



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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MEMORANDUM

TO: Commission

THROUGH: James A. Pehrkon *JAP*
Staff Director

FROM: Lawrence H. Norton *LHN*
General Counsel

Rosemary C. Smith *RCS*
Acting Associate General Counsel

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AGENDA ITEM

For Meeting of: 7-25-02

SUBMITTED LATE

SUBJECT: Reorganization of Definitions of "Contribution" and "Expenditure": Final Rules and Explanation and Justification

On June 14, 2002, the Commission published a Notice of Proposed Rulemaking ("NPRM") that proposed to amend the definitions of "contribution" and "expenditure" to implement section 103(b)(1) of the Bipartisan Campaign Reform Act, Pub. L. 107-155, 116 Stat. 81 (March 27, 2002), which deleted the office facility exception for national party committees from the definition of "contribution" in 2 U.S.C. 431(8). The NPRM also proposed to reorganize the definitions into four new subparts within 11 CFR part 100 to make them easier to read, understand, and amend. The Commission received five comments in response to the NPRM from the Campaign and Media Legal Center; Center for Responsive Politics; Common Cause and Democracy 21 (joint comment); Senators John McCain and Russell D. Feingold, and Representatives Christopher Shays and Marty Meehan (joint comment); and Ms. Cynthia Minchillo-Synhort, RP.

The Office of General Counsel has prepared draft final rules and the accompanying Explanation and Justification regarding the reorganization of the definitions of "contribution" and "expenditure." Except for minor or clarifying changes, the draft final rules follow the rules proposed in the NPRM.

Recommendation

The Office of General Counsel recommends that the Commission approve the attached final rules and accompanying Explanation and Justification for publication in the *Federal Register* and transmittal to Congress.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Part 100**

3 **[Notice 2002->]**

4 **Reorganization of Regulations on "Contribution" and "Expenditure"**

5 **AGENCY:** Federal Election Commission.

6 **ACTION:** Final rules and transmittal of regulations to Congress.

7 **SUMMARY:** The recently enacted Bipartisan Campaign Reform Act of 2002
8 ("BCRA") substantially amended the Federal Election Campaign
9 Act ("FECA" or "the Act"). Among its amendments is the
10 deletion of the office building or facility exception in the definition
11 of "contribution" in section 431(8)(B) of FECA. The Federal
12 Election Commission ("the Commission") is amending the
13 regulations to reflect this statutory change. As part of this effort,
14 the Commission is also reorganizing the sections defining
15 "contribution" and "expenditure" in its regulations. Further
16 information is provided in the supplementary information that
17 follows.

18
19 **EFFECTIVE**
20 **DATE:** November 6, 2002.

21
22 **FOR FURTHER**
23 **INFORMATION**
24 **CONTACT:** Ms. Mai T. Dinh, Acting Assistant General Counsel, 999 E Street,
25 N.W., Washington D.C. 20463, (202) 694-1650 or (800) 424-9530.

1

2 **SUPPLEMENTARY**

3 **INFORMATION:** The Bipartisan Campaign Reform Act of 2002, Pub. L. 107-155,
4 116 Stat. 81 (March 27, 2002), significantly amends the Federal Elections Campaign Act,
5 as amended, 2 U.S.C. 431 et seq., and directs the Commission to promulgate regulations
6 implementing Title I of BCRA within 90 days of enactment and to promulgate
7 regulations implementing the other titles of BCRA that are under the Commission's
8 jurisdiction within 270 days of enactment. See BCRA, section 402(c). One amendment
9 to the definition of "contribution" is in Title I, section 103(b)(1) of BCRA. These final
10 rules address this amendment.

11 Section 103(b)(1) of BCRA deletes current 2 U.S.C. 431(8)(B)(viii), thus
12 eliminating the office building or facility exception from the definition of "contribution."
13 Congress in BCRA also amended 2 U.S.C. 453 to prescribe that "notwithstanding any
14 other provision of the Act, a State or local committee if a political party may, subject to
15 State law, use exclusively funds that are not subject to the prohibitions, limitations, and
16 reporting requirements of the Act for the purchase or construction of an office building
17 for such State or local committee." In these final rules, the Commission amends the
18 definitions of "contribution" and "expenditure" to comply with these amendments. The
19 Commission has promulgated separate final rules to address the impact of this statutory
20 change on State and local party committees, as well as other changes from BCRA Title I.
21 See Explanation and Justification of "Prohibited and Excessive Contributions: Non-
22 Federal Funds or Soft Money" ("Non-Federal Funds Final Rules"), 67 Fed. Register part
23 II (July 29, 2002).

1 This rulemaking is one in a series of rulemakings that the Commission will
2 undertake to implement the various provisions of BCRA. The other separate rulemakings
3 will address: (1) electioneering communications; (2) coordinated and independent
4 expenditures; (3) the so-called “millionaires’ amendment,” which increases contribution
5 limits for congressional candidates facing self-financed candidates on a sliding scale,
6 based on the amount of personal funds the opponent contributes to his or her campaign;
7 (4) the limitations and prohibition on contributions including the increase in contribution
8 limits, and the ban on contributions by minors and foreign nationals; (5) other
9 provisions, including inaugural committees; fraudulent solicitations; disclaimers;
10 personal use of campaign funds; (6) reporting; and (7) BCRA’s impact on national
11 nominating conventions.

12 In addition, the Commission is reorganizing 11 C.F.R. 100.7 and 100.8 to
13 facilitate locating and reading the definitions of “contribution” and “expenditure,” and the
14 exceptions to both definitions.

15 Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional
16 Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules
17 to the Speaker of the House of Representatives and the President of the Senate and
18 publish them in the Federal Register at least 30 calendar days before they take effect.
19 The final rules on Reorganization of Regulations on “Contribution” and “Expenditure”
20 were transmitted to Congress on xxxx >>, 2002.

21 **Explanation and Justification**

22 The Notice of Proposed Rulemaking (“NPRM”) on which these final rules are
23 based was published in the Federal Register on June 14, 2002. 67 Fed. Register 40881

1 (June 14, 2002). The Commission received comments from The Campaign and Media
2 Legal Center; Center for Responsive Politics; Common Cause and Democracy 21 (joint
3 comment); Senators John McCain and Russell D. Feingold, and Representatives
4 Christopher Shays and Marty Meehan; and Ms. Cynthia Minchillo-Synhort, RP. The
5 Commission did not hold a hearing on the NPRM, and none of the commenters requested
6 an opportunity to testify.

7 Non-Federal Funds Final Rules Affect on 11 CFR 100.7 and 100.8

8 The NPRM raised the possibility of the Commission addressing, as part of the
9 Non-Federal Funds Final Rules, changes to the definitions of “contribution” and
10 “expenditure.” The NPRM also stated that any changes to these definitions in the
11 Non-Federal Funds Final Rules would be incorporated into these final rules. Several
12 commenters, including the principal Congressional sponsors of BCRA, expressed
13 concern that the Commission had acted “prematurely” in undertaking this reorganization
14 rulemaking at a time when the soft money rulemaking was not completed. These
15 commenters stated that conforming amendments to the definitions of “contribution” and
16 “expenditure” may be substantive in nature or have substantive impact. They argued that
17 the Commission should issue a new NPRM with proposed regulatory text for the
18 conforming amendments and seek comments before promulgating the final rules.

19 This rulemaking does not make substantive changes to the current definitions of
20 “contribution” and “expenditures” to conform to the Non-Federal Funds Final Rules.
21 The NPRM contemplated that if the Non-Federal Funds Final Rules included
22 amendments to 11 CFR 100.7 and 100.8, those amendments would be included in these

1 final rules, similar to the way in which in the Brokerage Loans and Lines of Credit final
2 rules are being incorporated in this reorganization. See below.

3 However, because the Commission's regulations in the Non-Federal Funds Final
4 Rules do not change the definitions of "contribution" or "expenditure," the Commission's
5 statements in the NPRM about the possibility of the soft money rulemaking affecting
6 these final rules are moot. Other than the reorganization and the changes discussed
7 below, these final rules do not amend the substantive definitions of "contribution" and
8 "expenditure."

9 Other BCRA Provisions that Affect the Definition of "Contribution" and "Expenditure"

10 Several commenters noted that other provisions in BCRA affect the definitions of
11 "contribution" and "expenditure." The Commission recognizes that rules implementing
12 the rest of BCRA may require amendments to these definitions. Such changes, however,
13 will be the subject of separate rulemakings described above. The public will receive full
14 notice and an opportunity to comment on the Commission's proposed rules on the
15 implementation of such changes. This final rule, however, makes preparations for the
16 separate rulemakings that may amend the definitions of "contribution" and
17 "expenditure." The structure of current 11 CFR 100.7 and 100.8 is difficult to amend in a
18 clear and comprehensive manner. By reorganizing the rules contained in these two
19 sections into multiple sections, subsequent amendments, in subsequent rulemakings, will
20 be easier for the Commission to incorporate, and easier for the public to identify,
21 comment on, and ultimately use. See discussion about reorganization, below.

1 “Allocation” Versus “Attribution”

2 In the NPRM, the Commission raised the possibility of changing the use of the
3 word “allocation” or any of its derivatives to “attribution” or one of its derivatives, and
4 sought comment on this possibility. The proposed rules did not reflect such proposed
5 change. The comments the Commission received on this suggestion did not support this
6 proposed change. One public interest group questioned what such a change would
7 accomplish. Several commenters stated that the necessity for clarification around
8 “allocation” in the rules requires more than a word change, especially in the area of
9 exempt activities. They argued that the allocation provisions in the Non-Federal Funds
10 Final Rules at 11 CFR parts 100 and 300 have direct impact on this issue. They urged the
11 Commission to amend the definitions to reflect the new allocation rules.

12 In response to those concerns, the final rules do not replace “allocation” and its
13 derivatives with “attribution” or its derivative. As was emphasized in the new Non-
14 Federal Funds Final Rules and Explanation and Justification, exempt activities that are
15 not Federal election activities are governed by 11 CFR 106.1 and 106.7. To the extent
16 that these activities do constitute Federal election activities, however, they must be
17 allocated between Federal funds and Levin funds pursuant to new 11 CFR part 300.
18 Nothing in this reorganization of the “contribution” and “expenditure” definitions
19 changes the use of Federal, non-Federal, or Levin funds for the payment of any exempt
20 activities. To clarify this, a cross-reference to the new allocation rules in 11 CFR part
21 300 has been added in the final rules in 11 CFR 100.80 (slate cards and sample ballots),
22 100.87 (volunteer activity for party committees), 100.88 (volunteer activity for
23 candidates), 100.89 (voter registration and get-out-the-vote activities for Presidential

1 candidates), 100.140 (slate cards and sample ballots), 100.147 (volunteer activity for
2 party committees), 100.148 (volunteer activity for candidates), and 100.149 (voter
3 registration and get-out-the-vote activities for Presidential candidates).

4 Reorganization of Current 11 CFR 100.7 and 100.8

5 The Commission is reorganizing 11 CFR 1007 and 100.8 in these final rules. The
6 reorganizing makes it easier to locate and read the definitions of “contribution” and
7 “expenditure” and the detailed exceptions to those definitions. Three commenters,
8 including the principal Congressional sponsors of BCRA, expressed support for, and
9 encouraged, this reorganization to make the rules more “user friendly” and “easier to read
10 and understand.”

11 The new rules create four new subparts, B through E, within 11 CFR part 100
12 which contain the definitions of, and exceptions to, “contribution” and “expenditure.”
13 Subpart B contains sections describing items that are contributions; subpart C contains
14 sections describing items that are not contributions; subpart D contains sections
15 describing items that are expenditures; and subpart E contains sections describing items
16 that are not expenditures. The distribution table attached to these final rules lists where
17 the various paragraphs of 11 CFR 100.7 and 100.8 can now be found within these new
18 subparts.

19 Inclusion of “Brokerage Loans and Lines of Credit”

20 The final rules also incorporate another recent change to FECA – the inclusion of
21 a loan of money derived from an advance on a candidate’s brokerage account, credit card,
22 home equity line of credit, or other line of credit available to the candidate as an item that
23 is not a contribution. The Commission published the final rules, entitled “Brokerage

1 Loans and Lines of Credit,” to amend 11 CFR 100.7(b) and 100.8(b) to include these
2 types of loans as exceptions to the definitions of “contribution” and “expenditure.” See
3 67 Fed. Register 38353 (June 4, 2002). The language in this final rule at 11 CFR 100.83
4 and 100.144 reflects the language in the “Brokerage Loans and Lines of Credit” final
5 rules. The Commission received no comment on this incorporation of the rules from a
6 previous rulemaking.

7 Amendments to the Office Building or Facility Exceptions

8 Current 11 CFR 100.7(b)(12) and 100.8(b)(13) designate that the construction or
9 purchase of an office building or facility are exceptions to the definitions of
10 “contribution” and “expenditure.” New 11 CFR 100.56 (stating that a contribution to
11 national party committees for the construction or purchase of an office building or facility
12 is a “contribution” under the Act) and 100.114 (stating that an expenditures by a national
13 party committees for the construction or purchase of an office building or facility is an
14 “expenditure” under the Act) make clear that these exceptions no longer apply to national
15 party committees. Similarly, in light of BCRA’s amendment of 2 U.S.C. 453, new 11
16 CFR 100.84 and 100.144 make clear that the office building or facility exceptions still
17 apply to State, local, and district party committees, subject to the provisions of 11 CFR
18 300.34. The final rules reflect the language proposed in the NPRM. The Commission
19 received no comment on its proposed changes implementing BCRA’s deletion of the
20 office building or facility exception.

21 Grammatical and Technical Revisions

22 In addition to nonsubstantive grammatical corrections, minor technical revisions
23 have been made to reflect the reorganization structure. Also, a cross-reference in

1 paragraph (f) of section 100.142 has been corrected, now directing the reader to the other
 2 bank loan provisions. Other substantive changes to the definitions of “contribution” and
 3 “expenditure” will take place in separate rulemakings.

4 Other Comments

5 One commenter criticized the NPRM in general, but made no specific comment
 6 or suggestion. Another commenter advocated the complete, or at least partial,
 7 elimination of the exception to the definitions of “contribution” and “expenditure” for
 8 recounts and election contests, on the basis that recounts and election contests, which are
 9 not Federal elections as defined by the Act, see generally Federal Election Regulations,
 10 H. R. Doc. No. 44, 95th Cong., 1st Sess. at 40 (1977) (FEC E&J Compilation at 38, 42),
 11 “serve as an avenue for the use of soft money to influence federal elections,” as
 12 evidenced by unregulated contributions used to pay for the 2000 Florida recount. This
 13 change is beyond the scope of this rulemaking dealing only with nonsubstantive changes,
 14 with the exception of the deletion of the office building or facility exception for national
 15 parties.

16 Distribution Table

17 100.7 and 100.8 Distribution Table
 18

Old Section	New Section
100.7	100.51(a)
100.7(a)(1)	100.52(a)
100.7(a)(1)(i)	100.52(b)
100.7(a)(1)(i)(A)	100.52(b)(1)
100.7(a)(1)(i)(B)	100.52(b)(2)
100.7(a)(1)(i)(C)	100.52(b)(3)
100.7(a)(1)(i)(D)	100.52(b)(4)
100.7(a)(1)(i)(E)	100.52(b)(5)
100.7(a)(1)(ii)	100.52(c)
100.7(a)(1)(iii)(A)	100.52(d)(1)

Old Section	New Section
100.7(a)(1)(iii)(B)	100.52(d)(2)
100.7(a)(2)	100.53
100.7(a)(3)	100.54
100.7(a)(3)(i)	100.54(a)
100.7(a)(3)(ii)	100.54(b)
100.7(a)(3)(iii)	100.54(c)
100.7(a)(4)	100.55
100.7(b)	100.71(a)
100.7(b)(1)(i)	100.72(a)
100.7(b)(1)(ii)	100.72(b)
100.7(b)(1)(ii)(A)	100.72(b)(1)
100.7(b)(1)(ii)(B)	100.72(b)(2)
100.7(b)(1)(ii)(C)	100.72(b)(3)
100.7(b)(1)(ii)(D)	100.72(b)(4)
100.7(b)(1)(ii)(E)	100.72(b)(5)
100.7(b)(2)	100.73
100.7(b)(3)	100.74
100.7(b)(4)	100.75
100.7(b)(5)	100.76
100.7(b)(6)	100.77
100.7(b)(7)	100.78
100.7(b)(8)	100.79
100.7(b)(9)	100.80
100.7(b)(10)	100.81
100.7(b)(11)	100.82(a) through (d)
100.7(b)(11)(i)	100.82(e)
100.7(b)(11)(ii)(A)(1)	100.82(e)(1)(i)
100.7(b)(11)(ii)(A)(2)	100.82(e)(1)(ii)
100.7(b)(11)(i)(B)	100.82(e)(2)
100.7(b)(11)(i)(B)(1)	100.82(e)(2)(i)
100.7(b)(11)(i)(B)(2)	100.82(e)(2)(ii)
100.7(b)(11)(i)(B)(3)	100.82(e)(2)(iii)
100.7(b)(11)(i)(B)(4)	100.82(e)(2)(iv)
100.7(b)(11)(i)(B)(5)	100.82(e)(2)(v)
100.7(b)(11)(ii)	100.82(e)(3)
100.7(b)(12)	100.84
100.7(b)(13)	100.85
100.7(b)(14)	100.86
100.7(b)(15)	100.87
100.7(b)(15)(i)	100.87(a)
100.7(b)(15)(ii)	100.87(b)
100.7(b)(15)(iii)	100.87(c)
100.7(b)(15)(iv)	100.87(d)
100.7(b)(15)(v)	100.87(e)

Old Section	New Section
100.7(b)(15)(vi)	100.87(f)
100.7(b)(15)(vii)	100.87(g)
100.7(b)(16)	100.88(a) and (b)
100.7(b)(17)	100.89
100.7(b)(17)(i)	100.89(a)
100.7(b)(17)(ii)	100.89(b)
100.7(b)(17)(iii)	100.89(c)
100.7(b)(17)(iv)	100.89(d)
100.7(b)(17)(v)	100.89(e)
100.7(b)(17)(vi)	100.89(f)
100.7(b)(17)(vii)	100.89(g)
100.7(b)(18)	100.90
100.7(b)(19) reserved	Removed
100.7(b)(20)	100.91
100.7(b)(21)	100.92
100.7(b)(22)	100.83
100.7(c)	100.51(b) and 100.71(b)
100.8(a)	100.110(a)
100.8(a)(1)	100.111(a)
100.8(a)(1)(i)	100.111(b)
100.8(a)(1)(ii)	100.111(c)
100.8(a)(1)(iii)	100.111(d)
100.8(a)(1)(iv)(A)	100.111(e)(1)
100.8(a)(1)(iv)(B)	100.111(e)(2)
100.8(a)(2)	100.112
100.8(a)(3)	100.113
100.8(b)	100.130(a)
100.8(b)(1)(i)	100.131(a)
100.8(b)(1)(ii)	100.131(b)
100.8(b)(1)(ii)(A)	100.131(b)(1)
100.8(b)(1)(ii)(B)	100.131(b)(2)
100.8(b)(1)(ii)(C)	100.131(b)(3)
100.8(b)(1)(ii)(D)	100.131(b)(4)
100.8(b)(1)(ii)(E)	100.131(b)(5)
100.8(b)(2)	100.132
100.8(b)(2)(i) and (ii)	100.132(a) and (b)
100.8(b)(3)	100.133
100.8(b)(4)	100.134(a)
100.8(b)(4)(i)	100.134(b)
100.8(b)(4)(ii)	100.134(c)
100.8(b)(4)(iii)	100.134(d)
100.8(b)(4)(iii)(A)(1)	100.134(d)(1)(i)
100.8(b)(4)(iii)(A)(2)	100.134(d)(1)(ii)
100.8(b)(4)(iii)(B)(1)	100.134(d)(2)(i)

Old Section	New Section
100.8(b)(4)(iii)(B)(2)	100.134(d)(2)(ii)
100.8(b)(4)(iii)(B)(3)	100.134(d)(2)(iii)
100.8(b)(4)(iii)(B)(4)	100.134(d)(2)(iv)
100.8(b)(4)(iii)(C)	100.134(d)(3)
100.8(b)(4)(iii)(D)	100.134(d)(4)
100.8(b)(4)(iv)(A)	100.134(e)
100.8(b)(4)(iv)(A)(1)	100.134(e)(1)
100.8(b)(4)(iv)(A)(2)	100.134(e)(2)
100.8(b)(4)(iv)(A)(3)	100.134(e)(3)
100.8(b)(4)(iv)(A)(4)	100.134(e)(4)
100.8(b)(4)(iv)(A)(5)	100.134(e)(5)
100.8(b)(4)(iv)(A)(6)	100.134(e)(6)
100.8(b)(4)(iv)(B)	100.134(f)
100.8(b)(4)(iv)(B)(1)	100.134(f)(1)
100.8(b)(4)(iv)(B)(2)	100.134(f)(2)
100.8(b)(4)(iv)(B)(3)	100.134(f)(3)
100.8(b)(4)(iv)(C)	100.134(g)
100.8(b)(4)(iv)(D)	100.134(h)
100.8(b)(4)(iv)(E)	100.134(i)
100.8(b)(4)(iv)(F)	100.134(j)
100.8(b)(4)(v)	100.134(k)
100.8(b)(4)(vi)	100.134(l)
100.8(b)(4)(vii)	100.134(m)
100.8(b)(5)	100.135
100.8(b)(6)	100.136
100.8(b)(7)	100.137
100.8(b)(8)	100.138
100.8(b)(9)	100.139
100.8(b)(10)	100.140
100.8(b)(11)	100.141
100.8(b)(12)	100.142(a) through (d)
100.8(b)(12)(i)	100.142(e)
100.8(b)(12)(i)(A)(1)	100.142(e)(1)(i)
100.8(b)(12)(i)(A)(2)	100.142(e)(1)(ii)
100.8(b)(12)(i)(B)	100.142(e)(2)
100.8(b)(12)(i)(B)(1)	100.142(e)(2)(i)
100.8(b)(12)(i)(B)(2)	100.142(e)(2)(ii)
100.8(b)(12)(i)(B)(3)	100.142(e)(2)(iii)
100.8(b)(12)(i)(B)(4)	100.142(e)(2)(iv)
100.8(b)(12)(i)(B)(5)	100.142(e)(2)(v)
100.8(b)(12)(ii)	100.142(e)(3)
100.8(b)(13)	100.144
100.8(b)(14)	100.145
100.8(b)(15)	100.146

Old Section	New Section
100.8(b)(16)	100.147
100.8(b)(16)(i)	100.147(a)
100.8(b)(16)(ii)	100.147(b)
100.8(b)(16)(iii)	100.147(c)
100.8(b)(16)(iv)	100.147(d)
100.8(b)(16)(v)	100.147(e)
100.8(b)(16)(vi)	100.147(f)
100.8(b)(16)(vii)	100.147(g)
100.8(b)(17)	100.148
100.8(b)(18)	100.149
100.8(b)(18)(i)	100.149(a)
100.8(b)(18)(ii)	100.149(b)
100.8(b)(18)(iii)	100.149(c)
100.8(b)(18)(iv)	100.149(d)
100.8(b)(18)(v)	100.149(e)
100.8(b)(18)(vi)	100.149(f)
100.8(b)(18)(vii)	100.149(g)
100.8(b)(19)	100.150
100.8(b)(20)	100.151
100.8(b)(21)(i)	100.152(a)
100.8(b)(21)(ii)	100.152(b)
100.8(b)(21)(iii)	100.152(c)
100.8(b)(21)(iii)(A)	100.152(c)(1)
100.8(b)(21)(iii)(B)	100.152(c)(2)
100.8(b)(22)	100.153
100.8(b)(23)	100.154
100.8(b)(24)	100.143
100.8(c)	100.110(b) and 100.130(b)

1

2 **Certification of No Effect Pursuant to 5 U.S.C. 605(b)**

3 **(Regulatory Flexibility Act)**

4 The attached final rules do not have a significant economic impact on a
5 substantial number of small entities. This certification is based on that fact that the final
6 rules' only substantive change, eliminating the office building or facility exceptions to
7 the definitions of "contribution" and "expenditure" for national party committees, affects
8 only national party committees. The national party committees of the two major political

1 parties are not small entities under 5 U.S.C. 601. The other provisions in these final rules
2 have already been certified as not having any significant economic impact on a
3 substantial number of small entities.

4

5 **List of Subjects**

6 11 CFR part 100

7 Elections

8

9

1 For the reasons set out in the Explanation and Justification, the Commission
2 amends Chapter I of title II of the Code of Federal Regulations as follows:

3

4 **Part 100 – SCOPE AND DEFINITIONS (2 U.S.C. 431)**

5 1. The authority citation for part 100 continues to read as follows:

6 Authority: 2 U.S.C. 431, 434(a)(11), 438(a)(8).

7 2. Section 100.7 is removed and reserved.

8 **§ 100.7 [Removed and reserved].**

9 Remove and reserve section 100.7.

10 3. Section 100.8 is removed and reserved.

11 **§ 100.8 [Removed and reserved].**

12 Remove and reserve section 100.8.

13 4. Part 100 is amended by adding new subparts B, C, D, and E to read as follows:

14 **Subpart B – Definition of Contribution (2 U.S.C. 431(8))**

15 Sec.

16 100.51 Scope.

17 100.52 Gift, subscription, loan, advance or deposit of money.

18 100.53 Attendance at a fundraiser or political event.

19 100.54 Compensation for personal services.

20 100.55 Extension of credit.

21 100.56 Office building or facility for national party committees.

22

1 **Subpart C – Exceptions to Contributions**

2 Sec.

3 100.71 Scope.

4 100.72 Testing the waters.

5 100.73 News story, commentary, or editorial by the media.

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15 100.83 Brokerage loans and lines of credit to candidates.

16 100.84 Office building for State, local, or district party committees or
17 organizations.

18 100.85 Legal or accounting services to political party committees.

19 100.86 Legal or accounting services to other political committees.

20 100.87 Volunteer activity for party committees.

21 100.88 Volunteer activity for candidates.

22 100.89 Voter registration and get-out-the-vote activities for Presidential
23 candidates ("coattails" exception).

1 100.90 Ballot access fees.

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3 100.92 Candidate debates.

4

5 **Subpart D -- Definition of Expenditure (2 U.S.C. 431(9))**

6 Sec.

7 100.110 Scope.

8 100.111 Gift, subscription, loan, advance or deposit of money.

9 100.112 Contracts, promises, and agreements to make expenditures.

10 100.113 Independent expenditures.

11 100.114 Office building or facility for national party committees

12

13 **Subpart E -- Exceptions to Expenditures**

14 Sec.

15 100.130 Scope.

16 100.131 Testing the waters.

17 100.132 News story, commentary, or editorial by the media.

18 100.133 Voter registration and get-out-the-vote activities.

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20 membership organizations.

21 100.135 Use of a volunteer's real or personal property.

22 100.136 Use of church or community room.

23 100.137 Invitations, food, and beverages.

- 1 100.138 Sale of food or beverages by vendor.
- 2 100.139 Unreimbursed payment for transportation and subsistence expenses.
- 3 100.140 Slate cards and sample ballots.
- 4 100.141 Payment by corporations and labor organizations.
- 5 100.142 Bank loans.
- 6 100.143 Brokerage loans and lines of credit to candidates.
- 7 100.144 Office building for State, local, or district party committees or
- 8 organizations.
- 9 100.145 Legal or accounting services to political party committees.
- 10 100.146 Legal or accounting services to other political committees.
- 11 100.147 Volunteer activity for party committees.
- 12 100.148 Volunteer activity for candidate.
- 13 100.149 Voter registration and get-out-the-vote activities for Presidential
- 14 Candidates ("coattails" exception).
- 15 100.150 Ballot access fees.
- 16 100.151 Recounts.
- 17 100.152 Fundraising costs for Presidential candidates.
- 18 100.153 Routine living expenses.
- 19 100.154 Candidate debates.
- 20
- 21

1 **Subpart B -- Definition of Contribution (2 U.S.C. 431(8))**

2 **§ 100.51 Scope.**

3 (a) The term contribution includes the payments, services, or other things of value
4 described in this subpart.

5 (b) For the purpose of this subpart, a contribution or payment made by an individual
6 shall not be attributed to any other individual, unless otherwise specified by that other
7 individual in accordance with 11 CFR 110.1(k).

8 **§ 100.52 Gift, subscription, loan, advance or deposit of money.**

9 (a) A gift, subscription, loan (except for a loan made in accordance with 11 CFR
10 100.72 and 100.73), advance, or deposit of money or anything of value made by any
11 person for the purpose of influencing any election for Federal office is a contribution.

12 (b) For purposes of this section, the term loan includes a guarantee, endorsement, and
13 any other form of security.

14 (1) A loan that exceeds the contribution limitations of 2 U.S.C. 441a and 11 CFR
15 part 110 shall be unlawful whether or not it is repaid.

16 (2) A loan is a contribution at the time it is made and is a contribution to the
17 extent that it remains unpaid. The aggregate amount loaned to a candidate or
18 committee by a contributor, when added to other contributions from that
19 individual to that candidate or committee, shall not exceed the contribution
20 limitations set forth at 11 CFR part 110. A loan, to the extent it is repaid, is
21 no longer a contribution.

22 (3) Except as provided in paragraph (b)(4) of this section, a loan is a contribution
23 by each endorser or guarantor. Each endorser or guarantor shall be deemed to

1 have contributed that portion of the total amount of the loan for which he or
2 she agreed to be liable in a written agreement. Any reduction in the unpaid
3 balance of the loan shall reduce proportionately the amount endorsed or
4 guaranteed by each endorser or guarantor in such written agreement. In the
5 event that such agreement does not stipulate the portion of the loan for which
6 each endorser or guarantor is liable, the loan shall be considered a loan by
7 each endorser or guarantor in the same proportion to the unpaid balance that
8 each endorser or guarantor bears to the total number of endorsers or
9 guarantors.

10 (4) A candidate may obtain a loan on which his or her spouse's signature is
11 required when jointly owned assets are used as collateral or security for the
12 loan. The spouse shall not be considered a contributor to the candidate's
13 campaign if the value of the candidate's share of the property used as
14 collateral equals or exceeds the amount of the loan that is used for the
15 candidate's campaign.

16 (5) If a political committee makes a loan to any person, such loan shall be subject
17 to the limitations of 11 CFR part 110. Repayment of the principal amount of
18 such loan to such political committee shall not be a contribution by the debtor
19 to the lender committee. Such repayment shall be made with funds that are
20 subject to the prohibitions of 11 CFR 110.4(a) and part 114. The payment of
21 interest to such committee by the debtor shall be a contribution only to the
22 extent that the interest paid exceeds a commercially reasonable rate prevailing

1 at the time the loan is made. All payments of interest shall be made from
2 funds subject to the prohibitions of 11 CFR 110.4(a) and part 114.

3 (c) For purposes of this section, the term money includes currency of the United
4 States or of any foreign nation, checks, money orders, or any other negotiable instruments
5 payable on demand.

6 (d) (1) For purposes of this section, the term anything of value includes all in-
7 kind contributions. Unless specifically exempted under 11 CFR part 100,
8 subpart C, the provision of any goods or services without charge or at a
9 charge that is less than the usual and normal charge for such goods or
10 services is a contribution. Examples of such goods or services include, but
11 are not limited to: Securities, facilities, equipment, supplies, personnel,
12 advertising services, membership lists, and mailing lists. If goods or
13 services are provided at less than the usual and normal charge, the amount
14 of the in-kind contribution is the difference between the usual and normal
15 charge for the goods or services at the time of the contribution and the
16 amount charged the political committee.

17 (2) For purposes of paragraph (d)(1) of this section, usual and normal charge
18 for goods means the price of those goods in the market from which they
19 ordinarily would have been purchased at the time of the contribution; and
20 usual and normal charge for any services, other than those provided by an
21 unpaid volunteer, means the hourly or piecework charge for the services at
22 a commercially reasonable rate prevailing at the time the services were
23 rendered.

1 **§ 100.53 Attendance at a fundraiser or political event.**

2 The entire amount paid to attend a fundraiser or other political event and the
3 entire amount paid as the purchase price for a fundraising item sold by a political
4 committee is a contribution.

5 **§ 100.54 Compensation for personal services.**

6 The payment by any person of compensation for the personal services of another
7 person if those services are rendered without charge to a political committee for any
8 purpose, except for legal and accounting services provided under 11 CFR 100.74 and
9 100.75, is a contribution. No compensation is considered paid to any employee under
10 any of the following conditions:

11 (a) Paid on an hourly or salaried basis. If an employee is paid on an hourly or
12 salaried basis and is expected to work a particular number of hours per period, no
13 contribution results if the employee engages in political activity during what would
14 otherwise be a regular work period, provided that the taken or released time is made up or
15 completed by the employee within a reasonable time.

16 (b) Paid on commission or piecework basis. No contribution results where an
17 employee engages in political activity during what would otherwise be normal working
18 hours if the employee is paid on a commission or piecework basis, or is paid only for
19 work actually performed and the employee's time is considered his or her own to use as
20 he or she sees fit.

21 (c) Vacation or earned leave time. No contribution results where the time used by the
22 employee to engage in political activity is bona fide, although compensable, vacation
23 time or other earned leave time.

1 **§ 100.55 Extension of credit.**

2 The extension of credit by any person is a contribution unless the credit is
3 extended in the ordinary course of the person's business and the terms are substantially
4 similar to extensions of credit to nonpolitical debtors that are of similar risk and size of
5 obligation. If a creditor fails to make a commercially reasonable attempt to collect the
6 debt, a contribution will result. (See 11 CFR 116.3 and 116.4.) If a debt owed by a
7 political committee is forgiven or settled for less than the amount owed, a contribution
8 results unless such debt is settled in accordance with the standards set forth at 11 CFR
9 116.3 and 116.4.

10 **§ 100.56 Office building or facility for national party committees.**

11 A gift, subscription, loan, advance, or deposit of money or anything of value to a
12 national party committee for the purchase or construction of an office building or facility
13 is a contribution.

14

15 **Subpart C – Exceptions to Contributions**

16

17 **§ 100.71 Scope.**

18 (a) The term contribution does not include payments, services or other things of value
19 described in this subpart.

20 (b) For the purpose of this subpart, a contribution or payment made by an individual
21 shall not be attributed to any other individual, unless otherwise specified by that other
22 individual in accordance with 11 CFR 110.1(k).

23

1 § 100.72 **Testing the waters.**

2 (a) General exemption. Funds received solely for the purpose of determining
3 whether an individual should become a candidate are not contributions. Examples of
4 activities permissible under this exemption if they are conducted to determine whether an
5 individual should become a candidate include, but are not limited to, conducting a poll,
6 telephone calls, and travel. Only funds permissible under the Act may be used for such
7 activities. The individual shall keep records of all such funds received. See 11 CFR
8 101.3. If the individual subsequently becomes a candidate, the funds received are
9 contributions subject to the reporting requirements of the Act. Such contributions must
10 be reported with the first report filed by the principal campaign committee of the
11 candidate, regardless of the date the funds were received.

12 (b) Exemption not applicable to individuals who have decided to become candidates.
13 This exemption does not apply to funds received for activities indicating that an
14 individual has decided to become a candidate for a particular office or for activities
15 relevant to conducting a campaign. Examples of activities that indicate that an individual
16 has decided to become a candidate include, but are not limited to:

- 17 (1) The individual uses general public political advertising to publicize his
18 or her intention to campaign for Federal office.
- 19 (2) The individual raises funds in excess of what could reasonably be
20 expected to be used for exploratory activities or undertakes activities
21 designed to amass campaign funds that would be spent after he or she
22 becomes a candidate.

- 1 (3) The individual makes or authorizes written or oral statements that refer
2 to him or her as a candidate for a particular office.
- 3 (4) The individual conducts activities in close proximity to the election or
4 over a protracted period of time.
- 5 (5) The individual has taken action to qualify for the ballot under State
6 law.

7 **§ 100.73 News story, commentary, or editorial by the media.**

8 Any cost incurred in covering or carrying a news story, commentary, or editorial
9 by any broadcasting station (including a cable television operator, programmer or
10 producer), newspaper, magazine, or other periodical publication is not a contribution
11 unless the facility is owned or controlled by any political party, political committee, or
12 candidate, in which case the costs for a news story:

- 13 (a) That represents a bona fide news account communicated in a publication of
14 general circulation or on a licensed broadcasting facility; and
- 15 (b) That is part of a general pattern of campaign-related news accounts that give
16 reasonably equal coverage to all opposing candidates in the circulation or listening area,
17 is not a contribution.

18 **§ 100.74 Uncompensated services by volunteers.**

19 The value of services provided without compensation by any individual who
20 volunteers on behalf of a candidate or political committee is not a contribution.

21 **§ 100.75 Use of a volunteer's real or personal property.**

22 No contribution results where an individual, in the course of volunteering
23 personal services on his or her residential premises to any candidate or to any political

1 committee of a political party, provides the use of his or her real or personal property to
2 such candidate for candidate-related activity or to such political committee of a political
3 party for party-related activity. For the purposes of this section, an individual's
4 residential premises, shall include a recreation room in a residential complex where the
5 individual volunteering services resides, provided that the room is available for use
6 without regard to political affiliation. A nominal fee paid by such individual for the use
7 of such room is not a contribution.

8 **§ 100.76 Use of church or community room.**

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

17 **§ 100.77 Invitations, food, and beverages.**

18 The cost of invitations, food and beverages is not a contribution where such items
19 are voluntarily provided by an individual volunteering personal services on the
20 individual's residential premises or in a church or community room as specified at 11
21 CFR 100.65 and 100.66 to a candidate for candidate-related activity or to any political
22 committee of a political party for party-related activity, to the extent that: The aggregate
23 value of such invitations, food and beverages provided by the individual on behalf of the

1 candidate does not exceed \$1,000 with respect to any single election; and on behalf of all
2 political committees of each political party does not exceed \$2,000 in any calendar year.

3 **§ 100.78 Sale of food or beverages by vendor.**

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

12 **§ 100.79 Unreimbursed payment for transportation and subsistence expenses.**

13 (a) Transportation expenses. Any unreimbursed payment for transportation expenses
14 incurred by any individual on behalf of any candidate or any political committee of a
15 political party is not a contribution to the extent that:

16 (1) The aggregate value of the payments made by such individual on behalf of
17 a candidate does not exceed \$1,000 with respect to a single election; and

18 (2) The aggregate value of the payments made by such individual on behalf of
19 all political committees of each political party does not exceed \$2,000 in a
20 calendar year.

21 (b) Subsistence expenses. Any unreimbursed payment from a volunteer's personal
22 funds for usual and normal subsistence expenses incidental to volunteer activity is not a
23 contribution.

24

1 **§ 100.80 Slate cards and sample ballots.**

2 The payment by a State or local committee of a political party of the costs of
3 preparation, display, or mailing or other distribution incurred by such committee with
4 respect to a printed slate card, sample ballot, palm card, or other printed listing(s) of three
5 or more candidates for any public office for which an election is held in the State in
6 which the committee is organized is not a contribution. The payment of the portion of
7 such costs allocable to Federal candidates must be made from funds subject to the
8 limitations and prohibitions of the Act. If made by a political committee, such payments
9 shall be reported by that committee as disbursements, but need not be allocated in
10 committee reports to specific candidates. This exemption shall not apply to costs
11 incurred by such a committee with respect to the preparation and display of listings made
12 on broadcasting stations, or in newspapers, magazines, and similar types of general
13 public political advertising such as billboards. But see 11 CFR part 300 for exempt
14 activities that also constitute Federal election activity.

15 **§ 100.81 Payments by corporations and labor organizations.**

16 Any payment made or obligation incurred by a corporation or a labor organization
17 is not a contribution, if under the provisions of 11 CFR part 114 such payment or
18 obligation would not constitute an expenditure by the corporation or labor organization.

19 **§ 100.82 Bank loans.**

20 (a) General provisions. A loan of money to a political committee or a candidate by a
21 State bank, a federally chartered depository institution (including a national bank) or a
22 depository institution whose deposits and accounts are insured by the Federal Deposit
23 Insurance Corporation or the National Credit Union Administration is not a contribution

1 by the lending institution if such loan is made in accordance with applicable banking laws
2 and regulations and is made in the ordinary course of business. A loan will be deemed to
3 be made in the ordinary course of business if it:

4 (1) Bears the usual and customary interest rate of the lending institution for the
5 category of loan involved;

6 (2) Is made on a basis that assures repayment;

7 (3) Is evidenced by a written instrument; and

8 (4) Is subject to a due date or amortization schedule.

9 (b) Reporting. Such loans shall be reported by the political committee in accordance
10 with 11 CFR 104.3(a) and (d).

11 (c) Endorsers and guarantors. Each endorser or guarantor shall be deemed to have
12 contributed that portion of the total amount of the loan for which he or she agreed to be
13 liable in a written agreement, except that, in the event of a signature by the candidate's
14 spouse, the provisions of 11 CFR 100.52(b)(4) shall apply. Any reduction in the unpaid
15 balance of the loan shall reduce proportionately the amount endorsed or guaranteed by
16 each endorser or guarantor in such written agreement. In the event that such agreement
17 does not stipulate the portion of the loan for which each endorser or guarantor is liable,
18 the loan shall be considered a contribution by each endorser or guarantor in the same
19 proportion to the unpaid balance that each endorser or guarantor bears to the total number
20 of endorsers or guarantors.

21 (d) Overdrafts. For purposes of this section, an overdraft made on a checking or
22 savings account of a political committee shall be considered a contribution by the bank or
23 institution unless:

1 (1) The overdraft is made on an account that is subject to automatic
2 overdraft protection;

3 (2) The overdraft is subject to a definite interest rate that is usual and
4 customary; and

5 (3) There is a definite repayment schedule.

6 (e) Made on a basis that assures repayment. A loan, including a line of credit, shall
7 be considered made on a basis that assures repayment if it is obtained using either of the
8 sources of repayment described in paragraphs (e)(1) or (2) of this section, or a
9 combination of paragraphs (e)(1) and (2) of this section:

10 (1) (i) The lending institution making the loan has perfected a security
11 interest in collateral owned by the candidate or political committee
12 receiving the loan, the fair market value of the collateral is equal to
13 or greater than the loan amount and any senior liens as determined
14 on the date of the loan, and the candidate or political committee
15 provides documentation to show that the lending institution has a
16 perfected security interest in the collateral. Sources of collateral
17 include, but are not limited to, ownership in real estate, personal
18 property, goods, negotiable instruments, certificates of deposit,
19 chattel papers, stocks, accounts receivable and cash on deposit.

20 (ii) Amounts guaranteed by secondary sources of repayment, such as
21 guarantors and cosigners, shall not exceed the contribution limits
22 of 11 CFR part 110 or contravene the prohibitions of 11 CFR
23 110.4, part 114 and part 115; or

1 (2) The lending institution making the loan has obtained a written agreement
2 whereby the candidate or political committee receiving the loan has
3 pledged future receipts, such as public financing payments under 11 CFR
4 part 9001 through part 9012, or part 9031 through part 9039,
5 contributions, or interest income, provided that:

6 (i) The amount of the loan or loans obtained on the basis of such
7 funds does not exceed the amount of pledged funds;

8 (ii) Loan amounts are based on a reasonable expectation of the receipt
9 of pledged funds. To that end, the candidate or political committee
10 must furnish the lending institution documentation, i.e., cash flow
11 charts or other financial plans, that reasonably establish that such
12 future funds will be available;

13 (iii) A separate depository account is established at the lending
14 institution or the lender obtains an assignment from the candidate
15 or political committee to access funds in a committee account at
16 another depository institution that meets the requirements of 11
17 CFR 103.2, and the committee has notified the other institution of
18 this assignment;

19 (iv) The loan agreement requires the deposit of the public financing
20 payments, contributions and interest income pledged as collateral
21 into the separate depository account for the purpose of retiring the
22 debt according to the repayment requirements of the loan
23 agreement; and

1 (v) In the case of public financing payments, the borrower authorizes
2 the Secretary of the Treasury to directly deposit the payments into
3 the depository account for the purpose of retiring the debt.

4 (3) If the requirements set forth in this paragraph are not met, the Commission
5 will consider the totality of the circumstances on a case-by-case basis in
6 determining whether a loan was made on a basis that assures repayment.

7 (f) This section shall not apply to loans described in 11 CFR 100.73.

8 **§ 100.83 Brokerage loans and lines of credit to candidates.**

9 (a) General provisions. Any loan of money derived from an advance on a candidate's
10 brokerage account, credit card, home equity line of credit, or other line of credit available
11 to the candidate, including an overdraft made on a personal checking or savings account
12 of a candidate, provided that:

13 (1) Such loan is made in accordance with applicable law and under
14 commercially reasonable terms; and

15 (2) The person making such loan makes loans derived from an advance on a
16 candidate's brokerage account, credit card, home equity line of credit, or
17 other line of credit in the normal course of the person's business.

18 (b) Endorsers and guarantors. Each endorser, guarantor, or co-signer shall be deemed
19 to have contributed that portion of the total amount of the loan derived from an advance
20 on a candidate's brokerage account, credit card, home equity line of credit, or other line
21 of credit available to the candidate, for which he or she agreed to be liable in a written
22 agreement, including a loan used for the candidate's routine living expenses. Any
23 reduction in the unpaid balance of the loan, advance, or line of credit shall reduce

1 proportionately the amount endorsed or guaranteed by each endorser or guarantor in such
2 written agreement. In the event that such agreement does not stipulate the portion of the
3 loan, advance, or line of credit for which each endorser, guarantor, or co-signer is liable,
4 the loan shall be considered a contribution by each endorser or guarantor in the same
5 proportion to the unpaid balance that each endorser, guarantor, or co-signer bears to the
6 total number of endorsers or guarantors. However, if the spouse of the candidate is the
7 endorser, guarantor, or co-signer, the spouse shall not be deemed to make a contribution
8 if:

9 (1) For a secured loan, the value of the candidate's share of the property used
10 as collateral equals or exceeds the amount of the loan that is used for the
11 candidate's campaign; or

12 (2) For an unsecured loan, the amount of the loan used for in connection with
13 the candidate's campaign does not exceed one-half of the available credit
14 extended by the unsecured loan.

15 (c) Routine living expenses.

16 (1) A loan derived from an advance on a candidate's brokerage
17 account, credit card, home equity line of credit, or other line of credit
18 available to the candidate, that is used by the candidate solely for routine
19 living expenses, as described in 11 CFR 100.153, does not need to be
20 reported under 11 CFR part 104 provided that the loan, advance, or line of
21 credit is repaid exclusively from the personal funds of the candidate or
22 payments that would have been made irrespective of the candidacy
23 pursuant to 11 CFR 113.1(g)(6).

1 (2) Any repayment, in part or in whole, of the loan, advance, or line of credit
2 described in paragraph (c)(1) of this section by the candidate's authorized
3 committee constitutes the personal use of campaign funds and is
4 prohibited by 11 CFR 113.2.

5 (3) Any repayment or forgiveness, in part or in whole, of the loan, advance, or
6 line of credit described in paragraph (c)(1) of this section by a third party
7 (other than a third party whose payments are permissible under 11 CFR
8 113.1(g)(6)) or the lending institution is a contribution, subject to the
9 limitations and prohibitions of 11 CFR parts 110 and 114, and shall be
10 reported under 11 CFR part 104.

11 (4) Notwithstanding paragraph (c)(1) of this section, the portion of any loan or
12 advance from a candidate's brokerage account, credit card account, home
13 equity line of credit, or other line of credit that is used for the purpose of
14 influencing the candidate's election for Federal office shall be reported
15 under 11 CFR part 104.

16 (d) Repayment. The candidate's authorized committee may repay a loan from the
17 candidate that is derived from an advance on a candidate's brokerage account, credit
18 card, home equity line of credit, or other line of credit available to the candidate, directly
19 to the candidate or the original lender. The amount of the repayment shall not exceed the
20 amount of the principal used for the purpose of influencing the candidate's election for
21 Federal office and interest that has accrued on that principal.

22 (e) Reporting. Loans derived from an advance on a candidate's brokerage account,
23 credit card, home equity line of credit, or other line of credit available to the candidate

1 shall be reported by the candidate's principal campaign committee in accordance with
2 11 CFR part 104.

3 **§ 100.84 Office building for State, local, or district party committees or**
4 **organizations.**

5 A donation made to a non-Federal account of a State, local, or district party
6 committee or organization in accordance with 11 CFR 300.35 for the purchase or
7 construction of an office building is not a contribution. A donation includes a gift,
8 subscription, loan, advance, or deposit of money or anything of value.

9 **§ 100.85 Legal or accounting services to political party committees.**

10 Legal or accounting services rendered to or on behalf of any political committee
11 of a political party are not contributions if the person paying for such services is the
12 regular employer of the individual rendering the services and such services are not
13 attributable to activities that directly further the election of any designated candidate for
14 Federal office. For purposes of this section, a partnership shall be deemed to be the
15 regular employer of a partner. Amounts paid by the regular employer for such services
16 shall be reported by the committee receiving such services in accordance with 11 CFR
17 104.3(h).

18 **§ 100.86 Legal or accounting services to other political committees.**

19 Legal or accounting services rendered to or on behalf of an authorized committee
20 of a candidate or any other political committee are not contributions if the person paying
21 for such services is the regular employer of the individual rendering the services and if
22 such services are solely to ensure compliance with the Act or 26 U.S.C. 9001 et seq. and
23 9031 et seq. For purposes of this section, a partnership shall be deemed to be the regular

1 employer of a partner. Amounts paid by the regular employer for these services shall be
2 reported by the committee receiving such services in accordance with 11 CFR 104.3(h).

3 **§ 100.87 Volunteer activity for party committees.**

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

9 (a) Exemption not applicable to general public communication or political
10 advertising. Such payment is not for cost incurred in connection with any broadcasting,
11 newspaper, magazine, bill board, direct mail, or similar type of general public
12 communication or political advertising. For purposes of this paragraph, the term
13 direct mail means any mailing(s) by a commercial vendor or any mailing(s) made from
14 commercial lists.

15 (b) Allocation. The portion of the cost of such materials allocable to Federal
16 candidates must be paid from contributions subject to the limitations and prohibitions of
17 the Act. But see 11 CFR part 300 for exempt activities that also constitute Federal
18 election activity.

19 (c) Contributions designated for particular Federal candidates. Such payment is not
20 made from contributions designated by the donor to be spent on behalf of a particular
21 candidate or candidates for Federal office. For purposes of this paragraph, a contribution
22 shall not be considered a designated contribution if the party committee disbursing the

1 funds makes the final decision regarding which candidate(s) shall receive the benefit of
2 such disbursement.

3 (d) Distribution of materials by volunteers. Such materials are distributed by
4 volunteers and not by commercial or for-profit operations. For the purposes of this
5 paragraph, payments by the party organization for travel and subsistence or customary
6 token payments to volunteers do not remove such individuals from the volunteer
7 category.

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

11 (f) State candidates and their campaign committees. Payments by a State candidate
12 or his or her campaign committee to a State or local political party committee for the
13 State candidate's share of expenses for such campaign materials are not contributions,
14 provided the amount paid by the State candidate or his or her committee does not exceed
15 his or her proportionate share of the expenses.

16 (g) Exemption not applicable to campaign materials purchased by national party
17 committees. Campaign materials purchased by the national committee of a political party
18 and delivered to a State or local party committee, or materials purchased with funds
19 donated by the national committee to such State or local committee for the purchase of
20 such materials, shall not qualify under this exemption. Rather, the cost of such materials
21 shall be subject to the limitations of 2 U.S.C. 441a(d) and 11 CFR 110.7.

22

23

1 **§ 100.88 Volunteer activity for candidates.**

2 (a) The payment by a candidate for any public office (including State or local office),
3 or by such candidate's authorized committee, of the costs of that candidate's campaign
4 materials that include information on or any reference to a candidate for Federal office
5 and that are used in connection with volunteer activities (such as pins, bumper stickers,
6 handbills, brochures, posters, and yard signs) is not a contribution to such candidate for
7 Federal office, provided that the payment is not for the use of broadcasting, newspapers,
8 magazines, billboards, direct mail or similar types of general public communication or
9 political advertising.

10 (b) The payment of the portion of the cost of such materials allocable to Federal
11 candidates shall be made from contributions subject to the limitations and prohibitions of
12 the Act. For purposes of this section, the term direct mail means any mailing(s) by
13 commercial vendors or mailing(s) made from lists that were not developed by the
14 candidate. But see 11 CFR part 300 for exempt activities that also constitute Federal
15 election activity.

16 **§ 100.89 Voter registration and get-out-the-vote activities for Presidential**
17 **candidates (“coattails” exception).**

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

22 (a) Exemption not applicable to general public communication or political
23 advertising. Such payment is not for the costs incurred in connection with any

1 broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general
2 public communication or political advertising. For purposes of this paragraph, the term
3 direct mail means any mailing(s) by a commercial vendor or any mailing(s) made from
4 commercial lists.

5 (b) Allocation. The portion of the costs of such activities allocable to Federal
6 candidates is paid from contributions subject to the limitations and prohibitions of the
7 Act. But see 11 CFR part 300 for exempt activities that also constitute Federal election
8 activity.

9 (c) Contributions designated for particular Federal candidates. Such payment is not
10 made from contributions designated to be spent on behalf of a particular candidate or
11 candidates for Federal office. For purposes of this paragraph, a contribution shall not be
12 considered a designated contribution if the party committee disbursing the funds makes
13 the final decision regarding which candidate(s) shall receive the benefit of such
14 disbursement.

15 (d) References to House or Senate candidates. For purposes of this section, if such
16 activities include references to any candidate(s) for the House or Senate, the costs of such
17 activities that are allocable to that candidate(s) shall be a contribution to such
18 candidate(s) unless the mention of such candidate(s) is merely incidental to the overall
19 activity.

20 (e) Phone banks. For purposes of this section, payment of the costs incurred in the
21 use of phone banks in connection with voter registration and get-out-the-vote activities is
22 not a contribution when such phone banks are operated by volunteer workers. The use of
23 paid professionals to design the phone bank system, develop calling instructions and train

1 supervisors is permissible. The payment of the costs of such professional services is not
2 an expenditure but shall be reported as a disbursement in accordance with 11 CFR 104.3
3 if made by a political committee.

4 (f) Reporting of payments for voter registration and get-out-the-vote activities. If
5 made by a political committee, such payments for voter registration and get-out-the-vote
6 activities shall be reported by that committee as disbursements in accordance with 11
7 CFR 104.3, but such payments need not be allocated to specific candidates in committee
8 reports except as provided in 11 CFR 100.78(d).

9 (g) Exemption not applicable to donations by a national committee of a political party
10 to a State or local party committee for voter registration and get-out-the-vote activities.

11 Payments made from funds donated by a national committee of a political party to a State
12 or local party committee for voter registration and get-out-the-vote activities shall not
13 qualify under this exemption. Rather, such funds shall be subject to the limitations of 2
14 U.S.C. 441a(d) and 11 CFR 110.7.

15 **§ 100.90 Ballot access fees.**

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

18 **§ 100.91 Recounts.**

19 A gift, subscription, loan, advance, or deposit of money or anything of value
20 made with respect to a recount of the results of a Federal election, or an election contest
21 concerning a Federal election, is not a contribution except that the prohibitions of 11 CFR
22 110.4(a) and part 114 apply.

23

1 **§ 100.92 Candidate debates.**

2 Funds provided to defray costs incurred in staging candidate debates in
3 accordance with the provisions of 11 CFR 110.13 and 114.4(f) are not contributions.

4

5 **Subpart D – Definition of Expenditure (2 U.S.C. 431(9))**

6

7 **§ 100.110 Scope.**

8 (a) The term expenditure includes payments, gifts or other things of value described
9 in this subpart.

10 (b) For the purpose of this subpart, a payment made by an individual shall not be
11 attributed to any other individual, unless otherwise specified by that other individual. To
12 the extent that a payment made by an individual qualifies as a contribution, the provisions
13 of 11 CFR 110.1(k) shall apply.

14 **§ 100.111 Gift, subscription, loan, advance or deposit of money.**

15 (a) A purchase, payment, distribution, loan (except for a loan made in accordance
16 with 11 CFR 100.113 and 100.114), advance, deposit, or gift of money or anything of
17 value, made by any person for the purpose of influencing any election for Federal office
18 is an expenditure.

19 (b) For purposes of this section, the term payment includes payment of any interest
20 on an obligation and any guarantee or endorsement of a loan by a candidate or a political
21 committee.

22 (c) For purposes of this section, the term payment does not include the repayment by
23 a political committee of the principal of an outstanding obligation that is owed by such

1 committee, except that the repayment shall be reported as disbursements in accordance
2 with 11 CFR 104.3(b).

3 (d) For purposes of this section, the term money includes currency of the United
4 States or of any foreign nation, checks, money orders, or any other negotiable instrument
5 payable on demand.

6 (e) (1) For purposes of this section, the term anything of value includes all in-
7 kind contributions. Unless specifically exempted under 11 CFR part 100,
8 subpart E, the provision of any goods or services without charge or at a
9 charge that is less than the usual and normal charge for the goods or
10 services is an expenditure. Examples of such goods or services include,
11 but are not limited to: Securities, facilities, equipment, supplies,
12 personnel, advertising services, membership lists, and mailing lists. If
13 goods or services are provided at less than the usual and normal charge,
14 the amount of the expenditure is the difference between the usual and
15 normal charge for the goods or services at the time of the expenditure and
16 the amount charged the candidate or political committee.

17 (2) For the purposes of paragraph (e)(1) of this section, usual and normal
18 charge for goods means the price of those goods in the market from which
19 they ordinarily would have been purchased at the time of the expenditure;
20 and usual and normal charge for services, other than those provided by an
21 unpaid volunteer, means the hourly or piecework charge for the services at
22 a commercially reasonable rate prevailing at the time the services were
23 rendered.

1 **§ 100.112 Contracts, promises, and agreements to make expenditures.**

2 A written contract, including a media contract, promise, or agreement to make an
3 expenditure is an expenditure as of the date such contract, promise or obligation is made.

4 **§ 100.113 Independent expenditures.**

5 An independent expenditure that meets the requirements of 11 CFR 104.4 or part
6 109 is an expenditure, and such independent expenditure is to be reported by the person
7 making the expenditure in accordance with 11 CFR 104.4 and part 109.

8 **§ 100.114 Office building or facility for national party committees.**

9 A payment, distribution, loan, advance, or deposit of money or anything of value
10 made by, or on behalf of, a national party committee for the purchase or construction of
11 an office building or facility is an expenditure.

12

13 **Subpart E – Exceptions to expenditures**

14

15 **§ 100.130 Scope**

16 (a) The term expenditure does not include payments, gifts, or other things of value
17 described in this subpart.

18 (b) For the purpose of this subpart, a payment made by an individual shall not be
19 attributed to any other individual, unless otherwise specified by that other individual. To
20 the extent that a payment made by an individual qualifies as a contribution, the provisions
21 of 11 CFR 110.1(k) shall apply.

22

23

1 **§ 100.131 Testing the waters.**

2 (a) General exemption. Payments made solely for the purpose of determining
3 whether an individual should become a candidate are not expenditures. Examples of
4 activities permissible under this exemption if they are conducted to determine whether an
5 individual should become a candidate include, but are not limited to, conducting a poll,
6 telephone calls, and travel. Only funds permissible under the Act may be used for such
7 activities. The individual shall keep records of all such payments. See 11 CFR 101.3. If
8 the individual subsequently becomes a candidate, the payments made are subject to the
9 reporting requirements of the Act. Such expenditures must be reported with the first
10 report filed by the principal campaign committee of the candidate, regardless of the date
11 the payments were made.

12 (b) Exemption not applicable to individuals who have decided to become candidates.
13 This exemption does not apply to payments made for activities indicating that an
14 individual has decided to become a candidate for a particular office or for activities
15 relevant to conducting a campaign. Examples of activities that indicate that an individual
16 has decided to become a candidate include, but are not limited to:

- 17 (1) The individual uses general public political advertising to publicize his
18 or her intention to campaign for Federal office.
- 19 (2) The individual raises funds in excess of what could reasonably be
20 expected to be used for exploratory activities or undertakes activities
21 designed to amass campaign funds that would be spent after he or she
22 becomes a candidate.

- 1 (3) The individual makes or authorizes written or oral statements that
2 refer to him or her as a candidate for a particular office.
- 3 (4) The individual conducts activities in close proximity to the election or
4 over a protracted period of time.
- 5 (5) The individual has taken action to qualify for the ballot under State
6 law.

7 **§ 100.132 News story, commentary, or editorial by the media.**

8 Any cost incurred in covering or carrying a new story, commentary, or editorial
9 by any broadcasting station (including a cable television operator, programmer or
10 producer), newspaper, magazine, or other periodical publication is not an expenditure
11 unless the facility is owned or controlled by any political party, political committee, or
12 candidate, in which case the costs for a news story:

- 13 (a) That represents a bona fide news account communicated in a publication of
14 general circulation or on a licensed broadcasting facility; and
- 15 (b) That is part of a general pattern of campaign-related news account that give
16 reasonably equal coverage to all opposing candidates in the circulation or listening area,
17 is not an expenditure.

18 **§ 100.133 Voter registration and get-out-the-vote activities.**

19 Any cost incurred for activity designed to encourage individuals to register to vote
20 or to vote is not an expenditure if no effort is or has been made to determine the party or
21 candidate preference of individuals before encouraging them to register to vote or to vote,
22 except that corporations and labor organizations shall engage in such activity in
23 accordance with 11 CFR 114.4 (c) and (d). See also 11 CFR 114.3(c)(4).

1 **§ 100.134 Internal communications by corporations, labor organizations, and**
2 **membership organizations.**

3 (a) General provision. Any cost incurred for any communication by a membership
4 organization, including a labor organization, to its members, or any cost incurred for any
5 communication by a corporation to its stockholders or executive or administrative
6 personnel, is not an expenditure, except that the costs directly attributable to such a
7 communication that expressly advocates the election or defeat of a clearly identified
8 candidate (other than a communication primarily devoted to subjects other than the
9 express advocacy of the election or defeat of a clearly identified candidate) shall, if those
10 costs exceed \$2,000 per election, be reported to the Commission on FEC Form 7 in
11 accordance with 11 CFR 104.6.

12 (b) Definition of labor organization. For purposes of this section, labor organization
13 means an organization of any kind (any local, national, or international union, or any
14 local or State central body of a federation of unions is each considered a separate labor
15 organization for purposes of this section) or any agency or employee representative
16 committee or plan, in which employees participate and that exists for the purpose, in
17 whole or in part, of dealing with employers concerning grievances, labor disputes, wages,
18 rates of pay, hours of employment, or conditions of work.

19 (c) Definition of stockholder. For purposes of this section, stockholder means a
20 person who has a vested beneficial interest in stock, has the power to direct how that
21 stock shall be voted, if it is voting stock, and has the right to receive dividends.

22 (d) Definition of executive or administrative personnel. For purposes of this section,
23 executive or administrative personnel means individuals employed by a corporation who

1 are paid on a salary rather than hourly basis and who have policymaking, managerial,
2 professional, or supervisory responsibilities.

3 (1) This definition includes—

4 (i) Individuals who run the corporation's business, such as officers,
5 other executives, and plant, division, and section managers; and

6 (ii) Individuals following the recognized professions, such as lawyers
7 and engineers.

8 (2) This definition does not include—

9 (i) Professionals who are represented by a labor organization;

10 (ii) Salaried foremen and other salaried lower level supervisors having
11 direct supervision over hourly employees;

12 (iii) Former or retired personnel who are not stockholders; or

13 (iv) Individuals who may be paid by the corporation, such as
14 consultants, but who are not employees, within the meaning of 26
15 CFR 31.3401(c)-(1), of the corporation for the purpose of the
16 collection of, and liability for, employee tax under 26 CFR
17 1.3402(a)-(1).

18 (3) Individuals on commission may be considered executive or administrative
19 personnel if they have policymaking, managerial, professional, or supervisory
20 responsibility and if the individuals are employees, within the meaning of 26
21 CFR 31.3401(c)-(1), of the corporation for the purpose of the collection of,
22 and liability for, employee tax under 26 CFR 31.3402(a)-(1).

1 (4) The Fair Labor Standards Act, 29 U.S.C. 201, et seq. and the regulations
2 issued pursuant to such Act, 29 CFR part 541, may serve as a guideline in
3 determining whether individuals have policymaking, managerial,
4 professional, or supervisory responsibilities.

5 (e) Definition of membership organization. For purposes of this section
6 membership organization means an unincorporated association, trade association,
7 cooperative, corporation without capital stock, or a local, national, or international labor
8 organization that:

- 9 (1) Is composed of members, some or all of whom are vested with the power and
10 authority to operate or administer the organization, pursuant to the
11 organization's articles, bylaws, constitution or other formal organizational
12 documents;
- 13 (2) Expressly states the qualifications and requirements for membership in its
14 articles, bylaws, constitution or other formal organizational documents;
- 15 (3) Makes its articles, bylaws, constitution or other formal organizational
16 documents available to its members;
- 17 (4) Expressly solicits persons to become members;
- 18 (5) Expressly acknowledges the acceptance of membership, such as by sending a
19 membership card or including the member's name on a membership
20 newsletter list; and
- 21 (6) Is not organized primarily for the purpose of influencing the nomination for
22 election, or election, of any individual for Federal office.

1 (f) Definition of members. For purposes of this section, the term members includes
2 all persons who are currently satisfying the requirements for membership in a
3 membership organization, affirmatively accept the membership organization's invitation
4 to become a member, and either:

5 (1) Have some significant financial attachment to the membership organization,
6 such as a significant investment or ownership stake; or

7 (2) Pay membership dues at least annually, of a specific amount predetermined by
8 the organization; or

9 (3) Have a significant organizational attachment to the membership organization
10 that includes: affirmation of membership on at least an annual basis and direct
11 participatory rights in the governance of the organization. For example, such
12 rights could include the right to vote directly or indirectly for at least one
13 individual on the membership organization's highest governing board; the
14 right to vote on policy questions where the highest governing body of the
15 membership organization is obligated to abide by the results; the right to
16 approve the organization's annual budget; or the right to participate directly in
17 similar aspects of the organization's governance.

18 (g) Additional considerations in determining membership. Notwithstanding the
19 requirements of paragraph (f) of this section, the Commission may determine, on a
20 case-by-case basis, that persons who do not precisely meet the requirements of the
21 general rule, but have a relatively enduring and independently significant financial or
22 organizational attachment to the organization, may be considered members for purposes
23 of this section. For example, student members who pay a lower amount of dues while in

1 school, long term dues paying members who qualify for lifetime membership status with
2 little or no dues obligation, and retired members may be considered members of the
3 organization.

4 (h) Members of local unions. Notwithstanding the requirements of paragraph (f) of
5 this section, members of a local union are considered to be members of any national or
6 international union of which the local union is a part and of any federation with which the
7 local, national, or international union is affiliated.

8 (i) National federation structures. In the case of a membership organization that has
9 a national federation structure or has several levels, including, for example, national,
10 state, regional and/or local affiliates, a person who qualifies as a member of any entity
11 within the federation or of any affiliate by meeting the requirements of paragraphs (f)(1),
12 (2), or (3) of this section shall also qualify as a member of all affiliates for purposes of
13 paragraphs (d) through (i) of this section. The factors set forth at 11 CFR 100.5(g)(2), (3)
14 and (4) shall be used to determine whether entities are affiliated for purposes of this
15 paragraph.

16 (j) Non-applicability of state law in determining status of membership organizations.
17 The status of a membership organization, and of members, for purposes of this section,
18 shall be determined pursuant to paragraphs (d) through (i) of this section and not by
19 provisions of state law governing unincorporated associations, trade associations,
20 cooperatives, corporations without capital stock, or labor organizations.

21 (k) Definition of election. For purposes of this section, election means two separate
22 processes in a calendar year, to each of which the \$2,000 threshold described above
23 applies separately. The first process is comprised of all primary elections for Federal

1 office, whenever and wherever held; the second process is comprised of all general
2 elections for Federal office, whenever and wherever held. The term election shall also
3 include each special election held to fill a vacancy in a Federal office (11 CFR 100.2(f))
4 or each runoff election (11 CFR 100.2(d)).

5 (l) Definition of corporation. For purposes of this section, corporation means any
6 separately incorporated entity, whether or not affiliated.

7 (m) Reporting. When the aggregate costs under this section exceed \$2,000 per
8 election, all costs of the communication(s) shall be reported on the filing dates specified
9 in 11 CFR 104.6, and shall include the total amount expended for each candidate
10 supported.

11 **§ 100.135 Use of a volunteer's real or personal property.**

12 No expenditure results where an individual, in the course of volunteering personal
13 services on his or her residential premises to any candidate or political committee of a
14 political party, provides the use of his or her real or personal property to such candidate
15 for candidate-related activity or to such political committee of a political party for
16 party-related activity. For the purposes of this section, an individual's residential
17 premises shall include a recreation room in a residential complex where the individual
18 volunteering services resides, provided that the room is available for use without regard
19 to political affiliation. A nominal fee paid by such individual for the use of such room is
20 not an expenditure.

21 **§ 100.136 Use of a church or a community room.**

22 No expenditure results where an individual, in the course of volunteering personal
23 services to any candidate or political committee of a political party, obtains the use of a

1 church or community room and provides such room to any candidate for
2 candidate-related activity or to any political committee of a political party for
3 party-related activity, provided that the room is used on a regular basis by members of the
4 community for noncommercial purposes and the room is available for use by members of
5 the community without regard to political affiliation. A nominal fee paid by such
6 individual for the use of such room is not an expenditure.

7 **§ 100.137 Invitations, food, and beverages.**

8 The cost of invitations, food, and beverages is not an expenditure where such
9 items are voluntarily provided by an individual in rendering voluntary personal services
10 on the individual's residential premises or in a church or community room as specified at
11 11 CFR 100.106 and 100.107 to a candidate for candidate-related activity or to a political
12 committee of a political party for party-related activity, to the extent that: The aggregate
13 value of such invitations, food and beverages provided by the individual on behalf of the
14 candidate does not exceed \$1,000 with respect to any single election; and on behalf of all
15 political committees of each political party does not exceed \$2,000 in any calendar year.

16 **§ 100.138 Sale of food and beverages by vendor.**

17 The sale of any food or beverage by a vendor (whether incorporated or not) for
18 use in a candidate's campaign, or for use by a political committee of a political party, at a
19 charge less than the normal or comparable commercial charge, is not an expenditure,
20 provided that the charge is at least equal to the cost of such food or beverage to the
21 vendor, to the extent that: The aggregate value of such discount given by the vendor on
22 behalf of any single candidate does not exceed \$1,000 with respect to any single election;

1 and on behalf of all political committees of each political party does not exceed \$2,000 in
2 a calendar year.

3 **§ 100.139 Unreimbursed payment for transportation and subsistence expenses.**

4 (a) Transportation expenses. Any unreimbursed payment for transportation expenses
5 incurred by any individual on behalf of any candidate or political committee of a political
6 party is not an expenditure to the extent that:

7 (1) The aggregate value of the payments made by such individual on behalf of
8 a candidate does not exceed \$1,000 with respect to a single election; and

9 (2) On behalf of all political committees of each political party does not
10 exceed \$2,000 in a calendar year.

11 (b) Subsistence expenses. Any unreimbursed payment from a volunteer's personal
12 funds for usual and normal subsistence expenses incident to volunteer activity is not an
13 expenditure.

14 **§ 100.140 Slate cards and sample ballots.**

15 The payment by a State or local committee of a political party of the costs of
16 preparation, display, or mailing or other distribution incurred by such committee with
17 respect to a printed slate card, sample ballot, palm card, or other printed listing(s) of three
18 or more candidates for any public office for which an election is held in the State in
19 which the committee is organized is not an expenditure. The payment of the portion of
20 such costs allocable to Federal candidates must be made from funds subject to the
21 limitations and prohibitions of the Act. If made by a political party committee, such
22 payments shall be reported by that committee as disbursements, but need not be allocated
23 in committee reports to specific candidates. This exemption shall not apply to costs

1 incurred by such a committee with respect to the preparation and display of listings made
2 on broadcasting stations, or in newspapers, magazines, and similar types of general
3 public political advertising such as billboards. But see 11 CFR part 300 for exempt
4 activities that also constitute Federal election activity.

5 **§ 100.141 Payment by corporations and labor organizations.**

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

9 **§ 100.142 Bank loans.**

10 (a) General provisions. Repayment of a loan of money to a candidate or a political
11 committee by a State bank, a federally chartered depository institution (including a
12 national bank) or a depository institution whose deposits and accounts are insured by the
13 Federal Deposit Insurance Corporation or the National Credit Union Administration is
14 not an expenditure by the lending institution if such loan is made in accordance with
15 applicable banking laws and regulations and is made in the ordinary course of business.

16 A loan will be deemed to be made in the ordinary course of business if it:

- 17 (1) Bears the usual and customary interest rate of the lending institution for
18 the category of loan involved;
- 19 (2) Is made on a basis that assures repayment;
- 20 (3) Is evidenced by a written instrument; and
- 21 (4) Is subject to a due date or amortization schedule.

22 (b) Reporting. Such loans shall be reported by the political committee in accordance
23 with 11 CFR 104.3(a) and (d).

1 (c) Endorsers and guarantors. Each endorser or guarantor shall be deemed to have
2 contributed that portion of the total amount of the loan for which he or she agreed to be
3 liable in a written agreement, except that, in the event of a signature by the candidate's
4 spouse, the provisions of 11 CFR 100.52(b)(4) shall apply. Any reduction in the unpaid
5 balance of the loan shall reduce proportionately the amount endorsed or guaranteed by
6 each endorser or guarantor in such written agreement. In the event that the loan
7 agreement does not stipulate the portion of the loan for which each endorser or guarantor
8 is liable, the loan shall be considered an expenditure by each endorser or guarantor in the
9 same proportion to the unpaid balance that each endorser or guarantor bears to the total
10 number of endorsers or guarantors.

11 (d) Overdrafts. For the purpose of this section, repayment of an overdraft made on a
12 checking or savings account of a political committee shall be considered an expenditure
13 unless:

- 14 (1) The overdraft is made on an account that is subject to automatic
15 overdraft protection; and
- 16 (2) The overdraft is subject to a definite interest rate and a definite
17 repayment schedule.

18 (e) Made on a basis that assures repayment. A loan, including a line of credit, shall
19 be considered made on a basis that assures repayment if it is obtained using either of the
20 sources of repayment described in paragraphs (e)(1) or (2) of this section, or a
21 combination of paragraphs (e)(1) or (2) of this section:

- 22 (1) (i) The lending institution making the loan has perfected a security

1 interest in collateral owned by the candidate or political committee
2 receiving the loan; the fair market value of the collateral is equal to
3 or greater than the loan amount and any senior liens as determined
4 on the date of the loan; and the candidate or political committee
5 provides documentation to show that the lending institution has a
6 perfected security interest in the collateral. Sources of collateral
7 include, but are not limited to, ownership in real estate, personal
8 property, goods, negotiable instruments, certificates of deposit,
9 chattel papers, stocks, accounts receivable and cash on deposit.

10 (ii) Amounts guaranteed by secondary sources of repayment, such as
11 guarantors and cosigners, shall not exceed the contribution limits
12 of 11 CFR part 110 or contravene the prohibitions of 11 CFR
13 110.4, part 114 and part 115; or

14 (2) The lending institution making the loan has obtained a written agreement
15 whereby the candidate or political committee receiving the loan has
16 pledged future receipts, such as public financing payments under 11 CFR
17 part 9001 through part 9012 or part 9031 through 9039, contributions, or
18 interest income, provided that:

19 (i) The amount of the loan(s) obtained the basis of such funds does
20 not exceed the amount of pledged funds;

21 (ii) Loan amounts are based on a reasonable expectation of the receipt
22 of pledged funds. To that end, the candidate or political committee
23 must furnish the lending institution documentation, i.e., cash flow

1 charts or other financial plans, that reasonably establish that such
2 future funds will be available;

3 (iii) A separate depository account is established at the lending
4 institution or the lender obtains an assignment from the candidate
5 or political committee to access funds in a committee account at
6 another depository institution that meets the requirements of
7 11 CFR 103.2, and the committee has notified the other institution
8 of this assignment;

9 (iv) The loan agreement requires the deposit of the public financing
10 payments, contributions, interest or other income pledged as
11 collateral into the separate depository account for the purpose of
12 retiring the debt according to the repayment requirements of the
13 loan; and

14 (v) In the case of public financing payments, the borrower authorizes
15 the Secretary of the Treasury to directly deposit the payments into
16 the depository account for the purpose of retiring the debt.

17 (3) If the requirements set forth in paragraph (e) of this section are not met,
18 the Commission will consider the totality of circumstances on a case-by-
19 case basis in determining whether a loan was made on a basis that assures
20 repayment.

21 (f) This section shall not apply to loans described in 11 CFR 100.83 and 100.143.

22

23

1 **§ 100.143 Brokerage loans and lines of credit to candidates.**

2 Repayment of a loan of money derived from an advance on a candidate's
3 brokerage account, credit card, home equity line of credit, or other line of credit available
4 to the candidate, as described in 11 CFR 100.83, is not an expenditure.

5 **§ 100.144 Office building for State, local, or district party committees or**
6 **organizations.**

7 A payment, distribution, loan, advance, or deposit of money or anything of value,
8 made by, or on behalf of, a State, local, or district party committee or organization for the
9 purchase or construction of an office building in accordance with 11 CFR 300.35 is not
10 an expenditure.

11 **§ 100.145 Legal or accounting services to political party committees.**

12 Legal or accounting services rendered to or on behalf of any political
13 committee of a political party are not expenditures if the person paying for such services
14 is the regular employer of the individual rendering the services and such services are not
15 attributable to activities that directly further the election of any designated candidate for
16 Federal office. For purposes of this section, a partnership shall be deemed to be the
17 regular employer of a partner. Amounts paid by the regular employer for such services
18 shall be reported by the committee receiving such services in accordance with 11 CFR
19 104.3(h).

20 **§ 100.146 Legal or accounting services to other political committees.**

21 Legal or accounting services rendered to or on behalf of an authorized committee
22 of a candidate or any other political committee are not expenditures if the person paying
23 for such services is the regular employer of the individual rendering such services and if

1 the services are solely to ensure compliance with the Act or 26 U.S.C. 9001 et seq. and
2 9032 et seq. For purposes of this section, a partnership shall be deemed to be the regular
3 employer of a partner. Amounts paid by the regular employer for these services shall be
4 reported by the committee receiving such services in accordance with 11 CFR 104.3(h).
5 Expenditures for these services by a candidate certified to receive Primary Matching
6 Funds under 11 CFR part 9034 do not count against such candidate's expenditure
7 limitations under 11 CFR part 9035 or 11 CFR 110.8. Unless paid for with federal funds
8 received pursuant to 11 CFR part 9005, disbursements for these services by a candidate
9 who is certified to receive payments from the Presidential Election Campaign Fund under
10 11 CFR part 9005 do not count against that candidate's expenditure limitations under
11 11 CFR 110.8.

12 **§ 100.147 Volunteer activity for party committees.**

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

18 (a) Exemption does not apply to general public communications or political
19 advertising. Such payment is not for costs incurred in connection with any broadcasting,
20 newspaper, magazine, billboard, direct mail, or similar type of general public
21 communication or political advertising. For the purposes of this paragraph, the term
22 direct mail means any mailing(s) by a commercial vendor or any mailing(s) made from
23 commercial lists.

- 1 (b) Allocation. The portion of the cost of such materials allocable to Federal
2 candidates is paid from contributions subject to the limitations and prohibitions of the
3 Act. But see 11 CFR part 300 for exempt activities that also constitute Federal election
4 activity.
- 5 (c) Contributions designated for Federal candidates. Such payment is not made from
6 contributions designated by the donor to be spent on behalf of a particular candidate or
7 candidates for Federal office. For purposes of this paragraph, a contribution shall not be
8 considered a designated contribution if the party committee disbursing the funds makes
9 the final decision regarding which candidate(s) shall receive the benefit of such
10 disbursement.
- 11 (d) Distribution of materials by volunteers. Such materials are distributed by
12 volunteers and not by commercial or for-profit operations. For the purposes of this
13 paragraph, payments by the party organization for travel and subsistence or customary
14 token payments to volunteers do not remove such individuals from the volunteer
15 category.
- 16 (e) Reporting. If made by a political party committee, such payments shall be
17 reported by that committee as disbursements, in accordance with 11 CFR 104.3, but need
18 not be allocated to specific candidates in committee reports.
- 19 (f) State candidates and their campaign committees. Payments by a State candidate
20 or his or her campaign committee to a State or local political party committee for the
21 State candidate's share of expenses for such campaign materials are not expenditures,
22 provided the amount paid by the State candidate or his or her committee does not exceed
23 his or her proportionate share of the expenses.

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

7 **§ 100.148 Volunteer activity for candidate.**

8 The payment by a candidate for any public office (including State or local office),
9 or by such candidate's authorized committee, of the costs of that candidate's campaign
10 materials that include information on or any reference to a candidate for Federal office
11 and that are used in connection with volunteer activities (such as pins, bumper stickers,
12 handbills, brochures, posters, and yard signs) is not an expenditure on behalf of such
13 candidate for Federal office, provided that the payment is not for the use of broadcasting,
14 newspapers, magazines, billboards, direct mail or similar types of general public
15 communication or political advertising. The payment of the portion of the cost of such
16 materials allocable to Federal candidates shall be made from contributions subject to the
17 limitations and prohibitions of the Act. For purposes of this section, the term direct mail
18 means mailings by commercial vendors or mailings made from lists that were not
19 developed by the candidate. But see 11 CFR part 300 for exempt activities that also
20 constitute Federal election activity.

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1 § 100.149 Voter registration and get-out-the-vote activities for Presidential
2 candidates ("coattails" exception).

3 The payment by a State or local committee of a political party of the costs of voter
4 registration and get-out-the-vote activities conducted by such committee on behalf of the
5 Presidential and Vice Presidential nominee(s) of that party is not an expenditure for the
6 purpose of influencing the election of such candidates provided that the following
7 conditions are met:

8 (a) Exemption not applicable to general public communication or political
9 advertising. Such payment is not for the costs incurred in connection with any
10 broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general
11 public communication or political advertising. For purposes of this paragraph, the term
12 direct mail means any mailing(s) by a commercial vendor or any mailing(s) made from
13 commercial lists.

14 (b) Allocation. The portion of the costs of such activities allocable to Federal
15 candidates is paid from contributions subject to the limitations and prohibitions of the
16 Act. But see 11 CFR part 300 for exempt activities that also constitute Federal election
17 activity.

18 (c) Contributions designated for Federal candidates. Such payment is not made from
19 contributions designated to be spent on behalf of a particular candidate or candidates for
20 Federal office. For the purposes of this paragraph, a contribution shall not be considered
21 a designated contribution if the party committee disbursing the funds makes the final
22 decision regarding which candidate(s) shall receive the benefit of such disbursement.

1 (d) References to House or Senate candidates. For purposes of this section, if such
2 activities include references to any candidate(s) for the House or Senate, the costs of such
3 activities that are allocable to that candidate(s) shall be an expenditure on behalf of such
4 candidate(s) unless the mention of such candidate(s) is merely incidental to the overall
5 activity.

6 (e) Phone banks. For purposes of this section, payment of the costs incurred in the
7 use of phone banks in connection with voter registration and get-out-the-vote activities is
8 not an expenditure when such phone banks are operated by volunteer workers. The use
9 of paid professionals to design the phone bank system, develop calling instructions and
10 train supervisors is permissible. The payment of the costs of such professional services is
11 not an expenditure but shall be reported as a disbursement in accordance with 11 CFR
12 104.3 if made by a political committee.

13 (f) Reporting of payments for voter registration and get-out-the-vote activities. If
14 made by a political committee, such payments for voter registration and get-out-the-vote
15 activities shall be reported by that committee as disbursements, in accordance with
16 11 CFR 104.3 but such payments need not be allocated to specific candidates in
17 committee reports except as provided in paragraph (d) of this section.

18 (g) Exemption not applicable to donations by a national committee of a political party
19 to a State or local party committee for voter registration and get-out-the-vote activities.
20 Payments made from funds donated by a national committee of a political party to a State
21 or local party committee for voter registration and get-out-the-vote activities shall not
22 qualify under this exemption. Rather, such funds shall be subject to the limitations of
23 2 U.S.C. 441a(d) and 11 CFR 110.7.

1 **§ 100.150 Ballot access fees.**

2 Amounts transferred by a party committee to another party committee or
3 payments made to the appropriate State official of fees collected from candidates or their
4 authorized committees as a condition of ballot access are not expenditures.

5 **§ 100.151 Recounts.**

6 A purchase, payment, distribution, loan, advance, or deposit of money or anything
7 of value made with respect to a recount of the results of a Federal election, or an election
8 contest concerning a Federal election, is not an expenditure except that the prohibitions of
9 11 CFR 110.4(a) and part 114 apply.

10 **§ 100.152 Fundraising costs for Presidential candidates.**

11 (a) Costs incurred in connection with the solicitation of contributions. Any costs
12 incurred by a candidate or his or her authorized committee(s) in connection with the
13 solicitation of contributions are not expenditures if incurred by a candidate who has been
14 certified to receive Presidential Primary Matching Fund Payments, or by a candidate who
15 has been certified to receive general election public financing under 26 U.S.C. 9004 and
16 who is soliciting contributions in accordance with 26 U.S.C. 9003(b)(2) or 9003(c)(2) to
17 the extent that the aggregate of such costs does not exceed 20 percent of the expenditure
18 limitation applicable to the candidate. These costs shall, however, be reported as
19 disbursements pursuant to 11 CFR part 104.

20 (b) Definition of in connection with the solicitation of contributions. For a candidate
21 who has been certified to receive general election public financing under 26 U.S.C. 9004
22 and who is soliciting contributions in accordance with 26 U.S.C. 9003(b)(2) or
23 9003(c)(2), in connection with the solicitation of contributions means any cost reasonably

1 related to fundraising activity, including the costs of printing and postage, the production
2 of and space or air time for, advertisements used for fundraising, and the costs of meals,
3 beverages, and other costs associated with a fundraising reception or dinner.

4 (c) Limitation on costs that may be exempted. For a candidate who has been certified
5 to receive Presidential Primary Matching Fund Payments, the costs that may be exempted
6 as fundraising expenses under this section shall not exceed 20% of the overall
7 expenditure limitation under 11 CFR 9035.1, and shall equal the total of:

- 8 (1) All amounts excluded from the state expenditure limitations for
9 exempt fundraising activities under 11 CFR 110.8(c)(2), plus
- 10 (2) An amount of costs that would otherwise be chargeable to the overall
11 expenditure limitation but that are not chargeable to any state
12 expenditure limitation, such as salary and travel expenses. See 11 CFR
13 106.2.

14 **§ 100.153 Routine living expenses.**

15 Payments by a candidate from his or her personal funds, as defined at 11 CFR
16 110.10(b), for the candidate's routine living expenses that would have been incurred
17 without candidacy, including the cost of food and residence, are not expenditures.

18 Payments for such expenses by a member of the candidate's family as defined in 11 CFR
19 113.1(g)(7), are not expenditures if the payments are made from an account jointly held
20 with the candidate, or if the expenses were paid by the family member before the
21 candidate became a candidate.

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1 § 100.154 Candidate debates.

2 Funds used to defray costs incurred in staging candidate debates in accordance
3 with the provisions of 11 CFR 110.13 and 114.4(f) are not expenditures.
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10 David M. Mason
11 Chairman
12 Federal Election Commission

13 DATED: _____
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