



FEDERAL ELECTION COMMISSION
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COMMISSION
SECRETARIAT

JUN 18 5 20 PM '02

AGENDA ITEM
For Meeting of: 6-19-02

MEMORANDUM

SUBMITTED LATE

DATE: June 18, 2002
TO: The Commission
FROM: Commissioner Bradley A. Smith *BAS*
RE: Additional Proposed Amendments to Agenda Document 02-44 Final Rule for Excessive and Prohibited Contributions: Non-Federal Funds or Soft Money

Attached please find additional 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.

§ 106.7(c) through (d)(3). Allocation of expenses between Federal and non-Federal accounts activities by party committees, other than for Federal election activities.

(c) Costs allocable by State, district, and local party committees between Federal and non-Federal accounts.

(1) Salaries. State, district, and local party committees must pay salaries from funds that comply with State law for employees who spend 25% or less of their time in any given month on Federal election activity or activity Federal election activity in connection with a Federal election. See 11 CFR 300.33(c)(2)(e) Costs allocable by State, district, and local party committees between Federal and non-Federal accounts.

(1) Salaries and other compensation including benefits. State, district, and local party committees may, for employees who spend 25% or less of their time in any given month Federal election activity in connection with a Federal election, either pay their salaries and other compensation, including benefits, from a Federal account, or allocate the salaries and other compensation, including benefits, between the committee's Federal and non-Federal accounts. See 11 CFR 300.33(e)(2).

(2) Administrative costs. State, district, and local party committees may either pay administrative costs, including rent, utilities, office equipment, office supplies, postage for other than mass mailings, and routine building maintenance, upkeep and repair, from their Federal account, or allocate

such expenses between their Federal and non-Federal accounts, except that any such expenses directly attributable to a clearly identified Federal candidate must be paid only from the Federal account.

- (3) Other Exempt party activities that are not Federal election activities. State, district, and local party committees may pay expenses for voter registration activities undertaken by a State, district, or local party outside the period beginning 120 days before an election and ending on the date of the election, for party activities that are exempt from the definitions of contribution and expenditure under 11 CFR 100.7(b)(9), (15), or (17), and 100.8(b)(10), (16), or (18), and that are not Federal election activities pursuant to 11 CFR 100.24, from their Federal accounts, or may allocate these expenses between their Federal and non-Federal accounts. If exempt party activities that are not Federal election activities are conducted in conjunction with non-Federal activities, their costs must be allocated between Federal and non-Federal accounts.
- (4) Certain fundraising costs. State, district, and local party committees may allocate the direct costs of certain fundraising programs or events between their Federal and non-Federal accounts provided that none of the proceeds from the activities or events will ever be used for Federal election activities. The proceeds of fundraising allocated pursuant to this paragraph must be segregated in bank or book accounts that are never used for Federal election activity. Direct costs of fundraising include

disbursements for the planning and administration of specific fundraising events or programs.

- (5) Voter-drive activities that do not qualify as Federal election activities and that are not party exempt activities. Other than for salaries as described in (c)(1) of this subsection, E expenses for voter identification, voter registration, and get-out-the-vote drives, and any other activities that urge the general public to register, vote, or promote or oppose a political party, without promoting or opposing a candidate or non-Federal candidate, that do not qualify as Federal election activities and that are not exempt party activities, must be paid with Federal funds or may be allocated between the committee's Federal and non-Federal accounts.

(d) Allocation percentages, ratios, and record-keeping.

- (1) Salaries, and other compensation, including benefits. Committees must keep time records for all employees for purposes of determining the percentage of time spent on activities in connection with a Federal election. Allocations of salaries and other compensation, including benefits, shall be undertaken as follows:

- (i) Salaries and other compensation, including benefits, paid for of employees who spend 25% or less of their compensated time in a given month on Federal election activity or on activities in connection with a Federal election shall be paid from funds that comply with State law, allocated between the committee's Federal and non-Federal account, subject to the following requirements:

- (A) ~~Presidential election years.~~ In any year in which a Presidential candidate, but no Senate candidate appears on the ballot, ~~and in the preceding year,~~ at least 28 % of such amounts salaries must be allocated to the Federal account.
- (B) ~~Presidential and Senate election year.~~ In any year in which a Presidential candidate and a Senate candidate appear on the ballot, ~~and in the preceding year,~~ at least 36 % of such amounts salaries must be allocated to the Federal account.
- (C) ~~Senate election year.~~ In any year in which a Senate candidate, but no Presidential candidate, appears on the ballot, ~~and in the preceding year,~~ at least 21% of such amounts salaries must be allocated to the Federal account.
- (D) ~~Non Presidential and non Senate year.~~ In any year in which neither a Presidential nor a Senate candidate appears on the ballot, ~~and in the preceding year,~~ at least 15% of such amounts salaries must be allocated to the Federal account.
- (E) ~~Salaries and other compensation, including benefits.~~
Salaries paid to employees who spend no time in a given month on activities in connection with a Federal election may be paid solely from the non-Federal account.
- (ii) Salaries ~~and other compensation, including benefits,~~ paid for employees who spend more than 25% of their compensated time on Federal election activity or on activities in connection with a

Federal election must be paid only from a Federal account. See 11 CFR 300.33(c)(2), and paragraph (e)(2) of this section.

- (2) Administrative costs. State, district, and local party committees that choose to allocate administrative expenses may do so subject to the following requirements:
- (i) Presidential election years. In any even year in which a Presidential candidate, but no Senate candidate appears on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 28 % of administrative expenses to their Federal accounts.
 - (ii) Presidential and Senate election year. In any even year in which a Presidential candidate and a Senate candidate appear on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 36 % of administrative expenses to their Federal accounts.
 - (iii) Senate election year. In any even year in which a Senate candidate, but no Presidential candidate, appears on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 21% of administrative expenses to their Federal account.
 - (iv) Non-Presidential and non-Senate year. In any even year in which neither a Presidential nor a Senate candidate appears on the ballot, and in the preceding year, State, district, and local party committee

must allocate at least 15% of administrative expenses to their Federal account.

- (3) ~~Exempt party activities and voter drive activities, and voter identification, GOTV and generic campaign activities that are not Federal election activities.~~ State, district, and local party committees that choose to allocate expenses for ~~voter registration activities addressed in this section, or that choose to allocate exempt party activities, or other voter registration, GOTV and generic campaign activities that are not Federal election activities,~~ must do so subject to the following requirements:
- (i) Presidential election years. In any even year in which a Presidential candidate, but no Senate candidate appears on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 28 % of these expenses to their Federal accounts.
 - (ii) Presidential and Senate election year. In any even year in which a Presidential candidate and a Senate candidate appear on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 36 % of these expenses to their Federal accounts.
 - (iii) Senate election year. In any even year in which a Senate candidate, but no Presidential candidate, appears on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 21% of these expenses to their Federal account.

- (iv) Non-Presidential and non-Senate year. In any even year in which neither a Presidential nor a Senate candidate appears on the ballot, and in the preceding year, State, district, and local party committee must allocate at least 15% of these expenses to their Federal account.

§ 300.33(a) through (c). Allocation of costs of Federal election activity.

(a) Costs of Federal election activity allocable by State, district, and local party committees and organizations.

- (1) ~~Salaries.~~ State, district and local party committees may allocate the salaries of employees who spend 25% or less of their time in any given month on Federal election activity between the committee's Federal and non-Federal accounts. The salaries of those employees who spend more than 25% of their time in any given month on Federal election activity must be paid only with Federal funds.
- (2) ~~Administrative costs.~~ State, district and local party committees may allocate administrative costs, including rent, utilities, office equipment, office supplies, postage for other than mass mailings, and routine building maintenance, upkeep and repair, between their Federal and non-Federal accounts except that any such expenses directly attributable to a clearly identified Federal candidate must be paid only from Federal accounts.
- (1) Costs of voter registration, voter identification, get-out-the-vote activity and generic campaign activity within certain time periods. State, district, and local party committees and organizations that have established a Federal account and a separate Levin account pursuant to 11 CFR 300.30(b) may allocate disbursements or expenditures, except salaries for employees, between Federal funds and Levin funds for (i) voter registration activity, as defined in 11 CFR 100.24(a)(2), that takes place during the period that begins on the date that is 120 days before the date of

a regularly scheduled Federal election and that ends on the date of the election, provided that the activity does not refer to a clearly identified Federal candidate.

- (2) Costs of voter identification, get-out-the-vote activity, or generic campaign activities within certain time periods. State, district, and local party committees ~~and organizations that have established a Federal account and a separate Levin account pursuant to 11 CFR 300.30(b)~~ may allocate disbursements or expenditures, except salaries for employees, between these two accounts Federal funds and Levin funds for voter identification, get-out-the-vote activity, or generic campaign activities, as defined in 11 CFR 100.24(a)(3) and (4) and 11 CFR 100.25, that are conducted in connection with an election in which a candidate for Federal office is on the ballot and within the time periods set forth in 11 CFR 100.24(a)(1), provided that the activity does not refer to a clearly identified Federal candidate.

- (b) Allocation percentages, ratios and record-keeping. State, district, and local party committees and organizations that choose to ~~make expenditures and disbursements in connection with activities described in paragraph (a)(3) of this section~~ must to allocate to allocate between Federal funds and non-Federal funds their expenditures and disbursements in connection with activities described in paragraph (a)(3) of this section that take place within the time periods set forth in 11 CFR 100.24(a)(1) or paragraph (a) of this section must allocate the following minimum percentages to their Federal funds:

The allocation must result in the following minimum percentages to their Federal accounts:

- (1) Presidential election years. ~~In any year in which~~ If a Presidential candidate, but no Senate candidate appears on the ballot, State, district, and local party committees and organizations must allocate at least 28% of expenses for activities described in paragraph (a) of this section to their Federal ~~account~~ funds.
- (2) Presidential and Senate election year. ~~In any year in which~~ If a Presidential candidate and a Senate candidate appear on the ballot, State, district, and local party committees and organizations must allocate at least 36% of expenses for activities described in paragraph (a)(2) of this section to their Federal ~~account~~ funds.
- (3) Senate election year. ~~In any year in which~~ If a Senate candidate, but no Presidential candidate, appears on the ballot, State, district, and local party committees and organizations must allocate at least 21% of expenses for activities described in paragraph (a)(2) of this section to their Federal ~~account~~ funds.
- (4) Non- Presidential and non-Senate year. ~~In any year in which~~ If neither a Presidential nor a Senate candidate appears on the ballot, State, district, and local party committees and organizations must allocate at least 15% of expenses for activities described in paragraph (a)(2) of this section to their Federal ~~account~~ funds.

~~(4) Other voter registration activities. Expenses for voter registration activities undertaken by a State, district or local party committee outside the period beginning 120 days before an election and ending on the date of the election may be paid with 100% non-Federal funds, or they may be allocated between the committee's Federal and non-Federal accounts.~~

~~(5) Other get-out-the-vote activities when no Federal candidate is on the ballot. Expenses for voter registration activities undertaken by a State, district or local party committee may be paid with 100% non-Federal funds, or they may be allocated between the committee's Federal and non-Federal accounts.~~

(c) Costs of Federal election activity not allocable by State, district, and local party committees. The following costs incurred by State, district, and local party committees and organizations must be paid only with Federal funds:

~~(1) Activities that refer to clearly identified Federal candidates.~~

~~Disbursements by State, district and local party committees for activities that refer to a clearly identified candidate for Federal office must not be allocated between or among Federal, non-Federal and Levin accounts. Only Federal funds may be used.~~

~~(2) Activities that refer to Federal and to State and/or local elections. With the exception of activities described in paragraph (a)(3) of this section, disbursements by State, district and local party committees for activities that do not refer to a clearly identified Federal candidate, but that are wholly or in part in connection with Federal elections, must not be~~

~~allocated between or among Federal, non-Federal and Levin accounts.~~

~~Only Federal funds may be used.~~

- (1) Public communications. Expenditures for public communications as defined in 11 CFR 100.26 by State, district, and local party committees and organizations that refer to a clearly identified candidate for Federal office and that promote, support, attack, or oppose any such candidate for Federal office must not be allocated between or among Federal, non-Federal, and Levin accounts. Only Federal funds may be used.
- (2) Salaries, ~~and other compensation, including benefits.~~ Salaries and other compensation, including benefits, for employees who spend more than 25% of their compensated time in a given month on Federal election activity or on activities in connection with a Federal election must not be allocated between or among Federal, non-Federal, and Levin accounts. Only Federal funds may be used.
- (3) Fundraising costs. Disbursements for direct fundraising costs incurred by State, district, and local party committees and organizations for funds to be used, in whole or in part, for Federal election activity, including the activities described in paragraph (a)(3) of this section, must not be allocated between or among Federal, non-Federal and Levin ~~accounts~~ funds. Only Federal funds may be used. ~~However, if such disbursements are for solely non-Federal fundraising costs, non-Federal funds may be used.~~