

committees and establish procedures for joint fundraising by political committees. They also contain provisions which clarify the status of unregistered organizations that collect and transfer contributions on behalf of a connected separate segregated fund. Such unregistered organizations, termed "collecting agents", are distinguished from participants in a joint fundraiser. Further information on the revised regulations is provided in the supplementary information which follows.

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

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SUPPLEMENTARY INFORMATION: The revised regulations on joint fundraising and collecting agents are based upon public comment received in response to the Commission's Notice of Proposed Rulemaking (46 FR 48074; September 30, 1981). The title of current 11 CFR 102.6 has been changed to "Transfers of Funds: Collecting Agents" and corresponding revisions have been made to that section. In addition, a new section entitled "Joint Fundraising By Committees Other Than Separate Segregated Funds" has been included in the regulations, designated as 11 CFR 102.17. This section was designated as section 102.7 in the Commission's Notice of Proposed Rulemaking; however, it has been added as the last section in Part 102 to avoid changing the numerous citations throughout the Commission's regulations to current §§ 102.7 through 102.16.

2 U.S.C. 438(d) requires that any rule or regulation prescribed by the Commission to implement Title 2, United States Code, be transmitted to the Speaker of the House of Representatives and the President of the Senate prior to final promulgation. If neither House of Congress disapproves of the regulations within 30 legislative days of their transmittal, the Commission may prescribe the regulations in question. The following regulations were transmitted to Congress on June 2, 1983.

Explanation and Justification for 11 CFR 102.6 and 102.17

Section 102.6 Transfers of Funds: Collecting Agents

Section 102.6(a) Transfers of Funds: Registration and Reporting Required.

Following current section 102.6(a), subsections (a)(1)(i) and (a)(1)(ii) state that party committees of the same political party and affiliated committees may make unlimited transfers of funds. 2 U.S.C. §§ 441a(a)(4) and 441a(a)(5). Subsection (a)(1)(iii) incorporates 2 U.S.C. 441a(a)(5)(A) into the regulations by stating that participants in a joint fundraising activity conducted under § 102.17 may transfer joint fundraising proceeds without limit so long as no participant receives more than its allocated share of the funds raised. Subsection (a)(1)(iv) clarifies that transfers may only be made from funds which are permissible under the Act.

Subsection (a)(2) generally follows the provisions of current § 102.6(a) to state that transfers of funds count against the reporting thresholds and may trigger political committee status under the Act. Hence, an unregistered committee which makes or receives transfers for the purpose of influencing a federal election may be subject to the registration and reporting requirements of the Act.

Section 102.6(b) Fundraising by Collecting Agents; No Reporting Required.

This is a new section in the regulations which clarifies the application of the Act to fundraising on behalf of separate segregated funds. See Advisory Opinions 1982-61, 1982-55, 1982-11, 1981-4, 1979-19, 1978-98, and 1978-42. Subsection (b)(1) describes a collecting agent as an organization or committee that collects and transmits contributions to one or more separate segregated funds which are related to it. Generally, the collecting agent is an organization which is eligible to establish and administer a separate segregated fund under 11 CFR 114.5 such as a corporation or labor organization. See 11 CFR 100.6. Under this section, a collecting agent may be any of several types of entities. It may be a registered or unregistered affiliated committee or connected organization of the separate segregated fund. A collecting agent may also be a parent or subsidiary of the connected organization of a separate segregated fund. Moreover, a local, national or international union may act as a collecting agent for a separate segregated fund of any federation with which the union is affiliated.

The inclusion of this section is also intended to permit an unregistered organization to collect contributions on behalf of a connected separate segregated fund without triggering

FEDERAL ELECTION COMMISSION

11 CFR Ch. I

Transfer of Funds; Collecting Agents, Joint Fundraising

AGENCY: Federal Election Commission.

ACTION: Transmittal of Regulations to Congress.

SUMMARY: FEC regulations at 11 CFR Part 102 have been revised and transmitted to Congress pursuant to 2 U.S.C. 438(d). These regulations govern transfers of funds between specified

political committee status under the Act. Transfers made by a collecting agent to a separate segregated fund in accordance with the requirements of subsection (c) do not trigger reporting requirements under the Act. Thus, subsection (b)(2) provides that unregistered organizations, such as a State PAC, union local or corporate subsidiary, which act as collecting agents following the procedures under subsection (c) need not register and report under the Act. This is consistent with the legislative history of the 1979 Amendments which indicates that Congress did not intend that reporting be required in this narrow circumstance. See e.g. 125 Cong. Rec. S19099 (daily ed. December 18, 1979) (statement of Sen. Pell) and 125 Cong. Rec. H12365 (daily ed. December 20, 1979) (statements of Rep. Thompson and Rep. Frenzel).

Subsection (b)(3) specifies that neither commercial fundraising firms nor individuals who collect contributions for separate segregated funds will be considered collecting agents under this section. Rather, commercial fundraising firms will be considered the agent of the separate segregated fund or collecting agent. All persons who collect contributions are subject to the requirements of 11 CFR 102.8 and the provisions of 11 CFR Part 110.

Subsection (b)(4) clarifies that separate segregated funds are not required to utilize a collecting agent. While this section provides for the use of a collecting agent to solicit contributions, it does not prevent a separate segregated fund from soliciting and collecting contributions on its own.

Section 102.6(c) Procedures for Collecting Agents

This section describes the procedures to be followed by a collecting agent in soliciting and collecting contributions on behalf of a separate segregated fund. Subsection (c)(1) makes it clear that the separate segregated fund is responsible for the acts of the collecting agent and for ensuring that the recordkeeping, reporting and transmittal requirements of the Act are met. Inclusion of this provision is intended to encourage separate segregated funds to ensure that those collecting contributions on their behalf follow the Act and regulations.

Subsection (c)(2) provides that a solicitation for voluntary contributions to a separate segregated fund may be included in a bill for membership dues or other fees or in a solicitation for contributions to the collecting agent itself. See Advisory Opinions 1979-19 and 1978-42. Such solicitations may only be made to the solicitable class of the parent organization under 11 CFR Part

114, such as a corporation's stockholders and executive and administrative personnel, and must meet the requirements for a proper solicitation under 11 CFR 114.5. See e.g. *Federal Election Commission v. National Right To Work Committee*, — U.S. —, 103 S.Ct. 552 (Dec. 13, 1982). Subsection (c)(2)(i) states that the collecting agent may pay any or all of the costs of transmitting contributions as such payments are considered part of the establishment, administration and solicitation expenses permitted under 2 U.S.C. 441b(b)(2)(C). A provision has also been included in subsection (c)(2)(ii) which permits a collecting agent to reimburse its separate segregated fund for administrative expenses within 30 days after the separate segregated fund pays the expense if the expense could have been paid directly by the collecting agent under 2 U.S.C. 441b(b)(2)(C). A corresponding provision has been included in 11 CFR 114.5. It should be noted that an unregistered committee that is not a connected organization may trigger the registration and reporting requirements of the Act by making reimbursements under this section.

Subsection (c)(3) provides that a contributor may combine payment of dues or other fees with a contribution to the separate segregated fund in a single check. However, that subsection requires that the check be drawn on the contributor's personal checking account or on a non-repayable corporate drawing account of the individual contributor. See also, Advisory Opinions 1978-98, 1979-19 and 1978-42.

Subsection (c)(3) also contains a provision which permits an employer to send a check to a union which includes payment of union dues or other employee deductions (such as vacation fund payments) and voluntary contributions from its employees to the union's separate segregated fund. Subsection (c)(3), thus, provides for combined payment of employee political contributions and other fees by an employer to a union or its agent. See Advisory Opinions 1982-55, 1982-11, 1981-4, and 1978-98. Contributions which may be so combined must be collected pursuant to a payroll deduction plan and are considered direct contributions from the individual employees.

One comment received by the Commission questioned the status of certain employee benefit plans, such as ERISA plans, under section 102.6. Under such plans, participants may designate a portion of the funds deposited with the plan on their behalf by their employer to be contributed to a separate segregated

fund, such as their union PAC. The comment raised the issue of whether certain fiduciaries, such as ERISA plan administrators, should be considered collecting agents under this section. These fiduciaries, however, are considered agents of the plan's sponsor. As the sponsor is the employer or the union of the plan participants, a plan administrator or fiduciary is acting on behalf of a collecting agent. The Commission, therefore, found no need to refer specifically to this situation in the regulations.

Moreover, no special provision is needed to govern the timing of the transmittal of such contributions to the separate segregated fund. A contribution by the plan participant to the separate segregated fund results only when the participant designates a sum in writing to be contributed to the separate, segregated fund and that sum can be disbursed under the plan agreement, since that is the point at which the participant acquires the right to such funds. For example, under a vacation fund plan, vacation benefits are paid out at specified times of the year. Payments to third parties, such as separate segregated funds, may only be made at the same time that disbursements are made to plan beneficiaries under the plan agreement. See ERISA Interpretive Bulletin 78-1 (43 FR 66565 (December 15, 1978)). Under these circumstances, the time for transmitting a contribution to the separate segregated fund under § 102.6(c)(4) would not begin to run until the date on which disbursements can be made to the beneficiary.

Subsection (c)(4) clarifies that collecting agents must follow the requirements of 11 CFR 102.8 regarding the time for transmittal of contributions. Therefore, contributions of \$50 or less collected by a collecting agent must be given to the separate segregated fund within 30 days after receipt. Contributions in excess of \$50 must be forwarded to the separate segregated fund within 10 days of receipt.

This subsection also sets forth methods for transmitting contributions to a separate segregated fund. Pursuant to subsection (c)(4)(i), checks made out to the separate segregated fund must be transmitted by the collecting agent directly to the fund within the appropriate time period. Subsection (c)(4)(ii) establishes several options for transmittal of contributions in other forms. First, as under current § 102.6(b)(1), the collecting agent may choose to set up a transmittal account solely for the deposit and transmittal of funds collected on behalf of a separate segregated fund under subsection

(c)(4)(ii)(A). Funds deposited into this account are subject to the prohibitions and limitations of the Act. If an expenditure is made from funds in this account, other than a transfer of funds to an affiliated committee, the account will be considered a depository of the recipient committee and all activity of that account must be reported.

Alternatively, the collecting agent may deposit contributions collected into its own treasury account under subsection (c)(4)(ii)(B). If the collecting agent selects this method, it must keep separate records of all receipts and deposits which represent contributions to the separate segregated fund and make separate deposits of all cash contributions. See e.g. Advisory Opinion 1978-42.

Another method, stated in subsection (c)(4)(ii)(C), follows current § 102.6(b)(3). This subsection provides that the collecting agent may deposit contributions into an account maintained for State and local election activity. Under this option, the collecting agent must also keep separate records of all receipts and deposits which represent contributions to the separate segregated fund.

In addition to the other methods for transmitting contributions, subsection (c)(4)(ii)(D), permits the collecting agent to transmit cash contributions to the separate segregated fund in the form of money orders or cashiers checks. This provision generally follows current § 102.6(b)(2), although it is now limited to cash contributions.

Subsection (c)(5) requires that the collecting agent comply with the requirements of 11 CFR 102.8 in transmitting contributor information to a separate segregated fund. However, as under current § 102.6(b)(3), if contributions of \$50 or less are received at a mass collection, the collecting agent must keep a record of the date, the total amount collected, and the name of the function at which the collection was made.

Finally, subsections (c)(6) and (c)(7) specify the recordkeeping and reporting responsibilities of collecting agents and separate segregated funds under this section. Pursuant to subsection (c)(6), a collecting agent is required to retain records of all contribution deposits and transmittals for three years and to make these records available to the Commission upon request. Similarly, the separate segregated fund must keep a record of all transmittals of contributions received from the collecting agent. It is not necessary that the separate segregated fund report contributions received from a collecting agent as transfers-in. Rather, under

subsection (c)(7), the separate segregated fund is required to report each contribution received through the collecting agent as a contribution received from the original contributor as required by 11 CFR 104.3(a).

Section 102.17 Joint Fundraising By Committees Other Than Separate Segregated Funds.

(a) *General.* This subsection sets forth the basic rules for conducting joint fundraising activities. See Advisory Opinions 1979-75, 1979-35, 1979-12, 1979-8, 1977-61, 1977-23, 1977-14 and 1977-8. Subsection (a)(1)(i) states the general permission allowing political committees to engage in joint fundraising with other political committees or with unregistered committees or organizations. This subsection requires that the joint fundraising participants have a fundraising representative. The participants have the option of either establishing a separate political committee or selecting a participating political committee to act as the fundraising representative. Regardless of which method the participants select, the fundraising representative must be a reporting political committee under the Act and will be considered an authorized committee of each participating Federal candidate consistent with 2 U.S.C. 432(e)(3)(A)(ii). See also 11 CFR 102.13(c)(1). The participants may hire a commercial fundraising firm or other type of agent to assist in conducting the joint fundraiser. However, subsection (a)(1)(ii) makes it clear that participants hiring a commercial firm are still required to select or establish a fundraising representative.

Subsection (a)(2) describes the entities which may engage in joint fundraising and states that the procedures at subsection (c) govern all joint fundraising activities conducted under this section. The Commission notes that if all of the participants in a fundraising activity are party committees of the same political party, the participants will not have to adhere to the requirements of this section even though an agreement may have been reached as to the allocation of proceeds before the fundraiser takes place. Since the party committees could decide, after the fundraising was concluded, to transfer any amount of the proceeds among themselves pursuant to 2 U.S.C. 441a(a)(4), the fact that an allocation formula had been previously agreed to would not trigger the joint fundraising requirements to provide notice of the recipients of the funds or to allocate contributions according to the

prearranged formula. However, the party committees would have to follow the notice requirements of 11 CFR 102.5 if the activity is conducted in connection with both Federal and non-federal elections. In addition, if no notice is given regarding the intended allocation of contributions, the contributions received would count toward the contributor's limit for the party committee sponsoring the event, i.e., the national committee or State committee running the fundraiser.

Subsection (a)(3) distinguishes a joint fundraising representative conducting a joint fundraising activity from an unregistered organization acting as a collecting agent under 11 CFR 102.6(b). It also clarifies that the provisions of this section are inapplicable to a separate segregated fund or an unregistered organization operating as a collecting agent under § 102.6(b)

Section 102.17(b) Fundraising Representatives.

This section reiterates that participants in a joint fundraising activity must either establish a separate political committee or select a participating political committee to act as fundraising representative. In either case, the fundraising representative must be a political committee under 11 CFR 100.5. This section also describes the fundraising representative's responsibilities in conducting the joint fundraising activity. Specifically, the fundraising representative is responsible for collecting contributions, paying the costs of the fundraising effort, and disbursing the net proceeds to each participant.

Subsection (b)(3) specifies the amounts which may be advanced by each participant for start-up costs of the fundraiser. To avoid an in-kind contribution, subsection (b)(3)(i) provides that a participant may advance an amount in proportion to the allocation formula agreed upon under subsection (c)(1). A participant may advance more than its proportionate share of the fundraising costs under subsection (b)(3)(ii). However, the amount in excess of the proportionate share may not exceed the amount the participant could legally contribute to the other participants. Subsection (b)(3)(iii) provides that if all the joint fundraising participants are affiliated committees or party committees of the same political party, unlimited amounts may be advanced for fundraising costs since transfers among such committees are unlimited. See 11 CFR 110.3; 2 U.S.C. 441a(a)(4) and 441a(a)(5).

Section 102.17(c) Joint Fundraising Procedures.

This section sets forth the procedures for conducting joint fundraising activities. The first requirement, stated in subsection (c)(1), is that all the participants must enter into a written agreement which identifies the fundraising representative and states the formula for allocating the fundraising proceeds and expenses. The participants should make this agreement prior to engaging in any fundraising activity. The fundraising representative is required to retain this agreement for three years and make it available to the Commission upon request.

Furthermore, in addition to the disclaimer notice required by 11 CFR 110.11, subsection (c)(2) requires that each solicitation for contributions to a joint fundraiser contain a fundraising notice informing contributors of specific details of the fundraising activity. Subsections (c)(2)(i) (A) through (D) require that the fundraising notice contain the names of the participating committees, regardless of whether they are registered political committees; the allocation formula; a statement informing contributors that they may designate their contribution for a particular participant or participants; and a statement that the allocation formula may change if the contributor makes a contribution which exceeds the amount he or she could give to any participant. Subsection (c)(2)(ii) provides for special notices in two situations. For example, under subsection (c)(2)(ii)(A), if the participants are engaging in the joint fundraiser only to pay outstanding debts, the fundraising solicitation must state that the allocation formula may change if a participant receives enough funds to pay its debts. Subsection (c)(2)(ii)(B) requires that if any of the participants can lawfully receive contributions from sources prohibited under the Act, such as a State or local committee that can receive corporate contributions, the solicitations must state that any such contributions received will be given only to participants that can receive them.

Under the Commission's regulations, an agent or other person who receives a contribution on behalf of a political committee is required to forward that contribution to the committee treasurer within 10 or 30 days of receipt. 11 CFR 102.8. The contribution must then be deposited within 10 days in a designated committee depository. However, the Commission recognizes that, in the context of a joint fundraising event, it is common for the fundraising

representative to receive contributions over an extended time period and retain them until all funds are received to ensure payment of expenses and proper distribution of proceeds.

Subsection (c)(3) is intended to address the aforementioned situation and resolve any possible conflict between the Commission's regulations and actual joint fundraising practices. Pursuant to subsection (c)(3)(i), the participants or joint fundraising representative are required to establish a separate account for the receipt and disbursement of joint fundraising proceeds. Under subsection (c)(3)(ii), contributions must be deposited into the separate account by the fundraising representative within 10 days of receipt as required by 11 CFR 103.3. The fundraising representative is not required, however, to distribute the proceeds to the participants until all contributions have been received and all expenses paid. Since each participating political committee must designate this account as an additional depository pursuant to subsection (c)(3)(i), such retention would not conflict with the Commission's regulations. Only funds permissible under the Act may be deposited into this joint fundraising account. If a participant can accept funds prohibited as to other participants under the Act, the fundraising representative or the participants may either establish another account for such contributions or transfer them directly to the participants that can accept them.

Furthermore, subsection (c)(3)(iii) requires that the fundraising representative report contributions in the reporting period in which they are received. This subsection also clarifies that, although distribution of proceeds may be delayed until expenses are paid, for contribution reporting and limitation purposes the date of receipt of a contribution by a participating political committee is the date that the contribution is received by the fundraising representative. Participating political committees are not required to report joint fundraising proceeds, however, until they receive the funds from the fundraising representative.

Moreover, subsection (c)(4) describes the recordkeeping responsibilities of the fundraising representative and participating committees. Under section (c)(4)(i), the fundraising representative and the participants are required to screen the contributions received to ensure that they are neither prohibited under the Act nor in excess of the contribution limitations. Participants must make their contributor records available to the fundraising

representative to facilitate its screening of contributions. Subsection (c)(4)(ii) requires the fundraising representative to collect and retain contributor information in accordance with 11 CFR 102.8 and to forward such information to participating political committees. If necessary, the fundraising representative should also keep a record of the total amount of prohibited contributions received and of transfers of these contributions to any participants that may accept them. Furthermore, fundraising disbursement records required under 11 CFR 102.9 must be kept by the fundraising representative for three years pursuant to subsection (c)(4)(iii). That subsection also provides that commercial fundraising firms or agents must forward contributor information to the fundraising representative.

Subsection (c)(5) permits a contributor to make a donation to a joint fundraiser up to the total amount which he or she could give to all the participants subject to the contribution limitations of 2 U.S.C. 441a(a)(1). Hence, if five Federal candidates participated in a joint fundraiser and agreed to share proceeds equally, an individual could contribute up to \$5,000, less any amount which had been previously contributed to any of the participants by that individual.

Subsection (c)(6) prescribes the manner in which gross proceeds from the joint fundraiser are to be allocated among the participants. Generally, as provided in subsection (c)(6)(i), the fundraising representative must allocate the proceeds according to the formula stated in the fundraising agreement. Changes in the agreed upon allocation formula are limited to two factual situations under this subsection. Excess funds may only be reallocated after distribution according to the preestablished formula has extinguished the debts of one or more participants or if distribution under the formula would result in a violation of the contribution limitations. Reallocation in either of these circumstances must be based on the remaining participants' proportionate shares under the allocation formula. If reallocation results in a contributor's exceeding the contribution limitations, the fundraising representative must return the amount of the contribution which exceeds the limit to the contributor pursuant to subsection (c)(6)(i). Since the participants are required to notify contributors before a contribution is made that reallocation may occur, there is no need to inform them of the results of such reallocation. Under subsection (c)(6)(ii), designated or earmarked

contributions which exceed the contributor's limit to the particular participant may not be reallocated without the written consent of the contributor. Subsection (c)(6)(iii) provides that prohibited contributions need not be distributed according to the allocation formula in the fundraising agreement if any participant may legally accept them.

Subsection (c)(7) governs the allocation of expenses and distribution of net proceeds. This subsection establishes different methods for calculating each participant's share of expenses and net proceeds based upon whether the participants were previously affiliated committees or are party committees of the same political party. For instance, subsection (c)(7)(i)(A) provides that if the participants are not affiliated committees or party committees of the same political party, the fundraising representative, after allocating gross proceeds, should calculate each participant's share of expenses based on the percentage of the total receipts each participant has been allocated. Prohibited contributions need not be included in the total receipts for the purpose of allocating expenses. Thus, under this subsection, the fundraising representative must subtract a participant's share of expenses from the amount it was allocated from gross proceeds to determine the amount of net proceeds each participant will receive. If each participant pays its own share of expenses calculated pursuant to this section, no contribution in-kind from one or more of the participants occurs. A participant may pay the expenses of another participant, but subsection (c)(7)(i)(B) points out that such payments are subject to the contribution limits of 11 CFR Part 110. Any funds advanced by one participant on behalf of another to pay the initial costs of the fundraising activity will also count against the contribution limits as provided under subsection (b)(3).

By contrast, since the Act permits unlimited transfers between committees which are affiliated or party committees of the same political party, no in-kind contribution results if one committee pays all expenses of a fundraising event. Thus, under subsection (c)(7)(ii) expenses need not be allocated if the participants are affiliated committees or are related party committees. This subsection also clarifies, however, that payment of such expenses by an unregistered Committee or organization on behalf of an affiliated political committee or related party political committee may trigger the registration

and reporting requirements under the Act.

Two additional points should be noted. First, under subsection (c)(7)(i) "committees of the same political party" refers only to party committees and not to candidates of the same political party. Also, regardless of whether the participants are affiliated committees or party committees of the same political party, pursuant to subsection (c)(7)(iii), the fundraising representative may pay expenses from gross proceeds.

Finally, subsection (c)(8) explains when and how receipts and disbursements must be reported by the fundraising representative and participating political committees. Under subsection (c)(8)(i)(A), the fundraising representative is required to report all contributions in the reporting period in which they are received on FEC Schedule A, with a clear indication that these contributions represent joint fundraising proceeds. If any prohibited contributions are received during the reporting period, the fundraising representative should report the total amount of such contributions as a memo entry on Schedule A. Subsection (c)(8)(i)(B) provides that, after the distribution of net proceeds, each participant must report the amount it receives as a transfer-in from the joint fundraising representative. Each committee should also file a memo Schedule A containing an itemization of its share of gross receipts as contributions from the original contributors as required under 11 CFR 104.3(a). Pursuant to subsection (c)(8)(ii), the fundraising representative must report all disbursements in the reporting period in which they are made.