

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

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

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

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

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

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

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

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

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

C. Additional Comments Sought

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