

**Federal  
Election  
Commission**

**Annual Report 1998**



# Federal Election Commission

## Annual Report 1998



## **Commissioners**

Scott E. Thomas, Chairman  
Darryl R. Wold, Vice Chairman  
Lee Ann Elliott, Commissioner  
David M. Mason, Commissioner  
Danny L. McDonald, Commissioner  
Karl J. Sandstrom, Commissioner

## **Statutory Officers**

James A. Pehrkon, Staff Director  
Lawrence M. Noble, General Counsel  
Lynne A. McFarland, Inspector General

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Change and reevaluation were the watchwords at the Federal Election Commission during 1998. Three new Commissioners came aboard in the second half of the year, as two retiring Commissioners departed; the agency's longtime staff director resigned to pursue another opportunity; and the agency underwent a Congressionally-mandated audit of its operations.

Amid all of this activity, the Commission continued to promote compliance with the law through educational outreach and disclosure, to advise the regulated community through regulations and advisory opinions, to monitor the financing of the 1998 elections and to investigate a myriad of alleged campaign finance violations.

Virtually all of these endeavors benefited from changes in computer technology. Enhancements to the agency's internet web site and its electronic filing program improved disclosure; a searchable document imaging system helped to streamline investigations that involved large collections of documents; and a new computerized case management system—designed to manage and track the agency's enforcement and litigation cases—was tested during 1998.

In addition to its oversight of the 1998 elections, the Commission worked to conclude its audits and investigations from 1996 and began to look ahead to the 2000 elections. The Commission warned of a significant shortfall in the Presidential Election Campaign Fund during the 2000 elections—so severe that qualified primary candidates might not receive their full entitlements until after the general election.

The material that follows details the Commission's 1998 activities. Additional information concerning most matters may be found in the 1998 issues of the FEC newsletter, the *Record*.

# Chapter One

## The Commission

During 1998, the FEC welcomed three new Commissioners, bade farewell to two departing Commissioners and to the agency's longtime staff director, and underwent a Congressionally-mandated audit of its operations. The agency also rejected a rulemaking petition asking for a change in the structure of the six-member Commission. These, and other developments, are described in the pages that follow.

### Commissioners

On July 30, 1998, the Senate confirmed the nominations of David M. Mason, Karl J. Sandstrom and Darryl R. Wold to the Commission, and the renomination of Commissioner Scott E. Thomas. Commissioners Mason and Sandstrom assumed their duties in August; Commissioner Wold, in September. Mr. Mason filled the vacancy created by Trevor Potter's October 1995 resignation. Mr. Sandstrom and Mr. Wold replaced Commissioners John Warren McGarry and Joan D. Aikens, respectively.

During the first eight months of the year, Commissioner Aikens served as Chairman of the Commission, and Mr. Thomas as its Vice Chairman. After Mrs. Aikens's departure, Mr. Thomas became Acting Chairman of the Commission.

On December 10, 1998, the Commission elected Mr. Thomas to be its 1999 Chairman and Mr. Wold to be its 1999 Vice Chairman. For biographies of the Commissioners and statutory officers, see Appendix 1.

### Rulemaking Petition on Composition of Commission

On January 22, 1998, the Commission declined to open a rulemaking in response to a petition for rulemaking submitted by the National Reform Party Organizing Committee. The petition had asked the Commission to amend its rules either to require that two members of the six-member FEC be members of minor parties or to expand the Commission by three seats reserved exclusively for minor party representatives.

The petitioner had argued that its rights and those of other minor parties were infringed by what it claimed was a statutory requirement (2 U.S.C. §437c(a)(1)) that the Commission be composed of three Republicans and three Democrats.<sup>1</sup>

In the Commission's response, it stated that the request was outside of its jurisdiction, citing Art. II, § 2, cl. 2 of the U.S. Constitution, which provides that the President shall make appointments, with the advice and consent of the Senate. The Commission further stated that Congress, by law, had established the six-member Federal Election Commission and that it alone has the authority to reconfigure the Commission.

The Commission also noted that, while the Commission has always been made up of three Democrats and three Republicans, that composition is not stipulated by the Act. The statute merely says that no more than three Commissioners may be affiliated with the same party. Additionally, 2 U.S.C. §437c(c) requires a four-vote majority to approve any formal Commission actions, thus ensuring that no political party can dictate the Commission's actions.

### Staff Director

John C. Surina, the Commission's longtime staff director, resigned in 1998, to become Director of the U.S. Department of Agriculture's Office of Ethics. His last day at the FEC was July 31. The Commission immediately launched a nationwide search for a replacement, and expected to select a new staff director in early 1999. In the interim, Deputy Staff Director James A. Pehrkon served as the agency's Acting Staff Director.

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<sup>1</sup> The Reform Party made a similar argument in a lawsuit it filed against the FEC, and others, in 1998 (*National Committee of the Reform Party v. FEC*). On February 27, 1998, the U.S. District Court for the Northern District of California dismissed the case for lack of standing and failure to state a claim upon which relief could be granted. On February 9, 1999, the U.S. Court of Appeals for the Ninth Circuit affirmed that judgment. (For a discussion of "standing," see page 23.)

## The FEC's Budget

### Fiscal Year 1998

Congress appropriated \$31.65 million to fund the FEC's operations in FY 1998, of which \$750,000 was earmarked for a PriceWaterhouseCoopers audit of the Commission's operations. (See page 6.) More than \$4 million of the remaining \$30.9 million was set aside for specific nonpersonnel uses, yielding an operational budget of roughly \$26.8 million. The bulk of the \$4 million set-aside was devoted to computer enhancements, including \$1.3 million for computerized litigation and enforcement document support. (See page 14.) Although the appropriation fell short of the Commission's request, the 313.5 FTE staffing authorization was an increase over the actual FY 1997 staffing level of 297 FTE.

### Fiscal Year 1999

The Commission received a \$36.5 million FY 1999 appropriation, the full amount the agency had requested.<sup>2</sup> Congress earmarked nearly \$4.5 million of the budget for computerization, and fenced off more than \$1 million, pending a Commission plan for the use of those funds. While Congress encouraged the agency to use the fenced-off amount to improve its enforcement program, it stipulated that no additional staff could be hired for enforcement. Moreover, Congress set a 347 FTE cap on overall staffing. The agency had hoped to increase its work force to 360 FTE by adding 47 positions—37 of which would have been in compliance and enforcement.

In March 1998, FEC Vice Chairman Scott Thomas testified in support of the Commission's staffing increase before the House Appropriations Subcommittee on Treasury, Postal Service and General Government. He argued that "the time has come to, in essence, put more cops on the beat."

<sup>2</sup> During its debate concerning the Commission's FY 99 budget, Congress considered instituting term limits for two of the agency's three statutory officers—the staff director and general counsel. After a contentious debate within Congress and in the news media, the proposal was abandoned.

"Our main message is simple: we need more staff to do a better job of ensuring compliance with existing laws," he said.

Mr. Thomas acknowledged that in recent years congressional budget committees have required the FEC to use funding increases to improve its computerization efforts and make campaign finance data more readily accessible to the public. He stated that, while the Commission has endorsed those goals, "it is imperative to have both modern technology and more staff if the laws on the books are to mean anything." He added: "Without adequate staff to enforce existing disclosure requirements and contribution restrictions, reliable disclosure will fade, and contributions of any amount from any source may become the norm."

### Budget Allocation: FYs 1998 and 1999

Budget allocation comparisons for FYs 1997 and 1998 appear in the table and charts that follow.

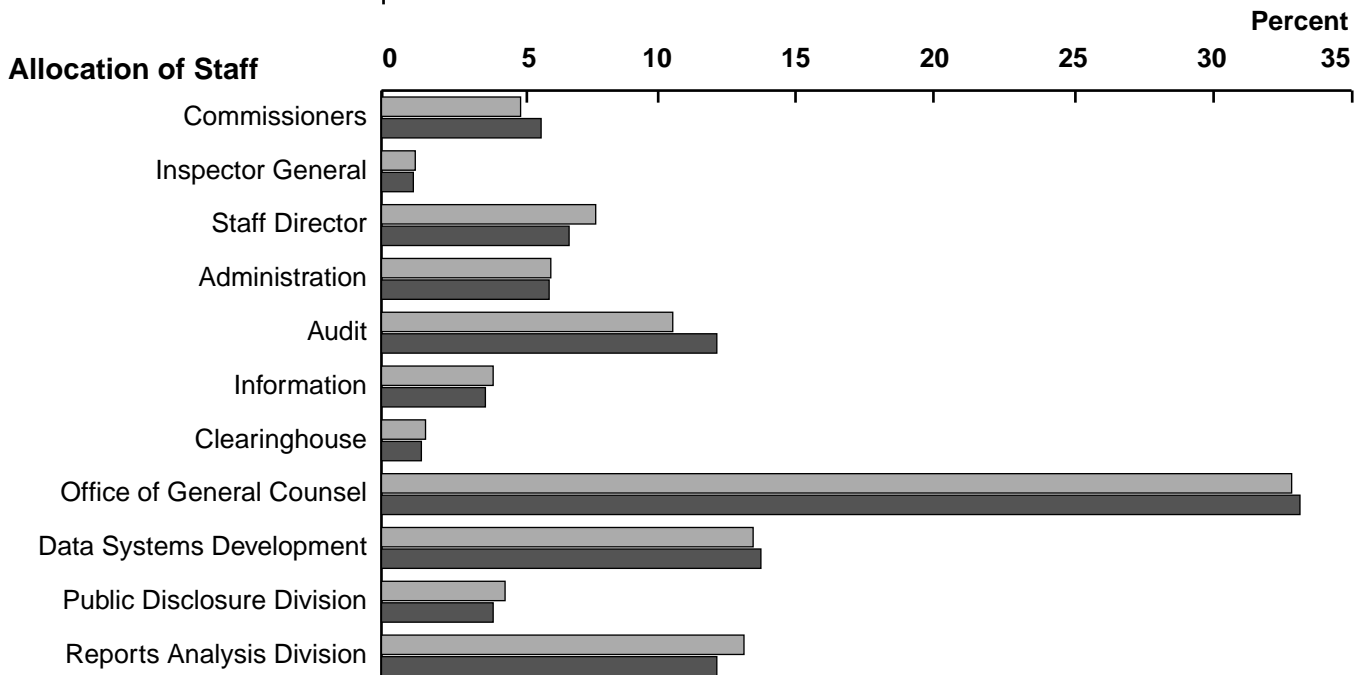
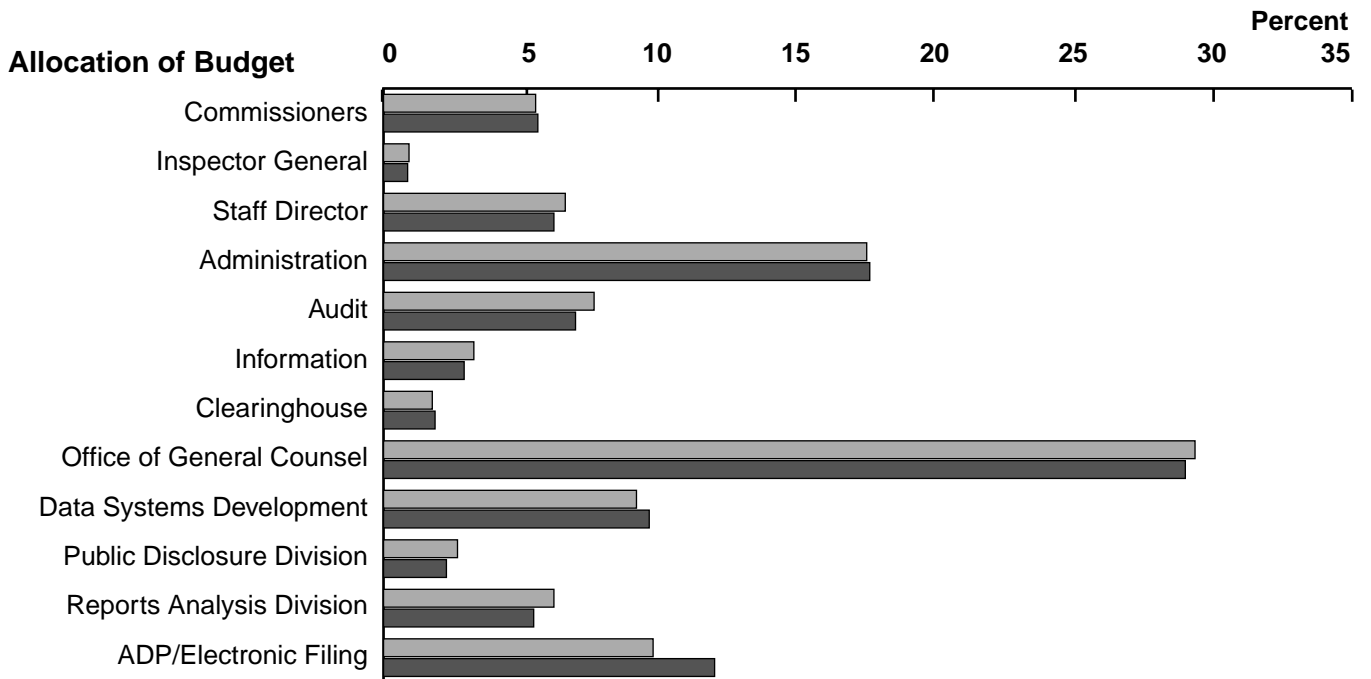
### CHART 1-1 Functional Allocation of Budget

	FY 1998	FY 1999
Personnel	\$20,595,216	23,407,500
Travel/Transportation	195,538	347,500
Space Rental	2,509,470	3,251,000
Phones/Postage	497,966	515,412
Printing	277,242	330,205
Training/Tuition	96,584	304,395
Contracts/Services	2,326,013	3,940,210
Maintenance/Repairs	466,633	381,450
Software/Hardware	381,710	1,390,500
Federal Agency Service	1,102,782	1,713,550
Supplies	345,497	293,778
Publications	250,353	341,500
Equipment Purchases	1,130,979	633,000
<b>Total</b>	<b>\$30,175,983</b>	<b>36,850,000</b>



**CHART 1-2  
Divisional Allocation**

FY 1998 Actual  
 FY 1999 Projected



## Audit of Commission Operations

As part of the Commission's FY 1998 appropriation, Congress earmarked \$750,000 for an independent audit of the FEC. Congress directed the General Accounting Office (GAO) to contract for a technological and performance audit and management review of the FEC. The Congress requested an impartial assessment of:

- The overall effectiveness of the FEC in meeting its statutory responsibilities;
- The appropriateness and effectiveness of the FEC organizational structure, systems and performance measures for accomplishing its mission;
- The adequacy of the FEC's strategic information resource management plan as a tool for increasing FEC efficiency and effectiveness through the use of data processing systems;
- The adequacy of the FEC's human resource programs for obtaining and maintaining adequate staff expertise and organizational capacity;
- The adequacy and completeness of internal management and financial controls systems to efficiently and effectively serve the FEC management needs and the reliability of information provided by these systems; and
- The satisfaction of the regulated community with the products and services the FEC provides.

The GAO contracted with PricewaterhouseCoopers LLP to perform this assessment, which was to be submitted to the Congress no later than January 31, 1999. The assessment began on June 16, 1998, and the project closure conference was held with FEC management on January 15, 1999.

## Computer Upgrades

During 1998, the Commission continued to enhance its computer capabilities in several areas. As detailed in Chapter 2, the agency implemented a voluntary electronic filing program, distributed filing software to help committees submit reports in electronic form and introduced a searchable database of campaign finance reports on its internet web site. The Commission also migrated its staff to a groupware

environment and undertook case management and legal research initiatives to benefit the Office of General Counsel (OGC).

## Ethics

During 1998, the ethics staff administered the Commission's Ethics in Government Act program, which included providing ethics orientation to all new employees and training all employees required to file public and confidential financial disclosure reports. The ethics staff also published an intraagency newsletter to further advise all staff on the standards of ethical conduct. They also administered the Commission's public and confidential financial disclosure report system, which helps ensure that employees remain impartial in the performance of their official duties. Finally, the ethics staff submitted required reports with the Office of Government Ethics, including the annual agency ethics report, the financial disclosure reports filed by Presidential and Vice Presidential candidates and semiannual travel payment reports.

## Inspector General

Under the Inspector General Act, the Commission's Office of the Inspector General (OIG) is authorized to conduct audits and investigations of FEC programs to find waste, fraud and abuse. The OIG audited several facets of Commission operations in 1998, including the agency's employee appraisal process, its management of desktop and laptop computers and the FEC's recreation association (FECREC). The office also monitored the Commission's progress in assuring that its computer systems are Year 2000 compatible.

The Inspector General also testified before the Subcommittee on Government Management, Information and Technology concerning oversight of the FEC. At the committee chairman's request, the OIG provided detailed information concerning its audits over the last four years.

## Chapter Two

# Keeping the Public Informed

Since its inception, the Commission has disclosed campaign finance data and provided information on the election law to both the general public and the regulated community. Doing so helps to create an educated electorate, and it promotes compliance with the campaign finance law.

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

### Public Disclosure

Disclosing the sources and amounts of funds spent on federal campaign activity continued to be the centerpiece of the Commission's work during 1998. The Commission received the reports filed by committees, reviewed them to ensure compliance with the law, entered the data into the FEC's computer database and made the information available to the public.

Over the last few years, computers have greatly enhanced the disclosure process. As detailed below, the Commission now uses computer technology in virtually every aspect of the disclosure process, from electronic filing to distributing information over the internet.

### Electronic Filing

In January 1997, the Commission introduced an interim electronic filing program that allowed committees to file reports via computer disk. In 1998, the Commission launched the second phase of that program, permitting filers to submit reports to the Commission by modem and via the internet.

To assist electronic filers, the agency created and distributed free filing software—FECFile. In March 1998, the second version of that software became available. The new version had a number of enhancements, such as importing capabilities, direct modem and Internet transmission capabilities, data purging (the ability to maintain records over a long period of time) and data masking (restricted data entry fields to assist the user in entering the correct information).

With the new software, electronic filers could send their computer-prepared reports electronically through a direct transmission to the FEC. To take advantage of this, committees used a new Digital Encrypted Password (DEP) system being implemented by the FEC. Committees that chose to send their reports through a direct dial connection (via a modem) or a TCP/IP (Internet access) were not required to send a hard copy of the report's Summary Page containing the treasurer's signature.<sup>1</sup> Instead, the committee treasurer would transmit a password to the FEC along with the encrypted file and the committee's FEC identification number.

In 1998, the FEC requested proposals from software companies wherein the Commission would make small payments to a company in exchange for its allowing the FEC to test its program for compliance with electronic filing and for providing electronic filing support to its customers. Based on those tests, in November 1998, the Commission announced two brands of reporting software that were compatible with the requirements of the FEC's electronic filing program. Filers using the latest version of Campaign Manager made by Aristotle Publishing, Inc., or Keep in Touch made by Gnosso Software could be assured that their electronic filings would comply with FEC reporting requirements and that their vendor would be able to assist them with electronic filing. In the past, committees using commercial software usually prepared reports on computers, printed out the result and mailed the pages to the FEC.

The Commission believes that political committees using FEC-compatible commercial software will find electronic filing a quick, flexible and efficient way to

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<sup>1</sup> Please note, certain reporting forms require additional documentation: Form 8 requires signatures of all creditors, Schedule C1 requires bank signatures and copies of loan agreements, and Form 5 and Schedule E must be notarized. Electronic filers are required to file hard copies of any of the above schedules (or a digitized version submitted as a separate file), along with the signed Summary Page, with their diskette. Committees filing through a direct dial connection, or TCP/IP, must send a hard copy of the above schedules to the FEC.

file their reports. The agency anticipates working with other commercial vendors in the future to ensure compatibility of their software with the electronic filing program.

### Imaging and Processing Campaign Finance Data

The Commission scans all of the reports filed with the agency to create digital images of the documents. (Senate candidates continue to file with the Secretary of the Senate, so their reports are not available on the digital imaging system. The Commission hopes, however, to make digital images of Senate-filed reports available in the near future.) As detailed below, the public can then view those images in the FEC's Public Records Office or on the Commission's internet web site. In November 1998, the agency added a new imaging machine that should speed scanning and filming of reports in the 2000 election cycle.

In addition to the digital imaging system, the Commission codes and enters information from campaign finance reports into the agency's disclosure database, which contains data from 1977 to the present.

Information is coded so that committees are identified consistently throughout the database. Consistency is crucial to maintaining records of which committees received contributions from individuals and which PACs made contributions to a specific candidate. For example, if a PAC's report states that it made a contribution to the Smith for Congress committee with a Washington address, staff must determine which candidate committee, among those with the name Smith and operating in Washington, the report referred to.

### Public Access to Campaign Data

During 1998, the Commission greatly enhanced the availability of campaign finance data via its internet web site—[www.fec.gov](http://www.fec.gov). Perhaps the most exciting of these enhancements was the new query system that allowed visitors to access the name and contribution amount of any individual who contributed \$200 or more to a federal political committee during the 1997-1998 election cycle. The query system also allowed users to access lists of PACs or party committees that contributed to specific candidates and to view lists of

**CHART 2-1**  
**Size of the Detailed Database**

Election Cycle	No. of Detailed Entries*
1986	526,000
1987	262,000
1988	698,000
1989	308,000†
1990	767,000
1991	444,000‡
1992	1,400,000
1993	472,000
1994	1,364,000
1995	570,000
1996	1,887,160
1997	619,170
1998	1,652,904

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

† The entry threshold for individual contributions was dropped from \$500 to \$200 in 1989.

‡ Nonfederal account data was first entered in 1991.

candidates to whom selected PACs and parties contributed. The system, which is updated daily, became available on July 21.

When using the web site query system, visitors could also access digitized copies of the actual reports filed by House candidates, PACs and party committees. Although the Commission has been using the digital imaging system for several years, the agency first made the images available on its web site in December 1997. These first images were for the 1998 election cycle only. Throughout 1998, the Commission continued to add images to its web site; not just images of newly-filed reports, but also images of reports dating back to the 1995-1996 election cycle. During the closing weeks of the 1998 campaign, the Commission added search functions to help visitors locate special filings concerning last-minute contribu-

tions and independent expenditures. During 1998, web page visitors accessed the imaging and query systems more than three million times.

The Commission's disclosure database, which contains millions of transactions, enabled researchers to select information in a flexible way. For example, the database could instantly produce a profile of a committee's financial activity for each election cycle. As another example, researchers could customize their searches for information on contributions by using a variety of elements (e.g., donor's name, recipient's name, date, amount or geographic location).

Visitors to the Public Records Office could use computer terminals to inspect digital images of reports and to access the disclosure database and more than 25 different campaign finance indices that organize the data in different ways. Those outside Washington, DC, could access the information via the internet or Direct Access Program, or order it using the Commission's toll-free number.

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

The FEC also continued to offer on-line computer access to the disclosure database to 1,357 subscribers to the thirteen-year-old Direct Access Program (DAP) for a small fee. Subscribers included journalists, political scientists, campaign workers and other interested citizens. DAP saved time and money for the Commission because providing information on line is more efficient than processing phone orders for data. During 1998, the Commission's State Access Program gave 41 state or local election offices free access to the database. In return, state offices helped the Commission track candidate committees that had failed to file copies of their FEC reports with the appropriate state, as required under federal law.

### Review of Reports

The Commission's reports analysts review all reports to ensure that the public record provides a full

and accurate portrayal of campaign finance activity. When analysts find that a report contains errors or suggests violations of the law, they send the reporting committee a request for additional information (RFAI). The committee treasurer can then make additions or corrections to the report. Apparent violations, however, may be referred to the Audit Division or the Office of General Counsel for possible enforcement action.

The increases in financial activity disclosed by PACs and party committees over the last several election cycles have placed greater demands on the Commission's reports analysts—longer reports take longer to review. Given that fact, the agency changed some of its procedures during 1998 to ensure the continued quality and timely review of all active committees' reports. For example, the Commission aggressively pursued the administrative termination of committees having little or no activity, allowing reports analysts to concentrate on active, on-going committees.

Analysts continued to use the Commission's computer imaging system to view reports at their own desks, and they applied refined computer programming tools to help them identify possible compliance problems more quickly. The agency also used technology to reduce its administrative workload by automating its nonfiler notification program.

## Educational Outreach

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

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

In its third year of operation, the Commission's web site offered visitors a variety of resources. In addition to reviewing the statistical data described above, visitors could access brochures on a variety of topics, read agency press releases, review national election results and voter registration and turnout statistics, look up reporting dates and download the national mail voter registration form, FEC reporting forms, copies of the *Record* newsletter, the *Campaign*

*Guides* for PACs, parties and candidates and other agency publications. The *Record* was placed on the Commission's home page the same day that copy was sent to the printer. This meant that the public could access the newsletter a full week before the printed copy was available.

### Telephone Assistance

A committee's first contact with the Commission is often a telephone call to the agency's toll-free information hotline. In answering questions about the law, staff research relevant advisory opinions and litigation, as needed. Callers receive, at no charge, FEC documents, publications and forms. In 1998, the Information Division responded to 61,046 callers with compliance questions.

### Faxline and Computer Faxing

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

During 1998, 4,908 callers sought information from the 24-hour Faxline and received 6,429 documents.

### Reporting Assistance

During 1998, reports analysts, assigned to review committee reports, were also available to answer complex reporting and compliance-related questions from committees calling on the toll-free line.

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

### Conferences

Leading up to the 1998 elections, the agency conducted a full program of conferences to help candidates and committees understand and comply with the law. The Commission held a Washington, DC, conference for candidate committees in February, a regional conference in Denver in March and a Washington, DC, conference for nonconnected PACs in April.

Both the regional conferences and those held in Washington featured workshops on the Commission's electronic filing program and on the impact that recent court decisions have had on the federal election law.

### Tours and Visits

Visitors to the FEC during 1998, including 33 student groups and 33 foreign delegations, listened to presentations about the campaign finance law and, in some cases, toured the agency's Public Records office.

### Media Assistance

The Commission's Press Office continued to field questions from the press and navigate reporters through the FEC's vast pool of information. Press Office staff responded to 15,514 calls and visits from media representatives and prepared 60 news releases. These releases alerted reporters to new campaign finance data and illustrated the statistics in tables and graphs.

### Publications

During 1998, the Commission published several documents to help committees, the press and the general public understand the law and find information about campaign finance. All of the new publications were available both in print and on the FEC web site.

The Commission updated its "Filing a Complaint" and "Free Publications" brochures, and published a new edition of its *Selected Court Case Abstracts, 1976-September 1998* (CCA). The CCA is a collection of summaries of court cases pertinent to the Federal Election Campaign Act. Most originally appeared in the FEC's monthly newsletter, the *Record*.

As in past years, the Commission continued to provide 10,474 free subscriptions to the award-winning *Record*. The newsletter summarizes recent advisory opinions, litigation, changes in regulations, audit reports and compliance cases. It also includes graphs and charts on campaign finance statistics.

The *Combined Federal/State Disclosure Directory 1998* directs researchers to federal and state offices that provide information on campaign finance, candidates' personal finances, lobbying, corporate registra-

tion, election administration and election results. The Commission also published a new edition of *Pacronyms*, an alphabetical list of acronyms, abbreviations, common names and locations of federal PACs. The publication lists PACs' connected, sponsoring or affiliated organizations and helps researchers identify PACs and locate their reports. Both the disclosure directory and PAC listing were available not only in print and on the web, but also on computer disks formatted for popular hardware and software. The web page version of the *Disclosure Directory* includes hyperlinks to the web pages of state offices and e-mail addresses for state officials.

The Commission also published *Campaign Finance Law 98*—a summary of state campaign finance laws—and posted “quick reference charts” from it on the FEC web site.

## Office of Election Administration

During 1998 the Office of Election Administration held its Advisory Panel Meeting of state and local election officials outside the Washington, DC, metropolitan area for the first time in three years. The meeting took place in Portland, Oregon, and more than 150 election officials from around the country attended. The attendees discussed numerous topics, including year 2000 compliance in election offices, recent election case law and methods for confirming identity through biometric technology.

The OEA also released several publications during 1998, including:

- *Innovations in Election Administration Volume 16 - Using the Internet in Election Offices*;
- *Innovations in Election Administration Volume 17 - Acquiring Election Systems and Equipment*;
- *The Election Directory (Section 2) - Addresses for Notices Canceling Prior Voter Registrations*; and
- *Frequently Asked Questions About the Voting Systems Standards*—a brochure produced in conjunction with the National Association of State Election Directors (NASED).

The OEA also continued its work with Management Technologies Corp. (MANTECH) to complete a requirements analysis concerning an update of the *Per-*

*formance and Test Standards for Punchcard, Marksense and Direct Recording Electronic Voting Systems.*

In addition, OEA staff briefed foreign visitors from over 45 countries on the Constitutional and administrative structure of the U.S. election system.

## Chapter Three

# Interpreting and Enforcing the Law

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

The agency's enforcement actions also promote compliance by correcting past violations and demonstrating to the regulated community that violations can result in civil penalties and remedial action.

## Regulations

The rulemaking process generally begins when the Commission votes to seek public comment on proposed rules by publishing the rules in the Federal Register. The agency may also invite those making written comments to testify at a public hearing. The Commission considers all timely comments when deliberating on the final rules in open meetings. Once approved, the text of the final regulations and the explanation and justification are published in the Federal Register and sent to the U.S. House and Senate. The Commission publishes a notice of effective date after the final rules have been before Congress for 30 legislative days.<sup>1</sup>

### Rulemakings Completed in 1998

The following new rule took effect in 1998:

- New regulations requiring publicly funded Presidential campaigns that maintain computerized campaign finance records to file their reports electronically took effect November 13. (See page 32.)

### Other Rulemakings in Process<sup>2</sup>

In addition to completing the above rule, the Commission took the following additional actions:

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<sup>1</sup> This requirement to wait 30 legislative days before publishing the effective date applies only to regulations based upon Titles 2 and 26 of the U.S. Code.

<sup>2</sup> In November 1998, the Commission established a new monthly internal reporting schedule to track the status of its pending rulemakings.

- It held a public hearing on February 11 concerning its NPRM on recordkeeping and reporting requirements, and proposed revisions to Forms 3 and 3X.
- It held a public hearing on April 29 concerning its Notice of Proposed Rulemaking (NPRM) on the definition of "member." On December 16, the Commission published a second NPRM on this subject. (See page 22.)
- It published an NPRM on July 13 in response to two petitions that asked the FEC to curb or ban soft money. The Commission held a public hearing on November 18. (See page 20.)
- It published an NPRM on December 18 concerning the status of limited liability companies under federal election law. (See page 26.)
- It published an NPRM on December 16 concerning the public funding of Presidential primary and general election candidates. (See page 31.)

## Advisory Opinions

The Commission responds to questions about how the law applies to specific situations by issuing advisory opinions. When the Commission receives a valid request for an advisory opinion, it generally has 60 days to respond. The Office of General Counsel prepares a draft opinion, which the Commissioners discuss and vote upon during an open meeting. A draft opinion must receive at least four favorable votes to be approved.

The Commission issued 26 advisory opinions in 1998. Of that number, five addressed the status of party committees, three examined party committees' use of "soft money" and two covered limited liability companies. These and other 1998 advisory opinions are discussed in Chapter Four, "Legal Issues."

## Enforcement

### The Enforcement Process

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



alleges violations and explains the basis for the allegations. The third is the referral process—possible violations discovered by other agencies are referred to the Commission.

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

The General Counsel recommends whether there is “reason to believe” the respondents have committed a violation. If the Commission finds there is “reason to believe,” it sends letters of notification to the respondents and investigates the matter. The Commission has authority to subpoena information and can ask a federal court to enforce a subpoena. At the end of an investigation, the General Counsel prepares a brief which states the issues involved and recommends whether the Commission should find “probable cause to believe” a violation has occurred. Respondents may file briefs supporting their positions.

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

### **Prioritization and Computer Initiatives**

During 1998, the Commission continued to use a prioritization system to focus its limited resources on more significant enforcement cases.

Now in its sixth year of operation, the Enforcement Priority System (EPS) has helped the Commission manage its heavy caseload involving thousands of respondents and complex financial transactions. The Commission instituted the system after recognizing that the agency did not have sufficient resources to

pursue all of the enforcement matters that came before it. Under the system, the agency uses formal criteria to decide which cases to pursue. Among those criteria are: the intrinsic seriousness of the alleged violation, the apparent impact the alleged violation had on the electoral process, the topicality of the activity and the development of the law and the subject matter. The Commission continually reviews the EPS to ensure that the agency uses its limited resources to best advantage.

In addition, during 1998, the Office of General Counsel (OGC) began using a computerized system to image documents and create a searchable database. Developed with help from a support contractor, the new system was designed to help streamline the investigation of cases that involve large collections of documents.

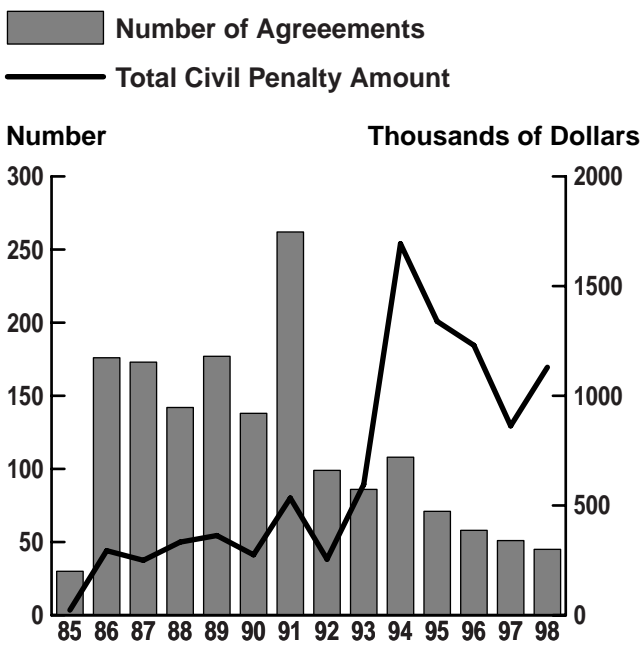
Also during 1998, the counsel’s office developed a new computerized case management system that will help manage and track the agency’s enforcement and litigation cases, as well as other projects in OGC. The Commission expects to implement the new system fully in 1999.

Despite the prioritization system and computer initiatives, the number and complexity of enforcement cases continued to exceed the Commission’s enforcement capabilities. During 1998, the agency had nearly as many cases awaiting assignment as it had being actively pursued.

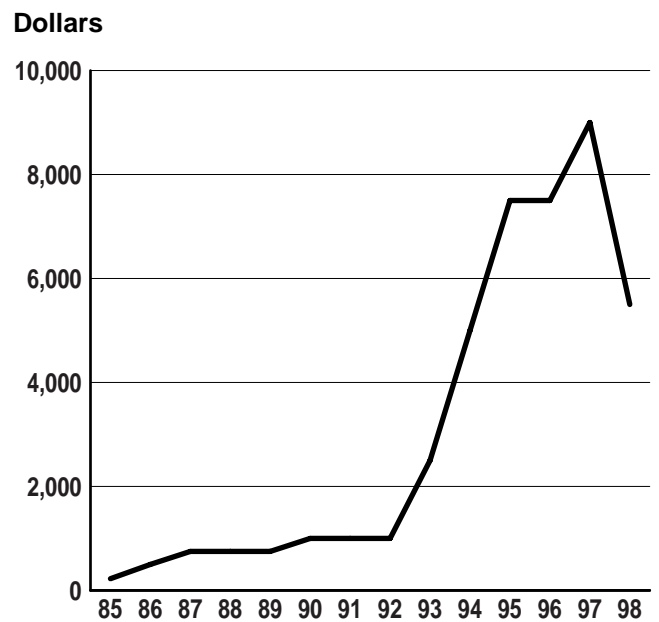
### **Statistics: Civil Penalties, Active/Inactive Cases and Number of Respondents**

Chart 3-1 compares civil penalties negotiated in 1998 conciliation agreements with those of previous years. In Chart 3-2, the median civil penalty negotiated in 1998 is compared with the median civil penalty of previous years. Chart 3-3 tracks the ratio of active to inactive enforcement cases over the last three years. Chart 3-4 examines the numbers and types of cases dismissed under the EPS over the last six years. Chart 3-5 illustrates the marked increase in the number of respondents per enforcement action during 1998.

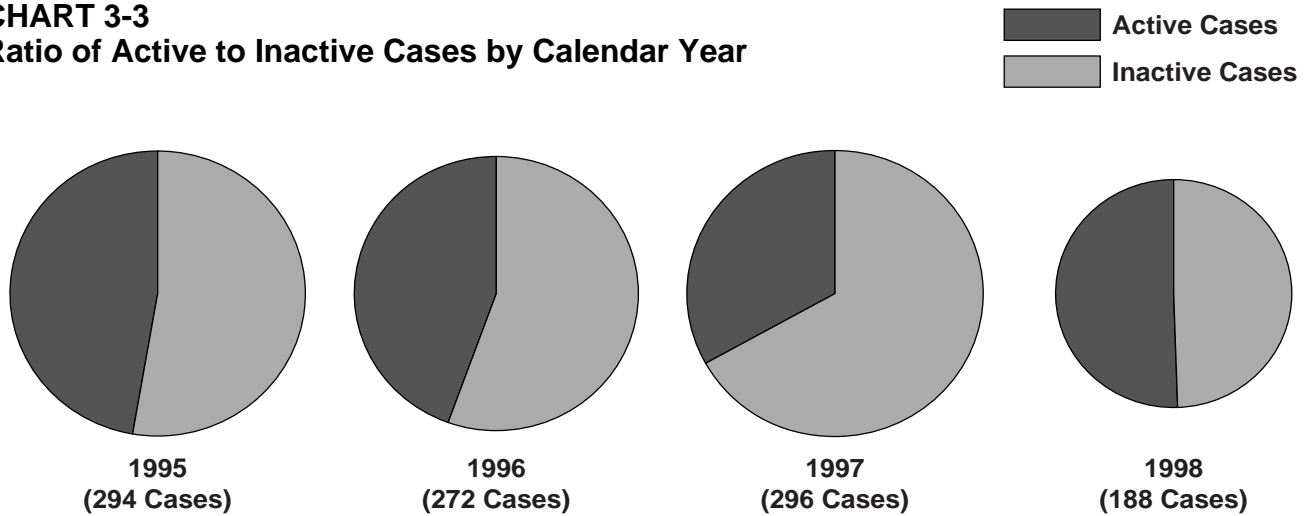
**CHART 3-1  
Conciliation Agreements  
by Calendar Year**



**CHART 3-2  
Median Civil Penalty  
by Calendar Year**

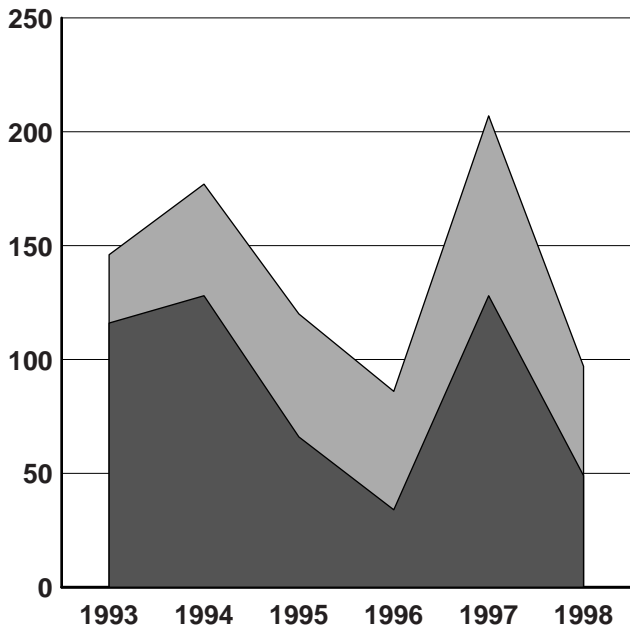


**CHART 3-3  
Ratio of Active to Inactive Cases by Calendar Year**



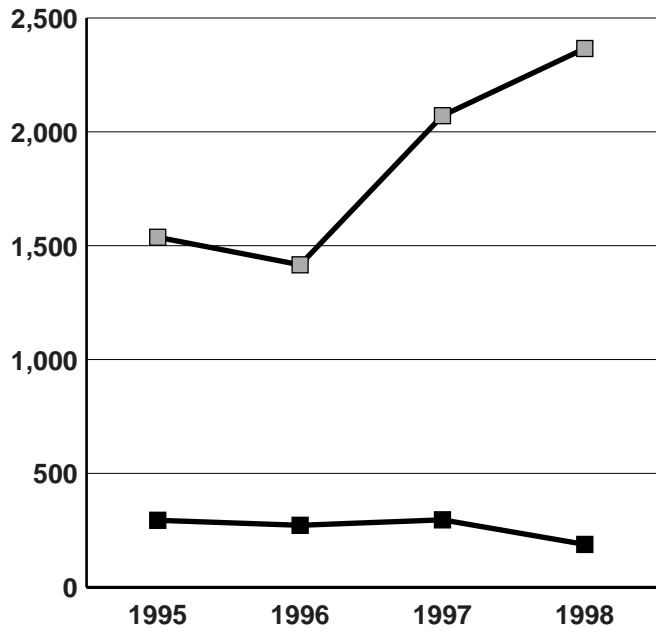
**CHART 3-4**  
**Cases Dismissed under EPS**

■ Stale Cases  
■ Low-Rated Cases



**CHART 3-5**  
**Average Number of Respondents and Enforcement Cases by Calendar Year**

■ Respondents  
■ Cases



## Chapter Four Legal Issues

As the independent regulatory agency responsible for administering and enforcing the Federal Election Campaign Act (the Act), the Federal Election Commission promulgates regulations explaining the Act's requirements and issues advisory opinions that apply the law to specific situations. The Commission also has jurisdiction over the civil enforcement of the Act. This chapter examines major legal issues confronting the Commission during 1998 as it considered regulations, advisory opinions, litigation and enforcement actions.

### Corporate/Labor Communications

The Act prohibits corporations and labor organizations from using their treasury funds to make contributions or expenditures in connection with federal elections. 2 U.S.C. §441b. However, the statute and FEC regulations contain several exceptions that permit corporations and unions to form PACs and, under certain circumstances, to communicate their views on matters related to federal elections. During 1998, the courts handed down two decisions concerning these exceptions, and the Commission considered two rulemaking petitions aimed at altering the exceptions themselves.

#### **MCFL Nonprofits**

One of the rulemaking petitions the Commission considered concerned the exception to the corporate ban that permits a narrow category of nonprofit ideological corporations to use their treasury funds to make independent expenditures. 11 CFR 114.10. The regulatory exception stems from the Supreme Court's 1986 decision in *FEC v. Massachusetts Citizens for Life* (MCFL) in which the court concluded that §441b could not constitutionally prohibit certain types of nonprofit corporations from making independent expenditures using their corporate treasury funds. Subsequently, the Commission promulgated new regulations that attempted to codify the MCFL exemption. 11 CFR 114.10. Under the regulations, in order for a nonprofit corporation to qualify for the exemption, it must have certain characteristics, as listed below:

- The corporation's express purpose is to promote political ideas, and it cannot engage in business activities (11 CFR 114.10(c)(1), (2)).
- The corporation does not have shareholders or other persons who have a claim on its assets or earnings, or for whom there are disincentives to disassociate themselves from the organization on the basis of its political positions (11 CFR 114.10(c)(3)).
- The corporation was not established by a business corporation or labor union and does not directly or indirectly accept donations or anything of value from such entities. If the corporation cannot demonstrate this, it must have a policy not to accept donations from business corporations or labor unions (11 CFR 114.10(c)(4)(i), (ii), (iii)).
- The corporation is described in 26 U.S.C. §501(c)(4) (11 CFR 114.10(c)(5)).

In November 1997, the James Madison Center for Free Speech filed a rulemaking petition asking the Commission to revise these rules to conform with the decision of the U.S. Court of Appeals for the Eighth Circuit in *Minnesota Citizens Concerned for Life v. FEC* (MCCL). The Eighth Circuit had declared 11 CFR 114.10 invalid because it denied the exemption to voluntary political associations that "conduct minor business activities or accept insignificant corporate donations." 113 F.3d 129 at 130-131. In the Eighth Circuit's view, this infringed upon those associations' First Amendment rights.

After publishing a Notice of Availability and receiving comments on the Center's petition, the Commission voted on May 21, 1998, not to open a rulemaking. In denying the petition, the Commission noted that courts recognize that a decision by one circuit court is binding only in that circuit. No other appellate courts have found the Commission's regulations regarding qualified nonprofit corporations invalid.

The Commission also believed that the Eighth Circuit erred in its interpretation of MCFL in MCCL. The FEC interpreted the MCFL decision to mean that, to qualify for the exemption allowing a nonprofit organization to make independent expenditures, a nonprofit organization had to satisfy all the characteristics listed in that decision, including the requirements that the organization not engage in business activities and not accept any contributions from corporations.

### Express Advocacy

The FEC's regulatory definition of express advocacy continued to receive attention in the courts and at the Commission during 1998. Like the qualified nonprofit rules described above, the express advocacy regulations resulted from the Supreme Court's *MCFL* decision. The *MCFL* Court, citing First Amendment concerns, held that the ban on corporate and labor organization independent expenditures could only be constitutionally applied in instances where the money was used to expressly advocate the election or defeat of a clearly identified candidate for federal office. In response to this decision, the Commission prescribed a new regulatory definition of express advocacy. The definition was based largely on two court opinions: the Supreme Court's opinion in *Buckley v. Valeo* and the Ninth Circuit Court of Appeals opinion in *Furgatch*.

Subpart (a) of 11 CFR 100.22 reflects the examples of phrases that constitute express advocacy listed in the *Buckley* opinion: "vote for," "elect," "support," "cast your ballot for," "vote against," "defeat," "reject."

Subpart (b) is based, *inter alia*, on the *Furgatch* decision. The court of appeals had held that language may be said to expressly advocate a candidate's election or defeat if, when taken in context and with limited reference to external events, it can have no other reasonable interpretation.

***Right to Life of Dutchess County, Inc. v. FEC.*** In April 1997, Right to Life of Dutchess County, Inc., (RLDC), a nonprofit membership corporation based in New York, filed suit asking the U.S. District Court for the Southern District of New York to find that the FEC acted contrary to law in promulgating subpart (b) of the express advocacy definition.

On June 1, 1998, the district court determined that subpart (b) violates the First Amendment and enjoined the FEC from enforcing it against RLDC. The court found that the regulation was "unconstitutionally overbroad" and beyond the scope of §441b, as interpreted by the courts.

In its suit, RLDC said it intended to make communications to its members and the general public—using newsletters, voter guides, columns, press conferences, fliers and other methods—about the stances of

federal candidates on abortion. RLDC would pay for such communications from its general treasury, and would accept donations—even from corporations—in order to fund such endeavors. RLDC maintained that, under subpart (b) of the Commission's regulations, its expenditures would be classified as express advocacy, but that, under the *Buckley* decision, they would not. The group further argued that the threat of FEC enforcement action for exercising what it considered its constitutional rights chilled its First Amendment guarantee of free expression.

Prior to issuing its opinion, the court determined that RLDC had standing to litigate this case. The court said that, in cases involving possible limits on First Amendment rights, a credible threat of prosecution is sufficient injury to confer standing. (For more information on legal standing, see "Enforcement and Legal Standing" on page 23.)

In its opinion, the district court recognized that RLDC's publications would be timed to influence voters when they went to the polls, but it held that subsection (b) of the Commission's express advocacy definition was constitutionally invalid because it "encompasses substantially more communication than is permissible" under 2 U.S.C. §441b, as narrowed by the Supreme Court in *Buckley* and *MCFL*. It stated that the Supreme Court requirement of express or explicit words of advocacy (of the election or defeat of a candidate) is necessary in order to avoid restrictions on "issue advocacy," which is not regulated by the FEC and is protected by the First Amendment.

The court did, however, reject RLDC's argument that the New York district court was bound by the decision from the First Circuit appellate court in *Maine Right to Life Committee, Inc., v. FEC (MRLC)*, which had also found subsection (b) to be unconstitutional. The court said that it is a well-settled principle in federal court that a decision in one circuit is not binding on federal courts in another circuit.

The Commission split 3-3 on whether to appeal the *RLDC* decision. Absent a majority vote, the Commission did not file an appeal.

***Petition for Rulemaking.*** In October 1997, the James Madison Center for Free Speech filed a rulemaking petition urging the Commission to repeal

11 CFR 100.22(b) to conform with the First Circuit's decision earlier that year in *MRLC*.

After publishing a Notice of Availability and receiving comments on the petition, the Commission voted on February 12, 1998, not to alter its rules.

The petitioners had asked for the rulemaking following the Supreme Court's refusal to review the First Circuit's decision in *MRLC*. The petitioners claimed that the Commission had violated the Administrative Procedure Act by failing to follow the First Circuit's ruling on a nationwide basis.

The appellate court for the Fourth Circuit (*FEC v. Christian Action Network*) and a district court in New York (*RLDC*) have reached conclusions similar to *MRLC*. However, these rulings conflict with the decision of the Ninth Circuit Court of Appeals in *Furgatch*—on which 11 CFR 100.22(b) is largely based. It is well established that the decision of one U.S. circuit court of appeals is not binding outside its circuit and that the Supreme Court's declining to hear a case implies nothing as to the merits of the lower court decision. Where circuit court opinions disagree, the Supreme Court has long recognized that an agency is free to adhere to its preferred interpretation of regulations and laws in all circuits where the courts have not rejected such interpretation.

Additionally, a majority of the Commission believed that the definition of express advocacy at paragraph 100.22(b) was constitutional. For example, in *MCFL*, the Supreme Court held that materials that were "marginally less direct than 'vote for Smith'" were, nevertheless, express candidate advocacy, even though the materials themselves stated that they were not endorsing particular candidates.

**Voter Guides and Voting Records.** Under the exceptions to §441b, corporations and unions may make certain types of communications related to federal elections. Generally, corporations and unions may direct to their restricted class<sup>1</sup> communications

that expressly advocate the election or defeat of candidates. Independent communications that go to people outside this restricted class may not contain an express advocacy message.

Specific regulations at 11 CFR 114.4(c)(4) and (5) permit corporations and unions to produce and distribute nonpartisan voter guides and voting records to the general public, subject to certain restrictions. Both of these provisions have been the subject of court action during the last couple of years.

*Clifton v. FEC*. In June 1997, the U.S. Court of Appeals for First Circuit invalidated two aspects of the regulations governing corporate and union produced voter guides and voting records. The appeals court declared the voting record regulation at 11 CFR 114.4(c)(4) invalid only insofar as the regulation "may purport to prohibit mere inquiries to candidates"; it declared the voter guide regulation at 11 CFR 114.4(c)(5) invalid only insofar as it limited contact with candidates to written inquiries and replies, and imposed an equal space and prominence restriction. 114 F.3d 1309, 1317 (1st Cir. 1997). With regard to the plaintiffs' challenge to the "electioneering message" portion of the voter guide regulation, the appeals court referred the matter to the district court because, it said, there had been inadequate briefing on the issue.

On April 30, 1998, the U.S. District Court for the District of Maine declared the "electioneering message" provisions to be invalid because they were inseverable from the regulations struck down by the First Circuit.<sup>2</sup> The court therefore found it unnecessary to consider whether the "electioneering message" provisions would otherwise be valid under the statute and the Constitution. (U.S. District Court for the District of Maine, 96-66-P-H.)

<sup>1</sup> A corporation's restricted class consists of its executive and administrative personnel, stockholders and the families of both of those groups. A labor union's restricted class consists of its executive and administrative personnel, members and the families of both of those groups.

<sup>2</sup> The sections in question—11 CFR 114.4(c)(5)(ii)(D) and (E)—stated that voter guides prepared on the basis of written responses from candidates to questions posed by a corporation or labor organization 1) could not include an "electioneering message" and 2) could not score or rate the candidates' responses in a way that conveyed an "electioneering message."

## Soft Money

The role of soft money—funds raised and/or spent outside the limitations and prohibitions of the Act that may be permissible under various state laws—continued to receive considerable attention during 1998.

### Soft Money Rulemaking

In 1997, President Clinton and five members of Congress submitted rulemaking petitions that asked the Commission to examine its rules governing soft money in light of the influence soft money had on political campaigns during the 1996 election cycle.

The Commission published a Notice of Availability on the issue, and received 188 comments in response. Based on those comments, on July 13, 1998, the Commission published a Notice of Proposed Rulemaking (NPRM) that would change the way party committees raise and spend soft money. Alternatives listed in the NPRM included leaving the FEC's current regulations unchanged, prohibiting national party committees from receiving and using soft money and modifying the way soft money is raised and used by national and state party committees.

The Commission held a public hearing concerning its proposed rules on November 18, 1998, at which a member of Congress, attorneys for a national party committee and representatives from several interest groups testified. The Commission's proposed rules drew sharply divergent opinions from the witnesses. While one side suggested that soft money is a viable way for party committees to support their nonfederal candidates, the other side argued that the large, unregulated contributions have made meaningless the contribution limits of the federal election statute.

At year's end, the Commission was reviewing the comments and testimony before determining how it would proceed with this rulemaking.

### Enforcement and Litigation

While the Commission considered a regulatory change, the courts reviewed the agency's current soft money rules in several 1998 cases.

***Ohio Democratic Party v. FEC and RNC v. FEC.*** On June 25, 1998, the U.S. District Court for the District of Columbia denied motions by the Ohio Demo-

cratic Party (ODP) and the Republican National Committee (RNC) for a preliminary injunction to prevent the FEC from enforcing its allocation regulation found at 11 CFR 106.5 and interpreted in AO 1995-25. The regulation requires the plaintiffs to pay a portion of what they term "issue advocacy" advertisement costs with hard money (i.e., funds that comply with the law's contribution limits and prohibitions). Both committees filed suits in 1998 charging that application of the allocation regulation to any advertisements that do not expressly advocate the election or defeat of a clearly identified federal candidate was unconstitutional. The two suits were subsequently consolidated.

The ODP and RNC claimed that the FEC's allocation regulation violates the First and Fifth Amendments to the Constitution. The ODP and RNC further alleged that the FEC lacks the authority to promulgate these rules because they attempt to regulate expenditures that do not expressly advocate the election or defeat of a federal candidate. The plaintiffs told the court that they would suffer irreparable harm if the injunction were not granted.

When the district court denied a preliminary injunction, the ODP and RNC filed an emergency motion for an injunction pending an appeal. The U.S. Court of Appeals for the District of Columbia Circuit denied that motion and, subsequently, affirmed the district court's decision denying a preliminary injunction.

The case was pending at year's end.<sup>3</sup>

***FEC v. California Democratic Party.*** In another case involving the Commission's soft money rules, on June 11, 1998, the U.S. District Court for the Eastern District of California denied the California Democratic Party's (CDP's) motion to dismiss a complaint filed against it by the FEC. The FEC had alleged that the CDP had violated the Act when it used only nonfederal funds to pay for a voter registration drive conducted by a ballot measure committee instead of allocating the costs between its federal and nonfederal accounts. The court rejected arguments that the Commission's allocation regulation is inconsistent with the Act or the Constitution.

This case, also, was pending at year's end.

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<sup>3</sup> ODP withdrew its suit in February 1999.

**RNC v. FEC and DSCC v. FEC.** There were developments in three other soft money cases during 1998: one involving the Republican National Committee (RNC) and two involving the Democratic Senatorial Campaign Committee (DSCC).

**RNC v. FEC.** On April 7, 1998, the parties agreed to dismiss this case with prejudice and to pay their own legal expenses. The RNC had asked the U.S. District Court for the District of Columbia to find that the FEC's dismissal of a soft money complaint it had filed with the agency was contrary to law.

In its initial administrative complaint, filed in 1995, the RNC had charged that the Democratic National Committee (DNC) had impermissibly used soft money to pay all the expenses of a nationwide media campaign that highlighted the party's legislative proposals for health care reform. A few days after this case was dismissed, the RNC filed its suit challenging the validity of the same allocation regulation that had been the basis for this administrative complaint. (See page 20.)

**DSCC v. FEC.** On April 10, 1998, the U.S. Court of Appeals for the District of Columbia Circuit remanded two cases to the district court after finding that the question of standing had not been resolved. (See page 24.)

The cases, which date back to 1993, involve allegations by the DSCC that the Commission had not acted quickly enough to pursue its administrative complaints. The complaints alleged that the National Republican Senatorial Committee (NRSC) made soft money donations to nonparty organizations, which then used the money to support the Republican nominees in Senate races in 1992 and 1994.

### Advisory Opinions

The Commission applied its current soft money allocation rules in three 1998 advisory opinions.

**AO 1998-21.** In AO 1998-21, the Commission ruled that the National Republican Senatorial Committee (NRSC) could not deviate from the minimum federal allocation percentage found at 11 CFR 106.5(c)(2) for its administrative and get-out-the-vote drive expenses incurred during the 1998 election cycle. The regulations require Senate and House campaign committees to pay for administrative and generic voter drive

expenses with at least 65 percent in federal funds during an election year. The committees may pay for no more than 35 percent of those expenses with nonfederal funds.

The NRSC planned to promote a number of nonfederal candidates during the 1998 election cycle with funds from its nonfederal account. It anticipated that more than 35 percent of its total candidate-specific disbursements during this time would be on behalf of nonfederal candidates. The NRSC asserted that, if it adhered to the minimum federal percentage, it would end up paying a disproportionate share of its total administrative and generic voter drive expenses from its federal accounts.

The NRSC proposed that, when allocating its expenses prior to the 1998 election, it would use the Commission's allocation ratio, subject to the minimum federal percentage. After the election, however, it would calculate the actual ratio of federal candidate-specific expenditures to total candidate-specific disbursements during the entire election cycle. If the actual nonfederal portion exceeded 35 percent, the committee would make a transfer from its nonfederal to its federal account so that the amount spent on administrative and generic voter expenses reflected the actual ratio of federal and nonfederal candidate disbursements.

Since the plain language of the regulation prohibits committees from paying more than 35 percent of administrative and generic voter drive expenses with nonfederal funds, the Commission could not authorize the NRSC plan.

**AO 1998-18.** In AO 1998-18, the Commission concluded that the Washington State Democratic Committee had to pay for a "testing the waters" poll entirely from its federal account despite the fact that the person whose prospects were being tested ultimately declined to seek federal office.

FEC regulations exempt from the definitions of "contribution" and "expenditure" funds raised and spent to "test the waters" for a potential candidacy. If the individual decides to run for federal office, those funds become reportable contributions and expenditures. Regardless of that decision, however, the regulations require that only federally permissible funds be



used to “test the waters.” As a result, the Commission concluded that the state party had to pay for the poll from its federal account, even though the potential candidate decided not to run.

**AO 1998-9.** In AO 1998-9, the Commission determined that the Republican Party of New Mexico (RPNM) could not treat certain disbursements for a special election as generic voter drive costs and could not use any nonfederal funds to pay for them. Instead, the disbursements at issue had to be considered either coordinated expenditures (441a(d) expenditures) or independent expenditures, both of which had to be paid for with funds from its federal account.

In connection with a special election to fill the seat left vacant by the death of Congressman Steven Schiff, the RPNM proposed communications (e.g., by telephone, television, radio and direct mail) urging the general public to vote Republican in the special election. One of the proposed communications said, in part, “On Tuesday, June 23, please vote in the special election for Congress. Vote Republican to continue the work of Steve Schiff.”

Commission regulations permit party committees to allocate the costs of generic voter drive activities between their federal and nonfederal accounts as long as the activities do not mention a specific candidate<sup>11</sup> CFR 106.5(a)(2)(iv).

In this case, because only one office was at stake in the June 23 special election and because the party had nominated only one candidate, the RPNM’s proposed communication could mean no other candidate than that nominee. As a result, the Commission concluded that the RPNM’s disbursements would be considered either coordinated expenditures subject to its limit for the special election, or independent expenditures.

## Definition of Member

During 1998, the Commission continued to consider alternatives to its regulatory definition of “member,” which had been partially invalidated by the DC circuit court of appeals. The definition is important because, under the Act, only “members” of an incorporated membership organization (and the

organization’s executive and administrative personnel and the families of both groups) may be solicited for contributions to the organization’s separate segregated fund, commonly called a political action committee or PAC. Additionally, only members are allowed to receive the organization’s communications that expressly advocate the election or defeat of candidates.

To qualify as a member of a membership association under current FEC rules, a member must satisfy one of the following three criteria:

- Pay regular dues and be entitled to vote for at least one member of the association’s “highest governing body” or for those who choose at least one member of that body; or
- Have a significant financial attachment to the association, not merely the payment of dues; or
- Have the right to vote directly for all those on the association’s highest governing board.

In addition, one might qualify as a member by virtue of having an organizational and financial attachment to the association that is significant enough to confer membership status, as determined by the Commission on a case-by-case basis. 11 CFR 114.1(e)(2), 100.8(b)(4)(iv)(B).

## Rulemaking

The Commission published a Notice of Proposed Rulemaking (NPRM) on who qualifies as a member of a membership association in December 1997, in response to a petition for rulemaking filed by the National Right to Life Committee, Inc. The petition sought revisions in the regulations in light of the decision in *Chamber of Commerce of the United States v. FEC*. In that case, the U.S. Court of Appeals for the District of Columbia Circuit held that the FEC’s rules on who could be considered a member were unduly restrictive as applied to the U.S. Chamber of Commerce and the American Medical Association. 11 CFR 100.8(b)(4)(iv) and 114.1(e).

In its decision, the court of appeals concluded that the FEC’s regulatory definition of “member” did not square with the Supreme Court’s definition in *FEC v. National Right to Work Committee (NRWC)*. 459 U.S. 197 (1982). In that case, the Supreme Court had ruled that “members of nonstock corporations were to

be defined . . . by analogy to stockholders of business corporations and members of labor unions . . . . [which] suggest[ed] that some relatively enduring and independently significant financial or organizational attachment is required . . . .” According to the court of appeals, the Commission’s rules interpreted the disjunctive “or” between “financial” and “organizational” as if the Supreme Court had used the conjunctive “and.” The court also concluded that the voting requirements in the FEC’s membership rules “ignored other indications of organizational attachment.”

In response to the court’s decision, the Commission’s initial NPRM sought comments on three alternative definitions of member. All three alternatives would have retained the three preliminary requirements set forth in the current rules: that the membership association specifically provide for members in its articles and by-laws, expressly solicit members and acknowledge the acceptance of membership by, e.g., sending a membership card or including the new member on a mailing list. The alternatives differed on the amount of dues required and whether any additional organizational attachments were necessary. (See *Annual Report 1997* for details.)

The Commission held a public hearing concerning these proposals on April 29, 1998, but commenters offered no consensus on which alternative would best suit membership organizations.

After considering these comments, the Commission published a second Notice of Proposed Rulemaking (NPRM) on December 16, 1998, offering further proposals.

The second NPRM focused primarily on the attributes of membership organizations. It suggested revisions to the preliminary requirements that an organization must meet to qualify as a membership organization—changes that were not proposed in the original NPRM. The proposed changes would:

- Replace the requirement that a membership organization expressly provide for members in its articles and bylaws with a more general statement that such organizations should be composed of members;
- Require that a membership organization be self governing;
- Require membership organizations to inform their members of their rights, qualifications and obliga-

tions under the organization’s articles, bylaws and other formal organization documents, and to make these documents available to their members; and

- Clarify that the current membership communications exception at 11 CFR 100.8(b)(4) applies only to communications made at the direction or control of a membership organization, and not of any outside party.

The second NPRM also addressed the definition of member, as explained below. The proposal would require members to renew membership in writing on an annual basis, as well as meet one of the following requirements:

- Members would have to pay annual dues set by the membership organization. The regulations would not specify a minimum amount of dues.
- In those situations where members were not required to pay a specific amount of annual dues, membership organizations would have to provide “direct and enforceable participatory and governing rights” to members. The new rules would provide some examples of the types of activities that would signify a sufficient organizational attachment, but they would not set out an exhaustive list.
- Retired union members who had paid dues and been active members of the organization for at least 10 years would be granted member status. Their past membership, the Commission suggested, would satisfy the requirement of a significant financial attachment to the membership organization and their union insurance policies and retirement benefits would provide significant organizational attachment.

Comments on the proposed rules were due by February 1, 1999.<sup>4</sup>

## Enforcement and Legal Standing

During 1998, the Commission faced several court challenges regarding its enforcement activity. Under 2 U.S.C. §437g(a)(8)(A), anyone who files a complaint with the FEC may seek court intervention if the

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<sup>4</sup> The Commission held a public hearing on March 17, 1999, concerning the proposed rules.

agency fails to complete action on the complaint within 120 days. The court then reviews the Commission's actions on the matter, and determines whether the agency acted contrary to law.

In many of this year's cases, the legal standing of those bringing the challenge was also at issue. If there is no standing, the court lacks jurisdiction to consider the case.

To demonstrate standing to litigate an issue in federal court, the plaintiff must satisfy a three-part test established by the Supreme Court in *Lujan v. Defenders of Wildlife* (1992). First, the plaintiff must have suffered an "injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." Second, the injury must be "fairly traceable to the challenged act of the defendant." And third, the injury must be "likely to be redressed by a favorable decision." In short, the test requires injury in fact, causation and redressability.

In its 1998 decision in *Steel Co. v. Citizens for a Better Environment*, the U.S. Supreme Court held that, in most circumstances, federal courts must determine whether the plaintiff in a case has legal standing before reaching the merits of the case.

### **DSCC v. FEC**

Based on the *Steel Co.* ruling, on April 10, 1998, the U.S. Court of Appeals for the District of Columbia Circuit remanded two enforcement-related cases to the district court after finding that the question of standing had not been resolved. Both of these cases had been filed by the Democratic Senatorial Campaign Committee (DSCC) against the FEC. The court declined to reach any other issue in these cases until the standing question was resolved.

The suits challenge the FEC's response to administrative complaints the DSCC had filed alleging that the National Republican Senatorial Committee (NRSC) had made soft money donations to nonparty organizations, which then had used the money to support the Republican nominees in Senate races in 1992 and 1994.

At year's end, the cases were pending in the district court.

### **Akins v. FEC**

Later in the year, on June 1, the U.S. Supreme Court ruled that James Akins and several other former government officials had standing to challenge the Commission's dismissal of an administrative complaint they had filed in 1989 against the American Israel Public Affairs Committee (AIPAC).

The complaint had alleged, *inter alia*, that AIPAC, an organization that lobbies public officials and disseminates information about federal candidates and officeholders, had failed to register and report as a political committee after it had made contributions to and expenditures on behalf of federal candidates in excess of \$1,000.<sup>5</sup>

***Injury in Fact.*** The Court found that the injury in fact in this case was that the plaintiffs were prevented from obtaining the statutorily-required information about AIPAC's donors and the organization's campaign-related contributions and expenditures that could have helped them to cast a more educated vote. It said that there is no reason to doubt that this information would have helped the plaintiffs evaluate candidates for public office, especially those candidates who received assistance from AIPAC. Thus, the court said, the injury in this case was both "concrete" and "particular." The FEC argued that the lawsuit involved only a "generalized grievance" shared by many (a kind of grievance for which standing usually is not conferred); the Supreme Court disagreed. In such cases of "generalized grievance," the Court said, the harm is usually "of an abstract and indefinite nature"—not the kind of concrete harm that the Court found here.

***Causation and Redressability.*** The high Court also found that the harm asserted by the plaintiffs was "fairly traceable" to the FEC's decision to dismiss their administrative complaint, and that the courts have the power to redress this harm.

In addition to finding standing under the three-part test, the Court also found that the plaintiffs' inability to

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<sup>5</sup> The Commission dismissed the complaint because, in its view, AIPAC did not qualify as a political committee since its major purpose was not influencing federal elections. (For further discussion of "major purpose," see page 29.)

obtain information about AIPAC's campaign-related finances satisfied prudential standing because it was the kind of injury that the Act seeks to address.

The Court did not address the merits of the case, but instead referred matters concerning AIPAC's membership and major purpose to the Commission for further consideration. (See pages 22 and 29, respectively.)

#### **Judicial Watch, Inc. v. FEC**

In a ruling based on the *Akins* decision, the U.S. District Court for the District of Columbia denied the FEC's motion to dismiss this suit, finding that Judicial Watch, Inc., had standing to challenge the agency's dismissal of an administrative complaint it had filed.

The dismissed complaint alleged that the White House, Democratic National Committee (DNC), Department of Commerce and Clinton administration had sold seats on foreign trade missions for large campaign contributions to the DNC and the Clinton/Gore 1996 reelection campaign. Judicial Watch contended that the contributions violated 18 U.S.C. §600, a criminal statute which makes it unlawful to promise any special benefit or treatment as a reward for political activities in support of or opposition to a particular candidate, election or political event.

The FEC moved to dismiss this case for lack of standing. The FEC claimed that Judicial Watch failed to allege an injury to itself flowing from the Commission's dismissal of its administrative complaint.

The court disagreed. It pointed out that, in *Akins*, the Supreme Court concluded that, for purposes of standing, an injury was created when a plaintiff failed to obtain information that had to be publicly disclosed. Thus, affected voters who do not have access to such information have standing to sue. The district court held that, in this case, information that trade mission seats may have been exchanged for contributions to the DNC and Clinton/Gore committee was "important and useful to voters."

The FEC also argued that Judicial Watch did not have standing because its administrative complaint failed to identify violations of the Act over which the Commission had jurisdiction. The complaint only alleged possible criminal violations, and did not allege

that any information required by the Act to be disclosed had been withheld. The court stated, however, that no complainant is required to supply the FEC with a "legal theory" under the Act in order for the agency to pursue an administrative complaint. "At minimum, the FEC, as an agency acting in the public interest, should not interpret complaints narrowly," the court stated.

Although neither party had addressed the merits, and the administrative record had not yet been filed, the court, *sua sponte*, granted summary judgment to Judicial Watch and remanded the case to the Commission. The court concluded that the matters outlined in the administrative complaint could raise reporting issues. The court suggested that a contribution in exchange for participation in trade missions might be classified as an offset to a contribution, a refund of a contribution or a disbursement. If so, the court indicated that the DNC and Clinton/Gore committee might have had an obligation to report such transactions.

The court further noted that the FEC did not notify Judicial Watch that its administrative complaint was deficient, as the court decided is required by 11 CFR 111.5. The court also stated that, "If ... the allegations were not within its prosecutorial jurisdiction, the FEC should have referred the matter to the Department of Justice or the appropriate agency."

The court also dismissed the FEC's argument that a huge backlog of cases at the agency required it to dismiss this complaint because of a lack of financial and human resources. Although the court had not seen the administrative record, it said the FEC could not rely on this rationale because it had not been raised in the administrative proceedings.

The court remanded the case to the FEC and ordered it to decide whether to pursue the administrative complaint within 120 days. The FEC appealed, and the D.C. Circuit granted the Commission a stay of the district court's decision pending appeal.

#### **Gottlieb v. FEC**

In another enforcement-related suit, the U.S. Court of Appeals for the District of Columbia Circuit affirmed a lower court ruling that dismissed *Gottlieb v. FEC* for lack of standing.

Alan Gottlieb, together with several other voters and organizations, had filed an administrative complaint with the FEC in March 1995 alleging that President Clinton's 1992 campaign received \$1.4 million in excess of its entitlement under the Presidential Primary Matching Payment Account Act. According to the complaint, the excess payment occurred because, following President Clinton's nomination, his campaign transferred \$1.4 million in private contributions to his General Election Legal and Accounting Compliance Fund (GELAC Fund) instead of using the funds to pay his primary debts. According to appellants, the transfer violated 11 CFR 9003.3(a)(1), as it was written at the time of the alleged violation, because the regulation permitted transfers of funds only in excess of amounts needed to pay primary debts.

The Commission dismissed the administrative complaint after deadlocking in a 3-3 vote. Mr. Gottlieb then filed suit, asking the district court to find that the FEC's action had been contrary to law. The district court found that the appellants did not have standing to pursue their claims in court because they had not been harmed by the Commission's decision. In its May 22 decision affirming the lower court, the appellate court called Mr. Gottlieb's claims of injury "speculative" and "amorphous."

### **Hollenbeck v. FEC**

In another case dismissed for lack of standing, the U.S. District Court for the District of Columbia granted the FEC's motion to dismiss *Hollenbeck v. FEC*.

Thomas Hollenbeck, a Pennsylvania resident, had filed suit against the FEC after it had dismissed his administrative complaint alleging that a 1994 candidate for federal office had accepted excessive loans.

In its July 27 decision, the district court concluded that Mr. Hollenbeck did not meet the requirements for standing because he failed to allege a "concrete and particularized injury" to himself that came about as a result of the Commission's dismissal of a complaint alleging a violation of the Act. Mr. Hollenbeck, the court said, only vaguely alleged an injury, claiming violations of his First and Fourteenth Amendment rights and the need to protect the public from abuses by federal candidates.

## **Limited Liability Company**

Neither the Act nor FEC regulations specifically address the status of limited liability companies (LLCs), which bear some resemblance to both corporations and partnerships. However, the Commission has addressed the status of LLCs, case by case, in several advisory opinions, including two issued during 1998. Concerned about this case-by-case approach, the Commission published a notice of proposed rulemaking on the subject on December 18, 1998.

In the 1998 advisory opinions, the Commission stood by the precedent it had established in previous opinions, determining that LLCs in California and Illinois should not be considered either partnerships or corporations. Instead, the Commission concluded, in each case, that the LLC would be considered "any other organization or group of persons" for purposes of the Act. As such, it could use its treasury funds to influence federal elections without also attributing its contributions to its individual members.

In making this determination, the Commission noted:

- The state's recognition of the LLC as a distinct form of business, separate from a corporation or partnership, with its own statutory framework;
- The state's requirements for naming the LLC;
- The corporate attribute of limitation of liability for all members; and
- The lack of the general corporate attributes of free transferability of interests and continuity of life.

The Commission's approval of LLC contributions was further conditioned on the assumption that none of the members of the LLC was in a category prohibited from contributing to federal elections—corporations, foreign nationals or federal contractors. See AOs 1998-11 and 1998-15.

The Commission's proposed rules offer two alternatives, both of which would abandon the precedent of these advisory opinions. One alternative would treat LLCs as partnerships. As such, contributions made by the LLC would count not only against its own contribution limit, but proportionally against each contributing partner's limit. Under the other alternative, an

LLC's status would be determined by its federal tax classification—either as a partnership or as a corporation.<sup>6</sup>

## Contributions in the Name of Another

Under the Act and Commission regulations, it is illegal for one person to make a contribution in the name of another person. 2 U.S.C. §441f. Violations of this provision often involve attempts to mask other transgressions. During 1998, the Commission concluded a number of enforcement actions involving §441f in which respondents had attempted to conceal excessive contributions and corporate contributions by laundering money through lawful contributors.

### MUR 4704

In Matter Under Review (MUR) 4704, the American Family Life Assurance Company (AFLAC) paid an \$80,000 civil penalty for making corporate contributions in the names of others, in violation of 2 U.S.C. §§ 441b(a) and 441f. The violations occurred when AFLAC Vice-President Warren B. Steele II asked two of the company's sales representatives and their wives each to contribute \$1,000 to help retire Henry Espy's 1994 campaign debt, and then authorized AFLAC to reimburse them for their contributions.

While Mr. Steele knew that the reimbursement was improper and that it violated AFLAC policies, he nonetheless orchestrated the repayments, identifying them as administrative expenses. When AFLAC discovered the reimbursements, it requested a full refund from the sales representatives and their wives.

The Commission concluded that AFLAC knowingly and willfully violated both the 441f ban on contributions in the name of another and the 441b(a) prohibition against corporate contributions.

This MUR grew out of Independent Counsel Donald C. Smaltz's investigation of Mr. Espy's brother, former Agriculture Secretary Mike Espy.

### MUR 4772

In another case involving corporate contributions made in the names of others (MUR 4772), Sun-Land Products of California paid an \$80,000 civil penalty for knowingly and willfully violating §§441b(a) and 441f.

During the 1992 campaign, Sun-Land's Board of Directors paid 16 nonmanagement directors \$2,500 stipends and suggested they make contributions to certain political campaigns and groups. Between March and May of that year, Sun-Land sent the collective contributions from some of the 16 employees it targeted to the Bush-Quayle '92 Primary Committee. Some of the stipend recipients sent contributions directly to Bush-Quayle '92 using their own names or the names of family members. In all, the targeted employees sent \$16,000 to Bush-Quayle '92.

In 1993, Sun-Land repeated its stipends-for-contributions plan. This time, the company collected and sent contributions to Campaign America, a federal PAC. Again, some of the targeted employees sent contributions directly to the PAC in their names or the names of family members. Campaign America received a total of \$21,000 in contributions from Sun-Land employees.

This matter was referred to the FEC by the Department of Justice.

### MUR 4582

In MUR 4582, three individuals paid a total of \$15,500 in civil penalties for their role in a contribution reimbursement scheme developed by their attorney, Lalit Gadhia.

During the 1993-1994 election cycle, Mr. Gadhia asked many individuals, including three clients, to make contributions to the Indian-American Leadership Investment Fund (IALIF) or to certain candidate committees. Mr. Gadhia promised them that their contributions would be reimbursed in cash as long as they or someone else could provide him a contribution in the form of a personal check of \$1,000. In the end, the

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<sup>6</sup> The Notice of Proposed Rulemaking also included a proposal that would permit subchapter S corporations to make contributions that are attributed only as personal contributions from the individual stockholders of the corporation.

clients, those whom they solicited and others contributed more than \$40,000. Mr. Gadhia subsequently reimbursed these individuals for their contributions and those they solicited.<sup>7</sup>

The candidate committees that received contributions from the three clients included Ben Cardin for Congress, Citizens for Sarbanes, Robb for the Senate, Murtha for Congress and Citizens for Senator Wofford. All of these committees have since disgorged the funds from their accounts, and paid the money to the U.S. Treasury.

## Party Status

The Commission issued four advisory opinions in 1998 that addressed state party committee status and one that addressed both state and national party status. These designations are important because the Act grants qualified state and national party committees certain spending rights that are not available to other types of committees. A state or national party, for example, may make coordinated party expenditures in support of its general election nominees, and may authorize qualified local party committees to spend against its coordinated expenditure limit. 2 U.S.C. §441a(d). As another example, state party committees may spend unlimited amounts for certain activities that benefit federal candidates but are not considered contributions or expenditures. These “exempt activities” include preparing and distributing slate cards, sample ballots and campaign materials, and conducting voter drives on behalf of the party’s Presidential and Vice Presidential nominees. 2 U.S.C. §431(8)(B)(v), (x) and (xi).

### State Party Status

Under the Act and Commission regulations, a “state committee” is defined as an organization which, by virtue of the bylaws of a political party, is respon-

sible for the day-to-day operations of the party at the state level, as determined by the Commission.

In AO 1992-30, the Commission established two criteria necessary to qualify as a state committee of a political party. First, the organization must engage in activities that “are commensurate with” the day-to-day operations of a party at a state level. Second, the state organization must gain ballot access for its federal candidates who, in turn, must qualify as “candidates” as defined at 2 U.S.C. §431(2).

Applying these criteria to the factual circumstances of the 1998 advisory opinion requests, the Commission concluded that the Green Party of New Mexico, the Reform Party of Idaho, the Maine Green Party Council and the American Heritage Party in Washington satisfied the requirements for state party status. (See Advisory Opinions 1997-29, 1998-3, 1998-23 and 1998-24.)

### National Party Status

The Act defines a national party committee as the organization that, by virtue of a party’s bylaws, is responsible for the day-to-day operations of that party at the national level. The Commission relies on several criteria to determine whether a political party has demonstrated sufficient activity on the national level to qualify. Those criteria include:

- Nominating qualified candidates for President and various Congressional offices in numerous states;
- Engaging in certain activities—such as voter registration and get-out-the-vote drives—on an ongoing basis;
- Publicizing the party’s supporters and primary issues throughout the nation;
- Holding a national convention;
- Setting up a national office; and
- Establishing state affiliates.

A party cannot qualify for national committee status if its activity is focused only on the Presidential and Vice Presidential election, if the activity is limited to one state or if the party has only a few federal candidates on a limited number of state ballots. Nevertheless, ballot access for Presidential candidates is a prerequisite for any organization trying to attain national committee status.

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<sup>7</sup> Lalit Gadhia was criminally prosecuted, convicted and incarcerated for these actions. Subsequently, the Commission found probable cause to believe that Mr. Gadhia knowingly and willfully made contributions in the names of others and solicited contributions from foreign nationals.

The Commission applied these criteria to the facts outlined in Advisory Opinion 1998-2 and determined that the Reform Party USA qualified as a “national committee” for purposes of the Act. The Commission also determined that 29 Reform Party affiliates satisfied the two criteria for state party status.

## Major Purpose Test

In 1998, the Supreme Court reviewed *Akins v. FEC*, a case involving the definition of “political committee.” The Act defines a political committee as any group of persons that either receives contributions or makes expenditures exceeding \$1,000 per year for the purpose of influencing a federal election. 2 U.S.C. §431(4). In applying this definition, the Commission has considered an additional factor—whether a group’s major purpose is the nomination or election of candidates.

This “major-purpose test” dates back to the Supreme Court’s *Buckley v. Valeo* decision in which the Court ruled that, in order to avoid difficult constitutional questions, the definition of political committee “need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate.” The Court reiterated this restriction in *FEC v. Massachusetts Citizens for Life*.

In December 1996, the U.S. Court of Appeals for the District of Columbia Circuit, sitting en banc (i.e., with all active judges present), ordered the Commission to reconsider its dismissal of a complaint alleging that the American Israel Public Affairs Committee (AIPAC) had violated the Act by failing to register as a political committee. The court said that the Commission should have reviewed the complaint based solely on the Act’s definition of political committee and that the major-purpose test was inapplicable when an organization made coordinated expenditures or contributions.

In 1997, the U.S. Supreme Court granted the petition for *certiorari* filed by the Solicitor General on behalf of the Commission in this case. On June 1, 1998, the Court ruled that the plaintiffs in *Akins* had standing to challenge the Commission’s dismissal of their ad-

ministrative complaint. (See page 23.) With regard to the “major purpose” test, the Court referred the matter back to the FEC because of uncertainty about the threshold issue of AIPAC’s “membership.”

The FEC had held that AIPAC’s campaign-related communications were directed to many people who did not qualify as “members” under the Act. (This was important because communications directed to a membership organization’s own members are not considered “contributions” or “expenditures” under the Act, and do not count toward the \$1,000 statutory threshold for “political committee” status.) Since that decision, however, the Commission has had to revisit its member regulations because of the decision in *Chamber of Commerce of the United States v. FEC*. In that case, an appellate court said that the FEC’s regulations defining “member” were invalid because they were unduly restrictive. The Commission is in the process of conducting a rulemaking that would modify language in its regulations to effectively broaden the class of people who would qualify as members of membership organizations. (See page 22.)

If the Commission now concludes that AIPAC’s supporters are “members” under the Act, then its disbursements for communications to them would not count as the kind of expenditures that could trigger the requirement to register and report as a political committee. In that case, there would be no need to address whether the “major purpose” test was applicable—the issue that was before the Court.

On the other hand, the court said, if the Commission again concludes that AIPAC’s supporters are not members, then the Commission and the lower courts, in reconsidering the plaintiffs’ arguments, can reevaluate AIPAC’s claims and actions, including questions related to whether AIPAC qualified as a political committee and to the relevance of the major-purpose test in that regard.



## Chapter Five Presidential Public Funding

Public funding has been a key part of our Presidential election system since 1976. Using funds from the \$3 tax checkoff, the federal government provides matching funds to qualified candidates for their primary campaigns, funding to major parties for Presidential nominating conventions, and grants to Presidential nominees for their general election campaigns.

### Shortfall Predicted for 2000

During 1998, the Commission warned of a significant shortfall in the Presidential Election Campaign Fund during the 2000 Presidential elections. That forecast was based on several factors:

- Payments from the Fund are adjusted for inflation, but Fund receipts are not.
- It is likely that three parties will participate in the public funding program in 2000.
- There will be open races for the 2000 Democratic and Republican nominations.
- Participation in the tax checkoff is likely to remain the same over the next two years.

Projected payments for the 2000 Democratic and Republican national conventions are \$13.3 million each. Assuming the Reform Party seeks and qualifies for public funding, it should receive about \$2.5 million for its convention, based on its performance in the 1996 election. Public funding for the general election for the two major parties is projected to be approximately \$67.9 million a piece. The Reform Party nominee is projected to receive about \$12.7 million.

With regard to matching primary funds, Treasury Department regulations require that the payments be made from funds actually contained in the Presidential Fund, minus the amount needed for the general election and convention payments. In effect, payments for the general election and conventions must be set aside. Receipts anticipated from taxpayers filing their returns in the year of the election cannot be used. Funds left over, after monies for the conventions and general election are set aside, are parceled out to qualified primary candidates.

Total primary matching funds available through the end of 2000 are estimated to be \$91.2 million, but demand for those funds is estimated to run from \$95

to \$105 million. While the total amounts needed and available will approach a balance by the end of the year, the bulk of the demand will occur early in the year before new checkoff receipts are deposited. Consequently, a shortfall is expected at the beginning of the 2000 election year. (The demand figure, however, is a rough estimate, given the uncertainty over the number of primary candidates who will raise sufficient matchable contributions (individual donations of \$250 or less) to qualify for primary funding.)

It appears likely that primary candidates will get only a portion of their entitlements early in the primary season—when the money is often most needed.

During the last Presidential election cycle, the first payment to qualified primary candidates on January 1, 1996, represented 60 percent of what they were entitled to receive. Most candidates were able to secure bridge loans until checkoff receipts for 1996 overcame the shortfall in April.

In the coming election, the shortfall may be more severe. The agency estimated in 1998 that, depending on the number of participating candidates and the amount of matchable contributions they raise, initial matching payments on January 2, 2000, might represent less than 40 percent of the funding to which the candidates are entitled.<sup>1</sup>

If a significant number of candidates remain eligible for matching funds throughout the Presidential primaries, subsequent entitlements may not be fully funded until new checkoff moneys are received in 2001. That means that, based on these projections, primary candidates may not get their full share of the fund until after the general election has been decided.

### Public Funding Regulations

In preparation for the 2000 election, the Commission published a Notice of Proposed Rulemaking (NPRM) on December 16, 1998, outlining proposed changes to the rules governing Presidential primary and general election candidates. Many of the propos-

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<sup>1</sup> A staff memo to the Commissioners, dated March 12, 1999, revised the projection. The memo estimated that the initial payout could be as low as 32 cents on the dollar.

als were designed to address issues that arose during the past election cycle, and to anticipate issues that might arise in 2000.

The NPRM addressed the following topics:

- Coordination between publicly funded presidential candidates and their political parties
- Qualified campaign expenses
- Compliance and fundraising costs
- Modification of the audit and repayment process
- Bases for repayment determinations
- Net outstanding campaign obligations/capital assets
- Transportation and services provided to the media
- Documentation of disbursements
- Matching fund documentation
- Pre-nomination Vice Presidential committees
- Nominating conventions and host committees
- Technical and conforming amendments

The deadline for comments was February 1, 1999.

## Electronic Filing by Presidential Campaigns

New regulations mandating electronic filing of reports by Presidential campaign committees that receive public funding and maintain computerized campaign finance records became effective November 13, 1998. The new regulations require the Presidential committees to file reports with the FEC by either mailing a diskette with the information on it or transmitting the data via the Internet.

Electronic filing by Presidential committees is intended to enhance public disclosure and to save a substantial amount of time and Commission resources. While the number of Presidential contenders is usually small, their reports can be voluminous, stretching for hundreds and sometimes thousands of pages.

## Update on Presidential Debate Lawsuits

In April 1998, Perot '96, Inc., and the Natural Law Party (NLP), along with its 1996 Presidential and Vice Presidential candidates, filed lawsuits asking the U.S. District Court for the District of Columbia to find that

the FEC acted contrary to law when it dismissed their administrative complaints. The complaints alleged several violations of campaign finance law related to the Commission on Presidential Debate's (CPD's) sponsorship of Presidential debates in 1996. The plaintiffs also asked the court to order the Commission to take action on those complaints.

In the alternative, Perot '96 and the NLP asked the court to find that the FEC's regulations governing nonpartisan candidate debates found at 11 CFR 110.13 and 114.4(f), as applied by the Commission when it dismissed their complaints against the CPD, are inconsistent with the Act. They contend that the regulations, as applied, constitute an illegal exception to the statutory ban on corporate contributions and expenditures under 2 U.S.C. §441b. While the law generally prohibits corporations from making contributions or expenditures in connection with federal elections, Commission regulations make an exception for bona fide nonprofit corporations to sponsor public debates among candidates, provided they follow rules for conducting such debates. The plaintiffs argued that, if the court finds that these regulations are invalid, it should then declare that all expenditures made or contributions received by the CPD are unlawful under the Federal Election Campaign Act (the Act).

The cases were pending at year's end.

## Audits of 1996 Presidential Campaigns

By December 1998, the Commission had approved final audit reports for all but five of the 1996 publicly funded Presidential primary and general election campaigns and nominating conventions. Four of the remaining audit reports were pending before the Commission, and the fifth was scheduled to be presented in early 1999.

The law requires the Commission to audit all Presidential candidates and convention committees receiving federal funds to ensure that the funds are not misused and that the committees maintain proper records. The chart on pages 34-35 tracks the Commission's progress through December 31, 1998.

## Repayments

Once a Presidential election is over, the Commission audits all of the candidates and committees that received public funds to ensure that they used those funds only for qualified campaign expenses and that they maintained proper records and filed accurate reports. These audits are mandated under the Presidential Election Campaign Fund Act. Sometimes an audit finds that a candidate or committee exceeded its expenditure limits, spent public funds on nonqualified expenses or ended the campaign with a surplus. In those cases, the Commission may require the candidate or committee to make a repayment to the U.S. Treasury. During 1998, after auditing several 1996 Presidential campaigns, the Commission determined that some repayments were required.

### Perot '96

Based on its audit of Perot '96, the Presidential campaign committee of Reform Party nominee Ross Perot, the FEC determined that the committee had to repay to the U.S. Treasury \$2,310,127 in public funding it received during the 1996 Presidential election. This is the amount by which the candidate exceeded his entitlement.

The excess entitlement resulted primarily from the inclusion of more than \$1.4 million in projected litigation expenses in the committee's Statement of Net Outstanding Qualified Campaign Expenses. Perot '96 had budgeted that amount to cover expenses it expected to incur for litigation related to the 1996 Presidential election. While the committee argued that the \$1.4 million was directly related to the 1996 campaign, the audit report concluded that the projected litigation expenses were not qualified campaign expenses because they were not incurred prior to the close of the expenditure report period—December 5, 1996—and were not valid winding-down costs. 11 CFR 9004.4(a).

### Hagelin for President

The Commission determined that Dr. John Hagelin For President, 1996, the Presidential campaign committee of Natural Law Party nominee Dr. John Hagelin, conducted its campaign with no material

problems in complying with the Act and Commission regulations. The committee had received \$504,831 from the U.S. Treasury.

### Fulani Repayment Stay Lifted

On September 18, 1998, the Commission voted to lift the stay on repayment, which it had granted Lenora B. Fulani and the Fulani for President Committee. The Commission had stayed \$115,875.54 of the repayment determination while the committee disputed some of the issues in the Commission's final determination. The Commission lifted the stay after the U.S. Court of Appeals for the District of Columbia Circuit denied the committee's petition seeking judicial review of the FEC's repayment determination of \$117,269.

The Commission also granted the committee a 90-day extension to make the repayment, and concluded that the committee had to pay interest on the repayment amount, dating back to August 1997—the original due date for the repayment.

**CHART 5-1 (Part A)**  
**1996 Presidential Audit Reports and Determinations**

**Primary Election Candidate Committees**

Candidate/Committee	Released/ Approved	Public Funds Received	Repayment/ Payment	Bases for Repayment/Payment
Alexander for President	6/19/97 6/19/97	\$4,573,444	\$884,993	Matching Funds received in excess of entitlement, nonqualified campaign expenses and stale-dated checks†
Buchanan for President	-- --	\$10,983,475	\$13,429*	
Clinton/Gore ' 96	12/3/98 --	\$13,412,198	\$5,500*	Stale-dated checks† and contributions submitted for matching, which were subsequently refunded
Dole for President	12/3/98 --	\$13,545,771	\$13,250*	Contributions submitted for matching, which were subsequently refunded
Gramm for President	6/26/97 6/26/97	\$7,356,221	\$417,363	Matching Funds received in excess of entitlement, stale-dated checks† and contributions submitted for matching, which were subsequently refunded
Hagelin for President	5/11/98 5/11/98	\$504,831	0	N/A
Keyes for President	1/15/98 1/15/98	\$2,145,766	\$84,736	Nonqualified campaign expenses and stale-dated checks†
La Rouche for President	7/17/97 7/17/97	\$624,692	\$174,623	Surplus repayment, matching funds received in excess of entitlement and contributions submitted for matching, which were subsequently refunded or returned as unpaid by the bank
Lugar for President	9/18/97 5/19/98	\$2,657,244	\$14,294	Nonqualified campaign expenses and stale-dated checks†
Specter for President	6/12/97 6/12/97	\$1,010,457	\$97,311	Stale-dated checks† and prohibited contributions
Wilson for President	7/31/97 8/27/97	\$1,724,257	\$104,740	Nonqualified campaign expenses and stale-dated checks†

\* Final repayment determinations are pending Commission final vote or committee appeal.

† Stale-dated checks are returned to the General Fund of the US Treasury.

‡ The Commission also audited the Kemp for Vice President Committee.

**CHART 5-1 (Part B)**  
**1996 Presidential Audit Reports and Determinations**

**Convention and Host Committees**

Committee Name	Released/ Approved	Public Funds Received	Repayment/ Payment	Bases for Repayment/Payment
DNC Convention	6/25/98	\$12,364,000	\$185,759	Unspent federal funds and nonqualified convention payments
RNC Convention	4/23/98	\$12,364,000	\$4700	Stale-dated checks†
DNC Host/Chicago	6/18/98 6/25/98	N/A		
RNC Host/San Diego	4/23/98	N/A		

**General Election Candidate Committees**

Candidate/Committee	Released/ Approved	Public Funds Received	Repayment/ Payment	Bases for Repayment/Payment
Clinton/Gore ' 96 General	--	\$61,820,000	0*	
Dole for President General‡	12/3/98 --	\$61,820,000	0*	
Perot ' 96 General	12/4/97 12/4/97	\$29,055,400	\$1,706,915	Funds received in excess of entitlement

\* Final repayment determinations are pending Commission final vote or committee appeal.

† Stale-dated checks are returned to the General Fund of the US Treasury.

‡ The Commission also audited the Kemp for Vice President Committee.

## Chapter Six Legislative Recommendations

In early 1999, the Federal Election Commission submitted to Congress and the President two separate sets of legislative recommendations. The first set contained three recommendations that the Commission deemed urgent. The second set, comprising 38 additional recommendations, was divided into two parts. The first contained recommendations to ease the burden on political committees or to streamline administration of the law. The second contained primarily technical recommendations aimed at correcting outdated or inconsistent parts of the law. The entire collection of 41 recommendations follows.

### ***Urgent Recommendations:***

#### **Disclosure**

##### **Electronic Filing Threshold (revised 1999)<sup>1</sup>**

*Section:* 2 U.S.C. §434(a)

*Recommendation:* The Commission recommends that Congress give the FEC authority to require committees with a certain level of financial activity to file FEC reports electronically.

*Explanation:* Public Law 104-79, effective December 28, 1995, authorized the electronic filing of disclosure reports with the FEC. As of January 1997, political committees (except for Senate campaigns) may opt to file FEC reports electronically.

The FEC has created the electronic filing program and is providing software to committees in order to assist committees that wish to file reports electronically. To maximize the benefits of electronic filing, Congress should consider requiring committees that meet a certain threshold of financial activity to file reports electronically. The FEC would receive, process and disseminate the data from electronically filed reports more easily and efficiently, resulting in better use of Commission resources. Moreover, information

in the FEC's database would be standardized for committees at a certain threshold, thereby enhancing public disclosure of campaign finance information. In addition, committees, once participating in the electronic filing program, should find it easier to complete and file reports.

#### *Legislative Language:*

##### **ELECTRONIC FILING THRESHOLD**

Section 302(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)) is amended by striking paragraph (11) and inserting the following:

‘(11)(A) The Commission shall promulgate a regulation under which a person required to file a designation, statement, or report under this Act—

- ‘(i) is required to maintain and file a designation, statement, or report for any calendar year in electronic form accessible by computers if the person has, or has reason to expect to have, aggregate contributions or expenditures in excess of a threshold amount determined by the Commission; and
- ‘(ii) may maintain and file a designation, statement, or report in electronic form or an alternative form if not required to do so under the regulation promulgated under clause (i).

‘(B) The Commission shall make a designation, statement, report, or notification that is filed electronically with the Commission accessible to the public on the Internet not later than 24 hours after the designation, statement, report, or notification is received by the Commission.

‘(C) In promulgating a regulation under this paragraph, the Commission shall provide methods (other than requiring a signature on the document being filed) for verifying designations, statements, and reports covered by the regulation. Any document verified under any of the methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.’

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<sup>1</sup> This recommendation was also made by PricewaterhouseCoopers LLP in its *Technology and Performance Audit and Management Review of the Federal Election Commission*, pages 4-34 and 5-2.

## Campaign-Cycle Reporting<sup>2</sup>

*Section:* 2 U.S.C. §434

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

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

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

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<sup>2</sup> This recommendation was also made by PricewaterhouseCoopers LLP in its *Technology and Performance Audit and Management Review of the Federal Election Commission*, pages 4-29 and 5-2.

*Legislative Language:*

### CAMPAIGN CYCLE REPORTING

Paragraphs (2), (3), (4), (6), and (7) of section 304(b) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(b)(2), (3), (4), (6), and (7)) are amended by inserting after "calendar year" each place it appears the following: "(election cycle, in the case of an authorized committee of a candidate for Federal office)."

## Contributions and Expenditures

### Application of \$25,000 Annual Limit

*Section:* 2 U.S.C. §441a(a)(3)

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

*Explanation:* Section 441a(a)(3) now provides that a contribution to a candidate made in a nonelection year counts against the individual donor's limit for the year in which the candidate's election is held. This provision has led to some confusion among contributors. For example, a contributor wishing to support Candidate Smith in an election year contributes to her in November of the year before the election. The contributor assumes that the contribution counts against his limit for the year in which he contributed. Unaware that the contribution actually counts against the year in which Candidate Smith's election is held, the contributor makes other contributions during the election year and inadvertently exceeds his \$25,000 limit. By requiring contributions to count against the limit of the calendar year in which the donor contributes, confusion would be eliminated and fewer contributors would inadvertently violate the law. The change would offer the added advantage of enabling the Commission to better monitor the annual limit. Through the use of our data base, we could more easily monitor contributions made by one individual regardless of whether they were given to retire the debt of a

candidate's previous campaign, to support an upcoming election (two, four or six years in the future) or to support a PAC or party committee. Such an amendment would not alter the per candidate, per election limits. Nor would it affect the total amount that any individual could contribute in connection with federal elections.

*Legislative Language:*

APPLICATION OF \$25,000 ANNUAL LIMIT

Section 315(a)(3) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(3)) is amended by striking the second sentence of that paragraph.

## ***Part A: Other Recommendations\****

### **Disclosure**

#### **Incomplete or False Contributor Information (1999)**

*Section:* 2 U.S.C. §434

*Recommendation:* Congress should amend the Act to address the recurring problem of committees' failure to provide full disclosure about their contributors. First, Congress might wish to prohibit the acceptance of contributions until the contributor information is obtained and recorded in the committee's records. Second, Congress might wish to amend the law to make contributors or the committee liable for submitting information known by the contributor or the committee to be false.

*Explanation:* There is consistent concern expressed by the Commission, the public and the press about the failure of candidates and political committees to report the addresses and occupations of many of their

contributors. Some press reports have suggested that this requirement is deliberately evaded in order to obfuscate the special-interest origins of contributions.

Currently, in those cases where contributor information is inadequate, the law states that committees will be in compliance if they make "best efforts" to obtain the information. In 1994, the FEC revised its "best efforts" regulations at 11 CFR 104.7 to specify that a committee can demonstrate "best efforts" by requesting contributor identification in the initial solicitation (including a statement of the law) and making one follow-up request for each contribution lacking the required information. See 58 FR 57725 (October 27, 1993), as amended at 62 FR 23335 (April 30, 1997). Even with stronger regulations in place, however, political committees are still not obtaining and disclosing important contributor information in a timely fashion.

An inducement to campaigns and political committees to fulfill this responsibility would be to prohibit the acceptance and/or expenditure of contributions until the contributor information is obtained and recorded in the committee's records. In the case of publicly funded Presidential campaigns, Congress may wish to tie the eligibility of a campaign to receive public funding to its ability to gather contributor information. These restrictions would have an immediate effect upon a committee's ability to effectively campaign before the election, which would be a powerful inducement to campaigns and political committees to obtain the information promptly. Moreover, violations would be relatively easy to detect and prove by reviewing the committee's disclosure reports.

Finally, Congress may wish to add another mechanism for improving disclosure. Congress should make clear that the contributor or committee is liable for submitting information known by the provider of the information to be false. Taken together, these measures should improve efforts to achieve full disclosure.

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\* The date, 1999, appearing after the name of a recommendation, indicates the recommendation was new in 1999. Those recommendations without any date were carried over, in the same form, from previous years.



### **Waiver Authority**

*Section:* 2 U.S.C. §434

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

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

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

Unauthorized committees also face unnecessary reporting requirements. For example, the Act requires monthly filers to file Monthly reports on the 20th day of each month. If sent by certified mail, the report must be postmarked by the 20th day of the month. The Act also requires monthly filers to file a Pre-General election report 12 days before the general election. If sent by certified or registered mail, the Pre-General report must be postmarked by the 15th day before the election. As a result of these specific due dates mandated by the law, the 1998 October Monthly report, covering September, was required to be postmarked October 20. Meanwhile the 1998 Pre-General report, covering October 1 -14, was required to be postmarked October 19, one day before the October Monthly. A waiver authority would enable the Commission to eliminate the requirement to file the monthly report, as long as the committee includes the activity in the Pre-General Election Report and files

the report on time. The same disclosure would be available before the election, but the committee would only have to file one of the two reports.

In other situations, disclosure would be served if the Commission had the authority to adjust the filing requirements, as is currently allowed for special elections. For example, runoff elections are often scheduled shortly after the primary election. In many instances, the close of books for the runoff pre-election report is the day after the primary—the same day that candidates find out if there is to be a runoff and who will participate. When this occurs, the 12-day pre-election report discloses almost no runoff activity. In such a situation, the Commission should have the authority to adjust the filing requirements to allow for a 7-day pre-election report (as opposed to a 12-day report), which would provide more relevant disclosure to the public.

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

### **Commission as Sole Point of Entry for Disclosure Documents (revised 1999)<sup>3</sup>**

*Section:* 2 U.S.C. §432(g)

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

*Explanation:* The Commission has offered this recommendation for many years. Public Law 104-79, effective December 28, 1995, changed the point of entry

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<sup>3</sup> This recommendation was also made by PricewaterhouseCoopers LLP in its *Technology and Performance Audit and Management Review of the Federal Election Commission*, pages 4-37 and 5-2.

for reports filed by House candidates from the Clerk of the House to the FEC. However, Senate candidates and the Senatorial Campaign Committees still must file their reports with the Secretary of the Senate, who then forwards the copies on to the FEC. A single point of entry is desirable because it would conserve government resources and promote public disclosure of campaign finance information.

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

Public Law 104-79 also authorized the electronic filing of disclosure reports with the FEC. As of January 1997, political action committees, political party committees (except for the Senatorial Campaign Committees), House campaigns and Presidential campaigns all could opt to file FEC reports electronically. This filing option is unavailable to Senate campaigns and to the Senatorial Campaign Committees, though, because the point of entry for their reports is the Secretary of the Senate. It should be noted, however, that the FEC is working closely with the Secretary of the Senate to improve disclosure within the current law. For example, the FEC and the Secretary of the Senate are exploring ways to implement digital imaging of reports and to develop the capacity of the Secretary's office to accept electronically filed reports. While these measures, once completed, will undoubtedly improve disclosure, absent mandatory electronic filing, a single point of entry remains desirable. It is important to note as well that, if the Congress adopted mandatory electronic filing, the recommendation to change the point of entry for Senate filers would be rendered moot.

In addition, Public Law 104-79 eliminated the requirements for a candidate to file copies of FEC reports with his or her State, provided that the State has electronic access to reports and statements filed with the FEC. In order to eliminate the State filing requirement for Senate candidates and the Senatorial Campaign

Committees, it would be necessary for a State to have electronic access to reports filed with the Secretary of the Senate, as well as to reports filed with the Federal Election Commission. In other words, unless the FEC becomes the point of entry for reports filed by Senate candidates and the Senatorial Campaign Committees, either the States will need to have the technological and financial capability to link up electronically with two different federal offices, or these committees must continue to file copies of their reports with the State.

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

The Commission has authority to prepare and publish lists of nonfilers. It is extremely difficult to ascertain who has and who has not filed when reports may have been filed at or are in transit between two different offices. Separate points of entry also make it difficult for the Commission to track responses to compliance notices. Many responses and/or amendments may not be received by the Commission in a timely manner, even though they were sent on time by the candidate or committee. The delay in transmittal between two offices sometimes leads the Commission to believe that candidates and committees are not in compliance. A single point of entry would eliminate this confusion. Finally, the Commission notes that the report of the Institute of Politics of the John F. Kennedy School of Government at Harvard University, *An Analysis of the Impact of the Federal Election Campaign Act, 1972-78*, prepared for the House Ad-

ministration Committee, recommended that all reports be filed directly with the Commission (Committee Print, 96th Cong., 1st Sess., at 122 (1979)).

### **Fraudulent Solicitation of Funds (revised 1999)**

*Section:* 2 U.S.C. §441h

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

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

### **Draft Committees (revised 1999)**

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

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

*1. Bring Funds Raised and Spent for Undeclared but Clearly Identified Candidates Within the Act's Pur-*

*view.* Section 431(8)(A)(i) should be amended to include in the definition of "contribution" funds contributed by persons "for the purpose of influencing a clearly identified *individual* to seek nomination for election or election to Federal office...." Section 431(9)(A)(i) should be similarly amended to include within the definition of "expenditure" funds expended by persons on behalf of such "a clearly identified *individual*."

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

*3. Limit Contributions to Draft Committees.* The law should include explicit language stating that no person shall make contributions to *any* committee (including a draft committee) established to influence the nomination or election of a clearly identified *individual* for any federal office which exceed the contribution limits applicable to federal candidates (e.g., in the case of individuals, \$1,000 per election). Further, the law should clarify that a draft committee is separate from a campaign committee, for purposes of the contribution limits.

*Explanation:* These proposed amendments were prompted by the decisions of the U.S. Court of Appeals for the District of Columbia Circuit in *FEC v. Machinists Non-Partisan Political League* and *FEC v. Citizens for Democratic Alternatives in 1980* and of the U.S. Court of Appeals for the Eleventh Circuit in *FEC v. Florida for Kennedy Committee*. The District of Columbia Circuit held that the Act, as amended in 1979, regulated only the *reporting requirements* of draft committees. The Commission sought review of this decision by the Supreme Court, but the Court declined to hear the case. Similarly, the Eleventh Circuit found that "committees organized to 'draft' a person for federal office" are not "political committees" within the Commission's investigative authority. The

Commission believes that the appeals court rulings create a serious imbalance in the election law and the political process because a nonauthorized group organized to support someone who has not yet become a candidate may operate completely outside the strictures of the Federal Election Campaign Act. However, any group organized to support someone who has in fact become a candidate is subject to the Act's registration and reporting requirements and contribution limitations. Therefore, the potential exists for funneling large aggregations of money, both corporate and private, into the federal electoral process through unlimited contributions made to nonauthorized draft committees that support a person who has not yet become a candidate. These recommendations seek to avert that possibility.

## Contributions and Expenditures

### Contributions by Foreign Nationals (1999)

*Section:* 2 U.S.C. §441e

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

*Explanation:* The Commission has consistently interpreted and enforced section 441e of the Act, banning contributions by foreign nationals, as applying to both federal and nonfederal elections. However, some recent court decisions have rejected this interpretation. While the Commission continues to believe that the statute permits, and the legislative history supports, application of section 441e to nonfederal elections, statutory clarification of this point would be useful. Congress could clarify section 441e either by changing the term "contribution" to "donation," or by explicitly applying the definition of contribution included in section 441b(b)(2) to section 441e. In this regard, Congress may also wish to note that, while section 441b (banning corporate, national bank, and union spending in connection with elections) prohibits both "contributions" and "expenditures," section 441e (foreign nationals) prohibits "contributions" only. The Commission has sought to clarify this apparent dis-

crepancy through its regulation at 11 CFR 110.4(a), which prohibits both contributions and expenditures by foreign nationals. A statutory clarification would make clear Congress's intent.

### Election Period Limitations for Contributions to Candidates (revised 1999)

*Section:* 2 U.S.C. §441a

*Recommendation:* The Commission recommends that limits on contributions to candidates be placed on an election cycle basis, rather than the current per election basis.

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

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

election, and the difficulty of assuring that particular contributions are used for a particular election could be eliminated.

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

A campaign cycle contribution limit would allow donors to target more than \$1,000 toward a particular primary or general election, but this would be tempered by the tendency of campaigns to plan their fundraising and manage their resources so as not to be left without fundraising capability at a crucial time. Moreover, adoption of this recommendation would eliminate the current requirement that candidates who lose the primary election refund or redesignate any contributions collected for the general election.

### **Distinguishing Official Travel from Campaign Travel**

*Section:* 2 U.S.C. §431(9)

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

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

Another difficult area concerns trips in which both official business and campaign activity take place.

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

### **Contributions from Minors**

*Section:* 2 U.S.C. §441a(a)(1)

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

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

### **Lines of Credit and Other Loans Obtained by Candidates (revised 1999)**

*Section:* 2 U.S.C. §431(8)(B)(vii)

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

*Explanation:* The Act currently exempts from the definition of “contribution” loans that are obtained by political committees in the ordinary course of business from federally-insured lending institutions. 2 U.S.C. §431(8)(B)(vii). Loans that do not meet the requirements of this provision are either subject to the Act’s

contribution limitations, if received from permissible sources, or the prohibition on corporate contributions, as appropriate.

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

#### **Broader Prohibition Against Force and Reprisals (revised 1999)**

*Section:* 2 U.S.C. §441b(b)(3)(A)

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

*Explanation:* Current §441b(b)(3)(A) could be interpreted to narrowly apply to the making of contributions or expenditures by a separate segregated fund which were obtained through the use of force, job discrimination, financial reprisals and threats. Thus, Congress should clarify that corporations and labor organizations are prohibited from using such tactics in

the solicitation of contributions for the separate segregated fund. In addition, the FEC has revised its rules to clarify that it is not permissible for a corporation or a labor organization to use coercion, threats, force or reprisal to urge any individual to contribute to a candidate or engage in fundraising activities. See 60 FR 64260 (December 14, 1995). However, Congress should include language to cover such situations.

## **Enforcement**

### **Addition of Commission to the List of Agencies Authorized to Issue Immunity Orders According to the Provisions of Title 18 (1999)**

*Section:* 18 U.S.C. §6001(1)

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

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

Federal immunity grants are controlled by 18 U.S.C. §§6001-6005. 18 U.S.C. §§ 6002 and 6004(a) provide that if a witness asserts his Fifth Amendment privilege against self-incrimination and refuses to answer questions at any "proceeding before an

agency of the United States,” the agency may seek approval from the Attorney General to immunize the witness from criminal prosecution for testimony or information provided to the agency (and any information directly or indirectly derived from such testimony or information). If the Attorney General approves the agency’s request, the agency may then issue an order immunizing the witness and compelling his testimony. Once that order is issued and communicated to the witness, he cannot continue to refuse to testify in the inquiry. The order issued by the agency only immunizes the witness as to criminal liability, and does not preclude civil enforcement action. The immunity conferred is “use” immunity, not “transactional” immunity. The government also can criminally prosecute the witness for perjury or giving false statements if the witness lies during his immunized testimony, or for otherwise failing to comply with the order.

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

#### **Fines for Reporting Violations (revised 1999)<sup>4</sup>**

*Section:* 2 U.S.C. §437g

*Recommendation:* The Commission recommends that Congress consider granting the Commission authority

to assess administrative fines for straightforward violations relating to the reporting of receipts and disbursements.

*Explanation:* In maintaining a regulatory presence covering all aspects of the Act, even the most simple and straightforward strict liability disclosure violations, e.g., the late filing or non-filing of required reports, may be addressed only through the existing enforcement process at 2 U.S.C. §437g. The enforcement procedures provide a number of procedural protections, and the Commission has no authority to impose penalties. Instead, the Commission can only seek a conciliation agreement, and without a settlement can only pursue a *de novo* civil action in federal court. This process can be unnecessarily time and resource consuming for all parties involved when applied to ministerial-type civil violations that are routinely treated via administrative fines by many other states and federal regulatory agencies. Nondeliberate and straightforward reporting violations would not have to be treated as full blown enforcement matters if the Commission had authority to assess fines for such violations, subject to a reasonable appeal procedure. The Commission would consider a number of factors (e.g., the election sensitivity of the report and the previous compliance record of the committee). Addition of such authority would introduce greater certainty to the regulated community about the consequences of noncompliance with the Act’s filing requirements, as well as lessen costs and lead to efficiencies for all parties, while maintaining the Commission’s emphasis on the Act’s disclosure requirements. The Commission would attempt to implement this on a trial basis.

#### **Enhancement of Criminal Provisions**

*Section:* 2 U.S.C. §437g(a)(5)(C) and (d)

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

*Explanation:* The Commission has noted an upsurge of §441f contribution reimbursement schemes, that may merit heavy criminal sanction. Although there is

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<sup>4</sup> This recommendation was also made by PricewaterhouseCoopers LLP in its *Technology and Performance Audit and Management Review of the Federal Election Commission*, pages 4-78 and 5-2.

no prohibition preventing the Department of Justice from initiating criminal FECA prosecutions on its own, the vehicle for the Commission to bring such matters to the Department's attention is found at §437g(a)(5)(C), which provides for referral only after the Commission has found probable cause to believe that a criminal violation of the Act has taken place.<sup>5</sup> Thus, even if it is apparent at an early stage that a case merits criminal referral, the Commission must pursue the matter to the probable cause stage before referring it to the Department for criminal prosecution. To conserve the Commission's resources, and to allow the Commission to bring potentially criminal FECA violations to the Department's attention at the earliest possible time, the Commission recommends that consideration be given to explicitly empower the Commission to refer apparent criminal FECA violations to the Department at any stage in the enforcement process.

#### **Audits for Cause**

*Section:* 2 U.S.C. §438(b)

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

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

#### **Modifying Terminology of "Reason to Believe" Finding (revised 1999)**

*Section:* 2 U.S.C. §437g

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

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

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

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

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<sup>5</sup> The Commission has the general authority to report apparent violations to the appropriate law enforcement authority (see 2 U.S.C. §437d(a)(9)), but read together with §437g, §437d(a)(9) has been interpreted by the Commission to refer to violations of law unrelated to the Commission's FECA jurisdiction.



## Public Financing

### Averting Impending Shortfall in Presidential Public Funding Program (1999)

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

*Recommendation:* The Commission strongly recommends that Congress take immediate action to avert the impending shortfall in the Presidential public funding program in the 2000 election year.

*Explanation:* The Presidential public funding program faces a shortfall for the election of 2000 because participation in the checkoff program is declining and the checkoff is not indexed to inflation while payouts are indexed. This shortfall will impact foremost upon primary candidates. The Commission projects that, in January 2000, the U.S. Treasury will be able to provide approximately 32 percent of the public funds to which qualified Presidential candidates will be entitled to receive. Specifically, an estimated \$20.4 million will be available for distribution to qualified primary candidates on January 1, 2000, after the Treasury sets aside the convention and general election grants.<sup>6</sup> However, the Commission expects the entitlement as of that date to be \$62.9 million, which equates to 32 cents on the dollar. Moreover, the total entitlement for primary candidates for the entire election cycle is estimated to be \$98.7 million. Thus, if FEC staff estimates and presumptions are correct, a significant shortfall will exist throughout calendar year 2000 and into 2001. Solvency would not be restored until April 2001 with the deposit of the March 2001 checkoff receipts. The Commission recommends that Congress take appropriate action to avoid this impending shortfall.

### Qualifying Threshold for Eligibility for Primary Matching Funds (revised 1999)

*Section:* 26 U.S.C. §9033

*Recommendation:* The Commission recommends that Congress raise the qualifying threshold for eligibility

for publicly funded Presidential primary candidates and make it adjustable for inflation.

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

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

### State Expenditure Limits for Publicly Financed Presidential Primary Campaigns

*Section:* 2 U.S.C. §441a

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

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

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<sup>6</sup> The Commission estimates that a total of \$28.9 million will be paid in convention grants and \$147.2 million will be set aside for use by general election candidates.

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

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

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

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

### **Fundraising Limitation for Publicly Financed Presidential Primary Campaigns**

*Section:* 2 U.S.C. §§431(9)(B)(vi) and 441a

*Recommendation:* The Commission recommends that the separate fundraising limitation provided to publicly financed Presidential primary campaigns be combined with the overall limit. Thus, instead of a candidate's having a \$10 million (plus COLA<sup>7</sup>) limit for campaign expenditures and a \$2 million (plus COLA) limit for fundraising (20 percent of overall limit), each candidate would have one \$12 million (plus COLA) limit for all campaign expenditures.

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

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<sup>7</sup> Spending limits are increased by the cost-of-living adjustment (COLA), which the Department of Labor calculates annually.

### **Eligibility Requirements for Public Financing**

*Section:* 26 U.S.C. §§9002, 9003, 9032 and 9033

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

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

### **Applicability of Title VI to Recipients of Payments from the Presidential Election Campaign Fund**

*Section:* 26 U.S.C. §§9006(b), 9008(b)(3) and 9037.

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

*Explanation:* This proposed amendment was prompted by the decision of the U.S. District Court for the District of Columbia in *Freedom Republicans, Inc., and Lugenia Gordon v. FEC*, 788 F. Supp. 600 (1992), *vacated*, 13 F.3d 412 (D.C. Cir 1994). The Freedom Republicans' complaint asked the district court to declare that the Commission has jurisdiction to regulate the national parties' delegate selection process under Title VI. It also requested the court to order the Commission to adopt such regulations, direct the Republican Party to spend no more of the funds already received for its 1992 national nominating convention, and seek refunds of moneys already disbursed if the Republican Party did not amend its delegate selection and apportionment process to comply with Title VI. The district court found that the Commission "does have an obligation to promulgate rules and regulations to insure the enforcement of Title VI. The language of Title VI is necessarily broad, and applies on its face to the FEC as well as to both major political parties and other recipients of federal funds." 788 F. Supp. at 601.

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

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

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

### **Enforcement of Nonwillful Violations**

*Section:* 26 U.S.C. §§9012 and 9042

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

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

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

## **Part B: Technical Recommendations**

### **Disclosure**

#### **Candidates and Principal Campaign Committees**

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

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

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

#### **Filing Reports Using Registered or Certified Mail (revised 1999)**

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

*Recommendation:* The Commission recommends that Congress delete the option to file campaign finance reports via registered or certified mail when the report is postmarked by a specific date. Instead, Con-

gress should consider simply requiring political committees to file their reports with the Commission (or the Secretary of the Senate) by the due date of the report.

*Explanation:* Section 434 of the Act permits committees to file their reports by registered or certified mail, provided that the report is postmarked by a certain date. (In the cases of a quarterly, monthly, semi-annual or post general report, the report must be postmarked by the due date if sent by registered or certified mail. In the case of a pre-primary or pre-general election report, the report must be postmarked 15 days before the election.)

To minimize this delay in disclosure, Congress should eliminate the option in the law that allows committees to rely on the postmark of a registered or certified mailed report. Instead, Congress should simply require that reports be filed with the FEC (or the Secretary of the Senate) by the due date specified in the law. This approach would result in more effective public disclosure of campaign finance information, because reports would be available for review at an earlier point before the election. It would also simplify the law and eliminate confusion about the appropriate due date for a report.

### **Monthly Reporting for Congressional Candidates**

*Section:* 2 U.S.C. §434(a)(2)

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

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

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

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

### **Reporting Deadlines for Semiannual, Year-End and Monthly Filers**

*Section:* 2 U.S.C. §§434(a)(3)(B) and (4)(A) and (B)

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

*Explanation:* Committees are often confused because the filing dates vary from report to report. Depending on the type of committee and whether it is an election year, the filing date for a report may fall on the 15th, 20th or 31st of the month. Congress should require that monthly, quarterly, semiannual and year-end reports are due 15 days after the close of books of

each report. In addition to simplifying reporting procedures, this change would provide for more timely disclosure, particularly in an election year. In light of the increased use of computerized recordkeeping by political committees, imposing a filing deadline of the fifteenth of the month would not be unduly burdensome.

#### **Facsimile Machines (revised 1999)**

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

*Recommendation:* The Commission recommends that Congress modify the Act to provide for the acceptance and admissibility of 24-hour notices of independent expenditures via telephone facsimiles or by other technologies such as e-mail.

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

#### **Reporting of Last-Minute Independent Expenditures**

*Section:* 2 U.S.C. §434(c)

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

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

#### **Require Monthly Filing for Certain Multicandidate Committees**

*Section:* 2 U.S.C. §434(a)(4)

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

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

Presidential candidates who anticipate receiving contributions or making expenditures aggregating \$100,000 or more must file on a monthly basis. Congress should consider applying this same reporting

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

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

*Section:* 2 U.S.C. §438(a)(4)

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

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

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

## **Contributions and Expenditures**

### **Certification of Voting Age Population Figures and Cost-of-Living Adjustment**

*Section:* 2 U.S.C. §441a(c) and (e)

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

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

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

### **Honorarium**

*Section:* 2 U.S.C. §431(8)(B)(xiv)

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

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

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

### **Acceptance of Cash Contributions**

*Section:* 2 U.S.C. §441g

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

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

While the Commission, in its regulations at 11 CFR 110.4(c)(2), has included a provision requiring a committee receiving such a cash contribution to promptly return the excess over \$100, the statute does not explicitly make acceptance of these cash contribu-

tions a violation. The other sections of the Act dealing with prohibited contributions (i.e., §§ 441b on corporate and labor union contributions, 441c on contributions by government contractors, 441e on contributions by foreign nationals, and 441f on contributions in the name of another) all prohibit both the making and accepting of such contributions.

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

## **Enforcement**

### **Subpoena and Reason-to-Believe Notification Signature Authority**

*Section:* 2 U.S.C. §§437d(a)(3) and 437g(a)(2)

*Recommendation:* The Commission recommends that Congress clarify these provisions to permit any member of the Commission to sign duly-authorized subpoenas and notifications of findings of reason-to-believe, rather than limiting signature authority to the Chairman and Vice Chairman.

*Explanation:* Section 437d(a)(3) grants the Commission the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary evidence. This provision specifies that subpoenas be signed by the Chairman or Vice Chairman of the agency. In those instances where the Commission has duly authorized the issuance of a subpoena, but neither the Chairman nor the Vice Chairman are available to sign, the subpoena is delayed. Providing for the signature of another member of the Commission would enable subpoenas to be issued in a more timely manner.

Likewise, §437g(a)(2) requires that the Commission, through its Chairman or Vice Chairman, notify respondents of a finding of reason-to-believe in an enforcement matter. For the reasons listed above, it would



be beneficial to allow other Members of the Commission to sign such notifications when neither the Chairman nor the Vice Chairman are available.

## Public Financing

### Deposit of Repayments

*Section:* 26 U.S.C. §9007(d)

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

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

### Contributions to Presidential Nominees Who Receive Public Funds in the General Election

*Section:* 26 U.S.C. §9003

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

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

## Miscellaneous

### Ex Officio Members of Federal Election Commission

*Section:* 2 U.S.C. §437c(a)(1)

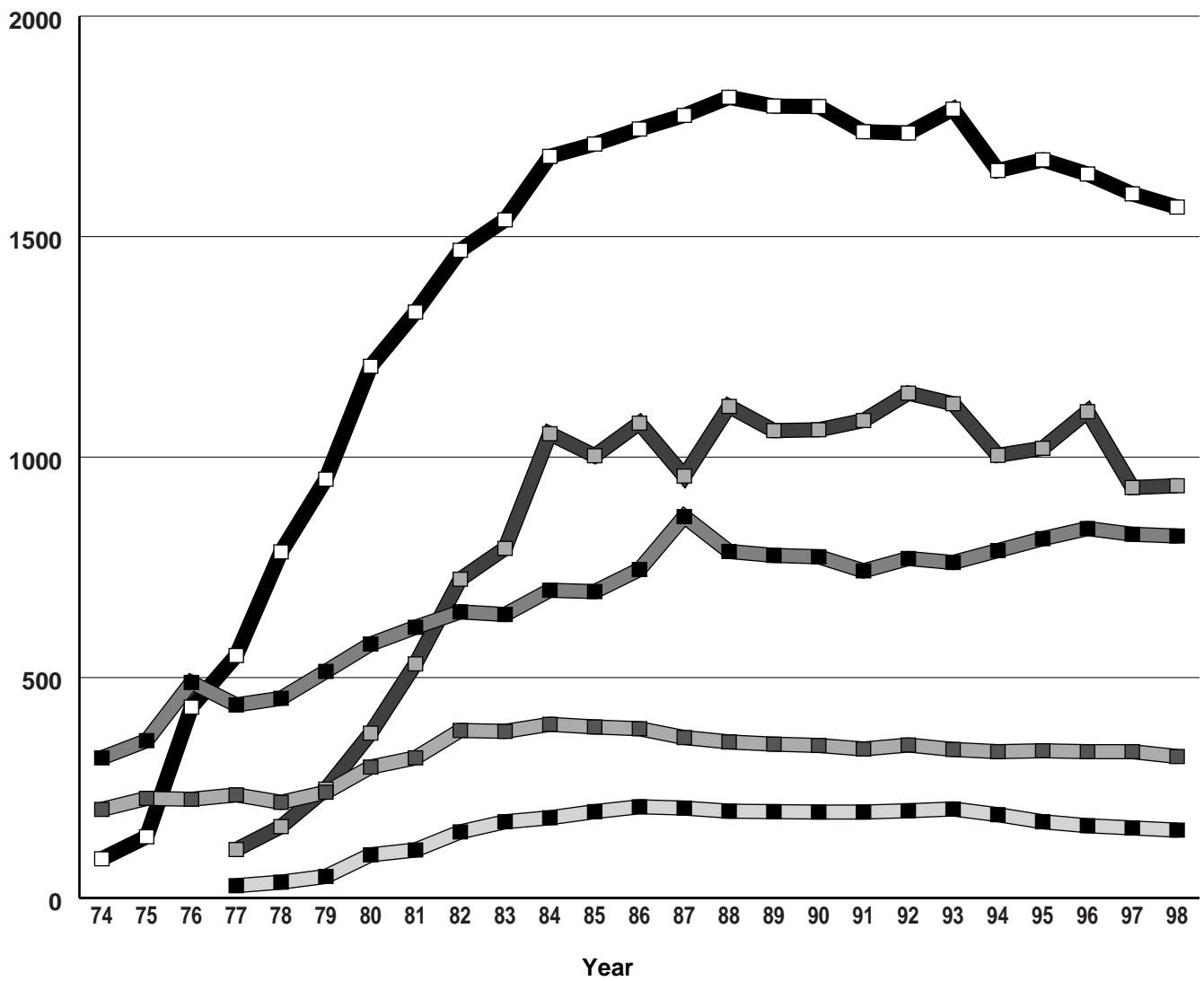
*Recommendation:* The Commission recommends that Congress amend section 437c by removing the Secretary of the Senate, the Clerk of the House, and their designees from the list of the members of the Federal Election Commission.

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

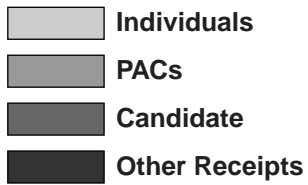
As a result of the appeals court decision, the FEC reconstituted itself as a six-member body whose members are appointed by the President and confirmed by the Senate. Congress should accordingly amend the Act to reflect the appeals court's decision by removing the references to the ex officio members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

# Chapter Seven Campaign Finance Statistics

**CHART 7-1**  
**Number of PACs, 1974-1998**

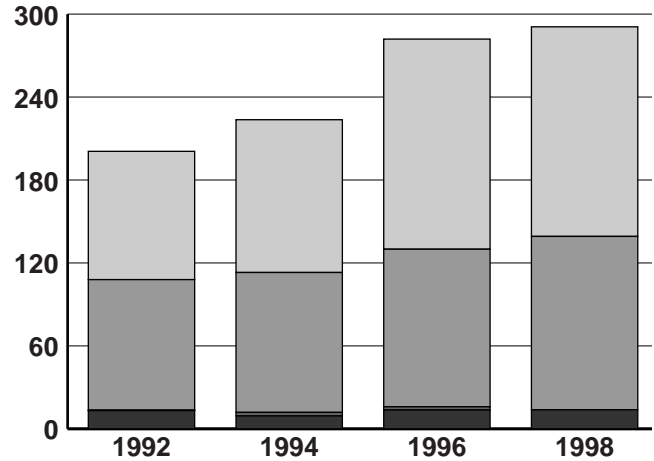


**CHART 7-2**  
**House Candidates'**  
**Sources of Receipts:**  
**Two-Year Election Cycle**



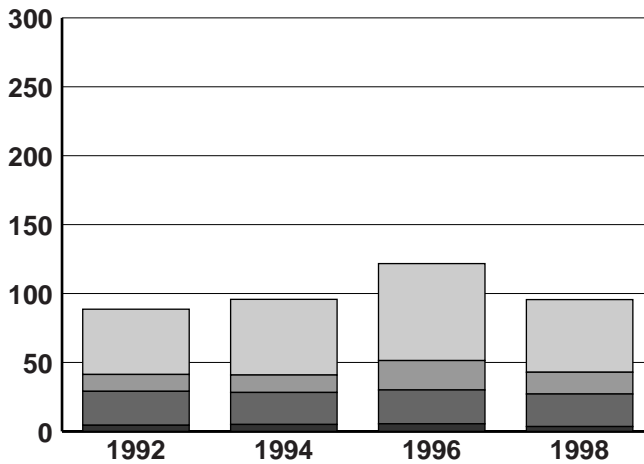
**Incumbents**

Millions of Dollars



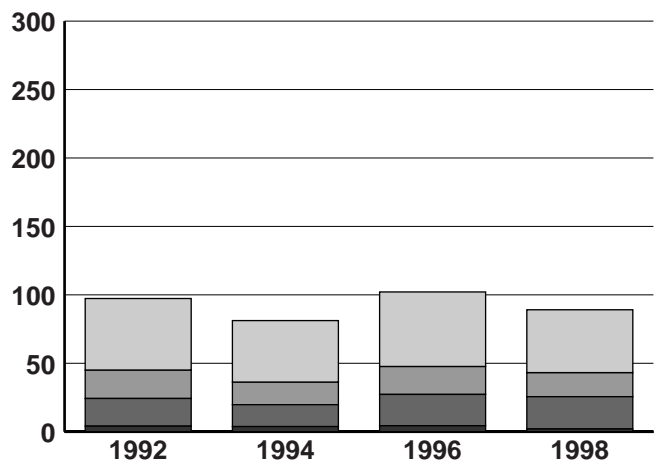
**Challengers**

Millions of Dollars

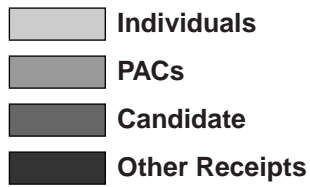


**Open Seat Candidates**

Millions of Dollars

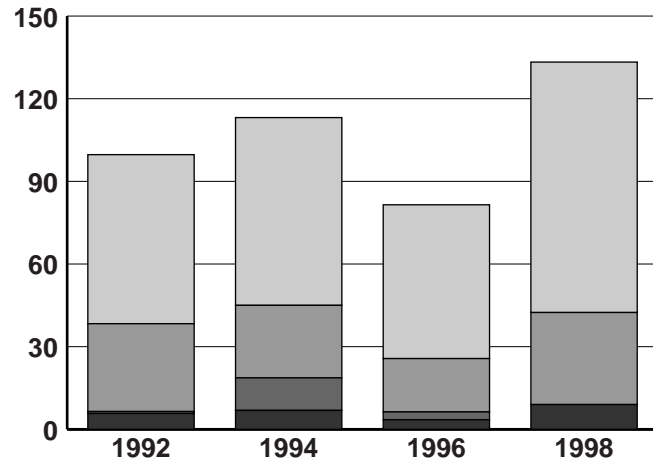


**CHART 7-3**  
**Senate Candidates'**  
**Sources of Receipts:**  
**Two-Year Election Cycle**



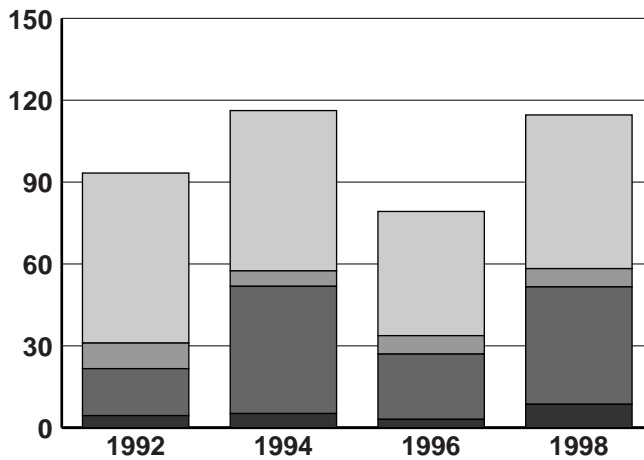
**Incumbents**

Millions of Dollars



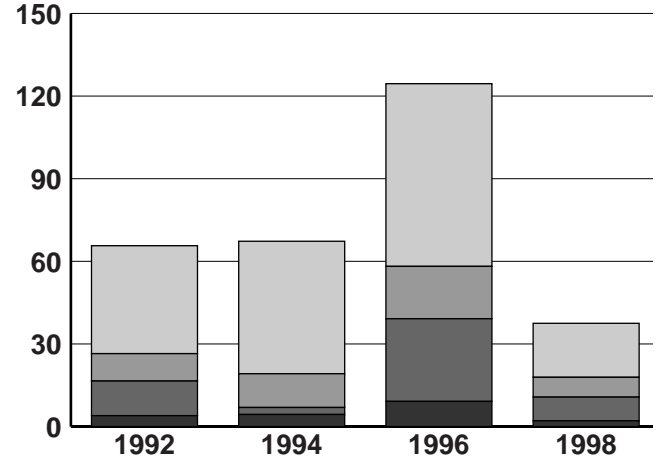
**Challengers**

Millions of Dollars



**Open Seat Candidates**

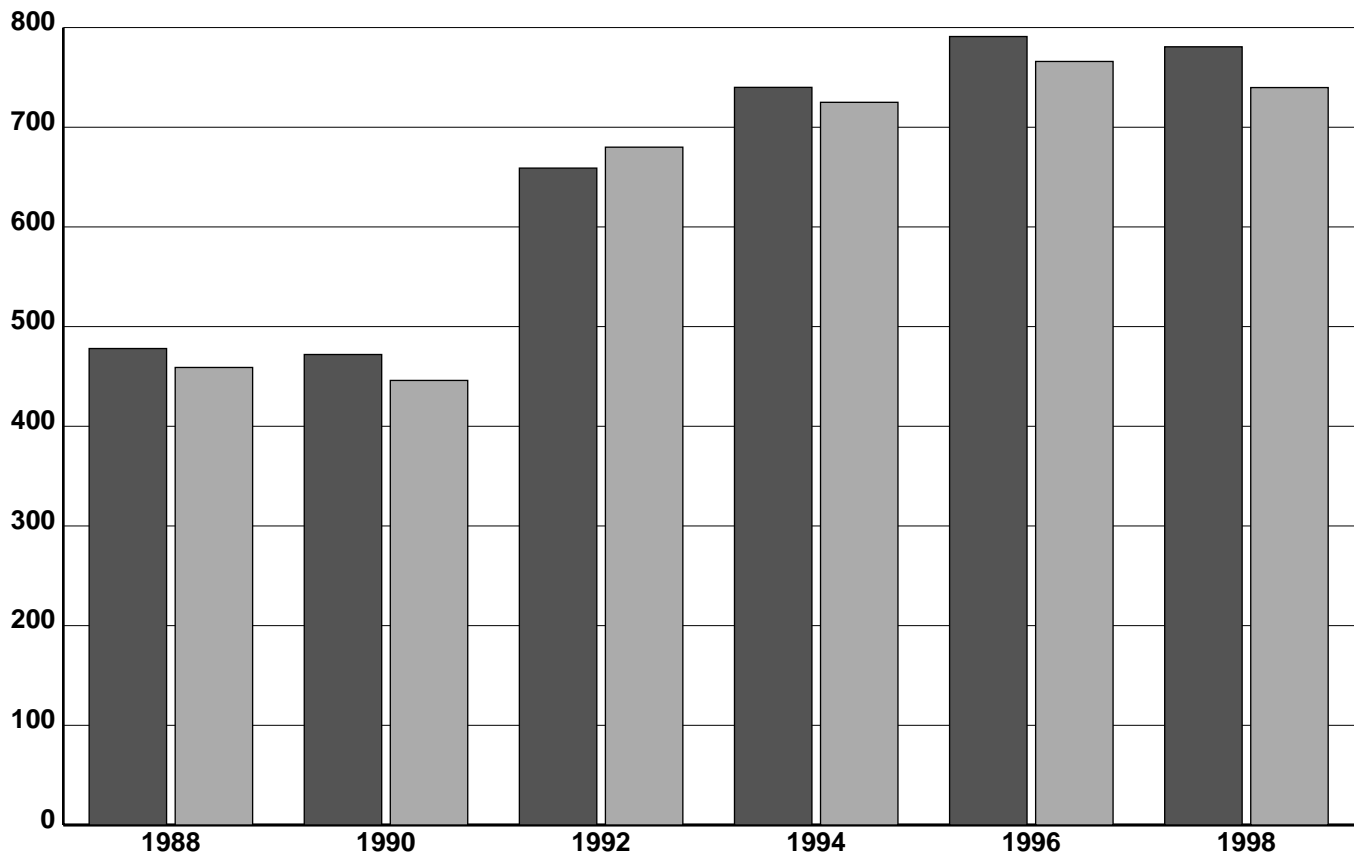
Millions of Dollars



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

■ Receipts  
■ Disbursements

Millions of Dollars



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

Democratic Candidates  
 Republican Candidates

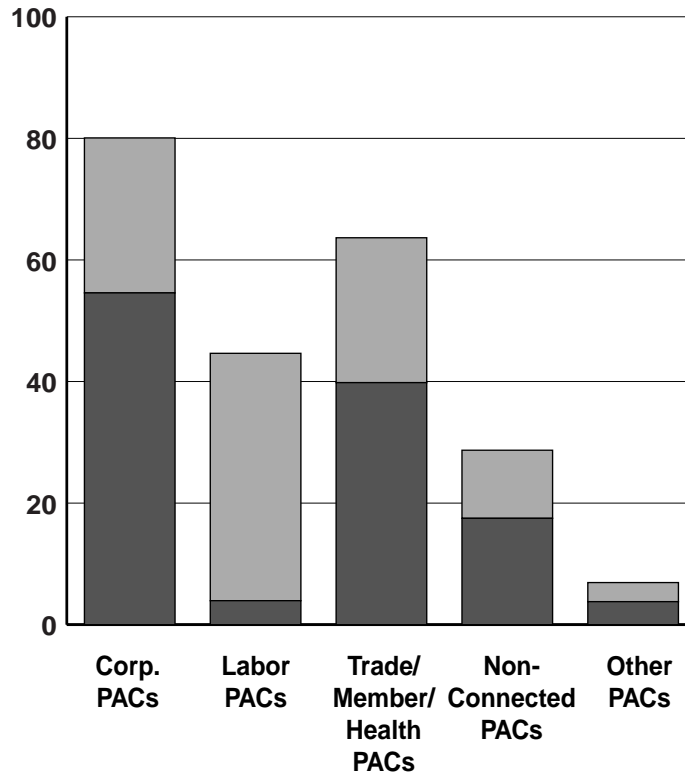
**1996 Election Cycle**

Millions of Dollars

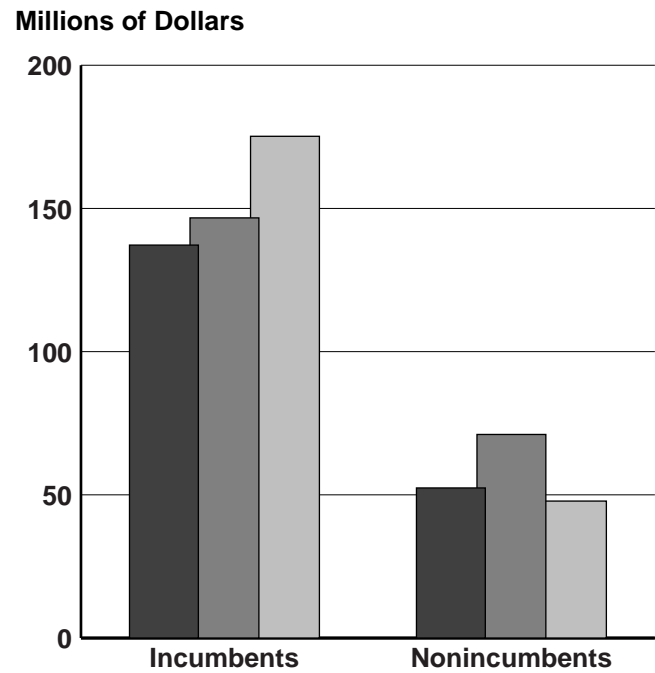
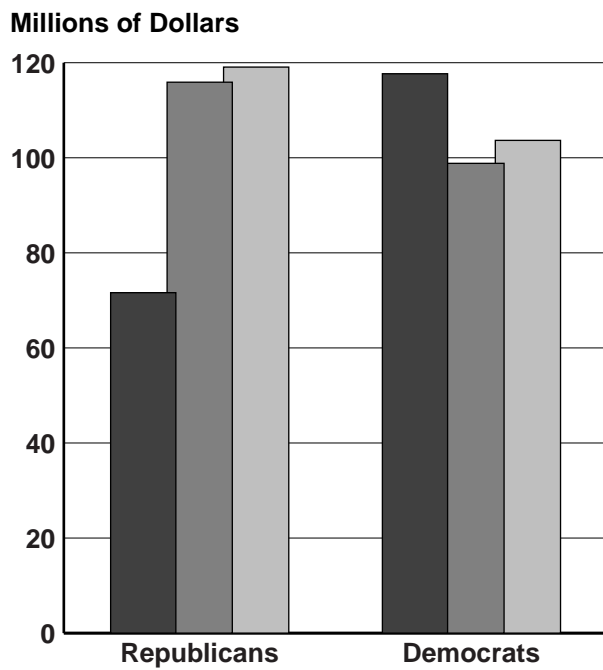
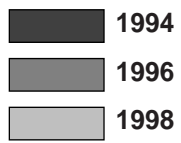


**1998 Election Cycle**

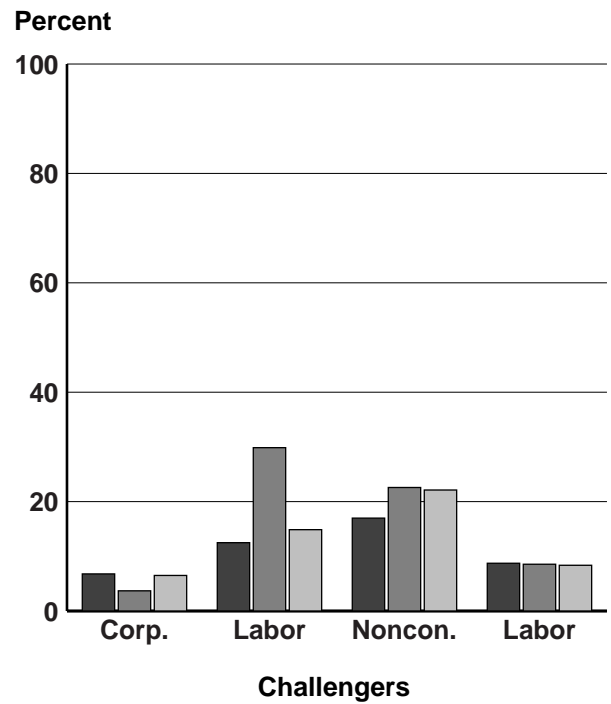
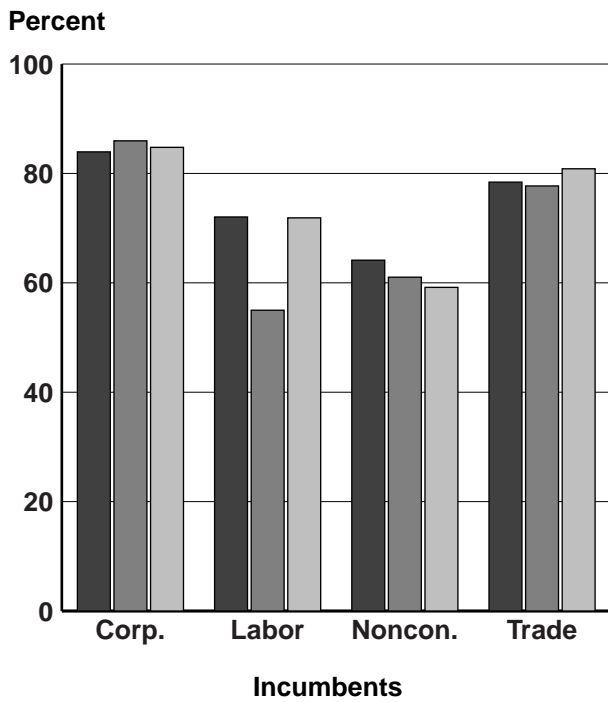
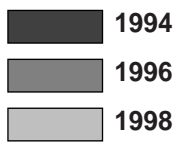
Millions of Dollars



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

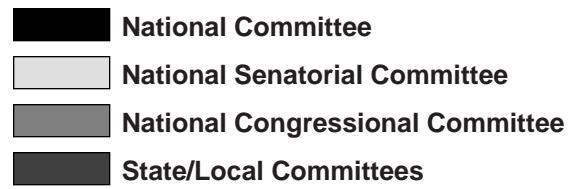


**CHART 7-7**  
**PAC Contributions to House Candidates**  
**by Type of PAC and Candidate Status**

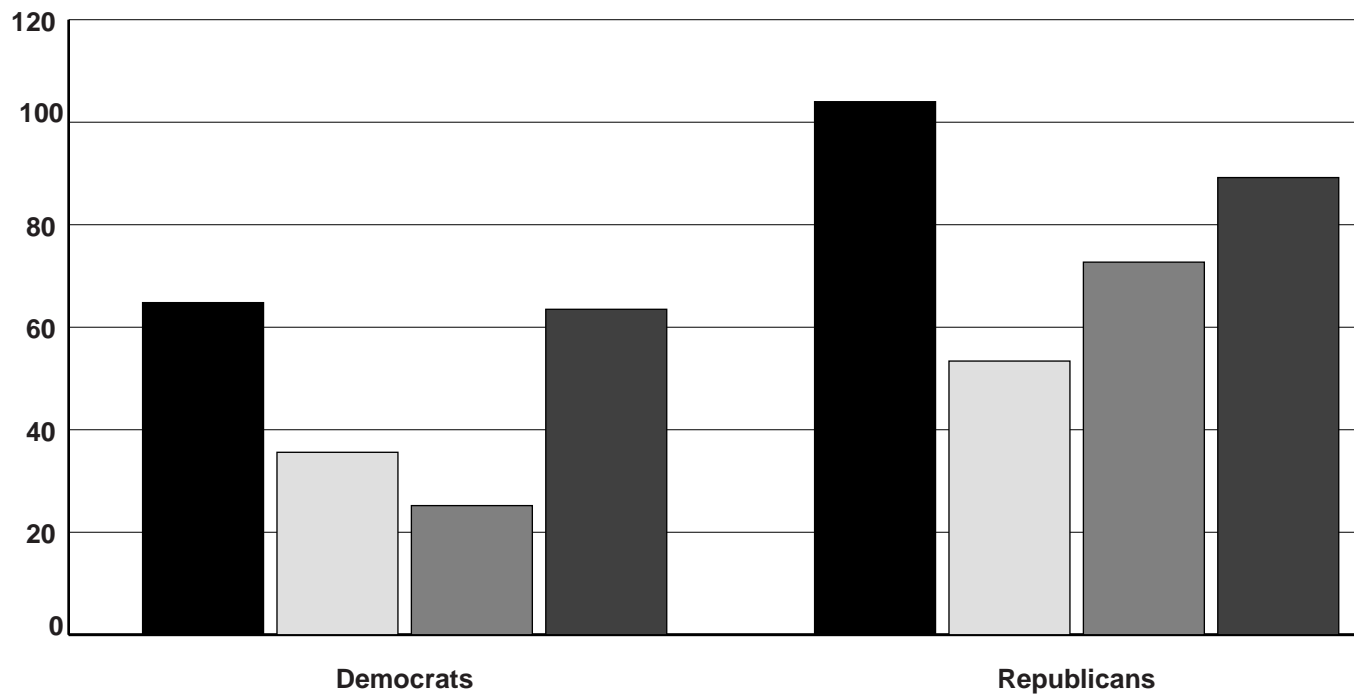






**CHART 7-8**  
**Major Party Federal**  
**Account Receipts: 1998**



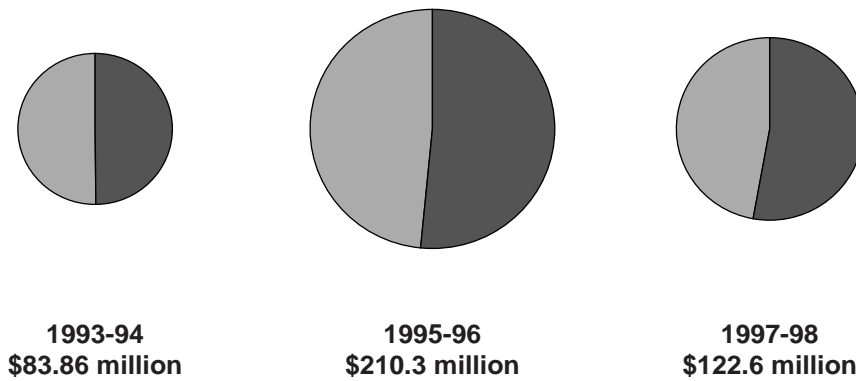
Millions of Dollars



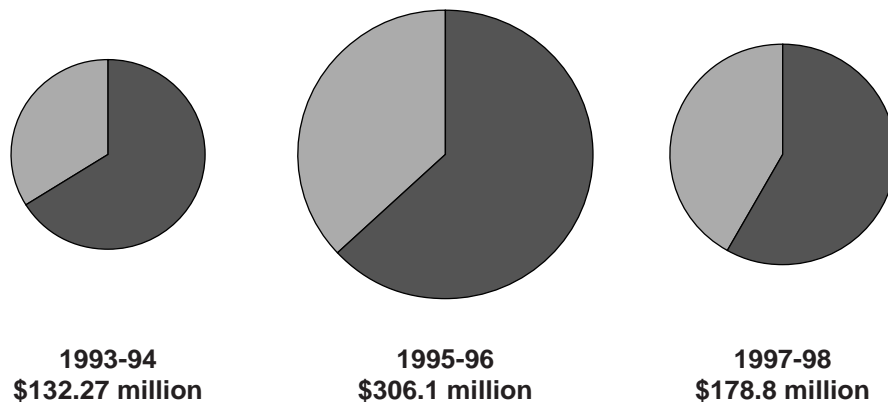
**CHART 7-9**  
**Party Federal and**  
**Nonfederal Receipts**

 Federal Receipts  
 Nonfederal Receipts

**Democratic National Committee (DNC)**



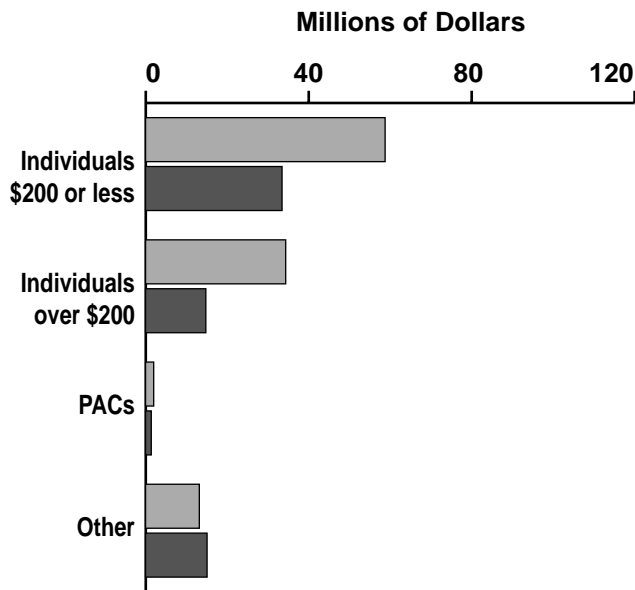
**Republican National Committee (RNC)**



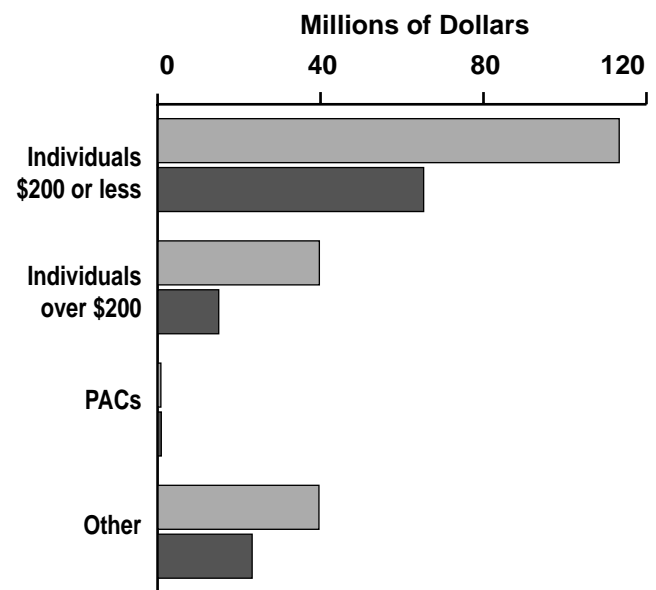
**CHART 7-10**  
**Sources of Party Receipts**

1996  
1998

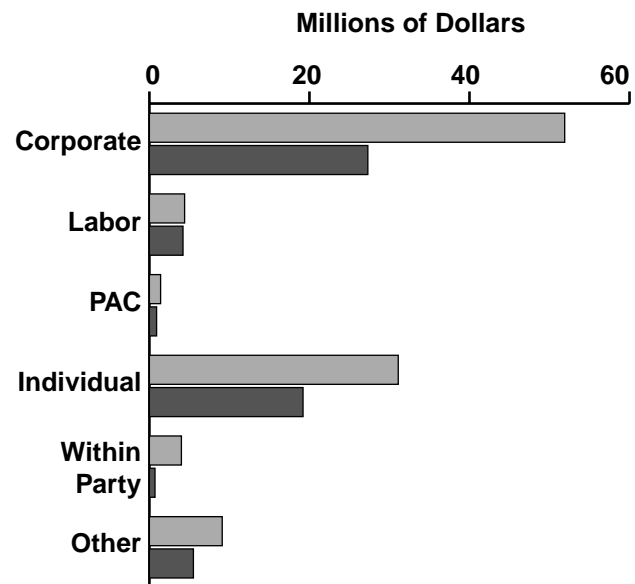
**DNC Federal Receipts by Source**



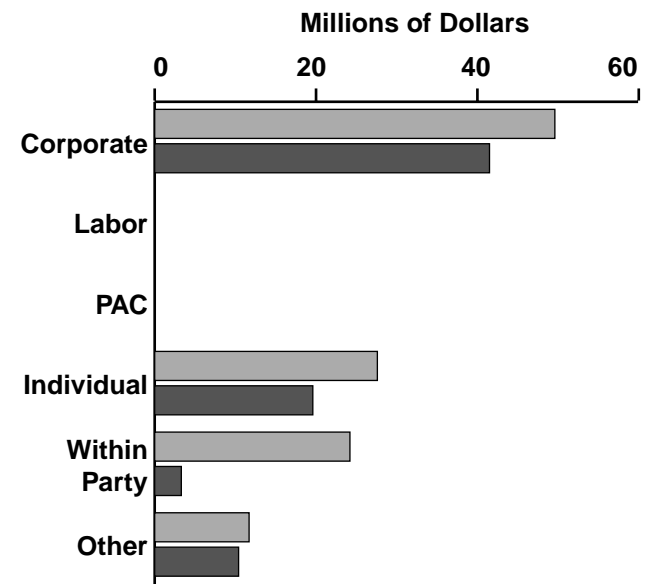
**RNC Federal Receipts by Source**



**DNC Nonfederal Receipts by Source**



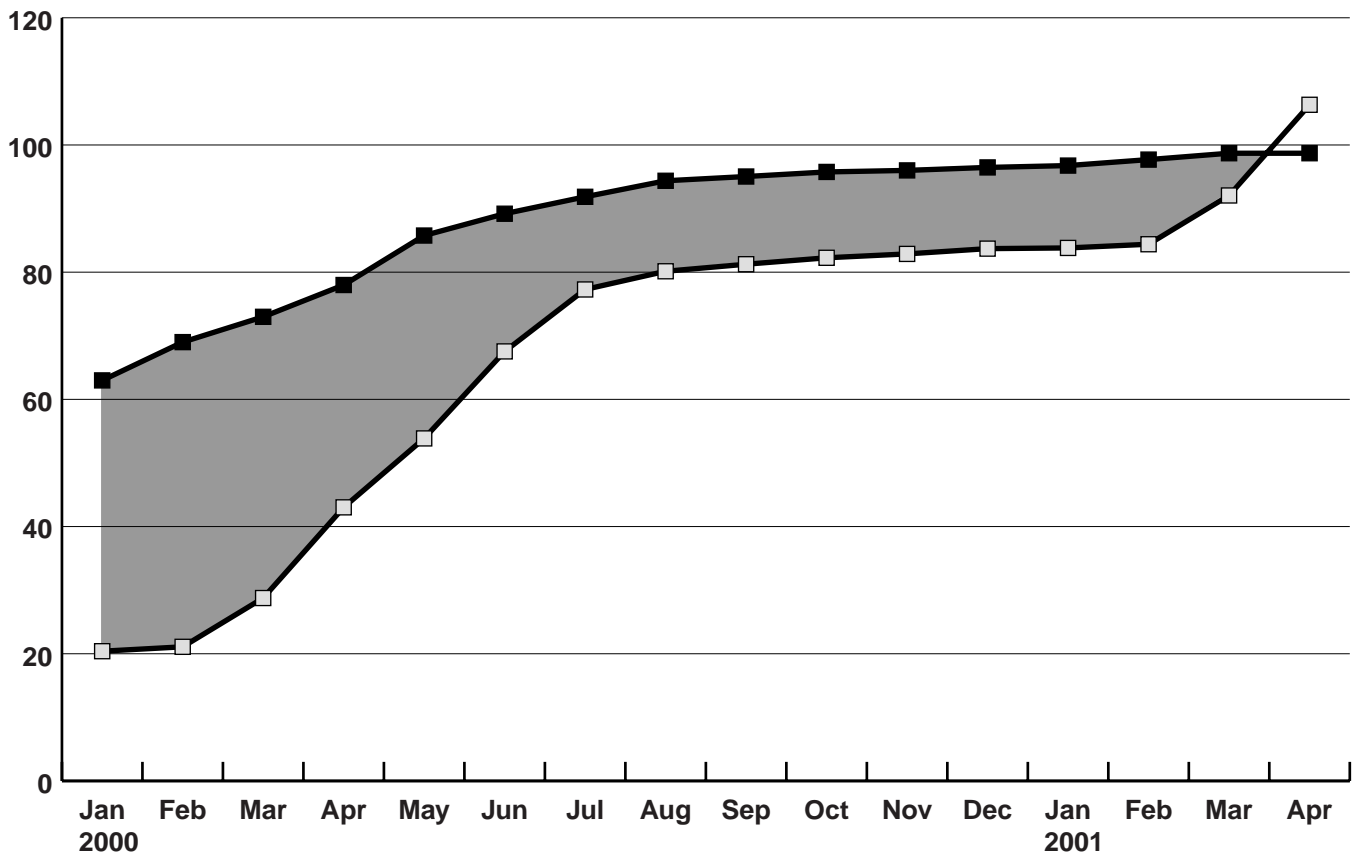
**RNC Nonfederal Receipts by Source**



**CHART 7-11**  
**Projected Shortfall in the**  
**Presidential Election Campaign Fund\***

- Estimated Cumulative Payments
- Estimated Cumulative Entitlements
- Estimated Shortfall

Millions of Dollars



\* The estimated entitlement reflects the amount of public funds the Commission expects qualified candidates to be eligible to receive. The estimated payment is the amount of public funds projected to be available to fulfill those entitlements.

# Appendix 1

## Biographies of Commissioners and Officers

### Commissioners

#### **Joan D. Aikens, Chairman** **April 30, 1995**

Commissioner Aikens served as Chairman during the first eight months of 1998, before retiring on September 18. One of the original members of the Commission, Commissioner Aikens was first appointed in 1975. Following the reconstitution of the FEC that resulted from the Supreme Court's *Buckley v. Valeo* decision, President Ford reappointed her to a five-year term. In 1981, President Reagan named Commissioner Aikens to complete a term left open because of a resignation and, in 1983, once again reappointed her to a full six-year term. Most recently, Commissioner Aikens was reappointed by President Bush in 1989. She previously served as FEC Chairman in 1978, 1986 and 1992.

Before her 1975 appointment, Commissioner Aikens was an executive with Lew Hodges Communications, a public relations firm in Valley Forge, Pennsylvania. She was also a member of the Pennsylvania Republican State Committee, president of the Pennsylvania Council of Republican Women and on the board of directors of the National Federation of Republican Women. A native of Delaware County, Pennsylvania, Commissioner Aikens has been active in a variety of volunteer organizations and was a member of the Commonwealth Board of the Medical College of Pennsylvania and a past President of Executive Women in Government. She is currently a member of the board of directors of Ursinus College, where she received her B.A. degree and an honorary Doctor of Law degree.

#### **Scott E. Thomas, Vice Chairman** **April 30, 2003**

Mr. Thomas was appointed to the Commission in 1986 and reappointed in 1991 and 1998. He served as acting Chairman during the last four months of 1998, and was elected Chairman for 1999. He previously served as Chairman in 1987 and 1993. Prior to

serving as a Commissioner, Mr. Thomas was the executive assistant to former Commissioner Thomas E. Harris. He originally joined the FEC as a legal intern in 1975 and later became an Assistant General Counsel for Enforcement.

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

#### **Lee Ann Elliott, Commissioner** **April 30, 1999**

Commissioner Elliott was first appointed in 1981 and reappointed in 1987 and 1994. She served as Chairman in 1984, 1990 and 1996. Before her first appointment, Commissioner Elliott was vice president of a political consulting firm, Bishop, Bryant & Associates, Inc. From 1961 to 1979, she was an executive of the American Medical Political Action Committee. Commissioner Elliott was on the board of directors of the American Association of Political Consultants and on the board of the Chicago Area Public Affairs Group, of which she is a past president. She was also a member of the Public Affairs Committee of the U.S. Chamber of Commerce. In 1979, she received the Award for Excellence in Serving Corporate Public Affairs from the National Association of Manufacturers. A native of St. Louis, Commissioner Elliott graduated from the University of Illinois. She also completed Northwestern University's Medical Association Management Executive Program and is a Certified Association Executive.

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

David M. Mason was nominated to the Commission by President Clinton on March 4, 1998, and confirmed by the U.S. Senate on July 30, 1998.

Prior to his appointment, Mr. Mason served as Senior Fellow, Congressional Studies, at the Heritage Foundation. He joined Heritage in 1990 as Director of

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

Executive Branch Liaison. In 1995 he became Vice President, Government Relations, and in 1997 Mr. Mason was designated Senior Fellow with a focus on research, writing and commentary on Congress and national politics.

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

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

**Danny L. McDonald, Commissioner  
April 30, 1999**

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

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

**John Warren McGarry, Commissioner  
April 30, 1995**

Mr. McGarry retired from the Commission on August 11, 1998. First appointed to the Commission in 1978, Mr. McGarry was reappointed in 1983 and 1989. He served as FEC Chairman in 1981, 1985,

1991 and 1997. Before his 1978 Commission appointment, Commissioner McGarry served as special counsel on elections to the House Administration Committee. He previously combined private law practice with service as chief counsel to the House Special Committee to Investigate Campaign Expenditures, a special committee established by Congress every election year through 1972. Before his work with Congress, Commissioner McGarry was the Massachusetts assistant attorney general.

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

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

Karl J. Sandstrom was nominated to the Commission by President Clinton on July 13, 1998, and confirmed by the U.S. Senate on July 30, 1998.

Prior to his appointment, Commissioner Sandstrom served as Chairman of the Administrative Review Board at the Department of Labor. From 1988 to 1992 he was Staff Director of the House Subcommittee on Elections, during which time he also served as the Staff Director of the Speaker of the House's Task Force on Electoral Reform. From 1979 to 1988, Commissioner Sandstrom served as the Deputy Chief Counsel to the House Administration Committee of the House of Representatives. In addition, he has taught public policy as an Adjunct Professor at American University.

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

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

Darryl R. Wold was nominated to the Commission by President Clinton on November 5, 1997, and confirmed by the U.S. Senate on July 30, 1998.

Prior to his appointment, Commissioner Wold had been in private law practice in Orange County, CA,

since 1974. In addition to his own practice, he was counsel for election law litigation and enforcement defense matters to Reed and Davidson, a California law firm. Mr. Wold's practice included representing candidates, ballot measure committees, political action committees and others with responsibilities under federal, state and local election laws. Mr. Wold's business practice emphasized business litigation and advice to closely-held companies.

Commissioner Wold graduated cum laude from Claremont McKenna College in California and earned an LL.B. from Stanford University. He is a member of the California bar, and is admitted to practice before the United States Supreme Court.

## Statutory Officers

### **John C. Surina, Staff Director**

John Surina resigned his post as FEC staff director on July 31, 1998, to become Director of the U.S. Department of Agriculture's Office of Ethics.

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

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

### **Lawrence M. Noble, General Counsel**

Lawrence Noble became General Counsel in 1987, after serving as Acting General Counsel. He joined the Commission in 1977, becoming the Deputy General Counsel in 1983. He previously served as Assistant General Counsel for Litigation and as a litigation

attorney. Before his FEC service, he was an attorney with the Aviation Consumers Action Project.

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

### **Lynne McFarland, Inspector General**

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

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

## Appendix 2

### Chronology of Events

#### January

- 1 — Chairman Joan D. Aikens and Vice Chairman Scott E. Thomas begin their one-year terms of office.
- 15 — FEC releases audit report on Alan Keyes for President committees.
- 22 — Commission denies rulemaking petition on its composition.
- 27 — FEC releases 1997 year-end PAC count.
- 31 — 1997 year-end report due.

#### February

- 3 — New York holds special general election in 6th Congressional District.
- 11 — Commission holds public hearing on proposed changes to recordkeeping and reporting rules.
- 12 — Commission denies rulemaking petition on express advocacy.
- 19 — FEC releases audit report on Democratic Party of Illinois.
- 23 — FEC holds candidate conference in Washington, DC.
- 27 — FEC releases audit report on Bob Barr-Congress.
  - District court dismisses Reform Party's constitutional challenge to public funding rules. (*National Committee of the Reform Party v. FEC*)

#### March

- 1 — Enhanced version of FECFile electronic filing software becomes available.
- 6 — FEC releases statistics on Congressional candidate activity during 1997.
- 12 — FEC submits 60 legislative recommendations to President and Congress.
- 19 — Vice Chairman Scott E. Thomas testifies before House Appropriations Subcommittee on FY 1999 budget request.
- 25-27 — FEC holds regional conference in Denver, CO.

#### April

- 1 — FEC publishes *Innovations in Election Administration 16: Using the Internet in Election Offices*.
- 7 — California holds special general elections in 9th and 44th Congressional Districts.
- 15 — First quarter report due.
  - FEC publishes *Combined Federal/State Disclosure and Election Directory 1998*.
- 27 — FEC holds nonconnected conference in Washington, DC.
- 28 — Commission adds images of reports from 1995-96 election cycle to web site.
- 29 — Commission holds public hearing on proposed rules defining member.
- 30 — District court invalidates FEC rule on voter guides. (*Clifton v. FEC*)

#### May

- 8 — FEC releases 15-month Congressional election figures.
- 21 — Commission denies rulemaking petition on expenditures by qualified nonprofits.
- 29 — FEC releases audit report on Lugar for President committees.

#### June

- 1 — FEC submits to President and Congress 23rd annual report.
  - Supreme Court finds plaintiffs have standing to challenge FEC's dismissal of complaint and refers questions on membership status back to Commission. (*Akins v. FEC*)
  - District court finds portion of FEC's express advocacy definition unconstitutional and enjoins Commission from enforcing it. (*Right to Life of Dutchess County, Inc. v. FEC*)
- 8 — FEC releases 15-month statistics on political party activity.
- 18 — FEC releases audit report on Darrell Ealum for Congress.
- 23 — New Mexico hold special general election in 1st Congressional District.



- 25 — District court denies preliminary injunction to prevent FEC enforcement of allocation rules. (*Ohio Democratic Party v. FEC* and *RNC v. FEC*)

### July

- 1 — FEC publishes "Filing a Complaint" brochure.
- 6 — FEC releases audit report on 1996 Committee on Arrangements for the Republican National Convention.
- 15 — Second quarter report due.  
— FEC releases audit report on 1996 Democratic National Convention Committee and Chicago's Committee '96.
- 21 — Commission adds search function to report image database on web site.  
— FEC releases 1998 mid-year PAC count.
- 30 — Senate confirms nominations of David M. Mason, Karl J. Sandstrom and Darryl R. Wold to Commission, and the renomination of Commissioner Scott E. Thomas.
- 31 — FEC Staff Director John Surina resigns to become Director of the U.S. Department of Agriculture's Office of Ethics.  
— FEC releases audit report on San Diego Host Committee/Sail to Victory '96.

### August

- 1 — James A. Pehrkon appointed Acting Staff Director of FEC.
- 11 — Commissioner John Warren McGarry retires.
- 14 — FEC releases 18-month report on Congressional candidate activity.

### September

- 18 — Chairman Joan D. Aikens retires.
- 24 — FEC releases 18-month PAC statistics.

### October

- 1 — FEC publishes 1998 edition of *PACronyms*.
- 15 — Third quarter report due.
- 19 — Commission begins adding reports on last-minute campaign activity to web site.
- 20 — FEC publishes 1998 edition of *Selected Court Case Abstracts*.
- 22 — Pre-general election report due.
- 27 — FEC releases pre-general election statistics on political party activity.
- 29 — FEC releases statistics on 1998 House and Senate campaign spending.

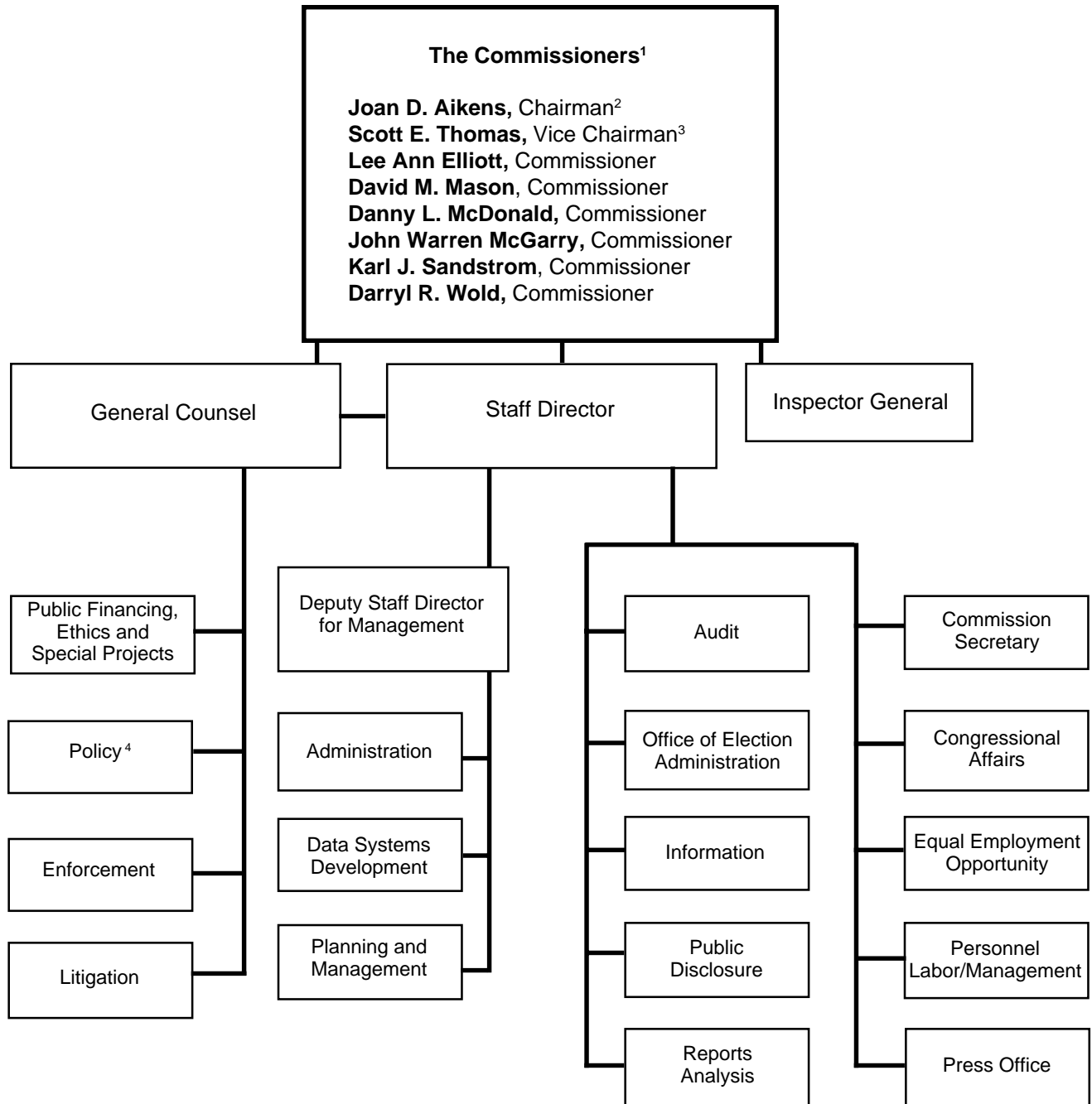
### November

- 13 — New regulations mandating electronic filing by Presidential campaigns take effect.
- 18 — Commission holds public hearing on proposed soft money regulations.

### December

- 3 — Post-general election report due.
- 10 — FEC elects Scott E. Thomas and Darryl R. Wold as 1999 Chairman and Vice Chairman.

# Appendix 3 FEC Organization Chart



<sup>1</sup> Commissioners Aikens and McGarry retired in 1998.

<sup>2</sup> Scott E. Thomas was elected 1999 Chairman.

<sup>3</sup> Darryl R. Wold was elected 1999 Vice Chairman.

<sup>4</sup> Policy covers regulations, advisory opinions, legal review and administrative law.

## Appendix 4 FEC Offices

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

### Administration

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

### Audit

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

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

### Commission Secretary

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

### Commissioners

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

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

### Congressional, Legislative and Intergovernmental Affairs

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

### Data Systems Development

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

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

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

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

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

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

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

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

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

## **General Counsel**

The General Counsel directs the agency's enforcement activities, represents and advises the Commission in any legal actions brought before it and serves as the Designated Agency Ethics Official. The Office of General Counsel handles all civil litigation, including Title 26 cases that come before the Supreme Court. The office also drafts, for Commission consideration, advisory opinions and regulations as well as other legal memoranda interpreting the federal campaign finance law.

## **Information**

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

## **Inspector General**

The FEC's Inspector General (IG) has two major responsibilities: to conduct internal audits and investigations to detect fraud, waste and abuse within the agency and to improve the economy and effectiveness of agency operations. The IG files reports notifying Congress of any serious problems or deficiencies in agency operations and of any corrective steps taken by the agency.

## **Law Library**

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

## Office of Election Administration

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

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

## Personnel and Labor/Management Relations

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

## Planning and Management

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

## Press Office

Staff of the Press Office are the Commission's official media spokespersons. In addition to publicizing Commission actions and releasing statistics on

campaign finance, they respond to all questions from representatives of the print and broadcast media. Located on the first floor, the office also handles requests under the Freedom of Information Act. Local phone: 202-694-1220; toll-free 800-424-9530.

## Public Disclosure

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

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

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

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

## Reports Analysis

Reports analysts assist committee officials in complying with reporting requirements and conduct detailed examinations of the campaign finance reports filed by political committees. If an error, omission or prohibited activity (e.g., an excessive contribution) is discovered in the course of reviewing a report, the analyst sends the committee a letter which requests that the committee either amend its reports or provide further information concerning a particular problem. By sending these letters (RFAs), the Commission

seeks to ensure full disclosure and to encourage the committee's voluntary compliance with the law. Analysts also provide frequent telephone assistance to committee officials and encourage them to call the division with reporting questions or compliance problems. Local phone: 202-694-1130; toll-free phone 800-424-9530 (press 2 on a touch-tone phone).

### **Staff Director and Deputy Staff Director**

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

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

## Appendix 5 Statistics on Commission Operations

### Summary of Disclosure Files

	Total Filers Existing in 1998	Filers Terminated as of 12/31/98	Continuing Filers as of 12/31/98	Number of Reports and Statements in 1998	Gross Receipts in 1998 (dollars)	Gross Expenditures in 1998 (dollars)
<b>Presidential Candidate Committees</b>	413	52	361	311	3,826,007	7,119,855
<b>Senate Candidate Committees</b>	676	236	440	1,893	216,905,461	269,135,130
<b>House Candidate Committees</b>	3,169	1,144	2,025	11,659	364,246,494	387,189,706
<b>Party Committees</b>						
Federal Party Committees	596	184	412	3,156	402,117,253	396,377,381
Reported Nonfederal Party Activity	111	—	111	433	174,414,116	177,204,190
<b>Delegate Committees</b>	10	2	8	—	—	—
<b>Nonparty Committees</b>						
Labor Committees	352	31	327	2,727	60,122,334	64,402,963
Corporate Committees	1,836	269	1,569	13,433	77,774,908	86,472,854
Membership, Trade and Other Committees	2,431	521	1,910	13,858	151,689,854	166,401,691
<b>Communication Cost Filers</b>	229	—	229	80	—	3,556,158
<b>Independent Expenditures by Persons Other Than Political Committees</b>	402	58	344	88	801,536	835,676

### Divisional Statistics for Calendar Year 1998

	Total
<b>Reports Analysis Division</b>	
Documents processed	64,977
Reports reviewed	43,103
Telephone assistance and meetings	11,432
Requests for additional information (RFAls)	6,957
Second RFAls	3,340
Data coding and entry of RFAls and miscellaneous documents	19,153
Compliance matters referred to Office of General Counsel or Audit Division	23
<b>Data Systems Development Division *</b>	
Documents receiving Pass I coding	61,110
Documents receiving Pass III coding	49,838
Documents receiving Pass I entry	64,535
Documents receiving Pass III entry	49,120
Transactions receiving Pass III entry	
• In-house	143,254
• Contract	1,113,929
<b>Public Records Office</b>	
Campaign finance material processed (total pages)	1,359,035
Cumulative total pages of documents available for review	15,683,118
Requests for campaign finance reports	6,048
Visitors	13,310
Total people served	19,358
Information telephone calls	16,164
Computer printouts provided	49,178
Faxline requests	4,852
Total income (transmitted to U.S. Treasury)	\$42,288
Contacts with state election offices	3,523
Notices of failure to file with state election offices	236

\* Computer coding and entry of campaign finance information occur in two phases. In the first phase, Pass I, summary information is coded and entered into the computer within 48 hours of the Commission's receipt of the report. During the second phase, Pass III, itemized information is coded and entered.

	Total
<b>Administrative Division</b>	
Contracting and procurement transactions	2,027
Publications prepared for print	35
Pages of photocopying	11,430,200
<b>Information Division</b>	
Telephone inquiries	61,046
Information letters	109
Distribution of FEC materials	8,894
Prior notices (sent to inform filers of reporting deadlines)	48,516
Other mailings	11,331
Visitors	76
Public appearances by Commissioners and staff	169
State workshops	0
Publications	24
<b>Press Office</b>	
News releases	60
Telephone inquiries from press	13,217
Visitors	2,297
Freedom of Information Act (FOIA) requests	486
Fees for materials requested under FOIA (transmitted to U.S. Treasury)	\$51,020
<b>Office of Election Administration</b>	
Telephone inquiries	4,707
National surveys conducted	8
Individual research requests	230
Materials distributed *	5,582
Election presentations/conferences	20
Foreign briefings	62
Publications	4

\* Figure includes National Voter Registration Act materials.



	Total
Office of General Counsel	
Advisory opinions	
Requests pending at beginning of 1998	6
Requests received	27
Issued	26
Not issued *	5
Pending at end of 1998	2
Compliance cases †	
Pending at beginning of 1998	207
Opened	168
Closed	164
Pending at end of 1998	211
Litigation	
Cases pending at beginning of 1998	35
Cases opened	17
Cases closed	21
Cases pending at end of 1998	31
Cases won	10
Cases lost	4
Cases settled ‡	7
Law Library	
Telephone inquiries	743
Visitors	1,172

**Audit Reports Publicly Released**

Year	Title 2 *	Title 26 †	Total
1976	3	1	4
1977	6	6	12
1978	98 ‡	10	108
1979	75 ‡	9	84
1980	48 ‡	11	59
1981	27 ‡	13	40
1982	19	1	20
1983	22	0	22
1984	15	2	17
1985	4	9	13
1986	10	4	14
1987	12	4	16
1988	8	0	8
1989	2	7	9
1990	1	6	7
1991	5	8	13
1992	9	3	12
1993	10	2	12
1994	5	17	22
1995	12	0	12
1996	23	0	23
1997	6	6	12
1998	5	7	12
<b>Total</b>	<b>425</b>	<b>126</b>	<b>551</b>

\* Three advisory opinion requests were withdrawn and two failed to garner the four Commission votes necessary for passage.

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

‡ Cases settled includes cases withdrawn, dismissed or re-manded.

### Audits Completed by Audit Division, 1975-1998

	Total
Presidential	106
Presidential Joint Fundraising	11
Senate	23
House	152
Party (National)	46
Party (Other)	135
Nonparty (PACs)	78
<b>Total</b>	<b>551</b>

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

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

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

### Status of Audits, 1998

	Pending at Beginning of Year	Opened	Closed	Pending at End of Year
Presidential	11	2	7	6
Presidential Joint Fundraising	0	1	0	1
Senate	1	0	1	0
House	3	0	3	0
Party (National)	1	0	0	1
Party (Other)	2	5	1	6
Nonparty (PACs)	0	4	0	4
<b>Total</b>	<b>18</b>	<b>12</b>	<b>12</b>	<b>18</b>

## Appendix 6

# 1998 Federal Register Notices

**1998-1**

Filing Dates for the New York Special Election (63 FR 2240, January 14, 1998)

**1998-2**

Privacy Act of 1974; Republication and Notice of New Routine Uses for Disclosure (63 FR 3895, January 27, 1998)

**1998-3**

Definition of Member of a Membership Association; Notice of Proposed Rulemaking; Technical Correction (63 FR 3851, January 27, 1998)

**1998-4**

Composition of the Commission; Notice of Disposition of Petition for Rulemaking (63 FR 4404, January 29, 1998)

**1998-5**

Filing Dates for the California Special Election (63 FR 5380, February 2, 1998)

**1998-6**

Definition of Express Advocacy; Notice of Disposition of Petition for Rulemaking (63 FR 8363, February 19, 1998)

**1998-7**

Filing Dates for the California Special Election (63 FR 9232, February 24, 1998)

**1998-8**

Definition of Member of a Membership Association; Public Hearing on Proposed Rules (63 FR 10783, March 5, 1998)

**1998-9**

Filing Dates for New Mexico Special Election (63 FR 19260, April 17, 1998)

**1998-10**

Qualified Nonprofit Corporations; Notice of Disposition of Petition for Rulemaking (63 FR 29358, May 29, 1998)

**1998-11**

Electronic Filing of Reports by Publicly Financed Presidential Primary and General Election Candidates; Notice of Proposed Rulemaking (63 FR 33012, June 17, 1998)

**1998-12**

Prohibited and Excessive Contributions; "Soft Money"; Notice of Proposed Rulemaking (63 FR 37722, July 13, 1998)

**1998-13**

Electronic Filing of Reports by Publicly Financed Presidential Primary and General Election Candidates; Final Rule and Transmittal of Regulations to Congress (63 FR 45679, August 27, 1998)

**1998-14**

Prohibited and Excessive Contributions; "Soft Money"; Extension of Comment Period and Change of Public Hearing Date (63 FR 48452, September 10, 1998)

**1998-15**

Prohibited and Excessive Contributions; "Soft Money"; Change of Public Hearing Date (63 FR 55056, October 14, 1998)

**1998-16**

Electronic Filing of Reports by Publicly Financed Presidential Primary and General Election Candidates: Final Rule; Announcement of Effective Date (63 FR 63388, November 13, 1998)

**1998-17**

Definition of "Member" of a Membership Association; Notice of Proposed Rulemaking (63 FR 69224, December 16, 1998)

**1998-18**

Public Financing of Presidential Primary and General Election Candidates; Notice of Proposed Rulemaking (63 FR 69524, December 16, 1998)

**1998-19**

Treatment of Limited Liability Companies Under the Federal Election Campaign Act; Notice of Proposed Rulemaking (63 FR 70065, December 18, 1998)

## Appendix 7 Recipients of Public Funding

### 1996 Presidential Election

Candidate/ Committee	Original Amount Certified	Date Audit Released	Repayment to Date	Net Public Money to Date
<b>Primary</b>				
Lamar Alexander (R)	\$4,573,443.84	06/19/97	\$ 884,993.00	\$ 3,688,450.84
Pat Buchanan (R)	10,983,474.85	-----	13,428.99	10,970,045.86
William J. Clinton (D)	13,412,197.51	12/03/98	5,500.00	13,406,697.51
Robert J. Dole (R)	13,545,770.94	12/03/98	13,250.00	13,532,520.94
Phil Gramm (R)	7,356,221.26	06/26/97	417,363.00	6,938,858.26
John Hagelin (NL)	504,830.79	05/11/98	0.00	504,830.79
Alan Keyes (R)	2,145,766.41	01/15/98	84,736.00	2,061,030.41
Lyndon LaRouche (D)	624,692.04	07/17/97	174,623.31	450,068.73
Richard G. Lugar (R)	2,657,244.26	09/18/97	14,294.00	2,642,950.26
Arlen Specter (R)	1,010,457.16	06/12/97	97,311.00	913,146.16
Pete Wilson (R)	1,724,257.09	07/31/97	104,739.60	1,619,517.49
<b>Total Primary</b>	<b>\$ 58,538,356.15</b>		<b>\$1,810,238.90</b>	<b>\$ 56,728,117.25</b>
<b>Convention</b>				
Democratic	\$ 12,364,000.00	06/18/98	\$ 185,758.95	\$ 12,178,241.05
Republican	12,364,000.00	12/04/97	470.12	12,363,529.88
<b>Total Convention</b>	<b>\$ 24,728,000.00</b>		<b>\$ 186,229.07</b>	<b>\$ 24,541,770.93</b>
<b>General</b>				
Clinton/Gore (D)	\$ 61,820,000.00	12/03/98	\$ 0.00	\$ 61,820,000.00
Dole/Kemp (R)	61,820,000.00	12/03/98	0.00	61,820,000.00
Perot	29,055,400.00	12/04/97	1,706,915.00	27,348,485.00
<b>Total General</b>	<b>\$152,695,400.00</b>		<b>\$1,706,915.00</b>	<b>\$150,988,485.00</b>
<b>Grand Total</b>	<b>\$235,961,756.15</b>		<b>\$3,703,382.97</b>	<b>\$232,258,373.18</b>

## 1992 Presidential Election

Candidate/ Committee	Original Amount Certified	Date Audit Released	Repayment to Date	Net Public Money to Date
<b>Primary</b>				
Larry Agran (D)	\$ 269,691.68	06/08/93	\$ 0.00	\$ 269,691.68
Edmund G. Brown, Jr. (D)	4,239,404.83	05/24/94	191,805.96	4,047,598.87
Pat Buchanan (R)	5,199,987.25	10/11/94	365,055.34	4,834,931.91
George Bush (R)	10,658,520.94	12/27/94	0.00	10,658,520.94
Bill Clinton (D)	12,536,135.47	12/27/94	1,353,159.82	11,182,975.65
Lenora B. Fulani (NA)	2,013,323.42	04/21/94	1,394.00	2,011,929.42
John Hagelin (NLP)	353,159.89	09/14/94	2,907.00	350,252.89
Tom Harkin (D)	2,103,361.85	03/15/94	35,316.00	2,068,045.85
Bob Kerrey (D)	2,195,529.81	03/03/94	7,937.00	2,187,592.81
Lyndon H. LaRouche (D)	570,507.92	11/30/94	292,090.93	278,416.99
Paul Tsongas (D)	3,003,981.09	12/16/94	10,567.00	2,993,414.09
Doug Wilder (D)	289,026.67	04/21/94	11,515.00	277,511.67
<b>Total Primary</b>	<b>\$ 43,432,630.82</b>		<b>\$2,271,748.05</b>	<b>\$ 41,160,882.77</b>
<b>Convention</b>				
Democratic	\$ 11,048,000.00	03/10/94	\$ 37,337.79	\$ 11,010,662.21
Republican	11,048,000.00	06/23/94	6,354.39	11,041,645.61
<b>Total Convention</b>	<b>\$ 22,096,000.00</b>		<b>\$ 43,692.18</b>	<b>\$ 22,052,307.82</b>
<b>General</b>				
George Bush (R)	\$ 55,240,000.00	12/27/94	\$ 155,400.89	\$ 55,084,599.11
Bill Clinton (D)	55,240,000.00	12/27/94	217,345.44	55,022,654.56
<b>Total General</b>	<b>\$110,480,000.00</b>		<b>\$ 372,746.33</b>	<b>\$110,107,253.67</b>
<b>Grand Total</b>	<b>\$176,008,630.82</b>		<b>\$2,688,186.56</b>	<b>\$173,320,444.26</b>

### 1988 Presidential Election

Candidate/ Committee	Original Amount Certified	Date Audit Released	Repayment to Date	Net Public Money to Date
<b>Primary</b>				
Bruce Babbitt (D)	\$ 1,078,939.44	05/25/89	\$ 1,004.80	\$ 1,077,934.64
George Bush (R)	8,393,098.56	01/30/92	113,079.70	8,280,018.86
Robert Dole (R)	7,618,115.99	04/11/91	235,821.53	7,382,294.46
Michael Dukakis (D)	9,040,028.33	10/10/91	485,000.00	8,555,028.33
Pete du Pont (R)	2,550,954.18	03/09/89	25,775.49	2,525,178.69
Lenora B. Fulani (NA)	938,798.45	11/02/89	16,692.11	922,106.34
Richard Gephardt (D)	3,396,276.37	05/23/91	121,572.28	3,274,704.09
Albert Gore, Jr. (D)	3,853,401.56	07/13/89	4,327.41	3,849,074.15
Alexander Haig (R)	538,539.20	06/22/89	8,834.14	529,705.06
Gary Hart (D)	1,124,708.09	01/25/90	38,215.79	1,086,492.30
Jesse Jackson (D)	8,021,707.31	04/22/92	75,000.00	7,946,707.31
Jack Kemp (R)	5,984,773.65	07/25/91	103,555.03	5,881,218.62
Lyndon LaRouche (D)	825,576.99	05/17/90	4,795.32	820,781.67
Pat Robertson (R)	10,410,984.83	03/26/92	0.00	10,410,984.83
Paul Simon (D)	3,774,344.77	08/29/91	0.00	3,774,344.77
<b>Total Primary</b>	<b>\$ 67,550,247.72</b>		<b>\$1,233,673.60</b>	<b>\$ 66,316,574.12</b>
<b>Convention</b>				
Democratic	\$ 9,220,000.00	11/21/89	\$ 57,294.06	\$ 9,162,705.94
Republican	9,220,000.00	10/25/89	32,506.57	9,187,493.43
<b>Total Convention</b>	<b>\$ 18,440,000.00</b>		<b>\$ 89,800.63</b>	<b>\$ 18,350,199.37</b>
<b>General</b>				
George Bush (R)	\$ 46,100,000.00	10/03/91	\$ 134,834.71	\$ 45,965,165.29
Michael Dukakis (D)	46,100,000.00	10/31/91	334,683.20	45,765,316.80
<b>Total General</b>	<b>\$ 92,200,000.00</b>		<b>\$ 469,517.91</b>	<b>\$ 91,730,482.09</b>
<b>Grand Total</b>	<b>\$178,190,247.72</b>		<b>\$1,792,992.14</b>	<b>\$176,397,255.58</b>

## 1984 Presidential Election

Candidate/ Committee	Original Amount Certified	Date Audit Released	Repayment to Date	Net Public Money to Date
<b>Primary</b>				
Reubin Askew (D)	\$ 976,179.04	08/02/84	\$ 5,073.55	\$ 971,105.49
Alan Cranston (D)	2,113,736.44	08/22/85	26,539.56	2,087,196.88
John Glenn (D)	3,325,382.66	08/19/85	76,146.29	3,249,236.37
Gary Hart (D)	5,333,785.31	06/26/86	1,295.52	5,332,489.79
Ernest Hollings (D)	821,599.85	09/10/84	15,605.59	805,994.26
Jesse Jackson (D)	3,053,185.40	07/19/85	4,538.50	3,048,646.90
Sonia Johnson (C)	193,734.83	06/25/85	0.00	193,734.83
Lyndon LaRouche (D)	494,145.59	10/29/85	0.00	494,145.59
George McGovern (D)	612,734.78	02/11/85	67,726.51	545,008.27
Walter Mondale (D)	9,494,920.93	10/28/86	290,140.55	9,204,780.38
Ronald Reagan (R)	10,100,000.00	07/10/86	403,086.49	9,696,913.51
<b>Total Primary</b>	<b>\$ 36,519,404.83</b>		<b>\$ 890,152.56</b>	<b>\$ 35,629,252.27</b>
<b>Convention</b>				
Democratic	\$ 8,080,000.00	09/05/85	\$ 20,654.60	\$ 8,059,345.40
Republican	8,080,000.00	04/28/86	306,454.29	7,773,545.71
<b>Total Convention</b>	<b>\$ 16,160,000.00</b>		<b>\$ 327,108.89</b>	<b>\$ 15,832,891.11</b>
<b>General</b>				
Walter Mondale (D)	\$ 40,400,000.00	02/05/87	\$ 181,945.30	\$ 40,218,054.70
Ronald Reagan (R)	40,400,000.00	05/11/87	277,244.82	40,122,755.18
<b>Total General</b>	<b>\$ 80,800,000.00</b>		<b>\$ 459,190.12</b>	<b>\$ 80,340,809.88</b>
<b>Grand Total</b>	<b>\$133,479,404.83</b>		<b>\$1,676,451.57</b>	<b>\$ 131,802,953.26</b>



### 1980 Presidential Election

Candidate/ Committee	Original Amount Certified	Date Audit Released	Repayment to Date	Net Public Money to Date
<b>Primary</b>				
John B. Anderson (R)	\$ 2,733,077.02	12/18/80	\$ 412,267.54	\$ 2,320,809.48
Howard H. Baker, Jr. (R)	2,635,042.60	12/18/80	104,074.58	2,530,968.02
Edmund G. Brown, Jr. (D)	892,249.14	12/16/80	18,980.02	873,269.12
George Bush (R)	5,716,246.56	02/04/81	39,691.01	5,676,555.55
Jimmy Carter (D)	5,117,854.45	01/21/81	111,431.13	5,006,423.32
Phillip M. Crane (R)	1,899,631.74	11/14/80	468.00	1,899,163.74
Robert J. Dole (R)	446,226.09	12/16/81	3,369.44	442,856.65
Edward M. Kennedy (D)	4,134,815.72	09/28/81	18,534.17	4,116,281.55
Lyndon H. LaRouche (D)	526,253.19	04/15/81	55,751.45	470,501.74
Ronald Reagan (R)	7,330,262.78	02/02/81	1,052,647.87	6,277,614.91
<b>Total Primary</b>	<b>\$ 31,431,659.29</b>		<b>\$1,817,215.21</b>	<b>\$ 29,614,444.08</b>
<b>Convention</b>				
Democratic	\$ 4,416,000.00	04/29/81	\$ 732,473.24	\$ 3,683,526.76
Republican	4,416,000.00	04/09/81	21,395.44	4,394,604.56
<b>Total Convention</b>	<b>\$ 8,832,000.00</b>		<b>\$ 753,868.68</b>	<b>\$ 8,078,131.32</b>
<b>General</b>				
John B. Anderson (I)	\$ 4,242,304.00	10/19/81	\$ 48,786.01	\$ 4,193,517.99
Jimmy Carter (D)	29,440,000.00	08/18/81	87,232.02	29,352,767.98
Ronald Reagan (R)	29,440,000.00	12/11/81	279,278.95	29,160,721.05
<b>Total General</b>	<b>\$ 63,122,304.00</b>		<b>\$ 415,296.98</b>	<b>\$ 62,707,007.02</b>
<b>Grand Total</b>	<b>\$103,385,963.29</b>		<b>\$2,986,380.87</b>	<b>\$100,399,582.42</b>

## 1976 Presidential Election

Candidate/ Committee	Original Amount Certified	Date Audit Released	Repayment to Date	Net Public Money to Date
<b>Primary</b>				
Bir ch Bayh (D)	\$ 545,710.39	06/16/78	\$ 0.00	\$ 545,710.39
Lloyd Bentsen (D)	511,022.61	08/29/77	0.00	511,022.61
Edmund G. Brown, Jr. (D)	600,203.54	09/28/77	306.00	599,897.54
Jimm y Carter (D)	3,886,465.62	04/02/79	132,387.60	3,754,078.02
Frank Chur ch (D)	640,668.54	07/18/77	0.00	640,668.54
Gerald For d (R)	4,657,007.82	03/30/78	148,140.41	4,508,867.41
Fred Harris (D)	639,012.53	05/17/79	7,798.32	631,214.21
Henry Jac kson (D)	1,980,554.95	01/25/78	17,603.78	1,962,951.17
Ellen McCormac k (D)	247,220.37	08/24/77	0.00	247,220.37
Ronald Reagan (R)	5,088,910.66	04/13/78	611,141.89	4,477,768.77
Terry Sanford (D)	246,388.32	10/14/76	48.04	246,340.28
Milton Shapp (D)	299,066.21	03/20/78	299,066.21	0.00
Sargent Shriver (D)	295,711.74	05/17/79	1,553.00	294,158.74
Morris Udall (D)	2,020,257.95	06/18/79	43,113.28	1,977,144.67
George Wallace (D)	3,291,308.81	04/03/78	45,380.98	3,245,927.83
<b>Total Primary</b>	<b>\$24,949,510.06</b>		<b>\$1,306,539.51</b>	<b>\$23,642,970.55</b>
<b>Convention</b>				
Democratic	\$ 2,185,829.73	12/20/77	\$ 170,093.16	\$ 2,015,736.67
Republican	1,963,800.00	07/10/78	382,205.36	1,581,594.64
<b>Total Convention</b>	<b>\$ 4,149,629.73</b>		<b>\$ 552,298.42</b>	<b>\$ 3,597,331.31</b>
<b>General</b>				
Jimm y Carter (D)	\$21,820,000.00	06/04/79	\$ 57,762.21	\$21,762,237.79
Gerald For d (R)	21,820,000.00	03/24/78	44,655.00	21,775,345.00
<b>Total General</b>	<b>\$43,640,000.00</b>		<b>\$ 102,417.21</b>	<b>\$43,537,582.79</b>
<b>Grand Total</b>	<b>\$72,739,139.79</b>		<b>\$1,961,255.14</b>	<b>\$70,777,884.65</b>