MEMORANDUM

TO:       The Commission

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SUBJECT:  Recommended Amendments to Agenda Doc. No. 04-75

On August 12, 2004, the Office of General Counsel submitted Agenda Document No. 04-75, which contained our recommendation on the Political Committee Status rulemaking. We recommend that the Commission adopt amendments to that Agenda Document and clarify the effective date for any Final Rule. Attachment A lists this Office's amendments to Agenda Document No. 04-75. These amendments pertain to
draft sections 100.5, 100.57, and 106.6 in the Draft Final Rules for Political Committee Status. Agenda Document No. 04-75 states that the effective date for any changed to the allocation regulations should be January 1, 2005. We also believe that January 1, 2005 should be the effective date for any other rule the Commission adopts as a part of this rulemaking.

Section 100.5 – Political Committee

Draft section 100.5(a) in Agenda Document No. 04-75 includes a two-part test for political committee status for organizations other than separate segregated funds, local political party committees, and authorized campaign committees. The two parts of the test include a $1,000 contributions/expenditures component in 11 CFR 100.5(a)(1)(i) and a “major purpose” component in draft 11 CFR 100.5(a)(1)(ii). This Office realizes that “major purpose” test in the draft we circulated could be viewed as applying to State and national political party committees. To avoid this inadvertent result, the attached amendments would clarify that the major purpose test in draft section 100.5(a)(2) would apply to organizations that are not national or State political party committees. The $1,000 contributions/expenditures test would continue to apply to national and State party committees as it does currently. Local political party committees would not be affected because they are addressed separately in 11 CFR 100.5(c).

Section 100.57 – Funds Received in Response to Solicitation

Draft section 100.57(a) in Agenda Document No. 04-75 included an exception for any solicitations from joint fundraisers operating under current 11 CFR 102.17. See draft section 100.57(a). This Office realizes that this blanket exception would have a broader effect than intended. Therefore, we offer the attached amendments that would remove
the exception for section 102.17 in draft section 100.57(a) and instead would add a new
draft section 100.57(c) to address joint fundraising. Under these amendments, the only
joint fundraising solicitations excepted from the rule in draft section 100.57 are those
conducted between or among the authorized committees of Federal and non-Federal
candidates. See draft section 100.57(c). All other joint fundraising pursuant to section
102.17 would be subject to draft section 100.57(a) and (b). Thus, draft section 100.57, as
amended, would apply to solicitations for joint fundraisers between or among political
committees and/or other organizations that indicate that any portion of the funds received
will be used to support or oppose the election of a clearly identified Federal candidate.

Section 106.6 – Allocation of Expenses Between Federal and Non-Federal Activities
by Separate Segregated Funds and Nonconnected Committees

Draft section 106.6 retains the current regulation’s definition of “generic voter
drives” as various activities which “urge the general public to register, vote or support
candidates of a particular party, or associated with a particular issue, without mentioning
a specific candidate.” See draft section 106.6(b)(3) (emphasis added). Such voter drives
that do not mention any specific candidates are allocated according to the flat 50%
minimum percentage in draft section 106.6(c). We recognize that the current
Commission regulations and the Draft Final Rules do not specifically address the
question of how to allocate voter drives that mention a specific Federal or non-Federal
candidate.¹ Under the Draft Final Rules, any candidate-specific voter drive activity that
meets the definition of “public communication” would be allocated according to draft

¹ Non-partisan voter drives, i.e., voter drive activity where no effort has been made to determine the party
or candidate preference of individuals before encouraging them to register to vote, or vote, are exempted
from the definition of expenditure. 2 U.S.C. 431(9)(B)(ii); 11 CFR 100.133. However, Commission
regulations do not specifically address how to allocate the costs of these voter drives if they refer to specific
Federal or non-Federal candidates.
section 106.6(f), which contains various rules for public communications that refer to a
political party and one or more Federal or non-Federal candidate(s). However, some
voter drive activity may fall in the gap between the definitions of "generic voter drives"
in draft section 106.6(b)(3) and the public communications provisions in draft sections
106.6(b)(5) and (6).

We offer the attached amendment addressing allocation of voter drives that
mention a specific Federal or non-Federal candidate to provide clear guidance to SSFs
and nonconnected committees on how to allocate voter drive activities in all
circumstances. Like the draft rules for "public communications," the attached
amendments would provide "candidate-driven" rules for the allocation of voter drives
that refer to at least one clearly identified candidate.

The amendment to draft section 106.6(b) inserts two categories of voter drives in
addition to "generic voter drives" in draft section 106.6(b)(3):

- Voter drives which urge the general public to register, vote or support one or
more clearly identified Federal candidate(s), but do not refer to any clearly
identified non-Federal candidate, including those that also support candidates of
a particular party or associated with a particular issue. See draft section
106.6(b)(4).

- Voter drives which urge the general public to register, vote or support one or
more clearly identified non-Federal candidate(s), but do not refer to any clearly
identified Federal candidate, including those that also support candidates of a
particular party or associated with a particular issue. See draft section
106.6(b)(5).
With the addition of these two paragraphs, draft section 106.6 would address all possible combinations of specific candidate and generic party or issue references in voter drive activity.

The attached amendments allocate voter drives the same way as the analogous public communications listed in draft section 106.6(b). "Generic voter drives" which do not refer to any specific candidates are allocated in draft section 106.6(b) with the 50% flat minimum percentage, together with public communications that refer to a political party, but no specific candidates. Voter drives that refer to one or more clearly identified Federal candidate(s) but do not refer to any non-Federal candidate(s), and which might also include a generic party or issue reference, are added to draft section 106.6(f)(1) and must be paid for with 100% Federal funds. Similarly, voter drives which refer to one or more clearly identified non-Federal candidate(s) but do not refer to any Federal candidate(s), and which might also include a generic party or issue reference, are added to draft section 106.6(f)(2) and may be paid for with 100% non-Federal funds. Finally, voter drives that refer to one or more clearly identified Federal candidate(s) and one or more clearly identified non-Federal candidate(s) are added to draft section 106.6(f)(3) and must be allocated under 11 CFR 106.1. We believe that requiring the same allocation for voter drives that refer to specific candidates as public communications that refer to specific candidates provides clear guidance to SSFs and nonconnected committees and is consistent with the purpose of the allocation regulations.

RECOMMENDATION

The Office of General Counsel recommends that the Commission approve Agenda Document No. 04-75 incorporating the amendments contained in Attachment A.
to this memorandum. We also recommend that the Commission incorporate the
amendments in Attachment A in Agenda Document No. 04-75-B, where applicable.
ATTACHMENT A
Amendments to Agenda Document 04-75

1. At page 37, line 8: delete “committees.” and replace with “committees and national or State political party committees.”

2. At page 37, line 15: delete “Has” and replace with “Is a national or State political party committee or has”

3. At page 41, line 19: delete the phrase “Except as provided in 11 CFR 102.17,”

4. At page 42: insert the following after line 13:

(c) Joint fundraisers. Joint fundraising conducted under 11 CFR 102.17 shall comply with the requirements of paragraphs (a) and (b) of this section except that joint fundraising between or among authorized committees of Federal candidates and campaign organizations of non-Federal candidates is not subject to paragraph (a) or (b) of this section.

5. At page 44, line 12: delete “(4)” and replace with “(6)”

6. At page 44, line 14: delete “(5)” and replace with “(7)”

7. At page 44, line 17: delete “(6)” and replace with “(8)”

8. At page 44: insert the following after line 11:

(4) Voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to:

(i) Register, vote or support one or more clearly identified Federal candidates, but do not refer to any clearly identified non-Federal candidates; or
(ii) Register, vote or support one or more clearly identified Federal candidates and also urge support for candidates of a particular party or associated with a particular issue, but do not refer to any clearly identified non-Federal candidates.

(5) Voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to:

(i) Register, vote or support one or more clearly identified non-Federal candidates, but do not refer to any clearly identified Federal candidates; or

(ii) Register, vote or support one or more clearly identified non-Federal candidates and also urge support for candidates of a particular party or associated with a particular issue, but do not refer to any clearly identified Federal candidates.

9. At page 45, line 18: delete "(b)(4)" and replace with "(b)(6)"

10. At page 46: Delete line 22 through to the end on page 47 and replace with the following:

(f) Payments for public communications and voter drives that refer to a political party and one or more clearly identified Federal or non-Federal candidates.

Nonconnected committees and separate segregated funds shall pay for the costs of all public communications that refer to a political party, as described in paragraphs (b)(7) and (b)(8) of this section, and voter drives that refer to one or more clearly identified candidates, as described in paragraphs (b)(4) and (b)(5) of this section, as follows:
(1) The following shall be paid 100 percent from the Federal account of the nonconnected committee or separate segregated fund:

(i) Public communications that refer to a political party and one or more clearly identified Federal candidates, but do not refer to any clearly identified non-Federal candidates, as described in paragraph (b)(7) of this section; and

(ii) Voter drives described in paragraph (b)(4) of this section.

(2) The following may be paid 100 percent from the non-Federal account of the nonconnected committee or separate segregated fund:

(i) Public communications that refer to a political party and one or more clearly identified non-Federal candidates, but do not refer to any clearly identified Federal candidates, as described in paragraph (b)(8) of this section; and

(ii) Voter drives described in paragraph (b)(5) of this section.

(3) The following shall be allocated under 11 CFR 106.1 as expenditures or disbursements on behalf of the clearly identified candidates, without regard to the portion of the communication that refers to a political party:

(i) Public communications that refer to a political party, one or more clearly identified Federal candidates, and also refer to one or more clearly identified non-Federal candidates; and

(ii) Voter drives that urge the general public to register, vote or support one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates.