OPEN-ENDED INTERGOVERNMENTAL WORKING GROUP ON THE
PREVENTION OF CORRUPTION

ARTICLE 7 UNCAC

MEASURES RELATED TO POLITICAL PARTIES AND ELECTION
CANDIDATES

UNITED STATES (FIFTH SESSION)

Part II, Question 1: Please describe the legislative and administrative measures you
have taken to prevent corruption in the public sector. In particular, please provide
information on measures you have taken to enhance transparency in the funding of
candidatures for elected public office and the funding of political parties.

States parties may wish to cite and describe measures that:

- Establish a legal definition of what constitutes a donation or contribution to a
candidate for public office or a political party;
- Require public disclosure of donations received by candidates for public office
and political parties, including the identity of individual and corporate donors;
- Establish a ceiling or limits on donations that can be made to candidates or
political parties;
- Clarify the permissibility and limits applicable to donations by foreign donors or
legal entities owned in whole or in part by the State;
- Establish regular financial reporting obligations of donations and expenditures,
including pre- and post-election, for candidates and political parties;
- Apply sanctions for the violation of any relevant laws, rules and regulations
applicable to political candidates or political parties; and
- Allow for the independent monitoring of financing of political candidates or
political parties.

Federal Election Commission

I. Introduction

In the United States, the financing of elections is regulated at the federal level and at the
state and local levels. The Federal Election Commission regulates the financing of
elections for federal offices – President, Vice President, the House of Representatives,
and Senate.

The Commission is the federal agency tasked with implementing, interpreting, and civilly
enforcing campaign finance laws and regulations. The Commission is an independent
agency comprised of six members appointed by the President of the United States with the advice and consent of the United States Senate. 2 U.S.C. § 437c(a). No more than three of the Commissioners may belong to the same political party. Id. The Commissioners are appointed to a single six-year term. Id. The Department of Justice is charged with criminal enforcement of campaign finance laws. See 2 U.S.C. § 437g(d).

The Commission’s activities are grouped into four categories: facilitating disclosure of campaign finance reports, interpreting the law, enforcing the law, and administering the public financing of presidential campaigns. The Commission makes public on its website all reports filed by political committees, as well as its own analysis and data generated from those reports. The Commission also clarifies the Federal Election Campaign Act (the “Act” or “FECA”) by issuing regulations, advisory opinions, and other forms of public guidance.

II. FECA Limitations and Prohibitions on Contributions to Candidates and Political Parties

FECA places limits on contributions by individuals and groups to candidates, political party committees, and other political committees. 2 U.S.C. § 441a. A contribution is “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing an election for Federal office.” 2 U.S.C. §431(8)(A)(i); see also 11 C.F.R. 100.52(a). The chart below shows how the contribution limits apply to the various participants in federal elections for the 2013-14 election cycle.
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<table>
<thead>
<tr>
<th>Contribution Limits 2013-14</th>
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</thead>
<tbody>
<tr>
<td><strong>To each candidate or candidate committee per election</strong></td>
</tr>
<tr>
<td>Individual may give</td>
</tr>
<tr>
<td>National Party Committee may give</td>
</tr>
<tr>
<td>State, District &amp; Local Party Committee may give</td>
</tr>
<tr>
<td>PAC (multicandidate) may give</td>
</tr>
<tr>
<td>PAC (not multicandidate) may give</td>
</tr>
<tr>
<td>Authorized Campaign Committee may give</td>
</tr>
</tbody>
</table>

* These contribution limits are indexed for inflation.

1. A contribution earmarked for a candidate through a political committee counts against the original contributor's limit for that candidate. In certain circumstances, the contribution may also count against the contributor's limit to the PAC. 11 CFR 110.6. See also 11 CFR 110.1(h).
2. This limit is shared by the national committee and the national Senate campaign committee.
3. A multicandidate committee is a political committee with more than 50 contributors which has been registered for at least 6 months and, with the exception of state party committees, has made contributions to 5 or more candidates for federal office. 11 CFR 100.5(e)(3).
4. A federal candidate's authorized committee(s) may contribute no more than $2,000 per election to another federal candidate's authorized committee(s). 11 CFR 102.12(c)(2).
FECA further restricts contributions by corporations, labor organizations, and federal
government contractors. See 2 U.S.C. §§ 441b, 441c. FECA also provides that foreign
nationals may not contribute, donate, or spend funds in connection with any federal, state,
or local election in the United States, either directly or indirectly. 2 U.S.C. § 441e.
Foreign nationals subject to this prohibition include foreign governments, political
parties, corporations, associations, partnerships, and individuals who are neither United
States citizens nor lawfully admitted for permanent residence in the United States. Id.;
see also 22 U.S.C. § 611(b) (defining foreign national).

In addition, FECA imposes the following restrictions on contributions:

- No one may make a contribution in another person’s name. 2 U.S.C. § 441f.
- No one may make a contribution in cash of more than $100. 2 U.S.C. § 441g.
- No anonymous contribution in excess of $50 may be accepted by any candidate or
candidate’s political committee. 2 U.S.C. § 432(c)(2); 11 C.F.R. § 110.4(c)(3).

While FECA contains limitations and prohibitions on contributions, as described above,
it generally does not impose limitations on spending. In 1976, the United States Supreme
Court determined that such limitations violated the U.S. Constitution. See Buckley v.
Valeo, 424 U.S. 1, 23 (1976).

See Attachment A (FEC Contributions Brochure), available at

III. Disclosure Requirements

FECA requires all political committees — including candidate campaign committees and
political party committees — to file periodic reports disclosing the money they receive
and spend. 2 U.S.C. § 434; see also 11 C.F.R. § 104.3. All reports filed with the FEC are
publicly available on the FEC’s website www.fec.gov.

Candidates and political party committees must identify on their periodic reports all
political committees that contribute to them and those individuals who contribute, in the
aggregate, more than $200 in an election cycle. The reports also must identify the date of
the contribution, the contributor’s name, address, occupation, and the name of the
contributor’s employer. The threshold for detailed disclosure is based on the aggregate,
therefore, a series of smaller contributions that add up to more than $200 must be detailed
once the $200 mark is passed. All other types of receipts (loans, refunds received, inter
committee transfers, interest income, etc.), are also reported, subject to the $200
threshold.
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Political committees also must report all disbursements. When disbursements to a particular payee exceed a total of $200 during an election cycle (for candidates) or a calendar year (for other political committees), a political committee must provide detailed information about the payee, including the name and address of the payee, the date and amount of the disbursement, and the purpose of the disbursement. Certain types of disbursements must be detailed regardless of amount, including loans made, loan repayments made, transfers and contributions to other political committees, and the refund of contributions previously received.

Candidate campaign committees and political party committees must keep detailed records of receipt and disbursement information. 2 U.S.C. § 432(c); see also 11 C.F.R. § 102.9. The political committee treasurers are responsible for keeping these records and copies of all reports filed for three years.

IV. Sanctions for Violations of Law

The Commission possesses civil jurisdiction to enforce the FECA, including the powers to investigate and file suit in federal court. 2 U.S.C. §§ 437d, 437g. The Commission has the authority to depose witnesses and subpoena testimony and documentary evidence in the course of its investigations. See 2 U.S.C. § 437d.

The Commission receives complaints of violations from the public, through its internal review of disclosure reports, by referral from other government agencies, and by individuals who believe they may have violated campaign finance law. If the Commission concludes that there is “reason to believe” or “probable cause to believe” a violation of the law has occurred, the Commission attempts to resolve the matter through a conciliation agreement, which may require the payment of a civil penalty or other remedial measures. 2 U.S.C. § 437g. If agreement cannot be reached between the Commission and respondent, the Commission has authority to bring suit in federal court. 2 U.S.C. § 437g(a)(6).

In enforcement matters where the only violation is a political committee’s failure to file a report on time (or at all), the Commission has the authority to impose civil penalties directly, without engaging in conciliation or filing suit in court. 2 U.S.C. § 437g(a)(4)(C); 11 C.F.R. §§ 111.30-.46. Congress recently enacted legislation extending and expanding the Commission’s authority to impose civil penalties directly, and the Commission is considering the implementation of this new law.

The Commission further administers an alternative dispute resolution program through which certain cases may be negotiated to a mutually agreeable settlement. While an
agreement reached in such cases may contain a monetary penalty, its primary focus is generally on remedial terms negotiated by the parties.

The Commission also has the authority to audit political committees’ financial disclosure reports and underlying records. 2 U.S.C. § 438(b). The Commission audits all presidential campaigns that receive public funds.

Finally, the Commission may refer cases involving knowing and willful FECA violations to the U.S. Department of Justice for criminal prosecution, which may result in criminal fines and imprisonment. 2 U.S.C. § 437g(a)(5)(c).