

**FEDERAL ELECTION COMMISSION****11 CFR Parts 100, 102, 104, 106, 108, 110, 114, 300, and 9034****[Notice 2002-7]****Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money****AGENCY:** Federal Election Commission.  
**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Election Commission seeks comments on proposed changes to its rules relating to funds raised, received, and spent by party committees under the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"). The proposed rules are based on the Bipartisan Campaign Reform Act of 2002 ("BCRA"), which adds to the Act new restrictions and prohibitions on the receipt, solicitation, and use of certain types of non-Federal funds, which are commonly referred to as "soft money." BCRA and the proposed rules prohibit national parties and Federal candidates and officeholders from raising non-Federal funds. They also generally require State, district, and local party committees to fund "Federal election activity," including voter registration and get-out-the-vote ("GOTV") drives, with money raised pursuant to the limitations, prohibitions, and reporting requirements of the Act, or with a combination of funds subject to various requirements of the Act and BCRA. They also address fundraising by Federal and non-Federal candidates and officeholders on behalf of political party committees, other candidates, and non-profit organizations.

BCRA's general effective date is November 6, 2002, the day following the November 2002 general election, although national party committees that received soft money prior to that date may use these funds for certain purposes before January 1, 2003. The changes to the Act's contribution limits take effect on January 1, 2003.

Further information is contained in the Supplementary Information that follows. Please note that the Commission has not made a final decision on any of these proposals.

**DATES:** Comments must be received on or before May 29, 2002. The Commission will hold a hearing on these proposed rules on June 4 and 5, 2002, 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. Rosemary C. Smith,

Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to [BCRAsoftmon@fec.gov](mailto:BCRAsoftmon@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. 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 hearing will be held in the Commission's ninth floor meeting room, 999 E St. NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rosemary C. Smith, Assistant General Counsel, or Attorneys Ruth Heilizer (definitions), Jonathan M. Levin (office buildings), Dawn Odrowski (national parties and tax-exempt organizations), Rita A. Reimer (Federal and State candidates), John C. Vergelli (Levin funds), or Anne A. Weissenborn (parties), 999 E Street NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The Bipartisan Campaign Reform Act of 2002 ("BCRA"), Public Law 107-155, 116 Stat. 81 (March 27, 2002), contains extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"), 2 U.S.C. 431 *et seq.* This is the first of a series of Notices of Proposed Rulemakings ("NPRM") the Commission will publish over the next several months in order to meet the rulemaking deadlines set out in BCRA.

This NPRM addresses BCRA's new limitations on party, candidate, and officeholder solicitation and use of non-Federal funds. Section 402 of BCRA establishes a 90-day deadline for the Commission to promulgate these rules. Since BCRA was signed into law on March 27, 2002, the 90-day deadline is June 25, 2002.

*Future NPRMs will address:* (1) Electioneering communications and issue ads; (2) coordinated and independent expenditures; (3) the so-called "millionaire's amendment," which increases contribution limits for congressional candidates facing self-financed candidates on a sliding scale, based on the amount of personal funds the opponent contributes to his or her

campaign; (4) the increase in contribution limits; and (5) other new and amended provisions, including contribution prohibitions and reporting. This last NPRM will address contributions by minors, foreign nationals, and U.S. nationals; inaugural committees; fraudulent solicitations; disclaimers; personal use of campaign funds; and civil penalties. BCRA's deadline for promulgation of these remaining rules is 270 days after the date of enactment, or December 22, 2002. The Commission also plans to address BCRA's impact on national nominating conventions in a separate rulemaking.

Because of the extremely tight deadline for promulgating these rules, the Commission must adhere to a shorter-than-usual timeline for receiving and considering public input on the proposed rules that follow. This schedule will be strictly adhered to. Comments on this NPRM must be received no later than May 29, 2002. Commenters who wish to testify at the June 4 and 5, 2002 public hearing must so indicate in their comments, also by May 29, 2002.

**Introduction**

The Act limits the amount that individuals can contribute 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. Contributions from national banks, 2 U.S.C. 441b(a); government contractors, 2 U.S.C. 441c; foreign nationals, 2 U.S.C. 441e; and minors, new 2 U.S.C. 441k, as enacted by BCRA; as well as contributions made in the name of another, 2 U.S.C. 441f; are also prohibited. These strictures regulate what is often referred to as "hard money," or Federal funds.

Some donations that do not meet the FECA hard money requirements, for example, corporate and labor organization general treasury contributions, may not be used for Federal elections, and are referred to as non-Federal funds.<sup>1</sup> Non-Federal funds

<sup>1</sup> Because the term "soft money" is used by different people to refer to a wide variety of funds under different circumstances, the Commission has decided to use the term "non-Federal funds" in the rules rather than the term "soft money." BCRA itself does not use the term except in the heading of Title I of BCRA and the headings within Title IV. Some donations that do not meet the Act's hard money requirements, for example, those from foreign nationals, national banks, and Federal corporations, may not be used at all. Nonetheless, the Commission seeks comment on whether use of the term "soft money" would in some instances be a better approach.

may not be used for the purpose of influencing any election for Federal office. Funds raised that are used by State or local parties or State or local candidates wholly on non-Federal elections may be governed by State or local law. Prior to BCRA's revisions, the FECA permitted national party committees, Federal candidates, and officeholders to raise money not subject to some of the Act's source limitations and prohibitions. Beginning November 6, 2002, under BCRA, national party committees "may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of this Act." 2 U.S.C. 441i(a).

BCRA also provides that State, district, and local political party committees must pay for "Federal election activities," which is a new term introduced and defined by BCRA, 2 U.S.C. 431(20), 441i(b)(1), with entirely Federal funds or, in some cases, a mixture of Federal funds and a new type of non-Federal funds, which the proposed rules call "Levin funds." These two provisions are related in that the latter is intended to prevent evasion of the former. A national political party committee may not evade the restrictions in BCRA by merely transferring its spending for Federal election activity to State, district, or local party committees. The State, district, and local party committees must spend Federal funds on these activities. See 148 Cong. Rec. H408-409 (daily ed. Feb. 13, 2002) (statement of Rep. Shays).

The "Levin Amendment" (named after Sen. Levin of Michigan who offered it) provides an exception or refinement to the requirement that State, district, and local party committees must spend only hard money for Federal election activities. The Levin Amendment provides that State, district, and local political party committees may use funds that do not meet all of the Act's limitations, prohibitions, and reporting requirements for a portion of certain Federal election activities if certain conditions are satisfied. See 2 U.S.C. 441i(b)(2)(A). The proposed regulations refer to these funds, which are a subset of non-Federal funds, as "Levin funds," a term which would be defined in the proposed regulations. BCRA does not permit national party committees, candidate committees, separate segregated funds, or nonconnected committees to raise or spend Levin funds.

A State, district, or local political party committee may spend under the Levin Amendment if the expenditure or disbursement is allocated between Federal funds and Levin funds. BCRA contemplates that the Commission will adopt regulations prescribing the allocation requirements. 2 U.S.C. 441i(b)(2)(A). See below. Under BCRA, Federal candidates and officeholders may not solicit or receive non-Federal funds in connection with a Federal election, and may raise only limited amounts in connection with non-Federal elections. 2 U.S.C. 441i(e)(1) and (2). These far-reaching amendments affect many other aspects of the Act and the Commission's rules. For example, the prohibition on Federal candidate and officeholder solicitation of non-Federal funds, and national party committees' solicitation or receipt of non-Federal funds, applies to convention committees, which are established by national committees under 11 CFR 9008.3(a). These statutory changes could apply to other entities as well. See 2 U.S.C. 441i(a)(2). As noted above, BCRA's impact on national nominating conventions will be addressed in a separate rulemaking. It also will be necessary to rewrite the Commission's allocation rules at 11 CFR part 106. See below.

The proposed rules are described and explained below. In several sections the Commission has identified specific questions, issues, or alternatives for which it seeks comments. In addition, the Commission welcomes comments that address issues not raised in this NPRM.

#### Scope, Effective Date, and Organization

The Commission proposes to prescribe new rules for non-Federal funds of political party committees. The bulk of these rules would be in 11 CFR part 300. Proposed 11 CFR 300.1 addresses the scope of new part 300, sets forth the effective date of the provisions contained in the new part, and outlines the organization of the new part. Specifically, proposed paragraph (a) of section 300.1 states that proposed new part 300 would implement changes to the FECA, enacted by Title I of BCRA. It also notes that nothing in part 300 is intended to alter the definitions, restrictions, liabilities, and obligations imposed by sections 431-455 of Title 2 of the United States Code or in the regulations prescribed thereunder in 11 CFR parts 100-116.

The effective date of BCRA, except where otherwise stated, is November 6, 2002. See 2 U.S.C. 431 note, section 402(a). Paragraph (b) of proposed section 300.1 states that part 300 would

take effect on November 6, 2002, except for the following: (1) Where otherwise stated in part 300; (2) subpart B of part 300 relating to State, district, and local party committees will not apply with respect to runoff elections, recounts, or election contests resulting from elections held prior to November 6, 2002; (3) the increase in individual contribution limits to State party committees as set forth in proposed 11 CFR 110.1(c)(5) will apply to contributions made on or after January 1, 2003, and (4) national parties must spend any remaining non-Federal funds received before November 6 and in their possession on that date before January 1, 2003, subject to the transition rules set forth in proposed 11 CFR 300.12.

Finally, paragraph (c) of section 300.1 indicates that part 300 would be organized into five subparts, with each subpart addressing a specific category of persons affected by BCRA. Specifically, subpart A of part 300 prescribes rules pertaining to national party committees; subpart B prescribes rules pertaining to State, district, and local party committees and organizations; subpart C addresses rules affecting certain tax-exempt organizations; subpart D prescribes rules pertaining to Federal candidates and Federal officeholders; and subpart E prescribes rules pertaining to State and local candidates. BCRA also requires changes in these parts of Title 11 of the *Code of Federal Regulations*, which are also addressed in this rulemaking.

#### Definitions

The proposed rules would amend an existing definition and add several new ones. Some of the new definitions would be added to current 11 CFR part 100 because they would have general applicability in Title 11 of the *Code of Federal Regulations*. The remaining new definitions would be added to proposed new 11 CFR part 300. The definitions are explained below.

##### 1. Proposed 11 CFR 100.24 Definition of "Federal Election Activity"

BCRA amends 2 U.S.C. 431 by adding a new term, "Federal election activity," which consists of certain activities that State and local committees of political parties must pay for with either Federal funds or a combination of Federal funds and Levin funds. As stated above, Levin funds are funds which are exempt from the restrictions and prohibitions of the Act, but which are limited, under BCRA, to \$10,000 per donor and which must comply with State law.

The proposed definition of Federal election activity, which would be incorporated into proposed new 11 CFR

100.24, tracks BCRA by including in Federal election activity the following activities when they occur in close proximity to, or in connection with, a Federal election: Voter registration; voter identification; GOTV drives; and public communications that refer to clearly identified Federal candidates, even if candidates for State and local offices are also mentioned. ("Generic campaign activities" are discussed below.)

With respect to "voter registration activity," which is addressed in proposed 11 CFR 100.24(a)(1), "special elections" are excluded, pursuant to BCRA. However, with regard to proposed 11 CFR 100.24(a)(2), which addresses other activities conducted in connection with an election, such as voter identification and GOTV activities, BCRA does not exclude "special elections." Therefore, under proposed 11 CFR 100.24(a)(2), voter identification and GOTV activities would constitute Federal election activity if conducted in connection with special elections.

Proposed 11 CFR 100.24(a)(2)(i) would set forth examples of "voter identification," such as activities designed to determine registered voters, likely voters, or voters indicating a preference for a candidate or political party. The Commission seeks comments as to whether those are appropriate examples of voter identification, or whether they are too broad or too narrow. Do efforts to identify potential voters for State or local candidates, without any mention of a Federal candidate, constitute Federal election activity? Should there be a *de minimis* level of voter identification activities related to Federal elections that would nonetheless not render certain activities "Federal election activities" under BCRA? For example, would a State committee's purchase of a list of voters from a vendor for the purpose of State fundraising constitute "Federal election activity"? Should "voter identification" be read in conjunction with "GOTV" to reach only those activities intended to identify voters for GOTV purposes? Should there be a defined time period that distinguishes "voter identification" from GOTV activities? For example, is an activity designed to identify supporters of a gubernatorial candidate "voter identification" if conducted several weeks or months before an election, but "GOTV" if conducted within a week of the election? What other examples of "voter identification" should be included in the regulations?

The Commission also notes that some examples of "voter identification," such as activities designed to determine

registered voters or likely voters, may sometimes be conducted on a nonpartisan basis. Nonpartisan activities intended to encourage individuals to vote or to register to vote appear to come within the definition of "Federal election activity" under BCRA. Nevertheless, should non-partisan GOTV drives be excluded from the definition of "Federal election activity" in 11 CFR 100.24? See 2 U.S.C. 431(9)(B)(ix). Is it appropriate to treat certain party or candidate-initiated or 501(c) activities as nonpartisan voter drives? If so, under what conditions?

Proposed 11 CFR 100.24(a)(2)(iii) contains the following examples of GOTV activities: Transporting voters to the polls; contacting voters on election day or shortly before to encourage voting, but without referring to any clearly identified candidate for Federal office; and distributing printed slate cards, sample ballots, palm cards, or other printed listing(s) of three or more candidates for any public office. The Commission seeks comments as to whether there should be a *de minimis* level of GOTV activities related to Federal elections that would nonetheless not render these activities "Federal election activities" under BCRA.

In addition, the Commission seeks comments concerning additional examples of GOTV activity for possible inclusion in the final version of this proposed rule. The Commission also seeks comments on whether printed slate cards, sample ballots, and palm cards should properly be considered GOTV activities or "public communications."

The Commission notes that, although slate cards, sample ballots, and printed listings of three or more candidates are exempted from the Act's definitions of "contribution" and "expenditure," (see 2 U.S.C. 431(8)(b)(v) and (9)(b)(iv)), they could be viewed as falling within the term "Federal election activities" under BCRA. Should they?

The Commission also notes that voter identification, GOTV, and generic campaign activity are only "Federal election activities" under BCRA when they are conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on the ballot.) The Commission seeks comments on how this requirement should be construed and implemented—specifically, during what period(s) of time should a Federal candidate be deemed to be on the ballot? Congress clearly intended to establish certain periods of time in

which a Federal candidate is not deemed to be on the ballot. How should the Commission proceed in effectuating Congress' intent?

The Commission notes that there are a variety of ways in which Federal candidates may qualify to have their names placed on the ballots of their States and that these processes are governed by State law. In addition, the method by which a candidate for Federal office obtains a position on the ballot is likely to differ for primaries and general elections. In some cases, one State political party may choose its candidate for Federal office before other State political parties choose their candidates. Should the Commission construe the statutory language "on the ballot" to encompass the period of time beginning on the earliest date that any Federal candidate could qualify for a position on the ballot according to the time periods specified in the applicable State law or should the time period begin on the day the filing period for Federal offices closes under State law? In the alternative, does this time period begin on January 1 of any Federal election year, that is, each even-numbered year? Or should the time period begin on the date that any individual has become a Federal candidate under the Act? See 2 U.S.C. 431(2) and 11 CFR 100.3(a)(1) through (4) regarding the definition of "candidate" for FECA purposes. In some States, most non-Federal elections are held in odd-numbered years. Should the Commission only exempt from "Federal election activity" that voter identification, GOTV, and generic campaign activity that occurs in such States in odd-numbered years?

Proposed 11 CFR 100.24(a)(3) follows new 2 U.S.C. 431(20) by providing that a public communication that refers to a clearly identified candidate for Federal office would constitute "Federal election activity" that must be paid for with Federal funds if the communication promotes, supports, attacks, or opposes any candidate for that Federal office. This is true even if a candidate for State or local office is also mentioned or identified. However, public communications that do not promote, support, attack, or oppose any Federal candidate, as well as certain contributions to State or local candidates, the costs of State, district, or local political conventions or similar meetings and conferences, and grassroots materials that refer only to non-Federal candidates would be specifically excluded from the definition of "Federal election activity." "Public communication" is defined in proposed 11 CFR 100.26, discussed

below. Thus, the definition of "Federal election activity" in proposed 11 CFR 100.24 and BCRA would extend beyond communications expressly advocating a vote for or against a candidate. Note that a proposed definition of "promote or support or attack or oppose" is set forth in proposed 11 CFR 300.2(l), which is discussed below.

BCRA also crafted 2 U.S.C. 431(20) to exempt from the definition of "Federal election activity" certain expenditures or disbursements by State, district, or local committees of political parties for certain activities which may be paid for with non-Federal funds. These activities are:

(1) Public communications that refer to a clearly identified candidate for State or local office, provided that the public communications are not voter registration activity, voter identification, generic campaign activity, or GOTV activity, as those terms are defined in proposed 11 CFR 100.24(a). This exception does not apply, for example, to a telephone bank on the day before an election where there is a federal candidate on the ballot and where GOTV phone calls are made to over 500 voters where the calls only refer to a State or local candidate (proposed 11 CFR 100.24(b)(1)).

(2) Contributions to candidates for State or local office, provided that the contributions are not for Federal election activities (proposed 11 CFR 100.24(b)(2)).

(3) The costs of State, district, or local political conventions, meetings or conferences (proposed 11 CFR 100.24(b)(3)).

(4) The costs of grassroots campaign materials, including buttons, bumper stickers, handbills, brochures, posters and yard signs, that name or depict no Federal candidate (proposed 11 CFR 100.24(b)(4)).

(5) Voter registration activity before or after the dates during which this activity becomes Federal election activity (proposed 11 CFR 100.24(b)(5)).

(6) GOTV and voter identification activities in elections in which no candidate for Federal office appears on the ballot (proposed 11 CFR 100.24(b)(6)).

The Commission also seeks comments concerning additional examples of "grassroots" activities.

## 2. Proposed 11 CFR 100.25 Definition of "Generic Campaign Activity"

Proposed section 100.25 contains the new statutory definition of "generic campaign activity," which is campaign activity that promotes a political party, and not a candidate for Federal office or for non-Federal office. The proposed

rules would add to the statutory definition those activities that oppose a political party without opposing specific candidates. Activities in opposition to a particular party or candidate may be construed as a form of promoting the other party or other candidates. Unlike "voter registration activity," as described in 11 CFR 100.24(a)(1), the Commission is proposing to interpret "generic campaign activity" to apply to special elections. In addition, the Commission seeks comment on the extent, if any, to which the exclusions for exempt activities in 11 CFR 100.7(b)(9), (15), (17) and 100.8(b)(8), (10), and (16), should apply to the definition of "generic campaign activity."

## 3. Proposed 11 CFR 100.26 Definition of "Public Communication"

BCRA amends 2 U.S.C. 431 by adding a new definition for the term "public communication." BCRA defines "public communication" to include communication by broadcast, cable, satellite, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising. In proposed 11 CFR 100.26, the Commission has not included the Internet as a form of "general public political advertising" because this provision of BCRA does not refer to the Internet. However, the Commission seeks comments as to whether the definition of "public communication" in proposed 11 CFR 100.26 should include or exclude communications provided through the use of World Wide Web sites available to the public, widely distributed electronic mail, or other uses of the Internet, such as "Webcasts" or the transmission of high-quality voice, graphics, or video advertisements.

A letter sent by Chairman Mason and Commissioner Smith requested that Congress clarify whether the term "public communication" was intended to encompass communications sent over the Internet. The letter noted that the definition included "any other form of general public political advertising," and stated: "The Commission has treated Internet web pages available to the public and widely-distributed e-mail as forms of 'general public political communication.' Thus, the new definition combined with the Commission's established interpretation of the FECA could command regulation of Internet and e-mail communications." See 148 Cong. Rec. S2340 (daily ed. March 22, 2002). Congress did not express agreement or disagreement with this interpretation.

## 4. Proposed 11 CFR 100.27 Definition of "Mass Mailing"

BCRA amends 2 U.S.C. 431 by adding a new definition of the term "mass mailing." This new definition, which is set out in proposed 11 CFR 100.27, would include any mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period.

The term "substantially similar" is also used in the Commission's disclaimer regulations at 11 CFR 110.11(a)(3). When these rules were adopted in 1995, the Commission explained that technological advances now permit what is basically the same communication to be personalized to include the recipient's name, occupation, geographic location, and similar variables. Communications are considered "substantially similar" for purposes of the disclaimer rules if they would be the same but for such individualization. See Explanation and Justification for Regulations on Communications Disclaimer Requirements, 60 FR 52069, 52070 (Oct. 5, 1995). The Commission is proposing that the term "substantially similar" as used in proposed 11 CFR 100.27 have the identical meaning, and is including language to this effect in the text of the rule. However, it welcomes comments as to whether some other definition of "substantially similar" would be more appropriate in this context.

## 5. Proposed 11 CFR 100.28 Definition of "Telephone Bank"

BCRA amends 2 U.S.C. 431 by adding a new definition of the term "telephone bank." This new definition, which is set out in proposed 11 CFR 100.28, would include more than 500 telephone calls of an identical or substantially similar nature within any 30-day period. The Commission is also proposing to address the meaning of "substantially similar" in the text of the rules. See discussion of proposed 11 CFR 100.27, above.

## 6. Proposed 11 CFR 300.2 Definitions

In proposed new section 300.2, the Commission seeks comments on draft definitions for the following terms: "501(c) organization that makes expenditures or disbursements in connection with a Federal election"; "agent"; "directly or indirectly establish, finance, maintain, or control"; "disbursement"; "donation"; "Federal account"; "Federal funds"; "Levin account"; "Levin funds"; "non-Federal account"; "non-Federal funds"; "promote, support, attack, or oppose";

and “to solicit or direct.” Several of these terms are adapted from existing rules.

Several key terms are discussed in further detail below. In addition, the Commission notes that proposed 11 CFR 300.2 defines several phrases, such as “directly or indirectly establish, finance, maintain, or control,” “to solicit or direct,” and “promote or support or attack or oppose,” rather than attempting to define the individual words in each phrase. Comments are sought on this approach, and on the clarity and scope of these definitions.

#### A. Definition of “Agent”

With respect to the definition of “agent,” the Commission seeks comments as to when an agent is acting “on behalf of” a principal. Additionally, the Commission seeks comments as to the circumstances under which a principal, such as a party committee or a candidate, would be held liable for the actions of an agent, such as an individual soliciting funds on behalf of the committee for a 501(c) organization. For example, must such an individual be a paid employee of the principal (*i.e.*, the candidate or officeholder) in order to qualify as an agent or would a vendor or independent consultant hired by a candidate or political committee qualify as an agent? Could a principal be held responsible for the actions of a volunteer who solicited impermissible funds if the volunteer was making solicitations pursuant to general written or oral instructions from the principal? Would a volunteer qualify as an agent if a principal had knowledge that a volunteer was making impermissible solicitations using the candidate’s name without being specifically directed by the principal to do so? In addition, should a principal only be held liable if an agent has actual, as opposed to apparent, authority to engage in the alleged actions at issue? Similarly, should a principal only be held liable if an agent has express, rather than implied, authority to act? Or should the Commission not attempt to define agency concepts in this part of the regulations, but instead leave the concepts undefined for purposes of BCRA and rely on common law definitions? Please note that the latter approach would depart from the approach taken regarding the definition of agency in the current independent expenditure rules. *See* 11 CFR 109.1(b)(5).

B. Definition of “Directly or Indirectly Establish, Finance, Maintain, or Control”

Proposed 11 CFR 300.2(c) would define “directly or indirectly establish, finance, maintain, or control,” a term that is used in several provisions of BCRA. (The phrase “established, financed, maintained, or controlled” already appears in the Commission’s “affiliation” regulation. *See* 2 U.S.C. 441a(a)(5), 11 CFR 100.5(g).) The term appears in BCRA in the context of State, district, and local political party committees (*see, e.g.*, 2 U.S.C. 441i(b)(2)(B)(iii)) and of Federal candidates and officeholders (*see, e.g.*, 2 U.S.C. 441i(e)(1)).

In BCRA, “directly or indirectly establish, finance, maintain, or control” is used in one context which seems to be akin to the current affiliation rule, that is, determining when ostensibly separate entities share a contribution limit. *See* 2 U.S.C. 441i(b)(2)(B)(iii). This usage would suggest that the existing affiliation regulation is helpful in understanding what is meant by “directly or indirectly establish, finance, maintain, or control.” The term, “directly or indirectly establish, finance, maintain, or control,” however, is also used in what seems to be a slightly different manner. For example, a State, district, or local committee of a political party must not use as “Levin funds” (a term that would also be defined in this section) any funds transferred to it from, among other persons, “any other State, local, or district committee of any State party, \* \* \* or \* \* \* any entity directly or indirectly established, financed, maintained, or controlled [by the State party committee].” 2 U.S.C. 441i(b)(2)(B)(iv)(I), (IV); *see also* 2 U.S.C. 441i(e)(1). This latter usage suggests a different purpose, namely preventing the proliferation of committees or organizations as a means of evading the Levin Amendment transfer prohibition, as well as other BCRA prohibitions.

The definition in proposed 11 CFR 300.2(c) would accommodate both of the usages of the term “directly or indirectly establish, finance, maintain, or control.” Proposed paragraph (c)(1) would begin by enumerating the persons to whom the regulation would apply, and would employ the shorthand “sponsor” to refer to these persons. Also in proposed paragraph (c)(1), the statutory concept of “indirect” establishment, financing, maintenance, or control would be addressed by including actions taken by a sponsor’s agents, and those taken on behalf of the

sponsor, or at the sponsor’s behest, within the definition.

Proposed paragraph (c)(1)(i) would provide that a sponsor “directly or indirectly establishes, finances, maintains, or controls” an entity if the sponsor and the entity would be considered affiliated under 11 CFR 100.5(g).

Given that the term, “directly or indirectly establish, finance, maintain, and control,” seems also to have a somewhat broader meaning in other contexts, proposed paragraphs (c)(1)(ii) through (c)(1)(vi) would go on to state other conditions in which a sponsor would “directly or indirectly establish, finance, maintain, or control” an entity. The Commission seeks comment on whether this term should be interpreted to extend beyond the current affiliation standard.

Proposed paragraph (c)(1)(ii) would focus on the establishment of entities by sponsors, and would extend to the conversion of an existing entity. Note that the proposed phrase, “alone or in combination with others,” would extend this provision to circumstances in which a sponsor (or its agent) was not solely responsible for the establishment of the entity, but worked with one or more other persons to establish the entity. The Commission seeks comment on whether this proposed paragraph should apply only to entities established by a sponsor after a given date (perhaps November 6, 2002, which is the effective date of BCRA), provided that the sponsor and the entity are not affiliated and do not satisfy the conditions in proposed paragraphs (c)(1)(iii) through (vi). In the alternative, should there be a rebuttable presumption that entities organized before a given date are not directly or indirectly established by a sponsor, provided that the sponsor and the entity are not affiliated and do not satisfy the conditions in proposed paragraphs (c)(1)(iii) through (vi)?

Proposed paragraph (c)(1)(iii) would address financing of an entity by a sponsor. It would state that providing a “significant amount of the entity’s funding at any point” would suffice to constitute “financing.” The proposed paragraph would enumerate three factors to be used in gauging the “significance” of funding. These factors would go to the magnitude, frequency, and duration of funding, and to how recently or distantly (in time) the funding has been provided. For example, a sponsor that had provided a sizable, but one-time contribution to an entity many years earlier would be able to assert that the one-time nature of the contribution, combined with its

remoteness in time, make this funding not “significant,” as the term is used here.

Proposed paragraph (c)(1)(iv) would address the maintenance of an entity by a sponsor. It would state that providing certain services to an entity would constitute “maintaining” the entity. The Commission seeks comment on whether there should be a *de minimis* exception to this provision. For example, if a party committee provides a *de minimis* amount of administrative services to a party-related organization, such as a governor’s association, should this activity be included in this provision?

Proposed paragraphs (c)(1)(v) and (c)(1)(vi) would go to control of an entity by a sponsor. Proposed paragraph (c)(1)(v) would focus on control, whether formal or informal, by the sponsor of solicitation of contributions and donations, and of making expenditures or disbursement, by the entity. Proposed paragraph (c)(1)(vi) would focus on more formal or structural decision-making relationships between the sponsor and the entity.

The Commission seeks comment on several aspects of these conditions. In proposed paragraph (c)(1)(ii), a sponsor would “directly or indirectly establish, finance, maintain, or control” an entity if the sponsor provided “any funding” for the formation or organization of the entity. The Commission seeks comment as to whether there should be a *de minimis* exception to the proposed “any funding” rule. Proposed paragraph (c)(1)(iii) would provide that a sponsor would “directly or indirectly establish, finance, maintain, and control” an entity if the sponsor “provides a significant amount of the entity’s funding at any point in the entity’s existence.” The Commission seeks comment about whether “at any point” should be replaced with a temporal limit (e.g., “within the past 5 years”).

Proposed paragraph (c)(2) would provide a mechanism for a sponsor or an entity to request a determination by the Commission through the advisory opinion process that the sponsor is no longer deemed to finance, maintain, or control an entity, even if it established the entity.

#### C. Definition of “Donation”

BCRA uses but does not define the term “donation.” The Commission proposes to define a “donation” in 11 CFR 300.2(e) as a payment, gift, subscription, loan, advance, deposit, or anything of value given to a non-Federal candidate or party committee, but not including a contribution or transfer. Comments are sought on specifically excluding from “donation” some of the

exemptions to “contribution” set forth in existing 11 CFR 100.7(b). Under this approach, the following would not be donations: Funds received solely for the purpose of determining whether an individual should become a Federal candidate (existing 11 CFR 100.7(b)(1)(i)); any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publisher (existing 11 CFR 100.7(b)(2)); individual volunteer services provided without compensation to Federal candidates and political committees (existing 11 CFR 100.7(b)(3)); the costs of providing the use of residential premises or of church or community rooms in the course of volunteering personal services to candidates or political parties (existing 11 CFR 100.7(b)(4) and (5)); the cost of invitations, food, and beverages in accordance with existing 11 CFR 100.7(b)(6); unreimbursed transportation and subsistence costs under existing 11 CFR 100.7(b)(7); and the staging of candidate debates in accordance with existing 11 CFR 100.7(b)(20) and (21). The Commission seeks comments concerning whether each of these activities should be expressly exempted from the definition of “donation.” What, if any, additional expenses should be excluded from the definition of “donation”? For example, are there particular activities that have been recognized through the Commission’s advisory opinion process as exempt from the definition of “contribution” (e.g., funds given to a candidate’s legal defense fund) that should be exempt from the definition of “donation” as well?

#### D. Definitions of “Levin Funds” and “Levin Accounts”

As explained above, BCRA’s Levin Amendment provides that State, district, and local political party committees may spend certain non-Federal funds for Federal election activities if those funds comply with certain prohibitions, limitations, and reporting requirements added to the Act by BCRA. 2 U.S.C. 441i(b)(2)(A)(ii). Thus, these funds are unlike Federal funds, which are fully subject to the Act’s requirements, and unlike “regular” non-Federal funds because they are subject to certain additional requirements under BCRA. Proposed paragraph (i) of proposed 11 CFR 300.2 would define these funds as “Levin funds,” with the intention that “Levin funds” become a definite, unambiguous reference to such funds. Note that the proposed definition contemplates that a State, district, or local political party

committee would be permitted to spend Levin funds on non-Federal activity or Federal election activity. As explained more thoroughly below in the discussion of proposed 11 CFR 300.32, the Commission seeks comment as to whether the Levin Amendment (2 U.S.C. 441i(b)(2)) should be interpreted to permit the spending of Levin funds for any purpose other than Federal election activity.

The Commission is considering requiring State, district, and local political party committees to set up a separate account to handle Levin funds if they raise and spend such funds. Proposed paragraph (h) of proposed 11 CFR 300.2 would define “Levin account” as these separate accounts for handling Levin funds, which would be established under proposed 11 CFR 300.30. Again, the intention is that the term would become an unambiguous reference to such accounts. The Commission seeks comment as to whether a requirement for mandatory Levin accounts would be more or less burdensome than the alternative of allowing party committees to deposit and spend Levin funds from any non-Federal account. The alternative approach would include a requirement that the committee must be able to show by a reasonable accounting method that the non-Federal portion of an expenditure for Federal election activities under the Levin Amendment (*see* 2 U.S.C. 441i(b)(2)(A)) was comprised of lawful Levin funds.

#### E. Definition of “Promote or Support or Attack or Oppose”

BCRA uses the terms, “promote,” “support,” “attack,” and “oppose” in both the Levin Amendment and elsewhere, but does not define these terms. The proposed rules at 11 CFR 300.2(J) include a definition, which incorporates the concept of “unmistakably and unambiguously” encouraging actions to elect or defeat a clearly identified candidate. *Cf. Buckley v. Valeo*, 424 U.S. 1, 43–44 (1976) (restricting the reach of former 18 U.S.C. 608(e)’s “clearly identified” to “an explicit and unambiguous reference to the candidate.”) The Commission has also included language in section 300.2(J) from its existing express advocacy regulations, 11 CFR 100.22(a) and (b), but has broadened the scope of these provisions in order to effectuate BCRA’s intention of enlarging the scope of regulated communications. The Commission seeks comments as to whether its proposed definition is too broad or too narrow, and why. Specifically, the Commission seeks

comments as to what definition is most likely to survive Constitutional scrutiny.

#### F. Definition of "To Solicit or Direct"

Lastly, proposed 11 CFR 300.2(m) contains a definition of "to solicit or direct" a contribution or donation. The draft definition would include a request, suggestion, or recommendation to make a contribution or donation, including those made through a conduit or intermediary. However, the definition does not construe advice or guidance as to applicable laws to constitute a "solicitation." The Commission seeks comments as to how the concept of "solicitation" should be applied to a series of conversations which, taken together, constitute a request for contributions or donations, but which do not do so individually. Comment is also sought as to whether the proposed definition is too broad or narrow, as well as whether the term "direct" in BCRA should be interpreted to follow the earmarking rules regarding contributions directed through a conduit or intermediary under 2 U.S.C. 441a(a)(8). Comment is also sought as to whether the passive providing of information in response to an unsolicited request for information should be specifically excluded from this definition.

#### National Party Committees

BCRA prohibits national party committees from raising and spending non-Federal funds, that is, funds that are not subject to the prohibitions, limitations, and reporting requirements of the Act. *See* 2 U.S.C. 441i(a). In explaining the purpose of this prohibition, BCRA co-sponsor, Congressman Shays, stated: "The purpose of these provisions is simple: to put the national parties entirely out of the soft money business." According to Congressman Shays, the corrupting dangers of funds raised outside the Act's prohibitions, limitations, and reporting requirements is present in the funding of national parties given that they operate at the national level and "are inextricably intertwined with Federal officeholders and candidates, who raise money for them \* \* \*" 148 Cong. Rec. H408-409 (daily ed. February 13, 2002) (statement of Rep. Shays).

The Commission is proposing to place the regulations that address this prohibition in a new part of the Code of Federal Regulations, 11 CFR part 300, subpart A. In addition to proposing this new subpart, the Commission is also proposing to amend current 11 CFR 102.5 to conform with BCRA's prohibition on national party committees and Federal candidates and

officeholders from raising and spending non-Federal funds.

#### 1. Proposed 11 CFR 300.10 General Prohibitions

The proposed rules at 11 CFR 300.10 track the language of BCRA in prohibiting national party committees from soliciting, receiving, or directing to another person "a contribution, donation, or transfer of funds or any other thing of value," or spending funds that are not subject to the Act's prohibitions, limitations, and reporting requirements. Accordingly, national party committees would no longer be able to accept funds from corporations or labor organizations or funds from individuals and others that exceed the limitations of the Act. Further, all expenditures and disbursements made by a national party committee, including donations to State and local candidates and donations or transfers to State parties, would be made with Federal funds.

The national party ban on raising and spending non-Federal funds has widespread application. BCRA expressly provides that the prohibition on raising and spending non-Federal funds also applies to the national party congressional committees (currently, the Democratic Senatorial Campaign Committee, the National Republican Senatorial Committee, the Democratic Congressional Campaign Committee, and the National Republican Congressional Committee), to officers and agents acting on behalf of a national party committee or a national party congressional committee, and to any entities directly or indirectly established, financed, maintained, or controlled by either. 2 U.S.C. 441i(a)(1) and (2). "The provision is intended to be comprehensive at the national party level. Simply put, the national parties and anyone operating on behalf of them are not to raise or spend nor [sic] to direct or control soft money." 148 Cong. Rec. H408-409 (daily ed. February 13, 2002) (statement of Rep. Shays).

The proposed rules track the statutory language. *See* proposed 11 CFR 300.10(a) and (c). Consequently, Federal candidates or Federal officeholders, or anyone else acting on behalf of a national party committee would not be able to raise or spend non-Federal funds or direct them to other persons. Similarly, party-created entities such as convention committees, which are established by a national party committee in accordance with 11 CFR 9008.3(a)(2) to conduct the daily operations of a party's national nominating convention, would not be able to raise or spend, or direct to other

persons, funds from corporations or labor organizations, or funds from individuals or other entities in amounts that exceed the Act's contribution limitations. In a subsequent rulemaking, the Commission will seek comment on whether BCRA bans national party committees, and their officers and agents, from directing non-Federal funds to a host committee in light of the statutory language that they are not permitted to direct non-Federal funds to other persons. *See* 2 U.S.C. 441i(a)(1).

The proposed rules also make clear that national parties cannot raise, spend, or direct to another person Levin funds. *See* proposed 11 CFR 300.10(a)(3). The Commission seeks comments on whether the rules should contain specific examples of "entities directly or indirectly established, maintained, financed, or controlled by a national party committee," and if so, what entities should be included.

#### 2. Proposed 11 CFR 300.11 Prohibition on National Party Fundraising for Certain Tax-Exempt Organizations

In addition to prohibiting national parties from raising and spending non-Federal funds, BCRA prohibits national party committees, their officers and agents, and entities directly or indirectly established, financed, maintained, or controlled by them from raising funds for, or making or directing donations to, certain tax-exempt organizations. 2 U.S.C. 441i(d)(1). BCRA's prohibition on this type of donor and fundraising activity extends only to tax-exempt organizations with a political purpose or that conduct activities in connection with a Federal election.

Specifically, the party fundraising ban extends to organizations exempt from taxation under 26 U.S.C. 501(c) that "[make] expenditures or disbursements in connection with an election for Federal office (including expenditures or disbursements for Federal election activity)." 2 U.S.C. 441i(d)(1). (Organizations formed under 26 U.S.C. 501(c) are referred to as "501(c) organizations" below.) The ban also extends to political organizations exempt from taxation under 26 U.S.C. 527. These entities are defined in the Internal Revenue Code as parties, committees, associations, funds, or other organizations organized and operated primarily to directly or indirectly accept contributions and make expenditures for the "exempt function" of influencing or attempting to influence the selection, nomination, election or appointment of an individual to a Federal, State, or local public office, political organization office, or election of Presidential and

Vice Presidential electors. 26 U.S.C. 527(e)(1) and (2). BCRA excludes certain section 527 organizations from the prohibition: Political committees, State, district, and local party committees and the authorized committees of State and local candidates.

Again, the proposed rules track the statute. See proposed 11 CFR 300.11. A section 501(c) organization that "makes expenditures or disbursements in connection with a Federal election" is defined as an organization that operates, supports, finances, or controls a political committee, as defined under the Act, makes expenditures and disbursements in connection with Federal election activity, finances voter registration at any time, or finances voter guides, candidate surveys and candidate questionnaires that refer to one or more Federal candidates. See proposed 11 CFR 300.2(a). As explained above, the definition of "Federal election activity" would generally follow the statutory definition of that term. See proposed 11 CFR 100.24. This ban on party fundraising for certain tax-exempt organizations would ensure that national party committees could not direct non-Federal funds they formerly raised themselves to other organizations that engage in election activity that could directly or indirectly support Federal candidates.

The Commission requests comment on whether any other types of disbursements and expenditures by 501(c) organizations should bring those organizations within the proposed 11 CFR 300.12 prohibition and whether the prohibition should contain a temporal requirement. For example, should the prohibition encompass a 501(c) organization that has made disbursements and expenditures in connection with a Federal election at any time in the past, within the past three election cycles, within the past three years, or within some other time frame? The Commission also seeks comments on whether the rules should include additional guidance as to how a national party committee, or anyone else, could determine whether a particular 501(c) organization falls within the prohibition.

Comments are also sought as to whether a safe harbor provision should be provided for a national party committee that takes certain actions before fundraising for, or donating to, a 501(c) organization to determine that the organization does not engage in the election activity described? Examples of such actions could include: (1) A national party obtains a 501(c) organization's publicly available application for tax-exempt status or

annual Form 990 tax returns and determines from that information that the organization has not reported making, or indicated plans to make, expenditures or disbursements in connection with a Federal election; or (2) with respect to future activity by a 501(c) organization or an organization that has applied for, but not yet obtained, tax-exempt status, obtains a certification from the organization indicating that it does not engage in or plan to engage in the type of election activity described.

Finally, the Commission seeks comment on what it means for a national party to "direct donations." Pursuant to proposed 11 CFR 300.2(m), "to direct" a donation would mean to request, suggest, or recommend that another person donate something of value to a section 501(c) or section 527 organization. So construed, could a national party committee or its agent respond to an unsolicited request for information about organizations that share a party's political, social, or philosophical goals?

Please note that the proposed section 300.11 prohibition on national party fundraising for, and donating to, certain tax exempt organizations would extend to a broader group than the prohibition in proposed section 300.10 on non-Federal fundraising by national party committees. Both 300.10 and 300.11 apply to national party and national congressional committees, officers and agents acting on behalf of them, and entities indirectly or directly established, financed, maintained, or controlled by them. In accordance with the statute, the 300.11 prohibition would also apply to officers and agents acting on behalf of entities directly or indirectly established, financed, maintained, or controlled by national party and national congressional campaign committees, and to entities directly or indirectly established, financed, maintained, or controlled by an agent of national party or congressional campaign committees. As is the case for the proposed 11 CFR 300.10 prohibition, the Commission seeks comments on whether the final rules should provide examples of entities directly or indirectly established, financed, maintained, or controlled by an agent of national party or congressional campaign committees, as well as examples of officers and agents acting on behalf of them and of entities directly or indirectly established, financed, maintained, or controlled by an agent of national party committees or congressional campaign committees.

### 3. Proposed 11 CFR 300.12 Transition Rules

BCRA's prohibitions on non-Federal funds raised and spent by national parties become effective on November 6, 2002. Accordingly, through November 5, 2002, a national party can use funds in non-Federal accounts in any way permissible under current law. Beginning on November 6, 2002, national parties can no longer accept non-Federal funds. Non-Federal funds that remain in a national party's possession after the November 5, 2002 general election are covered by BCRA's transition rules. See 2 U.S.C. 431 note, section 402(b)(2). Under these rules, non-Federal funds received by a national party before November 6, 2002 must be used before January 1, 2003 solely to: (1) Retire outstanding non-Federal debts or non-Federal obligations incurred solely in connection with an election held before November 6, 2002; or (2) to pay non-Federal expenses or retire outstanding non-Federal debts or obligations incurred solely in connection with any run-off election, recount, or election contest resulting from an election held prior to November 6, 2002. See 2 U.S.C. 431 note, section 402(b)(2)(B)(i) and (ii). These remaining non-Federal funds could not be used for building fund expenses or for outlays that would qualify as "expenditures" under the Act. Non-Federal funds contained in national party building fund accounts are treated separately and are described below. Non-Federal funds of State and local party committees would be covered by proposed 11 CFR part 300, subpart B.

The proposed transition rules governing the use of non-Federal funds remaining in a national party's possession, other than non-Federal funds contained in building funds, are set forth in 11 CFR 300.12(a) through (c). The proposed rules track the statutory language. In addition, the proposed rules would also indicate that current allocation regulations applicable to national party non-Federal accounts will remain in effect during the transition period. See proposed 11 CFR 300.12(d).

BCRA appears to restrict the use of excess non-Federal funds by national party committees to the specific purposes described above. It does not address what happens if national party committees have any non-Federal funds remaining after they have disbursed funds for those purposes. The Commission seeks comments as to whether any funds remaining may be disgorged to the United States Treasury or to a charitable organization or

whether they may be used in any other way.

BCRA treats non-Federal funds contained in national party building fund accounts more stringently. Under current law, funds in a national party building fund account can be used only for the purchase or construction of the national party committees' office building or facility. Beginning November 6, 2002, however, any funds remaining in a national party building fund account cannot be used for any building fund purposes. See 2 U.S.C. 431 note, 402(b)(2)(B)(iii). Hence, the proposed 11 CFR 300.12(e) would require any funds on deposit in such accounts on November 6, 2002 to be either disgorged to the United States Treasury or donated to an organization described in 26 U.S.C. 170(c) no later than December 31, 2002.

#### 4. Proposed 11 CFR 300.13 Reporting

BCRA requires national party committees, including national congressional campaign committees, and any subordinate committee of either, to report all receipts and disbursements during a reporting period. 2 U.S.C. 434(e). The proposed rules track the statutory language. See proposed 11 CFR 300.13(a). The Commission seeks comments on whether this provision is intended to require reporting by existing entities that currently are not required to report, and if so, the identification of such entities.

The proposed rules would also require national party committees to file termination reports for their non-Federal accounts to disclose the disposition of all non-Federal funds. See proposed 11 CFR 300.13(b). Proposed 11 CFR 300.13(c) identifies the current reporting regulations applicable to non-Federal accounts, including building funds, which will remain in effect to accomplish this.

#### 5. Effect on Joint Fundraising Rules

The ban on national party non-Federal fundraising would affect the Commission's joint fundraising rules, found at 11 CFR 102.17 (FECA) and 11 CFR 9034.8 (Presidential Primary Matching Payment Act). The Commission is, therefore, proposing to add introductory language to each of these sections, advising readers that "[n]othing in this section shall permit any person to solicit, receive, direct, transfer, or spend" any non-Federal funds prohibited under 11 CFR part 300.

#### State, District, and Local Party Committee, and Organizations

While BCRA completely prohibits national party committees from receiving, soliciting, using, and transferring non-Federal funds after November 5, 2002, State, district, and local party committees and organizations may continue to solicit and use non-Federal funds, consistent with State law, for certain purposes. 2 U.S.C. 441i(b). Proposed 11 CFR part 300, subpart B, which is explained in more detail below, would implement the new statutory provisions governing these non-Federal funds that apply to State, district, and local party committees and party organizations that are not political committees under the FECA.

#### 1. Proposed Revisions to 11 CFR 100.14 State, District, or Local Committee of a Political Party

The Levin Amendment, as set out in 2 U.S.C. 441i(b)(2), refers to "State, district, and local committees of a political party." The Commission's regulations already define "State committee" and "subordinate committee," and "party committee." 11 CFR 100.14, 100.5(e)(4); see also 2 U.S.C. 431(15). The proposed rules that follow would amend section 100.14 to conform with the Levin Amendment, and to harmonize sections 11 CFR 100.14 and 100.5(e)(4).

In proposed paragraph (a), status as a State committee would be determined by reference to the party by-laws or State law, with an eye to limiting the definition to organizations that are part of "the official party structure." This change would create a parallel with the current 11 CFR 100.5(e)(4), and would allow the proposed amended regulation to cover those States in which party committee status is a matter of State law and those in which it is a matter of party by-laws. There would also be a grammatical correction.

In proposed paragraph (b), there would be, in addition to a grammatical correction, the same change with regard to "official party structure" as in proposed paragraph (a), and the addition of the phrase, "as determined by the Commission," to the end of the paragraph. This added language would standardize the treatment of "State committees" and "subordinate committees" in the section (existing paragraph (a) already includes this statutory phrase). The added language would also give the Commission the necessary authority and flexibility to ensure that district and local

committees are treated consistently and fairly.

Proposed paragraph (c) would be a new provision defining "district or local committee." This proposed definition would parallel proposed paragraph (a) but for political subdivisions below the State level, and would encompass those political party committees that do not necessarily operate formally under the "control or direction" of the State party committee. The key criterion for determining status as a district or local party committee would again be "the official party structure," whether that is a matter of State law or the party's by-laws.

#### 2. Proposed Revisions to 11 CFR 106.5

The creation of a new part 300 to cover all aspects of party committee activity has rendered considerable portions of present section 106.5 either outdated or duplicative. As presently constituted, the proposed revision of this section will state in broad terms the general principles that after December 31, 2002, (1) national party committees are no longer permitted to raise and spend non-Federal funds, and thus are unable to allocate expenses between Federal and non-Federal accounts, and (2) that State, district, and local party committees that make expenditures and disbursements in connection with both Federal and non-Federal elections must either use only Federal funds for these purposes or must establish separate accounts and allocate expenditures between or among those accounts pursuant to the requirements of part 300. References to Levin activities and accounts have been added and references to specific sub-sections of part 300 are included in the draft revisions.

Although all references to "exempt activities" have been dropped from section 106.5, comments are solicited with regard to the relationship of such activities, as defined by 11 CFR 100.7(b)(9), (15) and (17) and 11 CFR 100.8(b)(10), (16) and (18), to the concept of "Federal election activity" in BCRA. Do these exempt activities remain separate allocable categories of State, district, and local party expenditures, or are they subsumed within "voter registration," "voter identification," "get-out-the vote," and "generic campaign activities" now included in what are termed "Levin activities" in the proposed regulations? Would voter registration activity outside the time frame of 120 or fewer days before an election be an example of remaining "exempt activity?" Would solely volunteer participation in the distribution of campaign materials take

such activity out of "Levin activity" for purposes of the kinds of funds that would be permissible to make such expenditures?

As discussed below, allocation accounts might be retained as they appear at present section 106.5.

### 3. Proposed 11 CFR 300.30 Accounts

The Commission is considering whether or not to require State, district, and local party committees to maintain three separate accounts. These would include a Federal account to be used for both Federal and mixed Federal and non-Federal activities; a second account, known as a Levin account, to be used to meet Levin activities, i.e., certain costs of voter registration within a fixed time period, voter identification, GOTV, and generic campaign activity pursuant to proposed 11 CFR 300.32; and a third account to be used for State, district, and/or local activities. The perceived need for these three separate accounts is based upon BCRA's apparent separation of State, district, and local party campaign activity into three distinct categories for which there are three distinct sets of conditions as to the funds that may be used to pay for each type of activity.

Consequently, the proposed rules in this section have been written to require that State, district, and local party committees maintain these three separate accounts. Comments are sought, however, as to whether, in the alternative, accounting procedures designed to track Levin receipts, expenditures, and disbursements could be adequate for purposes of enforcing BCRA with respect to these types of Federal election activities. Comments are also sought as to whether the requirement of a third account would serve as an unnecessary administrative burden or would it in fact create an accounting aid for the committees affected? Would it be more appropriate to leave to each committee the decision of whether or not to set up a separate Levin account? Would it be reasonable to require State party committees to maintain a separate Levin account, but only to recommend that district and local party committees do the same? Would three separate accounts promote greater transparency?

The proposed regulations in section 300.30(a)(4) require that, in order for contributions to be deposited into a State, district, or local committee's Federal account, either the solicitation of the contributions must expressly state the committee's intent to use the contributions for Federal elections, or the solicitation must expressly state that only permissible contributions can be

accepted into the Federal account, or the contributor must expressly designate the contribution for use in Federal elections. The Commission would presume that all contributions that meet these requirements, and are within the contribution limitations and prohibitions of the Act, may be deposited into the Federal account.

The proposed regulations in section 300.30(a)(8) state that Federal funds may be used for non-Federal election activities, provided that the contributors of the Federal funds have been informed that their contributions would be subject to the limitations and prohibitions of the Act and provided that the disbursements are reported pursuant to section 300.36. (*See, e.g.*, Advisory Opinion 2000-24 in which the Commission found the use of a non-Federal account to be permissive, not mandatory. *See also* the Explanation and Justification for revisions of the Commission's allocation regulations at 55 FR 26058 (June 26, 1990) and at 57 FR 8990, 8991 (March 13, 1992)).

The proposed regulations at section 300.30(b) provide that a State, district, and local committee would be permitted to deposit into its Levin account only those donations solicited and received for that account pursuant to proposed 11 CFR 300.31, and would have to use this account to make disbursements and expenditures only for the activities permitted by proposed 11 CFR 300.32 or for other, non-Federal activity permitted by State law. Comments are sought on whether this permission to use Levin funds for non-Federal activities is in keeping with the intent of BCRA.

In order for donations to be placed in the Levin account, either the solicitations for the donations would have to expressly state that donations will be subject to the special limitations and prohibitions of section 300.31, or there would have to be an express designation by the donors to the Levin account.

The proposed regulations in 11 CFR 300.30(c) would clarify that State, district, and local party committees would also be able to maintain a non-Federal account to be used for State, district, or local election activities.

The proposed regulations in section 300.30(a)(6) would continue the Commission's well-established requirement that State, district, and local party committees make all allocable expenditures and disbursements from their Federal accounts. Transfers into the Federal account from a non-Federal account of the non-Federal portions of allocable disbursements and expenditures would be permitted only within a specified

period of time which is set out in 11 CFR 300.34. The same approach and time frame are being proposed for Levin activities with regard to the payment of non-Federal portions of Levin expenses.

As an alternative to using the Federal account for all Federal and mixed expenditures, the Commission could also continue to permit, but not require, State, district, and local party committees to establish separate allocation accounts for purposes of making allocated expenditures for administrative and/or Levin expenses. Comments are sought on whether allocation accounts should still be permitted and whether there should be a second, separate Levin allocation account for use in financing Levin activities.

### 4. Proposed 11 CFR 300.31 Receipt of Levin Funds

BCRA places several restrictions on how State, district, and local political party committees raise Levin funds. Proposed 11 CFR 300.31 would implement these restrictions. Proposed paragraph (a) would state as a general proposition a key point in the statute: a State, district, or local political party committee that spends Levin funds must raise those funds solely by itself. 2 U.S.C. 441i(b)(2)(B)(iv).

Proposed 300.31(b) would elaborate on the statutory requirement that Levin funds must be raised from donations that comply with the laws of the State in which the State, district, or local party committee is organized. 2 U.S.C. 441i(b)(2)(B)(iii). More specifically, proposed paragraph (c) would clarify the status of donations from sources that are permitted under State law, but prohibited by the Act. A prime example is donations from corporations and labor organizations. Under Section 441b of the Act, "[i]t is unlawful \* \* \* for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election" for Federal office. 2 U.S.C. 441b(a). Under the campaign finance laws of several States, however, donations by corporations or labor organizations to political party committees are legal. Proposed 300.31(c) would clarify that in such States, a political party committee may solicit and accept donations of Levin funds from corporations and labor organizations, subject to the other conditions of the Act. (Of course, if donations from corporations or labor organizations to a political party committee are illegal in a State, political party committees in that State would not be able to accept Levin fund donations from those sources.)

Proposed paragraph (d) would address amount limitations on donations of Levin funds to a State, district, or local party committee. The Levin Amendment places a \$10,000 per calendar year per donor limitation on donations to a State, district, and local political party committee intended for use as Levin funds. 2 U.S.C. 441i(b)(2)(B)(iii). Proposed paragraph (d)(1) would clarify that this is an aggregate limit per recipient committee (i.e., the aggregate limit applies separately to each party committee). See discussion of proposed 11 CFR 300.31(d)(3), below. The amount limitation applies to a person, including "any person established, financed, maintained, or controlled by such person." The Commission seeks comment on whether its current "affiliation" regulation (11 CFR 100.5(g)) would appropriately determine whether a person is "established, financed, maintained, or controlled," within the meaning of this proposed paragraph.

Proposed paragraph (d)(2) would address those cases where State law generally imposes an amount limitation on donations to a State, district, or local party committee that differs from the amount limitation in 2 U.S.C. 441i(b)(2)(B)(iii) and proposed paragraph (d)(1). Proposed paragraph (d)(2) would attempt to strike a balance between respect for State law and protecting the integrity of the Levin Amendment amount limitation. It would make clear that lower State law amount limitations control over the amount limitation in the Levin Amendment, but that the Levin Amendment amount limitation would control where State law amount limitations exceed the limitation in proposed paragraph (d)(1).

A question may arise as to whether State, district, and local committees of the same political party would be affiliated for purposes of applying the donation amount limitation in proposed paragraph (d)(1). See generally 11 CFR 110.3. Proposed paragraph (d)(3) addresses this issue. The proposed paragraph would clarify that such committees are not considered affiliated *only* for the purpose of determining compliance with proposed paragraph (d)(1). See 148 Cong. Rec. H410 (daily ed. Feb. 13, 2002) (statement of Rep. Shays).

The Levin Amendment restricts the manner in which State, district, and local political party committees may raise Levin funds. Proposed paragraph (e) would restate these restrictions, clarifying that the Commission's joint fundraising regulation, 11 CFR 102.17,

does not otherwise sanction this activity. Proposed paragraph (f) would operate similarly in implementing the Levin Amendment's prohibition against joint fundraising of Levin funds by more than one State, district, or local committee of a political party, including such parties from more than one State. The final sentence of proposed paragraph (f) would clarify that the mere use of common vendors by two or more State, district, or local political party committees would not in and of itself constitute joint fundraising within the meaning of the proposed paragraph.

#### 5. Proposed 11 CFR 300.32 Expenditures and Disbursements

Proposed 11 CFR part 300, subpart B would encompass political party committee expenditures and disbursements of Federal funds and of Levin funds. Proposed 11 CFR 300.32 would address both kinds of spending, and would clarify that BCRA does not affect spending of non-Federal funds for State or local political activity.

Proposed paragraph (a)(1) would clarify that spending by a State, district, or local political party committee "for the purpose of influencing" a Federal election (see 11 CFR 100.8) must use Federal funds; that is, nothing in BCRA changes the existing requirements for that type of spending. See 148 Cong. Rec. H409 (daily ed. February 13, 2002) (statement of Rep. Shays). In addition, this proposed paragraph would require that an association or similar group of candidates for State or local office, or an association of State or local officeholders, would have to make expenditures for Federal election activity solely with Federal funds. Comments are sought about whether or not this term should be further defined in the proposed regulations, and if so, about examples of such associations or groups to include in the regulations. Proposed paragraph (a)(2) would make clear that the general rule in BCRA is that a State, district, or local political party committee spending on Federal election activity must use Federal funds for that spending, except as provided in the Levin Amendment. 2 U.S.C. 441i(b)(1).

The proposed rules interpret BCRA as requiring that local party organizations that do not qualify as political committees are nonetheless subject to the requirement to use Federal funds for Federal election activity. (See also proposed 11 CFR 300.36(a) regarding recordkeeping for such local party organizations.) The Commission seeks comment on this interpretation and whether, alternatively, use of the term "committee" in 2 U.S.C. 441i(b)(1)

should be read to exclude local party organizations which do not otherwise qualify as political committees under 2 U.S.C. 431(4).

Proposed paragraphs (a)(3) and (a)(4) would address the costs of fundraising, providing that a State, district, or local committee of a political party must use exclusively Federal funds to pay for all costs of raising funds for its Federal account and its Levin account. See 2 U.S.C. 441i(c). The Commission seeks comment on this interpretation of section 441i(c) with regard to Levin funds. In particular, the Commission seeks comment on (1) whether proposed paragraph (a)(4) could be limited to the direct costs (see current 11 CFR 106.5(a)(2)(ii)) of raising Levin funds; and (2) whether the costs of fundraising for Levin funds could be allocated between a party committee's Federal and non-Federal accounts under the "funds received" method. See current 11 CFR 106.5(f). Comments are also sought as to whether, generally, greater specificity should be provided in proposed section 300.32 as to the nature of fundraising costs in this section.

Proposed paragraph (b) would list the types of activities for which a State, district, or local political party committee may spend Levin funds in accordance with this proposed part. Proposed paragraph (b)(1) would spell out expressly the two kinds of Federal election activity for which Levin funds may be spent, see 2 U.S.C. 441i(b)(2)(A), and provide that such spending must be made subject to the conditions set out in proposed paragraph (c). Proposed paragraph (b)(2) would provide that a State, district, or local political party committee may also spend Levin funds for any purpose that is lawful under State law, and that such spending need not comply with proposed paragraph (c). (See below.) The Commission seeks comment on proposed paragraph (b)(2), specifically whether this broader use of Levin funds is within the intended scope of 2 U.S.C. 441i(b)(2)(A).

While the Levin Amendment would permit the spending of Levin funds as set out in proposed paragraph (b), it places restrictions and conditions on that spending when it is for Federal election activity. Proposed paragraph (c) would set out in one place important restrictions and conditions that are stated in different sections of BCRA. Proposed paragraph (c)(1) would implement the restriction that the Federal election activity paid for partly with Levin funds must not refer to a clearly identified Federal candidate. See 2 U.S.C. 441i(b)(2)(B)(i). Proposed paragraph (c)(2) would implement the restriction that the Federal election

activity paid for partly with Levin funds must not be for any broadcasting, cable, or satellite communications, other than a communication that refers solely to a clearly identified candidate for State or local office. *See* 2 U.S.C.

441i(b)(2)(B)(ii). Proposed paragraph (c)(4) would implement the Levin Amendment's requirement that spending under its authority must be allocated between Federal funds and Levin funds pursuant to the proposed regulation covering allocation. *See* 2 U.S.C. 441i(b)(2)(A)(i), (ii); *see* proposed 11 CFR 300.33, below. Finally, proposed paragraph (c)(3) would tie together the provisions of this proposed regulation with proposed 11 CFR 300.31 on raising Levin funds, above.

Proposed paragraph (d) would serve as a clarifying reminder that spending of non-Federal funds by a State, district, or local political party committee for State or local political activity, including the raising of solely non-Federal funds, remains a matter of State law. The proposed final sentence would clarify that a disbursement of non-Federal funds made under State law by a State, district, or local political party committee that is not directed by the disbursing committee for the purpose of influencing a Federal election or for Federal election activity shall not be an expenditure under 11 CFR 100.8 or an expenditure or disbursement for Federal election activity.

#### 6. Proposed 11 CFR 300.33 Allocation of Expenses

Section 441i(b)(1) of Title 2, United States Code, states that State, district, and local party committees must make all disbursements and expenditures for Federal election activity from their Federal accounts. This requirement holds even when the expenses involved are also related to non-Federal election activity. Generally, the costs of mixed Federal and non-Federal election activities cannot be allocated between Federal and non-Federal accounts. The only exception to the rule against the use of non-Federal funds in connection with Federal election activity involves activities to be funded from a Levin account, pursuant to Section 441i(b)(2).

Section 441i(b)(2)(A) permits State, district, and local party committees, under certain conditions, to use Levin funds for particular categories of activity, including voter registration, voter identification, GOTV, and generic campaign activities, in connection with Federal and non-Federal elections. These funds must have been received pursuant to specific requirements, are to be used to meet expenses related to voter registration activity within 120

days of a Federal election and/or expenses related to voter identification, GOTV activities, and generic campaign activities when a Federal candidate appears on the ballot, and must be used in situations in which disbursements and expenditures for the permitted activities are allocated between a committee's Federal and Levin accounts. Section 441i(b)(2)(A) permits the use of Levin funds for these purposes "to the extent that" the costs of the activities are allocated. Thus, if a committee wishes to use other than Federal funds for such costs, it must allocate a portion to its Federal account.

Comments are sought with regard to the relationships between the activities for which Levin funds may be used and "exempt activities" as defined by 11 CFR 100.7(b)(9), (15) and (17) and 11 CFR 100.8(b)(10), (16) and (18). In particular, information is requested on whether there remain exempt activities that should not be deemed "Federal election activity." For example, would voter registration activity outside the time frame of 120 or fewer days before an election be an example of remaining "exempt activity" that would be allocable between Federal and non-Federal accounts (as opposed to Federal and Levin accounts), but that would not count as an "expenditure" for purposes of political committee status? In the alternative, should voter registration activity outside the 120-day time frame be considered 100% non-Federal activity?

With the exception of salaries, BCRA does not address administrative costs directly, either as a category of expenditures and disbursements or as allocable expenditures. BCRA defines "Federal election activity" at 2 U.S.C. 431(b)(20) as including specified categories of activity that do not include administrative costs.

With regard to salaries, BCRA, for purposes of defining "Federal election activity," distinguishes between salaries paid those who spend more than 25% of their compensated time in any given month on activities in connection with Federal elections, who must be paid only with Federal funds, and those who do not spend that amount of time on these activities. Therefore, proposed section 300.33 would require State, district, and local committees to use only Federal funds to pay the salaries of those employees who spend more than 25% of their time in a particular month on activities in connection with Federal election activity. The proposed regulations also require that the salaries of those employees who spend 25% or less of their time in a given month on activities in connection with a Federal

election be allocated between the committee's Federal and non-Federal accounts. Salaries of those employees who spend no time in a given month on activities in connection with a Federal election could be paid solely from the non-Federal account.

Comments are sought as to whether State, district, and local party committees should be permitted to pay the salaries of employees who spend 25% or less of their time on Federal election activity with non-Federal funds, rather than be required to allocate those payments. The 100% non-Federal alternative is not set out in the proposed rules. For purposes of administering the 25% rule for salary payments, comments are sought as to whether the proposed regulations should require that any of the following three alternative methods be used by State, district, and local party committees to document decisions as to the accounts from which all or portions of employees' salaries have been paid. First, employees could be required to keep contemporary time logs documenting their Federal and non-Federal activities. Secondly, employees could be required at the end of each month to certify in writing the percentage or amount of time spent on Federal election activity. Or, thirdly, a responsible party official could keep a monthly tally sheet for the all employees. Please note that none of these options appear in the proposed rules that follow.

In lieu of requiring 100% Federal payments for certain other administrative costs, the proposed rules would continue the Commission's policy of permitting the allocation of those costs between the Federal and non-Federal accounts of State, district, and local party committees, unless such expenses are directly attributable to a Federal candidate, in which case they would have to be paid only with Federal funds. Allocable administrative costs would include rent, office equipment (calculators, computers, copiers, facsimile machines, furniture), office supplies, postage for other than mass mailings, and utilities. Other allocable administrative costs would include routine building maintenance, upkeep and repairs.

Comments are requested regarding whether the Commission should continue requiring allocation of administrative costs other than certain salaries, if a committee desires to use some non-Federal funds for these purposes. BCRA requires certain Federal election activities, fundraising costs and certain salaries to be paid with Federal funds. As a result, significant amounts

of activity that were once allocable will have to be paid for exclusively with Federal funds. BCRA also delineates which Federal election activities may be allocated between Federal funds and Levin funds. The Commission seeks comments on whether administrative expenses that are not identified in BCRA have a significant enough impact on Federal elections to require continued allocation of such expenses, or whether a State, district, or local committee should be able to pay administrative expenses, other than certain salaries, with 100% non-Federal funds, depending upon applicable State law.

The proposed rules address the issue of appropriate minimum amounts of Federal funds to be required both for administrative expenses, when allocable, and for the Federal portions of costs of the specified Levin activities for which the use of non-Federal funds is also permitted. One goal of the allocation regulations are to assure that activities deemed allocable are not paid for with a disproportionate amount of non-Federal or Levin funds. Another goal is to simplify the allocation process, in particular by establishing formulas that do not vary from State to State and that do not require measurements of time or space. Therefore, the proposed rules establish a fixed formula for all States that would vary only in terms of whether or not a Presidential campaign and/or a Senate campaign is to be held in a particular election year.

The following formulas have been derived by taking averages of the ballot composition-based allocation percentages reported by State party committees in four groupings of States selected for their diversities of size and geographic location and for the particular elections held in each state in 2000 and 2002. The groupings were: (1) Six states (Alabama, Colorado, Illinois, New Hampshire, Oklahoma, and Oregon) in which there was a Presidential but no Senate campaign in 2000; (2) 10 states (California, Delaware, Georgia, Florida, Michigan, New York, North Dakota, Texas, Vermont, and Wyoming) in which there were both a Presidential campaign and a Senate campaign in 2000; (3) six states (Delaware, Georgia, Michigan, Oklahoma, Texas and Wyoming) in which there will be a Senate campaign in 2002; and (4) six states (California, Florida, New York, North Dakota, Vermont and Washington) in which there will be no Senate campaign in 2002.

In 2000, the Federal percentages for the two parties in six States with only

a Presidential campaign ranged from 20%–33.33%, with an average of 28%, while the Federal percentages for the two parties in ten States which held both Presidential and Senate campaign that year ranged from 30% to 43%, with an average of 36%. In 2002, the Federal percentages for the two parties in six States with a Senate campaign range from 20% to 25%, with an average of 21%, while the Federal percentages for the two parties in six States with no Senate campaign range from 11.11% to 16.67, with an average of 15%.

The proposed rules would apply the average percentages in each of the four groupings of States to all 50 states, resulting in the following proposed minimum percentages for Federal shares of administrative costs and for Federal shares of costs of the voter registration, voter identification, GOTV, and generic campaign activities permitted to be paid in part with Levin funds, pursuant to 2 U.S.C. 441i(b)(2):

- (i) Presidential only election year—28% of costs
- (ii) Presidential and Senate election year—36% of costs
- (iii) Senate only election year—21% of costs
- (iv) Non-Presidential and Non-Senate election year—15% of costs.

Comments are solicited as to whether a set percentage approach to allocation of both administrative and Levin expenses is preferable to a State-by-State ballot composition ratio approach, and as to whether the formula proposed by the Commission serves the purposes of the Act.

Voter registration activities undertaken 120 days or less before an election and no later than the election itself are included among the activities for which Levin funds may be used by State, district, and local party committees. The proposed regulations assume that activity outside this time frame would fall outside the general provisions of 2 U.S.C. 441i(b)(i), which prohibits the use of non-Federal funds for Federal election activities, including activities that are wholly or in part in connection with a Federal election. Therefore, the proposed regulations in 11 CFR 300.33(b)(3) state that the expenses of voter registration activity outside the 120-day time frame could be paid entirely with non-Federal funds or they could be allocated between Federal and non-Federal accounts.

In the alternative, the regulations could state that, because voter registration activities undertaken more than 120 days before an election would be outside the time frame for the use of Levin funds, the expenses for such

activities would fall within the general provisions of 2 U.S.C. 441i(b)(i), which prohibits the use of non-Federal funds for Federal election activities, including activities that are wholly or in part in connection with a Federal election. Under this approach, expenses for voter registration activity outside the 120-day time frame would have to be paid entirely with Federal funds.

Comments are solicited as to which of these alternative approaches to expenses for voter registration activities more than 120 days before an election would most closely track the intent of BCRA.

The proposed regulations in 11 CFR 300.33(c) set out the categories of costs that may not be allocated. These include the costs of activities that refer to clearly identified Federal candidates, the costs of activities that refer to both Federal and State or local elections and certain fundraising costs.

Comments are sought as to whether fundraising costs would include a portion of a committee's overhead or only direct costs such as telephone banks, postage, printing, catering, banquet hall rental, and other such expenses related to a particular fundraising program. Comments are also sought as to whether costs related to raising funds only for non-Federal activity may be paid entirely from a non-Federal account.

The proposed regulations at 11 CFR 300.33(d) address the issue of transfers from a State, district, or local party committee's non-Federal account to cover the non-Federal portion of allocated administrative costs, and transfers from the committee's Levin account to meet that account's portion of the costs of allocated expenditures made pursuant to 2 U.S.C. 441i(b)(2). The proposed regulations employ the language of the present regulations at 11 CFR 106.5(g)(1)(i) and (2)(ii)(B), which require the use of the party committee's Federal account to pay the entire amounts of allocable expenses, with subsequent reimbursement by other accounts, and the limitation of such reimbursements to a set time frame of 10 days before and 60 days after the payment from the Federal account, unless a vendor requires an advance payment and the payment is based on a reasonable estimate. The proposed regulation continues the present rule's admonition at 11 CFR 106.5(g)(2)(B)(iii) that any payment outside this time frame, absent the need for an advance payment of a reasonably estimated amount, would result in the presumption of a loan of non-Federal funds to the Federal account and a violation of the Act.

### 7. Conforming Amendments to 11 CFR 104.10 and 106.1

#### A. Allocation of Expenses Among Candidates and Activities

Current section 104.10 addresses the reporting of expenses that are allocated among more than one clearly identified candidate (paragraph (a)) and expenses that are allocated among specific types of mixed Federal/non-Federal activities by political party committees and by separate segregated funds and nonconnected committees (paragraph (b)). However, BCRA has defined different categories of allocable expenses, including some of those areas falling within Federal election activity. Some of the allocable activity areas set out in current 11 CFR 106.5 (allocation of mixed Federal/non-Federal activities by party committees) are now subsumed by Federal election activity. In addition, under BCRA, mixed fundraising activity must be done with Federal funds, and the use of non-Federal funds by national party committee has been eliminated. Hence, the Commission proposes to divide the rules for reporting of allocable expenses into three sections: 11 CFR 104.10 would apply to political committees that are separate segregated funds or nonconnected committees; new 11 CFR 104.17 would address administrative expenses and some other activities by political committees that are State, district, or local party committees; and new 11 CFR 300.36 would cover reporting of payments allocated between Federal funds and Levin funds.

BCRA has no impact on the support by separate segregated funds and nonconnected committees of one or more clearly identified Federal and non-Federal candidates or such committees' allocation of specific categories of mixed Federal/non-Federal activities. Thus, revised section 104.10(a), which addresses payments entailing combined expenditures and disbursements on behalf of more than one clearly identified Federal and non-Federal candidates, would be changed very little. It would be amended to clarify the type of committee subject to this section and would delete references to current section 106.5(g), which addresses non-Federal to Federal transfers made by party committees for the purpose of mixed payments.

In revised section 104.10(b), the references to the Senate and House campaign committees of a political party would be deleted. In the discussion of itemization of allocated disbursements for administrative and generic voter drive expenses at proposed paragraph (b)(1)(ii), the

specific reference to the types of committees using the funds expended method would be deleted because all committees addressed in this regulation would use the funds expended method for those two allocation categories. References to exempt activities would be deleted because separate segregated funds and nonconnected committees do not engage in those activities. References to various paragraphs in 11 CFR 106.5, which currently pertains to party committees, would also be deleted.

#### B. Allocation of Expenses Between Candidates

Current section 106.1 addresses the allocation of expenses among more than one candidate. Paragraph (a)(1) sets out the general rule for allocation of an expenditure made on behalf of more than one clearly identified Federal candidate. It also addresses allocation of a payment involving both an expenditure made on behalf of one or more clearly identified Federal candidates and a disbursement on behalf of one or more non-Federal candidates. In view of the language of newly proposed section 300.33(c)(1), new language would be added to section 106.1(a)(1) making it clear that a party committee must only use Federal funds in both types of situations. *See also* newly proposed section 100.24(a)(3). Comments are requested as to whether the requirement that a State, district, or local party committee use only Federal funds for all payments made on behalf of both clearly identified Federal and clearly identified non-Federal candidates is appropriate under BCRA. (*See also* the narrative for newly proposed section 104.17 which addresses reporting of such activity by party committees.)

In view of the rearrangement and renumbering of the allocation reporting regulations, paragraph (a)(2) would be amended to conform to different section citations. It would also delete the citation to party committee transfer procedures in the event of a payment on behalf of clearly identified Federal and non-Federal candidates.

Paragraph (e) refers to allocation of activities that entail specific types of mixed Federal/non-Federal activity, other than payments on behalf of clearly identified candidates. The paragraph would be amended to conform to the new allocation categories and new allocation citation.

#### 8. Proposed 11 CFR 300.34 Transfers

As explained above, the Levin Amendment permits spending on certain Federal election activity subject

to certain restrictions and conditions, one of which is that the spending must be allocated between Levin funds and Federal funds. 2 U.S.C. 441i(b)(2)(A)(i), (ii). The Levin Amendment also requires that a State, district, or local committee must raise solely by itself all money spent under the Levin Amendment. 2 U.S.C. 441i(b)(2)(B)(iv). By the plain language of the last-cited provision, this restriction extends to the Federal funds component of the expenditure or disbursement allocated between Levin funds and Federal funds. *See* 148 Cong. Rec. H410 (daily ed. February 13, 2002) (Rep. Shays).

This provision of the Levin Amendment could cause confusion given the existing rule that party committees of the same political party may transfer Federal funds among themselves without limit on amount. *See* 11 CFR 102.6(a)(1)(ii). Proposed paragraph (a) of proposed section 300.34 would make clear that 11 CFR 102.6(a)(1)(ii) does not override the Levin Amendment as to transfers of Federal funds. Specifically, the committee must not use such transferred Federal funds to pay the Federal portion of Federal election activity that may be funded with a mixture of Federal funds and Levin funds under proposed 11 CFR 300.32 and 300.33. The Commission emphasizes that revisions to section 102.6(a) regarding transfers may be forthcoming in a future rulemaking to implement changes to 2 U.S.C. 441a(d) made by BCRA. The present discussion and this rulemaking extend only to Title I of BCRA. Pub L. 107-155, March 27, 2002. The proposed final sentence would state as a positive requirement that a State, district, or local political party committee that spends Levin funds must raise the Federal funds component of those funds by itself. As already mentioned above, the Levin Amendment imposes this fundraising requirement. 2 U.S.C. 441i(b)(2)(B)(iv).

In the same provision, the Levin Amendment specifically forbids certain transfers of Levin funds; that is, a State, district, or local party committee may not use as Levin funds any funds transferred to it by certain persons. 2 U.S.C. 441i(b)(2)(B)(iv)(I) through (IV). Proposed 11 CFR 300.34(b)(1) and (b)(2) would implement these transfer prohibitions by expressly identifying these persons.

#### 9. Proposed 11 CFR 300.35 Office Buildings

BCRA repealed the provision at 2 U.S.C. 431(8)(B)(viii) exempting from the definition of contribution any donation of money or anything of value,

or loan, to a national or State party committee that is specifically designated to “defray any cost for construction or purchase of any office facility not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office.” In the technical amendments, however, Congress provided for the use of funds that were not subject to the limitations and prohibitions of the Act for the purchase or construction of a State or local party committee office building. This provision, which is an addition to the section on preemption at 2 U.S.C. 453, states: “Notwithstanding any other provision of this Act, a State or local committee of a political party may, subject to State law, use exclusively funds that are not subject to the prohibitions, limitations, and reporting requirements of the Act for the purchase or construction of an office building for such State or local committee.” 2 U.S.C. 453(b).

The current text of 11 CFR 114.1(a)(2)(ix) follows the repealed statutory provision and would be deleted and replaced with an annotated cross-reference to proposed new 11 CFR 300.35. The texts of the regulations currently at 11 CFR 100.7(b)(12) and 100.8(b)(13), which are similar to the current text of section 114.1(a)(2)(ix), would be deleted in a separate rulemaking that the Commission is publishing concurrently with this rulemaking. The receipt and use of funds for the purchase or construction of a national party committee’s office building would be addressed in proposed section 300.10, which would allow only federal funds to be used for such purpose.

Proposed new section 300.35 would address four areas in implementing 2 U.S.C. 453(b)(1). First, it would provide for the application of State law to the activities, and would provide that generally Federal law will not preempt the application of State law. Second, it would explain the meaning of “purchase or construction of a party office building.” Third, it would provide that, if the funds are not used for the purpose as defined, they are to be treated as disbursements for other purposes and Federal law would apply. Finally, it would address the transitional requirements for the current State party office facility funds established under the repealed statutory section.

#### A. Application of State Law

Senator McConnell, the principal speaker in support of the technical amendments after their introduction in

the Senate, described the party office building provision as “[r]especting the primacy of State law in financing State and local party buildings.” 148 Cong. Rec. S2339 (daily ed. March 22, 2002) (statement of Sen. McConnell). During floor debate prior to Senate passage of the main bill, in anticipation of the adoption of technical amendments, Senator Feingold described the proposal as providing that Federal law would no longer allow a State or local party committee to receive non-Federal donations to purchase or construct an office building where such donations violated State law, that State law governs the receipt and disbursement of non-Federal donations by State or local parties for such purpose, and that there is no “required match consisting of Federal contributions.” 148 Cong. Rec. S2143–2144 (daily ed. March 20, 2002) (statement of Sen. Feingold).

Paragraph (a) of proposed section 300.35 would set out the basic provision that funds raised outside the limits and prohibitions of the Act may be used, and that State law would govern whether they may be raised and used for the purchase or construction of a State or local party office building. Paragraph (a) would also incorporate language from the repealed statute and deleted regulations to the effect that the exemptions from Federal limits and prohibitions are premised on the idea that the building is not purchased or constructed for the purpose of any particular Federal candidacy. The building is being purchased or constructed for the functioning of the party, which entails the support of most or all of the party’s candidates over a number of years; this concept did not change with the repeal of 2 U.S.C. 431(8)(B)(viii) and the enactment of 2 U.S.C. 453(b). The purchase or construction of the building for a particular Federal candidacy would entail the use of impermissible funds in a manner contrary to the basic purpose of the Federal law.

Paragraph (b) of section 300.35 would explain the coverage of State law. Paragraph (b)(1) would provide that Federal law will not preempt State law as to the non-Federal account activity, except where the funding does not fit the definition of the purchase or construction of an office building and would be another type of disbursement. Commission advisory opinions have addressed the question of whether the repealed contribution exemption, which permitted donations to a building fund from such Federally impermissible sources as corporations, preempted State law prohibitions on the use of such funds for campaign purposes.

Advisory Opinions 2001–12, 1998–8, 1998–7, 1997–14, 1993–9, 1991–5, and 1986–40. The Commission stated in these opinions that Congress decided not to place restrictions on the subject even though it could have determined that the purchase of the facility was for the purpose of influencing a Federal election, that Congress took the affirmative step of deleting the receipt and disbursement of funds for such activity from the proscriptions of the Act, and that there was no indication that Congress intended to limit the preemptive effect to some allocable portion of the purchase costs. Proposed new section 300.35, in effect, would supersede these Commission decisions as to Federal preemption with respect to the purchase or construction of an office building. Corporate donations and donations that would be excessive under Federal law may be used for the purchase or construction of a State party office building where State law permits (and this has been expanded to local party office buildings), but if the State law forbids corporate donations and donations in excess of a particular amount, Federal law would not preempt that law and such donations could not be made for that purpose.

Paragraph (b)(2) would provide that funds contributed to a Federal account that are then used to purchase or construct a State or local party office building must still comply with the limits and prohibitions of the Act. The committee’s reports filed with the Commission would disclose the Federal account’s receipts and disbursements that were used for the building purchase or construction as contributions received and disbursements made. Although this proposed section would address the use of Federal account funds, State law is the primary determinant as to the financing of these buildings and would still control whether such funds may be used. Thus, the Federal law would not preempt a State regulatory attempt to determine, using a reasonable accounting method, whether the Federal account funds used for the purchase or construction originated from contributions that would be impermissible or excessive under State law. Consistent with this State coverage, a State would be able to require the committees to file reports disclosing the Federal account’s receipts and disbursements of funds used for the building purchase or construction. This would not entail a replication of the Federal reports; it would merely entail the disbursements for the activity covered by this section and the contributions that, under a reasonable

accounting method, were the source of such disbursements.

Although receipts and disbursements from the non-Federal accounts would have to be in compliance with State law, and both Federal and State law would apply to the permissibility of receipts and disbursements from the Federal account, proposed new section 300.35 would not contemplate a Commission enforcement action against a party committee for violating State law. Such an action, which would interpret and apply State law, would be the State's responsibility. Moreover, although the new provision would not require the establishment of a separate bank account or book account for the receipt and disbursement of funds for purchase or construction of the office building, Federal law would not preempt a State law requirement to establish such an account.

Under paragraph (b)(3), Levin funds would be usable for the purchase or construction of an office building provided that State law permits the use of such funds.

In accordance with these provisions as to the application of State law, current section 108.7(c), which lists types of State laws that are not superseded by the Act and the regulations, would be amended to include the application of State law to the purchase or construction of a State or local party office building in accordance with proposed section 300.35.

#### B. Definition of "Purchase or Construction of an Office Building"

In view of the Commission's prior advisory opinions interpreting the scope of the repealed exception, it is necessary to delineate more precisely the scope of the activity covered under the new exception. In order to explain the scope of activities under which the funds would not be subject to the limitations and prohibitions of the Act (except for contributions to Federal accounts) and would be subject to State law, the proposed rules would define three terms: office building, purchase, and construction.

Section 453(b) of FECA refers to the purchase or construction of an "office building" rather than an "office facility" as found in the repealed section. The term "building" is a narrower term that indicates a more restricted range of covered expenses. In recent advisory opinions applying the repealed section, the Commission has stated that expenses that would be considered capital expenditures under the Internal Revenue Code would be payable from the building fund. *See* Advisory

Opinions 2001-12, 2001-01, and 1998-7; *see also* 26 CFR 1.263(a)-(1) and 1.263(a)-(2). This has been interpreted by some to mean that the building fund may pay for the purchase of office machinery, equipment, and furniture. *See* Advisory Opinion 2001-12. The proposed rules interpret the use of the term "building" instead of "facility" as a basis for ensuring that this proposed section would not include what are more appropriately administrative expenses for the operation of the party, rather than the purchase or construction of an office building.

Specifically, proposed paragraph (c)(1) would ensure that items such as office equipment, machinery, and furniture would not be considered a part of the building and that the exemption afforded by this section would not extend to such payments; such payments would instead be allocable administrative expenses. The definition of "building" would extend only to the building itself and accompanying land, but this definition would not be meant to exclude a portion of the building, such as an office suite or one or more floors of a building, that a committee may purchase instead of an entire building. Although structural components and certain other fixtures, as described in proposed paragraph (c)(1), would not by themselves constitute a building, they would appear in the proposed regulation to convey the idea of what would be part of the building's structure, as opposed to the office equipment and machinery and similar items. The term "structural component" would be derived from the tax regulations, at 26 CFR 1.148-1; it would apply to such features as interior walls, floors, ceilings, windows, doors, stairwells and elevators, central air conditioning or heating systems, sprinkler systems, plumbing and plumbing fixtures, and electrical and data transmission wiring and lighting fixtures. There may be other fixtures that are not strictly "structural components" that are essential to the operation or appearance of the building. (*See* the discussion below as to when the installation of a significant number of structural components as part of a major restoration or renovation will qualify as construction of an office building.)

One particularly relevant illustration of the distinction between a structural component and an item that would not be part of the building pertains to audio-visual production facilities. Although a studio with special lighting, acoustical paneling, and special wiring in the walls may be built during the general construction of the building and would

be considered part of the building, equipment such as recording equipment and cameras that are placed in the studio would not be part of the building's structure for the purposes of the proposed regulation.

The Commission seeks comment on whether the proposed definition of "building" should include, rather than explicitly exclude, items such as office equipment, machinery, or furniture. More generally, the Commission seeks comment on whether BCRA's use of the term "building" instead of "facility" contemplated a narrowing of the range of expenses falling within the exemption.

Proposed paragraph (c)(1) would also refer to the purpose of the party's use of the building, which is solely for its own party administration and election campaign support purposes. A party office building would not include floors or offices within the building or portions of the underlying land that are not used, or set aside for use, for party committee purposes. A party would be able to purchase a portion of a building such as a floor or suite to be its office building, but a party owning an entire building would not be able to rent or sell space in the building to others. The Commission seeks comment on whether a State or local party committee should be permitted to purchase an entire building and lease parts of it at fair market rates in order to generate income. In addition, the Commission seeks comment on whether the sources of the funds used to purchase or construct the office building should govern or guide the Commission in the determination of the lawful uses of such income. For example, would the purchase of a building with non-Federal funds require that the rental income generated be deposited in a non-Federal account and only used for non-Federal purposes? Would the purchase of the building with Federal funds allow rental income to be deposited in a Federal account and used for Federal purposes? What approach should be taken when revenue is generated from a building that was purchased with proceeds from a building fund that contains both Federal and non-Federal funds?

In the definition of "purchase" at proposed paragraph (c)(2), the payment to acquire the sole legal title would, of course, include down payments and mortgage payments. The proposed rule would draw from advisory opinions that limited the kinds of payments that would fall within the repealed exception. These opinions excluded payments for ongoing "operating expenses" such as property taxes and assessments (Advisory Opinion 1983-8)

or administrative expenses such as rent, building maintenance, utilities, and "office equipment expenses." Advisory Opinions 2001-12, 2001-01 and 1988-12.

In defining "construction," proposed paragraph (c)(3) would distinguish between expenses that constitute the erection of the building or the extensive renovation of a building on one hand, and costs for the upkeep, repair, or more piecemeal replacement of structural components. This distinction is derived from Advisory Opinion 1998-7 where the Commission, drawing from the tax code, distinguished the cost of incidental repairs that do not materially add to the property's value nor appreciably prolong its life, but "keep it in an ordinary efficient operating condition" from "repair work [that] reaches a level to constitute wholesale restoration or renovation of a structure." The distinction may be illustrated by the following examples:

Example A—Expansion of the size of the building (*i.e.*, changing the size or position of the outer perimeter of the structure) would constitute "construction."

Example B—A single large scale project (with a specific time deadline) entailing the replacement of a number of various structural components throughout the building to improve the building's habitability and function; for example, expanding, contracting, or altering the configuration of a significant number of rooms within the building coupled with replacements of a significant number of other structural components throughout the building such as installation of new electrical wiring throughout the building, and new climate control and plumbing systems would also constitute "construction."

Example C—The replacement on a periodic basis of structural components where such replacement is not part of a single large scale renovation project with a specific time deadline would not constitute "construction" under this section.

The definitions in proposed paragraph (c) may not include all of the possibilities for expenses for the purchase or construction of a party office building. In seeking comments on this proposed regulation, the Commission asks whether more examples should be included in what is or is not included in the particular sub-definitions, or whether the advisory opinion process would best serve that purpose. For example, should payments for a long-term lease with an option to purchase the rented building be included within the definition of

purchase? More generally, the Commission seeks comment on what constitutes the purchase or construction of a party office building.

#### C. Office Building-Related Expenses Not Qualifying Under Proposed Paragraph (c)

An expense that is not included within the definition of the purchase or construction of an office building would most likely be an administrative expense of the party. Depending on the circumstances, such an expense may be support for a particular candidate or in some other category, rather than an administrative expense. If the expense is an administrative expense, it would be allocable under proposed 11 CFR 300.33 and a sufficient amount of Federal account funds would have to be used for the expense. In addition, the provisions of the Act would apply to the sources that are properly used for allocable expense purposes. The Commission notes that the portion of this NPRM describing the allocation rules at proposed section 300.33 asks for comments on whether administrative expenses should be allocable between Federal and non-Federal accounts, or whether such funds should be considered as entirely Federal or entirely non-Federal.

#### D. Transitional Provisions for State Party Building or Facility Account

Up to and including November 5, 2002, the funds in a State party office facility account can be used only for the purchase or construction of a State party office facility. Starting on November 6, those funds, if used for the purchase or construction of the office building, would be subject to State law, and State law may determine that the funds may not be used for that purpose, as would be provided in proposed new section 300.35. The proposed rule would also state what the funds may not be used for.

#### 10. Proposed 11 CFR 300.36 Reporting Federal Election Activity; Recordkeeping

BCRA establishes certain reporting requirements for State, district, and local committees that finance Federal election activities. *See* 2 U.S.C. 434(e)(2). This requirement extends generally to all receipts and disbursements for Federal election activities if the aggregate amount of receipts and disbursements for such activity is \$5,000 or more per calendar year, 2 U.S.C. 434(e)(2)(A), and specifically extends to receipts and disbursements of Levin funds. 2 U.S.C. 434(e)(2)(B). Because spending under

the Levin Amendment is allocated between Federal funds and non-Federal funds not otherwise subject to the Act's prohibitions, limitation, and reporting requirements (*i.e.*, Levin funds), Congress has specifically required Federal disclosure of certain otherwise non-Federal receipts and disbursements of State, district, and local committees (*i.e.*, the Levin funds).

Proposed paragraph (a) of this section would apply to State, district, and local political party committees that have not qualified as political committees under 11 CFR 100.5. Although such an organization would not have reporting requirements under BCRA (*see* 2 U.S.C. 434(e)(2)), it would be required under proposed paragraph (a)(1) to demonstrate through a reasonable accounting method that it had sufficient Federal funds on hand to pay the required Federal portion of the costs of Federal election activity under proposed 11 CFR 300.32 and 300.33. Proposed paragraph (a)(1) would also require such a party organization to keep records of Federal receipts and disbursements and to make those records available to the Commission upon request.

Proposed paragraph (a)(2) would clarify that a payment of Federal funds for the costs of Federal election activity, or for the Federally allocated portion of the costs of Federal election activity, would constitute an expenditure, within the meaning of 11 CFR 100.8, unless an exclusion from the definition of expenditure in 11 CFR 100.8(b) applies. Thus, such payments would constitute expenditures for purposes of determining whether or not a State, district, or local political party organization becomes a political committee, under 11 CFR 100.5. The Commission seeks comment on this interpretation and whether, alternatively, disbursements for Federal election activity that do not otherwise qualify as "expenditures" or "exempt activities" should be excluded from the threshold for determining political committee status. Proposed paragraph (a)(2) would also state that a payment of Federal funds for the costs of Federal election activity, or for the Federally allocated portion of the costs of Federal election activity, that meets the definition of "exempt activities" (*see* 11 CFR 100.8(b)(10), (16), and (18)) would be treated as exempt activities in accordance with applicable provisions of the current (*i.e.*, pre-BCRA) regulations.

Proposed paragraph (b) of proposed section 300.36 would apply to State, district, and local political party committees that have qualified as political committees under 11 CFR

100.5. Proposed paragraph (b)(1) would provide that such committees must report all receipts and disbursements of Federal funds for all or part of the costs of Federal election activity. Proposed paragraph (b)(1) would go on to state that this requirement holds even if the committee has less than \$5,000 of aggregate receipts and disbursements for Federal election activity. *See* 2 U.S.C. 434(e)(2)(A). The final sentence of proposed paragraph (b)(1) would provide that a disbursement of Federal funds for the costs of, or for the Federally allocated portion of the costs of, Federal election activity is reportable as an expenditure, unless an exclusion in 11 CFR 100.8(b) applies.

Proposed paragraph (b)(2) would implement the broader reporting provisions of 2 U.S.C. 434(e)(2)(A) and (B). The proposed first sentence would state the basic rule that all receipts and disbursements for Federal election activity must be reported if the political committee has had an aggregate of \$5,000 or more of such receipts and disbursements in a calendar year. The proposed second sentence would make it clear that this basic reporting rule extends to the otherwise non-Federal funds spent for Federal election activity under the Levin Amendment (that is, to the Levin funds).

Proposed paragraph (b)(2)(i) would spell out the requirements for reporting payments for the costs of Federal election activity that are allocated between Federal funds and Levin funds. It would identify certain information, such as name, address, amount, and description of purpose, which must be provided for each reportable payment. Proposed paragraph (b)(2)(i) would require activity-by-activity itemization of a reportable payment that covers the costs of more than one Federal election activity. Proposed paragraph (b)(2)(ii) would implement BCRA's itemization provision for receipts and disbursements to or from any person of more than \$200 in a calendar year. *See* 2 U.S.C. 434(e)(3).

Proposed paragraph (b)(3) is intended to alert the reader to the rules for reporting payments allocated between Federal funds and non-Federal funds that are not covered in proposed paragraph (b)(2). As explained above, proposed paragraph (b)(2) would apply only to payments for Federal election activity allocated between Federal funds and Levin funds under proposed 11 CFR 300.33. The reporting regulation for other payments allocated between Federal funds and non-Federal funds would be contained in proposed new 11 CFR 104.17. For example, section 104.17 would address reporting of

administrative expenses and salaries of employees who spend 25% of their time, or less, on Federal elections.

Proposed paragraph (c) would implement BCRA's new requirement for monthly filing by party committees that come under new section 434(e) of the Act. This would be accomplished by referring to the Commission's existing regulation specifying monthly reporting, i.e., 11 CFR 104.5(c)(3). The Commission seeks comments on the applicability of the \$50,000 annual threshold for electronic filing to receipts and disbursements for Federal election activities. *See* 11 CFR 104.18.

Finally, proposed paragraph (d) would support the disclosure provisions outlined above by adding a recordkeeping requirement. This would be accomplished by referring to the Commission's existing regulation on recordkeeping, 11 CFR 104.14. This requirement is necessary to ensure that sufficient documentation exists to ensure compliance with the disclosure provisions of BCRA.

With regard to reporting and recordkeeping, the Commission seeks comments about what, if any, reporting requirements an association or similar group of candidates for, or holders of, State and local office (*see* 2 U.S.C. 441i(b)(1)) that is not a political committee has under 2 U.S.C. 434(e)(2).

#### *11. Proposed 104.17 Reporting of Allocable Expenses by Party Committees*

As indicated in the description of section 104.10, the proposed rules would divide the present regulations at that section into several regulations to cover reporting of specific allocation areas by specific types of reporting entities. New section 104.17, which is currently reserved space, would address reporting by party committees of allocable expenses. Reporting requirements with regard to activity allocated between Federal and Levin accounts pursuant to 11 CFR 300.30 and 11 CFR 300.33 are also addressed in 11 CFR 300.36.

Proposed 11 CFR 104.17(a) would address payments on behalf of more than one clearly identified candidate, including non-Federal candidates. Current section 104.10 provides for allocated Federal/non-Federal spending when a combined payment is made on behalf of both Federal and non-Federal clearly identified candidates. Under BCRA and as provided in the proposed revisions of section 106.1(a), however, it appears that all such payments must be made entirely from Federal funds. Hence, proposed 11 CFR 104.17(a) would provide for the reporting of all allocations between or among clearly

identified Federal and non-Federal candidates as Federal activity. Comments are solicited as to whether this requirement that State, district and local committees of political parties use Federal funds for activity on behalf of clearly identified Federal and clearly identified non-Federal candidates is appropriate under BCRA. (*See also* 11 CFR 300.30).

Proposed 11 CFR 104.17(b)(1) would require explanations of the percentages used to allocate payments for specific categories of State, district and local party activity. The Commission is also contemplating requiring the assignment of unique identifying codes to some allocable activities as is required in current 11 CFR 104.10(b)(2). (For example, the reporting of exempt costs now requires such identifiers.) Comments are sought as to whether such unique identifying codes for activities would be of utility in tracking any of the allocable expenditures for activities. Also, should activities that have been included under exempt costs (now apparently subsumed by other categories) require such identifiers?

Proposed 11 CFR 104.17(b)(2) would address the reporting of transfers between State, district and local party accounts for allocable expenses, while proposed 11 CFR 104.17(b)(3) would set out the details required in the reporting of disbursements for allocable activity by State, district and local committees of political parties.

#### *12. Proposed 11 CFR 300.37 Prohibitions on Fundraising for and Donating to Certain Tax Exempt Organizations*

Just as it prohibits national parties from fundraising for, or making or directing donations to, certain tax exempt organizations, BCRA also prohibits State, district, and local party committees, their officers and agents acting on their behalf, and entities directly or indirectly established, maintained, financed, or controlled by them from doing so. 2 U.S.C. 441i(d)(i). Thus, the proposed rules at 11 CFR 300.37 relating to State, district, and local party committees would mirror the proposed rules at 11 CFR 300.11 relating to national party committees. *See* discussion above.

The Commission seeks comments on one component of the proposed rules as they apply to State, district, and local party committees. Proposed 11 CFR 300.37(a)(3), like proposed 11 CFR 300.11(a)(3), would mirror 2 U.S.C. 441i(d) in extending the prohibition on fundraising for, or donating to, section 527 organizations "except for a political committee; a State, district, or local

committee of a political party; or the authorized campaign committee of a State or local candidate." The proposed rules would interpret "political committee" as it is currently defined in 11 CFR 100.5. Under this construction, State, district, and local party committees could fundraise for, or donate to, a section 527 organization that is a Federal political committee under the Act, but they could not do so for a section 527 organization that is a State-registered political action committee ("PAC") that supports only non-Federal candidates. The Commission seeks comment as to whether another interpretation of "political committee" is warranted that would permit State, district, and local party committees to donate to this type of State-registered section 527 organization.

### Tax-Exempt Organizations

For the convenience of readers interested in locating rules pertaining to fundraising and donations to tax-exempt organizations, subpart C of new part 300 would combine in a single place the prohibitions on national, State, district, and local party committee donations to, and fundraising for, certain 501(c) and 527 tax-exempt organizations and the rules governing fundraising by Federal candidates and officeholders for 501(c) organizations. Proposed 11 CFR 300.50 would mirror proposed rule 11 CFR 300.11. Proposed 11 CFR 300.51 would mirror proposed rule 300.37. Proposed 11 CFR 300.52 would mirror proposed 11 CFR 300.65. See the discussion in proposed 11 CFR 300.11 and 300.37 above and 300.65 below.

### Federal Candidates and Officeholders

BCRA places limits on the amounts and types of funds that can be raised by Federal candidates and officeholders for both Federal and State candidates. See 2 U.S.C. 441i(e). The Commission is proposing to place the regulations that address these limitations in 11 CFR part 300, subpart D.

#### 1. General Prohibitions

The restrictions apply to Federal candidates and officeholders, their agents, and entities directly or indirectly established, maintained, or controlled by, or acting on behalf of, any such candidate(s) or officeholder(s). As defined in 2 U.S.C. 431(3) and existing 11 CFR 100.4, "Federal office" means the office of President or Vice President of the United States, Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States. There is a similar definition of "Federal officeholder" in

11 CFR 113.1(c). Please note that these restrictions encompass candidate PACs and leadership PACs. Persons covered by these restrictions may not "solicit, receive, direct, transfer or spend" non-Federal funds unless certain requirements are satisfied.

BCRA prohibits any Federal candidate or officeholder, his or her agent, or any entity described above, from raising non-Federal funds in connection with an election for Federal, State, or local office. 2 U.S.C. 441i(e)(1)(A) and (B); proposed 11 CFR 300.61. These prohibitions encompass raising money for section 527 organizations, whether or not such organizations are Federal political committees. With limited exceptions, such persons may raise and spend Federal money in connection with a non-Federal election only in amounts and from sources that are consistent with State law, and that do not exceed the Act's contribution limits or come from prohibited sources under the Act. 2 U.S.C. 441i(e)(1)(B); proposed 11 CFR 300.62.

The prohibitions in 11 CFR 300.61 and 300.62 encompass "leadership" and "candidate" PACs since these PACs are entities directly or indirectly established, financed, maintained, or controlled by, Federal candidates and/or officeholders. Specifically, leadership PACs and candidate PACs are political organizations set up by congressional leaders and other Federal candidates and officeholders as a way to support other candidates' campaigns. In 2001, at least 110 members of Congress had leadership PACs.

As Senator McCain explained in the Senate debate, "A Federal officeholder or candidate is prohibited from soliciting contributions for a Leadership PAC that do not comply with the Federal hard money source and amount limitations." See 148 Cong. Rec. S2140 (Daily ed. March 20, 2002) (statement of Sen. McCain). Consequently, under proposed 11 CFR 300.61, Federal candidates, Federal officeholders, and their leadership PACs and candidate PACs cannot solicit, receive, direct, transfer, or spend funds for a Federal account of a leadership or candidate PAC unless the funds are subject to the prohibitions, limitations, and reporting requirements of the Act. Similarly, Federal candidates, Federal officeholders, and their leadership PACs and candidate PACs cannot solicit, receive, direct, transfer, or spend funds for a non-Federal account of a leadership PAC or candidate PAC unless the funds are subject to the prohibitions and limitations of the Act. Thus, neither the Federal nor non-Federal accounts of a Federal

candidate's leadership PAC or candidate PAC could receive or spend corporate treasury or labor organization funds or funds from individuals and political committees that exceed the limitations of the Act. Additionally, funds in the non-Federal account of these PACs must not be used for Federal election activities or in connection with a Federal election. See 148 Cong. Rec. S2140 (Daily ed. March 20, 2002) (statement of Sen. McCain).

#### 2. Exceptions for State and Local Candidates and for Fundraising Events

An exception applies when a Federal candidate or Federal officeholder is also a candidate for State or local office. Such candidates may raise and spend non-Federal funds for their State campaign, as long as their activities are consistent with State law and refer only to their status as a State or local candidate, to other candidates for that same office, or both. 2 U.S.C. 441i(e)(2); proposed 11 CFR 300.63. Please note that if a State or local candidate is simultaneously a candidate for Federal office, he or she must raise and spend only Federal funds in connection with the Federal campaign.

BCRA contains a further exemption, for Federal candidates and officeholders who attend, speak, or appear as a featured guest at a State, district, or local party committee fundraising event. See 2 U.S.C. 441i(e)(3); proposed 11 CFR 300.64. The Commission seeks comment on how it should construe and implement this provision, particularly in light of the separate general prohibition on Federal candidates and officeholders from soliciting non-Federal funds in connection with an election for Federal, State, or local office.

Sen. McCain explained in the Senate debate that "[t]he rule here is simple: Federal candidates and officeholders cannot solicit soft money funds, funds that do not comply with Federal contribution limits and source prohibitions, for any party committee—national, State, or local." 148 Cong. Rec. S2139 (daily ed. March 20, 2002) (statement of Sen. McCain). Thus, under the proposed rules, while such individuals may attend, speak, or be a featured guest at a State or local party fundraising event, they cannot solicit funds at any such event.

However, the Commission seeks comments on whether the fundraising event provision is a total exemption from the general solicitation ban, whereby Federal candidates and officeholders and their agents may attend and speak freely at such events without restriction or regulation. In

addition, the Commission seeks comments on how it should construe BCRA's phrase permitting Federal candidates and officeholders to "attend, speak, or be a featured guest" at a fundraising event. Specifically, the phrase "featured guest" strongly suggests that State, district, or local party committees may publicize in advance that a Federal candidate or officeholder will be attending and speaking at an event. Does this mean that Federal candidates and officeholders may be referred to in invitation materials for the event? May they appear as members of a host committee of an event? May they be honored at the event? Should the general solicitation bar be construed to mean that Federal candidates and officeholders are strictly prohibited from doing anything that would constitute a "solicitation" under the Internal Revenue Code that would trigger IRS disclaimer obligations?

### 3. Exception for Tax-Exempt Organizations

BCRA also addresses solicitations on behalf of 501(c) organizations that are made by Federal candidates, Federal officeholders, and individuals who are agents of either. 2 U.S.C. 441i(e)(4). BCRA makes clear that these individuals may make general solicitations on behalf of 501(c) organizations, without regard to the source or amount solicited, as long as the solicitation does not specify how the funds will or should be spent and as long as the solicitation is not for a 501(c) organization whose principal purpose is to conduct certain Federal election activity as described in 11 CFR 300.2(a), such as voter registration, voter identification, GOTV activities, or generic campaign activity. BCRA prohibits these individuals from specifically soliciting funds for the above-described Federal election activity, or for 501(c) organizations whose principal purpose is to conduct those Federal election activities, unless the solicitation is made to an individual and the amount solicited does not exceed \$20,000 per year. No solicitations may be made on behalf of 501(c) organizations for funds to use for public communications that refer to a clearly identified Federal candidate and that promote, support, attack, or oppose the candidate. *See* 148 Cong. Rec. H408 (daily ed. February 13, 2002) (statement of Rep. Shays). Thus, for example, a Federal candidate may make a general solicitation to a corporation or labor organization on behalf of the Red Cross, but may not solicit a corporation or labor organization for GOTV activities

conducted by a 501(c)(4) organization. These provisions also apply to organizations that have applied for 501(c) tax exempt status, where the application is still pending. The proposed rules track these provisions. *See* 11 CFR 300.65.

The BCRA provision relating to candidate/officeholder solicitations on behalf of 501(c) organizations specifically applies only to individuals described in 2 U.S.C. 441i(e)(1). Section 441i(e)(1) of FECA applies to Federal candidates, individual holding Federal office, their agents, and entities directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of either Federal candidates and Federal officeholders. Thus, the proposed rules construe BCRA to permit only individuals to make the solicitations—that is, Federal candidates, Federal officeholders, and individuals acting as their agents. An entity acting as a candidate's agent or an entity directly or indirectly established, financed, maintained, or controlled by a candidate could not make these general or specific solicitations on behalf of a 501(c) organization. However, the Commission seeks comments as to whether another interpretation is warranted.

The Commission also notes that the language encompassing an "agent" of Federal candidates and officeholders in Section 441i(e)(1), unlike the "agent" language in Sections 441i(a)(2) and 441i(d), does not include the limiting phrase, "agent acting on behalf of." The Commission seeks comment as to whether Section 441i(e)(1) should be similarly construed as applying to an agent acting on behalf of a Federal candidate or officeholder or whether the absence of this limiting language was intended to confer a different meaning on the use of the term "agent" in this provision.

The Commission also seeks comments on whether the proposed rules should address how to identify organizations whose principal purpose is to conduct the described Federal election activity. Should a 501(c) organization's major activities, as identified in publicly available information such as its application for tax-exempt status or annual Form 990 tax returns, be used to determine whether an organization's principal purpose is to conduct Federal election activity? Although those publicly available tax forms would reveal the past major activities of an organization or the major activities planned by the organization at the time it applied for tax exempt status, additional information would be needed to determine the principal purpose of an

organization that has applied for, but not yet obtained, tax exempt status, and to ascertain the current major activities of a 501(c) organization. Thus, should Federal candidates and officeholders be required to obtain a certification from an organization on whose behalf the candidate or officeholder wants to solicit funds that its principal purpose is not to conduct the described Federal election activity? Should the rules include a knowledge standard prohibiting solicitations for unlimited funds from any source if a Federal candidate, Federal officeholder, or individual acting on their behalf has knowledge that an organization is planning to conduct the described Federal election activity?

Finally, the Commission seeks comments on whether the rules should further address a Federal candidate's or Federal officeholder's responsibility when specifically soliciting individuals for funds for a 501(c) organization to use in conducting Federal election activity. For example, if a Federal candidate is soliciting a donation of \$20,000 from an individual who serves as the CEO of a major corporation, should the candidate be required to inform the individual that personal funds are being solicited and not funds from the individual's corporation?

### Communications by State and Local Candidates

Proposed Subpart E would implement two provisions of BCRA regarding State and local candidates. BCRA prohibits State and local candidates and officeholders from funding certain public communications with non-Federal funds. *See* 2 U.S.C. 441i(f)(1); proposed 11 CFR 300.71. They may, however, use Federal funds for these communications. The prohibition on use of non-Federal funds encompasses communications that refer to a clearly identified candidate for Federal office, if the communication promotes, supports, attacks, or opposes any candidate for that Federal office, regardless of whether the communication expressly advocates voting for or against any candidate.

In addition, BCRA contains an exception that permits State and local candidates to use non-Federal funds for communications that merely refer to Federal candidates in another context. 2 U.S.C. 441i(f)(2); proposed 11 CFR 300.72. For example, State and local candidates may note that they have been endorsed by Federal candidates, or that they agree or disagree with a Federal candidate's position on a certain issue. *See* 148 Cong. Rec. S2142–43 (daily ed. March 20, 2002) (statement of Sen.

Feingold). They would also be able to use non-Federal funds to refer to a bill or law by its popular name where that name happens to include the name of a Federal candidate. These examples are included in proposed 11 CFR 300.2(l)(ii), the definition of “promote, support, attack, or oppose,” which is cross-referenced in proposed 11 CFR 300.72.

A State or local candidate or officeholder may also use non-Federal funds for communications made in connection with an election for State or local office, that refer only to the sponsoring individual or to any other candidate for the State or local office held or sought by that individual, or both. *Id.*

#### **Certification of No Effect Pursuant to 5 U.S.C. 605(b)**

##### **[Regulatory Flexibility Act]**

The Commission certifies that the attached proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis for 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 small entities to which the rules would apply is not substantial.

##### **List of Subjects**

###### *11 CFR Part 100*

Elections.

###### *11 CFR Part 102*

Political committees and parties, reporting and recordkeeping requirements.

###### *11 CFR Part 104*

Campaign funds, political committees and parties, reporting and recordkeeping requirements.

###### *11 CFR Part 106*

Campaign funds, political committees and parties, political candidates.

###### *11 CFR Part 108*

Elections, reporting and recordkeeping.

###### *11 CFR Part 110*

Campaigns, political parties and committees.

###### *11 CFR Part 114*

Business and industry, elections, labor.

###### *11 CFR Part 300*

Campaign funds, nonprofit organizations, political committees and

parties, political candidates, reporting and recordkeeping requirements.

###### *11 CFR Part 9034*

Campaign funds, reporting and recordkeeping requirements.

For reasons set out in the preamble, Subchapters A, B and F of Chapter I of title 11 of the *Code of Federal Regulations* would be amended as follows:

#### **PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)**

1. The authority citation for 11 CFR part 100 would continue to read as follows:

**Authority:** 2 U.S.C. 431; 434(a)(11), 438(a)(8).

2. Section 100.14 would be revised to read as follows:

##### **§ 100.14 State committee, subordinate committee, district, or local committee (2 U.S.C. 431(15)).**

(a) *State committee* means the organization that by virtue of the bylaws of a political party or the operation of state law is part of the official party structure, and is responsible for the day-to-day operation of the political party at the State level, including an entity that is directly or indirectly established, financed, maintained, or controlled by that organization, as determined by the Commission.

(b) *Subordinate committee of a State committee* means any organization that is part of the official party structure, and is responsible for the day-to-day operation of the political party at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State or any organization under the control or direction of the State committee, as determined by the Commission.

(c) *District or local committee* means any organization that by virtue of the bylaws of a political party or the operation of State law is part of the official party structure, and is responsible, under State law, for the day-to-day operation of the political party at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State, including an entity that is directly or indirectly established, financed, maintained, or controlled by the district or local committee, as determined by the Commission.

3. Section 100.24 would be added to read as follows:

##### **§ 100.24 Federal election activity (2 U.S.C. 431(20)).**

(a) *Federal election activity* means—

(1) Voter registration activity during the period that begins on the date that is 120 calendar days before the date that a regularly scheduled Federal election is held and ends on the date of the election. For purposes of voter registration activity, the term “election” does not include any special election;

(2) The following activities conducted in connection with an election in which one or more candidates for Federal office appears on the ballot (regardless of whether one or more candidates for State or local office also appears on the ballot):

(i) Voter identification, including canvassing, and other activities designed to determine registered voters, likely voters, or voters indicating a preference for a specific candidate or political party; or

(ii) Generic campaign activity, as defined in 11 CFR 100.25;

(iii) Get-out-the-vote activity.

Examples of get-out-the-vote activity include transporting voters to the polls, contacting voters on election day or shortly before to encourage voting but without referring to any clearly identified candidate for Federal office, and distributing printed slate cards, sample ballots, palm cards, or other printed listing(s) of three or more candidates for any public office;

(3) A public communication that refers to a clearly identified candidate for Federal office, regardless of whether a candidate for State or local election is also mentioned or identified and that promotes, supports, attacks, or opposes any candidate for Federal office. This paragraph applies regardless of whether the communication expressly advocates a vote for or against a Federal candidate; or

(4) Services provided during any month by an employee of a State, district, or local committee of a political party who spends more than 25 percent of that individual’s compensated time during that month on activities in connection with a Federal election.

(b) *Exceptions. Federal election activity* does not include any amount expended or disbursed by a State, district, or local committee of a political party for:

(1) A public communication that refers solely to one or more clearly identified candidates for State and local office. This exception does not apply to a public communication that is voter registration activity, voter identification, generic campaign activity, or get-out-the-vote activity under paragraphs (a)(1) or (a)(2) of this section;

(2) A contribution to a candidate for State or local office, provided the contribution is not designated to pay for

voter registration activity, voter identification, generic campaign activity, get-out-the-vote activity, or a public communication as set forth in paragraphs (a)(1) through (4) of this section;

(3) The costs of a State, district, or local political convention or other similar meeting or conference;

(4) The costs of grassroots campaign materials, including buttons, bumper stickers, handbills, brochures, posters and yard signs, that name or depict only candidates for State or local office;

(5) Voter registration activity at any time other than the period of time that is 120 days before the date that a regularly scheduled Federal election is held through the date of the election; and

(6) Get-out-the-vote and voter identification activities in elections in which no candidate for Federal office appears on the ballot.

4. Section 100.25 would be added to read as follows:

**§ 100.25 Generic campaign activity (2 U.S.C. 431(21)).**

*Generic campaign activity* means a campaign activity that promotes or opposes a political party and does not promote or oppose a Federal candidate or a non-Federal candidate.

5. Section 100.26 would be added to read as follows:

**§ 100.26 Public communication (2 U.S.C. 431(22)).**

*Public communication* means a communication by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising.

6. Section 100.27 would be added to read as follows:

**§ 100.27 Mass mailing (2 U.S.C. 431(23)).**

*Mass mailing* means a mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period. For purposes of this section, substantially similar means communications that have been personalized to include the recipient's name, occupation, geographic location, or similar types of individualization.

7. Section 100.28 would be added to read as follows:

**§ 100.28 Telephone bank (2 U.S.C. 431(24)).**

*Telephone bank* means more than 500 telephone calls of an identical or substantially similar nature within any 30-day period. For purposes of this

section, *substantially similar* means communications that have been personalized to include the recipient's name, occupation, geographic location, or similar types of individualization.

**§§ 100.29–100.50 [Added and Reserved]**

8. Sections 100.29 through 100.50 would be added and reserved.

9. Sections 100.1 through 100.50 would be designated as subpart A—General Definitions, and Subpart B would be added and reserved.

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

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

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

11. Section 102.5 would be revised 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 that are political committees under the Act, other than National Party committees.*

(1) Each organization, including a State, district, or local party committee, 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 11 CFR part 102 and 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, except as otherwise permitted for State, district, and local party committees by 11 CFR part 300. 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 by 11 CFR 300.34 and 106.6(e). Administrative expenses for political committees other than party committees 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. Administrative expenses for State, district, and local party committees are subject to 11 CFR part 300; or

(ii) Establish a political committee 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 meeting the conditions set forth in paragraphs (a)(2)(i), (ii), or (iii) of this section may be deposited in a Federal account established under 11 CFR 102.5(a)(1)(i) or may be received by a political committee established under 11 CFR 102.5(a)(1)(ii).

(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; or

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

(3) Any party committee solicitation that makes reference to a Federal candidate or a Federal election shall be presumed to be for the purpose of influencing a Federal election, and contributions resulting from that solicitation shall be subject to the prohibitions and limitations of the Act. This presumption may be rebutted by demonstrating to the Commission that the funds were solicited with express notice that they would not be used for Federal election purposes.

(b) *Organizations that are not political committees under the Act.* Any organization that makes contributions or expenditures but does not qualify as a political committee under 11 CFR 100.5, including any State, district, or local party organization that makes contributions, expenditures and exempted payments under 11 CFR 100.7(b)(9), (15) and (17) and 11 CFR 100.8(b)(10), (16) and (18), or payments for certain Federal election activities under 11 CFR 300.32(b), shall either:

(1) Establish separate accounts to which only funds subject to the prohibitions and limitations of the Act, and only funds solicited for activities undertaken pursuant to 11 CFR 300.32, shall be deposited and from which contributions, expenditures, exempted payments, and payments for certain

Federal activities shall be made. Such organization shall keep records of deposits to and disbursements from such accounts and, upon request, shall make such records available for examination by the Commission; or

(2) Demonstrate through a reasonable accounting method that whenever such organization makes a contribution, expenditure, exempted payment or payment for certain Federal election activities, that organization has received sufficient funds subject to the limitations and prohibitions of the Act or to the requirements of 11 CFR 300.31 to make such contribution, expenditure or payment. Such organization shall keep records of amounts received or expended under this subsection and, upon request, shall make such records available for examination by the Commission.

(c) *National party committees.*

National party committees are prohibited from raising and spending non-Federal funds. Therefore, these committees are not included in this section.

12. Section 102.17 would be amended by adding introductory language to paragraph (a) to read as follows:

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

(a) *General.* Nothing in this section shall permit any person to solicit, receive, direct, transfer, or spend any non-Federal funds prohibited under 11 CFR part 300.

\* \* \* \* \*

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

13. The authority citation for part 104 would continue to read as follows:

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

14. Section 104.8 would be amended by revising paragraphs (e) and (f) to read as follows:

**§ 104.8 Uniform reporting of receipts.**

\* \* \* \* \*

(e) For reports covering activity on or before December 31, 2002, national party committees shall disclose in a memo Schedule A information about each individual, committee, corporation, labor organization, or other entity that donates an aggregate amount in excess of \$200 in a calendar year to the committee's non-Federal account(s). This information shall include the donating individual's or entity's name, mailing address, occupation or type of business, and the date of receipt and amount of any such donation. If a donor's name is known to have changed

since an earlier donation reported during the calendar year, the exact name or address previously used shall be noted with the first reported donation from that donor subsequent to the name change. The memo entry shall also include, where applicable, the information required by paragraphs (b) through (d) of this section.

(f) For reports covering activity on or before December 31, 2002, national party committees shall also disclose in a memo Schedule A information about each individual, committee, corporation, labor organization, or other entity that donates an aggregate amount in excess of \$200 in a calendar year to the committee's building fund account(s).

This information shall include the donating individual's or entity's name, mailing address, occupation or type of business, and the date of receipt and amount of any such donation. If a donor's name is known to have changed since an earlier donation reported during the calendar year, the exact name or address previously used shall be noted with the first reported donation from that donor subsequent to the name change. The memo entry shall also include, where applicable, the information required by paragraphs (b) through (d) of this section.

15. Section 104.9 would be amended by revising paragraphs (c), (d), and (e) to read as follows:

**§ 104.9 Uniform reporting of disbursements.**

\* \* \* \* \*

(c) For reports covering activity on or before December 31, 2002, national party committees shall report in a memo Schedule B the full name and mailing address of each person to whom a disbursement in an aggregate amount or value in excess of \$200 within the calendar year is made from the committee's non-Federal account(s), together with the date, amount and purpose of such disbursement, in accordance with 11 CFR 104.9(b). As used in 11 CFR 104.9, purpose means a brief statement or description as to the reasons for the disbursement. See 11 CFR 104.3(b)(3)(i)(A).

(d) For reports covering activity on or before December 31, 2002, national party committees shall report in a memo Schedule B the full name and mailing address of each person to whom a disbursement in an aggregate amount or value in excess of \$200 within the calendar year is made from the committee's building fund account(s), together with the date, amount and purpose of such disbursement, in accordance with 11 CFR 104.9(b). As

used in 11 CFR 104.9, purpose means a brief statement or description as to the reasons for the disbursement. See 11 CFR 104.3(b)(3)(i)(A).

(e) For reports covering activity on or before December 31, 2002, national party committees shall report in a memo Schedule B each transfer from their non-Federal account(s) to the non-Federal account(s) of a State or local party committee.

16. Section 104.10 would be revised to read as follows:

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

(a) *Expenses allocated among candidates.* A political committee that is a separate segregated fund or a nonconnected committee making an expenditure on behalf of more than one clearly identified candidate for Federal office shall allocate the expenditure among the candidates pursuant to 11 CFR 106.1. 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 shall also be allocated pursuant to 11 CFR 106.1. For allocated expenditures, the committee shall report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each Federal candidate. If a payment also includes amounts attributable to one or more non-Federal candidates, and is made by a political committee with separate Federal and non-Federal accounts, then the payment shall be made according to the procedures set forth in 11 CFR 106.6(e), as appropriate, but shall be reported pursuant to paragraphs (a)(1) through (a)(4), as follows:

(1) *Reporting of allocation of expenses attributable to specific Federal and non-Federal candidates.* In each report disclosing a payment that includes both expenditures on behalf of one or more Federal candidates and disbursements on behalf of one or more non-Federal candidates, the committee shall assign a unique identifying title or code to each program or activity conducted on behalf of such candidates, shall state the allocation ratio calculated for the program or activity, and shall explain the manner in which the ratio was derived. The committee shall also summarize the total amounts attributed to each candidate, to date, for each joint program or activity.

(2) *Reporting of transfers between accounts for the purpose of paying expenses attributable to specific Federal*

and non-Federal candidates. A political committee that pays allocable expenses in accordance with 11 CFR 106.6(e) shall report each transfer of funds from its non-Federal account to its Federal account or to its separate allocation account for the purpose of paying such expenses. In the report covering the period in which each transfer occurred, the committee shall explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one program or activity, the committee shall itemize the transfer, showing the amounts designated for each program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates.

(3) *Reporting of allocated disbursements attributable to specific Federal and non-Federal candidates.* A political committee that pays allocable expenses in accordance with 11 CFR 106.6(e) shall also report each disbursement from its Federal account or its separate allocation account in payment for a program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates. In the report covering the period in which the disbursement occurred, the committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount, and purpose of each such disbursement. If the disbursement includes payment for the allocable costs of more than one program or activity, the committee shall itemize the disbursement, showing the amounts designated for payment of each program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates. The committee shall also report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each Federal candidate, and the total amount attributed to the non-Federal candidate(s). In addition, the committee shall report the total amount expended by the committee that year, to date, for each joint program or activity.

(4) *Recordkeeping.* The treasurer shall retain all documents supporting the committee's allocation on behalf of specific Federal and non-Federal candidates, in accordance with 11 CFR 104.14.

(b) *Expenses allocated among activities.* A political committee that is a separate segregated fund or a

nonconnected committee and that has established separate Federal and non-Federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate between those accounts its administrative expenses and its costs for fundraising and generic voter drives according to 11 CFR 106.6, as appropriate, and shall report those allocations according to paragraphs (b) (1) through (5), as follows:

(1) *Reporting of allocation of administrative expenses and costs of generic voter drives.*

(i) In the first report in a calendar year disclosing a disbursement for administrative expenses or generic voter drives, as described in 11 CFR 106.6(b), the committee shall state the allocation ratio to be applied to these categories of activity according to 11 CFR 106.6(c), and the manner in which it was derived.

(ii) In each subsequent report in the calendar year itemizing an allocated disbursement for administrative expenses or generic voter drives:

(A) The committee shall state the category of activity for which each allocated disbursement was made, and shall summarize the total amount spent by the Federal and non-Federal accounts that year, to date, for each such category.

(B) The committees shall also report in a memo entry the total amounts expended in donations and direct disbursements on behalf of specific State and local candidates, to date, in that calendar year.

(2) *Reporting of allocation of the direct costs of fundraising.* In each report disclosing a disbursement for the direct costs of a fundraising program, as described in 11 CFR 106.6(b), the committee shall assign a unique identifying title or code to each such program or activity, shall state the allocation ratio calculated for the program or activity according to 11 CFR 106.6(d), and shall explain the manner in which the ratio was derived. The committee shall also summarize the total amounts spent by the Federal and non-Federal accounts that year, to date, for each such program or activity.

(3) *Reporting of transfers between accounts for the purpose of paying allocable expenses.* A political committee that pays allocable expenses in accordance with 11 CFR 106.6(e) shall report each transfer of funds from its non-Federal account to its Federal account or to its separate allocation account for the purpose of paying such expenses. In the report covering the period in which each transfer occurred, the committee shall explain in a memo entry the allocable expenses to which the transfer relates and the date on

which the transfer was made. If the transfer includes funds for the allocable costs of more than one activity, the committee shall itemize the transfer, showing the amounts designated for administrative expenses and generic voter drives, and for each fundraising program, as described in 11 CFR 106.6(b).

(4) *Reporting of allocated disbursements.* A political committee that pays allocable expenses in accordance with 11 CFR 106.6(e) shall also report each disbursement from its Federal account or its separate allocation account in payment for a joint Federal and non-Federal expense or activity. In the report covering the period in which the disbursement occurred, the committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount, and purpose of each such disbursement. If the disbursement includes payment for the allocable costs of more than one activity, the committee shall itemize the disbursement, showing the amounts designated for payment of administrative expenses and generic voter drives, and for each fundraising program, as described in 11 CFR 106.6(b). The committee shall also report the total amount expended by the committee that year, to date, for each category of activity.

(5) *Recordkeeping.* The treasurer shall retain all documents supporting the committee's allocated disbursements for three years, in accordance with 11 CFR 104.14.

17. Part 104 would be amended by adding section 104.17 to read as follows:

**§ 104.17 Reporting of allocable expenses by party committees.**

(a) *Expenses allocated among candidates.* A national party committee making an expenditure on behalf of more than one clearly identified candidate for Federal office must report the allocation between or among the named candidates pursuant to 11 CFR 106.1. A national party committee making expenditures and disbursements on behalf of one or more clearly identified Federal candidates and on behalf of one or more clearly identified non-Federal candidates must report the allocation among all named candidates pursuant to 11 CFR 106.1. A State, district or local party committee making expenditures and disbursements for Federal election activity as defined at 11 CFR 100.24 on behalf of one or more clearly identified Federal and one or more clearly identified non-Federal candidates must make the payments from its Federal account and must report the allocation among all named

candidates. For allocated expenditures, the committee must report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each candidate.

(1) *Reporting of allocation of expenses attributable to specific Federal and non-Federal candidates.* In each report disclosing an expenditure and/or disbursement that reflects payments on behalf of one or more Federal candidates and/or on behalf of one or more non-Federal candidates, the committee must assign a unique identifying title or code to each program or activity conducted on behalf of such candidates, and shall state and explain the manner in which the percentage of costs applied to each candidate was derived, pursuant to 11 CFR 106.1. The committee must also summarize the total amounts attributed to each candidate, to date, for each program or activity.

(2) *Recordkeeping.* The treasurer must retain all documents supporting the committee's allocations on behalf of specific Federal and non-Federal candidates, in accordance with 11 CFR 104.14.

(b) *Expenses allocated among activities.* A State, district or local committee of a political party that has established separate Federal and Levin accounts under 11 CFR 300.30 must report, pursuant to 11 CFR 300.36, all payments that are allocable between these accounts pursuant to the allocation rules at 11 CFR 300.33(a) and (b). A State, district or local committee of a political party that has established separate Federal and non-Federal accounts under 11 CFR 102.5 and 11 CFR 300.30 must report all payments that are allocable between these accounts pursuant to the allocation rules at 11 CFR 300.33(a) and (b).

(1) *Reporting of allocations of expenses for activities.*

(i) In the first report in a calendar year disclosing a disbursement allocable pursuant to 11 CFR 300.33, a State, district or local committee must state and explain the allocation percentage to be applied to each category of activity (e.g., 36% Federal/64% non-Federal in Presidential and Senate election years) pursuant to 11 CFR 300.33(b).

(ii) In each subsequent report in the calendar year itemizing an allocated disbursement, the State, district or local party committee must state the category of activity for which each allocated disbursement was made, and must summarize the total amounts expended by the Federal and non-Federal accounts that year, to date, for each such category.

(iii) In each report disclosing disbursements for allocable activity as described in 11 CFR 300.33, the State, district or local party committee must assign a unique identifying code to each such activity.

(2) *Reporting of transfers between the accounts of State, district and local party committees for allocable expenses.* A State, district or local committee of a political party that pays allocable expenses in accordance with 11 CFR 300.33(d) must report each transfer of funds from its non-Federal account or its Levin account to its Federal account for the purpose of payment of such expenses. In the report covering the period in which each transfer occurred, the committee must explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one activity, the committee must itemize the transfer, showing the amounts designated for each category of expense, as described in 11 CFR 300.33(b).

(3) *Reporting of allocated disbursements.* A State, district or local committee of a political party that pays allocable expenses in accordance with 11 CFR 300.33(d) must report each allocable disbursement from its Federal account (see 11 CFR 300.36). In the report covering the period in which the disbursement occurred, the committee must state the full name and address of each individual or vendor to which the disbursement was made, the date, amount and purpose of each such disbursement, and the amounts allocated between Federal and Levin accounts or Federal and non-Federal accounts. If the disbursement includes payment for the allocable costs of more than one activity, the committee shall itemize the disbursement, showing the amounts designated for payments of certain salaries, of other administrative costs and of costs for voter registration outside 120 days before an election, as described in 11 CFR 300.33. The committee must also report the total amount expended by the committee that year, to date, for each category of activity.

(4) *Recordkeeping.* The treasurer must retain all documents supporting the committee's allocations of expenditures and disbursements for the costs and activities cited at paragraph (b) of this section, in accordance with 11 CFR 104.14.

## PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

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

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

19. Section 106.1 would be amended by revising paragraphs (a)(1), (a)(2), and (e) 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. These methods 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. Party committees must use only Federal funds for such payments. See 11 CFR 100.24(a)(5).

(2) An expenditure made on behalf of more than one clearly identified Federal candidate shall be reported pursuant to 11 CFR 104.10(a) or 104.17(a), as appropriate. A payment by a separate segregated fund or a nonconnected committee that also 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 be made according to the procedures set forth in 11 CFR 106.6(e), but shall be reported pursuant to 11 CFR 104.10(a).

\* \* \* \* \*

(e) Party committees, separate segregated funds, and nonconnected committees that make disbursements for certain salaries, other administrative expenses, fundraising, generic voter drives, Levin activities, or certain voter registration activities, in connection with both Federal and non-Federal

elections, shall allocate their expenses in accordance with 11 CFR 106.6 or 300.33, as appropriate.

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

**§ 106.5 Allocation of expenses between Federal and non-Federal activities by party committees.**

(a) National party committees are prohibited from raising or spending non-Federal funds. Therefore, these committees shall not allocate expenditures and disbursements between Federal and non-Federal accounts. Only Federal accounts may be used.

(b) State, district, and local party committees that make expenditures and disbursements in connection with Federal and non-Federal elections shall make those expenditures and disbursements entirely from funds subject to the prohibitions and limitations of the Act, or from accounts established pursuant to 11 CFR 102.5 and 11 CFR 300.30. Political committees that have established separate Federal, Levin and/or non-Federal accounts under 11 CFR 102.5(a)(1)(i) and 11 CFR 300.30 shall allocate expenses according to 11 CFR 300.33. Party organizations that are not political committees but have established separate Federal, Levin and/or non-Federal accounts under 11 CFR 102.5(b)(1)(i) and 11 CFR 300.30, or that make Federal and non-Federal disbursements from a single account under 11 CFR 102.5(b)(1)(ii) and any Levin payments from a separate account, shall also allocate their Federal and non-Federal expenses according to 11 CFR 300.33.

**PART 108—FILING COPIES OF REPORTS AND STATEMENTS WITH STATE OFFICERS (2 U.S.C. 439)**

21. The authority citation for part 108 would continue to read as follows:

**Authority:** 2 U.S.C. 434(a)(2), 438(a)(8), 439, 453.

22. Section 108.7 would be amended by revising paragraphs (c)(4) and (c)(5) and adding paragraph (c)(6) to read as follows:

**§ 108.7 Effect on State law (2 U.S.C. 453).**

\* \* \* \* \*

(c) \* \* \*

(4) Prohibition of false registration, voting fraud, theft of ballots, and similar offenses;

(5) Candidate's personal financial disclosure; or

(6) Application of State law to the funds used for the purchase or construction of a State or local party office building to the extent described in 11 CFR 300.35.

**PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS**

23. The authority citation for part 110 would continue to be read as follows:

**Authority:** 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h.

24. Section 110.1 would be amended by adding new paragraph (c)(5) to read as follows:

**§ 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)).**

\* \* \* \* \*

(c) \* \* \*

(5) On or after January 1, 2003, no person shall make contributions to a political committee established and maintained by a State committee of a political party in any calendar year that, in the aggregate, exceed \$10,000.

\* \* \* \* \*

**PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY**

25. The authority citation for part 114 would continue to read as follows:

**Authority:** 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434(a)(11), 437d(a)(8), 438(a)(8), 441b.

26. Section 114.1 would be amended by revising paragraph (a)(2)(ix) to read as follows:

**§ 114.1 Definitions.**

(a) \* \* \*

(2) \* \* \*

(ix) Donations to a State or local party committee used for the purchase or construction of its office building are subject to 11 CFR 300.35. No exception applies to contributions or donations to a national party committee that are made or used for the purchase or construction of any office building or facility; or

\* \* \* \* \*

27. Part 300 would be added to subchapter B read as follows:

**PART 300—NON-FEDERAL FUNDS**

Sec.

300.1 Scope, effective date, and organization.

300.2 Definitions.

**Subpart A—National Party Committees**

300.10 General prohibitions on raising and spending non-Federal funds (2 U.S.C. 441(i)(a) and (c)).

300.11 Prohibition on fundraising for and donating to certain tax-exempt organizations, (2 U.S.C. 441(d)).

300.12 Transition rules.

300.13 Reporting (2 U.S.C. 431 note and 434(e)).

**Subpart B—State, District, and Local Party Committees and Organizations**

300.30 Accounts.

300.31 Receipt of Levin funds.

300.32 Expenditures and disbursements.

300.33 Allocation.

300.34 Transfers.

300.35 Office buildings.

300.36 Reporting Federal election activity; recordkeeping.

300.37 Prohibitions on fundraising for and donating to certain tax-exempt organizations (2 U.S.C. 441(d)).

**Subpart C—Tax-exempt Organizations**

300.50 Prohibited fundraising by national party committees (2 U.S.C. 441(d)).

300.51 Prohibited fundraising by State, district, and local party committees (2 U.S.C. 441(d)).

300.52 Fundraising by Federal candidates and Federal officeholders (2 U.S.C. 441(e)(4)).

**Subpart D—Federal Candidates and Officeholders**

300.60 Scope (2 U.S.C. 441(e)(1)).

300.61 Federal elections (2 U.S.C. 441(e)(1)(A)).

300.62 Non-Federal elections (2 U.S.C. 441(e)(1)(B)).

300.63 Exception for State party candidates (2 U.S.C. 441(e)(2)).

300.64 Exemption for attending or speaking at fundraising events.

300.65 Exceptions for certain tax-exempt organizations.

**Subpart E—State and Local Candidates**

300.70 Scope (2 U.S.C. 441(f)(1)).

300.71 Federal funds required for certain public communications (2 U.S.C. 441(f)(1)).

300.72 Federal funds not required for certain communications (2 U.S.C. 441(f)(2)).

**Authority:** 2 U.S.C. 434(e), 438(a)(8), 441a(a)(i), 441i, 453.

**§ 300.1 Scope, effective date, and organization.**

(a) *Introduction.* This part implements changes to the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"), enacted by Title I of the Bipartisan Campaign Finance Reform Act of 2002 ("BCRA"), Public Law 107-155. Unless expressly stated to the contrary, nothing in this part alters the definitions, restrictions, liabilities, and obligations imposed by sections 431-455 of Title 2, United States Code, or regulations prescribed thereunder (11 CFR parts 100-116).

(b) *Effective dates.*

(1) Except as otherwise specifically provided in this part, this part shall take effect on November 6, 2002; however, subpart B of this part shall not apply with respect to runoff elections, recounts, or election contests resulting from elections held prior to such date. See 11 CFR 300.12 for transition rules applicable to subpart A of this part.

(2) The increase in individual contribution limits to State committees of political parties, as described in 11 CFR 110.1(c)(5), shall apply to contributions made on or after January 1, 2003.

(c) *Organization of part.* Part 300, which generally addresses non-Federal funds and closely related topics, is organized into five subparts. Each subpart is oriented to the perspective of a category of persons facing issues related to non-Federal funds.

(1) Subpart A of this part prescribes rules pertaining to national party committees, including general non-Federal funds prohibitions, fundraising, and donation prohibitions with regard to certain tax-exempt organizations, transition rules as BCRA takes effect, and reporting.

(2) Subpart B of this part pertains to State, district, and local political party committees and organizations. Subpart B of this part focuses on the so-called "Levin Amendment" to BCRA, "building fund" issues, and fundraising and donation prohibitions with regard to certain tax-exempt organizations.

(3) Subpart C of this part addresses non-Federal funds issues from the perspective of tax-exempt organizations, setting out rules about prohibited fundraising for certain tax-exempt organizations by national party committees, State, district, and local party committees, and Federal candidates and officeholders.

(4) Subpart D of this part includes regulations about non-Federal funds issues facing Federal candidates and officeholders in Federal and non-Federal elections, and exceptions for those who are also State candidates, for attending and speaking at fundraising events, and with regard to certain tax-exempt organizations.

(5) Subpart E of this part focuses on State and local candidates, including regulations about the Federal funds for certain public communications, and exceptions for entirely non-Federal communications.

(6) For rules pertaining to convention and host committees, see 11 CFR part 9008.

### § 300.2 Definitions.

(a) A *501(c) organization that makes expenditures or disbursements in connection with a Federal election* includes an organization that:

(1) Establishes, finances, maintains, supports, or controls a political committee;

(2) Makes expenditures or disbursements for Federal election activity;

(3) Finances voter registration at any time; or

(4) Finances voter guides, candidate questionnaires, or candidate surveys that refer to one or more candidates for Federal office.

(b) *Agent* means any person who has actual express oral or written authority to act on behalf of a candidate, officeholder, or a national committee of a political party, or a State, district or local committee of a political party, or an entity directly or indirectly established, financed, maintained, or controlled by a party committee. An agent has actual authority if he or she has instructions, either oral or written, from the candidate or a committee official.

(c) *Directly or indirectly establish, maintain, finance, or control.* This paragraph applies to State, district, or local committees of a political party, candidates, and holders of Federal office, which shall be referred to as "sponsors" in this paragraph.

(1) A sponsor directly or indirectly establishes, finances, maintains, or controls an entity if one or more of the following conditions are satisfied as a result of actions taken by the sponsor, or by an officer, employee, or agent of the sponsor acting on behalf of the sponsor or at the sponsor's behest:

(i) The sponsor and the entity are affiliated under 11 CFR 100.5(g).

(ii) The sponsor, alone or in combination with other persons, forms, organizes, or otherwise creates the entity, including providing any of the funds used to form, organize or create the entity. As used in this paragraph, "forms, organizes, or otherwise creates" includes the conversion, reorganization, or redirection of a pre-existing entity.

(iii) The sponsor provides a significant amount of the entity's funding at any point in the entity's existence, whether by contribution (including in-kind contribution), donation (including in-kind donation), transfer, or other means. In determining whether or not this condition is satisfied, one or more of the following factors, any one of which may be dispositive, may be considered:

(A) The percentage of the entity's total funding in a given calendar year represented by the amount of funding provided by the sponsor.

(B) Whether the sponsor provided funding to the entity on a one-time basis or more systematically over a period of time, including the frequency, regularity, and duration of funding.

(C) The amount of time that has elapsed since the sponsor last provided funding to the entity.

(iv) The sponsor provides or has provided legal, accounting, consulting, administrative, or other services to the entity.

(v) The sponsor, alone or in combination with other persons, sets or has set policies for soliciting contributions or donations to the entity or for the making of expenditures or disbursements by the entity.

(vi) The same person or persons has or has had decision-making authority over the management of both the sponsor and the entity.

(2) Determinations by the Commission.

(i) A sponsor or entity may request an advisory opinion of the Commission to determine whether the sponsor is no longer directly or indirectly financing, maintaining, or controlling the entity for purposes of this part. The request for such an advisory opinion must meet the requirements of 11 CFR part 112.

(ii) Notwithstanding the fact that a sponsor may have established an entity within the meaning of paragraph (c)(1)(ii) of this section, the committee or the entity may request an advisory opinion of the Commission determining that the relationship between the sponsor and the entity has been severed. The request for such an advisory opinion must meet the requirements of 11 CFR part 112, and must specifically include a complete description of all facts relevant to showing that all connections between the sponsor and the entity have been severed for at least five years.

(d) *Disbursement* means any purchase or payment made by a political committee or organization that is not a political committee.

(e) For purposes of part 300, *donation* means a payment, gift, subscription, loan, advance, deposit, or anything of value given to a non-Federal candidate, a party committee, 501(c) organization, or a section 527 organization, but does not include contributions or transfers.

(f) *Federal account* means an account at a financial depository institution or other account that contains funds to be used in connection with a Federal election.

(g) *Federal funds* mean funds that comply with the limitations, prohibitions, and reporting requirements of the Act.

(h) *Levin account* means an account established by a State, district, or local committee of a political party pursuant to 11 CFR 300.30 for purposes of making expenditures or disbursements for Federal election activity or non-Federal activity (subject to State law) under 11 CFR 300.32.

(i) *Levin funds* mean non-Federal funds that comply with the limitations, prohibitions, and reporting requirements set out in subpart B of this part, which are or will be disbursed by a State, district, or local committee of a political party for Federal election activity or non-Federal activity (subject to State law) under 11 CFR 300.32.

(j) *Non-Federal account* means an account at a financial depository institution or other account which contains funds to be used in connection with a State or local election.

(k) *Non-Federal funds* mean funds that are not subject to the limitations and prohibitions of the Act.

(l) *Promote, support, attack, or oppose.*

(1) A communication *promotes, supports, attacks, or opposes* a candidate if, when taken as a whole and with limited reference to external events, such as the proximity to the election, the communication:

(i) Expressly advocates the election or defeat of that clearly identified candidate; or

(ii) Unmistakably and unambiguously encourages action to elect or defeat a clearly identified candidate, even if it also encourages some other kind of action.

(2) For purposes of paragraph (l)(1), a communication does not *promote, support, attack, or oppose* a candidate for Federal office if:

(i) The communication is made in connection with an election for State or local office, and does not refer to any candidate for Federal office; or

(ii) The communication refers to a candidate for Federal office but the reference to the Federal candidate consists only of:

(A) The fact that the Federal candidate endorsed another Federal, State, or local candidate;

(B) The fact that another Federal, State, or local candidate agrees or disagrees with the Federal candidate's position on an issue or on legislation; or

(C) A reference to a bill or law by its popular name where that name includes the name of the Federal candidate.

(m) *To solicit or direct* means to request or suggest or recommend that another person make a contribution or donation, including through a conduit or intermediary, to a candidate, a political committee, or a political organization described in 26 U.S.C. 527 or a tax-exempt organization described in 26 U.S.C. 501(c). A solicitation does not include merely providing information or guidance as to the requirements of applicable law.

## Subpart A—National Party Committees

### § 300.10 General prohibitions on raising and spending non-Federal funds (2 U.S.C. 441(i)(a) and (c)).

(a) *Prohibitions.* A national committee of a political party, including a national party congressional campaign committee, must not:

(1) Solicit, receive, or direct to another person a contribution, donation, or transfer of funds, or any other thing of value that are not subject to the prohibitions, limitations and reporting requirements of the Act; or

(2) Spend any funds that are not subject to the prohibitions, limitations, and reporting requirements of the Act; or

(3) Solicit, receive, direct or transfer to another person, or spend, Levin funds.

(b) *Fundraising costs.* A national committee of a political party, including a national party congressional campaign committee, must use only Federal funds to raise funds that are used, in whole or in part, for expenditures and disbursements for Federal election activity.

(c) *Application.* This section also applies to:

(1) An officer or agent acting on behalf of a national party committee or a national party congressional campaign committee; and

(2) An entity that is directly or indirectly established, financed, maintained, or controlled by a national party committee or a national congressional campaign committee.

### § 300.11 Prohibitions on fundraising for and donating to certain tax-exempt organizations (2 U.S.C. 441(d)).

(a) *Prohibitions.* A national committee of a political party, including a national party congressional campaign committee, must not solicit any funds for, or make or direct any donations to the following organizations:

(1) An organization that is described in 26 U.S.C. 501(c) and exempt from taxation under section 26 U.S.C. 501(a) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity;

(2) An organization that has submitted an application for tax-exempt status under section 26 U.S.C. 501(c) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity; or

(3) An organization described in 26 U.S.C. 527, except for a political

committee; a State, district, or local committee of a political party; or the authorized campaign committee of a State or local candidate.

(b) *Application.* This section also applies to:

(1) An officer or agent acting on behalf of a national party committee, including a national party congressional committee;

(2) An entity that is directly or indirectly established, financed, maintained, or controlled by a national party committee, including a national party congressional committee, or an officer or agent acting on behalf of such entity; and

(3) An entity that is directly or indirectly established, financed, maintained, or controlled by an agent of a national committee of a political party, including a national party congressional committee.

### § 300.12 Transition rules.

(a) *Permissible uses of excess non-Federal funds.* Non-Federal funds received before November 6, 2002, by a national committee of a political party, including a national party congressional campaign committee, must be used before January 1, 2003. Subject to the restrictions in paragraphs (b) and (e) of this section, such funds may be used only as follows:

(1) To retire outstanding debts or obligations that were incurred solely in connection with an election held prior to November 6, 2002; or

(2) To pay expenses, retire outstanding debts, or pay for obligations incurred solely in connection with any run-off election, recount, or election contest resulting from an election held prior to November 6, 2002.

(b) *Prohibited uses of non-Federal funds.* Non-Federal funds received by a national committee of a political party, including a national party congressional campaign committee, before November 6, 2002, and in its possession on that date, may not be used for the following purposes:

(1) To pay any expenditure as defined in 2 U.S.C. 431(9);

(2) To retire outstanding debts or obligations that were incurred for any expenditure; or

(3) To defray the costs of the construction or purchase of any office building or facility.

(c) *Application.* This section also applies to:

(1) An officer or agent acting on behalf of a national party committee or a national party congressional campaign committee; and

(2) An entity that is directly or indirectly established, financed,

maintained, or controlled by a national party committee or a national congressional campaign committee.

(d) *Treatment of Federal and non-Federal accounts during transition period.* The following provisions applicable to the allocation of, and payment for, expenses between Federal and non-Federal accounts of national party committees shall remain in effect between November 6 and December 31, 2002: 11 CFR 106.5(a), 106.5(b), 106.5(c), 106.5(f) and 106.5(g).

(e) *National party committee office building or facility accounts.* Before November 6, 2002, the national committee of a political party, including a national party congressional campaign committee, may accept funds into its party office building or facility account, established pursuant to repealed § 431(8)(B)(viii), and may use the funds in the account only for the construction or purchase of an office building or facility. After November 5, 2002, the national committees may no longer accept funds into such an account and must not use such funds for the purchase or construction of a national party office building or facility. Funds on deposit in any party office building or facility account on November 6, 2002, must be either disgorged to the United States Treasury or donated to an organization described in 26 U.S.C. 170(c) no later than December 31, 2002.

**§ 300.13 Reporting (2 U.S.C. 431 note and 434(e)).**

(a) *In general.* The national committee of a political party, a national party campaign committee, and any subordinate committee of either, shall report all receipts and disbursements during the reporting period.

(b) *Termination report for non-Federal accounts.* Each committee described in paragraph (a) of this section shall file a termination report disclosing the disposition of all funds in all non-Federal accounts and building fund accounts by January 31, 2003.

(c) *Transitional reporting rules.*

(1) The reporting requirements in 11 CFR 104.9(c) for national party committee non-Federal accounts shall remain in effect for the report covering activity between November 6 and December 31, 2002.

(2) The reporting requirements in 11 CFR 104.8(e) for national party committee non-Federal accounts shall remain in effect for the report covering activity between November 6 and December 31, 2002.

(3) The reporting requirements in 11 CFR 104.8(f) and 104.9(d) for national party committee building fund accounts shall remain in effect for the report

covering activity between November 6 and December 31, 2002.

**Subpart B—State, District, and Local Party Committees and Organizations**

**§ 300.30 Accounts.**

(a) *Federal Account.*

(1) Each State, district, and local party organization that qualifies as a political committee under 11 CFR 100.5 and that finances political activity in connection with both Federal and non-Federal elections shall:

(i) Establish a Federal account in a depository, in accordance with 11 CFR part 103, which shall be treated as a separate political committee and be required to comply with the requirements of the Act including the registration and reporting requirements of 11 CFR part 102 and part 104; or

(ii) Establish a separate Federal political committee that shall register as a political committee and comply with the requirements of the Act.

(2) Each State, district, and local party organization that does not qualify as a political committee under 11 CFR 100.5 and that finances political activity in connection with both Federal and non-Federal elections shall—

(i) Establish a Federal account in a depository; or

(ii) Demonstrate by a reasonable accounting method that whenever such organization makes a contribution or expenditure, that organization has received sufficient funds that are permissible under the Act to make such contribution or expenditure. Such organization shall keep records of amounts received or expenditures under this subsection and, upon request, shall make such records available for examination by the Commission.

(3) Only contributions that are permissible pursuant to the limitations and prohibitions of the Act shall be deposited into any Federal account established pursuant to paragraphs (a)(1) or (2) of this section, regardless of whether such contributions are for use in connection with Federal and non-Federal elections.

(4) Only contributions solicited and received pursuant to the following conditions may be deposited in a Federal account established under paragraph (a)(1) or (2) of this section:

(i) Contributions must be designated by the contributors for the Federal account;

(ii) The solicitation must expressly state that contributions may be used wholly or in part in connection with a Federal election; or

(iii) The solicitation must expressly state that all contributions are subject to

the prohibitions and limitations of the Act.

(5) All disbursements, contributions, and expenditures by a State, district, or local party committee made wholly or in part in connection with a Federal election must be made from the committee's Federal account, except as permitted by 11 CFR 300.32.

(6) Expenditures and disbursements for costs that are allocable pursuant to 11 CFR 300.33 must be made from the Federal account in their entirety, with the shares of a non-Federal account or of a Levin account being then transferred to the Federal account pursuant to 11 CFR 300.34.

(7) No transfers may be made to such Federal account from any other account(s) maintained by a State, district, or local party committee or from any other party committee at any level for the purpose of financing activity in connection with Federal elections, except as provided by 11 CFR 300.33 and 11 CFR 300.34.

(8) State, district, and local party committees may choose to make non-Federal disbursements from the Federal account, provided that such disbursements are reported pursuant to 11 CFR part 104 and provided that contributors of the Federal funds so used were notified that their contributions were subject to the limitations and prohibitions of the Act.

(b) *Levin account.*

(1) Any State, district, or local party committee, whether or not it qualifies as a political committee under the Act and including any organization that is directly or indirectly established, financed, maintained, or controlled by a State, district, or local committee of a political party and any officer or agent of such a committee or organization, that intends to engage in voter registration, voter identification, get-out-the-vote activity, and/or generic campaign activity pursuant to 11 CFR 300.32 must maintain a separate account in a depository for this purpose. This account shall be known as a Levin account.

(2) Only donations solicited and received pursuant to either of the following conditions may be deposited in a Levin account established under paragraph (b)(1) of this section:

(i) Donations must be designated by the donors for the Levin account; or

(ii) Donors have been informed that donations will be subject to the special donation limitations and prohibitions of 2 U.S.C. 441i(b)(2)(B) and 11 CFR 300.31(c) and (d).

(3) A State, district, or local party committees may use its Levin account to make expenditures or disbursements for

the categories of activities described at 11 CFR 300.32 or for other, non-Federal activities permissible under State law.

(4) A State, district, or local party committee may use its Levin account to make expenditures or disbursements only if all of the following conditions are met:

(i) The expenditure or disbursement does not pay for an activity that refers to a clearly identified candidate for Federal office;

(ii) The expenditure or disbursement does not pay for any part of the costs of any broadcasting, cable, or satellite communication, other than a communication that refers solely to a clearly identified candidate for State or local office; and

(iii) The Levin funds used for the expenditure or disbursement have been solicited, donated, received, and deposited in accordance with this part.

(c) *Non-Federal account.*

(1) Any State, district, or local party committee that makes disbursements solely in connection with State or local elections must establish a separate non-Federal account in a depository. The funds deposited into this account may be governed by State law.

(2) Disbursements, contributions, and expenditures made wholly or in part in connection with Federal elections must not be made from any non-Federal account, except as permitted by 11 CFR 300.33 and 11 CFR 300.34.

**§ 300.31 Receipt of Levin funds.**

(a) *General rule.* Levin funds expended or disbursed by any State, district, or local committee must be raised solely by the committee that expends or disburses them.

(b) *Compliance with State law.* Each donation of Levin funds solicited or accepted by a State, district, or local committee of a political party must be lawful under the laws of the State in which the committee is organized.

(c) *Donations from sources permitted by State law but prohibited by the Act.* If the laws of the State in which a State, district, or local committee of a political party is organized permit donations to the committee from a source prohibited by the Act and this chapter, the committee may solicit and accept donations of Levin funds from that source, subject to paragraph (d) of this section.

(d) *Donation amount limitation.*

(1) *General rule.* A State, district, or local committee of a political party must not solicit or accept from any person (including any person established, financed, maintained, or controlled by such person) one or more donations of

Levin funds aggregating to more than \$10,000 in a calendar year.

(2) *Effect of different State limitations.* If the laws of the State in which a State, district, or local committee of a political party is organized limit donations to that committee to less than the amount specified in paragraph (d)(1) of this section, then the State law amount limitations shall control. If the laws of the State in which a State, district, or local committee of a political party is organized permit donations to that committee in amounts greater than the amount specified in paragraph (d)(1) of this section, then the amount limitations in paragraph (d)(1) of this section shall control.

(3) *No affiliation of committees for purposes of this paragraph.* For purposes of determining compliance with paragraph (d) of this section only, State, district, and local committees of the same political party shall not be considered affiliated. A person (including any person established, financed, maintained, or controlled by such person) may donate up to \$10,000 per calendar year to each State, district, and local committee of political party.

(e) *No Levin funds from a national party committee or a Federal candidate or officeholder.* A State, district, or local committee of a political party disbursing Levin funds pursuant to 11 CFR 300.32 must not accept or use for those purposes any donations or other funds that are solicited, received, directed, transferred, or spent by or in the name of any of the following persons:

(1) A national committee of a political party (including a national congressional campaign committee of a political party). Notwithstanding 11 CFR 102.17, a State, district, or local committee of a political party must not raise Levin funds by means of joint fundraising with a national committee of a political party.

(2) A Federal candidate, individual holding Federal office, or an entity directly or indirectly established, financed, maintained, or controlled by or acting on behalf of one or more candidates or individuals holding Federal office. Notwithstanding 11 CFR 102.17, a State, district, or local committee of a political party must not raise Levin funds by means of joint fundraising with a Federal candidate, individual holding Federal office, or an entity directly or indirectly established, financed, maintained, or controlled by or acting on behalf of one or more candidates or individuals holding Federal office. A Federal candidate or individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district,

or local committee of a political party at which Levin funds are raised. See 11 CFR 300.64.

(f) *Certain joint fundraising prohibited.* Notwithstanding 11 CFR 102.17, a State, district, or local committee of a political party must not raise Levin funds by means of joint fundraising with any other State, district, or local committee of any political party, or the agent of such a committee. This prohibition includes State, district, and local committees of a political party organized in another State. The use of a common vendor for fundraising by more than one State, district, or local committee of a political party, or the agent of such a committee, shall not, by itself, be deemed joint fundraising for purposes of this paragraph.

**§ 300.32 Expenditures and disbursements.**

(a) *Federal funds.*

(1) A State, district, or local committee of a political party that makes an expenditure or disbursement for the purpose of influencing a Federal election must use Federal funds for the expenditure, subject to the provisions of this chapter. An association or similar group of candidates for State or local office, or an association or similar group of individuals holding State or local office, must make any expenditures or disbursements for Federal election activity solely with Federal funds.

(2) Except as provided in this part, a State, district, or local committee of a political party that makes expenditures or disbursements for Federal election activity must use Federal funds for that purpose, subject to the provisions of this chapter.

(3) State, district, and local party committees that engage in fundraising for Federal activities must pay all costs related to such fundraising only with Federal funds.

(4) State, district, and local party committees that engage in fundraising for a Levin account must pay all costs related to raising such funds only with Federal funds.

(b) *Levin funds.* A State, district, or local committee of a political party may spend Levin funds in accordance with this part on the following types of activity:

(1) Subject to the conditions set out in paragraph (c) of this section, the following types of Federal election activity:

(i) Voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election; and

(ii) Voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State of local office also appears on the ballot).

(2) Any use that is lawful under the laws of the State in which the committee is organized. A disbursement of Levin funds under this paragraph need not comply with paragraph (c) of this section, except as required by State law.

(c) *Conditions and restrictions on spending Levin funds for Federal election activity.*

(1) The Federal election activity for which the expenditure or disbursement is made must not refer to a clearly identified candidate for Federal office.

(2) The expenditure or disbursement must not pay for any part of the costs of any broadcasting, cable, or satellite communication, other than a communication that refers solely to a clearly identified candidate for State or local office.

(3) The expenditure or disbursement must be made from funds raised in accordance with 11 CFR 300.31.

(4) The expenditure or disbursement must be allocated between Federal funds and Levin funds according to 11 CFR 300.33.

(d) *Non-Federal funds.* A State, district, or local committee of a political party that makes disbursements for non-Federal activity may make those disbursements from its Federal or non-Federal funds, subject to the laws of the State in which it is organized. A State, district, or local party committee that engages in fundraising for solely non-Federal funds may pay the costs related to such fundraising from any account, subject to State law, including a Federal account. A disbursement of non-Federal funds made under State law by a State, district, or local committee of a political party that is not directed by the disbursing committee for the purpose of influencing a Federal election or for Federal election activity shall not be an expenditure under 11 CFR 100.8 or an expenditure or disbursement for Federal election activity.

### **§ 300.33 Allocation.**

(a) *Costs allocable by State, district, and local party committees.*

(1) *Salaries.* State, district, and local party committees may allocate the salaries of employees who spend 25% or less of their time in any given month on Federal election activity between the committee's Federal and non-Federal accounts. The salaries of those

employees who spend more than 25% of their time in any given month on Federal election activity must be paid only with Federal funds.

(2) *Administrative costs.* State, district, and local party committees may allocate administrative costs, including rent, utilities, office equipment, office supplies, postage for other than mass mailings, and routine building maintenance, upkeep and repair, between their Federal and non-Federal accounts, except that any such expenses directly attributable to a clearly identified Federal candidate must be paid only from the Federal account.

(3) *Costs of voter registration within a certain time period, voter identification, get-out-the-vote, and generic campaign activity.* State, district, and local party committees that have established a Federal account and a separate Levin account pursuant to 11 CFR 300.30(b), must allocate disbursements or expenditures between these two accounts for:

(i) Voter registration activity during the period that begins on the date that is 120 days before the date of a regularly scheduled Federal election and that ends on the date of the election, provided that the activity does not clearly identify a Federal candidate; and

(ii) Voter identification, get-out-the-vote activity, or generic campaign activities conducted in connection with an election in which a candidate for Federal office is on the ballot.

(b) *Allocation percentages, ratios and record-keeping.*

(1) *Salaries.* Committees must keep time records for all employees for purposes of determining the percentage of time spent on activities in connection with a Federal election. Allocations of salaries will be undertaken as follows:

(i) Salaries of employees who spend more than 25% of their compensated time in a given month on activities in connection with a Federal election must be paid 100% from the Federal account.

(ii) Salaries of employees who spend 25% or less of their compensated time in a given month on activities in connection with a Federal election shall be allocated between the committee's Federal and non-Federal account.

(iii) Salaries of employees who spend no time in a given month on activities in connection with a Federal election may be paid solely from the non-Federal account.

(2) *Administrative costs.* State, district, and local party committees that choose to allocate administrative expenses may do so subject to the following requirements:

(i) *Presidential election years.* In any year in which a Presidential candidate,

but no Senate candidate appears on the ballot, State, district, and local party committees must allocate at least 28% of administrative expenses to their Federal accounts.

(ii) *Presidential and Senate election year.* In any year in which a Presidential candidate and a Senate candidate appear on the ballot, State, district, and local party committees must allocate at least 36% of administrative expenses to their Federal accounts.

(iii) *Senate election year.* In any year in which a Senate candidate, but no Presidential candidate, appears on the ballot, State, district and local party committees must allocate at least 21% of administrative expenses to their Federal account.

(iv) *Non-Presidential and non-Senate year.* In any year in which neither a Presidential nor a Senate candidate appears on the ballot, State, district and local party committee must allocate at least 15% of administrative expenses to their Federal account.

(3) *Levin activities—Voter registration, voter identification, get-out-the-vote, and generic campaign activity.* State, district, and local party committees that choose to make expenditures and disbursements in connection with activities described in paragraph (a)(3) of this section must allocate such expenditures and disbursements between their Federal and Levin accounts. The allocation must result in the following minimum percentages to their Federal accounts:

(i) *Presidential election years.* In any year in which a Presidential candidate, but no Senate candidate appears on the ballot, State, district, and local party committees must allocate at least 28% of expenses for activities described in paragraph (a)(2) of this section to their Federal account.

(ii) *Presidential and Senate election year.* In any year in which a Presidential candidate and a Senate candidate appear on the ballot, State, district, and local party committees must allocate at least 36% of expenses for activities described in paragraph (a)(2) of this section to their Federal account.

(iii) *Senate election year.* In any year in which a Senate candidate, but no Presidential candidate, appears on the ballot, State, district, and local party committees must allocate at least 21% of expenses for activities described in paragraph (a)(2) of this section to their Federal account.

(iv) *Non-Presidential and non-Senate year.* In any year in which neither a Presidential nor a Senate candidate appears on the ballot, State, district, and local party committee must allocate at least 15% of expenses for activities

described in paragraph (a)(2) of this section to their Federal account.

(4) *Other voter registration activities.* Expenses for voter registration activities undertaken by a State, district, or local party committee outside the period beginning 120 days before an election and ending on the date of the election may be paid with 100% non-Federal funds, or they may be allocated between the committee's Federal and non-Federal accounts.

(5) *Other get-out-the-vote activities when no Federal candidate is on the ballot.* Expenses for voter identification, get-out-the-vote, and generic campaign activity when no Federal candidate is on the ballot that are undertaken by a State, district, or local party committee may be paid with 100% non-Federal funds, or they may be allocated between the committee's Federal and non-Federal accounts.

(c) *Costs not allocable by State, district, and local party committees.* The following costs incurred by State, district, and local party committees shall be paid only with Federal funds:

(1) *Activities that refer to clearly identified Federal candidates.*

Disbursements by State, district, and local party committee for activities that refer to a clearly identified candidate for Federal office must not be allocated between or among Federal, non-Federal and Levin accounts. Only Federal funds may be used.

(2) *Activities that refer to Federal and to State and/or local elections.* With the exception of activities described in paragraph (a)(3) of this section, disbursements by State, district, and local party committee for activities that do not refer to a clearly identified Federal candidate, but that are wholly or in part in connection with Federal elections, must not be allocated between or among Federal, non-Federal and Levin accounts. Only Federal funds may be used.

(3) *Fundraising costs.* Disbursements for fundraising costs incurred by State, district, and local party committees for funds to be used, in whole or in part, for Federal election activity, including the activities described at paragraph (a)(3) of this section, must not be allocated between or among Federal, non-Federal and Levin accounts. Only Federal funds may be used. However, if such disbursements are for solely non-Federal fundraising costs, non-Federal funds may be used.

(d) *Transfers between accounts to cover allocable expenses.* State, district, and local party committees may transfer funds from their non-Federal or Levin accounts to their Federal accounts solely to meet allocable expenses and

only pursuant to the following requirements:

(1) *Payments from Federal accounts.* State, district, and local party committees must pay the entire amount of an allocable expense from their Federal accounts and must transfer funds from their non-Federal account to the Federal account for administrative expenses or from their Levin account for expenses related to activities identified in paragraph (a)(2) of this section.

(2) *Timing.*

(i) State, district, and local party committees must transfer funds from their non-Federal or Levin accounts to their Federal accounts to meet allocable expenses no more than 10 days before and no more than 60 days after the payments for which they are designated are made from a Federal account, except that transfers may be made more than 10 days before a payment is made from the Federal account if advance payment is required by the vendor(s) and if such payment is based on a reasonable estimate of the activity's final costs as determined by the committee and the vendor(s) involved.

(ii) Any portion of a transfer from a committee's non-Federal account to its Federal account that does not meet the requirement of paragraph (d)(2)(i) of this section shall be presumed to be a loan or contribution from the non-Federal account or the Levin account to the Federal account, in violation of the Act.

#### § 300.34 Transfers.

(a) *Federal funds.* Notwithstanding 11 CFR 102.6(a)(1)(ii), a State, district, or local committee of a political party must not use any Federal funds transferred to it from, or otherwise accepted by it from, any of the persons enumerated in paragraphs (b)(1) and (b)(2) of this section as the Federal component of an expenditure for Federal election activity under 11 CFR 300.32. A State, district, or local committee of a political party must itself raise the Federal component of an expenditure allocated between Federal funds and Levin funds under 11 CFR 300.32 and 300.33.

(b) *Levin funds.* Levin funds must be raised solely by the State, district, or local committee of a political party that expends or disburses the funds. A State, district, or local committee of a political party must not use as Levin funds any funds transferred or otherwise provided to the committee by:

(1) Any other State, district, or local committee of any political party, any officer or agent acting on behalf of such a committee, or any entity directly or indirectly established, financed, maintained or controlled by such a committee; or,

(2) The national committee of any political party (including a national congressional campaign committee of a political party), any officer or agent acting on behalf of such a committee, or any entity directly or indirectly established, financed, maintained or controlled by such a committee.

(c) *Allocation transfers.* Transfers of Levin funds between the accounts of a State, district, or local committee of a political party for allocation purposes must comply with 11 CFR 300.33.

#### § 300.35 Office buildings.

(a) *General provision.* A State or local party committee may raise and spend funds for the purchase or construction of its office building, and such funds are not subject to the limitations, prohibitions, and disclosure provisions of the Act. Funds raised and spent for the purchase or construction of an office building are subject to State law. An office building must not be purchased or constructed for the purpose of influencing the election of any candidate in any particular election for Federal office. For purposes of this section, the term *local party committee* shall include a *district party committee*.

(b) *Application of State law.* Amounts raised and spent by a State or local party committee for the purchase or construction of its office building are subject to State law as set forth in paragraphs (b)(1) and (b)(2) of this section.

(1) *Non-Federal account.* If a State or local party committee uses non-Federal funds, Federal law does not preempt or supersede State law as to the source of funds used, the permissibility of the disbursements, or the reporting of the receipt and disbursement of such funds, except as provided in paragraph (d) of this section.

(2) *Federal account.* If a State or local party committee uses funds from its accounts containing only Federal funds, Federal law does not supersede or preempt State law as to the permissibility of the disbursements, except as provided in paragraph (d) of this section. Federal law also does not preempt or supersede any State law that purports to prohibit or limit the source of the funds, as ascertained by application of a reasonable accounting method prescribed under State law.

(3) *Levin funds.* Levin funds may be used for the purchase or construction of a State or local party committee office building, if permitted by State law.

(c) *Definition of "purchase or construction of an office building."*

(1) *Office building* means a structure and the land underlying the structure, comprised of structural components and

fixtures essential to the operation or appearance of the building, and that is lawfully occupied and used by a State or local party committee solely for its own party administration and election campaign support purposes. The term does not include office furnishings, furniture, equipment and machinery (such as computers, file cabinets, photocopiers or audio-visual production equipment).

(2) *Purchase* means any payment to acquire the sole legal title to the building, including fees directly related to the acquisition of the building, such as sales commissions and real estate closing or settlement fees. Purchase does not include payments for the rent or leasing of an office building, property taxes and similar assessments, building maintenance, utility services, and office equipment.

(3) *Construction* includes the design and erection of the structure of a building. Construction does not include the maintenance or repair of the building or its structural components, unless the repair work reaches a level to constitute major restoration or renovation of the building.

(d) *Allocation of expenses not within the definition of "purchase or construction of an office building."* If funds raised by a State or local party committee are used for an expense for its office building and the expense does not fall within the definitions in paragraph (c) of this section, the expense is an allocable administrative expense unless it falls within another category, such as support for a Federal or non-Federal candidate. If the expense is an allocable administrative expense, 11 CFR 300.33 applies, and the administrative expense is subject to the limitations and prohibitions of the Act.

(e) *Transitional Provisions for State Party Building or Facility Account.* Up to and including November 5, 2002, the State committee of a political party may accept funds into its party office building or facility account, established pursuant to repealed 2 U.S.C. 431(8)(B)(viii), and use the funds in the account only for the construction or purchase of an office building or facility. Starting on November 6, 2002, the funds in the account will be subject to the provisions of paragraphs (a) through (c) of this section if used for a State party office building. They may not be used for Federal account or Levin account purposes. They may be used for any non-Federal purposes, as permitted under State law.

**§ 300.36 Reporting Federal election activity; recordkeeping.**

(a) *Requirements for a State, district, or local committee of a political party that is not a political committee.*

(1) A State, district, or local committee of a political party that is not a political committee (see 11 CFR 100.5) must demonstrate through a reasonable accounting method that whenever it makes a payment of Federal funds for Federal election activity (see 11 CFR 300.32 and 300.33) it has received sufficient funds subject to the limitations and prohibitions of the Act to make the payment. Such an organization must keep records of amounts received or expended under this paragraph and, upon request, shall make such records available for examination by the Commission.

(2) A payment of Federal funds for Federal election activity shall constitute an expenditure for purposes of determining whether a State, district, or local committee of a political party qualifies as a political committee under 11 CFR 100.5, unless the payment is excluded from the definition of expenditure under 11 CFR 100.8. A payment of Federal funds for Federal election activity that meets the criteria of 100.8(b)(10), (16), or (18) (*exempt activities*) shall be treated as a payment for exempt activity in accordance with all applicable provisions of this chapter, including, but not limited to, 11 CFR 100.5(c).

(b) *Requirements for a State, district, or local committee of a political party that is a political committee.*

(1) *Reporting disbursements of Federal funds for Federal election activity.* A State, district, or local committee of a political party that is a political committee (see 11 CFR 100.5) must report all disbursements of Federal funds for Federal election activity, including the Federally allocated portion of a payment for Federal election activity. This requirement applies whether or not the committee's aggregate total receipts and disbursements for Federal election activity is \$5,000 or more during the calendar year. For purposes of this paragraph, a disbursement of Federal funds for Federal election activity (see 11 CFR 300.32 and 300.33) by a State, district, or local committee of a political party that is a political committee shall be deemed an expenditure and reported as such, unless the disbursement is excluded from the definition of expenditure under 11 CFR 100.8.

(2) *Reporting all receipts and disbursements for Federal election activity; threshold.* In addition to the requirements of paragraph (b)(1) of this

section, a State, district, or local committee of a political party that is a political committee must report all receipts and disbursements made for Federal election activity if the aggregate amount of such receipts and disbursements is \$5,000 or more during the calendar year. The disclosure required by this paragraph must include receipts and disbursements of Federal funds and of Levin funds used for Federal election activity, notwithstanding the otherwise non-Federal nature of the Levin funds.

(i) *Reporting of payments for Federal election activity allocated between Federal funds and Levin funds.* A State, district, or local committee of a political party that makes a payment for Federal election activity that is allocated between Federal funds and Levin funds (see 11 CFR 300.33) must report for each such payment the full name and address of each person to whom the payment was made, the date of the payment, amount and purpose of the payment, and the amount of and explanation for the allocation percentage used for the payment, as provided in 11 CFR 104.17(b). If the payment is for the allocable costs of more than one Federal election activity, the committee must itemize the payment, showing the amounts designated for each Federal election activity. The committee must also report the total amount paid for Federal election activity that calendar year, to date, for each Federal election activity.

(ii) *Itemization.* The disclosure required by paragraph (b)(2) of this section must include, in addition to any other applicable reporting requirement of this chapter, the itemized disclosure of receipts and disbursements of \$200 or more to or from any person for Federal election activities, as provided in part 104.

(3) *Reporting of other payments allocated between Federal funds and non-Federal funds.* A State, district, or local committee of a political party that makes a payment for costs allocable between Federal and non-Federal funds, other than the costs of Federal election activity that is allocated between Federal funds and Levin funds under 11 CFR 300.33, must comply with 11 CFR 104.17.

(c) *Filing Schedule.* A State, district, or local committee of a political party that must file reports under paragraph (b) of this section must comply with the monthly filing schedule in 11 CFR 104.5(c)(3).

(d) *Recordkeeping.* A State, district, or local committee of a political party that must file reports under paragraph (b) of

this section must comply with the requirements of 11 CFR 104.14.

**§ 300.37 Prohibitions on fundraising for and donating to certain tax-exempt organizations (2 U.S.C. 441i(d)).**

(a) *Prohibitions.* A State, district, or local committee of a political party must not solicit any funds for, or make or direct any donation to:

(1) An organization that is described in 26 U.S.C. 501(c) and exempt from taxation under section 26 U.S.C. 501(a) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity;

(2) An organization that has submitted an application for tax exempt status under 26 U.S.C. 501(c) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity; or

(3) An organization described in 26 U.S.C. 527 except for a political committee; a State, district, or local committee of a political party; or the authorized campaign committee of a state or local candidate.

(b) *Application.* This section also applies to:

(1) An officer or agent acting on behalf of a State, district or local committee of a political party;

(2) An entity that is directly or indirectly established, financed, maintained or controlled by a State, district or local committee of a political party or an officer or agent acting on behalf of such entity; and

(3) An entity that is directly or indirectly established, financed, maintained or controlled by an agent of a State, district or local committee of a political party.

**Subpart C—Tax-Exempt Organizations**

**§ 300.50 Prohibited fundraising by national party committees (2 U.S.C. 441i(d)).**

(a) *Prohibitions on fundraising and donations.* A national committee of a political party, including a national party congressional campaign committee, must not solicit any funds for, or make or direct any donations to:

(1) An organization that is described in 26 U.S.C. 501(c) and exempt from taxation under section 26 U.S.C. 501(a) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity;

(2) An organization that has submitted an application for tax-exempt status under 26 U.S.C. 501(c) and that makes

expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity; or

(3) An organization described in 26 U.S.C. 527, except for a political committee; a State, district, or local committee of a political party; or the authorized campaign committee of a State or local candidate.

(b) *Application.* This section also applies to:

(1) An officer or agent acting on behalf of a national party committee, including a national party congressional committee;

(2) An entity that is directly or indirectly established, financed, maintained or controlled by a national party committee, including a national party congressional committee, or an officer or agent acting on behalf of such an entity; or

(3) An entity that is directly or indirectly established, financed, maintained, or controlled by an agent of a national committee of a political party, including a national party congressional committee.

**§ 300.51 Prohibited fundraising by State, district, and local party committees (2 U.S.C. 441i(d)).**

(a) *Prohibitions.* A State, district, or local committee of a political party must not solicit any funds for, or make or direct any donation to:

(1) An organization that is described in 26 U.S.C. 501(c) and exempt from taxation under section 26 U.S.C. 501(a) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity;

(2) An organization that has submitted an application for tax-exempt status under 26 U.S.C. 501(c) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity; or

(3) An organization described in 26 U.S.C. 527, except for a political committee; a State, district, or local committee of a political party; or the authorized campaign committee of a State or local candidate.

(b) *Application.* This section also applies to:

(1) An officer or agent acting on behalf of a State, district, or local committee of a political party;

(2) An entity that is directly or indirectly established, financed, maintained or controlled by a State, district, or local committee of a political

party or an officer or agent acting on behalf of such an entity; and

(3) An entity that is directly or indirectly established, financed, maintained or controlled by an agent of a State, district, or local committee of a political party.

**§ 300.52 Fundraising by Federal candidates and Federal officeholders (2 U.S.C. 441i(e)(4)).**

(a) *General solicitations.* A Federal candidate, an individual holding Federal office, and an individual who is an agent of either may make a general solicitation of funds on behalf of any organization described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C. 501(a), or an organization that has submitted an application for determination of tax-exempt status under 26 U.S.C. 501(c), without regard to the source or amount of funds, only if all of the following conditions apply:

(1) The solicitation does not specify how the funds will or should be spent;

(2) The solicitation is not for a 501(c) organization whose principal purpose is to conduct:

(i) Voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election; or

(ii) Voter identification, get-out-the-vote activity or generic campaign activity conducted in connection with an election in which a Federal candidate appears on the ballot even if a candidate for State or local office also appears on the ballot; and

(3) The solicitation is not for the activities described in paragraph (a)(2) of this section.

(b) *Specific solicitations.*

(1) A Federal candidate, an individual holding Federal office, and an individual who is an agent of either may make a solicitation explicitly to obtain funds to carry out the activities described in paragraph (a)(2) of this section, only if the following conditions are met:

(i) The solicitation is made only to individuals; and

(ii) The amount solicited from any individual during any calendar year does not exceed \$20,000.

(2) A Federal candidate, an individual holding Federal office, and an individual who is an agent of either may make a solicitation explicitly for an entity whose principal purpose is to conduct any of the activities described in paragraph (a)(2) of this section, only if the following conditions are met:

(i) The solicitation is made only to individuals; and

(ii) The amount solicited from any individual during any calendar year does not exceed \$20,000.

#### **Subpart D—Federal Candidates and Officeholders**

##### **§ 300.60 Scope (2 U.S.C. 441i(e)(1)).**

This subpart applies to:

- (a) Federal candidates,
- (b) Individuals holding Federal office,
- (c) Agents of a Federal candidate or individual holding Federal office, and
- (d) Entities that are directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, one or more Federal candidates or individuals holding Federal office.

##### **§ 300.61 Federal elections (2 U.S.C. 441i(e)(1)(A)).**

No person described in 11 CFR 300.60 shall solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity as defined in 11 CFR 100.24, unless the amounts consist of Federal funds that are subject to the limitations, prohibitions, and reporting requirements of the Act.

##### **§ 300.62 Non-Federal elections (2 U.S.C. 441i(e)(1)(B)).**

No person described in 11 CFR 300.60 shall solicit, receive, direct, transfer, or spend or disburse funds in connection with any non-Federal election, unless the amounts consist of Federal funds that are subject to the limitations and prohibitions of the Act.

##### **§ 300.63 Exception for State party candidates (2 U.S.C. 441i(e)(2)).**

Section 300.62 shall not apply to a Federal candidate or individual holding Federal office who is a candidate for State or local office, if the solicitation, receipt or spending of funds is permitted under State law; and refers only to that State or local candidate, to any other candidate for that same State or local office, or both. If an individual is simultaneously running for both Federal and State or local office, the individual must raise, accept, and spend only Federal funds for the Federal election.

##### **§ 300.64 Exemption for attending or speaking at fundraising events (2 U.S.C. 441i(e)(3)).**

Notwithstanding the provisions of 11 CFR 100.24, 300.61 and 300.62, a Federal candidate or individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party, including a

fundraising event at which Levin funds are raised, or at which non-Federal funds are raised. Such candidate or individual holding Federal office shall not solicit, receive, direct, transfer, or spend funds or participate in any other fundraising aspect of any such event.

##### **§ 300.65 Exceptions for certain tax-exempt organizations.**

(a) *General solicitations.* A Federal candidate, an individual holding Federal office, and an individual who is an agent of either may make a general solicitation of funds on behalf of any organization described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C. 501(a), or an organization that has submitted an application for determination of tax-exempt status under 26 U.S.C. 501(c), without regard to the source or amount of funds, only if all of the following conditions apply:

- (1) The solicitation does not specify how the funds will or should be spent;
- (2) The solicitation is not for a 501(c) organization whose principal purpose is to conduct:

- (i) Voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election; or

- (ii) Voter identification, get-out-the-vote activity or generic campaign activity conducted in connection with an election in which a Federal candidate appears on the ballot even if a candidate for State or local office also appears on the ballot; and

- (3) The solicitation is not for the activities described in paragraph (a)(2) of this section.

(b) *Specific solicitations.*

- (1) A Federal candidate, an individual holding Federal office, and an individual who is an agent of either may make a solicitation explicitly to obtain funds to carry out the activities described in paragraph (a)(2) of this section, only if:

- (i) The solicitation is made only to individuals; and

- (ii) The amount solicited from any individual during any calendar year does not exceed \$20,000.

- (2) A Federal candidate, an individual holding Federal office, and an individual who is an agent of either may make a solicitation explicitly for an entity whose principal purpose is to conduct any of the activities described in paragraph (a)(2) of this section only if:

- (i) The solicitation is made only to individuals; and

- (ii) The amount solicited from any individual during any calendar year does not exceed \$20,000.

#### **Subpart E—State and Local Candidates**

##### **§ 300.70 Scope (2 U.S.C. 441i(f)(1)).**

This subpart applies to any candidate for State or local office, individual holding State or local office, or an agent of any such candidate or individual. For example, this subpart applies to an individual holding Federal office who is a candidate for State or local office. This subpart does not apply to an association or similar group of candidates for State or local office or of individuals holding State or local office.

##### **§ 300.71 Federal funds required for certain public communications (2 U.S.C. 441i(f)(1)).**

No individual described in 11 CFR 300.70 shall spend any amounts for a public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified), and that promotes or supports any candidate for that Federal office, or attacks or opposes any candidate for that Federal office (regardless of whether the communication expressly advocates a vote for or against a candidate) unless the amounts consist of Federal funds that are subject to the limitations, prohibitions, and reporting requirements of the Act. *See* definition of *public communication* at 11 CFR 100.26.

##### **§ 300.72 Federal funds not required for certain communications (2 U.S.C. 441i(f)(2)).**

The requirements of section 11 CFR 300.71 shall not apply if the communication:

- (a) Is in connection with an election for State or local office, and refers to one or more candidates for State or local office or to a State or local officeholder but does not promote, support, attack, or oppose any candidate for Federal office; or

- (b) Comes within the scope of 11 CFR 300.2(l)(2)(ii).

#### **PART 9034—ENTITLEMENTS**

28. The authority citation for Part 9034 would continue to read as follows:

**Authority:** 26 U.S.C. 9034 and 9039(b).

29. Section 9034.8 would be amended by adding introductory language to paragraph (a) to read as follows:

##### **§ 9034.8 Joint fundraising.**

(a) *General.* Nothing in this section shall permit any person to solicit, receive, direct, transfer, or spend any non-Federal funds prohibited under 11 CFR part 300.

\* \* \* \* \*

Dated: May 10, 2002.

**David. M. Mason,**

*Chairman, Federal Election Commission.*

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