



FEDERAL ELECTION COMMISSION  
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**AGENDA ITEM**  
For Meeting of: 05-13-04

**MEMORANDUM**

**DATE:** April 30, 2004  
**TO:** The Commission  
**FROM:** Commissioner Michael E. Toner <sup>MT</sup>  
Commissioner Scott E. Thomas ~~ST~~  
**RE:** Proposed Final Regulations

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Attached please find proposed final regulations regarding political committee status that we plan to offer at the Commission's Open Session on May 13, 2004.

1 **List of Subjects**

2 11 CFR Part 100

3 Elections.

4 11 CFR Part 104

5 Campaign funds, Political committees and parties, Reporting and recordkeeping  
6 requirements.

7 11 CFR Part 106

8 Campaign funds, Reporting and recordkeeping requirements.

9 For the reasons set out in the preamble, Subchapter A of Chapter I of Title 11 of  
10 the Code of Federal Regulations is amended as follows:

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

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

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

14 2. Section 100.5 would be amended by revising the introductory paragraph and  
15 paragraph (a) and adding paragraph (h) to read as follows:

16 **§ 100.5 Political committee (2 U.S.C. 431 (4), (5), (6)).**

17 Political Committee means any group meeting the conditions set forth in  
18 paragraph (a), (b), (c), (d) or (e) of this section.

19 (a) (1) Except as provided in paragraphs (b), (c), (d), (e)(1), and (e)(3) of this  
20 section, political committee means any committee, club, association, or  
21 other group of persons:

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- (i) That receives contributions aggregating in excess of \$1,000 or that makes expenditures aggregating in excess of \$1,000 during a calendar year; and
- (ii) For which the nomination or election of one or more Federal or non-Federal candidates is the major purpose.

(2) For purposes of paragraph (a)(1)(ii) of this section, a committee, club, association or group of persons that is organized under Section 527 of the Internal Revenue Code, 26 U.S.C. 527, has the nomination or election of one or more Federal or non-Federal candidates as its major purpose, unless it is a type of organization described as follows:

- (i) The campaign organization of an individual seeking nomination, election, appointment or selection to a non-Federal office;
- (ii) A committee, club, association or group of persons that is organized solely for the purpose of promoting the nomination or election of candidates to one or more non-Federal offices;
- (iii) A committee, club, association or group of persons whose nomination or election activities relate solely to elections where no candidate for Federal office appears on the ballot;

1 (iv) A committee, club, association or group of persons  
2 that is organized solely for the purpose of  
3 influencing state ballot initiatives or referenda; or

4 (v) A committee, club, association or group of persons  
5 that is organized solely for the purpose of  
6 influencing the nomination or appointment of  
7 individuals to one or more non-elected offices, or  
8 the nomination, election, or selection of individuals  
9 to leadership positions within a political party.

10 \* \* \* \* \*

11 (h) A committee, club, association or group of persons that qualifies as a political  
12 committee and that finances political activity in connection with both Federal and non-  
13 Federal elections shall organize its accounts according to 11 CFR 102.5(a).

14 \* \* \* \* \*

15 3. Section 100.115 would be added as follows:

16 **Sec. 100.115 Certain Federal Election Activities**

17 Except as provided at 11 CFR 100.155 and 100.133, a payment, distribution, loan,  
18 advance, or deposit of money or anything of value made by, or on behalf of, any political  
19 committee or organization described in 11 CFR 100.5(a)(2) for federal election activities  
20 as defined at 11 CFR 100.24(a), (b)(1), (b)(2)(i), and (b)(2)(iii), is an expenditure.

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1 4. Section 100.116 would be added to read as follows:

2 **§ 100.116 Certain public communications.**

3 Except as provided in 11 CFR 100.155, a payment, distribution, loan, advance, or  
4 deposit of money or anything of value made by, or on behalf of, any political committee  
5 or organization described in 11 CFR 100.5(a)(2) for a public communication, as defined  
6 in 11 CFR 100.26, is an expenditure if the public communication:

7 (a) Promotes, supports, attacks, or opposes any clearly identified candidate for  
8 Federal office; or

9 (b) Promotes or opposes any political party.

10 5. Section 100.133 would be amended to read as follows:

11 **§ 100.133 Non-partisan voter registration and get-out-the-vote activities.**

12 (a) Any cost incurred for activity designed to encourage individuals to register to vote  
13 or to vote is not an expenditure if:

14 (1) No effort is or has been made to determine the party or candidate  
15 preference of individuals before encouraging them to register to vote or to  
16 vote; and

17 (2) No public communication is used that:

18 (i) Promotes, supports, attacks, or opposes any clearly identified  
19 Federal or non-Federal candidate; or

20 (ii) Promotes or opposes any political party.

21 (b) Any corporation or labor organization that engages in the activity described in  
22 paragraph (a) of this section shall do so in accordance with 11 CFR 114.4(c) and (d). See  
23 also 11 CFR 114.3(c)(4).

1 6. Section 100.155 would be added to read as follows:

2 **§ 100.155 Allocated non-Federal amounts.**

3 Any non-Federal funds disbursed pursuant to 11 CFR 106.1, 106.6, 106.7, or  
4 300.33 are not expenditures.

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

6 7. The authority citation for part 104 would continue to read as follows:

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

9 8. Section 104.10 would be amended by revising the introductory language in  
10 paragraph (b), the title in (b)(1), and paragraphs (b)(1)(i) and (b)(1)(ii) to read as follows:

11 **§ 104.10 Reporting by separate segregated funds and nonconnected committees of**  
12 **expenses allocated among candidates and activities.**

13 \* \* \* \* \*

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

20 (1) Reporting of allocation of administrative expenses and costs of voter  
21 drives.

22 (i) In the first report in a calendar year disclosing a disbursement for  
23 administrative expenses or voter drives, as described in

1 11 CFR 106.6(b), the committee shall state the allocation ratio to  
2 be applied to these categories of activity according to  
3 11 CFR 106.6(c), (f), or (g), as applicable, and the manner in  
4 which it was derived. The committee shall also state whether the  
5 calculated ratio or the minimum Federal percentage required by  
6 11 CFR 106.6(c)(1)(ii) will be used.

7 (ii) In each subsequent report in the calendar year itemizing an  
8 allocated disbursement for administrative expenses or voter drives:

9 \* \* \* \* \*

10 **PART 106 – ALLOCATIONS OF CANDIDATE AND COMMITTEE**  
11 **ACTIVITIES**

12 9. The authority citation for part 106 would continue to read as follows:

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

14 10. Section 106.6 would be amended by:

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

17 b. Revising the introductory language in paragraph (c) and paragraphs  
18 (b)(1)(iii), (b)(2)(iii), (c)(1), and (e)(2)(ii)(B) and adding paragraphs  
19 (b)(1)(iv), (b)(1)(v), (b)(1)(vi), (b)(2)(iv), (b)(2)(v), (b)(2)(vi), (f) and (g)  
20 to read as follows:

21 **§ 106.6 Allocation of expenses between federal and non-federal activities by**  
22 **separate segregated funds and nonconnected committees.**

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(b)

\* \* \*  
(1) \* \* \*

- (iii) Certain federal election activities as described at 11 CFR 100.115 or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without including a public communication that is described in paragraph (b)(1)(iv), (v), or (vi) of this section;
- (iv) Public communications that promote or oppose a political party, as described in 11 CFR 100.116(b), but do not promote, support, attack, or oppose one or more clearly identified Federal or non-Federal candidates;
- (v) Public communications that promote, support, attack, or oppose one or more clearly identified Federal or non-Federal candidates, and that promote or oppose a political party, as described in 11 CFR 100.116(b); and
- (vi) Public communications that promote, support, attack, or oppose one or more clearly identified Federal or non-Federal candidates, but that do not promote or oppose a political party, as described in 11 CFR 100.116(b).

(2) \* \* \*

- (iii) Certain federal election activities as described at 11 CFR 100.115 or any other activities that urge the general public to register, vote



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

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

8 (v) Public communications that promote, support, attack, or oppose  
9 one or more clearly identified Federal or non-Federal candidates,  
10 and that promote or oppose a political party, as described in 11  
11 CFR 100.116(b); and

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

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



1 (e) \* \* \*

2 (2) \* \* \*

3 (ii) \* \* \*

4 (B) Except as provided in paragraph (d)(2) of this section, such  
5 funds may not be transferred more than 10 days before or  
6 more than 60 days after the payments for which they are  
7 designated are made.

8 \* \* \* \* \*

9 (f) Method for allocating public communications that promote, support, attack or  
10 oppose one or more clearly identified Federal or non-Federal candidates, and promote or  
11 oppose a political party. Nonconnected committees and separate segregated funds shall  
12 allocate public communications described in paragraphs (b)(1)(v) or (b)(2)(v) of this  
13 section as follows:

14 (1) The public communication shall be attributed according to the proportion  
15 of space and time devoted to each candidate and political party as  
16 compared to the total space and time devoted to all candidates and  
17 political parties;

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

21 (3) The proportion of the public communication that is attributed to the  
22 political party shall be allocated in accordance with paragraph (c) of this  
23 section; and

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

4     (g)     Method for allocating public communications that promote, support, attack, or  
5     oppose one or more clearly identified Federal or non-Federal candidates, without  
6     promoting or opposing a political party. Nonconnected committees and separate  
7     segregated funds shall allocate public communications described in paragraphs (b)(1)(vi)  
8     and (b)(2)(vi) of this section under 11 CFR 106.1 as expenditures or disbursements on  
9     behalf of the clearly identified candidates. A public communication that solely promotes,  
10    supports, attacks, or opposes one or more clearly identified Federal candidates is an  
11    expenditure that must be allocated 100% to the federal account.