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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AGENDA ITEM
For Meeting of: 6-19-02

SUBMITTED LATE

MEMORANDUM

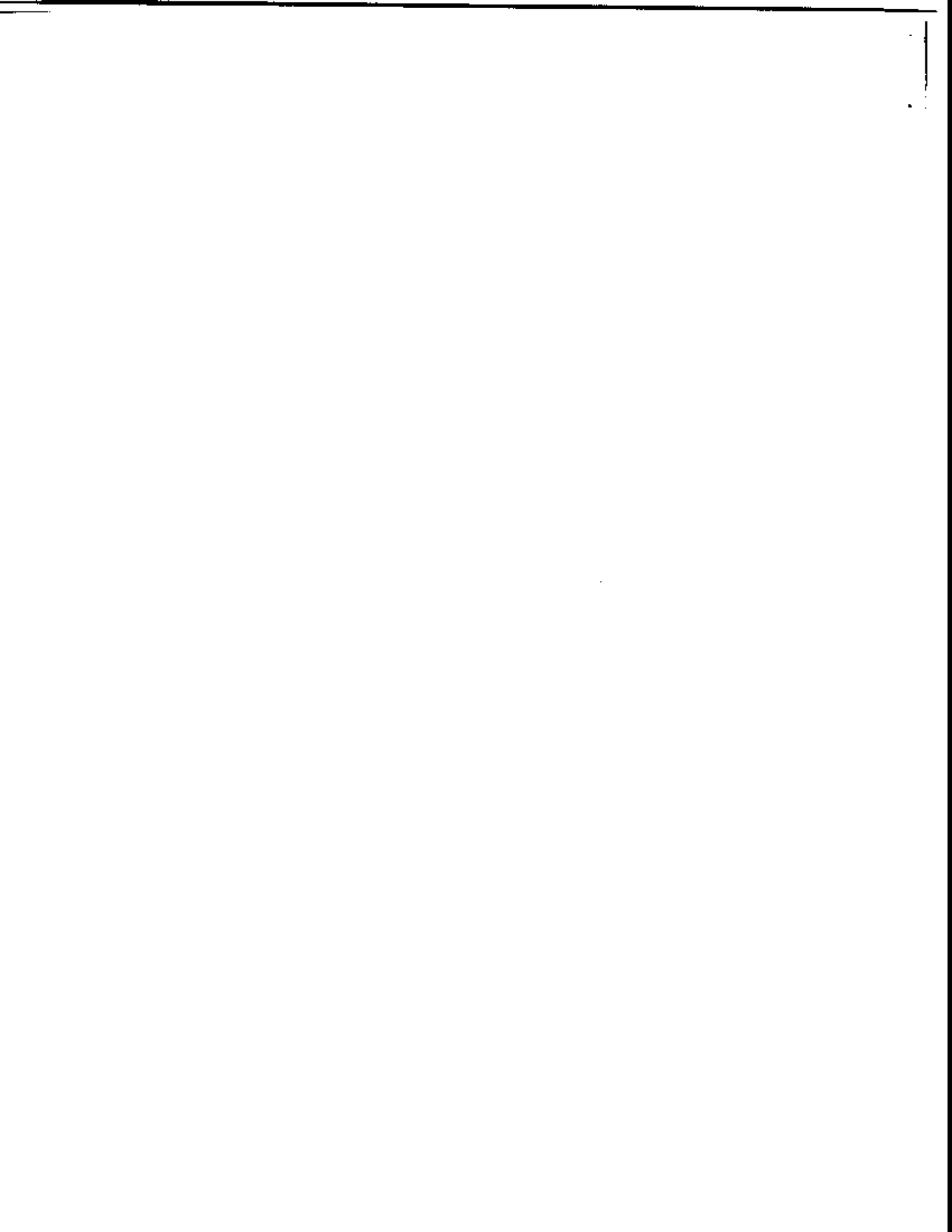
DATE: June 18, 2002

TO: The Commission

FROM: Commissioner Michael E. Toner *MT*

RE: Proposed Amendments to Agenda Document 02-44 Final Rule for Excessive and Prohibited Contributions: Non-Federal Funds or Soft Money

Attached please find amendments that I am considering offering on June 19, 2002 to amend Agenda Document 02-44 Final Rule for Excessive and Prohibited Contributions: Non-Federal Funds or Soft Money.



§ 100.14 State committee, subordinate committee, district, or local committee

(a) State committee means the organization that by virtue of the bylaws of a political party or the operation of state law is part of the official party structure, and is responsible for the day-to-day operation of the political party at the State level, including any entity that is directly or indirectly established, financed, maintained, or controlled by that organization, as determined by the Commission.

(b) District or local committee means any organization that by virtue of the bylaws of a political party or the operation of state law is part of the official party structure, and is responsible for the day-to-day operation of the political party at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State.

(c) Subordinate committee of a State, district, or local committee means any organization that operates at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State, and is directly or indirectly established, financed, maintained, or controlled by the State committee.

§ 100.24(a)(4): (To be inserted as the last sentence in the subsection): "Voter identification shall not include generic voter contact programs, including, but not limited to, contacting voters to determine party affiliation."

§ 100.25 Generic Campaign Activity

Generic campaign activity means a public communication that promotes or opposes a political party and does not promote or oppose a clearly identified federal or non-federal candidate.

§ 106.7(d)(1): Salaries. Committees must keep a monthly log of the percentage of time each employee spends in connection with a Federal election. Allocations of salaries shall be undertaken as follows:

§ 300.1(c)4): Replace “exceptions for those attending and speaking at fundraising events” with “exemptions for those attending, speaking and appearing as featured guests at fundraising events . . .”

§ 300.2

Definitions.

- (c) Directly or indirectly establish, maintain, finance, or control.
- (1) This paragraph (c) applies to national, State, district, and local committees of a political party, candidates, and holders of Federal office, including an officer, employee, or agent of any of the foregoing persons, which shall be referred to as "sponsors" in this section.
 - (2) To determine whether a sponsor directly or indirectly establishes, finances, maintains, or controls an entity, the factors described in paragraphs (c)(2)(i) through (x) of this section must be examined in the context of the overall relationship between sponsor and the entity to determine whether the presence of any factor or factors is evidence that the sponsor directly or indirectly establishes, finances, maintains or controls the entity. Such factors include, but are not limited to:
 - (i) Whether a sponsor, directly or through its agent, owns controlling interest in the voting stock or securities of the entity;
 - (ii) Whether a sponsor, directly or through its agent, has the authority or ability to direct or participate in the governance of the entity through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures;
 - (iii) Whether a sponsor, directly or through its agent, has the authority or ability to hire, appoint, demote, or otherwise control the officers, or other decision-making employees or members of the entity;
 - (iv) Whether a sponsor has a common or overlapping membership with the entity that indicates a formal or ongoing relationship between the sponsor and the entity;
 - (v) Whether a sponsor has common or overlapping officers or employees with the entity that indicates a formal or ongoing relationship between the sponsor and the entity;
 - (vi) Whether a sponsor has any members, officers or employees who were members, officers or employees of the entity that indicates a formal or ongoing relationship between the sponsor and the entity, or that indicates the creation of a successor entity;
 - (vii) Whether a sponsor, directly or through its agent, provides funds or goods in a significant amount or on an ongoing basis to the entity, such as through direct or indirect payments for administrative, fundraising, or other costs, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17, and otherwise lawfully;
 - (viii) Whether a sponsor, directly or through its agent, causes or arranges for funds in a significant amount or on an ongoing basis to be provided to the entity, but not including the transfer to a

committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17, and otherwise lawfully;

- (ix) Whether a sponsor, directly or through its agent, had an active or significant role in the formation of the entity; and
- (x) Whether the sponsor and the entity have similar patterns of receipts or disbursements that indicates a formal or ongoing relationship between the sponsor and the entity.

(3) Safe Harbor

Upon the effective date of BCRA, an entity shall not be deemed to be directly or indirectly established, financed, maintained, or controlled by another entity unless, based on the entities' actions and activities solely after the effective date of BCRA, they satisfy the requirements of this paragraph.

(4) Determinations by the Commission.

- (i) A sponsor or entity may request an advisory opinion of the Commission to determine whether the sponsor is no longer directly or indirectly financing, maintaining, or controlling the entity for purposes of this part. The request for such an advisory opinion must meet the requirements of 11 CFR part 112 and must demonstrate that the entity has not been directly or indirectly financed, maintained or controlled by the sponsor.
- (ii) Notwithstanding the fact that a sponsor may have established an entity within the meaning of paragraph (c)(2) of this section, the committee or the entity may request an advisory opinion of the Commission determining that the relationship between the sponsor and the entity has been severed. The request for such an advisory opinion must meet the requirements of 11 CFR part 112, and must demonstrate that all material connections between the sponsor and the entity have been severed for two years.
- (iii) Nothing in this section shall require entities that are separate organizations upon the effective date of BCRA to obtain an Advisory Opinion to operate separately from each other.

§ 300.2(e): The term Donation means a payment, gift, subscription, loan, advance, deposit, or anything of value made by any person to a non-federal candidate, a party committee, a 501(c) organization, or a section 527 organization for the purpose of influencing any election for non-federal office, but does not include contributions or transfers. The term donation does not include the following payments, services or other things of value:

(1) Funds received solely for the purpose of determining whether an individual should become a candidate are not donations. Examples of activities permissible under this exemption if they are conducted to determine whether an individual should become a candidate include, but are not limited to, conducting a poll, telephone calls, and travel.

(2) Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), newspaper, magazine, or other periodical publication is not a donation unless the facility is owned or controlled by any political party, political committee, or candidate, in which case the costs for a news story (i) which represents a bona fide news account communicated in a publication of general circulation or on a licensed broadcasting facility, and (ii) which is part of a general pattern of campaign-related news accounts which give reasonably equal coverage to all opposing candidates in the circulation or listening area, is not a donation.

(3) The value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee is not a donation.

(4) No donation results where an individual, in the course of volunteering personal services on his or her residential premises to any candidate or to any political committee of a political party, provides the use of his or her real or personal property to such candidate for candidate-related activity or to such political committee of a political party for party-related activity. An individual's residential premises shall include a recreation room in a residential complex where the individual volunteering services resides, provided that the room is available for use without regard to political affiliation. A nominal fee paid by such individual for the use of such room is not a donation.

(5) No donation results where an individual, in the course of volunteering personal services to any candidate or political committee of a political party, obtains the use of a church or community room and provides such room to any candidate for candidate-related activity or to any political committee of a political party for party-related activity, provided that the room is used on a regular basis by members of the community for noncommercial purposes and the room is available for use by members of the community without regard to political affiliation. A nominal fee paid by such individual for the use of such room is not a

donation.

(6) The cost of invitations, food and beverages is not a donation where such items are voluntarily provided by an individual volunteering personal services on the individual's residential premises or in a church or community room and to a candidate for candidate-related activity or to any political committee of a political party for party-related activity, to the extent that: The aggregate value of such invitations, food and beverages provided by the individual on behalf of the candidate does not exceed \$1,000 with respect to any single election; and on behalf of all political committees of each political party does not exceed \$2,000 in any calendar year.

(7) The sale of any food or beverage by a vendor (whether incorporated or not) for use in a candidate's campaign, or for use by a political committee of a political party, at a charge less than the normal or comparable commercial rate, is not a donation, provided that the charge is at least equal to the cost of such food or beverage to the vendor, to the extent that: The aggregate value of such discount given by the vendor on behalf of any single candidate does not exceed \$1,000 with respect to any single election; and on behalf of all political committees of each political party does not exceed \$2,000 in a calendar year.

(8) Any unreimbursed payment for transportation expenses incurred by any individual on behalf of any candidate or any political committee of a political party is not a donation to the extent that: The aggregate value of the payments made by such individual on behalf of a candidate does not exceed \$1,000 with respect to a single election; and on behalf of all political committees of each political party does not exceed \$2,000 in a calendar year. Additionally, any unreimbursed payment from a volunteer's personal funds for usual and normal subsistence expenses incidental to volunteer activity is not a donation.

(9) The payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card, sample ballot, palm card, or other printed listing(s) of three or more candidates for any public office for which an election is held in the State in which the committee is organized is not a donation.

(10) Any payment made or obligation incurred by a corporation or a labor organization is not a donation if under the provisions of 11 CFR part 114 such payment or obligation would not constitute an expenditure by the corporation or labor organization.

(11) Legal or accounting services rendered to or on behalf of any political committee of a political party are not donations if the person paying for such services is the regular employer of the individual rendering the services and such services are not attributable

to activities which directly further the election of any designated candidate. A partnership shall be deemed to be the regular employer of a partner.

(12) Legal or accounting services rendered to or on behalf of an authorized committee of a candidate or any other political committee are not donations if the person paying for such services is the regular employer of the individual rendering the services and if such services are solely to ensure compliance with the Act, BCRA, or 26 U.S.C. 9001 et seq. and 9031 et seq. A partnership shall be deemed to be the regular employer of a partner.

(13) The payment by a state or local committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters, and yard signs) used by such committee in connection with volunteer activities on behalf of any nominee(s) of such party is not a donation, provided that the following conditions are met:

(i) Such payment is not for cost incurred in connection with any broadcasting, newspaper, magazine, bill board, direct mail, or similar type of general public communication or political advertising. The term direct mail means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.

(ii) Such payment is not made from donations designated by the donor to be spent on behalf of a particular candidate or candidates. A donation shall not be considered a designated donation if the party committee disbursing the funds makes the final decision regarding which candidate(s) shall receive the benefit of such disbursement.

(iii) Such materials are distributed by volunteers and not by commercial or for-profit operations. Payments by the party organization for travel and subsistence or customary token payments to volunteers do not remove such individuals from the volunteer category.

(iv) If made by a political committee such payments shall be reported by the political committee as disbursements in accordance with 11 CFR 104.3 but need not be allocated to specific candidates in committee reports.

(v) Payments by a State candidate or his or her campaign committee to a State or local political party committee for the State candidate's share of expenses for such campaign materials are not donations, provided the amount paid by the State candidate or his or her committee does not exceed his or her proportionate share of the expenses.

(vi) Campaign materials purchased by the national committee of a political party and delivered to a State or local party committee, or materials purchased with funds donated by the national committee to such State or local committee for the purchase of such materials, shall not qualify under this exemption. Rather, the cost of such materials shall be subject to the limitations of 2 U.S.C. 441a(d) and 11 CFR 110.7.

(14) The payment by a candidate for any public office (including State or local office), or by such candidate's authorized committee, of

the costs of that candidate's campaign materials which include information on or any reference to a candidate for Federal office and which are used in connection with volunteer activities (such as pins, bumper stickers, handbills, brochures, posters, and yard signs) is not a donation to such candidate for Federal office, provided that the payment is not for the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication or political advertising. The payment of the portion of the cost of such materials allocable to Federal candidates shall be made from funds subject to the limitations and prohibitions of the Act.

The term direct mail means any mailing(s) by commercial vendors or mailing(s) made from lists which were not developed by the candidate.

(15) The payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of the Presidential and Vice Presidential nominee(s) of that party, is not a donation to such candidate(s) provided that the following conditions are met:

(i) Such payment is not for the costs incurred in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising. The term direct mail means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.

(ii) The portion of the costs of such activities allocable to Federal candidates is paid from funds subject to the limitations and prohibitions of the Act.

(iii) Such payment is not made from donations designated to be spent on behalf of a particular candidate or candidates for Federal office. A donation shall not be considered a designated donation if the party committee disbursing the funds makes the final decision regarding which candidate(s) shall receive the benefit of such disbursement.

(iv) If such activities include references to any candidate(s) for the House or Senate, the costs of such activities which are allocable to that candidate(s) shall be a contribution to such candidate(s) unless the mention of such candidate(s) is merely incidental to the overall activity.

(v) Payment of the costs incurred in the use of phone banks in connection with voter registration and get-out-the-vote activities is not a donation when such phone banks are operated by volunteer workers. The use of paid professionals to design the phone bank system, develop calling instructions and train supervisors is permissible. The payment of the costs of such professional services is not an expenditure but shall be reported as a disbursement in accordance with 11 CFR 104.3 if made by a political committee.

(vi) If made by a political committee, such payments for voter registration and get-out-the-vote activities shall be reported by that committee as disbursements in accordance with 11 CFR 104.3, but such

payments need not be allocated to specific candidates in committee reports except as provided in 11 CFR 100.7(b)(17)(iv).

(16) Payments made to any party committee by a candidate or the authorized committee of a candidate as a condition of ballot access are not donations.

(17) [Reserved]

(18) A gift, subscription, loan, advance, or deposit of money or anything of value made with respect to a recount of the results of a non-Federal election, or an election contest concerning a non-Federal election, is not a donation.

(19) Funds provided to defray costs incurred in staging candidate debates in accordance with the provisions of 11 CFR 110.13 and 114.4(f).

§ 300.35 Office Buildings

- (a) General provision. For the purchase or construction of its office building, a State or local party committee may spend Federal funds or non-Federal funds that are not subject to the limitations, prohibitions, and disclosure provisions of the Act, so long as such funds are not contributed or donated by a foreign national. See 2 U.S.C. 441e. If non-Federal funds are used, they are subject to State law. An office building must not be purchased or constructed for the purpose of influencing the election of any candidate in any particular election for Federal office. For purposes of this section, the term local party committee shall include a district party committee.
- (b) Application of State law. Non-Federal funds received by a State or local party committee that are spent for the purchase or construction of its office building are subject to State law as set forth in paragraphs (b)(1) and (2) of this section.
- (1) Non-Federal account. If a State or local party committee uses non-Federal funds, Federal law does not preempt or supersede State law as to the source of funds used, the permissibility of the disbursements, or the reporting of the receipt and disbursement of such funds, except as provided in paragraph (a) of this section.
- (2) Levin funds. Levin funds may be used for the purchase or construction of a State or local party committee office building, if permitted by State law.
- (c) **DELETE**
- (d) Leasing a portion of the party office building. A State or local party committee may lease a portion of its office building to others to generate income at the usual and normal charge. If the building is purchased or constructed in whole or in part with non-Federal funds, all rental income shall be deposited in the committee's non-Federal account and used only for non-Federal purposes. Such rental income and its use must also comply with State law. If the building is purchased or constructed solely with Federal funds, the rental income may be deposited in the Federal account. The receipt of such funds shall be reported in compliance with 11 CFR 104.3(a)(4)(vi). If the building is purchased or constructed with a combination of Federal and non-Federal funds, the rental income shall be deposited in the committee's non-Federal account and used only for non-federal purposes.
- (e) Transitional Provisions for State Party Building or Facility Account. Up to and including November 5, 2002, the State committee of a political party may accept funds into its party office building or facility account, established pursuant to repealed 2 U.S.C. 431(8)(B)(viii). Starting on November 6, 2002, the funds in the account may not be used for Federal account or Levin account purposes, but may be used for any non-Federal purposes, as permitted under State law.

§ 300.64 Exemption for attending or speaking or appearing as a featured guest at fundraising events

Notwithstanding the provisions of 11 C.F.R. §§ 100.24, 300.61 and 300.62, a Federal candidate or individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party, including, but not limited to, a fundraising event at which Levin Funds are raised, or at which non-Federal funds are raised. In light of the foregoing, (1) State, district, or local committees of a political party may advertise, announce or otherwise publicize that a federal candidate or individual holding federal office will attend, speak, or be a featured guest at a fundraising event, including, but not limited to, publicizing such appearance in pre-event invitation materials and in other party committee communications; and (2) Candidates and individuals holding federal office may speak at such events without restriction or regulation.