August 13, 2004

AGENDA ITEM
For Meeting of: 8-19-04

SUBMITTED LATE

MEMORANDUM

TO: The Commission

FROM: Scott E. Thomas
Commissioner

Michael E. Toner
Commissioner

SUBJECT: Alternative proposal for final rules regarding "political committee" status and allocation

Attached are proposed final rules that we offer for consideration on August 19 along with the proposal of the Office of General Counsel. This version is the same as the proposal we submitted for the May 13 meeting, except that it has been modified to incorporate the corrections we noted in an e-mail sent to our colleagues on May 12.
List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 106

Campaign funds, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Subchapter A of Chapter I of Title 11 of the Code of Federal Regulations is amended as follows:

Part 100 – SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 would continue to read as follows:

   Authority: 2 U.S.C. 431, 434 and 438(a)(8).

2. Section 100.5 would be amended by revising the introductory paragraph and paragraph (a) and adding paragraph (h) to read as follows:

   § 100.5 Political committee (2 U.S.C. 431 (4), (5), (6)).

   Political Committee means any group meeting the conditions set forth in paragraph (a), (b), (c), (d) or (e) of this section.

   (a) (1) Except as provided in paragraphs (b), (c), and (d) of this section, political committee means any committee, club, association, or other group of persons:
(i) That receives contributions aggregating in excess of $1,000 or that makes expenditures aggregating in excess of $1,000 during a calendar year; and

(ii) For which the nomination or election of one or more Federal or non-Federal candidates is the major purpose.

(2) For purposes of paragraph (a)(1)(ii) of this section, a committee, club, association or group of persons that is organized under Section 527 of the Internal Revenue Code, 26 U.S.C. 527, has the nomination or election of one or more Federal or non-Federal candidates as its major purpose, unless it is a type of organization described as follows:

(i) The campaign organization of an individual seeking nomination, election, appointment or selection to a non-Federal office;

(ii) A committee, club, association or group of persons that is organized or operates solely for the purpose of influencing the nomination or election of candidates to one or more non-Federal offices;

(iii) A committee, club, association or group of persons whose nomination or election activities relate solely to elections where no candidate for Federal office appears on the ballot;
(iv) A committee, club, association or group of persons
that is organized or operates solely for the purpose of
influencing state ballot initiatives or referenda; or
(v) A committee, club, association or group of persons
that is organized or operates solely for the purpose of
influencing the nomination or appointment of
individuals to one or more non-elected offices, or
the nomination, election, or selection or individuals
to leadership positions within a political party.

(3) For any committee, club, association or group of persons not described
in paragraph (a)(2) of this section, paragraph (a)(1)(i) of this section shall
be satisfied if the organization receives contributions aggregating in
excess of $1,000 or makes expenditures aggregating in excess of $1,000 in
a calendar year under applicable law.

(4) For any committee, club association or group of persons not described in
paragraph (a)(2) of this section, paragraph (a)(1)(ii) of this section shall be
satisfied if the nomination or election of one or more Federal or
non-Federal candidates is the major purpose of the organization under
applicable law.

(h) A committee, club, association or group of persons that qualifies as a political
committee and that finances political activity in connection with both Federal and non-
Federal elections shall organize its accounts according to 11 CFR 102.5(a).
3. Section 100.115 would be added as follows:

Sec. 100.115 Certain Federal Election Activities

Except as provided at 11 CFR 100.155 and 100.133, a payment, distribution, loan, advance, or deposit of money or anything of value made by, or on behalf of, any political committee or organization described in 11 CFR 100.5(a)(2) for federal election activities as defined at 11 CFR 100.24(a), (b)(1), (b)(2)(i), and (b)(2)(iii), is an expenditure.

4. Section 100.116 would be added to read as follows:

§ 100.116 Certain public communications.

Except as provided in 11 CFR 100.155, a payment, distribution, loan, advance, or deposit of money or anything of value made by, or on behalf of, any political committee or organization described in 11 CFR 100.5(a)(2) for a public communication, as defined in 11 CFR 100.26, is an expenditure if the public communication:

(a) Promotes, supports, attacks, or opposes any clearly identified candidate for Federal office; or

(b) Promotes, supports, attacks, or opposes any political party.

5. Section 100.133 would be amended to read as follows:

§ 100.133 Non-partisan voter registration and get-out-the-vote activities.

(a) Any cost incurred for activity designed to encourage individuals to register to vote or to vote is not an expenditure if:

(1) No effort is or has been made to determine the party or candidate preference of individuals before encouraging them to register to vote or to vote; and

(2) No public communication is used that:
(i) Promotes, supports, attacks, or opposes any clearly identified Federal or non-Federal candidate; or

(ii) Promotes, supports, attacks, or opposes any political party.

(b) Any corporation or labor organization that engages in the activity described in paragraph (a) of this section shall do so in accordance with 11 CFR 114.4(c) and (d). See also 11 CFR 114.3(c)(4).

6. Section 100.155 would be added to read as follows:

§ 100.155 Allocated non-Federal amounts.
Any non-Federal funds disbursed pursuant to 11 CFR 106.1, 106.6, 106.7, or 300.33 are not expenditures.

PART 104 – REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

7. The authority citation for part 104 would continue to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), 439a and 441a.

8. Section 104.10 would be amended by revising the introductory language in paragraph (b), the title in (b)(1), and paragraphs(b)(1)(i) and (b)(1)(ii) to read as follows:

§ 104.10 Reporting by separate segregated funds and nonconnected committees of expenses allocated among candidates and activities.

* * * * *

(b) Expenses allocated among activities. A political committee that is a separate segregated fund or a nonconnected committee and that has established separate Federal and non-Federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate between those accounts its administrative expenses and its costs for fundraising and voter drives.
according to 11 CFR 106.6, and shall report those allocations according to paragraphs (b)(1) through (5) of this section, as follows:

(1) Reporting of allocation of administrative expenses and costs of voter drives.

(i) In the first report in a calendar year disclosing a disbursement for administrative expenses or voter drives, as described in 11 CFR 106.6(b), the committee shall state the allocation ratio to be applied to these categories of activity according to 11 CFR 106.6(c), (f), or (g), as applicable, and the manner in which it was derived. The committee shall also state whether the calculated ratio or the minimum Federal percentage required by 11 CFR 106.6(c)(1)(ii) will be used.

(ii) In each subsequent report in the calendar year itemizing an allocated disbursement for administrative expenses or voter drives:

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PART 106 – ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

9. The authority citation for part 106 would continue to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

10. Section 106.6 would be amended by:

a. Removing the words "(c) and (d)" from paragraph (a) and adding in their place the words "(c), (d), (f) and (g)"; and

b. Revising the introductory language in paragraph (c) and paragraphs
(b)(1)(iii), (b)(2)(iii), (c)(1), and (e)(2)(ii)(B) and adding paragraphs (b)(1)(iv), (b)(1)(v), (b)(1)(vi), (b)(2)(iv), (b)(2)(v), (b)(2)(vi), (f) and (g)
to read as follows:

§106.6 Allocation of expenses between federal and non-federal activities by separate segregated funds and nonconnected committees.

* * * * *

(b) * * *

(1) * * *

(iii) Certain federal election activities as described at 11 CFR 100.115 or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without including a public communication that is described in paragraph (b)(1)(iv), (v), or (vi) of this section;

(iv) Public communications that promote, support, attack, or oppose a political party, as described in 11 CFR 100.116(b), but do not promote, support, attack, or oppose one or more clearly identified Federal or non-Federal candidates;

(v) Public communications that promote, support, attack, or oppose one or more clearly identified Federal or non-Federal candidates, and that promote, support, attack, or oppose a political party, as described in 11 CFR 100.116(b); and

(vi) Public communications that promote, support, attack, or oppose one or more clearly identified Federal or non-Federal candidates,
but that do not promote, support, attack, or oppose a political party, as described in 11 CFR 100.116(b).

(ii) Certain federal election activities as described at 11 CFR 100.115 or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without including a public communication that is described in paragraph (b)(2)(iv), (v), or (vi) of this section;

(iv) Public communications that promote, support, attack, or oppose a political party, as described in 11 CFR 100.116(b), but do not promote, support, attack, or oppose one or more clearly identified Federal or non-Federal candidates;

(v) Public communications that promote, support, attack, or oppose one or more clearly identified Federal or non-Federal candidates, and that promote, support, attack, or oppose a political party, as described in 11 CFR 100.116(b); and

(vi) Public communications that promote, support, attack, or oppose one or more clearly identified Federal or non-Federal candidates, but that do not promote, support, attack, or oppose a political party as described in 11 CFR 100.116(b).

(c) **Method for allocating administrative expenses, costs of voter drives, certain federal election activities, and certain public communications.** Nonconnected committees and separate segregated funds shall allocate their administrative expenses, costs of voter
drives, costs of certain federal election activities, and costs of public communications that
promote, support, attack, or oppose a political party as described in paragraph (b)(1)(i)
through (iv) or (b)(2)(i) through (iv) of this section, according to the funds expended
method, described in paragraphs (c)(1) and (2) as follows:

(1) (i) Under this method, expenses shall be allocated based on the ratio
of Federal expenditures to total Federal and non-Federal
disbursements made by the committee during the two-year Federal
election cycle, subject to the minimum Federal percentage
described in paragraph (c)(1)(ii) of this section. This ratio shall be
estimated and reported at the beginning of each Federal election
cycle, based upon the committee’s Federal and non-Federal
disbursements in a prior comparable Federal election cycle or upon
the committee’s reasonable prediction of its disbursements for the
coming two years. In calculating its Federal expenditures, the
committee shall include only amounts contributed to or otherwise
spent on behalf of specific Federal candidates, including
independent expenditures and amounts spent on public
communications that promote, support, attack, or oppose clearly
identified Federal candidates. Calculation of total Federal and non-
Federal disbursements shall also be limited to disbursements for
specific candidates, and shall not include overhead or other
generic costs.
(ii) Minimum Federal percentage for administrative expenses, voter drives, and certain public communications. The minimum Federal percentage for any costs allocable under paragraph (c) of this section shall be 50 percent.

(B) Except as provided in paragraph (d)(2) of this section, such funds may not be transferred more than 10 days before or more than 60 days after the payments for which they are designated are made.

(f) Method for allocating public communications that promote, support, attack, or oppose one or more clearly identified Federal or non-Federal candidates, and promote, support, attack, or oppose a political party. Nonconnected committees and separate segregated funds shall allocate public communications described in paragraphs (b)(1)(v) or (b)(2)(v) of this section as follows:

(1) The public communication shall be attributed according to the proportion of space and time devoted to each candidate and political party as compared to the total space and time devoted to all candidates and political parties;
The portion of the public communication that is attributed to the Federal candidate(s) shall be allocated to the nonconnected committee's or separate segregated fund's Federal account;

The proportion of the public communication that is attributed to the political party shall be allocated in accordance with paragraph (c) of this section; and

The portion of the public communication that is attributed to clearly identified non-Federal candidate(s), if any, may be allocated to either the Federal or non-Federal account.

Method for allocating public communications that promote, support, attack, or oppose one or more clearly identified Federal or non-Federal candidates, without promoting, supporting, attacking, or opposing a political party. Nonconnected committees and separate segregated funds shall allocate public communications described in paragraphs (b)(1)(vi) and (b)(2)(vi) of this section under 11 CFR 106.1 as expenditures or disbursements on behalf of the clearly identified candidates. A public communication that solely promotes, supports, attacks, or opposes one or more clearly identified Federal candidates is an expenditure that must be allocated 100% to the federal account.