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AGENDA ITEM

For Meeting of: 11-01-01

FEDERAL ELECTION COMMISSION

SUBMITTED LATE

11 CFR Part 106

[NOTICE 2001 -]

**PROPOSED STATEMENT OF POLICY REGARDING
PARTY COMMITTEE TRANSFERS OF NONFEDERAL FUNDS
FOR PAYMENT OF ALLOCABLE EXPENSES**

- AGENCY:** Federal Election Commission.
- ACTION:** Proposed Statement of Policy with Request For Comments.
- SUMMARY:** In light of the suspension of fundraising activities by some party committees after the terrorist attacks of September 11, 2001, the Commission proposes to exercise its discretion by not pursuing prima facie violations of the 60 day time limit for party committee transfers of nonfederal funds to pay for the nonfederal share of allocable expenses. The limitations on the scope and duration of the proposed policy will be discussed in detail below.
- DATE:** Comments must be submitted on or before [insert date 30 days after the date of publication in the Federal Register].
- ADDRESSES:** All comments should be addressed to Rosemary C. Smith, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, NW, Washington, DC 20463. Faxed comments should be sent to (202) 219-3923, with printed copy follow-up to insure legibility. Electronic mail comments should be sent to

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1 transfers@fec.gov. Commenters sending comments by electronic mail
2 must include their full name, electronic mail address and postal service
3 address within the text of their comments. Comments that do not
4 contain the full name, electronic mail address and postal service address
5 of the commenter will not be considered. The Commission will make
6 every effort to have public comments posted on its web site within ten
7 business days of the close of the comment period.

8 **FOR FURTHER**
9 **INFORMATION**
0 **CONTACT:**

Rosemary C. Smith, Assistant General Counsel, or Paul Sanford, Staff
1 Attorney, 999 E Street, NW, Washington, D.C. 20463, (202) 694-
2 1650 or (800) 424-9530.

3 **SUPPLEMENTARY**

4 **INFORMATION:** Sections 106.1 and 106.5 of the Commission's regulations
5 (11 CFR 106.1 and 106.5) allow party committees to defray the costs of activities that relate
6 to both federal and nonfederal elections by allocating the costs between their federal and
7 nonfederal accounts, so long as they pay an amount equal to or greater than the federal
8 portion of these expenses with funds that are permissible under the Federal Election Campaign
9 Act, 2 U.S.C. § 431 et seq. ["FECA" or "the Act"].

Party committees allocate these expenses by paying the entire amount of the expense
from a federal account or allocation account, and transferring funds from a nonfederal account
to cover the nonfederal portion of the allocable expense. 11 CFR 106.5(g)(1)(i) and (ii). The
regulations establish a time period, or "window," during which these nonfederal transfers may
be made. "[S]uch funds may not be transferred more than 10 days before or more than 60

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1 days after the payments for which they are designated are made.” 11 CFR 106.5(g)(2)(ii)(B).

2 Any transfer made more than 60 days after payment of the related allocable expense “shall be
3 presumed to be a loan or contribution from the non-federal account to a federal account, in
4 violation of the Act.” 11 CFR 106.5(g)(2)(iii).

5 In many instances, party committees plan and execute allocable activities based, in
6 part, on the expectation that they will subsequently receive nonfederal funds that can be
7 transferred to their federal or allocation accounts before the expiration of the 60 day time limit
8 in section 106.5(g)(2)(ii)(B). In most instances, committees' expectations are realized.

9 However, some party committees voluntarily suspended their fundraising activities in
0 the immediate aftermath of the September 11, 2001 terrorist attacks. See e.g., FEC Advisory
1 Opinion Request 2001-16; Rachel Van Dongen, Shoptalk, Roll Call, October 11, 2001
2 <<http://www.rollcall.com/pages/politics/shoptalk/>>. As a result, some party committees may
3 not have sufficient funds in their nonfederal accounts to make transfers to their federal
4 accounts or allocation accounts in a timely manner, i.e., within 60 days of when the committee
5 pays the allocable expense for which those funds would be transferred.¹

6 The Commission recognizes that this situation is the result of the unprecedented events
7 of September 11, 2001, which have had a significant impact on many aspects of American life,
8 and could not have been anticipated.

¹ The Commission notes that the rules permit but do not require party committees to transfer nonfederal funds to cover the nonfederal portion of an allocable expense, since the effect of not making such a transfer would be that federal funds are used to defray the full amount of the allocable expense, a result that is permissible under the Act and regulations. See Methods of Allocation Between Federal and Non-Federal Accounts: Payments, Reporting, 55 FR 26058, 26063 (June 26, 1990) (explaining that “allocating a portion of certain costs to a committee’s non-federal account is a permissive rather than a mandated procedure”).

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1 In light of these circumstances, the Commission proposes to exercise its discretion by
2 not pursuing prima facie violations of the 60 day time limit in certain limited situations. Under
3 the proposed policy, the Commission would not pursue an untimely party committee transfer
4 made to cover the nonfederal share of an allocable expense paid between July 13, 2001 and
5 November 1, 2001, if the transfer is made no later than December 31, 2001, and is fully
6 disclosed on the party committee's year end report.

7 The Commission invites comments on this proposed policy. Comments may be
8 submitted on any aspect of the proposed policy, including its scope and duration. After
9 reviewing the comments received, the Commission will issue a final Statement of Policy.

0 The Commission is taking this action in response to the unique circumstances
1 described above. Consequently, this action should not be viewed as a precedent for any
2 similar action in the future.

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8 Danny L. McDonald
9 Chairman
0 Federal Election Commission

1 DATED: _____
2 BILLING CODE: 6715-01-U