

Please note that the NPRM makes a couple of changes to the rulemaking schedule presented on April 11, 2002. First, the deadline for comments and requests to testify on this NPRM would be May 29, 2002. The public hearing on soft money would be extended to two days, June 4 and 5, 2002.

Recommendation

The Office of General Counsel recommends that the Commission:

1. Approve the attached Notice of Proposed Rulemaking for publication in the *Federal Register*; and
2. Schedule a public hearing on this NPRM for June 4 and 5, 2002.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Parts 100, 102, 104, 106, 108, 110, 114, 300, and 9034**

3 **[Notice 2002 ->]**

4 **Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money**

5 **AGENCY:** Federal Election Commission.

6 **ACTION:** Notice of Proposed Rulemaking.

7 **SUMMARY:** The Federal Election Commission seeks comments on proposed
8 changes to its rules relating to funds raised, received, and spent by
9 party committees under the Federal Election Campaign Act of
10 1971, as amended ("FECA" or the "Act"). The proposed rules are
11 based on the Bipartisan Campaign Reform Act of 2002 ("BCRA"),
12 which adds to the Act new restrictions and prohibitions on the
13 receipt, solicitation, and use of certain types of non-Federal funds,
14 which are commonly referred to as "soft money." BCRA and the
15 proposed rules prohibit national parties and Federal candidates and
16 officeholders from raising non-Federal funds. They also generally
17 require State, district, and local party committees to fund "Federal
18 election activity," including voter registration and get-out-the-vote
19 ("GOTV") drives, with money raised pursuant to the limitations,
20 prohibitions, and reporting requirements of the Act, or with a
21 combination of funds subject to various requirements of the Act
22 and BCRA. They also address fundraising by Federal and non-

1 Federal candidates and officeholders on behalf of political party
2 committees, other candidates, and non-profit organizations.

3 BCRA's general effective date is November 6, 2002, the
4 day following the November 2002 general election, although
5 national party committees that received soft money prior to that
6 date may use these funds for certain purposes before January 1,
7 2003. The changes to the Act's contribution limits take effect on
8 January 1, 2003.

9 Further information is contained in the Supplementary
10 Information that follows. Please note that the Commission has not
11 made a final decision on any of these proposals.

12 **DATES:**

Comments must be received on or before May 29, 2002. The
13 Commission will hold a hearing on these proposed rules on June 4
14 and 5, 2002, at 9:30 a.m. Commenters wishing to testify at the
15 hearing must so indicate in their written or electronic comments.

16 **ADDRESSES:**

All comments should be addressed to Ms. Rosemary C. Smith,
17 Assistant General Counsel, and must be submitted in either
18 electronic or written form. Electronic mail comments should be
19 sent to BCRASoftmon@fcc.gov and must include the full name,
20 electronic mail address, and postal service address of the
21 commenter. Electronic mail comments that do not contain the full
22 name, electronic mail address, and postal service address of the
23 commenter will not be considered. Faxed comments should be

1 sent to (202) 219-3923, with printed copy follow-up to ensure
2 legibility. Written comments and printed copies of faxed
3 comments should be sent to the Federal Election Commission, 999
4 E Street, N.W., Washington, D.C. 20463. Commenters are
5 strongly encouraged to submit comments electronically to ensure
6 timely receipt and consideration. The hearing will be held in the
7 Commission's ninth floor meeting room, 999 E St. N.W.,
8 Washington, D.C.

9 **FOR FURTHER**
10 **INFORMATION**
11 **CONTACT:**

Ms. Rosemary C. Smith, Assistant General Counsel, or Attorneys
12 Ruth Heilizer (definitions), Jonathan M. Levin (office buildings),
13 Dawn Odrowski (national parties and tax-exempt organizations),
14 Rita A. Reimer (Federal and State candidates), John C. Vergelli
15 (Levin funds), or Anne A. Weissenborn (parties), 999 E Street
16 N.W., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

17 **SUPPLEMENTARY**

18 **INFORMATION:** The Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L.
19 107-155, 116 Stat. 81 (March 27, 2002), contains extensive and detailed amendments to
20 the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"),
21 2 U.S.C. 431 *et seq.* This is the first of a series of Notices of Proposed Rulemakings
22 ("NPRM") the Commission will publish over the next several months in order to meet the
23 rulemaking deadlines set out in BCRA.

24 This NPRM addresses BCRA's new limitations on party, candidate, and
25 officeholder solicitation and use of non-Federal funds. Section 402 of BCRA establishes

1 a 90-day deadline for the Commission to promulgate these rules. Since BCRA was
2 signed into law on March 27, 2002, the 90-day deadline is June 25, 2002.

3 Future NPRMs will address: (1) electioneering communications and issue ads;
4 (2) coordinated and independent expenditures; (3) the so-called "millionaire's
5 amendment," which increases contribution limits for congressional candidates facing
6 self-financed candidates on a sliding scale, based on the amount of personal funds the
7 opponent contributes to his or her campaign; (4) the increase in contribution limits; and
8 (5) other new and amended provisions, including contribution prohibitions and reporting.
9 This last NPRM will address contributions by minors, foreign nationals, and U.S.
10 nationals; inaugural committees; fraudulent solicitations; disclaimers; personal use of
11 campaign funds; and civil penalties. BCRA's deadline for promulgation of these
12 remaining rules is 270 days after the date of enactment, or December 22, 2002. The
13 Commission also plans to address BCRA's impact on national nominating conventions in
14 a separate rulemaking.

15 Because of the extremely tight deadline for promulgating these rules, the
16 Commission must adhere to a shorter-than-usual timeline for receiving and considering
17 public input on the proposed rules that follow. This schedule will be strictly adhered to.
18 Comments on this NPRM must be received no later than May 29, 2002. Commenters
19 who wish to testify at the June 4 and 5, 2002 public hearing must so indicate in their
20 comments, also by May 29, 2002.

21

22

1 Introduction

2
3 The Act limits the amount that individuals can contribute to candidates, political
4 committees, and political parties for use in Federal elections. 2 U.S.C. 441a. The Act
5 also prohibits corporations and labor organizations from contributing their general
6 treasury funds for these purposes. 2 U.S.C. 441b. Contributions from national banks,
7 2 U.S.C. 441b(a); government contractors, 2 U.S.C. 441c; foreign nationals, 2 U.S.C.
8 441e; and minors, new 2 U.S.C. 441k, as enacted by BCRA; as well as contributions
9 made in the name of another, 2 U.S.C. 441f; are also prohibited. These strictures regulate
10 what is often referred to as “hard money,” or Federal funds.

11 Some donations that do not meet the FECA hard money requirements, for
12 example, corporate and labor organization general treasury contributions, may not be
13 used for Federal elections, and are referred to as non-Federal funds.¹ Non-Federal funds
14 may not be used for the purpose of influencing any election for Federal office. Funds
15 raised that are used by State or local parties or State or local candidates wholly on non-
16 Federal elections may be governed by State or local law. Prior to BCRA’s revisions,
17 the FECA permitted national party committees, Federal candidates, and officeholders to
18 raise money not subject to some of the Act’s source limitations and prohibitions.

19 Beginning November 6, 2002, under BCRA, national party committees “may not solicit,

¹ Because the term “soft money” is used by different people to refer to a wide variety of funds under different circumstances, the Commission has decided to use the term “non-Federal funds” in the rules rather than the term “soft money.” BCRA itself does not use the term except in the heading of Title I of BCRA. Some donations that do not meet the Act’s hard money requirements, for example, those from foreign nationals, national banks, and Federal corporations, may not be used at all.

1 receive, or direct to another person a contribution, donation, or transfer of funds or any
2 other thing of value, or spend any funds, that are not subject to the limitations,
3 prohibitions, and reporting requirements of this Act." 2 U.S.C. 441i(a).

4 BCRA also provides that State, district, and local political party committees must
5 pay for "Federal election activities," which is a new term introduced and defined by
6 BCRA, 2 U.S.C. 431(20), 441i(b)(1), with entirely Federal funds or, in some cases, a
7 mixture of Federal funds and a new type of non-Federal funds, which the proposed rules
8 call "Levin funds." These two provisions are related in that the latter is intended to
9 prevent evasion of the former. A national political party committee may not evade the
10 restrictions in BCRA by merely transferring its spending for Federal election activity to
11 State, district, or local party committees. The State, district, and local party committees
12 must spend Federal funds on these activities. See 148 Cong. Rec. H408-409 (daily ed.
13 Feb. 13, 2002) (statement of Rep. Shays).

14 The "Levin Amendment" (named after Sen. Levin of Michigan who offered it)
15 provides an exception or refinement to the requirement that State, district, and local party
16 committees must spend only hard money for Federal election activities. The Levin
17 Amendment provides that State, district, and local political party committees may use
18 funds that do not meet all of the Act's limitations, prohibitions, and reporting
19 requirements for a portion of certain Federal election activities if certain conditions are
20 satisfied. See 2 U.S.C. 441i(b)(2)(A). The proposed regulations refer to these funds,
21 which are a subset of non-Federal funds, as "Levin funds," a term which would be
22 defined in the proposed regulations. BCRA does not permit national party committees,

1 candidate committees, separate segregated funds, or nonconnected committees to raise or
2 spend Levin funds.

3 A State, district, or local political party committee may spend under the Levin
4 Amendment if the expenditure or disbursement is allocated between Federal funds and
5 Levin funds. BCRA contemplates that the Commission will adopt regulations
6 prescribing the allocation requirements. 2 U.S.C. 441i(b)(2)(A). See below.

7 Under BCRA, Federal candidates and officeholders may not solicit or receive non-
8 Federal funds in connection with a Federal election, and may raise only limited amounts
9 in connection with non-Federal elections. 2 U.S.C. 441i(c)(1) and (2). These far-
10 reaching amendments affect many other aspects of the Act and the Commission's rules.
11 For example, the prohibition on Federal candidate and officeholder solicitation of non-
12 Federal funds, and national party committees' solicitation or receipt of non-Federal
13 funds, applies to convention committees, which are established by national committees
14 under 11 CFR 9008.3(a). These statutory changes could apply to other entities as well.
15 See 2 U.S.C. 441i(a)(2). As noted above, BCRA's impact on national nominating
16 conventions will be addressed in a separate rulemaking. It also will be necessary to
17 rewrite the Commission's allocation rules at 11 CFR Part 106. See below.

18 The proposed rules are described and explained below. In several sections the
19 Commission has identified specific questions, issues, or alternatives for which it seeks
20 comments. In addition, the Commission welcomes comments that address issues not
21 raised in this NPRM.

22

23

1 **Scope, Effective Date, and Organization**

2
3 The Commission proposes to prescribe new rules for non-Federal funds of
4 political party committees. The bulk of these rules would be in 11 CFR part 300.
5 Proposed 11 CFR 300.1 addresses the scope of new part 300, sets forth the effective date
6 of the provisions contained in the new part, and outlines the organization of the new part.
7 Specifically, proposed paragraph (a) of section 300.1 states that proposed new part 300
8 would implement changes to the FECA, enacted by Title I of BCRA. It also notes that
9 nothing in part 300 is intended to alter the definitions, restrictions, liabilities, and
10 obligations imposed by sections 431-455 of Title 2 of the United States Code or in the
11 regulations prescribed thereunder in 11 CFR parts 100-116.

12 The effective date of BCRA, except where otherwise stated, is November 6, 2002.
13 See 2 U.S.C. 431 note, section 402(a). Paragraph (b) of proposed section 300.1 states
14 that part 300 would take effect on November 6, 2002, except for the following: (1) where
15 otherwise stated in part 300; (2) subpart B of part 300 relating to State, district, and local
16 party committees will not apply with respect to runoff elections, recounts, or election
17 contests resulting from elections held prior to November 6, 2002; (3) the increase in
18 individual contributions limits to State party committees as set forth in proposed 11 CFR
19 110.1(c)(5) will apply to contributions made on or after January 1, 2003, and (4) national
20 parties must spend any remaining non-Federal funds received before November 6 and in
21 their possession on that date before January 1, 2003, subject to the transition rules set
22 forth in proposed 11 CFR 300.12.

1 Finally, paragraph (c) of section 300.1 indicates that part 300 would be organized
2 into five subparts, with each subpart addressing a specific category of persons affected by
3 BCRA. Specifically, subpart A of part 300 prescribes rules pertaining to national party
4 committees; subpart B prescribes rules pertaining to State, district, and local party
5 committees and organizations; subpart C addresses rules affecting certain tax-exempt
6 organizations; subpart D prescribes rules pertaining to Federal candidates and Federal
7 officeholders; and subpart E prescribes rules pertaining to State and local candidates.
8 BCRA also requires changes in these parts of Title 11 of the Code of Federal
9 Regulations, which are also addressed in this rulemaking.

11 **Definitions**

13 The proposed rules would amend an existing definition and add several new ones.
14 Some of the new definitions would be added to current 11 CFR part 100 because they
15 would have general applicability in Title 11 of the Code of Federal Regulations. The
16 remaining new definitions would be added to proposed new 11 CFR part 300. The
17 definitions are explained below.

19 1. Proposed 11 CFR 100.24 Definition of "Federal election activity"

20 BCRA amends 2 U.S.C. 431 by adding a new term, "Federal election activity,"
21 which consists of certain activities that State and local committees of political parties
22 must pay for with either Federal funds or a combination of Federal funds and Levin
23 funds. As stated above, Levin funds are funds which are exempt from the restrictions and

1 prohibitions of the Act, but which are limited, under BCRA, to \$10,000 per donor and
2 which must comply with State law.

3 The proposed definition of Federal election activity, which would be incorporated
4 into proposed new 11 CFR 100.24, tracks BCRA by including in Federal election activity
5 the following activities when they occur in close proximity to a Federal election: voter
6 registration; voter identification; GOTV drives; and public communications that refer to
7 clearly identified Federal candidates, even if candidates for State and local offices are
8 also mentioned. ("Generic campaign activities" are discussed below.)

9 With respect to "voter registration activity," which is addressed in proposed
10 11 CFR 100.24(a)(1), "special elections" are excluded, pursuant to BCRA. However,
11 with regard to proposed 11 CFR 100.24(a)(2), which addresses other activities conducted
12 in connection with an election, such as voter identification and GOTV activities, BCRA
13 does not exclude "special elections." Therefore, under proposed 11 CFR 100.24(a)(2),
14 voter identification and GOTV activities would constitute Federal election activity if
15 conducted in connection with special elections.

16 Proposed 11 CFR 100.24(a)(2)(i) would set forth examples of "voter
17 identification," such as activities designed to determine registered voters, likely voters, or
18 voters indicating a preference for a candidate or political party. The Commission seeks
19 comments as to whether those are appropriate examples of voter identification, or
20 whether they are too broad or too narrow. Do efforts to identify potential voters for State
21 or local candidates, without any mention of a Federal candidate, constitute Federal
22 election activity? Should there be a de minimis level of voter identification activities
23 related to Federal elections that would nonetheless not render certain activities "Federal

1 election activities” under BCRA? For example, would a State committee’s purchase of a
2 list of voters from a vendor for the purpose of State fundraising constitute “Federal
3 election activity”? Should “voter identification” be read in conjunction with “GOTV” to
4 reach only those activities intended to identify voters for GOTV purposes? Should there
5 be a defined time period that distinguishes “voter identification” from GOTV activities?
6 For example, is an activity designed to identify supporters of a gubernatorial candidate
7 “voter identification” if conducted several weeks or months before an election, but
8 “GOTV” if conducted within a week of the election? What other examples of “voter
9 identification” should be included in the regulations?

10 The Commission also notes that some examples of “voter identification,” such as
11 activities designed to determine registered voters or likely voters, may sometimes be
12 conducted on a nonpartisan basis. Nonpartisan activities intended to encourage
13 individuals to vote or to register to vote appear to come within the definition of “Federal
14 election activity” under BCRA. Nevertheless, should non-partisan GOTV drives be
15 excluded from the definition of “Federal election activity” in 11 CFR 100.24? See 2
16 U.S.C. 431(9)(B)(ix). Is it appropriate to treat certain party or candidate-initiated or
17 501(c) activities as nonpartisan voter drives? If so, under what conditions?

18 Proposed 11 CFR 100.24(a)(2)(iii) contains the following examples of GOTV
19 activities: transporting voters to the polls; contacting voters on election day or shortly
20 before to encourage voting, but without referring to any clearly identified candidate for
21 Federal office; and distributing printed slate cards, sample ballots, palm cards, or other
22 printed listing(s) of three or more candidates for any public office. The Commission
23 seeks comments as to whether there should be a de minimis level of GOTV activities

1 related to Federal elections that would nonetheless not render these activities "Federal
2 election activities" under BCRA.

3 In addition, the Commission seeks comments concerning additional examples of
4 GOTV activity for possible inclusion in the final version of this proposed rule. The
5 Commission also seeks comments on whether printed slate cards, sample ballots, and
6 palm cards should properly be considered GOTV activities or "public communications."

7 The Commission notes that, although slate cards, sample ballots, and printed
8 listings of three or more candidates are exempted from the Act's definitions of
9 "contribution" and "expenditure," (see 2 U.S.C. 431(8)(b)(v) and (9)(b)(iv)), they could
10 be viewed as falling within the term "Federal election activities" under BCRA. Should
11 they?

12 The Commission also notes that voter identification, GOTV, and generic campaign
13 activity are only "Federal election activities" under BCRA when they are conducted in
14 connection with an election in which a candidate for Federal office appears on the ballot
15 (regardless of whether a candidate for State or local office also appears on the ballot.)
16 The Commission seeks comments on how this requirement should be construed and
17 implemented - specifically, during what period(s) of time should a Federal candidate be
18 deemed to be on the ballot? Congress clearly intended to establish certain periods of time
19 in which a Federal candidate is not deemed to be on the ballot. How should the
20 Commission proceed in effectuating Congress' intent?

21 The Commission notes that there are a variety of ways in which Federal
22 candidates may qualify to have their names placed on the ballots of their States and that
23 these processes are governed by State law. In addition, the method by which a candidate

1 for Federal office obtains a position on the ballot is likely to differ for primaries and
2 general elections. In some cases, one State political party may choose its candidate for
3 Federal office before other State political parties choose their candidates. Should the
4 Commission construe the statutory language "on the ballot" to encompass the period of
5 time beginning on the earliest date that any Federal candidate could qualify for a position
6 on the ballot according to the time periods specified in the applicable State law or should
7 the time period begin on the day the filing period for federal offices closes under State
8 law? In the alternative, does this time period begin on January 1 of any Federal election
9 year, that is each even-numbered year? Or should the time period begin on the date that
10 any individual has become a Federal candidate under the Act? See 2 U.S.C. 431(2) and
11 11 CFR 100.3(a)(1) through (4) regarding the definition of "candidate" for FECA
12 purposes.

13 Proposed 11 CFR 100.24(a)(3) follows new 2 U.S.C. 431(20) by providing that a
14 public communication that refers to a clearly identified candidate for Federal office
15 would constitute "Federal election activity" that must be paid for with Federal funds if
16 the communication promotes, supports, attacks, or opposes any candidate for that Federal
17 office. This is true even if a candidate for State or local office is also mentioned or
18 identified. However, public communications that do not promote, support, attack, or
19 oppose any Federal candidate, as well as certain contributions to State or local
20 candidates, the costs of State, district, or local political conventions or similar meetings
21 and conferences, and grassroots materials that refer only to non-Federal candidates would
22 be specifically excluded from the definition of "Federal election activity."

1 “Public communication” is defined in proposed 11 CFR 100.26, discussed below.
2 Thus, the definition of “Federal election activity” in proposed 11 CFR 100.24 and BCRA
3 would extend beyond communications expressly advocating a vote for or against a
4 candidate. Note that a proposed definition of “promote or support or attack or oppose” is
5 set forth in proposed 11 CFR 300.2(f), which is discussed below.

6 BCRA also crafted 2 U.S.C. 431(20) to exempt from the definition of “Federal
7 election activity” certain expenditures or disbursements by State, district, or local
8 committees of political parties for certain activities which may be paid for with non-
9 Federal funds. These activities are: public communications that refer to a clearly
10 identified candidate for State or local office, provided that the public communications do
11 not promote, support, attack, or oppose any candidate for Federal office (proposed 11
12 CFR 100.24(b)(1)); contributions to candidates for State or local office, provided that the
13 contributions are not for Federal election activities (proposed 11 CFR 100.24(b)(2)); the
14 costs of State, district, or local political conventions, meetings or conferences (proposed
15 11 CFR 100.24(b)(3)); the costs of grassroots campaign materials, including buttons,
16 bumper stickers, handbills, brochures, posters and yard signs, that name or depict no
17 Federal candidate for State or local office (proposed 11 CFR 100.24(b)(4)); voter
18 registration activity before or after the dates during which this activity becomes Federal
19 election activity (proposed 11 CFR 100.24(b)(5)); and GOTV and voter identification
20 activities in elections in which no candidate for Federal office appears on the ballot
21 (proposed 11 CFR 100.24(b)(6)). The Commission also seeks comments concerning
22 additional examples of “grassroots” activities.

1 2. Proposed 11 CFR 100.25 Definition of "generic campaign activity"

2 Proposed section 100.25 contains the new statutory definition of "generic
3 campaign activity," which is campaign activity that promotes a political party, and not a
4 candidate for Federal office or for non-Federal office. The proposed rules would add to
5 the statutory definition those activities that oppose a political party without opposing
6 specific candidates. Activities in opposition to a particular party or candidate may be
7 construed as a form of promoting the other party or other candidates. Unlike "voter
8 registration activity," as described in 11 CFR 100.24(a)(1), the Commission is proposing
9 to interpret "generic campaign activity" to apply to special elections. In addition, the
10 Commission seeks comment on the extent, if any, to which the exclusions for exempt
11 activities in 11 CFR 100.7(b)(9), (15), (17) and 100.8(b)(8), (10), and (16), should apply
12 to the definition of "generic campaign activity. "

13

14 3. Proposed 11 CFR 100.26 Definition of "public communication"

15 BCRA amends 2 U.S.C. 431 by adding a new definition for the term "public
16 communication." BCRA defines "public communication" to include communication by
17 broadcast, cable, satellite, newspaper, magazine, outdoor advertising facility, mass
18 mailing or telephone bank to the general public, or any other form of general public
19 political advertising. In proposed 11 CFR 100.26, the Commission has not included the
20 Internet as a form of "general public political advertising" because this provision of
21 BCRA does not refer to the Internet. However, the Commission seeks comments as to
22 whether the definition of "public communication" in proposed 11 CFR 100.26 should
23 include or exclude communications provided through the use of World Wide Web sites

1 available to the public, widely distributed electronic mail, or other uses of the Internet,
2 such as "Webcasts" or the transmission of high-quality voice, graphics, or video
3 advertisements.

4 A letter sent by Chairman Mason and Commissioner Smith requested that
5 Congress clarify whether the term "public communication" was intended to encompass
6 communications sent over the Internet. The letter noted that the definition included "any
7 other form of general public political advertising," and stated: "The Commission has
8 treated Internet web pages available to the public and widely-distributed e-mail as forms
9 of 'general public political communication.' Thus, the new definition combined with the
10 Commission's established interpretation of the FECA could command regulation of
11 Internet and e-mail communications." See 148 Cong. Rec. S2340 (daily ed. March 22,
12 2002). Congress did not express agreement or disagreement with this interpretation.
13

14 4. Proposed 11 CFR 100.27 Definition of "mass mailing"

15 BCRA amends 2 U.S.C. 431 by adding a new definition of the term "mass
16 mailing." This new definition, which is set out in proposed 11 CFR 100.27, would
17 include any mailing by United States mail or facsimile of more than 500 pieces of mail
18 matter of an identical or substantially similar nature within any 30-day period.

19 The term "substantially similar" is also used in the Commission's disclaimer
20 regulations at 11 CFR 110.11(a)(3). When these rules were adopted in 1995, the
21 Commission explained that technological advances now permit what is basically the
22 same communication to be personalized to include the recipient's name, occupation,
23 geographic location, and similar variables. Communications are considered

1 “substantially similar” for purposes of the disclaimer rules if they would be the same but
2 for such individualization. See Explanation and Justification for Regulations on
3 Communications Disclaimer Requirements, 60 Fed. Register 52069, 52070 (Oct. 5,
4 1995). The Commission is proposing that the term “substantially similar” as used in
5 proposed 11 CFR 100.27 have the identical meaning, and is including language to this
6 effect in the text of the rule. However, it welcomes comments as to whether some other
7 definition of “substantially similar” would be more appropriate in this context.

8
9 5. Proposed 11 CFR 100.28 Definition of “telephone bank”

10 BCRA amends 2 U.S.C. 431 by adding a new definition of the term “telephone
11 bank.” This new definition, which is set out in proposed 11 CFR 100.28, would include
12 more than 500 telephone calls of an identical or substantially similar nature within any
13 30-day period. The Commission is also proposing to address the meaning of
14 “substantially similar” in the text of the rules. See discussion of proposed 11 CFR
15 100.27, above.

16
17 6. Proposed 11 CFR 300.2 Definitions

18 In proposed new section 300.2, the Commission seeks comments on draft
19 definitions for the following terms: “501(c) organization that makes expenditures or
20 disbursements in connection with a Federal election”; “agent”; “directly or indirectly
21 establish, finance, maintain, or control”; “disbursement”; “donation”; “Federal account”;
22 “Federal funds”; “Levin account”; “Levin funds”; “non-Federal account”; “non-Federal

1 funds"; "promote, support, attack, or oppose"; and "to solicit or direct." Several of these
2 terms are adapted from existing rules.

3 Several key terms are discussed in further detail below. In addition, the
4 Commission notes that proposed 11 CFR 300.2 defines several phrases, such as "directly
5 or indirectly establish, finance, maintain, or control," "to solicit or direct," and "promote
6 or support or attack or oppose," rather than attempting to define the individual words in
7 each phrase. Comments are sought on this approach, and on the clarity and scope of
8 these definitions.

9 A. Definition of "agent"

10 With respect to the definition of "agent," the Commission seeks comments as to
11 when an agent is acting "on behalf of" a principal. Additionally, the Commission seeks
12 comments as to the circumstances under which a principal, such as a party committee or a
13 501(c) organization, would be held liable for the actions of an agent, such as an
14 individual soliciting funds on behalf of the committee or 501(c) organization. For
15 example, must such an individual be a paid employee of the principal (i.e., the candidate
16 or officeholder) in order to qualify as an agent or would a vendor or independent
17 contractor hired by a candidate or political committee qualify as an agent? Could a
18 principal be held responsible for the actions of a volunteer who solicited impermissible
19 funds if the volunteer was making solicitations pursuant to general written or oral
20 instructions from the principal? Would a volunteer qualify as an agent if a principal had
21 knowledge that a volunteer was making impermissible solicitations using the candidate's
22 name without being specifically directed by the principal to do so? In addition, should a
23 principal only be held liable if an agent has actual, as opposed to apparent, authority to

1 engage in the alleged actions at issue? Similarly, should a principal be held liable if an
2 agent has express, rather than implied, actual authority to act? Or should the Commission
3 not attempt to define agency concepts in this part of the regulations, but instead leave the
4 concepts undefined for purposes of BCRA and rely on common law definitions? Please
5 note that the latter approach would depart from the approach taken regarding the
6 definition of agency in the current independent expenditure rules. See 11 CFR
7 109.1(b)(5).

8 B. Definition of "directly or indirectly establish, finance, maintain, or control"

9 Proposed 11 CFR 300.2(c) would define "directly or indirectly establish, finance,
10 maintain, or control," a term that is used in several provisions of BCRA. (The phrase
11 "established, financed, maintained, or controlled" already appears in the Commission's
12 "affiliation" regulation. See 2 U.S.C. 441a(a)(5), 11 CFR 100.5(g)). The term appears in
13 BCRA in the context of State, district, and local political party committees (see, e.g., 2
14 U.S.C. 441i(b)(2)(B)(iii)) and of Federal candidates and officeholders (see, e.g., 2 U.S.C.
15 441i(e)(1)).

16 In BCRA, "directly or indirectly establish, finance, maintain, or control" is used
17 in one context which seems to be akin to the current affiliation rule, that is, determining
18 when ostensibly separate entities share a contribution limit. See 2 U.S.C.
19 441i(b)(2)(B)(iii). This usage would suggest that the existing affiliation regulation is
20 helpful in understanding what is meant by "directly or indirectly establish, finance,
21 maintain, or control." The term, "directly or indirectly establish, finance, maintain, or
22 control," however, is also used in what seems to be a slightly different manner, too. For
23 example, a State, district, or local committee of a political party must not use as "Levin

1 funds” (a term that would also be defined in this section) any funds transferred to it from,
2 among other persons, “any other State, local, or district committee of any State party, . . .
3 or . . . any entity directly or indirectly established, financed, maintained, or controlled [by
4 the State party committee].” 2 U.S.C. 441i(b)(2)(B)(iv)(I), (IV); see also 2 U.S.C.
5 441i(c)(1). This latter usage suggests a different purpose, namely preventing the
6 proliferation of committees or organizations as a means of evading the Levin Amendment
7 transfer prohibition, as well as other BCRA prohibitions.

8 The definition in proposed 11 CFR 300.2(c) would accommodate both of the
9 usages of the term “directly or indirectly establish, finance, maintain, or control.”
10 Proposed paragraph (c)(1) would begin by enumerating the persons to whom the
11 regulation would apply, and would employ the shorthand “sponsor” to refer to these
12 persons. Also in proposed paragraph (c)(1), the statutory concept of “indirect”
13 establishment, financing, maintenance, or control would be addressed by including
14 actions taken by a sponsor’s agents, and those taken on behalf of the sponsor, or at the
15 sponsor’s behest, within the definition.

16 Proposed paragraph (c)(1)(i) would provide that a sponsor “directly or indirectly
17 establishes, finances, maintains, or controls” an entity if the sponsor and the entity would
18 be considered affiliated under 11 CFR 100.5(g).

19 Given that the term, “directly or indirectly establish, finance, maintain, and
20 control,” seems also to have a somewhat broader meaning in other contexts, proposed
21 paragraphs (c)(1)(ii) through (c)(1)(vi) would go on to state other conditions in which a
22 sponsor would “directly or indirectly establish, finance, maintain, or control” an entity.

1 The Commission seeks comment on whether this term should be interpreted to extend
2 beyond the current affiliation standard.

3 Proposed paragraph (c)(1)(ii) would focus on the establishment of entities by
4 sponsors, and would extend to the conversion of an existing entity. Note that the
5 proposed phrase, "alone or in combination with others," would extend this provision to
6 circumstances in which a sponsor (or its agent) was not solely responsible for the
7 establishment of the entity, but worked with one or more other persons to establish the
8 entity. The Commission seeks comment on whether this proposed paragraph should
9 apply only to entities established by a sponsor after a given date (perhaps November 6,
10 2002, which is the effective date of BCRA), provided that the sponsor and the entity are
11 not affiliated and do not satisfy the conditions in proposed paragraphs (c)(1)(iii) through
12 (vi). In the alternative, should there be a rebuttable presumption that entities organized
13 before a given date are not directly or indirectly established by a sponsor, provided that
14 the sponsor and the entity are not affiliated and do not satisfy the conditions in proposed
15 paragraphs (c)(1)(iii) through (vi)?

16 Proposed paragraph (c)(1)(iii) would address financing of an entity by a sponsor.
17 It would state that providing a "significant amount of the entity's funding at any point"
18 would suffice to constitute "financing." The proposed paragraph would enumerate three
19 factors to be used in gauging the "significance" of funding. These factors would go to
20 the magnitude, frequency, and duration of funding, and to how recently or distantly (in
21 time) the funding has been provided. For example, a sponsor that had provided a sizable,
22 but one-time contribution to an entity many years earlier would be able to assert that the

1 one-time nature of the contribution, combined with its remoteness in time, make this
2 funding not “significant,” as the term is used here.

3 Proposed paragraph (c)(1)(iv) would address the maintenance of an entity by a
4 sponsor. It would state that providing certain services to an entity would constitute
5 “maintaining” the entity. The Commission seeks comment on whether there should be a
6 de minimis exception to this provision. For example, if a party committee provides a de
7 minimis amount of administrative services to a party-related organization, such as a
8 governor’s association, should this activity be included in this provision?

9 Proposed paragraphs (c)(1)(v) and (c)(1)(vi) would go to control of an entity by a
10 sponsor. Proposed paragraph (c)(1)(v) would focus on control, whether formal or
11 informal, by the sponsor of solicitation of contributions and donations, and of making
12 expenditures or disbursement, by the entity. Proposed paragraph (c)(1)(vi) would focus
13 on more formal or structural decision-making relationships between the sponsor and the
14 entity.

15 The Commission seeks comment on several aspects of these conditions. In
16 proposed paragraph (c)(1)(ii), a sponsor would “directly or indirectly establish, finance,
17 maintain, or control” an entity if the sponsor provided “any funding” for the formation or
18 organization of the entity. The Commission seeks comment as to whether there should
19 be a de minimis exception to the proposed “any funding” rule. Proposed paragraph
20 (c)(1)(iii) would provide that a sponsor would “directly or indirectly establish, finance,
21 maintain, and control” an entity if the sponsor “provides a significant amount of the
22 entity’s funding at any point in the entity’s existence.” The Commission seeks comment

1 about whether “at any point” should be replaced with a temporal limit (e.g., “within the
2 past 5 years”).

3 Proposed paragraph (c)(2) would provide a mechanism for a sponsor or an entity
4 to request a determination by the Commission through the advisory opinion process that
5 the sponsor is no longer deemed to finance, maintain, or control an entity, even if it
6 established the entity.

7 C. Definition of “donation”

8 BCRA uses but does not define the term “donation.” The Commission proposes
9 to define a “donation” in 11 CFR 300.2(e) as a payment, gift, subscription, loan, advance,
10 deposit, or anything of value given to a non-Federal candidate or party committee, but not
11 including a contribution or transfer. Comments are sought on specifically excluding from
12 “donation” some of the exemptions to “contribution” set forth in existing 11 CFR
13 100.7(b). Under this approach, the following would not be donations: funds received
14 solely for the purpose of determining whether an individual should become a Federal
15 candidate (existing 11 CFR 100.7(b)(1)(i)); any cost incurred in covering or carrying a
16 news story, commentary, or editorial by any broadcasting station, newspaper, magazine,
17 or other periodical publisher (existing 11 CFR 100.7(b)(2)); individual volunteer services
18 provided without compensation to Federal candidates and political committees (existing
19 11 CFR 100.7(b)(3)); the costs of providing the use of residential premises or of church
20 or community rooms in the course of volunteering personal services to candidates or
21 political parties (existing 11 CFR 100.7(b)(4) and (5)); the cost of invitations, food, and
22 beverages in accordance with existing 11 CFR 100.7(b)(6); unreimbursed transportation
23 and subsistence costs under existing 11 CFR 100.7(b)(7); and the staging of candidate

1 debates in accordance with existing 11 CFR 100.7(b)(20) and (21). The Commission
2 seeks comments concerning whether each of these activities should be expressly
3 exempted from the definition of "donation." What, if any, additional expenses should be
4 excluded from the definition of "donation"?

5 D. Definitions of "Levin funds" and "Levin accounts"

6 As explained above, BCRA's Levin Amendment provides that State, district, and
7 local political party committees may spend certain non-Federal funds for Federal election
8 activities if those funds comply with certain prohibitions, limitations, and reporting
9 requirements added to the Act by BCRA. 2 U.S.C. 441i(b)(2)(A)(ii). Thus, these funds
10 are unlike Federal funds, which are fully subject to the Act's requirements, and unlike
11 "regular" non-Federal funds because they are subject to certain additional requirements
12 under BCRA. Proposed paragraph (i) of proposed 11 CFR 300.2 would define these
13 funds as "Levin funds," with the intention that "Levin funds" become a definite,
14 unambiguous reference to such funds. Note that the proposed definition contemplates
15 that a State, district, or local political party committee would be permitted to spend Levin
16 funds on non-Federal activity or Federal election activity. As explained more thoroughly
17 below in the discussion of proposed 11 CFR 300.32, the Commission seeks comment as
18 to whether the Levin Amendment (2 U.S.C. 441i(b)(2)) should be interpreted to permit
19 the spending of Levin funds for any purpose other than Federal election activity.

20 The Commission is considering requiring State, district, and local political party
21 committees to set up a separate account to handle Levin funds if they raise and spend
22 such funds. Proposed paragraph (h) of proposed 11 CFR 300.2 would define "Levin
23 account" as these separate accounts for handling Levin funds, which would be established

1 under proposed 11 CFR 300.30. Again, the intention is that the term would become an
2 unambiguous reference to such accounts. The Commission seeks comment as to whether
3 a requirement for mandatory Levin accounts would be more or less burdensome than the
4 alternative of allowing party committees to deposit and spend Levin funds from any non-
5 Federal account. The alternative approach would include a requirement that the
6 committee must be able to show by a reasonable accounting method that the non-Federal
7 portion of an expenditure for federal election activities under the Levin Amendment (see
8 2 U.S.C. 441i(b)(2)(A)) was comprised of lawful Levin funds.

9 E. Definition of “promote or support or attack or oppose”

10 BCRA uses the terms, “promote,” “support,” “attack,” and “oppose” in both the
11 Levin Amendment and elsewhere, but does not define these terms. The proposed rules at
12 11 CFR 300.2(l) include a definition, which incorporates the concept of “unmistakably
13 and unambiguously” encouraging actions to elect or defeat a clearly identified candidate.
14 Cf. Buckley v. Valeo, 424 U.S. 1, 43-44 (1976) (restricting the reach of the Act to
15 “communications that included an explicit and unambiguous reference to a candidate.”)
16 The Commission has also included language in section 300.2(l) from its existing express
17 advocacy regulations, 11 CFR 100.22(a) and (b), but has broadened the scope of these
18 provisions in order to effectuate BCRA’s intention of enlarging the scope of regulated
19 communications. The Commission seeks comments as to whether its proposed definition
20 is too broad or too narrow, and why. Specifically, the Commission seeks comments as to
21 what definition is most likely to survive Constitutional scrutiny.

1 F. Definition of “to solicit or direct”

2 Lastly, proposed 11 CFR 300.2(m) contains a definition of “to solicit or direct” a
3 contribution or donation. The draft definition would include a request, suggestion, or
4 recommendation to make a contribution or donation, including those made through a
5 conduit or intermediary. However, the definition does not construe advice or guidance as
6 to applicable laws to constitute a “solicitation.” The Commission seeks comments as to
7 how the concept of “solicitation” should be applied to a series of conversations which,
8 taken together, constitute a request for contributions or donations, but which do not do so
9 individually. Comment is also sought as to whether the proposed definition is too broad
10 or narrow, as well as whether the term “direct” in BCRA should be interpreted to follow
11 the earmarking rules regarding contributions directed through a conduit or intermediary
12 under 2 U.S.C. 441a(a)(8). Comment is also sought as to whether the passive providing
13 of information in response to an unsolicited request for information should be specifically
14 excluded from this definition.

15
16 **National Party Committees**

17
18 BCRA prohibits national party committees from raising and spending non-Federal
19 funds, that is, funds that are not subject to the prohibitions, limitations, and reporting
20 requirements of the Act. Sec 2 U.S.C. 441j(a). In explaining the purpose of this
21 prohibition, BCRA co-sponsor, Congressman Shays, stated: “The purpose of these
22 provisions is simple: to put the national parties entirely out of the soft money business.”
23 According to Congressman Shays, the corrupting dangers of funds raised outside the

1 Act's prohibitions, limitations, and reporting requirements is present in the funding of
2 national parties given that they operate at the national level and "are inextricably
3 intertwined with Federal officeholders and candidates, who raise money for them . . ."

4 148 Cong. Rec. H408-409 (daily ed. February 13, 2002) (statement of Rep. Shays).

5 The Commission is proposing to place the regulations that address this prohibition
6 in a new part of the Code of Federal Regulations, 11 CFR part 300, subpart A. In
7 addition to proposing this new subpart, the Commission is also proposing to amend
8 current 11 CFR 102.5 to conform with BCRA's prohibition on national party committees
9 and Federal candidates and officeholders from raising and spending non-Federal funds.

10
11 I. Proposed 11 CFR 300.10 General Prohibitions

12 The proposed rules at 11 CFR 300.10 track the language of BCRA in prohibiting
13 national party committees from soliciting, receiving, or directing to another person "a
14 contribution, donation, or transfer of funds or any other thing of value," or spending
15 funds that are not subject to the Act's prohibitions, limitations, and reporting
16 requirements. Accordingly, national party committees would no longer be able to accept
17 funds from corporations or labor organizations or funds from individuals and others that
18 exceed the limitations of the Act. Further, all expenditures and disbursements made by a
19 national party committee, including donations to State and local candidates and donations
20 or transfers to State parties, would be made with Federal funds.

21 The national party ban on raising and spending non-Federal funds has widespread
22 application. BCRA expressly provides that the prohibition on raising and spending non-
23 Federal funds also applies to the national party congressional committees (currently, the

1 Democratic Senatorial Campaign Committee, the National Republican Senatorial
2 Committee, the Democratic Congressional Campaign Committee, and the National
3 Republican Congressional Committee), to officers and agents acting on behalf of a
4 national party committee or a national party congressional committee, and to any entities
5 directly or indirectly established, financed, maintained, or controlled by either. 2 U.S.C.
6 441i(a)(1) and (2). “The provision is intended to be comprehensive at the national party
7 level. Simply put, the national parties and anyone operating on behalf of them are not to
8 raise or spend nor [sic] to direct or control soft money.” 148 Cong. Rec. H408-409 (daily
9 ed. February 13, 2002) (statement of Rep. Shays).

10 The proposed rules track the statutory language. See proposed 11 CFR 300.10(a)
11 and (c). Consequently, Federal candidates or Federal officeholders, or anyone else acting
12 on behalf of a national party committee would not be able to raise or spend non-Federal
13 funds or direct them to other persons. Similarly, party-created entities such as convention
14 committees, which are established by a national party committee in accordance with
15 11 CFR 9008.3(a)(2) to conduct the daily operations of a party’s national nominating
16 convention, would not be able to raise or spend, or direct to other persons, funds from
17 corporations or labor organizations, or funds from individuals or other entities in amounts
18 that exceed the Act’s contribution limitations. In a subsequent rulemaking, the
19 Commission will seek comment on whether BCRA bans national party committees, and
20 their officers and agents, from directing non-Federal funds to a host committee in light of
21 the statutory language that they are not permitted to direct non-Federal funds to other
22 persons. See 2 U.S.C. § 441(i)(a)(1).

1 The proposed rules also make clear that national parties cannot raise, spend, or
2 direct to another person Levin funds. See proposed 11 CFR 300.10(a)(3). The
3 Commission seeks comments on whether the rules should contain specific examples of
4 “entities directly or indirectly established, maintained, financed, or controlled by a
5 national party committee,” and if so, what entities should be included.

6
7 2. Proposed 11 CFR 300.11 Prohibition on National Party Fundraising for Certain Tax-
8 Exempt Organizations.

9 In addition to prohibiting national parties from raising and spending non-Federal
10 funds, BCRA prohibits national party committees, their officers and agents, and entities
11 directly or indirectly established, financed, maintained, or controlled by them from
12 raising funds for, or making or directing donations to, certain tax-exempt organizations.
13 2 U.S.C. 441i(d)(1). BCRA’s prohibition on this type of donor and fundraising activity
14 extends only to tax-exempt organizations with a political purpose or that conduct
15 activities in connection with a Federal election.

16 Specifically, the party fundraising ban extends to organizations exempt from
17 taxation under 26 U.S.C. 501(c) that “make[s] expenditures or disbursements in
18 connection with an election for Federal office (including expenditures or disbursements
19 for Federal election activity).” 2 U.S.C. 441i(d)(1). (Organizations formed under
20 26 U.S.C. 501(c) are referred to as “501(c) organizations” below.) The ban also extends
21 to political organizations exempt from taxation under 26 U.S.C. 527. These entities are
22 defined in the Internal Revenue Code as parties, committees, associations, funds, or other
23 organizations organized and operated primarily to directly or indirectly accept

1 contributions and make expenditures for the “exempt function” of influencing or
2 attempting to influence the selection, nomination, election or appointment of an
3 individual to a Federal, State, or local public office, political organization office, or
4 election of Presidential and Vice Presidential electors. 26 U.S.C. 527(e)(1) and (2).
5 BCRA excludes certain section 527 organizations from the prohibition: political
6 committees, State, district, and local party committees and the authorized committees of
7 State and local candidates.

8 Again, the proposed rules track the statute. See proposed 11 CFR 300.11. A
9 section 501(c) organization that “makes expenditures or disbursements in connection
10 with a Federal election” is defined as an organization that operates, supports, finances, or
11 controls a political committee, as defined under the Act, makes expenditures and
12 disbursements in connection with Federal election activity, finances voter registration at
13 any time, or finances voter guides, candidate surveys and candidate questionnaires that
14 refer to one or more Federal candidates. See proposed 11 CFR 300.2(a). As explained
15 above, the definition of “Federal election activity” would generally follow the statutory
16 definition of that term. See proposed 11 CFR 100.24. This ban on party fundraising for
17 certain tax-exempt organizations would ensure that national party committees could not
18 direct non-Federal funds they formerly raised themselves to other organizations that
19 engage in election activity that could directly or indirectly support Federal candidates.

20 The Commission requests comment on whether any other types of disbursements
21 and expenditures by 501(c) organizations should bring those organizations within the
22 proposed 11 CFR 300.12 prohibition and whether the prohibition should contain a
23 temporal requirement. For example, should the prohibition encompass a 501(c)

1 organization that has made disbursements and expenditures in connection with a Federal
2 election at any time in the past, within the past three election cycles, within the past three
3 years, or within some other time frame? The Commission also seeks comments on
4 whether the rules should include additional guidance as to how a national party
5 committee, or anyone else, could determine whether a particular 501(c) organization falls
6 within the prohibition.

7 Comments are also sought as to whether a safe harbor provision should be
8 provided for a national party committee that takes certain actions before fundraising for,
9 or donating to, a 501(c) organization to determine that the organization does not engage
10 in the election activity described? Examples of such actions could include: (1) a national
11 party obtains a 501(c) organization's publicly available application for tax-exempt status
12 or annual Form 990 tax returns and determines from that information that the
13 organization has not reported making, or indicated plans to make, expenditures or
14 disbursements in connection with a Federal election; or (2) with respect to future activity
15 by a 501(c) organization or an organization that has applied for, but not yet obtained, tax-
16 exempt status, obtains a certification from the organization indicating that it does not
17 engage in or plan to engage in the type of election activity described.

18 Finally, the Commission seeks comment on what it means for a national party to
19 "direct donations." Pursuant to proposed 11 CFR 300.2(m), "to direct" a donation would
20 mean to request, suggest, or recommend that another person donate something of value to
21 a section 501(c) or section 527 organization. So construed, could a national party
22 committee or its agent respond to an unsolicited request for information about
23 organizations that share a party's political, social, or philosophical goals?

1 Please note that the proposed section 300.11 prohibition on national party
2 fundraising for, and donating to, certain tax exempt organizations would extend to a
3 broader group than the prohibition in proposed section 300.10 on non-Federal fundraising
4 by national party committees. Both 300.10 and 300.11 apply to national party and
5 national congressional committees, officers and agents acting on behalf of them, and
6 entities indirectly or directly established, financed, maintained, or controlled by them. In
7 accordance with the statute, the 300.11 prohibition would also apply to officers and
8 agents acting on behalf of entities directly or indirectly established, financed, maintained,
9 or controlled by national party and national congressional campaign committees, and to
10 entities directly or indirectly established, financed, maintained, or controlled by an agent
11 of national party or congressional campaign committees. As is the case for the proposed
12 11 CFR 300.10 prohibition, the Commission seeks comments on whether the final rules
13 should provide examples of entities directly or indirectly established, financed,
14 maintained, or controlled by an agent of national party or congressional campaign
15 committees, as well as examples of officers and agents acting on behalf of them and of
16 entities directly or indirectly established, financed, maintained, or controlled by an agent
17 of national party committee or congressional campaign committees.

18 19 3. Proposed 11 CFR 300.12 Transition Rules

20 BCRA's prohibitions on non-Federal funds raised and spent by national parties
21 become effective on November 6, 2002. Accordingly, through November 5, 2002, a
22 national party can use funds in non-Federal accounts in any way permissible under
23 current law. Beginning on November 6, 2002, national parties can no longer accept non-

1 Federal funds. Non-Federal funds that remain in a national party's possession after the
2 November 5, 2002 general election are covered by BCRA's transition rules. See
3 2 U.S.C. 431 note, section 402(b)(2). Under these rules, non-Federal funds received by a
4 national party before November 6, 2002 must be used before January 1, 2003 solely to:
5 (1) retire outstanding non-Federal debts or non-Federal obligations incurred solely in
6 connection with an election held before November 6, 2002; or (2) to pay non-Federal
7 expenses or retire outstanding non-Federal debts or obligations incurred solely in
8 connection with any run-off election, recount, or election contest resulting from an
9 election held prior to November 6, 2002. See 2 U.S.C. 431 note, section 402(b)(2)(B)(i)
10 and (ii). These remaining non-Federal funds could not be used for building fund
11 expenses or for outlays that would qualify as "expenditures" under the Act. Non-Federal
12 funds contained in national party building fund accounts are treated separately and are
13 described below. Non-Federal funds of State and local party committees would be
14 covered by proposed 11 CFR part 300, subpart B.

15 The proposed transition rules governing the use of non-Federal funds remaining
16 in a national party's possession, other than non-Federal funds contained in building
17 funds, are set forth in 11 CFR 300.12(a) through (c). The proposed rules track the
18 statutory language. In addition, the proposed rules would also indicate that current
19 allocation regulations applicable to national party non-Federal accounts will remain in
20 effect during the transition period. See proposed 11 CFR 300.12(d).

21 BCRA appears to restrict the use of excess non-Federal funds by national party
22 committees to the specific purposes described above. It does not address what happens if
23 national party committees have any non-Federal funds remaining after they have

1 disbursed funds for those purposes. The Commission seeks comments as to whether any
2 funds remaining may be disgorged to the United States Treasury or to a charitable
3 organization or whether they may be used in any other way.

4 BCRA treats non-Federal funds contained in national party building fund
5 accounts more stringently. Under current law, funds in a national party building fund
6 account can be used only for the purchase or construction of the national party
7 committees' office building or facility. Beginning November 6, 2002, however, any
8 funds remaining in a national party building fund account cannot be used for any building
9 fund purposes. See 2 U.S.C. 431 note, (b)(2)(iii). Hence, the proposed 11 CFR
10 300.12(e) would require any funds on deposit in such accounts on November 6, 2002 to
11 be either disgorged to the United States Treasury or donated to an organization described
12 in 26 U.S.C. 170(c) no later than December 31, 2002.

14 4. Proposed 11 CFR 300.13 Reporting

15 BCRA requires national party committees, including national congressional
16 campaign committees, and any subordinate committee of either, to report all receipts and
17 disbursements during a reporting period. 2 U.S.C. 434(e). The proposed rules track the
18 statutory language. See proposed 11 CFR 300.13(a). The Commission seeks comments
19 on whether this provision is intended to require reporting by existing entities that
20 currently are not required to report, and if so, the identification of such entities.

21 The proposed rules would also require national party committees to file
22 termination reports for their non-Federal accounts to disclose the disposition of all non-
23 Federal funds. See proposed 11 CFR 300.13(b). Proposed 11 CFR 300.13(c) identifies

1 the current reporting regulations applicable to non-Federal accounts, including building
2 funds, which will remain in effect to accomplish this.

3
4 5. Effect on Joint Fundraising Rules

5 The ban on national party non-Federal fundraising would affect the Commission's
6 joint fundraising rules, found at 11 CFR 102.17 (FECA) and 11 CFR 9034.8 (Presidential
7 Primary Matching Payment Act). The Commission is, therefore, proposing to add
8 introductory language to each of these sections, advising readers that "[n]othing in this
9 section shall permit any person to solicit, receive, direct, transfer, or spend" any non-
10 Federal funds prohibited under 11 CFR part 300.

11
12 **State, District, and Local Party Committees, and Organizations**

13
14 While BCRA completely prohibits national party committees from receiving,
15 soliciting, using, and transferring non-Federal funds after November 5, 2002, State,
16 district, and local party committees and organizations may continue to solicit and use
17 non-Federal funds, consistent with State law, for certain purposes. 2 U.S.C. 441i(b).
18 Proposed 11 CFR part 300, subpart B, which is explained in more detail below, would
19 implement the new statutory provisions governing these non-Federal funds that apply to
20 State, district, and local party committees and party organizations that are not political
21 committees under the FECA.

1 1. Proposed Revisions to 11 CFR 100.14 State, District, or Local Committee of a
2 Political Party

3 The Levin Amendment, as set out in 2 U.S.C. 441i(b)(2), refers to "State, district,
4 and local committees of a political party." The Commission's regulations already define
5 "State committee" and "subordinate committee," and "party committee." 11 CFR
6 100.14, 100.5(e)(4); see also 2 U.S.C. 431(15). The proposed rules that follow would
7 amend section 100.14 to conform with the Levin Amendment, and to harmonize section
8 11 CFR 100.14 and 100.5(e)(4).

9 In proposed paragraph (a), status as a State committee would be determined by
10 reference to the party by-laws or State law, with an eye to limiting the definition to
11 organizations that are part of "the official party structure." This change would create a
12 parallel with the current 11 CFR 100.5(e)(4), and would allow the proposed amended
13 regulation to cover those States in which party committee status is a matter of State law
14 and those in which it is a matter of party by-laws. There would also be a grammatical
15 correction.

16 In proposed paragraph (b), there would be, in addition to a grammatical
17 correction, the same change with regard to "official party structure" as in proposed
18 paragraph (a), and the addition of the phrase, "as determined by the Commission," to the
19 end of the paragraph. This added language would standardize the treatment of "State
20 committees" and "subordinate committees" in the section (existing paragraph (a) already
21 includes this statutory phrase). The added language would also give the Commission the
22 necessary authority and flexibility to ensure that district and local committees are treated
23 consistently and fairly.

1 Proposed paragraph (c) would be a new provision defining "district or local
2 committee." This proposed definition would parallel proposed paragraph (a) but for
3 political subdivisions below the State level, and would encompass those political party
4 committees that do not necessarily operate formally under the "control or direction" of
5 the State party committee. The key criterion for determining status as a district or local
6 party committee would again be "the official party structure," whether that is a matter of
7 State law or the party's by-laws.

8

9 2. Proposed Revisions to 11 CFR 106.5

10 The creation of a new part 300 to cover all aspects of party committee activity has
11 rendered considerable portions of present section 106.5 either outdated or duplicative. As
12 presently constituted, the proposed revision of this section will state in broad terms the
13 general principles that after December 31, 2002, (1) national party committees are no
14 longer permitted to raise and spend non-Federal funds, and thus are unable to allocate
15 expenses between Federal and non-Federal accounts, and (2) that State, district, and local
16 party committees that make expenditures and disbursements in connection with both
17 Federal and non-Federal elections must either use only Federal funds for these purposes
18 or must establish separate accounts and allocate expenditures between or among those
19 accounts pursuant to the requirements of part 300. References to Levin activities and
20 accounts have been added and references to specific sub-sections of part 300 are included
21 in the draft revisions.

22 Although all references to "exempt activities" have been dropped from section
23 106.5, comments are solicited with regard to the relationship of such activities, as defined

1 by 11 CFR 100.7(b)(9), (15) and (17) and 11 CFR 100.8(b)(10), (16) and (18), to the
2 concept of "Federal election activity" in BCRA. Do these exempt activities remain
3 separate allocable categories of State, district, and local party expenditures, or are they
4 subsumed within "voter registration," "voter identification," "get-out-the vote," and
5 "generic campaign activities" now included in what are termed "Levin activities" in the
6 proposed regulations? Would voter registration activity outside the time frame of 120 or
7 less days before an election be an example of remaining "exempt activity?" Would
8 solely volunteer participation in the distribution of campaign materials take such activity
9 out of "Levin activity" for purposes of the kinds of funds that would be permissible to
10 make such expenditures?

11 As discussed below, allocation accounts might be retained as they appear at
12 present section 106.5.

14 3. Proposed 11 CFR 300.30 Accounts

15
16 The Commission is considering whether or not to require State, district, and local
17 party committees to maintain three separate accounts. These would include a Federal
18 account to be used for both Federal and mixed Federal and non-Federal activities; a
19 second account, known as a Levin account, to be used to meet Levin activities, i.e.,
20 certain costs of voter registration within a fixed time period, voter identification, GOTV,
21 and generic campaign activity pursuant to proposed 11 CFR 300.32; and a third account
22 to be used for State, district, and/or local activities. The perceived need for these three
23 separate accounts is based upon BCRA's apparent separation of State, district, and local

1 party campaign activity into three distinct categories for which there are three distinct
2 sets of conditions as to the funds that may be used to pay for each type of activity.

3 Consequently, the proposed rules in this section have been written to require that
4 State, district, and local party committees maintain these three separate accounts.

5 Comments are sought, however, as to whether, in the alternative, accounting procedures
6 designed to track Levin receipts, expenditures, and disbursements could be adequate for
7 purposes of enforcing BCRA with respect to these types of Federal election activities.

8 Comments are also sought as to whether the requirement of a third account would serve
9 as an unnecessary administrative burden or would it in fact create an accounting aid for
10 the committees affected? Would it be more appropriate to leave to each committee the
11 decision of whether or not to set up a separate Levin account? Would it be reasonable to
12 require State party committees to maintain a separate Levin account, but only to
13 recommend that district and local party committees do the same? Would three separate
14 accounts promote greater transparency?

15 The proposed regulations in section 300.30(a)(4) require that, in order for
16 contributions to be deposited into a State, district, or local committee's Federal account,
17 either the solicitation of the contributions must expressly state the committee's intent to
18 use the contributions for Federal elections, or the solicitation must expressly state that
19 only permissible contributions can be accepted into the Federal account, or the
20 contributor must expressly designate the contribution for use in Federal elections. The
21 Commission would presume that all contributions that meet these requirements, and are
22 within the contribution limitations and prohibitions of the Act, may be deposited into the
23 Federal account.

1 The proposed regulations in section 300.30(a)(8) state that Federal funds may be
2 used for non-Federal election activities, provided that the contributors of the Federal
3 funds have been informed that their contributions would be subject to the limitations and
4 prohibitions of the Act and provided that the disbursements are reported pursuant to
5 section 300.36. (See, e.g., Advisory Opinion 2000-24 in which the Commission found
6 the use of a non-Federal account to be permissive, not mandatory. See also the
7 Explanation and Justification for revisions of the Commission's allocation regulations at
8 55 Fed. Register 26058 (June 26, 1990) and at 57 Fed. Register 8990, 8991 (March 13,
9 1992)).

10 The proposed regulations at section 300.30(b) provide that a State, district, and
11 local committee would be permitted to deposit into its Levin account only those
12 donations solicited and received for that account pursuant to proposed 11 CFR 300.31,
13 and would have to use this account to make disbursements and expenditures only for the
14 activities permitted by proposed 11 CFR 300.32 or for other, non-Federal activity
15 permitted by State law. Comments are sought on whether this permission to use Levin
16 funds for non-Federal activities is in keeping with the intent of BCRA.

17 In order for donations to be placed in the Levin account, either the solicitations
18 for the donations would have to expressly state that donations will be subject to the
19 special limitations and prohibitions of section 300.31, or there would have to be an
20 express designation by the donors to the Levin account.

21 The proposed regulations in 11 CFR 300.30(c) would clarify that State, district,
22 and local party committees would also be able to maintain a non-Federal account to be
23 used for State, district, or local election activities.

1 The proposed regulations in section 300.30(a)(6) would continue the
2 Commission's well-established requirement that State, district, and local party
3 committees make all allocable expenditures and disbursements from their Federal
4 accounts. Transfers into the Federal account from a non-Federal account of the non-
5 Federal portions of allocable disbursements and expenditures would be permitted only
6 within a specified period of time which is set out in 11 CFR 300.34. The same approach
7 and time frame are being proposed for Levin activities with regard to the payment of non-
8 Federal portions of Levin expenses.

9 As an alternative to using the Federal account for all Federal and mixed
10 expenditures, the Commission could also continue to permit, but not require, State,
11 district, and local party committees to establish separate allocation accounts for purposes
12 of making allocated expenditures for administrative and/or Levin expenses. Comments
13 are sought on whether allocation accounts should still be permitted and whether there
14 should be a second, separate Levin allocation account for use in financing Levin
15 activities.

17 4. Proposed 11 CFR 300.31 Receipt of Levin Funds

18 BCRA places several restrictions on how State, district, and local political party
19 committees raise Levin funds. Proposed 11 CFR 300.31 would implement these
20 restrictions. Proposed paragraph (a) would state as a general proposition a key point in
21 the statute: a State, district, or local political party committee that spends Levin funds
22 must raise those funds solely by itself. 2 U.S.C. 441j(b)(2)(B)(iv).

1 Proposed 300.31(b) would elaborate on the statutory requirement that Levin funds
2 must be raised from donations that comply with the laws of the State in which the State,
3 district, or local party committee is organized. 2 U.S.C. 441b(2)(B)(iii). More
4 specifically, proposed paragraph (c) would clarify the status of donations from sources
5 that are permitted under State law, but prohibited by the Act. A prime example is
6 donations from corporations and labor organizations. Under Section 441b of the Act,
7 “[i]t is unlawful . . . for any corporation whatever, or any labor organization, to make a
8 contribution or expenditure in connection with any election” for Federal office. 2 U.S.C.
9 441b(a). Under the campaign finance laws of several States, however, donations by
10 corporations or labor organizations to political party committees are legal. Proposed
11 300.31(e) would clarify that in such States, a political party committee may solicit and
12 accept donations of Levin funds from corporations and labor organizations, subject to the
13 other conditions of the Act. (Of course, if donations from corporations or labor
14 organizations to a political party committee are illegal in a State, political party
15 committees in that State would not be able to accept Levin fund donations from those
16 sources.)

17 Proposed paragraph (d) would address amount limitations on donations of Levin
18 funds to a State, district, or local party committee. The Levin Amendment places a
19 \$10,000 per calendar year per donor limitation on donations to a State, district, and local
20 political party committee intended for use as Levin funds. 2 U.S.C. 441b(2)(B)(iii).
21 Proposed paragraph (d)(1) would clarify that this is an aggregate limit per recipient
22 committee (i.e., the aggregate limit applies separately to each party committee). See
23 discussion of proposed 11 CFR 300.31(d)(3), below. The amount limitation applies to a

1 person, including “any person established, financed, maintained, or controlled by such
2 person.” The Commission seeks comment on whether its current “affiliation” regulation
3 (11 CFR 100.5(g)) would appropriately determine whether a person is “established,
4 financed, maintained, or controlled,” within the meaning of this proposed paragraph.

5 Proposed paragraph (d)(2) would address those cases where State law generally
6 imposes an amount limitation on donations to a State, district, or local party committee
7 that differs from the amount limitation in 2 U.S.C. 441i(b)(2)(B)(iii) and proposed
8 paragraph (d)(1). Proposed paragraph (d)(2) would attempt to strike a balance between
9 respect for State law and protecting the integrity of the Levin Amendment amount
10 limitation. It would make clear that lower State law amount limitations control over the
11 amount limitation in the Levin Amendment, but that the Levin Amendment amount
12 limitation would control where State law amount limitations exceed the limitation in
13 proposed paragraph (d)(1).

14 A question may arise as to whether State, district, and local committees of the
15 same political party would be affiliated for purposes of applying the donation amount
16 limitation in proposed paragraph (d)(1). See generally 11 CFR 110.3. Proposed
17 paragraph (d)(3) addresses this issue. The proposed paragraph would clarify that such
18 committees are not considered affiliated only for the purpose of determining compliance
19 with proposed paragraph (d)(1). See 148 Cong. Rec. H410 (daily ed. Feb. 13, 2002)
20 (statement of Rep. Shays).

21 The Levin Amendment restricts the manner in which State, district, and local
22 political party committees may raise Levin funds. Proposed paragraph (c) would restate
23 these restrictions, clarifying that the Commission’s joint fundraising regulation, 11 CFR

1 102.17, does not otherwise sanction this activity. Proposed paragraph (f) would operate
2 similarly in implementing the Levin Amendment's prohibition against joint fundraising of
3 Levin funds by more than one State, district, or local committee of a political party,
4 including such parties from more than one State. The final sentence of proposed
5 paragraph (f) would clarify that the mere use of common vendors by two or more State,
6 district, or local political party committees would not in and of itself constitute joint
7 fundraising within the meaning of the proposed paragraph.

8

9 5. Proposed 11 CFR 300.32 Expenditures and Disbursements

10 Proposed 11 CFR part 300, subpart B would encompass political party committee
11 expenditures and disbursements of Federal funds and of Levin funds. Proposed 11 CFR
12 300.32 would address both kinds of spending, and would clarify that BCRA does not
13 affect spending of non-Federal funds for State or local political activity.

14 Proposed paragraph (a)(1) would clarify that spending by a State, district, or local
15 political party committee "for the purpose of influencing" a Federal election (see 11 CFR
16 100.8) must use Federal funds; that is, nothing in BCRA changes the existing
17 requirements for that type of spending. See 148 Cong. Rec. H409 (daily ed. February 13,
18 2002) (statement of Rep. Shays). In addition, this proposed paragraph would require that
19 an association or similar group of candidates for State or local office, or an association of
20 State or local officeholders, would have to make expenditures for Federal election
21 activity solely with Federal funds. Comments are sought about whether or not this term
22 should be further defined in the proposed regulations, and if so, about examples of such
23 associations or groups to include in the regulations. Proposed paragraph (a)(2) would

1 make clear that the general rule in BCRA is that a State, district, or local political party
2 committee spending on Federal election activity must use Federal funds for that
3 spending, except as provided in the Levin Amendment. 2 U.S.C. 441i(b)(1).

4 Proposed paragraphs (a)(3) and (a)(4) would address the costs of fundraising,
5 providing that a State, district, or local committee of a political party must use
6 exclusively Federal funds to pay for all costs of raising funds for its Federal account and
7 its Levin account. See 2 U.S.C. 441i(c). The Commission seeks comment on this
8 interpretation of section 441i(c) with regard to Levin funds. In particular, the
9 Commission seeks comment on (1) whether proposed paragraph (a)(4) could be limited
10 to the direct costs (see current 11 CFR 106.5(a)(2)(ii)) of raising Levin funds; and (2)
11 whether the costs of fundraising for Levin funds could be allocated between a party
12 committee's Federal and non-Federal accounts under the "funds received" method. See
13 current 11 CFR 106.5(f). Comments are also sought as to whether, generally, greater
14 specificity should be provided in proposed section 300.32 as to the nature of fundraising
15 costs in this section.

16 Proposed paragraph (b) would list the types of activities for which a State, district,
17 or local political party committee may spend Levin funds in accordance with this
18 proposed part. Proposed paragraph (b)(1) would spell out expressly the two kinds of
19 Federal election activity for which Levin funds may be spent, see 2 U.S.C. 441i(b)(2)(A),
20 and provide that such spending must be made subject to the conditions set out in
21 proposed paragraph (c). Proposed paragraph (b)(2) would provide that a State, district, or
22 local political party committee may also spend Levin funds for any purpose that is lawful
23 under State law, and that such spending need not comply with proposed paragraph (c).

1 (See below.) The Commission seeks comment on proposed paragraph (b)(2), specifically
2 whether this broader use of Levin funds is within the intended scope of 2 U.S.C.
3 441i(b)(2)(A).

4 While the Levin Amendment would permit the spending of Levin funds as set out
5 in proposed paragraph (b), it places restrictions and conditions on that spending when it is
6 for Federal election activity. Proposed paragraph (c) would set out in one place
7 important restrictions and conditions that are stated in different sections of BCRA.
8 Proposed paragraph (c)(1) would implement the restriction that the Federal election
9 activity paid for partly with Levin funds must not refer to a clearly identified Federal
10 candidate. See 2 U.S.C. 441i(b)(2)(B)(i). Proposed paragraph (c)(2) would implement
11 the restriction that the Federal election activity paid for partly with Levin funds must not
12 be for any broadcasting, cable, or satellite communications, other than a communication
13 that refers solely to a clearly identified candidate for State or local office. See 2 U.S.C.
14 441i(b)(2)(B)(ii). Proposed paragraph (c)(4) would implement the Levin Amendment's
15 requirement that spending under its authority must be allocated between Federal funds
16 and Levin funds pursuant to the proposed regulation covering allocation. See 2 U.S.C.
17 441i(b)(2)(A)(i), (ii); see proposed 11 CFR 300.33, below. Finally, proposed paragraph
18 (c)(3) would tie together the provisions of this proposed regulation with proposed
19 11 CFR 300.31 on raising Levin funds, above.

20 Proposed paragraph (d) would serve as a clarifying reminder that spending of
21 non-Federal funds by a State, district, or local political party committee for State or local
22 political activity, including the raising of solely non-Federal funds, remains a matter of
23 State law. The proposed final sentence would clarify that a disbursement of non-Federal

1 funds made under State law by a State, district, or local political party committee that is
2 not directed by the disbursing committee for the purpose of influencing a Federal election
3 or for Federal election activity shall not be an expenditure under 11 CFR 100.8 or an
4 expenditure or disbursement for Federal election activity.

5
6 6. Proposed 11 CFR 300.33 Allocation of Expenses
7

8 Section 441i(b)(1) of Title 2, United States Code, states that State, district, and
9 local party committees must make all disbursements and expenditures for Federal
10 election activity from their Federal accounts. This requirement holds even when the
11 expenses involved are also related to non-Federal election activity. Generally, the costs
12 of mixed Federal and non-Federal election activities cannot be allocated between Federal
13 and non-Federal accounts. The only exception to the rule against the use of non-Federal
14 funds in connection with Federal election activity involves activities to be funded from a
15 Levin account, pursuant to Section 441i(b)(2).

16 Section 441i(b)(2)(A) permits State, district, and local party committees, under
17 certain conditions, to use Levin funds for particular categories of activity, including voter
18 registration, voter identification, GOTV, and generic campaign activities, in connection
19 with Federal and non-Federal elections. These funds must have been received pursuant
20 to specific requirements, are to be used to meet expenses related to voter registration
21 activity within 120 days of a Federal election and/or expenses related to voter
22 identification, GOTV activities, and generic campaign activities when a Federal
23 candidate appears on the ballot, and must be used in situations in which disbursements
24 and expenditures for the permitted activities are allocated between a committee's Federal

1 and Levin accounts. Section 441j(b)(2)(A) permits the use of Levin funds for these
2 purposes "to the extent that" the costs of the activities are allocated. Thus, if a committee
3 wishes to use other than Federal funds for such costs, it must allocate a portion to its
4 Federal account.

5 Comments are sought with regard to the relationships between the activities for
6 which Levin funds may be used and "exempt activities" as defined by 11 CFR
7 100.7(b)(9), (15) and (17) and 11 CFR 100.8(b)(10), (16) and (18). In particular,
8 information is requested on whether there remain exempt activities that should not be
9 deemed "Federal election activity." For example, would voter registration activity
10 outside the time frame of 120 or less days before an election be an example of remaining
11 "exempt activity" that would be allocable between Federal and non-Federal accounts (as
12 opposed to Federal and Levin accounts), but that would not count as an "expenditure" for
13 purposes of political committee status? In the alternative, should voter registration
14 activity outside the 120-day time frame be considered 100% non-Federal activity?

15 With the exception of salaries, BCRA does not address administrative costs
16 directly, either as a category of expenditures and disbursements or as allocable
17 expenditures. BCRA defines "Federal election activity" at 2 U.S.C. 431(b)(20) as
18 including specified categories of activity that do not include administrative costs.

19 With regard to salaries, BCRA, for purposes of defining "Federal election
20 activity," distinguishes between salaries paid those who spend more than 25% of their
21 compensated time in any given month on activities in connection with Federal elections,
22 who must be paid only with Federal funds, and those who do not spend that amount of
23 time on these activities. Therefore, proposed section 300.33 would require State, district,

1 and local committees to use only Federal funds to pay the salaries of those employees
2 who spend more than 25% of their time in a particular month on activities in connection
3 with Federal election activity. The proposed regulations also require that the salaries of
4 those employees who spend 25% or less of their time in a given month on activities in
5 connection with a Federal election be allocated between the committee's Federal and
6 non-Federal accounts. Salaries of those employees who spend no time in a given month
7 on activities in connection with a Federal election could be paid solely from the non-
8 Federal account.

9 Comments are sought as to whether State, district, and local party committees
10 should be permitted to pay the salaries of employees who spend 25% or less of their time
11 on Federal election activity with non-Federal funds, rather than be required to allocate
12 those payments. The 100% non-Federal alternative is not set out in the proposed rules.
13 For purposes of administering the 25% rule for salary payments, comments are sought as
14 to whether the proposed regulations should require that any of the following three
15 alternative methods be used by State, district, and local party committees to document
16 decisions as to the accounts from which all or portions of employees' salaries have been
17 paid. First, employees could be required to keep contemporary time logs documenting
18 their Federal and non-Federal activities. Secondly, employees could be required at the
19 end of each month to certify in writing the percentage or amount of time spent on Federal
20 election activity. Or, thirdly, a responsible party official could keep a monthly tally sheet
21 for the all employees. Please note that none of these options appear in the proposed rules
22 that follow.

1 In lieu of requiring 100% Federal payments for certain other administrative costs,
2 the proposed rules would continue the Commission's policy of permitting the allocation
3 of those costs between the Federal and non-Federal accounts of State, district, and local
4 party committees, unless such expenses are directly attributable to a Federal candidate, in
5 which case they would have to be paid only with Federal funds. Allocable administrative
6 costs would include rent, office equipment (calculators, computers, copiers, facsimile
7 machines, furniture), office supplies, postage for other than mass mailings, and utilities.
8 Other allocable administrative costs would include routine building maintenance, upkeep
9 and repairs.

10 Comments are requested regarding whether the Commission should continue
11 requiring allocation of administrative costs other than certain salaries, if a committee
12 desires to use some non-Federal funds for these purposes. BCRA requires certain Federal
13 election activities, fundraising costs and certain salaries to be paid with Federal funds.
14 As a result, significant amounts of activity that were once allocable will have to be paid
15 for exclusively with Federal funds. BCRA also delineates which Federal election
16 activities may be allocated between Federal funds and Levin funds. The Commission
17 seeks comments on whether administrative expenses that are not identified in BCRA
18 have a significant enough impact on Federal elections to require continued allocation of
19 such expenses, or whether a State, district, or local committee should be able to pay
20 administrative expenses, other than certain salaries, with 100% non-Federal funds,
21 depending upon applicable State law.

22 The proposed rules address the issue of appropriate minimum amounts of Federal
23 funds to be required both for administrative expenses, when allocable, and for the Federal

1 portions of costs of the specified Levin activities for which the use of non-Federal funds
2 is also permitted. One goal of the allocation regulations are to assure that activities
3 deemed allocable are not paid for with a disproportionate amount of non-Federal or Levin
4 funds. Another goal is to simplify the allocation process, in particular by establishing
5 formulas that do not vary from State to State and that do not require measurements of
6 time or space. Therefore, the proposed rules establish a fixed formula for all States that
7 would vary only in terms of whether or not a Presidential campaign and/or a Senate
8 campaign is to be held in a particular election year.

9 The following formulas have been derived by taking averages of the ballot
10 composition-based allocation percentages reported by State party committees in four
11 groupings of States selected for their diversities of size and geographic location and for
12 the particular elections held in each state in 2000 and 2002. The groupings were: (1) six
13 states (Alabama, Colorado, Illinois, New Hampshire, Oklahoma, and Oregon) in which
14 there was a Presidential but no Senate campaign in 2000; (2) 10 states (California,
15 Delaware, Georgia, Florida, Michigan, New York, North Dakota, Texas, Vermont, and
16 Wyoming) in which there were both a Presidential campaign and a Senate campaign in
17 2000; (3) six states (Delaware, Georgia, Michigan, Oklahoma, Texas and Wyoming) in
18 which there will be a Senate campaign in 2002; and (4) six states (California, Florida,
19 New York, North Dakota, Vermont and Washington) in which there will be no Senate
20 campaign in 2002.

21 In 2000, the Federal percentages for the two parties in six States with only a
22 Presidential campaign ranged from 20% - 33.33%, with an average of 28%, while the
23 Federal percentages for the two parties in ten States which held both Presidential and

1 Senate campaign that year ranged from 30% to 43%, with an average of 36%. In 2002,
2 the Federal percentages for the two parties in six States with a Senate campaign ranged
3 from 20% to 25%, with an average of 21%, while the Federal percentages for the two
4 parties in six States with no Senate campaign ranged from 11.11% to 16.67, with an
5 average of 15%.

6 The proposed rules would apply the average percentages in each of the four
7 groupings of States to all 50 states, resulting in the following proposed minimum
8 percentages for Federal shares of administrative costs and for Federal shares of costs of
9 the voter registration, voter identification, GOTV, and generic campaign activities
10 permitted to be paid in part with Levin funds, pursuant to 2 U.S.C. 441i(b)(2):

- 11 (i) Presidential only election year 28% of costs
- 12 (ii) Presidential and Senate election year 36% of costs
- 13 (iii) Senate only election year 21% of costs
- 14 (iv) Non-Presidential and Non-Senate election year - 15% of costs.

15 Comments are solicited as to whether a set percentage approach to allocation of
16 both administrative and Levin expenses is preferable to a State-by-State ballot
17 composition ratio approach, and as to whether the formula proposed by the Commission
18 serves the purposes of the Act.

19 Voter registration activities undertaken 120 days or less before an election and no
20 later than the election itself are included among the activities for which Levin funds may
21 be used by State, district, and local party committees. The proposed regulations assume
22 that activity outside this time frame would fall outside the general provisions of 2 U.S.C.
23 441i(b)(i), which prohibits the use of non-Federal funds for Federal election activities.

1 including activities that are wholly or in part in connection with a Federal election.

2 Therefore, the proposed regulations in 11 CFR 300.33(b)(3) state that the expenses of
3 voter registration activity outside the 120-day time frame could be paid entirely with non-
4 Federal funds or they could be allocated between Federal and non-Federal accounts.

5 In the alternative, the regulations could state that, because voter registration
6 activities undertaken more than 120 days before an election would be outside the time
7 frame for the use of Levin funds, the expenses for such activities would fall within the
8 general provisions of 2 U.S.C. 441i(b)(i), which prohibits the use of non-Federal funds
9 for Federal election activities, including activities that are wholly or in part in connection
10 with a Federal election. Under this approach, expenses for voter registration activity
11 outside the 120-day time frame would have to be paid entirely with Federal funds.

12 Comments are solicited as to which of these alternative approaches to expenses
13 for voter registration activities more than 120 days before an election would most closely
14 track the intent of BCRA.

15 The proposed regulations in 11 CFR 300.33(c) sets out the categories of costs that
16 may not be allocated. These include the costs of activities that refer to clearly identified
17 Federal candidates, the costs of activities that refer to both Federal and State or local
18 elections and certain fundraising costs.

19 Comments are sought as to whether fundraising costs would include a portion of a
20 committee's overhead or only direct costs such as telephone banks, postage, printing,
21 catering, banquet hall rental, and other such expenses related to a particular fundraising
22 program. Comments are also sought as to whether costs related to raising funds only for
23 non-Federal activity may be paid entirely from a non-Federal account.

1 The proposed regulations at 11 CFR 300.33(d) address the issue of transfers from
2 a State, district, or local party committee's non-Federal account to cover the non-Federal
3 portion of allocated administrative costs, and transfers from the committee's Levin
4 account to meet that account's portion of the costs of allocated expenditures made
5 pursuant to 2 U.S.C. 441i(b)(2). The proposed regulations employ the language of the
6 present regulations at 11 CFR 106.5(g)(1)(i) and (2)(ii)(B), which require the use of the
7 party committee's Federal account to pay the entire amounts of allocable expenses, with
8 subsequent reimbursement by other accounts, and the limitation of such reimbursements
9 to a set time frame of 10 days before and 60 days after the payment from the Federal
10 account, unless a vendor requires an advance payment and the payment is based on a
11 reasonable estimate. The proposed regulation continues the present rule's admonition at
12 11 CFR 106.5(g)(2)(B)(iii) that any payment outside this time frame, absent the need for
13 a advance payment of a reasonably estimated amount, would result in the presumption of
14 a loan of non-Federal funds to the Federal account and a violation of the Act.

15
16 7. Conforming Amendments to 11 CFR 104.10 and 106.1

17 A. Allocation of Expenses Among Candidates and Activities

18 Current section 104.10 addresses the reporting of expenses that are allocated
19 among more than one clearly identified candidate (paragraph (a)) and expenses that are
20 allocated among specific types of mixed Federal/non-Federal activities by political party
21 committees and by separate segregated funds and nonconnected committees (paragraph
22 (b)). However, BCRA has defined different categories of allocable expenses, including
23 some of those areas falling within Federal election activity. Some of the allocable

1 activity areas set out in current 11 CFR 106.5 (allocation of mixed Federal/non-Federal
2 activities by party committees) are now subsumed by Federal election activity. In
3 addition, under BCRA, mixed fundraising activity must be done with Federal funds, and
4 the use of non-Federal funds by national party committee has been eliminated. Hence,
5 the Commission proposed to divide the rules for reporting of allocable expenses into
6 three sections: 11 CFR 104.10 would apply to political committees that are separate
7 segregated funds or nonconnected committees; new 11 CFR 104.17 would address
8 administrative expenses and some other activities by political committees that are State,
9 district, or local party committees; and new 11 CFR 300.36 would cover reporting of
10 payments allocated between Federal funds and Levin funds.

11 BCRA had no impact on the support by separate segregated funds and
12 nonconnected committees of one or more clearly identified Federal and non-Federal
13 candidates or such committees' allocation of specific categories of mixed Federal/ non-
14 Federal activities. Thus, revised section 104.10(a), which addresses payments entailing
15 combined expenditures and disbursements on behalf of more than one clearly identified
16 Federal and non-Federal candidates, would be changed very little. It would be amended
17 to clarify the type of committee subject to this section and would delete references
18 current section 106.5(g) which addresses Federal to Federal transfers made by party
19 committees for the purpose of mixed payments.

20 In revised section 104.10(b), the references to the Senate and House campaign
21 committees of a political party would be deleted. In the discussion of itemization of
22 allocated disbursements for administrative and generic voter drive expenses at proposed
23 paragraph (b)(1)(ii), the specific reference to the types of committees using the funds

1 expended method would be deleted because all committees addressed in this regulation
2 would use the funds expended method for those two allocation categories. References to
3 exempt activities would be deleted because separate segregated funds and nonconnected
4 committees do not engage in those activities. References to various paragraphs in
5 11 CFR 106.5, which currently pertains to party committees, would also be deleted.

6 B. Allocation of Expenses Between Candidates

7 Current section 106.1 addresses the allocation of expenses among more than one
8 candidate. Paragraph (a)(1) sets out the general rule for allocation of an expenditure
9 made on behalf of one or more clearly identified Federal candidate. It also addresses
10 allocation of a payment involving both an expenditure made on behalf of one or more
11 clearly identified Federal candidates and a disbursement on behalf of one or more non-
12 Federal candidates. In view of the language of newly proposed section 300.33(c)(1), new
13 language would be added to section 106.1(a)(1) making it clear that a party committee
14 must only use Federal funds in both types of situations. See also newly proposed section
15 100.24(a)(3). Comments are requested as to whether the requirement that a State,
16 district, or local party committee use only Federal funds for all payments made on behalf
17 of both clearly identified Federal and clearly identified non-Federal candidates is
18 appropriate under BCRA. (See also the narrative for newly proposed section 104.17
19 which addresses reporting of such activity by party committees.)

20 In view of the rearrangement and renumbering of the allocation reporting
21 regulations, paragraph (a)(2) would be amended to conform to different section citations.
22 It would also delete the citation to party committee transfer procedures in the event of a
23 payment on behalf of clearly identified Federal and non-Federal candidates.

1 Paragraph (c) refers to allocation of activities that entail specific types of mixed
2 Federal/non-Federal activity, other than payments on behalf of clearly identified
3 candidates. The paragraph would be amended to conform to the new allocation
4 categories and new allocation citation.

5

6 8. Proposed 11 CFR 300.34. Transfers

7 As explained above, the Levin Amendment permits spending on certain Federal
8 election activity subject to certain restrictions and conditions, one of which is that the
9 spending must be allocated between Levin funds and Federal funds. 2 U.S.C.
10 441(b)(2)(A)(i), (ii). The Levin Amendment also requires that a State, district, or local
11 committee must raise solely by itself all money spent under the Levin Amendment.
12 2 U.S.C. 441(b)(2)(B)(iv). By the plain language of the last-cited provision, this
13 restriction extends to the Federal funds component of the expenditure or disbursement
14 allocated between Levin funds and Federal funds. See 148 Cong. Rec. H410 (daily ed.
15 February 13, 2002) (Rep. Shays).

16 This provision of the Levin Amendment could cause confusion given the existing
17 rule that party committees of the same political party may transfer Federal funds among
18 themselves without limit on amount. See 11 CFR 102.6(a)(1)(ii). Proposed paragraph
19 (a) of proposed section 300.34 would make clear that 11 CFR 102.6(a)(1)(ii) does not
20 override the Levin Amendment as to transfers of Federal funds. Specifically, the
21 committee must not use such transferred Federal funds to pay the Federal portion of
22 Federal election activity that may be funded with a mixture of Federal funds and Levin
23 funds under proposed 11 CFR 300.32 and 300.33. The Commission emphasizes that

1 revisions to section 102.6(a) regarding transfers may be forthcoming in a future
2 rulemaking to implement changes to 2 U.S.C. 441a(d) made by BCRA. The present
3 discussion and this rulemaking extend only to Title I of BCRA. Pub L. 107-155, March
4 27,2002. The proposed final sentence would state as a positive requirement that a State,
5 district, or local political party committee that spends Levin funds must raise the Federal
6 funds component of those funds by itself. As already mentioned above, the Levin
7 Amendment imposes this fundraising requirement. 2 U.S.C. 441i(b)(2)(B)(iv).

8 In the same provision, the Levin Amendment specifically forbids certain transfers
9 of Levin funds; that is, a State, district, or local party committee may not use as Levin
10 funds any funds transferred to it by certain persons. 2 U.S.C. 441i(b)(2)(B)(iv)(I)
11 through (IV). Proposed 11 CFR 300.34(b)(1) and (b)(2) would implement these transfer
12 prohibitions by expressly identifying these persons.

13

14 9. Proposed 11 CFR 300.35 Office Buildings

15 BCRA repealed the provision at 2 U.S.C. 431(8)(B)(viii) exempting from the
16 definition of contribution any donation of money or anything of value, or loan, to a
17 national or State party committee that is specifically designated to "defray any cost for
18 construction or purchase of any office facility not acquired for the purpose of influencing
19 the election of any candidate in any particular election for Federal office." In the
20 technical amendments, however, Congress provided for the use of funds that were not
21 subject to the limitations and prohibitions of the Act for the purchase or construction of a
22 State or local party committee office building. This provision, which is an addition to the
23 section on preemption at 2 U.S.C. 453, states: "Notwithstanding any other provision of

1 this Act, a State or local committee of a political party may, subject to State law, use
2 exclusively funds that are not subject to the prohibitions, limitations, and reporting
3 requirements of the Act for the purchase or construction of an office building for such
4 State or local committee.” 2 U.S.C. 453(b).

5 The current text of 11 CFR 114.1(a)(2)(ix) follows the repealed statutory
6 provision and would be deleted and replaced with an annotated cross-reference to
7 proposed new 11 CFR 300.35. The texts of the regulations currently at 11 CFR
8 100.7(b)(12) and 100.8(b)(13), which are similar to the current text of section
9 114.1(a)(2)(ix), would be deleted in a separate rulemaking that the Commission is
10 publishing concurrently with this rulemaking. The receipt and use of funds for the
11 purchase or construction of a national party committee’s office building would be
12 addressed in proposed section 300.10, which would allow only hard money to be used for
13 such purpose.

14 Proposed new section 300.35 would address four areas in implementing 2 U.S.C.
15 453(b)(1). First, it would provide for the application of State law to the activities, and
16 would provide that generally Federal law will not preempt the application of State law.
17 Second, it would explain the meaning of “purchase or construction of a party office
18 building.” Third, it would provide that, if the funds are not used for the purpose as
19 defined, they are to be treated as disbursements for other purposes and Federal law would
20 apply. Finally, it would address the transitional requirements for the current State party
21 office facility funds established under the repealed statutory section.

1 A. Application of State Law

2 Senator McConnell, the principal speaker in support of the technical amendments
3 after their introduction in the Senate, described the party office building provision as
4 “[r]especting the primacy of State law in financing State and local party buildings.”
5 148 Cong. Rec. S2339 (daily ed. March 22, 2002) (statement of Sen. McConnell).
6 During floor debate prior to Senate passage of the main bill, in anticipation of the
7 adoption of technical amendments, Senator Feingold described the proposal as providing
8 that Federal law would no longer allow a State or local party committee to receive non-
9 Federal donations to purchase or construct an office building where such donations
10 violated State law, that State law governs the receipt and disbursement of non-Federal
11 donations by State or local parties for such purpose, and that there is no “required match
12 consisting of Federal contributions.” 148 Cong. Rec. S2143-2144 (daily ed. March 20,
13 2002) (statement of Sen. Feingold).

14 Paragraph (a) of proposed section 300.35 would set out the basic provision that
15 funds raised outside the limits and prohibitions of the Act may be used, and that State law
16 would govern whether they may be raised and used for the purchase or construction of a
17 State or local party office building. Paragraph (a) would also incorporate language from
18 the repealed statute and deleted regulations to the effect that the exemptions from Federal
19 limits and prohibitions are premised on the idea that the building is not purchased or
20 constructed for the purpose of any particular Federal candidacy. The building is being
21 purchased or constructed for the functioning of the party, which entails the support of
22 most or all of the party’s candidates over a number of years; this concept did not change
23 with the repeal of 2 U.S.C. 431(8)(B)(viii) and the enactment of 2 U.S.C. 453(b). The

1 purchase or construction of the building for a particular Federal candidacy would entail
2 the use of impermissible funds in a manner contrary to the basic purpose of the Federal
3 law.

4 Paragraph (b) of section 300.35 would explain the coverage of State law.

5 Paragraph (b)(1) would provide that Federal law will not preempt State law as to the non-
6 Federal account activity, except where the funding does not fit the definition of the
7 purchase or construction of an office building and would be another type of
8 disbursement. Commission advisory opinions have addressed the question of whether the
9 repealed contribution exemption, which permitted donations to a building fund from such
10 Federally impermissible sources as corporations, preempted State law prohibitions on the
11 use of such funds for campaign purposes. Advisory Opinions 2001-12, 1998-8, 1998-7,
12 1997-14, 1993-9, 1991-5, and 1986-40. The Commission stated in these opinions that
13 Congress decided not to place restrictions on the subject even though it could have
14 determined that the purchase of the facility was for the purpose of influencing a Federal
15 election, that Congress took the affirmative step of deleting the receipt and disbursement
16 of funds for such activity from the proscriptions of the Act, and that there was no
17 indication that Congress intended to limit the preemptive effect to some allocable portion
18 of the purchase costs. Proposed new section 300.35, in effect, would supersede these
19 Commission decisions as to Federal preemption with respect to the purchase or
20 construction of an office building. Corporate donations and donations that would be
21 excessive under Federal law may be used for the purchase or construction of a State party
22 office building where State law permits (and this has been expanded to local party office
23 buildings), but if the State law forbids corporate donations and donations in excess of a

1 particular amount, Federal law would not preempt that law and such donations could not
2 be made for that purpose.

3 Paragraph (b)(2) would provide that funds contributed to a Federal account that
4 are then used to purchase or construct a State or local party office building must still
5 comply with the limits and prohibitions of the Act. The committees' reports filed with
6 the Commission would disclose the Federal account's receipts and disbursements that
7 were used for the building purchase or construction as contributions received and
8 disbursements made. Although this proposed section would address the use of Federal
9 account funds, State law is the primary determinant as to the financing of these buildings
10 and would still control whether such funds may be used. Thus, the Federal law would not
11 preempt a State regulatory attempt to determine, using a reasonable accounting method,
12 whether the Federal account funds used for the purchase or construction originated from
13 contributions that would be impermissible or excessive under State law. Consistent with
14 this State coverage, a State would be able to require the committees to file reports
15 disclosing the Federal account's receipts and disbursements of funds used for the building
16 purchase or construction. This would not entail a replication of the Federal reports; it
17 would merely entail the disbursements for the activity covered by this section and the
18 contributions that, under a reasonable accounting method, were the source of such
19 disbursements.

20 Although receipts and disbursements from the non-Federal accounts would have
21 to be in compliance with State law, and both Federal and State law would apply to the
22 permissibility of receipts and disbursements from the Federal account, proposed new
23 section 300.35 would not contemplate a Commission enforcement action against a party

1 committee for violating State law. Such an action, which would interpret and apply State
2 law, would be the State's responsibility. Moreover, although the new provision would
3 not require the establishment of a separate bank account or book account for the receipt
4 and disbursement of funds for purchase or construction of the office building, Federal law
5 would not preempt a State law requirement to establish such an account.

6 Under paragraph (b)(3), Levin funds would be usable for the purchase or
7 construction of an office building provided that State law permits the use of such funds.

8 In accordance with these provisions as to the application of State law, current
9 section 108.7(c), which lists types of State laws that are not superseded by the Act and
10 the regulations, would be amended to include the application of State law to the purchase
11 or construction of a State or local party office building in accordance with proposed
12 section 300.35.

13 B. Definition of "purchase or construction of an office building"

14 In view of the Commission's prior advisory opinions interpreting the scope of the
15 repealed exception, it is necessary to delineate more precisely the scope of the activity
16 covered under the new exception. In order to explain the scope of activities under which
17 the funds would not be subject to the limitations and prohibitions of the Act (except for
18 contributions to Federal accounts) and would be subject to State law, the proposed rules
19 would define three terms: office building, purchase, and construction.

20 Section 453(b) of FECA refers to the purchase or construction of an "office
21 building" rather than an "office facility" as found in the repealed section. The term
22 "building" is a narrower term that indicates a more restricted range of covered expenses.
23 In recent advisory opinions applying the repealed section, the Commission has stated that

1 expenses that would be considered capital expenditures under the Internal Revenue Code
2 would be payable from the building fund. See Advisory Opinions 2001-12, 2001-01, and
3 1998-7; see also 26 CFR 1.263(a)-(1) and 1.263(a)-(2). This has been interpreted by
4 some to mean that the building fund may pay for the purchase of office machinery,
5 equipment, and furniture. See Advisory Opinion 2001-12. The proposed rules interpret
6 the use of the term "building" instead of "facility" as a basis for ensuring that this
7 proposed section would not include what are more appropriately administrative expenses
8 for the operation of the party, rather than the purchase or construction of an office
9 building.

10 Specifically, proposed paragraph (c)(1) would ensure that items such as office
11 equipment, machinery, and furniture would not be considered a part of the building and
12 that the exemption afforded by this section would not extend to such payments; such
13 payments would instead be allocable administrative expenses. The definition of
14 "building" would extend only to the building itself and accompanying land, but this
15 definition would not be meant to exclude a portion of the building, such as an office suite
16 or one or more floors of a building, that a committee may purchase instead of an entire
17 building. Although structural components and certain other fixtures, as described in
18 proposed paragraph (c)(1), would not by themselves constitute a building, they would
19 appear in the proposed regulation to convey the idea of what would be part of the
20 building's structure, as opposed to the office equipment and machinery and similar items.
21 The term "structural component" would be derived from the tax regulations, at
22 26 CFR 1.148-1; it would apply to such features as interior walls, floors, ceilings,
23 windows, doors, stairwells and elevators, central air conditioning or heating systems,

1 sprinkler systems, plumbing and plumbing fixtures, and electrical and data transmission
2 wiring and lighting fixtures. There may be other fixtures that are not strictly "structural
3 components" that are essential to the operation or appearance of the building. (See the
4 discussion below as to when the installation of a significant number of structural
5 components as part of a major restoration or renovation will qualify as construction of an
6 office building.)

7 One particularly relevant illustration of the distinction between a structural
8 component and an item that would not be part of the building pertains to audio-visual
9 production facilities. Although a studio with special lighting, acoustical paneling, and
10 special wiring in the walls may be built during the general construction of the building
11 and would be considered part of the building, equipment such as recording equipment
12 and cameras that are placed in the studio would not be part of the building's structure for
13 the purposes of the proposed regulation.

14 The Commission seeks comment on whether the proposed definition of
15 "building" should include, rather than explicitly exclude, items such as office equipment,
16 machinery, or furniture. More generally, the Commission seeks comment on whether
17 BCRA's use of the term "building" instead of "facility" contemplated a narrowing of the
18 range of expenses falling within the exemption.

19 Proposed paragraph (c)(1) would also refer to the purpose of the party's use of the
20 building, which is solely for its own party administration and election campaign support
21 purposes. A party office building would not include floors or offices within the building
22 or portions of the underlying land that are not used, or set aside for use, for party
23 committee purposes. A party would be able to purchase a portion of a building such as a

1 floor or suite to be its office building, but a party owning an entire building would not be
2 able to rent or sell space in the building to others. The Commission seeks comment on
3 whether a State or local party committee should be permitted to purchase an entire
4 building and lease parts of it at fair market rates in order to generate income. In addition,
5 the Commission seeks comment on whether the sources of the funds used to purchase or
6 construct the office building should govern or guide the Commission in the determination
7 of the lawful uses of such income. For example, would the purchase of a building with
8 non-Federal funds require that the rental income generated be deposited in a non-Federal
9 account and only used for non-Federal purposes? Would the purchase of the building
10 with Federal funds allow rental income to be deposited in a Federal account and used for
11 Federal purposes? What approach should be taken when revenue is generated from a
12 building that was purchased with proceeds from a building fund that contains both
13 Federal and non-Federal funds?

14 In the definition of "purchase" at proposed paragraph (c)(2), the payment to
15 acquire the sole legal title would, of course, include down payments and mortgage
16 payments. The proposed rule would draw from advisory opinions that limited the kinds
17 of payments that would fall within the repealed exception. These opinions excluded
18 payments for ongoing "operating expenses" such as property taxes and assessments
19 (Advisory Opinion 1983-8) or administrative expenses such as rent, building
20 maintenance, utilities, and "office equipment expenses." Advisory Opinions 2001-12,
21 2001-01 and 1988-12.

22 In defining "construction," proposed paragraph (c)(3) would distinguish between
23 expenses that constitute the erection of the building or the extensive renovation of a

1 building on one hand, and costs for the upkeep, repair, or more piecemeal replacement of
2 structural components. This distinction is derived from Advisory Opinion 1998-7 where
3 the Commission, drawing from the tax code, distinguished the cost of incidental repairs
4 that do not materially add to the property's value nor appreciably prolong its life, but
5 "keep it in an ordinary efficient operating condition" from "repair work [that] reaches a
6 level to constitute wholesale restoration or renovation of a structure." The distinction
7 may be illustrated by the following examples:

8 Example A – Expansion of the size of the building (i.e, changing the size or position of
9 the outer perimeter of the structure) would constitute "construction."

10 Example B - A single large scale project (with a specific time deadline) entailing the
11 replacement of a number of various structural components throughout the building to
12 improve the building's habitability and function; for example, expanding, contracting, or
13 altering the configuration of a significant number of rooms within the building coupled
14 with replacements of a significant number of other structural components throughout the
15 building such as installation of new electrical wiring throughout the building, and new
16 climate control and plumbing systems would also constitute "construction."

17 Example C –The replacement on a periodic basis of structural components where such
18 replacement is not part of a single large scale renovation project with a specific time
19 deadline would not constitute "construction" under this section.

20 The definitions in proposed paragraph (c) may not include all of the possibilities
21 for expenses for the purchase or construction of a party office building. In seeking
22 comments on this proposed regulation, the Commission asks whether more examples
23 should be included in what is or is not included in the particular sub-definitions, or

1 whether the advisory opinion process would best serve that purpose. For example,
2 should payments for a long-term lease with an option to purchase the rented building be
3 included within the definition of purchase? More generally, the Commission seeks
4 comment on what constitutes the purchase or construction of a party office building.

5 C. Office Building-Related Expenses Not Qualifying Under Proposed

6 Paragraph (c)

7 An expense that is not included within the definition of the purchase or
8 construction of an office building would most likely be an administrative expense of the
9 party. Depending on the circumstances, such an expense may be support for a particular
10 candidate or in some other category, rather than an administrative expense. If the
11 expense is an administrative expense, it would be allocable under proposed 11 CFR
12 300.33 and a sufficient amount of Federal account funds would have to be used for the
13 expense. In addition, the provisions of the Act would apply to the sources that are
14 properly used for allocable expense purposes. The Commission notes that the portion of
15 this NPRM describing the allocation rules at proposed section 300.33 asks for comments
16 on whether administrative expenses should be allocable between Federal and non-Federal
17 accounts, or whether such funds should be considered as entirely Federal or entirely non-
18 Federal.

19 D. Transitional Provisions for State Party Building or Facility Account

20 Up to and including November 5, 2002, the funds in a State party office facility
21 account can be used only for the purchase or construction of a State party office facility.
22 Starting on November 6, those funds, if used for the purchase or construction of the
23 office building, would be subject to State law, and State law may determine that the funds

1 may not be used for that purpose, as would be provided in proposed new section 300.35.

2 The proposed rule would also state what the funds may not be used for.

3

4 10. Proposed 11 CFR 300.36 Reporting Federal Election Activity; Recordkeeping

5 BCRA establishes certain reporting requirements for State, district, and local
6 committees that finance Federal election activities. See 2 U.S.C. 434(e)(2). This
7 requirement extends generally to all receipts and disbursements for Federal election
8 activities if the aggregate amount of receipts and disbursements for such activity is
9 \$5,000 or more per calendar year, 2 U.S.C. 434(c)(2)(A), and specifically extends to
10 receipts and disbursements of Levin funds. 2 U.S.C. 434(e)(2)(B). Because spending
11 under the Levin Amendment is allocated between Federal funds and non-Federal funds
12 not otherwise subject to the Act's prohibitions, limitation, and reporting requirements
13 (i.e., Levin funds), Congress has specifically required Federal disclosure of certain
14 otherwise non-Federal receipts and disbursements of State, district, and local committees
15 (i.e., the Levin funds).

16 Proposed paragraph (a) of this section would apply to State, district, and local
17 political party committees that have not qualified as political committees under 11 CFR
18 100.5. Although such an organization would not have reporting requirements under
19 BCRA (see 2 U.S.C. 434(e)(2)), it would be required under proposed paragraph (a)(1) to
20 demonstrate through a reasonable accounting method that it had sufficient Federal funds
21 on hand to pay the required Federal portion of the costs of Federal election activity under
22 proposed 11 CFR 300.32 and 300.33. Proposed paragraph (a)(1) would also require such

1 a party organization to keep records of Federal receipts and disbursements and to make
2 those records available to the Commission upon request.

3 Proposed paragraph (a)(2) would clarify that a payment of Federal funds for the
4 costs of Federal election activity, or for the Federally allocated portion of the costs of
5 Federal election activity, would constitute an expenditure, within the meaning of 11 CFR
6 100.8, unless an exclusion from the definition of expenditure in 11 CFR 100.8(b) applies.
7 Thus, such payments would constitute expenditures for purposes of determining whether
8 or not a State, district, or local political party committee becomes a political committee,
9 under 11 CFR 100.5. Proposed paragraph (a)(2) would also state that a payment of
10 Federal funds for the costs of Federal election activity, or for the Federally allocated
11 portion of the costs of Federal election activity, that meets the definition of "exempt
12 activities" (see 11 CFR 100.8(b)(10), (16), and (18)) would be treated as exempt
13 activities in accordance with applicable provisions of the current (i.e., pre-BCRA)
14 regulations.

15 Proposed paragraph (b) of proposed section 300.36 would apply to State, district,
16 and local political party committees that have qualified as political committees under
17 11 CFR 100.5. Proposed paragraph (b)(1) would provide that such committees must
18 report all receipts and disbursements of Federal funds for all or part of the costs of
19 Federal election activity. Proposed paragraph (b)(1) would go on to state that this
20 requirement holds even if the committee has less than \$5,000 of aggregate receipts and
21 disbursements for Federal election activity. See 2 U.S.C. 434(c)(2)(A). The final
22 sentence of proposed paragraph (b)(1) would provide that a disbursement of Federal
23 funds for the costs of, or for the Federally allocated portion of the costs of, Federal

1 election activity is reportable as an expenditure, unless an exclusion in 11 CFR 100.8(b)
2 applies.

3 Proposed paragraph (b)(2) would implement the broader reporting provisions of
4 2 U.S.C. 434(e)(2)(A) and (B). The proposed first sentence would state the basic rule
5 that all receipts and disbursements for Federal election activity must be reported if the
6 political committee has had an aggregate of \$5,000 or more of such receipts and
7 disbursements in a calendar year. The proposed second sentence would make it clear that
8 this basic reporting rule extends to the otherwise non-Federal funds spent for Federal
9 election activity under the Levin Amendment (that is, to the Levin funds).

10 Proposed paragraph (b)(2)(i) would spell out the requirements for reporting
11 payments for the costs of Federal election activity that are allocated between Federal
12 funds and Levin funds. It would identify certain information, such as name, address,
13 amount, and description of purpose, which must be provided for each reportable
14 payment. Proposed paragraph (b)(2)(i) would require activity-by-activity itemization of a
15 reportable payment that covers the costs of more than one Federal election activity.
16 Proposed paragraph (b)(2)(ii) would implement BCRA's itemization provision for
17 receipts and disbursements to or from any person of more than \$200 in a calendar year.
18 See 2 U.S.C. 434(c)(3).

19 Proposed paragraph (b)(3) is intended to alert the reader to the rules for reporting
20 payments allocated between Federal funds and non-Federal funds that are not covered in
21 proposed paragraph (b)(2). As explained above, proposed paragraph (b)(2) would apply
22 only to payments for Federal election activity allocated between Federal funds and Levin
23 funds under proposed 11 CFR 300.33. The reporting regulation for other payments

1 allocated between Federal funds and non-Federal funds would be contained in proposed
2 new 11 CFR 104.17. For example, section 104.17 would address reporting of
3 administrative expenses and salaries of employees who spend 25% of their time, or less,
4 on Federal elections.

5 Proposed paragraph (c) would implement BCRA's new requirement for monthly
6 filing by party committees that come under new section 434(e) of the Act. This would be
7 accomplished by referring to the Commission's existing regulation specifying monthly
8 reporting, i.e., 11 CFR 104.5(c)(3). The Commission seeks comments on the
9 applicability of the \$50,000 annual threshold for electronic filing to receipts and
10 disbursements for Federal election activities. See 11 CFR 104.18.

11 Finally, proposed paragraph (d) would support the disclosure provisions outlined
12 above by adding a recordkeeping requirement. This would be accomplished by referring
13 to the Commission's existing regulation on recordkeeping, 11 CFR 104.14. This
14 requirement is necessary to ensure that sufficient documentation exists to ensure
15 compliance with the disclosure provisions of BCRA.

16 With regard to reporting and recordkeeping, the Commission seeks comments
17 about what, if any, reporting requirements an association or similar group of candidates
18 for, or holders of, State and local office (see 2 U.S.C. 441i(b)(1)) that is not a political
19 committee has under 2 U.S.C. 434(c)(2).

20 21 11. Proposed 104.17 Reporting of Allocable Expenses by Party Committees

22 As indicated in the description of section 104.10, the proposed rules would divide
23 the present regulations at that section into several regulations to cover reporting of

1 specific allocation areas by specific types of reporting entities. New section 104.17,
2 which is currently reserved space, would address reporting by party committees of
3 allocable expenses. Reporting requirements with regard to activity allocated between
4 Federal and Levin accounts pursuant to 11 CFR 300.30 and 11 CFR 300.33 are also
5 addressed in 11 CFR 300.36.

6 Proposed 11 CFR 104.17(a) would address payments on behalf of more than one
7 clearly identified candidate, including non-Federal candidates. Current section 104.10
8 provides for allocated Federal/non-Federal spending when a combined payment is made
9 on behalf of both Federal and non-Federal clearly identified candidates. Under BCRA
10 and as provided in the proposed revisions of section 106.1(a), however, it appears that all
11 such payments must be made entirely from Federal funds. Hence, proposed 11 CFR
12 104.17(a) would provide for the reporting of all allocations between or among clearly
13 identified Federal and non-Federal candidates as Federal activity. Comments are
14 solicited as to whether this requirement that State, district and local committees of
15 political parties use Federal funds for activity on behalf of clearly identified Federal and
16 clearly identified non-Federal candidates is appropriate under BCRA. (See also 11 CFR
17 300.30).

18 Proposed 11 CFR 104.17(b)(1) would require explanations of the percentages
19 used to allocate payments for specific categories of State, district and local party activity.
20 The Commission is also contemplating requiring the assignment of unique identifying
21 codes to some allocable activities as is required in current 11 CFR 104.10(b)(2). (For
22 example, the reporting of exempt costs now requires such identifiers.) Comments are
23 sought as to whether such unique identifying codes for activities would be of utility in

1 tracking any of the allocable expenditures for activities. Also, should activities that have
2 been included under exempt costs (now apparently subsumed by other categories) require
3 such identifiers?

4 Proposed 11 CFR 104.17(b)(2) would address the reporting of transfers between
5 State, district and local party accounts for allocable expenses, while proposed 11 CFR
6 104.17(b)(3) would set out the details required in the reporting of disbursements for
7 allocable activity by State, district and local committees of political parties.

8
9 12. Proposed 11 CFR 300.37 Prohibitions on Fundraising for and Donating to Certain
10 Tax Exempt Organizations

11 Just as it prohibits national parties from fundraising for, or making or directing
12 donations to, certain tax exempt organizations, BCRA also prohibits State, district, and
13 local party committees, their officers and agents acting on their behalf, and entities
14 directly or indirectly established, maintained, financed or controlled by them from doing
15 so. 2 U.S.C. 441i(d)(i). Thus, the proposed rules at 11 CFR 300.37 relating to State,
16 district, and local party committees would mirror the proposed rules at 11 CFR 300.11
17 relating to national party committees. See discussion above.

18 The Commission seeks comments on one component of the proposed rules as they
19 apply to State, district, and local party committees. Proposed 11 CFR 300.37(a)(3), like
20 proposed 11 CFR 300.11(a)(3), would mirror 2 U.S.C. 441i(d) in extending the
21 prohibition on fundraising for, or donating to, Section 527 organizations "except for a
22 political committee; a State, district, or local committee of a political party; or the
23 authorized campaign committee of a State or local candidate." The proposed rules would

1 interpret "political committee" as it is currently defined in 11 CFR 100.5. Under this
2 construction, State, district, and local party committees could fundraise for, or donate to,
3 a section 527 organization that is a Federal political committee under the Act, but they
4 could not do so for a section 527 organization that is a State-registered political action
5 committee ("PAC") that supports only non-Federal candidates. The Commission seeks
6 comment as to whether another interpretation of "political committee" is warranted that
7 would permit State, district, and local party committees to donate to this type of State-
8 registered section 527 organization.

9

10 **Tax-exempt Organizations**

11

12 For the convenience of readers interested in locating rules pertaining to
13 fundraising and donations to tax-exempt organizations, subpart C of new part 300 would
14 combine in a single place the prohibitions on national, State, district, and local party
15 committee donations to, and fundraising for, certain 501(c) and 527 tax-exempt
16 organizations and the rules governing fundraising by Federal candidates and
17 officeholders for 501(c) organizations. Proposed 11 CFR 300.50 would mirror proposed
18 rule 11 CFR 300.11. Proposed 11 CFR 300.51 would mirror proposed rule 300.37.
19 Proposed 11 CFR 300.52 would mirror proposed 11 CFR 300.65. See the discussion in
20 proposed 11 CFR 300.11 and 300.37 above and 300.65 below.

21

22

1 **Federal Candidates and Officeholders**

2
3 BCRA places limits on the amounts and types of funds that can be raised by
4 Federal candidates and officeholders for both Federal and State candidates. See 2 U.S.C.
5 441j(e). The Commission is proposing to place the regulations that address these
6 limitations in 11 CFR Part 300, subpart D.

7 8 1. General Prohibitions

9 The restrictions apply to Federal candidates and officeholders, their agents, and
10 entities directly or indirectly established, maintained, or controlled by, or acting on behalf
11 of, any such candidate(s) or officeholder(s). As defined in 2 U.S.C. 431(3) and existing
12 11 CFR 100.4, "Federal office" means the office of President or Vice President of the
13 United States, Senator or Representative in, or Delegate or Resident Commissioner to,
14 the Congress of the United States. There is a similar definition of "Federal officeholder"
15 in 11 CFR 113.1(c). Please note that these restrictions encompass candidate PACs and
16 leadership PACs. Persons covered by these restrictions may not "solicit, receive, direct,
17 transfer or spend" non-Federal funds unless certain requirements are satisfied.

18 BCRA prohibits any Federal candidate or officeholder, his or her agent, or any
19 entity described above, from raising non-Federal funds in connection with an election for
20 Federal, State, or local office. 2 U.S.C. 441j(e)(1)(A) and (B); proposed 11 CFR 300.61.
21 These prohibitions encompass raising money for section 527 organizations, whether or
22 not such organizations are Federal political committees. With limited exceptions, such
23 persons may raise and spend Federal money in connection with a non-Federal election

1 only in amounts and from sources that are consistent with State law, and that do not
2 exceed the Act's contribution limits or come from prohibited sources under the Act.
3 2 U.S.C. 441i(e)(1)(B); proposed 11 CFR 300.62.

4 The prohibitions in 11 CFR 300.61 and 300.62 encompass "leadership" and
5 "candidate" PACs since these PACs are entities directly or indirectly established,
6 financed, maintained, or controlled by, Federal candidates and/or officeholders.
7 Specifically, leadership PACs and candidate PACs are political organizations set up by
8 congressional leaders and other Federal candidates and officeholders as a way to support
9 other candidates' campaigns. In 2001, at least 110 members of Congress had leadership
10 PACs.

11 As Senator McCain explained in the Senate debate, "A Federal officeholder or
12 candidate is prohibited from soliciting contributions for a Leadership PAC that do not
13 comply with the Federal hard money source and amount limitations." See 148 Cong.
14 Rec. S2140 (Daily ed. March 20, 2002) (statement of Sen. McCain). Consequently,
15 under proposed 11 CFR 300.61, Federal candidates, Federal officeholders, and their
16 leadership PACs and candidate PACs cannot solicit, receive, direct, transfer, or spend
17 funds for a Federal account of a leadership or candidate PAC unless the funds are subject
18 to the prohibitions, limitations, and reporting requirements of the Act. Similarly, Federal
19 candidates, Federal officeholders, and their leadership PACs and candidate PACs cannot
20 solicit, receive, direct, transfer, or spend funds for a non-Federal account of a leadership
21 PAC or candidate PAC unless the funds are subject to the prohibitions and limitations of
22 the Act. Thus, neither the Federal nor non-Federal accounts of a Federal candidate's
23 leadership PAC or candidate PAC could receive or spend corporate treasury or labor

1 organization funds or funds from individuals and political committees that exceed the
2 limitations of the Act. Additionally, funds in the non-Federal account of these PACs
3 must not be used for Federal election activities or in connection with a Federal election.
4 See 148 Cong. Rec. S2140 (Daily ed. March 20, 2002) (statement of Sen. McCain).

5

6 2. Exceptions for State and Local Candidates and for Fundraising Events

7 An exception applies when a Federal candidate or Federal officeholder is also a
8 candidate for State or local office. Such candidates may raise and spend non-Federal
9 funds for their State campaign, as long as their activities are consistent with State law and
10 refer only to their status as a State or local candidate, to other candidates for that same
11 office, or both. 2 U.S.C. 441i(e)(2); proposed 11 CFR 300.63. Please note that if a State
12 or local candidate is simultaneously a candidate for Federal office, he or she must raise
13 and spend only Federal funds in connection with the Federal campaign.

14 BCRA contains a further exemption, for Federal candidates and officeholders
15 who attend, speak, or appear as a featured guest at a State, district, or local party
16 committee fundraising event. See 2 U.S.C. 441i(c)(3); proposed 11 CFR 300.64. The
17 Commission seeks comment on how it should construe and implement this provision,
18 particularly in light of the separate general prohibition on Federal candidates and
19 officeholders from soliciting non-Federal funds in connection with an election for
20 Federal, State, or local office.

21 Sen. McCain explained in the Senate debate that “[t]he rule here is simple:
22 Federal candidates and officeholders cannot solicit soft money funds, funds that do not
23 comply with Federal contribution limits and source prohibitions, for any party

1 committee –national, State, or local.” 148 Cong. Rec. S2139 (daily ed. March 20,2002)
2 (statement of Sen. McCain). Thus, under the proposed rules, while such individuals may
3 attend, speak, or be a featured guest at a State or local party fundraising event, they
4 cannot solicit funds at any such event.

5 However, the Commission seeks comments on whether the fundraising event
6 provision is a total exemption from the general solicitation ban, whereby Federal
7 candidates and officeholders and their agents may attend and speak freely at such events
8 without restriction or regulation. In addition, the Commission seeks comments on how it
9 should construe BCRA’s phrase permitting Federal candidates and officeholders to
10 “attend, speak, or be a featured guest” at a fundraising event. Specifically, the phrase
11 “featured guest” strongly suggests that State, district, or local party committees may
12 publicize in advance that a Federal candidate or officeholder will be attending and
13 speaking at an event. Does this mean that Federal candidates and officeholders may be
14 referred to in invitation materials for the event? May they appear as members of a host
15 committee of an event? May they be honored at the event? Should the general
16 solicitation bar be construed to mean that Federal candidates and officeholders are strictly
17 prohibited from doing anything that would constitute a “solicitation” under the Internal
18 Revenue Code that would trigger IRS disclaimer obligations?

19

20 3. Exception for Tax-exempt Organizations

21 BCRA also addresses solicitations on behalf of 501(c) organizations that are made
22 by Federal candidates, Federal officeholders, and individuals who are agents of either.
23 2 U.S.C. 441i(e)(4). BCRA makes clear that these individuals may make general

1 solicitations on behalf of 501(c) organizations, without regard to the source or amount
2 solicited, as long as the solicitation does not specify how the funds will or should be
3 spent and as long as the solicitation is not for a 501(c) organization whose principal
4 purpose is to conduct certain Federal election activity as described in 11 CFR 300.2(a),
5 such as voter registration, voter identification, GOTV activities, or generic campaign
6 activity. BCRA prohibits these individuals from specifically soliciting funds for the
7 above-described Federal election activity, or for 501(c) organizations whose principal
8 purpose is to conduct those Federal election activities, unless the solicitation is made to
9 an individual and the amount solicited does not exceed \$20,000 per year. No solicitations
10 may be made on behalf of 501(c) organizations for funds to use for public
11 communications that refer to a clearly identified Federal candidate and that promote,
12 support, attack, or oppose the candidate. See 148 Cong. Rec. H408 (Daily ed. February
13 13, 2002) (statement of Rep. Shays). Thus, for example, a Federal candidate may make a
14 general solicitation to a corporation or labor organization on behalf of the Red Cross, but
15 may not solicit a corporation or labor organization for GOTV activities conducted by a
16 501(c)(4) organization. These provisions also apply to organizations that have applied
17 for 501(c) tax exempt status, where the application is still pending. The proposed rules
18 track these provisions. See 11 CFR 300.65.

19 The BCRA provision relating to candidate/officeholder solicitations on behalf of
20 501(c) organizations specifically applies only to individuals described in 2 U.S.C.
21 441i(c)(1). Section 441i(e)(1) of FECA applies to Federal candidates, individual holding
22 Federal office, their agents, and entities directly or indirectly established, financed,
23 maintained, or controlled by, or acting on behalf of either Federal candidates and Federal

1 officeholders. Thus, the proposed rules construe BCRA to permit only individuals to
2 make the solicitations – that is, Federal candidates, Federal officeholders, and individuals
3 acting as their agents. An entity acting as a candidate’s agent or an entity directly or
4 indirectly established, financed, maintained, or controlled by a candidate could not make
5 these general or specific solicitations on behalf of a 501(c) organization. However, the
6 Commission seeks comments as to whether another interpretation is warranted.

7 The Commission also notes that the language encompassing an “agent” of Federal
8 candidates and officeholders in Section 441i(e)(1), unlike the “agent” language in
9 Sections 441i(a)(2) and 441i(d), does not include the limiting phrase, “agent acting on
10 behalf of.” The Commission seeks comment as to whether Section 441i(e)(1) should be
11 similarly construed as applying to an agent acting on behalf of a Federal candidate or
12 officeholder or whether the absence of this limiting language was intended to confer a
13 different meaning on the use of the term “agent” in this provision.

14 The Commission also seeks comments on whether the proposed rules should
15 address how to identify organizations whose principal purpose is to conduct the described
16 Federal election activity. Should a 501(c) organization’s major activities, as identified in
17 publicly available information such as its application for tax-exempt status or annual
18 Form 990 tax returns, be used to determine whether an organization’s principal purpose is
19 to conduct Federal election activity? Although those publicly available tax forms would
20 reveal the past major activities of an organization or the major activities planned by the
21 organization at the time it applied for tax exempt status, additional information would be
22 needed to determine the principal purpose of an organization that has applied for, but not
23 yet obtained, tax exempt status, and to ascertain the current major activities of a 501(c)

1 organization. Thus, should Federal candidates and officeholders be required to obtain a
2 certification from an organization on whose behalf the candidate or officeholder wants to
3 solicit funds that its principal purpose is not to conduct the described Federal election
4 activity? Should the rules include a knowledge standard prohibiting solicitations for
5 unlimited funds from any source if a Federal candidate, Federal officeholder, or
6 individual acting on their behalf has knowledge that an organization is planning to
7 conduct the described Federal election activity?

8 Finally, the Commission seeks comments on whether the rules should further
9 address a Federal candidate's or Federal officeholder's responsibility when specifically
10 soliciting individuals for funds for a 501(c) organization to use in conducting Federal
11 election activity. For example, if a Federal candidate is soliciting a donation of \$20,000
12 from an individual who serves as the CEO of a major corporation, should the candidate
13 be required to inform the individual that personal funds are being solicited and not funds
14 from the individual's corporation?

15

16 **Communications by State and Local Candidates**

17

18 Proposed Subpart E would implement two provisions of BCRA regarding State
19 and local candidates. BCRA prohibits State and local candidates and officeholders from
20 funding certain public communications with non-Federal funds. See 2 U.S.C. 441i(f)(1);
21 proposed 11 CFR 300.71. They may, however, use Federal funds for these
22 communications. The prohibition on use of non-Federal funds encompasses
23 communications that refer to a clearly identified candidate for Federal office, if the

1 communication promotes, supports, attacks, or opposes any candidate for that Federal
2 office, regardless of whether the communication expressly advocates voting for or against
3 any candidate.

4 In addition, BCRA contains an exception that permits State and local candidates
5 to use non-Federal funds for communications that merely refer to Federal candidates in
6 another context. 2 U.S.C. 441i(f)(2); proposed 11 CFR 300.72. For example, State and
7 local candidates may note that they have been endorsed by Federal candidates, or that
8 they agree or disagree with a Federal candidate's position on a certain issue. See 148
9 Cong. Rec. S2142-43 (daily ed. March 20, 2002) (statement of Sen. Feingold). They
10 would also be able to use non-Federal funds to refer to a bill or law by its popular name
11 where that name happens to include the name of a Federal candidate. These examples are
12 included in proposed 11 CFR 300.2(l)(ii), the definition of "promote, support, attack, or
13 oppose," which is cross-referenced in proposed 11 CFR 300.72.

14 A State or local candidate or officeholder may also use non-Federal funds for
15 communications made in connection with an election for State or local office, that refer
16 only to the sponsoring individual or to any other candidate for the State or local office
17 held or sought by that individual, or both. Id.

18

19 **Certification of No Effect Pursuant to 5 U.S.C. 605(b)**

20 **[Regulatory Flexibility Act]**

21

22 The Commission certifies that the attached proposed rules, if promulgated, will
23 not have a significant economic impact on a substantial number of small entities. The

1 basis for this certification is that the national, State, and local party committees of the two
2 major political parties are not small entities under 5 U.S.C. 601, and the number of other
3 small entities to which the rules would apply is not substantial.

4

5 List of Subjects

6 11 CFR Part 100

7 Elections

8 11 CFR Part 102

9 Political committees and parties, reporting and recordkeeping requirements.

10 11 CFR Part 104

11 Campaign funds, political committees and parties, reporting and recordkeeping
12 requirements.

13 11 CFR Part 106

14 Campaign funds, political committees and parties, political candidates.

15 11 CFR Part 108

16 Elections, reporting and recordkeeping.

17 11 CFR Part 110

18 Campaigns, political parties and committees.

19 11 CFR Part 114

20 Business and industry, elections, labor.

21 11 CFR Part 300

22 Campaign funds, nonprofit organizations, political committees and parties,
23 political candidates, reporting and recordkeeping requirements.

24

1 11 CFR Part 9034

2 Campaign funds, reporting and recordkeeping requirements.

3

1 For reasons set out in the preamble, Subchapters A and F of Chapter 1 of title 11
2 of the Code of Federal Regulations would be amended to read as follows:

3
4 **PART 100 – SCOPE AND DEFINITIONS (2 U.S.C. 431)**

5 1. The authority citation for 11 CFR part 100 would continue to read as follows:

6 Authority: 2 U.S.C. 431; 434(a)(11), 438(a)(8).

7 2. Section 100.14 would be amended by revising paragraphs (a) and (b), and
8 adding paragraph (c) to read as follows:

9 **§ 100.14 State committee, subordinate committee, district, or local committee**
10 **(2 U.S.C. 431(15)).**

11 (a) State committee means the organization ~~which~~ that by virtue of the bylaws of a
12 political party or the operation of state law is part of the official party structure, and is
13 responsible for the day-to-day operation of the political party at the State level, including
14 an entity that is directly or indirectly established, financed, maintained, or controlled by
15 that organization, as determined by the Commission.

16 (b) Subordinate committee of a State committee means any organization ~~which~~ that is
17 part of the official party structure, and is responsible for the day-to-day operation of the
18 political party at the level of city, county, neighborhood, ward, district, precinct, or any
19 other subdivision of a State or any organization under the control or direction of the State
20 committee, as determined by the Commission.

21 (c) District or local committee means any organization that by virtue of the bylaws of
22 a political party or the operation of State law is part of the official party structure, and is
23 responsible, under State law, for the day-to-day operation of the political party at the

1 level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a
2 State, including an entity that is directly or indirectly established, financed, maintained,
3 or controlled by the district or local committee, as determined by the Commission.

4 3. Section 100.24 would be added to read as follows:

5 **§ 100.24 Federal election activity (2 U.S.C. 431(20)).**

6 (a) Federal election activity means—

- 7 (1) Voter registration activity during the period that begins on the date that is
8 120 calendar days before the date that a regularly scheduled Federal
9 election is held and ends on the date of the election. For purposes of voter
10 registration activity, the term “election” does not include any special
11 election;
- 12 (2) The following activities conducted in connection with an election in which
13 one or more candidates for Federal office appears on the ballot (regardless
14 of whether one or more candidates for State or local office also appears on
15 the ballot):
- 16 (i) Voter identification, including surveys, and other activities
17 designed to determine registered voters, likely voters, or voters
18 indicating a preference for a specific candidate or political party; or
- 19 (ii) Generic campaign activity, as defined in 11 CFR 100.25;
- 20 (iii) Get-out-the-vote activity. Examples of get-out-the-vote activity
21 include transporting voters to the polls, contacting voters on
22 election day or shortly before to encourage voting but without
23 referring to any clearly identified candidate for Federal office, and

1 distributing printed slate cards, sample ballots, palm cards, or other
2 printed listing(s) of three or more candidates for any public office;

3 (3) A public communication that refers to a clearly identified candidate for
4 Federal office, regardless of whether a candidate for State or local election
5 is also mentioned or identified and that promotes, supports, attacks, or
6 opposes any candidate for Federal office. This paragraph applies
7 regardless of whether the communication expressly advocates a vote for or
8 against a Federal candidate; or

9 (4) Services provided during any month by an employee of a State, district, or
10 local committee of a political party who spends more than 25 percent of
11 that individual's compensated time during that month on activities in
12 connection with a Federal election.

13 (b) Exceptions. Federal election activity does not include any amount expended or
14 disbursed by a State, district, or local committee of a political party for:

15 (1) A public communication that refers to one or more clearly identified
16 candidates for State or local office, if the public communication does not
17 promote, support, attack, or oppose any candidate for Federal office;

18 (2) A contribution to a candidate for State or local office, provided the
19 contribution is not designated to pay for voter registration activity, voter
20 identification, generic campaign activity, get-out-the-vote activity, or a
21 public communication as set forth in paragraphs (a)(1) through (4) of this
22 section;

- 1 (3) The costs of a State, district, or local political convention or other similar
2 meeting or conference;
- 3 (4) The costs of grassroots campaign materials, including buttons, bumper
4 stickers, handbills, brochures, posters and yard signs, that name or depict
5 only candidates for State or local office;
- 6 (5) Voter registration activity at any time other than the period of time that is
7 120 days before the date that a regularly scheduled Federal election is held
8 through the date of the election; and
- 9 (6) Get-out-the-vote and voter identification activities in elections in which no
10 candidate for Federal office appears on the ballot.

11 4. Section 100.25 would be added to read as follows:

12 **§ 100.25 Generic campaign activity (2 U.S.C. 431(21)).**

13 Generic campaign activity means a campaign activity that promotes or opposes a
14 political party and does not promote or oppose a Federal candidate or a non-Federal
15 candidate.

16 5. Section 100.26 would be added to read as follows:

17 **§ 100.26 Public communication (2 U.S.C. 431(22)).**

18 Public communication means a communication by means of any broadcast, cable
19 or satellite communication, newspaper, magazine, outdoor advertising facility, mass
20 mailing or telephone bank to the general public, or any other form of general public
21 political advertising.

1 6. Section 100.27 would be added to read as follows:

2 § 100.27 **Mass mailing (2 U.S.C. 431(23)).**

3 Mass mailing means a mailing by United States mail or facsimile of more than
4 500 pieces of mail matter of an identical or substantially similar nature within any 30-day
5 period. For purposes of this section, substantially similar means communications that
6 have been personalized to include the recipient's name, occupation, geographic location,
7 or similar types of individualization.

8 7. Section 100.28 would be added to read as follows:

9 § 100.28 **Telephone bank (2 U.S.C. 431(24)).**

10 Telephone bank means more than 500 telephone calls of an identical or
11 substantially similar nature within any 30-day period. For purposes of this section,
12 substantially similar means communications that have been personalized to include the
13 recipient's name, occupation, geographic location, or similar types of individualization.

14 8. Sections 100.29 through 100.50 would be added and reserved.

15 9. Sections 100.1 through 100.50 would be designated as subpart A – General
16 Definitions.

17

18 **PART 102 – REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY**
19 **POLITICAL COMMITTEES (2 U.S.C. 433)**

20 10. The authority citation for part 102 would continue to read as follows:

21 Authority: 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

22

1 11. Section 102.5 would be revised to read as follows:

2 **§ 102.5 Organizations financing political activity in connection with Federal**
3 **and non-Federal elections, other than through transfers and joint fundraisers.**

4 (a) Organizations that are political committees under the Act, other than National
5 Party committees.

6 (1) Each organization, including a State, district, or local party committee,
7 that finances political activity in connection with both Federal and non-
8 Federal elections and that qualifies as a political committee under 11 CFR
9 100.5 shall either:

10 (i) Establish a separate Federal account in a depository in accordance
11 with 11 CFR part 103. Such account shall be treated as a separate
12 Federal political committee which shall comply with the
13 requirements of the Act including the registration and reporting
14 requirements of 11 CFR part 102 and 104. Only funds subject to
15 the prohibitions and limitations of the Act shall be deposited in
16 such separate Federal account. All disbursements, contributions,
17 expenditures, and transfers by the committee in connection with
18 any Federal election shall be made from its Federal account, except
19 as otherwise permitted for State, district, and local party
20 committees by 11 CFR part 300. No transfers may be made to
21 such Federal account from any other account(s) maintained by
22 such organization for the purpose of financing activity in
23 connection with non-Federal elections, except as provided by

1 11 CFR ~~106.5(g)~~ 300.34 and 106.6(e). Administrative expenses
2 for political committees other than party committees shall be
3 allocated pursuant to 11 CFR part 106 between such Federal
4 account and any other account maintained by such committee for
5 the purpose of financing activity in connection with non-Federal
6 elections. Administrative expenses for State, district, and local
7 party committees are subject to 11 CFR part 300; or

8 (ii) Establish a political committee which shall receive only
9 contributions subject to the prohibitions and limitations of the Act,
10 regardless of whether such contributions are for use in connection
11 with Federal or non-Federal elections. Such organization shall
12 register as a political committee and comply with the requirements
13 of the Act.

14 (2) Only contributions meeting the conditions set forth in paragraphs (a)(2)(i),
15 (ii), or (iii) of this section may be deposited in a Federal account
16 established under 11 CFR 102.5(a)(1)(i) or may be received by a political
17 committee established under 11 CFR 102.5(a)(1)(ii).

18 (i) Contributions designated for the Federal account;
19 (ii) Contributions that result from a solicitation which expressly states
20 that the contribution will be used in connection with a Federal
21 election; or

1 (iii) Contributions from contributors who are informed that all
2 contributions are subject to the prohibitions and limitations of the
3 Act.

4 (3) Any party committee solicitation that makes reference to a Federal
5 candidate or a Federal election shall be presumed to be for the purpose of
6 influencing a Federal election, and contributions resulting from that
7 solicitation shall be subject to the prohibitions and limitations of the Act.
8 This presumption may be rebutted by demonstrating to the Commission
9 that the funds were solicited with express notice that they would not be
10 used for Federal election purposes.

11 (b) Organizations that are not political committees under the Act. Any organization
12 that makes contributions or expenditures but does not qualify as a political committee
13 under 11 CFR 100.5, and including any State, district, or local party organization that
14 makes contributions, expenditures and exempted payments under 11 CFR 100.7(b)(9),
15 (15) and (17) and 11 CFR 100.8(b)(10), (16) and (18), or payments for certain Federal
16 election activities under 11 CFR 300.32(b), shall either:

17 (1) Establish a separate accounts to which only funds subject to the
18 prohibitions and limitations of the Act, and only funds solicited for
19 activities undertaken pursuant to 11 CFR 300.32, shall be deposited and
20 from which contributions, expenditures, exempted payments, and
21 payments for certain Federal activities shall be made. Such organization
22 shall keep records of deposits to and disbursements from such accounts

1 and, upon request, shall make such records available for examination by
2 the Commission; or

3 (2) Demonstrate through a reasonable accounting method that whenever such
4 organization makes a contribution, expenditure, exempted payment or
5 payment for certain Federal election activities, that organization has
6 received sufficient funds subject to the limitations and prohibitions of the
7 Act or to the requirements of 11 CFR 300.31 to make such contribution,
8 expenditure or payment. Such organization shall keep records of amounts
9 received or expended under this subsection and, upon request, shall make
10 such records available for examination by the Commission.

11
12 (c) National party committees. National party committees are prohibited from
13 raising and spending non-Federal funds. Therefore, these committees are not included in
14 this section.

15 12. Section 102.17 would be amended by adding introductory language to
16 paragraph (a) to read as follows:

17 **§ 102.17 Joint fundraising by committees other than separate segregated funds.**

18 (a) General. Nothing in this section shall permit any person to solicit, receive, direct,
19 transfer, or spend any non-Federal funds prohibited under 11 CFR part 300.

20 * * * * *

21

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

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

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

4 14. Section 104.8 would be amended by revising paragraphs (e) and (f) to read
5 as follows:

6 **§ 104.8 Uniform reporting of receipts.**

7 * * * * *

8 (e) For reports covering activity on or before December 31, 2002, national party
9 committees shall disclose in a memo Schedule A information about each individual,
10 committee, corporation, labor organization, or other entity that donates an aggregate
11 amount in excess of \$200 in a calendar year to the committee's non-Federal account(s).
12 This information shall include the donating individual's or entity's name, mailing address,
13 occupation or type of business, and the date of receipt and amount of any such donation.
14 If a donor's name is known to have changed since an earlier donation reported during the
15 calendar year, the exact name or address previously used shall be noted with the first
16 reported donation from that donor subsequent to the name change. The memo entry shall
17 also include, where applicable, the information required by paragraphs (b) through (d) of
18 this section.

19 (f) For reports covering activity on or before December 31, 2002, national party
20 committees shall also disclose in a memo Schedule A information about each individual,
21 committee, corporation, labor organization, or other entity that donates an aggregate
22 amount in excess of \$200 in a calendar year to the committee's building fund account(s).

1 This information shall include the donating individual's or entity's name, mailing address,
2 occupation or type of business, and the date of receipt and amount of any such donation.

3 If a donor's name is known to have changed since an earlier donation reported during the
4 calendar year, the exact name or address previously used shall be noted with the first
5 reported donation from that donor subsequent to the name change. The memo entry shall
6 also include, where applicable, the information required by paragraphs (b) through (d) of
7 this section.

8 15. Section 104.9 would be amended by revising paragraphs (c), (d), and (e) to
9 read as follows:

10 **§ 104.9 Uniform reporting of disbursements.**

11 * * * * *

12 (c) For reports covering activity on or before December 31, 2002, national party
13 committees shall report in a memo Schedule B the full name and mailing address of each
14 person to whom a disbursement in an aggregate amount or value in excess of \$200 within
15 the calendar year is made from the committee's non-Federal account(s), together with the
16 date, amount and purpose of such disbursement, in accordance with 11 CFR 104.9(b). As
17 used in 11 CFR 104.9, purpose means a brief statement or description as to the reasons
18 for the disbursement. See 11 CFR 104.3(b)(3)(i)(A).

19 (d) For reports covering activity on or before December 31, 2002, national party
20 committees shall report in a memo Schedule B the full name and mailing address of each
21 person to whom a disbursement in an aggregate amount or value in excess of \$200 within
22 the calendar year is made from the committee's building fund account(s), together with
23 the date, amount and purpose of such disbursement, in accordance with 11 CFR 104.9(b).

1 As used in 11 CFR 104.9, purpose means a brief statement or description as to the
2 reasons for the disbursement. See 11 CFR 104.3(b)(3)(i)(A).

3 (e) For reports covering activity on or before December 31, 2002, national party
4 committees shall report in a memo Schedule B each transfer from their non-Federal
5 account(s) to the non-Federal account(s) of a State or local party committee.

6 16. Section 104.10 would be revised to read as follows:

7 **§ 104.10 Reporting by separate segregated funds and nonconnected committees of**
8 **expenses allocated among candidates and activities.**

9 (a) Expenses allocated among candidates. A political committee that is a separate
10 segregated fund or a nonconnected committee making an expenditure on behalf of more
11 than one clearly identified candidate for Federal office shall allocate the expenditure
12 among the candidates pursuant to 11 CFR 106.1. Payments involving both expenditures
13 on behalf of one or more clearly identified Federal candidates and disbursements on
14 behalf of one or more clearly identified non-Federal candidates shall also be allocated
15 pursuant to 11 CFR 106.1. For allocated expenditures, the committee shall report the
16 amount of each in-kind contribution, independent expenditure, or coordinated
17 expenditure attributed to each Federal candidate. If a payment also includes amounts
18 attributable to one or more non-Federal candidates, and is made by a political committee
19 with separate Federal and non-Federal accounts, then the payment shall be made
20 according to the procedures set forth in 11 CFR ~~106.5(g)~~ 106.6(e), as appropriate, but
21 shall be reported pursuant to paragraphs (a)(1) through (a)(4), as follows:

22 (1) Reporting of allocation of expenses attributable to specific Federal and
23 non-Federal candidates. In each report disclosing a payment that includes

1 both expenditures on behalf of one or more Federal candidates and
2 disbursements on behalf of one or more non-Federal candidates, the
3 committee shall assign a unique identifying title or code to each program
4 or activity conducted on behalf of such candidates, shall state the
5 allocation ratio calculated for the program or activity, and shall explain the
6 manner in which the ratio was derived. The committee shall also
7 summarize the total amounts attributed to each candidate, to date, for each
8 joint program or activity.

- 9 (2) Reporting of transfers between accounts for the purpose of paying
10 expenses attributable to specific Federal and non-Federal candidates. A
11 political committee that pays allocable expenses in accordance with
12 11 CFR ~~106.5(g)~~ or 106.6(c) shall report each transfer of funds from its
13 non-Federal account to its Federal account or to its separate allocation
14 account for the purpose of paying such expenses. In the report covering
15 the period in which each transfer occurred, the committee shall explain in
16 a memo entry the allocable expenses to which the transfer relates and the
17 date on which the transfer was made. If the transfer includes funds for the
18 allocable costs of more than one program or activity, the committee shall
19 itemize the transfer, showing the amounts designated for each program or
20 activity conducted on behalf of one or more clearly identified Federal
21 candidates and one or more clearly identified non-Federal candidates.
- 22 (3) Reporting of allocated disbursements attributable to specific Federal and
23 non-Federal candidates. A political committee that pays allocable

1 expenses in accordance with 11 CFR ~~106.5(g)~~ or 106.6(c) shall also report
2 each disbursement from its Federal account or its separate allocation
3 account in payment for a program or activity conducted on behalf of one
4 or more clearly identified Federal candidates and one or more clearly
5 identified non-Federal candidates. In the report covering the period in
6 which the disbursement occurred, the committee shall state the full name
7 and address of each person to whom the disbursement was made, and the
8 date, amount, and purpose of each such disbursement. If the disbursement
9 includes payment for the allocable costs of more than one program or
10 activity, the committee shall itemize the disbursement, showing the
11 amounts designated for payment of each program or activity conducted on
12 behalf of one or more clearly identified Federal candidates and one or
13 more clearly identified non-Federal candidates. The committee shall also
14 report the amount of each in-kind contribution, independent expenditure,
15 or coordinated expenditure attributed to each Federal candidate, and the
16 total amount attributed to the non-Federal candidate(s). In addition, the
17 committee shall report the total amount expended by the committee that
18 year, to date, for each joint program or activity.

19 (4) Recordkeeping. The treasurer shall retain all documents supporting the
20 committee's allocation on behalf of specific Federal and non-Federal
21 candidates, in accordance with 11 CFR 104.14.

22 (b) Expenses allocated among activities. A political committee that is a separate
23 segregated fund or a nonconnected committee and that has established separate

1 Federal and non-Federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate
2 between those accounts its administrative expenses and its costs for fundraising
3 ~~exempt activities~~ and generic voter drives according to 11 CFR ~~106.5 or~~ 106.6, as
4 appropriate, and shall report those allocations according to paragraphs (b) (1)
5 through (5), as follows:

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

8 (i) In the first report in a calendar year disclosing a disbursement for
9 administrative expenses or generic voter drives, as described in 11
10 CFR ~~106.5(a)(2) or~~ 106.6(b), the committee shall state the
11 allocation ratio to be applied to these categories of activity
12 according to 11 CFR ~~106.5 (b), (c) or (d) or~~ 106.6(c), and the
13 manner in which it was derived. ~~The Senate and House campaign~~
14 ~~committees of each political party shall also state whether the~~
15 ~~calculated ratio or the minimum Federal percentage required by 11~~
16 ~~CFR 106.5(e)(2) will be used.~~

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

20 (A) The committee shall state the category of activity for which
21 each allocated disbursement was made, and shall
22 summarize the total amount spent by the Federal and non-
23 Federal accounts that year, to date, for each such category.

1 (13) The committees ~~separate segregated funds, and Senate and~~
2 ~~House campaign committees of a national party that have~~
3 ~~allocated expenses according to the funds expended method~~
4 ~~as described in 11 CFR 106.5(e)(1) or 106.6(e)~~ shall also
5 report in a memo entry the total amounts expended in
6 donations and direct disbursements on behalf of specific
7 State and local candidates, to date, in that calendar year.

8 (2) Reporting of allocation of the direct costs of fundraising and costs of
9 ~~exempt activities.~~ In each report disclosing a disbursement for the direct
10 costs of a fundraising program ~~or an exempt activity~~, as described in 11
11 CFR ~~106.5(a)(2) or~~ 106.6(b), the committee shall assign a unique
12 identifying title or code to each such program or activity, shall state the
13 allocation ratio calculated for the program or activity according to ~~11 CFR~~
14 ~~106.5 (e) and (f) or~~ 106.6(d), and shall explain the manner in which the
15 ratio was derived. The committee shall also summarize the total amounts
16 spent by the Federal and non-Federal accounts that year, to date, for each
17 such program or activity.

18 (3) Reporting of transfers between accounts for the purpose of paying
19 ~~allocable expenses.~~ A political committee that pays allocable expenses in
20 accordance with 11 CFR ~~106.5(g) or~~ 106.6(c) shall report each transfer of
21 funds from its non-Federal account to its Federal account or to its separate
22 allocation account for the purpose of paying such expenses. In the report
23 covering the period in which each transfer occurred, the committee shall

1 explain in a memo entry the allocable expenses to which the transfer
2 relates and the date on which the transfer was made. If the transfer
3 includes funds for the allocable costs of more than one activity, the
4 committee shall itemize the transfer, showing the amounts designated for
5 administrative expenses and generic voter drives, and for each fundraising
6 program ~~or exempt activity~~, as described in 11 CFR ~~106.5(a)(2)~~ or
7 106.6(b).

8 (4) Reporting of allocated disbursements. A political committee that pays
9 allocable expenses in accordance with 11 CFR ~~106.5(g)~~ or 106.6(e) shall
10 also report each disbursement from its Federal account or its separate
11 allocation account in payment for a joint Federal and non-Federal expense
12 or activity. In the report covering the period in which the disbursement
13 occurred, the committee shall state the full name and address of each
14 person to whom the disbursement was made, and the date, amount, and
15 purpose of each such disbursement. If the disbursement includes payment
16 for the allocable costs of more than one activity, the committee shall
17 itemize the disbursement, showing the amounts designated for payment of
18 administrative expenses and generic voter drives, and for each fundraising
19 program ~~or exempt activity~~, as described in 11 CFR ~~106.5(a)(2)~~ or
20 106.6(b). The committee shall also report the total amount expended by
21 the committee that year, to date, for each category of activity.

22 (5) Recordkeeping. The treasurer shall retain all documents supporting the
23 committee's allocated disbursements for three years, in accordance with

1 11 CFR 104.14.

2 17. Part 104 would be amended by adding section 104.17 to read as follows:

3 **§ 104.17 Reporting of allocable expenses by party committees.**

4 (a) Expenses allocated among candidates. A national party committee making an
5 expenditure on behalf of more than one clearly identified candidate for Federal office
6 must report the allocation between or among the named candidates pursuant to 11 CFR
7 106.1. A national party committee making expenditures and disbursements on behalf of
8 one or more clearly identified Federal candidates and on behalf of one or more clearly
9 identified non-Federal candidates must report the allocation among all named candidates
10 pursuant to 11 CFR 106.1. A State, district or local party committee making
11 expenditures and disbursements for Federal election activity as defined at 11 CFR 100.24
12 on behalf of one or more clearly identified Federal and one or more clearly identified
13 non-Federal candidates must make the payments from its Federal account and must report
14 the allocation among all named candidates. For allocated expenditures, the committee
15 must report the amount of each in-kind contribution, independent expenditure, or
16 coordinated expenditure attributed to each candidate.

17 (1) Reporting of allocation of expenses attributable to specific Federal and
18 non-Federal candidates. In each report disclosing an expenditure and/or
19 disbursement that reflects payments on behalf of one or more Federal
20 candidates and/or on behalf of one or more non-Federal candidates, the
21 committee must assign a unique identifying title or code to each program
22 or activity conducted on behalf of such candidates, and shall state and
23 explain the manner in which the percentage of costs applied to each

1 candidate was derived pursuant to 11 CFR 106.1. The committee must
2 also summarize the total amounts attributed to each candidate, to date, for
3 each program or activity.

4 (2) Recordkeeping. The treasurer must retain all documents supporting the
5 committee's allocations on behalf of specific Federal and non-Federal
6 candidates, in accordance with 11 CFR 104.14.

7 (b) Expenses allocated among activities. A State, district or local committee of a
8 political party that has established separate Federal and Levin accounts under 11 CFR
9 300.30 must report, pursuant to 11 CFR 300.36, all payments that are allocable between
10 these accounts pursuant to the allocation rules at 11 CFR 300.33(a) and (b). A State,
11 district or local committee of a political party that has established separate Federal and
12 non-Federal accounts under 11 CFR 102.5 and 11 CFR 300.30 must report all payments
13 that are allocable between these accounts pursuant to the allocation rules at 11 CFR
14 300.33(a) and (b).

15 (1) Reporting of allocations of expenses for activities.

16 (i) In the first report in a calendar year disclosing a disbursement
17 allocable pursuant to 11 CFR 300.33, a State, district or local
18 committee must state and explain the allocation percentage to be
19 applied to each category of activity (e.g., 36% Federal/64% non-
20 Federal in Presidential and Senate election years) pursuant to 11
21 CFR 300.33(b).

22 (ii) In each subsequent report in the calendar year itemizing an
23 allocated disbursement, the State, district or local party committee

1 must state the category of activity for which each allocated
2 disbursement was made, and must summarize the total amounts
3 expended by the Federal and non-Federal accounts that year, to
4 date, for each such category.

5 (iii) In each report disclosing disbursements for allocable activity as
6 described in 11 CFR 300.33, the State, district or local party
7 committee must assign a unique identifying code to each such
8 activity.

9 (2) Reporting of transfers between the accounts of State, district and local
10 party committees for allocable expenses. A State, district or local
11 committee of a political party that pays allocable expenses in accordance
12 with 11 CFR 300.33(d) must report each transfer of funds from its non-
13 Federal account or its Levin account to its Federal account for the purpose
14 of payment such expenses. In the report covering the period in which each
15 transfer occurred, the committee must explain in a memo entry the
16 allocable expenses to which the transfer relates and the date on which the
17 transfer was made. If the transfer includes funds for the allocable costs of
18 more than one activity, the committee must itemize the transfer, showing
19 the amounts designated for each category of expense, as described in 11
20 CFR 300.33(b).

21 (3) Reporting of allocated disbursements. A State, district or local committee
22 of a political party that pays allocable expenses in accordance with 11
23 CFR 300.33(d) must report each allocable disbursement from its Federal

1 account (sec 11 CFR 300.36). In the report covering the period in which
2 the disbursement occurred, the committee must state the full name and
3 address of each individual or vendor to which the disbursement was made,
4 the date, amount and purpose of each such disbursement, and the amounts
5 allocated between Federal and Levin accounts or Federal and non-Federal
6 accounts. If the disbursement includes payment for the allocable costs of
7 more than one activity, the committee shall itemize the disbursement,
8 showing the amounts designated for payments of certain salaries, of other
9 administrative costs and of costs for voter registration outside 120 days
10 before an election, as described in 11 CFR 300.33. The committee must
11 also report the total amount expended by the committee that year, to date,
12 for each category of activity.

- 13 (4) Recordkeeping. The treasurer must retain all documents supporting the
14 committee's allocations of expenditures and disbursements for the costs
15 and activities cited at paragraph (b)(1) of this section, in accordance with
16 11 CFR 104.14.

17
18 **PART 106 - ALLOCATIONS OF CANDIDATE AND COMMITTEE**

19 **ACTIVITIES**

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

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

22 19. Section 106.1 would be amended by revising paragraphs (a)(1), (a)(2), and
23 (c) to read as follows:

24

1 § 106.1 Allocation of expenses between candidates.

2 (a) General rule.

3 (1) Expenditures, including in-kind contributions, independent expenditures,
4 and coordinated expenditures made on behalf of more than one clearly
5 identified Federal candidate shall be attributed to each such candidate
6 according to the benefit reasonably expected to be derived. For example,
7 in the case of a publication or broadcast communication, the attribution
8 shall be determined by the proportion of space or time devoted to each
9 candidate as compared to the total space or time devoted to all candidates.
10 In the case of a fundraising program or event where funds are collected by
11 one committee for more than one clearly identified candidate, the
12 attribution shall be determined by the proportion of funds received by each
13 candidate as compared to the total receipts by all candidates. These
14 methods shall also be used to allocate payments involving both
15 expenditures on behalf of one or more clearly identified Federal
16 candidates and disbursements on behalf of one or more clearly identified
17 non-Federal candidates. Party committees must use only Federal funds for
18 such payments. See 11 CFR 100.24(a)(5).

19 (2) An expenditure made on behalf of more than one clearly identified Federal
20 candidate shall be reported pursuant to 11 CFR 104.10(a) or 104.17(a), as
21 appropriate. A payment by a separate segregated fund or a nonconnected
22 committee that also includes amounts attributable to one or more non-
23 Federal candidates, and that is made by a political committee with separate

1 Federal and non-Federal accounts, shall be made according to the
 2 procedures set forth in 11 CFR 106.6(e), but shall be reported pursuant to
 3 11 CFR 104.10(a).

4 * * * * *

5 (e) Party committees, separate segregated funds, and nonconnected committees that
 6 make disbursements for certain salaries, other administrative expenses, fundraising,
 7 generic voter drives, Levin activities, or certain voter registration activities, in connection
 8 with both Federal and non-Federal elections, shall allocate their expenses in accordance
 9 with 11 CFR ~~106.5~~ or 106.6 or 300.33, as appropriate.

10 20. Section 106.5 would be revised to read as follows:

11 **§ 106.5 Allocation of expenses between Federal and non-Federal activities by**
 12 **party committees.**

13 (a) National party committees are prohibited from raising or spending non-Federal
 14 funds. Therefore, these committees shall not allocate expenditures and disbursements
 15 between Federal and non-Federal accounts. Only Federal accounts may be used.

16 (b) State, district, and local party committees that make expenditures and
 17 disbursements in connection with Federal and non-Federal elections shall make those
 18 expenditures and disbursements entirely from funds subject to the prohibitions and
 19 limitations of the Act, or from accounts established pursuant to 11 CFR 102.5 and
 20 11 CFR 300.30. Political committees that have established separate Federal, Levin
 21 and/or non-Federal accounts under 11 CFR 102.5(a)(1)(i) and 11 CFR 300.30 shall
 22 allocate expenses ~~between these accounts~~ according to 11 CFR 300.33. Party
 23 organizations that are not political committees but have established separate Federal,

1 Levin and/or non-Federal accounts under 11 CFR 102.5(b)(1)(i) and 11 CFR 300.30, or
 2 that make Federal and non-Federal disbursements from a single account under 11 CFR
 3 102.5(b)(1)(ii) and any Levin payments from a separate account, shall also allocate their
 4 Federal and non-Federal expenses according to 11 CFR 300.33.

5
 6 **PART 108 – FILING COPIES OF REPORTS AND STATEMENTS WITH STATE**
 7 **OFFICERS (2 U.S.C. 439)**

8 21. The authority citation for part 108 would continue to read as follows:

9 Authority: 2 U.S.C. 434(a)(2), 438(a)(8), 439, 453.

10 22. Section 108.7 would be amended by revising paragraphs (c)(4) and (c)(5) and
 11 adding paragraph (c)(6) to read as follows:

12 **§ 108.7 Effect on State law (2 U.S.C. 453).**

13 * * * * *

14 (c) * * *

15 (4) Prohibition of false registration, voting fraud, theft of ballots, and similar
 16 offenses; ~~or~~

17 (5) Candidate's personal financial disclosure; ~~or~~

18 (6) Application of State law to the funds used for the purchase or construction
 19 of a State or local party office building to the extent described in 11 CFR
 20 300.35.

21

1 **PART 110 – CONTRIBUTION AND EXPENDITURE LIMITATIONS AND**
 2 **PROHIBITIONS**

3 23. The authority citation for part 110 would continue to be read as follows:

4 Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b,
 5 441d, 441e, 441f, 441g, 441h.

6 24. Section 110.1 would be amended by adding new paragraph (c)(5) to read as
 7 follows:

8 **§ 110.1 Contributions by persons other than multicandidate political**
 9 **committees (2 U.S.C. 441a(a)(1)).**

10 * * * * *

11 (c) * * *

12 (5) On or after January 1, 2003, no person shall make contributions to a
 13 political committee established and maintained by a State committee of a
 14 political party in any calendar year that, in the aggregate, exceed \$10,000.

15 * * * * *

16
 17 **PART 114 – CORPORATE AND LABOR ORGANIZATION ACTIVITY**

18 25. The authority citation for part 114 would continue to read as follows:

19 Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434(a)(11), 437d(a)(8), 438(a)(8),
 20 441b.

21 26. Section 114.1 would be amended by revising paragraph (a)(2)(ix) to read as
 22 follows:

23

1 § 114.1 Definitions.

2 (a) * * *

3 (2) * * *

4 (ix) Donations to a State or local party committee used for the purchase
5 or construction of its office building are subject to 11 CFR 300.35.
6 No exception applies to contributions or donations to a national
7 party committee that are made or used for the purchase or
8 construction of any office building or facility; or

9 * * * * *

10

11 27. Part 300 would be added to read as follows:

12 **PART 300 – NON-FEDERAL FUNDS**

13 Sec.

14 300.1 Scope, effective date, and organization.

15 300.2 Definitions.

16 **Subpart A – National Party Committees**

17 300.10 General prohibitions on raising and spending non-Federal funds.

18 300.11 Prohibition on fundraising for and donating to certain tax-exempt
19 organizations.

20 300.12 Transition rules.

21 300.13 Reporting.

22

23

1 **Subpart B – State, District, and Local Party Committees and Organizations**

2 300.30 Accounts.

3 300.31 Receipt of Levin funds.

4 300.32 Expenditures and disbursements.

5 300.33 Allocation.

6 300.34 Transfers.

7 300.35 Office buildings.

8 300.36 Reporting Federal election activity; recordkeeping.

9 300.37 Prohibitions on fundraising for and donating to certain tax-exempt
10 organizations.

11

12 **Subpart C – Tax-exempt Organizations**

13 300.50 Prohibited fundraising by national party committees (2 U.S.C. 441i(d)).

14 300.51 Prohibited fundraising by State, district, and local party committees
15 (2 U.S.C. 441i(d)).

16 300.52 Fundraising by Federal candidates and Federal officeholders
17 (2 U.S.C. 441i(e)(4)).

18

19 **Subpart D – Federal Candidates and Officeholders**

20 300.60 Scope.

21 300.61 Federal elections.

22 300.62 Non-Federal elections.

23 300.63 Exception for State party candidates

1 300.64 Exemption for attending or speaking at fundraising events.

2 300.65 Exceptions for certain tax-exempt organizations.

3

4 **Subpart E – State and Local Candidates**

5 300.70 Scope.

6 300.71 Federal funds required for certain public communications

7 (2 U.S.C. 441i(f)(1)).

8 300.72 Federal funds not required for certain communications (2 U.S.C. 441i(f)(2)).

9

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

11

12 **§ 300.1 Scope and effective date, and organization.**

13 (a) Introduction. This part implements changes to the Federal Election Campaign
14 Act of 1971, as amended (“FECA” or the “Act”), enacted by Title I of the Bipartisan
15 Campaign Finance Reform Act of 2002 (“BCRA”). Pub. L. 107-155. Unless expressly
16 stated to the contrary, nothing in this part alters the definitions, restrictions, liabilities,
17 and obligations imposed by sections 431-455 of Title 2, United States Code, or
18 regulations proscribed thereunder (11 CFR parts 100-116).

19 (b) Effective dates.

20 (1) Except as otherwise specifically provided in this part, this part shall take
21 effect on November 6, 2002; however, subpart B of this part shall not
22 apply with respect to runoff elections, recounts, or election contests

1 resulting from elections held prior to such date. See 11 CFR 300.12 for
2 transition rules applicable to subpart A of this part.

- 3 (2) The increase in individual contribution limits to State committees of
4 political parties, as described in 11 CFR 110.1(c)(5), shall apply to
5 contributions made on or after January 1, 2003.

6 (c) Organization of part. Part 300, which generally addresses non-Federal funds and
7 closely related topics, is organized into five subparts. Each subpart is oriented to the
8 perspective of a category of persons facing issues related to non-Federal funds.

- 9 (1) Subpart A of this part prescribes rules pertaining to national party
10 committees, including general non-Federal funds prohibitions,
11 fundraising, and donation prohibitions with regard to certain tax-exempt
12 organizations, transition rules as BCRA takes effect, and reporting.

- 13 (2) Subpart B of this part pertains to State, district, and local political party
14 committees and organizations. Subpart B of this part focuses on the so-
15 called "Levin Amendment" to BCRA, "building fund" issues, and
16 fundraising and donation prohibitions with regard to certain tax-exempt
17 organizations.

- 18 (3) Subpart C of this part addresses non-Federal funds issues from the
19 perspective of tax-exempt organizations, setting out rules about prohibited
20 fundraising for certain tax-exempt organizations by national party
21 committees, State, district, and local party committees, and Federal
22 candidates and officeholders.

- 23 (4) Subpart D of this part includes regulations about non-Federal funds issues

1 facing Federal candidates and officeholders in Federal and non-Federal
2 elections, and exceptions for those who are also State candidates, for
3 attending and speaking at fundraising events, and with regard to certain
4 tax-exempt organizations.

5 (5) Subpart E of this part focuses on State and local candidates, including
6 regulations about the Federal funds for certain public communications,
7 and exceptions for entirely non-Federal communications.

8 (6) For rules pertaining to convention and host committees, see 11 CFR
9 part 9008.

10 **§ 300.2 Definitions.**

11 (a) A 501(c) organization that makes expenditures or disbursements in connection
12 with a Federal election includes an organization that:

- 13 (1) Establishes, finances, maintains, supports, or controls a political
14 committee;
- 15 (2) Makes expenditures or disbursements for Federal election activity;
- 16 (3) Finances voter registration at any time; or
- 17 (4) Finances voter guides, candidate questionnaires, or candidate surveys that
18 refer to one or more candidates for Federal office.

19 (b) Agent means any person who has actual express oral or written authority to act on
20 behalf of a candidate, or a national committee of a political party, or a State, district or
21 local committee of a political party, or an entity directly or indirectly established,
22 financed, maintained, or controlled by a party committee. An agent has actual authority

1 if he or she has instructions, either oral or written, from the candidate or a committee
2 official.

3 (c) Directly or indirectly establish, maintain, finance, or control. This paragraph
4 applies to State, district, or local committees of a political party, candidates, and holders
5 of Federal office, which shall be referred to as "sponsors" in this paragraph.

6 (1) A sponsor directly or indirectly establishes, finances, maintains, or
7 controls an entity if one or more of the following conditions are satisfied
8 as a result of actions taken by the sponsor, or by an officer, employee, or
9 agent of the sponsor acting on behalf of the sponsor or at the sponsor's
10 behest:

11 (i) The sponsor and the entity are affiliated under 11 CFR 100.5(g).

12 (ii) The sponsor, alone or in combination with other persons, forms,
13 organizes, or otherwise creates the entity, including providing any
14 of the funds used to form, organize or create the entity. As used in
15 this paragraph, "forms, organizes, or otherwise creates" includes
16 the conversion, reorganization, or redirection of a pre-existing
17 entity.

18 (iii) The sponsor provides a significant amount of the entity's funding
19 at any point in the entity's existence, whether by contribution
20 (including in-kind contribution), donation (including in-kind
21 donation), transfer, or other means. In determining whether or not
22 this condition is satisfied, one or more of the following factors, any
23 one of which may be dispositive, may be considered:

- 1 (A) The percentage of the entity's total funding in a given
2 calendar year represented by the amount of funding
3 provided by the sponsor.
- 4 (B) Whether the sponsor provided funding to the entity on a
5 one-time basis or more systematically over a period of
6 time, including the frequency, regularity, and duration of
7 funding.
- 8 (C) The amount of time that has elapsed since the sponsor last
9 provided funding to the entity.
- 10 (iv) The sponsor provides or has provided legal, accounting,
11 consulting, administrative, or other services to the entity.
- 12 (v) The sponsor, alone or in combination with other persons, sets or
13 has set policies for soliciting contributions or donations to the
14 entity or for the making of expenditures or disbursements by the
15 entity.
- 16 (vi) The same person or persons has or has had decision-making
17 authority over the management of both the sponsor and the entity.
- 18 (2) Determinations by the Commission.
- 19 (i) A sponsor or entity may request an advisory opinion of the
20 Commission to determine whether the sponsor is no longer directly
21 or indirectly financing, maintaining, or controlling the entity for
22 purposes of this part. The request for such an advisory opinion
23 must meet the requirements of 11 CFR part 112.

- 1 (ii) Notwithstanding the fact that a sponsor may have established an
2 entity within the meaning of paragraph (c)(1)(ii) of this section, the
3 committee or the entity may request an advisory opinion of the
4 Commission determining that the relationship between the sponsor
5 and the entity has been severed. The request for such an advisory
6 opinion must meet the requirements of 11 CFR part 112, and must
7 specifically include a complete description of all facts relevant to
8 showing that all connections between the sponsor and the entity
9 have been severed for at least five years.
- 10 (d) Disbursement means any purchase or payment made by a political committee or
11 organization that is not a political committee.
- 12 (e) For purposes of part 300, donation means a payment, gift, subscription, loan,
13 advance, deposit, or anything of value given to a non-Federal candidate or a party
14 committee, but does not include contributions or transfers.
- 15 (f) Federal account means an account at a financial depository institution or other
16 account that contains funds to be used in connection with a Federal election.
- 17 (g) Federal funds mean funds that comply with the limitations, prohibitions, and
18 reporting requirements of the Act.
- 19 (h) Levin account means an account established by a State, district, or local
20 committee of a political party pursuant to 11 CFR 300.30 for purposes of making
21 expenditures or disbursements for Federal election activity or non-Federal activity
22 (subject to State law) under 11 CFR 300.32.

1 (i) Levin funds mean non-Federal funds that comply with the limitations,
2 prohibitions, and reporting requirements set out in subpart B of this part, which are or
3 will be disbursed by a State, district, or local committee of a political party for Federal
4 election activity or non-Federal activity (subject to State law) under 11 CFR 300.32.

5 (j) Non-Federal account means an account at a financial depository institution or
6 other account which contains funds to be used in connection with a State or local
7 election.

8 (k) Non-Federal funds mean funds that are not subject to the limitations and
9 prohibitions of the Act.

10 (l) Promote, support, attack, or oppose.

11 (1) A communication promotes, supports, attacks, or opposes a candidate if,
12 when taken as a whole and with limited reference to external events, such
13 as the proximity to the election, the communication:

14 (i) Expressly advocates the election or defeat of that clearly identified
15 candidate; or

16 (ii) Unmistakably and unambiguously encourages action to elect or
17 defeat a clearly identified candidate, even if it also encourages
18 some other kind of action.

19 (2) For purposes of paragraph (l)(1), a communication does not promote,
20 support, attack, or oppose a candidate for Federal office if:

21 (i) The communication is made in connection with an election for
22 State or local office, and does not refer to any candidate for
23 Federal office; or

1 (ii) The communication refers to a candidate for Federal office but the
2 reference to the Federal candidate consists only of:

3 (A) The fact that the Federal candidate endorsed another
4 Federal, State, or local candidate;

5 (B) The fact that another Federal, State, or local candidate
6 agrees or disagrees with the Federal candidate's position on
7 an issue or on legislation; or

8 (C) A reference to a bill or law by its popular name where that
9 name includes the name of the Federal candidate.

10 (m) To solicit or direct means to request or suggest or recommend that another person
11 make a contribution or donation, including through a conduit or intermediary, to a
12 candidate, a political committee, or a political organization described in 26 U.S.C. 527 or
13 a tax-exempt organization described in 26 U.S.C. 501(c). A solicitation does not include
14 merely providing information or guidance as to the requirements of applicable law.
15

16 **Subpart A – National Party Committees**

17 **§ 300.10 General prohibitions on raising and spending non-Federal funds**

18 **(2 U.S.C. 441(i)(a) and (c)).**

19 (a) Prohibitions. A national committee of a political party, including a national party
20 congressional campaign committee, must not:

21 (1) Solicit, receive, or direct to another person a contribution, donation, or
22 transfer of funds, or any other thing of value that are not subject to the
23 prohibitions, limitations and reporting requirements of the Act; or

1 (2) Spend any funds that are not subject to the prohibitions, limitations, and
2 reporting requirements of the Act; or

3 (3) Solicit, receive, direct or transfer to another person, or spend, Levin funds.

4 (b) Fundraising costs. A national committee of a political party, including a national
5 party congressional campaign committee, must use only Federal funds to raise funds that
6 are used, in whole or in part, for expenditures and disbursements for Federal election
7 activity.

8 (c) Application. This section also applies to:

9 (1) An officer or agent acting on behalf of a national party committee or a
10 national party congressional campaign committee; and

11 (2) An entity that is directly or indirectly established, financed, maintained, or
12 controlled by a national party committee or a national congressional
13 campaign committee.

14 **§ 300.11 Prohibitions on fundraising for and donating to certain tax-exempt**
15 **organizations (2 U.S.C. § 441i(d)).**

16 (a) Prohibitions. A national committee of a political party, including a national party
17 congressional campaign committee, must not solicit any funds for, or make or direct any
18 donations to the following organizations:

19 (1) An organization that is described in 26 U.S.C. § 501(c) and exempt from
20 taxation under section 26 U.S.C. § 501(a) and that makes expenditures or
21 disbursements in connection with an election for Federal office, including
22 expenditures for Federal election activity;

- 1 (2) An organization that has submitted an application for tax-exempt status
2 under section 26 U.S.C. § 501(c) and that makes expenditures or
3 disbursements in connection with an election for Federal office, including
4 expenditures for Federal election activity; or
- 5 (3) An organization described in 26 U.S.C. § 527, except for a political
6 committee; a State, district, or local committee of a political party; or the
7 authorized campaign committee of a State or local candidate.

8 (b) Application. This section also applies to:

- 9 (1) An officer or agent acting on behalf of a national party committee,
10 including a national party congressional committee;
- 11 (2) An entity that is directly or indirectly established, financed, maintained, or
12 controlled by a national party committee, including a national party
13 congressional committee, or an officer or agent acting on behalf of such
14 entity; and
- 15 (3) An entity that is directly or indirectly established, financed, maintained, or
16 controlled by an agent of a national committee of a political party,
17 including a national party congressional committee.

18 **§ 300.12 Transition rules.**

19 (a) Permissible uses of excess non-Federal funds. Non-Federal funds received before
20 November 6, 2002, by a national committee of a political party, including a national party
21 congressional campaign committee, must be used before January 1, 2003. Subject to the
22 restrictions in paragraphs (b) and (e) of this section, such funds may be used only as
23 follows:

- 1 (1) To retire outstanding debts or obligations that were incurred solely in
2 connection with an election held prior to November 6, 2002; or
- 3 (2) To pay expenses, retire outstanding debts, or pay for obligations incurred
4 solely in connection with any run-off election, recount, or election contest
5 resulting from an election held prior to November 6, 2002.

6 (b) Prohibited uses of non-Federal funds. Non-Federal funds received by a national
7 committee of a political party, including a national party congressional campaign
8 committee, before November 6, 2002, and in its possession on that date, may not be used
9 for the following purposes:

- 10 (1) To pay any expenditure as defined in 2 U.S.C. 431(9);
- 11 (2) To retire outstanding debts or obligations that were incurred for any
12 expenditure; or
- 13 (3) To defray the costs of the construction or purchase of any office building
14 or facility.

15 (c) Application. This section also applies to:

- 16 (1) An officer or agent acting on behalf of a national party committee or a
17 national party congressional campaign committee; and
- 18 (2) An entity that is directly or indirectly established, financed, maintained, or
19 controlled by a national party committee or a national congressional
20 campaign committee.

21 (d) Treatment of Federal and non-Federal accounts during transition period. The
22 following provisions applicable to the allocation of, and payment for, expenses between
23 Federal and non-Federal accounts of national party committees shall remain in effect

1 between November 6 and December 31, 2002: 11 CFR 106.5(a), 106.5(b), 106.5(c),
2 106.5(f) and 106.5(g).

3 (e) National party committee office building or facility accounts. Before November
4 6, 2002, the national committee of a political party, including a national party
5 congressional campaign committee, may accept funds into its party office building or
6 facility account, established pursuant to repealed §431(8)(B)(viii), and may use the funds
7 in the account only for the construction or purchase of an office building or facility.
8 After November 5, 2002, the national committees may no longer accept funds into such
9 an account and must not use such funds for the purchase or construction of a national
10 party office building or facility. Funds on deposit in any party office building or facility
11 account on November 6, 2002, must be either disgorged to the United States Treasury or
12 donated to an organization described in 26 U.S.C. §170(c) no later than December 31,
13 2002.

14 **§ 300.13 Reporting (2 U.S.C. §§ 431 note and 434(e)).**

15 (a) In general. The national committee of a political party, a national party campaign
16 committee, and any subordinate committee of either, shall report all receipts and
17 disbursements during the reporting period.

18 (b) Termination report for non-Federal accounts. Each committee described in
19 paragraph (a) of this section shall file a termination report disclosing the disposition of all
20 funds in all non-Federal accounts and building fund accounts by January 31, 2003.

21

1 (c) Transitional reporting rules.

- 2 (1) The reporting requirements in 11 CFR 104.9(c) for national party
3 committee non-Federal accounts shall remain in effect for the report
4 covering activity between November 6 and December 31, 2002.
- 5 (2) The reporting requirements in 11 CFR 104.8(e) for national party
6 committee non-Federal accounts shall remain in effect for the report
7 covering activity between November 6 and December 31, 2002.
- 8 (3) The reporting requirements in 11 CFR 104.8(f) and 104.9(d) for national
9 party committee building fund accounts shall remain in effect for the
10 report covering activity between November 6 and December 31, 2002.
- 11

12 **Subpart B – State, District, and Local Party Committees and Organizations**

13 **§ 300.30 Accounts.**

14 (a) Federal Account.

- 15 (1) Each State, district, and local party organization that qualifies as a political
16 committee under 11 CFR 100.5 and that finances political activity in
17 connection with both Federal and non-Federal elections shall:
- 18 (i) Establish a Federal account in a depository, in accordance with
19 11 CFR part 103, which shall be treated as a separate political
20 committee and be required to comply with the requirements of the
21 Act including the registration and reporting requirements of
22 11 CFR Part 102 and Part 104; or
- 23 (ii) Establish a separate Federal political committee that shall register

1 As a political committee and comply with the requirements of the
2 Act.

3 (2) Each State, district, and local party organization that does not qualify as a
4 political committee under 11 CFR 100.5 and that finances political activity
5 in connection with both Federal and non-Federal elections shall -

6 (i) Establish a Federal account in a depository; or

7 (ii) Demonstrate by a reasonable accounting method that whenever
8 such organization makes a contribution or expenditure, that
9 organization has received sufficient funds that are permissible
10 under the Act to make such contribution or expenditure. Such
11 organization shall keep records of amounts received or
12 expenditures under this subsection and, upon request, shall make
13 such records available for examination by the Commission.

14 (3) Only contributions that are permissible pursuant to the limitations and
15 prohibitions of the Act shall be deposited into any Federal account
16 established pursuant to paragraphs (a)(1) or (2) of this section, regardless
17 of whether such contributions are for use in connection with Federal and
18 non-Federal elections.

19 (4) Only contributions solicited and received pursuant to the following
20 conditions may be deposited in a Federal account established under
21 paragraph (a)(1) or (2) of this section:

22 (i) Contributions must be designated by the contributors for the
23 Federal account;

- 1 (ii) The solicitation must expressly state that contributions may be
2 used wholly or in part in connection with a Federal election; or
- 3 (iii) The solicitation must expressly state that all contributions are
4 subject to the prohibitions and limitations of the Act.
- 5 (5) All disbursements, contributions, and expenditures by a State, district, or
6 local party committee made wholly or in part in connection with a Federal
7 election must be made from the committee's Federal account, except as
8 permitted by 11 CFR 300.32.
- 9 (6) Expenditures and disbursements for costs that are allocable pursuant to
10 11 CFR 300.33 must be made from the Federal account in their entirety,
11 with the shares of a non-Federal account or of a Levin account being then
12 transferred to the Federal account pursuant to 11 CFR 300.34.
- 13 (7) No transfers may be made to such Federal account from any other
14 account(s) maintained by a State, district, or local party committee or from
15 any other party committee at any level for the purpose of financing
16 activity in connection with Federal elections, except as provided by
17 11 CFR 300.33 and 11 CFR 300.34.
- 18 (8) State, district, and local party committees may choose to make non-
19 Federal disbursements from the Federal account, provided that such
20 disbursements are reported pursuant to 11 CFR 300.36 and provided that
21 contributors of the Federal funds so used were notified that their
22 contributions were subject to the limitations and prohibitions of the Act.
23

1 (b) Levin account.

2 (1) Any State, district, or local party committee, whether or not it qualifies as
3 a political committee under the Act and including any organization that is
4 directly or indirectly established, financed, maintained, or controlled by a
5 State, district, or local committee of a political party and any officer or
6 agent of such a committee or organization, that intends to engage in voter
7 registration, voter identification, get-out-the-vote activity, and/or generic
8 campaign activity pursuant to 11 CFR 300.32 must maintain a separate
9 account in a depository for this purpose. This account shall be known as a
10 Levin account.

11 (2) Only donations solicited and received pursuant to the following conditions
12 may be deposited in a Levin account established under paragraph (b)(1) of
13 this section:

14 (i) Donations must be designated by the donors for the Levin
15 account; or

16 (ii) Donors have been informed that donations will be subject to the
17 special donation limitations and prohibitions of 2 U.S.C.
18 441i(b)(2)(B) and 11 CFR 300.31(c) and (d).

19 (3) A State, district, or local party committees may use its Levin account to
20 make expenditures or disbursements for the categories of activities
21 described at 11 CFR 300.32 or for other, non-Federal activities
22 permissible under State law.

1 (4) A State, district, or local party committee may use its Levin account to
2 make expenditures or disbursements only if all of the following conditions
3 are met:

4 (i) The expenditure or disbursement does not pay for an activity that
5 refers to a clearly identified candidate for Federal office;

6 (ii) The expenditure or disbursement does not pay for any part of the
7 costs of any broadcasting, cable, or satellite communication, other
8 than a communication that refers solely to a clearly identified
9 candidate for State or local office; or

10 (iii) The Levin funds used for the expenditure or disbursement have
11 been solicited, donated, received, and deposited in accordance with
12 this part.

13 (c) Non-Federal account.

14 (1) Any State, district, or local party committee that makes disbursements
15 solely in connection with State or local elections must establish a separate
16 non-Federal account in a depository. The funds deposited into this
17 account may be governed by State law.

18 (2) Disbursements, contributions, and expenditures made wholly or in part in
19 connection with Federal elections must not be made from any non-Federal
20 account, except as permitted by 11 CFR 300.33 and 11 CFR 300.34.

21 **§ 300.31 Receipt of Levin funds.**

22 (a) General rule. Levin funds expended or disbursed by any State, district, or local
23 committee must be raised solely by the committee that expends or disburses them.

1 (b) Compliance with State law. Each donation of Levin funds solicited or accepted
2 by a State, district, or local committee of a political party must be lawful under the laws
3 of the State in which the committee is organized.

4 (c) Donations from sources permitted by State law but prohibited by the Act. If the
5 laws of the State in which a State, district, or local committee of a political party is
6 organized permit donations to the committee from a source prohibited by the Act and this
7 chapter, the committee may solicit and accept donations of Levin funds from that source,
8 subject to paragraph (d) of this section.

9 (d) Donation amount limitation.

10 (1) General rule. A State, district, or local committee of a political party must
11 not solicit or accept from any person (including any person established,
12 financed, maintained, or controlled by such person) one or more donations
13 of Levin funds aggregating to more than \$10,000 in a calendar year.

14 (2) Effect of different State limitations. If the laws of the State in which a
15 State, district, or local committee of a political party is organized limit
16 donations to that committee to less than the amount specified in paragraph
17 (d)(1) of this section, then the State law amount limitations shall control.
18 If the laws of the State in which a State, district, or local committee of a
19 political party is organized permit donations to that committee in amounts
20 greater than the amount specified in paragraph (d)(1) of this section, then
21 the amount limitations in paragraph (d)(1) of this section shall control.

22 (3) No affiliation of committees for purposes of this paragraph. For purposes
23 of determining compliance with paragraph (d) of this section only, State,

1 district, and local committees of the same political party shall not be
2 considered affiliated. A person (including any person established,
3 financed, maintained, or controlled by such person) may donate up to
4 \$10,000 per calendar year to each State, district, and local committee of
5 political party.

6 (e) No Levin funds from a national party committee or a Federal candidate or
7 officeholder. A State, district, or local committee of a political party disbursing Levin
8 funds pursuant to 11 CFR 300.32 must not accept or use for those purposes any donations
9 or other funds that are solicited, received, directed, transferred, or spent by or in the name
10 of any of the following persons:

11 (1) A national committee of a political party (including a national
12 congressional campaign committee of a political party). Notwithstanding
13 11 CFR 102.17, a State, district, or local committee of a political party
14 must not raise Levin funds by means of joint fundraising with a national
15 committee of a political party.

16 (2) A Federal candidate, individual holding Federal office, or an entity
17 directly or indirectly established, financed, maintained, or controlled by or
18 acting on behalf of one or more candidates or individuals holding Federal
19 office. Notwithstanding 11 CFR 102.17, a State, district, or local
20 committee of a political party must not raise Levin funds by means of joint
21 fundraising with a Federal candidate, individual holding Federal office, or
22 an entity directly or indirectly established, financed, maintained, or
23 controlled by or acting on behalf of one or more candidates or individuals

1 holding Federal office. A Federal candidate or individual holding Federal
2 office may attend, speak, or be a featured guest at a fundraising event for a
3 State, district, or local committee of a political party at which Levin funds
4 are raised. See 11 CFR 300.64.

5 (f) Certain joint fundraising prohibited. Notwithstanding 11 CFR 102.17, a State,
6 district, or local committee of a political party must not raise Levin funds by means of
7 joint fundraising with any other State, district, or local committee of any political party,
8 or the agent of such a committee. This prohibition includes State, district, and local
9 committees of a political party organized in another State. The use of a common vendor
10 for fundraising by more than one State, district, or local committee of a political party, or
11 the agent of such a committee, shall not, by itself, be deemed joint fundraising for
12 purposes of this paragraph.

13 **§ 300.32 Expenditures and disbursements.**

14 (a) Federal funds.

- 15 (1) A State, district, or local committee of a political party that makes an
16 expenditure or disbursement for the purpose of influencing a Federal
17 election must use Federal funds for the expenditure, subject to the
18 provisions of this chapter. An association or similar group of candidates
19 for State or local office, or an association or similar group of individuals
20 holding State or local office, must make any expenditures or
21 disbursements for Federal election activity solely with Federal funds.
- 22 (2) Except as provided in this part, a State, district, or local committee of a
23 political party that makes expenditures or disbursements for Federal

1 election activity must use Federal funds for that purpose, subject to the
2 provisions of this chapter.

3 (3) State, district, and local party committees that engage in fundraising for
4 Federal activities must pay all costs related to such fundraising only with
5 Federal funds.

6 (4) State, district, and local party committees that engage in fundraising for a
7 Levin account must pay all costs related to raising such funds only with
8 Federal funds.

9 (b) Levin funds. A State, district, or local committee of a political party may spend
10 Levin funds in accordance with this part on the following types of activity:

11 (1) Subject to the conditions set out in paragraph (c) of this section, the
12 following types of Federal election activity:

13 (i) Voter registration activity during the period that begins on the date
14 that is 120 days before the date a regularly scheduled Federal
15 election is held and ends on the date of the election; and,

16 (ii) Voter identification, get-out-the-vote activity, or generic campaign
17 activity conducted in connection with an election in which a
18 candidate for Federal office appears on the ballot (regardless of
19 whether a candidate for State or local office also appears on the
20 ballot).

21 (2) Any use that is lawful under the laws of the State in which the committee
22 is organized. A disbursement of Levin funds under this paragraph need

1 not comply with paragraph (c) of this section, except as required by State
2 law.

3 (c) Conditions and restrictions on spending Levin funds for Federal election activity.

4 (1) The Federal election activity for which the expenditure or disbursement is
5 made must not refer to a clearly identified candidate for Federal office.

6 (2) The expenditure or disbursement must not pay for any part of the costs of
7 any broadcasting, cable, or satellite communication, other than a
8 communication that refers solely to a clearly identified candidate for State
9 or local office.

10 (3) The expenditure or disbursement must be made from funds raised in
11 accordance with 11 CFR 300.31.

12 (4) The expenditure or disbursement must be allocated between Federal funds
13 and Levin funds according to 11 CFR 300.33.

14 (d) Non-Federal funds. A State, district, or local committee of a political party that
15 makes disbursements for non-Federal activity may make those disbursements from its
16 Federal or non-Federal funds, subject to the laws of the State in which it is organized. A
17 State, district, or local party committee that engages in fundraising for solely non-Federal
18 funds may pay the costs related to such fundraising from any account, subject to State
19 law, including a Federal account. A disbursement of non-Federal funds made under State
20 law by a State, district, or local committee of a political party that is not directed by the
21 disbursing committee for the purpose of influencing a Federal election or for Federal
22 election activity shall not be an expenditure under 11 CFR 100.8 or an expenditure or
23 disbursement for Federal election activity.

1 § 300.33 Allocation.

2 (a) Costs allocable by State, district, and local party committees.

3 (1) Salaries. State, district, and local party committees may allocate the
4 salaries of employees who spend 25% or less of their time in any given
5 month on Federal election activity between the committee's Federal and
6 non-Federal accounts. The salaries of those employees who spend more
7 than 25% of their time in any given month on Federal election activity
8 must be paid only with Federal funds.

9 (2) Administrative costs. State, district, and local party committees may
10 allocate administrative costs, including rent, utilities, office equipment,
11 office supplies, postage for other than mass mailings, and routine building
12 maintenance, upkeep and repair, between their Federal and non-Federal
13 accounts, except that any such expenses directly attributable to a clearly
14 identified Federal candidate must be paid only from the Federal account.

15 (3) Costs of voter registration within a certain time period, voter
16 identification, get-out-the-vote, and generic campaign activity. State,
17 district, and local party committees that have established a Federal account
18 and a separate Levin account pursuant to 11 CFR 300.30(b), must allocate
19 disbursements or expenditures between these two accounts for:

20 (i) Voter registration activity during the period that begins on the date
21 that is 120 days before the date of a regularly scheduled Federal
22 election and that ends on the date of the election, provided that the
23 activity does not clearly identify a Federal candidate; and

1 (ii) Voter identification, get-out-the-vote activity, or generic campaign
2 activities conducted in connection with an election in which a
3 candidate for Federal office is on the ballot.

4 (b) Allocation percentages, ratios and record-keeping.

5 (1) Salaries. Committees must keep time records for all employees for
6 purposes of determining the percentage of time spent on activities in
7 connection with a Federal election. Allocations of salaries will
8 undertaken as follows:

9 (i) Salaries of employees who spend more than 25% of their
10 compensated time in a given month on activities in connection
11 with a Federal election must be paid 100% from the Federal
12 account.

13 (ii) Salaries of employees who spend 25% or less of their compensated
14 time in a given month on activities in connection with a Federal
15 election shall be allocated between the committee's Federal and
16 non-Federal account.

17 (iii) Salaries of employees who spend no time in a given month on
18 activities in connection with a Federal election may be paid solely
19 from the non-Federal account.

20 (2) Administrative costs. State, district, and local party committees that
21 choose to allocate administrative expenses may do so subject to the
22 following requirements:

23 (i) Presidential election years. In any year in which a Presidential

1 candidate, but no Senate candidate appears on the ballot, State,
2 district, and local party committees must allocate at least 28 % of
3 administrative expenses to their Federal accounts.

4 (ii) Presidential and Senate election year. In any year in which a
5 Presidential candidate and a Senate candidate appear on the ballot,
6 State, district, and local party committees must allocate at least
7 36 % of administrative expenses to their Federal accounts.

8 (iii) Senate election year. In any year in which a Senate candidate, but
9 no Presidential candidate, appears on the ballot, State, district and
10 local party committees must allocate at least 21% of administrative
11 expenses to their Federal account.

12 (iv) Non-Presidential and non-Senate year. In any year in which
13 neither a Presidential nor a Senate candidate appears on the ballot,
14 State, district and local party committee must allocate at least 15%
15 of administrative expenses to their Federal account.

16 (3) Levin activities : Voter registration, voter identification, get-out-the-vote,
17 and generic campaign activity. State, district, and local party committees
18 that choose to make expenditures and disbursements in connection with
19 activities described in paragraph (a)(3) of this section must allocate such
20 expenditures and disbursements between their Federal and Levin accounts.
21 The allocation must result in the following minimum percentages to their
22 Federal accounts:

23 (i) Presidential election years. In any year in which a Presidential

1 candidate, but no Senate candidate appears on the ballot, State,
2 district, and local party committees must allocate at least 28 % of
3 expenses for activities described in paragraph (a)(2) of this section
4 to their Federal account.

5 (ii) Presidential and Senate election year. In any year in which a
6 Presidential candidate and a Senate candidate appear on the ballot,
7 State, district, and local party committees must allocate at least
8 36% of expenses for activities described in paragraph (a)(2) of this
9 section to their Federal account.

10 (iii) Senate election year. In any year in which a Senate candidate, but
11 no Presidential candidate, appears on the ballot, State, district, and
12 local party committees must allocate at least 21% of expenses for
13 activities described in paragraph (a)(2) of this section to their
14 Federal account.

15 (iv) Non- Presidential and non-Senate year. In any year in which
16 neither a Presidential nor a Senate candidate appears on the ballot,
17 State, district, and local party committee must allocate at least 15%
18 of expenses for activities described in paragraph (a)(2) of this
19 section to their Federal account.

20 (4) Other voter registration activities. Expenses for voter registration
21 activities undertaken by a State, district, or local party committee outside
22 the period beginning 120 days before an election and ending on the date of

1 the election may be paid with 100% non-Federal funds, or they may be
2 allocated between the committee's Federal and non-Federal accounts.

- 3 (5) Other get-out-the-vote activities when no Federal candidate is on the
4 ballot. Expenses for voter registration activities undertaken by a State,
5 district, or local party committee may be paid with 100% non-Federal
6 funds, or they may be allocated between the committee's Federal and non-
7 Federal accounts.

8 (c) Costs not allocable by State, district, and local party committees. The following
9 costs incurred by State, district, and local party committees shall be paid only with
10 Federal funds:

- 11 (1) Activities that refer to clearly identified Federal candidates.

12 Disbursements by State, district, and local party committee for activities
13 that refer to a clearly identified candidate for Federal office must not be
14 allocated between or among Federal, non-Federal and Levin accounts.
15 Only Federal funds may be used.

- 16 (2) Activities that refer to Federal and to State and/or local elections. With
17 the exception of activities described in paragraph (a)(3) of this section,
18 disbursements by State, district, and local party committee for activities
19 that do not refer to a clearly identified Federal candidate, but that are
20 wholly or in part in connection with Federal elections, must not be
21 allocated between or among Federal, non-Federal and Levin accounts.
22 Only Federal funds may be used.

1 (3) Fundraising costs. Disbursements for fundraising costs incurred by State,
2 district, and local party committees for funds to be used, in whole or in
3 part, for Federal election activity, including the activities described at
4 paragraph (a)(3) of this section, must not be allocated between or among
5 Federal, non-Federal and Levin accounts. Only Federal funds may be
6 used. However, if such disbursements are for solely non-Federal
7 fundraising costs, non-Federal funds may be used.

8 (d) Transfers between accounts to cover allocable expenses. State, district, and
9 local party committees may transfer funds from their non-Federal or Levin accounts to
10 their Federal accounts solely to meet allocable expenses and only pursuant to the
11 following requirements:

12 (1) Payments from Federal accounts. State, district, and local party
13 committees must pay the entire amount of an allocable expenses from
14 their Federal accounts and must transfer funds from their non-Federal
15 account to the Federal account for administrative expenses or from their
16 Levin account for expenses related to activities identified in paragraph
17 (a)(2) of this section.

18 (2) Timing.

19 (i) State, district, and local party committees must transfer funds from
20 their non-Federal or Levin accounts to their Federal accounts to
21 meet allocable expenses no more than 10 days before and no more
22 than 60 days after the payments for which they are designated are
23 made from a Federal account, except that transfers may be made

1 more than 10 days before a payment is made from the Federal
2 account if advance payment is required by the vendor(s) and if
3 such payment is based on a reasonable estimate of the activity's
4 final costs as determined by the committee and the vendor(s)
5 involved.

6 (ii) Any portion of a transfer from a committee's non-Federal account
7 to its Federal account that does not meet the requirement of
8 paragraph (d)(2)(i) of this section shall be presumed to be a loan or
9 contribution from the non-Federal account or the Levin account to
10 the Federal account, in violation of the Act.

11 **§ 300.34 Transfers.**

12 (a) Federal funds. Notwithstanding 11 CFR 102.6(a)(1)(ii), a State, district, or local
13 committee of a political party must not use any Federal funds transferred to it from, or
14 otherwise accepted by it from, any of the persons enumerated in paragraphs (b)(1) and
15 (b)(2) of this section as the Federal component of an expenditure for Federal election
16 activity under 11 CFR 300.32. A State, district, or local committee of a political party
17 must itself raise the Federal component of an expenditure allocated between Federal
18 funds and Levin funds under 11 CFR 300.32 and 300.33.

19 (b) Levin funds. Levin funds must be raised solely by the State, district, or local
20 committee of a political party that expends or disburses the funds. A State, district, or
21 local committee of a political party must not use as Levin funds any funds transferred or
22 otherwise provided to the committee by:

23 (1) Any other State, district, or local committee of any political party, any
24 officer or agent acting on behalf of such a committee, or any entity

1 directly or indirectly established, financed, maintained or controlled by
2 such a committee; or,

3 (2) The national committee of any political party (including a national
4 congressional campaign committee of a political party), any officer or
5 agent acting on behalf of such a committee, or any entity directly or
6 indirectly established, financed, maintained or controlled by such a
7 committee.

8 (c) Allocation transfers. Transfers of Levin funds between the accounts of a State,
9 district, or local committee of a political party for allocation purposes must comply with
10 11 CFR 300.33.

11 **§ 300.35 Office buildings.**

12 (a) General provision. A State or local party committee may raise and spend funds
13 for the purchase or construction of its office building, and such funds are not subject to
14 the limitations, prohibitions, and disclosure provisions of the Act. Funds raised and spent
15 for the purchase or construction of an office building are subject to State law. An office
16 building must not be purchased or constructed for the purpose of influencing the election
17 of any candidate in any particular election for Federal office. For purposes of this
18 section, the term local party committee shall include a district party committee.

19 (b) Application of State law. Amounts raised and spent by a State or local party
20 committee for the purchase or construction of its office building are subject to State law
21 as set forth in paragraphs (b)(1) and (b)(2) of this section.

22 (1) Non-Federal account. If a State or local party committee uses non-Federal
23 funds, Federal law does not preempt or supersede State law as to the

1 source of funds used, the permissibility of the disbursements, or the
2 reporting of the receipt and disbursement of such funds, except as
3 provided in paragraph (d) of this section.

4 (2) Federal account. If a State or local party committee uses funds from its
5 accounts containing only Federal funds, Federal law does not supersede or
6 preempt State law as to the permissibility of the disbursements, except as
7 provided in paragraph (d) of this section. Federal law also does not
8 preempt or supersede any State law that purports to prohibit or limit the
9 source of the funds, as ascertained by application of a reasonable
10 accounting method prescribed under State law.

11 (3) Levin funds. Levin funds may be used for the purchase or construction of
12 a State or local party committee office building, if permitted by State law.

13 (c) Definition of "purchase or construction of an office building."

14 (1) Office building means a structure and the land underlying the structure,
15 comprised of structural components and fixtures essential to the operation
16 or appearance of the building, and that is lawfully occupied and used by a
17 State or local party committee solely for its own party administration and
18 election campaign support purposes. The term does not include office
19 furnishings, furniture, equipment and machinery (such as computers, file
20 cabinets, photocopiers or audio-visual production equipment).

21 (2) Purchase means any payment to acquire the sole legal title to the building,
22 including fees directly related to the acquisition of the building, such as
23 sales commissions and real estate closing or settlement fees. Purchase

1 does not include payments for the rent or leasing of an office building,
2 property taxes and similar assessments, building maintenance, utility
3 services, and office equipment.

4 (3) Construction includes the design and erection of the structure of a
5 building. Construction does not include the maintenance or repair of the
6 building or its structural components, unless the repair work reaches a
7 level to constitute major restoration or renovation of the building.

8 (d) Allocation of expenses not within the definition of "purchase or construction of an
9 office building." If funds raised by a State or local party committee are used for an
10 expense for its office building and the expense does not fall within the definitions in
11 paragraph (c) of this section, the expense is an allocable administrative expense unless it
12 falls within another category, such as support for a Federal or non-Federal candidate. If
13 the expense is an allocable administrative expense, 11 CFR 300.33 applies, and the
14 administrative expense is subject to the limitations and prohibitions of the Act.

15 (e) Transitional Provisions for State Party Building or Facility Account. Up to and
16 including November 5, 2002, the State committee of a political party may accept funds
17 into its party office building or facility account, established pursuant to repealed 2 U.S.C.
18 431(8)(B)(viii), and use the funds in the account only for the construction or purchase of
19 an office building or facility. Starting on November 6, 2002, the funds in the account
20 will be subject to the provisions of paragraphs (a) through (c) of this section if used for a
21 State party office building. They may not be used for Federal account, Levin account, or
22 other soft money purposes.

1 § 300.36 Reporting Federal election activity; recordkeeping.

2 (a) Requirements for a State, district, or local committee of a political party that is not
3 a political committee.

4 (1) A State, district, or local committee of a political party that is not a
5 political committee (see 11 CFR 100.5) must demonstrate through a
6 reasonable accounting method that whenever it makes a payment of
7 Federal funds for Federal election activity (see 11 CFR 300.32 and
8 300.33) it has received sufficient funds subject to the limitations and
9 prohibitions of the Act to make the payment. Such an organization must
10 keep records of amounts received or expended under this paragraph and,
11 upon request, shall make such records available for examination by the
12 Commission.

13 (2) A payment of Federal funds for Federal election activity shall constitute
14 an expenditure for purposes of determining whether a State, district, or
15 local committee of a political party qualifies as a political committee
16 under 11 CFR 100.5, unless the payment is excluded from the definition of
17 expenditure under 11 CFR 100.8. A payment of Federal funds for Federal
18 election activity that meets the criteria of 100.8(b)(10), (16), or (18)
19 (exempt activities) shall be treated as a payment for exempt activity in
20 accordance with all applicable provisions of this chapter, including, but
21 not limited to, 11 CFR 100.5(c).

22

1 (b) Requirements for a State, district, or local committee of a political party that is a
2 political committee.

3 (1) Reporting disbursements of Federal funds for Federal election activity. A
4 State, district, or local committee of a political party that is a political
5 committee (see 11 CFR 100.5) must report all disbursements of Federal
6 funds for Federal election activity, including the Federally allocated
7 portion of a payment for Federal election activity. This requirement
8 applies whether or not the committee's aggregate total receipts and
9 disbursements for Federal election activity is \$5,000 or more during the
10 calendar year. For purposes of this paragraph, a disbursement of Federal
11 funds for Federal election activity (see 11 CFR 300.32 and 300.33) by a
12 State, district, or local committee of a political party that is a political
13 committee shall be deemed an expenditure and reported as such, unless the
14 disbursement is excluded from the definition of expenditure under 11 CFR
15 100.8.

16 (2) Reporting all receipts and disbursements for Federal election activity;
17 threshold. In addition to the requirements of paragraph (b)(1) of this
18 section, a State, district, or local committee of a political party that is a
19 political committee must report all receipts and disbursements made for
20 Federal election activity if the aggregate amount of such receipts and
21 disbursements is \$5,000 or more during the calendar year. The disclosure
22 required by this paragraph must include receipts and disbursements of

1 Federal funds and of Levin funds used for Federal election activity,
2 notwithstanding the otherwise non-Federal nature of the Levin funds.

3 (i) Reporting of payments for Federal election activity allocated
4 between Federal funds and Levin funds. A State, district, or local
5 committee of a political party that makes a payment for Federal
6 election activity that is allocated between Federal funds and Levin
7 funds (see 11 CFR 300.33) must report for each such payment the
8 full name and address of each person to whom the payment was
9 made, the date of the payment, amount and purpose of the
10 payment, and the amount of and explanation for the allocation
11 percentage used for the payment, as provided in 11 CFR 104.17(b).
12 If the payment is for the allocable costs of more than one Federal
13 election activity, the committee must itemize the payment,
14 showing the amounts designated for each Federal election activity.
15 The committee must also report the total amount paid for Federal
16 election activity that calendar year, to date, for each Federal
17 election activity.

18 (ii) Itemization. The disclosure required by paragraph (b)(2) of this
19 section must include, in addition to any other applicable reporting
20 requirement of this chapter, the itemized disclosure of receipts and
21 disbursements of \$200 or more to or from any person for Federal
22 election activities, as provided in part 104.

1 (3) Reporting of other payments allocated between Federal funds and non-
2 Federal funds. A State, district, or local committee of a political party that
3 makes a payment for costs allocable between Federal and non-Federal
4 funds, other than the costs of Federal election activity that is allocated
5 between Federal funds and Levin funds under 11 CFR 300.33, must
6 comply with 11 CFR 104.17.

7 (c) Filing Schedule. A State, district, or local committee of a political party that must
8 file reports under paragraph (b) of this section must comply with the monthly filing
9 schedule in 11 CFR 104.5(c)(3).

10 (d) Recordkeeping. A State, district, or local committee of a political party that must
11 file reports under paragraph (b) of this section must comply with the requirements of
12 11 CFR 104.14.

13 **§ 300.37 Prohibitions on fundraising for and donating to certain tax-exempt**
14 **organizations (2 U.S.C. § 441i(d)).**

15 (a) Prohibitions. A State, district, or local committee of a political party must not
16 solicit any funds for, or make or direct any donation to:

17 (1) An organization that is described in 26 U.S.C. 501(c) and exempt from
18 taxation under section 26 U.S.C. 501(a) and that makes expenditures or
19 disbursements in connection with an election for Federal office, including
20 expenditures for Federal election activity;

21 (2) An organization that has submitted an application for tax exempt status
22 under 26 U.S.C. 501(c) and that makes expenditures or disbursements in

1 connection with an election for Federal office, including expenditures for
2 Federal election activity; or

- 3 (3) An organization described in 26 U.S.C. 527 except for a political
4 committee; a State, district, or local committee of a political party; or the
5 authorized campaign committee of a state or local candidate.

6 (b) Application. This section also applies to:

- 7 (1) An officer or agent acting on behalf of a State, district or local committee
8 of a political party;
- 9 (2) An entity that is directly or indirectly established, financed, maintained or
10 controlled by a State, district or local committee of a political party or an
11 officer or agent acting on behalf of such entity; and
- 12 (3) An entity that is directly or indirectly established, financed, maintained or
13 controlled by an agent of a State, district or local committee of a political
14 party.

15
16 **Subpart C – Tax-exempt Organizations**

17 **§ 300.50 Prohibited fundraising by national party committees (2 U.S.C.**
18 **441i(d)).**

19 (a) Prohibitions on fundraising and donations. A national committee of a political
20 party, including a national party congressional campaign committee, must not solicit any
21 funds for, or make or direct any donations to:

- 22 (1) An organization that is described in 26 U.S.C. 501(c) and exempt from
23 taxation under section 26 U.S.C. 501(a) and that makes expenditures or

1 disbursements in connection with an election for Federal office, including
2 expenditures for Federal election activity;

3 (2) An organization that has submitted an application for tax-exempt status
4 under 26 U.S.C. 501(c) and that makes expenditures or disbursements in
5 connection with an election for Federal office, including expenditures for
6 Federal election activity; or

7 (3) An organization described in 26 U.S.C. 527, except for a political
8 committee; a State, district, or local committee of a political party; or the
9 authorized campaign committee of a State or local candidate.

10 (b) Application. This section also applies to:

11 (1) An officer or agent acting on behalf of a national party committee,
12 including a national party congressional committee;

13 (2) An entity that is directly or indirectly established, financed, maintained or
14 controlled by a national party committee, including a national party
15 congressional committee, or an officer or agent acting on behalf of such an
16 entity; or

17 (3) An entity that is directly or indirectly established, financed, maintained, or
18 controlled by an agent of a national committee of a political party,
19 including a national party congressional committee.

20 **§300.51 Prohibited fundraising by State, district, and local party committees**

21 **(2 U.S.C. 441i(d)).**

22 (a) Prohibitions. A State, district, or local committee of a political party must not
23 solicit any funds for, or make or direct any donation to:

- 1 (1) An organization that is described in 26 U.S.C. 501(c) and exempt from
2 taxation under section 26 U.S.C. 501(a) and that makes expenditures or
3 disbursements in connection with an election for Federal office, including
4 expenditures for Federal election activity;
- 5 (2) An organization that has submitted an application for tax-exempt status
6 under 26 U.S.C. 501(c) and that makes expenditures or disbursements in
7 connection with an election for Federal office, including expenditures for
8 Federal election activity; or
- 9 (3) An organization described in 26 U.S.C. 527, except for a political
10 committee; a State, district, or local committee of a political party; or the
11 authorized campaign committee of a State or local candidate.

12 (b) Application. This section also applies to:

- 13 (1) An officer or agent acting on behalf of a State, district, or local committee
14 of a political party;
- 15 (2) An entity that is directly or indirectly established, financed, maintained or
16 controlled by a State, district, or local committee of a political party or an
17 officer or agent acting on behalf of such an entity; and
- 18 (3) An entity that is directly or indirectly established, financed, maintained or
19 controlled by an agent of a State, district, or local committee of a political
20 party.

1 §300.52 Fundraising by Federal candidates and Federal officeholders

2 (2 U.S.C. 441i(e)(4)).

3 (a) General solicitations. A Federal candidate, an individual holding Federal office,
4 and an individual who is an agent of either may make a general solicitation of funds on
5 behalf of any organization described in 26 U.S.C. 501(c) and exempt from taxation under
6 26 U.S.C. 501(a), or an organization that has submitted an application for determination
7 of tax-exempt status under 26 U.S.C. 501(c), without regard to the source or amount of
8 funds, only if all of the following conditions apply:

9 (1) The solicitation does not specify how the funds will or should be spent;

10 (2) The solicitation is not for a 501(c) organization whose principal purpose is
11 to conduct:

12 (i) Voter registration activity during the period that begins on the date
13 that is 120 days before the date a regularly scheduled Federal
14 election is held and ends on the date of the election; or

15 (ii) Voter identification, get-out-the-vote activity or generic campaign
16 activity conducted in connection with an election in which a
17 Federal candidate appears on the ballot even if a candidate for
18 State or local office also appears on the ballot; and

19 (3) The solicitation is not for the activities described in paragraph (a)(2) of
20 this section.

21 (b) Specific solicitations.

22 (1) A Federal candidate, an individual holding Federal office, and an
23 individual who is an agent of either may make a solicitation explicitly to

1 obtain funds to carry out the activities described in paragraph (a)(2) of this
2 section, only if the following conditions are met:

- 3 (i) The solicitation is made only to individuals; and
4 (ii) The amount solicited from any individual during any calendar year
5 does not exceed \$20,000.

6 (2) A Federal candidate, an individual holding Federal office, and an
7 individual who is an agent of either may make a solicitation explicitly for
8 an entity whose principal purpose is to conduct any of the activities
9 described in paragraph (a)(2) of this section, only if the following
10 conditions are met:

- 11 (i) The solicitation is made only to individuals; and
12 (ii) The amount solicited from any individual during any calendar year
13 does not exceed \$20,000.

14
15 **Subpart D – Federal Candidates and Officeholders**

16 **§ 300.60 Scope (2 U.S.C. 441i(e)(1)).**

17 This subpart applies to:

- 18 (a) Federal candidates,
19 (b) Individuals holding Federal office,
20 (c) Agents of a Federal candidate or individual holding Federal office, and
21 (d) Entities that are directly or indirectly established, financed, maintained, or
22 controlled by, or acting on behalf of, one or more Federal candidates or individuals
23 holding Federal office.

1 **§ 300.61 Federal elections (2 U.S.C. 441i(e)(1)(A)).**

2 No person described in 11 CFR 300.60 shall solicit, receive, direct, transfer, or
3 spend funds in connection with an election for Federal office, including funds for any
4 Federal election activity as defined in 11 CFR 100.24, unless the amounts consist of
5 Federal funds that are subject to the limitations, prohibitions, and reporting requirements
6 of the Act.

7 **§ 300.62 Non-Federal elections (2 U.S.C. 441i(e)(1)(B)).**

8 No person described in 11 CFR 300.60 shall solicit, receive, direct, transfer, or
9 spend or disburse funds in connection with any non-Federal election, unless the amounts
10 consist of Federal funds that are subject to the limitations and prohibitions of the Act.

11 **§ 300.63 Exception for State party candidates (2 U.S.C. 441i(e)(2)).**

12 Section 300.62 shall not apply to a Federal candidate or individual holding
13 Federal office who is a candidate for State or local office, if the solicitation, receipt or
14 spending of funds is permitted under State law; and refers only to that State or local
15 candidate, to any other candidate for that same State or local office, or both. If an
16 individual is simultaneously running for both Federal and State or local office, the
17 individual must raise, accept, and spend only Federal funds for the Federal election.

18 **§ 300.64 Exemption for attending or speaking at fundraising events (2 U.S.C.**
19 **441i(e)(3)).**

20 Notwithstanding the provisions of 11 CFR 100.24, 300.61 and 300.62, a Federal
21 candidate or individual holding Federal office may attend, speak, or be a featured guest at
22 a fundraising event for a State, district, or local committee of a political party, including a
23 fundraising event at which Levin funds are raised, or at which non-Federal funds are

1 raised. Such candidate or individual holding Federal office shall not solicit, receive,
2 direct, transfer, or spend funds or participate in any other fundraising aspect of any such
3 event.

4 **§ 300.65 Exceptions for certain tax-exempt organizations.**

5 (a) General solicitations. A Federal candidate, an individual holding Federal office,
6 and an individual who is an agent of either may make a general solicitation of funds on
7 behalf of any organization described in 26 U.S.C. § 501(c) and exempt from taxation
8 under 26 U.S.C. § 501(a), or an organization that has submitted an application for
9 determination of tax-exempt status under 26 U.S.C. § 501(c), without regard to the source
10 or amount of funds, only if all of the following conditions apply:

- 11 (1) The solicitation does not specify how the funds will or should be spent;
- 12 (2) The solicitation is not for a 501(c) organization whose principal purpose is
13 to conduct:
- 14 (i) Voter registration activity during the period that begins on the date
15 that is 120 days before the date a regularly scheduled Federal
16 election is held and ends on the date of the election; or
- 17 (ii) Voter identification, get-out-the-vote activity or generic campaign
18 activity conducted in connection with an election in which a
19 Federal candidate appears on the ballot even if a candidate for
20 State or local office also appears on the ballot; and
- 21 (3) The solicitation is not for the activities described in paragraph (a)(2) of
22 this section.
- 23

1 (b) Specific solicitations.

2 (1) A Federal candidate, an individual holding Federal office, and an
3 individual who is an agent of either may make a solicitation explicitly to
4 obtain funds to carry out the activities described in paragraph (a)(2) of this
5 section, only if:

6 (i) The solicitation is made only to individuals; and

7 (ii) The amount solicited from any individual during any calendar year
8 does not exceed \$20,000.

9 (2) A Federal candidate, an individual holding Federal office, and an
10 individual who is an agent of either may make a solicitation explicitly for
11 an entity whose principal purpose is to conduct any of the activities
12 described in paragraph (a)(2) of this section only if:

13 (i) The solicitation is made only to individuals; and

14 (ii) The amount solicited from any individual during any calendar year
15 does not exceed \$20,000.

16
17 **Subpart E – State and Local Candidates**

18 **§ 300.70 Scope (2 U.S.C. 441i(f)(1)).**

19 This subpart applies to any candidate for State or local office, individual holding
20 State or local office, or an agent of any such candidate or individual. For example, this
21 subpart applies to an individual holding Federal office who is a candidate for State or
22 local office. This subpart does not apply to an association or similar group of candidates
23 for State or local office or of individuals holding State or local office.

1 § 300.71 **Federal funds required for certain public communications (2 U.S.C.**
2 **441i(d)(1)).**

3 No individual described in 11 CFR 300.70 shall spend any amounts for a public
4 communication that refers to a clearly identified candidate for Federal office (regardless
5 of whether a candidate for State or local office is also mentioned or identified), and that
6 promotes or supports any candidate for that Federal office, or attacks or opposes any
7 candidate for that Federal office (regardless of whether the communication expressly
8 advocates a vote for or against a candidate) unless the amounts consist of Federal funds
9 that are subject to the limitations, prohibitions, and reporting requirements of the Act.

10 See definition of public communication at 11 CFR 100.26.

11 § 300.72 **Federal funds not required for certain communications (2 U.S.C.**
12 **441i(f)(2)).**

13 The requirements of section 11 CFR 300.71 shall not apply if the communication:

- 14 (a) Is in connection with an election for State or local office, and refers to one or
15 more candidates for State or local office or to a State or local officeholder but does not
16 promote, support, attack, or oppose any candidate for Federal office; or
17 (b) Comes within the scope of 11 CFR 300.2(l)(2)(ii).

18
19 **PART 9034 – ENTITLEMENTS**

20 28. The authority citation for Part 9034 would continue to read as follows:

21 Authority: 26 U.S.C. 9034 and 9039(b).

22 29. Section 9034.8 would be amended by adding introductory language to
23 paragraph (a) to read as follows:

1 § 9034.8 Joint fundraising.

2 (a) General. Nothing in this section shall permit any person to solicit, receive, direct,
3 transfer, or spend any non-Federal funds prohibited under 11 CFR Part 300.

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David M. Mason
Chairman
Federal Election Commission

DATED: _____
BILLING CODE: 6715-01-P