

(i) Except as provided in paragraph (a)(1)(iii) of this section, the period of time beginning on the date of the earliest filing deadline for access to the primary election ballot for Federal candidates as determined by State law, or in those States that do not conduct primaries, on January 1 of each even-numbered year and ending on the date of the general election, up to and including the date of any general runoff.

(ii) The period beginning on the date on which the date of a special election appears on the ballot is set and ending on the date of the special election.

(iii) In municipalities that elect local officials in elections that do not coincide with primary or general elections for Federal office but occur during the period described in paragraph (a)(1)(i) of this section, the following periods of time are excluded from the periods described in paragraphs (a)(1)(i) and (a)(1)(ii) of this section:

(A) For municipalities that hold local elections before primary elections for Federal office, from the beginning of the period described in paragraph (a)(1)(i) up to and including the date of the municipal election; and

(B) For municipalities that hold primary elections for Federal office before local elections, from the day after the primary election for Federal office up to and including the date of the municipal election.

(2) *Voter registration activity* means contacting individuals by telephone, in person, or by other individualized means to assist them in registering to vote. Voter registration activity includes, but is not limited to, printing and distributing registration and voting information, providing individuals with voter registration forms, and assisting individuals in the completion and filing of such forms.

(3) *Get-out-the-vote activity* means contacting registered voters by telephone, in person, or by other individualized means, to assist them in engaging in the act of voting. Get-out-the-vote activity includes, but is not limited to:

(i) Providing to individual voters, within 72 hours of an election, information such as the date of the election, the times when polling places are open, and the location of particular polling places; and

(ii) Offering to transport or actually transporting voters to the polls.

(4) *Voter identification* means acquiring information about potential voters, including, but not limited to, obtaining voter lists and creating or enhancing voter lists by verifying or

adding information about the voters' likelihood of voting in an upcoming election or their likelihood of voting for specific candidates.

\* \* \* \* \*

Dated: April 29, 2005.

**Scott E. Thomas,**

*Chairman, Federal Election Commission.*

[FR Doc. 05-8864 Filed 5-3-05; 8:45 am]

**BILLING CODE 6715-01-P**

## FEDERAL ELECTION COMMISSION

### 11 CFR Parts 106 and 300

[NOTICE 2005-12]

#### State, District, and Local Party Committee Payment of Certain Salaries and Wages

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Election Commission is seeking comment on proposed changes to regulations regarding payments by State, district or local party committees for salaries and wages of employees who spend 25 percent or less of their compensated time in a month on Federal election activity and activity in connection with Federal elections. Currently, these committees may use funds whose only restriction is that they comply with State law. The proposed changes would require these expenses to be paid using at least some Federal funds, consistent with the ruling of the United States District Court for the District of Columbia in *Shays v. Federal Election Commission*. The Commission is appealing this ruling to the DC Circuit. In the interim, the Commission is initiating this rulemaking. The Commission has not made any final decision on the issues presented in this rulemaking. Further information is provided in the supplementary information that follows.

**DATES:** Comments must be received on or before June 3, 2005. If the Commission receives sufficient requests to testify, it may hold a hearing on the proposed rules. Anyone wishing to testify at the hearing must file written comments by the due date and must include a request to testify in the written comments.

**ADDRESSES:** All comments must be in writing, addressed to Ms. Mai T. Dinh, and submitted in either electronic, facsimile, or hard copy form. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. Electronic comments must be sent to

either [StatePartyWages@fec.gov](mailto:StatePartyWages@fec.gov) or submitted through the Federal eRegulations Portal at <http://www.regulations.gov>. If the electronic comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments must be sent to (202) 219-3923, with hard copy follow-up. Hard copy comments and hard copy follow-up of faxed comments must be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered. The Commission will post comments on its Web site after the comment period ends. If the Commission decides a hearing is necessary, the hearing will be held in the Commission's ninth floor meeting room, 999 E Street NW., Washington, DC.

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

**SUPPLEMENTARY INFORMATION:** The Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (March 27, 2002), contained extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended (the "Act"), 2 U.S.C. 431 *et seq.* Under BCRA, State, district and local party committees ("State party committees") must pay the salaries and wages of employees who spend more than 25 percent of their compensated time per month on Federal election activity and activities in connection with a Federal election (collectively "Federal-related activities") entirely with Federal funds.<sup>1</sup> 2 U.S.C. 431(20)(A)(iv) and 441i(b)(1). However, BCRA is silent on what type of funds State party committees must use to pay the salaries and wages of employees who spend some, but not more than 25 percent, of their compensated time per month on Federal-related activities. In 2002, the Commission promulgated 11 CFR 106.7(c)(1) and (d)(1)(i), and 300.33(c)(2) to address salaries and wages for both types of employees. Under these rules, State party committees may pay the salaries or wages of employees who spend 25 percent or less of their compensated time each month on these activities

<sup>1</sup> "Federal funds" are funds that are subject to the contribution limitations, source prohibitions, and reporting requirements of the Act. 11 CFR 300.2(g).

entirely with funds that comply with State law. *Id.*

In *Shays v. Federal Election Commission*, 337 F.Supp.2d 28 (DDC 2004), *appeal docketed*, No. 04-5352 (DC Cir. Sept. 28, 2004) (“*Shays*”), the district court considered a challenge to the portion of the regulations that permits State party committees to use all non-Federal funds to pay the salaries and wages of employees who spend 25 percent or less of their time each month on Federal-related activities. The district court recognized that the Commission’s interpretation of 2 U.S.C. 431(20)(A)(iv) and 441i(b)(1), as promulgated in 11 CFR 300.33(c)(2), is a permissible reading of these statutory sections under step one of *Chevron* because Congress had not directly spoken on this issue.<sup>2</sup> *Shays* at 113-114. The district court also determined that it could not conclude that the Commission’s regulation was a facially impermissible interpretation of BCRA. *Shays* at 114. However, the district court determined that the regulation compromised BCRA’s “purposes of preventing circumvention of its national party committee non-Federal money ban and stemming the flow of non-Federal money into activities that impact Federal elections” by permitting State party committees to divide “the Federal workload among multiple employees.” *Shays* at 114 (citing *McConnell v. Federal Election Commission*, 540 U.S. 93, 124 S.Ct. 619, 676 (2003)). The district court found that “the regulation ‘creates the potential for gross abuse’” and remanded section 300.33(c)(2) to the Commission for further action consistent with its opinion. *Shays* at 114 (citing *Orloski v. Federal Election Commission*, 795 F.2d 156, 165 (DC Cir. 1986)).<sup>3</sup>

Implicit in the district court’s decision is that State party committees

<sup>2</sup> The district court described the first step of the *Chevron* analysis, which courts use to review an agency’s regulations: “a court first asks ‘whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.’” See *Shays*, at 51 (quoting *Chevron, U.S.A., Inc. v. Natural Res. Def. Council*, 467 U.S. 837, 842-43 (1984)).

<sup>3</sup> The Commission has filed an appeal with the U.S. Court of Appeals for the DC Circuit of certain aspects of the *Shays* decision, including the court’s conclusion that the rules regarding payments by State, district or local party committees for salaries and wages of employees who spend 25 percent or less of their compensated time in a month on Federal-related activity creates the potential for great abuse of BCRA. The appeal is currently pending. In the event the Commission prevails on appeal, the Commission may terminate this rulemaking proceeding prior to adoption of final rules.

are required under BCRA and FECA to use at least some Federal funds to pay for the salaries and wages of those employees who spend some of their compensated time, but not more than 25 percent per month, on Federal-related activity. Thus, the Commission is issuing this Notice of Proposed Rulemaking (“NPRM”) to determine the appropriate mix of Federal and non-Federal funds that State party committees must use to pay the salaries and wages for these employees.

One approach would be to adopt an allocation method that would establish a fixed minimum percentage that a State party committee would be required to allocate to its Federal account. A fixed minimum percentage provides committees with a bright-line rule that is easy to understand and administer. The proposed rule below reflects this approach. Section 106.7(c)(1) would be amended to set forth two methods by which State party committees could pay the salaries and wages for employees who spend 25 percent or less of their compensated time in a month on Federal-related activity. Paragraph (c)(1)(i) would state that State party committees could pay for such salaries and wages with funds from their Federal account. Paragraph (c)(1)(ii) would state that such salaries and wages could also be allocated between the committee’s Federal and non-Federal accounts under section 106.7(d)(1)(i). Section 106.7(d)(1)(i) would be amended to require State party committees to allocate at least 25 percent of the salaries and wages for employees who spend 25 percent or less of their compensated time on Federal-related activities to their Federal account.<sup>4</sup> Non-Federal funds used to pay the remaining portion of salaries and wages would still be required to comply with State law.

The Commission has two reasons for proposing 25 percent as the fixed minimum percentage. Because these employees would not spend more than 25 percent of their compensated time on Federal-related activities, a minimum allocation percentage that is 25 percent would ensure that State party committees would use Federal funds to pay for the compensated time spent on Federal-related activity. In addition, prior to BCRA, salaries and wages of State party committees’ employees were considered administrative expenses that were allocated based on ballot composition. See former 11 CFR 106.5(d) (repealed 2002). In the Final

<sup>4</sup> Under the proposed rules, salaries of employees who spend no time in a given month on Federal-related activities could continue to be paid entirely with funds that comply with State law.

Rules and Explanation and Justification for Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money, 67 FR 49064 (July 29, 2002), the Commission repealed 11 CFR 106.5(d) and replaced it with an allocation method for administrative expenses that were fixed percentages, depending upon whether there were Presidential or Senatorial candidates on the ballot for a two-year election cycle. See 11 CFR 106.7(d)(2). However, employees’ salaries and wages are no longer considered administrative expenses. Rather than treating them as administrative expenses and requiring State party committees to use different allocation ratios every two years, the 25 percent allocation ratio in the proposed rule represents the average of the four allocation ratios used for administrative expenses, and should roughly approximate the average annual allocated expenses for salaries and wages over the same period.

Nevertheless, in the alternative, the Commission seeks comment on returning to treating salaries and wages for these employees as administrative expenses subject to the allocation ratios in 11 CFR 106.7(d)(2). The Commission is also seeking suggestions for other fixed minimum percentages and the basis for the suggested fixed minimum percentages.

Another alternative method, which is not reflected in the proposed rule, would be to establish an allocation percentage that is directly proportional to the amount of compensated time these employees spend on Federal-related activities in a given month. Under this approach, the percentage of Federal funds that a State party committee must use to pay for these salaries and wages would be no less than the percentage of compensated time these employees spend on Federal-related activities in relation to all compensated time in a given month. The remaining salaries and wages could be paid for with non-Federal funds, provided that the funds comply with State law. The log that each State, District or local party committee maintains pursuant to section 106.7(d)(1) would allow committees to determine the percentage of an employee’s time that must be compensated using Federal funds.

The proposed rules also include conforming changes to current 11 CFR 300.33(c)(2). That paragraph would be amended to state that salaries and wages for employees who spend 25 percent or less of their compensated time per month on Federal-related activities may be allocated in accordance with 11 CFR 106.7(c) and (d)(1)(i).

The Commission also seeks comment on whether the methods for allocating salaries and wages should be applied to fringe benefits of employees. In Advisory Opinion 2003–11, a State party committee sought guidance on paying the costs of fringe benefits (medical, dental, and prescription drug insurance coverage; coverage for short-term disability (wage loss) and long-term disability insurance benefits; coverage for life insurance benefit; and employer matching contributions to the 401(k) retirement plan) for employees who spent 25 percent or less of their compensated time per month on Federal-related activity. The committee had allocated such costs based on the allocation method used for administrative expenses, which required a mixture of Federal and non-Federal funds, rather than based on the allocation method used for salaries and wages, which would have allowed for the use of all non-Federal funds. The Commission concluded amounts spent on fringe benefits fall into the category of compensated time, and thus concluded that the State party committee could use all non-Federal funds to pay for the fringe benefits.

The Commission now seeks comment on whether the rules should be amended to permit, but not require, State, district and local party committees to use the same allocation rules for fringe benefits as are used for salaries and wages, instead of allocating fringe benefits as administrative costs. See also Advisory Opinion 2004–12.

In Advisory Opinion 2004–12, the Commission determined that a State party committee may pay for Federal election activity with Federal funds raised at events where the costs of such events had been paid for with a combination of Federal and non-Federal funds through the use of the “funds received” method under 11 CFR 106.7(d)(4). See 11 CFR 106.7(c)(4). A narrow interpretation of current section 106.7(c)(4) may suggest that when there is an event at which Federal and non-Federal funds are being raised, and the costs of the event are properly allocated between the Federal and non-Federal accounts according to the funds received method, the Federal money raised at the event cannot be used to pay for any Federal election activity. This interpretation would require a State party committee to differentiate its Federal funds depending on their intended use, a requirement that the Commission has not historically adopted. Because the Commission wishes to make clear that it has not adopted this interpretation, it is seeking comment on whether current 11 CFR

106.7(c)(4) should be revised, consistent with AO 2004–12, to clarify that Federal funds raised at an event where both non-Federal and Federal funds are raised, and the costs of the event are allocated according to the funds received method, may be used for Federal election activity. The Commission also seeks comment as to whether this approach is consistent with BCRA.

The Commission seeks comment on all the issues identified in this NPRM as well as the proposed rule.

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

[Regulatory Flexibility Act]

The Commission certifies that the attached proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the organizations affected by this proposed rule are State, district, and local party committees, which are not “small entities” under 5 U.S.C. 601. These not-for-profit committees do not meet the definition of “small organization” which requires that the enterprise be independently owned and operated and not dominant in its field. 5 U.S.C. 601(4). State political party committees are not independently owned and operated because they are not financed and controlled by a small identifiable group of individuals, and they are affiliated with the larger national political party organizations. In addition, the State political party committees representing the Democratic and Republican parties have a major controlling influence within the political arena of their State and are thus dominant in their field. District and local party committees are generally considered affiliated with the State committees and need not be considered separately. To the extent that any State party committees representing minor political parties might be considered “small organizations,” the number affected by this proposed rule is not substantial.

#### **List of Subjects**

##### *11 CFR Part 106*

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

##### *11 CFR Part 300*

Campaign funds, Nonprofit organizations, Political committees and parties, Political candidates, Reporting and recordkeeping requirements.

For reasons set out in the preamble, subchapters A and C of chapter 1 of title

11 of the Code of Federal Regulations would be amended to read as follows:

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

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

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

2. Paragraphs (c)(1) and (d)(1) introductory text and (d)(1)(i) of § 106.7 would be revised to read as follows:

#### **§ 106.7 Allocation of expenses between Federal and non-Federal accounts by party committees, other than for Federal election activities.**

\* \* \* \* \*

(c) *Costs allocable by State, district, and local party committees between Federal and non-Federal accounts.*

(1) *Salaries and wages.* For the salaries and wages for employees who spend 25% or less of their compensated time in any given month on Federal election activity or activity in connection with a Federal election, State, district, and local party committees must either:

(i) Pay for such salaries and wages with funds from their Federal account; or

(ii) Allocate such salaries and wages between their Federal and non-Federal accounts in accordance with paragraph (d)(1)(i) of this section.

\* \* \* \* \*

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

(1) *Salaries and wages.* Committees must keep a monthly log of the percentage of time each employee spends in connection with a Federal election. Allocations of salaries and wages shall be undertaken as follows:

(i) For salaries and wages for employees who spend 25% or less of their compensated time in a given month on Federal election activities or on activities in connection with a Federal election, the committee shall allocate at least 25% of such salaries and wages to a Federal account. Any portion of salaries and wages not allocated to a Federal account must be paid from funds that comply with State law.

\* \* \* \* \*

#### **PART 300—NON-FEDERAL FUNDS**

1. The authority citation for part 300 would continue to read as follows:

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

2. Paragraph (c)(2) of § 300.33 would be revised to read as follows:

**§ 300.33 Allocation of costs of Federal election activity.**

\* \* \* \* \*

(c) \* \* \*

(2) *Salaries and wages.* Salaries and wages for employees who spend more than 25% of their compensated time in a given month on Federal election activity or activities in connection with a Federal election must not be allocated between or among Federal, non-Federal, and Levin accounts. Only Federal funds may be used. (Salaries and wages for employees who spend 25% or less of their compensated time in a given month on Federal election activity or activities in connection with a Federal election may be allocated in accordance with 11 CFR 106.7(c) and (d)(1)(i)).

\* \* \* \* \*

Dated: April 29, 2005.

**Scott E. Thomas,***Chairman, Federal Election Commission.*

[FR Doc. 05-8863 Filed 5-3-05; 8:45 am]

BILLING CODE 6715-01-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[R06-OAR-2005-NM-0002; FRL-7908-1]

**Approval and Promulgation of Air Quality Implementation Plans; New Mexico; San Juan County Early Action Compact Area****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve revisions to the State Implementation Plan (SIP) submitted by the Governor of New Mexico on December 16, 2004. The proposed revisions will incorporate the Early Action Compact (EAC) Clean Air Action Plan into the New Mexico SIP. The EAC is a voluntary program between the New Mexico Department of Environment (NMED), the Cities of Aztec, Bloomfield, and Farmington, San Juan County, and EPA. EPA is proposing approval of the photochemical modeling in support of the attainment demonstration of the 8-hour ozone standard within the San Juan County EAC area. EPA is proposing these actions as a strengthening of the SIP in accordance with the requirements of sections 110 and 116 of the Federal Clean Air Act (the Act). The revisions will contribute to improvement in air quality and continued attainment of the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone.

**DATES:** Comments must be received on or before June 3, 2005.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID No. R06-OAR-2005-NM-0002, by one of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

*Agency Web site:* <http://docket.epa.gov/rmepub/> Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

*U.S. EPA Region 6 "Contact Us" Web site:* <http://epa.gov/region6/r6comment.htm> Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

*E-mail:* Mr. Thomas Diggs at [diggs.thomas@epa.gov](mailto:diggs.thomas@epa.gov). Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

*Fax:* Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), at fax number 214-665-7263.

*Mail:* Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

*Hand or Courier Delivery:* Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Regional Material in EDocket (RME) ID No. R06-OAR-2005-NM-0002. The EPA's policy is that all comments received will be included in the public file without change, change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through Regional Material in EDocket (RME), [regulations.gov](http://www.regulations.gov), or e-mail if you believe that it is CBI or otherwise protected from disclosure. The EPA RME Web site and the Federal [regulations.gov](http://www.regulations.gov) are "anonymous access"

systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public file and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the Regional Material in EDocket (RME) index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in the official file which is available at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cents per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

New Mexico Environment Department, Air Quality Bureau, 2048 Galisteo, Santa Fe, New Mexico 87505.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alan Shar, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue,