

# Federal Election Commission

## Annual Report 2002



Federal Election Commission  
Washington, DC 20463

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## **Commissioners**

Ellen L. Weintraub, Chair  
Bradley A. Smith, Vice Chairman  
David M. Mason, Commissioner  
Danny L. McDonald, Commissioner  
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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 1, 2003

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

Dear Mr. President, Senators and Representatives:

We are pleased to submit for your information the 28th Annual Report of the Federal Election Commission, pursuant to 2 U.S.C. §438(a)(9). The *Annual Report 2002* describes the activities performed by the Commission in the last calendar year.

Last year was marked by the successful implementation of the Bipartisan Campaign Reform Act (BCRA): the Commission completed nine BCRA-related rulemakings within the 270-day time period specified by the BCRA. In addition, the Commission made permanent its Alternative Dispute Resolution program to ensure the expeditious processing of enforcement matters and approved revisions to the National Mail Voter Registration form and the Voting System Standards.

This report also includes the seven legislative recommendations the Commission recently adopted and transmitted to the President and the Congress for consideration. The Commission has substantially reduced the number of recommendations for legislative action, including only high priority recommendations with broad Commission support. We hope that Congress will consider adopting these proposals, which we believe would bring about some necessary changes in campaign finance law.

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

Respectfully,

A handwritten signature in cursive script that reads "Ellen L. Weintraub".

Ellen L. Weintraub  
Chair

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The Federal Election Commission faced unprecedented challenges during 2002. On March 27 President Bush signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA), which required the Commission to promulgate implementing regulations within 270 days, and within 90 days for the soft money provisions. The Commission met the statutory deadlines, completing nine BCRA-related rulemakings by December 22, 2002.

At the same time that the agency worked to implement the new law, it also devoted its efforts to defending the constitutionality of the BCRA. A number of lawsuits, consolidated around *McConnell v. FEC*, that challenge provisions of the new law were expected to reach the Supreme Court by mid-2003. The Commission is also defending its new regulations in the U.S. Court for the District of Columbia, in response to a complaint filed by Representatives Christopher Shays and Martin Meehan charging that the new rules contravene the language of the BCRA.

In addition to completing its duties in implementing the BCRA, the Commission also monitored the 2002 election. Although committees generally have less financial activity in non-Presidential election cycles than during Presidential elections, 2002 proved to be an especially active year in many respects. For example, the national party committees raised \$1.1 billion for the 2002 cycle, an amount comparable to that raised for the 2000 elections and 72 percent greater than that raised in the last non-Presidential election. The Commission also completed all but one of the audits required for the publicly funded Presidential primary and general and convention committees for the 2000 elections.

In the area of enforcement, the Commission entered into conciliation agreements requiring the payment of more than \$1.3 million in total civil penalties, representing a 42 percent increase over 2001 and the highest total amount in the last six years. Moreover, the median civil penalty for 2002 was the largest median civil penalty in the last 16 years. Additionally, the Alternative Dispute Resolution program, which began as a Pilot program in 2000, continues to help expedite the agency's processing of compliance matters. In September 2002, the Commission voted to establish a permanent Alternative Dispute Resolution Office

and approved a report chronicling the Pilot program's success over the past two years.

The Commission also made great strides during the year to improve its ability to provide campaign finance disclosure information to the public. The agency has created a new retrieval system that allows anyone with access to the FEC's web site to examine all of the FEC's campaign finance records. The new system allows users to perform complex search functions online and save their results. The Commission believes that the enhanced abilities of the new data retrieval system are a seminal achievement in its mission to make campaign finance information available to public.

Likewise, the Commission's Office of Election Administration (OEA) completed significant work in 2002, and the Commission approved its revisions to both the National Mail Voter Registration form and the 2002 Voting Systems Standards (the Standards). The Standards are intended to ensure that election equipment certified for purchase by participating states is accurate, reliable and dependable. In 2002 OEA was the only federal office directly involved in providing assistance to state and local officials who administer federal elections. On October 29, 2002, Congress passed the Help America Vote Act, which provides, among other things, for a new agency to assist in the administration of federal elections. All of the duties, liabilities, assets and personnel of the FEC's OEA will be transferred to this new agency upon the appointment of its Commissioners. The FEC and OEA believe that the 2002 Standards will serve as a necessary policy directive until this new federal law is implemented. To this end, the Commission additionally approved an Implementation Plan for the 2002 Standards.

The material that follows details the Commission's 2002 activities. Additional information on most materials can be found in the 2002 issues of the FEC newsletter, the *Record*.

# Chapter One

## Keeping the Public Informed

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

As detailed below, new regulations and other changes went into effect during the year that will lead to further enhancement of the disclosure and educational outreach programs.

### Public Disclosure

During 2002, the disclosure of the sources and amounts of funds spent on federal campaign activity continued to be the centerpiece of the Commission's work. 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.

Continued advances in computer technology greatly enhanced the disclosure process in 2002. Moreover, the Commission acted during the year to aid filers in complying with new disclosure requirements mandated under the Bipartisan Campaign Reform Act of 2002 (BCRA). As detailed below, these changes benefit both the public and the regulated community.

### Policy Statement on Interim Reporting Procedures

In November 2002, the Commission issued a policy statement to help the regulated community comply with the new reporting requirements of the BCRA while regulations and forms and instructions to implement those reporting requirements were completed. Congress set a 270-day period for the completion of most BCRA rulemakings, including those regarding most reporting requirements. This deadline fell on December 22, 2002. However, many of the BCRA's statutory reporting requirements became effective on

November 6, 2002, before the rulemakings and forms development could be completed.

The Commission issued the policy statement to provide filers with interim reporting instructions. Using these instructions, filers could comply with the post-BCRA reporting requirements while continuing to use the existing disclosure forms and software until the new reporting regulations and forms became available. The interim reporting instructions applied to the December 5<sup>th</sup> Post General Election Report, the January 31<sup>st</sup> Year End Report and, for monthly filers only, the February Monthly Report. New or revised reporting responsibilities introduced by the BCRA and addressed in the Policy Statement included:

- The reporting by state, district and local party committees of federal election activities, including the allocation of some of those activities between federal funds and "Levin" funds;
- Allocations of payments between federal and nonfederal funds; and
- Disclosure by federal candidates and their committees with respect to a candidate's funding of his or her own campaign under the BCRA's "Millionaires' Amendment."

In the Policy Statement, the Commission additionally expressed its intention to exercise its discretion by not pursuing the filers addressed in the statement for possible reporting violations so long as the filers fully adhered to those instructions and timely filed the reports.

### Electronic filing

The Commission's mandatory electronic filing program continued to pay disclosure dividends in 2002. Under the program, committees that receive contributions or make expenditures in excess of \$50,000 in a calendar year, or expect to do so, must file their campaign finance reports electronically.<sup>1</sup> Committees that are required to file electronically but instead file on paper are considered nonfilers and could be subject to enforcement actions. In order to file electronically, committee treasurers obtain passwords from the FEC

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<sup>1</sup> The mandatory electronic filing rules do not apply to Senate committees.



and use software to fill out the reports, which they can send to the Commission via Internet connection, modem or floppy disk. The FEC's validation system verifies that the reports meet certain criteria and informs the committees of problems that need to be fixed.

### State Filing Waivers

The Commission's State Filing Waiver Program continued to ease the reporting and recordkeeping burdens for political committees and state election offices. The program, which began in October 1999, expanded in 2002 to include Alaska, Iowa and Massachusetts. Fifty-one states/territories have now qualified for the waiver.<sup>2</sup> 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.

### Imaging and Processing of Data

The Commission also continued its work in 2002 to make the reports it receives quickly and easily available to the public. The Commission scans all of the reports filed with the agency to create digital images of the documents, which are then accessible to the public in the FEC's Public Disclosure 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.

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

Year	Number of Detailed Entries*
1990	767,000
1991	444,000 <sup>†</sup>
1992	1,400,000
1993	472,000
1994	1,364,000
1995	570,000
1996	1,887,160
1997	619,170
1998	1,652,904
1999	840,241
2000	2,390,837
2001	661,591
2002	13,888,456 <sup>‡</sup>

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

<sup>†</sup> The FEC began entering nonfederal account data in 1991.

<sup>‡</sup> The FEC began entering transactions of amounts less than \$200 in 2002.

<sup>2</sup> As of December 31, 2002, the Commission had certified that the following states and territories qualify for filing waivers:

Alabama, Alaska, American Samoa, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Virgin Islands, Washington, West Virginia, Wisconsin and Wyoming. Guam, Montana and Puerto Rico are not currently in the State Filing Waiver Program.

### Public access to data

During the year the Commission completed one of the most significant improvements to its disclosure system in the history of the agency.

In 2002, as part of its information technology upgrade, the Commission modernized its hardware, software and communications infrastructure to create a new retrieval system that allows anyone with access to the FEC's web site—[www.fec.gov](http://www.fec.gov)—to access all of the FEC's campaign finance records. By allowing users to login with a personal account on the FEC's web site, this new system, which debuted in December 2002, allows users to sort, filter, export and save the results of their campaign finance searches. The

new system also allows users to perform complex search functions previously unavailable on the FEC's web site or in its Office of Public Disclosure.

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. Researchers can also customize their searches for information on contributions by using a variety of elements (e.g., donor's name, recipient's name, date, amount or geographic location).

Visitors to the Office of Public Disclosure can use 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 can also access the FEC's web site, which offers search and retrieval of more than 3 million images of report pages dating back to 1993 and over 2 million database entries since 1997. Those outside Washington, DC, can access the information via the Internet or the Direct Access Program, or order it using the Commission's toll-free number.

The Office of Public Disclosure 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.<sup>3</sup>

### Review of reports

The Commission's Reports Analysis Division (RAD) reviews all reports to track compliance with the law and to ensure that the public record provides a full and accurate portrayal of campaign finance activity. When Campaign Finance Analysts, formerly known as Reports Analysts, find that a report contains errors or suggests violations of the law, they send the report-

ing committee a Request for Additional Information (RFAI). The committee treasurer can then make additions or corrections to the report, which are then 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.

Recently, RAD has introduced a number of innovations to help its Campaign Finance Analysts address an increasing number of campaign finance transactions. In May 2002, RAD contracted with ICF Consulting to assess efficiencies in its operations and to suggest changes that would heighten efficiency. Additionally, RAD's mentoring program, in which new Campaign Finance Analysts are mentored by more senior personnel, has proved very effective in allowing RAD to fulfill its functions with greater success. Finally, RAD continues to work closely with the Office of Administrative Review to streamline the compliance process for administrative fines.

## Educational Outreach

Throughout the year, 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 sixth year of operation, the Commission's web site offers visitors a variety of resources. Visitors can search for advisory opinions (AOs) on the web by using words or phrases or by entering the year and AO number, and can access a variety of rulemaking documents, including Notices of Proposed Rulemaking and final rules. Visitors can 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. In September 2002, the Commission added a new section to the web site devoted to the BCRA. The new section provided links to the Federal

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<sup>3</sup>In *AFL-CIO v. FEC*, the U.S. District Court for the District of Columbia found that the FEC's practice at the end of an investigation of disclosing documents obtained during an investigation violated the confidentiality provisions of the Act. The Commission filed an appeal on February 15, 2002.

Election Campaign Act as amended by the BCRA, summaries of major BCRA-related lawsuits and continuously updated information on new Commission regulations, including final rules and the Commission's rulemakings calendar. The web site averaged nearly 4.7 million hits per month and logged a high of over 7.5 million hits in October 2002. The average daily hits also peaked in October, at over 243,000.

#### **Telephone Assistance**

A committee's first contact with the Commission is often a telephone call to the agency's toll-free information hotline. In answering questions about the law, staff research relevant advisory opinions and litigation, as needed. Callers receive, at no charge, FEC documents, publications and forms. In 2002, the Information Division responded to 19,858 callers with compliance questions. The monthly average was 1,665 calls, with a peak of 2,448 in October.

#### **Faxline**

The Commission's automated Faxline allows the public to obtain publications or other documents quickly and easily. During the year, 553 callers sought information from the 24-hour Faxline and received 776 documents.

#### **Reporting Assistance**

During 2002, Campaign Finance 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**

As part of its education outreach activities, the FEC holds roundtable sessions for the regulated community. In 2002 the FEC increased the maximum num-

ber of participants for its roundtables from 12 to 35 participants per session, so that members of the regulated community could learn about the Commission's new soft money and electioneering communications regulations.<sup>4</sup>

#### **Conferences**

Also during 2002, the agency conducted a full program of conferences to help candidates and committees understand and comply with the law. In Washington, DC, the Commission hosted four conferences for candidates, parties, corporations, trade associations, membership organizations and labor organizations. In addition, the agency held a regional conference in San Francisco 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 program and on changes to the federal campaign finance law.

#### **Tours and Visits**

In addition to holding conferences and roundtable sessions, the Commission welcomes individuals and groups who visit the FEC. Visitors to the FEC during 2002, including 37 student groups and foreign delegations, listened to presentations about the campaign finance law and, in some cases, toured the agency's Office of Public Disclosure.

#### **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 9,823 calls and visits from media representatives and prepared 135 news releases. Many of these releases alerted reporters to new campaign finance data and illustrated the statistics in tables and graphs.

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<sup>4</sup> Additional roundtables on other BCRA topics were held in early 2003.

## Publications

During 2002, the Commission published several documents to help committees, the press and the general public understand the law and find information about campaign finance. Specifically, the Commission published a new *Campaign Guide for Congressional Candidates and Committees* and a new *Campaign Guide for Nonconnected Committees*. Given that the guides will be revised again in 2003 in order to incorporate changes made by the BCRA, the Commission chose to conserve its resources by publishing them only on the Commission's web site. However, paper copies were made available to any individual upon request.

Also during the year, the Commission published the eighteenth edition of Selected Court Case Abstracts (CCA). The CCA is a collection of summaries of court cases from 1976 to March 2002 pertinent to the Federal Election Campaign Act. Most of the summaries originally appeared in the FEC's monthly newsletter, the *Record*. As in past years, the Commission continued to provide more than 10,000 free subscriptions to the *Record*. The newsletter summarizes recent advisory opinions, compliance cases, audits, litigation and changes in regulations. It also includes graphs and charts on campaign finance statistics.

In addition, the FEC provided the public with the *Combined Federal/State Disclosure Directory 2002*, which directs researchers to federal and state offices that provide information on campaign finance, candidates' personal finances, lobbying, corporate registration, election administration and election results. The disclosure directory was available not only in print and on the web, but also on computer disks formatted for popular hardware and software. The web page version of the *Disclosure Directory* includes hyperlinks to the web pages of state offices and e-mail addresses for state officials.

## Office of Election Administration

The Commission's Office of Election Administration (OEA) completed a number of significant projects in 2002.

On July 12, the Commission approved revisions to the national voter registration form's categories for allowing applicants to identify their race and ethnicity. The new categories more closely match those used by other federal agencies, including the U.S. Bureau of Census, and comply with standards set for federal programs by the Office of Management and Budget. At the same time, the OEA announced changes to the state-specific information in the national voter registration forms. These changes comply with revisions made to state law since the forms were last revised in August 2000. One significant change permits individuals in most states to register by downloading the registration form from the FEC web site and sending it to their state elections officer.<sup>5</sup>

Also during the year, the Commission unanimously approved the 2002 Voting Systems Standards for release and publication. The Standards are intended to ensure that election equipment certified for purchase by participating states will be accurate, reliable and dependable. Although the Standards are voluntary, 38 states have chosen to adopt them either in whole or in part and currently use them to design systems and procure equipment to meet the needs of a variety of voting populations and election formats. The Commission additionally approved an Implementation Plan for the Standards that provides guidance to assist states, voting system vendors and local jurisdictions in the transition from the 1990 Voting Systems Standards to the 2002 Standards.

The OEA also devoted efforts to preparing for significant changes that will result from legislation passed during the year. On October 29, 2002, Congress passed the Help America Vote Act to improve election administration in federal elections. PL 107-252. The Help America Vote Act includes provisions that establish:

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<sup>5</sup> Residents of Illinois, Massachusetts, Missouri, New Mexico, South Carolina and Ohio must obtain a hard copy of the form from their state elections officer in order to register. Additionally, although Wisconsin is exempt from the provisions of the National Voter Registration Act, it now accepts the national form.

- A funding program to replace punch card voting systems;
- Minimum election administration standards for states and local entities responsible for the administration of federal elections; and
- A new agency—the Election Assistance Commission—to assist in the administration of federal elections.

Although the Help America Vote Act of 2002 will affect the long-term implementation of the Standards, it is unclear when and how these changes will take effect. The 2002 Standards will serve as a necessary policy directive until the new federal law is implemented.

## Chapter Two Interpreting and Enforcing the Law

As part of its mission to administer, interpret and enforce the Federal Election Campaign Act, the Commission promulgates regulations and issues advisory opinions to promote compliance with the law. The regulations explain the law in detail, and implement the statutory requirements legislated by Congress. 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.

### Regulations

Rulemakings are initiated when Congressional action, judicial decisions, petitions for rulemaking or other changes in the law or campaign practices make it necessary to update the current rules or create new ones.

Proposed rules are published in the *Federal Register*, and the Commission 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 announces the effective date, which is at least 30 days after the publication of the final rules in the *Federal Register*, in the Explanation and Justification of the final rules.

#### Rulemakings Completed in 2002

The Commission completed an historic set of rulemakings in 2002, when in addition to completing other rulemaking projects, it met the deadlines imposed by Congress for promulgating regulations to implement the BCRA. The BCRA required the Commission to issue its "soft money" regulations within 90 days of the statute's enactment, with the remainder of the implementing regulations to be completed within 270 days.

Specifically, the Commission completed work on the following new rules during 2002:

- Independent expenditure reporting regulations that clarified when and how independent expenditures must be reported took effect on June 13, 2002.
- Brokerage loans and lines of credit regulations that outlined the circumstances in which brokerage loans and lines of credit available to a candidate could be used to help finance his or her campaign without being considered a contribution took effect on December 31, 2002.
- A reorganization of the regulations on "contributions" and "expenditures" that clarifies the codification of these rules took effect on November 6, 2002.
- Nonfederal funds or "soft money" regulations that prohibit national parties from receiving and spending soft money, restrict federal candidates' and officeholders' raising of soft money and control how state and local party committees must and may pay for newly defined "federal election activities" took effect on November 6, 2002, and January 1, 2003.
- Regulations defining electioneering communications and setting forth the conditions under which persons may make them took effect on November 22, 2002.
- Regulations providing a mechanism by which persons making electioneering communications can establish whether their communication can be received by 50,000 or more persons in given area took effect on November 22, 2002.
- Contribution limits and prohibitions regulations that increase the individual contribution limits, strengthen the foreign national ban and prohibit minors from making contributions to candidates and parties took effect on January 1 and 13, 2003.
- BCRA-related regulations addressing disclaimers, fraudulent solicitation, civil penalties and personal use of campaign funds took effect on January 13, 2003.
- Regulations that set forth the new reporting requirements under the BCRA took effect on February 3, 2003.
- Coordinated and independent expenditure regulations that determine whether an expenditure is coordinated or independent and that implement new restrictions on expenditures by political party com-



mittees that are made relative to candidates took effect on February 3, 2003.

- BCRA technical amendments regulations that conform citations took effect on December 26, 2002.
- Regulations that implement the BCRA's "Millionaires' Amendment," allowing increased contribution limits and other compensating advantages for certain candidates facing wealthy, self-financing opponents, took effect on February 26, 2003.

### Other Rulemakings in Progress

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

- It approved a Notice of Proposed Rulemaking seeking comments on proposed rules to address when and under what circumstances so-called "leadership PACs" are affiliated with the authorized committees of federal candidates or officeholders and the ramifications of any such affiliation.
- It approved a Notice of Proposed Rulemaking seeking comments on proposed changes to the administrative fines regulations, including proposals to decrease civil money penalties.
- It determined that no increases needed to be made at this time under the Inflation Adjustment Act to the maximum civil penalties that could be assessed for violations of the Federal Election Campaign Act.
- It adopted an interpretive rule to clarify that the travel allocation and reporting requirements of 11 CFR 106.3(b) do not apply to the extent that a candidate pays for certain travel expenses using funds authorized and appropriated by the federal government.
- It held a public hearing concerning the use of the Internet for campaign purposes.
- It published a petition for rulemaking on candidate debates, and determined that a rulemaking on this issue was not appropriate at this time.

### 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 the following 15 advisory opinions in 2002:

- AO 2001-17: Disclosing the receipt of contributions made via a single check that are split between federal and nonfederal accounts (DNC Services Corporation/Democratic National Committee; issued January 30, 2002).
- AO 2001-18: Affiliation between the PAC of a joint venture and the SSFs of its corporate owners (BellSouth Corporation; issued January 22, 2002).
- AO 2001-19: No federal preemption of a state law that prohibits the use of bingo as a fundraising device for a local party committee (Oakland Democratic Campaign Committee; issued January 10, 2002).
- AO 2002-1: No Presidential public funding for a coalition of minor parties supporting candidate(s) who together gain five percent of the vote (Lenora B. Fulani and James Mangia, *et al.*; issued March 6, 2002).
- AO 2002-2: Preemption of state law barring a lobbyist from fundraising for a Congressional candidate who is a member of the Maryland General Assembly (Eric Gally; issued March 6, 2002).
- AO 2002-3: Qualification as a state committee of a political party (Green Party of Ohio; issued April 11, 2002).
- AO 2002-4: Official name and abbreviated name of SSF (Austin, Nichols & Co./Pernod Ricard USA; issued April 25, 2002).
- AO 2002-5: Use of campaign funds to pay for travel, including campaign, local officeholder and personal activities, of a federal candidate who is a local officeholder (Mayor Ann Hutchinson; issued May 10, 2002).
- AO 2002-6: Qualification as a state committee of a political party (Green Party of California; May 16, 2002).

- AO 2002-7: Political fundraising services provided by an Internet Service Provider (Careau & Co. and Mohre Communications; issued October 10, 2002).
- AO 2002-8: Return of funds transferred from a candidate's federal campaign committee to his state exploratory committee (David Vitter for Congress; issued August 1, 2002).
- AO 2002-9: Disclaimer requirements for express advocacy communications printed as text messages on cell phone screens (Target Wireless; issued August 23, 2002).
- AO 2002-10: Qualification as state committee of a political party (Green Party of Michigan; issued August 1, 2002).
- AO 2002-11: Non-affiliation of national and state trade associations (Mortgage Bankers Association of America; issued October 10, 2002).
- AO 2002-12: Disaffiliation of SSFs of health insurance companies (American Medical Security, Inc.; issued December 10, 2002).

Some of these advisory opinions are discussed in greater detail in Chapter 3 "Legal Issues."

## Enforcement

### The Enforcement Process

The Commission learns of possible election law violations in three ways. The first is the agency's monitoring process—potential violations are discovered through a review of a committee's reports or through a Commission audit. The second is the complaint process—anyone may file a sworn complaint, 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 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 that the document satisfies specific criteria for a proper complaint.

The General Counsel recommends whether the Commission should find "reason to believe" and open an investigation. 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.

In *AFL-CIO v. FEC*, the U.S. District Court for the District of Columbia found that the FEC's practice at the end of an investigation of disclosing documents obtained during an investigation violated the confidentiality provision of the Act. On February 15, 2002, the Commission appealed this case to the U.S. Court of Appeals for the District of Columbia Circuit.

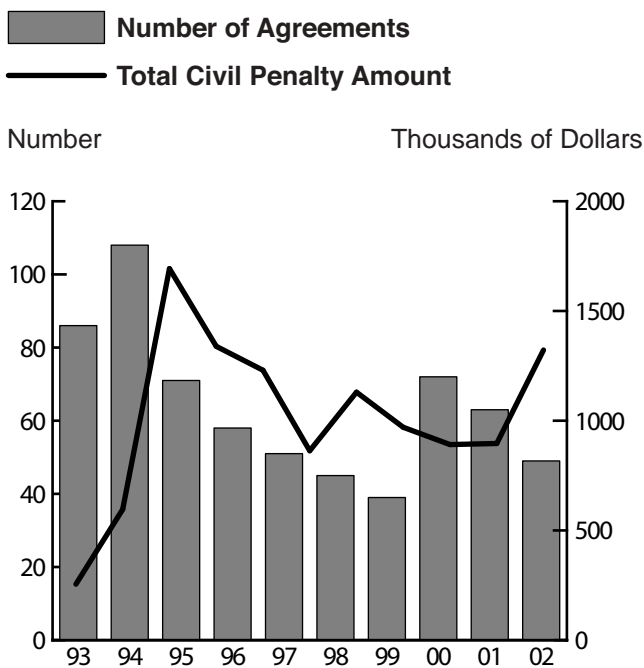
### Enforcement Initiatives

During 2002, the Commission continued to use a prioritization system to focus its limited resources on more significant enforcement cases.

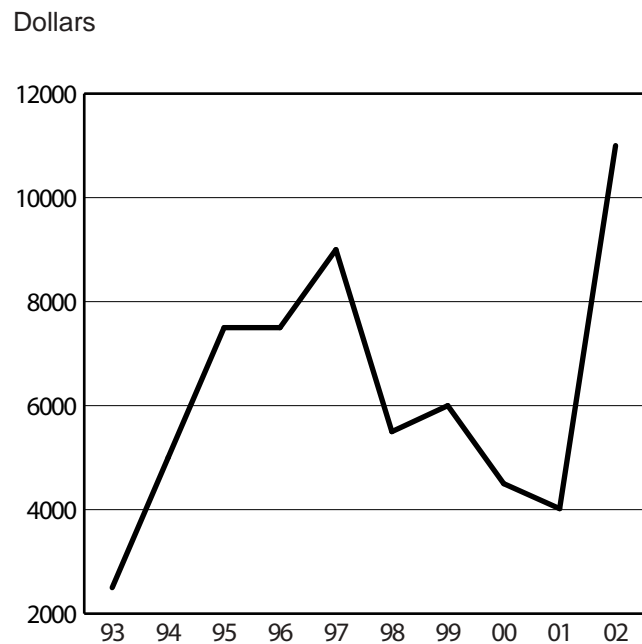
Now in its tenth year of operation, the Enforcement Priority System (EPS) has helped the Commission manage a heavy caseload involving thousands of respondents and complex financial transactions. The Commission instituted the system after recognizing that the agency did not have sufficient resources to pursue all of the enforcement matters that came before it. Under the system, the agency uses formal criteria to decide which cases to pursue. These crite-



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



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



ria include the intrinsic seriousness of the alleged violation, the apparent impact the alleged violation had on the electoral process, the topicality of the activity and the development of the law and the subject matter. The Commission continually reviews the EPS to ensure that the agency uses its limited resources to its best advantage.

Among the cases concluded in 2002, two enforcement actions resulted in the highest and third highest civil penalties in the Commission’s history, MUR 4530 and MUR 5187. These MURs, involving contributions by foreign nationals and the corporate reimbursement of contributions, respectively, resulted in almost \$1.2 million in civil penalties. These and other MURs are further discussed in Chapter 3 “Legal Issues.”

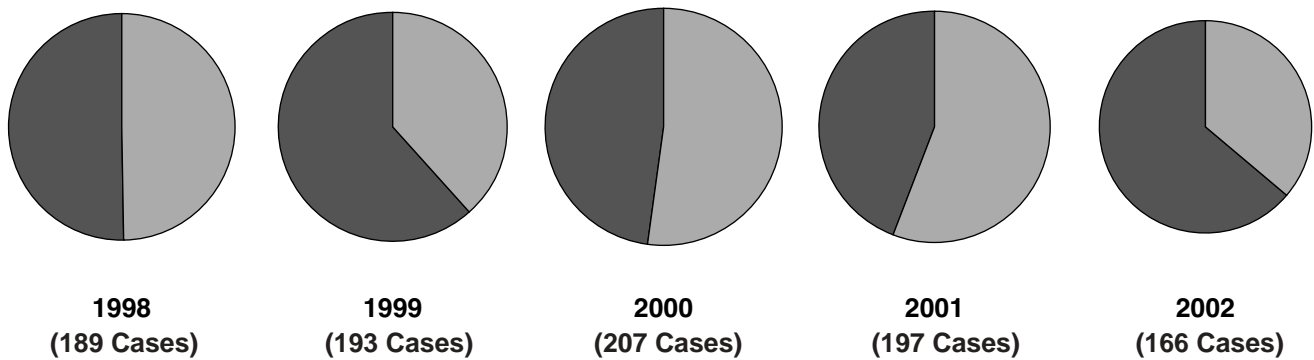
### Administrative Fine Program

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

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

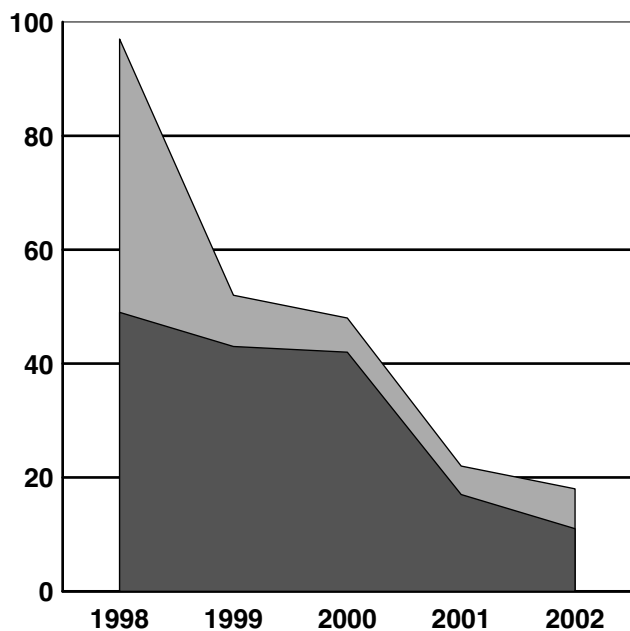
**CHART 2-3**  
Ratio of Active to Inactive Cases by Calendar Year

■ Active Cases  
■ Inactive Cases



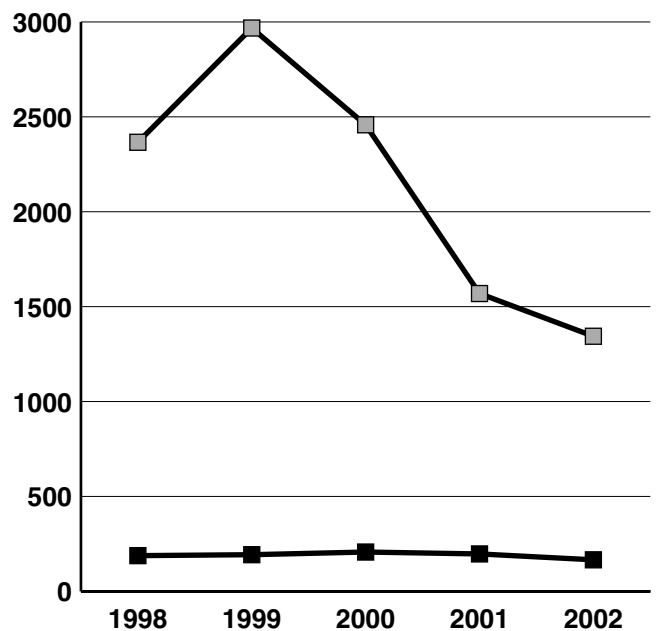
**CHART 2-4**  
Cases Dismissed Under EPS

■ Stale Cases  
■ Low-Rated Cases



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

■ Respondents  
■ Cases



### How the Program Works

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

All administrative fine actions are initiated in the Reports Analysis Division (RAD). RAD monitors all committees for possible filing violations and recommends to the Commission those committees that appear to be in violation. If the Commission finds “reason to believe” (RTB) that a committee violated the applicable reporting provisions, RAD provides a written notification to the committee and its treasurer containing the factual and legal basis of its finding and the amount of the proposed civil money penalty. The respondents have 40 days from the date of the RTB finding to either pay the civil money penalty or submit to the Office of Administrative Review a written response, with supporting documentation, outlining why it believes the Commission’s fine and/or penalty is in error. If the committee submits a response to the Office of Administrative Review, RAD forwards its information to that office for consideration by an impartial Reviewing Officer who was not involved in the original RTB recommendation.

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

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

When a respondent fails either to pay the civil money penalty or to seek judicial review after the Commission makes a final determination, the Commission may transfer the case to the U.S. Department

of Treasury for collection. Alternatively, the Commission may decide to file suit in the appropriate U.S. district court to collect owed civil money penalties under 2 U.S.C. §437g(a)(6).

### Calculating Penalties

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

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

### Administrative Fines in 2002

During 2002, the Commission processed 183 cases and collected a total of \$289,035 in fines. Overall, the Commission had publicly released a total of 483 cases by the end of 2002, with penalties totaling \$700,296.

Also, during the year, a number of court cases challenging the Commission’s final administrative fine determinations were resolved in the Commission’s favor. Three of these cases, *Miles for Senate v. FEC*, *Friends for Houghton v. FEC* and *Jeremiah T. Cunningham v. FEC* are summarized in Chapter 3 “Legal Issues.”

## Alternative Dispute Resolution Program

On September 13, 2002, the Commission voted to make the ADR Pilot Program a permanent program at the FEC. The Program was established in October 2000 as a pilot to determine the viability of using Alternative Dispute Resolution (ADR) procedures to address and resolve violations of campaign finance laws. It seeks to expedite the resolution of enforcement matters through expanded use of negotiations with respondents.

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<sup>1</sup> A committee is a “nonfiler” if it files its report beyond a certain deadline or fails to file at all.

Cases are accepted into the ADR Program after review by the Office of General Counsel and the ADR Office for suitability. Cases are excluded from ADR consideration if the matter:

- Raises issues requiring a definitive resolution for precedential value;
- Raises issues that bear on Government policy;
- May have an impact on other persons or organizations that are not parties to the proceeding; and
- Would benefit from a full public record of the proceeding.

Other internal factors are important in determining a case's appropriateness for ADR and are addressed on a case-by-case basis.

Negotiations in the ADR Program are oriented toward reaching an expeditious resolution through a mutually agreeable settlement that promotes compliance with the Act and the FEC's regulations. Mediation to resolve a negotiation impasse is available by mutual agreement between the respondent(s) and the Commission's representative. Resolutions reached through direct and, when necessary, mediated negotiations are submitted to the Commission for final approval. None of the cases handled by the ADR office have yet required mediation, although the Office is committed to calling on the cadre of FEC-designated Mediators when the need arises.

The ADR Program was evaluated this past summer by a national conflict management and resolution firm that provided the Commission with an independent review of the Program. The evaluation team interviewed respondents and members of the election bar and also sought comment from complainants. The team concluded, based on comments from interviewees, that the Pilot Program had achieved its stated goals. The study found that 90 percent of the interviewed respondents believed they saved time and money using the Program and that, based on their initial experience with the program, they would be more likely to request or choose to use the process in the future. The evaluation also concluded that the Program saved respondents legal fees and enabled the Commission to increase significantly the number of cases processed.

Since the inception of the Program, the Office has processed 107 cases, of which 65 percent were ac-

cepted into ADR. The other 35 percent of cases were either determined to be inappropriate for ADR or involved respondents who rejected the ADR option. Seventy-seven percent of this total caseload arose from complaints filed with the Commission. The balance of the cases originated as referrals from the Reports Analysis or Audit Divisions or from *sua sponte* submissions. Cases not entered in the ADR Program were returned to OGC for processing. By the end of 2002, the 56 cases assigned to ADR during the Program's tenure had produced 69 separate negotiated agreements based on 47 cases—of that total all, except four, were approved by the Commission. A number of cases had multiple parties, which led to multiple agreements. The remaining 9 assigned cases were in various stages of negotiations at the close of the year.

The Office concluded the cases in an average of 110 days from the time the case was assigned to ADR until the agreement was reviewed and/or approved by the Commission. The Office, however, aims to further expedite the process in order to meet its goal of resolving cases, in the negotiation portion of the process, within 77 days.

## Chapter Three Legal Issues

As the independent regulatory agency responsible for interpreting, administering and enforcing the Federal Election Campaign Act (the Act), the Federal Election Commission promulgates regulations implementing 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. In 2002, the majority of the legal issues facing the Commission related to the implementation of the Bipartisan Campaign Reform Act of 2002 (BCRA). This chapter examines major legal issues confronting the Commission during 2002 as it considered regulations, advisory opinions, litigation and enforcement actions. Full summaries of BCRA rulemakings appear in Appendix 7.

### BCRA Challenges

#### McConnell v. FEC

On March 27, 2002, the day President Bush signed the BCRA into law, Senator Mitch McConnell and the National Rifle Association (NRA) each filed a complaint against the Commission with the U.S. District Court for the District of Columbia, challenging the constitutionality of several provisions of the BCRA. In April and early May, nine other lawsuits were filed challenging the BCRA. The court consolidated these eleven BCRA cases around *McConnell v. FEC*, and a three-judge panel was appointed to hear them.

On April 3, 2002, Senators John McCain, Russell Feingold, Olympia Snowe and James Jeffords and Representatives Christopher Shays and Martin Meehan (collectively the Reform Act Sponsors) filed motions to intervene as defendants.

Senator McConnell alleges in his complaint that aspects of the BCRA violate the First, Fifth and Tenth Amendments and the principles of federalism. For example, the complaint alleges that the BCRA:

- Unconstitutionally favors some speakers over others;
- Unconstitutionally constrains the rights of officeholders and candidates to raise money for tax-exempt organizations, political parties and other candidates;
- Burdens First Amendment associational rights by requiring organizations to disclose the identity of

their supporters to a greater extent than does the FECA; and

- Places unprecedented limits on political parties' ability to make expenditures for political speech.

The NRA's complaint alleges similar constitutional violations resulting from the BCRA's limits and prohibitions on electioneering communications.

The Reform Act Sponsors counter that the BCRA "affirmatively promotes and enhances core First Amendment values," and "ensures that candidates, parties, and citizens have robust opportunities to exercise their fundamental rights of expression and association." The court has allowed them to intervene in support of the BCRA.

These cases were pending in the U.S. District Court for the District of Columbia at the year's end.<sup>1</sup>

### Soft Money

The BCRA prohibits national party committees, without exceptions, and federal candidates and officeholders, with exceptions, from raising funds not subject to the prohibitions, limits and reporting requirements of the Act, i.e. nonfederal funds or "soft money." It additionally addresses fundraising by federal and nonfederal candidates and officeholders on behalf of political party committees, other candidates and nonprofit organizations. Provisions of the BCRA also address the activities of state and local party committees, significantly expanding the Act's treatment of these committees' activities. For example, the rules provide a new definition of "federal election activity" and provide for a special category of funds, called "Levin funds," that may be used, usually in

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<sup>1</sup> On May 2, 2003, a three-judge panel of the United States District Court for the District of Columbia found various provisions of the Bipartisan Campaign Reform Act unconstitutional and enjoined the Commission from enforcing these provisions. At this writing, the nearly 1,700-page decision, composed of a per curiam decision and three separate opinions, concurring and dissenting in pertinent parts, has been appealed to the United States Supreme Court. For further information on this decision see *McConnell vs FEC*, Civil Action No. 02-582, (D.D.C. May 2, 2003).

allocation with federal funds, by state and local party committees for certain federal election activities. The BCRA required the Commission to promulgate regulations implementing these provisions by June 25, 2002. These regulations are briefly summarized below, along with a court challenge to these regulations that was filed by two of the BCRA sponsors, Representatives Christopher Shays and Martin Meehan.

### Regulations

On June 22, 2002, the Commission promulgated new and revised rules addressing nonfederal funds or “soft money.” The new and revised rules at 11 CFR Parts 100, 102, 104, 106, 108, 110, 114, 300 and 9034 regulate and, in some cases, ban the receipt, solicitation and use of nonfederal funds. Specifically, these rules:

- Prohibit national party committees from raising or spending nonfederal funds, including funds to purchase or construct a party office facility;
- Require state, district and local party committees to fund certain “federal election activities” with federal funds, and, in some cases, allow these committees to fund activities with federal funds allocated with money raised according to new limitations, prohibitions and reporting requirements (i.e., “Levin funds”) or in some limited circumstances solely with Levin funds; and
- Address fundraising by federal and nonfederal candidates and officeholders on behalf of party committees, other candidates and nonprofit organizations.

The regulations introduce a new category of activities, “federal election activities,” which include:

- Voter registration activity during the 120 days before a regularly scheduled federal election and ending on the day of that election;
- Voter identification, generic campaign activities<sup>2</sup> and get-out-the-vote activities that are conducted in connection with an election in which one or more candidates for federal office appear on the ballot (regard-

less of whether state or local candidates also appear on the ballot);

- A public communication<sup>3</sup> that refers to a clearly-identified federal candidate and that promotes, supports, attacks or opposes any federal candidate (this definition applies regardless of whether a nonfederal candidate is also mentioned or identified in the communication and regardless of whether the communication expressly advocates a vote for or against a federal candidate); and
- Services provided by an employee of a state, district or local party committee who spends more than 25 percent of his or her compensated time during that month on activities in connection with a federal election.

Under the new regulations, state, district and local party committees must, as a general rule, use federal funds to make expenditures and disbursements for federal election activity.<sup>4</sup> 11 CFR 300.32(a)(2). However, as long as certain conditions are met, they may use Levin funds to pay for part or, in some limited cases, all of the following types of federal election activity:<sup>5</sup>

- Voter registration activity during the period that begins 120 days before the date of a regularly scheduled federal election and ends on the day of that election; and
- Voter identification, get-out-the vote or generic campaign activity conducted in connection with an election in which a federal candidate appears on the

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<sup>3</sup> A “public communication” means any communication by means of television (including cable and satellite), radio, newspaper, magazine, billboard, mass mailing, telephone bank or any other form of general public political advertising. Communications over the Internet are not included in the definition of public communication. 11 CFR 100.26.

<sup>4</sup> Additionally, an association or similar group of state or local candidates or officeholders must use only federal funds to make expenditures or disbursements for federal election activity. 11 CFR 300.32(a)(1).

<sup>5</sup> Levin funds may also be used for any purpose that is not in connection with a federal election or federal election activity as long as this use is lawful in the state in which the committee is organized. 11 CFR 300.32(b)(2).

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<sup>2</sup> “Generic campaign activity” means a public communication that promotes or opposes a political party and does not promote or oppose a clearly identified federal or nonfederal candidate. 11 CFR 100.25.



ballot (regardless of whether a state or local candidate also appears on the ballot).

The new rules also address the activities of federal and nonfederal candidates and officeholders. For example, the regulations include new restrictions on general solicitations made by federal candidates and officeholders on behalf of nonprofit organizations. The new requirements also address federal candidates' and officeholders' activities with regard to federal and nonfederal elections. Under the new regulations, federal candidates and officeholders can only solicit, receive, direct, transfer, spend or disburse federal funds in connection with a federal election or to be used for federal election activity. Additionally, federal candidates and officeholders can only solicit, receive, direct, transfer, spend or disburse funds in connection with a nonfederal election in amounts and from sources that are both consistent with state law and not in excess of the Act's limits and prohibitions.<sup>6</sup> It is important to note, however, that a federal candidate or officeholder may attend, speak or be a featured guest at a fundraising event for a state, district or local party committee, including a fundraising event at which nonfederal funds or Levin funds are raised.

### **Shays and Meehan v. FEC**

On October 8, 2002, Representatives Christopher Shays and Martin Meehan filed a complaint in the U.S. District Court for the District of Columbia challenging the Commission's "soft money" regulations. They amended their complaint on January 21, 2003, adding challenges to the "coordination" and "electioneering communications" regulations. The complaint charges that the FEC regulations "contravene the language" of the BCRA and "will frustrate the purpose and intent of the BCRA by allowing soft money to continue to flow into federal elections and into the federal political process." The plaintiffs ask that the

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<sup>6</sup> This requirement does not apply to a federal candidate or officeholder who is also a candidate for state or local office so long as the receipt or spending of funds is permissible under state law and refers only to that state or local candidate and/or to any other candidate for that same state or local office. 11 CFR 300.63.

court invalidate the FEC regulations on the grounds that they are arbitrary and capricious, an abuse of discretion, in excess of the FEC's statutory jurisdiction or authority and otherwise not in accordance with law.

Specifically, the plaintiffs allege, for example, that these rules contain amendments that were not made available for public comment and that they "undermined the letter and [the] purpose of the BCRA." The plaintiffs contend that these regulations contravene the BCRA in terms of the:

- Creation of so-called "sham party entities";
- Definitions of "solicit," "direct," "agent" and "federal election activity";
- Payment of solicitation costs for raising "Levin funds";
- Treatment of state party office building funds;
- Exemption for certain charitable corporations; and
- Description of coordination.

This case was pending in the U.S. District Court for the District of Columbia at the year's end.

## **Electioneering Communications**

The BCRA amended the Act to address certain television and radio ads that refer to a clearly identified federal candidate, but do not necessarily expressly advocate the election or defeat of a federal candidate. In the past these ads have commonly been referred to as "issue ads," and often were not subject to the Act's limitations, prohibitions and reporting requirements. However, under the BCRA such communications are considered to be "electioneering communications" when they are distributed to the relevant electorate and in proximity to an election. In 2002 the Commission promulgated regulations governing the making and reporting of electioneering communications.<sup>7</sup>

### **Regulations**

The new rules define an "electioneering communication" as a television or radio communication that refers to a clearly identified federal candidate and is

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<sup>7</sup> See also the discussion of *Hawaii Right to Life v. FEC*, p. 25.

publicly distributed for a fee to the relevant electorate within 60 days prior to the general election or 30 days prior to a primary. To be considered an electioneering communication, the communication must meet each of the following conditions:<sup>8</sup>

- The communication refers to a clearly identified federal candidate;
- The communication is publicly distributed for a fee;
- The communication is distributed during a certain time period before an election; and
- The communication can be received by 50,000 or more persons in the relevant Congressional district, state or, in the case of a Presidential convention or general election, nationwide.

In implementing the BCRA, the regulations both restrict who can pay for electioneering communications and require that the costs of the communications be disclosed once they aggregate in excess of \$10,000, along with other information about the individual or organization who paid for the communication and the source of certain funds. Corporations and labor organizations may not make or finance electioneering communications and may not provide funds to any person if they know that the funds are for the purpose of making electioneering communications. Individuals and organizations that do make electioneering communications must report their activity to the Commission each time that the direct costs for airing and producing electioneering communications aggregate in excess of \$10,000.

The Commission also issued interim final rules that provide methodologies to determine whether a com-

munication will be capable of being received by 50,000 or more persons in the relevant jurisdiction.

## Coordinated and Independent Expenditures

The BCRA repealed Commission regulations defining a “coordinated general public political communication” (old 11 CFR 100.23), and instructed the Commission to promulgate new rules on “coordinated communications paid for by persons other than candidates, authorized committees of candidates, and party committees.” 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 to the campaign. As such, coordinated expenditures are subject to the Act’s limits. Independent expenditures, on the other hand, are not subject to the contribution limits. The new rules, summarized below, also address BCRA-mandated changes to the regulations governing coordinated and independent expenditures.

### Regulations

Commission regulations approved on December 5, 2002, define “coordinated” to mean “made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee, or their agents, or a political party committee or its agents.”<sup>9</sup> The rules focus most closely on “coordinated communications,” which are treated as an in-kind contribution to the candidate, authorized committee or party committee with whom the communication is coordinated, and must be reported as such. Apart from communications containing express advocacy or the republication of a candidate’s campaign materials, communications that are distributed or disseminated prior to 120 days before a primary or general election are not subject to the coordination regulations.

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<sup>8</sup> However, six types of communications are exempt from the definition of “electioneering communication,” including communications by 501(c)(3) organizations (which are still barred from participating in partisan political activity by the Internal Revenue Code) and communications that constitute a reported expenditure. The Commission did not specifically exempt public service announcements (PSAs). However, generally speaking, PSAs can be communications for which the broadcaster or satellite or cable systems operator does not charge a fee for publicly distributing. See 67 FR 51136. If no fee is charged for distribution, the communication would not meet the definition of an “electioneering communication.”

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<sup>9</sup> For the purposes of 11 CFR part 109 only, “agent” is defined at 11 CFR 109.3.



The new regulations provide for a three-part test to determine whether a communication is coordinated. Satisfaction of all of the three specific tests is required for the conclusion that payments for the coordinated communication are for the purpose of influencing a federal election and constitute an in-kind contribution. The three parts of the test consider:

- The source of payment;
- A “content standard” regarding the timing and subject matter of the communication<sup>10</sup>; and
- A “conduct standard” regarding the interactions between the person paying for the communication and the candidate or political party committee or their agents. 11 CFR 109.21(a).<sup>11</sup>

In addition to contributions, national, state and subordinate committees of political parties may make coordinated expenditures up to prescribed limits in connection with the general election campaigns of federal candidates without counting such expenditures against the committees’ contribution limits. 2 U.S.C. §441a(d). These expenditures are commonly referred to as “coordinated party expenditures,” and the limits for these expenditures can be found in new section 11 CFR 109.32.<sup>12</sup> Political party committees may make coordinated party expenditures in connection with the general election campaign before or after the party’s candidate has been nominated. All pre-nomination coordinated expenditures continue to be

subject to the coordinated party expenditure limitations, whether or not the candidate on whose behalf they are made receives the party’s nomination. 11 CFR 109.34.

In the BCRA, Congress prohibits political party committees, under certain conditions, from making both coordinated party expenditures and independent expenditures with respect to the same candidate, and from making transfers and assignments to other political party committees. 2 U.S.C. §441a(d)(4). For the purposes of these restrictions only, all political committees established and maintained by a national political party (including all Congressional campaign committees), and all political committees established and maintained by a state political party (including any subordinate committee of a state committee), shall be considered to be a single political committee. 11 CFR 109.35(a). Such a “single” political party committee is prohibited from making any post-nomination coordinated party expenditure in connection with the general election campaign of a candidate at any time after that political party committee makes any post-nomination independent expenditure with respect to the candidate. 11 CFR 109.35(b)(1). Similarly, such a “single” political party committee is prohibited from making any post-nomination independent expenditure with respect to a candidate at any time after that political party committee makes a post-nomination coordinated expenditure in connection with the general election campaign of the candidate. 11 CFR 109.35(b)(2).

Finally, the new rules consider independent expenditures by national party committees. Prior to the enactment of the BCRA, the Commission’s rules prohibited a national committee of a political party from making independent expenditures in connection with the general election campaign of a Presidential candidate. See former 11 CFR 110.7(a)(5). Section 441a(d)(4) added by the BCRA, however, precludes such a broad prohibition. As a result, the Commission has added a new section that specifically prohibits a national committee of a political party from making independent expenditures with respect to a Presidential candidate only if it serves as the principal cam-

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<sup>10</sup> A communication that meets any of these four standards meets the content requirement: (1) A communication that is an “electioneering communication”; (2) A public communication that republishes, disseminates or distributes candidate campaign materials; (3) A public communication that expressly advocates the election or defeat of a clearly identified candidate for federal office; (4) A public communication that refers to a clearly identified federal candidate or political party, is publicly distributed or disseminated 120 days or fewer before a primary or general election or a convention or caucus with the authority to nominate a candidate and is directed to voters in the jurisdiction of the clearly identified candidate or to voters in a jurisdiction where one or more candidates of the political party appear on the ballot.

<sup>11</sup> For a further discussion of the conduct standard, see Appendix 7, page 95.

<sup>12</sup> These limits were formerly located at 11 CFR 110.7.

campaign committee or authorized committee of its Presidential candidate under 11 CFR 9002.1(c). 11 CFR 109.36.

## Contribution Limitations and Prohibitions

On January 1, 2003, new contribution limits took effect under the BCRA. Most of the changes to the contribution limits were included in the Commission's final rules on contribution limitations and prohibitions, as described below. Regulations included in the Commission's "soft money" rulemaking that increase the individual contribution limit to state party committees from \$5,000 to \$10,000 also took effect with the new year. In addition, in 2002, the Commission promulgated regulations to implement the BCRA's so-called "Millionaires' Amendment," which increases the contribution limits for certain candidates whose opponent spends large amounts of personal funds on the campaign and also, in some cases, suspends the limits for coordinated party expenditures made on that candidate's behalf.

### Regulations

On October 31, 2002, the Commission approved final rules to implement provisions of the BCRA that increased the following contribution limits and also provided for these limits to be indexed for inflation:

- *Contributions to candidates and political party committees.* The limits on contributions made by individuals and non-multicandidate committees increased to \$2,000 per election to federal candidates and to \$25,000 per year to national party committees.
- *Aggregate biennial contribution limitations for individuals.* The former \$25,000 annual limit for individuals has been replaced by a new biennial limit of \$95,000. This limit includes up to \$37,500 in contributions to candidate committees and up to \$57,500 in contributions to any other committees. The \$57,500 portion of the biennial limit contains a further restriction, in that no more than \$37,500 of this amount may be given to committees that are not national party committees.

- *Special contribution limit to Senate candidates.* The limit on contributions made to Senate candidates by the Republican and Democratic Senatorial campaign committees or the national committees of a political party, or any combination of these committees, increased to \$35,000 per election cycle.

This rulemaking also included regulations to prohibit contributions and donations by minors to federal candidates and political party committees and to revise regulations regarding the reattribution of contributions to different contributors and the redesignation of contributions for different elections.

In December, the Commission approved interim final rules to implement the so-called "Millionaires' Amendment," which increases individual contribution limits and coordinated party expenditure limits for certain candidates running against self-financed opponents. The rules establish monetary thresholds that trigger increased individual contribution and coordinated party expenditure limits, along with computation formulas used to determine the application of the increased limits. The computation formulas are necessary in part because the difference between the candidates' expenditures of personal funds is not the only factor that determines whether a candidate qualifies for increased limits. The computations also take into account other factors, such as a disparity in other campaign fundraising. Additionally, the interim rules address new reporting and notification requirements and repayment restrictions for personal loans from the candidate.

## Disclaimers

Prior to the BCRA, the Act and Commission regulations required that communications that solicited a contribution or expressly advocated the election or defeat of a clearly identified candidate and were distributed through general public political advertising had to contain a disclaimer. 2 U.S.C. §441d and 11 CFR 110.11. The disclaimer had to indicate who paid for the communication and, if made in support of a candidate, whether that candidate or a candidate's committee authorized the communication. If the candidate's committee both authorized and paid for the communication, then the disclaimer had to state

that the communication was paid for by the campaign committee.

In November 2002, provisions of the BCRA took effect that amended the Act's disclaimer requirements to require disclaimers on more types of communications and, in some cases, to require that more information be disclosed. In addition to approving regulations to implement these portions of the BCRA, the Commission also issued one advisory opinion on this issue, and one district court ruled on the matter, based on the Commission's pre-BCRA regulations.

### Regulations

The new regulations apply to all public communications by all political committees and to any public communication made by any person if the communication contains express advocacy, solicits contributions or is an "electioneering communication."

Under the new regulations, any public communication<sup>13</sup> made by a political committee—including communications that do not expressly advocate the election or defeat of a clearly identified federal candidate or solicit a contribution—must display a disclaimer. The disclaimer must state that the communication is paid for by the committee. Moreover, a disclaimer for a communication authorized by a candidate or candidate's committee, but paid for by any other person, must state both who paid for the communication and that it was authorized by that candidate.

Communications not authorized by a candidate or his/her campaign committee, including any solicitation, must disclose the permanent street address, telephone number or web site address of the person who paid for the communication, and also state that the communication was not authorized by any candidate.

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<sup>13</sup> The new regulations apply to electioneering communications and "public communications," including any "communication by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising." For the purposes of the disclaimer regulations only, the term "public communication" also includes political committees' web sites and unsolicited e-mail of more than 500 substantially-similar communications. See 11 CFR 100.26.

The new rules include additional requirements for disclaimers for radio and television communications—the so-called "stand by your ad" rules. When such communications are authorized by a candidate, he or she must deliver an audio statement identifying himself or herself, and stating that he or she has approved the communication. For a television communication, this disclaimer must be conveyed by either a full-screen view of the candidate making the statement or a clearly identifiable image of the candidate that appears during the candidate's voice-over statement. Additionally, television communications must contain a written disclaimer at the end of the ad.

For a radio or television communication that is not authorized by a candidate, the name of the political committee or other person who is responsible for the communication and, if applicable, the name of the sponsoring committee's connected organization is required in the disclaimer.

A televised ad must also include a disclaimer conveyed by a full-screen view of a representative of the political committee or other person making the statement, or a voice-over by the representative, and a written disclaimer must appear at the end of the communication.

Printed materials must contain a disclaimer in a printed box that is set apart from the contents in the communication, among other requirements.

### Advisory Opinion

In AO 2002-9, the Commission ruled that Target Wireless may send political ads to wireless phone subscribers via Short Messaging Service (SMS) without including a disclaimer stating who paid for the ad and whether it was authorized by a candidate. SMS messages are limited to 160 characters in length, and the entire message—including the primary content, the political ad and any disclaimer included—is not capable of conveying more than this number of letters, symbols, spaces, punctuation marks and single digits.

The Commission regulations governing disclaimers include exceptions for small items upon which a disclaimer cannot be conveniently printed, such as bumper stickers, pins, buttons and pens. 11 CFR

110.11(a)(6)(i). In this case, the Commission determined that because the SMS messages, like bumper stickers, pins and other small objects, are limited in the size and length of the messages they can contain, the small-item exception from the Commission's disclaimer requirement applies to SMS messages.

### **FEC v. Freedom's Heritage Forum, et al.**

On March 28, 2002, the U.S. District Court for the Western District of Kentucky at Louisville granted the Commission's motion for summary judgment on claims that the Freedom's Heritage Forum, a political committee that promotes pro-life and other social issues, failed to include the required disclaimers on express-advocacy communications.<sup>14</sup> The Commission had argued, among other things, that Freedom's Heritage Forum (the Forum), distributed seven flyers expressly advocating the election or defeat of a federal candidate, Thomas Hardy,<sup>15</sup> and failed to include disclaimers. 2 U.S.C. §441d(a). Having previously found that three of the Forum's flyers contained express advocacy, and that none of them stated whether they were authorized by a candidate, the court granted the Commission summary judgment on its claims that the Forum violated 2 U.S.C. §441d(a). The court imposed a \$3,000 penalty—\$1,000 for each violation.

In their counterclaims, the defendants alleged, among other things, that the Commission violated their rights to equal protection under the Fourteenth Amendment by selectively enforcing the Act against

them because of their conservative political views. Under the Sixth Circuit's three-part test for evaluating a selective enforcement claim, the enforcement situation in question must:

- Single out for prosecution a person belonging to an identifiable group (such as a group exercising constitutional rights) even though the enforcement official has in similar situations decided not to prosecute individuals not belonging to that group;
- Be initiated with a discriminatory purpose; and
- Have a discriminatory effect on the group to which the defendant belongs.

The defendants contended that the Commission did not prosecute any other group involved in the election, including a gay or lesbian organization that published an express advocacy communication for Mr. Hardy's opponent and did not include a disclaimer. The defendants also generally claimed that the Commission does not prosecute "liberal politicians and elected officials." The court, however, granted the Commission's motion to dismiss this counterclaim, finding that the defendants had not provided sufficient supporting facts. The court also found that the defendants' general claims of FEC bias were not specific enough to withstand scrutiny under the selective enforcement test.

On December 5, 2002, the court denied the defendants' requests to alter, amend or vacate this order and to file counter claims.

## **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 2002, a number of lawsuits challenged the constitutionality of that ban and related provisions of FEC regulations. Two cases involved so-called "MCFL" organizations, which qualify for a constitutionally-mandated exception from the Act's prohibition on corporate expenditures in connection with a federal election. See *FEC v. Massachusetts Citizens for Life, Inc.*, (MCFL) 479 U.S.

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<sup>14</sup> The court also granted the Commission's motion to dismiss with prejudice several counts of its complaint because the FEC had promulgated new coordination regulations since the case first entered the courts. Since this decision, however, the Commission has again revisited its coordination regulations—as described above—as part of its BCRA rulemakings.

<sup>15</sup> The Commission also requested summary judgment on its claim that Mr. Hardy knowingly accepted corporate contributions in violation of 2 U.S.C. §441b(a). The court determined, however, that although a campaign staff member had knowingly accepted the illegal contribution, the Commission had not provided uncontested evidence that the staff member acted on Mr. Hardy's behalf. This issue remains to be resolved during a trial.

238 (1986).<sup>16</sup> These cases, along with additional enforcement matters, advisory opinions and district court decisions involving prohibited corporate contributions, are described below.

### **Christine Beaumont v. FEC**

On November 18, 2002, the U.S. Supreme Court granted the government's petition for *writ of certiorari* on behalf of the FEC, agreeing to review this case on its merits. On January 25, 2002, the U.S. Court of Appeals for the Fourth Circuit found that the Act's prohibitions on corporate contributions and expenditures were unconstitutional as applied to North Carolina Right to Life, Inc., a nonprofit, MCFL-type corporation.<sup>17</sup>

### **Hawaii Right to Life, Inc. v. FEC**

In another case, a nonprofit corporation challenged the Commission's definition of a "qualified nonprofit corporation," along with both its definition of "expressly advocating" and its newly promulgated rules on "electioneering communications." In a complaint filed on November 22, 2002, in the U.S. District Court for the District of Columbia, Hawaii Right to Life, Inc., (HRTL) asked the court to find that it qualifies for the constitutionally mandated exception from the Act's prohibition on corporate expenditures. In the alternative, HRTL challenged the constitutionality of the Commission's definitions of "electioneering communi-

cation" and "expressly advocating." 11 CFR 100.29 and 100.22. HRTL planned, among other things, to air radio ads in advance of two Hawaii special elections.

HRTL asserted that it could run these ads because it met the requirements of a protected nonprofit corporation under *MCFL*, even though it did not meet the test of a "qualified nonprofit corporation" under the Commission's regulations at 11 CFR 114.10(c). HRTL contended that the Commission's criteria for identifying "qualified nonprofit corporations" are too narrow and that, because its business activities and corporate contributions are *de minimis*, it should qualify for the exemption. HRTL also claimed that the ads would contain issue advocacy rather than express advocacy, and that it would be unable to participate in its planned activity unless the court enjoined the Commission from enforcing against HRTL the "electioneering communication" and "expressly advocating" regulations.

The court ruled that HRTL currently is a nonprofit organization that qualifies under the *MCFL* decision (as interpreted in the D.C. Circuit) for the exemption from the ban on corporate expenditures, despite the fact that it engages in *de minimis* business activities and receives insubstantial sums from business corporations. In *FEC v. National Rifle Association*, the court held that \$1,000 in contributions from for-profit corporations in a single year was *de minimis*, and therefore did not disqualify the NRA from treatment as an exempt "*MCFL*-corporation" during that year. 254 F.3d 173 (D.C. Cir. 2001). The court chose not to rule at any time on HRTL's challenge regarding the constitutionality of Commission regulations. The court entered a final order that permanently enjoined the Commission from acting inconsistently with the court's finding that HRTL is currently a so-called "*MCFL*-corporation."

### **FEC v. Arlen Specter '96, Inc.**

Under Commission regulations, a campaign committee must pay the charter fare for air travel on an FAA-licensed commercial charter carrier. 11 CFR 114.9(e). If the campaign pays less than the charter rate, then the difference between the usual and nor-

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<sup>16</sup>Under Commission regulations a corporation is considered a "qualified nonprofit corporation" if it meets the following criteria:

- Its only express purpose is the promotion of political ideas;
- It cannot engage in business activities;
- It has no shareholders and no persons who are offered or receive any benefit that is a disincentive to disassociate from the corporation on the basis of the corporation's position on a political issue;
- It was not established by a business corporation and does not directly or indirectly accept donations or anything of value from business corporations; and
- It is described in the Internal Revenue Code at 26 U.S.C. §501(c)(4). 11 CFR 114.10(c).

<sup>17</sup>The Supreme Court heard oral arguments in *Christine Beaumont v. FEC* on March 24, 2003.



mal cost of the service and the amount paid by the candidate or committee represents an in-kind contribution. 11 CFR 100.7(a)(1)(iii)(A). In March 2002, the U.S. District Court for the Eastern District of Pennsylvania, pursuant to a stipulation between the Commission and Koro Aviation, Inc., (Koro) held that Koro violated 2 U.S.C. §441b(a) by making unlawful in-kind corporate contributions to Arlen Specter '96, Inc., in the form of air travel services charged at less than the usual and normal rate. The court permanently enjoined Koro from violating 2 U.S.C. §441b(a) by providing goods or services to any federal candidate at less than the usual and normal charge and also ordered Koro to pay a \$25,000 civil penalty.<sup>18</sup>

### Advisory Opinion

In AO 2002-7, the Commission determined that Careau & Co. and Moher Communications (the Companies) may require Internet service provider subscribers to pay a monthly service fee that includes up to \$2.00 per month in contributions to political committees or donations to charities. The Commission found that this activity would not result in prohibited corporate contributions to recipient political committees.

First, no corporate contributions will result from the transactions—vendors providing processing services will be compensated with contributed funds and the Companies will be compensated by the federal political committees for creating the web site and arranging for the processing services.

Second, the funds contributed will be forwarded, minus processing fees, to the political committees or charities through the use of a merchant account and, thus, will not become corporate treasury funds of the Companies.

Finally, the screening procedure for the electronic payment of contributions is well within the “safe harbor” for determining whether individuals can contribute to federal political committees, as discussed in previous advisory opinions. AOs 1999-9 and 1999-22.

### Enforcement

**MUR 5187.** In MUR 5187 the Commission examined the use of corporate treasury funds to reimburse individuals who made contributions to federal candidates and political committees. As a result of this enforcement matter, the Commission entered into conciliation agreements with Mattel, Inc., (Mattel) former Mattel Senior Vice President Fermin Cuza and former Mattel consultant Alan Schwartz, resulting in civil penalties of \$477,000—one of the highest cumulative civil penalties in the history of the Commission. The agreements provide for Mattel to pay \$94,000, Mr. Cuza to pay \$188,000 and Mr. Schwartz to pay \$195,000 in civil penalties.

In addition to the ban on corporate contributions, the Act prohibits making contributions in the name of another, knowingly permitting one’s name to be used to effect such a contribution and knowingly accepting such a contribution. Further, no person may knowingly help or assist any person in making a contribution in the name of another. This prohibition also applies to any person who provides the money to others to effect contributions in their names. 2 U.S.C. §441f.

Mr. Cuza, who was in charge of Government Affairs at Mattel, directed the hiring of Alan Schwartz—the sole proprietor of Asset Management Systems (AMS)—as a consultant to Mattel. According to the conciliation agreements, Mattel made payments to AMS, at Mr. Cuza’s direction, for various consulting services and other purposes. In consultation with Mr. Cuza, Mr. Schwartz used these funds to make contributions to federal candidates and political committees. Mr. Schwartz also used funds received from Mattel to reimburse individuals for contributions to various federal political committees. As a result, Mr. Cuza and Mr. Schwartz, their spouses and family members and other individuals made reimbursed contributions totaling \$120,714 to federal political committees.

The Commission’s investigation stemmed from a *sua sponte* complaint filed by Mattel. The Commission acknowledged that there was evidence that Mr. Cuza concealed the reimbursements from his superiors at Mattel, and it also found no evidence that any

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<sup>18</sup> In March 2003, the U.S. District Court entered a settlement agreement among the remaining parties in which Arlen Specter '96, Inc., and Paul S. Diamond as treasurer agreed to pay \$25,000 to the United States Treasury.

of the recipient political committees were aware that Mattel was the true source of the contributions.

**MUR 5208.** In MUR 5208 the Commission considered Amboy National Bank's (Amboy) violation of the Act's broad restrictions on contributions and expenditures by national banks. The Act prohibits a national bank from making contributions "in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office." Moreover, under the Act, Amboy, which does not have a corporate PAC, may not use its resources or facilities to engage in fundraising activities—including the collecting and forwarding of contributions. 2 U.S.C. §441b(b)(2)(A) and 11 CFR 114.2(f) and 114.3(a)(1); see also AO 1987-29.

In the early 1990s, Amboy's Board of Directors approved an expense account program wherein senior officers made political contributions from these accounts. A Vice President at Amboy performed activities during regular business hours in connection with opening the expense accounts, ordering checks for drawing on these accounts, drafting, signing and transmitting contribution checks and updating spreadsheets to track contributions made from each account. When political solicitations were received by Amboy or by individual officers, they were generally forwarded to this individual, who worked with Amboy's President and Board of Directors Chairman, George Scharpf, to coordinate political contributions and attendance at fundraising events in an informal manner.

Senior officers used their expense accounts to make at least 149 contributions totaling \$55,322. In addition, Mr. Scharpf directed his executive assistant to collect and forward during work hours contributions to the New Jersey Bankers Association PAC (JebPAC) that were made from staff members' personal bank accounts. By using its staff and other resources to set up and administer the expense account program and to collect and forward contributions, Amboy facilitated the making of these contributions.

In addition to findings against Amboy concerning corporate facilitation, Amboy and JebPAC also admitted to violating the Act's requirement that a solicitation

for a contribution to a trade association's PAC include a notice informing the solicitee of his or her right to refuse to contribute without reprisal. 11 CFR 114.5(a)(2)-(5). See also AOs 1998-19 and 1985-12. The Commission entered into conciliation agreements with Amboy, JebPAC and Mr. Scharpf, resulting in \$86,000 in civil penalties.

## Personal Use of Campaign Funds

On November 25, 2002, the Commission approved new rules, driven by the BCRA, concerning the personal use of campaign funds. Earlier in the year, the Commission also issued one advisory opinion under its previous rules. The new rules generally continue the existing prohibition against the personal use of campaign funds and retain the so-called "irrespective test." Candidates may not, therefore, use funds in a campaign account to "fulfill a commitment, obligation, or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder." 11 CFR 113.1(g). Personal use of campaign funds includes, but is not limited to, payment of the following: household items or supplies, clothing, except for clothing items of *de minimis* value that are used in a campaign, tuition payments, mortgage, rent or utility payments, vacations and health or country club dues. 11 CFR 113.1(g)(1)(i). The regulations have, however, been amended as follows.

### Regulations

The most notable change to the personal use regulations permits a candidate for federal office to receive a salary from the principal campaign committee. According to the regulations, a salary may be received only under the following conditions:

- The salary must be paid by the principal campaign committee and may not be paid by any other committee.
- Incumbent federal officeholders may not receive salary payments under this provision.
- Salary shall not be paid before the filing deadline for access to the primary election ballot in the state in

which the candidate is running for office, and salary may not be paid beyond the date when the recipient is no longer a candidate.<sup>19</sup>

- The salary must not exceed the lesser of either the minimum annual salary for the federal office sought or what the candidate received as earned income in the previous year.<sup>20</sup>
- Payments of salary from the committee must be made on a pro-rata basis.<sup>21</sup>
- Individuals who elect to receive a salary from their campaign committees must provide income tax records and additional proof of earnings from relevant years upon request from the Commission.

The new regulations also amend the definition of a candidate's family at 11 CFR 113.1(g)(7). The previous regulations included as a member of a candidate's family "a person who has a committed relationship with a candidate, such as sharing a household and having mutual responsibility for each other's welfare or living expenses." 11 CFR 113.1(g)(7)(iv). This section has been removed from the new regulations and replaced with a provision that includes any person who shares a residence with the candidate. The Commission recognizes that any person actually living with the candidate may pay a share of his or her living expenses without making a contribution to the campaign. The Commission further noted that the personal funds of a candidate would include his or her share of a joint account held with the person(s) with whom a residence is shared. However, gifts from the campaign to family members or anyone residing with the candidate are prohibited because they may be used to defray the personal expenses of the candidate. 11 CFR 113.1 (g)(4).

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<sup>19</sup> The filing deadline for the primary election for federal candidates is determined by state law. In those states that do not have a primary election, candidates may not receive payment until after January 1st of each even-numbered year.

<sup>20</sup> Additional salary or wages received from other sources will count toward the limit that may be received by the candidate.

<sup>21</sup> This provision will prevent a candidate from receiving a whole year's salary for less than a whole year's candidacy.

Because the regulations permit, in certain circumstances, the *de minimis* personal use of campaign funds, recordkeeping requirements for expenses that may be partly personal in nature have been added to the regulations. Such expenses may include, but are not limited to, the costs of vehicles, travel, meals and legal services. The new provision requires that logs of these expenses be maintained to help the Commission determine on a case-by-case basis what portion was for personal use rather than for campaign-related activity or officeholder duties.

The Commission has removed from the regulations the section referring to "any other lawful purpose" as a permitted use of campaign funds. The BCRA made such an amendment to the list of permitted uses of campaign funds at 2 U.S.C. §439a. Thus, in addition to paying expenses in connection with the campaign for federal office, campaign funds may be used only for those non-campaign purposes included in an exhaustive list found at 11 CFR 113.2 (a), (b) and (c).

Finally, Congress deleted the statutory phrase "in excess of any amount to defray" campaign expenses from 2 U.S.C. § 439a. Therefore, the Commission revised 11 CFR 113.1 and 113.2 so that officeholders may spend money from campaign accounts to pay for campaign and non-campaign expenses incurred as a consequence of holding federal office. Such expenses, according to the Commission, may be paid in any order.

### Advisory Opinion

The Commission also considered one advisory opinion, under the pre-BCRA rules, that dealt with the personal use of campaign funds where a federal candidate who was also a city mayor engaged in travel that included personal stops, city business and campaign activity. In AO 2002-5, the Commission determined Ann Hutchison, the Mayor of Bettendorf, Iowa, could use campaign funds to pay those travel expenses that related to days when she met with party officials to discuss her federal candidacy and engaged in other campaign activity, but could not use campaign funds to pay expenses related to portions of the trip that were devoted to either personal activities or city business.



Although the Commission's regulations at 11 CFR 106.3 would otherwise require that all travel expenses for such a trip be considered campaign related (unless the campaign activity was incidental), the Commission determined that this reasoning would imply that campaign funds could be used to pay for all of the travel expenses, including sight-seeing and city business.<sup>22</sup> The Commission concluded that this result would be inconsistent with, or even contrary to, the personal use regulations. Thus, the Commission applied an incremental approach to determine which funds could be used to pay for Mayor Hutchison's travel, subsistence and lodging expenses during the trip. However, because the airfare represented a defined expense that would have existed irrespective of any personal or campaign-related activities, the entire cost of the ticket could be paid for by the city of Bettendorf, with no obligation by Ms. Hutchison or her campaign committee to reimburse the city.

## Foreign Nationals

The BCRA strengthened the Act's prohibitions with respect to foreign nationals by explicitly banning contributions, donations, expenditures, independent expenditures and disbursements for electioneering communications by foreign nationals. In addition to promulgating new regulations to implement the BCRA's provisions, during 2002 the Commission concluded an enforcement matter involving contributions by foreign nationals, which resulted in record civil penalties. This enforcement matter was conducted prior to the BCRA.

### New Regulations

On October 31, 2002, the Commission approved regulations that added new section 11 CFR 110.20, implementing the BCRA's prohibition on contributions, donations, expenditures, independent expenditures

and disbursements solicited, accepted, received or made directly or indirectly by or from foreign nationals in connection with state and local elections as well as federal elections. This ban applies to:

- Contributions and donations to candidates, to political committees<sup>23</sup> and to organizations of political parties;
- Contributions and donations to party committee office building funds;
- Disbursements for electioneering communications;
- Expenditures, independent expenditures and disbursements in connection with any election; and
- The solicitation, acceptance or receipt of contributions and donations from foreign nationals.

The foreign national prohibition also applies to a person who knowingly provides substantial assistance to foreign nationals in the making of contributions, donations, expenditures, independent expenditures and disbursements in connection with federal and nonfederal elections. This prohibition covers, but is not limited to, acting as a conduit or intermediary for foreign national contributions and donations and providing substantial assistance in the soliciting, making or receiving of such a contribution or donation or the making of an independent expenditure or disbursement by a foreign national. 11 CFR 110.20(g) and (h).

The Commission has additionally included a knowledge requirement and defined the term "knowingly" with regard to the prohibitions on the solicitation, acceptance or receipt of foreign national contributions or donations. The Commission determined that this would produce a more appropriate result than a strict liability standard.

### MURs 4530, et al.

Individuals, corporations and political committees are subject to civil penalties for soliciting, making and/or accepting prohibited foreign national contributions and making or accepting contributions in the name of

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<sup>22</sup> An incremental approach toward travel expenses of trips with multiple purposes departs from the interpretation of 11 CFR 106.3(b)(3) in AOs 1992-34 and 1994-37. Therefore, the portions of these two opinions dealing with section 106.3(b)(3) that are inconsistent with the analysis adopted in this opinion are superseded.

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<sup>23</sup> This prohibition applies regardless of whether the committee is a political committee under 11 CFR 100.5. See 11 CFR 110.20(c)(2).

another. 2 U.S.C. §§441e and 441f. On September 20, 2002, the Commission made public its final action on enforcement cases related primarily to foreign activity in connection with the 1996 elections—MUR 4530, et al.<sup>24</sup> The combined enforcement actions resulted in \$719,500 in civil penalties, and committees were required to disgorge certain prohibited funds. The cumulative civil penalty in these matters is the highest in Commission history to date.

Examples of foreign nationals making contributions include Georgios Psaltis, a Greek foreign national, who was the sole owner of the Psaltis Corporation. The Psaltis Corporation made \$50,000 in contributions to the Democratic National Committee (DNC), which was also a respondent in these enforcement actions. The Psaltis Corporation had no U.S.-derived income at the time of the contributions. Rather, the funds were provided, at least in part, by Mr. Psaltis himself. In another instance, Gilberto Pagan, a citizen of the Dominican Republic, contributed \$5,000 to the DNC using a check drawn on the Royal Bank of Canada. Moreover, although the DNC was informed of Mr. Pagan's status as a foreign national, the check was not timely refunded or disgorged. The DNC agreed to pay a \$115,000 civil penalty stemming from its acceptance of prohibited contributions.

The Commission also found violations of the Act in cases where a foreign national directed, dictated, controlled or directly or indirectly participated in the decision-making process of a person, including domestic corporations, with regard to decisions concerning the making of contributions in connection with elections for local, state or federal office. For example, when ACPC, Inc., which is incorporated in Delaware, made a corporate contribution of \$50,000 to the DNC, Alfredo Riviere, the corporation's Presi-

dent at the time and a Venezuelan national, participated in that decision. See 11 CFR 110.20.

Finally, the Commission examined situations where contributions—including contributions from foreign nationals—were made through another person, in violation of the Act's ban on contributions in the name of another. 2 U.S.C. §441f and 11 CFR 110.4(b). Yah Lin "Charlie" Trie, a U.S. citizen, was among those found to have violated this provision. He made numerous contributions to the DNC directly, through his wife, his companies and other U.S. residents. These contributions were then reimbursed with funds primarily from a foreign national, Ng Lap Seng, a citizen of China who resides in Macau. Similarly, Pauline Kanchanalak, a foreign national and President of Ban Chang International (USA), Inc., a Cayman Island corporation with offices in Washington, DC, channeled over \$700,000 through Duangnet Kronenberg and Praitun Kanchanalak, both permanent U.S. residents, to the DNC and other political committees. These funds came from the treasuries of Ban Chang International, a foreign corporation, and its U.S. subsidiary, and from the personal funds of Pauline Kanchanalak and other foreign nationals.

## Preemption

The Act and Commission regulations "supersede and preempt any provision of State law with respect to election to Federal office." 2 U.S.C. §453; 11 CFR 108.7(a).<sup>25</sup> According to the Conference Committee report on the 1974 Amendments to the Act, "Federal law occupies the field with respect to criminal sanctions relating to limitations on campaign expenditures, the sources of campaign funds used in Federal races,

<sup>24</sup> In addition to violations involving the Act's prohibitions on the contributions from foreign nationals, the conciliation agreements addressed violations of the Act's prohibitions on corporate contributions and facilitation and its contribution limits, as well as the requirements of Commission regulations that political committee treasurers refund within 30 days any deposited contributions that are discovered to be illegal.

<sup>25</sup> New regulations that implement the BCRA made two additions to the list of state laws that the Act does not supersede: (1) the application of state law to the funds used for the purchase or construction of a state or local party office building to the extent described in 11 CFR 300.35; and (2) donations made by minors to state, district and local party committees. 11 CFR 108.7(c)(5) and (6) and 110.19(b)(3). See also the Explanation and Justification for the rules on contribution limitations and prohibitions (67 FR 69928), pages 69938 and 69939.

the conduct of Federal campaigns, and similar offences, but does not affect the States' rights" as to other election-related conduct, such as voter fraud and ballot theft. H.R. Rep. No. 93-1438, 93rd Cong. 2d Sess. 69 and 100-101 (1974). The Commission issued two advisory opinions in 2002 relating to the Act's preemption of state law.

### **Bingo License.**

In AO 2001-19, the Commission considered a 1995 Michigan statute that excludes "political committees," as defined by state law, from the list of organizations qualified to obtain a bingo license (1995 PA 275, MCL 432.103 et seq.), and found that the Act did not supersede this law. The Oakland Democratic Campaign Committee (the Committee), which operated two bingos to raise funds to influence federal elections, had received notification from the Michigan Bureau of State Lottery that it fell within the definition of a "committee" under the Michigan statute and, as a result, was no longer eligible for a state bingo license. The Commission stated no opinion regarding whether the Committee falls under the Michigan statute's definition of "political committee," stating that this is a matter to be decided by Michigan officials, pursuant to state law. In concluding that the Act did not supersede state law, the Commission noted that FEC regulations specifically recognize state authority regarding gaming activity by permitting certain committees to use gaming devices such as raffles, only "so long as state law permits" their use. 11 CFR 114.5 (b)(2). Additionally, the Commission explained that the Committee's situation differed significantly from situations dealt with in past opinions, in which the Commission preempted state laws that disqualified an entire class of contributors to federal campaigns. AOs 2000-23, 1995-48, 1993-25 and 1989-12.

### **Soliciting Contributions and Serving on Fundraising Committee.**

In AO 2002-2, the Commission determined that the Act preempts provisions of Maryland law with respect to certain activities planned by Eric Gally, a registered lobbyist who intended to:

- Hold a private fundraiser for friends and family members in his home in order to solicit contributions to a

federal candidate who was also a member of the General Assembly; and

- Solicit other friends and family for contributions to this candidate.

Provisions of the Maryland statute prohibit lobbyists from soliciting or transmitting a political contribution to a member of the General Assembly and from serving on a fundraising committee or political committee of a candidate who is a member of the General Assembly. Md. Code Ann., State Gov't §15-714(d)(1)(i) and (ii) (2001).

Commission regulations, however, provide that federal law supersedes state law with respect to federal candidates and political committees with regard to the organization and registration of committees, the disclosure of receipts and expenditures and the limitations on contributions and expenditures. 11 CFR 108.7(b).<sup>26</sup> The Act and Commission regulations govern the sources of funds used in federal races, prohibiting and limiting contributions and solicitations by various entities. Moreover, they specifically cover Mr. Gally's solicitation activities by the application of specific exceptions to the definition of "contribution" for an individual's volunteer services and for a volunteer's use of his or her home for campaign-related activities—including up to \$1,000 per election for food, beverages and invitations. 2 U.S.C. §431(8)(B)(i) and (ii); 11 CFR 100.7(b)(3), (4) and (6). The Act and Commission regulations also address the transmittal of contributions. For example, they prohibit transmittal by certain persons and set a time period in which a person who receives a contribution for a political committee must transmit it to the committee. 2 U.S.C. §432(b); 11 CFR 102.6(b)(1), 110.6(b)(2)(ii) and 102.8. Thus, the Commission determined that, as applied to these fundraising activities for a federal candidate, these provisions of Maryland law address activities reserved for regulation under federal law.

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<sup>26</sup> See *Federal Election Commission Regulations, Explanation and Justification*, House Document No. 95-44, at 51. See also, H.R. Rep. No. 93-1438, 93d Cong., 2d Sess. 100-101 (1974).

## Administrative Fines

The Commission's Administrative Fine program was extended in 2001 to cover violations that relate to reporting periods through December 31, 2003. Under the administrative fines regulations, respondents may challenge the Commission's RTB finding and/or proposed civil money penalty based, among other things, on "the existence of extraordinary circumstances beyond the respondents' control that were for a duration of at least 48 hours and prevented them from timely filing the report." 11 CFR 111.35. The regulations also provide several broad examples of circumstances that will not be considered "extraordinary circumstances."<sup>27</sup> In 2002, district courts ruled on a number of challenges to the Commission's final administrative fine determinations, three of which are described below.

### Cunningham v. FEC

The U.S. District Court for the Southern District of Indiana granted the Commission's motion for summary judgment against the Robert W. Rock for Congress committee (the Committee) and its treasurer, Jeremiah T. Cunningham. The Committee had filed suit challenging the Commission's determination that the Committee had failed to file timely its 2000 Post-General report and alleging that the civil money penalty assessed by the Commission was excessive, erroneous and unwarranted.

The court found that the Committee had waived before the court any arguments it failed to raise before the Commission during its administrative proceedings (see 11 CFR 111.38). The court additionally ruled that the Commission's penalty determination, assessed in accordance with its administrative fines regulations, was not arbitrary and capricious. Under the Act, when calculating civil penalties, the Commission must consider the amount of the violation involved (that is, the level of activity of the report that

was untimely filed) and the existence of any prior violations. The Act delegates solely to the Commission the determination of what other factors to take into account in calculating the civil penalty at 2 U.S.C. §437g(a)(4)(C)(i)(II)—a decision that the court concluded was not for courts "to second guess."

### Friends for Houghton v. FEC

The U.S. District Court for the Western District of New York granted the Commission's motion for summary judgment and dismissed this case concerning Friends for Houghton's (the Committee) appeal of a civil money penalty for failure to timely file the Committee's 2000 Pre-Primary Report. According to the allegations in the complaint, on September 1, 2000, the Commission sent a notice to the Committee indicating that it may have failed to file its pre-primary report, and that it would have four business days from the date of the notice to file the report. Because of the Labor Day holiday, the fourth business day after the Commission's notice was September 8. The Committee filed the report on that day.

On October 17, 2000, the Commission found reason to believe that the Committee and its treasurer had violated 2 U.S.C. §434(a). Having filed its pre-primary report less than five days before the election, the committee was subject to the schedule of penalties for reports that are "not filed." The Commission assessed a civil money penalty in the amount of \$9,000 in accordance with 11 CFR 111.43. In its complaint, the Committee asked the court to order the Commission to modify both its determination that the Committee was a nonfiler and its assessment of the civil money penalty.

The Act requires the Commission to notify any principal campaign committee of a House or Senate candidate that may have failed to file a required pre-election report or a quarterly report before an election of its failure to file such report, prior to taking action against that committee. If the committee does not file the report within four business days of the notification, the Commission must publish, before the election, the name of that committee as having failed to file the report. 2 U.S.C. §437g(b). In addition to this statutory requirement, Commission regulations provide that

<sup>27</sup> On April 16, 2003, new rules took effect that make several amendments to the administrative fine rules. The final rules were published in the March 17, 2003, *Federal Register* (67 FR 12572).

election-sensitive reports are subject to the schedule of penalties for “late” reports if they are filed after their due date, but more than four days before an election. Committees filing later than that, or failing to file at all, are subject to the schedule of penalties for reports that are “not filed.”

The court observed that while the Commission’s notice informed the Committee that the Commission was considering taking action against it and provided the Committee with a four business-day window to file its report and avoid the publication of its name, “Section 437g(b) does not . . . attach any additional significance to the four business-day rule. More specifically, 437g(b) does not indicate that, by filing within four business days, the late filing is excused [and] that the person avoids a monetary penalty.”

Thus, while a committee has four additional business days to file a report in order to avoid the publication of its name before the election, neither the Act nor Commission regulations provide a grace period for calculating a penalty under the Administrative Fine program.

### **Miles for Senate v. FEC**

The U.S. District Court for the District of Minnesota granted judgment in favor of the Commission in this case. The Miles for Senate Committee, Steven H. Miles and Barbara Steinberg (the plaintiffs) filed suit against the Commission on January 18, 2001, appealing a civil money penalty the Commission assessed against Miles for Senate (the Committee) and its treasurer, Barbara Steinberg, LTD. The plaintiffs had argued, among other things, that Commission regulations that distinguish between certified or registered mail and regular mail for the purpose of determining when a report is filed are arbitrary and capricious and in excess of the Commission’s rulemaking authority. 11 CFR 104.5(e).

The court found that Mr. Miles and Ms. Steinberg lacked standing to request judicial review, and that the plaintiffs’ arguments were untimely because they did not raise them during the Commission’s administrative process. Moreover, the court found that, even if the plaintiffs had raised their arguments in a timely manner, the arguments were unpersuasive and failed

as a matter of law. In their motion to the court, the plaintiffs had argued that the Commission regulation that distinguishes between first class mail and registered or certified mail exceeds the Commission’s rulemaking authority and draws an arbitrary distinction. 11 CFR 104.5(e). The court, however, did not find that the regulation exceeded the Commission’s authority to make regulations to implement the Act: “Because the regulation merely incorporates the same distinction as that made by the statute, it is impossible to find that the regulation is inconsistent with the statute.” 2 U.S.C. §434(a)(5). The court also concluded that it could not respond to the plaintiffs’ arguments concerning whether distinguishing among postmarks was a “bad policy.” Such arguments, the court explained, should be addressed to legislators and administrators rather than to the courts.



## Chapter Four 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 the general election campaigns.

### Shortfall

The Commission projects the temporary shortfall in matching funds that has occurred in the past two Presidential elections may recur in 2004, and it appears that the January 2004 payout may be only about 53 cents on the dollar. The funds considered “available” by the Department of Treasury will be about \$19.3 million, and the funds to which candidates will be entitled will be about \$36.6 million. Thus, the payouts will have to be reduced accordingly. February and March payouts also will be less than 100 percent, but by the April 2004 payouts, the temporary shortfall will have ended under this projection because the check-off proceeds flowing into Treasury Department accounts will be adequate to make up the earlier deficiencies.

### Entitlement to Pre-General Election Presidential Funding

In 2002 the Commission continued to examine issues related to the public funding of minor party Presidential candidates. Under the Presidential Election Campaign Fund Act (the Fund Act), a Presidential candidate<sup>1</sup> of one or more political parties (not including a major party) is entitled to pre-general election

payments if he or she was a candidate for such office in the preceding election and received between five and 25 percent of the popular vote. Additionally, the Presidential nominee of a minor party is entitled to pre-general election payments if that party’s candidate in the prior election received between five and 25 percent of the total vote.<sup>2</sup> 26 U.S.C. §§9004(a)(2)(A) and (B); 11 CFR 9004.2(a) and (b).

In AO 2002-1, in response to a request from Lenora B. Fulani and James Mangia, the Commission determined that the entitlement for pre-general election Presidential funding in 2008 may not be determined by aggregating the 2004 vote totals of several minor party Presidential candidates. Instead, each minor party must use the vote totals received by its own Presidential candidate to determine the public funding entitlement, if any, of that party’s candidate in the next Presidential election. 26 U.S.C. §9004.

The Commission reached this determination based on the language of the Fund Act and Commission regulations, which describe one Presidential candidate per political party, rather than several Presidential candidates of either the same party or of multiple parties. The Commission additionally considered *Buckley v. Valeo*, in which the Supreme Court examined the legislative history of the Fund Act and determined that “Congress’ interest in not funding hopeless candidates with large sums of public money, necessarily justifies the withholding of public assistance from candidates without a significant modicum of support.” 424 U.S. 1 at 96 (1976). The Commission concluded that providing pre-general election funding to a minor party based on the prior performances of several minor party candidates within the same party, or of a group of Presidential candidates who join together in one coalition despite differing party affiliations, runs counter to these concerns.

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<sup>1</sup> The Fund Act defines a Presidential “candidate” in this context as an individual who has been nominated by a major party to the office of President or Vice President or has qualified to have his or her name on the ballot in at least 10 states as a party’s Presidential or Vice-Presidential candidate. 26 U.S.C. §9002(2).

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<sup>2</sup> In both cases, other eligibility conditions must be met. The Fund Act defines a “minor party” as a political party whose Presidential candidate in the preceding election received, as the party’s candidate, at least five percent, but less than 25 percent, of the total popular votes for all Presidential candidates in that election. 26 U.S.C. §9002(7).

## Repayment of Public Funds—2000 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 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 (the Treasury).

Repayments may also stem from Commission determinations that contributions that were initially thought to be matchable were later found to have been nonmatchable. Such determinations may or may not result from the FEC's audit of the committee. During 2002, the Commission made final determinations that the campaigns of eight Presidential candidates and one convention committee had to make repayments stemming from the 2000 elections.

### Bradley Committee

The Commission determined that Bill Bradley's primary committee, Bill Bradley for President, Inc., had to repay the Treasury \$14,055, representing matching funds that the committee received in excess of its entitlement, and an additional \$28,085, representing stale-dated checks.

### Buchanan Committees

The Commission determined that Patrick Buchanan's general election campaign, Buchanan Foster, Inc. (BFI), had to repay \$58,033 to the Treasury. This amount represented \$33,479 in surplus funds and \$24,554 that the committee received in interest on invested public funds. The audit also found that BFI purchased a mailing list from the primary committee, Buchanan Reform, Inc., at a cost that was \$147,496 in excess of the fair market value of the list. Thus, in determining BFI's assets, the Au-

dit staff listed this overpayment as an amount receivable due from the primary committee.<sup>3</sup>

### Bush Committees

The Commission determined that Bush-Cheney 2000, Inc. (BC2000), President Bush's general election committee, had to repay \$487,222 to the Treasury. The bulk of this amount represented income that the committee received from interest earned on invested public funds and from selling the use of film footage related to its media ads. A portion of this repayment, \$95,509, represented contributions the committee received when it paid the first-class fare for air travel on licensed commercial charter carriers, rather than the charter rate.<sup>4</sup> An additional portion represented stale-dated checks. The remaining repayment represented the amount that BC2000 exceeded the \$67,560,000 expenditure limitation for publicly funded Presidential candidates in the 2000 general election.

The Commission additionally determined that the Bush-Cheney Compliance Committee, Inc., had to make a \$33,415 repayment representing stale-dated checks. President Bush's primary election committee did not accept public funds and, thus, was not required to be audited.

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<sup>3</sup> The Buchanan committees appealed the Commission's determination.

<sup>4</sup> Commission regulations provide that the campaign may pay the first-class rate if the airplane is owned or leased by a corporation, other than a corporation licensed to offer commercial travel services, and the travel is between cities served by regularly scheduled commercial service. 11 CFR 114.9(e)(1). If the corporation is licensed to offer commercial air travel services and the campaign pays the first-class rate, rather than the charter rate, then the difference between the first-class and charter rates represents a contribution to the campaign. If the Commission determines that a major party Presidential candidate who has accepted public funding also accepts contributions to defray qualified campaign expenses (other than contributions to make up deficiencies in payments from the Presidential Election Campaign Fund), then the candidate must repay that amount to the Treasury. 11 CFR 9007.2(b)(5).

**Gore Committees**

The Commission's final audit found that Gore 2000, Inc., former Vice President Al Gore's primary committee, had to repay \$170,591, representing surplus funds, and \$2,485 representing stale-dated checks.

Mr. Gore's general election committee, Gore/Lieberman, Inc. (Gore/Lieberman), had to repay \$11,625 representing interest earned on invested public funds. Gore/Lieberman and the Gore/Lieberman General Election Legal and Accounting Compliance Fund were additionally required to repay \$3,262 to the Treasury, representing stale-dated checks.

**Keyes Committee**

The Commission determined that Keyes 2000, Inc., Ambassador Alan Keyes's primary committee, did not receive public funds in excess of its entitlement, but had to repay \$104,448 to the Treasury representing both nonqualified campaign expenses and costs associated with continuing to campaign. The largest portion of this repayment, \$74,439, represented nonqualified campaign expenses. In most cases, Keyes 2000, Inc., lacked adequate documentation to show the purpose of these expenses. Keyes 2000, Inc., was also required to repay \$30,009, representing public funds it spent continuing to campaign after the candidate's date of ineligibility. In addition, Keyes 2000, Inc., had to pay the Treasury \$8,003, representing stale-dated checks. See 11 CFR 9034.3(a)(3)(ii) and 9034.4(b)(3).

**McCain Committees**

The Commission's final audit determined that Senator John McCain's 2000 primary committee, McCain 2000, Inc., and the McCain Compliance Committee, Inc., had to repay \$99,037 to the Treasury. The bulk of the repayment, \$85,017, represented stale-dated checks. The audit also identified apparent non-qualified campaign expenses, which included some expenses not related to the campaign and some lost or stolen equipment. McCain 2000, Inc., did not receive matching funds in excess of its entitlement.

**Nader Committee**

The Commission made a determination that Ralph Nader's primary committee, Nader 2000 Primary Committee, Inc. (NPC), did not receive public funds in excess of its entitlement, but was required to repay to the Treasury \$11,398, representing stale-dated checks. The audit also found that NPC erroneously received 1,550 contributions that were instead intended for the general election campaign. Thus, the audit did not consider the resulting \$96,744 in contributions when calculating the amount of matching funds NPC was entitled to receive after Mr. Nader's date of ineligibility.

**Quayle Committee**

The Commission determined that Dan Quayle's 2000 Presidential primary committee, Quayle 2000, Inc., did not receive matching funds in excess of its entitlement; however, the Commission determined that it must repay to the Treasury \$5,307, representing stale-dated checks.

**Reform Party 2000 Convention Committee**

Federal 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. In 2002 the Commission determined that the Reform Party 2000 Convention Committee (the Convention Committee), which organized the Reform Party's national Presidential nominating convention in Long Beach, California, had to repay the Treasury \$333,558, primarily representing payments it made for activities and services not related to that convention. Most of this amount represented funds paid to a consulting firm that did not perform services for the nominating convention but instead appeared to have worked on an Emergency National Convention in Las Vegas. In March 2000 the U.S. District Court for the Western District of Virginia, Lynchburg Division, concluded that the Las Vegas Convention was not a properly convened convention of the Reform party. Thus, payments associated with the Las Vegas convention were not expenses for which the Convention Committee could use public funds.



## Chapter Five The Commission

### Commissioners

The Commission welcomed two new members during 2002.

Michael E. Toner was nominated to the Federal Election Commission by President Bush on March 2, 2002, and appointed on March 29, 2002.

Prior to his appointment, Mr. Toner was Chief Counsel to the Republican National Committee and served as General Counsel to the Bush/Cheney Transition and Bush/Cheney 2000 Presidential Campaign.

Ellen L. Weintraub was appointed to the Commission on December 6, 2002, and sworn-in on December 9. Before joining the Commission, Ms. Weintraub was Of Counsel at Perkins Coie, LLP, in Washington, DC.

During 2002, David M. Mason served as Chairman of the Commission and Karl J. Sandstrom served as its Vice Chairman. On December 18, 2002, the Commission elected Commissioner Weintraub as its Chair and Bradley A. Smith as Vice Chairman for 2003.

For biographies of the Commissioners and statutory officers, see Appendix 1.

### 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.

In 2002, the OIG began an audit of the Commission's disclosure process in response to a request from Congressman Stephen Horn, Chairman of the Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations. The objectives of the audit are to: 1) determine the extent, if any, of disclosure differences between candidate contributions reported by political committees and related political committee contributions reportedly received by candidates; and 2) determine whether an adequate process is in place to remedy a reporting discrepancy. The OIG planned to complete the audit in early 2003.

In June 2002, the OIG issued a review entitled *Limited Scope Building Security Review*. The objec-

tives of the study were to assess the effectiveness of the FEC closed circuit television (CCTV) security system and provide suggestions to improve overall security. The OIG concluded that the FEC's CCTV security system is generally effective in providing surveillance of the FEC building.

### Equal Employment Opportunity

During 2002, the FEC's Office of Equal Employment Opportunity and Special Programs drafted proposed guidance for the Commission's EEO Complaint Alternative Dispute Resolution Program and policies regarding Reasonable Accommodations for People with Disabilities. During Black History Month, six outstanding African American employees were recognized. The Office also increased the total participation of Commission employees in both the U.S. Savings Bond Drive and the Combined Federal Campaign. Finally, the EEO Office partnered with the Health Unit to sponsor various Health and Welfare programs.

### Ethics

Staff members in the General Counsel's office serve as the Commission's ethics officials and administer the Ethics in Government Act program. During 2002, the Office of Government Ethics (OGE) completed a routine review of the Commission's ethics program. OGE found the ethics program to be in compliance with applicable statutes and regulations, and it noted that the agency's ethics program is well managed by ethics officials.

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

sure reports filed by Presidential candidates and travel payment reports.

## Personnel and Labor/Management Relations

The Personnel Office provides policy guidance and operational support to FEC managers and staff in the area of human resources. During 2002, OPM's Office of Merit Systems Oversight and Effectiveness conducted a review of FEC's human capital program. OPM's review focused on staffing, workforce management and human resources management accountability. Overall, OPM found the FEC's human capital program operating within the merit system principles. In particular, OPM commended the FEC's personnel office for the high level of service they provide to their clients, in terms of both quality and timeliness.

The Personnel Office also developed agency policy for the administration of numerous federal leave programs, provided training for senior management in a variety of areas, and enhanced Commission security by issuing new identification cards for Commission employees and contractors. In addition, the Personnel Office represented the Commission as chief negotiator in contract negotiations with the union.

## FEC's Budget

### Fiscal Year 2002

The Commission received a fiscal year (FY) 2002 appropriation of \$43,657,000. In addition, the FEC received a Supplemental Appropriation of \$750,000 for expenses related to obtaining additional space to house staff to implement the Bipartisan Campaign Reform Act's (BCRA) amendments to the Federal Election Campaign Act (the Act). The final total FY 2002 appropriation was \$44,407,000 for 362 full-time employees (FTE). The Commission obligated over \$1.2 million of FY 2002 funds for forced move and construction costs to obtain additional space.

FY 2002 Enacted	\$43,657,000	362 FTE
FY 2002 Supplemental	\$ 750,000	0 FTE
<b>FY 2002 Total</b>	<b>\$44,407,000</b>	<b>362 FTE</b>

### Fiscal Year 2003

The initial FEC FY 2003 budget request for the FEC was \$45,244,000 for 362 FTE. Upon enactment of the BCRA amendments to the Act, the Commission requested additional funds for implementing the BCRA changes. The request included an additional 31 FTE and brought the total request for FY 2003 to \$50,610,200 and 393 FTE. (The FEC agreed that enactment of a FY 2002 supplemental request for \$750,000 for additional space would reduce this request by \$750,000.)

Awaiting resolution of the FY 2003 appropriation, the Commission operated under a series of Continuing Resolution appropriations at the FY 2002 level.

The enacted FY 2003 appropriation, reduced by a .65% across-the-board rescission, was \$49,541,871 with 389 FTE.

### Budget Allocation: FYs 2002 and 2003

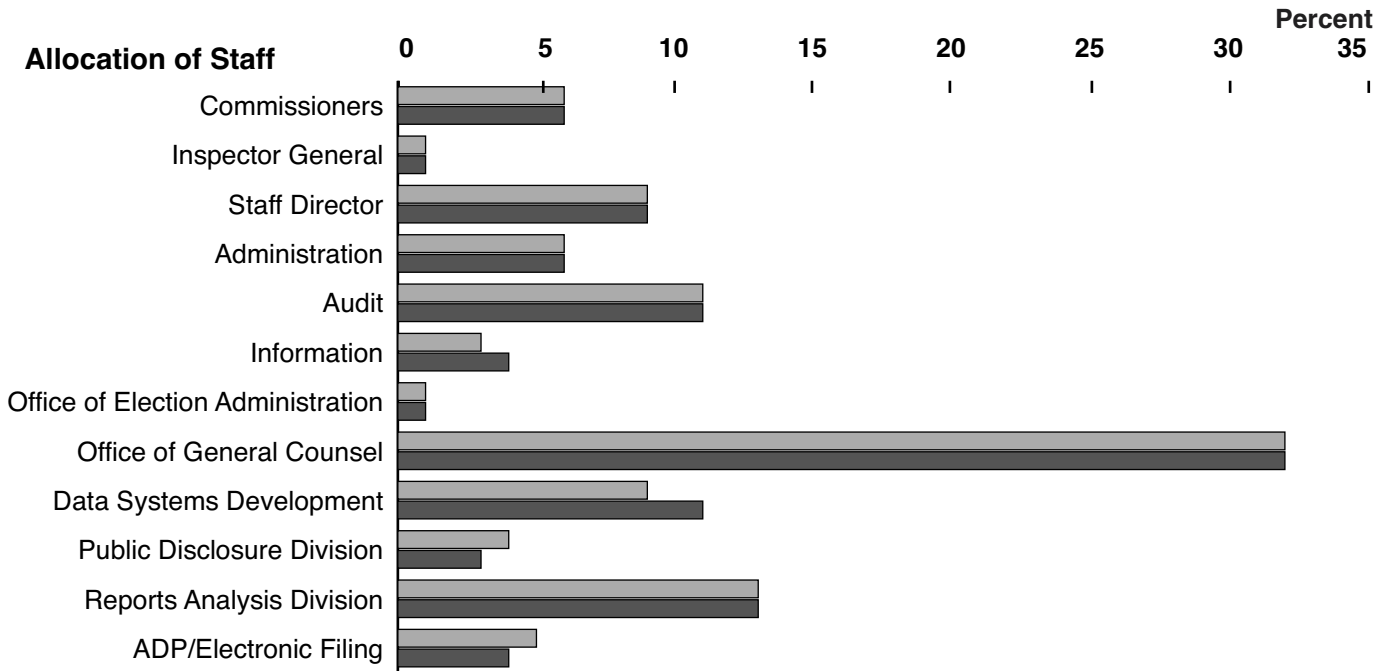
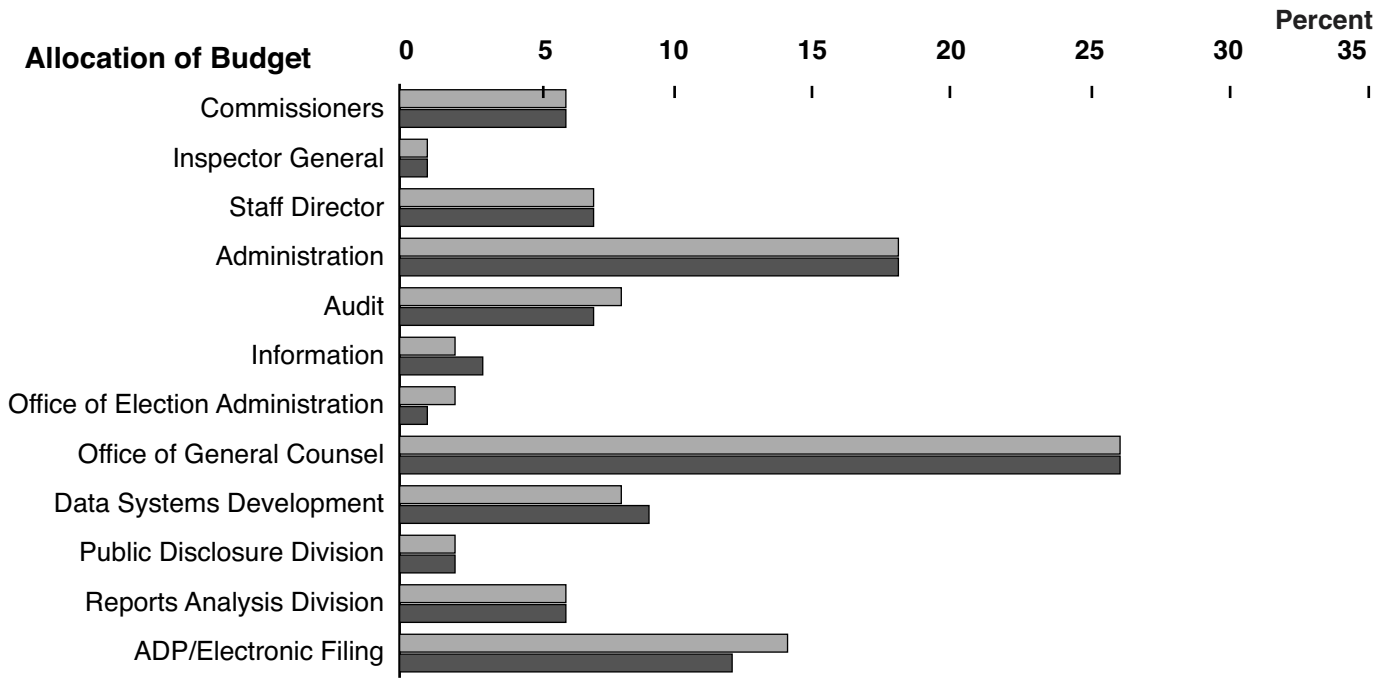
Budget allocation comparisons for FYs 2002 and 2003 appear in the table and charts that follow.

## CHART 5-1 Functional Allocation of Budget

	FY 2002	FY 2003
Personnel	\$29,682,755	33,198,800
Travel/Transportation	229,407	447,000
Space Rental	3,705,377	3,797,000
Phones/Postage	454,004	468,500
Printing	337,039	632,500
Training/Tuition	216,667	302,000
Depositions/Transcripts	168,303	125,000
Contracts	1,418,859	2,985,000
Equipment Rental/Maint	423,556	470,000
Software/Hardware	3,481,897	3,508,000
Federal Agency Services	1,346,096	1,548,571
Supplies	368,649	405,000
Publications	433,000	537,000
Equipment Purchases	1,909,047	983,000
Other	44,670	134,500
<b>Total</b>	<b>\$44,219,324</b>	<b>49,541,871</b>

**CHART 5-2  
Divisional Allocation**

FY 2002 Actual  
 FY 2003 Projected



## Chapter Six

# Legislative Recommendations

In May 2003, the Federal Election Commission submitted to Congress and the President seven legislative recommendations. The Commission substantially reduced the number of recommendations for legislative action, including only high priority recommendations with broad Commission support. Those seven recommendations follow.

## Compliance

### **Making Permanent the Administrative Fine Program for Reporting Violations (2003)**

*Section:* 2 U.S.C. §437g

*Recommendation:* The Commission recommends that Congress make permanent the Commission's authority to assess administrative fines for straightforward violations of the law requiring timely reporting of receipts and disbursements. The Commission's current Administrative Fine program only covers violations that relate to reporting periods through December 31, 2003.

*Explanation:* On November 12, 2001, President Bush signed the Fiscal Year 2002 Treasury and General Government Appropriations Act, which extended the Administrative Fine Program to cover violations of 2 U.S.C. § 434(a) that relate to reporting periods through December 31, 2003. Since the Administrative Fine program was implemented with the 2000 July Quarterly report, the Commission has processed and made public 519 cases, with \$722,221 in fines collected. The Administrative Fine program has been remarkably successful: over the course of the program, the number late and nonfiled reports has generally decreased. As a result, the Administrative Fine program has become an integral part of the Commission's mission to administer and enforce the Act. By making the program permanent, Congress would ensure that the Commission would not lose one of the most cost-effective and successful programs in its history.

Under the Administrative Fine program, the Commission considers reports to be filed late if they are received after the due date, but within 30 days of that due date. Election-sensitive reports are considered

late if they are filed after their due date, but at least five days before the election. (Election sensitive reports are those filed immediately before an election and include pre-primary, pre-special, pre-general, October quarterly and October monthly reports). Committees filing reports after these dates are considered nonfilers. Civil money penalties for late reports are determined by the amount of activity on the report, the number of days the report was late and any prior penalties for violations under the administrative fines regulations. Penalties for nonfiled reports are also determined by the amount of activity on the report and any prior violations. Committees have the option to either pay the civil penalty assessed or challenge the Commission's finding and/or proposed penalty.

## Ethics

### **Allowing the FEC to Restrict the Political Activities of its Employees (2003)**

*Section:* 2 U.S.C. §437c(f), 5 U.S.C. §7323(b)(1)

*Recommendation:* The Commission recommends that Congress amend the FECA by adding a new subsection (f)(5) to 2 U.S.C. §437c, which would prohibit an FEC Commissioner or employee from publicly supporting or opposing a candidate, political party or political committee subject to the FEC's jurisdiction, regardless of whether the activity is performed in concert with a political party, partisan political group or a candidate for partisan public office.

*Explanation:* In 1993, the enactment of the Hatch Reform Act (Pub. L. 103-94) lifted many of the original Hatch Act's restrictions on many Federal employees with regard to participation in political campaigns. The Hatch Reform Act places special limitations on Commission employees, prohibiting them from requesting or receiving political contributions from, or giving political contributions to, an employee, a Member of Congress or an officer of a uniformed service, as well as from taking an active part in political management or political campaigns. 5 U.S.C. §§7323(b)(1) and 7323(b)(2).

The Hatch Reform Act specifically states, “employees should be encouraged to exercise fully, freely, and without fear of penalty or reprisal, and to the extent not expressly prohibited by law, their right to participate or to refrain from participating in the political processes of the nation.” 5 U.S.C. §7321. It also provides that “[a]n employee retains the right to vote as he chooses and to express his opinion on political subjects and candidates.” 5 U.S.C. §7323(c). OPM has authority to issue regulations regarding the Hatch Reform Act. See 5 U.S.C. §1103(a)(5) and 5 U.S.C. §7325. With regard to agencies such as the Commission whose employees are limited in their political activity, OPM regulations allow such employees to “[e]xpress his or her opinion as an individual privately and publicly on political subjects and candidates.” 5 CFR 734.402. The OPM regulations provide that such activity may not be done “in concert with a political party, partisan political group or a candidate for partisan political office.”

There are no provisions in the Hatch Reform Act that empower any agency other than OPM to interpret its provisions, and there is currently no provision in FECA that directly refers to the Hatch Reform Act or previous Hatch restrictions. OPM has issued regulations expressly limiting the extent to which the political activities of employees may be limited beyond the restrictions in the Hatch Reform Act. See 11 CFR 734.104. These OPM regulations, as well as the Commission’s current lack of independent statutory authority, could be read to block any additional regulatory restrictions that the Commission might wish to place on the political activities of Commission employees. See Statement of Basis and Purpose for 11 CFR 734.104, 59 *Fed. Reg.* 48765. The Hatch Reform Act and the OPM regulatory regime also raises questions regarding the viability of the foundation for Commission’s current regulations on the political activity of Commissioners and Commission employees at 11 CFR 7.11. These questions could be resolved if the Commission’s regulatory restrictions on political activity of employees could be explicitly based on independent statutory authority in FECA.

Given its role in the political process, the Commission believes that public support of, or opposition to, any candidate, political party or political committee

subject to its jurisdiction by Commissioners or employees could seriously harm its credibility as a non-partisan agency and thus its ability to fulfill its mission. Therefore, to provide an independent statutory basis for regulating the political activities of its employees beyond the Hatch Reform Act, the Commission recommends that Congress enact a new statutory provision, as part of 2 U.S.C. §437c(f), to prohibit an FEC Commissioner or employee from publicly supporting or opposing a candidate, political party or political committee subject to the FEC’s jurisdiction, regardless of whether the activity is performed in concert with a political party, partisan political group or a candidate for partisan public office.

## Disclosure

### Increasing and Indexing all Registration and Reporting Thresholds for Inflation (2003)

*Section:* 2 U.S.C. §§431 and 434

*Recommendation:* The Commission recommends that Congress increase and index for inflation all registration and reporting thresholds.

*Explanation:* Most of the Act’s registration and reporting thresholds were set in 1974 and 1979. Because over twenty years of inflation had effectively reduced the Act’s contribution limits in real dollars, the BCRA increased some contribution limits to partially adjust for inflation, and then indexed those limits: contributions to candidates and national party committees by individuals and non-multicandidate committees, the biennial aggregate contribution limit for individuals and the limit on contributions to Senate candidates by certain national party committees. The Commission proposes extending this approach to all registration and reporting thresholds, which have similarly been effectively reduced as a result of inflation.

Increasing and then indexing these thresholds would ease the registration and reporting burdens on smaller political committees who, in some cases, are unaware of the Act’s registration and reporting provisions. Moreover, by increasing and then indexing the thresholds for inflation, Congress would help to ensure that some committees and persons who lack the



resources and technical expertise to comply with the Act's registration and reporting requirements would not have to do so. Finally, because of the effect of inflation, increasing and then indexing the registration and reporting thresholds would continue to capture the significant financial activity envisioned when Congress enacted the FECA.

### **Electronic Filing of Senate Reports**

*Section:* 2 U.S.C. §§432(g) and 434(a)(11)

*Recommendation:* The Commission recommends that Congress require:

- Mandatory electronic filing, at a date to be determined by Congress, for those persons and political committees filing designations, statements, reports or notifications pertaining only to Senate elections if they have, or have reason to expect to have, aggregate contributions or expenditures in excess of \$50,000 in a calendar year.
- Electronically filed designations, statements, reports or notifications pertaining only to Senate elections to be forwarded to the Commission within 24 hours of receipt and to be made accessible to the public on the Internet, if Congress does not change the point of entry for filings pertaining only to Senate elections.

*Explanation:* Public Law 106-58 required, among other things, that the Commission make electronic filing mandatory for political committees and other persons required to file with the Commission who, in a calendar year, have, or have reason to expect to have, total contributions or total expenditures exceeding a threshold set by the Commission. The Commission set this threshold at \$50,000 and, in the Commission's experience, that threshold has worked well. Extending electronic filing to political committees and persons who file designations, statements, reports or notifications pertaining only to Senate elections would standardize the information received, thereby enhancing public disclosure of campaign finance information. Additionally, data from electronically filed reports is received, processed and disseminated more easily and efficiently, resulting in better use of resources.

Electronic filing (by means other than diskette) is also unaffected by disruptions in the delivery of first

class mail, such as those arising from the terrorist attacks on the U.S. Postal Service. As a result of these disruptions, some amendments to Senate campaign reports that were filed via regular mail in late 2001 took months to arrive at the Secretary of the Senate (and the FEC), delaying disclosure. In contrast, amendments electronically filed during the same time period by other types of filers were received and processed in a timely manner.

### **Filing Reports Using Overnight Delivery, Priority or Express Mail**

*Section:* 2 U.S.C. §§434(a)(2)(A)(i), (a)(4)(A)(ii) and (a)(5)

*Recommendation:* The Commission recommends that Congress amend 2 U.S.C. §§434(a)(2)(A)(i), (a)(4)(A)(ii) and (a)(5) to offer filers additional means of ensuring timely filing of designations, reports, and statements. Specifically, the Commission recommends that Congress equate the date of receipt by one of the following delivery services with the registered or certified mail postmark dates currently set forth in section 434:

- Overnight delivery with an online tracking system that allows delivery status to be verified; and
- Priority Mail or Express Mail with U.S. Postal Service delivery confirmation.

*Explanation:* Section 434 of the Act permits committees that do not file electronically to rely upon a registered or certified mail postmark as evidence that their designations, reports and statements were filed on time. For example, quarterly, monthly, semiannual and post-general election reports must be postmarked by the due date, and pre-primary and pre-general election reports must be postmarked 15 days before the election.

Overnight delivery, Priority Mail and Express Mail were not widely used when the registered or certified mail provisions were adopted as part of the 1979 amendments to the FECA. Since that time, these services have come into wide use and are frequently used by political committees to file their FEC designations, reports and statements. Equating the date of receipt by one of these services with the registered or certified mail date would aid the regulated community



in its efforts to comply with the Act's reporting requirements.

Overnight delivery, Priority Mail and Express Mail ensure that there is written evidence that a package was mailed and received. Additionally, due to their reliability and speed, the Commission's ability to collect, process and disseminate information would be improved if Congress were to amend 2 U.S.C. §§434(a)(2)(A)(i), (a)(4)(A)(ii) and (a)(5) to include these services.

## Contribution Limits

### **Multicandidate Political Committee Contribution Limitations and Non-multicandidate Political Committee Contribution Limitations (2003)**

*Section:* 2 U.S.C. §§441a(a)(2) and 441a(c)

*Recommendation:* The Commission recommends that Congress consider indexing for inflation the contribution limitations applicable to multicandidate political committees and adjusting the amount such committees may contribute to national party committees to harmonize these limits with the limits applicable to non-multicandidate political committees.

*Explanation:* A political committee qualifies for multicandidate status if it has been registered with the Commission for six months or more, has received contributions from more than 50 persons, and has contributed to five or more Federal candidates. 2 U.S.C. §441a(a)(4). FECA, prior to the BCRA, provided a significantly higher limit on contributions to candidates for political committees with multicandidate status than for those without that status (\$5,000 per election versus \$1,000 per election). The BCRA raised and indexed for inflation the contribution limit on non-multicandidate committees (to \$2,000 per election), and such limit eventually will become higher than the limit imposed on multicandidate committees. Thus, this contribution limit itself one day will create a substantial disincentive to achieve multicandidate committee status.

In addition, the limit for contributions to national party committees from multicandidate committees is \$15,000 per year (as it was prior to the BCRA), yet the BCRA increased the limit on contributions to the

same national party committees from non-multicandidate committees to \$25,000 per year. 2 U.S.C. §441a(a)(2)(B), (1)(B). Moreover, only the contribution limit for non-multicandidate committees is indexed for inflation, which means that over time the current \$10,000 difference will only increase.

Congress should consider revising the statute to give multicandidate committees allowances at least as generous as those given to non-multicandidate committees.

## Public Financing

### **Averting Impending Shortfall in Presidential Public Funding Program (*revised 2003*)**

*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 check-off 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>1</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.

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<sup>1</sup> The Commission certified a total of \$28.9 million in convention grants, and \$147.2 million was set aside for use by general election candidates.







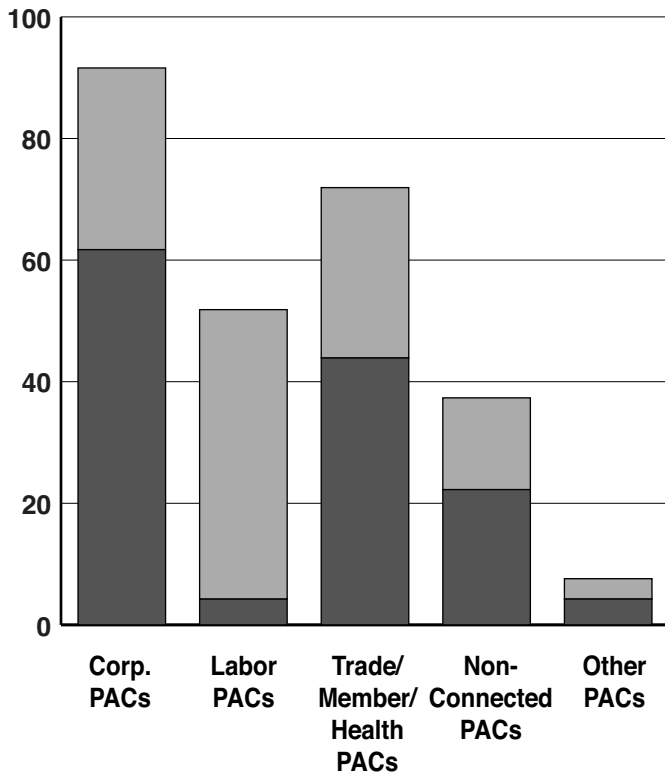


**CHART 7-4**  
**PAC Contributions to Candidates**  
**by Party and Type of PAC**

■ Democratic Candidates  
■ Republican Candidates

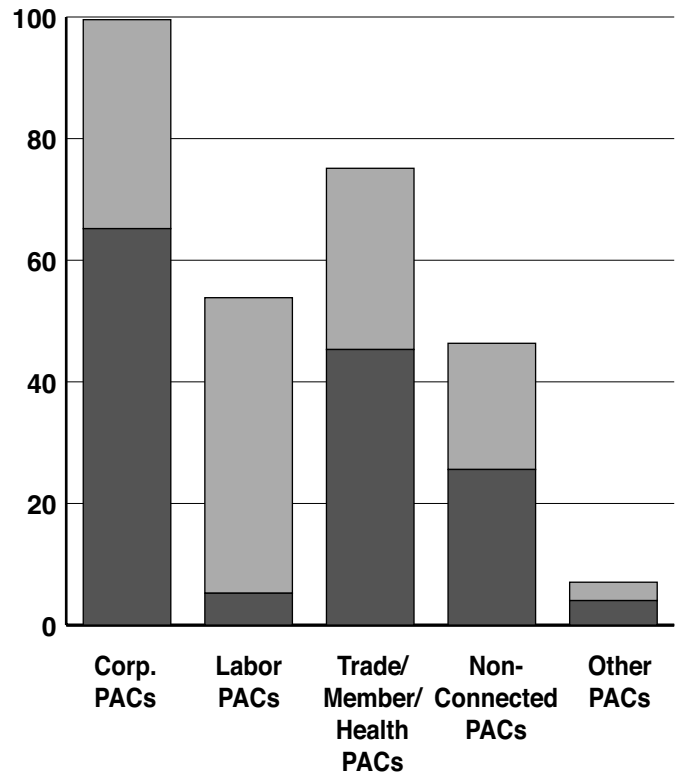
**2000 Election Cycle**

Millions of Dollars



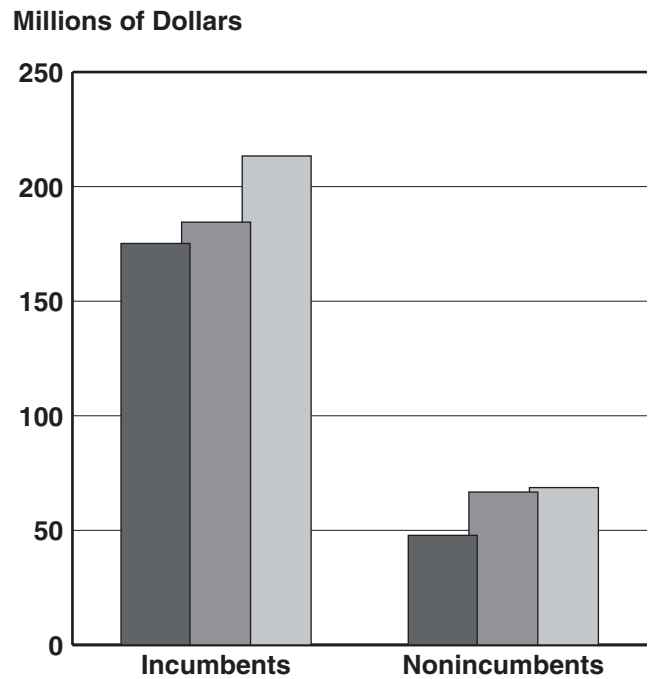
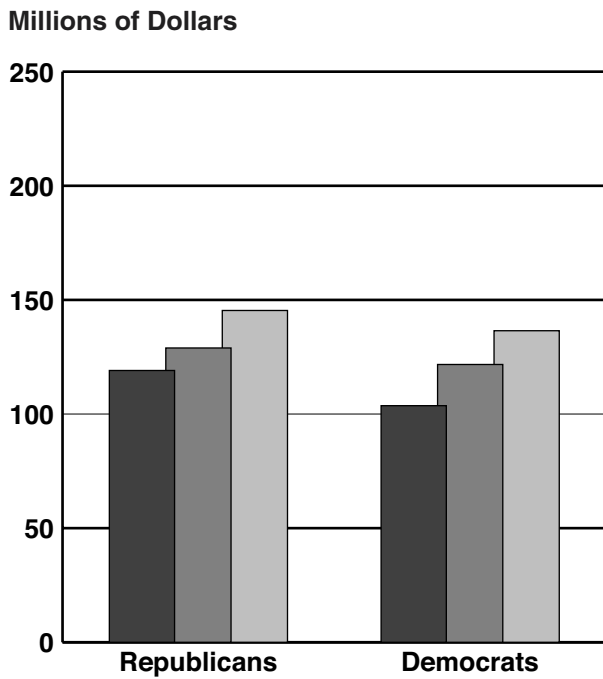
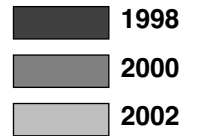
**2002 Election Cycle**

Millions of Dollars

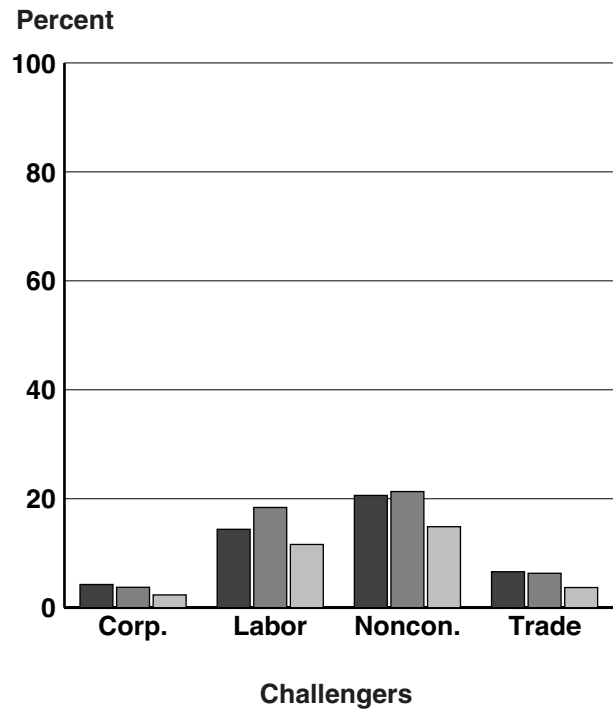
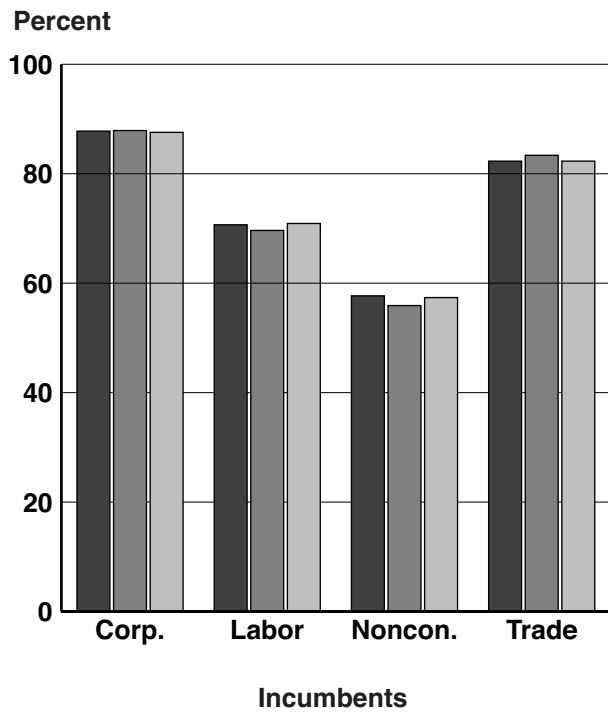
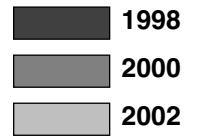




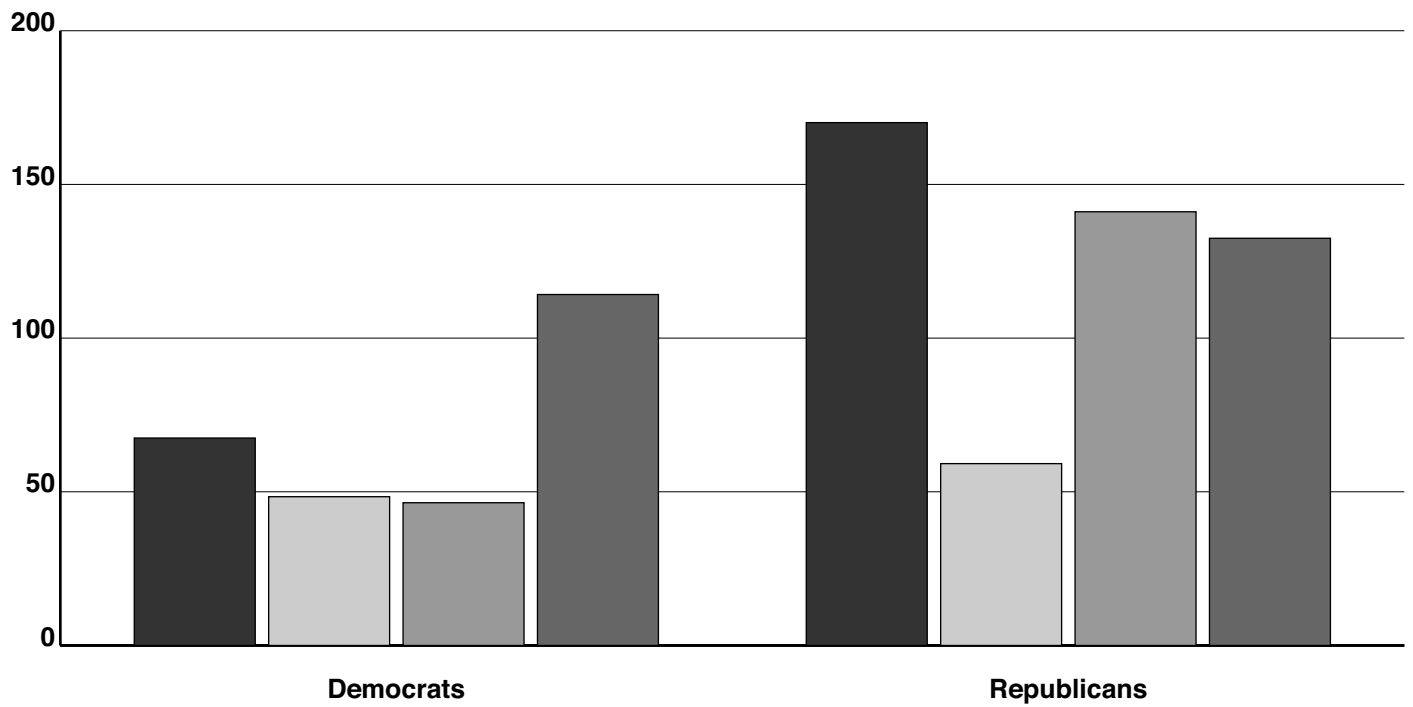
**CHART 7-5**  
**PAC Contributions to House and Senate**  
**Candidates by Party and Candidate Status**





**CHART 7-6**  
**PAC Contributions to House Candidates**  
**by Type of PAC and Candidate Status**



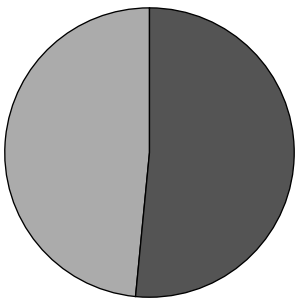
**CHART 7-7**  
**Major Party Federal**  
**Account Receipts: 2002**



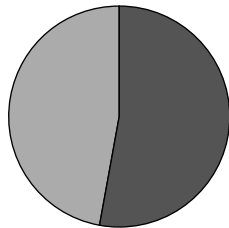
**CHART 7-8**  
**Party Federal and**  
**Nonfederal Receipts**

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

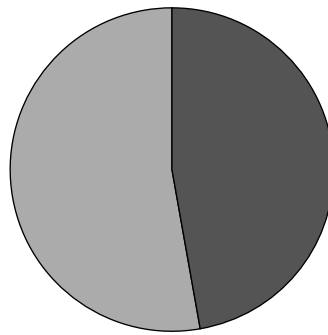
**Democratic National Committee (DNC)**



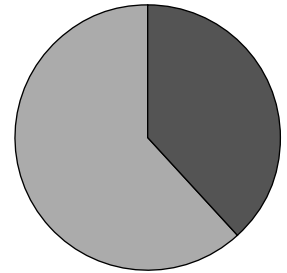
**1995-96**  
**\$210.3 million**



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

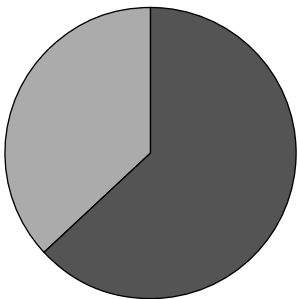


**1999-00**  
**\$262.7 million**

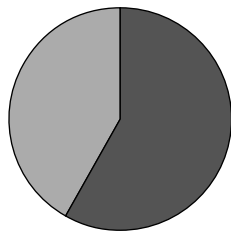


**2001-02**  
**\$176.8 million**

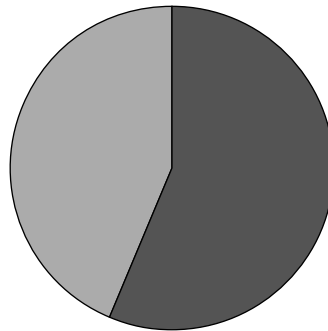
**Republican National Committee (RNC)**



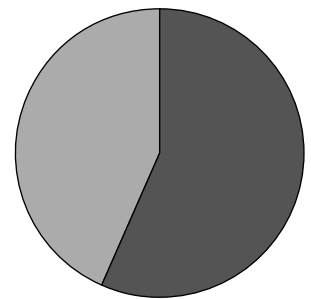
**1995-96**  
**\$306.1 million**



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



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

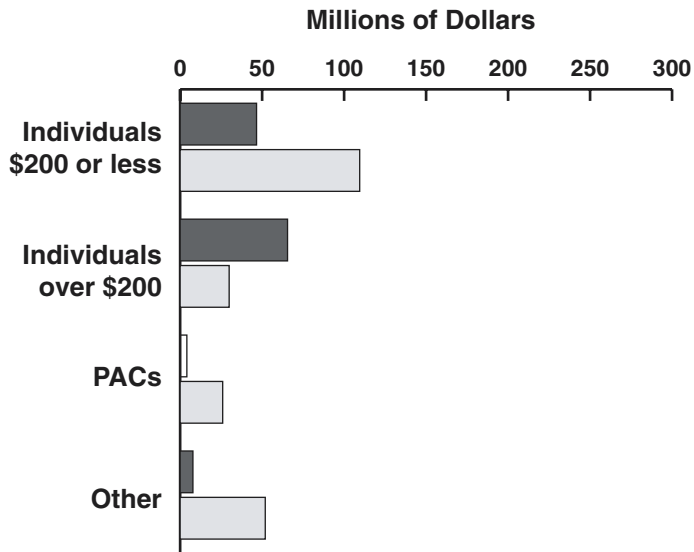


**2001-02**  
**\$300.5 million**

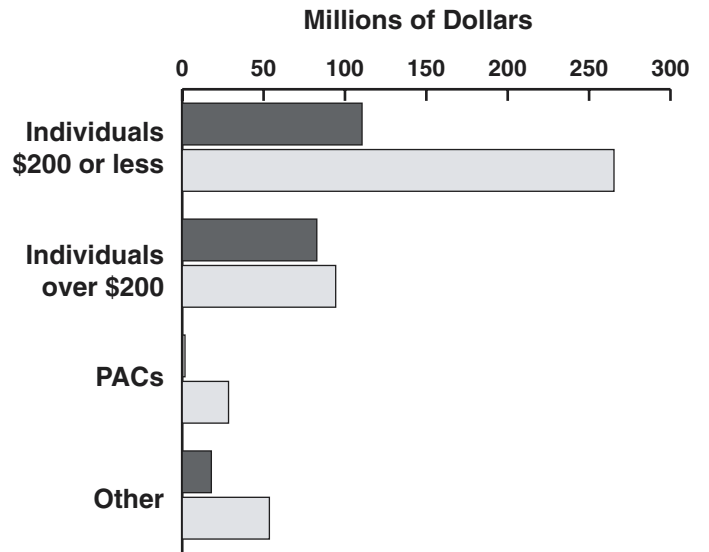
**CHART 7-9**  
**Sources of Party Receipts**

2000  
2002

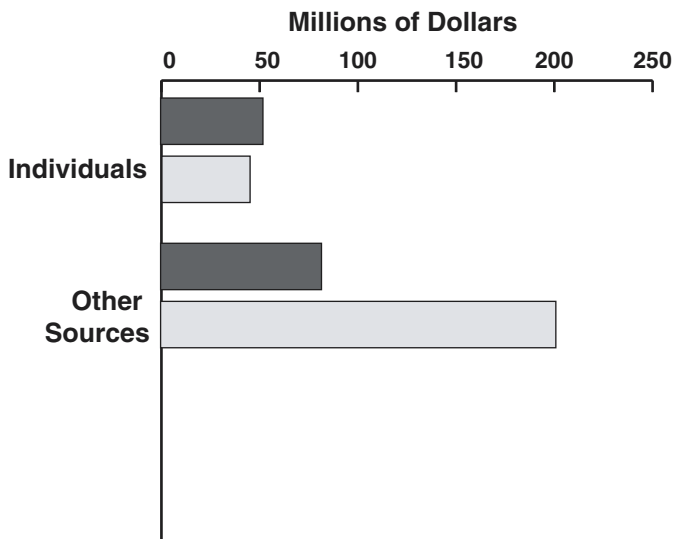
**DNC Federal Receipts by Source**



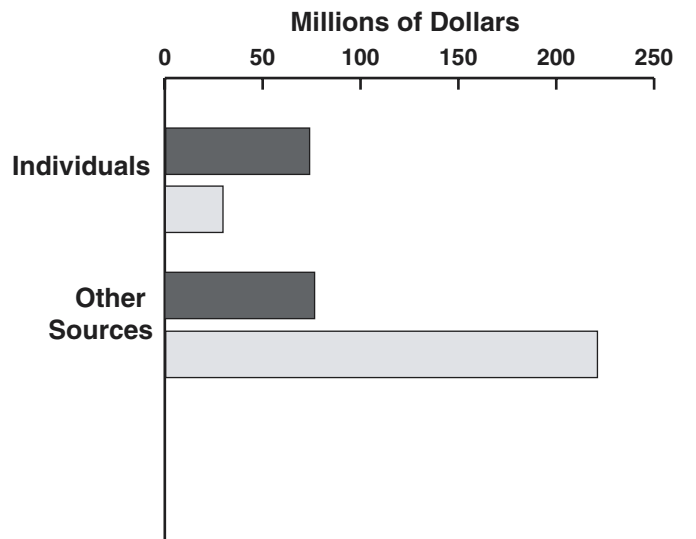
**RNC Federal Receipts by Source**



**DNC Nonfederal Receipts by Source**



**RNC Nonfederal Receipts by Source**



# Appendix 1

## Biographies of Commissioners and Officers

### Commissioners

#### **David M. Mason, Chairman** **April 30, 2003<sup>1</sup>**

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 ten children.

#### **Karl J. Sandstrom, Vice-Chairman** **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 Elec-

toral Reform. From 1979 to 1988, Commissioner Sandstrom served as the Deputy Chief Counsel to the House Administration Committee of the House of Representatives. In addition, he has taught public policy as an Adjunct Professor at American University.

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

Commissioner Sandstrom departed from the Commission on December 9, 2002.

#### **Bradley A. Smith, Commissioner** **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.

#### **Danny L. McDonald, Commissioner** **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 pre-

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



viously served as secretary of the Tulsa County Election Board and as chief clerk of the board. He was also a member of the Advisory Panel to the FEC's National Clearinghouse on Election Administration.

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

**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. He worked as a staff attorney in the Office of General Counsel and later became an Assistant General Counsel for Enforcement.

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

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

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

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

Commissioner Wold departed from the Commission on March 29, 2003.

**Michael E. Toner, Commissioner**  
**April 30, 2007**

Michael E. Toner was nominated to the Federal Election Commission by President George W. Bush on March 4, 2002, and appointed on March 29, 2002. Prior to his appointment, Mr. Toner was Chief Counsel to the Republican National Committee. Mr. Toner joined the RNC in 2001 after serving as General Counsel of the Bush-Cheney Transition and General Counsel of the Bush-Cheney 2000 Presidential Campaign. Before joining the Bush campaign in Austin, Mr. Toner was Deputy Counsel at the RNC from 1997-1999. Prior to his tenure at the RNC, he served as counsel to the Dole/Kemp Presidential Campaign in 1996.

Commissioner Toner was an associate attorney at Wiley, Rein, & Fielding in Washington, DC, from 1992-1996. His work there included advising political committees and corporate clients in federal and state election law compliance. He was also involved in a number of First and Fourteenth Amendment appellate matters, including two cases that reached the U.S. Supreme Court.

Commissioner Toner received a J.D., *cum laude* from Cornell Law School in 1992, an M.A. in Political Science from Johns Hopkins University in 1989 and a B.A. with distinction from the University of Virginia in 1986. He is a member of the District of Columbia and Virginia bars as well as the United States Supreme Court bar, the Fourth U.S. Circuit Court of Appeals and the U.S. District Courts for the District of Columbia and the Eastern District of Virginia.

**Ellen L. Weintraub, Commissioner**  
**April 30, 2007**

Ellen Weintraub was appointed to the Federal Election Commission on December 6, 2002, by President George W. Bush, and took office on December 9, 2002. She is the third woman to serve on the Commission. Prior to her appointment, Ms. Weintraub was Of Counsel to Perkins Coie, LLP, and a member of its Political Law Group. There, she counseled clients on federal and state campaign finance laws, political ethics, nonprofit law and lobbying regulation. During the election contest arising out of the 1996 election of Senator Mary Landrieu (D-LA), Ms. Weintraub served on the legal team that advised the Senate Rules Committee. Her tenure with Perkins Coie represented Ms. Weintraub's second stint in private practice, having previously practiced as a litigator with the New York firm of Cahill Gordon & Reindel.

Before joining Perkins Coie, Ms. Weintraub was Counsel to the Committee on Standards of Official Conduct for the U.S. House of Representatives (the House Ethics Committee). Like the Commission, the Committee on Standards is a bipartisan body, evenly divided between Democratic and Republican members. There, Ms. Weintraub focused on implementing the Ethics Reform Act of 1989 and subsequent changes to the House Code of Official Conduct. She also served as editor in chief of the House Ethics Manual and as a principal contributor to the Senate Ethics Manual. While at the Committee, Ms. Weintraub counseled Members on investigations and often had lead responsibility for the Committee's public education and compliance initiatives.

Ms. Weintraub received her B.A., *cum laude*, from Yale College and her J.D. from Harvard Law School. A native New Yorker, she is a member of the New York and District of Columbia bars and the Supreme Court bar. She currently resides in Maryland with her husband, Bill Dauster, and their three children.

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

**Lawrence H. Norton, General Counsel**

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

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

**Lynne A. McFarland, Inspector General**

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

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

## Appendix 2 Chronology of Events

### January

- 1 — Chairman David M. Mason and Vice Chairman Karl Sandstrom begin their one-year terms of office.
- 9 — In *Miles for Senate v. FEC*, the U.S. District Court for the District of Minnesota grants judgement in the Commission's favor in case challenging administrative fine.
- 9 — FEC conducts roundtable on "Reporting Requirements for 2002."
- 24 — FEC releases semi-annual PAC count.
- 25 — In *Beaumont v. FEC*, the U.S. Court of Appeals for the 4th Circuit upholds a district court decision that found that the Act's corporate contribution ban was unconstitutional as applied to MCFL-type corporation.
- 31 — 2001 year-end report due.

### February

- 1 — FEC approves notice explaining applicability of Commission travel allocation rules.
- 5-7 — FEC holds conference for candidates, parties and PACs in San Francisco, CA.
- 11 — Robert Biersack appointed to be FEC's Deputy Press Officer.

### March

- 20 — FEC holds public hearing on "The Internet and Federal Elections."
- 25-26 — FEC holds conference for candidates and party committees in Washington, DC.
- 27 — President Bush signs Bipartisan Campaign Reform Act of 2002 (BCRA).
- 27 — Senator Mitch McConnell and the National Rifle Association each file complaint with U.S. District Court for the District of Columbia challenging constitutionality of several provisions of BCRA. The complaint is styled as *McConnell v. FEC*.
- 29 — Appointment of Michael E. Toner to Commission; Commissioner Darryl Wold departs.

### April

- 15 — Quarterly report due
- 18 — FEC approves Notice of Proposed Rulemaking on reducing administrative fines for late filers and nonfilers.
- 22-24 — FEC holds conference for corporations in Washington, DC.
- 23 — FEC submits amended FY2003 budget request seeking additional \$5,366,200 and 31 full-time employees in order to fund implementation of BCRA.
- 30 — FEC approves Voting Systems Standards for release and publication.

### May

- 9 — FEC approves Notice of Proposed Rulemaking on implementing BCRA's "soft money" provisions.
- 14 — Revised *Campaign Guide for Nonconnected Committees* available.
- 14 — FEC submits 23 legislative recommendations to Congress and President.
- 22-24 — FEC holds conference for trade associations in Washington, DC.
- 24 — FEC approves "Brokerage Loans and Lines of Credit" final rules.

### June

- 1 — FEC issues *Annual Report 2001*.
- 4-5 — FEC holds public hearing on "Soft Money."
- 22 — FEC approves "Soft Money" rules, meeting 90-day deadline of BCRA.
- 26-28 — FEC holds conference for membership and labor organizations.

### July

- 12 — FEC approves revisions to National Mail Voter Registration Form.
- 15 — Quarterly report due.
- 15 — FEC releases semi-annual PAC count.

### August

- 1 — FEC approves Notice of Proposed Rulemaking on "Electioneering Communications."

- 15 — FEC approves Notice of Proposed Rulemaking on “Contribution Limitations and Prohibitions.”
- 22 — FEC approves Notice of Proposed Rulemaking on “Disclaimers, Fraudulent Solicitation, Civil Penalties and Personal Use of Campaign Funds.”
- 28-29— FEC holds public hearing on “Electioneering Communications.”
- 29 — Revised *Campaign Guide for Congressional Candidates and Committees* available.

#### September

- 9 — Congressional fundraising summary.
- 12 — FEC approves Notice of Proposed Rulemaking on “Coordinated and Independent Expenditures.”

#### October

- 2 — FEC holds “New Soft Money Rules” roundtable.
- 3 — ADR Program made permanent.
- 11 — FEC approves Notice of Proposed Rulemaking on “BCRA Reporting.”
- 11 — FEC approves “Electioneering Communications” final rules.
- 11 — FEC approves “FCC Database on Electioneering Communications” interim final rules.
- 15 — FEC publishes filing dates for Hawaii 2nd District special election.
- 15 — Quarterly report due.
- 23-24— FEC holds public hearing on “Coordinated and Independent Expenditures.”
- 24 — Pre-General report due.

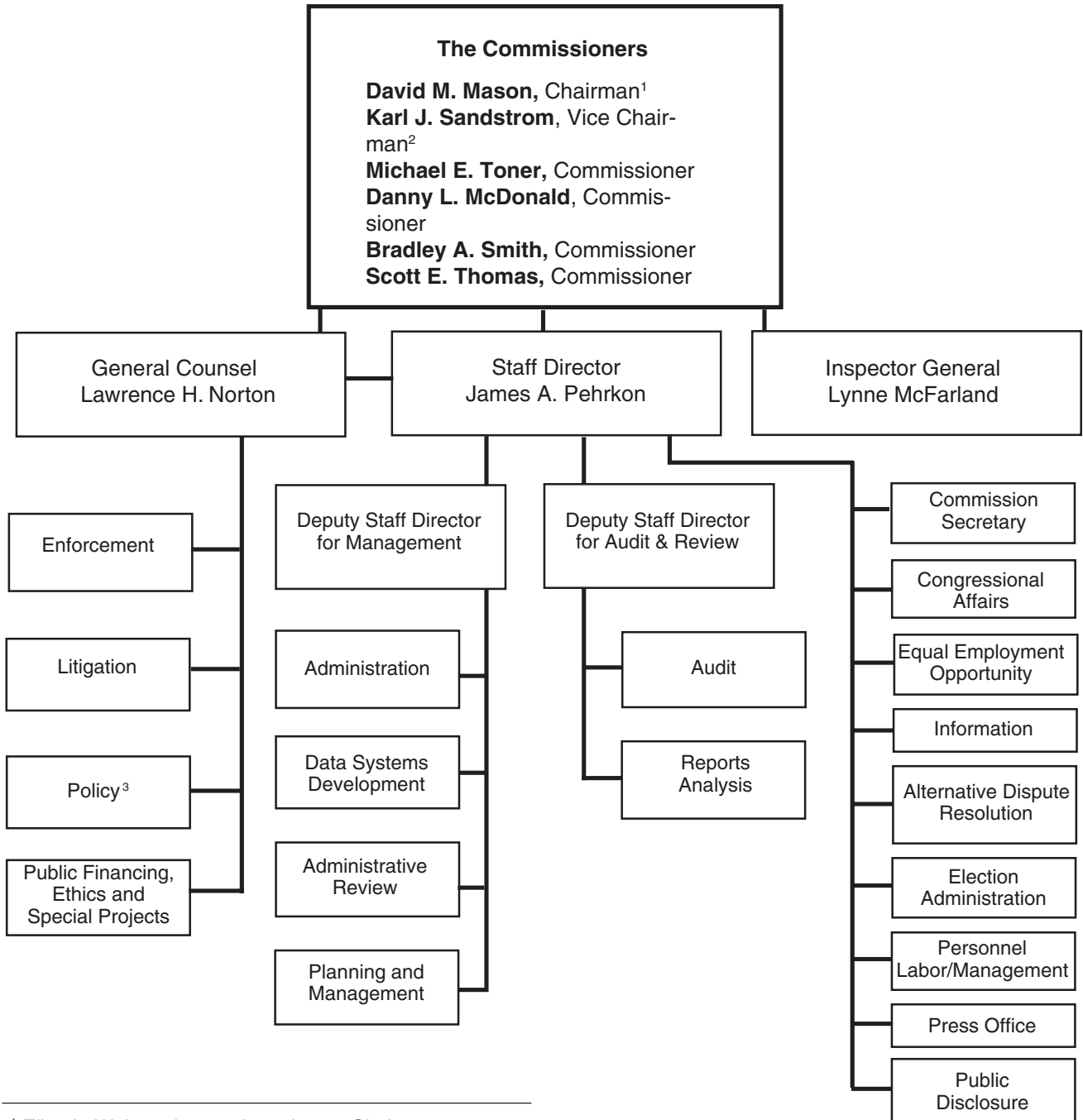
#### November

- 5 — Post-General report due.
- 8 — FEC approves “Contribution Limitations and Prohibitions” final rules.
- 25 — FEC approves “Disclaimers, Fraudulent Solicitation, Civil Penalties and Personal Use of Campaign Funds” final rules.
- 29 — FEC approves “Interim Reporting Procedures” policy statement.

#### December

- 4-5 — Oral arguments on *McConnell v. FEC* before three-judge District Court panel.
- 5 — FEC approves “Coordinated and Independent Expenditures” final rules.
- 6 — Appointment of Ellen L. Weintraub to Commission.
- 9 — Commissioner Karl Sandstrom departs.
- 12 — FEC approves “BCRA Reporting” final rules.
- 18 — Commission elects Ellen L. Weintraub Chair and Bradley A. Smith Vice Chairman for 2003.
- 19 — FEC approves Notice of Proposed Rulemaking on “Leadership PACs.”
- 19 — FEC approves “Millionaires’ Amendment” interim final rules, completing BCRA rulemaking within 270 days of enactment of BCRA.

# Appendix 3 FEC Organization Chart



<sup>1</sup> Ellen L. Weintraub was elected 2003 Chair.  
<sup>2</sup> Bradley A. Smith was elected 2003 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 at 800-424-9530 and locally at 202-694-1100.

### Administration

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

### Audit

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

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

### Commission Secretary

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

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

### Commissioners

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

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

### Congressional, Legislative and Intergovernmental Affairs

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

### Data Systems Development

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

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

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



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

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

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

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

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

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

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

## **General Counsel**

The General Counsel's Office consists of four Divisions. The Policy Division drafts, for Commission consideration, advisory opinions and regulations as well as other legal memoranda interpreting the federal campaign finance law. In addition, the Policy Division provides legal advice in response to legislative inquiries and advises other divisions within the agency on legal matters. The Policy Division also provides staff

training throughout the agency concerning changes in the law. The Enforcement Division investigates alleged violations of the law, negotiates conciliation agreements and recommends civil penalties for individuals and entities that have violated the Act. The Litigation Division handles all civil litigation, including Title 26 cases that come before the Supreme Court, and represents and advises the Commission regarding any legal actions brought by or against the Commission. The Public Financing, Ethics and Special Projects (PFESP) Division provides legal advice to the Commission on matters relating to the public financing program, including eligibility matters, audit reviews and repayments. In addition, PFESP is responsible for all of the enforcement matters that relate to publicly funded candidates. PFESP also reviews all Title 2 (non-Presidential) audit reports, handles all enforcement matters stemming from these audits, is responsible for debt settlement reviews and administrative termination reviews and administers the Commission's ethics program.

## **Information**

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

## **Inspector General**

The FEC's Inspector General (IG) has two major responsibilities: to conduct internal audits and investigations to detect fraud, waste and abuse within the agency and to improve the economy and effective-

ness of agency operations. The IG is required to report its activities to Congress on a semiannual basis. These reports may include descriptions of any serious problems or deficiencies in agency operations as well as corrective steps taken by the agency.

## Law Library

The Commission law library, a government document depository, is located on the eighth floor and is open to the public. The library contains a basic 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 after statutory amendments permitted the Commission to impose civil money penalties for violations of certain reporting requirements. Under the program, if the Commission finds “reason to believe” (RTB) that a committee failed to file a required report or notice, or filed it late, it will notify the committee of its finding and the amount of the proposed civil money penalty. Within 40 days, the committee may challenge the RTB finding. OAR reviews these challenges and may recommend that the Commission uphold the RTB finding and civil money penalty, uphold the RTB finding but modify or waive the civil money penalty, determine that no violation occurred or terminate its proceedings. OAR also serves as the Commission’s liaison with the U.S. Department of the Treasury on debt collection matters involving unpaid civil money penalties under this program.

## Office of Alternative Dispute Resolution

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

## Office of Election Administration

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

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

## Personnel and Labor/Management Relations

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

## Planning and Management

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

## Press Office

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

## Public Disclosure

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

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

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

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

## Reports Analysis

Campaign finance 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 Directors

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

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

## Appendix 5 Statistics on Commission Operations

### Summary of Disclosure Files

	Total Filers Existing in 2002	Filers Terminated as of 12/31/02	Continuing Filers as of 12/31/02	Number of Reports and Statements in 2002	Gross Receipts in 2002 (dollars)	Gross Expenditures in 2002 (dollars)
<b>Presidential Candidate Committees</b>	254	49	205	476	17,574,833	26,297,530
<b>Senate Candidate Committees</b>	567	153	414	3,951	410,878,206	380,989,618
<b>House Candidate Committees</b>	2,606	690	1,916	26,049	656,362,442	636,039,444
<b>Party Committees</b>						
Federal Party Committees	592	141	451	5,104	1,463,327,331	1,475,450,141
Reported Nonfederal Party Activity	194	12	182	631	685,214,286	712,063,343
<b>Delegate Committees</b>	8	5	3	6	15,066	16,764
<b>Nonparty Committees</b>						
Labor Committees	337	20	317	3,867	167,613,721	157,862,766
Corporate Committees	1,742	219	1,523	17,179	195,088,306	179,566,144
Membership, Trade and Other Committees	2,515	279	2,236	22,253	345,068,453	339,156,333
<b>Communication Cost Filers</b>	287	1	286	111	0	10,447,847
<b>Independent Expenditures by Persons Other Than Political Committees</b>	348	30	318	176	1,249,509	2,149,070

### Divisional Statistics for Calendar Year 2002

	Total
<b>Reports Analysis Division</b>	
Documents processed	19,932
Reports reviewed	46,882
Telephone assistance and meetings	18,440
Requests for additional information (RFAs)	10,593
Second RFAs	3,900
Data coding and entry of RFAs and miscellaneous documents	15,096
Compliance matters referred to Office of General Counsel or Audit Division	16
<b>Data Systems Development Division *</b>	
Documents receiving Pass I coding	27,224
Documents receiving Pass III coding	55,685
Documents receiving Pass I entry	79,803
Documents receiving Pass III entry	30,739
Transactions receiving Pass III entry	
• In-house	1,409,409
• Contract	347,510
<b>Public Disclosure Division</b>	
Campaign finance material processed (total pages)	3,087,490
Cumulative total pages of documents available for review	22,450,832
Requests for campaign finance reports	5,054
Visitors	7,527
Total people served	23,559
Information telephone calls	10,978
Computer printouts provided	31,827
Faxline requests	553
Total income (transmitted to U.S. Treasury)	18,251
Contacts with state election offices	4,219
Notices of failure to file with state election offices	12

\* 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	1,230
Publications prepared for print	16
Pages of photocopying	21,600,200
<b>Information Division</b>	
Telephone inquiries	31,546
Information letters	172
Distribution of FEC materials	5,424
Prior notices (sent to inform filers of reporting deadlines)	24,150
Other mailings	25,673
Visitors	90
Public appearances by Commissioners and staff	17
Roundtable workshops	3
Publications	29
<b>Press Office</b>	
News releases	135
Telephone inquiries from press	8,168
Visitors	1,055
Freedom of Information Act (FOIA) requests	28
Fees for materials requested under FOIA (transmitted to U.S. Treasury)	0
<b>Office of Election Administration</b>	
Telephone inquiries	3,715
National surveys conducted	4
Individual research requests	344
Materials distributed *	18,170
Election presentations/conferences	37
Foreign briefings	95
Publications	6
Public Hearings	1

\* Figure includes National Voter Registration Act materials.

	Total
Office of General Counsel	
Advisory opinions	
Requests pending at beginning of 2002	5
Requests received	15
Issued	15
Not issued	3
Pending at end of 2001	2
Compliance cases <sup>†</sup>	
Pending at beginning of 2002	166
Opened	118
Closed	98
Pending at end of 2002	186
Law Library	
Telephone inquiries	768
Visitors	542
Legal Review FECA	
Pending at beginning of 2002	7
Opened in 2002	29
Closed in 2002	27
Pending at end of 2002	9
Litigation	
Cases pending at beginning of 2002	35
Cases opened	21
Cases closed	15
Cases pending at end of 2002	41
Cases won	8
Cases lost	1
Cases won/lost	2
Miscellaneous Cases <sup>‡</sup>	4
Regulations	
Notices of Proposed Rulemaking	9
Final or Interim Final Rules with Explanation and Justification	12
Public Rulemaking Hearings	4

<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>Three cases were voluntarily withdrawn by the plaintiff: one was withdrawn prior to a deposition motion; two were withdrawn after deposition motions. One case was concluded pursuant to a settlement agreement.

### 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
19805	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
2001	15	1	16
2002	20	13	33
<b>Total</b>	<b>495</b>	<b>147</b>	<b>642</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 – 2002**

	<b>Total</b>
Presidential	126
Presidential Joint Fundraising	12
Senate	28
House	182
Party (National)	47
Party (Other)	159
Nonparty (PACs)	88
<b>Total</b>	<b>642</b>

**Status of Audits, 2002**

	<b>Pending at Beginning of Year</b>	<b>Opened</b>	<b>Closed</b>	<b>Pending at End of Year</b>
Presidential	17	0	14	3
Presidential Joint Fundraising	0	0	0	0
Senate	3	0	3	0
House	12	1	11	2
Party (National)	0	0	0	0
Party (Other)	2	6	1	7
Nonparty (PACs)	0	8	4	4
<b>Total</b>	<b>34</b>	<b>15</b>	<b>33</b>	<b>16</b>

## Appendix 6

# 2002 Federal Register Notices

**2002-1**

Interpretation of Allocation of Candidate Travel Expenses; Interpretation (67 FR 5445, February 6, 2002)

**2002-2**

The Internet and Federal Elections; Candidate-Related Materials on Web Sites of Individuals, Corporations and Labor Organizations; Notice of Public Hearing (67 FR 6883, February 14, 2002)

**2002-3**

Independent Expenditure Reporting; Final Rule (67 FR 12834, March 20, 2002)

**2002-4**

The Voting System Standards and an Opportunity to Publicly Voice Previously Submitted Comments; Notice of Public Hearing (67 FR 13334, March 22, 2002)

**2002-5**

Administrative Fines; Notice of Proposed Rulemaking (67 FR 20461, April 25, 2002)

**2002-6**

Candidate Debates; Petition for Rulemaking and Notice of Availability (67 FR 31164, May 9, 2002)

**2002-7**

Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Notice of Proposed Rulemaking (67 FR 35654, May 20, 2002)

**2002-8**

Brokerage Loans and Lines of Credit; Final Rule (67 FR 38353, June 4, 2002)

**2002-9**

Reorganization of Regulations on "Contribution" and "Expenditure"; Notice of Proposed Rulemaking (67 FR 40881, June 14, 2002)

**2002-10**

Independent Expenditure Reporting; Final Rule and Effective Date (67 FR 40586, June 13, 2002)

**2002-11**

Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Final Rule (67 FR 49064, July 29, 2002)

**2002-12**

Reorganization of Regulations on "Contribution" and "Expenditure"; Final Rule (67 FR 50582, August 5, 2002)

**2002-13**

Electioneering Communications; Notice of Proposed Rulemaking (67 FR 51131, August 7, 2002)

**2002-14**

Contribution Limitations and Prohibitions; Notice of Proposed Rulemaking (67 FR 54366, August 22, 2002)

**2002-15**

Disclaimers, Fraudulent Solicitation, Civil Penalties and Personal Use of Campaign Funds; Notice of Proposed Rulemaking (67 FR 55348, August 29, 2002)

**2002-16**

Coordinated and Independent Expenditures; Notice of Proposed Rulemaking (67 FR 60042, September 24, 2002)

**2002-17**

Contribution Limitations and Prohibitions; Cancellation of Public Hearing (67 FR 62410, October 7, 2002)

**2002-18**

Filing Dates for the Hawaii Special Election in the 2nd Congressional District (67 FR 63658, October 15, 2002)

**2002-19**

Bipartisan Campaign Reform Act of 2002 Reporting; Notice of Proposed Rulemaking (67 FR 64555, October 21, 2002)

**2002-20**

Electioneering Communications; Final Rule (67 FR 65190, October 23, 2002)

**2002-21**

FCC Database on Electioneering Communications; Interim Final Rules with Requests for Comments (67 FR 65212, October 23, 2002)

**2002-22**

Contribution Limitations and Prohibitions; Final Rule (67 FR 69928, November 19, 2002)

**2002-23**

Filing Dates for the Hawaii Special Election in the 2nd Congressional District (67 FR 70599, November 25, 2002)

**2002-24**

FEC Policy Statement: Interim Reporting Procedures (67 FR 71075, November 29, 2002)

**2002-25**

Disclaimers, Fraudulent Solicitation, Civil Penalties and Personal Use of Campaign Funds; Final Rule (67 FR 76962, December 13, 2002)

**2002-26**

Bipartisan Campaign Reform Act of 2002 Reporting; Final Rule (68 FR 404, January 3, 2003)

**2002-27**

Coordinated and Independent Expenditures; Final Rule (68 FR 421, January 3, 2003)

**2002-28**

Leadership PACs; Notice of Proposed Rulemaking (67 FR 78753, December 26, 2002)

**2002-29**

BCRA Technical Amendments; Final Rule (67 FR 78679, December 26, 2002)

**2002-30**

Contribution Limitations and Prohibitions; Delay of Effective Date and Correction; Final Rule (67 FR 78959, December 27, 2002)

**2002-31**

Brokerage Loans and Lines of Credit; Final Rule and Announcement of Effective Date (67 FR 79844, December 31, 2002)

## Appendix 7

### Summaries of Selected BCRA-Related Rulemakings

This appendix summarizes the regulatory changes the Commission has made as a result of the *Bipartisan Campaign Reform Act of 2002*. The excerpts are arranged chronologically.

#### Nonfederal Fund or “Soft Money”

On June 22, 2002, the Commission promulgated new and revised rules based on provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA) that restrict and, in some cases, ban the receipt, solicitation and use of nonfederal funds (sometimes called “soft money”). These rules:

- Prohibit national parties from raising or spending nonfederal funds;
- Require state, district and local party committees to fund certain “federal election activities” with federal funds and, in some cases, with money raised according to new limitations, prohibitions and reporting requirements (i.e., “Levin funds”<sup>1</sup>), or with a combination of such funds; and
- Address fundraising by federal and nonfederal candidates and officeholders on behalf of party committees, other candidates and nonprofit organizations.

The final rules and their Explanation and Justification were published in the July 29 *Federal Register* (67 FR 49064) and are available on the FEC web site at [http://www.fec.gov/pdf/nprm/soft\\_money\\_nprm/fr67n145p49063.pdf](http://www.fec.gov/pdf/nprm/soft_money_nprm/fr67n145p49063.pdf).

#### Part I: General Information and Terminology

Organization. *In order to implement the BCRA, the Commission has revised its existing regulations and added new 11 CFR part 300, which contains most of the rules governing party committees’ use of nonfederal funds and the so-called “Levin funds.” New part 300 contains five subparts, which address the use of nonfederal funds by each of the following entities:*

- National party committees;
- State, district and local party committees;
- Federal candidates and officeholders;

- State and local candidates; and
- Tax-exempt organizations.

The rules applicable to each of these entities are addressed in detail below, in Part II: Application.

*Federal election activity.* Many provisions of the BCRA are framed in terms of “federal election activities.” As used in 11 CFR part 300, “federal election activity” means any of the following activities:

- Voter registration activity during the 120 days before a regularly-scheduled federal election and ending on the day of that election;
- Voter identification, generic campaign activities<sup>2</sup> and get-out-the-vote activities that are conducted in connection with an election in which one or more candidates for federal office appear on the ballot (regardless of whether state or local candidates also appear on the ballot);
- A public communication<sup>3</sup> that refers to a clearly identified federal candidate and that promotes, supports, attacks or opposes any federal candidate (This definition applies regardless of whether a nonfederal candidate is also mentioned or identified in the communication and regardless of whether the communication expressly advocates a vote for or against a federal candidate.); and
- Services provided by an employee of a state, district or local party committee who spends more than 25 percent of his or her compensated time during that month on activities in connection with a federal election. 11 CFR 100.24(b).

The Commission has also adopted regulations at 11 CFR 100.24(a) that define certain terms used in the above definition of “federal election activity”:

- “In connection with an election in which a candidate for federal office appears on the ballot” means:

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<sup>2</sup>“Generic campaign activity” means a public communication that promotes or opposes a political party and does not promote or oppose a clearly identified federal or nonfederal candidate. 11 CFR 100.25.

<sup>3</sup>A “public communication” means any communication by means of television (including cable and satellite), radio, newspaper, magazine, billboard, mass mailing, telephone bank or any other form of general public political advertising. Communications over the Internet are not included in this definition of public communication. 11 CFR 100.26.

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<sup>1</sup> See p. 80 for a full description of “Levin funds.”

- In an even-numbered year, the period beginning on the day of the earliest filing deadline for primary election ballot access under state law—or on January 1 in states that do not hold primaries—and ending on the day of the general election or the general election runoff if a runoff is held; or
- In an odd-numbered year, the period beginning on the day that the date is set for a special election in which a federal candidate appears on the ballot, and ending on the day of that election.
- “Voter registration activity” means contacting individuals by telephone, in person or by other individualized means to assist them in registering to vote. This activity includes, but is not limited to, printing and distributing registration and voting information, providing individuals with voter registration forms and assisting individuals with completing and filing these forms.
- “Get-out-the-vote activity” means contacting registered voters by telephone, in person or by other individualized means in order to assist them in voting (unless the activity is undertaken by state or local candidates and/or officeholders, or an organization of such candidates or officeholders, and refers only to one or more state or local candidates). This activity includes, but is not limited to:
  - Providing individual voters, within 72 hours of an election, with information about when and where polling places are open; and
  - Transporting, or offering to transport, voters to polling places.
- “Voter Identification” means creating or enhancing voter lists by adding information about voters’ likelihood of voting in a particular election or voting for a particular candidate (unless the activity is undertaken by state or local candidates and/or officeholders, or an organization of such candidates or officeholders, and refers only to one or more state or local candidates).

The regulations also identify activities that are *not* included in the definition of “federal election activity.” These are:

- A public communication that refers solely to one or more clearly identified candidate(s) for state or local office and does not promote, support, attack or op-

pose a clearly identified candidate for federal office. A public communication would, however, be considered a federal election activity if it constituted voter registration, generic campaign activity, get-out-the-vote activity or voter identification;

- A contribution to a candidate for state or local office, unless the contribution is designated for voter registration, voter identification activity, generic campaign activity, get-out-the vote activity, employee services for these activities or a public communication;
- The costs of state, district or local political conventions, meetings or conferences; and
- The costs of grassroots campaign materials that name or depict only a candidate for state or local office. 11 CFR 100.24(c).

*Agent.* In most cases, regulations that apply to a party committee, a federal candidate or officeholder or a state or local candidate also apply to any “agent” acting on behalf of that individual or organization. For the purposes of 11 CFR part 300, the term “agent” is defined as any person who has “actual authority, either express or implied” to engage in specifically-listed activities on behalf of another person or organization. 11 CFR 300.2(b).

*Directly or indirectly established, maintained, financed or controlled.* Most of the new regulations that apply to a party committee or a federal candidate or officeholder also apply to any entity “directly or indirectly established, maintained, financed or controlled” by the committee, candidate or officeholder. The new regulation at 11 CFR 300.2(c), which is based on the existing “affiliation” regulation at 11 CFR 100.5(g)(4), includes a series of factors that must be considered, in the context of an overall relationship, to determine whether the presence of one or more of these factors indicates that the individual or committee established, finances, maintains or controls the organization. An entity will not be considered to be directly or indirectly established, financed, maintained or controlled based solely upon activities undertaken before November 6, 2002.

## Part II: Application

### National Party Committees, Including National Congressional Campaign Committees

*General prohibitions.* Beginning on November 6, 2002, national party committees may not solicit,<sup>4</sup> receive, direct to another person or spend nonfederal funds, that is, funds that are not subject to the limits, prohibitions and reporting requirements of the Act. Moreover, such committees must use only federal funds to raise funds that are used, in whole or in part, for expenditures and disbursements for federal election activity. 11 CFR 300.10.

*Tax-exempt organizations.* National party committees may not solicit funds for, or make or direct donations to, tax-exempt 501(c) organizations, or an organization that has applied for this tax status, if the organization makes expenditures or disbursements in connection with federal elections, including federal election activity.<sup>5</sup> 11 CFR 300.11(a). The committee may establish whether or not the organization makes expenditures or disbursements in connection with federal elections by obtaining a signed certification from an authorized representative of the organization. The certification should state that within the current election cycle the organization has not made, and does not intend to make, such expenditures and disbursements, including payments for debts incurred in an earlier cycle.<sup>6</sup> 11 CFR 300.11(c) and (d).

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<sup>4</sup> For the purposes of 11 CFR part 300, to “solicit” means to “ask that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value, whether the contribution, donation, transfer of funds, or thing of value, is to be made or provided directly, or through a conduit or intermediary.” Merely providing information or guidance as to the requirement of a particular law does not constitute a solicitation. 11 CFR 300.2(m).

<sup>5</sup> Note that national party committees may solicit funds for, or make or direct donations to, permissible tax-exempt organizations only if the funds are subject to the limitations, prohibitions and reporting requirements of the Act.

<sup>6</sup> In no case is a committee prohibited from responding to a request for information about a tax-exempt group that shares the party’s political or philosophical goals. 11 CFR 300.11(f).

National party committees may solicit funds for, or make or direct donations to, so-called “527 organizations” only if these organizations are:

- Political committees under Commission regulations; or
- State, district or local party committees or authorized campaign committees of state or local candidates. 11 CFR 300.11(a)(3).

*Office Building Funds.* After November 5, 2002, national party committees may no longer accept funds into party office building accounts and may not use such funds for the purchase or construction of any office facility. Any funds remaining in an office building account on November 6 must be disgorged to the U.S. Treasury or returned to donors no later than December 31, 2002. Any refund check not cashed by February 28, 2003, must be disgorged to the Treasury by March 31. 11 CFR 300.12.

*Transition rules.* If a national party committee has nonfederal funds in its possession on November 6, 2002, it may use these funds to retire outstanding debts or other obligations relating to the 2002 elections, including runoff elections and recounts, until January 1, 2003. Any remaining nonfederal funds must be disgorged to the Treasury or returned to donors no later than December 31, 2002. Any refund checks not cashed by February 28, 2003, must be disgorged to the Treasury by March 31. The nonfederal accounts of national party committees must file termination reports with the Commission disclosing the disposition of all funds deposited in nonfederal accounts and building fund accounts. 11 CFR 300.12 and 300.13.

### State, District and Local Party Committees and Organizations

Under the new regulations, state, district and local party committees that have receipts or make disbursements for federal election activity may maintain, as appropriate, up to four different types of accounts:

- Federal accounts, for deposit of funds that comply with the limitations, prohibitions and reporting requirements of the Act;
- Nonfederal accounts, for deposit of funds that are governed by state law;



- Allocation accounts, which may be established to make allocable expenditures and disbursements; and
- Levin accounts, for deposit of a new category of funds, called “Levin funds,” that comply with some of the limits and prohibitions of the Act and are also governed by state law.<sup>7</sup>

*Levin funds.* A state, district or local party committee may spend only those Levin funds that it raises for itself, and these funds can be used only for certain types of voter registration, voter identification, get-out-the-vote and generic campaign activity. Note that certain types of federal election activities may *not* be financed with Levin funds:

- Public communications that refer to a clearly identified candidate; and
- The services of employees who devote more than 25 percent of their compensated time to activities in connection with a federal election.

National party committees may not raise or spend Levin funds.

When a party committee receives a donation of Levin funds, this donation:

- Must be permissible under the laws of the state in which the party committee raising and spending the funds is organized;
- May be solicited from some sources that cannot contribute under the Act (e.g., corporations, unions and federal government contractors) so long as the donation is not from foreign nationals or from sources that are impermissible under state law;
- Is limited to \$10,000 in a calendar year from any person, including any entity established, maintained, financed or controlled by that person (if state law limits donations to an amount less than \$10,000, then the lower limit applies); and

- Must be raised using only federal funds or Levin funds to pay the direct costs of the fundraising (including expenses for the solicitation of funds and for the planning and administration of actual fundraising activities and programs) if any portion of the funds will be used for federal election activity. 11 CFR 300.31 and 300.32(a)(4).

Each state, district and local party committee has a separate Levin fund donation limit, and such committees are not considered to be affiliated for the purposes of determining Levin fund donation limits. Levin funds expended or disbursed by a given state, district or local party committee must be raised solely by that particular committee, and these committees cannot raise Levin funds through joint fundraising efforts or accept transfers of Levin funds from other committees. Additionally, these committees cannot accept or use as Levin funds any funds that come from, or in the name of, a national party committee, federal candidate or federal officeholder. 11 CFR 300.31 and 300.34(b).

*Levin fund expenditures and disbursements.* As a general rule, state, district and local party committees must use federal funds to make expenditures and disbursements for federal election activity.<sup>8</sup> 11 CFR 300.32(a)(2). However, as long as certain conditions are met, a state, district, or local party committee may use Levin funds to pay for part, or in some limited circumstances, all of the following types of federal election activity:<sup>9</sup>

- Voter registration activity during the period that begins 120 days before the date of a regularly-scheduled federal election and ends on the day of that election; and
- Voter identification, get-out-the vote activities or generic campaign activity conducted in connection with an election in which a federal candidate ap-

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<sup>7</sup> An organization may also deposit Levin funds in a nonfederal account that must function as a nonfederal and Levin account. In order to make a disbursement of Levin funds from such an account, the organization must be able to show through a reasonable accounting method approved by the Commission that the organization had received into this account sufficient federal contributions or Levin donations to make the disbursement. 11 CFR 300.30(c)(3)(ii).

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<sup>8</sup> Additionally, an association or similar group of state or local candidates or officeholders must use only federal funds to make expenditures or disbursements for federal election activity. 11 CFR 300.32(a)(1).

<sup>9</sup> Levin funds may also be used for any purpose that is not federal election activity as long as this use is lawful in the state in which the committee is organized. 11 CFR 300.32(b)(2).



pears on the ballot (regardless of whether a state or local candidate also appears on the ballot). 11 CFR 300.32(b).

Levin funds may *not* be used, however, to pay for any part of a federal election activity if:

- The activity refers to a clearly identified federal candidate; or
- Any portion of the funds will be used to pay for a television or radio communication, other than a communication that refers solely to a clearly identified state or local candidate. 11 CFR 300.32(c).

Levin funds may be used to pay for the entirety of permissible federal election activity disbursements only if the party committee's disbursements do not exceed \$5,000 in the aggregate in a calendar year. Disbursements and expenditures that aggregate in excess of \$5,000 per year must be paid entirely with federal funds or allocated between federal funds and Levin funds, according to the minimum allocation percentages described below. 11 CFR 300.33(a).

*Allocating expenses.* State, district and local party committees that allocate federal election activity expenses between federal and Levin funds must allocate to their federal account one of following minimum percentages, depending on the composition of the ballot for that year:

- If a Presidential candidate, but no Senate candidate, appears on the ballot, then at least 28 percent of the expenses must be allocated to the federal account.
- If both a Presidential candidate and a Senate candidate appear on the ballot, then at least 36 percent of the expenses must be allocated to the federal account.
- If a Senate candidate, but no Presidential candidate, appears on the ballot, then at least 21 percent of the expenses must be allocated to the federal account.
- If neither a Presidential nor a Senate candidate appear on the ballot, at least 15 percent of the expenses must be allocated to the federal account.

An organization must make payments for allocable expenses either from a federal account or from an allocation account. If payments are made from a federal account, Levin funds may be transferred to this account, during the 70-day window for such transfers, in order to cover the Levin-fund portion of the expense. 11 CFR 300.33(d).

*Expenses that may not be allocated.* Certain costs of federal election activity are not allocable:

- Expenditures for public communications that refer to a clearly identified federal candidate and that promote, support, attack or oppose any federal candidate must be paid entirely with federal funds.
- Salaries and wages for employees who spend more than 25 percent of their compensated time per month on federal election activities, or on activities in connection with federal elections, must be paid entirely with federal funds. Salaries and wages for employees who spend 25 percent or less of their compensated time in this manner must be paid with funds that comply with state law.
- The direct costs of raising federal funds to be used for federal election activities must be paid with federal funds; if Levin funds are being raised, federal funds or Levin funds may be used. No nonfederal funds may be used to pay for an allocable portion of the fundraising costs for federal or Levin funds used for federal election activity. 11 CFR 300.33(c).

*Office buildings.* Under the amended Act and regulations, a state, district or local party committee may spend federal funds or nonfederal funds (including Levin funds) to purchase or construct a party office facility, so long as the funds are not contributed or donated by a foreign national. If a committee chooses to use nonfederal funds or Levin funds, the funds are subject to state law, and the Act will not preempt the limits and prohibitions of state law except to prohibit donations by foreign nationals. Moreover, if nonfederal or Levin funds are used, the office facility must not be purchased or constructed for the purpose of influencing the election of any federal candidate in any particular election. If federal funds are used to purchase or construct the facility, the Act will preempt the limits and prohibitions of state law. 11 CFR 300.35(a) and (b).

Additionally, a state, district or local party committee may generate income by leasing out a portion of its office building at the usual and normal charge. If the building is purchased in whole or in part with nonfederal funds, then all rental income must be deposited in the committee's nonfederal account and

used only for nonfederal purposes. The rental income and its use must also comply with state law. If the building is purchased entirely with federal funds, then the rental income may be deposited in the committee's federal account. Any such income must be disclosed in the committee's reports to the Commission. 11 CFR 300.35(c).

*Reporting and recordkeeping for organizations that are not political committees.* A state, district or local party committee (or an association of state or local candidates or officeholders) that is not a political committee under the Act is not required to file reports, but must be able to demonstrate through a reasonable accounting method that it has enough funds on hand that comply with the limits and prohibitions of the Act to cover any payment of federal funds (or Levin funds) that it makes for federal election activity. The organization must keep records to this effect and make these records available to the Commission upon request. Payments by such organizations for federal election activity are not "expenditures" for the purpose of determining whether an organization qualifies as a political committee with registration and reporting requirements, unless the payment otherwise qualifies as an expenditure under 2 U.S.C. §431(9).<sup>10</sup> 11 CFR 300.36(a).

*Reporting and recordkeeping for political committees.*<sup>11</sup> A state, district or local party committee (or an association of state or local candidates or officeholders) that is a political committee under the Act must file on a monthly schedule and report all receipts and disbursements of federal funds for federal election activity, including the federal portion of allocated ex-

penses. 11 CFR 300.36(b)(1) and (b)(2). See also 11 CFR 100.5.

A state, district or local party committee that is a political committee but that has less than \$5,000 of aggregate receipts and disbursements for federal election activity per calendar year—and any association of state or local candidates or officeholders that is a political committee—must report all receipts and disbursements of federal funds. (The party committee need not report receipts and disbursements of Levin funds.) Such a committee or association of candidates and officeholders should not report federal funds or Levin funds disbursed for federal election activity as "expenditures" on their reports, unless the disbursement otherwise qualifies as an expenditure.<sup>12</sup> 11 CFR 300.36(b)(1) and 300.36(c)(1). See also 2 U.S.C. §421(9) and 11 CFR 100.8.

A state, district or local party committee that has \$5,000 or more of aggregate receipts and disbursements for federal election activity per calendar year must disclose its activity in greater detail, including receipts and disbursements of federal funds and of Levin funds used for federal election activity. 11 CFR 300.36(b)(2) and 300.36(c)(1). Such a committee must also report the allocation percentages used.

Contributions and expenditures of federal funds for federal election activity apply toward the \$50,000 threshold for determining whether a committee must file its reports electronically under the Commission's mandatory electronic filing program. Receipts and disbursements for federal election activity that do not qualify as contributions and expenditures (including Levin fund receipts and disbursements) do not, however, count toward this threshold. 11 CFR 104.18 and 300.36(c)(2). See also 11 CFR 100.7 and 100.8.

*Tax exempt organizations.* Like national party committees, state, district and local party committees may not solicit funds for, or make or direct donations to, tax-exempt 501(c) organizations, or to organizations that have applied for tax-exempt status, if the organi-

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<sup>10</sup> Certain organizations that make "expenditures," as defined at 11 CFR 100.8(a), in excess of \$1,000 in a calendar year become political committees under the Act and must register and report with the Commission. 11 CFR 100.5. In a separate rulemaking, the Commission has reorganized 11 CFR 100.7 and 100.8. See "Reorganization of Regulations on "Contribution" and "Expenditure" (67 FR 50582, August 5, 2002).

<sup>11</sup> These requirements added by the BCRA are in addition to the Act's existing requirements to report expenditures of federal funds. 2 U.S.C. §434 and 11 CFR part 104.

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<sup>12</sup> Associations, or other similar organizations, of state or local candidates may spend federally permissible funds for federal election activity, but they cannot raise or spend Levin funds.

zation makes expenditures or disbursements in connection with federal elections, including federal election activity.<sup>13</sup> Committees may solicit funds for, or make or direct donations to, so-called “527 organizations” only if these organizations are:

- Political committees under Commission regulations;
- State, district or local party committees;
- Authorized campaign committees of state or local candidates; or
- A political committee under state law that supports only state or local candidates and that does not make expenditures or disbursements in connection with federal elections, including expenditures or disbursements for federal election activity.

In order to establish whether or not an organization makes expenditures or disbursements in connection with federal elections, party committees may obtain a signed certification from an authorized representative of the organization. The certification should state that within the current election cycle the organization has not made, and does not intend to make, such expenditures and disbursements, including payments for debts incurred from making such expenditures and disbursements in an earlier cycle. 11 CFR 300.37.

*Contribution limit.* In addition, the new rules raise the individual contribution limit to a state party committee to \$10,000 per year.

### **Fundraising by Federal Candidates and Officeholders**

The new regulations restrict and, in some cases, prohibit the solicitation and use of nonfederal funds by federal candidates and federal officeholders,<sup>14</sup> including agents acting on their behalf and entities that are directly or indirectly established, maintained, financed

or controlled by one or more federal candidate or officeholder. 11 CFR 300.60 and 300.61.

*Federal elections.* Under the Act and regulations, federal candidates and officeholders can only solicit, receive, direct, transfer, spend or disburse federal funds in connection with a federal election or for federal election activity in amounts subject to the limits, prohibitions and reporting requirements of the Act. 11 CFR 300.61.

*Nonfederal elections.* Federal candidates and officeholders can only solicit, receive, direct, transfer, spend or disburse funds in connection with a nonfederal election in amounts and from sources that are both consistent with state law and not in excess of the Act’s limits and prohibitions. However, if a federal candidate or officeholder is also a candidate for state or local office, then he or she may raise and spend nonfederal funds that only comply with state law, so long as the solicitation, receipt and spending of funds refers only to the state or local candidate and/or another state or local candidate for that same office. Individuals simultaneously running for federal and nonfederal office may only raise and spend federal funds for the federal election. 11 CFR 300.62 and 300.63.

*Attending, speaking or appearing as a featured guest at a fundraising event.* A federal candidate or officeholder may attend, speak or be a featured guest at a fundraising event for a state, district or local committee of a political party, including a fundraising event at which nonfederal funds or Levin funds are raised. The committees may advertise, announce or otherwise publicize that a federal candidate or officeholder will attend, speak or be a featured guest at the fundraising event. Candidates and federal officeholders may speak at such an event without restriction or regulation. 11 CFR 300.64.

*Tax-exempt organizations.* A federal candidate or officeholder may make a general solicitation on behalf of a tax-exempt organization, without limits on the source or amount of funds, if the organization does not make expenditures or disbursements in connection with federal elections, including the federal election activities listed below. Moreover, a candidate or office holder may make a general solicitation on be-

<sup>13</sup> In no case is a committee prohibited from responding to a request for information about a tax-exempt group that shares the party’s political or philosophical goals. 11 CFR 300.37(f).

<sup>14</sup> The regulations at 11 CFR 300.2(o) define an “Individual holding Federal office” as an individual elected to or serving in the office of the U.S. President or Vice President, or in the U.S. Congress.

half of an organization that conducts activities in connection with an election if:

- The organization's principal purpose is not to conduct election activities, including the federal election activities listed below; and
- The solicitation is not to obtain funds for activities in connection with an election, including federal election activities. 11 CFR 300.65(a) and (c). See 300.52(a)(2)(ii).

Under certain circumstances, a federal candidate or officeholder may also make a specific solicitation explicitly to obtain funds to pay for federal election activities conducted by a tax-exempt organization whose principal purpose is to undertake such activities. The federal election activities for which such a specific solicitation may be made are:

- Voter registration activity during the period that begins 120 days before the date of a regularly scheduled federal election and ends on the day of that election; and
- Voter identification, get-out-the vote activity or generic campaign activity conducted in connection with an election in which a federal candidate appears on the ballot (regardless of whether a state or local candidate also appears on the ballot). 11 CFR 300.65(c).

Such solicitations are permissible, however, only if they are made solely to individuals and the amount solicited does not exceed \$20,000 during any calendar year. 11 CFR 300.65(b) and (c).

Because the BCRA permits limited solicitations by federal candidates and officeholders only for the specific federal election activities listed above, these individuals *must not* make any solicitations on behalf of a 501(c) organization, or an organization that has applied for this tax status, for other types of election activities, such as public communications promoting or supporting federal candidates. 300.65(d).

*Determining "principal purpose."* A federal candidate or officeholder may determine a tax-exempt organization's "principal purpose" by obtaining a signed certification from an authorized representative of the organization stating that:

- The organization's principal purpose is not to conduct election activities, including the federal election activities listed above; and

- The organization does not intend to pay debts incurred from making federal election disbursements and expenditures (including debts for federal election activity) in a prior election cycle. 11 CFR 300.65(e).

### **State and Local Candidates**

The new regulations prohibit a state or local candidate or officeholder, or any agents acting on his or her behalf,<sup>15</sup> from spending nonfederal funds on a public communication that refers to a clearly identified federal candidate (regardless of whether a state or local candidate is also identified) and that promotes, supports, attacks or opposes a federal candidate. This prohibition applies whether or not the communication expressly advocates a vote for or against a federal candidate.

### **Tax-Exempt Organizations**

The Commission has also added a subpart to 11 CFR 300, subpart C, which addresses the BCRA's limits and prohibitions on the use of soft money from the perspective of certain tax-exempt organizations. The regulations under this subpart contain the restrictions on fundraising and donations by national party committees and state, district and local party committees and fundraising by federal candidates and officeholders that are also addressed in the subparts devoted to each of these types of entity. 11 CFR 300.50, 300.51 and 300.52.

### **Advisory Opinions Superseded**

These new and revised rules partially supersede the following advisory opinions relating to party office building funds: AOs 2001-12, 2001-1, 1998-8, 1998-7, 1997-14, 1993-9, 1991-5 and 1986-40. Other advisory opinions may no longer be relied upon to the extent that they conflict with the BCRA.

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<sup>15</sup> For example, this prohibition would apply to an individual who is both a federal office holder and a state candidate. The regulations at 11 CFR 300 subpart E do not apply to an association of state or local candidates or officeholders.

## Electioneering Communications

On October 10, 2002, the Commission approved final rules to implement provisions of the BCRA regulating television or radio communications that refer to a clearly identified federal candidate and are distributed to the relevant electorate within 60 days prior to the general election or 30 days prior to a primary.

The final rules and their Explanation and Justification were published in the October 23, 2002, *Federal Register* (67 FR 65190) and are available on the FEC web site at [www.fec.gov/pages/bcra/rulemakings/electioneering\\_communications.htm](http://www.fec.gov/pages/bcra/rulemakings/electioneering_communications.htm).

### “Electioneering Communication” Defined

An electioneering communication is any broadcast, cable or satellite communication which fulfills **each** of the following conditions:

*The communication refers to a clearly identified candidate.* A communication refers to a clearly identified federal candidate if it contains the candidate’s name, nickname or image, or makes any unambiguous reference to the person or their status as a candidate, such as “the Democratic candidate for Senate.” 11 CFR 100.29(b)(2).

*The communication is publicly distributed.* Generally, a communication is publicly distributed if it is disseminated for a fee by a television station, radio station, cable television system or satellite system.

In the case of Presidential and Vice-Presidential candidates, the communication is publicly distributed if it can be received by 50,000 or more people:

- In a state where a primary election or caucus is being held within 30 days;
- Anywhere in the United States during the period between 30 days prior to the nominating convention and the conclusion of that convention; or
- Anywhere in the United States within 60 days prior to the general election. 11 CFR 100.29(b)(3)(ii).

The Commission will publish on its web site a list of the applicable event in each state that triggers the 30-day period for Presidential and Vice-Presidential candidates.

Electioneering communications are limited to paid programming. The station must seek or receive payment for distribution of the communication. Both

infomercials and commercials are included within the definition. 11 CFR 100.29(b)(3)(i).

*The communication is distributed during a certain time period before an election.* Electioneering communications are transmitted within 60 days prior to a general election or 30 days prior to a primary election for federal office, including elections in which the candidate is unopposed. A “primary election” includes any caucus or convention of a political party which has the authority to nominate a candidate to federal office. 11 CFR 100.29(a)(2).

This condition regarding the timing of the communication applies only to elections in which the candidate referred to is running.

*In the case of Congressional candidates only, the communication is targeted to the relevant electorate.* The communication targets the relevant electorate if it can be received by 50,000 or more people in the district (in the case of a U.S. House candidate) or state (in the case of a Senate candidate) that the candidate seeks to represent. 11 CFR 100.29(b)(5).

The Federal Communications Commission (FCC) will provide on its web site the information necessary to determine whether a communication can be received by 50,000 people. Under interim rules promulgated by the FEC, if this information is not yet available, the person making a communication may argue that it could not have been received by 50,000 people of the relevant electorate.<sup>16</sup> To make this argument, they may:

- Use written documentation from the entity that transmitted the communication;
- Demonstrate that the communication is not distributed on a station located in a metropolitan area; or
- Demonstrate that the person possesses information which leads them to reasonably believe that the communication could not be received by 50,000 or more people in the relevant area.

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<sup>16</sup> The interim rules were published in the October 23, 2002, *Federal Register* (67 FR 65212). The full text of the final rules and the Explanation and Justification is available on the FEC web site at <http://www.fec.gov/register.htm>.



## Exemptions

The regulations at 11 CFR 100.29(c)(1) through (6) exempt certain communications from the definition of “electioneering communication:”

- A communication that is disseminated through a means other than a television station, radio station, cable television system or satellite system. For example, printed media—including newspapers, magazines, bumper stickers, yard signs and billboards—are not included, nor are communications over the Internet, e-mail or the telephone;
- A news story, commentary or editorial broadcast by a television station, radio station, cable television system or satellite system. However, the facilities may not be owned or controlled by a political party, political committee or candidate, unless the communication satisfies the exemption for news stories at 11 CFR 100.132(a) and (b);
- Expenditures or independent expenditures that must otherwise be reported to the FEC;
- A candidate debate or forum or a communication that solely promotes a debate or forum. Communications promoting the debate or forum must be made by or on behalf of the sponsor;
- Communications by state or local candidates that do not promote, support, attack or oppose federal candidates; and
- Communications by 501(c)(3) organizations. However, these organizations are still barred from participating in partisan political activity by the Internal Revenue Code. Making electioneering communications may jeopardize their tax-exempt status.

## Application

*Corporations and Labor Organizations.* Corporations and labor organizations are prohibited from making or financing electioneering communications. 11 CFR 114.2(b)(2)(iii). Further, they may not provide funds to any person if they know, have reason to know or are willfully blind to the fact that the funds are for the purpose of making electioneering communications. 11 CFR 114.14(a) and (c).

*Qualified Nonprofit Corporations.* Qualified nonprofit corporations (QNC) may make electioneering communications. To qualify, the entity must be a nonprofit corporation incorporated under 26 U.S.C.

§501(c)(4) that is ideological in nature and qualifies for exemptions under 11 CFR 114.10.

If a QNC makes electioneering communications that aggregate in excess of \$10,000 in a calendar year, it must certify that it is eligible for the QNC exemption. The certification must include the name and address of the corporation and the signature and printed name of the individual making the qualifying statement. It must also certify that the corporation meets the standards of a QNC, either by satisfying all of the qualifications at 11 CFR 114.10(c)(1)-(5), or through a court ruling pursuant to 11 CFR 114.10(e)(1)(i)(B). The certification is due no later than when the first electioneering communications report is required to be filed. 11 CFR 100.29(e).

QNCs still may not make contributions to federal political committees, nor may they accept any funds from corporations or labor organizations. 11 CFR 114.10(d)(2) and (3). Also, these regulations do not supercede any section of the Internal Revenue Code regarding 501(c)(4) organizations. 11 CFR 100.29(i).

*“527” Organizations.* The prohibition against the use of corporate funds to make or finance electioneering communications does not apply to certain organizations incorporated under 26 U.S.C. §527.

Incorporated state party committees and state candidate committees registered as 527 organizations are exempt from the corporate prohibition provided that the committee:

- Is not a political committee as defined at 11 CFR 100.5;
- Incorporates for liability purposes only;
- Does not use any funds donated by corporations or labor organizations to fund the electioneering communication; and
- Complies with the FEC’s reporting requirements for electioneering communications. 11 CFR 114.2(b)(2)(iii).

Unincorporated, unregistered “527” organizations may also make electioneering communications, subject to the disclosure requirements and the prohibition against corporate and labor funds.

*Individuals and Partnerships.* Individuals and partnerships may make or finance electioneering communications, provided that certain conditions are met. Those that accept funds provided by corporations or

labor organizations may not use those funds to pay for electioneering communications, nor may they give these funds to another to defray the costs of making an electioneering communication. 11 CFR 114.14(b).

They must be able to demonstrate through a reasonable accounting procedure that no prohibited funds were used to pay for the electioneering communication. 11 CFR 114.14(d).

### Disclosure Requirements

The BCRA requires that persons who make electioneering communications that in the aggregate cost more than \$10,000 must file disclosure reports with the FEC within 24 hours of the disclosure date. Reporting requirements for electioneering communications are included in the reporting rulemaking summarized on page 98.

## Contribution Limitations and Prohibitions

On October 31, 2002, the Commission approved final rules to implement provisions of the BCRA that:

- Increase the contribution limits for individuals and political committees;
- Modify recordkeeping requirements for political committee treasurers;
- Prohibit certain contributions and donations by minors; and
- Strengthen the current statutory prohibitions on contributions and donations by foreign nationals.

The final rules and their Explanation and Justification were published in the November 19, 2002, *Federal Register* (67 FR 69928) and are available on the FEC web site at [www.fec.gov/pages/bcra/rulemakings/part\\_110\\_rules.htm](http://www.fec.gov/pages/bcra/rulemakings/part_110_rules.htm).

### Contribution Limits Increased

On January 1, 2003, a number of contribution limits increased, and some of the limits became indexed for inflation.

*Contributions to candidates and political party committees.* The limits on contributions made by individuals and non-multicandidate committees increased to \$2,000 per election to federal candidates and \$25,000

per year to national party committees. 11 CFR 110.1(b)(1) and 110.1(c)(1). These limits will be indexed for inflation, as described below.

*Aggregate biennial contribution limitations for individuals.* The former \$25,000 annual limit for individuals has been replaced by a new biennial limit of \$95,000. This limit includes up to \$37,500 in contributions to candidate committees and up to \$57,500 in contributions to any other committees. The \$57,500 portion of the biennial limit contains a further restriction, in that no more than \$37,500 of this amount may be given to committees that are not national party committees. 11 CFR 110.5(b)(1).<sup>17</sup> The biennial limit will be indexed for inflation.

*Special contribution limit to Senate candidates.* The limit on contributions made to Senate candidates by the Republican and Democratic Senatorial campaign committees or the national committees of a political party, or any combination of these committees, will increase to \$35,000 per election cycle. 11 CFR 110.2(e)(1). This special limit will also be indexed for inflation.

*Indexing.* Under the old regulations, the coordinated party expenditure and Presidential candidate expenditure limits were indexed for inflation. The new rules extend the inflation indexing to contributions to candidates and national party committees by individuals and non-multicandidate committees, the biennial aggregate contribution limit for individuals and the limit on contributions to Senate candidates by certain national party committees. 11 CFR 110.17(a) and (b).

For the “per election” limit on contributions to candidates, the indexing changes will take effect on the day after the general election and remain in effect through the day of the next regularly scheduled general election. 11 CFR 110.1(b)(1)(ii). For example, an increase in the limit made in January 2005 would be

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<sup>17</sup> Under the so-called Millionaires’ Amendment, individual limits to Congressional candidates increase if the candidate’s opponent makes expenditures from his or her personal funds above a certain threshold. Contributions excess of the Act’s limits made under this provision will not be subject to the overall biennial limit. The Commission has address the Millionaires’ Amendment in a separate rulemaking, described on page 100.



## Contribution Limits

Donors		Recipients			Special Limits
	Candidate Committee	PAC <sup>1</sup>	State, District and Local Party Committee <sup>2</sup>	National Party Committee <sup>3</sup>	
<b>Individual</b>	\$2,000* per election <sup>4</sup>	\$5,000 per year	\$10,000 per year combined limit	\$25,000* per year	Biennial limit of \$95,000* (\$37,500 to all candidates and \$57,500 <sup>5</sup> to all PACs and parties)
<b>State, District and Local Party Committee<sup>2</sup></b>	\$5,000 per election combined limit	\$5,000 per year combined limit	Unlimited transfers to other party committees		
<b>National Party Committee<sup>3</sup></b>	\$5,000 per election	\$5,000 per year	Unlimited transfers to other party committees		\$35,000* to Senate candidate per campaign <sup>6</sup>
<b>PAC Multicandidate<sup>7</sup></b>	\$5,000 per election	\$5,000 per year	\$5,000 per year combined limit	\$15,000 per year	
<b>PAC Not Multicandidate<sup>7</sup></b>	\$2,000* per election	\$5,000 per year	\$10,000 per year combined limit	\$25,000* per year	

\*These limits will be indexed for inflation.

<sup>1</sup> These limits apply to both separate segregated funds (SSFs) and political action committees (PACs). Affiliated committees share the same set of limits on contributions made and received.

<sup>2</sup> A state party committee shares its limits with local and district party committees in that state unless a local or district committee's independence can be demonstrated. These limits apply to multicandidate committees only.

<sup>3</sup> A party's national committee, Senate campaign committee and House campaign committee are each considered national party committees, and each have separate limits, except with respect to Senate candidates—see Special Limits column.

<sup>4</sup> Each of the following is considered a separate election with a separate limit: primary election, caucus or convention with the authority to nominate, general election, runoff election and special election.

<sup>5</sup> No more than \$37,500 of this amount may be contributed to state and local parties and PACs.

<sup>6</sup> This limit is shared by the national committee and the Senate campaign committee.

<sup>7</sup> A multicandidate committee is a political committee that has been registered for at least six months, has received contributions from more than 50 contributors and—with the exception of a state party committee—has made contributions to at least five federal candidates.

effective from November 3, 2004, to November 7, 2006, and would only affect elections held after November 3, 2004. On the other hand, the indexing changes for the calendar-year-based limits will affect the calendar-based period that follows, or from January 1 of the odd-numbered year through December 31 of the next even-numbered year. 11 CFR 110.1(c)(ii), 110.2(e)(2) and 110.5(b)(3). The Commission will announce the amount of the adjusted expenditure and contribution limits in the *Federal Register* and on the FEC web site at [www.fec.gov](http://www.fec.gov). These indexing provisions will first be applied in 2005. 11 CFR 110.17(e).

The applicable expenditure and contribution limits will be adjusted according to the Consumer Price Index (CPI). The limits will be adjusted in odd-numbered years, and will be increased by the percentage difference between the CPI during the 12 months preceding the beginning of that calendar year and the CPI during the base year, which is 2001. The rules contain a rounding provision so that the inflation-adjusted amount will be rounded to the nearest multiple of \$100. 11 CFR 110.17(c) and (d).

### Redesignations and Reattributions

The Commission has streamlined its rules for designating contributions to a particular election. When an individual or non-multicandidate committee makes an excessive contribution to a candidate's authorized committee, the committee may automatically redesignate excessive contributions to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit. 11 CFR 110.1(b)(5)(ii)(B)(1)-(4).

In the case of an authorized committee of a Presidential candidate who accepts public funding for the general election, this presumption is available only to the extent that the candidate is permitted to accept contributions to a general election legal and accounting compliance (GELAC) fund.

The redesignation presumption also includes a backward-looking provision where an undesignated,

excessive contribution made after the primary, but before the general election, may be automatically applied to the primary if the campaign committee has more net debts outstanding from the primary than the excessive portion of the contribution. The redesignation, of course, may not cause the contributor to exceed any contribution limits. 11 CFR 110.1(b)(5)(ii)(C).

The candidate committee is required to notify the contributor of the redesignation by paper mail, e-mail, fax or other written method within 60 days of the treasurer's receipt of the contribution. Also, at the time of notification, the contributor must be given the opportunity to request a refund. 11 CFR 110.1(b)(5)(ii)(B)(5)-(6) and 110.1(b)(5)(ii)(C)(6)-(7).

Similarly, the Commission has also updated its rules regarding reattributions. When an excessive contribution is made via a written instrument with more than one individual's name imprinted on it, but only has *one* signature, the permissible portion will be attributed to the signer and the excessive portion may now be attributed to the other individual whose name is imprinted on the written instrument, without obtaining a second signature, so long as the reattribution does not cause the contributor to exceed any other contribution limit. 11 CFR 110.1(k)(3)(ii)(B)(1).

Political committees employing this presumption must notify all contributors in writing or via e-mail within 60 days of the committee treasurer's receipt of the check. At the time of notification, the committee must offer the contributor who signed the check a refund of the excessive portion. 11 CFR 110.1(k)(3)(ii)(B)(2) and (3).

*Recordkeeping.* To facilitate audits that determine compliance with the contribution limits, political committee treasurers are now required to maintain either a full-size photograph or a digital image of each check or written instrument by which a contribution of \$50 or more is made. 11 CFR 102.9(a)(4). Under a new section added to the rule outlining the explicit standard for acceptable accounting methods, the committee's records must demonstrate that, prior to the primary election, recorded cash on hand was at all times equal to or in excess of the sum of general election contributions received minus the sum of general election disbursements made. 11 CFR 102.9(e)(2). In

addition, for the political committee redesignations or reattributions to be effective, any signed writings from contributors that accompany the contribution and the committee's notices must be retained.

### **Prohibition on Contributions and Donations by Minors**

Under the new regulations, individuals who are under 18 years old are prohibited from making contributions to federal candidates and contributions or donations to committees of political parties 11 CFR 110.19(a) and (b). By including the term "donation" in this regulation, the prohibition encompasses both federal and nonfederal accounts of political party committees. Thus, this provision preempts state law to the extent that state law may permit minors to make donations to state, district and local party committees. In the Explanation and Justification for this rule, the Commission indicated that prohibiting donations by minors to all committees of state, district and local parties has a federal purpose because donations of nonfederal funds to state parties could otherwise be used, in part, to finance "federal election activities."<sup>18</sup>

The final rules make clear that individuals under 18 may, however, participate in volunteer work for federal candidates and political party committees and may continue to make contributions to unauthorized committees that are not political party committees, such as PACs, under certain conditions. See 11 CFR 110.19(c).

### **Prohibition on Contributions, Donations, Expenditures, Disbursements by Foreign Nationals**

New section 11 CFR 110.20 implements BCRA's prohibition on contributions, donations, expenditures and disbursements solicited,<sup>19</sup> accepted, received or made directly or indirectly by or from foreign nationals

in connection with state and local elections as well as federal elections. This ban applies to:

- Contributions and donations to political committees and organizations of political parties;
- Contributions and donations to party committee building funds;
- Disbursements for electioneering communications;<sup>20</sup> and
- Expenditures, independent expenditures, and disbursements in connection with any election.<sup>21</sup>

The Commission has included a knowledge requirement and knowledge standards with regard to the solicitation, acceptance or receipt of foreign national contributions or donations, determining that this would produce a less harsh result than a strict liability standard.

*Knowledge.* The final rules contain in the definition of "knowingly" three standards of knowledge that focus on the sources of funds received. Meeting any one of these standards would satisfy the knowledge element of this rule.

The first standard is actual knowledge that funds have come from a foreign source. The second is an awareness on the part of the person soliciting, accepting or receiving the contribution or donation of certain facts that would lead a reasonable person to conclude that there is a substantial probability that the contribution or donation is coming from a foreign source. The third standard is an awareness on the part of the person soliciting, accepting or receiving a contribution or donation of facts that should have prompted a reasonable inquiry into whether the source of the funds is a foreign national, but the person neglected to undertake such an inquiry. 11 CFR 110.20(a)(4)(i)-(iii).

The rule further outlines the types of information that should lead a recipient to question the origin of a contribution or donation under this section. They are:

- Use by a contributor or donor of a foreign passport or passport number;
- Use by a contributor or donor of a foreign address;

<sup>18</sup> "Federal election activity," is defined on page 77.

<sup>19</sup> The term "solicit" at section 11 CFR 110.20 has the same meaning as in section 11 CFR 300.2(m), "to ask another person to make a contribution or donation, or transfer of funds, or to provide anything of value, including through a conduit or intermediary."

<sup>20</sup> "Electioneering communication" is defined on page 85.

<sup>21</sup> An additional ban on foreign national donations to Presidential inaugural committees will be addressed in a later rulemaking.

- A check or other written instrument is drawn on an account or a wire transfer from a foreign bank; or
- Contributors or donors live abroad. 11 CFR 110.20(a)(5)(i)-(iv).

*Knowledge safe harbor.* The Commission has adopted a narrowly tailored safe harbor for the knowledge standards in 11 CFR 110.20(a)(4)(iii). A person shall be deemed to have conducted a reasonable inquiry into a possible foreign national contribution if he or she seeks and obtains copies of current and valid U.S. passport papers for U.S. citizens who are contributors or donors and to whom any of the above four types of information are applicable. 11 CFR 110.20(a)(7).

*Assisting foreign national contributions or donations.* The foreign national prohibition applies to a person who knowingly provides substantial assistance to foreign nationals in the making of contributions, donations, expenditures, independent expenditures and disbursements in connection with federal and nonfederal elections. This prohibition covers, but is not limited to, acting as a conduit or intermediary for foreign national contributions and donations. The prohibition does not, however, include those who perform strictly ministerial activity undertaken pursuant to the instructions of an employer, manager or supervisor. 11 CFR 110.20(g).

## Disclaimers, Fraudulent Solicitation, Civil Penalties and Personal Use of Campaign Funds

On November 25, 2002, the Commission approved final rules to implement provisions of the BCRA that:

- Specify new requirements for disclaimers accompanying radio, television, print and other campaign communications;
- Make changes regarding the personal use of campaign funds by candidates and federal officeholders;
- Allow non-incumbent federal candidates to pay themselves salaries from campaign funds if they follow a number of important conditions, as described below;
- Expand the scope of the statutory prohibition on fraudulent misrepresentation; and

- Increase the civil penalties for violating the prohibition on contributions made in the name of another.

The final rules and their Explanation and Justification were published in the December 13, 2002, *Federal Register* (67 FR 76962) and are available on the FEC web site at [www.fec.gov/pages/bcra/rulemakings/other\\_provisions.htm](http://www.fec.gov/pages/bcra/rulemakings/other_provisions.htm).

### Disclaimers

The new regulations replace pre-BCRA 11 CFR 110.11 with a new section of the same number that implements statutory changes to the disclaimer requirements. The disclaimer requirements in this new section apply to public communications, including any “communication by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising.” See 11 CFR 100.26. These requirements also apply to political committees’ web sites, to unsolicited e-mail of more than 500 substantially-similar communications and to any “electioneering communication.” All disclaimers must be “clear and conspicuous” regardless of the medium in which the communication is transmitted. A disclaimer is not clear and conspicuous if it is difficult to read or hear, or if its placement is easily overlooked. 11 CFR 110.11(c)(1).

*Basic Requirements.* Any public communication made by a political committee—including communications that do not expressly advocate the election or defeat of a clearly identified federal candidate or solicit a contribution—must display a disclaimer. 11 CFR 110.11(a)(1).

The disclaimer for a communication paid for and authorized by a candidate or candidate’s committee must state that the communication is paid for by the candidate’s committee. The disclaimer for a communication authorized by the candidate or candidate’s committee, but paid for by any other person, must state both who paid for the communication and that it was authorized by that candidate.

Communications not authorized by a candidate or his/her campaign committee, including any solicitation, must disclose the permanent street address, telephone number or web site address of the person

who paid for the communication, and also state that the communication was not authorized by any candidate. 11 CFR 110.11(b).

*Specific requirements for radio and television communications.* For radio and television communications authorized by a candidate, the candidate must deliver an audio statement identifying himself or herself, and stating that he or she has approved the communication. For a television communication, this disclaimer must be conveyed by either:

- A full-screen view of the candidate making the statement; or
- A “clearly identifiable photographic or similar image of the candidate” that appears during the candidate’s voice-over statement. 11 CFR 110.11(c)(3)(ii)(A) and (B).

Additionally, television communications must contain a “clearly readable” written statement that appears at the end of the communication for a period of at least four seconds with a reasonable degree of color contrast between the background and the disclaimer statement. The written statement must occupy at least four percent of the vertical picture height. 11 CFR 110.11(c)(3)(iii).

For a radio or television communication that is not authorized by a candidate, the name of the political committee or other person who is responsible for the communication and, if applicable, the name of the sponsoring committee’s connected organization is required in the disclaimer.<sup>22</sup>

In the case of a televised ad, the disclaimer must also include a statement that is conveyed by a full screen view of a representative of the political committee or other person making the statement, or a voice-over by the representative. In addition, the disclaimer must appear in writing at the end of the communication in a “clearly readable” manner with a reasonable degree of color contrast to the background, and it must be shown for a period of four seconds. 11 CFR 110.11(c)(4).

The regulations include safe harbor guidelines for television communication disclaimers:

- A still picture of the candidate shall be considered “clearly identifiable” if it occupies at least 80 percent of the vertical screen height; and
- Disclaimers that are printed in black text on a white background, as well as disclaimers that have at least the same degree of contrast with the background color as the degree of contrast between the background color and the color of the largest text used in the communication, will be considered “clearly readable.” 11 CFR 110.11(c)(3)(iii)(C).

*Specific requirements for printed communications.* Printed materials must contain a printed box that is set apart from the contents in the communication. The disclaimer print in this box must be of sufficient type size to be “clearly readable” by the recipient of the communication, and the print must have a reasonable degree of color contrast between the background and the printed statement. 11 CFR 110.11(c)(2)(ii) and (iii).

The regulations contain a safe harbor that establishes a fixed, twelve-point type size as a sufficient size for disclaimer text in newspapers, magazines, flyers, signs and other printed communications that are no larger than the common poster size of 24 inches by 36 inches. 11 CFR 110.11(c)(2)(i). Disclaimers for larger communications will be judged on a case-by-case basis.

The regulations additionally provide two safe harbor examples that would comply with the color-contrast requirement:

- The disclaimer is printed in black text on a white background; or
- The degree of contrast between the background color and the disclaimer text color is at least as great as the degree of contrast between the background color and the color of the largest text in the communication. 11 CFR 110.11(c)(2)(iii).<sup>23</sup>

### **Personal Use of Campaign Funds**

The new rules retain the existing prohibition against the personal use of campaign funds, as well as the so-called “irrespective test.” Candidates may not, therefore, use funds in a campaign account to “fulfill a

<sup>22</sup> In addition, communications transmitted through telephone banks, as defined by 11 CFR 100.28, must carry this same disclaimer statement.

<sup>23</sup> Please note these examples do not constitute the only ways to satisfy the color contrast requirement.



commitment, obligation, or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder." 11 CFR 113.1(g). Personal use of campaign funds includes, but is not limited to, payment of the following: household food items or supplies, clothing (except for clothing items of *de minimis* value), tuition payments (other than those associated with training campaign staff), mortgage, rent or utility payments, vacations and health or country club dues, unless they are part of a specific campaign activity that takes place on the premises. 11 CFR 113.1(g)(1)(i). The regulations have, however, been amended as follows.

*Candidate salaries.* The most notable change permits a candidate for federal office to receive a salary from his or her principal campaign committee.<sup>24</sup> According to the regulations, a salary may be received under the following conditions:

- The salary must be paid by the principal campaign committee only, and not any other authorized committees.
- Incumbent federal officeholders may not receive salary payments from campaign funds.
- The salary must not be paid before the filing deadline for access to the primary election ballot in the state in which the candidate is running for office, and salary may not be paid beyond the date when he or she is no longer a candidate.<sup>25</sup>
- The salary must not exceed the lesser of either the minimum annual salary for the federal office sought or what the candidate received as earned income in the previous year. Thus, any salary paid by the campaign committee will be equal to the lesser of these two amounts.
- Additional salary or wages received from other sources count toward the limit that may be received by the candidate.
- Payments of salary from the committee must be made on a pro-rata basis.

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<sup>24</sup> This amendment to the regulations supersedes Advisory Opinion 1999-1.

<sup>25</sup> The filing deadline for the primary election for federal candidates is determined by state law. In those states that do not have a primary election, candidates may not receive payment until after January 1<sup>st</sup> of each even-numbered year.

- Individuals who elect to receive a salary from their campaign committees must provide income tax records and additional proof of earnings from relevant years upon request from the Commission.

*Members of a candidate's family.* The new regulations amend the definition of a candidate's family at 11 CFR 113.1(g)(7). The previous regulations included as a member of a candidate's family, "a person who has a committed relationship with a candidate, such as sharing a household and having mutual responsibility for each other's welfare or living expenses." 11 CFR 113.1(g)(7)(iv). This section has been removed from the new regulations and replaced with a provision that includes any person who shares a residence with the candidate.

The Commission recognized that any person actually living with the candidate may pay a share of his or her living expenses without making a contribution to the campaign. The Commission further noted that the personal funds of a candidate would include his or her share of a joint account held with the person(s) with whom a residence is shared. However, gifts from the campaign to family members or anyone residing with the candidate are prohibited because they may be used to support personal expenses of the candidate. 11 CFR 113.1(g)(4).

*Recordkeeping of personal uses.* Because the regulations permit, in certain circumstances, the *de minimis* personal use of campaign funds, recordkeeping requirements for expenses that may be partly personal in nature have been added to the regulations. Such expenses may include, but are not limited to, the costs of vehicles, travel, meals and legal services.<sup>26</sup> The new provision requires that logs of these expenses be maintained to help the Commission determine on a case-by-case basis what portion was for personal use rather than for campaign related activity or officeholder duties.

*"Any other lawful purpose."* The BCRA deleted the phrase "for any other lawful purpose" from the list of

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<sup>26</sup> See 11 CFR 113.1(g)(1)(ii)(A), (B), (C), and (D) and 11 CFR 113.2.

permitted uses of campaign funds at 2 U.S.C. §439a. Therefore, the Commission has removed the section referring to “any other lawful purpose” regarding the use of campaign funds. Thus, in addition to paying expenses in connection with the campaign for federal office, campaign funds may be used only for non-campaign purposes included in an exhaustive list found at 11 CFR 113.2 (a), (b), and (c).

*Contributions to other candidates.* In a previous rulemaking, the Commission amended the regulations regarding contribution limits. The Commission has noted, however, that the contribution limits for authorized candidate committees has not changed as a result of the BCRA. Authorized committees may make contributions of \$1,000 or less to authorized committees of other federal candidates. U.S.C. §432(c)(3)(B). They may also make contributions to state and local candidates in furtherance of the federal candidate’s election. See 2 U.S.C. §439a(a)(1).

*Payment of campaign and officeholder expenses from campaign accounts.* Congress has deleted the phrase “in excess of any amount to defray” campaign expenses from 2 U.S.C. §439a. Therefore, the Commission has revised 11 CFR 113.1 and 113.2 so that officeholders may spend money from campaign accounts to pay for campaign and non-campaign expenses incurred as a consequence of holding federal office. Such expenses, according to the Commission, may be paid in any order.

### **Prohibitions on Fraudulent Solicitations**

The final rule prohibits a person from fraudulently misrepresenting that the person is speaking, writing or otherwise acting for, or on behalf of, a federal candidate or political party, or an employee or agent of either, for the purpose of soliciting contributions or donations. Persons are also banned from willfully and knowingly participating in, or conspiring to participate in, any scheme to do so. 11 CFR 110.6(b)(1) and (2). The regulation implementing this new provision, together with the pre-BCRA fraudulent misrepresentation regulation formerly found at 11 CFR 110.9(b), is combined in new 11 CFR 110.16.

### **Civil Penalties**

The BCRA amends the Federal Election Campaign Act (the Act) to impose greater penalties for knowing and willful violations of the Act regarding contributions made in the name of another.<sup>27</sup> The Commission has amended the regulations to impose a civil penalty for such violations that is not less than 300 percent of the amount of any contribution, but is no more than \$50,000 or 1,000 percent of the amount of the contribution involved. 11 CFR 111.24.

## **Coordinated and Independent Expenditures**

On December 5, 2002, the Commission approved final rules to implement provisions of the BCRA that:

- Define coordination between a candidate or a political party and a person making a communication;
- Define coordination between a candidate and a political party committee making a communication; and
- Set forth requirements for political party committees regarding the permitted timing of independent and coordinated expenditures, and transfers and assignments.

Note that new reporting requirements for certain independent expenditures are summarized on p. 98.

The final rules and their Explanation and Justification were published in the January 3, 2003, *Federal Register* (68 FR 421) and are available on the FEC web site at [www.fec.gov/pages/bcra/rulemakings/coordinated\\_independent\\_expenditures.htm](http://www.fec.gov/pages/bcra/rulemakings/coordinated_independent_expenditures.htm).

### **Coordination**

The BCRA repealed Commission regulations defining a “coordinated general public political communication” (old 11 CFR 100.23), and instructed the Commission to promulgate new rules on “coordinated communications paid for by persons other than candidates, authorized committees of candidates, and

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<sup>27</sup> The Act’s civil penalties are set forth in two tiers of monetary penalties at 2 U.S.C. §§437g(a)(5), (6), and (12). The first tier addresses violations of the Act, whereas the second tier speaks to “knowing and willful” violations of the Act. The Commission addressed changes to the second tier regarding contributions in the name of another.



party committees.” Pub. L. 107-155, sec. 214(c) (March 27, 2002).

New 11 CFR 109.20(a) implements 2 U.S.C. §§441a(a)(7)(B)(i) and (ii) by defining “coordinated” to mean “made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee, or their agents, or a political party committee or its agents.”<sup>28</sup>

The rules in section 109.21 define a “coordinated communication,” which is treated as an in-kind contribution to the candidate, authorized committee or party committee the communication is coordinated with, and must be reported as such. The new regulations provide for a three-part test to determine whether a communication is coordinated. Satisfaction of all of the three specific tests justifies the conclusion that payments for the coordinated communication are for the purpose of influencing a federal election. The three parts of the test consider:

- The source of payment;
- A “content standard” regarding the subject matter of the communication; and
- A “conduct standard” regarding the interactions between the person paying for the communication and the candidate or political party committee. 11 CFR 109.21(a).

*Source of Payment.* A coordinated communication is paid for by someone other than a candidate, an authorized committee or a political party committee. However, a person’s status as a candidate would not exempt him or her from the coordination regulations with respect to payments he or she makes on behalf of a different candidate. 11 CFR 109.21(a)(1).

*Content Standard.* The purpose of the four content standards is to determine whether the subject matter of a communication is reasonably related to an election. A communication that meets any of these four standards meets the content requirement:

- A communication that is an “electioneering communication”;
- A public communication that republishes, disseminates or distributes candidate campaign materials,

unless the activity meets one of the exceptions at 11 CFR 109.23(b) discussed in the conduct standards below;

- A public communication that expressly advocates the election or defeat of a clearly identified candidate for federal office; or
- A public communication that:
  - Refers to a political party or a clearly identified federal candidate;
  - Is publicly distributed or disseminated 120 days or fewer before a primary or general election or a convention or caucus with the authority to nominate a candidate; *and*
  - Is directed to voters in the jurisdiction of the clearly identified candidate or to voters in a jurisdiction where one or more candidates of the political party appear on the ballot. 11 CFR 109.21(c)(1)-(4).

*Conduct Standard.* Under the final rules, if one of the conduct standards is met, and the first two parts of the test (the content standards and the source of payment) are also met, then the communication is coordinated. 11 CFR 109.21(d). The conduct standards are as follows:

- *Request or Suggestion.* This test has two prongs, and satisfying either satisfies the test. The first prong is satisfied if the person creating, producing or distributing the communication does so at the request or suggestion of a candidate, authorized committee, political party committee or agent of any of these. The second prong of the “request or suggestion” conduct standard is satisfied if a person paying for the communication suggests the creation, production or distribution of the communication to the candidate, authorized committee, political party committee or agent of any of the above, and the candidate or political party committee assents to the suggestion. 11 CFR 109.21(d)(1).
- *Material Involvement.* This test is satisfied if a candidate, candidate committee, political party committee or an agent of any of these was “materially involved in decisions” regarding any of the following aspects of a public communication paid for by someone else:
  - Content of the communication;
  - Intended audience;

<sup>28</sup> “Agent” is defined at 11 CFR 109.3, for the purposes of part 109 only.

- Means or mode of the communication;
- Specific media outlet used;
- Timing or frequency of the communication; or
- Size or prominence of a printed communication or duration of a communication by means of broadcast, cable or satellite. 11 CFR 109.21(d)(2).
- *Substantial Discussion*. A communication meets this standard if it is created, produced or distributed after one or more substantial discussions between the person paying for the communication, or the person's agents, and the candidate clearly identified in the communication or that candidate's committee, that candidate's opponent or opponent's committee, a political party committee, or an agent of the above. A discussion would be "substantial" if information about the plans, projects, activities or needs of the candidate or political party committee that is material to the creation, production or distribution of the communication is conveyed to the person paying for the communication. 11 CFR 109.21(d)(3).
- *Employment of Common Vendor*. This conduct standard explains what a common vendor is and provides that the use of a common vendor in the creation, production or distribution of a communication satisfies the conduct standard if:
  - The person paying for the communication contracts with, or employs, a "commercial vendor" to create, produce or distribute the communication.<sup>29</sup>
  - The commercial vendor, including any officer, owner or employee of the vendor, has a previous or current relationship with the candidate or political party committee that puts the commercial vendor in a position to acquire information about the campaign plans, projects, activities or needs of the candidate or political party committee. This previous relationship is defined in terms of nine specific services related to campaigning and campaign communications. Note that these services would have to have been rendered during the election cycle in which the communication is first publicly distributed.
- The commercial vendor uses or conveys information about the campaign plans, projects, activities or needs of the candidate or political party committee, or information previously used by the commercial vendor in serving the candidate or political party committee, to the person paying for the communication, and that information is material to the creation, production or distribution of the communication. 11 CFR 109.21(d)(4).
- *Former Employee/Independent Contractor*. This standard applies to communications paid for by a person who has previously been an employee or an independent contractor of a candidate's campaign committee or a political party committee during the election cycle. The standard requires that the former employee use or convey material information about the plans, projects, activities or needs of the candidate or political party committee, or material information used by the former employee in serving the candidate or political party committee, to the person paying for the communication, and the information is material to the creation, production or distribution of the communication. 11 CFR 109.21(d)(5).<sup>30</sup>
- *Dissemination, distribution or republication of campaign material*. A communication that republishes, disseminates or distributes campaign material only satisfies the first three conduct standards on the basis of the candidate's conduct—or that of his or her committee or agents—that occurs after the original preparation of the campaign materials that are

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<sup>29</sup> The term "commercial vendor" is defined at 11 CFR 116.1(c).

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<sup>30</sup> A candidate or political party committee would not be held responsible for receiving or accepting an in-kind contribution that resulted only from conduct described in the fourth and fifth conduct standards. 11 CFR 109.21(d)(4) and (d)(5). However, the person paying for a communication that is coordinated because of conduct described in the fourth or fifth conduct standards would still be responsible for making an in-kind contribution for purposes of the contribution limitations, prohibitions and reporting requirements of the Act. 11 CFR 109.21(b)(2).

disseminated, distributed or republished. 11 CFR 109.21(d)(6).<sup>31</sup>

*Agreement or formal collaboration.* Neither agreement (defined as a mutual understanding on any part of the material aspects of the communication or its dissemination) nor formal collaboration (defined as planned or systematically organized work) is necessary for a communication to be a coordinated communication. 11 CFR 109.21(e).

*Safe harbor for responses to inquiries about legislative or policy issues.* A candidate's or political party committee's response to an inquiry about that candidate's or party's positions on legislative or policy issues, which does not include discussion of campaign, plans, projects, activities or needs, will not satisfy any of the conduct standards. 11 CFR 109.21(f)

*Party Coordinated Communications.* Although Congress did not specifically direct the Commission to promulgate a new regulation on coordinated communications paid for by political party committees, the Commission promulgated final rules to set forth the circumstances under which communications paid for by a party committee would be considered to be coordinated with a candidate, a candidate's authorized committee or their agents. These rules generally apply the same coordination standards that are applied to communications paid for by other persons. 11 CFR 109.37.

### **Coordinated and Independent Expenditures by Party Committees**

National, state and subordinate committees of political parties may make expenditures up to prescribed limits in connection with the general election campaigns of federal candidates without counting such

expenditures against the committees' contribution limits. 2 U.S.C. §441a(d). These expenditures are commonly referred to as "coordinated party expenditures," and the limits for these expenditures can be found in new section 11 CFR 109.32.<sup>32</sup>

*When coordinated party expenditures can be made.* Political party committees can make coordinated party expenditures in connection with the general election campaign before or after the party's candidate has been nominated. All pre-nomination coordinated expenditures continue to be subject to the coordinated party expenditure limitations, whether or not the candidate on whose behalf they are made receives the party's nomination. 11 CFR 109.34.

*Restrictions on making both independent expenditures and coordinated expenditures.* In BCRA, Congress prohibits political party committees, under certain conditions, from making both coordinated party expenditures and independent expenditures with respect to the same candidate, and from making transfers and assignments to other political party committees. 2 U.S.C. §441a(d)(4). Congress plainly intended to combine certain political party committees into a collective entity or entities for purposes of these restrictions. 2 U.S.C. §441a(d)(4)(B).

For the purposes of these restrictions only, all political parties established and maintained by a national political party (including all Congressional campaign committees), and all political committees established and maintained by a state political party (including any subordinate committee of a state committee), shall be considered to be a single political committee. 11 CFR 109.35(a).

Under the BCRA and the new regulations, a political party committee is prohibited from making any post-nomination coordinated party expenditure in connection with the general election campaign of a candidate at any time after that political party committee makes any post-nomination independent expenditure with respect to the candidate. 11 CFR 109.35(b)(1). Similarly, a political party committee is prohibited from making any post-nomination independent expenditure with respect to a candidate at any time after that political party committee makes a post-

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<sup>31</sup> Please note that the financing of the distribution or republication of campaign materials, while considered an in-kind contribution by the person making the expenditure, is not considered an expenditure by the candidate's authorized committee unless the dissemination, distribution or republication of campaign materials is coordinated. Additionally, republications of campaign materials coordinated with party committees are in-kind contributions to such party committees, and are reportable as such. 11 CFR 109.23(a).

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<sup>32</sup> These limits were formerly located at 11 CFR 110.7.

nomination coordinated expenditure in connection with the general election campaign of the candidate. 11 CFR 109.35(b)(2).

*Prohibited Transfers.* Congress provided in the BCRA that a “committee of a political party” that makes coordinated party expenditures with respect to a candidate must not, during an election cycle, transfer any funds to, assign authority to make coordinated party expenditures under 2 U.S.C. §441a(d) to, or receive a transfer of funds from, a “committee of the political party” that has made or intends to make an independent expenditure with respect to the candidate. 2 U.S.C. §441a(d)(4)(C). The final rules generally track this statutory language. 11 CFR 109.35(c).

*National party independent expenditures on behalf of Presidential candidates.* Prior to the enactment of the BCRA, the Commission’s rules prohibited a national committee of a political party from making independent expenditures in connection with the general election campaign of a Presidential candidate. See former 11 CFR 110.7(a)(5). However, section 441a(d)(4), added by the BCRA, precludes such a broad prohibition. As a result, the Commission has added a new section that specifically prohibits a national committee of a political party from making independent expenditures with respect to a Presidential candidate if it serves as the principal campaign committee or authorized committee of its Presidential candidate under 11 CFR 9002.1(c). 11 CFR 109.36.

## BCRA Reporting

On December 12, 2002, the Commission approved final rules on reporting requirements related to the BCRA, including:

- Reporting of independent expenditures;
- Reporting of electioneering communications;
- Quarterly reporting by the principal campaign committees of House and Senate candidates;
- Monthly reporting by national committees of political parties; and
- Reporting funds for state and local party office buildings.

The final rules and their Explanation and Justification were published in the January 3, 2003, *Federal*

*Register* (68 FR 404) and are available on the FEC web site at [http://www.fec.gov/pages/bcra/rulemakings/rulemakings\\_bcra.htm](http://www.fec.gov/pages/bcra/rulemakings/rulemakings_bcra.htm).

## Independent Expenditures

The BCRA requires political committees and other persons who make independent expenditures at any time during a calendar year—up to and including the 20<sup>th</sup> day before an election—to disclose this activity within 48 hours each time that the expenditures aggregate \$10,000 or more. This reporting requirement is in addition to the pre-BCRA requirement to file 24-hour notices of independent expenditures each time that disbursements for independent expenditures aggregate at or above \$1,000 during the last 20 days—up to 24-hours—before an election. 2 U.S.C. §§434(b), (d) and (g). The new rules address when and how such reports should be filed.

*Independent expenditures aggregating less than \$10,000.* Committees must report on Schedule E of Form 3X independent expenditures that aggregate less than \$10,000 with respect to a given election during the calendar year that are made up to and including the 20<sup>th</sup> day before an election. The report must be filed no later than the filing date of the committee’s next regularly scheduled report. 11 CFR 104.4(a) and (b)(1). Individuals other than political committees disclose on FEC Form 5 independent expenditures aggregating in excess of \$250 with respect to a given election during the calendar year that are made during this time period. The report must be filed by the filing deadline of the next report under the quarterly filing schedule. 11 CFR 109.10(b).

Both committees and individuals must file an additional report each time that independent expenditures made less than 20 days, but more than 24 hours, before an election aggregate in excess of \$1,000. These reports must be *received* by the Commission by the end of the day following the date that the communication is publicly disseminated. All individuals and committees, even those supporting or opposing Senate candidates, must file 24-hour notices of independent expenditures with the Commission. Electronic filers must file these reports electronically, and

paper filers may file by fax or e-mail. Additionally, electronic filers and paper filers may file 24-hour reports using the FEC web site's online program. 11 CFR 104.4(c), 109.10(d) and 100.19(d)(3).

*Independent expenditures aggregating \$10,000 and above.* Once an individual's or committee's independent expenditures reach or exceed \$10,000 in the aggregate at any time up to and including the 20<sup>th</sup> day before an election, they must be reported within 48 hours of the date that the expenditure is publicly distributed. All 48-hour reports must be filed with and *received* by the Commission at the end of the second day after the independent expenditure is publicly distributed. Electronic filers must file these reports electronically, and paper filers may file by fax or e-mail. 11 CFR 104.4(b)(2), 109.10(c) and 100.19(d)(3).

*Verification of independence.* All 24- and 48-hour reports must contain, among other things, a verification under penalty of perjury as to whether the expenditure was made in cooperation, consultation or concert with a candidate, a candidate's committee, a political party committee or an agent of any of these. 11 CFR 104.4(d)(1) and 109.10(e)(1)(v).

*Aggregating independent expenditures for reporting purposes.* Independent expenditures are aggregated toward the various reporting thresholds on a per-election basis within the calendar year. Consider, as examples, the following scenarios, all of which occur outside of the 20-day window before an election when 24-hour notices are required:

- If a committee makes \$5,000 in independent expenditures with respect to a Senate candidate, and \$5,000 in independent expenditures with respect to a House candidate, then the committee is not required to file 48-hour reports, but must disclose this activity on its next regularly-scheduled report.
- If the committee makes \$5,000 in independent expenditures with respect to a clearly identified candidate in the primary, and an additional \$5,000 in independent expenditures with respect to the same candidate in the general, then again no 48-hour notice is required and the expenditures are disclosed on the committee's next report.
- If the committee makes \$6,000 in independent expenditures supporting a Senate candidate in the primary election and \$4,000 opposing that Senate

candidate's opponent in the same election, then the committee must file a 48-hour report.

The date that a communication is publicly disseminated serves as the date that a person or committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amounts of \$1,000 or \$10,000. The calculation of the aggregate amount of the independent expenditures must include both disbursements for independent expenditures and all contracts obligating funds for disbursements of independent expenditures. 11 CFR 104.4(f).

### **Electioneering Communications**

The BCRA requires persons who make electioneering communications that aggregate more than \$10,000 to file disclosure statements with the Commission within 24 hours of the disclosure date. 2 U.S.C. §434(f)(1). The new regulations implement this provision, and require that the statement be *received* by the Commission by 11:59 on the day following the disclosure date. Electronic filers must file these reports electronically, and paper filers may file by fax or e-mail. 11 CFR 100.19(f).

The regulations define "disclosure date" as:

- The first date on which an electioneering communication is publicly distributed, provided that the person making the electioneering communication has made disbursement(s), or has executed contract(s) to make disbursements, for the direct costs of producing or airing<sup>33</sup> one or more electioneering communication aggregating in excess of \$10,000; or
- Any other date during the same calendar year on which an electioneering communication is publicly distributed, provided that the person making the communication has made disbursement(s) or executed contract(s) to make disbursements for the

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<sup>33</sup>The direct costs of producing or airing electioneering communications are defined as the costs charged by a vendor, such as studio rental time, staff salaries, costs of video or audio recording media and talent, or the cost of airtime on broadcast, cable and satellite radio and television stations, studio time, material costs and the charges for a broker to purchase the airtime. 11 CFR 104.20(a)(2).



direct costs of airing one or more electioneering communication aggregating in excess of \$10,000 since the most recent disclosure date. 11 CFR 104.20(a)(1)(i).

Disbursements made at any time for the direct costs of producing or airing the publicly-distributed electioneering communication, or other unreported electioneering communications, count toward the threshold. However, costs already reported for earlier electioneering communications are not included.

Each statement must disclose:

- The identification of the person who made the disbursement, or who executed a contract to make a disbursement, and the person's principal place of business if the person is not an individual;
- The identification of any person sharing or exercising direction or control<sup>34</sup> over the activities of the person who made the disbursement or executed the contract;
- The identification of the custodian of books and accounts from which the disbursements were made;
- The amount of each disbursement or amount obligated in excess of \$200 during the period covered by the statement, the date of the transaction and the person who received the funds;
- All clearly-identified candidates referred to in the electioneering communication and the elections in which they are candidates;
- The disclosure date; and
- The name and address of each donor who, since the first day of the preceding calendar year, has donated in the aggregate \$1,000 or more to the person making the disbursements, or to the separate segregated bank account if the disbursements were paid exclusively from that bank account. 11 CFR 104.20(c).

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<sup>34</sup> Persons sharing or exercising direction or control means officers, directors, executive directors or their equivalent, partners and, in the case of unincorporated organizations, owners of the entity or person making the disbursement for the electioneering communication. 11 CFR 104.20(a)(3).

### **Filing Frequency for House and Senate Committees and National Party Committees**

*House and Senate Candidates.* The BCRA requires that all principal campaign committees of House and Senate candidates file quarterly in non-election years as well as in election years. 2 U.S.C. §434(a)(2)(B). As a result, House and Senate campaign committees may no longer file on a semi-annual basis during non-election years. 11 CFR 104.5(a).

*National party committees.* Under the BCRA, national party committees must file on a monthly basis in all years. 2 U.S.C. §434(a)(4)(B). Thus, under the new regulations a national committee of a political party, including a national Congressional campaign committee, must always file monthly and may no longer file on a quarterly basis in election years and semi-annually in non-election years. 11 CFR 104.5(c)(4).

### **Funds for Party Office Buildings**

Commission regulations on nonfederal funds (or "soft money") provide that donations used by a state, district or local party committee for the purchase or construction of an office building are subject to state law if they are donated to a nonfederal account. However, if funds or things of value are contributed to or used by the party's federal account to buy or build an office building, then the amounts donated are contributions. 11 CFR 300.12 and 300.35. The new rules clarify that any funds or things of value received by a federal account and used for the purchase or construction of an office facility, regardless of any specific contributor designation, are contributions and not treated any differently from other funds or goods donated to the federal account. 11 CFR 104.3(g).

### **Millionaires' Amendment**

On December 19, 2002, the Commission approved interim final rules that increase individual contribution limits and coordinated party expenditure limits for certain candidates running against self-financed opponents. The rules address:

- Monetary thresholds that trigger the increased individual contribution and coordinated party expenditure limits;
- Computation formulas used to determine the application of the increased limits;
- The specific amounts of the increases in individual contribution limits;
- New reporting and notification requirements; and
- Repayment restrictions for personal loans from the candidate.

**Threshold Amounts**

The provisions of the BCRA’s Millionaires’ Amendment increase the individual contribution and coordinated party expenditure limits for House and Senate candidates whose opponents’ personal spending exceeds their own by more than certain threshold amounts. The difference between the candidates’ expenditures of personal funds can be reduced by a disparity in other campaign fundraising. The threshold amounts for House and Senate candidates differ. For House candidates, the threshold amount is \$350,000; for Senate candidates, it is two times the sum of \$150,000 plus an amount equal to the voting age population of the state in question multiplied by \$0.04.<sup>35</sup>

**Opposition Personal Funds Amount**

As noted above, opposition personal spending that exceeds the threshold amounts does not by itself trigger increased contribution limits. The regulations also take into account expenditures from the personal funds of the candidate seeking increased limits under the Millionaires’ Amendment as well as fundraising by the campaigns.

Campaigns must use the appropriate “opposition personal funds amount” formula to determine whether an opposing candidate has spent sufficient personal funds in comparison to the amounts raised by the campaigns to trigger increased contribution and coordinated party expenditure limits. The opposition personal funds formula takes half the difference between the gross receipts of the candidate and the gross

receipts of the opponent and subtracts that from the amount by which the opponent is outspending the candidate using their personal funds.<sup>36</sup> Hence, a candidate with a significant fundraising advantage over a self-financed opponent might not receive an increased contribution limit. In this way, the new rules avoid giving increased contribution limits to candidates whose campaigns have a significant fundraising advantage over their opponents.

**Increased Contribution Limits**

When a House candidate’s opposition personal funds amount exceeds the \$350,000 threshold:

- The contribution limits for the candidate triple; and
- The national and state party committees may make coordinated expenditures on behalf of the candidate that are not subject to the usual 2 U.S.C. §441a(d) limits.

For Senate candidates, the extent to which a candidate’s opposition personal funds amount exceeds the threshold determines the amount of the increase in contribution limits. If it exceeds:

- Twice the threshold,<sup>37</sup> then the contribution limits for the candidate are tripled;

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<sup>36</sup> Depending on the date of computation, the formula is either  $a - b$ ;  $a - b - ((c - d)/2)$ ; or  $a - b - ((e - f)/2)$ , where:

- $a$  = opponent’s personal funds spending;
- $b$  = candidate’s personal funds spending;
- $c$  = candidate’s receipts (contributions not from candidate);
- $d$  = opponent’s receipts (contributions not from opponent);
- $e$  = candidate’s receipts (contributions not from candidate);
- $f$  = opponent’s receipts (contributions not from opponent).

The values for  $c$  and  $d$  are determined on June 30 of the year before the election (report due on July 15), and the values for  $e$  and  $f$  are determined on December 31 of the year before the election (year-end report due on January 31). Prior to July 16 of the year before the election, values for  $c$ ,  $d$ ,  $e$ , and  $f$  are not included in the equations, and the “opposition personal funds amount” formula is  $a - b$ .

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<sup>35</sup> Differently formulated: Two times \$150,000 + (.04 x (voting age population)) = Senate threshold.

<sup>37</sup> \$300,00 + (\$0.08 x VAP).



- Four times the threshold,<sup>38</sup> then the contribution limits for the candidate are raised six-fold;
- Ten times the threshold,<sup>39</sup> then the contribution limits for the candidate are raised six-fold, and the national and state party committees may make unlimited coordinated expenditures on the candidate's behalf.

### **Avoiding Excessive Contributions Under the Increased Limits**

Campaigns that accept contributions under the increased limits must continually monitor the opposition personal funds amount to ensure their continued eligibility for the increased limits and to make sure that they have not accepted excessive contributions. Similarly, national and state party committees must monitor the opposition personal funds amount for campaigns in which they are making coordinated party expenditures in excess of the regular coordinated party expenditure limits (at 11 CFR 109.32(b)).

Senate candidates (and their authorized committees) must not accept and national and state party committees making coordinated party expenditures on behalf of Senate candidates must not make any contribution or coordinated party expenditure that causes the aggregate contributions accepted and coordinated party expenditures made under the increased limits to be greater than 110 percent of the opposition personal funds amount.

Similarly, House candidates (and their authorized committees) must not accept and national and state party committees making coordinated party expenditures on behalf of House candidates must not make any contribution or coordinated party expenditure that causes the aggregate contributions accepted and coordinated party expenditures made under the increased limits to be greater than 100 percent of the opposition personal funds amount.

### **Reporting and Notification**

In order to facilitate this continual monitoring of fundraising and personal spending by candidates and

party committees, new reporting and notification requirements have been added to the regulations.

At the outset, candidates must declare on their Statement of Candidacy (FEC Form 2) the amount by which their personal spending on the campaign will exceed the applicable threshold amount. 11 CFR 101.1(a). Also, to facilitate opposition personal funds calculations, by July 15 of the year before the election and January 31 of the year in which the election takes place, each principal campaign committee must file a report disclosing the aggregate gross receipts for the primary and general elections, and the candidate's aggregate contributions from personal funds for the primary and general elections (FEC Form 3Z-1). 11 CFR 104.19.

Additionally, a Senate candidate's principal campaign committee must notify the Secretary of the Senate, the Commission and each opposing candidate within 24 hours when the candidate makes an expenditure from personal funds that aggregates in excess of the threshold (FEC Form 10). 11 CFR 400.21(a). A House candidate's principal campaign committee must notify the Commission, each opposing candidate and the national party committee of each opposing candidate within 24 hours when the candidate makes an expenditure from personal funds that aggregates in excess of the threshold (FEC Form 10). 11 CFR 400.21(b).

From that time on, the committee must also notify all of the above-listed entities within 24 hours whenever the candidate makes an additional expenditure from personal funds in excess of \$10,000. 11 CFR 400.22. Both the initial and additional notifications must be made by faxing or e-mailing a copy of FEC Form 10 to all of the entities mentioned above.<sup>40</sup> 11 CFR 400.24.

Within 24 hours after they become eligible, candidates who qualify for increased coordinated party expenditure limits (or their principal campaign commit-

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<sup>38</sup> \$600,000 + (\$0.16 x VAP).

<sup>39</sup> \$1,500,000 + (\$0.40 x VAP).

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<sup>40</sup> Note that, for Senate candidates, the original Form 10 will be filed with the Secretary of the Senate in the manner that all forms are normally filed. Similarly, for House candidates, the original Form 10 will be filed electronically with the Commission.

tees) must file FEC Form 11 to inform their national and state party committees and the Commission of the opposition personal funds amount.

National or state political party committees that make coordinated expenditures on behalf of a candidate whose limits have been raised must notify the Commission and the candidate on whose behalf the expenditure is made within 24 hours, using Schedule F. 11 CFR 400.30(c)(2).

Senate candidates operating under the increased limits (or their principal campaign committees) must file FEC Form 12 within 24 hours after the aggregate amount of contributions accepted and coordinated party expenditures made under the increased limits reaches 110 percent of the opposition personal funds amount.

House candidates operating under the increased limits (or their principal campaign committees) must file FEC Form 12 within 24 hours after the aggregate amount of contributions accepted and coordinated party expenditures made under the increased limits reaches 100 percent of the opposition personal funds amount.

#### **Repayment of Personal Loans from Candidate**

Apart from the calculations and disclosure requirements surrounding the increased contribution limits, the new rules also restrict the repayment of loans made by the candidate to his or her committee. The new rules apply to all candidates, without regard to any of the Millionaires' Amendment provisions. For personal loans from the candidate to his or her authorized committee that aggregate more than \$250,000, the following rules apply:

- The committee may use contributions to repay the candidate for the entire amount of the loan or loans only if those contributions were made on or before the day of the election; and
- The committee may use contributions to repay the candidate only up to \$250,000 from contributions made after the date of the election.

11 CFR 116.11(b).

Furthermore, if the committee uses the amount of cash-on-hand as of the date of the election to repay the candidate for loans in excess of \$250,000, it must do so within 20 days of the election. 11 CFR

116.11(c). During that time, the committee must treat the portion of candidate loans that exceed \$250,000, minus the amount of cash-on-hand as of the day after the election, as a contribution by the candidate. 11 CFR 116.11(c).

#### **Additional Information**

These rules, and their Explanation and Justification, were published in the January 27, 2003, *Federal Register* (68 FR 3970) and are available on the FEC web site at <http://www.fec.gov/pages/bcra/rulemakings/millionaire.htm>.