



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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March 1, 2004

**MEMORANDUM**

**TO:** The Commission

**THROUGH:** James A. Pehrkon  
Staff Director

**FROM:** Lawrence H. Norton  
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**AGENDA ITEM**  
For Meeting of: 03-04-04

**SUBMITTED LATE**

**SUBJECT:** Draft Notice of Proposed Rulemaking on Political Committee Status

Attached is the draft Notice of Proposed Rulemaking ("NPRM") addressing issues related to the political committee status including the definitions of "expenditure" and "political committee" and the allocation rules. This draft NPRM reflects discussions with the Regulations Committee.

A Commission vote is required to approve the attached NPRM for publication in the *Federal Register*.

Attachment

# Political Committee Status: Notice of Proposed Rulemaking

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**FEDERAL ELECTION COMMISSION**  
**11 CFR Parts 100, 102, 104, 106 and 114**

[Notice 2004 - \_\_]

**Political Committee Status**

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Federal Election Commission is seeking comment on whether to amend the definition of “political committee” applicable to nonconnected committees. The Commission is also considering amending its current regulations to address when disbursements for certain election activity should be treated as “expenditures.” Related amendments to the allocation regulations for nonconnected committees and separate segregated funds are also under consideration to determine whether those regulations need further refinement. While the Commission requests comments on proposed changes to its rules, it has made no final decisions on any of the proposed revisions in this Notice. Further information is provided in the supplementary information that follows.

**DATES:** The Commission will hold a hearing on these proposed rules on April 14 and 15, 2004, at 10:00 a.m. Commenters wishing to testify at the hearing must submit their request to testify along with their written or electronic comments by April 5, 2004.

1 Commenters who do not wish to testify must submit their written  
2 or electronic comments by April 9, 2004.

3 **ADDRESSES:**

4 All comments should be addressed to Ms. Mai T. Dinh, Acting  
5 Assistant General Counsel, and must be submitted in either  
6 electronic or written form. Commenters are strongly encouraged  
7 to submit comments electronically to ensure timely receipt and  
8 consideration. Electronic mail comments should be sent to  
9 politicalcommitteestatus@fec.gov and must include the full name,  
10 electronic mail address and postal service address of the  
11 commenter. Electronic mail comments that do not contain the full  
12 name, electronic mail address and postal service address of the  
13 commenter will not be considered. If the electronic mail  
14 comments include an attachment, the attachment must be in the  
15 Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed  
16 comments should be sent to (202) 219-3923, with printed copy  
17 follow-up to ensure legibility. Written comments and printed  
18 copies of faxed comments should be sent to the Federal Election  
19 Commission, 999 E Street, N.W., Washington, D.C. 20463. The  
20 Commission will post public comments on its Web site. The  
21 hearing will be held in the Commission's ninth floor meeting  
room, 999 E Street, N.W., Washington, D.C.

1 **FOR FURTHER**  
2 **INFORMATION**  
3 **CONTACT:**

Ms. Mai T. Dinh, Acting Assistant General Counsel, Mr. J. Duane  
Pugh Jr., Senior Attorney, or Mr. Daniel E. Pollner, Attorney, 999  
E Street, N.W., Washington, DC 20463, (202) 694-1650 or (800)  
424-9530.

7 **SUPPLEMENTARY**  
8 **INFORMATION:**

9 **I. INTRODUCTION**

10 On March 7, 2001, the Commission published an Advance Notice of Proposed  
11 Rulemaking (“ANPR”) seeking comment on the definitions of “political committee,”  
12 “contribution” and “expenditure.” See “Definition of Political Committee; Advance  
13 Notice of Proposed Rulemaking,” 66 Fed. Reg. 13681 (Mar. 7, 2001). After receiving  
14 comments on the ANPR,<sup>1</sup> the Commission voted on September 27, 2001 to hold that  
15 rulemaking in abeyance pending changes in legislation, future judicial decisions, or other  
16 action. The Bipartisan Campaign Reform Act of 2002 (“BCRA”), which amended the  
17 Federal Election Campaign Act (“FECA” or “the Act”), was signed into law on March  
18 27, 2002. The Supreme Court upheld most of BCRA in McConnell v. FEC, 540 U.S. ---,  
19 124 S. Ct. 619 (2003).

20 McConnell recognized that regulation of certain activities that affect Federal  
21 elections is a valid measure to prevent circumvention of FECA’s contribution limitations  
22 and prohibitions. Consequently, the Commission is undertaking this rulemaking to  
23 revisit the issue of whether the current definition of “political committee” adequately

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<sup>1</sup> The ANPR and related comments are available on the FEC’s website at:  
<http://www.fec.gov/register.htm> under “Definition of Political Committee.”

1 encompasses all organizations that should be considered political committees subject to  
2 the limitations, prohibitions and reporting requirements of FECA.

3 FECA, and the Commission's regulations, with certain exceptions, define a  
4 political committee as "any committee, club, association, or other group of persons which  
5 receives contributions aggregating in excess of \$1,000 in a calendar year or which makes  
6 expenditures aggregating in excess of \$1,000 during a calendar year." 2 U.S.C.  
7 431(4)(A); 11 CFR 100.5(a). FECA subjects political committees to certain registration  
8 and reporting requirements, as well as limitations and prohibitions on the contributions  
9 they receive and make, that do not apply to organizations that are not political  
10 committees. See, e.g., 2 U.S.C. 432, 433, 441a, 441b; 11 CFR part 102.

11 While the statutory and regulatory definitions of "political committee" set forth  
12 above depend solely on the dollar amount of annual contributions received and  
13 expenditures made, the Supreme Court, in Buckley v. Valeo, explained that to fulfill the  
14 purposes of FECA, the definition of political committee "need only encompass  
15 organizations that are under the control of a candidate or the major purpose of which is  
16 the nomination or election of a candidate," and does not "reach groups engaged purely in  
17 issue discussion." Buckley v. Valeo, 424 U.S. 1, 79 (1976) (emphasis added). The  
18 Supreme Court has reaffirmed the applicability of the "major purpose" test in subsequent  
19 opinions. See FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238  
20 (1986)("MCFL"). Therefore, the definition of "political committee" arguably should



1 have two elements: first, the \$1,000 contribution or expenditure threshold;<sup>2</sup> and second,  
2 the major purpose test for organizations not controlled by Federal candidates.

3 The FECA generally defines “expenditures” as “(i) any purchase, payment,  
4 distribution, loan advance, deposit, or gift of money or anything of value, made by any  
5 person for the purpose of influencing any election for Federal office; and (ii) a written  
6 contract, promise, or agreement to make an expenditure.” 2 U.S.C. 431(9)(A). The  
7 definition also includes a lengthy list of exceptions. 2 U.S.C. 431(9)(B). Commission  
8 regulations at 11 CFR part 100, subparts D and E implement this statutory definition.  
9 Since the enactment of the FECA, there have been debates about whether certain  
10 activities, not specifically mentioned in the statutory or regulatory definitions, were  
11 expenditures. BCRA did not amend the definition of expenditure, but instead categorized  
12 certain election-related activities into new statutory definitions. McConnell shed light on  
13 what the Supreme Court considered to be activities that could affect Federal elections.  
14 See McConnell, 124 S. Ct. at 673-675 and 696-697 (upholding BCRA’s provisions  
15 concerning Federal election activity and electioneering communications).

16 This notice of proposed rulemaking (“NPRM”) explores whether and how the  
17 Commission should amend its regulations defining whether an entity is a nonconnected  
18 political committee<sup>3</sup> and what constitutes an “expenditure” under 11 CFR 100.5(a) or 11  
19 CFR Part 100, Subparts D and E. With respect to the second element of the definition of

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<sup>2</sup> This threshold, however, does not apply to separate segregated funds and state or local party committees. See 2 U.S.C. 431(4)(B) and (C) and 11 CFR 100.5(b) and (c).

<sup>3</sup> The Commission is not proposing to change the definition of “political committee” applicable to party committees, Federal candidates’ authorized committees or separate segregated funds.

1 “political committee,” the Commission’s regulations do not expressly incorporate the  
2 “major purpose” test into 11 CFR 100.5(a). However, the Commission does apply the  
3 “major purpose” test when assessing whether an organization is a political committee.  
4 See, e.g., Advisory Opinions (“AOs”) 1994-25 and 1995-11. In this NPRM, the  
5 Commission is seeking comment on whether to amend its regulations to incorporate the  
6 major purpose test into the regulatory definition of “political committee” in 11 CFR  
7 100.5(a). Furthermore, the Commission seeks comment on whether the effective date for  
8 any final rules that the Commission may adopt should be delayed until after the next  
9 general election and whether there is a legal basis for delaying the effective date. The  
10 Commission also seeks comment on whether changing the definition of basic terms such  
11 as “political committee,” “expenditure,” and “contribution,” in the middle of an election  
12 year would cause undue disruption to the regulated community.

## 13 **II. EXPENDITURES**

14 In Buckley, 424 U.S. at 62-63, the Supreme Court first examined FECA’s  
15 definitions of “expenditure” and “contribution” and their operative phrase, which is “for  
16 the purpose of influencing any election for Federal office.” See 2 U.S.C. 431(8) and (9)  
17 The Supreme Court found that the ambiguity of this phrase posed constitutional problems  
18 as applied to expenditures made by individuals other than candidates and organizations  
19 other than political committees. Buckley, 424 U.S. at 77. To avoid the vagueness and  
20 potential overbreadth of the statutory definition, Buckley adopted a narrowing  
21 construction so that FECA’s definition of “expenditure” reached “only funds used for

1 communications that expressly advocate the election or defeat of a clearly identified  
2 candidate.” Buckley, 424 U.S. at 79-80.<sup>4</sup>

3 **A. McConnell v. FEC, 540 U.S. ---, 124 S. Ct. 619 (2003).**

4 The Supreme Court clarified in McConnell that Buckley’s “express advocacy”  
5 test is not a constitutional barrier in determining whether an expenditure is “for the  
6 purpose of influencing any Federal election.” McConnell, 124 S.Ct. at 688-89. The  
7 Supreme Court explained: “In narrowly reading the FECA provisions in Buckley to  
8 avoid problems of vagueness and overbreadth, we nowhere suggested that a statute that  
9 was neither vague nor overbroad would be required to toe the same express advocacy  
10 line.” McConnell, 124 S.Ct. at 688.

11 With this understanding of express advocacy, the Supreme Court found  
12 constitutional Congress’ regulation of two types of activities addressed in BCRA:  
13 “Federal election activity,” as defined in 2 U.S.C. 431(20), and “electioneering  
14 communication,” as defined in 2 U.S.C. 434(f)(3)(A)(i). McConnell, 124 S.Ct. at 670-77  
15 and 685-99. In upholding BCRA’s amendments to FECA, the Supreme Court discussed  
16 the effects that Federal election activities and electioneering communications have on  
17 Federal elections.

18 **1. Federal Election Activities**

19 As the Supreme Court observed in McConnell, “[t]he core of [section 441i(b)] is a  
20 straightforward contribution regulation: It prevents donors from contributing nonfederal

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<sup>4</sup> A communication refers to a clearly identified candidate if it includes “the candidate’s name, nickname, photograph, or drawing” or if “the identity of the candidate is otherwise apparent through unambiguous reference [or] through unambiguous reference to his or her status a candidate.” 11 CFR 100.17.

1 funds to state and local party committees to help finance ‘Federal election activity.’” 124  
2 S.Ct. at 671.<sup>5</sup> The Supreme Court noted that this regulation arises out of Congressional  
3 recognition of “the close ties between federal candidates and state party committees.”  
4 Id., at 670. “Federal election activity” encompasses four distinct categories of activities:  
5 (1) voter registration activity during the 120 days preceding a regularly scheduled Federal  
6 election; (2) voter identification, get-out-the-vote (“GOTV”), and generic campaign  
7 activity that is conducted in connection with an election in which a candidate for Federal  
8 office appears on the ballot; (3) a public communication that refers to a clearly identified  
9 Federal candidate and that promotes, supports, attacks, or opposes a candidate for that  
10 office; and (4) the services provided by certain political party committee employees. See  
11 2 U.S.C. 431(20) through (24); 11 CFR 100.24 through 100.28. McConnell referred to  
12 all four types of Federal election activities as “electioneering,” and found BCRA’s  
13 definition of Federal election activities to be “narrowly focused” on “those contributions  
14 to state and local parties that can be used to benefit federal candidates directly.”  
15 McConnell, 124 S.Ct. at 671 and 674.

16         Considering the first two types of Federal election activities, which include  
17 certain voter registration, voter identification, GOTV and generic campaign activities, the  
18 Supreme Court determined that all of these activities “confer substantial benefits on  
19 federal candidates.” McConnell, 124 S.Ct. at 675. The Supreme Court also stated that  
20 “federal candidates reap substantial rewards from any efforts that increase the number of  
21 like-minded registered voters who actually go to the polls.” Id., 124 S.Ct. at 674.

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<sup>5</sup> The Supreme Court acknowledged that the Levin Amendment “carves out an exception to this general rule.” McConnell, 124 S.Ct. at 671.

1 McConnell described the factual record as “show[ing] that many of the targeted tax-  
2 exempt organizations engage in sophisticated and effective electioneering activities for  
3 the purpose of influencing elections, including waging broadcast campaigns promoting or  
4 attacking particular candidates and conducting large scale voter registration and GOTV.”  
5 Id., 124 S.Ct. at 678 n.68. Like the first two types, public communications that promote,  
6 support, attack, or oppose a clearly identified Federal candidate, “also undoubtedly have  
7 a dramatic effect on Federal elections. Such ads were a prime motivating force behind  
8 BCRA’s passage. . . . [A]ny public communication that promotes or attacks a clearly  
9 identified federal candidate directly affects the election in which he is participating.” Id.,  
10 124 S.Ct. at 675. Because the fourth type of Federal election activities applies on its face  
11 only to certain political party committees, it is not considered further in this proposal.  
12 2 U.S.C. 431(20)(A)(iv).

## 13 2. Electioneering Communications

14 An “electioneering communication” is any broadcast, cable, or satellite  
15 communication that refers to a clearly identified Federal candidate, is publicly distributed  
16 for a fee within 60 days before a general election or 30 days before a primary election or  
17 convention, and is targeted to the relevant electorate. See 2 U.S.C. 434(f)(3)(A)(i);  
18 11 CFR 100.29. For communications that refer to congressional candidates, targeting  
19 means the communication can be received by 50,000 persons in the relevant State or  
20 congressional district. 2 U.S.C. 434(f)(3)(C); 11 CFR 100.29(b)(5). For communications  
21 that refer to presidential candidates in the nomination context, “publicly distributed”  
22 means the communication can be received by 50,000 persons in the relevant State prior to  
23 its presidential primary election or anywhere in the United States prior to the presidential

1 nominating convention. 11 CFR 100.29(b)(3)(ii). BCRA establishes disclosure  
2 requirements for persons who make electioneering communications. 2 U.S.C. 434(f);  
3 11 CFR 104.20. McConnell upheld regulation of electioneering communications against  
4 a facial challenge, explaining that the definition of “electioneering communication”  
5 serves “to replace the narrowing construction of FECA’s disclosure provisions adopted  
6 by this Court in Buckley,” which, for nonpolitical committee groups, was the express  
7 advocacy construction. McConnell, 124 S.Ct. at 686 and 695. In so holding, the Court  
8 observed that “the definition of ‘electioneering communication’ raises none of the  
9 vagueness concerns that drove our analysis in Buckley.” Id., at 689.

10 BCRA also amended the definition of “contribution or expenditure” in  
11 2 U.S.C. 441b to include any payment for an electioneering communication, thereby  
12 expressly prohibiting corporations and labor organizations from using their general  
13 treasury funds to pay for electioneering communications. McConnell described  
14 electioneering communications subject to 2 U.S.C. 441b as “communications that are  
15 intended to, or have the effect of, influencing the outcome of federal elections.”  
16 McConnell, 124 S.Ct. at 654.

17 BCRA further provides that any disbursement for an electioneering  
18 communication that is coordinated with a candidate, candidate authorized committee, or a  
19 Federal, State, or local political party committee shall be treated as a contribution to the  
20 candidate or the candidate’s party and as an expenditure by that candidate or party.  
21 2 U.S.C. 441a(a)(7)(C).

22 In rejecting various challenges to BCRA’s electioneering communication  
23 requirements, the Supreme Court addressed the purpose and effect of electioneering

1 communications in several instances. McConnell concluded that while advertisers  
2 seeking to evade the express advocacy line create advertisements that “do not urge the  
3 viewer to vote for or against a candidate in so many words, they are no less clearly  
4 intended to influence the election.” McConnell, 124 S.Ct. at 689. The Supreme Court  
5 also referred a second time to the use of electioneering communications “to influence  
6 federal elections” and quoted approvingly from the decision below, which referred to  
7 electioneering communications as either “designed to influence federal elections” or, in  
8 fact, “influencing elections.” Id., at 691 (quoting McConnell v. FEC, 251 F.Supp.2d 176,  
9 at 237 (D.D.C. 2003)). The Supreme Court also concluded that “the vast majority” of  
10 advertisements that qualify as electioneering communications had an “electioneering  
11 purpose,” which the Court equated with advertisements that are “intended to influence  
12 the voters’ decisions and [that] have that effect.” McConnell, 124 S.Ct. at 696. The  
13 Court considered such advertisements to be “the functional equivalent of express  
14 advocacy.” Id.

15         The Commission seeks comment on whether the Supreme Court’s treatment of  
16 Federal election activity or electioneering communications in McConnell requires or  
17 permits the Commission to change its regulations defining “expenditure” and  
18 “contribution” in 11 CFR part 100, subparts B, C, D and E to include those concepts. In  
19 the alternative, the Commission seeks comment on whether McConnell recognizes  
20 additional activities that may be constitutionally regulated by Congress, but in the  
21 absence of new legislation doing so, the Commission is prohibited from expanding the  
22 regulatory definitions of “expenditure” and “contribution.”

1           The Commission further seeks comment on whether, even if it may so amend its  
2 regulations, the Commission should refrain from redefining such fundamental and  
3 statutorily defined terms, in the absence of further guidance from Congress. Is it  
4 consistent with BCRA to include all Federal election activity within the regulatory  
5 definition of “expenditure” when BCRA only added electioneering communications to  
6 the definition of “contribution or expenditure” in 2 U.S.C. 441b(b)(2)? Does BCRA’s  
7 specification in 2 U.S.C. 441a(a)(7)(C) that coordinated “disbursements” for  
8 electioneering communications can be contributions provide any guidance regarding  
9 whether payments for electioneering communications should be considered expenditures?  
10 Is it consistent with Congressional intent for the Commission to categorize voter  
11 registration, voter identification, get-out-the-vote and generic campaign activities by a  
12 state or local candidate committee as “for the purpose of influencing any election to  
13 Federal office?”

14           Does the definition of “independent expenditure” in 2 U.S.C. 431(17)(A), which  
15 requires express advocacy, limit Commission’s ability to define an “expenditure” to  
16 communications that include express advocacy? If not, can communications be  
17 considered “expenditures” if they fail to meet both the definition of “independent  
18 expenditure” in 2 U.S.C. 431(17) and the definition of “coordinated communication”  
19 under 11 CFR 109.21? Is the function of the definition of “independent expenditure” in  
20 2 U.S.C. 431(17)(A) limited to the 24-hour and 48-hour reporting requirements in  
21 2 U.S.C. 434(g)?



1           **B.       Proposed Regulations**

2           In this NPRM, the Commission considers whether, in light of McConnell, it  
3 should revise current regulations to reflect that certain communications and certain voter  
4 drive activities have the purpose of influencing Federal elections. This proposal includes  
5 several alternatives. The Commission has not made any final decisions on any of the  
6 proposed rules or alternatives, which are described below, and seeks comment on all of  
7 them.

8                       1.       Proposed 11 CFR 100.5 -- Definition of “political committee”

9           Current 11 CFR 100.5(a) specifies that any committee, club, association, or other  
10 group of persons that receives contributions aggregating in excess of \$1,000 or which  
11 makes expenditures aggregating in excess of \$1,000 during a calendar year is a political  
12 committee. In addition to considering amending this regulation to include Buckley’s  
13 major purpose test, the proposal for which is discussed separately below, the Commission  
14 is considering amending this definition so that the first three types of Federal election  
15 activity and electioneering communications would be counted toward the \$1,000  
16 expenditure thresholds.

17           Alternative 1-A would define those “expenditures” that count toward the \$1,000  
18 threshold, but this definition would not apply in any other context in which the term  
19 “expenditure” is used in FECA or in the Commission’s regulations.

20           The Commission is considering a number of issues related to Alternative 1-A.  
21 Should persons other than political party committees be subject to a rule that treats the  
22 first three types of Federal election activities as “expenditures” for purposes of the \$1,000  
23 threshold in the definition of “political committee?” Should all of Federal election

1 activity and all electioneering communications count toward political committee status,  
2 or should the Commission make distinctions to count only certain types of Federal  
3 election activity or only certain electioneering communications toward political  
4 committee status? For example, should Federal election activity that does not refer to a  
5 clearly identified Federal candidate count toward political committee status? Would a  
6 definition of “expenditure” that includes voter drive activities by a State or local  
7 candidate committees on behalf of their own candidacies be overly broad?

8           Should funds received for Federal election activities types 1 through 3 or  
9 electioneering communications count as contributions for purposes of the \$1,000  
10 threshold? If any disbursements for these activities should count as expenditures, should  
11 the corresponding funds received to make those disbursements count as contributions?  
12 Should the Commission treat funds raised by a State or local candidate committee  
13 through solicitations advocating their own election, as well as incidentally expressly  
14 advocating the election or defeat of a clearly identified Federal candidate, or promoting,  
15 supporting, attacking or opposing a clearly identified Federal candidate, as funds  
16 contributed “for the purpose of influencing any election for Federal office?” Please note  
17 that none of the regulatory text set forth below relates to this proposal regarding  
18 “contributions” as used in proposed 11 CFR 100.5(a)(1)(i).

19           Finally, should the Commission confine any reexamination of the definition of  
20 “expenditure” to apply only as that term is used as part of the definition of “political  
21 committee?” FECA already provides two definitions of “expenditure,” one in  
22 2 U.S.C. 431(9) and a broader definition in 2 U.S.C. 441b. Currently, “expenditure” in  
23 11 CFR 100.5(a) uses the definition in 2 U.S.C. 431(9) and 11 CFR part 100, subpart D.

1 Should the Commission create by regulation a third definition of “expenditure” for  
2 determining political committee status?

3 2. 11 CFR Part 100, Subpart D -- Definition of “expenditure”

4 The Commission is also considering amendments to its general definition of  
5 “expenditure” to reflect McConnell’s conclusion that certain communications and certain  
6 voter drives have the purpose or effect of influencing Federal elections.

7 One approach would be to add payments for the Federal election activities  
8 described in 2 U.S.C. 431(20)(A)(i) through (iii) and payments for electioneering  
9 communications to the definition of “expenditure” in 11 CFR part 100, subpart D. In  
10 evaluating this approach to amending its rules, the Commission will consider the same  
11 issues raised above concerning BCRA’s application of the concepts of Federal election  
12 activities and electioneering communications in connection with Alternative 1-A.

13 BCRA imposes prohibitions and restrictions related to Federal election activities  
14 on national party committees (2 U.S.C. 441i(c)), State, district, and local political party  
15 committees (2 U.S.C. 441i(b)), Federal candidates (2 U.S.C. 441i(e)(1)(A), (e)(4)(A), and  
16 (e)(4)(B)), and State candidates (2 U.S.C. 441i(f)). Consequently, most of the Supreme  
17 Court’s consideration of Federal election activities arose with respect to political party  
18 committees. In this context, the “close relationship” of Federal officeholders and  
19 candidates to their political parties was part of the justification of the Government’s  
20 interest in regulating Federal election activities. See McConnell, 124 S.Ct. at 668 and  
21 n.51. In fact, in disposing of an equal protection claim that BCRA discriminates against  
22 political party committees in favor of “interest groups,” the Supreme Court  
23 acknowledged: “Interest groups, however, remain free to raise soft money to fund voter

1 registration, GOTV activities, mailings, and broadcast advertising (other than  
2 electioneering communications).” Id., 124 S.Ct. at 686.

3 The approach of including all funds disbursed for Federal election activities in the  
4 definition of “expenditure,” if adopted, would extend restrictions related to Federal  
5 election activities beyond political party committees and candidates to all persons,  
6 including a State or local candidate committee.<sup>6</sup> Would such a regulation be consistent  
7 with FECA, as amended by BCRA? Would it be consistent with Congressional intent?

8 Similarly, BCRA amended the definition of “contribution or expenditure” in the  
9 corporate and labor organization prohibitions to include payments “for any applicable  
10 electioneering communication.” 2 U.S.C. 441b(b)(2). BCRA did not amend, however,  
11 the definition of “expenditure” with a broader application in 2 U.S.C. 431(9). Would the  
12 approach of including all payments for electioneering communications in the regulations  
13 implementing the 2 U.S.C. 431(9) definition of “expenditure” be consistent with FECA,  
14 as amended by BCRA? Would it be consistent with Congressional intent?

15 The proposed rules that follow as Alternative 1-B present a narrower approach.  
16 Although the Supreme Court’s discussion of Federal election activities in McConnell was  
17 framed in the political party and candidate context, it recognized that these same  
18 activities by tax-exempt organizations do affect Federal elections. McConnell, 124 S.Ct.  
19 at 678 n.68. Given the Supreme Court’s conclusions that types 1 through 3 of Federal  
20 election activities have a demonstrable effect on Federal elections, can the Commission  
21 conclude that the same communications and the same activities by actors other than

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<sup>6</sup> State and local candidate committees are subject to limitations with respect to their type 3 Federal election activities. 2 U.S.C. 441i(f).

1 political party committees and candidates are not expenditures, i.e., payments for the  
2 purpose of influencing a Federal election? In an effort to take the Supreme Court's  
3 conclusions into consideration, Alternative 1-B would incorporate the concepts of  
4 Federal election activities types 1 through 3, but would also recognize that applying these  
5 concepts to actors other than political party committees and candidates requires some  
6 tailoring of Federal election activities.

7 A proposal to regulate Federal election activities by persons other than political  
8 party committees and candidates requires a reexamination of those activities in order to  
9 determine whether those activities carried out by such persons are the functional  
10 equivalent of the same activities when carried out by political party committees and  
11 candidates. Inherent in any activities conducted by political party committees or  
12 candidates is a partisan purpose, as the Supreme Court has recognized in other context.  
13 See FEC v. Colorado Republican Federal Campaign Committee, 533 U.S. 431, 450  
14 (2001) (noting "the seemingly unexceptionable premise that parties are organized for the  
15 purpose of electing candidates" and agreeing that "political parties are dominant players,  
16 second only to the candidates themselves, in federal elections"). When the proposed  
17 rules in Alternative 1-B consider Federal election activities conducted by other persons,  
18 they attempt to be consistent with McConnell by limiting the activities included in the  
19 "expenditure" definition to those with a partisan purpose. Are the proposed rules  
20 consistent with McConnell? Do they limit the activities included in the "expenditure"  
21 definition to those activities that have a partisan purpose? Is Alternative 1-B's treatment  
22 of a State or local candidate committee's partisan activities consistent with BCRA? Is  
23 Alternative 1-B consistent with 2 U.S.C. 441i(e)(4), which permits Federal candidates to

1 solicit up to \$20,000 per individual for certain Federal election activities or for an entity  
2 whose principal purpose is to conduct certain Federal election activities?

3 a. Proposed 11 CFR 100.115 -- Federal election activity:  
4 Partisan voter drives.

5 Because the Supreme Court recognized that voter registration activity that takes  
6 place within 120 days before a Federal election, voter identification, and get-out-the-vote  
7 activities “confer substantial benefits on federal candidates” and because voter drives  
8 may be for the purpose of influencing Federal elections even when performed by tax-  
9 exempt organizations, Alternative 1-B would incorporate these aspects of Federal  
10 election activities in the definition of “expenditure.” See McConnell, 124 S.Ct. at 675,  
11 678 n.68, and the discussion above in Part II, A., 1. Proposed section 100.34 would  
12 define “partisan voter drives,” and proposed section 100.115 would include payments for  
13 voter registration, voter identification, and GOTV activities into the regulatory definition  
14 of “expenditure,” subject to the exceptions described below.

15 As reflected in FECA, the proposed rules in Alternative 1-B would distinguish  
16 partisan from nonpartisan Federal election activities. FECA exempts “nonpartisan  
17 activity designed to encourage individuals to vote or register to vote” from the definition  
18 of “expenditure.” 2 U.S.C. 431(9)(B)(ii). In order for voter drives to be “nonpartisan,”  
19 Commission regulations currently require that no effort is or has been made to determine  
20 the party or candidate preference of individuals before encouraging them to vote.  
21 11 CFR 100.133.

22 Alternative 1-B includes proposed changes to section 100.133. First, the proposal  
23 would expressly state that if voter registration or get-out-the-vote activities included a

1 communication that promotes, supports, attacks, or opposes a Federal or non-Federal  
2 candidate or if it promotes or opposes a political party, then the voter registration or get-  
3 out-the-vote activities is partisan. See proposed 11 CFR 100.133(a). Second, the  
4 proposal would add a provision that if information concerning likely party or candidate  
5 preference has been used to determine which voters to encourage to register to vote or to  
6 vote, the voter registration and get-out-the-vote activities would be partisan. See  
7 proposed 11 CFR 100.133(b).

8           These proposed changes would achieve more harmony between the  
9 Commission’s approach to this issue and the Internal Revenue Service’s (“the IRS’s”)  
10 approach. The IRS regulations provide that “to be nonpartisan, voter registration and  
11 ‘get-out-the-vote’ campaigns must not be specifically identified by the organization with  
12 any candidate or political party.” 26 CFR 1.527-6(b)(5). In a private letter ruling, the  
13 IRS determined that a voter drive was partisan, even though the activities “may not be  
14 specifically identified with a candidate or party in every case.” It did so “due to the  
15 intentional and deliberate targeting of individual voters or groups of voters on the basis of  
16 their expected preference for pro-issue candidates, as well as the timing of the  
17 dissemination and format of the materials used.” Priv. Ltr. Rul. 99-25-051 (Mar. 29,  
18 1999). Should the Commission otherwise clarify this rule or consider any other criteria?

19           Should voter identification be considered part of get-out-the-vote activities  
20 subject to section 100.133? If so, what changes to the proposed rules, if any, are  
21 necessary?

22           The proposed new rules for voter registration and get-out-the-vote activities at  
23 11 CFR 100.34(a) and (c) would retain by reference the nonpartisan exception to the

1 definition of “expenditure” in proposed 11 CFR 100.133. Similarly, proposed  
2 11 CFR 100.34(b) would exclude disbursements for voter identification when no effort  
3 has been or will be made to determine or record the party or candidate preference of  
4 individuals on the voter list from the definition of “partisan voter drive” and therefore  
5 “expenditure.” See proposed 11 CFR 100.34(b) and 100.115.

6         The proposed rule at new 11 CFR 100.115 would also exclude Levin funds from  
7 the definition of “expenditure.” Levin funds are funds raised by State, district, or local  
8 political party committees and party organizations pursuant to 11 CFR 300.31 and  
9 disbursed by the same committee or organization pursuant to 11 CFR 300.32. BCRA  
10 specifically permits State, district, and local political party committees to raise and spend  
11 Levin funds for an allocable portion of voter registration, voter identification, and get-  
12 out-the-vote activities, rather than requiring these committees to use entirely Federal  
13 funds for these Federal election activities. 2 U.S.C. 441i(b)(2). This exception in BCRA  
14 would be preserved for State, district, and local political party committees and  
15 organizations by the exclusion of Levin funds from the proposed rules.

16         State and local political party committees may also conduct voter drives under the  
17 “coattails” exception to the definition of “expenditure.” 2 U.S.C. 431(9)(B)(ix);  
18 11 CFR 100.149. Under certain conditions, voter registration and GOTV activities  
19 conducted by these party committees on behalf of the Presidential nominees are not  
20 treated as expenditures. In order to leave this exemption unaffected by the inclusion of  
21 the types 1 and 2 of Federal election activity in the definition of “expenditure,” the  
22 proposed rules would also amend 11 CFR 100.149 to provide expressly that the  
23 “coattails” exemption would apply notwithstanding proposed 11 CFR 100.115.



1           A proposal for the allocation of these expenditures is discussed below. Proposed  
2 section 100.155 would state that any non-Federal funds permissibly disbursed by a  
3 separate segregated fund or a nonconnected committee for partisan voter drives pursuant  
4 to the allocation rule in proposed 11 CFR 106.6 would not be “expenditures.”  
5 Consequently, the non-Federal funds would not count toward the \$1,000 of expenditures  
6 required for political committee status under current 11 CFR 100.5(a) (or proposed  
7 11 CFR 100.5(a)(1)(i)).

8           Additionally, the Commission seeks comment on the following questions. Are  
9 proposed sections 100.34 and 100.115 sufficiently tailored to reflect the application of  
10 Federal election activities to persons other than political party committees and  
11 candidates? The proposed regulations would treat many of the voter activities conducted  
12 by State and local candidate committees on behalf of their own candidacies as  
13 “expenditures.” Is there any evidence that Congress intended for the Commission to  
14 categorize such activities as “for the purpose of influencing any election for Federal  
15 office?” Should the Commission give any consideration in this context to the statutory  
16 exemptions from the definition of Federal election activity set forth in 2 U.S.C.  
17 431(20)(B)? Should the proposed rules include an exception for the receipt of funds  
18 solicited by Federal candidates under 2 U.S.C. 441i(e)(4)(B)(ii), which under certain  
19 circumstances permits Federal candidates to solicit funds from individuals of up to  
20 \$20,000 – an amount that exceeds the contribution limit applicable to certain political  
21 committees in 2 U.S.C. 441a? Or, should the exception in 2 U.S.C. 441i(e)(4)(B)(ii) be  
22 limited to entities that are not political committees or that confine their voter registration,  
23 voter identification, and get-out-the-vote activities to nonpartisan activities? If the

1 exception were confined to nonpartisan activities, what evidence, if any, is there that  
2 Congress intended for the exception in 2 U.S.C. 441i(e)(4)(B)(ii) to be interpreted in such  
3 a way?

4 The definition of “partisan voter drive” in proposed section 100.34 would not  
5 include some voter registration and get-out-the-vote activities that would simultaneously  
6 fail to qualify for the exemption of “nonpartisan voter registration and get-out-the-vote  
7 activities” in section 100.133, in either its current form or as proposed to be amended.  
8 For example, some voter registration activity could take place more than 120 days before  
9 an election, which would mean that payments for it would not be expenditures. See  
10 proposed 11 CFR 100.34(a) (citing current 11 CFR 100.24(b)(1)) and 100.115. That  
11 same activity could also fail to qualify as nonpartisan under proposed 11 CFR 100.133 if  
12 it is subject to any of that section’s exclusions, which include, for example, directing  
13 voter drives to supporters of a political party. Any voter registration or get-out-the-vote  
14 activities that fall in this “gap” would not be expenditures under proposed  
15 section 100.115, even though they would not qualify as “nonpartisan” under the  
16 exception in proposed section 100.133. This gap may be appropriate in that it reflects  
17 that such activity cannot be considered nonpartisan for purpose of the exemption, but it  
18 may not rise to the level of an “expenditure” under proposed sections 100.34 and 100.115  
19 for the same reason that similar activity by a political party committee would be excluded  
20 from the definition of “Federal election activity.” 11 CFR 100.24(b)(1).

21 Alternatively, this gap could be eliminated by either adding an additional  
22 exemption from the definition of “expenditure” in 11 CFR part 100, subpart E, or  
23 dropping the time limitations of current 11 CFR 100.24(a)(1), (a)(3)(i), and (b)(1) from

1 proposed section 100.34. Under the latter approach, the time limitations in current  
2 section 100.24 would be maintained with respect to the political party committees whose  
3 Federal election activities are subject to BCRA’s time limits. 2 U.S.C. 431(20)(A)(i).  
4 The Commission seeks comment on these issues.

5 b. Proposed 11 CFR 100.116 -- Certain public  
6 communications.

7 Alternative 1-B would also incorporate into the definition of “expenditure”  
8 payments for public communications that refer to a political party or a clearly identified  
9 Federal candidate and promote or support, or attack or oppose any political party or any  
10 Federal candidate. See proposed 11 CFR 100.116. This proposed rule is based on two  
11 types of Federal election activities: generic campaign activities, which are public  
12 communications that promote or oppose a political party, and public communications that  
13 promote, support, attack, or oppose a clearly identified candidate. See  
14 2 U.S.C. 431(20)(A)(ii) and (iii); 11 CFR 100.24(a)(1); (b)(2)(ii); (b)(3); 100.25; and  
15 100.26. Proposed section 100.155 would state that any non-Federal funds permissibly  
16 disbursed by a separate segregated fund or a nonconnected committee for public  
17 communications pursuant to the allocation rule in proposed 11 CFR 106.6 would not be  
18 “expenditures.”

19 The Supreme Court found that public communications that promote, support,  
20 attack or oppose a clearly identified Federal candidate “have a dramatic effect on federal  
21 elections.” McConnell, 124 S.Ct. at 675. The Supreme Court also found that generic  
22 campaign activity “confer[s] substantial benefits on federal candidates.” Id. If the  
23 Commission were to apply the voter drive activities of types 1 and 2 of Federal election

1 activities outside of the political party committee context, these concepts may require  
2 modification to incorporate a partisan element. In contrast, generic campaign activity and  
3 type 3 of Federal election activities, by definition, include material that either promotes,  
4 supports, attacks or opposes a clearly identified Federal candidate or promotes or opposes  
5 a political party. This partisan content obviates the need to tailor these concepts for  
6 application outside the political party and candidate context.

7 Consistent with this approach, the Commission recently issued Advisory Opinion  
8 2003-37 in which it stated that “communications that promote, support, attack or oppose  
9 a clearly identified Federal candidate have no less a ‘dramatic effect’ on Federal elections  
10 when aired by other types of political committees, rather than party committees or  
11 candidate committees.” AO 2003-37, at 3. In that advisory opinion, the Commission  
12 concluded that public communications that promote, support, attack or oppose a clearly  
13 identified Federal candidate when made by political committees are expenditures.  
14 Proposed section 100.116 would incorporate this conclusion in the Commission’s  
15 regulations. It would also treat public communications that promote or oppose political  
16 parties in a similar fashion, and it would apply to communications made by all persons,  
17 not just political committees. If new rules apply the “promote, support, attack or oppose”  
18 standard to actors other than political party committees and candidates, should a temporal  
19 element be included in any such rule? Might an advertisement by a person other than a  
20 political party committee or candidate be properly understood as, for example, promoting  
21 a Federal candidate if publicly distributed close to an election, but the same  
22 advertisement by the same person publicly distributed far from an election might not

1 promote the candidate? Should any of FECA’s temporal limitations, which are discussed  
2 in connection with expenditures generally below, be adapted for this purpose?

3           Would the “promote, support, attack or oppose” standard be appropriate for all  
4 527 organizations (tax exempt “political organizations,” discussed more infra) which by  
5 their very nature have influencing elections as a primary purpose? Should the  
6 Commission adopt a different standard for 501(c) organizations (other tax exempt  
7 organizations, discussed more infra) that would require not only “promote, support,  
8 attack or oppose” content, but also some basis for concluding the message is to influence  
9 a Federal election? Such additional bases could include: (1) reference to the clearly  
10 identified candidate as a candidate; (2) reference to the election or to the voting process;  
11 (3) reference to the clearly identified candidate’s opponent; or (4) reference to the  
12 character or fitness for office of the clearly identified candidate. Alternatively, should the  
13 Commission adopt the “promote, support, attack or oppose” standard for 501(c)  
14 organizations, but build in an exception for a message that is confined to expressly  
15 advocating seeking action by the clearly identified candidate on an upcoming legislative  
16 or executive decision without reference to any candidacy, election, voting, opponent,  
17 character, or fitness for office? In essence, the Commission seeks comment on whether it  
18 should define what is an expenditure in a way that follows the functional distinctions in  
19 the Internal Revenue Code and recognizes that some organizations engage in “grassroots  
20 lobbying” campaigns primarily designed to affect upcoming legislative or executive  
21 actions. If so, what regulatory language would be appropriate?

22           In different contexts, FECA now provides at least three content standards for  
23 communications – express advocacy; promote, support, attack or oppose; and reference

1 to a clearly identified Federal candidate. See, e.g., 2 U.S.C. 431(17)(A); (20)(A)(iii);  
2 434(f)(3)(A)(i)(I) and 441d(a). What other content standards that are not vague or  
3 overbroad, if any, should be included in the definition of “expenditure?”

4 c. Electioneering communications.

5 Alternative 1-B does not include payments for electioneering communications in  
6 the definition of “expenditures.” Many electioneering communications either already are  
7 included in the definition of “expenditure” or would be included under the proposal.

8 Under the current rules, political committees must treat communications that satisfy the  
9 general definition of “electioneering communications” in 2 U.S.C. 434(f)(3)(A) as  
10 expenditures. 11 CFR 104.20(b). In addition, if an electioneering communication

11 promotes, supports, attacks, or opposes a Federal candidate, it would also be a public  
12 communication that promotes, support, attacks, or opposes a Federal candidate, which  
13 would make it an expenditure under proposed section 100.116. Consequently, the only  
14 electioneering communications that would not be treated as expenditures under

15 Alternative 1-B would be those made by persons other than political committees that do  
16 not promote, support, attack, or oppose a clearly identified Federal candidate. Should the  
17 final rules include all electioneering communications in the definition of “expenditure?”

18 d. Other potential approaches.

19 The Commission also seeks comments on other potential approaches to amending  
20 the definition of “expenditure” in 11 CFR Part 100, Subpart D. Should a payment’s  
21 status as an “expenditure” depend on the identity of the maker? For example, should  
22 payments for public communications that promote, support, attack or oppose a Federal  
23 candidate be expenditures only if made by a Federal political committee?

1           Are there other identifying characteristics that should be considered in  
2 determining whether a payment is an expenditure? For example, should payments by a  
3 tax-exempt, charitable organizations operating under 26 U.S.C. 501(c)(3) be exempt from  
4 the definition of “expenditure?” In this regard, how should the Commission interpret the  
5 Internal Revenue Service’s Technical Advice Memorandum 89-36-002 (Sept. 8, 1989),  
6 which permitted a 501(c)(3) organization to make advertisements that “support or oppose  
7 a candidate in an election campaign,” without losing its 501(c)(3) status for intervening in  
8 a political campaign?

9           Should the rule Commission consider an organization’s status under section  
10 501(c) or 527 of the Internal Revenue Code in determining whether a payment is an  
11 expenditures? Should some activities be expenditures if made by a section 527  
12 organization, regardless of whether it is a Federal political committee? Should the same  
13 rules or different rules apply to organizations operating under section 501(c)(3), (4), or  
14 (6)?

15           Should the timing of a payment affect whether it is an “expenditure?” FECA and  
16 BCRA provide several temporal limitations on various provisions that recognize the  
17 significance of proximity to an election. FECA provides that certain independent  
18 expenditures must be reported within 24 hours if made during the twenty days before an  
19 election. 2 U.S.C. 434(g)(1) (formerly 2 U.S.C. 434(c)(2)(C)). BCRA limits  
20 electioneering communications to the thirty days before a primary election and the sixty  
21 days before a general election. 2 U.S.C. 434(f)(3)(A)(i)(II). BCRA also includes voter  
22 registration activity in Federal election activity only in the 120 days before a regularly

1 scheduled Federal election. 2 U.S.C. 431(20)(A)(i). Do any of these time periods  
2 provide an appropriate temporal standard for any expenditures?

3           Should the rules address expenditures that might be in connection with more than  
4 one Federal election? The Commission recently concluded in an advisory opinion that an  
5 advertisement that was coordinated by a Congressional candidate with a presidential  
6 campaign committee could be a contribution to the presidential campaign committee in  
7 connection with the upcoming Presidential primary election in that State and an  
8 expenditure of the Congressional candidate in connection with her special election. AO  
9 2004-1. Should this conclusion be incorporated into regulations?

10           The Commission also seeks comment on whether any aspect of Alternative 1-B  
11 should be revised in order to harmonize the definition of “expenditure” in the  
12 Commission’s regulations with the approach taken by the IRS. Section 527(e)(2) of the  
13 Internal Revenue Code of 1986, as amended, defines the term “exempt function” as “the  
14 function of influencing or attempting to influence the selection, nomination, election, or  
15 appointment of any individual to any Federal, State, or local public office or office in a  
16 political organization, or the election of Presidential or Vice Presidential electors,  
17 whether or not such individual or electors are selected, nominated, elected, or appointed.”  
18 26 U.S.C. 527(e)(2). IRS regulations implementing this statutory definition provide that  
19 “the term ‘exempt function’ includes all activities that are directly related to and support  
20 the process of influencing or attempting to influence the selection, nomination, election,  
21 or appointment of any individual to public office or office in a political organization.” 26  
22 CFR 1.527-2(c)(1). IRS regulations also specify that whether an expenditure is for an  
23 exempt function depends on all the facts and circumstances. Id.



1           A Revenue Ruling issued by the IRS on December 23, 2003, stated that “[w]hen  
2 an advocacy communication explicitly advocates the election or defeat of an individual to  
3 public office, the expenditure clearly is for an exempt function under § 527(e)(2).” Rev.  
4 Rul. 04-6, at 4. The Revenue Ruling also identified a non-exhaustive list of factors that  
5 “tend to show” whether an advocacy communication on a public policy issue is for an  
6 exempt function or not, in the absence of “explicit advocacy.” The six identified factors  
7 that tend to show a communication is for an exempt function are: (a) The communication  
8 identifies a candidate for public office; (b) The timing of the communication coincides  
9 with an electoral campaign; (c) The communication targets voters in a particular election;  
10 (d) The communication identifies that candidate’s position on the public policy issue that  
11 is the subject of the communication; (e) The position of the candidate on the public  
12 policy issue has been raised as distinguishing the candidate from others in the campaign,  
13 either in the communication itself or in other public communications; and (f) The  
14 communication is not part of an ongoing series of substantially similar advocacy  
15 communications by the organization on the same issue. The five factors that tend to  
16 show a communication is not for an exempt function are: (a) The absence of one or more  
17 of the factors listed in (a) through (f) above; (b) The communication identifies specific  
18 legislation, or a specific event outside the control of the organization, that the  
19 organization hopes to influence; (c) The timing of the communication coincides with a  
20 specific event outside the control of the organization that the organization hopes to  
21 influence; (d) The communication identifies the candidate solely as a government official  
22 who is in a position to act on the public policy issue in connection with the specific event;

1 and (e) The communication identifies the candidate solely in the list of key or principal  
2 sponsors of the legislation that is the subject of the communication.

3 To what extent should Alternative 1-B be modified for harmony with the IRS's  
4 approach?

5 3. 11 CFR Part 100, Subpart B -- Definition of "contribution."

6 The Commission is also considering amending the definition of "contribution" in  
7 11 CFR part 100, subpart B to make changes that would correspond to those proposed for  
8 the definition of "expenditure" in Alternative 1-B. Additionally, the Commission is  
9 considering amending its definition of "contribution" to include any funds that are  
10 received in response to a communication containing express advocacy of a clearly  
11 identified candidate.

12 a. Amendments corresponding to amendments to  
13 "expenditure" definition.

14 Current 11 CFR 102.5(b) imposes requirements on organizations that do not  
15 qualify as "political committees" under current 11 CFR 100.5 and that make  
16 contributions or expenditures. The organization must demonstrate through a reasonable  
17 accounting method that, whenever it makes expenditures, it has received sufficient funds  
18 subject to the limitations and prohibitions of FECA to make the expenditures. Such  
19 organizations must also keep records of receipts and disbursements and, upon request,  
20 must make such records available to the Commission. See current 11 CFR 102.5(b)(1).  
21 Consequently, if the definition of "expenditure" is amended in any way, then any entity  
22 making such expenditures would be required to do so using only contributions that  
23 comply with the amount limitations and source prohibitions of FECA. If the Commission

1 adopts the amended definition of “expenditure,” as proposed in Alternative 1-B, is an  
2 amendment to Commission regulations needed to state that funds used for any  
3 expenditures are contributions to that entity? Please note that proposed rule text for this  
4 approach is not included below, but if the Commission were to decide to adopt  
5 Alternative 1-B and this approach, then the text in the final rules amending the definition  
6 of “contribution” would be similar to the text in proposed sections 100.115 and 100.116  
7 regarding “expenditure.” Should entities that are not political committees be required to  
8 report their contributions received and expenditures made in this context?

9 b. Proposed 11 CFR 100.57 -- Funds solicited with express  
10 advocacy.

11 The Commission is considering whether solicitations containing express advocacy  
12 of federal candidates establish that any funds received in response are necessarily “for the  
13 purpose of influencing any election for Federal office,” so that they are contributions.  
14 Proposed section 100.57 would state that any funds provided in response to a solicitation  
15 that contained express advocacy for or against a clearly identified Federal candidate are  
16 contributions. If a solicitation states that the solicitor intends to take actions to elect or  
17 defeat a particular candidate, is it then logical to treat funds that are provided in response  
18 as funds that are “for the purpose of influencing a Federal election?” Should the standard  
19 be that the solicitation must not just include express advocacy but state that the funds will  
20 be used for express advocacy? Should funds raised by a State or local candidate for his  
21 or her own candidacy be treated as contributions “for the purpose of influencing a Federal  
22 election” if the State or local candidate’s solicitation includes express advocacy for or  
23 against a clearly identified Federal candidate? Should proposed section 100.57 also

1 include solicitations that expressly advocate the election or defeat of Federal candidates  
2 of a particular party without clearly identifying the particular candidates? Should the  
3 new rule use a standard other than express advocacy, such as a solicitation that promotes,  
4 supports, attacks, or opposes a Federal candidate, or indicates that funds received in  
5 response thereto will be used to promote, support, attack, or oppose a clearly identified  
6 Federal candidate? Should the new rule specify which contributions result from which  
7 solicitations? Should the new rule incorporate the standards in current  
8 11 CFR 102.5(a)(2)(i) through (iii) to clarify further the types of funds received that must  
9 be treated as contributions? A conforming amendment to current 11 CFR 102.5(a)(2)(ii)  
10 would be necessary if any rule based on proposed section 100.57 is adopted.

11 4. Proposed 11 CFR 114.4 -- Corporate and Labor Organization  
12 Communications.

13 Current 11 CFR 114.4(c)(2) and (d) permit corporations and labor organizations  
14 to conduct voter registration and get-out-the-vote activities beyond their restricted class  
15 provided that any communication does not expressly advocate the election or defeat of  
16 any clearly identified candidate(s) or candidates of a clearly identified political party and  
17 subject to other restrictions. The Commission seeks comment on proposed rules that  
18 would amend paragraphs (c)(2) and (d) and add new paragraph (c)(3) to specify that such  
19 voter registration and get-out-the-vote activities would be subject to the conditions set  
20 forth in proposed 11 CFR 100.133, as discussed above. The purpose of such a revision  
21 would be to ensure that corporations and labor organizations would be subject to the  
22 same conditions as political committees, as well as other conditions specific to  
23 corporations and labor organizations, when spending non-Federal funds on these voter

1 registration and get-out-the-vote activities. The Commission seeks comment on whether  
2 the same rules should apply not only to corporations and labor organizations, but also to  
3 any person or entity who uses corporate or labor organization general treasury funds for  
4 these purposes.

5 The Commission also seeks comment on whether current 11 CFR 100.133 should  
6 be amended to make clear that, when a corporation or labor organization conducts voter  
7 registration or get-out-the-vote activities, it would be subject to the requirements of 11  
8 CFR 100.133 and 114.4(c) and (d). Additionally, the Commission seeks comment on  
9 whether the “express advocacy” standard set forth in 11 CFR 114.4(c)(2) and (d)(1)  
10 should be changed to the “promote, support, attack or oppose” standard. Would the latter  
11 standard be an appropriate standard for determining whether a communication has the  
12 “purpose of influencing a Federal election?” Would such an approach be consistent with  
13 MCFEL?

14 Corporations and labor organizations may also conduct certain voter registration  
15 and GOTV activities aimed at their restricted classes. 11 CFR 114.3(c)(4). Because  
16 these activities are permitted by 11 CFR part 114, they are exempt from the definition of  
17 “expenditure.” 2 U.S.C. 431(9)(B)(v); 11 CFR 100.141. No changes to section  
18 114.3(c)(4) are proposed because the Commission intends to retain this exception to the  
19 definition of “expenditure.”

### 20 **III. MAJOR PURPOSE**

#### 21 **A. Major Purpose Requirement**

22 The Commission seeks comment as to whether the existing definition of “political  
23 committee” in 11 CFR 100.5(a) should be amended by incorporating the major purpose

1 requirement, and if so, how that should be accomplished. Under the proposed section  
2 100.5(a)(1), a committee, club, association or group of persons that receives in excess of  
3 \$1,000 in total contributions or makes in excess of \$1,000 in total expenditures would be  
4 a political committee only if “the nomination or election of one or more Federal  
5 candidates is a major purpose” of the committee, club, association or group of persons  
6 (emphasis added).

7 1. Major Purpose or Primary Purpose?

8 The proposed rule would include the indefinite article “a” to modify “major  
9 purpose,” rather than the definite article “the.” The consequence would be that the major  
10 purpose element of the definition of “political committee” may be satisfied if the  
11 nomination or election of a candidate or candidates is one of two or more major purposes  
12 of an organization, even if it is not its primary purpose. The Commission seeks comment  
13 regarding whether, to satisfy the major purpose requirement, the nomination or election  
14 of candidates must be the predominant purpose of the organization, or whether the major  
15 purpose standard is satisfied when the nomination or election of candidates is a major  
16 purpose of the organization, even when the organization spends more funds for another  
17 purpose.

18 In first articulating the major purpose requirement in Buckley, the Supreme Court  
19 determined that the definition of political committee “need only encompass organizations  
20 that are under the control of a candidate or the major purpose of which is the nomination  
21 or election of a candidate.” Buckley, 424 U.S. at 79 (emphasis added). Likewise, in  
22 MCFL, the Supreme Court observed that:

1           should MCFL’s independent spending become so extensive that the  
2           organization’s major purpose may be regarded as campaign activity, the  
3           corporation would be classified as a political committee. As such it would  
4           automatically be subject to the obligations and restrictions applicable to  
5           those groups whose primary objective is to influence political campaigns.  
6           MCFL, 479 U.S. at 262 (emphasis added and citations omitted). These passages indicate  
7           that the nomination or election of candidates must be the major purpose or, put another  
8           way, the primary objective of the organization. In light of the Supreme Court’s repeated  
9           use of the term “the major purpose,” can the Commission substitute the term “a major  
10          purpose,” which appears to have a different meaning?

11           Could the major purpose standard in Buckley nevertheless be interpreted to  
12          require that the nomination or election of candidates be “a” major purpose of the  
13          organization, even when the organization has other, perhaps more significant, purposes?  
14          The Commission notes that the “major purpose” requirement appears only in judicial  
15          opinions not in any statute, and that the Supreme Court has warned against “dissect[ing]  
16          the sentences of the United States Reports as though they were the United States Code.”  
17          St. Mary’s Honor Ctr. v. Hicks, 509 U.S. 502, 515 (1993). In Aka v. Washington Hosp.  
18          Ctr., 156 F.3d 1284 (D.C. Cir. 1998), the Circuit Court explained that “the [Supreme]  
19          Court’s every word and sentence cannot be read in a vacuum; its pronouncements must  
20          be read in light of the holding of the case and to the degree possible, so as to be consistent  
21          with the Court’s apparent intentions.” Id. at 1291.

22           As explained above, in Buckley, the Court imposed the “major purpose”  
23          requirement because it was concerned that the statutory definition of political committee

1 “could be interpreted to reach groups engaged purely in issue discussion.” Buckley, 424  
2 U.S. at 79. Consequently, the “apparent intention” of the Court appears to have been to  
3 limit the applicability of the definition of political committee so that it would not cover  
4 organizations involved “purely in issue discussion” but that nevertheless engage in some  
5 incidental activity that might otherwise satisfy the Act’s \$1,000 expenditure or  
6 contribution political committee thresholds. Would it be consistent with the Court’s  
7 apparent intention for the Commission to amend its definition of “political committee” to  
8 only require that the nomination or election of candidates be a major purpose rather than  
9 the primary purpose of the organization? It seems that an organization that has the  
10 nomination or election of candidates as a major purpose is not “engaged purely in issue  
11 discussion.” Moreover, such a definition of political committee appears unlikely to cover  
12 organizations that engage in some incidental activity that causes them to exceed the  
13 \$1,000 expenditure or contribution thresholds.

14 In United States v. Harriss, 347 U.S. 612, 621-22 (1954), the Supreme Court  
15 interpreted the meaning of the term “principal purpose” in the Federal Regulation of  
16 Lobbying Act. That statute provided that certain provisions applied only to those persons  
17 whose “principal purpose” is to aid in the passage or defeat of legislation. Id. at 619.  
18 The Court refused to interpret the statute to require that the influencing of legislation be  
19 the person’s most important – or primary – purpose. Instead, the Court concluded that  
20 the phrase “principal purpose” was designed to exclude from the coverage of the act  
21 those persons “having only an incidental purpose of influencing legislation.” Id. at 622.  
22 According to the Supreme Court:



1 [i]f it were otherwise, -- if an organization, for example, were exempted  
2 because lobbying was only one of its main activities – the Act would in  
3 large measure be reduced to a mere exhortation against abuse of the  
4 legislative process. In construing the Act narrowly to avoid constitutional  
5 doubts, we must also avoid a construction that would seriously impair the  
6 effectiveness of the Act in coping with the problem it was designed to  
7 alleviate.

8 Id. at 622-23.

9 The Court’s ruling in Harriss may be instructive because, in that case, the Court  
10 was interpreting the meaning of the word “principal,” which, when used as an adjective,  
11 is defined as “most important.” See Webster’s II New Riverside Dictionary 556 (1<sup>st</sup> ed.  
12 1984). The term “major,” on the other hand, is defined as “greater in importance rank or  
13 stature” or “demanding great attention.” Webster’s II New Riverside Dictionary 421 (1<sup>st</sup>  
14 ed. 1984). Thus, “major,” unlike “principal,” does not signify “most important” or  
15 “primary” or “first in rank.” Given that the Supreme Court has interpreted the phrase  
16 “principal purpose” in a statute to include an organization for which lobbying is merely  
17 “one of its main activities,” would the Commission be justified in interpreting the phrase  
18 “major purpose” in Buckley to also mean “one of its main activities?” Is it significant  
19 that the Court in Buckley chose to use the phrase “major purpose” instead of “primary  
20 purpose” or “principal purpose?”

## 21 2. Particular Federal Candidates

22 The proposed rule would require that the organization have as a major purpose the  
23 nomination or election of candidates for Federal office, as opposed to non-Federal office.

1 The Commission seeks comment regarding whether the proposed rule should be limited  
2 to the nomination or election of Federal candidates or, instead, whether the nomination or  
3 election of all candidates, including candidates for non-Federal office will suffice.  
4 Likewise, the Commission asks whether the major purpose requirement mandates that the  
5 organization be involved in the nomination or election of one or more particular  
6 candidates or, instead, whether it is sufficient for the organization to have a major  
7 purpose of nominating or electing certain categories of candidates, such as Democrats or  
8 Republicans, or women, or candidates who take a position on a particular issue. In FEC  
9 v. GOPAC, Inc., 917 F. Supp. 851 (D.D.C. 1996), the District Court interpreted Buckley  
10 and MCFL to require that the major purpose of the organization be “the nomination or  
11 election of a particular candidate or candidates for federal office.” GOPAC, 917 F. Supp.  
12 at 859 (emphasis added). The Commission seeks comment as to whether this is a proper  
13 reading of Buckley and MCFL. Should the Commission issue regulations that conflict  
14 with the GOPAC decision?

15 3. Existing 11 CFR 100.5(b) through (e)

16 Please note that current 11 CFR 100.5(b) through (e), which identify certain  
17 organizations that are considered to be political committees (separate segregated funds,  
18 local party committees, principal campaign committees, and multi-candidate  
19 committees), do not incorporate the “major purpose” standard. This is because the  
20 Commission has determined that these organizations, by their nature or by definition,  
21 have as their major – if not primary – purpose, the nomination or election of candidates.

22 For example, current 11 CFR 100.5(b) provides that a separate segregated fund  
23 established under 2 U.S.C. 441b(b)(2)(C) is a political committee because, pursuant to

1 2 U.S.C. 441b(b)(2)(C), a separate segregated fund is “to be utilized for political  
2 purposes.” 2 U.S.C. 441b(b)(2)(C). Current 11 CFR 100.5(c) provides that, under  
3 certain circumstances, the local committee of a political party is a political committee  
4 because, like national parties, these organizations exist for the purpose of nominating and  
5 electing candidates. See 2 U.S.C. 431(4)(C). Moreover, such organizations are  
6 organized under section 527 of the Internal Revenue Code, which requires that these  
7 organizations be organized and operated primarily for the purpose of influencing or  
8 attempting to influence the nomination, election or appointment of individuals to public  
9 office. See 26 U.S.C. 527(e); see also discussion of 527 organizations below. Current 11  
10 CFR 100.5(d) and (e)(1) provide that an individual’s principal or authorized campaign  
11 committees are political committees because these organizations are established for the  
12 purpose of nominating or electing an individual to public office. See 2 U.S.C. 431(5) and  
13 (6). Moreover, such organizations are “under the control of a candidate,” and therefore  
14 are not subject to the major purpose requirement. See Buckley, 424 U.S. at 79. Finally,  
15 current 11 CFR 100.5(e)(3) provides that multi-candidate committees are political  
16 committees because these organizations make and receive contributions for Federal  
17 elections. Consequently, these organizations satisfy the major purpose test.

18 The Commission proposes no changes to existing 11 CFR 100.5(b) through (e).  
19 Nevertheless, the Commission seeks comments regarding whether any amendments to  
20 these paragraphs are necessary.

21 **B. Major Purpose Tests**

22 The Commission seeks comment on proposed 11 CFR 100.5(a)(2)(i) through (iv),  
23 which provides four tests for determining when an entity would satisfy the major purpose

1 requirement. Please note that the Commission has not made any decisions on whether to  
2 adopt any of the proposals for the major test(s). If the Commission were to decide to  
3 adopt one or more of the proposed major purpose tests, an organization that meets any of  
4 the major purpose tests would be considered to have as a major purpose the nomination  
5 or election of Federal candidates. Consequently, if that organization exceeds the \$1,000  
6 contribution or expenditure threshold in 11 CFR 100.5(a)(1)(i), it would be a political  
7 committee and would have to comply with the registration, reporting and other  
8 requirements for political committees. Are the criteria appropriate? Would other criteria  
9 be more appropriate?

10 1. Proposed 11 CFR 100.5(a)(2)(i) – Avowed Purpose and Spending

11 The first of the four proposed major purpose tests, which is set forth in proposed  
12 section 100.5(a)(2)(i), would use the organization’s public pronouncements and spending  
13 to determine if its major purpose is to nominate or elect candidates. An organization  
14 would satisfy the major purpose element in proposed section 100.5(a)(2)(i) if: (1) its  
15 organizational documents, solicitations, advertising, other similar written materials,  
16 public pronouncements, or any other communications demonstrate that its major purpose  
17 is to nominate, elect, defeat, promote, attack, support, or oppose a clearly identified  
18 candidate or candidates for Federal office or the Federal candidates of a clearly identified  
19 political party; and (2) it disburses more than \$10,000 in the current calendar year or any  
20 of the previous four calendar years on the following: (1) expenditures (including  
21 independent expenditures); (2) contributions; (3) payments for types 1 through 3 of  
22 Federal election activity; and (4) payments for all or any part of an electioneering  
23 communication, as defined in 11 CFR 100.29.

1           The first prong of the major purpose test in proposed section 100.5(a)(2)(i) would  
2 rely on an organization’s written characterization of its own activities. This would  
3 include the organization’s organizational documents, such as its charter, constitution, by-  
4 laws, etc. The second prong would require that an organization’s disbursements in  
5 connection with a federal election exceed \$10,000. This two-pronged approach would  
6 ensure that documents or communications that demonstrate that an organization’s  
7 avowed purpose is to nominate, elect, defeat, promote, attack, support or oppose a  
8 candidate or candidates are substantiated by its actual disbursements in connection with a  
9 Federal election.

10                           a. Public Pronouncements

11           For an organization’s public pronouncements and other communications to  
12 demonstrate that the organization has a major purpose of nominating, electing,  
13 promoting, attacking, supporting, or opposing clearly identified Federal candidates or the  
14 Federal candidates of a clearly identified political party, the written materials and other  
15 communications must refer to Federal candidates of a clearly identified political party or  
16 to a “clearly identified candidate,” which is defined in 11 CFR 100.17. Thus, under  
17 proposed paragraph (a)(2)(i), an organization would not be considered to have the  
18 nomination or election of candidates as a major purpose where the organization’s public  
19 communications merely indicate that its major purpose is to elect candidates holding  
20 particular positions (e.g., pro-business candidates or pro-environmental candidates)  
21 without specifying which candidates hold those positions. Such an organization,  
22 however, could still be considered to have the nomination or election of candidates as a

1 major purpose under the other three major purpose tests – proposed paragraphs (a)(2)(ii)  
2 through (iv), which are discussed below.

3         The Commission seeks comment regarding whether it is appropriate to base its  
4 major purpose analysis on the written public statements, documents, solicitations, and  
5 other communications by an organization. Are there circumstances where an  
6 organization’s written public statements, documents, solicitations, and other  
7 communications would not be an appropriate measure of its major purpose? Should the  
8 final rule take into account the organization’s oral, as well as written, communications to  
9 determine if it satisfies the first prong of the major purpose test in proposed section  
10 100.5(a)(2)(i)?

11         The Commission also seeks comment regarding how this provision should operate  
12 with respect to disavowed major purposes or apparently contradictory statements of the  
13 organization’s major purposes. For example, what would be the outcome if the leader  
14 (e.g., president, chairperson, etc.) of the organization disavows the organization’s  
15 previously stated purpose? What if this disavowal is attempted by someone other than  
16 the organization’s leader? Should the rules account for the possibility that an  
17 organization can disavow its previous statements regarding its major purpose? Should  
18 there be a time limit on the applicability of statements made in the organization’s  
19 communications? For example, should statements from five years ago be given less  
20 weight than more current statements? Are these concerns alleviated by the second prong  
21 of the major purpose test set forth in proposed section 100.5(a)(2)(i), which would  
22 require that the organization exceed \$10,000 in disbursements in connection with a  
23 Federal election?

1 Similarly, what if some of the organization's communications indicate that its  
2 major purpose is the nomination or election of candidates, but other communications  
3 indicate that it has one or more other major purposes? How should the major purpose of  
4 the organization be assessed in these situations? Should some communications or types  
5 of communications be afforded greater weight than others when assessing major purpose  
6 under this proposed paragraph? For example, should the Commission give greater  
7 weight to statements in the organization's solicitations or in its governing documents than  
8 it gives to potentially self-serving, ambiguous or contradictory statements by its leaders  
9 or its members? Should the Commission consider only the statements it makes in its  
10 solicitations or in its organizational documents and ignore statements found elsewhere?  
11 Would these concerns be alleviated by the second prong of the major purpose test set  
12 forth in proposed section 100.5(a)(2)(i), which would require that the organization exceed  
13 \$10,000 in disbursements in connection with a Federal election?

14 b. \$10,000 Disbursement Threshold

15 To satisfy the second prong of the major purpose test set forth in proposed section  
16 100.5(a)(2)(i), the organization's disbursements in connection with any election for  
17 Federal office would have to exceed the \$10,000 threshold in the current year or any of  
18 the previous four calendar years. For example, to assess whether this threshold has been  
19 met in 2004, the Commission would examine the organization's disbursements in 2000,  
20 2001, 2002, 2003 and 2004. If it exceeded the \$10,000 threshold in any of those years, it  
21 would satisfy the \$10,000 disbursement requirement in proposed paragraph (a)(2)(i).  
22 Because this threshold is an absolute dollar amount rather than a percentage of total  
23 spending, the current year spending would be relevant to the analysis. Consequently, this

1 provision, unlike proposed paragraph (a)(2)(ii), would apply to both existing and newly  
2 established organizations. The Commission seeks comment regarding the use of this  
3 time period in proposed paragraph (a)(2)(i). Should the threshold have to be met in all  
4 four preceding years? If the Commission does adopt such a four-year look-back  
5 provision, would it be fair to implement it prior to 2008?

6 The Commission also seeks comment regarding the proposed \$10,000 threshold.  
7 The Commission notes that Congress established a \$10,000 threshold to trigger the  
8 reporting requirements for electioneering communications under 2 U.S.C. 434(f) and 48-  
9 hour reporting of independent expenditures under 2 U.S.C. 434(g)(2). By establishing  
10 these \$10,000 thresholds, Congress indicated that it believed \$10,000 in activity to be  
11 significant enough to require reporting within 48 hours of the activity. Is it appropriate  
12 for the Commission to adopt a similar threshold to use in the major purpose test set forth  
13 in proposed paragraph (a)(2)(i), or is a higher or lower threshold more appropriate and  
14 why?

15 The Commission also seeks comment on the proposal to count the following types  
16 of disbursements toward the \$10,000 threshold: (1) expenditures (including independent  
17 expenditures); (2) contributions; (3) payments for types 1 to 3 of Federal election  
18 activity; and (4) payments for all or any part of an electioneering communication, as  
19 defined in 11 CFR 100.29. Payments for Federal election activity would be limited to  
20 only the first three of the four types of Federal election activity described in 11 CFR  
21 100.24(b) because the fourth type of Federal election activity – services provided during  
22 any month by an employee of a state, district, or local committee of a political party who  
23 spends more than 25 percent of that individual's compensated time during that month on



1 activities in connection with a Federal election – applies only to certain political party  
2 committees, which are presumed to satisfy the major purpose requirement.

3 The Commission seeks comment regarding the types of disbursements that would  
4 count toward the \$10,000 threshold. Is it appropriate to count expenditures (including  
5 independent expenditures), contributions, Federal election activity (types 1 through 3),  
6 and electioneering communications toward the spending threshold? Are there other  
7 categories or types of disbursements that should be included, such as administrative costs,  
8 overhead, and costs associated with volunteer activities? Should certain exceptions be  
9 included and, if so, how should those exceptions be crafted? For example, since some  
10 Federal election activity by non-party organizations might be truly non-partisan, should  
11 the types of voter registration, voter identification, get-out-the-vote, and generic  
12 campaign activity captured in the major purpose analysis be confined to partisan activity?  
13 Since the major purpose test envisioned in the proposed rules uses ‘a major purpose to  
14 influence Federal elections’ test, should the four types of disbursements be subject to an  
15 allocation regime similar to those in 11 CFR 106.1 and 106.6, where only the allocable  
16 Federal portion would count toward the \$10,000 threshold?

17 As discussed above with regard to the proposed amendments to the definition of  
18 “expenditure,” certain Federal election activity influences Federal elections. Does this  
19 justify counting the three types of Federal election activity toward the \$10,000  
20 disbursement threshold? McConnell concluded that “[w]hile the distinction between  
21 ‘issue’ and express advocacy seemed neat in theory, the two categories of advertisements  
22 proved functionally identical in important respects.” McConnell, 124 S.Ct. at 650. The  
23 Supreme Court went on to explain that both types of communications “were used to

1 advocate the election or defeat of clearly identified candidates, even though the so-called  
2 issue ads eschewed the use of magic words.” Id. Nonetheless, since some electioneering  
3 communications (and even some ‘promote, support, attack, or oppose’ messages) by  
4 certain non-party organizations, such as 501(c) organizations might, be confined to  
5 advocating action regarding a particular legislative or executive decision, is there need to  
6 develop a more focused content analysis for the major purpose test? McConnell held that  
7 it is permissible to treat an organization as a political committee even when the  
8 organization makes only independent expenditures and does not make any contributions  
9 to Federal candidates. Id. at 665 n.48. Does this justify counting independent  
10 expenditures toward the spending threshold?

11 2. Proposed 11 CFR 100.5(a)(2)(ii) – Fifty Percent Disbursement  
12 Threshold

13 The second of the four proposed major purpose tests is set forth in proposed  
14 paragraph (a)(2)(ii). This paragraph would consider an organization to have a major  
15 purpose of nominating or electing candidates if more than fifty percent of the  
16 organization’s total annual disbursements during any of the previous four calendar years  
17 was spent on: (1) expenditures (including independent expenditures); (2) contributions;  
18 (3) payments for types 1 through 3 of Federal election activity; and (4) payments for all  
19 or any part of an electioneering communication, as defined in 11 CFR 100.29.

20 The Commission notes that, unlike proposed paragraph (a)(2)(i), this major  
21 purpose test does not consider the organization’s public pronouncements. An  
22 organization that exceeds the fifty percent threshold would be considered to have the  
23 election or nomination of candidates as a major purpose regardless of whether or not the

1 organization's public pronouncements or other communications indicate that it has such a  
2 major purpose. The Commission seeks comments regarding whether this major purpose  
3 test should also include consideration of the organization's public pronouncements or  
4 other communications, as is the case in proposed paragraph (a)(2)(i).

5 As set forth above, the relevant years for proposed paragraph (a)(2)(ii) would be  
6 the previous four calendar years. For example, to apply proposed paragraph (a)(2)(ii) for  
7 an organization during the year 2004, the relevant years would be 2000, 2001, 2002, and  
8 2003. If an organization's election-related spending exceeded the fifty percent threshold  
9 in any of these years, it would be considered to have the nomination or election of  
10 candidates as a major purpose. Alternatively, should the organization's election-related  
11 spending have to exceed the fifty percent threshold in each of the preceding four years to  
12 trigger political committee status? Because an organization's total annual disbursements  
13 are typically unknown until the end of the year, the current year spending would not be  
14 examined under this proposed major purpose test. That is why, in the example given  
15 above, the organization's spending during 2004 was not considered. For the same reason,  
16 this proposed provision would be inapplicable to newly established organizations that  
17 have no spending in any prior years. However, newly established organizations would  
18 still be subject to the other three proposed major purpose tests, including the \$50,000  
19 disbursement threshold in proposed paragraph (a)(2)(iii).

20 The Commission also seeks comment on the proposal to consider the  
21 organization's spending during the previous four calendar years, which would cover  
22 groups that are active only during presidential election years. Should the proposed rule  
23 look back more years or fewer years? If so, how many calendar years would it be

1 appropriate to examine? What should be the effective date of a rule that looks back four  
2 years?

3 The types of spending that would be counted toward the fifty percent threshold in  
4 the major purpose test set forth in proposed paragraph (a)(2)(ii) would be the same as  
5 those that would be counted toward the \$10,000 spending threshold in proposed  
6 paragraph (a)(2)(i). The Commission seeks comment regarding counting these categories  
7 of disbursements toward the fifty percent threshold. The Commission specifically refers  
8 commenters to the questions and issues raised above with respect to counting these  
9 categories of disbursements toward the \$10,000 disbursement threshold in proposed  
10 paragraph (a)(2)(i).

11 The Commission also seeks comment on the use of the fifty percent threshold. Is  
12 another percentage more appropriate to assess an organization's major purpose? Should  
13 the Commission apply a 25 percent threshold? Could a very large organization that  
14 spends less than fifty percent of its funds on election-related disbursements nevertheless  
15 have a profound effect on Federal elections? Does this justify the Commission adopting  
16 a threshold lower than fifty percent or would this situation be addressed by absolute  
17 dollar thresholds that would be used in proposed paragraphs (a)(2)(i) and (a)(2)(iii).

18 Should the size of the percentage threshold depend upon the determination of  
19 whether the nomination or election of candidates must be the major purpose of the  
20 organization, or must be only a major purpose of the organization? If the proper  
21 interpretation of the major purpose requirement is that the nomination or election of  
22 candidates must be the organization's primary purpose, should this proposed fifty percent  
23 threshold be the only test for major purpose adopted by the Commission in the final

1 rules? In other words, if the nomination or election of candidates must be the  
2 organization's most important purpose, perhaps only those organizations that spend most  
3 (i.e., more than fifty percent) of their funds on the nomination or election of candidates  
4 satisfy the major purpose requirement.

5 On the other hand, how should the final rule address organizations that spend a  
6 plurality, but not a majority, of their money on nomination and election activities? For  
7 example, should an organization be considered to satisfy the major purpose requirement  
8 if it spends only 30 percent of its funds on election-related activities (i.e., those items that  
9 would count toward the proposed fifty percent threshold) but does not spend more than  
10 30 percent on any other activity? To apply such a rule, would the Commission have to  
11 adopt categories of non-election spending so that the seventy percent of funds that the  
12 organization spent on non-election purposes would not be combined into a single  
13 category of "non-election activities," thereby allowing the organization to avoid political  
14 committee status? If such categories are required, how should they be crafted?

15 3. Proposed 11 CFR 100.5(a)(2)(iii) – \$50,000 Disbursement

16 Threshold

17 The third of the four proposed major purpose tests, which is set forth in proposed  
18 paragraph (a)(2)(iii), would consider an organization to have the nomination or election  
19 of Federal candidates as a major purpose if it spends more than \$50,000 in the current  
20 calendar year or any of the previous four calendar years on the following:

21 (1) expenditures (including independent expenditures); (2) contributions; (3) payments  
22 for types 1 through 3 of Federal election activity; and (4) payments for all or any part of  
23 an electioneering communication, as defined in 11 CFR 100.29. When an organization

1 exceeds the \$50,000 spending threshold, it would satisfy the major purpose standard. For  
2 example, to conclude that an organization has a major purpose of nominating and electing  
3 candidates in 2004, under proposed paragraph (a)(2)(iii), the organization would have to  
4 exceed the \$50,000 threshold in either 2000, 2001, 2002, 2003 or 2004. The relevant  
5 time period in proposed 11 CFR 100.5(a)(2)(iii) is the current calendar year or any of the  
6 four previous calendar years. Because this threshold is an absolute dollar amount instead  
7 of a percentage of total spending, the current year spending would be relevant to the  
8 analysis. Consequently, this provision, unlike proposed paragraph (a)(2)(ii) would apply  
9 to newly established organizations. The Commission seeks comment regarding the use  
10 of this time period in proposed paragraph (a)(2)(iii). Would it be more appropriate to  
11 require that the threshold be met in each of the four preceding calendar years?

12         The Commission seeks comment regarding the proposed \$50,000 threshold. The  
13 Commission notes that it uses a \$50,000 threshold to determine when a political  
14 committee is subject to mandatory electronic filing of its financial disclosure statements.  
15 See 11 CFR 104.18(a). Is this an appropriate dollar threshold for triggering major  
16 purpose under this proposed test or is a higher or lower threshold more appropriate and  
17 why? Is a higher or lower threshold more appropriate in certain situations or with respect  
18 to particular types of organizations? Should the proposed rule incorporate a sliding-scale  
19 dollar threshold that would increase or decrease depending upon the size or type of  
20 organization, or the type of activity in which the organization engages? How might such  
21 a sliding scale specifically work? Is it preferable not to have any major purpose criteria  
22 based upon a strict dollar amount and, if so, how would the Commission assess the major  
23 purpose of a newly established organization?

1 Like proposed paragraphs (a)(2)(i) and (a)(2)(ii), proposed paragraph (a)(2)(iii)  
2 would count the following types of disbursements toward the spending threshold:  
3 (1) expenditures (including independent expenditures); (2) contributions; (3) payments  
4 for types 1 through 3 of Federal election activity; and (4) payments for all or any part of  
5 an electioneering communication, as defined in 11 CFR 100.29. The Commission seeks  
6 comment regarding counting these categories of disbursements toward the \$50,000  
7 threshold. The Commission specifically refers commenters to the questions and issues  
8 raised above with respect to counting these categories of disbursements toward the  
9 \$10,000 spending threshold in proposed paragraph (a)(2)(i).

10 4. Proposed 11 CFR 100.5(a)(2)(iv) – 527 Organizations

11 Proposed 11 CFR 100.5(a)(2)(iv) offers two alternatives for the fourth of the four  
12 proposed major purpose tests. Both alternatives address “527 organizations,” which are  
13 entities organized under Section 527 of the Internal Revenue Code, 26 U.S.C. 527. A  
14 527 organization is “a party, committee, association, fund, or other organization (whether  
15 or not incorporated) organized and operated primarily for the purpose of directly or  
16 indirectly accepting contributions or making expenditures, or both, for an exempt  
17 function.” 26 U.S.C. 527(e)(1). An exempt function is defined as “the function of  
18 influencing or attempting to influence the selection, nomination, election, or appointment  
19 of any individual to any Federal, State, or local public office or office in a political  
20 organization, or the election of Presidential or Vice Presidential electors.” 26 U.S.C.  
21 527(e)(2).

22 Alternative 2-A provides that all 527 organizations would be considered to have  
23 the nomination or election of candidates as a major purpose, but carves out five

1 exceptions: (1) any 527 organization that is the campaign organization of an individual  
2 seeking nomination, election, appointment or selection to a non-Federal office; (2) any  
3 527 organization that is organized solely for the purpose of promoting the nomination or  
4 election of a particular individual to a non-Federal office; (3) any 527 organization that  
5 engages in nomination and election activities only with respect to elections in which there  
6 is no candidate for Federal office on the ballot; (4) any 527 organization that operates in  
7 only one state and which is required by the law of that state to file financial disclosure  
8 reports with a state agency; and (5) any 527 organization that is organized solely for the  
9 purpose of influencing the selection, appointment, or nomination of individuals to non-  
10 elective office, or the election, selection, nomination or appointment of persons to  
11 leadership positions within a political party.

12         The first proposed exception would recognize that the major purpose of a  
13 campaign organization for an individual seeking non-Federal office is the nomination or  
14 election of that individual to non-Federal office. Consequently, such an organization is  
15 not likely to have as a major purpose the nomination or election of candidates to Federal  
16 office. The second proposed exception would address those organizations that are  
17 organized solely to promote the nomination or election of individuals to non-Federal  
18 offices, but do not fall within the first exception because they are not under the control of  
19 that particular non-Federal candidate.

20         The third and fourth proposed exceptions pertain to state political organizations.  
21 The exception in proposed section 100.5(a)(2)(iv)(C) would address 527 organizations  
22 that operate only in connection with non-federal elections and only in states, such as  
23 Virginia, that hold non-Federal elections in years where there is no regularly scheduled



1 Federal election (i.e., odd-numbered years). Such an organization, which does not  
2 engage in activity in connection with any election for Federal office, is not likely to have  
3 as a major purpose the nomination or election of Federal candidates. The exception in  
4 proposed section 100.5(a)(2)(iv)(D) would address organizations that operate in only one  
5 state and, under state law, must disclose their financial activity to a state agency. Such  
6 organizations, because they operate in only one state, would not be deemed to have a  
7 major purpose of nominating or electing Federal candidates solely because they are 527  
8 organizations.

9 The fifth proposed exception would recognize that 527 organizations established  
10 solely to influence the selection, appointment or nomination of individuals to non-  
11 elective office (e.g., judicial appointments), or the nomination or election of candidates  
12 for leadership positions within a political party, should be exempt from this proposed  
13 major purpose test because they appear unlikely to have a major purpose of nominating  
14 or electing candidates to Federal office.

15 Organizations that do not satisfy any of the five exceptions and that receive  
16 \$1,000 in contributions or make \$1,000 in expenditures would be Federal political  
17 committees under proposed section 100.5(a) if they are organized under section 527 of  
18 the Internal Revenue Code. Should the Commission consider additional exceptions to  
19 proposed section 100.5(a)(2)(iv) to exclude more organizations, or should the  
20 Commission conclude that other organizations should be treated as Federal political  
21 committees if they satisfy the \$1,000 thresholds in proposed section 100.5(a)(1)?

22 The Commission notes that any 527 organization that falls within one or more of  
23 the exceptions contained in Alternative 2-A could nevertheless be considered to have a

1 major purpose of nominating or electing Federal candidates under one of the first three  
2 major purpose tests, such as by exceeding the fifty percent threshold set forth in proposed  
3 paragraph (a)(2)(ii) or the \$50,000 spending threshold set forth in proposed paragraph  
4 (a)(2)(iii). The Commission seeks comment on whether the exceptions contained in  
5 Alternative 2-A are appropriate and whether Alternative 2-A should include additional  
6 exceptions. Alternative 2-B, in contrast, would provide that all 527 organizations would  
7 be considered to have the nomination or election of candidates as a major purpose, and  
8 does not provide for any exceptions.

9 The Commission seeks comment regarding whether it is necessary and  
10 appropriate to mention 527 organizations in the proposed rule, or whether it would be  
11 better to eliminate the fourth major purpose test and instead subject 527 organizations,  
12 like any other organization, to analysis under the first three tests. To the extent that 527  
13 organizations should be explicitly mentioned in the proposed rule, which alternative is  
14 more appropriate, Alternative 2-A or Alternative 2-B?

15 5. Other Tax-Exempt Organizations

16 The proposed rule does not expressly mention other tax-exempt organizations,  
17 such as those organized under section 501(c) of the Internal Revenue Code, because,  
18 unlike most 527 organizations, these organizations could lose their tax-exempt status if  
19 their primary purpose were to influence elections. Should the final rule state that certain  
20 tax-exempt organizations, such as those organized under 501(c)(3) and (c)(4) of the  
21 Internal Revenue Code, will not meet any of the major purpose tests because of the nature  
22 of their tax-exempt status, and exempt them from the definition of political committee?  
23 Or should the final rule not provide an exemption for 501(c) organizations, recognizing

1 that the various thresholds in the major purpose tests are set high enough that certain  
2 501(c) organizations may continue to conduct incidental or low levels of election  
3 activities without satisfying any of the major purpose tests and triggering political  
4 committee status?<sup>7</sup> Would it be more appropriate to discard “a major purpose” analysis  
5 and use instead “the major purpose” analysis for these types of organizations? In this  
6 regard, should the Commission fashion a test whereby it would recognize three broad  
7 categories of activity for 501(c) organizations – “election influencing activity,”  
8 “legislative or executive lobbying activity,” and “educational, research, or other activity.”  
9 If the organization put more resources, either financially or timewise, into “election  
10 influencing activity” than it put into either of the other two activities, the major purpose  
11 test would be met.

12 **C. Treatment of Contributions for the Major Purpose Requirement**

13 Should the major purpose requirement apply when an organization’s status as a  
14 political committee is based upon its making in excess of \$1,000 in any contributions or  
15 expenditures, or only when its status as a political committee is based solely upon its  
16 making of independent expenditures in excess of \$1,000? In Akins v. FEC, 101 F.3d 731  
17 (D.C. Cir. 1996), vacated, 524 U.S. 11 (1998), one appeals court interpreted Buckley and  
18 MCFL to require application of the major purpose test only when political committee

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<sup>7</sup> This is especially true for 501(c)(3) organizations because their communications are exempt from the definition of “electioneering communications.” See 11 CFR 100.29(c)(6). Thus, any disbursements for such communications would not count toward a 501(c)(3)’s major purpose as electioneering communications. Furthermore, the Supreme Court recognized that the Massachusetts Citizens for Life, Inc., a nonprofit corporation, could become a political committee if its independent expenditures become “so extensive” that it satisfies the major purpose requirement. MCFL, 479 U.S. at 262.

1 status is based upon the organization's independent expenditures, not when it is based  
2 upon the organization's other expenditures, including contributions to political  
3 committees. See Akins, 101 F.3d at 742 ("the Court clearly distinguished independent  
4 expenditures and contributions as to their constitutional significance, and its references to  
5 a 'major purpose' test seem to implicate only the former"). Should the Akins court's  
6 interpretation be incorporated into the proposed rule, or should the major purpose  
7 requirement apply to organizations that exceed \$1,000 in expenditures, not just those that  
8 exceed \$1,000 in independent expenditures exclusively?

9 **D. Proper Application of the Major Purpose Requirement**

10 The Commission seeks comment regarding whether the definition of political  
11 committee in 11 CFR 100.5(a) should include a major purpose test along the lines set  
12 forth above or whether it should instead incorporate the major purpose requirement as an  
13 exception to the definition of "political committee." For example, if the major purpose  
14 requirement is incorporated into the definition of political committee (as it is in the  
15 proposed rules), an organization, regardless of the amount of its contributions and  
16 expenditures, will not be considered to be a political committee unless it is shown to have  
17 a major purpose of nominating or electing candidates. This is essentially how the  
18 proposed rules described above would work. An alternative approach, which is not  
19 reflected in the proposed rules, would be to use the major purpose requirement as an  
20 exception to the definition of political committee. Under this alternative approach, an  
21 organization would be considered to be a political committee if its expenditures or  
22 contributions exceed the \$1,000 threshold unless the organization has a major purpose  
23 other than nominating or electing candidates. This alternative approach would, to a

1 certain extent, place the burden on the organization to show that it does not have a major  
2 purpose of nominating or electing candidates. Would this alternative approach reflect the  
3 correct reading of the major purpose requirement as set forth in Buckley, MCFL and  
4 other cases?

5 Although not reflected in the proposed rules, the Commission seeks comment on  
6 the proper application of the major purpose requirement to complex organizations that  
7 include a political committee within the organization. For instance, should the  
8 Commission impute major purpose across such organizations? Thus, if an organization  
9 includes a political committee, should all other committees or organizations within the  
10 complex organization be deemed to satisfy the major purpose test? Or should the  
11 Commission conclude that its current affiliation rules at 11 CFR 100.5(g) sufficiently  
12 address this issue and no amendment to the regulations are necessary?

#### 13 **IV. CONVERSION OF FEDERALLY PERMISSIBLE FUNDS TO FEDERAL** 14 **FUNDS**

15 The Commission recognizes that there may be a need to provide guidance to  
16 organizations that become political committees after operating for some time as a non-  
17 political committee organization, especially concerning two issues: (1) how the new  
18 political committee should demonstrate that the contributions and expenditures that it  
19 made prior to becoming a political organization were paid for with Federally permissible  
20 funds and (2) how it should treat the funds it has cash-on-hand on the day that it became a  
21 political committee. Consequently, to address these issues, this NPRM includes proposed  
22 subpart A – Organizations that Become Political Committees, which would set forth the  
23 requirements for existing organizations that become political committees under 11 CFR

1 100.5(a). The proposed rules would not apply to organizations that register with the  
2 Commission as a political committee prior to making any contributions, expenditures,  
3 independent expenditures or allocable expenditures. The proposed rules do not replace  
4 any of the Commission's existing rules applicable to political committees. All political  
5 committees, including the political committees subject to these proposed rules, would  
6 remain subject to all of the Commission's rules applicable to political committees.

7         One purpose of the proposed 11 CFR part 102, subpart A is to provide a  
8 mechanism for organizations that become political committees to convert into Federal  
9 funds some or all of the funds received prior to the time that they became political  
10 committees. As explained below, a political committee could convert these funds into  
11 Federal funds by contacting its recent donor(s), making certain disclosures, and seeking  
12 the donor(s)' consent to use the funds for the purpose of influencing Federal elections.  
13 Allowing new political committees to convert pre-existing funds into Federal funds  
14 would achieve two goals. First, it would allow political committees to account for  
15 contributions and expenditures made before they became political committees that were  
16 required under the Act and the Commission's regulations to be paid for with Federal  
17 funds (i.e., funds that comply with the source prohibitions, amount limitations and other  
18 requirements of the Act). Non-political committees are already required to "demonstrate  
19 through a reasonable accounting method that, whenever such an organization makes a  
20 contribution or expenditure, or payment, the organization has received sufficient funds  
21 subject to the limitations and prohibitions of the Act to make such contribution,  
22 expenditure, or payment." 11 CFR 102.5(b)(1). The proposed rules would provide  
23 guidance on the initial reporting requirements for non-political committees that

1 subsequently become political committees but would not impose any new requirements  
2 on those groups that never become political committees. Second, the proposed rules  
3 would, under certain circumstances, allow political committees to transfer to their Federal  
4 account some of the funds in their possession when they became political committees.

5         The Commission seeks comment regarding the need for a mechanism for political  
6 committees to convert funds received prior to becoming a political committee into  
7 Federal funds. The proposed rules, as mentioned above, would apply only to those  
8 organizations that, prior to becoming a political committee, made contributions or  
9 expenditures that were required by the Act and the Commission's regulations to be paid  
10 for with funds that are subject to the amount limitations and source prohibitions of the  
11 Act. Should the Commission also provide a mechanism in the final rules for political  
12 committees that, prior to becoming a political committee, did not make any  
13 disbursements that were required to be paid for with funds that are subject to the  
14 limitations and prohibitions of the Act, to convert some or all of its funds received prior  
15 to becoming a political committee into Federal funds and then transfer those converted  
16 funds into its Federal account?

17         **A.     Proposed 11 CFR 102.50**

18         Proposed 11 CFR 102.50 would set forth the definitions of four terms used  
19 in proposed subpart A. "Allocable expenditures" would be defined as expenditures that  
20 are allocable under 11 CFR 106.1. Given that proposed 11 CFR 100.115 would make  
21 partisan voter registration, partisan voter identification and partisan get-out-the-vote  
22 activities "expenditures" and that some of these activities would be encompassed by

1 “generic voter drive” and subject to allocation in current section 106.6, should the final  
2 rules include these types of voter drive activities as “allocable expenditures?”

3 “Covered period” would be defined as the period of time beginning on January 1  
4 of the calendar year immediately preceding the calendar year in which the organization  
5 first satisfies the definition of “political committee” in 11 CFR 100.5(a) and ending on  
6 the date that the organization first satisfies the definition of “political committee” in  
7 11 CFR 100.5(a). This covered period is similar to the period in 2 U.S.C. 434(f)(2)(E)  
8 for disclosing information pertaining to individuals who donate \$1,000 or more to  
9 persons who make electioneering communications. Should the Commission adopt a  
10 shorter or a longer covered period in the final rule?

11 For example, if an organization first satisfies the definition of political committee  
12 in 11 CFR 100.5(a) on March 15, 2004, the covered period for that organization would be  
13 January 1, 2003 until March 15, 2004. For an organization that first became a political  
14 committee on December 31, 2005 would have a covered period of January 1, 2004 until  
15 December 31, 2005. Consequently, the covered period for any organization would be at  
16 least one year, but would be no longer than two years.

17 “Federal funds” would have the same meaning as in 11 CFR 300.2(g). Thus, it  
18 would mean funds that comply with the limitations, prohibitions and reporting  
19 requirements of the Act.

20 “Federally permissible funds” would be defined as funds that comply with the  
21 amount limitations and source prohibitions of the Act and were received during the  
22 covered period by the organization becoming a political committee. Federally  
23 permissible funds are different from Federal funds because, although both comply with



1 the source prohibitions and amount limitations of the Act, Federally permissible funds do  
2 not comply with the solicitation and reporting requirements of the Act. Moreover,  
3 Federally permissible funds would be limited to those funds received during the  
4 organization's covered period. Only a political committee's Federally permissible funds  
5 would be able to be converted to Federal funds under the proposed rules.

6 Consequently, not all of the organizations pre-existing funds would be subject to  
7 conversion to Federal funds under the proposed rules. Only those pre-existing funds that  
8 comply with the amount limitations and source prohibitions of the Act (i.e., Federally  
9 permissible funds) would be subject to conversion to Federal funds. Consequently, funds  
10 donated to the organization by a corporation, a labor organization or foreign national  
11 could not be converted to Federal funds because these are prohibited sources under the  
12 Act. See 2 U.S.C. 441b and 441e. Likewise, a political committee would not be able to  
13 convert to Federal funds an entire \$20,000 donation to the organization from an  
14 individual because this amount would exceed the \$5,000 limit for individual  
15 contributions to non-connected political committees. See 2 U.S.C. 441a(a)(1)(C). Only  
16 the first \$5,000 of such a donation would be able to be converted to Federal funds under  
17 the proposed rule. The remaining \$15,000 would have to be treated as non-Federal  
18 funds.

19 **B. Proposed 11 CFR 102.51**

20 Proposed 11 CFR 102.51 provides that subpart A would apply to a committee,  
21 club, association, or other group of persons that satisfies the definition of "political  
22 committee" under 11 CFR 100.5(a) and that made contributions, expenditures,  
23 independent expenditures or expenditures allocable under 11 CFR 106.1 during the

1 covered period. Consequently, the proposed rules would apply to any organization that  
2 meets the following two criteria: (1) it satisfies the Commission's definition of "political  
3 committee"; and (2) it has made expenditures, allocable expenditures or allocable  
4 disbursements during the covered period.

5 **C. Proposed 11 CFR 102.52**

6 Proposed 11 CFR 102.52 would set forth the requirements for political  
7 committees that would be subject to proposed subpart A. Proposed paragraphs  
8 (a) and (b) would remind these political committees that they are required to register with  
9 the Commission and to establish a campaign depository. These requirements already  
10 exist under 11 CFR 102.1(d) and 103.2 and would not be altered under the proposed  
11 rules.

12 Proposed paragraph (c) would require each political committee that would be  
13 subject to proposed subpart A to determine the amount of expenditures and allocable  
14 expenditures and disbursements it made during its covered period. Thus, under this  
15 provision, political committees would be required to determine how much of its spending  
16 in the period of time immediately before it became a political committee was required to  
17 have been paid for with Federal funds. For example, if a disbursement was an  
18 "expenditure" under the Act or the Commission's regulations, it would count toward this  
19 amount. Likewise, if a disbursement was an allocable expenditure under 11 CFR 106.1,  
20 it would also go toward this amount.

21 Proposed paragraph (d) would require political committees subject to proposed  
22 subpart A to determine the amount of Federally permissible funds that the political  
23 committee received during its covered period. Thus, only donations of \$5,000 or less

1 from persons other than corporations, labor organizations, foreign nationals and other  
2 prohibited sources would be counted toward this amount, provided that these donations  
3 were received by the organization during its covered period.

4 Proposed paragraph (e) would require the political committees that would be  
5 subject to proposed subpart A to file financial disclosure reports with the Commission in  
6 accordance with part 104 of the Commission's regulations and proposed 11 CFR 102.56.  
7 Part 104 of the Commission's regulations are the general reporting requirements  
8 applicable to all political committees, including those that also would be subject to  
9 proposed subpart A. Proposed 11 CFR 102.56 are reporting requirements that the  
10 Commission proposes to adopt as part of these proposed rules. These additional  
11 reporting requirements are discussed in detail below.

12 **D. Proposed 11 CFR 102.53**

13 Proposed 11 CFR 102.53(a) would require a political committee subject to  
14 proposed subpart A to treat the amount of expenditures and allocable expenditures and  
15 disbursements made during its covered period as debt owed by its Federal account to its  
16 non-Federal account. For example, if, under proposed section 102.52(c), a political  
17 committee determined that, during its covered period, it made \$100,000 in expenditures  
18 and allocable expenditures and disbursements, its Federal account would owe \$100,000  
19 to its non-Federal account. Consequently, virtually every political committee that would  
20 be subject to proposed subpart A would, at the time it becomes a political committee,  
21 have debt owed by its Federal account to its non-Federal account.

22 Under proposed paragraph (b), a political committee would not be permitted to  
23 make any contributions, expenditures, independent expenditures or allocable

1 expenditures until the debt owed by the Federal account to the non-Federal account is  
2 satisfied. Thus, a political committee would be unable to make any disbursements that  
3 must be paid for with Federal funds until the debt is satisfied pursuant to proposed  
4 section 102.53(c).

5 Proposed paragraph (c) would provide two methods for a political committee  
6 subject to proposed subpart A to satisfy the debt owed by its Federal account to its non-  
7 Federal account. The first method would be for the political committee to raise Federal  
8 funds and transfer those funds to its non-Federal account. The other method would be for  
9 the political committee to convert some or all of its Federally permissible funds to  
10 Federal funds. The proposed rule would allow the political committee to satisfy the debt  
11 owed by its Federal account by using either method or both methods in combination.

12 As set forth above, the Commission is seeking comment regarding whether  
13 political committees should be permitted to maintain non-Federal accounts. How would  
14 the conversion to Federal funds operate if the Commission were to adopt a final rule  
15 prohibiting Federal political committees from maintaining non-Federal accounts?

16 **E. Proposed 11 CFR 102.54**

17 Proposed section 102.54 would set forth the procedure through which a political  
18 committee that is subject to proposed subpart A may convert some or all of its Federally  
19 permissible funds to Federal funds. The proposed rule would provide a two-step process  
20 for a political committee to convert its Federally permissible funds into Federal funds.  
21 First, the political committee would be required to send written notification to the  
22 donor(s) of any Federally permissible funds to be converted into Federal funds. The  
23 written notification would need to:

1 (1) inform the donor(s) that the political committee has registered as a  
2 Federal political committee;  
3 (2) make all disclaimers required by 11 CFR 110.11;  
4 (3) inform the donor(s) of the amount of the Federally permissible funds  
5 donated by the donor(s) that the political committee seeks to convert to  
6 Federal funds and request that the donor(s) grant written consent for the  
7 political committee to use that amount of Federally permissible funds for  
8 the purpose of influencing Federal elections;  
9 (4) advise the donor(s) that they may grant written consent for an amount  
10 of Federally permissible funds lower than the amount requested, and that  
11 they may refuse to grant consent entirely; and  
12 (5) inform the donor(s) that, by granting consent, the donor(s) will be  
13 deemed to have made a contribution to a Federal political committee, that  
14 the contribution is subject to the amount limitations and source  
15 prohibitions of the Act, and that the contribution will be deemed to have  
16 been made on the date that the written consent is signed by the donor(s).  
17 Second, the political committee would be required to receive the written consent from the  
18 donor(s) within 60 days after the political committee first satisfies the definition of  
19 “political committee” in 11 CFR 100.5.

20 If the political committee satisfies the requirements of proposed 11 CFR 102.54,  
21 the funds for which it receives written consent pursuant to proposed paragraph (b) would  
22 be considered to be converted to Federal funds and may be used to satisfy the debt owed  
23 by the Federal account. The Commission notes that, under the proposed rules, the

1 political committee would need to receive the written consent from the donor(s) within  
2 sixty days after the political committee becomes a political committee under 11 CFR  
3 100.5. The funds for which the political committee receives written consent from the  
4 donor(s) after that date would not be able to be converted to Federal funds and used to  
5 satisfy the debt owed by the Federal account.

6 The Commission seeks comment generally regarding the proposed procedure for  
7 converting Federally permissible funds into Federal funds. The written notice  
8 requirements under proposed section 102.54(a) are designed to serve at least two  
9 purposes. First, they would ensure that the donor(s) are fully informed that their  
10 donations will be or have been used by the political committee for the purpose of  
11 influencing Federal elections and that the donor(s) are given a reasonable opportunity to  
12 object to such use. Second, the disclosures would ensure that the donor(s) have adequate  
13 information to comply with the contributions limitations of the Act. Are any of the  
14 requirements for the written notice under proposed paragraph 102.54(a) unnecessary?  
15 Should any other requirements be added? Is it appropriate to require that the donor(s)  
16 grant their consent to the conversion of their donated funds in writing? Should oral  
17 consent, perhaps subject to a requirement that the oral consent be memorialized in  
18 writing, be sufficient?

19 Should the Commission adopt the sixty-day time limit in proposed paragraph  
20 102.54(b)? The sixty-day time limit is designed to ensure that any conversion of  
21 Federally permissible funds to Federal funds occurs shortly after the political committee  
22 achieves political committee status under 11 CFR 100.5(a). Limiting the time period for  
23 conversion also will allow for the Commission and the public to more easily assess a

1 political committee's compliance with these proposed rules. Is a time limit necessary?  
2 Would a time period other than sixty days be preferable? If so, how long should the  
3 conversion period last?

4         Would it be preferable to adopt an implied consent procedure, whereby the  
5 political committee would send a written notification to the donor(s), but would not have  
6 to wait for the donor(s) to affirmatively consent to the conversion. Instead, the political  
7 committee may consider the donor(s) to have consented to the transfer unless and until it  
8 receives an affirmative objection to the conversion from the donor(s). Such a procedure  
9 would be similar to the procedures the Commission adopted for redesignation and  
10 reattribution of certain apparently excessive contributions to authorized candidate  
11 committees under 11 CFR 110.1(k)(3)(ii)(B) and 11 CFR 110.1(b)(5)(ii)(B). Are there  
12 reasons that the Commission should or should not adopt a similar regime to govern  
13 conversion of Federally permissible funds to Federal funds in proposed subpart A?

14         **F. Proposed 11 CFR 102.55**

15         Proposed 11 CFR 102.55 would provide a mechanism for political committees to  
16 convert an amount of Federally permissible funds to Federal funds that is greater than the  
17 amount of debt owed by its Federal account. A political committee that successfully  
18 converts an amount of Federally permissible funds to Federal funds that is greater than  
19 the amount of debt owed by its Federal account would be required to first use the  
20 converted funds to satisfy the debt owed by its Federal account. The surplus converted  
21 Federal funds (i.e., the amount of converted Federally permissible funds exceeding the  
22 amount of debt owed by the political committee's Federal account) may then be  
23 transferred to the political committee's Federal account. The amount of converted

1 Federal funds transferred to the Federal account under this proposed section, however,  
2 may be no greater than the amount of cash-on-hand that the political committee had in its  
3 possession at the time it first became a political committee under 11 CFR 100.5(a).

4 For example, if a political committee has \$50,000 in debt owed by its Federal  
5 account and is able to convert \$75,000 of its Federally permissible funds into Federal  
6 funds pursuant to proposed section 102.54, it would be able to transfer the surplus  
7 \$25,000 to its Federal account if it had at least \$25,000 cash-on-hand in its possession at  
8 the time it became a political committee. If the political committee, however, had only  
9 \$10,000 of cash-on-hand in its possession when it became a political committee, it would  
10 be able to transfer only \$10,000 from its non-Federal account to its Federal account. If  
11 the political committee had zero cash-on-hand in its possession when it became a  
12 political committee, it would not be permitted to transfer any funds to its Federal account.

13 The Commission seeks comment regarding whether it is appropriate for the  
14 proposed rules to allow this surplus amount to be transferred to a political committee's  
15 Federal account. Would it be preferable to limit the conversion procedures only to the  
16 amount needed by the political committee to satisfy the debt owed by its Federal  
17 account? If it is advisable for the Commission to allow political committees to convert as  
18 much of their Federally permissible funds into Federal funds as possible, and to transfer  
19 any surplus to their Federal account, should the rule limit the amount transferred to the  
20 amount of cash-on-hand in the possession of the political committee when it became a  
21 political committee?



1           **G.     Proposed 11 CFR 102.56**

2           Proposed section 102.56 would set forth the initial reporting requirements for  
3 political committees that would be subject to proposed subpart A. Under proposed  
4 section 102.56, political committees that would be subject to proposed subpart A would  
5 be required to report certain information along with other required information in the  
6 political committee's first report due under 11 CFR 104.5. Thus, political committees  
7 that are subject to proposed subpart A are also subject to the reporting requirements of  
8 11 CFR part 104, which apply to all political committees. Proposed section 102.56  
9 would merely require a political committee that would be subject to proposed subpart A  
10 to report certain additional information related to its compliance with proposed subpart  
11 A. The additional subpart A information would be due whenever the political  
12 committee's first financial disclosure report is due under 11 CFR part 104.

13           Under proposed paragraph (a) a political committee that would be subject to  
14 proposed subpart A would be required to report the amount of expenditures and allocable  
15 expenditures and disbursements made by the political committee during its covered  
16 period. This figure would reflect the amount of debt the political committee's Federal  
17 account owes to its non-Federal account pursuant to proposed section 102.53(a).

18           Under proposed paragraph (b), a political committee that would be subject to subpart A  
19 would be required to report the amount of any Federally permissible funds converted to  
20 Federal funds under proposed 11 CFR 102.54. This figure would reflect the amount of  
21 converted Federal funds that are available for the political committee to satisfy the debt  
22 owed by its Federal account and, possibly, the amount of surplus converted Federal funds

1 that the political committee may transfer to its Federal account pursuant to proposed 11  
2 CFR 102.55(b).

3 Proposed paragraph (c) would require a political committee that is subject to  
4 proposed subpart A to report the identifying information required under 11 CFR  
5 104.3(a)(4)(i). This is the contributor information that all political committees must  
6 report to the Commission when they receive contributions. This proposed provision is  
7 designed to require political committees that would be subject to subpart A to report this  
8 information for any donation of Federally permissible funds that is converted to Federal  
9 funds.

10 Proposed paragraph (d) would require a political committee to report the  
11 difference between the amount reported under proposed paragraph (a), which is the  
12 amount of debt owed by the political committee's Federal account under proposed  
13 11 CFR 102.53(a), and the amount reported under proposed paragraph (b), which is the  
14 amount of Federally permissible funds converted to Federal funds under proposed  
15 11 CFR 102.54. Consequently, the amount reported pursuant to proposed paragraph (d)  
16 would reflect whether the political committee has converted a sufficient amount of  
17 Federally permissible funds to Federal funds to allow it to satisfy the debt owed by its  
18 Federal account. If not, the deficiency would be required to be reported as a debt owed  
19 by the Federal account. It would also reflect whether the political committee has  
20 converted an amount of Federally permissible funds to Federal funds in excess of the  
21 amount of debt owed by the Federal account, thereby possibly permitting the political  
22 committee to transfer some or all of the surplus funds to its Federal account pursuant to  
23 proposed 11 CFR 102.55(b).

1 Proposed paragraph (e) would require a political committee that would be subject  
2 to proposed subpart A to report the amount and date of any transfers to its Federal  
3 account made pursuant to proposed 11 CFR 102.55(b). This would permit the  
4 Commission to assess whether the political committee complied with the transfer  
5 requirements under proposed paragraph 102.55(b).

6 The Commission seeks comment regarding these additional reporting  
7 requirements that would apply to political committees that would be subject to proposed  
8 subpart A. Are any of these reporting requirements unnecessary or unduly burdensome?  
9 Are there additional reporting requirements that the Commission should include in the  
10 proposed rules?

11 **V. PROPOSED 11 CFR 106.6 -- ALLOCATION**

12 Alternative 1-B includes proposed changes to the allocation rules to reflect other  
13 changes proposed in Alternative 1-B and for other purposes. The Commission has not  
14 determined that any changes to its allocation rules are appropriate, and is thus seeking  
15 comment to determine what, if any, changes are advisable. Although BCRA invalidated  
16 the Commission's allocation regime for national party committees and substituted a  
17 different allocation regime for other political party committees, it did not address the  
18 Commission's allocation regulations for separate segregated funds and nonconnected  
19 committees. Although McConnell criticized aspects of the Commission's allocation  
20 regulations regarding political party committees, allocation by nonconnected committees  
21 and separate segregated funds was not before the Supreme Court. McConnell, 124 S.Ct.  
22 at 660 and 661. Accordingly, the Commission seeks comments on whether either BCRA  
23 or McConnell requires, permits, or prohibits changes to the allocation regulations for

1 separate segregated funds and nonconnected committees. Does either provide any  
2 guidance as to how the Commission should exercise any discretion it may have in this  
3 regard? Given McConnell's criticism of the Commission's prior allocation rules for  
4 political parties, is it appropriate for the regulations to allow political committees to have  
5 non-Federal accounts and to allocate their disbursements between their Federal and non-  
6 Federal accounts? Should any changes to the allocation regulations be effective  
7 immediately, or should their effective date be January 1, 2005, which is the first day of  
8 year following the completion of the current election cycle?

9 Under the proposed rules in Alternative 1-B, separate segregated funds and  
10 nonconnected committees would be permitted to allocate expenses for partisan voter  
11 drives and for communications that promote or oppose a political party between Federal  
12 and non-Federal accounts according to the "funds expended" method, which is consistent  
13 with the requirements of current section 106.6(c) for administrative expenses and generic  
14 voter drives. The proposal would add a minimum Federal percentage to the "funds  
15 expended" method, and would also clarify the ratio in the "funds expended" method by  
16 further describing the Federal component of that ratio. Finally, the proposal would  
17 specify an allocation method for communications that promote both candidates and  
18 political parties.

19 **A. Partisan voter drives**

20 The proposal would replace the references to "generic voter drives" in current  
21 11 CFR 106.6(b)(1)(iii) and (2)(iii) with references to "partisan voter drives" as defined  
22 in proposed 11 CFR 100.34. Political committees are currently required to allocate the  
23 costs for "generic voter drives," which include voter drives that urge the general public to

1 support candidates of a particular party or associated with a particular issue, without  
2 mentioning a specific candidate. Under Alternative 1-B, most “generic voter drives”  
3 would be considered an allocable expenditure as a “partisan voter drive” under proposed  
4 11 CFR 100.34 and 106.6(b)(1)(iii), (2)(iii), and (c). Voter drives that urge the general  
5 public to register, vote or support candidates associated with a particular issue would  
6 continue to be allocable under proposed 11 CFR 106.6(b)(1)(iii), (b)(2)(iii), and (c).

7 Partisan voter drives that include any communication that promotes, supports,  
8 attacks, opposes, or expressly advocates a clearly identified Federal candidate are  
9 expenditures subject to allocation under current 11 CFR 106.1, or, if the communication  
10 also promotes or opposes a political party, the partisan voter drive would be allocated  
11 under proposed 11 CFR 106.6(f), which is described below. In all other instances,  
12 expenditures for partisan voter drives would be allocable under the “funds expended”  
13 method of proposed 11 CFR 106.6(c). Because “partisan voter drives” would be defined  
14 as “expenditures” under proposed 11 CFR 100.34 and 100.115, the communications  
15 involved would not be limited to those that meet the definition of “public  
16 communication” in current 11 CFR 100.26 through 100.28.

17 Current 11 CFR 106.1(a)(1) provides that the allocation methods in that section  
18 shall be used to allocate payments involving both expenditures on behalf of one or more  
19 clearly identified Federal candidates and disbursements on behalf of one or more clearly  
20 identified non-Federal candidates. Proposed section 106.6(f), which is described below,  
21 would provide an allocation method similar in some respects to the “expected benefit”  
22 method under current section 106.1. Proposed section 106.6(g) would specify that public  
23 communications that promote, support, attack or oppose a clearly identified Federal

1 candidate, without also promoting or opposing a political party, would be allocable under  
2 section 106.1 as expenditures or disbursements on behalf of the clearly identified Federal  
3 or non-Federal candidates. Under this approach, the Commission is not proposing any  
4 changes to 11 CFR 106.1(a)(1) and instead would rely on the limitations in proposed  
5 section 106.6(b), (c), (f) and (g) to ensure that all partisan voter drives except those that  
6 promote, support, attack, oppose, or expressly advocate a clearly identified Federal  
7 candidate would be subject to allocation under section 106.6(c). Comments are sought  
8 on this approach.

9 **B. Public communications that promote or support a political party**

10 The proposal would also require nonconnected committees and separate  
11 segregated funds to allocate costs of public communications that promote or oppose a  
12 political party, which would be expenditures under proposed 11 CFR 100.116(b), under  
13 the “funds expended” method in proposed 11 CFR 106.6(c). If such a communication  
14 also promotes, supports, attacks, or opposes a clearly identified Federal candidate, it  
15 would be allocable under proposed 11 CFR 106.6(f), described below. Nonpartisan voter  
16 drives that include a public communication would be subject to the same allocation  
17 regime. A public communication that promotes or opposes a political party, but that does  
18 not also promote, support, attack or oppose a clearly identified Federal candidate, would  
19 be allocable under proposed 11 CFR 106.6(c), without regard to references to Federal  
20 candidates or even express advocacy of candidates for State office. Thus, a  
21 communication that, for example, promotes the Republican Party and the Governor of  
22 New York’s reelection would be allocable under proposed 11 CFR 106.6(c).

- 1           The charts below illustrate the allocation methods that would be required under
- 2   Alternative 1-B.
- 3

1 ALLOCATION FOR NONCONNECTED COMMITTEES AND SEPARATE  
 2 SEGREGATED FUNDS OF PARTISAN VOTER DRIVES THAT INCLUDE A  
 3 COMMUNICATION

4 In the communication,

How is the Federal Candidate Depicted?	Does it promote or oppose a political party?	Does it clearly identify a Non-Federal Candidate?	ALLOCATION: citation and method
--	--	---	---------------------------------

None	NO	NO	106.6(c) fund expended
		YES	106.6(c) fund expended
	YES	NO	106.6(c) fund expended
		YES	106.6(c) fund expended

Clearly ID'd Candidate	NO	NO	106.6(c) fund expended
		YES	106.6(c) fund expended
	YES	NO	106.6(c) fund expended
		YES	106.6(c) fund expended

PASO'd or Express Advocacy	NO	NO	106.1 = time/space (100% Fed)
		YES	106.1 = time/space
	YES	NO	106.6(f) time/space & fund exp
		YES	106.6(f) time/space & fund exp



1           ALLOCATION FOR NONCONNECTED COMMITTEES AND SEPARATE  
 2           SEGREGATED FUNDS OF PUBLIC COMMUNICATIONS AND NON-PARTISAN  
 3           VOTER DRIVES THAT INCLUDE A PUBLIC COMMUNICATION

4   In the communication,

How is the Federal Candidate Depicted?	Does it promote or oppose a political party?	Does it clearly identify a Non-Federal Candidate?	ALLOCATION: citation and method
--	--	---	---------------------------------

None	NO	NO	N/A
		YES	106.1 = time/space (100% NF)
	YES—See partisan voter drive allocation chart.		

Clearly ID'd candidate	NO	NO	N/A
		YES	106.1 = time/space
	YES—See partisan voter drive allocation chart.		

PASO'd or Express Advocacy	See partisan voter drive allocation chart.		
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1           **C.     Minimum Federal percentage**

2           The proposal would add a minimum Federal percentage to the “funds expended”  
3 allocation method. This minimum would be the same percentage that is applicable to  
4 State, district, and local political party committees’ allocation of voter drives under  
5 current 11 CFR 106.7(d)(3). It varies with the Federal offices that appear on a particular  
6 State’s ballot, ranging from 15%, in election years in which a State votes for candidates  
7 for the United States House of Representatives only, to 36%, in election years in which a  
8 State votes for president and a senator as well. See current 11 CFR 106.7(d)(3)(i)  
9 through (iv). Related changes to reporting requirements are also proposed for  
10 11 CFR 104.10.

11           For nonconnected committees and separate segregated funds that conduct partisan  
12 voter drives, or engage in other activities subject to the “funds expended” allocation  
13 method, in more than one State, two alternative proposed rules are presented.  
14 Alternative 3-A would require such committees to use the greatest percentage applicable  
15 to any of the States in which the committee conducted such activities for all its  
16 disbursements allocable under proposed 11 CFR 106.6(c). Alternative 3-B would permit  
17 such committees to allocate such costs on a State-by-State basis according to the  
18 percentage applicable in each State. Under Alternative 3-B, a committee could choose to  
19 simplify its allocation by using the highest applicable percentage to avoid the  
20 complications of a State-by-State allocation.

21           The Commission is considering other minimum Federal percentages as  
22 alternatives to those presented in the proposed rules. Should the rules in 11 CFR 106.6  
23 apply different minimum Federal percentages than those for State, district and local

1 political party committees? Should the Commission adopt a fixed minimum Federal  
2 percentage? Should it select a higher minimum for committees that conduct activities in  
3 several states? For example, the allocation rule could specify that nonconnected  
4 committees and separate segregated funds that conduct activities in fewer than ten States  
5 must use a minimum Federal percentage of 25%, while those that do so in ten or more  
6 States would face a minimum Federal percentage of 50%. The 25% figure was chosen as  
7 the average of the four percentages in current 11 CFR 106.7(d)(3), and the 50% figure  
8 was chosen to reflect the broader scope of activities and as a slight reduction to the 60%  
9 or 65% applicable to national party committees under previous 11 CFR 106.5(b)(2), prior  
10 to its sunset on December 31, 2002. See 11 CFR 106.5(h)(2003). If the final rule should  
11 take such an approach, what should the minimum Federal percentages be?

12 **D. Clarifying the ratio in the “funds expended” method**

13 The “funds expended” allocation method provides that expenses are allocated  
14 between the Federal and non-Federal accounts of a nonconnected committee or a separate  
15 segregated fund based on the ratio of Federal expenditures to total Federal and non-  
16 Federal disbursements made by the committee during the two-year Federal election cycle.  
17 Current section 106.6(c)(1) specifies that: “In calculating its federal expenditures, the  
18 committee shall include only amounts contributed to or otherwise spent on behalf of  
19 specific federal candidates.” The proposal would clarify that “amounts . . . spent on  
20 behalf of specific Federal candidates” includes independent expenditures and amounts  
21 spent on public communications that promote, support, attack, support, or oppose a  
22 clearly identified Federal candidate. See proposed 11 CFR 106.6(c)(1)(i). This proposal  
23 reflects the Commission’s application of current regulations in a recent Advisory

1 Opinion. See AO 2003-37, at 4 n.5. The Commission seeks comment on whether the  
2 conclusion in this Advisory Opinion should be expressly stated in proposed  
3 11 CFR 106.6(c)(1)(i).

4 **E. Public communications that promote and a Federal candidate**

5 Proposed section 106.6(f) would specify an allocation method for public  
6 communications that promote or oppose a political party and promote, support, attack or  
7 oppose a clearly identified Federal candidate. This method would apply to this  
8 communication whether or not the communications also clearly identify a non-Federal  
9 candidate.

10 Proposed section 106.6(f) would provide an allocation method that combines the  
11 “time and space” method and the “funds expended” method for communications that  
12 support Federal candidates and a political party. The communication would first be  
13 subject to a “time and space” analysis to split the communication among the candidates  
14 and the political party. The portions attributed to candidates would be allocated to either  
15 the Federal or non-Federal accounts based on the candidates’ status. The portion  
16 attributed to the political party would allocated under the “funds expended” method in  
17 proposed 11 CFR 106.6(c).

18 This approach would be consistent with the Commission’s analysis and  
19 conclusions based on the application of current regulations in a recent Advisory Opinion.  
20 See AO 2003-37, at 12. Should the Commission expressly incorporate this result in its  
21 allocation regulations?

1           **F.       Public communications that promote a Federal candidate, without**  
2                           **promoting or opposing a political party**

3           Proposed section 106.6(g) would specify that public communications that  
4 promote, support, attack or oppose a clearly identified Federal candidate without  
5 promoting or opposing a political party by a nonconnected committee or separate  
6 segregated fund would be allocable under current section 106.1. Nonpartisan voter drives  
7 that include a public communication with similar content would be subject to the same  
8 allocation requirements. The only other expenditures or disbursements by a  
9 nonconnected committee or separate segregated fund for a public communication or voter  
10 drive that would be allocable under current section 106.1 would involve communications  
11 that clearly identify non-Federal candidates, but do not promote, support, attack, oppose,  
12 or expressly advocate a Federal candidate.

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

14           **[Regulatory Flexibility Act]**

15           When an agency issues certain rulemaking proposals, the Regulatory Flexibility  
16 Act (“RFA”) requires the agency to “prepare and make available for public comment an  
17 initial regulatory flexibility analysis” which will describe the impact of the proposed rule  
18 on small entities. 5 U.S.C. 603(a). Section 605 of the RFA allows an agency to certify a  
19 rule, in lieu of preparing an initial regulatory flexibility analysis, if the proposed  
20 rulemaking is not expected to have a significant economic impact on a substantial  
21 number of small entities.

1 Political Committees

2 One part of the proposed rule would amend the Commission’s definition of  
3 “political committee.” Under the Federal Election Campaign Act of 1971, as amended,  
4 and the Commission’s regulations, political committees have certain reporting obligations  
5 that do not apply to non-political committees. Moreover, there are restrictions and  
6 limitations on the receipt of funds by political committees that do not apply to non-  
7 political committees. This part of the proposed rule would directly affect only those  
8 organizations that are not currently political committees, but would fall within the  
9 amended definition of “political committee” in the proposed rule, if the Commission  
10 decides to amend the definition.

11 It is difficult for the Commission to estimate the number of organizations that  
12 may be affected by the proposed change in the definition of political committee. The  
13 Commission believes, however, that most of the organizations that would be affected by  
14 the proposed rule are “political organizations” organized under section 527 of the Internal  
15 Revenue Code. Under the North American Industry Classification System (“NAICS”),  
16 political organizations are considered to be “small entities” if they have less than \$6  
17 million in average annual receipts. The Commission estimates that all but a few of the  
18 527 organizations that may be affected by the proposed rules, if adopted, have less than  
19 \$6 million in average annual receipts and, therefore, qualify as small entities under the  
20 NAICS.

21 The Commission notes that a number of these political organizations are already  
22 registered with the Commission as political committees and therefore, would not be  
23 affected by the proposed change to the definition of political committee. The proposed

1 rule also includes various exceptions. For example, the proposed rule would only affect  
2 those political organizations that: (1) meet the “major purpose” test set forth in proposed  
3 section 100.5(a)(2) of the proposed rule; and (2) exceed the \$1,000 expenditure and  
4 disbursement thresholds set forth in proposed section 100.5(a)(1) of the proposed rule.  
5 Moreover, the proposed rule would exempt from political committee status those political  
6 organizations that are involved primarily in state, as opposed to Federal, political activity.  
7 Consequently, while it is difficult for the Commission to estimate precisely the number of  
8 organizations that would be affected by the proposed rule, the Commission believes that,  
9 as a result of the exceptions described above, the proposed rule would not have an  
10 economic effect on a substantial number of the small entities.

11 Furthermore, the Commission does not believe that the proposed rule, if adopted,  
12 will have a significant economic impact on those small entities that would be affected.  
13 As stated above, the effect of the proposed rule would be to impose certain reporting  
14 requirements and restrictions on funding certain activities upon those political  
15 organizations that would become political committees under the amended definition of  
16 “political committee.”

17 The reporting requirements, however, are not complicated and would not be  
18 costly to complete. For the most part, the reports would be filed electronically, using free  
19 software provided by the Commission. The Commission also provides free technical  
20 support and free access to the Commission’s Information Specialists to assist political  
21 committees in submitting the reports. It is highly unlikely that a political committee  
22 would need to hire additional staff or retain professional services to comply with the  
23 reporting requirements.

1           The Commission also notes that the Act and the Commission’s regulations do not  
2 place any limit on the amount of funds that a political committee would be permitted to  
3 spend. The proposed rule would merely limit the types of funds that may be used to pay  
4 for certain activities, which are essentially those activities that fall within the definition of  
5 “expenditure.” Political committees are, and will remain, free to spend unlimited funds  
6 on those activities that do not fall within the definition of expenditure. Moreover, the  
7 Commission is considering alternatives that would have even less of an impact than those  
8 described above, including the possibility of not making any changes to the definition of  
9 “political committee.”

#### 10 Expenditures and Allocation

11           The proposed rule would also amend the Commission’s definition of  
12 “expenditure” to include payments for activities that are not expressly included in the  
13 Commission’s existing definition of expenditure. Whether a disbursement qualifies as an  
14 “expenditure” determines whether the disbursement must be paid for with Federal funds  
15 or may be paid for with non-Federal funds. It also impacts whether an organization  
16 satisfies the \$1,000 expenditure threshold for political committee status. The proposed  
17 rule would also revise the Commission’s rules regarding the allocation of certain  
18 disbursements between a political committee’s Federal account and non-Federal account.  
19 Consequently, these parts of the proposed rule could impact any organization or  
20 individual that engages in activities in connection with a Federal election.

21           As explained above with respect to the proposed amendment of the definition of  
22 “political committee,” the proposed changes are unlikely to have a significant economic  
23 impact on small entities. Neither the proposed change in the definition of “expenditure”



1 nor the proposed change in the allocation rules would limit the amount of money that  
2 may be raised or spent on electoral activity. The proposed rules would merely require  
3 that only funds raised in accordance with the Act may be spent in connection with  
4 Federal elections. Moreover, the Commission is considering alternatives that would have  
5 even less of an impact than those described above, including the possibility of not making  
6 any changes to the definition of “expenditure” and the allocation rules.

7 Certification

8 For the foregoing reasons, the Commission hereby certifies that this proposed rule  
9 would not have a significant economic impact on a substantial number of small entities.  
10 The Commission invites comment from members of the public who believe that the  
11 proposed rule will have a significant economic impact on a substantial number of small  
12 entities.

13 **List of Subjects**

14 11 CFR Part 100

15 Elections.

16 11 CFR Part 102

17 Political committees and parties, Reporting and recordkeeping requirements.

18 11 CFR Part 104

19 Campaign funds, Political committees and parties, Reporting and recordkeeping  
20 requirements.

21 11 CFR Part 106

22 Campaign funds, Reporting and recordkeeping requirements.

23 11 CFR Part 114

1 Business and industry, Elections, Labor.

2

3

1 For the reasons set out in the preamble, it is proposed to amend Subchapter A of  
2 Chapter I of Title 11 of the Code of Federal Regulations as follows:

3 **PART 100 – SCOPE AND DEFINITIONS (2 U.S.C. 431)**

4 1. The authority citation for part 100 would continue to read as follows:

5 **Authority:** 2 U.S.C. 431, 434 and 438(a)(8).

6 2. Section 100.5 would be amended by revising the introductory paragraph and  
7 paragraph (a) to read as follows:

8 **§ 100.5 Political committee (2 U.S.C. 431 (4), (5), (6)).**

9 Political Committee means any group meeting ~~one of the following conditions:~~  
10 set forth in paragraph (a), (b), (c), (d) or (e) of this section.

11 (a) (1) Except as provided in paragraphs 11 CFR 100.5 (b), (c), and (d), (e)(1),  
12 and (e)(3) of this section, political committee means any committee, club,  
13 association, or other group of persons:

14 (i) That which receives contributions aggregating in excess of \$1,000  
15 or that which makes expenditures aggregating in excess of \$1,000  
16 during a calendar year is a political committee; and

17 (ii) For which the nomination or election of one or more Federal  
18 candidates is a major purpose.

19 ALTERNATIVE 1-A:

20 (iii) For purposes of this paragraph (a)(1)(i) only, the term expenditure  
21 shall include payments for Federal election activities described in  
22 11 CFR 100.24(b)(1) through (b)(3) and payments for all or any

1 part of an electioneering communication as defined in  
2 11 CFR 100.29.

3 End of Alternative 1-A. For Alternative 1-B, see 11 CFR 100.34 to 114.4.

4 (2) For purposes of paragraph (a)(1) of this section, a committee, club,  
5 association or group of persons has the nomination or election of a  
6 candidate or candidates as a major purpose if it satisfies the conditions set  
7 forth in paragraph (a)(2)(i), (a)(2)(ii), (a)(2)(iii), or (a)(2)(iv) of this  
8 section.

9 (i) The organizational documents, solicitations, advertising, other  
10 similar written materials, public pronouncements, or any other  
11 communication of the committee, club, association or group of  
12 persons demonstrate that its major purpose is to nominate, elect,  
13 defeat, promote, support, attack or oppose a clearly identified  
14 candidate or candidates for Federal office or the Federal candidates  
15 of a clearly identified political party; and during the current  
16 calendar year or during any of the previous four calendar years, the  
17 committee, club, association or group of persons makes more than  
18 \$10,000 total disbursements composed of any combination of the  
19 following:

20 (A) Contributions;

21 (B) Expenditures (including independent expenditures);

22 (C) Payments for Federal election activities described in

23 11 CFR 100.24(b)(1) through (b)(3); and

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(D) Payments for all or any part of an electioneering communication as defined in 11 CFR 100.29.

(ii) More than 50 percent of the committee's, club's association's or group's total annual disbursements during any of the previous four calendar years are composed of any combination of the following:

- (A) Contributions;
- (B) Expenditures (including independent expenditures);
- (C) Payments for Federal election activities described in 11 CFR 100.24(b)(1) through (b)(3); and
- (D) Payments for all or any part of an electioneering communication as defined in 11 CFR 100.29.

(iii) During the current calendar year or during any of the previous four calendar years, the committee, club, association or group of persons makes more than \$50,000 in total disbursements composed of any combination of the following:

- (A) Contributions;
- (B) Expenditures (including independent expenditures);
- (C) Payments for Federal election activities described in 11 CFR 100.24(b)(1) through (b)(3); and
- (D) Payments for all or any part of an electioneering communication as defined in 11 CFR 100.29.

ALTERNATIVE 2-A:

1           (iv) The committee, club, association or group of persons is organized  
2           under Section 527 of the Internal Revenue Code, 26 U.S.C. 527,  
3           except that this paragraph (a)(2)(iv) shall not apply to:

4           (A) The campaign organization of an individual seeking  
5           nomination, election, appointment or selection to a non-  
6           Federal office;

7           (B) A committee, club, association or group of persons that is  
8           organized solely for the purpose of promoting the  
9           nomination or election of a candidate or candidates to a  
10          non-Federal office;

11          (C) A committee, club, association or group of persons whose  
12          election or nomination activities relate solely to elections  
13          where no candidate for Federal office appears on the ballot;

14          (D) A committee, club, association, or group of persons that  
15          operates solely within one State and, pursuant to State law,  
16          must file financial disclosure reports with one or more  
17          branches, departments or agencies of that State's  
18          government, showing all its activities in that State; or

19          (E) A committee, club, association, or group of persons that is  
20          organized solely for the purpose of influencing the  
21          nomination or appointment of individuals to a non-elected  
22          office, or the nomination, election, or selection of  
23          individuals to leadership positions within a political party.

1 ALTERNATIVE 2-B:

2 (iv) The committee, club, association or group of persons is organized  
3 under Section 527 of the Internal Revenue Code, 26 U.S.C. 527.

4 \* \* \* \* \*

5 ALTERNATIVE 1-B:

6 3. Section 100.34 would be added to read as follows:

7 § 100.34 Partisan voter drives.

8 Partisan voter drive means any or all of the following:

9 (a) Voter registration activity as described in 11 CFR 100.24(a)(2) and (b)(1), except  
10 for voter registration activity described in 11 CFR 100.133;

11 (b) Voter identification as described in 11 CFR 100.24(a)(1), (a)(4), and (b)(2)(i),  
12 except for voter identification when no effort has been or will be made to determine or  
13 record the party or candidate preference of individuals on the voter list; and

14 (c) Get-out-the-vote activity as described in 11 CFR 100.24(a)(1), (a)(3), and  
15 (b)(2)(iii), except for get-out-the-vote activity described in 11 CFR 100.133.

16 4. Section 100.57 would be added to read as follows:

17 § 100.57 Solicitations with express advocacy.

18 A gift, subscription, loan, advance, or deposit of money or anything of value  
19 made by any person in response to any communication that includes material expressly  
20 advocating, as defined in 11 CFR 100.22, a clearly identified Federal candidate is a  
21 contribution to the person making the communication.

22 5. Section 100.115 would be added to read as follows:

23 § 100.115 Partisan voter drives.

1        A payment, distribution, loan, advance, or deposit of money or anything of value  
2 made by, or on behalf of any person for partisan voter drives, as described in  
3 11 CFR 100.34, is an expenditure, except Levin funds, as defined in 11 CFR 300.2(i),  
4 that are disbursed for partisan voter drives are not expenditures.

5        6.        Section 100.116 would be added to read as follows:

6        **§ 100.116        Certain public communications.**

7        A payment, distribution, loan, advance, or deposit of money or anything of value  
8 made by, or on behalf of any person for a public communication, as defined in  
9 11 CFR 100.26, is an expenditure if the public communication:

- 10        (a)        Refers to a clearly identified candidate for Federal office, and promotes or  
11 supports, or attacks or opposes any candidate for Federal office; or  
12        (b)        Promotes or opposes any political party.

13        7.        Section 100.133 would be revised to read as follows:

14        **§ 100.133        ~~V~~Nonpartisan voter registration and get-out-the-vote activities.**

15        Any cost incurred for activity designed to encourage individuals to register to vote  
16 or to vote is not an expenditure if:

- 17        (a)        It does not include a communication that promotes, supports, attacks, or opposes a  
18 Federal or non-Federal candidate or that promotes or opposes a political party;  
19        (b)        ~~¶~~No effort is or has been made to determine the party or candidate preference of  
20 individuals before encouraging them to register to vote or to vote; and  
21        (c)        Information concerning likely party or candidate preference has not been used to  
22 determine which individuals encouraged to register to vote or to vote, except that e



1 (d) Corporations and labor organizations ~~shall~~that engage in such activity shall  
2 comply with the additional requirements set forth in accordance with 11 CFR 114.4(c)  
3 and (d). See also 11 CFR 114.3(c)(4).

4 8. Section 100.149 would be amended by revising the introductory paragraph to read  
5 as follows:

6 **§ 100.149 Voter registration and get-out-the-vote activities for Presidential**  
7 **candidates (“coattails” exception).**

8 Notwithstanding 11 CFR 100.115 and 100.117, the ~~The~~ payment by a State or  
9 local committee of a political party of the costs of voter registration and get-out-the-vote  
10 activities conducted by such committee on behalf of the Presidential and Vice  
11 Presidential nominee(s) of that party is not an expenditure for the purpose of influencing  
12 the election of such ~~candidates~~candidate(s) provided that the following conditions are  
13 met:

14 \* \* \* \* \*

15 9. Section 100.155 would be added to read as follows:

16 **§ 100.155 Allocated amounts.**

17 Notwithstanding 11 CFR 100.115 or 100.116, any non-Federal funds disbursed by  
18 a separate segregated fund pursuant to 11 CFR 106.6(b)(1)(iii) through (vi) or by a  
19 nonconnected committee pursuant to 11 CFR 106.6(b)(2)(iii) through (vi) are not  
20 expenditures.

21 **PART 102 – REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY**  
22 **POLITICAL COMMITTEES (2 U.S.C. 433)**

23 10. The authority citation for part 102 would continue to read as follows:

1           **Authority:** 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

2   11.   Sections 102.18 through 102.49 would be added and reserved.

3   12.   Subpart A would be added to read as follows:

4   Sec.

5   102.50        What are the definitions for this subpart A?

6   102.51        To which organizations does this subpart A apply?

7   102.52        What must a committee, club, association, or other group of persons do  
8                    upon becoming a political committee under 11 CFR 100.5(a)?

9   102.53        How must a new political committee treat the amount of contributions,  
10                   expenditures, independent expenditures and allocable expenditures that it  
11                   made during the covered period (before it became a political committee)?

12   102.54        How can a political committee convert its Federally permissible funds to  
13                    Federal funds?

14   102.55        What if the political committee is able to convert an amount of Federally  
15                    permissible funds to Federal funds that is greater than the amount of  
16                    contributions, expenditures, independent expenditures and allocable  
17                    expenditures that it made during the covered period?

18   102.56        What are the initial reporting requirements?

19   **§ 102.50**        **What are the definitions for this subpart A?**

20        For purposes of this subpart A, the following terms are defined as follows:

21        Allocable expenditures mean expenditures that are allocable under 11 CFR 106.1.

22        Covered period means the period of time beginning on January 1 of the calendar  
23        year immediately preceding the calendar year in which a committee, club, association, or

1 other group of persons first satisfies the definition of “political committee” in 11 CFR  
2 100.5(a) and ending on the date that the committee, club, association, or other group of  
3 persons first satisfies the definition of “political committee” in 11 CFR 100.5(a).

4 Federal funds has the same meaning as in 11 CFR 300.2(g).

5 Federally permissible funds mean funds that comply with the amount limitations  
6 and source prohibitions of the Act and were received during the covered period by the  
7 committee, club, association, or other group of persons that becomes a political  
8 committee.

9 **§ 102.51 To which organizations does this subpart A apply?**

10 This subpart A applies to a committee, club, association, or other group of persons  
11 that satisfies the definition of “political committee” under 11 CFR 100.5(a) and that made  
12 contributions, expenditures, independent expenditures, or expenditures allocable under 11  
13 CFR 106.1 during the covered period.

14 **§ 102.52 What must a committee, club, association, or other group of persons**  
15 **do upon becoming a political committee under 11 CFR 100.5?**

16 The committee, club, association, or other group of persons, upon becoming a  
17 political committee shall:

18 (a) File a Statement of Organization pursuant to 11 CFR 102.1(d);

19 (b) Establish a campaign depository pursuant to 11 CFR 103.2;

20 (c) Determine the amount of contributions, expenditures, independent expenditures  
21 and allocable expenditures that it made during the covered period;

22 (d) Determine the amount of Federally permissible funds that it received; and

1 (e) File financial disclosure reports with the Commission in accordance with 11 CFR  
2 part 104 and 11 CFR 102.56.

3 **§ 102.53 How must a new political committee treat the amount of**  
4 **contributions, expenditures, independent expenditures and allocable expenditures**  
5 **that it made during the covered period (before it became a political committee)?**

6 (a) A political committee must treat the amount of contributions, expenditures,  
7 independent expenditures, and allocable expenditures that it made during the covered  
8 period as a debt owed by its Federal account to its non-Federal account.

9 (b) The political committee may not make any additional contributions, expenditures,  
10 independent expenditures or allocable expenditures until this debt is satisfied.

11 (c) The political committee may satisfy this debt by:

12 (1) Converting some or all of its Federally permissible funds to Federal funds  
13 pursuant to this subpart A;

14 (2) Raising new Federal funds and transferring the Federal funds to the non  
15 Federal account; or

16 (3) A combination of paragraphs (c)(1) and (c)(2) of this section.

17 **§ 102.54 How can a political committee convert its Federally permissible funds**  
18 **to Federal funds?**

19 A political committee may convert its Federally permissible funds to Federal  
20 funds only in accordance with this section. To convert Federally permissible funds to  
21 Federal funds, the political committee shall:

22 (a) Send a written notification to the donor(s) of the Federally permissible funds that  
23 the political committee seeks to convert to Federal funds. The written notification must:

- 1           (1) Inform the donor(s) that the political committee has registered with the  
2                           Commission as a Federal political committee;
- 3           (2) Make all disclaimers required by 11 CFR 110.11;
- 4           (3) Inform the donor(s) of the amount of their donation that the political  
5                           committee seeks to convert to Federal funds and request that the donor(s)  
6                           grant written consent for the political committee to use that amount of  
7                           their donation for the purpose of influencing Federal elections;
- 8           (4) Advise the donor(s) that they may grant written consent for an amount less  
9                           than the amount the political committee seeks to convert to Federal funds  
10                          and that they may refuse to grant consent to convert any of the funds; and
- 11           (5) Advise the donor(s) that, by granting written consent, the donor(s) will be  
12                           considered to have made a contribution to the political committee, that the  
13                           contribution will be subject to the amount limitations in 2 U.S.C. 441a(a),  
14                           and that the contribution will be considered made on the date that the  
15                           written consent is signed by the donor(s); and
- 16           (b) Receive the written consent described in paragraph (a) of this section within 60  
17                           days after first satisfying the definition of “political committee” in 11 CFR 100.5(a).

18           **§ 102.55       What if the political committee is able to convert an amount of**  
19           **Federally permissible funds to Federal funds that is greater than the amount of**  
20           **contributions, expenditures, independent expenditures and allocable expenditures**  
21           **that it made during the covered period?**

22           If the political committee is able to convert an amount of Federally permissible  
23           funds to Federal funds that is greater than the amount of contributions, expenditures,

1 independent expenditures, and allocable expenditures that it made during the covered  
2 period, the political committee:

3 (a) Must use the converted Federal funds to satisfy the debt described in 11 CFR  
4 102.53; and

5 (b) May, but is not required to, transfer to its Federal account the remaining  
6 converted Federal funds. The amount of converted Federal funds transferred to the  
7 political committee's Federal account under this section, however, may not exceed the  
8 total amount of funds the political committee had cash-on-hand on the date that it first  
9 satisfied the definition of political committee under 11 CFR 100.5(a).

10 **§ 102.56 What are the initial reporting requirements?**

11 In addition to filing its Statement of Organization under 11 CFR 102.2, the  
12 political committee shall include the following information along with other required  
13 information in the first report due under 11 CFR 104.5:

14 (a) All contributions, expenditures, independent expenditures and allocable  
15 expenditures it made during the covered period;

16 (b) The amount of any Federally permissible funds that have been converted to  
17 Federal funds pursuant to 11 CFR 102.54;

18 (c) The information required in 11 CFR 104.3(a)(4)(i) for each donor who provided  
19 written consent under 11 CFR 102.54;

20 (d) The amount described in paragraph (a) of this section minus the amount described  
21 in paragraph (b) of this section as a debt owed by the Federal account to the non-Federal  
22 account; and

23 (e) The amount and date of any transfers made under 11 CFR 102.55.

1 **PART 104 – REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)**

2 13. The authority citation for part 104 would continue to read as follows:

3 **Authority:** 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b),  
4 439a, and 441a.

5 14. Section 104.10 would be amended by revising the introductory language in  
6 paragraphs (b), the title in (b)(1), and paragraphs (b)(1)(i) and (b)(1)(ii) to read as  
7 follows:

8 **§ 104.10 Reporting by separate segregated funds and nonconnected committees of**  
9 **expenses allocated among candidates and activities.**

10 \* \* \* \* \*

11 (b) Expenses allocated among activities. A political committee that is a separate  
12 segregated fund or a nonconnected committee and that has established separate Federal  
13 and non-Federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate between those  
14 accounts its administrative expenses and its costs for fundraising and ~~generic~~partisan  
15 voter drives according to 11 CFR 106.6, and shall report those allocations according to  
16 paragraphs (b)(1) through (5) of this section, as follows:

17 (1) Reporting of allocation of administrative expenses and costs of ~~generic~~  
18 partisan voter drives.

19 (i) In the first report in a calendar year disclosing a disbursement for  
20 administrative expenses or ~~generic~~partisan voter drives, as  
21 described in 11 CFR 106.6(b), the committee shall state the  
22 allocation ratio to be applied to these categories of activity  
23 according to 11 CFR 106.6(c), (f), or (g), as applicable, and the

1 manner in which it was derived. The committee shall also state  
2 whether the calculated ratio or the minimum Federal percentage  
3 required by 11 CFR 106.6(c)(1)(ii) will be used.

4 (ii) In each subsequent report in the calendar year itemizing an  
5 allocated disbursement for administrative expenses or generic  
6 partisan voter drives:

7 \* \* \* \* \*

8 **PART 106 – ALLOCATIONS OF CANDIDATE AND COMMITTEE**

9 **ACTIVITIES**

10 15. The authority citation for part 106 would continue to read as follows:

11 **Authority:** 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

12 16. Section 106.6 would be amended by:

13 a. Removing the words “(c) and (d)” from paragraph (a) and adding in their  
14 place the words “(c), (d), (f) and (g)”;

15 b. Revising the introductory language in paragraph (c) and paragraphs  
16 (b)(1)(iii), (b)(2)(iii), (c)(1), and (e)(2)(ii)(B) and adding paragraphs  
17 (b)(1)(iv), (b)(1)(v), (b)(1)(vi), (b)(2)(iv), (b)(2)(v), (b)(2)(vi), (f) and (g)

18 to read as follows:

19 **§ 106.6 Allocation of expenses between federal and non-federal activities by**  
20 **separate segregated funds and nonconnected committees.**

21 \* \* \* \* \*

22 (b) \* \* \*

23 (1) \* \* \*



1 (iii) ~~Generic-Partisan~~ voter drives as described in 11 CFR 100.34  
2 ~~including voter identification, voter registration, and get-out-the-~~  
3 ~~vote drives,~~ or any other activities that urge the general public to  
4 register, vote or support candidates of a particular party or  
5 associated with a particular issue, ~~without mentioning a specific~~  
6 ~~candidate~~ including a public communication that is described in  
7 paragraph (b)(1)(iv), (v), or (vi) of this section;

8 (iv) Public communications that promote or oppose a political party, as  
9 described in 11 CFR 100.116(b), but do not promote, support,  
10 attack, or oppose a clearly identified Federal candidate, as  
11 described in 11 CFR 100.116(a);

12 (v) Public communications that promote, support, attack, or oppose a  
13 clearly identified Federal candidate, as described in  
14 11 CFR 100.116(a), and that promote or oppose a political party,  
15 as described in 11 CFR 100.116(b); and

16 (vi) Public communications that promote, support, attack, or oppose a  
17 clearly identified Federal candidate, as described in  
18 11 CFR 100.116(a), but that do not promote or oppose a political  
19 party, as described in 11 CFR 100.116(b).

20 (2) \* \* \*

21 (iii) ~~Generic-Partisan~~ voter drives as described in 11 CFR 100.34  
22 ~~including voter identification, voter registration, and get-out-the-~~  
23 ~~vote drives,~~ or any other activities that urge the general public to

1 register, vote or support candidates of a particular party or  
2 associated with a particular issue, ~~without mentioning a specific~~  
3 ~~candidate~~ including a public communication that is described in  
4 paragraph (b)(2)(iv), (v), or (vi) of this section;

5 (iv) Public communications that promote or oppose a political party, as  
6 described in 11 CFR 100.116(b), but do not promote, support,  
7 attack, or oppose a clearly identified Federal candidate, as  
8 described in 11 CFR 100.116(a);

9 (v) Public communications that promote, support, attack, or oppose a  
10 clearly identified Federal candidate, as described in  
11 11 CFR 100.116(a), and that promote or oppose a political party,  
12 as described in 11 CFR 100.116(b); and

13 (vi) Public communications that promote, support, attack, or oppose a  
14 clearly identified Federal candidate, as described in  
15 11 CFR 100.116(a), but that do not promote or oppose a political  
16 party, as described in 11 CFR 100.116(b).

17 (c) Method for allocating administrative expenses, and costs of ~~generic partisan voter~~  
18 drives, and certain public communications. Nonconnected committees and separate  
19 segregated funds shall allocate their administrative expenses, ~~and costs of generic~~  
20 partisan voter drives, and costs of public communications that promote or support any  
21 political party as described in paragraph (b)(1)(i) through (iv) or (b)(2)(i) through (iv) of  
22 this section, according to the funds expended method, described in paragraphs (c)(1) and  
23 (2) as follows:

1 (1) (i) ~~Under~~ Under this method, expenses shall be allocated based on the ratio  
2 of ~~federal-Federal~~ expenditures to total ~~federal-Federal~~ and ~~non-~~  
3 ~~federal-non-Federal~~ disbursements made by the committee during  
4 the two-year ~~federal-Federal~~ election cycle, subject to the  
5 minimum Federal percentage described in paragraph (c)(1)(ii) of  
6 this section. This ratio shall be estimated and reported at the  
7 beginning of each ~~federal-Federal~~ election cycle, based upon the  
8 committee's ~~federal-Federal~~ and ~~non-federal-non-Federal~~  
9 disbursements in a prior comparable ~~federal-Federal~~ election cycle  
10 or upon the committee's reasonable prediction of its disbursements  
11 for the coming two years. In calculating its ~~federal-Federal~~  
12 expenditures, the committee shall include only amounts  
13 contributed to or otherwise spent on behalf of specific ~~federal~~  
14 Federal candidates, including independent expenditures and  
15 amounts spent on public communications that promote, attack,  
16 support, or oppose clearly identified Federal candidates.  
17 Calculation of total ~~federal-Federal~~ and ~~non-federal-non-Federal~~  
18 disbursements shall also be limited to disbursements for specific  
19 candidates, and shall not include overhead or other generic costs.  
20 (ii) Minimum Federal percentage for administrative expenses, partisan  
21 voter drives, and certain public communications. The minimum  
22 Federal percentage for any costs allocable under paragraph (c) of  
23 this section is as follows:

1                    (A) For a nonconnected committee or a separate segregated  
2                    fund that conducts partisan voter drives in or distributes  
3                    public communications subject to allocation under  
4                    paragraph (c) of this section to only one State, the  
5                    minimum Federal percentage shall be the percentage in  
6                    11 CFR 106.7(d)(3)(i), (ii), (iii), or (iv) that is applicable to  
7                    the Federal elections in that State.

8    ALTERNATIVE 3-A

9                    (B) For a nonconnected committee or a separate segregated  
10                   fund that conducts partisan voter drives in or distributes  
11                   public communications subject to allocation under  
12                   paragraph (c) of this section to more than one State, the  
13                   minimum Federal percentage shall be the greatest  
14                   percentage in 11 CFR 106.7(d)(3)(i), (ii), (iii), or (iv) that is  
15                   applicable to any of the Federal elections in any of the  
16                   States in which the nonconnected committee or separate  
17                   segregated fund conducts activities allocable under  
18                   paragraph (c) of this section.

19    ALTERNATIVE 3-B

20                   (B) For a nonconnected committee or a separate segregated  
21                   fund that conducts partisan voter drives in or distributes  
22                   public communications subject to allocation under  
23                   paragraph (c) of this section to more than one State, the

1                   minimum Federal percentage for each State in which the  
2                   nonconnected committee or separate segregated fund  
3                   conducts activities allocable under paragraph (c) of this  
4                   section shall be the percentage in 11 CFR 106.7(d)(3)(i),  
5                   (ii), (iii), or (iv) that is applicable to the Federal elections in  
6                   that State.

7                   \*           \*           \*           \*           \*

8                   (e)           \*           \*           \*

9                           (2)           \*           \*           \*

10                                   (ii)           \*           \*           \*

11                                   (B)           Except as provided in paragraph (d)(2) of this section or in  
12   11 CFR part 102, subpart A, such funds may not be  
13   transferred more than 10 days before or more than 60 days  
14   after the payments for which they are designated are made.

15                   \*           \*           \*           \*           \*

16                   (f) Method for allocating public communications that promote, support, attack or  
17                   oppose a clearly identified Federal candidate, and promote or oppose a political party.  
18                   Nonconnected committees and separate segregated funds shall allocate public  
19                   communications described in paragraphs (b)(1)(v) or (b)(2)(v) of this section as follows:

20                           (1) The public communication shall be attributed according to the proportion  
21   of space and time devoted to each candidate and political party as  
22   compared to the total space and time devoted to all candidates and  
23   political party;

1           (2) The portion of the public communication that is attributed to the Federal  
2                           candidate(s) shall be allocated to the nonconnected committee's or  
3                           separate segregated fund's Federal account;

4           (3) The portion of the public communication that is attributed to the political  
5                           party shall be allocated in accordance with paragraph (c) of this section;  
6                           and

7           (4) The portion of the public communication that is attributed to clearly  
8                           identified non-Federal candidate(s), if any, may be allocated to either the  
9                           Federal or non-Federal account.

10   (g) Method for allocating public communications that promote, support, attack or  
11   oppose a clearly identified Federal candidate, without promoting or opposing a political  
12   party. Nonconnected committees and separate segregated funds shall allocate public  
13   communications described in paragraphs (b)(1)(vi) and (b)(2)(vi) of this section under  
14   11 CFR 106.1 as expenditures or disbursements on behalf of the clearly identified  
15   candidates.

16   **PART 114 – CORPORATE AND LABOR ORGANIZATION ACTIVITY**

17   17.   The authority citation for part 114 would continue to read as follows:

18           **Authority:**   2 U.S.C. 431(8)(B), 431(9)(B), 432, 434, 437d(a)(8), 438(a)(8),  
19   441b.

20   18.   Section 114.4 would be amended by revising paragraphs (c) and (d) to read as  
21   follows:

22   **§ 114.4 Disbursements for communications beyond the restricted class in**  
23   **connection with a Federal election.**

1 \* \* \* \* \*

2 (c) \* \* \*

3 (2) Registration and voting communications. A corporation or labor  
4 organization may make registration and get-out-the-vote communications  
5 to the general public, only to the extent permitted by 11 CFR 100.133, and  
6 provided that the communications do not expressly advocate the election  
7 or defeat of any clearly identified candidate(s) or candidates of a clearly  
8 identified political party. The preparation and distribution ~~or of~~  
9 registration and get-out-the-vote communications shall not be coordinated  
10 with any candidate(s) or political party. A corporation or labor  
11 organization may make communications permitted under this section  
12 through posters, billboards, broadcasting media, newspapers, newsletter,  
13 brochures, or similar means of communication with the general public.

14 (3) Official registration and voting information. A corporation or labor  
15 organization may engage in the activities described in paragraphs (c)(3)(i)  
16 through (iii) of this section only to the extent permitted by  
17 11 CFR 100.133.

18 \* \* \* \* \*

19 (d) Registration and get-out-the-vote drives. A corporation or labor organization may  
20 support or conduct voter registration and get-out-the-vote drives ~~which~~ that are aimed at  
21 employees outside its restricted class and the general public in accordance with the  
22 conditions set forth in paragraphs (d)(1) through (d)(6) of this section and only to the

1 extent permitted by 11 CFR 100.133. Registration and get-out-the-vote drives include  
2 providing transportation to the polls or to the place of registration.

3  
4  
5  
6

\_\_\_\_\_  
Bradley A. Smith  
Chairman  
Federal Election Commission

7 DATED \_\_\_\_\_  
8 BILLING CODE: 6715-01-U