



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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June 21, 2002

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence H. Norton *LHN (RCS)*
General Counsel
Rosemary C. Smith *RCS*
Acting Associate General Counsel

SUBJECT: Final Rule for Excessive and Prohibited Contributions: Non-Federal Funds or Soft Money

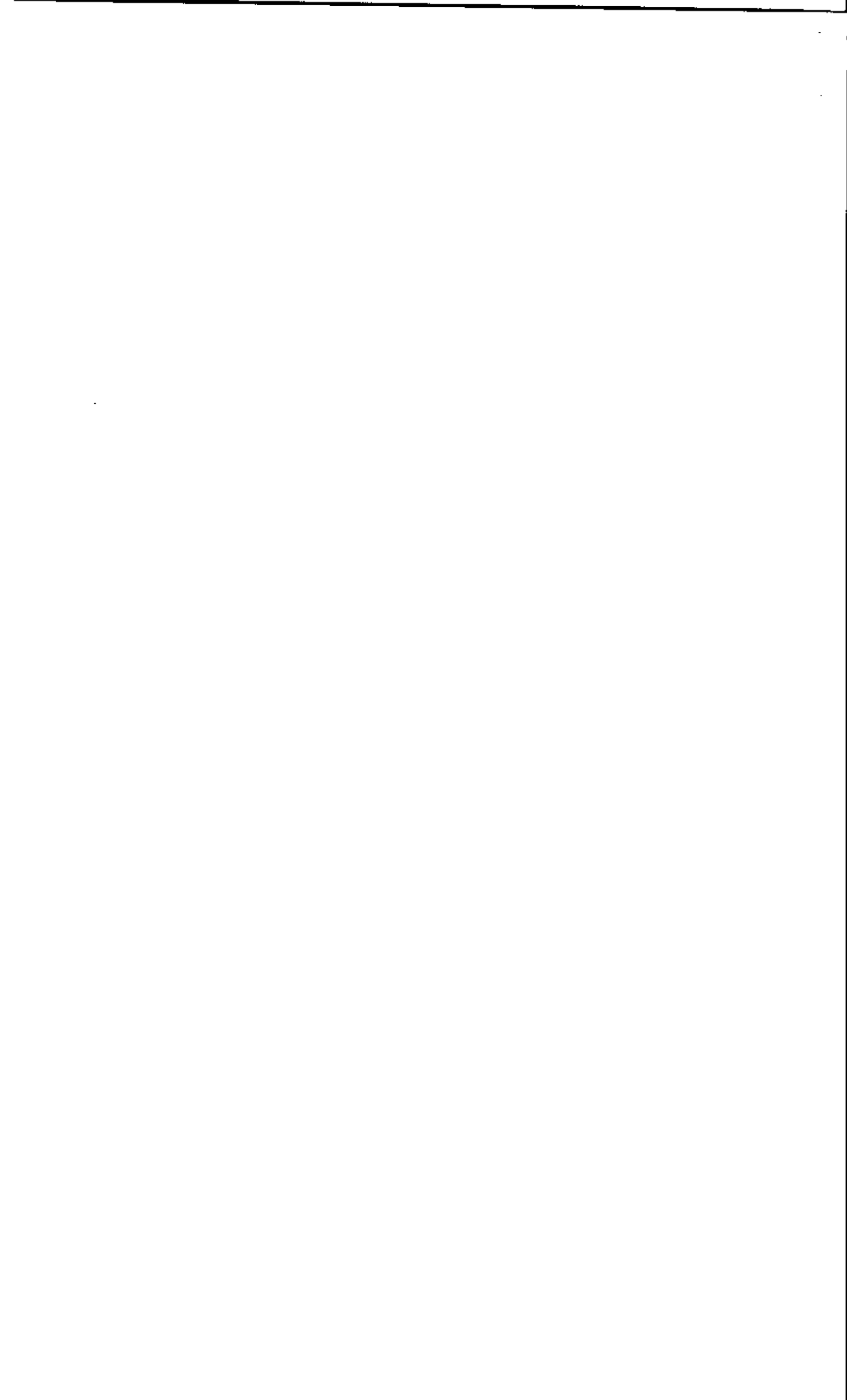
AGENDA ITEM
For Meeting of: 6-19-02

CONTINUED ON 06-22-02

SUBMITTED LATE

Attached is the regulatory text for 11 CFR 300.2(a), 300.11, 300.37, 300.50 through 300.52, and 300.65. The attachment supplements the agenda document submitted by the Office of General Counsel earlier today.

Attachment



1 § 300.2 Definitions.

2 (a) A 501(c) organization that makes expenditures or disbursements in connection with a
3 Federal election as that term is used in 11 CFR 300.11, 300.37, 300.50, and 300.51 includes an
4 organization that, within the last 2 years has undertaken, and within the current election cycle,
5 plans to undertake the following activities:

6 (1) Makes expenditures or disbursements in connection with an election for Federal
7 office including for Federal election activity; or

8 (2) Makes expenditures in connection with an election for Federal office. Pays a debt
9 incurred from the making of expenditures or disbursements in connection with an
10 election for Federal office (including for Federal election activity) in a prior
11 election cycle.

1 § 300.11 Prohibitions on fundraising for and donating to certain tax-exempt
2 organizations (2 U.S.C 441i(d)).

3 (a) Prohibitions. A national committee of a political party, including a national
4 congressional campaign committee, must not solicit any funds for, or make or direct any
5 donations to the following organizations:

6 (1) An organization that is described in 26 U.S.C. 501(c) and exempt from taxation
7 under section 26 U.S.C. 501(a) and that makes expenditures or disbursements in
8 connection with an election for Federal office, including expenditures or
9 disbursements for Federal election activity;

10 (2) An organization that has submitted an application for tax-exempt status under
11 26 U.S.C. 501(c) and that makes expenditures or disbursements in connection
12 with an election for Federal office, including expenditures or disbursements for
13 Federal election activity; or

14 (3) An organization described in 26 U.S.C. 527, unless the organization is:

15 (i) A political committee under 11 CFR 100.5;

16 (ii) A State, district, or local committee of a political party; or

17 (iii) The authorized campaign committee of a State or local candidate;

18 (b) Application. This section also applies to:

19 (1) An officer or agent acting on behalf of a national party committee, including a
20 national congressional campaign committee;

21 (2) An entity that is directly or indirectly established, financed, maintained or
22 controlled by a national party committee, including a national congressional
23 campaign committee, or an officer or agent acting on behalf of such an entity; or

1 (3) An entity that is directly or indirectly established, financed, maintained, or
2 controlled by an agent of a national, State, district, or local committee of a
3 political party, including a national congressional campaign committee.

4 (c) Determining whether a section 501(c) organization makes expenditures or disbursements
5 in connection with Federal elections. In determining whether a section 501(c) organization is
6 one that makes expenditures or disbursements in connection with a Federal election as described
7 in paragraphs (a)(1) and (2), a national committee of a political party, including a national
8 congressional campaign committee, or any other person described in paragraph (b) may obtain
9 and rely upon a certification from the organization that satisfies the criteria described in
10 paragraph (d) of this section.

11 (d) Certification. A national committee of a political party, including a national
12 congressional campaign committee, or any person described in paragraph (b) of this section, may
13 rely upon a certification that meets all of the following criteria:

- 14 (1) The certification is a signed written statement by an officer or other authorized
15 representative of the organization with knowledge of the organization's activities;
16 or by the treasurer of the political committee; and
- 17 (2) The certification states that within the last two calendar years current election
18 cycle, the organization or political committee has not made, and within the current
19 election cycle does not intend to make, expenditures or disbursements in
20 connection with an election for Federal office (including for Federal election
21 activity); and
- 22 (3) The certification states that the organization or political committee does not
23 intend to pay debts incurred from the making of expenditures or disbursements in,

1 connection with an election for Federal office (including for Federal election
2 activity) in a prior election cycle.

3 (e) If a national committee of a political party or any person described in paragraph (b) of
4 this section has actual knowledge that the certification is false, the certification may not be relied
5 upon.

6 (f) It is not prohibited for a national party or its agent to respond to a request for information
7 about a tax-exempt group that shares the party's political or philosophical goals.

1 § 300.37 Prohibitions on fundraising for and donating to certain tax-exempt
2 organizations (2 U.S.C. 441i(d)).

3 (a) Prohibitions. A State, district, or local committee of a political party must not solicit any
4 funds for, or make or direct any donations to:

5 (1) An organization that is described in 26 U.S.C. 501(c) and exempt from taxation
6 under section 26 U.S.C. 501(a) and that makes expenditures or disbursements in
7 connection with an election for Federal office, including expenditures or
8 disbursements for Federal election activity;

9 (2) An organization that has submitted an application for tax-exempt status under
10 26 U.S.C. 501(c) and that makes expenditures or disbursements in connection
11 with an election for Federal office, including expenditures or disbursements for
12 Federal election activity; or

13 (3) An organization described in 26 U.S.C. 527, unless the organization is:

14 (i) A political committee under 11 CFR 100.5;

15 (ii) A State, district, or local committee of a political party;

16 (iii) The authorized campaign committee of a State or local candidate; or

17 (iv) A political committee under State law, that supports only State or local
18 candidates and that does not make expenditures or disbursements in
19 connection with an election for Federal office, including expenditures or
20 disbursements for Federal election activity.

21 (b) Application. This section also applies to:

22 (1) An officer or agent acting on behalf of a State, district, or local committee of a
23 political party;

1 (2) An entity that is directly or indirectly established, financed, maintained, or
2 controlled by a State, district, or local committee or a political party or an officer
3 or agent acting on behalf of such an entity; or

4 (3) An entity that is directly or indirectly established, financed, maintained, or
5 controlled by an agent of a State, district, or local committee of a political party.

6 (c) Determining whether an organization makes expenditures or disbursements in
7 connection with a Federal election. (1) In determining whether a section 501(c) organization is
8 one that makes expenditures or disbursements in connection with a Federal election as described
9 in paragraphs (a)(1) and (2), including expenditures and disbursements for Federal election
10 activity, a State, district, or local committee of a political or any other person described in
11 paragraph (b) may obtain and rely upon a certification from the organization that satisfies the
12 criteria described in paragraph (d) of this section.

13 (2) In determining whether a section 527 organization is a State-registered political
14 committee that supports only State or local candidates and does not make expenditures or
15 disbursements in connection with an Federal election, as described in paragraph (a)(3)(iv),
16 ~~including expenditures and disbursements for Federal election activity~~, a State, district, or local
17 committee of a political or any other person described in paragraph (b) may obtain and rely upon
18 a certification from the organization that satisfies the criteria described in paragraph (ed) of this
19 section.

20 (d) Certification. A State, district or local committee of a political party or any person
21 described in paragraph (b) of this section may rely upon a certification that meets all of the
22 following criteria:

1 (1) The certification is a signed written statement by an officer or other authorized
2 representative of the organization with knowledge of the organization's activities
3 or by the treasurer of the state-registered political committee described in
4 paragraph (a)(3)(iv) of this section; and

5 (2) The certification states that within the last two calendar years current election
6 cycle, the organization or political committee has not made, and within the current
7 election cycle does not intend to make, expenditures or disbursements in
8 connection with an election for Federal office (including for Federal election
9 activity); and

10 (3) The certification states that the organization or political committee does not
11 intend to pay debts incurred from the making of expenditures or disbursements in
12 connection with an election for Federal office (including for Federal election
13 activity) in a prior election cycle.

14 (e) If a State, district or local committee of a political party or any person described in
15 paragraph (b) of this section has actual knowledge that the certification is false, the certification
16 may not be relied upon.

17 (f) It is not prohibited for a State, district or local committee of a political party or its agents
18 to respond to a request for information about a tax-exempt group that shares the party's political
19 or philosophical goals.

1 **Subpart C – Tax-exempt Organizations**

2 **§ 300.50 Prohibited fundraising by national party committees (2 U.S.C. 441i(d)).**

3 (a) Prohibitions on fundraising and donations. A national committee of a political party,
4 including a national congressional campaign committee, must not solicit any funds for, or make
5 or direct any donations to the following organizations:

6 (1) An organization that is described in 26 U.S.C. 501(c) and exempt from taxation
7 under section 26 U.S.C. 501(a) and that makes expenditures or disbursements in
8 connection with an election for Federal office, including expenditures or
9 disbursements for Federal election activity;

10 (2) An organization that has submitted an application for tax-exempt status under
11 26 U.S.C. 501(c) and that makes expenditures or disbursements in connection
12 with an election for Federal office, including expenditures or disbursements for
13 Federal election activity; or

14 (3) An organization described in 26 U.S.C. 527, unless the organization is:

15 (i) A political committee under 11 CFR 100.5;

16 (ii) A State, district, or local committee of a political party; or

17 (iii) The authorized campaign committee of a State or local candidate;

18 (b) Application. This section also applies to:

19 (1) An officer or agent acting on behalf of a national party committee, including a
20 national congressional campaign committee;

21 (2) An entity that is directly or indirectly established, financed, maintained or
22 controlled by a national party committee, including a national congressional
23 campaign committee, or an officer or agent acting on behalf of such an entity; or

1 (3) An entity that is directly or indirectly established, financed, maintained, or
2 controlled by an agent of a national, State, district, or local committee of a
3 political party, including a national congressional campaign committee.

4 (c) Determining whether a section 501(c) organization makes expenditures or disbursements
5 in connection with Federal elections. In determining whether an section 501(c) organization is
6 one that makes expenditures or disbursements in connection with a Federal election as described
7 in paragraphs (a)(1) and (2), a national committee of a political party, including a national
8 congressional campaign committee, or any other person described in paragraph (b) may obtain
9 and rely upon a certification from the organization that satisfies the criteria described in
10 paragraph (d) of this section.

11 (d) Certification. A national committee of a political party, including a national
12 congressional campaign committee, or any person described in paragraph (b) of this section, may
13 rely upon a certification that meets all of the following criteria:

- 14 (1) The certification is a signed written statement by an officer or other authorized
15 representative of the organization with knowledge of the organization's activities;
16 ~~or by the treasurer of the political committee;~~ and
- 17 (2) The certification states that within the ~~last two calendar years~~ current election
18 cycle, the organization ~~or political committee~~ has not made, and ~~within the current~~
19 ~~election cycle~~ does not intend to make, expenditures or disbursements in
20 connection with an election for Federal office (including for Federal election
21 activity); and
- 22 (3) The certification states that the organization or political committee does not
23 intend to pay debts incurred from the making of expenditures or disbursements in

1 connection with an election for Federal office (including for Federal election
2 activity) in a prior election cycle.

3 (e) If a national committee of a political party or any person described in paragraph (b) of
4 this section has actual knowledge that the certification is false, the certification may not be relied
5 upon.

6 (f) It is not prohibited for a national party or its agent to respond to a request for information
7 about a tax-exempt group that shares the party's political or philosophical goals.

8
9 **§ 300.51 Prohibited fundraising by State, district, or local party committees (2 U.S.C.**
10 **441i(d)).**

11 (a) Prohibitions. A State, district, or local committee of a political party must not solicit any
12 funds for, or make or direct any donations to:

13 (1) An organization that is described in 26 U.S.C. 501(c) and exempt from taxation
14 under section 26 U.S.C. 501(a) and that makes expenditures or disbursements in
15 connection with an election for Federal office, including expenditures or
16 disbursements for Federal election activity;

17 (2) An organization that has submitted an application for tax-exempt status under
18 26 U.S.C. 501(c) and that makes expenditures or disbursements in connection
19 with an election for Federal office, including expenditures or disbursements for
20 Federal election activity; or

21 (4) An organization described in 26 U.S.C. 527, unless the organization is:

22 (i) A political committee under 11 CFR 100.5;

23 (ii) A State, district, or local committee of a political party;

- 1 (iii) The authorized campaign committee of a State or local candidate; or
2 (iv) A political committee under State law, that supports only State or local
3 candidates and that does not make expenditures or disbursements in
4 connection with an election for Federal office, including expenditures or
5 disbursements for Federal election activity.

6 (b) Application. This section also applies to:

- 7 (1) An officer or agent acting on behalf of a State, district, or local committee of a
8 political party;
9 (2) An entity that is directly or indirectly established, financed, maintained, or
10 controlled by a State, district, or local committee or a political party or an officer
11 or agent acting on behalf of such an entity; or
12 (3) An entity that is directly or indirectly established, financed, maintained, or
13 controlled by an agent of a State, district, or local committee of a political party.

14 (c) Determining whether an organization makes expenditures or disbursements in
15 connection with a Federal election. (1) In determining whether a section 501(c) organization is
16 one that makes expenditures or disbursements in connection with a Federal election as described
17 in paragraphs (a)(1) and (2), including expenditures and disbursements for Federal election
18 activity, a State, district, or local committee of a political or any other person described in
19 paragraph (b) may obtain and rely upon a certification from the organization that satisfies the
20 criteria described in paragraph (d) of this section.

21 (2) In determining whether a section 527 organization is a State-registered political
22 committee that supports only State or local candidates and does not make expenditures or
23 disbursements in connection with an Federal election, as described in paragraph (a)(3)(v) of this

1 ~~section, including expenditures and disbursements for Federal election activity~~, a State, district,
2 or local committee of a political or any other person described in paragraph (b) may obtain and
3 rely upon a certification from the organization that satisfies the criteria described in paragraph
4 (ed) of this section.

5 (d) Certification. A State, district or local committee of a political party or any person
6 described in paragraph (b) of this section may rely upon a certification that meets all of the
7 following criteria:

- 8 (1) The certification is a signed written statement by an officer or other authorized
9 representative of the organization with knowledge of the organization's activities
10 or by the treasurer of the state-registered political committee described in
11 paragraph (a)(3)(iv) of this section; and
- 12 (2) The certification states that within the last two calendar years current election
13 cycle, the organization or political committee has not made, and within the current
14 election cycle does not intend to make, expenditures or disbursements in
15 connection with an election for Federal office (including for Federal election
16 activity); and
- 17 (3) The certification states that the organization does not intend to pay debts incurred
18 from the making of expenditures or disbursements in connection with an election
19 for Federal office (including for Federal election activity) in a prior election cycle.

20
21 (e) If a State, district or local committee of a political party or any person described in
22 paragraph (b) of this section has actual knowledge that the certification is false, the certification
23 may not be relied upon.

1 (f) It is not prohibited for a State, district or local committee of a political party or its agents
2 to respond to a request for information about a tax-exempt group that shares the party's political
3 or philosophical goals.

4
5 **§ 300.52 Fundraising by Federal candidates and Federal officeholders (2 U.S.C.**
6 **441i(e)(1)&(4)).**

7 A Federal candidate, an individual holding Federal office, and an individual agent acting
8 on behalf of either may make the following solicitations of funds on behalf of any organization
9 described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C. 501(a), or an
10 organization that has submitted an application for determination of tax-exempt status under 26
11 U.S.C. 501(c):

12 (a) General solicitations. A Federal candidate, an individual holding Federal office or an
13 individual agent acting on behalf of either, may make a general solicitation of funds, without
14 regard to source or limitation, if:

15 (1) The organization does not engage in activities in connection with an election,
16 including any activity described in paragraph (c) of this section; or

17 (2) (i) The organization conducts activities in connection with an election, but
18 the organization's principal purpose is not to conduct election activity or
19 any activity described in paragraph (c) of this section; and

20 (ii) The solicitation is not to obtain funds for activities in connection with an
21 election or any activity described in paragraph (c) of this section.

22 (b) Specific solicitations. A Federal candidate, an individual holding Federal office, or an
23 individual agent acting on behalf of either, may make a solicitation explicitly to obtain funds for

1 any activity described in paragraph (c) of this section or for an organization whose principal
2 purpose is to conduct that activity, if:

- 3 (1) The solicitation is made only to individuals; and
- 4 (2) The amount solicited from any individual does not exceed \$20,000 during any
5 calendar year.

6 (c) Voter registration, voter identification, get-out-the-vote activity and generic campaign
7 activity. This section applies to only the following types of Federal election activity:

- 8 (1) Voter registration activity, as described in 11 CFR 100.24(a)(2), during the period
9 that begins on the date that is 120 days before the date a regularly scheduled
10 Federal election is held and ends on the date of the election; or
- 11 (2) The following activities conducted in connection with an election in which one or
12 more Federal candidates appear on the ballot (see 11 CFR 100.24(a)(1)),
13 regardless of whether one or more State candidates also appears on the ballot:
 - 14 (i) Voter identification as described in 11 CFR 100.24(a)(4);
 - 15 (ii) Get-out-the-vote activity as described in 11 CFR 100.24(a)(3); or
 - 16 (iii) Generic campaign activity as defined in 11 CFR 100.25.

17 (d) Prohibited solicitations. A Federal candidate, an individual holding Federal office, and
18 an individual who is an agent acting on behalf of either, must not make any solicitation on behalf
19 of any organization described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C.
20 501(a), or an organization that has submitted an application for determination of tax-exempt
21 status under 26 U.S.C. 501(c) for any election activity other than a Federal election activity as
22 described in paragraph (c) of this section.

1 (e) Safe Harbor. In determining whether a 501(c) organization is one whose principal
2 purpose is to conduct the activities described in paragraph (c) of this section, a Federal candidate,
3 an individual holding Federal office, or an individual agent acting on behalf of either may obtain
4 and rely upon a certification from the organization that satisfies the following criteria:

5 (1) The certification is a signed written statement by an officer or other authorized
6 representative of the organization with knowledge of the organization's activities;

7 and

8 (2) The certification states that the organization's principal purpose is not, ~~and within~~
9 ~~the last two calendar~~ years, has not been, to conduct election activities, including
10 election activities described in paragraphs (c) of this section.

11 (3) The certification states that the organization does not intend to pay debts incurred
12 from the making of expenditures or disbursements in connection with an election
13 for Federal office (including for Federal election activity) in a prior election cycle.

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16

1 § 300.65 Exceptions for certain tax-exempt organizations (2 U.S.C. 441i(e)(1)&(4)).

2 A Federal candidate, an individual holding Federal office, and an individual agent acting
3 on behalf of either may make the following solicitations of funds on behalf of any organization
4 described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C. 501(a), or an
5 organization that has submitted an application for determination of tax-exempt status under
6 26 U.S.C. 501(c):

7 (a) General solicitations. A Federal candidate, an individual holding Federal office or an
8 individual agent acting on behalf of either, may make a general solicitation of funds, without
9 regard to source or limitation, if:

10 (1) The organization does not engage in activities in connection with an election,
11 including any activity described in paragraph (c) of this section; or

12 (2) (i) The organization conducts activities in connection with an election, but
13 the organization's principal purpose is not to conduct election activity or
14 any activity described in paragraph (c) of this section; and

15 (ii) The solicitation is not to obtain funds for activities in connection with an
16 election or any activity described in paragraph (c) of this section.

17 (b) Specific solicitations. A Federal candidate, an individual holding Federal office, or an
18 individual agent acting on behalf of either, may make a solicitation explicitly to obtain funds for
19 any activity described in paragraph (c) of this section or for an organization whose principal
20 purpose is to conduct that activity, if:

21 (1) The solicitation is made only to individuals; and

22 (2) The amount solicited from any individual does not exceed \$20,000 during any
23 calendar year.

- 1 (c) Voter registration, voter identification, get-out-the-vote activity and generic campaign
2 activity. This section applies to only the following types of Federal election activity:
- 3 (1) Voter registration activity, as described in 11 CFR 100.24(a)(2), during the period
4 that begins on the date that is 120 days before the date a regularly scheduled
5 Federal election is held and ends on the date of the election; or
- 6 (2) The following activities conducted in connection with an election in which one or
7 more Federal candidates appear on the ballot (see 11 CFR 100.24(a)(1)),
8 regardless of whether one or more State candidates also appears on the ballot:
- 9 (i) Voter identification as described in 11 CFR 100.24(a)(4);
10 (ii) Get-out-the-vote activity as described in 11 CFR 100.24(a)(3); or
11 (iii) Generic campaign activity as defined in 11 CFR 100.25.
- 12 (d) Prohibited solicitations. A Federal candidate, an individual holding Federal office, and
13 an individual who is an agent acting on behalf of either, must not make any solicitation on behalf
14 of any organization described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C.
15 501(a), or an organization that has submitted an application for determination of tax-exempt
16 status under 26 U.S.C. 501(c) for any election activity other than a Federal election activity as
17 described in paragraph (c) of this section.
- 18 (e) Safe Harbor. In determining whether a 501(c) organization is one whose principal
19 purpose is to conduct the activities described in paragraph (c) of this section, a Federal candidate,
20 an individual holding Federal office, or an individual agent acting on behalf of either may obtain
21 and rely upon a certification from the organization that satisfies the following criteria:
- 22 (1) The certification is a signed written statement by an officer or other authorized
23 representative of the organization with knowledge of the organization's activities;

- 1 (2) The certification states that the organization's principal purpose is not, ~~and within~~
2 the last two calendar years, ~~has not been~~, to conduct election activities, including
3 election activities described in paragraphs (c) of this section.
- 4 (3) The certification states that the organization does not intend to pay debts incurred
5 from the making of expenditures or disbursements in connection with an election
6 for Federal office (including for Federal election activity) in a prior election cycle.
- 7
- 8