

United States) for disclosing information at the request of the Commission.

(d) Concurrent transmissions to Congress or Member of budget estimates, etc.; prior submission of legislative recommendations, testimony, or comments on legislation

(1) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of such estimate or request to the Congress.

(2) Whenever the Commission submits any legislative recommendation, or testimony, or comments on legislation, requested by the Congress or by any Member of the Congress, to the President or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress or to the Member requesting the same. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, testimony, or comments on legislation, to any office or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(e) Exclusive civil remedy for enforcement

Except as provided in section 437g(a)(8) of this title, the power of the Commission to initiate civil actions under subsection (a)(6) of this section shall be the exclusive civil remedy for the enforcement of the provisions of this Act.

(Pub. L. 92-225, title III, § 307, formerly § 311, as added Pub. L. 93-443, title II, § 208(a), Oct. 15, 1974, 88 Stat. 1282; renumbered § 310 and amended Pub. L. 94-283, title I, §§ 105, 107, 115(b), May 11, 1976, 90 Stat. 481, 495; renumbered § 307 and amended Pub. L. 96-187, title I, §§ 105(3), 106, Jan. 8, 1980, 93 Stat. 1354, 1356; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

This Act, referred to in subssecs. (a)(6), (8), and (e), means the Federal Election Campaign Act of 1971, as amended, as defined by section 431 of this title.

PRIOR PROVISIONS

A prior section 307 of Pub. L. 92-225 was renumbered section 305, and is classified to section 437 of this title.

AMENDMENTS

1986—Subsec. (a)(6), (8). 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, § 106, in par. (1) substituted “under oath, such written reports and answers to questions as the Commission may prescribe” for “in writing such reports and answers to questions as the Commission may prescribe” and struck out provision that such submission be made within such reasonable time and under oath as determined by the Commission; in par. (4) struck out “of this subsection” after “paragraph (3)”; in par. (6) substituted “section 437g(a)(8)” for “section 437g(a)(9)”, and substituted “to enforce the provisions of this Act” for “for the purpose of enforcing the provisions of this Act”; struck out par. (9) relating to formulation of general policy respecting administration of this Act and chapters 95 and 96 of title 26; and redesignated former par. (10) as (9).

Subsec. (b). Pub. L. 96-187, § 106, reworded subsec. (b) without substantive changes.

Subsec. (c). Pub. L. 96-187, § 106, reenacted subsec. (c) without change.

Subsec. (d). Pub. L. 96-187, § 106, struck out “of the United States” after “President” in pars. (1) and (2).

Subsec. (e). Pub. L. 96-187, § 106, substituted “section 437g(a)(8)” for “section 437g(a)(9)”.

1976—Subsec. (a)(6). Pub. L. 94-283, § 107(b)(1), substituted “civil actions” for “civil proceedings” and inserted “(in the case of any civil action brought under section 437g(a) (9) of this title)” after “defend” and “and chapter 95 and chapter 96 of title 26” after “this Act”.

Subsec. (a)(7). Pub. L. 94-283, § 115(b), substituted “section 312” for “section 313” in the original to accommodate the renumbering of section 313 of Pub. L. 92-225 as section 312 of Pub. L. 92-225 by section 105 of Pub. L. 94-283. Since both the original and substituted references translate as “section 437f of this title” no change in text was required.

Subsec. (a)(8). Pub. L. 94-283, § 107(a)(1), inserted “to develop such prescribed forms and to” before “to make, amend, and repeal” and inserted “and chapter 95 and chapter 96 of title 26” after “provisions of this Act”.

Subsec. (a)(9). Pub. L. 94-283, § 107(a)(2), substituted “and chapter 95 and chapter 96 of title 26; and” for “and sections 608, 610, 611, 613, 614, 615, 616, and 617 of title 18;”.

Subsecs. (a)(10), (11). Pub. L. 94-283, § 107(a)(3), redesignated par. (11) as par. (10). Former par. (10), which covered the development of prescribed forms under subsection (a)(1) of this section, was struck out.

Subsec. (e). Pub. L. 94-283, § 107(b)(2), added subsec. (e).

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.

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

Section, Pub. L. 92-225, title III, § 311, formerly § 312, as added Pub. L. 93-443, title II, § 208(a), Oct. 15, 1974, 88 Stat. 1283; renumbered § 311, Pub. L. 94-283, title I, § 105, May 11, 1976, 90 Stat. 481, related to reports to the President and Congress.

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.

§ 437f. Advisory opinions

(a) Requests by persons, candidates, or authorized committees; subject matter; time for response

(1) Not later than 60 days after the Commission receives from a person a complete written request concerning the application of this Act, chapter 95 or chapter 96 of title 26, or a rule or regulation prescribed by the Commission, with respect to a specific transaction or activity by the person, the Commission shall render a written advisory opinion relating to such transaction or activity to the person.

(2) If an advisory opinion is requested by a candidate, or any authorized committee of such candidate, during the 60-day period before any election for Federal office involving the requesting party, the Commission shall render a writ-

ten advisory opinion relating to such request no later than 20 days after the Commission receives a complete written request.

(b) Procedures applicable to initial proposal of rules or regulations, and advisory opinions

Any rule of law which is not stated in this Act or in chapter 95 or chapter 96 of title 26 may be initially proposed by the Commission only as a rule or regulation pursuant to procedures established in section 438(d) of this title. No opinion of an advisory nature may be issued by the Commission or any of its employees except in accordance with the provisions of this section.

(c) Persons entitled to rely upon opinions; scope of protection for good faith reliance

(1) Any advisory opinion rendered by the Commission under subsection (a) of this section may be relied upon by—

(A) any person involved in the specific transaction or activity with respect to which such advisory opinion is rendered; and

(B) any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered.

(2) Notwithstanding any other provisions of law, any person who relies upon any provision or finding of an advisory opinion in accordance with the provisions of paragraph (1) and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of any such act, be subject to any sanction provided by this Act or by chapter 95 or chapter 96 of title 26.

(d) Requests made public; submission of written comments by interested public

The Commission shall make public any request made under subsection (a) of this section for an advisory opinion. Before rendering an advisory opinion, the Commission shall accept written comments submitted by any interested party within the 10-day period following the date the request is made public.

(Pub. L. 92-225, title III, § 308, formerly § 313, as added Pub. L. 93-443, title II, § 208(a), Oct. 15, 1974, 88 Stat. 1283; renumbered § 312 and amended Pub. L. 94-283, title I, §§ 105, 108(a), May 11, 1976, 90 Stat. 481, 482; renumbered § 308 and amended Pub. L. 96-187, title I, §§ 105(4), 107(a), Jan. 8, 1980, 93 Stat. 1354, 1357; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

This Act, referred to in subssecs. (a)(1), (b), and (c)(2), means the Federal Election Campaign Act of 1971, as amended, as defined by section 431 of this title.

PRIOR PROVISIONS

A prior section 308 of Pub. L. 92-225 was classified to section 437b of this title, prior to repeal by Pub. L. 96-187.

Another prior section 308 of Pub. L. 92-225 was classified to section 437a of this title, prior to repeal by Pub. L. 94-283.

Another prior section 308 of Pub. L. 92-225 was renumbered section 311, and is classified to section 438 of this title.

AMENDMENTS

1986—Subsecs. (a)(1), (b), (c)(2). 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, § 107, redesignated existing provisions as par. (1), substituted provisions requiring the Commission to render a written advisory opinion no later than 60 days after receiving a written request concerning the application of this Act, chapters 95 or 96 of title 26, or a rule or regulation for provisions requiring a written advisory opinion within a reasonable time in response to a written request by any individual holding Federal office, candidate for Federal office, any political committee or the national committee of a political party, provisions requiring promulgation of a rule or regulation pursuant to procedures established by section 438(c) of this title, and prohibiting issuance of advisory opinions except in accordance with the provisions of this section, and added par. (2).

Subsec. (b). Pub. L. 96-187, § 107, struck out the par. (1) and (2) designations and substituted provisions requiring any rule of law not stated in this Act or chapter 95 or 96 of title 26 be initially proposed as a rule or regulation pursuant to the procedures of section 438(d) of this title, and provisions prohibiting issuance of an advisory opinion except in accordance with the provisions of this section for provisions holding any person relying upon an advisory opinion free from any sanction provided by this Act or chapter 95 or 96 of title 26, and provisions allowing reliance on an advisory opinion by any person involved in the specific transaction and any person involved in a transaction indistinguishable from the transaction with respect to which such opinion was rendered.

Subsec. (c). Pub. L. 96-187, § 107, redesignated existing provisions as par. (1), substituted provisions allowing reliance on any advisory opinion by any person involved in the specific transaction or activity to which such opinion was rendered and any person involved in a transaction or activity indistinguishable from the transaction with respect to which such opinion was rendered for provisions mandating that any request for an advisory opinion be made public and allowing any interested party to transmit written comments to the Commission prior to the rendering of its opinion, and added par. (2).

Subsec. (d). Pub. L. 96-187, § 107, added subsec. (d).

1976—Subsec. (a). Pub. L. 94-283, § 108(a), added national committees of political parties to the enumeration of persons and political bodies authorized to request advisory opinions, substituted the application of general rules of law as stated in the Act or in chapter 95 or 96 of title 26 or as prescribed by rules or regulations of the Commission to specific factual situations for the resolution of the question of whether or not any specific transaction or activity by an individual, candidate, or political committee would constitute a violation of the Act as the subject matter of advisory opinions, and inserted requirement that rules or regulations forming the basis for rules of law be rules or regulations proposed pursuant to section 438(c) of this title and that advisory opinions be issued only in accordance with the provisions of this section.

Subsec. (b). Pub. L. 94-283, § 108(a), designated existing provisions as par. (1), substituted provisions that any person who relies upon any finding or provision of an advisory opinion in accordance with the provisions of paragraph (2) and who acts in good faith in accordance with the provisions and findings of the advisory opinion shall not, as a result of that act, be subject to any sanctions provided by the Act or by chapter 95 or 96 of title 26 for provisions that any person with respect to whom an advisory opinion was rendered under subsection (a) who acted in good faith in accordance with the provisions and findings of an advisory opinion would be presumed to be in compliance with the Act, and added par. (2).

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.

CONFORMANCE OF ADVISORY OPINIONS ISSUED PRIOR TO MAY 11, 1976, TO REQUIREMENTS IMPOSED UNDER 1976 AMENDMENTS

Pub. L. 94-283, title I, §108(b), May 11, 1976, 90 Stat. 482, provided that: "The Commission shall, no later than 90 days after the date of the enactment of this Act [May 11, 1976], conform the advisory opinions issued before such date of enactment to the requirements established by section 312 (a) of the Act [subsec. (a) of this section], as amended by subsection (a) of this section. The provisions of section 312(b) of the Act [subsec. (b) of this section], as amended by subsection (a) of this section, shall apply with respect to all advisory opinions issued before the date of the enactment of this Act as conformed to meet the requirements of section 312(a) of the Act, as amended by subsection (a) of this section."

§ 437g. Enforcement**(a) Administrative and judicial practice and procedure**

(1) Any person who believes a violation of this Act or of chapter 95 or chapter 96 of title 26 has occurred, may file a complaint with the Commission. Such complaint shall be in writing, signed and sworn to by the person filing such complaint, shall be notarized, and shall be made under penalty of perjury and subject to the provisions of section 1001 of title 18. Within 5 days after receipt of a complaint, the Commission shall notify, in writing, any person alleged in the complaint to have committed such a violation. Before the Commission conducts any vote on the complaint, other than a vote to dismiss, any person so notified shall have the opportunity to demonstrate, in writing, to the Commission within 15 days after notification that no action should be taken against such person on the basis of the complaint. The Commission may not conduct any investigation or take any other action under this section solely on the basis of a complaint of a person whose identity is not disclosed to the Commission.

(2) If the Commission, upon receiving a complaint under paragraph (1) or on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities, determines, by an affirmative vote of 4 of its members, that it has reason to believe that a person has committed, or is about to commit, a violation of this Act or chapter 95 or chapter 96 of title 26, the Commission shall, through its chairman or vice chairman, notify the person of the alleged violation. Such notification shall set forth the factual basis for such alleged violation. The Commission shall make an investigation of such alleged violation, which may include a field investigation or audit, in accordance with the provisions of this section.

(3) The general counsel of the Commission shall notify the respondent of any recommendation to the Commission by the general counsel to proceed to a vote on probable cause pursuant to paragraph (4)(A)(i). With such notification, the general counsel shall include a brief stating the position of the general counsel on the legal and factual issues of the case. Within 15 days of

receipt of such brief, respondent may submit a brief stating the position of such respondent on the legal and factual issues of the case, and replying to the brief of general counsel. Such briefs shall be filed with the Secretary of the Commission and shall be considered by the Commission before proceeding under paragraph (4).

(4)(A)(i) Except as provided in clauses¹ (ii) and subparagraph (C), if the Commission determines, by an affirmative vote of 4 of its members, that there is probable cause to believe that any person has committed, or is about to commit, a violation of this Act or of chapter 95 or chapter 96 of title 26, the Commission shall attempt, for a period of at least 30 days, to correct or prevent such violation by informal methods of conference, conciliation, and persuasion, and to enter into a conciliation agreement with any person involved. Such attempt by the Commission to correct or prevent such violation may continue for a period of not more than 90 days. The Commission may not enter into a conciliation agreement under this clause except pursuant to an affirmative vote of 4 of its members. A conciliation agreement, unless violated, is a complete bar to any further action by the Commission, including the bringing of a civil proceeding under paragraph (6)(A).

(ii) If any determination of the Commission under clause (i) occurs during the 45-day period immediately preceding any election, then the Commission shall attempt, for a period of at least 15 days, to correct or prevent the violation involved by the methods specified in clause (i).

(B)(i) No action by the Commission or any person, and no information derived, in connection with any conciliation attempt by the Commission under subparagraph (A) may be made public by the Commission without the written consent of the respondent and the Commission.

(ii) If a conciliation agreement is agreed upon by the Commission and the respondent, the Commission shall make public any conciliation agreement signed by both the Commission and the respondent. If the Commission makes a determination that a person has not violated this Act or chapter 95 or chapter 96 of title 26, the Commission shall make public such determination.

(C)(i) Notwithstanding subparagraph (A), in the case of a violation of a qualified disclosure requirement, the Commission may—

(I) find that a person committed such a violation on the basis of information obtained pursuant to the procedures described in paragraphs (1) and (2); and

(II) based on such finding, require the person to pay a civil money penalty in an amount determined, for violations of each qualified disclosure requirement, under a schedule of penalties which is established and published by the Commission and which takes into account the amount of the violation involved, the existence of previous violations by the person, and such other factors as the Commission considers appropriate.

(ii) The Commission may not make any determination adverse to a person under clause (i)

¹ So in original. Probably should be "clause".