FEC

Annual Report 1977

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Letter of Transmittal

FEDERAL ELECTION COMMISSION
Washington, D.C.

To the Congress of the United States:

We submit for your consideration the third annual report of the Federal Election Commission as required by the Federal Election Campaign Act of 1971, as amended. This **Annual Report 1977** includes a detailed statement of Federal Election Commission activities performed in carrying out its duties under this Act, together with recommendations for such legislative or other actions the Commission considered appropriate. We hope you will find this a useful description of the Commission's efforts to implement the Federal Election Campaign Act.

Respectfully,

THOMAS E. HARRIS
Chairman

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Introduction

The Commission's third year was distinguished from the preceeding years by two factors: the impact of the Supreme Court decision in *Buckley* v. *Valeo* and the effects of a nonelection year.

The effect of the *Buckley* decision was not fully felt until 1977—a year after it was handed down. That decision laid the foundation for new legislation placing sole responsibility for the enforcement of Titles 2 and 26 of the U.S. Code with the Commission. Thus, in 1977, the Commission formulated, for the first time, a comprehensive set of enforcement procedures.

With the passage of the 1976 Amendments, moreover, the Commission wrote a complete set of regulations implementing the Act. Prescribed on April 13, 1977, the new regulations became the medium, together with the statute, through which the Commission administered the Act and made policy.

The *Buckley* decision and resulting Amendments in election year 1976 meant that the nation conducted its Federal elections under a law only five months old. Not surprisingly, this gave rise to numerous questions and problems. In 1976, the Commission had been called upon to answer these questions and make many decisions to resolve these problems with little time for reflection.

The absence of regularly scheduled Federal elections made 1977 a unique year for the Commission. For the first time in its short existence, the Commission could pause to evaluate its past actions and, on the basis of that evaluation, refine its policies and procedures and, where necessary, formulate new ones. The Commission drafted an amended regulation, for example, to deal with the unexpected problem of Presidential primary candidates acquiring surplus contributions after having received enough public funds to defray their campaign expenses. As another example, the Commission expanded its computer capability enabling it to streamline the monitoring of reports and facilitate their disclosure to the public.

In addition to providing time to evaluate past experience and develop new procedures, the nonelection year permitted the Commission to address many audits and enforcement cases resulting from the 1976 elections.

Without the pressure of pending elections, in 1977 the Commission also engaged in long-range planning and formulated several basic objectives to serve as guides in its administration of the statute:

—To administer public funding of Presidential elections.

—To obtain compliance with the Act by interpreting the Act through regulations, rendering advisory opinions, providing information, monitoring reports and enforcing the provisions of the law.

—To provide the public with information on the campaign finance activities of candidates and committees.

—To serve as a clearinghouse for information on the State administration of Federal elections.

These objectives became the basis for systematic program development, budget allocation and program evaluation.

Part I of this report describes Commission activities in terms of meeting these four objectives. Part II covers the Commission's views on legislation relating to Federal elections including the Commission's recommendations for changes in the Federal Election Campaign Act. Part III describes the organization and operation of the Commission.

New objectives, new procedures, new internal processes—all these had one basic purpose: to enable the Commission to administer the election law as smoothly as possible in 1978 and in the future.

Chapter 1
Administer Public Financing of Presidential Elections

The Commission's first objective, to administer public financing of Presidential elections, reflects the statutory requirement embodied in Chapters 95 and 96 of the Act. Although the Presidential election was held in 1976, Commission activity in fulfilling this objective continued into 1977. The Commission made final certifications for matching funds, audited those candidates receiving public funds, and, in a few cases, required the repayment of public funds. The nonelection year also gave the Commission an opportunity to reflect on its procedures, identify problem areas and propose solutions.

Presidential Election Campaign Fund

During the 1976 election period, the Commission, for the first time in U.S. politics, implemented a program of public financing of Presidential elections.* Funded through the dollar check-off on income tax forms, the Presidential Election Campaign Fund is divided into separate accounts designed to finance three aspects of the Presidential election campaign:

1. Presidential Primary Matching Account

This account provides matching funds to those Presidential candidates who meet the initial threshold amount ($5,000 in contributions of $250 or less from individuals in each of 20 States). Each candidate may receive matching funds for every contribution of $250 or less from individuals up to $5,000,000 (plus the cost-of-living increase for that year).

2. Party Convention Payment Account

The law provides that each major political party is entitled to up to $2,000,000 (plus the cost-of-living increase) to help finance its nominating convention. Additionally, minor party conventions may be funded on a proportionate basis. A major party is a party whose candidate in the previous Presidential election received 25 percent or more of the popular vote. Minor party is defined as one whose candidate for President in the previous Presidential election received more than five but less than 25 percent of the total number of popular votes cast in such election.

3. Presidential General Election Account

This account provides public funding for major party Presidential nominees who agree to certain statutory conditions. Each candidate becomes eligible for $20,000,000 (plus the cost-of-living increase), provided he or she accepts no private contributions. Partial and post-election funding is available for qualifying minor or new party candidates.

After an intense year in 1976* of implementing a new program—i.e., determining eligibility of candidates, verifying matchable contributions, certifying public funds—1977 activity was directed to the final certification of primary matching funds, audits and subsequent repayments of public funds.

*For more information on the activity of the Fund, see Appendix 5.

*For detailed information on the public financing program in 1976, see the Commission's 1976 **Annual Report**.

Certifications in 1977

During 1977, certifications of primary matching funds continued at a reduced level as the various primary campaigns wound down. The Act requires that matching payments be used solely to defray qualified campaign expenses. Qualified campaign expenses may be incurred only before the date of the candidate's "ineligibility" for public funds. (A candidate becomes "ineligible" if he/she fails to receive at least 10 percent of the votes cast in two consecutive primary elections in which he/she actively sought election.* For all other candidates, the ineligibility date is the date of withdrawal from the race or of the nominating convention.)

On February 3, 1977, the Commission adopted an amendment to its then-proposed matching fund regulations. This amendment tied post-eligibility matching fund payments to net outstanding campaign obligations, private funds raised after the candidate's date of ineligibility, and previous post-eligibility matching fund payments. The effect was that matching funds could be received to liquidate qualified campaign debts only to the extent that privately raised funds were not available.

Under the previous regulation (which did not contemplate the situation in which candidates would receive sufficient post-eligibility private contributions to retire their primary debts), the Commission would have matched contributions up to the amount of the outstanding debt on the date of ineligibility, regardless of the amount of private funds raised after that date. A partial repayment would have been required, however, if the candidate had accumulated a surplus.

Together with those matching fund submissions pending from 1976, the Commission certified a total of $516,164.48 in matching payments during 1977. Out of the 15 candidates receiving public funds in 1976, eight continued to receive funds in 1977 to pay 1976 election campaign debts. See Appendix 5.

Audits

The Commission is required to conduct a "thorough examination and audit" of all primary matching fund recipients, publicly funded party convention committees and general election Presidential candidates receiving public funding to ensure the funds are used in accordance with conditions required under the Act. The scheduling of these audits is outlined in the statute:

—Primary Matching Fund: Audits must be conducted ". . . after each matching payment period. . . ." (26 U.S.C. §9038(a).) The "matching payment period" ends on the date of the candidate's party nominating convention.

—Convention Account: Audits must be conducted ". . . no later than December 31 of the calendar year in which the Presidential nominating convention involved is held." (26 U.S.C. §9008(g).)

—General Election Fund: Audits must be conducted ". . . after each Presidential election . . . ." (26 U.S.C. §9007(a).)

After the 1976 election period, the Commission was required, under these provisions, to conduct audits of the 15 Presidential candidates receiving matching funds, the two national nominating conventions which received public funding, and the two major party Presidential candidates who received public funds for the general election.

As 1976 was the first year a program of public financing for Presidential elections had ever been implemented and the audits of these candidates in 1977 were the first audits of any type conducted by the Commission, questions were raised and problems encountered. For example, the question was raised during the audits as to what extent documentation of expenditures should be provided by a campaign to ensure that public funds were used solely for qualified campaign expenses, as required by the Act. For additional problems raised in the area of public financing, and Commission recommendations for possible solutions, see the Chapter on Legislative Recommendations.

The procedures followed in Presidential audits are similar to those used in the random and referral audits described in the Audit Section. During the field audit, the candidates' expenditures are verified to determine whether funds were used for expenses other than qualified campaign expenses. The audit also determines whether candidates have debts of surplus funds as of the date of their ineligibility. On the basis of these determinations, the audit report may recommend to the Commission that repayment of public funds be made.

Repayments

Repayment of funds to the Presidential Election Campaign Fund is required if:

*This criteria for ineligibility was first enacted in the 1976 Amendments to the Act, which took effect on May 11, 1976.

1. The amount received exceeds the amount to which the candidate (or convention committee) is entitled;
2. The "qualified campaign expenses" of the candidate (or convention committee) exceed the limitations set forth in the Act;
3. Public funds are used for other than "qualified campaign expenses"; or
4. Public funds remain after debts and obligations have been liquidated.

Under the Federal Election Campaign Act, each major party was eligible to receive $2,182,000 in Federal funds in quarterly payments to defray expenses related to their 1976 conventions. In March 1977, the Democratic National Committee (DNC) and the Republican National Committee (RNC) returned to the Federal Treasury a total of more than a half million dollars in surplus public funds. The DNC refunded $170,085 and the RNC $382,136, in unused funds.

On May 12, 1977, in another repayment action, the Commission directed Governor Milton Shapp, former Presidential primary candidate, to repay to the U.S. Treasury $299,066.21, an amount equal to the total amount of Federal matching funds he had received. The Commission based its decision on the fact that Governor Shapp had incorrectly certified to the Commission that he had met the eligibility requirements for obtaining primary matching funds and was, therefore, not entitled to any public funds. During the required audit and examination of Governor Shapp's campaign finance reports, the Commission determined that certain unusual patterns of contributions existed. Further examination and investigation disclosed that certain persons made illegal contributions.* When these improper contributions were subtracted from the total amount submitted, the Commission found that Governor Shapp had not satisfied the 20-State threshold requirement to qualify for public funding. Since Governor Shapp did not meet the statutory qualifications for matching funds, the Commission determined that the matching payments he received were in excess of the amount to which he was entitled and, therefore, had to be repaid.

Other repayments by Presidential primary candidates were made as a result of the statutorily-required field audits by the Commission. These included refunds of certain expenditures determined by the Commission to be nonqualified campaign expenses and of a statutorily-mandated percentage of unused funds. For a summary of repayments, see Appendix 5.

*As a result of enforcement actions stemming from these investigations, the Commission entered into conciliation agreements and/or levied fines against several individuals.

Chapter 2
Obtain Compliance

The Commission devoted much of its staff and resources to the fulfillment of its second objective, to encourage candidates and committees to comply with the provisions of the Act. The Commission attempts to achieve this goal by:

A. Prescribing regulations which interpret the Act;
B. Rendering advisory opinions applying the Act or regulations to specific factual situations;
C. Disseminating information on the Act and regulations;
D. Monitoring campaign activity reflected in reports and statements;
E. Implementing systematic procedures for enforcement; and
F. Defending Commission actions through litigation.

Each of these programs is discussed respectively in the sections below.

Regulations

To lay the groundwork for fulfilling the objective of obtaining compliance, the Commission prescribes regulations which flesh out and clarify the broader provisions of the Federal Election Campaign Act. They have the effect of law. Under the Act, the Commission cannot prescribe regulations until Congress has had 30 legislative days to review them, during which time either the House or the Senate may disapprove the regulations.

Regulations Prescribed in April

After hearings, extensive debate and revisions, the Commission sent its first set of proposed disclosure regulations to Congress in December 1975 and January 1976.* The Supreme Court decision (*Buckley* v. *Valeo*) on January 31, 1976, suspended the Commission's rulemaking authority and, thus, these regulations never went into effect.

Following passage of the 1976 Amendments to the Act, signed into law on May 11, 1976, the Commission approved a new set of regulations which were sent to Congress on August 3, 1976. These proposed regulations had been under review for 28 legislative days when Congress adjourned on October 1, 1976. Consequently, the Commission was not able to prescribe this second set of regulations.

On January 11, 1977, the Commission resubmitted to Congress the regulations it had approved on August 3, 1976, modified by three substantive amendments to the following sections:

—§102.9: Reporting particulars of expenditures.
—§114.4: Corporate and labor organization distribution of voter registration information.
—§134.3: Formula for repayment of Presidential matching funds.

*Two separate regulations (on Document Filing and Office Accounts) were sent to Congress in July and August, 1975. Both were subsequently disapproved.

On March 29, the 30-legislative-day review period for the regulations expired without either House of Congress exercising its veto. A week later, on April 7, the Commission voted 6-0 to prescribe the regulations. The notice of promulgation appeared in the **Federal Register** on April 13, the effective date of the regulations.

With the prescription of its regulations, the Commission could issue Advisory Opinions based on the application of the regulations as well as the Act. In addition, the promulgated regulations provided an interpretive base for enforcement proceedings.

Regulatory Process Continues

The regulatory process is a continuous one. Regulations may become outdated when changes are made in statutes on which they are based. Late in December, for example, Congress passed the Social Security Financing Act (P.L. 95-216), which contained several amendments to 2 U.S.C. §441i, the honorarium provisions of the Act. The Commission's regulations (Part 110.12) will be modified to reflect the legislative changes.

New regulations may also be needed to deal with situations not foreseen in the current regulations. During 1977, numerous staff meetings were held at the Commission to discuss the drafting of technical and clarifying amendments to the regulations, as well as substantive additions reflecting new Commission policy. New regulations are frequently based on the practical knowledge gained from implementing the Act and regulations. The public financing regulations, for example, are being revised on the basis of a year's experience in the certification of public funds and the resulting audits.

Rulemaking Notices

During 1977, the Commission published, in the **Federal Register**, three different notices on proposed rulemaking, each requesting public comment on issues in need of further clarification.

Corporate and Labor Solicitations

The first notice, published on May 26, 1977, requested public comments on questions concerning the statutory requirement that corporations make solicitation methods available to labor organizations (§114.5(k)). The Commission had determined, while considering an advisory opinion request submitted by Continental Oil Company (CONOCO), that the current regulations did not cover the specific factual situations posed in the CONOCO request.

Under existing FEC regulations, any corporation which raises funds for its separate segregated fund by soliciting voluntary contributions from its executive and administrative personnel and stockholders must, upon request, make the same solicitation method available to a labor organization with respect to its members. FEC regulations identify, as examples, several methods of political solicitation, including payroll deduction or "check-off" plans, computer mailing services and the use of corporate meeting rooms to explain voluntary giving.

The following is a summary of the questions raised in the rulemaking notice:

1. To what extent is a corporation required to make its solicitation plan available to a labor organization (representing the corporation's employees) after the corporation stops utilizing the plan, if the union's request was initially made while the plan was still in use?
2. To what extent must a corporation make its solicitation plan available to a labor organization if the union's request was initially made after the corporation stopped utilizing the plan?
3. Is a parent corporation required to make its solicitation plan avaialble to a labor organization representing employees of one of its subsidiaries if the parent corporation solicits the executive and administrative personnel of another subsidiary corporation which does not employ any members of this labor organization?

At the end of the year, the staff was considering the comments received in order to draft proposed regulatory language for Commission consideration.

Candidate Debates

On July 12, 1977, a second notice was published to solicit public comment on the sponsorship and financing of public debates between candidates for Federal office. Hearings were held on September 12, 1977. The issue arose from the FEC's decision in the fall of 1976 that the Carter-Ford Presidential debates could be sponsored by the League of Women Voters, but that corporate or union general treasury funds could not be used to help finance the debates.

During the hearings, the Commission received testimony on this issue and several additional questions, including:

—Are contributions to finance debates "made for

the purpose of influencing" or "in connection with" a Federal election?

—Does the inclusion or exclusion of particular candidates (for example, independent or third party) have significance as to the debate's "influence on" or "connection with" a Federal election? Are factors such as receipt of public financing or ballot qualifications important in determining whether a debate would have an "influence on" or be "in connection with" a Federal election?

—Is the nature (such as nonprofit or educational) of the sponsoring organization relevant to the debate's "influence on" or "connection with" an election?

—Under what circumstances are disbursements made by a corporation, labor organization or Federal contractor to finance a debate not considered a contribution or expenditure "in connection with" an election?

—Who should control the subject matter or format of the debate?

—To what extent does sponsorship or financing of debates by corporations, labor organizations and Federal contractors affect the debates and/or the ensuing election?

Testimony was given by nine witnesses, including representatives from the League of Women Voters and the National Citizens Committee for Broadcasting, an attorney for a 1976 independent Presidential candidate, two 1976 Federal congressional candidates and several other individuals with an interest in campaign financing. In addition to hearing testimony, the Commission received 15 written comments.

After reviewing the comments and testimony received, on December 8, 1977, the Commission approved new proposed regulatory language which would permit corporations and labor organizations to donate general treasury funds to certain nonprofit groups for use in the sponsorship of candidate debates. The Commission debated, but did not adopt, three alternative proposals for establishing criteria for participation in debates. The proposed language must be submitted to Congress for 30 legislative days before the regulation may be prescribed.

Independent Expenditures

A third notice requested public comment on the general subject of independent expenditures. After considering several advisory opinions dealing with independent expenditures, the Commission appointed a Task Force consisting of a Commissioner and several staff members to study the issue, identify the problems and propose possible solutions. The notice published on October 18, 1977, posed several questions to assist in this process:

—Do the present regulations offer sufficient guidance to a person who wishes to know whether a contemplated expenditure is independent?

—With reference to the statutory definition of "independent expenditure" as an expenditure ". . . expressly advocating the election or defeat of a clearly identified candidate. . . ." what types of expenditures constitute express advocacy of the election or defeat of a clearly identified candidate?

—Should factual situations which give rise to the presumption that an expenditure is **not** independent include:

a) The situation where there has been substantial or significant contact between the expending person and the candidate, committee or agents; or

b) The situation where an individual who is, or has been, actively participating in the financing or management of a candidate's campaign either makes an independent expenditure or is in a decision-making position within a committee which makes an independent expenditure on behalf of that candidate?

—Are there constitutional or other considerations which require or allow a distinction between independent expenditures made by committees and those made by individuals?

—Should the definition of "agent" (§109.1(b)(5)) be expanded (or narrowed)? If it is expanded, should it include any person who is an agent under the common law of agency, including an employee or an independent contractor?

Comments received were being reviewed by Commission staff at the end of the year to assess the need for modified or additional regulatory language on this subject.

Advisory Opinions

In its effort to assist candidates and committees in complying with the Act and regulations, the Commission issues advisory opinions (AO's) applying a general rule of law, as stated in the Act or the Commission's regulations, to a specific factual situation. An AO provides legal protection to the following persons who, in good

faith, act in accordance with the provisions or findings of the opinion:

1. The requestor of the AO* and
2. Any persons involved in a specific activity which is ". . . indistinguishable in all its material aspects . . ." from the activity described in the AO.

The 1976 Amendments to the Federal Election Campaign Act specified that any general role of law must first be stated in the Act or in formally prescribed regulations before being discussed in an advisory opinion. Consequently, between the enactment of the 1976 Amendments in May 1976 and the promulgation of Commission regulations in April 1977, the only advisory opinions issued were those based solely on the Act. During this period, however, the FEC continued to receive advisory opinion requests which required responses based, at least in part, on the Commission's proposed regulations. Each of these responses (designated "Re: AOR") contained a notice indicating it was informational in nature and did not constitute an advisory opinion because it was based in part on proposed regulations then pending before the Congress. The Re: AOR did not afford the recipient the same legal protection as that granted through an advisory opinion.

Advisory Opinion Procedure

All advisory opinion requests (AOR's) are made public in the Office of Public Records at the Commission. Interested members of the public may make comments on any AOR within 10 days of the date it is made public. A line description of the AOR and other pertinent information for obtaining copies is published on a monthly basis in the Commission's newsletter, the **Record**. The Commission discontinued, for budgetary reasons, its previous policy of publishing summaries of AOR's in the **Federal Register**, effective October 1, 1977.

The Office of General Counsel considers each request for an AO. If necessary, it seeks additional information from the requestor. The Office presents a draft AO to the Commission in open session during a regularly scheduled Commission meeting. All AO's must be approved by at least four Commissioners. An advisory opinion may be reconsidered provided the original requestor submits a written request to that effect, and one of the Commissioners who voted with the majority approving the original opinion makes the motion to reconsider. Once issued, AO's are made public in the Office of Public Records and summarized in the **Record**.

During 1977, the Commission issued 46 advisory opinions and 11 Re: AOR's (issued before April 13, 1977). For summaries of these AO's and Re: AOR's, see Appendix 4.

Summaries of Advisory Opinions

Advisory opinions cover a wide variety of subjects. During the 1976 election year, opinions focused on questions such as the legality of certain contributions or expenditures and the reporting requirements. Questions during 1977, the nonelection year, dealt more with the use of excess campaign funds, officeholder activities, corporate and labor organization activity and preparations for the upcoming 1978 election. Major issues in 1977, addressed in several advisory opinions, are summarized below.

Use of Excess Campaign Funds

With the winding down of the campaigns from the 1976 election, many requests for advisory opinions concerned the use of excess campaign funds. The statute provides (2 U.S.C. §439a) that excess funds may be used:

1. To support activities of a Federal officeholder;
2. As donations to charitable organizations; or
3. For any other lawful purpose.

The Commission confirmed that excess funds could be used by a Congressman for a television program to inform his constituents of new developments (Re: AOR 1976-107) or to pay for telephone bills in excess of a Congressman's communication allowance (Re: AOR 1976-114). The Commission also concluded that, as used in 2 U.S.C. §439a, "any other lawful purpose" includes the transfer of excess funds to a future campaign (AO 1977-24) and the retirement of debts from a 1969 congressional or a 1976 gubernatorial campaign (AO 1977-41 and AO 1977-48), as well as the payment of legal fees incurred in defending the candidate against criminal charges (AO 1977-39).

*An AO may be requested only by Federal officeholders, candidates for Federal office, political committees supporting such candidates, and the national committee of a political party.

Corporate and Labor Organization Activity

In a request from the Continental Oil Company submitted in 1976 (Re: AOR 1976-106), the Commission considered whether or not employee/participants in CONOCO's Employee Stock Ownership Plan (ESOP) were stockholders for puposes of the solicitation provisions of the Act (2 U.S.C. §441b). In its original response issued December 30, 1976, the Commission determined, by a 4-2 vote, that the participants in CONOCO's ESOP did not fall within the Commission's definition of "stockholder" (11 CFR §114.1(h)), which requires that stockholders have:

1. A vested beneficial interest in the stock;
2. The power to direct how that stock will be voted; and
3. The right to receive dividends.

The response concluded that while CONOCO's ESOP participants met the first two criteria for stockholders, the third did not apply. It stated ". . . while the cash dividends generated by the stock are reinvested by the trustee for the benefit of the shareholders, these 'stockholders' do not receive the dividends directly."

In September 1977, by a 4-1 vote, the Commission agreed to reconsider the response, thereby rendering the original response null and void. The issue to be reconsidered centered on the third criterion for stockholders: whether the "right to receive dividends" meant the direct, physical receipt of dividends at any time, or whether this phrase implied receipt of any nature including payment of dividends to a trustee for the benefit of the employee/participant, as in the case of CONOCO's ESOP.

The Commission was unable to reach a consensus in this matter.

The Commission received a second advisory opinion request on the subject of solicitations under §441b from the Proprietary Industry Political Action Committee (PIPAC) (AO 1977-18). It asked whether the Board of Directors of PIPAC's sponsoring trade association (Proprietary Association) could be solicited even though they were also executive or administrative personnel of certain member corporations of the Association. Some of these member corporations had not given the statutorily-required prior approval for solicitations by the trade association.

The Commission concluded, in an opinion issued in November, that the solicitations could not be made: The members of the Board of Directors were not stockholders or executive or administrative personnel of the trade association, the only group which, under the Act, could be solicited without restriction. Rather, the members of the Board could be solicited by the trade association only if their employing corporation had consented to a solicitation by the trade association, and had not consented to solicitations by any other trade association in that calendar year.

Advisory opinion requests answered by the Commission dealt with several other subjects concerning corporate and labor organization activity, including the following:

—Corporations may not use payroll deduction plans to solicit contributions for a trade association political action committee (Re: AOR 1976-94).

—National banks may establish separate segregated funds (Re: AOR 1976-109).

Duration of Candidacy

The Commission responded to several advisory opinion requests concerning the duration of candidate or committee status. Following are summaries of two of these opinions:

—AO 1977-11 concluded that a Member of Congress was a candidate ". . . irrespective of whether the Member 'officially' declared as a candidate for reelection . . ." when he maintained a campaign account which accepted contributions or made expenditures (as defined in the Act), or when such an account was maintained by a continuing campaign committee on his behalf.

—A 1976 candidate for the U.S. House of Representatives had forgiven a loan to his campaign committee so that it could terminate. He asked the Commission whether his committee could accept a contribution received several months after termination and use it as partial repayment of the forgiven loan. AO 1977-43 concluded that once a committee had properly terminated, it could not subsequently receive contributions. Vice Chairman Joan Aikens filed a dissenting opinion.

Affiliated Committees

In several opinions, the Commission dealt with the difficult question of affiliation. Other opinion requests on this subject are still pending. In a brief opinion, the Commission confirmed that two committees which are affiliated may transfer unlimited amounts of funds between them (AO 1977-21). However, the two committees must

maintain separate identities for disclosure purposes and both must file campaign finance disclosure reports with the Commission.

With regard to the question of whether or not affiliation exists between two committees, AO 1976-104 applied the criteria set out in Commission regulations (§110.3 (a)(1)(iii)) to a specific set of circumstances. The opinion held that the Good Government Committee of First Federal Savings of Miami (the Committee) was affiliated with the Florida Savings Political Action Committee because they met two of these criteria:

> . . . *(D) Similar patterns of contributions;*
>
> *(E) The transfer of funds between committees which represent a substantial portion of the funds of either the transferor or transferee committee . . .*

The Commission based its conclusion on information from the Committee and a review of its reports filed.

Search Committee

In a request received by the Commission, the Iowa 1980 Senate Campaign Committee (the Committee) proposed to ". . . function initially as a search committee 'for the purpose of selecting the best Republican candidate' for the 1980 Senate election in Iowa." At the time of selection, the Committee would become that candidate's principal campaign committee. The Committee raised the question as to whether it could function as a principal campaign committee without a candidate until such time as a candidate was selected. The Commission concluded that the committee ". . . may be established and operate as a 'political committee' under the Act . . . [and] . . . if desired, the Committee may operate under the contribution limits applicable to contributions which are made to a principal campaign committee." The opinion also determined that the Committee could retroactively be designated as the principal campaign committee of the candidate eventually selected. However, the opinion imposed numerous conditions on the acceptance of contributions by the Committee and on the application of contribution limitations to contributions received both before and after the committee's designation as a principal campaign committee.

Chairman Thomas Harris and Commissioner Neil Staebler dissented from the majority opinion's conclusion.

Joint Fundraising

In two advisory opinions issued during 1977 (AO 1977-14, AO 1977-23), the Commission defined certain procedures for joint fundraising which would ensure proper disclosure and compliance with the contribution limitations of the Act.

The Commission agreed that contributions could be divided among the participating candidates according to a predetermined formula. All such contributions received through joint fundraising would, of course, be subject to contribution limitations. Therefore, a donor who had already contributed up to the limit to one of the participating candidates would have to allocate his/her contribution among the other participating candidates (rather than subscribing to the predetermined formula) to avoid exceeding contribution limitations.

Fundraising costs, including advances for prepaid expenses, would have to be allocated among the participating committees according to the same formula adopted for allocating contributions. Any other allocation would result in a contribution in-kind (subject to limitations) by the committee which pays more than its proportionate share.

A separate political committee could be designated by the participating candidates to conduct the joint fundraising. However, each participating candidate would have to designate, as one of his/her own depositories, the depository of such separate committee.

Finally, the Commission stated that each candidate would have to report the portion of contributions which he/she received. Any proportionate contribution exceeding $100, when added to other contributions from the same donor, would have to be fully itemized.

Information

As one of the major means of obtaining compliance with the Act, the Commission has always stressed its policy of making as much information as possible available to candidates and committees, and to the general public. By making information available, the Commission is able to help candidates and committees understand their obligations under the Act, particularly reporting requirements and contribution limits. It can also help the general public understand FEC functions and activities. A variety of information programs have been created to further this goal of

explaining the law, answering questions and assisting filers.

Information Division

These information programs are administered by the Information Division, consisting of three branches*: the Office of Public Communications, the Press Office and the Publications Office. The Office of Public Communications' primary function is to respond to inquiries and requests for materials by candidates, committees and the general public. In spite of the fact that 1977 was a nonelection year, the Office maintained three toll-free telephone lines (800/424-9530) in addition to regular telephone lines, which enabled it to respond to nearly 25,000 phone inquiries and to fill over 8,000 individual requests for materials. In addition, the staff responded to over 400 general information letters. Periodic informational mailings to all candidates, committees and the general public were also coordinated through this Office.

All contacts with the press continued to be centralized in the Press Office. During 1977, this Office handled approximately 2,200 calls from media sources around the country with questions about the campaign law. This Office handles all press calls to ensure prompt, coordinated responses to media questions and requests, and to ensure uniform dissemination of information about Commission policies and actions. In addition to responding to inquiries, the Office issued 43 press releases on major Commission decisions, policies and activities. Other regular mailings included notices of Commission meetings. The Press Office, a focal point for all public inquiries about compliance matters, is responsible for maintaining the statutorily-mandated confidentiality for pending compliance matters and for putting closed compliance cases on the public record.

During 1977, the Publications Office produced materials directed toward helping candidates, committees and other interested individuals understand the Act and FEC policies. The monthly newsletter, the **Record**, served as the primary means through which the Commission imparted information on its current decisions, policies and procedures. The Office continued to develop the **Campaign Guide** series, each volume of which focused on a particular set of election law provisions, such as nonelection year activity or requirements of congressional candidates and their committees. The Office also published the Commission's newly prescribed regulations, complete with two indices to the general provisions of the regulations and the public financing provisions, respectively. For summaries of specific publications, see Appendix 9.

*Although administratively a part of the Information Division, the Clearinghouse is discussed in a separate chapter of the report.

Public Appearance Policy

In response to invitations to address public gatherings, the Federal Election Commission sends representatives, free of charge, to explain or discuss election and campaign finance laws. In April, the Commission identified five guidelines for accepting such invitations:

1. The Commission's appearances must afford equal opportunity to all political parties, without preferential treatment to any organization or person.
2. FEC appearances must permit the Commission to maximize its contact with the public, within a limited travel budget.
3. As a general rule, that portion of the function involving Commission representatives must be open to the general public.
4. The Commission cannot accept invitations when the sponsors appear to have organized the function to gain financial profit or commercial advantage. (This limitation does not, however, prevent FEC appearances at functions charging reasonable fees to cover costs of the function.) Nor can the Commission participate when its presence at the function has been advertised in such a manner as to suggest profit or commercial advantage for the sponsor.
5. The Commission must reject invitations when its participation would be associated with political solicitation efforts or with endorsement of partisan activities.

During 1977, Commissioners and FEC staff made approximately 72 public appearances in 19 States, Washington, D.C. and Puerto Rico.

In addition to participating in outside conferences and seminars, the Commission welcomed various student and citizens groups and foreign visitors to Commission headquarters in Washington. A short tour of the Commission, followed by a discussion and question/answer session, acquainted visitors with the Commission's role.

Audits

To further promote compliance with the Act, the Commission directly verifies campaign financ-

ing information through audits of candidates and committees. The Act requires the Commission ". . . to make from time to time audits and field investigations with respect to reports and statements filed under the [Act]." 2 U.S.C §438(a)(8). These referral or random audits are in addition to those required under Title 26 for Presidential candidates receiving public funds. For further information on audits required under Title 26, see Chapter on Public Financing.

The statutorily required audits of Presidential candidates were the top priority for the Commission during late 1976 and the early months of 1977. Later in 1977 the Commission implemented its policy for random or referral audits. In April, it approved a staff report establishing scheduling priorities and procedures for conducting these audits. The procedures are described below. The policy for random or referral audits, approved in November 1976, is discussed at the end of this chapter.

Audit Procedures

The audit procedures approved by the Commission in April endorsed three objectives for FEC audits:

—To verify reporting accuracy;

—To determine compliance with the Act; and

—To provide guidance to persons required to file reports under the Act.

The Commission stressed the importance of using its auditing staff to help educate candidates and committees about proper recordkeeping and reporting procedures. The seven-step auditing process adopted by the Commission reflects this priority.

Step 1: Pre-Audit Review

In order to prepare for audit field work and to have an overview of the committee's campaign activity, the first step of the audit is a review of all statements and reports filed by the committee with the Commission. At this stage, the audit staff makes extensive use of the information available in the Disclosure Information System.

With the support of the Disclosure Division, the audit staff also reviews the Disclosure file on the committee. That file may include Requests for Additional Information (RFAI's), correspondence, records of telephone conversations with the committee, and other pertinent information. Finally, the audit staff consults with the Office of General Counsel to determine if any advisory opinions or informational letters have been issued to the committee or if it is or has been involved in any compliance matters.

Step 2: Entrance Conference

The entrance conference between the committee and the auditors is designed to promote an understanding of the Commission's goals of education, assistance and voluntary compliance, and to outline the general steps of the audit. At this stage, the auditors obtain a description of the accounting and bookkeeping methods used by the committee and also obtain written statements from the committee on the availability of records and the identity of all campaign depositories.

Step 3: Field Review

Following recognized accounting practices, the auditors then review the actual records maintained by the committee. This examination includes reconciliation of all bank statements to obtain an overall picture of the committee's financial activity, review of receipts and expenditures, review of all debts and obligations, and a comparison of the committee's records with the filed disclosure reports.

Step 4: Exit Conference

The exit conference between the auditors and the committee is used to identify, for the committee, any disclosure or compliance problems found during the audit. The auditors recommend changes or adjustments to be made through amendments to the committee's reports and offer suggestions to improve accounting procedures.

Step 5: Post-Audit Report

After returning to the Commission from the field, the auditors summarize their field work and complete any working papers. At this stage, auditors refer to the Office of General Counsel possible serious violations of the Act which may require enforcement action, or questions raised during the course of the audit needing legal clarification. If necessary, a letter is sent to the committee summarizing the findings of the audit and requesting amendments to reports to correct any minor violations found during the audit.

Based on the audit findings, the auditor's research and the committee's response to FEC recommendations, an audit report is drafted containing the following information:

A. Background: Authority and purpose of the audit, dates covered by the audit and com-

mittee organizational information.

B. Audit Opinion: Auditor's opinion on the overall compliance of the committee. This opinion may vary from an unqualified opinion where no material problems are discovered, to an adverse opinion where the audit disclosed serious problems.

C. Findings
   1. Significant violations and violations requiring committee amending action: Identification of the section of the U.S. Code which has been violated, a statement of the facts, recommendations for correction made to the committee by the auditor, the committee's response to these recommendations, and a recommendation for Commission action.
   2. Technical violations requiring no action.

All materials involved in a particular audit (working papers, letters, the report itself, etc.) are processed in two ways to ensure the integrity of the final report: Indexing, to identify the workpaper which substantiates each fact in the audit report; and referencing, which is an internal control process whereby an individual, who has taken no part in the particular audit, verifies that the facts stated in the report are accurate and that the workpapers and related materials adequately support the findings, conclusions and recommendations expressed in the report.

Certain audits, especially those raising policy questions or compliance problems, are referred at this stage through the Staff Director's Office to the Office of General Counsel. A legal analysis of the report is made to verify that the recommendations contained in the report are legally supportable. Any changes or recommendations made by the Office of General Counsel are forwarded back to the audit staff by the Staff Director's Office.

Step 6: Presentation to the Commission

A final audit report, together with a legal analysis (if necessary), is presented to the Commission. The approval of at least four Commissioners is required before the audit report may be released. Depending on the complexity of the audit, the audit report is discussed and acted on during a Commission executive session meeting, or is circulated to the Commissioners individually for approval.

Step 7: Completed Audits

Once an audit report is approved by the Commission, the committee receives a copy of the final report. At this time, the audit report is also made public and is available in the Office of Public Records at the Commission. In the case of House or Senate audits, reports for all candidates/committees contending for the same seat are released at the same time, when possible. For a listing of all audits released to the public to date, see Appendix 8.

Implementation of Audit Policy

The Commission's Audit Policy provided for audits of all types of filers, as follows:

1. Multicandidate Committees*

Multicandidate committees would be selected for audit on the basis of either a "dollar threshold" or "random selection." Under the category of "dollar threshold," the policy called for audits on a two-year cycle of all multicandidate committees whose receipts or expenditures exceeded $100,000 in an election year. During election year 1976, 121 multicandidate committes exceeded this threshold.

In addition, random selections for audits would be made from those multicandidate committees with financial transactions of less than $100,000 during the election year.

2. National Party Committees

The policy included audits of the two major national political party committees, to be conducted on a two-year cycle.

3. State Party Committees

All State party committees filing with the Commission would be audited every two years. Although only one State party committee was audited during 1977, an additional 76 State party committees are projected for audits during 1978.

4. Senate and House Candidate Committees

Senate and House candidate committees would be audited by a "random selection" of 10 percent of the seats for which an election is held in each election year. For the 1976 election, these audits encompassed 44 House and four Senate seats and

*Included in the term "multicandidate committee" are separate segregated funds established by corporations, labor organizations, trade associations and other groups, as well as minor political party national committees and local major and minor party-related committees.

approximately 100 candidates in all. For each of the 48 elections randomly selected, the Commission audited:

—All major party general election candidates;

—All other general election candidates who received five percent or more of the vote; and

—All candidates who raised or spent more than $10,000.

If the winning candidate received more than 75 percent of the vote in the general election, but less than 75 percent in a primary election victory, then the Commission also audited all primary candidates of the same party who received more than five percent of the vote, or who received or spent more than $10,000. Congressional candidate audits were given top priority for the latter half of 1977 in an effort to complete them during the nonelection year. Candidates in the earliest 1978 primaries were audited first, and all audits for a particular seat were done at the same time, where scheduling permitted.

5. Presidential Candidates Not Receiving Public Funds

Audits of minor party Presidential candidates would be limited to those who appeared on a minimum of 10 State general election ballots.

6. Other Audits

The policy also called for random audits of five percent of those corporate/labor organizations filing reports on their communication costs (2 U.S.C. §431(f)(4)(C)) and eight percent of those persons filing independent expenditure reports.

7. Referral Audits

In addition, the policy included "referral audits." Such audits would cover referrals by the Disclosure Division or the Office of General Counsel of any candidate or committee whose reports and statements indicated need for assistance to improve their reporting or recordkeeping systems.

Enforcement

As a final step in obtaining compliance, the Federal Election Commission has exclusive civil enforcement authority over all provisions of the Federal Election Campaign Act. This authority, stemming from the Supreme Court's decision in *Buckley* v. *Valeo*, was spelled out in the 1976 Amendments to the Act (2 U.S.C. §437d(e)). The first section below examines the procedures used by the Commission, applicable to all enforcement cases. The second section deals with the monitoring of reports conducted by the Disclosure Division which, in some cases, results in an enforcement action.

Enforcement Procedures

The enforcement procedures followed by the Commission are specifically outlined by the statutory language of the Act. Each step must be approved by at least four Commissioners (2 U.S.C. §437(c)). If at any stage a vote of four cannot be obtained, the case is closed. The following is a brief summary of the procedural steps in an enforcement action:

Preliminary Review

The statute provides that enforcement actions may be initiated either by a signed, sworn, notarized complaint (2 U.S.C. §437g(a)(1)), or by information which the Commission received ". . . in the normal course of . . . [it's] supervisory responsibilities. . . ." (2 U.S.C. §437g(a)(2).)

When a complaint is received, or information within the Commission indicates the possibility of a violation of the Act, the Office of the General Counsel assigns it a "Matter Under Review" (MUR) number and conducts a preliminary review of the case. A report is presented to the Commission containing:

1. A summary of the complaint;
2. A preliminary legal analysis; and
3. A recommendation for Commission action.

The Office of the General Counsel attempts to complete these preliminary reports within seven days of the time a complaint is received. The recommendation for Commission action may result in one of two dispositions: a) If the Commission determines there is "reason to believe" that a violation of the Act has occurred, the enforcement action proceeds; or b) If the Commission concludes there is no "reason to believe" the Act has been violated, the MUR is closed.

Investigation

In cases in which the Commission concludes that information affords it "reason to believe" a violation may have occurred, the Office of General Counsel conducts a formal investigation into the MUR. Any person involved in the alleged violation is notified of the Commission's finding and is informed of the statutory opportunity to dem-

onstrate that ". . . no action should be taken . . . by the Commission . . ." against that person. An investigation may include, where necessary, issuance of subpoenas for records or depositions, or issuance of an order requiring answers to written questions. If the Commission concludes, as a result of the investigation, that the evidence supports the conclusion that there is "reasonable cause to believe" the Act has been violated (2 U.S.C. §437g(a)(5)(A)), the case proceeds to the next step, conciliation. On the other hand, if the Commission determines that there is no "reasonable cause to believe" the Act has been violated, the case is closed.

Conciliation

If the Commission concludes that there is "reasonable cause to believe" that a violation has occurred, it is required to ". . . make every endeavor for a period of not less than 30 days to correct or prevent such violation by informal methods of conference, conciliation, and persuasion, and to enter into a conciliation agreement with the person involved. . . ." The only exception to the 30-day requirement is that the conciliation period is shortened where the violation involves the filing of pre-election reports or a complaint is filed close to an election. Once a conciliation agreement is entered into, unless violated, the MUR is closed.

Civil Action

If conciliation attempts fail and the Commission determines that there is a "probable cause to believe" that the Act has been violated or is about to be violated, the Commission may institute a civil action for relief, including a permanent or temporary injunction, a restraining order or a civil penalty not exceeding the greater of $5,000 or the amount of the violation. Determinations involving certain "knowing or willful" violations of the Act may be referred to the Justice Department for criminal action.

Availability to the Public

The statute sets forth specific requirements for confidentiality concerning all enforcement actions. Under 2 U.S.C. §437(a)(3)(B), no notification or investigation may be made public by any member of the Commission or other person without the written consent of the person involved in the alleged violation. The statute provides for fines up to $5,000 for violators of this provision.

The Commission makes public all closed cases where it determines that no violation of the Act occurred and those cases where conciliation attempts were completed, including any conciliation agreements entered into. Compliance cases made public are available in both the Public Records Office and the Press Office of the Commission. The basic documents contained in each file include:

1. The complaint filed (where applicable).
2. The report by the Office of General Counsel which was adopted by the Commission.
3. The formal Commission action sheet.
4. Any conciliation agreements.
5. Any Commissioner opinion.
6. The close-out letter to the persons involved in the case, indicating the Commission's final disposition of the matter.

Indexes of MUR's which were made public were available by MUR number, by names of the parties involved in each case and by the date they are put on the public record. In addition, by the end of the year, the Commission had nearly completed microfilming compliance cases which have been made public for viewing in the Public Records Office.

As of December 31, 1977, 486 enforcement cases had been processed by the Office of General Counsel. This total included 107 cases which were pending at the end of 1976, 48 initiated in 1977 as a result of a complaint filed pursuant to §437g(a)(1) and 79 resulting from internal Commission review in 1977.

	Cases Closed (Status when closed)	Pending Cases (Status as of 12/31/77)
Preliminary Review	273	21
Investigation	35	52
Conciliation Period	16	18
Civil Action	46	0

The above chart summarizes the status of the cases as of December 31, 1977. The majority of those cases made public were closed after preliminary review of the complaint, without necessitating an investigation or further action.

Special Procedures for Monitoring Reports

In addition to the enforcement actions described above and handled by the Office of General Counsel during 1977, the Disclosure Division developed a comprehensive information

base from which to monitor compliance with the Act. There were two aspects of this monitoring process: First, a review to determine the adequacy of reports filed; second, a review of committees and candidates to identify those who failed to file required reports.

Review of Reports

The teams of reports analysts use the original reports and computer-based indexes for monitoring compliance with 58 major requirements of the Act, and for reviewing completeness, accuracy and possible violations. In election year 1976, the Commission had concentrated primarily on the review of reports from Presidential or multicandidate committees whose total receipts or expenditures were in excess of $10,000. In 1977, this threshold was removed, greatly increasing the number of candidate and committee reports to be reviewed. Computerized cross-referencing of candidates, political committees and contributions assisted this review.

If during the review the teams observe any disclosure or limitation problems, the candidate or committee receives either a Request for Additional Information (RFAI) or a Surface Violation Letter:

1. An RFAI is sent to a filer if a disclosure report is found to lack information required to be disclosed under the Act, or if there are omissions or mathematical errors requiring correction. If there is no response to the initial RFAI, a second letter is sent requesting the information. If the filer ultimately fails to provide adequate information, the matter is referred to the Office of General Counsel for review and possible formal compliance procedures.
2. A Surface Violation Letter is sent to a filer if a disclosure report shows on its face an "apparent violation" of the contribution or expenditure limitations or some other major provision of the statute. If an inadequate response or no response is received, a second letter is sent to the filer. If the filer ultimately fails to supply a satisfactory response to its inquiry, the Disclosure Division refers the matter to the Office of General Counsel.

During 1977, the Disclosure Division sent approximately 2,500 RFAI's and 300 Surface Violation Letters.

Nonfiler Procedures

The Disclosure Division also monitored compliance with the provisions of the Act which require Federal candidates and political committees to file detailed reports of their campaign receipts and expenditures. The nonfiler program was expanded from a limited group of candidates and committees monitored in 1976 to the monitoring of all types of filers, including:

—Candidates and committees with continuing reporting obligations from the 1976 election;

—Continuing party and nonparty committees;

—Candidates and committees in 1977 special elections; and

—Candidates and committees commencing activity for 1978 or 1980.

The Commission's nonfiling procedures begin when the Disclosure Division sends a "prior notice" to inform all candidates and committees of their filing obligations. After a filing date has passed, the Disclosure teams compile an initial list of candidates and committees who either have not filed one or more required reports or have failed to register altogether. Then a notice is sent to each person on the list, indicating the Commission has found "reason to believe" that a violation of the Act has occurred. If the recipients of the notice do not respond adequately, or fail to respond at all, a second notice is sent stating the Commission has taken the next enforcement step and found "reasonable cause to believe" the Act has been violated. Continued noncompliance with the reporting or registration requirements results in the Commission's publishing the names of those candidates and committees who have failed to file or register, as required by the Act.

During 1977, there were 26 filing deadlines to be monitored (a year-end report, monthly reports, quarterly reports and pre- and post-election reports for the four special elections held in 1977). During the first six months of 1977, the Disclosure teams worked to consolidate and verify an accurate list of those candidates and committees required to file.

For the April 10 Quarterly report, 750 candidates and/or political committees were sent "reason to believe" notices and 331 of these received a second notice ("reasonable cause to believe"). Three hundred and thirty-seven nonfiling notices were sent to candidates and committees failing to file the July 10 Quarterly report. The four special elections held in 1977 for the U.S. House of Representatives resulted in 53 initial nonfiling notices and 22 follow-up notices. In the special elections, five candidate names were published.

After the Octber 10 Quarterly report, the Commission modified its procedure by developing a consolidated status report on 346 candidates and

political committees who had failed to file one or more reports in 1977. On October 15, the Commission sent 147 letters to candidates and committees who had more than one report due explaining the compliance actions taken against them. It also sent telegrams to 199 candidates or committees who had failed to file the October 10 Quarterly report. Disclosure analysts followed these telegrams and letters with telephone calls explaining the reporting requirements and encouraging the filing of reports. A second consolidated status report on November 16 showed that of the 346 candidates or committees contacted by the Commission, 187 subsequently filed reports and were in compliance.

The Commission then voted to send "reasonable cause to believe" notices to the 159 remaining nonfilers. By the end of December, the number of nonfilers still not in compliance had been reduced to 39, or 0.8 percent of the 5,160 candidates and committees required to file in 1977. On January 9, 1978, the Commission published the names of those 39 nonfilers.

In addition to publishing the names of nonfilers, the Commission has the authority to undertake further enforcement action, including civil court enforcement and the imposition of civil fines. During 1977, 16 suits against nonfilers were filed in U.S. District Courts.

Litigation

During 1977, substantial numbers of cases were brought to test the Act and Commission actions. Several of these suits were filed pursuant to the specific review provisions of 2 U.S.C. §437g(a)(9), which provide that any part aggrieved by either the Comissions's dismissal or failure to act on its complaint may bring suit in the U.S. District Court for the District of Columbia. In other actions, suit was filed either under 2 U.S.C. §437h, to seek review of the consitutionality of the Act, or under the general review provisions of the Federal code. The following is a summary of the major litigation brought against the Commission.

Litigation Under §437g(a)(9)

A candidate, Brian A. Hampton, filed suit against the Commission alleging that it had failed to enforce the Federal Election Campaign Act by dismissing one complaint filed with it and failing to act on a second. The Court decision to dismiss the case agreed with the FEC's argument that the dismissal of Mr. Hampton's complaint was not contrary to law.* Further, the Court stated that because Hampton filed his complaint in District Court "before allowing the Commission 90 days in which to act upon his second complaint," the FEC's failure to act "was not contrary to law." An appeal by Mr. Hampton is pending.

In two additional cases filed against the Commission, both plaintiffs alleged that the Commission had failed to act on their complaints against the National Education Association (NEA) and certain of its affiliates. (The two cases were consolidated by the Court because they ". . . involve[d] common questions of law. . . .") The complaints argued that NEA had violated the FECA by:

1. Administering a plan which compelled teachers, as a condition of employment, to pay money to NEA's fund for political purposes; and
2. Soliciting such payments without informing the employees of their right to refuse without reprisal.

The Commission argued that its power to initiate civil actions was ". . . the exclusive remedy for enforcement of the provisions of the Act. . ." except as provided under §437g(a)(9). In the Commission's view, this exception did not apply because it had acted on the complaints and was attempting to enter into a conciliation agreement.

The Court ruled that the 90-day time period established by law in §437g(a)(9) must serve as the time limit for formal resolution of complaints in order that the complaint process not be ". . . subverted through infinite delays . . ." and that the plaintiffs not be left ". . . without any way of knowing whether any action at all has been taken on their complaints."** The Court ruled that the Commission must bring about formal resolution of the complaints within 30 days of its order by dismissal, entry into a conciliation agreement or institution of a formal enforcement action.

In another suit, also filed by the National Right to Work Committee, plaintiffs alleged that the Commission had failed to act on the complaint the Committee had filed with the Commission against the AFL-CIO and its political action committee (COPE).

Brian A. Hampton v. Federal Election Commission, United States District court for the District of Columbia, Docket No. 76-1392 (April 15, 1977).

***Paul E. Chamberlain, et al. v. Vernon W. Thomson, et al.; National Right to Work Committee v. Vernon W. Thomson, et al.*, United States District Court for the District of Columbia, Docket Nos. 77-387, 77-435 (August 31, 1977).

The Commission argued that the exception to filing civil actions under §437g(a)(9) did not apply in this case since the FEC had acted but had not completed action on the original complaint because of complex legal and factual situations involved. The Court did not agree and ruled that the Commission had 30 days in which to act upon the complaint.* The Commission subsequently filed suit against the AFL-CIO alleging violations of the Act in that COPE transferred to its Political Contributions Committee funds from the AFL-CIO general treasury.

Suit Challenging Legislative Review of Regulations

In a suit filed in 1976, Ramsey Clark, former candidate in the New York State Senate primary election, asked the U.S. District Court of the District of Columbia for declaratory and injunctive relief against those provisions in the Act governing legislative review of the rules, regulations and advisory opinions of the FEC. Under these provisions, regulations proposed by the Commission may not be prescribed until they have been before Congress for 30 legislative days, during which time either house may disapprove them.

Clark argued that the "one-house veto" violated the constitutional principle of "separation of powers." Further, he asserted, regulations would be tainted by congressional influence on the Commission's decision-making process. He also claimed the procedure delayed promulgation of Commission regulations, thereby denying him, as voter and as candidate, protection of the Act.

Intervening as a plaintiff on behalf of the Executive Branch, the Attorney General also requested an injunction against the "one-house veto," arguing that it intrudes "upon those areas reserved by the Constitution of the United States to the Executive Branch. . . ."

The Federal Election Commission asked the Court to dismiss the complaint, arguing, *inter alia*, the case was not ripe for Court action since Congress had not disapproved any regulation and the plaintiff had claimed no hardship resulting from compliance with the substance of a proposed regulation.

The District Court certified a number of constitutional questions to the U.S. Court of Appeals. Concluding that the matter was not "ripe" for adjudication, the U.S. Court of Appeals, in a 6-2 decision on January 21, 1977, returned the certified questions to the District Court unanswered, with instructions to dismiss. The Court said that Clark's case, based on his status as a candidate, became moot when he failed to win the primary in New York. As a voter, Clark had neither protested a specific veto action by Congress nor identified any proposed regulation tainted by the threat of veto or review. With respect to the constitutional issue raised by the one-house veto, the Court held the case was "unripe" because congressional disapproval of a proposed regulation had not yet occurred. "Until Congress exercises the one-house veto," the Court said, "it may be difficult to present a case with sufficient concreteness as to standing and ripeness to justify resolution of the pervasive constitutional issue which the one-house veto provision involves."

On June 6, 1977, the Supreme Court of the United States affirmed the lower Court's decision.*

Litigation Challenging Disclosure of Campaign Contributors

In August 1976, the Socialist Workers Party (SWP) amended its complaint to name the Federal Election Commission and the U.S. Attorney General as defendants in a suit charging that the Act, as applied to the SWP, is unconstitutional because of alleged harassment directed against the SWP. In October 1976, three defendants filed motions to dismiss the case. On January 17, 1977, the U.S. District Court denied the Federal Election Commission's motion to dismiss the case and remanded the matter to the FEC, ordering it to develop a full factual record and make specific findings of fact concerning the ". . . present nature and extent of any harassment suffered . . ." by the SWP as a result of the disclosure provisions of the Act. It granted the motions to dismiss by the Attorney General because he had expressly indicated no intention to enforce criminal sanctions against the SWP while the matter was still pending before the Courts and because the Federal Election Commission had exclusive primary jurisdiction over civil enforcement, and granted the administrative officers' motion to dismiss since their

National Right to Work Committee v. Vernon W. Thomas, et al., United States District Court for the District of Columbia, Docket No. 77-831 (November 18, 1977).

Clark v. Valeo, et al., United States District Court for the District of Columbia, Docket No. 76-1227 (September 3, 1976); 559 F.2d 642 (1977); 97 S. Ct. 2667 (1977).

supervisory duties had been transferred to the Federal Election Commission.

The District Court subsequently ordered the Commission not to proceed in the case pursuant to 2 U.S.C. §437g; in September 1977, the Court of Appeals ruled that order unappealable. The Commission was given until March 15, 1978, to return to the Court with the findings of fact ordered.*

Suit on Candidate Debates

Prior to the regulatory proceedings held by the Commission on the issue of candidate debates, the League of Women Voters of the United States (LWVUS) filed a complaint** in U.S. District Court of the District of Columbia against the FEC asking that the Court declare null and void that portion of the Commission's Policy Statement on Presidential Debates issued August 30, 1976, which prohibited contributions from corporations and labor organizations to the League of Women Voters Education Fund (the Fund) for purposes of defraying expenses related to the 1976 televised Presidential debates between Jimmy Carter and Gerald Ford, sponsored by the Fund. Such corporate and union contributions, the FEC had said in its statement, would be "in connection with" a Fedral election and would therefore be prohibited under the Act. The Policy Statement had expressed the Commission's view, however, that the Fund could accept funds from political action committees established by corporations or labor organizations to pay for the debates.

The Commission argued that the "Court has no jurisdiction over this action because the Commission's policy statement is not a final agency action." The policy statement "expresses its view of what interpretation of the law it would seek to enforce . . ." and ". . . represents an attempt by the Commission to give informal advice in an uncharted area of the law."

The Court denied the Commission's motion to dismiss, after which the Commission filed its answer to the original complaint.

Socialist Workers Committee v. W. Pat Jennings, et al., United States District Court for the District of Columbia, Docket No. 74-1338 (January 17, 1977); United States Court of Appeals for the District of Columbia, Docket No. 77-1490 (December 13, 1977).

***League of Women Voters, et al.* v. *Federal Election Commission, et al.*, United States District Court for the District of Columbia, Docket No. 77-0235.

Suit Challenging Trade Association Activities

The provisions of the Act governing the solicitation activities of trade associations were challenged in a suit filed by Bread Political Action Committee (Bread PAC) et al. (two trade associations and three political action committees) in the District Court for the Northern District of Illinois.* The complaint asked the Court to declare the provisions set out in 2 U.S.C. §441b(b)(4)(D) unconstitutional because they deny the plaintiffs their First Amendment rights to freedom of speech and association and their Fifth Amendment right to due process of the law. The suit asked for declaratory and injunctive relief against the Commission.

In asking that the case be dismissed, the Commission argued that the Court lacked jurisdiction because:

—Standing to initiate a suit seeking review of the constitutionality of the Act is statutorily granted, under 2 U.S.C. §437h, to the Commission, national political parties and voters—but not to trade associations.

—Plaintiffs' action, lacking any factual context, is ". . . not a case or a controversy." The Commission ". . . has invoked no authority against plaintiffs nor required of them any activity."

—The Court should exercise restraint since ". . . the Act provides a comprehensive scheme of review and gives the Commission prosecutorial discretion in enforcement."

The Court denied both the Commission's motion to dismiss and a motion by the plaintiffs to certify constitutional questions. The Court also denied a motion by plaintiff Bread PAC for a preliminary injunction against the enforcement of the provisions of the Act prohibiting solicitations by Bread PAC at the trade association's imminent convention. Bread PAC has appealed the Court's refusal to certify constitutional questions pursuant to 2 U.S.C. §437b.

Bread Political Action Committee, et al. v. *Federal Election Commission, et al.*, United States District Court for the Northern District of Illinois, Eastern Division, Docket No. 77C-947.

Chapter 3
Facilitate the Public Disclosure of Information

Meeting the Commission's third objective, to provide the public with information on campaign finance activities of Federal candidates and committees, was primarily the responsibility of the Disclosure Division during 1977. To fulfill this goal, the Commission makes available all campaign finance information which, under the Act, must be made public: primarily the campaign finance reports and statements filed by Federal candidates and committees. In addition, other campaign finance data which the Commission considers appropriate is made available (e.g., the **Disclosure Series** of statistical studies).

Receipt of Documents

Although 1977 was an "off-election" year, the Commission continued to give priority to the public disclosure of Federal candidate and committee reports and statements, in accordance with the reporting requirements of the Federal Election Campaign Act. During 1977, the Commission received, controlled, reviewed and made public over 21,500 reports from 6,757 candidates/committees, totaling over 169,000 pages of campaign finance information. These reports disclosed more than $100 million in receipts and $87 million in expenditures.

The nonelection year disclosure provisions of the Act required quarterly reports (April 10, July 10, October 10) and a year-end report (January 31), monthly reports for multicandidate committees who requested monthly filing, and pre- and post-election reports for candidates and committees involved in the four special elections held in 1977.

In addition to these ongoing reporting responsibilities, candidates and committees continued to file termination reports for 1972, 1974 and 1976 campaigns. Other filers amended registrations to indicate, for example, new candidates supported or officers appointed, and still others filed new statements of candidacy or committee registrations for election activity in 1978 and 1980.

The Federal Election Campaign Act requires that reports be made available to the public within 48 hours after their receipt. Immediate public access to this large volume of material required a close working relationship with the Clerk of the House of Representatives and the Secretary of the Senate, as well as the development within the Commission of a night-shift filing operation and an efficient document-processing unit during peak filing periods.

Since April 7, 1972, when the disclosure requirements of the Act were first put into effect, the Clerk of the House and the Secretary of the Senate have been the initial "points of entry" for House and Senate campaign finance reports, and have microfilmed these incoming reports. The Commission continued this practice of microfilming with respect to incoming Presidential, multicandidate and other reports for which it is the point of entry. The FEC also obtained microfilmed copies of the House and Senate reports.

This cooperative document control system permitted public access within 48 hours to reports filed at the FEC (100,934 pages), the Clerk's office (49,950 pages) and the Secretary's office (19,073 pages) in 1977. All reports were made public in the Public Records Office at the Commission.

Team Processing of Reports

Early in 1977, the Commission reorganized the Disclosure Division into five teams of reports analysts, each concentrating on the review of documents filed by a specific type of candidate, committee or individual. This "team concept" encouraged analysts to develop expertise in reviewing reports of a specific category of filers with similar reporting and accounting problems, contribution limitations, affiliations and financial transactions. The new system also permitted candidates and committees to contact FEC staff who were knowledgeable about their reporting difficulties, and about the requirements of the Act as applied to their particular situation.

The five teams were organized according to the following categories of filers:

1. Presidential candidates and committees.
2. Senate candidates and committees.
3. House candidates and committees.
4. Party committee filers.
5. Nonparty committee filers.

In reviewing reports, each team was responsible for identifying and indexing incoming documents, entering into the computer contribution and expenditure data, reviewing documents for completeness and accuracy, and monitoring limitations and prohibitions. The size of each team was determined by the number of filers in each category and the amount of receipts and expenditures to be monitored. A chart on the types and number of filers handled by each team appears in Appendix 6.

In 1976, the Commission initiated a computer-based indexing and information retrieval system to assist with the Disclosure Division's responsibility to process and review campaign filings. This system was continued and improved during 1977. It consists of financial data and other information entered from the campaign reports. In three steps, or "passes," each team of reports analysts transfers increasingly more detailed information from the reports into the system. For more detailed information on the Disclosure Information System, see section on Computer Support in the Chapter on Organization and Operation.

Pass I: Identifying and Indexing

The first step for each team is to identify and index incoming documents. This immediate categorization of reports allows the Commission to retrieve data easily for public review, locate documents for analysis, and store data for future use. To fulfill the indexing and identification requirements for Pass I, each team extracts from the reports specific information such as name and type of candidate or committee (Presidential, Senate, House, etc.), type of report, date filed, and total receipts and expenditures for each reporting period. This data is typed into computer terminals, permitting retrieval of different types of information in almost any order. By supplying the computer with a committee's identification number, for example, an individual could obtain a list of all documents filed by that committee, with coverage dates, receipts and expenditures, and microfilm location of each report.

Identification of reports in this manner facilitates quick access to the specific microfilm location of documents and also assists the Commission in producing periodic lists of "nonfilers," double-checking committee registrations, and maintaining an accurate mailing list of all candidates and committees.

Pass II: Entering Committee Contributions and Expenditures

The second step for each team is to enter into the computer data about political committees' contributions to, or expenditures on behalf of, Federal candidates. In this phase of the process, each team enters into the computer the name of the political committee, the name, State and/or District of each candidate supported, and the amounts of contributions or expenditures. Pass II data is utilized by the teams to monitor compliance with the contribution limits and the filing of required reports.

While all teams review reports for committee contributions made directly to candidates, the nonparty team also uses Pass II information to monitor two specific kinds of expenditures: "independent expenditures" and "communication costs." A committee makes an "independent expenditure" when it purchases a communication "expressly advocating the election or defeat of a clearly identified candidate" without conferring or collaborating with that candidate or committee. These expenditures are not limited but must be reported.

A corporation or a union incurs "communication costs" when it purchases and distributes partisan communications to its stockholders, executive and administrative personnel and their families, or union members and their families. These expenditures are also unlimited, but must be reported to the FEC by the corporation or union when they exceed $2,000 per election.

The Party team also monitors specific party expenditure limitations using information entered at this stage. Under the Act, State and national party committees are permitted to make expenditures on behalf of Presidential, Senate and House candidates in connection with the general election, within limitations based on population.

Pass III: Entering Individual and Committee Contributions

The teams' third step is to enter data from reports for use in the monitoring of compliance with the individual and committee contribution limitations. The Federal Election Campaign Act limits contributions of money, guarantees, loans, and "anything of value" to Federal candidates, their committees, and party and nonparty committees. It also limits the total amount of contributions an individual may make in any calendar year. Using the data entered during this third step, team members check reports to be sure that each contribution has been properly disclosed and is within the limitations.

During 1977, the Commission maintained a computerized alphabetical list of individual contributors who gave $500 or more in a single contribution. In October 1977, this threshold was lowered and the Disclosure Division began entering the names of contributors who gave over $100 in a single contribution (retroactive to January 1, 1977).

During this stage, transfers (contributions) from unregistered committees are also entered into the computer. This data assists the Commission in identifying committees which are required to register and file campaign finance reports by virtue of having raised or spent more than $1,000 in support of Federal candidates.

Preparation and Release of Statistics

On January 21, 1977, the Commission approved a report of the Task Force on Statistics, establishing guidelines for the preparation and release of campaign finance statistics on the 1976 elections. By publicizing the areas in which the FEC planned to gather data, the Commission hoped to facilitate planning by other groups engaged in research on campaign financing and preclude unnecessary duplication of Commission studies.

Under these new guidelines, the Commission collected statistics in five categories according to specific priorities. Presidential statistics were collected from reports of campaigns where the candidate received primary matching funds or where the candidate was on the general election ballot in at least 10 States. Senate and House statistics were gathered from reports of candidates on the general election ballots. The final two statistical categories were based on statistics from reports of nonparty committees with receipts or expenditures exceeding $100,000 and national party committees.

In February 1977, the Commission also decided to collect additional statistics on independent expenditures and communication costs by corporations, labor organizations and trade associations.

This **Disclosure Series** was released periodically during 1977. The following are highlights of the reports:

Index of Independent Expenditures

An index released by the Federal Election Commission on March 23 revealed that individuals and groups spent $373,993 in "independent expenditures" in support of or opposition to 43 Federal candidates in the 1976 elections. Of this total, $364,823 was spent in support of 43 candidates and $9,170 was spent in opposition to two candidates. (An "independent expenditure" is a disbursement for communications expressly advocating the election or defeat of a clearly identified candidate. It may not be made with the cooperation or at the request of a candidate or his/her authorized agents. Independent expenditures are reported by the person or group making them.) The 130-page index, itemizing independent expenditures alphabetically by candidate and spender, covered the period from January 1, 1975, to February 28, 1977. It did not include independent expenditures made by regularly reporting political committees.

National Party Report

A report released by the Commission on April 27 revealed that both the Democratic and Republican national parties received the majority of their 1976 election contributions in amounts of less than $100. Compiled from reports filed between January 1, 1975, and December 31, 1976, the report analyzed the total income and expenditures of each major political party (and its affiliated committees) for the 1976 Federal election campaigns. Included were national party committees, affiliates, convention committees, congressional committees and party-identified committees. Adjusted to reflect interparty transfers, repaid loans, and in-kind and earmarked contributions, total receipts of the Republican Party committees were

$45,705,886 and total expenditures were $40,076,187. Receipts for the Democratic Party committees totaled $18,209,774 with total expenditures of $17,562,370.

Index of Communication Costs by Corporations, Unions, Membership Organizations and Trade Associations

On April 27, an FEC index was released disclosing that 71 corporations, labor and membership organizations and trade associations reported spending $2,146,899 on "internal communications" for or against 414 Federal candidates in 1976. Under the Act, corporations, labor and membership organizations and trade associations are required to report the costs of partisan communications made to stockholders, executive and administrative personnel, or to members and their families, when these costs exceed $2,000 per election. The index covered election-related communications from May 11, 1976, through December 31, 1976. Of the total communication costs reported, more than $2 million (93.9 percent) was spent by 66 labor organizations. Four corporations spent an aggregate of over $31,000 (1.4 percent) and one membership organization reported spending more than $101,000 (4.77 percent).

Report on 1976 Senate Campaigns

The FEC released on May 3 a report analyzing the receipts and expenditures of 64 Senate candidates who appeared on 1976 general election ballots. Covering the period of January 1, 1975, through December 31, 1976, the report listed "adjusted" receipts and expenditures. All figures in the report represented the combined totals for primary and general election activity. Highlights of the report include:

—Of a total of $39,129,660 in receipts for Senate general election candidates, 28.3 percent consisted of individuals' contributions of $100 or less; 13.4 percent of individuals' contributions of between $101 and $499; and 27.9 percent of individuals' contributions of $500 or more.

—Democrats and Republicans received approximately the same amount of contributions; but 25 incumbents received 42 percent of the total receipts, while 23 challengers received 27 percent and 16 open-seat candidates received 31 percent of total contributions.

Report on 1976 Presidential Campaign

On June 5, 1977, the Commission released a report on **1976 Presidential Campaign Receipts and Expenditures** compiled from campaign finance reports filed with the FEC from January 1, 1975, through December 31, 1976. The report analyzed the receipts and expenditures of 23 Presidential candidates, including 15 candidates who received public funding for the primaries (two of whom were also the major party nominees in the general election) and eight third party or independent candidates who were on the general election ballot in at least 10 States. Highlights of the report include:

—Over half (approximately 51 percent) of total private primary contributions received respectively by Democratic candidates, Republican candidates and non-major party candidates were made in amounts of $100 or less.

—Of the $39,612,365 total received by 13 Democratic candidates during the primaries, 37 percent was provided by the Presidential Election Campaign Fund.

—Of the $28,255,259 total received by two Republican candidates during the primaries, 34 percent was from the Presidential Fund.

—Of the $46,118,867 total received by 10 candidates in the general election (two major party candidates and eight third party or independent candidates), 95 percent was from public funds.

—Total adjusted receipts for the 23 candidates included in the report were $113,986,491 of which 60 percent came from public funds.

—Total expenditures for the 23 candidates amounted to $112,775,207 of which 59 percent was spent for primaries and 41 percent for the general election.

Report on Corporate-Related Political Action Committees

The Commission released a report on the political activity of 450 corporate political action committees (PAC's) compiled from reports filed during the period January 1, 1975, through December 31, 1976. The report consisted of three parts: a summary of PAC activity, including the receipts and expenditures of 450 PAC's; an alphabetical listing of corporations with two or more political action committees; and an alphabetical listing of all other PAC's and their sponsoring organizations. Highlights of the report include:

—The nine largest PAC's, those with receipts and/or expenditues in excess of $100,000, spent 18.5 percent ($1,074,208) of the total amount spent by all corporate PAC's ($5,803,415), even though they comprised only two percent of the total number of the PAC's involved in 1976 election period.

—Most of the PAC's (42 percent) reported receipts and expenditures of less than $9,999.

—Of the 450 PAC's registered with the Commission, 89 had registered by January 1, 1975; 208 registered between January 1, 1975, and May 10, 1976; and 153 registered after May 11, 1976, the effective date of the 1976 Amendments to the Federal Election Campaign Act.

—Over 94 percent of the PAC's provided the names of their affiliated and/or connected organizations.

Report of 1976 House of Representatives Campaigns

On October 2, 1977, the Commission released a report compiled from the reports filed by 860 general election candidates for the U.S. House of Representatives in 1976 who received five percent or more of the vote. Included in the report were 433 Democrats, 390 Republicans and 37 independent or minor party candidates. The report summarized receipts and expenditures of each candidate, providing a breakdown of candidates by party status, incumbent-challenger-open seat and winner-loser. Highlights of the report include:

—Donations from individuals of $100 or less made up 36 percent of the total ($65,740,937) received by all 860 candidates. Of these small contributions, $11,551,598 was received by Democratic candidates, $11,978,694 by Republican candidates and $149,724 by independent or minor party candidates.

—Expenditures by Democratic candidates amounted to 53.1 percent of the total expenditures ($60,907,960) made during the period covered: January 1, 1975, through December 31, 1976. Republican candidates made 46.1 percent of all expenditures and independent or minor party candidates made the remaining .8 percent.

Public Records

The Federal Election Commission makes campaign finance reports filed by Federal candidates and committees available for public review and copying in its "storefront" Public Records Office.

During 1977, this office provided over a million pages of Federal campaign finance data for public inspection. Visitors to the office ranged from 200 per week in early 1977 to 350 per month between October and December 1977. There is no charge for reviewing the files in the Public Records Office and any document may be copied at a cost of 10 cents per page.* During 1977, the Office copied and sold over a quarter million pages of statements and reports on self-service copy machines, and processed 1,215 written requests and 847 phone requests for copies of specific candidate and committee reports from across the country.

Computer Indexes Available for Reference

Aside from the reports themselves, the second major format for public disclosure consisted of daily updated computer printouts of FEC indexes. Several indexes are required by the statute, such as the Index of Statements and Reports. Others were developed to promote public understanding of the data. A complete list of these indexes is available on request. A partial listing appears in Appendix 7.

Other Documents Available

Although the principal function of the Public Records Office is to make available to the public campaign reports filed by candidates and committees, Public Records also maintains other information for public review. The following is a list of additional materials available in 1977 from the Public Records Office:

- Commission Documents (press releases, memoranda, agendas, agenda items and minutes of Commission meetings)
- FEC Opinions (Index, Advisory Opinion Requests, Opinions of Counsel, comments on Advisory Opinions)
- Compliance Cases (Index, closed compliance actions)
- Audits (GAO 1972-1974, FEC)
- Court Cases (*Buckley* v. *Valeo*, etc.)
- Presidential Matching Funds Certifications
- Hearing Transcripts (upon request)
- General Information (newspaper articles, studies on campaign finance by other organizations, informational handouts)
- FEC Publications (**Campaign Guides, Record, Federal Register** notices)
- "A Study of the Impact of the Federal Election Campaign Act on the 1976 Elections" (FEC Survey)
- **Disclosure Series**

*Anyone using such documents is reminded, however, of the Act's requirement that "any information copied from such reports and statements shall not be sold or utilized by any person for the purpose of soliciting contributions or for any commercial purpose." 2 U.S.C. §438(a)(4).

Assisting the States

The Federal Election Campaign Act (§439) requires candidates and committees to file copies of their Federal campaign finance reports with their Secretary of State or equivalent State officer. As a result, each of the 50 States maintains copies of reports of Federal candidates for public inspection and copying.

During 1977, the Commission provided greater assistance to the States in meeting their obligation to make reports available to the local public. The Commission appointed a Coordinator of State Disclosure to serve as liaison between the Commission and the State filing offices. In addition, the Disclosure Division used computerized lists of candidate and committee filings to produce a State-by-State list of reports filed by candidates and political committees. This list was circulated by the Coordinator at the National Conference of Secretaries of State in September 1977 and an update of the list was sent to all Secretaries in October. The State offices were asked to cooperate on a voluntary basis by comparing their own filings against the Commission's list and to notify the Commission of any discrepancies.

The Commission also surveyed the State officers in August as to their problems in administering this provision of the Act. The responses indicated ways in which the Commission could further assist the States in fulfilling their responsibilities, and made recommendations for new legislation in this area.

During 1978, the Coordinator will compile lists of Federal candidates for use in information mailings, and will compile election results for each of the 1978 elections.

Chapter 4
Serve as a Clearinghouse for Election Administration Information

To achieve its fourth and final objective, the Commission maintains a National Clearinghouse for Election Administration Information. The Clearinghouse disseminates election administration information to assist Federal, State and local election agencies in developing efficient and effective election systems. In addition, it compiles and develops information about election administration through contract studies.

Election Administration

Administering elections is a complicated and expensive function performed by State and local governments. While an election occurs on only one day during the year, the administration of that election involves:

—Overall planning, management, budgeting, and the training of permanent and temporary staff;

—Defining the voting jurisdictions and informing candidates and the public of any changes;

—Certifying the qualifications of candidates and issues, and designing the ballot;

—Registering voters and maintaining registration records;

—Monitoring and maintaining records on campaign financing;

—Providing the public with information about the election;

—Establishing the polls, including the recruitment of poll workers, the identification of polling places, the acquisition and testing of equipment and the preparation of materials and facilities;

—Tabulating the votes cast, as well as recording and reporting them; and

—Certifying the results, including conducting any system verification or recounts.

The administration of these election functions is further complicated by the number and variety of State and local agencies directly or indirectly responsible for them. There are over 6,300 independent election boards directly responsible for some aspect of conducting elections, with well over 10,000 individuals involved. Conservative estimates place the administrative costs of a four-year election cycle at over $1 billion.

Despite their numbers and common interests, there is often a lack of effective communication among State and local election officials. Many election officials continue to face problems in approving and purchasing vote-counting equipment, operating various voter registration systems, processing candidates and petitions, establishing effective voter education programs and training poll workers. While some election agencies have solved such difficult problems, their experiences have not been available to administrators and legislators in other jurisdictions. As a result, millions of dollars and staff hours are wasted through duplication of efforts while the election systems function unevenly and occasionally with unfortunate consequences.

Recognizing a need for the systematic collection and sharing of election administration information, Congress in 1971 created a National Clearinghouse for Information on the Administration of Elections within the General Accounting Office. The unit was transferred to the Federal Election

Commission by 2 U.S.C. §439(b) of the Federal Election Campaign Act Amendments of 1974. This section of the Act directs the Commission to serve as a clearinghouse for information with respect to the administration of elections and to conduct independent contract studies of the administration of elections. Studies are to include, but are not limited to: methods of selecting and the responsibilities of election board officials, personnel practices relating to the registration of voters, as well as voting and vote-counting methods. Finally, the statute provides that the research products issuing from these efforts be made available to the general public at cost.

Clearinghouse Research Program

Clearinghouse resources are devoted largely to research projects on topics of special concern to election officials and which are beyond the scope or capacity of any one State or local jurisdiction. Such research efforts take one of two forms: Contract research projects or in-house staff research projects.

Contract Research

The contract research effort constitutes the largest single item in the Clearinghouse budget. Research topics and specifications are selected in conjunction with the Clearinghouse Advisory Panel and typically focus on one of the election functions (or a troublesome aspect of them) listed in the introduction above. A normal research contract requires a review of the literature and history on the topic, a review and documentation of relevant State and Federal laws, a survey of relevant current practices around the nation, and a set of recommendations or models appropriate to the varied needs and resources available in State and local jurisdictions. Each project normally issues more than one report so that the pertinent information can be directed to the particular audience (State officials, local administrators, or State legislators) for whom it is intended.

As an additional measure to ensure the utility and readability of the final reports, each contractor is required to establish an advisory board of five to eight election officials or area experts. This board serves as both a resource for and a reviewer of the contractor's work.

Staff Research

Internal staff research projects absorb a significant portion of Clearinghouse staff time. These projects range in depth and intensity from those of rapid information retrieval using the Documents Center (described below) to research projects requiring several weeks' analysis. Projects of this type are undertaken in response to requests from State or local election officials or legislators; members of Congress or their staff; representatives of foreign governments; or other divisions within the Commission itself.

Research Reports

Clearinghouse research reports are provided free of charge to Federal, State and local government officials. Members of the general public may purchase copies from the Department of Commerce, National Technical Information Service. Since the inception of this program on June 1, 1976, nearly 5,000 copies of Clearinghouse reports have been sold. See Appendix 9 for a complete listing of Clearinghouse reports.

Clearinghouse Information Program

In addition to its research efforts, the Clearinghouse plays an active role in collecting and disseminating information about the election process.

Clearinghouse Documents Center

The central physical feature of the Clearinghouse is its Documents Center which is rapidly becoming the largest national resource for information about election administration and procedures. In addition to general and historical works, the Documents Center maintains statistical summaries of voter registration, voter turnout and election returns for Federal offices; State and Federal election laws, hearings and case law; State and local forms, sample ballots and procedures; and other reports, theses and analyses relevant to election administration. The Documents Center serves as the principal resource for staff research projects and is available to election administrators, legislators and members of the general public.

FEC Journal of Election Administration

The Clearinghouse's primary means of communication with election administrators around the country is the **FEC Journal of Election Administration**, published quarterly.

The **Journal** is designed to provide a forum for national discussion of problems in election management and, as such, publishes articles submitted

by Federal, State and local election-related officials. The **Journal** also keeps readers informed of Clearinghouse activities, services and reports. The **Journal** is currently distributed to approximately 10,000 State and local election officials and legislators whose addresses are categorized and maintained in the FEC computer system.

Clearinghouse Assistance Program

Consonant with its mission of serving as a clearinghouse of information on election administration, the Clearinghouse staff responds to a variety of requests for personal appearances and assistance. In addition to accepting speaking engagements at national and State organizations and associations, the Clearinghouse has provided specific assistance to State legislatures, legislative committees and State commissions which contemplate changing their election laws and procedures. At the same time, the Clearinghouse frequently serves as a general information service by directing State and local officials to the Federal agency or official concerned with the particular problem.

Clearinghouse Advisory Panel

To help ensure that the activities and research projects of the National Clearinghouse are consistent with the needs and priorities of election officials around the country, the Commission approved in 1976 the formation of a Clearinghouse Advisory Panel.

The Advisory Panel is composed of 20 State election officials, local election administrators, and State legislators appointed for two-year terms with ten appointments made each year. The three-tier, bipartisan character of the Panel provides a wide-ranging view of election administration and offers the first national forum of its kind for discussion of problems in planning and managing elections.

The Panel meets twice annually to review the current problems and priorities in election administration, to review Clearinghouse research projects and services and to make recommendations to the Commission for future projects and activities. It also serves as a liaison between the Clearinghouse and other Federal, State, and local agencies. During 1977, the Panel met on January 9-10 and again on July 25-26.

Chapter 5 Legislative Recommendations

The Commission is required by the statute (2 U.S.C. §437e) to send to Congress each year "... recommendations for such legislative or other action as the Commission considers appropriate...." In its annual report for 1976, the Commission recommended a number of far reaching legislative changes for simplifying and streamlining the Federal Election Campaign Act. During 1977, Congress began consideration of these recommendations and other proposals for modifications of the Act. The Commission reiterates its support for its 1976 recommendations and the proposals contained in its testimony to the congressional committees during the past year. In its 1977 annual report, the Commission offers additional recommendations based mostly on its experience with the audits of Presidential candidates and committees. Two recommendations are also included which would streamline the administration of the Act.

Repayments to the Treasury

The Presidential Election Campaign Fund Act and Presidential Primary Matching Payment Account Act stipulate the conditions under which repayments of funds are to be made and the formulas for computing such repayments by Presidential candidates to the Federal Treasury. The Commission is given authority to make these determinations. In its regulations implementing these provisions, the Commission has attempted to give candidates and committees ample leeway to challenge Commission determinations with respect to the repayment of funds to the Federal Treasury and sufficient time to gather funds to make repayments. These regulations have generally operated fairly and equitably. However, there have been a few instances where this time period has been used to accrue interest on the amounts which the Commission has determined must be repaid to the Treasury. In order to simplify the repayment procedure and ensure the fiscal integrity of the Presidential public financing process, the Commission recommends that all surplus funds, regardless of amount, be repaid to the Treasury at the end of a campaign. (Any such repayment requirement should, of course, exclude payments made for tax purposes.)

In the alternative, the statute should be amended to require that any and all interest earned on public monies from savings accounts, government bonds, and other sources be returned to the U.S. Treasury. This latter requirement would insure that Presidential committees do not gain private advantage from funds which the Commission has determined must be repaid to the Federal Treasury.

Use of Contributions Matched by Federal Dollars

An ambiguity exists in the Presidential Primary Matching Payment Account Act in that the Commission is given specific authority to require repayment only of Federal monies to the public Treasury. At least one Presidential campaign has argued that the Commission cannot require the repayment of contributions which are submitted for matching purposes and that these contributions can be used for other than qualified campaign expenses. For example, under this theory, private contributions could be submitted to the Commission to obtain matching funds. Once

matched, these private contributions could then be used for the personal expenses of the candidate, the ordinary and necessary expenses of an officeholder, and any other nonqualified campaign expense. The Commission, according to proponents of this argument, has no authority to require repayments of funds used in this manner or to prevent these private contributions from being matched with Federal monies. The Commission takes the view that, since these contributions are used to obtain Federal funds on a dollar for dollar basis, they should not be used for non-campaign purposes. The statute should specifically prohibit the use of private contributions which are submitted for matching public grants for other than qualified campaign expenses.

Compliance Funds

The Federal Election Campaign Act Amendments of 1976 specificially exclude from the definition of "contribution" the payment of legal and accounting services by a regular employer to insure compliance with the Federal Election Campaign Act and Chapters 95 and 96 of Title 26 of the Internal Revenue Code. The Commission's regulations specifically permit a Presidential campaign to set up a separate account containing private monies to be used for compliance purposes. Outside of these exempted donations for legal and accounting services, a major party Presidential candidate receiving full public financing in the general election may not receive private contributions. In order to insure the integrity of the Presidential general election public financing provisions and to eliminate the need for all private contributions in the general election, the Presidential Election Campaign Fund Act should be amended to provide a block grant of a specified amount for legal and accounting services for each candidate and committee receiving public funds.

Definition of Nominating Process

The statute does not delineate what constitutes a bona fide nominating process for purposes of obtaining Presidential primary matching funds. There are no specific criteria set forth for determining whether a political party actually has a nominating process. Under the current law, a political party could have a pro forma nominating process, and the party's candidate could receive public primary matching funds which may then be used for the general election. Criteria need to be established which will answer a number of questions. For example, can a candidate or political party unilaterally declare that a nomination process has occurred and claim public funding? When does a nominating process begin and when does it end? Can a minor party candidate be nominated within a few days or weeks of a Presidential general election, thus being allowed to collect matching funds up through the date of nomination, in which case a substantial portion of these funds might be used to influence the general election? The Presidential Primary Matching Payment Account Act should be amended to provide guidelines for answering these questions.

Qualified Campaign Expense

Chapters 95 and 96 of Title 26 of the Internal Revenue Code contain different definitions of "qualified campaign expense." Chapter 95 defines a "qualified campaign expense" to mean an expense incurred *to further the election* of a Presidential candidate to Federal office. Chapter 96 defines "qualified campaign expense" to mean an expense incurred *in connection with a campaign* for nomination to the Office of President. The Commission recommends that the broader definition contained in Chapter 96 be incorporated into Chapter 95.

Vice Presidential Candidates

The Act does not provide a coherent statutory framework for the treatment of Vice Presidential candidates. For example, the campaign depository of the Vice Presidential candidate is considered to be the campaign depository of the Presidential candidate. Yet, the definitions of "candidate" and "Federal office" differentiate the Presidential candidate from the Vice Presidential candidate. Thus, the Vice Presidential candidate is required to file disclosure reports separately from the Presidential candidate. In the Presidential general election, expenditures made on behalf of the Vice Presidential candidate are considered to be made on behalf of the Presidential candidate of the same political party and are thus subject to an expenditure limitation. A framework should be set forth for Vice Presidential candidates clearly and consistently delineating their requirements under both the Federal Election Campaign Act and the Presidential Election Campaign Fund Act.

Principal Campaign Committees

Under the current law, the name of most principal campaign committees identifies the candidate supported. However, in a relatively few cases, it is difficult to determine which candidate a principal campaign committee supports because the committee's name does not contain the candidate's name as, for example, "Good Government Committee" or "Spirit of '76." In order to avoid confusion, the name of the principal campaign committee should be required to contain the name of the candidate supported.

Federal Reports Act

The Federal Election Campaign Act does not exempt the Commission from the requirements of the Federal Reports Act. The Commission is required to submit all forms and other similar materials requesting information from candidates and committees to the General Accounting Office for approval, thus delaying Commission efforts to improve its information retrieval systems. A major goal of the Federal Reports Act is, of course, to prevent duplicative Federal paperwork. Since, however, the Commission is granted exclusive primary jurisdiction over the Federal Election Campaign Act and no other Federal agencies have responsibility for collecting data in this area, the Commission should be exempt from the requirements of this law. Such an exemption would facilitate Commission efforts to streamline the reporting process and expedite the simplification and development of forms and other similar materials.

Chapter 6
Commission Testimony

The Commission testified before both houses of Congress on several bills dealing with various aspects of campaign financing and election reform. With regard to each issue discussed below, the Commisssion presented information on subjects within the Commission's area of expertise.

Universal Voter Registration

Commissioners Tiernan and Springer appeared before the House Administration Committee on April 25, 1977, to analyze possible FEC administration of H.R. 5400, the Universal Voter Registration bill. The bill would establish a program under FEC administration permitting individuals with proper identification to register to vote at the appropriate polling place on election day. FEC administrative duties would include developing criteria for "proper identification" on election day, distributing information and technical assistance on effective registration methods, approving State registration outreach plans, administering grants to the States to pay for the programs, monitoring the programs and referring possible criminal violations to the Attorney General. Grants would be allocated to the States to implement election-day registration for Federal elections. Additional assistance would be available to those States which implemented voter outreach programs to increase registration or which instituted election-day registration for State and local elections.

The Commission, although taking no position on the bill's substantive merits, offered specific suggestions to improve the proposed program's implementation and enforcement. Suggestions to improve the bill included expanded and more precise enforcement provisions for the FEC such as powers to conduct audits, issue subpoenas, take depositions, investigate matters uncovered in audits or reported by persons outside the Commission and file civil suits against violators. Commissioner Tiernan commended the bill's encouragement of Federal-State cooperation, but warned that adequate lead time would be essential for smooth program operation. To make the plan operative for 1978 elections, the Commission estimated that $300,000 in start-up costs would be needed in 1977. Total program costs for Fiscal Year 1978 were estimated at $1,362,000.

On May 6, 1977, Commissioner Tiernan presented similar testimony before the Senate Committee on Rules and Administration.

No further action was taken on this legislation during 1977.

Amendments to the Federal Election Campaign Act

On May 6, 1977, Commissioner Joan Aikens testified before the Senate Committee on Rules and Administraton on amendments to the Federal Election Campaign Act. While the proposed amendments were contained in several bills, the FEC's testimony focused on S. 1344. Several appendices contained comments on other pending bills. The Commission statement covered five areas of concern:

1. Simplification of the Act.
2. Contribution limitations and the role of political parties.
3. Corporate and union activity.

4. Presidential campaigns.
5. Clarifying technical amendments.

Citing both FEC recommendations on needed changes in the Act (published in the Commission's 1976 **Annual Report**) and a recent survey on the Act's impact on election campaigns (see Appendix 11), Commissioner Aikens expressed Commission endorsement of many of the amendments contained in S. 1344 and recommended a small number of additional changes.

On August 3, 1977, the Senate voted 83-1 to approve S. 926, the "Federal Election Campaign Act Amendments of 1977." (The approved bill did not include any congressional public financing provisions. See below.)

On October 13, 1977, Chairman Thomas Harris and Commissioner Vernon Thomson testified before the House Administration Committee on amendments to the Act. The revisions included proposals drafted by the Committee's staff and those contained in the Senate bill (S. 926). Endorsing many of the proposed changes, the Commission's testimony focused on four major areas in the House proposals:

1. Disclosure.
2. Political party activity.
3. Enforcement.
4. Discretionary authority of the FEC.

In addition, the Commission offered several suggestions for needed changes which were not addressed by the staff proposals or the Senate bill, including legislative recommendations previously submitted by the FEC and solutions to other problem areas which had come to the Commission's attention. Detailed Commission comments on the specific House proposals were contained in an appendix to its written testimony.

No further action was taken by the House during 1977.

Congressional Public Financing

On May 6, 1977, Chairman Harris (serving then as Vice Chairman) appeared before the Senate Committee on Rules and Administration to comment on S. 926, a bill proposing public financing of Senate election campaigns. His testimony, while taking no position as to the merits of the proposal, answered Committee inquiries on three topics:

1. Cost per election year to fund Senate campaigns.
2. Agency cost for staff and equipment to administer and monitor the proposed program.
3. Technical suggestions on program implementation and enforcement.

The Commission estimated that public financing under S. 926 would cost between $27.6 and $38.7 million for the Senate election process (combining primary and general election campaign costs), with an administrative cost of approximately $1.24 million for fiscal year 1978. The Commission explained, however, that its projections could change significantly with modifications in legislative or administrative requirements.

With regard to technical changes in the bill, Commissioner Harris recommended that Congress consolidate all public financing into one title of the U.S. Code; establish a single point of entry for all disclosure statements and reports; clarify matching payment eligibility; clarify the status of party expenditures on behalf of candidates accepting public funds; clarify procedures for determining when a publicly-funded candidate is exempt from the expenditure limit by virtue of an opponent's exceeding the limit; simplify reporting requirements; and provide guidelines for reducing payments to candidates in case of shortages in the Federal fund.

On August 3, 1977, the Senate voted to delete the public financing provisions from S. 926.

On July 12, 1977, Chairman Harris and Vice Chairman Aikens testified before the House Administration Committee on congressional public financing legislation. Although the testimony did not cover any specific proposed legislation or address the merits of any proposal, the Commission explained the processes and procedures involved in the 1976 system of Presidential public financing and gave tentative cost estimates for providing funds to congressional candidates under such a system.

The FEC presented a step-by-step outline of how candidate requests for Presidential primary matching funds and certification of candidates were handled during the 1976 Presidential campaign. The primary goal of the Commission in implementing Presidential public financing was to ensure public confidence in the distribution of public funds. Chairman Harris stated that, in the view of the Commission, this goal was met with the help of several effective safeguards, which included:

1. The FEC certification process whereby all requests for matching funds were reviewed prior to certifying payment to the Treasury.

2. The congressional requirement that the FEC conduct post-election audits of all candidates receiving public funds.
3. The congressional provision that the candidate be personally responsible for any repayment required.

While noting the lack of specific proposed legislation on which to base cost estimates, the FEC discussed two hypothetical systems of funding (all matching funds after reaching threshold vs. partial grant plus matching funds) as a basis for making tentative projections. The FEC's estimates for congressional public financing, when combined with prior estimates for Senate public financing, ranged from $36 million to $62 million.

Finally, the Commission offered several recommendations concerning the income tax checkoff and payment provisions including:

—A provision changing current law to require a one-time reduction in payments to candidates in the event of insufficient funds in the checkoff account.

—A provision requiring the FEC and the Treasury to report to the Congress on the status of the account as soon as possible after the 1978 election.

—A provision requiring that any necessary repayment of general election and convention funds be made to the checkoff account.

—A provision requiring that eligibility for further public funding cease when the total private contributions plus public funds received by a candidate equal the allowable spending limitations.

—A provision requiring that any surplus campaign funds remaining after campaign debts have been extinguished be regarded as public funds and therefore returned to the Treasury.

The House committee took no further action on this legislation during 1977.

Personal Financial Disclosure

In testimony presented on June 7, 1977, before the House Select Committee on Ethics, Chairman Thomas Harris and Vice Chairman Joan Aikens commented on several procedural aspects of the proposed Legislative Branch Disclosure Act of 1977. This Act, to be administered by the Clerk of the House and the Secretary of the Senate, would require Members of Congress, candidates for Congress and staff persons earning over $25,000 per year to file personal financial disclosure statements for public inspection.

Noting the similarity between procedural questions confronted by the Commission and those raised by the proposed Act, the Commission described FEC methods for informing candidates about their disclosure obligations, reviewing reports for accuracy and compliance, and dealing with State officials who have administrative responsibilities under campaign finance laws.

The FEC also offered several recommendations to ease administrative problems through coordinating campaign and personal financial disclosure requirements. These recommendations included:

1. A provision defining "candidate" as one who has registered as a candidate under the Federal Election Campaign Act, or who has taken action to qualify for the State ballot. Personal disclosure requirements would thus be triggered by FEC registration, enabling the new program to avoid duplicating the process of seeking out many minor campaigns that may be unaware of disclosure obligations,
2. A single centralized candidate list to facilitate coordination of FEC and congressional financial disclosure documents.
3. A provision to give the Clerk of the House and the Secretary of the Senate the power to grant reporting waivers to candidates whose campaign financial activity is minimal.

Chapter 7
Organization

The Federal Election Commission, created by the Federal Election Campaign Act (the Act), is composed of six Presidentially appointed Commissioners and two ex officio nonvoting members, the Secretary of the Senate and the Clerk of the House of Representatives. In addition, the law provides for two statutory officers appointed by the Commission: the Staff Director and the General Counsel.

The bulk of the Commission's staff is divided between two major units under the direction of the two statutory officers, respectively. (See Appendix 2.) During 1977, the various subdivisions of the staff were as follows:

1. Commissioners and their immediate staff
2. Staff Director's Office
   —Office of Planning and Management
   —Disclosure Division
   —Audit Division
   —Information Division
   —Administration Division
   —Data Systems Development Division
3. Office of General Counsel

As of December 31, 1977, the Commission staff totaled 211 permanent employees, and 19 temporary employees.

In December, a prospective realignment was announced, to be effective January 1, 1978, establishing a separate Reports Analysis Division to incorporate all disclosure review functions formerly assigned to the Disclosure Division. The realignment reflected an increased emphasis the Commission placed on routine monitoring of the disclosure provisions of the Federal Election Campaign Act.

The Commissioners

The Commissioners are responsible for administering, seeking to obtain compliance with, and formulating policy with respect to the Act, codified in Titles 2 and 26 of the U.S. Code. All decisions must be made by a majority vote of the members except that four affirmative votes are required to approve regulations, render advisory opinions and take certain actions in connection with enforcement (2 U.S.C. §437c).

Thomas E. Harris, former Vice Chairman of the Commission, was unanimously elected Chairman by his fellow Commissioners on May 12, 1977; Joan D. Aikens was unanimously elected Vice Chairman. Both assumed office on May 21, 1977. From May 1976 to May 1977, Commissioner Vernon W. Thomson served as Chairman of the Commission. By statute, any Commissioner is limited to a single, one-year term as Chairman. The Chairman and the Vice Chairman must be affiliated with different political parties. J. S. Kimmitt, sworn in as the new Secretary of the Senate on April 1, 1977, became a new ex officio member. Both the Secretary of the Senate and the Clerk of the House are represented at the Commission by Special Deputies who maintain offices at the Commission and participate in all Commission meetings and operations.

Generally meeting twice a week during 1977 (once in open session and once in closed session), the Commissioners considered an increasing number of compliance cases, defined audit policies and

procedures, requested repayments of public funds and continued to render advisory opinions.

Sunshine Policy

During its two and a half year history, the Commission has been committed to making itself fully accessible to the public. Sunshine Act regulations, adopted by the Commission on March 2, 1977, require that meetings be publicly announced in advance and conducted in open session except when the Commissioners discuss alleged violations of the Act. In those instances, the meetings are automatically closed because of the statutory requirement that such matters be kept confidential. In addition, and subject to approval by the majority of the Commissioners, meetings may be closed to the public only when the Commission considers:

—Matters solely related to personnel;

—Confidential financial or personal information; or

—Information which, if prematurely disclosed, would adversely affect a proposed FEC action.

None of these criteria apply, however, if the public interest otherwise requires a meeting to be open. During 1977, 50 formal meetings and many task force sessions were open to the public.

Election Law Survey

At the direction of the Commissioners, a survey on the impact of the Federal Election Campaign Act on the 1976 elections was conducted by two firms, Decision Making Information and Hart Research Associates.

The 240-page document, released on April 28, 1977, revealed that the law was working reasonably well, that it had not, as some predicted, stifled the political process, and that campaigns made use of the Commission and were generally satisfied with its response to their inquiries. The study was intended as a basis for recommendations for changes in the Act (included in the 1976 **Annual Report**), as a guide to future Commission priorities and as a benchmark from which to evaluate future changes in campaign finance legislation. The Commissioners specificially did not undertake to examine major questions of policy such as public financing of elections, contribution limits, and corporate and labor PAC activities. Special precautions were taken to contact an accurate cross-section of campaigns operating in the 1976 House and Senate elections. Eight hundred and fifty House and Senate campaigns, representing more than two-thirds of those contacted, provided data through written questionnaires and personal interviews. For a summary of the survey's findings, see Appendix 11.

Office of the Staff Director

The Staff Director is the executive officer responsible for staff appointments and organization and, together with the General Counsel, for the implementation of Commission policy through a variety of programs. Several significant steps were taken during 1977 to expand and strengthen the central executive role of the Office of the Staff Director. Principal among these was the creation of the position of Deputy Staff Director with broad responsibility for assisting in the supervision of all phases of Commission activity, particularly planning and procedural development. The position of Associate Staff Director was also created with special responsibility for training and orientation of Commission staff, and planning and implementation of operational changes. Concurrently, the Office of Planning and Management, which was organized early in 1977 as a separate entity, expanded its role as a management support unit within the Office of the Staff Director.

Office of General Counsel

The Office of General Counsel directs the enforcement activities of the Commission and represents and advises the Commission regarding any legal actions brought against it. The Office is also responsible for drafting, for Commission consideration, proposed legal interpretations of the Act which are embodied in regulations, and for drafting advisory opinions.

During 1977, the Enforcement Section of the Office of General Counsel was organized to carry out the new enforcement duties conferred on the Commission as a result of the Supreme Court decision in *Buckley* v. *Valeo* and the 1976 Amendments to the Act. The structure of the Office was modified to accommodate the new duties, and procedures were devised and implemented to facilitate careful yet efficient processing of the Commission's enforcement cases.

Chapter 8
Operation

The operation of the Commission during 1977 was affected by several changes. With the implementation of zero-based budgeting and the creation of a separate Office of Planning and Management, the budgetary process required division heads to identify each of their programs with a specific Commission objective. In addition, as a result of the Supreme Court decision (*Buckley* v. *Valeo*) and the 1976 Amendments to the Act, the staff was classified according to Civil Service standards. Furthermore, the Commission approved and began to implement an Equal Employment Opportunity plan. Finally, expanded computer support allowed the Commission to assume more of its own administrative functions. These changes are described in greater detail below.

Planning and Management

Effective January 17, 1977, a separate Office of Planning and Management was instituted with overall authority for Commission planning and management, as required of all Federal agencies. Reporting directly to the Staff Director, the new office works in conjunction with the Budget Task Force in formulating and developing the Commission budget, evaluating the consistency of Commission programs with FEC objectives, and reviewing all FEC reporting forms, manuals and recordkeeping systems. During 1977, the office provided staff support for the Commission budget and fiscal planning activity. Considerable effort was spent during the year to apply the principles of zero-based budgeting to the management of the Commission's fiscal affairs.

In Fiscal Year 1978, Planning and Management plans to monitor and develop a method of reviewing disclosure reports, advise the Commission on the impact of any legislative changes on the campaign finance law, and review organizational and administrative procedures at the FEC.

Zero-Based Budgeting

The Budget Task Force, chaired by a Commissioner, made its budget recommendations after evaluating alternative program packages submitted by division heads in accordance with zero-based budgeting principles. The program packages were ranked in terms of their ability to achieve one or more of the Commission's major objectives:

1. Administer public funding of Presidential candidates;
2. Obtain compliance with the Act;
3. Facilitate public disclosure of information on campaign finance activities of candidates and committees; and
4. Serve as clearinghouse for election administration information.

The Commission also instituted a work reporting system to help monitor budget outlays and program results and to provide more accurate data for future budget planning. Each month, division heads reported staff costs allocated among ongoing division programs.

Budget

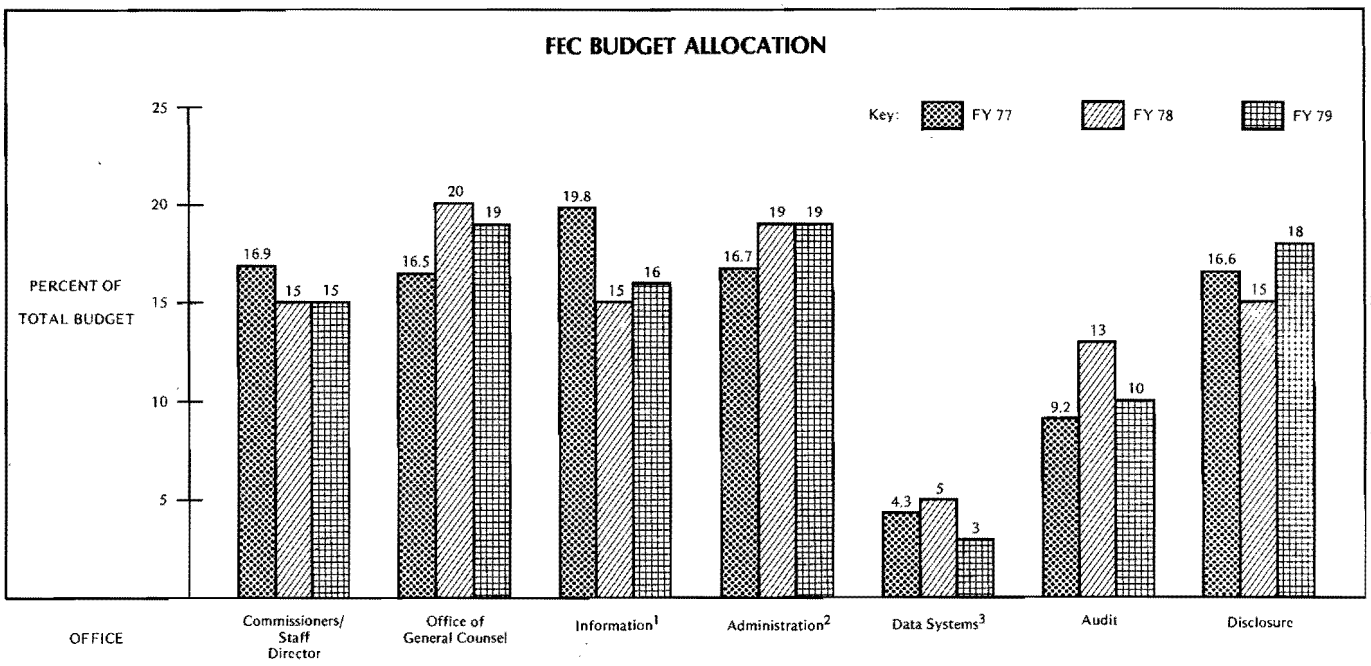
In Fiscal Year 1977 the Commission received an annual appropriation of $6,000,000 plus a supplemental appropriation of $180,000 to compensate

for the October 1976 cost-of-living pay increase. These monies were expended during the fiscal year as follows:

Commission and staff salaries, including benefits	$3,964,466
Consultants	29,652
Travel	181,743
Motor Pool	5,938
Space Rental	306,077
Equipment Rental	167,081
Printing	161,525
Contracts (including Clearinghouse)	776,853
Supplies	91,013
Library Materials	15,552
Telephone/Telegraph	113,857
Postage	24,933
Administrataive Expenses	115,745
Equipment	218,254
TOTAL	$6,172,689

For FY 78 the Commission received an annual appropriation of $7,300,000. Expenditure of these funds is budgeted as follows:

Commission and staff salaries, including benefits	$4,615,261
Consultants	50,000
Travel	242,788
Motor Pool	10,000
Space Rental	331,440
Equipment Rental	184,603
Printing	276,222
Contracts (including Clearinghouse)	1,042,163
Supplies	107,760
Library Materials	22,000
Telephone/Telegraph	136,410
Postage	25,000
Administrative Expenses	129,960
Equipment	126,393
TOTAL	$7,300,000



Footnotes: 1. Public Information resources include Clearinghouse contractual costs.

2. Administration contains resources *not* allocated including rent, supplies reproduction services, etc.

3. Data Systems resources presented include only developmental programs. All other computer costs (i.e., operating time, contract service, etc.) have been allocated to other organizational units.

In addition, the Commission has requested a supplemental appropriation of $310,000 to defray the costs of the October 1977 statutory pay increase.

An appropriation of $8,624,000 has been requested for FY 79.

The graph on page 44 compares the proposed allocation of resources among FEC divisions during Fiscal Years 1977, 1978 and 1979. Fiscal Year 1977 figures are based on estimates from division heads for the final five months of the fiscal year (May through September).

Accounting and Financing

In order to be responsive to the needs of its staff and able to reimburse its vendors in a timely fashion, the Federal Election Commission proceeded with plans to manage all of its own accounting and finance activities. In this regard, the Administration Division worked closely with the Commission's Data Systems Development Division (see below), the U.S. General Accounting Office and the Department of Treasury. The Commission expects that a computerized system for independent accounting will be developed, tested and approved in time for it to assume full responsibility for accounting and finance by October 1, 1978.

Personnel

Job Classifications

The Commission formalized personnel practices and procedures throughout the Agency during the course of the year. All staff positions were classified according to Civil Service standards, as a result of the Federal Election Campaign Act Amendments of 1976 which transformed the Commission into an Executive Branch Agency as required by the Supreme Court's decision in *Buckley* v. *Valeo*. The classification process established a job description and grade level for each position. All positions are excepted, however, from the competitive service.

The Office of the Staff Director promulgated, with the Commission's approval, a comprehensive set of personnel policies covering promotions and performance ratings, grievances and complaints.

Orientation and Training for Employees

During 1977, the Commission established both an orientation program for new employees and a training program for existing employees. The training program consisted of presentations by each division to other divisions and the Commissioners' offices describing the role and the mission of each division, its procedures and practices, and the various ways which other divisions could use its services. The orientation program was given to all new employees within one to four weeks of their entrance on duty. This program, supplemented by an Employees Handbook, consisted of a general introductory session to the Commission, presentations by each division, and an analysis of the Act and the Commission's regulations. Finally, each new employee attended a Commission meeting.

In addition, the Commission had special training programs such as weekly regulation review sessions, periodic presentations by the Data Systems Development Division on new computer capabilities, and audit site visits by key personnel. The Commission is also exploring methods of incorporating the professional programs offered by other agencies into its own training program, particularly where specialized courses will benefit selected individuals in a manner which the Commission cannot duplicate.

Equal Employment Opportunity

On March 31, the Commission adopted specific guidelines to ensure equality of employment for all persons working at the FEC, regardless of race, creed, color, sex, age, national origin, or physical handicaps. To carry out this policy, the Commission designated several staff members to serve as Equal Employment Opportunity (EEO) officers while continuing their other regular duties at the FEC. Officers included a Director, a Federal Women's Program Coordinator and two EEO counselors.

Later in the year, the Commission adopted an Equal Employment Opportunity Plan which summarized the Commission's EEO policy, assessed action already taken by the Commission to implement EEO policy, and outlined future action. It also included an analysis of the composition of the Commission staff to provide a data base for future evaluations and policy determinations.

Since the inception of the Commission's EEO program, only three informal complaints of discrimination have been filed. No complaint reached the formal stage. However, approximately 20 employees asked for and received some form of EEO counseling regarding such matters as training and upward mobility.

During 1977, the EEO staff conducted recruiting activities aimed primarily at filling a substantial

number of attorney position vacancies with minority individuals. EEO staff contacted placement offices at the major law schools and interest groups such as the Urban League and the National Bar Association.

The Federal Women's Program Coordinator initiated a series of seminars to deal with problems faced by women in Federal employment, such as obtaining credit.

Computer Support—Data Systems Development Division

In order to provide broader based computer support to the entire Commission, the Data Systems Office was reorganized as a separate division in early 1977. The new Data Systems Development Division (DSDD) expanded its scope to include computer support not only for the Disclosure Division, as it had done in 1976, but for the other divisions of the Commission as well. The Division now offers computer support in four major areas:

Disclosure Information System: The Disclosure Information System was developed in 1976 to store general information which would allow the Commission and the public to determine which candidates and committees were registered and what reports had been filed, and to track contributions and expenditures.

During 1977, the capabilities of the Disclosure Information System were greatly expanded. New information was entered for itemized receipts and expenditures and additional programs were developed to cross-reference data already entered into the system. These additions allowed the Commission to undertake a more detailed analysis of campaign finance activity and to monitor campaign limitations more closely. During 1977, DSDD produced an average of 30 standard indexes per month, which were available to the FEC and the public.

Administrative Support System: Prior to 1977, the General Services Administration provided the Commission with all its administrative support functions. In 1977, DSDD planned and began to implement the computerization of the Commission's support functions. Personnel and mail control systems were completed in 1977. The Commission will assume all administrative responsibilities by 1978 when it completes the computerization of payroll, inventory, budget and accounting systems.

Information System: To facilitate the distribution of materials by the Information Division, DSDD developed and implemented a computer system to produce mail labels for periodic mailings. The system increased the Division's ability to make selected mailings and to respond to inquiries.

General Support: As a service division, DSDD also helps other divisions utilize the various computer systems in their daily operations. Such individual requests for computer assistance averaged 44 per month.

Appendix 1
Biographical Data on Commissioners and Statutory Officers

Commissioners

Thomas E. Harris, Chairman
April 30, 1979*

Presently Chairman, Mr. Harris was associate general counsel to the AFL-CIO in Washington, D.C., from 1955 to 1975. He had held the same position with the CIO from 1948 until it merged with the AFL in 1955. Prior to that, he was an attorney in private practice and with various Government agencies. A native of Little Rock and a 1932 graduate of the University of Arkansas, Mr. Harris is a 1935 graduate of Columbia University Law School, where he was on the **Law Review** and was a Kent Scholar. After graduation, he clerked one year for Supreme Court Justice Harlan F. Stone. He was originally appointed to the Commission for a four-year term and upon reconstitution received a three-year appointment.

Joan D. Aikens, Vice Chairman
April 30, 1981

At the time of her initial appointment, Mrs. Aikens was Vice President of Lew Hodges/ Communications, a public relations firm located in Valley Forge, Pennsylvania. From 1972 until 1974, she was President of the Pennsylvania Council of Republican Women and served on the Board of Directors of the National Federation of Republican Women. A native of Delaware County, Pennsylvania, Mrs. Aikens has been active in a variety of volunteer organizations. She received her B.A. from Ursinus College, Collegeville, Pennsylvania. Her original appointment to the Federal Election Commission in 1975 was for a one-year term. She was reappointed for five years when the FEC was reconstituted.

*Term expiration date.

William L. Springer
April 30, 1977

Mr. Springer, an attorney by profession, served as State's Attorney of Champaign County, Illinois, from 1940 to 1942. After military service in the Navy, he returned to Champaign, Illinois, and served as County Judge from 1946 to 1950. In 1950 he was elected to the 82nd Congress and reelected to each succeeding Congress from the 22nd Congressional District of Illinois until his retirement at the close of the 92nd Congress. President Nixon appointed him a Commissioner of the Federal Power Commission in 1973. He resigned in December 1975 and was appointed to the Federal Election Commission by President Ford in 1976. Mr. Springer is a graduate of DePauw University and the University of Illinois Law School. He received LL.D. degrees from Millikin University in 1953, Lincoln College in 1966, and DePauw University in 1972.

Neil O. Staebler
April 30, 1977

The Commission's first Vice Chairman, Neil O. Staebler was formerly chairman of the Michigan Democratic State Central Committee (1950-61), a member of the National Democratic Committee (1965-68 and 1972-75), a one-term Member of the House (1963-65) and a gubernatorial candidate in 1964 against former Gov. George W. Romney (1963-69). He served on President Kennedy's Commission on Campaign Financing in 1961 and was vice chairman of the 1970 Twentieth Century Task Force on Financing Congressional Campaigns. Currently the owner of a land development company, Mr. Staebler was graduated from the University of Michigan in 1926. Originally appointed for three years in 1975, he was reappointed upon reconstitution for a one-year term.

Vernon W. Thomson
April 30, 1979

Vernon Thomson, the Commission's second Chairman, was a Republican Member of Congress from Wisconsin from 1961 to 1975. Before that, he was his State's Governor (1957-59), Attorney General (1951-56) and a member of the State legislature (1935-50). He holds a B.A. from the University of Wisconsin and is a graduate of its law school. He was originally appointed for five years and for three years when the Commission was reconstituted.

Robert O. Tiernan
April 30, 1981

Robert Tiernan served as a Democratic Member of Congress from Rhode Island for eight years, and prior to that as a State legislator for seven years. An attorney, he was born in Providence, Rhode Island, and is a graduate of Providence College and Catholic University Law School. Mr. Tiernan has been admitted to practice in all Federal courts, the State of Rhode Island, and the District of Columbia. He has held various national and State party positions. Originally appointed for two years, he received a five-year term upon reconstitution of the Commission.

Ex Officio Members of the Commission

Edmund L. Henshaw, Jr.

Edmund L. Henshaw, and Ex Officio Member of the Commission, was reelected Clerk of the House of Representatives for the 95th Congress. He had been appointed Acting Clerk of the House on November 17, 1975, and was elected Clerk on December 17, 1975. Prior to that, he served as Executive Director of the Democratic National Congressional Committee, from 1972-1975, and Research Director of the Democratic National Congressional Committee from 1955 to 1972. He received a B.S. degree from the University of Maryland in 1954, and attended George Washington University Law School from 1955 to 1956.

Douglas Patton, attorney, serves as Special Deputy to the Clerk of the House at the Commission.

Joseph Stanley Kimmitt

Stanley Kimmitt, an Ex Officio Member of the Commission, was elected Secretary of the Senate in April 1977. He previously served as Secretary of the Majority for the Senate (1966-1977) and as Administrative Assistant to the Majority Leader of the Senate. A native of Great Falls, Montana, he holds a Bachelor of Science degree in political science from Utah State University. Mr. Kimmitt also attended the University of Montana and did graduate work at George Washington University. Mr. Kimmitt was inducted as a private in the U.S. Army in 1941 and retired as a colonel in 1966.

Harriet Robnett, attorney, serves as Special Deputy to the Secretary of the Senate at the Commission.

Statutory Officers

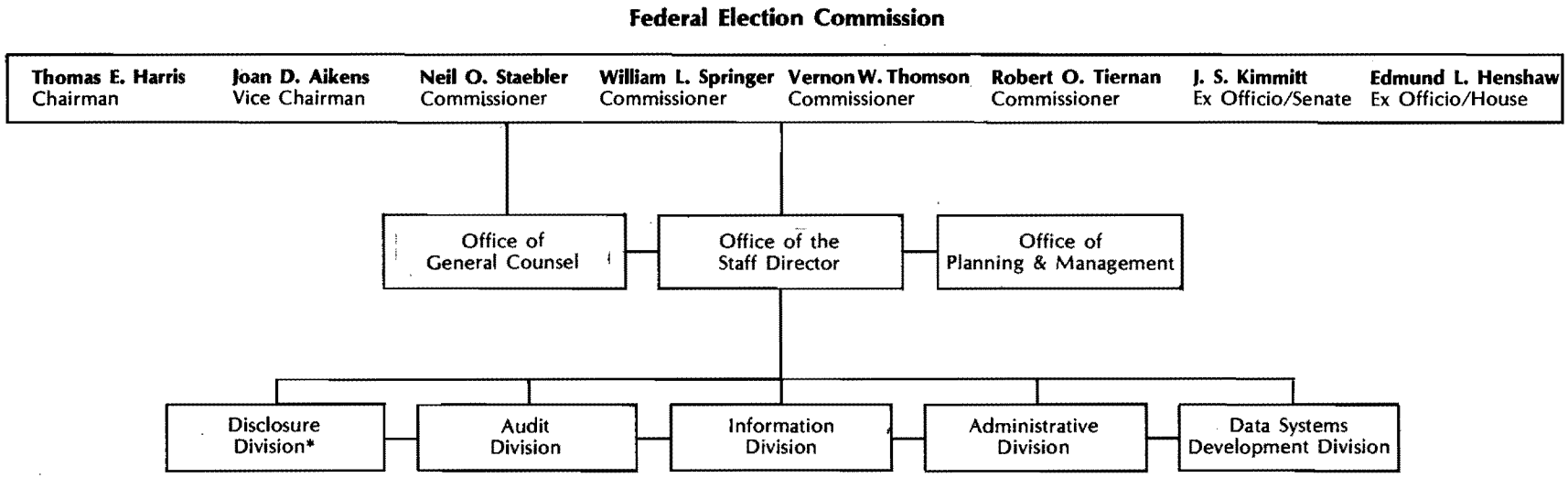
Orlando B. Potter, Staff Director

Before joining the Commission, Orlando Potter was consultant to the Secretary of the U.S. Senate in the administration of campaign disclosure laws. Prior to that he was legislative assistant to U.S. Senator Claiborne Pell, and in 1968 was a candidate for the U.S. House of Representatives from New York. Mr. Potter previously was a Washington correspondent and editorial writer for the Providence (R.I.) **Journal Bulletin.** A 1950 graduate of Hamilton College, Mr. Potter also holds a Masters Degree from Yale University. He received a Congressional Staff Fellowship from the American Political Science Association in 1970, and did graduate work in computer science at American University.

William C. Oldaker, General Counsel

William Oldaker began serving as General Counsel on January 1, 1977, after being Assistant General Counsel for Compliance and Litigation since 1975. Holding B.A. and J.D. degrees from the University of Iowa, he also attended the Graduate School of Business at the University of Chicago. Prior to coming to the Commission, Mr. Oldaker served with the Federal Communications Commission and the Equal Employment Opportunity Commission.

Appendix 2
FEC Organization Chart



*Effective January 1, 1978, the Disclosure Division was reorganized into two separate entities: Public Disclosure Division and Reports Analysis Division.

Appendix 3
Chronology of Events, 1977

January

1 Disclosure Division and Data Systems Development Division established. William C. Oldaker begins serving as General Counsel.

3 Commission issues policy statement on post-election contributions to retire 1976 campaign debts.

9 Clearinghouse Advisory Panel meets.

11 FEC resubmits proposed regulations to Congress.

17 Office of Planning and Management created.

21 FEC publishes names of nonfilers of post-general election report. FEC approves report of the Task Force on Statistics establishing guidelines for the preparation and release of campaign finance statistics on the 1976 elections.

31 Year-end report due.

February

3 FEC adopts amendment to proposed matching fund regulation (§134.2(c)(2)).

8 FEC sends legislative recommendations to Congress.

10 Monthly reporting in 1977 approved for political committees.

22 Special general election in Minnesota for the 7th Congressional District.

March

2 FEC adopts Sunshine Regulations to govern proceedings.

7 S.926 introduced in Senate, providing for public financing of Senatorial elections.

9 Sunshine Regulations implemented.

15 Testimony before the Senate Appropriations Committee on the Commission's budget request for Fiscal Year 1978.

16 Testimony before the House Administration Committee concerning Section 114.5 of the Commission's regulations (negative check-off prohibition).

17 FEC sends Report to Congress on Commission activities under the Freedom of Information Act.

18 Democratic and Republican National Committees return to the Federal Treasury over one-half million dollars in surplus public funds.

22 President Carter presents election reform package to Congress. Included in the package is a bill to allow election-day voter registration, to eliminate the Electoral college and to provide for the public financing of Congressional elections. House Administration Committee votes not to exercise its power of veto over §114.5 of the Commission's regulations.

23 FEC releases Index of Independent Expenditures.

28 **Annual Report** for 1976 sent to Congress.

29 30th Legislative Day for the Commission's proposed regulations.

30 Testimony before the House Appropriations Committee (Subcommittee on Treasury, Postal Service and General Government) concerning the Commission's budget request.

31 FEC adopts specific guidelines to ensure equality of employment opportunity.

April

1 J. S. Kimmitt, sworn in as Secretary of the Senate, becomes ex officio member of the Commission.

5 Special election in Georgia for 5th Congressional District.

7 Commission approves procedures for conducting audits.

10 First quarterly report due.

13 Regulations prescribed. FEC prescribes full set of regulations after the 30-legislative day congressional review period expires March 29 with neither House of Congress exercising its veto.

14 Index to reports available in the Office of Public Records released to the public.

21 Invitation policy adopted by the Commission. Commission establishes scheduling priorities for 1977 audits.

25 Testimony before the House Administration Committee on universal voter registration.

27 Index on Communication Costs by Corporations, Unions, Membership Organizations and Trade Associations published. National Party Report published.

28 FEC releases 240-page survey "A Study of the Federal Election Campaign Act on the 1976 Elections."

May

3 Report on 1976 Senate Campaigns published.

6 Testimony before the Senate Rules and Administration Committee on election reform, including universal voter registration, public financing of congressional elections and amendments to the Act.

12 FEC directs Governor Milton Shapp to repay matching funds. Commissioners elect Thomas E. Harris Chairman, Joan D. Aikens Vice Chairman, effective May 21.

14 FEC publishes names of two nonfilers for the pre-election report in the Washington special election.

17 Special general election in Washington for the 7th Congressional District.

26 Public comment invited on a proposed regulation on corporate obligation to make its political solicitation methods available to a labor organization.

June

5 Report on 1976 Presidential Campaign Receipts and Expenditures published.

7 Testimony before the House Select Committee on Ethics concerning personal financial disclosure.

July

10 Second quarterly report due.

12 Testimony before the House Administration Committee on congressional public financing. Public comment invited on the subject of sponsorship and financing of public debates between candidates for Federal office.

14 FEC completes action on agency job classifications.

25 Clearinghouse Advisory Panel meets.

August

3 The Senate approves S.926, the "Federal Election Campaign Act Amendments of 1977."

4 FEC announces commencement of routine audits of randomly selected congressional races.

8 Commission approves FY 1979 budget proposals.

27 Special election in Louisiana for the 1st Congressional District.

September

12 FEC holds hearings on sponsorship and financing of public debates between candidates.

October

2 Report on 1976 House Campaigns released.

10 Third quarterly report due.

13 Testimony before the House Administration Committee concerning proposed amendments to the Act.

15 First office account report due.

18 FEC requests public comment on regulations governing independent expenditures.

20 Commission approves Equal Employment Opportunity Plan.

December

6 Commission presents FY 1979 budget proposals to the Senate Rules Committee.

8 Commission approves amendment to Section 114.4 of the regulations allowing donation of corporate or labor organization funds to qualified organizations for use in sponsoring nonpartisan candidate debates.

20 President signs into law the Social Security Financing Bill containing amendments to the honorarium provisions of the Act (2 U.S.C. §441i).

Appendix 4
FEC Opinions: Summaries

Prior to the promulgation of Commission regulations on April 13, 1977, the Commission issued two types of opinions:

1. **Advisory Opinions**, designated as AO's, concerned the application of the Act to specific factual situations. Any person requesting an AO, who in good faith acts in accordance with the findings of the opinion, would not be penalized under the Act. The opinion could also be relied upon by any other person involved in a specific transaction which was indistinguishable in all material aspects from the activity discussed in the AO.
2. **Informational Responses to Advisory Opinion Requests**, designated as Re: AOR's, differed from AO's in that they were based in part on the Commission's proposed regulations and they offered no legal protection to recipients until the regulations on which they were based went into effect (April 13, 1977).

After the regulations were prescribed, the Commission no longer issued Re: AOR's. The advisory opinion, as defined above, is now the only type of response given to requests for advisory opinions.

The following summaries of AO's and Re: AOR's include those issued between January 1, 1977, and December 31, 1977. Those seeking guidance for their own activity should consult the full text of an advisory opinion and not rely on the synopsis given here. Copies of the full text of AO's and Re: AOR's are available from the Office of Public Records at the Commission. (202/523-4148—toll free 800/424-9530)

Re: AOR 1976-94: Payroll Deduction Plan Used by Trade Association PAC

Section 114.8(e)(3) of the Commission's proposed regulations (submitted to Congress on August 3, 1976, and published in the Federal Register August 25, 1976) explicitly prohibits a corporation which belongs to a trade association from using a payroll deduction plan to facilitate contributions from its executive and administrative personnel to the trade association's political action committee (PAC). However, in the specific case of the Connecticut Insurance Political Action Committee (CIPAC), established by the Insurance Association of Connecticut (a trade association), otherwise proper contributions made by payroll deduction on or before August 25, 1976, are permissible since an earlier draft of proposed regulations (published in the Federal Register May 26, 1976, to elicit public comment, but never adopted) permitted member corporations to use such a payroll deduction system. Following public hearings, the Commission formally approved the proposed regulations prohibiting the use of payroll deductions to facilitate contributions to a trade association PAC.

Re: AOR 1976-103: Forgiving Campaign Debts Owed to Individuals Rendering Personal Services

If a candidate has incurred a debt for a personal service which does not count as a contribution under the Act, the person who rendered the service may forgive the debt without thereby making a contribution (for limitation purposes). The candidate would, however, have to file an explanation of the settlement. Services which do not count as contributions include: legal or accounting services rendered to the candidate to insure compliance with the Act; volunteer services provided without compensation and any usual and normal expense related to the volunteer activity; and travel on behalf of a candidate, as long as the travel expenses do not exceed $500 per election.

AO 1976-104: Affiliation of Political Committees

The Good Government Committee of First Federal Savings of Miami (the Committee) is an affiliated political committee of the Florida Savings Political Action Committee (FSPAC). Because the committee gave a substantial portion of its total receipts to FSPAC, and the reports of the two committees demonstrated similar patterns of contributions, the Commission concluded that the two committees met two criteria established in FEC Regulations to determine committee "affiliation." (See §110.3(a)(1)(iii).) Therefore, the Committee and FSPAC are regarded as a single committee for contribution limitation purposes, and transfers between the two committees are unlimited. However, each committee must file separate reports. In a related question, the Commission had insufficient information to determine whether the Committee was affiliated with the Savings Association Political Elections Committee, another political committee.

Re: AOR 1976-105: Activity of Political Action Committee Established by Membership Organization

The advisory opinion procedure may not be used to obtain Commission approval of the Articles of Organization proposed by the American Institute of Certified Public Accountants (AICPA) to govern the operations of its political action committee (the committee). The Commission may, however, respond to specific, factual issues addressed in that statement. Eligibility to participate in the committee's activities and membership in the committee expand neither the class of individuals to whom AICPA may make partisan communications funded from its general treasury, nor the class of individuals who may be solicited by either AICPA or the committee.

Re: AOR 1976-107: Use of Excess Campaign Funds

Congressman Whitehurst may use excess campaign funds to finance a series of television programs, to be aired over the next two years, informing constitutents of factual happenings in Washington that may affect them directly or indirectly. Any use of funds, however, would be considered a campaign expenditure if made for the purpose of influencing a Federal election. The Commission has no authority to comment on tax implications of such a transfer.

AO 1976-108: National Party Committee Expenditures on Behalf of Congressional Candidates

Specified party campaign committees, such as the National Republican Congressional Committee (NRCC), are considered national party committees. Funds may be transferred between party committees without limitation. If, therefore, the Republican National Committee (RNC) designates the NRCC as its agent for making general election expenditures on behalf of House candidates, funds of either the NRCC or the RNC may be expended on behalf of a candidate for Congress. The limit on national party expenditures for Congressional candidates applies, however, to the national party as a whole (including all its committees), not to each committee separately. If the RNC designates as its spending agent a committee which is not a committee of the Republican Party, the RNC would have to provide the funding since transfers by a nonparty agent to the RNC would be limited to $20,000 or $15,000 per year.

Re: AOR 1976-109: Activity by National Bank's Separate Segregated Funds

The Society National Bank of Cleveland (Society National), the Society Corporation which owns the stock of Society National, and other banks also owned by Society Corporation may each participate in the establishment and maintenance of two separate segregated funds: 1) SOPAC, created to support candidates for Federal office and 2) the Association, established to support candidates for State and local office only. Such participation may include the defraying of expenses incurred in the establishment and administration of the separate segregated funds and in the solicitation of voluntary contributions to them. SOPAC, as a registered, political committee, would fulfill its reporting obligations under the Act by filing reports with the FEC and copies of such reports with appropriate State officers. As long as the Association does not contribute to Federal candidates or political committees, and none of its receipts or disbursements are "contributions" or "expenditures" under the Act, the Association would not be a political committee and therefore would not be subject to the Act's reporting requirements.

AO 1976-110: Contributions from Local Candidate's Campaign Account

The Akaka for Congress Committee (the Committee) must return a $500 contribution received from a local candidate's campaign account

because corporate and noncorporate contributions were commingled in that account and a contribution made from commingled funds is considered an indirect corporate contribution prohibited under the Act. The Committee could, however, accept a contribution made from a local candidate's personal funds.

Re: AOR 1976-111: Definition of Administrative Costs Incurred by Labor Organization and its PAC

The League of Voter Education (the League), the political action committee formed by the Laundry, Dry Cleaning and Dye House Workers Union (the Union), may accept reimbursements from the Union for legal fees the League paid in connection with its own formation because the fees are considered administrative costs. While the Union is not required to report such disbursements, the League must disclose the receipt of Union funds as a reimbursement for administrative costs.

The costs of printing political cards supporting an individual's candidacy is not considered an administrative cost, regardless of whether the individual qualifies as a candidate under the Act or qualifies to appear on a State ballot. The Union could not, therefore, reimburse the League for such printing costs.

AO 1976-112: Democrats Abroad Constitutes Party Committee

Democrats Abroad is considered a party committee because it "represents the Democratic Party to Americans living in foreign countries, and . . . functions as part of the official structure of the Democratic Party." It is not, however, considered a State party committee since it is not responsible for the day-to-day operation of a political party at the State level. Therefore, it is not entitled to the special allowance granted State parties for making expenditures on behalf of Federal candidates in the general election. Democrats Abroad is, however, regarded as a subordinate of the national party committee. Transfers between Democrats Abroad and other Democratic party committees are not, therefore, subject to contribution limits, but they are reportable as intraparty transfers.

Re: AOR 1976-113: Follow-Up Solicitations by Trade Association PAC

When the Savings Bankers Nonpartisan Political Action Committee (PAC) conducts its annual solicitation of officers of member corporations over a three- or four-month period beginning in November 1976 and extending into 1977, it must obtain prior and specific approval from corporate members for the 1977 "follow-up" solicitations, even though it already received approval for the initial fundraising solicitation made in 1976.

Re: AOR 1976-114: Use of Excess Campaign Funds

Congressman Joseph Early may use excess campaign funds to defray telephone costs incurred in the ordinary course of his official duties. If the disbursements for phone calls are made from an office account, to which the excess campaign funds were first transferred, they would be subject to the reporting requirements set forth in the Commission's proposed regulations on office accounts, section 113.4.

AO 1976-116: Expenditures by Principal Campaign Committee

Congressman Mario Biaggi's principal campaign committee may make expenditures in 1977 for a book and screenplay about the Congressman's life, intended to influence the Congressman's future election. These expenditures must be reported, as must all disbursements by a political committee.

AO 1977-1: Post-Election Use of Property Purchased by Principal Campaign Committee

A car purchased by Congressman Norman Lent's principal campaign committee during his 1976 campaign may be used by the Congressman and his staff after the election is over. Since property purchased by a principal campaign committee ". . . may be treated like surplus campaign funds . . ." the car may be used for any lawful purpose. Committee disbursements related to the car, however, constitute reportable expenditures by the principal campaign committee.

Re: AOR 1977-3: Office Accounts

Senator Ted Stevens may accept private contributions to establish a "leader's office account" to be used for paying costs associated with Stevens' duties as a Senate leader since these duties are among those of a Federal officeholder. Receipts and disbursements from this account must be disclosed. They are not, however, subject to contribution limits unless they are made for the purpose of influencing a Federal election. Funds

from the account may be used to pay costs of attending "political functions" involving another Senator. If, however, attendance at a "political function" relates to influencing the election of another Senator, the use of office account funds would constitute a contribution-in-kind by Stevens to that Senator's campaign. As such, they would be subject to the Act's limitations and could not be made at all if the account contained any corporation or labor organization treasury funds.

AO 1977-4: Donation of Goods to Officeholder

Congressman Richard T. Schulze may accept from the Franklin Mint (a corporation) a donation of 250 medals, valued at approximately $2,000, to be awarded by the Congressman as medals of merit to selected constituents, only if: 1) Schulze is not a candidate for any 1978 Federal election and 2) the medals are neither intended for use nor actually used in connection with a future Federal election campaign. If these two conditions are not met, the donation would violate the Act because it would constitute an in-kind contribution by a corporation "in connection with a Federal election."

AO 1977-5: Legal and Accounting Fees Related to Ensuring Candidate's Compliance with FECA

Contribution limits apply to donations made to a candidate specifically to defray legal and accounting services rendered solely to ensure compliance with the Act. The limits do not apply, however, when an employer donates the services (i.e., pays the salary) of his accountant-employee or his attorney-employee. A principal campaign committee may establish a separate fund for defraying costs of legal and accounting services rendered to ensure compliance with the Act. Contributions to such a fund would, however, constitute contributions to the candidate and, therefore, would count against the donor's contribution limits. Further, all receipts and expenditures would be reportable.

AO 1977-7: Solicitation of Personal Funds

The Federal Election Campaign Act does not apply to a plan submitted by Congressman George Hansen to solicit funds for purely personal, noncampaign purposes. The Congressman, therefore, is not required to file any reports to the FEC on the activities of such a noncampaign fundraising plan. The Commission emphasized, however, that this opinion "should not be construed as Commission endorsement or approval of the plan . . ." Moreover, other laws outside the Commission's jurisdiction, such as Title 18 of the U.S. Code, Federal tax laws and rules of the House of Representatives, may apply to its operation.

The Commission also stressed the importance of the officeholder's commitment not to use any personal funds (once the plan was in operation) to influence his own future election. Further, the Commission noted, the Congressman could not assume any liability for a loan obtained by or on behalf of an authorized campaign committee to defray costs of a past or future campaign.

Re: AOR 1977-8: Joint Fundraising by Federal Candidates

The Sasser for Senate Committee may accept its agreed pro rata share of the net proceeds from a joint fundraising event held in conjunction with the Rowland for Congress Committee, provided reporting requirements and contribution limits are observed. This opinion is based on the fact that the committees had entered into an agreement before the event and both candidates appeared at the event. The pro rata share of each contribution, based on the gross amount of the ticket purchase price, may be accepted only to the extent the amount, when aggregated with previous contributions to candidate Sasser by the same donor, does not exceed the contribution limitations.

The total pro rata proceeds should be reported by the Sasser Committee as a transfer from the Rowland Committee provided **all** receipts are reported by the Rowland Committee. In addition, the Sasser Committee must itemize its pro rata share of all contributions from political committees and its pro rata share of any individual contribution which, when added to previous contributions to the Sasser Committee from the same donor, exceeds $100.

AO 1977-9: Separation of Federal and Non-Federal Funds

In two specific factual situations, the Santa Clara County Democratic Central Committee (SCDC) may transfer specific sums of money from its account for local and State elections to its Federal Funds Committee (FFC), a separate committee (with separate account) supporting Federal candidates. In the first case, the transfer is permissible because the money was originally contributed by other "political committees," as defined in the Act. Under the regulations, a "political committee" may accept contributions from another "political committee," but not from a committee which is not organized and operated according to the Act and FEC regulations. In the second in-

stance, SCDC may transfer to the FFC funds erroneously deposited in the account for local and State elections since they were expressly solicited for use in Federal elections only.

AO 1977-10: Computerized Voters List As Gift by State Committee to Candidate

A computerized voters list given by the Oklahoma Republican State Committee to Senators Dewey F. Bartlett and Henry L. Bellmon would not be considered a campaign contribution if it were given exclusively for the purpose of aiding the Senators' communications with their constituents under the congressional franking privilege, and not for the purpose of influencing a Federal election.

AO 1977-11: Criteria for Candidacy

Regardless of whether a Member of Congress has "officially" declared his or her candidacy for reelection, when he or she or an authorized committee accepts contributions for a "campaign account" or makes campaign-related expenditures from it, the Member is considered a candidate for a **future** Federal election. (Note one exception: Funds accepted and spent only to retire a past campaign debt do not trigger candidacy for a future election.)

Once a Member thus becomes a candidate for the 1978 elections, he or she must file a Statement of Candidate (FEC Form 2), designating a principal campaign committee and a campaign depository and begin filing reports of receipts and expenditures required under the Act. The Member may utilize the same principal campaign committee he or she used in the 1976 campaign by redesignating it on FEC Form 2.

The Act does not restrict the types of expenditures which a candidate may make from the campaign account. Funds may be used, for example, to defray the costs of services which are "quasi-political in nature," such as expenses related to travel within the District to address a political party meeting or flowers sent to constituents for anniversaries, funerals, etc.

The advisory opinion notes, however, that non-campaign expenditures made from a campaign account may be subject to the rules of the House of Representatives and Federal tax laws.

AO 1977-12: Place of Work Used as Campaign Office

Federal candidate Donald Meyer may use the place of business he personally owns and his business telephone for campaign purposes, but must report their use as campaign expenditures. To assure accurate reporting of these campaign expenditures, a reasonable allocation of office expenses must be made between those expenses incurred for business and those for campaign purposes. The campaign's telephone costs must be a proportionate share of the monthly base charge plus long distance fees incurred for campaign purposes. Part of the total overhead costs, proportionate to the percentage of time the office is used for campaign purposes, must be counted as campaign office expenses and, accordingly, be reported as campaign expenditures. Computation of overhead expenses must include utilities and the fair market rental value of the space to be utilized.

AO 1977-13: High School Intern Program* Sponsored by Member of Congress

Representative Newton I. Steers, Jr. may sponsor a 1977 summer intern program for high school students within his district, selected by an Intern Selection Committee (the Committee) without regard to party preference. The Committee may raise donations from individuals to defray expenses of the intern program. The Committee's funding appears not to involve any contributions or expenditures made to influence Steers' future nomination or election. Thus, the Committee would not be considered a political committee subject to the Act's reporting requirements and contribution limits.

However, since Steers is initiating, sponsoring and apparently organizing significant parts of the program "as constituent service" to his district, donations to the Committee are regarded as funds to support Steers' activities as a Federal officeholder. As such, they are subject to the disclosure requirements for officeholders under 2 U.S.C. 439a and section 113.4 of the regulations.

The Commission notes that these circumstances are distinguishable from the situation where an officeholder merely meets with constituents and participates in activities initiated and funded by them for their own benefit. In that case, no reporting obligations arise.

AO 1977-14: Joint Fundraising by Three Former Presidential Candidates

The campaign committees of former Presidential candidates Birch Bayh, Fred R. Harris and Sargent Shriver may create a "Special Committee" to jointly raise funds to retire their respective

*Superceded in part by AO 1977-27, decided in February 1978.

Presidential campaign debts. Authorized by each candidate, the Special Committee must designate its own depository, which must also serve as a depository for each participating campaign. The Special Committee is subject to all requirements of the Act and regulations, and all persons contributing to it will be regarded as making a contribution to the participating Presidential campaigns.

The Special Committee and the participating campaigns are all responsible for establishing an appropriate accounting system to ensure compliance with contribution limits. For each contribution transferred to the candidate, the participating campaign must disclose the same contributor information required for contributions made directly to a candidate. A person who has "used up" his limit with respect to one of the participating Presidential campaigns must allocate his contribution among the other candidates to whom he has not yet contributed the maximum amount. All solicitations by the Special Committee must inform potential contributors about the applicability of contribution limits and methods for allocating contributions among the participating campaigns.

Contributions to the Special Committee may be distributed among the three participating candidates according to a formula based on their respective outstanding campaign debts, to the extent contributors are not required to make allocations to particular candidates. This same formula must be used to allocate the Special Committee's fundraising expenses among the three candidates.

The Special Committee may also participate as a beneficiary in a fundraising dinner given by the Democratic Senatorial and Congressional Campaign Committees (Campaign Committees) if each contributor purchasing tickets from the Special Committee is informed of the distribution formula to be utilized and given an option to allocate his or her contribution (i.e., purchase price of ticket) among the participating campaigns of the Special Committee. To avoid making contributions to or receiving contributions from the Special Committee, the Campaign Committees must bear a proportionate share of the dinner expenses and must divide any advance expenses with the Special Committee according to the ratio of tickets issued to each committee.

AO 1977-15: Application of Contribution Limits to Members of Candidate's Immediate Family

Federal candidate Caputo, who received a $2,000 contribution from both his father and brother prior to the Supreme Court's *Buckley* v. *Valeo* decision (January 30, 1976), may accept additional post-election contributions from them. The candidate may receive, to the extent of remaining indebtedness, the maximum contribution of $1,000 per election from each one because contributions made by members of a candidate's immediate family before the *Buckley* decision are neither required to be reported nor regarded as having "used up" the candidate contribution limit. All contributions relating to a 1976 election are, however, subject to the $25,000 annual (1976) limit applicable to all individuals, regardless of when the contributions are made.

AO 1977-16: Search Committee

The Iowa 1980 U.S. Senate Committee (the Commitee) may operate initially as a political committee formed to select a Republican candidate for the 1980 Senate election in Iowa by raising money, conducting surveys and identifying campaign workers and volunteers. During this time, the Committee may also voluntarily observe the limitations applicable to contributions made to a principal campaign committee, even though no candidate has yet been selected. If these limitations are observed, the candidate eventually selected by the Committee may designate it retroactively as his or her principal campaign committee. The Committee's accumulated contributions, available for the candidate's use in the campaign, would not be regarded as a contribution from the Committee to the candidate selected.

The Commission based its opinion on the following additional conditions:

—Once the Committee selects a candidate (and provided the candidate authorizes the Committee as his or her principal campaign committee), any previous contributions received by the Committee will be regarded as having been accepted by the principal campaign committee of the candidate.

—All contributions previously made to the Committee and all contributions made directly to or for the candidate before his or her selection must be aggregated by donor and reviewed to ensure that no contributors have exceeded their limitation. Refunds must be made to those contributors who are determined to have contributed in excess of their limits.

—The Committee's Statement of Organization must be amended at the time of the candidate's selection and the candidate must authorize the Committee as his or her principal campaign committee.

Chairman Thomas Harris and Commissioner Neil Staebler dissented from the majority opinion's conclusion.

AO 1977-17: Definition of Membership of a Membership Organization

Commodity representatives of the Chicago Mercantile Exchange (the Exchange), a nonprofit membership organization, are not (for purposes of the Federal Election Campaign Act, as amended) considered "members" of the Exchange since they do not have the same status within the Exchange as that enjoyed by full members. For example, commodity representatives may not trade, vote or serve as officers of the Exchange. Consequently, the Commodity Futures Political Fund, a political action committee established by the Exchange, may not solicit voluntary contributions from the commodity representatives.

AO 1977-18: Solicitation by Trade Association

The Proprietary Industry Political Action Committee (PIPAC) may not solicit the Board of Directors of its sponsoring trade association, the Proprietary Association (the Association), because they are not stockholders or executive or administrative personnel of the Association. However, since the Board consists of executive and administrative personnel of the corporate members of the Association, PIPAC may solicit members of the Board under the FEC's trade association regulations (11 CFR §114.8). These regulations require that the corporate member give prior approval to a solicitation by a trade association and limit such approval to only one trade association in any calendar year. Those Board members who are employed by a corporation which has not consented to a PIPAC solicitation or which has consented to a solicitation by another trade association could not be solicited by PIPAC.

AO 1977-19: Taxes on Interest Earned

Texaco may not use treasury funds to pay taxes on the interest income earned on unused contributions which were placed by Texaco's separate segregated fund (Texaco Employees Political Involvement Committee) in an interest-bearing account. The tax obligation is not considered an "administrative" cost because it was not incurred in the establishment of, the administration of, or the solicitation of contributions to the separate segregated fund. Rather, the tax was the result of the production of income to the separate segregated fund.

AO 1977-20: Joint Fundraising by Federal and Non-Federal Committees

The National Association of Realtors Political Action Committee (RPAC), established by the National Association of Realtors (a trade association) to support Federal candidates, may follow procedures it proposed to the FEC for receiving and allocating funds donated for both Federal and non-Federal elections. Under the proposed procedures, funds would be collected jointly by RPAC and State political action committees which are established by State associations of realtors which, in turn, are affiliated with the National Association of Realtors. These funds would be deposited in a special account established in a bank which would have escrow instructions directing the bank to allocate the contributions between the State political action committees and RPAC on a 60-40 percent basis. Contributors would be fully advised of the allocation ratio and, according to the proposed plan, RPAC would report to the FEC the names of contributors and the amount of contributions (40 percent of the total contributions). Commission approval of this proposal was conditioned on RPAC's complying with the following **additional** requirements of the Act:

—The solicitation materials must also inform the contributor that the Federal portion of the contribution is charged against applicable contribution limitations of the Act.

—The special bank accounts must be designated on RPAC's Statement of Organization as campaign depositories.

—All joint contributions deposited into the special accounts including the portion intended for the State committees must be otherwise lawful under the Act. Contributions from national banks, corporations, labor organizations, Government contractors and foreign nationals are prohibited altogether. Joint contributions would be subject to contribution limitations only to the extent of RPAC's 40 percent share of the contribution.

—Contributions are deemed "received" by RPAC at the time they are delivered to the treasurer of RPAC or the RPAC representative functioning in each State (i.e., the bank), rather than when RPAC receives a bank transfer from a State escrow account. The State RPAC representative must supply RPAC with all information necessary to comply with its recordkeeping and reporting obligations under the Act.

AO 1977-21: Transfers Between Affiliated Committees

Realtors Political Action Committee and the California Realtors Political Action Committee/ Federal are two affiliated political action committees (connected to two trade associations, the National Association of Realtors and the California Association of Realtors, respectively). Therefore, both committees are regarded as a "single political committee" for purposes of applying the Act's contribution limits to their contributions to Federal candidates and other political committees. Transfers of funds between them, however, are considered intracommittee transactions and not, therefore, subject to contribution limits. Nevertheless, the two affiliated committees must each file separate reports which reflect, among other transactions, transfers made and transfers received.

AO 1977-22: Fundraising Concert

In connection with a fundraising concert, the Democratic Congressional Campaign Committee (the Committee) may rent amphitheater facilities from Universal City Studios, Inc. (a corporation) for a fee of $5,000 if this fee is the normal and usual rental charge for the use of equivalent facilities at the time the event is held. With regard to recordkeeping and reporting, the full amount of a ticket purchase is regarded as a contribution. Recordkeeping requirements are triggered if the total amount paid for any number of tickets purchased by the same individual exceeds $50. The Committee must report total proceeds and must itemize any ticket purchase which exceeds $100 (in a calendar year) when combined with other contributions from the same person.

AO 1977-23: Joint Fundraising

Congressman Newton Steers and 10 other Members of Congress may participate in a joint fundraising effort conducted by the Civic Development Group (CDG), a fundraising firm authorized by the Members. In the proposed plan for reporting, all contributions and expenditures will be divided equally among the 11 Congressmen. Each Member's principal campaign committee will report its share of expenditures and contributions. Commission approval of this proposal was conditioned on the following additional requirements:

—The principal campaign committee of each participating Member must designate the account used by CDG for the collection of contributions as an additional depository on its Statement of Organization.

—Solicitation materials must clearly indicate the pro rata distribution of contributions so contributors will know how their contribution limits are affected with respect to each candidate.

—The two notices required on all solicitation materials must be modified to identify all the participating campaign committees. (See 2 U.S.C. §§435, 441d.)

AO 1977-24: Termination of 1976 Campaign Committee and Establishment of 1978 Campaign Committee

The Commission regards Congressman John Duncan's 1976 campaign committee as a continuing political committee until it is terminated (see 2 U.S.C. §433(d)). The committee may terminate when it no longer has debts or obligations. Alternatively, the Congressman could designate the committee as his 1978 principal campaign committee by amending the committee's 1976 Statement of Organization.

Surplus campaign funds from the 1976 committee may be transferred to the 1978 campaign committee of the Congressman. (See §110.3(a)(2)(iv).) These transfers are not subject to the 1978 contribution limitations, as long as they consist of contributions received prior to the 1976 general election.

Contributors who gave up to their limit in 1976 may contribute in 1977 to the Congressman's 1978 campaign. These contributions will count against the limitations for the 1978 election.

AO 1977-25: Notices for Radio Advertising

The Lowenstein '76 Committee must include the notice specified in 2 U.S.C. §435(b) in a series of radio advertisments to publicize a fundraising concert. An appropriate wording would be: "Paid for by the Lowenstein '76 Committee. A copy of our report is filed with the Federal Election Commission and is available for purchase from the Federal Election Commission, Washington, D.C." The broadcasts are considered solicitations because the advertisements would urge contributors to attend and make ticket purchases which would be contributions. The opinion also referred the Lowenstein '76 Committee to the Federal Communications Commission for information on sponsorship identification requirements which may be prescribed for broadcast stations by that agency.

AO 1977-26: Voter Registration Activity

Any compensation or reimbursement by the State Democratic Party of Pennsylvania/Voters Registration Drive Committee ("VRC") to William J. Green for voter registration promotional activities, conducted during the 1976 election campaign, would be a contribution to Mr. Green and would be subject to limitations of the Federal Election Campaign Act of 1971, as amended. This opinion is based on the fact that Mr. Green was actively campaigning for the Pennsylvania U.S. Senate seat in 1976 at the same time he performed voter registration activities for the VRC throughout the Commonwealth of Pennsylvania. The opinion concludes that, while FEC regulations allow a political party to reimburse a candidate for "party-building activity," it would be impossible to distinguish Mr. Green's party-building activity from activities directly related to his campaign. In addition, the constituency to be reached by the voter registration activity was identical to Mr. Green's constituency for election to the Senate.

AO 1977-29: Return of Deposit

Congressman Richardson Preyer may personally accept the return of a deposit, with accrued interest, from Piedmont Airlines. Because the deposit was originally made in a commercial transaction to secure campaign transportation in Congressman Preyer's 1964 gubernatorial campaign and from funds provided for that purpose by a family member, its return would not constitute a contribution under the Federal Election Campaign Act.

The Congressman may also have the deposit paid directly to his current congressional campaign committee. The return of the deposit would be reported as a "miscellaneous receipt" rather than a contribution since the return was not made to influence the Congressman's nomination or election to Federal office. The report should contain an explanatory footnote indicating the specifics of the situation. Tax ramifications of this deposit fall outside the Commission's jurisdiction.

AO 1977-30: Acceptance of Honoraria*

Senator Robert Dole will be considered to have accepted an honorarium if he directs or states a preference that an organization (before which he makes an appearance or speech) make a donation to one or more charities on a list provided by the Senator. FEC regulations state an honorarium will not be considered to have been accepted if the organization itself selects the charity (§110.12(b)(5)).

*Superceded by 1977 amendment to 2 U.S.C. §441i.

AO 1977-31: In-Kind Contributions

Public service messages recorded by Mr. Leo Berman, a candidate for Federal office, and paid for by his employer, Western Company of North America, would constitute a contribution in-kind by the corporation to Mr. Berman. The opinion concludes that "recitation of [Mr. Berman's] name twice in the body of these public service radio messages would provide value to [Mr. Berman] as a candidate." Therefore, the payment by Western Company of North America for the production and airing of the messages would constitute a prohibited corporate contribution in-kind.

AO 1977-32: Trade Association Solicitations of Municipal Corporations

APTA-PAC is a political committee established by the American Public Transit Association (APTA), a trade association representing the urban transit industry. It must obtain specific solicitation approval from its **municipal** corporate members (as well as other corporate members) before soliciting those members' executive and administrative personnel.

AO 1977-35: Limitation on Honoraria*

Even though Senator Robert Dole returns all or a portion of some honoraria previously accepted, the honoraria are still considered accepted for purposes of the limitations contained in the Act. Once an honorarium is "accepted," as defined in §110.12(b)(5) of the Commission's regulations, the honorarium is charged to the limitations for that calendar year. An honorarium accepted, but then returned, can be distinguished from the return of an honorarium received, but not actually "accepted." The latter situation is not charged against the annual honorarium limit. The applicability of IRS regulations and Senate Rules to Senator Dole's situation falls outside the Commission's jurisdiction.

AO 1977-38: Campaign Debt from State Election

Charles Ravenel, candidate for the U.S. Senate in 1978, may simultaneously maintain separate organizations to 1) support his candidacy for Federal office and 2) retire a campaign debt from a prior State election campaign. The effort to retire the prior State election debt (which will involve separate solicitation materials and separate bank accounts and will focus solely on retiring the State election debt) would not be subject to the Federal Election Campaign Act since it does not involve

*Superceded by 1977 amendment to 2 U.S.C. §441i.

activity which influences the nomination or election of persons to Federal office.

AO 1977-39: Payment of Legal Fees

Congressman William L. Clay may use excess campaign funds to pay legal fees incurred in connection with a grand jury investigation, provided no other Federal or State law is violated by such payments. The disbursement should be reported by the committee which makes the payment. The applicability of IRS regulations and House rules to this transaction falls outside the Commission's jurisdiction.

AO 1977-41: Retirement of Prior Campaign Debt

Samuel H. Young, congressional candidate in 1976, may use excess campaign funds received before the date of the 1976 general election to retire all or a portion of a campaign debt from a 1969 Congressional campaign. The Act permits the use of excess campaign funds for supporting activities of a Federal officeholder, charitable purposes, and "any other lawful purpose." 2 U.S.C. §439a. The use of excess 1976 campaign funds by Mr. Young to repay a loan incurred during the course of a 1969 campaign would be a "lawful purpose" provided no State or Federal law outside the FEC's jurisdiction prohibits such use. Payments for this purpose must be disclosed by the Young for Congress Committee—1976. The application of IRS Regulations to such payments falls outside the jurisdiction of the Federal Election Commission.

AO 1977-43: Receiving Contributions After Termination Reports

The Glenn Brown for Congress Committee (the Committee) may not receive contributions or make expenditures after it has filed a valid Termination Report. The Committee may not be reactivated solely for the purpose of accepting a contribution designated to retire a 1976 election debt which the Committee previously owed to the candidate, but which the candidate subsequently forgave in order to permit the Committee to terminate.

AO 1977-45: Use of Credit Received

Mr. Terry Martin, candidate for the U.S. House of Representatives, may use credit from an advertising publication, received as compensation for his professional services, to purchase campaign advertising space in the same publication. The credit would be considered personal funds of Mr. Martin, rather than an in-kind contribution, provided:

1. The credit is the result of bona fide employment of Mr. Martin; and
2. The compensation does not exceed the fair market value of the services performed, when compared to similar work performed by others.

Actual use of the credit to purchase advertising space in the publication would be an expenditure by the candidate's principal campaign committee. The committee should report the credit actually used both as an expenditure by the committee and as an in-kind contribution from the candidate. The committee should also maintain a record of the unused amount of compensation available to avoid expenditures in excess of that amount. The application of IRS Regulations to this transaction falls outside the jurisdiction of the Federal Election Commission.

AO 1977-46: Receiving Honoraria*

Congressman Guy Vander Jagt may count honoraria received in 1977 for speeches given in 1976 against his 1976 calendar year limitations on honoraria. An honorarium is considered "accepted," and therefore counted against the limitations, when the officeholder delivers a speech or makes an appearance to earn the honorarium, which may or may not be when the honorarium is actually received. The application of House Rules or IRS Regulations is not within the jurisdiction of the Federal Election Commission.

AO 1977-47: Use of Surplus Campaign Funds

Senator Clifford P. Hansen may use surplus campaign funds from his 1972 election campaign to pay expenses incurred in connection with his duties as a Federal officeholder, such as entertainment of constituents or travel to and from Wyoming. The Senator's campaign committee may remain in operation to make these disbursements, in which case the committee continues to have a reporting obligation under the Federal Election Campaign Act. Alternatively, since Senator Hansen is retiring and will not be a candidate for reelection and since the committee has no outstanding debts or obligations, the committee may file a termination report. If, upon termination, the surplus funds are transferred to an office account (11 CFR §113.1(b)), a reporting obligation under Part 113 of the Commission's Regulations would be incurred. The applicability of Senate Rules or IRS Regulations to this situation is not within the jurisdiction of the Federal Election Commission.

*Superceded by 1977 amendment to 2 U.S.C. §441i.

AO 1977-48: Use of Excess Campaign Funds

Marvin Durning, congressional candidate in Washington State's 1977 special election, may use excess campaign funds from this campaign to retire debts from a 1976 gubernatorial campaign. The Act permits the use of excess campaign funds for supporting activities of a Federal officeholder, charitable purposes and "any other lawful purpose." 2 U.S.C. §439a. The use of excess campaign funds by Mr. Durning to pay debts from a 1976 gubernatorial campaign would be a "lawful purpose" provided no State or Federal law outside the FEC's jurisdiction prohibits such use. Any possible application of IRS Regulations to such payments falls outside the jurisdiction of the Federal Election Commission.

AO 1977-50: Officeholder Expenses Paid by the National Republican Senatorial Committee

Certain payments made by the National Republican Senatorial Committee (NRSC) on behalf of particular Senators would not be contributions or expenditures **unless the payments were made for the purpose of influencing their nomination or election to Federal office.** With regard to a specific list of different types of payments submitted by NRSC for Commission approval, the Commission said it could not determine whether the payment was a contribution or expenditure without evaluating all the circumstances and facts in the situation where a particular payment was contemplated. (The list of payments included, among others, travel for official business, entertainment of constituents and staff salaries.)

If the payments were contributions or expenditures, they would have to be reported by both NRSC and the candidate benefitting from the payment. Even if the payments did not entail the making of contributions or expenditures, NRSC would nevertheless be required to report them as disbursements. Furthermore, the Senator on whose behalf an NRSC payment was made would have to report the payments as receipts and corresponding disbursements under 11 CFR 113.1(a) dealing with "funds donated" to a Federal officeholder "... for the purpose of supporting the activities of a Federal ... officeholder." This language would cover circumstances where NRSC made payments to vendors to provide materials or services to participating Senators.

AO 1977-51: Gifts to Congressional Members

Congressman Cecil Heftel may give gifts of macadamia nuts to other Members of Congress without incurring a reporting obligation and without making a contribution under the Federal Election Campaign Act. The gifts, purchased by the Congressman or received from corporations, trade associations or individuals, would not be subject to the Act. The application of House Rules to this activity is not within the jurisdiction of the Federal Election Commission.

AO 1977-56: Preserving Anonymity for Contributors to Separate Segregated Funds

The custodian of employees' contributions solicited (under the twice yearly provisions of 2 U.S.C. §441b) by SAFEPAC, the political action committee of the Western Company of North America, may also be the treasurer of SAFEPAC provided he/she preserves the anonymity of contributors and files the required reports. A custodian who serves as treasurer is subject to all the responsibilities of a treasurer under the Act and may not participate in the decision-making process whereby the separate segregated fund makes contributions and expenditures.

The treasurer-custodian may not disclose to a company accountant or an outside auditing firm the records of persons making a single contribution of $50 or less or multiple contributions aggregating $100 or less in a calendar year. The custodian-treasurer could, however, disclose to either a company accountant or outside auditing firm those records required with respect to single contributions exceeding $50 in a calendar year or contributions from an individual which aggregate over $100 in a calendar year.

AO 1977-59: Assistant Treasurer May Assume Treasurer's Duties

The treasurer of AICPA Effective Legislation Committee (the Committee) may designate an assistant treasurer to serve in his absence provided the Committee first files an amendment to its Statement of Organization identifying the assistant treasurer. In this case, the assistant treasurer may assume all the duties and responsibilities of the treasurer, including the duty to sign required reports.

AO 1977-60: Purchase of Greeting Cards

Congressman Leo C. Zeferetti may regard the purchase of Christmas greeting cards with campaign funds as an expenditure by his principal campaign committee under the Federal Election Campaign Act. The greeting cards would not have to contain the statement of authorization or notice of filed reports (2 U.S.C. §§435 and 441d) required by the Act, provided the cards do not expressly advocate the Congressman's election or solicit funds for his campaign.

Appendix 5
Public Financing Activity

Chart I: Matching Fund Activity as of 12/31/77*

Candidate	Amount Certified 1976	Amount Certified 1977	Amount Repaid (to date)	Total Public Funds Received
1. Bayh, Birch	$ 469,199.54	$ 76,510.85	—	$ 545,710.39
2. Bentsen, Lloyd	511,022.61	—	—	511,022.61
3. Brown, Jerry	580,629.65	19,573.89	306.00	599,897.54
4. Carter, Jimmy	3,465,584.89	206,936.80	126,515.00	3,600,006.69
5. Church, Frank	622,747.04	17,921.50	—	640,668.54
6. Ford, Gerald	4,657,007.82	—	—	4,657,007.82
7. Harris, Frank	633,099.05	5,913.48	—	639,012.53
8. Jackson, Henry	1,980,554.95	—	17,603.78	1,962,951.17
9. McCormack, Ellen	244,125.40	3,094.97	—	247,220.37
10. Reagan, Ronald	5,088,910.66	—	611,141.89	4,477,768.77
11. Sanford, Terry	246,388.32	—	48.04	246,340.28
12. Shapp, Milton	299,066.21	—	299,066.21	— 0 —
13. Shriver, Sargent	285,069.74	10,642.00	—	295,711.74
14. Udall, Morris	1,898,686.96	121,570.99	—	2,020,257.95
15. Wallace, George	3,291,308.81	—	—	3,291,308.81
TOTALS	$24,273,401.65	$516,164.48	$1,054,680.92	$23,734,885.21

*For 1976 Presidential **primary** election candidates. Does not include public funds paid to **general** election candidates.

Chart II: Convention Fund Activity as of 12/31/77

	Cumulative Certifications	Repayments to Date	Total Public Funds Received
Democratic National Committee	$2,185,829.73	$170,093.06	$2,015,736.67
Republican National Committee	$1,963,800.00	$382,135.52	$1,581,664.48
TOTAL	$4,149,629.73	$552,228.58	$3,597,401.15

Chart III: Receipts and Disbursements from the Presidential Election Campaign Fund (in millions of dollars)

Deposits to Presidential Election Campaign Fund from income tax check-off (as of 12/31/76)	$95.9
Less certifications for Primary Matching Funds, Convention Funds and 1976 General Election Funds	–72.6
(Balance)	$23.3
Plus repayments received from Matching Fund Certifications and Convention Fund Certifications; and	+ 1.6
Plus new deposits to Presidential Election Campaign Fund from income tax check-off (between January 1977 and November 1977)	+36.6
TOTAL PUBLIC FUNDS AVAILABLE (as of 11/77)	$61.5

Appendix 6
Summary of Disclosure Files

	Total Filers Existing in 1977	Filers Terminating in 1977	Filers Waived as of 12/31/77	Continuing Filers as of 12/31/77	Number of Reports and Statements in 1977	Gross Receipts in 1977	Gross Expenditures in 1977
Presidential					584	$2,031,683	$3,735,625
Candidates	102	87	10	5			
Committees	163	80	0	83			
Office Accounts	0	0	0	0			
Senate					1,515	$9,224,388	$7,236,048
Candidates	300	154	109	37			
Committees	333	129	0	204			
Office Accounts	23	6	0	17			
House					8,953	$12,130,816	$11,459,643
Candidates	1,756	780	804	172			
Committees	1,853	678	0	1,175			
Office Accounts	120	32	0	88			
Party					2,496	$52,480,643	$48,342,397
National Level Committees	57	16	0	41			
State Level Committees	151	53	0	98			
Local Level Committees	457	202	0	255			
Convention Committees	8	6	0	2			
Delegates	5	4	0	1	5	$992	$1,862
Nonparty					8,044	$24,056,023	$15,366,138
Labor Committees	236	20	0	216			
Corporate Committees	552	14	0	538			
Membership, Trade & Other Committees	601	57	0	544			
Corporate Debt Settlements	1	NA	0	NA			
Communication Cost Filers	8	NA	0	NA	16	0	$405,565
Independent Expenditures by Persons Other Than Political Committees	31	18	0	13	80	10,090	$ 16,809
TOTAL	6,757	2,335	923	3,489	21,693	$99,974,635	$86,564,087

Appendix 7
Computer Indexes Available

A Index — **Names and Addresses of Candidates** sorted by type of office sought (President, U.S. Senator, U.S. Representative), and alphabetically by last name or by State/congressional district.

B Index — **Names and Addresses of Committees,** including name of connected organization, name of treasurer, committee ID number, notation if it is "qualified" as multicandidate committee, and filing frequency. This index can be sorted alphabetically by committee name, by committee ID number, and by type (Presidential, Senate, House, Party, Non-Party).

C Index — **Disclosure Documents Filed by Political Committees** — Includes, for each committee, its name, ID number, list of each document filed (name of report, period receipts, period expenditures, coverage dates, number of pages, and microfilm location), total gross receipts and expenditures, and number of pages.

D Index — **Index of Candidates Supported by Committees** — Includes, for each committee, its name, ID number, name of connected organization, notation if it is "qualified" for higher contribution limits, and a listing of all Federal candidates supported, together with total aggregate contributions to or expenditures on behalf of each candidate (1972-78). In the case of party committees, §441a(d) expenditures are listed in place of independent expenditures.

E Index — **Index of Candidates and Supporting Committees** — Includes for each candidate the following:

1. Candidate name, district/State, party affiliation and candidate ID number.
2. Listing of all documents filed by the candidate (type, coverage dates, period receipts, period expenditures, number of pages, microfilm location).
3. Listing of all documents filed by the principal campaign committee (See C Index for explanation).
4. Listing of all documents filed by other authorized committees of the candidate.
5. Listing of all committees (other than those authorized by the candidate) forwarding contributions to the candidate, the principal campaign committee, or an authorized committee, and the aggregate total of such contributions given to date. This listing also identifies committees making expenditures on behalf of the candidate or party committees making §441a(d) expenditures, including the aggregate total spent to date.
6. Listing of all persons or unauthorized single candidate committees filing reports indicating they made independent expenditures on behalf of the candidate.
7. Listing of all persons or committees filing unauthorized delegate reports.
8. Listing of all corporations or labor unions filing reports of communication costs on behalf of the candidate.

G Index — Index of Contributions is an alphabetical listing of individuals contributing over $100 in a single contribution during 1977-1978.

Every contribution of more than $100 is a separate entry and includes the name of contributor, street address, city, state, zip code, principal place of business, date of contribution, amount of contribution, name of report in which contribution was indicated, and its microfilm location.

Y Index — Special Inquiry. This immediate access system permits direct video display or printout of selected information in the Disclosure Information System. It consists of between 40-50 separate programs to locate, retrieve and display individual items or groups.

Appendix 8
Audit Statistics

Chart I: Total* Audits by Category as of 12/31/77
(Figures in parentheses indicate status of audits as of 2/28/78.)

Category	Field Work in Process	Field Work Completed; Reports in Progress	Final Report Pending Committee Amendment	Final Report Forwarded to the Commission	Total Audits Instituted, Completed or in Process
Title 26 Presidential Primary	0	7(5)	0(2)	9	16
General	0	2(1)	0	0(1)	2
Convention & Host Cmtes.	1	0	0	3	4
Minor Party Presidential	1	2	0	0	3
Senate	6(2)	0(4)	2(1)	0(1)	8
House	10(6)	48(21)	19(27)	23(46)	100
Multicandidate					
Labor	0	2	0	3	5
Corporation	0	0	0	1	1
Trade Assoc.	0	0	0	1	1
Other	0	2	1	0	3
Party Committees	0	5(8)	4(0)	2(3)	11
TOTAL	18(10)	68(45)	26(31)	42(68)	154

*Figures do not reflect ongoing process of audits and are accurate only for date noted.

Chart II: Audits Released to the Public as of 2/15/78

Organizations	Date of FEC Release
1. United Federation Teachers Committee on Political Education	10/5/76
2. Voice of Teachers for Education Committee on Political Education	10/5/76
3. The Sanford for President Committee	10/14/76
4. United Steelworkers of America Political Action Fund	10/28/76
5. United Technologies Corporation Political Action Committee	3/24/77
6. Trust for Special Political Agricultural Community Education	7/12/77
7. Church for President Committee, Inc.	7/18/77
8. The Pro-Life Action Committee—McCormack	8/24/77
9. The Bentsen in '76 Committee	8/29/77
10. Brown for President Committee	9/28/77
11. Democratic Congressional Campaign Committee	12/12/77
12. Democratic National Congressional Committee	12/12/77
13. Jamie Whitten/Committee to Re-Elect Jamie Whitten	12/13/77
14. Richardson Preyer/Preyer for Congress Committee	12/14/77
15. Citizens Committee for the Democratic National Convention, Inc.	12/20/77
16. 1976 Democratic National Convention Committee, Inc.	12/20/77
17. Dave Obey/Citizens for Dave Obey	1/5/78
18. Frank Savino/Savino for Congress	1/5/78
19. Ray Roberts Campaign Committee	1/19/78
20. Glenn for Congress Committee	1/19/78
21. Jack Brooks Campaign Committee	1/19/78
22. Henry M. Jackson/Jackson for President Committee	1/25/78
23. Caldwell Butler/Butler '76 Committee	2/1/78
24. Warren D. Saunders/Saunders for Congress Campaign Committee	2/1/78
25. Bill Frenzel/Frenzel Volunteer Committee	2/3/78
26. Jerome Coughlin/Coughlin for Congress Committee	2/3/78
27. Lynn Greer/Lynn Greer for Congress Committee	2/3/78
28. Jules Machen/Machen for Congress Committee	2/3/78
29. Robert C. McEwen/Citizens for McEwen Committee	2/9/78
30. Bobby Richardson/Richardson for Congress Committee	2/9/78
31. Larry Pressler/Pressler for Congress Committee	2/9/78
32. Robert Cornell/Cornell for Congress Committee	2/9/78
33. Berkley W. Bedell/The People to Re-Elect Bedell Committee	2/9/78
34. Norma Bartle/Norma Bartle for Congress Committee	2/14/78

Appendix 9
FEC Publications and Clearinghouse Studies

FEC Publications

Federal Election Campaign Laws
(June 1976)

This volume is a complete compilation of Federal election campaign laws. It consists of three sections: The text of the Federal Election Campaign Act, as codified in Titles 2 and 26 of the U.S. Code; the text of additional statutory provisions which are not under the Commission's jurisdiction but are relevant to persons involved in Federal elections; and a subject index of Title 2 relating to disclosure and contribution limits.

Federal Election Commission Regulations
(April 1977)

This volume is a complete compilation of the FEC Regulations prescribed on April 13, 1977. It includes two indexes: one covering general regulatory provisions related to contribution limits, registration, recordkeeping and reporting (Parts 100-115) and a second covering the public financing provisions (Parts 120-125, 130-134 and 140-146).

The FEC Record

Published as a four- to eight-page binder insert, the newsletter serves as the primary means of informing candidates, political committees, parties and other persons interested in Federal elections about Commission activity. During 1977, twelve issues covered the following major topics:

—Reports Due
—Advisory Opinions
—Statistics
—Regulations
—Compliance Matters
—Litigation
—Legislation
—FEC Procedures and Staff
—Federal Register Notices
—Publications

An index to the 1977 **Record** (Volume 3) was published in February 1978.

Campaign Guide Series

Several color-coded pamphlets comprise the Federal Election Commission's **Campaign Guide** series, a reference tool prepared by the FEC to assist candidates and political committees in complying with the Federal Election Campaign Act. Each guide, prepared as a binder insert, has a distinct focus as described below:

1. Campaign Guide for Congressional Candidates and Their Committees (February 1978)

This Guide, substituting for three Guides written in 1976, focuses exclusively on the concerns of congressional candidates and their committees. It includes a thorough explanation of contributions and expenditures, as well as an examination of other sources of campaign support such as volunteer activity, independent expenditure activity and party activity. The Guide also contains a comprehensive explanation of registration, recordkeeping and reporting requirements.

2. Campaign Guide for the Nonelection Year (July 1977)

This Guide presents issues of special importance during the years in which no regularly scheduled Federal elections are held. It explains how contribution limits and reporting require-

ments apply during the nonelection year. It offers guidelines on debt retirement, the use of surplus campaign funds and the termination of reporting obligations, and outlines registration requirements for candidates and committees.

3. **Campaign Guide for State and Subordinate Party Committees (September 1976)**

This pamphlet explores the role that party committees play in financing Federal campaigns. Topics include: committee registration requirements, contributions to candidates, allocable and nonallocable expenditures for congressional and Presidential campaigns, and a checklist of "do's and don'ts" for party committees.

Annual Report 1976
(March 1977)

The second **Annual Report** to the President and Congress provides a comprehensive review of the Commission's activities during the 1976 election year, including public financing certifications, legislative recommendations, policy decisions and new procedures. Statistical data is provided in the Appendices.

Bookkeeping and Reporting Manual

This booklet presents a recommended method of bookkeeping to assist Federal candidates and political committees in maintaining records required by the Federal Election Campaign Act.

Disclosure Series

The **Disclosure Series,** prepared by the Disclosure Division, consolidates and summarizes data taken from the financial disclosure reports of the 1976 campaign. For summaries of the individual **Disclosure Series**, see Chapter on Disclosure. The following reports had been issued by the end of the year:

1. **Presidential Pre-Nomination Receipts and Expenditures—1976 Campaign**

2. **Contributions of $500 or More From Individuals to Major Party Presidential Candidates (Ford and Carter)—1976 Campaign** (Currently being revised)

3. **Index of Independent Expenditures by Individuals and Receipts and Expenditures by Unauthorized Delegates—1976 Campaign**

4. **National Political Party Committee Receipts and Expenditures**

5. **Index of Communications Costs by Corporations, Labor Organizations, Membership Organizations and Trade Associations**

6. **1976 Senatorial Campaigns Receipts and Expenditures**

7. **A Study of the 1976 Presidential Campaigns Receipts and Expenditures**

8. **A Study of the 1976 Corporate-Related Committees Receipts and Expenditures**

9. **A Study of the 1976 House Campaigns Receipts and Expenditures**

With the exception of the **Disclosure Series,** all publications listed above are available free from the Public Communications Office of the FEC. The **Disclosure Series** is available from the Public Records Office.

Clearinghouse Research Studies—Completed

Voting Systems

Three volumes: These studies describe in detail the voting equipment currently on the market, recommend local procurement procedures, provide legal memoranda of State voting equipment laws for 24 representative States, and offer guidelines for changing relevant State laws.

Reducing Voter Waiting Time: How to Allocate Voting Machines to the Polls

This publication provides a worksheet with an explanation and a running example for determining the number of voting machines required at the polls in order to achieve a selected level of service.

Election Law Updates

This quarterly report compiles and summarizes all Federal and State legislation and litigation relating to elections. Each volume contains a State-by-State review and brief description of State supreme court, Federal court, and Supreme Court cases; and a digest of relevant Department of Justice rulings, Internal Revenue Service rulings and State Attorney General opinions.

Campaign Finance Laws 1977

Two volumes: The first volume presents an overview of Federal and State campaign finance regulations followed by summaries of the campaign finance laws of the United States, each of the 50 States, the District of Columbia and the Commonwealth of Puerto Rico.

The second volume contains five quick-reference charts highlighting significant provisions of Federal and State campaign finance laws, including the District of Columbia and the Commonwealth of Puerto Rico.

Handbook of State Election Agencies and Election Officials (August 1976)

This report, which will be updated periodically, provides a comprehensive State-by-State synopsis of which State election officials perform what election functions, a tabular presentation of these officials and functions, and a telephone and mailing address list of all key State and local election officials.

An Analysis of Laws and Procedures Governing Absentee Registration and Absentee Voting in the United States (June 1975)

Two volumes: Volume I analyzes absentee registration and absentee voting in the 50 States. Volume II provides legal memoranda of each State's absentee voting system and gives State code citations.

State and Local Government Expenditures for Election Administration: Fiscal Years 1970 to 1973 (July 1975)

The work compiles State and national expenditures for administration of elections.

Effective Use of Computer Technology in Vote Tallying (March 1975)

The report describes computer hardware, software, and administrative problems encountered in 14 electronically computed elections. The report suggests methods of ensuring greater accuracy and security in the vote-tallying process.

Clearinghouse Research Studies—Currently Underway

Ballot Access: An Analysis of Laws and Procedures in the United States

This study will provide a comprehensive analysis of the varying State laws and procedures relating to candidate certification.

Voter Registration: An Analysis of the Implementation of State-Wide and State Mail Registration

This two-part project is designed to review the experiences of States which have adopted State-wide or mail registration systems. The study seeks to identify problems encountered in certain legal, structural and socioeconomic settings. The research will result in technical guidelines for implementing State-wide and State mail registration systems.

Contested Elections and Recounts: An Analysis of Laws and Procedures in the United States

This project will examine and compare State legislation, regulations, standards, procedures and guidelines related to election recounts.

Bilingual Election Services

The purpose of this study is to pull together the experiences of States and local jurisdictions affected by the bilingual amendments to the Voting Rights Act of 1965. The comprehensive report will be supplemented by an analysis of Federal financial and informational resources available to State and local election administrators for implementing the bilingual amendments.

Election Planning, Management and Budgeting for Local Election Offices

This project will provide management guidelines to State and local election officials for the planning, budgeting and financial monitoring of election systems.

Appendix 10
FEC Library: Summary of Collection

The FEC library is located in the Office of General Counsel and, although primarily used by the legal staff, serves all divisions of the Federal Election Commission. The library is also open to the public on weekdays between 9:00 a.m. and 5:00 p.m. The legal collection includes basic legal research tools with an emphasis on materials dealing with political campaign financing, corporate and labor political activity, and election and campaign reform.

Functions of the Library

The library serves as the central reference and research center for the Commission. It is part of a nationwide interlibrary loan system designed to quickly provide staff members with items not readily available within the Commission. As a designated limited depository, the library also receives selected Government documents and other items from the Government Printing Office on a regular basis, including the **Federal Register, Congressional Record, Code of Federal Regulations**, and U.S. Supreme Court Slip Opinions.

Resources of the Library

Outlined below is a brief explanation and description of each resource area contained in the FEC library.

1. General Reference Section

This section contains reference tools frequently used by all divisions of the Commission including topical encyclopedias, dictionaries, directories, atlases, manuals, almanacs and a current set of the **Martindale-Hubbell Law Directory**.

2. Federal Election Commission Materials and Publications

This section includes material generated by the Commission as well as legislative material bearing on the establishment and operation of the Commission and the regulations governing Federal election campaigns. Materials include bound legislative histories of the Federal Election Campaign Act of 1971 and all subsequent amendments; transcripts of FEC hearings on regulations; Advisory Opinions and Advisory Opinion Requests; Opinions of Counsel; **Federal Register** Notices; FEC Meeting Minutes; FEC **Record**; FEC **Campaign Guide** Series; Task Force Reports; Audit Reports; and Disclosure Reports.

3. Case Material File

For cases directly involving the Federal Election Commission in litigation, the case material file contains available briefs and records and copies of judicial decisions rendered. In addition, the case material file contains briefs and slip opinions for relevant court cases.

4. Journal Article File

A journal article file contains photocopies of pertinent law review articles and Library of Congress Congressional Research Service reports devoted to discussions of the Federal Election Commission, election reform, campaign finance, congressional ethics, corporations and politics,

labor and politics, the Privacy Act, the Freedom of Information Act and the Sunshine Act. Materials dealing specifically with election administration and State election legislation are located in the Clearinghouse Document Center. (See Chapter on Clearinghouse.)

5. Periodical and Journal Collection

The library maintains subscriptions of periodicals which are considered helpful to the work of the Commission including, **Campaign Practices Reports, Access Reports, Congressional Quarterly Weekly Reports, National Journal Reports, Election Administration Reports** and the **Harvard Law Review.**

6. Looseleaf Service

The two most important looseleaf services housed in the library are **United States Law Week**, published by the Bureau of National Affairs (BNA), which includes coverage of recent Supreme Court decisions and lower court decisions; and the **Federal Election Campaign Finance Guide**, published by Commerce Clearing House (CCH). Other services housed in the library include: **Standard Federal Tax Reporter** (CCH); **Congressional Index** (CCH); and **Fair Employment Practice Service** (BNA).

7. Book Collection

The book collection contains election-related monographs and legal treatises with an emphasis on Federal civil procedure and administrative law, as well as legal research sets such as **American Jurisprudence 2d**, and **American Law Reports 2d** and **3d.**

8. Code Section

This section contains major code materials required by the legal staff, including the **United States Code** and **United States Code Annotated; United States Code Congressional and Administrative News; Code of Federal Regulations; Daily Federal Register** and State election law material.

9. Reporter Section

The collection of law reporters includes the **U.S. Supreme Court Reports** (Official and West editions); **Federal Reporter 2d, Modern Federal Practice Digest; Federal Practice Digest 2d; Supreme Court Digest** (Lawyers edition); **Federal Rules Decisions;** and the slip opinions of the U.S. Court of Appeals for the D.C. Circuit.

10. Card Catalog

Primary access to the library collection is through the card catalog. It is divided into two sections: one section containing items in the book collection, and the second section containing items found in the journal article file.

11. Indexes

The library maintains several index services to aid library users in their research.

a. Opinion Index

The library indexes FEC opinions by subject, requestor and U.S. Code. The index is published regularly in the **Federal Register**.

b. Index to OGC Research Memos

The library is currently indexing all Office of General Counsel research memos by author, date distributed, and subject area to assist staff members in retrieving information contained in the memos.

c. Commercially Published Indexes

The library maintains various commercially published indexes, including the **Congressional Index**, published by Commerce Clearing House; and the **Index to Legal Periodicals**, published by H.W. Wilson Company.

Appendix 11
Campaign Finance Survey: Synopsis

A Study of the Federal Election Campaign Act on the 1976 Elections, a 240-page survey, was released by the Commission on April 28, 1977. The following synopsis of the survey findings was prepared by the Decision Making Information, Inc. and Hart Research Associates.

It is important to remember that the people who ran for congressional office and were covered by the FECA do not conform to most people's stereotypes of who the candidates were. For example, 13 percent of the candidates were Independents, (as used in this report, Independents included candidates running without a party, or as minor party candidates), and the remaining candidates did not split equally between Republicans and Democrats: Democratic candidates outnumbered Republicans by 50 percent to 37 percent. There was not an equal number of winners and losers—only 29 percent of all candidates who ran won the seat for which they competed. Most (71 percent) were losers, and many (29 percent) did not even get to the general election. In 1976, incumbents won (93 percent), challengers lost (92 percent), and just 31 percent of those who competed for an open seat won. Ten percent of the candidates were women, but just three percent of the House and Senate is comprised of women; 90 percent of the candidates who ran competed for the House of Representatives, but 81 percent of the legislative seats are in the House. Thus, the candidates differed in many respects from both the Congressional membership and the typical picture of candidates. In evaluating this survey and the FECA, it is important to remember these differences.

Probably the most important difference to keep in mind is that most campaigns spend very little money by modern-day political standards. For example, the median amount of money reportedly spent by these respondents on a political campaign in 1976 was $24,000. In fact 43 percent of all congressional campaigns in this survey reported that they spent under $15,000; fully 93 percent of the Independents spent less than that amount. For House and Senate general election winners, the median amount spent on a campaign was about $86,000. More than half of all funds spent in the 1976 congressional campaigns was spent by fewer than 10 percent of the candidates. Given this fact, it is not surprising that few campaigns (27 percent) had paid campaign managers. Only 11 percent had professional accounting help; six percent had professional treasurer and/or lawyer service.

A major strength of this survey is that it examines the 1976 campaign in the context of the candidates who ran and what kind of campaign they waged. This helps to set the stage for the attitudinal information which follows. This survey of the 1976 campaign demonstrates that most of the participants were losers, and most of them spent relatively little money on their election bids.

Despite this fact, two-thirds of all candidates who ran expressed total or general satisfaction with their campaigns. Furthermore, when they viewed their campaigns in terms of 19 basic elements that are involved in running for office, these campaigns did not single out the federal campaign laws as a liability any more often than they did such traditional factors as coverage by the media, ability to raise funds both locally and nationally, coordination with national, state and local party organizations, and assistance from Presidential candidates. Overall, in responding to questions about the things which were least helpful to the campaign, only five percent of the respondents named compliance with the federal campaign laws. Additionally, the federal campaign laws were not seen as a factor giving the opposition competitive advantage, nor were the laws perceived as causing the greatest adjustment from previous campaigns. The laws were a complicating factor, but they did not dominate the candidates' retrospective view of 1976.

When the perspective is shifted from the entire 1976 campaign to the FECA specifically, a greater percentage of campaigns felt that the federal campaign laws had had some impact on their campaigns. The impact in one respect was clearly positive: a majority felt the FECA was an asset in the goal of public disclosure. The FECA was clearly perceived as a negative factor in another instance: a majority felt it had hindered fundraising. For other items such as voter registration drives, the role of political action committees, volunteer activity, getting more candidates to run, and outside independent activity, a majority of campaigns said either that the FECA had no effect or that they did not know what effect it had. At the same time, it is important to point out that more campaigns said that the Act had hindered each of these activities rather than improved them.

Fundraising was the one area where candidates and their representatives were most likely to see the law as having a negative effect. Given the low level of spending, it is not surprising that a majority of all respondents said they found fundraising difficult and more time consuming than expected.

Yet, the reason that fundraising was more difficult had less to do with the Act than with the traditional problems that campaigns have always faced: 50 percent said that public perception of the candidate as a certain winner or loser made fundraising difficult; 39 percent said it was because people were turned off by politics because of scandals; and 38 percent cited the nation's economic condition. Items directly related to the Act, such as limitations on individual contributions (29 percent), limitations on political action committees (20 percent), and requirements of public disclosure (17 percent), were selected less frequently as reasons making fundraising difficult.

While respondents agreed by 48 percent to 34 percent that the advantage of a detailed public accounting outweighed the additional time and personnel it required, and agreed by 68 percent to 20 percent that the Act helped to reduce the influence of major contributors, there were negative feelings that the Act made it necessary for the campaign to spend too much time raising money (46 percent to 22 percent), and that the Act did not encourage more people to donate (62 percent to 16 percent). Finally, 34 percent felt disclosure of contributors caused some persons to shy away from giving.

If there was some uniformity of opinion about how the Act affected the fundraising process, candidates and their representatives were divided in their opinions on how much the Act affected the political parties. One out of three respondents felt it created an unnecessary barrier between congressional and Presidential campaigns. Some 27 percent agreed that the political parties were substantially strengthened by the Act, but 34 percent disagreed. (Democrats disagreed 29 percent to 26 percent, and Republicans disagreed by a 41 percent to 22 percent margin.) Sixty-three percent rejected the idea that the FECA encouraged more people to run by putting all candidates on a more equal footing. More than two-thirds said it gave an advantage to candidates with access to political action committees and other special interest groups. Finally, 51 percent agreed that the FECA put Independents at a greater disadvantage than ever before. The Act thus was not perceived as a political "equalizer."

While there was discontent with some aspects and effects of the FECA, in general, the performance of the Federal Election Commission in administering the law was rated positively. Most campaigns (62 percent) learned about the FECA primarily through the Commission. The campaigns found the FEC material helpful, especially the handbooks and pamphlets (71 percent) and newsletters (57 percent). Two out of three campaigns used the FEC telephone hotline to contact the Commission. Fully 83 percent of all campaigns contacted the Commission at least once. Of those persons, 36 percent said the Commission was a great help, and another 43 percent found them to be of some help. Only 20 percent found it to be of little or no help.

Nonetheless, two out of three campaigns reported some difficulty dealing with the Act. The most frequently mentioned difficulty was keeping records and filing reports. Similarly, when it came to assessing how the Act hurt the political process, the most frequently volunteered comment was that it required too many and too complex reports. Independents and candidates spending little money were especially likely to voice this complaint.

The most frequently volunteered way in which the FECA improved the campaign process was public disclosure (12 percent of responses), contribution limitations (nine percent), and making campaigns more open and encouraging honesty (four percent). However, more than one-third of all respondents (37 percent) volunteered against the grain of the question that the FECA did not improve the political process.

Finally, when asked to rate the law's effect on various aspects of the campaign process, respondents gave it a very positive rating on public disclosure; less positive ratings on its treatment of political action committees, contribution limits,

use of volunteers, and penalties for violations; and relatively neutral ratings on reporting requirements, individual contribution limits, restrictions on in-kind services, fundraising restrictions, and independent expenditures.

On the very basic question of whether the FECA helped more than it hurt, respondents were deeply divided: 36 percent said it helped more than it hurt, 36 percent said it hurt more than it helped, and 24 percent said it basically made little difference. A plurality of Democrats said it helped, a plurality of Republicans said it hurt, and a majority of Independents said that it hurt.

In contrast, only five percent of respondents said that the FECA should be kept in its present form. Nine out of ten said that some type of change should be made in the federal campaign laws. About one-third (35 percent) wanted slight modifications in the FECA; 36 percent wanted major modifications; 18 percent wanted the FECA abolished and a return to the pre-1971 law. By a 45 percent to 35 percent margin, Democrats wanted slight rather than major modifications, while by a 42 percent to 29 percent margin, Republicans wanted major rather than slight modifications; 51 percent of the Independents wanted the FECA abolished.

Public disclosure was heavily singled out as the major aspect of the Act worth retaining. The one major change most often volunteered was simplification of reporting procedures.

There was no consensus on other changes. There was some support for public financing of congressional elections (eight percent), and for allowing larger campaign contributions to be made by individuals (eight percent). Some respondents wanted political action committee contributions abolished (five percent); others wanted those committees to be allowed to contribute more (two percent). Support was volunteered for stricter limitations on expenditures and in-kind contributions (five percent), and for elimination of disclosure for small contributors (three percent). There was substantial difference of opinion among various subgroups of respondents. While respondents were almost unanimous in the feeling that some change was needed, they were far from united on the question of what form such change should take.

Appendix 12
FEC Federal Register Notices, 1977

Notice	Title	Federal Register Publication Date	Citation
1977-1	Establishment of Clearinghouse Advisory Committee	1-12-77	42 FR 2624
1977-2	Privacy Act: OMB Grant of Waiver	1-19-77	42 FR 3812
1977-3	Index of Advisory Opinions, 1975-1976	1-21-77	42 FR 4040
1977-4	Advisory Opinion Requests 1976-116 through 1977-1	1-19-77	42 FR 3812
1977-5	Sunshine Act Regulations Proposed	1-19-77	42 FR 3810
1977-6	Charter of Clearinghouse	1-27-77	42 FR 5339
1977-7	Advisory Opinion Requests 1976-119 and 1977-2	1-27-77	42 FR 5338
1977-8	Advisory Opinion Request 1977-3	1-28-77	42 FR 5395
1977-9	Advisory Opinion Requests 1977-4 and 1977-5	2-16-77	42 FR 9507
1977-10	Privacy Act: System of Records	2-23-77	42 FR 10722
1977-11	Advisory Opinion Requests 1977-6 through 1977-8	3-3-77	42 FR 12379
1977-12	Government in the Sunshine: Final Regulations	3-9-77	42 FR 13202
1977-13	Advisory Opinion Request 1977-9	3-18-77	42 FR 15207
1977-14	Regulations Interpreting FECA: Transmittal to Congress	3-18-77	42 FR 15206
1977-15	Advisory Opinion Request 1977-10	3-16-77	42 FR 14841
1977-16	Advisory Opinion Request 1977-11	3-17-77	42 FR 14900
1977-17	Advisory Opinion Request 1977-12	3-21-77	42 FR 15362
1977-18	Clearinghouse Advisory Panel Review Notice	3-28-77	42 FR 16468
1977-19	Advisory Opinion Request 1977-13	3-30-77	42 FR 16848
1977-20	Candidate and Committee Index of Filers—1975 & 1976	4-14-77	42 FR 19615
1977-21	Advisory Opinion Request 1977-14	4-5-77	42 FR 18243
1977-22	Advisory Opinion Request 1977-15	4-6-77	42 FR 18303
1977-23	Promulgation of Regulations Implementing FECA of 1971, as amended	4-13-77	42 FR 19324
1977-24	Advisory Opinion Request 1977-16	4-12-77	42 FR 19313
1977-25	Advisory Opinion Request 1977-17	4-21-77	42 FR 20773

Notice	Title	Federal Register Publication Date	Citation
1977-26	Advisory Opinion Requests 1977-18 and 1977-19	4-27-77	42 FR 21597
1977-27	Advisory Opinion Request 1977-20	5-3-77	42 FR 22513
1977-28	Advisory Opinion Request 1977-21	5-6-77	42 FR 23193
1977-29	Not Published		
1977-30	Advisory Opinion Request 1977-22	5-23-77	42 FR 26349
1977-31	Request for Comments on Proposed Regulations	5-26-77	42 FR 26990
1977-32	Advisory Opinion Request 1977-23	6-7-77	42 FR 29289
1977-33	Advisory Opinion Request 1977-24	6-17-77	42 FR 30897
1977-34	Advisory Opinion Requests 1977-25 and 1977-26	6-20-77	42 FR 31303
1977-35	Advisory Opinion Request 1977-27	6-28-77	42 FR 32903
1977-36	Advisory Opinion Requests 1977-28, 1977-29 and 1977-30	6-30-77	42 FR 33054
1977-37	Advisory Opinion Request 1977-31	7-13-77	42 FR 36011
1977-38	Request for Comments on Proposed Regulations	7-12-77	42 FR 35856
1977-39	Advisory Opinion Request 1977-32	7-21-77	42 FR 37439
1977-40	Clearinghouse Advisory Panel Meeting	7-21-77	42 FR 37439
1977-41	Advisory Opinion Request 1977-33	7-26-77	42 FR 38549
1977-42	Advisory Opinion Requests 1977-34, 1977-35 and 1977-36	8-8-77	42 FR 40102
1977-43	Advisory Opinion Request 1977-37	8-8-77	42 FR 40102
1977-44	Advisory Opinion Requests 1977-38 and 1977-39	8-17-77	42 FR 41473
1977-45	Privacy Act—System of Records Privacy Act—Regulations	9-20-77 9-20-77	42 FR 47399 42 FR 47506
1977-46	Advisory Opinion Request 1977-40	8-30-77	42 FR 43664
1977-47	Advisory Opinion Request 1977-41	9-14-77	42 FR 46077
1977-48	Not Published		
1977-49	Advisory Opinion Requests 1977-45, 1977-46, 1977-47 and 1977-48	9-29-77	42 FR 51839
1977-50	Advisory Opinion Request 1977-49	10-5-77	42 FR 54333
1977-51	Request for Comments—Federal Candidates: Independent Expenditures	10-18-77	42 FR 55622
1977-52	Publication of Advisory Opinion Requests Discontinued	11-10-77	42 FR 58567
1977-53	Opinion and Regulation Index: Availability	11-15-77	42 FR 59110
1977-54	Freedom of Information Act Regulations	11-22-77	42 FR 59944
1977-55	Clearinghouse on Election Administration Advisory Panel Meeting	12-14-77	42 FR 62974

Appendix 13
Privacy and Freedom of Information Acts

Privacy Act

The stated purpose of the Privacy Act of 1974 (P.L. 93-579) is to safeguard individuals against an invasion of privacy by Federal Government agencies. Under the provisions of this Act, the Commission is required to develop and publish its Systems of Records, and to publish regulations which outline procedures whereby individuals can determine whether a system of records contains information about them and how they may procure this information. Further, agencies are required to set out procedures for review of the record where an amendment or correction is sought by the individual.

The Commission initially published its Systems of Records in the **Federal Register** on August 22, 1975 (40 F.R. 36875). The Commission, upon further review, revised and updated its systems, in order to incorporate larger categories of individuals, changes in equipment and information collected, as well as amendments to the Act which occurred in May 1976. The following systems of records are maintained by the Commission:

1. Requests for opinions and responses.
2. Audits and investigations.
3. Compliance actions.
4. Public information mailing list.
5. Personnel and travel.
6. Candidate reports and designations.
7. Certification for primary matching funds and general election campaign funds.
8. Payroll records.

The Commission's regulations outlining procedures for individuals to review their records were published initially on August 22, 1975, for comment (40 F.R. 36872). They were published in final on September 29, 1976 (41 F.R. 43064), and became effective on October 29, 1976.

Information in the FEC records systems is regularly open for public review and examination, with the exception of information contained in compliance, audit and investigation files, personnel files and payroll records. There is, therefore, little need for the public to invoke the formal Privacy Act procedures to review records.

Freedom of Information Act

On November 22, 1977, the Commission published for comment in the **Federal Register** its proposed regulations for the implementation of the requirements of 5 U.S.C. §552, the Freedom of Information Act. This Act requires that Federal executive agencies make available for public review and dissemination certain information about their operations and decisions. The Act exempts nine specific categories of information from this disclosure. Much of the information maintained by the Commission is already subject to public review by statute or policy:

By Statute

—Campaign finance disclosure reports filed by candidates, committees and others.

—Advisory Opinion Requests, Advisory Opinions and an Index thereto.

—Compliance Actions, including conciliation attempts, conciliation agreements entered into and determinations by the Commission that no violations of the Act have occurred.

By Policy

—Commission documents: press releases, memoranda, agendas, agenda items and minutes of Commission meetings.

—Comments on Advisory Opinion Requests.

—Reports on compliance actions prepared by the Office of General Counsel at the conclusion of a case.

—Proposed regulations and comments thereto.

—Completed audits.

Exceptions to this policy include only pending audits, pending compliance cases and personnel matters.

Because of the openness of this agency, requests under the Freedom of Information Act have been minimal. On March 17, 1977, the Commission sent to Congress a report on its 1976 activities under the Act, which included only 11 formal requests for information not already available. During 1977, there were 22 such requests. The Commission has appointed a Freedom of Information Act officer to coordinate all requests.