



Paul Sanford <psanford@crp.org> on 09/25/2003 04:57:42 PM

To: mailinglists@fec.gov
cc:

Subject: Mailing List comments

Attached find comments submitted by FEC Watch and the Center for Responsive Politics on the FEC's Notice of Proposed Rulemaking on Mailing Lists of Political Committees. They are attached in MS Word and Portable Document Format.



- mailinglists.comment.pdf



- mailinglists.comment.doc



September 25, 2003

VIA E-MAIL

Mai T. Dinh
Acting Assistant General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: Notice 2003-17: Mailing Lists of Political Committees

Dear Ms. Dinh:

FEC Watch and the Center for Responsive Politics (CRP) are pleased to submit the attached comments on the Notice of Proposed Rulemaking on Mailing Lists of Political Committees, published at 68 *Fed. Reg.* 52531 (September 4, 2003).

Respectfully submitted,

Lawrence Noble
Executive Director
Center for Responsive Politics

Paul Sanford
General Counsel
Center for Responsive Politics

Attachment

BEFORE THE FEDERAL ELECTION COMMISSION

NOTICE 2003-17

Mailing Lists of Political Committees

Comments of FEC Watch and the Center for Responsive Politics

I. Introduction

FEC Watch and the Center for Responsive Politics submit these comments in response to the Federal Election Commission's Notice of Proposed Rulemaking ("NPRM") on Mailing Lists of Political Committees. 68 *Fed. Reg.* 52531 (Sept. 4, 2003). FEC Watch is a project of the Center For Responsive Politics, a non-partisan, non-profit research group based in Washington, D.C. that tracks money in politics and its effect on elections and public policy. FEC Watch's objective is to increase enforcement of the nation's campaign finance, lobbying, and ethics laws. FEC Watch monitors the enforcement activities of the Federal Election Commission and other government entities, including the Department of Justice and congressional ethics committees, and encourages these entities to aggressively enforce the law.

II. Comments

A. Conditions for Rental and Sale of Mailing lists

Our comments on the rental and sale of mailing lists are the same, so we have combined our discussion into a single section.

1. Usual and normal charge

The threshold condition on treating rentals and sales of mailing lists as exempt rather than as fundraising activity is that the list has an ascertainable fair market value. Thus, the rules should require committees to determine the fair market value of a mailing list prior to entering into an agreement to rent or sell the list. If there is no ascertainable fair market value, then the committee should be required to treat the proceeds from the rental or sale as a contribution subject to section 441a and 441b of the Federal Election Campaign Act, 2 U.S.C. § 431 *et seq.* (FECA or the Act), or should be prohibited from renting or selling the list.

The rules should place the burden for ascertaining fair market value on the committee renting or selling the list. This is an appropriate assignment of responsibility for at least two reasons. First, the committee will need to know the fair market value of the list in order to determine the usual and normal charge for renting or selling the list. Second, these transactions are an exception from the general rule that the full amount received from the sale of a committee asset is a contribution. Thus, the committee benefiting from the exception should be able to demonstrate that the conditions exist for its application.

The factors to be used to ascertain the usual and normal charge should be defined if possible, especially if some of the available indicators are more reliable than others. If so, the rule should direct committees to look to these indicators first, though it could also allow committees to make a showing based on other indicators.

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The factors to be used to ascertain the usual and normal charge should be defined if possible, especially if some of the available indicators are more reliable than others. If so,

2. Allocation of proceeds

Committees should not be able to use a list rental or sale to convert nonfederal assets into federal funds. Therefore, committees that developed their mailing lists with funds from a nonfederal account should be required to treat a portion of the proceeds from the rental or sale of that list as nonfederal funds and deposit them into their nonfederal account. This allocation should be made using the ratio for allocating administrative expenses.

The national party committees raise unique issues, since they likely developed their lists using partially nonfederal funds but no longer operate nonfederal accounts. The rules should require them to allocate the proceeds from rentals and sales and give 35% of the proceeds to a section 501(c)(3) charitable organization. This requirement should remain in place for a period of time to reflect the residual value of the list, perhaps through one complete four-year election cycle, *i.e.*, through the end of 2006. After that, the national party committee would be able to treat the entire amount received as federal funds.

3. Recordkeeping

Committees should be required to retain a sale or rental agreement for three years after the agreement is signed, consistent with 2 U.S.C. § 432(d). Committees should be able to provide copies of these agreements to the Commission upon request.

A committee's records should also include documentation of the usual and normal charge for the list. Generally, valuation by one of the two sources listed in proposed section 110.21(f)(2) would be appropriate. However, we urge the Commission to revise paragraph (f)(2)(ii) to require that committees use entities that are in the business of appraising the fair market value of mailing lists for all non-SRDS appraisals. If a committee is unable to get an appraisal from such an entity, it should be required to either obtain SRDS documentation of the fair market value of the list or treat the proceeds from the rental or sale as a contribution.

4. Conversions of Lists to Personal Use

Proposed section 113.2(d) states the correct rule and should be adopted.

III. Conclusion

FEC Watch and the Center for Responsive Politics hope that these comments are useful to the Commission as it considers issuing new rules regarding mailing lists of political committees.