

reimbursement from the clearly identified Federal candidate of some or the entire attributed portion of the disbursement. Consequently, paragraph (b)(2) allows party committees and organizations to treat the portions of disbursements attributed to clearly identified Federal candidates as in-kind contributions, or as coordinated or independent expenditures, or as expenses to be reimbursed by the clearly identified Federal candidates, or a combination of any of these. Under paragraph (b)(2)(i), if the disbursement is treated as an in-kind contribution, it is subject to the contribution limitations of 11 CFR 110.1 or 110.2.

The Commission notes that a State party committee would be able to make coordinated party expenditures (under 2 U.S.C. 441a(d)) to pay for phone bank communications on behalf of its presidential candidate subject to new 11 CFR 106.8 only if the national party committee has made a written assignment of a specific amount of its coordinated party expenditure authority to the State party committee. See 11 CFR 109.33(a). Similarly, a district or local party committee may spend some of the amount authorized by the national or the State party committee upon receiving a written authorization to do so. See 11 CFR 109.33(b). The Commission did not receive any comments in response to its question on whether the final rule should refer to this requirement or whether it is understood that this final rule would not exempt a State, district, or local party committee from these requirements. The Commission is including a reference to 11 CFR 109.33 as well as to section 109.32 in new section 106.8(b)(2)(ii) to ensure that party committees understand that these sections apply to disbursements for phone banks that are treated as coordinated expenditures.

New section 106.8(b)(2)(ii) also provides for the disbursements attributed to the clearly identified Federal candidate to be treated as independent expenditures. As independent expenditures, they are also subject to the requirements of 11 CFR 109.10, and a reference to that section is included in paragraph (b)(2)(ii). This paragraph also includes a reference to 11 CFR 109.35 requiring party committees to choose between making either coordinated party expenditures or independent expenditures, but not both, on behalf of a Federal candidate after the party has nominated that candidate. Once, a party committee makes a coordinated party expenditure on behalf of a Federal candidate, it may not make an independent expenditure on behalf

of that Federal candidate, and vice versa.

### 3. Examples

The following examples illustrate the scope and operation of new section 106.8.

Example 1: A week before the general election, a local party committee operates a phone bank through the use of volunteers and the message is: "You can show your support for the Green Party presidential nominee by going to the polls next Tuesday and contributing to the local party committee so that it can help others to get to the polls too."

The costs of the phone bank would not fall within the scope of 11 CFR 106.8 for three reasons. First, by using volunteers to run a phone bank that seeks to get out the vote for the presidential and vice presidential nominee, and by complying with other requirements in 11 CFR 100.89(e) and 100.149(e), the local party committee does not make a contribution or expenditure under 11 CFR 100.89 and 100.149, and, therefore, these costs are excluded from the provisions of section 106.8. Second, the communication only contains a reference to the clearly identified Federal candidate ("Green Party presidential nominee") and does not refer generically to other candidates. Thus, it does not meet the condition set forth in 11 CFR 106.8(a)(3). Finally, the message includes a solicitation for the local party committee, and, therefore, does not meet the condition set forth in section 106.8(a)(4).

Example 2: The Republican National Committee ("RNC") operates a phone bank and the message is: "When you vote for Representative Jane Smith on Tuesday, remember to vote for the other Republican candidates." The cost of operating this phone bank is \$20,000. The RNC has already made an independent expenditure on behalf of Representative Smith but has not made any contributions to her authorized committee.

The costs of the phone bank would come within the scope of 11 CFR 106.8 because the communication: (1) Contains a reference to a clearly identified Federal candidate ("Representative Jane Smith"); (2) contains a generic reference to other Republican candidates; (3) does not include a reference to any other clearly identified candidate; (4) does not solicit a contribution or donation from any person; and (5) is conveyed by paid workers, not volunteers, and is thus not exempt from the definitions of "contribution" and "expenditure." The RNC must attribute \$10,000 to Representative Smith. Because the RNC

has already made an independent expenditure on behalf of Representative Smith, it cannot treat this \$10,000 as a coordinated party expenditure. See 2 U.S.C. 441a(d)(4)(A)(i); 11 CFR 109.35(b)(1). Rather it may treat the entire amount as an independent expenditure provided that it has not coordinated with Representative Smith or her authorized committee or agents. If the RNC or its agents coordinated this phone bank with Representative Smith or her agents, then it may treat \$5,000 as an in-kind contribution to her authorized committee under the limits of 2 U.S.C. 441a(a)(2)(A), and it must seek reimbursement from her authorized committee for the other \$5,000. The remaining fifty percent of the expenditure (\$10,000) is not attributed to any candidate and the entire \$20,000 must be paid for with Federal funds.

Example 3: A State party committee operates a phone bank and the message is: "Show your support for Senator John Doe and the great Democratic team by voting for them." The cost of operating the phone bank is \$34,000. The State party committee's coordinated party expenditure limit under 2 U.S.C. 441a(d) is \$20,000 and it already spent \$5,000 in coordinated party expenditures on behalf of Senator Doe. The State party committee is a multicandidate committee and has made a \$1,000 contribution to his campaign.

The costs of this phone bank are within the scope of 11 CFR 106.8 because the communication: (1) Contains a reference to a clearly identified Federal candidate ("Senator John Doe"); (2) contains a generic reference to other Democratic candidates; (3) does not include a reference to any other clearly identified candidate; (4) does not solicit a contribution or donation from any person; and (5) does not qualify for the 11 CFR 100.89 and 100.149 exceptions. Because the State party committee has already made a coordinated party expenditure on behalf of Senator Doe after the nomination, the State party committee cannot make a subsequent independent expenditure on his behalf. See 2 U.S.C. 441a(d)(4)(A)(ii); 11 CFR 109.35(b)(2). The State party committee does not have to attribute \$17,000 to any candidate but must still use all Federal funds to pay for that \$17,000. The remaining \$17,000 must be attributed to Senator Doe and must also be paid for with Federal funds. The State party committee may treat \$15,000, which is equal to its remaining coordinated party spending authority, of the attributed amount as a coordinated party expenditure. The remaining \$2,000 may