



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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SECRETARIAT

JUN 18 3 40 PM '02

AGENDA ITEM
For Meeting of: 6-19-02

SUBMITTED LATE

MEMORANDUM

DATE: June 18, 2002
TO: The Commission
FROM: Commissioner Bradley A. Smith *BAS*
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.

1 § 100.24 Federal election activity (2 U.S.C. 431(20)).

2 (a) As used in this section, and in part 300 of this chapter,

3 (1) In connection with an election in which a candidate for Federal office
4 appears on the ballot means:

5 (i) The period of time beginning on the date of the filing deadline for
6 access to the primary election ballot for Federal candidates as
7 determined by State law, or in those states that do not conduct
8 primaries, on January 1 of each even-numbered year and ending on
9 the date of the general election, up to and including the date of any
10 general runoff; ~~December 31 of each even-numbered year; and,~~

11 (ii) In an odd-numbered year, the period beginning on the date on which the date
12 of a special election in which a candidate for Federal office appears on the
13 ballot is set and ending on the date of the special election.

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16 § 100.24 Federal election activity (2 U.S.C. 431(20)).

17 (b)(3) A public communication promotes or supports, or attacks or opposes that refers
18 to a clearly identified candidate for Federal office when the communication refers to a
19 clearly identified candidate for Federal office, regardless of whether a candidate for State
20 or local office election is also mentioned or identified, and the communication that
21 promotes, or supports, or attacks, or opposes a clearly identified candidate for that office,
22 regardless whether the communication expressly advocates a vote for or against the

1 ~~candidate. any candidate for Federal office. This paragraph applies whether or not the~~
2 ~~communication expressly advocates a vote for or against a Federal candidate; or.~~

17 **§ 100.27 Mass mailing (2 U.S.C. 431(23)).**

18 Mass mailing means a mailing by United States mail or facsimile of more than
19 500 pieces of mail matter of an identical or substantially similar nature within any 30-day
20 period. A mass mailing does not include electronic mail or Internet communications.
21 For purposes of this section, substantially similar includes communications that include
22 substantially the same template or language, but vary in non-material respects such as
23 communications customized by the recipient's name, occupation, or geographic location.

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§ 100.28 Telephone bank (2 U.S.C. 431(24)).

Telephone bank means more than 500 telephone calls of an identical or substantially similar nature within any 30-day period. A telephone bank does not include electronic mail or Internet communications transmitted over telephone lines. For purposes of this section, substantially similar includes communications that include substantially the same template or language, but vary in non-material respects such as communications customized by the recipient's name, occupation, or geographic location.

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§ 102.5 Organizations financing political activity in connection with Federal and non-Federal elections, other than through transfers and joint fundraisers:

Accounts and Accounting

(a) Organizations that are political committees under the Act, other than National Party committees.

(1) Each organization, including a State, district or local party committee, that finances political activity in connection with both Federal and non-Federal

1 elections and that qualifies as a political committee under 11 CFR 100.5
2 shall either:

3 (i) Establish a separate Federal account in a depository in
4 accordance with 11 CFR part 103. Such account shall be treated as
5 a separate Federal political committee ~~shall which~~ that must
6 comply with the requirements of the Act including the registration
7 and reporting requirements of 11 CFR parts 102 and 104. Only
8 funds subject to the prohibitions and limitations of the Act shall be
9 deposited in such separate Federal account. All disbursements,
10 contributions, expenditures and transfers by the committee in
11 connection with any Federal election shall be made from its
12 Federal account, except as otherwise permitted for State, district
13 and local party committees by 11 CFR part 300 and paragraph
14 102.5(a)(6) of this section. No transfers may be made to such
15 Federal account from any other account(s) maintained by such
16 organization for the purpose of financing activity in connection
17 with non-Federal elections, except as provided by 11 CFR ~~300.34,~~
18 300.33, 300.34 and 106.7(e). Administrative expenses for political
19 committees other than party committees shall be allocated pursuant
20 to 11 CFR 106.7 between such Federal account and any other
21 account maintained by such committee for the purpose of
22 financing activity in connection with non-Federal elections.

1 Administrative expenses for State, district and local party
2 committees are subject to 11 CFR 106.7 and 11 CFR part 300; or

3 (ii) Establish a political committee ~~which~~ that shall receive only
4 contributions subject to the prohibitions and limitations of the Act,
5 regardless of whether such contributions are for use in connection
6 with Federal or non-Federal elections. Such organization shall
7 register as a political committee and comply with the requirements
8 of the Act.

9 (2) Only contributions meeting the conditions set forth in paragraphs (a)(2)(i),
10 (ii), or (iii) of this section may be deposited in a Federal account
11 established under paragraph (a)(1)(i) of this section, or may be received by
12 a political committee established under paragraph (a)(1)(ii) of this section.

13 (i) Contributions designated for the Federal account;

14 (ii) Contributions that result from a solicitation which expressly states
15 that the contribution will be used in connection with a Federal
16 election; or

17 (iii) Contributions from contributors who are informed that all
18 contributions are subject to the prohibitions and limitations of the
19 Act.

20 (3) Any State, district or local party committee solicitation that makes
21 reference to a Federal candidate or a Federal election shall be presumed to
22 be for the purpose of influencing a Federal election, and contributions
23 resulting from that solicitation shall be subject to the prohibitions and

1 limitations of the Act. This presumption may be rebutted by
2 demonstrating to the Commission that the funds were solicited with
3 express notice that they would not be used for Federal election purposes.

4 (4) (4) State, district and local party committees that intend to expend Levin
5 funds raised pursuant to 11 CFR 300.31 for activities identified in 11 CFR
6 300.32(b)(1) must either:

7 (i) Establish one or more separate Levin accounts pursuant to 11
8 CFR 300.30. Only donations meeting the conditions set forth in 11
9 CFR 300.30(a)(4) may be deposited into a Levin account.

10 (ii) Demonstrate through a reasonable accounting method (including
11 any method embedded in software provided or approved by the
12 Commission) that whenever such organization makes a payment
13 that organization has received sufficient funds subject to the
14 limitations and prohibitions of the Act or the requirements of 11
15 CFR 300.31 to make such payment. Such organization shall keep
16 records of amounts received or expended under this subsection
17 and, upon request, shall make such records available for
18 examination by the Commission; or

19 (iii) Establish one or more separate allocation accounts to be used for
20 activities allocable pursuant to 11 CFR 106.7(c) and 11 CFR
21 300.33.

22 (5) Solicitations by Federal candidates and Federal officeholders for State,

1 district and local party committees are subject to the restrictions in 11 CFR
 2 300.31(e) and 11 CFR part 300, subpart D.

3 ~~(6) State, district and local party committees and organizations may establish~~
 4 ~~one or more separate allocation accounts to be used for activities allocable~~
 5 ~~pursuant to 11 CFR 106.7(c) and 11 CFR 300.33.~~

6 (b) Organizations that are not political committees under the Act.

7 (1) State, district or local party organizations

8 (i) ~~Any organization that makes contributions or expenditures but~~
 9 ~~does not qualify as political committee under 11 CFR 5 and State,~~
 10 ~~district or local party organization that makes contributions, or~~
 11 ~~expenditures, and exempted payments under 11 CFR 100.7(b)(9),~~
 12 ~~(15) and (17) and 11 CFR 100.8(b)(10), (16) and (18), but that~~
 13 ~~does not qualify as a political committee under 11 CFR 100.5,~~
 14 must keep records of deposits into and disbursements from such
 15 accounts, and, upon request, must make such records available for
 16 examination by the Commission. ~~or payments for certain Federal~~
 17 ~~election activities under 11 CFR 300.32(b), shall either All such~~
 18 ~~party committees must either:~~

19 (2) Any State, district or local party organization that makes payments for certain
 20 Federal election activities under 11 CFR 300.32(b) must either:

21 (A) Establish at least three separate accounts as follows

22 (1) An account into which only funds subject to the
 23 prohibitions and limitations of the Act and only

1 funds solicited for activities pursuant to 11 CFR
2 300.32, may be deposited and from which
3 contributions, expenditures, and disbursements for
4 exempt activities and payments for certain Federal
5 activities shall must be made;

6 (i)(2) Establish One or more Levin accounts pursuant to
7 11 CFR 300.30(b) into which only funds solicited
8 pursuant to 11 CFR 300.31 may be deposited and
9 from which payments must be made pursuant to 11
10 CFR 300.32 and 300.33; and or

11 (ii) Demonstrate through a reasonable accounting
12 method (including any method embedded in
13 software provided or approved by the Commission)
14 that whenever such organization makes a payment
15 that organization has received sufficient funds
16 subject to the limitations and prohibitions of the Act
17 or the requirements of 11 CFR 300.31 to make such
18 payment. Such organization shall keep records of
19 amounts received or expended under this subsection
20 and, upon request, shall make such records
21 available for examination by the Commission; or

22 (iii) All such party organizations shall keep records of
23 deposits to and disbursement from such Federal and

1 Levin accounts, and upon request, shall make such
2 records available for examination by the
3 Commission,

4 ~~(3) One or more additional accounts pursuant to State~~
5 ~~law from which payments for activities other than~~
6 ~~those permitted by paragraphs (b)(1)(i)(A)(1) and~~
7 ~~(2) of this section;~~

8 ~~(B) Establish two separate accounts as follows:~~

9 ~~(1) A Federal account into which may be deposited~~
10 ~~both funds subject to the prohibitions and~~
11 ~~limitations of the Act and funds solicited for~~
12 ~~activities pursuant to 11 CFR 300.32. Payments~~
13 ~~may be made from this account for contributions,~~
14 ~~expenditures and disbursements for exempt~~
15 ~~activities in connection with Federal elections and~~
16 ~~for activities undertaken pursuant to 11 CFR~~
17 ~~300.32(b). Use of this Federal account as a~~
18 ~~depository for Levin funds requires employment of~~
19 ~~a general ledger accounting system that segregates~~
20 ~~assets, liabilities, revenue and expenses for~~
21 ~~activities undertaken pursuant to 11 CFR 106.7 and~~
22 ~~11 CFR 300.32. If the accounting method~~

1 employed is computer based, the data must be
2 backed up on no less than a monthly basis; and

3 ~~(2) — One or more additional accounts pursuant to State~~
4 law from which payments for activities other than
5 those permitted by paragraphs (b)(1)(i)(B)(1) may
6 be made; or

7 ~~(C) — Establish one account with three or more ledger accounts as~~
8 follows:

9 ~~(1) — Use of one account for all activity requires an~~
10 accounting method that employs general ledger
11 accounts that segregate assets, liabilities, revenue
12 and expenses for activities undertaken pursuant to
13 11 CFR 106.7 and 300.32. Funds recorded in a
14 general ledger account as received for non-Federal
15 activities may not be reclassified as funds available
16 for Federal election activities to be undertaken
17 pursuant to 11 CFR 300.32 (i.e., Levin funds),
18 unless the funds to be reclassified were received
19 pursuant to a solicitation for Levin funds or so
20 designated by the donors. If the accounting method
21 employed is computer based, the data must be
22 backed up on no less than a monthly basis.

1 and spending non-Federal funds. Therefore, this section does not apply to
2 national party committees after December 31, 2002.

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