

# **Federal Election Commission Annual Report 2003**



**Federal Election Commission  
Washington, DC 20463**

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June 1, 2004

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 29th Annual Report of the Federal Election Commission, pursuant to 2 U.S.C. §438(a)(9). The *Annual Report 2003* describes the activities performed by the Commission in the last calendar year.

During 2003, the Commission again completed a number of significant rulemakings, including new rules to implement the "Millionaires' Amendment" and reporting procedures under the Bipartisan Campaign Reform Act of 2002 and revised rules on party committee phone banks, multicandidate committee status, leadership PACs, candidate travel and the financing of Presidential candidates and conventions. In addition, the Commission issued 35 Advisory Opinions, doubling the number issued in 2002.

The Commission also initiated a broad review of its enforcement procedures. Commissioners testified on FEC enforcement procedures before the Committee on House Administration and held a public hearing to receive comments on those procedures. In addition, the Commission unveiled a web-based search tool to facilitate public examination of documents regarding closed Matters Under Review.

This report also includes the twelve legislative recommendations the Commission recently adopted and transmitted to the President and the Congress for consideration. We hope that Congress will consider adopting these proposals, which we believe would be beneficial 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 black ink, appearing to read "Bradley A. Smith". The signature is fluid and cursive, with a large loop at the end.

Bradley A. Smith  
Chairman

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# Executive Summary

Throughout 2003, the Federal Election Commission (FEC) continued to implement the newly enacted Bipartisan Campaign Reform Act of 2002 (BCRA) by issuing many new regulations and advisory opinions and by making internal adjustments to enforce the new law. The agency emphasized education of the regulated community and accessibility of information provided to the public.

As the agency worked to implement the new law, it also devoted considerable resources to defending its constitutionality. In May, the U.S. District Court for the District of Columbia issued an opinion in *McConnell v. FEC* that upheld some BCRA provisions, found others unconstitutional and determined some to be nonjusticiable. The court stayed its decision, pending an appeal to the Supreme Court. As the year drew to a close, the Commission celebrated a significant victory as the high court upheld the two principal features of the BCRA: the control of soft money and the regulation of electioneering communications. Only the BCRA's ban on contributions from minors and its provisions limiting party committees' ability to finance both coordinated and independent expenditures were struck down.

In addition to the BCRA litigation, another Supreme Court decision upheld the constitutionality of the Federal Election Campaign Act's ban on corporate contributions as applied to nonprofit advocacy corporations (so-called MCFL corporations). On June 16, 2003, the Court overruled the U.S. Court of Appeals for the 4<sup>th</sup> Circuit in *Beaumont v. FEC*, concluding that the prohibition on contributions by corporations is constitutional as applied to nonprofit MCFL-type advocacy corporations, such as North Carolina Right to Life, Inc.

The Commission continued to make its enforcement process more effective and efficient by reorganizing the Office of General Counsel and implementing changes in case management. Through its standard enforcement process, the FEC entered into conciliation agreements requiring the payment of more than \$2 million in total civil penalties during 2003. Some of these penalties were among the highest in the history of the Commission. In MUR 4931, for example, the agency entered into conciliation agreements that resulted in civil penalties of \$849,000—the highest cumulative civil penalty in FEC history. The

Commission obtained more in civil penalties in 2003 than in any previous year, including three of the ten largest penalties ever obtained by the FEC. The Commission also obtained more penalties in excess of \$50,000 than in the previous three years combined.

Other FEC programs intended to promote compliance and expedite the resolution of enforcement matters continued to pay dividends during 2003. The Alternative Dispute Resolution (ADR) program, which completed its first year as a permanent program at the Commission, had produced a total of 103 separate negotiated agreements based on 78 cases by the end of 2003. In addition, the FEC's Administrative Fine program continued to encourage compliance with the law's reporting deadlines by assessing civil money penalties for violations involving failure to file reports on time or at all, including failure to file 48-hour notices. During 2003, the Administrative Fines office processed 379 cases and collected a total of \$455,581 in fines for the U.S. Treasury. During the three years the program has been in place, the rate of timely filing has increased. For example, nine percent of the 2003 Year End Reports were filed late, a 10 percentage point improvement from 1999 when 19 percent of the Year End Reports were filed late.

The FEC also continued to promote compliance by educating the regulated community and by making information more accessible to the public. Commissioners and FEC staff hosted a full series of conferences in Washington, DC, and regional locations, as well as roundtable workshops, public speaking engagements and state outreach programs. The agency also posted the latest information on the BCRA in a special section of its web site. In an effort to improve public access to information from closed enforcement matters, the Commission unveiled the Enforcement Query System (EQS) on December 11, 2003. The program is a web-based search tool that allows users to find and examine public documents regarding closed Matters Under Review (MURs). Previously, these documents were available only on paper or microfilm at the Commission's offices in Washington. Initially, only those cases closed since January 2002 were available in EQS. The staff continues to add cases closed prior to 2002 as well as those closed in the current year. Other FEC compliance actions (Alternative Dis-

pute Resolution cases and Administrative Fines) will be included in the system at a later date. Additionally, the Commission began a redesign of the FEC web site in an effort to improve navigation and to provide easier access to the FEC's growing online services.

The agency also provides guidance to the regulated community through advisory opinions (AOs) and regulations. During 2003, the Commission issued 35 AOs—double the number issued in the previous year. Many of these involved novel issues under the BCRA. In addition, the FEC completed significant rulemakings regarding leadership PACs, candidate travel and phone banks. The agency also completed a comprehensive review and overhaul of its public financing rules for candidates and party committee conventions in time for the beginning of the 2004 Presidential election campaign season.

In December 2003, the President appointed Commissioners to the newly created Election Assistance Commission, which will assume duties previously performed by the FEC's Office of Election Administration (OEA). During its last year as a part of the FEC, the OEA completed a number of significant projects. Most involved implementing changes resulting from the Help America Vote Act that Congress enacted during 2002 to improve the administration of federal elections. In addition, the OEA sent a report to Congress that documented the impact of the National Voter Registration Act of 1993 (NVRA) during the 2001-2002 election cycle, and made recommendations for improvements in election administration. The OEA also revised the National Mail Voter Registration Form.

The material that follows details the FEC's activities during 2003. Supplemental information on most topics may be found in issues of the FEC's monthly newsletter, the *Record*, that were published during the past year.

# 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 federal campaign finance law. The financial reports of all federal political committees are accessible to members of the general public, providing an added 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.

Throughout 2003, the Commission demonstrated an ongoing commitment to increasing the availability and improving the accessibility of information and resources provided by the FEC. 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 2003, the disclosure of the sources and amounts of funds spent on federal campaign activity continued to be the focal point 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.

### Electronic Filing

The Commission's mandatory electronic filing program continued to pay disclosure dividends in 2003. Under the program, committees that receive contributions 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, including administrative fines. In order to file electronically, committee treasurers obtain passwords from the FEC and use software to fill out the reports, which they can send to the Commission via internet

<sup>1</sup> Mandatory electronic filing requirements do not apply to Senate committees.

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.

Throughout 2003, the Reports Analysis and Information Technology divisions worked to ensure that both the Commission's free FECFile electronic filing software and other commercially available software allowed users to comply with BCRA-related changes to reporting. Additionally, they made efforts to improve compliance by clarifying outgoing messages and error codes that may be received during filing attempts.

### 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, includes 51 states and territories that have 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 public access to the Commission's web site.

### Imaging and Processing Data

The Commission also continued its work in 2003 to make the reports it receives quickly and easily available to the public. The Commission scans all of the paper reports filed with the agency to create digital images of the documents, which are then accessible

<sup>2</sup> As of December 31, 2003, the FEC had certified that the following states and territories qualify for filing waivers: Alabama, Alaska, American Samoa, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, 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.

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 the 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. For electronic filings, this process is completely automated.

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

Year	Number of Detailed Entries*
1990	767,000
1991	444,000†
1992	1,400,000
1993	472,000
1994	1,364,000
1995	570,000
1996	1,887,160
1997	619,170
1998	1,652,904
1999	840,241
2000	2,390,837
2001	661,591
2002	2,281,963
2003	1,109,946

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

† The FEC began entering nonfederal account data in 1991.

### Public Access to Data

Due to modernized hardware, software and communications infrastructure, the Commission's retrieval system allows anyone with access to the Commission web site—[www.fec.gov](http://www.fec.gov)—to access the FEC's campaign finance disclosure database. The new system also allows users to perform complex search functions.

The Commission's disclosure database, which contains millions of transactions, enables researchers to select a profile of a committee's financial activity for each election cycle. Researchers can also access information on contributions by using a variety of search 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, access the disclosure reports and 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 continues 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.

The Commission has continued to make improvements to its disclosure system throughout the history of the agency. This year was no exception. Continued advances in computer technology greatly enhanced the disclosure process in 2003. As part of a continuing effort to improve the public's access to and understanding of FEC compliance actions, the Commission implemented several disclosure initiatives, including an interim policy regarding the placement of documents from closed enforcement cases on the public record and the launch of a new searchable MUR database. Together these initiatives represent an effort to improve the transparency of Commission actions by raising enforcement disclosure to the same high level the Commission has sought for campaign finance reports and other public information. 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).

### **Enforcement Query System**

On June 11, 2003, Chair Weintraub announced that the Commission would add a searchable MUR database to the agency's web site by the end of the year to improve public access to enforcement documents. FEC Staff Director James Pehrkon unveiled the agency's new Enforcement Query System (EQS) on December 11, 2003. The program is a web-based search tool that allows users to find and examine public documents regarding closed Commission enforcement matters. Using current scanning, optical character recognition and text search technologies, the system permits intuitive and flexible searches of case documents and other materials. Previously, these documents were available only at the Commission's offices in Washington, and only on paper or microfilm. Users of the system can search for specific words or phrases from the text of all public case documents. They can also identify single MURs or groups of cases by searching additional identifying information about cases prepared as part of the Case Management System. Included among these criteria are case names and numbers, complainants and respondents, timeframes, dispositions, legal issues and penalty amounts.

Initially, the EQS contained complete public case files for all MURs closed since January 1, 2002. In addition to adding all cases closed subsequently, staff will work to add cases closed prior to 2002. Other FEC compliance actions (Alternative Dispute Resolution cases and Administrative Fines) will be included in the system at a later date.

### **Disclosure Policy**

In December, the Commission also approved a Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files that identified the categories of records that will be released to the public once enforcement cases are closed. The new FEC policy provides for the release of additional documents when enforcement cases are closed. These will include original complaints or internal FEC referrals that initiate enforcement actions, along with reports and briefs from the Office of General Counsel (OGC) and responses to those reports and briefs by respon-

dents. The Policy Statement is an interim measure, and the Commission intends to conduct a rulemaking in 2004 to address materials to be placed on the public record.

### **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 find that a report contains errors or suggests violations of the law, they send the reporting committee a Request for Additional Information (RFAI). In 2003, the procedure for sending RFAI letters changed. Previously, committees were sent up to two RFAI letters and allowed up to 60 days total to respond to both letters. Over half of the RFAI letter recipients did not respond to the first letter. Under the new procedure, however, analysts now send only one letter requesting additional information, allowing respondents 30 days to reply. This is intended to prevent duplication and enable analysts more time to review reports. After receipt of the letter, the committee treasurer can 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.

RAD has also implemented a number of innovations to help its Campaign Finance Analysts handle an increasing number of campaign finance transactions. ICF Consulting assessed efficiencies in RAD's operations and issued a report on January 21, 2003, suggesting changes to improve efficiency. Based on those recommendations, the division strengthened management capabilities, assigning new assistant branch chiefs and implementing standardized training and practice in both the authorized and nonauthorized branches. The division's mentoring program continued to help newer staff learn from those with more experience, allowing the division to fulfill its functions with greater success. Additionally, committees are now encouraged to call their analysts directly rather than calling a central number to make the process more efficient. 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 seventh 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 key 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. Researchers may also access brochures on a variety of campaign finance related issues, read agency news releases, review federal 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 Guide series and other agency publications. Additionally, a section of the web site is devoted exclusively to the BCRA, providing links to the Federal Election Campaign Act as amended by the BCRA, summaries of major BCRA-related lawsuits and final rules and summaries.

As part of an ongoing endeavor to make the Commission more accessible to the public, Chair Weintraub initiated an effort to reconfigure the FEC web site. Throughout 2003, the Commission made considerable progress in redesigning the site to meet the needs of the regulated community, researchers and the general public. The completed project is expected to be unveiled in 2004.

### Telephone Assistance

A committee's first contact with the Commission is often a telephone call to the agency's toll-free information hotline. FEC staff members research relevant advisory opinions and litigation, as needed, to answer specific inquiries. Callers receive FEC documents, publications and forms at no cost. In 2003, the Information Division responded to 29,457 callers with com-

pliance questions. The monthly average was 2,455, peaking in July with 3,686 calls.

### Faxline

The Commission's automated Faxline allows the public to obtain publications or other documents quickly and easily. During the year, 336 callers sought information from the 24-hour Faxline and received 475 documents.

### Reporting Assistance

During 2003, 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 FEC's monthly newsletter, and the FEC's web site also listed reporting schedules and requirements, including new requirements imposed as part of the BCRA.

### Roundtables

As part of its education outreach activities, the FEC holds roundtable sessions for the regulated community. The maximum number of participants for the roundtables is typically 12 participants per session, but interest in the new BCRA provisions prompted the agency to expand the sessions to permit up to 35 attendees. The Commission hosted 6 roundtables during 2003, including sessions on new BCRA provisions regarding soft money, electioneering communications, contribution limits and prohibitions, coordinated and independent expenditures, and the so-called millionaires' amendment.

### State Outreach

During the summer of 2003, the Commission held informal state outreach workshops in Nashville, TN, and Austin, TX. The sessions were intended to help educate members of the regulated community in regions that were not within proximity of Washington, DC, or any of the scheduled regional conferences on the BCRA's changes to campaign finance law. More than 100 representatives from candidate committees,

separate segregated funds and state and local party committees attended these workshops.

### Conferences

Also during 2003, 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 three conferences for candidates, parties, corporations, trade associations, membership organizations and labor organizations. In addition, the agency held regional conferences in Chicago and Boston. The final conference was to have been held in San Diego, but was canceled due to hazardous conditions in the surrounding area. Registrants were offered a free one-day seminar in Los Angeles or discounted admission to a future conference in lieu of the canceled event.

The conferences featured hands-on workshops in the fundamental areas of campaign finance law. Additionally, Commissioners and staff conducted specialized sessions on the BCRA's changes to the federal campaign finance law and reporting requirements.

### Tours and Visits

In addition to holding conferences and roundtable sessions, the Commission welcomes individuals and groups who visit the FEC. Visitors to the Commission during 2003, including 105 groups and foreign delegations, listened to presentations about campaign finance law and, in some instances, toured the agency's office of Public Disclosure.

### Media Assistance

The Commission's Press Office continued to field questions from media representatives and navigate reporters through the FEC's vast pool of information. Press office staff responded to 8,389 calls and visits from members of the press and prepared 94 news releases during 2003. Many of these releases alerted reporters to new campaign finance data and contained statistical graphs and tables. As part of its efforts to improve disclosure regarding enforcement actions, the Commission expanded its news releases regarding completed enforcement actions. The new structure adds explanatory material to provide a more

complete description of the statutory framework of the allegations and the resolution of the matter.

### Publications

During 2003, the Commission produced a number of documents to help committees, the press and the general public understand the law and find information about campaign finance. Throughout the year, the Commission updated brochures to reflect changes from the BCRA. The following brochures were completed and made available to the public during the year: *Contribution Limits, FEC and the Federal Campaign Finance Law*, *Foreign Nationals*, *FAQ on the BCRA and Other New Rules* and *Special Notices on Political Ads and Solicitations*. In light of the pending litigation surrounding the new law, the agency did not go to the expense of printing these brochures, but rather made them available on the agency's web site.

Commission staff also worked to revise the *Campaign Guide* series to reflect the BCRA amendments, and expects to publish new guides in 2004. In the interim, the agency made available a Campaign Guide Supplement—a compilation of *Record* newsletter articles summarizing provisions of the BCRA.

As in past years, the Commission distributed 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 provides campaign finance statistics in graph and table format.

Although the concentration of the FEC is on federal campaign finance disclosure, the Commission also provides some state information to the public with the *Combined Federal/State Disclosure Directory 2003*. This manual directs researchers to federal and state disclosure offices that provide information on campaign finance, candidates' personal finances, lobbying, corporate registration, election administration and election results. In an effort to make Commission resources more accessible, the disclosure directory was available in print, online and on computer disks formatted for popular hardware and software. The online 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

During 2003, the FEC Office of Election Administration (OEA) completed a number of significant projects. Throughout the year, efforts were devoted to implementing changes that resulted from the Help America Vote Act (HAVA) passed during 2002 to improve election administration in federal elections.

On June 30, 2003, the Commission approved the Office of Election Administration's report to Congress documenting the impact of the National Voter Registration Act of 1993 (NVRA) during the 2001-2002 election cycle, and making recommendations for improvements in election administration. In the current report to Congress, the Commission reiterated its recommendations that:

- The U.S. Postal Service create a new class of mail for "official election material," provided at the most reduced rates possible for the first class treatment of this mail, and provide space in their postal lobbies free of charge to state and local election officials for voter registration material; and
- States develop and implement an on-going, periodic training program for relevant motor vehicle and agency personnel regarding their duties and responsibilities under the NVRA as implemented by the state's law.

In addition, the Office of Election Administration recently revised the National Mail Voter Registration Form. The form has been updated to reflect new requirements set forth in HAVA. The following are highlights of the changes that were made:

- Questions were added to the form asking applicants if they are a citizen of the United States, and if they will be 18 years of age on or before election day. Applicants are also informed that they should not complete the form if they checked "No" in response to either question.
- A statement was added informing the applicant that if the form is submitted by mail and he or she is registering for the first time, appropriate information must be submitted with the mail-in registration form in order to avoid additional identification requirements upon voting at the polls for the first time.
- These changes comply with revisions made to state law since the form was last revised in July 2002. (As

of this date, many states remain in the process of amending and updating their election laws and procedures to reflect the new provisions of HAVA.)

- All states that are covered by NVRA now allow individuals to print the form from the FEC web site, complete the application and mail it to their State election officer.

Finally, as 2003 came to an end, the OEA produced three new brochures on voting system usability. They are designed to meet the needs of vendors, buyers and election officials:

- "Developing a User-Centered Voting System" is written for voting system developers and helps them design systems that are easier for voters to use.
- "Procuring a User-Centered Voting System" is written to assist state and local officials in purchasing a system that is best suited for their constituents' needs. It helps them to identify those characteristics which make a voting system easier to use.
- "Usability Testing of Voting Systems" assists both developers and election officials in their evaluation of voting system usability. It provides guidance on how to test varied systems for ease of use.

The brochures were available through the Office of Election Administration, the Information Division and in PDF form on the Commission's web site.

## 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 violations and demonstrating to the regulated community that violations can result in civil penalties and remedial action.

### Regulations

Congressional action, judicial decisions, petitions for rulemaking or other changes in campaign finance law or practices may necessitate that the Commission update or create new regulations. Consequently, the FEC undertakes rulemakings when appropriate to revise existing campaign finance rules or create new ones.

Notices of proposed rules are published in the *Federal Register* and on the U.S. Government web site ([www.regulations.gov](http://www.regulations.gov)). The notice provides an opportunity for members of the public and regulated community to review the rules and submit written comments to the Commission. The Commission considers the comments and testimony when deliberating on the final rules in open meetings. The text of the final rules and corresponding Explanation and Justification are published in the *Federal Register* and sent to the House of Representatives and Senate once they have been approved. The Commission announces the effective date, which is at least 30 days after the notice of final rule in the *Federal Register*, in the Explanation and Justification of the final rules.

#### Rulemakings Completed in 2003

The Commission completed an historic set of rulemakings in 2002 regarding the Bipartisan Campaign Reform Act (BCRA). Throughout the beginning of 2003, the Commission successfully completed the following BCRA-related regulations:

- Rules regarding the reporting of electioneering communications and independent expenditures, monthly

reporting by national political party committees and quarterly reporting by principal campaign committees for the House of Representatives and Senate took effect February 3, 2003.

- Regulations that implement the BCRA's "Millionaires' Amendment," allowing increased contribution limits and other compensating advantages for certain candidates facing wealthy, self-financed opponents took effect on February 26, 2003.

In addition, the Commission completed work on the following new rules during 2003:

- Rules regarding the public financing of Presidential candidates and conventions were revised to administer more effectively the public financing programs and to reflect changes from the BCRA. The revisions took effect on November 28, 2003.
- Revised regulations regarding multicandidate political committee status, annual contributions by persons other than multicandidate committees to national party committees, contributions to candidates for more than one federal office and biennial contribution limits for individuals took effect December 15, 2003.
- New rules regarding the proper attribution of a party committee's or party organization's disbursements for telephone bank communications that refer to a clearly identified candidate took effect on December 15, 2003.
- Leadership PAC rules that address the relationship between authorized committees and unauthorized committees that are associated with a federal candidate or officeholder took effect on December 31, 2003.
- Candidate travel regulations that establish uniform payment rates for all federal election travel on either government or private aircraft and other conveyances took effect January 14, 2004.

#### Other Rulemakings in Process

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

- The Commission proposed new rules addressing when the proceeds of a political committee's rental, sale or exchange of its mailing list would be consid-

ered a contribution to the committee subject to the prohibitions and limitations of the FECA. The rule-making was terminated on November 14, 2003.

- The Commission received a petition for rulemaking regarding payroll deduction contributions to a trade association's separate segregated fund. The Commission was urged to allow trade associations' member corporations to use payroll deduction plans to collect such contributions.

## 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 on during an open meeting. A draft opinion must receive at least four favorable votes to be approved.

Many of the advisory opinions the Commission issued in 2003 dealt with issues related to the BCRA, including several concerning the solicitation of funds by federal candidates and officeholders. These and other advisory opinions issued during the year are explored in greater detail in Chapter 3 "Legal Issues."

## Enforcement

### The Enforcement Process

The Commission learns of possible election law violations in four ways. First, the agency's monitoring process may discover potential violations through a review of a committee's reports or through a Commission audit. Second, potential violations may be brought to the Commission's attention through the complaint process. This process enables anyone to file a sworn complaint alleging violations and explaining the basis for the allegations. Third, the referral process enables other government agencies to refer

possible violations to the FEC. Finally, any person or entity who believes it has committed a violation may bring the matter *sua sponte* to the Commission's attention.

Each of the preceding may lead to a Matter Under Review (MUR). Internally generated cases include those revealed in audits and reviews of reports and those referred to the Commission by other government agencies. Externally generated cases initiated 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 whether an investigation is warranted. If the Commission determines there is "reason to believe" a violation has been committed, respondents are notified and, if necessary, an investigation is started. The Commission has authority to subpoena information and ask a federal court to enforce a subpoena. After the investigation, the General Counsel sends a brief to the respondent, stating the issues involved and recommending whether the Commission should find "probable cause to believe" a violation has occurred. In addition to briefs prepared by the General Counsel, the Commission will consider respondents' reply briefs supporting their positions.

In a continuing effort to improve the efficacy of the agency, the FEC held a public hearing regarding the Commission's enforcement process on June 11, 2003. Representatives of national party committees, counsel for members of the regulated community and public interest groups testified at the hearing. The open forum enabled the Commission to hear testimony regarding issues that face members of the public, counsel who practice before the Commission and complainants and respondents who interact with FEC staff.

### Enforcement Initiatives

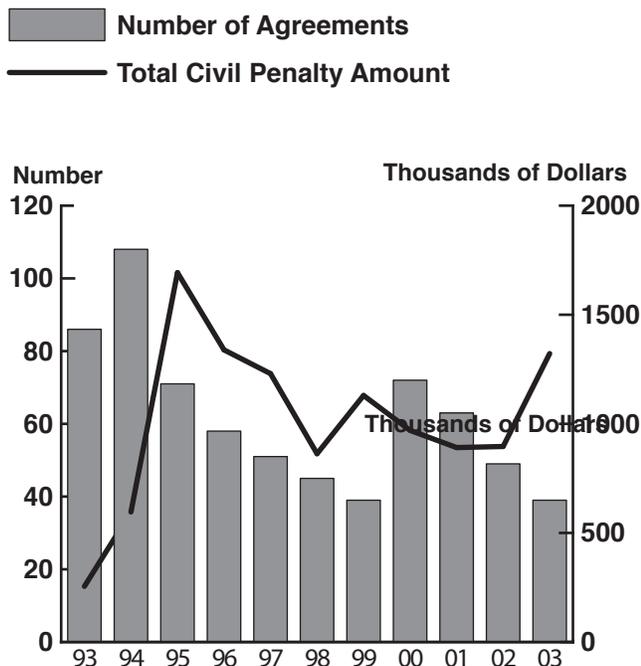
The Commission continued to focus its resources on more significant enforcement cases by continuing to use a prioritization system throughout 2003.

Now in its eleventh year of operation, the Enforcement Priority System (EPS) has helped the Commission manage a substantial caseload involving thousands of respondents and complex financial transactions. The FEC created and implemented the EPS 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 Commission uses formal criteria to decide which cases to pursue. The following are among the criteria considered by the EPS: intrinsic seriousness of the alleged violation, the apparent impact of the alleged violation on the electoral process, the topicality of the activity and the development of the law on the subject matter. The Commission continually reviews the EPS to ensure that its resources are used to the agency's best advantage.

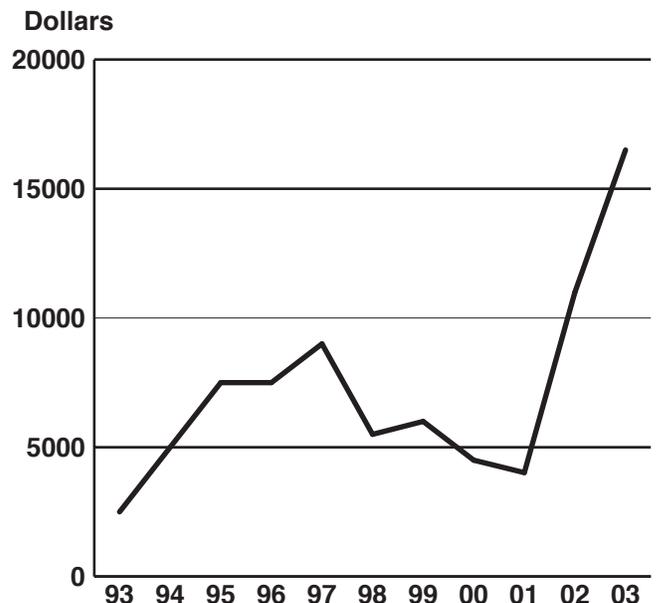
MUR 4931 and MUR 5229 were among the most significant cases concluded in 2003. MUR 4931, involving corporate contributions and contributions in the name of another, resulted in civil penalties of \$849,000—the highest cumulative civil penalty in the history of the Commission. MUR 5229 involved the untimely transfer of contributions by a collecting agent. The cumulative civil penalty of \$262,500 is the largest ever obtained in an enforcement matter arising from the review of political committee disclosure reports by the Commission's Reports Analysis Division. These and other MURs are further discussed in Chapter 3 "Legal Issues."

Chart 2-1

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

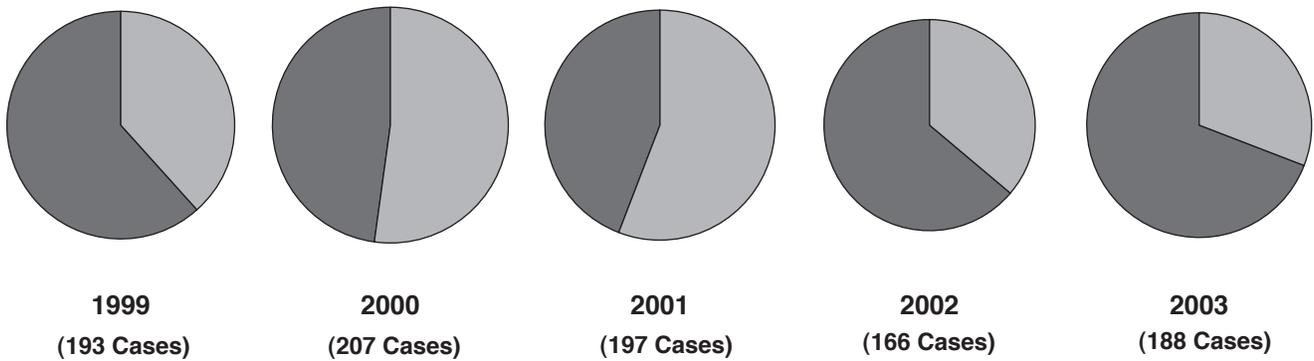


**CHART 2-2  
Median Civil Penalty  
by Calendar Year**



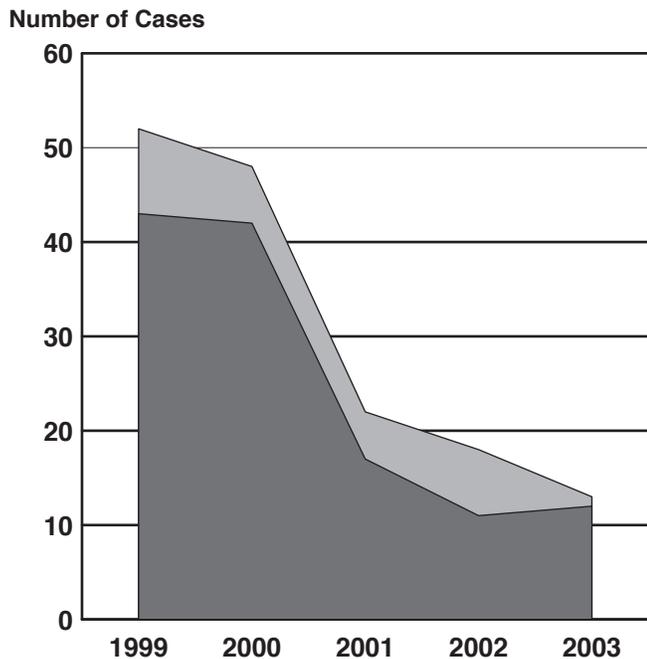
**CHART 2-3**  
Ratio of Active to Inactive Cases by Calendar Year

Active Cases  
Inactive Cases



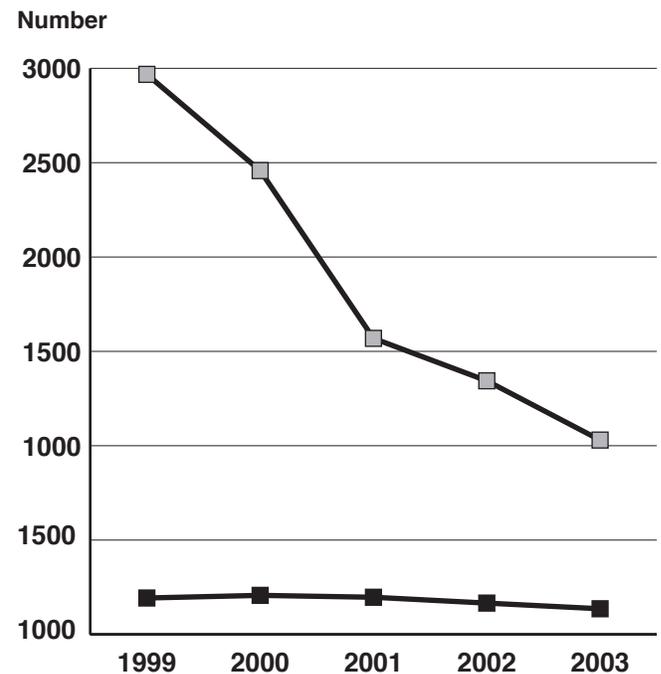
**CHART 2-4**  
Cases Dismissed Under EPS

Stale Cases  
Low-Rated Cases



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

Respondents  
Cases



## Administrative Fine Program

The Administrative Fine program began in July 2000 and was originally mandated to last only through December 31, 2001.<sup>2</sup> However, the program has continually proven to be an integral part of the Commission's effort to promote timely compliance with the law's reporting deadlines. The program allows the Commission to assess civil money penalties for violations involving:

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

### How the Program Works

Prior to the establishment of the Administrative Fine program, the Commission handled reporting violations under its regular enforcement procedures, as previously described in the chapter. The Administrative Fine program has created a streamlined process for these violations.

Administrative fine actions originate in the Reports Analysis Division (RAD). RAD monitors committees registered with the Commission 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 has 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 designated penalty or submit to the Office of Administrative Review a written response. The response should provide proper supporting documentation outlining why the committee believes the Commission's fine and/or penalty has been administered erroneously. 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.

The reviewing officer forwards a recommendation to the Commission along with all documentation after reviewing the RTB finding and the respondent's written submission. A respondent may submit written responses to the reviewing officer's recommendation. A final determination is then made by the Commission as to whether the respondent violated the law. The Commission assesses a civil money penalty if a violation has occurred and the respondent has not demonstrated the existence of "extraordinary circumstances."

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 an additional 30 days after receipt of the FEC's final determination to pay the penalty or to seek judicial review.

The Commission may transfer cases to the U.S. Department of Treasury for collection when a respondent fails to pay the monetary penalty or to seek judicial review after a final determination has been made. 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 §437 g(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;
- The amount of financial activity in the report;
- Prior civil money penalties for reporting violations.

### Administrative Fines in 2003

During 2003, the Commission processed 379 cases and collected a total of \$455,581 in fines. Overall, the FEC publicly released a total of 862 cases by the close of 2003, with penalties totaling \$1,155,877.

Throughout the year, all but one of the court cases challenging the Commission's final administrative fine determination were resolved in the Commission's favor. See *Lovely v. FEC*, 2004 WL 424034 (D.Mass. Mar 09, 2004).

<sup>2</sup> As part of the FY 2004 appropriations process, Congress extended it to cover reporting periods through December 31, 2005.

## Alternative Dispute Resolution Program

In 2003, the Alternative Dispute Resolution (ADR) program completed its first year as a permanent program at the FEC. The program was established in October of 2000 as a pilot to determine the viability of using ADR procedures to address and resolve campaign finance law violations. One primary goal of the program is to expedite the resolution of enforcement matters through expanded use of negotiations with respondents. The significance of the program is reflected in the procedures adopted during the year by the Reports Analysis and Audit Divisions that enable cases to be referred to ADR without being reviewed by the Office of General Counsel.

Not all cases are eligible for the ADR program. Cases may be assigned to the program after they have been reviewed by the Office of General Counsel and the ADR Office to determine suitability. Cases will be excluded from ADR consideration under the following circumstances:

- The case raises issues requiring a definitive resolution for precedential value;
- The case raises issues that bear on government policy;
- The cases effect other persons or organizations that are not parties to the proceeding; and/or
- The matter would benefit from a full public record of the proceeding.

Additionally, internal factors help determine whether a case is appropriate for ADR and are addressed on a case-specific basis.

The goal of ADR negotiations is to reach an expeditious resolution through mutually agreeable terms which promote compliance with the Act and Commission regulations. Mediation to resolve a negotiation impasse is available by mutual agreement between the respondent(s) and the Commission representative. Negotiations reached through direct and, when necessary, mediated negotiations are submitted to the Commission for final approval. None of the cases have yet required mediation.

Since the inception of the program, the Office has processed 149 cases, of which 58 percent were accepted into ADR. The remaining cases were either

deemed inappropriate for ADR or involved respondents who rejected the ADR option. Seventy-seven percent of the total caseload arose from complaints filed with the Commission. The remainder originated as referrals from the Reports Analysis Division, Audit or *sua sponte* submissions. Cases not assigned to ADR were returned to OGC for processing or dismissed. At the close of 2003, 86 cases assigned to ADR during the program's tenure had produced 103 separate negotiated agreements based on 78 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 8 cases were in various stages of negotiations at the close of the year.

The Office completed the cases in an average of 118 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.

## Audit

Over the past several years, the Audit Division has worked to develop a stand-alone Title 2 audit function and to increase the audit presence in the regulated community. Since the mandatory audits of publicly funded Presidential campaigns have traditionally required a large portion of the Division's resources, relatively few other audits could be accomplished. However, with the increased use of computer technology, including electronic filing of disclosure reports, some streamlining of audit procedures, the Division's reorganization and the addition of modest staff resources, progress has been made.

In the 1998 election cycle the Division audited 35 non-Presidential committees (Authorized and Non-Authorized combined). In the 2000 election cycle—a Presidential election cycle—the number rose to 39, an 11 percent increase. In the 2002 election cycle the number will be approximately 55, a 57 percent increase over 1998 and a 41 percent increase over the 2000 election cycle.

An increased audit presence not only contributes to the Commission's enforcement efforts, but also encourages voluntary compliance among the regulated community. Furthermore, the broader scope of the audit presence provides the Commission with information that can be used to refine internal procedures and regulation.

## Chapter Three Legal Issues

The FEC is the independent regulatory agency responsible for interpreting, administering and enforcing the Federal Election Campaign Act (FECA/the Act). As part of this task, the Commission promulgates regulations implementing the Act's requirements and issues advisory opinions that apply the law to particular circumstances brought forth by requesters for official determination by the FEC. Additionally, the Commission has jurisdiction over the civil enforcement of the Act. Throughout 2003, the Commission continued to face legal issues and judicial challenges related to the Bipartisan Campaign Act of 2002 (BCRA). This chapter sets forth major legal issues considered by the FEC in rulemakings, advisory opinions, litigation and enforcement actions in 2003.

### BCRA Challenges

#### ***McConnell v. FEC***

Most provisions of the BCRA took effect on November 6, 2002. As soon as the BCRA was enacted in March 2002, however, a number of parties filed challenges to the constitutionality of several BCRA provisions. Senator Mitch McConnell and others alleged that aspects of the BCRA violated the First, Fifth and Tenth Amendments and the principles of federalism. The National Rifle Association's complaint alleged similar constitutional violations resulting from the BCRA's limits and prohibitions on electioneering communications. These cases were consolidated around *McConnell v. FEC* and heard by a three-judge panel of the U.S. District Court for the District of Columbia. On May 2, 2003, the District Court determined that certain provisions were constitutional, while a number of others were unconstitutional or nonjusticiable. The District Court issued a stay of its ruling on May 19, 2003, while the case received an expedited appellate review by the Supreme Court.

On December 10, 2003, the Supreme Court issued a ruling upholding the two principal features of the BCRA: the control of soft money and the regulation of electioneering communications. The following provisions were upheld by the Court:

- National party committees' use of soft money;
- State and local party committees' use of soft money;
- Party solicitations for and donations to 501(c) and 527 organizations;
- Federal candidates' and officeholders' solicitation, direction, transfer and use of soft money;
- State and local candidates and officeholders' use of soft money for public communications that promote or oppose federal candidates; and
- Electioneering communications.

The Court found unconstitutional the BCRA's ban on contributions from minors and the so-called "choice provision," which provides that a party committee cannot make both coordinated and independent expenditures on behalf of a candidate after that candidate's general election nomination.<sup>1</sup> The Supreme Court's decision affirmed in part and reversed in part the U.S. District Court for the District of Columbia's decision in this matter. For additional information, please consult the FEC's 2004 edition of *Court Case Abstracts*.

### Soft Money

The BCRA prohibits national party committees and federal candidates and officeholders from raising funds not subject to the prohibitions, limits and reporting requirements of the Act, i.e. nonfederal funds or "soft money." 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 require parties to finance these activities using more federally permissible funds. In addition, the rules provide for a special category of funds, called "Levin funds," that may be used, usually in allocation with federal funds, by state and local party committees for certain federal election activities. These provisions were among those challenged in litigation, but ultimately upheld by the Supreme Court. In addition to judicial review of these rules, the Commission was asked to issue a

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<sup>1</sup> The Court additionally ruled on a number of other challenges from the plaintiffs, including finding their challenge to the so-called Millionaires' Amendment to be nonjusticiable.

number of advisory opinions regarding the application of the new soft money provisions.

### ***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 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.

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.

### **Advisory Opinions Involving Federal Candidates and Officeholders**

During 2003, the Commission issued a number of advisory opinions regarding the solicitation of non-federal funds by federal candidates and officeholders and agents acting on their behalf. Generally, these opinions permitted the aforementioned individuals to attend and speak at events where nonfederal funds were raised. In some cases, however, the candidates or officeholders were required to issue a disclaimer indicating that they were not soliciting any funds from sources or in amounts that would be impermissible under federal law.

### ***Solicitation for Nonfederal Elections***

In AO 2003-3, for example, the Commission determined that Representative Eric Cantor could solicit donations to state or local candidates as long as the funds solicited were within the limitations and prohibitions of the Act. To ensure compliance, the solicitations would need to include language informing potential donors that Representative Cantor would only be soliciting funds within the aforementioned limitations and prohibitions.

In AO 2003-12, the Commission went a step further, concluding that a state referendum committee established by Representative Jeff Flake could only raise and spend funds within the limits and prohibitions of the Act. See 2 U.S.C. §§441(e)(1) and 441a(a)(1), (2) and (3). Based on Representative Flake's connection to the committee, its work concerning the ballot initiative and its voter registration, get-out-the-vote and advertising that clearly identifies federal candidates would all be considered in connection with an election.

AO 2003-10, dealt with questions concerning fundraising by a candidate's agent. The Commission determined that Rory Reid, a Commissioner of Clark County, Nevada, and son of U.S. Senator Harry Reid, could raise nonfederal funds for the Nevada State Democratic Party without being considered an agent of Senator Reid, even if he had acted and continued to act as the Senator's fundraising agent in other circumstances. Commissioner Reid's fundraising activities would only be attributed to a federal candidate or officeholder if he is acting on the actual authority, express or implied, of that candidate or officeholder.

### ***Federal Officeholder's Appearance in Nonfederal Candidate's Ad***

Under the BCRA, candidates for state or local office must use only federal funds to pay for a public communication that refers to a clearly identified federal candidate and promotes, supports, attacks or opposes any candidate for federal office. 11 CFR 300.71. Nonfederal funds (i.e., funds that do not comply with the limits and prohibitions of the Act) may not be used to pay for such an advertisement. 2 U.S.C. §441i(f). A state or local candidate may spend nonfederal funds for a public communication in connection

with an election for state or local office that refers to a federal candidate so long as the communication does not promote, support, attack or oppose any candidate for federal office. 11 CFR 300.72.

In AO 2003-25, the Commission concluded that U.S. Senator Evan Bayh's appearance in a television advertisement for Jonathan Weinzapfel, a mayoral candidate in the city of Evansville, Indiana, did not promote or support Senator Bayh; accordingly, the Weinzapfel Committee could use nonfederal funds to pay for the advertisement. In addition, the Commission concluded that the ad was not an in-kind contribution because it did not meet any of the content standards of the Commission's coordination regulations (the communication was not an electioneering communication, it did not contain express advocacy related to the election or defeat of a federal candidate, it was not the republication of Senator Bayh's campaign materials, and it did not air less than 120 days before an election where he appeared on the ballot). 11 CFR 109.21.

#### ***Solicitation for Membership Organizations***

In addition to addressing whether federal candidates and officeholders may solicit funds in connection with nonfederal elections, the Commission also addressed whether they may solicit funds for nonprofit membership organizations. In AO 2003-5, the Commission determined that a federal candidate or officeholder may perform limited activity for a membership organization. The National Association of Home Builders of the United States (NAHB), and its separate segregated fund (SSF), BUILD-PAC, hold events in conjunction with NAHB's annual convention that raise money for BUILD-PAC and raise funds and awareness for NAHB's "Voter Mobilization" program. According to the opinion issued by the Commission, the federal officeholder or candidate may be listed as a featured speaker, attend the organization's meetings

and the members' sporting event and make specific solicitations for the Voter Mobilization program.<sup>2</sup>

#### ***Solicitation for Legal Expenses***

In AO 2003-15, the Commission determined that donations to a legal expense trust fund established by U.S. Representative Denise Majette for the sole purpose of defending against a lawsuit challenging Georgia's open primary election system are not subject to the limits, restrictions and reporting requirements of the Act, because the donations are not in connection with a federal election. The Commission found no indication in the legislative history of the BCRA that Congress intended the new fundraising restrictions to change longstanding interpretations found in Congressional policy and Commission advisory opinions concerning legal defense funds. In fact, after it enacted the BCRA, the U.S. House of Representatives adopted a House Rule that permits Members to accept donations for their legal expense funds subject to certain restrictions. H.R. Res. 5, 108<sup>th</sup> Cong. (2003).

#### ***Solicitation for Scholarship Fund***

In AO 2003-20, the Commission concluded that U.S. Representative Silvestre Reyes could solicit donations for a scholarship fund established in his name by the Hispanic College Fund, Inc., a nonprofit corporation. The amounts raised by Representative Reyes on behalf of the scholarship fund will not be used in connection with a federal or nonfederal election and, thus, are not subject to the limits, prohibitions and reporting requirements of the Act.

#### ***Advisory Opinions Involving National Party Committees***

On November 6, 2002, provisions of the BCRA took effect that banned national party committees

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<sup>2</sup> The Commission determined that a plan to invite the Secretary of Housing and Urban Development to an event is not subject to the limitations of the BCRA or the Act, because the Secretary is not a federal candidate or elected officeholder and, as such, is not subject to the Act's provisions regarding participation at events and solicitations. 11 CFR 100.3 and 100.4.

from soliciting, receiving, directing, transferring or spending nonfederal funds. 2 U.S.C. §441i(a) and 11 CFR 300.10(a). Prior to the BCRA, national party committees could raise and spend nonfederal funds using separate nonfederal accounts. During 2003, the FEC issued the following advisory opinions concerning the soft money prohibition and national party committees.

***Lease of Mailing List and Sale of Advertising Space and Trademark License***

In AO 2002-14, the Commission concluded that the national committee of the Libertarian Party of the United States, the Libertarian National Committee, Inc. (LNC), could, under the circumstances presented, rent its mailing list at the usual and normal charge in a *bona fide* arm's length transaction without the rental payments resulting in a contribution or donation to the LNC. As a result, rental payments could come from sources otherwise prohibited from contributing to a national party committee and in amounts in excess of the contribution limits. Receipts from rental payments would be considered federal funds usable by the LNC for any purposes permitted under the Act and Commission regulations. Likewise, the LNC may exchange its mailing lists, or portions of the lists, of equal value with any outside organization, provided that the lists or list portions that are exchanged are of equal value. (See discussion of AO 2003-19 below.)

The Commission also considered the sale of party trademarks and advertising space in the party's publication. Unlike with mailing lists, it is difficult, if not impossible, to determine the fair market value for advertising space in the Libertarian Party News and for the licensing of the Libertarian Party trademarks. The sale of advertising space in a political committee's newsletter is also inherently susceptible to use for political fundraising rather than for commercial purposes. As a result, the Commission concluded that payments for either advertising space or trademark licensing would be treated as a contribution in its full amount and subject to the Act's limits and prohibitions.

***Affinity Credit Card Program***

The Commission concluded in AO 2003-16 that Providian National Bank (Providian) may offer an affinity credit card program (the Affinity Program) giving credit card holders the option of making political contributions to a national party committee using rewards and rebates that cardholders have earned through the use of their credit cards. The proposed program will not result in any prohibited contributions under the Act.

Unlike previous proposed credit card arrangements that were not approved by the Commission, Providian's Affinity Program included a rebate credit card and bonus feature. Cardholders may choose to keep for themselves the rebates and bonuses they accumulate by using their card through Providian or to forward them to the national party committee.

***National Party Committee's Sale of Office Equipment***

According to AO 2003-19, the Democratic Congressional Campaign Committee (DCCC) may sell its used office equipment and furniture to corporations, labor organizations and other sources prohibited from contributing to a national party committee.

In the past, the Commission has used certain criteria to determine whether a market transaction by a national party committee would constitute a prohibited receipt of funds. See AO 2002-14. Applying a similar analysis to this case, the DCCC may sell its office equipment and furniture at a price that does not exceed the usual and normal charge because:

- The goods were purchased for everyday business and not as a means of raising funds;
- The goods have an ascertainable market value; and
- It is an isolated disposal of unwanted and depreciated committee assets, and thus is not inherently susceptible to use for political fundraising.

In addition, to ensure that the assets are sold for the usual and normal charge, the sale may not be advertised in any contribution solicitation.

Payments received through these transactions are not subject to the Act's contribution limits and may come from otherwise prohibited sources. The payments will be considered federal funds and may be used by the DCCC for federal election purposes.

## Use of Campaign Funds

The Bipartisan Campaign Reform Act deleted the phrase “for any other lawful purpose” from the list of permissible uses of campaign funds at 2 U.S.C. §439a, and the Commission subsequently removed that phrase from its regulations. Therefore, 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): ordinary and necessary expenses incurred in connection with the duties of a federal officeholder, donations to a charitable organization and transfers to a national, state or local committee of a political party committee. In 2003, the Commission issued four advisory opinions regarding the use of campaign funds.

### Advisory Opinions

In AO 2003-17, the Commission determined that James W. Treffinger, a former Senate candidate facing criminal indictments, may use campaign funds to pay for the portion of legal fees that relate to his status as a candidate for federal office. He was indicted in the District of New Jersey on 20 counts of criminal activity relating primarily to alleged schemes to defraud the Essex County government. Mr. Treffinger asked the Commission if his excess campaign funds could be used to pay for his legal defense.

The Commission determined that nine of the 20 criminal counts in the indictment against Mr. Treffinger related directly to his federal campaign. Accordingly, Mr. Treffinger may pay 45 percent (9/20) of his legal expenses with his campaign funds.

Treffinger’s committee must maintain the appropriate documents of any disbursements made to pay these legal fees, and must report all such disbursements with the FEC as operating expenditures, with the purpose noted.

In AO 2003-18, the Commission addressed the issue of transferring General Election funds to a charitable organization. Because Mr. Smith was not a candidate in the general election, the committee did not have the option of donating the funds from general election contributions to the American Patriot Foundation, a charitable organization.

In AO 2003-26, the Commission determined that a Senate campaign committee may not use its campaign funds to refund improper contributions received by the candidate’s former state campaign committee. The facts before the Commission in this case did not support a conclusion that a refund of the improper state contributions would be in connection with either of Senator Voinovich’s campaigns for federal office; nor would the refund comply with any of the other three permissible non-campaign uses of campaign funds.

In AO 2003-30, the Commission concluded that the Fitzgerald for Senate Committee could use its remaining cash-on-hand for any of the permissible uses of campaign funds listed in FEC regulations, including the repayment of personal loans made by the candidate during the 1998 elections. Recently enacted regulations that limit campaigns’ ability to repay certain candidate loans do not apply to these repayments because the loans in question pre-date these rules.

## Leadership PACs

The Act does not specifically address or define “leadership PACs.” Generally speaking, though, leadership PACs are formed by federal officeholders and/or federal candidates. The committee raises funds in order to make contributions to other federal candidates to gain support when the officeholder seeks a leadership position in Congress and subsidize the officeholder’s travel when he or she campaigns for other federal candidates. Additionally, these committees may be used to make contributions to party committees, including state party committees in key states, or donations to candidates for state or local office.

The Commission first addressed leadership PACs in a 1978 advisory opinion where it concluded that a political action committee formed in part by a Congressman was not considered an authorized committee of that Congressman as long as he did not authorize the committee in writing. See AO 1978-12. As a result, contributors to the leadership PAC were not considered to make contributions to the Congressman’s campaign. In the advisory opinion,

the Commission further noted that—assuming that the committee was not affiliated with the Congressman’s principal campaign committee—persons could contribute up to \$5,000 per year to the leadership PAC, which is the contribution limit for a multicandidate PAC. The Commission has continued to hold the policy that committees formed or used by a candidate or officeholder to further his or her campaign are affiliated; those formed or used for other purposes are not.

The BCRA places new limits on the amounts and types of funds that may be solicited, received, directed, transferred or spent by federal candidates and officeholders, their agents and entities directly or indirectly established, financed, maintained or controlled by, or acting on behalf of, the candidate or officeholder. These limits apply to both federal and nonfederal elections. 2 U.S.C. §441i(e)(1) and 11 CFR 300.60 and 300.61. In the new “soft money” rules, the Commission acknowledged that the BCRA’s limitations apply to leadership PACs. In 2003, the Commission completed a rulemaking addressing concerns about the BCRA’s effect on leadership PACs.

### Regulations

On November 20, 2003, the Commission approved final rules to address the relationship between a federal candidate’s authorized committee and leadership PACs. The final rules state that authorized committees and leadership PACs will not be considered affiliated. As a result, certain disbursements by a leadership PAC will be treated as in-kind contributions to the candidate associated with it.

New 11 CFR 100.5(g)(5) clarifies the relationship between an authorized committee and a leadership PAC by removing the possibility that a candidate’s authorized committee can be affiliated with an entity that is not another authorized committee, even if the candidate established, financed, maintained or controlled that entity.<sup>3</sup> Thus, a leadership PAC that provides

<sup>3</sup> This decision does not affect affiliation between an authorized committee and a joint fundraising committee under 2 U.S.C. §432(e)(3)(ii) and 11 CFR 102.13(c), nor does it affect the ability of a national party committee to be designated as the principal campaign committee for the party’s Presidential nominee under 2 U.S.C. §432(e)(3)(i) and 11 CFR 102.12(c)(2).

funds, goods or services to *any* authorized committee will make a contribution to that committee subject to the Act’s contribution limits.<sup>4</sup>

The new regulation also applies to entities that are not political committees. Thus, if a federal officeholder or candidate established an entity that was not a political committee under the Act, such as a state ballot initiative committee, the Commission would not examine the transactions between the federal candidate/officeholder and the ballot initiative committee to determine whether that committee was affiliated with the candidate/officeholder’s authorized campaign committee. See AO 2003-12. Instead, the Commission would consider whether the ballot initiative committee made in-kind contributions to the federal candidate/officeholder.

Under the Commission’s previous reporting regulation at 11 CFR 102.2(B)(1)(i), a principal campaign committee was required to disclose the names and addresses of any unauthorized committees with which it was affiliated. Because the new rule eliminates the possibility of such a relationship, the Commission has revised this regulation to require only that the names and addresses of affiliated authorized committees be disclosed.

## 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 2003, the Supreme Court ruled on the constitutionality of that ban and related provisions of FEC regulations. The case involved a so-called “MCFL” organization, which qualifies for a constitutionally mandated exception

<sup>4</sup> The Commission additionally noted that one complication in any scheme to make authorized committees and leadership PACs affiliated is that these types of committees are subject to different contribution limits and, thus, requiring them to abide by a single contribution limit would mean choosing a limitation that was not intended for one of the committees. Consequently, it is logical to view an authorized committee and a leadership PAC as separate committees.

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. 238 (1986).<sup>5</sup> This case and an enforcement matter involving prohibited corporate contributions, are described below.

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

North Carolina Right to Life, Inc., a nonprofit advocacy corporation, three of its officers and Christine Beaumont, a North Carolina voter (NCRL), filed suit against the FEC asking the court to declare 441b and its implementing regulations overly broad and unconstitutional and issue a permanent injunction barring the FEC from enforcing the Act and these regulations against the plaintiffs.

On January 24, 2001, the U.S. District Court for the Eastern District of North Carolina, Northern Division, permanently enjoined the Commission from relying on, enforcing or prosecuting against the plaintiffs violations of 441b. The Commission appealed the district court decision, and on January 25, 2002, the U.S. Court of Appeals for the 4<sup>th</sup> Circuit found that a complete ban on corporate contributions and expenditures in connection with federal elections, with an exception to the corporate expenditure ban "so narrow that NCRL does not fit into it," burdened the plaintiffs' First Amendment speech and association interests.

The Solicitor General appealed the case to the Supreme Court solely on the issue of the constitutionality of the ban against contributions from nonprofit

advocacy corporations.<sup>6</sup> The Court agreed to hear the case because on this issue the U.S. Court of Appeals for the 4<sup>th</sup> Circuit was in conflict with the U.S. Court of Appeals for the 6<sup>th</sup> Circuit. On June 16, 2003, the U.S. Supreme Court, overruling the U.S. Court of Appeals for the 4<sup>th</sup> Circuit, held that the prohibition on contributions by corporations is constitutional as applied to nonprofit MCFL-type advocacy corporations, such as North Carolina Right to Life, Inc.

According to the Court, ruling in favor of NCRL would mean recasting its understanding of the "risks of harm" of corporate political contributions, their "expressive significance" and the deference owed to Congress on how to treat them. Additionally, the Court pointed out that recognizing that the "degree of scrutiny runs on the nature of the activity regulated is the only practical way to square two leading cases," *National Right to Work* and *MCFL*. Having found that the prohibition on corporate contributions is constitutional as applied to NCRL, the Supreme Court ordered that the judgment of the U.S. Court of Appeals for the 4<sup>th</sup> Circuit in *Beaumont v. FEC* be reversed.

### **Enforcement**

In MUR 4931, the Commission entered into conciliation agreements with Audiovox Corporation (Audiovox), its Executive Vice President, six of its executives and several other individuals and Audiovox distributors, resulting in civil penalties of \$849,000—the highest cumulative civil penalty in the history of the Commission. This matter was referred to the Commission by the U.S. Department of Justice on March 2, 1999. The conciliation agreements settle violations of the Act resulting from the reimbursement of individuals' contributions to federal candidates, both by Audiovox and its subsidiaries, and personally by the Executive Vice President. The agreements provide, among other penalties, that Audiovox and six of its executives will

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<sup>5</sup> Under the 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 and 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).

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<sup>6</sup> The Court noted that as a result it had no occasion to address whether NCRL was entitled to an MCFL-type exception to the ban on corporate independent expenditures. The Court also quoted from its decision in *MCFL* noting that MCFL's formal policy against accepting donations from corporations was "essential to our holding."

pay \$620,000 and the Executive Vice President will pay \$130,000 from his personal funds.

Seven additional respondents, including three of Audiovox's distributors, acknowledged violations of the Act's prohibitions on corporate contributions and contributions in the name of another and agreed to pay a total of \$99,000 in civil penalties. Additionally, in all the conciliation agreements, the respondents agree not to commit further violations.

### Trade Associations

A trade association that has a separate segregated fund (SSF) may solicit contributions from its restricted classes in a variety of ways. Some of the most common methods include: oral solicitations, solicitations by mail, solicitations in internal publications, solicitations at conventions and solicitations through the internet. In addition to soliciting its own restricted class, a trade association or its SSF may get permission from a member corporation to solicit that member's restricted class under certain circumstances for contributions to the association's SSF. In 2003, the Commission received a rulemaking petition and issued an advisory opinion related to the ability of corporate members of trade associations to implement payroll deduction plans to collect SSF contributions.

### Regulations

On September 3, 2003, the Commission received a Petition for Rulemaking asking it to amend its rules to allow corporate members of trade associations to use payroll deduction to facilitate voluntary contributions to the association's separate segregated fund.<sup>7</sup>

Under Commission regulations, a trade association may use any method to solicit voluntary contributions or facilitate the making of voluntary contributions to its SSF, except that a member corporation may not use a payroll deduction or check-off system for executive and administrative personnel contributing to the association's SSF. See 11 CFR 114.8(e)(3). However, corporate members may manually facilitate the mak-

ing of contributions to the trade association's SSF by collecting and forwarding checks from their restricted classes in accordance with AO 2003-27.

### Advisory Opinion

In AO 2003-22, the Commission determined that executives of member corporations may collect and forward contribution checks to the SSF of the American Bankers Association (ABA), a trade association for the banking industry, so long as a payroll deduction or check-off system is not used. The member corporations must first give ABA permission to solicit their restricted class.

The Commission regulations appear to contemplate that executives of member corporations may collect and forward contribution checks for the trade association SSF by means other than a payroll deduction or check-off system. Thus, executives of ABA member corporations may collect and forward contributions to ABA's SSF by using the corporation's inter-office mail system, by hand collection, by providing envelopes and postage for contributors to send their checks to ABA's SSF or by other similar means, where those corporations and the association's SSF have complied with 11 CFR 114.5(a) and 114.8(b), (c) and (d).

### Sale or Use of Contributor Information

The Act prohibits anyone from selling or using the names and addresses of individual contributors, copied from FEC reports for the purpose of soliciting contributions for any commercial purpose. 2 U.S.C. §438 (a)(4). This "sale or use" restriction, however, does not apply to the names and addresses of political committees that are listed in reports filed with the Commission. Committees are allowed to "salt" their reports with up to ten fictitious names to detect impermissible uses of individual contributor information by other organizations. 11 CFR 104.3 (e). In 2003, the Commission issued an advisory opinion regarding the sale and use of contributor information for communication purposes.

<sup>7</sup> The rulemaking petition was submitted by America's Community Bankers (ACB), a trade association representing community banks, and its SSF, COMPAC.

### Advisory Opinion

In AO 2003-24, the Commission concluded that the National Center for Tobacco-Free Kids (NCTFK) may not use contributor information contained in the disclosure reports filed with the Commission to communicate with the public.

NCTFK wished to obtain from FEC disclosure reports the names of individuals who make contributions to political committees in order to send NCTFK information to those individuals via direct mail. The proposed communications were to take various forms, including: providing information on issues; urging recipients to contact a federal officeholder about the subject of the communication; and allowing recipients to indicate their interest in receiving additional information which would result in their receipt of communications that might include a solicitation for funds. (NCTFK indicated that none of the communications sent to such individuals would expressly advocate the election or defeat of any candidate, nor would such communications constitute electioneering communications as defined in 2 U.S.C. §434(f)(3).)

The Commission reads section 438(a)(4) to be a broad protective measure intended to guard the privacy of the contributors who are named in FEC reports. Although not all of the proposed communications were for fundraising purposes, they presented the possibility of repetitive and intrusive communications to contributors critical of the tobacco industry. The Commission concluded that the proposed activity would be impermissible under section 438(a)(4).<sup>8</sup>

### Campaign Travel

In the past, when a candidate or other campaign passenger used an airplane owned by a corporation or other organization that was *not* in the business of providing commercial air travel, the candidate's authorized committee was required to reimburse the service provider at either the first-class airfare or the normal charter rate, depending on whether a destination city

was served by regularly scheduled commercial air service. 11 CFR 114.9(e)(1). The FEC completed a rulemaking in 2003 addressing the issue of campaign travel by candidates and other political committees.

### Regulations

On December 4, 2003, the Commission approved new and revised rules governing the rates and timing for payment for travel via non-commercial means of transportation, such as a corporate jet, on behalf of political committees and candidates. The new rules establish a uniform valuation scheme for campaign travel that does not depend on whether the service provider is a corporation, labor organization, individual, partnership, limited liability company or other entity. The final rules apply to federal candidates, including publicly funded Presidential candidates, and other individuals traveling on behalf of candidates, party committees and other political committees where the travel is in connection with a federal election.

For air travel, the regulations provide three valuation methods that apply in different situations, requiring:

- The lowest unrestricted and non-discounted first-class airfare available for the dates traveled, or within seven calendar days, for travel between two cities with regularly scheduled first-class airline service;<sup>9</sup>
- The lowest unrestricted and non-discounted coach airfare available for the dates traveled, or within seven calendar days, for travel between a city served by regularly scheduled coach airline service but *not* regularly scheduled first-class airline service and a city served by regularly scheduled coach service, whether or not the latter city also has regularly scheduled first-class services; and
- The charter rate for a comparable commercial airplane of sufficient size to accommodate all of the campaign travelers, including members of the news media, and security personnel for travel between two

<sup>8</sup> In addition, the Commission recognizes the legitimate interests of the owners of the mailing lists used to solicit the political contributions that resulted in the disclosure of the individuals' information in the FEC reports.

<sup>9</sup> See Advisory Opinion 1999-13 for a discussion of when a city is served by first-class airline service. In addition, a special provision in 11 CFR 100.93(e) permits the use of a first-class airfare rate for travel on a government airplane to or from a military base.

cities not served by regularly scheduled first-class or coach airline service, or between such a city and a different city with regularly scheduled first-class or coach commercial airline service.

The new rules do not require a campaign traveler to pay in advance of travel, but they establish a strict deadline of payment within seven calendar days of the departure of the flight.

For other means of travel not operated for commercial passenger service, such as limousines, other automobiles, trains, helicopters and buses, a political committee must pay the service provider an amount equal to the normal and usual fare or rental charge for a comparable commercial conveyance that is capable of accommodating the same number of campaign travelers, including any members of the news media, and security personnel. Payment for travel must be made 30 calendar days from the receipt of the invoice, but no more than 60 calendar days following the date the travel commenced.

## Earmarking

An *earmarked* contribution is one which the contributor directs (either orally or in writing) to a clearly identified candidate or his or her authorized committee through an intermediary or conduit. The conduit or intermediary may be an unregistered entity, such as an individual or group, or a registered political committee with regular reporting obligations. 11 CFR 110.6 (b). Earmarking contributions is sometimes referred to as “bundling” contributions because, in many cases, the conduit receives several contributions that are earmarked for a candidate and forwards them together. In previous advisory opinions, the Commission has examined earmarking proposals involving the collecting and forwarding of contributions to designated federal candidates. See AOs 1996-18, 1996-1, 1995-15, 1988-16, and 1986-4. In 2003, the Commission issued an advisory opinion regarding the earmarking of contributions for a presumptive nominee.

### Advisory Opinion

In AO 2003-23, the FEC determined that Women Engaged in Leadership, Education and Action in Democracy (“WE LEAD”) may collect and forward ear-

marked contributions to the presumptive Democratic Presidential nominee so long as certain conditions are met regarding reporting and transmittal of funds.

The Commission determined that WE LEAD may collect and forward contributions for an undesignated candidate since the candidate is identifiable as to a specific office, party affiliation and election cycle.<sup>10</sup> Additionally, WE LEAD described a clear method whereby the recipient will be identified and the committee will not exercise any direction or control over who will be the recipient campaign or party committee. Furthermore, the Commission determined that the contributions and a transmittal report must be forwarded within ten days after the candidate is identified.<sup>11</sup>

If the presumptive nominee is not determined within seven days of the Democratic National Convention, WE LEAD will forward the contributions to the DNC. Neither the Federal Election Campaign Act nor Commission regulations address contributions earmarked for committees other than campaigns, but the Commission does not hold that it is forbidden. 11 CFR 110.6 and AOs 1981-57 and 1983-18.

If the contributions are forwarded to the DNC, then the amount of time allowable before forwarding varies according to the amount of the contribution. Contributions of \$50 or less must be forwarded within 30 days of receipt. Contributions over \$50 must be forwarded within 10 days of receipt. 11 CFR 102.8(b)(1)–(2). Requirements regarding solicitation and reporting of earmarked contributions and handling of excessive contributions also apply to contributions forwarded to the DNC.

The Commission also addressed the issue of solicitation costs. According to the opinion, if the solici-

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<sup>10</sup> The Commission has issued similar opinions regarding situations in which there is no definite candidate. Earmarking proposals have been acceptable under these circumstances when the candidate is identifiable by a specific office, party affiliation and election cycle. See AOs 1977-16 and 1982-23.

<sup>11</sup> Generally, earmarked contributions must be forwarded within ten days of receipt. 11 CFR 102.8. However, that is not possible in this instance since the recipient is unknown.

tion is coordinated with the recipient campaign or its agents, then the direct cost of the solicitation will be considered an in-kind contribution. If the solicitation is not coordinated, however, the costs will be considered an independent expenditure. 11 CFR 100.16. In each instance, the communication must carry the appropriate disclaimers. 11 CFR 110.11.

### ***FEC v. Toledano***

On November 7, 2002, the U.S. Court of Appeals for the Ninth Circuit affirmed the decision of the U.S. District Court for the Central District of California granting the Commission summary judgment in this case and imposing a \$7,500 fine against James Toledano. The appeals court also ordered Mr. Toledano to pay the Commission's attorney's fees on this appeal as a sanction for his "bad-faith conduct and abuse of the judicial process."

The appeals court found that Mr. Toledano violated 2 U.S.C. §432(b), which requires persons who receive contributions in excess of \$50 to forward these contributions to the committee's treasurer within 10 days after receiving them. In 1996 Mr. Toledano, who was then the chairman of the Orange County Democratic Party (the Party), received a \$10,000 contribution check made out to the Party, which he used to print and mail pamphlets supporting a Congressional candidate. Mr. Toledano did not forward the contribution to the committee treasurer within 10 days or even inform him of it.

On appeal, Mr. Toledano argued, among other things, that his actions did not violate 2 U.S.C. §432(b) given that he "had de facto authority to act as treasurer" because he was convinced that the real treasurer was "incompetent and failed to discharge his duties responsibly." The court found that Mr. Toledano was not a designated agent of the treasurer and could not exercise the treasurer's authority under the statute or Commission regulations. The court further concluded that "to recognize unauthorized 'de facto agents' of the treasurer and thus open up multiple points of entry and exit through which campaign funds may flow is to create predictable confusion and unravel the whole statutory scheme." The court concluded that by failing to forward the contribution to the Party's treasurer, Mr.

Toledano prevented the contribution, which turned out to be excessive, from being scrutinized by the Party's treasurer for its legality.

The court affirmed all aspects of the district court's order granting the Commission summary judgment and imposing a \$7,500 fine. The court also referred the case to the Appellate Commissioner for a determination of the Commission's attorney's fees and related expenses in defending this case on appeal.

### **Enforcement**

During 2003, the Commission defended in court its disclosure policy regarding closed Matters Under Review (MURs), held hearings and testified before Congress concerning its enforcement procedures and issued a policy statement regarding deposition transcripts in nonpublic investigations. Late in the year, the agency issued an interim policy regarding the release of closed enforcement files and unveiled a new system to improve public access to those files. In the midst of all this activity, the agency also closed a number of significant MURs, a couple of which are summarized below.

### ***AFL-CIO and DNC Services Corp./DNC v. FEC***

On June 17, 1997, the Commission found reason to believe that the plaintiffs had violated the Act during the 1995-96 election cycle (MURs 4291, *et al.*). At the conclusion of its investigation, the Commission voted to take no further action on MURs 4291, *et al.*, and to close the files. In keeping with its long-standing practice of disclosing the investigatory record once a MUR is closed, the Commission planned to make public a portion of the investigatory file. The plaintiffs claimed that public disclosure of the files would cause irreparable injury by revealing confidential information and by chilling the plaintiffs' future efforts to engage in political activities. The plaintiffs asked the Commission not to make the documents public; however, the Commission denied their requests on the grounds that the Commission's regulations under the Act and the Freedom of Information Act (FOIA) required disclosure of the MUR files.

The plaintiffs filed suit in district court to challenge the Commission's determination. The district court concluded that the plain language of the Act barred

the Commission from publicizing investigative materials and, thus, that the Commission's interpretation of the statute ran counter to Congressional intent. 2 U.S.C. §437g(a)(12)(A). The court found that the Act's provision requiring that MUR determinations be made public was a limited exception to the Act's confidentiality provision, not a directive to end the protection of that provision.

On June 20, 2003, the U.S. Court of Appeals for the District of Columbia Circuit upheld the U.S. District Court for the District of Columbia's decision in this case, but on different grounds. The appeals court found that the FEC's practice of disclosing documents obtained during an investigation was based on a regulation that, "while not contrary to the plain language of the statute, is nevertheless impermissible because it fails to account for the substantial First Amendment interests implicated in releasing political groups' strategic documents and other internal materials."

### **Procedures and Disclosure Policy**

As the MUR disclosure litigation progressed, the Commission launched a broad review of its enforcement procedures. On June 11, 2003, the Commission conducted a public hearing to receive comments on its enforcement practices and procedures. The comments focused on the agency's procedures for:

- Designating additional respondents in a complaint;
- Advising witnesses about the confidentiality requirements of the Act (2 U.S.C. §437g(a)(12));
- Considering motions from complainants' and respondents' attorneys;
- Providing deposition transcripts and documents to respondents;
- Granting respondents extensions of time to respond to the probable cause brief;
- Allowing respondents to appear before the Commission;
- Releasing documents from enforcement matters in proximity to an election;
- Releasing its directives and penalty guidelines;
- Bringing MURs to a timely conclusion;
- Prioritizing cases;
- Dividing responsibility for enforcement of the Act with the Department of Justice; and

- Dealing with situations where the six Commissioners vote 3-3 at the "reason-to-believe" stage of an investigation.

Soon after the public hearing, the Commission issued a Statement of Policy announcing a change in its enforcement practices to allow deponents to obtain a copy of the transcript of their own deposition so long as there is no good cause to limit the deponent to an opportunity only to review and sign the transcript.

On October 16, Commission Chair Ellen Weintraub and Vice-Chairman Bradley Smith testified before the Committee on House Administration, which had invited the Commissioners to speak about the FEC's enforcement procedures. Chair Weintraub and Vice-Chairman Smith briefed the House Members on the enforcement procedures hearing held in June and on steps the Commission has taken to respond to the public comments it received.

Both Commissioners urged Congress to make necessary changes to the statute in order to allow the proposed reforms. For example, they asked Congress to change the language of the Act to replace a "reason to believe" finding with a finding of "reason to open an investigation into allegations" as the trigger for the Commission's opening of an investigation.

In December 2003, the Commission announced an interim enforcement disclosure policy and unveiled a new web-based Enforcement Query System (EQS). As detailed in Chapter 1, the disclosure policy identifies which enforcement documents can be made available to the public, and the EQS improves public access to those documents.

### **Key Enforcement Cases Closed**

In MUR 5270, the Commission entered into a conciliation agreement with the American Federation of State, County and Municipal Employees-Public Employees Organization to Promote Legislative Equality (AFSCME PEOPLE) and its treasurer William Lucy concerning the committee's failure to report transfers of funds from its federal account to its nonfederal accounts. AFSCME PEOPLE and Mr. Lucy admitted to reporting violations that spanned six years and involved more than \$10 million, and agreed to pay a \$60,000 civil penalty. They also agreed to cease and desist from violating the Act's reporting requirements

at section 434 and to properly disclose all future transfers from the committee's federal accounts to its nonfederal accounts.<sup>12</sup>

From 1995 through September 2000, AFSCME PEOPLE failed to report in excess of \$10 million in disbursements that the committee made in the form of transfers from its federal account to its nonfederal accounts. The failure to report these disbursements also caused the committee to make corresponding overstatements of its beginning and ending cash-on-hand in reports filed during this period.

In MUR 5229, the Commission entered into conciliation agreements with New York's Health and Human Service Union 1199/SEIU, AFL-CIO<sup>13</sup> (1199), two of its separate segregated funds and Service Employees International Union Political Campaign Committee (SEIU COPE), resulting in \$262,500 in civil penalties. The conciliation agreements primarily resolved violations of the Act stemming from 1199's failure to transfer timely to its separate segregated funds and its international union's separate segregated fund political contributions collected from 1199's members. This cumulative civil penalty is the largest ever obtained in an enforcement matter arising from the review of political committee disclosure reports by the Commission's Reports Analysis Division.

The union may support its SSF by acting as a "collecting agent."<sup>14</sup> The SSF is responsible for ensuring that its collecting agent complies with Commission regulations and must disclose contributions it receives through a collecting agent, along with its other financial activity, in its regularly scheduled reports. See

11 CFR 102.6(c)(1). The SSF must also report the identification of any person who makes a contribution aggregating more than \$200 during the calendar year, together with the date and amount of the contribution. 2 U.S.C. §434(b)(3).<sup>15</sup>

According to the conciliation agreements, between at least January 1997 and September 1999, 1199 collected approximately \$3.9 million in a general bank account and kept large amounts of unreported contributions in this account for many months. When 1199's leadership decided to spend money on a federal activity, the necessary funds were transferred to Local 1199 PAC and used immediately to make a contribution. After spending the funds, Local 1199 PAC would report a zero cash-on-hand balance. 1199 also transferred contributions from the general fund to other political committees, including SEIU COPE, after the 30-day transfer window had closed. As a result, over \$1.9 million in contributions were not reported in a timely fashion, and the separate segregated funds consistently understated their available cash-on-hand in reports filed with the Commission.

Pursuant to these conciliation agreements, SEIU COPE paid \$75,000 in civil penalties, and 1199 and its SSFs paid \$187,500 in civil penalties. In addition, the respondents agreed, among other things, to cease and desist from similar violations of the Act and to have representatives attend an appropriate FEC training conference.

## Administrative Fines

The Administrative Fine program was instituted in July 2000, and has been extended past its original mandate that ended on December 31, 2001. The program has proven to be successful in increasing the timeliness of filing and using the Commission's limited resources to handle an extensive caseload. Under the administrative fines regulations, respondents may challenge the Commission's RTB finding and/or proposed civil money penalty based, among other things,

<sup>12</sup> The Commission took into account AFSCME PEOPLE and Mr. Lucy's self-reporting of the violations and voluntary corrective measures when it considered an appropriate civil penalty in this matter.

<sup>13</sup> 1199 is also known as Local 1199NY, Service Employees International Union and frequently known as 1199, the National Health and Human Service Employees Union.

<sup>14</sup> Under the Commission regulations, a collecting agent is an organization or committee that collects and transmits contributions to an SSF to which the collecting agent is related. 11 CFR 102.6(b)(1).

<sup>15</sup> For a "person" other than a natural person, identification means the person's full name and address. 2 U.S.C. §431(13)(B).

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.” During 2003, district courts issued rulings in a number of cases in which the respondents filed suit, contesting the Commission’s final determination. The Commission won all but one of the challenges. The Commission also amended its administrative fines regulations.

#### **Final Rules on Administrative Fines Regulations**

On March 6, 2003, the Commission approved final rules amending its administrative fines regulations. The amendments to the regulations implemented changes regarding the structure and application of the Commission’s civil penalties schedules, the scope of “extraordinary circumstances” considered by the FEC in penalty assessment and procedures for respondent notification. The new regulations were implemented to:

- Reduce the civil money penalties for political committees with less than \$50,000 in financial activity (total receipts plus total disbursements) in a reporting period who file reports late or not at all;
- Create two additional levels-of-activity brackets in the civil penalty schedules for such committees to make further distinctions in the amount of the civil penalty assessed; and
- Exclude certain nonfederal activity from the level-of-activity calculation on which civil penalties for unauthorized committees are based.

The Commission not only adjusted the penalty schedules, but amended the list of specific “extraordinary circumstances” that the Commission will consider in determining whether to assess a civil money penalty. The revised rules added staff “inexperience” and “unavailability”—including that of the treasurer—to the examples of circumstances that are not considered “extraordinary.” 11 CFR 111.35(b)(4)(iii). Finally, the Commission added new regulations to explain how respondents will be notified of reason-to-believe findings, final determinations and all other communications under the administrative fine regulations.

## 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 for Presidential nominating conventions and grants to Presidential nominees for the general election campaigns. In 2003, the Commission certified candidates and convention committees for public funding for the 2004 Presidential election. In addition, the FEC completed a rulemaking to administer more effectively the public finance programs and to address the effect of the Bipartisan Campaign Reform Act of 2002 (BCRA) on the public funding of Presidential candidates and nominating conventions.

### Shortfall for 2004

In the past two Presidential election cycles, the Presidential Election Campaign Fund (the Fund) has experienced a temporary shortfall in matching funds, requiring the Fund to make pro-rata payments to candidates until sufficient deposits are received. On December 1, 2003, seven Presidential candidates in the 2004 primary elections submitted matching fund requests, totaling over \$15 million.<sup>1</sup> These requests were the first received from any candidates for the 2004 election cycle. The Fund reported a balance of \$16.7 million, after setting aside funds for general election and national convention payments.<sup>2</sup> Thus, all candidates were paid their full entitlement on January 2, 2004. FEC staff did not anticipate that any shortfall in the Fund will last beyond April 2004.

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<sup>1</sup> These seven candidates were Wesley Clark, John Edwards, Richard Gephardt, Dennis Kucinich, Lyndon LaRouche, Joseph Lieberman and Al Sharpton. George W. Bush, Howard Dean, John Kerry and Carol Mosely-Braun did not participate in the matching payment program.

<sup>2</sup> This amount includes deposits made to the Fund through October 2003.

### Certification of Public Funds

#### Primary Matching Funds

Presidential candidates eligible to participate in the matching fund program receive matching federal dollars for a portion of the contributions they raise. To establish eligibility, a candidate must submit documentation showing that he or she raised more than \$5,000 in matchable contributions in each of at least 20 states. The FEC reviews this threshold submission to determine whether the candidate has met the eligibility requirements. The candidate must also agree to comply with the law in a letter of agreement and certification. Once the Commission has determined a candidate to be eligible, the federal government will match up to \$250 per contributor, but only contributions from individuals qualify for matching.

Presidential candidates may establish their eligibility during the year prior to the election (i.e., in 2003 for 2004 primaries), and, once eligible, they may submit additional contributions for matching funds (called matching fund submissions) on specific dates.

#### Convention Funds

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

Under the statute, major party conventions are fully funded at \$4 million plus an adjustment for inflation since 1974. On June 27, 2003, the Commission certified that the Republican and Democratic convention committees met all eligibility requirements for public funding. Each received \$14,592,000 from the U.S. Treasury for planning and conducting their respective 2004 Presidential nominating conventions.

The Presidential Election Campaign Fund Act also permits a minor party to receive federal funding for holding its convention. A minor party is defined as a political party whose candidate for the Presidency in the preceding Presidential election received more than five percent but less than 25 percent of the total popular votes cast. No minor party Presidential candidate in the 2000 general election received more than five percent of the popular vote.

### General Election Grants

The Presidential nominee of each major party may become eligible for a public grant of \$20 million (plus a cost of living adjustment) for the general election campaign. In addition, minor and new party candidates may qualify for partial funding in the general election based on their party's electoral performance. Minor party candidates may receive public funds based on the ratio of their party's vote in the previous Presidential election to the average vote for the major parties' candidates in that election.<sup>3</sup> New party candidates may receive public funds after the election if they receive five percent or more of the vote. The amount granted to a new party candidate is based on the ratio of the new party candidate's vote to the average vote for the major parties' candidates in the election.

The Commission projected that the major party nominees who choose to accept public funding will receive at least \$74.4 million each to finance their campaigns. Participants in the general election public funding program must spend only those funds awarded by the Commission and raised by the \$3 tax checkoff through the U.S. Department of Treasury. They may not supplement public funds with any private contributions for the campaign. However, nominees may raise private funds to cover certain legal and accounting costs, which are not subject to the spending limit.

### Revised Regulations on the Public Financing of Presidential Candidates and Nominating Conventions

On July 24, 2003, the Commission approved revisions to its regulations governing the public funding of Presidential campaigns and nominating conventions. 11 CFR parts 9001-9039. The revised rules, among other things, apply certain parts of the BCRA to Presidential nominating conventions, address the solicita-

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<sup>3</sup> "Minor party candidates" refers to nominees of parties whose Presidential candidates received between five and 25 percent of the vote in the preceding election.

tion and uses of General Election Legal and Accounting Compliance (GELAC) funds, adopt regulations concerning winding down costs and create a shortfall bridge loan exemption.

### Nominating Conventions

#### *Application of the BCRA to convention funding.*

The Commission adopted new regulations to address the BCRA's application to convention activities. Under the BCRA, national party committees, their agents and any committee directly or indirectly established, maintained, financed or controlled by a national party committee are generally barred from raising or spending funds outside the limits and prohibitions of the Act. Because convention committees are, as a matter of law, agents of a national party committee and established, financed, maintained and controlled by that committee, these restrictions also apply to convention committees.<sup>4</sup> 11 CFR 9008.55(a). See 2 U.S.C. §441i(a) and 11 CFR 300.10(a). The new regulations do not, however, significantly alter the pre-BCRA rules governing the financing of the national conventions, and convention committees may continue to receive in-kind donations from host committees and municipal funds to cover certain convention expenses specified in the regulations.

In addition, federal candidates and officeholders may continue to solicit funds on behalf of host committees and municipal funds. Under the BCRA, federal candidates and officeholders may make a "general solicitation" on behalf of a 501(c) organization so long as the organization's principal purpose is not to conduct certain federal election activity and the solicitation does not specify how the funds should be used. 2 U.S.C. §441i(e)(4)(A). Because the principal purpose of host committees and municipal funds is to promote commerce in the host city, new 11 CFR

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<sup>4</sup> The Commission also determined that host committees, which typically do not have the authority to solicit, direct or receive any contribution, donation or transfer of funds on behalf of a national party committee, are not presumed to be agents of the party or convention committee or to be directly or indirectly established, financed, maintained or controlled by them. Committees should look to 11 CFR 300.2(b)(1) and 300.2(c) for guidance.

9008.55(d) provides that federal candidates and officeholders may make general solicitations without restriction on source or amount on behalf of 501(c) host committees or municipal funds, provided that the solicitations do not specify how the funds will or should be spent.

*Host committees and municipal funds.* The new rules also provide for more similar treatment of host committees and municipal funds. Both host committees and municipal funds must now file an FEC Form 1, Statement of Organization, within 10 days of their formation or within 10 days after the convention city is selected, whichever date is later. 11 CFR 9008.51. Moreover, both types of committees have increased reporting responsibilities and must comply, as appropriate, with the filing requirements.

The Commission removed the requirement that only “local” businesses, labor organizations, other organizations and individuals are permitted to make donations to host committees and municipal funds. The Commission determined that this restriction no longer served a meaningful purpose because the disbursements that host committees and municipal funds are permitted to make are consistent with the narrow purpose of promoting commerce in the convention city.

*Candidates’ use of public funds.* The new rules allow candidates, including candidates who fail to win their party’s nomination, to treat expenses related to the national nominating convention as qualified campaign expenses up to \$50,000. 11 CFR 9034.4(a)(6).

### **GELAC Funds**

The new regulations change the starting date for GELAC solicitations from June 1 of the year in which a Presidential election is held to April 1 of that year. The Commission determined that the earlier starting date was appropriate given the early primary dates for some states in the 2004 elections. 11 CFR 9003.3(a)(1)(i). The new rules also permit publicly funded Presidential candidates, under certain circumstances, to redesignate the excessive portion of a primary contribution to the GELAC fund without obtaining a signed, written document from the contributor. 11 CFR 9003.3(a)(1). See 11 CFR 110.1(b)(5)(ii)(B).

In addition, under the new rules, Presidential candidates may use remaining GELAC funds to pay

their primary committee’s winding down costs, and they must use GELAC funds to pay any of their primary committee’s required repayments to the U.S. Treasury before the GELAC funds can be dispensed under 2 U.S.C. §439a, which describes how campaigns may use funds remaining after campaign expenses are paid. 11 CFR 9003.3(a)(2)(i)(D) and (I); 9003.3(a)(2)(iv).

### **Winding Down Expenses**

For general election candidates, the Commission has adopted a “winding down limitation” that caps the total amount of public funds that can be used for winding down expenses at the lesser of 2.5 percent of the expenditure limitation or 2.5 percent of the total of:

- The candidate’s expenditures subject to the expenditure limitation as of the end of the expenditure report period; plus
- The candidate’s expenses exempt from the expenditure limitation, such as fundraising expenses, as of the end of the expenditure report period.

Regardless of the above calculations, the smallest winding down limitation will be \$100,000. 11 CFR 9004.11(b).

The Commission adopted similar regulations to address primary candidates’ winding down expenses. However, for primary election candidates, the applicable winding down limitations are 10 percent, rather than 2.5 percent, of the candidate’s expenditures and expenses or of the expenditure limit. 11 CFR 9034.11(b).

The new rules also allow winding down expenses to be allocated between the candidate’s primary and general election campaigns using any reasonable allocation method. An allocation method will be considered reasonable so long as it divides the total winding down costs between the primary and the general election committees and results in no less than one third of the total winding down costs allocated to each committee. 11 CFR 9004.11(c) and 90034.11(c).

### **Shortfall Bridge on Loan Exemption**

During recent election cycles, the Presidential Primary Matching Payment Account has occasionally contained insufficient funds to meet the entitlements

of all primary candidates on the dates the payments were due. Often candidates obtained, at additional costs, “bridge loans” to pay their expenses until they received their full entitlements several months later. The Commission is creating a new “shortfall bridge loan exemption” from candidates’ expenditure limits. See 11 CFR 9035.1(c)(3). Under this exemption, interest charges accrued during the shortfall period on loans secured or guaranteed by matching funds will not count toward the candidate’s expenditure limitation.

#### **Pre-candidacy Payments by Multicandidate Committees**

The new rules enable Presidential candidates to reimburse multicandidate committees for the payment of certain expenses made during the “testing the waters” or pre-candidacy period. These expenses include, among other things, polling expenses, compensation of staff, administrative costs and expenses of individuals seeking to become delegates to the national convention. Payment by a multicandidate committee is an in-kind contribution to, and qualified expense by, a Presidential candidate even if it is made before the person becomes a candidate. 11 CFR 9034.10 (a). However, if the candidate’s authorized committee reimburses the multicandidate committee within 30 days of becoming a candidate, the payment will not be considered an in-kind contribution for either entity. 11 CFR 9034.10(b).

#### **Repayment of Public Funds**

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 repay the U.S. Treasury. The 2000 Presidential audits were

completed during 2003.<sup>5</sup> Additionally, the Commission faced a legal challenge regarding alleged violations of the Presidential Primary Matching Payment Account Act (the Matching Payment Act) in the 1996 Presidential election.

#### **2000 Election**

On May 1, 2003, the Commission made a determination that the LaRouche Committee for a New Bretton Woods (the Committee) must repay \$236,692 to the U.S. Treasury for public funds it used during the 2000 primary elections. The largest portion of the repayment, \$163,272, represents primary matching payments that the Committee received in excess of its entitlement. Another \$70,139 represents apparent non-qualified campaign expenses that the Committee incurred by overpaying vendors for campaign work. The remaining \$3,281 represents stale-dated checks.

#### **Advisory Opinions**

In AO 2003-35, the Commission concluded that Congressman Richard A. Gephardt, a Presidential candidate in 2004, could choose to withdraw from the Presidential Primary Matching Payment Account Act’s (the Matching Payment Act) public funding program even though the Commission had already certified his eligibility to receive funds under the program, so long as he made the request to withdraw before the payment date for receiving funds.<sup>6</sup> Withdrawing from the program would not require him to refund any contributions or obtain the contributors’ authorization to retain the contributions. Moreover, if he withdrew from the program, Congressman Gephardt would not be bound by the legal requirements imposed as a result of participating in the public funding program.

Neither the Matching Payment Act nor its legislative history addresses a candidate whom the Commission has certified as eligible to receive payments but who no longer wished to participate in the program. How-

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<sup>5</sup> The majority of 2000 Presidential audits were completed in 2002 and summarized in the 2002 *Annual Report*.

<sup>6</sup> Congressman Gephardt accepted \$3,131,788.10 in matching fund payments on January 2, 2004.

ever, the legislative history does expressly recognize that a Presidential primary candidate's participation in the program is voluntary. See H.R. Conf. Rep. No. 93-1438, at 116 (1974). Moreover, the Matching Payment Act's dependence on a candidate's written agreement and certification implicitly recognizes the voluntary nature of participation in the program. In addition, the Supreme Court held that the voluntary nature of all of the public funding programs permits the related expenditure limits, while it at the same time found expenditure limits that were not voluntarily accepted as part of a public funding program to be unconstitutional. See *Buckley v Valeo*, 424 U.S. 1, 57 n. 65 (1976). The voluntary nature of the program supports the conclusion that a candidate may withdraw from the program prior to receiving payments.

Finally, the Matching Payment Act, Commission regulations and the U.S. Treasury Department all require the Secretary of the Treasury to distribute the available funds equally and to consider the sequence in which the funds are certified for candidates. 26 U.S.C. §9037(b). In the event of a shortfall, the Secretary considers all funds certified for all candidates in order to determine how the funds should be distributed. If the Commission withdraws its certification of funds for a candidate, those funds will become available for distribution to the remaining eligible candidates. Thus, withdrawing the certification of eligibility for a candidate prior to the date of payment would not prejudice the other fund recipients.

In light of all of these factors, the Commission would withdraw a certification of a candidate's eligibility to receive matching funds prior to the initial payment date for that candidate if the Commission received a written request to do so signed by the candidate.<sup>7</sup> The Commission's withdrawal of its certification would constitute its agreement to a candidate's request to rescind the Candidate and Committee Agreements and Certifications.

Having already made his threshold submission, Congressman Gephardt's only legal option to delay payment was to request that the Commission withdraw its certification, which, if agreed to by the Com-

mission, would nullify the agreement in its entirety. No provision of law would prevent the Congressman from submitting another Candidate and Committee Agreement and Certifications at a later point, and any matchable contributions may be included in a subsequent threshold submission.

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<sup>7</sup> The certification of funds must not be pledged as security for private financing.

## Chapter Five

# The Commission

### Commissioners

During 2003, Ellen L. Weintraub served as Chair of the Commission and Bradley A. Smith served as Vice Chairman. On December 18, 2003, the Commission elected Commissioner Smith as its Chairman and Commissioner Weintraub as its Vice Chair for 2004.

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 to promote economic effectiveness and efficiency within the Commission.

### Equal Employment Opportunity (EEO)

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

Jointly administered by the EEO Director, Personnel Director and three EEO Counselors, the ADR program or Early Intervention Program seeks to resolve employee concerns that might otherwise result in formal complaints. Prior to filing an EEO complaint, employees may agree to meet voluntarily, separately or jointly, with the EEO Director or Personnel Director, an EEO Counselor and/or the party allegedly responsible for the discrimination or wrongdoing. If attempts to resolve the problem fail, the employee may proceed with EEO counseling and may file a formal EEO complaint or grievance, if applicable.

### Ethics

Staff members in the General Counsel's office serve as the Commission's ethics officials. Dissemination of information to FEC employees regarding compliance with the Ethics in Government Act

required a number of undertakings throughout the year. The ethics staff conducted ethics orientation sessions for all new employees, and provided annual ethics briefings to employees who are required to file public and confidential financial disclosure reports. In order to help ensure that employees remain impartial in the performance of their official duties, the ethics staff also administered the financial disclosure report system. Additionally, staff provided guidance to employees on the *Standards of Ethical Conduct for Employees of the Executive Branch*. Finally, the ethics staff ensured the Commission's compliance with requirements of the Office of Government Ethics (OGE) by submitting the following documents to the OGE: the annual agency ethics program report, financial disclosure reports filed by Presidential candidates and travel payment reports.

At the 2003 Government Ethics Conference, the Commission received an *Outstanding Ethics Program Award* in recognition of its development and management of the ethics program.

### FEC's Budget

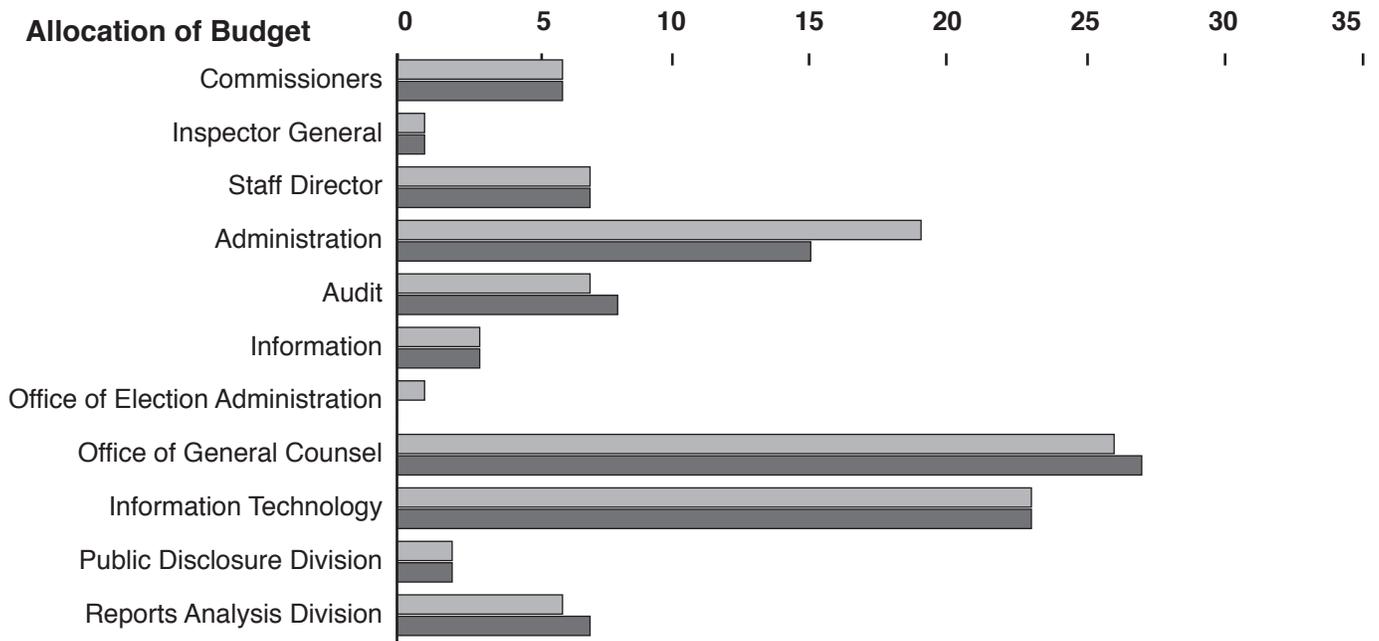
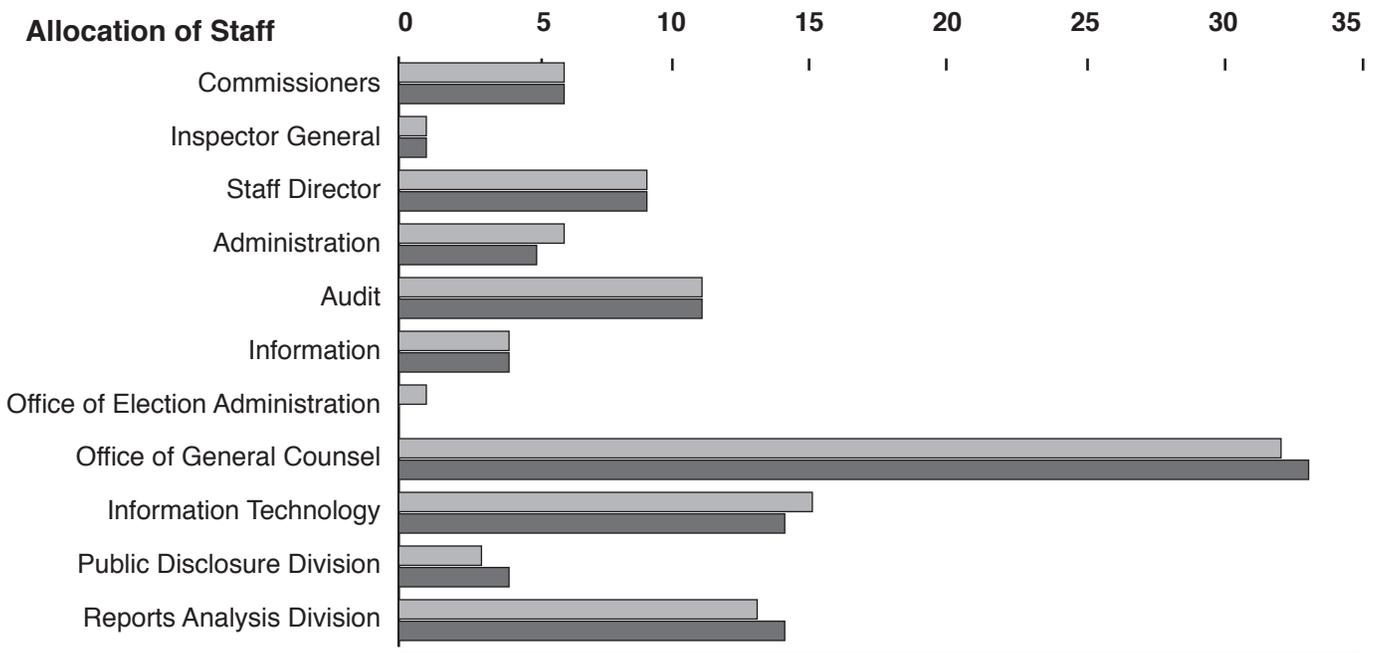
#### Fiscal Year 2003

The initial FEC FY 2003 budget request was \$45,244,000 for 362 full time employees (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.)

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

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

FY 2003 Actual  
 FY 2004 Projected



**CHART 5-2**  
**Functional Allocation of Budget**

	<b>FY 2003</b>	<b>FY 2004</b>
Personnel	\$32,481,924	35,975,300
Travel/Transportation	293,973	351,324
Space Rental	3,632,968	3,767,404
Equipment Rental/Maint	493,205	545,000
Telephone/Postage	450,302	420,000
Printing	572,506	529,000
Training/Tuition	195,635	271,875
Depositions/Transcripts	49,576	53,500
Federal Agency Services	2,533,284	475,000
Software/Hardware	3,111,094	1,125,500
Contracts	2,215,728	2,649,062
Publications	447,314	480,675
Supplies	312,882	365,000
Equipment Purchases	2,692,173	3,039,126
Other	59,307	94,638
<b>Total</b>	<b>\$49,541,871</b>	<b>50,142,404</b>

## Chapter 6

# Legislative Recommendations

In early May 2004, the Federal Election Commission submitted to Congress and the President 12 legislative recommendations—four priority recommendations and eight additional recommendations, including proposed amendments to address problems that the regulated community and the Commission have encountered.

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

#### **Contributions/Expenditures**

##### **Use of Contributed Amounts For Certain Purposes (2004)**

*Section:* 2 U.S.C. §439a

*Recommendation:* The Commission recommends that Congress amend 2 U.S.C. §439a(a) to allow, as a permissible use of Federal campaign funds, donations to State and local candidates, subject to the limits and prohibitions of State law, and to allow the use of Federal campaign funds for any other lawful purpose that does not violate subsection (b) of section 439a.

*Explanation:* BCRA amended 2 U.S.C. §439a. In the floor debate on BCRA, Senator Feingold stated that the intent of the revised section 439a was to codify the Commission's then current regulations on the use of campaign funds. Section 439a, as amended by BCRA, lists four explicitly permitted uses of campaign funds in paragraphs (a)(1)-(4) and then, in subsection (b), states that campaign funds may not be converted to personal use. However, unlike the pre-BCRA version of section 439a and unlike the pre-BCRA regulations to which Senator Feingold referred, the use of campaign funds for "any other lawful purpose" (so long as they are not converted to personal use) is no longer listed as a statutorily permitted use. In post-BCRA rulemakings and advisory opinions, the Commission has had no choice but to interpret this statutory deletion as meaning that the list of permissible uses in section 439a(a) is exhaustive.

Given Senator Feingold's assertion that the BCRA amendments were intended to codify the pre-BCRA regulations, it appears that the narrowing of the statute may have been inadvertent. The Commission suggests that the use of campaign funds for lawful purposes that do not constitute personal use is consistent with purposes of FECA. Therefore, the Commission recommends that section 439a(a) be amended to permit explicitly the use of campaign funds for "any other lawful purpose" that does not constitute personal use of those funds.

The question of whether section 439a still permits a donation of campaign funds by an authorized committee to a non-Federal campaign has lately arisen with considerable frequency. This was a common practice before the passage of BCRA. It is not, however, clear under post-BCRA section 439a whether such a donation is an "otherwise authorized expenditure" in connection with the Federal candidate's campaign for Federal office. See 2 U.S.C. §439a(a)(1). The Commission believes that such use of campaign funds is fully consistent with the purposes of FECA, and thus, that section 439a(a) be amended to permit explicitly donation of campaign funds by an authorized committee to a non-Federal campaign to the extent allowed by applicable State law. This statutory change would allow a Federal candidate or officeholder to donate his or her campaign funds to State and local candidates, even if he or she is no longer a candidate for Federal office. It would also permit Federal candidates and officeholders who decide to run for non-Federal offices to donate their Federal campaign funds to their own campaigns for State and local offices, if State law permits.

##### *Legislative Language:*

Section 312a(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. §439a(a)) is amended:

- (1) by striking the "or" at the end of paragraph (a)(3);
- (2) by striking the period, and adding a semi-colon at the end of paragraph (a)(4);
- (3) by adding a new paragraph (a)(5) to read as follows: "(5) for donations to State and local candidates subject to the provisions of State law; or"; and

(4) by adding a new paragraph (a)(6) to read as follows: “(6) for any other lawful purpose unless prohibited by subsection (b) of this section.”.

**Increasing the Amount That Authorized Committees May Give to Authorized Committees of Other Candidates (2004)**

*Section:* 2 U.S.C. §432(e)(3)(B)

*Recommendation:* The Commission recommends that Congress amend 2 U.S.C. §432(e)(3)(B) so that the term “support” will not include a contribution by any authorized committee in amounts of \$2,000 or less (rather than the current \$1,000 or less) to an authorized committee of any other candidate.

*Explanation:* Under the Act, with certain exceptions, no political committee which supports or has supported more than one candidate may be designated as an authorized committee. 2 U.S.C. §432(e)(3)(A). “Support” is defined to exclude a contribution by any authorized committee in an amount of \$1,000 or less to an authorized committee of any other candidate. Prior to BCRA, the amount of this “support” limitation and the contribution limitation for candidates and authorized committees with respect to any election for Federal office were both \$1,000. 2 U.S.C. §§432(e)(3)(B) and former 441a(a)(1)(A). In BCRA, Congress raised the section 441a(a)(1)(A) contribution limitation for candidates and authorized committees to \$2,000, but did not change the 2 U.S.C. §432(e)(3)(B) support limitation. To the extent the resulting variance between these sections of the Act may have been an oversight, the Commission recommends that the section 432(e)(3)(B) limit be increased to \$2,000, consistent with 2 U.S.C. §441a(a)(1)(A).

*Legislative Language:*

Section 302(e)(3)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. §432(e)(3)(B)) is amended by striking “\$1,000” and inserting in its place “\$2,000”.

## Compliance

**Modifying Terminology of “Reason to Believe” Finding (2004)**

*Section:* 2 U.S.C. §437g

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

*Explanation:* Under the present statute, the Commission is required to make a finding that there is “reason to believe a violation has occurred” before it may investigate. Only then may the Commission request specific information from a respondent to determine whether, in fact, a violation has occurred. The statutory phrase “reason to believe” is misleading and does a disservice to both the Commission and the respondent. It implies that the Commission has evaluated the evidence and concluded that the respondent has violated the Act. In fact, however, a “reason to believe” finding simply means that the Commission believes a violation may have occurred if the facts as described in the complaint or referral are true. An investigation permits the Commission to evaluate the validity of the facts as alleged. It would therefore be helpful to substitute words that sound less accusatory and that more accurately reflect what, in fact, the Commission is doing at this early phase of enforcement.

In order to avoid perpetuating the erroneous conclusion that the Commission believes a respondent has violated the law every time it finds “reason to believe,” the statute should be amended. Note that the change in terminology recommended by the Commission would not change the standard that this finding simply represents that the Commission believes a violation

may have occurred if the facts as described are accurate.

## Disclosure

### Electronic Filing of Senate Reports (Revised 2004)

*Sections:* 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 all Senate candidates (or those candidates' authorized committees) and 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 (\$50,000). The Bipartisan Campaign Reform Act of 2002 (Public Law No. 107-155) required the Commission to develop software and software standards that will allow information concerning reportable receipts and disbursements to be "transmitted immediately" and posted on the Commission's web site "immediately upon receipt." BCRA also expanded the class of persons required to file electronically, mandating that "each candidate for Federal office (or that candidate's authorized committee) shall use software" that meets the

new standards once such software is made available to the candidate. 2 U.S.C. §434(a)(12)(C). The plain language of this statutory revision does not appear to exempt Senate candidates and their authorized committees from the electronic filing requirements, but it does not specify where the electronic reports must be filed. Thus, a plain reading of these new requirements indicates that all Senate candidates and their authorized committees must use software, presumably to file electronically, with the Senate (or with the FEC). (The Commission notes that legislation is currently pending (S.1874) in the Senate to mandate electronic filing by Senate campaigns.)

Data from electronically filed reports is received, processed and disseminated more easily and efficiently, resulting in better use of resources. Reports that are filed electronically are normally available within five minutes and detailed data is available in the Commission's databases within 24 to 48 hours. In contrast, the time between the receipt of a report filed through the paper filing system and its appearance on the Commission's web site is 48 hours. It can take as long as 30 days before some detailed data filed on paper is available in the Commission's databases.

Disclosure delays are likely to severely impede the effective implementation of several requirements of the Act. For example, the "Millionaires' Amendment" is predicated on the timely availability of disclosure documents. 2 U.S.C. §§441a(i)(1)(E) and 441a-1(a)(2)(B). In other cases, the Act requires the disclosure of specific expenditures within 24 or 48 hours from the time they are made.

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 presence of anthrax powder in the Senate buildings and U.S. Postal Service facilities in 2001 and the more recent discovery of Ricin in mail delivered to the Senate office buildings. In each case, the disruptions have significantly delayed amendments to Senate campaign reports that were filed via regular mail. In 2001, reports

submitted by regular mail took months to arrive at the Secretary of the Senate (and the FEC), delaying disclosure. In contrast, amendments electronically filed during the same time periods by other types of filers were received and processed in a timely manner.

*Legislative Language:*

Section 304(a)(11)(D) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)(11)(D)) is amended to read as follows: “As used in this paragraph, the terms “designation”, “statement”, or “report” mean a designation, statement or report, respectively, which - (i) is required by this Act to be filed with the Commission, or (ii) is required under section 302(g) to be filed with the Secretary of the Senate and forwarded by the Secretary to the Commission.”

Section 302(g)(2) of the Federal Election Campaign Act of 1971 (2 U.S.C. 432(g)(2)) is amended by inserting “or 1 working day in the case of a designation, statement, or report filed electronically” after “2 working days”.

Section 304(a)(11)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)(11)(B)) is amended by inserting “, or filed with the Secretary of the Senate under section 302(g)(1) and forwarded to the Commission,” after “Act”.

## **Part II: Non-Priority/Substantive or Technical Legislative Recommendations**

### **Contributions/Expenditures**

#### **Multicandidate Political Committee Contribution Limitations and Non-multicandidate Political Committee Contribution Limitations (Revised 2004)**

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

*Recommendation:* The Commission recommends that Congress consider indexing for inflation the con-

tribution 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 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). 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. It is important to note that a committee cannot opt out of multicandidate status. Instead, under section 441a(a)(4), a committee automatically triggers multicandidate status once it meets the specific requirements listed above.

In addition, the limit for contributions to national party committees from multicandidate committees is \$15,000 per year (as it was prior to BCRA), yet BCRA increased the limit on contributions to the same national party committees from non-multicandidate committees from \$20,000 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.

*Legislative Language:*

Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. §441a) is amended—

- (1) in subparagraph (a)(2)(B), by striking “\$15,000” and inserting in lieu thereof “\$25,000”;
- (2) in clause (i) of subparagraph (c)(1)(B), by inserting “(a)(2)(A), (a)(2)(B),” after “(a)(1)(B),”;
- (3) in subparagraph (c)(1)(C), by inserting “(a)(2)(A), (a)(2)(B),” after “(a)(1)(B),”;
- (4) in clause (ii) of subparagraph (c)(2)(B), by inserting “(a)(2)(A), (a)(2)(B),” after “(a)(1)(B),”.

**Modifying the Definition of Federal Election Activity to Simplify Compliance for State, District and Local Party Committees Where Certain Employees Spend More than 25 Percent of Their Time In Connection with a Federal Election**

*Section:* 2 U.S.C. §431(20)(A)(iv)

*Recommendation:* The Commission recommends that Congress amend 2 U.S.C. §431(20)(A)(iv) to allow State, district and local political party committees to comply with that provision of the Act in biweekly, semi-monthly or monthly periods, in conformity with the period of time a party committee selects for payroll purposes. Currently, section 431(20)(A)(iv) requires compliance in monthly periods.

*Explanation:* Under BCRA, “services provided during any month by an employee of a State, district or local committee of a political party who spends more than 25 percent of that individual’s compensated time during that month on activities in connection with a Federal election” are Federal election activity. 2 U.S.C. §431(20)(A)(iv). Several party committees have informed Commission staff that this provision imposes a difficult compliance burden because the committees’ payroll periods frequently are different than monthly periods. The compliance burden for party committees will be lessened if such committees can elect a section 431(20)(A)(iv) compliance period that is the same as the payroll period used by the committees (e.g., biweekly, semimonthly or monthly payroll period). For example, a party committee that conducts payroll operations on a biweekly basis can also determine on a biweekly basis whether or not an employee meets the 25 percent test, and thus whether the employee must be compensated from the committee’s Federal account.

*Legislative Language:*

Section 301(20)(A)(iv) of the Federal Election Campaign Act of 1971 (2 U.S.C. §431(20)(A)(iv)) is amended:

- (1) by striking “any month” and inserting in lieu thereof “a payroll period of a State, district or local committee of a political party”;
- (2) by striking “a State, district or local committee of a political party” and inserting in lieu thereof “that party committee”;
- (3) by striking “that month” and inserting in lieu thereof “that payroll period”;
- (4) by inserting at the end the following: “For purposes of this subparagraph, a payroll period may be a biweekly, semimonthly or monthly period.”.

**Federal Candidates Soliciting, Receiving Or Spending Funds (2004)**

*Section:* 2 U.S.C. §441i(e)(1) and (e)(2)

*Recommendations:* The Commission recommends that Congress amend 2 U.S.C. §441i(e)(1) to clarify the circumstances in which recall elections, referenda and initiatives, recounts, redistricting, legal defense funds, and related activities fall within the scope of activities that are “in connection with a Federal election” and are thus subject to the §441i(e)(1) restrictions. The Commission also recommends that Congress clarify whether under §441i(e)(1)(A) a candidate or officeholder may solicit, direct, or transfer funds to entities not required to file reports with the Commission.

In addition, the Commission recommends that Congress amend 2 U.S.C. §441i(e)(1)(B) to make clear that this provision does not prohibit a Federal candidate or officeholder from spending his or her own personal funds in connection with an election other than an election for Federal office, and recommends that Congress amend 2 U.S.C. §441i(e)(2) to clarify that the phrase, “refers only to such State or local candidate,” does not apply to non-communicative activity.

*Explanation:* Section 441i(e)(1)(A) prohibits a Federal candidate or officeholder and certain entities from soliciting, receiving, directing, transferring, spending,

or disbursing, in connection with a Federal election funds that are outside the limitations, prohibitions, and reporting requirements of the Act. Because these prohibitions are limited in scope to specific activities conducted “in connection with an election for Federal office,” the Commission requests additional guidance from Congress as to the meaning of this phrase in this context. Specifically, Congress should consider amending the statute to clarify the circumstances in which it intends recall elections, referenda and initiatives, recounts, redistricting, candidate litigation costs and legal defense funds to be encompassed and thus subject to the restrictions in §441(e).

In addition, because this prohibition extends to the solicitation of funds not “subject to the ... reporting requirements of the Act,” Congress should consider resolving the potential ambiguity that might arise in situations where a candidate wishes to solicit funds on behalf of an entity in connection with a Federal election, including Federal election activity, when that entity is not yet (or may not ever be) required to file reports with the Commission. Even though such an organization’s funds are not subject to the reporting requirements of the Act, they may be subject to the limitations and prohibitions of the Act.

Section 441(e)(1)(B) similarly prohibits a Federal candidate or officeholder and certain entities from soliciting, receiving, directing, transferring, spending, or disbursing, in connection with a *non*-Federal election, funds that are outside the limitations and prohibitions of the Act. As written, the verbs “spend” and “disburse” in section 441(e)(1)(B) arguably apply to a Federal candidate’s or officeholder’s donation of his or her personal funds in connection with a State or local candidate or ballot measure election. This provision is meant to prevent corruption or the appearance of corruption of Federal candidates and officeholders resulting from large soft money donations made at their behest. However, there is little or no chance of such corruption in the context of a Federal candidate or officeholder donating his or her own funds. Thus, to the extent section 441(e)(1)(B) can be read to

prevent such individual donations, the Commission recommends that Congress amend this provision to remove the ambiguity.

Section 441(e)(2) is an exception to the general rule at 2 U.S.C. §441(e)(1)(B); the latter provision prohibits a Federal candidate or officeholder from soliciting, receiving, or spending funds in connection with a non-Federal election that are outside the amount limitations and source prohibitions of the Act. In order to qualify for the section 441(e)(2) exception, a Federal candidate or officeholder must meet two requirements: (1) any solicitation, receipt, or spending of funds by the Federal candidate or officeholder must be permitted under State law; (2) such solicitation, receipt, or spending must “refer only to such State or local candidate, or to any other candidate for the State or local office sought by such candidate, or both.” The second condition is unclear insofar as how non-communicative activity, such as receiving funds, can “refer to” any candidate. The Commission recommends that Congress clarify this language to make clear that the second condition refers to public communications, as defined in 2 U.S.C. §431(22).

*Legislative Language:*

Section 323(e)(1)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. §441(e)(1)(B)) is amended by inserting “(except for the candidate’s personal funds)” after “spend funds” and after “disburse funds”.

Section 323(e)(2) of the Federal Election Campaign Act of 1971 (2 U.S.C. §441(e)(2)) is amended by inserting “, in the case of a public communication,” prior to the phrase “refers only to”.

## Compliance

### Fraudulent Misrepresentation of Campaign Authority

*Section:* 2 U.S.C. §441h

*Recommendation:* The Commission recommends that Congress revise the prohibitions on fraudulent misrepresentation of campaign authority to encompass all persons purporting to act on behalf of candidates and real or fictitious political committees and political organizations. In addition, the Commission recommends that Congress remove the requirement that the fraudulent misrepresentation must pertain to a matter that is “damaging” to another candidate or political party.

*Explanation:* 2 U.S.C. §441h(a) prohibits a Federal candidate or his or her agent or employee from fraudulent misrepresentation such as speaking, writing, or otherwise acting on behalf of a candidate or political party committee on a “matter which is damaging to such other candidate or political party” or an employee or agent of either. The Commission recommends that this prohibition be extended to any person who would disrupt a campaign by such unlawful means, rather than being limited to candidates and their agents and employees. Proving damages as a threshold matter is often difficult and unnecessarily impedes the Commission’s ability to pursue persons who employ fraud and deceit to undermine campaigns. Fraudulent solicitations of funds on behalf of a candidate or political party committee were recently prohibited in BCRA without any required showing of damage to the misrepresented candidate or political party committee. See §441h(b).

In addition, while both §§441h(a) and (b) directly address fraudulent actions “on behalf of any other candidate or political party,” they do not address situations where a person falsely claims to represent another type of political committee or claims to be acting on behalf of a fictitious political organization, rather than an actual political party or a candidate. For example, the narrow scope of the existing language does not

bar fraudulent misrepresentation or solicitation on behalf of a corporate or union separate segregated fund or a non-connected political committee.

Congress should consider revising the statute to strengthen these important prohibitions on fraudulent activity.

#### *Legislative Language:*

Section 322 of the Federal Election Campaign Act of 1971 (2 U.S.C. §441h) is amended:

- (1) in subsection (a), by striking “who is a candidate for Federal office or an employee or agent of such a candidate”;
- (2) in paragraph (a)(1), by striking “or political party or employee or agent thereof on a matter which is damaging to such other candidate or political party or employee or agent thereof” and inserting in lieu thereof “, political party, other real or fictitious political committee or organization, or employee or agent of any of the foregoing,”;
- (3) in paragraph (b)(1), by striking “or political party” and inserting in lieu thereof “, political party, other real or fictitious political committee or organization, or employee or agent of any of the foregoing,”.

## Disclosure

### Increasing and Indexing all pre-BCRA Registration and Reporting Thresholds for Inflation

*Sections:* 2 U.S.C. §§431 and 434

*Recommendation:* The Commission recommends that Congress increase and index for inflation all pre-BCRA 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 pre-BCRA 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.

#### **Making Permanent the Administrative Fine Program for Reporting Violations (Revised 2004)**

*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, 2005.

*Explanation:* On January 23, 2004, President Bush signed the Consolidated Appropriations Act, 2004, which extended the Administrative Fine Program to cover violations of 2 U.S.C. §434(a) that relate to reporting periods through December 31, 2005. Since the Administrative Fine program was implemented with the 2000 July Quarterly report, the Commission has processed and made public 935 cases, with \$1,228,749 in fines collected. The Administrative Fine Program has been remarkably successful: over the

course of the program, the number of late and non-filed 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 fine regulations. Penalties for nonfiled reports are determined by the estimated 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.

## **Public Financing**

#### **Stabilizing the Presidential Public Funding Program (Revised 2004)**

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

*Recommendation:* The Commission strongly recommends that Congress take immediate action to stabilize the Presidential public funding program for upcoming election years.

*Explanation:* The Presidential public funding program has experienced shortfalls during each of the last three Presidential elections. The shortfalls are a result of declining participation in the check-off program and the fact that the checkoff is not indexed to infla-

tion while payouts are indexed. To date, the shortfalls have principally affected primary candidates, whose funding is given lowest priority under the law. In February 2004, when the U.S. Treasury made its second payment for the 2004 elections, it was only able to provide approximately 46 percent of the public funds that qualified Presidential candidates were entitled to receive.

Specifically, only a little over \$2.3 million was available for distribution to qualified primary candidates on February 1, 2004, 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 5 million, twice as much as the amount of available public funds. By February 2004, total payments made to primary candidates exceeded \$20.4 million.

The 2004 shortfall could have been considerably more severe had three major party candidates not opted out of public funding for the primary. While this left more money for candidates who chose to participate in the program, the candidates who opted out appeared to do so out of a desire to spend beyond the spending limits. Their ability to operate outside the restrictions of the public funding program may encourage more candidates to opt out in future election years.

The Commission recommends several specific legislative changes. First, to alleviate future shortfalls, the statute should be revised so that Treasury will be able to rely on *expected* proceeds from the voluntary checkoff, rather than relying solely on actual proceeds *on hand* as of the dates of the matching fund payments. Since large infusions of voluntary checkoff proceeds predictably occur in the first few months of the election year, including such estimated proceeds in the calculation of funds available for matching fund

payouts would virtually eliminate the shortfall in the near future. Because estimates for expected payouts are an acceptable part of the calculations (e.g., setting aside sufficient funds to cover general election payouts), estimates of the checkoff proceeds could be incorporated, as well. A very simple change in the wording of 26 U.S.C. §9037 would accomplish this: changing “are available” to “will be available.” Expected payments should be based on sound statistical methods to produce a cautious, conservative estimate of the funds that will be available to cover convention and general election payments.

A second revision in the statute would further the long-term stability of the presidential public funding program: indexing the voluntary checkoff amount to inflation. Although the checkoff amount was increased from \$1 to \$3 beginning with 1993 returns, there was no indexing built in to account for further inflation thereafter. Although other factors influence the fund’s balance, including the number of candidates participating, the number of contributions they can have matched, the taxpayer participation rate and deposits of repayments, an indexing of the checkoff amount for inflation would help guarantee some money coming in to replenish the public funding program.

## Miscellaneous

### Pay Level for the General Counsel and Creation of Senior Executive Service Positions (2004)

*Sections:* 2 U.S.C. §437c(f)(1); 5 U.S.C. §3132(a)(1)

*Recommendation:* The Commission recommends that Congress revise section 437c(f)(1) to state that the General Counsel shall be paid at a rate not to exceed the rate of basic pay in effect for level IV of the Executive Schedule (5 U.S.C. §5315), and that Congress amend 5 U.S.C. §3132(a)(1) by deleting subsection (C), which specifically excludes the Federal Election Commission from eligibility for the creation of Senior Executive Service positions.

*Explanation:* The Commission believes that two statutory changes are needed to bring the Commission’s personnel structure in line with that of other compa-

<sup>1</sup> The Commission certified a total of \$29.18 million in convention grants, and \$149.2 million was set aside for use by general election candidates.

nable federal agencies. This would ensure that the Commission is able to compete with other government agencies and the private sector in recruiting and retaining key management personnel, including the General Counsel. These changes would also enable the Commission, like other agencies, to move to merit-based pay systems for top executives. First, the FECA creates the statutory office of General Counsel and provides that the compensation of the General Counsel shall not exceed the rate of basic pay in effect for level V of the Executive Schedule (currently \$128,200). The Commission believes that this rate of pay is too low in light of the significant responsibilities entrusted to this statutory officer and in comparison to the salary rates of General Counsels of other agencies who have equivalent responsibilities. The FEC's General Counsel manages and directs a law office of approximately 125 persons. The General Counsel is also responsible for overseeing the Commission's enforcement program, federal litigation in district and appellate courts, public financing matters, conducting rulemakings, drafting advisory opinions, and providing general guidance on other legal matters.

Under the present compensation structure, the General Counsel is paid *less than the highest paid GS-15* in the Washington, D.C. area, and less than the overwhelming majority of SES employees. Congress recently restructured the SES compensation system into a performance-based, payband system. National Defense Authorization Act for Fiscal Year 2004 (Pub. L 108-136, Nov. 24, 2003). For 2004, individuals serving in SES positions are compensated in a payband between \$104,927 and \$145,600 (or \$158,100 in agencies with a certified SES performance appraisal system). Increasing the General Counsel's pay will ensure that the Commission can retain highly qualified individuals to serve as General Counsel as well as enable it to remain competitive in the marketplace for federal executives when a vacancy arises.

Second, the current pay and benefits structure hinders the Commission's ability to recruit talented executives from other agencies and retain high-performing senior managers, while conversion to SES would

enhance this ability. The Commission is prohibited by law from creating Senior Executive Service positions within the agency. 5 U.S.C. §3132(a)(1)(C). Consequently, unlike other agencies, the Commission's senior managers are employed in Senior Level positions. These executives, consisting of two Deputy Staff Directors, a Deputy General Counsel, and four Associate General Counsels, oversee major programmatic areas and supervise not only staff, but other managers as well. However, OPM's Guide to the Senior Executive Service indicates that the Senior Level system is for non-executive positions. In fact, the OPM Guide provides that supervisory duties should occupy less than 25 percent of a Senior Level employee's time. At the Commission, by contrast, supervisory and executive responsibilities occupy 100 percent of the time of SL employees.

In terms of total compensation and benefits, individuals serving in Senior Level positions are under-compensated for the responsibilities and duties required by these positions, and under-compensated when compared to individuals serving in similar capacities at virtually all other Federal agencies. Conversion to SES would also allow higher pay ranges for these positions and enable the Commission's senior managers to receive performance awards and other benefits not available to Senior Level employees. Perhaps most significantly, this includes the ability to carry over many more days of annual leave than Senior Level employees. Given that high-level managers frequently work extended periods in which they cannot use much leave, especially in the aftermath of BCRA, an executive's ability to accumulate and defer leave is not only an important benefit to him or her, but is also a valuable tool for the agency to ensure that executives are available to accomplish agency priorities.

Accordingly, the Commission believes that current Senior Level positions within the agency should be converted to SES positions and that any future Senior Level positions be created in the SES. There is a trend toward performance-based pay for executives throughout the government; converting the current Senior Level positions into SES positions would ensure performance-based pay is similarly emphasized

for the Commission's senior executive positions. The Commission is confident that conversion of Senior Level positions to SES positions will assist in retaining highly qualified individuals and will attract superior candidates when vacancies arise, thus permitting the Commission to remain competitive in the marketplace for federal executives.

*Legislative Language:*

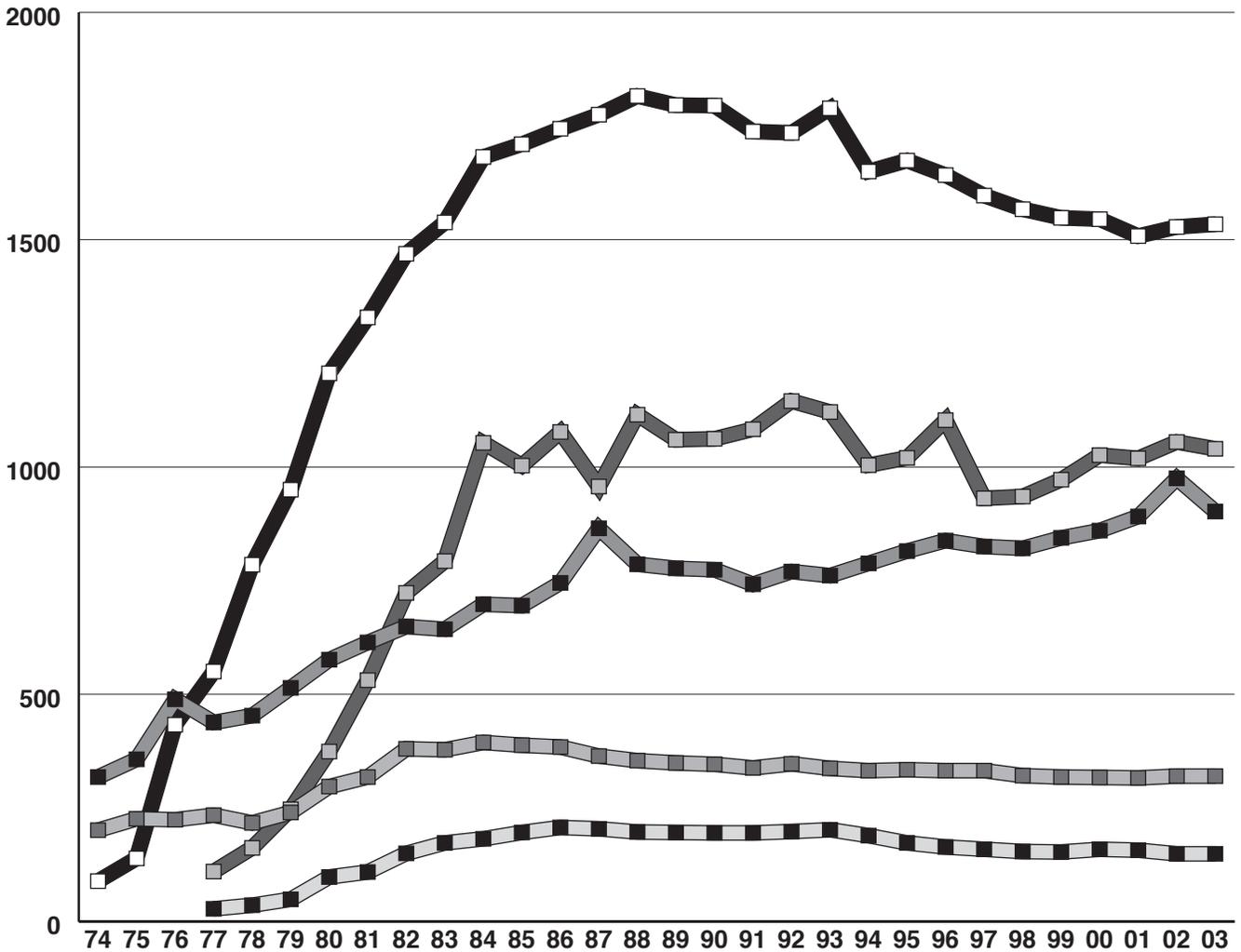
Section 310(f)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. §437c(f)(1)) is amended by striking "V" and inserting in lieu thereof "IV".

Section 3132(a)(1)(C) of Title 5 of the United States Code is amended by striking "Federal Election Commission, or".

# Chapter Seven Campaign Finance Statistics

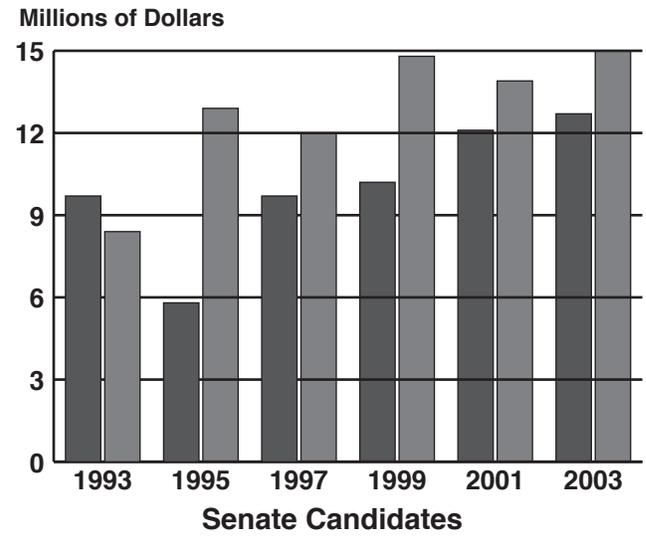
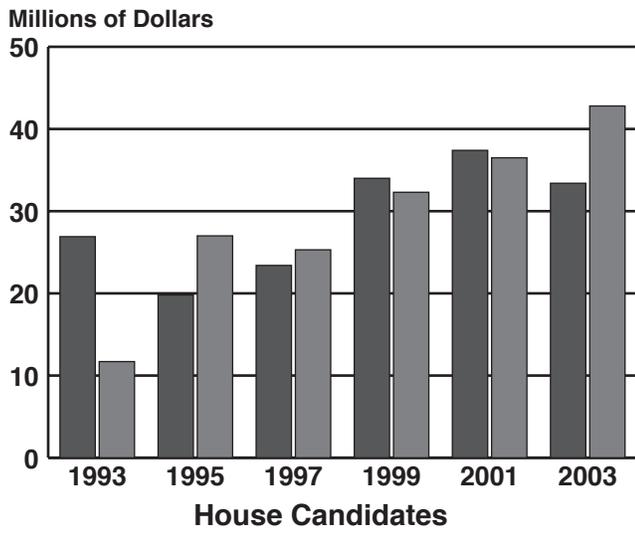
**CHART 7-1**  
**Number of PACs, 1974-2003**

-  Corporate
-  Nonconnected
-  Trade/Membership/Health
-  Labor
-  Other

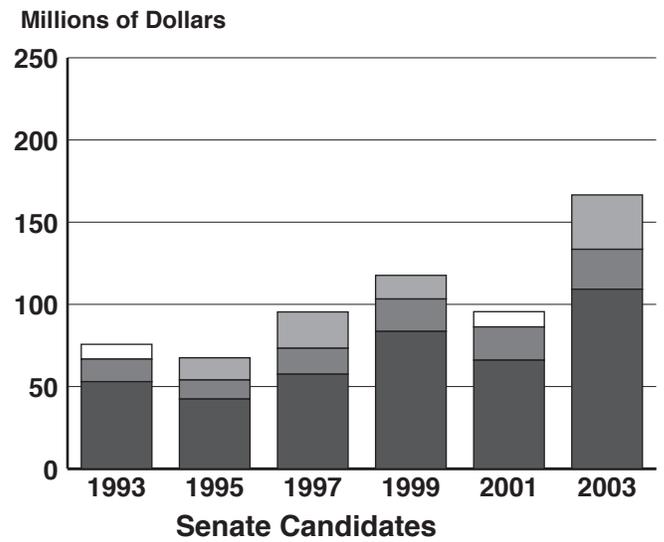
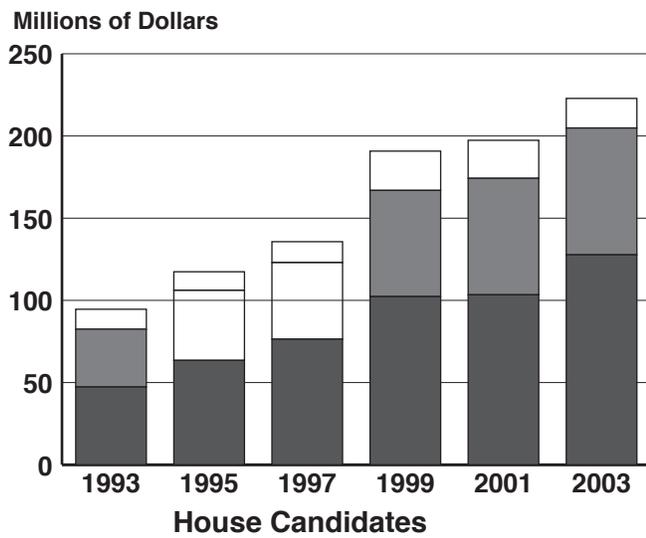
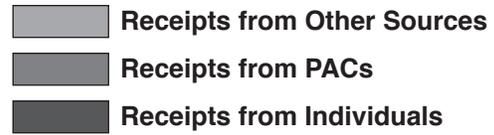


**CHART 7-2**  
**PAC Contributions to House and Senate**  
**Candidates in Nonelection Years**

■ Republicans  
■ Democrats

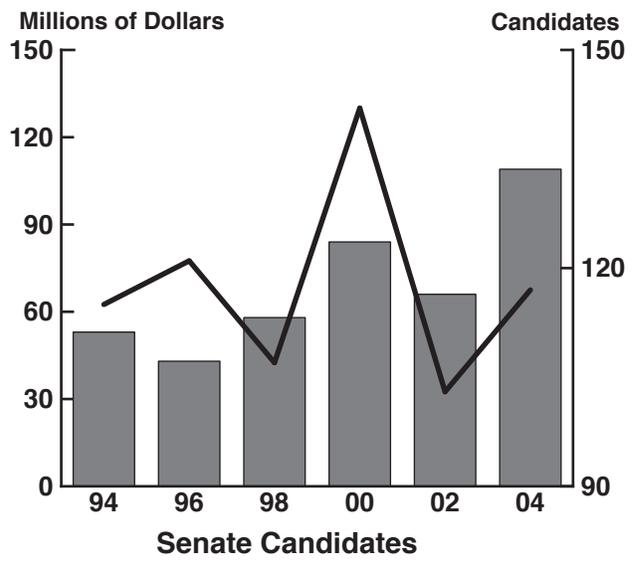
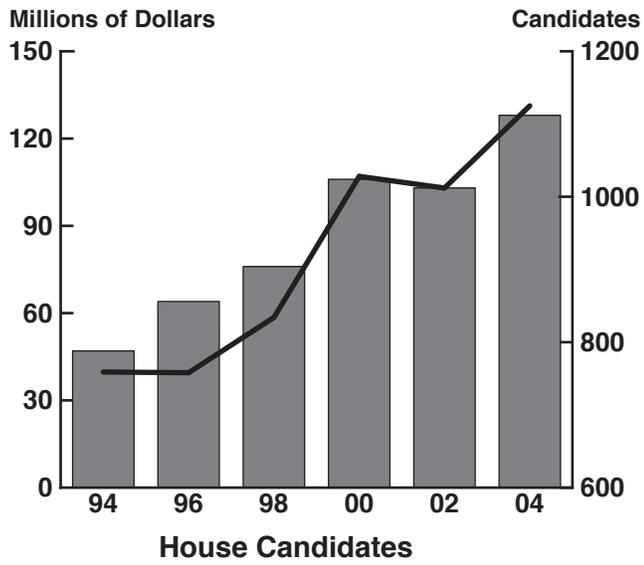


**CHART 7-3**  
**House and Senate Campaign Fundraising**  
**in Nonelection Years**



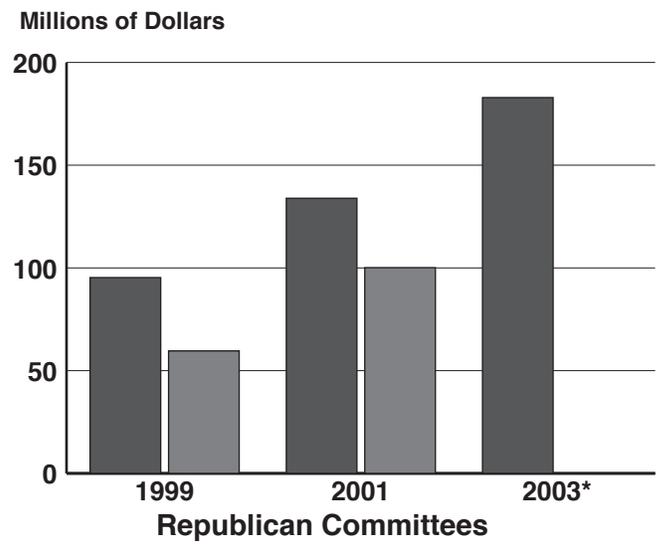
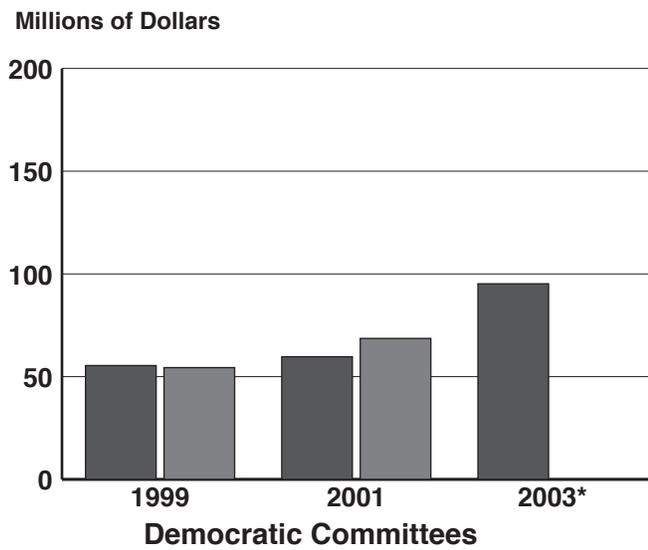
**CHART 7-4**  
**Contributions to House and Senate**  
**Candidates from Individuals During Off**  
**Year of Election Cycle**

█ Contributions  
— Number of Candidates



**CHART 7-5**  
**Fundraising by All Committees of**  
**National Party**

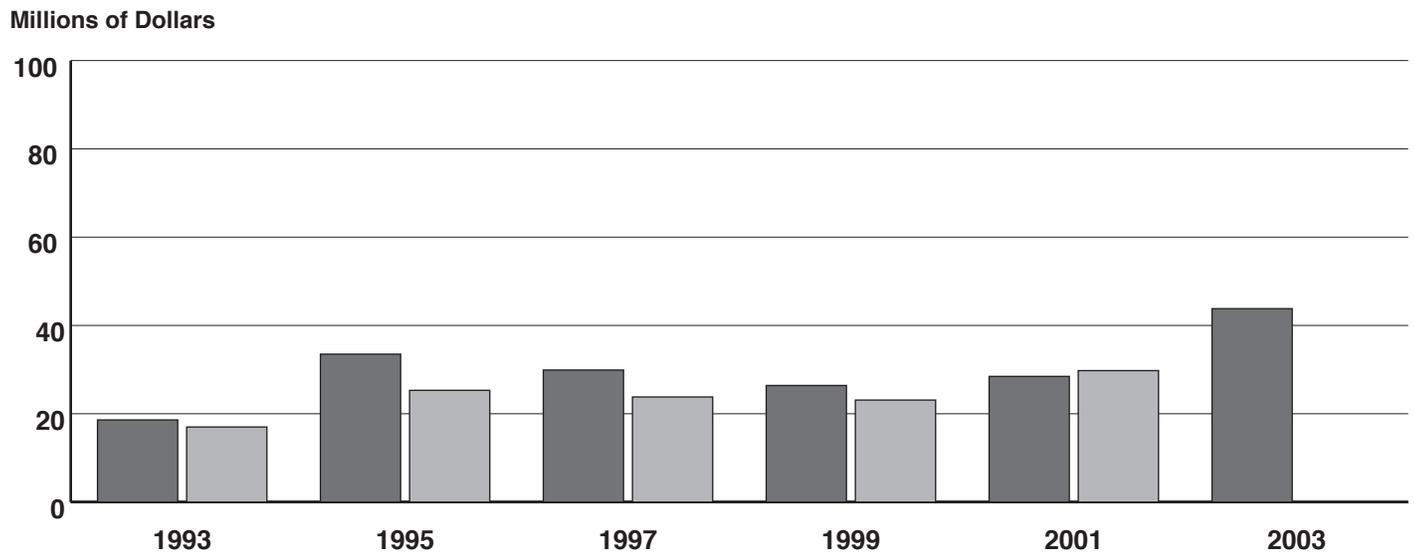
■ Nonfederal \*  
 ■ Federal



\* As of November 6, 2002, national party committees were barred from raising and spending nonfederal funds. 2 U.S.C. §441i(a).

**CHART 7-6**  
**Democratic National Committee**  
**Nonelection Year Fundraising**

■ Federal Dollars  
■ Nonfederal Dollars \*

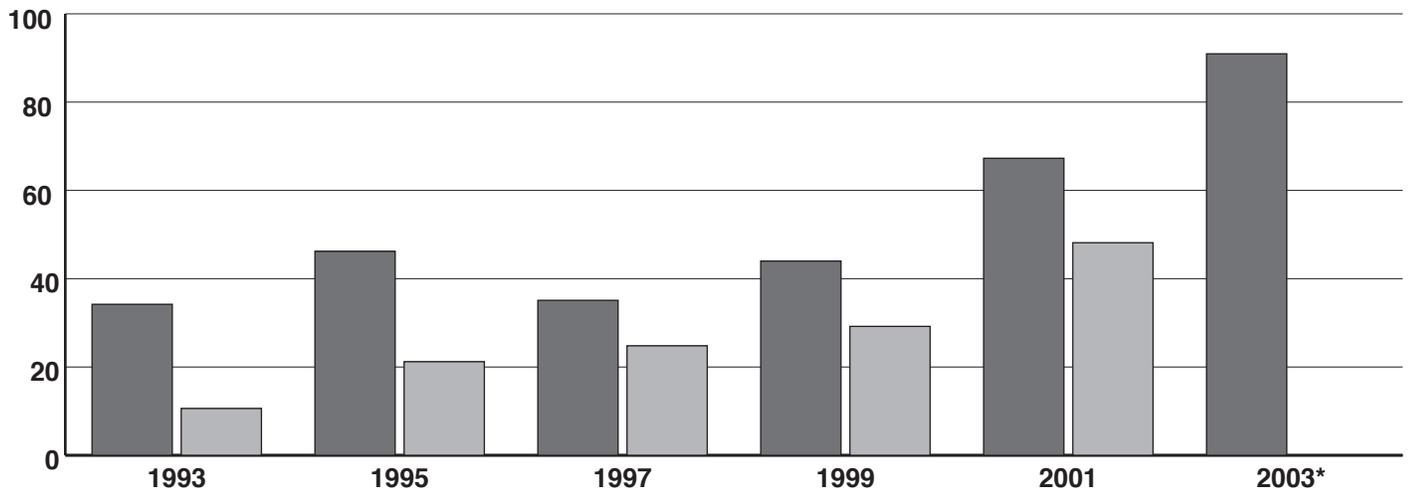


\* As of November 6, 2002, national party committees were barred from raising and spending nonfederal funds. 2 U.S.C. §441i(a).

**CHART 7-7**  
**Republican National Committee**  
**Nonelection Year Fundraising**

**Federal Dollars**  
**Nonfederal Dollars \***

Millions of Dollars



\* As of November 6, 2002, national party committees were barred from raising and spending nonfederal funds. 2 U.S.C. §441i(a).

# Appendix 1

## Biographies of Commissioners and Officers

### Commissioners

#### Ellen L. Weintraub, Chair

April 30, 2007<sup>1</sup>

Ellen Weintraub was appointed to the Federal Election Commission on December 6, 2002, by President George W. Bush. On December 9, 2002, Chair Weintraub began her tenure with the FEC as 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. During that time, she counseled clients on federal and state campaign finance laws, political ethics, nonprofit law and lobbying regulation. Ms. Weintraub served on the legal team that advised the Senate Rules Committee during an election contest that arose out of the 1996 election of Senator Mary Landrieu (D-LA). During a previous stint in private practice, Ms. Weintraub practiced as a litigator with the New York firm of Cahill Gordon & Reindel.

Prior to her tenure at Perkins Coie, Ms. Weintraub was Counsel to the Committee on Standard of Official Conduct for the U.S. House of Representatives (the House Ethics Committee). The Committee on Standards is structured in a manner similar to the Commission in which a bipartisan body is evenly divided between Republican and Democratic members. Ms. Weintraub's focus during that time was the implementation of 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. Ms. Weintraub also advised Members on investigations and frequently 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.

#### Bradley A. Smith, Vice Chairman

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. His areas of specialty were Election Law, Comparative Election Law, Jurisprudence, Law & Economics and Civil Procedure.

Prior to joining the faculty at Capital in 1993, Mr. Smith had practiced with the Columbus law firm of Vorys, Sater, Seymour & Pease. Throughout his career, he has also served as the 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. During his tenure at the Small Business Association, Mr. Smith's 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. from Harvard Law School.

#### David M. Mason, Commissioner

April 30, 2003

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

Prior to his work at the Heritage Foundation, Commissioner Mason served as Deputy Assistant Secretary of Defense and served on the Staffs of Senator John Warner, Representative Tom Bliley and then House Minority Whip Trent Lott. Throughout his career, he worked on numerous Congressional, Senate, Gubernatorial and Presidential campaigns. Additionally, Mr. Mason was a nominee for the Virginia House of Delegates in the 48<sup>th</sup> District in 1982.

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

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 levels. Commissioner Mason served as Chairman of the FEC in 2002. He and his wife reside in Lovettsville, Virginia, with their ten children.

**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, Mr. McDonald managed 10 regulatory divisions as the general administrator of the Oklahoma Corporation Commission. He had previously served as secretary of the Tulsa County Election Board and as the chief clerk of the board. He was also a member of the Advisory Panel to the FEC's Clearinghouse on Election Administration.

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

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

Scott Thomas was appointed to the Commission 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. from Georgetown University Law Center. He is a member of the District of Columbia and U.S. Supreme Court bars.

**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. Mr. Toner was confirmed by the United States Senate on March 18, 2003.

Prior to being appointed to the FEC, Mr. Toner served as Chief Counsel of the Republican National Committee. Mr. Toner joined the RNC in 2001 after serving as General Counsel of the Bush-Cheney Transition Team in Washington, DC, and General Counsel of the Bush-Cheney 2000 Presidential Campaign in Austin, TX.

Before joining the Bush campaign in Austin, Commissioner Toner was Deputy Counsel at the RNC from 1997-1999. Prior to his tenure at the RNC, Mr. Toner served as counsel to the Dole/Kemp Presidential Campaign in 1996.

Mr. 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 on federal and state election law compliance. He was also involved in a number of First and Fourteenth Amendment appellate litigation matters, including two cases that were successful in the U.S. Supreme Court.

Mr. Toner has written widely on campaign finance matters, including in the *Washington Post*, *Boston Globe*, *Chicago Tribune* and *Washington Times*. Mr. Toner is a lecturer in the Department of Politics at the University of Virginia.

Mr. 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.

## 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 for 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 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 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 the Frostburg State College and is a member of the Institute of Internal Auditors.

## Appendix 2 Chronology of Events

### January

- 1 – Chair Ellen L. Weintraub and Vice-Chairman Bradley A. Smith begin their one-year terms of office.
- 2 – Commission issues summary of financial activity of House and Senate campaign committees, chronicling overall receipts and disbursements since 1990.
- 14 – Commission issues semi-annual PAC count.

### February

- 5 – Commission holds BCRA roundtable session regarding “Disclaimers, Use of Campaign Funds and Fraudulent Solicitations.”
- 12 – FEC holds BCRA roundtable session regarding “Coordinated and Independent Expenditures.”
- 19 – Commission holds BCRA roundtable session regarding the so-called “Millionaires’ Amendment.”
- 26 – Commission holds public hearing on Leadership PAC NPRM.

### March

- 6 – FEC approves final rules on “Administrative Fines Regulations.”
- 12-13 – FEC holds conference for House and Senate campaigns and political party committees in Washington, DC.
- 20 – The U.S. Court of Appeals for the Sixth Circuit grants motion to voluntarily dismiss the defendants’ appeal in *FEC v. Freedom’s Heritage Forum*, regarding the failure to include disclaimers in express advocacy communications.
- 21 – Commission submits to Congress its budget request for FY 2004.

### April

- 3 – FEC approves a Notice of Proposed Rule-making on “Public Financing of Presidential Candidates and Nominating Conventions.”
- 15 – Quarterly report due.
- 29-30 – FEC holds conference in Washington, DC for corporations.

### May

- 2 – The U.S. District Court for the District of Columbia issues opinion in *McConnell et al. v. FEC* upholding certain provisions of the Bipartisan Campaign Reform Act, invalidating others and finding some provisions nonjusticiable.
- 8 – FEC submits seven legislative recommendations to Congress and President Bush.
- 19 – The U.S. District Court for the District of Columbia grants a stay in *McConnell et al. v. FEC* regarding constitutionality of BCRA.
- 21-22 – Commission holds conference in Boston for House and Senate campaigns.

### June

- 4 – FEC releases for public comment an updated draft of the national mail voter registration form that reflects information required by the Help America Vote Act.
- 5 – In *Stevens v. FEC*, the U.S. District Court for the Northern District of Illinois grants the Commission’s motion to dismiss the plaintiffs’ complaint challenging the Commission’s final determination regarding the untimely filing of the committee’s report.
- 6 – FEC holds public hearing on proposed changes to its rules governing publicly financed Presidential candidates and national nominating conventions.
- 11 – FEC holds public hearing on enforcement procedures.
- 16 – In *Christine Beaumont, et al. v. FEC*, Supreme Court rules that the prohibition on contributions by corporations is constitutional as applied to MCFL- type advocacy corporations.
- 17-18 – FEC holds conference for labor organizations in Washington, DC.
- 20 – U.S. Court of Appeals for upholds the decision in *AFL-CIO and DNC Services Corp. v. FEC* concerning availability of closed enforcement files.
- 27 – FEC certifies Democratic and Republican parties’ convention committees’ eligibility for public funding.

- 30 – Commission approves the Office of Election Administration’s report to Congress documenting impact of the National Voter Registration Act of 1993.

### July

- 3 – Commission certifies eligibility of Howard Dean’s Presidential primary committee to receive primary matching funds.
- 24 – FEC approves final rules on “The Public Financing of Presidential Candidates and Nominating Conventions.”

### August

- 14 – FEC issues Statement of Policy announcing change in its enforcement practices to allow deponents to obtain a copy of the transcript of their own deposition.
- 14 – U.S. District Court for the District of Kentucky at Louisville issues an agreed order regarding the involvement of Timothy Hardy in *FEC v. Freedom’s Heritage Forum*.
- 14 – FEC approves a Notice of Proposed Rulemaking on “Multicandidate Committees and Biennial Contribution Limits.”
- 14 – Commission approves a Notice of Proposed Rulemaking on “Candidate Travel.”
- 18 – U.S. District Court for the District of South Carolina, Columbia Division, grants Commission’s motion for summary judgment in *Cannon v. FEC*, regarding the failure to file a required disclosure report.
- 18 – U.S. District Court for the Eastern District of Pennsylvania grants summary judgment in favor of Greenwood for Congress, Inc. in challenge to FEC’s administrative fine.
- 28 – Commission approves Notice of Proposed Rulemaking on “Party Committee Phone Banks.”
- 28 – FEC approves Notice of Proposed Rulemaking on “Political Committees’ Mailing Lists.”
- 29 – FEC issues semi-annual PAC count.

- 30 – U.S. Court for the District of Columbia grants the Commission’s motion for summary judgment in *Judicial Watch and Peter F. Paul v. FEC* regarding the Commission’s alleged failure to respond to an administrative complaint.

### September

- 3 – Commission receives Petition for Rulemaking on “Trade Association Use of Payroll Deduction.”
- 9-10 – FEC holds regional conference in Chicago for House and Senate campaigns, political party committees and corporations, labor organizations, trade associations and membership organizations.
- 30 – U.S. District Court for the District of Columbia grants plaintiff’s request to dismiss with prejudice *Luis M. Correa, et al. v. FEC*, regarding the failure to file a required disclosure report in a timely manner.

### October

- 1 – Commission holds public hearing on Notices of Proposed Rulemakings concerning: multicandidate committees and biennial contribution limits, candidate travel and political committee mailing lists.
- 8 – Commission certifies eligibility of Lyndon LaRouche’s Presidential primary committee to receive Presidential primary matching payments.
- 15 – Quarterly report due.
- 16 – Chair Weintraub and Vice-Chairman Smith testify before Committee on House Administration on FEC enforcement procedures.

### November

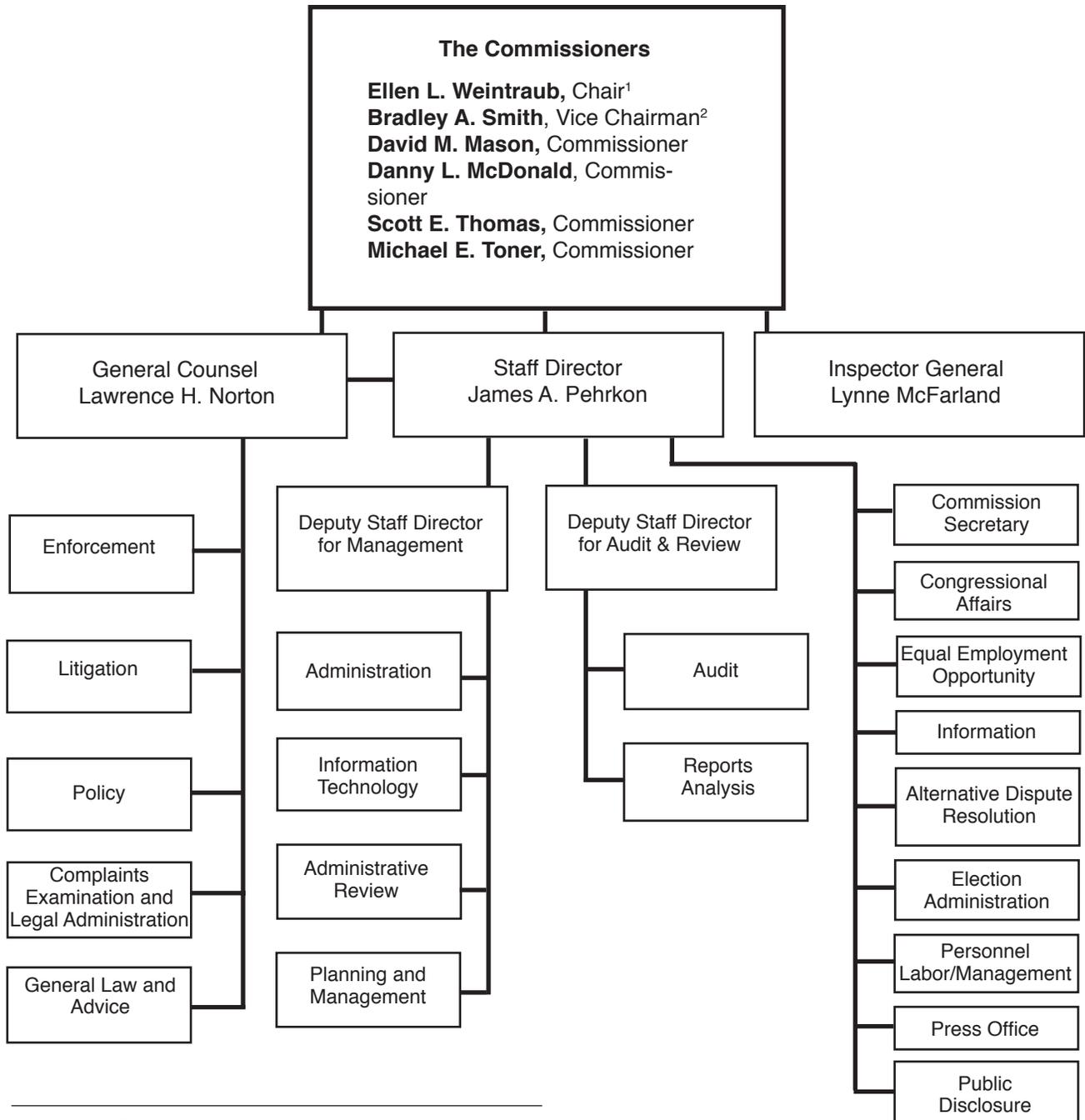
- 6 – FEC approves final rules on “Party Committee Phone Banks.”
- 6 – Commission approves a Notice of Disposition, terminating its rulemaking on “Political Committees’ Mailing Lists.”

- 14 – Commission certifies eligibility of Joseph Lieberman’s Presidential primary committee to receive Presidential primary matching payments.
- 20 – FEC approves final rules to address relationship between federal candidate’s authorized committee and “Leadership PAC.”
- 28 – Amended rules governing public funding of Presidential campaigns and nominating conventions take effect.

#### **December**

- 2 – Commission certifies eligibility of Richard Gephardt’s Presidential primary committee to receive Presidential primary matching payments.
- 2 – Commission certifies eligibility of Wesley Clark’s Presidential primary committee to receive Presidential primary matching payments.
- 4 – Commission approves final rules on “Travel on Behalf of Candidates and Political Committees.”
- 4 – Commission certifies eligibility of John Edwards’ Presidential primary committee to receive Presidential primary matching payments.
- 10 – Supreme Court issues ruling in *McConnell v. FEC* upholding two principal features of Bipartisan Campaign Reform Act: control of soft money and regulation of electioneering communications.
- 11 – FEC Staff Director James Pehrkon unveils agency’s new Enforcement Query System.
- 11 – FEC approves Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files identifying categories of records to be released publicly.
- 18 – Commission elects Bradley Smith as Chairman and Ellen Weintraub as Vice Chair for 2004.
- 23 – Commission certifies eligibility of Dennis Kucinich’s Presidential primary committee to receive Presidential primary matching payments.

# Appendix 3 FEC Organizational Chart



<sup>1</sup> Bradley A. Smith was elected 2004 Chairman.  
<sup>2</sup> Ellen L. Weintraub was elected 2004 Vice Chair.

## 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.

### 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 performs its responsibilities through the Enforcement Litigation, Policy and General Law and Advice Divisions and the Office of Complaint Examination and Legal Administration. 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 General Law and Advice Division is responsible for processing all audit and repayment matters, as well as handling debt settlements, administrative terminations and administrative fines matters.<sup>1</sup> In addition, this Division handles all administrative law, disclosure, FOIA, Privacy Act, employment and labor law matters, and it administers the Commission's Ethics in Government Act program.

The Complaints Examination and Legal Administration Office is responsible for processing all incoming enforcement matters (including Audit referrals) and tracking performance data for all of the Office of Gen-

eral Counsel's (OGC) activities.<sup>2</sup> This Office is also responsible for managing and monitoring all IT projects within OGC and managing the Law Library.

## 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, email, 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.

## Information Technology

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 IT 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,

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<sup>1</sup> The General Law and Advice Division was created during 2003. It assumed all the responsibilities of the Public Financing, Ethics and Special Projects Division, except for enforcement matters, and the administrative law responsibilities that formerly resided with the Policy Division.

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<sup>2</sup> This division was created during 2003.

personnel and payroll systems as well as the MUR prioritization system.

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

## **Inspector General**

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

## **Law Library**

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

On April 1, 2004, the Office of Election Administration, including all staff and equipment, was formally transferred to the newly established Election Assistance Commission.

## **Office of Personnel and Labor Relations**

The Personnel Office provides policy guidance and operational support to managers and staff in all areas of human resources management. The office plays a critical role in helping the Commission meet strategic performance goals by attracting, developing, and retaining a highly qualified, diverse workforce and

providing results-driven approaches to position management and classification, pay administration and compensation, performance management and human resource development. Personnel also provides expert consultation regarding employee benefits and wellness and family-friendly programs that sustain and enhance the employer-employee relationship. Additionally, the office administers the Commission's labor-management relations program. Finally, the Personnel Office processes all personnel actions and maintains all official personnel records for Commission employees.

## 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.

## 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; 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 2003	Filers Terminated as of 12/31/03	Continuing Filers as of 12/31/03	Number of Reports and Statements in 2003	Gross Receipts in 2003 (dollars)	Gross Expenditures in 2003 (dollars)
<b>Presidential Candidate Committees</b>	193	26	167	726	637,186,116	292,672,439
<b>Senate Candidate Committees</b>	470	117	353	2,081	319,500,451	145,811,898
<b>House Candidate Committees</b>	2,147	576	1,571	8,982	397,203,746	228,091,846
<b>Party Committees</b>						
Federal Party Committees	495	95	400	3,140	785,386,220	628,559,803
Reported Nonfederal Party Activity	178	22	156	0	19,796	89,486
<b>Delegate Committees</b>	1	0	1	5	0	132
<b>Nonparty Committees</b>						
Labor Committees	318	16	302	1,903	132,148,409	89,192,225
Corporate Committees	1,626	117	1,509	10,181	135,023,039	110,539,995
Membership, Trade and Other Committees	2,414	314	2,100	10,784	269,663,522	209,288,079
<b>Communication Cost Filers</b>	293	0	293	28	0	2,123,226
<b>Independent Expenditures by Persons Other Than Political Committees</b>	354	13	341	76	1,191,252	912,160

**Divisional Statistics for Calendar Year 2003**

	<b>Total</b>
<b>Reports Analysis Division</b>	
Documents processed	20,599
Reports reviewed	58,537
Telephone assistance and meetings	17,161
Requests for additional information (RFAs)	8,647
Second RFAs	3,697
Data coding and entry of RFAs and miscellaneous documents	30,807
Compliance matters referred to Office of General Counsel or Audit Division	43
Administrative Fine cases initiated	282
<b>Information Technology*</b>	
Documents receiving Pass I coding	15,481
Documents receiving Pass III coding	44,197
Documents receiving Pass I entry	57,654
Documents receiving Pass III entry	20,984
Transactions receiving Pass III entry	
• In-house	1,023,984
• Contract	140,123
<b>Public Disclosure Division</b>	
Campaign finance material processed (total pages)	1,555,967
Cumulative total pages of documents available for review	24,006,799
Requests for campaign finance reports	4,980
Visitors	7,528
Total people served	24,292
Information telephone calls	11,784
Computer printouts provided	37,429
Faxline requests	336
Total income (transmitted to U.S. Treasury)	10,703
Contacts with state election offices	3,367
Notices of failure to file with state election offices	2

\*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.

	<b>Total</b>
<b>Administrative Division</b>	
Contracting and procurement transactions	1,090
Publications prepared for print	47
Pages of photocopying	22,000,000
<b>Information Division</b>	
Telephone inquiries	29,457
Information letters	201
Distribution of FEC materials	4,927
Prior notices (sent to inform filers of reporting deadlines)	16,600
Other mailings	13,396
Visitors	111
Public appearances by Commissioners and staff	21
Roundtable workshops	6
Publications	16
<b>Press Office</b>	
News releases	94
Telephone inquiries from press	7,467
Visitors	922
Freedom of Information Act (FOIA) requests	47
Fees for materials requested under FOIA (transmitted to U.S. Treasury)	0
<b>Office of Election Administration</b>	
Telephone inquiries	3,806
National surveys conducted	3
Individual research requests	563
Materials distributed *	4,107
Election presentations/conferences	35
Foreign briefings	10
Publications	41
Public Hearings	0

\* Figure includes National Voter Registration Act materials.

	Total
Office of General Counsel	
Advisory opinions	
Requests pending at beginning of 2003	2
Requests received	40
Issued	35
Not issued	5
Pending at end of 2003	5
Compliance cases <sup>†</sup>	
Pending at beginning of 2003	188
Opened	64
Closed	96
Transferred to ADR	53
Pending at end of 2003	103
Law Library	
Telephone inquiries	548
Visitors	322
Legal Review FECA	
Pending at beginning of 2003	7
Opened in 2003	45
Closed in 2003	43
Pending at end of 2003	9
Litigation	
Cases pending at beginning of 2003	41
Cases opened	9
Cases closed	13
Cases pending at end of 2003	37
Cases won	5
Cases lost	2
Cases won/lost	2
Miscellaneous Cases <sup>‡</sup>	4
Regulations	
Notices of Proposed Rulemaking	5
Final or Interim Final Rules with Explanation and Justification	9
Public Rulemaking Hearings	3

<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>Four cases were voluntarily withdrawn by the plaintiff: three were withdrawn prior to dispositive motions; one was withdrawn after dispositive motion.

### 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
2003	21	4	25
<b>Total</b>	<b>516</b>	<b>151</b>	<b>667</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, 1975–2003**

	<b>Total</b>
Presidential	130
Presidential Joint Fundraising	12
Senate	29
House	192
Party (National)	47
Party (Other)	165
Nonparty (PACs)	92
<b>Total</b>	<b>667</b>

**Status of Audits, 2003**

	<b>Pending at Beginning of Year</b>	<b>Opened</b>	<b>Closed</b>	<b>Pending at End Year</b>
Presidential	4	0	4	0
Presidential Joint Fundraising	0	0	0	0
Senate	0	8	1	7
House	2	18	10	10
Party (National)	0	0	0	0
Party (Other)	6	1	6	1
Nonparty (PACs)	4	10	4	10
<b>Total</b>	<b>16</b>	<b>37</b>	<b>25</b>	<b>28</b>

## Appendix 6

# 2003 Federal Register Notices

**2003-1**

Contribution Limitations and Prohibitions: Corrections (68 FR 1793, January 14, 2003).

**2003-2**

BCRA Technical Corrections (68 FR 2871, January 22, 2003).

**2003-3**

Increased Contribution and Coordinated Party Expenditure Limits for Candidates Opposing Self-Financed Candidates, Interim Final Rules (68 FR 3970, January 27, 2003).

**2003-4**

Filing Dates for the Texas Special Election in the 19<sup>th</sup> Congressional District (68 FR 5020, January 31, 2003)

**2003-5**

Notice of Public Hearing (68 FR 7728, February 18, 2003).

**2003-6**

Administrative Fines Regulations, Final Rules (68 FR 12572, March 17, 2003).

**2003-7**

Correction to Administrative Fines Regulations, Final Rules and Explanation and Justification (68 FR 16715, April 7, 2003).

**2003-8**

Public Financing of Presidential Candidates and Nominating Conventions (68 FR 18484, April 15, 2003).

**2003-9**

Notice of Public Hearing and Request for Public Comment on Enforcement Procedures (68 FR 23311, May 1, 2003)

**2003-10**

Extension of Public Comment Period for Public Financing of Presidential Candidates and Nominating Conventions (68 FR 26237, May 15, 2003).

**2003-11**

Filing Date for the Texas Special Election in the 19<sup>th</sup> Congressional District (68 FR 28006, May 22, 2003).

**2003-12**

Public Financing of Presidential Candidates and Nominating Conventions, Final Rules (68 FR 47386, August 8, 2003).

**2003-13**

Notice of Proposed Rulemaking on Multicandidate Committees and Biennial Contribution Limits (68 FR 50488, August 21, 2003).

**2003-14**

Notice of Proposed Rulemaking on Candidate Travel (68 FR 50481, August 22, 2003).

**2003-15**

Statement of Policy Regarding Deposition Transcription in Nonpublic Investigations (68 FR 50688, August 22, 2003).

**2003-16**

Notice of Proposed Rulemaking on Party Committee Telephone Banks (68 FR 52529, September 4, 2003).

**2003-17**

Notice of Proposed Rulemaking on Mailing Lists of Political Committees (68 FR 52531, September 4, 2003).

**2003-18**

Payroll Deduction Contributions to a Trade Association's Separate Segregated Fund (68 FR 60887, October 24, 2003)

**2003-19**

Multicandidate Committees and Biennial Contribution Limits, Final Rules (68 FR 64512, November 14, 2003).

**2003-20**

Party Committee Phone Banks, Final Rules (68 FR 64517, November 14, 2003).

**2003-21**

Mailing Lists of Political Committees, Notice of Disposition, Termination of Rulemaking (68 FR 64571, November 14, 2003).

**2003-22**

Leadership PACs, Final Rules (68 FR 67013, December 1, 2003).

**2003-23**

Public Financing of Presidential Candidates and Nominating Conventions, Announcement of Effective Date and Correction (68 FR 66699, November 28, 2003).

**2003-24**

Travel on Behalf of Candidates and Political Committees, Final Rules (68 FR 69583, December 15, 2003)

**2003-25**

Statement of Policy regarding Disclosure of Closed Enforcement and Related Files (68 FR 70426, December 18, 2003).

## Appendix 7

# 2003 Advisory Opinions

This appendix includes a comprehensive list of the Advisory Opinions (AOs) issued by the Commission throughout the year. Some of these advisory opinions are explored in greater detail in Chapter 3 “Legal Issues.”

- AO 2002-14:** National Party committee’s lease of mailing list and sale of ad space and trade-mark license (Libertarian National Committee, Inc.; issued January 31, 2003).
- AO 2002-15:** Affiliation of trade associations consisting of physician members who specialize in urology (American Association of Clinical Urologists and American Urological Association, Inc.; issued February 4, 2003).
- AO 2003-1:** Nonconnected committee’s allocation of administrative expenses (NORPAC; issued March 7, 2003).
- AO 2003-2:** Socialist Workers Party disclosure exemption (Socialist Workers Party National Campaign Committee; issued April 4, 2003)
- AO 2003-3:** Solicitation of funds for nonfederal candidates by federal candidates and officeholders (Representative Eric Cantor; issued April 25, 2003).
- AO 2003-4:** Corporation’s matching charitable contribution plan (Freeport—McMoRan Copper and Gold, Inc; issued April 29, 2003).
- AO 2003-5:** Federal Candidate’s or officeholder’s participation in membership organization fundraising events (National Association of Home Builders of the United States and BUILD-PAC; issued July 14, 2003).
- AO 2003-6:** Transfer of payroll deduction authority from subsidiary to parent corporation’s PAC (Public Service Enterprises Group, Inc.; issued May 9, 2003).
- AO 2003-7:** State leadership PAC’s refund of non-federal funds (Virginia Highlands Advancement Fund; issued May 16, 2003).
- AO 2003-10:** Solicitation of nonfederal funds by relative of federal candidate or officeholder (Rory Reid, son of Senator Harry Reid; issued June 13, 2003).
- AO 2003-11:** State party committee’s payment of employee benefits (Michigan Democratic State Party; issued August 7, 2003).
- AO 2003-12:** Federal candidate/officeholder’s support of ballot initiative (Representative Jeff Flake; issued July 29, 2003).
- AO 2003-13:** Qualification of “Members-in-Training” as members of membership organization (American Academy of Ophthalmology, ORTHPAC; issued June 2, 2003).
- AO 2003-14:** Distribution of apron pins bearing PAC name (Home Depot, Inc.; issued June 20, 2003).
- AO 2003-15:** Donations to legal expense trust fund of federal officeholder (Representative Denise Majette; issued August 14, 2003).
- AO 2003-16:** Affinity credit card program between national bank and national party committee (Providian National Bank; issued August 14, 2003).
- AO 2003-17:** Use of campaign funds to pay for criminal defense (James W. Treffinger; issued July 25, 2003).
- AO 2003-18:** Impermissibility of transfer of general election funds to charitable organization (Bob Smith for Senate; issued July 28, 2003).
- AO 2003-19:** National party committee’s sale of office equipment (Democratic Congressional Campaign Committee; issued August 25, 2003).
- AO 2003-20:** Federal officeholder solicitation for scholarship fund (Representative Silvestre Reyes; issued August 29, 2003).

**AO 2003-21:** Disaffiliation of corporations' PACs (Lehman Brothers Holdings, Inc. and Peabody Energy Corporation; issued September 26, 2003).

**AO 2003-22:** Contributions collected and forwarded to trade association SSF by executives of member corporations (American Bankers Association; issued August 28, 2003).

**AO 2003-23:** Earmarking contributions to Presumptive Presidential Nominee (Women Engaged in Leadership, Education and Action in Democracy; issued November 7, 2003).

**AO 2003-24:** Prohibition of the sale and use of contributor information (National Center for Tobacco-Free Kids; issued October 10, 2003).

**AO 2003-25:** Federal candidate appearing in an advertisement endorsing a nonfederal candidate (Senator Evan Bayh; issued October 17, 2003).

**AO 2003-26:** Impermissible use of campaign funds by Senate campaign (Voinivich for Senate; issued November 7, 2003).

**AO 2003-27:** Status of state party as state committee of political party (Missouri Green Party; issued November 7, 2003).

**AO 2003-28:** LLC's nonconnected PAC may become an SSF (Horizon Lines Associates Good Government Fund; issued November 24, 2003).

**AO 2003-29:** Transfer of funds from a nonfederal PAC to a federal PAC of an incorporated membership organization (National Fraternal Order of Police; issued November 25, 2003).

**AO 2003-30:** Retiring campaign debt and repaying candidate loans (Fitzgerald for Senate Committee; issued December 19, 2003).

**AO 2003-31:** Candidate's loans to campaign apply to Millionaires' Amendment threshold (Senator Mark Dayton; issued December 19, 2003).

**AO 2003-32:** Federal candidate's use of surplus funds from nonfederal campaign account (Inez Tenenbaum; issued December 19, 2003).

**AO 2003-33:** Charitable matching plan with prize for donors. (Anheuser Busch Companies, Inc.; issued December 12, 2003).

**AO 2003-34:** Reality television to simulate Presidential campaign (Showtime Networks, Viacom and TMD Productions; issued December 19, 2003).

**AO 2003-35:** Presidential candidate may withdraw from matching payment program (Gephardt for President, Inc.; issued December 12, 2003).