



THE FEDERAL ELECTION COMMISSION

RECORD

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

Volume 5, Number 4

April 1979

The quarterly report is due on or before April 10, 1979, and must include all reportable transactions occurring since the last full report (FEC Form 3) filed (or, if the committee is new, from the date of registration) through March 31, 1979. Those committees filing on a monthly basis should file their report for the month of March by April 20, 1979.

APRIL QUARTERLY REPORT

All candidates for Federal office (except those who have received a personal reporting waiver) who are not on the ballot during this calendar year and all of their authorized committees must file a quarterly report by April 10, 1979, if: the candidate and the committees together received contributions and made expenditures exceeding \$5,000 during the quarter. Receipts and expenditures include debts incurred and debts extinguished or forgiven. All other political committees (except monthly filers) must file the quarterly report if either receipts or expenditures (including debts incurred and debts extinguished or forgiven) exceeded \$1,000 during this period. **NOTE:** Candidates and committees involved in the special elections in Wisconsin and California should consult the specific notices sent to them regarding their quarterly reporting obligations.

Candidates and committees must use one of the following forms:

- Form 3a: Candidates and committees whose financial activity did not exceed the reporting thresholds (\$5,000 or \$1,000) must nevertheless file the postcard form or a letter with the same information.
- Form 3P: Presidential candidates and their committees whose financial activity exceeded the reporting thresholds must file their report on Form 3P (with supporting schedules).
- Form 3: All other candidates and committees whose financial activity exceeded the reporting thresholds must file their report on Form 3 (with supporting schedules).

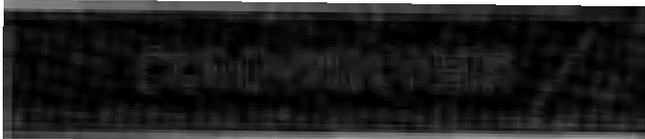
The report should be filed with the Clerk of the House, the Secretary of the Senate or the Federal Election Commission, as appropriate. A notice containing additional information, as well as forms, has been sent to all registered candidates and committees. Questions about the notices or requests for forms should be addressed to the Office of Public Communications, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463; or telephone 202/523-4068, toll-free 800/424-9530.

SPECIAL ELECTION SPENDING LIMITS - 1979

For the special elections in Wisconsin and California, party committees eligible to make coordinated party expenditures (2 U.S.C. §441a(d), 11 CFR 110.7) may spend up to \$13,320.

On March 12, 1979, the Department of Labor announced that there had been a 32.3% increase in the cost-of-living since 1974. That figure is used to calculate coordinated expenditure limitations for eligible State and national committees.

When the Department of Commerce releases the estimates of the 1979 voting age population, the **Record** will publish the 1979 party spending limitations for each State.



NEW COMMISSIONERS

On February 21, 1979, the Senate confirmed the nomination of two new members of the Federal Election Commission: Democrat John W. McGarry and Republican Max L. Friedersdorf.

Mr. Friedersdorf, who succeeds Commissioner William L. Springer, was born in Indiana. He received his B.A. from Franklin College in 1952 and earned an M.A. from American University in 1970. From 1952 to 1960, Mr. Friedersdorf was a reporter and editor with the *Indianapolis News*, *Chicago Daily News*, *Louisville Times* and *Franklin Evening Star* (Indiana). From 1961 to 1970, he was an administrative assistant and press secretary for former Congressman Richard L. Roudebush (R-Ind.).

The new Commissioner was Director of Congressional Relations for the Office of Economic Opportunity during 1970. Between 1971 and 1977, Mr. Friedersdorf served as Assistant to Presidents Nixon and Ford. He was Special Assistant and then Deputy Assistant for Congressional Affairs to President Nixon from 1971 to 1974. He continued as Deputy Assistant to President Ford until 1975, when he became the President's Assistant for Legislative Affairs.

The American Political Science Association presented Mr. Friedersdorf with their award for Outstanding Reporting of Government Affairs in 1957, and in 1968 he received the Association's Congressional Fellowship Award. The Indiana Republican Mayors Association named the new Commissioner Indiana Man of the Year in 1976.

Since January 1977, Mr. Friedersdorf has been Staff Director of the Senate Republican Policy Committee. He assumed his new duties as Commissioner on March 1, 1979.

Mr. McGarry, who succeeds Commissioner Neil Staebler, has been serving as a Commissioner since his interim appointment to the six-member Commission by President Carter on October 25, 1978.

Mr. McGarry, who was born in Boston, Massachusetts, served in the Navy during World War II. After the war, he graduated from Holy Cross College, did graduate work at Boston University and earned a law degree at Georgetown

Law Center. After graduation from law school, Mr. McGarry served as Assistant Counsel and then as Counsel for the Committee on Government Operations for the U.S. House of Representatives.

In 1959, he was appointed Assistant Attorney General for the Commonwealth of Massachusetts. In that capacity, Mr. McGarry served as trial counsel and appellate advocate for Massachusetts before both State and Federal Courts from 1959 until 1962. Between 1962 and 1973 Mr. McGarry combined private practice with service as Chief Counsel for the House Special Committee to Investigate Campaign Expenditures. In 1973, Mr. McGarry was appointed Special Counsel on Elections to the Committee on House Administration. He remained in that position until last year, when he assumed his duties as an FEC Commissioner.

The terms of both new Commissioners will expire in April 1983.



PROPOSED REVISIONS IN PRESIDENTIAL MATCHING PAYMENTS ACCOUNT

As part of its general planning and preparation for the 1980 Presidential election, the FEC has proposed several revisions to the regulations governing the administration of the Presidential Primary Matching Payments Account. These regulations define the process under which 1980 Presidential candidates may receive Federal matching funds for their primary campaigns. In accordance with the law, the Commission submitted its proposed changes to Congress on February 16, 1979. Unless the House or Senate disapproves the proposed regulations within 30 legislative days, the proposed regulations will become effective.

The proposed regulations codify and delineate Commission policies and procedures by:

1. Defining the candidate's responsibility for proving that public funds are expended in accordance with the law;
2. Clarifying recordkeeping procedures; and
3. Standardizing the procedures for handling disputes between the Commission and the candidate.

The RECORD is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: Joan D. Aikens, Chairman; Robert O. Tiernan, Vice Chairman; Max L. Friedersdorf; Thomas E. Harris; John W. McGarry; Vernon W. Thomson; 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 202/523-4068 or toll-free 800/424-9530.

A brief summary of proposed additions to the regulations appears below. Candidates who will be required to comply with the regulations are cautioned not to rely on the summary, but to obtain the full text of the proposed regulations.

CANDIDATE RESPONSIBILITY FOR DOCUMENTING QUALIFIED CAMPAIGN EXPENSES

Under the statute as well as current and proposed Regulations, the candidate is required to "obtain and furnish any evidence the Commission may request" regarding qualified campaign expenditures. The proposed regulations also provide that the candidate must assume "...the burden of proving that expenditures...are qualified campaign expenses," and specify the documentation which will be required as proof that the expenditure was actually made and was related to the campaign.

DEFINITION OF QUALIFIED CAMPAIGN EXPENSE

Qualified campaign expenses include expenditures made in connection with the campaign between the date the individual becomes a candidate and the date that candidacy is terminated. Expenses incurred **before** the date candidacy is established may be qualified campaign expenses if they are incurred for the purpose of determining whether an individual should become a candidate ("testing the waters"); expenses incurred **after** the date the candidacy is terminated may be qualified campaign expenses if they are related to termination of campaign activity ("winding down" costs).

To ensure that public funds are spent only on qualified campaign expenses, the proposed regulations specify that all funds (both private contributions and public matching funds) may be spent only to defray qualified campaign expenses. This would prohibit a candidate who accepts public funds from using private contributions, including those he received prior to establishing his eligibility, or public funds for nonqualified campaign expenses. The purpose of the regulation is to avoid a situation where a candidate would require more public funding to restore private funds diverted to nonqualified expenditures.

The regulations entitle a candidate to matching funds after his date of ineligibility only if he has net outstanding campaign obligations on that date. Within fifteen days of his ineligibility, the candidate is required to provide the Commission with a statement of outstanding debts. Matching payments will be made only if the sum of private contributions plus matching funds does not exceed the reported debt.

RECORDKEEPING PROCEDURES

All submissions to the FEC must be prepared in accordance with the format prescribed by the *FEC Guideline for Presentation in Good Order*. This requirement will expedite the processing of submissions for certification by the Commission. Furthermore, it is the candidate's responsibility to facilitate an FEC audit by gathering all records in a centralized location and providing the necessary space and person-

nel to perform the audit. Finally, all bank records and supporting documentation for matching fund submissions must be provided by the candidate.

DISPUTES PROCEDURE

In those cases where a candidate may choose to challenge a Commission determination (initial certification, inactive candidacy, suspension of payments, additional certification, active candidacy, repayments), a procedure has been standardized to conform with due process requirements. The candidate has an opportunity to respond to a Commission decision within a specified time, engage counsel if he/she so desires and submit written evidence in support of his/her position. The Commission is required to thoroughly investigate the evidence submitted, and provide a statement of reasons underlying its final determination.

The Commission's submission of the proposed regulations is the first step toward the development of a comprehensive plan for administering the 1980 Presidential election — a plan designed to assist campaigns in complying with the Federal Election Campaign Act and to ensure that public funds are spent in accordance with the Act.



BUDGET TESTIMONY

FEC Vice Chairman Robert O. Tiernan and Commissioner Vernon W. Thomson appeared before the House Appropriations Subcommittee on Treasury, Postal Service and General Government on February 15, 1979, to testify on the budgetary needs of the FEC. The Commissioners told the Subcommittee that the FEC would require \$10.7 million during Fiscal Year 1980 to fulfill its statutorily mandated responsibility to enforce the Federal Election Campaign Act.

The \$10.7 million request for Fiscal Year 1980 represents a \$2.1 million increase over the Commission's \$8.6 million request for FY 1979. The request represents the amount necessary to maintain FEC programs at the FY 1979 level and meet the needs of a Presidential election year. In his testimony, Mr. Tiernan described 1980 as a "crucial year for the FEC," and pointed out that fiscal 1980 (October 1, 1979, through September 30, 1980) "includes the bulk of election activity for November 1980 Presidential and Congressional elections."

For this reason, Mr. Tiernan said that "any reduction in funds for the Commission, including across-the-board cuts for all Federal agencies, will jeopardize the 1980 Presidential election process involving public financing, and hamper Commission efforts to fairly and effectively implement the campaign finance and disclosure provisions for the 1980 Congressional elections."

Congress has not yet voted on FY 1980 authorization and appropriations.

ADVISORY OPINION REQUESTS

The following chart lists Advisory Opinion Requests (AOR's), with a brief description of the subject matter, the date the requests were made public and the number of pages of each request. The full text of each AOR is available to the public in the Commission's Office of Public Records.

AOR	Subject	Date Made Public	No. of Pages
1979-5	Satisfying debts owed to committee before its termination.	2/12/79	2
1979-6	Allocation of proceeds of joint fundraising effort.	2/12/79	2
1979-7	Activities of State party committee in delegate selection process.	2/29/79	2
1979-8	Administration and solicitations of separate segregated fund of trade association.	2/26/79	3
1978-9	State party committee fundraising for debts of 1978 Federal candidates.	2/26/79	1

ADVISORY OPINIONS: SUMMARIES

Designated as AO's, Advisory Opinions discuss the application of the Act or Commission's Regulations to specific factual situations. Any qualified person requesting an Advisory Opinion who in good faith acts in accordance with the opinion will not be subject to any sanctions 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. Those seeking guidance for their own activity should consult the full text of the Advisory Opinion and not rely only on the summary given here.

AO 1979-1: Personal Liability for Campaign Debts

In response to a question posed by the Friends of Senator Otterbacher (the Committee), the Commission held that, as a general rule, contributions to retire debts from a past election are subject to the contribution limits applicable to that election. The Commission also explained that its authority to issue advisory opinions is limited to requests concerning the application of the Act or Commission Regulations to specific factual situations.

The Committee had asked if payment of Committee debts by Committee agents or members who are held personally liable, under State law, would constitute contributions subject to limitation under the Act?

The Commission noted that, since no State judgments had yet been rendered against any committee personnel, such a situation did not currently exist; if it did develop, the Commission would then give further consideration to the application of the Act in that specific situation. (Length: 2 pages)

AO 1979-3: Source of Contributor List

The Committee for the Survival of a Free Congress (CSFC) may not copy names of contributors from a report on file with the FEC even though the political committee (Donor) which filed the report specifically authorizes CSFC to compile such a list from a filed report. The Commission approved, however, the following methods of obtaining the list, proposed as alternatives by CSFC:

1. The Donor may give CSFC a photocopy of the list.
2. The Donor may give CSFC, by means other than photocopy, the names and addresses on the list.
3. The Donor may give CSFC selected names from the list.

The fourth alternative, the Donor's written authorization for CSFC to copy names from the report it filed with the FEC, is not permissible because the Act and Commission Regulations prohibit use of information obtained from reports filed with the Commission for the purpose of soliciting contributions.

The Commission also noted that a contributor list provided without charge or at less than the usual charge would be a contribution in-kind by the Donor to CSFC for purposes of disclosure requirements and limitations. (Length: 4 pages)

AO 1979-6: Joint Fundraising Effort

The Shasteen for Senate Committee, the Bereuter for Congress Committee and the Elect Daub to Congress Committee (the Committees) may, in order to retire 1978 campaign debts, conduct a joint fundraising effort in accordance with procedures which they have proposed to the Commission. The Agreement for Republican Unity Dinner (the Agreement), submitted by the Committees to the Commission, is in compliance with the Act and Commission Regulations because it contains the following conditions:

1. The Committee will appoint a single agent (the Agent) who will receive all funds and make all disbursements in connection with the dinner.
2. Each of the Committees will formally designate the bank into which the funds are deposited as an additional campaign depository.
3. The Agent will pay all expenses, allocate the costs among the Committees in equal proportions and furnish an itemized statement of expenditures to each Committee.
4. The Agent will divide the net proceeds equally among the Committees and furnish an appropriate itemization of the contributions, along with required information on contributors, to each Committee.
5. If any Committee receives a contribution in excess of limitations allowed by the Act as a result of the des-

cribed allocation, the excess will be returned to the Agent to be reallocated between the other two Committees or returned to the contributor.

6. If such a reallocation of proceeds is necessary, a corresponding reduction in the proportion of the expenses attributed to the particular Committee will be made.
7. Notice will be printed on all tickets, explaining the pro rata distribution of the contributions; the intended reallocation procedure, if it is necessary, and the availability of the Committees' reports from the Commission.

The Commission noted that the recordkeeping and reporting obligations of the Act are triggered when the Agent receives any contribution or makes an expenditure on behalf of the Committees. The Agent must furnish to the Treasurer of each Committee complete information on any contribution or expenditure which, when allocated among the three Committees, amounts to more than \$100 per calendar year. The Agent is also required to deposit all contributions in the designated depository within ten days. (Length: 5 pages)

PUBLICATIONS

FREEDOM OF INFORMATION ACT: FEC REPORT

The Commission submitted its report on 1978 activities under the Freedom of Information Act (FOIA) to Congress and the President on March 8, 1979. Pointing out that "disclosure and public access to campaign finance information are at the heart of the Federal Election Campaign Act," the report suggests that the Commission's success in providing ready access to its records has probably helped hold the number of Freedom of Information requests at a low level. During 1978, approximately two-thirds of the 36 requests made under FOIA were for information that was readily available through public records.

Last year the "storefront" Public Records Office, located on the ground floor of the Commission building, helped more than 10,000 people locate information on campaign financing. The only exceptions to the FEC's full disclosure policy are matters involving compliance, audit and personnel, where there is a specific statutory mandate for confidentiality until a case is completed. Closed cases are routinely put on the public record.

During 1978, the Commission granted 23 of the 36 Freedom of Information requests it received. Six requests were denied in part, because disclosure would have violated the Privacy Act. Seven requests were denied altogether. Of those, five involved active compliance matters; the sixth denied request involved contractual information considered proprietary and financial in nature. The seventh request was questionable under FOIA because it asked for a reduction in the Commission's established cost of reproducing materials. An appeal from this denial was denied by the full Commission and subsequently has been placed into litigation by the requester. (See Litigation Status Information.)



LITIGATION STATUS INFORMATION

The following is a list of new litigation involving the Commission, together with the date the suit was filed, the Court involved, the Docket Number and a brief description of the major issue(s) involved in the case. Persons seeking additional information on a particular case should contact the Court where the suit is filed, or the Commission.

Edward Roeder v. FEC, U.S. District Court for the District of Columbia, Docket Number 79-0216, January 19, 1979.

The Plaintiff seeks injunctive relief from the Commission's practice of charging \$.10 per page for duplicating Commission records and statements.

Barnstead for Congress Committee v. FEC et al., U.S. District Court for the District of Columbia, Docket Number 79-0054, January 22, 1979.

The Plaintiff has brought suit against the Commission pursuant to 2 U.S.C. §437g(a)(9)(B)(i).



AUDITS RELEASED TO THE PUBLIC

The Federal Election Campaign Act requires the Commission to periodically make audits and field investigations with respect to reports and statements filed under the Act. The Commission is also required to conduct audits of all campaigns of Presidential candidates who receive public funds. Once an audit is completed and an audit report is approved by the Commission, the report is made public and is available in the Office of Public Records and the Press Office. The following is a chronological listing of audits released between February 2, 1979, and March 3, 1979.

Audit	Date Made Public
1. Minnesota Democratic Telethon Committee	2/13/79
2. Holland in Congress Committee, SC/5	2/16/79
3. Harrison Schmitt Senatorial Committee and Democrats for Schmitt	2/16/79
4. Pennsylvania GOP Congressional Committee	2/28/79
5. Lowenstein '79 Committee, NY/5	2/28/79

With the approach of the 1980 Presidential primary and general elections, the Public Communications Office has received an increasing number of questions on public financing. With the March issue, the *Record* initiated a series of brief articles summarizing those sections of the Act and regulations governing public financing. The article below, second in the planned series, outlines the certifications and agreements required of candidates seeking public matching funds.

ESTABLISHING ELIGIBILITY TO RECEIVE PRIMARY MATCHING FUNDS

Under statutory provisions, a Presidential candidate may establish his eligibility to receive primary matching funds, any time after January 1, 1979 (the year immediately preceding a Presidential election year), even though the payments of those funds will not begin until January 1, 1980 (the year of the Presidential election). To become eligible for matching funds, a candidate must submit signed **agreements and certifications** to the Commission. The content of the certifications and agreements is summarized below. However, Presidential candidates and their committees are cautioned not to rely solely on the summary, but to consult statutory provisions as well as current and proposed regulations for details.

CERTIFICATIONS

To become eligible to receive Presidential primary matching fund payments, the candidate must certify to the Commission, in a signed, written statement, that:

1. The candidate is seeking **nomination by a political party** to the office of President in more than one State. The party must have an established procedure for holding a primary election, including a run-off election, a nominating convention or a caucus.
2. The candidate and his/her committees will not exceed the following **expenditure limitations**:
 - a. \$10 million in aggregate qualified campaign expenses (plus cost-of-living adjustment - COLA).
 - b. The prescribed expenditure limits in any one State: either $\$.16 \times$ the voting age population (plus COLA) or \$200,000 (plus COLA), whichever is greater.
 - c. \$50,000 in personal funds, or funds of his/her immediate family, in connection with the primary campaign.
3. The candidate has satisfied the **"threshold requirement,"** i.e., he/she has received at least \$100,000 in contributions consisting of \$5,000 from residents of at least 20 States. For purposes of satisfying the threshold, only the first \$250 of any contribution will be counted. (To be considered a resident of a State, an individual need not meet voting qualifications, but contributions may not be

submitted from one individual as a resident of more than one State.)

AGREEMENTS

In addition to the above certifications, the candidate must also agree in a signed, written statement, that he/she and his/her principal campaign committee will:

1. Assume the "...burden of proving that expenditures... are **qualified campaign expenses,**" and provide specified documentation for all expenses.
2. Furnish to the Commission any books and records, including bank records, for all accounts and **supporting documentation for all contributions** submitted for matching funds payments.
3. Facilitate an **audit** by the Commission of all campaign expenditures; repay the amount of any matching payment which was in excess of the amount to which the candidate was entitled, was improperly used, or incompletely documented; pay any civil penalties imposed in a conciliation agreement.
4. Prepare **contributions submitted for matching payments** in accordance with the prescribed format presented in the *FEC Guideline for Presentation in Good Order*.
5. Comply with all the requirements of the Act, including the filing of all **reports required** under the Act.

If a candidate either knowingly and willfully exceeds the expenditure limitations or knowingly, willfully and substantially fails to comply with the disclosure requirements, payments may be suspended.

FEC PUBLIC APPEARANCES

In keeping with its objective of making information available to the public, the Federal Election Commission regularly accepts invitations for its representatives to address public gatherings on the subject of campaign finance laws and the Commission itself. This regular column lists scheduled Commission appearances, detailing the name of the sponsoring organization, the location of the event and the Commission's representative. For additional information on any scheduled appearance, please contact the **sponsoring organization.**

4/4-6 Gonzaga University Law School
Symposium on Campaign Finance
Spokane, Washington
Vice Chairman Robert Tiernan



To purchase either of these Clearinghouse reports, send payment (check or money order), together with the report number, to the address below or call 703/557-4650.

N.T.I.S. — Sales Desk
 Department of Commerce
 5285 Port Royal Road
 Springfield, Virginia 22161

FEC RELEASES NAME OF NONFILER

On March 3, 1979, the Federal Election Commission published the name of one Federal candidate in California's 11th Congressional District who failed to file the required 10-day pre-election report of campaign finances for the March 6 special primary election.

Under Commission procedures, three notices are sent to candidates and committees reminding them of their reporting obligations and urging compliance. If a candidate or committee does not file the required report(s) following the receipt of these notices, the name of that "nonfiler" is made public, as required by law.



ANNUAL EDITIONS OF ELECTION CASE LAW AND ELECTION LAW UPDATES AVAILABLE

The Clearinghouse recently announced that the annual editions of *Election Case Law '78* and *Election Law Updates '78* are now available for purchase. These cumulative reports, which are published on a quarterly basis, are produced for the Clearinghouse by the American Law Division of the Library of Congress. The annual editions, which include the three previously published quarterly reports, provide up-to-date information on all State and Federal election case law and legislation for calendar year 1978.

Election Case Law '78 contains brief analyses of all Federal and State election law cases decided during 1978. The volume is divided into four sections: Supreme Court decisions, major Federal court decisions, major State court decisions and major opinions of any State Attorney General.

Election Law Updates '78 contains brief analyses of all Federal and State Election Laws enacted during 1978, including synopses of all proposed Federal election legislation.

Report	Cost	Order Number
<i>Election Case Law '78</i>	\$7.50	FEC-CH-79-004
<i>Election Law Updates '78</i>	\$7.50	FEC-CH-79-003

FORMS

Forms for candidates and committees are available from:

Office of Public Communications
 Federal Election Commission
 1325 K Street, N.W.
 Washington, D.C. 20463
 Telephone: 202/523-4068
 Toll-Free: 800/424-9530

Candidates and committees should use the revised form for reporting receipts and expenditures. It is designated in the upper left hand corner as: **FEC Form 3 REVISED, January 1978.**

CHANGE OF ADDRESS

Record subscribers, when calling or mailing in a change of address, are asked to provide the following information:

- Name of person to whom the Record is sent;
- Old address;
- New address;
- Subscription number.

The subscription number is located in the upper left hand corner of the mailing label. It consists of three letters and five numbers (e.g., ABC12345). Without this number, there is no guarantee that your subscription can be located on the computer.

Note: Registered candidates and committees are automatically sent the Record and do not have this subscription number on their mailing labels. Any change of address by a registered entity, must, by law, be made in writing as an amendment to FEC Form 1 (Statement of Organization for a Political Committee) or FEC Form 2 (Statement of Candidate), and be placed on the public record.

FEDERAL ELECTION COMMISSION
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