



THE FEDERAL ELECTION COMMISSION

RECORD

1325 K Street N.W., Washington, D.C. 20463

Volume 3, Number 5

May 1977

FEC REGULATIONS BECOME LAW

On April 13, 1977, the Federal Election Commission prescribed a full set of regulations interpreting the Federal Election Campaign Act of 1971, as amended. Proposed regulations were submitted to Congress on January 11, 1977. Under the statute, the Commission could not prescribe them until Congress had 30 legislative days in which to review and disapprove one or more parts of the proposed regulations. On March 29, this review period expired without either house exercising its veto. A virtually identical version of these regulations, previously submitted to Congress on August 3, 1976, was never officially promulgated because Congress recessed after only 28 legislative days had passed.

The bulk of the regulations were published in the August 25, 1975, *Federal Register*, with minor amendments appearing in the *Federal Register* notices dated September 10 and October 18, 1976.

Copies of the regulations, published as reprints of the August 25, 1976, *Federal Register*, were sent last year to all candidates, political committees and other individuals on the FEC mailing list. Those in need of additional copies may obtain them free of charge from the FEC Office of Public Information. The three minor amendments incorporated into the final regulations were sent to individuals on the FEC mailing list in March 1977. Additional copies are available upon request.

The other Ex Officio member of the Commission is Edmund L. Henshaw, Jr., Clerk of the House of Representatives.

NEW EX OFFICIO MEMBER OF THE COMMISSION

J. S. Kimmitt, sworn in as Secretary of the Senate on April 1, has become a new Ex Officio member of the Federal Election Commission. Prior to assuming the post of Secretary of the Senate, Kimmitt served as Secretary of the Majority in the Senate.

Serving as nonvoting members of the Commission, each Ex Officio Commissioner has a Special Deputy assigned and attached to the Commission. Harriet Robnett serves as Special Deputy to the Secretary of the Senate and Douglas J. Patton is the Special Deputy to the Clerk of the House. They serve on the Commission panel when the Ex Officio members cannot attend Commission meetings.

OPINIONS

ADVISORY OPINIONS: SUMMARIES

With the official promulgation of FEC regulations on April 13, the Commission discontinued the practice of issuing "Re: AOR's." All responses to requests for advisory opinions will be issued in the form of **Advisory Opinions**. Designated as AO's, **Advisory Opinions** concern the application of the Act to specific factual situations. Any person requesting an advisory opinion who in good faith acts in accordance with the findings of the opinion will not be penalized under the Act. The opinion may also be relied upon by any other person involved in a specific transaction which is indistinguishable in all material aspects from the activity discussed in the advisory opinion.

AO 1976-112: Democrats Abroad Constitutes Party Committee

Democrats Abroad is considered a party committee because it "represents the Democratic Party to Americans living in foreign countries, and . . . functions as part of the official structure of the Democratic Party." It is not, however, considered a State party committee since it is not responsible for the day-to-day operation of a political party at the State level. Therefore, it is not entitled to the special allowance granted to State parties for making expenditures on behalf of Federal candidates in the general election. Democrats Abroad is, however, regarded as a subordinate of the national party committee. Transfers between Democrats Abroad and other Democratic party committees are not, therefore, subject to contribution limits, but they are reportable as intraparty transfers. (Length: 3 pages)

AO 1977-7: Solicitation of Personal Funds

The Federal Election Campaign Act does not apply to a plan submitted by Congressman George Hansen to solicit funds for purely personal, noncampaign purposes. The Congressman, therefore, is not required to file any reports to the FEC on the activities of such a noncampaign fund-raising plan. The Commission emphasized, however, that this opinion "should not be construed as Commission endorsement or approval of the plan . . ." Moreover, other

laws outside the Commission's jurisdiction, such as Title 18 of the U.S. Code, Federal tax laws and rules of the House of Representatives, may apply to its operation.

The Commission also stressed the importance of the office-holder's commitment not to use any personal funds (once the plan was in operation) to influence his own future election. Further, the Commission noted, the Congressman could not assume any liability for a loan obtained by or on behalf of an authorized campaign committee to defray costs of a past or future campaign. (Length: 4 pages)

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

In two specific factual situations, the Santa Clara County Democratic Central Committee (SCDC) may transfer specific sums of money from its account for local and State elections to its Federal Funds Committee (FFC), a separate committee (with separate account) supporting Federal candidates. In the first case, the transfer is permissible because the money was originally contributed by other "political committees," as defined in the Act. Under the regulations, a "political committee" may accept contributions from another "political committee," but not from a committee which is not organized and operated according to the Act and FEC regulations. In the second instance, SCDC may transfer to the FFC funds erroneously deposited in the account for local and State elections since they were expressly solicited for use in Federal elections only. (Length: 3 pages)

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

A computerized voters list given by the Oklahoma Republican State Committee to Senators Dewey F. Bartlett and Henry L. Bellmon would not be considered a campaign contribution if it were given exclusively for the purpose of aiding the Senators' communications with their constituents under the congressional franking privilege, and not for the purpose of influencing a Federal election. (Length: 2 pages)

AO 1977-11: Criteria for Candidacy

Regardless of whether a Member of Congress has "officially" declared his or her candidacy for reelection, when he or she or an authorized committee accepts contributions

(Continued)

The RECORD is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: Vernon W. Thomson, Chairman; Thomas E. Harris, Vice-Chairman; Joan D. Aikens; William L. Springer; Neil Staebler; Robert O. Tiernan; J.S. Kimmitt, Secretary of the Senate, Ex Officio; Edmund L. Henshaw, Jr., Clerk of the House of Representatives, Ex Officio. For more information, call 523-4068 or toll free 800-424-9530.

for a "campaign account" or makes campaign-related expenditures from it, the Member is considered a candidate for a future Federal election. (Note one exception: Funds accepted and spent only to retire a past campaign debt do not trigger candidacy for a future election.)

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

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

The advisory opinion notes, however, that noncampaign expenditures made from a campaign account may be subject to the rules of the House of Representatives and Federal tax laws. (Length: 4 pages)

3. A field review to verify the candidate or committee's records.
4. An "Exit Conference" between auditors and the candidate or committee to discuss the results of the audit, subsequent audit procedures and possible suggestions for improved recordkeeping and reporting.
5. A staff report to the Commission on the audit results.
6. Commission review of the report to decide what action, if any, to take with respect to these results.
7. Publication of all completed audits.

COMPLIANCE MATTERS

FEC PUBLICIZES NON-FILERS IN GEORGIA'S SPECIAL ELECTION

The FEC published on March 12 the names of three candidates for Georgia's 5th District seat in the House of Representatives (and their principal campaign committees) who failed to file their pre-election reports. Due ten days before the March 15 special election, the report was to have covered the candidate's (campaign's) financial transactions related to the special election held in Georgia to fill the seat vacated by U.N. Ambassador Andrew Young.

Before making the names public, the Commission sent these candidates three notices reminding them of their reporting obligations and urging compliance.

PROCEDURES

AUDIT PROCEDURES

The Federal Election Commission is directed by the Campaign Finance Act (2 U.S.C. Sec. 438(a)(8)) "to make from time to time audits and field investigations with respect to reports and statements filed under the (Act)." To carry out this duty, the Commission at its April 7 meeting approved procedures for conducting audits.

Three basic objectives for FEC audits were endorsed: verifying reporting accuracy, determining compliance with the Act and providing guidance to persons filing under the Act. The Commission stressed the importance of using its auditing staff to help educate candidates and committees about proper recordkeeping and reporting procedures.

The Commission adopted a seven-step auditing process:

1. A detailed pre-audit review at the FEC of all reports and statements filed by the party.
2. An "Entrance Conference" between the auditors and the candidate or committee to explain the purpose of the audit, outline its procedures, obtain necessary documents, records and statements and answer any questions about the audit process.

FEC FILES SUITS AGAINST SIX HOUSE CANDIDATES

On March 30, the FEC announced it had filed civil suits in six U.S. District Courts (in Alabama, Illinois, Nevada, New York, Oklahoma and Pennsylvania) to compel six 1976 candidates for the House of Representatives to comply with the reporting requirements of the Federal Election Campaign Act. In separate suits, the FEC asked the courts to order these candidates either to designate a principal campaign committee or to file one or more required reports (pre-general election, post-general election, year-end) or both. In addition, the Commission asked the courts to assess a penalty of not more than \$5,000 against the candidates for "failing and refusing to comply with the Act."

As of April 1, the FEC had filed a total of 28 civil suits in District Courts against candidates failing to file reports for the 1976 Federal elections.

Prior to filing these suits, the Commission had sent the candidates at least two notices concerning each reporting obligation. In addition, it made public their failure to comply with the Act's reporting provisions.

PUBLIC FINANCING

ONE-HALF MILLION RETURNED TO PRESIDENTIAL ELECTION FUND

The Federal Election Commission announced on March 18 that the Democratic National Committee (DNC) and the Republican National Committee (RNC) had returned to the Federal Treasury a total of more than a half-million dollars in surplus funds originally certified for the 1976 Presidential nominating conventions. The DNC had refunded \$170,085 and the RNC, \$382,136 in unused funds.

Under the Federal Election Campaign Act, each major party was entitled to \$2,182,000 in Federal funds to defray costs related to the nominating convention.

The following figures, which take into account the refunds made by the two national committees, indicate how public funds were allocated for the 1976 Presidential campaign:

\$2,010,785 -- DNC national nominating convention
1,581,664 -- RNC national nominating convention
3,592,449 -- Total convention payments
24,774,330 -- Primary matching funds for 15 Presidential candidates (as of April 14, 1977)
43,640,000 -- General election payments to Ford and Carter
\$72,006,779 -- Total certified for Convention, Primary and General Elections (as of April 14, 1977)

Public funds are disbursed from the Presidential Election Fund consisting of \$1 dollar amounts checked off by individuals filing their income tax returns. The fund received roughly \$95.8 million between 1973 and 1976. As of December 31, 1976, this left a surplus of approximately \$23.8 million to be carried over to the 1980 Presidential elections. Between January 1 and March 30, 1977, an additional \$17,170,000 was added (from the dollar check-off on tax returns filed for 1976), bringing the total amount in the Fund to \$40,970,000.

FEC CONTINUES FUND CERTIFICATIONS FOR PRESIDENTIAL CANDIDATES

As of April 14, the FEC had certified a total of \$24,774,329.99 in matching funds for 15 Presidential primary candidates in 1976. In the case of those candidates with remaining primary debts, the Commission continues to match qualified contributions received prior to December 31, 1976. Public funds certified since August 1976 may be used only to retire primary debts incurred before the national party nominating conventions. Total certifications by candidate, as of April 14, are as follows:

CANDIDATE

TOTAL CERTIFICATIONS

B. Bayh (D)	\$ 545,710.39
L. Bentsen (D)	511,022.61
E.G. Brown (D)	598,704.37
J. Carter (D)	3,726,521.69
F. Church (D)	640,668.54
G. Ford (R)	4,657,007.82
F. Harris (D)	639,012.53
H. Jackson (D)	1,980,554.95
E. McCormack (D)	244,125.40
R. Reagan (R)	5,088,910.66
T. Sanford (D)	246,388.32
M. Shapp (D)	299,066.21
S. Shriver (D)	285,069.74
M. Udall (D)	2,020,257.95
G. Wallace (D)	3,291,308.81

PUBLICATIONS

ANNUAL REPORT

In its Annual Report for 1976, transmitted to Congress on March 28, the FEC says it received disclosure reports from 3,022 Federal candidates (230 candidates for the Presidency, 415 for the Senate and 2,377 for the House of Representatives), from 5,651 political committees and from 376 individuals and groups reporting money spent independently on behalf of candidates. Altogether, 9,049 filers representing 3,390 campaigns submitted a half-million disclosure documents.

In the public financing area, the Commission reports it provided funds to 15 qualified Presidential primary candidates and developed satisfactory procedures to ensure public confidence in the matching process. During the peak of the primary season when, for two months, the Supreme Court's decision prevented the FEC from certifying public funds, the Commission continued "accepting and processing requests for matching payments" so that it was ready "to certify a backlog of \$3.2 million to nine candidates on May 21," the day it was empowered to resume certification of public funds to Presidential candidates.

During 1976, the Commission reports, the FEC implemented a computer system to assist in its initial review of disclosure documents, the publication of a variety of indexes and the compilation of data from disclosure reports.

By conducting all of its 88 formal meetings and numerous task force meetings in public view, the FEC encouraged additional "public comment that would not have been so readily available to the Commission had discussion been held in closed session."

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The Annual Report also summarizes procedures and policy questions related to public financing, disclosure, expenditure and contribution limitations and enforcement. A special section includes the full text of the Commission's legislative recommendations (summarized in the March issue of the Record). Throughout the Report, the Commission provides statistics on its activity. During 1976, the Commission:

- Certified \$24.3 million in matching grants to 15 Presidential candidates; \$4.1 million in grants to finance the two major party nominating conventions; and \$43.6 million to the two major party Presidential nominees.
- Submitted a complete set of proposed regulations to Congress which were published in the **Federal Register**.
- Responded to 25,000 telephone and letter inquiries received by the Public Communications office, including more than 1,000 calls a week during October.
- Provided 57 formal advisory opinions and 51 responses to requests for advisory opinions.
- Reviewed 319 enforcement cases (including 34 begun in 1975) of which two-thirds were closed after preliminary review or investigation.
- Made public 245 completed compliance cases.
- Published the names of 127 candidates as "non-filers" after having sent each one at least two notices reminding him of his failure to comply with reporting requirements. Of this number, only 22 resulted in civil litigation.
- Published informational materials, including a six-part **Campaign Guide**, a periodic newsletter, compilation of Federal election campaign laws and a **Bookkeeping Manual**.

FREEDOM OF INFORMATION ACT: REPORT OF FEC

On March 17, 1977, the Federal Election Commission transmitted to Congress a report on its 1976 activities under the Freedom of Information Act. The report points out that most materials and information at the FEC are regularly made available to the public, virtually "eliminating the need for interested parties to utilize formal procedures under the Freedom of Information Act to obtain desired information." The only exceptions to this open policy are pending audits, compliance cases and personnel matters. All of the Commission's 88 meetings in 1976, for example, were open to the public with the exception of the portions of meetings dealing with pending compliance, audit or personnel topics. Even compliance cases, the report explains, were revealed to the public once the Commission completed action on them. During 1976, 245 such compliance cases were released to the public. As further evidence of the Commission's general policy of openness, the report cites public access to all campaign finance reports, the processing of 25,000 requests for information and the regular distribution of informational materials to a mailing list of more than 10,000 candidates, political committees and other interested parties.

STATISTICS

FEC RELEASES INDEX OF INDEPENDENT EXPENDITURES

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

The following chart, based on data from the index, details the total amounts of independent expenditures made in support of each Presidential candidate.

Independent Expenditures for Presidential Candidates

Candidate	Amount Spent	% of Total
Ronald Reagan	\$115,957	43%
Gerald Ford	\$108,214*	40%
Frank Church	\$ 24,212	9%
Jimmy Carter	\$ 17,091*	6%
Morris Udall	\$ 675	1%
Jerry Brown	\$ 630	1%
Milton Shapp	\$ 448	--
George Wallace	\$ 445	--
Henry Jackson	\$ 14	--
TOTAL	\$267,686	100%

*Figures do not include expenditures made in opposition to the candidate: \$650 made in opposition to Gerald Ford and \$8,520 made in opposition to Jimmy Carter.

This index also lists expenditures made on behalf of clearly identified candidates by "unauthorized delegates" participating in the Presidential nominating conventions (i.e., those delegates who had no financial relationship with a Presidential candidate) and delegate committees. They spent a total of \$277,167 for communications supporting or opposing Federal candidates. This figure, representing the expenditures made for identified candidates only, does not reflect total expenditures made by all "unauthorized delegates" and delegate committees; 67 percent of such delegates and committees reported the identity of the candidates they supported.

LEGISLATION

FEC COMPLETES TESTIMONY ON BUDGET REQUEST

Completing its testimony on the budget request for fiscal year 1978, the Federal Election Commission addressed the House Appropriations Subcommittee on Treasury, Postal Service and General Government on March 30, 1977. Commissioners Robert O. Tiernan and Joan D. Aikens presented data in support of the Commission's request for \$8.123 million. Similar testimony was previously delivered to the Senate Rules and Senate Appropriations Committees on March 3 and 15, respectively. Congress has not yet voted on the FY '78 appropriations.

nel operations to gauge conformity with EEO policy and providing counseling services to employees or job applicants who feel they have encountered discrimination. The Women's Coordinator, under the EEO Director's supervision, is responsible for matters of special concern to women, including recruitment, training, advancement, expansion of part-time employment opportunities and development of an Upward Mobility Program to alleviate concentration of women in lower-level, dead-end positions.

FEDERAL REGISTER

FEC documents of general applicability are published regularly in the **Federal Register**. The following list identifies all FEC documents appearing in the **Federal Register** between March 19 and April 14, 1977:

STAFF

FEC ENSURES EQUALITY OF EMPLOYMENT OPPORTUNITY

On March 31, the Commission adopted specific guidelines to ensure equality of employment opportunity for all persons working at the FEC, regardless of their race, creed, color, sex, age, national origin, physical handicaps or other irrelevant factors.

To carry out this policy, the Commission designated several staff members to serve as Equal Employment Opportunity (EEO) officers while continuing their other regular duties at the FEC. Victor Sterling, staff attorney, will serve as EEO Director; Evelyn Kershaw, document coordinator, will be Federal Women's Program Coordinator; and Joan Middleton, secretary to Commissioner Staebler, will serve as one of two EEO counselors.

The EEO Director is responsible for developing programs to ensure equal employment opportunity, appraising person-

Notice	Title	Federal Register Publication Date	Citation
1977-17	Advisory Opinion Request 1977-12	3-21-77	42 FR 15362
1977-18	Clearinghouse Advisory Panel Review Notice	3-28-77	42 FR 16468
1977-19	Advisory Opinion Request 1977-13	3-30-77	42 FR 16848
1977-20	Candidate and Committee Index of Filers -- 1975 & 1976	4-14-77	42 FR 19615
1977-21	Advisory Opinion Request 1977-14	4-5-77	42 FR 18243
1977-22	Advisory Opinion Request 1977-15	4-6-77	42 FR 18303
1977-23	Promulgation of Regulations Implementing FECA of 1971, as amended	4-13-77	42 FR 19324

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1325 K STREET, NW
WASHINGTON, DC 20463

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