

## PRIOR PROVISIONS

A prior section 305 of Pub. L. 92-225 was classified to section 435 of this title, prior to repeal by Pub. L. 96-187.

## AMENDMENTS

1980—Pub. L. 96-187 substituted “60” and “20” for “sixty” and “twenty”, respectively, and struck out “Federal Election” before “Commission”.

1974—Pub. L. 93-443 substituted “Federal Election Commission” and “it” for “Comptroller General of the United States” and “he”, respectively.

## EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-187 effective Jan. 8, 1980, see section 301(a) of Pub. L. 96-187, set out as a note under section 431 of this title.

## EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-443 effective Jan. 1, 1975, see section 410(a) of Pub. L. 93-443, set out as a note under section 431 of this title.

**§ 437a. Repealed. Pub. L. 94-283, title I, § 105, May 11, 1976, 90 Stat. 481**

Section, Pub. L. 92-225, title III, § 308, as added Pub. L. 93-443, title II, § 208(a), Oct. 15, 1974, 88 Stat. 1279, required the filing of reports with the Commission by certain named persons other than individuals who act to influence others to vote for or against political candidates. See section 441d et seq. of this title.

## SAVINGS PROVISION

Repeal by Pub. L. 94-283 not to release or extinguish any penalty, forfeiture, or liability incurred under this section, with this section or penalty to be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of any penalty, forfeiture, or liability, see section 114 of Pub. L. 94-283, set out as a note under section 441 of this title.

**§ 437b. Repealed. Pub. L. 96-187, title I, § 105(1), Jan. 8, 1980, 93 Stat. 1354**

Section, Pub. L. 92-225, title III, § 308, formerly § 309, as added Pub. L. 93-443, title II, § 208(a), Oct. 15, 1974, 88 Stat. 1280; renumbered § 308 and amended Pub. L. 94-283, title I, §§ 105, 106, 115(i), May 11, 1976, 90 Stat. 481, 496, set forth provisions respecting designation, etc., of campaign depositories.

## EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 8, 1980, see section 301(a) of Pub. L. 96-187, set out as an Effective Date of 1980 Amendment note under section 431 of this title.

**§ 437c. Federal Election Commission**

**(a) Establishment; membership; term of office; vacancies; qualifications; compensation; chairman and vice chairman**

(1) There is established a commission to be known as the Federal Election Commission. The Commission is composed of the Secretary of the Senate and the Clerk of the House of Representatives or their designees, ex officio and without the right to vote, and 6 members appointed by the President, by and with the advice and consent of the Senate. No more than 3 members of the Commission appointed under this paragraph may be affiliated with the same political party.

(2)(A) Members of the Commission shall serve for a single term of 6 years, except that of the members first appointed—

(i) two of the members, not affiliated with the same political party, shall be appointed for terms ending on April 30, 1977;

(ii) two of the members, not affiliated with the same political party, shall be appointed for terms ending on April 30, 1979; and

(iii) two of the members, not affiliated with the same political party, shall be appointed for terms ending on April 30, 1981.

(B) A member of the Commission may serve on the Commission after the expiration of his or her term until his or her successor has taken office as a member of the Commission.

(C) An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed only for the unexpired term of the member he or she succeeds.

(D) Any vacancy occurring in the membership of the Commission shall be filled in the same manner as in the case of the original appointment.

(3) Members shall be chosen on the basis of their experience, integrity, impartiality, and good judgment and members (other than the Secretary of the Senate and the Clerk of the House of Representatives) shall be individuals who, at the time appointed to the Commission, are not elected or appointed officers or employees in the executive, legislative, or judicial branch of the Federal Government. Such members of the Commission shall not engage in any other business, vocation, or employment. Any individual who is engaging in any other business, vocation, or employment at the time of his or her appointment to the Commission shall terminate or liquidate such activity no later than 90 days after such appointment.

(4) Members of the Commission (other than the Secretary of the Senate and the Clerk of the House of Representatives) shall receive compensation equivalent to the compensation paid at level IV of the Executive Schedule (5 U.S.C. 5315).

(5) The Commission shall elect a chairman and a vice chairman from among its members (other than the Secretary of the Senate and the Clerk of the House of Representatives) for a term of one year. A member may serve as chairman only once during any term of office to which such member is appointed. The chairman and the vice chairman shall not be affiliated with the same political party. The vice chairman shall act as chairman in the absence or disability of the chairman or in the event of a vacancy in such office.

**(b) Administration, enforcement, and formulation of policy; exclusive jurisdiction of civil enforcement; Congressional authorities or functions with respect to elections for Federal office**

(1) The Commission shall administer, seek to obtain compliance with, and formulate policy with respect to, this Act and chapter 95 and chapter 96 of title 26. The Commission shall have exclusive jurisdiction with respect to the civil enforcement of such provisions.

(2) Nothing in this Act shall be construed to limit, restrict, or diminish any investigatory, informational, oversight, supervisory, or disciplinary authority or function of the Congress

or any committee of the Congress with respect to elections for Federal office.

**(c) Voting requirements; delegation of authorities**

All decisions of the Commission with respect to the exercise of its duties and powers under the provisions of this Act shall be made by a majority vote of the members of the Commission. A member of the Commission may not delegate to any person his or her vote or any decisionmaking authority or duty vested in the Commission by the provisions of this Act, except that the affirmative vote of 4 members of the Commission shall be required in order for the Commission to take any action in accordance with paragraph (6), (7), (8), or (9) of section 437d(a) of this title or with chapter 95 or chapter 96 of title 26.

**(d) Meetings**

The Commission shall meet at least once each month and also at the call of any member.

**(e) Rules for conduct of activities; judicial notice of seal; principal office**

The Commission shall prepare written rules for the conduct of its activities, shall have an official seal which shall be judicially noticed, and shall have its principal office in or near the District of Columbia (but it may meet or exercise any of its powers anywhere in the United States).

**(f) Staff director and general counsel; appointment and compensation; appointment and compensation of personnel and procurement of intermittent services by staff director; use of assistance, personnel, and facilities of Federal agencies and departments; counsel for defense of actions**

(1) The Commission shall have a staff director and a general counsel who shall be appointed by the Commission. The staff director shall be paid at a rate not to exceed the rate of basic pay in effect for level IV of the Executive Schedule (5 U.S.C. 5315). The general counsel shall be paid at a rate not to exceed the rate of basic pay in effect for level V of the Executive Schedule (5 U.S.C. 5316). With the approval of the Commission, the staff director may appoint and fix the pay of such additional personnel as he or she considers desirable without regard to the provisions of title 5 governing appointments in the competitive service.

(2) With the approval of the Commission, the staff director may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, but at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS-15 of the General Schedule (5 U.S.C. 5332).

(3) In carrying out its responsibilities under this Act, the Commission shall, to the fullest extent practicable, avail itself of the assistance, including personnel and facilities of other agencies and departments of the United States. The heads of such agencies and departments may make available to the Commission such personnel, facilities, and other assistance, with or without reimbursement, as the Commission may request.

(4) Notwithstanding the provisions of paragraph (2), the Commission is authorized to appear in and defend against any action instituted under this Act, either (A) by attorneys employed in its office, or (B) by counsel whom it may appoint, on a temporary basis as may be necessary for such purpose, without regard to the provisions of title 5 governing appointments in the competitive service, and whose compensation it may fix without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title. The compensation of counsel so appointed on a temporary basis shall be paid out of any funds otherwise available to pay the compensation of employees of the Commission.

(Pub. L. 92-225, title III, §306, formerly §310, as added Pub. L. 93-443, title II, §208(a), Oct. 15, 1974, 88 Stat. 1280; renumbered §309 and amended Pub. L. 94-283, title I, §§101(a)-(d), 105, May 11, 1976, 90 Stat. 475, 476, 481; renumbered §306 and amended Pub. L. 96-187, title I, §§105(3), (6), 112(b), Jan. 8, 1980, 93 Stat. 1354, 1366; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 105-61, title V, §512(a), Oct. 10, 1997, 111 Stat. 1305.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (b), (c), and (f)(3), (4), means the Federal Election Campaign Act of 1971, as amended, as defined by section 431 of this title.

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (f)(1), (4), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 306 of Pub. L. 92-225 was classified to section 436 of this title, prior to repeal by Pub. L. 96-187.

AMENDMENTS

1997—Subsec. (a)(2)(A). Pub. L. 105-61 substituted “for a single term of 6 years” for “for terms of 6 years” in introductory provisions.

1986—Subsec. (c). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

1980—Subsec. (a). Pub. L. 96-187, §105(6), in par. (1) inserted “or their designees,” before “ex officio”, and struck out “of the United States” after “President”; in par. (2)(B) inserted “or her” after “his” in two places; in par. (2)(C) inserted “or she” after “he”; in par. (3) struck out “maturity” before “experience”, substituted “and members (other than the Secretary of the Senate and the Clerk of the House of Representatives) shall be individuals who, at the time appointed to the Commission” for “and shall be chosen from among individuals who, at the time of their appointment”, substituted “Such members of the Commission” for “Members of the Commission” and substituted “of his or her appointment to the Commission” for “such individual begins to serve as a member of the Commission”; and in par. (5) substituted “A member may serve as Chairman only once” for “No member may serve as Chairman more often than once”.

Subsec. (b)(1). Pub. L. 96-187, §105(6), substituted “exclusive jurisdiction” for “exclusive primary jurisdiction”.

Subsec. (c). Pub. L. 96-187, §105(6), substituted “provisions of this Act” for “provisions of this subchapter” in first sentence, and substituted “A member of the Commission may not delegate to any person his or her vote or any decisionmaking authority or duty vested in the Commission by the provisions of this Act, except that

the affirmative vote of 4 members of the Commission shall be required in order for the Commission to take any action in accordance with paragraph (6), (7), (8), or (9) of section 437d(a) of this title or with chapter 95 or chapter 96 of title 26." for "except that the affirmative vote of 4 members of the Commission shall be required in order for the Commission to establish guidelines for compliance with the provisions of this Act or with chapter 95 or chapter 96 of title 26, or for the Commission to take any action in accordance with paragraph (6), (7), (8), or (10) of section 437d(a) of this title. A member of the Commission may not delegate to any person his vote or any decisionmaking authority or duty vested in the Commission by the provisions of this subchapter".

Pub. L. 96-187, §112(b), purported to substitute "section 307(a)" for "section 310(a)", referred to in text as "section 437d(a) of this title". However, that substitution had been made in the general amendment of the subsection by section 105(6) of Pub. L. 96-187. See preceding paragraph.

Subsec. (f). Pub. L. 96-187, §105(6), in par. (1) inserted "or she" after "as he"; in par. (3) struck out "Government" after "United States"; and added par. (4).

1976—Subsec. (a)(1). Pub. L. 94-283, §101(a), changed provisions covering the appointment and confirmation of the six members of the Commission other than the Secretary of the Senate and the Clerk of the House of Representatives by substituting a requirement that they be appointed by the President of the United States, by and with the advice and consent of the Senate, for a requirement that appointment be made by the President, the President pro tempore of the Senate, and the Speaker of the House, with confirmation by a majority of both Houses of the Congress, and made technical changes in the provisions covering the political affiliation of the six appointees so as to accommodate the changed appointment and confirmation procedures.

Subsec. (a)(2). Pub. L. 94-283, §101(b), provided that members of the Commission serve for terms of 6 years, except that members first appointed serve for staggered terms as designated by the President, and inserted provision that a member may serve on the Commission after the expiration of his term until his successor has taken office as a member of the Commission.

Subsec. (a)(3). Pub. L. 94-283, §101(c)(1), inserted provisions that Commission members may not engage in other businesses, vocations, or employment, but allowed appointees one year after beginning service as members of the Commission to terminate or liquidate other businesses, vocations, or employment which they may be engaged in when they begin their service as Commission members.

Subsec. (b). Pub. L. 94-283, §101(c)(2), designated existing provisions as par. (1), substituted "chapter 95 and chapter 96 of title 26" for "sections 608, 610, 611, 613, 614, 615, 616, and 617 of Title 18" and "shall have exclusive primary jurisdiction" for "has primary jurisdiction", and added par. (2).

Subsec. (c). Pub. L. 94-283, §101(c)(3), provided that the affirmative vote of 4 members of the Commission shall be required in order for the Commission to establish guidelines for compliance with the provisions of this Act or with chapter 95 or chapter 96 of title 26, or for the Commission to take any action in accordance with paragraph (6), (7), (8), or (10) of section 437d(a) of this title.

Subsec. (f)(1). Pub. L. 94-283, §101(d), provided that the appointment and the fixing of pay of additional personnel by the staff director may be done without regard to the provisions of title 5 governing appointments in the competitive service.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Section 512(b) of Pub. L. 105-61, as amended by Pub. L. 105-119, title VI, §631, Nov. 26, 1997, 111 Stat. 2523, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to individuals nominated by the President to be members of

the Federal Election Commission after December 31, 1997 unless the President announced his intent to nominate the individual prior to November 30, 1997."

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-187 effective Jan. 8, 1980, see section 301(a) of Pub. L. 96-187, set out as a note under section 431 of this title.

#### EFFECTIVE DATE

Section effective Jan. 1, 1975, see section 410(a) of Pub. L. 93-443, set out as an Effective Date of 1974 Amendment note under section 431 of this title.

OPERATION OF FEDERAL ELECTION COMMISSION AFTER 1976 AMENDMENT OF FEDERAL ELECTION CAMPAIGN ACT; APPOINTMENT OF COMMISSION MEMBERS; TRANSFER OF PERSONNEL, LIABILITIES, CONTRACTS, PROPERTY, AND RECORDS, OF COMMISSION; REFERENCES TO COMMISSION PRIOR TO AMENDMENT DEEMED REFERENCES TO COMMISSION AS CONSTITUTED AFTER 1976 AMENDMENT OF FEDERAL ELECTION CAMPAIGN ACT

Section 101(e)-(g) of Pub. L. 94-283 provided for the transition of the Federal Election Commission as it was reconstituted under the Federal Election Campaign Act of 1971 as amended by Pub. L. 94-283 by providing for appointment of members, transfer of personnel, liabilities, contracts, property, and records, and savings provisions for orders, determinations, rules opinions, and proceedings issued, pending, or commenced before such amendments.

TRANSITIONAL PROVISION PENDING APPOINTMENT AND QUALIFICATION OF MEMBERS AND GENERAL COUNSEL OF FEDERAL ELECTION COMMISSION AND TRANSFER OF RECORDS, DOCUMENTS, MEMORANDUMS, AND OTHER PAPERS

Section 208(b) of Pub. L. 93-443 provided transitional authority for the Comptroller General, the Secretary of the Senate, and the Clerk of the House of Representatives pending the appointment and qualification of the members and general counsel of the Federal Election Commission and authority for transfer of records, documents, memorandums, and other papers to the Commission.

## § 437d. Powers of Commission

### (a) Specific authorities

The Commission has the power—

(1) to require by special or general orders, any person to submit, under oath, such written reports and answers to questions as the Commission may prescribe;

(2) to administer oaths or affirmations;

(3) to require by subpoena, signed by the chairman or the vice chairman, the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

(4) in any proceeding or investigation, to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3);

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States;

(6) to initiate (through civil actions for injunctive, declaratory, or other appropriate relief), defend (in the case of any civil action brought under section 437g(a)(8) of this title) or appeal any civil action in the name of the