



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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AGENDA ITEM

For Meeting of 04-29-10

MEMORANDUM

SUBMITTED LATE

TO: The Commission

FROM: Steven T. Walther *STW*
Commissioner

DATE: April 29, 2010

SUBJECT: Proposed Regulatory Text for Participation by Federal Candidates and
Officeholders at Non-Federal Fundraising Events (11 CFR 300.64)

Attached please find proposed regulatory text for 11 CFR 300.64. The italicized insertions in the attached indicate differences from the regulatory text that appears in Agenda Document No. 10-22.

I request that this proposed regulatory text be placed on the agenda for April 29, 2010.

Attachment

For the reasons set out in the preamble, Subchapter C of Chapter 1 of title 11 of the Code of Federal Regulations is amended to read as follows:

PART 300 – NON-FEDERAL FUNDS

1. The authority citation for part 300 continues to read as follows:

Authority: 2 U.S.C. 434(e), 438(a)(8), 441a(a), 441i, 453.

2. Section 300.64 is revised to read as follows:

§ 300.64 Participation By Federal Candidates and Officeholders at Non-Federal Fundraising Events (2 U.S.C. 441i(e)(1) and (3)).

(a) Scope. This section covers participation by Federal candidates and officeholders at fundraising events in connection with an election for Federal office or any non-Federal election at which funds outside the amount limitations and source prohibitions of the Act or Levin funds are solicited. This section also covers participation by Federal candidates and officeholders in publicity related to such non-Federal fundraising events. This section applies even if funds that comply with the amount limitations and source prohibitions of the Act are also solicited at the event. Nothing in this section shall be construed to alter the fundraising exception for State candidates at 11 CFR 300.63 or the fundraising exceptions for certain tax-exempt organizations at 11 CFR 300.65.

(b) Participation at non-Federal fundraising events. A Federal candidate or officeholder may:

- (1) Attend, speak at, or be a featured guest at a non-Federal fundraising event.
- (2) Solicit funds at a non-Federal fundraising event, provided that the solicitation is limited to funds that comply with the amount limitations and source prohibitions of the Act and that are consistent with State law.

- (i) A Federal candidate or officeholder may limit such a solicitation by displaying at the fundraising event a clear and conspicuous written notice, or making a *contemporaneous* clear and conspicuous oral statement, that the solicitation is not for Levin funds (when applicable), does not seek funds in excess of \$[Federally permissible amount], and does not seek funds from corporations, labor organizations, national banks, federal government contractors, or foreign nationals.
- (ii) A written notice or oral statement is not clear and conspicuous if it is difficult to read or hear or if its placement is easily overlooked *by any significant number of those in attendance.*

(3) *Notwithstanding paragraphs (b)(1) and (b)(2) of this section, a Federal candidate or officeholder may not consent to providing any benefit or service at a non-Federal fundraising event, such as a photo opportunity, that has been offered to donors in consideration for, or is otherwise conditioned upon, a donation of funds that, when aggregated with any funds that the donor has already paid to attend the event, do not comply with the amount limitations and source prohibitions of the Act.*

(c) Publicity for non-Federal fundraising events. For the purposes of this paragraph, publicity for a non-Federal fundraising event includes, but is not limited to, advertisements, announcements, or pre-event invitation materials, regardless of format or medium of communication.

- (1) Publicity not containing a solicitation. A Federal candidate or officeholder may approve, authorize, agree to, or consent to the use of his or her name or likeness in publicity for a non-Federal fundraising event that does not contain a solicitation.
- (2) Publicity containing a solicitation limited to funds that comply with the amount limitations and source prohibitions of the Act. A Federal candidate or officeholder may approve, authorize, agree to, or consent to the use of his or her name or likeness in publicity for a non-Federal fundraising event that solicits only funds that comply with the amount limitations and source prohibitions of the Act.
- (3) Publicity containing a solicitation of funds outside the amount limitations and source prohibitions of the Act.
 - (i) A Federal candidate or officeholder may approve, authorize, agree to, or consent to the use of his or her name or likeness in publicity for a non-Federal fundraising event that contains a solicitation of funds outside the amount limitations and source prohibitions of the Act or Levin funds only if:
 - (A) The Federal candidate or officeholder is identified as a featured guest, honored guest, special guest, featured speaker, or honored speaker, or in any other manner not specifically related to fundraising; and

- (B) The publicity includes a clear and conspicuous disclaimer that the solicitation is not being made by the Federal candidate or officeholder.
- (ii) The disclaimer required in paragraph (c)(3)(i)(B) of this section must meet the requirements in 11 CFR 110.11(c)(2) if the publicity is written.
- (iii) Where publicity is disseminated by non-written means, the disclaimer described in paragraph (c)(3)(i)(B) of this section is required only if the publicity is recorded or follows any form of written script, *or is coordinated, formalized, pre-planned, or conducted according to a structured or organized program, including the use of call lists.*
- (iv) Examples of disclaimers that satisfy paragraph (c)(3)(i)(B) of this section include, but are not limited to:
 - (A) “[Name of Federal candidate/officeholder] is appearing at this event only as a featured speaker. [Federal candidate/officeholder] is not asking for funds or donations”; or
 - (B) “All funds solicited in connection with this event are by [name of non-Federal candidate or entity], and not by [Federal candidate/officeholder].”
- (v) A Federal candidate or officeholder may not approve, authorize, agree to, or consent to the use of his or her name or likeness in

publicity for a non-Federal fundraising event that contains a solicitation of funds outside the amount limitations and source prohibitions of the Act or Levin funds if:

- (A) The Federal candidate or officeholder is identified as serving in a position specifically related to fundraising, such as honorary chairperson or member of a host committee, or is identified in the publicity as extending an invitation to the event, even if the communication contains a written disclaimer as described in paragraph (c)(3)(i)(B) of this section; or
 - (B) The Federal candidate or officeholder signs the communication, even if the communication contains a written disclaimer as described in paragraph (c)(3)(i)(B) of this section.
- (vi) A Federal candidate, officeholder, or an agent of either, may not disseminate publicity for a non-Federal fundraising event that contains a solicitation of funds outside the amount limitations and source prohibitions of the Act or Levin funds by someone other than the Federal candidate or officeholder.