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2002 OCT 31 A 10: 06

AGENDA ITEM

For Meeting of: 10-31-02

SUBMITTED LATE

Alternative to Thomas Amendment

1. On p. 34, line 23, beginning with "New paragraph" and ending on p. 35, line 6, with "Clarity" substitute the following: "The issues relating to the relationship of the statutory timeframe for aggregating contributions and the inflation adjustment timeframe are discussed below regarding 11 CFR 110.17(b)."
2. On p. 35, lines 6 and 9, and anywhere else applicable, change "(b)(5)" to "(b)(4)".
3. For the text beginning on p. 39, line 2, with "However" and ending on p. 43, line 4 substitute the following:

The NPRM raised the issue of the interaction between the statutory provision that indexes certain contribution limits, 2 U.S.C. 441a(c)(1)(C), and the various contribution limits themselves. Particular focus was centered on the retroactive effective date in the indexing provision as it relates to the two calendar year-based aggregate contribution limit of 2 U.S.C. 441a(a)(3).

In the NPRM the Commission proposed at 11 CFR 110.5(b)(3) to interpret the statute in a way that required donors to aggregate contributions using the two-year period referenced in the effective date language of the indexing provision, rather than the 'January 1 of odd year through December 31 of even year' timeframe of § 441a(a)(3).

Several commenters, including the Congressional sponsors of BCRA, urged that the Commission not adopt the proposed approach and instead apply the calendar year approach set forth in the statutory provision setting out the contribution limit itself. The commenters noted that the inflation adjustment language was confusing and its effective date language stems largely from an intention to assure that the revised 'per election' limit on giving to candidates was revised after each general election. They urged, in essence, that the Commission simplify application of the inflation adjustment provision so that for affected limits based on calendar year aggregations, the effective date would only affect the next upcoming calendar year-based period. This would mean that the inflation adjustments on the limit on contributing to national parties (2 U.S.C. 441a(a)(1)(B)), the limit on national party contributions to Senate candidates (2 U.S.C. 441a(h)), and the two-year limit on aggregate contributions (2 U.S.C. 441a(a)(3)) would only affect the next calendar year-based period, not the

calendar year-based period when the effective date period technically begins under § 441a(c)(1)(B).

The Commission has decided to adopt the approach suggested by the commenters. It would be somewhat confusing if the calendar year-based contribution limits were to be increased in the midst of the calendar year period involved. Accordingly, the Commission is adopting final rules that delete the language at proposed 11 CFR 110.5(b)(3), and is modifying the language at proposed 11 CFR 110.1(c)(1)(ii), 110.2(e)(2), and 110.5(b)(2) and 110.17(b)(1) to clarify that for the calendar year-based limits, the indexing changes will only affect the calendar year-based periods that follow. Please note that the indexing changes for the 'per election' limit at 11 CFR 110.1(b)(1) will still take effect, pursuant to 11 CFR 110.1(b)(1)(ii), on the day after the general election and will only affect elections held after that general election. See discussion above regarding 11 CFR 110.1(b)(3) and Net Debts Outstanding.

4. On p. 88, lines 1-7, substitute the following:

(ii) The increased contribution limitation shall be in effect for the two calendar years next following the day after the general election preceding the year in which the contribution limitation is increased.

5. On p. 92, line 19, through line 1 on p. 93, substitute the following:

11 CFR 110.17. The increased contribution limit shall be in effect for the two calendar years next following the day after the general election preceding the year in which the contribution limitation is increased.

6. On p. 93, line 20, substitute the following:

(1) In the two-year period beginning on January 1 of an odd-numbered year and ending on December 31 of the next even-numbered year, no

7. On p. 94, lines 13-23, substitute the following:

11 CFR 110.17. The increased contribution limitations shall be in effect for the two calendar years next following the day after the general election preceding the year in which the contribution limitations are increased.

8. On p. 95, line 1, change "(5)" to "(4)".

9. On p. 97, lines 16-21, substitute the following:

(1) The increased contribution limitations shall be in effect as provided in 11 CFR 110.1(b)(1)(ii), 110.1(c)(1)(ii), 110.2(e)(2), and 110.5(b)(2).