

(b) The approved insurance provider must immediately report in writing all operational and financial changes that could cause a material adverse impact upon its approved premium reduction plan to the Director of the Reinsurance Services Division, or a designee or successor.

(c) All procedural issues, questions, problems or clarifications with respect to implementation of the premium reduction plan must be timely addressed by the approved insurance provider.

(d) The approved insurance provider must implement the premium reduction plan in accordance with the terms and conditions of approval.

(e) All producers insured by the approved insurance provider will automatically receive the premium reduction contained in the approved premium reduction plan.

(f) An independent certified public accountant must certify to the reasonableness, accuracy, and completeness of all actual costs relating to the efficiencies and the total dollar in premium reduction for the reinsurance year the premium reduction plan will be offered, in a format approved by RMA, not later than April 1 after the annual settlement for the reinsurance year (The costs associated with such certification will be at the approved insurance provider's expense and must be included in the approved insurance provider's projected expenses for the purposes of determining an efficiency);

(g) The approved insurance provider must provide semi-annual reports, or more frequently as determined by RMA, that permit RMA to accurately evaluate the effectiveness of the premium reduction plan, in the manner specified by RMA. At a minimum, each report must contain:

(1) The number of producers making initial application for insurance by State;

(2) The average number of acres insured under all policies by State before and after implementation of the premium reduction plan;

(3) The number of small producers, limited resources farmers as defined in section 1 of the Basic Provisions, 7 CFR 457.8, women and minority producers making application as result of the implementation of the marketing plan;

(4) The average coverage level purchased by producers insured by the approved insurance provider before implementation of the premium reduction plan and after;

(5) The number of agents selling and servicing policies on behalf of the approved insurance provider by State; and

(6) The number, substance, and final or pending resolution of complaints from producers regarding the service received under the premium reduction plan.

(h) If at any time RMA discovers that the cost reduction or efficiencies contained in the premium reduction plan are not attained, are not sufficient to cover the dollar amount of premium reduction, or that the reduction in premium is not corresponding to the efficiency, RMA will require that the amount of efficiency used to determine the premium reduction for the next applicable reinsurance year be limited to the actual cost savings obtained for the reinsurance year, excluding any financial reserve plan measures that may have been used to make up for the effects of the deficiency.

(i) RMA will closely monitor the approved insurance provider's efforts to market the premium reduction plan to small producers, limited resources farmers as defined in section 1 of the Basic Provisions, 7 CFR 457.8, women and minority producers to ensure that no unfair discrimination takes place and if it is discovered, RMA may withdraw approval for the premium reduction plan, in accordance with paragraph (n) of this section.

(j) The approved insurance provider is solely liable for all damages caused by any mistakes, errors, misrepresentations, or flaws in the premium reduction plan or its implementation.

(k) The approved insurance provider must fully cooperate with RMA in its periodic review of the operations of the approved insurance provider for the purpose of assuring that the efficiencies are generated, that the projected cost reductions materialize, that the premium reduction plan is administered in the manner presented in the revised Plan of Operations, that the solvency and operational capacity of the approved insurance provider remains unimpaired, and that the interests of producers and taxpayers are protected.

(l) The approved insurance provider may be required by RMA to modify its implementation of an approved premium reduction plan to ensure compliance with 7 CFR 400.714-720, the Act, regulations, the SRA, and any applicable policy provisions and approved procedures, and to protect the interests of producers and taxpayers, and the integrity of the program.

(m) At its sole discretion and upon written notice, RMA may withdraw or modify its approval of any premium reduction plan if RMA determines that:

(1) The approved premium reduction plan, or its implementation, no longer

satisfies all the terms and conditions in 7 CFR 400.714-720;

(2) There have been instances of unfair discrimination;

(3) The stated efficiencies have not been realized or the approved premium reduction is not provided to all existing policyholders and producers as required by subsection (e); or

(4) The integrity of the crop insurance program is jeopardized in any way, as determined by RMA, by the premium reduction plan.

(n) If any condition in paragraph (m) of this section exists, RMA will notify the approved insurance provider in writing:

(1) That approval has been withdrawn or a modification to the premium reduction plan is required;

(2) The date such withdrawal is effective or modifications must be made;

(3) If modified, such modification must be approved by RMA before implementation;

(4) The basis for such withdrawal or modification; and

(5) If approval is withdrawn, the approved insurance provider must cease offering the associated premium reduction effective for the next sales closing date.

Signed in Washington, DC, on February 17, 2005.

**Ross J. Davidson, Jr.,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 05-3435 Filed 2-23-05; 8:45 am]

**BILLING CODE 3410-08-P**

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## FEDERAL ELECTION COMMISSION

### 11 CFR Part 300

[Notice 2005-6]

#### Candidate Solicitation at State, District, and Local Party Fundraising Events

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Election Commission seeks comments on proposed changes to its rule regarding appearances by Federal officeholders and candidates at State, district, and local party fundraising events under the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"). The current regulation contains an exemption permitting Federal officeholders and candidates to speak at State, district, and local party fundraising events "without restriction or regulation." This regulation was challenged in *Shays v. FEC*. The U.S. District Court for the District of

Columbia held that this regulation implementing the Bipartisan Campaign Reform Act of 2002 was based on a permissible construction of the statute. However, the district court also held that the Commission had not provided adequate explanation of its decision to permit Federal candidates and officeholders to speak “without restriction or regulation,” and therefore had not satisfied the reasoned analysis requirement of the Administrative Procedure Act. The district court remanded the regulation to the Commission for further action consistent with the court’s opinion. Accordingly, in order to comply with the court’s decision, the Commission now revisits the exemption for candidate and Federal officeholder speech at State, district, and local party fundraising events. The Commission has made no final decision on the issues presented in this rulemaking. Further information is provided in the supplementary information that follows.

**DATES:** Comments must be received on or before March 28, 2005. If the Commission receives sufficient requests to testify, it may hold a hearing on this proposed rule. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

**ADDRESSES:** All comments should be addressed to Ms. Mai T. Dinh, Assistant General Counsel, and must be submitted in either electronic or written form. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. Electronic mail comments should be sent to [statepartyfr@fec.gov](mailto:statepartyfr@fec.gov) and may also be submitted through the Federal eRegulations Portal at [www.regulations.gov](http://www.regulations.gov). All electronic comments must include the full name, electronic mail address, and postal service address of the commenter. Electronic comments that do not contain the full name, electronic mail address, and postal service address of the commenter will not be considered. If the electronic comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC, 20463. The Commission will post public comments on its Web site. If the Commission decides that a hearing is necessary, the hearing will be held in the Commission’s ninth floor meeting room, 999 E Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mai T. Dinh, Assistant General Counsel, Mr. J. Duane Pugh Jr., Senior Attorney, or Ms. Margaret G. Perl, Attorney, 999 E Street, NW., Washington, DC 20463 (202) 694–1650 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** The Bipartisan Campaign Reform Act of 2002 (“BCRA”), Public Law 107–155, 116 Stat. 81 (2002), places limits on the amounts and types of funds that can be raised by Federal officeholders and candidates for both Federal and State elections. See 2 U.S.C. 441i(e). These restrictions also apply to their agents, and entities directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, any such candidate(s) or Federal officeholder(s) (“covered persons”). Covered persons may not “solicit, receive, direct, transfer or spend” non-Federal funds in connection with an election for Federal, State, or local office except under limited circumstances. See 2 U.S.C. 441i(e); 11 CFR part 300, subpart D.

Section 441i(e)(3) states that “notwithstanding” the prohibition on raising non-Federal funds, including Levin funds, in connection with a Federal or non-Federal election in section 441i(b)(2)(C) and (e)(1), “a candidate or an individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party.” *Id.* During the rulemaking implementing this provision, the Commission initially sought comment on a rule proposing that, while such individuals could attend, speak, or be a featured guest at a party fundraising event, they could not say anything that could be construed as soliciting or otherwise seeking non-Federal funds, including Levin funds. See Notice of Proposed Rulemaking on Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money, 67 FR 35654, 35672 (May 20, 2002). In the alternative, the NPRM sought comment on whether the fundraising event provision was a total exemption from the general solicitation ban, whereby Federal officeholders and candidates and their agents may attend and speak freely at such events without restriction or regulation. *Id.*

The Commission considered a range of comments on the scope of the fundraising provision. Ultimately, the Commission decided to construe the statutory provision broadly, permitting Federal officeholders and candidates to attend, speak, and appear as a featured guest at State, district, and local

fundraising events “without restriction or regulation.” See Final Rules on Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money, 67 FR 49064, 49108 (July 29, 2002); 11 CFR 300.64(b).

In *Shays v. FEC*, 337 F. Supp.2d 28 (D.D.C. 2004), the district court held that the Commission’s explanation and justification for the fundraising provision in 11 CFR 300.64(b) did not satisfy the reasoned analysis requirement of the Administrative Procedure Act (“APA”) in two respects.<sup>1</sup> First, the district court held that the Commission’s construction of BCRA as permitting Federal officeholders and candidates to speak at State, district, and local party fundraising events “without restriction or regulation” is not compelled by the language of the statute. *Id.* at 92–93. The court concluded that the BCRA provision “is ambiguous in that it can be read in more than one way.” *Id.* at 89. Specifically, the court concluded that the statute “can be read to either be a carve-out for unabashed solicitation by federal candidates and officeholders at state, district or local committee fundraising events, or to simply make clear that merely attending, speaking or being the featured guest at such an event is not to be construed as constituting solicitation per se.” *Id.* Second, the district court stated “the FEC has not explained how examining speech at fundraising events implicates constitutional concerns that are not present when examining comments made at other venues.” *Id.* at 93. The court remanded the regulation to the Commission for further action consistent with its opinion. *Id.* at 130.

To comply with the district court’s order, the Commission is issuing this notice of proposed rulemaking to provide proposed revisions to the explanation and justification for the final rules it adopted concerning the provision allowing Federal officeholders and candidates to speak without restriction or regulation at fundraising events for State, district, and local party committees. See 11 CFR 300.64. As an alternative to providing a new

<sup>1</sup> Although the court held that the fundraising exemption regulation failed to satisfy the APA, it found the regulation did not necessarily run contrary to Congress’s intent in creating the fundraising exemption and was based on a permissible construction of the statute. *Id.* at 90, 92 (finding the regulation survived *Chevron* review). Moreover, the court stated that it “cannot find on the current record that the Commission’s regulation on its face ‘unduly compromises the Act’s purposes’ by ‘creat[ing] the potential for gross abuse.’” *Id.* at 91 (quoting *Orloski v. FEC*, 795 F.2d 156, 164, 165 (DC Cir. 1986)). See also *Shays*, 337 F. Supp.2d at 92 (“the court cannot find that the Commission has unduly compromised FECA’s purposes”).

explanation for the current rule, this NPRM also includes a proposed rule that would replace current section 300.64 with a rule barring candidates and Federal officeholders from soliciting or directing non-Federal funds when attending or speaking at party fundraising events. Both approaches are explained below.

#### Proposed Revisions to the Explanation and Justification for Current 11 CFR 300.64

The Commission seeks comment on the following proposed three paragraphs to be included in a revised explanation and justification for current 11 CFR 300.64:

“In promulgating current 11 CFR 300.64(b), the Commission construed 2 U.S.C. 441i(e)(3) to exempt Federal officeholders and candidates from the general solicitation ban, so that they may attend and speak without restriction or regulation at party fundraising events. The district court recognized that section 441i(e)(3) was ambiguous and upheld the Commission’s interpretation of this section as a permissible reading under *Chevron* step one. See 337 F. Supp.2d at 89–90. The district court also upheld the current section 300.64(b) under *Chevron* step two review because the regulation did not unduly compromise FECA. *Id.* at 92.

“Section 300.64 effectuates the balance Congress struck between the appearance of corruption engendered by soliciting sizable amounts of soft money and the legitimate and appropriate role Federal officeholders and candidates play in raising funds for their political parties. Just as Congress expressly permitted these individuals to raise non-Federal funds when they themselves run for non-Federal office (see 2 U.S.C. 441i(e)(2)), and to solicit limited amounts of non-Federal funds for certain 501(c) organizations (see 2 U.S.C. 441i(e)(4)), Congress also enacted 2 U.S.C. 441i(e)(3) to provide a mechanism whereby Federal officeholders and candidates could continue to play a role at State, district and local party committee fundraising events at which non-Federal funds are raised. The limited nature of this statutory exemption embodied in 11 CFR 300.64 is evident in that it does not permit Federal officeholders and candidates to solicit non-Federal funds for State, district or local party committees in pre-event publicity or through other mechanisms. Nor does it extend to fundraising on behalf of national party committees.

“In implementing this statutory scheme, the Commission is mindful that

evaluating speech in the context of a party fundraising event raises First Amendment concerns where it is difficult to discern what specific words would be merely ‘speaking’ at such an event without crossing the line into soliciting or directing non-Federal funds. See 11 CFR 300.2(m) (definition of ‘to solicit’) and 300.2(n) (definition of ‘to direct’). As the U.S. Supreme Court has observed, ‘solicitation is characteristically entwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views.’ *Schaumburg v. Citizens for a Better Env’t*, 444 U.S. 620, 632 (1980). A regulation that permitted speaking at a party event, the central purpose of which is fundraising, but prohibited soliciting would require candidates to tease out words of general support for the political party and its causes from words of solicitation for non-Federal funds for that political party. A complete exemption in section 300.64(b) that allows Federal officeholders and candidates, in these limited circumstances, to speak and attend without restriction or regulation, including solicitation of non-Federal or Levin funds, avoids these concerns.”<sup>2</sup>

The Commission seeks comments on these proposed revisions to the explanation and justification or comments that provide alternative rationales for the complete exemption in current 11 CFR 300.64(b). Additionally, the district court voiced concern that the current 300.64(b) “creates the potential for abuse.” See 337 F. Supp.2d at 91. The Commission seeks public comment as to any potential for abuse under the current rule.

The Commission also notes, as the *Shays* court observed, that under BCRA, outside the context of State, district and local party fundraisers, “nonfederal money solicitation is almost completely barred.” *Id.* at 92. From time to time, the Commission has been asked to permit attendance and participation by Federal officeholders and candidates at various functions other than those for State, district and local parties, where non-Federal funds will be raised. Subject to various restrictions, the Commission has allowed this. See, e.g., Advisory Opinions 2003–36 and 2003–03. The Commission requests comment on whether these advisory opinions, allowing attendance at such functions, struck the proper balance. Alternatively, are these advisory opinions inconsistent

<sup>2</sup> These concerns are more of an issue for these types of party fundraisers where Federal funds and non-Federal funds may both be raised than for national party committee fundraisers where only Federal funds may be raised.

with BCRA’s language and intent? Does the permission granted in 2 U.S.C. 441i(e)(3) to attend, speak, or be a featured guest at State, district and local party events, by implication, prohibit Federal officeholders and candidates from doing so at other fundraising events unless such events are solely and exclusively raising Federal funds?<sup>3</sup>

Should the Commission specifically bar attendance by a Federal officeholder or candidate at a non-State, district or local party fundraising event when the officeholder or candidate knows or reasonably should know that solicitations otherwise prohibited when made by the candidate or officeholder will take place at the event? Alternatively, should Advisory Opinions 2003–03 and 2003–36 be incorporated into the Commission’s regulations? If so, should other modifications be added?

#### Alternative Proposed 11 CFR 300.64

Although providing a revised explanation and justification for current 11 CFR 300.64 would comply with the district court’s decision in *Shays v. FEC*, the Commission is also considering an alternative approach. This approach would replace current section 300.64 with a rule barring candidates and Federal officeholders from soliciting, receiving, directing, transferring or spending any non-Federal funds, including Levin funds, when speaking at party fundraising events.

The proposed rule would redesignate the introductory paragraph of 11 CFR 300.64 as paragraph (a) and amend it to state that Federal officeholders and candidates may not solicit, receive, direct, transfer, or spend non-Federal funds at any such event. Current section 300.64(a) would be redesignated as paragraph (b) without any substantive changes, and current section 300.64(b) would be deleted entirely.

#### Proposed 11 CFR 300.64(a)

The proposed rule would limit the scope of section 300.64 by replacing the complete exemption for speaking “without restriction or regulation” in current 11 CFR 300.64(b) with a narrower exception under which Federal candidates and officeholders would still be able to speak at or attend any party fundraising event (as the

<sup>3</sup> See 2 U.S.C. 441i(e)(1)(B) (permitting solicitations by Federal candidates for State candidates so long as such solicitations comply with the source prohibitions and amount restrictions under the Act for Federal candidates). See also 2 U.S.C. 441i(e)(4) (permitting certain solicitations, with restrictions, by Federal officeholders and candidates for funds to be used by certain tax-exempt organizations to be used for certain types of Federal election activity).

statute clearly authorizes), but they would not be able to *solicit, receive, direct, transfer or spend* non-Federal funds, including Levin funds, at the party fundraising event. This proposed rule would interpret section 441i(e)(3) as an exception that makes clear that the mere attendance or speaking by a candidate in this circumstance should not be equated with a solicitation prohibited by section 441i(e)(1). However, this safe harbor would not apply to a candidate or Federal officeholder who uses words that solicit or direct non-Federal funds. See 11 CFR 300.2(m) (definition of “to solicit”) and 300.2(n) (definition of “to direct”).

The district court in *Shays v. FEC* held that this interpretation is another permissible reading of the statute. See 337 F. Supp.2d at 89–90. The Commission seeks public comment on this alternative approach.

The alternative approach raises an issue about interpreting BCRA in light of *Shays v. FEC*. In that opinion, the district court stated: “the plain reading of [BCRA] makes clear that Levin funds are funds ‘subject to [FECA’s] limitations, prohibitions, and reporting requirements.’” *Shays v. FEC*, 337 F. Supp.2d at 118. Does this mean that 2 U.S.C. 441i(e)(1) does not prohibit covered persons from soliciting Levin funds? Although 2 U.S.C. 441i(b)(2)(B)(iii) and (C) nonetheless generally prohibit State parties from treating funds raised by covered persons as Levin funds, do the cross-references between subsection (e)(3) and subparagraph (b)(2)(C) create an exception permitting State party committees to treat funds solicited by covered persons at fundraising events as Levin funds? The Commission seeks comment on how it should interpret 2 U.S.C. 441i(b)(2), (e)(1), and (e)(3), in light of *Shays v. FEC*.

In addition, if the Commission were to adopt this alternative approach, would it be appropriate to permit written notices or oral disclaimers similar to those discussed in Advisory Opinions 2003–03 and 2003–36 for other fundraising events? The opinions addressed appearances, speeches, and solicitations by covered persons at fundraising events where non-Federal funds were being raised. Those opinions permitted covered persons to solicit funds and comply with 2 U.S.C. 441i(e)(1) by using either written notices or oral disclaimers. Alternatively, would another type of notice or disclaimer be more appropriate?

### Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The Commission certifies that the attached proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the proposed rule is an exception from the requirements of a general rule applicable to Federal officeholders and candidates. In addition, the other organizations affected by this rule are State, district and local party committees of the two major political parties, which are not “small entities” under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions. To the extent that any of these political party committees may fall within the definition of “small entities,” their number is not substantial.

### List of Subjects in 11 CFR Part 300

Campaign funds, nonprofit organizations, political committees and parties, political candidates, reporting and recordkeeping requirements.

For reasons set out in the preamble, Subchapter C of Chapter 1 of title 11 of the *Code of Federal Regulations* would be amended to read as follows:

### PART 300—NON-FEDERAL FUNDS

1. The authority citation for part 300 would continue to read as follows:

**Authority:** 2 U.S.C. 434(e), 438(a)(8), 441a(a), 441i, 453.

2. Section 300.64 would be revised to read as follows:

#### § 300.64 Exception for attending, speaking, or appearing as a featured guest at fundraising events (2 U.S.C. 441i(e)(3)).

(a) Notwithstanding the provisions of 11 CFR 100.24, 300.61 and 300.62, a Federal candidate or individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party, including but not limited to a fundraising event at which Levin funds are raised, or at which non-Federal funds are raised. Such candidate or individual holding Federal office shall not solicit, receive, direct, transfer or spend non-Federal funds, including Levin funds, at any such event.

(b) State, district, or local committees of a political party may advertise, announce or otherwise publicize that a Federal candidate or individual holding Federal office will attend, speak, or be a featured guest at a fundraising event, including, but not limited to, publicizing such appearance in pre-

event invitation materials and in other party committee communications.

Dated: February 17, 2005.

**Scott E. Thomas,**

*Chairman, Federal Election Commission.*

[FR Doc. 05–3471 Filed 2–23–05; 8:45 am]

BILLING CODE 6715–01–U

### FARM CREDIT ADMINISTRATION

**12 CFR Parts 611, 612, 614, 615, 618, 619, 620, 630**

**RIN 3052–AC19**

#### Organization; Standards of Conduct and Referral of Known or Suspected Criminal Violations; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions; Definitions; Disclosure to Shareholders; Disclosure to Investors in Systemwide and Consolidated Bank Debt Obligations of the Farm Credit System

**AGENCY:** Farm Credit Administration.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The Farm Credit Administration (FCA, we, us, or our) is extending the comment period for 60 days on our proposed rule affecting the governance of the Farm Credit System so all parties will have more time to respond.

**DATES:** Please send your comments to us on or before May 20, 2005.

**ADDRESSES:** Comments may be sent by electronic mail to [reg-comm@fca.gov](mailto:reg-comm@fca.gov), through the Pending Regulations section of our Web site at <http://www.fca.gov>, or through the Government-wide <http://www.regulations.gov> portal. You may also send written comments to S. Robert Coleman, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or by facsimile transmission to (703) 734–5784.

You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at <http://www.fca.gov>. Once you are in the Web site, select “Legal Info,” and then select “Public Comments.” We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove electronic-mail addresses to help reduce Internet spam.