FEDERAL ELECTION COMMISSION

RECORD

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LEGISLATION

CONGRESS ENSURES VOTING ACCESS FOR ELDERLY AND HANDICAPPED

On September 28, 1984, the President approved the Voting Accessibility for the Elderly and Handicapped Act. Pub. L. 98-435. The Act stipulates that registration and polling places for federal elections must be accessible to handicapped and elderly individuals. For the next five election cycles, the states will report to the FEC on difficulties faced and actions taken to enhance accessibility. The FEC will then compile the state information and forward a summary report to Congress.

REGULATIONS

ACCESS TO FEC INFORMATION

On October 19, 1984, the Commission prescribed regulations governing the fees for reproduction of materials made available to the public by the FEC's Public Records Office or through the Freedom of Information Act (FOIA). 11 CFR Parts 4 and 5. (For a summary of these regulations, see page 1 of the July 1984 Record.) The revised regulations update current fee schedules, change the billing procedure for microfilm and computer tape requests, and clarify that the FEC does not charge for staff time devoted to duplicating information made available under the FOIA. The final rules were published in the Federal Register on July 31, 1984. (49 Fed. Reg. 30458) Copies are available from the Commission's Public Records Office.

HANDICAPPED PERSONS' ACCESS TO FEC PROGRAMS

On November 2, 1984, the agency prescribed regulations which will implement and enforce section 504 of the Rehabilitation Act of 1973, as amended. 11 CFR Part 6. The rules prohibit discrimination on the basis of handicap in FEC programs and activities. (For a summary of these rules, see page 2 of the August 1984 Record.) They were published in the Federal Register on August 22, 1984. (49 Fed. Reg. 33206) Copies are available from the Commission's Public Records Office.

OPINIONS

AO 1984-46: Funds Transferred from 1984 State Campaign to 1982 Federal Campaign for Debt Retirement

Mr. Rod Johnston may transfer funds from his 1984 campaign for state office (the state committee) to his unsuccessful campaign for federal office in 1982 (the federal committee) to help

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retire the federal committee's remaining debts. Since the state committee and the federal committee are considered affiliated committees by virtue of Mr. Johnston's control over both of them, unlimited funds may be transferred between the two committees. The Act and Commission Regulations impose, however, certain requirements on both committees, depending on the amount of funds transferred between them.

Specifically, if Mr. Johnston transfers more than $1,000 from the state committee to the federal committee during the year, the state committee must register and report as a "political committee" under the Act. 2 U.S.C. §431(4)(A); 11 CFR 100.5 and 102.6(a). The state committee may file only one report, using it as both the initial and terminating report. On the report, the state committee, newly registered as a political committee, must disclose the amount to be transferred as cash on hand, itemizing these funds, where appropriate, on the basis of "last in, first on hand." 2 U.S.C. §434(b). The state committee must exclude any impermissible contributions from the funds transferred to the federal committee. Similarly, the state committee must exclude from the transfer any contributions which, when added to contributions already made by the same donor to the federal committee, would cause the donor to exceed contribution limits. 2 U.S.C. §441a(a)(1) and (2). On the same report, the state committee must also disclose the transfer of these funds to its affiliated federal committee. The federal committee, in turn, reports the transfers as a "miscellaneous receipt" from the state committee.

The Commission expressed no opinion on the application of state laws to the proposed transfer because the Act does not supercede state provisions governing disposition of state campaign funds. Nor did the Commission address relevant state and federal tax rules because they are not within its jurisdiction. (Date issued: October 12, 1984; Length: 4 pages)

AO 1984-47: Former Congressman's Personal Use of Excess Funds From 1982 and 1984 Primary Campaigns

Mr. Peter A. Peyser, a former member of Congress, may make personal use of excess campaign funds remaining from unsuccessful primary campaigns he waged in 1982 and 1984. Although the 1979 amendments to the election law prohibit candidates from converting excess funds to personal use, the amendments do not apply to individuals, such as Mr. Peyser, who were members of Congress on January 8, 1980. 2 U.S.C. §439a.

The Commission did not address related tax issues since they are not within its jurisdiction. (Date issued: October 18, 1984; Length: 2 pages)

AO 1984-49: Excess Campaign Funds Used for Travel of Aide

The Geraldine A. Ferraro for Congress 1984 Committee (the Committee), the principal campaign committee for the Congressional campaign Ms. Ferraro waged before accepting the Democratic Party's Vice Presidential nomination, may use excess funds remaining from the campaign to reimburse Ms. Ferraro's Executive Assistant for travel expenses she incurred while accompanying Ms. Ferraro to the June 1984 annual convention of the National Organization of Women (NOW). At that time, Ms. Ferraro was a candidate for the House of Representatives. Because Ms. Ferraro was a member of Congress on January 8, 1980,* the law permits her to use excess campaign funds for personal use. Consequently, she may use excess funds from her Congressional campaign to cover the travel costs of her aide, regardless of the purpose of the trip. (The advisory opinion request did not specify the purpose of the trip but did state the trip was not "official.") 2 U.S.C. §439a.

Reporting Requirements

If the travel reimbursement exceeds $200, the Committee should report it as an itemized "other" disbursement with a brief description of its purpose, such as "travel expense reimbursement for noncampaign travel." 11 CFR 104.3(b)(4)(vi). (Date made public: October 18, 1984; Length: 2 pages)

**The law prohibits candidates who were not members of Congress on January 8, 1980, from using excess campaign funds for personal use.*

The Record is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: Lee Ann Elliott, Chairman; Thomas E. Harris, Vice Chairman; Joan D. Aikens; Danny Lee McDonald; 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.

AO 1984-50 In-Kind Contributions Made by Vice Presidential Candidate's Former Congressional Campaign to National Party Committee

The Geraldine A. Ferraro for Congress 1984 Committee (the Committee), Ms. Ferraro's principal campaign committee for the Congressional campaign she conducted prior to becoming the Democratic Vice Presidential nominee, may contribute 500 caricature cards (valued at $95.05) and 12 caricature posters (valued at $13.80) to the Democratic National Committee's (DNC's) 1984 Victory Fund.* The cards and posters qualify as excess campaign funds because they are part of the Committee's assets and are not needed to defray the Committee's campaign expenses. Candidate committees may transfer excess campaign funds without limit to party committees. 11 CFR 113.1(e) and AO 1981-11.

Reporting Requirements

On the Detailed Summary Page (FEC Form 3), the Committee should disclose the transaction as a negative entry on the same line that the Committee originally used to disclose the payments for the cards and posters. The transfer should also be disclosed on the Detailed Summary Page as "other disbursements" and itemized on Schedule B as an "unlimited in-kind contribution from excess campaign funds." 11 CFR 104.3(b)(4).

The DNC should report the receipt of the in-kind contribution on the Detailed Summary Page under "contributions from other political committees" (line 11c) and should itemize it on Schedule A as an in-kind contribution. The transaction should also be disclosed as an operating expenditure on Schedule B, with a note indicating that the funds represent the value of an in-kind contribution from the Ferraro committee. (Date issued: October 29, 1984; Length: 3 pages)

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
1984-56	Income from book considered honorarium from publisher. (Date made public: October 25, 1984; Length: 2 pages)
1984-57	Corporate communication on legislation distributed to employees and retirees. (Date made public: November 1, 1984; Length: 5 pages, plus 6-page supplement)
1984-58	Presidential campaign's reimbursement to city for security services. (Date made public: November 5, 1984; Length: 2 pages, plus 2-page supplement)
1984-59	Committee's purchase of van for campaign purposes; reimbursements for non-campaign use. (Date made public: November 13, 1984; Length: 1 page)

Since the Committee did not explain how it had assessed the value of the cards and posters, the Commission did not address the validity of their value.

COURT CASES

DEMOCRATIC CONGRESSIONAL CAMPAIGN COMMITTEE v. FEC

On November 5, 1984, the U.S. District Court for the District of Columbia issued an order denying plaintiff's motion for a preliminary injunction in Democratic Congressional Campaign Committee v. FEC (Civil Action No. 84-3352).

Background

In its suit, filed on November 2, 1984, the Democratic Congressional Campaign Committee (the Committee) had sought action against the FEC for the agency's failure to expedite action on an administrative complaint that the Committee filed on October 22, 1984. In light of the November 6 general election, the Committee's administrative complaint had asked the FEC to initiate expedited enforcement proceedings against the Republican National Committee and the National Republican Congressional Committee for their alleged violations of the election law. In its civil complaint, the Committee asked the court to enter a permanent injunction directing the Commission to institute expedited enforcement proceedings concerning the violations of the election law alleged in the Committee's complaint. The Committee also asked the court to establish and announce the compliance standards no later than 5:00 p.m. on November 2, 1984.

In addition, the Committee sought a preliminary injunction ordering the Commission to give expedited consideration to the Committee's administrative complaint and to announce its determination on that complaint no later than 5:00 p.m. on November 2, 1984.

continued

Court's Ruling

On November 2, 1984, the court denied the Committee's motion for a preliminary injunction. The court concluded that it lacked jurisdiction to require the Commission to make an expedited decision on the Committee's administrative complaint because 120 days had not yet elapsed since the Committee had filed the complaint with the FEC. See 2 U.S.C. §437g(a)(8)(A). In addition, the court stated that it clearly lacked authority to direct the Commission to shorten the time period set forth in the Act's enforcement provisions because Congress had given that authority to the Commission's discretion. The Committee filed a notice of appeal on November 6, 1984.

McDONALD v. FEC

On October 5, 1984, the U.S. District Court for the District of Columbia granted the FEC's motion to dismiss George T. McDonald v. FEC (CA No. 84-2710) on grounds that Mr. McDonald had failed to prosecute the suit and to meet the statutory deadline for filing it. See 2 U.S.C. §437g(a)(8)(B).

In his suit, Mr. McDonald, a 1984 candidate for a House seat representing New York's 15th Congressional district, sought action against the FEC for dismissing an administrative complaint he had filed in May 1984. For a summary of the suit, see page 9 of the October 1984 Record.

ROSE v. FEC (Second Suit)

On October 31, 1984, the U.S. District Court for the District of Columbia issued an order in Rose v. FEC (Civil Action No. 84-2278) stating that the FEC's delay in acting on an administrative complaint filed by Congressman Rose was contrary to law. The court ordered the FEC to conform its conduct to the decision within 30 days of the court's order. See 2 U.S.C. §437g(a)(8).

Background

On July 24, 1984, Congressman Charles E. Rose had repetitioned the district court to issue an order requiring the FEC to take action on his administrative complaint, originally filed with the FEC in October 1982. (For summaries of previous action, see the following Record articles: August 1983, p. 9; April 1984, p. 10; and October 1984, p. 9.)

Court Rulings

On October 4, 1984, the district court found that the FEC had acted contrary to law by failing to resolve the complaint. However, after reviewing the case on appeal, on October 24, 1984, the appeals court summarily reversed the district court's original decision and remanded the case to the district court for reconsideration.

Upon reconsideration, the district court granted plaintiff's motion for summary judgment. The court concluded that a variety of factors had unreasonably delayed the conclusion of the investigation into Mr. Rose's administrative complaint.

COMPLIANCE

MUR 1412: Loan Repayments and Reimbursements by Corporation to its PAC

On May 2, 1984, the Commission entered into a conciliation agreement with a nonprofit corporation (the Corporation) and its separate segregated fund (the PAC). The Corporation had made prohibited contributions to the PAC (in violation of 2 U.S.C. §441b) by: 1) reimbursing the PAC for a portion of the PAC's administrative expenses and 2) repaying a loan which the PAC had made to the Corporation in October 1980. The PAC, in turn, had violated section 441b by accepting the reimbursements and loan repayments from the Corporation.

Complaint

Based on its normal review of the PAC's reports during 1980 and 1981, the Commission's Reports Analysis Division noted that the PAC had accepted funds from the Committee that may have constituted prohibited corporate contributions. On September 29, 1982, the Commission found reason to believe that the Committee and the PAC had violated the election law and authorized the General Counsel's Office to investigate the transactions in question.

General Counsel's Report

The election law prohibits the donation or acceptance of corporate contributions for federal elections. 2 U.S.C. §441b. This prohibition applies to loan repayments made by a corporation to its PAC and reimbursements made by a corporation* to its PAC for the PAC's administrative expenses. (Under a narrow exemption to this prohibition, however, the law permits corporations and labor organizations to directly pay for the administra-

Under revisions to FEC Regulations prescribed in August 1983, a parent corporation may reimburse its PAC for administrative expenses, provided it does so within 30 days after the PAC has paid for them. 11 CFR 102.6(c)(2)(ii).

tive expenses of their respective PACs. See 2 U.S.C. §441b(b)(2)(C).)

The General Counsel found that the Corporation had made prohibited contributions in two kinds of transactions:

Reimbursement of Administrative Expenses. Several reports filed by the PAC disclosed that it had incurred operating expenditures amounting to over $17,000, of which more than $11,000 had been reimbursed by the Corporation. A review of the PAC's reports suggested that few of the reimbursements occurred within 30 days after the original payments.

Corporation's Repayment of a $9,000 Loan to the Fund. In its 1980 year-end report, the PAC disclosed that, in December, the Corporation repaid $3,000 of a $9,000 loan which the PAC had made to the Corporation in October 1980. On being informed by the Reports Analysis Division that the Committee's loan repayment constituted an illegal corporate contribution, the PAC amended its 1980 and 1981 reports to reflect the loan repayment as reimbursements from the Corporation for administrative expenses originally paid by the PAC. The General Counsel noted that the Corporation appeared to have used the reimbursements "as a guise to repay the loan to the [PAC] in violation of the election law."

The respondents did not challenge the illegality of the Corporation's loan repayments to the PAC. They contended, however, that since the election law permitted a parent corporation to directly pay the administrative expenses of its separate segregated fund, the election law also authorized the corporation to reimburse its PAC for these expenses. In support of this view, the respondents cited several advisory opinions involving corporate reimbursements for PAC payments for administrative expenses: AOs 1979-33 and 1979-22 and AOR 1976-111.

The General Counsel found, however, that the transactions presented in these advisory opinions differed from the respondents' transactions because the corporate reimbursements occurred within a reasonable time after the PAC's payments and because the reimbursements covered isolated payments made inadvertently or mistakenly.

In this case, the General Counsel said, "The reimbursements were not a one time, isolated event but a continuous course of conduct over a couple of years. It also appears that the conduct will continue into the future, since [the PAC's] reports indicate that the administrative expenses are still not being paid directly" by the Corporation. (See also AO 1982-42.) The General Counsel therefore recommended that the Commission find probable cause to believe that the Corporation and the PAC had violated the election law.

Commission Determination

On August 9, 1983, the Commission found probable cause to believe that the Corporation and the PAC had violated section 441b. On May 4, 1984, the Commission entered into a conciliation agreement with the respondents in which they agreed:

-- The reimbursements and loan repayments had violated section 441b of the election law;
-- The PAC had to return those funds (amounting to $10,159.28) that it had reported as reimbursements from the Corporation for its administrative expenses; and
-- To pay a civil penalty of $250 to the U.S. Treasury.

STATISTICS

PAC CONTRIBUTIONS UP 46 PERCENT FOR 1984 RACES

PACs* contributed $50.7 million to Congressional campaigns during the first 18 months of the 1983-84 election cycle, a 46 percent increase over the $34.6 million contributed to Congressional races during the same period in 1982 and a 144 percent increase over the $20.8 million given to Congressional campaigns during the first 18 months of the 1979-80 election cycle.

Chart I on page 5 compares PAC spending on Congressional campaigns during the same 18-month period in the 1979-80, 1981-82 and 1983-84 election cycles. Chart II lists the PACs which have made the most contributions to all federal candidates during the first 18 months of the 1983-84 election cycle.

More detailed information on PAC activity may be obtained from the four-volume study, FEC Reports on Financial Activity: 1983-84, Interim Report No. 8: Party and Non-Party Political Committees. The study may be purchased ($15 per volume) from the FEC's Public Records Office, 1325 K Street, N.W., Washington, D.C. 20463. Checks should be made payable to the FEC.

continued

**PAC is a popular term used to define a political committee that has not been established by a candidate or political party.*

CHART I
PAC CONTRIBUTIONS TO CONGRESSIONAL CANDIDATES

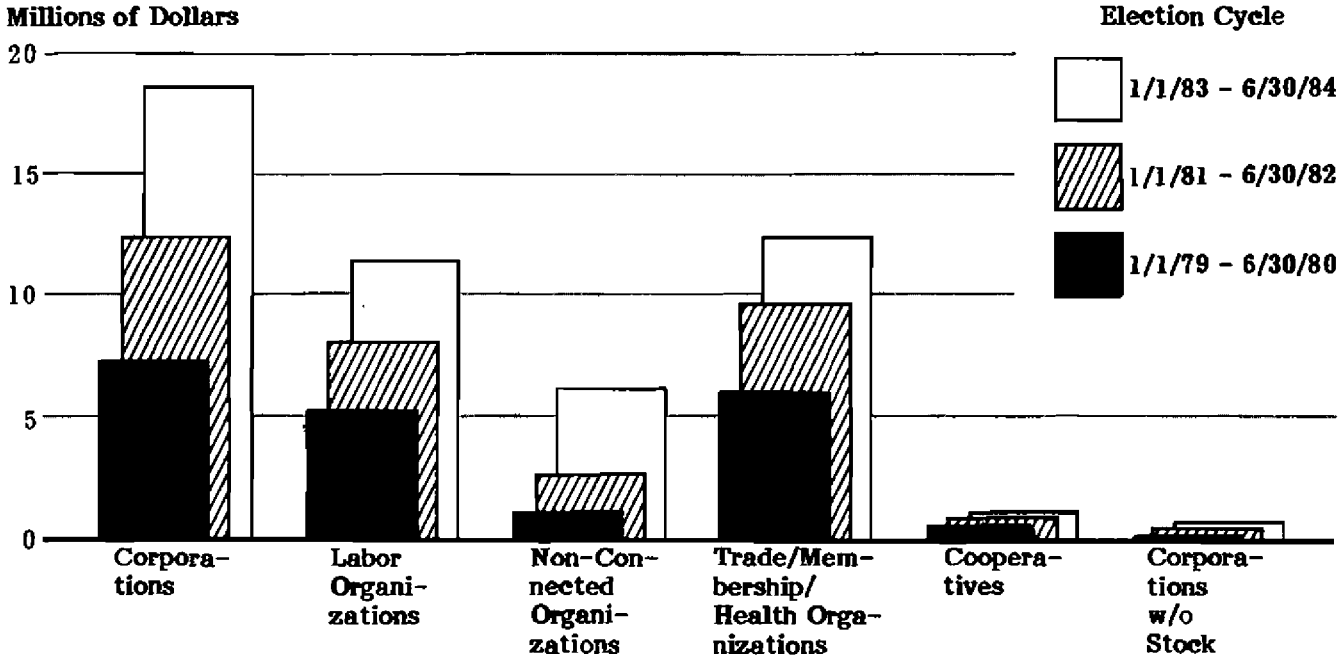


CHART II
TOP 10 PAC CONTRIBUTORS TO ALL FEDERAL CANDIDATES*

Political Action Committee	Amount Contributed 1/83 - 6/84
Realtors Political Action Committee	$890,736
American Medical Association Political Action Committee	792,962
Seafarers Political Activity Donation	758,222
National Education Association Political Action Committee	715,078
Build Political Action Committee Of the National Association Of Home Builders	669,453
UAW Voluntary Community Action Program (UAW-V-CAP)	649,039
Machinists Non-Partisan Political League	609,902
Active Ballot Club of the United Food and Commercial Workers International Union	596,356
American Bankers Association BANKPAC	496,125
American Federation Of State County and Municipal Employees - P.E.O.P.L.E., Qualified	494,497

**Contribution figures do not include totals for independent expenditures made for or against candidates.*

CAMPAIGN FINANCE ACTIVITY OF 1984 CONGRESSIONAL RACES

During the first 18 months of the 1983-84 election cycle, 2019 House and Senate candidates spent a record $161.8 million on their campaigns, a 21 percent increase over the $133.6 million spent by 2020 Congressional campaigns during the same period in 1981-82.

The study released by the FEC on October 21, 1984, showed that from January 1, 1983, through June 30, 1984, Congressional candidates raised a total of $213.4 million, of which 23 percent came from PACs.* During the same period in 1981-82, Congressional candidates raised $175.6 million, of which 19 percent came from PACs.

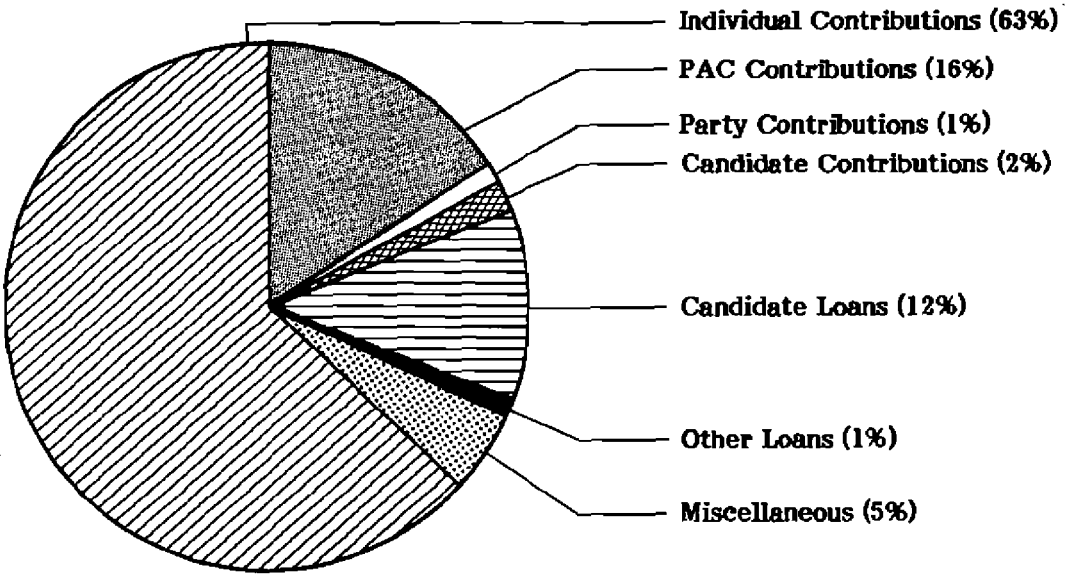
Chart I on page 7 provides detailed information on the sources of House and Senate candidates' receipts during the first 18 months of the 1983-84 election cycle. Chart II on page 8 plots total spending by Congressional campaigns over four election cycles.

More detailed information may be obtained from the study, the FEC Report on Financial Activity, 1983-84: U.S. Senate and House Campaigns--Interim Report No. 7, available at $15 per copy from the FEC's Public Records Office, 1325 K Street, N.W., Washington, D.C. 20463. Checks should be made payable in advance to the FEC.

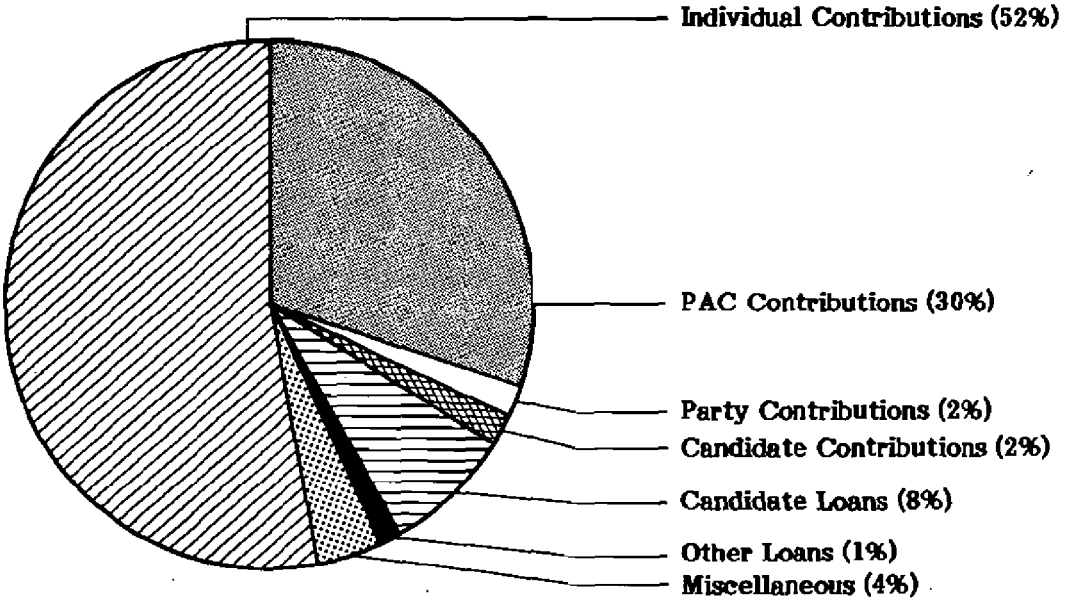
**PAC is a popular term used to define a political committee that has not been established by a candidate or political party.*

CHART I
RECEIPTS* OF CONGRESSIONAL CANDIDATES, 1/1/83 - 6/30/84

SENATE RECEIPTS BY SOURCE

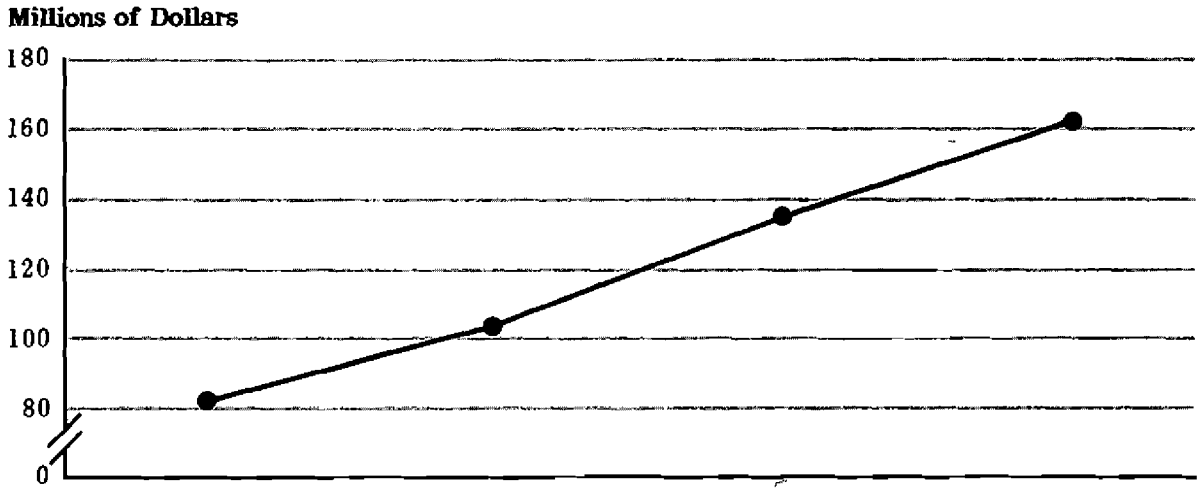


HOUSE RECEIPTS BY SOURCE



*Receipts include funds transferred between authorized committees.

CHART II
SPENDING BY CONGRESSIONAL CAMPAIGNS



Election Cycle	1/1/77 - 6/30/78	1/1/79 - 6/30/80	1/1/81 - 6/30/82	1/1/83 - 6/30/84
Total Number of Candidates	1812	2184	2020	2019

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