

# Federal Election Commission

## Annual Report 1999



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The Federal Election Commission faced a variety of challenges as it prepared for the new millennium. In addition to carrying out its responsibility to administer and enforce the Federal Election Campaign Act, the Commission worked to implement the recommendations of a Congressionally-mandated audit of its operations.

The agency received the results of the audit, conducted by PricewaterhouseCoopers (PwC), in January 1999. PwC's overall evaluation of the agency was generally favorable, finding the agency "competently managed" and "without partisan bias." Nonetheless, the Commission recognized that the audit offered an opportunity to further improve its disclosure and enforcement operations. It embarked, therefore, on an ambitious plan to implement the audit report's recommendations and continue to work on other agency projects initiated in 1998. By year's end, the agency had carried out many of these recommendations and projects, and expected to complete nearly all of them by the end of the year 2000.

Amid all of this activity, the Commission continued to enhance its disclosure of campaign finance information, 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 upcoming 2000 elections and to investigate a myriad of alleged campaign finance violations.

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—whose implementation began in 1999—provided a more effective tool for managing and tracking the agency's enforcement and litigation cases.

The material that follows details the Commission's 1999 activities. Additional information concerning most matters may be found in the 1999 issues of the FEC newsletter, the *Record*.

# Chapter One

## The Commission

### PricewaterhouseCoopers Audit

In January 1999, the FEC received the results of a Congressionally-mandated audit of its operations, conducted by PricewaterhouseCoopers (PwC). The results of the audit were generally favorable. Even so, the Commission saw the report as an opportunity to further improve its operations. Consequently, it devoted considerable resources to implementing the audit report's recommendations as well as completing other initiatives begun in 1998.

The PwC audit determined that the Commission executes its duties "...without partisan bias," and it addressed the necessity for Congress to authorize mandatory electronic filing of campaign reports. (See Chapter 2, p. 9.) The audit had been requested by Congress in 1997, and was conducted during 1998. The paragraphs that follow describe many of the report's recommendations and the actions the Commission has taken in response to them. Others are described in subsequent chapters. (See, for example, pages 9, 12 and 17.)

#### Findings

In the report's Executive Summary, the PwC auditors stated: "The FEC is basically a competently managed organization with a skilled and motivated staff, although it has its shortcomings. The ability of the FEC to adapt to the changing election environment, however, has been hindered by the FECA [Federal Election Campaign Act] statute itself, escalating campaign finance disclosure and compliance workloads, and an organizational culture that has attempted incremental change in a deadline-driven environment stretched by limited resources."

Among specific FEC strengths, the independent audit report mentioned that:

- Confidentiality of potential and existing compliance matters is maintained throughout the report review, referral, audit and enforcement process.
- Disclosure and compliance activities are executed without partisan bias.
- The FEC has a strong organizational focus on facilitating voluntary compliance within the filing community to create an accurate public record of campaign finances.

- The filing community is generally satisfied with the products and services provided by the FEC.
- Productivity has increased in the processing, review and dissemination of campaign finance transactions in the face of increasing workloads.

#### Recommendations

With regard to the future, the PwC audit report identified opportunities for the refinement of Commission operations, as follows:

- The Congress and the FEC need to initiate actions that will eventually allow the FEC to shift some resources from its disclosure activities to its compliance programs by the following means:
  - Develop a comprehensive, mandatory electronic data filing system for the major filers in conjunction with a significant business process reengineering throughout the FEC;
  - Redesign disclosure processes (using industry standard software) and realign organizational units to improve processing time, accuracy and cost; and
  - Monitor compliance with the FECA through a computer-based system that can verify transaction accuracy, content and disclosure thresholds.
- The FEC should increase compliance and enforcement productivity in the following ways:
  - Move nondeliberate and straightforward reporting violations, such as failure to meet reporting deadlines, into an administrative fine system, thus freeing up enforcement resources to handle more significant violations;
  - Establish workload and performance standards for all compliance matters;
  - Aggregate data about compliance matters by descriptive offense category to better coordinate screening criteria and prioritize compliance; and
  - Reassess the roles and responsibilities of the Office of the General Counsel to reduce staff time consumed in legal reviews of enforcement matters and to better harmonize activity with the reports review and audit compliance criteria.

- The FEC needs to renew itself by conducting a broad range of organizational development activities to strengthen leadership and accountability, to enhance human resource management and to nurture increased communication and collaboration throughout the organization.

### **FEC Response**

The Commission's official response, published as Section 6 of the report, focused on PwC's recognition of FEC accomplishments, the influence of outside factors on FEC operations and the need for legislative change in order to accomplish some of the PwC recommendations.

During 1999, the Commission completed a number of new projects, many of which had been recommended in the PwC audit, including:

- Selecting a permanent Staff Director tasked to improve overall organizational performance;
- Redesigning the FEC web site;
- Beginning the transition to a paperless disclosure and reports review process;
- Preparing and maintaining documentation regarding EPS (Enforcement Priority System) case-activation decisions;
- Transferring payroll and personnel systems to the National Finance Center;
- Setting up Internet connections on computers in the Public Records office to provide alternative ways for the public to access images of campaign finance reports, using the FEC's web site;
- Establishing several new interdivisional working groups to improve efficiency and encouraging more collaboration and communication among existing work groups; and
- Ensuring that the agency's computer systems were Y2K compliant.

In addition, the agency established several task forces to address PwC recommendations and other Commission initiatives.

Amidst all this, the agency also began an extensive renovation of its office space. The project was expected to be completed in May 2000.

## **Commissioners**

During 1999, Scott E. Thomas served as Chairman of the Commission and Darryl R. Wold as its Vice Chairman. On December 10, 1999, the Commission elected Mr. Wold to be its Chairman and Danny L. McDonald to be its Vice Chairman in the year 2000. For biographies of the Commissioners and statutory officers, see Appendix 1.

## **Staff Director**

On April 14, 1999, the FEC announced the appointment of James A. Pehrkon as Staff Director. Mr. Pehrkon had been serving as Acting Staff Director since August 1998. With this new appointment, he officially replaced John M. Surina, who left the agency last year for a position at the Department of Agriculture. For a biography, see Appendix 1.

## **Inspector General**

Under the Inspector General Act, the Commission's Office of the Inspector General (OIG) is authorized to conduct audits and investigations of FEC programs to find waste, fraud and abuse, and to promote economy, effectiveness and efficiency within the Commission. The OIG audited several facets of agency operations in 1999, focusing particular attention on the FEC's management of computer software and its Y2K readiness. The office also reviewed recommendations it made in prior audits concerning computer hardware/software management and the agency's employee appraisal process to determine what actions FEC management had taken in response. The office posted all of its audit reports and its semiannual reports to Congress on the Internet at <http://www.fec.gov/fecig.htm>.

Also during 1999, a peer review of the OIG confirmed that the office had established an effective internal control system and was following applicable Government Auditing Standards.

## Year 2000 Computer Readiness

During 1999, the Commission's Data Division worked to ensure that the agency's computer systems were Y2K compliant. In addition to its own testing and remediation efforts, the Data Division hired a contractor to conduct independent verification and validation of all internally written program codes. As a result of these measures, the FEC experienced no Y2K-related computer problems.

## New Personnel Director Appointed

On March 15, 1999, William J. Fleming took over as the FEC's new Director of Personnel and Labor Management Relations. Mr. Fleming succeeded former FEC personnel director David Orr. The hiring of Mr. Fleming was the first of what became a wholesale staffing change in the Personnel office.

Among its 1999 accomplishments, the Personnel office:

- Helped transfer the agency's payroll and personnel systems to the National Finance Center;
- Negotiated revisions to four articles of the Labor/Management Agreement, as well as several agreements regarding the health and safety and subsequent temporary relocation of employees during building renovations; and
- Administered the Federal Employees Group Life Insurance (FEGLI) open season—the program's first open enrollment period in 10 years.

## Equal Employment Opportunity (EEO)

The Equal Employment Opportunity Commission (EEOC) has mandated that, by January 1, 2000, all government agencies offer an Alternative Dispute Resolution (ADR) Program to informally resolve EEO complaints and other workplace disputes. The FEC's Office of Equal Employment Opportunity has been a leader in the area of ADR, establishing and successfully utilizing mediation to informally resolve EEO matters since March 1994. The agency's ADR Program was featured in the November 1999 issue of *Government Executive* magazine, discussed on the FedTalk Radio Show, included in the Office of Personnel

Management's 1999 ADR Resource Guide and featured in several publications and on the World Wide Web.

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

During the period March 1994 through December 1999, the Commission informally resolved 100 percent of the complaints employees voluntarily brought before the EEO Director.

## The FEC's Budget

### Fiscal Year 1999

The Commission received a \$36.5 million FY 1999 appropriation, the full amount the agency had requested. That amount, combined with a \$350,000 carryover from FY 1998 and a \$59,000 rescission, resulted in a \$36.8 million FY 99 operating budget for the agency. Congress earmarked nearly \$4.5 million of the appropriation for computerization and limited staff to 347 full-time equivalent (FTE) employees.

### Fiscal Year 2000

In the spring of 1999, Darryl R. Wold, then Vice Chairman of the Commission and chairman of the FEC's finance committee, presented the FEC's FY 2000 budget request to members of a House appropriations subcommittee and to the Committee on House Administration. The Commission requested \$38.6 million and 356.5 FTE for FY 2000, a net increase of \$1.7 million (4.5 percent) and 9.5 FTE over FY 1999. Vice Chairman Wold noted that the majority of the requested budget increase was due to inflation, while the remainder was for additional staff resources, primarily in enforcement programs.

The vice chairman said that three of the requested additional staff would be added to the FEC's Audit Division "to handle the anticipated increase in the number of funding requests in the Presidential matching fund program in the 2000 elections," and that six of the additional requested staff would be added in the General Counsel's Office "to improve our compliance efforts, both in regular enforcement matters and in the Presidential public funding program."

In the end, the Commission received a \$38.152 million appropriation, supporting a total FTE level of 351.5. When combined with a \$270,000 carryover from FY 99 and a \$144,000 rescission, the Commission netted a \$38.278 million budget for FY 2000. Congress earmarked nearly \$5 million of the budget for computerization initiatives.

#### **Budget Allocation: FYs 1999 and 2000**

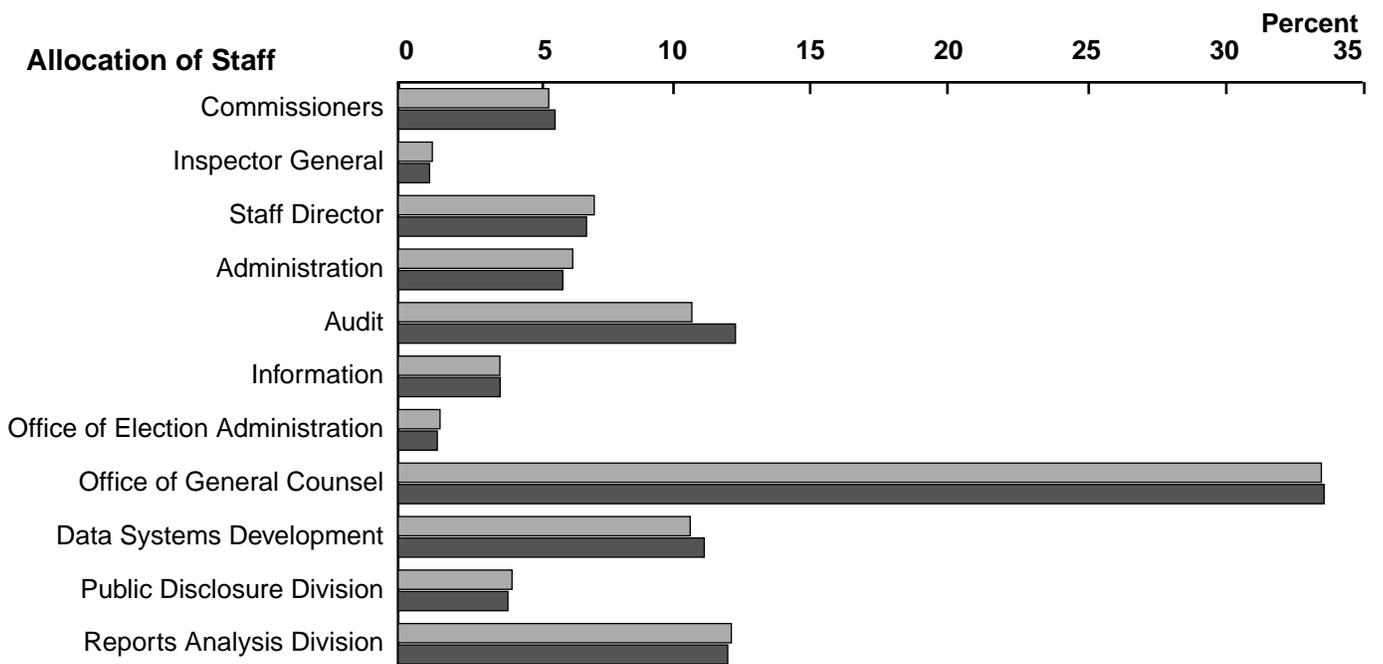
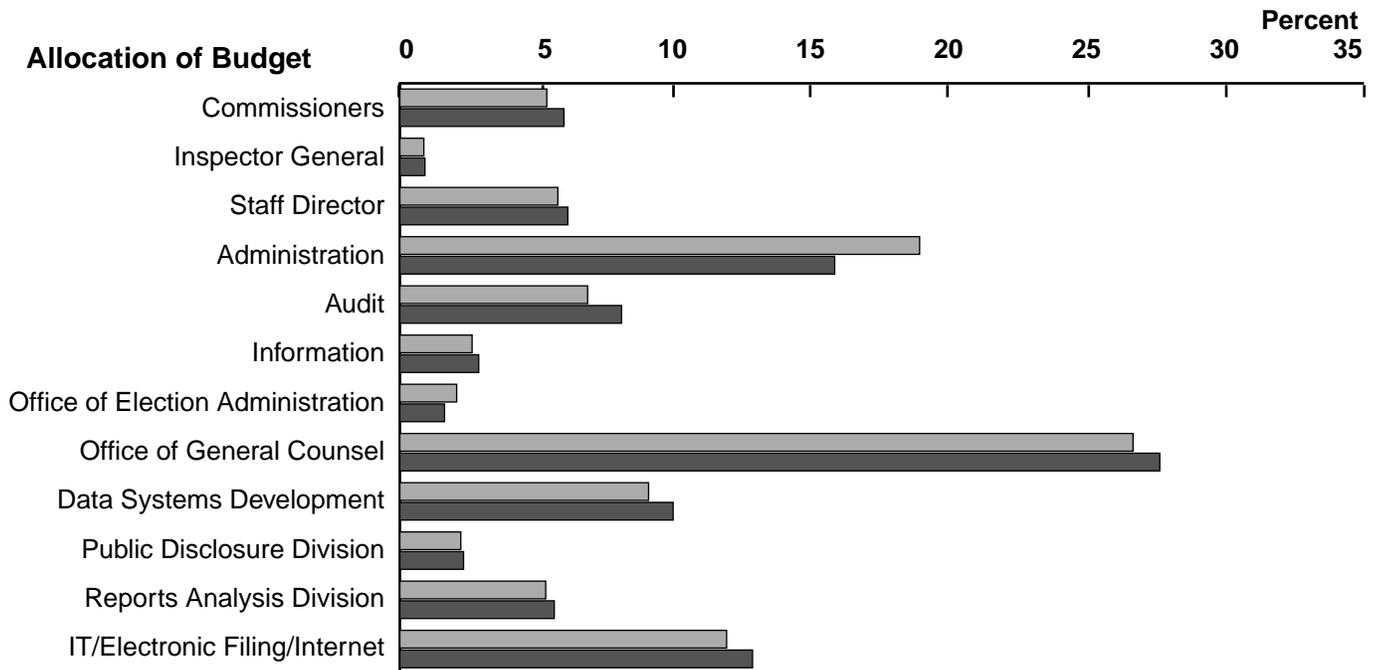
Budget allocation comparisons for FYs 1999 and 2000 appear in the table and charts that follow.

#### **CHART 1-1 Functional Allocation of Budget**

	<b>FY 1999</b>	<b>FY 2000</b>
Personnel	\$22,688,756	25,911,000
Travel/Transportation	333,002	435,000
Space Rental	3,114,971	3,346,500
Phones/Postage	460,445	415,000
Printing	243,177	330,500
Training/Tuition	218,368	138,500
Contracts/Services	2,746,609	2,492,000
Maintenance/Repairs	357,868	353,500
Software/Hardware	2,094,899	2,682,500
Federal Agency Service	1,472,788	627,000
Supplies	298,194	325,000
Publications	367,315	387,500
Equipment Purchases	1,005,847	501,000
<b>Total</b>	<b>\$36,791,000</b>	<b>38,278,000</b>

**CHART 1-2  
Divisional Allocation**

FY 1999 Actual  
 FY 2000 Projected



## Chapter Two Keeping the Public Informed

The FEC's disclosure and educational outreach programs work hand-in-hand to help educate the electorate and promote compliance with the campaign finance law. Public knowledge about who contributes and how candidates and committees spend their money helps to create an informed electorate. At the same time, 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.

As detailed below, the Commission's continuing investment in computer technology paid substantial dividends in the disclosure and educational outreach programs during 1999.

### 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 1999. The Commission received the reports filed by committees, reviewed them to ensure compliance with the law, entered the data into the FEC's computer database and made the reports available to the public within 48 hours of receipt.

Continued advances in computer technology, combined with legislative amendments, greatly enhanced the disclosure process during 1999. As detailed below, these changes are expected to benefit both the public and the regulated community.

### New Legislation

As part of the Commission's FY 2000 appropriation, Congress passed three amendments to the Federal Election Campaign Act, two of which were designed to enhance disclosure. The first mandated electronic filing for committees whose financial activity exceeds a certain threshold (to be determined by the Commission). The second requires authorized candidate committees to report on an election-cycle (rather than calendar-year) basis. The Commission had recommended both of these changes in its 1999 Legislative Recommendations. (See *Annual Report 1998*.) Both are to be in place for the 2002 election cycle.

### Electronic Filing

Mandatory electronic filing comes on the heels of the Commission's successful voluntary electronic filing program. Launched in January 1997, the voluntary program permits filers to submit reports to the Commission by modem and via the Internet, using the agency's free FECFile software or compatible commercial software applications.

The growth of electronic filing has been smooth and impressive. In April 1998, 50 committees had filed electronically. Now, more than a year later, that number has increased to 468 committees. Electronic filers have transmitted more than 3,000 reports to the Commission disclosing over \$275 million in transactions. Careful planning has ensured that this growth, and the rapid expansion expected throughout the 2000 election cycle, will not stress the electronic filing system.

During 1999, the Commission upgraded its FECFile software. The new Version 3.0 offered three new features: A simplified interface; an expanded HELP component; and a directory of committee/candidate addresses that filers can copy automatically into their reports. It also contained Schedule H forms for those committees that must report the allocation of federal and nonfederal expenses, and it sorted information much more quickly than previous versions.

The FEC distributed the upgrade to over 1,300 committees that had previously requested the software, and offered it free on the agency's Web site.

In a further effort to ease the transition from paper to electronic filing, the FEC's Electronic Filing Office conducted classes in electronic filing. The classes covered FECFile basics, data entry requirements for all types of transactions and procedures for reviewing and filing reports. In addition to the classes, which were held at the Commission, staff also presented information on electronic filing at FEC conferences throughout the country.

### State Filing Waivers

On October 14, 1999, the Commission approved a state filing waiver program, relieving qualified state offices of the requirement to receive and maintain paper copies of campaign finance reports from Presidential and House candidates and most other political committees that file their reports with the Commission. The waiver program also relieved committees of the obligation to file these paper copies.

Under the new program, qualified states disclose campaign finance information by providing public access, via computer, to the FEC's Web site, which displays the reports of most federal candidates and committees. In order to qualify for the waiver, states must fulfill the following criteria to show they have a system that ensures public Internet access to the FEC's Web site, where visitors can view and copy reports and statements filed with the Commission:

- The state has at least one computer terminal that can electronically access the Commission's Web page, with at least one printer (connected either directly or through a network); and
- The state will, to the greatest extent possible, allow anyone requesting federal campaign finance data to use the computer terminal at any time during regular business hours.

As part of the program, the Commission offered to provide participating offices with free computer equipment and free Internet access for the remainder of the 2000 election cycle, provided that the state would continue to provide the access effective March 1, 2001, at its own expense.

On December 8, the Commission certified Arkansas, Florida, Idaho, Illinois, Kansas, Michigan, Nebraska, New York, North Dakota, South Dakota, Utah and Wisconsin as eligible for the program.<sup>1</sup> As a result, beginning with the December 1999 monthly report, most political committees that used to file copies

of their reports in these 12 states no longer had to do so. Senate candidates, however, continued to file copies of their reports with the states.<sup>2</sup>

The concept for the state waiver program originated in December 1995, when President Clinton signed Public Law 104-79, which exempts a state from receiving and maintaining paper copies of federal campaign finance reports, as long as the state "has a system that permits electronic access to, and duplication of, reports and statements that are filed with the Commission."

### 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 Web site.

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.

<sup>1</sup> At the time of publication, the Commission had certified the following additional states: Alabama, California, Colorado, Connecticut, Delaware, Hawaii, Indiana, Kentucky, New Hampshire, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, U.S. Virgin Islands, Virginia, Washington and West Virginia.

<sup>2</sup> The law requires Senate candidate committees to file their reports and statements with the Secretary of the Senate. Because the Commission was unable to scan these reports, the reports were not available to the public through the Commission's Web site and, therefore, were not electronically available to the states.

**CHART 2-1**  
**Size of Detailed Database by Election Cycle**

Year	Number 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
1999	840,241

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

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

‡ The FEC began entering nonfederal account data in 1991.

**Public Access to Campaign Data**

During 1999, the Commission continued to provide campaign finance data via its Web site—[www.fec.gov](http://www.fec.gov). The site’s query system allowed visitors to access the name and contribution amount of any individual who contributed \$200 or more to a federal political committee; to access lists of PACs or party committees that contributed to specific candidates; and to view lists of candidates to whom selected PACs and parties contributed.

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 used 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. During 1999, the Commission configured the terminals to provide connections to the FEC’s Web site, thereby offering the public an alternative way of retrieving images. Those outside Washington, DC, also accessed the information via the Internet or the Direct Access Program, or ordered 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 1,300 subscribers to the fourteen-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 1999, the Commission’s State Access Program gave 38 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 (RAFI). The committee treasurer can then make additions or corrections to the report. Apparent violations, how-

ever, may be referred to the Audit Division or the Office of General Counsel for possible enforcement action.

During 1999, the reports analysts used a new automated review tool that significantly accelerated their review of electronically filed reports. Analysts also used the FEC Web site to access images of reports and related information. Web access served as additional backup to the FEC imaging system. The agency revised and consolidated other computer programs to ensure greater efficiency, consistency and quality in the review process. In addition to that, RAD management began to develop other methods for ensuring the quality and consistency of review.

## 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 fourth year of operation, the Commission's Web site continued to offer visitors a variety of resources. On August 15, 1999, the Commission made its advisory opinions (AOs) issued since 1977 available on the site. For the first time, the public could search for AOs on the Web by using words or phrases or by entering the year and AO number. In addition, 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 registration and reporting forms, copies of the *Record* newsletter, the Campaign Guides for PACs, parties and candidates and other agency publications.

In the closing weeks of 1999, the Commission redesigned and streamlined its site, reorganizing materials to offer the most efficient presentation of relevant and appropriate information to various audiences, including the general public, candidates, campaign workers and the media.

At the same time, the agency implemented Media-Independent Presentation Language (MIPL), an Internet-based technology that allows persons with special needs to access many types of information by using a wide variety of hardware and software solutions. Using this system, the visually handicapped could dial a phone number and receive a voice menu of phone-touch choices that parallel the FEC's Web site choices.

By the end of 1999, the FEC Web site was receiving about three million page hits per month.

### Meeting Documents Now Available Via E-Mail

In yet another example of the FEC's increased use of computer technology, the Commission began distributing draft advisory opinions and agendas for open meetings via electronic mail. Those with standing requests to receive these documents and anyone else who requested draft advisory opinions or meeting agendas from the Public Records Office could opt for either e-mail or paper delivery.

Previously, these documents were available to the public only as paper copies.

### 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 1999, the Information Division responded to 53,137 callers with compliance questions.

### Faxline

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

During 1999, 3,836 callers sought information from the 24-hour Faxline and received 5,100 documents.

### Reporting Assistance

During 1999, 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.

### Monthly Roundtables

In February 1999, the FEC began hosting monthly roundtable sessions for the regulated community. The roundtables, limited to 10-12 participants per session, focused on a range of topics from PAC fundraising fundamentals to advancing money to a campaign through personal funds. Nearly 100 people attended roundtable sessions during 1999, and the response from those attendees was overwhelmingly positive.

### Conferences

During 1999, the agency conducted a full program of conferences to help candidates and committees understand and comply with the law. In the spring and summer, the Commission held conferences in Washington, DC, for corporations and labor organizations, membership and trade associations and partnerships. Then, in the fall, the agency held regional conferences in Chicago and San Francisco.

In addition to hands-on workshops on the fundamental areas of the law, the conferences featured workshops on the Commission's electronic filing program and on the impact of recent court decisions on the federal election law.

### Tours and Visits

Visitors to the FEC during 1999, including 24 student groups and 26 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 12,136 calls and visits from media representatives and prepared 130 news releases. These releases alerted reporters to new campaign finance data and illustrated the statistics in tables and graphs.

### Publications

During 1999, 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.

One of the new publications, *Availability of FEC Information*, was designed to help people find and obtain information from the agency, including information available under the Freedom of Information Act. This publication satisfied the requirement, in 5 U.S.C. §552(b), that agencies publish a "handbook" on how to obtain different types of public information from the agency. In addition, the Commission published an updated version of its *Campaign Guide for Congressional Candidates and Committees* and released a new edition of its *Selected Court Case Abstracts, 1976-September 1999* (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 10,817 free subscriptions to the *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 1999* directs researchers to federal and state offices that provide information on campaign finance, candidates' personal finances, lobbying, corporate registration, 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 a supplement to *Campaign Finance Law 98*—a summary of state campaign finance laws—and posted “quick reference charts” from it on the FEC Web site. The supplement summarizes the campaign finance laws of the U.S. territories and possessions of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico and the U.S. Virgin Islands.

The FEC also released *Federal Elections 98*, a 130-page publication that provides an historical record of federal election results.

## Office of Election Administration

During 1999 the Office of Election Administration held its Advisory Panel Meeting of state and local election officials in Chicago. The agenda for the two-day meeting included lectures and discussions on:

- The National Voter Registration Act (NVRA) Report
- The Accessibility of the Election Process
- Biometrics Report/Internet Voting
- A Political Retrospective on the 20th Century
- The 2000 Census
- Recent Developments in Election Case Law
- Contested Elections
- Updating the Voting Systems Standards

At the FEC, on February 25, 1999, the Commission approved a new project to reorganize and revise the FEC's national voting system standards. The voluntary standards, first published in 1990, set performance benchmarks to assure election officials and the public that voting equipment would count votes accurately and securely. Independent test authorities use the standards to evaluate voting equipment under the direction of the National Association of State Election Directors (NASED).

The Commission's approval was based upon a requirements analysis conducted by ManTech Advanced Systems International, Inc. (ManTech). As part of this project, ManTech representatives reviewed current standards, observed voting equipment in operation, and considered input from NASED's Voting Systems Board, independent test authorities, voting system vendors and others.

Twenty-seven states currently require voting systems marketed in the state either to meet the national standards adopted by the state or to pass the NASED evaluation process. Four more states are expected to require election equipment to meet the standards within the next election cycle. All told, the FEC standards affect nearly 3,200 counties, 13,000 election offices and 180,000 precincts nationwide.

On June 18, 1999, the Commission approved a report to Congress documenting the impact of the National Voter Registration Act (NVRA) during 1997 and 1998 and reiterating three recommendations to improve the administration of elections. Specifically, the report:

- Urged states to request only partial social security numbers from registration applicants and current voters;
- Urged states to employ technology that computerizes all voter registration offices and links all of the offices within the respective states; and
- Urged the U.S. Postal Service to create a new class of mail with a reduced postage rate for “official election material” required for the NVRA and to provide free space in postal lobbies for state and local voter registration materials.

Based on surveys from 43 states and the District of Columbia, the report found that between 1994 and 1998 active voter registration in states covered by the NVRA rose by 3.72 percent (nearly 7.1 million people). The report also found that, in 1998, 70.15 percent of the voting age population (nearly 141 million people) was registered to vote. Despite this figure—the highest since Congressional elections in 1970—the number of people who actually voted in 1998 declined by more than 2.38 percent over the same period of time.

## 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, sometimes incorporating interpretations of the law that the Commission made in 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 publish proposed rules in the Federal Register and seeks public comment on them. The agency may also invite those making written comments to testify at a public hearing. The Commission considers the comments and testimony when deliberating on the final rules in open meetings. Once approved, the text of the final regulations and the Explanation and Justification of the new regulations 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 1999

The following new rules took effect in 1999:

- Two sets of rules addressing when credit card and debit card contributions to Presidential candidates (including those made over the Internet) can be matched with public funds, and what documentation is needed for the contributions to qualify for matching. Took effect (retroactively) January 1, 1999.

- Rules on pre-nomination party committee coordinated expenditures and costs of media travel with publicly financed Presidential campaigns. Took effect November 3.
- Regulations governing public financing of Presidential primary and general election candidates (e.g., winding down costs; lost, misplaced or stolen items; disposition of capital assets; and receipts and disbursements of convention and host committees). Took effect November 12.
- Rules regarding solicitations to Presidential candidates' General Election Legal and Accounting Compliance Fund (GELAC). Will take effect June 1, 2000.
- Rules governing the Presidential audit process, the "bright line" between primary and general election expenses, and contributions to and expenditures by Vice Presidential committees prior to nomination. These rules were pending before Congress at year's end.
- Rules that treat limited liability companies (LLCs) as partnerships under the Act unless they opt to be treated as corporations for tax purposes or are publicly traded. Took effect November 12. (See page 29.)
- A revised regulatory definition of "member." Took effect November 2. (See page 28.)

#### Other Rulemakings in Process

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

- It published a Notice of Proposed Rulemaking (NPRM) on March 4 concerning amendments to the FEC's Freedom of Information Act regulations. The amendments complied with the Electronic Freedom of Information Act Amendments of 1996 (EFOIA), which were enacted to make covered documents available by electronic means.<sup>2</sup>

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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. Other rules take effect 30 days after publication in the Federal Register.

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<sup>2</sup> Although the Commission did not complete its work on these regulations during 1999, the agency was already complying with the EFOIA requirements. See also, "Publications," p. 13. In February 2000, the Commission approved EFOIA regulations, which were to take effect March 27, 2000.

- It published a Notice of Availability (NOA) on June 10 in response to a petition that it amend its rules for debates by Presidential and Vice Presidential candidates. The petition urged the Commission to establish objective criteria for debate participants, rather than leaving it to the discretion of the debate-staging organizations.<sup>3</sup>
- It published an NOA on August 25 in response to a petition urging the repeal of the FEC's rules on distribution by corporations and labor organizations of voting records and voter guides outside the restricted class.
- It published an NOA on October 13 in response to a petition that sought various changes to the disclosure requirements applicable to political action committees.
- It published a Notice of Inquiry (NOI) on November 5 seeking comments on the issues raised by the use of the Internet to conduct campaign activity. (See page 26.)
- It published an NPRM on December 9 concerning coordinated communications made in support of or in opposition to clearly identified candidates by persons other than candidates, authorized committees and party committees. (See page 22.)

## Advisory Opinions

The Commission responds to questions about how the law applies to specific situations by issuing advisory opinions. When the Commission receives a valid request for an advisory opinion, it generally has 60 days to respond. If, however, a candidate's campaign submits a valid request within 60 days before an election, and the request directly relates to that election, the Commission must respond within 20 days. The Office of General Counsel prepares a draft opinion, which the Commissioners discuss and vote upon during an open meeting. A draft opinion must receive at least four favorable votes to be approved.

The Commission issued 34 advisory opinions in 1999. Of that number, five involved use of the Internet, five others examined party committees' use of "soft money" and three dealt with the definition of "member." These and other 1999 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 the Commission should find 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

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<sup>3</sup> The Commission subsequently voted to suspend this rulemaking until after the 2000 elections. See also p. 37 for discussion of a lawsuit on Presidential debates.

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 with respect to all respondents in the matter and releases the information to the public.

### Enforcement Initiatives

During 1999, the Commission continued to use a prioritization system to focus its limited resources on more significant enforcement cases.

Now in its seventh 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. Based on a recommendation in the PricewaterhouseCoopers (PwC) audit, the Office of General Counsel (OGC) developed, and the Commission approved, a new system to document EPS case-activation decisions. This process was intended to increase the transparency and accountability of the system.

Based on other PwC recommendations:

- Congress passed legislation authorizing the Commission to establish an administrative fine system for straightforward reporting violations occurring between January 1 and December 31, 2000. The Commission planned to activate such a system in the spring of 2000.
- The Commission contracted with Booz/Allen & Hamilton to define the requirements for a comprehensive offense profile database. The database

would inform Commissioners, policy makers and the public about emerging enforcement trends.

- An OGC working group surveyed OGC staff and Commissioners to identify ways to reduce the number of legal reviews embedded in the enforcement process.<sup>4</sup>
- The Commission enlisted the Federal Mediation and Conciliation Service to study a possible Alternative Dispute Resolution (ADR) pilot program at the FEC.<sup>5</sup>

In addition, during 1999, OGC used a computerized system to image documents and create a searchable database. Developed with help from a support contractor, the system was designed to help streamline the investigation of cases that involve large collections of documents.

Also during the year, the counsel’s office began to implement a computerized case management system to help manage and track the agency’s enforcement and litigation cases, as well as other projects in OGC. Implementation involved three components: Staff received training; information from legacy systems was incorporated into the system; and OGC began to enter information relating to active cases.

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

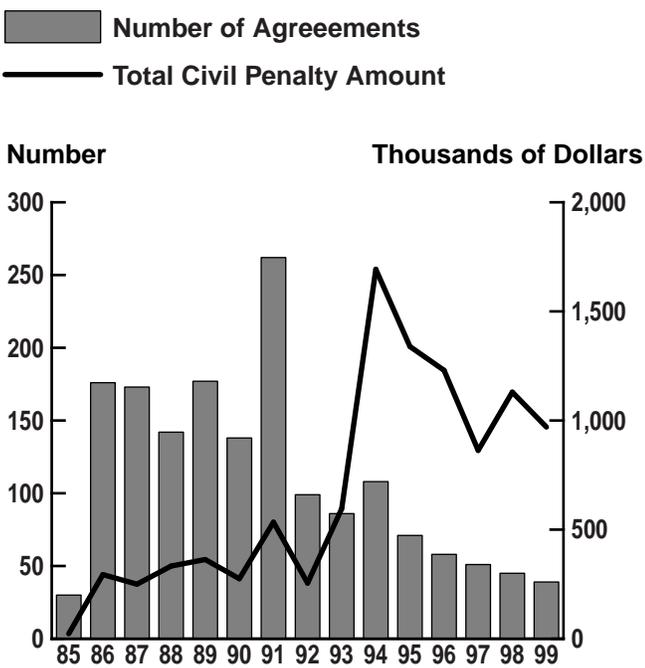
Chart 3-1 (page 18) compares civil penalties negotiated in 1999 conciliation agreements with those of previous years. In Chart 3-2, the median civil penalty negotiated in 1999 is compared with the median civil penalty of previous years. Chart 3-3 tracks the ratio of active to inactive enforcement cases 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 1999.

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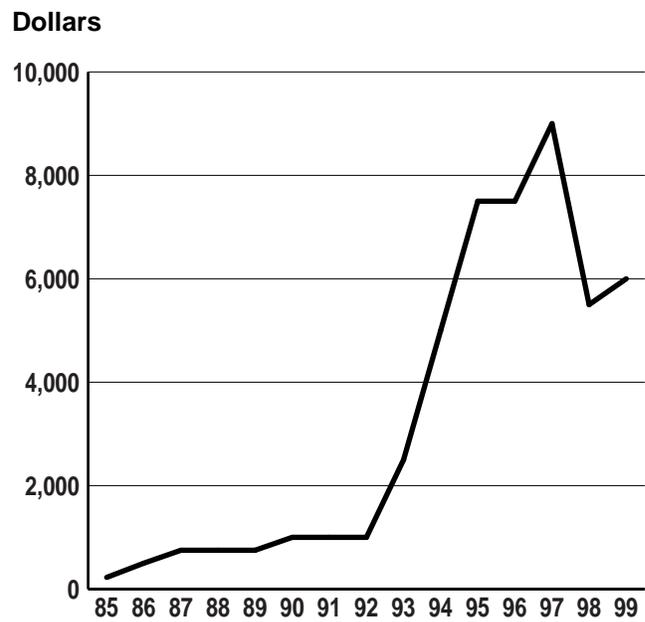
<sup>4</sup> The working group incorporated the survey results in its recommendations to the Commission, dated January 24, 2000.

<sup>5</sup> The Commission discussed this study at its meeting of December 14, 1999, along with an analysis of ADR conducted by an FEC task force. On January 21, 2000, the Commission posted a vacancy announcement for an ADR Director.

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



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



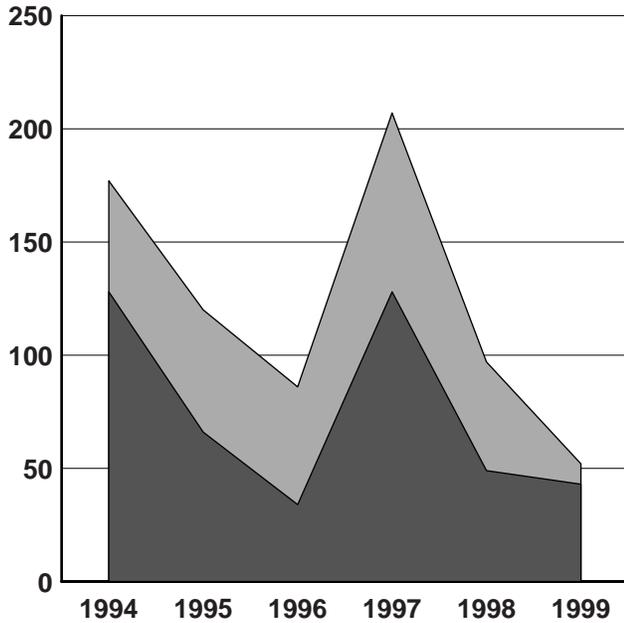
**CHART 3-3  
Ratio of Active to Inactive Cases by Calendar Year**

■ Active Cases  
■ Inactive Cases



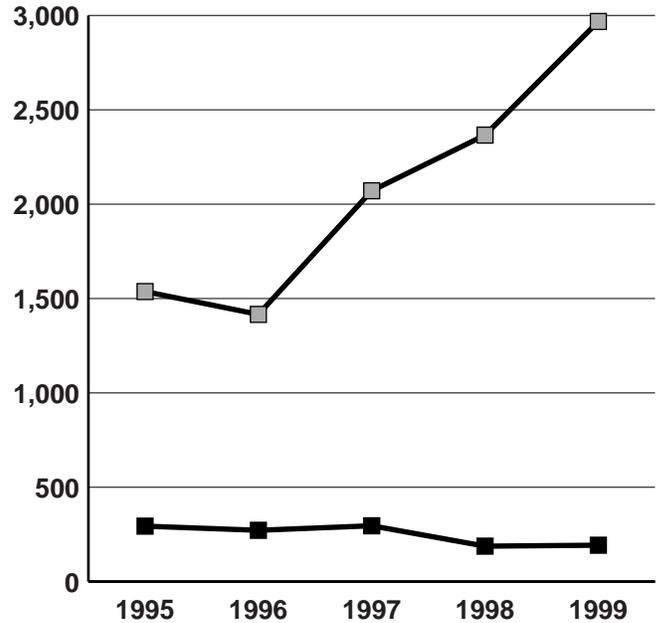
**CHART 3-4**  
**Cases Dismissed under EPS**

■ Stale Cases  
■ Low-Rated Cases



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

■ Respondents  
■ Cases



## Chapter 4 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 1999 as it considered regulations, advisory opinions, litigation and enforcement actions.

### Express Advocacy

The FEC's regulatory definition of express advocacy, and its effect on corporate/labor activity, continued to receive attention in the courts and at the Commission during 1999. To understand the issue, it is necessary to examine earlier court decisions. In *FEC v. Massachusetts Citizens for Life (MCFL)*, the Supreme Court, citing First Amendment concerns, held that the Act's 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 *FEC v. Furgatch*.

Paragraph (a) of 11 CFR 100.22 includes the examples of phrases that constitute express advocacy that were listed in the *Buckley* opinion—the so-called “magic words”: “vote for,” “elect,” “support,” “cast your ballot for,” “vote against,” “defeat,” “reject.”

Paragraph (b)—often referred to as the “reasonable person” test—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.

Since the Commission promulgated this definition in 1995, it has faced several legal challenges, virtually all of which have focused on paragraph (b) of the definition. During 1999, the Commission declined to act on a rulemaking petition on the subject and, in two court cases, district courts examined the express advocacy standard.

#### Petition for Rulemaking

On April 29, 1999, the Commission, by a pair of 3-3 votes, declined to act on a petition for rulemaking that sought to repeal paragraph (b) of the Commission's express advocacy definition. The petition, filed by James Bopp, Jr., and the James Madison Center for Free Speech on behalf of the Virginia Society for Human Life, was nearly identical to one Mr. Bopp filed in 1997 on behalf of the James Madison Center for Free Speech. (See *Annual Report 1997*.)

The latest petition came in response to the Commission's 1998 split vote on whether to appeal the *Right to Life of Dutchess County v. FEC (RLDC)* decision, in which a district court determined that subpart (b) violates the First Amendment and enjoined the FEC from enforcing it against RLDC. (See *Annual Report 1998*.)

#### FEC v. Christian Coalition

In its August 1999 decision, the U.S. District Court for the District of Columbia, without relying on the regulations, discussed both the “magic words” and “the context of the entire communication” to determine that one of the three Christian Coalition expenditures that the FEC had alleged to be unlawful violated §441b's ban on corporate independent expenditures.

Based on decisions by the Supreme Court and lower courts in other jurisdictions, the district court concluded that an express advocacy communication is one that a reasonable person would understand contains an explicit directive that unmistakably exhorts the audience to take electoral action to support or defeat a clearly identified candidate. More specifically, the court held that, in order for an expenditure made by a corporation to contain express advocacy and violate §441b:

- The communication must contain an explicit directive that uses an active verb or its functional equivalent

(e.g., “Vote for Smith” or “Smith for Congress” or an unequivocal symbol); and

- The “active verb or its immediate equivalent—considered in the context of the entire communication, including its temporal proximity to the election—must unmistakably exhort the [receiver] to take electoral action to support the election or defeat of a clearly identified candidate.” Electoral action includes campaigning for and/or contributing to a clearly identified candidate, as well as voting for or against the candidate.

On September 22, 1999, the Commission voted not to appeal the district court’s decision.

#### **FEC v. Freedom’s Heritage Forum, et al.**

In September 1999, the U.S. District Court for the Western District of Kentucky at Louisville handed down a ruling in the Commission’s suit against *Freedom’s Heritage Forum, et al.*, a political committee that promotes pro-life and other social issues. Although this case did not involve corporate activity, it did pertain to express advocacy.

In this case, the court took a similar view as the *Christian Coalition* court with regard to the use of “magic words” or the equivalent. In pertinent part, the court stated that, “although a communication does not have to contain ‘magic words’ [‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for Congress,’ ‘vote against,’ ‘reject’] to constitute express advocacy, it will ordinarily contain some sort of functional equivalent of an exhortation, directive, or imperative for it to expressly advocate the election or defeat of a candidate.”

With regard to the meaning of electoral action, however, the court differed from the *Christian Coalition* decision. In *Freedom’s Heritage Forum*, the court distinguished between a message that urges the reader to vote for or against a candidate and a message that merely urges the reader to contribute time or money to the candidate. Only the former, in the court’s view, constitutes express advocacy.<sup>1</sup>

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<sup>1</sup> The court denied the Commission’s motion to reconsider its decision on this issue.

## **Coordination**

Coordination between campaigns and the person making a communication that influences federal elections was an issue in three 1999 court cases—those involving the *Christian Coalition*, the *Freedom’s Heritage Forum* and *Public Citizen*. It also was the subject of a Notice of Proposed Rulemaking. In *Buckley v. Valeo*, the 1976 landmark decision, the Supreme Court ruled that expenditures made in coordination with a campaign are in-kind contributions. As such, coordinated expenditures are subject to the Act’s contribution limits and prohibitions, regardless of whether they contain express advocacy.

#### **FEC. v. Christian Coalition**

In this case, the U.S. District Court for the District of Columbia sought to determine what level of contact between a corporation and a campaign constitutes “coordination” and thereby converts a corporate expenditure that influences an election into a prohibited contribution.

The Commission alleged that the Coalition had coordinated its voter guides during the 1990, 1992 and 1994 elections with various federal candidates. In only one instance did the court decide that there was coordination.<sup>2</sup>

The district court limited its decision to what the court called “expressive coordinated expenditures” by corporations. According to the court, an “expressive coordinated expenditure” is an expenditure for a communication that (although not containing express advocacy) is “made for the purpose of influencing a federal election in which the spender is responsible for a substantial portion of the speech and for which the spender’s choice of speech has been arrived at after coordination with the campaign.” The court distinguished this type of coordinated expenditure from other types such as coordinated expenditures for noncommunicative materials (e.g., food or travel expenses for campaign staff).

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<sup>2</sup> With respect to Oliver North’s 1994 U.S. Senate campaign in Virginia, the court determined that there were contested issues to be resolved after a future hearing. However, the parties settled the case without an additional hearing.

The court concluded that “expressive coordinated expenditures” made at the request or suggestion of the campaign are contributions. In the absence of a request or suggestion from the campaign, the court decided, an expressive expenditure is still coordinated where the candidate or his agent exercises control over the communication, or where there has been substantial discussion or negotiation between the campaign and the spender about such things as the content, timing, location, mode, intended audience or volume of the communication. A substantial discussion, the court explained, is one from which the spender and the campaign emerge as partners (not necessarily equal partners) or joint venturers in the expressive expenditure. “This standard limits §441b’s contribution prohibition on expressive coordinated expenditures to those in which the candidate has taken a sufficient interest to demonstrate that the expenditure is perceived as valuable for meeting the campaign’s needs or wants.”

As noted above, the Commission decided not to appeal the district court’s decision.

### Supplemental Notice of Proposed Rulemaking<sup>3</sup>

In response to the *Christian Coalition* decision, the Commission published a Supplemental Notice of Proposed Rulemaking (NPRM) on December 9, 1999, regarding coordinated communications that are made in support of or in opposition to clearly identified candidates and that are paid for by persons other than candidates, authorized committees or party committees. The proposed rules largely follow the language of the *Christian Coalition* decision, except that the Commission replaced the term “expressive coordinated expenditure” with “coordinated general public political communications.”

The NPRM proposed a definition of “general public political communications” that would include those communications that:

- Are made through a broadcasting station, including cable television, newspaper, magazine, outdoor

advertising facility, mailing or any electronic medium, including the Internet and the World Wide Web;

- Have an intended audience of over one hundred people; and
- Include a “clearly identified candidate,” as defined in 11 CFR 100.17 and 2 U.S.C. §431(17).

With respect to the coordination standard itself, the Commission proposed several alternatives. Generally, under the proposed rules, a communication would be coordinated if it were paid for by someone other than the candidate’s campaign or party and were “created, produced or distributed”:

- “At the request or suggestion of” the campaign or party;
- After the campaign or party “exercised control or decision-making authority over” specific elements of the communication; or
- Based on “substantial discussion or negotiation” between the campaign and those making the communication regarding the particulars of the communication.

Alternative proposals would consider whether “the communication is distributed primarily in the geographic area in which a candidate is running;” and whether the nature of the contacts between the campaign and those making the communication results in “collaboration or agreement.”

Comments on the NPRM were due by January 24, 2000.<sup>4</sup>

### FEC v. Freedom’s Heritage Forum, et al.

In addition to its findings with respect to express advocacy (mentioned above), the Kentucky district court addressed coordination in its *Freedom’s Heritage Forum* decision.

The FEC alleged that more than \$23,000 worth of Forum expenditures in support of Tim Hardy, a candidate in the 1994 Republican primary in Kentucky, were not independent expenditures (as the Forum

<sup>3</sup> The Commission published two earlier NPRMs on this subject in 1997 and 1998.

<sup>4</sup> The Commission held a hearing on the proposed rules February 16, 2000.

had argued) but, rather, were coordinated expenditures. As such, the FEC argued, the expenditures resulted in excessive contributions to the Hardy campaign. The court disagreed.

To qualify as an independent expenditure, an expenditure must not be made in concert with, or at the request or suggestion of, the candidate or the campaign. FEC regulations further explain that: "An expenditure will be presumed to be so made [in cooperation with the campaign] when it is based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate, or by the candidate's agents, with a view toward having an expenditure made." 11 CFR 109.1(b)(4)(i)(A).

The Commission alleged two instances of coordination between the Forum and the Hardy campaign. The first was a meeting between the Forum's treasurer and representatives of the Hardy campaign. The second took place at a political event where Mr. Hardy gave a speech asking for support in the election, after which Forum members planned strategies "on how to get Tim Hardy elected." Following the event, the Forum made four separate direct mailings of campaign literature that supported the election of Mr. Hardy.

The court rejected the Forum's assertion that actual coordination of a specific disbursement must be shown in order to consider it a "coordinated expenditure." Further, the court stated, "[W]e do not find any requirement that coordinated expenditures must contain 'express advocacy' in order for them to fall within the purview of the statute." Nevertheless, the court found that "the FEC [had] not sufficiently plead enough facts that allege that the expenditures made by the Forum were coordinated with the Hardy campaign."

Regarding the first meeting, the court said that the FEC had not explicitly alleged that "Hardy actually informed [the Forum's treasurer] of his plans, projects, or needs *with a view toward having an expenditure made*." As to the direct mailings of campaign literature, the court held that there were no allegations that the mailings were at the request or suggestion of Mr. Hardy. The court stated that, "Hardy's mere presence at the meeting, even if his presence was accompanied by the giving of a campaign speech, [was] insuffi-

cient to make these expenditures coordinated." Following its conclusion that there was no coordination, the court dismissed the charges that the Forum had failed to report its expenditures as contributions.<sup>5</sup>

### **FEC v. Public Citizen**

In another district court decision involving coordination, the U.S. District Court for the Northern District of Georgia, Atlanta Division, dismissed an enforcement case brought by the FEC against Public Citizen, Inc., and its separate segregated fund, Public Citizen's Fund for a Clean Congress (the Fund).

The Commission alleged that the Fund had made excessive in-kind contributions to Herman Clark, a 1992 primary opponent of former Representative Newt Gingrich, by coordinating several anti-Gingrich expenditures with the Clark campaign. The Commission's position was that contact with the Clark campaign to ascertain whether he would challenge Mr. Gingrich and repeated contacts between the Fund and representatives of Mr. Clark's campaign regarding suggested negative attacks constituted coordination. As such, the Fund's expenditures could not qualify as independent expenditures, as the Fund had characterized them, but would instead be excessive in-kind contributions.

In its September 15, 1999, decision, the court rejected the Commission's argument. Coordination, the court stated, implies some measure of collaboration that goes beyond inquiry regarding a candidate's position on an issue. In the court's view, the Fund's expenditures were permissible independent expenditures. The Commission voted not to appeal this portion of the district court's decision.

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<sup>5</sup> On February 4, 2000, the district court denied the Commission's motion to reconsider its decision. However, the court granted the FEC's alternative motion to amend the complaint to add the language (that campaign information was provided "with a view toward having an expenditure made") that the court had previously found to be the touchstone for an adequate allegation of coordination. Therefore, the coordination counts in this case have been reinstated for further litigation.

## Illegal Contributions

The Act prohibits corporations and labor organizations from using their treasury funds to make contributions or expenditures in connection with federal elections. 2 U.S.C. §441b. As part of this ban, corporations are prohibited from serving as a conduit for earmarked contributions to federal candidates or from making an advance to federal candidates.

### FEC v. Friends of Jane Harman

In August 1999, the U.S. District Court for the Central District of California found that Friends of Jane Harman, the principal campaign committee of former Congresswoman Jane Harman, and its treasurer violated the Act when they accepted corporate contributions in the form of contribution collection and transmittal services of a corporate representative and an advance from the same corporation.

Hughes Aircraft Company (Hughes), a Los Angeles corporation, sponsored a fundraiser for Ms. Harman at her request during the 1993-1994 election cycle. The corporation's CEO approved the fundraiser and directed Hughes's employees to handle logistics for the event, including the collection and forwarding of contributions to the Harman campaign. The campaign later reimbursed the corporation for its labor costs and the use of its facilities.

The court found that the collection of contributions by a Hughes employee in her official capacity as director of public relations conferred a benefit on the campaign from the corporation. Therefore, when the Harman campaign received the checks collected, it violated §441b's prohibition against accepting anything of value from a corporation—i.e., a contribution.

In addition, the court concluded that, "because the Harman Campaign did not pay for the use of employee services in putting on a fundraiser for the campaign until after the event occurred," the value of the employees' labor constituted an advance of corporate funds and was, therefore, an impermissible corporate contribution.

While the court found that the committee knowingly violated the Act, the court imposed no remedy, denying the FEC's requests to require the committee to disgorge to the U.S. Treasury an amount equal to the

contributions it received as a result of the violations, to assess a civil penalty against the committee and/or to enjoin the committee from accepting such corporate contributions again.

On October 19, 1999, the Commission voted to appeal that portion of the decision denying any remedy for the Harman campaign's violations. Later in the year, however, the Commission voted to withdraw its appeal.

### MUR 4879

It is unlawful for a corporation to make contributions or expenditures in connection with any federal election. 2 U.S.C. §441b(a). It is also unlawful for any person to make a contribution in the name of another or to knowingly permit his or her name to be used to effect such a contribution. 2 U.S.C. §441f. The Commission found violations of both these provisions in MUR 4879.

Beaulieu of America, Inc., paid a \$200,000 civil penalty for using corporate funds to reimburse employees and their spouses for contributions they made to Alexander for President (the Committee), Lamar Alexander's 1996 campaign committee. The civil penalty was one of the largest civil penalties ever paid by a respondent.

Beaulieu CEO Carl M. Bouckaert served as a national co-chair of the Committee, and was a co-chair of a March 1995 fundraiser held in Dalton, Georgia, where the corporation was based. At the request of corporate officers, 36 persons, consisting of Beaulieu employees and their spouses, made \$36,000 in contributions to the Committee by purchasing tickets to the fundraiser. All but two contributors were later reimbursed with corporate funds by Beaulieu executives, who disguised the money as bonuses or expense reimbursements. The two contributors who did not receive a corporate reimbursement were reimbursed with personal funds of two of the company's executives.

Beaulieu, which accepted the responsibility for the actions of its managers, knowingly and willfully violated both of these provisions in the Federal Election Campaign Act.

## Use of Internet

The FEC first addressed Internet campaigning in 1995. Since that time, the Commission has responded to an increasing number of inquiries regarding the use of the Internet. During 1999, the Commission issued five advisory opinions (AOs) on the subject, and published a Notice of Inquiry requesting comment on the need for regulations specific to the Internet.

### Advisory Opinions

Three of the Internet AOs issued during 1999 involved organizations interested in providing nonpartisan information about candidates and their campaigns, two involved credit card contributions made over the web and one answered a Presidential candidate's questions about the medium.

**Nonpartisan Voting Information.** Under FEC regulations, payments for nonpartisan activity designed to encourage individuals to vote or to register to vote are not an expenditure provided that no effort is or has been made to determine the party or candidate preference of individuals before encouraging them to register to vote or to vote. 11 CFR 100.8(b)(3). Applying this provision, the Commission concluded in AO 1999-7 that the Secretary of State's office in Minnesota could provide links from its web site, containing information about candidates for elective office, to those same candidates' campaign web sites without making an expenditure. The Secretary of State's web site included a disclaimer stating that the hyperlinks were displayed for voter information purposes only. The Commission determined that the state's activities fit within the exemption for nonpartisan voting information.

The Commission reached a similar conclusion in AO 1999-25 with respect to a web site sponsored by two corporations—the League of Women Voters Education Fund (the League) and the Center for Governmental Studies (CGS). The Commission concluded that the corporations could sponsor Democracy Network (DNet), a Web site providing information on federal candidates, without making a corporate expenditure because the composition, purpose and activities of DNet fell within the nonpartisan voting information

exemption. Under the approved plan, DNet would provide all registered candidates with an ID and password so they could submit on-line biographies and policy positions and could reply to questions and statements from other candidates and the public—all done on-line.

The Commission determined that DNet's activities fell within the exemption for nonpartisan voting information based on the fact that DNet would:

- Invite all qualified candidates in an election;
- Not attempt to determine the political party or candidate preference of the viewers;
- Try to link to a representative sample of newspapers that had made endorsements in a relevant race;
- Not discuss with any candidate his/her plans, projects or needs; and
- Not score or rate the candidates or make statements expressly advocating their election or defeat.

In AO 1999-24, the Commission reached a similar conclusion with respect to a web site established by Election Zone LLC (Ezone).

Like DNet, EZone sought to provide a means of electronic communication between candidates and voters on a nonpartisan basis. The EZone site would include:

- A "Q & A Zone," where viewers could submit questions to the candidates in a selected political race;
- A "Candidate Chat Zone," where each candidate would have an equal opportunity to discuss issues with his or her voting constituency;
- An "On-Line Debate Zone," where two or more candidates in a particular race could debate on-line; and
- Hyperlinks to candidate sites.

EZone planned to finance the site by accepting sponsorship or advertising revenues from commercial entities.

Based on an analysis of the composition, purpose and activities of EZone, the Commission determined that its activities were permissible under the nonpartisan voting exception. Specifically, the Commission noted that EZone:

- Was not affiliated with any candidate, political party, PAC or advocacy group;
- Was created for the purpose of "expanding democracy" by serving as a channel between candidates and voters on a nonpartisan basis;

- Would invite all ballot-qualified candidates to participate;
- Would impose equal word limits and criteria to candidate responses;
- Would not attempt to determine the political party or candidate preference of the viewers;
- Would limit its contacts with candidates to those necessary for the effective operation of the Web site; and
- Would not score or rate the candidates or make statements expressly advocating their election or defeat.

**Credit Card Contributions.** The Commission first approved credit card contributions made via the Internet in AO 1995-9, issued in 1995. The Commission responded to additional questions on the subject in two 1999 opinions.

In AO 1999-9, the Commission concluded that Bill Bradley for President, Inc., could request matching funds for credit and debit card contributions received over the Internet.<sup>6</sup> Under the approved plan, the Bradley campaign would use an Internet credit card processing company, which would compare contributor information submitted to the Committee with records on file with the issuer of the credit card. The campaign would screen for impermissible or nonmatchable contributions through a series of measures, including an electronic form that would require information about the contributor.

For purposes of federal matching payments, a contribution is a gift of money made by a written instrument that identifies the person making the contribution. 11 CFR 9034.2. The Commission concluded that the campaign's electronic contributor form was the functional equivalent of a written instrument. The contributor's authorized response to questions on the form would be tantamount to a written signature on that form. The Commission further noted that the screening procedures proposed by the Committee

would provide a "safe harbor" for other Presidential committees that sought federal matching payments for credit card contributions received over the Internet, but the Commission did not mandate the use of the identical safeguards mentioned in this advisory opinion.

In AO 1999-22, the Commission determined that Aristotle Publishing's credit card contribution plan fell within the "safe harbor" established in the Bradley opinion. In addition, the Commission approved a detailed plan whereby Aristotle would collect credit card contributions for its clients via the Internet using its own merchant ID number. It could not, however, use a single merchant ID number for contributions to Presidential campaigns that were to be submitted for Federal matching payments.

**Internet Use by Campaign.** In AO 1999-17, the Commission responded to a number of Internet-related questions posed by the Governor George W. Bush for President Exploratory Committee, Inc. (the Committee). The Commission concluded that:

- Pro-Bush web sites established by volunteers would not result in contributions, as long as the volunteer prepared the web site using his or her personal property at home. The same rule would apply to e-mail sent by volunteers. In addition, volunteers could redistribute campaign materials as part of their Internet fundraising efforts for the Committee without making a contribution to the Bush campaign. 11 CFR 100.7(b)(4).
- Providing a hyperlink to the Committee's web site would result in a contribution if the owner of the site would normally charge for a link but chose not to charge the Committee, or charged the Committee less than it would charge a similarly situated nonpolitical organization. 11 CFR 100.7(a)(1)(iii)(A).
- Vendors of campaign merchandise could forward to the Committee the names of supporters and also provide a link to the Committee's web site as long as the Committee paid the usual and normal charge for the list of supporters and for the link (if it were the standard business practice to be charged for the link).
- The campaign could use its web site or e-mail to support Mr. Bush via Internet polling.

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<sup>6</sup> The Commission approved this opinion on a provisional basis, pending promulgation of new regulations to permit the matching of credit card contributions. Those regulations were published in the Federal Register on August 5, 1999 (64 FR 42584) and were effective retroactive to January 1, 1999. See Chapter 5 for details.

- Absent some exemption under the law, disclaimers would be required on web sites that expressly advocated the election or defeat of a clearly identified candidate or solicited contributions. 11 CFR 110.11(a)(1). See AO 1998-22.
- The Committee could substitute e-mail communications for written or oral communications as a means of exerting best efforts to obtain missing contributor information. 11 CFR 104.7(b)(2). See AO 1995-9.

### Notice of Inquiry

To date, the Commission has addressed several issues involving the use of new technologies for campaign activity consistent with the campaign finance laws. Nevertheless, many issues regarding the use of technological innovations for campaign activity remain unanswered. In an attempt to deal with them in a systematic manner, the Commission published a Notice of Inquiry (NOI) in the Federal Register on November 5, 1999. The NOI asked some fundamental questions regarding application of the laws to Internet campaigning:

- Are Internet campaign activities analogous to campaign activities conducted in other contexts, or do they differ to such a degree as to require different rules?
- When the Internet is used for activity relating to federal elections and candidates, should the activity be treated as an expenditure or a contribution? If so, under what circumstances?
- Should campaign activity conducted on the Internet be subject to the Act and Commission regulations at all?

The Commission will use the comments it receives to determine whether to issue a Notice of Proposed Rulemaking (NPRM), which might include proposed changes to its regulations. An NPRM would seek further comment on any proposed revisions to the regulations.

Comments on the NOI were due on or before January 7, 2000.<sup>7</sup>

## Definition of Member

On July 22, 1999, the Commission concluded a lengthy rulemaking process by approving final rules for determining who qualifies as a “member” of a membership organization. The Commission’s previous definition of “member” had been partially invalidated in 1995 in the DC circuit in *Chamber of Commerce of the United States v. FEC*.

The “member” 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 organization communications that expressly advocate the election or defeat of candidates.

In its *Chamber of Commerce* decision, the court of appeals concluded that the FEC’s previous regulatory definition of “member” did not square with the Supreme Court’s definition in *FEC v. National Right to Work Committee (NRWC)*. 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 former 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 mandatory voting requirements in the old membership rules “ignored other indications of organizational attachment.”

The new rules, which took effect on November 2, replace the term “membership association” with “membership organization” and, for the limited purposes of the internal communication exemption at 11 CFR 100.8, expand the definition to include unincorporated associations.

With respect to the definition of “member,” the rules continue to require members to satisfy the qualifications for membership in a membership organization

<sup>7</sup> The Commission received more than 1,200 comments.

and affirmatively accept the membership organization's invitation to become a member. The rules then establish new criteria for being a member, reflecting the Commission's revised interpretation of the *NRWC* decision. Under the new rules, members must:

- Have some significant financial attachment to the membership organization, such as a significant investment or ownership stake; or
- Pay annual dues set by the membership organization;<sup>8</sup> or
- Have a significant organizational attachment to the membership organization that includes:
  - affirmation of membership on at least an annual basis<sup>9</sup> and
  - direct participatory rights in the governance of the organization.<sup>10</sup>

With regard to retired, student and lifetime members, and other persons who do not meet the above requirements but have a relatively enduring and independently significant attachment to the organization, the Commission will determine their membership status on a case-by-case basis through the advisory opinion process.

### Advisory Opinions

During 1999—but prior to the effective date of the new rules—the Commission issued three AOs dealing with the definition of member (AOs 1999-10, 1999-15

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<sup>8</sup> The regulations do not specify a minimum amount of dues.

<sup>9</sup> The regulations provide some flexibility in interpreting the phrase “annual affirmation.” For example, activities such as attending and signing in at a membership meeting or responding to a membership questionnaire would satisfy this requirement.

<sup>10</sup> The regulations cite as examples of “direct participatory rights” the right to vote directly or indirectly for at least one individual on the membership organization's highest governing board; the right to vote on policy questions where the highest governing body of the membership organization is obliged to abide by the results; the right to approve the organization's annual budget; or the right to participate directly in similar aspects of the organization's governance.

and 1999-16) . In each case the Commission found that the organizations and members qualified as “membership associations” and “members” under the more stringent regulations in place at the time. Consequently, the organizations that requested these opinions can feel confident that their members also satisfy the more inclusive definition contained in the new membership regulations.

## Limited Liability Companies

Prior to November 1999, neither the Act nor FEC regulations specifically addressed the status of limited liability companies (LLCs), which bear some resemblance to both corporations and partnerships. The Commission, however, had been asked to address the status of LLCs, case-by-case, in several advisory opinions. In these opinions, the Commission had looked to state law to determine how LLCs should be treated under the Act. Using this approach, LLCs were typically considered “persons,” subject to the same limits as individuals (except for the \$25,000 annual limit, which applies only to individuals).

On November 12, 1999, the Commission promulgated new regulations governing contributions to federal candidates and committees by LLCs. The new rules follow the Internal Revenue Service's (IRS) “check the box” approach in classifying LLCs. IRS rules allow LLCs to decide whether to be treated as partnerships or corporations for federal tax purposes. If an LLC selects neither option, and is not traded publicly, it is automatically treated as a partnership. All publicly-traded LLCs are treated as corporations.

Under the new FEC regulations, an LLC is treated as a partnership unless it opts to be treated as a corporation for tax purposes.<sup>11</sup> LLCs that choose corporate tax treatment and those that are publicly traded are treated as corporations. In adopting the new rules,

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<sup>11</sup> Contributions by a partnership are subject to the limits contained in 2 U.S.C. §441a(a). In addition, partnership contributions are attributed proportionately against each contributing partner's limit for the same candidate and election. 11 CFR 110.1

the Commission said that this approach was a narrow exception to its general practice of relying on state law to determine corporate status of any given entity.

The NPRM had also sought comments on how Subchapter S corporations should be treated for purposes of the Act. Because Subchapter S corporations are considered corporations under all states' laws, the final rules do not address them; they continue to be barred from making contributions in federal elections.

The new regulations supersede AOs 1998-15, 1998-11, 1997-17, 1997-4, 1996-13 and 1995-11.

## Soft Money

Soft money—funds raised and/or spent outside the limitations and prohibitions of the Act—received considerable attention during 1999, both in the courts and at the FEC.

### Litigation

***USA v. Kanchanalak, et al.*** As part of its October 8, 1999, decision in this criminal case, the U.S. Court of Appeals for the District of Columbia Circuit reversed a district court decision concerning the disclosure of soft money donations. The U.S. District Court for the District of Columbia had determined that neither the Act nor Commission regulations require political committees to report the sources of soft money donations.

While the appellate court did not question the lower court's determination that the Act does not require soft money reporting, it held that the FEC's own regulation does require such disclosure. The appeals court pointed to the Commission's regulation at 11 CFR 104.8(e), which requires disclosure of any entity that "donates an aggregate amount in excess of \$200 in a calendar year to the committee's nonfederal account(s)." In upholding the FEC's interpretation of its regulation to require the disclosure of the sources of soft money, the opinion noted the appeals court's long history of deferring to agencies' interpretations of their own regulations, and quoted a Supreme Court opinion which stated "that the [Federal Election] Commission is precisely the type of agency to which deference should presumptively be afforded."

The court of appeals also affirmed the Commission's position that the Act's ban on contributions by foreign nationals applies to donations to support candidates for state and local offices, not just federal offices. The opinion cited 2 U.S.C. §441e, which states that "it shall be unlawful for a foreign national directly or through any other person to make any contribution...in connection with an election to any political office." Based on this language, the court concluded that "Congress plainly intended to reach certain contributions made to state and local offices." (See also "Foreign Nationals," p. 33.)

***FEC v. California Democratic Party, et al.*** On October 14, 1999, the U.S. District Court for the Eastern District of California ruled that the California Democratic Party (CDP) violated the Commission's allocation rules when it used soft money to pay for a voter registration drive that was "targeted" at potential Democratic registrants.<sup>12</sup> On November 2, 1999, the court issued a consent order and judgment in which the CDP agreed to pay a civil penalty to the FEC in the amount of \$70,000 and to transfer \$354,500 from its federal account to its nonfederal account.

The case involved donations the CDP made from its nonfederal account to a California group for a voter registration drive. The undisputed evidence of the case demonstrated that the voter registration drive was "a targeted effort to register Democrats to vote in a general election."

Under Commission regulations, political committees must allocate expenses for generic voter drives between their federal and nonfederal accounts, must pay for the expenses directly from their federal account or a special allocation account, and must disclose the allocation in their reports to the FEC. 11 CFR 102.5(a)(1)(i), 104.10(b)(4) and 106.5(d) and (g). In this case, the CDP failed to allocate any of the voter drive costs to its federal account, paid for all of the costs directly from a nonfederal account and failed to report any of the costs to the FEC.

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<sup>12</sup> The Commission reached a similar conclusion in MUR 3774, involving payments by the National Republican Senatorial Committee for generic voter drives. The case was closed in February 2000.

### Advisory Opinions

The Commission considered several advisory opinions during 1999 that dealt with soft money issues. Most involved the Commission's rules on allocation of shared federal and nonfederal expenses by party committees.

**AO 1999-4.** In AO 1999-4, the Commission determined that Minnesota's Senate District 43 committee (SD 43), a local party organization, could make contributions to federal candidates and exempt payments on behalf of federal candidates without registering as a federal political committee, so long as it used "hard money" for those purposes (i.e., funds that complied with the Act's limits and prohibitions) and its contributions and payments did not exceed federal registration thresholds.

The Commission noted that local party organizations are subject to the allocation rules<sup>13</sup> regardless of whether they have separate federal and nonfederal accounts. Therefore, if SD 43 engaged in exempt party activities involving federal and nonfederal elections, the portion of its payments allocable to federal activity would count toward the \$5,000 registration threshold that applies to exempt activities. 11 CFR 106.5(a)(1), 106.5(a)(2)(iii) and 106.5(e).

**AOs 1999-5, 1999-18 and 1999-30.** These opinions all involved the "ballot composition" allocation method. Under FEC regulations, state and local party committees must allocate their administrative and generic voter drive expenses between "hard money" (federal) sources and "soft money" (nonfederal) sources, based on the ratio of federal offices expected on the ballot to total federal and nonfederal offices expected on the ballot in the next general election to be held in the committee's state or geographic area. 11 CFR 106.5(d)(1)(i). This ratio is determined by the number of categories of federal and nonfederal

offices on the ballot. 11 CFR 106.5(d)(1)(i). The regulations list the relevant federal and state offices and how they should be counted for purposes of the ratio. 11 CFR 106.5(d)(1)(ii).

In AOs 1999-5 and 1999-18, the Commission determined that the Democratic Party of New Mexico (DPNM) and the San Diego County Republican Central Committee (SDCRCC), respectively, could adjust their ballot ratios by adding nonfederal points for some additional state and local offices included on the state ballots. The DPNM's support of Democratic candidates for two seats on a newly-created state utilities regulatory body earned it one additional nonfederal point. Similarly, the SDCRCC could treat the candidates it endorsed and supported in "nonpartisan" local races as partisan local candidates and could, therefore, add two nonfederal points when calculating its allocation ratio. The Commission based its decision on a 1996 district court decision that found unconstitutional Article II, §6(a), of the California Constitution, which mandates that local elections be nonpartisan.<sup>14</sup> The Commission's position could change if future legal developments indicated that §6(b) could be lawfully applied or enforced.

In AO 1999-30, the Commission addressed an unusual situation facing the Nebraska State Democratic Party (NDP). Normally, using the ballot composition method, state party committees can avail themselves of two nonfederal points, one for each house in a bicameral legislature. See 11 CFR 106.5(d). Unlike every other state legislature, the Nebraska legislature consists of only one house. The individual members of the legislature each hold the office of State Senator, and one-half of the seats are up for election every two years. Based on the explicit language of its regulations and their Explanation and Justification (E & J), the Commission concluded that the NDP could take only one nonfederal point with respect to the state legislative office.

<sup>13</sup> The Commission's allocation regulations require party committees to pay for certain kinds of expenses with both soft money and hard money (or exclusively with hard money if they so choose), according to specific allocation formulae established by the regulations.

<sup>14</sup> *California Democratic Party v. Lungren*, 919 F. Supp. 1397 (N.D. Cal. 1996).

**AO 1999-27.** In this opinion, the Commission concluded that all the funds spent by the Alaska Federation of Republican Women (the Federation), a party committee, in connection with a presidential straw poll would be subject to the limitations and prohibitions of the Act. Soft money could not be used. Unlike allocable generic party activities (for which both soft money and hard money are permissible), the straw poll would focus on a specific group of Presidential candidates, and the straw poll form itself would list specific Presidential candidates. Consequently, the Commission concluded that the Federation had to finance the poll exclusively with “hard dollars,” i.e., funds subject to the limitations and prohibitions of the Act.

### Enforcement

In three 1999 enforcement cases, the Commission examined improper transfers of soft money by party committees.<sup>15</sup> Under FEC rules, a committee may only transfer funds from its nonfederal (soft money) account to its federal account to defray the nonfederal share of allocable expenses. The rules also require that these transfers occur within a specific time frame.

**MUR 4751.** In MUR 4751, the New Jersey Democratic State Committee paid a \$15,000 civil penalty and transferred \$54,279 from its federal account to its nonfederal account after the FEC determined that the committee had improperly transferred \$117,000 during the 1996 election cycle from its nonfederal account to its federal account in excess of the nonfederal share of allocable expenses. (The committee had previously transferred \$62,216 from its federal account to its nonfederal account to remedy some of the excessive '96 transfers.)

In addition to finding improper transfers, the Commission found that these transfers contained excessive individual and PAC contributions and impermissible corporate contributions. 2 U.S.C. §§441a(f) and 441b(a). New Jersey state law, which governs the committee's nonfederal activities, permits individuals, PACs and corporations to make contributions of up to

\$25,000 annually. Federal statutes, however, limit contributions to state party committees to \$5,000 per year for individuals and PACs, and prohibit corporate contributions.

**MURs 4797/4798.** In these two related MURs, an unregistered party organization, the Randolph County Republican Executive Committee, illegally transferred prohibited funds to the federal accounts of two party committees. (In both cases, the recipient federal accounts were appropriately registered as federal committees under the Act.) The two federal accounts, in turn, illegally accepted the transfers. Additional violations included one of the recipient committees' failure to allocate and failure to accurately report transfers.

The transfers, amounting to \$32,425 and \$13,925, occurred just prior to the 1996 elections in North Carolina. The Randolph Committee made the transfers so that the two federal committees could purchase public communications. Although most of the communications appeared to support local candidates, one of them had a federal component.

The Act and Commission regulations state that an organization that does not qualify as a federal political committee, but influences federal elections, must either establish a federal account that receives only funds subject to the limitations of the Act or be able to demonstrate through a reasonable accounting method that it has sufficient funds permissible under federal law to cover the amount of the federal disbursement at the time the contribution is made. 11 CFR 102.5(b)(1). The Randolph Committee had done neither, and it had accepted soft money—i.e., donations that, while legal under North Carolina law, had exceeded the limits of the Act. It passed these funds on to the two federal party committees. Those two party committees, in turn, permitted the deposit of impermissible funds from an unregistered committee into their federal accounts.

The Commission entered into conciliation agreements with the three committees prior to a finding of probable cause to believe that they had violated the Act and Commission regulations. Each committee agreed to pay a \$6,000 civil penalty.

<sup>15</sup> These were among several 1999 enforcement matters on this topic.

## Contributions from Foreign Nationals

The Act's ban on contributions from foreign nationals was the subject of a significant court case, an advisory opinion and an enforcement matter during 1999.

### Litigation

**USA v. Kanchanalak, et al.** On October 8, 1999, the U.S. Court of Appeals for the District of Columbia Circuit reversed a district court decision to dismiss charges against Pornpimol Kanchanalak and Duangnet Kronenberg for illegally disguising donations from foreign nationals and corporations. The Department of Justice originally filed suit against Ms. Kanchanalak and Ms. Kronenberg for willfully causing the Democratic National Committee (DNC) and other committees to file false reports of hard money contributions and soft money donations with the FEC, in violation of 18 U.S.C. §§2(b), 1001. The defendants were allegedly involved in a scheme in which permanent U.S. residents signed checks for both hard and soft money when the actual source of the funds was a foreign corporation, Ban Chang International (USA), Inc. The U.S. District Court for the District of Columbia dismissed the charges against Ms. Kanchanalak and Ms. Kronenberg, concluding that the government had failed to prove that the defendants had directly caused the making of false reports to the FEC. The court also determined that neither the Act nor Commission regulations could be read to regulate foreign soft money donations. The Court of Appeals reversed on each of these matters.

**Hard Money.** The appeals court reinstated the hard money counts against the defendants based on its previous decision in *United States v. Hsia*,<sup>16</sup> which established that the Act requires political committees to report the true source of the federal funds they receive. 2 U.S.C. §441f. The appellate court ruled that the defendants' scheme of illegally utilizing conduits caused the DNC and other committees to report the conduits rather than the true sources of the contributions on FEC forms. Because the defendants' actions

"caused false statements to be made to a government agency," the appeals court summarily reversed the district court's decision on these counts.

**Soft Money Donations by Foreign Nationals.** In reversing the district court's judgment with regard to the soft money counts, the appeals court found that the FEC had reasonably interpreted the Act to forbid donations by foreign nationals to support candidates for state and local offices, not just federal offices. While the defendants had argued that the prohibition applied only to federal elections, the appellate court ruled that it extends to state and local elections as well. The opinion cited 2 U.S.C. §441e, which states that "it shall be unlawful for a foreign national directly or through any other person to make any contribution...in connection with an election to any political office." While the defendants had focused on the fact that "contribution" is defined elsewhere in the statute to include "any gift...made by any person for the purpose of influencing any election for Federal office" (2 U.S.C. §431(8)(A)(i)), the appeals court emphasized the use of the term "any political office" in §441e. The appeals court compared §441e to §441b, which differentiates between contributions in connection with elections to federal office and those in connection with election to "any political office." The opinion noted that, "[b]y distinguishing federal offices from 'any political office,' Congress plainly intended to reach certain contributions made to state and local offices." In this regard, the appellate court again relied on the FEC's interpretation of the law, namely, that nonfederal offices are included in the foreign national prohibition.

**Reporting Soft Money.** The court of appeals also reversed the district court's ruling regarding the soft money reporting regulation. The appellate court did not question the lower court's determination that nothing in the Act specifically requires soft money reporting, but pointed to the Commission's regulation at 11 CFR 104.8(e), which requires disclosure about any entity that "donates an aggregate amount in excess of \$200 in a calendar year to the committee's nonfederal account(s)." (See also "Soft Money," p. 30.)

<sup>16</sup> *United States v. Hsia*, 176 F.3d 517 (D.C. Cir. 1999).

### **Advisory Opinions**

**AO 1999-28.** Consistent with its previous holdings on the subject, a majority on the Commission concluded that a domestic subsidiary of a foreign corporation may solicit PAC contributions from—and send election advocacy communications to—the restricted class of its foreign corporate parent and any of its U.S. subsidiaries, so long as those individuals are not foreign nationals and foreign nationals do not participate in PAC operations or decision making. The affiliated status of the various corporations provided the basis for the Commission’s conclusion that qualified personnel within the restricted class of any one of the corporations would be included within the restricted class of all. 11 CFR 100.5(g)(3)(i) and 110.3(a)(2)(i).

### **Enforcement**

**MUR 4834.** In MUR 4834, Howard Glicken agreed to pay a \$40,000 civil penalty for knowingly and willfully soliciting a \$20,000 contribution from a foreign national and for causing a contribution from a foreign national to be falsely made in the name of a U.S. citizen.

The evidence showed that Mr. Glicken solicited the contribution from Thomas Kramer in April 1993 and knew at the time that Mr. Kramer was a German national and that foreign nationals are prohibited from making contributions in elections in the U.S. Mr. Glicken told Mr. Kramer that he should have someone else write the check to the DSCC and then reimburse that person. Subsequently, Mr. Glicken was present when Mr. Kramer asked his secretary to write a \$20,000 contribution check, which the DSCC received a few days after it was made. Mr. Glicken apparently knew that Mr. Kramer reimbursed his secretary for the full amount of the check.

This scheme violated not only the foreign national ban, but also the prohibition on contributions in the name of another. 2 U.S.C. §§441e and 441f.

## 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 and minor parties for Presidential nominating conventions, and grants to Presidential nominees for their general election campaigns.

### Shortfall for 2000

During 1999, the Commission continued to warn 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.
- Three parties were expected to participate in the public funding program in 2000.
- Open races for the 2000 nomination would occur in both major parties.
- Taxpayer participation in the tax checkoff had remained low.

Early projections for 2000 had indicated that candidates might initially receive as little as 32 percent of their entitlement in January 2000, and that the shortfall might persist until early 2001. (See *Annual Report 1998*.) When Texas Governor George W. Bush announced that he would forego federal matching funds, however, the Commission revised its estimates. The revised figures continued to forecast a significant shortfall, but FEC staff believed that all certified funds would be paid by July 20, 2000, and that initial payments would equal 39 percent of the candidates' entitlements. Later in the year, Elizabeth Dole announced that she would not accept matching funds, further increasing the percentage of entitlement that could be paid in January 2000.

The actual payment process began at the end of 1999. On December 22, the Commission certified eight primary candidates as eligible to receive a total of more than \$34 million in federal matching funds. (That figure was nearly \$3 million less than the Commission's initial certifications for 10 candidates in the 1992 election.) The Treasury Department's Janu-

ary 3, 2000, payments to the candidates amounted to roughly 50 cents on the dollar. (See Chart 5-1, p. 36.) Based on these facts, the Commission expected the funding shortfall to end by June 20, 2000. Of course, a lag in deposits from the tax checkoff or an acceleration in requested payments could alter those estimates. To bridge the funding gap, candidates could secure loans by pledging anticipated matching fund receipts as collateral.

The Commission for several years has urged Congress to help alleviate the shortfall problem. Revising the "set aside" of general election funds and increasing and indexing the checkoff amount are possible solutions.

### Certification of Primary Matching Funds

Presidential candidates eligible to participate in the matching fund program receive matching federal dollars for a portion of the contributions they raise. The federal government will match up to \$250 per contributor, but only contributions from individuals qualify for matching. To establish eligibility, a candidate must submit documentation showing that he or she has raised in excess of \$5,000 in matchable contributions in each of at least 20 states (i.e., over \$100,000). The FEC reviews this threshold submission to determine whether the candidate has met the eligibility requirements. The candidate must also agree to comply with the law in a letter of agreement and certification.

Presidential candidates may establish their eligibility during the year before the election (i.e., in 1999 for the 2000 primaries) and, once eligible, they may submit additional contributions for matching funds (called matching fund submissions) on specified dates.

Chart 5-1 (next page) lists the 2000 Presidential primary candidates who qualified for matching funds and the total amount of matching funds certified and actually paid to each, as of January 2000.

**CHART 5-1**  
**Matching Fund Certifications and Payments, January 2000**

Candidate	Certification Amount	Actual Payment on 1/3/00
Gary L. Bauer (R)	\$ 3,964,359.04	\$ 1,969,126.75
Bill Bradley (D)	\$ 8,343,853.83	\$ 4,144,454.52
Patrick J. Buchanan (Reform)	\$ 2,372,196.26	\$ 1,178,287.60
Al Gore (D)	\$11,070,709.82	\$ 5,498,904.26
Alan L. Keyes (R)	\$ 1,241,434.35	\$ 616,629.71
Lyndon H. LaRouche, Jr. (D)	\$ 733,767.72	\$ 364,467.91
John S. McCain (R)	\$ 4,190,650.22	\$ 2,081,527.27
Dan Quayle (R)	\$ 2,102,525.00	\$ 1,044,339.87

## Convention Funding

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

Based on its Presidential candidate's performance in the 1996 election, the National Committee of the Reform Party, USA, and its convention committee qualified as a minor party under the Presidential Election Campaign Fund Act for purposes of convention financing and eligibility. A minor party is defined as a political party whose candidate for the Presidency in the preceding Presidential election received more than 5 percent, but less than 25 percent, of the total popular votes cast. In the 1996 general election, the Reform Party candidate, Ross Perot, received 8.4 percent of the popular vote. Accordingly, the Reform Party was entitled to partial convention funding for 2000. On November 22, 1999, the FEC certified the Reform Party 2000 Convention Committee as eligible to receive \$2,468,921 in public funds.

Under the statute, major party conventions are fully funded at \$4 million, plus an adjustment for inflation since 1974. On June 28, 1999, the 2000 Democratic National Convention Committee, Inc. and the Committee on Arrangements for the 2000 Republican National Convention each received payments of \$13.224 million.

In addition to these initial certifications, all of the convention committees will receive a second payment from the Department of Treasury during 2000 to adjust for inflation.

## Public Funding Regulations

Over the years, the Commission has developed and refined its regulations explaining the requirements and procedures for public funding. After each Presidential cycle, the agency revises the regulations to clarify the law and address problems that arose in the previous cycle. During 1999, the Commission amended its rules in several areas, including the following:

- The revised rules permit the matching of credit or debit card contributions, including those made via the Internet. 11 CFR 9034.2, 9034.3 and 9036.1. (See Chapter 4, p. 27.)
- The amendments establish a "bright line" between primary and general election expenses. Under the revised rule, salary and overhead costs incurred between June 1 of the Presidential election year and the date of the nomination are treated as primary expenses. However, Presidential campaign committees have the option of attributing to the general election an amount of salary and overhead ex-

penses incurred during this period of up to 15 percent of the primary election spending limit. 11 CFR 9034.4(e)(1) and (e)(3).<sup>1</sup>

- The new rules also require a Vice Presidential committee to begin aggregating its contributions and expenditures with those of the Presidential nominee on the date that either the future Presidential or Vice Presidential nominee publicly indicates that the two candidates intend to run on the same ticket. Alternatively, aggregation of contributions would begin when the Vice Presidential candidate accepts an offer to be the running mate, or when the committees of these two candidates become affiliated. 11 CFR 9035.3.<sup>1</sup>
- The revised rules permit party committees to make coordinated party expenditures in connection with the general election before they select their nominee. However, all prenomination coordinated expenditures are subject to the coordinated expenditure limits, whether or not the candidate with whom they are coordinated receives the party's nomination. 11 CFR 110.7(d).
- The amended rules also modify the Presidential audit process to include Commission approval of the Preliminary Audit Report before it is provided to the audited committee following the exit conference. This preliminary audit report replaces the exit conference memorandum. 11 CFR 9007.1(b)(2)(iii), (c) and (d)(1), and 9038.1(b)(2)(iii), (c) and (d)(1).<sup>1</sup>
- The changes also modify the General Election Legal and Accounting Compliance (GELAC) Fund rules by:
  - Restricting GELAC Fund deposits made prior to June 1 of the Presidential election year to those primary election contributions that exceed the contributors' contribution limits and are properly redesignated to the Fund; and
  - Specifying that the GELAC Fund may not solicit contributions before June 1 of the Presidential election year. 11 CFR 9003.3(a)(1)(i).<sup>2</sup>
  - Modifying rules on joint fundraising involving the GELAC Fund. 11 CFR 9034.4(e)(6).
- The new rules also modify the reimbursement requirements for media use of campaign transportation and other services by:
  - Specifying that publicly funded campaigns may seek reimbursement from the media for the items listed in the White House Press Corps Travel Policies and Procedures issued by the White House Travel Office plus those items or services not listed if they are requested by media personnel; and
  - Specifying that Presidential campaign committees have 60 days to provide each media representative traveling or attending a campaign event with an itemized bill for each segment of the trip. Payments for uncontested charges from the media representatives are due 60 days after the date of the bill.

The Commission also amended the rules concerning: documentation of disbursements; winding down costs; lost, misplaced or stolen items; capital and noncapital assets; Net Outstanding Campaign Obligations (NOCO) and Net Outstanding Qualified Campaign Expenses (NOQCE); compliance costs for primary committees; matching fund submissions; and nominating conventions.

## Update on 1996 Presidential Debate Lawsuit

In April 1998, Perot '96, the 1996 committee of former Reform Party Presidential candidate Ross Perot, filed a lawsuit asking the U.S. District Court for the District of Columbia to find that the FEC acted contrary to law in dismissing an administrative complaint that Perot '96 had filed against the Commission on Presidential Debates (CPD). The CPD had sponsored the 1996 Presidential debates in which Mr. Perot was not invited to participate. Perot '96 had asked the court to order the FEC to take action on the complaint or to find that the agency's regulations governing nonpartisan candidate debates were unconstitutional. 11 CFR 110.13 and 114.4(f).

<sup>1</sup> An effective date for these regulations had not been announced at year's end.

<sup>2</sup> Neither one of these GELAC Fund provisions will be implemented until June 1, 2000.

On April 12, 1999, the court dismissed this case with prejudice at the plaintiff's request. At the time of the plaintiff's voluntary motion to dismiss with prejudice, the Commission's motion to dismiss for lack of standing was pending and awaiting judgment.<sup>3</sup>

## Repayment of Public Funds

Once a Presidential election is over, the Commission audits all of the candidates and committees that received public funds to ensure that they used those funds only for qualified campaign expenses and that they maintained proper records and filed accurate reports. These audits are mandated under the 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.

Repayments may also stem from Commission determinations that contributions that were initially thought to be matchable were later determined to have been nonmatchable. Such determinations may or may not result from the FEC's audit of the committee.

During 1999, the Commission determined that several 1996 campaigns had to make repayments, including those discussed below.

### Clinton Committees

On June 3, 1999, the Commission approved the audit reports on the committees for the Clinton/Gore '96 Primary, the General Election and the General Election Legal and Accounting Compliance Fund. These reports contained the Commission's repayment and payment determinations. The Commission concluded that most of the repayments set forth in the reports would not be necessary if the Clinton/Gore

campaign transferred specific amounts of funds among the committees. On August 12, 1999, the committees filed a joint response and attached payment and repayment checks of \$11,180 for stale-dated checks and \$3,241 for interest income, as well as documentation of the transfers recommended in the audit reports, which obviated the remaining repayments.

In addition to the repayments and payments arising from the Commission's audits of the Clinton committees, on July 15, 1999, the Commission determined that the Clinton/Gore '96 Primary Committee, Inc., had to repay nearly \$11,000 to the US Treasury for public funding payments that had been made on the basis of contributions that were later determined to have been nonmatchable. 11 CFR 9038.2(b)(1)(iii). This determination was based on information obtained during a Department of Justice (DOJ) investigation of campaign irregularities involving Future Tech International, Inc., Mark Vision Computers, Inc., Mark Jimenez and Juan Ortiz. One aspect of the investigation involved 25 contributions to the Clinton/Gore '96 Primary Committee, Inc., that were connected to Future Tech and the above-stated individuals. The Commission concluded that guilty pleas entered into by Future Tech and Mr. Ortiz as a result of the DOJ investigation were sufficient to conclude that these contributions should not have been matched with public funds.

### Dole Committees

The Commission made a repayment determination that Former Senator Bob Dole's 1996 primary committee, Dole for President, Inc., repay \$515,272 to the Treasury. The Commission noted a surplus repayment of \$283,481 resulting from amounts due from the general election campaign for winding-down expenses paid on its behalf and \$6,255 in nonqualified campaign expenses. The Commission also determined that the committee pay the Treasury \$225,536 for stale-dated checks.

The Commission's repayment determination for Dole/Kemp '96, Inc., and the Dole/Kemp '96 Compliance Committee, Inc., totaled \$3.2 million. Of this amount, more than \$2.5 million was due to the fact

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<sup>3</sup> A similar case, brought by the Natural Law Party, was pending at year's end. See also p.16 for discussion of a rulemaking petition on candidate debates.

that the Dole committees exceeded the 1996 Presidential general election expenditure limit (\$61.82 million). The largest factor in the excessive spending related to overbilling the press and Secret Service for travel on the campaign. The Commission also cited \$574,158 in nonqualified campaign expenses related to expenses that should have been paid by Dole for President (the primary election committee); and \$46,510 in interest income earned by the two committees. In addition, the Commission determined that the committee pay the Treasury \$44,046 for stale-dated checks. The Commission also determined that Dole/Kemp '96 refund \$1.15 million to press representatives and \$65,754 to the Secret Service because it had overcharged them for campaign travel.

The Dole committees disputed the FEC's findings and requested administrative review. In December 1999, the committees presented their arguments at an oral hearing. The Commission will issue Statements of Reason addressing those arguments in a post-administrative review repayment determination.

#### **Perot '96 Repayment Reduced**

Based on a committee challenge, the Commission reduced the amount the Perot '96 committee had to repay the U.S. Treasury to \$1,706,915—approximately \$600,000 less than the Commission's original repayment determination.

The Perot committee had challenged the original repayment determination on the basis of two arguments. First, because the committee was unable to terminate in April 1998, as it had expected to do, it needed more funds to pay winding-down costs. Second, the committee argued that \$1,447,000 in litigation expenses were qualified campaign expenses and should be reflected in its Statement of Net Outstanding Qualified Campaign Expenses.

The Commission allowed the additional funds for winding-down costs, but rejected the committee's claim that its litigation expenses were qualified campaign expenses. The Commission found that the litigation expenses—for two lawsuits filed by the committee—were not incurred in furtherance of the 1996 general election and were not incurred prior to the close of the expenditure report period. 11 CFR

9002.11(a)(1) and (2). The lawsuits had challenged the Commission on Presidential Debates and the Republican and Democratic national committees. (See p. 37.)

#### **Buchanan Committee 26 U.S.C. § 9039(b) Investigation<sup>4</sup>**

On June 16, 1998, the Commission opened an inquiry under 26 U.S.C. § 9039(b) and 11 C.F.R. 9039.3 to determine whether the reattribution of certain contributions to Patrick J. Buchanan and Buchanan for President, Inc., were proper and whether the Committee received any matching funds for nonmatchable contributions. Based upon this inquiry, on July 15, 1999, the Commission determined that Patrick J. Buchanan and Buchanan for President, Inc., repay \$63,750 to the US Treasury for matching funds received in excess of the candidate's entitlement. The repayment was based on the Commission's determination that some of the matched contributions were nonmatchable. 26 U.S.C. § 9038(b)(1); 11 C.F.R. 9038.2(b)(1)(iii). The repayment amount included \$62,116 for matching funds related to improper reattributions and \$1,634 for matched contributions that were later refunded. The repayment determination was in addition to the repayment determinations arising from the Commission's audit of the Buchanan Committee. See 11 C.F.R. 9038.2(f) and 9039.3(b)(4). The Buchanan Committee responded to the repayment determination on October 12, 1999.

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<sup>4</sup> This provision permits the Commission to conduct additional investigations to obtain information relevant to candidate eligibility, matchability of contributions and repayments.

## Chapter Six Legislative Recommendations

In March 2000, the Federal Election Commission submitted to Congress and the President two sets of legislative recommendations. The first set contained six priority recommendations. The second set comprised 32 additional recommendations, including technical changes and amendments that addressed problems that the regulated community and the Commission have encountered. The entire collection of 38 recommendations follows.

### **Part A: Priority Recommendations**

#### **Disclosure**

**Election Cycle Reporting of Operating Expenditures and Other Disbursements (2000)\***  
*Section: 2 U.S.C. §434(b)(5) and (6)*

*Recommendation:* The Commission recommends that Congress make technical amendments to sections 434(b)(5) and (6) to require itemization of operating expenditures by authorized committees on an election-cycle basis rather than on a calendar-year basis and to clarify the basis for itemization of other disbursements. More specifically, Congress should make a technical amendment to section 434(b)(5)(A) to ensure that authorized committees (i.e., candidate committees) itemize operating expenditures on an election-cycle basis. Section 434(b)(6)(A) should be modified to address only election-cycle reporting since the subparagraph applies only to authorized candidate committees. Finally, sections 434(b)(6)(B)(iii) and (v) should be amended to address only calendar-year reporting since these subparagraphs apply only to unauthorized political committees (i.e., PACs and party committees).

*Explanation:* In 1999, Congress amended the statute at section 434(b) to require authorized candidate committees to report on an election-cycle basis,

rather than on a calendar-year basis, with respect to reporting periods beginning after December 31, 2000. Pub. Law No. 106-58, Section 641. However, the 1999 amendment did not include section 434(b)(5)(A), which states that operating expenditures must be itemized on a calendar-year basis and details the information required in that itemization. The result is that, under section 434(b)(4), operating expenditures will be required to be aggregated on an election-cycle basis, while under section 434(b)(5), they are still required to be itemized on a calendar-year basis.

To establish consistency within the Act, the Commission recommends that Congress make a technical amendment to section 434(b)(5)(A) by inserting “(or election cycle in the case of an authorized committee of a candidate for Federal office)” after “calendar year.” This amendment would require authorized committees to itemize operating expenditures on an election-cycle basis.

Congress also should tighten up the language in section 434(b)(6)(B)(iii) and (v) by striking “(or election cycle, in the case of an authorized committee of a candidate for Federal office).” The references to authorized committees are unnecessary as section 434(b)(6)(B) applies solely to unauthorized political committees. Similarly, in section 434(b)(6)(A), Congress should strike “calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office)” and insert in its place the phrase, “election cycle,” as section 434(b)(6)(A) only applies to authorized committees.

#### *Legislative Language:*

#### **ELECTION CYCLE REPORTING OF OPERATING EXPENDITURES AND OTHER DISBURSEMENTS**

Paragraph (5)(A) of section 304(b) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(b)(5)(A)) is amended by inserting after “calendar year” the following: “(or election cycle, in the case of an authorized committee of a candidate for Federal office)”.

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\* The date, 2000, appearing after the name of the recommendation, indicates the recommendation was new in 2000. Those recommendations without any date were carried over, in the same form, from previous years.

Paragraph (6)(A) of section 304(b) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(b)(6)(A)) is amended by striking “calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office),” and inserting in its place the following: “election cycle.”

Paragraphs (6)(B)(iii) and (v) of section 304(b) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(b)(6)(B)(iii) and (v)) are amended by striking the following in both paragraphs: “(or election cycle, in the case of an authorized committee of a candidate for Federal office)”.

### **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.

### *Legislative Language:*

#### Waiver Authority

Section 304 (2 U.S.C. 434) is amended by adding at the end the following new subsection:

“(d) The Commission may relieve any person or category of persons of the obligation to file any re-

ports required by this section, or may change the due dates of any of the reports required by this section, if it determines that such action is consistent with the purposes of this title. During each calendar quarter, the Commission shall publish a list of each waiver granted under this subsection during the previous quarter.”

### **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.

*Legislative Language:*

Monthly Reporting for Congressional Candidates

Section 304(a) (2 U.S.C. 434(a)) is amended—

(1) in paragraph (2), by striking “If” and inserting “Except as provided in paragraph (12), if”; and

(2) by adding at the end the following new paragraph:

“(12)(A) The principal campaign committee of a candidate for the House of Representatives or for the Senate may file monthly reports in accordance with this paragraph in lieu of the reports required to be filed under paragraph (2), provided that—

“(i) in addition to such monthly reports, the committee shall file a pre-election report in accordance with paragraph (2)(A)(i) with respect to any primary election in which the candidate participates, except that in the case of a primary election occurring during the first 20 days of a month, the Commission may waive the requirement to file such pre-election report or the requirement to file the report otherwise due under this paragraph during the month, or may revise the deadlines otherwise applicable for submitting such reports; and

“(ii) in lieu of filing the reports otherwise due under this paragraph in November and December of any year in which a regularly scheduled general election is held, a pre-general election report shall be filed in accordance with paragraph (2)(A)(i), a post-general election report shall be filed in accordance with paragraph (2)(A)(ii), and a year end report shall be filed no later than January 31 of the following calendar year.

“(B) Monthly reports under this paragraph shall be filed by the treasurer of the committee no later than the 20th day after the last day of the month and shall be complete as of the last day of the month.”

## 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.

### Contributions by Foreign Nationals (revised 2000)

*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. Although two district court decisions have rejected this interpretation, the U.S. Court of Appeals for the District of Columbia interpreted section 441e to apply to both federal and nonfederal elections (*United States v. Trie*, 21 F.Supp.2d 7 (DDC 1998); 23 F.Supp. 55 (DDC 1998); *United States v. Kanchanalak et al.*, 37 F.Supp.2d 1 (DDC 1999); *rev’d.*, 192 F.3d 1037 (D.C. Cir. 1999). 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 discrepancy 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.

*Legislative Language:*

## Contributions by Foreign Nationals

Section 319 (2 U.S.C. 441e) is amended—

- (1) in the heading, by striking “CONTRIBUTIONS” and inserting “DONATIONS AND OTHER DISBURSEMENTS”;
- (2) in subsection (a), by striking “contribution” each place it appears and inserting “donation or other disbursement”; and
- (3) in subsection (a), by striking the semicolon and inserting the following: “, including any donation or other disbursement to a political committee of a political party or to any organization or account created or controlled by a political party and any donation or other disbursement for an independent expenditure;”.

**Lines of Credit and Other Loans Obtained by Candidates**

*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.

*Legislative Language:*

## Lines of Credit and Other Loans Obtained by Candidates

Section 301(8)(B) (2 U.S.C. 431(8)(B)) is amended—

- (1) by striking “and” at the end of clause (xiii);
- (2) by striking the period at the end of clause (xiv) and inserting “; and”; and
- (3) by adding at the end the following new clause:

“(xv) any loan of money derived from an advance on a candidate’s brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, if such loan is made in accordance with applicable law and under commercially reasonable terms and if the person making such loan makes loans in the normal course of the person’s business.”

## **Part B: Other Recommendations**

### **Disclosure**

#### **Incomplete or False Contributor Information**

*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.

#### **Commission as Sole Point of Entry for Disclosure Documents (revised 2000)<sup>1</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 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

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<sup>1</sup> This recommendation was also made by Pricewaterhouse Coopers LLP in its *Technology and Performance Audit and Management Review of the Federal Election Commission*, pages 4-37 and 5-2.

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 for Senate campaigns and Senatorial Campaign Committees, a single point of entry remains desirable. It is important to note as well that, if the Congress adopted mandatory electronic filing for Senate campaigns and Senatorial Campaign Committees, the recommendation to change the point of entry for Senate filers would be rendered moot.

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, ad-

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

#### **Fraudulent Solicitation of Funds**

*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 2000)**

*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 Purview.* 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 U. S. Court of Appeals for 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

### Election Period Limitations for Contributions to Candidates (revised 2000)

*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-a-vis* a particular election, but not *vis-a-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.

Moreover, Public Law No. 106-58 (the fiscal 2000 appropriations bill) amended the Federal Election Campaign Act to require authorized candidate committees to report on a campaign-to-date basis, rather than on a calendar year basis, as of the reporting period beginning January 1, 2001. Placing the limits on contributions to candidates on an election cycle basis would complement this change and streamline candidate reporting.

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 (revised 2000)**

*Section:* 2 U.S.C. §441a(a)(1)

*Recommendation:* The Commission recommends that Congress establish a minimum age of 16 for making contributions.

*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 of 16 for contributors, or otherwise provide guidelines ensuring that parents are not making contributions in the name of another.

#### **Broader Prohibition Against Force and Reprisals**

*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**

*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) pro-

vide 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.

#### **Referral of Criminal Violations (revised 2000)**

*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, which may merit heavy criminal sanction. Although there is 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>2</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.

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<sup>2</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.

### **Modifying Terminology of “Reason to Believe” Finding**

*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.

### **Public Financing**

#### **Averting Impending Shortfall in Presidential Public Funding Program (revised 2000)**

*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 is experiencing 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 impacts foremost upon primary candidates. In January 2000, when the U.S. Treasury made its first payment for the 2000 election, it was only able to provide approximately 50 percent of the public funds to which qualified Presidential candidates were entitled to receive. Specifically, an estimated \$16.9 million was available for distribution to qualified primary candidates on January 3, 2000, after the Treasury paid the convention grants and set aside the general election grants.<sup>3</sup> However, the entitlement (i.e., the amount which the qualified candidates were entitled to receive) was \$34 million, which equates to roughly 50 cents on the dollar. Moreover, the total entitlement for primary candidates for the entire election cycle is estimated to be \$67.1 million. Thus, if FEC staff estimates and presumptions are correct, a significant shortfall will exist until June 2000. The Commission recommends that Congress take appropriate action to reduce the impact of this shortfall.

#### **Qualifying Threshold for Eligibility for Primary Matching Funds (revised 2000)**

*Section:* 26 U.S.C. §9033

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

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<sup>3</sup> The Commission has certified a total of \$28.9 million in convention grants, and \$147.2 million will be set aside for use by general election candidates.

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 establishing a new set dollar threshold, which would eventually require additional inflationary adjustments, Congress may wish to express the threshold as a percentage of the previous Presidential primary election 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, along with an increase in the amount to be raised from within each state, 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.

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>4</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>4</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*, 510 U.S. 992 (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 (revised 2000)**

*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. 13 F.3d at 416.

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 C: 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 2000)**

*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, Congress should consider simply requiring political com-

mittees 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, semiannual 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.

With the advent of mandatory electronic filing for certain filers as of the reporting periods after December 31, 2000, this recommendation takes on added significance as a way to establish a clear, concise, across-the-board reporting deadline for all filers, regardless of methodology used to file reports.

#### **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 semiannual, 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 2000)**

*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 or web based filing.

*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 or web based filing. This could be accomplished by allowing the committee to fax, e-mail, or electronically fill out via the FEC’s web site, 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.

## **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)

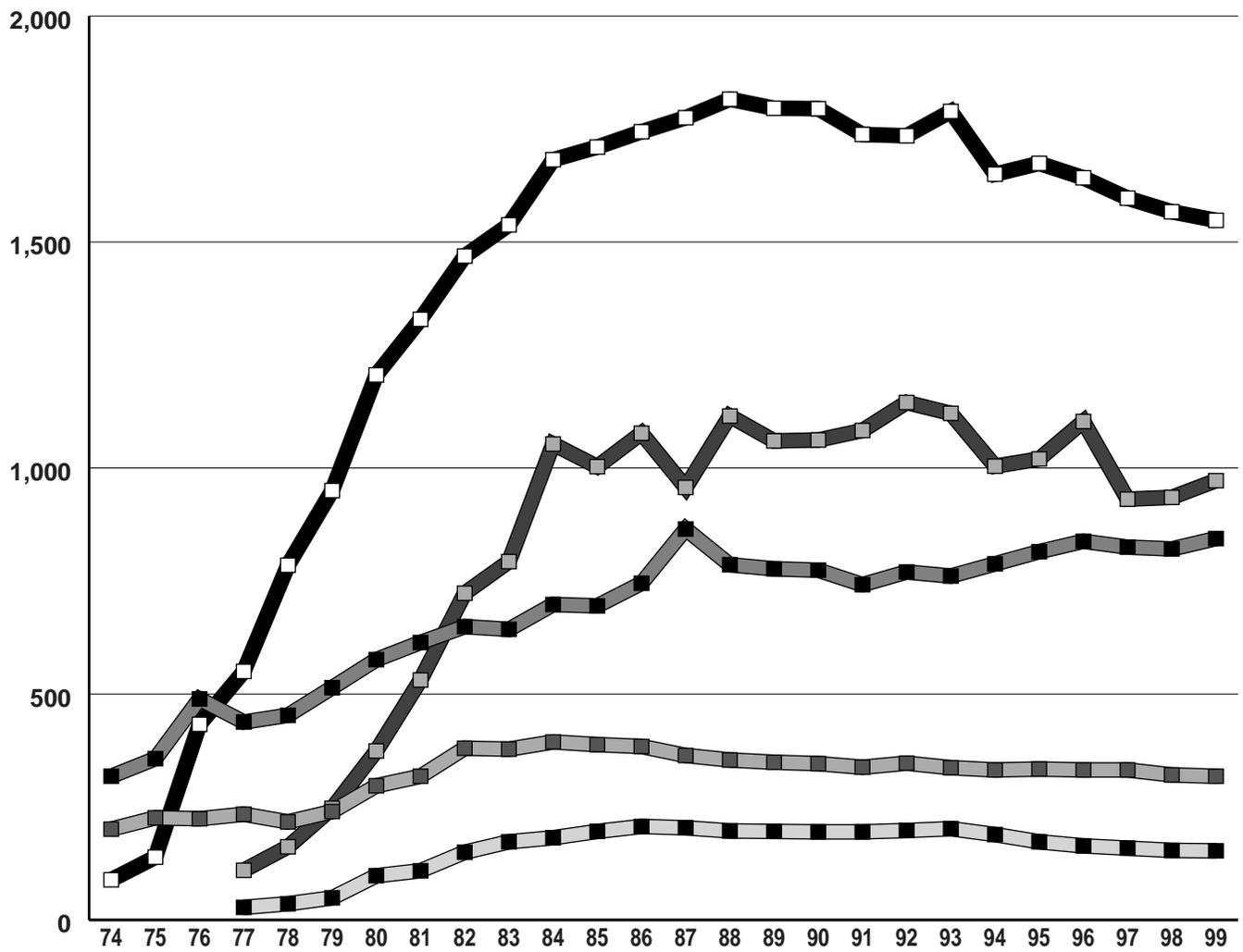
*Recommendation:* The Commission recommends that Congress amend section 437c by removing the Secretary of the Senate, the Clerk of the House, and their designees from the list of the members of the Federal Election Commission.

*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

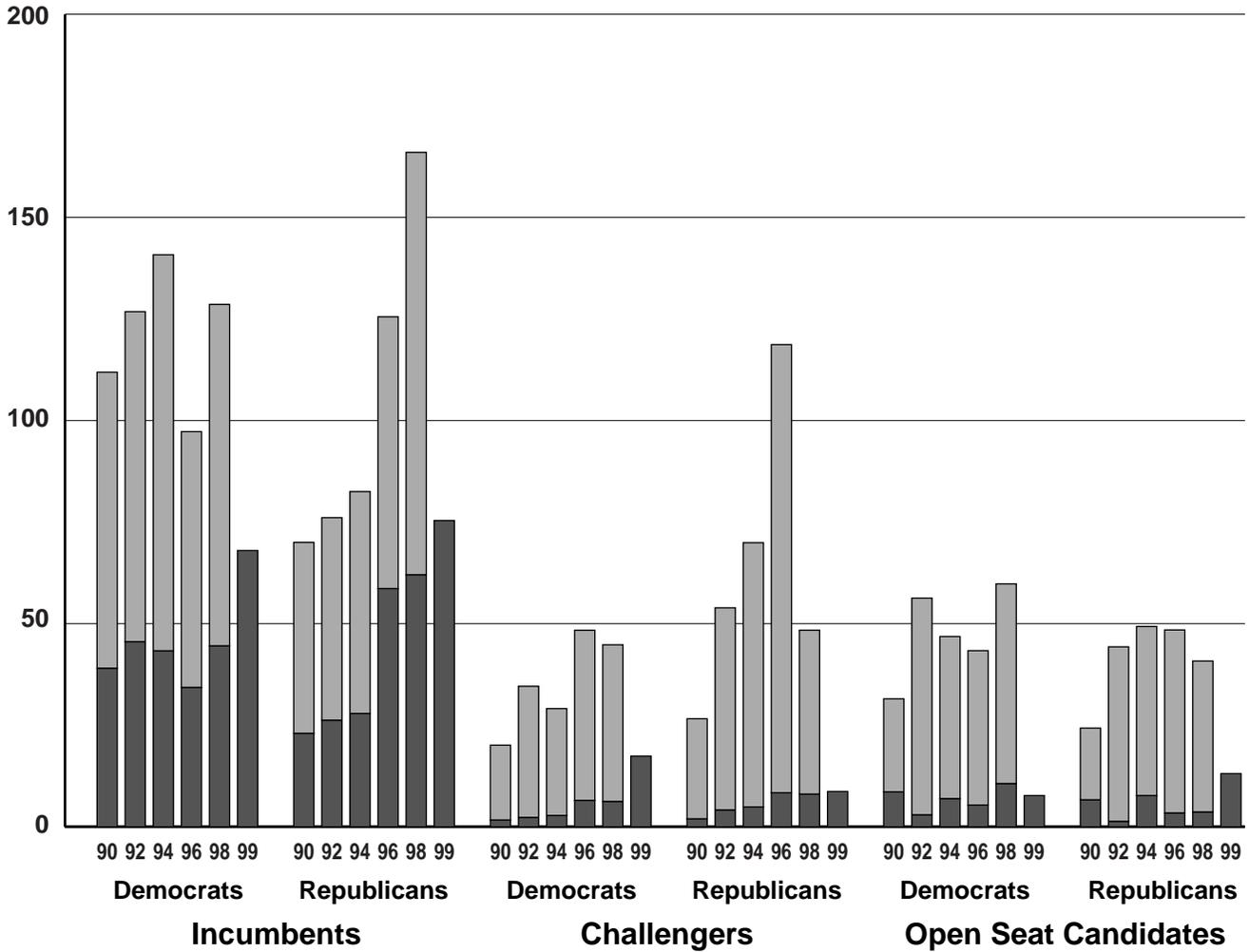
**CHART 7-1**  
**Number of PACs, 1974-1999**



**CHART 7-2**  
**Receipts of House Candidates for**  
**Each Year of Election Cycle, 1990-1999**

■ Election Year  
 ■ Nonelection Year

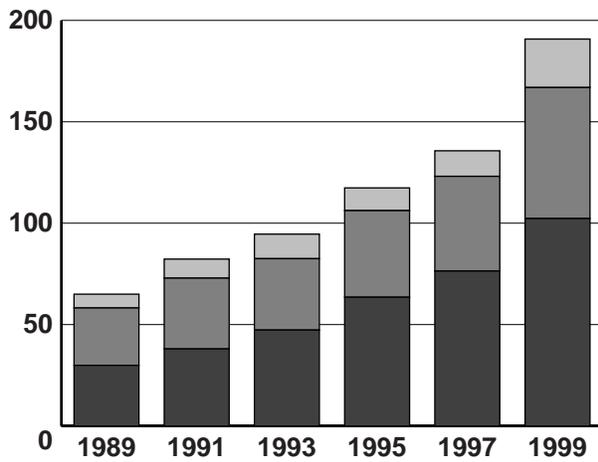
Millions of Dollars



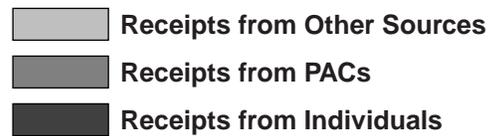
**CHART 7-3**  
**House Campaign Fundraising**  
**in Nonelection Years**



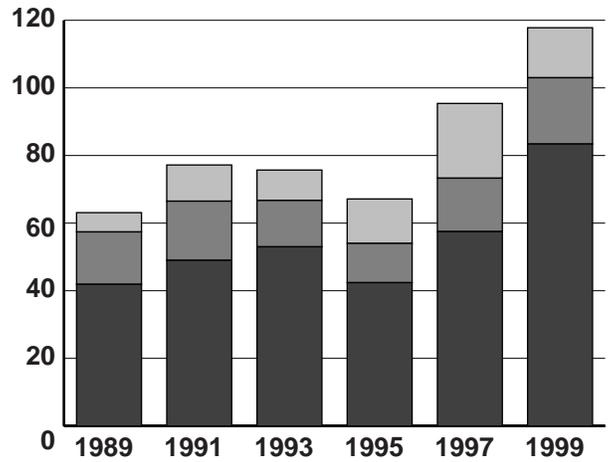
Millions of Dollars



**CHART 7-4**  
**Senate Campaign Fundraising**  
**in Nonelection Years**



Millions of Dollars

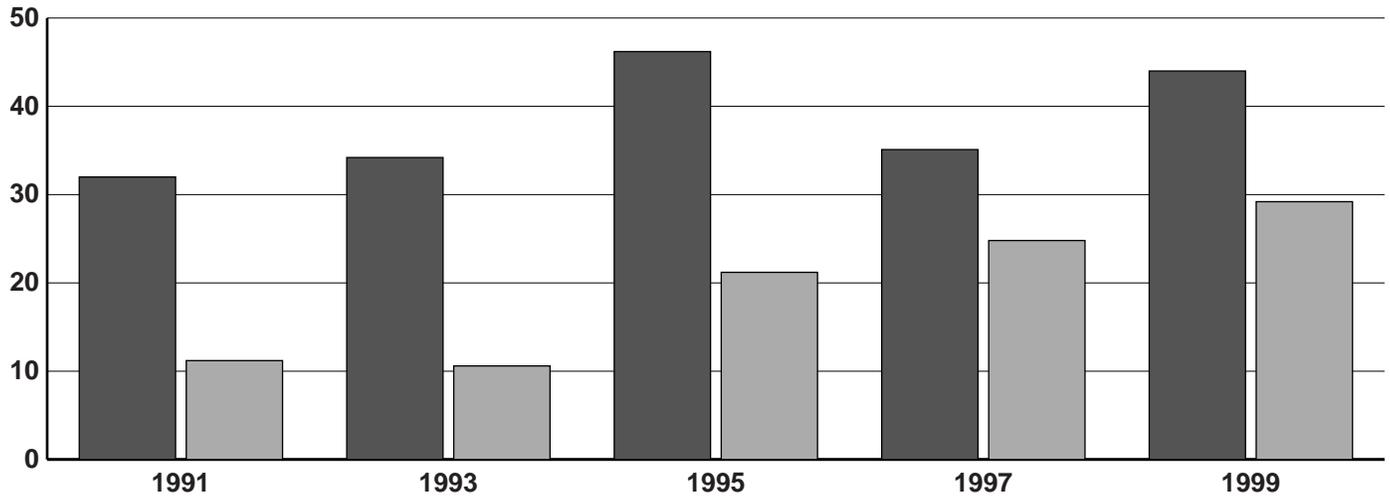


**CHART 7-5**  
**Nonelection Year Fundraising by National Party**  
**Committees: Federal and Nonfederal Accounts**

 Federal Dollars  
 Nonfederal Dollars

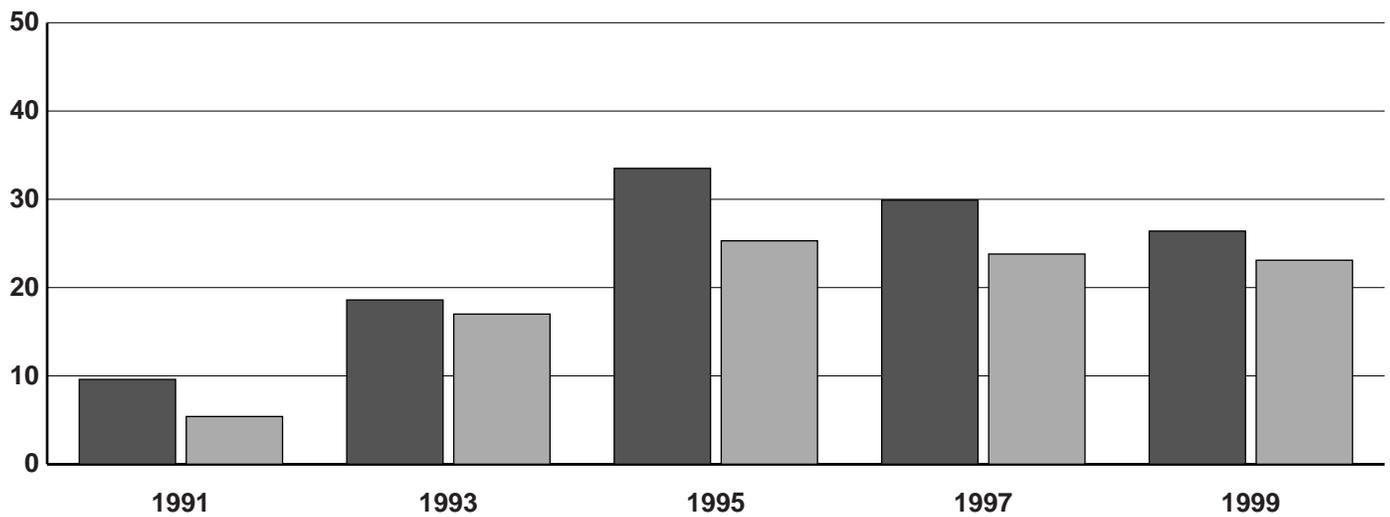
**Republican National Committee**

Millions of Dollars

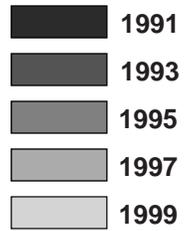


**Democratic National Committee**

Millions of Dollars

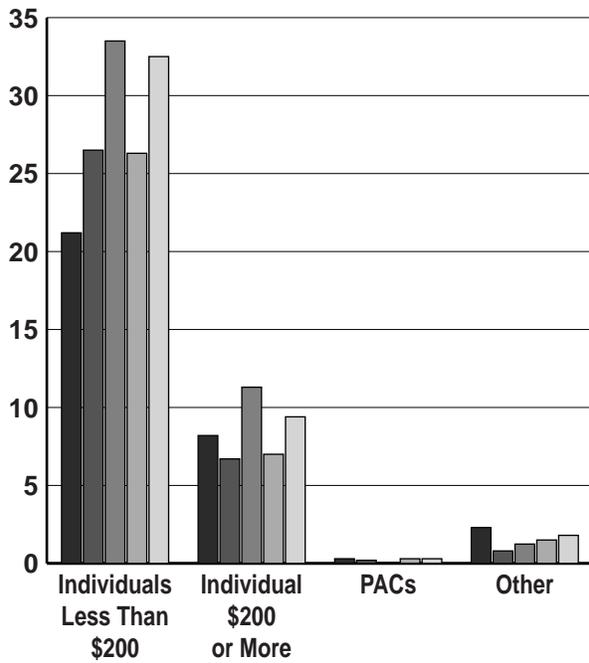


**CHART 7-6**  
**Sources of National Party Committee:**  
**Federal Account Receipts**  
**in Nonelection Years**



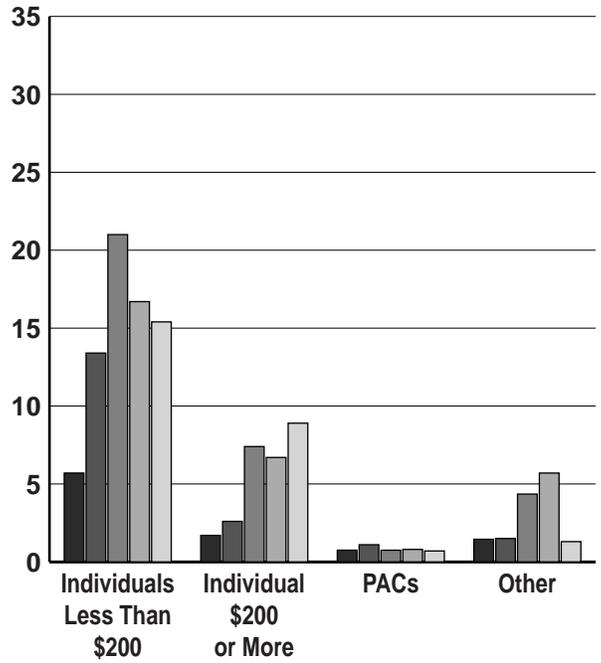
**Republican National Committee**

Millions of Dollars

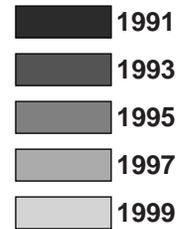


**Democratic National Committee**

Millions of Dollars

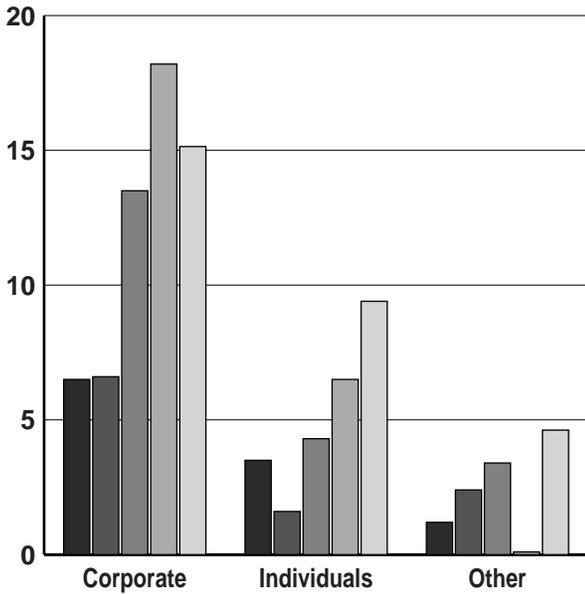


**CHART 7-7**  
**Sources of National Party Committee:**  
**Nonfederal Account Receipts**  
**in Nonelection Years**



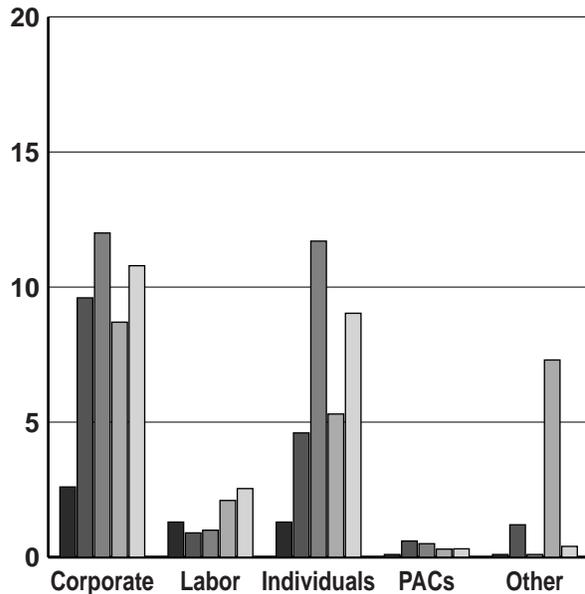
**Republican National Committee**

Millions of Dollars



**Democratic National Committee**

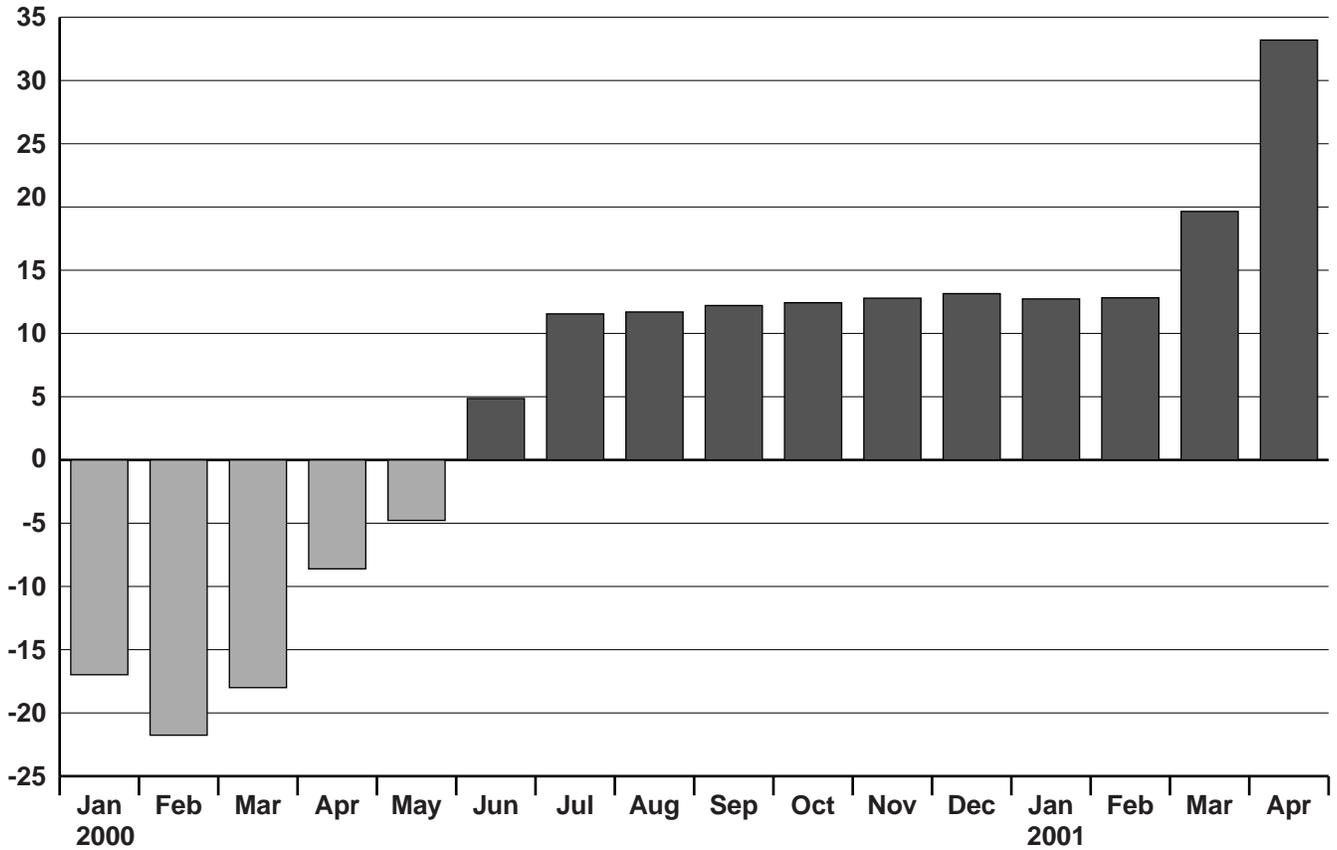
Millions of Dollars



**CHART 7-8**  
**Presidential Primary 2000:**  
**Estimated Cumulative Shortfall/Balance by Month\***

Shortfall  
 Balance

Millions of Dollars



\*These figures exclude the funds set aside for the national nominating conventions and general election nominees.

# Appendix 1

## Biographies of Commissioners and Officers

### Commissioners

#### **Scott E. Thomas, Chairman** **April 30, 2003**<sup>1</sup>

Scott 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 as Chairman throughout 1999. He previously served as Chairman in 1987 and 1993. Prior to serving as a Commissioner, Mr. Thomas was the executive assistant to former Commissioner Thomas E. Harris. He originally joined the FEC as a legal intern in 1975 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.

#### **Darryl R. Wold, Vice Chairman** **April 30, 2001**

Darryl 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, California, 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 counseling 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 and U.S. Supreme Court bars.

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

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

Prior to his work at the Heritage Foundation, Commissioner Mason served as Deputy Assistant Secretary of Defense and served on the staffs of Senator John Warner, Representative Tom Bliley and then-House 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.

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

Commissioner Mason attended Lynchburg College in Virginia and graduated cum laude from Claremont McKenna College in California. He is active in political and community affairs at both the local and national 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, Danny 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.

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

Karl 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.

## Statutory Officers

**James A. Pehrkon, Staff Director**

James Pehrkon became staff director on April 14, 1999, after serving as Acting Staff Director for eight months. Prior to that, Mr. Pehrkon served 18 years as the Commission's Deputy Staff Director with responsibilities for managing the FEC's budget, administration and computer systems. Among the agency's first employees, Mr. Pehrkon is credited with setting up the FEC's data processing department and establishing the Data Systems Development Division. He directed the data division before assuming his duties as Deputy Staff Director.

An Austin, TX, native, Mr. Pehrkon received an undergraduate degree from Harvard University and did graduate work in foreign affairs at Georgetown 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 and for 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 A. McFarland, Inspector General**

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

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

## Appendix 2 Chronology of Events

### January

- 1 — Chairman Scott E. Thomas and Vice Chairman Darryl R. Wold begin their one-year terms of office.
  - Regulations on matching credit card and debit card contributions in Presidential campaigns take effect.
- 4 — FEC releases Version 3.0 of FECFile electronic filing software.
- 29 — PricewaterhouseCoopers submits audit report on FEC operations to Congress.
- 31 — 1998 year-end report due.

### February

- 3 — FEC conducts monthly roundtable on “Trade Association PACs: Fundraising Basics for Newcomers”.
- 9 — Appeals court affirms lower court’s dismissal for lack of standing in *National Committee of the Reform Party v. FEC*.
- 12 — FEC releases semiannual PAC count.
- 23 — District court rules coordinated party expenditure limits unconstitutional (*FEC v. Colorado Republican Federal Campaign Committee*).
  - Georgia holds special general election in 6th Congressional District.
- 25 — Commission approves reorganization of national voting system standards.

### March

- 2 — FECFile 3.0 available for download on FEC web site.
- 3 — FEC conducts monthly roundtable on “Candidate Preparations for the Next Election Cycle”.
- 8 — FEC submits three urgent legislative recommendations to Congress and the President.
- 9 — Vice Chairman Darryl R. Wold testifies before House Appropriations Subcommittee on FY 2000 budget request.
- 15 — FEC names William J. Fleming personnel director.
- 17 — Commission holds hearing on “Member” rulemaking.

- 23 — Commission votes to appeal district court decision in *Colorado Republicans* case.
- 24 — Commission holds hearing on public funding rules.
- 25 — FEC certifies Bill Bradley eligible for primary matching funds.

### April

- 1 — FEC submits 38 additional legislative recommendations to Congress and the President.
  - FEC publishes updated *Campaign Guide for Congressional Candidates and Committees*.
- 7 — FEC conducts monthly roundtable on “FEC Rules on Use of the Internet to Raise Funds”.
- 9 — FEC releases report on party activity for 1997-98.
- 12 — District court dismisses lawsuit on 1996 Presidential debates (*Perot 96 v. FEC*).
- 14 — Commission names James A. Pehrkon Staff Director.
- 22-23 — FEC holds corporate/labor conference in Washington, DC.
- 28 — FEC releases report on congressional fundraising for 1997-98.
- 29 — By 3-3 vote, Commission declines to act on express advocacy rulemaking petition.

### May

- 1 — Louisiana holds special general election in 1st Congressional District.
- 5 — FEC conducts monthly roundtable on “Fundraising Through Payroll Deductions and Combined Dues/PAC Solicitations”.
- 7 — Appeals court reverses lower court’s dismissal for lack of standing in *Judicial Watch v. FEC*.
- 18 — Chairman Thomas and Vice Chairman Wold present FY 2000 budget request to Committee on House Administration.
- 26 — FEC publishes *Annual Report 1998*.
- 27 — FEC certifies Gary Bauer and Dan Quayle eligible for primary matching funds.
  - Commission approves final audit reports on 1996 Clinton and Dole campaigns.

**June**

- 1 — FEC publishes *Federal Elections 98*.  
— FEC surveys committees on electronic filing.
- 2 — FEC conducts monthly roundtable on “Candidate Reporting Basics”.
- 7-8 — FEC holds membership/trade conference in Washington, DC.
- 8 — FEC releases report on PAC activity for 1997-98.
- 15 — Commission appoints four new members to Office of Election Administration’s 1999 Advisory Panel and renews Panel’s charter through July 15, 2001.
- 18 — Commission approves report on impact of National Voter Registration Act—the “motor voter” law.  
— Appeals court reverses lower court’s dismissal of charges regarding collecting and disguising impermissible contributions in 1995-96 election (*USA v. Hsia*).
- 28 — FEC certifies 2000 Democratic National Convention Committee, Inc. and the Committee on Arrangements for the 2000 Republican National Convention eligible for public funding.

**July**

- 1 — FEC certifies John McCain eligible for primary matching funds.  
— FEC publishes “Availability of FEC Information” brochure.
- 2 — Commission modifies procedures for Presidential and Vice Presidential candidates’ personal financial reports.
- 7 — FEC conducts monthly roundtable on “Using Prizes or Entertainment to Raise SSF Funds”.
- 19 — Commission approves revisions to National Mail Voter Registration form.
- 20 — FEC releases semiannual PAC count.
- 29 — FEC holds partnership/limited liability company conference in Washington, DC.
- 30 — FEC certifies Elizabeth Dole eligible for primary matching funds.
- 31 — Mid-year report due.

**August**

- 2 — District court rules on express advocacy and coordination by nonprofit corporation (*FEC v. Christian Coalition*).
- 4 — FEC conducts monthly roundtable on “Corporate Mergers and Spin-Offs—Effect on the SSF”.
- 6-7 — Office of Election Administration Advisory Panel meets in Chicago.
- 15 — FEC makes advisory opinions issued since 1977 available on Web site.
- 17 — Electronic Filing Office offers classes on FECFile 3 software.
- 18 — District court finds campaign illegally accepted corporate contributions made in others’ names (*FEC v. Friends of Jane Harman*).
- 19 — Commission approves Notice of Availability on petition to repeal regulations governing corporate/labor voting records and voter guides
- 24 — Electronic Filing Office offers classes on FECFile 3 software.
- 31 — Electronic Filing Office offers classes on FECFile 3 software.

**September**

- 1 — FEC conducts monthly roundtable on “Fundraising Through Payroll Deductions”.
- 15 — District court finds alleged excessive in-kind contributions to be permissible independent expenditures (*FEC v. Public Citizen*).
- 21 — California holds special general election in 42nd Congressional District.
- 22 — FEC releases mid-year congressional and party committee fundraising figures.
- 27-29 — FEC holds regional conference in Chicago, IL.
- 29 — President Clinton signs FY 2000 appropriation bill, mandating electronic filing, administrative fines and election-cycle reporting.  
— District court rules on express advocacy and coordination by PAC (*FEC v. Freedom’s Heritage Forum*).

- 30 — FEC certifies Pat Buchanan, Al Gore, Alan Keyes and Lyndon LaRouche eligible for primary matching funds.

### October

- 6 — FEC conducts monthly roundtable on “Making Contributions to Federal Candidates: Designations, Redesignations and Reattributions”.
- 8 — Appeals court reverses district court’s dismissal of alleged foreign and corporate, hard and soft money contributions made in others’ names (*USA v. Kanchanalak*).
- 14 — Commission approves state filing waiver program.  
— District court finds state party impermissibly spent soft money for voter drive (*FEC v. California Democratic Party*).
- 18 — District court finds FEC unreasonably delayed action on complaint and orders agency to conclude matter within 30 days (*Democratic Senatorial Campaign Committee v. FEC*).
- 26 — Parties settle case in which plaintiff sought to recover illegal contributions the Dole campaign had disgorged to US Treasury (*Simon C. Fireman v. USA*).
- 29 — FEC publishes *Selected Court Case Abstracts*.

### November

- 2 — Regulations on definition of “member” of membership organization take effect.
- 3 — FEC conducts monthly roundtable on “Update on New FEC Regulations: Definition of Member; Contributions from Limited Liability Companies”.  
— Regulations on party coordinated expenditures and costs of media travel with publicly financed Presidential campaigns take effect.
- 5 — Commission publishes Notice of Inquiry on use of Internet for campaign activity.
- 12 — Regulations on treatment of limited liability companies under Federal Election Campaign Act take effect.

- Regulations on public financing of Presidential primary and general election candidates take effect.

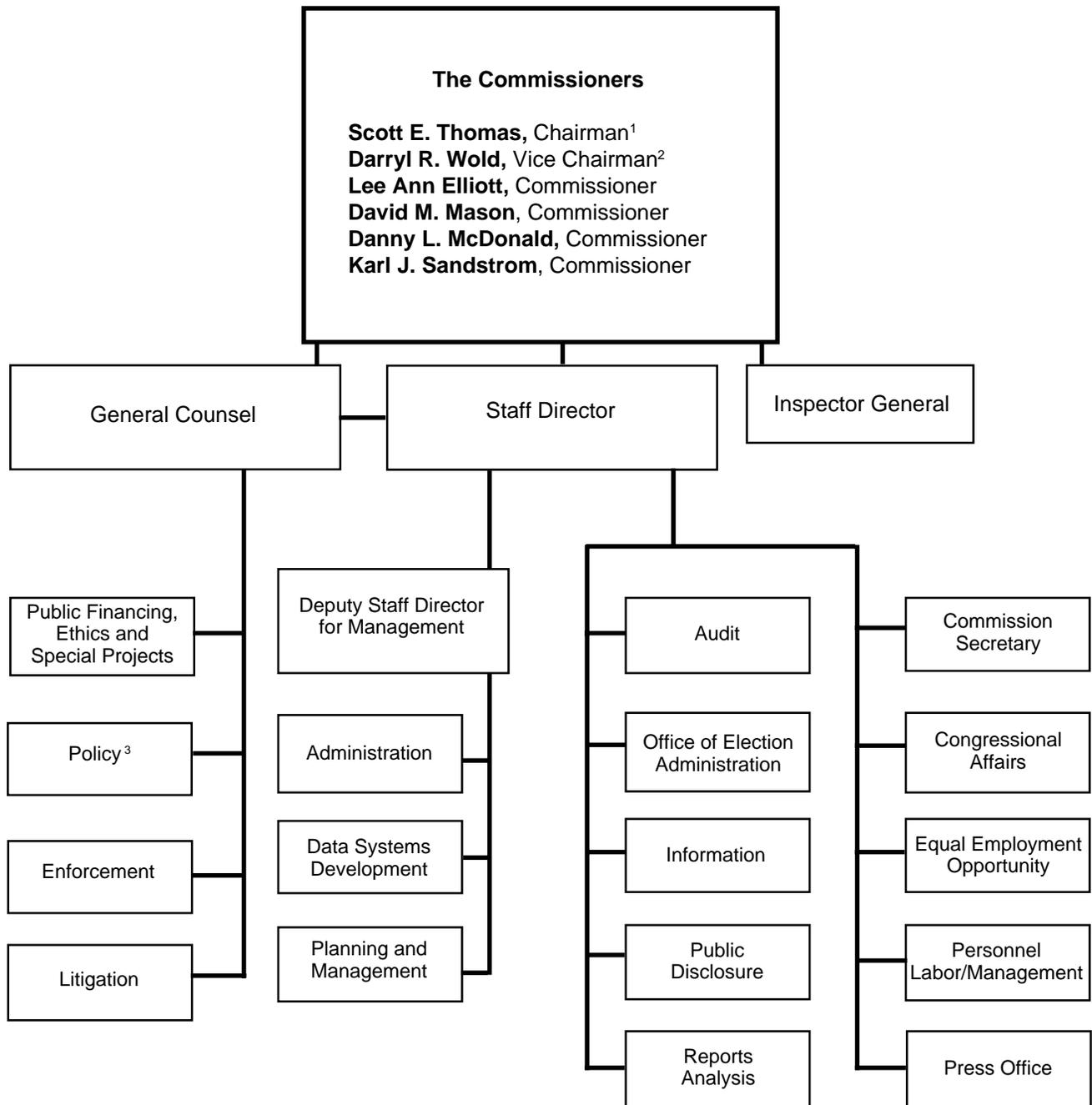
- 15-17— FEC holds regional conference in San Francisco, CA.

- 22 — FEC certifies Reform Party 2000 Convention Committee eligible for public funding.

### December

- 1 — FEC conducts monthly roundtable on “Reporting Requirements for 2000: Deadlines; Pitfalls to Avoid”.
- 2 — Commission approves Notice of Proposed Rulemaking on coordinated communications supporting or opposing candidates.
- 8 — Commission grants state filing waivers for 12 states.
- 9 — FEC submits FY2001 budget request for \$41.323 million and 356 personnel.
- 16 — Commission elects Darryl R. Wold 2000 Chairman and Danny L. McDonald 2000 Vice Chairman.
- 23 — FEC launches redesigned Web site.

## Appendix 3 FEC Organization Chart



<sup>1</sup> Darryl R. Wold was elected 2000 Chairman.

<sup>2</sup> Danny L. McDonald was elected 2000 Vice Chairman.

<sup>3</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 is required to report to Congress on a semiannual basis the activities of the Office of Inspector General. The semiannual report to Congress may include a description 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 library contains a basic reference collection, which includes materials on campaign finance reform, election law and current political activity. Visitors to the law library may use its computers to access the Internet and FEC databases. FEC advisory opinions and computer indices of enforcement proceedings (MURs) may be searched in the law library or the Public Disclosure Division. Local phone: 202-694-1600; toll-free: 800-424-9530.

## Office of 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 1999	Filers Terminated as of 12/31/99	Continuing Filers as of 12/31/99	Number of Reports and Statements in 1999	Gross Receipts in 1999 (dollars)	Gross Expenditures in 1999 (dollars)
<b>Presidential Candidate Committees</b>	312	26	286	720	265,106,053	211,078,429
<b>Senate Candidate Committees</b>	571	85	486	1,178	152,213,920	66,693,825
<b>House Candidate Committees</b>	2,603	330	2,273	5,027	215,412,861	118,367,328
<b>Party Committees</b>	609	49	561	2,116	508,561,330	413,081,658
Federal Party Committees	474	49	425	1,739	379,267,636	321,805,848
Reported Nonfederal Party Activity	136	0	136	377	129,293,694	91,275,810
<b>Delegate Committees</b>	15	0	15	9	0	0
<b>Nonparty Committees</b>	4,185	277	3,908	18,522	266,258,773	205,669,244
Labor Committees	339	22	317	1,895	59,818,834	43,620,681
Corporate Committees	1,673	136	1,537	8,461	78,639,371	64,753,177
Membership, Trade and Other Committees	2,173	119	2,054	8,166	127,800,568	97,295,386
<b>Communication Cost Filers</b>	234	0	234	19	0	177,719
<b>Independent Expenditures by Persons Other Than Political Committees</b>	370	7	363	62	217,444	214,019

### Divisional Statistics for Calendar Year 1999

	Total
Reports Analysis Division	
Documents processed	34,414
Reports reviewed	33,815
Telephone assistance and meetings	8,928
Requests for additional information (RFAs)	7,860
Second RFAs	2,938
Data coding and entry of RFAs and miscellaneous documents	15,218
Compliance matters referred to Office of General Counsel or Audit Division	118
Data Systems Development Division *	
Documents receiving Pass I coding	32,885
Documents receiving Pass III coding	31,196
Documents receiving Pass I entry	34,689
Documents receiving Pass III entry	31,353
Transactions receiving Pass III entry	
• In-house	262,372
• Contract	489,068
Public Records Office	
Campaign finance material processed (total pages)	818,970
Cumulative total pages of documents available for review	16,290,664
Requests for campaign finance reports	3,369
Visitors	9,413
Total people served	12,782
Information telephone calls	9,849
Computer printouts provided	34,956
Faxline requests	3,836
Total income (transmitted to U.S. Treasury)	\$30,497
Contacts with state election offices	4,616
Notices of failure to file with state election offices	320

\* 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
Administrative Division	
Contracting and procurement transactions	1,079
Publications prepared for print	32
Pages of photocopying	13,950,200
Information Division	
Telephone inquiries	53,137
Information letters	89
Distribution of FEC materials	9,220
Prior notices (sent to inform filers of reporting deadlines)	15,969
Other mailings	10,877
Visitors	59
Public appearances by Commissioners and staff	130
Roundtable workshops	10
Publications	22
Press Office	
News releases	130
Telephone inquiries from press	10,229
Visitors	1,907
Freedom of Information Act (FOIA) requests	131
Fees for materials requested under FOIA (transmitted to U.S. Treasury)	\$6,500
Office of Election Administration	
Telephone inquiries	5,787
National surveys conducted	6
Individual research requests	367
Materials distributed *	6,104
Election presentations/conferences	22
Foreign briefings	76
Publications	3

\* Figure includes National Voter Registration Act materials.

	Total
Office of General Counsel	
Advisory opinions	
Requests pending at beginning of 1999	2
Requests received	40
Issued	34
Not issued*	1
Pending at end of 1999	7
Compliance cases <sup>†</sup>	
Pending at beginning of 1999	212
Opened	118
Closed	129
Pending at end of 1999	201
Litigation	
Cases pending at beginning of 1999	31
Cases opened	7
Cases closed	12
Cases pending at end of 1999	26
Cases won	8
Cases lost	1
Cases settled <sup>‡</sup>	3
Law Library	
Telephone inquiries	988
Visitors	629

\* One advisory opinion request was withdrawn by the requester.

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

<sup>‡</sup> Cases settled includes cases withdrawn, dismissed or re-manded.

### Audit Reports Publicly Released

Year	Title 2*	Title 26 <sup>†</sup>	Total
1976	3	1	4
1977	6	6	12
1978	98 <sup>‡</sup>	10	108
1979	75 <sup>‡</sup>	9	84
1980	48 <sup>‡</sup>	11	59
1981	27 <sup>‡</sup>	13	40
1982	19	1	20
1983	22	0	22
1984	15	2	17
1985	4	9	13
1986	10	4	14
1987	12	4	16
1988	8	0	8
1989	2	7	9
1990	1	6	7
1991	5	8	13
1992	9	3	12
1993	10	2	12
1994	5	17	22
1995	12	0	12
1996	23	0	23
1997	6	6	12
1998	5	7	12
1999	20	7	27
<b>Total</b>	<b>445</b>	<b>133</b>	<b>578</b>

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

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

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

**Audits Completed by Audit Division, 1975 – 1999**

	<b>Total</b>
Presidential	112
Presidential Joint Fundraising	12
Senate	23
House	164
Party (National)	47
Party (Other)	139
Nonparty (PACs)	81
<b>Total</b>	<b>578</b>

**Status of Audits, 1999**

	<b>Pending at Beginning of Year</b>	<b>Opened</b>	<b>Closed</b>	<b>Pending at End of Year</b>
Presidential	6	0	6	0
Presidential Joint Fundraising	1	0	1	0
Senate	0	1	0	1
House	0	16	12	4
Party (National)	1	0	1	0
Party (Other)	5	7	4	8
Nonparty (PACs)	4	0	3	1
<b>Total</b>	<b>17</b>	<b>24</b>	<b>27</b>	<b>14</b>

## Appendix 6

# 1999 Federal Register Notices

**1999-1**

Filing Dates for the Georgia Special Election (64 FR 3298, January 21, 1999)

**1999-2**

Definition of Express Advocacy; Notice of Availability of Rulemaking Petition (64 FR 5200, February 3, 1999)

**1999-3**

Definition of "Member" of a Membership Association; Notice of Public Hearing (64 FR 8270, February 19, 1999)

**1999-4**

Public Financing of Presidential Primary and General Election Candidates; Notice of Public Hearing (64 FR 8270, February 19, 1999)

**1999-5**

Electronic Freedom of Information Act Amendments; Notice of Proposed Rulemaking (64 FR 10405, March 4, 1999)

**1999-6**

Filing Dates for the Louisiana Special Election (64 FR 13582, March 19, 1999)

**1999-7**

Definition of Express Advocacy; Notice of Disposition on Petition for Rulemaking (64 FR 27478, May 20, 1999)

**1999-8**

Presidential Debates; Notice of Availability of Petition for Rulemaking (64 FR 31159, June 10, 1999)

**1999-9**

Matching Credit Card and Debit Card Contributions in Presidential Campaigns; Final rules and transmittal of regulations to Congress (64 FR 32394, June 17, 1999)

**1999-10**

Treatment of Limited Liability Companies Under Federal Election Campaign Act; Final Rules and Transmittal of Regulations to Congress (64 FR 37397, July 12, 1999)

**1999-11**

Candidate Debates; Extension of Comment Period (64 FR 39095, July 21, 1999)

**1999-12**

Definition of "Member" of a Membership Organization; Final Rules and Transmittal of Regulations to Congress (64 FR 41266, July 30, 1999)

**1999-13**

Party Committee Coordinated Expenditures; Costs of Media Travel with Publicly Financed Presidential Candidates; Final Rules and Transmittal of Regulations to Congress (64 FR 42579, August 5, 1999)

**1999-14**

Voting Records and Voter Guides; Notice of Availability of Rulemaking Petition (64 FR 46319, August 25, 1999)

**1999-15**

Matching Credit Card and Debit Card Contributions in Presidential Campaigns; Final Rules and Transmittal of Regulations to Congress (64 FR 42584, August 5, 1999)

**1999-16**

Filing Dates for the California Special Election (64 FR 42696, August 5, 1999)

**1999-17**

Public Financing of Presidential Primary and General Election Candidates; Final Rules and Transmittal of Regulations to Congress (64 FR 49355, September 13, 1999)

**1999-18**

Matching Credit Card and Debit Card Contributions in Presidential Campaigns; Announcement of Effective Date (64 FR 51422, September 23, 1999)

**1999-19**

Treatment of Limited Liability Companies Under Federal Election Campaign Act; Announcement of Effective Date (64 FR 55125, October 12, 1999)

**1999-20**

Reporting by Political Action Committees; Notice of Availability of Rulemaking Petition (64 FR 55440, October 13, 1999)

**1999-21**

Definition of "Member" of a Membership Organization; Announcement of Effective Date (64 FR 59113, November 2, 1999)

**1999-22**

Matching Credit Card and Debit Card Contributions in Presidential Campaigns; Announcement of Effective Date (64 FR 59607, November 3, 1999)

**1999-23**

Party Committee Coordinated Expenditures; Costs of Media Travel with Publicly Financed Presidential Campaigns; Announcement of Effective Date (64 FR 59606, November 3, 1999)

**1999-24**

Use of Internet for Campaign Activity; Notice of Inquiry (64 FR 60360, November 5, 1999)

**1999-25**

Public Financing of Presidential Primary and General Election Candidates; Announcement of Effective Date (64 FR 61475, November 12, 1999)

**1999-26**

Audit Procedures, Presidential Primary/General "Bright Line," and Vice Presidential Committees; Final Rules and Transmittal of Regulations to Congress (64 FR 61777, November 15, 1999)

**1999-27**

General Public Political Communications Coordinated with Candidates; Supplemental Notice of Proposed Rulemaking (64 FR 68951, December 9, 1999)