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May 29, 2002

Rosemary Smith, Assistant General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: Notice of Proposed Rulemaking, Notice 2002-7: Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money

Dear Ms. Smith,

OMB Watch, a nonprofit organization that promotes government accountability and citizen participation in public issues and decision-making, welcomes this opportunity to comment on proposed rules relating to soft money issues. In promoting civic participation we work with and through the nonprofit sector because of its vital place in communities and our faith that the sector can play a powerful role in reinforcing our democratic principles. Because of our commitment to strengthening the voice of the nonprofit sector in public policy debates we work to protect the advocacy rights of nonprofits, educate them about laws and regulations that impact their advocacy work. In addition, we promote public accountability of the nonprofit sector through government oversight that is clear and not unduly burdensome.

Terminology

Our experience in informing nonprofits about their advocacy rights, and in conducting trainings on laws and rules that govern advocacy activities convinces us that there is a great need to simplify both election and tax law in this area. For this reason we strongly support Commissioner Thomas' proposal that the Commission drop use of the terms "federal" and "non-federal" funds. Both FEC regulations and the *Campaign Guide for Nonconnected Committees* precede the legal developments that led to the explosion of soft money in elections. Private letter rulings issued by the IRS after the 1996 elections, combined with court rulings that limit application of FECA to express advocacy, combined to create for space soft money to develop. Soft money can be used in connection with federal, state or local campaigns. Those funds are all considered "non-

federal" under election law terminology, even though all or part of the expenditures may be made in an attempt to influence a federal election.

As a result, the application of outdated, pre-soft money election law terminology to today's nonprofit activities only serves to create confusion. We strongly encourage the FEC to abandon use of the terms "federal funds" and "non-federal funds" in its final rule, and use labels that clearly indicate what kinds of entities and activities are being addressed. Members of Congress, the press, the regulated community and public have all referred to "federal accounts" as hard money accounts, and "non-federal accounts" as soft money accounts. This terminology does a better job of informing the public of the kinds of activities that are covered by the proposed rules. Since the final regulations will have a wide impact it is imperative that the terminology clearly indicate which accounts of which PACs are covered, so that nonprofits know what is regulated, and by whom. If the terms "soft" and "hard" money are considered too perjorative a term to use in regulations, then "regulated" and "unregulated" funds would be adequate to describe what is being regulated and what is not.

Internet

We believe the Commission has taken the correct approach by not including the Internet in the definition of "general public political advertising" in proposed 11 CFR 100.26, since it is not included in the statutory definition. There are good policy reasons for leaving the Internet out of the definition, as it is cheap and widely available. Internet communications are not part of the campaign finance problem, and should not be regulated as such unless Congress specifically mandates it.

Nonpartisan Voter Education Efforts

Because of the Internal Revenue Code strictly prohibits charities from supporting or opposing candidates for office, we suggest that the regulations contain a presumption that voter education and turnout activity by organizations exempt under IRC 501(c)(3) are nonpartisan and do not promote or attack candidates. This would give recognition to the fact that, unless a charity is violating the tax code, its activities will be covered by the exemption in proposed 11 CFR 100.24(b). Such a presumption would diminish the chilling effect these regulations could have on nonpartisan voter education efforts. Since these efforts help diminish the influence of money in politics, the presumption would further the purpose of BCRA.

Please let us know if any further information is needed. Thank you for the opportunity to comment.

Yours truly,

Kay Guinane,
Counsel and Manager, Community Education Center