



FEDERAL ELECTION COMMISSION
Washington, DC 20463

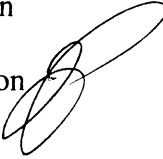
October 25, 2004


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MEMORANDUM


TO: The Commission


THROUGH: James A. Pehrkon 
Staff Director


FROM: Lawrence H. Norton 
General Counsel

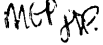
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AGENDA ITEM
For Meeting of: 10-28-04

SUBMITTED LATE

SUBJECT: Final Rules and Explanation and Justification for Political Committee Status

On August 19, 2004, the Commission approved Final Rules in the Political Committee Status rulemaking and directed the Office of General Counsel to make necessary changes, including technical and conforming ones, to the Final Rules and prepare an Explanation and Justification for publication in the *Federal Register*.

Recommendation:

The Office of General Counsel recommends that the Commission approve the attached Explanation and Justification and the revisions to the Final Rules for publication in the *Federal Register* and transmittal to Congress.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Parts 100, 102, 104, and 106**

3 **[Notice 2004 - __]**

4 **Political Committee Status, Definition of Contribution, and**

5 **Allocation for Separate Segregated Funds and Nonconnected Committees**

6 **AGENCY:** Federal Election Commission.

7 **ACTION:** Final rules and transmittal of regulations to Congress.

8 **SUMMARY:** The Federal Election Commission (“Commission”) is revising
9 portions of its regulations regarding the definition of
10 “contribution” and the allocation of certain costs and expenses by
11 separate segregated funds (“SSFs”) and nonconnected committees.

12 A new rule explains when funds received in response to certain
13 communications by any person must be treated as “contributions.”

14 In the allocation regulations, the final rules eliminate the previous
15 allocation formula under which SSFs and nonconnected

16 committees used the “funds expended” method to calculate a ratio
17 for use of Federal and non-Federal funds for administrative and

18 generic voter drive expenses, replacing it with a flat 50%
19 minimum. These rules also spell out how SSFs and nonconnected

20 committees must pay for voter drives and certain public
21 communications. Other changes proposed previously regarding

22 the definitions of “political committee” and “expenditure” are not

1 being adopted. Further information is provided in the
2 supplementary information that follows.

3 **EFFECTIVE**
4 **DATE:** January 1, 2005

5 **FOR FURTHER**
6 **INFORMATION**
7 **CONTACT:** Ms. Mai T. Dinh, Assistant General Counsel, Mr. J. Duane Pugh
8 Jr., Senior Attorney, Mr. Richard T. Ewell, Attorney, Mr. Robert
9 M. Knop, Attorney, or Ms. Margaret G. Perl, Attorney, 999 E
10 Street, NW, Washington, DC 20463, (202) 694-1650 or (800)
11 424-9530.

12 **SUPPLEMENTARY**
13 **INFORMATION:**

14 The Commission published a Notice of Proposed Rulemaking on March 11, 2004.
15 See Notice of Proposed Rulemaking on Political Committee Status, 69 FR 11736 (Mar.
16 11, 2004) (“NPRM”). Written comments were due by April 5, 2004 for those
17 commenters who wished to testify at the Commission hearing on these proposed rules,
18 and by April 9, 2004 for commenters who did not wish to testify. The NPRM addressed
19 a number of proposed changes to 11 CFR parts 100, 102, 104, 106 and 114. The
20 Commission received over 100,000 comments from the public with regard to the various
21 issues raised in the NPRM. The comments are available at
22 <http://www.fec.gov/register.htm> under “Political Committee Status.” The Commission
23 held a public hearing on April 14 and 15, 2004, at which 31 witnesses testified. A
24 transcript of the public hearing is also available at <http://www.fec.gov/register.htm> under
25 “Political Committee Status.” For the purposes of this document, the terms “comment”

1 and “commenter” apply to both written comments and oral testimony at the public
2 hearing.

3 Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional
4 Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules
5 to the Speaker of the House of Representatives and the President of the Senate and
6 publish them in the Federal Register at least 30 calendar days before they take effect.
7 The final rules that follows were transmitted to Congress on _____, 2004.

8 **EXPLANATION AND JUSTIFICATION**

9 **Solicitations**

10 The Commission is adopting one addition to the regulatory definition of
11 “contribution” in 11 CFR part 100, subpart B. This addition comports with the statutory
12 standard for “contribution” by reaching payments “made . . . for the purpose of
13 influencing any election for Federal office.” 2 U.S.C. 431(8)(A)(i); 11 CFR 100.51 and
14 100.52. This addition has several exceptions to avoid sweeping too broadly.

15

16 11 CFR 100.57 -- Funds received in response to solicitations

17 Section 100.57 is a new rule that explains when funds received in response to
18 certain communications by any person must be treated as “contributions” under FECA.
19 Paragraph (a) sets out the general rule, paragraphs (b) and (c) create two specific
20 exceptions: paragraph (b) addresses certain allocable solicitations, and paragraph (c)
21 addresses joint fundraisers. These rules in new 11 CFR 100.57 apply to all political
22 committees, corporations, labor organizations, partnerships, organizations and other
23 entities that are “persons” under the Federal Election Campaign Act of 1971, as amended

1 (“FECA”). See 2 U.S.C. 431(11). The rules apply without regard to tax status, so they
2 reach all FECA “persons,” including, for example, entities described in or operating
3 under section 501(c)(3), 501(c)(4), and 527 of the Internal Revenue Code.

4 1. 11 CFR 100.57(a) -- Treatment as contributions.

5 New section 100.57(a) classifies all funds provided in response to a
6 communication as contributions under the FECA if the communication indicates that any
7 portion of the funds received will be used to support or oppose the election of a clearly
8 identified Federal candidate.

9 Most political committees and other organizations pay careful attention to
10 communications with potential donors. These communications are commonly the
11 cornerstone of the relationship between a group and its donors, and their effectiveness is
12 vital to almost all organizations. Many groups’ fundraising solicitations will say nothing
13 of an electoral objective regarding the use of funds (i.e., that any funds provided in
14 response to the solicitation will be used to support or oppose the election of clearly
15 identified Federal candidates). Communications that do so, however, plainly seek funds
16 “for the purpose of influencing Federal elections.” Thus, the new rule appropriately
17 concludes that such funds are “contributions” under FECA.

18 The standard in new section 100.57 draws support from a 1995 decision of the
19 United States Court of Appeals for the Second Circuit. FEC v. Survival Education Fund,
20 Inc., 65 F.3d 285 (2d Cir. 1995). See also Advisory Opinion 2003-37 at 15 and 20,
21 available at www.fec.gov. In the Second Circuit case, the court found that a July 1984
22 letter from two nonprofit issue advocacy groups solicited “contributions” under FECA
23 because it included a statement “[t]hat . . . leaves no doubt that the funds contributed

1 would be used to advocate President Reagan’s defeat at the polls, not simply to criticize
2 his policies during the election year.” Id. at 295. According to the court, the critical
3 statement from the mailing was: “your special election-year contribution today will help
4 us communicate your views to hundreds of thousands of members of the voting public,
5 letting them know why Ronald Reagan and his anti-people policies must be stopped.” Id.
6 at 289 and 295 (first emphasis added by court, second in original). The mailing described
7 in FEC v. Survival Education Fund, if used following the effective date of these rules and
8 modified to identify clearly a current Federal candidate, would trigger new section
9 100.57(a) and would require the group issuing the mailing to treat all the funds received
10 in response to the mailing as “contributions” under FECA.

11 The following are examples of solicitations based on the one that Survival
12 Education Fund used that illustrate how a variation in the text of a solicitation would
13 change the result of whether a solicitation is subject to new section 100.57. A solicitation
14 might state the following:

15 “The President wants to cut taxes again. Our group has been fighting for
16 lower taxes since 1960, and we will fight for the President’s tax cuts.
17 Send us money for our important work.”

18 Because this solicitation does not indicate that any funds received will be used to support
19 or oppose the election of any candidates, any funds received in response are not subject to
20 new section 100.57.

21 In contrast, a solicitation that would trigger the new rule might read as follows:

1 “The President wants to cut taxes again. Our group has been fighting for
2 lower taxes since 1960, and we will fight to give the President four more
3 years to fight for lower taxes. Send us money for our important work.”

4 Because this solicitation indicates that the funds received will be used to support the
5 election of a Federal candidate (“give the President four more years”), any funds received
6 in response to this solicitation are “contributions” under the new rule.

7 The rule’s focus on the planned use of funds leaves the group issuing the
8 communication with complete control over whether its communications will trigger new
9 section 100.57. New section 100.57 requires an examination of only the text of a
10 communication. It does not depend on reference to external events, such as the timing or
11 targeting of a solicitation, nor is it limited to solicitations that use specific words or
12 phrases that are similar to a list of illustrative phrases.

13 It is important to note that if a solicitation indicates that any portion of the funds
14 received will be used to support or oppose the election of a clearly identified candidate,
15 new section 100.57(a) applies even if the solicitation states that funds received would be
16 used for other purposes too, subject to the exceptions in new 11 CFR 100.57(b)(2) and
17 (c), discussed below. For example, funds received in response to a solicitation stating
18 “donate to our organization to help us elect the President and other anti-tax candidates at
19 all levels of government – Federal, State, and local” must be treated as contributions. In
20 addition, a disclaimer stating that any funds received that cannot be treated as
21 contributions, or that cannot be accepted by a political committee or cannot be deposited
22 in a committee’s Federal account, will be deposited in the organization’s non-Federal
23 account does not negate the application of new section 100.57(a). Thus, an organization

1 that sends out a solicitation that is subject to new section 100.57(a) or (b)(1) with a
2 disclaimer similar to the one described above cannot accept any funds that are not Federal
3 funds (funds that comply with the amount limitations, source prohibitions and reporting
4 requirements of FECA) in response to that solicitation unless it satisfies one of the
5 exceptions in new section 100.57(b)(2) or (c), discussed below.

6 Further examples of communications that solicit contributions under new section
7 100.57(a) are:

- 8 1. “Electing Joe Smith is crucial to our efforts to preserve the environment.
9 Please send money to us so that we can be successful in this cause.”
- 10 2. “Our group strives to preserve Social Security, and Representative Jones
11 has a great plan to protect this vital program. The Congressman needs our
12 help to stay in Washington and implement his plan to save Social Security.
13 Give now to help us fight to save Social Security.”
- 14 3. “Senator Jane Doe voted against a tax package that would have helped working
15 families. Your generous gift will enable us to make sure Californians remember
16 in November.”
- 17 4. “XYZ Foundation is about shaping America’s economy by organizing
18 voters. Join us in helping Senator Brown keep America’s economy strong
19 and growing. Donate to our organizing efforts.”

20 Because the italicized language in each of these solicitations [**words that are**
21 **underlined will be italicized in the Federal Register**] indicates that the funds received
22 will be used to support the election or defeat of a Federal candidate, any funds received in
23 response to these solicitations are “contributions” under the new rule.

1 In the NPRM, the proposed regulation text for section 100.57 took a different
2 approach. See NPRM at 11757. However, new section 100.57(a) is similar to an
3 approach that the Commission sought comment on in the narrative of the NPRM. See
4 NPRM at 11743. The commenters did not address the approach discussed in the
5 NPRM’s narrative, but some addressed the proposed regulation text for this provision.
6 Those commenters raised objections to proposed section 100.57 based on some of the
7 exemptions from the “expenditure” definition for certain communications, as discussed
8 below. The exemption from the “expenditure” definition for the costs of internal
9 communications by corporations, labor organizations and membership organizations in 2
10 U.S.C. 431(9)(B)(iii) and 11 CFR 100.134 is not affected by the Commission’s
11 promulgation of new section 100.57.

12 New section 100.57 does not address when the costs of communications are
13 expenditures under FECA. Instead, it specifies when funds received in response to
14 certain communications must be treated as contributions under FECA. Thus, a
15 corporation, labor organization or membership organization that issues an internal
16 communication of the type described in new section 100.57 may consider the costs of the
17 communication to be disbursements not subject to FECA requirements under section
18 100.134, but it must treat any funds received in response as FECA contributions under
19 new section 100.57. If the corporation, labor organization, or membership organization
20 maintains a separate segregated fund (“SSF”), treating the funds received in response to
21 the communication as contributions to the SSF will satisfy new section 100.57.

22 Section 100.141 exempts from the “expenditure” definition any payments made
23 by corporations or labor organizations that are permissible under 11 CFR part 114. Part

1 114 authorizes the use of non-Federal funds for the costs of various corporate, labor
2 organization, and membership organization communications under certain conditions.
3 See, e.g., 11 CFR 114.3 to 114.8; 2 U.S.C. 441b(b)(2)(A), (b)(2)(B), (b)(4)(B). New
4 section 100.57 does not make the costs of these communications expenditures; instead, it
5 concerns the treatment of funds received in response to certain communications without
6 regard to how the costs of those communications were paid.

7 One commenter argued that its status as an MCFL-type corporation (a qualified
8 nonprofit corporation allowed to make independent expenditures pursuant to 11 CFR
9 114.10) means its communications that inform potential contributors of the
10 organization's ability to advocate in connection with a Federal election must be immune
11 from FECA consequences. The Supreme Court holding in FEC v. Massachusetts
12 Citizens for Life, 479 U.S. 238 (1986) ("MCFL"), is not so broad. Indeed, the Court
13 twice has recognized that an MCFL-type corporation's independent spending can have
14 FECA consequences. See id. at 262 (noting: "should MCFL's independent spending
15 become so extensive that the organization's major purpose may be regarded as campaign
16 activity, the corporation would be classified as a political committee"); see also FEC v.
17 Beaumont, 539 U.S. 146, 149 (2003) (holding that the ban on corporate contributions
18 directly to Federal candidates applies to MCFL-type corporations). Independent
19 expenditures were the core of the MCFL holding, yet the opinion expressly notes that the
20 independent expenditures can trigger political committee status. Nonetheless, the
21 commenter claims that an MCFL corporation's ability to explain to potential contributors
22 that it will make independent expenditures on behalf of particular Federal candidates
23 must be immune from consequences under new section 100.57. Just as an MCFL

1 corporation's independent expenditures can make it a political committee, an MCFL
2 corporation's solicitations can make it the recipient of contributions under the FECA.
3 Therefore, new section 100.57 is in no way inconsistent with MCFL. Moreover, an
4 MCFL-type corporation can tailor its solicitations to satisfy the notice requirement of 11
5 CFR 114.10(f) ("solicitation shall inform potential donors that their donations may be
6 used for political purposes, such as supporting or opposing candidates") without
7 mentioning a clearly identified Federal candidate.

8 Some commenters addressed the interplay between this regulation and other
9 proposed rules that the Commission is not adopting, which renders these comments moot.

10 New section 100.57 provides one example of communications that can generate
11 contributions; it is not an exhaustive list. The rule addresses communications that
12 indicate that the funds received in response will be used to support or oppose the election
13 of a clearly identified Federal candidate. Other communications that do not include such
14 an indication can also generate contributions under FECA. A solicitation that explains
15 that the funds received will be used to influence Federal elections will generate FECA
16 contributions, see, e.g., 11 CFR 102.5(a)(2)(ii), even though such a communication
17 would not be subject to new section 100.57 because it does not mention a clearly
18 identified Federal candidate.

19 Any funds that are "contributions" by operation of new section 100.57 are
20 contributions for purposes of the "political committee" definition in 2 U.S.C. 431(4)(A)
21 and 11 CFR 100.5(a), which defines a "political committee" as any group that makes
22 \$1,000 of expenditures or receives \$1,000 of contributions during a calendar year. In
23 Buckley v. Valeo, 424 U.S. 1, 79 (1976), the Supreme Court narrowed the "political

1 committee” definition with a “major purpose” test, which is discussed further below. The
2 “major purpose” test applies in the same way to groups that make or receive \$1,000 of
3 contributions and groups that make \$1,000 of expenditures.

4 2. 11 CFR 100.57(b) -- Certain allocable solicitations.

5 a. 11 CFR 100.57(b)(1)

6 New section 100.57(b)(1) states that a solicitation that meets section 100.57(a)
7 and refers to a political party so that its costs are allocable under 11 CFR 106.6 or 106.7
8 is nonetheless subject to the rule that all of its proceeds are “contributions” under FECA.
9 This approach is consistent with the “candidate-driven” approach in the revised allocation
10 rules, discussed below. See, e.g., Explanation and Justification for new 11 CFR
11 106.6(f)(1).

12 b. 11 CFR 100.57(b)(2)

13 New section 100.57(b)(2) provides that where the costs of a solicitation are
14 allocable under 11 CFR 106.1, 106.6 or 106.7, if the solicitation also refers to at least one
15 clearly identified non-Federal candidate, at least fifty percent of the proceeds of the
16 solicitation must be treated as contributions under FECA. See new 11 CFR 100.57(b)(2).
17 The funds that satisfy the requirement that fifty percent of the funds received must be
18 contributions under the FECA under new section 100.57(b)(2) must also comply with
19 FECA’s amount limitations and source prohibitions and must be reported as contributions
20 if the recipient is a political committee. Thus, if such a solicitation does not yield at least
21 fifty percent in funds that meet the FECA’s amount limitations and source prohibitions,
22 then the organization must refund some of the donations to comply with new section
23 100.57. For example, a political committee might raise a total of \$30,000 for its Federal

1 and non-Federal accounts with a fundraising event where the invitation includes a
2 solicitation that is subject to both new section 100.57 and allocation under section
3 106.6(d). Under new section 100.57(b)(2), the political committee must consider at least
4 fifty percent of the proceeds to be contributions. If the \$30,000 total receipts include
5 only \$12,000 that are in compliance with FECA's limitations and prohibitions, then the
6 committee may retain only \$12,000 in non-Federal funds. The political committee must
7 then refund \$6,000 of donations so that fifty percent of the proceeds from this solicitation
8 are contributions. ($\$12,000 \times 2 = \$24,000$. $\$30,000 - \$24,000 = \$6,000$.)

9 New section 100.57 does not change the allocation of direct costs of fundraising
10 under current 11 CFR 106.6(d) or 106.7(d)(4). These costs are subject to allocation
11 according to the funds received method. New section 100.57, however, does affect the
12 nature of the funds received from a solicitation and requires that either 100% or at least
13 50% of the funds received must be contributions. The amount of contributions received,
14 in turn, impacts how the funds received method operates when the fundraising includes a
15 solicitation that is subject to new section 100.57. For example, consider again the
16 situation described above where a political committee raised \$30,000 for its Federal and
17 non-Federal accounts and spent \$2,000 in direct costs of fundraising. After the \$6,000
18 refund, the funds received from that event were 50% Federal and 50% non-Federal, so
19 the political committee must use at least \$1,000 in Federal funds to pay for direct costs of
20 fundraising under section 106.6(d). In accordance with 11 CFR 106.6(d)(2), the final
21 allocation of the direct costs of fundraising must result in the Committee using at least
22 \$1,000 of Federal funds to pay those costs, and prior payments based on an estimated

1 allocation ratio under section 106.6(d)(1) must be adjusted to match the final allocation
2 ratio.

3 3. 11 CFR 100.57(c) -- Joint fundraisers.

4 New section 100.57(c) concerns joint fundraising. It provides that funds received
5 in response to solicitations conducted between or among the authorized committees of
6 Federal and non-Federal candidates are excepted from being treated entirely as
7 contributions under the new rule in section 100.57. Nevertheless, when a Federal
8 candidate's authorized committee participates in a joint fundraiser, all funds solicited are
9 subject to restrictions imposed on Federal candidates by BCRA. See 2 U.S.C. 441i(e)(1)
10 and either 11 CFR 300.61 or 300.62. When a Federal candidate conducts a joint
11 fundraiser with a State candidate, the candidates must divide the receipts according to the
12 written joint fundraising agreement under 11 CFR 102.17. All funds raised for the
13 Federal candidate are subject to 11 CFR 300.61 and all funds raised for the State
14 candidate are subject to 11 CFR 300.62 because of the Federal candidate's participation
15 in the joint fundraiser.

16 All other joint fundraising pursuant to section 102.17 is subject to new section
17 100.57(a) and (b). Thus, section 100.57 applies to solicitations for joint fundraisers
18 involving unauthorized political committees or other organizations that are not political
19 committees where the solicitations indicate that any portion of the funds received will be
20 used to support or oppose the election of a clearly identified Federal candidate. If the
21 communication is subject to new section 100.57(a) or (b)(1), then the entire amount of
22 the proceeds of the joint fundraiser must be treated as contributions. Alternatively, if the
23 solicitation is subject to new section 100.57(b)(2) (includes at least one clearly identified

1 Federal candidate and at least one clearly identified non-Federal candidate), then at least
2 fifty percent of the proceeds must be treated as FECA contributions, without regard to
3 which entity receives those contributions. Any joint fundraising agreement must reflect
4 the appropriate division of proceeds and costs in order for the joint fundraising entities to
5 comply with new section 100.57 and in 11 CFR 102.17.

6 For example, two political committees, called A and B, each with a Federal and
7 non-Federal account, sign a joint fundraising agreement stating that A will receive 75%
8 of the proceeds and B will receive 25% of the proceeds. In accordance with the
9 agreement, they jointly raise \$100,000 with a solicitation subject to new section
10 100.57(b)(2), with A receiving \$75,000 and B receiving \$25,000. The \$100,00 raised by
11 the two committees must be distributed among their Federal and non-Federal accounts in
12 any way that results in at least 50% of the \$100,000 total proceeds being deposited in the
13 Federal accounts. For example, A may deposit one third of its \$75,000 in proceeds
14 (\$25,000) in its Federal account and the remaining two thirds (\$50,000) in its non-Federal
15 account. B would then treat all of its \$25,000 in proceeds as Federal funds, deposit
16 \$25,000 in its Federal account, and nothing in its non-Federal account. All funds
17 deposited in Federal accounts must comply with the amount limitations, source
18 prohibitions, and reporting requirements of the Act. Furthermore, at least 50% of the
19 direct costs of fundraising must be paid for with Federal funds.

20 **Allocation**

21 The Commission is adopting final rules at 11 CFR 106.6 to change the allocation
22 regime for SSFs and nonconnected committees. These final rules establish a simpler
23 bright-line rule providing that administrative expenses, generic voter drives, and certain

1 public communications that refer to a political party must be paid for with at least 50%
2 Federal funds. Under the previous regulations, SSFs and nonconnected committees
3 applied a complex “funds expended” formula to arrive at a ratio of Federal funds to total
4 Federal and non-Federal disbursements and then paid for these expenses with allocated
5 amounts from Federal and non-Federal accounts. The previous rules were a source of
6 confusion for some SSFs and nonconnected committees and resulted in time-consuming
7 reporting.

8 These final rules also establish candidate-driven allocation rules for voter drives
9 and public communications that refer to clearly identified Federal or non-Federal
10 candidates regardless of whether the voter drive or public communication refers to a
11 political party. When the voter drive or public communication refers to clearly identified
12 Federal candidates, but no clearly identified non-Federal candidates, the costs must be
13 paid for with 100% Federal funds. Similarly, when the voter drive or public
14 communication refers to clearly identified non-Federal candidates, but no clearly
15 identified Federal candidates, the costs may be paid 100% from a non-Federal account.
16 Any voter drives or public communications that refer to both clearly identified Federal
17 and non-Federal candidates are subject to the time/space method of allocation under 11
18 CFR 106.1. The final rules do not change the allocation methods in 11 CFR 106.1, which
19 are based on the benefit reasonably expected to be derived by each candidate. Minor
20 changes are being made in 11 CFR 102.5 and 104.10 to conform to the changes in 11
21 CFR 106.6.

22

1 11 CFR 102.5 -- Organizations financing political activity in connection with Federal and
2 non-Federal elections, other than through transfers and joint fundraisers: Accounts and
3 Accounting.

4 Section 102.5(a)(1)(i) regulates how political committees, other than national
5 committees, that finance political activity in connection with both Federal and non-
6 Federal elections set up accounts and transfer monies between Federal and non-Federal
7 accounts to pay for these activities. As explained below in the Explanation and
8 Justification for revised 11 CFR 106.6, the Commission is revising the rules for SSFs and
9 nonconnected committees regarding allocation of administrative and generic voter drive
10 expenses, and adding rules regarding the payment of costs of certain voter drives and
11 public communications. In order to conform to revised 11 CFR 106.6, the Commission is
12 revising section 102.5(a)(1)(i) to add references to sections 106.6(c) and 106.6(f), which
13 govern transfers from non-Federal to Federal accounts under 11 CFR 102.5(a) to pay for
14 allocable activities.

15

16 11 CFR 104.10 -- Reporting by separate segregated funds and nonconnected committees
17 of expenses allocated amount candidates and activities.

18 Section 104.10 specifies how SSFs and nonconnected committees must report
19 expenses allocated among candidates and activities pursuant to 11 CFR 106.1 and 106.6.
20 Previously, section 104.10(b)(1) established the reporting requirements for allocation of
21 administrative and generic voter drive expenses under the former “funds expended”
22 method in section 106.6. As explained in greater detail below (see Explanation and
23 Justification for revised 11 CFR 106.6), the Commission is revising the rules for SSFs

1 and nonconnected committees and removing the “funds expended” method of allocation.
2 In order to conform to the revised 11 CFR 106.6, the Commission is deleting the
3 requirements for reporting allocated expenditures and disbursements under the “funds
4 expended” method in section 104.10(b)(1). Instead, revised paragraph (b)(1) states that
5 in each report disclosing a disbursement for administrative expenses, generic voter
6 drives, or public communications that refer to a political party, but do not refer to any
7 clearly identified candidates, the committee shall state the allocation ratio used for these
8 categories of expenses under revised 11 CFR 106.6(c). The committee must report
9 whether it is using the 50% minimum Federal funds required under section 106.6(c) or
10 another percentage of Federal funds (greater than 50%). Because of the simplified
11 approach under the revised allocation provisions of section 106.6 explained below, the
12 reporting obligations for SSFs and nonconnected committees should be easier to meet
13 than the obligations under former section 104.10.

14
15 11 CFR 106.6 -- Payment for administrative expenses, voter drives and certain public
16 communications.

17 This section specifies how SSFs and nonconnected committees must pay for
18 certain activities that are in connection with Federal elections, non-Federal elections, or
19 both, using Federal and non-Federal accounts established pursuant to 11 CFR 102.5. The
20 NPRM included several proposals to amend the allocation provisions in 11 CFR 106.6,
21 which are discussed in greater detail below. NPRM at 11753-55 and 11759-60.
22 Approximately ten commenters provided substantive comments regarding these
23 proposals. In general, the commenters were divided as to the impact of the U.S. Supreme

1 Court decision in McConnell v. FEC, 540 U.S. 93 (2003), on the allocation rules for SSFs
2 and nonconnected committees. One commenter argued that McConnell reaffirmed that
3 allocation between Federal and non-Federal accounts is appropriate for SSFs and
4 nonconnected committees. Other commenters believed that McConnell's statements
5 regarding the circumvention of the FECA permitted under the former party committee
6 allocation rules could just as easily be said of the allocation regime for SSFs and
7 nonconnected committees.

8 After carefully considering these public comments and examining information
9 regarding how the allocation system under former 11 CFR 106.6 has worked over the
10 past ten years, the Commission adopts the following amendments to 11 CFR 106.6: (1)
11 deleting the “funds expended” ratio from 11 CFR 106.6(c) and replacing it with a 50%
12 flat minimum Federal percentage; (2) applying this new 50% Federal minimum to
13 administrative and generic voter drive expenses, as well as to a newly added category of
14 allocable expenses – public communications that refer to a political party but do not refer
15 to any clearly identified Federal or non-Federal candidates; (3) providing for allocation of
16 certain voter drives and public communications that refer to both political parties and
17 clearly identified candidates based upon whether the candidates are Federal, non-Federal,
18 or both; and (4) directing SSFs and nonconnected committees to use the time/space
19 allocation method in section 106.1 for certain voter drives and public communications
20 that refer to a political party, to at least one clearly identified Federal candidate, and to at
21 least one clearly identified non-Federal candidate. Through these final rules, the
22 Commission seeks to enhance compliance with the FECA, to simplify the allocation

1 system, and to make it easier for SSFs and nonconnected committees to comprehend and
2 for the Commission to administer these requirements.

3 1. 11 CFR 106.6(b) -- Payments for administrative expenses, voter drives and
4 certain public communications

5 Previous 11 CFR 106.6(b)(1) listed disbursements that must be allocated by SSFs,
6 and previous 11 CFR 106.6(b)(2) listed disbursements that must be allocated by
7 nonconnected committees. Because the allocation method is very similar for both SSFs
8 and nonconnected committees, it is unnecessary to create separate lists for them. Rather,
9 the distinction in the final rules concerning allocation is between the types of
10 disbursements that are subject to allocation and the types of disbursements that are not.
11 Thus, revised 11 CFR 106.6(b)(1) lists the disbursements that SSFs and nonconnected
12 committees must allocate in accordance to revised 11 CFR 106.6(c). Revised 11 CFR
13 106.6(b)(2) lists the disbursements that are not subject to allocation but must be paid for
14 in accordance with new 11 CFR 106.6(f).

15 Proposed 11 CFR 106.6(b)(1) would have applied the allocation rules to public
16 communications that promote or support a political party or promote, support, attack or
17 oppose a clearly identified candidate. NPRM at 11759. The final rules do not adopt this
18 approach. Rather, revised section 106.6(b) lists public communications that refer to a
19 political party or a clearly identified candidate. The Commission is adopting the standard
20 in the final rules because it is an objective standard that is easy to administer.

21 A. 11 CFR 106.6(b)(1) -- Costs to be allocated

22 The four types of disbursements in revised 11 CFR 106.6(b)(1) that are subject to
23 allocation are: administrative expenses, direct costs of fundraising, generic voter drives

1 and public communications that refer to a political party. The final rules retain the
2 former descriptions of administrative expenses, direct costs of fundraising, and generic
3 voter drives in new paragraphs (b)(1)(i), (ii) and (iii) in section 106.6, respectively. New
4 paragraphs (b)(1)(i) and (ii) still make clear that SSFs may have the costs of
5 administrative expenses and fundraising programs paid by their connected organization.
6 “Generic voter drives” is a defined term used prior to BCRA and goes beyond the limited
7 activities defined under “Federal election activity.” For example, a television ad urging
8 the general public to vote for candidates associated with a particular issue, without
9 mentioning a specific candidate, would be considered allocable as a generic voter drive
10 activity under 11 CFR 106.6(b)(1)(iii). The final rules add a fourth type of disbursement
11 that must be allocated – public communications, as defined in 11 CFR 100.26, that refer
12 to a political party but do not refer to any Federal or non-Federal candidate. See 11 CFR
13 106.6(b)(1)(iv). To illustrate, public communications that use phrases such as “the
14 Democratic team,” “the Minnesota Democratic Committee,” “the GOP,” “Democrats,”
15 and “Republicans in Congress,” would fall under new paragraph (b)(1)(iv) of section
16 106.6 because they refer to a political party. See also 11 CFR 106.6.(b)(2)(iii) and (iv)
17 discussed below.

18 B. 11 CFR 106.6(b)(2) -- Costs not subject to allocation

19 Revised 11 CFR 106.6(b)(2) lists the four types of disbursements that are not
20 subject to allocation between Federal and non-Federal accounts, but are subject to the
21 payment requirements in new paragraph (f) of section 106.6. Two of the four types of
22 disbursements concern voter drives and the other two types concern public
23 communications.

1 The Commission recognizes that the allocation regulation for generic voter drives
2 in new 11 CFR 106.6(b)(1)(iii) does not apply to voter drives that mention a specific
3 Federal or non-Federal candidate. Without an additional regulatory clarification, some
4 voter drive activity may have fallen into the gap between the regulation of generic voter
5 drives in 11 CFR 106.6(b)(1)(iii) and the candidate-specific public communications
6 provisions in new 11 CFR 106.6(b)(2)(iii) and (iv), discussed below. To prevent such a
7 gap, the Commission is issuing new rules for voter drives that refer to a clearly identified
8 Federal or non-Federal candidate.

9 New paragraph (b)(2)(i) of section 106.6 describes voter drives in which the
10 printed materials or scripted messages refer to one or more clearly identified Federal
11 candidate, or any voter drives which include written instructions that direct the
12 committee's employee or volunteer to refer to a clearly identified Federal candidate
13 (including voter drives that also generally refer to candidates of a particular party or those
14 associated with a particular issue), but do not refer to any clearly identified non-Federal
15 candidates. New paragraph (b)(2)(ii) also addresses voter drives that similarly refer to
16 one or more clearly identified non-Federal candidates, including voter drives that
17 generally refer to candidates of a particular party or candidates associated with a
18 particular issue, but do not refer to any clearly identified Federal candidates.

19 In both paragraphs, the reference to the clearly identified candidate must be
20 contained in printed materials, scripted messages, or written instructions. Only written
21 instructions that direct the employee or volunteer to refer to a clearly identified Federal or

1 non-Federal candidate will satisfy these paragraphs.¹ The Commission included these
2 limitations to avoid converting an allocable generic voter drive into an unallocable
3 candidate-specific voter drive based solely upon “off script” or unauthorized oral
4 comments by an employee or volunteer. The regulation seeks to capture only authorized
5 statements; an SSF or nonconnected committee is not required to treat an otherwise
6 generic voter drive as a candidate-specific one based on unauthorized comments by
7 committee employees or volunteers. SSFs and nonconnected committees should be
8 maintaining sufficient control over their printed materials, scripts and written instructions
9 to be on notice whether or not the voter drive would qualify as a candidate-specific voter
10 drive in new paragraphs (b)(2)(i) or (ii) of section 106.6.

11 Revised 11 CFR 106.6(b)(2) also includes two types of public communications,
12 as defined in 11 CFR 100.26. First, paragraph (b)(2)(iii) describes public
13 communications that refer to a political party and one or more clearly identified Federal
14 candidates, but do not refer to any clearly identified non-Federal candidates. Second,
15 paragraph (b)(2)(iv) of section 106.6 describes public communications that refer to a
16 political party and one or more clearly identified non-Federal candidates, but do not refer
17 to any clearly identified Federal candidates. References to clearly identified Federal or
18 non-Federal candidates that come within new 11 CFR 106.6(b)(2)(iii) and (iv) include
19 “the President,” “your Senators,” and “the Republican candidate for Senate in the State of
20 Georgia.” See also 11 CFR 100.17 (definition of “clearly identified”).

¹ For example, a written instruction to the employees or volunteers that states “do not mention or refer to Candidate Y” would not by itself be covered by paragraphs (b)(2)(i) or (ii) of section 106.6.

1 2. 11 CFR 106.6(c) -- Method for allocating administrative expenses, costs of
2 voter drives and certain public communications.

3 A. Proposals in the NPRM

4 In the NPRM, the Commission set forth several proposals to amend the allocation
5 regulations in 11 CFR 106.6 that apply to SSFs and nonconnected committees other than
6 state and local party committees. Those included a number of proposals where minimum
7 Federal percentages would be added to the funds expended method. One alternative in
8 the proposed rules would have required SSFs and nonconnected committees to use the
9 greatest percentage applicable in any of the States in which the committee conducted its
10 activities as the minimum Federal percentage applied to all allocations under the funds
11 expended method. See NPRM at 11754. A competing alternative would have allowed
12 committees to choose between allocating costs on a State-by-State basis according to the
13 percentage applicable in each State, or using the highest applicable percentage across the
14 board. See id.

15 The NPRM also discussed other possible minimums including a “two tier” system
16 where SSFs and nonconnected committees that operate in fewer than 10 States would
17 have used a lower minimum Federal percentage (such as 25%), while any committees
18 operating in more than 10 States would have been subject to a higher percentage (such as
19 50%). See id. The NPRM also proposed the alternative of a fixed minimum Federal
20 percentage as a replacement for the “funds expended” method. Finally, the NPRM also
21 sought comment on eliminating the allocation scheme and requiring SSFs and
22 nonconnected committees to use 100% Federal funds for partisan voter drives and public
23 communications listed in proposed 11 CFR 106.6(b).

1 B. Comments on allocation proposals

2 In general, no commenters were supportive of the allocation system in former
3 section 106.6 and most agreed that some change to the former system was needed. One
4 commenter wanted to eliminate allocation altogether and require 100% Federal funds for
5 almost all activities, and two commenters recommended revamping the allocation scheme
6 by eliminating the funds expended method.

7 The commenters differed regarding whether it was appropriate to add a Federal
8 minimum percentage into the “funds expended” method in former section 106.6(c). One
9 commenter supported revision of the section 106.6 allocation scheme to avoid “absurd
10 results” under the former system by requiring a “significant minimum hard money share”
11 for allocated expenses. Another commenter noted that the new bookkeeping, reporting,
12 and calculations required for the proposed “funds expended method plus a minimum
13 percentage” approach in the NPRM would be burdensome for political committees.
14 Some commenters supported 100% Federal funds for certain expenditures, others
15 supported a State-by-State approach, one supported a modified “two tier” approach to
16 minimums, and others expressed concern that any number chosen as a minimum would
17 be arbitrary.

18 The commenters also differed with regard to the proposals for allocation of public
19 communications and voter drives. One commenter noted that if a communication
20 promotes, supports, attacks, or opposes (“PASOs”)² a Federal candidate, then it should be
21 paid for with 100% Federal funds. Likewise, this commenter noted that if a
22 communication only includes non-Federal candidates, then the committee should be

² “PASO” has emerged as a convenient acronym for “promote, support, attack or oppose.”

1 allowed to use 100% non-Federal funds to pay its costs. Some commenters supported a
2 minimum Federal percentage for both PASO communications and partisan voter drives.
3 One commenter asserted that allocation based on the PASO standard would be vague.
4 Another commenter argued that adding PASO communications to the “funds expended”
5 ratio would be unenforceable, arbitrary, and unbalanced. In addition, some commenters
6 suggested also revising 11 CFR 106.1 to include a minimum Federal percentage under
7 the time/space methodology of allocation. The Commission is not able to adopt this
8 latter suggestion because the NPRM did not seek public comment on amending section
9 106.1.

10 C. Final Rules

11 In examining public disclosure reports filed by SSFs and nonconnected
12 committees over the past ten years, the Commission discovered that very few committees
13 chose to allocate their administrative and generic voter drive expenses under former
14 section 106.6(c). Anecdotal evidence suggested that many committees, including those
15 that allocated, were confused as to how the funds expended ratio should be calculated and
16 adjusted throughout the two-year election cycle. Committees have consistently requested
17 guidance on the proper application of the allocation methods under former section 106.6
18 at various Commission conferences, roundtables and education events. Audit experience
19 has also shown that some committees were not properly allocating under the complicated
20 funds expended method. See Final Report of the Audit Division on Volunteer PAC
21 (Sept. 21, 2004) (improper application of flat state ballot composition ratio instead of
22 calculating ratio under funds expended method in section 106.6) and Final Report of the
23 Audit Division on Republicans for Choice PAC (Dec. 2, 1999) (apparent confusion

1 between calculation of funds received ratio and funds expended ratio in section 106.6).
2 In addition, calculating and adjusting the funds expended ratio may have posed an
3 administrative burden to some committees, particularly those with limited resources,
4 because compliance required committees to monitor their Federal expenditures and non-
5 Federal disbursements, compare their current spending to the ratio reported at the start of
6 the election cycle, and then adjust the ratio to reflect their actual behavior. The confusion
7 and administrative burden associated with the funds expended method may at least partly
8 explain why, historically, SSFs and nonconnected committees have not adjusted their
9 allocation ratios during an election cycle, or from one election cycle to the next election
10 cycle.

11 Given the complexity of former section 106.6(c), the confusion regarding the
12 proper application of this rule exhibited by some SSFs and nonconnected committees,
13 and the administrative burden of compliance, the Commission seeks to simplify, not
14 further complicate, the allocation system. Thus, the Commission is not retaining the
15 funds expended method in any form.

16 A flat minimum percentage makes the allocation scheme easier to understand and
17 apply, while preserving the overall rationale underlying allocation. The flat minimum
18 percentage eliminates the requirement—and, thus, the accompanying burdens—of
19 calculating the ratio and monitoring it continuously for accuracy. Furthermore, the
20 Commission’s recent experience with State and local party allocation ratios in 11 CFR
21 106.7 and 300.33 indicates that flat minimum allocation ratios are easier for committees
22 to understand and for the Commission to administer. A flat minimum Federal percentage
23 will also result in less complex, less intrusive, and speedier enforcement actions, thereby

1 enhancing compliance with the law. Finally, SSFs and nonconnected committees will
2 retain the flexibility to allocate more than the flat minimum percentage of these expenses
3 to their Federal account if they wish to do so. Accordingly, the Commission has decided
4 to replace the funds expended method of allocation with a flat minimum allocation
5 percentage.

6 Neither FECA nor any court decision dictates how the Commission should
7 determine appropriate allocation ratios. In fact, at least one court has recognized that the
8 Commission has the discretion to establish the Federal funds percentage it deems best for
9 administrative and generic voter drive expenses. See Common Cause v. FEC, 692 F.
10 Supp. 1391, 1396 (D.D.C. 1987).

11 A flat 50% allocation minimum recognizes that SSFs and nonconnected
12 committees can be “dual purpose” in that they engage in both Federal and non-Federal
13 election activities. These committees have registered as Federal political committees
14 with the FEC; consistent with that status, political committees should not be permitted to
15 pay for administrative expenses, generic voter drives and public communications that
16 refer to a political party with a greater amount of non-Federal funds than Federal funds.
17 However, the 50% figure also recognizes that some Federal SSFs and nonconnected
18 committees conduct a significant amount of non-Federal activity in addition to their
19 Federal spending. The Commission has concluded that this approach is preferable to
20 importing percentages used in other contexts for dissimilar entities, such as the former
21 national party committee ratios repealed by BCRA or the current ratios applicable to
22 State and local party committees, as suggested in the NPRM.

1 Public communications that refer to a political party without referring to any
2 clearly identified Federal or non-Federal candidates are subject to the new 50% flat
3 minimum percentage in revised 11 CFR 106.6(c). Like the administrative expenses and
4 generic voter drives (which may refer to a political party), which are also allocated under
5 section 106.6(c), these references solely to a political party inherently influence both
6 Federal and non-Federal elections. Therefore, the 50% Federal funds requirement
7 reflects the dual nature of the communication. As with other expenses under revised
8 section 106.6(c), an SSF or nonconnected committee may choose to allocate more than
9 50% of the costs of any such public communication to its Federal account, if it wishes to
10 do so.

11 The past decade of reports filed with the FEC indicate that most SSFs and
12 nonconnected committees do not allocate under section 106.6(c). In fact, fewer than 2%
13 of all registered non-party political committees filed H1 and H4 schedules allocating
14 administrative and generic voter drive expenses under former section 106.6(c) in each
15 election cycle since these regulations were made effective in 1991. Any SSF or
16 nonconnected committee that was not allocating under section 106.6 was presumably
17 already using 100% Federal funds for these expenses, except where those expenses were
18 paid by other entities in accordance with the Act and Commission regulations, such as an
19 SSF's connected organization paying its administrative expenses. Thus, removing the
20 funds expended method and replacing it with a flat minimum percentage in section 106.6
21 should only affect a small fraction of all SSFs and nonconnected committees.

22 Even for those SSFs and nonconnected committees that were allocating, the
23 impact of the final rules should not be substantial. A review of past reports filed with the

1 FEC shows that almost half of these committees were already paying for these expenses
2 with at least 50% Federal funds under the former system. These committees will not
3 need to adjust their payments under the 50% flat percentage method in revised 11 CFR
4 106.6(c). Moreover, the actual dollar amounts of non-Federal funds that were spent in
5 past cycles on administrative and generic voter drive expenses under former section
6 106.6(c), and which will have to be partially replaced with Federal funds under the final
7 rules, is relatively low. With the exception of one or two committees per election cycle
8 whose spending was out of line with other SSFs and nonconnected committees, the final
9 rules affect each committee by requiring only a minimal increase in Federal funds
10 expended. Additionally, these amounts were not high compared to total disbursements
11 from these committees' Federal accounts in an election cycle (and would have been even
12 smaller if disbursements from non-Federal accounts were taken into consideration).
13 Thus, revised 11 CFR 106.6(c) should not impose a significant fundraising burden on
14 these committees.

15 3. 11 CFR 106.6(f) -- Payments for public communications and voter drives that
16 refer to a political party and one or more clearly identified Federal or non-Federal
17 candidates.

18 The final rules add new paragraph (f) to 11 CFR 106.6 to address payments for
19 voter drives that refer to clearly identified Federal or non-Federal candidates, as
20 described in new 11 CFR 106.6(b)(2)(i) and (ii), and public communications that refer to
21 a political party and clearly identified Federal or non-Federal candidates, as described in
22 new 11 CFR 106.6(b)(2)(iii) and (iv). The final rules also direct SSFs and nonconnected
23 committees to use the time/space allocation method in section 106.1 for voter drives and

1 public communications that refer to at least one clearly identified Federal candidate and
2 to at least one clearly identified non-Federal candidate, without regard to any references
3 to a political party.

4 The Commission views voter drives and public communications that refer to a
5 political party and either Federal or non-Federal candidates, but not both, as “candidate-
6 driven.” The Federal or non-Federal nature of the political party reference is determined
7 by whether the clearly identified candidates in the communication are Federal or non-
8 Federal. Thus, voter drives and public communications that refer to a political party and
9 also refer only to clearly identified Federal candidates must be paid for with 100%
10 Federal funds from the Federal account under new 11 CFR 106.6(f)(1). Permitting these
11 voter drives and communications to be paid for with some non-Federal funds based on a
12 cursory reference to a political party would invite circumvention of the intent of the
13 allocation scheme.

14 On the other hand, voter drives and public communications that refer to a political
15 party and also refer only to clearly identified non-Federal candidates may be paid for
16 entirely by the non-Federal account under new 11 CFR 106.6(f)(2). SSFs and
17 nonconnected committees may pay for these communications referring to non-Federal
18 candidates partly or entirely with Federal funds, but are not required to do so. Finally,
19 voter drives and public communications that refer to a political party and also to both
20 Federal and non-Federal candidates are subject to time/space allocation under 11 CFR
21 106.1 without regard to the portion referring to the party. See new 11 CFR 106.6(f)(3).³

³ The Commission notes that State law may also govern communications referring to non-Federal candidates.

1 The final rules are simpler than the approach taken in Advisory Opinion 2003-37
2 and proposed in the NPRM at proposed 11 CFR 106.6(f) and (g). These required a
3 combined application of the time/space allocation method under 11 CFR 106.1 and the
4 funds expended method under former 11 CFR 106.6 for public communications that refer
5 to a party and to specific Federal candidates. That portion of Advisory Opinion 2003-37,
6 as well as the portions of the opinion that relied on the funds expended allocation method,
7 are superseded. The candidate-driven approach for these voter drives and public
8 communications, coupled with the removal of the funds expended method in favor of a
9 flat percentage method, reduces the amount of recordkeeping, tracking, and calculating
10 that SSFs and nonconnected committees must do to allocate properly administrative
11 expenses, and to pay properly for voter drives, and public communication costs under 11
12 CFR 106.6.

13 The revised 11 CFR 106.6 allocation regulations should reduce the burden of
14 compliance on SSFs and nonconnected committees. Incorporation of certain voter drives
15 and public communications into 11 CFR 106.6 provides more specific guidance to
16 committees that conduct such activity. The Commission believes that these final rules
17 best resolve the problems with the former allocation scheme revealed through reviewing
18 past FEC reports and the issues raised by the commenters on the NPRM.

19 **Effective Date**

20 Many commenters on the NPRM argued that any changes made effective before
21 the general election on November 2, 2004 would cause great disruption to political
22 committees and other organizations. Taking into account the statutorily mandated
23 waiting period before a regulation may be effective under the Administrative Procedure

1 Act, these regulations could not be effective until after the November 2, 2004 general
2 election. To provide an orderly phase-in of the new rules and transition from one election
3 cycle to the next election cycle, the Commission is establishing January 1, 2005 as the
4 effective date for all amendments and additions to 11 CFR parts 100, 102, 104 and 106.
5 This effective date allows affected political committees to “close out” the 2003-2004
6 election cycle by making final adjustments to their section 106.6(c) ratios and any final
7 transfers of money between Federal, non-Federal, and allocation accounts. It also
8 provides sufficient time for all those affected to make whatever internal changes
9 necessary to comply with the new rules.

10 **OTHER PROPOSALS**

11 The NPRM proposed several additional new and revised rules, including changes
12 to the definitions of “political committee” and “expenditure.” Other than the Final Rules
13 that follow, the Commission is not promulgating any of the proposed rules. The NPRM
14 also raised many issues in the narrative describing the proposed rules. The Commission
15 cautions that no inferences should be made as to the Commission’s position on any of the
16 issues that are not discussed in this document or on any of the proposed rules that are not
17 adopted as final rules. Discussed below are some of the proposals from the NPRM that
18 the Commission did not adopt. As noted above, the Commission received many
19 comments on the NPRM. The comments related to proposed rules that the Commission
20 did not adopt are not specifically described and addressed in this document.

21

1 Proposed 11 CFR 100.5 -- Political committee (2 U.S.C. 431(4), (5), (6)).

2 Under current law, any committee, club, association, or other group of persons
3 that receives contributions aggregating in excess of \$1,000 or which makes expenditures
4 aggregating in excess of \$1,000 during a calendar year is a political committee. See 2
5 U.S.C. 431(4)(A); 11 CFR 100.5(a). Nearly three decades ago, the Supreme Court
6 narrowed the Act’s references to “political committee” in order to prevent their “reach
7 [to] groups engaged purely in issue discussion.” Buckley v. Valeo, 424 U.S. 1, 79
8 (1976). The Court concluded that “[t]o fulfill the purpose of the Act [the words ‘political
9 committee’] need only encompass organizations that are under the control of a candidate
10 or the major purpose of which is the nomination or election of a candidate.” Id.

11 The NPRM proposed four alternatives for revisions to the definition of a “political
12 committee” in 11 CFR 100.5(a). NPRM at 11743-49 and 11756-57. The proposed
13 alternatives differed mainly in whether, and if so, how, the definition of “political
14 committee” should include a test to determine an organization’s “major purpose.”

15 The Commission received a large number of comments addressing these
16 proposals and the various individual components of the proposed “major purpose” tests.
17 Many commenters supported the idea of incorporating a major purpose test into the
18 definition of “political committee” and offered a variety of alternatives for what the test
19 should be. In contrast, many other commenters opposed all of the proposals set forth in
20 the NPRM and expressed concerns about the potential impact of the proposed rules on
21 non-electoral speech. Several provisions in BCRA, such as those barring the use of
22 corporate funds for electioneering communications but permitting the use of unlimited
23 individual funds for that purpose, were cited for the proposition that an overly broad rule

1 defining “political committee” would conflict with the structure Congress established in
2 BCRA.

3 Many commenters questioned whether new rules were necessary or appropriate at
4 this time and suggested that Buckley’s “major purpose” language might be better
5 addressed by Congress or the Supreme Court. A joint comment from hundreds of 501(c)
6 organizations contended that the Commission has not obtained access to the types of
7 comprehensive reports that Congress has at its disposal, and the Commission is therefore
8 poorly positioned at this time to assess properly the operations of the variety of
9 organizations that might be affected by new regulations.

10 Some observed that Congress did not address political committee status in BCRA
11 even though Congress appeared to be fully aware that some groups were operating
12 outside FECA’s registration and reporting requirements as well as its limitations and
13 prohibitions. These commenters found it significant that Congress had recently focused
14 on 527 organizations in 2000 and 2002 when it added and revised IRS-based reporting
15 requirements for many of these organizations. According to the commenters, Congress
16 consciously did not require 527 organizations of the type then well known to register with
17 the Commission as political committees.

18 There were additional concerns raised about the constitutional and practical issues
19 relating to the “major purpose” test. Some commenters noted that the “major purpose”
20 test is not a statutory trigger for political committee status, but rather a court-created
21 protection to avoid over-reach of the triggers for political committee status actually
22 contained in the FECA. Many commenters argued that a “major purpose” test would
23 chill constitutionally protected speech, some expressing the view that the boundaries of

1 the test would be inherently vague and thus force organizations to curtail permissible
2 activities. Other commenters expressed concern about the practical difficulties they
3 perceived in implementing a test intended to ascertain a group's "purpose." For instance,
4 a number of commenters similarly expressed concern that the "major purpose" test set
5 out in the NPRM might unfairly categorize organizations as political committees based
6 on a few statements or organizational documents where those statements and documents
7 might not accurately convey the actual purpose of the organization. Other commenters
8 also asserted that the Commission's determinations of an organization's purpose would
9 often result in intrusive investigations into the private internal workings of an
10 organization. Another commenter feared that any definition of "political committee"
11 potentially encompassing nonprofit organizations would force them to choose between
12 accepting foundation funds or corporate donations and advocating ballot questions as a
13 part of the organization's overall activity.

14 In addition, arguments were made that the Commission would be in a better
15 position to address the issue of political committee status after monitoring the behavior of
16 various organizations during at least one election cycle following the enactment of
17 BCRA. A number of commenters asserted that it would be improper for the Commission
18 to add a new "major purpose" test without sufficient data demonstrating the existence of
19 corruption or the appearance of corruption to justify the new regulations.

20 After evaluating these comments, the Commission considered two separate draft
21 Final Rule approaches that would have revised the definition of "political committee."
22 Each of these approaches incorporated modified portions of the rules proposed in the
23 NPRM. Each approach included a "major purpose" test, but the tests were different in

1 purpose and operation. See draft 11 CFR 100.5(a), Agenda Document 04-75, at 37-41,
2 and draft 11 CFR 100.5(a), Agenda Document 04-75-A, at 2-3 (Aug. 19, 2004 meeting).

3 The draft Final Rules in Agenda Document 04-75 would have incorporated one
4 construction of the Buckley test into the definition of “political committee” in 11 CFR
5 100.5(a) by requiring an organization to have “as its major purpose the nomination or
6 election of one or more candidates for Federal office.” See draft 11 CFR 100.5(a)(1)(ii)
7 of Agenda Document 04-75 (emphasis added). Draft paragraph (a)(2) presented three
8 ways in which any organization could have satisfied that test: (1) by publicly declaring
9 that the purpose of the group is to influence Federal elections; (2) by spending more than
10 50% of its funds on certain specified activities; or (3) by receiving more than 50% of its
11 funding through “contributions,” as defined in 2 U.S.C. 431(8) and 11 CFR Part 100,
12 Subpart B. These draft Final Rules would have also established an additional test
13 whereby 527 organizations could satisfy the “major purpose” test through the application
14 of a broader 50% disbursements test.

15 The other set of draft Final Rules that the Commission considered, but did not
16 adopt, would have incorporated a different construction of Buckley’s major purpose test
17 into the definition of “political committee” in 11 CFR 100.5(a). This test would have
18 focused on whether an organization’s major purpose was the “election of one or more
19 Federal or non-Federal candidates.” See draft 11 CFR 100.5(a)(1)(ii) of Agenda
20 Document 04-75-A (emphasis added). Coupled with the Commission rule allowing a
21 political committee to report only its Federal activity, this was designed to prevent groups
22 from avoiding political committee status altogether because a majority of the campaign
23 activity is non-Federal. The major purpose test would have been satisfied in one of two

1 ways. Under draft 11 CFR 100.5(a)(2), an organization described in section 527 of the
2 Internal Revenue Code (a “527 organization”) would have satisfied the “major purpose”
3 test just by virtue of its having registered with the Internal Revenue Service under 26
4 U.S.C. 527, unless covered by one of five enumerated exceptions. All other
5 organizations would have been subject to the previously existing standards for
6 determining their major purpose. See draft 11 CFR 100.5(a)(4) of Agenda Document 04-
7 75-A.

8 While the Commission does not agree with all the comments regarding “major
9 purpose,” these comments raise valid concerns that lead the Commission to conclude that
10 incorporating a “major purpose” test into the definition of “political committee” may be
11 inadvisable. Thus, the Commission has decided not to adopt any of the foregoing
12 proposals to revise the definition of “political committee.” As a number of commenters
13 noted, the proposed rules might have affected hundreds or thousands of groups engaged
14 in non-profit activity in ways that were both far-reaching and difficult to predict, and
15 would have entailed a degree of regulation that Congress did not elect to undertake itself
16 when it increased the reporting obligations of 527 groups in 2000 and 2002 and when it
17 substantially transformed campaign finance laws through BCRA. Furthermore, no
18 change through regulation of the definition of “political committee” is mandated by
19 BCRA or the Supreme Court’s decision in McConnell. For that matter, the “major
20 purpose” test is a judicial construct that the Commission has been applying for many
21 years without additional regulatory definitions, and it will continue to do so in response
22 to advisory opinion requests and through enforcement actions.

23

1 Proposed 11 CFR 100.34, 100.115, 100.133, 100.149, 114.4 -- Voter drive provisions.

2 The NPRM proposed to define a new term, “partisan voter drive,” in proposed 11
3 CFR 100.34, to revise the exemption from the “expenditure” definition for nonpartisan
4 voter drives in proposed 11 CFR 100.133, and to specify that the costs for partisan voter
5 drives are “expenditures” in proposed 11 CFR 100.115. Corresponding changes were
6 also proposed for 11 CFR 100.149 and 114.4. See NPRM at 11740-41, 11757, and
7 11760.

8 In its consideration of Final Rules, the Commission considered a different version
9 of these rules. Under this proposal, draft 11 CFR 100.115 would have specified that
10 costs for certain Federal election activities would have been “expenditures” when
11 incurred by political committees or a 527 organization. See draft 11 CFR 100.115,
12 Agenda Document No. 04-75-A, at 4 (Aug. 19, 2004 meeting). The exemption from the
13 “expenditure” definition for nonpartisan voter drives also would have been revised to
14 state that voter drives that PASO a Federal candidate, a non-Federal candidate, or a
15 political party can not be considered “nonpartisan” exempt voter drives. See draft 11
16 CFR 100.133, Agenda Document No. 04-75-A, at 4-5 (Aug. 19, 2004 meeting). The
17 Commission rejected a motion to approve draft 11 CFR 100.115 and revisions to current
18 11 CFR 100.133. The Commission determined that the changes and additions to the
19 allocation rules in 11 CFR 106.6 related to voter drives that are described above
20 sufficiently address these issues at this time, and therefore the new and revised voter
21 drive rules in proposed sections 100.34, 100.115, 100.133, 100.149, and 114.4 are not
22 needed.

23

1 Proposed 11 CFR 100.116 -- Certain public communications.

2 FECA defines “expenditure” to include a payment for a communication that is
3 “made . . . for the purpose of influencing any election for Federal office.” 2 U.S.C.
4 431(9)(A)(i). The NPRM proposed to include in the definition of “expenditure”
5 payments for communications that PASO any candidate for Federal office or that
6 promote or oppose any political party. See proposed 11 CFR 100.116, NPRM at 11741-
7 42 and 11757.

8 In its consideration of Final Rules, the Commission considered and rejected two
9 different versions of this rule. One version of this rule would have applied to public
10 communications that PASO a clearly identified candidate for Federal office or that PASO
11 a political party, but only when made by a political committee or 527 organizations. See
12 draft 11 CFR 100.116, Agenda Document No. 04-75-A, at 4 (Aug. 19, 2004 meeting).
13 The second version of this rule would have been limited to communications that PASO a
14 clearly identified candidate, but only when made by Federal political committees and
15 unregistered groups that meet Buckley’s “major purpose” test, which was the subject of
16 another draft rule discussed above. See draft 11 CFR 100.115, Agenda Document No.
17 04-75, at 19-23 and 42 (Aug. 19, 2004 meeting).

18 The Commission did not adopt a rule addressing this subject. Without the “major
19 purpose” rules, the rules addressing PASO communications could not have been adopted
20 in the forms considered by the Commission.

21 Although these Final Rules do not address when a payment for a communication
22 that PASOs a clearly identified Federal candidate is an expenditure, the Commission
23 notes a recent advisory opinion that addressed some aspects of this issue. In Advisory

1 Opinion 2003-37, the Commission concluded that the payments for communications by a
2 Federal political committee that PASO clearly identified Federal candidates are
3 expenditures and must be made with Federal funds. See AO 2003-37 at 3. Examples of
4 communications that PASO and others that do not are set forth in two advisory opinions.
5 See AOs 2003-25 (Weinzapfel) and 2003-37 (ABC).

6

7 Proposed 11 CFR 100.155 -- Allocated amounts.

8 The NPRM proposed a new regulation that would have specifically stated that
9 when costs are properly allocable between a Federal account and a non-Federal account,
10 the costs that must be paid by a Federal account are “expenditures” under FECA, and the
11 costs that may and in fact are paid by a non-Federal account are not “expenditures” under
12 FECA. The proposed regulation was linked to proposed 11 CFR 100.115 and 100.116
13 regarding PASO communications and voter drives. See NPRM at 11757. The
14 Commission considered a version of this regulation that was broader than the version in
15 the NPRM, in that it would have extended this principle to any non-Federal funds
16 disbursed pursuant to allocation rules at 11 CFR 106.1, 106.6, 106.7, or 300.33. See draft
17 11 CFR 100.155, Agenda Document No. 04-75-A, at 5 (Aug. 19, 2004 meeting). For the
18 reasons that the Commission did not adopt draft 11 CFR 100.115 and 100.116 in Agenda
19 Document No. 04-75-A, it also did not adopt draft 11 CFR 100.155.

20

21 Proposed 11 CFR part 102, subpart A -- Conversion Rules

22 The NPRM included proposed rules to address how organizations that become
23 political committees after operating for some time as non-political committee

1 organizations would demonstrate that they used Federally permissible funds to pay for
2 expenditures made before becoming political committees. The proposed rules would
3 have included a new subpart A in 11 CFR part 102. See NPRM at 11749-53, 11757-59.
4 The proposed rules would have required a new political committee to convert funds
5 received during the two years prior to the time the organization became a political
6 committee into Federal funds in an amount equal to the amount of its expenditures during
7 the same time period. To do so, the new political committee would have been required to
8 contact recent donors, make certain disclosures, and seek the donors' consent to use the
9 funds for the purpose of influencing Federal elections. See NPRM at 11757-59.

10 The Commission received numerous comments in response to these proposed
11 changes. Although one commenter supported the proposed rules, most commenters who
12 addressed this topic expressed broad opposition to the proposals. Several commenters
13 especially disagreed with the proposed rules that would have required political
14 committees to look back at past activity and repay debts of Federal money for activities
15 completed up to two years before the organizations became political committees. Some
16 commenters also opposed the specific two-step conversion process in the proposed rules,
17 including the requirement to contact and obtain permission from past donors and the 60-
18 day deadline for converting funds to Federal funds.

19 In response to these comments and the Commission's further consideration of the
20 issues raised by the proposed rules, the Commission has decided not to promulgate final
21 rules establishing subpart A of 11 CFR part 102.

22

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

2 The Commission certifies that the final rules do not have a significant economic
3 impact on a substantial number of small entities.

4 The final rules amend the Commission’s definition of “contribution” to include
5 funds received in response to certain communications that are not expressly included in
6 the Commission’s prior definition of “contribution.” For political committees, whether a
7 receipt qualifies as a “contribution” determines whether it is subject to amount limitations
8 and source prohibitions for Federal funds imposed by FECA. For organizations that are
9 not political committees, whether a receipt is a “contribution” may affect whether the
10 organization is a political committee. New section 100.57 does not, however, limit the
11 overall amount of money that may be raised or spent on electoral activity. The rule in
12 new section 100.57 is carefully tailored to reach communications that seek funds “for the
13 purpose of influencing Federal elections,” and includes a limited exception for
14 communications that refer to a non-Federal candidate, and a complete exception for joint
15 fundraising efforts between or among authorized committees of Federal and non-Federal
16 candidates. Therefore, any economic impact on Federal and non-Federal candidate
17 committees, some of which might qualify as small entities, is not significant.

18 The final rules also revise the Commission’s rules regarding the allocation of
19 certain disbursements between a political committee’s Federal account and non-Federal
20 account. Thus, these revisions affect only some political committees. As discussed in
21 the Explanation and Justification for revised 11 CFR 106.6(c), a review of the past ten
22 years of public disclosure reports filed with the FEC revealed that few current political
23 committees allocate their administrative expenses and generic voter drives under former

1 11 CFR 106.6, and among those political committees, many already use 50% or more as
2 their Federal allocation ratio. Although the new section 106.6(f) requires Federal funds
3 be used for certain public communications and voter drive activities by political
4 committees, the final rule does not limit the overall amount of money that political
5 committees may raise and spend on such activity. Consequently, the final rules' changes
6 are unlikely to have a significant economic impact on substantial number of small
7 entities.

8

9 **List of Subjects**

10 11 CFR Part 100

11 Elections.

12 11 CFR Part 102

13 Political committees and parties, Reporting and recordkeeping requirements.

14 11 CFR Part 104

15 Campaign funds, Political committees and parties, Reporting and recordkeeping
16 requirements.

17 11 CFR Part 106

18 Campaign funds, Political committees and parties, Reporting and recordkeeping
19 requirements.

20

1 For the reasons set out in the preamble, the Federal Election Commission amends
2 subchapter A of chapter 1 of title 11 of the Code of Federal Regulations as follows:

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

4 1. The authority citation for part 100 continues to read as follows:

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

6 2. Section 100.57 is added to subpart B to read as follows:

7 **§ 100.57 Funds received in response to solicitations.**

8 (a) Treatment as contributions. A gift, subscription, loan, advance, or deposit of
9 money or anything of value made by any person in response to any communication is a
10 contribution to the person making the communication if the communication indicates that
11 any portion of the funds received will be used to support or oppose the election of a
12 clearly identified Federal candidate.

13 (b) Certain allocable solicitations. If the costs of a solicitation described in paragraph
14 (a) of this section are allocable under 11 CFR 106.1, 106.6 or 106.7 (consistent with 11
15 CFR 300.33(c)(3)) as a direct cost of fundraising, the funds received in response to the
16 solicitation shall be contributions as follows:

17 (1) If the solicitation does not refer to any clearly identified non-Federal
18 candidates, but does refer to a political party, in addition to the clearly
19 identified Federal candidate described in paragraph (a) of this section, one
20 hundred percent (100%) of the total funds received are contributions.

21 (2) If the solicitation refers to one or more clearly identified non-Federal
22 candidates, in addition to the clearly identified Federal candidate described
23 in paragraph (a) of this section, at least fifty percent (50%) of the total

1 funds received are contributions, whether or not the solicitation refers to a
2 political party.

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

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

10 3. The authority citation for part 102 continues to read as follows:

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

12 4. Section 102.5 is amended by revising paragraph (a)(1)(i) to read as follows:

13 **§ 102.5 Organizations financing political activity in connection with Federal and**
14 **non-Federal elections, other than through transfers and joint fundraisers: Accounts**
15 **and Accounting.**

16 (a) * * * *

17 (1) * * *

18 (i) Establish a separate Federal account in a depository in
19 accordance with 11 CFR part 103. Such account shall be
20 treated as a separate Federal political committee that must
21 comply with the requirements of the Act including the
22 registration and reporting requirements of 11 CFR parts
23 102 and 104. Only funds subject to the prohibitions and

1 limitations of the Act shall be deposited in such separate
2 Federal account. See 11 CFR 103.3. All disbursements,
3 contributions, expenditures, and transfers by the committee
4 in connection with any Federal election shall be made from
5 its Federal account, except as otherwise permitted for State,
6 district and local party committees by 11 CFR part 300 and
7 paragraph (a)(5) of this section. No transfers may be made
8 to such Federal account from any other account(s)
9 maintained by such organization for the purpose of
10 financing activity in connection with non-Federal elections,
11 except as provided by 11 CFR 300.33, 300.34, 106.6(c),
12 106.6(f), and 106.7(f). Administrative expenses for
13 political committees other than party committees shall be
14 allocated pursuant to 11 CFR 106.6(c) between such
15 Federal account and any other account maintained by such
16 committee for the purpose for financing activity in
17 connection with non-Federal elections. Administrative
18 expenses for State, district, and local party committees are
19 subject to 11 CFR 106.7 and 11 CFR part 300; or

20 * * * * *

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

22 5. The authority citation for part 104 continues to read as follows:

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

3 6. Section 104.10 is amended by revising the introductory text in paragraph (b) and
4 paragraph (b)(1) to read as follows:

5 **§ 104.10 Reporting by separate segregated funds and nonconnected committees of**
6 **expenses allocated among candidates and activities.**

7 * * * * *

8 (b) Expenses allocated among activities. A political committee that is a separate
9 segregated fund or a nonconnected committee and that has established separate Federal
10 and non-Federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate between those
11 accounts its administrative expenses and its costs for fundraising, generic voter drives,
12 and certain public communications according to 11 CFR 106.6, and shall report those
13 allocations according to paragraphs (b)(1) through (5) of this section, as follows:

14 (1) Reporting of allocation of administrative expenses and costs of generic
15 voter drives and public communications that refer to any political party.

16 In each report disclosing a disbursement for administrative expenses,
17 generic voter drives, or public communications that refer to any political
18 party, but do not refer to any clearly identified candidates, as described in
19 11 CFR 106.6(b)(1)(i), (b)(1)(iii) and (b)(1)(iv), as applicable, the
20 committee shall state the allocation ratio to be applied to each category of
21 activity according to 11 CFR 106.6(c).

22 * * * * *

1 **PART 106 – ALLOCATIONS OF CANDIDATE AND COMMITTEE**
2 **ACTIVITIES**

3 7. The authority citation for part 106 continues to read as follows:

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

5 8. Section 106.6 is amended by:

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

8 b. Removing the words “or (b)(1)(i)” from paragraphs (a) and (e);

9 c. Removing the citation “102.5(b)(1)(ii)” from paragraph (a) and adding in its
10 place the citation “102.5(a)(1)(ii)”;

11 d. Revising paragraphs (b) and (c) and adding paragraph (f) to read as follows:

12 **§ 106.6 Allocation of expenses between federal and non-federal activities by**
13 **separate segregated funds and nonconnected committees.**

14 * * * * *

15 (b) Payments for administrative expenses, voter drives and certain public
16 communications.

17 (1) Costs to be allocated. Separate segregated funds and nonconnected
18 committees that make disbursements in connection with Federal and non-
19 Federal elections shall allocate expenses for the following categories of
20 activity in accordance with paragraphs (c) or (d) of this section:

21 (i) Administrative expenses including rent, utilities, office supplies,
22 and salaries not attributable to a clearly identified candidate, except

1 that for a separate segregated fund such expenses may be paid
2 instead by its connected organization;

3 (ii) The direct costs of a fundraising program or event including
4 disbursements for solicitation of funds and for planning and
5 administration of actual fundraising events, where Federal and
6 non-Federal funds are collected through such program or event,
7 except that for a separate segregated fund such expenses may be
8 paid instead by its connected organization;

9 (iii) Generic voter drives including voter identification, voter
10 registration, and get-out-the-vote drives, or any other activities that
11 urge the general public to register, vote or support candidates of a
12 particular party or associated with a particular issue, without
13 mentioning a specific candidate; and

14 (iv) Public communications that refer to a political party, but do not
15 refer to any clearly identified Federal or non-Federal candidate;

16 (2) Costs not subject to allocation. Separate segregated funds and
17 nonconnected committees that make disbursements for the following
18 categories of activity shall pay for those activities in accordance with
19 paragraph (f) of this section:

20 (i) Voter drives, including voter identification, voter registration, and
21 get-out-the-vote drives, in which the printed materials or scripted
22 messages refer to, or the written instructions direct the separate

1 segregated fund's or nonconnected committee's employee or
2 volunteer to refer to:

3 (A) One or more clearly identified Federal candidates, but do
4 not refer to any clearly identified non-Federal candidates;
5 or

6 (B) One or more clearly identified Federal candidates and also
7 refer to candidates of a particular party or associated with a
8 particular issue, but do not refer to any clearly identified
9 non-Federal candidates;

10 (ii) Voter drives, including voter identification, voter registration, and
11 get-out-the-vote drives, in which the printed materials or scripted
12 messages refer to, or the written instructions direct the separate
13 segregated fund's or nonconnected committee's employee or
14 volunteer to refer to:

15 (A) One or more clearly identified non-Federal candidates, but
16 do not refer to any clearly identified Federal candidates; or

17 (B) One or more clearly identified non-Federal candidates and
18 also refer to candidates of a particular party or associated
19 with a particular issue, but do not refer to any clearly
20 identified Federal candidates;

21 (iii) Public communications that refer to a political party, and refer to
22 one or more clearly identified Federal candidates, but do not refer
23 to any clearly identified non-Federal candidates; and

1 (iv) Public communications that refer to a political party, and refer to
2 one or more clearly identified non-Federal candidates, but do not
3 refer to any clearly identified Federal candidates.

4 (c) Method for allocating administrative expenses, costs of generic voter drives, and
5 certain public communications. Nonconnected committees and separate segregated funds
6 shall pay their administrative expenses, costs of generic voter drives, and costs of public
7 communications that refer to any political party, as described in paragraphs (b)(1)(i),
8 (b)(1)(iii) or (b)(1)(iv) of this section, with at least 50 percent Federal funds, as defined in
9 11 CFR 300.2(g).

10 * * * * *

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

13 Nonconnected committees and separate segregated funds shall pay for the costs of all
14 public communications that refer to a political party, as described in paragraphs (b)(2)(iii)
15 and (b)(2)(iv) of this section, and voter drives that refer to one or more clearly identified
16 candidates, as described in paragraphs (b)(2)(i) and (b)(2)(ii) of this section, as follows:

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

19 (i) Public communications that refer to a political party and one or
20 more clearly identified Federal candidates, but do not refer to any
21 clearly identified non-Federal candidates, as described in
22 paragraph (b)(2)(iii) of this section; and

23 (ii) Voter drives described in paragraph (b)(2)(i) of this section.

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

3 (i) Public communications that refer to a political party and one or
4 more clearly identified non-Federal candidates, but do not refer to
5 any clearly identified Federal candidates, as described in paragraph
6 (b)(2)(iv) of this section; and

7 (ii) Voter drives described in paragraph (b)(2)(ii) of this section.

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

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

14 (ii) Voter drives that refer to one or more clearly identified
15 Federal candidates and one or more clearly identified non-
16 Federal candidates.

17
18
19 _____
20 Bradley A. Smith
21 Chairman
22 Federal Election Commission

23 DATED: _____
24 BILLING CODE: 6715-01-U