The original documents are located in Box 17, folder "Federal Election Law Manual (1)" of the John Marsh Files at the Gerald R. Ford Presidential Library.

Republican
National
Committee.

Mary Louise Smith
Chairman

MAR 19 1975

March 19, 1975

Mr. John O. Marsh, Jr.
Counsellor to the President
The White House
Washington, D. C. 20500

Dear Jack:

We are pleased to be able to provide you with the enclosed Federal Election Law Manual. We commissioned this work shortly after the 1974 campaign act was passed last year but this is much broader in scope than that.

We have attempted to include all federal legislation affecting campaigns including pertinent tax legislation and rulings.

All Republican members of Congress and each State GOP headquarters are being provided copies at no charge. Additional copies may be obtained at a cost of $25.00 for party affiliated individuals and groups and for $50.00 each for other groups. Such requests should be forwarded to Jacquie Nystrom at the Republican National Committee's headquarters or call at (202) 484-6693.

You will receive (as will all those who purchase the books) timely updates as various rulings and court interpretations are handed down. It may prove necessary for us to levy a small additional charge to continue this service next year.

I hope you find this work useful and urge you to let us know if you see any changes or improvements that you think might make it even better.

Sincerely,

Mary Louise

Mary Louise Smith

Please send ___ copies of the Manual of Federal Laws Relating to Financing and Conducting Federal Election Campaigns. Enclosed is a check made out to the Republican National Committee for $_____ ($25.00 each for GOP affiliated groups and individuals and $50.00 for other groups).

NAME _____ OCCUPATION _____

ORGANIZATION _____ BUSINESS PHONE _____

BUSINESS ADDRESS _____ CITY _____

STATE _____ ZIP _____

PLEASE RETURN TO: Ms. Jacquie Nystrom
Republican National Committee
310 First Street, Southeast
Washington, D. C. 20003

PLEASE ALLOW FOUR WEEKS FOR DELIVERY

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MANUAL OF FEDERAL LAWS RELATING TO

FINANCING AND CONDUCTING

FEDERAL ELECTION CAMPAIGNS

Prepared for:

The Republican National Committee

By:

Baker, Hostetler, Frost & Towers
Washington, D.C.

February, 1975

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INTRODUCTION

On October 15, 1974 Congress passed and the President signed the Federal Election Campaign Act Amendments of 1974, P.L. 93-443 ("the 1974 Amendments"), which made far-reaching changes in the Federal Election Campaign Act of 1971 ("the 1971 Act"). The 1971 Act, as amended by the 1974 Amendments, will hereinafter be referred to as "the Act." On January 3, 1975 the President signed P.L. 93-625 ("the Tax Act") which affects tax considerations in election campaigns.

The Act imposes many new restrictions on the amount of contributions which individuals and groups may make to candidates for Federal office, and on the amount of expenditures which candidates for Federal office may make and which may be made on their behalf; establishes a required procedure for disclosing, reporting and handling campaign funds; establishes a Federal Election Commission ("the Commission"); prohibits certain campaign practices; changes the law dealing with public financing of Presidential general elections; provides for public financing of national nominating conventions of political parties; and provides for partial public financing of Presidential primary elections. The Tax Act made significant changes in the taxation of political organizations, contributors and candidates.

All provisions of the Act and the Tax Act became effective no later than January 1, 1975. The effect of the Act is drastically to alter the way in which campaigns for Federal offices may be financed and conducted. It is essential that candidates, political organizations, contributors and others who participate in Federal election campaigns understand what they may and may not do in order to be in compliance with the law. Failure to comply with almost any provision of the Act may result in a criminal penalty. In addition, failure to comply with the provisions of the Act dealing with reporting, disclosing and handling of funds may result in the disqualification of an individual from eligibility to run for Federal office.

In order to assist candidates, political organizations, contributors and others who participate in Federal election campaigns in understanding and complying with applicable laws, the Republican National Committee has authorized the preparation of this Manual of Federal Laws Relating to Financing and Conducting Federal Election Campaigns ("the Manual"). Although the Manual is not primarily designed for use by attorneys, they may also find it useful as an introduction to a quite complicated law.

The Manual deals mainly with the Act, the Tax Act and certain other closely related laws. The Manual does not discuss the rules and regulations which have been promulgated by the Secretary of the Senate, the Clerk of the House of Representatives and the Comptroller General under the 1971 Act (11 Code of Federal Regulations), since these rules and regulations should soon be superseded by the rules and regulations of the Federal Election Commission. Furthermore, the following topics, which are more remotely related to the day-to-day fund-raising and campaign activities of candidates, political organizations, contributors and others, are not within the scope of the Manual: qualifications of voters; civil rights legislation dealing with the right to vote; eligibility to hold various offices; qualifications of candidates; qualifications of Presidential and Vice Presidential electors and the performance of their duties; the time and place of elections; laws concerning actual balloting; preservation of records of the actual election (as opposed to campaigns); and contested elections.

The Manual seeks to present the applicable laws as clearly as possible, first, by reorganizing them into a systematic, logical topic outline and, second, by adding Comments to explain the probable operation of the laws and to indicate questions on which clarification should be sought from the Federal Election Commission and the Treasury Department. Although the Manual follows the language of the laws very closely, the Manual does not contain a verbatim reproduction of the text of the laws and, in addition to reorganizing the laws discussed, the Manual paraphrases them where paraphrasing aids clarity. A citation to the relevant section of the Act, the Tax Act or United States Code indicates the original source of each topic treated in the Manual. The Comments contain statements from legislative history, discussions of various aspects of the laws and illustrative examples. The Comments do not constitute legal opinions as to the legality of any specific transaction or activity. Such a legal opinion can only be rendered on the basis of an actual set of facts.

Once the members of the Federal Election Commission have been appointed, it is expected that the Commission will promulgate rules and regulations and issue advisory opinions clarifying many aspects of the Act. The Treasury Department may promulgate rules and regulations with respect to the Tax Act. The Republican National Committee intends to revise the Manual as developments occur which affect the financing and conducting of Federal election campaigns.

OUTLINE OF CHAPTER I

FEDERAL CRIMINAL CODE PROVISIONS RELATING TO LIMITATIONS ON CONTRIBUTIONS AND EXPENDITURES AND PROHIBITIONS OF CERTAIN ELECTION PRACTICES

CHAPTER I

FEDERAL CRIMINAL CODE PROVISIONS RELATING TO LIMITATIONS ON CONTRIBUTIONS AND EXPENDITURES AND PROHIBITION OF CERTAIN ELECTION PRACTICES

Both the 1971 Act and the 1974 Amendments made significant changes in the provisions of the Federal Criminal Code dealing with election practices (18 U.S.C. §591 et seq.). The criminal provisions discussed in this Chapter do not encompass all criminal violations provided by the Act but only those criminal violations which are governed by the Federal Criminal Code. Other parts of the Act provide criminal penalties for such acts as, for example, failure to comply with reporting and disclosure requirements (see Chapter II infra) and misuse of funds received under the provisions for public financing of certain elections (see Chapter V infra).

The criminal provisions discussed in this Chapter contain very important restrictions on the source and amount of contributions which candidates for various Federal elective offices may receive, restrictions on the nature and amount of expenditures which a candidate may make and which may be made on his behalf, prohibitions of certain election practices and definitions of a variety of terms for purposes of the Criminal Code. The restrictions on contributions and expenditures are especially important because many other parts of the Act refer to these restrictions.

A. Definition of terms (18 U.S.C. §591)

1. Election means

a. a general, special, primary or runoff election;

b. a convention or caucus of a political party held to nominate a candidate;

[I.A.1: Election]

c. a primary election held for selection of delegates to a national nominating convention of a political party; or

d. a primary election held for expression of a preference for nomination of persons for election to the office of President.

Comment: Under this definition of election several different phases of the elective process may each be treated as a separate election. It should be noted that even a convention or caucus held to nominate a candidate is considered an election. For the specific rule governing what elections are treated as separate elections for various purposes see section I.B.3 infra.

2. Candidate means an individual who seeks nomination for election, or election, to Federal office, whether or not such individual is elected, and an individual shall be deemed to seek nomination for election, or election, to Federal office if he has

a. taken the action necessary under the law of a State to qualify himself for nomination for election, or election; or

b. received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office.

Comment: Once an individual meets the specified criteria, he becomes a candidate, and his election campaign becomes subject to the contribution and expenditure limitations discussed in sections I.B and I.C infra. Even if an individual has not declared his candidacy and has not qualified as a candidate under State law, the contribution and expenditure limitations apply to his campaign from the moment he receives contributions, makes expenditures or gives his consent for others to do so.

[I.A.2: Candidate]

Contributions to, and expenditures on behalf of, an individual who prior to January 1, 1975 (the effective date of the contribution and expenditure limitations) was a candidate for Federal office in an election to be held subsequent to January 1, 1975 probably do not have to be included in computing the contribution and expenditure limitations imposed on the candidate by the Act. This is not entirely clear, however, and clarification should be sought from the Federal Election Commission.

3. Federal office means the office of President or Vice President of the United States, or Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

Comment: The contribution and expenditure limitations and prohibitions of certain campaign activities apply only to elections with respect to the offices listed above.

4. Political committee means any committee, club, association or other group of persons which receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding $1,000.

Comment: The specific types of contributions and expenditures which will cause an organization to be classified as a political committee are discussed in section I.A.11 infra. Since the terms contribution and expenditure by definition relate only to campaigns for nomination for election, or election, to Federal office, a political committee by definition must support one or more candidates for Federal office. If a committee or other group of persons supports only candidates for State or local office, it is not a political committee for purposes of the Act. If a committee or other group of persons supports one or more Federal candidates and receives contributions, or makes expenditures, for such Federal candidates in an aggregate amount exceeding $1,000 in any calendar year, then it is a political committee regardless of the fact that it may also support candidates for State and local office.

Clarification should be sought from the Federal Election Commission on the question of whether every non-earmarked contribution to such a hybrid Federal-State/local

multi-candidate committee will be deemed to be a contribution with respect to Federal elections for purposes of the $25,000 calendar year aggregate limitation on contributions by individuals (see section I.B.4 infra) or whether such contributions will somehow be allocated between Federal and State/local purposes. If all such contributions are deemed to be contributions with respect to Federal elections, then it would seem to be advantageous to separate committees which support State and local candidates from committees which support Federal candidates. Such a separation would allow an individual to contribute more than $25,000 to a State/local committee supporting only State or local candidates (assuming that this is not prohibited by a State or local law) without running afoul of the $25,000 aggregate calendar year limitation on contributions by individuals with respect to Federal elections. In connection with this discussion of hybrid Federal-State/local committees, compare section II.M.2 infra which allows the Commission to exempt from reporting requirements political committees which primarily support persons seeking State or local office and which do not operate in more than one State or do not operate on a statewide basis.

5. Principal campaign committee means the political committee which a candidate for Federal office has designated as his principal campaign committee. Each such candidate (other than a candidate for the office of Vice President of the United States) must designate one political committee as his principal campaign committee. A political committee may not be designated or serve as the principal campaign committee of more than one candidate nor may a political committee which supports more than one candidate be designated as a principal campaign committee, with the exception that a candidate for the office of President of the United States may designate the national committee of the political party which nominated him as his principal campaign committee.

Comment: One of the major innovations of the 1974 Amendments was the requirement that each candidate must designate a principal campaign committee. Certain special contribution and expenditure limitations apply to such a principal campaign committee, and such committees serve as a funnel for

reporting and disclosing all contributions and expenditures made by or on behalf of a candidate by all other committees. The principal campaign committee must be devoted solely to the support of its candidate, except that the national committee of a political party may serve as the principal campaign committee of a candidate for President while at the same time supporting other candidates. The principal campaign committee of a candidate for President is automatically the principal campaign committee of his Vice Presidential running mate.

6. Political party means any association, committee or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee or organization.

7. State committee means the organization which, by virtue of the by-laws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Federal Election Commission.

Comment: It is not clear whether the Federal Election Commission must determine that a committee is a State committee prior to the committee's acting as a State committee, or whether the Federal Election Commission is merely to serve as the arbiter between rival committees claiming the status of State committee. The latter interpretation seems justified and unless the Commission issues regulations establishing a procedure for certification of State committees, duly constituted State committees should be able to continue functioning without prior clearance from the Commission. Clarification of this question should be sought from the Federal Election Commission. (See Chapter III infra for a discussion of the Federal Election Commission, which was established by the 1974 Amendments.)

8. National committee means the organization which, by virtue of the by-laws of the political party, is responsible for the day-to-day operation of the political party at the national level, as determined by the Federal Election Commission.

[I.A.8: National committee]

Comment: See Comment to definition of State committee in section I.A.7 supra.

9. Person means an individual, partnership, committee, association, corporation or any other organization or group of persons.

Comment: In reading the provisions discussed in this Chapter it is important to bear in mind that the term person applies not merely to natural persons but also to partnerships, committees, associations, corporations or any other organization or group of persons. When a natural person is meant the term individual is used.

10. State means each State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

11. Contribution means

a. a gift, subscription, loan, advance or deposit of money or anything of value (EXCEPT a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business, which shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance thereof that each endorser or guarantor bears to the total number of endorsers or guarantors) made

(1) for the purpose of influencing the nomination for election, or election, of any person to Federal office; or

(2) for the purpose of influencing the results of a primary held for the selection of delegates to a national nominating convention of a political party or the expression of a preference for the nomination

[I.A.11.a: Contribution]

of persons for election to the office of President;

Comment: The definition of a contribution is very broad and anything that falls within the definition, and which is not specifically exempted (see section I.A.11.c infra), must be included in computing the applicable contribution limitations discussed in section I.B infra. The catch-all phrase "anything of value" is intended to include anything that cannot be classified as money. Such donations of "anything of value"--including, for example, such "in-kind" donations as free use of cars, store fronts, airplanes, trucks, food and other items--must be reported and credited to a person's contribution limitation.

Except for the bank loans discussed below, a loan of money by a person to a candidate does constitute a contribution and counts against the contribution limitation (see section I.B.1 infra) of the person making the loan, even after the loan has been repaid. For example if X, an individual, loans Y, a candidate, $1,000 (the contribution limitation applicable to X) for use by Y in Y's primary election campaign, X may not make any other contribution to Y's primary campaign, even if Y has alread repaid the loan to X.

A loan of money made by a national or State bank in the ordinary course of business, on the other hand, does not constitute a contribution. If, however, the loan is endorsed or guaranteed, then the loan represents a contribution by each endorser or guarantor in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors. For example, if a national bank makes a campaign-related loan to a candidate in the amount of $2,000 in the ordinary course of business and the loan is endorsed or guaranteed by two individuals, then the two endorsers/guarantors would have made a contribution of $1,000 each. If the candidate were later to pay off $1,000 of the balance himself, then the two individuals would then each be deemed to have made a contribution of $500 (one-half of the remaining $1,000 balance) and would be free to make an additional contribution of $500 each without violating the $1,000 contribution limitation (see section I.B.1 infra). The rationale for allowing the endorser/guarantor contribution to disappear as the loan is repaid while not allowing the individual loan contribution to

disappear is not clear. Clarification should be sought from the Federal Election Commission on the question of whether it intends to enforce this distinction.

In determining whether or not a contribution or expenditure by a group or organization is made for the purpose of influencing an election, the nature and goals of the organization making the expenditure should be considered. The following distinction between activities by party organizations and activities by special interest groups was drawn in a discussion of the bill on the floor of the House:

> "For example, a party committee might stage a seminar or workshop for party workers on campaign methods or techniques. It would be difficult to compute how much such seminars or workshops aid a candidate. Even if this could be computed, it would be incidental to the primary purpose of the program, because the main goal of such party activities is to strenghen the party, not to benefit the candidate.
>
> "On the other hand, if a special interest committee were to conduct the same type of activity, especially in an area in which there are candidates which it supports, there might be a significant difference. Special interest committees often conduct such affairs for the purpose of aiding friendly candidates. The main goal of special interest political activity is usually to influence legislators and campaigns, while that of the party is usually to build a strong party organization.
>
> "The [Federal Election] Commission should also investigate the differences between party publications and special interest publications,

and party field workers and special interest field workers. The goal of the party in each instance is generally not, like in the case of many special interest groups, directly influencing elections and legislation, but building a strong party organization."

Thus special care should be exercised in determining whether an activity sponsored by a special interest group constitutes a contribution or expenditure.

b. a contract, promise, agreement, express or implied, whether or not legally enforceable, to make a contribution for the above purposes.

c. funds received by a political committee which are transferred to such committee from another political committee or other source.

Comment: According to this provision funds tranferred from one political committee to another do constitute contributions. Such inter-committee contributions, however, do not count toward the transferring political committee's contribution limitation unless they are made to a candidate through a single-candidate committee supporting a particular candidate (see section I.B.1 and I.B.2 supra) or are otherwise earmarked to go to a particular candidate (see section I.B.7 infra). Thus this provision discourages the proliferation of single-candidate committees. Since the contribution does not count toward the transferring committee's contribution limitation, the only consequence of the contribution seems to be that it would have to be included in determining whether the receiving committee has received contributions in excess of $1,000 so as to make it a political committee as defined in section I.A.4 supra.

d. payment, by any person other than a candidate or a political committee, of compensation for personal services of another person which are rendered to such candidate or political committee without charge for any such purpose.

[I.A.11.d: Contribution]

Comment: When someone other than the candidate or a political committee pays a third person for personal services which were rendered on a volunteer basis, this payment constitutes a contribution by the person who makes the payment. If a person is allegedly working for a candidate as a volunteer but is in fact on the payroll of another organization or group, then the value of such services must be included in determining the organization's compliance with its contribution limitation and in determining the candidate's compliance with his expenditure limitation.

e. EXCEPTIONS to definition of contribution:

Comment: The following items are specifically excepted from the definition of contribution. These items, when donated in the manner and in the amount prescribed, need not be included in determining compliance with an applicable contribution limitation.

volunteers

(1) value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;

Comment: The value of services provided by unpaid individual volunteers does not constitute a contribution by them.

campaign entertainment at individual's residence

(2) use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual's residential premises for candidate-related activities,

TO THE EXTENT THAT the cumulative value of such items and services furnished by any person on behalf of any candidate with respect to any election does not exceed $500;

Comment: Such affairs as campaign dinners, social gatherings, etc. do not constitute contributions by an individual

if the affair is sponsored voluntarily and is held at the individual's residence and if the cumulative value of such items or services furnished by the individual to any single-candidate does not exceed $500 with respect to any election. If the cumulative value does exceed $500 then that amount of the value which exceeds $500 would constitute a contribution by the individual. Note that the exemption applies with respect to each election. For example, an individual might spend a total of $1,500 ($500 each on three separate occasions) giving a dinner at home for the same candidate for Congress during the primary election campaign, during a runoff election and during the general election campaign. (He might be able to give an additional $500 dinner if a party nominating convention or caucus preceded the primary election. See section I.B.3 infra.) If an individual were to spend $750 on a campaign dinner for a candidate at the individual's home during the primary election, that individual would be deemed to have made a contribution of $250 to the candidate for his primary election campaign. Or if an individual were to give a $450 campaign dinner for a candidate in the early part of the primary election campaign and another $300 dinner later in the primary election campaign, the individual would be deemed to have contributed $250 to the candidate's campaign. The same individual could also spend $500 giving a similar dinner for the same candidate during a runoff campaign and $500 more giving a similar dinner during a general election campaign. The individual's total contribution to the candidate would be $250--the amount by which the primary election dinners exceeded $500.

Since the statutory language speaks of donations "to a candidate" and imposes the $500 limit on activities "on behalf of any candidate", it appears that the same individual could repeat the same pattern of dinners for as many candidates for Federal office as he chooses--all without using up any part of his contribution limitation. The answer to the question of whether the $500 limit applies with respect to all candidates or with respect to any one candidate is not, however, entirely clear and clarification of this question should be sought from the Federal Election Commission. Clarification should also be sought on the question of whether the $500 exemptions may be pooled, that is, whether an individual may spend $1,000 on one campaign dinner at his residence for two candidates without being deemed to have made a contribution to either candidate.

[I.A.11.e.(2): Contribution exceptions (at-home entertainment)]

Finally, the Commission will have to clarify the question of whether having the dinner in one's home and using one's home furnishings constitutes use of real or personal property which must be included in computing the $500 limit; and if so, how such use should be valued.

food and beverages

(3) sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if such charge for the candidate's use is at least equal to the cost of such food or beverage to the vendor,

TO THE EXTENT THAT the cumulative value of such activities by any person on behalf of any candidate with respect to any election does not exceed $500;

Comment: This exception for food or beverage sold by a vendor at a price below his normal charge but not below his cost does not seem to be limited to individuals and would, therefore, seem to allow unincorporated businesses, associations, etc., as well as individuals, to avail themselves of the exception. Clarification should be sought from the Federal Election Commission. Furthermore, the statutory language does not expressly require that in order to take advantage of the exception the vendor must be in the business of selling such food and beverages. However, in order for the vendor to be able to sell the food or beverage below the normal comparable charge but not below his cost, he would normally have to have access to a wholesale outlet. If one who was not in the business of selling food and beverages managed to purchase such items at wholesale cost and then sold them at his wholesale cost for use in a candidate's campaign, the exemption would seem to apply to him.

Presumably the $500 limit applies not to the total value of food and beverages sold by the vendor but rather to the value of the discount below the normal comparable charge granted by the vendor. Legislative history supports this interpretation.

[I.A.11.e.(3): Contribution exceptions (travel expenses)]

The same rules govern the availability of the $500 exemption for each separate election as apply in the case of campaign entertainment at an individual's residence (see section I.A.11.e.(2) supra).

Clarification of the same questions as were raised with regard to the exception for campaign entertainment at an individual's residence (i.e., whether the $500 exemption applies separately with respect to each candidate and whether the exemptions for more than one candidate may be pooled) should also be sought from the Federal Election Commission with respect to this exemption.

travel expenses

(4) any unreimbursed payment for travel expenses made by an individual who on his own behalf volunteers his personal services to a candidate,

TO THE EXTENT THAT the cumulative value of such unreimbursed travel expenses incurred by any individual on behalf of any candidate with respect to any election does not exceed $500;

Comment: For a discussion of the application of the $500 limit to separate elections and of the points on which clarification should be sought from the Federal Election Commission, see the Comments to sections I.A.11.e.(2) and (3) supra.

slate cards

(5) payment by a State or local committee of a political party of costs of preparation, display, mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot or other printed listing of 3 or more candidates for any public office for which any election is held in the State in which such committee is organized,

BUT costs incurred by such committee with respect to a display

[I.A.11.e.(5): Contribution exceptions (slate cards)]

of any such listing made on broadcasting stations, or in newspapers, magazines or other similar types of general public political advertising do not fall within the above exception to the definition of a contribution and, therefore, do constitute contributions.

Comment: Payment by a State or local committee of a political party of costs incurred in preparing and distributing a listing of 3 or more candidates for any public office in the particular State through any means, other than a broadcasting system, newspaper, magazine or other similar types of general political advertising (such as billboards), does not constitute a contribution to the candidates whose names appear in the listing. The purpose of this exception is to enable State and local committees of political parties to educate the general public as to the identity of the candidates of the party. The three candidates listed may be candidates for any public office--Federal, State or local. The inclusion as contributions of costs incurred in displaying such a listing through certain communications media is designed to insure that the listings not escalate into an advertising battle between competing parties.

Although the statute merely requires that 3 or more candidates be included in the listing, legislative history suggests that the exemption is intended to apply only to lists containing the names of all candidates of a party within the State, displayed with equal prominence. Clarification should be sought from the Federal Election Commission on the question of whether it intends to require merely that 3 or more candidates be listed or to require that all candidates be listed with equal prominence. If the Commission chooses the latter interpretation, further clarification should be sought on the question of whether it intends to require that any listing sponsored by a State or local committee of a political party must bear the names of all candidates. For example, must a listing sponsored by a county party committee contain the names of all of that party's candidates for office in other counties within the State?

[I.A.12: Expenditure]

12. Expenditure means

a. a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value (EXCEPT a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) made

(1) for the purpose of influencing the nomination for election, or election, of any person to Federal office; or

(2) for the purpose of influencing the results of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President of the United States;

Comment: The specified items constitute expenditures for the purpose of determining whether a person has exceeded the applicable expenditure limitation (see section I.C. infra). Like the definition of contribution, the definition of expenditure is very broad. Unlike the definition of contribution, which includes an endorsement of a loan to the extent of the unpaid balance, an endorsement of a loan does not constitute an expenditure on behalf of the candidate.

b. a contract, promise or agreement, express or implied, whether or not legally enforceable, to make any expenditure; and

c. the transfer of funds by a political committee to another political committee.

Comment: The transfer of funds from one political committee to another constitutes an expenditure by the transferring committee. Apart from creating symmetry with the similar

provision in the limitation of contribution, the purpose of this provision is not entirely clear. Clarification should be sought from the Federal Election Commission.

d. EXCEPTIONS to definition of expenditure:

news stories

(1) any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication,

UNLESS such facilities are owned or controlled by any political party, political committee or candidate;

Comment: Legislative history indicates that the intention of this provision was not to limit or fetter First Amendment rights. News stories, commentaries or editorials concerning a candidate do not constitute expenditures on his behalf, unless the news facilities are owned or controlled by any political party, political committee or candidate. Thus the value of news stories, commentaries or editorials concerning a candidate in a publication of a political party or political committee would constitute an expenditure on behalf of the candidate. Furthermore, if a candidate owned or controlled broadcasting or publishing facilities the value of stories, commentaries or editorials about the candidate would constitute expenditures by him. In order to avoid having such stories, commentaries or editorials count as expenditures, the candidate would have to divest himself of ownership and control of the facilities or else avoid the publication or broadcasting of any such items. Putting the facilities in trust for the duration of his candidacy would probably be a sufficient divestiture of ownership and control, but clarification should be sought from the Federal Election Commission.

non-partisan get-out-the-vote activity

(2) non-partisan activity designed to encourage individuals to register to vote or to vote;

Comment: A general get-out-the-vote campaign which is sponsored by a political party but which is not designated as

[I.A.12.d.(2): Expenditure exceptions (non-partisan get-out-the-vote activity)]

being sponsored by a political party and which merely encourages people to register to vote or to vote would seem to fall within the purpose of this exemption. It is not, however, entirely clear that such activity would fall within the literal meaning of "non-partisan". Clarification should be sought from the Federal Election Commission on the question of whether get-out-the-vote activity must be non-partisan both in sponsorship and in purpose, or merely in purpose, in order to qualify for the exemption.

communications to organization members

(3) any communication by any membership organization or corporation to its members or stockholders,

IF such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any person to Federal office;

Comment: This exemption would allow, for example, an industrial corporation or a labor union to communicate its views to its stockholders or members without necessitating the inclusion of the value of such communications in the candidate's expenditure limitation. There is a statement in legislative history to the effect that this exemption "of course, includes communications by a federated organization to its members on behalf of its affiliates utilizing its own or its affiliate's resources and personnel, and by a parent corporation on behalf of its subsidiaries." On the other hand, communications to members by an organization which was organized primarily for the purpose of influencing Federal elections would have to be included in the candidate's expenditure limitation. Inclusion in the candidate's expenditure limitation seems to be required even if the organization is non-partisan and even if it is not organized for the purpose of influencing the nomination or election of one particular candidate for Federal office, so long as it is organized for the purpose of influencing the nomination or election of some candidates for Federal office. Clarification on this last point, as well as on the question of how the primary purpose of an organization will be determined, should be sought from the Federal Election Commission.

[I.A.12.d.(4): Expenditure exceptions (at-home entertainment)]

campaign entertainment at individual's residence

(4) use of real or personal property and cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual's residential premises for candidate-related activities,

TO THE EXTENT THAT the cumulative value of such items and services furnished by any individual on behalf of any candidate with respect to any election does not exceed $500;

Comment: See the discussion of the similar exception to the definition of contribution in section I.A.11.e.(2) supra.

travel expenses

(5) any unreimbursed payment for travel expenses made by an individual who on his own behalf volunteers his personal services to a candidate,

TO THE EXTENT THAT the cumulative value of such unreimbursed travel expenses incurred by any individual on behalf of any candidate with respect to any election does not exceed $500;

Comment: See the discussion of the similar exception to the definition of contribution in section I.A.11.e.(4) supra.

non-election communications

(6) any communication by any person which is not made for the purpose of influencing the nomination for election, or election, of any person to Federal office;

Comment: In some cases it may be difficult to ascertain the purpose for which a communication was made. One problem area is mailings by Congressmen under the frank. There is a statement in legislative history that "the Commission should

[I.A.12.d.(6): Expenditure exceptions (non-election communications)]

follow the following guidelines: if any item or publication can be sent under the frank, it should not be counted as an expenditure for the purpose of influencing an election. Hence, congressional newsletters and other similar publications need not be credited to the contribution or expenditure limits of Congressional candidates."

slate cards

(7) payment by a State or local committee of a political party of the costs of preparation, display, mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot or other printed listing of 3 or more candidates for any public office for which any election is held in the State in which such committee is organized,

BUT costs incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines or other similar types of general public political advertising do not fall within the above exception to the definition of expenditure and, therefore, do constitute expenditures; and

Comment: See the discussion of the similar exception to the definition of contribution in section I.A.11.e.(5) supra.

fund-raising costs of a candidate

(8) any costs incurred by a candidate in connection with the solicitation of contributions,

TO THE EXTENT THAT such costs do not exceed 20 percent of the expenditure limitation imposed on the candidate;

Comment: The purpose of this provision is to enable candidates to spend the larger amounts of money that are required for raising many small contributions than are required for

[I.A.12.d.(8): Expenditure exceptions (fund-raising costs of a candidate)]

raising several large contributions. The effect of this exception is to allow a candidate to spend 20% more than the expenditure limitation applicable to him, so long as that additional 20% is spent in soliciting contributions. Any amount spent by the candidate beyond 20% of his expenditure limitation would count against his expenditure limitation. The amount of the fund-raising exemption is stated as a percentage because it will vary as the amount of the expenditure limitation is adjusted annually (see the discussion of expenditure limitations in section I.C infra. Fund-raising expenditures made by a single-candidate political committee which has been authorized by the candidate are treated as fund-raising expenditures by the candidate (see section I.C.1.c.(1) infra).

For example, the expenditure limitation applicable to a candidate seeking election to the office of Representative from a State entitled to more than one Representative, is $70,000 for each election. Such a candidate might spend $70,000 in the primary, $70,000 in a run-off and $70,000 in the general election. (Concerning the possibility of spending another $70,000 in a party nominating convention or caucus, see section I.B.3 infra.) At each of these three stages of the electoral process the candidate could spend an additional $14,000 (for a total of $84,000) in soliciting contributions. A question arises as to whether a candidate may make maximum use of the fund-raising exemption at each stage of the electoral process even if he has already raised enough funds to cover the particular election at hand. For example, a candidate for Representative who managed to raise the $70,000 necessary for his primary campaign by spending only $7,000 (i.e., 10% of his expenditure limitation and one-half of his 20% fund-raising exemption) might be able to spend $7,000 more (i.e., the remaining one-half of his 20% fund-raising exemption) to raise additional funds which he could not spend in the primary election but which he might be able to spend in a primary run-off or in the general election. Using one's fund-raising exemption with respect to one election to raise funds for use in another election is not explicitly prohibited by the Act. However, since it is possible that the Federal Election Commission might construe the fund-raising exemption as containing an implicit restriction to the effect that a fund-raising exemption may only be used to raise funds for use in the particular election at hand, clarification should be sought.

[I.A.12.d.(8): Expenditure exceptions (fund-raising costs of a candidate)]

Where a candidate for President in a Presidential primary uses public funds provided by the Presidential Primary Matching Payment Account Act (see Chapter V infra), legislative history indicates that he is only entitled to a 20% exemption with respect to the funds he raises privately. For example, if his expenditure limitation for all primaries is $10,000,000 and if he raises $5,000,000 from private funds and receives $5,000,000 in matching payments from the United States Treasury, he would only be entitled to spend $1,000,000 (20% of $5,000,000) rather than $2,000,000 (20% of $10,000,000) in fund-raising activities without being required to include such amounts in his expenditure limitation. Similarly, a Presidential candidate who received his full $20,000,000 general election entitlement from the Presidential Election Campaign Fund (see Chapter V infra) would apparently not be entitled to any exemption for fund-raising activities. If he received less than $20,000,000 from the Presidential Election Campaign Fund, then he would apparently be entitled to an exemption equal to 20% of the amount of private funds which he raised up to a maximum exemption of $4,000,000 (20% of his $20,000,000 expenditure limitation). Difficult problems of budgeting may arise where a candidate does not know at the outset of his campaign how much private funds he must raise and, consequently, how much he may spend on exempt fund-raising costs.

fund-raising costs of political committees

(9) Costs incurred by a political committee with respect to the solicitation of contributions to such political committee or any general political fund controlled by such political committee,

EXCEPT that costs incurred with respect to the solicitation of contributions to any such political committee made through broadcasting stations, newspapers, magazines, outdoor advertising facilities and other similar types of general public political advertising do not fall within the above exception to the definition of expenditure and, therefore, do constitute expenditures.

[I.A.12.d.(9): Expenditure exceptions (fund-raising costs of a political committee)]

Comment: There is no limit on the amount which a political committee may spend in soliciting contributions to itself without such amounts being deemed expenditures. But solicitations of funds by a single-candidate committee which has been authorized by the candidate are treated as solicitations of contributions by the candidate (see sections I.A.12.d.(8) supra and I.C.1.c.(1) infra). There is, however, a restriction on the nature of the solicitations that qualify for the exemption. The cost of solicitations made by a political committee through broadcasting stations, newspapers, magazines, outdoor advertising facilities and other similar types of general public political advertising must be included in computing the applicable expenditure limitation. This restriction is designed to avoid the use of the fund-raising exemption as a subterfuge for a media advertising campaign on behalf of a candidate.

General comment on the exceptions to the definition of contribution and expenditure: Some of the exceptions to the definition of expenditure are similar to the exceptions to the definition of contribution. There are, however, several additional exceptions to the definition of expenditure; and, on the other hand, certain exceptions to the definition of contribution are not exceptions to the definition of expenditure.

In particular, there is no exception to the definition of expenditure to correspond to the exception to the definition of contribution for voluntary services and for sales of food and beverages at a discount. There are no exceptions to the definition of contribution to correspond to the expenditure exceptions for news stories, non-partisan get-out-the-vote activities, communications to organization members, non-election communications or fund-raising costs.

Legislative history suggests that the absence of certain exceptions from the definition of contribution was not intended to force their inclusion in computing contribution limitations. Legislative history similarly suggests that the absence of expenditure exceptions for volunteer services and food or beverage was not intended to force these items to be included in computing expenditures. Legislative history states that there "are certain exemptions made to one term that are not also made to the other.

[I.A.11.e and I.A.12.d: General comment on the exceptions to the definitions of contribution and expenditure]

This is because 'contribution' standing alone refers to a donation to a candidate or other person for the latter's independent use, while an 'expenditure' is the use of money and other things of value by a candidate or other person in his own name. [While the law exempts communications by membership organizations to their members, no] such exemption is provided to the term 'contribution' because such communications plainly do not fall within the meaning of that term." From the language of the statute, however, it is not clear that the lacking exceptions to contribution and expenditure, respectively, "plainly do not fall within the meaning" of these terms. It would, therefore, be advisable to seek clarification from the Federal Election Commission.

For example, the effect of excluding volunteer services and food or beverage discounts from the definition of contribution (as a result of explicit exceptions to the definition of contribution) while including them in the definition of expenditure (as a result of the absence of explicit exceptions to the definition of expenditure) would be to allow such volunteer services and the discount on food or beverages to be furnished by an individual without including their value in computing that individual's contribution limitation, while at the same time to require that the value of the discount given for such food or beverages and the volunteer services be deemed expenditures for the candidate and be included in determining whether the candidate has exceeded the applicable expenditure limitation. Since one of the purposes of the 1974 Amendements was to encourage participation by a broad cross-section of the electorate in the election process, the absence of an exception for voluntary services to the definition of expenditure seems contrary to the purpose of the law. It would, therefore, be advisable to seek clarification from the Federal Election Commission on the question of whether it intends to require the value of services rendered by volunteers to be included in determining whether a candidate or other person has exceeded his expenditure limitation. Similarly, the absence of an exception to the definition of expenditure for the discount on sales of food or beverages might mean that such discounts must be included in determining whether a candidate has exceeded his expenditure limitation, even though the amount may be less than $500 and therefore excluded from being counted as a contribution by the vendor.

[I.A.11.e and I.A.12.d: General comment on the exceptions to the definitions and contribution and expenditure]

On the other hand, the effect of excluding news stories, non-partisan get-out-the-vote activities, communications to organization members and fund-raising costs of political committees from the definition of expenditure (as a result of explicit exceptions to the definition of expenditure) while including them in the definition of contribution (as a result of the absence of explicit exceptions to the definition of contribution) would be to allow these items to be used for the benefit of a candidate without including their value in computing the candidate's expenditure limitation (see section I.C.1 infra) or the independent expenditure limitation of the person furnishing the item (see section I.C.3 infra), while at the same time to require that these items be included in determining whether the person furnishing the item has exceeded his contribution limitation (see section I.B infra). (Non-election communications and fund-raising costs of a candidate do not present this problem since they would not fall within the definition of contribution). Clarification of this aspect of the problem should also be sought from the Federal Election Commission.

B. Limitations on contributions

Comment: In considering the limitations on contributions discussed below one should bear in mind the exceptions to the definition of contribution discussed in section I.A.11.e supra. Anything that is excepted from the definition of a contribution does not count toward the applicable contribution limitation.

1. General rule ($1,000 limit) (18 U.S.C. §608)

> No person may make contributions to any candidate with respect to any election for Federal office which, in the aggregate, exceed $1,000.

Comment: It has been suggested that this contribution limitation, as well as the other dollar amount limitations discussed below, may be an unconstitutional encroachment on First Amendment rights.

[I.B.2: Exception (political committee)]

2. EXCEPTION: Political committee ($5,000 limit) (18 U.S.C. §608)

a. A political committee (other than a principal campaign committee) which

(1) has been registered as a political committee under the Act for at least 6 months (see section II.B.2 infra for a discussion of registration as a political committee),

(2) has received contributions from more than 50 persons, and

(3) (except for any State political party organization) has made contributions to 5 or more candidates for Federal office

may make contributions to any candidate with respect to any election for Federal office, which, in the aggregate, do not exceed $5,000.

Comment: This provision deals primarily with broad-based multicandidate committees which include, for example, committees of political parties, Congressional campaign committees and committees of so-called special interest groups. This provision allows such committees to continue to contribute to campaigns but imposes a limit on the amount of their contributions. Such committees which meet the prescribed criteria may contribute up to $5,000 to any candidate with respect to any election rather than the $1,000 that would be allowed in the absence of this exception. A principal campaign committee is not limited to a $5,000 contribution to its one candidate. A State political party organization may make a $5,000 contribution to a candidate regardless of whether it meets the 5-candidate contribution requirement of the multicandidate committee definition (subject to the independent decision rule discussed below). Clarification should be sought from the Federal Election Commission on the definition of the term "State political party organization." That is, does the term mean State as

opposed to statewide or State as opposed to Federal? Under the latter interpretation a county political organization would qualify for the multicandidate committee $5,000 contribution limit even if it did not support 5 or more candidates for Federal office, while under the former view it would not.

One question raised by this provision is whether a national multicandidate committee may subdivide into 20 multicandidate committees in order that each of the committees be able to take advantage of the provision allowing multicandidate committees to contribute $5,000 each (thus producing a total contribution of $100,000 rather than $5,000). Legislative history makes it clear that such a proliferation of committees for the purpose of circumventing the $5,000 contribution limitation would be a "subterfuge" and "clearly a violation of the law." The legislative history states that, in determining whether different multicandidate committees sponsored by the same organization will each be allowed to make a $5,000 contribution to the same candidate, the test is whether "the decision or judgment to make such contributions is independently exercised within the separate levels of the organization. However, if the subsidiary or sub-unit organizations are under the control or direction of the parent organization with respect to their contributions to specific candidates, then the organizations acting in concert would constitute one political committee for the purpose of contribution limits included in this bill."

Another question that has arisen in connection with multicandidate committees is whether the administrative expenses of a multicandidate committee must be charged against the expenditure and contribution limitations with respect to a candidate who receives a contribution from the committee. Legislative history makes it clear that such normal day-to-day administrative expenses of a multicandidate committee need not be charged against applicable contribution and expenditure limitations, unless the administrative expenses were incurred on behalf of a clearly identified candidate. Such day-to-day administrative expenses include, for example, research, speech writing, general party organization and travel, party publications, fund raising expenses, staff at various party headquarters

in the field and national convention expenditures, if such expenses do not contribute directly to any candidate's campaign effort. The Federal Election Commission is expected to prescribe regulations defining more precisely what is and what is not a general administrative expense.

b. The national committee of a political party serving as the principal campaign committee of a candidate for the office of President of the United States may make contributions to any other candidate for Federal office in an amount which, in the aggregate, does not exceed $5,000.

Comment: This provision deals with the only possible situation where a principal campaign committee may also be a multicandidate committee.

3. Each election treated separately (18 U.S.C. §608)

The above contribution limitations apply separately with respect to each election

EXCEPT that all elections held in any calendar year for the office of President of the United States (other than a general election for such office) will be deemed to be one election.

Comment: Except in the case of a Presidential election, each election, as defined in section I.A.1 supra, constitutes a separate election for purposes of determining applicable contribution and expenditure limitations. Thus if a candidate for the office of Representative from a State entitled to more than one Representative runs in a primary election, a runoff election and the general election, each of these separate elections would entitle contributors to contribute, and candidates to spend, up to the maximum allowable limits. (Such a candidate for Representative would also seem to be entitled to a fourth application of the limitations for a State party nominating convention or caucus. Legislative history, however, contains a puzzling

suggestion to the contrary. Clarification should, therefore, be sought from the Federal Election Commission.) For example, the hypothetical candidate for Representative could spend a total of $252,000 for all three campaigns (three times $84,000; $84,000 = $70,000 plus $14,000 fund raising exemption) in addition to amounts that could be spent on his behalf in the general election by party political committees (see section I.C.2 infra) and in addition to independent expenditures by individuals (see section I.C.3 infra). Multicandidate committees could contribute a total of $15,000 (three times $5,000 for each election) for all three campaigns. The contribution exemptions for $500 of unreimbursed travel expenses, campaign entertainment and discounts on food and beverages would apply separately to each of the three elections (see section I.A.11.e.(2) supra).

One question which the Federal Election Commission should be asked to clarify is whether a candidate for Representative who chooses to run in the primary election of more than one political party will be deemed to be engaged in two elections or in one election.

In the case of a campaign for the Presidency there are only two separate elections in the calendar year in which the general election will take place: (1) the general election and (2) all other elections (including all primaries and nominating conventions). Thus there are only two separate occasions for the application of the Presidential contribution and expenditure limitations. If a State were to hold a Presidential primary in the calendar year preceding the year of the general election, then the question would arise as to whether that primary would be treated as a separate election for the purpose of applying the contribution and expenditure limitations. Most probably, it would not, but clarification should be sought.

4. Aggregate limit on individuals for calendar year ($25,000) (18 U.S.C. §608)

No individual may make contributions aggregating more than $25,000 in any calendar year,

BUT for purposes of computing this $25,000 limit, if a contribution is made in a

calendar year other than the calendar year in which the election is held, and if the contribution is made with respect to the election, then the contribution will be deemed to have been made in the calendar year in which the election is held.

Comment: In addition to the $1,000 per election limitation imposed on contributions by individuals, this provision limits individuals to contributing no more than $25,000 in the aggregate in any one calendar year regardless of whether an election is held in that year. An individual who makes no other contributions (either to candidates or other political committees) in a calendar year may contribute up to $25,000 to a political committee, including, for example, the national committee of a political party, if the contribution to the political committee is in no way earmarked for the use of a particular candidate and if the contribution is in no way earmarked for use in a calendar year other than the year in which it is made. (Contributions to a single-candidate political committee are necessarily earmarked for the use of that candidate.) For example, in 1975 Mr. X could contribute $25,000 to the national committee of a political party if he makes no contributions to Federal candidates or to other political committees supporting Federal candidates, if his $25,000 contribution is in no way earmarked for the use of a particular candidate and if his contribution is in no way earmarked for use in a calendar year other than the year in which it is made. Although the Act is not entirely clear, it seems probable that such a 1975 contribution by Mr. X would not prevent him from making an identical contribution in 1976 or, alternatively, from making 25 $1,000 contributions in 1976 to candidates for Federal office. Clarification of the question of the permissibility of such a 1976 contribution, however, should be sought from the Commission.

Contributions made in one calendar year will be counted toward the $25,000 limit in a second calendar year if the contribution in the first calendar year is made with respect to an election in the second calendar year. For example, if Mr. A contributes $1,000 to each of 15 Congressmen in 1975 (for a total of $15,000) with the intention that they use this money in their campaigns for re-election

in 1976, then Mr. A may give no more than $1,000 to each of 10 Congressional candidates in 1976. Because his 1975 contributions were made with respect to the 1976 election, his contributions are deemed to have been made in 1976 and, when combined with his contributions in 1976, his contributions equal the maximum $25,000 allowed for any calendar year. The same rules would apply to contributions made after the calendar year of the election.

Clarification should be sought from the Commission on the question of whether an individual who makes contributions which are attributed to a later year may make contributions totalling more than $25,000 in the earlier year. For example, in the situation described in the preceding paragraph could Mr. A contribute $40,000 in 1975 since $15,000 of that $40,000 was deemed to be contributed in 1976, thus leaving $25,000 as the 1975 contribution?

See section I.A.4 supra for a discussion of the application of the $25,000 limit to contributions to hybrid Federal-State/local committees.

5. Contributions to an authorized political committee (18 U.S.C. §608)

Contributions to a named candidate made to any political committee authorized by such candidate, in writing, to accept contributions on his behalf will be deemed to be contributions made to such candidate.

Comment: This provision expressly prevents an individual, for example, from making one $1,000 contribution directly to a candidate and another $1,000 contribution with respect to the same election to the candidate through a political committee authorized in writing by the candidate to accept contributions. Such a dual contribution would constitute one contribution of $2,000 which, when made with respect to one election, would violate the contribution limitation applicable to an individual. Legislative history makes it clear that the requirement that the committee be authorized in writing was not intended to create a loophole whereby the candidate might receive contributions in excess of the limits simply by having the contributions go to a political

committee which is not authorized in writing to accept contributions for the candidate. Another provision of the law is intended to close this possible loophole by providing that an earmarked contribution made directly or indirectly, through an intermediary or otherwise, on behalf of a candidate will be treated as a contribution from the donor to the candidate (see section I.B.7 infra).

6. Contributions to Vice Presidential candidate treated as contributions to Presidential candidate (18 U.S.C. §608)

Contributions made to or for the benefit of any candidate nominated by a political party for election to the office of Vice President of the United States will be deemed to be contributions made to or for the benefit of the candidate of such party for election to the office of President of the United States.

Comment: For example, in a general election campaign an individual may not give $1,000 to a party's Presidential candidate and $1,000 to the party's Vice Presidential candidate. These two contributions would be treated as one $2,000 contribution to the Presidential candidate and would exceed the individual's $1,000 contribution limitation. On the other hand, since the exemptions to the definition of contribution (see section I.A.11.e supra) do not constitute contributions, it would seem that an individual could, for example, spend $500 for an at-home campaign dinner for a party's Presidential candidate in the general election campaign and also spend $500 for an at-home campaign dinner for the party's Vice Presidential candidate in the same general election campaign. Since no contributions would be involved, the question of attributing the Vice Presidential dinner to the Presidential candidate should not arise. The legality of such separate dinners, of course, depends on the Commission's clarification of the question of the legality of separate dinners for more than one candidate in any given election (see section I.A.11.e.(2) supra).

7. Contributions made through an intermediary (18 U.S.C. §608)

[I.B.7: Through an intermediary]

For purposes of computing the above contribution limitations, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate (including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate) will be deemed to be contributions by that person to the candidate.

The intermediary or conduit must report the original source and the intended recipient of such contribution to

a. the Federal Election Commission, and

b. the intended recipient.

Comment: This provision should be considered in connection with the provision which treats as a contribution to the candidate a contribution to him through a political committee authorized in writing by the candidate to receive contributions. That provision leaves open the question of how contributions to unauthorized committees or individuals should be treated. The provision discussed here deals with this question.

A contribution made directly or indirectly on behalf of a candidate will be treated as a contribution from the originial donor to the candidate. Legislative history makes it clear that in determining whether a particular contribution should be treated as having been made by a person (the original donor) other than the immediate transferor to the candidate, the test to be used is whether the original donor exercised any direct or indirect control over the making of the contribution to the candidate. For example, if A, an individual, gives $1,000 directly to the general election campaign of candidate C for Representative and A gives another $1,000 to B, A's friend, with the understanding that B contribute that $1,000 to candidate C's general election campaign, and if B in fact makes a $1,000 contribution to C's general election campaign, then because A exercised control over B's contribution to C, A would be deemed to have made one contribution of $2,000 to candidate C for his general election campaign. A would therefore

[I.B.7: Through an intermediary]

have exceeded his $1,000 contribution limitation. On the other hand, if A gives $1,000 to candidate C for use in his general election campaign and gives another $1,000 to, for example, the national committee of C's political party without any indication whatsoever by A as to the use which the national committee should make of the $1,000 and without any control whatsoever by A over the use of the $1,000, A would have made only one $1,000 contribution to C, even if C were to receive $1,000 from the national committee as part of its general assistance to Congressional candidates in general elections.

The crucial factor in determining whether such a contribution will be attributed back to the original donor is whether he exercised direct or indirect control over the intermediary's contribution to the candidate. Legislative history suggest that contributions from separate segregated funds maintained by corporations or labor organizations (see section I.B.8.c.(3) infra) will not be attributed back to the original donor "because donors to such funds must relinquish control of their donation to the corporation or labor organization and such donors may not earmark or direct such donations to any specific candidates or political committee." The question arises as to whether the result would be the same if it at the time when the original donor contributed to the separate segregated fund it were clear that the fund would be making contributions to one particular candidate. Clarification should be sought from the Federal Election Commission on the question of what does and does not constitute direct or indirect control.

8. Prohibition of contributions or expenditures by national banks, corporations or labor organizations (18 U.S.C. §610)

a. No national bank, and no corporation organized by authority of any law of Congress, may make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office.

[I.B.8: By corporations, etc.]

b. No corporation whatsoever and no labor organization may make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices.

Comment: It should be noted that Federal corporations (such as Comsat) are prohibited from making contributions to candidates for any political office regardless of whether the office is local, State or Federal. All corporations, both those Federally-incorporated and those State-incorporated, are prohibited from making contributions to candidates for Federal office. State-incorporated corporations, however, may contribute to candidates for non-Federal office unless such a contribution is prohibited by State law.

c. No candidate, political committee or other person may accept or receive any contribution prohibited by sections I.B.8.a or b supra.

d. For purposes of this prohibition contribution or expenditure means

any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business)

to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in sections I.B.8.a and b supra.

[I.B.8. e : By corporations, etc. (exceptions)]

e. EXCEPTION:

The following activities do not constitute contributions or expenditures and, therefore, are not prohibited:

(1) Communications by a corporation to its stockholders and their families or by a labor organization to its members and their families on any subject.

(2) Non-partisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families, or by a labor organization aimed at its members and their families.

(3) The establishment, administration and solicitation of contributions to a <u>separate segregated fund</u> to be utilized for political purposes by a corporation or labor organization,

BUT such a segregated fund may not make contributions or expenditures by utilizing money or anything of value secured

(a) by physical force, job discrimination, financial reprisals or the threat of force, job discrimination or financial reprisal, or

(b) by dues, fees or other monies required as a condition of membership in a labor organization or as a condition of employment, or by monies obtained in a commercial transaction.

[I.B.8.f: By corporations, etc. (penalties)]

f. Penalties

(1) A corporation or labor organization which makes a contribution or expenditure in violation of this prohibition may be fined not more than $25,000,

BUT if the violation was willful, the penalty may be a fine of not more than $50,000 or imprisonment for not more than two years or both.

(2) An officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization in violation of the above prohibition may be fined not more than $1,000 or imprisoned not more than one year or both,

BUT if the violation was willful, the penalty may be a fine of not more than $50,000 or imprisonment for not more than two years or both.

(3) A person who accepts or receives any contribution in violation of the above prohibition may be fined not more than $1,000 or imprisoned not more than one year or both,

BUT if the violation was willful, the penalty may be a fine of not more than $50,000 or imprisonment for not more than two years or both.

Comment: Legislative history makes it clear that a plan whereby a corporation absorbs losses on services which it

rendered to a candidate pursuant to a contract constitutes a "subterfuge and should be considered an illegal effort to circumvent the prohibition on corporate giving."

Legislative history also indicates that whether a professional association is a corporation is a matter determined under State law. If under State law such an association is a corporation, it would be prohibited from making a political contribution to a candidate for Federal office as a corporation. However, the individual members of the corporation could, of course, make political contributions as individuals.

Finally, legislative history states that the penalties for violation of the prohibition against contributions by corporations and labor organizations should "be enforced rigorously against officers and directors of corporations and labor organizations to the extent such officers and directors are responsible for" such violations.

9. Prohibition of contributions by government contractors (18 U.S.C. §611)

a. A government contractor means a person who enters into any contract with the United States or any department or agency thereof either for the rendition of personal services or furnishing any material, supplies or equipment to the United States or any department or agency thereof or for selling any land or building to the United States or any department or agency thereof,

IF payment for performance of such contract or payment for such material, supplies, equipment, land or building is to be made in whole or in part from funds appropriated by the Congress.

b. A government contractor is prohibited from making, directly or indirectly, any contribution of money or other thing of value, or promising, expressly or impliedly, to make any such contribution

[I.B.9: By government contractors]

to any political party, committee or candidate for public office or to any person for any political purpose or use during the period beginning with the commencement of negotiations between the contractor and the government and ending with the latter of

(1) the completion of the performance of the contract, or

(2) the termination of negotiations.

c. A government contractor is also prohibited from knowingly soliciting any such contribution from any person for any such purpose during the proscribed time period.

d. EXCEPTION

It is not unlawful for a corporation or labor organization which is a government contractor to establish or administer, or solicit contributions to, any separate segregated fund for the purpose of influencing the nomination for election, or election, of any person to Federal office

UNLESS the establishment or administration of, or the solicitation of contributions to, such fund is prohibited by the prohibition of contributions and expenditures by corporations and labor organizations. (See section I.B.8 supra.)

e. Violation of the prohibition against contributions by government contractors may result in a fine of not more than $25,000 or imprisonment for not more than five years or both.

[I.B.9: By government contractors]

Comment: Legislative history makes it clear that doctors who receive payments under Medicare and Medicaid programs should not be considered government contractors by virtue of the fact that they receive such payments and that, therefore, they do not fall within the scope of this prohibition of political contributions by government contractors. The initial contractual relationship under both Medicare and Medicaid is viewed as not being between the doctor and the Federal government. In the case of Medicare the initial contractual relationship is viewed as being between the individual patient and the Federal government, while under Medicaid the initial contractual relationship is viewed as being between the doctor and a State agency.

According to the definition of government contractor in this provision, a consultant who performed services for the government pursuant to a contract would be a government contractor during the proscribed period.

It should be noted that government contractors are permitted to establish separate segregated funds in the same way that corporations and labor organizations may. A government contractor need not be a corporation.

10. Prohibition against contributions by foreign nationals (18 U.S.C. §613)

a. A foreign national (as defined in 22 U.S.C. §11(b)) is

(1) a government of a foreign country or a foreign political party;

(2) an individual affiliated or associated with, or supervised, directed, controlled, financed, or subsidized, in whole or in part, by any foreign government or foreign political party;

(3) a person outside of the United States,

UNLESS it is established that such a person is an individual and

[I.B.10: By foreign nationals]

is a citizen of and domiciled within the United States or that such a person is not an individual, is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States, and has its principal place of business within the United States. (Nothing in this clause limits the operation of section I.B.10.a.(5) infra.);

(4) a partnership, association, corporation, organization or other combination of individuals organized under the laws of, or having its principal place of business in, a foreign country;

(5) a domestic partnership, association, corporation, organization or other combination of individuals, subsidized directly or indirectly, in whole or in part, by any foreign principal defined in sections I.B.10.a.(1), (3) or (4) supra;

(6) a domestic partnership, association, corporation, organization or other combination of individuals, supervised, directed, controlled or financed, in whole or in substantial part, by any foreign government or foreign political party; or

(7) an individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence (i.e., who is not currently lawfully being accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws).

[I.B.10: By foreign nationals]

(8) EXCEPTION: An individual who is a citizen of the United States is not a foreign national.

b. A foreign national may not, directly or through any other person, knowingly make any contribution of money or other thing of value, or promise expressly or impliedly to make any such contribution, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office.

c. A person may not knowingly solicit, accept or receive any such contribution from any such foreign national.

d. Violation of the prohibition against the making, solicitation or acceptance of contributions from a foreign national may result in a fine of not more than $25,000 or not more than five years imprisonment or both.

Comment: Foreign nationals are prohibited from contributing to candidates for Federal, State or local office. The provision excluding citizens of the United States from the definition of a foreign national means that a citizen of the United States who serves as a lobbyist for a foreign government, foreign corporation or other foreign national is not himself a foreign national and may, therefore, contribute to candidates for elective office.

11. Prohibition of contributions in the name of another (18 U.S.C. §614)

a. No person may make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution or accept a contribution knowing that it is made by one person in the name of another.

[I.B.11: In the name of another]

b. Violation of this prohibition may result in a fine of not more than $25,000 or one year imprisonment or both.

Comment: This provision ensures that contribution limitations will not be evaded by making a contribution in someone else's name. Also, reports of contributions will disclose the actual donor.

12. Prohibition of contributions in currency in excess of $100 (18 U.S.C. §615)

a. No person may make contributions in the currency of the United States or the currency of a foreign country to or for the benefit of a candidate for nomination for election, or election, to Federal office which, in the aggregate, exceed $100, with respect to any campaign of such candidate for nomination for election, or for election, to Federal office.

b. Any person who violates this currency prohibition may be fined not more than $25,000 or imprisoned not more than one year or both.

Comment: This provision ensures that a written record will exist of all monetary contributions in excess of $100.

13. Prohibition of acceptance of excessive honorariums (18 U.S.C. §616)

a. An elected or appointed officer or any employee of any branch of the Federal government

(1) may not accept an honorarium for any appearance, speech or article which exceeds $1,000 (excluding amounts accepted for actual travel and subsistence expenses), and

[I.B.13: Excessive honorariums]

(2) may not accept honorariums which, in the aggregate, exceed $15,000 in any calendar year.

b. Violation of this prohibition may result in a fine of not less than $1,000 nor more than $5,000.

Comment: It seems probable that actual travel and subsistence expenses should be excluded from the $15,000 calendar year limit just as they are excluded from the $1,000 limit. However, since this exclusion is not explicit with respect to the $15,000 limit, clarification should be sought from the Federal Election Commission.

Legislative history makes it clear that acceptance of royalties from a published book does not constitute an honorarium, while acceptance of payment for a magazine article does constitute acceptance of an honorarium.

Legislative history contains two different views of what constitutes a separate honorarium for the purpose of computing the $1,000 limitation. One view would allow a Federal officer or employee to receive a $1,000 honorarium for each of two speeches made on the same trip at different times to the same organization, or to different organizations on the same trip, for a total of $2,000 so long as the speeches were "separate occasions". The other view holds that a Federal officer or employee may not accept more than one $1,000 honorarium from the same organization in the same calendar year and that the $1,000 limitation may not be circumvented by accepting more than one honorarium from the same organization on the same trip or from the same organization during the same calendar year. Clarification should be sought from the Federal Election Commission on what constitutes a separate honorarium, whether more than one honorarium may be received from the same organization in the same calendar year or from different organizations on the same trip.

Strictly speaking the prohibition against acceptance of excessive honorariums may not constitute a limitation on contributions. An honorarium that is paid to an elected officer, such as a Congressman, for delivering a

speech, for example, does not fall within the definition of a contribution unless the honorarium is paid for the purpose of influencing the Congressman's nomination or election. Thus payment of a legitimate honorarium to a candidate would not have to be included in the contribution limitation of the payor. Nevertheless, the acceptance of excessive honorariums could be a subterfuge through which a candidate might raise money for use in his election campaigns. Furthermore, acceptance of excessive honorariums might be viewed as making Federal officials and employees subject to the influence of so-called "special interest" groups.

14. Prohibition of knowingly accepting excessive contribution (18 U.S.C. §608)

a. No candidate or political committee may knowingly accept a contribution in violation of the limitations imposed on contributions.

b. No officer or employee of a political committee may knowingly accept a contribution made for the benefit or use of a candidate in violation of the limitations imposed on contributions.

Comment: This provision establishes that one who accepts a contribution with the knowledge that the contribution is in excess of the contribution limitation applicable to the donor violates the law.

15. Penalties (18 U.S.C. §608)

Unless a different penalty is mentioned in the above discussion of a particular restriction, any person who violates any provision of the Federal Criminal Code discussed in this section B may be fined not more than $25,000 or imprisoned for not more than one year or both.

16. Effective date (§410 of the 1974 Amendments)

All the restrictions discussed in section B became effective no later than January 1, 1975.

[I.C.1.a: Presidency]

C. Limitations on expenditures

Comment: In considering the limitations on expenditures discussed below one should bear in mind the exceptions to the definition of expenditure discussed in section I.A.12.d supra. Anything that is excepted from the definition of an expenditure does not count toward the applicable expenditure limitation.

1. Limitations on expenditures by candidates (18 U.S.C. §608)

a. Presidency

(1) A candidate for nomination for election to the office of President of the United States

(a) may not spend more than $10,000,000, in the aggregate,

(b) nor may he spend in any one State more than twice the expenditure limitation applicable in such State to a candidate for nomination for election to the office of Senator, Delegate or Resident Commissioner.

(2) A candidate in the general election campaign for the office of President of the United States may not spend more than $20,000,000.

(3) An expenditure made by or on behalf of any candidate nominated by a political party to the office of Vice President will be deemed to be an expenditure by or on behalf of that party's candidate for election to the office of President.

(4) For purposes of the per-State limitation on expenditures in

Presidential primaries, the Federal Election Commission will prescribe rules under which an expenditure for use in more than one State by a candidate for nomination to the office of President will be attributed to the candidate's expenditure limitation in each State involved. The basis for making the attribution will be the voting age population in each State which can reasonably be expected to be influenced by the expenditure.

Comment: For example, the cost of a television broadcast into several states in which a candidate is running in primaries would have to be allocated to the candidate's expenditure limitation applicable to expenditures in each State during the primary elections.

b. Senator, Representative, Delegate and Resident Commissioner

(1) A candidate for the office of Senator or for the office of Representative from a State which is entitled to only one Representative

(a) in each election in the campaign for nomination may not spend more than the greater of

(i) 8 cents multiplied by the voting age population of the State, or

(ii) $100,000, and

(b) in each election in the campaign for election may not spend more than the greater of

(i) 12 cents multiplied by the voting age population of the State, or

(ii) $150,000.

[I.C.1.b: Senator, Representative, Delegate, Resident Commissioner]

(2) A candidate for the office of Representative from a State entitled to more than one Representative, for the office of Delegate from the District of Columbia, or for the office of Resident Commissioner, may not spend more than $70,000 in each election in the campaign for nomination and in each election in the campaign for election.

(3) A candidate for the office of Delegate from Guam or the Virgin Islands may not spend more than $15,000 in each election in the campaign for nomination and in each election in the campaign for election.

Comment: See section I.B.3 supra for a discussion of the treatment of each stage of the nominating and election process as a separate election.

Legislative history indicates that where a candidate for Representative accompanies the President or Vice President in an official plane to a political event in support of the candidate, the amount which must be included in the candidate's expenditure limitation may be what it would normally cost a person to make the trip by commercial airline rather than the tens of thousands of dollars that the trip made in the official plane may cost. "These costs should not count against the candidate's expenditure limitation, because it would be unfair to both the President and the candidate to require the candidate to use up to $30,000 out of a $70,000 limitation just to fly with the President." Clarification should be sought from the Federal Election Commission.

c. General rules

(1) Attribution of expenditures

An expenditure will be deemed to be made by or on behalf of a candidate if it is made

(a) by an authorized committee or any other agent of the candidate for the purpose of making expenditures, or

(b) by any person who has been authorized or requested by the candidate, an authorized committee of the candidate or an agent of the candidate, to make the expenditure.

Comment: Expenditures which are authorized or requested by the candidate or his agents must be included in computing the applicable expenditure limitation. For the limitation imposed on unauthorized, independent expenditures by party committees and individuals see section I.C.3 infra.

(2) Annual cost-of-living adjustment of expenditure limitations

The expenditure limitations imposed on candidates for nomination for election, or election, to the office of President, Senator, Representative, Delegate or Resident Commissioner will increase each calendar year (beginning in 1976) by the amount of any per centum difference between the Consumer Price Index for the 12-month period prior to the calendar year in question and the calendar year 1974. At the beginning of each calendar year the Secretary of Labor will certify to the Federal Election Commission, and will publish in the Federal Register, the applicable per centum difference.

(3) Determination of voting age population

During the first week of January 1975 and each subsequent

year, the Secretary of Commerce will certify to the Federal Election Commission, and publish in the Federal Register, an estimate of the voting age population of the United States, of each State and of each Congressional district as of the first day of July next preceding the date of certification.

Voting age population means resident population, 18 years of age or older.

Comment: The Secretary of Commerce must certify the voting age population in each of the specified areas. Since voting age population is defined as resident population 18 years of age or older, the Secretary of Commerce should probably include non-citizens as well as citizens in determining the voting age population.

2. Limitations on expenditures by national and State committees of political parties in general election campaigns (18 U.S.C. §608)

a. Applicable limitations

The national committee of a political party and State party committees, including any subordinate committees of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office as follows:

(1) In connection with the general election campaign of its candidate for President, the national committee of a political party may make expenditures not in excess of 2 cents times the voting age population on behalf of the party's candidate for President.

[I.C.2: By national and State committees of political parties]

These expenditures are in addition to any expenditure by a national committee of a political party serving as the Presidential candidate's principal campaign committee.

Comment: In addition to any expenditures which it may make if it is serving as the principal campaign committee of a Presidential candidate and in addition to any expenditures which are made by the candidate, the national committee of a political party may spend the prescribed amount for the party's Presidential candidate in the general election.

(2) In connection with the general election campaign of its candidate for election to the office of Senator or to the office of Representative from a State entitled to only one Representative, both the national committee of a political party and a State party committee, including any subordinate committee of the State party committee, may each make an expenditure not in excess of the greater of

(a) 2 cents multiplied by the voting age population of the State, or

(b) $20,000.

Comment: In addition to the expenditure limitation applicable to a candidate for Senator or Representative from a State entitled to only one Representative, both the national committee and the State or local committees of the candidate's political party may each spend the prescribed amount on behalf of the candidate in the general election. Legislative history indicates that the national and State (or local) party committees may each contribute the maximum amount IF their respective decisions to contribute were made independently of each other. State and local committee contributions are presumably considered one contribution; therefore their contributions must be co-ordinated.

[I.C.2: By national and State committees of political parties]

(3) In connection with the general election campaign of its candidate for election to the office of Representative from a State entitled to more than one Representative, to the office of Delegate, or to the office of Resident Commissioner, both the national committee of a political party and a State party committee, including a subordinate committee of the State party committee, may each make an expenditure not in excess of $10,000.

Comment: Same as immediately preceding comment except that this provision applies to candidates for Representative from a State entitled to more than one Representative, to candidates for Delegate and to candidates for Resident Commissioner.

b. Annual cost-of-living adjustment of limitations

The expenditure limitations imposed on the national committee of a political party and on State party committees, including any subordinate committees of the State committee, will increase each calendar year (beginning in 1976) by the amount of any per centum difference between the Consumer Price Index for the 12-month period prior to the calendar year in question and the calendar year 1974. At the beginning of each calendar year the Secretary of Labor will certify to the Federal Election Commission, and will publish in the Federal Register, the applicable per centum difference.

c. Determination of voting age population

See section I.C.1.c.(3) supra.

[I.C.3: Independent expenditures]

3. Limitation on independent expenditures (18 U.S.C. §608)

Except for expenditures made by or on behalf of a candidate by an authorized committee or an authorized person, no person may make any expenditure during a calendar year relative to a clearly identified candidate which, when added to all other expenditures made by such person during the year advocating the election or defeat of such candidate, exceeds $1,000.

Comment: It has been suggested that this provision may be an unconstitutional encroachment on First Amendment rights.

a. Clearly identified means:

(1) candidate's name appears; or

(2) photograph or drawing of candidate appears; or

(3) identity of candidate is apparent by unambiguous reference.

b. For purposes of computing the limitation on independent expenditures, expenditures do not include payments made or incurred by a corporation or labor organization which are not specifically prohibited by Federal law, such as:

(1) communications by a corporation to its stockholders and their families and by a labor organization to its members and their families;

(2) non-partisan get-out-the-vote activity by a corporation or a labor organization aimed at stockholders or members and their families; and

[I.C.3: Independent expenditures]

(3) establishment, administration and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or a labor organization.

Comment: This provision allows independent expenditures up to $1,000 in any calendar year in support of, or in opposition to, a candidate to be made by persons whom the candidate has neither authorized nor requested to make an expenditure. Such independent expenditures must be truly spontaneous on the part of the individual and in no way approved or encouraged by the candidate. When such expenditures in a calendar year exceed $100 in the aggregate, the person making the expenditure must file a prescribed report with the Commission. There is no limit on the number of candidates with respect to whom such $1,000 independent expenditures may be made. For example, an individual could make 50 $1,000 expenditures advocating the election of each of 50 Congressional candidates (for a total of $50,000) if each of these $1,000 expenditures qualified as an independent expenditure. Since such expenditures are not contributions, the $25,000 aggregate limit on contributions does not limit the amount of independent expenditures. The individual would have to report such expenditures to the Commission.

Clarification should be sought from the Federal Election Commission on the question of whether an individual may make one $1,000 independent expenditure advocating the election of candidate A and another $1,000 independent expenditure advocating the defeat of B, candidate A's opponent. That is, will the expenditure advocating the defeat of B be deemed to be an expenditure advocating the election of A which, when added to the expenditure advocating the election of A, would be in excess of the individual's $1,000 annual independent expenditure limitation?

The Federal Election Commission should also be consulted for clarification of the question of when, if ever, expenditures in support of an issue with which a candidate is strongly identified may constitute an independent expenditure in support of, or in opposition to, that candidate.

[I.C.4: Personal and family funds]

4. Limitations on expenditures from personal funds of the candidate and his immediate family (18 U.S.C. §608)

a. No candidate may make expenditures from his personal funds or those of his immediate family in connection with the candidate's campaigns during any calendar year for nomination for election, or election, to Federal office which, in the aggregate, exceed:

(1) $50,000 in the case of a candidate for President or Vice President;

(2) $35,000 in the case of a candidate for Senator or Representative from a State which is entitled to only one Representative; or

(3) $25,000 in the case of a candidate for Representative from a State which is entitled to more than one Representative or in the case of a candidate for Delegate or Resident Commissioner.

b. Immediate family means a candidate's spouse, any child, parent, grandparent, brother or sister of the candidate, and the spouses of such persons.

c. If an expenditure is made in a year other than the calendar year in which the election is held, and if the expenditure is made with respect to the election, then the expenditure will be deemed to have been made in the election year.

Comment: See the similar rule applicable to the aggregate limit on contributions by individuals (section I.B.4 supra). For example, if Representative Y spends $25,000 from his personal funds in 1975 with respect to his 1976 re-election campaign, that 1975 $25,000 expenditure will be deemed to

have been made in 1976 and will preclude Representative Y from making any further expenditures from his personal funds in 1976. Clarification should be sought from the Federal Election Commission on the question of which 1976 election the $25,000 expenditure will be counted against. That is, will it be counted against Representative Y's expenditure limitation in the 1976 primary election, a runoff election or the general election, or will it somehow be allocated between all 1976 elections?

d. No candidate or his immediate family may make advances or loans from their personal funds in connection with the candidate's campaign for nomination for election, or election, to Federal office,

UNLESS there is a written instrument disclosing the terms and conditions of the advance or the loan.

For purposes of computing the amount of expenditures made from the personal funds of the candidate or his immediate family, any such loan or advance will be counted as an expenditure only to the extent of the balance of such loan or advance outstanding and unpaid.

e. EXCEPTION: Any individual may satisfy or discharge, out of his personal funds or the personal funds of his immediate family, any debt or obligation which was outstanding on October 15, 1974, and which was incurred by him or on his behalf by any political committee in connection with any campaign ending before December 31, 1972 for election to Federal office.

Comment: This provision merely allows a candidate to spend his own funds, or the funds of members of his immediate family over which he has control, in his campaign up to the

prescribed limits. It does not permit a member of the candidate's immediate family to disregard applicable contribution limitations and spend the member's own funds in support of his relative's campaign. Legislative history states that it was intended that

> "members of the immediate family of any candidate shall be subject to the contribution limitations established by this legislation. If a candidate for the office of Senator, for example, already is in a position to exercise control over funds of a member of his immediate family before he becomes a candidate, then he could draw upon these funds up to the limit of $35,000. If, however, the candidate did not have access to or control over such funds at the time he became a candidate, the immediate family member would not be permitted to grant access or control to the candidate in amounts up to $35,000, if the immediate family member intends that such amounts are to be used in the campaign of the candidate. The immediate family member would be permitted merely to make contributions to the candidate in amounts not greater than $1,000 for each election involved."

5. Prohibition of knowingly making an excessive expenditure (18 U.S.C. §608)

   a. No candidate or political committee may knowingly make an expenditure in violation of the limitations imposed on expenditures.

   b. No officer or employee of a political committee may knowingly make any expenditure on behalf of a candidate in violation of the limitations imposed on expenditures.

6. Prohibition of contributions or expenditures by national banks, corporations or labor organizations (18 U.S.C. §610)

See section I.B.8 supra.

7. Penalties (18 U.S.C. §608)

Unless a different penalty is specified in the discussion of a particular limitation or prohibition in this section C, any person who violates any federal statutory restriction on expenditures may be fined not more than $25,000 or imprisoned for not more than one year or both.

8. Effective date (§410 of the 1974 Amendments)

All the restrictions on expenditures discussed in this section C became effective no later than January 1, 1975.

D. Prohibition of specific election practices

1. Fraudulent misrepresentation of campaign authority (18 U.S.C. §617)

a. A candidate for Federal office or an employee or agent of the candidate

(1) may not fraudulently misrepresent himself or any committee or organization under his control as speaking, writing or otherwise acting for or on behalf of another candidate or political party or agent or employee thereof on a matter which is damaging to the other candidate, political party or employee or agent thereof, and

(2) may not willfully and knowingly participate in or conspire to participate in any plan, scheme or design of fraudulent misrepresentation in violation of section I.D.1.a.(1) supra.

[I.D.1: Misrepresentation of campaign authority]

b. For each violation of this prohibition there may be imposed a fine of not more than $25,000 or imprisonment for not more than one year or both.

2. Miscellaneous

The Act leaves unchanged several provisions of the Federal Criminal Code which deal with election practices. These other miscellaneous provisions are:

a. Prohibition of publishing or distributing any statement concerning a candidate for Federal office which does not contain the names of the persons, associations, committee, or corporations responsible for the publication or distribution of the same and the names of the officers of each such association, committee or corporation. (18 U.S.C. §612)

b. Prohibition of intimidation of voters for the purpose of interfering with their right to vote. (18 U.S.C. §594)

c. Prohibition of administrative employees of the Federal, State or territorial governments using their official authority for the purpose of interfering with the nomination or election of any candidate for Federal office. (18 U.S.C. §595)

d. Prohibition of offering or accepting an expenditure in exchange for an agreement to vote or withhold a vote. (18 U.S.C. §597)

e. Prohibition of a candidate's promising, either directly or indirectly, to use his influence to appoint any person to

any public or private position or employment for the purpose of procuring support for his candidacy. (18 U.S.C. §599)

f. Prohibition of any person promising, either directly or indirectly, to secure for another person employment or any other benefit, provided for by any Act of Congress, in exchange for any political activity by that other person. (18 U.S.C. §600)

g. Prohibition of the direct or indirect deprivation of employment or other benefit, provided for by an Act of Congress, on the basis of political activity. (18 U.S.C. §601)

h. Prohibition of any officer or employee of the United States, or any person receiving compensation for services from the United States, directly or indirectly soliciting or receiving any contribution for any political purpose whatsoever from any other officer or employee of the United States, or from any person receiving compensation for services from the United States. (18 U.S.C. §602)

i. Prohibition of soliciting any contribution for any political purpose in a place which an officer or employee of the United States, or a person receiving compensation for services from the United States, occupies in the discharge of his official duties or in any navy yard, fort or arsenal. (18 U.S.C. §603)

j. Prohibition of any officer or employee of the United States, or any person receiving compensation for services from the United States, intimidating any other such person with loss of job or promotion for the purpose of securing a political contribution. (18 U.S.C. §606)

k. Prohibition of any officer, clerk or other person in the service of the United States delivering any political contribution to any other such officer, clerk or person. (18 U.S.C. §607)

l. Prohibition of solicitation or receipt of a political contribution from any person known to be entitled to relief benefits provided by any Act of Congress. (18 U.S.C. §604)

m. Prohibition of disclosure to, or receipt by, any candidate, political committee or campaign manager of a list of persons entitled to relief benefits provided by any Act of Congress. (18 U.S.C. §605)

n. Prohibition of using relief appropriations for the purpose of interfering with any person's right to vote. (18 U.S.C. §598)

o. Prohibition of stationing troops at the polls. (18 U.S.C. §592)

p. Prohibition of interference by armed forces in elections. (18 U.S.C. §593)

q. Prohibition of polling members of the armed forces. (18 U.S.C. §596)

E. Effect on State law (§104 of the 1974 Amendments)

The Federal Criminal Code provisions described in this Chapter supersede and preempt any provisions of State law with respect to election to Federal office, as of October 15, 1974.

Comment: Legislative history makes it clear that "Federal law occupies the field with respect to criminal sanctions relating to limitations on campain expenditures, the sources of campaign funds used in Federal races, the conduct of Federal campaigns, and similar offenses, but does not affect the States' rights to prohibit false registration, voting fraud, theft of ballots, and similar offenses under State law."