FEDERAL ELECTION COMMISSION

RECORD

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REPORTS

FEC MAKES AVAILABLE NEW PRESIDENTIAL REPORTING FORMS

On February 16, 1983, the Commission made available a revised reporting form (FEC Form 3P) for authorized committees of Presidential candidates. The new Form 3P supersedes the old Form 3P. The new form must be used by all Presidential committees filing reports with the FEC.

The new Form 3P provides for fuller disclosure of campaign finance information, as required by the 1979 amendments to the election law. The Commission has also modified the format of the form to facilitate disclosure of campaign finance information. For example, the line spacing on the new form corresponds to typewriter spacing.

In late March, the Commission will send the new Form 3P to all authorized Presidential committees and to those Presidential exploratory committees which have voluntarily registered with the FEC.* Presidential committees filing on a quarterly basis must use the new Form 3P to file their April quarterly report, due by April 15.

In the case of monthly filers, the Commission recommends that Presidential committees file an April quarterly report (using the new Form 3P) in lieu of filing monthly reports in February, March and April (using the old Form 3P). In this way, monthly filers can avoid difficulties arising from the use of two different report formats during one calendar year.

Questions and requests for forms should be addressed to the Public Communications Office, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463; or call 202/423-4068 or toll free 800/424-9530.

Under the election law, exploratory committees formed by individuals to test the waters for a potential Presidential candidacy are not required to register or report with the FEC.

REGULATIONS

PRIMARY MATCHING FUND REGULATIONS SENT TO CONGRESS

On January 24, 1983, the Commission transmitted to Congress revised regulations governing the payment of public money in the form of primary matching funds to Presidential primary candidates. These regulations will be promulgated 30 legislative days after their transmittal to Congress, provided neither the House nor the Senate disapproves them.

The intent of the proposed revisions is to clarify and simplify administration of the primary matching fund program. The changes have three major purposes: to clarify provisions in the law which have caused uncertainty in the past; to provide a fuller explanation of the certification and audit processes; and to cover aspects of the Presidential primary process not previously addressed in the FEC's Regulations. The following paragraphs highlight the major modifications. Readers should not, therefore, rely solely on this summary. Instead, they should consult the full text of 11 CFR Parts 106 and 9031-9039, published in the Federal Register on February 4, 1983 (48 Fed. Reg. 5224).

State-by-State Allocations

Presidential primary campaigns receiving public funds must agree to limit spending to both a national limit and a separate limit for each state.* The existing regulations provide few guidelines for allocating expenditures under the state limits. By contrast, the suggested revisions set out definite procedures for allocating particular types of expenditures. For example, they include specific methods for allocating media expenditures within a state (e.g., newspaper and t.v. political ads) and overhead expenses involving

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The national spending limit is $10 million plus a Cost of Living Adjustment (COLA). The state limit is based on the following formula: $200,000 plus COLA or 16 cents (plus COLA) x the state Voting Age Population, whichever is greater.

campaign activity in several states (e.g., costs of telephone calls between states or opinion polls conducted in two or more states).

Moreover, the revised regulations clearly establish "testing-the-water" disbursements as a category of allocable expenditures. Under a new provision, if an individual makes disbursements to test the waters for a potential Presidential candidacy and subsequently becomes a candidate, those payments become campaign expenditures subject to the spending limits.

Exemptions to State-By-State Spending Limits

Other provisions allow campaigns to exclude certain expenditures from the state spending limits. For example, one provision allows campaigns to exclude from the state spending limit up to 10 percent of overhead expenditures and campaign workers' salaries in a particular state. These are considered exempt compliance costs (i.e., expenditures to ensure compliance with the campaign finance law). Another 10 percent may be applied toward the limited exemption for fundraising. (If, however, a campaign wishes to exempt more than 10 percent of its overhead expenditures under either category, the campaign must fully document its claim to the larger exemption.) Such disbursements for compliance and fundraising are also exempt from the national spending limit.

Another proposed rule establishes a new category of **national campaign expenditures** which need not be allocated to the state spending limits, namely, expenditures for national campaign headquarter operations and for national advertising and opinion polls. The suggested revisions also clarify other types of expenditures which are not subject to the campaign's state-by-state spending limits, such as the salaries of campaign staff working in a state for four consecutive days or less or disbursements for producing media ads or for providing transportation and other services to media representatives. These expenditures are, however, subject to the campaign's national spending limit.

Submissions and Certifications

The proposed rules more closely reflect actual procedures followed in past elections for the submission and resubmission of contributions to be matched and for the Commission's certification of matching fund payments. Moreover, all requirements for matching fund submissions are consolidated under one section of the regulations.

One new provision, for example, allows a campaign to submit requests for matching funds by letter rather than a full matching fund submission.* The letter request must specify the amount of matchable contributions a campaign received subsequent to its last submission and must be accompanied by supporting bank documentation, such as validated deposit slips. The campaign's next submission must be a fully documented submission covering the letter request and the current submission. The Commission anticipates that this proposed change will almost halve the number of matching fund submissions prepared by campaigns while still providing for twice-monthly matching fund payments. Under another new provision, a campaign will no longer be required to alphabetize the back-up documentation (i.e., copies of all contributor checks) included with each submission made after its threshold submission. Instead, the checks may be presented in the order in which they are deposited with a reference on the contributor list to indicate the exact location of each check.

Matchable Contributions

The proposed rules answer a number of questions raised during the 1980 election cycle concerning the matchability of certain types of contributions. For example, a new provision states that contributions collected through joint fundraising with other candidates or committees are matchable contributions. (Although the Commission had matched joint fundraising proceeds in the 1980 Presidential election, it had never codified the rule.) The provision goes on to set out procedures for campaigns to follow when engaged in joint fundraising.

**A full matching fund submission contains a list of matchable contributions and includes each contributor's address and the amount of each contribution. The submission also includes a photocopy of each contributor check (or other written instrument) and supporting bank documentation showing that the funds were deposited. These contributions must be submitted in accordance with the Commission's Guideline for Presentation in Good Order.*

The Record is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: Danny Lee McDonald, Chairman; Lee Ann Elliott, Vice Chairman; Joan D. Aikens; Thomas E. Harris; John Warren McGarry; Frank P. Reiche; William F. Hildenbrand, Secretary of the Senate, Ex Officio; Benjamin J. Guthrie, Clerk of the House of Representatives, Ex Officio. For more information, call 202/523-4068 or toll-free 800/424-9530.

In a change from 1980 policy, the proposed regulations provide that the full price for admission to a fundraising event, such as a concert, may be a matchable contribution if it otherwise meets the requirements. Contributions received when an individual tests the waters for a potential Presidential candidacy may also be matched, according to the proposed rules, once the individual declares his/her candidacy and if the contributions meet the standards for matchability. In addition, the revisions include new matchability standards for contributions made by money orders or cashier's checks.

Sale of Assets

The proposed regulations address the issue of whether campaigns may sell fundraising items either donated to or purchased by the campaign, such as artwork. A suggested provision permits campaigns to sell such assets, though the amount paid would be a contribution subject to the law's limits and prohibitions. However, the provision includes an exception for campaigns whose outstanding debts exceed their cash on hand at the end of the matching payment period. These campaigns may sell assets acquired for fundraising purposes to a wholesaler or other intermediary, who may, in turn, sell the assets to the public. The proposed rules specify that, in this case, the sale proceeds do not count as campaign contributions from either the wholesaler or the purchaser.

Review and Investigative Authority

The proposed rules clarify the Commission's statutorily mandated authority to conduct audits of campaigns receiving matching funds. They fully describe the audit process, including audit fieldwork and the preparation, content and public release of audit reports.

Repayments

Other provisions explain the candidate's obligation, under certain circumstances, to repay matching funds. The revised regulations also provide candidates with an opportunity to contest an initial Commission determination that the campaign must repay public funds. Under the new rules, campaigns that submit written statements contesting a repayment determination can also be granted an oral hearing upon an affirmative vote of four Commissioners.

OPINIONS

ADVISORY OPINION REQUESTS

The following chart lists recent requests for advisory opinions (AORs). The full text of each AOR is available to the public in the Commission's Office of Public Records.

AOR	Subject
1983-3	Affiliation of utility company's state and federal PACs; transfer of funds between them. (Date made public: January 19, 1983; Length: 5 pages, plus 12-page supplement)
1982-4	PAC funds used for lobbying expenses of parent labor organization. (Date made public: January 19, 1983; Length: 1 page)
1982-5	Campaign funds used to reward regular contributors. (Date made public: January 27, 1983; Length: 1 page)
1982-6	Settlement of disputed bill reached by hotel corporation and county party organization. (Date made public: February 4, 1983; Length: 1 page, plus 4-page supplement)

ADVISORY OPINIONS: SUMMARIES

An Advisory Opinion (AO) issued by the Commission provides guidance with regard to the specific situation described in the AOR. Any qualified person who has requested an AO and acts in accordance with the opinion will not be subject to any sanctions under the Act. Other persons may rely on the opinion if they are involved in a specific activity which is indistinguishable in all material aspects from the activity discussed in the AO. Those seeking guidance for their own activity, however, should consult the full text of an AO and not rely only on the summary given here.

AO 1982-60: Services Provided by Congressional Fellow to Congressman's Legislative Staff

The American Society of Mechanical Engineers (ASME), a nonprofit professional society, sponsors a Congressional Fellowship Program under which an ASME member takes a year's leave of absence from his or her company and serves full time on the staff of a member of Congress or on a Congressional committee. During 1983, an ASME fellow plans to work on a Congressman's legisla-

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tive staff. Financial support provided to the fellow by ASME or his company will not result in a prohibited corporate contribution to the Congressman, as long as this compensation does not cover any campaign activities the fellow might undertake on behalf of the Congressman (or any other federal candidate or political committee).

The Commission noted that this opinion superseded a previous opinion issued to ASME in 1975 (OC 1975-63), which held that 18 U.S.C. §610 (now 2 U.S.C. §441b) prohibited corporate financial support for ASME fellows assigned to the staff of a Member of Congress, while permitting such support to ASME fellows assigned to a Congressional committee.

The Commission did not address the application of House or Senate rules since they are outside its jurisdiction. (Date issued: January 21, 1983; Length: 2 pages)

AO 1982-61: Association's Solicitation Plan; Disposition of Corporate Donations Used for Administering PAC

The Association of Trial Lawyers of America (ATLA), an incorporated membership association consisting of individual members, may solicit contributions to its separate segregated fund, the Attorneys Congressional Campaign Trust (ACCT), by implementing a combined dues payment/political contribution plan. Moreover, checks representing combined payments from members may be deposited in ATLA's general treasury fund and either transmitted to ACCT for use as political contributions or, in the case of checks drawn on corporate accounts, used to defray ACCT's administrative expenses. Contributions drawn on corporate accounts may be used by ATLA to pay for the administrative costs of ACCT, but the checks may not be transmitted to an "ACCT Administrative Fund" under the control and direction of ACCT.

Under a proposed plan, ATLA will send members a statement billing them for both membership dues and a contribution, payable by one check for the total amount. The billing statement will indicate that ATLA's contribution guidelines are merely suggestions, that the contributor may give more or less than the suggested amount and that no member will be favored or disfavored by the amount of his or her contribution. 11 CFR 114.5 (a)(2). However, if a member pledges future contributions to ACCT by checking off a box on the statement, ATLA must include all the solicitation information (described above) on any subsequent billing statement or reminder.

Upon receiving the checks, ATLA plans to deposit them in its general treasury fund, along with other ATLA receipts. In a timely manner, ATLA will forward directly to ACCT those funds to be used for political contributions (i.e., funds derived from checks drawn on members' personal checking accounts). ATLA will also forward a list of the contributors' names. See 2 U.S.C. §432(b)(2) and 11 CFR 102.8(b), 103.3(d).

Of the two methods proposed for using corporate donations (i.e., checks drawn on corporate accounts) to pay for ACCT's administrative expenses, only one is permissible. ATLA may retain the corporate donations in its general treasury fund and pay ACCT's administrative expenses directly from the fund. See 2 U.S.C. §441b(b)(2)(C); 11 CFR 114.1(b) and 114.5(b); AO's 1982-36 and 1980-59. However, ATLA may **not** forward the donations from its general treasury fund to a separate ACCT Administrative Fund, which would be under the "control and direction of the governing body of ACCT." This method is not permissible because, under FEC Regulations, a sponsoring organization (i.e., a corporation or labor organization) may exercise control over its separate segregated fund, but a separate segregated fund may not exercise control over its sponsor's funds. 11 CFR 114.5(d). See also California Medical Association v. FEC, 453 U.S. 182 (1981) and AFL-CIO v. FEC 628 F.2d 97 (D.C. Cir. 1980). (Date issued: January 21, 1983; Length: 7 pages)

AO 1982-62: Eligibility of 1980 New Party Presidential Candidate for General Election Public Funding Prior to the 1984 General Election

Mr. John Anderson, a 1980 new party Presidential candidate who received public funding for his general election campaign **after** the 1980 general election, meets two of the three eligibility requirements for receiving general election public funding **prior** to the 1984 general election, should he became a candidate for the Presidency in 1984.

Under Section 9004(a)(2)(B) of the Presidential Election Campaign Fund Act (the Fund Act), a Presidential candidate is entitled to receive general election public funding **prior** to the Presidential general election if the candidate: 1) was a candidate of a political party in the preceding Presidential general election, 2) received five percent or more but less than 25 percent of the total popular votes cast for all Presidential candidates in that election and 3) is the candidate of one or more political parties (other than a major party) for the upcoming Presidential election. As a new party candidate in 1980, Mr. Anderson satisfied the first two eligibility requirements. However, the Commission found that it did not have sufficient facts before it to determine whether Mr. Anderson would satisfy the third eligibility requirement.

As to any future Commission action, once the Commission determines that Mr. Anderson has complied with all the conditions for eligibility (see 26 U.S.C. §§9002(2), 9003, 9004 and 9005), it will certify his initial payment to the U.S. Treasury. Certification must occur within 10 days after the Commission decides that Mr. Anderson is eligible.

The Commission was not asked to address the question of whether, as an independent, nonparty candidate, Mr. Anderson would qualify for pre-general election public funding in 1984 under the Fund Act. (Date issued: February 8, 1983; Length: 4 pages)

AO 1982-63: Check-Off System Used by Law Partnership to Solicit Funds to Its PAC

Manatt, Phelps, Rothenberg & Tunney (the Firm), a law partnership, may implement a check-off system to facilitate the making of contributions to the Manatt, Phelps, Rothenberg & Tunney Political Action Committee (the PAC) from the Firm's noncorporate partners and from the employees of its corporate partners. Although it is located on Firm premises and is operated by Firm personnel, the PAC was established as a nonconnected political committee (i.e., a political committee without a corporate sponsor). Accordingly, in addition to steps the Firm must take to ensure that its corporate partners do not indirectly contribute to the PAC in facilitating contributions from their employees, the Firm must ensure that expenses it incurs in administering the check-off plan do not result in excessive or corporate contributions to the PAC.

Proposed Check-off Plan

Following the guidelines for partnership contributions spelled out in Section 110.1(e) of the Regulations, a noncorporate partner would authorize the Firm to withhold a designated amount from the partner's share of Firm profits. The Firm would then transfer this amount to the PAC. An employee of a corporate partner would authorize the partner to deduct the contribution from his or her salary. To expedite the transfer of the employee's contribution to the PAC, the corporate partner would authorize the Firm to deduct the contribution from the partner's share of Firm profits. The Firm would then transfer the amount designated to the PAC.

Conditions of Operating the Plan

To ensure that neither the Firm nor its partners make excessive or prohibited corporate contributions to the PAC, expenditures the Firm makes to administer the plan (e.g., costs incurred in using Firm facilities, personnel, supplies and services) must be treated as in-kind contributions to the PAC from the Firm. As in-kind contributions, they must be attributed only to the noncorporate partners in the Firm. The Firm may not contribute more than $5,000 per year to administer the plan (or the PAC). Alternatively the PAC may reimburse the Firm for expenditures which the Firm incurs in administering the check-off plan. All PAC transactions are reportable.

Firm employees may provide legal and accounting services to the PAC during regular work hours, but solely to ensure compliance with the Act. While these compliance services are specifically exempt from the Act's definitions of "contribution" and "expenditure" (11 CFR 100.7(b)(14)), they are reportable by the PAC.

In authorizing the Firm to deduct a share of its profits to cover employee contributions, a corporate partner must take steps to ensure that it does not **indirectly** make prohibited corporate contributions to the PAC. Accordingly, a corporate partner may not deduct from its profits more than the amount needed to deduct an employee's contribution. Nor may the corporate partner base an employee's salary level on his or her contributions to the PAC. 2 U.S.C. §441b; 11 CFR 114.5 (b)(1).

The Commission distinguished this advisory opinion from earlier opinions involving partnership contribution plans. The earlier opinions* dealt with partnership contributions to candidates facilitated through various administrative mechanisms. In those situations, reporting by the partnerships was not required. By contrast, in this opinion, a partnership has established a nonconnected political committee subject to the law's reporting provisions. The committee, not the partnership, makes contributions to candidates. Commissioner Frank P. Reiche filed a concurring opinion. Commissioner Thomas E. Harris filed a dissenting opinion. (Date issued: February 10, 1983; Length: 8 pages, including concurring and dissenting opinions)

AO 1982-65: PAC Information Provided in Corporation's Annual Report

The Union Carbide Corporation (Union Carbide) may insert a notice in its 1982 annual report regarding the availability of information on its separate segregated fund, the Union Carbide Corporation Political Action Committee (UCCPAC). The notice will be solely informational; it will not encourage or facilitate contributions to the PAC. Accordingly, the notice will not be considered a

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**See AO's 1979-77, 1980-72, 1981-50 and 1982-13.*

solicitation for PAC contributions and will not require the authorization statement specified in 2 U.S.C. §441d.

Similarly, Union Carbide's response to informational requests generated by the notice will not be considered solicitations of either solicitable shareholders or other nonsolicitable individuals who receive the report.* The response Union Carbide sends to **solicitable** shareholders will only include information on contributions made to UCCPAC in the previous year, as well as some information on contribution guidelines and UCCPAC members. Furthermore, the response will explicitly state that Union Carbide plans to reject any contributions sent in response to the annual report notice. The response Union Carbide sends to **nonsolicitable** individuals will provide no information on UCCPAC, but will merely direct requesters to consult information on UCCPAC filed with the FEC. See also AO's 1979-13, 1979-66 and 1980-65. (Date issued: February 4, 1983; Length: 4 pages)

AO 1982-66: Merchandising Program to Promote Fictitious 1984 Presidential Candidate

A merchandising program undertaken by a marketing corporation to promote a fictitious 1984 Presidential candidate (i.e., George Orwell) would not be subject to the election law, as long as the program did not attempt to influence the election or defeat of an actual person. (See AO's 1978-72 and 1982-30.) However, depending on the facts, production costs incurred for promotional items that referred to actual candidates could be regarded as election-influencing expenditures subject to the Act. 2 U.S.C. §§431 and 441b. (Date issued: February 4, 1983; Length: 2 pages)

Approximately 70 percent of those receiving the report are ineligible for UCCPAC solicitations. Among these are Union Carbide's foreign shareholders who are prohibited by 2 U.S.C. §441e from being solicited for, or making, contributions in connection with American elections.

COURT CASES

NEW LITIGATION

Citizens for LaRouche v. FEC

Pursuant to 26 U.S.C. §9041, Lyndon H. LaRouche, a candidate for the Democratic Party's Presidential nomination in 1980, and Citizens for LaRouche, his principal campaign committee, ask the appeals court to review a final determination made by the FEC on December 16, 1982. The FEC's determination required the LaRouche campaign to repay $54,671.84 in primary matching funds to the U.S. Treasury. (The FEC had certified the funds to the LaRouche campaign during 1980.)

U.S. Court of Appeals for the District of Columbia Circuit, Docket No. 83-1050, January 11, 1983.

Orloski v. FEC

Pursuant to 2 U.S.C. §437g(a)(8), plaintiff asks the district court to review and reverse an FEC decision dismissing an administrative complaint filed by plaintiff on September 27, 1982. In the complaint, plaintiff had alleged that a picnic organized by a group of senior citizens was a political event on behalf of a candidate, requiring the group to register as a political committee. Plaintiff also alleged that, in sponsoring the picnic, the group had accepted prohibited corporate contributions.

U.S. District Court for the District of Columbia, Docket No. 83-0026, January 7, 1983.

FEDERAL REGISTER

FEDERAL REGISTER NOTICES

The items below identify FEC documents that appeared in the Federal Register during January and February 1983. Copies of these notices are available in the Public Records Office.

Notice	Title
1983-3	11 CFR Parts 106 and 9031-9039: Presidential Primary Matching Fund; Transmittal of Regulations to Congress (48 Fed. Reg. 5224, February 4, 1983)
1983-4	Filing Dates for New York Special Election (48 Fed. Reg. 4320, January 31, 1983)

STATISTICS

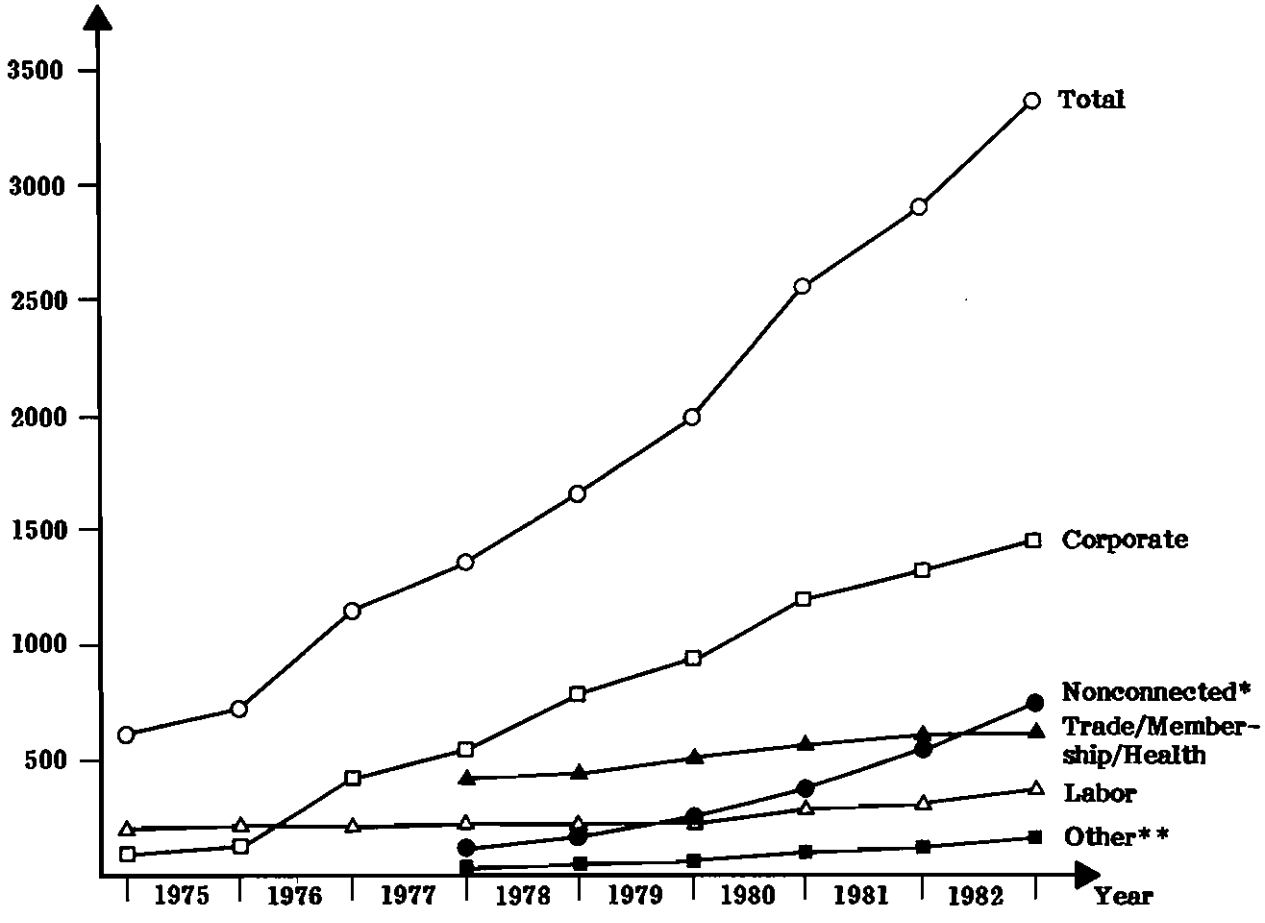
1982 PAC GROWTH

The number of PACs registered with the FEC continued to increase during 1982. By the year's end, there were 3,371 PACs, an increase of 16.2 percent over the 2,901 PACs registered at the end of 1981. (The term PAC or political action committee includes all political committees not authorized by a federal candidate and not established by a political party).

Figures released by the FEC in mid-January show that yearly increases in the number of PACs since 1976 have averaged 20 percent, with the exception of 1980, when PACs increased by 28 percent. However, between 1974 and 1976, PAC numbers grew by 88 percent. PACs formed by corporations without capital stock showed the greatest percentage increase in 1982 -- up by 51.5 percent over 1981 to a total of 103 PACs.

The graph below plots the growth of PACs between 1975 and 1982. Figures show that 608 PACs existed at the beginning of 1975. By the end of 1976, that number had risen to 1,146 and by December 31, 1982, had reached 3,371. The graph does **not** reflect the financial activity of PACs.

PAC GROWTH



For the years 1974 through 1976, the FEC did not identify subcategories of PACs other than corporate and labor PACs. Therefore, numbers are not available for Trade/Membership/Health PACs and Nonconnected PACs.

***Includes PACs formed by corporations without capital stock and cooperatives. Numbers are not available for these categories of PACs from 1974 through 1976.*

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