

Rules and Regulations

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FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 102

[Notice 2003–22]

Leadership PACs

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is revising portions of its regulations to address the relationship between the authorized committee of a Federal candidate or officeholder and entities that are not authorized committees but are associated with the Federal candidate or officeholder. The final rules state that authorized committees and entities that are not authorized committees shall not be deemed to be affiliated. Thus, certain disbursements by those unaffiliated entities will be treated as in-kind contributions to the candidates. Further information is contained in the Supplementary Information that follows.

EFFECTIVE DATE: December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, Mr. J. Duane Pugh Jr., Senior Attorney, or Mr. Anthony T. Buckley, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is adopting final rules at 11 CFR 100.5(g)(5) to address the relationship between authorized committees and unauthorized committees that are associated with a Federal candidate or officeholder, more commonly known as “leadership PACs,” as well as other entities that are not Federal political committees, but are established, financed, maintained, or controlled by, or acting on behalf of, a Federal candidate or officeholder

(collectively “leadership PACs”). Previously, the Commission has examined this relationship on a case-by-case basis to determine whether transactions between an authorized committee and a leadership PAC constituted in-kind contributions or resulted in affiliation under 11 CFR 100.5(g). In promulgating rules of general applicability, the Commission is changing its case-by-case approach and is deciding to analyze these transactions as in-kind contributions exclusively and not to engage in an affiliation analysis in examining the relationship between an authorized committee and a leadership PAC. As such, under the new rules, an authorized committee and a leadership PAC will not be deemed to be affiliated. Additionally, the adoption of these rules requires a change in the Commission’s regulations at 11 CFR 102.2(b)(1)(i), which, in part, governs the disclosure of the names of all unauthorized committees affiliated with an authorized committee.

The Commission published a Notice of Proposed Rulemaking on December 26, 2002, 67 FR 78753 (“NPRM”). Written comments were due by January 31, 2003. Comments were received from: the Campaign and Media Legal Center; the Center for Responsive Politics and Common Cause and Democracy 21 (joint comment); Cleta Mitchell, Esq.; Paul E. Sullivan, Esq.; Republicans Members of the U.S. House of Representatives Tom DeLay, Roy Blunt, Deborah Pryce, David Dreier, John Doolittle, Jack Kingston, Tom Reynolds, Bob Ney, Tom Davis, Phil English, Greg Walden, Buck McKeon, Hal Rogers, and Pete Sessions, and the American Liberty PAC, American Success PAC, Federal Victory Fund, Help America’s Leaders PAC, Pacific Northwest Leadership Fund, People for Enterprise, Trade, and Economic Growth, Together for Our Majority PAC, and the 21st Century Fund (joint comment); the Rely on Your Beliefs Fund; and Lyn Utrecht, Esq., Eric Kleinfeld, Esq., Jim Lamb, Esq., and Pat Fiori, Esq. (joint comment). The comments are available at <http://www.fec.gov/register.htm> under “Leadership PACs.” The Commission held a public hearing on February 26, 2003, at which it heard testimony from seven witnesses: Donald McGahn, Esq.; Cleta Mitchell, Esq.; Paul E. Sullivan, Esq.; Lawrence M. Noble, Esq.; Paul

Sanford, Esq.; Glen Shor, Esq.; and Donald Simon, Esq. Transcripts of the hearing are available at the website identified above. Please note that, for purposes of this document, “comment” and “commenter” apply to both written comments and oral testimony at the public hearing.

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 that follow were transmitted to Congress on November 24, 2003.

Explanation and Justification

11 CFR 100.5 Political Committee

I. Background

The Federal Election Campaign Act of 1971, as amended (“FECA”), 2 U.S.C. 431 *et seq.*, defines “authorized committee” as “the principal campaign committee or any other political committee authorized by a candidate under section 432(e)(1) of this title to receive contributions or make expenditures on behalf of such candidate.” 2 U.S.C. § 431(6); *see also* 11 CFR 100.5(f)(1). “Unauthorized committee” is defined in the Commission’s regulations as “a political committee which has not been authorized in writing by a candidate to solicit or receive contributions or make expenditures on behalf of such candidate, or which has been disavowed pursuant to 11 CFR 100.3(a)(3).” 11 CFR 100.5(f)(2) (emphasis added). An unauthorized committee may accept contributions in greater amounts than those allowed to be accepted by an authorized committee, *compare* 2 U.S.C. 441a(a)(1)(C) *with* 2 U.S.C. 441a(a)(1)(A), and, if it attains multicandidate committee status,¹ may contribute greater amounts to Federal candidates than those allowed to be contributed by an authorized

¹ A committee achieves multicandidate status when it has been registered under 2 U.S.C. 433 for not less than six months, has received contributions from more than 50 persons, and except for a State political party organization, has made contributions to five or more candidates for Federal office. 2 U.S.C. 441a(a)(4); 11 CFR 100.5(c)(3).