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FEDERAL ELECTION COMMISSION
Washington, DC 20463

2006 SEP -7 P 2:09

September 7, 2006

MEMORANDUM

AGENDA ITEM
For Meeting of: 09-14-06

TO: The Commission

THROUGH: Patrina M. Clark *PMC*
Staff Director

FROM: Lawrence H. Norton *LH*
General Counsel

Rosemary C. Smith *RC*
Associate General Counsel

J. Duane Pugh Jr. *JDP*
Acting Assistant General Counsel

Albert J. Kiss *AK*
Attorney

SUBJECT: Draft Final Rules and Explanation and Justification Implementing the Increase in the Amount Limit for Authorized Committees Contributing to Authorized Committees of Other Candidates.

Attached are draft Final Rules and an Explanation and Justification that would implement the amendment to 2 U.S.C. 432(e)(3)(B) made by the Consolidated Appropriations Act, 2005 ("2005 Appropriations Act").

FECA and Commission regulations limit the amount of support that a principal campaign committee or another authorized committee of a federal candidate may provide to another federal candidate. 2 U.S.C. 432(e)(3); 11 CFR 102.12 and 102.13. Prior to the 2005 Appropriations Act, the limit was \$1,000 per election. The 2005 Appropriations Act amended section 432(e)(3)(B) by increasing the amount of permissible support to \$2,000 per election. This amount is not indexed for inflation. The draft final rule similarly amends 11 CFR 102.12(c)(2) and 102.13(c)(2) by increasing the amount of permissible support to \$2,000.

The Office of General Counsel requests that this draft be placed on the agenda for the September 14, 2006 open meeting. If the Commission approves this draft, we will send the document to the *Federal Register* for publication and to Congress.

Attachment

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FEDERAL ELECTION COMMISSION

11 CFR Part 102

[Notice 2006 - __]

Increase in Limitation on Authorized Committees

Supporting Other Authorized Committees

AGENCY: Federal Election Commission.

ACTION: Final Rules.

SUMMARY: The Federal Election Commission (“Commission”) is amending its rules specifying the amount authorized committees of candidates may contribute to authorized committees of other candidates. The Consolidated Appropriations Act, 2005, amended the Federal Election Campaign Act of 1971, as amended (“the Act”), by increasing this amount from \$1,000 to \$2,000. These final rules implement this increase. Further information is provided in the supplementary information that follows.

EFFECTIVE DATE: These rules are effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. J. Duane Pugh Jr., Acting Assistant General Counsel, or Mr. Albert J. Kiss, Attorney, 999 E Street N.W., Washington, D.C. 20463, (202) 694-1650 or (800) 424-9530.

1 **SUPPLEMENTARY**
2 **INFORMATION:**

3 **Explanation and Justification for 11 CFR 102.12(c) and 102.13(c)**

4 Each candidate for Federal office (other than a nominee for Vice President) is
5 required to designate in writing a political committee to serve as the candidate's
6 "principal campaign committee" under the Act and Commission regulations. 2 U.S.C.
7 432(e)(1) and 431(5); 11 CFR 101.1(a) and 102.12(a). Candidates may also authorize
8 additional political committees to receive contributions or make expenditures on their
9 behalf. 2 U.S.C. 432(e)(1) and 431(6); 11 CFR 101.1(b) and 102.13(a)(1). These
10 political committees are collectively known as the candidate's "authorized committees."
11 2 U.S.C. 431(6).

12 Subject to two exceptions, no political committee that "supports" or has supported
13 more than one candidate may be designated either as a principal campaign committee or
14 as an authorized committee.¹ 2 U.S.C. 432(e)(3)(A); 11 CFR 102.12(c)(1) and
15 102.13(c)(1). Prior to enactment of the Consolidated Appropriations Act, 2005, Pub. L.
16 No. 108-447, 118 Stat. 2809 (2004) ("2005 Appropriations Act"), FECA provided that
17 "support" did not include contributions by any authorized committee in amounts of
18 \$1,000 or less to an authorized committee of any other candidate. 2 U.S.C. 432(e)(3)(B)
19 (2004). Section 525 of the 2005 Appropriations Act amended 2 U.S.C. 432(e)(3)(B) by
20 increasing this amount to \$2,000. 118 Stat. at 3271. To implement this statutory change,

¹ One exception allows a candidate for the office of President nominated by a political party to designate the national committee of the political party as the candidate's principal campaign committee. 2 U.S.C. 432(e)(3)(A)(i); 11 CFR 102.12(c)(1). The other exception allows two or more candidates to designate a political committee established solely for the purpose of joint fundraising by such candidates as an authorized committee. 2 U.S.C. 432(e)(3)(A)(ii) and 11 CFR 102.13(c)(1).

1 the Commission is amending 11 CFR 102.12(c)(2) and 102.13(c)(2) to reflect the
2 increased amount.

3 The Commission is promulgating these rules without notice or an opportunity for
4 comment (“notice and comment”) because the Administrative Procedure Act’s (“APA”)
5 “good cause” exemption allows the Commission to dispense with notice and comment
6 when “impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C.
7 553(b)(B). Notice and comment are unnecessary when regulations merely restate the
8 statute they implement. Gray Panthers Advocacy Committee v. Sullivan, 936 F.2d 1284,
9 1291 (D.C. Cir. 1991), citing Komjathy v. National Transportation Safety Board, 832
10 F.2d 1294, 1296-97 (D.C. Cir. 1987). Because these final rules merely restate the amount
11 limitation in section 432(e)(3)(B), notice and comment are unnecessary and the “good
12 cause” exemption applies to these final rules.

13 For the same reasons, these final rules are not subject to the APA’s thirty-day
14 delayed effective date requirement under the “good cause” exemption to the delayed
15 effective date requirement. 5 U.S.C. 553(d)(3). Thus, the Commission is making these
16 final rules effective immediately upon publication in the Federal Register.

17 The Commission is submitting these final rules to the Speaker of the House of
18 Representatives and the President of the Senate pursuant to the Congressional Review of
19 Agency Rulemaking Act, 5 U.S.C. 801 et seq., on [DATE].

20 **Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)**

21 The provisions of the Regulatory Flexibility Act are not applicable to these rules
22 because the Commission was not required to publish a notice of proposed rulemaking or

1 to seek public comment under 5 U.S.C. 553 or any other laws. 5 U.S.C. 603(a) and
2 604(a). Therefore, no regulatory flexibility analysis is required.

3

4 **List of Subjects**

5 11 CFR Part 102

6 Political committees and parties; Reporting and recordkeeping requirements.

7

1 For the reasons set out in the preamble, the Federal Election Commission is
2 amending Subchapter A of Chapter I of Title 11 of the Code of Federal Regulations as
3 follows:

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

6 1. The authority citation for part 102 continues to read as follows:

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

8 2. In section 102.12(b), remove “that” and add in its place “than”.

9 3. In section 102.12(c)(2), remove “\$1,000” and add in its place “\$2,000”.

10 4. In section 102.13(c)(2), remove “\$1,000” and add in its place “\$2,000”.

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Michael E. Toner
Chairman
Federal Election Commission

18 DATED _____
19 BILLING CODE: 6715-01-U