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FEDERAL ELECTION COMMISSION
Washington, DC 20463

JUN 17 2002

MEMORANDUM

AGENDA ITEM
For Meeting of: 6-19-02

SUBMITTED LATE

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence H. Norton
General Counsel

Rosemary C. Smith
Acting Associate General Counsel

Anthony Buckley
Attorney

Mai T. Dinh
Attorney

Jonathan M. Levin
Senior Attorney

Dawn M. Odrowski
Attorney

Rita A. Reimer
Attorney

John C. Vergelli
Attorney

Anne Weissenborn
Senior Attorney

SUBJECT: Final Rule for Excessive and Prohibited Contributions: Non-Federal Funds or Soft Money

On May 20, 2002, the Commission published a notice of proposed rulemaking (NPRM) entitled "Excessive and Prohibited Contributions; Non-Federal Funds or Soft Money." See 67 Fed. Register 35654. The Commission held a hearing on the NPRM on June 4-5, 2002. After reviewing the written comments as well as comments expressed during the hearing, and discussion with the Regulations Committee, the Office of General Counsel has prepared for Commission

consideration the attached final rules and the accompanying Explanation and Justification regarding non-Federal funds.

Recommendation

The Office of General Counsel recommends that the Commission approve the attached Final Rule for publication in the *Federal Register* and transmittal to Congress.

The Office of General Counsel also recommends that the Commission direct this Office to prepare a new notice of proposed rulemaking addressing the definition of "promote or support, attack or oppose."

Attachment

FEDERAL ELECTION COMMISSION

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

[Notice 2002 -]

Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money

AGENCY: Federal Election Commission.

ACTION: Final Rules and Transmittal of Regulations to Congress.

SUMMARY: The Federal Election Commission is revising its rules relating to funds raised, received, and spent by party committees under the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"). The revisions are based on the Bipartisan Campaign Reform Act of 2002 ("BCRA"), which adds to the Act new restrictions and prohibitions on the receipt, solicitation, and use of certain types of non-Federal funds, which are commonly referred to as "soft money." BCRA and the revised rules prohibit national parties and Federal candidates and officeholders from raising non-Federal funds. They also generally require State, district, and local party committees to fund "Federal election activity," including certain voter registration and get-out-the-vote ("GOTV") drives, with money raised pursuant to the limitations, prohibitions, and reporting requirements of the Act, or with a combination of funds subject to various requirements of the Act and BCRA. They also address fundraising by Federal and non-Federal candidates and Federal officeholders on behalf of political party committees, other

candidates, and non-profit organizations. Further information is contained in the Supplementary Information that follows.

DATES: The effective date is November 6, 2002. However, the effective date for 11 CFR 106.7(a) is delayed until January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Acting Associate General Counsel, or Attorneys Mr. Jonathan M. Levin (office buildings), Ms. Dawn Odrowski (national parties and tax-exempt organizations), Ms. Rita A. Reimer (Federal and State candidates), Mr. John C. Vergelli (definitions and Levin funds), or Ms. Anne A. Weissenborn (State and local parties), 999 E Street N.W., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (March 27, 2002), contains extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"), 2 U.S.C. 431 et seq. This is the first of a series of rulemakings the Commission is undertaking this year in order to meet the rulemaking deadlines set out in BCRA. These rules address BCRA's new limitations on party, candidate, and officeholder solicitation

and use of non-Federal funds.[1]

Section 402(c)(2) of BCRA establishes a 90-day deadline for the Commission to promulgate these rules. Since BCRA was signed into law on March 27, 2002, the 90-day deadline is June 25, 2002.[2] The new rules will take effect on November 6, 2002, the day following the November 2002 general election, except rules that take effect after the transition period. 2 U.S.C. 431 note.

Because of the extremely tight deadline for promulgating these rules, the Commission adhered to a shorter-than-usual timeline for receiving and considering public comments. The Notice of Proposed Rulemaking ("NPRM") on which these rules are based was published in the Federal Register on May 20, 2002. 67 Fed. Register 35654 (May 20, 2002). Comments were received from the Alliance for Justice; the American Federation of Labor and Congress of Industrial Organizations; the American Federation of State, County, and Municipal Employees ("AFSCME"); the Association of State Democratic Chairs ("ASDC"); Dr. Peter Bearse; the California Republican Party; the

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[1] Future rulemakings will address: (1) electioneering communications and issue ads; (2) coordinated and independent expenditures; (3) the so-called "millionaires' amendments," which increases contribution limits for congressional candidates facing self-financed candidates on a sliding scale, based on the amount of personal funds the opponent contributes to his or her campaign; (4) the increase in contribution limits; and (5) other new and amended provisions, including contribution prohibitions and reporting. This last rulemaking will address contributions by minors, foreign nationals, and U.S. nationals; inaugural committees; fraudulent solicitations; disclaimers; personal use of campaign funds; and civil penalties. BCRA's impact on national nominating conventions will be addressed in a separate rulemaking.

[2] BCRA's deadline for promulgation of the remaining rules is 270 days after the date of enactment, or December 22, 2002.

Campaign and Media Legal Center; the Center for Responsive Politics and FEC Watch (joint comment); Common Cause and Democracy 21 (joint comment); the Connecticut Republican State Central Committee; the Democratic National Committee ("DNC"), the Democratic Senatorial Campaign Committee ("DSCC") and the Democratic Congressional Campaign Committee ("DCCC") (joint comment); Development Strategies Corporation; Benjamin L. Ginsberg, Esq.; Janice P. Johnson; the Latino Coalition and National Taxpayer Network (joint comment); the Michigan Democratic Party ("MDP"); Mindshare Internet Campaigns L.L.C.; the NAACP National Voter Fund ("NAACP NVF"); the National Republican Congressional Committee ("NRCC"); OMB Watch; Senators John S. McCain and Russell D. Feingold, and Representatives Christopher Shays and Marty Meehan (joint comment), and a supplemental comment from Sen. McCain; Representative Bob Ney; Norman D. Petrick; and the Republican National Committee ("RNC").

The Commission held a public hearing on the NPRM on June 4 and 5, 2002, at which it heard testimony from representatives of the ASDC; the AFL-CIO; the Campaign and Media Legal Center; Common Cause and Democracy 21; CRP and FEC Watch; the DNC, DSCC and DCCC; the Latino Coalition and the Taxpayer Network, Inc.; NAACP NVF; the MDP; the RNC, the RNCC, and the Republican State Chairmen; and Mr. Ginsberg. Please note that, for purposes of this rulemaking, the terms "commenter" and "comment" cover both written comments and oral testimony at the public hearing.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and

publish them in the Federal Register at least 30 calendar days before they take effect. The final rules on prohibited and excessive contributions: non-Federal funds or Soft Money were transmitted to Congress on June >, 2002.

Explanation and Justification

I. Terminology

Because the term "soft money" is used by different people to refer to a wide variety of funds under different circumstances, the Commission is using the term "non-Federal funds" in the final rules rather than the term "soft money." BCRA does not use the term "soft money" except in the heading of Title I and the headings within Title IV. Moreover, 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 accepted at all. Nonetheless, the Commission sought comment on whether use of the term "soft money" would in some instances be preferable.

Not all commenters addressed this issue, and several of those who did not used the term "soft money" throughout their comments. Most of those who addressed this question, however, urged the Commission to use the terms "Federal funds" and "non-Federal funds" in place of what they characterized as the often-misunderstood term "soft money." One commenter urged the Commission to use the terms "regulated" and "unregulated" funds, arguing that the terms "Federal" and "non-Federal" funds are also confusing. However, the terms "Federal" and "non-Federal" have been used by the

Commission for many years throughout the rules and are thus familiar to those active in this area. See, for example, 11 CFR 102.5 ("Federal" and "non-Federal" accounts); 11 CFR 106.5 ("Federal" and "non-Federal" disbursements). The terms "regulated" and "unregulated" could also be subject to different interpretations. The Commission is, therefore, using the terms "Federal" and "non-Federal" throughout the text of the regulations and the accompanying Explanation and Justification.

II. The Statutory Framework

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

Some donations that do not meet the FECA hard money requirements, for example, corporate and labor organization general treasury contributions, may not be used for Federal elections, and are referred to as non-Federal funds. Non-Federal funds may not be used for the purpose of influencing any election for Federal office. Funds raised that are used by State or local parties or State or local candidates wholly on non-Federal elections may be governed by State or local law. Prior to BCRA's revisions, the FECA permitted national party committees, Federal candidates, and officeholders to raise

money not subject to some of the Act's source limitations and prohibitions. Beginning November 6, 2002, under BCRA, national party committees "may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of this Act." 2 U.S.C. 441i(a).

BCRA also requires State, district, and local political party committees to pay for "Federal election activities," which is a new term introduced and defined by BCRA, 2 U.S.C. 431(20), with entirely Federal funds or, in some cases, a mix of Federal funds and a new type of funds, which the rules call "Levin funds." These two provisions are related in that the latter is intended to prevent evasion of the former. A State, district, or local political party committee may not evade the restrictions in BCRA by receiving funds transferred from a national party committee and spending those funds on Federal election activity. The State, district, and local party committees must spend Federal funds it raises itself on these activities. See 148 Cong. Rec. H408-409 (daily ed. Feb. 13, 2002) (statement of Rep. Shays).

As discussed below, these new and revised rules partially supersede the following advisory opinions relating to party office buildings: Advisory Opinions 2001-12, 2001-1, 1998-8, 1998-7, 1997-14, 1993-9, 1991-5, and 1986-40. Other advisory opinions may no longer be relied upon to the extent they conflict with BCRA. Further guidance will be forthcoming in future advisory opinions and rulemakings.

III. Part 100 – Scope and Definition

11 CFR 100.14. Definition of "State committee, subordinate committee, district, or local committee"

Several provisions of BCRA refer to "State, district, and local committees of a political party." See, e.g., the "Levin Amendment," 2 U.S.C. 441i(b)(2). In the NPRM, the Commission pointed out that the terms "State committee," "subordinate committee," and "party committee," are already defined in the regulations, although "district committee" and "local committee" are not. 11 CFR 100.14, 100.5(e)(4); see also 2 U.S.C. 431(15). The NPRM proposed to conform section 100.14 with BCRA, and to harmonize sections 11 CFR 100.14 and 100.5(e)(4).

In paragraph (a) of section 100.14, the status as a State committee is determined by reference to the party bylaws or State law. This provision, which did not draw comment, allows the regulation to cover those States in which party committee status is a matter of State law and those in which it is a matter of party bylaws. There is also a grammatical correction in paragraph (a).

The proposed regulation published in the NPRM provided, in paragraphs (a), (b), and (c), with regard to "State committees," "subordinate committees," and "district or local committees," respectively, that an organization must be "part of the official party structure" and be "responsible for the day-to-day operation of the political party" to meet the definition. Three commenters, including the principal Congressional sponsors of BCRA, objected to this conjunctive requirement. These commenters collectively believe that limiting the definition to organizations that are part of the "official party structure"

will open the door to purportedly "unofficial" party organizations that would be able to avoid BCRA's requirement while "manifestly engaged in party operations." Instead, they propose a disjunctive definition, which would provide that a party organization meets the respective definitions if it is part of the official party structure or responsible for the day-to-day operation of the party. In paragraph (a), the Commission has determined not to add the words, "is part of the official party structure," in the final rules because they are redundant. If an organization is provided for in either the party by-laws or in State, it is "official."

In paragraph (b), there is, in addition to a grammatical correction, the addition of the phrase, "as determined by the Commission," to the end of the paragraph. This added language standardizes the treatment of "State committees" and "subordinate committees" in the section. Existing paragraph (a) already includes this statutory requirement. 2 U.S.C. 431(15). The added language also gives the Commission the necessary authority and flexibility to ensure that district and local committees are treated consistently and fairly. The principal Congressional sponsors of BCRA commented that proposed paragraph (b) did not, but should, include within the definition an entity that is directly or indirectly established, financed, maintained, or controlled by the subordinate committee. The Commission has adopted this suggestion in the final rules. Also, for the reasons explained above in the context of paragraph (a), the words, "is part of the official party structure," have not been included in the final regulation.

Paragraph (c) is a new provision defining "district or local committee." This definition parallels paragraph (a) but for political subdivisions below the State level, and encompasses those political party committees that do not necessarily operate formally

under the "control or direction" of the State party committee. The key criterion for determining status as a district or local party committee is responsibility for the day-to-day operation of the party, whether that is a matter of State law or the party's bylaws. For the reasons explained above in the context of paragraph (a), the words, "is part of the official party structure," have not been included in the final regulation.

The principal Congressional sponsors of BCRA commented that the words, "under State law," are redundant given the preceding reference to "operation of State law." The Commission agrees, and has deleted the redundant words in the final rule.

Three commenters objected to adding language, "as determined by the Commission," in paragraph (c) of section 100.14. An association of State party officials stated, referring to paragraph (c), "there should be no discretion left to the Commission to decide whether a particular organization is a local party committee." A national party committee described status as a local committee as a "quintessential State and local" issue. The Commission notes, however, that many operative provisions of BCRA apply expressly to "local committee of a political party," including the so-called "soft-money ban" that lies at the heart of BCRA's Title I. See 2 U.S.C. 441i(b)(1). Therefore, status as a committee of a political party, even at the local level, now has implications under the FECA, as amended by BCRA.

11 CFR 100.24 Definition of "Federal election activity"

Many of the operative provisions of Title I of BCRA use the term "Federal election activity" ("FEA"). See, e.g., 2 U.S.C. 441i(b)(1), (2), which provides that a State, district, and local political party committee that conducts FEA must pay for this

activity with either Federal funds or a combination of Federal funds and Levin funds. See also 2 U.S.C. 441i(d). Congress defined the term at 2 U.S.C. 431(20). The Commission is adopting new regulation 11 CFR 100.24 to implement the statutory definition.

The definition of FEA proposed in the NPRM drew numerous comments urging divergent interpretations of key statutory terminology. Many of these comments focused on four important phrases that are used in the statutory definition at 2 U.S.C. 431(20). In light of these comments, the Commission has revised the regulation proposed in the NPRM by adding a new first paragraph, 11 CFR 100.24(a), which defines these four terms for the purposes of the rest of the regulation and for use in part 300 of chapter 1 of Title 11. These terms are "voter registration activity" (see 2 U.S.C. 431(20)(A)(i)), "in connection with an election in which a candidate for Federal office appears on the ballot," "get-out-the-vote activity" ("GOTV"), and "voter identification" (see 2 U.S.C. 431(20)(A)(ii)).

A. Elections in Which Federal Candidates "Appear on the Ballot"

The statutory definition of FEA provides that certain activities are FEA if they are "in connection with an election in which a candidate for Federal office appears on the ballot." 2 U.S.C. 431(20)(A)(ii). The NPRM requested comment as to how to interpret this statutory provision. Several commenters, including the principal Congressional sponsors of BCRA, urged the Commission to construe this phrase to mean "starting at the beginning of a two-year Federal election cycle, except in states holding regularly scheduled state elections in odd-numbered years." These commenters argued that this approach is "consistent with the Commission's current practice with respect to allocation

of generic voter drive and administrative expenses," and comports with the plain meaning of the statute.

In contrast, two commenters, a national party committee and a labor organization, urged the Commission to pick a date, January 1 of even-numbered years, certain to identify the time-frame that is "in connection with an election in which a candidate for Federal office appears on the ballot." The commenters commended this approach as "practical" and "reasonable." One of these commenters suggested that the concept of even-numbered Federal election years is already familiar, and that party activities are "more diverse" in odd-numbered years, in that they are more focused on local and State activities. The Commission notes that a large number of State and local elections take place in odd-numbered years (e.g., mayoral elections in some large cities). Activities in connection with such elections are presumably not "conducted in connection with an election in which a candidate for Federal office appears on the ballot," even under the most expansive reading of the statute.

One commenter suggested that the Commission interpret the term, "in connection with an election in which a candidate for Federal office appears on the ballot," to mean that period of time beginning on the day on which a Federal candidate is actually certified for the ballot in a given jurisdiction. This commenter argues this interpretation is the plainest possible reading of the statute. Another commenter suggested that the Commission interpret the statutory term to mean the earliest date on which a Federal candidate could qualify for the ballot in a given jurisdiction. Both of these proposals share a common flaw: Each would result in a more complex rule that varies considerably from jurisdiction to jurisdiction, and possibly from one election to the next within a

jurisdiction, in contrast to a rule that would have uniform application throughout the United States.

Paragraph (a)(1) of 11 CFR 100.24 defines "in connection with an election in which a candidate for Federal office appears on the ballot" to mean two specific periods of time. The first begins on January 1 of even-numbered years, and ends on December 31 of such years. The Commission chooses this time-frame for several reasons. First, it respects the broad purposes of BCRA to regulate activities that most directly affect Federal elections. Most Federal election activity will take place in even-numbered years, in the "run-up" to the primary and general elections themselves. Second, this time-frame recognizes that political activity in odd-numbered years tends to be more heavily focused on State and local races, and consequently has at best only an attenuated effect on Federal elections that are often more than a year away. Third, this rule is simple and may be consistently applied throughout the United States, without local uncertainties due to the varying dates of elections in varying jurisdictions. The Commission chooses December 31 as the ending date of the period to allow consistent application of the regulations (e.g., the reporting regulations in part 104 and section 300.36) throughout a given calendar. The consequence of this rule is that activities described in 2 U.S.C. 431(20)(A)(ii) will be Federal election activities in even-numbered years, but not in odd-numbered years (except in the case of certain odd-year special elections, see below).

The second time-frame that is "in connection with an election in which a candidate for Federal office appears on the ballot" occurs in odd-numbered years in which a special election for a Federal office occurs. Paragraph (a)(1)(ii) prescribes that the period beginning on the date the special election date is set and ending on the day of

the special election is considered to be "in connection with an election in which a candidate for Federal office appears on the ballot."

B. Voter Registration Activity

Under the statutory definition of FEA, "voter registration activity" is a FEA if it is conducted 120 days or fewer before a regularly scheduled Federal election. 2 U.S.C. 431(20)(A)(i). New section 100.24(a)(2) defines voter registration activity to encompass direct contact with individuals for the specific purpose of encouraging or assisting those individuals with the process of registering to vote. The definition in paragraph (a)(2) also includes the costs of printing and distributing voter registration information, such as registration forms, and voting information, for example, pamphlets of similar materials explaining the voter-registration process.

C. Get-Out-the-Vote

Based upon the comments and testimony on the proposed rules, and its own analysis of BCRA, the Commission has concluded that it must define GOTV in a manner that distinguishes the activity from ordinary or usual campaigning that a party committee may conduct of behalf of its candidates. The need for this line-drawing is illustrated by the fact that new 2 U.S.C. 431(20)(B)(i) provides that, in connection with an election in which a Federal candidate appears on the ballot, a public communication that refers solely to a clearly identified candidate for State or local office is not a FEA, unless the communication is also, among other things, a GOTV activity. Thus, the Commission's regulation must provide a means for distinguishing a public communication that is not GOTV from one that is. Stated another way, if GOTV is defined too broadly, the effect of the regulations would be to federalize a vast percentage of ordinary campaign activity.

The Commission received several comments on this topic. A national party committee commented that if "a GOTV effort is designed to solely encourage the election of state and local candidates, even though occurring at a time when federal candidates are on the ballot, those costs should be viewed as 100% non-federal . . . . Therefore, the suggestion . . . that a public communication that urges the voter to vote for a state or local candidate should be viewed as a federal election activity, since it is by definition a GOTV message, should be rejected." This comment seems to misapprehend 2 U.S.C. 431(20)(B)(i), which does not provide that a public communication that refers solely to a State or local candidate is "by definition" a GOTV activity — the statute does contemplate that it may (or may not) be so. A State political party argued that the timing (i.e., relative to the election) should not be relevant to determining whether an activity is GOTV. Rather, the State party committee suggested that GOTV "should refer to actual communications with voters for the purpose of encouraging them to vote." A public interest group agreed that timing relative to the election is not relevant to determining whether an activity is GOTV. The group, however, does not suggest an actual definition of the term. A labor organization suggested that timing is relevant, and urged that the Commission's definition of GOTV be limited to activities that occur on election day.

In 11 CFR 100.24(a)(3), the Commission adopts a definition of "GOTV activity" as "contacting registered voters to encourage or assist them with the act of voting." This definition is focused on activity that is ultimately directed to registered voters, even if the efforts also incidentally reach the general public. Second, GOTV has a very particular purpose: Encouraging or assisting registered voters to take any and all necessary steps to get to the polls and cast their ballots, or to vote by absentee ballot or other means

provided by law. The Commission understands this purpose to be narrower and more specific than the broader purposes of generally increasing public support for a candidate or decreasing public support for an opposing candidate.

Paragraph (a)(3) includes a non-exhaustive list of three factors intended to assist in applying the regulation to particular factual situations. The first factor, paragraph (a)(3)(i), is whether the activity includes providing to voters information such as the date of the election, the location of polling places, and the hours the polls are open. The second factor, paragraph (a)(3)(ii), is whether the activity facilitates voting by particular individuals. Providing transportation to the polls and babysitting services are given as examples of such facilitation, because both are long-recognized in the Commission's regulations on voter registration and GOTV. See, e.g., House Doc. No. 95-44 at p. 106 (January 12, 1977) (Explanation and Justification for 1977 Amendments to 11 CFR 114.4). The third factor, paragraph (a)(3)(iii), is the proximity of the activity to the date of the election. The Commission stresses, however, that proximity in time to the election is not necessarily dispositive with regard to whether an activity is a GOTV activity.

In the NPRM, the Commission posed several questions as to how the term, "get-out-the-vote activity" ("GOTV"), should be interpreted in the statute. Among the issues raised was whether there should be an exception for "non-partisan" GOTV. In their comment, the principal Congressional sponsors of BCRA strongly opposed a non-partisan exception as "flatly inconsistent with BCRA." They argued that the plain language of the statute does not admit such an exception. Two other commenters, both of which are public interest groups, make the same general argument. These three

commenters also opposed regulations that might contemplate "non-partisan" voter-drive activities by party committees and candidates, which one of the commenters labeled as "oxymoronic."

In contrast, one commenter, a non-profit corporation, urged the Commission to adopt a "non-partisan exception" for non-profit organizations that engage in non-partisan voter-drive activities such as GOTV and voter registration. This group noted that the proposed regulations would restrict fundraising on behalf of a non-profit by political party committees and Federal candidates if the non-profit spent money for FEA. They contended that, if the Commission fails to distinguish between partisan and non-partisan voter-drive activities, the efforts of legitimate, non-partisan groups to encourage voting will be hampered, perhaps fatally in the case of some organizations. This commenter also argued that the Commission should create a "safe harbor" to allow political party committees and Federal candidates to raise funds on behalf of section 501(c)(3) organizations that legally engage in non-partisan voter-drive activities.

In Title I of BCRA, Congress expressly addressed party fundraising for tax-exempt organizations. Congress specifically provided that national, State, district and local political party committees "shall not solicit any funds for, or make or direct any donations to" section 501(c) organizations that spend for the costs of FEA. 2 U.S.C. 441i(d)(1). The Commission does not discern, from the plain language of section 441i(d)(1), any authority to craft a regulatory exception to the definition of FEA that would modify the effect of section 441i(d)(1). This conclusion is supported by the fact that Congress did provide a limited exception for fundraising by Federal candidates on behalf of 501(c) organization that engage in FEA. See 2 U.S.C. 441i(e)(4)(B) (which

provides that a Federal candidate is permitted to raise up to $20,000 per calendar year from individuals for a section 501(c) organization even if the organization engages in certain FEA.) Clearly, Congress could have crafted a non-partisan exception, but did not do so with regard to party committees' GOTV drives. Therefore, the Commission declines to adopt a "non-partisan" exception in 11 CFR 100.24 with regard to the definition of FEA.

In the NPRM, the Commission solicited comments as to whether there should be a de minimis exception allowing a certain, nominal amount of GOTV related to a Federal election that would nonetheless not render these activities as FEA. The principal Congressional sponsors of BCRA and a public interest group commented that there is no basis in the statute for a de minimis exception, and that such an exception "would be contrary to the plain meaning of the statute." Two labor organizations and a State political party committee support the inclusion of a de minimis exception. The State party committee suggests a $5,000 exception, so that "informal and occasional GOTV and grassroots activities do not invoke the full force of federal regulations." One of the labor organizations asserts the exception would prevent the regulation from having a "strict liability" aspect.

The Commission declines to adopt a de minimis exception in 11 CFR 100.24. The plain language of the 2 U.S.C. 431(20) does not indicate that Congress contemplated such an exception.

D. Slate Cards, Sample Ballots, and Other Exempt Activities

In the NPRM, the Commission specifically sought comment as to the use of printed slate cards, sample ballots, palm cards, and similar listings of three or more

candidates in the context of GOTV. The Commission also sought comment about the larger issue of the relationship of "exempt activities" to "Federal election activities." 67 Fed. Register at 35656.

The term "exempt activities" refers to three types of spending by State and local party organizations, each of which is excluded from the statutory definitions of contribution and expenditure in 2 U.S.C. 431(8) and (9). That is, a payment by a State or local party organization for an exempt activity is not a "contribution," within the meaning of the Act, to a candidate benefited by the activity, nor an "expenditure," within the meaning of the Act, by the party organization.

Slate cards are one type of exempt activity. A payment for the "costs of preparation, display, or mailing or other distribution . . . with respect to a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any public office," is not a contribution or expenditure. The exclusion does not apply to spending for displaying the slate card "on broadcast stations, or in newspapers, magazines, or similar types of general public political advertising." 2 U.S.C. 431(8)(B)(v) (contribution); 2 U.S.C. 431(9)(B)(iv) (expenditure). See also 11 CFR 100.7(b)(9), 100.8(b)(10). Note that the exemption extends to the costs of a mass mailing of the slate card.

"The original intent of the slate card amendment was to allow parties to print slate cards, sample ballots, etc., to educate voters and encourage straight party voting without being subject to the disclosure provisions and contribution and expenditure limitations in Federal law." H.R. Rep. No. 93-1239, at 142 (1974) (House Committee on Administration Report on the Federal Election Campaign Act Amendments of 1974)

(Supp. View of Rep. Frenzel). Other statements in the legislative history tend to confirm this view of the intent behind the provision. See, e.g., H.R. Rep. No. 93-1438, at 65 (1974) (Conference Report on Federal Election Campaign Act Amendments of 1974) (intent of provision "is to allow State and local parties to educate the general public as to the identity of the candidates of the party".)

Several commenters have addressed the relationship between FEA and exempt activities, including slate cards. One State party committee commented that it understands BCRA to have "clearly redefined all such ... activities as Federal election activities that must be funded entirely by hard money." The principal Congressional sponsors of BCRA commented that slate cards, sample ballots, and palm cards should be included in GOTV. With regard to the larger issue of the relationship between all exempt activities and FEA, the principal sponsors urged that if an activity constitutes FEA, then it must be treated as such. A public interest group argues that "federal election activity subsumes all previously allocable expenses," with certain exceptions not relevant here.

In a joint comment, a national party committee and two Congressional campaign committees advocated the opposite conclusion: "Congress did not leave any suggestion in the legislative history that these important exceptions were somehow overridden ... by BICRA." These commenters argued that the Commission's current treatment of exempt activities is consistent with BCRA because BCRA focuses on "soft money" spending for "issue advertising," whereas exempt activities are, by definition, at the grassroots level. Thus, they conclude, "exempt activities should not be deemed to be 'Federal election activity,' and that the costs of exempt activities should continue to be allocated between Federal and non-Federal funds," by which they mean non-Federal funds other than Levin

funds. Another national party committee, a State party committee, and a labor organization made essentially the same points, agreeing that the definition of Federal election activity should exclude exempt activities.

The Commission does not interpret the Act, as amended by BCRA, to permit blanket conclusions about the relationship of exempt activities and FEA, in the sense of asserting that all exempt activities are necessarily now FEA, or vice versa. It is clear that not all exempt activities are FEA. For example, voter registration activities undertaken by a State or local political party on behalf of the Presidential ticket more than 120 days before a regularly scheduled election is an exempt activity under 2 U.S.C. 431(8)(B)(xii) and (9)(B)(ix), but not a Federal election activity. 11 CFR 100.24(b)(1). It is also clear that some activities satisfy one of the definitions of exempt activities and simultaneously satisfy one of the definitions of FEA. For example, voter registration activities undertaken by a State or local political party on behalf of the Presidential ticket fewer than 120 days before a regularly scheduled election satisfy both the definition of exempt activity and of Federal election activity. 2 U.S.C. 431(8)(B)(xii), (9)(B)(ix), and 20(A)(i).

In cases where a given activity undertaken by a State, district, or local political party committee is both an exempt activity and a Federal election activity, the issue is how it may or must be paid for. On this point, BCRA and the Commission's pre-BCRA regulations appear to be in conflict. Under BCRA, if the activity is deemed a FEA, it must be paid for with Federal funds, or with an allocated mix of Federal and Levin funds. 2 U.S.C. 441i(b)(1), (2). Under the Commission's pre-BCRA regulations, if the activity is deemed an exempt activity that is combined with non-Federal activity it may be paid

for with an allocated mix of Federal and non-Federal funds. 11 CFR 100.7(b)(9), (15), (17), 100.8(b)(10), (16), (18), and 106.5(a)(2)(iii). See Common Cause v. Federal Election Com'n, 692 F.Supp. 1391, 1394-1396 (D.D.C. 1987). The Common Cause case directly addressed two of the three categories of exempt activities: campaign materials used by volunteers (see 11 CFR 100.7(b)(15) and 100.8(b)(16)) and voter registration and GOTV activities on behalf of the Presidential ticket (see 11 CFR 100.7(b)(17) and 100.8(b)(18)), establishing that allocation of payments for these activities between Federal and non-Federal funds was properly a matter for the Commission to address in its regulations. Common Cause, 692 F.Supp. at 1396. While not directly addressed in Common Cause, the allocation of the costs of slate cards is also addressed in the Commission's regulations, but not in FECA. Compare 2 U.S.C. 431(8)(B)(v) and (9)(B)(iv), which does not specifically provide for allocation, with 11 CFR 100.7(b)(9) and 100.8(b)(10), which provides for allocation.

Since the Commission's regulations may not override the Act, as amended by BCRA, if an activity undertaken by a State, district, or local political party committee simultaneously constitutes both exempt activity and Federal election activity, that activity must now be paid for as a Federal election activity, not as an exempt activity. This means the activity must be paid for with entirely Federal funds, or an allocated mix of Federal funds and Levin funds. 2 U.S.C. 441i(b)(1), (2).

The Commission emphasizes, however, that payments by a State, district, or local political party committee for an activity that is within one of the exempt activity categories remains excluded from the definitions of "contribution" and "expenditure." That is, the conclusion explained in the preceding paragraph goes only to how the activity

must be paid for, not to characterizing the payment as a contribution or expenditure under the Act.

With these considerations in mind, the Commission sees no valid reason to handle slate cards differently from any other type of exempt activity with regard to the definition of Federal election activity. If a State, district, or local political party committee uses slate cards as part of GOTV activity, or in a public communication that promotes or supports, or attacks or opposes a Federal candidate, then the committee must pay for the costs of these slate cards as a Federal election activity (see 2 U.S.C. 431(20)(A)(ii), (iii)), although these payments are excluded from the definition of "expenditure." On the other hand, if a State, district, or local political party committee uses slate cards mentioning Federal and non-Federal candidates in the course of campaigning that does not constitute Federal election activity, then it may allocate the costs of these slate cards between Federal and non-Federal funds.

E. Voter Identification

In BCRA, Congress included "voter identification" within the definition of "Federal election activity." 2 U.S.C. 431(20)(A)(ii). In the NPRM, the Commission sought comments about several aspects of defining "voter identification" for purposes of implementing section 431(20)(A)(ii) in the regulations. 67 Fed. Register at 35656. The Commission received numerous comments in response. A consortium of non-profit groups expressed concern that the term "voter identification" could be read too broadly by encompassing "efforts to identify the shared interests of individuals for non-electoral purposes." They urged the Commission to restrict the definition to "activities designed

primarily to identify the political preferences of individuals in order to influence their voting." Similarly, a State political party commented that the definition in the proposed regulation was "far too broad and instead should be defined to include only activity that involved actual contact of voters, by phone, in person or otherwise, to determine their likelihood of voting generally or their likelihood of voting for a specific Federal candidate." This State party committee specifically urged that the final definition exclude the costs of "acquisition or enhancement of a list of voters, or the acquisition of publicly available demographic information regarding these voters," arguing that such functions are properly treated as administrative expenses because they are part of the party's "fundamental functions." Several national party committees offered essentially similar views. A labor organization commented that "voter identification" should be defined as telephone calls or canvassing "to identify voters for other Federal election activities," and agreed that gathering data about voters should be excluded. Another labor organization commented that "voter identification" should be limited to determining voter intent with regard to specific Federal candidates only.

In contrast, the principal Congressional sponsors of BCRA commented that "voter identification" should include all activities designed to determine registered voters, likely voters, or voters indicating a preference for a specific candidate or party." They also commented that voter identification efforts should not be excluded simply because no mention is made of a Federal candidate. With regard to the Commission's question, posed in the NPRM, about distinguishing voter identification from GOTV, the principal Congressional sponsors commented that the distinction "makes no difference" because both types of activity are covered under the same provision of BCRA (see 2 U.S.C.

431(20)(A)(ii)). A public interest group commented that "voter identification" includes "all efforts to identify voters, even if done so in the name of state and local candidates." This same commenter argued against limiting the definition according to proximity in time to the election. Another public interest group urged the Commission not to limit "voter identification" to efforts to identify voters for other Federal election activities, arguing that only a "tortured reading" of the statute allows "get-out-the-vote activity" to modify "voter identification."

In paragraph (a)(4) of section 100.24, the Commission adopts a definition of "voter identification" that includes the costs of obtaining and enhancing voter lists, creating voter files, and contacting voters to determine their likelihood of voting and voting tendencies and preferences. The Commission notes that "voter identification" is one of the types of Federal election activity that will occur, by definition, only in even-numbered years under 11 CFR 100.24(a)(1) (with the exception of certain special elections in odd-numbered years). The reason for limiting these types of Federal election activity, including voter identification, to even-numbered years is that voter-drive activity in such years is inherently more directly connected to Federal elections. Thus, the argument made by some commenters that the costs of acquiring a voter list are inherently administrative in character loses force when the activity occurs in a year in which a Federal election is to be held. Moreover, while enhanced voter lists may indeed have additional uses apart from directly affecting Federal elections, such as fundraising, it nonetheless remains true that list enhancement is the first fundamental step in voter identification and thus significantly affects Federal elections. Moreover, parties regularly use voter lists to raise funds to help elect their candidates, including Federal candidates.

F. Definition of "Federal Election Activity"

Paragraph (b) of section 100.24 defines Federal election activity. Paragraph (b)(1) implements 2 U.S.C. 431(20)(A)(i) by including voter registration activity during the period that begins on the date that is 120 calendar days before the date of the election. "Special elections" are, of course, not "regularly scheduled," and therefore excluded from the definition. Paragraph (b)(2) of section 100.24 implements 2 U.S.C. 431(20)(A)(ii) by including with the definition of Federal election activity voter identification, GOTV, and generic campaign activity.

11 CFR 100.24(b)(3) follows new 2 U.S.C. 431(20) by providing that a public communication that refers to a clearly identified candidate for Federal office would constitute "Federal election activity" that must be paid for with entirely Federal funds if the communication promotes, supports, attacks, or opposes any candidate for that Federal office. This is true even if a candidate for State or local office is also mentioned or identified. "Public communication" is defined in proposed 11 CFR 100.26, discussed below. Public communications falling within this category of the definition of "Federal election activity" extend beyond communications expressly advocating a vote for or against a candidate.

11 CFR 100.24(b)(4) implements 2 U.S.C. 431(20)(A)(iv) by providing that Federal election activity includes services provided during any month by an employee of a State, district, or local committee of a political party who spends over 25% of that individual's compensated time on activities in connection with a Federal election. There were no comments on this definition. A number of issues involving employees are discussed below in the Explanation and Justification for section 300.33. The

Commission has concluded that the statute is clear on its face, and therefore paragraph (b)(4) follows that statutory language without additional interpretation.

G. Activities Excluded from the Definition of "Federal Election Activity"

In BCRA, Congress specifically excluded certain activities from the definition of Federal election activity. 2 U.S.C. 431(20)(B). Activities falling within one of the exceptions may be paid for with entirely non-Federal funds. 11 CFR 100.24(c) implements these statutory exceptions. Paragraphs (c)(1) through (c)(4) of section 100.24 parallel the statutory exclusions at 2 U.S.C. 431(20)(B)(i) through (iv).

Paragraph (c)(1) excludes a public communication that refers solely to one or more clearly identified State or local candidates, and does not promote or support, or attack or oppose, a clearly identified candidate for Federal office, provided that the public communication is not a voter registration activity, or GOTV, or voter identification. 2 U.S.C. 431(20)(B)(i). As an example of the application of this paragraph, this exception does not apply to a telephone bank on the day before an election where there is a Federal candidate on the ballot and where GOTV phone calls are made to over 500 voters, even if the calls only refer to a State or local candidate. 2 U.S.C. 431(20)(B)(i); see 11 CFR 100.24(b)(2).

Paragraph (c)(2) excludes a contribution to a State or local candidate, provided that the contribution is not designated to pay for voter registration activity, voter identification, GOTV, generic campaign activity, a public communication promoting or supporting, or attacking or opposing, a clearly identified Federal candidate, or employee services as set forth in paragraphs (b)(1) through (b)(4) of section 100.24. 2 U.S.C.

431(20)(B)(ii). In the final rules, the Commission has added a reference to employee services as set forth in paragraph (b)(4) for the sake of completeness.

The principal Congressional sponsors of BCRA commented that the version of paragraph (c)(3) that appeared in the NPRM was too broad, in that it included "a similar meeting or conference," whereas the statutory provision it implemented, 2 U.S.C. 431(20)(B)(iii) refers only to "conventions." The Commission agrees, and has deleted this language from the final version of the rule. Paragraph (c)(3) excludes the costs of a State, district, or local convention. 2 U.S.C. 431(20)(B)(iii). The principal Congressional sponsors otherwise supported paragraphs (c)(1) through (c)(4).

Paragraph (c)(4) excludes the costs of grassroots campaign materials that name or depict only State and local candidates. 2 U.S.C. 431(20)(B)(iv). The list of examples of such materials in paragraph (c)(4) includes certain items not mentioned in the statute. The Commission received no comments objecting to the additional items.

In the version of the regulation published in the NPRM, the Commission included two additional exceptions that it has subsequently determined should not be listed as exceptions to the definition of Federal election activity in paragraph (c). These provisions would have covered voter registration activity at any time other than the period of time that is within 120 days of a regularly scheduled Federal election, and GOTV and voter identification in elections in which no Federal candidate appears on the ballot. While these activities are not Federal election activities, under certain circumstances payments for these activities must be allocated between Federal funds and non-Federal funds. See 11 CFR 106.5. In this regard, these two types of activities differ from the activities described in paragraphs (c)(1) through (c)(4) of section 100.24, which

always may be paid for with entirely non-Federal funds. Therefore, the Commission has removed these two provisions from the final regulation.

11 CFR 100.25 Definition of "Generic campaign activity"

Section 100.25 implements the statutory definition of "generic campaign activity," which has been added to the Act by BCRA. "Generic campaign activity" is defined in BCRA as campaign activity "that promotes a political party and does not promote a candidate or non-Federal candidate." 2 U.S.C. 431(21).

Generic campaign activity is a form of Federal election activity when it takes place in connection with an election in which a candidate for Federal office appears on the ballot. 11 CFR 100.24(b)(2)(ii). The Commission is defining "in connection with an election in which a candidate for Federal office appears on the ballot" to include special elections fitting that description. 11 CFR 100.24(a)(1). Therefore, generic campaign activity may, in principle, occur in connection with a special election in which a candidate for Federal office appears on the ballot, provided, of course, that the elements of the definition are otherwise satisfied. An association of state party officials commented favorably on this approach. A public interest group pointed out that Advisory Opinion 1998-9, which was issued to a State party committee, addressed a special election in which only one Federal office was at stake, and thus only one candidate of the party on the ballot. The Commission opined that under such circumstances a candidate was clearly identified, and allocable "generic activities" by the party under pre-BCRA 11 CFR 106.5(a)(2)(iv) were thus not possible with regard to that

special election. The final regulations is consistent with the reasoning of AO 1998-9 in defining "generic campaign activity."

The final regulation makes one elaboration on the statute by including within the definition of "generic campaign activity" those activities that oppose a political party without opposing a specific candidate. A labor organization commented that the regulation impermissibly goes beyond the statute by including activities in opposition to another party. In the Commission's experience, however, such activities in opposition to another party implicitly promote the party undertaking the activities, and are thus properly included in the definition. A national party committee also argued against the approach taken in the proposed regulation, characterizing the approach as "confusing" because it is framed in terms of promoting and opposing the party, which "unnecessarily clouds the distinction of voter registration and GOTV activities." This commenter would have the Commission define "generic campaign activity" as an "activity that promotes or opposes the particular party's ticket, without mentioning or referring to candidates by name." The Commission believes most of these concerns are addressed in the definitions of voter registration activity and GOTV at 11 CFR 100.24(a)(2) and (3), respectively. Also, the distinction drawn by the commenter, that is, between the promoting the party and promoting the party's ticket, is limited in practical application. Whether an activity is characterized as voter registration, GOTV, or generic campaign activity, it is treated as a Federal election activity when conducted in certain relation to a Federal election, see 100.24(b)(1), (2), and is, in each case, a Federal election activity on which Levin funds may be spent, see 11 CFR 300.32(b)(1).

In the NPRM, the Commission sought comment on the extent, if any, to which the exclusions for exempt activities in 11 CFR 100.7(b)(9), (15), (17) and 100.8(b)(8), (10), and (16), should apply to the definition of "generic campaign activity." A public interest group commented that "exempt activities should not be excluded from the definition of 'generic campaign activity.'" An association of State party officials commented that there appears to be no overlap between exempt activities and generic campaign activities since the former, "by definition, reference a clearly identified Federal candidate," while the latter, by definition, may not.

The Commission understands two of the categories of exempt activities, slate cards (see 11 CFR 100.7(b)(9), 100.8(b)(8)) and voter registration on behalf of the Presidential ticket (see 11 CFR 100.7(b)(17), 100.8(b)(16)), to have no applicability to payments for generic campaign activity. This is so because these two types of exempt activities, by their nature, promote one or more candidates, and activities that promote a candidate are outside the scope of the definition of generic campaign activity. The remaining category of exempt activity -- payments for certain campaign materials used by party volunteers (see 11 CFR 100.7(b)(15), 100.8(b)(10)) -- may in certain circumstances also qualify as generic campaign activity under 11 CFR 100.25. If the campaign materials used by the volunteers promote only the party, and do not promote a candidate, then this activity would be both exempt and a generic campaign activity. A public interest group included an essentially similar analysis of this point in their comment.

11 CFR 100.26 Definition of "Public communication"

BCRA amends 2 U.S.C. 431 by adding a new definition for the term "public communication." BCRA defines "public communication" to include communications by broadcast, cable, satellite, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising.

The Commission did not include the Internet as a form of "general public political advertising" in proposed 11 CFR 100.26, because this provision of BCRA does not refer to the Internet. The Commission, however, sought comment as to whether the definition of "public communication" in proposed 11 CFR 100.26 should include or exclude communications provided through the use of World Wide Web sites available to the public, widely distributed electronic mail, or other uses of the Internet, such as "Webcasts" or the transmission of high-quality voice, graphics, or video advertisements.

By letter to Senator McConnell dated February 25, 2002, Chairman Mason and Commissioner Smith suggested that Congress clarify whether the term "public communication" was intended to encompass communications sent over the Internet. The letter noted that the definition included "any other form of general public political advertising," and stated: "The Commission has treated Internet web pages available to the public and widely-distributed e-mail as forms of 'general public political communication.' Thus, the new definition combined with the Commission's established interpretation of the FECA could command regulation of Internet and e-mail communications." See 148 Cong. Rec. S2340 (daily ed. March 22, 2002). Prior to

enactment of BCRA, Congress did not express agreement or disagreement with this interpretation.

Some commenters who addressed this issue urged the Commission not to include the Internet in the definition of "public communication." They noted that Congress had had an opportunity to include the Internet in this definition, but declined to do so. They argued that the Internet provides a low cost way for parties and other interested persons to disseminate their message widely, and the Commission should not attempt to regulate their doing so. Moreover, these commenters note that technology is advancing so rapidly in this area that any rules could become outdated shortly after they are promulgated. Other commenters argued that failure to include the Internet in this definition could carve out an exception for a widespread and growing form of political advertising.

The Commission is not including or specifically excluding the Internet as a form of general public political advertising for purposes of this rule at this time, both because neither BCRA nor the legislative record addresses this issue and because of an ongoing rulemaking on the Internet. The Commission published a Notice of Inquiry on use of the Internet for campaign activity in 1999, 64 Fed. Register 60360 (Nov. 5, 1999), and an NPRM seeking comment on specific issues related to this topic in October 2001. 66 Fed. Register 50358 (Oct. 3, 2001). The Commission is, therefore, leaving this question open until it can more broadly consider the application of campaign finance laws to Internet activity, including application of laws that pre-existed the BCRA amendments.

11 CFR 100.27 Definition of "Mass mailing"

BCRA amends 2 U.S.C. 431 by adding a new definition of the term "mass mailing" at section 431(23). This definition, which is set out in new 11 CFR 100.27, includes any mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period.

The term "substantially similar" is also used in the Commission's disclaimer regulations at 11 CFR 110.11(a)(3). When the disclaimer rules were adopted in 1995, the Commission explained that technological advances now permit what is basically the same communication to be personalized to include the recipient's name, occupation, geographic location, and similar variables. Communications are considered "substantially similar" for purposes of the disclaimer rules if they would be the same but for such individualization. See Explanation and Justification for Regulations on Communications Disclaimer Requirements, 60 Fed. Register 52069, 52070 (Oct. 5, 1995). The Commission proposed in the NPRM that the term "substantially similar" in 11 CFR 100.27 have the identical meaning.

Several commenters expressed the view that this definition of "substantially similar" is too narrow as applied to mass mailings. They pointed out, for example, that the sponsoring group could change an internal sentence every 490 letters and thereby escape coverage under this definition. Also, many communications are largely identical but contain a separate paragraph addressing a targeted group, such as retired teachers or those with a particular hobby. The Commission has therefore revised the final rules to state that communications are considered substantially similar for purposes of this section if they include substantially the same template or language, but vary in non-material

respects such as communications customized by the recipient's name, occupation, or geographic location.

11 CFR 100.28 Definition of "Telephone bank"

BCRA amends 2 U.S.C. 431 by adding a new definition of the term "telephone bank." This definition, which is set out in new 11 CFR 100.28, includes more than 500 telephone calls of an identical or substantially similar nature within any 30-day period. The Commission also proposed addressing the meaning of "substantially similar" in the text of the rules. See discussion of 11 CFR 100.27, above.

As with the definition of "mass mailing," discussed above, several commenters urged the Commission to broaden the definition of "substantially similar" contained in the proposed rules. They pointed out that, even more so than with mass mailings, phone conversations, even those where the caller is using a prepared script, are likely to vary somewhat from call to call. The Commission accordingly has revised the language of section 100.28 as proposed in the NPRM to provide that, consistent with the definition of "mass mailing" contained in section 100.27, communications are considered substantially similar for purposes of section 100.28 if they include substantially the same template or language, but vary in non-material respects such as communications customized by the recipient's name, occupation, or geographic location.

IV. Part 102 -- Registration, Organization, and Recordkeeping by Political Committees

11 CFR 102.5 Organizations Financing Political Activity in Connection with Federal and Non-Federal Elections, Other than Through Transfers and Joint Fundraisers

This section continues to set out requirements for accounts or accounting methods that must be established and maintained by organizations, including political committees, that fund activities in connection with Federal elections and non-Federal elections. The section has, however, been revised in several respects. 2 USC 441i(a) expressly prohibits national party committees from raising and spending non-Federal funds. Paragraph 102.5(c) addresses the application of this section to national party committees, while corresponding changes have been made to other portions of 11 CFR 102.5 to clarify that various provisions are now applicable to only State, district, and local party committees and organizations. While this section will continue to apply to these party committees between November 6, 2002 and December 31, 2002, after the latter date, national party committees will no longer be covered by its provisions.

Paragraph (a)(1) and paragraph (a)(3) remain unchanged except for the itemization of State, district and local party committees as the party organizations covered in these provisions.

Paragraph (a)(2) is revised to require committees to meet at least one of the three listed conditions for depositing contributions into their Federal accounts. The purpose of this regulation is to assure that funds placed in this account are from contributors who know the intended use of their contributions, and the Commission believes that this

purpose can be fulfilled by means of either contributor designations, solicitations for express purposes, or solicitations or notifications that inform contributors that only contributions permissible under the Act will be accepted.

New paragraph (a)(4) requires State, district, and local party organizations qualifying as political committees to establish separate Levin accounts pursuant to 11 CFR 300.30, if they intend to raise and spend Levin funds pursuant to 11 CFR 300.31 and 300.32, and directs attention to the conditions for depositing donations into a Levin account at 11 CFR 300.30(b)(2). The reasons for the requirement of separate Levin accounts are given in the Explanation and Justification for the rules at 11 CFR 300.30 below.

New paragraph (a)(5) brings State, district, and local party committees within the restrictions on solicitations by Federal candidates and Federal officeholders in 11 CFR 300.31(e) and 11 CFR part 300, subpart D. A comment submitted in response to the NPRM expressed concern that paragraph (a)(3) could be construed as allowing Federal candidates and officeholders to solicit funds that would be excessive or prohibited under Federal law, if the solicitation being used stated that the funds would be used for a non-Federal purpose. To address this concern, paragraph (a)(5) is being added to emphasize that the restrictions on solicitations by Federal candidates and Federal officeholders in 11 CFR 300.31(e) and 11 CFR part 300, subpart D, apply to solicitations for State, district, and local party committees.

The final rules also include a new paragraph (a)(6) that clarifies the permissibility of State, district, and local party committees and organizations creating separate allocation accounts to be used for funding Levin activities that are allocable between

Federal and Levin accounts and for funding other activities allocable between a committee's Federal and non-Federal accounts. See also the Explanation and Justification below for amendments to 11 CFR 106.5 and for new 11 CFR 300.33.

The principal sponsors of BCRA, in their comments on the NPRM, expressed concern regarding the potential pooling of Federal funds and Levin funds, should State, district, and local party organizations that are not political committees not be required to maintain separate Levin accounts. The Commission has determined, however, that, given the relatively small sizes of these party organizations and of the amounts of their receipts and disbursements, these organizations should be required to establish separate Federal accounts, but be given a choice between setting up separate Levin accounts in depositories and relying upon a specific accounting system that will accurately and completely segregate receipts and disbursements between and among Federal, Levin and non-Federal funds.

With regard to organizations that are not political committees, paragraph (b) of section 102.5 has been divided between State, district and local party organizations that are not political committees and other organizations that are neither party committees nor political committees. The State, district and local party organizations addressed at paragraph (b)(1) have three choices with regard to depository accounts and accounting: (1) the establishment of at least three separate accounts (Federal, Levin and non-Federal); (2) the establishment of two separate account (Federal/Levin with general ledger accounting, and non-Federal); and (3) the use of a general ledger accounting system for all Federal, Levin and non-Federal funds. With regard to the last of the three options, the rules at paragraph (b)(1)(i)(C) emphasize that funds entered on a ledger as non-Federal

receipts may only be reclassified as Levin funds if donor intent can be ascertained through relevant solicitation materials or donor designation. In addition, those choosing a general ledger system are required to back up any computer-based data at least once a month.

In light of the fact that organizations that are neither party organizations nor political committees will not be faced with the complexities of accounting for the raising and use of Levin funds, the final rules retain for these organizations at paragraph (b)(2) the option from the pre-BRCA regulations of setting up a Federal account or of using a reasonable accounting method to track Federal, Levin and non-Federal funds.

The NPRM sought comments as to whether a solicitation for Levin funds could include a general reference to Federal elections and/or a reference to a Federal candidate, so long as the solicitation is otherwise clear that donations will be used for Levin activities. No comments were received in this regard.

11 CFR 102.17 Joint Fundraising by Committees Other than Separate Segregated Accounts

The ban on national party non-Federal fundraising affects the Commission's joint fundraising rules at 11 CFR 102.17. The Commission is, therefore, adding introductory language to each of these sections, advising readers that "[n]othing in this section shall supersede 11 CFR part 300, which prohibits any person from soliciting, receiving, directing, transferring, or spending any non-Federal funds, or from transferring Federal funds for Federal election activities." Part 300 is discussed below.

V. Part 104 – Reports by Political Committees

11 CFR 104.8 and 104.9 Uniform reporting of receipts and disbursements.

As of November 6, 2002, BCRA prohibits national committees of political parties and entities directly or indirectly established, financed, maintained, and controlled by them, including their subordinate committees, from raising and spending non-Federal funds. BCRA further requires that national party committees, including subordinate committees thereof, dispose of all non-Federal funds by December 31, 2002 in accordance with Section 300.12, and report the disposition of those funds pursuant to section 300.13. Since national parties will no longer maintain non-Federal accounts, the national party non-Federal account reporting rules at 11 CFR 104.8(e) and (f), and 11 CFR 104.9(c), (d) and (e) will no longer be necessary. Therefore, sections 104.8(e), and (f) and 104.9(c), (d) and (e) have been amended so that they only apply to reports covering non-Federal account activity through December 31, 2002.

11 CFR 104.10 Reporting by Separate Segregated Funds and Nonconnected Committees of Expenses Allocated Among Candidates and Activities

Section 104.10 of the pre-BCRA regulations addressed the reporting of expenses that are allocated among more than one clearly identified candidate (paragraph (a)) and expenses that are allocated among specific types of mixed Federal/non-Federal activities by political party committees and by separate segregated funds and nonconnected

committees (paragraph (b)). However, the allocation rules and categories of allocable expenses with respect to mixed party activities have changed as a result of BCRA. BCRA has created additional categories of allocable expenses, including some of those areas falling within Federal election activity. Some of the activity that was allocable under 11 CFR 106.5 (allocation of mixed Federal/non-Federal activities by party committees) is now Federal election activity under certain circumstances (such as particular activities conducted in years during which regularly scheduled Federal elections are held). Moreover, the use of non-Federal funds by national party committees has been eliminated.

In view of these new circumstances, the rules for reporting of allocable expenses are being divided into three sections: 11 CFR 104.10 applies to political committees that are separate segregated funds or nonconnected committees; new 11 CFR 104.17 applies to payments allocated between the Federal and non-Federal accounts of State, district, and local party committees; and new 11 CFR 300.36 covers payments allocated by those party committees between Federal funds and funds usable for some Federal election activities pursuant to 11 CFR 300.32(b)(1) and 300.33.

BCRA has no impact on the allocation of expenses by separate segregated funds and nonconnected committees on behalf of more than one clearly identified Federal or non-Federal candidates, or such committees' allocation of specific categories of mixed Federal/non-Federal activities. Thus, pre-BCRA section 104.10(a), which addressed payments entailing combined expenditures and disbursements on behalf of more than one clearly identified Federal and non-Federal candidate, is being changed very little at this point. Paragraph (a) is being amended to specify that it applies only to separate

segregated funds and nonconnected committees, and to delete references to section 106.5(g) (now section 106.7(f)), which addresses non-Federal to Federal transfers made by party committees for the purpose of mixed payments.

Similar changes are being made to paragraph (b) of section 104.10. In view of the removal of party committees from this section, other adjustments are being made. In the discussion of itemization of allocated disbursements for administrative and generic voter drive expenses, the references to the Senate and House campaign committees of a political party are being deleted from paragraph (b)(1)(i) and (ii). In paragraph (b)(1)(ii), the specific reference to the types of committees using the funds expended method is being deleted because all committees addressed in this regulation would use the funds expended method for those two allocation categories. References to exempt activities are also deleted because those exemptions do not apply to the activities of separate segregated funds and nonconnected committees.

The only specific comments received on section 104.10 were general expressions of support from the principal Congressional sponsors of BCRA and two commenters on behalf of State party committees. Consequently, the final rules follow the proposed rules, except for two small reversions back to the pre-BCRA regulation. Instead of citing to 11 CFR 106.1 specifically as the regulation providing instructions on allocation for candidate support, the revised citation is to 11 CFR part 106 because 11 CFR 106.4 is applicable to the allocation of polling costs.

11 CFR 104.17 Reporting of Allocable Expenses by Party Committees

As indicated in the Explanations and Justifications for 11 CFR 104.10 and 106.1, pre-BCRA section 104.10 has been divided into two sections for the reporting of allocable payments. Section 104.10 now addresses allocation reporting by separate segregated funds and non-connected committees. Section 104.17, which had been a reserved section prior to the enactment of BCRA, now addresses allocation reporting by party committees.

Paragraph (a) of new section 104.17 addresses allocation of the support of candidates, including Federal and non-Federal candidates, by national party committees and by State, district, and local party committees. As indicated below, national party committees must use all Federal funds, while State, district, and local party committees may use a mixture of Federal and non-Federal funds under certain circumstances. Paragraph (b) of this section addresses the reporting of the allocation of expenditures and disbursements for mixed Federal/non-Federal activities that are not Federal election activities undertaken by State, district, and local party committees. Reporting requirements with regard to specific Federal election activities allocable between Federal and Levin accounts pursuant to 11 CFR 300.33 are addressed separately in 11 CFR 300.36.

The NPRM included proposed 11 CFR 104.17(a) to address payments on behalf of more than one clearly identified candidate, including payments that entail an expenditure on behalf of one or more Federal candidates and a disbursement on behalf of one or more non-Federal candidates. The NPRM explained that all such payments must be made with Federal funds and must be reported.

Proposed paragraphs (a)(1) and (a)(2) provided for the use of a unique identifying title or code for each program or activity conducted on behalf of more than one candidate and for the retention of records in accordance with 11 CFR 104.14. These requirements were in pre-BCRA 11 CFR 104.10.

The Commission sought comments on the proposed requirement that a State, district, or local party use only Federal funds for the combined payments on behalf of clearly identified Federal and clearly identified non-Federal candidates. As indicated in the Explanation and Justification of 11 CFR 106.1, a number of commenters noted that materials and communications that refer to both Federal and non-Federal candidates, but are not public communications and do not otherwise meet the definition of Federal election activity, should continue to be subject to allocation based on the time or space devoted to each candidate. Other commenters asserted that only Federal funds could be used.

The final rule in 11 CFR 104.17 clarifies the issue as to the use of Federal funds. Paragraph (a) makes clear that, where a national party committee makes a payment that consists of both an expenditure on behalf of a Federal candidate and a disbursement on behalf of a non-Federal candidate, the amounts attributed to each candidate must be disclosed, but only a Federal account may be used.

Paragraph (a) changes the approach taken in the NPRM with respect to State, district, and local party committees, which, unlike national party committees, may have non-Federal accounts under BCRA. The application of the new Federal election activity provisions of BCRA means that many disbursements by State, district, and local party committees mentioning Federal candidates that in the past were allocable between

Federal and non-Federal accounts pre-BCRA must now be paid solely with Federal funds. There will still be, however, other payments entailing expenditures by State, district, and local party committees on behalf of Federal candidates and disbursements by these committees on behalf of non-Federal candidates that will not be Federal election activities; these will continue to be allocable between Federal and non-Federal accounts.

Accordingly, paragraph (a)(1) in the final rule generally follows pre-BCRA 11 CFR 104.10(a)(1), including the retention of the requirement of unique identifying titles or codes. All report entries that reflect the same allocable program or activity will share the same title or code to better track the particular program or activity. The use of unique identifiers for other various categories of mixed party activities is discussed below.

Paragraphs (a)(2) and (a)(3) of 11 CFR 104.17 follow pre-BCRA 11 CFR 104.10 with a minor citation change. Proposed paragraph (a)(2), addressing recordkeeping, is re-numbered as (a)(4) in the final rules.

Section 104.17(b) in the NPRM addressed the reporting of all allocations of disbursements for activities of State, district, and local party committees, including disbursements for allocable Federal election activities, i.e., certain activities eligible to be paid in part with Levin funds pursuant to 11 CFR 300.33. For purposes of clarity, the final rule covers only the reporting of disbursements for allocable party activities that are not Federal election activities. The reporting of allocable Federal election activities is subject to the rules in 11 CFR 300.36.

Section 104.17(b) establishes that State, district, and local party committees that have set up Federal and non-Federal accounts, including any allocation accounts being

used to make disbursements for allocable activities, must report all payments that are being allocated pursuant to 11 CFR 106.7.

Paragraphs (b)(1)(i) and (ii) require statements by State, district, and local party committees in their initial reports at the beginning of a calendar year of the percentages the committee will use for payments to be allocated between Federal and non-Federal accounts for specific categories of party activity. This requirement is similar to the one contained in the pre-BCRA regulations.

With regard to a requirement of unique identifiers in the reports of allocable activities, the NPRM asked for comments as to whether such identifying codes would be useful. The principal Congressional sponsors of BCRA in their comments left this decision to the Commission, although they stated that identifying codes would be of "significant utility in greater specificity in reporting." Two of the responses from party committees argued against such a requirement, arguing that the purpose of the codes in the past had been to distinguish among activities that had differing allocation ratios and that use of the same allocation ratio made the codes unnecessary.

The final rule at paragraph (b)(1)(iii) of 11 CFR 104.17 requires party committees to assign unique identifiers to allocable activities, other than those involving payments of certain allocable salaries and other compensation and payments of allocable administrative costs. This requirement follows requirements in the pre-BCRA regulations at 11 CFR 104.10(b)(2) with regard to the reporting of exempt party costs.

The Commission recognizes that, as noted by certain party committees in their comments, the rules will now require use of the same set of percentages in a given year for almost all allocable party activity categories, thereby weakening one of the previous

rationales for using unique identifiers for some categories of activities. Such identifying mechanisms are, however, still needed to enable reviewers of a party committee's reports, including members of the public, to track accurately the specific transactions involved in a particular allocable activity. It is significant that party committees frequently make many disbursements to the same vendor for differing purposes and that a number of vendors may be paid for similar activities. Thus, the Commission is requiring that certain allocable activities or programs carry a unique identifying title or code. The Commission has also concluded that, while unique identifiers for administrative or salary and other compensation costs would be of some utility, it will continue the practice of not requiring them in order to avoid imposing an additional administrative burden on party committees. All entries of disbursements to pay for an allocated program or activity must include a reference to the unique identifier, if an identifier is required for that allocation category. In addition, each reporting entry of a transfer (from the non-Federal account to the Federal or allocation account) for a program or activity must include a reference to the unique identifier, if an identifier is required for that allocation category.

Paragraph (b)(2) of 11 CFR 104.17 addresses the reporting of transfers between State, district, and local party accounts and into allocation accounts of funds to be used for allocable expenses. As did the pre-BCRA rules, this paragraph requires memo entries on reports as to the allocable expenses for which the transfer is being made and the date of the transfer. If more than one activity is covered by a transfer, the report must itemize the amounts designated for each expense as categorized at 11 CFR 106.7. The Commission received no comments on this provision.

Section 104.17(b)(3)(i) sets out the details required in the reporting of disbursements for allocable activity by State, district, and local committees of political parties.

Section 104.17(b)(3)(ii) addresses the reporting of State, district, and local party disbursements for activity that is allocable between a committee's Federal and Levin funds by referring the reader to the requirements of 11 CFR 300.36.

Section 104.17(b)(4) requires the retention of all documents supporting allocations of expenditures and other disbursements for three years, consistent with FECA.

VI. Part 106 – Allocations of Candidate and Committee Activities

11 CFR 106.1 Allocation of Expenses Between Candidates

A. Allocation of Expenses Between Candidates

Pre-BCRA 11 CFR 106.1 addressed the allocation of expenditures and/or disbursements among more than one candidate. Paragraph (a)(1) set out the general rule for allocation of an expenditure made on behalf of more than one clearly identified Federal candidate. It also addressed allocation of a payment involving both an expenditure made on behalf of one or more clearly identified Federal candidates and a disbursement on behalf of one or more non-Federal candidates. The proposed regulation in the NPRM added language indicating that a party committee must use only Federal funds for both kinds of situations, not just the first one. This was based on proposed 11 CFR 300.33(c)(1), which stated that only Federal funds could be used for activities that

referred to a Federal candidate. It was also based on BCRA and proposed 11 CFR 100.24(a)(3), which provided that only Federal funds may be used for a public communication that refers to a clearly identified Federal candidate and that promotes, attacks, supports, or opposes the candidate (regardless of whether a non-Federal candidate is also mentioned).

The NPRM divided pre-BCRA section 104.10, which addressed reporting of allocation by nonconnected committees and separate segregated funds, as well as party committees, into two sections: 11 CFR 104.10 for nonconnected committees and separate segregated funds, and 11 CFR 104.17 for party committees. In view of this rearrangement, the proposed rules in paragraph (a)(2) of section 106.1 added a reference to 11 CFR 104.17(a) to cover party committee reporting. In addition, the pre-BCRA rules addressing allocation among Federal and non-Federal candidates was modified in the NPRM to delete the citation to party committee transfer procedures; this was premised on the position that such payments had to be made entirely with Federal funds.

The NPRM proposed no changes to pre-BCRA paragraphs (b), (c), and (d) of 11 CFR 106.1. Paragraph (e) is a signpost to the sections that address allocation of specific types of mixed Federal/non-Federal activity, other than expenditures and/or disbursements on behalf of clearly identified candidates. The NPRM proposed to delete from this paragraph a reference to 11 CFR 106.5, to add a reference to 11 CFR 300.33, and to amend the list of allocation categories to conform to other proposed regulations, including a deletion of exempt activities.

The NPRM narrative asked whether the proposed requirement that a State, district, or local party committee use only Federal funds for all payments made on behalf

of both clearly identified Federal and clearly identified non-Federal candidates is appropriate under BCRA. The NPRM also asked for comments on, and discussed whether exempt party activities[3] for both Federal and non-Federal candidates (i.e., entailing disbursements for Federal candidates that were exempt from the definition of contribution or expenditure) still exist as an allocable category after passage of BCRA.

Three commenters on behalf of party committees stated that not every activity that mentions a clearly identified Federal candidate must be paid for exclusively with Federal funds. They argued that materials and communications that refer to both Federal and non-Federal candidates but are not public communications and do not otherwise meet the definition of Federal election activity should continue to be subject to allocation based on time or space devoted to the Federal and non-Federal candidates as under the pre-BCRA regulations. One of these commenters also argued that the costs of "non-communicative activities" that result in an in-kind contribution and donation to Federal and non-Federal candidates respectively should continue to be allocable between Federal and non-Federal accounts.

The principal Congressional sponsors of BCRA stated that BCRA required the proposed result for such payments by State, district, and local party committees. Another commenter referred to several specific provisions in BCRA to support the view that only Federal funds can be used for the payment on behalf of both a Federal and non-Federal candidate: (1) 2 U.S.C. 441i(b)(1), which provides that costs for Federal election activity shall be paid for with Federal funds; and (2) 2 U.S.C. 441i(b)(2)(A) and (B), which allow

[3] For discussion of exempt activities, see Explanation and Justification for 11 CFR 100.24, above; see also 2 U.S.C. 431(8)(B)(v), (ix), and (xi), and 431(9)(B)(iv),(viii), and (ix).

for allocation of some Federal election activities but not when the activity refers to a clearly identified Federal candidate. A third commenter agreed that national party committees must use only Federal funds for payments involving both expenditures on behalf of a Federal candidate and disbursements on behalf of a non-Federal candidate but did not comment on State, district, or local party committees.

The comments on the relationship of Federal election activities to exempt activities are summarized in the Explanation and Justification of 11 CFR 100.24 above. Some commenters conclude that many exempt activities are not redefined as Federal election activity and thus there are exempt activities that are not Federal election activity. Others believe that exempt activities are nearly or completely subsumed by, or redefined as, Federal election activity. Within both groups, there was a variety of opinion as to the precise relationship.

The final rule at 11 CFR 106.1 has been changed from the proposed regulation with respect to the use by a party committee of both Federal and non-Federal funds for a payment that is an expenditure on behalf of a clearly identified Federal candidate and a disbursement on behalf of a clearly identified non-Federal candidate. Any such payment that is for a Federal election activity requires the use of Federal funds only, as set out in amended paragraph (a)(2). However, such payments that are not for Federal election activities must be allocable between Federal and non-Federal accounts. Hence, the last sentence of proposed paragraph (a)(1), indicating that only Federal funds can be used, is deleted from the final rules. In addition, the final rule does not include language added in proposed paragraph (a)(2) to the effect that only separate segregated funds and nonconnected committees could make a payment that included an expenditure of Federal

funds on behalf of a Federal candidate and a disbursement on behalf of a non-Federal candidate.

Paragraph (a)(1) of the final rule includes also the appropriate method for attributing expenditures and disbursements among candidates in the case of a phone bank. This method is derived from pre-BCRA 11 CFR 106.5(e), which addressed Federal/non-Federal allocation in the analogous situation of exempt activities. In view of the fact that this method, which has provided guidance for allocation of expenditures and disbursements for direct candidate support, is no longer in the new regulations after December 31, 2002 for other mixed party activities (renumbered 11 CFR 106.7), the regulations in 106.1 directly address phone banks.

Federal election activity includes some of the activities that also meet the definition of exempt activities. As indicated in the Explanation and Justification of 11 CFR 100.24, a Federal election activity that, pre-BCRA, would have been allocable as an exempt cost activity, is now a Federal election activity covered by the allocation rules at 11 CFR 300.33. That explanation and 11 CFR 106.7 also indicate, however, that exempt activities still exist as an allocable category in a number of situations. Hence, a complete list of particular allocable activities other than those addressed in 11 CFR 106.1 should include exempt activities. The listing of allocable activities, however, concerns more than just the re-inclusion of exempt activities; BCRA has necessitated a re-labeling and addition of some allocable activities. Hence, the final rule at paragraph (e) does not list individual allocation categories but still serves as a signpost to sections addressing the allocation of mixed Federal/non-Federal or mixed Federal/Levin activities.

Exempt party activities also relate to section 106.1 as follows. If an activity supporting clearly identified Federal and non-Federal candidates is a Federal election activity and is not also an exempt activity, the portion of the payment attributable to each Federal candidate is an expenditure for that candidate, including an in-kind contribution, an independent expenditure, or a coordinated expenditure. If the payment is for a Federal election activity that is also an exempt activity, the amounts are exempted from the definition of "expenditure" or "contribution." Although the expense must be paid for entirely with Federal funds, only the amounts that are attributable to the Federal candidates or Federal elections (but using the new percentages in 11 CFR 106.7) count toward the political committee registration threshold at 2 U.S.C. 431(4)(C) for local party committees, which is more than $5,000 in exempt activity payments. See Explanation and Justification for 11 CFR 100.24(a).

11 CFR 106.5 Allocation of Expenses Between Federal an d Non-Federal Activities by National Party Committees

The NPRM proposed amending 11 CFR 106.5 to explain the allocation rules for State, district, and local party committees. Proposed paragraph (a) also stated that because national party committees would no longer be able to raise and spend non-Federal funds, they would no longer be able to allocate their expenses between their Federal and non-Federal accounts. See 67 Fed. Register 35679. While this is true after December 31, 2002, national party committees will be able to spend non-Federal funds for limited purposes during the transition period of November 6, 2002, through December 31, 2002. For discussion of the transition period, see the Explanation and Justification

for 11 CFR 300.12, below. The Commission realizes that the regulations need to contain allocation rules for national party committees during this transition period. Therefore, the final rules include several technical amendments to section 106.5 to make it applicable solely to national party committees and only during the transition period. The current allocation rules remains unchanged for national party committees. The final rules that apply to State, district, and local party committees, set out in proposed 11 CFR 106.5, are being designated as new 11 CFR 106.7 in the final rules. See below.

Consistent with this reorganization, the word "national" is placed before "party committees" in several places in 11 CFR 106.5, including the title of the section, to clarify that this section only applies to national party committees. A title is added to paragraph (a)(1) for consistency because all other paragraphs under paragraph (a) have titles. Paragraphs (a)(2)(iii), (d), and (e) are removed and reserved because they apply to State, district, and local party committees. Paragraph (h) is added to be a sunset provision. Paragraph (h) states that section 106.5 only applies during the transition period and will no longer be effective after December 31, 2002.

11 CFR 106.7 Allocation of Expenses Between Federal and Non-Federal Activities by Party Committees

Section 106.7 sets forth rules governing the allocation of certain expenses between the Federal and non-Federal accounts of political parties. Much of new section 106.7 covers many topics formerly addressed in pre-BCRA 11 CFR 106.5. New section 106.7 is being revised and reorganized in several respects. The final regulations addressing allocation of expenditures and disbursements at 11 CFR 106.7 and 11 CFR 300.33 separate between

the two sections respectively those activities that are not "Federal election activity" and those that are. This reorganization is based in large part upon the need to clarify in the rules the relationship between "exempt activities" and "Federal election activities," particularly given certain timing issues that became apparent concerning the sub-set of Federal election activities that may be paid in part with Levin funds. See 11 CFR 300.32 and 300.33. Therefore, 11 CFR 106.7 now addresses allocation of expenses for all State, district, and local party activity that falls outside the definition of Federal election activity, while 11 CFR 300.33 addresses only the allocation of the costs of those activities that come within that definition. As a result, a number of provisions included at 11 CFR 300.33 in the version of the regulation proposed in the NPRM now appear in 11 CFR 106.7. For example, proposed 11 CFR 300.33(a)(1) regarding salaries is now, in somewhat expanded form, 11 CFR 106.7(c)(1).

The content of 11 CFR 106.7(a)(1) and (2) remains much the same as the NPRM, although language has been added to emphasize that these provisions address activities other than Federal election activities. These paragraphs state the general principles that after December 31, 2002, (1) national party committees are no longer permitted to raise and spend non-Federal funds, and thus are unable to allocate expenses between Federal and non-Federal accounts; and (2) State, district, and local party committees that make expenditures and disbursements for activities other than Federal election activities in connection with both Federal and non-Federal elections must either use only Federal funds for these purposes or must establish separate Federal and non-Federal accounts and allocate expenditures between or among those accounts.

The prohibitions on national party committee use of non-Federal funds has resulted in the complete elimination of pre-BCRA 11 CFR 106.5(b) and (c).

Paragraph 106.7(c) sets out costs that must be either paid totally from Federal accounts or allocated by State, district, and local party committees between their Federal and non-Federal accounts. These costs include salaries at paragraph (c)(1), a category which has been broadened in the final regulation to include other compensation, including benefits. This provision applies only to employees who spend 25% or less of their compensated time in connection with Federal elections. The compensation of other employees who spend more time on Federal elections is a "Federal election activity" pursuant to 11 CFR 100.24, and, therefore, the allocation of that compensation is addressed in new 11 CFR 300.33.

The proposed regulations at 11 CFR 300.33(b)(1) would have required State, district, and local party committees to keep time records for all employees, the purpose being to provide documentation for allocation purposes. The NPRM set out three possible alternative methods by which a committee could collect such documentation. In response to the NPRM, a State party committee asserted that time sheets would be "burdensome," that written certifications by employees would be "equally impractical," but that a tally sheet kept by the employer would be "more reasonable." The same commenter nonetheless urged the Commission not to require any particular method of documentation. For the reasons noted by the commenters, the final rule at 11 CFR 106.7(d)(1) retains the requirement that time records be kept, but leaves the choice of particular method to the discretion of the party committee.

The comment submitted by the principal Congressional sponsors of BCRA urged the Commission to clarify that funds from a Levin account, established pursuant to 11 CFR 300.30(b), could be used to meet the non-Federal portion of salaries. 11 CFR 300.30(b)(3) states that Levin accounts may be used to pay for non-Federal activities to the extent permitted by State law.

The second category of allocable expenses in 11 CFR 106.7 is "administrative costs." Under paragraph (c)(2), these costs cover administrative expenses except for employee salaries, compensation, and other benefits. The final regulation requires allocation of these costs between a party committee's Federal and non-Federal accounts, unless they can be attributed to a clearly identified Federal candidate, in which case they are totally Federal costs to be paid with Federal funds.

A number of the comments received in response to the NPRM argued that, because BCRA does not address administrative costs, State, district, and local party committees should be able to pay them totally out of their non-Federal accounts. One commenter representing a State party emphasized the many State and local elections and ballot initiatives with which his party is involved as compared to the number of Federal elections. Other commenters, however, including the principal Congressional sponsors of BCRA, argued that BCRA was never intended to change the allocations required by the pre-BCRA regulations, and that administrative costs should continue to be allocable between Federal and non-Federal accounts.

While the Commission recognizes that non-Federal activity consumes a large portion of State party time and finances, there is no doubt that Federal candidates benefit from such party committees' efforts to reach and motivate potential voters. The

Commission also agrees that nothing in BCRA or the legislative history suggests that Congress intended the Commission to abandon its longstanding allocation requirement for these expenses. Therefore, the final rules continue to require allocation of administrative costs under a simplified allocation method discussed below.

Under the Act, as amended by BCRA, how the costs of voter registration, voter identification, get-out-the-vote ("GOTV") and other campaign activities that may promote or oppose a political party without promoting or opposing a candidate are allocated depends on whether such activities come within the definition of "Federal election activity" or not. See 11 CFR 100.24(a), (b). Numerous commenters focused upon the relationship between the provisions in FECA and in the Commission's regulations that exempt certain party activities from the definitions of "contribution" and "expenditure" and the provisions in BCRA establishing "Federal election activities" as a general category, and activities for which Levin funds may be used. The positions taken by the commenters and the Commission's determinations in this regard are addressed in the Explanation and Justification for 11 CFR 100.24 defining "Federal election activity."

The final rules adopted in 11 CFR 106.7(c)(3) set out the permitted allocations of costs for categories of party expenditures and disbursements for activities that are exempt party activities but are not Federal election activities, and that may, therefore, be allocated between Federal and non-Federal accounts. For such exempt activities that are not Federal election activities (e.g., voter registration activities on behalf of the Presidential ticket more than 120 days before an election or after that election), the party committee must either pay the costs of this activity from its Federal account or allocate the costs between its Federal and non-Federal account.

11 CFR 106.7(c)(4) addresses direct fundraising costs related to activities that are undertaken in connection with Federal and non-Federal elections that are not Federal election activities. The NPRM indicated that all direct fundraising costs for all activities must be paid from a Federal account, while other fundraising-related costs not directly related to particular fundraising programs or events could be allocated between Federal and non-Federal accounts as administrative costs. The rationale for this distinction is the fact that all Federal funds raised are in fact available to meet the costs of Federal election activities, while BCRA establishes a clear requirement that all fundraising costs related to Federal and Levin funds that will be used in whole or in part for Federal election activities be paid with Federal funds. 2 U.S.C. 441i(c). The principal Congressional sponsors of BCRA supported the proposed rules that required entirely Federal funds to be used for these purposes. A public interest group and a party committee urged the Commission to continue to use the funds received method for allocating these costs. Two party committees urged allocation of only those fundraising costs that are directly associated with a particular fundraising program or event.

While the fact remains that BCRA requires the use by State, district, and local party committees of only Federal funds to raise funds for Federal election activities, there are also other purposes for which the direct costs of related fundraising may be appropriately allocated between Federal and non-Federal accounts because the proceeds will not be used for Federal election activity. The final rule at 11 CFR 106.7(c)(4) therefore permits such allocation of the direct costs of raising funds to go only into Federal and non-Federal accounts, on the condition that none of the proceeds so raised may ever be used for Federal election activities. Thus, the rule requires the segregation

of the proceeds in either a separate bank account or a separate book account. The rule also specifies that direct costs of fundraising entail the solicitation costs and the costs of planning and administering a particular event or program.

11 CFR 106.7(c)(5), which did not appear in the version of the regulation published in the NPRM, covers certain voter-drive activities and other party campaign activities that are not candidate-specific that do not qualify as Federal election activities. These may include, for example, certain voter identification, GOTV, and activity that does not promote or oppose a candidate or non-Federal candidate that do not qualify as Federal election activities because they are not in connection with an election in which a Federal candidate appears on the ballot. See 11 CFR 100.24(a)(1), (b)(2). Paragraph (c)(5) provides that the costs of such activities may be allocated between the Federal and non-Federal accounts of the party committee.

One goal of the final regulation is to assure that activities deemed allocable are not paid for with a disproportionate amount of non-Federal funds. Another goal is to simplify the allocation process, in particular by establishing formulas that do not vary from State to State and that do not require measurements of time or space devoted to each of several candidates. Therefore, in lieu of the State-by-State ballot composition ratios for administrative costs and generic campaign activity and in lieu of the time or space method applied to exempt State activities, which were required by the pre-BCRA regulations, the rules at revised 11 CFR 106.7(d)(2) and (3) establish fixed percentages for all States for certain activities. The percentages vary only in terms of whether or not a Presidential campaign and/or a Senate campaign is to be held in a particular election year.

In the NPRM, the Commission set out proposed required allocation percentages for the Federal shares of salaries and other compensation paid employees who spend 25% or less of their time on Federal elections, for administrative expenses, and for exempt party activities that are not Federal election activities. These Federal percentages are as follows:

(i) Presidential only election year – 28% of costs

(ii) Presidential and Senate election year – 36% of costs

(iii) Senate only election year – 21% of costs

(iv) Non-Presidential and Non-Senate election year – 15% of costs.

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

In 2000, the Federal percentages for the two parties in six States with only a Presidential campaign ranged from 20% to 33.33%, with an average of 28%, while the

Federal percentages for the two parties in ten States which held both Presidential and Senate campaign that year ranged from 30% to 43%, with an average of 36%. In 2002, the Federal percentages for the two parties in six States with a Senate campaign ranged from 20% to 25%, with an average of 21%, while the Federal percentages for the two parties in six States with no Senate campaign ranged from 11.11% to 16.67, with an average of 15%. The rules apply the average percentages in each of the four groupings of States to all 50 States.

One comment on the proposed rules from a public interest organization addressed the Commission's proposed fixed percentages by providing two alternatives to the Commission's figures. The first alternative would have set a flat 33% requirement for Federal shares of what the response termed "Levin expenditures" (see 11 CFR 300.33) and for allocable costs other than administrative costs in odd-numbered years or in non-Presidential election years, and a flat 40% requirement for Federal shares of these same categories of activities in Presidential election years. This alternative would also have required a 25% allocation for administrative costs in all years. The commenter based these percentages on what were termed "the current assumption" as to what State party committees spend in certain years.

The second alternative urged by this commenter adopted the Commission's calculations, but called for the use of the higher percentages in the sample States for what the response termed "Levin spending" and for voter registration outside the 120 day period before an election, plus the average percentages for non-Levin expenses such as administrative costs. The commenter also urged the Commission to be clear that its

allocation percentages apply to a two-year election cycle, not just to the year of a Federal election.

The comment submitted on behalf of the principal Congressional sponsors of BCRA with regard to fixed allocation percentages was very similar to that of the public interest organization's response cited above in that, as one alternative approach, it called for at least a 33% Federal allocation of what it termed "Levin activities" and of voter registration activities outside the 120 period before an election, plus 25% Federal allocations for administrative expenses. It also called for 40% Federal allocations of Levin and of voter registration activities that are not Federal election activities in Presidential election years. This alternative assumed the application of the percentages to two-year Federal election cycles. As a second alternative, this response also agreed to use of the Commission's percentages for administrative costs in a two year cycle, but urged the application over that cycle of the highest, not the average, Federal percentages for what it termed "Levin activities and voter registration activities that are not 'Federal election activity'

. . . ." Another comment from a public interest organization also called for use of the highest percentages in the identified States, not the average percentages.

The comments received from party committees with regard to fixed percentages for Federal allocations ranged from support for the Commission's position to giving party committees a choice at the beginning of each cycle between the proposed formula and ballot composition ratios.

The final rules at 11 CFR 106.7(d) include the phrase, "and in the preceding year," to clarify that the allocation formula in this section apply to both years of a Federal election cycle.

With regard to the amounts of the fixed minimum Federal allocations, the final rules adopt the percentages contained in the NPRM because they represent averages of actual allocation ratios used in specific States at specific times, not assumptions as to possible State, district, and local party behavior in the future. These percentages represent a clear, bright line test intended to be more easily understood and applied than the previous regulations, consistent with statutory intent.

Section 106.7(e) sets out those activities that are not allocable between Federal and non-Federal accounts. Proposed 11 CFR 300.33(c)(2) has not been included in this listing because it has been replaced by clearer statements in other provisions in this section and in 11 CFR 300.33. Paragraphs (e)(2) and (3) have been added regarding certain employee compensation and to Federal election activities with cross references in both instances to 11 CFR 300.33.

Section 106.7(f), which addresses transfers to pay for allocable activities, is largely the same as the proposed rule, with the addition of language providing for allocation accounts as an alternative to the use of Federal accounts for initial payments of allocable expenditures and disbursements. This provision tracks for the most part the language and requirements of pre-BCRA 11 CFR 106.5(g). No comments addressed the continuation of this requirement. Reimbursements from a non-Federal account to a Federal account must take place within a specified number of days, unless a vendor requires an advance payment and the payment is based upon a reasonable estimate of the

costs involved. The continuation of these timing provisions will ensure that party committees need not change this aspect of their operations.

Section 106.7(f)(2)(ii), like former 11 CFR 106.5(g)(2)(B)(iii), explains that any payment outside this time frame, absent the need for an advance payment of a reasonably estimated amount, would result in the presumption of a loan of non-Federal funds to the Federal account and a violation of the Act. No commenters addressed this provision.

VII. Part 108 – Filing Copies of Reports and Statements with State Officers

11 CFR 108.7 Effect of State Law

Section 108.7 addresses Federal preemption of State law based on 2 U.S.C. 453(a) and its legislative history. Paragraph (c) lists the types of State laws that are not preempted or superseded by the Act and the regulations. BCRA amended the Act at 2 U.S.C. 453(b), providing for the application of State law to the purchase or construction by a State or local party of its office building. This amendment is implemented in new section 300.35. Paragraph (c) of section 108.7 is therefore being amended to include the application of State law to the purchase or construction of a State or local party office building in accordance with 11 CFR 300.35.

VIII. Part 110 – Contribution and Expenditure Limitations and Prohibitions

11 CFR 110.1 Contributions by Persons Other than Multicandidate Political Committees

BCRA amended 2 U.S.C. 441a(a)(1) to raise the amount that individuals may donate to State committees of political parties from $5,000 to $10,000 in any calendar year. New 11 CFR 110.1(c)(5) incorporates this increased contribution limitation, which is effective January 1, 2003. The principal Congressional sponsors of BCRA included in their comment an emphasis upon the fact that this is an increase in the limitation on Federal funds. No other comments on this provision were received.

IX. Part 114 – Corporate and Labor Organization Activity

11 CFR 114.1 Definitions

The pre-BCRA text of 11 CFR 114.1(a)(2)(ix), follows the repealed statutory provision as to the purchase or construction by a national or State party committee of an office facility. It is therefore being deleted and replaced with an annotated cross-reference to new 11 CFR 300.35 which describes how the purchase or construction of an office building by a State or local party committee may be funded. A national committee's office building must be purchased or constructed only with Federal funds. See new section 300.10. The texts of the regulations currently at 11 CFR 100.7(b)(12) and 100.8(b)(13), which are similar to the pre-BCRA text of section 114.1(a)(2)(ix), will be modified in a separate rulemaking that the Commission is publishing shortly.

X. Part 300 – Non-Federal Funds

11 CFR 300.1 Scope, Effective Date, and Organization

The bulk of the new rules that address non-Federal funds of political party committees are contained in 11 CFR part 300. Section 300.1 addresses the scope of new part 300, sets forth the effective date of the provisions contained in the new part, and outlines the organization of the new part. Specifically, paragraph (a) of section 300.1 states that new part 300 implements changes to the FECA enacted by Title I of BCRA. It also notes that nothing in part 300 is intended to alter the definitions, restrictions, liabilities, and obligations imposed by sections 431 to 455 of Title 2 of the United States Code or in the regulations prescribed thereunder in 11 CFR parts 100 to 116.

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

Finally, paragraph (c) of section 300.1 explains that part 300 is organized into five subparts, with each subpart addressing a specific category of persons affected by BCRA. Subpart A of part 300 prescribes rules pertaining to national party committees; subpart B prescribes rules pertaining to State, district, and local party committees and organizations; subpart C addresses rules affecting certain tax-exempt organizations; subpart D prescribes rules pertaining to Federal candidates and Federal officeholders; and subpart E prescribes rules pertaining to State and local candidates. In addition, BCRA requires changes in other parts of Title 11 of the Code of Federal Regulations, which are also addressed in this rulemaking. One commenter supported the provisions of this section. The final rules follow the proposed rules, with the exception of minor revisions to clarify the scope of each subpart.

11 CFR 300.2 Definitions

A. 11 CFR 300.2(a) Definition of "501(c) organization that makes expenditures and disbursements in connection with a Federal Election"

New 11 CFR 300.2(a) defines a 501(c) organization "that makes expenditures and disbursements in connection with a Federal election." BCRA prohibits national and State party committees, their officers and agents, and certain entities associated with them, from soliciting any funds for, or making or directing any donations to, 501(c) organizations that fit this definition. The NPRM sought comments on whether the regulations should contain a temporal requirement so that this prohibition is not overbroad and does not encompass, for example, an organization that made expenditures

and disbursements in connection with a Federal election many years ago but has not done so recently and does not plan to do so in the future.

Commenters were in general agreement that a temporal requirement was a good idea. Several commenters suggested that the prohibition should encompass organizations that have made expenditures and disbursements in connection with a Federal election during the past three election cycles, or six years. The Commission believes that six years is unnecessarily long and is not necessarily indicative of an organization's current activities. Instead, paragraph (a) of the final rule encompasses an organization "that within the last six years has, or within the current election cycle plans to undertake" certain enumerated activities in connection with a Federal election. This temporal requirement ensures that the definition is not overly broad.

The definition in 11 CFR 300.2(a) also sets out specific examples as to what constitutes activities "in connection with a Federal election." The principal Congressional sponsors of BCRA support these examples. The final rules follow the proposed rules as to these activities with the addition of paragraph (a)(5). This new paragraph makes clear that in addition to generic activities and get-out-the-vote activities covered within Federal election activity in paragraph (a)(2), expenditures and disbursements in connection with a Federal election also includes get-out-the-vote communications that refer to one or more candidates for Federal office. This addition covers organizations that, for example, finance activities such as get-out-the-vote phone calls directed to individual voters before an election, where the phone calls that provide information regarding federal candidates and urge individuals to vote in an upcoming election.

B. 11 CFR 300.2(b) Definition of "agent"

Many of the prohibitions and restrictions of BCRA apply to a principal entity, such as a political party committee or a candidate, and to the "agents" of such principals. See, e.g., 2 U.S.C. 441i(a)(1), (2); 2 U.S.C. 441i(b)(1); 2 U.S.C. 441i(e)(1). Congress did not define the term, "agent," in BCRA. In the NPRM, the Commission proposed a regulatory definition framed in terms of "a person who has actual express oral or written authority" to act on behalf of a principal. This definition would have defined "actual authority" as "instructions, either oral or written," from the principal. The Commission solicited comments on several aspects of this proposed definition, such as the potential applicability of the definition to volunteers, whether the principal's actual knowledge of the putative agent's activities is relevant, and the potential applicability of the concept of apparent authority.

The Commission received many comments on the proposed definition of agent. Several commenters found the proposed definition "too narrow." One described the requirement that an agent's authority must be actual and express to be a "loophole that would utterly swallow the rule," arguing that in the "real world" fundraising is accomplished largely through agents without express authority in a "technical" or "legal" sense. The principal Congressional sponsors of BCRA commented that the proper definition of "agent" is critical to prevent evasion of the "soft-money" prohibitions at the center of Title I of BCRA. The definition, they believe, should encompass "anyone who has an agency relationship under common law," including apparent authority. The principal Congressional sponsors and a public interest group commented that the new definition should not be narrower than the definition of agent currently used by the

Commission in regulating independent expenditures. See 11 CFR 109.1(b)(5). The sponsors also commented that the Commission should not exclude volunteers and vendors per se. A public interest group also urged the Commission to include apparent authority within the definition. This group argued that "bestowing" a title or position on an individual implies that the individual is working on behalf of the principal who bestowed the title or position.

In contrast, other commenters, comprised of national and State political party committees and labor organizations, applauded the proposed rule's conjunctive requirement that the agent's authority must be actual and express. Three national party committees commented that the definition should be further limited to individuals with "substantive decision-making authority." Many of these commenters stressed that the Commission should consider two issues in implementing the regulatory definition of "agent." The first issue is the nature of an agent's "individual liability" for his or her own actions. The second issue is the perceived "vicarious liability" of the principal. With regard to the first issue, several commenters, including a State party committee, an association of State party officials, and several national party committees, suggested the Commission use 11 CFR 109.1(b)(5) as a model for the new definition, presumably modified to provide that authority must be actual and express. Regarding the second issue, several commenters urged the Commission to give full effect to a requirement that the agent must be acting on behalf of the principal before the principal incurs liability derived from the agent's actions. Two labor organizations commented that the principal's derivative liability should not extend beyond activities the agent has been specifically authorized to conduct. Two national party committees commented that the

final definition must impose liability only when a principal exercises actual control over the actions of the agent, arguing that it would be unfair to impose liability for actions beyond the principal's control. Another commenter, a State party committee, framed its suggestion in terms of limiting a principal's liability to actions taken by an agent on the principal's "explicit instructions."

Many of the commenters suggested that 11 CFR 109.1(b)(5), which defines "agent" in the specific context of independent expenditures, could provide a foundation for the definition of agent for purposes of Title I of BCRA. In the Explanation and Justification accompanying the adoption of the definition of "agent" for independent expenditure purposes, the Commission stated, "[t]he definition of 'agency' imputes agency power not only to persons actually authorized, but also to persons who appear to have such power, in accordance with general principles of the law of agency." House Doc. No. 95-44 at 55 (Explanation and Justification for 1977 Amendments to FECA) (January 12, 1977). Thus, the Commission, in the absence of statutory guidance in FECA, relied on general principles of the law of agency in crafting the 11 CFR 109.1 definition of agent. In Community for Creative Non-Violence v. Reid, 490 U.S. 730, 739 (1989), the U.S. Supreme Court stated, "[i]t is ... well established that '[w]here Congress uses terms that have accumulated settled meaning under ... the common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms."

Based upon the Commission's previous approach and the suggestions of the commenters, the final rules defining "agent" for purposes of Title I of BCRA provides that an agent is "any person who has actual authority, either express or implied." The

final regulation thus differs from the regulation proposed in the NPRM in that the agent's actual authority may be express or implied. The Commission makes this change for two reasons. First, it is in keeping with the Supreme Court's admonition in Community for Creative Non-Violence, supra, that the Commission should be guided by "settled meaning under ... the common law ... unless the statute otherwise dictates" in defining statutory terms. In this regard, the Commission notes that under the Federal common law of agency:

> An agent's authority may be actual or apparent, see generally Restatement (Second) of Agency 7-8; if it is actual, it may be express or implied, see id. 7 cmt c. Implied authority is that authority which is inherent in an agent's position and is, simply, actual authority proved through circumstantial evidence. Actual authority "to do an act can be created by written or spoken words or other conduct of the principal, which, reasonably interpreted, causes the agent to believe that the principal desires him so to act on the principal's account."

Moriarty v. Glueckert Funeral Home, Ltd., 155 F.3d 859, 865-866 (7th Cir. 1998) (quoting Restatement (Second) of Agency, 26).

The comments and testimony received by the Commission perhaps reveals some confusion about the term "implied authority." As Moriarty, supra, makes clear, implied authority is actual authority; in this regard, it should not be confused with apparent authority, which is a distinct concept. Restatement (Second) of Agency, 8, cmt a. It is well settled that whether an agent has implied authority is within the control of the principal. Thus, the Commission emphasizes that a principal may not be held liable,

under an implied actual authority theory unless the principal's own conduct reasonably causes the agent to believe that he or she had authority. For example, a party committee cannot be held liable for the actions of a rogue or misguided volunteer who purported to act on behalf of the committee, unless the committee's own written or spoken word, or other conduct, caused the volunteer to reasonably believe that the committee desired him or her to so act. Once an agent has actual authority, however, "[u]nless otherwise agreed, authority to conduct a transaction includes authority to do acts which are incidental to it, usually accompany it, or are reasonably necessary to accomplish it." Restatement (Second) of Agency, 35; see U.S. v. Flemmi, 225 F.3d 78, 85 (1st Cir. 2000). Also, "for purposes of determining whether an agent's acts are within the scope of his authority, the fact that the agent's act was not specifically authorized is not dispositive, so long as it is of the general kind he is authorized to perform, and is motivated, at least in part, by a purpose to serve the principal." Richman v. Sheahan, 270 F.3d 430, 442 (7th Cir. 2001) (decided under Illinois law). See also Kolstad v. American Dental Ass'n, 527 U.S. 526, 544 (1999) (general common law of agency, as codified in section 228 of the Restatement (Second) of Agency, permits damages against a principal even as to intentional, forbidden acts of an employee, so long as the "'conduct is of the kind [the employee] is employed to perform,' 'occurs within authorized time and space limits,' and 'is actuated, at least in part, by a purpose to serve the employer.'")

Second, it is necessary to define "agent" to include implied and express authority in order to fully implement Title I of BCRA. Otherwise, agents with actual authority would be able to engage in activities that would not be imputed to their principals so long

as the principal was careful enough to confer authority through conduct or a mix of conduct and spoken words.

The definition of "agent" in the final regulation does not include apparent authority. "[A]pparent authority to do an act is created as to a third party by written or spoken words or any other conduct of the principal which, reasonably interpreted, causes the third party to believe that the principal consents to have the act done on his behalf by the person purporting to act for him." Restatement (Second) of Agency, 27. As has been noted by commenters, apparent authority is largely a concept created to protect third parties in economic relationships with a principal. The Commission does not interpret the use of agency principles in Title I of BCRA to be focused upon protecting third parties, such as contributors or donors, from unlawful conduct by party committees or candidates. Rather, the Commission interprets Title I of BCRA to use agency concepts to prevent evasion or avoidance of certain prohibitions and restrictions by the use of agents. In this light, apparent authority concepts are not necessary to give effect to BCRA.

Title I of BCRA refers to "agents" in order to implement specific prohibitions and limitations with regard to particular, enumerated activities on behalf of specific principals. The final regulation limits the scope of the definition accordingly in paragraphs (b)(1) through (b)(4). Each provision in paragraphs (b)(1) through (b)(4) is tied to a specific provision in Title I of BCRA that relies on agency concepts to implement a specific prohibition or limitation. The Commission emphasizes that a principal cannot be held liable for the actions of a purported agent unless the agent has actual authority and is engaged in one of the specific activities described in paragraphs (b)(1) through (4).

Paragraph (b)(1) limits a national party committee's liability to an agent's authorized actions with regard to two activities. The first is soliciting, directing, or receiving any contribution, donation, or transfer of funds. 2 U.S.C. 441i(a)(1), (2). The second is soliciting funds, or making or directing donations to section 501(c) and 527 organizations. 2 U.S.C. 441i(d).

Paragraph (b)(2) limits the liability of State, district, or local political party committees to the actions of an agent who has actual authority in four particular areas. The first is to make expenditures or disbursements of any funds for Federal election activity. 2 U.S.C. 441i(b)(1). The second is to transfer, or to accept a transfer of, funds to make expenditures or disbursements for Federal election activity. 2 U.S.C. 441i(b)(2)(B)(iv). The third is to engage in joint fundraising activities with any person if any part of the funds raised are used, in whole or in part, to pay for Federal election activity. 2 U.S.C. 441i(b)(2)(C). The fourth is to solicit funds, or to make or direct donations, to section 501(c) and 527 organizations. 2 U.S.C. 441i(d).

Paragraph (b)(3) limits the liability of Federal candidates to the actions of an agent who has actual authority to solicit, receive, direct, transfer, or spend funds in connection with any election. 2 U.S.C. 441i(e)(1). The Commission notes that the exception to 2 U.S.C. 441i(e)(1)'s general rule found in section (e)(2) of that section also applies to agents of such Federal candidates who are or were State or local candidates.

Paragraph (b)(4) applies to State candidates, and limits their liability to actions taken by their agents who have actual authority to spend funds for public communications. 2 U.S.C. 441i(f).

C. 11 CFR 300.2(c) Definition of "Directly or indirectly established, financed, maintained, or controlled."

11 CFR 300.2(c) defines "directly or indirectly establish, finance, maintain, or control," a term that is used in several provisions of BCRA. The term appears in BCRA in the context of national party committees (see 2 U.S.C. 441i(a)(2)), State, district, and local political party committees (see, e.g., 2 U.S.C. 441i(b)(2)(B)(iii)), and of Federal candidates and Federal officeholders (see, e.g., 2 U.S.C. 441i(e)(1)). The phrase "established, financed, maintained, or controlled," without the modifier "directly or indirectly," was already used in the anti-proliferation provisions of the FECA and in the Commission's "affiliation" regulation. See 2 U.S.C. 441a(a)(5); 11 CFR 100.5(g), and 110.3.

Paragraph (c)(1) of section 300.2 enumerates the persons to whom the regulation applies, and employs the shorthand "sponsor" to refer collectively to these persons. A public interest group supporting campaign finance reform commented that the regulation should apply to national, as well as State, district, and local political party committees. Accordingly, given that the term, "directly or indirectly established, financed, maintained, or controlled," is applied to national party committees in 2 U.S.C. 441i(a)(2), the Commission is incorporating this suggestion in the final regulation. Another commenter suggested that agents should be included in the description of the term "sponsor," rather than addressed in another part of the rule. The final rules also adopt this suggestion. In paragraph (c)(1), the statutory concept of "indirect" establishment, financing, maintenance, or control is addressed by including actions taken by a sponsor's agents on behalf of the sponsor.

In BCRA, "directly or indirectly establish, finance, maintain, or control" is used in two contexts. The first is determining when ostensibly separate entities share a contribution amount limit. See 2 U.S.C. 441i(b)(2)(B)(iii). This usage suggests that the Commission's existing affiliation regulation is helpful in understanding what is meant by "directly or indirectly establish, finance, maintain, or control."

The term, "directly or indirectly establish, finance, maintain, or control," is also used in BCRA in what seems to be a slightly different manner. For example, a State, district, or local committee of a political party must not use as "Levin funds" (see 11 CFR 300.2(i)) any funds transferred to it from, among other persons, "any other State, local, or district committee of any State party, . . . or . . . any entity directly or indirectly established, financed, maintained, or controlled [by the State party committee]." 2 U.S.C. 441i(b)(2)(B)(iv)(I), (IV); see also 2 U.S.C. 441i(e)(1). This latter usage suggests a somewhat different purpose, namely preventing the proliferation of committees or organizations as a means of evading the Levin Amendment transfer prohibition, as well as other BCRA prohibitions.

The version of 11 CFR 300.2(c) proposed in the NPRM addressed this second usage of the term "directly or indirectly establish, finance, maintain, or control" by including factors that extended beyond the affiliation provisions of 11 CFR 100.5(g). Several commenters, including an association of State party officials, several national party committees, and two State party committees, objected to this portion of the regulation proposed in the NPRM, and suggested uniformly that the final regulation should be based solely upon the existing affiliation regulation in 11 CFR 100.5(g), which one commenter described as "relatively well-established and well-understood." On the

other hand, two public interest groups supported the Commission's proposed use of factors extending beyond the reach of 11 CFR 100.5(g), one of whom argued that Congress used the term, "directly or indirectly established, financed, maintained, or controlled," in several contexts to "make it clear that Congress wanted to move beyond the current affiliation rules."

The Commission has concluded that the affiliation factors laid out in 11 CFR 100.5(g) properly define "directly or indirectly established, financed, maintained, or controlled" for purposes of BCRA. Therefore, in paragraph (c)(2), the affiliation factors found at 11 CFR 100.5(g)(4)(ii) have been recast in the terminology demanded by the BCRA context. Paragraphs (c)(2)(i) through (x) of section 300.2 generally correspond to paragraphs (g)(4)(ii)(A) through (J) of section 100.5. This change in terminology, for example, substituting "entity" for "committee," and "sponsor" for "sponsoring organization," recognizes that affiliation concepts are being applied in a different context, and is not intended to introduce substantive changes in the application of the factors. Besides the changes in terminology, the words "and otherwise lawfully" have been added to the phrase about joint fundraising in paragraphs (c)(2)(vii) and (viii) of section 300.2(c). This addition is intended to preclude any confusion that might arise between these provisions and the joint fundraising restrictions in subpart B of part 300.

In the NPRM, the Commission sought comment on whether this regulation should apply only to entities established by a sponsor after a given date (perhaps November 6, 2002, which is the effective date of BCRA). The Commission also asked, alternatively, whether there should be a rebuttable presumption that entities organized before a given

date are not directly or indirectly established by a sponsor, provided that the sponsor and the entity are not affiliated. 67 Fed. Register at 35658.

The principal Congressional sponsors of BCRA and two public interest groups opposed these options. The principal Congressional sponsors state, "There is nothing in the statutory language that permits the term . . . to apply only to entities established after the effective date of the Act . . . ." Such a rebuttable presumption, they continued, would "create an obvious loophole for organizations established or controlled by members of Congress that are currently raising soft money." One of the public interest groups commented that "grandfathering" existing entities would "effectively prop the [soft-money] loophole open." The other public interest group opposing this idea said, "This would, as a practical matter, allow the activity sought to be regulated by BCRA to continue on an unregulated basis through the preexisting entity."

A non-profit organization commented that the Commission should not apply the new regulation to existing entities that may have been directly or indirectly established, financed, maintained, or controlled by a sponsor because, "otherwise, the rule would go against any conceivable precept of the BCRA having an effective date after the 2002 general elections." This organization asserts, "the only relevant question . . . is whether an entity is controlled by a sponsor after the effective date of BCRA." This organization supported the idea of a rebuttable presumption. Several party committees urged the Commission to apply the regulation if there is affiliation "on or after the effective date of BCRA."

The Commission's regulation must take into account the fact that certain actions that occur before the effective date of BCRA have as much of an impact on whether an

entity is "established, financed, maintained, or controlled" by a sponsor as actions that occur immediately after BCRA's effective date. For example, an entity that receives a large infusion of funds from a sponsor before November 6, 2002, may spend those funds after that date. Moreover, several of the factors set out in the final regulation are inherently retrospective, that is, they require an historical perspective. For example, 11 CFR 300.2(c)(2)(vi) looks to whether there are "successor entities" indicating establishment, financing, maintenance, or control. To insist that the relationship between a sponsor and an entity before November 6, 2002 has no legal effect would render portions of BCRA and the final rules inapplicable to any number of entities that are established, financed, maintained, or controlled by a sponsor within the plain meaning of those terms and the affiliation rules. Therefore, the Commission has not included a "grandfather clause" in the final regulation. Nevertheless, the Commission notes that, when applying 11 CFR 300.2(c), events that occurred in the remote past must be appropriately weighed in the context of the overall relationship between the sponsor and the entity to determine if affiliation still exists. Also, actions taken by a sponsor and an entity after November 6, 2002, may cast the past actions in a new light. For example, an entity that received large amounts of funds from a sponsor may return those funds or decide not to accept future funding from that sponsor. The entity may also decide to amend its by-laws or change its officers or directors in a manner that affects the balancing required in applying 11 CFR 300.2(c). Finally, a sponsor and an entity will have recourse to the advisory opinion process, under paragraph (c)(3), to establish that post-effective date actions have altered the relationship between the sponsor and the

entity. See, e.g., AO 2000-36 (Commission approved disaffiliation of previously affiliated entities).

In the NPRM, the Commission sought comment as to whether there should be an exception for a de minimis level of funding by a sponsor. 67 Fed. Register at 35659. Only one commenter, a State party committee, supported this idea and suggested $5,000 for this purpose. The Commission has not included a de minimis exception in the final regulation. Such an exception does not square with the overall, situation-specific approach of the regulation, which is to weigh factors such as "[w]hether a sponsor or its agent provides funds or goods in a significant amount or on an ongoing basis to the entity" "in the context of the overall relationship between sponsor and the entity." See 11 CFR 300.2(c)(2), (c)(2)(vi). Nor does a de minimis exception appear to be supported by the plain language of the statute.

Paragraph (c)(3) provides a mechanism for a sponsor or an entity to request a determination by the Commission through the advisory opinion process that the sponsor is no longer deemed to finance, maintain, or control an entity, even if the sponsor established the entity. The Commission notes that nothing in paragraph (c)(3) should be construed to require any given entity that has not directly or indirectly established, financed, maintained, or controlled another entity to obtain a determination to that effect before the two entities may operate independently of each other.

D. 11 CFR 300.2(d) Definition of "Disbursement"

Both FECA and BCRA use the term "disbursement," but do not provide a definition. The NPRM contained a proposed definition of "disbursement" as "any purchase or payment made by a political committee or organization that is not a political

committee." One commenter pointed out that this term should not be limited to payments by political parties or organizations, since it covers spending by individuals or entities that do not constitute political parties or organizations. See, for example, 2 U.S.C. 441i(b)(1), which refers to disbursements by (among others) "an association or similar group of candidates . . . or of individuals." The Commission, therefore, is revising the proposed definition in the final rule to clarify that it covers purchases and payments by a political party or other person, including an organization that is not a political committee, that is nevertheless subject to FECA or BCRA.

E. 11 CFR 300.2(e) Definition of "Donation"

In BCRA, Congress uses but does not define the term "donation." The Commission proposed in the NPRM to define a "donation," in 11 CFR 300.2(e), as a payment, gift, subscription, loan, advance, deposit, or anything of value given to a non-Federal candidate, party committee, 501(c) organization, or 527 organization, but not including a contribution or transfer.

Comments were sought on specifically excluding from "donation" some of the exemptions to "contribution" set forth in existing 11 CFR 100.7(b). The comments were split on this approach.

The Commission did not include these exemptions, or any others, in the final rule, because donations in many cases will be essentially a matter of State law, and thus the inclusion or exclusion of certain payments should be left to State campaign finance law. For example, in the Levin Amendment, donations of Levin funds must be in accordance with State law, with one Federal limitation: a $10,000 amount limitation per year per donor. 2 U.S.C. 441i(b)(2)(B)(iii). The Commission believes States should be free to

craft their own exemptions to donations of Levin funds, subject only to the $10,000 overall limitation imposed by BCRA.

Several commenters asked the Commission to specifically incorporate additional exemptions, such as money spent for redistricting, election recounts, FECA civil penalties, and legal defense funds. The exemption for recounts is addressed in the Commission's current rules at 11 CFR 100.7(b)(20); as are payments for civil penalties, cf. 11 CFR 9034.4(b)(4). The Commission's interpretations on the raising and spending of funds for the purposes of redistricting were done in the context of Advisory Opinions that interpreted the terms "contribution" and "expenditure." See Advisory Opinions 1990-23, 1982-37. The question of legal defense funds implicates not only the definition of "contribution," but also the Commission's personal use regulations at 11 CFR 113.1(g) in the case of a candidate legal defense fund. With respect to legal defense funds or any other legal expenses incurred by national party committees, the Commission does not interpret the broad language of 2 U.S.C. 441i(a) to permit the receipt or use of any non-Federal funds for such purposes.

As with the exemptions in 11 CFR 100.7(b), discussed above, State laws may address each of these payments in a variety of different ways. In addressing these issues, the Commission does not believe it is appropriate to require States to follow the Commission's precedents, which were established to implement the specific, detailed provisions of the FECA regarding "contributions" and "expenditures" for the purpose of influencing Federal elections. Moreover, to do so could present issues involving the preemption of State law.

Several commenters suggested that the definition of "donation" be expanded to include anything of value given to a "person," to conform with the use of this term in 11 CFR 300.10, 300.11, 300.37, 300.50, and 300.51. The Commission has made this change to 11 CFR 300.2(e), given the broad statutory reach of the term "donation" in 2 U.S.C. 441i(a)(1).

F. 11 CFR 300.2(f) Definition of "Federal account"

Paragraph (f) of section 300.2 defines "Federal account" as an account at a campaign depository that contains funds to be used in connection with a Federal election. The term "financial depository institution" proposed in the NPRM has been changed to the more accurate term "campaign depository." See 2 U.S.C. 432(h) and 11 CFR 103.2.

Some commenters asked the Commission to include in this definition the requirement that only Federal funds and funds transferred for the purpose of paying the non-Federal share of allocated expenditures may be deposited into these accounts. This topic is treated elsewhere in the Commission's rules and in this rulemaking. See 11 CFR 103.3, 106.5(g), 300.30, and 300.33.

G. 11 CFR 300.2(g) Definition of "Federal funds"

Paragraph (g) of section 300.2 defines "Federal funds" to mean funds that comply with the limitations, prohibitions, and reporting requirements of the FECA. The Commission received no comments regarding this definition.

H. 11 CFR 300.2(h) Definition of "Levin account"

Section 300.2(h) defines "Levin account" as an account established by a State, district, or local committee of a political party pursuant to 11 CFR 300.30 for purposes of making expenditures or disbursements for Federal election activity or non-Federal

activity (subject to State law) under 11 CFR 300.32(b). The Commission revised the definition proposed in the NPRM to clarify that these accounts must be established at a campaign depository in accordance with 2 U.S.C. 432(h).

The NPRM raised substantive questions on the operation of these accounts. The comments that addressed these questions are discussed in connection with 11 CFR 300.30, below.

I. 11 CFR 300.2(i) Definition of "Levin funds"

As explained above, BCRA's Levin Amendment provides that State, district, and local political party committees may spend certain essentially non-Federal funds for Federal election activities if those funds comply with certain requirements. 2 U.S.C. 441i(b)(2)(A)(ii). Thus, these funds are unlike Federal funds, which are fully subject to the Act's requirements, and unlike ordinary non-Federal funds because they are subject to certain additional requirements under BCRA. Section 300.2(i) defines these funds as "Levin funds," with the intention that "Levin funds" become a definite, unambiguous reference to such funds.

One commenter requested that the Commission use a "functionally descriptive" term, such as "specially allocated," for these funds, rather than the name of their legislative sponsor. It proved difficult, however, to draft a term that clearly and unambiguously includes these funds, while excluding all others. For that reason, the Commission has retained the term "Levin funds" in the final rules.

Two commenters suggested that the definition should include the limits on the use of the term "Levin funds" found at 2 U.S.C. 441i(b)(2)(A). These restrictions go to the use of the funds, and are implemented in 11 CFR 300.32, to which the definition in 11

CFR 300.2(i) already expressly refers. Therefore, these restrictions are not repeated in this definitional paragraph.

J. 11 CFR 300.2(j) Definition of "Non-Federal account"

Section 300.2(j) defines "non-Federal account" as an account that contains funds to be used in connection with a State or local election. The term "financial depository institution" proposed in the NPRM has been deleted because non-Federal accounts are not required to comply with 2 U.S.C. 432(h). No commenters addressed this paragraph.

K. 11 CFR 300.2(k) Definition of "Non-Federal funds"

This section defines "non-Federal funds" as funds that are not subject to the limitations and prohibitions of the Act. No commenters addressed this definition.

L. 11 CFR 300.2(m) and (n) Definitions of "to solicit," and "to direct"

The NPRM proposed a definition of "to solicit or direct" a contribution or donation, which would be located at 11 CFR 300.2(m). The proposed definition included a request, suggestion, or recommendation to make a contribution or donation, including those made through a conduit or intermediary. However, the proposed definition did not construe advice or guidance as to applicable laws to constitute a "solicitation." The Commission sought comments as to how the concept of "solicitation" should be applied to a series of conversations which, taken together, constitute a request for contributions or donations, but which do not do so individually. Comment was also sought as to whether the proposed definition is too broad or narrow, as well as to whether the term "direct" in BCRA should be interpreted to follow the earmarking rules regarding contributions directed through a conduit or intermediary under 2 U.S.C. 441a(a)(8). Comment was

also sought as to whether the passive providing of information in response to an unsolicited request for information should be specifically excluded from this definition.

Two commenters, a labor organization and a public interest organization, expressed qualified support for the proposed rule. The labor organization stated that it concurred with the proposed rule, and that it particularly endorsed the express acknowledgment that the mere provision of information or guidance as to applicable legal requirements does not fall within the statutory language. The public interest organization stated that the proposed rule was "generally consistent" with the letter and spirit of BCRA. For purposes of clarity, it suggests that the proposed rule be revised to read: "Merely providing information or guidance as to the requirements of applicable law is not a solicitation."

In contrast, five commenters argued that the proposed rule is too vague or broad. A group representing certain State parties states that the phrase "request, suggest and recommend" is an invitation for endless Commission investigation. This commenter urged that "solicit" be limited to an explicit request that a person make a contribution. This commenter also supported including examples in the Explanation and Justification of what is not soliciting or directing. Likewise, national party political organizations asserted that the final rule should not contain a reference to "suggestion" because that is too vague a term, and compels inquiry into whether a communication conveys a sense, or creates an impression, of a solicitation. These commenters believe BCRA's rules should be concrete. This group further urged that clear exclusions should be provided, such as for inquiries into positions or issues, as well as political speech or commentary to an

audience who may respond with contributions, in the absence of an express request for them.

Another commenter, a public interest organization, stated that "ambiguous standards" such as "suggest[ion]" or "series of conversations" will merely lead to confusion. This commenter suggested that the Commission look to past advisory opinions for guidance. Similarly, a State and a national political party argued that "request, suggest and recommend" is unconstitutionally vague and potentially overbroad, as it would involve an investigation into what a person meant in a series of conversations, and would thus chill political speech. Several party committee commenters argued that solicitation should be confined to an explicit request that an entity make a contribution.

Three commenters argued that the proposed rule is too lenient. One public interest organization stated that the discussion should include scenarios where a person suggests where a contributor who has already decided to make a contribution should send their contribution. This commenter read the proposed rule as confining itself to candidates, committees and nonprofits, and suggested it should also apply to solicitations from individuals, partnerships, labor organizations, and corporations. Another public interest organization agrees with the first point of the previous response. The sponsors of BCRA stated that the proposed definition fails to capture the plain meaning of the words and to effectuate the central goal of the law. They support the position regarding suggestions to already-willing contributors. These commenters read the proposed rule in the same manner as the public interest organization, as if it only applies to candidates, committees and nonprofits. They state that "certain provisions in the Act apply to

soliciting contributions from any 'person,' which would obviously include individuals and corporations." They urge that the rule be modified to reflect this.

The Commission has determined that the concepts of "to solicit" and "to direct" embody very different activity, and they thus should be separately defined. Accordingly, 11 CFR 300.2(m) defines "to solicit," and 11 CFR 300.2(n) contains the definition of "to direct." Both definitions include "transfer of funds" in addition to "contribution" and "donation," because the phrase "transfer of funds" appears several times in seriatim with "contribution" and "donation" in applicable rules. See, e.g., 11 CFR 300.2(b)(1)(i).

The Commission has issued a number of advisory opinions over the years regarding the issue of what is and what is not a solicitation. These advisory opinions have invariably involved situations where corporations wished to make public to a limited audience the activities of their separate segregated funds.[4] See, e.g., Advisory Opinions 1991-3, 1988-2, 1982-65, 1979-13 and 1979-6.

In these advisory opinions, the Commission has generally held that the publication of the activities of a separate segregated fund ("SSF") was not considered a solicitation because the publication did not encourage readers to support the SSF's activities or facilitate the making of contributions. In one case, however, AO 1979-13, the Commission did determine that the way the information was presented resulted in a solicitation. In that case, as the Commission noted, "the article state[d] the amount of money raised and spent by [the SSF] and the methods used by [the SSF] in determining

[4] Because corporations can issue written solicitations for contributions for their separate segregated funds only twice in one year to employees outside of the restricted class, see 11 CFR 114.6, the issue of what is and what is not a solicitation takes on great importance.

to whom it should contribute. The article further point[ed] out the number of corporate employees who 'participated in' [the SSF's] activities in 1978 and include[d] a quotation from [the SSF's] chairman: 'I was glad to see that [the corporation] has so many employees who realize that the welfare of us all is tied very closely to government policies and attitudes toward business. [The SSF] is one way we can make the voice of business people and our industry heard in this county. I hope we continued [sic] to have such an enthusiastic group.'" The Commission noted that, "The legislative history of the Act indicates that informing persons of a fundraising activity is considered a solicitation." The Commission determined that the proposed article would be a solicitation within the meaning of the Act since it "describe[d the SSF's] activities and encourage[d] employee participation in the SSF by [commending] the enthusiasm of employees whose participation in the SSF ha[d] indicate[d] awareness of the connection between their welfare and government policies toward business." In subsequent advisory opinions, the Commission has favorably cited its holding in AO 1979-13. See, e.g., AO's 2000-7, 1995-14, 1992-9, 1991-3.

Further, in its Campaign Guide for Corporations and Labor Organizations (June 2001), the Commission set out what constitutes a solicitation on behalf of a corporation's separate segregated fund. The Commission noted that, "In addition to a straightforward request for contributions," a solicitation could exist if a statement in an in-house publication publicizes the right of the SSF to accept unsolicited contributions from any

lawful contributor, provides information on how to contribute to the SSF, or encourages support for the SSF.[5]

Thus, the Commission has previously indicated that activity that does not constitute a specific asking may nevertheless constitute a solicitation, with the key element appearing to be an attempt to persuade a person to make a contribution, where that person has not otherwise indicated a specific willingness to do so. Given this longstanding interpretation, which is consistent with the plain meaning of a solicitation, the final rules indicate that "to solicit" means "to request or suggest or recommend that another person make a contribution, donation or transfer of funds, whether the contribution, donation or transfer of funds is to be made directly, or through a conduit or intermediary. A solicitation does not include merely providing information or guidance as to the requirement of particular law."

Comments were sought as to whether the concept of soliciting should apply to a series of conversations which, when taken together, constitute a request for contributions or donations. BCRA's sponsors and several public interest organizations supported applying the definition to a series of conversations if, when taken as a whole, they are consistent with a solicitation, stating that, otherwise, restrictions will be easily circumvented. One group of national political party organizations opposed applying the rule to a series of conversations, stating that it would involve heavy government involvement in deciphering political speech and that the Commission should look only at express statements.

[5] The Commission cited these same factors in its Campaign Guide for Corporations and Labor Organizations issued in March 1992.

For the reasons set forth in the comments of the party committees, the Commission is not defining "to solicit" in terms of a series of conversations at this time. However, the Commission may revisit this issue at some future time should events warrant.

Regarding the definition of the term "to direct," the Commission sought comment as to whether it should be interpreted to follow earmarking rules under 2 USC 441a(a)(8). A group of state party leaders supported limiting "to direct" to the definition at 11 CFR 110.6(b)(2), as did one of the national political parties. One of the public interest organizations opposed this approach, stating that this was inconsistent with BCRA and far too narrow an approach. None of the commenters explained their criticisms in detail.

This issue of the meaning of "to direct" is also tied to another question asked by the Commission: whether the passive providing of information in response to an unsolicited request for information should be specifically excluded in this definition. Two commenters, a public interest organization and the sponsors, felt that the Commission should not exclude providing information if that information includes the names of organizations to which contributions can be made. One commenter, a national political party, said that such information should be excluded, because any other approach would be unworkable and lead to endless accusations and investigations.

As several commenters have noted, the act of direction appears to encompass situations where a person has indicated a willingness to make a contribution, donation or transfer of funds that would advance a particular cause, but lacks the identity of an appropriate organization to which to make the contribution, donation or transfer of funds. Beyond this limited activity, it is not clear what other activity might constitute

"direction." Accordingly, the final rule states that "to direct" means to provide the name of a candidate, political committee or organization to a person who has expressed an interest in making a contribution, donation or transfer of funds to those who support the beliefs or goals of the contributor or donor. The final rule in 11 CFR 300.2(n) also includes a statement indicating that merely providing information or guidance as to the requirements of particular law is not direction.

M. 11 CFR 300.2(o) Definition of "Individual holding Federal office"

New section 300.2(o), which parallels 11 CFR 100.4 (definition of "Federal office") and 11 CFR 113.1(c) (definition of "Federal officeholder"), has been added for the reader's convenience. Consistent with those sections and 2 U.S.C. 431(3), it states that "individual holding Federal office" means an individual elected to or serving in the office of President or Vice President of the United States; or a Senator or a Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

N. Definition of "Promote or support, or attack or oppose"

In BCRA, Congress defined "Federal election activity" (FEA) as, among other things, a public communication that refers to a clearly identified Federal candidate, and "that promotes or supports ... or attacks or opposes" the candidate or his or her opponent. 2 U.S.C. 431(20)(A)(iii). The term "promotes or supports, or attacks or opposes" is not, however, defined in BCRA. In the NPRM, the Commission proposed a definition that incorporated the concept of "unmistakably and unambiguously" encouraging actions to elect or defeat a clearly identified candidate. Cf. Buckley v. Valeo, 424 U.S. 1, 43-44 (1976) (restricting the reach of some provisions of the Act to "communications that

include[d] an explicit and unambiguous reference to a candidate.") The Commission also included language in proposed section 300.2(l) from its existing express advocacy regulations, 11 CFR 100.22(a) and (b), but attempted to broaden the scope of these provisions in order to effectuate BCRA's intention of enlarging the scope of regulated communications. The NPRM sought comments as to whether its proposed definition was too broad or too narrow, and why. Comments were also sought as to what definition is most likely to survive Constitutional scrutiny.

Several commenters believed that the definition proposed in the NPRM construed the statutory term too narrowly, and criticized the use of the "express advocacy" test as a foundation for the proposed regulation. The principal Congressional sponsors of BCRA stated, "[b]ecause the meaning of these statutory terms is clear, it is not necessary for an extensive additional regulatory definition to be developed." A public interest group stated a similar view, that the words of the statutory term, "speak for themselves and do not need to be defined by the regulations." One public interest group commented that "in order to give proper effect to the State party soft money ban . . ., this phrase must be given the sweep intended by Congress." Several other commenters made similar statements about the "sweep" that should be given to the term by the definition.

The principal Congressional sponsors stated that the "Commission should apply the statutory language . . . using a broad nexus test that captures public communications that tend to increase support for or opposition to Federal candidates." They referred to the Commission's former "electioneering message" standard as a good approximation of the intent behind the term, "promote or support, or attack or oppose." See Advisory Opinions 1984-15, and 1985-14. But see Statement of Reasons of Vice Chairman Wold

and Commissioners Elliott, Mason, and Sandstrom on, and see also Statement for the Record of Commissioners McDonald and Thomas on, the Audits of "Dole For President Committee, Inc.," the "Clinton/Gore '96 Primary Committee, Inc.," "Dole/Kemp '96, Inc.," the "Dole/Kemp '96 Compliance Committee, Inc.," the "Clinton/Gore '96 General Committee, Inc." and the "Clinton/Gore '96 General Election Legal And Compliance Fund." (The Statement of Reasons rejected the "electioneering message" standard). Two other commenters also suggested that the "electioneering message" standard provided guidance in construing the term, "promote or support, or attack or oppose."

Three commenters specifically argued that a broad construction of the term is constitutional. The principal Congressional sponsors commented, "the U.S. Supreme Court noted that spending by political committees—such as the political parties—is 'by definition, campaign related," citing Buckley v. Valeo, 424 U.S. 1, 79 (1976). They argue that the "express advocacy" test applies "only with respect to certain non-party entities whose spending is not by definition campaign-related." (Emphasis in original.) The other two commenters made similar points.

A national party committee and two labor organizations, conversely, commented that any attempt to define this term that goes beyond express advocacy is unconstitutional. One of these commenters cited Buckley, 424 U.S. at 44, n. 52. A State party committee and an association of State party officials identically characterized the regulation proposed in the NPRM as "unconstitutionally vague and overbroad."

The Commission has decided to defer attempting to define the term "promotes or supports, or attacks or opposes." The Commission notes that this term is also a potentially important component of Title II of BCRA, where it appears as the alternative

definition of "electioneering communication" should the primary definition be held to be constitutionally insufficient. See 2 U.S.C. 434(f)(3)(A)(ii). Because this key term appears in another portion of BCRA and the Commission has not elicited comment on the impact of defining the term in the context of Title II, the Commission intends to issue shortly a separate Notice of Proposed Rulemaking that specifically seeks comment on whether and how this term should be defined, with a view toward both relevant contexts.

Subpart A – National Party Committees

11 CFR 300.10 General Prohibitions

BCRA prohibits national party committees from raising and spending non-Federal funds, that is, funds that are not subject to the prohibitions, limitations, and reporting requirements of the Act. See 2 U.S.C. 441i(a). The Commission is placing the regulations that address this prohibition in a new part of the Code of Federal Regulations, 11 CFR part 300, subpart A. In addition to this new subpart, the Commission is amending several sections of its current rules to conform with BCRA's prohibition on national party committees and Federal candidates and officeholders raising and spending non-Federal funds.

Section 300.10(a) tracks the language of BCRA, which prohibits national party committees from soliciting, receiving, or directing to another person "a contribution, donation, or transfer of funds or any other thing of value," or spending funds that are not subject to the Act's prohibitions, limitations, and reporting requirements. Accordingly, as of November 6, 2002, BCRA's effective date, national party committees must not

receive or solicit or direct to another person contributions or donations from corporations, labor organizations or other prohibited sources, and must not receive or solicit or direct to another person contributions or donations from individuals and others that exceed the limitations of the Act. Additionally, after a brief transition period set forth in 11 CFR 300.12, discussed below, all expenditures and disbursements made by a national party committee, including donations to State and local candidates and donations and transfers to State party committees must be made with funds that comply with the limitations, prohibitions, and reporting requirements of the Act.

BCRA's ban on raising and spending non-Federal funds by national party committees has widespread application. Tracking the language in 2 U.S.C. 441i(a)(2), 11 CFR 300.10(c) provides that the ban on raising and spending non-Federal funds also applies to the national congressional campaign committees (currently, the Democratic Senatorial Campaign Committee, the National Republican Senatorial Committee, the Democratic Congressional Campaign Committee, and the National Republican Congressional Committee), to officers and agents acting on behalf of a national party committee or a national congressional campaign committee, and to any entities directly or indirectly established, financed, maintained, or controlled by either. 2 U.S.C. 441i(a)(1) and (2). As noted by one of BCRA's congressional co-sponsors during the congressional debate, "[t]he provision is intended to be comprehensive at the national party level. Simply put, the national parties and anyone operating on behalf of them are not to raise or spend nor to direct or control soft money." 148 Cong. Rec. H408-409 (daily ed. February 13, 2002)(statement of Rep. Shays).

Thus, under BCRA and 11 CFR 300.10, a Federal candidate or a Federal officeholder acting on behalf of a national congressional campaign committee must not solicit or direct to any person funds from corporations or labor organizations, or funds from individuals or entities in amounts that exceed the Act's contribution limits.

Section 300.10(b) tracks the statutory language at 2 U.S.C. 441i(e). It provides that national parties and others covered by section 300.10(a) must use only Federal funds to finance Federal election activity.

Section 300.10(a)(3) makes clear that national parties cannot raise, spend, or direct to another person Levin funds. See 2 U.S.C. 441i(b)(2)(A) and (B) and 11 CFR 300.31 and 300.32, which are discussed below.

The NPRM noted that the Commission would address in a subsequent rulemaking whether BCRA bans national party committees, and their officers and agents, from directing non-Federal funds to a host committee for a national party convention in light of the statutory language that they are not permitted to direct non-Federal funds to other persons. See 2 U.S.C. 441i(a)(1). In comments submitted to the NPRM, BCRA's sponsors stated that since BCRA prohibits national parties and their agents from soliciting or directing non-Federal funds to any person, they could not raise or direct non-Federal funds to host committees. 2 U.S.C. 431(11) of FECA defines person to include "a committee . . . or any other organization or group of persons . . . ." The Commission has decided that the sponsor's interpretation of BCRA and additional issues concerning BCRA's effect on conventions will be addressed in a future rulemaking on national party conventions.

Virtually all of the commenters opined that the definition of "agent" was critically important to many of BCRA's provisions, including 11 CFR 300.10. As discussed in the Explanation and Justification for 11 CFR 300.2, the comments submitted by party committees urged that the Commission adopt a narrow definition of "agent" to encompass only persons given express oral or written authority to engage in specific conduct because of the many volunteers and others involved in political campaigns over whom parties have little or no control and because national party officials often serve in more than one capacity. For example, persons who serve on executive committees of a national party may also serve as a chair of a party. Comments submitted by BCRA's congressional co-sponsors and certain public interest groups, however, emphasized that the definition of "agent" must be broad enough to make BCRA's prohibitions on raising non-Federal funds complete and effective, so that the prohibition cannot be easily circumvented by using a staff person or intermediary to raise non-federal funds as long as the national party or its officials do not expressly authorize, orally or in writing, the staff person or intermediary to raise non- funds on their behalf.

The Commission shares the concerns expressed by these commenters. It notes that the breadth of the national party non- funds prohibition is already limited in 2 U.S.C. 441i(a)(2) and in 11 CFR 300.11(c) to the extent that the prohibition applies to officers and agents "acting on behalf" of national parties. This limiting construction appears in other Federal statutes and indeed, in some campaign finance laws. The Commission has also attempted to address the concerns of all of the commenters in the definition of "agent" in Section 300.2(b). See discussion above.

Several party committee commenters expressed the view that, despite BCRA's broad prohibition on national parties' raising and spending non- funds, the Commission should consider a rule that would permit national parties to continue to maintain non-Federal accounts devoted specifically to support and local candidates as long as funds raised for such an account meet the source and contribution limits of the Act. This position is based on the NPRM's discussion of "leadership PACs" maintained by candidates and particularly on comments made by Senator McCain, a principal BCRA sponsor, during the Senate debate, a part of which was referenced in the NPRM. In Senator McCain's floor remarks, he interpreted 2 U.S.C. 441i(e)(1)(B) (11 CFR 300.62) to permit a Federal candidate or officeholder to raise funds for both a Federal and non-Federal account of a leadership PAC provided that the funds raised for the non-Federal account met the source and contribution limits of the Act. The party committees' comments specifically referenced another statement made by Senator McCain suggesting that an officeholder could solicit a donation up to the Act's contribution limits for the non- account of a leadership PAC even if the donor already contributed to the PAC's Federal account. The application of 11 CFR 300.62 to leadership and candidate PACs is discussed below. Regardless of the application of BCRA to leadership and candidate PACs under 2 U.S.C. 441i(e)(1), however, the plain language of the ban on national party non-Federal fundraising at 2 U.S.C. 441i(a) cannot be plausibly construed to allow party committees to continue to raise non-Federal funds for any purpose. The language is broad in prohibiting a national party committee from soliciting, receiving, or directing to another person "a contribution, donation, or transfer of funds or any other thing of value" or spending funds that are not subject to the Act's limitation, prohibitions and reporting

requirements. A separate "non-federal" account, even if it contained funds that complied with the prohibitions of the Act, would not contain funds complying with the amount limitations of the Act, if for example, individuals gave $20,000 per year to a national party's account and also gave another $20,000 to the party's "non-federal" account as suggested by the party commenters.

The legislative history supports this statutory interpretation. The primary sponsor of BCRA in the House specifically explained the national party non-Federal funds ban as follows: "The soft money provisions of the Shays-Meehan bill regarding the national political parties operate in a straight-forward way. The national parties are prohibited entirely from raising or spending any soft money . . . The purpose of these provisions is simple: to put the national parties entirely out of the soft money business." 148 Cong. Rec. H408 (daily ed. February 13, 2002) (statement of Rep. Shays). According to Congressman Shays, the corrupting dangers of funds raised outside the Act's prohibitions, limitations, and reporting requirements are present in the funding of national parties given that they operate at the national level and "are inextricably intertwined with Federal officeholders and candidates, who raise money for them . . ." Id. at H409.

In addition, Senator McCain, whose comments on the Senate floor were used by the parties to support their position, filed a supplemental comment responding to the parties' comment. Senator McCain stated that Congress' intent was clear that BCRA prohibits national party committees from raising spending or directing non- funds. He further pointed out that that an amendment that would have allowed party committees to continue to raise "soft money" subject to limits on the amounts and purpose failed. The Commission notes that a House amendment would have continued to permit national

parties to raise "soft money" for certain activities subject to the Act's prohibitions, limitations and reporting requirements that do not exceed $20,000 per year per person. That amendment was defeated. See 148 Cong. Rec. H459-H465 (daily ed. February 13, 2002).

The party committees also maintain that the Commission should define the term "donation," which is not defined in BCRA, to exclude funds received by national party committees for certain purposes such as funds provided for redistricting, legal expense funds, and the payment of civil penalties for violations of the Act. The parties argue that the Commission has, over time, recognized these activities as wholly exempt from the reach of FECA.

As discussed in the Explanation and Justification for the definition of "donation," the plain language of BCRA, supported by the legislative history, indicates that the ban on national party raising and spending non-Federal funds was intended to be broad, prohibiting a party from raising, receiving, or directing to another person " a contribution, donation or transfer of funds, or any other thing of value" or spending "any funds" that are not subject to the Act's limitations, prohibitions, and reporting requirements. Moreover, the Commission's interpretations on the receipt and spending of funds for such purposes as redistricting and the establishment of legal expense funds involve fact-specific inquiries, which are best addressed in the context of Advisory Opinions. See, e.g., Advisory Opinion 1990-23. Indeed, in some instances, funds raised and accepted by a political committee to pay for legal expenses may constitute a contribution subject to the Act's prohibitions, limitations and reporting requirements. See e.g., Advisory Opinion 1980-57. Consequently, neither 11 CFR 300.10 nor the definition of "donation"

in 11 CFR 300.2(e) contains a sweeping exclusion of donations that would permit national parties to raise funds for these purposes under any and all circumstances. In addition, the payment by a national party committee of legal fees incurred by a candidate would involve a determination as to whether the payment constitutes a contribution to that candidate.

11 CFR 300.11 Prohibition on National Party Fundraising for Certain Tax-Exempt Organizations.

BCRA prohibits national party committees, their officers and agents, and entities directly or indirectly established, financed, maintained, or controlled by them from raising any funds for, or making or directing any donations to, certain tax-exempt organizations. 2 U.S.C. 441i(d)(1). BCRA's prohibition on this type of donor and fundraising activity extends only to tax-exempt organizations with a political purpose or that conduct activities in connection with a Federal election. Specifically, this prohibition extends to organizations exempt from taxation under 26 U.S.C. 501(c) that "[make] expenditures or disbursements in connection with an election for Federal office (including expenditures or disbursements for Federal election activity)." Id. (Organizations formed under 26 U.S.C. 501(c) are referred to as "501(c) organizations" below.) The ban also extends to political organizations exempt from taxation under 26 U.S.C. 527 (referred to as "Section 527 organizations" below). These entities are defined in the Internal Revenue Code as parties, committees, associations, funds, or other organizations organized and operated primarily to directly or indirectly accept contributions and make expenditures for the "exempt function" of influencing or

attempting to influence the selection, nomination, election or appointment of an individual to a Federal, State, or local public office, political organization office, or election of Presidential and Vice Presidential electors. 26 U.S.C. 527(e)(1) and (2). BCRA excludes certain section 527 organizations as discussed below.

The regulations implementing this provision are set forth in new 11 CFR 300.11. A parallel provision of this regulation, 11 CFR 300.50, and others affecting tax exempt organizations that also appear elsewhere in Part 300, have been placed together in subpart C for the convenience of those interested in locating rules pertaining to fundraising and donations to tax exempt organizations.

Section 300.11 as proposed closely tracked the language of BCRA. The final rule has taken into account comments received on questions posed in the NPRM, as discussed below.

A. General Prohibition

Section 300.11(a)(1) and (2) of the final rules remain unchanged from the proposed rule except for minor language changes to the description of national congressional campaign committees to conform with other formulations of the phrase.

Paragraph (a)(3) implements BCRA's prohibition on national party committee fundraising for and donating to a section 527 organization unless the organization is a "political committee," a and local party committee, or an authorized committee of a or local candidate. In the context of a parallel provision in 11 CFR 300.37 applicable to and local party committees, the NPRM asked whether "political committee" should mirror the definition of that term in 2 U.S.C. 431(4), which would encompass only organizations that make contributions to and expenditures on behalf of elections or whether it should

be interpreted to encompass -registered political committees that support only and local candidates.

BCRA's cosponsors stated that "it would be in keeping with the intent of BCRA to carve out from the definition of 'political committee' a distinction that would permit district and local party committees to make a non-federal donation" to a section 527 organization registered as a State political committee as long as the committee does not make expenditures and disbursements in connection with a Federal election, including expenditures and disbursements for Federal election activity. Several party committee commenters and at least one public interest group agreed with this approach. Only one public interest commenter disagreed, stating that permitting and local party committees to fundraise for, or donate to, political committees "would be contrary to the letter and spirit of BCRA." None of the commenters addressed this provision in the context of the national party prohibition, perhaps because it was not specifically asked.

Although the construction of "political committee" addressed by the commenters may be permissible as applied to , district and local party committees in 11 CFR 300.37, the Commission concludes that the broad prohibition applicable to national party fundraising and spending in 2 U.S.C. 441i(a) prevents a similar construction in 11 CFR 300.11. Thus, Section 441i(a) prohibits national party committees from soliciting or directing to another person "a contribution, donation or transfer or funds or any other thing of value" or spending any funds that are not subject to the limitations, prohibitions and reporting requirements of the Act. Funds solicited or directed by a national party committee to a -registered Section 527 organization are not be subject to the reporting requirements of the Act. Accordingly, in the final rules, paragraph (a)(3)(i) of 11 CFR

300.11 prohibits national party committees from soliciting funds for, or making donations to a Section 527 "political committee" unless the organization is a "political committee" as defined in 11 CFR 100.5.

Paragraph (b) of Section 300.11, describing the other persons and entities to whom the prohibition applies, remains unchanged from the proposed rule. The NRPM asked whether the final rule should provide examples of the types of persons and entities covered by this provision, and sought specific examples that might illuminate the scope of this provision. Although many commenters expressed approval for including examples as to who is covered by the provision, none provided specific examples. The final rule does not include specific examples.

The NPRM also sought comments on whether the regulations should contain a temporal requirement so that the prohibition on national and party fundraising and donations to non-profits is appropriately circumscribed and does not encompass, for example, an organization that made expenditures and disbursements in connection with a Federal election many years ago but has not done so recently and does not plan to do so in the future. The final rules contain a temporal requirement, which has been incorporated into the definition of a 501(c) organization "that makes expenditures and disbursements in connection with a Federal election." See 11 CFR 300.2(a). See the discussion above relating to 11 CFR 300.2(a).

One nonprofit organization urged the Commission to exclude 501(c)(3) organizations from the party committee fundraising/donation prohibition. This commenter argued that because 501(c)(3) organizations are required by tax law to undertake only election-related activity that cannot benefit any particular candidate or

party, they should not be subject to the prohibition. However, the plain language of BCRA applies to all 501(c) organizations that make disbursements or expenditures in connection with Federal elections, including expenditures and disbursements and for election activity. Financing certain voter registration and GOTV activities are considered election activities under BCRA and new 11 CFR 100.24. Moreover, all voter registration and GOTV activities, even nonpartisan activities, are capable of having an impact on elections. Indeed, BCRA's co-sponsors specifically indicated in their comments that nonpartisan voter registration drives or GOTV activities were not intended to be excluded from the definition of Federal election activity. The Commission notes that this provision does not prohibit nonprofit organizations from undertaking any type of voter registration or GOTV activities. Because Congress clearly could have excluded 501(c)(3) organizations from this provision but chose not to do so, the final rules do not include any such exclusion or exemption.

B. Safe Harbor Provisions

The NPRM asked whether a safe harbor provision should be provided so that a national or party committee and others affected by the prohibition can safely fundraise or make a donation to a Section 501(c) or a Section 527 organization if they take certain steps to ensure that the organization is not one that falls within the prohibition. The NPRM gave examples of such safe harbors such as 1) obtaining and examining a 501(c) organization's application for tax exempt status or annual Form 990 tax return to determine whether the organization has reported making, or indicates plans to make expenditures or disbursements in connection with a Federal election, or 2) with respect to

current or planned activity, obtaining and examining a certification from the organization that indicates it does not make, or plan to make such expenditures.

The commenters agreed that the regulations should provide a safe harbor for national and party committees. The commenters split, however, on what the safe harbor should be. The primary co-sponsors of BCRA and one public interest group suggested that Section 501(c) and Section 527 organizations be required to file sworn certifications with the Commission, enforceable under 18 U.S.C. 1001, upon which a party could rely in determining whether it could solicit funds for, or make or direct donations to such organizations. The co-sponsors urged that party committees be held strictly liable for any violations of the Act if, in the absence of such a certification, an organization misrepresents itself.

Without addressing the concept of a safe harbor, another public interest group commented that a party committee should be required to obtain a sworn certification from a Section 501(c) or a Section 527 organization for whom it wishes to solicit or to whom it wishes to donate or direct funds.

Several party committee commenters expressed approval for a safe harbor that would permit a party committee to obtain and rely on applications for tax exempt status or Form 990 tax returns to determine whether it could permissibly fundraise for, or donate to, a tax exempt organization. One commenter suggested that party committees be given a choice between obtaining certifications or relying upon publicly available tax documents. A labor organization argued that the regulations should not require party committees to investigate non-profits it wishes to donate to or assist. Rather, this commenter urged that the Commission adopt specific language that a party committee

could use, presumably in a cover letter, when it makes a donation to a 501(c) to serve as a save harbor "from prosecution." The commenter suggested that the party committee merely be required to to the Section 501(c) organization that any funds it donated cannot be used for activities that would "constitute an expenditure in a federal election."

In considering how best to implement these BCRA provisions, the Commission has concluded that a safe harbor is an appropriate way to help ensure that party committees, and others to whom 11 CFR 300.11 and 300.37 apply, comply with the Act. The Commission believes that requiring a 501(c) organization to file a certification with the Commission would be burdensome. However, requiring party committees and others covered by this provision to obtain a sworn certification from an official with knowledge of the activities of an organization's activities is the best way to ensure the party committee or other person has reliable information as to whether a particular organization engages in certain election-related activities. Form 990s tax return forms may not clearly show whether an organization has undertaken specific election-related activities. Moreover, these forms do not provide information on current activities. Accordingly, new paragraph (c) of the final rule provides that a party committee may obtain and rely upon a certification from a Section 501(c) organization to determine whether it may permissibly raise funds for, or make or direct donations to, the organization. New paragraph (d) of the final rule sets forth specific criteria a certification must include, including: 1) the certification is signed and sworn to by an officer or other authorized representative with knowledge of the organization's activities, and 2) the certification specifically states that, within the current election cycle and within the two years preceding the current cycle, the organization has not, and does not intend to, engage in

specific types of activity that constitute making expenditures or disbursements in connection with a Federal election. Paragraph (d)(2)(i) also requires that a Section 501(c) organization that is exempt from taxation must provide with the certification, its Form 990 tax returns for the current election cycle and the last two fiscal years preceding the cycle as well as its application for tax exempt status. Although these forms by themselves may not necessarily provide sufficient information to determine whether an organization has made disbursements and expenditures in connection with a Federal election, the provision of these publicly-available forms to a party committee with a certification will enable a committee to ask any necessary questions to ensure that an organization is not one the committee is prohibited from assisting. In the case of an organization that has submitted an application for determination of tax exempt status under section 501(c) but has not yet been granted or denied such status, paragraph (d)(2)(ii) requires the organization to provide to the party committee its Form 990 tax return and its application for tax exempt status once these documents are available. The Commission believes that requiring an organization to file a certification with the Commission would be too burdensome.

11 CFR 300.12 Transition Rule

One of the BCRA amendments to the FECA is the prohibition on national party committees raising and spending non-Federal funds after November 5, 2002, the effective date of BCRA.[6] 2 U.S.C. 431 note. BCRA, however, created a transition period between

[6] The raising and spending of non-Federal funds by State, district, and local committees or organizations are addressed in 11 CFR part 300, subpart B, discussed below.

November 6, 2002 and December 31, 2002, that permits national party committees to spend non-Federal funds in their accounts as of November 5, 2002, for certain expenses and debts. The rules governing the use of non-Federal funds by national party committees, including national congressional campaign committees, during this transition period are set forth in 11 CFR 300.12.

A. Permissible Uses of Excess Non-Federal Funds During the Transition Period

Paragraph (a) of section 300.12 describes the two permissible uses of non-Federal funds in a national committee's account, other than an office building or facility account, as of November 5, 2002. They are: (1) to retire outstanding non-Federal debts or non-Federal obligations incurred solely in connection with an election held before November 6, 2002; or (2) to pay non-Federal expenses or retire outstanding non-Federal debts or obligations incurred solely in connection with any run-off election, recount, or election contest resulting from an election held prior to November 6, 2002. BCRA expressly provides that these non-Federal funds must be used solely for these two purposes and must be spent before January 1, 2003. 2 U.S.C. 431 note.

The NPRM sought comments on whether the use of the word "solely" in the enumeration of the permissible uses of non-Federal funds in paragraph (a) during the transition period precluded permitting any funds remaining thereafter to be disgorged to the United States Treasury or donated to a charitable organization. The Commission received several comments on this issue as well as suggestions for other permissible uses under paragraph (a).

The commenters split on whether the Commission should permit remaining non-Federal funds in any non-Federal account to be donated to charity. BCRA's sponsors and

one public interest group stated that BCRA provides no statutory basis for transferring any non-Federal funds as of November 6, 2002, to non-profit organizations and doing so could undermine a central purpose of the law which is to prohibit national party non-Federal funds from being used in the 2004 elections. Since charitable organizations under section 170 include section 501(c)(3) organizations, the sponsors point out that there is a potential that any donated funds could be used for Federal election purposes in the next election. Section 501(c)(3) organizations are permitted to engage in voter registration, get-out-the-vote activities, and other activities defined as "Federal election activities" in BCRA.

The sponsors suggested that any funds remaining in national parties' non-Federal accounts be disgorged to the United States Treasury or refunded to donors on a pro rata basis. Another commenter concurred with this suggestion, pointing out that because the statutory language only permitted specific uses during the transition period, any funds remaining thereafter must be disgorged or refunded. One public interest group commented that the Commission could require disgorgement or permit donations to charitable organizations as long as the charitable organization is not one that the national parties would be prohibited from donating to under 11 CFR 300.10(b).

A commenter from a non-profit organization stated that BCRA should be construed to permit national parties to use any soft money remaining after payment of non-Federal election-related debts for any purpose currently permitted under FECA. According to this commenter this construction is warranted because BCRA is silent as to the disposition of funds during the transition period after permissible debts are paid under paragraph (a) of section 300.12, and only specific uses are prohibited in paragraph (b).

The commenter further stated that the rules should permit national parties to transfer non-Federal funds remaining after non-Federal debt is paid to 501(c) organizations because these organizations are required to engage in non-partisan charitable or social welfare activity under tax law. None of the party committee commenters addressed this issue.

To give effect both to the use of the word "solely" in 2 U.S.C. 431 note, and to the legislative intent to prohibit national party non-Federal money from being used in future Federal elections, 11 CFR 300.12(a) limits the use of non-Federal funding remaining in national party committees' accounts as of November 5, 2002 to those specifically enumerated in paragraphs (a)(1) and (2). Additionally, "solely" has been added to the last sentence in paragraph (a) to emphasize that the debts, obligations, and expenses described in paragraphs (a)(1) and (2) are the only two permissible uses of the national party committees' non-Federal funds during the transition period. Therefore, national party committees are not permitted to donate non-Federal funds to charitable organizations or to refund non-Federal contributions to contributors after November 5, 2002. Disgorgement of remaining non-Federal funds is discussed below.

B. Prohibited Uses of Non-Federal Funds After November 5, 2002

Under 11 CFR 300.12(b), national party committees will no longer be able to use non-Federal funds for any of the following activities after November 5, 2002: (1) to pay any expenditure as defined in 2 U.S.C. 431(9); (2) to retire outstanding debts or obligations that were incurred for any expenditure; or (3) to defray the costs of the construction or purchase of any office building or facility. The final rules track the language in the proposed rules. The Commission did not receive any comments

concerning this paragraph, other than those pertaining to building funds which are discussed below.

C. Disposal of Remaining Non-Federal Funds

New section 300.12(c) requires any non-Federal funds remaining after non-Federal debts and obligations are paid pursuant to paragraph (a), must be disgorged to the United States Treasury. Although some commenter suggested that national party committees be permitted to donate the remaining non-Federal funds to a charitable organization or to refund them, disgorgement to the United States Treasury is consistent with the Commission's practice when a contributor has made, and a political committee has accepted, funds prohibited under the Act to ensure that such funds are not used for the purpose of influencing Federal elections. Permitting refunds to donors on a pro rata basis presents problems in the event that some donors do not cash refund checks, which some donors might willingly do to allow the party committee to make use of the funds. Disgorgement ensures that excess national party non-Federal funds will not be used in future Federal elections, and that all impermissible funds are purged from the national parties' accounts by the dates required by BCRA.

D. National Party Committee Office Building or Facility Accounts

BCRA treats non-Federal funds contained in national party building fund accounts more stringently than non-Federal funds in the national party committees' other non-Federal accounts. Under current law, funds in a national party building fund account may be used only for the purchase or construction of the national party committees' office building or facility. Beginning November 6, 2002, however, any funds remaining

in a national party building fund account must not be used for the purchase or construction of any office building or facility. See 2 U.S.C. 431 note.

In their comments, the sponsors pointed out that while proposed paragraph (e) only prohibited excess building funds from being used to construct or purchase a national party office building, the statutory language prohibits the use of such funds to defray construction or purchase costs for "any" office building or facility. See 2 U.S.C. 431 note. Paragraph (d) of the final rules at 11 CFR 300.12 incorporates this change.

E. Application

Section 11 CFR 300.12(e) clarifies that these transition rules apply to officers and agents acting on behalf of a national party committee or a national congressional campaign committee, and to entities that are directly or indirectly established, financed, maintained, or controlled by a national party committee or a national congressional campaign committee. The Commission did not receive any comments relating to this provision, which follows proposed paragraph (with one minor change redesignating it as paragraph (c)) with one minor change.

F. Allocation and Payment of Expenses During the Transition Period

Section 300.12(f) clarifies that the pre-BCRA allocation rules applicable to national party non-Federal and Federal accounts in 11 CFR 106.5 remain in effect during the transition period. No comments addressed this provision. The final rules in paragraph (f) are identical to proposed paragraph (d). Following the transition period, the revised and renumbered rules at 11 CFR 106.5, discussed above, will become effective since national parties will no longer have non-Federal accounts.

11 CFR 300.13 Reporting

BCRA requires national party committees, including national congressional campaign committees, and any subordinate committee of either, to report all receipts and disbursements during regular reporting periods. 2 U.S.C. 434(e). New 11 CFR 300.13(a) tracks the statutory language. Minor changes have been made to the final rule so that it more closely conforms to the statutory language.

The NPRM sought comment on whether this provision of BCRA was intended to require reporting by existing entities that currently are not required to report and sought the identity of any such entities. The primary sponsors of BCRA commented that the term "subordinate committee" was intended to ensure that any new committees created by the national party committees would file required reports for all receipts and disbursements. The sponsors further stated that this provision requires existing entities that are subordinate to the national parties to report all of their receipts and disbursements whether or not they are required to do so under current law. The sponsors and several other public interest group commenters identified the College Democrats and College Republicans as subordinate committees of the national parties. None of the party committee commenters addressed this point.

Although neither BCRA nor FECA contains a definition of a "subordinate committee" of a national political party, the phrase is used in 2 U.S.C. 441a(a)(4). That provision states that limitations on contributions do not apply to transfers between and among political committees that are national, State, district or local committees of the same political party "including any subordinate committee thereof." In Advisory Opinion 1976-112, the Commission concluded that Democrats Abroad was a subordinate

committee of the Democratic National Committee for purposes of 2 U.S.C. 441a(a)(4). The advisory opinion noted that the group was "an organization of American citizens living overseas who support the basic principles of the National Democratic Party," had a central office in London, and local clubs in several countries that anticipated reaching political committee status. The Commission concluded that Democrats Abroad functioned as a part of the official structure of the Democratic Party and represented the Democratic Party to Americans living in foreign countries. Factors relied upon in this conclusion included: the group held fundraisers, the proceed of which were donated to the DNC; the Democratic Party charter authorized a voting delegating from the group to participate at the 1976 party convention; the Call to Convention gave the group three votes to be cast by six delegates elected by group members in accordance with the rules of the party's Compliance Review Commission; the group was allowed representation on the Standing Committee of the Democratic Party; and the group functioned as a party committee by participation in voter registration and GOTV drives for the Democratic Party in 1976. The Commission specifically rejected the conclusion that Democrats Abroad was the equivalent of a State party committee based on the statutory definitions of "State committee" and "State."

Based on the prior construction of the term in AO 1976-112, the Commission concludes that a "subordinate committee" of a national party committee is one that is affiliated with, and participates in, the official party structure of the national party committee. As applied to a particular group, whether an organization is a subordinate committee of a national party is a factual determination. Based on the broad legislative intent to prohibit national parties from raising and spending non- funds, however, the

Commission further concludes that a subordinate committee for the purpose of 11 CFR 300.10(a) qualifies as an entity directly or indirectly established, financed, maintained and controlled by a national committee of a political party.

Since national party committees and entities directly or indirectly established, financed, maintained and controlled by them cannot solicit, receive, direct, or spend non-funds as of November 6, 2002, and must dispose of all funds in their non- accounts as of December 31, 2003, section 300.13(b) requires national party committees and their subordinate committees to file termination reports for all non- accounts, whether or not a subordinate committee was required to file disclosure reports under FECA prior to BCRA. Section 300.13(c) makes clear that the reporting regulations at 11 CFR 104.8 and 104.9 applicable to non-Federal accounts, including building funds, will remain in effect to accomplish this.

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

11 CFR 300.30 Accounts

Under new 11 CFR 300.30, State, district, and local party organizations that are political committees must maintain certain separate accounts in depositories if they pay for the costs of voter registration within a fixed time period or for certain voter identification, GOTV, and generic campaign activity pursuant to 11 CFR 100.24 and 300.32(b)(1). These separate accounts include a Federal account that is to be used exclusively for Federal as well as mixed Federal and non-Federal purposes; a second account, known as a Levin account, that is to be used for Federal election activities under 11 CFR 300.32(b)(1); and a third, optional account to be used only for strictly non-

Federal purposes pursuant to State law. The need for separate accounts has been heightened by BCRA's separation of State, district, and local party campaign activity into three distinct categories for which there are three distinct sets of conditions as to the funds that may be accepted and used to pay for each type of activity. See 2 U.S.C. 441i(b). For party organizations that are not political committees, the final rules set out choices rather than requirements regarding separate accounts, including Levin accounts.

Several of the comments received in response to the NPRM agreed with the proposed requirement that all State, district, and local party committees and organizations be required to maintain separate Levin accounts, no matter the organization's size, level of activity and political committee status, if they desired to undertake certain Federal election activities pursuant to 11 CFR 300.32(b). Other comments raised directly or indirectly the issue of whether the Commission should or even could require such accounts, particularly in light of laws in certain States either limiting the number of non-Federal accounts that a State party organization may hold or, more often, requiring numerous such accounts for varying purposes. It was also argued that the number of non-Federal accounts held by a party committee or party organization is a State, not a Federal issue.

In order to assure that the purposes of BCRA are fulfilled, the final rules retain the requirement that State, district, and local party organizations that are political committees and that decide to undertake activities pursuant to 11 CFR 300.32(b) must maintain separate Levin accounts for this purpose. In deciding to require such accounts for these larger committees, the Commission recognizes that within this grouping there are differences of size, experience with Federal campaign finance regulations, and funding.

In addition, the Commission recognizes that some States already require multiple accounts, while a few may prohibit more than one account for all activity. It has also been noted, however, that some State party committees already have as many as 20 to 30 accounts for various purposes, placing in doubt the burdensomeness of multiple accounts.

Most importantly, the Commission is very aware of, and concerned about, the complexities of FECA as amended by BCRA, including the many conditions and restrictions arising from the Levin Amendment, and about the resulting record-keeping and reporting requirements to be imposed upon State, district, and local party committees. The Commission believes that several important goals of the FECA as amended by BCRA, including full public disclosure, accurate record-keeping and reporting, and the reduction in the use of impermissible funds in Federal elections, are furthered significantly by requiring all but those party organizations with the least activities in connection with Federal elections to separate party funds into at least three distinct accounts to be used for different purposes. In fact, more than one Federal account and more than one Levin account may be deemed necessary by a single party committee or organization in order to meet particular Federal or State requirements, a multiplicity that will be appropriate so long as complete records are kept and the activity of each account is properly reported pursuant to 11 CFR part 104 and 11 CFR 300.36.

With regard to the legal basis for requiring Levin accounts, the Commission notes that, in the NPRM, it referred to Levin funds as a "subset of non-Federal" funds; however, the accounts into which such funds are to be placed are a separate issue. Levin accounts themselves are creatures of Federal law. The rules governing the sources and limitations of funds going into such accounts, and the rules governing the uses of such

funds, are based on BCRA, even though the statute looks in part to State law with regard to the permissibility of certain sources of funds. Therefore, Levin accounts are special accounts set up pursuant to Federal law that potentially contain what would otherwise be non-Federal funds except for BCRA and 11 CFR part 300, subpart B. They are not non-Federal accounts subject to State law.

Paragraph (b) of 11 CFR 300.30 addresses State, district, and local party organizations that are not political committees. As discussed in the Explanation and Justification for the rules at 11 CFR 102.5, the principal sponsors of BCRA, in their response to the NPRM, expressed particular concern about the potential pooling of Federal funds and Levin funds if State, district, and local party committees that are not political committees are not also required to maintain separate Levin accounts. Consistent with the requirements set out for these organizations at 11 CFR 102.5(b), the rules in this section provide party organizations that are not political committees with three choices regarding depository accounts and accounting: (1) the establishment of at least three separate accounts (Federal, Levin, and non-Federal); (2) the establishment of two separate accounts (Federal/Levin with general ledger accounting, and non-Federal); and (3) the use of a general ledger accounting system for all Federal, Levin, and non-Federal funds. With regard to the last of the three options, the rules emphasize that funds entered on a ledger as non-Federal receipts may only be reclassified as Levin funds if donor intent can be ascertained through relevant solicitation materials or donor designations. In addition, those choosing a general ledger system are required to back up any computer-based data at least once a month.

Paragraph (c) requires all party organizations to keep records and to make them available to the Commission upon request.

The structure of this section has been changed since the NPRM. It is now organized based upon types of organization instead of types of accounts. Paragraph 300.30(a) now addresses the accounts required of party organizations that are political committees, while paragraph 300.30(b) addresses those accounts that may be established by those party organizations that are not political committees. The rules pertaining to allocation accounts have been moved to a new section (d).

Paragraph (a)(1)(i) requires State, district, and local party organizations that qualify as political committees either to maintain Federal accounts or to register a separate Federal political committee for purposes of undertaking activities in connection with Federal elections. This paragraph tracks the alternatives set out in 11 CFR 102.5(a) in this regard. Paragraph (a)(1)(ii) requires that only contributions permissible under the Act be deposited into a State, district, or local party committee's Federal account, even when such funds may be used in connection with both Federal and non-Federal elections. Paragraph (a)(1)(iii) sets out requirements for deposits into Federal accounts that are the same as the requirements at 11 CFR 102.5(a)(2) applicable to all political committees that make expenditures in connection with Federal and non-Federal elections. Paragraph (a)(1)(iv) requires that only Federal accounts or allocation accounts be used to make disbursements, contributions, or expenditures in connection with Federal elections. This procedure tracks the longstanding requirements at 11 CFR 106.5 for transfers to Federal accounts or to allocation accounts for shared Federal and non-Federal activity. Paragraph (a)(1)(v) provides that, when a Federal rather than an allocation account is to be used to

make allocable expenditures, the initial payment must be made from the Federal account with timely reimbursements from other accounts involved in a transaction.

Paragraph (a)(1)(vi) prohibits transfers into a party committee's Federal account from other accounts of the same party committee or from other party committees or party organizations to pay for Federal election activity, except as permitted by 11 CFR 300.30(a)(6), 300.33, and 330.34. The language of this paragraph in the NPRM has been changed to better track the requirements of BCRA.

Paragraph (a)(1)(vii) states that Federal funds may be used in non-Federal elections, provided that the contributors of the Federal funds have been informed that their contributions will be subject to the limitations and prohibitions of the Act and provided that the disbursements are reported pursuant to section 300.36. (See, e.g., Advisory Opinion 2000-24 in which the Commission found the use of a non-Federal account to be permissive, not mandatory; see also the Explanation and Justification for revisions of the Commission's allocation regulations at 55 Fed. Register 26058 (June 26, 1990) and at 57 Fed. Register 8990, 8991 (March 13, 1992).) The phrase "subject to State law" has been added in response to a comment on the NPRM.

Paragraph (a)(2)(i) requires State, district, and local party organizations that are political committees to establish one or more Levin accounts for purposes of making expenditures and disbursements for the activities permitted under 11 CFR 300.32(b)(1). Pursuant to paragraphs (b)(2)(ii) and (iii), a State, district, and local party committee is permitted to deposit into its Levin account only those donations solicited and received for that account pursuant to new 11 CFR 300.31, and must use this account to make

disbursements and expenditures only for the activities permitted by new 11 CFR 300.32 or for other, non-Federal activity as permitted by State law.

Paragraphs (b)(2)(ii) also requires that, in order for donations to be placed in a Levin account, either the solicitations for the donations must have expressly stated that donations will be subject to the special limitations and prohibitions of section 300.31, or there must have been an express designation to the Levin account by the donors. Several commenters objected to these requirements, arguing that they are not in BCRA and would be unnecessary and/or inappropriate. The Commission has, however, virtually since its inception, required similar notification of donors and/or expressions of donor intent in the context of Federal accounts in order to prevent arbitrary decisions on the parts of party committees as to the uses of monies received, decisions that could in some cases cause contributors to exceed their individual contribution limits. The appropriateness of requiring such donor notification or proof of donor intent is augmented by the fact that Levin accounts are to be created for very specific and limited purposes pursuant to Federal law. Transparency necessitates some level of proof of donor awareness of the uses to which donations deposited into Levin accounts will be put, while the limitations upon, and the need to report, donations received for Federal election activities under 11 CFR 300.32(b)(1) and 300.36 require an ability to track which donations have been made for those purposes. Paragraph (a)(2)(iv) sets out the limitations on the use of funds in a Levin account.

Several commenters on the NPRM, including the principal sponsors of BCRA, expressly approved the use of Levin funds for non-Federal activities if consistent with

State law. No contrary opinions were received. Paragraph (a)(2)(iii) sets out the permitted uses of funds in a Levin account.

Paragraph (a)(3) provides for the use of non-Federal accounts by State, district, and local party committees, to the extent permitted by State law.

The NPRM requested comments on whether the Commission should continue to permit the use of allocation accounts for purposes of making allocable expenditures. The consensus of those responding to this question was in the affirmative. Therefore, a new paragraph (a)(4) is being added expressly permitting the establishment of such allocation accounts in lieu of making all allocated expenditures from a Federal account and setting out the requirements for the use of such allocation accounts. Paragraphs (a)(4)(i) and (ii) state that only certain funds may be deposited in each allocation account, depending upon whether the purpose of the account is to make expenditures and disbursements that have been allocated between a party committee's Federal and non-Federal accounts or to make expenditures and disbursements that have been allocated between its Federal and Levin accounts. This requirement of a separate allocation account for activities undertaken pursuant to 11 CFR 300.32(b) is necessitated by the requirements in BCRA that define the specific funds that can and cannot be used for such activities. Paragraph (a)(4)(iii) requires that, once allocation accounts are established, they must be used for all allocable expenses so long as the accounts are maintained. Pursuant to paragraph (a)(4)(iv) and (v), only the amount needed to meet the allocable share of expenses may be transferred into these allocation accounts and no funds from these accounts may be transferred out to other accounts.

Paragraph (c) requires all party organizations to keep records and to make them available to the Commission upon request.

11 CFR 300.31 Receipt of Levin Funds

In BCRA, Congress placed several restrictions on how State, district, and local political party committees raise Levin funds. New 11 CFR 300.31 implements these statutory restrictions. Paragraph (a) states as a general proposition a key point in the statute: a State, district, or local political party committee that spends Levin funds must raise those funds solely by itself. 2 U.S.C. 441i(b)(2)(B)(iv).

Paragraphs (b) and (c) of section 300.31 elaborate on the statutory requirement that Levin funds must be raised from donations that comply with the laws of the State in which the State, district, or local party committee is organized. 2 U.S.C. 441i(b)(2)(B)(iii). Paragraph (b) states this as a general requirement. More specifically, paragraph (c) clarifies the status of donations from sources that are permitted under State law, but prohibited by the Act. A prime example is donations from corporations and labor organizations. Under 2 U.S.C. 441b of the Act, "[i]t is unlawful . . . for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election" for Federal office. 2 U.S.C. 441b(a). Under the campaign finance laws of several States, however, donations by corporations or labor organizations to political party committees are legal. Section 300.31(c) clarifies that in such States a political party committee may solicit and accept donations of Levin funds from corporations and labor organizations, subject to the other conditions of the Act. (Of course, if donations from corporations or labor organizations to a political party

committee are illegal in a State, political party committees in that State would not be able to accept Levin fund donations from those sources.)

Three commenters expressed concern that section 300.31(c), as published in the NPRM, could be misinterpreted to allow donations from foreign nationals. One of these commenters suggested adding the phrase, "other than 2 U.S.C. 441e," after the word "chapter." Although the sweeping nature of the 2 U.S.C. 441e as amended by BCRA seems to preclude the possibility that a donation by a foreign national to a party committee could be lawful under any State law, the Commission has revised paragraph (c) of section 300.31 as suggested.

The principal Congressional sponsors commented that paragraph (c) should not be misinterpreted to allow a donation of Levin funds to a State, district, or local political party committee from a person established, financed, maintained, or controlled by a person forbidden from providing Levin funds to the committee. The Commission has addressed this concern in paragraphs (e) and (f) of section 300.31. (See discussion below.)

Paragraph (d), in general, addresses amount limitations on donations of Levin funds to a State, district, or local party committee. In the Levin Amendment, Congress placed a $10,000 per calendar year per donor limitation on donations to a State, district, and local political party committee to be used as Levin funds. This statutory amount limitation applies to a person, including "any person established, financed, maintained, or controlled by such person." 2 U.S.C. 441i(b)(2)(B)(iii). Paragraph (d)(1) clarifies that this is an aggregate limit per recipient committee (i.e., the aggregate limit applies separately to each party committee). See discussion of 11 CFR 300.31(d)(3), below.

Paragraph (d)(1) did not draw comment. In the NPRM, the Commission sought comment on whether its current "affiliation" regulation (11 CFR 100.5(g)) would appropriately determine whether a person is "established, financed, maintained, or controlled," within the meaning of this paragraph. The Commission received no comments on this point. The Commission, in this rulemaking, is adopting 11 CFR 300.2(c), which is based on 11 CFR 100.5(g), and which should be applied to determine whether certain persons share a $10,000 per year per committee contribution amount limitation under paragraph (d)(1).

Paragraph (d)(2) addresses those cases in which State law imposes an amount limitation on donations to a State, district, or local party committee that differs from the amount limitation in 2 U.S.C. 441i(b)(2)(B)(iii) and paragraph (d)(1). Paragraph (d)(2) strikes a balance between respect for State law and protecting the integrity of the Levin Amendment amount limitation. It makes clear that lower State law amount limitations prevail over the $10,000 limitation in the Levin Amendment, but that the Levin Amendment $10,000 limit controls where State law amount limitations exceed $10,000. There were no public comments on paragraph (d)(2).

Paragraph (d)(3) of section 300.31 addresses the question of whether State, district, and local committees of the same political party are affiliated for purposes of applying the donation amount limitation as set forth in paragraphs (d)(1) and (d)(2) of section 300.31. See generally 11 CFR 110.3. The paragraph clarifies that such committees are not considered affiliated only for the purpose of determining compliance with paragraph (d)(1). See 148 Cong. Rec. H410 (daily ed. Feb. 13, 2002) (statement of Rep. Shays).

Three commenters discussed paragraph (d)(3). A national party committee supported the provision. Another commenter suggested that there should be a "rebuttable presumption" of affiliation of party organizations "at the same political or geographic unit" in order to prevent a possible proliferation of party organizations each with its own $10,000 per donor limit. The legislative history indicates, however, that Congress contemplated the possibility of such a proliferation of party committees and chose to address it by imposing a ban on transfers of Levin funds between party committees rather than by affiliating the committees under a single contribution limit. 148 Cong. Rec. H410 (daily ed. Feb. 13, 2002) (statement of Rep. Shays); see 2 U.S.C. 441i(b)(2)(B)(iv). Therefore, the Commission has not adopted this suggestion.

As mentioned above in the discussion of paragraph (a) of section 300.31, a key point made in the statute is that expenditures and disbursements of Levin funds by a State, district, or local political party committees must be "made solely from funds raised by the ... committee which makes such expenditure or disbursement...." 2 U.S.C. 441i(b)(2)(B)(iv). Congress elaborated on this fundamental requirement by specifically providing that Levin funds must not be "solicited, received, directed, transferred, or spent by or in the name of" a national committee of a political party, including a national Congressional campaign committee, or a Federal candidate or individual holding Federal office. 2 U.S.C. 441i(b)(2)(C)(i). This statutory prohibition extends to an agent acting on behalf of a national party committee or a candidate or Federal officeholder, and to any entity that is directly or indirectly established, financed, maintained, or controlled by a national party committee or a candidate or Federal officeholder. 2 U.S.C. 441i(a)(2), and (e)(1); see 2 U.S.C. 441i(b)(2)(C).

Paragraph (e) of section 300.31 implements these specific statutory restrictions. Paragraph (e)(1) provides that a State, district, or local political party committee must not "accept or use" as Levin funds any funds "solicited, received, directed, transferred or spent" by a national committee of a political party, including a national Congressional campaign committee. Paragraph (e)(2) extends the same prohibition to funds "solicited, received, directed, transferred or spent" by a Federal candidate or officeholder. Two commenters pointed out that paragraphs (e)(1) and (e)(2), as published in the NPRM, did not consistently or expressly refer to agents of, or to entities directly or indirectly established, financed, maintained, or controlled by, national party committees, and Federal candidates and officeholders. The prohibition in paragraph (e)(1) has been revised in the final regulation to extend explicitly to agents of, and to entities directly or indirectly established, financed, maintained, or controlled by, national party committees and by Federal candidates and officeholders. Similarly, paragraph (e)(2) has been revised to refer expressly to agents of Federal candidates and officeholders.

Confusion could arise about the relationship of the Commission's long standing joint-fundraising regulation, 11 CFR 102.17, and the restrictions imposed in paragraphs (e)(1) and (e)(2) of section 300.31. Therefore, both paragraphs (e)(1) and (e)(2) explicitly provide that 11 CFR 102.17 does not permit joint fundraising of Levin funds by a State, district, or local political party committee, and a national party committee or a Federal candidate or officeholder. Paragraph (e)(1) also clarifies that a State, district, or local political party committee may jointly raise, under 11 CFR 102.17, Federal funds not to be used for Federal election activity.

Congress specifically addressed other joint fundraising of Levin funds by providing that a State, district, or local political party committee must not use as Levin funds any amounts "solicited, received, or directed through fundraising activities conducted jointly by two or more State, local, or district committees of any political party or their agents." 2 U.S.C. 441i(b)(2)(C)(ii). This prohibition extends across State lines. Ibid. New paragraph (f) implements this statutory prohibition against joint fundraising of Levin funds by more than one State, district, or local committee of a political party, including such parties from more than one State. Paragraph (f) also clarifies that nothing in BCRA forbids two or more State, district, or local political party committees from jointly raising Federal funds that are not to be used for Federal election activity.

The provisions of paragraphs (e)(1), (e)(2), and (f) of section 300.31 regarding joint fundraising drew several comments. A national party committee suggested that the Commission clarify that these joint fundraising prohibitions extend only to Levin funds. In response, the Commission emphasizes that the section heading and the language in the introduction to paragraph (e) explicitly limit the scope of these provisions to "Levin funds." Similarly, the Commission emphasizes that paragraph (f) explicitly refers to "Levin funds."

One commenter approved of the scope of joint-fundraising provisions of paragraphs (e)(1), (e)(2), and (f), stating that the joint-fundraising prohibition should extend beyond particular "events" to all fundraising activities for Levin funds that are conducted jointly. Conversely, three commenters, a national party committee, a State party committee, and an association of State party officials, urged the Commission to limit the reach of the joint fundraising prohibition in paragraphs (e)(1), (e)(2), and (f) to

"specific joint fundraising events," in contrast to joint fundraising "activities." They urge that such joint fundraising "activities" for Levin funds should be permitted. In support, they quote Rep. Shays, who said, "joint fundraisers between state committees or state and local committees are not permitted . . . The joint fundraising prohibition will prevent a single fundraiser for multiple state and local party committees." 148 Cong. Rec. H410 (daily ed. Feb. 13, 2002). These commenters apparently have focused upon Rep. Shays' use of the term "single fundraiser," which they seem to interpret to mean a dinner, a speech, or similar "event." Presumably, a fundraising "activity," such as a direct mail campaign, would be permitted under the commenters' suggested interpretation. In response, the Commission notes that statements by any member of Congress during the floor debate should not be used to contradict the plain language of the statute. BCRA itself broadly refers to "fundraising activities conducted jointly" by State, district, or local political party committees. 2 U.S.C. 441i(b)(2)(C)(ii) (emphasis added). In addition, the specific statement made by Rep. Shays, referring to a "single fundraiser," could easily encompass either a dinner or a specific direct mail campaign.

Paragraph (g) clarifies that the mere use of common vendors by two or more State, district, or local political party committees would not in and of itself constitute joint fundraising within the meaning of the proposed paragraph. The principal Congressional sponsors of BCRA agreed with this provision in principle, but noted that use of a common vendor may, in some circumstances, be a means of carrying out actual 'joint fundraising' schemes. The sponsors urged the Commission to be "highly attentive" to this practice.

11 CFR 300.32 Expenditures and Disbursements

11 CFR part 300, subpart B, generally addresses expenditures of Federal funds for Federal election activities and disbursements of Levin funds for Federal election activities. 11 CFR 300.32 specifically addresses both kinds of spending by a State, district, or local political party committee, and clarifies that BCRA does not affect spending of non-Federal funds for purely State or local activity.

Paragraph (a)(1) clarifies that spending by a State, district, or local political party committee "for the purpose of influencing" a Federal election (see 11 CFR 100.8) must use Federal funds; that is, nothing in BCRA changes the existing requirements for that type of spending. See 148 Cong. Rec. H409 (daily ed. February 13, 2002) (statement of Rep. Shays).

In the NPRM, the Commission solicited comments about the term, "association or similar group of candidates for State or local office, or an association of State or local officeholders," specifically asking whether it should be further defined in the regulations, and if so, about examples of such associations or groups to include in the final regulations. The Commission received no comments on this point, nor did the Commission receive any other comments about paragraph (a)(1).

Paragraph (a)(2) makes clear that the general rule in BCRA is that a State, district, or local political party committee spending on Federal election activity must use Federal funds for that spending, except as provided in the Levin Amendment. 2 U.S.C. 441i(b)(1). The Commission received no comments regarding this provision. In addition, this paragraph requires that an association or similar group of candidates for State or local office, or an association of State or local officeholders, must make

expenditures for Federal election activity solely with Federal funds. This latter provision appeared in paragraph (a)(1) in the regulation proposed in the NPRM; it has been moved to paragraph (a)(2) in the final rules purely for organizational purposes.

Paragraphs (a)(3) and (a)(4) address how State, district, or local party committees must pay the costs of raising funds used to pay for Federal election activities. In BCRA, Congress required that spending by a State, district, or local committee of a political party "to raise funds that are used, in whole or in part, for expenditures and disbursements for a Federal election activity shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act." 2 U.S.C. 441i(c). As published in the NPRM, paragraphs (a)(3) and (a)(4) sought to implement section 441i(c) as it applied to Federal funds raised for Federal election activity and Levin funds raised for Federal election activity, respectively.

In the NPRM, the Commission sought comment about section 441i(c) with regard to Levin funds. In particular, the Commission sought comment on (1) whether proposed paragraph (a)(4) could be limited to the direct costs (see pre-BCRA 11 CFR 106.5(a)(2)(ii)) of raising Levin funds; and (2) whether the costs of fundraising for Levin funds could be allocated between a party committee's Federal and non-Federal accounts under the "funds received" method. See pre-BCRA 11 CFR 106.5(f). Comments were also sought as to whether, generally, greater specificity should be provided in proposed section 300.32 as to the nature of fundraising costs in this section. 67 Fed. Register at 35664.

The Commission received several comments about paragraphs (a)(3) and (a)(4). The principal Congressional sponsors of BCRA and a public interest group suggested that

both paragraphs (a)(3) and (a)(4) should be clarified by including the statutory language, "in whole or in part." The Commission has included this suggestion in the final regulation. The added language better conforms the scope of the regulation to the scope of the statute.

Another commenter suggested that both paragraphs (a)(3) and (a)(4) should be limited to the direct costs of raising funds to be spent for Federal election activity, in contrast to the regulation proposed in the NPRM, which would have covered all costs of fundraising. The Commission has included this suggestion in the final rules. The purposes of 2 U.S.C. 441i(c) are adequately served by regulating only the direct costs of raising funds for Federal election activity. This limitation also avoids unnecessary confusion about allocation of administrative costs in the fundraising context in that covering the direct costs of fundraising is consistent with the Commission's longstanding regulation of fundraising costs. Given this change in the final regulation, the Commission has imported language from its pre-BCRA allocation regulation describing what constitutes direct costs.

A public interest group supported paragraph (a)(4), while a State party committee objected to paragraph (a)(4) to the extent that it forbids a State, district, or local political party committee from spending Levin funds to raise Levin funds. This commenter suggests that Levin funds are subject to the limitations, prohibition, and reporting requirements of the Act, as specified in 2 U.S.C. 441i(c). The Commission disagrees with this interpretation of 2 U.S.C. 441i(c). Levin funds are subject to only some of the Act's provisions (i.e., those in 2 U.S.C. 441i(b)), but by no means all of its limitations, prohibitions, and reporting requirements.

Paragraph (b) of section 300.32 lists the types of activities for which a State, district, or local political party committee may spend Levin funds. Paragraph (b)(1) spells out the two kinds of Federal election activity for which Levin funds may be spent, see 2 U.S.C. 441i(b)(2)(A), and provides that such spending must be made subject to the conditions set out in paragraph (c) of section 300.32. The principal Congressional sponsors of BCRA suggested that the word "only" be included to preclude any possible misinterpretation of the provision. The Commission has adopted this suggestion in the final regulation.

Paragraph (b)(2) of section 300.32, as proposed in the NPRM, drew several comments. A national party committee and a State party committee supported the provision. The principal Congressional sponsors of BCRA and a public interest group expressed concern that paragraph (b)(2) could be misinterpreted to allow spending of Levin funds for the Federal election activities described in 2 U.S.C. 431(20)(A)(iii) and (iv). In response to this concern, the Commission has added the language, "other than the Federal election activities defined in 11 CFR 100.24(b)(3) and (4)," which implement section 431(20)(A)(iii) and (iv).

As published in the NPRM, paragraph (b)(2) of section 300.32 would have allowed a State, district, or local political party committee to spend Levin funds for any purposes allowed by State law, and would have also provided that such spending was not subject to paragraph (c) (see below). The principal Congressional sponsors of BCRA expressed concern that the latter provision could be misinterpreted to allow fundraising and unallocated spending of Levin funds otherwise forbidden in other regulations. The Commission agrees. Therefore, the final rule, paragraph (b)(2), exempts spending of

Levin funds for purposes permissible under State law from only paragraphs (c)(1) and (c)(2) of section 300.32 because those two paragraphs are specifically focused on spending for Federal election activities. As revised, the final rule subjects all spending of Levin funds to paragraphs (c)(3) and (c)(4). The heading for paragraph (c) has been changed slightly in the final rule to conform with this change.

While the Levin Amendment permits the spending of Levin funds for the purposes set out in paragraphs (b)(1) and (2), it places restrictions and conditions on that spending when it is for Federal election activity. Paragraph (c) sets out in one place important restrictions and conditions that are stated in different sections of BCRA. Paragraph (c)(1) implements the restriction that the Federal election activity paid for partly with Levin funds must not refer to a clearly identified Federal candidate. See 2 U.S.C. 441i(b)(2)(B)(i). Paragraph (c)(2) implements the restriction that the Federal election activity paid for partly with Levin funds must not be for any broadcasting, cable, or satellite communications, other than a communication that refers solely to a clearly identified candidate for State or local office. See 2 U.S.C. 441i(b)(2)(B)(ii). Paragraph (c)(3) ties together the provisions of this regulation with 11 CFR 300.31, which covers the raising of Levin funds. Paragraph (c)(4) implements the Levin Amendment's requirement that spending under its authority must be allocated between Federal funds and Levin funds pursuant to 11 CFR 300.33. See 2 U.S.C. 441i(b)(2)(A)(i), (ii). The principal Congressional sponsors of BCRA commented that this paragraph should expressly refer to spending under paragraph (b)(1), since it does not apply to spending of Levin funds for non-Federal election activities under State law. The Commission has adopted this clarification in the final rules. The Commission emphasizes that paragraph

(c)(4) must not be interpreted to permit unallocated spending of Levin funds on non-Federal election activities if other provisions of chapter I of Title 11 require allocation of the expenditure or disbursement.

Paragraph (d) serves as a clarifying reminder that spending of non-Federal funds by a State, district, or local political party committee for State or local political activity, including the raising of non-Federal funds, remains a matter of State law. In response to several comments, the Commission is making two minor clarifications to this paragraph in the final rules. First, the paragraph heading has been changed to refer to "activities," rather than "funds," as it read in the NPRM, to be more descriptive of the actual subject of the paragraph. Second, the first sentence of the paragraph now refers to spending "Federal, Levin, or non-Federal" funds to conform this paragraph with paragraph (b)(2) of section 300.32.

11 CFR 300.33 Allocation of Costs of Federal Election Activity

The final regulations in this section address the allocation of expenditures and disbursements by State, district, and local party committees for Federal election activity, pursuant to the requirements of BCRA. The requirements for allocations by these committees for other categories of expenditures and disbursements that are not Federal election activity are to be found at 11 CFR 106.7. As discussed in the Explanation and Justification for 11 CFR 106.7, this division of rules represents an attempt to clarify how different categories of activities are addressed with regard to allocation, depending upon their nature, timing and, in certain instances, the presence or absence of a Federal

candidate on the ballot, i.e., whether they come within the definition of "Federal election activity" at 11 CFR 100.24. Provisions at proposed 11 CFR 300.33 that addressed activities not within the definition of Federal election activity are being moved to new 11 CFR 106.7.

Section 441i(b)(1) of Title 2, United States Code, states that State, district, and local party committees must make all disbursements and expenditures for Federal election activity from their Federal accounts. This requirement holds even when the expenses involved are also related to activities in connection with non-Federal elections. The only exception to the rule against the use of funds that are not Federal funds in connection with Federal election activity involves activities to be paid in part with Levin funds, pursuant to 2 U.S.C. 441i(b)(2).

Section 441i(b)(2)(A) permits State, district, and local party committees, under certain conditions, to use funds from a Levin account for particular categories of activity, including voter registration, voter identification, get-out-the-vote ("GOTV"), and generic campaign activities during certain time periods in connection with Federal and non-Federal elections. These funds must have been received by a party committee pursuant to specific requirements, and are to be used to meet expenses related to voter registration activity that takes place within 120 days of a Federal election and/or expenses related to voter identification, GOTV activities, and generic campaign activities that are conducted when a Federal candidate appears on the ballot. Disbursements and expenditures for the permitted activities must be allocated between a committee's Federal and Levin funds. Such activities must not refer to a clearly identified candidate for Federal office. Section 441i(b)(2)(A) permits the use of Levin funds for these purposes "to the extent that" the

costs of the activities are allocated. Thus, if a committee wishes to use other than Federal funds for such costs, it must allocate a portion to its Federal account. Levin funds may also be used for non-Federal purposes permissible under State law. See 11 CFR 300.30(b)(3).

Sections 300.33(a)(1) and (2) of the proposed regulations, which addressed allocation of the costs of salaries and other compensation paid employees who spend less than 25% of their time in connection with Federal elections and of other administrative costs, have been moved to 11 CFR 106.7 because they are not costs of Federal election activities.

In the final rules, section 300.33(a) addresses costs than may be allocated between Federal and Levin funds. Sections (a)(1) and (a)(2) represent a division of the proposed rule into two parts, the first addressing voter registration within 120 days of the date of an election and the second the costs of voter identification, GOTV, and generic campaign activities occurring within certain time periods. The relevant time periods for the latter categories of activity are set out at 11 CFR 100.24(a)(1). All of these expenditures and disbursements for the activities addressed in these sections must be allocated only between Federal funds and Levin funds if not paid entirely with Federal funds.

Section 300.33(b) sets out fixed minimum amounts of Federal funds to be required for the Federal portions of costs of the specified activities for which the use of Levin funds is also permitted. One goal of the allocation regulations is to assure that activities deemed allocable are not paid for with a disproportionate amount of Levin funds. Another goal is to simplify the allocation process, in particular by establishing formulas that do not vary from State to State and that do not require measurements of

time or space. Therefore, in lieu of the State-by-State ballot composition ratios for generic campaign activity and in lieu of the time or space method applied to exempt State party activities in the pre-BCRA regulations, the new rules establish a fixed formula for all States that would vary only in terms of whether or not a Presidential campaign and/or a Senate campaign is to be held in a particular election year.

In the NPRM, at proposed 11 CFR 300.33(b)(3), the Commission set out allocation percentages for the Federal shares of activities allocable in part to Levin funds. The Federal percentages were as follows:

(i) Presidential only election year – 28% of costs

(ii) Presidential and Senate election year – 36% of costs

(iii) Senate only election year – 21% of costs

(iv) Non-Presidential and Non-Senate election year – 15% of costs.

As with the percentages used in 11 CFR 106.7 for the allocation of activities that are not Federal election activities, the percentages for those Federal election activities that may be paid for in part with Levin funds were derived by taking averages of the ballot composition-based allocation percentages reported by State party committees in four groupings of States selected for their diversities of size and geographic location and for the particular elections held in each State in 2000 and 2002. The groupings were: (1) six States (Alabama, Colorado, Illinois, New Hampshire, Oklahoma, and Oregon) in which there was a Presidential but no Senate campaign in 2000; (2) ten States (California, Delaware, Georgia, Florida, Michigan, New York, North Dakota, Texas, Vermont, and Wyoming) in which there were both a Presidential campaign and a Senate campaign in 2000; (3) six States (Delaware, Georgia, Michigan, Oklahoma, Texas, and Wyoming) in

which there will be a Senate campaign in 2002; and (4) six States (California, Florida, New York, North Dakota, Vermont, and Washington) in which there will be no Senate campaign in 2002.

In 2000, the Federal percentages for the two parties in six States with only a Presidential campaign ranged from 20% to 33.33%, with an average of 28%, while the Federal percentages for the two parties in ten States which held both Presidential and Senate campaign that year ranged from 30% to 43%, with an average of 36%. In 2002, the Federal percentages for the two parties in six States with a Senate campaign ranged from 20% to 25%, with an average of 21%, while the Federal percentages for the two parties in six States with no Senate campaign ranged from 11.11% to 16.67, with an average of 15%. The rules apply the average percentages in each of the four groupings of States to all 50 States.

As discussed in the Explanation and Justification for 11 CFR 106.5 (now 11 CFR 106.7), one comment to the NPRM from a public interest organization addressed the Commission's proposed fixed percentages by providing two alternatives to the Commission's figures. The first alternative would have set a flat 33% requirement for Federal shares of what the response termed "Levin expenditures" and for allocable costs other than administrative costs in odd-numbered years or in non-Presidential election years, and a flat 40% requirement for Federal shares of these same categories of activities in Presidential election years. The commenter based these percentages on what was termed "the current assumption" as to what State party committees spend in certain years.

The second alternative in this same comment adopted the Commission's calculations, but called for the use of the higher percentages in the sample States for what

the response termed "Levin spending" and for voter registration outside the 120 day period before an election, plus the average percentages for certain non-Levin expenses. The comment also urged the Commission to apply the allocation percentages apply to a two-year election cycle, not just to the year of a Federal election.

The comment submitted on behalf of the sponsors of BCRA with regard to fixed allocation percentages was very similar to that of the public interest organization's response cited above in that, as one alternative approach, it called for at least a 33% Federal allocation of what it termed "Levin activities" and of voter registration activities outside the 120 period before an election. It also called for 40% Federal allocations of Levin and of voter registration activities that are not Federal election activities in Presidential election years. This alternative urged the application of the percentages to two-year Federal election cycles. As a second alternative, this commenter also agreed to use of the Commission's percentages for administrative costs in a two year cycle, but urged the application over that cycle of the highest, not the average, Federal percentages for what it termed "Levin activities" and voter registration activities that are not 'Federal election activity'. . . ." Another comment from a public interest organization also called for use of the highest percentages in the identified States, not the average percentages.

Comments on the NPRM received from party committees with regard to fixed percentages for Federal allocations ranged from support for the Commission's position to giving party committees a choice at the beginning of each cycle between the proposed formula and ballot composition ratios.

The final rules at 11 CFR 300.33(b) contain additional language to clarify that these allocation percentages must be used for activities that occur within the time periods

described in 11 CFR 100.24 which set time parameters as to when specific activities are treated as "Federal election activity" under BCRA. This revision conforms to the reference in 11 CFR 300.33(a)(2) to 11 CFR 100.24. These times differ between voter registration on the one hand and voter identification, GOTV, and generic campaign activities on the other, with the latter being deemed "Federal election activities" between January 1 and December 31 of an even numbered year. Thus, the flat two-year cycle approach urged by some commenters has not been applied to activities that may be paid in part with Levin funds.

With regard to the amounts of the fixed minimum Federal allocations, the Commission has retained the percentages contained in the NPRM because they represent averages of actual allocation ratios used in specific States at specific times, not assumptions of State, district, and local party behavior. The Explanation and Justification for 11 CFR 106.7 explains the reasoning for this approach in greater detail.

Section 300.33(c)(1) and (2) sets out the categories of Federal election activity costs that must not be allocated between Federal funds and Levin funds. These include the costs of public communications as defined at 11 CFR 100.26 and the costs of salaries and other compensation, including benefits, for employees that spend more than 25% of their compensated time in a month on activities in connection with a Federal election. The approach taken here is explained more fully in the Explanation and Justification for 11 CFR 106.7.

Section 300.33(c)(3) requires that the direct costs of raising funds for Federal election activities be paid solely from the party committee's Federal funds, pursuant to 2 U.S.C. 441i(e). The limitation to direct costs tracks the same limitation in 11 CFR 106.7.

(See the accompanying Explanation and Justification for 11 CFR 106.7 for a discussion of comments received in this regard.) The proposed rules had indicated that non-Federal funds could be used in certain limited fundraising situations involving non-Federal activity. This language has been deleted from the final rules for the reasons explained in the accompanying Explanation and Justification for 11 CFR 106.7. This deletion from section 300.33(c)(3) is consistent with the revisions to 11 CFR 106.7.

Section 300.33(d) addresses transfers from a party committee's Levin account to its Federal account, or to an allocation account, to meet the Levin fund portion of the costs of allocable expenditures made pursuant to 2 U.S.C. 441i(b)(2). The final rule largely tracks pre-BCRA 11 CFR 106.5(g), by requiring that reimbursements from a Levin account to a Federal account take place within a specified number of days, unless a vendor requires an advance payment and the payment is based upon a reasonable estimate of the costs involved. The regulation also continues the pre-BCRA rules' statement at former 11 CFR 106.5(g)(2)(B)(iii) that any payment outside this time frame, absent the need for a advance payment of a reasonably estimated amount, results in the presumption of a loan to the Federal account and a violation of the Act. No commenters addressed this provision.

11 CFR 300.34. Transfers

As explained above, the Levin Amendment permits spending on certain Federal election activities subject to restrictions and conditions, one of which is that the spending must be allocated between Levin funds and Federal funds. 2 U.S.C. 441i(b)(2)(A)(i), (ii). A State, district, or local committee must raise by itself all money spent under the Levin

Amendment. 2 U.S.C. 441i(b)(2)(B)(iv). Congress expressly stated that a State, district, or local committee must not use as Levin funds "any funds provided to such committee" by certain enumerated entities. These entities are: Any other State, district, or local committee; any national political party committee; any agent of a political party committee; and any entity directly or indirectly established, financed, maintained, or controlled by a political party committee. 2 U.S.C. 441i(b)(2)(B)(iv)(I) through (IV). By the plain language of these provisions, these restrictions extend to the Federal funds component of the expenditure or disbursement allocated between Levin funds and Federal funds. See 148 Cong. Rec. H410 (daily ed. February 13, 2002) (Rep. Shays).

This provision of the Levin Amendment could cause confusion given the pre-existing rule that party committees of the same political party may transfer Federal funds among themselves without limit on amount. See 11 CFR 102.6(a)(1)(ii).[7] Paragraph (a) of section 300.34 makes clear that 11 CFR 102.6(a)(1)(ii) does not override the Levin Amendment as to transfers of Federal funds. Specifically, the committee must not use such transferred Federal funds to pay the Federal portion of Federal election activity. A State party committee and an association of State party officials commented that this provision about transferred Federal funds should apply only to transferred Federal funds "earmarked" for spending under the Levin Amendment by the transferring committee. The Commission has not adopted this suggestion in the final rules. Congress, at 2 U.S.C. 441i(b)(2)(B)(iv), specifically bars a State, district, or local committee spending Federal

[7] The Commission emphasizes that revisions to section 102.6(a) regarding transfers may be forthcoming in a future rulemaking to implement changes to 2 U.S.C. 441a(d) made by BCRA. The present discussion and this rulemaking extend only to Title I of BCRA. Pub L. 107-155, March 27, 2002.

funds (and Levin funds) for Federal election activity from using transferred funds. How a transferring committee may or may not characterize the transfer is irrelevant to this prohibition.

In response to the NPRM, a public interest group noted that a State, district, or local political party committee's Federal account may commingle Federal funds raised by the committee itself, which are eligible for spending for Federal election activities, and transferred Federal funds, which are not so eligible. This commenter suggested that the Commission should require party committees to use "a reasonable and industry-accepted accounting method" to ensure that they have sufficient self-raised, non-transferred Federal funds to cover expenditures for Federal election activities as the expenditures are made. The Commission has adopted this suggestion in the final rules. Paragraph (a) of section 300.34 is organized into two paragraphs. Paragraph (a)(1) contains the language published in the NPRM, without change. Paragraph (a)(2) provides that a State, district, or local political party committee must demonstrate that its Federal account has sufficient Federal funds raised by the committee itself to make a given expenditure of Federal funds for Federal election activity. Paragraph (a)(2) prescribes that the accounting method must use general ledger accounts, and that it must be able to segregate Federal funds eligible for expenditure for Federal election activity. Paragraph (a)(2) alternatively permits, but does not require, a State, district, or local political party committee to established a separate Federal account to use for spending on Federal election activities, and into which it deposits only Federal funds it has raised by itself.

The principal Congressional sponsors of BCRA commented that 11 CFR 300.34 should not be interpreted to forbid a State, district, or local political party committee from

using Federal funds raised lawfully on its behalf by a Federal or State candidate or officeholder as long as the funds are contributed directly to the party committee. The Commission agrees with the sponsors' interpretation, and emphasizes that 11 CFR 300.34 applies to transfers of funds from the persons described in paragraphs (b)(1) and (b)(2).

The final sentence of paragraph (a)(1) states as a positive requirement that a State, district, or local political party committee that spends Levin funds must raise the Federal funds component of those funds by itself. As already mentioned above, the Levin Amendment imposes this fundraising requirement. 2 U.S.C. 441i(b)(2)(B)(iv).

The Levin Amendment specifically forbids particular transfers of Levin funds; that is, a State, district, or local party committee may not use as Levin funds any funds transferred to it by certain persons. 2 U.S.C. 441i(b)(2)(B)(iv)(I) through (IV). 11 CFR 300.34(b)(1) and (b)(2) implement these transfer prohibitions by expressly identifying these persons to, and from, which transfers must not be made.

Paragraph (c) of section 300.34 cross-refers to 11 CFR 300.33, in which are the rules for allocation transfers between the accounts of a given State, district, or local political party committee.

11 CFR 300.35 Office Buildings

BCRA repealed 2 U.S.C. 431(8)(B)(viii), which had exempted from the definition of contribution any donation of money or anything of value, or loan, to a national or State party committee that is specifically designated to "defray any cost for construction or purchase of any office facility not acquired for the purpose of influencing the election of

any candidate in any particular election for Federal office." In subsequent technical amendments, however, Congress enacted 2 U.S.C. 453(b), which states: "Notwithstanding any other provision of this Act, a State or local committee of a political party may, subject to State law, use exclusively funds that are not subject to the prohibitions, limitations, and reporting requirements of the Act for the purchase or construction of an office building for such State or local committee." 2 U.S.C. 453(b).

New section 300.35 addresses five areas in implementing 2 U.S.C. 453(b). Paragraphs (a) and (b) provide for the application of State law to the source and use of funds, and provide that generally Federal law will not preempt the application of State law. Paragraph (c) explains the meaning of "purchase or construction of a party office building." Paragraph (d) provides that, if the funds are not used for the purpose as defined in paragraph (c), they are to be treated as disbursements for other purposes and Federal law applies. Paragraph (e) specifically allows a party committee to lease space in its office building to others and places conditions on the revenues. Finally, paragraph (f) addresses the transitional requirements for the current State party office facility funds established under the repealed statutory section.

A. Application of State Law

A principal sponsor of the technical amendments described the party office building provision as "[r]especting the primacy of State law in financing State and local party buildings." 148 Cong. Rec. S2339 (daily ed. March 22, 2002) (statement of Sen. McConnell). A principal sponsor of BCRA described the proposal as providing that Federal law would no longer allow a State or local party committee to receive non-Federal donations to purchase or construct an office building where such donations

violated State law, that State law governs the receipt and disbursement of non-Federal donations used by State or local parties for such purposes, and that there is no "required match consisting of Federal contributions." 148 Cong. Rec. S2143-2144 (daily ed. March 20, 2002) (statement of Sen. Feingold).

Paragraph (a) of the proposed section 300.35 in the NPRM set out the basic provision that funds raised outside the limits and prohibitions of the Act may be used, and that State law would govern whether they may be raised and used for the purchase or construction of a State or local party office building. Proposed paragraph (a) also incorporated language from the repealed statute and deleted regulations to the effect that the exemptions from Federal limits and prohibitions are premised on the idea that the building is not purchased or constructed for the purpose of any particular Federal candidacy. The building is being purchased or constructed for the functioning of the party, which entails the support of most or all of the party's candidates over a number of years; this concept did not change with the repeal of 2 U.S.C. 431(8)(B)(viii) and the enactment of 2 U.S.C. 453(b). The purchase or construction of the building to assist the campaign of a particular Federal candidate would entail the use of impermissible funds in a manner contrary to the basic purpose of the Federal law.

Proposed paragraph (b) in the NPRM explained the coverage of State law. Proposed paragraph (b)(1) provided that, with respect to a non-Federal account, Federal law will not preempt State law as to the source of funds used, the permissibility of the disbursements, or the reporting of the receipt and disbursement of such funds, except where the funding does not fit the definition of the purchase or construction of an office building and would be another type of disbursement. Commission advisory opinions

have addressed the question of whether the repealed contribution exemption, which permitted donations to a building fund from such Federally impermissible sources as corporations, preempted State law prohibitions on the use of such funds for campaign purposes. Advisory Opinions 2001-12, 1998-8, 1998-7, 1997-14, 1993-9, 1991-5, and 1986-40. The Commission stated in these opinions that Congress decided not to place restrictions on the subject even though it could have determined that the purchase of the facility was for the purpose of influencing a Federal election, that Congress took the affirmative step of deleting the receipt and disbursement of funds for such activity from the proscriptions of the Act, and that there was no indication that Congress intended to limit the preemptive effect to some allocable portion of the purchase costs. New section 300.35 supersedes these Commission advisory opinions to the extent that they pertain to Federal preemption with respect to the purchase or construction of an office building. For example, corporate donations and donations that are excessive under Federal law may be used for the purchase or construction of a State party office building where State law permits (and this has been expanded to local party office buildings), but if State law forbids corporate donations and donations in excess of a particular amount, Federal law does not preempt that law and such donations must not be made or used for that purpose.

Proposed paragraph (b)(2) provided that funds contributed to a Federal account that are then used to purchase or construct a State or local party office building must still comply with the limits and prohibitions of the Act. The committee's reports filed with the Commission would disclose the Federal account's receipts and disbursements that were used for the building purchase or construction as contributions received and disbursements made. Although proposed paragraph (b)(2) addressed the use of Federal

account funds, State law is the primary determinant as to the financing of these buildings and still controls whether such funds may be used. Thus, the Federal law does not preempt a State's attempt to determine, using a reasonable accounting method, whether the Federal account funds used for the purchase or construction originated from contributions that are impermissible or excessive under State law. Consistent with this State coverage, a State may require the committees to file reports disclosing the Federal account's receipts and disbursements of funds used for the building purchase or construction. This does not entail a replication of the Federal reports; it merely entails the disbursements for the activity covered by this section and the contributions that, under a reasonable accounting method, are the source of such disbursements.

Although receipts and disbursements from the non-Federal accounts must be in compliance with State law, and both Federal and State law apply to the permissibility of receipts and disbursements from the Federal account, section 300.35 does not contemplate that the Commission could file an enforcement action against a party committee for violating State law. Such an action, which would interpret and apply State law, is the State's responsibility. Moreover, although section 300.35 does not require the establishment of a separate bank account or book account for the receipt and disbursement of funds for purchase or construction of the office building, Federal law does not preempt a State law requirement to establish such an account.

Under proposed paragraph (b)(3), the NPRM provided that Levin funds could be used for the purchase or construction of an office building provided that State law permits the use of such funds.

Several commenters remarked on the provisions in paragraphs (a) and (b) relating to the application of State law. Two commenters representing party committees expressed concern about the provision that, with respect to the use of Federal account funds, Federal law would not supersede a State law that would further limit or prohibit contributions. They stated that this could conceivably prevent a party committee from using 100 percent Federal funds to pay for a building. They asserted that there is no support in the BCRA legislative history for this proposition, and that BCRA's intent was simply to allow State and local parties to pay for their buildings entirely with non-Federal funds and would not require them to use non-Federal funds.

The new regulation, however, draws upon the intent of new 2 U.S.C. 453(b), which Senator McConnell characterized as "respecting the primacy of State law in financing State and local party buildings." 148 Cong. Rec. S2339 (daily ed. March 22, 2002) (statement of Sen. McConnell). If State law is to have primacy (other than funds from foreign nationals which are discussed below and cannot be donated for Federal or non-Federal election purposes), then a State agency enforcing State law must be able to determine whether funds are permissable under State law to pay for the building.

Three comments, including one from the four principal sponsors of BCRA, stated that the provisions regarding application of State law should not be read to allow for the use of contributions or donations by foreign nationals to pay for the purchase or construction of the party office buildings. They stated that BCRA was not intended to allow for such funds to be used. Two of those commenters recommended that these rules should make this prohibition clear.

The final rules in paragraphs (a) and (b) incorporate a prohibition against the use of contributions or donations from foreign nationals for the purchase or construction of an office building. The prohibition at 2 U.S.C. 441e, is so sweeping and explicit (including an explicit prohibition of donations "to a committee of a political party") that it would be difficult to read the intent of BCRA as allowing for the use of such funds by a party committee for those activities. One of BCRA's principal sponsors stated that BCRA "prohibits foreign nationals from making any contribution to a committee of a political party or any contribution in connection with federal, state or local elections . . . This clarifies that the ban on contributions [by] foreign nationals applies to soft money donations." 148 Cong. Rec. S1994 (daily ed. March 18, 2002) (statement of Senator Feingold). See also United States v. Kanachanalak, 192 F.3d 1037 (D.C. Cir. 1999). This ban also applies to any in-kind contribution or donation by a foreign national such as a direct payment to a seller, builder, or other vendor for purchase or construction.

B. Technical Changes

Paragraphs (a) and (b) of the final rules state more clearly that the pertinent funds include funds that are in the accounts but were not received specifically for the purchase or construction, as well as funds specifically received for that purpose.

In addition, the sentence in paragraph (a) discussing the application of State law is changed to conform to other parts of the regulation emphasizing that this exemption is meant to apply only to a State or local committee paying for its own building. In paragraph (b), the reference to the paragraphs on State law is corrected to refer to paragraphs (b)(1), (2), and (3).

Another technical change occurs in paragraph (b)(3). The proposed rule stated that Federal law does not preempt any State law "that purports to prohibit or limit the source of funds..." This is meant to apply to State laws that contain additional prohibitions or lower limits on contributions and is not meant to allow the use of contributions not in compliance with the Act. Hence, the phrase is being changed to "that establishes additional prohibitions or limitations as to the source of funds."

C. Definition of "purchase or construction of an office building"

Paragraph (c) of section 300.35 defines three terms: office building, purchase, and construction.

1. Office Building

Section 453(b) of the FECA refers to the purchase or construction of an "office building" rather than an "office facility" as found in repealed 2 U.S.C. 431(8)(b)(viii). The term "building" is a narrower term that indicates a more restricted range of covered expenses. In recent advisory opinions applying the repealed section, the Commission has stated that expenses that would be considered capital expenditures under the Internal Revenue Code would be payable from the building fund. See Advisory Opinions 2001-12, 2001-01, and 1998-7; see also 26 CFR 1.263(a)-(1) and 1.263(a)-(2). This has been interpreted by some to mean that the building fund may pay for the purchase of office machinery, equipment, and furniture. See Advisory Opinion 2001-12. (In addition, others may have interpreted the exemption to be this broad regardless of any Commission interpretation.) The new rule at section 300.35(c) construes the use of the term "building" instead of "facility" as a basis for ensuring that this proposed section would

not include what are more appropriately administrative expenses for the operation of the party, rather than the purchase or construction of an office building.

Specifically, proposed paragraph (c)(1) stated that items such as office equipment, machinery, and furniture would not be considered a part of the building and that the exemption afforded by this section would not extend to such payments. As indicated in paragraph (d) (discussed below), such payments are instead allocable administrative expenses. The definition of "building" extends only to the building itself and accompanying land, but this definition is not meant to exclude a portion of the building, such as an office suite or one or more floors of a building, that a committee may purchase instead of an entire building. Although structural components and certain other fixtures, as described in proposed paragraph (c)(1), do not by themselves constitute a building, they are addressed by the new rules to provide guidance as to what is part of the building's structure, as distinguished from office equipment and machinery and similar items. The term "structural component" is derived from the tax regulations, at 26 CFR 1.48-1; it applies to such features as interior walls, floors, ceilings, windows, doors, stairwells and elevators, central air conditioning or heating systems, sprinkler systems, plumbing and plumbing fixtures, and electrical and data transmission wiring and lighting fixtures. There may be other fixtures that are not strictly "structural components" that are essential to the operation or appearance of the building. (See the discussion below as to when the installation of a significant number of structural components as part of a major restoration or renovation will qualify as construction of an office building.)

One particularly relevant illustration of the distinction between a structural component and an item that would not be part of the building pertains to audio-visual

production facilities. Although a studio with special lighting, acoustical paneling, and special wiring in the walls may be built during the general construction of the building and would be considered part of the building, equipment such as recording equipment and cameras that are placed in the studio would not be part of the building's structure for the purposes of the new rules.

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

Three commenters representing party committees asserted that BCRA did not intend the change in terminology from "facility" to "building" to represent a change in the expenses covered by the exemption. One commenter noted that the McCain-Feingold bill as passed by the Senate in 2001 eliminated the building fund exemption for national and State parties and also provided that "Federal election activity" would specifically not include "the cost of constructing or purchasing an office facility or equipment for a State, district, or local committee." An amendment adopted by the House eliminated a transition provision allowing national party committees to spend building fund donations raised prior to the effective date of the new law, and that amendment also eliminated the language as to the purchase of an office facility or equipment. The commenter characterized the technical amendment now in effect as merely a restoration of the deleted provision on the State and local office facility or equipment, noting that one of BCRA's principal sponsors characterized this as a non-substantive amendment.

One of the party committee commenters urged the Commission to continue to use principles from the Internal Revenue Code "such that capital expenditures would be allowed from the building fund (subject to state law) and ongoing expenses would not." Two of the party committee commenters maintained that the question of narrowing the definition is a moot point because they believe that if certain costs were not deemed to be within the definition, they would be classified as administrative costs and payable with 100% non-Federal funds.

In contrast, three comments, including one from the principal sponsors, maintained that the change from "facility" to "building" indicated a Congressional intent to narrow the scope of the exemption and that items such as office equipment, machinery, or furniture should not be included within the exemption. They agreed with proposed paragraph (c)(1). The sponsors also stated that it was their intent that administrative expenses related to office buildings should be allocable between Federal and non-Federal accounts or Federal and Levin accounts.

The final rule retains the definition of "office building" set out in the NPRM at paragraph (c)(1). The Commission notes that, even though a provision excluding "purchasing or constructing an office facility or equipment" from the definition of "Federal election activity" was deleted, the addition, via the technical amendments of the language in 2 U.S.C. 453(b), was not a mere restoration of the deleted language. It is difficult to consider the use of the phrase "office building," instead of "office facility or equipment" as merely inadvertent in view of the then extant, and still ongoing, controversy as to the definitional issue resulting from previous Commission interpretations. Moreover, the transition provision in section 402(b)(2)(B)(iii) of BCRA

makes a distinction as to the extent of the exemption under the pre-BCRA office facility provision as opposed to the new BCRA office building provision. Specifically, in the transition provision introduced along with section 453(b) as part of the technical amendments, Congress provided that a national party committee may not use non-Federal funds "for activities to defray the costs of the construction or purchase of any office building or facility." The use of the term "office building or facility" reflected the perceived current state of the law as to the exemption, which ceases to exist for national parties on November 6, 2002. In the same set of amendments, Congress created a prospective exemption for district and local parties, as well as the State parties (which had had the benefit of the pre-November 6 exemption), but used different and decidedly narrower terminology to do so when it employed the term "office building."

2. Use of the Office Building

Proposed paragraph (c)(1) also referred to the purpose of the party's use of the building, which is solely for its own party administration and election campaign support purposes. A party office building does not include floors or offices within the building or portions of the underlying land that are not used, or set aside for use, for party committee purposes. A party would, however, be able to purchase a portion of a building such as a floor or suite to be its office building. The final rule at paragraph (c)(1) remains unchanged with respect to the use of the building, although this point is modified as it pertains to the leasing of space in the building to others, as described below.

3. Purchase or Construction

"Purchase" was defined in the NPRM at paragraph (c)(2) as any payment to acquire sole legal title to the building, including fees directly related to the acquisition of

the building, such as sales commissions and real estate closing or settlement fees. The NPRM also made clear that the payment to acquire the sole legal title also includes down payments and mortgage payments. The proposed paragraph also drew from advisory opinions that limited the kinds of payments that would fall within the repealed exception. These opinions excluded payments for ongoing "operating expenses" such as property taxes and assessments (Advisory Opinion 1983-8) or administrative expenses such as rent, building maintenance, utilities, and "office equipment expenses." Advisory Opinions 2001-12, 2001-01 and 1988-12.

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

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

Example B -- A single large scale project (with a specific time deadline) entailing the replacement of a number of various structural components throughout the building to improve the building's habitability and function; for example, expanding, contracting, or

altering the configuration of a significant number of rooms within the building coupled with replacements of a significant number of other structural components throughout the building such as installation of new electrical wiring throughout the building, and new climate control and plumbing systems would also constitute "construction."

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

The NPRM asked whether more examples should be included in the particular sub-definitions, such as purchase or construction, or whether the advisory opinion process would best suit that purpose. The Commission also inquired as to what constitutes the purchase or construction of an office building. Specifically, it asked whether payments for a long-term lease with an option to purchase the rented building should be included within the definition of purchase. One commenter stated that, to avoid abuses, the Commission should establish a bright line rule that treats purchases as falling within the exemption and leases as administrative expenses.

The Commission believes that it is preferable to rely on the plain language of BCRA, which uses the term "purchase." In past interpretations, the Commission has distinguished between the purchase and leasing of an office facility, concluding that the exemption did not apply to leasing. See Advisory Opinions 2001-12 and 1988-12. The Commission understands that there may be a variety of purchase arrangements; however, in view of the distinction between purchase and rental established in the opinions and in the absence of further details as to any particular purchase arrangements, paragraph (c)(2)

of the final rules follows the proposed rules. In addition, paragraph (e)(3) of the final rules, defining "construction," also remains unchanged from the proposed rules.

D. Office Building-Related Expenses Not Qualifying Under Proposed Paragraph (e)

In the NPRM, proposed paragraph (d) stated that if funds raised by a State or local party committee are used for office building expenses and the expense does not fall within the definitions in paragraph (e) for the purchase or construction of an office building, the expense would be an allocable administrative expense under section 300.33, unless it falls within another category, such as support for a Federal or non-Federal candidate. If allocable, a sufficient amount of Federal account funds would have to be used for the expense.

The NPRM asked whether the proposed section on allocable party expenses (now at 11 CFR 106.7) should require the allocation of administrative costs. As indicated above, several party committees asserted, with respect to the office buildings, that the administrative costs should be payable entirely with non-Federal funds. For the reasons stated above in the Explanation and Justification for section 106.7, the final rule at paragraph (d) treats such costs as allocable.

E. Leasing a Portion of the Office Building to Others

The Commission requested comments on whether a party would also be able to purchase an entire building and lease space in the building to others at fair market rates in order to generate income. The Commission also sought comments on whether the sources of the funds used to purchase or construct the office building should govern or guide the Commission in the determination of the lawful uses of such income.

One commenter, speaking on behalf of party committees, stated that party committees should be permitted to rent space in their office buildings to State and local candidates regardless of the source of funds used to purchase the buildings. The comment from the principal sponsors of BCRA stated that BCRA permits the party committee to generate income by leasing parts of its building and describes how to determine whether the funds may be deposited in a Federal or non-Federal account. Specifically, a purchase in whole or on part with non-Federal funds would require the deposit of rental income into the non-Federal account to be used only for non-Federal purposes. Rental income generated from a building purchased solely with Federal funds may be deposited in the committee's Federal account only if all the revenues collected comply with the limitations, prohibitions, and reporting requirements of the Act.

The Commission has incorporated the approach of the sponsors in the final rule at paragraph (e). Consistent with the jurisdiction of State law over non-Federal accounts, the rule provides that the revenue received by the non-Federal account must comply with State law. The Commission also notes its treatment of the rental income if it is deposited in the Federal account. Unless excepted through the advisory opinion process with respect to specific types of assets or particular circumstances, the purchase or rental of a committee asset has been determined to be a contribution in accordance with 11 CFR 100.7(a)(2). In this circumstance, the Commission will normally consider the rental income to be an "other receipt," and reportable as such, and not a contribution. If, however, the office space is rented at a rate in excess of the usual and normal charge, the amount in excess will be a contribution to the committee and reportable as such.

F. Transitional Provisions for State Party Building or Facility Account

Proposed paragraph (f) (which was (e) in the NPRM) provided that, up to and including November 5, 2002, the funds in a State party office facility account may be used only for the purchase or construction of a State party office facility. Starting on November 6, those funds, if used for the purchase or construction of the office building, would be subject to the provisions of paragraphs (a) through (e) of section 300.35 (including a State law determination that they may not be used for such purpose). The proposed rule also stated that the funds may not be used for Federal account or Levin account purposes but may be used for any non-Federal purposes permitted by State law.

Two commenters from the party committees criticized the transitional provisions, stating that unlike the national party building and facility fund transition provisions in BCRA, there is no BCRA provision covering the spending of funds by the already existing State party office facility fund. One of those commenters criticized the State law limitation on the use of the funds in the pre-existing office facility account for non-Federal purposes. The regulation was written to conform the treatment of those funds with BCRA and still allow their use for election purposes. As unlimited non-Federal funds, they could not be used for Federal account or Levin account purposes. As such, however, they may be used for non-Federal purposes, and the Commission also acknowledges the control by State law over such uses. Thus, paragraph (f) remains unchanged from the proposed rule.

11 CFR 300.36 Reporting Federal Election Activity; Recordkeeping

BCRA establishes certain reporting requirements for State, district, and local committees that finance Federal election activities. See 2 U.S.C. 434(e)(2). This

requirement extends generally to all receipts and disbursements for Federal election activities if the aggregate amount of receipts and disbursements for such activity is $5,000 or more per calendar year, 2 U.S.C. 434(e)(2)(A), and specifically extends to receipts and disbursements of Levin funds. 2 U.S.C. 434(e)(2)(B). These requirements added by BCRA are in addition to the existing FECA requirements to report expenditures of Federal funds under 2 U.S.C. 434. See also 11 CFR part 104. Because spending under the Levin Amendment may be allocated between Federal funds and non-Federal funds not otherwise subject to the Act's prohibitions, limitation, and reporting requirements (i.e., Levin funds), Congress has specifically required Federal disclosure of certain non-Federal receipts and disbursements of State, district, and local committees (i.e., the Levin funds).

Paragraph (a) of new section 300.36 applies to two types of entities. The first is a State, district, and local political party committee that has not qualified as political committees under 11 CFR 100.5. The second is an association or similar group of candidate for State or local office or of individuals holding State or local office (see 2 U.S.C. 441i(b)(1)) that has not qualified as a political committee under 11 CFR 100.5. In the NPRM, the Commission sought comments as to what, if any, reporting requirements an association or similar group of candidates for, or holders of, State and local office may have under 2 U.S.C. 434(e)(2) if it is not a political committee. The Commission received one comment, from a public interest group, which suggested that the result should depend on whether the association or similar group has attained political committee status under 11 CFR 100.5. The Commission has concluded that such an association or similar group that has not qualified as a political committee has no

reporting requirements under 2 U.S.C. 434(e)(2) because that section, by its own terms, applies to "political committees." The Commission further concludes such an association or similar group is in a position analogous to a political party organization that is not a political committee under 11 CFR 100.5 to the extent both engage in Federal election activity. Therefore, in the final rules, such an association or similar group that has not qualified as a political committee under 11 CFR 100.5 must comply with paragraph (a) of section 300.36.

Paragraph (a) recognizes that neither type of organization has reporting requirements under BCRA because it is not a political committee. See 2 U.S.C. 434(e)(2). Under paragraph (a)(1), both types of organizations must demonstrate that they have sufficient Federal funds on hand to pay the required Federal portion of the costs of Federal election activity under 11 CFR 300.32 and 300.33. Paragraph (a)(1) describes the type of accounting methodology required to make this demonstration. Paragraph (a)(1) also requires each type of organization to keep records of Federal receipts and disbursements and to make those records available to the Commission upon request. A State party committee and an association of State party officials commented in support of paragraph (a)(1), to the extent that it applies to political party committees.

Paragraph (a)(2) clarifies that a payment of Federal funds for the costs of Federal election activity, or for the Federally allocated portion of the costs of Federal election activity, constitutes an expenditure, within the meaning of 11 CFR 100.8, unless an exclusion from the definition of expenditure in 11 CFR 100.8(b) applies. Thus, such payments constitute expenditures for purposes of determining whether or not a State, district, or local political party committee, or an association or similar group of candidate

for State or local office or of individuals holding State or local office, becomes a political committee, under 11 CFR 100.5. Paragraph (a)(2) also states that a payment of Federal funds for the costs of Federal election activity, or for the Federally allocated portion of the costs of Federal election activity, that meets the definition of "exempt activities" (see 11 CFR 100.8(b)(10), (16), and (18)) is to be treated as a payment for exempt activities.

A national party committee commented in opposition to paragraph (a)(2). This commenter objected to characterizing a payment of Federal funds for Federal election activity as an expenditure "even if such activity does not reference any Federal candidate." A State party committee and an association of State party officials made very similar comments, citing Advisory Opinion 1999-4. The State party committee characterizes this advisory opinion as "rul[ing] that only disbursements that influence a specific Federal election count towards the dollar thresholds in [11 CFR 100.5(c)]." The State party committee's primary concern is that "thousands" of local and district committees not currently required to register and file reports with the Commission will be required to do so. One of the commenters stated that the Commission has "effectively acknowledged" in paragraph (a)(1) of section 300.36 that "Congress did not intend first-dollar disclosure of" Federal election activity spending. Conversely, a public interest group commented in support of this paragraph.

Congress has defined Federal election activity to include activities that may or may not refer to a Federal candidate, see, e.g., 2 U.S.C. 431(20)(A)(ii) and (20)(B)(i), and Congress has required the expenditure of Federal funds to pay for these activities. 2 U.S.C. 441i(b)(1), (2). With regard to Advisory Opinion 1999-4, the Commission has concluded that the payments of Federal funds for Federal election activities do influence

"specific Federal elections" because the definitions of Federal election activity are tied to particular Federal elections. Each of the four categories of Federal election activity is framed in terms of a specific Federal election, 2 U.S.C. 431(20)(A)(i), (ii), and (iv), or a clearly identified Federal candidate, 2 U.S.C. 431(20)(A)(iii). Therefore, paragraph (a)(2) does not conflict with Advisory Opinion 1999-4. As to the comment that paragraph (a)(1) of this section "effectively acknowledges" that Congress did not intend "first-dollar" disclosure of Federal election activity spending, the Commission points out that paragraph (a)(1) applies to organizations that are not political committees under the Act, and thus have no reporting requirements under the Act. The Commission may not require "first-dollar" reporting from such organizations because it may not require reporting from them at all. Paragraph (b), on the other hand, applies to party committees that are political committees under the Act. As political committees, these entities covered by paragraph (b) must report all Federal receipts and disbursements from the "first dollar." 2 U.S.C. 434.

Paragraph (b) of section 300.36 applies to State, district, and local political party committees, and to an association or similar group of State and local candidates and officeholders, that disburse Federal funds for Federal election activities and that have qualified as political committees under 11 CFR 100.5. The heading of paragraph (b)(1) is revised from the version of the regulation published in the NPRM. The new heading makes clear that paragraph (b)(1) applies to State, district, and local political party committees that have qualified as political committees and that have less than $5,000 in total receipts and disbursements for Federal election activity (see 2 U.S.C. 434(c)(2)(A)), and to an association or similar group of candidate for State or local office or of

individuals holding State or local office at all times. Paragraph (b)(1) provides that such committees must report all receipts and disbursements of Federal funds for all or part of the costs of Federal election activity. Paragraph (b)(1) goes on to state that this requirement applies even if the committee has less than $5,000 of aggregate receipts and disbursements for Federal election activity. See 2 U.S.C. 434(e)(2)(A). A national party committee and a State party committee commented in opposition to the requirement of itemization of Federal receipts for Levin activity, because "Federal receipts will be used fungibly for multiple purposes." The Commission points out that Federal receipts are not fungible, as far as spending for Federal election activity goes, to the extent that receipts include transfers from other party committees. A State, district, or local committee must not use transferred funds for Federal election activity spending. 2 U.S.C. 441i(b)(2)(B)(iv). Moreover, Congress has specifically required itemization of these receipts. 2 U.S.C. 434(e)(3). Consequently, the final sentence of 11 CFR 300.36 (b)(1) provides that a disbursement of Federal funds for the costs of, or for the Federally allocated portion of the costs of, Federal election activity is reportable as an expenditure, unless an exclusion in 11 CFR 100.8(b) applies.

In the final rules, the Commission has corrected an inadvertent omission that appeared in the version of paragraph (b)(1) of section 300.36 published in the NPRM. The words "receipts and" have been inserted before the word "disbursement" in the second sentence. The preamble of 11 CFR 300.36(b)(1) correctly discussed the paragraph, referring to "receipts and disbursements." 67 Fed. Register at 35671. The Commission has also deleted an unnecessary and potentially confusing introductory clause in one of the sentences in this paragraph.

Paragraph (b)(2) implements the broader reporting provisions of 2 U.S.C. 434(e)(2)(A) and (B) with regard to State, district, and local political party committees. The heading of this paragraph has been revised from the version of the regulation published in the NPRM. The change is intended to make clear that this paragraph applies to State, district, and local political party committees that are political committees and that have $5,000 or more of total receipts and disbursements for Federal election activity. 2 U.S.C. 434(e)(2)(A), (B). Paragraph (b)(2) does not apply to an association or similar group of State and local candidates and officeholders that disburses Federal funds for Federal election activities because such groups are not authorized to raise and spend Levin funds, and thus may not allocate disbursements for Federal election activity between Federal funds and Levin funds. See 2 U.S.C. 441i(b)(2), which applies only to party committees. These committees always report under part 104 of Title 11 because they may have no Levin funds to report pursuant to paragraph (a), discussed above.

The first sentence of paragraph (b)(2) states the basic rule that all receipts and disbursements for Federal election activity must be reported if the political committee has an aggregate of $5,000 or more of such receipts and disbursements in a calendar year. The second sentence makes it clear that this basic reporting rule extends to the otherwise non-Federal funds spent for Federal election activity under the Levin Amendment (that is, to the Levin funds).

Paragraphs (b)(2)(i) through (iv) have been revised, or added, since the version of the regulation published in the NPRM. As published in the NPRM, the regulation would have referred the reader to 11 CFR 104.17(b) to identify important elements of

information that must be reported under this section 300.36. Instead, paragraphs (b)(2)(i) through (iv), as adopted in the final rules, state these requirements expressly, for the convenience of the reader. These requirements generally parallel the requirements adopted in 11 CFR 104.17(b) with certain modifications appropriate to the context of expenses allocated among Federal election activities.

Paragraph (b)(2)(i) pertains to disclosure of the methods State, district, or local committees use to report allocating expenses for Federal election activity between Federal funds and Levin funds. Paragraph (b)(2)(i)(A) of section 300.36 specifies that a committee must state the allocation percentages for Federal election activity disbursements that are used in its reports. This paragraph includes a specific cross-reference to 11 CFR 300.33(b), where these allocation percentages for Federal election activity are set out.

Paragraph (b)(2)(i)(B) of section 300.36 requires the committee to report which allocable category of Federal election activity a given allocated disbursement falls into. In paragraph (b)(2)(i)(B), the reference to allocable category of Federal election activity means the type of Federal election activity as defined in 11 CFR 100.24 (e.g., voter registration activity as defined in section 100.24(b)(1), or voter identification as defined in section 100.24(b)(2)(i)). Note that expenses for certain categories of Federal election activity are not allocable between Federal funds and Levin funds (e.g., public communications that promote or support, or attack or oppose, a clearly identified Federal candidate under 11 CFR 100.24(b)(3)). See 11 CFR 300.33(a).

Paragraph (b)(2)(ii) pertains to reporting of allocation transfers between a Levin account and Federal account, or among a Levin account, a Federal account and a

designated allocation account for allocated Federal election activity. All transfers related to a category of Federal election activity must identify that category. Paragraph (b)(2)(iii) specifies the elements of information that must be reported for an allocated disbursement for Federal election activity, including the name and address of the payee, the date of the payment, and the purpose of the payment. This paragraph also sets out itemization requirements for disbursements covering more than one program or activity. Paragraph (b)(2)(iv) covers itemization of disbursements of more than $200. 2 U.S.C. 434(c)(3).

Paragraph (b)(3) alerts the reader to the rules for reporting payments allocated between Federal funds and non-Federal funds that are not covered in paragraph (b)(2). As explained above, paragraph (b)(2) applies only to payments for Federal election activity allocated between Federal funds and Levin funds under 11 CFR 300.33. The reporting regulation for payments allocated between Federal funds and non-Federal funds are contained in 11 CFR 104.17. For example, section 104.17 addresses reporting of administrative expenses and salaries of employees who spend 25% of their time, or less, on Federal elections.

Paragraph (c)(1) implements BCRA's new requirement for monthly filing by party committees that come under new section 434(e) of the Act. 2 U.S.C. 434(e)(4). This is accomplished by referring to the Commission's existing regulation specifying monthly reporting, i.e., 11 CFR 104.5(c)(3).

In the NPRM, the Commission sought comments on the applicability of the $50,000 annual threshold for electronic filing to receipts and disbursements for Federal election activities. See 11 CFR 104.18. The Commission received two comments. An

association of State party officials opposed applying receipts and disbursements for Federal election activities toward the electronic filing threshold because these "will also be disclosed on the party committee's regularly filed reports." The Commission notes that this comment, while true, could be applied to any committee with regard to electronic filing. A public interest group commented that receipts and disbursements for Federal election activity should apply to the electronic filing threshold.

Consistent with 2 U.S.C. 434(a)(11), paragraph (c)(2) of section 300.36 provides that contributions and expenditures of Federal funds for Federal election activity apply to the $50,000 threshold for mandatory electronic filing. When determining whether a receipt of Federal funds for Federal election activities is a contribution, the Commission's regulation at 11 CFR 100.7, including the exclusions in paragraph (b) of that section, must be applied. Similarly, when determining whether a disbursement of Federal funds for Federal election activity is an expenditure, the Commission's regulation at 11 CFR 100.8, including the exclusions in paragraph (b) of that section, must be applied. The Commission discerns no reason why a contribution or expenditure should be treated differently for this purpose simply because it is related to a Federal election activity. The Commission emphasizes that this provision does not apply to receipts and disbursements of Levin funds for Federal election activity, and does not apply to receipts and disbursements that are not "contributions" or "expenditures" as defined by the FECA.

Finally, paragraph (d) of section 300.36 supports the disclosure provisions outlined above by adding a recordkeeping requirement. Paragraph (d) refers to the Commission's existing regulation on recordkeeping, 11 CFR 104.14. This requirement is

necessary to ensure that sufficient documentation exists to ensure compliance with the disclosure provisions of BCRA.

11 CFR 300.37 Prohibitions on Fundraising for and Donating to Certain Tax Exempt Organizations

BCRA prohibits State, district, and local party committees, their officers and agents acting on their behalf, and entities directly or indirectly established, maintained, financed, or controlled by them, from soliciting any funds for, or making or directing any donations to certain tax exempt organizations engaged in certain election-related activity. 2 U.S.C. 441i(d). Except as discussed below, the State party ban on fundraising for tax-exempt organizations at new 11 CFR 300.37 mirrors to the provision applicable to the prohibition on national party committee fundraising for these organizations at new 11 CFR 300.11. See Explanation and Justification for 11 CFR section 300.11 above for a discussion of comments received in response to specific questions raised in the NPRM.

Paragraph (a)(3) implements BCRA's prohibition on State party committee fundraising for, and donating to, a section 527 organization unless the organization is a "political committee," a State and local party committee, or an authorized committee of a State or local candidate. The NPRM asked whether the term "political committee" in 11 CFR 300.37 should mirror the definition of that term in 2 U.S.C. 431(4), which would encompass only organizations that make contributions to and expenditures on behalf of federal elections or whether it should be interpreted to encompass State-registered political committees that support only State and local candidates.

BCRA's cosponsors stated that "it would be in keeping with the intent of BCRA to carve out from the definition of 'political committee' a distinction that would permit State, district, and local party committees to make a non-federal donation" to a section 527 organization registered as a State political committee as long as the State committee does not make expenditures and disbursements in connection with a Federal election, including expenditures and disbursements for Federal election activity. Several party committee commenters and at least one public interest group agreed with this approach. Only one public interest commenter disagreed, stating that permitting State and local party committees to fundraise for, or donate to, State political committees "would be contrary to the letter and spirit of BCRA." None of the commenters addressed this provision in the context of the national party prohibition, perhaps because it was not specifically asked.

Accordingly, in the final rules, paragraph (a)(3) of section 300.11 has been amended so that it provides that, for the purposes of this paragraph only, "political committee" includes a State-registered political committee that supports only non-federal candidates and does not make expenditures or disbursements in connection with an election for Federal office, including expenditures and disbursements for Federal election activity. The Commission agrees with the sponsors and other commenters that with this change, 11 CFR 300.11(a)(3) does not contravene the major purpose of BCRA -- to prohibit non-federal funds from being used in connection with Federal elections. As long as the section 527 organization for which funds are being raised exclusively supports non-federal candidates and does not finance activities that could benefit federal

candidates, such as get-out-the-vote activities in connection with an election in which a Federal candidate appears on the ballot, BCRA's intent is preserved.

Because 11 CFR 300.37(a) permits state parties to solicit funds for, or donate funds to, Section 527 organizations that are state-registered political committees and that meet certain other requirements, paragraph (c) includes a safe harbor provision applicable to those organizations similar to the provision applicable to Section 501(c) organizations. Paragraph (c) contains the requirements of the certification required to satisfy the safe harbor.

Subpart C – Tax-exempt Organizations

For the convenience of readers interested in locating rules pertaining to fundraising and donations to tax-exempt organizations, subpart C of new part 300 combines in a single place the prohibitions on national, State, district, and local party committee donations to, and fundraising for, certain 501(c) and 527 tax-exempt organizations and the rules governing fundraising by Federal candidates and officeholders for 501(c) organizations.

The proposed rules for 11 CFR 300.50 (national party prohibition) and 11CFR 300.51 (party prohibition) were identical to proposed 11 CFR 300.11 (national party prohibition) and proposed 11 CFR 300.37 (party prohibition).

The final rules at 11 CFR 300.50 (national party prohibition) is identical to the final rule at 11 CFR 300.11; the final rules at 11 CFR 300.51 (party prohibition) is identical to the final rule at 11 CFR 300.37; and the final rule at 11 CFR 300.52 (regulations governing candidate and officeholder solicitations for 501(c) organizations)

is identical to the final rule at 11 CFR 300.65. The Explanation and Justification for 11 CFR 300.11, 300.37 and 300.65 apply to 11 CFR 300.50, 300.51 and 300.52, respectively.

Subpart D – Federal Candidates and Officeholders

11 CFR 300.60 Scope

BCRA places limits on the amounts and types of funds that can be raised by Federal candidates and officeholders for both Federal and State candidates. See 2 U.S.C. 441i(e). The Commission is placing the regulations that address these limitations in 11 CFR part 300, subpart D.

Section 300.60 explains that these restrictions apply to Federal candidates and officeholders, their agents, and entities directly or indirectly established, maintained, or controlled by, or acting on behalf of, any such candidate(s) or officeholder(s). As defined in 2 U.S.C. 431(3) and existing 11 CFR 100.4, "Federal office" means the office of President or Vice President of the United States, Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States. There is a similar definition of "Federal officeholder" in 11 CFR 113.1(c). As noted above, the Commission is adding a comparable definition at 11 CFR 300.2(o). Persons covered by the restrictions in this subpart may not "solicit, receive, direct, transfer or spend" non-Federal funds unless certain requirements are satisfied, and subject to certain exceptions explained below.

No comments were received on this section.

11 CFR 300.61 Federal elections

Section 300.61 as proposed in the NPRM prohibited any Federal candidate or officeholder, his or her agent, or any person described in section 300.60, above, from soliciting, receiving, directing, transferring, or spending non-Federal funds in connection with an election for Federal office, including funds for any Federal election activity described in 11 CF 100.24, discussed above. 2 U.S.C. 441i(e)(1)(A). One commenter urged the Commission to construe this language to prohibit a candidate only from raising non-Federal funds that would eventually benefit the candidate's own campaign. Because the Commission does not find support in the statutory language for this approach, it is not incorporating this recommendation.

The principal sponsors of BCRA asked the Commission to include "disburse" in the list of specified actions, so as to clarify that a person described in 11 CFR 300.60 must use Federal funds when disbursing funds in connection with an election for Federal office. The Commission appreciates the desire for uniformity between sections 300.61 and 300.62, discussed below; and also notes that drawing a distinction between funds that are "spent" and funds that are "disbursed" for certain purposes could prove problematic. Accordingly, it is adding "disburse" to the list of covered activities in section 300.61.

11 CFR 300.62 Non-Federal Elections

BCRA also prohibits any Federal candidate or officeholder, his or her agent, or any other person described in section 300.60, from raising, receiving, directing, transferring, or spending or disbursing funds in connection with any non-Federal election, unless the funds are not in excess of the amounts permitted with respect to contributions

to candidates and political committees and are not from sources prohibited by the Act from making contributions in connection with Federal elections. 2 U.S.C. 441i(e)(1)(B).

The NPRM limited this restriction to Federal funds subject to the limitations and prohibitions of the Act. One comment requested the Commission to remove the term "Federal" from this definition, to make it cover all funds that are subject to the limitations and prohibitions of the Act. The Commission is making this change, which is consistent with the statutory language; and is making additional changes to further parallel the statutory language.

In discussing proposed 11 C.F.R. 300.61 and 300.62, the NPRM stated that these prohibitions encompassed "leadership PACs" and "candidate PACs" because they are entities "directly or indirectly established, financed, maintained, or controlled by" Federal candidates and/or officeholders as defined in 11 C.F.R. 300.2(c). Generally, "leadership PACs" and "candidate PACs" are political organizations set up by congressional leaders and other Federal candidates and officeholders, in part, as a way to support other candidates' campaigns. Although candidate PACs and leadership PACs are not specifically mentioned, the legislative history indicates that 2 U.S.C. 441i(e)(1) is intended to prohibit Federal officeholders and candidates from soliciting any funds for these committees that do not comply with FECA's source and amount limitations. See 148 Cong. Rec. S2140 (Daily ed. March 20, 2002) (statement of Sen. McCain). Consequently, the NRPM stated that Federal candidates and officeholders and their leadership and candidate PACs must not solicit, receive, direct, transfer, or spend funds for such a PAC's Federal or non-Federal account unless the funds complied with the Act's source and limitations requirements.

The comments of the national party committees construed the NPRM statements, in light of statements made in the Senate debates, to mean that a person could contribute $5,000 to the Federal account of a "leadership" PAC and could donate an additional $5,000 to the non-Federal account of the same committee. These commenters expressed support for such an interpretation of the proposed rules and further argued that the national party ban on raising and spending non-Federal funds found at 2 U.S.C. 441i(a) should be construed similarly. As noted elsewhere, the Commission believes that the plain language of 2 U.S.C. 441i(a) prevents such an interpretation as to the national party committees. No other commenters addressed this point in their written comments, although some commenters testified that the statutory language could be interpreted either to permit solicitations of $5,000 each for a Federal and non-Federal account of a leadership PAC in light of the floor statements, or not to permit such PACs to have non-Federal accounts at all. Another commenter argued that the statutory language did not include the term "non-Federal accounts" but instead permitted a Federal officeholder to solicit, receive, direct and spend funds "in connection with non-Federal elections."

The Commission notes first that the definition of an entity "directly or indirectly established, financed, maintained, or controlled" is being modified in the final rules from the definition contained in the proposed rule at section 300.2(c). The final rule defines this phrase by incorporating the affiliation factors set forth at 11 CFR 100.5(g)(4)(ii). Consequently, 11 C.F.R. 300.62, permitting solicitations and spending for funds "in connection with" a non-Federal election applies to a candidate PAC or leadership PAC to the extent that the PAC comes within the new definition of 11 C.F.R. 300.2(c). Secondly, in discussing BCRA's restrictions on the solicitation and spending of non-

Federal funds by Federal candidates and officeholders, the co-sponsors stated that these provisions were part of a "system of prohibitions and limitations on the ability of Federal officeholders and candidates, to raise, spend and control soft money" in order "to stop the use of soft money as a means of buying influence and access with Federal officeholders and candidates." See 148 Cong. Rec. S2139 (Daily ed. March 20, 2002) (statement of Sen. McCain). In light of this purpose, the Commission notes that new 11 C.F.R. 300.62 permits Federal candidates and officeholders to solicit, receive, direct, transfer, spend or disburse funds in connection with Federal and non-Federal elections only from sources permitted under the Act and only when the combined amounts solicited and received from any particular person or entity do not exceed the amounts permitted under the Act's contribution limits and are not from prohibited sources. In other words, a Leadership PAC that comes within the definition of 11 CFR 300.2(c) can raise up to a total of $5,000 from any particular person or entity, regardless of whether the funds are contributed to the PAC's Federal account, donated to its non-Federal account, or allocated between the two. In addition, the Commission agrees with commenters who pointed out that 11 C.F.R. 300.62 does not permit Federal candidates and officeholders, their agents and entities established, financed, maintained, or controlled by them to solicit, receive, direct, transfer, spend or disburse non-Federal funds for Federal elections.

11 CFR 300.63 Exception for Party Candidates

An exception to the fundraising prohibition applies when a Federal candidate or Federal officeholder is a candidate for State or local office. 2 U.S.C. 441i(e)(2). Such candidates may raise and spend non-Federal funds for their State campaign, as long as

their activities are consistent with State law and refer only to their status as a State or local candidate, to other candidates for that same office, or both. This exception is reflected in new 11 CFR 300.63. Please note that if a State or local candidate is simultaneously a candidate for Federal office, he or she must raise and spend only Federal funds in connection with the Federal campaign. No comments addressed this provision.

11 CFR 300.64 Exemption for Attending or Speaking at Fundraising Events

BCRA contains an exemption from the fundraising prohibition for Federal candidates and officeholders who attend, speak, or appear as a featured guest at a State, district, or local party committee fundraising event. 2 U.S.C. 441i(e)(3). The NPRM sought comment on how to construe and implement this provision, particularly in light of the separate general prohibition on Federal candidates and officeholders from soliciting non-Federal funds in connection with an election for Federal, State, or local office.

The NPRM cited Sen. McCain's explanation in the Senate debate that "[t]he rule here is simple: Federal candidates and officeholders cannot solicit soft money funds, funds that do not comply with Federal contribution limits and source prohibitions, for any party committee—national, State, or local." 148 Cong. Rec. S2139 (daily ed. March 20,2002) (statement of Sen. McCain). Consistent with this statement, the Commission proposed that, while such individuals could attend, speak, or be a featured guest at a State or local party fundraising event, they must not solicit funds at any such event.

However, the NPRM sought comment on whether the fundraising event provision was a total exemption from the general solicitation ban, whereby Federal candidates and

officeholders and their agents may attend and speak freely at such events without restriction or regulation. The Commission also sought comment on how to construe BCRA's phrase permitting Federal candidates and officeholders to "attend, speak, or be a featured guest" at a fundraising event. It noted that the phrase "featured guest" strongly suggests that State, district, or local party committees may publicize in advance that a Federal candidate or officeholder will be attending and speaking at an event, and asked whether this means that Federal candidates and officeholders may be referred to in invitation materials for the event, or appear as members of a host committee, or be honored at the event.

The Commission received a range of comments on this issue. Some advocated a strict approach, consistent with the statutory language. They argued that any other approach would substantially undercut the fundraising prohibition. Others noted that it could be almost impossible for a Federal candidate or officeholder not to become involved in at least indirect fundraising, such as thanking people in a rope line for their support. Some claimed that monitoring every word the speaker said could turn the Commission into "speech police," raising First Amendment concerns. Also, the fact that a candidate or officeholder is to be honored at an event seemingly implies that his or her name or picture may appear on invitations, flyers, and other material distributed in connection with the event.

The Commission is adopting a middle approach in new section 300.64. Most commenters who favored an expansive interpretation agreed that Federal candidates and officeholders could not actively fundraise (specifically solicit contributions) at a covered event. The Commission believes the statutory prohibition is also broad enough to bar a

Federal candidate or officeholder from serving on a host committee for or signing a solicitation in connection with the event. However, the rules do not prohibit a sponsor from publicizing a Federal candidate's or officeholder's appearance at an event, or incidental conversations in connection with the event in which the candidate or officeholder does not directly solicit funds.

11 CFR 300.65 Exceptions for certain tax-exempt organizations

In 2 U.S.C. 441i(e)(1), BCRA prohibits candidates and officeholders from soliciting, receiving or spending funds unless the funds meet the source and limitations restrictions of the Act. See also 11 CFR 300.61 and 11 CFR 300.62. BCRA creates two exceptions from that general rule in 2 U.S.C. 441i(e)(4): 1) it allows candidates, officeholders, and individuals who are agents acting on behalf of either to make general solicitations, without source or amount restrictions for a 501(c) organization unless the "principal purpose" of the organization is to conduct certain Federal election activity, specifically voter registration, voter identification, GOTV activities, or generic campaign activity, so long as the solicitation is not to obtain funds in connection with a Federal election; and 2) it permits Federal candidates and officeholders, and individuals who are agents acting on their behalf, to make specific solicitations for 501(c) organizations where the organization's principal purpose is to conduct Federal election activity as described above or to make specific solicitations for a 501(c) organization to conduct these activities provided that only individuals are solicited for no more than $20,000 per calendar year. The final rule at 11 CFR 300.65 implements these exceptions for Federal

candidate and officeholder solicitations for 501(c) organizations. It mirrors the final rule at 11 CFR 300.52 contained in subpart C.

In response to the NPRM, BCRA's principal sponsors and a public interest group stated that the proposed rule at 11 CFR 300.52(a)(1)(mirrored in 300.65(a)(1)) could be interpreted to prohibit candidate/officeholder solicitations that were not meant to be prohibited. The proposed rules stated that a Federal candidate or officeholder may make a general solicitation on behalf of a 501(c) organization without regard to source or amount restrictions "only if the solicitation does not specify how the funds will or should be spent," the solicitation is not for a 501(c) organization whose principal purpose is to conduct certain enumerated Federal election activity, and if the solicitation is not for that enumerated Federal election activity. The commenters interpreted this provision as prohibiting Federal candidates or officeholders from making a general or specific solicitation, without source or amount limitations, for an organization such as the Red Cross, which engages in no "electoral activities" whatsoever. BCRA's principal sponsors also argued that this provision could be interpreted to prohibit specific solicitations, without source or amount limitations, for a 501(c) organization whose principal purpose is not to engage in Federal election activity, but who nonetheless engages in some election activity, provided that the solicitation is not for activity in connection with an election. The sponsors argued that the final rules should permit such specific solicitations. The examples given by the sponsors to illustrate this point included a specific solicitation for the NAACP College Fund or the NRA firearms training program, even though the NAACP and the NRA engage in certain election activity.

As noted in the NPRM, the Commission agrees that 11 CFR 300.65 should not be interpreted to prohibit candidates, officeholders or their agents from soliciting funds for a 501(c) organization that engages in no election activity, such as the Red Cross. Accordingly, the final rule at 11 CFR 300.65 addresses the commenters' concerns by more specifically setting forth the circumstances under which Federal candidates, officeholders and their agents can make general solicitations on behalf of 501(c) organizations, without regard to source or limitation, and by setting forth in paragraph (b) the circumstances under which they can made specific, limited solicitations to individuals.

In response to a question in the NRPM regarding the scope of the term "agent" in 2 U.S.C. 441i(e), the sponsors stated that it was their intent that the restrictions on candidate/officer holder solicitations apply to an agent "acting on behalf" of either. Accordingly, the final rule states throughout that it applies to an individual who is an agent "acting on behalf of a Federal candidate or officeholder. BCRA's sponsors and the same public interest commenter also pointed out that proposed 11 CFR 300.52(b)(2)(mirrored in proposed 11 CFR 300.65(b)(2)) did not make clear that the specific solicitations permitted for Federal election activity or organizations principally engaged in such activities applies only to 501(c) organizations and not to other tax exempt organizations, such as Section 527 organizations. The Commission agrees. Accordingly, the introductory language in the final rule specifically states that the requirements for solicitations in the rule apply to 501(c) organizations.

Paragraph (c) enumerates the specific types of Federal election activity for which a Federal candidate or officeholder can make specific solicitations and incorporates the

definitions of those activities at 11 CFR 100.24(a). Because BCRA permits limited solicitations only for specific Federal election activities, paragraph (d) has been added to the final rule to make clear that solicitations are not permitted for other election activities, including Federal election activity such as public communications promoting or opposing clearly identified Federal candidates. See 11 CFR 100.24(b)(3).

In response to questions raised in the NPRM, BCRA's principal sponsors, a public interest group and a non-profit organization agreed that 11 CFR 300.65 should include a safe harbor provision for Federal candidates, officeholders and their agents, similar to the one for party committees in 11 CFR 300.11 and 11 CFR 300.37. Accordingly, paragraph (c) provides that a Federal candidate, officeholder, or agent acting on behalf of either, may obtain and rely upon a certification from a Section 501(c) organization in determining the scope of the permissible solicitations they may make on behalf of the organization. Paragraph (e) also sets forth the requirements for such a certification.

A non-profit organization raised several concerns about the restrictions on Federal officeholders soliciting for 501(c) organizations. First, the non-profit group maintained that the regulations should create a presumption that the principal purpose of any 501(c) organization is not to conduct election activity because "under federal tax law, no 501(c) organization may conduct partisan electoral activity as its primary purpose." The commenter was concerned that requiring a candidate or officeholder to verify whether or not an organization engages in election activity as its principal purpose will "result in an unnecessary chilling effect on their assistance" to 501(c) organizations. The commenter was also concerned that IRS Form 990 tax returns and other tax forms mentioned in the

NPRM as possible ways to determine an organization's activities or principal purpose would not provide a candidate or officeholder with the necessary information. Second, the commenter urged that any definition of "principal purpose" be based on a multi-year average of an organization's expenditures for Federal election activity to more accurately capture an organization's actual level of electoral activity, which necessarily occurs closer to elections. Finally, the group urged that the regulations include a safe harbor permitting candidates and officeholders to appear at a Section 501(c) organization's fundraiser or convention as long as no solicitations are made for funds for election activities, or alternatively, for any funds.

Determining whether a particular organization's "principal purpose" is to conduct election activities, such as voter registration or GOTV, is a fact-based determination that must be made as to a particular organization. Thus, creating a presumption that the principal purpose of any 501(c) organization is not to engage in election activity is inappropriate and could conflict with IRS determinations. As for including a definition of "primary purpose" that is based on a multi-year average of an organization's election expenditures, the Commission lacks sufficient information to establish a particular percentage or average at this time. Finally, the Commission notes that the general and specific solicitations contemplated in 11 CFR 300.65 may take place at a fundraising event conduct by the 501(c) organization.

As for the concern that Federal candidates and officeholders will be chilled from assisting 501(c) organizations in fundraising, the safe harbor provided in paragraph (c) is intended to ease 'federal candidates' or 'officeholders' concern about inadvertently violating the Act, as amended by BCRA.

Subpart E – State and Local Candidates

11 CFR 300.70 Scope

Subpart E implements two provisions of BCRA regarding State and local candidates. 2 U.S.C. 441i(f)(1), (2). Section 300.70 explains that this subpart applies to any candidate for State or local office, individual holding State or local office, or an agent of any such candidate or individual. 2 U.S.C. 441i(f)(1). For example, the subpart applies to an individual holding Federal office who is a candidate for State or local office. It does not, however, apply to an association or similar group of candidates for State or local office, or of individuals holding State or local office, because they are not addressed in this section of BCRA. The Commission received no comments on this section.

11 CFR 300.71 Federal Funds Required for Certain Communications

BCRA prohibits State and local candidates and officeholders from funding certain public communications with non-Federal funds. 2 U.S.C. 441i(f)(1). This prohibition is contained in new 11 CFR 300.71. The prohibition on use of non-Federal funds encompasses public communications that refer to a clearly identified candidate for Federal office, if the communication promotes, supports, attacks, or opposes any candidate for that Federal office, regardless of whether the communication expressly advocates voting for or against any candidate. See 2 U.S.C. 431(20)(A)(iii). The section contains a cross reference to section 11 CFR 100.26, which defines the new term public communication for purposes of the Act. State and local candidates and officeholders may, however, use Federal funds for these public communications.

No commenters addressed this section.

11 CFR 300.72 Federal Funds Not Required for Certain Communications

BCRA contains an exception to the prohibition on the use of Federal funds for certain public communications that permits State and local candidates and officeholders to use non-Federal funds for public communications that refer to Federal candidates but do not promote, support, attack, or oppose any candidate for Federal office. 2 U.S.C. 441i(f)(2). This exception is set forth at new 11 CFR 300.72. Section 300.72 follows the statutory language.

XI. Part 9034 -- Entitlements

11 CFR 9034.8 Joint fundraising

The ban on national party non-Federal fundraising affects the Commission's joint fundraising rules under the Presidential Primary Matching Payment Act at 11 CFR 9034.8. The Commission is, therefore, adding introductory language to each of these sections, advising readers that "[n]othing in this section shall supersede 11 CFR part 300, which prohibits any person from soliciting, receiving, directing, transferring, or spending any non-Federal funds, or from transferring Federal funds for Federal election activities."

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

[Regulatory Flexibility Act]

The Commission certifies that the attached proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the national, State, and local party committees of the two major political parties are not small entities under 5 U.S.C. 601, and the number of other small entities to which the rules would apply is not substantial.

List of Subjects

11 CFR Part 100

Elections

11 CFR Part 102

Political committees and parties, reporting and recordkeeping requirements.

11 CFR Part 104

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

11 CFR Part 106

Campaign funds, political committees and parties, political candidates.

11 CFR Part 108

Elections, reporting and recordkeeping.

11 CFR Part 110

Campaigns, political parties and committees.

11 CFR Part 114

Business and industry, elections, labor.

11 CFR Part 300

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

11 CFR Part 9034

Campaign funds, reporting and recordkeeping requirements.

For reasons set out in the preamble, Subchapters A, C and F of Chapter I of title 11 of the Code of Federal Regulations is amended to read as follows:

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

1. The authority citation for 11 CFR part 100 continues to read as follows:

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

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

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

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

(b) Subordinate committee of a State committee means any organization that ~~is part of the official party structure, and~~ is responsible for the day-to-day operation of the political party at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State or any organization under the control or direction of the State committee, including an entity that is directly or indirectly established, financed, maintained, or controlled by that organization, as determined by the Commission.

(c) District or local committee means any organization that by virtue of the bylaws of a political party or the operation of State law ~~is part of the official party structure, and~~ is

responsible~~, under State law,~~ for the day-to-day operation of the political party at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State, including an entity that is directly or indirectly established, financed, maintained, or controlled by the district or local committee, as determined by the Commission.

3. Sections 100.24, 100.25, 100.26, 100.27, and 100.28 are added to read as follows:

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

(a) As used in this section, and in part 300 of this chapter,

(1) In connection with an election in which a candidate for Federal office appears on the ballot means:

(i) The period of time beginning on January 1 of each even-numbered year and ending on December 31 of each even-numbered year; and,

(ii) In an odd-numbered year, the period beginning on the date on which the date of a special election in which a candidate for Federal office appears on the ballot is set and ending on the date of the special election.

(2) Voter registration activity means contacting individuals by telephone, in person, or by other direct means to encourage them to or assist them in registering to vote. Voter registration activity includes, but is not limited to, printing and distributing registration and voting information, providing individuals with voter registration forms, and assisting individuals in the completion and filing of such forms.

(3) Get-out-the-vote activity means contacting registered voters by telephone, in person, or by other direct means, to encourage them or to assist them in engaging in the act of voting. The following factors are relevant to determining whether a given activity is a get-out-the-vote activity:

(i) Whether the activity involves providing to voters information such as the date of the election, the times when polling places are open, and the location of particular polling places;

(ii) Whether the activity facilitates voting by particular individuals, for example, offering to transport or actually transporting voters to polls, or providing babysitting services to allow a parent to vote;

(iii) The proximity of the activity to the date of the election.

(4) Voter identification means acquiring information about voters, including, but not limited to, the costs of obtaining voter lists, creating voter files or updating and enhancing voter lists by verifying or adding information about the voters, and contacting voters to determine their likelihood of voting in an upcoming election or their likelihood to vote for specific candidates.

~~(a)~~(b) As used in part 300 of this chapter, Federal election activity means any of the activities described in paragraphs (b)(1) through (b)(4) of this section.

(1) Voter registration activity during the period that begins on the date that is 120 calendar days before the date that a regularly scheduled Federal election is held and ends on the date of the election. For purposes of voter

registration activity, the term "election" does not include any special election.

(2) The following activities conducted in connection with an election in which one or more candidates for Federal office appears on the ballot (regardless of whether one or more candidates for State or local office also appears on the ballot):

(i) Voter identification~~, including canvassing, and other activities designed to determine registered voters, likely voters, or voters indicating a preference for a specific candidate or political party, or~~.

(ii) Generic campaign activity, as defined in 11 CFR 100.25;.

(iii) Get-out-the-vote activity ~~Examples of get-out-the-vote activity include transporting voters to the polls, contacting voters on election day or shortly before to encourage voting but without referring to any clearly identified candidate for Federal office, and distributing printed slate cards, sample ballots, palm cards, or other printed listing(s) of three or more candidates for any public office;~~.

(3) A public communication that refers to a clearly identified candidate for Federal office, regardless of whether a candidate for State or local election is also mentioned or identified, and that promotes or supports, or attacks or opposes any candidate for Federal office. This paragraph applies whether or not the communication expressly advocates a vote for or against a Federal candidate~~;or~~.

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

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

(1) A public communication that refers solely to one or more clearly identified candidates for State or local office and that does not promote or support, or attack or oppose a clearly identified candidate for Federal office; provided, however, that such a public communication shall be considered a Federal election activity if it constitutes voter registration activity, generic campaign activity, get-out-the-vote activity, or voter identification.

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

(3) The costs of a State, district, or local political convention.

(4) The costs of grassroots campaign materials, including buttons, bumper stickers, handbills, brochures, posters and yard signs, that name or depict only candidates for State or local office.

~~(5) Voter registration activity at any time other than the period of time that is 120 days before the date that a regularly scheduled Federal election is held through the date of the election.~~

~~(6) Get-out-the-vote activity, voter identification, and generic campaign activity that is not in connection with an election in which a candidate for Federal office appears on the ballot.~~

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

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

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

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

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

Mass mailing means a mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period. For purposes of this section, substantially similar includes communications that include substantially the same template or language, but vary in non-material respects such as communications customized by the recipient's name, occupation, or geographic location.

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

Telephone bank means more than 500 telephone calls of an identical or substantially similar nature within any 30-day period. For purposes of this section, substantially similar includes communications that include substantially the same template or language, but vary in non-material respects such as communications customized by the recipient's name, occupation, or geographic location.

4. Sections 100.29 through 100.50 are added and reserved.

5. Sections 100.1 through 100.50 are designated as subpart A - General Definitions.

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

6. The authority citation for part 102 continues to read as follows:

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

7. Section 102.5 is revised to read as follows:

§ 102.5 Organizations financing political activity in connection with Federal and non-Federal elections, other than through transfers and joint fundraisers: Accounts and Accounting

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

(1) Each organization, including a State, district or local party committee, that finances political activity in connection with both Federal and non-Federal

elections and that qualifies as a political committee under 11 CFR 100.5 shall either:

(i) Establish a separate Federal account in a depository in accordance with 11 CFR part 103. Such account shall be treated as a separate Federal political committee ~~shall which~~ that must comply with the requirements of the Act including the registration and reporting requirements of 11 CFR parts 102 and 104. Only funds subject to the prohibitions and limitations of the Act shall be deposited in such separate Federal account. All disbursements, contributions, expenditures and transfers by the committee in connection with any Federal election shall be made from its Federal account, except as otherwise permitted for State, district and local party committees by 11 CFR part 300 and paragraph (a)(6) of this section. No transfers may be made to such Federal account from any other account(s) maintained by such organization for the purpose of financing activity in connection with non-Federal elections, except as provided by 11 CFR ~~300.34~~, 300.33, 300.34 and 106.7(c). Administrative expenses for political committees other than party committees shall be allocated pursuant to 11 CFR 106.7 between such Federal account and any other account maintained by such committee for the purpose of financing activity in connection with non-Federal elections. Administrative expenses

for State, district and local party committees are subject to 11 CFR 106.7 and 11 CFR part 300; or

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

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

(i) Contributions designated for the Federal account;

(ii) Contributions that result from a solicitation which expressly states that the contribution will be used in connection with a Federal election; or

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

(3) Any State, district or local party committee solicitation that makes reference to a Federal candidate or a Federal election shall be presumed to be for the purpose of influencing a Federal election, and contributions resulting from that solicitation shall be subject to the prohibitions and

limitations of the Act. This presumption may be rebutted by demonstrating to the Commission that the funds were solicited with express notice that they would not be used for Federal election purposes.

(4) State, district and local party committees that intend to expend Levin funds raised pursuant to 11 CFR 300.31 for activities identified in 11 CFR 300.32(b)(1) must establish one or more separate Levin accounts pursuant to 11 CFR 300.30. Only donations meeting the conditions set forth in 11 CFR 300.30(a)(4) may be deposited into a Levin account.

(5) Solicitations by Federal candidates and Federal officeholders for State, district and local party committees are subject to the restrictions in 11 CFR 300.31(c) and 11 CFR part 300, subpart D.

(6) State, district and local party committees and organizations may establish one or more separate allocation accounts to be used for activities allocable pursuant to 11 CFR 106.7(c) and 11 CFR 300.33.

(b) Organizations that are not political committees under the Act.

(1) State, district or local party organizations

(i) Any ~~organization that makes contributions or expenditures but does not qualify as political committee under 11 CFR 5 and~~ State, district or local party organization that makes contributions, ~~or~~ expenditures, and exempted payments under 11 CFR 100.7(b)(9), (15) and (17) and 11 CFR 100.8(b)(10), (16) and (18), but that does not qualify as a political committee under 11 CFR 100.5, must keep records of deposits into and disbursements from such

accounts, and, upon request, must make such records available for examination by the Commission. ~~or payments for certain Federal election activities under 11 CFR 300.32(b), shall either~~ All such party committees must either:

(A) Establish at least three separate accounts as follows -

(1) An account into which only funds subject to the prohibitions and limitations of the Act ~~and only funds solicited for activities pursuant to 11 CFR 300.32,~~ may be deposited and from which contributions, expenditures, and disbursements for exempt activities ~~and payments for certain Federal activities shall~~ must be made;

(2) One or more Levin accounts pursuant to 11 CFR 300.30(b) into which only funds solicited pursuant to 11 CFR 300.31 may be deposited and from which payments must be made pursuant to 11 CFR 300.32 and 300.33; and

(3) One or more additional accounts pursuant to State law from which payments for activities other than those permitted by paragraphs (b)(1)(i)(A)(1) and (2) of this section;

~~or~~ (B) Establish two separate accounts as follows:

(1) A Federal account into which may be deposited both funds subject to the prohibitions and limitations of the Act and funds solicited for activities pursuant to 11 CFR 300.32. Payments may be made from this account for contributions, expenditures and disbursements for exempt activities in connection with Federal elections and for activities undertaken pursuant to 11 CFR 300.32(b). Use of this Federal account as a depository for Levin funds requires employment of a general ledger accounting system that segregates assets, liabilities, revenue and expenses for activities undertaken pursuant to 11 CFR 106.7 and 11 CFR 300.32. If the accounting method employed is computer-based, the data must be backed-up on no less than a monthly basis; and

(2) One or more additional accounts pursuant to State law from which payments for activities other than those permitted by paragraphs (b)(1)(i)(B)(1) may be made; or

(C) Establish one account with three or more ledger accounts as follows:

Use of one account for all activity requires an accounting method that employes general ledger accounts that segregate asets, liabilities, revenue and expenses for activities undertaken pursuant to 11 CFR 106.7 and 300.32. Funds recorded in a general ledger account as received for non-Federal activities may not be reclassified as funds available for Federal election activities to be undertaken pursuant to 11 CFR 300.32 (i.e., Levin funds), unless the funds to be reclassified were received pursuant to a solicitation for Levin funds or so designated by the donors. If the accounting method employed is computer-based, the data must be backed up on no less than a monthly basis.

(2) Organizations that are not political party organizations

Any organization that is not a political party organization, and that makes contributions or expenditures under the Act, but does not qualify as a political committee under 11 CFR 100.5, must either:

(i) Establish a separate account into which only funds subject to the prohibitions and limitations of the Act shall be deposited and from which contributions and expenditures shall be made. Such organizations shall keep records of deposits to and disbursements from such account, and, upon request, shall make such records available for examination by the Commission; or

(ii) Demonstrate through a reasonable accounting method that, whenever such an organization makes a contribution or expenditure, or payment, the organization has received sufficient funds subject to the limitations and prohibitions of the Act to make such contribution, expenditure or payment. Such organization shall keep records of amounts received or expended under this subsection and, upon request, shall make such records available for examination by the Commission.

(c) National party committees. Between November 6, 2002, and December 31, 2002, paragraphs (a) and (b) of this section apply to national party committees. After December 31, 2002, national party committees are prohibited from raising and spending non-Federal funds. Therefore, this section does not apply to national party committees after December 31, 2002.

8. Section 102.17 is amended by adding introductory language to paragraph (a) to read as follows:

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

(a) General. Nothing in this section shall supersede 11 CFR part 300, which prohibits any person from soliciting, receiving, directing, transferring, or spending any non-Federal funds, or from transferring Federal funds for Federal election activities.

* * * * *

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

9. The authority citation for part 104 continues to read as follows:

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

10. Section 104.8 is amended by revising paragraphs (e) and (f) to read as follows:

§ 104.8 Uniform reporting of receipts.

* * * * *

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

(f) For reports covering activity on or before December 31, 2002, national party committees shall also disclose in a memo Schedule A information about each individual, committee, corporation, labor organization, or other entity that donates an aggregate amount in excess of $200 in a calendar year to the committee's building fund account(s). This information shall include the donating individual's or entity's name, mailing address, occupation or type of business, and the date of receipt and amount of any such donation. If a donor's name is known to

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

11. Section 104.9 is amended by revising paragraphs (c), (d), and (e) to read as follows:

§ 104.9 Uniform reporting of disbursements.

* * * * *

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

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

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

12. Section 104.10 is revised to read as follows:

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

(a) Expenses allocated among candidates. A political committee that is a separate segregated fund or a nonconnected committee making an expenditure on behalf of more than one clearly identified candidate for Federal office shall allocate the expenditure among the candidates pursuant to 11 CFR ~~106.1~~ part 106. Payments involving both expenditures on behalf of one or more clearly identified Federal candidates and disbursements on behalf of one or more clearly identified non-Federal candidates shall also be allocated pursuant to 11 CFR ~~106.1~~ part 106. For allocated expenditures, the committee shall report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each Federal candidate. If a payment also includes amounts attributable to one or more non-Federal candidates, and is made by a political committee with separate Federal and non-Federal accounts, then the payment shall be made according to the procedures set forth in 11 CFR 106.6(e), ~~as appropriate,~~ but shall be reported pursuant to paragraphs (a)(1) through (a)(4), as follows:

(1) Reporting of allocation of expenses attributable to specific Federal and non-Federal candidates. In each report disclosing a payment that includes both expenditures on behalf of one or more Federal candidates and disbursements on behalf of one or more non-Federal candidates, the

committee shall assign a unique identifying title or code to each program or activity conducted on behalf of such candidates, shall state the allocation ratio calculated for the program or activity, and shall explain the manner in which the ratio was derived. The committee shall also summarize the total amounts attributed to each candidate, to date, for each joint program or activity.

(2) Reporting of transfers between accounts for the purpose of paying expenses attributable to specific Federal and non-Federal candidates. A political committee that pays allocable expenses in accordance with 11 CFR 106.6(e) shall report each transfer of funds from its non-Federal account to its Federal account or to its separate allocation account for the purpose of paying such expenses. In the report covering the period in which each transfer occurred, the committee shall explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one program or activity, the committee shall itemize the transfer, showing the amounts designated for each program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates.

(3) Reporting of allocated disbursements attributable to specific Federal and non-Federal candidates. A political committee that pays allocable expenses in accordance with 11 CFR 106.6(c) shall also report each disbursement from its Federal account or its separate allocation account in

payment for a program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates. In the report covering the period in which the disbursement occurred, the committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount, and purpose of each such disbursement. If the disbursement includes payment for the allocable costs of more than one program or activity, the committee shall itemize the disbursement, showing the amounts designated for payment of each program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates. The committee shall also report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each Federal candidate, and the total amount attributed to the non-Federal candidate(s). In addition, the committee shall report the total amount expended by the committee that year, to date, for each joint program or activity.

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

(b) Expenses allocated among activities. A political committee that is a separate segregated fund or a nonconnected committee and that has established separate Federal and non-Federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate between those accounts its administrative expenses and its costs for fundraising and generic voter drives

according to 11 CFR 106.6, ~~as appropriate,~~ and shall report those allocations according to paragraphs (b) (1) through (5), as follows:

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

(i) In the first report in a calendar year disclosing a disbursement for administrative expenses or generic voter drives, as described in 11 CFR 106.6(b), the committee shall state the allocation ratio to be applied to these categories of activity according to 11 CFR 106.6(c), and the manner in which it was derived.

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

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

(B) The committees shall also report in a memo entry the total amounts expended in donations and direct disbursements on behalf of specific State and local candidates, to date, in that calendar year.

(2) Reporting of allocation of the direct costs of fundraising. In each report disclosing a disbursement for the direct costs of a fundraising program, as described in 11 CFR 106.6(b), the committee shall assign a unique

identifying title or code to each such program or activity, shall state the allocation ratio calculated for the program or activity according to 11 CFR 106.6(d), and shall explain the manner in which the ratio was derived. The committee shall also summarize the total amounts spent by the Federal and non-Federal accounts that year, to date, for each such program or activity.

(3) Reporting of transfers between accounts for the purpose of paying allocable expenses. A political committee that pays allocable expenses in accordance with 11 CFR 106.6(e) shall report each transfer of funds from its non-Federal account to its Federal account or to its separate allocation account for the purpose of paying such expenses. In the report covering the period in which each transfer occurred, the committee shall explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one activity, the committee shall itemize the transfer, showing the amounts designated for administrative expenses and generic voter drives, and for each fundraising program, as described in 11 CFR 106.6(b).

(4) Reporting of allocated disbursements. A political committee that pays allocable expenses in accordance with 11 CFR 106.6(e) shall also report each disbursement from its Federal account or its separate allocation account in payment for a joint Federal and non-Federal expense or activity. In the report covering the period in which the disbursement

occurred, the committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount, and purpose of each such disbursement. If the disbursement includes payment for the allocable costs of more than one activity, the committee shall itemize the disbursement, showing the amounts designated for payment of administrative expenses and generic voter drives, and for each fundraising program, as described in 11 CFR 106.6(b). The committee shall also report the total amount expended by the committee that year, to date, for each category of activity.

(5) Recordkeeping. The treasurer shall retain all documents supporting the committee's allocated disbursements for three years, in accordance with 11 CFR 104.14.

13. Part 104 is amended by adding section 104.17 to read as follows:

§ 104.17 Reporting of allocable expenses by party committees.

(a) Expenses allocated among candidates. A national party committee making an expenditure on behalf of more than one clearly identified candidate for Federal office must report the allocation between or among the named candidates ~~pursuant to 11 CFR 106.1~~. A national party committee making expenditures and disbursements on behalf of one or more clearly identified Federal candidates and on behalf of one or more clearly identified non-Federal candidates must report the allocation among all named candidates ~~pursuant to~~ 11 CFR ~~part 106~~. These payments shall be allocated among candidates pursuant to 11 CFR Part 106, but only Federal funds may be used for such payments. A State, district, or local party committee making expenditures and disbursements for

Federal election activity as defined at 11 CFR 100.24 on behalf of one or more clearly identified Federal and one or more clearly identified non-Federal candidates must make the payments from its Federal account and must report the allocation among all named candidates. A State, district, or local party committee making expenditures and disbursements on behalf of one or more clearly identified Federal and one or more clearly identified non-Federal candidates where the activity is not a Federal election activity may allocate the payments between its Federal and non-Federal account and must report the allocation among all named candidates. For allocated expenditures, the committee must report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each candidate. If a payment also includes amounts attributable to one or more non-Federal candidates, and is made by a State, district, or local party committee with separate Federal and non-Federal accounts, and is not for a Federal election activity, then the payment shall be made according to the procedures set forth in 11 CFR 106.7(f), but shall be reported pursuant to paragraphs (a)(1) through (a)(4) of this section, as follows:

(1) Reporting of allocation of expenses attributable to specific Federal and non-Federal candidates. In each report disclosing a payment that includes both an expenditures ~~and/or disbursement that reflects payments~~ on behalf of one or more Federal candidates and~~/or~~ disbursements on behalf of one or more non-Federal candidates, the committee must assign a unique identifying title or code to each program or activity conducted on behalf of such candidates, ~~and shall~~ state the allocation ratio calculated for the program or activity, and explain the manner in which the ~~percentage of~~

~~costs~~ ratio applied to each candidate was derived, ~~pursuant to 11 CFR 106.1~~. The committee must also summarize the total amounts attributed to each candidate, to date, for each program or activity.

(2) Reporting of transfers between accounts for the purpose of paying expenses attributable to specific Federal and non-Federal candidates. A State, district, or local party committee that pays allocable expenses in accordance with 11 CFR 106.7(f) shall report each transfer of funds from its non-Federal account to its Federal account or to its separate allocation account for the purpose of paying such expenses. In the report covering the period in which each transfer occurred, the State, district, or local party committee shall explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one program or activity, the State, district, or local party committee must itemize the transfer, showing the amounts designated for each program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates.

(3) Reporting of allocated disbursements attributable to specific Federal and non-Federal candidates. A State, district, or local committee that pays allocable expenses in accordance with 11 CFR 106.7(f) shall also report each disbursement from its Federal account or its separate allocation account in payment for a program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly

identified non-Federal candidates. In the report covering the period in which the disbursement occurred, the State, district, or local party committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount, and purpose of each such disbursement. If the disbursement includes payment for the allocable costs of more than one program or activity, the committee shall itemize the disbursement, showing the amounts designated for payment of each program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates. The State, district, or local party committee must also report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each Federal candidate, and the total amount attributed to the non-Federal candidate(s). In addition, the State, district, or local party committee must report the total amount expended by the committee that year, to date, for each joint program or activity.

(4) Recordkeeping. The treasurer of a State, district, or local party committee must retain all documents supporting the committee's allocations on behalf of specific Federal and non-Federal candidates, in accordance with 11 CFR 104.14.

(b) ~~Expenses allocated among activities~~ Allocation of activities that are not Federal election activities. ~~A State, district or local committee of a political party that has established separate Federal and Levin accounts under 11 CFR 300.30 must report, pursuant to 11 CFR 300.36, all payments that are allocable between these accounts~~

pursuant ~~to the allocation rules at 11 CFR 300.33(a) and (b).~~ A State, district, or local committee of a political party that has established separate Federal and non-Federal accounts, including related allocation accounts, under 11 CFR 102.5 must report all payments that are allocable between these accounts pursuant to the allocation rules at in 11 CFR ~~300.33(a) and (b)~~ 106.7. Disbursements for activities that are allocable between Federal and Levin accounts, including related allocation accounts, must be reported pursuant to 11 CFR 300.36.

(1) Reporting of allocations of expenses for activities that are not Federal election activities.

(i) In the first report in a calendar year disclosing a disbursement allocable pursuant to 11 CFR 106.7 ~~11 CFR 300.33~~, a State, district, or local committee shall state and explain the allocation percentages to be applied to each category of allocable activity (e.g., 36% Federal/64% non-Federal in Presidential and Senate election years) pursuant to 11 CFR 106.7(d) ~~11 CFR 300.33(b)~~.

(ii) In each subsequent report in the calendar year itemizing an allocated disbursement, the State, district, or local party committee shall state the category of activity for which each allocated disbursement was made, and shall summarize the total amounts expended ~~by the~~ from Federal and non-Federal accounts, or from allocation accounts, that year to date for each such category.

(iii) In each report disclosing disbursements for allocable ~~activity~~ activities as described in 11 CFR 106.7 ~~11 CFR 300.33~~, the State,

district, or local party committee shall assign a unique identifying title or code to each such program or activity, and shall state the applicable Federal/non-Federal percentage for any direct costs of fundraising. Unique identifying titles or codes are not required for certain salaries and other compensation, including benefits, allocated pursuant to 11 CFR 106.7(c)(1), or for other administrative costs allocated pursuant to 11 CFR 106.7(c)(2).

(2) Reporting of transfers between the accounts of State, district, and local party committees and into allocation accounts for allocable expenses. A State, district, or local committee of a political party that pays allocable expenses in accordance with 11 CFR 106.7 ~~11 CFR 300.33(d)~~ shall report each transfer of funds from its non-Federal account ~~or its Levin account~~ to its Federal account, or each transfer from its Federal account and its non-Federal account into an allocation account, for the purpose of payment of such expenses. In the report covering the period in which each transfer occurred, the State, district, or local party committee must explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one activity, the State, district, or local party committee must itemize the transfer, showing the amounts designated for each category of expense as described in 11 CFR 106.7 ~~11 CFR 300.33(b)~~.

(3) Reporting of allocated disbursements for ~~joint Federal and non-Federal activity~~ certain allocable activity that is not Federal election activity.

(i) A State, district, or local committee of a political party that pays allocable expenses in accordance with 11 CFR 106.7 ~~11 CFR 300.33(d)~~ shall report each disbursement from its Federal account for the Federal portion of allocable expenses ~~and for activity paid from Federal/Levin activity (see 11 CFR 300.36)~~, or each payment from an allocation account for such activity. In the report covering the period in which the disbursement occurred, the State, district, or local committee shall state the full name and address of each individual or vendor to which the disbursement was made, the date, amount, and purpose of each such disbursement, and the amounts allocated to Federal, ~~Levin~~ and non-Federal portions of the allocable activity. If the disbursement includes payment for the allocable costs of more than one activity, the State, district, or local party committee ~~shall~~ must itemize the disbursement, showing the amounts designated for payments of ~~certain salaries, of other administrative costs and of costs for voter registration outside 120 days before an election,~~ particular categories of activity as described in 11 CFR ~~300.33~~ 106.7. ~~See also 11 CFR 300.36((b)(2).~~ The State, district, or local party committee ~~shall~~ must also report the total amount ~~expended by the committee~~ paid that calendar year to date for each category of allocable activity.

(ii) A State, district, or local committee of a political party that pays allocable expenses from a Federal account and a Levin account in

accordance with 11 CFR 300.33~~(d)~~ shall report disbursements from those accounts according to the requirements of 11 CFR 300.36.

(4) Recordkeeping. The treasurer of a State, district, or local party committee must retain all documents supporting the committee's allocations of expenditures and disbursements for the costs and activities cited at paragraph (b)(1) of this section, in accordance with 11 CFR 104.14.

PART 106 – ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

14. The authority citation for part 106 continues to read as follows:

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

15. Section 106.1 is amended by revising paragraphs (a)(1), (a)(2), and (c) to read as follows:

§ 106.1 Allocation of expenses between candidates.

(a) General rule.

(1) Expenditures, including in-kind contributions, independent expenditures, and coordinated expenditures made on behalf of more than one clearly identified Federal candidate shall be attributed to each such candidate according to the benefit reasonably expected to be derived. For example, in the case of a publication or broadcast communication, the attribution shall be determined by the proportion of space or time devoted to each candidate as compared to the total space or time devoted to all candidates.

In the case of a fundraising program or event where funds are collected by one committee for more than one clearly identified candidate, the attribution shall be determined by the proportion of funds received by each candidate as compared to the total receipts by all candidates. In the case of a phone bank, the attribution shall be determined by the number of questions or statements devoted to each candidate as compared to the total number of questions or statements devoted to all candidates. These methods shall also be used to allocate payments involving both expenditures on behalf of one or more clearly identified Federal candidates and disbursements on behalf of one or more clearly identified non-Federal candidates. ~~Party committees must use only Federal funds for such payments. See 11 CFR 100.24(a)(5).~~

(2) An expenditure made on behalf of more than one clearly identified Federal candidate shall be reported pursuant to 11 CFR 104.10(a) or 104.17(a), as appropriate. A payment ~~by a separate segregated fund or a nonconnected committee~~ that also includes amounts attributable to one or more non-Federal candidates, and that is made by a political committee with separate Federal and non-Federal accounts, shall be made according to the procedures set forth in 11 CFR 106.6(e) or 106.7(f), but shall be reported pursuant to 11 CFR 104.10(a) or 104.17(a). If a State, district, or local party committee's payment on behalf of both a Federal candidate and a non-Federal candidate is for a Federal election activity, only Federal funds may be used for the entire payment.

* * * * *

(e) State, district, and local party committees, separate segregated funds, and nonconnected committees that make ~~disbursements for certain salaries, other administrative expenses~~, ~~fundraising, generic voter drives, Levin activities, or certain voter registration activities, in connection with both Federal and non-Federal elections.~~ mixed Federal/non-Federal payments for activities other than an acitvity entailing an expenditure for a Federal candidate and disbursement for a non-Federal candidate, or that make mixed Federal/Levin fund payments, shall allocate ~~their~~ those expenses in accordance with 11 CFR 106.6, 106.7(f), or 300.33, as appropriate.

16. Section 106.5 is revised to read as follows:

§ 106.5 Allocation of expenses between federal and non-federal activities by national party committees.

(a) General rules.

(1) Disbursements from Federal and non-Federal accounts. National party committees that make disbursements in connection with Federal and non-Federal elections shall make those disbursements entirely from funds subject to the prohibitions and limitations of the Act, or from accounts established pursuant to 11 CFR 102.5. Political committees that have established separate Federal and non-Federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate expenses between those accounts according to this section. Organizations that are not political committees but have established separate Federal and non-Federal accounts under 11 CFR 102.5(b)(1)(i), or that make Federal and non-Federal disbursements from a

single account under 11 CFR 102.5(b)(1)(ii) shall also allocate their Federal and non-Federal expenses according to this section. This section covers:

(i) General rules regarding allocation of Federal and non-Federal expenses by party committees;

(ii) Percentages to be allocated for administrative expenses and costs of generic voter drives by national party committees;

(iii) Methods for allocation of administrative expenses, costs of generic voter drives, and of fundraising costs by national party committees; and

(iv) Procedures for payment of allocable expenses. Requirements for reporting of allocated disbursements are set forth in 11 CFR 104.10.

(2) Costs to be allocated. National party committees that make disbursements in connection with Federal and non-Federal elections shall allocate expenses according to this section for the following categories of activity:

(i) Administrative expenses including rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate;

(ii) The direct costs of a fundraising program or event including disbursements for solicitation of funds and for planning and administration of actual fundraising events, where Federal and

non-Federal funds are collected by one committee through such program or event; and

(iii) [Removed and reserved]

(iv) Generic voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.

(b) National party committees other than Senate or House campaign committees; fixed percentages for allocating administrative expenses and costs of generic voter drives--

(1) General rule. Each national party committee other than a Senate or House campaign committee shall allocate a fixed percentage of its administrative expenses and costs of generic voter drives, as described in paragraph (a)(2) of this section, to its Federal and non-Federal account(s) each year. These percentages shall differ according to whether or not the allocable expenses were incurred in a presidential election year. Such committees shall allocate the costs of each combined Federal and non-Federal fundraising program or event according to paragraph (f) of this section, with no fixed percentages required.

(2) Fixed percentages according to type of election year. National party committees other than the Senate or House campaign committees shall

allocate their administrative expenses and costs of generic voter drives according to paragraphs (b)(2) (i) and (ii) as follows:

(i) Presidential election years. In presidential election years, national party committees other than the Senate or House campaign committees shall allocate to their Federal accounts at least 65% each of their administrative expenses and costs of generic voter drives.

(ii) Non-presidential election years. In all years other than presidential election years, national party committees other than the Senate or House campaign committees shall allocate to their Federal accounts at least 60% each of their administrative expenses and costs of generic voter drives.

(c) Senate and House campaign committees of a national party; method and minimum Federal percentage for allocating administrative expenses and costs of generic voter drives--

(1) Method for allocating administrative expenses and costs of generic voter drives. Subject to the minimum percentage set forth in paragraph (c)(2) of this section, each Senate or House campaign committee of a national party shall allocate its administrative expenses and costs of generic voter drives, as described in paragraph (a)(2) of this section, according to the funds expended method, described in paragraphs (c)(1)(i) and (ii) as follows:

(i) Under this method, expenses shall be allocated based on the ratio of Federal expenditures to total Federal and non-Federal

disbursements made by the committee during the two-year Federal election cycle. This ratio shall be estimated and reported at the beginning of each Federal election cycle, based upon the committee's Federal and non-Federal disbursements in a prior comparable Federal election cycle or upon the committee's reasonable prediction of its disbursements for the coming two years. In calculating its Federal expenditures, the committee shall include only amounts contributed to or otherwise spent on behalf of specific federal candidates. Calculation of total Federal and non-Federal disbursements shall also be limited to disbursements for specific candidates, and shall not include overhead or other generic costs.

(ii) On each of its periodic reports, the committee shall adjust its allocation ratio to reconcile it with the ratio of actual Federal and non-Federal disbursements made, to date. If the non-Federal account has paid more than its allocable share, the committee shall transfer funds from its Federal to its non-Federal account, as necessary, to reflect the adjusted allocation ratio. The committee shall make note of any such adjustments and transfers on its periodic reports, submitted pursuant to 11 CFR 104.5.

(2) Minimum Federal percentage for administrative expenses and costs of generic voter drives. Regardless of the allocation ratio calculated under paragraph (c)(1) of this section, each Senate or House campaign

committee of a national party shall allocate to its Federal account at least 65% each of its administrative expenses and costs of generic voter drives each year. If the committee's own allocation calculation under paragraph (c)(1) of this section yields a Federal share greater than 65%, then the higher percentage shall be applied. If such calculation yields a Federal share lower than 65%, then the committee shall report its calculated ratio according to 11 CFR 104.10(b), and shall apply the required minimum Federal percentage.

(3) Allocation of fundraising costs. Senate and House campaign committees shall allocate the costs of each combined Federal and non-Federal fundraising program or event according to paragraph (f) of this section, with no minimum percentages required.

(d) [Removed and reserved].

(e) [Removed and reserved].

(f) National party committees; method for allocating direct costs of fundraising.

(1) If Federal and non-Federal funds are collected by one committee through a joint activity, that committee shall allocate its direct costs of fundraising, as described in paragraph (a)(2) of this section, according to the funds received method. Under this method, the committee shall allocate its fundraising costs based on the ratio of funds received into its Federal account to its total receipts from each fundraising program or event. This ratio shall be estimated prior to each such program or event based upon the committee's reasonable prediction of its Federal and non-Federal

revenue from that program or event, and shall be noted in the committee's report for the period in which the first disbursement for such program or event occurred, submitted pursuant 11 CFR 104.5. Any disbursements for fundraising costs made prior to the actual program or event shall be allocated according to this estimated ratio.

(2) No later than the date 60 days after each fundraising program or event from which both Federal and non-Federal funds are collected, the committee shall adjust the allocation ratio for that program or event to reflect the actual ratio of funds received. If the non-Federal account has paid more than its allocable share, the committee shall transfer funds from its Federal to its non-Federal account, as necessary, to reflect the adjusted allocation ratio. If the Federal account has paid more than its allocable share, the committee shall make any transfers of funds from its non-federal to its federal account to reflect the adjusted allocation ratio within the 60-day time period established by this paragraph. The committee shall make note of any such adjustments and transfers in its report for any period in which a transfer was made, and shall also report the date of the fundraising program or event that serves as the basis for the transfer. In the case of a telemarketing or direct mail campaign, the date for purposes of this paragraph is the last day of the telemarketing campaign, or the day on which the final direct mail solicitations are mailed.

(g) Payment of allocable expenses by committees with separate Federal and non-Federal accounts--

(1) Payment options. Committees that have established separate Federal and non-Federal accounts under 11 CFR 102.5(a)(1)(i) or (b)(1)(i) shall pay the expenses of joint Federal and non-Federal activities described in paragraph (a)(2) of this section according to either paragraph (g)(1)(i) or (ii), as follows:

(i) Payment by Federal account; transfers from non-Federal account to Federal account. The committee shall pay the entire amount of an allocable expense from its Federal account and shall transfer funds from its non-Federal account to its Federal account solely to cover the non-Federal share of that allocable expense.

(ii) Payment by separate allocation account; transfers from Federal and non-Federal accounts to allocation account.

(A) The committee shall establish a separate allocation account into which funds from its Federal and non-Federal accounts shall be deposited solely for the purpose of paying the allocable expenses of joint Federal and non-Federal activities. Once a committee has established a separate allocation account for this purpose, all allocable expenses shall be paid from that account for as long as the account is maintained.

(B) The committee shall transfer funds from its Federal and non-Federal accounts to its allocation account in amounts

proportionate to the Federal or non-Federal share of each allocable expense.

(C) No funds contained in the allocation account may be transferred to any other account maintained by the committee.

(2) Timing of transfers between accounts.

(i) Under either payment option described in paragraphs (g)(1)(i) or (ii) of this section, the committee shall transfer funds from its non-Federal account to its Federal account or from its Federal and non-Federal accounts to its separate allocation account following determination of the final cost of each joint Federal and non-Federal activity, or in advance of such determination if advance payment is required by the vendor and if such payment is based on a reasonable estimate of the activity's final cost as determined by the committee and the vendor(s) involved.

(ii) Funds transferred from a committee's non-Federal account to its Federal account or its allocation account are subject to the following requirements:

(A) For each such transfer, the committee must itemize in its reports the allocable activities for which the transferred funds are intended to pay, as required by 11 CFR 104.10(b)(3); and

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

(ii) Any portion of a transfer from a committee's non-Federal account to its Federal account or its allocation account that does not meet the requirements of paragraph (g)(2)(ii) of this section shall be presumed to be a loan or contribution from the non-Federal account to a Federal account, in violation of the Act.

(3) Reporting transfers of funds and allocated disbursements. A political committee that transfers funds between accounts and pays allocable expenses according to this section shall report each such transfer and disbursement pursuant to 11 CFR 104.10(b).

(h) Sunset provision. This section applies from November 6, 2002, to December 31, 2002. After December 31, 2002, see 11 CFR 106.7(a).

17. Section 106.7 is added to part 106 to read as follows:

§ 106.7 Allocation of expenses between Federal and non-Federal accounts ~~activities~~ by party committees, other than for Federal election activities.

(a) National party committees are prohibited from raising or spending non-Federal funds. Therefore, these committees shall not allocate expenditures and disbursements between Federal and non-Federal accounts. ~~Only~~ All disbursements by a national party committee must be made from a Federal account~~s may be used~~.

(b) State, district, and local party committees that make expenditures and disbursements in connection with both Federal and non-Federal elections for activities that are not Federal election activities pursuant to 11 CFR 100.24 ~~300.32~~ may use only funds subject to the prohibitions and limitations of the Act, or ~~from accounts established pursuant to 11 CFR 102.5 and 11 CFR 300.30~~ they may allocate such expenditures and disbursements between their Federal and their non-Federal accounts. ~~Political~~ State, district, and local party committees that are political committees that have established separate Federal, ~~Levin,~~ and/~~or~~ non-Federal accounts under 11 CFR 102.5(a)(1)(i) ~~and 11 CFR 300.30~~ shall allocate expenses between those accounts according to paragraphs (c) and (d) of this section. ~~11 CFR 300.33~~. Party organizations that are not political committees but have established separate Federal, ~~Levin,~~ and/~~or~~ non-Federal accounts under 11 CFR 102.5(b)(1)(i), or that make Federal and non-Federal disbursements from a single account under 11 CFR 102.5(b)(1)(ii), shall also allocate their Federal and non-Federal expenses according to ~~11 CFR 300.33~~ paragraphs (c) and (d) of this section. In lieu of establishing separate accounts, party organizations that are not political committees may choose to use an accounting method that employs general ledger accounts pursuant to 11 CFR 102.5 and 300.30.

(c) Costs allocable by State, district, and local party committees between Federal and non-Federal accounts.

(1) Salaries and other compensation including benefits. State, district, and local party committees may, for employees who spend 25% or less of their time in any given month ~~Federal election activity~~ in connection with a Federal election, either pay their salaries and other compensation,

including benefits, from a Federal account, or allocate the salaries and other compensation, including benefits, between the committee's Federal and non-Federal accounts. See 11 CFR 300.33(c)(2).

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

(3) ~~Other~~ Exempt party activities that are not Federal election activities. State, district, and local party committees may pay expenses ~~for voter registration activities undertaken by a State, district, or local party outside the period beginning 120 days before an election and ending on the date of the election,~~ for party activities that are exempt from the definitions of contribution and expenditure under 11 CFR 100.7(b)(9), (15), or (17), and 100.8(b)(10), (16), or (18), and that are not Federal election activities pursuant to 11 CFR 100.24, from their Federal accounts, or may allocate these expenses between their Federal and non-Federal accounts. If exempt party activities that are not Federal election activities are conducted in conjunction with non-Federal activities, their costs must be allocated between Federal and non-Federal accounts.

(4) Certain fundraising costs. State, district, and local party committees may allocate the direct costs of certain fundraising programs or events between their Federal and non-Federal accounts provided that none of the proceeds from the activities or events will ever be used for Federal election activities. The proceeds of fundraising allocated pursuant to this paragraph must be segregated in bank or book accounts that are never used for Federal election activity. Direct costs of fundraising include disbursements for the planning and administration of specific fundraising events or programs.

(5) Voter-drive activities that do not qualify as Federal election activities and that are not party exempt activities. Expenses for voter identification, voter registration, and get-out-the-vote drives, and any other activities that urge the general public to register, vote, or promote or oppose a political party, without promoting or opposing a candidate or non-Federal candidate, that do not qualify as Federal election activities and that are not exempt party activities, must be paid with Federal funds or may be allocated between the committee's Federal and non-Federal accounts.

(d) Allocation percentages, ratios, and record-keeping.

(1) Salaries and other compensation, including benefits. Committees must keep time records for all employees for purposes of determining the percentage of time spent on activities in connection with a Federal election. Allocations of salaries and other compensation, including benefits, shall be undertaken as follows:

(i) Salaries and other compensation, including benefits, paid for of employees who spend 25% or less of their compensated time in a given month on activities in connection with a Federal election shall be allocated between the committee's Federal and non-Federal account, subject to the following requirements:

(A) Presidential election years. In any year in which a Presidential candidate, but no Senate candidate appears on the ballot, and in the preceding year, at least 28 % of such amounts ~~salaries~~ must be allocated to the Federal account.

(B) Presidential and Senate election year. In any year in which a Presidential candidate and a Senate candidate appear on the ballot, and in the preceding year, at least 36 % of such amounts ~~salaries~~ must be allocated to the Federal account.

(C) Senate election year. In any year in which a Senate candidate, but no Presidential candidate, appears on the ballot, and in the preceding year, at least 21% of such amounts ~~salaries~~ must be allocated to the Federal account.

(D) Non-Presidential and non-Senate year. In any year in which neither a Presidential nor a Senate candidate appears on the ballot, and in the preceding year, at least 15% of such amounts ~~salaries~~ must be allocated to the Federal account.

(E) Salaries and other compensation, including benefits. ~~Salaries~~ paid to employees who spend no time in a given month on activities in connection with a Federal election may be paid solely from the non-Federal account.

(ii) Salaries and other compensation, including benefits, paid for employees who spend more than 25% of their compensated time on activities in connection with a Federal election must be paid only from a Federal account. See 11 CFR 300.33(c)(2), and paragraph (e)(2) of this section.

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

(i) Presidential election years. In any year in which a Presidential candidate, but no Senate candidate appears on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 28 % of administrative expenses to their Federal accounts.

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

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

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

(3) ~~Voter registration outside 120 day period, other~~ eExempt party activities and voter drive activities~~, and voter identification, GOTV and generic campaign activities~~ that are not Federal election activities. State, district, and local party committees that choose to allocate expenses for ~~voter registration activities addressed in this section, or that choose to allocate~~ exempt ~~party~~ activities~~, or other voter registration, GOTV and generic campaign activities~~ that are not Federal election activities, must do so subject to the following requirements:

(i) Presidential election years. In any year in which a Presidential candidate, but no Senate candidate appears on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 28 % of these expenses to their Federal accounts.

(ii) Presidential and Senate election year. In any year in which a

Presidential candidate and a Senate candidate appear on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 36 % of these expenses to their Federal accounts.

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

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

(4) Fundraising for Federal and non-Federal accounts. If Federal and non-Federal funds are collected by a State, district, or local party committee through a joint fundraising activity, that committee must allocate its direct fundraising costs using to funds received method and according to the following procedures:

(i) The committee must allocate its fundraising costs based on the ratio of funds received into its Federal account to its total receipts from each fundraising program or event. This ratio shall be estimated prior to each such program or event based upon the committee's reasonable prediction of its Federal and non-Federal

revenue from that program or event, and must be noted in the committee's report for the period in which the first disbursement for such program or event occurred, submitted pursuant to 11 CFR 104.5. Any disbursements for fundraising costs made prior to the actual program or event must be allocated according to this estimated ratio.

(ii) No later than the date 60 days after each fundraising program or event from which both Federal and non-Federal funds are collected, the committee shall adjust the allocation ratio for that program or event to reflect the actual ratio of funds received. If the non-Federal account has paid more than its allocable share, the committee shall transfer funds from its Federal to its non-Federal account, as necessary, to reflect the adjusted allocation ratio. If the Federal account has paid more than its allocable share, the committee shall make any transfers of funds from its non-Federal to its Federal account to reflect the adjusted allocation ratio within the 60-day time period established by this paragraph. The committee shall make note of any such adjustments and transfers in its report for any period in which a transfer was made, and shall also report the date of the fundraising program or event that serves as the basis for the transfer. In the case of a telemarketing or direct mail campaign, the date for purposes of this paragraph is the last

day of the telemarketing campaign, or the day on which the final direct mail solicitations are mailed.

(c) Costs not allocable by State, district, and local party committees between Federal and non-Federal accounts. The following costs incurred by State, district, and local party committees shall be paid only with Federal funds:

(1) Disbursements for State, district, and local party committees for activities that refer only to one or more candidates for Federal office must not be allocated ~~between Federal, non-Federal and Levin accounts. Only~~ All such disbursements must be made from a Federal accounts ~~may be used~~.

(2) Salary and other compensation, including benefits. Salaries and other compensation, including benefits, for employees who spend more than 25% of their compensated time in a given month on activities in connection with a Federal election must not be allocated. ~~Only~~ All such disbursements must be made from a Federal accounts ~~may be used~~. See ~~11 CFR 100.24 and~~ 11 CFR 300.33(c)(2).

(3) Federal election activities. Activities that are Federal election activities pursuant to 11 CFR 100.24 must not be allocated between Federal and non-Federal accounts. Only Federal funds, or a mixture of Federal funds and Levin funds, as provided in 11 CFR 300.33, may be used.

(4) Fundraising Costs. Expenses incurred by State, district, and local party committees directly related to programs or events undertaken to raise funds to be used, in whole or in part, for activities in connection with Federal and

non-Federal elections that are Federal election activities pursuant to 11 CFR 100.24 must not be allocated between Federal and non-Federal accounts. All such disbursements must be made from a Federal account.

(f) Transfers between accounts to cover allocable expenses. State, district, and local party committees may transfer funds from their non-Federal to their Federal accounts or to an allocation account solely to meet allocable expenses under this section and only pursuant to the following requirements:

(1) Payments from Federal accounts or from allocation accounts.

(i) State, district, and local party committees must pay the entire amount of an allocable expense from their Federal accounts and transfer funds from their non-Federal account to the Federal account ~~for administrative expenses~~ solely to cover the non-Federal share of that allocable expense; or

(ii) State, district, or local party committees may establish a separate allocation account into which funds from its Federal and non-Federal accounts may be deposited solely for the purpose of paying the allocable expenses of joint Federal and non-Federal activities.

(2) Timing.

(i) If a Federal account is used to make allocable expenditures and disbursements, State, district, and local party committees must transfer funds from their non-Federal to their Federal accounts to meet allocable expenses no more than 10 days before and no more than 60 days after the payments for which they are designated are

made from a Federal account, except that transfers may be made more than 10 days before a payment is made from the Federal account if advance payment is required by the vendor(s) and if such payment is based on a reasonable estimate of the activity's final costs as determined by the committee and the vendor(s) involved.

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

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

18. The authority citation for part 108 continues to read as follows:

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

19. Section 108.7 is amended by revising paragraphs (c)(4) and (c)(5) and adding paragraph (c)(6) to read as follows:

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

* * * * *

(c) * * *

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

(5) Candidate's personal financial disclosure; or

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

PART 110 – CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

20. The authority citation for part 110 continues to be read as follows:

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

21. Section 110.1 is amended by adding new paragraph (c)(5) to read as follows:

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

* * * * *

(c) * * *

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

* * * * *

PART 114 – CORPORATE AND LABOR ORRGANIZATION ACTIVITY

22. The authority citation for part 114 continues to read as follows:

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

23. Section 114.1 is amended by revising paragraph (a)(2)(ix) to read as follows:

§ 114.1 Definitions.

(a) * * *

(2) * * *

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

* * * * *

24. Subchapter C is added to Chapter I to read as follows:

SUBCHAPTER C – BCRA REGULATIONS

PART 300 – NON-FEDERAL FUNDS

Sec.

Subpart A – National Party Committees

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

Subpart C – Tax-exempt Organizations

Subpart D – Federal Candidates and Officeholders

Subpart E – State and Local Candidates

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

§ 300.1 Scope and effective date, and organization.

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

(b) Effective dates.

(1) Except as otherwise specifically provided in this part, this part shall take effect on November 6, 2002. However, subpart B of this part shall not apply with respect to runoff elections, recounts, or election contests resulting from elections held prior to such date. See 11 CFR 300.12 for transition rules applicable to subpart A of this part.

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

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

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

(2) Subpart B of this part pertains to State, district, and local political party committees and organizations. Subpart B of this part focuses on "Levin Amendment" to BCRA; office buildings; and fundraising and donation prohibitions with regard to certain tax-exempt organizations.

(3) Subpart C of this part addresses non-Federal funds from the perspective of tax-exempt organizations, setting out rules about prohibited fundraising for certain tax-exempt organizations by national party

committees, State, district, and local party committees, and Federal candidates and officeholders.

(4) Subpart D of this part includes regulations pertaining to soliciting non-Federal funds from the perspective of Federal candidates and officeholders in Federal and non-Federal elections; including exceptions for those who are also State candidates and exceptions for those attending and speaking at fundraising events, or who solicit for certain tax-exempt organizations.

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

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

§ 300.2 Definitions.

(a) A 501(c) organization that makes expenditures or disbursements in connection with a Federal election as that term is used in 11 CFR 300.10, 300.37, 300.50, and 300.51 includes an organization that, within the current election cycle and the two years preceding it, has taken, or within the current election, plans to undertake the following activities:

(1) Directly or indirectly establishes, finances, maintains, supports, or controls a political committee;

(2) Makes expenditures or disbursements for Federal election activity;

(3) Finances voter registration ~~at any time~~;

(4) Finances voter guides, candidate questionnaires, or candidate surveys that refer to one or more candidates for Federal office; or

(5) Finances get-out-the-vote communications that refer to one or more candidates for Federal office.

(b) Agent. ~~means any person who has actual express oral or written authority to act on behalf of a candidate, officeholder, or a national committee of a political party, or a State, district or local committee of a political party, or an entity directly or indirectly established, financed, maintained, or controlled by a party committee. An agent has actual authority if he or she has instructions, either oral or written, from the candidate or a committee official.~~ For the purposes of part 300 of chapter I, agent means any person who has actual authority, either express or implied, to engage in any of the following activities on behalf of the specified persons:

(1) In the case of a national committee of a political party:

(i) To solicit, direct, or receive any contribution, donation, or transfer of funds; or,.

(ii) To solicit any funds for, or make or direct any donations to, an organization that is described in 26 U.S.C 501(c) and exempt from taxation under 26 U.S.C. 501(a) (or has submitted an application for determination of tax exempt status under 26 U.S.C. 501(a)), or an organization described in 26 U.S.C. 527 (other than a political committee, a State, district, or local committee of a political party, or the authorized campaign committee of a candidate for State or local office).

(2) In the case of a State, district, or local committee of a political party:

(i) To expend or disburse any funds for Federal election activity; or

(ii) To transfer, or accept a transfer of, funds to make expenditures or disbursements for Federal election activity; or

(iii) To engage in joint fundraising activities with any person if any part of the funds raised are used, in whole or in part, to pay for Federal election activity; or

(iv) To solicit any funds for, or make or direct any donations to, an organization that is described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C. 501(a) (or has submitted an application for determination of tax exempt status under 26 U.S.C. 501(a)), or an organization described in 26 U.S.C. 527 (other than a political committee, a State, district, or local committee of a political party, or the authorized campaign committee of a candidate for State or local office).

(3) In the case of an individual who is a Federal candidate or an individual holding Federal office, to solicit, receive, direct, transfer, or spend funds in connection with any election.

(4) In the case of an individual who is a candidate for State or local office, to spend funds for a public communication (see 11 CFR 100.26).

(c) Directly or indirectly establish, maintain, finance, or control.

(1) This paragraph (c) applies to national, State, district, and local committees of a political party, candidates, and holders of Federal office, including an

officer, employee, or agent of any of the foregoing persons, which shall be referred to as "sponsors" in this section.

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

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

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

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

~~(A) The percentage of the entity's total funding in a given calendar year represented by the amount of funding provided by the sponsor.~~

~~(B) Whether the sponsor provided funding to the entity on a one-time basis or more systematically over a period of time, including the frequency, regularity, and duration of funding.~~

~~(C) The amount of time that has elapsed since the sponsor last provided funding to the entity.~~

~~(iv) The sponsor provides or has provided legal, accounting, consulting, administrative, or other services to the entity.~~

~~(v) The sponsor, alone or in combination with other persons, sets or has set policies for soliciting contributions or donations to the entity or for the making of expenditures or disbursements by the entity.~~

~~(vi) The same person or persons has or has had decision-making authority over the management of both the sponsor and the entity.~~

(2) To determine whether a sponsor directly or indirectly established, finances, maintains, or controls an entity, the factors described in paragraphs (c)(2)(i) through (x) of this section must be examined in the context of the overall relationship between sponsor and the entity to determine whether the presence of any factor or factors is evidence that the sponsor directly or indirectly established, finances, maintains, or controls the entity. Such factors include, but are not limited to:

(i) Whether a sponsor, directly or through its agent, owns controlling interest in the voting stock or securities of the entity;

(ii) Whether a sponsor, directly or through its agent, has the authority or ability to direct or participate in the governance of the entity through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures;

(iii) Whether a sponsor, directly or through its agent, has the authority or ability to hire, appoint, demote, or otherwise control the officers, or other decision-making employees or members of the entity;

(iv) Whether a sponsor has a common or overlapping membership with the entity that indicates a formal or ongoing relationship between the sponsor and the entity;

(v) Whether a sponsor has common or overlapping officers or employees with the entity that indicates a formal or ongoing relationship between the sponsor and the entity;

(vi) Whether a sponsor has any members, officers or employees who were members, officers or employees of the entity that indicates a formal or ongoing relationship between the sponsor and the entity, or that indicates the creation of a successor entity;

(vii) Whether a sponsor, directly or through its agent, provides funds or goods in a significant amount or on an ongoing basis to the entity, such as through direct or indirect payments for administrative, fundraising, or other costs, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17, and otherwise lawfully;

(viii) Whether a sponsor, directly or through its agent, causes or arranges for funds in a significant amount or on an ongoing basis to be provided to the entity, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17, and otherwise lawfully;

(ix) Whether a sponsor, directly or through its agent, had an active or significant role in the formation of the entity; and

(x) Whether the sponsor and the entity have similar patterns of receipts or disbursements that indicate a formal or ongoing relationship between the sponsor and the entity.

(3) Determinations by the Commission.

(i) A sponsor or entity may request an advisory opinion of the Commission to determine whether the sponsor is no longer directly or indirectly financing, maintaining, or controlling the entity for purposes of this part. The request for such an advisory opinion must meet the requirements of 11 CFR part 112 and must demonstrate that the entity is not directly or indirectly financed, maintained, or controlled by the sponsor.

(ii) Notwithstanding the fact that a sponsor may have established an entity within the meaning of paragraph ~~(e)(1)(ii)~~ (c)(2) of this section, the committee or the entity may request an advisory opinion of the Commission determining that the relationship

between the sponsor and the entity has been severed. The request for such an advisory opinion must meet the requirements of 11 CFR part 112, and~~specifically include a complete description of all facts relevant to showing that~~ must demonstrate that all material connections between the sponsor and the entity have been severed for at least five years.

(d) Disbursement means any purchase or payment made by:

(1) A political committee; or

(2) Any other person, including an organization that is not a political committee, that is subject to the Act. ~~made by a political committee or organization that is not a political committee~~.

(e) For purposes of part 300, donation means a payment, gift, subscription, loan, advance, deposit, or anything of value given to a ~~non-Federal candidate or a party committee, 501(c) organization, or a section 527 organization~~, person, but does not include contributions or transfers.

(f) Federal account means an account at a ~~financial depository institution~~ campaign depository ~~or other account~~ that contains funds to be used in connection with a Federal election.

(g) Federal funds mean funds that comply with the limitations, prohibitions, and reporting requirements of the Act.

(h) Levin account means an account at a campaign depository established by a State, district, or local committee of a political party pursuant to 11 CFR 300.30, for purposes

of making expenditures or disbursements for Federal election activity or non-Federal activity (subject to State law) under 11 CFR 300.32.

(i) Levin funds mean ~~non-Federal~~ funds that comply with the limitations, prohibitions, and reporting requirements set out in subpart B of this part, which are raised pursuant to 11 CFR 300.30 and 300.31 and are or will be disbursed by a State, district, or local committee of a political party for Federal election activity or non-Federal activity (subject to State law) under 11 CFR 300.32.

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

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

(l) [Reserved].

(m) To solicit means to request or suggest or recommend that another person make a contribution, donation or transfer of funds, whether the contribution, donation or transfer of funds is to be made directly, or through a conduit or intermediary. A solicitation does not include merely providing information or guidance as to the requirement of particular law.

(n) To direct means to provide the name of a candidate, political committee or organization to a person who has expressed an interest in making a contribution, donation or transfer of funds to those who support the beliefs or goals of the contributor or donor. Direction does not include merely providing information or guidance as to the requirement of particular law.

(o) Individual holding Federal office means an individual elected to or serving in the office of President or Vice President of the United States; or a Senator or a Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

Subpart A – National Party Committees

§ 300.10 General prohibitions on raising and spending non-Federal funds (2 U.S.C. 441i(a) and (c)).

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

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

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

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

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

(c) Application. This section also applies to:

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

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

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

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

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

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

(3) An organization described in 26 U.S.C. 527, ~~except for a political party~~ unless the organization is:

(i) A political committee under 11 CFR 100.5;

(ii) A State, district, or local committee of a political party; or

(iii) The authorized campaign committee of a State or local candidate;

(b) Application. This section also applies to:

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

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

(3) An entity that is directly or indirectly established, financed, maintained, or controlled by an agent of a national, State, district, or local committee of a political party, including a national ~~party~~congressional campaign committee.

(c) Determining whether a section 502© organization makes expenditures or disbursements in connection with Federal elections. In determining whether an organization makes expenditures or disbursements in connection with a Federal election as described in paragraphs (a)(1) and (2), a national committee of a political party, including a national congressional campaign committee, or any other person described in paragraph (b) may obtain and rely upon a certification from the organization that satisfies the criteria described in paragraph (d) of this section.

(d) Certification. A national committee of a political party, including a national congressional campaign committee, or any person described in paragraph (b) of this section, may rely upon a certification that meets all of the following criteria:

(1) The certification states with specificity that, in the current election cycle, and within the two years preceding the current cycle, the organization has not and does not intend to:

(i) Establish, finance, maintain, support, or control a political committee;

(ii) Make expenditures or disbursements for Federal election activity;

(iii) Finance voter registration;

(iv) Finance voter guides, candidate questionnaires, or candidate surveys that refer to one or more candidates for Federal office; or

(v) Finance get-out-the-vote communications that refer to one or more candidates for Federal office;

(2) The certification is signed and sworn to by an officer or other authorized representative of the organization with knowledge of the organization's activities; and

(3) The certification is accompanied by:

(i) The organization's Form 990 tax returns for the current election cycle and the last two fiscal years preceding it and its application for tax exempt status if the organization has already been granted exempt status under 501(c); or

(ii) The organization's Form 990 tax return and its application for tax exempt status once these documents are become available if the organization has submitted an application for determination of tax-exempt status under 26 U.S.C. 501(c) that has not yet been granted or denied.

§ 300.12 Transition rules.

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

(1) To retire outstanding debts or obligations that were incurred solely in connection with an election held prior to November 6, 2002; or

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

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

(1) To pay any expenditure as defined in 2 U.S.C. 431(9);

(2) To retire outstanding debts or obligations that were incurred for any expenditure; or

(3) To defray the costs of the construction or purchase of any office building or facility.

(c) Any non- funds remaining after payment of debts and obligations permitted in paragraph (a) of this section must be disgorged to the United States Treasury no later than December 31, 2002.

(d) National party committee office building or facility accounts. Before November 6, 2002, the national committee of a political party, including a national congressional campaign committee, may accept funds into its party office building or facility account, established pursuant to repealed 2 U.S.C. 431(8)(B)(viii), and may use the funds in the account only for the construction or purchase of an office building or facility. After November 5, 2002, the national party committees may no longer accept funds into such an account and must not use such funds for the purchase or construction of any office building or facility. Funds on deposit in any party office building or facility account on November 6, 2002, must be disgorged to the United States Treasury.

(e) Application. This section also applies to:

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

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

(f) Treatment of Federal and non-Federal accounts during transition period. The following provisions applicable to the allocation of, and payment for, expenses between Federal and non-Federal accounts of national party committees shall remain in effect between November 6 and December 31, 2002: 11 CFR 106.5(a), 106.5(b), 106.5(c), 106.5(f) and 106.5(g).

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

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

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

(c) Transitional reporting rules.

(1) The reporting requirements in 11 CFR 104.8(e), 104.9(c) and 104.9(e) for national party committee non-Federal accounts shall remain in effect for the report covering activity between November 6 and December 31, 2002.

(2) The reporting requirements in 11 CFR 104.8(f) and 104.9(d) for national party committee building fund accounts shall remain in effect for the report covering activity between November 6 and December 31, 2002.

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

§ 300.30 Accounts

(a) Political Committees.

(1) Federal Accounts

(i) Each State, district, and local party organization that qualifies as a political committee under 11 CFR 100.5 and that finances political activity in connection with both Federal and non-Federal elections shall, in accordance with 11 CFR 102.5(a), either:

(A) Establish a Federal account in a depository, in accordance with 11 CFR part 103, which shall be treated as a separate political committee and be required to comply with the requirements of the Act including the registration and reporting requirements of 11 CFR part 102 and part 104; or

(B) Establish a separate Federal political committee that shall register as a political committee and comply with the requirements of the Act.

~~(2) Each State, district and local party organization that does not qualify as a political committee under 11 CFR 100.5, but that finances political activity in connection with both Federal and non-Federal elections, and or that makes payments for certain Federal election activities pursuant to 11 CFR 300.32(b), shall, in accordance with 11 CFR 102.5(b)(1), establish a Federal account in a depository.~~

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

(ii) Only contributions that are permissible pursuant to the limitations and prohibitions of the Act shall be deposited into any Federal

account established pursuant to paragraph (a)(1)(i) of this section, regardless of whether such contributions are for use in connection with Federal, or with non-Federal elections, or for the Federal portion of Federal election activities.

(iii) Only contributions solicited and received pursuant to the following conditions may be deposited in a Federal account established under paragraph (a)(1)(i) of this section:

(A) Contributions must be designated by the contributors for the Federal account;

(B) The solicitation must expressly state that contributions may be used wholly or in part in connection with a Federal election; or

(C) The solicitation must expressly state that all contributions are subject to the prohibitions and limitations of the Act.

(iv) All disbursements, contributions, and expenditures made wholly or in part by any State, district, or local party ~~committee~~ organization in connection with a Federal election must be made from either:

(A) A Federal account, except as permitted by 11 CFR 300.32; or

(B) A separate allocation account.

(v) If all payments in connection with a Federal election, including payments for Federal election activities, are to be made from a Federal account, not an allocation account, expenditures and

disbursements for costs that are allocable pursuant to 11 CFR 106.7 or 11 CFR 300.33 must be made from a the Federal account in their entirety, with the shares of a non-Federal account or of a Levin account being transferred to the Federal account pursuant to 11 CFR 300.33 and 11 CFR 300.34.

(vi) No transfers may be made to a Federal account from any other account(s) maintained by a State, district, or local party committee or from any other party committee at any level for the purpose of financing Federal election activity ~~in connection with Federal elections~~, except as provided by paragraphs (a)(1)(v) of this section or 11 CFR 300.33 and 300.34.

(vii) State, district, and local party committees may choose to make non-Federal disbursements from a ~~the~~ Federal account, subject to State law, provided that such disbursements are reported pursuant to 11 CFR 104.17 and provided that contributors of the Federal funds so used were notified that their contributions were subject to the limitations and prohibitions of the Act.

(2) Levin accounts.

(i) Any State, district, or local party organization that is a political committee, including any organization that is directly or indirectly established, financed, maintained, or controlled by a State, district, or local committee of a political party and any officer or agent of such a committee or organization, that intends to engage in voter

registration, voter identification, get-out-the-vote activity, and/or generic campaign activity pursuant to 11 CFR 300.32(b), must maintain one or more separate accounts in a depository for this purpose. These ~~This~~ accounts shall be known as a Levin accounts.

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

(A) Donations must be designated by the contributors for the Levin account; or

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

(iii) A State, district, or local party committee may use its Levin account(s) ~~to make expenditures or disbursements~~ only for the categories of activities described at 11 CFR 300.32(b)(1) or for other, non-Federal activities permissible under State law.

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

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

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

(C) The funds used for the expenditure or disbursement have been solicited, donated, received, and deposited in accordance with 11 CFR 300.31.

(3) Non-Federal account.

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

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

(4) Allocation accounts. At the discretion of the party committee or organization, separate allocationaccounts may be established for purposes of making allocable expenditures anddisbursements.

(i) Only funds from the party committee or organization's Federal and

non-Federal accounts may be deposited into an allocation account used to make allocable expenditures and disbursements for activities in connection with Federal and non-Federal elections.

(ii) Only funds from the party committee or organization's Federal account and Levin account(s) may be deposited into an allocation account used to make allocable expenditures and disbursements for activities undertaken pursuant to 11 CFR 300.32(b).

(iii) Once a party committee or organization has established a separate allocation account for activities in connection with Federal and non-Federal elections and a separate account for activities undertaken pursuant to 11 CFR 300.32(b), all allocable expenses shall be paid from the appropriate allocation account for as long as that account is maintained.

(iv) The organization shall transfer to the appropriate allocation account funds from its Federal and non-Federal or Levin accounts in amounts proportionate to the Federal, non-Federal and Levin shares of each allocable expense pursuant to 11 CFR 300.33. The transfers shall be made pursuant to 11 CFR 300.34.

(v) No funds contained in an allocation account may be transferred to any other account maintained by the party committee or organization.

(b) State, district, and local party organizations that are not political committees. Any State, district, or local party organization that makes payments for certain Federal

election activities pursuant to 11 CFR 300.32(b), but that does not qualify as a political committee under 11 CFR 100.5, must either:

(1) Establish at least three separate accounts in depositories as follows -

(i) An account into which only funds subject to the prohibitions and limitations of the Act ~~and only funds solicited for activities pursuant to 11 CFR 300.32,~~ may be deposited and from which contributions, expenditures, disbursements for exempt activities and payments for certain Federal activities ~~shall~~ must be made;

(ii) One or more Levin accounts pursuant to 11 CFR 300.30(b) into which only funds solicited pursuant to 11 CFR 300.31 may be deposited and from which payments must be made pursuant to 11 CFR 300.32 and 300.33; and

(iii) One or more additional accounts pursuant to State law from which payments for activities other than those permitted by paragraphs (b)(1)(i) and (ii) of this section;

(2) Establish two separate accounts in depositories as follows:

(i) An Federal account into which may be deposited both funds subject to the prohibitions and limitations of the Act and funds solicited for activities pursuant to 11 CFR 300.32. Payments may be made from this account for contributions, expenditures and disbursements for exempt activities in connection with Federal elections and for activities undertaken pursuant to 11 CFR 300.32(b). Use of this Federal account as a depository for Levin

funds requires employment of a general ledger accounting system that segregates assets, liabilities, revenue and expenses for activities undertaken pursuant to 11 CFR 106.7 and 11 CFR 300.32. If the accounting method employed is computer-based, the data must be backed-up on no less than a monthly basis.

(ii) One or more additional accounts pursuant to State law from which payments for activities other than those permitted by paragraphs (b)(1)(i) and (ii) must be made; or

(3) Establish one account in a depository using three or more general ledger accounts as follows: Use of one account for all activity requires an accounting method that employs general ledger accounts that segregate assets, liabilities, revenue and expenses for activities undertaken pursuant to 11 CFR 106.7 and 300.32. Funds recorded in a general ledger account as received for non-Federal activities may not be reclassified as funds available for Federal election activities to be undertaken pursuant to 11 CFR 300.32 (i.e., Levin funds), unless the funds to be reclassified were received pursuant to a solicitation for Levin funds or were so designated by the donors. If the accounting method employed is computer-based, the data must be backed up on no less than a monthly basis.

(c) All party organizations must keep records of deposits into and disbursements from such accounts, and, upon request, must make such records available for examination by the Commission.

§ 300.31 Receipt of Levin funds.

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

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

(c) Donations from sources permitted by State law but prohibited by the Act. If the laws of the State in which a State, district, or local committee of a political party is organized permit donations to the committee from a source prohibited by the Act and this chapter, other than 2 U.S.C. 441e, the committee may solicit and accept donations of Levin funds from that source, subject to paragraph (d) of this section.

(d) Donation amount limitation.

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

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

greater than the amount specified in paragraph (d)(1) of this section, then the amount limitations in paragraph (d)(1) of this section shall control.

(3) No affiliation of committees for purposes of this paragraph. For purposes of determining compliance with paragraph (d) of this section only, State, district, and local committees of the same political party shall not be considered affiliated. Subject to the amount limitations specified in paragraphs (d)(1) and (d)(2) of this section, ~~A~~ a person (including any ~~person~~ entity established, financed, maintained, or controlled by such person) may donate ~~up to $10,000 per calendar year~~ to each and every State, district, and local committee of a political party.

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

(1) A national committee of a political party (including a national congressional campaign committee of a political party), any officer or agent acting on behalf of such a national party committee, or any entity that is directly or indirectly established, financed, maintained, or controlled by such a national party committee. Notwithstanding 11 CFR 102.17, a State, district, or local committee of a political party must not raise Levin funds by means of joint fundraising with a national committee of a political party, any officer or agent acting on behalf of such a national

party committee, or any entity that is directly or indirectly established, financed, maintained, or controlled by such a national party committee. Nothing in this section shall be construed to prohibit a State, district, or local committee of a political party from jointly raising, under 11 CFR 102.17, Federal funds not to be used for Federal election activity with a national committee of a political party, or its agent, or any entity directly or indirectly established, financed, maintained, or controlled by such a national party committee.

(2) A Federal candidate, or an individual holding Federal office, or an agent of a Federal candidate or officeholder, or an entity directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, one or more Federal candidates or individuals holding Federal office. Notwithstanding 11 CFR 102.17, a State, district, or local committee of a political party must not raise Levin funds by means of joint fundraising with a Federal candidate, an individual holding Federal office, or an entity directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, one or more candidates or individuals holding Federal office. A Federal candidate or individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party at which Levin funds are raised. See 11 CFR 300.64.

(f) Certain joint fundraising prohibited. Notwithstanding 11 CFR 102.17, a State, district, or local committee of a political party must not raise Levin funds by means of

any joint fundraising activity with any other State, district, or local committee of any political party, the agent of such a committee, or an entity directly or indirectly established, financed, maintained, or controlled by such a committee. This prohibition includes State, district, and local committees of a political party organized in another State. Nothing in this section shall be construed to prohibit two or more State, district, or local committees of a political party from jointly raising, under 11 CFR 102.17, Federal funds not to be used for Federal election activity.

(g) Common vendors. The use of a common vendor for fundraising by more than one State, district, or local committee of a political party, or the agent of such a committee, shall not, by itself, be deemed joint fundraising for purposes of this paragraph.

§ 300.32 Expenditures and disbursements.

(a) Federal funds.

(1) A State, district, or local committee of a political party, or an association or similar group of candidates for State or local office, or an association or similar group of individuals holding State or local office, that makes an expenditure ~~or disbursement~~ for the purpose of influencing a Federal election must use Federal funds for the expenditure, subject to the provisions of this chapter.

(2) Except as provided in this part, a State, district, or local committee of a political party that makes expenditures or disbursements for Federal election activity must use Federal funds for that purpose, subject to the provisions of this chapter. An association or similar group of candidates

for State or local office, or an association or similar group of individuals holding State or local office, must make any expenditures or disbursements for Federal election activity solely with Federal funds.

(3) State, district, and local party committees that ~~engage in fundraising~~ raise Federal funds to be used, in whole or in part, for Federal election activities must pay ~~all~~ the direct costs ~~related to~~ of such fundraising only with Federal funds. The direct costs of a fundraising program or event include expenses for the solicitation of funds and for the planning and administration of actual fundraising programs and events.

(4) State, district, and local party committees that ~~engage in fundraising~~ raise Levin funds to be used, in whole or in part, for ~~a Levin account~~ Federal election activity must pay ~~all~~ the direct costs ~~related to raising such funds~~ of such fundraising only with Federal funds. The direct costs of a fundraising program or event include expenses for the solicitation of funds and for the planning and administration of actual fundraising programs and events.

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

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

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

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

(2) Any use that is lawful under the laws of the State in which the committee is organized, other than the Federal election activities defined in 11 CFR 100.24(b)(3) and (4). A disbursement of Levin funds under this paragraph need not comply with paragraphs (c)(1) and (c)(2) of this section, except as required by State law.

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

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

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

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

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

(d) Non-Federal ~~funds~~ activities. A State, district, or local committee of a political party that makes disbursements for non-Federal activity may make those disbursements from its Federal, Levin, or non-Federal funds, subject to the laws of the State in which it is organized. A State, district, or local party committee that engages in fundraising for solely non-Federal funds may pay the costs related to such fundraising from any account, subject to State law, including a Federal account.

§ 300.33 Allocation of costs of Federal election activity.

(a) Costs of Federal election activity allocable by State, district, and local party committees and organizations.

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

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

(1) Costs of voter registration, ~~voter identification, get-out-the vote activity and generic campaign~~ activity within certain time periods. State, district,

and local party committees and organizations ~~that have established a Federal account and a separate Levin account pursuant to 11 CFR 300.30(b)~~ may allocate disbursements or expenditures between Federal funds and Levin funds for ~~(i)~~ voter registration activity, as defined in 11 CFR 100.24(a)(2), that takes place during the period that begins on the date that is 120 days before the date of a regularly scheduled Federal election and that ends on the date of the election, provided that the activity does not refer to a clearly identified Federal candidate.

(2) Costs of voter identification, get-out-the-vote activity, or generic campaign activities within certain time periods. State, district, and local party committees and organizations ~~that have established a Federal account and a separate Levin account pursuant to 11 CFR 300.30(b)~~ may allocate disbursements or expenditures between ~~these two accounts~~ Federal funds and Levin funds for voter identification, get-out-the-vote activity, or generic campaign activities, as defined in 11 CFR 100.24(a)(3) and (4) and 11 CFR 100.25, that are conducted in connection with an election in which a candidate for Federal office is on the ballot and within the time periods set forth in 11 CFR 100.24(a)(1), provided that the activity does not refer to a clearly identified Federal candidate.

(b) Allocation percentages~~, ratios and record-keeping~~. State, district, and local party committees and organizations that choose ~~to make expenditures and disbursements in connection with activities described in paragraph (a)(3) of this section must to allocate~~ to allocate between Federal funds and non-Federal funds their expenditures and

disbursements in connection with activities described in paragraph (a)~~(3)~~ of this section that take place within the time periods set forth in 11 CFR 100.24(a)(1) or paragraph (a) of this section must allocate the following minimum percentages to their Federal funds:~~The allocation must result in the following minimum percentages to their Federal accounts:~~

(1) Presidential election years. ~~In any year in which~~ If a Presidential candidate, but no Senate candidate appears on the ballot, State, district, and local party committees and organizations must allocate at least 28% of expenses for activities described in paragraph (a) of this section to their Federal ~~account~~ funds.

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

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

(4) Non- Presidential and non-Senate year. ~~In any year in which~~ If neither a Presidential nor a Senate candidate appears on the ballot, State, district, and local party committees and organizations must allocate at least 15% of

expenses for activities described in paragraph (a)(2) of this section to their Federal account funds.

~~(4) Other voter registration activities. Expenses for voter registration activities undertaken by a State, district or local party committee outside the period beginning 120 days before an election and ending on the date of the election may be paid with 100% non-Federal funds, or they may be allocated between the committee's Federal and non-Federal accounts.~~

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

(c) Costs of Federal election activity not allocable by State, district, and local party committees. The following costs incurred by State, district, and local party committees and organizations must be paid only with Federal funds:

~~(1) Activities that refer to clearly identified Federal candidates. Disbursements by State, district and local party committees for activities that refer to a clearly identified candidate for Federal office must not be allocated between or among Federal, non-Federal and Levin accounts. Only Federal funds may be used.~~

~~(2) Activities that refer to Federal and to State and/or local elections. With the exception of activities described in paragraph (a)(3) of this section, disbursements by State, district and local party committees for activities~~

~~that do not refer to a clearly identified Federal candidate, but that are wholly or in part in connection with Federal elections, must not be allocated between or among Federal, non-Federal and Levin accounts. Only Federal funds may be used.~~

(1) Public communications. Expenditures for public communications as defined in 11 CFR 100.26 by State, district, and local party committees and organizations that refer to a clearly identified candidate for Federal office and that promote, support, attack, or oppose any such candidate for Federal office must not be allocated between or among Federal, non-Federal, and Levin accounts. Only Federal funds may be used.

(2) Salary and other compensation, including benefits. Salaries and other compensation, including benefits, for employees who spend more than 25% of their compensated time in a given month on activities in connection with a Federal election must not be allocated between or among Federal, non-Federal, and Levin accounts. Only Federal funds may be used.

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

~~are for solely non-Federal fundraising costs, non-Federal funds may be used.~~

(d) Transfers between accounts to cover allocable expenses. State, district, and local party committees and organizations may transfer funds from their Levin accounts to their Federal accounts or to allocation accounts solely to meet expenses allocable pursuant to paragraphs (a)(1) and (2) of this section and only pursuant to the following ~~requirements~~ methods:

(1) Payments from Federal accounts or from allocation accounts.

(i) If Federal accounts are used to make payments for allocable activities, State, district, and local party committees and organizations must pay the entire amount of ~~an~~ allocable expenses from their Federal accounts and transfer funds from their Levin accounts to their Federal accounts solely to cover the Levin accounts' portions of the expenses; or

(ii) State, district, and local party committees and organizations may establish separate allocation accounts into which Federal funds and Levin funds may be deposited solely for the purpose of paying allocable expenses.

(2) Timing.

(i) If a Federal accounts ~~is~~ are used to make allocable expenditures and disbursements, State, district, and local party committees and organizations must transfer Levin funds ~~from their Levin accounts~~ to their Federal accounts to meet allocable expenses no more than

10 days before and no more than 60 days after the payments for which they are designated are made from a Federal account, except that transfers may be made more than 10 days before a payment is made from the Federal account if advance payment is required by the vendor(s) and if such payment is based on a reasonable estimate of the activity's final costs as determined by the committee and the vendor(s) involved.

(ii) Any portion of a transfer ~~from a committee's Levin account~~ of Levin funds to ~~it's~~ a party committee or organization's Federal account that does not meet the requirement of paragraph (d)(2)(i) of this section shall be presumed to be a loan or contribution from the Levin account to the Federal account, in violation of the Act.

§ 300.34 Transfers.

(a) Federal funds.

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

(2) A State, district, or local committee of a political party that makes an expenditure of Federal funds for Federal election activities must

demonstrate that the Federal funds used to make the expenditure do not include Federal funds transferred to the committee in violation of this section. To make this demonstration, the committee must use an accounting method that employs general ledger accounts and that segregates assets, liabilities, revenue and expenses for Federal election activity undertaken pursuant to 11 CFR 300.32. If the accounting method is computer-based, the data must be back up no less than monthly. Alternatively, a State, district, or local committee of a political party committee may establish a separate Federal account into which the committee deposits only Federal funds raised by the committee itself, and from which all expenditures of Federal funds for Federal election activities are made.

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

(1) Any other State, district, or local committee of any political party, any officer or agent acting on behalf of such a committee, or any entity directly or indirectly established, financed, maintained or controlled by such a committee; or,

(2) The national committee of any political party (including a national congressional campaign committee of a political party), any officer or agent acting on behalf of such a committee, or any entity directly or

indirectly established, financed, maintained, or controlled by such a committee.

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

§ 300.35 Office buildings.

(a) General provision. For the purchase or construction of its office building, a State or local party committee may spend funds that are not subject to the limitations, prohibitions, and disclosure provisions of the Act, so long as such funds are not contributed or donated by a foreign national. See 2 U.S.C. 441e. Funds received by the State or local party committee that are spent for the purchase or construction of its office building are subject to State law. An office building must not be purchased or constructed for the purpose of influencing the election of any candidate in any particular election for Federal office. For purposes of this section, the term local party committee shall include a district party committee.

(b) Application of State law. Amounts received by a State or local party committee that are spent for the purchase or construction of its office building are subject to State law as set forth in paragraphs (b)(1), (2), and (3) of this section.

(1) Non-Federal account. If a State or local party committee uses non-Federal funds, Federal law does not preempt or supersede State law as to the source of funds used, the permissibility of the disbursements, or the reporting of the receipt and disbursement of such funds, except as provided in paragraphs (a) and (d) of this section.

(2) Federal account. If a State or local party committee uses funds from its accounts containing only Federal funds, Federal law does not supersede or preempt State law as to the permissibility of the disbursements, except as provided in paragraphs (a) and (d) of this section. Federal law also does not preempt or supersede any State law that establishes additional prohibitions or limitations as to the source of the funds, as ascertained by application of a reasonable accounting method prescribed under State law.

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

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

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

(2) Purchase means any payment to acquire the sole legal title to the building, including fees directly related to the acquisition of the building, such as sales commissions and real estate closing or settlement fees. Purchase does not include payments for the rent or leasing of an office building,

property taxes and similar assessments, building maintenance, utility services, and office equipment.

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

(d) Allocation of expenses not within the definition of "purchase or construction of an office building." If funds raised by a State or local party committee are used for an expense for its office building and the expense does not fall within the definitions in paragraph (c) of this section, the expense is an allocable administrative expense unless it falls within another category, such as support for a Federal or non-Federal candidate. If the expense is an allocable administrative expense, 11 CFR ~~300.33~~ 106.7 applies. ~~and the administrative expense is subject to the limitations and prohibitions of the Act~~.

(e) Leasing a portion of the party office building. A State or local party committee may lease a portion of its office building to others to generate income at the usual and normal charge. If the building is purchased or constructed in whole or in part with non-Federal funds, all rental income shall be deposited in the committee's non-Federal account and used only for non-Federal purposes. Such rental income and its use must also comply with State law. If the building is purchased or constructed solely with Federal funds, the rental income may be deposited in the Federal account only if the sources of the revenue collected comply with the limitations and prohibitions of the Act and the revenue does not exceed the limitations of the Act. The receipt of such funds shall be reported in compliance with 11 CFR 104.3(a)(4)(vi).

(f) Transitional Provisions for State Party Building or Facility Account. Up to and including November 5, 2002, the State committee of a political party may accept funds into its party office building or facility account, established pursuant to repealed 2 U.S.C. 431(8)(B)(viii), and use the funds in the account only for the construction or purchase of an office building or facility. Starting on November 6, 2002, the funds in the account will be subject to the provisions of paragraphs (a) through (c) of this section if used for a State party office building. They may not be used for Federal account or Levin account purposes. They may be used for any non-Federal purposes, as permitted under State law.

§ 300.36 Reporting Federal election activity; recordkeeping.

(a) Requirements for a State, district, or local committee of a political party, or an association or similar group of candidates for State or local office or of individuals holding State or local office, that is not a political committee.

(1) A State, district, or local committee of a political party, or an association or similar group of candidates for State or local office or of individuals holding State or local office, that is not a political committee (see 11 CFR 100.5) must demonstrate ~~through a reasonable accounting method~~ that whenever it makes a payment of Federal funds for Federal election activity (see 11 CFR 300.32 and 300.33) it has received sufficient funds subject to the limitations and prohibitions of the Act to make the payment. To make this demonstration, the committee must use an accounting method that employs general ledger accounts and that segregates assets, liabilities, revenue and expenses for Federal election activity undertaken pursuant to 11 CFR 300.32. If the accounting method is computer-based, the data must be back up no less than monthly. Such an organization must

keep records of amounts received or expended under this paragraph and, upon request, shall make such records available for examination by the Commission.

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

(b) Requirements for a State, district, or local committee of a political party, or an association or similar group of candidates for State or local office or of individuals holding State or local office, that is a political committee.

(1) ~~Reporting disbursements of Federal funds for Federal election activity~~. Requirements for a State, district, or local committee of a political party that has less than $5,000 of aggregate receipts and disbursements for Federal election activity in a calendar year, and for an association or similar group of candidates for State or local office or of individuals holding State or local office at all times. This paragraph applies to A a

State, district, or local committee of a political party that is a political committee, and that has less $5,000 of aggregate receipts and disbursements for Federal election activity in a calendar year; and, at all times, to an association or similar group of candidates for State or local office or of individuals holding State or local office that is a political committee (see 11 CFR 100.5). ~~Either s~~Such a party committee or association of candidates or officeholders must report all receipts and disbursements of Federal funds for Federal election activity, including the Federally allocated portion of a payment for Federal election activity. ~~This requirement applies whether or not the committee's aggregate total receipts and disbursements for Federal election activity is $5,000 or more during the calendar year. For purposes of this paragraph,~~ aA disbursement of Federal funds for Federal election activity (see 11 CFR 300.32 and 300.33) by ~~a State, district, or local committee of a political party that is a political committee~~ either such a party committee or association of candidates or officeholders shall be deemed an expenditure and reported as such pursuant to 11 CFR part 104, unless the disbursement is excluded from the definition of expenditure under 11 CFR 100.8.

(2) ~~Reporting all receipts and disbursements for Federal election activity; threshold~~. Requirements for a State, district, or local committee of a political party that has $5,000 or more of aggregate receipts and disbursements for Federal election activity in a calendar year. ~~In addition to the requirements of paragraph (b)(1) of this section, a~~A State, district,

or local committee of a political party that is a political committee (see 11 CFR 100.5) must report all receipts and disbursements made for Federal election activity if the aggregate amount of such receipts and disbursements is $5,000 or more during the calendar year. The disclosure required by this paragraph must include receipts and disbursements of Federal funds and of Levin funds used for Federal election activity, ~~notwithstanding the otherwise non-Federal nature of the Levin funds~~.

(i) Reporting of ~~payments for Federal election activity allocated~~ allocation of expenses between Federal funds and Levin funds. A State, district, or local committee of a political party that makes a ~~payment~~ disbursement for Federal election activity that is allocated between Federal funds and Levin funds (see 11 CFR 300.33) must report for each such ~~payment~~ disbursement:

(A) In the first report of a calendar year disclosing an allocated disbursement for Federal election activity, the committee must state the allocation percentages to be applied for allocable Federal election activity pursuant to 11 CFR 300.33(b).

(B) In each subsequent report in the calendar year itemizing an allocated disbursement for Federal election activity, the committee must state the category of Federal election activity (see 11 CFR 100.24(b)) for which each allocated disbursement was made, and must disclose the total

amounts disbursed from Federal funds and Levin funds for that year to date for each such category.

(ii) Reporting of allocation transfers. A committee that makes allocated disbursements for Federal election activities in accordance with 11 CFR 300.33(d) shall report each transfer of Levin funds from its Levin account, to its Federal account, and each transfer from its Federal account and its Levin account into an allocation account, for the purpose of making such disbursements. In the report covering the period in which each transfer occurred, the committee must explain in a memo entry the allocated disbursement to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one category of Federal election activity, the committee must itemize the transfer, showing the amounts designated for each category.

(iii) Reporting of allocated disbursements. For each disbursement allocated between Federal funds and Levin funds, the committee must report ~~T~~the full name and address of each person to whom the ~~payment~~ disbursement was made, the date of the ~~payment~~ disbursement, amount and purpose of the ~~payment~~ disbursement~~, and the amount of and explanation for the allocation percentage used for the payment, as provided in 11 CFR 104.17(b)~~. If the ~~payment~~ disbursement is for the allocable costs of more than one

category of Federal election activity, the committee must itemize the ~~payment~~ disbursement, showing the amounts designated for each ~~Federal election activity~~ category. The committee must also ~~report~~ disclose the total amount ~~paid~~ disbursed from Federal funds and Levin funds for Federal election activity that calendar year, to date, for each category of Federal election activity.

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

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

(c) Filing.

(1) Schedule. A State, district, or local committee of a political party, or an association or similar group of candidates for State or local office or of individuals holding State or local office, that must file reports under paragraph (b) of this section must comply with the monthly filing schedule in 11 CFR 104.5(c)(3).

(2) Electronic filing. Receipts of Federal funds for Federal election activity that constitute contributions under 11 CFR 100.7, and disbursements of Federal funds for Federal election activity that constitute expenditures under 11 CFR 100.8, apply when determining whether a political committee must file reports in an electronic format under 11 CFR 104.18.

(d) Recordkeeping. A State, district, or local committee of a political party, or an association or similar group of candidates for State or local office or of individuals holding State or local office, that must file reports under paragraph (b) of this section must comply with the requirements of 11 CFR 104.14.

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

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

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

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

(4) An organization described in 26 U.S.C. 527, ~~except for a political party~~

unless the organization is:

(i) A political committee under 11 CFR 100.5;

(ii) A State, district, or local committee of a political party;

(iii) The authorized campaign committee of a State or local candidate; or

(iv) A political committee under State law, that supports only State or local candidates and that does not make expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity.

(b) Application. This section also applies to:

(1) An officer or agent acting on behalf of a State, district, or local committee of a political party;

(2) An entity that is directly or indirectly established, financed, maintained, or controlled by a State, district, or local committee or a political party or an officer or agent acting on behalf of such an entity; or

(3) An entity that is directly or indirectly established, financed, maintained, or controlled by an agent of a State, district, or local committee of a political party.

(c) Determining whether an organization makes expenditures or disbursements in connection with a Federal election. In determining whether a section 501(c) organization makes expenditures or disbursements in connection with a Federal election as described in paragraphs (a)(1) and (2), including expenditures and disbursements for Federal

election activity, a State, district, or local committee of a political or any other person described in paragraph (b) may obtain and rely upon a certification from the organization that satisfies the criteria described in paragraph (d) of this section. In determining whether section 527 organization is a State-registered political committee that supports only State or local candidates and does not make expenditures or disbursements in connection with an Federal election, as described in paragraph (a)(3), including expenditures and disbursements for Federal election activity, a State, district, or local committee of a political or any other person described in paragraph (b) may obtain and rely upon a certification from the organization that satisfies the criteria described in paragraph (e) of this section.

(d) Certification from section 501(c) organization. A State, district, or local committee of a political or any other person described in paragraph (b) of this section may rely upon a certification that meets all of the following criteria:

(1) The certification states with specificity that, in the current election cycle, and within the two years preceding the current cycle, the organization has not and does not intend to:

(i) Establish, finance, maintain, support, or control a political committee;

(ii) Make expenditures or disbursements for Federal election activity;

(iii) Finance voter registration;

(iv) Finance voter guides, candidate questionnaires, or candidate surveys that refer to one or more candidates for Federal office; or

(v) Finance get-out-the-vote communications that refer to one or more candidates for Federal office;

(2) The certification is signed and sworn to by an officer or other authorized representative of the organization with knowledge the organization's activities; and

(3) The certification is accompanied by:

(i) The organization's Form 990 tax returns for the current election cycle and the last two fiscal years preceding it and its application for tax exempt status if the organization has already been granted exempt status under 501(c); or

(ii) The organization's Form 990 tax return and its application for tax exempt status once these documents are become available if the organization has submitted an application for determination of tax-exempt status under 26 U.S.C. 501(c) that has not yet been granted or denied.

(c) Certification from section 527 organization. A State, district, or local committee of a political or any other person described in paragraph (b) of this section may rely upon a certification from a State-registered section 527 organization that meets all of the following criteria:

(1) The certification states with specificity that, in the current election cycle, and within the two years preceding the current cycle, the organization has not and does not intend to:

(i) Establish, finance, maintain, support, or control a political committee;

(ii) Make expenditures or disbursements for Federal election activity;

(iii) Finance voter registration;

(iv) Finance voter guides, candidate questionnaires, or candidate surveys that refer to one or more candidates for Federal office; or

(v) Finance get-out-the-vote communications that refer to one or more candidates for Federal office.

(2) The certification is signed and sworn to by an officer or other authorized representative of the State-registered section 527 organization, including the treasurer, who has knowledge of the organization's activities.

(3) The certification is accompanied by the organization's IRS Forms 8871 and 8872 for the current election cycle and the last two fiscal years preceding it.

Subpart C – Tax-exempt Organizations

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

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

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

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

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

(3) An organization described in 26 U.S.C. 527, ~~except for a political party~~ unless the organization is:

(i) A political committee under 11 CFR 100.5;

(ii) A State, district, or local committee of a political party; or

(iii) The authorized campaign committee of a State or local candidate;

(b) Application. This section also applies to:

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

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

(3) An entity that is directly or indirectly established, financed, maintained, or controlled by an agent of a national, State, district, or local committee of a political party, including a national ~~party~~congressional campaign committee.

(c) Determining whether an organization makes expenditures or disbursements in connection with Federal elections. In determining whether an organization makes expenditures or disbursements in connection with a Federal election as described in paragraphs (a)(1) and (2), a national committee of a political party, including a national congressional campaign committee, or any other person described in paragraph (b) may obtain and rely upon a certification from the organization or committee that satisfies the criteria described in paragraph (d) of this section.

(d) Certification. A national committee of a political party, including a national congressional campaign committee, or any person described in paragraph (b) of this section may rely upon a certification that meets all of the following criteria:

(1) The certification states with specificity that, in the current election cycle, and within the two years preceding the current cycle, the organization has not and does not intend to:

(i) Establish, finance, maintain, support, or control a political committee;

(ii) Make expenditures or disbursements for Federal election activity;

(iii) Finance voter registration;

(iv) Finance voter guides, candidate questionnaires, or candidate surveys that refer to one or more candidates for Federal office; or

(v) Finance get-out-the-vote communications that refer to one or more candidates for Federal office;

(2) The certification is signed and sworn to by an officer or other authorized representative of the organization with knowledge the organization's activities; and

(3) The certification is accompanied by:

(i) The organization's Form 990 tax returns for the current election cycle and the last two fiscal years preceding it and its application for tax exempt status if the organization has already been granted exempt status under 501(c); or

(ii) The organization's Form 990 tax return and its application for tax exempt status once these documents are become available if the organization has submitted an application for determination of tax-exempt status under 26 U.S.C. 501(c) that has not yet been granted or denied.

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

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

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

(2) An organization that has submitted an application for tax-exempt status under

26 U.S.C. 501(c) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity; or

(3) An organization described in 26 U.S.C. 527, ~~except for a political party~~ unless the organization is:

(i) A political committee under 11 CFR 100.5;

(ii) A State, district, or local committee of a political party;

(iv) The authorized campaign committee of a State or local candidate; or

(iv) A political committee under State law, that supports only state or local candidates and that does not make expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity.

(b) Application. This section also applies to:

(1) An officer or agent acting on behalf of a State, district, or local committee of a political party;

(2) An entity that is directly or indirectly established, financed, maintained or controlled by a State, district, or local committee or a political party or an officer or agent acting on behalf of such an entity; or

(3) An entity that is directly or indirectly established, financed, maintained, or controlled by an agent of a State, district, or local committee of a political party.

(c) Determining whether an organization makes expenditures or disbursements in connection with a Federal election. In determining whether a Section 501(c) organization makes expenditures or disbursements in connection with a Federal election as described in paragraphs (a)(1) and (2), including expenditures and disbursements for Federal election activity, a state, district, or local committee of a political or any other person described in paragraph (b) may obtain and rely upon a certification from the organization that satisfies the criteria described in paragraph (d) of this section. In determining whether Section 527 organization is a State-registered political committee that supports only state or local candidates and does not make expenditures or disbursements in connection with an Federal election, as described in paragraph (a)(3), including expenditures and disbursements for Federal election activity, a state, district, or local committee of a political or any other person described in paragraph (b) may obtain and rely upon a certification from the organization that satisfies the criteria described in paragraph (e) of this section.

(d) Certification from Section 501(c) organization. A state, district, or local committee of a political or any other person described in paragraph (b) of this section may rely upon a certification that meets all of the following criteria:

(1) The certification states with specificity that, in the current election cycle, and within the two years preceding the current cycle, the organization has not and does not intend to:

(i) Establish, finance, maintain, support, or control a political committee;

(ii) Make expenditures or disbursements for Federal election activity;

(iii) Finance voter registration;

(iv) Finance voter guides, candidate questionnaires, or candidate surveys that refer to one or more candidates for Federal office; or

(v) Finance get-out-the-vote communications that refer to one or more candidates for Federal office;

(2) The certification is signed and sworn to by an officer or other authorized representative of the organization with knowledge the organization's activities; and

(3) The certification is accompanied by:

(i) The organization's Form 990 tax returns for the current election cycle and the last two fiscal years preceding it and its application for tax exempt status if the organization has already been granted exempt status under 501(c); or

(ii) The organization's Form 990 tax return and its application for tax exempt status once these documents are become available if the organization has submitted an application for determination of tax-exempt status under

26 U.S.C. 501(c) that has not yet been granted or denie

(e) Certification from Section 527 organization. A state, district, or local committee of a political or any other person described in paragraph (b) of this section may rely upon a certification from a state-registered Section 527 organization that meets all of the following criteria:

(1) The certification states with specificity that, in the current election cycle, and within the two years preceding the current cycle, the organization has not and does not intend to:

(i) Establish, finance, maintain, support, or control a political committee;

(ii) Make expenditures or disbursements for Federal election activity;

(iii) Finance voter registration;

(iv) Finance voter guides, candidate questionnaires, or candidate surveys that refer to one or more candidates for Federal office; or

(v) Finance get-out-the-vote communications that refer to one or more candidates for Federal office.

(2) The certification is signed and sworn to by an officer or other authorized representative of the state-registered 527 organization, including the treasurer, who has knowledge of the organization's activities.

(3) The certification is accompanied by the organization's IRS Forms 8871 and 8872 for the current election cycle and the last two fiscal years preceding it.

§ 300.52 Fundraising by Federal candidates and Federal officeholders (2 U.S.C. 441i(e)(1)&(4)).

A Federal candidate, an individual holding Federal office, and an individual agent acting on behalf of either may make the following solicitations of funds on behalf of any organization described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C.

501(a), or an organization that has submitted an application for determination of tax-exempt status under 26 U.S.C. 501(c):

(a) General solicitations. A Federal candidate, an individual holding Federal office, or an individual agent acting on behalf of either, may make a general solicitation of funds, without regard to source or limitation, if:

(1) The organization does not engage in activities in connection with an election, including any activity described in paragraph (c) of this section; or

(2) (i) The organization conducts activities in connection with an election, but the organization's principal purpose is not to conduct election activity or any activity described in paragraph (c) of this section; and

(ii) The solicitation is not to obtain funds for activities in connection with an election or any activity described in paragraph (c) of this section.

(b) Specific solicitations. A Federal candidate, an individual holding Federal office, or an individual agent acting on behalf of either, may make a solicitation explicitly to obtain funds for any activity described in paragraph (c) of this section or for an organization whose principal purpose is to conduct that activity, if:

(1) The solicitation is made only to individuals; and

(2) The amount solicited from any individual does not exceed $20,000 during any calendar year.

(c) Voter registration, voter identification, get-out-the-vote activity and generic campaign activity. This section applies to only the following types of Federal election activity:

(1) Voter registration activity, as described in 11 CFR 100.24(a)(2), during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election; or

(2) The following activities conducted in connection with an election in which one or more Federal candidates appear on the ballot (see 11 CFR 100.24(a)(1)), regardless of whether one or more State candidates also appears on the ballot:

(i) Voter identification as described in 11 CFR 100.24(a)(4);

(ii) Get-out-the-vote activity as described in 11 CFR 100.24(a)(3); or

(iii) Generic campaign activity as defined in 11 CFR 100.25.

(d) Prohibited solicitations. A Federal candidate, an individual holding Federal office, and an individual who is an agent acting on behalf of either, must not make any solicitation on behalf of any organization described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C. 501(a), or an organization that has submitted an application for determination of tax-exempt status under 26 U.S.C. 501(c) for any election activity other than a Federal election activity as described in paragraph (c) of this section.

(e) Safe Harbor. In determining whether a 501(c) organization is one whose principal purpose is to conduct the activities described in paragraph (c) of this section, a Federal candidate, an individual holding Federal office, or an individual agent acting on

behalf of either may obtain and rely upon a certification from the organization that satisfies the following criteria:

(1) The certification states with specificity that the organization's principal purpose is not, and within the last two years has not been, to conduct election activities, including election activities described in paragraphs (c) of this section;

(2) The certification is signed and sworn to by an officer or other authorized representative of the organization with knowledge the organization's activities; and

(3) The certification is accompanied by:

(i) The organization's Form 990 tax returns for the last two fiscal years and its application for tax exempt status if the organization has already been granted exempt status under 501(c); or

(ii) The organization's Form 990 tax return and its application for tax exempt status if the organization once these documents are available if the organization has submitted an application for determination of tax-exempt status under 26 U.S.C. § 501(c), that has not been granted or denied.

Subpart D – Federal Candidates and Officeholders

§ 300.60 Scope (2 U.S.C. 441i(e)(1)).

This subpart applies to:

(a) Federal candidates;

(b) Individuals holding Federal office (see 11 CFR 100.4);

(c) Agents of a Federal candidate or individual holding Federal office, and

(d) Entities that are directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, one or more Federal candidates or individuals holding Federal office.

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

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

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

No A person described in 11 CFR 300.60 ~~shall~~ may solicit, receive, direct, transfer, ~~or~~ spend, or disburse funds in connection with any non-Federal election~~, unless the amounts consist of Federal funds that are subject to the limitations and prohibitions of the Act~~, only in amounts and from sources that are consistent with State law, and that do not exceed the Act's contribution limits or come from prohibited sources under the Act.

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

Section 300.62 shall not apply to a Federal candidate or individual holding Federal office who is a candidate for State or local office, if the solicitation, receipt or spending of funds is permitted under State law; and refers only to that State or local candidate, to any other candidate for that same State or local office, or both. If an

individual is simultaneously running for both Federal and State or local office, the individual must raise, accept, and spend only Federal funds for the Federal election.

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

Notwithstanding the provisions of 11 CFR 100.24, 300.61 and 300.62, a Federal candidate or individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party, including a fundraising event at which Levin funds are raised, or at which non-Federal funds are raised. The sponsoring entity may advertise, announce, or otherwise publicize that the Federal candidate or Federal officeholder will attend, speak, or be a featured guest at the event. The Federal candidate or individual holding Federal office must not:

(a) Serve on the host committee for a fundraising event;

(b) Sign a solicitation for the event;

(c) Actively solicit funds at the event;

(d) Receive or accept contributions or donations; or

(e) Direct contributions or donations to others.

§ 300.65 Exceptions for certain tax-exempt organizations (2 U.S.C. 441i(e)(1)&(4)).

A Federal candidate, an individual holding Federal office, and an individual agent acting on behalf of either may make the following solicitations of funds on behalf of any organization described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C. 501(a), or an organization that has submitted an application for determination of tax-exempt status under 26 U.S.C. 501(c):

(a) General solicitations. A Federal candidate, an individual holding Federal office or an individual agent acting on behalf of either, may make a general solicitation of funds, without regard to source or limitation, if:

(1) The organization does not engage in activities in connection with an election, including any activity described in paragraph (c) of this section; or

(2) (i) The organization conducts activities in connection with an election, but the organization's principal purpose is not to conduct election activity or any activity described in paragraph (c) of this section; and

(ii) The solicitation is not to obtain funds for activities in connection with an election or any activity described in paragraph (c) of this section.

(b) Specific solicitations. A Federal candidate, an individual holding Federal office, or an individual agent acting on behalf of either, may make a solicitation explicitly to obtain funds for any activity described in paragraph (c) of this section or for an organization whose principal purpose is to conduct that activity, if:

(1) The solicitation is made only to individuals; and

(2) The amount solicited from any individual does not exceed $20,000 during any calendar year.

(c) Voter registration, voter identification, get-out-the-vote activity and generic campaign activity. This section applies to only the following types of Federal election activity:

(1) Voter registration activity, as described in 11 CFR 100.24(a)(2), during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election; or

(2) The following activities conducted in connection with an election in which one or more Federal candidates appear on the ballot (see 11 CFR 100.24(a)(1)), regardless of whether one or more State candidates also appears on the ballot:

(i) Voter identification as described in 11 CFR 100.24(a)(4);

(ii) Get-out-the-vote activity as described in 11 CFR 100.24(a)(3); or

(iii) Generic campaign activity as defined in 11 CFR 100.25.

(d) Prohibited solicitations. A Federal candidate, an individual holding Federal office, and an individual who is an agent acting on behalf of either, must not make a general or specific solicitation on behalf of any organization described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C. 501(a), or an organization that has submitted an application for determination of tax-exempt status under 26 U.S.C. 501(c) for any election activity other than a activity described in paragraph (c) of this section.

(e) Safe Harbor. In determining whether a 501(c) organization is one whose principal purpose is to conduct the activities described in paragraph (c) of this section, a Federal candidate, an individual holding Federal office, or an individual agent acting on behalf of either may obtain and rely upon a certification from the organization that satisfies the following criteria:

(1) The certification states with specificity that the organization's principal purpose is not, and within the last two years has not been, to conduct election activities, including election activities described in paragraph (c) of this section;

(2) The certification is signed and sworn to by an officer or other authorized representative of the organization with knowledge the organization's activities; and

(3) The certification is accompanied by:

(i) The organization's Form 990 tax returns for the last two fiscal years and its application for tax exempt status if the organization has already been granted exempt status under 501(c); or

(ii) The organization's Form 990 tax return and its application for tax exempt status if the organization once these documents are available if the organization has submitted an application for determination of tax-exempt status under 26 U.S.C. § 501(c), that has not been granted or denied.

Subpart E – State and Local Candidates

§ 300.70 Scope (2 U.S.C. 441i(f)(1)).

This subpart applies to any candidate for State or local office, individual holding State or local office, or an agent of any such candidate or individual. For example, this subpart applies to an individual holding Federal office who is a candidate for State or

local office. This subpart does not apply to an association or similar group of candidates for State or local office or of individuals holding State or local office.

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

No individual described in 11 CFR 300.70 shall spend any funds for a public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified), and that promotes or supports any candidate for that Federal office, or attacks or opposes any candidate for that Federal office (regardless of whether the communication expressly advocates a vote for or against a candidate) unless the funds consist of Federal funds that are subject to the limitations, prohibitions, and reporting requirements of the Act. See definition of public communication at 11 CFR 100.26

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

The requirements of section 11 CFR 300.71 shall not apply if the public communication is in connection with an election for State or local office, and refers to one or more candidates for State or local office or to a State or local officeholder but does not promote, support, attack, or oppose any candidate for Federal office, ~~as defined at 11 CFR 300.2(l)~~.

PART 9034 – ENTITLEMENTS

25. The authority citation for Part 9034 continues to read as follows:

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

26. Section 9034.8 is amended by adding introductory language to paragraph (a) to read as follows:

§ 9034.8 Joint fundraising.

(a) General. Nothing in this section shall supersede 11 CFR part 300, which prohibits any person from soliciting, receiving, directing, transferring, or spending any non-Federal funds, or from transferring Federal funds for Federal election activities.

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David, M. Mason
Chairman
Federal Election Commission

DATED: _____

BILLING CODE: 6715-01-P