American Federation of Labor and Congress of Industrial Organizations

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September 13, 2002

Mai T. Dinh
Acting Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Notice of Proposed Rulemaking, "Contribution Limitations and Prohibitions," 67 Fed. Reg. 54366 (August 22, 2002)

Dear Ms. Dinh:

These comments concerning the above-referenced notice of proposed rulemaking ("NPRM") are submitted on behalf of the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO"), the national federation of 66 national and international unions representing over 13 million working men and women throughout the nation. These comments address two aspects of the NPRM: first, the year when inflation-indexing first takes effect, and second, the exemption from the individual aggregate limits on contributions of amounts above the usual limits pursuant to the so-called "millionaires" amendments of the Bipartisan Campaign Reform Act of 2002 ("BCRA").

Inflation Indexing

The NPRM asks whether the increased contribution limits under revised 2 U.S.C. §§ 441a(a)(1)(A) and (B), (a)(3) and (h) are subject to being increased further on January 1, 2003 by the inflation-indexing provisions of revised § 441a(c). The NPRM does not explicitly reflect this interpretation in proposed 11 C.F.R. § 110.5. The AFL-CIO submits that the only way to read the statute so its provisions may be harmonized is to conclude that such indexing can first increase contributions made on and after November 3, 2004, the first day after the date of the 2004 general election.

BCRA § 307(e) provides that "[t]he amendments made by [Section 307] shall be effective with respect to contributions made on or after January 1, 2003," an exception to the

BCRA's November 6, 2002 effective date for virtually all its other provisions. Until next January 1, then, all contributions, including those made on and after November 6, must comply with current § 441a. BCRA § 307(d) adds new § 441a(c)(1)(C), which provides that inflation-indexed increases in the enumerated contributions limits "shall only be made in odd-numbered years and such increases shall remain in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election." If this provision were to apply during 2003, then it would dictate an increase in the contribution limits effective November 6, 2002, the first day after the last general election in the preceding year, which would squarely conflict with the effective date of January 1, 2003 for contributions established by BCRA §307(c). This conflict is not relieved by new § 441a(c)(1)(B), which makes general provision for inflation-indexing of the contribution limits under §§ 441a(a)(1)(A) and (B), (a)(3) and (h) as well as §§ 441a(b) and (d), because that provision is expressly subject to subparagraph (C), which, again, directs that the increases take effect the day after the date of the last general election.

Had Congress intended that inflation-indexing of the various contribution limits take effect immediately on January 1, 2003, it could have crafted the amendments to §441a so as to avoid the plain conflict just described. It did not do so. And, we are unaware of anything in the legislative history of the BCRA that suggests that the new contribution limits would be subject to concurrent inflation-indexed increases from the first day they went into effect. To the contrary, the Senate and House debates are replete with references to the specific amounts of the new contribution limits (most frequently the doubling of the individual per-candidate per-election contribution limit from $1,000 to $2,000 under amended § 441a(a)(1)) and contain no suggestion that those figures would never actually be in effect due to the new inflation-indexing provisions.

Accordingly, we recommend that proposed 11 C.F.R. §110.5 make clear that 2005 is the first odd-numbered year when increases shall be made pursuant to §441a(c)(1)(C), such increases to become effective on November 3, 2004.

Exemption From Individual Aggregate Limits

The so-called "millionaires" amendments in the BCRA provide, in virtually identical language with respect to contributions to Senate and House candidates, that the individual aggregate limits at 2 U.S.C. § 441a(a)(3) "shall not apply with respect to any contribution made with respect to" a candidate "if the contribution is made under the increased limit" provided by the amendment "during a period in which the candidate may accept such a contribution...." See amended §§ 441i(1)(C)(i)(II) and 441aA(a)(1)(B). Proposed 11 C.F.R. § 110.5(b)(1)(iii) provides that "contributions made under the increased limits under 11 C.F.R. part 400 are not subject to" the statutory individual aggregate contribution limits.

We assume that the BCRA and the proposed regulation can only mean that the portion of an individual's contribution to a candidate for a particular election that is lawfully made solely by operation of the "millionaires" amendments is not counted toward the contributor's aggregate limits, but the first $2,000 of the individual's contributions to that candidate for the particular

election remain subject to those limits. In order to make that meaning more explicit, we recommend that proposed §110.5(b)(1)(iii) provide instead as follows: "However, the portions of an individual's contributions that are made pursuant to the increased limits under 11 CFR part 400 are not subject to the limitations of paragraphs (b)(1)(i) and (ii) of this section."

The AFL-CIO appreciates the opportunity to provide these comments. We do not request an opportunity to testify if a hearing is conducted on this NPRM..

Yours truly,

Laurence E. Gold

Laurence E. Gold
Associate General Counsel