

regardless of the year in which the particular election is held. See 11 CFR 110.1(b)(6). This paragraph (c)(1) also applies to earmarked contributions and contributions to a single candidate committee that has supported or anticipates supporting the candidate.

(2) Contributions made prior to January 1, 2004.

(i) For purposes of this paragraph (c)(2), a contribution to a candidate or his or her authorized committee with respect to a particular election shall be considered to be made during the calendar year in which such election is held.

(ii) For purposes of this paragraph (c)(2), any contribution to an unauthorized committee shall not be considered to be made during the calendar year in which an election is held unless:

(A) The political committee is a single candidate committee which has supported or anticipates supporting the candidate; or

(B) The contribution is earmarked by the contributor for a particular candidate with respect to a particular election.

\* \* \* \* \*

Dated: November 7, 2003.

**Bradley A. Smith,**

*Vice Chairman, Federal Election Commission.*

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## FEDERAL ELECTION COMMISSION

### 11 CFR Part 106

[Notice 2003-20]

#### Party Committee Telephone Banks

**AGENCY:** Federal Election Commission.

**ACTION:** Final rule and transmittal of regulations to Congress.

**SUMMARY:** The Federal Election Commission is promulgating final rules regarding the attribution of political party committee disbursements for telephone bank communications made on behalf of a clearly identified Federal candidate. The final rules address the proper attribution of a party committee's or party organization's disbursements for communications that refer to a clearly identified Federal candidate when the party's other candidates are referred to generically, but not by name. The entire disbursement must be paid for with Federal funds. Further information is provided in the Supplementary Information that follows.

**EFFECTIVE DATE:** December 15, 2003.

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

**SUPPLEMENTARY INFORMATION:** In the months leading up to a general election, political party committees, or party committees in conjunction with the principal campaign committees of Federal candidates, may conduct phone banks to get out the vote ("GOTV") or otherwise promote the party and its candidates. Such phone banks may involve the reading of scripted messages that include a statement asking the person called specifically to vote, or get their family and friends out to vote, for the named Federal candidate and that then make one or more general promotional references to the party's other candidates. An example would be: "Please tell your family and friends to come out and vote for President John Doe and our great Party team." Given that no other Federal or non-Federal candidates are specifically mentioned, the question is whether the entire cost of the communication, or only a portion of the cost, should be attributed to the Federal candidate. The Commission is issuing final rules to provide clear guidance on how to attribute the cost of these communications.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules on party committee phone banks were transmitted to Congress on November 7, 2003.

#### Explanation and Justification

The Commission published a Notice of Proposed Rulemaking ("NPRM") on September 4, 2003, in which it sought comment on proposed rules that would add a new section to 11 CFR part 106 to address telephone bank expenditures by political party committees and organizations. 68 FR 52529 (Sept. 4, 2003). The comment period was originally set to close on September 25, 2003, but the Commission extended the comment period until September 29, 2003. In addition to the comments concerning the proposed rules, the NPRM sought comments on a number of other issues including: (1) Whether the scope of the rulemaking should be expanded to include other types of

communications such as broadcast or print media and to include candidates for the Senate or House of Representatives; (2) whether the final rules should explicitly state that a State party committee's use of its coordinated party expenditure authority to pay for these phone banks is subject to the restrictions of 11 CFR 109.33; and (3) whether the final rules should explicitly state that party committees are prohibited from using contributions designated for a particular candidate to pay for these phone bank expenditures.

The Commission received one comment in response to the NPRM. The Commission did not receive any requests to testify on the subject of party committee's disbursements for telephone banks at its hearing on October 1, 2003.

#### *11 CFR 106.8 Allocation of Expenses for Political Party Committee Phone Banks That Refer to a Clearly Identified Federal Candidate*

The Commission is adding new section 106.8 to address the costs of phone banks conducted by national, State and local party committees and party organizations on behalf of clearly identified Federal candidates. In Federal election years, party committees and organizations conduct such phone banks to encourage voters to support the entire ticket. Although the specific mention of the clearly identified Federal candidate provides something of value to the candidate being promoted, it also provides the party with a benefit. The final rules, discussed below, reflect that such communications benefit both the candidate and the party.

##### 1. 11 CFR 106.8(a) Scope

New section 106.8(a) begins by stating the conditions under which the special attribution rule in paragraph (b) would apply. Paragraphs (a)(1) through (a)(5) of new section 106.8 describe the communications that are subject to the final rule. The proposed rules would have limited the scope of the new section 106.8 to presidential and vice presidential nominees, although the Commission asked whether they should be expanded to include candidates for the Senate and the House of Representatives. The commenter urged that the rules be extended to these candidates while noting that the underlying coordinated party expenditure limits would differ for these candidates. Because there is no apparent reason to distinguish presidential and vice presidential candidates from other Federal candidates, and to maintain a consistent approach for all Federal candidates, the