



FEDERAL ELECTION COMMISSION
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AGENDA ITEM

For Meeting of: 8-19-04

SUBMITTED LATE

MEMORANDUM

To: The Commission

From: Bradley A. Smith *BAS*
Chairman

Ellen L. Weintraub *ELW*
Vice Chair

David M. Mason *DM*
Commissioner

Re: Agenda Document No. 04-75
Draft Final Rules for Political Committee Status

In keeping with the suggestion of the General Counsel regarding the severability of certain rules from the proposal contained in Agenda Document No. 04-75 (see page 35), we intend to propose adoption of the following regulations, which amend 11 C.F.R. Sections 100.57 and 106.6:

3. Section 100.57 is added to subpart B to read as follows:

§ 100.57 Funds received in response to solicitations.

(a) Treatment as contributions. Except as provided in 11 CFR 102.17, a gift, subscription, loan, advance, or deposit of money or anything of value made by any person in response to any communication is a contribution to the person making the communication if the communication indicates that any portion of the funds received will be used to support or oppose the election of a clearly identified Federal candidate.

(b) Certain allocable solicitations. If the costs of a solicitation described in paragraph (a) of this section are allocable under 11 CFR 106.1, 106.6 or 106.7 (consistent with 11 CFR 300.33(c)(3)) as a direct cost of fundraising, the funds received in response to the solicitation shall be contributions as follows:

- (1) If the solicitation does not refer to any clearly identified non-Federal candidates, but does refer to a political party, in addition to the clearly identified Federal candidate described in paragraph (a) of this section, one hundred percent (100%) of the total funds received are contributions.
- (2) If the solicitation refers to one or more clearly identified non-Federal candidates, in addition to the clearly identified Federal candidate described in paragraph (a) of this section, at least fifty percent (50%) of the total funds received are contributions, whether or not the solicitation refers to a political party.

**PART 106 – ALLOCATIONS OF CANDIDATE AND COMMITTEE
ACTIVITIES**

5. The authority citation for part 106 continues to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

6. Section 106.6 is amended by:

- a. Removing the words “(c) and (d)” from paragraph (a) and adding in their place the words “(c), (d), and (f)”;
- b. Removing the words “or (b)(1)(i)” from paragraphs (a) and (e);
- c. Removing the citation “102.5(b)(1)(ii)” from paragraph (a) and adding in its place the citation “102.5(a)(1)(ii)”;
- d. Revising paragraphs (b), (c), and (e)(2)(ii)(B) and adding paragraph (f) to read as follows:

**§ 106.6 Allocation of expenses between federal and non-federal activities by
separate segregated funds and nonconnected committees.**

* * * * *

(b) Costs to be allocated ~~(1) Separate segregated funds~~. Separate segregated funds and nonconnected committees that make disbursements in connection with federal and non-federal elections shall allocate expenses for the following categories of activity:

(i) ~~Administrative expenses including rent, utilities, office supplies, and salaries not attributable to a clearly identified candidate, if such expenses are not paid by the separate segregated fund's connected organization;~~

(1)(ii) The direct costs of a fundraising program or event including disbursements for solicitation of funds and for planning and administration

of actual fundraising events, where ~~f~~Federal and non-~~f~~Federal funds are collected through such program or event, if such expenses are not paid by the separate segregated fund's connected organization; and except that for a separate segregated fund such expenses may be paid instead by its connected organization;

- (2)(iii) Generic voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate;
- (3) Public communications that refer to a political party, but do not refer to any clearly identified Federal or non-Federal candidate;
- (4) Public communications that refer to a political party, and refer to one or more clearly identified Federal candidates, but do not refer to any clearly identified non-Federal candidates; and
- (5) Public communications that refer to a political party, and refer to one or more clearly identified non-Federal candidates, but do not refer to any clearly identified Federal candidates.
- (2) ~~Nonconnected committees.~~ Nonconnected committees that make disbursements in connection with federal and non-federal elections shall allocate expenses for the following categories of activity:
- (i) ~~Administrative expenses including rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate;~~

~~(ii) The direct costs of a fundraising program or event including disbursements for solicitation of funds and for planning and administration of actual fundraising events, where Federal and non-Federal funds are collected through such program or event; and~~

~~(iii) Generic voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.~~

(c) Method for allocating costs of generic voter drives, and certain public communications. Nonconnected committees and separate segregated funds shall ~~allocate~~ pay their, and costs of generic voter drives, as described in paragraph (b) of this section, and costs of public communications that refer to any political party, as described in paragraphs (b)(3), (b)(4), or (b)(5) of this section, according to the funds expended method, described in paragraphs (c)(1) and (2) as follows: with at least 50 percent Federal funds, as defined in 11 CFR 300.2(g).

(1) ~~Under this method, expenses shall be allocated based on the ratio of Federal expenditures to total Federal and non-Federal disbursements made by the committee during the two-year Federal election cycle. This ratio shall be estimated and reported at the beginning of each Federal election cycle, based upon the committee's Federal and non-Federal disbursements in a prior comparable Federal election cycle or upon the committee's reasonable~~

~~prediction of its disbursements for the coming two years. In calculating its Federal expenditures, the committee shall include only amounts contributed to or otherwise spent on behalf of specific Federal candidates. Calculation of total Federal and non-Federal disbursements shall also be limited to disbursements for specific candidates, and shall not include overhead or other generic costs.~~

- (2) ~~On each of its periodic reports, the committee shall adjust its allocation actual Federal and non-Federal disbursements made, to date. If the non-Federal account has paid more than its allocable share, the committee shall transfer funds from its Federal to its non-Federal account, as necessary, to reflect the adjusted allocation ratio. The committee shall make note of any such adjustments and transfers on its periodic reports, submitted pursuant to 11 CFR 104.5.~~

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(e) * * *

(2) * * *

(ii) * * *

(B) Except as provided in paragraph (d)(2) of this section or in 11 CFR part 102, such funds may not be transferred more than 10 days before or more than 60 days after the payments for which they are designated are made.

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(f) Payments for public communications that refer to a political party and one or more clearly identified Federal or non-Federal candidates. Nonconnected committees and separate segregated funds shall pay for the costs of all public communications that refer to a political party, except those described in paragraph (b)(4) of this section as follows:

- (1) Public communications that refer to a political party and one or more clearly identified Federal candidates, but do not refer to any clearly identified non-Federal candidates, as described in paragraph (b)(5) of this section, shall be paid 100 percent from the Federal account of the nonconnected committee or separate segregated fund.
- (2) Public communications that refer to a political party and one or more clearly identified non-Federal candidates, but do not refer to any clearly identified Federal candidates, as described in paragraph (b)(6) of this section, may be paid 100 percent from the non-Federal account of the nonconnected committee or separate segregated fund.
- (3) Public communications that refer to a political party, one or more clearly identified Federal candidates, and also refer to one or more clearly identified non-Federal candidates shall be allocated under 11 CFR 106.1 as expenditures or disbursements on behalf of the clearly identified candidates, without regard to the portion of the communication that refers to a political party.