

Commission is extending the final rules to all Federal candidates.

Consequently, the conditions set forth in 11 CFR 106.8(a)(1) through (a)(5) implement this approach. Under paragraph (a)(1) the communication must refer to a clearly identified Federal candidate. The term "clearly identified" is defined in 2 U.S.C. 431(18) and 11 CFR 100.17. Second, the communication must also refer to no other clearly identified Federal or non-Federal candidate under paragraph (a)(2). Third, under paragraph (a)(3), the communication must refer generically to the other candidates of the clearly identified Federal candidate's party without clearly identifying them. Generic references to "our great Republican team" or "our great Democratic ticket" would satisfy the latter requirement. The commenter suggested that the final rules make clear that the generic reference is to other candidates and not to the clearly identified Federal candidate. For instance, according to the commenter, a reference to the "great Presidential Candidate X team" with no other generic reference to other candidates should not fall within the scope of the final rules because the word "team" should be treated as a reference to the presidential ticket and not as a reference to other candidates of the same party. The language in paragraph (a)(3) is slightly different from the proposed rule to make clear that the communication must include another reference that generically refers to other candidates and not the clearly identified Federal candidate.

Under paragraph (a)(4), the communication must not 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.

Under paragraph (a)(5), the phone bank must not be exempt from the definitions of "contribution" and "expenditure" under 11 CFR 100.89 and 100.149. These sections implement the statutory exceptions for certain voter registration and GOTV activities conducted by party committees under 2 U.S.C. 431(8)(B)(xi) and 431(9)(B)(ix). Consequently, a State or local party committee's voter registration and GOTV activities, including phone banks

operated by volunteers under 11 CFR 100.89(e) or 100.149(e) conducted on behalf of a presidential or vice presidential nominee, which are exempt from the definitions of "contribution" and "expenditure," are not affected by new section 106.8, provided that the conditions set forth in 11 CFR 100.89(a) through (g) or 100.149(a) through (g) are satisfied. Thus, State and local party committees may continue to spend on behalf of publicly financed presidential candidates for these purposes without making an expenditure or a contribution.

The Commission did not receive any comments in response to its question as to whether the final rules should specifically prohibit State and local party committees from using contributions that were designated for a particular Federal candidate to make expenditures for these phone banks. *See* 11 CFR 100.89(c) and 100.149(c). This situation is already governed by the "coattails" exception in 2 U.S.C. 431(8)(B)(xi) and (9)(B)(ix) and is not relevant to situations addressed in new section 106.8. The Commission therefore is not including this prohibition in the final rules. In answer to the Commission's question of whether 11 CFR 106.8 should include other forms of communications such as broadcast or print media, the commenter urged the Commission to defer consideration of extending the final rules to include other forms of communications. The Commission has decided to limit the scope of new section 106.8 to phone banks at this time because each type of communication presents different issues that need to be considered in further detail before establishing new rules.

2. 11 CFR 106.8(b) Attribution

The NPRM included two alternatives for new section 106.8(b) to establish the attribution of the party committee's payments for the phone bank. Under Alternative A, party committees and organizations would have attributed fifty percent of the disbursement to clearly identified presidential and vice presidential nominees, and the remaining fifty percent would not have been attributable to any Federal or non-Federal candidate but would have to be paid solely with Federal funds. Alternative B would have provided that 100 percent of the disbursement must be attributed to the clearly identified presidential and vice presidential nominees.

The Commission sought comment on which of these two alternatives would be 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. The commenter argued that a fifty percent attribution to the presidential or vice presidential nominee is permissible provided that the entire phone bank expenditure is paid for with Federal funds.

The Commission is incorporating Alternative A in the final rules. Because these phone bank communications contain two references—one to a clearly identified Federal candidate and one that generically refers to other candidates—it is appropriate that the disbursement for the communications be attributed evenly between the two references. Thus, new section 106.8(b)(1) states that fifty percent of the disbursement for the phone bank is not attributed to any candidate because the generic reference does not refer to any clearly identified candidate and therefore cannot be attributed to any specific candidate.

The Commission has determined that Federal funds must be used to pay for all disbursements for telephone banks that fall within the scope of new section 106.8, even the portion that is not attributed to any particular candidate. 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), if conducted by a State, district, or local party committee. *See* 11 CFR 100.24(b)(3), 100.26 and 100.28. It must also be paid for entirely with Federal funds if conducted by a national party committee, which only has Federal funds under 2 U.S.C. 441i(a) and 11 CFR 300.10. The amount that is not attributed to a Federal candidate, however, is not considered an in-kind contribution to any candidate, a coordinated party expenditure, or an independent expenditure by the party committee or organization.

Section 106.8(b)(2) requires that the remaining fifty percent of the disbursement be attributed to the clearly identified Federal candidate and that this portion of the disbursement must be paid for with Federal funds. Generally, party committees have several options in how to treat the attributed portion of a disbursement "as an in-kind contribution, a coordinated party expenditure, or an independent expenditure, depending on the circumstances. They may also obtain