

JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, DC 20001.2113

TELEPHONE: +1.202.879.3939 • JONESDAY.COM

DIRECT NUMBER: +1.202.879.3951

SCROSLAND@JONESDAY.COM

September 30, 2024

VIA ONLINE SUBMISSION

Federal Election Commission
ATTN: Amy L. Rothstein
Assistant General Counsel for Policy
1050 First Street, N.E.
Washington, DC 20463

Re: Comment of the Republican National Committee on REG 2024-07
(Political Party Rules II)

Dear Ms. Rothstein:

The Republican National Committee (“RNC”), by and through undersigned counsel, respectfully submits this comment in response to the Commission’s Notice of Availability of the petition for rulemaking filed by the Minnesota Democratic Farmer-Labor Party and its Chairman, Notice 2024-18, 89 Fed. Reg. 62,671 (Aug. 1, 2024) (“the Petition”). The RNC urges the Commission to commence a rulemaking consistent with the Petition. It is beyond time for the Commission to implement sensible reforms, like those proposed by the Petition, in order to alleviate unnecessary regulatory burdens on state and local party committees.

This is not the Commission’s first time heading down this road. Over the years, rotating casts of bipartisan Commissioners have expressed their desire to give a hard look toward ways in which the Commission can strengthen political parties—especially state and local parties—by alleviating any unnecessary demands imposed by the Commission’s Bipartisan Campaign Reform Act of 2002 (“BCRA”) regulations. At the FEC’s June 2014 Political Party Public Forum, for example, several participating Commissioners expressed interest in relaxing the BCRA regulations, to the extent appropriate under the statute.

But it has now been over a decade and still *nothing* has happened. All the while, state and local parties are struggling to keep up in our modern campaign-finance system. *See* Petition at 2 (“State and local party committees continue to compete for resources with a growing number of unregulated non-profits and political committees that can spend unlimited sums from unlimited sources in close proximity, and in some cases, in direct coordination with federal candidates.”); *see also, e.g.*, Gerald F. Seib, *For Saner Politics, Try Stronger Parties*, Wall St. J. (Apr. 20, 2023), <https://on.wsj.com/3o2DWKc> (“Donna Brazile, a former Democratic national chairwoman, says that ‘over the years, the parties have been weakened by the new landscape where super PACs ... have a stranglehold.’”); Robert F. Baur, *The Parties’ Struggles in the Political “Market”: Can Regulation Solve This Problem—Should It, and if so, How?*, 54 Hous. L. Rev. 881, 899 (2017)

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(“[I]t is widely accepted [that the advent of Super PACs] has been damaging to the political parties, and some Super PACs are seen to be moving in the direction of assuming most of the functions of parties, including not only expensive on-air appeals but also the ‘ground game’ conducted to motivate voters to appear at the polls.”); Raymond J. La Raja & Brian F. Schaffner, *Campaign Finance and Political Polarization: When Purists Prevail* 130-32 (Univ. of Michigan Press 2015) (describing how “[n]ational groups [have] displace[d] the role of state parties” under BCRA regulation).

The Petition therefore resuscitates a rulemaking petition originally filed in 2016, calling for some relief. The RNC submitted a comment in support of that original petition, detailing the need for reform and offering the Commission workable regulatory solutions available to it. *See Exhibit A* (RNC Comment on Political Party Rules Rulemaking Petition, REG 2016-03 (Jan. 30, 2017)). The RNC hereby incorporates its prior comment in response to the newest Petition, and offers the following additional comments on the three specific items emphasized by the Petition.

1. The RNC agrees that the Commission should amend its party payroll regulations to follow the statutory text. In 2017, the RNC encouraged the Commission to bring its “Federal election activity” (“FEA”) payroll regulations into conformity with the statutory text, Ex. A at 4, but that has not happened. The Federal Election Campaign Act, as amended by BCRA, defines “Federal election activity” (“FEA”) to include “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 time during that month on activities *in connection with a Federal election*.” 52 U.S.C. § 30101(20)(A)(iv) (emphases added); *accord* 11 C.F.R. § 100.24(b)(4). Yet the Commission’s allocation rules at 11 C.F.R. §§ 106.7(c)(1), 106.7(d)(1), and 300.33(d), doubly extend beyond the statute’s plain language. *See* Comment of Center for Competitive Politics, REG 2016-03 at 2-5 (Jan. 30, 2017) (“Center Comment”) (“The Commission’s departure from the statutory definition of employee services has resulted in both confusing circularity and the regulation of statutorily excluded activity.”). *First*, those rules trigger regulation at “25% or less”—not “25% or more”—of compensated time. *Id.* at 3-4. *Second*, they broadly include employee work on FEA within the 25% calculation’s numerator, even though the statute only applies to more directly federal activities (*i.e.*, those “in connection with a Federal election”). *Id.* at 4-5. Such regulatory deviation from the statute that Congress wrote cannot withstand even the most basic of scrutiny—especially now that *Relentless, Inc. v. Department of Commerce* and *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), has brought an end to the *Chevron*-deference era.

2. The RNC agrees that the Commission should revise its regulations defining the outer bounds of FEA. The Commission should ensure its regulations defining FEA are appropriately tailored toward addressing the “only ... permissible ground” that justifies campaign-finance regulation in light of the First Amendment: “the prevention of ‘*quid pro quo*’ corruption or its

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appearance.” *Cruz v. FEC*, 596 U.S. 289, 305 (2022); *McCutcheon v. FEC*, 572 U.S. 185, 192 (2014) (“Any regulation must ... target ... ‘*quid pro quo*’ corruption or its appearance.”). Indeed, as Commissioner Dickerson previously wrote, when counsel to a commenter in 2017, “In *Shays*, The D.C. Circuit recognized that the Commission has an obligation to attempt to avoid unnecessarily infringing on First Amendment interests while establishing rules that fulfill statutory goals.” Center Comment, *supra*, at 2 (internal quotation marks and footnote omitted). Consistent with that mandate, the Commission should revisit its regulations and draft more tailored definitions better describing which activities do—and which do not—constitute FEA to ensure its regulations are not unnecessarily chilling state and local party speech directed toward non-federal elections. *See, e.g.*, Ex. A at 4 (offering that the “FEC could recraft the regulatory definition of FEA to exclude state and local party committee communications or activities clearly intended to increase support for nonfederal candidates but which may include incidental ‘voter registration’ or ‘get-out-the-vote activity’”).

3. The RNC agrees that the Commission should clarify and modernize its regulations governing state and local party volunteer activities. As the RNC explained in its 2017 comment: “In drafting the statutory volunteer materials exemption, [at 52 U.S.C. §§ 30101(8)(B)(ix), 9(B)(viii),] Congress’s stated purpose was to ‘encourage volunteers to work for and with local and state political party organizations.’” Ex. A at 6. But the regulations that the FEC subsequently adopted have proven to be far too vague and uncertain in many applied circumstances. This is particularly true with respect to volunteer mail activity—especially as modern technology has rapidly advanced. The lack of clarity in this area acts as a deterrent against robustly engaging in volunteer activity, defeating the whole point of the exemption. *Id.* The RNC thus agrees with the Petition that the Commission should promulgate new volunteer activity regulations to provide necessary clarity and bring the rules in line with modern campaigning and technology.

* * *

We thank the Commission for this opportunity to comment and hope that this time around, the Commission takes action on the Petition and brings needed regulatory relief to state and local party committees through the requested rulemaking.

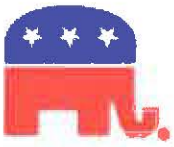
Respectfully,



E. Stewart Crosland

Counsel to the Republican National Committee

Exhibit A



Republican National Committee

January 30, 2017

VIA ONLINE SUBMISSION

Mr. Neven F. Stipanovic, Acting Assistant General Counsel
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Comment on Political Party Rules Rulemaking Petition (REG 2016–03)

The Republican National Committee (“RNC”), by and through counsel, submits this comment in support of the petition for rulemaking filed on behalf of Minnesota Democratic Farm-Labor Party Chairman Ken Martin on June 15, 2016 (“Petition”), asking the Federal Election Commission (“FEC” or “Commission”) to review and modify its regulations to provide some desperately needed relief to state and local political party committees.

At the June 2014 public forum on political parties co-hosted by Commissioners Goodman and Ravel, participating Commissioners expressed their desire to assist and strengthen party committees to the extent allowed by statute.¹ Such desire is commendable. Party committees are the most transparent, accountable, and grassroots-oriented organizations in our political system² – and they also happen to be the most highly regulated. Yet, notwithstanding the Commissioners’ statements and strong bipartisan support for reform from most of the forum’s participants, nearly three years have passed without action by Congress or the FEC, and the need for legal reform has grown even more urgent. The FEC should seize this opportunity to deliver on the promises Commissioners made at the 2014 forum and undertake the Petition’s requested rulemaking.

¹ See Forum Audio at 119:42–126:07 (2014), http://www.fec.gov/audio/2014/20140604_FORUM.mp3 (closing statements of Commissioners Goodman, Ravel, Walther, and Weintraub).

² See generally Ian Vandewalker & Daniel I. Weiner, *Stronger Parties, Stronger Democracy: Rethinking Reform* 3–4 (Brennan Center for Justice 2015) (discussing some of the virtues of political party committees).

I. There is urgent need for legal reform to ensure the relevance of state and local party committees in American politics.

As the governing body of the Republican Party, the RNC works closely with state and local party committees during each election cycle to support Republican candidates. State and local party committees form the backbone of the RNC's collective efforts to elect Republican candidates at every level of government. In fact, the chairmen of every Republican state party committee serve as members of the RNC.

The RNC thus understands well that effective state and local party committees are “an essential element of our democracy.”³ They organize and educate voters and give citizens the chance to participate in politics through numerous core grassroots political activities – including training and recruiting of volunteers, registering and mobilizing voters, managing telephone banks, and distributing campaign and party literature and sample ballots.⁴

Furthermore, unlike candidate campaigns and outside groups, state and local party committees are enduring political institutions. They are continuous players that represent the grassroots of their party throughout each day of every election cycle.⁵ State and local party committees thus aim for sustainable success for both them and their party as a whole,⁶ making them “a majoritarian counterbalance to narrow special interest groups, and . . . a moderating force responsive to public opinion in pursuit of broadening governing coalitions.”⁷

Yet, as discussed in detail at the 2014 public forum and in the Petition, state and local party committees increasingly find themselves unable to perform their traditional functions effectively, largely because of the unnecessarily burdensome and often byzantine federal campaign finance

³ *Id.* at 3; *see also id.* at 1 (“Political parties are a core ingredient of representative democracy.”).

⁴ *See* Petition at 2 (“[S]tate parties have traditionally worked to increase voter turnout through voter contact methods such as voter registration and get-out-the-vote.”); Lee E. Goodman, *A Time to Revive the Party*, Wash. Examiner (Nov. 16, 2015), <http://www.washingtonexaminer.com/a-time-to-revive-the-party/article/2576416> (“The democratic activities that state and local parties facilitate are the most virtuous kind.”); Raymond J. La Raja & Jonathan Rauch, *The state of parties – and how strengthening them can improve our politics* 4 (Brookings Mar. 2016) (“During the campaign season, state parties provide candidates with core services such as training campaign staff and volunteers.”); Neil Reiff & Don McGahn, *A Decade of McCain-Feingold*, Campaigns & Elections (Apr. 16, 2014), <https://www.campaignsandelections.com/campaign-insider/a-decade-of-mccain-feingold> (noting that registering voters, developing voter lists, providing sample ballots, and getting voters to the polls on Election Day are all “traditional party programs”).

⁵ La Raja & Rauch, *supra* note 4, at 3 (“Campaigns and outside groups come and go, but state parties are repeat players.”).

⁶ *Id.* (“We carry the [party] brand We are stewards of the brand. . . . We’re the ones that exist forever.” (quoting an unnamed Democratic state party official)).

⁷ Vandewalker & Weiner, *supra* note 2, at 3; *see also* Petition at 2 (“[T]hese committees are well situated to perform grassroots political activity in order to support the party’s national political and electoral interests, which can help to ensure consistency and cohesion in party goals.”); Reiff & McGahn, *supra* note 4 (“The two-party system has been a stabilizing force in our democracy for over 200 years. Without that stabilizing force, however, there has been a significant rise in the number of single-issue candidates, nasty primaries pitting the middle against the hard partisan flank, and a general polarization.”).

laws and regulations applicable to their activities.⁸ A growing body of policy experts, academics, and practitioners across the political spectrum agrees that these overly onerous and complex laws and regulations – especially those imposed by the Bipartisan Campaign Reform Act of 2002 (“BCRA”) – have proven counterproductive, placing state and local party committees at a considerable competitive disadvantage in the political marketplace.⁹ As a result, more and more scarce political dollars have flowed away from party committees and toward outside groups and independent expenditures, and candidates increasingly have lost incentive to work with their party committees.¹⁰ “Weakened by [these] regulations and resource constraints, [state and local party committees] have been reduced to spectators” in many circumstances.¹¹

Without imminent legal reform, these problems only will worsen. State and local party committees indeed may soon find themselves completely irrelevant in American politics, a result that likely would lead to significant downturns in civic engagement and voter turnout. The RNC thus echoes the Petition’s plea to the FEC for some much needed help on behalf of all Republican state and local party committees.

II. The FEC should thoroughly review and amend its regulations to help relieve the burden on state and local party committees.

Although much of the burden for legal reform rests with Congress, the FEC can and should heed the Petition’s appeal to find common ground to review how its regulations may be modified to provide some relief to state and local party committees to help restore their efficacy.¹² Among its potential reforms, the FEC should consider doing the following to mitigate the regulatory burdens on party committees:

⁸ See Petition 2 (“Through strapping the hands of political parties and limiting their ability to perform [their traditional] functions, current laws have weakened political parties, leading to subsequent issues”); see also Forum Audio, *supra* note 1.

⁹ See, e.g., Petition at 5, 5 n.30 (noting that “there is growing literature and support from political legal and policy experts that effective state parties are critical to the functioning of our democracy” and collecting authorities); see also, e.g., *Hearing – Dollars and Sense: How Undisclosed Money and Post McCutcheon Campaign Finance Will Affect the 2014 Election and Beyond Before the S. Comm. on Rules & Admin* (2014) (joint statement of Don McGahn and Neil Reiff) (noting that “current law has placed parties at a competitive disadvantage”); La Raja & Rauch, *supra* note 4, at 5–12 (“[L]aw and public policy have . . . plac[ed] state parties at a disadvantage.”); Reiff & McGahn, *supra* note 4 (“McCain-Feingold placed a very complex set of regulations upon state and local committees, which make the law regulating state parties look like a Rube Goldberg contraption.”); Vandewalker & Weiner, *supra* note 2.

¹⁰ See, e.g., La Raja & Rauch, *supra* note 4, at 2 (“Restrictions intended to constrain state parties’ activities and fundraising do exactly that – with the perverse effect of weakening the parties and strengthening unaccountable outside groups.”).

¹¹ Jonathan Rauch, *How American Politics Went Insane*, *The Atlantic* (Jul./Aug. 2016), <http://www.theatlantic.com/magazine/archive/2016/07/how-american-politics-went-insane/485570>.

¹² Petition at 6.

- ***Narrow the regulatory definition of “federal election activity” (“FEA”).*** The current definition of FEA in the FEC’s regulations, which was adopted after *Shays III*,¹³ is too broad and extends beyond Congress’s intent in enacting BCRA.¹⁴ This overly broad definition has left virtually all state and local party activity subject to federal regulation whenever a federal election is occurring, no matter how absurdly tenuous the activity’s connection to a federal race.¹⁵ The FEC should look to narrow the regulatory definition of FEA to provide state and local party committees greater freedom in undertaking their commendable efforts to register and mobilize more voters in state and local elections. For example, the FEC could recraft the regulatory definition of FEA to exclude state and local party committee communications or activities clearly intended to increase support for nonfederal candidates but which may include incidental “voter registration” or “get-out-the-vote activity.”¹⁶

- ***Bring the FEA payroll rule into conformity with the statutory text.*** As discussed in the Petition, BCRA imposes a preliminary limitation on state and local party committees by requiring them to pay their employees with only federal funds if more than 25% of their time is spent on activities “in connection with a federal election.”¹⁷ The FEC’s regulations, however, also include within the 25% calculation any time employees spend on FEA.¹⁸ This peculiar regulatory addition to the statutory text has proven counterproductive, as it discourages state and local party committees from engaging in their traditional voter outreach and mobilization activities at the nonfederal level out of concern their activities may constitute FEA.¹⁹ The FEC should bring its regulation into conformity with the statute; “if Congress intended to include ‘federal election activity’ in this statutory provision, they would have done so at the time of the passage of the BCRA.”²⁰

¹³ *Shays v. FEC*, 508 F. Supp. 2d 10 (D.D.C. 2007), *aff’d*, 528 F.3d 914 (D.C. Cir. 2008).

¹⁴ See Petition at 3 (urging the Commission to “reconsider the sheer overbreadth of its BCRA regulations”).

¹⁵ *Id.* (explaining that after *Shays III*, “the Commission revised its definition of federal election activity to mean virtually any state and local party activity”).

¹⁶ See, e.g., Proposed Resolution of the FEC Commencing Work on a Notice of Proposed Rulemaking Focused on Strengthening Political Parties 3 (Oct. 20, 2015).

¹⁷ Petition at 4.

¹⁸ See 11 C.F.R. §§ 106.7(c)(1), 106.7(d)(1)(i)–(ii), 300.33(d)(1)–(2).

¹⁹ See Petition at 4 (explaining that the rule “has led many party committees to refrain from allowing their staff to work on state and local activities or hiring staff to work on state or local candidate activities that otherwise qualify as ‘federal election activity’”).

²⁰ *Id.*

- **Revise the rules for raising and spending Levin funds.** The rules governing the raising and spending of Levin funds to pay for certain quintessential party grassroots activities that constitute FEA²¹ are far too complicated and, consequently, too easy for state and local party committees to violate unwittingly. Because of this, hardly any Republican state or local party committees raise and spend Levin funds, despite the Levin amendment’s laudable federalism purposes. The FEC should review its regulations governing Levin funds and look to revise and simplify them as best it can to encourage greater use of Levin funds by state and local party committees.
- **Eliminate the presumption of affiliation between state and local party committees of the same political party in the same state.** By regulation, the state party committee and all local party committees of a party within the same state are presumed affiliated and thus must share in their contribution limits – which unnecessarily reduces their potentially available funds.²² State and local party committees can overcome this presumption, but to do so they must use already limited resources to request an advisory opinion from the Commission. The regulation’s presumption of affiliation, however, is not based on express statutory text in the Federal Election Campaign Act (“FECA”), but rather on mere congressional silence as to whether local party committees are exempt from FECA’s affiliation rules and the FEC’s broad application of the anti-proliferation rule.²³ The presumption also ignores reality; state and local party committees, in the RNC’s experience, generally operate separately from each other, with distinct bylaws and leadership structures and their own employees and volunteers. Furthermore, the presumption imposes a substantial compliance burden on state and local party committees by requiring them to track each other’s fundraising activity in real time. The FEC should eliminate the regulatory presumption of affiliation and treat state and local party committees of the same party as per se independent.
- **Loosen party coordinated communication restrictions.** The FEC should look to expand its regulations governing party coordinated communications²⁴ to encourage greater interaction between party committees and their nominees and allow party committees more freedom to communicate valuable information and consistent messages to the electorate. BCRA required the FEC to promulgate new regulations on “coordinated communications” paid for by persons other than candidates, authorized committees of candidates, and party committees.²⁵ It “did not specifically direct the Commission to

²¹ See 11 C.F.R. §§ 300.2(i), 300.30–300.36.

²² See *id.* § 110.3(b)(3). For example, “an individual’s total contributions to all affiliated state and local party committees cannot exceed \$10,000 per year; and those affiliated committees’ total contributions to any one candidate cannot exceed \$5,000 per election.” FEC Local Party Activity Guide, <http://www.fec.gov/pages/brochures/locparty.shtml>.

²³ See Advisory Opinion 1999-04 (Republican Party of Minn.) at 3.

²⁴ See 11 C.F.R. §§ 109.30–109.37.

²⁵ *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 448 (Jan. 3, 2003).

address coordinated communications paid for by political party committees.”²⁶ Yet the Commission did so anyway. Because BCRA did not demand the regulations currently governing party coordinated communications, the FEC should reassess them in light of its present efforts to help revive party committees.

- ***Simplify the rules for exempt volunteer activity.*** In drafting the statutory volunteer materials exemption,²⁷ Congress’s stated purpose was to “encourage volunteers to work for and with local and state political party organizations.”²⁸ Yet the regulations and guidance implementing the exemption²⁹ – particularly with respect to volunteer mail – are unnecessarily vague and complicated. This may deter some state and local party committees from recruiting volunteers and supporting federal candidates, even when they have sufficient federal funds on hand, out of concern they might exceed their contribution or party coordinated expenditure limits. The FEC should look to simplify and broaden as much as possible its rules relating to application of the volunteer materials exemption to foster greater volunteer recruitment and participation in the political process.
- ***Revise the regulations governing the continuous reporting of debts and obligations.*** The FEC should revise its regulations governing the continuous reporting of debts and obligations “which remain outstanding.”³⁰ As drafted, this reporting obligation is not, by any stretch, intuitive. To reflect commercial realities, the regulation should expressly tie the meaning of “outstanding” debt to the date on which a committee’s payment for a vendor invoice is stated due. In cases where no due date is specified, a debt should be deemed “outstanding” only after passage of a commercially reasonable time period.

III. The FEC should take further actions in support of state and local party committees in addition to a rulemaking.

In addition to undertaking a rulemaking, the RNC recommends that the FEC take the following steps to help state and local parties remain relevant in our democratic system:

- ***Issue a Commission policy statement declaring leniency in the enforcement of violations by non-recidivist state and local party committees.*** Given the complexity of the rules applicable to state and local party committees – as well as the resource constraints that frequently prevent them from retaining counsel or reasonably sized compliance staffs – the FEC, in addition to a rulemaking, should issue a policy statement establishing a more lenient enforcement scheme for violations by state and local party committees. The policy statement could provide, for example, for greater reliance on the FEC’s Office of Alternative Dispute Resolution in Matters Under Review involving state

²⁶ *Id.*

²⁷ See 52 U.S.C. §§ 30101(8)(B)(ix), 9(B)(viii).

²⁸ H.R. Rep. No. 422, 96th Cong., 1st Sess. at 9.

²⁹ 11 C.F.R. §§ 100.87, 100.147.

³⁰ *Id.* § 104.11(a).


and local party committees that have not committed similar violations within a reasonable stated time period. This would allow the FEC to educate the regulated community without imposing penalties on organizations that frequently are not resourced sufficiently to be sophisticated on all of the diverse compliance issues facing them.

- ***Send Congress a substantial, meaningful set of legislative recommendations aimed at providing even greater relief to state and local party committees.*** Finally, the FEC should craft and send to Congress a fulsome set of legislative recommendations aimed at providing relief from the excessive statutory burdens on state and local party committees. Among other things, such recommendations should encourage Congress to: (i) index for inflation contribution limits applicable to state and local party committees; (ii) revise the definition of FEA wholesale; (iii) increase and index for inflation the registration thresholds for local party committees;³¹ (iv) broaden the application of the volunteer materials exemption; and (v) repeal mandatory monthly filing for state party committees that spend funds on FEA.³² In light of Commissioners' stated support of efforts to promote effective state and local party committees, the FEC should willingly place its imprimatur on a substantial package of suggested reforms in an effort to implore Congress to action.

* * *

The RNC thanks the Commission for the opportunity to offer these comments and once again urges the FEC to seize this opportunity to bring much needed relief to state and local party committees through the requested rulemaking. The reform proposals presented herein – along with those set forth in both the Petition and Commissioner Goodman's memorandum and resolution from the October 29, 2015 Open Meeting – should provide the FEC a strong foundation on which to begin a successful bipartisan dialogue and rulemaking aimed at restoring the efficacy of state and local party committees.

Sincerely,


John R. Phillippe
Chief Counsel
Republican National Committee


E. Stewart Crosland
Senior Counsel
Republican National Committee

³¹ The RNC commends the Commission for once again – as it has several years in a row – recommending legislative changes related to the issue of registration thresholds in its year-end 2016 recommendations submitted to Congress.

³² 52 U.S.C. § 30104(e)(4); *see also* 11 C.F.R. § 300.36(c).