

any solicitations, communications or other materials of the unauthorized committee; (3) requiring that the candidate or officeholder make no reference to his or her candidacy or potential candidacy during his or her speeches or appearances on behalf of the leadership PAC; and (4) requiring that specified expenses would have to be reimbursed by a presidential campaign committee if the candidate or officeholder becomes a presidential candidate. If the leadership PAC did not conform its activities to these limitations, under Alternative C, it would be deemed to be an authorized committee.

### III. Comments

#### 1. Question of Affiliation

One commenter thought that Alternative A was contrary to FECA and not mandated by the Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, 116 Stat. 81(2002) (“BCRA”). Another commenter believed that this alternative would defeat the purpose of leadership PACs, and that it was sufficiently onerous that Federal officeholders could not and would not establish them. A third commenter agreed with this latter point, arguing that its terms went beyond what the authors of BCRA envisioned. One commenter disagreed with Alternative A’s general structure, arguing that no one single factor is sufficient to prove affiliation absent express authorization by the candidate.

Other commenters disapproved of Alternative A because it did not allow for sufficient opportunities to find affiliation. One commenter stated that the alternative contained only a *per se* list and thus ignored numerous factors that indicated a relationship existed between two committees. Another commenter argued that Alternative A was insufficiently comprehensive to encompass all relationships covered by the statutory term “established, financed, maintained, or controlled.” Similarly, one commenter supported many of the factors of Alternative A, but believed it did not include enough factors and was not sufficiently flexible.

With respect to Alternative B, one commenter argued that it also was contrary to FECA and not mandated by BCRA. Another commenter felt that it essentially defeated the purpose of leadership PACs and was sufficiently onerous that the only conclusion to be drawn is that Federal officeholders could not and would not establish them. A third commenter agreed with this latter point, stating that Alternative B

was a more burdensome version of Alternative A.

The commenter who disagreed with the general structure of Alternative A concurred that most of the eight factors listed should be considered in determining affiliation, but thought setting a specific number to be met could present problems. Of the three commenters who thought Alternative A was not sufficiently comprehensive, all three supported the structure of Alternative B, but did not feel it included enough factors. Each of these commenters proposed variations on Alternative B that included additional factors. Two of these commenters added a third option for finding affiliation, based on a “totality of the circumstances.” The commenter who did not include such an option argued that the rule should only apply to political committees under FECA and political organizations organized under 26 U.S.C. 527.

One commenter stated that Alternative C was a useful starting point for addressing the issue of the status of leadership PACs in the related candidate’s own election. Another commenter thought that Alternative C provided a basis for a reasonable set of criteria defining and governing leadership PACs. This commenter suggested that certain amendments to Alternative C would be appropriate: (1) Specifically authorizing leadership PACs to contribute to State and local candidates and political parties within the limits and pursuant to State laws; (2) eliminating provisions that prohibit references to the related Federal candidate in solicitations or public appearances; and (3) requiring candidates and officeholders who become candidates for President and qualify for primary or general election financing to repay to the presidential campaign committee any expenses paid by the leadership PAC for travel, polling, staff, or other expenses made on behalf of the presidential campaign effort. Another commenter stated that Alternative C’s proposed conditions are cumbersome and do not significantly improve the Commission’s regulatory framework. This commenter suggested that the Commission should presume a leadership PAC is unaffiliated unless its activities are for the purpose of influencing the election of the connected Federal candidate.

Another commenter argued that Alternative C continues a current system that fails to properly consider affiliation, and that the mere absence of a leadership PAC attempt to influence the specific officeholder’s election should not be conclusive evidence that

the committees are not affiliated. This commenter argued that such a standard ignores the “established, financed, maintained, or controlled by” test in FECA. Two other commenters disapproved of Alternative C because it maintains the status quo.

#### 2. Impact of BCRA

The Commission also sought comment as to how BCRA impacted a potential rule governing leadership PACs. Five commenters took issue with a suggestion in the NPRM that BCRA might require a finding of affiliation between an authorized committee and a leadership PAC. One commenter noted that one of BCRA’s sponsors, Senator John McCain, had stated that, under BCRA’s terms, “[a] Federal officeholder or candidate is prohibited from soliciting contributions for a Leadership PAC that do not comply with Federal hard money source and amount limitations. Thus, the Federal officeholder or candidate could solicit up to \$5,000 per year from an individual or PAC for the Federal account of the Leadership PAC and an additional \$5,000 from an individual or PAC for the non-Federal account of the Leadership PAC.” 148 Cong. Rec. S2140 (Mar. 20, 2002). Thus, this commenter argued that BCRA does not contemplate the automatic affiliation of leadership PACs with authorized committees.

This same commenter noted that a number of leaders of the House of Representatives, all of whom voted in favor of BCRA, have leadership PACs. One commenter argued that BCRA does not require or even suggest that the Commission change its approach with respect to leadership PACs and the proper focus is on whether the activities at issue are “for the purpose of influencing the election of the individual who is connected with the PAC.” In contrast, other commenters argued for an interpretation that BCRA prohibits Federal candidates and officeholders from maintaining soft money leadership PACs.

The Commission determined in the Soft Money rulemaking that BCRA does not allow a Federal candidate or officeholder to raise up to \$5,000 separately for the Federal and non-Federal accounts of leadership PACs directly or indirectly established, financed, maintained, or controlled by that Federal candidate or officeholder. Rather, for their leadership PACs, they are limited to raising a total of \$5,000 from any one source, per election cycle. *See Final Rules on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money*, 67 FR 49064, 49107 (July 29, 2002) (“Although