



RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

2018 DEC 12 PM 3:46

December 12, 2018

MEMORANDUM

TO: The Commission

AGENDA DOCUMENT NO. 18-54-A

THROUGH: Alec Palmer *AP by MAH*
Staff Director

AGENDA ITEM

For meeting of 12-13-18

SUBMITTED LATE

FROM: J. Duane Pugh Jr. *JDP*
Director

Amy E. Pike *AEP*
Deputy Director

Congressional, Legislative and Intergovernmental Affairs

SUBJECT: Draft Legislative Recommendations 2018

Attached for your approval are draft Legislative Recommendations. The recommendations are:

1. Electronic Filing of Electioneering Communication Reports
2. Authority to Create Senior Executive Service Positions
3. Prohibit Fraudulent PAC Practices
4. Fraudulent Misrepresentation of Campaign Authority
5. Conversion of Campaign Funds
6. Prohibit Aiding or Abetting the Making of Contributions in Name of Another
7. Make Permanent the Administrative Fine Program for Reporting Violations
8. Increase and Index for Inflation Registration and Reporting Thresholds
9. Increase the In-Home Event Exemption and Unreimbursed Travel Expense Exemption for Candidates and Political Parties
10. Permit Political Committees to Make Disbursements by Methods Other than Check
11. Update Citations to Reflect the Recodification of FECA
12. Repeal the Convention Funding Provisions Rendered Non-Operational by the Gabriella Miller Kids First Research Act

Once the Commission has approved the draft Legislative Recommendations, we will prepare transmittal letters to the President and Congress for the Chairman's signature.

Electronic Filing of Electioneering Communication Reports

Section: 52 U.S.C. § 30104(a)(11)(A)(i)

Recommendation: Congress should require reports of electioneering communications to be filed electronically with the Commission, rather than on paper.

Explanation: The Treasury and General Government Appropriations Act, 2000, Pub. L. No. 106-58, § 639, 113 Stat. 430, 476 (1999), required the Commission to make electronic filing mandatory for political committees and other persons required to file with the Commission who, in a calendar year, have, or have reason to expect to have, total contributions or total expenditures exceeding a threshold amount set by the Commission (which is currently \$50,000). In addition, many independent expenditure reports are already subject to mandatory electronic filing under 52 U.S.C. § 30104(a)(11)(A)(i). However, because electioneering communication reports are not filed by political committees, and because funds spent for electioneering communications are reported as “disbursements,” and not as “expenditures,” the mandatory electronic filing provisions do not apply to electioneering communication reports.

Compared to data from paper reports, data from electronically filed reports is received, processed and disseminated more easily and efficiently, resulting in better use of resources. Reports that are filed electronically are normally available to the public, and may be downloaded, within minutes. In contrast, the time between the receipt of a report filed through the paper filing system and its initial appearance on the Commission’s web site is 48 hours.

Electronic filings are not subject to delay due to post office processing or disruptions in the delivery of mail, such as those arising from security measures put in place after the discovery of anthrax powder and ricin in mail. Because of these security measures, the Commission’s receipt of mailed paper filings is delayed. In contrast, electronic filings are not subject to these delays.

Only entities that report more than \$50,000 of electioneering communications would be subject to mandatory electronic filing under the proposal. The current threshold selected by the Commission ensures that entities with limited financial resources can file reports on paper, which avoids the limited cost of internet access and a computer sufficient to file reports.

Legislative Language:

Section 304(a)(11)(A)(i) of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30104(a)(11)(A)(i)) is amended by inserting “or makes or has reason to expect to make electioneering communications” after “expenditures”.

Authority to Create Senior Executive Service Positions

Sections: 5 U.S.C. § 3132(a)(1)
52 U.S.C. § 30106(f)(1)

Recommendation: Congress should delete the exclusion of the Federal Election Commission from eligibility for the Senior Executive Service (SES) under the Civil Service Reform Act of 1978 (as amended by the Federal Election Campaign Act Amendments of 1979). *See* Pub. L. No. 96-187, § 203, 93 Stat. 1339, 1368 (1980), *codified at* 5 U.S.C. § 3132(a)(1)(C). Additionally, Congress should revise section 306 of the Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (1972), as amended (“FECA”), to delink the salaries of the Staff Director and the General Counsel from Level IV and Level V of the Executive Schedule.

Explanation: The Commission believes that these statutory changes are needed to bring the Commission’s personnel structure in line with that of other comparable federal agencies. This would ensure that the Commission is better able to compete with other government agencies in recruiting and retaining key management personnel.

Currently, the Commission is prohibited by law from creating Senior Executive Service positions within the agency. 5 U.S.C. § 3132(a)(1)(C). The Commission recommends that it be made eligible to create Senior Executive Service positions because: (1) the agency currently has several top management positions that the Commission believes would fully satisfy the criteria for SES positions set forth in 5 U.S.C. § 3132 (*e.g.*, directing the work of an organizational unit, monitoring progress toward organizational goals, etc.); and (2) the SES system would provide institutional benefits to the agency and agency employees.

As a result of the current prohibition, the Commission’s senior managers (other than the Staff Director and the General Counsel) are employed in Senior Level positions. The current Senior Level positions (the Chief Financial Officer, the Inspector General, four Deputy Staff Directors, two Deputy General Counsels, and three Associate General Counsels) oversee major programmatic areas and supervise not only staff, but other managers as well. Although these eleven top management positions are designated as Senior Level, because supervisory and executive responsibilities occupy 100% of the time of the employees filling these positions, the positions would be more appropriately designated as SES.¹

The FEC’s expenses would not increase significantly if it were permitted to participate in the SES program. In 2008, legislation brought the salary ranges for Senior Level employees into parity with Senior Executive Service employees. *See* Senior Professional Performance Act of 2008, Pub. L. No. 110-372, 122 Stat. 4043 (2008). Like SES employees, Senior Level employees may now carry over 720 hours of annual leave into the next year, rather than the

¹ In fact, OPM’s guidance on the Senior Level positions indicates that the Senior Level system is generally for positions in which supervisory duties occupy less than 25% of the employee’s time. *See* <http://www.opm.gov/policy-data-oversight/senior-executive-service/scientific-senior-level-positions/> (last visited Dec. 12, 2018). OPM’s guidance does note, however, that “in a few agencies [such as the Federal Election Commission] that are statutorily exempt from inclusion in the Senior Executive Service (SES), executive positions are staffed with SL employees.”

previous Senior Level limit of 240. Nonetheless, the SES system would provide institutional benefits to the Commission and its employees by enhancing the quality and quantity of the pool of persons available to fill vacancies that may arise.

SES candidates must go through a competitive selection process in order to enter a Candidate Development Program. Completion of a Candidate Development Program by candidates within the agency ensures that a cadre of SES-approved employees is available for selection and thereby assists in good succession planning. In addition, the SES system enables agencies to hire experienced and skilled leaders from a *government-wide*, not just intra-agency, pool with relative ease and with the assurance that all such employees have met the same standards of development and experience. For example, because SES-certified applicants from outside the agency will have met all of the Executive Core Qualifications, the Commission would be able to evaluate their applications with the assurance that fundamental competencies have already been developed.

The current provision in FECA specifies that the Staff Director and General Counsel are to be paid at Level IV and Level V of the Executive Schedule, respectively. Both positions supervise personnel at the GS-15 and Senior Level pay scales, which often provide higher salaries than Levels IV and V of the Executive Schedule. The Staff Director and General Counsel have significant responsibilities and oversight duties with respect to both administrative and legal areas, as well as management over almost all agency personnel. According to recruiting specialists working with the Commission, the current limit makes attracting a strong pool of applicants to these positions more challenging. The appointment and retention of these key leaders have been identified as ongoing management and performance challenges to the Commission by the Inspector General in the 2018, 2017, 2016, 2015 and 2014 Agency Financial Reports and in previous Performance and Accountability Reports. The General Counsel's position is currently filled on an acting basis.

The Commission proposes removing the statutory references to the Executive Schedule, so that the Staff Director and General Counsel would be compensated under the same schedule as the Commission's other senior managers. This revision will remedy the current situation where the Commission's top managers are compensated at a lower rate than many of their direct reports, and will ensure that the Commission can retain highly qualified individuals to serve in those positions as well as enable it to remain competitive in the marketplace for Federal executives when filling the current vacancy or when further vacancies arise. This change will not require an increase in the Commission's appropriation request.

Accordingly, the Commission believes that the positions of Staff Director and General Counsel, as well as the current Senior Level positions within the agency, would be more appropriately categorized as SES positions. Because salary ranges for Senior Executive Service employees and Senior Level employees are in parity, as discussed above, the foregoing amendments will affect the salary expenses for only two positions: the Staff Director and the General Counsel.

Legislative Language:

Section 306(f)(1) of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30106(f)(1)) is amended by striking the second and third sentences.

Section 3132(a)(1)(C) of Title 5, United States Code, is amended by striking “the Federal Election Commission, or”.

Prohibit Fraudulent PAC Practices

Section: 52 U.S.C. § 30114 & 52 U.S.C. § 30124

Recommendation: Congress should examine potentially fraudulent fundraising and spending activities of certain political committees. These committees solicit contributions with promises of supporting candidates, but then disclose minimal or no candidate support activities while engaging in significant and continuous fundraising, which predominantly funds personal compensation for the committees' organizers. In many cases, all funds raised by this subset of political committees are provided to fundraising vendors, direct mail vendors, and consultants in whom the political committees' officers appear to have financial interests. Based on its examination, Congress should amend the Federal Election Campaign Act to address and prohibit fraudulent fundraising practices.

Explanation: Most political committees appropriately use vendors and consultants in support of their fundraising and political efforts, and these vendors are often compensated with significant amounts that constitute large percentages of committees' disbursements. Yet, from its examination of campaign finance disclosure reports and media accounts, the Federal Election Commission is seeing a recurring pattern of certain unauthorized political committees soliciting contributions with fundraising materials that promise to use solicited funds to support candidates, sometimes even implying that the materials originate from a named candidate for Federal office without that candidate's knowledge or permission. Then, the contributions are not used as indicated in the solicitations, but instead for significant and continuous fundraising by the committees. In some cases, 90 percent or more of their disbursements are paid to vendors in which the committees' officers have a financial interest, while 10 percent or less of their disbursements are spent on candidate-support activities, such as contributions to candidates, independent expenditures, or donations to state and local candidates.

The Commission believes that Congress should give the Commission the authority to protect contributors from committees that defraud their contributors. Congress should consider whether any political committee should be permitted to solicit contributions with false promises of supporting candidates, but then, over the course of years, deliver only support of the committee's vendors. While legal recourse against such committees might be pursuable under mail- and wire-fraud statutes or the Lanham Act, candidates and contributors who believe they have been victimized by these committees often seek the FEC's assistance. Amending FECA to address and prohibit fraudulent solicitation, including false claims of candidate endorsement and the use of the federal political committee as an artifice to defraud contributors solely to enrich committee organizers, would provide the Commission jurisdiction to consider the complaints of aggrieved candidates and contributors.

Another troubling aspect of this recurring pattern is the frequency of relationships between the individuals who established or operate the political committees and the vendors who receive a large amounts of the committees' disbursements. In some instances, the committees pay fees directly to individuals who established or operated the committees, and in other instances, the fees are paid to entities with financial relationships with those who established or operate the committee. Congress could also consider adding standards addressing payments to vendors with financial relationships with the individuals who establish or operate political committees.

Fraudulent Misrepresentation of Campaign Authority

Section: 52 U.S.C. § 30124

Recommendation: Congress should revise the prohibitions on fraudulent misrepresentation of campaign authority to encompass all persons purporting to act on behalf of candidates and real or fictitious political committees and political organizations. In addition, Congress should remove the requirement that the fraudulent misrepresentation must pertain to a matter that is “damaging” to another candidate or political party.

Explanation: The Federal Election Campaign Act prohibits a Federal candidate or his or her agents or employees from fraudulent misrepresentation such as speaking, writing or otherwise acting on behalf of a candidate or political party committee on a “matter which is damaging to such other candidate or political party” or an employee or agent of either. *See* 52 U.S.C. § 30124(a). The Commission recommends that this prohibition be extended to any person who would disrupt a campaign by such unlawful means, rather than being limited to candidates and their agents and employees. Proving damages as a threshold matter is often difficult and unnecessarily impedes the Commission’s ability to pursue persons who employ fraud and deceit to undermine campaigns. Fraudulent solicitations of funds on behalf of a candidate or political party committee have been prohibited without any required showing of damage to the misrepresented candidate or political party committee. *See* Bipartisan Campaign Reform Act of 2002, § 309, Pub. L. No. 107-155, 116 Stat. 81, 104 (2002) (“BCRA”), *codified at* 52 U.S.C. § 30124(b).

In addition, while both subsections (a) and (b) of 52 U.S.C. § 30124 directly address fraudulent actions “on behalf of any other candidate or political party,” they do not address situations where a person falsely claims to represent another type of political committee or claims to be acting on behalf of a fictitious political organization, rather than an actual political party or a candidate. For example, the current statute does not bar fraudulent misrepresentation or solicitation on behalf of a corporate or union separate segregated fund or a non-connected political committee.

Legislative Language:

Section 322 of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30124) is amended:

- (1) in subsection (a), by striking “who is a candidate for Federal office or an employee or agent of such a candidate”;
- (2) in paragraph (a)(1), by striking “candidate or political party or employee or agent thereof on a matter which is damaging to such other candidate or political party or employee or agent thereof” and inserting “candidate, political party, other real or fictitious political committee or organization, or employee or agent of any of the foregoing,”; and

- (3) in paragraph (b)(1), by striking “candidate or political party or employee or agent thereof” and inserting “candidate, political party, other real or fictitious political committee or organization, or employee or agent of any of the foregoing,”.

Conversion of Campaign Funds

Section: 52 U.S.C. § 30114

Recommendation: Congress should amend the Federal Election Campaign Act's prohibition of the personal use of campaign funds to extend its reach to all political committees.

Explanation: In 2007, the Department of Justice noted, “[r]ecent years have seen a dramatic rise in the number of cases in which candidates and campaign fiduciaries steal money that has been contributed to a candidate or political committee for the purpose of electing the candidate or the candidates supported by the political committee.” See U.S. Department of Justice, *Federal Prosecution of Election Offenses*, 194-95 (7th ed. May 2007). In fact, the Commission has seen a substantial number of instances where individuals with access to the funds received by political committees have used such funds to make unauthorized disbursements to pay for their own personal expenses.

The Commission proposes to revise 52 U.S.C. § 30114(b) to address this growing problem by prohibiting the use by any person of any political committee's receipts for expenses that would exist irrespective of the political committee's political activities. Political activities would include activities in connection with a Federal election, as well as activities in furtherance of a political committee's policy or educational objectives and other legitimate committee functions and related administrative expenses. Such an amendment would provide for coherent and consistent application of FECA.

Legislative Language:

Section 313 of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30114) is amended:

- (1) in paragraph (b)(1), by inserting “or a receipt accepted by any other political committee” after “subsection (a)”;
- (2) in paragraph (b)(2), by striking “contribution or donation” and replacing with “contribution, donation, or receipt”;
- (3) in paragraph (b)(2), by striking “campaign or individual's duties as a holder of Federal office,” and inserting “campaign, individual's duties as a holder of Federal office, or political committee's political activities,”.

Prohibit Aiding or Abetting the Making of Contributions in Name of Another

Sections: 52 U.S.C. § 30122

Recommendation: Congress should amend the prohibition of making contributions in the name of another in the Federal Election Campaign Act to also prohibit directing, helping or assisting the making of a contribution in the name of another.

Explanation: Since its enactment in 1972, FECA has prohibited contributions in the name of another. Specifically, the statute prohibits making a contribution in the name of another person or knowingly permitting another to use one's name to effect such a contribution. Additionally, knowingly accepting a contribution made by one person in the name of another is also prohibited. 52 U.S.C. § 30122. These prohibitions promote the important and long-recognized governmental interest in fighting corruption and its appearance by ensuring accurate disclosure of the true sources and amounts of campaign contributions and preventing circumvention of FECA's contribution limits and source prohibitions. This section of FECA is one of its most frequently violated provisions. *See* U.S. Department of Justice, *Federal Prosecution of Election Offenses*, 166 (7th ed. May 2007). People attempting to violate FECA's limits on the sources and amounts of contributions often attempt to avoid detection by laundering their illegal contributions through straw donors.

In 1989, the Commission added a provision to its regulation providing that no person shall “[k]nowingly help or assist any person in making a contribution in the name of another.” 11 C.F.R. § 110.4(b)(1)(iii) (1989); *see* *Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions*, 54 Fed. Reg. 34,098, 34,104-05 (Aug. 17, 1989). The Commission promulgated section 110.4(b)(1)(iii) after a federal district court held the previous year that a defendant had violated section 30122 “by knowingly assisting in the making of contributions in the name of another.” *See FEC v. Rodriguez*, Final Order and Default Judgment, Case No. 86-687-Civ-T-10 (M.D. Fla. Oct. 28, 1988) (emphasis added). In the nearly three decades since the FEC promulgated section 110.4(b)(1)(iii), the agency has consistently and repeatedly enforced section 30122 in administrative enforcement matters against respondents who knowingly helped or assisted conduit contributions. Doing so has permitted the Commission to reach actors in schemes who initiated, instigated and significantly participated in another person's making of a contribution in the name of another. In one such enforcement proceeding, the Commission's authority to promulgate this regulation was challenged, and a federal district court agreed with the challenger and struck down the regulation. That court found that the regulation's prohibition went beyond the prohibitions in FECA, stating that legislation is therefore required to expand the reach of FECA in this way. *See FEC v. Swallow*, 304 F. Supp. 3d 1113, 1116 (D. Utah 2018). The court also issued a nationwide injunction, which makes a different court reaching a different result unlikely.

This Legislative Recommendation would incorporate the language of the Commission's stricken regulation into FECA, modified to include direct along with help or assist.

Legislative Language:

Section 320 of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30122) is amended by adding to the end the following:

“No person shall knowingly direct, help or assist any person in making a contribution in the name of another.”

Make Permanent the Administrative Fine Program for Reporting Violations

Section: 52 U.S.C. § 30109

Recommendation: Congress should make permanent the Commission's authority to assess administrative fines for violations of the law requiring timely reporting of receipts and disbursements. The Commission's current Administrative Fine Program only covers violations that relate to reporting periods through December 31, 2018. The House of Representatives passed legislation on November 27, 2018, that would extend the Administrative Fine Program through reporting periods ending December 31, 2023. *See* H.R. 7120, 115th Cong. (2018). The bill is pending before the Senate.

Explanation: On December 26, 2013, President Obama signed legislation that extended the Administrative Fine Program, which authorized the Commission to include in the Program certain violations of 2 U.S.C. §§ 434 and 437 (now 52 U.S.C. §§ 30104 and 30105) that relate to reporting periods through December 31, 2018. *See* Pub. L. No. 113-72, 127 Stat. 1210 (2013). Since the Administrative Fine Program was implemented in 2000 through the end of fiscal year 2017, the Commission has processed and made public 3,055 cases, with more than \$5.9 million in fines assessed. The Administrative Fine Program has been remarkably successful: over the course of the program, the number of late and nonfiled reports has dramatically decreased. For election cycles 1992 through 2000, an average of 21% of campaign finance reports were filed late. Since the inception of the Administrative Fine Program, the percentage of late reports has dropped to below 10%. As a result, the Administrative Fine Program has become an integral part of the Commission's mission to administer and enforce the Act. With fewer late reports and fewer challenges to administrative fines, the Commission has been able to reduce the number of employees who work on this program. By making the program permanent, Congress would ensure that the Commission would not lose one of the most cost-effective and successful programs in its history.

Under the Administrative Fine Program, the Commission considers reports to be filed late if they are received after the due date, but within 30 days of that due date. Election-sensitive reports are considered late if they are filed after their due date, but at least five days before the election. (Election sensitive reports are those filed immediately before an election and include pre-primary, pre-special, pre-general, October quarterly and October monthly reports.) Committees filing reports after these dates are considered nonfilers. Civil money penalties for late reports are determined by the amount of activity on the report, the number of days the report was late and any prior penalties for violations under the administrative fine regulations. Penalties for nonfiled reports are determined by the estimated amount of activity on the report and any prior violations. Committees have the option to challenge the Commission's finding, proposed penalty or both, or they may pay the civil penalty assessed.

Legislative Language:

Section 309(a)(4)(C)(v) of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30109(a)(4)(C)(v)) is amended to read as follows: “This subparagraph shall apply with respect to violations that relate to reporting periods that begin on or after January 1, 2000.”

Increase and Index for Inflation Registration and Reporting Thresholds

Sections: 52 U.S.C. §§ 30101, 30104 and 30116

Recommendation: Congress should increase and index for inflation certain registration and reporting thresholds in the Federal Election Campaign Act that have not been changed since the 1970s.

Explanation: Most of the Federal Election Campaign Act's contribution limits and registration and reporting thresholds were set in the 1970s. Because over twenty years of inflation had effectively reduced FECA's contribution limits in real dollars, the Bipartisan Campaign Reform Act of 2002 increased most of the Act's contribution limits to adjust for some of the effects of inflation. Furthermore, BCRA indexed these limits for inflation to address inflation in future. The Commission proposes extending this approach to registration and reporting thresholds, which have been effectively reduced by inflation since those thresholds were established in 1971 or 1979.

Since 1971, FECA has provided that any group of persons that receives contributions or makes expenditures in excess of \$1,000 in a calendar year must register and report as a political committee. 52 U.S.C. § 30101(4)(A). FECA also requires political committees to abide by the contribution limits and source prohibitions specified in FECA. Since 1979, FECA has provided that local political party organizations are also subject to a \$1,000 threshold for federal political committee status. 52 U.S.C. § 30101(4)(C). The Commission recommends that Congress increase these thresholds to amounts determined appropriate by Congress, and then index those amounts for inflation to prevent erosion in the future. Raising this threshold would be particularly beneficial for local and Congressional district committees of political parties. These organizations frequently breach the \$1,000 threshold. An increased threshold would permit limited spending on federal elections without triggering federal political committee status for local and Congressional district committees of political parties.

Since 1979, FECA has required persons (other than political committees) who make independent expenditures in excess of \$250 in a calendar year to report such expenditures to the Commission. 52 U.S.C. § 30104(c)(1). The Commission recommends that Congress increase this threshold to an amount determined by Congress and index this amount for inflation.

Increasing these thresholds would take into account many years of inflation and the general increase in campaign cost and ease the compliance burdens on smaller organizations and individuals. Additionally, by increasing the thresholds, Congress would exempt some individuals and small organizations that engage in only minimal spending from the Act's registration and reporting requirements. Increasing the registration and reporting thresholds to compensate for inflation would leave significant financial activity subject to regulation as intended by Congress when it enacted the FECA.

Legislative language:

Section 301 of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30101) is amended:

- (1) in paragraph (4)(A), by striking both references to “\$1,000” and by inserting a dollar amount determined by Congress; and
- (2) in paragraph (4)(C), by striking both references to “\$5,000” and both references to “\$1,000” and by inserting dollar amounts determined by Congress.

Section 304 of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30104) is amended, in paragraph (c)(1) by striking “\$250” and inserting a dollar amount determined by Congress.

Section 315(c) of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30116(c)) is amended—

- (1) in paragraph (1), by inserting after subparagraph (C) the following:
 - “(D) In any calendar year after 2018—
 - (i) a threshold established by section 301(4)(A) or (4)(C) shall be increased by the percent difference determined under subparagraph (A);
 - (ii) each amount so increased shall remain in effect for the calendar year; and
 - (iii) if any amount after adjustment under clause (i) is not a multiple of \$100, such amount shall be rounded to the nearest multiple of \$100.”;
- (2) in paragraph (2)(B)(i), by deleting “and” at the end;
- (3) in paragraph (2)(B)(ii), by replacing the period at the end with “; and”; and
- (4) by inserting after paragraph (2)(B)(ii) the following:

“(iii) for purposes of section 301(4)(A) and (4)(C), calendar year 2018.”.

Increase the In-Home Event Exemption and Unreimbursed Travel Expense Exemption for Candidates and Political Parties

Section: 52 U.S.C. § 30101(8)(B)(ii) and (iv)

Recommendation: Increase the in-home event exemption and unreimbursed travel expense exemption for candidates to the current contribution limit and index for inflation. Establish a separate in-home event exemption and unreimbursed travel expense exemption for each political party committee, increase the exemption to an amount deemed appropriate by Congress, and index it for inflation.

Explanation: Under FECA, an individual may spend up to \$1,000 per candidate, per election and up to \$2,000 per calendar year on behalf of all political committees of the same party for food, beverages, and invitations for an event held in the individual's home without making a contribution. FECA also permits an individual to spend up to \$1,000 per candidate, per election and up to \$2,000 per calendar year on behalf of all political committees of the same party for unreimbursed travel expenses on behalf of the campaign or political party without making a contribution.

When Congress created the in-home event exemption and unreimbursed travel expense exemption in 1974, it did not limit spending under these exemptions. *See* Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, § 102(c), 88 Stat. 1263, 1269 (1974). Congress added the current exemption limits in 1979, setting the amount for candidates as the same as the contribution limit then in effect (\$1,000 per election) and setting the amount for political parties as 40% of the contribution limit then in effect for state, district, and local parties (\$5,000 per calendar year) and 10% of the contribution limit then in effect for national parties (\$20,000). *See* Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, § 101, 93 Stat. 1339 (1980). Since then, Congress has doubled the contribution limits for candidates and state, district, and local party committees, indexing both limits for inflation, as well as increased and indexed for inflation the contribution limit for national party committees.

The Commission recommends that Congress update the in-home event exemption and unreimbursed travel expense exemption on behalf of candidates to reflect the spending limit as originally intended and index these amounts for inflation (*i.e.*, one contribution limit or currently \$2,700). With respect to political parties, sharing an in-home event exemption and unreimbursed travel expense exemption among all committees of a political party imposes significant regulatory burdens on national, state, district, and local committees to keep track of such exempt spending. Therefore, the Commission further recommends that Congress grant each political party committee its own in-home event exemption and unreimbursed travel exemption as well as increasing the increase the exemption limits on behalf of political parties at an amount deemed appropriate by Congress, adjusted for inflation.

Permit Political Committees to Make Disbursements by Methods Other Than Check

Section: 52 U.S.C. § 30102(h)(1)

Recommendation: Congress should delete the reference to a “check drawn on” an account at a campaign depository as the only permissible method of making political committee disbursements.

Explanation: The Federal Election Campaign Act requires all political committees to maintain at least one campaign depository account and to make all disbursements (other than from petty cash) “by check drawn on such accounts in accordance with this section.” *See* 52 U.S.C. § 30102(h)(1). Since this provision was adopted, financial payments have evolved to include credit cards, debit cards, and other well-established electronic transaction methods.² The Commission accordingly recommends deletion of FECA’s requirement that disbursements be made “by check drawn on” campaign depository accounts. The Commission recommends substituting technology-neutral language to require that committees make disbursements “from such accounts.”

Legislative Language:

Section 302(h)(1) of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30102(h)(1)) is amended to revise the last sentence to read as follows: “No disbursements may be made (other than petty cash disbursements under paragraph (2)) by such committee except from such accounts.”.

² *See, e.g.,* Fed. Reserve Sys., *2013 Federal Reserve Payments Study: Recent and Long-Term Payment Trends in the United States: 2003-2012*, at 6-8, 12 (2013), <https://www.frbservices.org/assets/news/research/2013-fed-res-paymt-study-summary-rpt.pdf> (last visited Dec. 12, 2018)(noting that “fewer checks enter the banking system as paper at all” as more checks are processed electronically); Fed. Reserve Sys., *2010 Federal Reserve Payments Study: Noncash Payment Trends in the United States: 2006-2009*, at 4 (2011), <https://www.frbservices.org/assets/news/research/2010-payments-study-summary-report.pdf> (last visited Dec. 12, 2018)(noting that electronic payments — whether made by debit card, credit card, or through automated clearinghouses — “collectively exceed three-quarters of all noncash payments” in U.S.).

Update Citations to Reflect the Recodification of FECA

Legislation: H.R. 2832 (114th Congress)

Explanation and Recommendation: On September 1, 2014, a new title in the United States Code was established for codifying legislation related to Voting and Elections. The new Title 52 includes the Federal Election Campaign Act. In order to ensure that other laws accurately reflect the new location of the Federal Election Campaign Act in the United States Code, legislation is needed to conform citations to the Federal Election Campaign Act in various other laws to its current codification. In the 114th Congress, H.R. 2832 was a bill that would have provided the necessary updates. *See* H.R. 2832, 114th Cong. (2015). The bill passed the House of Representatives on September 6, 2016, by voice vote. The Senate did not act on it. Similar legislation should be enacted in order to promote public understanding and access to the Federal Election Campaign Act.

Repeal the Convention Funding Provisions Rendered Non-Operational by the Gabriella Miller Kids First Research Act

Section: 26 U.S.C. § 9008

Recommendation: Congress should repeal the provisions of the Presidential Election Campaign Fund Act that allocate and govern the use of funds through the now-defunct public convention financing program.

Explanation: The Gabriella Miller Kids First Research Act, Pub. L. 113-94, 128 Stat. 1085 (2014) (the “Research Act”), amended the Presidential Election Campaign Fund Act, 26 U.S.C. §§ 9001-9013 (the “Funding Statute”), by terminating the longstanding entitlement of national party committees to public funds to finance their presidential nominating conventions. But the Research Act did not repeal the convention financing provisions. Rather, the Research Act implemented the termination by requiring that the funds in question be transferred to a “10-Year Pediatric Research Initiative Fund” instead of to the national party committees.³ See Pub. L. 113-94, § 2(a), 128 Stat. 1085 (codified at 26 U.S.C. § 9008(i)).

Prior to the Research Act, the Commission had promulgated numerous regulations implementing the Funding Statute. See 11 C.F.R. part 9008. Many of these public funding regulations no longer serve a functional purpose following the Research Act, yet the statutory provisions that they implement remain in place. These statutory and regulatory provisions, which the Research Act rendered inoperative, may confuse the public as to the state of the law. By repealing those inoperative provisions, Congress can clarify the law.

The following statutory provisions are no longer operational and should be removed:

- 26 U.S.C. § 9008(b)(3) — requires the Secretary of the Treasury to make payments to “the national committee of a major party or a minor party which elects to receive its entitlement”;
- 26 U.S.C. § 9008(c) — restricts national party committees from using funds received under the Funding Statute except for expenses incurred with respect to a presidential nominating convention or to repaying loans or otherwise restoring funds that were used to defray such expenses;
- 26 U.S.C. § 9008(d) — limits expenditures by national party committees to the amount of funds to which they are entitled under the Funding Statute, and sets out exceptions to this limitation;
- 26 U.S.C. § 9008(e) — states the date on which the national party committees may begin receiving funds;

³ The Research Act did delete the statutory requirements for the Commission to report to Congress regarding payments to and expenses of national party committees for presidential nominating conventions. Pub. L. No. 113-94, § 2(c)(1), 128 Stat. 1085-96 (deleting 26 U.S.C. § 9009(a)(4)-(6)). The Research Act also removed statutory provisions that criminalized (1) a national party committee’s spending more than the limit established by 26 U.S.C. § 9008(d); (2) any person’s spending public convention funds on expenses other than a national party committee’s convention expenses; and (3) giving or accepting a kickback in connection with any convention expense. *Id.* § 2(c)(2) (amending 26 U.S.C. § 9012).

- 26 U.S.C. § 9008(f) — requires the Secretary of the Treasury to transfer to the Treasury any remaining funds in a national party committee’s account after the close of a nominating convention;
- 26 U.S.C. § 9008(g) — states that any major or minor party may file a statement with the Commission designating the national committee of that party; and requires the Commission, upon verifying the statement, to certify to the Secretary of the Treasury the payment amount the national party committee is entitled to;
- 26 U.S.C. § 9008(h) — grants the Commission the authority to require repayments from a national party committee that has received funds under the Funding Statute.

Legislative Language:

Section 9008 of the Internal Revenue Code of 1986 is amended as follows:

- (1) in subsection (b), by striking paragraph (3); and
- (2) by striking subsections (c), (d), (e), (f), (g), and (h).