
FEDERAL ELECTION COMMISSION**11 CFR Parts 100 and 110****[Notice 1980-21]****Contributions to and Expenditures by
Delegates to National Nominating
Conventions****AGENCY:** Federal Election Commission.**ACTION:** Final Rule; transmittal of
Regulations to Congress.

SUMMARY: The Commission has transmitted regulations to Congress to govern the application of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431 *et seq.*), to contributions to and expenditures by delegates to national party nominating conventions. The regulations set forth reporting obligations of delegates and delegate committees under the Act as well as treatment of contributions to and expenditures by delegates and delegate committees.

2 U.S.C. 438(d) requires that any rule or regulation proposed by the Commission to implement Chapter 14 of Title 2, United States Code be transmitted to the Speaker of the House and the President of the Senate prior to final promulgation. If neither House of Congress disapproves the regulation within 30 legislative days after its transmittal, the Commission may finally prescribe the regulation in question. The following regulations were transmitted to Congress on May 14, 1980.

EFFECTIVE DATE: Further action, including the announcement of an effective date will be taken after the regulations have been before Congress 30 legislative days in accordance with 2 U.S.C. 438(d).

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Ann Fiori, Assistant General Counsel, 1325 K Street, N.W., Washington, D.C. 20463 (202) 523-4143.

SUPPLEMENTARY INFORMATION: On September 5, 1979, the Commission published an Advance Notice of Proposed Rulemaking on Contributions to and Expenditures by Delegates to National Party Nominating Conventions (44 FR 51962). The regulations transmitted to Congress incorporate suggestions received in response to the

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ANPRM as well as provisions required by the enactment on January 8, 1980, of the 1979 Amendments to the Federal Election Campaign Act of 1971 (Pub. L. 96-187).

Under the regulations as proposed and transmitted to Congress, contributions to a delegate for the purpose of furthering that delegate's selection are not subject to the contribution limitations of 2 U.S.C. 441a(a)(1) and (2), but such contributions would still count against the individual contributor's aggregate contribution limit of \$25,000 per calendar year under 2 U.S.C. 441a(a)(3). Also, contributions to a delegate by the campaign committee of a presidential candidate receiving public financing would count against that candidate's expenditure limitations.

Expenditures by delegates from their personal funds to defray the costs of advocating their own selection are not limited or reportable by the proposed rules. In addition, expenditures by delegates to defray the cost of certain campaign materials, such as pins, bumper stickers, handbills, brochures, posters and yard signs, which advocate the delegate's selection and also mention a presidential candidate are not limited provided the material is used in connection with volunteer activity. However, expenditures by delegates to defray costs incurred in the use of broadcasting, newspapers, magazines, direct mail or similar types of general public communication or political advertising which advocate the delegate's selection and which also mention a presidential candidate may result in an expenditure which would be either chargeable against the Presidential candidate's expenditure limits, an in-kind contribution by the delegate to the candidate, or an independent expenditure reportable by the delegate. The regulations provide that administrative expenses incurred by State and local party committees in connection with the sponsoring of conventions and caucuses are not reportable under the Act. Similarly, payments made by individuals to qualify as delegates would not be contributions or expenditures under the Act and need not be reported as such. In addition, the regulations define the term "delegate committee" and set out registration and reporting requirements for such committees.

The regulations provide that contributions to and expenditures made by delegates or by delegate committees are subject to the prohibitions of 2 U.S.C. 441b and 441e.

Explanation and Justification of Regulations Concerning Contributions to and Expenditures by Delegates to National Nominating Conventions

These regulations govern contributions to and expenditures by delegates and delegate committees at all levels of the delegate selection process. Funds received or expended to further the selection of a delegate are contributions or expenditures under the Federal Election Campaign Act. Under 2 U.S.C. 431, the terms "contribution" and "expenditure" are defined, in part, to include amounts received or expended " . . . for the purpose of influencing any election for Federal office." 2 U.S.C. 431(8)(A)(i), 431(9)(A)(i). The term "election" is defined to include a national nominating convention, as well as any primary election held to select delegates to such a convention. 2 U.S.C. 431(1) (B) and (C). In addition, the term "federal office" includes the Office of President. 2 U.S.C. 431(3). Amounts received or spent to further the selection of a delegate are received or spent for the purpose of influencing a national nominating convention or for the purpose of influencing a primary election held to select delegates to such a convention. Hence, such amounts fall squarely within the definition of the terms "contribution" or "expenditure" under the Act.

The term "delegate" includes those individuals who seek to become delegates as well as those individuals who are selected as delegates. "Delegate committee" is defined as a political committee which receives contributions or makes expenditures for the purpose of influencing the selection of delegates to a national nominating convention and includes any group of individuals supporting delegates, as well as any group of individuals seeking selection as delegates.

If several persons acting as a group receive contributions or make expenditures in an aggregate amount exceeding \$1,000 in a calendar year for the purpose of influencing the selection of any delegate(s), the group is a political committee as defined by 2 U.S.C. 431(4). A delegate committee would be treated as any other political committee is treated under the Act. Thus, delegate committees, by virtue of their status as political committees, must register and report their contributions and expenditures in accordance with 2 U.S.C. 433 and 434. Contributions made by such committees would be subject to limitation under 2 U.S.C. 441a(a); contributions to a delegate committee are subject to limitation under 2 U.S.C. 441a; and all expenditures by such committees must

be reported in accordance with the provisions of 2 U.S.C. 434 and 11 CFR Part 104.

A delegate who acts as an individual to further his or her own selection is treated differently under the regulations than a delegate committee. While amounts received or spent by such a delegate are contributions or expenditures, a delegate is not a candidate under the Act. The term "candidate" is defined as " . . . an individual who seeks nomination for election, or election to Federal office . . ." 2 U.S.C. 431(2). Since a delegate does not seek nomination or election to a federal office, he or she is not a "candidate" under the Act.

The Act imposes limitations only on contributions to *candidates* or *political committees*. 2 U.S.C. 441a(a). Thus, contributions to a delegate to further his or her selection as a delegate are not limited by the Act. However, even though no limitation is placed on the amount of a contribution to a delegate, such contributions count against a contributor's \$25,000 limitation under 2 U.S.C. 441a(a)(3). Moreover, because the Act imposes reporting requirements only on contributions to candidates and political committees, contributions to a delegate are not required to be reported. In addition, it should be noted that contributions made to a delegate for the purpose of furthering his or her selection are not considered contributions to any presidential candidate, regardless of whether or not the delegate is pledged to or supports a particular presidential candidate.

Because the Act imposes reporting requirements on expenditures by candidates or political committees, expenditures made by a delegate for the purpose of advocating only his or her own selection are neither limited nor reportable under the act. Examples of such expenditures are: travel and subsistence during the delegate selection process, including the national nominating convention; and the costs of any communications advocating only a delegate's selection. Moreover, expenditures of this type are not chargeable against the expenditure limitations of any presidential candidate under the Act.

The Act exempts from the definition of contribution and expenditure the payment by a "candidate . . ." to any public office (including State or local office) of the cost of certain campaign material such as pins, bumper stickers, handbills, brochures, posters and yard signs, which include reference to any other candidate for Federal office, provided that such campaign materials are used in connection with volunteer

activities. 2 U.S.C. 431(B)(xi). This exemption was designed to permit candidates to seek office as a team. 125 Cong. Rec. H7628 (daily ed. Sept. 10, 1979) (remarks of Mr. Frenzel). Since similar campaign activity in the delegate selection process should be encouraged, the subsections governing expenditures by delegates incorporate this exemption.

Thus, expenditures made by a delegate to defray the costs of certain campaign materials (such as pins, bumper stickers, handbills, brochures, posters and yard signs) which advocate the selection of a delegate and which also include reference to any presidential candidate are not subject to limitation and need not be reported under the Act as long as the materials are used in connection with volunteer activities and further, that such expenditures are not for costs incurred for the use of broadcasting, newspapers, magazines, billboards, direct mail or other similar types of general public communication or political advertising.

Expenditures by a delegate to defray costs incurred in the use of broadcasting, newspapers, magazines, direct mail or similar types of general public communication or political advertising which advocate the delegate's selection and which also mention a presidential candidate are not limited or reportable unless the expenditures are either contributions in-kind to the presidential candidate or independent expenditures advocating the election of the presidential candidate. Delegate expenditures which qualify as in-kind contributions, that is, they are made by the delegate in cooperation, consultation or concert with, or at the request or suggestion of the candidate or his or her authorized political committee(s) are subject to contribution limitations, must be reported by the presidential candidate's authorized political committees and, are chargeable against the presidential candidate's statutory expenditure limitations.

Alternatively, expenditures by a delegate to defray the cost incurred in the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communications or political advertising are independent expenditures if they are made to expressly advocate the election of a clearly identified presidential candidate and are not made with the cooperation or prior consent of or at the request or suggestion of the presidential candidate. If such independent expenditures by an individual delegate exceed \$250 during a calendar year, the

delegate must report them in accordance with the Act. (See 2 U.S.C. 434(c)).

The general prohibitions of 2 U.S.C. 441b on contributions and expenditures by corporations, labor unions, and national banks apply to all contributions to and expenditures by delegates and delegate committees.

Administrative expenses incurred by State and local party committees in connection with the sponsoring of conventions and caucuses are not reportable under the Act but they may not be paid with contributions which are otherwise prohibited by the Act.

Ballot fees paid to State or local party committees by individuals to qualify as delegates are not contributions or expenditures under the Act. Such payments are not subject to limitation under the Act and they need not be reported by the party committee.