



**Federal Election Commission
Legislative Recommendations
2023**

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Part I: HIGHEST PRIORITY LEGISLATIVE RECOMMENDATIONS

Establish an Itemization Threshold for Conduit Contributions

Section: FECA § 315(a)(8)
(codified at 52 U.S.C. § 30116(a)(8))

Recommendation: Congress should amend FECA’s reporting requirement for conduit contributions to establish an itemization threshold consistent with other FECA reporting requirements.

Explanation: Under current law, political committees must report all contributions received but are required to itemize only contributions that have an aggregate amount or value in excess of \$200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office).¹ Contributions of less than this amount may be reported as one aggregated transaction of “unitemized contributions,” rather than reporting each contribution separately.

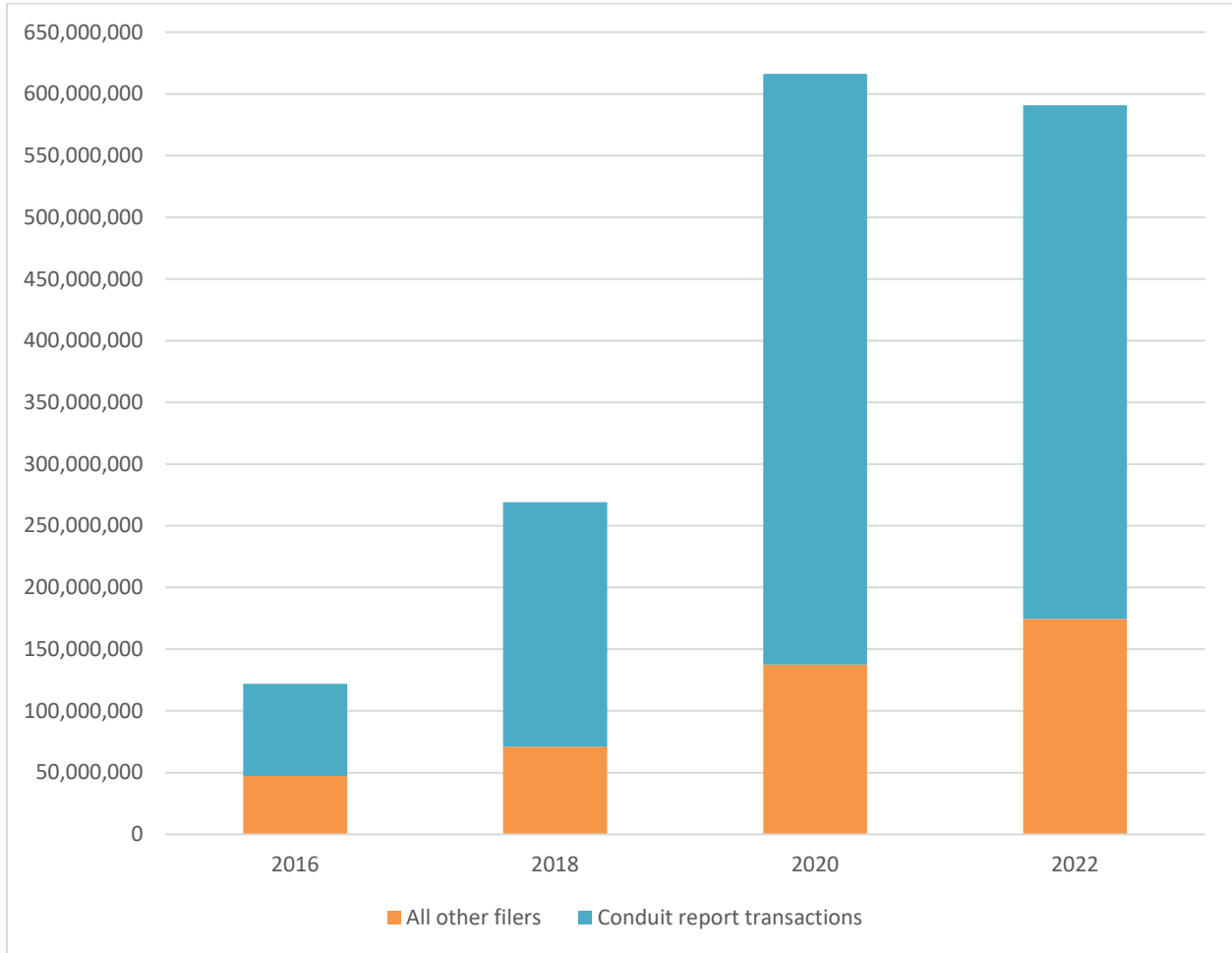
With respect to contributions made by a person that are “in any way earmarked or otherwise directed through an intermediary or conduit,” FECA imposes a reporting requirement on the intermediary or conduit that requires reporting to the FEC both the receipt of the initial contribution as well as the disbursement to the intended recipient.² However, this reporting requirement does not include a threshold for itemization of contributions.

Some contributors who use conduits or intermediaries divide contributions among many intended recipients, which can make some transactions of less than one dollar. Separately reporting transactions of this size can lead to enormous reports with thousands of transactions to disclose a relatively low level of financial activity. This has a significant impact on the total number of reported transactions disclosed by all FEC filers. From 2016 to 2020, the FEC saw the number of reported transactions increase by more than 400 percent. The FEC attributes more than eighty percent of this increase to conduit and intermediary reports, as illustrated in the table below.

¹ FECA, § 304(b)(3)(A), codified at 52 U.S.C. § 30104(b)(3)(A). FECA also permits committees to choose a lower threshold for reporting contributions received.

² FECA, § 315(a)(8), codified at 52 U.S.C. § 30116(a)(8).

Transactions Reported to the FEC 2016-2022 Election Cycles



Congress should amend the intermediary or conduit reporting requirement to include a mandatory itemization threshold for conduits and intermediaries’ reports to the Commission. Note that conduits and intermediaries would still need to report all transactions to recipient committees to facilitate the recipient committees meeting their reporting obligations.

Legislative Language:

Section 315(a)(8) of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30116(a)(8)) is amended—

- (1) by striking “to the Commission and” and
- (2) by adding at the end the following:

“The intermediary or conduit shall report to the Commission the original source and the intended recipient of such contribution for each person who makes a contribution through the intermediary or conduit during the reporting period, whose contribution or contributions through the intermediary or conduit have an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of any such contribution.”

Increase the Rate of Pay for FEC Commissioners, Staff Director and General Counsel

Section: FECA § 306(a)(4) and (f)(1)
(codified at 52 U.S.C. § 30106(a)(4) & (f)(1))

Recommendation: Congress should revise section 306 of FECA to increase the rate of pay for Commissioners and to delink the salaries of the Staff Director and the General Counsel from Level IV and Level V of the Executive Schedule.

Explanation:

- Commissioners

The Federal Election Campaign Act provides in section 306(a)(4) that FEC Commissioners are to be paid at Level IV of the Executive Schedule. For 2023, that amount is \$183,500. However, for FEC Commissioners and others, compensation has been subject to a freeze since 2010, with only one adjustment in 2019, which limits the pay for these positions to \$158,500—a 13.6 percent reduction from the current Executive Schedule level. At this current rate, Commissioners receive less compensation than FEC employees in Senior Level positions, and less compensation than some agency employees in the GS-14 and GS-15 positions, including many of their direct reports. The FEC’s Office of the Inspector General (OIG) expects that the percentage of FEC staff who earn more than FEC Commissioners will approach 40% by the end of FY 2024.³

The OIG identified the pay freeze of the Commissioners’ salary structure as a Human Capital Management challenge for the FEC in 2023, 2024 and in written testimony and responses to questions for the record submitted in connection with the Committee on House Administration’s September 2023 oversight hearing of the FEC.⁴ Finding suitable nominees willing to serve as Members of the FEC will be increasingly difficult the longer the current situation persists. Lapses in having a quorum of Commissioners serving prevent the agency from accomplishing many of its most important functions. An increase in Commissioner compensation may reduce the likelihood of further lapses of a quorum of Commissioners.

The Commission recommends that Congress set the compensation level for FEC Commissioners at an amount that delinks it from the Executive Schedule Level. Changing the

³ FEC, Office of the Inspector General, *Management and Performance Challenges Facing the FEC for FY 2024* at 7 (Nov. 1, 2023) (“OIG Challenges 2024”), <https://www.fec.gov/resources/cms-content/documents/FY-2024-Mgmt-Challenges.pdf>.

⁴ FEC, Office of the Inspector General, *Management and Performance Challenges Facing the FEC for FY 2023* at 6 (Nov. 14, 2022), <https://www.fec.gov/resources/cms-content/documents/FY-2023-Mgmt-Challenges.pdf>; OIG Challenges 2024 at 7; FEC, Office of the Inspector General, *Statement Before the Committee on House Administration* 6 (Sept. 20, 2023) (“OIG Written Testimony”), <https://docs.house.gov/meetings/HA/HA00/20230920/116301/HHRG-118-HA00-Wstate-SkinnerC-20230920.pdf>; Letter from Christopher Skinner, FEC Inspector General, to Rep. Bryan Steil, Chair, Committee on House Administration, at 11-12 (Oct. 30, 2023) (“OIG QFRs”), <https://docs.house.gov/meetings/HA/HA00/20230920/116301/HHRG-118-HA00-20230920-QFR008.pdf>.

salaries for Commissioners would not require an increase in the Commission’s appropriation request.

- Staff Director and General Counsel

The current provision in FECA specifies that the Staff Director and General Counsel are to be paid at Level IV and Level V of the Executive Schedule, respectively. Both positions supervise personnel at the GS-15 and Senior Level pay scales, which often provide higher salaries than Levels IV and V of the Executive Schedule. The Staff Director and General Counsel have significant responsibilities and oversight duties with respect to both administrative and legal areas, as well as management over almost all agency personnel. According to recruiting specialists who have worked with the Commission, the current limit makes attracting a strong pool of applicants to these positions more challenging. The appointment and retention of these key leaders have been identified as ongoing management and performance challenges to the Commission by the Inspector General in the 10 most recent Agency Financial Reports covering 2014 through 2023 and in previous Performance and Accountability Reports as well as in the Inspector General’s management and performance challenges for FY 2024 and written testimony and responses to questions for the record submitted to the Committee on House Administration.⁵ The General Counsel’s position is currently filled on an acting basis.

The Commission proposes removing the statutory references to the Executive Schedule, and amending FECA to specify that the Staff Director and General Counsel would be compensated under the same schedule as the Commission’s other senior managers. This revision will remedy the current situation where the Commission’s top managers are compensated at a lower rate than many of their direct reports and will ensure that the Commission can retain highly qualified individuals to serve in those positions as well as enable it to remain competitive in the marketplace for Federal executives when vacancies arise. Changing the salaries for these two positions would not require an increase in the Commission’s appropriation request.

Legislative Language:

Section 306(a)(4) of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30106(a)(4)) is amended by striking “equivalent to the compensation paid at level IV of the Executive Schedule (5 U.S.C. 5315)” and inserting “at an annual rate of basic pay of \$186,300, as adjusted under section 5318 of title 5, United States Code, in the same manner as the annual rate of pay for positions at each level of the Executive Schedule”; and

Section 306(f)(1) of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30106(f)(1)) is amended by striking the second and third sentences, and inserting: “The staff director and general counsel shall be compensated in accordance with section 5376 of title 5, United States Code.”.

⁵ See, e.g., *OIG Challenges 2024* at 7-8; *OIG Written Testimony* at 6-7; *OIG QFRs* at 9-10, 12.

Amend the Foreign National Prohibition to Include Substantial Assistance

Section: FECA § 319
(codified at 52 U.S.C. § 30121)

Recommendation: Congress should revise FECA’s foreign national prohibition to prohibit knowingly helping or assisting a foreign national in violating the prohibition.

Explanation: FECA prohibits foreign nationals from, directly or indirectly, making a contribution or donation of money or other thing of value, or making an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election. Foreign nationals are also prohibited from contributing and donating to political party committees and from making expenditures, independent expenditures and disbursements for electioneering communications. FECA further prohibits any person from soliciting, accepting, or receiving any of these prohibited contributions or donations.

Congress should amend FECA’s foreign national prohibition to further prohibit any person from knowingly providing substantial assistance to a foreign national to engage in any of the prohibited transactions. Doing so would permit the Commission to reach actors who aided, abetted, conspired, facilitated or otherwise significantly participated in schemes in which a foreign national violates FECA’s foreign national prohibition.

Legislative Language:

Section 319(a) of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30121(a)) is amended:

- (1) in paragraph (a)(2), by striking the period at the end, replacing it with a semicolon and inserting “or”; and
- (2) by adding at the end of subsection (a) the following new paragraph:

“(3) a person to knowingly help, or assist a foreign national in violating this subsection.”

Amend the Foreign National Prohibition to Include State and Local Ballot Initiatives, Referenda and Recall Elections

Section: FECA § 319
(codified at 52 U.S.C. § 30121)

Recommendation: Congress should revise FECA’s foreign national prohibition to include state and local ballot initiatives, referenda and any recall elections that are not already included in the prohibition.

Explanation: FECA prohibits foreign nationals from, directly or indirectly, making a contribution or donation of money or other thing of value, or making an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election. Foreign nationals are also prohibited from contributing and donating to political party committees and from making expenditures, independent expenditures and disbursements for electioneering communications.

The Commission recently considered an enforcement action related to foreign national donations in opposition to a Montana ballot initiative. In that Matter Under Review (MUR), the Commission determined that consistent with FECA and Supreme Court precedent, spending related to ballot initiatives is “generally outside the purview of the Act because such spending is not ‘in connection with’ elections.”⁶ FECA defines “election” to include a “general, special, primary, or runoff election” and “a convention or caucus of a political party which has the authority to nominate a candidate.”⁷ FEC regulations further specify that “[e]lection means the process by which individuals, whether opposed or unopposed, seek nomination for election, or election, to Federal office.”⁸ The foreign national prohibition’s reach to state and local elections is exceptional in the FECA which otherwise is limited to federal elections. The Commission determined that FECA’s foreign national prohibition does not reach ballot initiatives that do not appear to be linked to an office-seeking candidate at the federal, state or local level.

The Commission recommends that Congress amend FECA’s foreign national prohibition to include ballot initiatives, referenda and any recall elections not covered by the current version of FECA.

Some recall elections involve the voters simultaneously recalling an incumbent and electing another candidate as a replacement, and recall elections structured this way are subject to the current version of FECA’s foreign national prohibition as they are elections for a (nonfederal) candidate seeking office. However, the Commission recommends that Congress amend FECA’s foreign national prohibition to include expressly recall elections and to clarify its application to these ballot questions and the related processes.

⁶ See FEC Factual and Legal Analysis at 4, MUR 7523 (Stop I-186 to Protect Mining and Jobs) (Oct. 4, 2021), available at https://www.fec.gov/files/legal/murs/7523/7523_23.pdf.

⁷ FECA, § 301(1), codified at 52 U.S.C. § 30101(1).

⁸ 11 C.F.R. § 100.2.

Amending FECA's foreign national prohibition to apply to state and local ballot initiatives, referenda and recall elections would make prohibited foreign national spending in these contests subject to civil enforcement by the Federal Election Commission and, under the appropriate circumstances, it would also provide the U.S. Department of Justice with the authority to pursue knowing and willful violations as criminal cases.

Legislative Language:

Section 319(a)(1)(A) of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30121(a)(1)(A)) is amended by inserting a comma after "election" followed by "including a State or local ballot initiative, referendum or recall election".

Part II: PRIORITY LEGISLATIVE RECOMMENDATIONS

Expand Electronic Filing Requirements

Section: FECA § 304(a)(11)(A)(i)
(codified at 52 U.S.C. § 30104(a)(11)(A)(i))

Recommendation: Congress should expand the types of campaign finance reports required to be filed electronically, rather than on paper, to include electioneering communication reports, inaugural committee reports and reports of communication costs.

Explanation: The Treasury and General Government Appropriations Act, 2000,⁹ required the Commission to make electronic filing mandatory for political committees and other persons required to file with the Commission who, in a calendar year, have, or have reason to expect to have, total contributions or total expenditures exceeding a threshold amount set by the Commission (which is currently \$50,000). In addition, many independent expenditure reports are already subject to mandatory electronic filing under FECA section 304(a)(11)(A)(i). However, because not all funds required to be reported to the FEC meet the statutory definitions of “contributions” or “expenditures,” the current mandatory electronic filing provision does not apply to Reports of Communication Costs by Corporations and Membership Organizations (FEC Form 7), Notices of Disbursements/Obligations for Electioneering Communications (FEC Form 9), and Reports of Donations Accepted for Inaugural Committees (FEC Form 13).

Compared to data from paper reports, data from electronically filed reports is received, processed and disseminated more easily and efficiently, resulting in better use of agency resources. Reports that are filed electronically are normally available to the public, and may be downloaded, within minutes of receipt by the FEC. In contrast, the time between the receipt of a report filed through the paper filing system and its initial appearance on the Commission’s web site is 48 hours.

Electronic filings are not subject to delay due to post office processing or disruptions in the delivery of mail, such as those arising from security measures related to the discovery of anthrax powder and ricin in mail. Because of these measures, the Commission’s receipt of mailed paper filings is delayed.

Only entities that report more than \$50,000 of communication costs on FEC Form 7, electioneering communication disbursements on FEC Form 9, or donations for inaugural committees on FEC Form 13 in a calendar year would be subject to mandatory electronic filing under the proposal. The current threshold selected by the Commission ensures that entities with limited financial resources may continue to file reports on paper, which avoids the cost of internet access and a computer sufficient to file reports.

⁹ Pub. L. No. 106-58, § 639, 113 Stat. 430, 476 (1999).

Legislative Language:

Section 304(a)(11)(A)(i) of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30104(a)(11)(A)(i)) is amended by striking “contributions or expenditures” and inserting “contributions, costs, disbursements, donations, or expenditures”.

Prohibit Fraudulent PAC Practices

Recommendation: Congress should examine potentially fraudulent fundraising and spending activities of certain political committees that solicit contributions with the promise of supporting candidates, but then disclose minimal or no candidate-support activities while engaging in significant and continuous fundraising. This fundraising predominantly funds personal compensation for the committees' organizers. In many cases, all funds raised by this subset of political committees are provided to fundraising vendors, direct mail vendors, and consultants in which the political committees' officers appear to have financial interests. Based on its examination, Congress should amend the Federal Election Campaign Act to address, define, and prohibit fraudulent fundraising practices.

Explanation:

- Misleading Contributors

Most political committees appropriately use vendors and consultants in support of their fundraising and political efforts, and vendors are often legitimately compensated with significant amounts of money that constitute large percentages of committees' disbursements. However, through its examination of campaign finance disclosure reports and media accounts, the FEC has noticed a recurring pattern where certain unauthorized political committees use fundraising materials that promise to use solicited funds to support candidates but instead, these committees use the funds solely for further committee fundraising activity. Sometimes, these solicitations imply that the committee's fundraising materials originate from a named candidate for Federal office without that candidate's knowledge or permission. In some cases, 90 percent or more of committee disbursements are paid to vendors in which the committees' officers have a financial interest, while 10 percent or less of their disbursements are actually spent on candidate-support activities, such as contributions to candidates, independent expenditures, or donations to state and local candidates. The Federal Bureau of Investigation has recently warned of an increase in reports of potentially fraudulent PACs.¹⁰

The Commission believes that Congress should give the FEC the authority to protect contributors from committees that defraud their contributors. Congress should consider whether political committees should be permitted to solicit contributions with false promises of supporting candidates, but then deliver only support to the committee's vendors. While legal recourse against such committees might be pursuable under mail- and wire-fraud statutes or the Lanham Act, candidates and contributors who believe they have been victimized by these committees often seek the FEC's assistance. Amending FECA to address and prohibit fraudulent solicitation, including false claims of candidate endorsement and the use of the federal political committee as an artifice to defraud contributors solely to enrich committee organizers, would

¹⁰ See FBI Press Release, "Scam PACs Are on the Rise" (Apr. 15, 2021), *available at* <https://www.fbi.gov/news/stories/scam-pacs-are-on-the-rise-041521>; see also FBI Press Release, "FBI Warns Voters on Election Crimes Ahead of the November 2022 Midterm Election" (Oct. 12, 2022), *available at* <https://www.fbi.gov/news/press-releases/press-releases/fbi-warns-voters-on-election-crimes-ahead-of-the-november-2022-midterm-election>.

provide the Commission jurisdiction to consider the complaints of aggrieved candidates and contributors.

- Related Vendors

Another troubling aspect of this recurring pattern is the frequency of relationships between the individuals who established or operate these committees and the vendors who receive large amounts of the committees' disbursements. In some instances, the committees pay fees directly to individuals who establish or operate the committees, and in other instances, the fees are paid to entities with financial relationships with those who establish or operate the committee. Congress could also consider adding standards that address payments to vendors that have financial relationships with the individuals who establish or operate political committees.

In this Legislative Recommendation, the Commission renews its call for Congress to act to empower the FEC to address these potentially fraudulent PAC practices. The Commission seeks an examination of this problem and development of a legislative solution. In addition, the Commission asks Congress to amend FECA to define the fundraising practices of political committees that Congress finds to be fraudulent and to prohibit the use of those practices. The Commission suggests that Congress require further disclosure in an effort to address these problems. Amending FECA in these ways would provide the Commission with the authority to pursue these actors for civil penalties, and in the appropriate circumstances, it would also provide the U.S. Department of Justice with the authority to pursue knowing and willful violations as criminal cases.

Expand the Fraudulent Misrepresentation of Campaign Authority Prohibition

Section: FECA § 322
(codified at 52 U.S.C. § 30124)

Recommendation: Congress should revise the prohibitions on fraudulent misrepresentation of campaign authority to encompass all persons purporting to act on behalf of candidates and real or fictitious political committees and political organizations. In addition, Congress should remove the requirement that the fraudulent misrepresentation must pertain to a matter that is “damaging” to another candidate or political party.

Explanation: The Federal Election Campaign Act prohibits a Federal candidate or his or her agents or employees from fraudulent misrepresentation such as speaking, writing or otherwise acting on behalf of a candidate or political party committee on a “matter which is damaging to such other candidate or political party” or an employee or agent of either.¹¹ The Commission recommends that this prohibition be extended to any person who would disrupt a campaign by such unlawful means, rather than being limited to candidates and their agents and employees. Proving damages as a threshold matter is often difficult and unnecessarily impedes the Commission’s ability to pursue persons who employ fraud and deceit to undermine campaigns. Fraudulent solicitations of funds on behalf of a candidate or political party committee have been prohibited without any required showing of damage to the misrepresented candidate or political party committee.¹²

In addition, while both subsections (a) and (b) of FECA section 322 directly address fraudulent actions “on behalf of any other candidate or political party,” they do not address situations where a person falsely claims to represent another type of political committee or claims to be acting on behalf of a fictitious political organization, rather than an actual political party or a candidate. For example, the current statute does not bar fraudulent misrepresentation or solicitation on behalf of a corporate or union separate segregated fund or a non-connected political committee.

Legislative Language:

Section 322 of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30124) is amended:

- (1) in subsection (a), by striking “who is a candidate for Federal office or an employee or agent of such a candidate”;
- (2) in paragraph (a)(1), by striking “candidate or political party or employee or agent thereof on a matter which is damaging to such other candidate or political party or

¹¹ See FECA § 322, codified at 52 U.S.C. § 30124(a).

¹² See Bipartisan Campaign Reform Act of 2002, § 309, Pub. L. No. 107-155, 116 Stat. 81, 104 (2002) (BCRA), codified at 52 U.S.C. § 30124(b).

employee or agent thereof” and inserting “candidate, political party, other real or fictitious political committee or organization, or employee or agent of any of the foregoing,”; and

- (3) in paragraph (b)(1), by striking “candidate or political party or employee or agent thereof” and inserting “candidate, political party, other real or fictitious political committee or organization, or employee or agent of any of the foregoing,”.

Expand the Personal Use Prohibition

Section: FECA § 313
(codified at 52 U.S.C. § 30114)

Recommendation: Congress should amend the Federal Election Campaign Act’s prohibition of the personal use of campaign funds to extend its reach to all political committees.

Explanation: In 2007, the Department of Justice noted, “[r]ecent years have seen a dramatic rise in the number of cases in which candidates and campaign fiduciaries steal money that has been contributed to a candidate or political committee for the purpose of electing the candidate or the candidates supported by the political committee.”¹³ In fact, the Commission has seen a substantial number of instances where individuals with access to the funds received by political committees have used such funds to pay for their own personal expenses.

The Commission proposes to revise section 313 of FECA to address this growing problem by prohibiting the use by any person of any political committee’s receipts for expenses that would exist irrespective of the political committee’s political activities. Political activities would include activities in connection with a Federal election, as well as activities in furtherance of a political committee’s policy or educational objectives and other legitimate committee functions and related administrative expenses. Such an amendment would provide for the coherent and consistent application of FECA.

Legislative Language:

Section 313 of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30114) is amended:

- (1) in paragraph (b)(1), by inserting “or a receipt accepted by any other political committee” after “subsection (a)”;
- (2) in paragraph (b)(2), by striking “contribution or donation” and inserting “contribution, donation, or receipt”;
- (3) in paragraph (b)(2), by striking “campaign or individual’s duties as a holder of Federal office,” and inserting “campaign, individual’s duties as a holder of Federal office, or political committee’s political activities,”.

¹³ See U.S. Department of Justice, *Federal Prosecution of Election Offenses*, 194-95 (7th ed. May 2007); see generally U.S. Department of Justice, *Federal Prosecution of Election Offenses*, 195-96 (8th ed. Dec. 2017).

Prohibit Aiding or Abetting the Making of Contributions in Name of Another

Section: FECA § 320
(codified at 52 U.S.C. § 30122)

Recommendation: Congress should amend the prohibition of making contributions in the name of another in the Federal Election Campaign Act to also prohibit directing, helping or assisting the making of a contribution in the name of another.

Explanation: Since its enactment in 1972, FECA has prohibited contributions in the name of another. Specifically, the statute prohibits making a contribution in the name of another person or knowingly permitting another to use one's name to effect such a contribution. Additionally, knowingly accepting a contribution made by one person in the name of another is also prohibited. These prohibitions promote the important and long-recognized governmental interest in fighting corruption and its appearance by ensuring accurate disclosure of the true sources and amounts of campaign contributions and preventing circumvention of FECA's contribution limits and source prohibitions. This section of FECA is one of its most frequently violated provisions.¹⁴ People attempting to violate FECA's limits on the sources and amounts of contributions often attempt to avoid detection by directing their illegal contributions through straw donors.

In 1989, the Commission added a provision to its regulation providing that no person shall "[k]nowingly help or assist any person in making a contribution in the name of another."¹⁵ The Commission promulgated 11 C.F.R. § 110.4(b)(1)(iii) after a federal district court ruled, in a default judgment issued the previous year, that a defendant had violated section 320 of FECA "by *knowingly assisting* in the making of contributions in the name of another." In one enforcement action applying this regulatory text, the Commission's authority to promulgate the regulation was challenged, and a federal district court agreed with the challenger and struck down the regulation. That court found that the regulation's prohibition went beyond the prohibitions in FECA, stating that legislation is therefore required to expand the reach of FECA in this way.¹⁶ The court also issued a nationwide injunction, which the Commission did not appeal and which remains in force.

This Legislative Recommendation would incorporate the language of the Commission's stricken regulation into FECA, modified to include direct along with help or assist.

¹⁴ See FECA § 320, codified at 52 U.S.C. § 30122; U.S. Department of Justice, *Federal Prosecution of Election Offenses*, 141 (8th ed. Dec. 2017).

¹⁵ 11 C.F.R. § 110.4(b)(1)(iii) (1989); see *Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions*, 54 Fed. Reg. 34,098, 34,104-05 (Aug. 17, 1989).

¹⁶ See *FEC v. Swallow*, 304 F. Supp. 3d 1113, 1116 (D. Utah 2018).

Legislative Language:

Section 320 of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30122) is amended by adding at the end the following:

“No person shall knowingly direct, help, or assist any person in making a contribution in the name of another.”

Require Disclosures to Contributors Regarding Recurring Contributions

Section: FECA § 318
(codified at 52 U.S.C. § 30120)

Recommendation: Congress should amend FECA to require those soliciting recurring contributions to receive the affirmative consent of the contributors, to disclose additional information to their financial supporters and to immediately cancel recurring contributions upon request.

Explanation: Commission staff are regularly contacted by individuals who have discovered recurring contributions to political committees have been charged to their credit card accounts or deducted from their checking accounts. In many cases, the contributors do not recall authorizing recurring contributions. Often, these contributors have attempted unsuccessfully to cancel the recurring transactions with the political committee prior to contacting FEC staff.

Some fundraising devices use “pre-checked boxes” to treat a one-time contribution as a recurring contribution. In this way, some committees consider the contributor to have authorized the recurring contributions without obtaining the contributors’ affirmative consent. The Commission’s experience strongly suggests that many contributors are unaware of the “pre-checked boxes” and are surprised by the already completed transactions appearing on account statements.

Without express statutory authority in FECA, Commission staff do not have much effective assistance to offer these frustrated contributors. Congress should amend FECA to require those soliciting contributions to (1) receive affirmative consent of contributors when setting up recurring contributions, not to include implied consent through such means as “pre-checked” boxes; (2) provide a receipt and clearly and conspicuously disclose all material terms of recurring contributions to contributors at the time the contributions are set up and at the time of each individual contribution; (3) in each communication with the contributor regarding a recurring contribution, provide information needed to cancel the recurring contribution; and (4) immediately cancel recurring contributions upon the request of contributors. The same requirements should apply to those seeking recurring donations to fund electioneering communications.

Legislative Language:

Section 318(d) of the Federal Election Campaign Act of 1971 (codified at 52 U.S.C. § 30120(d)) is amended by adding at the end the following:

- (3) *Communications that solicit recurring contributions.*
 - (A) Any person soliciting a recurring contribution to a political committee, a recurring contribution to fund an independent expenditure, or a recurring donation

to fund an electioneering communication must receive the affirmative consent of the contributor or donor at the arrangement of the recurring contribution or donation. Passive action by the contributor or donor, such as failing to uncheck a pre-checked box authorizing a recurring contribution, shall not meet the requirement of affirmative consent under this subparagraph.

- (B) Any person accepting a recurring contribution or donation described in subparagraph (A) shall:
- (i) provide a receipt for an initial contribution or donation and each recurrence that clearly and conspicuously discloses all material terms;
 - (ii) provide all information needed to cancel recurring contributions or donations in each communication with the contributor or donor that concerns the contribution or donation; and
 - (iii) shall immediately cancel recurring contributions or donations upon request of the contributor or donor.

Extend the Time Period for a Complainant to File a Suit for Delay

Section: FECA § 309(a)(8)(A)
(codified at 52 U.S.C. § 30109(a)(8)(A))

Recommendation: Congress should amend FECA to extend the waiting period for those filing suits against the Commission for failure to act on a complaint from 120 days to 240 days from when the complaint is filed.

Explanation: FECA provides a cause of action for any party who filed a complaint aggrieved “by a failure of the Commission to act on such complaint.”¹⁷ Under current law, a complainant may file suit against the Commission for failure to act upon a complaint 120 days after the complaint is filed.¹⁸

The Commission has limited resources and staff to address complaints of increasing complexity and sophistication, which makes this timeline difficult for the Commission to meet. Additionally, the Commission has experienced substantial growth in the number of complaints filed since the Commission began operating in 1975, and the size of the Commission’s staff has not grown proportionately. The Commission expects the number of complaints to continue to increase as funds raised and spent on political activities at the federal level continue to grow.

With an increasing volume and complexity of complaints, the existing 120-day timeline exposes the Commission to the risk of costly litigation as it works to address the complaints filed regarding alleged violations of FECA. The Commission recommends that Congress extend the waiting period for a complainant to file suit for delay against the Commission from 120 days to 240 days to ensure that the Commission has sufficient time to properly address each complaint and mitigate the risk of litigation posed by the 120-day timeline.

Legislative Language:

Section 309(a)(8)(A) of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30109(a)(8)(A)) is amended by striking “120-day” and inserting “240-day”.

¹⁷ See FECA § 309(a)(8)(A), codified at 52 U.S.C. 30109(a)(8).

¹⁸ *Id.*

Increase and Index for Inflation Limitations, Thresholds and Exemptions

Sections: FECA §§ 301, 304 and 315
(codified at 52 U.S.C. §§ 30101, 30104 & 30116)

Recommendation: Congress should increase and index for inflation certain limitations, thresholds and exemptions in the Federal Election Campaign Act, many of which have not changed since the 1970s.

Explanation: Most of the Federal Election Campaign Act's contribution limits and registration and reporting thresholds were set in the 1970s. Because more than twenty years of inflation had effectively reduced FECA's contribution limits in real dollars, the Bipartisan Campaign Reform Act of 2002 (BCRA) increased most of FECA's contribution limits to adjust for some of the effects of inflation. Furthermore, BCRA indexed these limits for inflation to address the impact of future inflation.¹⁹ The Commission proposes extending this approach to registration and reporting thresholds, which have been effectively reduced by inflation since those thresholds were established in 1971 or 1979.

Since 1971, FECA has provided that any group of persons that receives contributions or makes expenditures in excess of \$1,000 in a calendar year must register and report as a political committee.²⁰ FECA also requires political committees to abide by the contribution limits and source prohibitions specified in FECA. Since 1979, FECA has provided that local political party organizations are also subject to a \$1,000 threshold for federal political committee status.²¹ The Commission recommends that Congress increase these thresholds to \$2,000, and then index those amounts for inflation to prevent erosion in the future. Raising this threshold would be particularly beneficial for local and Congressional district committees of political parties. These organizations frequently breach the \$1,000 threshold. An increased threshold would permit limited spending on federal elections without triggering federal political committee status for local and Congressional district committees of political parties.

Since 1979, FECA has required persons (other than political committees) who make independent expenditures in excess of \$250 in a calendar year to report such expenditures to the Commission.²² The Commission recommends that Congress increase this threshold to \$500 and index this amount for inflation.

Under FECA, an individual may spend up to \$1,000 per candidate, per election and up to \$2,000 per calendar year on behalf of all political committees of the same party for food, beverages, and invitations for an event held in the individual's home without making a

¹⁹ Bipartisan Campaign Reform Act of 2002, § 307, Pub. L. No. 107-155, 116 Stat. 81, 102-03 (2002).

²⁰ FECA § 301(4)(A), codified at 52 U.S.C. § 30101(4)(A); see Federal Election Campaign Act of 1971, § 301(d), Pub. L. No. 92-225, 86 Stat. 3, 11 (1972).

²¹ FECA § 301(4)(C), codified at 52 U.S.C. § 30101(4)(C); see Federal Election Campaign Act Amendments of 1979 (1979 Amendments), Pub. L. No. 96-187, § 101, 93 Stat. 1339, 1340 (1980).

²² FECA § 304(c)(1), codified at 52 U.S.C. § 30104(c)(1); see 1979 Amendments, § 104, 93 Stat. at 1354.

contribution.²³ FECA also permits an individual to spend up to \$1,000 per candidate, per election and up to \$2,000 per calendar year on behalf of all political committees of the same party for unreimbursed travel expenses on behalf of the campaign or political party without making a contribution.²⁴

Congress added the current exemption limits in 1979, setting the amount for candidates as the same as the contribution limit then in effect (\$1,000 per election) and setting the amount for political parties as 40 percent of the contribution limit then in effect for state, district, and local parties (\$5,000 per calendar year) and 10 percent of the contribution limit then in effect for national parties (\$20,000).²⁵

The Commission recommends that Congress update the in-home event exemption and unreimbursed travel expense exemption on behalf of candidates from \$1,000 to \$2,000 and index these amounts for inflation. The Commission further recommends that Congress update the in-home event exemption and unreimbursed travel exemption on behalf of political parties to \$4,000.

The 1979 FECA Amendments amended FECA to provide that authorized committees could support only one candidate, with “support” defined to exclude contributions of \$1,000 or less to an authorized committee; thus, a candidate’s authorized committees contributions to the authorized committee of another candidate was limited to \$1,000.²⁶ BCRA did not amend this provision of FECA. However, in a 2004 appropriations act, Congress amended this provision of FECA to change the amount to \$2,000.²⁷ This amount, however, was not made subject to adjustment for inflation. Congress should amend FECA to make this \$2,000 limit on authorized committees’ contributions to other authorized committees subject to adjustment for future inflation.

The 1976 FECA Amendments added contribution limits for multicandidate political committees and a \$5,000 limit on contributions from all persons other than multicandidate political committees to most political committees.²⁸ The amounts have not been adjusted since 1976, nor are they subject to inflation adjustment. In 2002, BCRA added a \$10,000 contribution limit applicable to contributions from all persons to political committees of state political parties.²⁹ This contribution limit is not subject to adjustment for inflation. Congress should amend FECA to make these contribution limits subject to inflation adjustments.

²³ FECA § 301(8)(B)(ii), *codified at* 52 U.S.C. § 30101(8)(B)(ii).

²⁴ FECA § 301(8)(B)(iv), *codified at* 52 U.S.C. § 30101(8)(B)(iv).

²⁵ *See* 1979 Amendments, § 101, 93 Stat. at 1340-41.

²⁶ *See* 1979 Amendments, § 102, 93 Stat. at 1346.

²⁷ Consolidated Appropriations Act, 2005, Div. H., § 525, Pub. L. No. 108-447, 118 Stat. 2809, 3271 (Dec. 8, 2004).

²⁸ FECA Amendments of 1976, § 112(2), Pub. Law No. 94-283, 90 Stat. 475, 487 (May 11, 1976).

²⁹ Bipartisan Campaign Reform Act of 2002, § 102, Pub. Law No. 107-155, 116 Stat. 81, 87 (Mar. 27, 2002).

Increasing these thresholds and exemptions would take into account many years of inflation and would ease the compliance burdens on individuals and smaller organizations. Additionally, by increasing the thresholds, Congress would exempt some individuals and small organizations that engage in only minimal spending from the Act's registration and reporting requirements. Increasing the registration and reporting thresholds to compensate for inflation would leave significant financial activity subject to regulation as intended by Congress when it enacted the FECA.

Legislative Language:

Section 301 of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30101) is amended:

- (1) in paragraph (4)(A), by striking both references to "\$1,000" and inserting "\$2,000";
- (2) in paragraph (4)(C), by striking both references to "\$5,000" and inserting "\$10,000" and by striking both references to "\$1,000" and inserting "\$2,000";
- (3) in subparagraph (8)(B)(ii), by striking "\$2,000" and inserting "\$4,000" and by striking "\$1,000" and inserting "\$2,000"; and
- (4) in subparagraph (8)(B)(iv), by striking "\$2,000" and inserting "\$4,000" and by striking "\$1,000" and inserting "\$2,000".

Section 304 of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30104) is amended in paragraph (c)(1) by striking "\$250" and inserting "\$500".

Section 315 of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30116) is amended—

- (1) in paragraph (c)(1), by adding after subparagraph (C) the following:
 - “(D) In any calendar year after 2024—
 - (i) a limitation established by subsection (a)(1)(C) or a threshold established by section 301(4)(A) or (4)(C) shall be increased by the percent difference determined under subparagraph (A);
 - (ii) each amount so increased shall remain in effect for the calendar year; and
 - (iii) if any amount after adjustment under clause (i) is not a multiple of \$100, such amount shall be rounded to the nearest multiple of \$100.”;
 - “(E) In any odd numbered calendar year after 2024—

(i) a limitation established by subsection (a)(1)(D), (a)(2), or section 302(e)(3)(B), or an exemption amount established by section 301(8)(B)(ii) or (iv) shall be increased by the percent difference determined under subparagraph (A);

(ii) each amount so increased shall remain in effect for the 2-year period beginning on the first day following the date of the general election in the year preceding the year in which the amount is increased and ending on the date of the next general election; and

(iii) if any amount after adjustment under clause (i) is not a multiple of \$100, such amount shall be rounded to the nearest multiple of \$100.”;

(2) in paragraph (c)(2)(B)(i), by striking “and” at the end;

(3) in paragraph (c)(2)(B)(ii), by striking the period at the end and inserting a semicolon followed by “and”; and

(4) by adding after paragraph (c)(2)(B)(ii) the following:

“(iii) for purposes of subsections (a)(1)(C), (a)(1)(D), (a)(2), section 301(4)(A), (4)(C), (8)(B)(ii), (8)(B)(iv), and section 302(e)(3)(B), calendar year 2024.”.

Permit Political Committees to Make Disbursements by Methods Other Than Check

Section: FECA § 302(h)(1)
(codified at 52 U.S.C. § 30102(h)(1))

Recommendation: Congress should delete the reference to a “check drawn on” an account at a campaign depository as the only permissible method of making political committee disbursements.

Explanation: The Federal Election Campaign Act requires all political committees to maintain at least one campaign depository account and to make all disbursements (other than from petty cash) “by check drawn on such accounts in accordance with this section.”³⁰ Since this provision was adopted, financial payments have evolved to include credit cards, debit cards, and other well-established electronic transaction methods.³¹ The Commission accordingly recommends deletion of FECA’s requirement that disbursements be made “by check drawn on” campaign depository accounts. The Commission recommends substituting technology-neutral language to require that committees make disbursements “from such accounts.”

Legislative Language:

Section 302(h)(1) of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30102(h)(1)) is amended by striking the last sentence and adding: “No disbursements may be made (other than petty cash disbursements under paragraph (2)) by such committee except from such accounts.”.

³⁰ See FECA § 302(h)(1), codified at 52 U.S.C. § 30102(h)(1).

³¹ See, e.g., Fed. Reserve Sys., *Developments in Noncash Payments for 2019 and 2020: Findings from the Federal Reserve Payments Study* (Dec. 2021), <https://www.federalreserve.gov/paymentssystems/fr-payments-study.htm>.

Part III: OTHER IMPROVEMENTS

Extend the Respondent Notification Period from Five to Ten Days

Section: FECA § 309(a)(1)
(codified at 52 U.S.C. § 30109(a)(1))

Recommendation: Congress should extend the period for notifying respondents of the receipt of a complaint from 5 to 10 days.

Explanation: Under FECA, any person who believes that a violation of FECA or of chapter 95 or chapter 96 of title 26 has occurred may file a complaint with the Commission. Within five days after receipt of the complaint, the Commission must notify, in writing, any person alleged in the complaint to have committed such a violation.

The Commission has experienced exponential growth in the number of filed complaints since the Commission began operating in 1975. However, the size of the Commission's staff has not grown proportionately. As our modern communications, technological, and financial systems improve and grow increasingly interconnected and international, the Commission expects the volume of filed complaints to continually increase.

In order to respond to these complaints, the Commission must identify the proper party or parties to notify. In cases where a foreign national is involved, this can raise practical difficulties when the party lives overseas as well as delicate questions concerning diplomatic communications. Extending the period of time the Commission has to conduct its preliminary review would allow the Commission to better handle its expanding workload and ensure that the proper respondents, including those abroad, are correctly identified and properly notified.

The Commission recommends that Congress extend the time period between when the Commission receives a complaint and when the Commission must notify the respondent from five to ten days.

Legislative Language:

Section 309(a)(1) of the Federal Election Campaign Act (52 U.S.C. § 30109(a)(1)) is amended by striking "Within 5 days" and inserting "Within 10 days".

Extend the Time to Establish Reporting Dates for Special Elections

Section: FECA § 304(a)(9)
(codified at 52 U.S.C. § 30104(a)(9))

Recommendation: Congress should require the Commission to establish the reporting dates for a special election within five business days of the special election date being set, instead of within five calendar days as currently required.

Explanation: The Federal Election Campaign Act requires that the Commission “establish the reporting dates within 5 days of the setting of [a special] election and shall publish such dates and notify the principal campaign committees of all candidates in such election of the reporting dates.”³² The five-day period often includes a weekend, leaving the Commission with only three business days to establish the relevant reporting dates in many circumstances. In the Commission’s experience, dates for special elections, and their corresponding reporting deadlines, are ordinarily established months in advance. As a result, changing the deadline from five calendar days to five business day would alleviate an administrative burden on the Commission without any significant effect on candidates or their campaign committees.

Legislative Language:

Section 304(a)(9) of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30104(a)(9)) is amended by striking “5 days” and inserting “5 business days”.

³² FECA § 304(a)(9), codified at 52 U.S.C. § 30104(a)(9).

Update the Federal Campaign Finance Statutes

Sections: 26 U.S.C. § 9008; and
FECA §§ 304, 306, 307, 309, 315, 315A, 316, & 324
(codified at 52 U.S.C. §§ 30104, 30106, 30107, 30109, 30116, 30117, 30118
& 30126)

Recommendation: Congress should update FECA and the provisions of the Presidential Election Campaign Fund Act (PECFA) by:

- (i) removing the FECA provisions that have been held to be unconstitutional and that are, thus, no longer operative;
- (ii) repealing the provisions of PECFA that allocate and govern the use of funds through the public convention financing program that subsequent legislation has made inoperative;
- (iii) revising certain citations to reflect the 2014 recodification of FECA; and
- (iv) modernizing the spelling of “subpena” in FECA.

Explanation:

(i) Remove Unconstitutional FECA Provisions.

A number of provisions of the FECA have been held to be unconstitutional. As a result, the Commission may no longer enforce them. Nevertheless, these provisions remain in FECA. Repealing these invalid provisions would promote public understanding of federal campaign finance law.

The FECA provisions that have been held to be unconstitutional but remain in FECA are as follows:

- The inclusion of the Secretary of the Senate and the Clerk of the House of Representatives in the membership of the Commission.
Statutory provision: relevant portions of FECA § 306(a)(1), codified at 52 U.S.C. § 30106(a)(1).
Relevant court case: *FEC v. NRA Political Victory Fund*, 6 F.3d 821 (D.C. Cir. 1993), cert. dismissed for want of jurisdiction, 513 U.S. 88 (1994).
- The requirement that a political party committee must choose between making coordinated communications or independent expenditures after it nominates a candidate.
Statutory provision: FECA § 315(d)(4), codified at 52 U.S.C. § 30116(d)(4).
Relevant court case: *McConnell v. FEC*, 540 U.S. 93 (2003)
- The prohibition on contributions by minors.
Statutory provision: FECA § 324, codified at 52 U.S.C. § 30126.
Relevant court case: *McConnell v. FEC*, 540 U.S. 93 (2003)
- The so-called Millionaires’ Amendment, which increased contribution limits for candidates whose opponents spent more than certain threshold amounts of their own personal funds on their campaigns.

Statutory provisions: FECA §§ 304(a)(6)(B)-(E); 315(i); & 315A, *codified at* 52 U.S.C. §§ 30104(a)(6)(B)-(E); 30116(i); & 30117.

Relevant court case: *Davis v. FEC*, 554 U.S. 724 (2008)

- The prohibition on the making of electioneering communications and independent expenditures by corporations and labor organizations.
Statutory provision: relevant portions of FECA § 316(a), *codified at* 52 USC 30118(a).
Relevant court case: *Citizens United v. FEC*, 558 U.S. 310 (2010)
- The limitation on the aggregate amount of contributions an individual may make in an election cycle.
Statutory provision: FECA § 315(a)(3), *codified at* 52 U.S.C. § 30116(a)(3).
Relevant court case: *McCutcheon v. FEC*, 572 U.S. 185 (2014)
- The limitation on repayment of personal loans.
Statutory provision: FECA § 315(j), *codified at* 52 U.S.C. § 30116(j).
Relevant court case: *FEC v. Ted Cruz for Senate*, 596 U.S. 289 (2022).

(ii) Repeal Inoperable PECFA Provisions.

The Gabriella Miller Kids First Research Act (the “Research Act”)³³ amended the Presidential Election Campaign Fund Act³⁴ by terminating the longstanding entitlement of national party committees to public funds to finance their presidential nominating conventions. But the Research Act did not repeal the convention financing provisions. Rather, the Research Act implemented the termination by requiring that the funds in question be transferred to a “10-Year Pediatric Research Initiative Fund” instead of to the national party committees.³⁵

Prior to the Research Act, the Commission had promulgated numerous regulations implementing the Presidential Election Campaign Fund Act.³⁶ Many of these public funding regulations no longer serve a functional purpose following the Research Act, yet the statutory provisions that they implement remain in place. These statutory and regulatory provisions, which the Research Act rendered inoperative, may confuse the public as to the state of the law. By repealing those inoperative provisions, Congress can clarify the law.

The following statutory provisions are no longer operational and should be removed:

³³ Pub. L. No. 113-94, 128 Stat. 1085 (2014).

³⁴ 26 U.S.C. §§ 9001-9013.

³⁵ See Pub. L. No. 113-94, § 2(a), 128 Stat. 1085, *codified at* 26 U.S.C. § 9008(i). The Research Act did delete the statutory requirements for the Commission to report to Congress regarding payments to and expenses of national party committees for presidential nominating conventions. Pub. L. No. 113-94, § 2(c)(1), 128 Stat. 1085-96 (deleting 26 U.S.C. § 9009(a)(4)-(6)). The Research Act also removed statutory provisions that criminalized (1) a national party committee’s spending more than the limit established by 26 U.S.C. § 9008(d); (2) any person’s spending public convention funds on expenses other than a national party committee’s convention expenses; and (3) giving or accepting a kickback in connection with any convention expense. *Id.* § 2(c)(2) (amending 26 U.S.C. § 9012).

³⁶ See 11 C.F.R. part 9008.

- 26 U.S.C. § 9008(b)(3) — requires the Secretary of the Treasury to make payments to “the national committee of a major party or a minor party which elects to receive its entitlement”;
- 26 U.S.C. § 9008(c) — restricts national party committees from using funds received under the Funding Statute except for expenses incurred with respect to a presidential nominating convention or to repaying loans or otherwise restoring funds that were used to defray such expenses;
- 26 U.S.C. § 9008(d) — limits expenditures by national party committees to the amount of funds to which they are entitled under the Funding Statute, and sets out exceptions to this limitation;
- 26 U.S.C. § 9008(e) — states the date on which the national party committees may begin receiving funds;
- 26 U.S.C. § 9008(f) — requires the Secretary of the Treasury to transfer to the Treasury any remaining funds in a national party committee’s account after the close of a nominating convention;
- 26 U.S.C. § 9008(g) — provides that any major or minor party may file a statement with the Commission designating the national committee of that party; and requires the Commission, upon verifying the statement, to certify to the Secretary of the Treasury the payment amount the national party committee is entitled to;
- 26 U.S.C. § 9008(h) — grants the Commission the authority to require repayments from a national party committee that has received funds under the Funding Statute.

Legislative Language for (ii):

Section 9008 of the Internal Revenue Code of 1986 is amended as follows:

- (1) in subsection (b), by striking paragraph (3); and
- (2) by striking subsections (c), (d), (e), (f), (g), and (h).

(iii) Revise Citations to Reflect Recodification.

On September 1, 2014, Title 52 of the United States Code was established for codifying legislation related to Voting and Elections, and it includes the Federal Election Campaign Act. In order to ensure that other laws accurately reflect the new location of FECA in the United States Code, legislation is needed to conform citations to the Federal Election Campaign Act in various other laws to its current codification. In the current Congress, H.R. 3571 includes the necessary revisions to update the United States Code.³⁷ The bill passed the House of Representatives on November 13, 2023, by voice vote. This legislation should be enacted in order to promote public understanding and access to the Federal Election Campaign Act.

³⁷ See H.R. 3571, 118th Cong. (2023).

Legislative Language for (iii):

See H.R. 3571, 118th Cong. (2023).

(iv) Modernize the Spelling of “Subpena” in FECA.

FECA currently gives the Commission the power of “subpena.” While this formulation may have been the spelling of choice in the 1970s, the more common version today is “subpoena.” To avoid confusion, we recommend that Congress modernize FECA accordingly.

Legislative Language for (iv):

Sections 307 and 309 of the Federal Election Campaign Act (52 U.S.C. § 30107 and § 30109) are amended by striking “subpena” at each place it appears and inserting “subpoena” in its place.