

Federal Election Commission

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(3) Does not notify the contributor that the results are refused.

(c) The acceptance of any part of a poll's results which part, prior to receipt, has been made public without any request, authorization, prearrangement, or coordination by the candidate-recipient or political committee-recipient, shall not be treated as a contribution in-kind and expenditure under paragraph (b) of this section.

(d) The purchase of opinion poll results by an unauthorized political committee for its own use, in whole or in part, is an overhead expenditure by the political committee under §106.1(c)(1) to the extent of the benefit derived by the committee.

(e) The amount of a contribution under paragraph (b) of this section or of any expenditure under paragraphs (a) and (b) of this section attributable to each candidate-recipient or political committee-recipient shall be—

(1) That share of the overall cost of the poll which is allocable to each candidate (including State and local candidates) or political committee, based upon the cost allocation formula of the polling firm from which the results are purchased. Under this method the size of the sample, the number of computer column codes, the extent of computer tabulations, and the extent of written analysis and verbal consultation, if applicable, may be used to determine the shares; or

(2) An amount computed by dividing the overall cost of the poll equally among candidates (including State and local candidates) or political committees receiving the results; or

(3) A proportion of the overall cost of the poll equal to the proportion that the number of question results received by the candidate or political committee bears to the total number of question results received by all candidates (including State and local candidates) and political committees; or

(4) An amount computed by any other method which reasonably reflects the benefit derived.

(f) The first candidate(s) or committee(s) receiving poll results under paragraph (b) or (d) of this section and any candidate or political committee receiving poll results under paragraph

(b) of this section within 15 days after receipt by the initial recipient(s) shall compute the amount of the contribution in-kind and the expenditure as provided in paragraph (e) of this section.

(g) The amount of the contribution and expenditure reported by a candidate or a political committee receiving poll results under paragraph (b) of this section more than 15 days after receipt of such poll results by the initial recipient(s) shall be—

(1) If the results are received during the period 16 to 60 days following receipt by the initial recipient(s), 50 percent of the amount allocated to an initial recipient of the same results;

(2) If the results are received during the period 61 to 180 days after receipt by the initial recipient(s), 5 percent of the amount allocated to an initial recipient of the same results;

(3) If the results are received more than 180 days after receipt by the initial recipient(s), no amount need be allocated.

(h) A contributor of poll results under paragraph (b) of this section shall maintain records sufficient to support the valuation of the contribution(s) in-kind and shall inform the candidate-recipient(s) or political committee-recipient(s) of the value of the contribution(s).

[41 FR 35944, Aug. 25, 1976, as amended at 45 FR 21209, Apr. 1, 1980; 67 FR 78681, Dec. 26, 2002]

§ 106.5 Allocation of expenses between federal and non-federal activities by national party committees.

(a) *General rules.* (1) *Disbursements from Federal and non-Federal accounts.* National party committees that make disbursements in connection with Federal and non-Federal elections shall make those disbursements entirely from funds subject to the prohibitions and limitations of the Act, or from accounts established pursuant to 11 CFR 102.5. Political committees that have established separate Federal and non-Federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate expenses between those accounts according to this section. Organizations that are not political committees but have established

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separate Federal and non-Federal accounts under 11 CFR 102.5(b)(1)(i), or that make Federal and non-Federal disbursements from a single account under 11 CFR 102.5(b)(1)(ii), shall also allocate their Federal and non-Federal expenses according to this section. This section covers:

(i) General rules regarding allocation of Federal and non-Federal expenses by party committees;

(ii) Percentages to be allocated for administrative expenses and costs of generic voter drives by national party committees;

(iii) Methods for allocation of administrative expenses, costs of generic voter drives, and of fundraising costs by national party committees; and

(iv) Procedures for payment of allocable expenses. Requirements for reporting of allocated disbursements are set forth in 11 CFR 104.10.

(2) *Costs to be allocated.* National party committees that make disbursements in connection with Federal and non-Federal elections shall allocate expenses according to this section for the following categories of activity:

(i) Administrative expenses including rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate;

(ii) The direct costs of a fundraising program or event including disbursements for solicitation of funds and for planning and administration of actual fundraising events, where Federal and non-Federal funds are collected by one committee through such program or event; and

(iii) [Reserved]

(iv) Generic voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.

(b) *National party committees other than Senate or House campaign committees; fixed percentages for allocating administrative expenses and costs of generic voter drives.*

(1) *General rule.* Each national party committee other than a Senate or House campaign committee shall allo-

cate a fixed percentage of its administrative expenses and costs of generic voter drives, as described in paragraph (a)(2) of this section, to its Federal and non-Federal account(s) each year. These percentages shall differ according to whether or not the allocable expenses were incurred in a presidential election year. Such committees shall allocate the costs of each combined Federal and non-Federal fundraising program or event according to paragraph (f) of this section, with no fixed percentages required.

(2) *Fixed percentages according to type of election year.* National party committees other than the Senate or House campaign committees shall allocate their administrative expenses and costs of generic voter drives according to paragraphs (b)(2) (i) and (ii) as follows:

(i) *Presidential election years.* In presidential election years, national party committees other than the Senate or House campaign committees shall allocate to their Federal accounts at least 65% each of their administrative expenses and costs of generic voter drives.

(ii) *Non-presidential election years.* In all years other than presidential election years, national party committees other than the Senate or House campaign committees shall allocate to their Federal accounts at least 60% each of their administrative expenses and costs of generic voter drives.

(c) *Senate and House campaign committees of a national party; method and minimum Federal percentage for allocating administrative expenses and costs of generic voter drives.*

(1) *Method for allocating administrative expenses and costs of generic voter drives.* Subject to the minimum percentage set forth in paragraph (c)(2) of this section, each Senate or House campaign committee of a national party shall allocate its administrative expenses and costs of generic voter drives, as described in paragraph (a)(2) of this section, according to the funds expended method, described in paragraphs (c)(1)(i) and (ii) as follows:

(i) Under this method, expenses shall be allocated based on the ratio of Federal expenditures to total Federal and non-Federal disbursements made by the committee during the two-year

Federal election cycle. This ratio shall be estimated and reported at the beginning of each Federal election cycle, based upon the committee's Federal and non-Federal disbursements in a prior comparable Federal election cycle or upon the committee's reasonable prediction of its disbursements for the coming two years. In calculating its Federal expenditures, the committee shall include only amounts contributed to or otherwise spent on behalf of specific federal candidates. Calculation of total Federal and non-Federal disbursements shall also be limited to disbursements for specific candidates, and shall not include overhead or other generic costs.

(ii) On each of its periodic reports, the committee shall adjust its allocation ratio to reconcile it with the ratio of actual Federal and non-Federal disbursements made, to date. If the non-Federal account has paid more than its allocable share, the committee shall transfer funds from its Federal to its non-Federal account, as necessary, to reflect the adjusted allocation ratio. The committee shall make note of any such adjustments and transfers on its periodic reports, submitted pursuant to 11 CFR 104.5.

(2) *Minimum Federal percentage for administrative expenses and costs of generic voter drives.* Regardless of the allocation ratio calculated under paragraph (c)(1) of this section, each Senate or House campaign committee of a national party shall allocate to its Federal account at least 65% each of its administrative expenses and costs of generic voter drives each year. If the committee's own allocation calculation under paragraph (c)(1) of this section yields a Federal share greater than 65%, then the higher percentage shall be applied. If such calculation yields a Federal share lower than 65%, then the committee shall report its calculated ratio according to 11 CFR 104.10(b), and shall apply the required minimum Federal percentage.

(3) *Allocation of fundraising costs.* Senate and House campaign committees shall allocate the costs of each combined Federal and non-Federal fundraising program or event according to paragraph (f) of this section, with no minimum percentages required.

(d)-(e) [Reserved]

(f) *National party committees; method for allocating direct costs of fundraising.*

(1) If Federal and non-Federal funds are collected by one committee through a joint activity, that committee shall allocate its direct costs of fundraising, as described in paragraph (a)(2) of this section, according to the funds received method. Under this method, the committee shall allocate its fundraising costs based on the ratio of funds received into its Federal account to its total receipts from each fundraising program or event. This ratio shall be estimated prior to each such program or event based upon the committee's reasonable prediction of its Federal and non-Federal revenue from that program or event, and shall be noted in the committee's report for the period in which the first disbursement for such program or event occurred, submitted pursuant to 11 CFR 104.5. Any disbursements for fundraising costs made prior to the actual program or event shall be allocated according to this estimated ratio.

(2) No later than the date 60 days after each fundraising program or event from which both Federal and non-Federal funds are collected, the committee shall adjust the allocation ratio for that program or event to reflect the actual ratio of funds received. If the non-Federal account has paid more than its allocable share, the committee shall transfer funds from its Federal to its non-Federal account, as necessary, to reflect the adjusted allocation ratio. If the Federal account has paid more than its allocable share, the committee shall make any transfers of funds from its non-federal to its federal account to reflect the adjusted allocation ratio within the 60-day time period established by this paragraph. The committee shall make note of any such adjustments and transfers in its report for any period in which a transfer was made, and shall also report the date of the fundraising program or event that serves as the basis for the transfer. In the case of a telemarketing or direct mail campaign, the date for purposes of this paragraph is the last day of the telemarketing campaign, or the day on which the final direct mail solicitations are mailed.

(g) *Payment of allocable expenses by committees with separate Federal and non-Federal accounts.* (1) *Payment options.* Committees that have established separate Federal and non-Federal accounts under 11 CFR 102.5(a)(1)(i) or (b)(1)(i) shall pay the expenses of joint Federal and non-Federal activities described in paragraph (a)(2) of this section according to either paragraph (g)(1)(i) or (ii), as follows:

(i) *Payment by Federal account; transfers from non-Federal account to Federal account.* The committee shall pay the entire amount of an allocable expense from its Federal account and shall transfer funds from its non-Federal account to its Federal account solely to cover the non-Federal share of that allocable expense.

(ii) *Payment by separate allocation account; transfers from Federal and non-Federal accounts to allocation account.*

(A) The committee shall establish a separate allocation account into which funds from its Federal and non-Federal accounts shall be deposited solely for the purpose of paying the allocable expenses of joint Federal and non-Federal activities. Once a committee has established a separate allocation account for this purpose, all allocable expenses shall be paid from that account for as long as the account is maintained.

(B) The committee shall transfer funds from its Federal and non-Federal accounts to its allocation account in amounts proportionate to the Federal or non-Federal share of each allocable expense.

(C) No funds contained in the allocation account may be transferred to any other account maintained by the committee.

(2) *Timing of transfers between accounts.* (i) Under either payment option described in paragraphs (g)(1)(i) or (ii) of this section, the committee shall transfer funds from its non-Federal account to its Federal account or from its Federal and non-Federal accounts to its separate allocation account following determination of the final cost of each joint Federal and non-Federal activity, or in advance of such determination if advance payment is required by the vendor and if such payment is based on a reasonable estimate of the activity's final cost as deter-

mined by the committee and the vendor(s) involved.

(ii) Funds transferred from a committee's non-Federal account to its Federal account or its allocation account are subject to the following requirements:

(A) For each such transfer, the committee must itemize in its reports the allocable activities for which the transferred funds are intended to pay, as required by 11 CFR 104.10(b)(3); and

(B) Except as provided in paragraph (f)(2) of this section, such funds may not be transferred more than 10 days before or more than 60 days after the payments for which they are designated are made.

(iii) Any portion of a transfer from a committee's non-Federal account to its Federal account or its allocation account that does not meet the requirements of paragraph (g)(2)(ii) of this section shall be presumed to be a loan or contribution from the non-Federal account to a Federal account, in violation of the Act.

(3) *Reporting transfers of funds and allocated disbursements.* A political committee that transfers funds between accounts and pays allocable expenses according to this section shall report each such transfer and disbursement pursuant to 11 CFR 104.10(b).

(h) *Sunset provision.* This section applies from November 6, 2002, to December 31, 2002. After December 31, 2002, see 11 CFR 106.7(a).

67 FR 49116, July 29, 2002]

§ 106.6 Allocation of expenses between federal and non-federal activities by separate segregated funds and nonconnected committees.

(a) *General rule.* Separate segregated funds and nonconnected committees that make disbursements in connection with federal and non-federal elections shall make those disbursements either entirely from funds subject to the prohibitions and limitations of the Act, or from accounts established pursuant to 11 CFR 102.5. Separate segregated funds and nonconnected committees that have established separate federal and non-federal accounts under 11 CFR 102.5 (a)(1)(i) or (b)(1)(i), or that make federal and non-federal disbursements from a single account under 11 CFR