FEDERAL ELECTION COMMISSION

[Notice 1998–12]

11 CFR Parts 102, 103, and 106

Prohibited and Excessive Contributions; ''Soft Money''

AGENCY: Federal Election Commission.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The Federal Election Commission today seeks comments on proposed rules relating to funds received by party committees outside the prohibitions and limitations of the Federal Election Campaign Act, also known as ''soft money.'' This NPRM addresses issues raised in two petitions for rulemaking, one submitted by President William J. Clinton and the other submitted by five Members of the United States House of Representatives. The two petitions seek limits on the use of soft money for activities that have an impact on federal elections. The draft rules which follow do not represent a final decision by the Commission regarding the changes sought in the petitions. Further information is provided in the supplementary information that follows.

DATES: Statements in support of or in opposition to the proposed rules must be filed on or before September 11, 1998. The Commission will hold a public hearing at 10:00 a.m. on September 23, 1998. Persons wishing to testify must so indicate in their written comments.

ADDRESSES: All comments should be addressed to Susan E. Propper, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, N.W., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow up. Electronic mail comments should be sent to softmoneynpr@fec.gov. Commenters sending comments by electronic mail should include their full name and postal service address within the text of their comments. Electronic mail comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. The public hearing will be held in the Commission's public hearing room, 999 E Street, N.W., 9th Floor.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Paul Sanford, Staff Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: With this NPRM, the Commission is publishing and seeking comments on proposed rules relating to the receipt and use of prohibited and excessive contributions, also known as ''soft money,'' by national, state and local party committees. The Commission is publishing these rules in response to two petitions for rulemaking that seek limits on the use of soft money in activities that may influence federal elections.

For reasons that will be explained further below, the Commission has decided that the issues raised in the petitions warrant further consideration. The Commission believes that changes in the regulations relating to soft money may be necessary to give full force and effect to the prohibitions and limitations in the Federal Election Campaign Act, 2 U.S.C. 431 *et seq.* [''FECA'' or ''the Act'], and ensure that impermissible funds are not used to influence federal elections. Therefore, the Commission is seeking comments on proposed rules that would limit the use of soft money by party committees. The proposed rules are described in detail below.

However, the Commission would like to emphasize that no final decision has been made on whether or not to promulgate new rules in this area. At this point, the Commission is merely seeking comments on possible approaches for limiting the impact of soft money on federal elections. No final decision will be made until after the comment period has concluded and a public hearing has been held.

Prior History

The Act limits the amount that individuals can give to candidates, political committees and political parties for use in federal elections. 2 U.S.C. 441a. The Act also prohibits corporations and labor organizations from contributing their general treasury funds for these purposes. 2 U.S.C. 441b. Federal contractors are also prohibited from making these contributions. 2 U.S.C. 441c, 11 CFR 115.2(a). Note that, under 2 U.S.C. 441b and 441e, national banks, Congressionally-chartered corporations, and foreign nationals are prohibited from making contributions in connection with any election to any political office.

In contrast, some state campaign finance statutes allow corporations and labor organizations to make contributions to state and local candidates, and also allow individuals to make contributions to state and local candidates in amounts that would exceed the dollar limits in 2 U.S.C. 441a. In addition, the Act's prohibition on contributions by federal contractors does not apply to contributions made in connection with state or local elections. 11 CFR 115.2(a).

Today, most party committees receive some contributions that are permissible under the FECA and also receive other contributions that are not permissible under the Act if they are to be used in connection with federal elections. Contributions that are permissible under the FECA are often referred to as ''hard money'' contributions. Contributions that are not permissible, i.e., individual contributions in excess of the section 441a dollar limits, all corporate and labor organization general treasury contributions, and contributions from federal contractors, are often referred to as ''soft money,'' and are to be used exclusively for state and local campaign activity or other party committee activities that do not influence federal elections.

Typically, party committees set up separate bank accounts into which they deposit the hard and soft money contributions they receive. Hard money contributions are to be deposited into a federal account, and soft money contributions are to be deposited into a non-federal account. Some party committees have a federal account and multiple non-federal accounts. However, since 2 U.S.C. 441b and 441e prohibit national banks, Congressionally-chartered corporations, and foreign nationals from making contributions in connection with any election to any political office, contributions from these entities to a party committee's non-federal accounts are also prohibited.

It is usually a relatively simple matter for the party committee to distinguish between hard and soft money contributions and segregate them in separate bank accounts. However, it can be more difficult to distinguish between a party committee's federal and non-federal expenses, because many party committee activities benefit both federal and non-federal candidates. For example, when a party committee conducts a get-out-the-vote drive urging people to support the party's candidates, it presumably increases the turnout of voters who favor that party's candidates. If there are both federal and non-federal candidates on the ballot, the drive benefits both the federal and the non-federal candidates. Consequently, if the party committee pays the costs of such a drive entirely with soft dollars, the committee is using prohibited contributions to benefit federal candidates. This would violate the contribution prohibitions and limitations in the FECA.

Since early in its history, the Commission has struggled with the fact that many party functions have an impact on both federal and non-federal elections, and has sought to give force and effect to the FECA's prohibitions and limitations by requiring party committees to pay at least a portion of the cost of these ''mixed'' activities with hard dollars. For example, in Advisory Opinion 1975–21, the Commission required a local party committee to use hard dollars to pay for a portion of its administrative expenses and voter registration costs. The Commission said that even though some party functions do not relate to any particular candidate or election, ''these functions have an indirect effect on particular elections, and since monies contributed to fulfill these functions free other money to be used for contributions and expenditures in connection with Federal elections, it is appropriate to ascribe a certain portion of the administrative functions of a party organization to Federal elections during time periods in which Federal elections are held.'' *Id.*

The Commission incorporated part of Advisory Opinion 1975–21 into regulations promulgated in 1977. The regulations required political committees active in both federal and non-federal elections to allocate their administrative expenses between separate federal and non-federal accounts ''in proportion to the amount of funds expended on federal and non-federal elections, or on another reasonable basis.'' 11 CFR 106.1(e) (1978). Sections 106.1 and 106.5 of the current rules contain updated versions of these regulations.

In two opinions issued after AO 1975–21, the Commission took an even more restrictive view of the use of soft money for registration and get-out-the-vote drive activity. In its response to Advisory Opinion Request 1976–72, the Commission said that ''even though the Illinois law apparently permits corporate contributions for State elections, corporate/union treasury funds may not be used to defray any portion of a registration or get-out-the-vote drive conducted by a political party.'' Thus, the Commission concluded that this type of activity would have to be paid for with hard dollars. In its response to Advisory Opinion Request 1976–83, the Commission reached a similar conclusion.

However, in Advisory Opinion 1978–10, the Commission modified its position. In that opinion, the Commission concluded that the costs of voter registration and GOTV drives should be allocated in the same manner as party administrative expenditures. In reaching this conclusion, the Commission superseded Re: AOR 1976–72 and 1976–83 and said that corporate and union treasury funds could be used for the portion of the costs allocated to the party committee's non-federal account.

In Advisory Opinion 1979–17, the Commission recognized the ability of a national party committee to establish a separate account to be used ''for the deposit and disbursement of funds designated specifically and exclusively to finance national party activity limited to influencing the nomination or election of candidates for public office other than elective 'federal office.' '' Thus, the Commission concluded that a national party committee could accept corporate contributions ''for the exclusive and limited purpose of influencing the nomination or election of candidates for nonfederal office.''

The 1979 amendments to the Federal Election Campaign Act sought to encourage the participation of state and local party committees in federal elections by carving out exceptions to the definitions of contribution and expenditure for certain volunteer, voter registration and get-out-the-vote activity conducted by these committees. Under sections 431(8)(B)(x) and 431(9)(B)(viii), payments for the costs of campaign materials used in connection with volunteer activities on behalf of the party's nominee are not contributions or expenditures so long as the payments do not finance any general public political advertising, and are made from contributions that are permissible under the Act but were not designated for a particular candidate. Sections 431(8)(B)(xii) and 431(9)(B)(ix) contain the same rule for voter registration and get-out-the-vote drive costs conducted by the committee on behalf of its presidential and vice-presidential nominees. These provisions supplement a similar provision for slate cards and sample ballots that existed in the Act prior to the 1979 amendments. 2 U.S.C. 431(8)(B)(v) and 431(9)(B)(iv). Since then, these activities have collectively been referred to as ''exempt activities.'' The House Report accompanying the 1979 amendments recognizes the ability of state and local party committees to allocate the costs of slate card and volunteer activities in certain circumstances. H.R. Rep. No. 96–422 at 8, 9 (1979).

In 1984, the Commission received a petition for rulemaking from Common Cause seeking new rules relating to the use of soft money. The petition requested that the Commission take action to address what the petitioner alleged was the use of soft money by national party committees to influence federal elections. The Commission published a Notice of Availability on January 4, 1985, and subsequently published a Notice of Inquiry on December 18, 1985. *See* 50 FR 477 (Jan. 4, 1985), 50 FR 51535 (Dec. 18, 1985). These two notices sought comments from the public on the issues raised in the petition. The Commission also held a public hearing on January 29, 1986, at which several witnesses testified.

After reviewing the petition, the comments and the witness' testimony, the Commission denied the Common Cause petition, concluding that neither the petition nor the comments ''constitute concrete evidence demonstrating that the Commission's regulations have been abused so that funds purportedly raised for use in nonfederal elections have in fact been transferred to the state and local level with the intent that they be used to influence federal elections.'' Notice of Disposition, 51 FR 15915 (Apr. 29, 1986).

Common Cause challenged the Commission's denial of the petition in U.S. District Court. In court, Common Cause asserted that no allocation method is permissible under the FECA. Consequently, Common Cause argued, the Commission's denial of the petition was arbitrary and capricious under the Administrative Procedure Act, 5 U.S.C. § 706. Common Cause also argued that allowing committees to allocate on a reasonable basis was contrary to law because it failed to ensure proper allocation between federal and non-federal accounts.

The court rejected Common Cause's first argument, saying that the Act cannot be read to prohibit allocation. *Common Cause* v. *FEC*, 692 F. Supp. 1391, 1395 (D.D.C. 1987). However, the court then agreed that the Commission's policy of allowing state party committees to allocate slate card expenses on any reasonable basis was contrary to law, ''since Congress stated clearly in the FECA that all monies spent by state committees on these activities vis-à-vis federal elections must be paid for 'from contributions subject to the limitations and prohibitions of this Act.''' *Id.* (*quoting* 2 U.S.C. 431(8)(B)(x)(2) and (xii)(2), 431(9)(B)(viii)(2) and (ix)(2)). The court said that

> [t]he plain meaning of the FECA is that any improper allocation of nonfederal funds by a state committee would be a violation of the FECA. Yet, the Commission provides no guidance whatsoever on what allocation methods a state or local committee may use; . . . Thus, a revision of the Commission's

regulations to ensure that any method of allocation used by state or local party committees is in compliance with the FECA is warranted. *Id.* at 1396.

The court directed the Commission to replace the ''any reasonable basis'' allocation method with more specific allocation formulas that would ensure that only contributions subject to the limitations and prohibitions of the Act are used to influence federal elections. However, the court also acknowledged that the Commission could ''conclude that *no* method of allocation will effectuate the Congressional goal that *all* moneys spent by state political committees on those activities permitted in the 1979 amendments be 'hard money' under the FECA. That is an issue for the Commission to resolve on remand.'' *Id.* (emphasis in original).

In a subsequent order, the same court stated that '''[s]oft money' denotes contributions to federally regulated campaign committees in excess of the aggregate amounts permitted for federal elections by the FECA; these contributions, even if directed to national campaign entities, are permissible if the money is not to be used in connection with federal elections.'' *Common Cause* v. *FEC,* 692 F.Supp. 1397, 1398 (D.D.C. 1988).

The Commission initiated a rulemaking in response to the court's decision in which it made several efforts to obtain input from the regulated community. In addition to the two comment periods and public hearing held before the court's decision, the Commission sought comments on proposed rules through a new Notice of Proposed Rulemaking published on September 29, 1988. 53 FR 38012. The Commission also held another public hearing on the proposed rules on December 15, 1988, at which a cross section of the regulated community had an opportunity to testify. The Commission took the additional step of sending questionnaires to the chairs of all the Democratic and Republican state party committees, and also sought input from the chief fundraisers for each of the major political parties during the 1988 election year.

The Commission issued final rules in 1990 and put them into effect on January 1, 1991. *Methods of Allocation Between Federal and Non-Federal Accounts; Payments; Reporting,* 55 FR 26058 (June 26, 1990). These rules currently govern the allocation of expenses between federal and non-federal accounts. They seek to address the issue of soft money in two ways.

First, the current rules replace the ''any reasonable basis'' allocation method with specific allocation methods to be used to pay the costs of activities that impact both federal and nonfederal elections. The method to be used depends on the type of committee incurring the expense and the type of activity for which expenses are to be allocated.

National party committees, other than the Senate and House campaign committees, are required to allocate a minimum of 60% of their administrative expenses and costs of generic voter drives to their federal accounts each year (65% in presidential election years). 11 CFR 106.5(b). In addition, national party committees must allocate the costs of each combined federal and non-federal fundraising program or event using the funds received method described in 11 CFR 106.5(f).

Senate and House campaign committees are required to allocate their administrative and generic voter drive expenses using a funds expended formula, subject to a 65% minimum federal percentage, 11 CFR 106.5(c), and, like the national party committees, they must allocate the costs of each combined federal and non-federal fundraising program or event using the funds received method described in 11 CFR 106.5(f), with no minimum federal percentage required.

State and local party committees must allocate (1) their administrative expenses and generic voter drive costs using the ballot composition method, described in 11 CFR 106.5(d); (2) the costs of communications exempt from the contribution and expenditure definitions under 11 CFR 100.7(b) (9), (15) or (17), and 100.8(b) (10), (16) or (18), according to the proportion of time or space devoted to federal and nonfederal candidates in the communication, 11 CFR 106.5(e); (3) expenses incurred in joint fundraising activities using the funds received method, 11 CFR 106.5(f); and (4) direct candidate support activity according to the time or space devoted to each candidate in the communication. 11 CFR 106.1. The new rules also set up procedures to be used by all three types of committees to pay for their mixed activities.

Second, the rules impose additional reporting requirements in order to enhance the Commission's ability to monitor the allocation process. All three types of party committees are required to report their allocations of administrative expenses, voter drive costs, fundraising costs and costs of exempt activities, and also to itemize any transfer of funds from their non-federal to their federal or allocation accounts. In addition, all six national party committees are now required to disclose the financial activities of their nonfederal accounts. Specifically, the committees are required to report all nonfederal receipts and disbursements. The Commission believed this additional reporting would help to ensure that impermissible funds were not used for federal election activities.

On May 20, 1997, the Commission received a petition for rulemaking from five Members of the United States House of Representatives urging the Commission ''to modify its rules to help end or at least significantly lessen the influence of soft money.'' On June 5, 1997, the Commission received a second petition for rulemaking relating to soft money, this one submitted by President Clinton. President Clinton's petition asks the Commission to ''ban soft money'' and ''adopt new rules requiring that candidates for federal office and national parties be permitted to raise and spend only 'hard dollars.'''

In accordance with its usual procedures, the Commission published a Notice of Availability in the June 18, 1997 edition of the **Federal Register** announcing that it had received the petitions and inviting the public to submit comments on them. 62 FR 33040 (June 18, 1997). The comment period closed on July 18, 1997. The Commission received 188 comments in response to the Notice of Availability.

Summary of Comments on the Petitions for Rulemaking

Most of the comments on the Notice of Availability were directed at the question of whether the Commission should promulgate new rules on soft money, and if so, what those rules should be. However, a few commenters raised threshold issues regarding the petitions that should be addressed before examining the substantive issues raised. These threshold issues will be discussed in subsection 1, below. The remaining comments will be summarized in subsection 2.

1. Comments Raising Threshold Issues Regarding the Petitions

a. Sufficiency of the Petitions

One comment raised a threshold question about the sufficiency of the petitions. This comment asserted that the petitions should be denied because they do not set forth the factual and legal grounds supporting the proposed change in the rules. *See* 11 CFR 200.2(b)(4). The comment said that the Commission should require petitioners to put on record ''specific, detailed and credible instances of abuse that in terms of seriousness and scope will justify'' the rules sought in the petition, and

should hold certain petitioners to a higher standard of evidence.

This comment misconstrues the purpose of the petition for rulemaking procedures. These procedures provide the public with guidance on how to seek changes in the Commission's rules, and should be read in light of the Commission's long-standing practice of making its policymaking processes as open and accessible as possible. The rules do not place a heavy evidentiary burden on a petitioner to prove, on the face of a petition, that policy changes are necessary. Petitioners need only raise policy issues that are within the Commission's jurisdiction, and request that the Commission consider whether policy changes are warranted. If a petitioner does so, the Commission will publish a Notice of Availability and begin its consideration process. The Commission will use the comments received on the petition and its own experience in interpreting and enforcing the Act to determine whether to proceed with a rulemaking.

Furthermore, implicit in the Commission's commitment to making its rulemaking process easily accessible to the public is a commitment to making that process available to all members of the public on an equal basis. Consequently, the Commission does not believe it would be appropriate to hold certain petitioners to higher evidentiary standards.

The Commission concludes that the letters submitted by President Clinton and the five Members of Congress adequately explain the factual and legal grounds upon which they rely, and demonstrate that there are issues related to the use of soft money that are worthy of Commission consideration. Therefore, they qualify as petitions under 11 CFR 200.2(b). The Commission also notes that even if it were to conclude that the letters do not qualify as petitions, it has the discretionary authority to treat them as the basis for a sua sponte rulemaking. 11 CFR 200.2(d).

b. Statutory Authority

Another threshold issue raised by the comments is whether the Commission has the authority to regulate soft money. Several of the comments that opposed the petitions take the position that soft money is outside the Commission's jurisdiction, and that imposing limits on soft money would exceed the Commission's statutory authority. They assert that, since the Act does not restrict the use of non-federal funds by the national party committees unless those funds are used for federal election activity, the Commission cannot impose restrictions on its own.

In contrast, several of the comments that support the petitions argued that the Commission has the power to ban the use of soft money by party committees to the extent necessary to avoid having soft money influence federal elections. Another comment argued that, in the *Common Cause* case, discussed above, the court said that when the Commission fails to issue regulations, and the policy resulting from that failure flatly contradicts Congress's purpose, the Commission can be held to have acted contrary to law. Since the Act prohibits the use of soft money in federal elections, this comment asserts that a Commission-imposed limitation serving the same purpose would be upheld.

The Commission has reviewed this threshold question and reached the preliminary conclusion that it has the authority to issue new rules relating to soft money, at least insofar as it is used in connection with Federal elections. The FECA limits the amounts that individuals and political committees can contribute for the purpose of influencing federal elections, and also prohibits corporations, labor organizations and federal contractors from using their general treasury funds to make contributions in connection with federal elections. 2 U.S.C. 441a, 441b, 441c. Section 438(a)(8) of the Act authorizes the Commission to ''prescribe rules, regulations and forms to carry out the provisions of this Act. * * *'' The Commission believes this broad grant of rulemaking authority includes the authority to promulgate rules to limit the use of soft money in connection with federal elections.

There is ample judicial authority supporting this conclusion. As the United States Court of Appeals for the District of Columbia Circuit has recognized, courts have shown a ''lack of hesitation in construing broad grants of rule-making power to permit promulgation of rules with the force of law as a means of agency regulation of otherwise private conduct.'' *National Petroleum Refiners Association* v. *Federal Trade Commission*, 482 F.2d 672, 680 (D.C. Cir. 1973) (''*NPRA*''). ''An agency with a general grant of rulemaking authority has jurisdiction to promulgate regulations reasonably related to the purposes of its enabling legislation.'' *Pinney* v. *National Transportation Safety Board*, 993 F.2d 201, 202 (10th Cir. 1993). The Supreme Court has said that ''[w]here the empowering provision of a statute states simply that the agency may 'make * * * such rules and regulations as may be necessary to carry out the provisions of this Act,' we have held that the validity of a regulation promulgated thereunder will be sustained so long as it is 'reasonably related to the purposes of the enabling legislation.' '' *Mourning* v. *Family Publications Service, Inc.*, 411 U.S. 356, 369 (1973) (quoting *Thorpe* v. *Housing Authority of City of Durham*, 393 U.S. 268, 280–81 (1969). The ''authority of the [Federal Power Commission] need not be found in explicit language. [A general rulemaking provision] demonstrates a realization by Congress that the Commission would be confronted with unforeseen problems of administration in regulating this huge industry and should have a basis for coping with such confrontation. While the action of the Commission must conform with the terms, policies and purposes of the Act, it may use means which are not in all respects spelled out in detail.'' *Public Service Comm'n of State of New York* v. *Federal Power Commission*, 327 F.2d 893, 897 (D.C. Cir. 1964). Thus, the Commission believes that it has the authority to promulgate rules to ensure that contributions that would violate sections 441a, 441b or 441c are not used to influence federal elections.

The Commission also believes that, given the complexity of the issues raised, this is an area in which providing additional guidance to the regulated community is particularly important. ''More than merely expediting the agency's job, use of substantive rule-making is increasingly felt to yield significant benefits to those the agency regulates. Increasingly, courts are recognizing that use of rule-making to make innovations in agency policy may actually be fairer to regulated parties than total reliance on case-by-case adjudication.'' *NPRA*, 482 F.2d at 682.

However, the Commission does not regard this as a closed issue. Therefore, as part of its effort to explore the question of whether new rules are needed, commenters are invited to further address the issue of whether the Commission has the authority to promulgate rules in this area. Commenters are also encouraged to express their views on whether the proposed rules set out in this notice are within the scope of that authority.

2. General Comments on the Petitions for Rulemaking

a. Comments Supporting the Petitions

Approximately ¾ of the 188 comments received in response to the Notice of Availability expressed support for the petitions for rulemaking. Among

those supporting the petition were twelve United States Senators, three United States Congressmen, the Secretaries of State of five states, and eleven state Attorneys General.

These supporting comments suggested a number of different strategies for addressing the issues raised in the petition. For example, more than a hundred comments urged the Commission to ban soft money completely, while other comments urged the Commission to limit certain uses of soft money. A dozen comments urged the Commission to ban soft money contributions to the national party committees, or to prohibit the party committees from receiving soft money contributions. Three other commenters urged the Commission to prohibit the solicitation of soft money contributions by national party committees, federal officeholders, and federal candidates. Another comment suggested that the Commission prohibit the party committees from spending soft money or transferring it to other committees. Other comments were directed at the use of soft money by state and local party committees. These comments suggested that the Commission prohibit state and local party committees from spending soft money on any activity or event that might influence a federal election, and limit their use of soft money to general overhead expenses.

Several comments suggested that the Commission impose partial limits on soft money. One comment suggested that the use of soft money be reduced or limited so that the amount will not influence a party or candidate. Two comments suggested that specific dollar limits be imposed, one on the amount that a party committee could receive, and the other on the amount that a contributor could give.

The comments contained a number of arguments as to why additional limits on the use of soft money are needed. Four comments asserted that soft money destroys the integrity of the political process, and said that a ban on soft money would help to restore public confidence in the integrity of the process. Eight comments said that the widespread use of soft money alienates voters, and creates the perception of impropriety, thereby discouraging involvement in the process. Five commenters argued that soft money increases the demand for campaign contributions, and distracts government officials from the responsibilities of governance.

Many of the comments also argued that soft money is a loophole being used to circumvent the prohibitions and limitations of the Act. One comment asserted that the current system essentially allows money laundering to occur by allowing impermissible soft dollars to be exchanged for hard dollars that can be used without limitation. Other comments said that soft money results in actual *quid pro quo* corruption, thereby frustrating the purposes of 2 U.S.C. 441a and 441b. Another comment expressed concern that soft money is having a negative impact on the public financing system for presidential campaigns.

Several comments were directed at the system of allocating federal and non-federal expenses, as set out in the current rules. Most of these comments urged the Commission to abandon the system and prohibit any combined use of federal and nonfederal funds. Several comments asserted that the soft money problem has grown significantly worse since the rules were promulgated, indicating that the rules have failed to ensure that only hard dollars are used to influence federal elections. One of these comments said that reporting under the allocation rules is inadequate, and that the Commission does not have the resources necessary to enforce the rules.

b. Comments Opposing the Petitions

As indicated above, about one quarter of the comments spoke out against limits on soft money, for a variety of reasons. Several comments argued that the proposals set out in the petitions would violate the First Amendment. Others expressed concern that the proposals would effectively federalize all national party activities, and could weaken parties, which play an important role in our political system. Two other comments urged the Commission to take action on soft money only when it has addressed the issue of compulsory union dues. Three comments urged the Commission to reject the petitions and devote its resources to enforcing existing laws.

Analysis

Prior to 1991, it was difficult to determine how much soft money the party committees were raising and spending, because there was no systematic disclosure of soft money activity, and no uniform guideline for allocating expenses. Although some states required party committees to disclose their non-federal account activity, others did not, and even in those states where disclosure was required, not all activity appeared on the public record. Consequently, most of the available information was anecdotal.

The Commission is generally reluctant to make significant changes in existing policy in the absence of clear evidence that such changes are needed to effectuate the Act's mandate. Consequently, the Commission concluded that it would be inappropriate to impose the significant restraints on the use of soft money sought in the 1984 petition for rulemaking. Instead, the Commission established specific allocation methods and required additional disclosure by the party committees. Based upon the information available at the time, the Commission believed this approach struck the appropriate balance between the need to effectuate the prohibitions and limitations of the Act, and also recognize the interests of the states in regulating non-federal activity.

However, recent developments—brought to light in many instances because of the additional disclosure requirements imposed in 1991—have reopened the question of whether allowing party committees to pay a portion of their mixed activities costs with soft dollars is consistent with the mandate of the FECA. Concerns have been raised that the allocation rules have allowed party committees to use large contributions from prohibited sources and in excess of the hard dollar limits in ways that, in fact, influence federal elections, even though they are ostensibly being used for nonfederal election activity.

One such development is the dramatic increase in the amount of soft money raised and spent by the national party committees since promulgation of the allocation rules. According to summaries of the reports filed with the Commission, which do not include transfers among the national party committees, the national committees raised $262.1 million during the 1995–96 election cycle, or an average of approximately $131.05 million per year, up from $86 million in the 1992 election cycle or an average of $43 million per year. Similarly, soft money disbursements by the committees totaled $271.5 million in the 1996 election cycle, a significant increase from the $79.1 million spent in the 1992 election cycle. The reports also show that soft money receipts by the national party committees continued to increase in 1997. Soft money fundraising by the Democratic committees increased 25% during the first six months of the year, when compared to the same period during the previous election cycle. Soft money fundraising by the Republican national party committees increased 17% during this period.

In addition to the increase in the total dollar amount of soft money contributions, there has also been an increase in the number of contributions made to the party committees' nonfederal accounts that would have been prohibited under FECA if they had been made to a federal account. As explained above, the Act limits individual contributions to the national party committees' federal accounts to $20,000 per calendar year, and also limits total contributions by an individual to $25,000 per year. 2 U.S.C. 441a(a)(1)(B) and 441a(a)(3). In addition, the Act prohibits contributions by corporations, labor organizations and federal contractors. 2 U.S.C. 441b, 441c. Entities that are prohibited from making contributions to a federal account and individuals wishing to make contributions in excess of the dollar limits have generally been permitted to direct those contributions to a nonfederal account, even though contributions to nonfederal accounts are often used for activities that have an impact on federal elections.

The reports indicate that contributors are doing so with increasing frequency. The national party committees' nonfederal accounts received at least 381 individual contributions of more than $20,000 during the 1992 presidential election cycle, and also received about 11,000 contributions from sources that are prohibited from contributing to federal accounts. In the 1996 election cycle, both numbers more than doubled. The committees' nonfederal accounts received nearly 1000 individual contributions in excess of $20,000, and also received approximately 27,000 contributions from FECA-prohibited sources. Thus, it appears that an increasing number of contributors see the party committees' nonfederal accounts as an avenue through which they can make contributions that would be prohibited under sections 441b or 441c or would exceed the $20,000 individual contribution limit. Some individual contributors may also be using these accounts to make contributions that would otherwise exceed their $25,000 overall limit.

Ironically, there are also indications that the allocation rules themselves may have increased the amount of soft money raised by the national party committees, although it may not be possible to establish cause and effect. Although the national party committees were not required to report soft money receipts in 1984, one national party committee official submitted testimony stating that his party raised $3.7 million in soft money during the 1984 Presidential election year. *Federal Election Commission Hearing on the Use of Undisclosed Funds or ''Soft Money'' to Influence Federal Elections,* January 29, 1986 (written testimony of Frank J. Fahrenkopf, Chairman, Republican National Committee, at 4). That same party committee raised $23.5 million in 1992, the first Presidential election year in which the allocation rules applied. This party committee subsequently raised $66.2 million in the 1996 Presidential election year, approximately 18 times the amount reportedly raised in 1984. In addition, two national party committees that did not have a non-federal money account before promulgation of the allocation rules established such an account and began raising soft money after the rules went into effect.

In some situations, the national party committees have interpreted the allocation rules to allow transfers of funds to state and local party committees in order to take advantage of more favorable allocation ratios. Although the allocation rules prohibit state party committees from using transferred funds for certain volunteer and GOTV activities, *see* 11 CFR 100.7(b)(15)(vii), and (b)(17)(vii), 100.8(b)(16)(vii) and (b)(18)(vii), they do not prohibit the use of transferred funds for voter drive or other activities, nor do they explicitly require state parties to apply the national party committee's allocation ratio when they use transferred funds for those purposes.

Generally speaking, it is easier to raise soft money than hard money. As a result, the national party committees look for ways to make their hard dollars go farther. Transferring funds helps them achieve this goal in a number of ways. For example, a national party may try to stretch its hard dollars by transferring them to a state or local party committee and instructing the committee to use the funds for a particular mixed activity. Generally, the rules permit a state or local party committee to pay a higher percentage of its mixed activity costs with soft dollars than a national party is able to when conducting the same activity. In many cases, the difference is significant. To illustrate, a national party committee conducting a $100,000 voter drive under the current rules would be required to pay for the drive with at least $60,000 in hard money. In contrast, a state party committee conducting the same drive might only be required to use $35,000 in hard money, and could pay the remaining costs with soft money. This creates an incentive for the national committee to transfer hard dollars to the state committee and have the recipient committee conduct the activity.

There have also been allegations that both national and state party committees have transferred soft dollars to nonprofit organizations for them to use in conducting activities that influence federal elections, such as voter registration drives or get-out-the-vote campaigns. Ordinarily, a party committee would be required to allocate the costs of such an activity, i.e., pay part of the cost of the activity with hard dollars. However, many nonprofit organizations are not political committees under the FECA, and thus are generally not subject to the allocation rules. Currently, in many situations, nonprofit organizations that are not political committees under the FECA can pay the costs of voter registration or get-out-the-vote activities entirely with soft dollars. Thus, as with the hard dollar transfers described above, the party committees may believe that transferring soft money to these types of nonprofit organizations will enable them to conserve hard dollars. However, in applying the allocation rules, one court has said that when an organization conducts an allocable activity with funds received from a party committee, the recipient organization can be required to use the allocation rules applicable to the party committee from which the funds were obtained. *FEC* v. *California Democratic Party,* No. S–97–891, (E.D.Cal. Jun. 11, 1998).

The disclosure reports show that, in election years, the national party committees transfer more soft money to state and local party committees in states that appear to have closely contested races for federal office. For example, reports indicate that the national party committees transferred a combined $14.3 million in soft money to state and local party committees in California during the 1995–96 election cycle. California was an important battleground state in the Presidential election. Polls indicated that both major party candidates had a chance to win the state's 54 electoral votes.

In contrast, polls indicated that President Clinton had a substantial lead in New York State. One national party committee did not transfer any soft money to state and local party committees in New York during the 1995–96 election cycle, and the other national party committee transferred only $325,332, even though New York represents 33 electoral votes. While this is only one example and there are other possible explanations for this disparity, one likely explanation for it is that the national party committees were

directing their soft money to those states in which it would have the most impact on federal elections.

In addition, there have been allegations in the press and other fora that suggest that federal candidates and officeholders may be more involved in the process of raising soft money for the parties than they have been in the past. Federal officeholders, in particular, appear to be directly involved in soliciting contributions for the party committees' soft money accounts. In 1990, the Commission recognized that some solicitations for soft money contributions may lead contributors to believe that funds contributed will be used to benefit federal candidates, when, in fact, soft money can only be used for non-federal election activity. In order to address this concern, the Commission created a presumption that party committee solicitations that refer to a federal candidate or election are for the purpose of influencing a federal election, and thus any contributions received in response to those solicitations are subject to the prohibitions and limitations of the Act. 11 CFR 102.5(a)(3). 55 FR at 26059 (June 26, 1990). The Commission now believes it may be appropriate to seek comments as to whether solicitations by a federal candidate or federal officeholder should be covered by § 102.5(a)(3), and thus whether the resulting contributions should be subject to the Act's prohibitions and limitations.

Of course, the discussion of the above allegations should not be read as a determination by the Commission that these allegations involve violations of the FECA. Determinations by the Commission of violations of FECA by specific persons in specific factual contexts can only be made in an enforcement proceeding.

However, the record described above suggests that the use of soft money has expanded far beyond what the Commission anticipated when it promulgated the allocation rules. This appears to be particularly true for the national party committees. They are directly tied to federal officeholders in Congress and the White House. They also play a major role in raising funds to elect candidates for federal office, and in directing those funds to states in which key elections are being held. Thus, it is reasonable to conclude that at least one dominant focus of the national party committees is in electing federal candidates. This is in contrast to state and local party committees, who focus more of their activities on raising funds for and assisting in the election of state and local candidates.

On the other hand, the Commission is also aware that only a small percentage of the 500,000 elected positions in this country are federal, and that national party committees may have an interest in the outcome of both federal and nonfederal elections. In some cases, the national party committees promote ideas, issues and agendas of importance to their respective parties, activities which, they assert, do not fall within the FECA. Thus, it is reasonable to conclude that another dominant focus of the national party committees is advocating issues and electing state and local candidates, although the level of direct involvement in non-federal elections varies among the national party committees. In recognition of this interest, national party committees have, to date, been permitted to set up separate nonfederal accounts to raise and spend money as allowed under applicable state and local law.

Putting aside the question of how much national party committee activity is not federal-election related, it appears that by allowing national party committees to pay a portion of their mixed activities costs with soft dollars, the allocation rules appear to be allowing the national party committees to use large soft money contributions in ways that unavoidably influence federal elections, even though they are ostensibly raised for nonfederal election activity. This is inconsistent with the policy goals of the FECA, which seeks to limit corruption and the appearance of corruption that is created when large individual contributions and corporate, labor organization and federal contractor funds are used to influence federal elections. The number and percentage of comments expressing the view that soft money has a corrupting influence on the federal election process is a strong indication that soft money is ''eroding * * * public confidence in the electoral process through the appearance of corruption.'' *FEC* v. *National Right to Work Committee,* 459 U.S. 197, 209 (1982) (citing *Buckley* v. *Valeo,* 424 U.S. 1, 26–27 (1976)).

Consequently, the Commission believes that it may be necessary to promulgate new rules to ensure that soft money is not used to influence federal elections, and give full force and effect to the prohibitions and limitations of the Act. The Commission has drafted proposed rules that seek to achieve this goal. These rules are set out below, along with several alternative proposals.

The Commission is also interested in receiving comments on any other issues relating to soft money. In particular, as discussed above, comments are invited on the scope of the Commission's authority to promulgate rules in this area. Comments are also invited on whether the allegations discussed above are accurate, relevant to this inquiry, and adequate to justify changes in Commission policy.

The Commission would like to re-emphasize that the rules and alternatives set out below are preliminary proposals only. They do not represent a final decision, and may be modified by the Commission or rejected and not adopted at all. Also note that these proposals focus on soft money activity conducted by party committees, and would not directly impact issue advocacy conducted by other entities, which, unless it expressly advocates the election or defeat of a clearly identified candidate, or in certain cases is coordinated with a candidate or party, is outside the Commission's jurisdiction. Coordination is currently being addressed in another rulemaking. *See* 62 FR 24367 (May 5, 1997).

Rulemaking Proposals

In an effort to generate a full range of views, the Commission is seeking comment on two options for addressing the issues raised above, and is also seeking comment on three variations on the second of these two options.

The first option would be to make no changes to the current rules. Under the first option, the national parties would continue to be prohibited from receiving and using soft money in connection with federal elections. Soft money raised for non-federal election related purposes would be permitted. Non-federal accounts would be permitted for these non-federal election purposes along with the building fund accounts specifically authorized by the FECA.

The second option would be to make revisions to the current rules. The Commission has drafted proposed revisions to the current rules that would address these issues. The proposed revisions are described in detail in the next two sections. Draft rules implementing these proposals are set out in the proposed rule section of this notice.

The proposed revisions consist of a core proposal, and three variations on the core proposal. The core proposal would prohibit the receipt and use of soft money by the national party committees, and would eliminate all national party committee nonfederal accounts other than the building fund accounts specifically authorized by the FECA. This proposal also clarifies portions of section 102.5 relating to solicitations by federal candidates and officeholders. However, the core proposal would not change the

allocation rules for state and local party committees.

The first variation to the core proposal would modify it to make a narrow exception to the prohibition on the receipt of soft money by national party committees. This exception would allow national party committees to raise soft money for the limited purpose of making direct or earmarked contributions to state and local candidates. The section of the proposed rules titled ''variation one'' sets out those rule provisions that would be different from the core proposal if this variation were adopted. All the other provisions of the core proposal would remain the same.

The second variation on the core proposal would modify the core proposal to ensure that hard money transferred from a national to a state or local party committee is spent using the rules applicable to the national party committees, rather than the state or local party committee's more favorable allocation ratios. Variation two would require the national party committee to earmark transfers of funds for use in a particular activity, and would require the state or local party committee to finance the identified activity entirely with hard dollars. Variation two could be implemented if either one of the two options were adopted as is, or if the core proposal of the second option were adopted with variation one. As with variation one, variation two of the proposed rules sets out those rule provisions that would be different from the core proposal if variation two were adopted.

Finally, the third variation on the second option's core proposal would extend portions of the core proposal's treatment of national party committees to state and local party committees. Under variation three, state and local party committees would be required to finance their mixed activities entirely with hard dollars. Like variation two, variation three could be implemented in conjunction with the core proposal, or in conjunction with both the core proposal and variation one. Those provisions that would differ from the core proposal of the second option are set out in variation three of the proposed rules, below.

The Commission invites commenters to submit their views on the first and second options, including the core proposal and all three variations of the second option.

1. National Party Committees, Including the Senate and House Campaign Committees of the National Parties

The objective of the proposed rules is to ensure that soft money is not used to influence federal elections. In order to achieve this result, the core proposal virtually eliminates the soft money available to the national party committees to subsidize activities that influence federal elections.

Both the first and second options recognize the limited scope of the FECA, and acknowledge that national party committees have other purposes besides the election of federal candidates. The major difference between the two options is whether most national party committees' federal and nonfederal activities are inextricably intertwined, or, as the current rules suggest, can be separated in a way that will ensure that soft money is not used to influence federal elections.

One way to attempt to reduce the amount of soft money used to influence federal elections would be to adjust the allocation ratios so that national party committees are required to use a larger percentage of hard dollars to pay the costs of their mixed activities. However, adjusting the allocation ratios would have limited impact for several reasons.

First, unless the ratios were increased to 100%, the national party committees could continue to pay for a portion of their mixed activities with soft dollars. Thus, increasing the ratios would merely reduce, rather than eliminate, the amount of soft money spent by the national party committees on mixed activities that influence federal elections.

In addition, this approach would have no impact on soft money spent by the national party committees that is not spent directly on mixed activities. Of the $271.5 million in soft money disbursed by the national party committees during the 1996 election cycle, only $90.5 million, or one third, was spent directly on mixed activities that were subject to the allocation ratios. An even greater amount, $114.8 million, or 42% of the total spent during the cycle, was transferred to state and local party committees. An additional amount, which cannot be as readily determined from the committees' reports, was transferred to outside groups that are not subject to the allocation rules. Adjusting the allocation ratios would only affect those amounts spent on mixed activities. Amounts transferred between party committees would be unaffected.

The preliminary evidence described above indicates that soft money transferred by the national party committees, except for money not used in connection with federal elections, is having a significant impact on federal elections. If the proposed rules do not take these transfers into account, they will not adequately effectuate the Congressional intent that only hard money be used to influence the outcome of federal elections. *See Common Cause* v. *FEC*, 692 F. Supp. 1391 (D.D.C. 1987), *enforced*, 692 F. Supp. 1397 (D.D.C. 1987).

The first option, described in the introduction above, assumes that money raised by national party committees to elect candidates to state and local offices and to promote party positions on issues of local, regional, and national importance can be spent in a way that will not influence federal elections, and thus is beyond the Commission's jurisdiction. The Commission invites comments on this option. In particular, the Commission encourages commenters to help clarify the various purposes of national party committees by discussing those national party committee activities that promote party positions, agendas and ideas on issues of local, regional, and national importance.

In addition to seeking comments on this approach, the Commission is also seeking comments on whether Schedule I should be revised so that transfers between party committees can be more accurately tracked as well as money used to elect candidates to state and local offices and to promote party positions on issues of local, regional, and national importance. This information would greatly enhance the available information on how soft money is spent by national party committees.

The second option is based on the conclusion that the only way to limit the amount of soft money spent by the party committees to influence federal elections would be to reduce the amount of soft money raised by the party committees, and in particular, by the national party committees. This option concludes that the dominant focus of the national party committees is on electing federal candidates, and virtually all national party committee activities influence federal elections. Thus, it would be more consistent with the purposes of the FECA and the statute's jurisdictional reach to require national party committees to finance their mixed activities entirely with hard dollars. The most effective way of carrying out the Act's requirements is to prohibit the national party committees

from raising soft money for most purposes.

The core proposal of the second option would achieve this goal by revising the allocation rules for national party committees. Specifically, the core proposal would revise section 102.5 to prohibit all three types of national party committees from operating non-federal accounts and accepting soft money. The only exception would be that committees could continue to operate the building fund accounts, since these accounts are specifically permitted by the FECA. *See* 2 U.S.C. 431(8)(B)(viii), 11 CFR 100.7(b)(12) and 11 CFR 100.8(b)(13).

The core proposal of the second option would also make related changes to Part 106. Proposed sections 106.1(a) and 106.5(b) would require the national party committees to defray expenses, other than building fund expenses, entirely with hard dollars. This would include the costs of expenditures that are on behalf of both federal and nonfederal candidates, section 106.1(a), and the costs of combined federal and non-federal fundraising programs currently allocated using the funds received method in section 106.5(f). It would also include costs incurred in fundraising for the committees' building funds, in order to ensure that fundraising for building funds does not become an avenue for spending soft money to influence federal elections, such as by soliciting building fund contributions with communications that expressly advocate the election or defeat of federal candidates.

Sections 106.1(a) and 106.5(b) of the core proposal would apply to all of the national party committees, including the Senate and House campaign committees. The core proposal would also make minor structural modifications to section 106.1. Paragraph (a) would be broken into two parts, and several reporting requirements in separate paragraphs of the current rule would be relocated to paragraph (b). In addition, current section 106.5(c), would be removed and replaced with an entirely new provision, to be discussed below. The Commission invites comments on these proposals.

Variation one on the second option's core proposal is largely the same as the core proposal. However, variation one would create a narrow exception to the prohibition on the receipt of soft money by national party committees. Under section 102.5(c) of variation one, national party committees other than the Senate and House campaign committees would be allowed to maintain a second non-federal account for the limited purpose of receiving donations that are either earmarked for and subsequently donated to clearly identified non-federal candidates or are raised and spent solely in the form of donations to non-federal candidates, either directly or through an earmarked transfer to a state or local party committee. This would allow national party committees to continue raising soft dollars for the very limited purpose of making or passing on contributions directly to nonfederal candidates. However, the national party committees would still be required to finance their mixed activities entirely with hard dollars. Comments are invited on this proposal.

If the second option were to be adopted, either with or without variation one of the core proposal, a modest reorganization of section 106.5 of the regulations would be necessary. This reorganization is shown in the core proposal section of the proposed rules. First, the section heading would be revised to reflect the substantive changes in the section. Second, since the national party committees would no longer be allocating expenses, the list of costs to be allocated in current section 106.5(a)(2) would be relocated to section 106.5(c)(2). Revised section 106.5(b) would apply to all national party committees, including the Senate and House campaign committees, and new section 106.5(c) would state the general rule that state and local party committees are required to allocate the expenses in paragraph (c)(2) in accordance with paragraphs (d) through (f). Comments are invited on the reorganization of section 106.5.

The version of section 106.5 in variation three of the second option also reflects this reorganization, although variation three would also make other changes to section 106.5 that will be discussed further below.

2. State and Local Party Committees

The Commission is seeking comment on whether the rules governing state and local party committees should be changed to address some of the issues raised above.

As with the national party committees, the current allocation rules appear to be allowing state and local party committees to use soft money to subsidize activities that, at least in part, influence federal elections. In addition, as discussed above, the differences between the allocation methods applicable to national party committees and those applicable to state and local party committees create an incentive for a national party committee that wants to engage in a mixed activity to transfer hard dollars to a state or local party committee and have the recipient committee conduct the activity using its more favorable allocation ratios. This problem exists under the current rules. However, it would be made more acute if the second option were adopted, because the core proposal for national party committees would eliminate the national party committees' non-federal accounts and require national party committees to use 100% hard money for all activities.

Implementing the core proposal of the second option could also encourage soft money donors to redirect their contributions to the state and local party committees, which would then use the funds for mixed activities that influence federal elections. The national party committees might assist their state and local affiliates by employing a type of directed donor strategy, in which the national committee solicits soft money contributions and instructs contributors to send their contributions directly to the state or local committee. Thus, instead of reducing the amount of soft money activity, the core proposal for national party committees may merely redirect that activity to the state and local level, where reporting may be less complete than at the federal level.

Variations two and three on the core proposal would address these issues. If the core proposal of the second option were implemented with variation two, the rules would eliminate the national party committees' nonfederal accounts and would also seek to limit the incentive for national party committees to transfer funds to state and local party committees in order to take advantage of the recipient committee's more favorable allocation ratios. Specifically, variation two would require a national party committee that transfers hard dollars to a state or local party committee to include a written communication identifying the state or local party committee activity for which the transferred funds are to be used. The national party committee would also be required to include a copy of the written communication in its next regularly scheduled disclosure report to the Commission. *See* section 106.5(b) of variation two.

The recipient state or local party committee would then be required to use the transferred funds for the identified activity, and pay any additional costs incurred in the identified activity entirely with hard dollars. This would ensure that funds that originate with a national party committee are used in accordance with the rules that apply to national party committees. Finally, like the national

party committee, the state or local party committee would be required to submit a copy of the written communication with its next regularly scheduled disclosure report. Section 106.5(c)(1)(ii)(A) of variation two. Comments are encouraged on these proposals.

Paragraph (c)(1)(ii)(B) of variation two contains an exception for transfers to state and local party committees in states that hold federal and non-federal elections in different years. The transfer requirements described above would not apply to transfers made to these entities if the funds transferred were used exclusively for generic voter drive activity conducted in a calendar year in which no candidates for federal office appear on any primary, general, or special election ballot.

Variation two also contains a conforming amendment to section 106.1. Revised section 106.1(a)(1) would require state and local committees to follow the transfer rules in section 106.5 if they use transferred funds to pay for expenditures on behalf of both federal and nonfederal candidates. The Commission also notes that it may be necessary to make other conforming amendments to the reporting requirements in Part 104 of the regulations, should variation two be implemented.

Variation three of the core proposal would extend portions of the core proposal's treatment of national party committees to state and local party committees in order to ensure that state and local committees do not use soft money donations to influence federal elections. The core proposal would require national party committees to pay their expenses entirely with hard dollars. Similarly, variation three would require state and local party committees to pay the costs of their mixed activities entirely with hard dollars, regardless of whether the funds used were transferred from a national party committee. Under this approach, state and local party committees would be required to pay all of the costs they incur in the activities described in current section 106.5(a)(2) with funds that are permissible under the FECA. This is in contrast to the current rules, under which they allocate the costs of all of these activities, and is also in contrast to variation two, under which they would allocate the costs of any mixed activities not partially financed with funds transferred from a national party committee. Variation three would also amend section 106.1 to require state and local committees to use hard dollars for expenditures made on behalf of both federal and nonfederal candidates.

Variation three would contain two exceptions to the general requirement that state and local party committees pay the costs of their mixed activities entirely with hard dollars. First, national and state party committees could continue to defray their building fund expenses with funds in a building fund account established in accordance with section 102.5(c)(2). In addition, state and local party committees in states that do not hold federal and non-federal elections in the same year could continue to use funds that are not subject to the prohibitions and limitations of the Act to defray the costs of generic voter drive activity conducted in a calendar year in which no candidates for federal office appear on any primary, general, or special election ballot.

Comments are invited on variation three of the core proposal. The Commission recognizes that this would be a significant change for committees that operate on the state and local level, and would raise issues regarding the scope of the FECA. The concept underlying this approach is that all mixed activity, by its very nature, affects federal elections, and must be paid for with hard dollars. Commenters are encouraged to address the question of whether the Commission has the statutory authority to implement such a rule.

The Commission would like to emphasize that, under variations two and three, state and local party committees would be able to continue raising soft money to pay for activities that exclusively influence nonfederal elections.

Finally, the core proposal and all three variations of the core proposal would amend current section 106.5(a)(2)(iv) to address the allegation that party committees have transferred funds to nonprofit organizations in order to avoid the allocation requirements. The revised provisions are set out in section 106.5(c)(2)(iv) of the core proposal, variation one and variation two, and in section 106.5(b) of variation three. Section 106.5(c)(2)(iv) would indicate that the costs of generic voter drives must be allocated if the drive is conducted directly by a state or local party committee or is financed by the party committee and conducted by another entity. Section 106.5(b) of variation three would indicate that the costs of generic voter drives must be defrayed entirely with hard dollars, whether the drive is conducted directly by a state or local party committee or is financed by the party committee and conducted by another entity. The Commission invites comments on these proposals.

3. Other Proposed Rules

a. Party committee solicitations by federal candidates and officeholders

The Commission is considering changes to section 102.5(a)(3) to make it clear that contributions solicited by a federal candidate or officeholder are subject to the prohibitions and limitations of the Act. As discussed above, when a federal candidate or officeholder solicits a contribution, the contributor is likely to assume that his or her contribution will be used to benefit a federal candidate. Proposed revisions to section 102.5(a)(3) set out in the core proposal would make it clear that contributions resulting from a solicitation made by a federal candidate or officeholder are subject to the prohibitions and limitations of the Act. However, in the case of a solicitation for a national party committee, this presumption could be rebutted if the donor, in writing, expressly designates the contribution for the committee's building fund account, as described in section 102.5(c)(2). In the case of a solicitation for a state party committee, this presumption could be rebutted if the donor, in writing, expressly designates the contribution for the committee's building fund account, or for its non-federal account, as described in section 102.5(a)(1)(i). Donors to a local party committee could also designate their contributions for a nonfederal account. The core proposal also contains a conforming amendment to current section 102.5(a)(2), which would add to the list of contributions that may be deposited in a federal account those contributions that, due to the operation of proposed paragraph (a)(3), would be presumed to be for the purpose of influencing an election. The Commission invites comments on these proposals.

b. Allocating Joint Fundraising Expenses

Section 102.17 sets out rules for committees, other than separate segregated funds, that engage in joint fundraising. Generally, this provision only applies to joint fundraising activities conducted on behalf of more than one federal candidate or on behalf of multiple non-connected committees. Fundraising activities conducted by party committees for both their federal and nonfederal accounts are currently governed by 11 CFR 106.5(f), although under the core proposal of the second option, national party committee

fundraising would be governed by paragraph (b).

The core proposal of the second option would insert a cross reference into section 102.17(c)(7) directing party committees that collect both federal and nonfederal funds through a joint fundraiser to allocate their expenses for the fundraiser in accordance with section 106.5. Even though no comparable language appears in the current rule, this new language would merely make explicit the Commission's long-standing interpretation of these two provisions. Thus, this proposal would not be a change in Commission policy. Comments are invited on this proposed revision.

c. Curing prohibited and excessive contributions

Under section 103.3(b) of the Commission's rules, committee treasurers are responsible for examining all contributions received to ensure that they do not violate the prohibitions or limitations of the Act. Contributions that present genuine questions as to whether they are from a prohibited source may be deposited in the committee's account or returned to the contributor within ten days of receipt. However, if such a contribution is deposited, the treasurer has thirty days to determine the legality of the contribution. If unable to confirm that the contribution is legal, the treasurer must refund the contribution. 11 CFR 103.3(b)(1).

Similarly, if a treasurer receives a contribution that does not initially appear to be from a prohibited source, and subsequently determines that the contribution is from a prohibited source, the treasurer is required to refund the contribution within 30 days. 11 CFR 103.3(b)(2).

Paragraph (b)(3) contains similar rules for contributions that exceed the limitations in 2 U.S.C. § 441a, either on their face or when aggregated with other contributions from the same contributor. *See also* 11 CFR 110.1 or 110.2. The treasurer has the option of depositing the excessive contribution or returning it to the contributor. However, if the contribution is deposited, the treasurer has sixty days to seek redesignation of the contribution to another election, or reattribution to another contributor. If unable to obtain redesignation or reattribution, the treasurer is required to refund the contribution. 11 CFR 103.3(b)(3).

The Commission is considering the situation where a committee has received an excessive or prohibited contribution and wants to cure this problem by transferring the contribution to a nonfederal account. Proposed revisions to sections 103.3(b)(1), (2) and (3), as shown in the core proposal of the second option, would allow a treasurer to make such a transfer to a non-federal account established in accordance with 11 CFR 102.5(a)(1)(i) or 102.5(c), but only after obtaining an express written redesignation of the contribution to the non-federal account. If a written redesignation cannot be obtained within thirty days of receiving the contribution, the treasurer would be required to return the contribution to the contributor. The Commission invites comments on these proposals.

The treasurer's ability to transfer the prohibited or excessive contribution would also be subject to other applicable federal laws. For example, if a treasurer receives a contribution from a foreign national, he or she would not be able to cure the illegality of that contribution by transferring it to a non-federal account, because foreign nationals are prohibited from making contributions in connection with any election to any political office. Similarly, the transfer would be subject to applicable state laws. The proposed rule would not preempt, under 2 U.S.C. 453, any state-imposed contribution prohibitions or limitations. Comments on these limitations are welcome.

Conclusion

The Commission welcomes comments on the issues raised by the proposed rules, and on the general question of whether changes to the regulations relating to soft money are warranted at this time. As mentioned above, the Commission is also interested in comments on the issue of whether it has the authority to promulgate rules in this area. Those interested are also welcome to raise other issues that should be addressed if the Commission decides to issue final rules.

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

I certify that the attached proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis of this certification is that the national, state and local party committees of the two major political parties are not small entities under 5 U.S.C. § 601, and the number of other party committees to which the rule would apply is not substantial.

List of Subjects

11 CFR Part 102

Political committees and parties.

11 CFR Part 103

Campaign funds, Political committees and parties.

11 CFR Part 106

Campaign funds, Political committees and parties.

First Option

The Commission would make no changes to the existing regulations.

Second Option

The Commission is proposing to make the following changes to the regulations:

For the reasons set out in the preamble, it is proposed to amend subchapter A, chapter I of title 11 of the Code of Federal Regulations as follows:

Core Proposal

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

1. The authority citation for part 102 would continue to read as follows:

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

2. Section 102.5 would be amended by revising paragraph (a) and adding paragraph (c), to read as follows:

§ 102.5 Organizations financing political activity in connection with Federal and non-Federal elections, other than through transfers and joint fundraisers.

(a) *Organizations, other than national party committees, that are political committees under the Act.* (1) Except as provided in paragraph (c) of this section, any organization that finances political activity in connection with both federal and non-federal elections and that qualifies as a political committee under 11 CFR 100.5 shall either:

(i) Establish a separate federal account in a depository in accordance with 11 CFR part 103. Such account shall be treated as a separate federal political committee which shall comply with the requirements of the Act including the registration and reporting requirements of this part and 11 CFR part 104. Only funds subject to the prohibitions and limitations of the Act shall be deposited in such separate federal account. All disbursements, contributions, expenditures and transfers by the committee in connection with any federal election shall be made from its federal account. No transfers may be made to such federal account from any other account(s) maintained by such organization for the purpose of financing activity in connection with non-federal elections, except as

provided in 11 CFR 106.5(g) and 106.6(e). Administrative expenses shall be allocated pursuant to 11 CFR part 106 between such federal account and any other account maintained by such committee for the purpose of financing activity in connection with non-federal elections; or

(ii) Establish one account, which shall receive only contributions subject to the prohibitions and limitations of the Act, regardless of whether such contributions are for use in connection with federal or non-federal elections. Such organization shall register as a political committee and comply with the requirements of the Act.

(2) Only contributions described in paragraphs (a)(2)(i), (ii), (iii) or (iv) of this section may be deposited in a federal account established under paragraph (a)(1)(i) of this section or may be received by a political committee established under paragraph (a)(1)(ii) of this section:

(i) Contributions designated for the federal account;

(ii) Contributions that result from a solicitation which expressly states that the contribution will be used in connection with a federal election;

(iii) Contributions from contributors who are informed that all contributions are subject to the prohibitions and limitations of the Act; or

(iv) Contributions that, due to the operation of paragraph (a)(3) of this section, are presumed to be for the purpose of influencing an election.

(3) Any party committee solicitation that is made by a federal candidate or federal officeholder or that makes reference to a federal candidate or a federal election shall be presumed to be for the purpose of influencing a federal election. The full amount of any funds received as a result of that solicitation shall be presumed to be a contribution under 11 CFR 100.7(a) that is subject to the prohibitions and limitations in 11 CFR parts 110 and 114. However, this paragraph does not apply to a donation that is made payable to or is accompanied by a writing, signed by the donor, which clearly indicates that the donation is for a non-federal account or building fund account described in paragraphs (a)(1)(i) or (c) of this section.

* * * * *

(c) *National party committees.* (1) National party committees, including the Senate and House campaign committees of a national party, shall establish one or more federal account(s) in accordance with 11 CFR part 103. The federal account(s) shall receive only contributions subject to the prohibitions and limitations of the Act. Except as provided in paragraph (c)(2) of this section, national party committees shall not establish any nonfederal account or receive any contribution or donation of anything of value that is not subject to the prohibitions and limitations of the Act.

(2) National party committees, including the Senate and House campaign committees of a national party, may establish a building fund account to be used solely for the purpose of receiving gifts, subscriptions, loans, advances or deposits of money or anything of value described in 11 CFR 100.7(b)(12) or 11 CFR 100.8(b)(13).

3. Section 102.17 would be amended by revising paragraph (c)(7)(ii), redesignating current paragraph (c)(7)(iii) as paragraph (c)(7)(iv), and adding new paragraph (c)(7)(iii), to read as follows:

§ 102.17 Joint fundraising by committees other than separate segregated funds.

* * * * *

(c) * * *

(7) * * *

(ii) If participating committees are affiliated as defined in 11 CFR 110.3 prior to the joint fundraising activity, expenses need not be allocated among those participants. Payment of such expenses by an unregistered committee or organization on behalf of an affiliated political committee may cause the unregistered organization to become a political committee.

(iii) If the participants are party committees of the same political party, expenses need not be allocated among those participants, unless the committees collect both federal and non-federal funds, in which case, expenses must be allocated in accordance with 11 CFR 106.5. Payment of such expenses by an unregistered committee or organization on behalf of an affiliated political committee may cause the unregistered organization to become a political committee.

* * * * *

PART 103—CAMPAIGN DEPOSITORIES (2 U.S.C. 432(h))

4. The authority citation for part 103 would continue to read as follows:

Authority: 2 U.S.C. 432(h), 438(a)(8)

5. Section 103.3 would be amended by adding a new sentence at the end of paragraphs (b)(1), (b)(2) and (b)(3), to read as follows:

§ 103.3 Deposit of receipts and disbursements (2 U.S.C. 432(h)(1)).

* * * * *

(b) * * *

(1) * * * Treasurers of committees that are not authorized by any candidate may also transfer the contribution to a non-federal account established in accordance with 11 CFR 102.5(a)(1) (i) or (c) and treat the funds as a contribution to the non-federal account, so long as the donor provides an express written redesignation of the contribution to the non-federal account within thirty days of the treasurer's receipt of the contribution.

(2) * * * Treasurers of committees that are not authorized by any candidate may also transfer the contribution to a non-federal account established in accordance with 11 CFR 102.5(a)(1) (i) or (c) and treat the funds as a contribution to the non-federal account, so long as the donor provides an express written redesignation of the contribution to the non-federal account within thirty days of the treasurer's receipt of the contribution.

(3) * * * Treasurers of committees that are not authorized by any candidate may also transfer the contribution to a non-federal account established in accordance with 11 CFR 102.5(a)(1)(i) or (c) and treat the funds as a contribution to the non-federal account, so long as the donor provides an express written redesignation of the contribution to the non-federal account within thirty days of the treasurer's receipt of the contribution.

* * * * *

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

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

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

7. Section 106.1 would be amended by revising paragraphs (a) and (b) to read as follows:

§ 106.1 Allocation of expenses between candidates.

(a) *General rule.* (1) Expenditures, including in-kind contributions, independent expenditures, and coordinated expenditures made on behalf of more than one clearly identified federal candidate shall be attributed to each such candidate according to the benefit reasonably expected to be derived. For example, in the case of a publication or broadcast communication, the attribution shall be determined by the proportion of space or time devoted to each candidate as compared to the total space or time devoted to all candidates. In the case of a fundraising program or event where funds are collected by one committee

for more than one clearly identified candidate, the attribution shall be determined by the proportion of funds received by each candidate as compared to the total receipts by all candidates.

(2) (i) Except as provided in paragraph (a)(2)(ii) of this section, the methods described in paragraph (a)(1) of this section shall also be used to allocate payments involving both expenditures on behalf of one or more clearly identified federal candidates and disbursements on behalf of one or more clearly identified non-federal candidates. When such a payment is made by a political committee with separate federal and non-federal accounts, the payment shall be made according to the procedures set forth in 11 CFR 106.5(g) or 106.6(e), as appropriate.

(ii) When a national party committee, including a Senate or House campaign committee of a national party, makes a payment involving both expenditures on behalf of one or more clearly identified federal candidates and disbursements on behalf of one or more clearly identified non-federal candidates, the payment shall be made entirely from the committee's federal account(s), i.e., with funds subject to the prohibitions and limitations of the Act.

(b) *Reporting.* An expenditure made on behalf of more than one clearly identified federal candidate shall be reported pursuant to 11 CFR 104.10(a). A payment that includes amounts attributable to one or more non-federal candidates, and that is made by a political committee with separate federal and non-federal accounts, shall also be reported pursuant to 11 CFR 104.10(a). An authorized expenditure made by a candidate or political committee on behalf of another candidate shall be reported as a contribution in-kind to the candidate on whose behalf the expenditure was made, except that expenditures made by party committees pursuant to 11 CFR 110.7 need only be reported as an expenditure.

* * * * *

8. In § 106.5, the section heading and paragraphs (a), (b), (c), (d)(1) introductory text, (d)(2) heading, the first sentence of paragraph (e), and paragraph (f) heading, would be revised to read as follows:

§ 106.5 Party committee federal and non-federal activities; payments by national party committees; allocation by state and local party committees.

(a) *Scope and general rule.* This section covers payment of expenses by national party committees, general rules regarding federal and non-federal expenses incurred by state and local party committees, methods for allocation of administrative expenses, costs of generic voter drives, exempt activities, and fundraising costs by state and local party committees, and procedures for payment of allocable expenses. Requirements for reporting of allocated disbursements are set forth in 11 CFR 104.10. Party committees that make disbursements in connection with federal and non-federal elections shall make those disbursements entirely from funds subject to the prohibitions and limitations of the Act, or from accounts established pursuant to 11 CFR 102.5. Political committees that have established separate federal and non-federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate expenses between those accounts according to this section. Organizations that are not political committees but have established separate federal and non-federal accounts under 11 CFR 102.5(b)(1)(i), or that make federal and non-federal disbursements from a single account under 11 CFR 102.5(b)(1)(ii) shall also allocate their federal and non-federal expenses according to this section.

(b) *National party committees.* (1) Except as provided in paragraph (b)(2) of this section, national party committees, including the Senate and House campaign committees of a national party, shall defray their expenses entirely from funds subject to the prohibitions and limitations of the Act.

(2) National party committees may defray the expenses described in 11 CFR 100.7(b)(12) and 11 CFR 100.8(b)(13) with funds from an account established in accordance with 11 CFR 102.5(c)(2).

(c) *State and local party committees.* (1) *General rule.* State and local party committees shall allocate the costs described in paragraph (c)(2) of this section in accordance with paragraphs (d) through (f) of this section.

(2) *Costs to be allocated.* Committees that make disbursements in connection with federal and non-federal elections shall allocate expenses according to this section for the following categories of activity:

(i) Administrative expenses including rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate;

(ii) The direct costs of a fundraising program or event, including disbursements for solicitation of funds and for planning and administration of actual fundraising events, through which a committee collects both federal and non-federal funds, whether the committee conducts the program or event individually or in conjunction with another committee;

(iii) State and local party activities exempt from the definitions of contribution and expenditure under 11 CFR 100.7(b) (9), (15) or (17), and 100.8(b) (10), (16) or (18) (exempt activities) including the production and distribution of slate cards and sample ballots, campaign materials distributed by volunteers, and voter registration and get-out-the-vote drives on behalf of the party's presidential and vice-presidential nominees, where such activities are conducted in conjunction with non-federal election activities; and

(iv) Generic voter drives either conducted by the committee itself or paid for by the committee and conducted by another entity, including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.

(d) *State and local party committees; method for allocating administrative expenses and costs of generic voter drives*—(1) *General rule.* Except as provided in paragraph (d)(2) of this section, all state and local party committees shall allocate their administrative expenses and costs of generic voter drives, as described in paragraph (c)(2) of this section, according to the ballot composition method, described in paragraphs (d)(1)(i) and (ii) of this section as follows:

* * * * *

(2) *State and local party committees in states that do not hold federal and non-federal elections in the same year.* * * *

(e) *State and local party committees; method for allocating costs of exempt activities.* Each state or local party committee shall allocate its expenses for activities exempt from the definitions of *contribution* and *expenditure* under 11 CFR 100.7(b) (9), (15) or (17), and 100.8(b) (10), (16) or (18), when conducted in conjunction with non-federal election activities, as described in paragraph (c)(2) of this section, according to the proportion of time or space devoted in a communication. * * *

(f) *State and local party committees; method for allocating direct costs of fundraising.* * * *

* * * * *

Variation One

PART 102—REGISTRATION, ORGANIZATION AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

1. The authority citation for part 102 would continue to read as follows:

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

2. Section 102.5 would be amended by revising paragraph (a) and adding paragraph (c), to read as follows:

§ 102.5 Organizations financing political activity in connection with Federal and non-Federal elections, other than through transfers and joint fundraisers.

(a) [Same as core proposal of second option.]

* * * * *

(c) *National party committees.* (1) National party committees, including the Senate and House campaign committees of a national party, shall establish one or more federal account(s) in accordance with 11 CFR part 103. The federal account(s) shall receive only contributions subject to the prohibitions and limitations of the Act. Except as provided in paragraphs (c)(2) and (3) of this section, national party committees shall not establish any nonfederal account or receive any contribution or donation of anything of value that is not subject to the prohibitions and limitations of the Act.

(2) National party committees, including the Senate and House campaign committees of a national party, may establish a building fund account to be used solely for the purpose of receiving gifts, subscriptions, loans, advances or deposits of money or anything of value described in 11 CFR 100.7(b)(12) or 11 CFR 100.8(b)(13).

(3) National party committees, other than the Senate and House campaign committees of a national party, may establish one or more accounts for receiving donations that are:

(i) Earmarked for and subsequently donated to a clearly identified non-federal candidate; or

(ii) Raised and spent solely in the form of donations to non-federal candidates, either directly or through an earmarked transfer to a state or local party committee.

3. Proposed § 102.17 would be the same as the core proposal of the second option.

PART 103—[AMENDED]

4. Proposed § 103.3 would be the same as the core proposal of the second option.

PART 106—[AMENDED]

5. Proposed §§ 106.1 and 106.5 would be the same as the core proposal of the second option.

Variation Two

PART 102—[AMENDED]

1. Proposed §§ 102.5 and 102.17 would be the same as the core proposal of the second option.

PART 103—[AMENDED]

2. Proposed § 103.3 would be the same as the core proposal of the second option.

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

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

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

4. Section 106.1 would be amended by revising paragraphs (a) and (b) to read as follows:

§ 106.1 Allocation of expenses between candidates.

(a) *General rule.* (1) [same as core proposal of second option.]

(2) (i) Except as provided in paragraph (a)(2)(ii) of this section and in 11 CFR 106.5(c)(1)(ii)(A), the methods described in paragraph (a)(1) of this section shall also be used to allocate payments involving both expenditures on behalf of one or more clearly identified federal candidates and disbursements on behalf of one or more clearly identified non-federal candidates. When such a payment is made by a political committee with separate federal and non-federal accounts, the payment shall be made according to the procedures set forth in 11 CFR 106.5(g) or 106.6(e), as appropriate.

(ii) [Same as core proposal of second option.]

(b) [Same as core proposal of second option.]

* * * * *

5. In § 106.5, the section heading and paragraphs (a), (b), (c), (d)(1) introductory text, (d)(2) heading, the first sentence of paragraph (e), and paragraph (f) heading, would be revised to read as follows:

§ 106.5 Party committee federal and non-federal activities; payments and transfers by national party committees; allocation by state and local party committees.

(a) *Scope and general rule.* This section covers general rules regarding federal and non-federal expenses incurred by party committees, payment of expenses by national party committees and transfers of funds from national party committees to state and local party committees, methods for allocation of administrative expenses, costs of generic voter drives, exempt activities, and fundraising costs by state and local party committees, and procedures for payment of allocable expenses. Requirements for reporting of allocated disbursements are set forth in 11 CFR 104.10. Party committees that make disbursements in connection with federal and non-federal elections shall make those disbursements entirely from funds subject to the prohibitions and limitations of the Act, or from accounts established pursuant to 11 CFR 102.5. Political committees that have established separate federal and non-federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate expenses between those accounts according to this section. Organizations that are not political committees but have established separate federal and non-federal accounts under 11 CFR 102.5(b)(1)(i), or that make federal and non-federal disbursements from a single account under 11 CFR 102.5(b)(1)(ii) shall also allocate their federal and non-federal expenses according to this section.

(b) *National party committees*—(1) *Disbursements for mixed activities.* (i) Except as provided in paragraph (b)(1)(ii) of this section, national party committees, including the Senate and House campaign committees of a national party, shall defray their expenses entirely from funds subject to the prohibitions and limitations of the Act.

(ii) National party committees may defray the expenses described in 11 CFR 100.7(b)(12) and 11 CFR 100.8(b)(13) with funds from an account established in accordance with 11 CFR 102.5(c)(2).

(2) *Transfers to state or local party committees.* Whenever a national party committee, including the Senate and House campaign committees of a national party, transfers funds from any account of the national party committee to any account of a state or local party committee, the transfer shall be accompanied by a written communication specifically identifying the state or local party committee activity or expense for which the transferred funds are to be used. The national party committee shall attach a copy of the written communication to the schedule of itemized disbursements submitted with its next regularly scheduled report.

(c) *State and local party committees.* (1)(i) *General rule.* Except as provided

in paragraph (c)(1)(ii) of this section, state and local party committees shall allocate the costs described in paragraph (c)(2) of this section in accordance with paragraphs (d) through (f) of this section.

(ii) *State and local party committees defraying expenses with funds transferred from a national party committee*—(A) *General rule.* A state or local party committee that receives a transfer from a national party committee shall:

(*1*) Use the funds transferred exclusively for the activity specifically identified by the national party committee in the written communication accompanying the transfer, except that no funds transferred from a non-federal account shall be used for any portion of the costs of any activity described in paragraph (c)(2) of this section;

(*2*) Defray 100% of the remaining costs of the specifically identified activity with funds drawn from the state or local party committee's federal account, i.e., with funds that are subject to the prohibitions and limitations of the Act; and

(*3*) Attach a copy of the written communication to the schedule of itemized receipts submitted with its next regularly scheduled report.

(B) *Exception for transfers to state and local party committees in states that do not hold federal and non-federal elections in the same year.* The requirements of paragraph (c)(1)(ii)(A) of this section shall apply to transfers made to state and local party committees in states that do not hold federal and non-federal elections in the same year, unless the funds transferred are used exclusively for generic voter drive activity conducted in a calendar year in which no candidates for federal office appear on any primary, general, or special election ballot.

(2) [Same as core proposal of second option.]

(d) [Same as core proposal of second option.]

(e) [Same as core proposal of second option.]

(f) [Same as core proposal of second option.]

* * * * *

Variation Three

PART 102—[AMENDED]

1. Proposed §§ 102.5 and 102.17 would be the same as the core proposal of the second option.

PART 103—[AMENDED]

2. Proposed § 103.3 would be the same as the core proposal of the second option.

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

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

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

4. Section 106.1 would be amended by revising paragraphs (a) and (b) to read as follows:

§ 106.1 Allocation of expenses between candidates.

(a) *General rule.* (1) [same as core proposal of second option.]

(2) Payments that involve both expenditures, in-kind contributions, independent expenditures, or coordinated expenditures on behalf of one or more clearly identified federal candidates and disbursements on behalf of one or more clearly identified non-federal candidates shall be made entirely from the committee's federal account(s), i.e., with funds subject to the prohibitions and limitations of the Act.

(b) [Same as core proposal of second option.]

* * * * *

5. Section 106.5 would be revised to read as follows:

§ 106.5 Federal and non-federal activities by party committees and use of party committee funds by other organizations.

(a) *National party committees.* (1) Except as provided in paragraph (a)(2) of this section, national party committees, including the Senate and House campaign committees of a national party, shall defray their expenses entirely from funds subject to the prohibitions and limitations of the Act.

(2) National party committees may defray the expenses described in 11 CFR 100.7(b)(12) and 11 CFR 100.8(b)(13) with funds from an account established in accordance with 11 CFR 102.5(c)(2).

(b) *State and local party committees*—(1) *General rule.* Except as provided in paragraph (b)(3) of this section, state and local party committees, and other party committees that are not national party committees but that have established separate federal and non-federal accounts under 11 CFR 102.5(a)(1)(i), shall defray the following expenses entirely from funds subject to the prohibitions and limitations of the Act:

(i) Administrative expenses including rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate;

(ii) The direct costs of a fundraising program or event, including disbursements for solicitation of funds and for planning and administration of actual fundraising events, through which a committee collects federal funds or a combination of federal and non-federal funds, whether the committee conducts the program or event individually or in conjunction with another committee;

(iii) State and local party activities exempt from the definitions of contribution and expenditure under 11 CFR 100.7(b) (9), (15) or (17), and 100.8(b) (10), (16) or (18) (exempt activities) including the production and distribution of slate cards and sample ballots, campaign materials distributed by volunteers, and voter registration and get-out-the-vote drives on behalf of the party's presidential and vice-presidential nominees, whether or not such activities are conducted in conjunction with non-federal election activities; and

(iv) Generic voter drives either conducted by the committee itself or paid for by the committee and conducted by another entity, including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.

(2) *Use of party committee funds by other organizations.* When a state or local party committee pays for a generic voter drive conducted by another entity, such as a voter identification, voter registration, get-out-the-vote drive, or any other activity that urges the general public to register, vote or support candidates of a particular party or associated with a particular issue without mentioning a specific candidate, the costs of the voter drive shall be defrayed entirely from funds subject to the prohibitions and limitations of the Act.

(3) *Generic voter drives in exclusively non-federal elections.* State and local party committees in states that do not hold federal and non-federal elections in the same year may use funds that are not subject to the prohibitions and limitations of the Act to defray the costs of generic voter drive activity conducted in a calendar year in which no candidates for federal office appear on any primary, general, or special election ballot.

Dated: July 8, 1998.

Lee Ann Elliott,

Commissioner, Federal Election Commission.

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