Appeals Decision.** On May 5, 2000, the U.S. Court of Appeals for the 10<sup>th</sup> Circuit affirmed the lower court’s decision. In defending the constitutional-

ity of the 441a(d) limits, the Commission had offered three principal arguments that the limits prevent corruption or the appearance of corruption.

The court, in a 2-1 decision, rejected all three of the Commission's arguments. It noted that—based on the Supreme Court's earlier ruling in this case—party committees can already make unlimited independent expenditures. The court refused to consider the potential corrupting influence of unregulated “soft money” contributions, since those funds cannot legally be spent to influence federal elections.

The court further held that “there is nothing pernicious” about a party “shaping the views of its candidates.” The court added that, “Parties are simply too large and too diverse to be corrupted by any one faction.”

Having found no persuasive evidence that coordinated party expenditures corrupt or appear to corrupt the electoral process, the appeals court concluded that “441a(d)(3)'s limit on party spending . . . constitutes an ‘unnecessary abridgment’ of First Amendment freedoms.” The court stated explicitly that its analysis and holding apply only to party spending in connection with Congressional races.

In dissent, Chief Judge Seymour said that the panel majority “substitute[d] its judgment for that of Congress on quintessentially political matters the Supreme Court has cautioned courts to leave to the legislative process. In so doing, the majority creates a special category for political parties based on its view of their place in American politics, a view at odds with history and with legislation drafted by politicians.”

**Appeal to Supreme Court.** The Commission voted to appeal the decision to the Supreme Court, and the Court agreed to hear the case. In addition, the Commission issued a statement indicating that it would not file any action in the courts in the 10<sup>th</sup> Circuit to enforce section 441a(d)(3), but would continue the administrative processing of matters concerning the section. The Commission's statement explained that “only the Tenth Circuit has found section 441a(d)(3) unconstitutional, and its decision is not controlling outside that court's geographic jurisdiction. Furthermore, if the United States Supreme Court overrules the Tenth Circuit, the Court's decision upholding section 441a(d)(3) will apply retroactively to

any activities in the interim that violate section 441a(d)(3), even in the Tenth Circuit. . . . Therefore, anyone who chooses to act in contravention of section 441a(d)(3)—within or without the Tenth Circuit—before the Supreme Court rules in *Colorado* could be subject to liability for violating the statute if the *Colorado* decision is reversed.”

## Use of the Internet

The FEC first addressed Internet campaigning in 1995. Since that time, the Commission has responded to an increasing number of inquiries regarding the use of the Internet. During 2000, the Commission issued seven advisory opinions (AOs) on the subject.

### Advisory Opinions

**Electronic Checks.** In AO 1999-36, the Commission determined that candidates could collect contributions (including matchable contributions to Presidential candidates) via electronic check transmitted over the Internet, using a system developed by Advantage, a Maryland corporation. The Commission based this conclusion, in part, on AO 1999-9, which allowed Bill Bradley for President, Inc., to receive matchable credit and debit card contributions over the Internet. In both cases, screenings would be done for impermissible or nonmatchable contributions through a series of measures, including required electronic information provided by the contributor. See also AO 1999-22.

**Independent Expenditures Via Web Site and E-Mail.** In AO 1999-37, the Commission concluded that X-PAC, a nonconnected committee, could post communications containing express advocacy on its Web site and distribute them through e-mail without making a contribution to any candidate. Since the communications expressly advocated the election or defeat of specific federal candidates but were made without consulting any candidate's campaign, they qualified as independent expenditures. The communications, which were created specifically for electronic distribution, were developed “in-house” by X-PAC using commercially available software and would be hosted on

its Web site at no additional cost. The Commission required X-PAC to follow all FEC regulations regarding disclaimers and reporting.

***Corporate PAC's Use of Internet and E-Mail.***

Under the Act, a corporation is able to solicit money for its PAC only from a restricted class of individuals. In AO 2000-07, the Commission determined that Alcatel USA, Inc., could post certain messages referring to its PAC on the company's government relations intranet Web site (accessible to all Alcatel employees, including those outside the PAC's restricted class). The PAC messages did not solicit contributions, nor did they encourage them. They also included a statement that Alcatel would not accept contributions from those outside the restricted class.

In addition, the Commission concluded that Alcatel PAC could use its Web site and the company's e-mail system to solicit contributions. Since the Web site was available only to the restricted class through the use of a password, there was no danger of soliciting beyond the restricted class. See AO 1995-33.

***Electronic Prior Approval.*** Under Commission regulations, a trade association must obtain prior written authorization from a member corporation before soliciting the member's restricted class. 11 CFR 114.8(d) and (e). In AO 2000-10, the Commission allowed America's Community Bankers Community Campaign Committee (COMPAC), the separate segregated fund of America's Community Bankers (ACB), to put a form on its "members only" Web page to obtain prior approval from corporate members to solicit contributions from their restricted classes. In addition, COMPAC could put a notice on ACB's public Web page providing information about the PAC. The Commission concluded that both COMPAC's notice and its prior approval form were permissible because they did not solicit or encourage contributions and because COMPAC planned to employ safeguards to ensure that no prohibited contributions would be received.

In a related opinion, AO 2000-22, the Commission determined that corporate members of the Air Transportation Association of America and a number of other incorporated trade associations could grant prior approval using electronic signatures. In the past, the Commission has approved the use of an electronic

signature, concluding that, like a traditional signature, it is a unique identifier of the authorizing individual. See AOs 1999-3 and 1999-6. In this case, the associations had to verify that the permission-to-solicit forms were only available to authorized corporate representatives, and that each electronically signed authorization came from the corporate representative.

***Internet Convention Coverage.*** In AO 2000-13, the Commission ruled that iNEXTV Corporation (iNEXTV), through its affiliate, EXBTv, could provide gavel-to-gavel Internet video coverage of the Republican and Democratic national conventions without making a prohibited corporate contribution or expenditure. The proposed activities fell within the Act's exemption for news stories and commentary. 2 U.S.C. §431(9)(B)(i). iNEXTV and EXBTv met the criteria for the exemption because they qualified as press entities both in their purpose and function; they were not owned by any political party, political committee or candidate; and they would be acting in their capacity as press entities in undertaking this media coverage.

***Ads on Internet for Academic Study.*** In AO 2000-16, the Commission allowed Third Millennium: Advocates for the Future, Inc., (Third Millennium) to place advertisements for Presidential candidates on the Internet in order to study their effects on voter participation among young adults. Third Millennium retained the services of an Internet service provider that maintained demographic information on its subscribers. Using that data, Third Millennium intended to randomly select subscribers to view ads supporting one or all of the Presidential candidates, and then measure those subscribers' voting patterns through a post-election survey. Third Millennium planned to use either the content and design of advertisements created by each Presidential campaign or to create its own advertisements from available materials. In doing so, Third Millennium would treat each candidate equally, giving none a qualitative or quantitative advantage. It would not pay the campaigns for materials provided, and it reserved the right to reject material that mentioned or alluded to another candidate. The Commission determined that Third Millennium's proposed activities did not constitute a contribution and were therefore permissible.

### Status of Rulemaking

Although the Commission has issued a number of advisory opinions on the application of the law to Internet activity, many issues remain unanswered. In 2000, the Commission reviewed and analyzed some 1,200 comments that it received in response to a 1999 Notice of Inquiry on the use of the Internet in campaigning. These comments will help the agency decide whether to proceed with further rulemaking on this subject.

### Soft Money

Soft money—funds raised and/or spent outside the limitations and prohibitions of the Act—received considerable attention during 2000. Under FEC regulations, committees that have both federal and nonfederal accounts must allocate certain expenses, including administrative and generic voter drive expenses, based on an allocation formula. Committees must pay the federal portion of the expenses with funds subject to the limitations and prohibitions of the Act, but may use soft money for the rest.

### Advisory Opinions

The Commission considered one advisory opinion during 2000 that dealt with soft money issues. In AO 2000-19, the Commission determined that the Republican Party of Florida (RPF) could retroactively adjust its federal-to-nonfederal (hard-to-soft money) allocation ratio—and reallocate its administrative expenses accordingly—to reflect the addition of two state offices, which had become vacant earlier in the year.<sup>8</sup> RFP was required to submit an amended schedule H1 for the period in question and to transfer funds between its federal and nonfederal accounts to correct its prior allocation for this period.

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<sup>8</sup> Under Commission regulations, state and local party committees are required to allocate their administrative expenses and costs of generic voter drives using the “ballot composition method,” which is based on the ratio of federal offices expected on the ballot to total federal and nonfederal offices expected on the ballot in the next general election to be held in the committee’s state or geographic area. 11 CFR 106.5(d).

### Enforcement

In MUR 3774, an enforcement case, the Commission examined the failure of a party committee to allocate expenses between its federal and nonfederal accounts. The National Republican Senatorial Committee (the Party) and its treasurer paid a civil penalty of \$20,000 and transferred \$88,207.60 from the Party’s federal account to its nonfederal account for failing to allocate payments made to a third party to conduct get-out-the-vote drives (GOTV). Between October 31 and November 4, 1994, the Party disbursed a total of \$175,000 from its nonfederal account to the National Right to Life Committee (NRLC), which then made payments of at least \$135,704 for GOTV phone calls targeting pro-life supporters in states with elections that included federal candidates.

The Commission determined that the Party knew and intended that the nonfederal funds it transferred to NRLC would be used for these purposes.

A national party committee, such as the Party, must allocate expenses for generic voter drive activities<sup>9</sup> between its federal and nonfederal accounts according to the formula set out at 11 CFR 106.5(c)(2): a minimum of 65 percent of these costs must be allocated to the federal account. The Commission found probable cause to believe that the Party’s disbursements of 100 percent nonfederal funds to NRLC in 1994, which NRLC used to finance GOTV activities, was not in accordance with the Act or Commission regulations. The Party contended that no violations occurred or were proven by the record, but, in order to settle the matter, the Party agreed not to further contest the Commission’s probable cause findings that it had violated 2 U.S.C. §§441a(f) and 441b(a) and 11 CFR 102.5(a)(1)(i), 106.5(c) and 106.5(g)(1)(i). (For a more complete discussion of this case, see the March 2000 *Record*.)

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<sup>9</sup> Generic voter drives include voter identification, voter registration and get-out-the-vote drives, or any other activity that urges the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate. 106.5(a)(2)(iv).

### **Status of Rulemaking**

Plans for additional regulations on soft money remained a priority for the Commission during 2000. The Office of General Counsel (OGC) completed analysis of the comments and testimony that it received in response to the 1998 Notice of Proposed Rulemaking (NPR), and it forwarded its recommendations to the Commissioners on February 4, 2000. After Commission discussion of the rules, OGC forwarded alternative versions of the draft final rules on October 16, 2000, for further consideration.

### **American Indian Tribes**

The Commission addressed the issue of contributions from American Indian tribes in two separate advisory opinions during 2000.

#### **Advisory Opinions**

**AO 1999-32.** The Commission said that the Tohono O'odham Nation (the Nation) could make contributions to influence federal elections even though its Utility Authority (TOUA) was a government contractor. Under 2 U.S.C. §441c, it is unlawful for a Federal contractor to make contributions in connection with a federal election. Based on a variety of factors, the Commission determined, however, that TOUA was a separate entity from the Nation and, consequently, the Nation was permitted to make contributions. The Nation would not, however, be able to make contributions if it received any revenues from TOUA.

**AO 2000-05.** In AO 2000-05, the Commission ruled that the Oneida Nation of New York (the Nation) could make contributions in support of federal candidates totaling in excess of \$25,000 in a calendar year. The Act states that no "individual" can make contributions of more than \$25,000 in a calendar year. 2 U.S.C. §441a(a)(3). While the Nation qualifies as a "person"—which is defined to include various types of organizations, as well as individuals—the Commission concluded that it is an organization and not an individual. Therefore, it is not subject to the \$25,000 limit.

## Chapter Five The Commission

### Commissioners

President Clinton nominated Bradley A. Smith to the Commission on February 9, 2000, and the U.S. Senate confirmed the nomination on May 24, 2000.

Prior to his appointment, Commissioner Smith was Professor of Law at Capital University Law School in Columbus, Ohio, where he taught Election Law, Comparative Election Law, Jurisprudence, Law & Economics and Civil Procedure.

During 2000, Darryl R. Wold served as Chairman of the Commission and Danny L. McDonald as its Vice Chairman. On December 14, 2000, the Commission elected Mr. McDonald to be its Chairman and David M. Mason to be its Vice Chairman in 2001. For biographies of the Commissioners and statutory officers, see Appendix 1.

### General Counsel

Lawrence M. Noble, the FEC's General Counsel, resigned from the agency in order to accept a position as the Executive Director and General Counsel of the Center for Responsive Politics, a nonpartisan, non-profit research group. Mr. Noble, who joined the FEC in 1977 and served as the Commission's General Counsel from 1987 through 2000, left the Commission on December 30, 2000.

The Commission appointed Lois G. Lerner to serve as Acting General Counsel for a period of six months, during which time the Commission will conduct an open selection process to fill the General Counsel's position. Ms. Lerner joined the staff of the FEC's Office of General Counsel in 1981 and most recently served as the FEC's Associate General Counsel for Enforcement.

### Inspector General

Under the Inspector General Act, the Commission's Office of the Inspector General (OIG) is authorized to conduct audits and investigations of FEC programs to find waste, fraud and abuse, and to promote economy, effectiveness and efficiency within the Commission. The OIG audited several facets of agency operations in 2000, focusing particular atten-

tion on the FEC's procurement procedures. The office also received and responded to a Congressional request concerning the types of information available from the FEC's Web site, conducted unannounced quarterly cash counts of the FEC's imprest fund and began to develop an OIG Policy and Procedures pamphlet to help FEC employees understand the OIG's role.

Also during 2000, the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency presented OIG senior auditor Jonathan Hatfield with an award for individual accomplishment.

### ADR and Administrative Fines Offices

During 2000, the Commission established new offices—under the direction of the Staff Director—to administer its Alternative Dispute Resolution (ADR) and Administrative Fine programs.

The ADR pilot program is designed to promote compliance with the federal election law by encouraging settlements outside the traditional enforcement or litigation processes. For additional information about the program, see page 13.

The Administrative Fine program streamlines the Commission's processing of violations involving late-filing and failure to file reports. For more information on the program, see page 11.

### Equal Employment Opportunity (EEO)

The FEC's Office of Equal Employment Opportunity has been a leader in the area of Alternative Dispute Resolution (ADR), establishing and successfully utilizing mediation to informally resolve EEO matters since March 1994.

Jointly administered by the EEO Director, Personnel Director and three EEO Counselors, the ADR program or Early Intervention program seeks to resolve employee concerns that might otherwise result in formal EEO complaints. Prior to filing an EEO complaint, employees may voluntarily agree to meet,

separately or jointly, with the EEO Director or Personnel Director, an EEO Counselor and/or the party allegedly responsible for the discrimination or wrongdoing. If resolution attempts fail, the employee may proceed with EEO counseling and may file a formal EEO complaint or grievance, if applicable.

During the period March 1994 through December 2000, the Commission informally resolved 100 percent of the complaints employees voluntarily brought before the EEO Director.

In addition to this accomplishment, during 2000, the EEO office presented cultural diversity training to staff of the Office of General Counsel, sponsored an African-American Fashion Show and hosted Asian-Pacific Islander and Hispanic Heritage luncheons.

## Personnel

Among the Personnel Office's accomplishments during 2000 were:

- Implementing new oversight procedures for the Commission's Performance Management System to ensure that employee performance appraisals are appropriate and timely;
- Providing training to managers regarding Performance Standards development and their responsibilities under the labor relations laws; and
- Providing pre-retirement training to approximately 35 employees.

## The FEC's Budget

### Fiscal Year 2000

The Commission received a \$38.152 million FY 2000 appropriation, supporting a total FTE level of 351.5. When combined with a \$270,000 carryover from FY 99 and a \$144,000 rescission, the Commission netted a \$38.278 million budget for FY 2000. Congress earmarked nearly \$5 million of the budget for computerization initiatives.

### Fiscal Year 2001

In the spring of 2000, Danny L. McDonald, then Vice Chairman of the Commission and chairman of the FEC's finance committee, presented the FEC's

FY 2001 budget request to members of a House Appropriations subcommittee and to the Committee on House Administration. The Commission requested \$40.96 million and 356 FTE for FY 2001, a modest increase of 7.5 percent and 4 additional personnel over FY 2000. Vice Chairman McDonald noted that the majority of the requested budget increase was needed to cover inflation in operating costs, but would also provide additional resources in core program areas.

In the end, the Commission received a \$40.5 million FY 2001 appropriation. After a .22 percent government-wide rescission, the FEC netted a \$40.41 appropriation for FY 2001.

### Budget Allocation: FYs 2000 and 2001

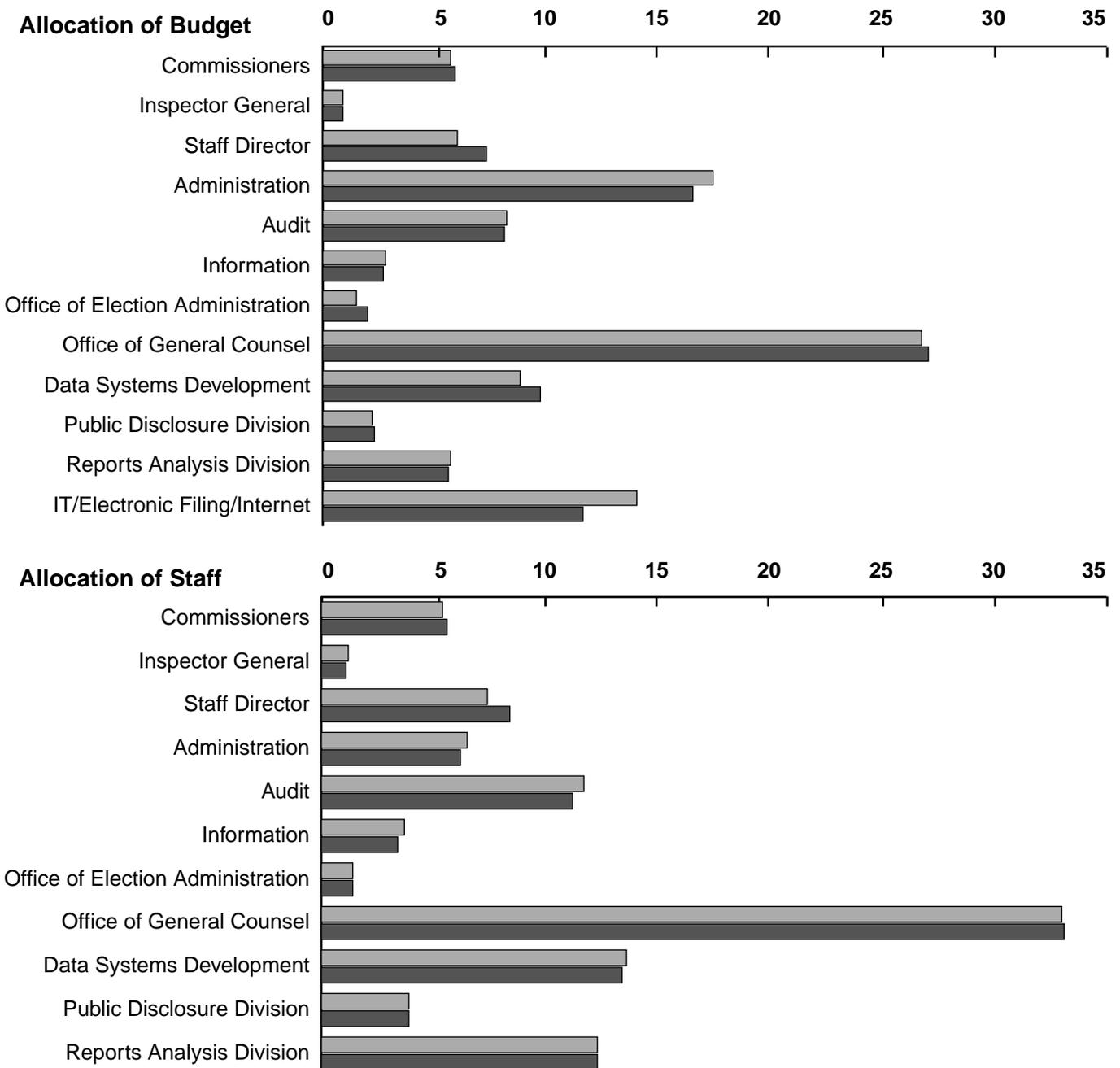
Budget allocation comparisons for FYs 2000 and 2001 appear in the table and charts that follow.

**CHART 5-1**  
**Functional Allocation of Budget**

	FY 2000	FY 2001
Personnel	\$25,530,642	27,757,000
Travel/Transportation	700,839	507,500
Space Rental	3,398,336	3,544,000
Phones/Postage	402,972	441,000
Printing	293,791	375,500
Training/Tuition	93,258	218,000
Administrative Expenses	127,339	108,500
Contracts/Services	2,881,266	2,721,500
Maintenance/Repairs	573,563	986,500
Software/Hardware	2,053,512	2,312,000
Federal Agency Service	646,597	414,000
Supplies	380,646	357,500
Publications	402,892	421,000
Equipment	789,412	246,900
<b>Total</b>	<b>\$38,275,065</b>	<b>40,410,900</b>

**CHART 5-2  
Divisional Allocation**

FY 2000 Actual  
 FY 2001 Projected



## Chapter Six

# Legislative Recommendations

In late February and early March 2001, the Federal Election Commission submitted to Congress and the President two sets of legislative recommendations. The first set contained two priority recommendations. The second set comprised 32 additional recommendations, including technical changes and amendments that addressed problems that the regulated community and the Commission have encountered. The entire collection of 34 recommendations follows.

### **Part I: Priority Recommendations**

#### **Compliance**

##### **Extending Administrative Fine Program for Reporting Violations (2001)<sup>1</sup>**

*Section:* 2 U.S.C. §437g

*Recommendation:* The Commission recommends that Congress extend the Commission's authority to assess administrative fines for straightforward violations of the law requiring the timely reporting of receipts and disbursements. Congress should extend the administrative fine authority to cover violations that relate to reporting periods that begin on or after January 1, 2002, and that end on or before December 31, 2003.

*Explanation:* Congress amended the Act in 1999 to permit the Commission to impose civil money penalties for violations of filing requirements that occur between January 1, 2000, and December 31, 2001. Public Law 106-58. Accordingly, the Commission promulgated new regulations at 11 CFR Part 111, Subpart B, to implement a new Administrative Fine program for violations of reporting deadlines. See 64 FR 31787 (May 19, 2000). Under the program in place, when a committee files a late report, or fails to file a report, the Commission assesses a civil penalty

based on a schedule of penalties that takes into account the committee's level of financial activity in the reporting period, the election sensitivity of the report, the number of days late and the number of previous violations. Committees have the option to either pay the civil penalty assessed or challenge the Commission's finding and/or proposed penalty.

The Administrative Fine program has introduced greater certainty about the consequences of noncompliance with the Act's filing requirements, with the result that compliance has increased. For example, the number of late filers dropped significantly with the July quarterly report, the first report handled under the new program. While 30 percent of filers were late for the 2000 April quarterly filing, only 18 percent of filers were late for the 2000 July quarterly filing.

Because the program is scheduled to end in December 2001, the Commission has only a limited number of reporting periods in which to evaluate the program's effectiveness. Also, new legislation and regulations on mandatory electronic filing became effective on January 1, 2001. (See Public Law 106-58, section 639, and 65 FR 38415 (June 21, 2000).) Extending the duration of the Administrative Fine pilot would give the Commission and Congress an opportunity to evaluate the effects of the impact of the pilot program on one full cycle of reporting—the final report for the current cycle is due January 31, 2003. Additionally, the extension would allow the agency to evaluate the effects of mandatory electronic filing upon the ability of filers to meet reporting deadlines and avoid administrative penalties. The new mandatory electronic filing program began on January 1, 2001.

#### **Election Administration**

##### **Duties of the Office of Election Administration, Advisory Panel (2001)**

*Section:* 2 U.S.C. §438(a)(10)

*Recommendation:* The Commission recommends that Congress amend 2 U.S.C. §438(a)(10), both to clarify that the responsibilities of the Office of Election Administration (OEA) include the periodic update and

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<sup>1</sup> The recommendation to implement an administrative fines program was also made by Pricewaterhouse Coopers LLP in its *Technology and Performance Audit and Management Review of the Federal Election Commission*, pages 4-78 and 5-2.

enhancement of the voluntary Voting System Standards (VSS) program, and to establish statutorily an Advisory Panel. The state and local officials who serve on the Commission's Advisory Panel counsel the Commission on the most useful allocation of resources and advise the Commission and election officials on consensus best practices in the administration of elections. A statutorily-chartered Advisory Panel specifically would be responsible for advising the Commission on the VSS program, including issues relating to the scope and frequency of updates to the VSS, and the independent testing authority that would use the VSS to test voting equipment.

*Explanation:* The FEC's Office of Election Administration was established as part of the Commission by the Federal Election Campaign Act Amendments of 1974 (codified at 2 U.S.C. §438(a)(10)), which mandated that the Federal Election Commission serve as a national clearinghouse for the compilation of information and review of procedures with respect to the administration of federal elections. In connection with the OEA's duties, the Commission established an Advisory Panel of state and local officials by administrative action in 1976. The OEA has served as a national clearinghouse for 25 years, gathering information on the voting process and other election administration practices and issues, establishing voluntary standards for voting equipment and providing guidance to state and local election administrators throughout the United States. The Office has acquired a wealth of experience and expertise. It successfully helped to implement the Polling Place Accessibility for the Elderly and Handicapped Act and the National Voter Registration Act ("Motor Voter"), and recently has overseen a multiyear project to revise the voluntary Voting System Standards. Since 1975, the OEA has administered more than 30 studies in the field of election administration and, as a result, has published 65 volumes on these matters.

The OEA's expertise in voting system standards, voting equipment and election administration practices and issues is well established. Building upon both this expertise and the credibility it has established with state and local election officials, the FEC's Office of

Election Administration could immediately and efficiently undertake an expanded role in this field. With no need for start-up time, the OEA, with the assistance of its Advisory Panel, could help fulfill the increased demand for "the compilation of information and the review of procedures with respect to the administration of Federal elections" (2 U.S.C. §438(a)(10)) to directly benefit the conduct of elections in 2002. Specifically, the OEA would:

- Continue to update the VSS first developed in 1990, and expand the VSS program beyond technical standards to include voluntary management standards and voluntary performance/design standards that will optimize ease of use and minimize voter confusion;
- Increase outreach efforts to state and local jurisdictions (and vendors of voting equipment) regarding the VSS;
- Work with existing association and membership organizations to provide training and technical assistance opportunities for election officials;
- Develop and maintain a current data bank on election voting equipment;
- Facilitate the timely exchange of information among state and local officials on issues relating to election administration;
- Consult with other government agencies having responsibility for the conduct of federal elections; and
- Compile information about funding needs of state and local officials relating to voting equipment, training of poll workers, voter education, and other areas that might be appropriate for a federal grant program, if Congress chooses to fund state and local initiatives in election administration.

## ***Part II: (Valid and Technical) Supplemental Recommendations***

### **Part A: Other Valid Legislative Recommendations**

#### **Disclosure**

##### **Waiver Authority (revised 2001)**

*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 12-day pre-election reporting requirements and 48-hour notice requirements for large last-minute contributions 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 2002 October Monthly report, covering September, will be required to be postmarked October 20. Meanwhile, the 2002 Pre-General report, covering October 1 -16, will be required to 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.

##### **Monthly Reporting for Congressional Candidates (revised 2001)**

*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 in both election and non-election years.

*Explanation:* Political committees, other than principal campaign committees, may choose under the Act to file either monthly or quarterly reports. 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 might 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.

The Commission notes, however, that, in certain circumstances, switching to a monthly reporting schedule would create a lag in disclosure directly before a primary or runoff election or a nominating convention.<sup>1</sup> In States where a primary (including a runoff or nominating convention) is held in the beginning of the month, the financial activity occurring the month before the primary would not be disclosed until after the election. To remedy this, Congress should specify that Congressional committees continue to be required to file a 12-day Pre-Primary report (or pre-runoff or pre-convention report), regardless of whether a campaign has opted to file quarterly or monthly. However, where the timing of a primary will cause an overlap of reporting due dates between a regular monthly report and the Pre-election report, Congress should grant the Commission the authority to waive one of the reports or adjust the reporting requirements. (See the recommendation entitled "Waiver Authority.") Congress should also clarify that campaigns must still file 48-hour notices disclosing large last-minute contributions of \$1,000 or more during the period immediately before the primary, runoff or nominating convention, regardless of their reporting schedule.

<sup>1</sup> In several states, a nominating convention is held in lieu of or in addition to a primary election, and has the ability to determine the general election nominee.

### **Commission as Sole Point of Entry for Disclosure Documents (revised 2001)<sup>2</sup>**

*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 primarily affect Senate candidate committees, but would also apply to the Republican and Democratic Senatorial Campaign Committees. Under current law, those committees alone file their reports with the Secretary of the Senate, who then forwards copies to the FEC.

*Explanation:* The Commission has offered this recommendation for many years. Public Law 104-79, effective December 28, 1995, changed the point of entry for reports filed by House candidates from the Clerk of the House to the FEC. However, Senate candidates and the Senatorial Campaign Committees 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 also authorized the electronic filing of disclosure reports with the FEC. As of January 1997, political action committees, political party committees (except for the Senatorial Campaign Committees), House campaigns and Presidential campaigns all could opt to file FEC reports electronically. Moreover, Public Law 106-58, section 639, mandated elec-

<sup>2</sup> This recommendation was also made by PricewaterhouseCoopers LLP in its *Technology and Performance Audit and Management Review of the Federal Election Commission*, pages 4-37 and 5-2.

tronic filing for committees who meet certain thresholds as specified by the Commission. Senate candidates and the Senatorial Campaign Committees, however, do not have the official authority to file electronic reports because the point of entry for their reports is the Secretary of the Senate (not the FEC). It should be noted, however, that such committees may file unofficial electronic copies of their reports with the FEC. It is also important to note that the FEC has worked closely with the Secretary of the Senate to improve disclosure within the current law. For example, the FEC and the Secretary of the Senate have implemented digital imaging of Senate reports and have developed the capacity of the Secretary's office to accept electronically filed reports. While these measures have undoubtedly improved disclosure, absent mandatory electronic filing for Senate campaigns and Senatorial Campaign Committees, a single point of entry remains desirable. It is important to note as well that, if the Congress adopted mandatory electronic filing for Senate campaigns and Senatorial Campaign Committees, the recommendation to change the point of entry for Senate filers would be rendered moot.

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 diffi-

cult 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. 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)).

#### **Fraudulent Solicitation of Funds**

*Section:* 2 U.S.C. §441h

*Recommendation:* Section 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.

*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 exceed the contribution limits applicable to federal candidates (e.g., in the case of individuals, \$1,000 per election). Further, the law should clarify that a draft committee is separate from a campaign committee, for purposes of the contribution limits.

*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 U. S. Court of Appeals for 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.

### **Registration of Candidates and Principal Campaign Committees (revised 2001)**

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

*Recommendation:* The Commission recommends that Congress revise section 433(a) to require a principal campaign committee to file its Statement of Organization at the same time that the candidate is required, under section 432(e)(1), to file his or her Statement of Candidacy.

*Explanation:* An individual becomes a candidate under the FECA once he or she crosses the \$5,000 threshold in raising contributions or making expenditures. Under current law, the candidate has 15 days to file his/her Statement of Candidacy, designating the principal campaign committee, which will subse-

quently disclose all of the campaign's financial activity. This committee, in turn, has 10 days from the candidate's designation to file a Statement of Organization, the document that officially registers the committee. 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 first report. During an election year, this period can be so long that it interferes with effective disclosure. For example, if a candidate triggered candidate status 44 days before his or her primary, he or she would be required to file the Statement of Candidacy 29 days before the primary. The committee in turn would not be required to register (i.e., file the Statement of Organization) until 19 days before the primary. This would allow the committee to avoid filing the pre-primary report (which covers financial activity up through 20 days before the primary and is due 12 days before the primary). Although the committee would have to file 48-hour notices of last-minute large contributions received between 19 days and 48 hours before the primary, it would not provide complete financial disclosure of contributions and expenditures until after the primary election because the committee's first required financial report would be the quarterly report (not due possibly for 2 more months).

By requiring simultaneous registration of both the candidate and the principal campaign committee within 15 days of the date that the candidate triggered candidate status under the Act, the public would be assured of more timely disclosure of the campaign's activity. Applying this principle to the example above, the candidate and committee in question would register with the Commission 29 days before the primary, and the committee would file the pre-primary report due 12 days before the primary, assuring complete disclosure of financial activity before the election.

### **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 disclosure, 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.

### **Contributions and Expenditures**

#### **Application of \$25,000 Annual Limit (revised 2001)**

*Section:* 2 U.S.C. §441a(a)(3)

*Recommendation:* The Commission recommends that Congress modify 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. 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. (For example, see FEC Matters Under Review (MURs) 4790 (Democratic contributor paid \$13,989 civil penalty for exceeding annual limit in one calendar year) and 3929 (Republican contributor paid \$32,000 civil penalty for exceeding annual limit in three calendar years).)

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. Such an amendment would not alter the per candidate, per election limits.

The change would also 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.

### **Contributions by Foreign Nationals**

*Section:* 2 U.S.C. §441e

*Recommendation:* The Commission recommends that Congress explicitly clarify that section 441e of the Act applies to both contributions and expenditures received and made in connection with both federal and nonfederal elections.

*Explanation:* The Commission has consistently interpreted and enforced section 441e of the Act, banning contributions by foreign nationals, as applying to both federal and nonfederal elections. Although two district court decisions have rejected this interpretation, the U.S. Court of Appeals for the District of Columbia interpreted section 441e to apply to both federal and nonfederal elections (*United States v. Trie*, 21 F.Supp.2d 7 (DDC 1998); 23 F.Supp.2d 55 (DDC 1998); *United States v. Kanchanalak et al.*, 37 F.Supp.2d 1 (DDC 1999); *rev'd.*, 192 F.3d 1037 (D.C. Cir. 1999). While the Commission continues to believe that the statute permits, and the legislative his-

tory supports, application of section 441e to nonfederal elections, statutory clarification of this point would be useful. Congress could clarify section 441e either by changing the term "contribution" to "donation," or by explicitly applying the definition of contribution included in section 441b(b)(2) to section 441e. In this regard, Congress may also wish to note that, while section 441b (banning corporate, national bank and union spending in connection with elections) prohibits both "contributions" and "expenditures," section 441e (foreign nationals) prohibits "contributions" only. The Commission has sought to clarify this apparent discrepancy through its regulation at 11 CFR 110.4(a), which prohibits both contributions and expenditures by foreign nationals. A statutory clarification would make clear Congress's intent.

### **Election Period Limitations for Contributions to Candidates (revised 2001)**

*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 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 “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.

Moreover, Public Law No. 106-58 (the fiscal 2000 appropriations bill) amended the Federal Election Campaign Act to require authorized candidate committees to report on a campaign-to-date basis, rather than on a calendar year basis, as of the reporting period beginning January 1, 2001. Placing the limits on contributions to candidates on an election cycle basis would complement this change and streamline candidate reporting.

It would be advisable to clarify that if a candidate participates 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 Presidential candidates might opt to take public funding for the general election, but not the primary, and thereby be precluded from accepting general election contributions, the \$1,000/5,000 “per election” contribution limits should be retained for Presidential candidates.

A campaign cycle contribution limit would allow contributors to give more than \$1,000 toward a particular primary or general election, but this would be balanced 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. Moreover, adoption of this recommendation would eliminate the current requirement that candidates who lose the primary election refund or redesignate any contributions made for the general election after the primary is over.

### **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.

### **Contributions from Minors**

*Section:* 2 U.S.C. §441a(a)(1)

*Recommendation:* The Commission recommends that Congress establish a minimum age of 16 for making contributions.

*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 of 16 for contributors, or otherwise provide guidelines ensuring that parents are not making contributions in the name of another.

### **Broader Prohibition Against Force and Reprisals**

*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 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.

## **Compliance**

### **Ensuring Independent Authority of FEC in Supreme Court Litigation (2001)**

*Section:* 2 U.S.C. §§437c(f)(4), 437d(a)(6), 437g(a)(9) and 437h

*Recommendation:* Congress should clarify that the Commission is authorized to initiate and/or conduct Supreme Court litigation on matters arising under Title 2 of FECA.

*Explanation:* The Commission, rather than the Solicitor General's Office, should be responsible for initiating and/or conducting Supreme Court litigation on matters arising under Title 2 of the Federal Election Campaign Act (FECA). This would include civil enforcement actions brought by the agency, actions against the agency for its dismissal or failure to act on

enforcement matters, subpoena enforcement actions and actions challenging or construing the constitutionality of the FECA.

The statute clearly provides Supreme Court litigation authority to the Commission under the Title 26 presidential public funding provisions. The Commission had conducted its own Supreme Court litigation, even under Title 2, for 18 years. In 1994, however, the Supreme Court interpreted the statute to preclude the FEC from having authority to conduct Supreme Court litigation without the prior authorization of the Solicitor General's Office. See *FEC v. NRA Political Victory Fund*, cert. dismissed for want of jurisdiction, 513 U.S. 88 (1994) ("NRA"). Under this ruling, the Solicitor General may decline to authorize action even in cases where the six-member Commission believes Supreme Court review is advisable. Indeed, on several cases since the NRA decision, the Commission's requests have been denied. This has occurred even though the Commission clearly had authority to conduct the litigation in the lower courts.

The Commission should be able to determine which issues merit Supreme Court resolution. Some difficult legal questions for which the Commission sought Supreme Court review might have been resolved by now, one way or another, if the Solicitor General's Office had not declined the Commission's requests.

The Commission is a unique federal agency that regulates those persons seeking election to the Presidency and the political parties that support them. No more than three commissioners may be from any one political party; thus, the required majority vote to take any action cannot be controlled by any one party. This insures that any Commission litigation decisions in the Title 2 area are not subject to an appearance of conflict. This certainly underlies the legislative history indicating that Congress intended the Commission to have broad independent litigation authority. In the Commission's view, the difference in language between the Title 26 provisions and the Title 2 provisions was not intended by Congress to deprive the Commission of Supreme Court litigating authority under Title 2.

**Addition of Commission to the List of Agencies Authorized to Issue Immunity Orders According to the Provisions of Title 18**

*Section:* 18 U.S.C. §6001(1)

*Recommendation:* The Commission recommends that Congress revise 18 U.S.C. §6001(1) to add the Commission to the list of agencies authorized to issue immunity orders according to the provisions of title 18.

*Explanation:* Congress has entrusted the Commission with the exclusive jurisdiction for the civil enforcement of the Federal Election Campaign Act of 1971, as amended, the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act. The Commission is authorized, in any proceeding or investigation, to order testimony to be taken by deposition and to compel testimony and the production of evidence under oath pursuant to subpoena. See 2 U.S.C. §437d(a)(3) and (4). However, in some instances, an individual who has been called to testify or provide other information refuses to do so on the basis of his privilege against self-incrimination. There is currently no mechanism whereby the Commission, with the approval of the Attorney General, can issue an order providing limited criminal immunity for information provided to the Commission. A number of other independent agencies do have access to such a mechanism.

Federal immunity grants are controlled by 18 U.S.C. §§6001-6005. 18 U.S.C. §§6002 and 6004(a) provide that if a witness asserts his Fifth Amendment privilege against self-incrimination and refuses to answer questions at any “proceeding before an agency of the United States,” the agency may seek approval from the Attorney General to immunize the witness from criminal prosecution for testimony or information provided to the agency (and any information directly or indirectly derived from such testimony or information). If the Attorney General approves the agency’s request, the agency may then issue an order immunizing the witness and compelling his testimony. Once that order is issued and communicated to the witness, he cannot continue to refuse to testify in the inquiry.

The order issued by the agency only immunizes the witness as to criminal liability, and does not preclude civil enforcement action. The immunity conferred is “use” immunity, not “transactional” immunity. The government also can criminally prosecute the witness for perjury or giving false statements if the witness lies during his immunized testimony, or for otherwise failing to comply with the order.

Only “an agency of the United States,” as that term is defined in 18 U.S.C. §6001(1), can avail itself of the mechanism described above. The term is currently defined to mean an executive department or military department, and certain other persons or entities, including a large number of enumerated independent federal agencies. The Commission is not one of the enumerated agencies. When the provision was added to title 18 in 1970, the enumerated agencies were those which already had immunity granting power, but additional agencies have been substituted or added since then. Adding the Commission as one of the enumerated agencies in 18 U.S.C. §6001(1) would facilitate its obtaining of information relevant to the effective execution of its enforcement responsibilities.

**Referral of Criminal Violations**

*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.<sup>3</sup> 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.

#### **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.

## **Public Financing**

### **Averting Impending Shortfall in Presidential Public Funding Program (revised 2001)**

*Section:* 26 U.S.C. §§6096, 9008(a) and 9037(a)

*Recommendation:* The Commission strongly recommends that Congress take immediate action to avert a projected impending shortfall in the Presidential public funding program in the 2004 election year.

*Explanation:* The Presidential public funding program experienced a shortfall for the election of 2000 because participation in the checkoff program is declining and the checkoff is not indexed to inflation while payouts are indexed. This shortfall impacted foremost upon primary candidates. In January 2000, when the U.S. Treasury made its first payment for the 2000 election, it was only able to provide approximately 50 percent of the public funds that qualified Presidential candidates were entitled to receive. Specifically, only \$16.9 million was available for distribution to qualified primary candidates on January 1, 2000, after the Treasury paid the convention grants and set aside the general election grants.<sup>4</sup> However, the entitlement (i.e., the amount that the qualified candidates were entitled to receive) on that date was \$34 million, twice as much as the amount of available public funds. By January 2001, total payments made to primary candidates was in excess of \$61 million.

Moreover, FEC staff predict that an even more significant shortfall will exist in the 2004 election cycle. The balance in the Presidential Election Campaign Fund in January 2004 is estimated to be approximately \$8.5 million while demand is estimated to be \$37 million. Based on those estimates, candidates will receive approximately 23 cents on the dollar with the first payment, and it is estimated that the shortfall will extend until March 2005. The Commission recommends that Congress take appropriate action to reduce the impact of this shortfall.

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<sup>3</sup> 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.

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<sup>4</sup> The Commission has certified a total of \$28.9 million in convention grants, and \$147.2 million will be set aside for use by general election candidates.

### **Qualifying Threshold for Eligibility for Primary Matching Funds**

*Section:* 26 U.S.C. §9033

*Recommendation:* The Commission recommends that Congress raise the qualifying threshold for eligibility for publicly funded Presidential primary candidates and make it adjustable for inflation.

*Explanation:* The present law sets a very low bar for candidates to qualify for federal primary matching funds: \$100,000 in matchable contributions (\$5,000 in each of at least 20 states from individual donations of \$250 or less). In other words, to qualify for matching funds, a candidate needs only 400 individual contributors, contributing \$250 each. The threshold was never objectively high; now, a quarter century of inflation has effectively lowered it yet by two thirds. Congress needs to consider a new threshold that would not be so high as to deprive potentially late blooming candidates of public funds, nor so low as to permit individuals who are clearly not viable candidates to exploit the system.

Rather than establishing a new set dollar threshold, which would eventually require additional inflationary adjustments, Congress may wish to express the threshold as a percentage of the previous Presidential primary election spending limit, which itself is adjusted for inflation. For example, a percentage of 5% of the 1996 spending limit would have computed to a threshold of a little over \$1.5 million. In addition, the test for broad geographic support might be expanded to require support from at least 30 states, as opposed to 20, along with an increase in the amount to be raised from within each state, which is the current statutory requirement.

### **State Expenditure Limits for Publicly Financed Presidential Primary Campaigns (revised 2001)**

*Section:* 2 U.S.C. §441a(b)(1)(A)

*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.

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.

### **Eligibility for Public Funding Following Violations of the Public Finance Laws (revised 2001)**

*Section:* 26 U.S.C. §§9003 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 knowing and willful (criminal) violation of the Presidential Primary Matching Payment Account Act (26 U.S.C. §9042), the Presidential Election Campaign Fund Act (26 U.S.C. §9012), or other offenses relating to public funding—or who have failed to make repayments in connection with a past campaign—will not be eligible for public funding in subsequent elections.

*Explanation:* Neither Presidential public financing statute expressly restricts eligibility for funding because of a candidate's prior violations of law, no matter how severe. In *LaRouche v. FEC*, 996 F.2d 1263 (D.C. Cir. 1993), *cert. denied*, 510 U.S. 992 (1993), the court held that the Commission could not deny funding to a candidate who had been convicted of fraud involving election-related activities. The court reasoned that the Matching Payment Act did not authorize the Commission to evaluate a candidate's "good faith" as part of the funding process. The same reasoning would seemingly apply to the Fund Act.

There is a risk of serious erosion in the public confidence in the integrity of the public financing system if the U.S. Government were to provide public funds to candidates who had been convicted of crimes related to the public funding process, or additional funds to those who had not made past repayments. 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.

Some criminal violations of the public finance laws are classified as felonies, while others are misdemeanors. (Under federal law, a misdemeanor is any crime for which the maximum penalty is one year's imprisonment or less, and a felony is any crime for which the maximum penalty is more than one year's imprisonment. See 18 U.S.C. §3559.) Accordingly, we recommend that this prohibition encompass all criminal violations covered by these Acts, be they misdemeanors or felonies.

## **Part B: Technical Recommendations**

### **Disclosure**

#### **Election Cycle Reporting of Operating Expenditures and Other Disbursements**

*Section:* 2 U.S.C. §434(b)(5) and (6)

*Recommendation:* The Commission recommends that Congress make technical amendments to sections 434(b)(5) and (6) to require itemization of operating expenditures by authorized committees on an election-cycle basis rather than on a calendar-year basis and to clarify the basis for itemization of other disbursements. More specifically, Congress should make a technical amendment to section 434(b)(5)(A) to ensure that authorized committees (i.e., candidate committees) itemize operating expenditures on an election-cycle basis. Section 434(b)(6)(A) should be modified to address only election cycle reporting since the subparagraph applies only to authorized candidate committees. Finally, section 434(b)(6)(B)(iii) and (v) should be amended to address only calendar-year reporting since these subparagraphs apply only to unauthorized political committees (i.e., PACs and party committees).

*Explanation:* In 1999, Congress amended the statute at section 434(b) to require authorized candidate committees to report on an election-cycle basis,

rather than on a calendar-year basis, with respect to reporting periods beginning after December 31, 2000. Pub. Law No. 106-58, Section 641. However, the 1999 amendment did not include section 434(b)(5)(A), which states that operating expenditures must be itemized on a calendar-year basis and details the information required in that itemization. The result is that, under section 434(b)(4), operating expenditures will be required to be aggregated on an election-cycle basis, while under section 434(b)(5), they are still required to be itemized on a calendar-year basis.

To establish consistency within the Act, the Commission recommends that Congress make a technical amendment to section 434(b)(5)(A) by inserting “(or election cycle in the case of an authorized committee of a candidate for Federal office)” after “calendar year”. This amendment would require authorized committees to itemize operating expenditures on an election-cycle basis.

Congress also should tighten up the language in section 434(b)(6)(B)(iii) and (v) by striking “(or election cycle, in the case of an authorized committee of a candidate for Federal office).” The references to authorized committees are unnecessary as section 434(b)(6)(B) applies solely to unauthorized political committees. Similarly, in section 434(b)(6)(A), Congress should strike “calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office)” and insert in its place the phrase, “election cycle,” as section 434(b)(6)(A) only applies to authorized committees.

#### **Point of Entry for Pseudonym Lists**

*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**

### **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.

### **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.

## **Compliance**

### **Modifying Terminology of "Reason to Believe" Finding (revised 2001)**

*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" terminology 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 or referral 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. Note that the change in terminology recommended by the Commission would not change the standard that this finding simply represents that the Commission believes a violation may have occurred if the facts as described are accurate.

## Public Financing

### 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 (plus COLA<sup>5</sup>) limit 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.

### Enforcement of Nonwillful Violations (revised 2001)

*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. Congress should also consider amending the Presidential Election Campaign Fund Act to clarify how unlawful uses of payments by convention committees, if nonwillful, are to be penalized.

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<sup>5</sup> Spending limits are increased by the cost-of-living adjustment (COLA), which the Department of Labor calculates annually.

*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.

Section 9012(c)(2) governs the unlawful use of payments by a convention committee. The language of 9012(c) fails, however, to specify the appropriate criminal penalty for such violations. Since criminal penalties are specified for all the other violations listed in section 9012(c), the absence of such a penalty for the convention violation mentioned in (c)(2) may be a statutory oversight.

Alternatively, Congress may wish to clarify whether the unlawful use of payments by a convention committee under section 9012(c)(2) is a criminal violation. This is unclear because the language of section 9012(c)(2) does not contemplate a “knowing and willful” violation. This contrasts with other violations of section 9012. Also, as noted above, the penalties specified in paragraph (c)(3) apply to other violations of the section, but not to violations by convention committees.

### **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.

### **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 (revised 2001)**

*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

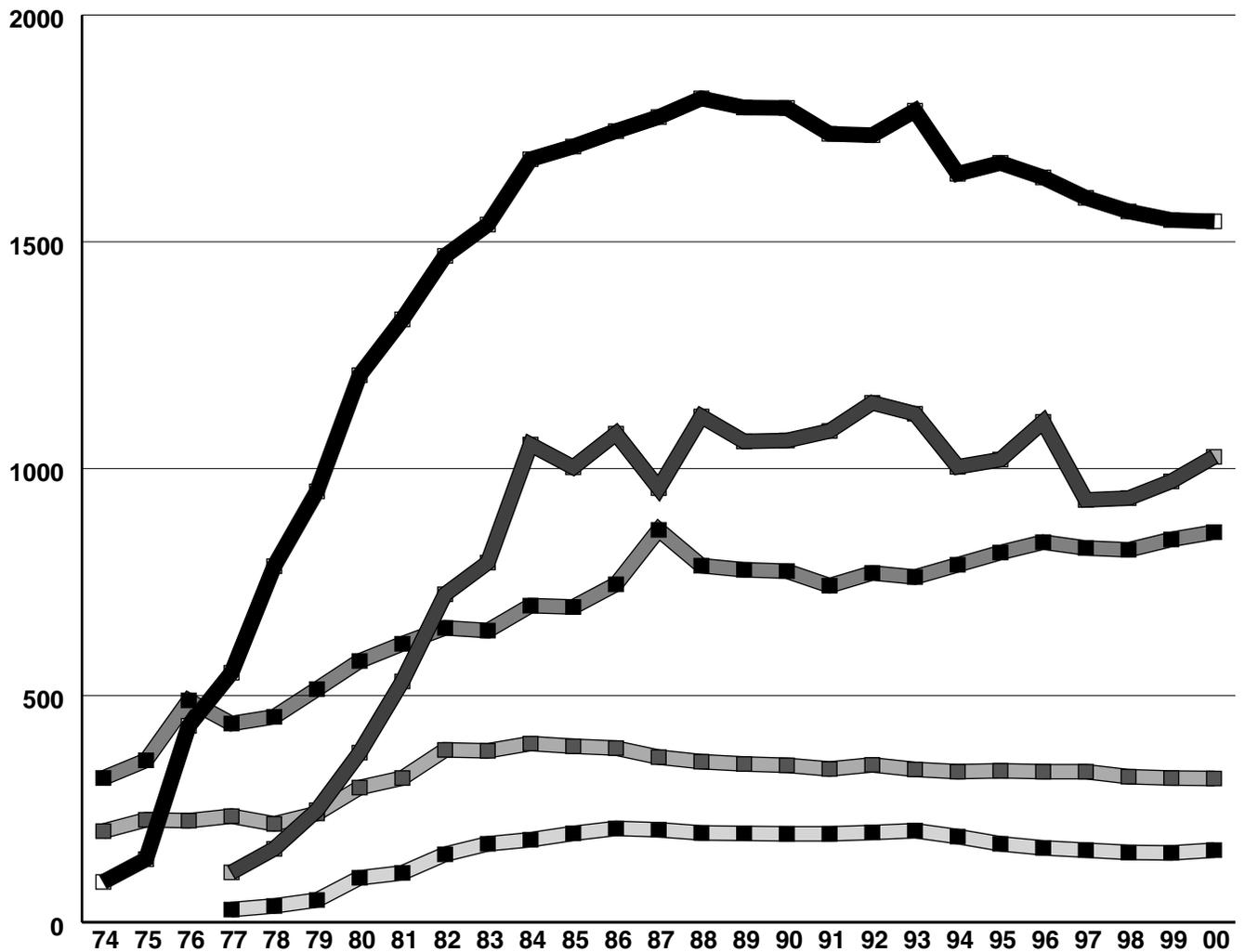
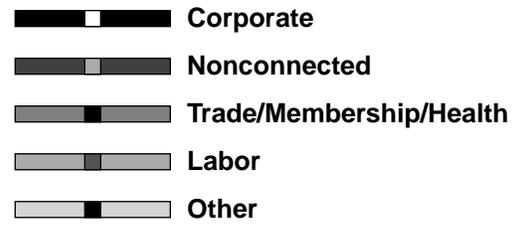
designees from the list of the members of the Federal Election Commission.

*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, 513 U.S. 88 (1994).) 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.

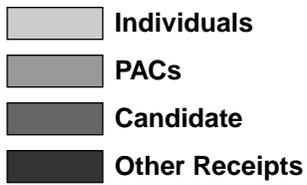
As a result of the appeals court decision, the FEC reconstituted itself as a six-member body whose members are appointed by the President and confirmed by the Senate. Congress should accordingly amend the Act to reflect the appeals court's decision by removing the references to the ex officio members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

# Chapter Seven Campaign Finance Statistics

**CHART 7-1**  
**Number of PACs, 1974-2000**

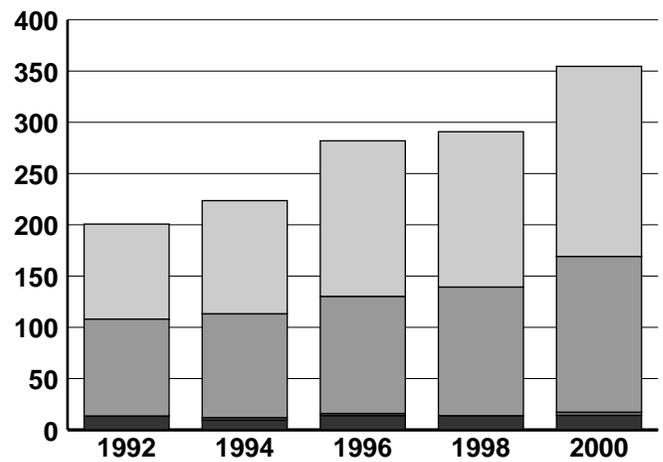


**CHART 7-2**  
**House Candidates'**  
**Sources of Receipts:**  
**Election Cycle**



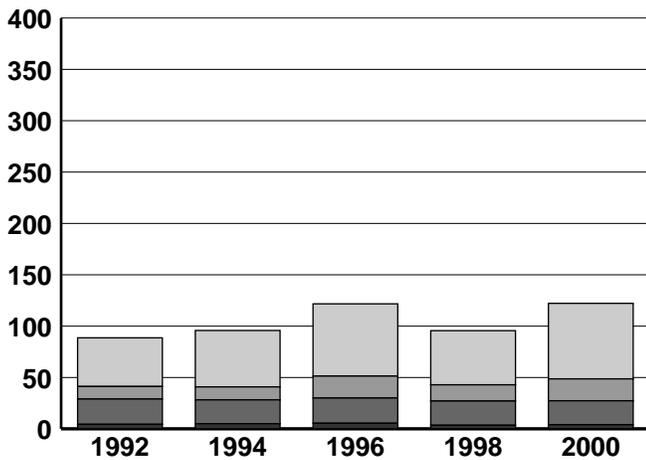
**Incumbents**

Millions of Dollars



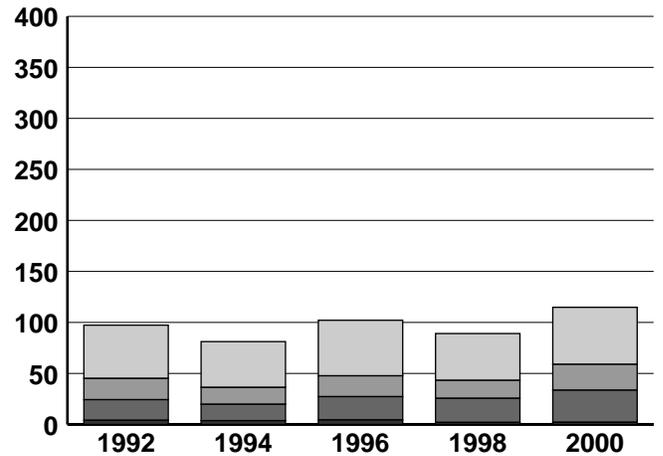
**Challengers**

Millions of Dollars

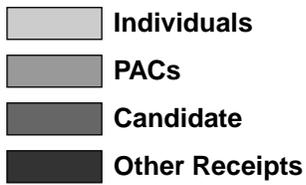


**Open Seat Candidates**

Millions of Dollars

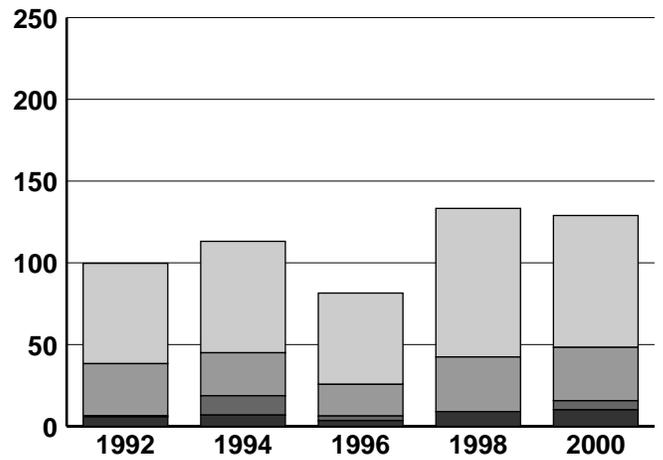


**CHART 7-3**  
**Senate Candidates'**  
**Sources of Receipts:**  
**Election Cycle**



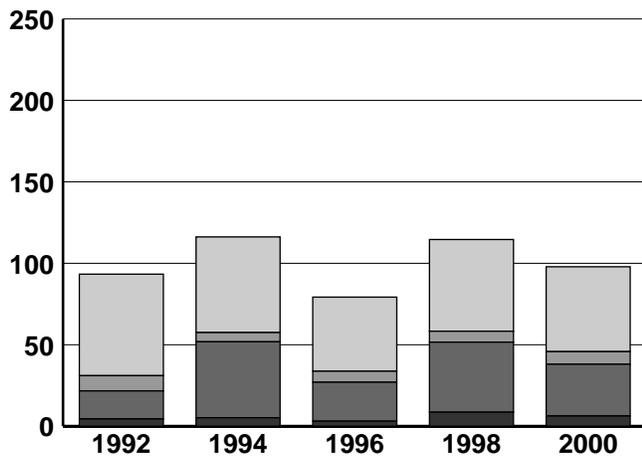
**Incumbents**

Millions of Dollars



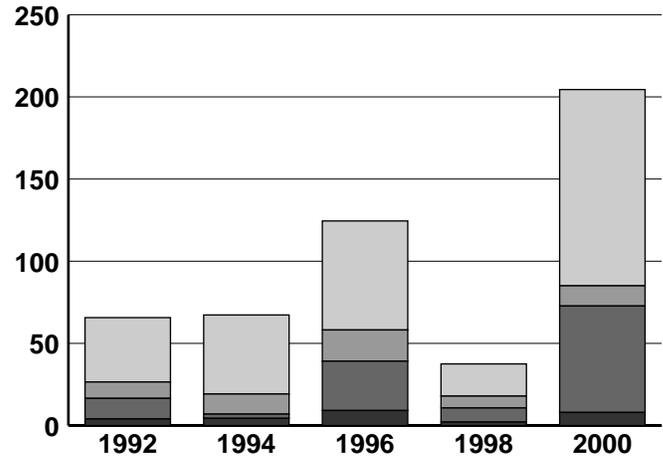
**Challengers**

Millions of Dollars



**Open Seat Candidates**

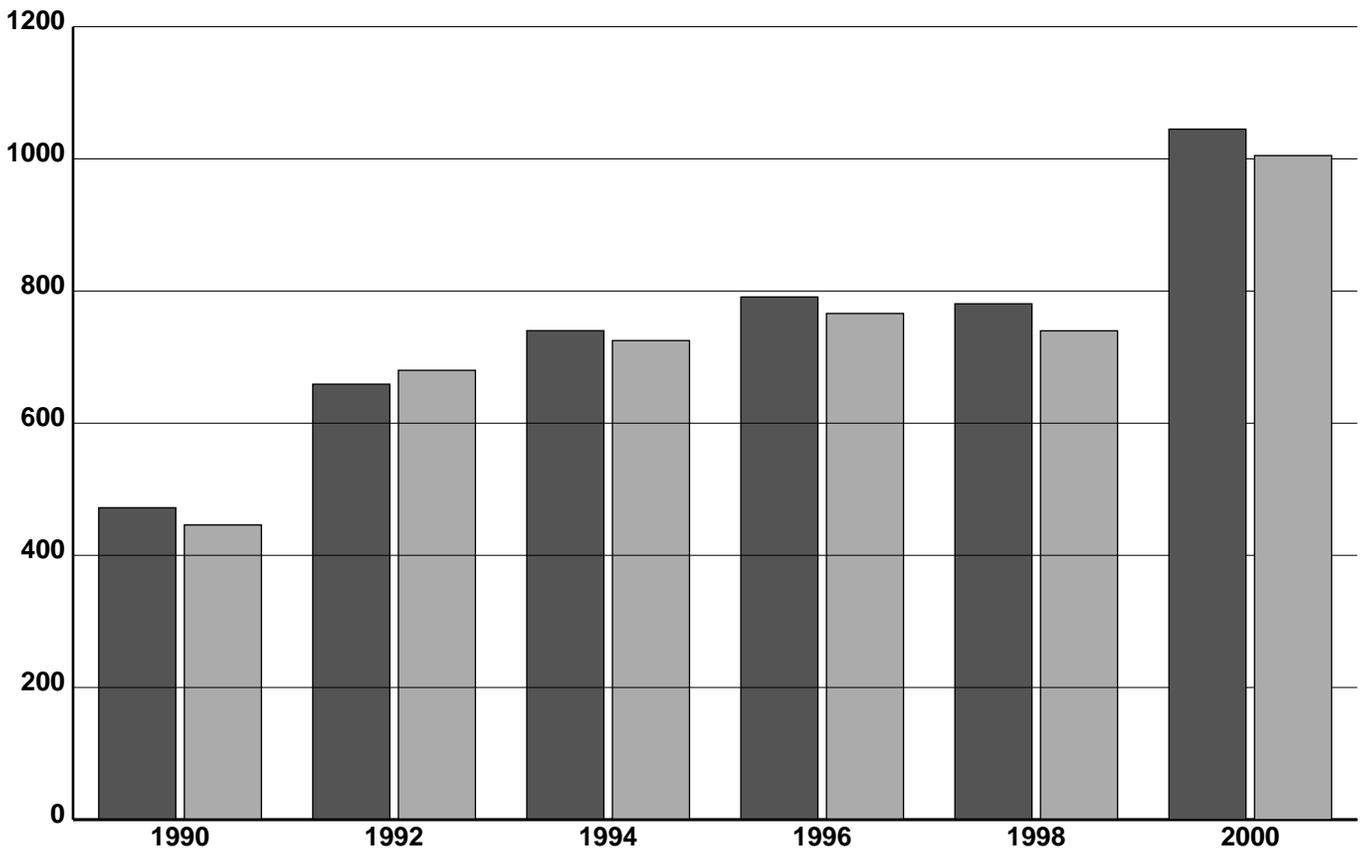
Millions of Dollars



**CHART 7-4**  
**House and Senate Activity**  
**by Election Cycle**

Receipts  
Disbursements

Millions of Dollars

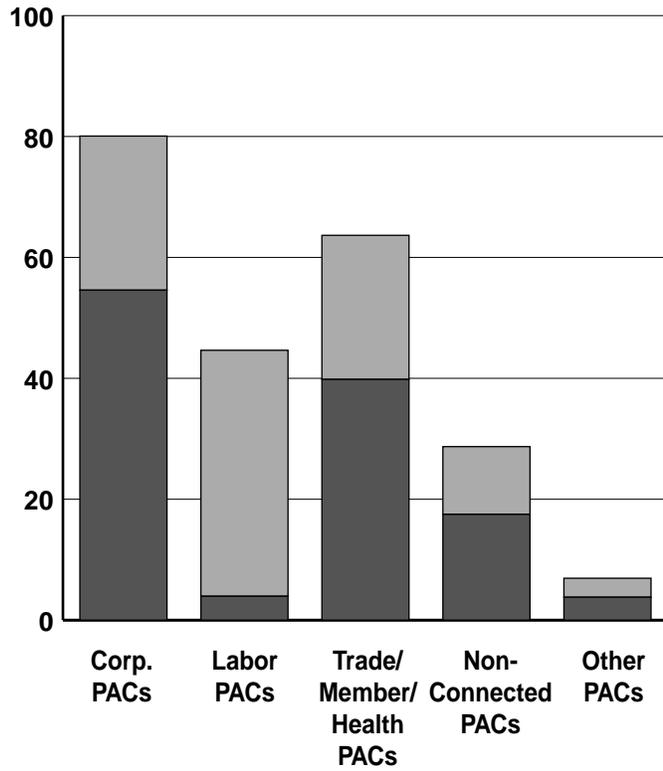


**CHART 7-5**  
**PAC Contributions to Candidates**  
**by Party and Type of PAC**

Democratic Candidates  
 Republican Candidates

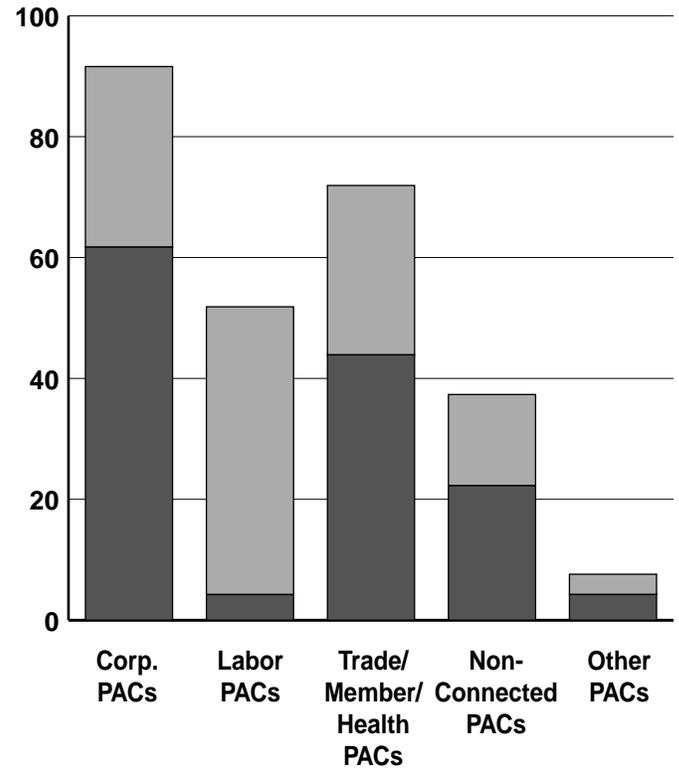
**1998 Election Cycle**

Millions of Dollars

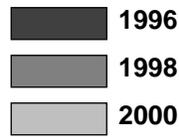


**2000 Election Cycle**

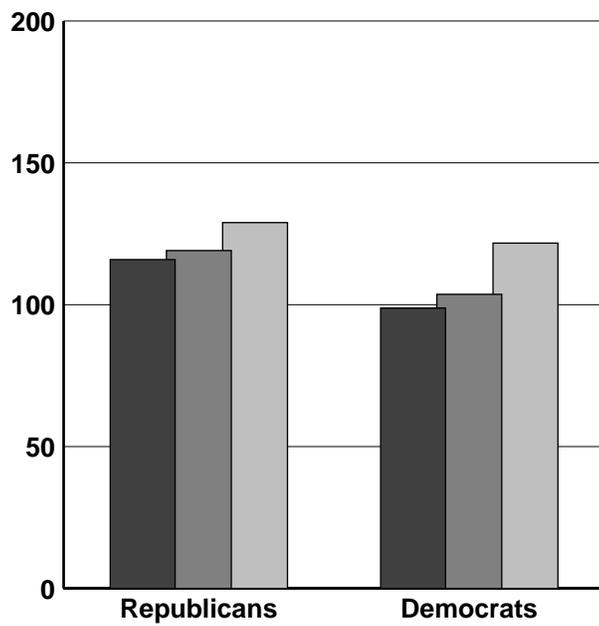
Millions of Dollars



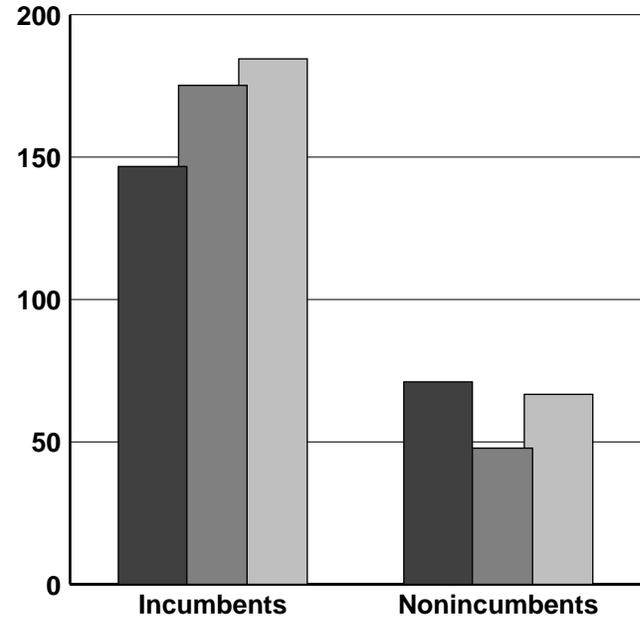
**CHART 7-6**  
**PAC Contributions to House and Senate**  
**Candidates by Party and Candidate Status**



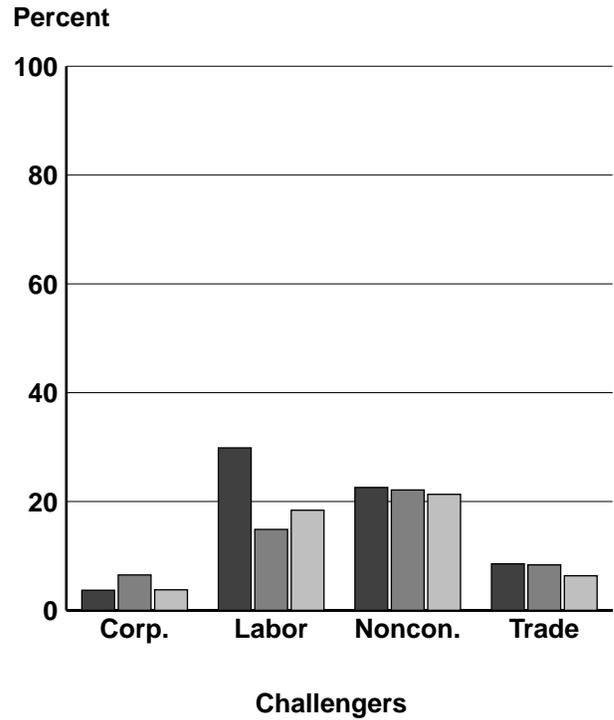
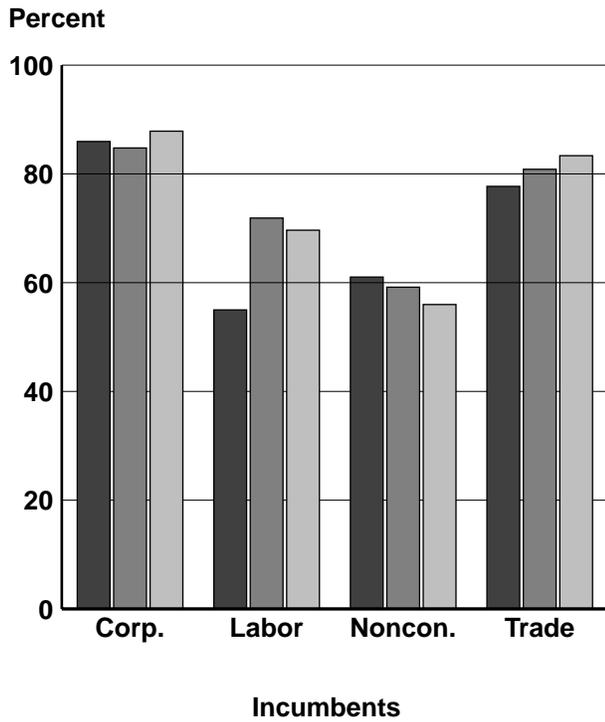
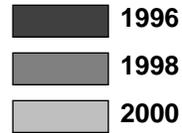
Millions of Dollars



Millions of Dollars

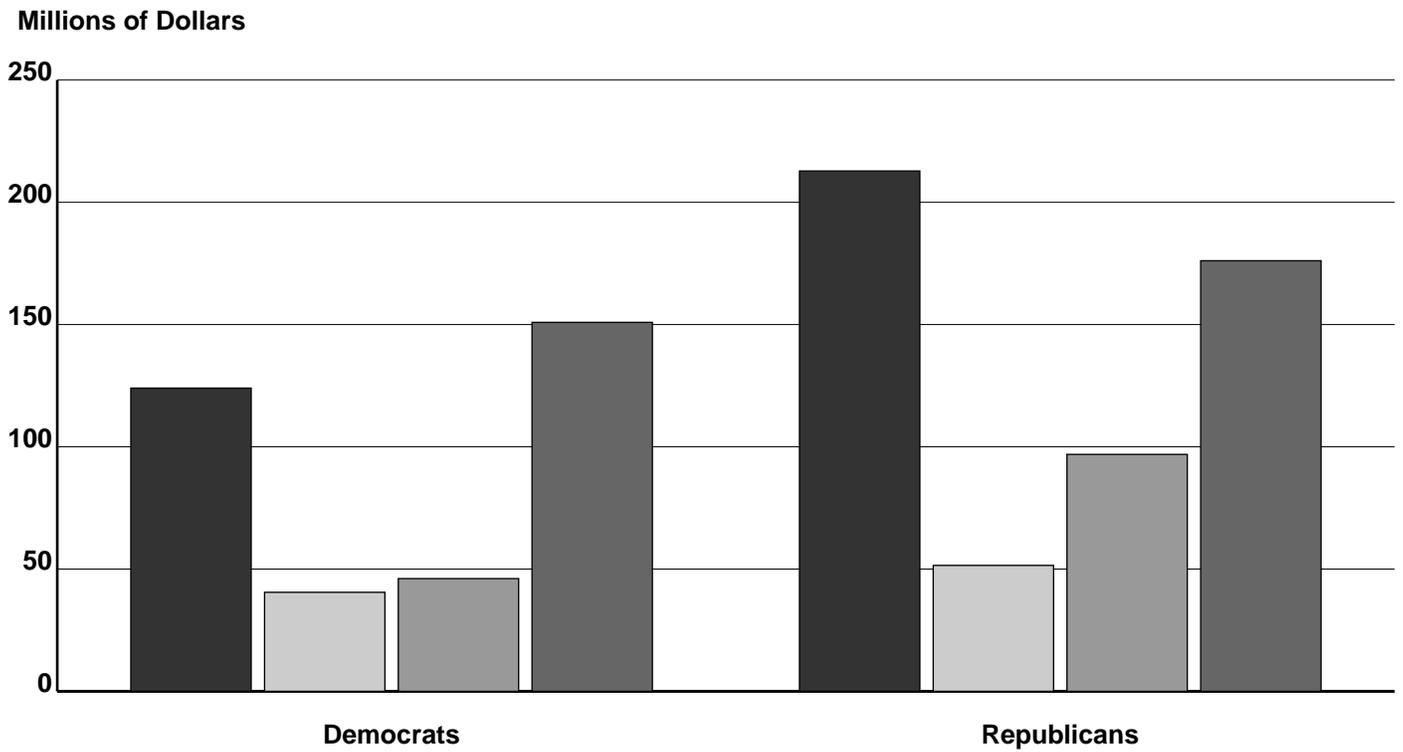


**CHART 7-7**  
**PAC Contributions to House Candidates**  
**by Type of PAC and Candidate Status**



**CHART 7-8**  
**Major Party Federal**  
**Account Receipts: 2000**

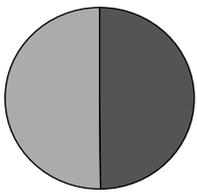
- National Committee
- National Senatorial Committee
- National Congressional Committee
- State/Local Committees



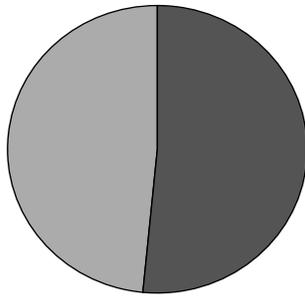
**CHART 7-9**  
**Party Federal and**  
**Nonfederal Receipts**

 **Federal Receipts**  
 **Nonfederal Receipts**

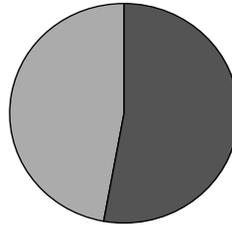
**Democratic National Committee (DNC)**



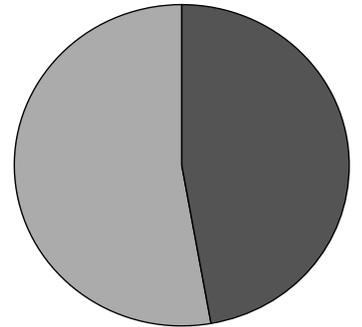
**1993-94**  
**\$83.86 million**



**1995-96**  
**\$210.3 million**

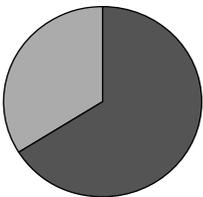


**1997-98**  
**\$122.6 million**

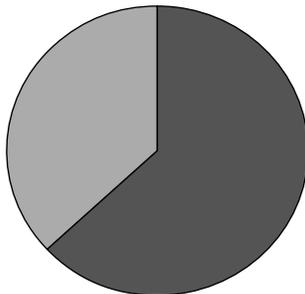


**1999-00**  
**\$262.7 million**

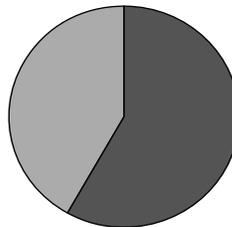
**Republican National Committee (RNC)**



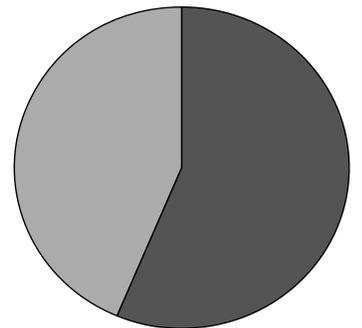
**1993-94**  
**\$132.27 million**



**1995-96**  
**\$306.1 million**

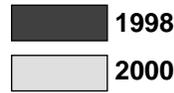


**1997-98**  
**\$178.8 million**

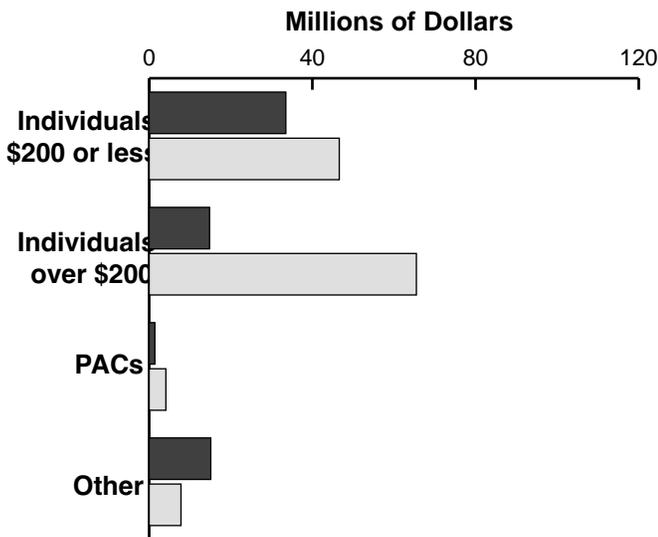


**1999-00**  
**\$377.9 million**

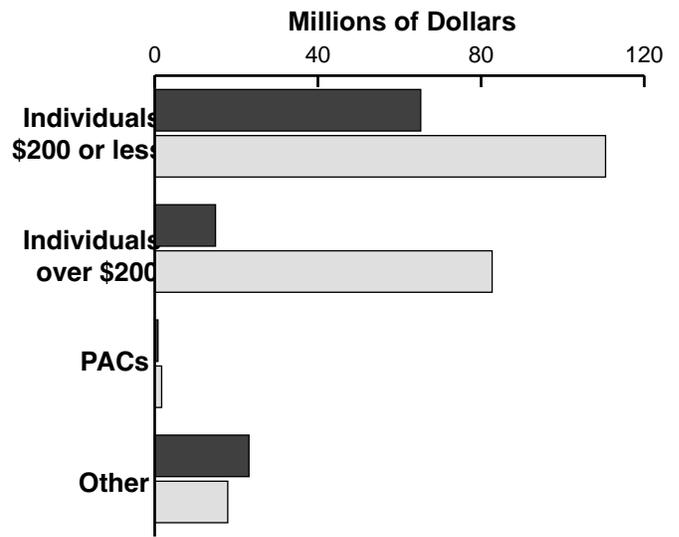
**CHART 7-10**  
**Sources of Party Receipts**



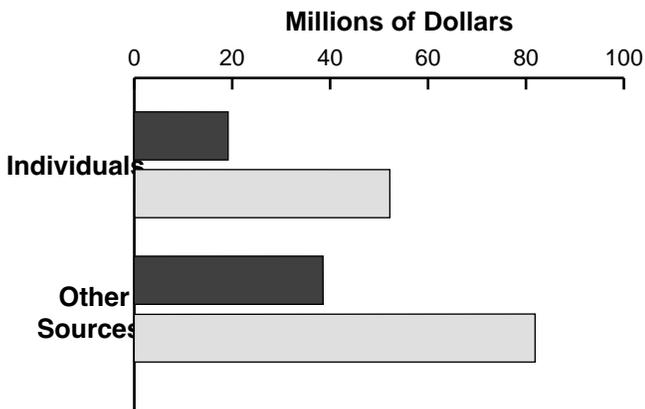
**DNC Federal Receipts by Source**



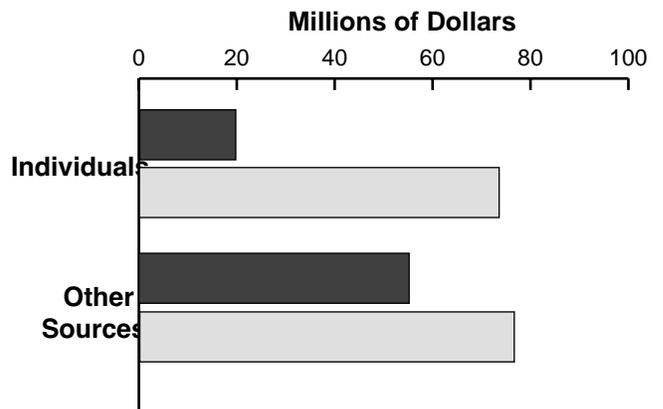
**RNC Federal Receipts by Source**



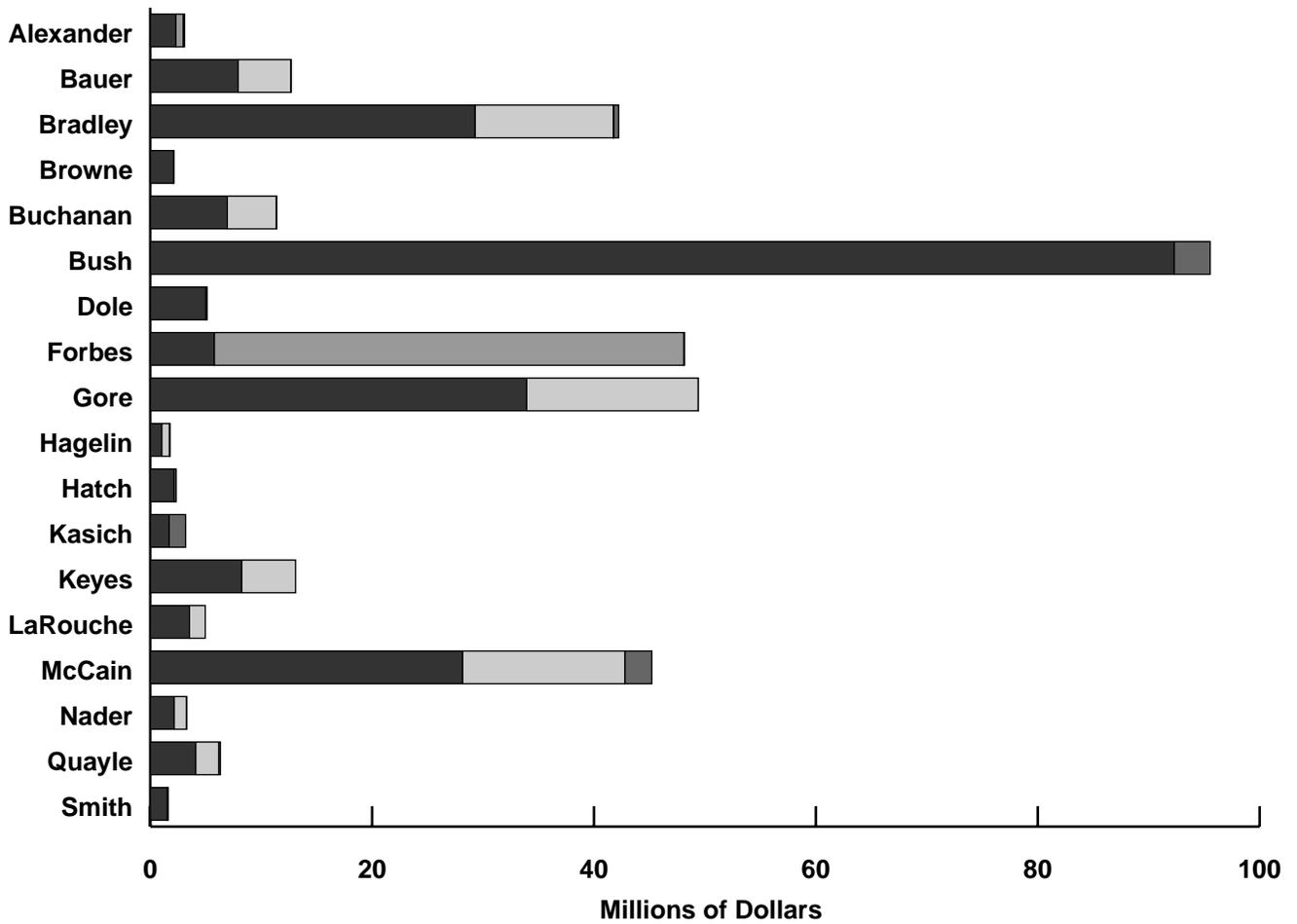
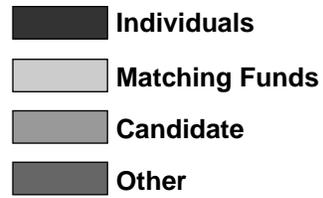
**DNC Nonfederal Receipts by Source**



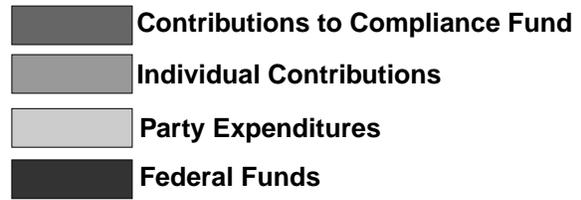
**RNC Nonfederal Receipts by Source**



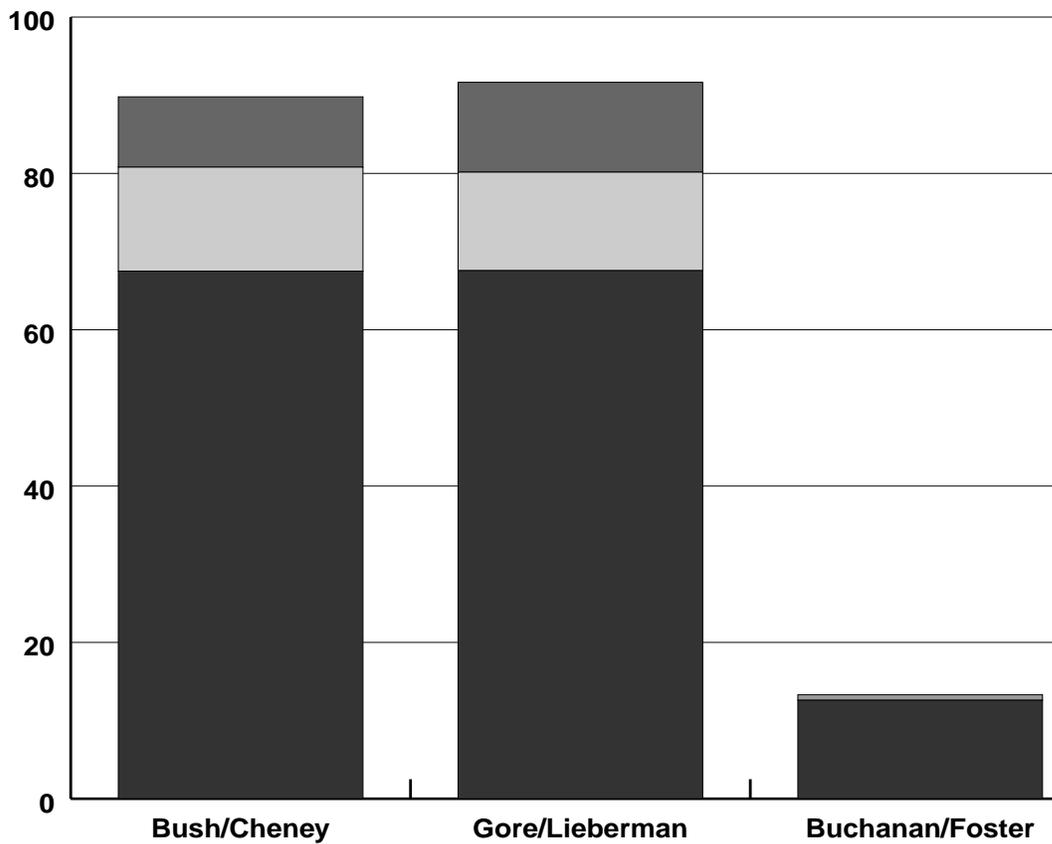
**CHART 7-11**  
**Receipts of Presidential Primary**  
**Campaigns by Source**



**CHART 7-12**  
**2000 General Election:**  
**Funding Sources of Candidates**  
**Receiving Public Grants**



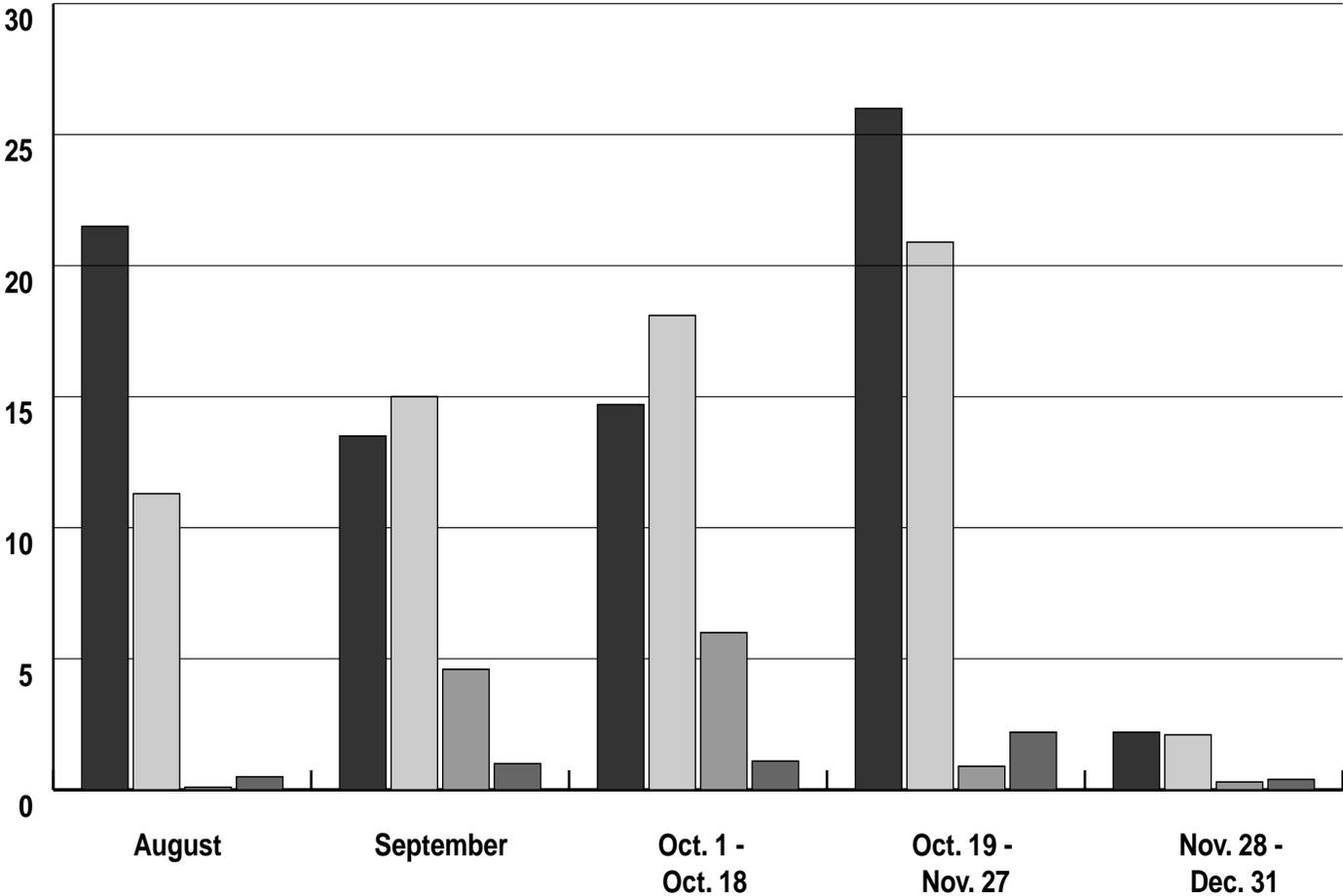
Millions of Dollars



**CHART 7-13**  
**Presidential Spending by 2000**  
**General Election Campaigns**

- Bush/Cheney
- Gore/Lieberman
- Buchanan/Foster
- Nader/LaDuke

Millions of Dollars



# Appendix 1

## Biographies of Commissioners and Officers

### Commissioners

#### **Darryl R. Wold, Chairman** **April 30, 2001<sup>1</sup>**

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

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

#### **Danny L. McDonald, Vice Chairman** **April 30, 2005**

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

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

#### **David M. Mason, Commissioner** **April 30, 2003**

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

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

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

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

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

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<sup>1</sup> Term expiration date.

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

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

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

Prior to joining the faculty at Capital in 1993, he had practiced with the Columbus law firm of Vorys, Sater, Seymour & Pease, served as United States Vice Consul in Guayaquil, Ecuador, worked as a consultant in the health care field and served as General Manager of the Small Business Association of Michigan, a position in which his responsibilities included management of the organization's political action committee.

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

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

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

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

## Statutory Officers

**James A. Pehrkon, Staff Director**

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

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

**Lawrence 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 and for the U.S. Court of Appeals for the DC Circuit and the District of Columbia. He is also a member of the American and District of Columbia Bar Associations.

**Lynne A. McFarland, Inspector General**

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

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

## Appendix 2 Chronology of Events

### January

- 1 — Chairman Darryl R. Wold and Vice Chairman Danny L. McDonald begin their one-year terms of office.
- 14 — FEC issues semiannual PAC count.
  - Commission certifies ten additional states for paper-filing waiver.
- 24 — U.S. Supreme Court rules that Missouri's contribution limits are constitutional (*Nixon v. Shrink Missouri Government PAC*).
- 31 — 1999 year-end report due.

### February

- 2 — FEC adds open meeting agenda documents to Web site.
- 9 — President Clinton nominates Bradley A. Smith and reappoints Danny L. McDonald as FEC Commissioners.
- 10-11 — FEC holds candidate conference in Washington, DC.
- 15 — Commission certifies ten additional states for paper-filing waiver.
- 16 — Commission holds public hearing on proposed coordination rules.
- 23 — FEC conducts monthly roundtable on "Soliciting Funds for Corporate/Labor/Trade PACs Using Newsletters and Web Sites."
- 29 — FEC submits \$40.96 million FY 2001 budget request to Congress.

### March

- 1 — FEC conducts monthly roundtable on "Reporting Basics for Corporate/Labor/Trade Association PACs."
- 1 — Commission announces 2000 Presidential spending limits and §441a(d) limits.
- 8-10 — FEC holds regional conference in Miami, FL.
- 10 — Commission releases statistics on Congressional activity during 1999.
- 13 — FEC submits six priority legislative recommendations to Congress and the President.
- 16 — Commission sends additional 32 recommendations for legislative action to Congress and the President.

- 22 — Vice Chairman Danny L. McDonald testifies before House Appropriations subcommittee on \$40.96 million FY 2001 budget request.
- 27 — Regulations on electronic Freedom of Information Act take effect.
- 28 — FEC certifies additional \$288,000 cost-of-living payments to Democratic and Republican Parties for nominating conventions.
- 31 — FEC certifies John Hagelin eligible for primary matching funds.

### April

- 6-7 — FEC holds corporate/labor conference in Washington, DC.
- 10 — Commission certifies three additional states for paper-filing waiver.
- 15 — Quarterly report due.
- 19 — Revised regulations governing aspects of the public funding of Presidential primary and general election campaigns take effect.

### May

- 1 — FEC publishes 2000 Combined Federal/State Disclosure and Election Directory.
- 5 — U.S. Court of Appeals affirms district court decision that coordinated party expenditure limits are unconstitutional (*FEC v. Colorado Republican Federal Campaign Committee*).
- 16-17 — FEC holds member/trade conference in Washington, DC.
- 18 — U.S. Court of Appeals rejects constitutional challenges to prohibitions on corporate contributions and contributions in the name of another (*Mariani v. USA*).
- 24 — Commission certifies two additional states for paper-filing waiver.
- 25 — Commission certifies additional \$53,769 cost-of-living payment to Reform Party for nominating convention.
- 25 — Senate confirms nomination of Bradley A. Smith and renomination of Danny L. McDonald as FEC Commissioners.

**June**

- 1 — FEC issues *Annual Report 1999*.
- 5 — Commission issues 15-month fundraising figures of major parties.
- 7 — FEC conducts monthly roundtable on “Partner/Partnership Federal Election Activity.”
- 7 — Regulations on state waiver program take effect.
- 14 — Danny L. McDonald sworn in for fourth term as FEC Commissioner.
- 15 — Commission approves final rules on mandatory electronic filing.
- 26 — Bradley A. Smith sworn in as FEC Commissioner.
- 30 — FEC certifies Ralph Nader eligible for primary matching funds.

**July**

- 5 — Commission approves final rules on election cycle reporting.
- 14 — Regulations on administrative fines take effect.
- 15 — Quarterly report due.
- 25 — Commission approves pilot Alternative Dispute Resolution program.

**August**

- 2 — FEC conducts monthly roundtable on “Update on New and Proposed FEC Reporting Regulations.”
- 4 — Commission certifies \$67.56 million payment of public funds to Bush/Cheney campaign.
- 18 — Commission certifies \$67.56 million payment of public funds to Gore/Lieberman campaign.
- 22 — FEC issues semiannual PAC count.

**September**

- 1 — Commission publishes *Campaign Guide Supplement*.
- 11 — U.S. Court of Appeals rules that Missouri’s limits on party contributions to candidates are unconstitutional (*Missouri Republican Party, et al. v. Charles F. Lamb, et al.*).

- 12 — Commission votes to deny public funding to Hagelin/Goldhaber campaign.
- 13 — FEC conducts monthly roundtable on “Pre-Election Reporting Tune-Up.”
- 14 — Commission certifies \$12.6 million payment of public funds to Buchanan/Foster campaign.
- 14 — District court rules that FEC’s debate regulations are not arbitrary or capricious (*Buchanan et al. v. FEC*).
- 15 — FEC publishes “Alternative Dispute Resolution Program” brochure.
- 22 — FEC makes Senate candidates campaign finance reports available on FEC Web site.
- 27 — Commission releases 18-month fundraising figures of PACs and major parties.
- 28 — FEC extends state filing waiver program to Senate candidates.

**October**

- 1 — FEC launches Alternative Dispute Resolution program.
- 2 — Commission certifies one additional state for paper-filing waiver.
- 3 — District court rules that prohibitions on contributions and independent expenditures by a nonprofit corporation are unconstitutional (*Christine Beaumont, et al. v. FEC*).
- 10 — U.S. Supreme Court grants FEC’s petition for certiorari in *FEC v. Colorado Republican Federal Campaign Committee*.
- 12 — FEC publishes list of Presidential candidates on state ballots.
- 15 — Quarterly report due.
- 18 — FEC makes additions to its Web site services, including on-line filing of 48-hour notices.
- 26 — Pre-General report due.

**November**

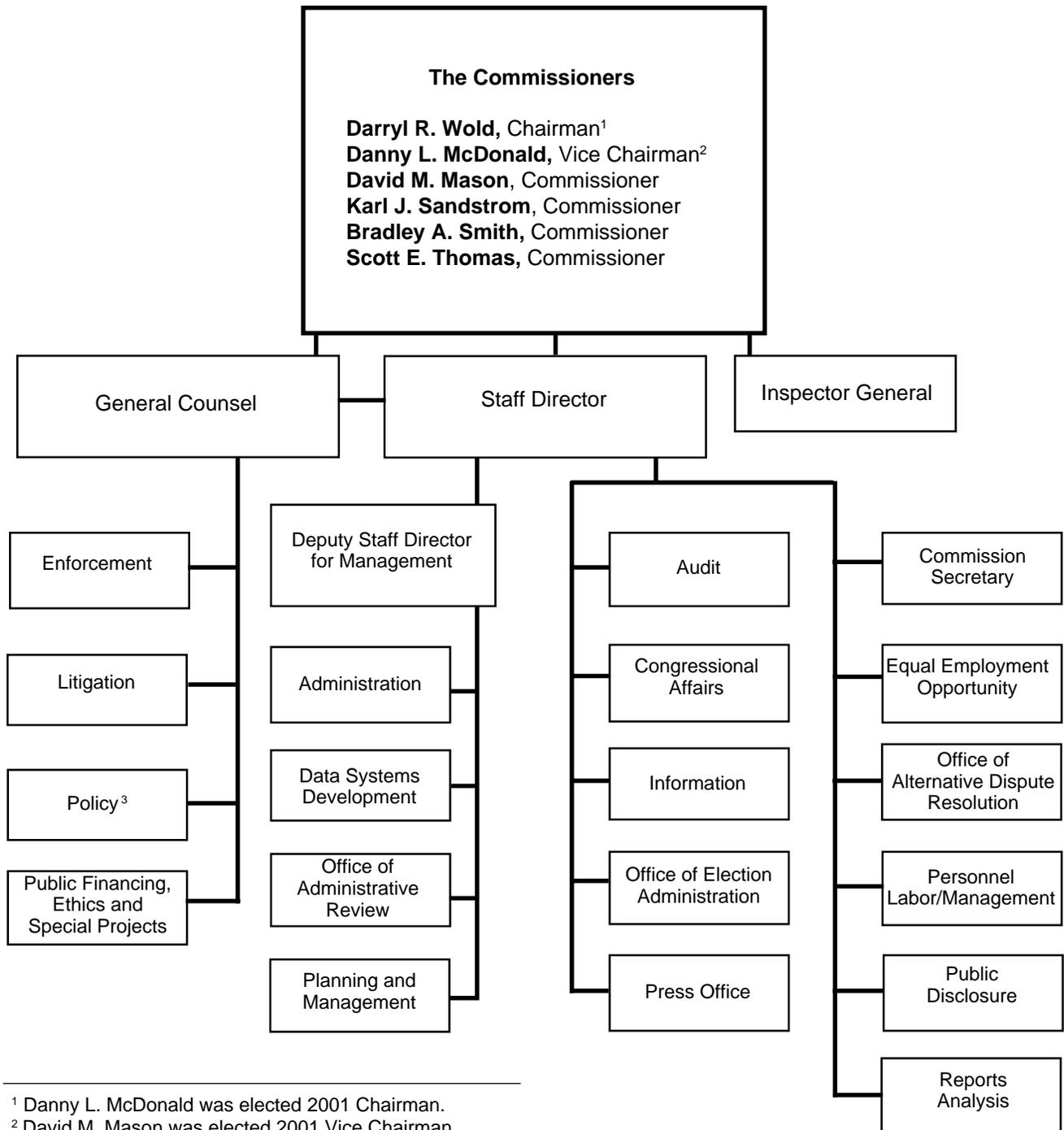
- 2 — FEC releases statistics on 2000 House and Senate campaign spending.
- 7 — General Election.
- 7 — Georgia holds special general election for Senate seat.

- 20 — FEC General Counsel Lawrence Noble announces resignation, effective January 1, 2001.
- 30 — Commission approves final rules on coordinated communications and independent expenditures.

**December**

- 1 — Lois G. Lerner designated Acting General Counsel, effective January 2, 2001.
- 7 — Post-General report due.
- 14 — Commission elects Danny L. McDonald Chairman and David M. Mason Vice Chairman for 2001.
- 21 — First case resolved and certified under the Alternative Dispute Resolution Program.
- 29 — Commission certifies one additional state for paper-filing waiver.

# Appendix 3 FEC Organization Chart



<sup>1</sup> Danny L. McDonald was elected 2001 Chairman.

<sup>2</sup> David M. Mason was elected 2001 Vice Chairman.

<sup>3</sup> Policy covers regulations, advisory opinions, legal review and administrative law.

## Appendix 4 FEC Offices

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

### Administration

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

### Audit

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

In addition, the division audits those committees 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.

### Commission Secretary

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

The Secretary also logs, circulates and tracks numerous materials not related to Commission meet-

ings, and records the Commissioner's votes on these matters. All matters on which a vote is taken are entered into the Secretary's database.

### Commissioners

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

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

### Congressional, Legislative and Intergovernmental Affairs

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

### Data Systems Development

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

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

These indexes permit a detailed analysis of campaign finance activity and, 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: 202-694-1250; toll-free phone: 800-424-9530.

## **Equal Employment Opportunity (EEO) and Special Programs**

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

The office is also responsible for developing a Special Emphasis Program tailored to the training and advancement needs of women, minorities, veterans, special populations and disabled employees 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 through the World Wide Web, letters, phone conversations, publications and conferences. Responding to phone and written inquiries, members of the staff provide information on the statute, FEC regulations, advisory opinions and court cases. Staff also lead workshops on the law and produce guides, pamphlets and videos on how to comply with the law. Located on the second floor, the division is open to the public. Local phone: 202-694-1100; toll-free phone: 800-424-9530 (press 1, then 3 on a touch-tone phone).

## **Inspector General**

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

## **Law Library**

The Commission law library, a government document depository, is located on the eighth floor and is open to the public. The library contains a basic reference collection, which includes materials on campaign finance reform, election law and current political activity. Visitors to the law library may use its computers to access the Internet and FEC databases. FEC advisory opinions and computer indices of enforcement proceedings (MURs) may be searched in the law library or the Public Disclosure Division. Local phone: 202-694-1600; toll-free: 800-424-9530.

## Office of Administrative Review

The Office of Administrative Review (OAR) was established in 2000 as a result of statutory amendments permitting the Commission to impose civil money penalties for violations of certain reporting requirements occurring between January 1, 2000, and December 31, 2001. Under the program, if the Commission finds “reason to believe” (RTB) that a committee failed to file a required report or notice, or filed it late, the committee may within 40 days challenge that finding. OAR reviews these challenges and, based on its conclusions, may recommend that the Commission uphold the RTB finding and civil money penalty; uphold the RTB finding but modify or waive the civil money penalty; determine that no violation occurred; or terminate its proceedings. OAR also serves as the Commission’s liaison with the U.S. Department of the Treasury on debt collection matters involving unpaid civil money penalties under this program.

## Office of Alternative Dispute Resolution

During 2000, the FEC established the Alternative Dispute Resolution (ADR) office to provide parties in enforcement actions with an alternative method for resolving complaints that have been filed against them or for addressing issues identified in the course of an FEC audit. The pilot program is designed to promote compliance with the federal campaign finance law and Commission regulations, and to reduce the cost of processing complaints by encouraging settlements outside the agency’s normal enforcement track.

## Office of Election Administration

The Office of Election Administration (OEA) assists state and local election officials by responding to inquiries, publishing research and conducting workshops on all matters related to election administration. Additionally, the OEA answers questions from the

public and briefs foreign delegations on the U.S. election process, including voter registration and voting statistics.

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

## Personnel and Labor/Management Relations

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, performs personnel records maintenance and offers 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: 202-694-1220; toll-free 800-424-9530 (press 1 on a touch-tone phone).

## Public Disclosure

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

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

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

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

## Reports Analysis

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

## Staff Director and Deputy Staff 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 2000	Filers Terminated as of 12/31/00	Continuing Filers as of 12/31/00	Number of Reports and Statements in 2000	Gross Receipts in 2000 (dollars)	Gross Expenditures in 2000 (dollars)
<b>Presidential Candidate Committees</b>	355	136	219	1,317	366,067,863	398,958,368
<b>Senate Candidate Committees</b>	644	250	394	2,696	345,635,717	415,712,646
<b>House Candidate Committees</b>	2,873	1,297	1,576	12,983	419,874,635	487,649,417
<b>Party Committees</b>	730	125	605	4,935	1,318,611,899	1,359,495,929
Federal Party Committees	578	125	453	4,289	844,998,175	850,749,609
Reported Nonfederal Party Activity	152	0	152	646	473,613,724	508,746,320
<b>Delegate Committees</b>	16	9	7	54	305,465	317,799
<b>Nonparty Committees</b>	4,516	609	3,907	36,705	337,873,403	369,811,077
Labor Committees	350	33	317	3,117	76,431,245	82,222,294
Corporate Committees	1,727	182	1,545	15,486	89,214,848	97,428,866
Membership, Trade and Other Committees	2,439	394	2,045	18,102	172,227,310	190,159,917
<b>Communication Cost Filers</b>	270	0	270	170	0	22,157,913
<b>Independent Expenditures by Persons Other Than Political Committees</b>	420	119	301	329	679,291	4,630,988

### Divisional Statistics for Calendar Year 2000

	Total
<b>Reports Analysis Division</b>	
Documents processed	68,359
Reports reviewed	35,426
Telephone assistance and meetings	11,431
Requests for additional information (RFAs)	13,475
Second RFAs	3,713
Data coding and entry of RFAs and miscellaneous documents	19,354
Compliance matters referred to Office of General Counsel or Audit Division	27
<b>Data Systems Development Division *</b>	
Documents receiving Pass I coding	59,954
Documents receiving Pass III coding	52,866
Documents receiving Pass I entry	72,681
Documents receiving Pass III entry	52,765
Transactions receiving Pass III entry	1,753,458
• In-house	425,677
• Contract	1,327,781
<b>Public Records Office</b>	
Campaign finance material processed (total pages)	1,654,331
Cumulative total pages of documents available for review	17,546,103
Requests for campaign finance reports	6,067
Visitors	10,297
Total people served	27,547
Information telephone calls	11,183
Computer printouts provided	33,654
Faxline requests	1,714
Total income (transmitted to U.S. Treasury)	\$35,534
Contacts with state election offices	4,559
Notices of failure to file with state election offices	51

\* 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
<b>Administrative Division</b>	
Contracting and procurement transactions	1,118
Publications prepared for print	16
Pages of photocopying	14,800,000
<b>Information Division</b>	
Telephone inquiries	54,178
Information letters	64
Distribution of FEC materials	11,461
Prior notices (sent to inform filers of reporting deadlines)	40,663
Other mailings	21,572
Visitors	55
Public appearances by Commissioners and staff	141
Roundtable workshops	6
Publications	24
<b>Press Office</b>	
News releases	84
Telephone inquiries from press	14,998
Visitors	1,716
Freedom of Information Act (FOIA) requests	33
Fees for materials requested under FOIA (transmitted to U.S. Treasury)	\$1,160
<b>Office of Election Administration</b>	
Telephone inquiries	9,769
National surveys conducted	4
Individual research requests	429
Materials distributed *	49,256
Election presentations/conferences	30
Foreign briefings	101
Publications	0

\* Figure includes National Voter Registration Act materials.

	Total
Office of General Counsel	
Advisory opinions	
Requests pending at beginning of 2000	7
Requests received	40
Issued	41
Not issued*	3
Pending at end of 2000	3
Compliance cases <sup>†</sup>	
Pending at beginning of 2000	201
Opened	195
Closed	160
Pending at end of 2000	236
Litigation	
Cases pending at beginning of 2000	26
Cases opened	25
Cases closed	15
Cases pending at end of 2000	36
Cases won	7
Cases lost	3
Cases won/lost	1
Miscellaneous Cases <sup>‡</sup>	4
Law Library	
Telephone inquiries	908
Visitors	613

\* Three advisory opinion requests were withdrawn by the requesters.

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

<sup>‡</sup> This category includes cases in which the Commission participated only as an *amicus curiae*, or cases that were voluntarily withdrawn prior to depository briefing.

### Audit Reports Publicly Released

Year	Title 2*	Title 26 <sup>†</sup>	Total
1976	3	1	4
1977	6	6	12
1978	98 <sup>‡</sup>	10	108
1979	75 <sup>‡</sup>	9	84
1980	48 <sup>‡</sup>	11	59
1981	27 <sup>‡</sup>	13	40
1982	19	1	20
1983	22	0	22
1984	15	2	17
1985	4	9	13
1986	10	4	14
1987	12	4	16
1988	8	0	8
1989	2	7	9
1990	1	6	7
1991	5	8	13
1992	9	3	12
1993	10	2	12
1994	5	17	22
1995	12	0	12
1996	23	0	23
1997	7	6	13
1998	5	7	12
1999	20	7	27
2000	14	0	14
<b>Total</b>	<b>460</b>	<b>133</b>	<b>593</b>

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

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

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

**Audits Completed by Audit Division, 1975 – 2000**

	<b>Total</b>
Presidential	112
Presidential Joint Fundraising	12
Senate	23
House	168
Party (National)	47
Party (Other)	147
Nonparty (PACs)	84
<b>Total</b>	<b>593</b>

**Status of Audits, 2000**

	<b>Pending at Beginning of Year</b>	<b>Opened</b>	<b>Closed</b>	<b>Pending at End of Year</b>
Presidential	0	10	0	10
Presidential Joint Fundraising	0	0	0	0
Senate	1	0	0	1
House	4	0	4	0
Party (National)	0	0	0	0
Party (Other)	8	10	5	13
Nonparty (PACs)	1	2	3	0
<b>Total</b>	<b>14</b>	<b>22</b>	<b>12</b>	<b>24</b>

## Appendix 6

# 2000 Federal Register Notices

**2000-1**

Use of the Internet for Campaign Activity; Extension of Comment Period (65 FR 1074, January 7, 2000)

**2000-2**

Schedule of Matching Fund Submission Dates and Submission Dates for Statements of Net Outstanding Campaign Obligations (NOCO) for 2000 Presidential Candidates Post Date of Ineligibility (65 FR 3237, January 20, 2000)

**2000-3**

Electronic Freedom of Information Act Amendments; Final Rules and Statement of Basis and Purpose (65 FR 9201, February 24, 2000)

**2000-4**

Filing Copies of Campaign Finance Reports and Statements with State Officers; Final Rules and Transmittal of Regulations to Congress (65 FR 15221, March 22, 2000)

**2000-5**

Public Funding of Presidential Primary Candidates—Repayments; Notice of Disposition and Termination of Rulemaking (65 FR 15273, March 22, 2000)

**2000-6**

Administrative Fines; Notice of Proposed Rulemaking (65 FR 16534, March 29, 2000)

**2000-7**

Electronic Filing of Reports by Political Committees; Notice of Proposed Rulemaking (65 FR 19339, April 11, 2000)

**2000-8**

Public Financing of Presidential Primary and General Election Candidates; Final Rule; Announcement of Effective Date (65 FR 20893, April 19, 2000)

**2000-9**

Election Cycle Reporting by Authorized Committees, Notice of Proposed Rulemaking (65 FR 25672, May 3, 2000)

**2000-10**

Administrative Fines; Final Rules and Explanation and Justification—Transmittal to Congress (65 FR 31787, May 19, 2000)

**2000-11**

Announcement of Changes to the Computerized Magnetic Media Requirements for Presidential Primary, General Election and Convention Committees (65 FR 32094, May 22, 2000)

**2000-12**

Filing Copies of Campaign Finance Reports and Statements with State Officers; Final rules and Announcement of Effective Date (65 FR 36053, June 7, 2000)

**2000-13**

Mandatory Electronic Filing; Final Rules and Explanation and Justification—Transmittal to Congress (65 FR 38415, June 21, 2000)

**2000-14**

Guidance to Candidates and Political Party Committees on Status of FEC Civil Enforcement Actions Pending Supreme Court Consideration of *FEC v. Colorado Republican Federal Campaign Committee* (65 FR 42365, July 10, 2000)

**2000-15**

Election Cycle Reporting by Authorized Committees (Candidate Committees); Final Rules and Explanation and Justification—Transmittal to Congress (65 FR 42619, July 11, 2000)

**2000-16**

Notice of Filing Dates for the Georgia Senate Special Election (65 FR 48710, August 9, 2000)

**2000-18**

Electronic Filing of Reports by Political Committees; Announcement of Effective Date (65 FR 63535, October 24, 2000)

**2000-19**

Rulemaking Petition; Reporting by Political Action Committees; Notice of Disposition (65 FR 66936, November 8, 2000)

**2000-20**

Rules on Election-Cycle Reporting by Authorized Candidate Committees; Announcement of Effective Date (65 FR 70644, November 27, 2000)

**2000-21**

General Public Political Communications Coordinated with Candidates and Party Committees; Final Rules and Explanation and Justification—Transmittal to Congress (65 FR 76138, December 6, 2000)

## Appendix 7

# Summaries of Selected New Regulations

### Administrative Fine Program

Beginning with the July 15, 2000, quarterly reports, the Commission implemented a new program for assessing civil money penalties for violations involving:

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

The Administrative Fine program is based on amendments to the Federal Election Campaign Act (the Act) that permit the FEC to impose civil money penalties, based on schedules of penalties, for violations of reporting requirements that occur between January 1, 2000, and December 31, 2001.

#### How the Program Works

In the past, the FEC handled reporting violations (late filers, nonfilers and committees that failed to file 48-hour notices) under the same enforcement procedures it employs for other alleged campaign finance violations, culminating in agreement on a civil penalty or court action. Under the new rules, if the Commission finds “reason to believe” that a committee violated the law, the Commission will provide written notification to the committee containing the factual and legal basis of its finding and the amount of the proposed civil money penalty. The committee will have 40 days from the date of the reason-to-believe finding to either pay the civil money penalty or submit to the Commission a written response, with supporting documentation outlining the reasons why it believes the Commission’s finding and/or penalty is in error. (The Commission strongly encourages respondents to submit their documents in the form of affidavits or declarations. Documents submitted in these forms are generally given more weight and credibility.) If the committee submits such a response, it will be forwarded to the Office of Administrative Review (OAR), an FEC office that was not involved in the original reason-to-believe recommendation.

After reviewing the Commission’s reason-to-believe finding and the committee’s written response, the OAR will forward a recommendation to the Commission, along with the original reason-to-believe finding, the committee’s written response and any supporting

documentation. Respondents will have an opportunity to submit a written response to the reviewing officer’s recommendation. The Commission will then make a final determination as to whether the committee violated 2 U.S.C. §434a and, if so, assess a civil money penalty based on the schedules of penalties.

Committee treasurers may be liable for civil money penalties if reports are not filed on time.

#### Challenging Commission Determinations

As noted above, the new rules allow committees to challenge the Commission’s reason-to-believe finding and to seek review by submitting documentation to the OAR, which makes a recommendation to the Commission as to the final determination.

Should a committee fail to pay the civil money penalties or submit a challenge within the original 40 days, the Commission will issue a final determination with an appropriate civil money penalty. The committee will then have 30 days to pay the civil money penalty or seek judicial review through a U.S. district court in the area where the committee resided or conducted business.<sup>1</sup>

#### Reports Covered

All reports that committees are required to file are covered under the Administrative Fine program. This includes semi-annual, quarterly, monthly, pre-election, 30-day post-general and special election reports, as well as 48-hour notices that candidate committees are required to file for elections in which the candidate participates.

#### Calculating Penalties

The interaction of several factors will determine the size of the penalty:

- Election sensitivity of the report;
- Committee as late filer, including the number of days late, or nonfiler;
- The amount of financial activity in the report; and
- Prior civil money penalties for reporting violations.

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<sup>1</sup> The committee may also seek judicial review if it disagrees with a final determination made by the Commission after the committee submits a challenge.

One factor used to determine the amount of the civil money penalty is the *election sensitivity* of the report. Under the new rules, the following reports are considered election sensitive: the October quarterly, the October monthly and the pre-election reports for primary, general and special elections. All other reports are considered nonsensitive.

The Commission will also consider whether the committee is a *late filer* or a *nonfiler*. In the case of nonsensitive reports, a committee will be considered a late filer if it files its report within 30 days after the due date, and a nonfiler if it files its report later than that.

In the case of election-sensitive reports, a committee will be considered a late filer if it files a report after its due date, but more than four days before the applicable election; a committee that files later than that will be considered a nonfiler.

The third factor is the *amount of financial activity*—that is, the total amount of receipts and disbursements in the report.

The final factor is the existence of *prior civil money penalties* for reporting violations under the Administrative Fine program.

### Schedules of Penalties

The schedules of penalties, included in the new regulations, are based on the factors described above.

#### *For Reports Other Than 48-Hour Notices*

The calculation of the civil money penalties for late filers and nonfilers of reports, other than 48-hour notices, has four components, as described below.

##### 1. Base Amount for Late Filers.

In calculating the penalty, the Commission begins with the *base amount*, a prescribed figure that depends on the total amount of financial activity in the report and the election sensitivity of the report. For example, on an election-sensitive report, if the total amount of receipts and disbursements is \$80,000, the base amount will be \$600. Or, if the total amount of receipts and disbursements is \$500,000, the base amount will be \$3,750. The base amount ranges from \$100 to \$5,000 for nonsensitive reports and from \$150 to \$7,500 for election-sensitive reports.

##### 2. Additional Set Amount for Late Filers.

The Commission then adds to the base amount a number that is calculated by multiplying a *set amount*, based on the financial activity in the report, by the number of days the report is filed late (up to 30 days). The set amount ranges from \$25 to \$200 per day, depending on the total amount of receipts and disbursements.

##### 3. Base Amount for Nonfilers.

In the case of nonfilers, the Commission begins with a *base amount* that depends on both the election sensitivity of the nonfiled report and the estimated level of activity based on the average activity in the current or prior two-year election cycle. The base amount will range from \$900 to \$12,000 for nonsensitive reports and from \$1,000 to \$16,000 for election-sensitive reports.

##### 4. Additional Premium for Previous Violation(s).

With regard to both late filers and nonfilers, the Commission adds a premium for prior civil money penalties assessed for failure to file timely reports. The premium is equal to 25 percent of the civil money penalty times the number of final civil money penalties assessed during the previous and current two-year election cycles under the Administrative Fine program. *For 48-Hour Notices*

The calculation of the civil money penalties for committees that fail to file timely 48-hour notices is \$100 for each nonfiled notice plus 10 percent of the dollar amount of the contributions not timely reported. The civil money penalty increases by 25 percent for each time a prior civil money penalty was assessed during the previous and current two-year election cycles under the Administrative Fine program.

The table on page 89 provides examples of how civil money penalties are calculated.

### Collecting Unpaid Penalties

When a respondent fails to pay the civil money penalty, the Commission will transfer the case to the U.S. Department of the Treasury for collection.<sup>2</sup> Alternatively, the Commission may decide to file suit in the appropriate U.S. district court to collect owed civil money penalties, under 2 U.S.C. §437g(a)(6).

<sup>2</sup> In compliance with the Debt Collection Improvement Act of 1996 (31 U.S.C. §3711(g)).

## Examples of Civil Money Penalty Calculations

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**EXAMPLE 1: Late Filer of Election-Sensitive Report.** A committee files its October quarterly report (an election-sensitive report) 10 days late. The level of financial activity on the report is \$105,000, and the committee has one prior violation in the current two-year election cycle.

Applicable formula:

Penalty = [*base amount* + (*set amount* x number of days late)] x [1 + (.25 x number of previous violations)]

Penalty = [\$900 + (\$125 x 10)] x [1 + (.25 x 1)]

Penalty = \$2687.50

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**EXAMPLE 2: Late Filer with Relatively Little Activity, No Prior Violations.** A committee files its July quarterly report on August 4. The report contains \$500 in receipts and disbursements, and the committee has no prior violations.

Applicable formula:

Penalty = The lesser of: the level of activity in the report; or  
 [*base amount* + (*set amount* x number of days late)]

Penalty = The lesser of: \$500 or [\$100 + (\$25 x 20)]

Penalty = The lesser of: \$500 or \$600

Penalty = \$500

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**EXAMPLE 3: Nonfiler of Nonelection-Sensitive Report.** A committee fails to file its July quarterly report within 30 days of its due date. Based on its previous filings, the committee's estimated level of activity is \$50,000. The committee has one prior violation in the current two-year election cycle.

Applicable formula:

Penalty = *base amount* x [1 + (.25 x number of previous violations)]

Penalty = \$2,700 x [1 + (.25 x 1)]

Penalty = \$3,375

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**EXAMPLE 4: Nonfiler of 48-Hour Notice.** A House campaign committee fails to submit a 48-hour notice to disclose its receipt of a last-minute \$5,000 PAC contribution. The campaign has two prior violations in the current two-year election cycle.

Applicable formula:

Penalty = [\$100 + (.10 x amount of contribution(s) not timely reported)] x [1 + (.25 x number of previous violations)]

Penalty = [\$100 + (.10 x \$5,000)] x [1 + (.25 x 2)]

Penalty = \$900

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## Election Cycle Reporting

On July 5, 2000, the Commission approved new regulations requiring authorized committees of federal candidates to aggregate and report receipts and disbursements on an election-cycle basis rather than on a calendar-year basis, which was the previous system. These revised regulations affect reports covering periods that begin on or after January 1, 2001. The new rules do not affect unauthorized committees, such as PACs and party committees.

The change to election cycle reporting, required by Public Law 106-58, is intended to simplify recordkeeping and reporting. Under previous regulations, candidate committees monitored contribution limits on a per-election basis, but disclosed their financial activity on a calendar-year-to-date basis. Under the new system, committees will report all of their receipts and disbursements on an election-cycle basis. 11 CFR 104.3. For example, campaigns must itemize a donor's contributions once they exceed \$200 for the election cycle, rather than for the calendar year. Likewise, candidate committees must itemize disbursements to a person once they aggregate in excess of \$200 within the election cycle.

### Election Cycle

Under FEC regulations, an election cycle typically begins the day after the general election for a seat or office and ends on the day of the next general election for that seat or office. 11 CFR 100.3(b). The length of the election cycle, thus, depends on the office sought. For example, the election cycle is two years for House candidates, six years for Senate candidates and four years for Presidential candidates.

### Transition to Election Cycle Reporting

Since the new regulations took effect after the close of post-general and year-end reporting periods for 2000, many candidates have already reported receipts and disbursements related to the 2002, 2004 or 2006 election cycles under the previous reporting system. Committees will need to include the total of this previously-disclosed activity in their election-cycle-to-date figures, beginning with their first report

under the new system.<sup>1</sup> In some cases, the activity may span several years. For example, a Senate candidate for a 2002 election who has been receiving contributions and making disbursements since the 1996 election for that seat will need to include the aggregate of that activity in his or her election-cycle-to-date totals. Since committees are only required to retain records for a period of three years, the Commission intends to provide Senate committees registered for the 2002 and 2004 elections with their election cycle figures as of December 31, 2000. The figures will be based on reports previously filed by the committees.

## Electronic Filing

On June 15, the Commission approved the final rules on mandatory electronic filing. Beginning with the reporting periods that start on or after January 1, 2001, all persons required to file their reports with the FEC who receive contributions or make expenditures in excess of \$50,000 in a calendar year, or who expect to do so, must submit their campaign finance reports electronically. Any filers who are required to file electronically, but who file on paper, will be considered nonfilers and may be subject to enforcement action.

The new rules, required by Public Law 106-58, provide faster disclosure of filed reports and streamline operations for both filers and the Commission. The Commission estimates, based on data from the 1996 and 1998 election cycles, that, with the \$50,000 threshold, 96 to 98 percent of all financial activity reported to the FEC will be available almost immediately on the FEC's Web site.

### Mandatory v. Voluntary Filing

The mandatory electronic filing regulations (11 CFR 104.18) apply to any political committee or other person required to file reports, statements or designations with the FEC. This includes all filers except Senate candidate committees (and other persons who

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<sup>1</sup> For most campaigns, the first report under the new system will be the mid-year report, due July 31, 2001.

support only Senate candidates), who are required to file with the Secretary of the Senate.<sup>1</sup>

Since 1996, the Commission has encouraged voluntary electronic filing. For those individuals and political committees that do not exceed (or do not expect to exceed) the \$50,000 threshold, voluntary electronic filing will still be encouraged.

Voluntary electronic filers must continue to file electronically for the remainder of the calendar year unless the Commission determines that unusual circumstances make continued electronic filing impractical. 11 CFR 104.18(b). No such waiver by the Commission, however, has been established for mandatory electronic filers.

### Who Must File Electronically

**Candidate Committees.** All committees authorized by one candidate must file electronically if their combined total contributions or combined total expenditures exceed, or are expected to exceed, the \$50,000 threshold.

**PACs and Party Committees.** By contrast, each unauthorized committee (PAC or party committee), whether or not it is affiliated, must file electronically if its total contributions or total expenditures exceed, or are expected to exceed, the threshold.

**Joint Fundraising Representatives.** A joint fundraising representative must file electronically if its total contributions or total expenditures exceed, or are expected to exceed, the \$50,000 threshold.<sup>2</sup>

**Independent Expenditures.** Individuals and qualified nonprofit corporations whose independent expenditures exceed, or are expected to exceed, the \$50,000 threshold must file electronically on FEC Form 5. Because Form 5 must be notarized, filers are required to submit a paper copy of Form 5 bearing the notarized seal and signature, or, if filing on diskette,

attach a digital version of the seal and signature as a separate file when filing Form 5 electronically. 11 CFR 104.18(h) and 109.2(a).

### Calculating the Threshold

A committee (other than a Senate committee) must file electronically if:

- It has received contributions of more than \$50,000 or made expenditures of more than \$50,000 during any calendar year; or
- It has “reason to expect to exceed” the above threshold in any calendar year. 11 CFR 104.18(a)(1) and 104.18(a)(3)(i).

*“Have Reason to Expect to Exceed.”* Once filers actually exceed the threshold, they have “reason to expect to exceed” the threshold in the following two calendar years. 11 CFR 104.18 (a)(3)(i). This means they must continue to file electronically for the next two years (January through December).

*Exception for Candidate Committees.* In some cases, a candidate committee that has exceeded the threshold and filed electronically may not have to continue filing electronically. This exception applies to a candidate committee that:

- Has \$50,000 or less in net debts outstanding on January 1 of the year following the election;
- Anticipates terminating prior to the next election year; and
- Supports a candidate who has not qualified for the next election and does not intend to become a candidate in the next election. 11 CFR 104.18 (a)(3)(i).

*Persons With No History.* New political committees or other persons with no history of campaign finance activity may rely on one of the following formulas to determine whether they will exceed, or should expect to exceed, the threshold:

- The filer receives contributions or makes expenditures that exceed one-quarter of the threshold amount in the first calendar quarter of the calendar year; or
- The filer receives contributions or makes expenditures that exceed one-half of the threshold amount in the first half of the calendar year. 11 CFR 104.18 (a)(3)(ii).

<sup>1</sup> Senate candidates, however, are encouraged to voluntarily file electronically an unofficial copy of their reports with the FEC to ensure faster disclosure.

<sup>2</sup> For more information on joint fundraising, see 11 CFR 102.17 and the *Campaign Guides* for Congressional candidates and committees and for party committees.

*Other Considerations.* When a committee calculates whether it has exceeded, or expects to exceed, the \$50,000 threshold, it should keep in mind the following:

- The calculation is based on either making \$50,000 in expenditures or receiving \$50,000 in contributions during the calendar year; it is not based on a combination of expenditures and contributions.
- Nonfederal funds are excluded from the calculation.
- Cash on hand and outstanding debt at the beginning of the calendar year are excluded from the calculation.

(Also, see chart on page 93: *Calculating the Electronic Filing Threshold.*)

### Filing Reports and Statements

*Validation of Report.* Electronic filers (whether mandatory or voluntary) must file all their reports electronically. The reports must follow the FEC's Electronic Filing Specifications Requirements, available online or on paper from the FEC. 11 CFR 104.18(d). An electronic report is considered "filed" when it is received and validated by the Commission's computer system on or before 11:59 p.m. on the prescribed filing date. Incomplete or inaccurate reports that do not pass the FEC's validation program will not be considered filed. The Commission will notify the filer that the report has not been accepted. 11 CFR 104.18(e)(2).

*Filing an Amendment.* To amend an electronically filed report, the filer must electronically resubmit the entire report, not just the amended portions. Additionally, the amendments must comply with the formatting rules contained in the FEC's Electronic Filing Specifications Requirements. 11 CFR 104.18(f).

### Registration Documents (FEC Forms 1 and 2)

If a committee has exceeded or expects to exceed the \$50,000 threshold, its Statement of Organization (FEC Form 1) and Statement of Candidacy (FEC Form 2), and any amendments to either form, must be filed electronically. 11 CFR 102.2(a)(2) and 104.18(c). Note that all filers (whether electronic or paper) must include on their Statement of Organization the URL for their Web site, if they maintain one. Those commit-

tees that file electronically must also include their e-mail address on their Statement of Organization. 11 CFR 102.2(a)(1)(vii).

### Refiling Paper Reports

Filers will not be expected to refile any reports or statements that were correctly filed on paper earlier in the calendar year or election cycle. 11 CFR 104.18(a)(2).

### Signature Requirements

A committee's treasurer (or other person responsible for filing designations with the FEC) must verify that all electronically filed documents have been examined by the treasurer and (to the best of that person's knowledge) are accurate and complete. Verification may be:

- Direct transmission of the filing, using the treasurer's personal password received from the FEC. (In order to receive a password, treasurers should call the electronic filing office at (202)208-5263); or
- If filing on diskette, a digitized copy of a signed certification sent, as a separate file on the diskette, with the electronically filed documents. 11 CFR 104.18(g).

### Availability of Forms

FECFile software, available free from the FEC, currently generates FEC forms 3 and 3X for disclosure of financial information. The software will also generate forms 1 and 2.

Many commercially available software products also include electronic filing capabilities.

### Nonfilers

Those filers who are required to file electronically and who file on paper instead, or who fail to file, will be considered nonfilers and may be subject to enforcement action by the Commission, including publication of their names and the imposition of civil money penalties under the new Administrative Fine Program.<sup>3</sup> 11 CFR 104.18(a)(2) and Part 111, Subpart B and 2 U.S.C §437g(a)(4) and (6)(A).

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<sup>3</sup> See page 11.

## Calculating the Electronic Filing Threshold

Political committees should use the following formulas to determine if their total expenditures or total contributions are over \$50,000 per calendar year:

### CANDIDATE COMMITTEES

$$\begin{array}{r}
 \text{Total Contributions Received}^1 \\
 - \quad \underline{\text{Refunds of Contributions}} \\
 \hline
 \text{Total Contributions (if over \$50,000, must file electronically)}
 \end{array}$$

$$\begin{array}{r}
 \text{Total Operating Expenditures} \\
 + \quad \underline{\text{Contributions Made}} \\
 \hline
 \text{Total Expenditures (if over \$50,000, must file electronically)}
 \end{array}$$

### PACS

$$\begin{array}{r}
 \text{Total Contributions Received} \\
 - \quad \text{Refunds of Contributions} \\
 + \quad \underline{\text{Transfers from affiliated federal committees}} \\
 \hline
 \text{Total Contributions (if over \$50,000, must file electronically)}
 \end{array}$$

$$\begin{array}{r}
 \text{Total Federal Operating Expenditures} \\
 + \quad \text{Transfers to affiliated federal committees} \\
 + \quad \text{Contributions Made} \\
 + \quad \underline{\text{Independent Expenditures}} \\
 \hline
 \text{Total Expenditures (if over \$50,000, must file electronically)}
 \end{array}$$

### POLITICAL PARTY COMMITTEES

$$\begin{array}{r}
 \text{Total Contributions Received} \\
 - \quad \text{Refunds of Contributions} \\
 + \quad \underline{\text{Transfers from affiliated federal political party committees}} \\
 \hline
 \text{Total Contributions (if over \$50,000, must file electronically)}
 \end{array}$$

$$\begin{array}{r}
 \text{Total Federal Operating Expenditures} \\
 + \quad \text{Transfers to affiliated federal political party committees} \\
 + \quad \text{Contributions Made} \\
 + \quad \text{Independent Expenditures} \\
 + \quad \underline{\text{Coordinated Expenditures}} \\
 \hline
 \text{Total Expenditures (if over \$50,000, must file electronically)}
 \end{array}$$

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<sup>1</sup> Including the outstanding balance of any loans made, guaranteed or endorsed by the candidate or other person.