

committee. *Compare* 2 U.S.C. 441a(a)(2)(A) with 2 U.S.C. 441a(a)(1)(A).

The term "leadership PAC" lacks a formal definition. Generally, such PACs "are formed by individuals who are Federal officeholders and/or Federal candidates. The monies these committees receive are given to other Federal candidates to gain support when the officeholder seeks a leadership position in Congress, or are used to subsidize the officeholder's travel when campaigning for other Federal candidates. The monies may also be used to make contributions to party committees, including State party committees in key states, or donated to candidates for State and local office." *Notice of Proposed Rulemaking on Leadership PACs*, 67 FR 78753, 78754 (Dec. 26, 2002) (citations omitted).

Pursuant to 2 U.S.C. 441a(a)(5), "all contributions made by political committees established or financed or maintained or controlled by any corporation, labor organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such corporation, labor organization, or any other person, or by any group of such persons, shall be considered to have been made by a single political committee."

Under the Commission's regulations, committees that are affiliated, that is, committees that are established, financed, maintained, or controlled by the same corporation, labor organization, person or group of persons, *et al.*, share a single limitation on the amount they can accept from any one contributor. 11 CFR 100.5(g), 110.3(a)(1), 110.3(a)(3)(ii). Typically, under FECA and the Commission's regulations, the Commission has treated "leadership PACs" as unauthorized political committees, and usually has not found them to be affiliated with authorized committees sharing contribution limits of affiliated committees.

In 1986 the Commission began a rulemaking to address affiliation in general, including leadership PACs. The Commission determined in 1989, however, to maintain its existing approach, noting that "the Commission has concluded that this complex area is better addressed on a case-by-case basis." *Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions; Final Rule*, 54 FR 34098, 34101 (Aug. 17, 1989). The Commission embarked on this rulemaking in 2002, in part, to clarify its historic approach in examining the

relationship and transactions between a candidate's authorized committee and a leadership PAC associated with that candidate. NPRM at 78755.

II. Alternatives in the NPRM

The NPRM set forth three different ways of addressing the question of affiliation between an authorized committee and a leadership PAC. The first two proposals (Alternatives A and B) would have established factors for finding affiliation, with all of the consequences of affiliation applying as a result. The third proposal (Alternative C) sought to codify the Commission's existing practice.

Alternative A set out individual factors in proposed section 100.5(g)(5)(i), the presence of any one of which would result in affiliation. The factors were: (1) The candidate or officeholder, or their agent has signature authority on the unauthorized committee's checks; (2) funds contributed or disbursed by the unauthorized committee are authorized or approved by the candidate or officeholder or their agent; (3) the candidate or officeholder is clearly identified as described in 11 CFR 100.17 on either the stationery or letterhead of the unauthorized committee; (4) the candidate, officeholder or his campaign staff, office staff, or immediate family members, or any other agent, has the authority to approve, alter or veto the unauthorized committee's solicitations, contributions, donations, disbursements or contracts to make disbursements; and (5) the unauthorized committee pays for travel by the candidate, his campaign staff or office staff in excess of \$10,000 per calendar year. The second factor would have been satisfied even if the officeholder or candidate or agent authorized or approved only some and not all of the disbursements.

Alternative B described two separate tests under which affiliation would have been found. Under proposed section 100.5(g)(5)(i)(A), affiliation would have existed if any one of the following factors were present: (1) The candidate or officeholder has signature authority on the entity's checks; (2) the candidate or officeholder must authorize or approve disbursements over a certain minimum amount; (3) the candidate or officeholder signs solicitation letters and other correspondence on behalf of the entity; (4) the candidate or officeholder has the authority to approve, alter or veto the entity's solicitations; (5) the candidate or officeholder has the authority to approve, alter, or veto the entity's contributions, donations, or disbursements; or (6) the candidate or

officeholder has the authority to approve the entity's contracts. Under this alternative, the authorized committee and the leadership PAC would have been considered affiliated because the candidate or officeholder exercised sufficient influence to conclude that the candidate or officeholder established, financed, maintained, or controlled the leadership PAC.

If none of the above factors were present, affiliation could still be found under Alternative B of proposed section 100.5(g)(5)(i)(B) if any three of the following factors were present: (1) The campaign staff or immediate family members of the candidate or officeholder have the authority to approve, alter or veto the entity's solicitations; (2) the campaign staff or immediate family members of the candidate or officeholder have the authority to approve, alter, or veto the entity's contributions, donations, or disbursements; (3) the campaign staff or immediate family members of the candidate or officeholder have the authority to approve the entity's contracts; (4) the entity and the candidate or officeholder's authorized committees share, exchange, or sell contributor lists, voter lists, or other mailing lists directly to one another, or indirectly through the candidate or officeholder to one another; (5) the entity pays for the candidate or officeholder's travel anywhere except to or from the candidate or officeholder's home State or district; (6) the entity and the candidate or officeholder's authorized committees share office space, staff, a post office box, or equipment; (7) the candidate or officeholder's authorized committee(s) and the entity share common vendors; and (8) the name or nickname of the candidate or the officeholder, or other unambiguous reference to the candidate or officeholder appears on either the entity's stationery or letterhead.

Alternative C would have largely continued the Commission's current treatment of leadership PACs by treating a leadership PAC as affiliated with a candidate or officeholder's authorized committees unless the leadership PAC undertook activities that would indicate its primary purpose is not to influence the nomination or election of the candidate or officeholder involved. These activities are: (1) Only making disbursements to raise funds for party committees or to influence the nomination or election of persons other than the candidate or officeholder involved; (2) avoiding references to the candidacy or potential candidacy of the sponsoring candidate or officeholder in