

and application security management, system/application life cycle management, risk management, and contingency planning.

(5) IT function management and operations personnel shall receive training in computer security basics; management and implementation level training in security planning and system/application security management; and management and implementation level training in system/application life cycle management, risk management, and contingency planning.

(b) Provide the computer awareness material/exposure outlined in NIST guidance on computer security awareness and training to all new employees within 60 days of their appointment.

(c) Provide computer security refresher training for agency employees as frequently as determined necessary by the agency, based on the sensitivity of the information that the employees use or process.

(d) Provide training whenever there is a significant change in the agency information security environment or procedures or when an employee enters a new position that requires additional role-specific training.

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## FEDERAL ELECTION COMMISSION

### 11 CFR Part 106

[Notice 2003-16]

#### Party Committee Telephone Banks

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Election Commission requests comments on proposed changes to its rules regarding the allocation of political party committee expenditures for telephone bank communications made on behalf of a presidential candidate. The proposed rules would address the proper allocation of a party committee's expenditures for such communications that refer to presidential and vice-presidential nominees when the party's other candidates are referred to generically, but not by name. The amount allocated as an expenditure on behalf of, or a contribution to, the presidential nominee would be subject to the limitations and prohibitions of the Federal Election Campaign Act of 1971. The Commission has not made any final decisions on the revisions

proposed in this Notice. Further information is provided in the supplementary information that follows.

**DATES:** Comments must be received on or before September 25, 2003. If the Commission receives sufficient requests to testify, it will hold a hearing on these proposed rules on October 1, 2003, at 9:30 a.m. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

**ADDRESSES:** All comments should be addressed to Ms. Mai T. Dinh, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to [phone2003@fec.gov](mailto:phone2003@fec.gov) and must include the full name, electronic mail address and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219-3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to post public comments on its Web site within ten business days of the close of the comment period. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mai T. Dinh, Acting Assistant General Counsel, or Mr. Jonathan M. Levin, Senior Attorney, 999 E Street NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

In the months leading up to a presidential general election, party committees, or party committees in conjunction with a principal campaign committee of a presidential nominee, may conduct a phone bank to get out the vote ("GOTV") or otherwise promote the party and its candidates. Such phone banks may involve the reading of scripted messages that include a statement asking the person called specifically to vote, or get their family and friends out to vote, for the named presidential candidate and that then make a general promotional reference or

references to the party's other candidates. An example would be: "Please tell your family and friends to come out and vote for President John Doe and our great Party team." Given that no other Federal or non-Federal candidates are specifically mentioned, the question is whether the entire cost of the communication or only a portion of the cost should be attributed to the presidential candidate.

Current 11 CFR 106.1(a)(1) addresses the attribution of expenditures (including in-kind contributions, independent expenditures, and coordinated expenditures) for communications made on behalf of more than one clearly identified Federal candidate. It also addresses expenditures and disbursements on behalf of a combination of clearly identified Federal candidates and non-Federal candidates. In the case of communications other than fundraising communications, the expenditure is generally attributed to a candidate in accordance with the portion of the communication devoted to that candidate. For example, in a publication or broadcast communication, the attribution is determined by the space or time devoted to each candidate as compared to the space or time devoted to all candidates. Similarly, for a phone bank, the attribution is based on the number of questions or statements devoted to each candidate as compared to the total number of questions or statements devoted to all candidates.

Under one interpretation of section 106.1(a)(1), the disbursement for the political party phone bank described above would be 100 percent attributable to the presidential (and vice presidential) candidate because he or she would be the only candidate clearly identified. On the other hand, this section could be read to mandate an attribution of significantly less than fifty percent to the presidential candidate because the actual wording of the message emphasizes support for all the party's Federal and non-Federal candidates. To provide clear guidance as to the attribution of these types of phone banks, the Commission is proposing new 11 CFR 106.8, which is described below.

##### B. Proposed 11 CFR 106.8 Allocation of Political Party Committee Phone Banks That Refer to a Clearly Identified Presidential or Vice Presidential Nominee

The Commission proposes adding new section 106.8 to address phone banks conducted by national, State and local party committees on behalf of their presidential nominees. In presidential

election years, party committees conduct such phone banks to encourage voters to support the entire ticket. Although the specific mention of the presidential candidate provides something of value to the presidential candidate being promoted, it also provides the party with a benefit. In consideration of the fact that the presidential candidate is the only candidate identified, and balancing that fact with the use of the candidate's name for general party promotion purposes, the Commission seeks comment on two alternative approaches described below regarding phone bank expenses to be attributed to the presidential candidate.

Proposed 11 CFR 106.8(a) begins by stating the conditions under which the special attribution rule in proposed paragraph (b) would apply. First, the proposed rule would apply only if the provisions of 11 CFR 100.89 and 100.149 do not apply. They provide that, under specific conditions, the payment by a State and local party committee for voter registration and GOTV activities it conducts on behalf of a presidential or vice presidential nominee is exempt from the definitions of "contribution" and "expenditure." These sections provide an avenue for State and local party committees to spend on behalf of publicly financed presidential candidates without making a coordinated expenditure or an impermissible contribution. This exemption does not include payments for "any costs incurred in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising." 11 CFR 100.89(a) and 100.149(a). Phone banks are treated separately and qualify for the exemption when the phone banks are operated by volunteer workers (although the use of paid professionals to design the system, to develop calling instructions, and to train supervisors is permissible under the exemption). 11 CFR 100.89(e) and 100.149(e). Thus, the proposed rules in new 11 CFR 106.8 would not apply, and no amount would have to be attributed to the presidential candidate, if the phones are operated by volunteer workers and if the other conditions pertaining to the source of the funds used in 11 CFR 100.89 and 100.149 are satisfied.

Proposed paragraphs (a)(1) through (4) of section 106.8 would describe the communication that would be subject to the proposed rule. The communication would have to: refer to a clearly identified presidential or vice presidential nominee (proposed

paragraph (a)(1)); refer to no other clearly identified candidate (proposed paragraph (a)(2)); and refer generically to the other candidates of the presidential nominee's party without clearly identifying them (proposed paragraph (a)(3)). Generic references to "our great Republican team" or "our great Democratic ticket" would satisfy the latter requirement. Moreover, under proposed paragraph (a)(4), the communication must not be used as a means to solicit contributions, donations, or any funds from any person for any Federal or non-Federal candidate, or for any political committee or political organization, or any entity disbursing funds in connection with a Federal or non-Federal election. If such a solicitation were made, it would change the nature of the communication and may require a different determination as to the attribution of the party's spending for the communication among candidates or committees.

Proposed section 106.8(b) includes two alternatives that would establish the attribution of the party committee's payments for the phone bank. Alternative A would provide that fifty percent of the disbursement must be attributed to the presidential and vice presidential nominees, and the remaining fifty percent would not be attributable to any Federal or non-Federal candidate but must be paid solely with Federal funds. Alternative B would provide that 100 percent of the disbursement must be attributed to the presidential and vice presidential nominees. The Commission seeks comment on which of these two alternatives is preferable, or on whether the percentage should be based on the actual space or time used to refer to the presidential nominee or some other factor.

If the party committee pays for the entire cost of the phone bank mentioning a publicly funded general election candidate (as opposed to the assumption of some of the cost by the presidential candidate's principal campaign committee), the payment may be, in some cases, either a coordinated expenditure under 2 U.S.C. 441a(d) or an independent expenditure under 2 U.S.C. 431(17). In the case of a non-publicly funded general election candidate, it may be either an in-kind contribution to the candidate, or a coordinated or independent expenditure.

The Commission also notes that, unlike the exempt payments in 11 CFR 100.89 and 100.149, a State party committee would be able to use coordinated expenditures (under 2

U.S.C. 441a(d)) to cover phone bank communications subject to proposed 11 CFR 106.8 only if the national party committee has made a written assignment of a specific amount of its spending authority to the State committee in an amount sufficient to cover the expenditure. *See* 11 CFR 109.33(a). The district or local party committee may spend some of the amount authorized by the national to the State committee, subject to the control of the State committee, which ensures that the entire party organization in the State stays within the assigned limit. *See* 11 CFR 109.33(b). The Commission seeks comment on whether the proposed rule should refer to this requirement or whether it is understood that this proposed rule would not exempt a State, district, or local party committee from these requirements.

Barring the unlikely event that the phone bank will involve 500 or fewer calls, a message such as, "Please vote for President John Doe and our great Party team," would be a public communication that refers to a clearly identified Federal candidate and promotes that candidate. It would thus be a form of Federal election activity that must be paid for entirely with Federal funds, pursuant to 11 CFR 300.33(c)(1). *See* 11 CFR 100.24(b)(3), 100.26, and 100.28. Payments by a national party committee must be from Federal funds because such committees are prohibited from maintaining accounts that do not consist entirely of Federal funds. *See* 11 CFR 300.10(a)(1). Thus, under alternative A, the fifty percent that would not be attributed to the presidential nominee would have to be paid for entirely with Federal funds, and would not be allocable between Federal and non-Federal funds or Federal and Levin funds. Similarly, under Alternative B, the entire amount must be paid for with Federal funds.

### C. Additional Comments Sought

In addition to the request for comment as to national party committee assignment of its coordinated expenditure authority, the Commission seeks comments on several aspects of the proposed rule. Specifically, comment is sought on whether this attribution should apply only to phone banks or whether it should apply to other media such as broadcast or print media. The Commission also seeks comment on whether the specific condition in 11 CFR 100.89 and 100.149—that the party expenditures not be made from contributions designated for particular Federal candidates—should be included in the

proposed rule. See 2 U.S.C. 431(8)(B)(xi)(3) and (9)(B)(ix)(3); 11 CFR 100.89 and 100.149. Finally, the Commission seeks comment on whether proposed 11 CFR 106.8 should apply to candidates for the Senate and the House of Representatives as well as presidential candidates.

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

The attached proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities would be affected by these proposals, which apply only to committees of political parties. National, State and many local party committees of the two major political parties and other political committees are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions. The proposed rules are intended to simplify the determination as to the amount of a party committee expenditure that must be attributed to a presidential candidate in the case of certain telephone bank communications and to clarify what funding is permissible. Any increase in the cost of compliance that might result from these proposed rules would not be in an amount sufficient to cause a significant economic impact.

#### **List of Subjects in 11 CFR Part 106**

Campaign funds, Political committees and parties, Political candidates.

For the reasons set out in the preamble, the Federal Election Commission proposes to amend subchapter A of chapter 1 of title 11 of the *Code of Federal Regulations* as follows:

#### **PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES**

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

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

2. New section 106.8 would be added to read as follows:

#### **§ 106.8 Allocation of expenses for political party committee phone banks that refer to a clearly identified presidential or vice presidential nominee.**

(a) *Scope.* Except as provided in 11 CFR 100.89 and 100.149, this section applies to a phone bank conducted by a national, State, district, or local

committee or organization of a political party where—

(1) The communication refers to a clearly identified presidential or vice presidential nominee;

(2) The communication does not refer to any other clearly identified Federal or non-Federal candidate;

(3) The communication generically refers to other candidates of the presidential nominee's party without clearly identifying them; and

(4) The communication does not solicit a contribution, donation, or any other funds from any person.

#### **Alternative A**

(b) *Attribution.* Each expenditure for the phone bank described in paragraph (a) of this section (including an in-kind contribution, independent expenditure, and coordinated expenditure) shall be attributed as follows:

(1) Fifty percent of the disbursement for the phone bank is attributed to the presidential and vice presidential nominees; and

(2) The remaining fifty percent is not attributable to any other Federal or non-Federal candidate, but must be paid for entirely with Federal funds.

#### **Alternative B**

(b) *Attribution.* The entire amount of each expenditure for the phone bank described in paragraph (a) of this section (including an in-kind contribution, independent expenditure, and coordinated expenditure) shall be attributed to the presidential and vice presidential nominees.

Dated: August 29, 2003.

**Ellen L. Weintraub,**

*Chair, Federal Election Commission.*

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#### **FEDERAL ELECTION COMMISSION**

#### **11 CFR Parts 110, 113, 9004, and 9034**

**[Notice 2003-17]**

#### **Mailing Lists of Political Committees**

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Election Commission requests comments on proposed additions to its rules covering the sale, rental, and exchange of political committee mailing lists. The proposed rules address when the proceeds of a political committee's rental or sale of its mailing list, or an exchange of its mailing list with another entity, would be considered a contribution to that committee subject

to the limitations and prohibitions of the Federal Election Campaign Act of 1971. The proposed rules also address the personal use by a candidate of his or her authorized committee's mailing list. Finally, the proposed rules address the sale or rental of a mailing list by an authorized committee of a publicly funded presidential candidate. The Commission has not made any final decisions on any of the proposed revisions in this Notice. Further information is provided in the **SUPPLEMENTARY INFORMATION** that follows.

**DATES:** Comments must be received on or before September 25, 2003. If the Commission receives sufficient requests to testify, it will hold a hearing on these proposed rules on October 1, 2003, at 9:30 a.m. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

**ADDRESSES:** All comments should be addressed to Ms. Mai T. Dinh, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to [mailinglists@fec.gov](mailto:mailinglists@fec.gov) and must include the full name, electronic mail address and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219-3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to post public comments on its Web site within ten business days of the close of the comment period. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mai T. Dinh, Acting Assistant General Counsel, or Mr. Jonathan M. Levin, Senior Attorney, 999 E Street NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** One of the principal assets of many political committees is their mailing list. Political committees develop their mailing lists to ensure a high response rate from potential contributors. Several advisory