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FEDERAL ELECTION COMMISSION
Washington, DC 20463

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August 18, 2004

MEMORANDUM

AGENDA ITEM
For Meeting of: 8-19-04

SUBMITTED LATE

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6 TO: The Commission

7
8 THROUGH: James A. Pehrkon
9 Staff Director

10
11 FROM: Lawrence H. Norton
12 General Counsel

13 Rosemary C. Smith
14 Associate General Counsel

15 Mai T. Dinh
16 Assistant General Counsel

17 J. Duane Pugh Jr.
18 Senior Attorney

19 Richard T. Ewell
20 Attorney

21 Robert M. Knop
22 Attorney

23 Margaret G. Perl
24 Attorney

25
26 **SUBJECT:** Recommended Amendments to Agenda Doc. No. 04-75

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28 On August 12, 2004, the Office of General Counsel submitted Agenda Document

29 No. 04-75, which contained our recommendation on the Political Committee Status

30 rulemaking. We recommend that the Commission adopt amendments to that Agenda

31 Document and clarify the effective date for any Final Rule. Attachment A lists this

32 Office's amendments to Agenda Document No. 04-75. These amendments pertain to

1 draft sections 100.5, 100.57, and 106.6 in the Draft Final Rules for Political Committee
2 Status. Agenda Document No. 04-75 states that the effective date for any changed to the
3 allocation regulations should be January 1, 2005. We also believe that January 1, 2005
4 should be the effective date for any other rule the Commission adopts as a part of this
5 rulemaking.

6 **Section 100.5 – Political Committee**

7 Draft section 100.5(a) in Agenda Document No. 04-75 includes a two-part test for
8 political committee status for organizations other than separate segregated funds, local
9 political party committees, and authorized campaign committees. The two parts of the
10 test include a \$1,000 contributions/expenditures component in 11 CFR 100.5(a)(1)(i) and
11 a “major purpose” component in draft 11 CFR 100.5(a)(1)(ii). This Office realizes that
12 “major purpose” test in the draft we circulated could be viewed as applying to State and
13 national political party committees. To avoid this inadvertent result, the attached
14 amendments would clarify that the major purpose test in draft section 100.5(a)(2) would
15 apply to organizations that are not national or State political party committees. The
16 \$1,000 contributions/expenditures test would continue to apply to national and State party
17 committees as it does currently. Local political party committees would not be affected
18 because they are addressed separately in 11 CFR 100.5(c).

19 **Section 100.57 – Funds Received in Response to Solicitation**

20 Draft section 100.57(a) in Agenda Document No. 04-75 included an exception for
21 any solicitations from joint fundraisers operating under current 11 CFR 102.17. *See* draft
22 section 100.57(a). This Office realizes that this blanket exception would have a broader
23 effect than intended. Therefore, we offer the attached amendments that would remove

1 the exception for section 102.17 in draft section 100.57(a) and instead would add a new
2 draft section 100.57(c) to address joint fundraising. Under these amendments, the only
3 joint fundraising solicitations excepted from the rule in draft section 100.57 are those
4 conducted between or among the authorized committees of Federal and non-Federal
5 candidates. See draft section 100.57(c). All other joint fundraising pursuant to section
6 102.17 would be subject to draft section 100.57(a) and (b). Thus, draft section 100.57, as
7 amended, would apply to solicitations for joint fundraisers between or among political
8 committees and/or other organizations that indicate that any portion of the funds received
9 will be used to support or oppose the election of a clearly identified Federal candidate.

10 **Section 106.6 – Allocation of Expenses Between Federal and Non-Federal Activities**
11 **by Separate Segregated Funds and Nonconnected Committees**

12 Draft section 106.6 retains the current regulation’s definition of “generic voter
13 drives” as various activities which “urge the general public to register, vote or support
14 candidates of a particular party, or associated with a particular issue, *without mentioning*
15 *a specific candidate.*” See draft section 106.6(b)(3) (emphasis added). Such voter drives
16 that do not mention any specific candidates are allocated according to the flat 50%
17 minimum percentage in draft section 106.6(c). We recognize that the current
18 Commission regulations and the Draft Final Rules do not specifically address the
19 question of how to allocate voter drives that mention a specific Federal or non-Federal
20 candidate.¹ Under the Draft Final Rules, any candidate-specific voter drive activity that
21 meets the definition of “public communication” would be allocated according to draft

¹ Non-partisan voter drives, *i.e.*, voter drive activity where no effort has been made to determine the party or candidate preference of individuals before encouraging them to register to vote, or vote, are exempted from the definition of expenditure. 2 U.S.C. 431(9)(B)(ii); 11 CFR 100.133. However, Commission regulations do not specifically address how to allocate the costs of these voter drives if they refer to specific Federal or non-Federal candidates.

1 section 106.6(f), which contains various rules for public communications that refer to a
2 political party and one or more Federal or non-Federal candidate(s). However, some
3 voter drive activity may fall in the gap between the definitions of “generic voter drives”
4 in draft section 106.6(b)(3) and the public communications provisions in draft sections
5 106.6(b)(5) and (6).

6 We offer the attached amendment addressing allocation of voter drives that
7 mention a specific Federal or non-Federal candidate to provide clear guidance to SSFs
8 and nonconnected committees on how to allocate voter drive activities in all
9 circumstances. Like the draft rules for “public communications,” the attached
10 amendments would provide “candidate-driven” rules for the allocation of voter drives
11 that refer to at least one clearly identified candidate.

12 The amendment to draft section 106.6(b) inserts two categories of voter drives in
13 addition to “generic voter drives” in draft section 106.6(b)(3):

- 14 • Voter drives which urge the general public to register, vote or support one or
15 more clearly identified Federal candidate(s), but do not refer to any clearly
16 identified non-Federal candidate, including those that also support candidates of
17 a particular party or associated with a particular issue. *See* draft section
18 106.6(b)(4).
- 19 • Voter drives which urge the general public to register, vote or support one or
20 more clearly identified non-Federal candidate(s), but do not refer to any clearly
21 identified Federal candidate, including those that also support candidates of a
22 particular party or associated with a particular issue. *See* draft section
23 106.6(b)(5).

1 With the addition of these two paragraphs, draft section 106.6 would address all possible
2 combinations of specific candidate and generic party or issue references in voter drive
3 activity.

4 The attached amendments allocate voter drives the same way as the analogous
5 public communications listed in draft section 106.6(b). “Generic voter drives” which do
6 not refer to any specific candidates are allocated in draft section 106.6(b) with the 50%
7 flat minimum percentage, together with public communications that refer to a political
8 party, but no specific candidates. Voter drives that refer to one or more clearly identified
9 Federal candidate(s) but do not refer to any non-Federal candidate(s), and which might
10 also include a generic party or issue reference, are added to draft section 106.6(f)(1) and
11 must be paid for with 100% Federal funds. Similarly, voter drives which refer to one or
12 more clearly identified non-Federal candidate(s) but do not refer to any Federal
13 candidate(s), and which might also include a generic party or issue reference, are added
14 to draft section 106.6(f)(2) and may be paid for with 100% non-Federal funds. Finally,
15 voter drives that refer to one or more clearly identified Federal candidate(s) and one or
16 more clearly identified non-Federal candidate(s) are added to draft section 106.6(f)(3)
17 and must be allocated under 11 CFR 106.1. We believe that requiring the same
18 allocation for voter drives that refer to specific candidates as public communications that
19 refer to specific candidates provides clear guidance to SSFs and nonconnected
20 committees and is consistent with the purpose of the allocation regulations.

21 **RECOMMENDATION**

22 The Office of General Counsel recommends that the Commission approve
23 Agenda Document No. 04-75 incorporating the amendments contained in Attachment A

1 to this memorandum. We also recommend that the Commission incorporate the
2 amendments in Attachment A in Agenda Document No. 04-75-B, where applicable.
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ATTACHMENT A
Amendments to Agenda Document 04-75

1. At page 37, line 8: delete “committees.” and replace with “committees and national or State political party committees.”
2. At page 37, line 15: delete “Has” and replace with “Is a national or State political party committee or has”
3. At page 41, line 19: delete the phrase “Except as provided in 11 CFR 102.17,”
4. At page 42: insert the following after line 13:

(c) Joint fundraisers. Joint fundraising conducted under 11 CFR 102.17 shall comply with the requirements of paragraphs (a) and (b) of this section except that joint fundraising between or among authorized committees of Federal candidates and campaign organizations of non-Federal candidates is not subject to paragraph (a) or (b) of this section.

5. At page 44, line 12: delete “(4)” and replace with “(6)”
6. At page 44, line 14: delete “(5)” and replace with “(7)”
7. At page 44, line 17: delete “(6)” and replace with “(8)”
8. At page 44: insert the following after line 11:

(4) Voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to:

- (i) Register, vote or support one or more clearly identified Federal candidates, but do not refer to any clearly identified non-Federal candidates; or

1 (ii) Register, vote or support one or more clearly identified Federal
2 candidates and also urge support for candidates of a particular
3 party or associated with a particular issue, but do not refer to any
4 clearly identified non-Federal candidates.

5 (5) Voter drives including voter identification, voter registration, and get-out-
6 the-vote drives, or any other activities that urge the general public to:

7 (i) Register, vote or support one or more clearly identified non-
8 Federal candidates, but do not refer to any clearly identified
9 Federal candidates; or

10 (ii) Register, vote or support one or more clearly identified non-
11 Federal candidates and also urge support for candidates of a
12 particular party or associated with a particular issue, but do not
13 refer to any clearly identified Federal candidates.

14 9. At page 45, line 18: delete “(b)(4)” and replace with “(b)(6)”

15 10. At page 46: Delete line 22 through to the end on page 47 and replace with the
16 following:

17 (f) Payments for public communications and voter drives that refer to a political
18 party and one or more clearly identified Federal or non-Federal candidates.

19 Nonconnected committees and separate segregated funds shall pay for the costs of all
20 public communications that refer to a political party, as described in paragraphs (b)(7)

21 and (b)(8) of this section, and voter drives that refer to one or more clearly identified
22 candidates, as described in paragraphs (b)(4) and (b)(5) of this section, as follows:

1 (1) The following shall be paid 100 percent from the Federal account of the
2 nonconnected committee or separate segregated fund:

3 (i) Public communications that refer to a political party and one or
4 more clearly identified Federal candidates, but do not refer to any
5 clearly identified non-Federal candidates, as described in
6 paragraph (b)(7) of this section; and

7 (ii) Voter drives described in paragraph (b)(4) of this section.

8 (2) The following may be paid 100 percent from the non-Federal account of
9 the nonconnected committee or separate segregated fund:

10 (i) Public communications that refer to a political party and one or
11 more clearly identified non-Federal candidates, but do not refer to
12 any clearly identified Federal candidates, as described in paragraph
13 (b)(8) of this section; and

14 (ii) Voter drives described in paragraph (b)(5) of this section.

15 (3) The following shall be allocated under 11 CFR 106.1 as expenditures or
16 disbursements on behalf of the clearly identified candidates, without
17 regard to the portion of the communication that refers to a political party:

18 (i) Public communications that refer to a political party, one or more
19 clearly identified Federal candidates, and also refer to one or more
20 clearly identified non-Federal candidates; and

21 (ii) Voter drives that urge the general public to register, vote or support
22 one or more clearly identified Federal candidates and one or more
23 clearly identified non-Federal candidates.