



STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

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TO: Members, Public Disclosure Commission

FROM: Doug Ellis
Assistant Director

DATE: August 7, 2007

SUBJECT: Internet Campaigning Regulation

Fifteen percent of all American adults say the Internet was the primary source for campaign news during the 2006 election according to a January study by the Pew Internet & American Life Project.

The "Election 2006 Online" study found that 31% of all Americans used the Internet during the 2006 campaign to get political news and information and discuss the races through email. The study indicated that while mainstream media (msm) news sources still dominated, a majority of Internet users get political material from blogs, comedy sites, government websites, candidate sites, or alternative news sites.

Sixty percent of the online users got news and information about campaigns from either news portals such as Google News or Yahoo! News or from TV network websites such as CNN.com or ABCNews.com. About 20% got news and information about campaigns from blogs, international news organization websites or websites created by candidates.

The study showed that 23% of campaign Internet users or about 14 million people were using the "read-write Web" to contribute to political discussion and activity by posting their own political commentary or forwarding or posting someone else's political commentary.

Internet Regulation – Bipartisan California Commission and the FEC

The Bipartisan California Commission on Internet Political Practices report in December 2003 and the Federal Election Commission in the adoption of Internet rules in March 2006 recognized the Internet as a unique and evolving mode of mass communication and political speech that is distinct from other media in a manner that warrants a restrained regulatory approach.

They stated that unlike other forms of mass communication, the Internet has minimal barriers to entry, including its low cost and widespread accessibility and there was no record that Internet activities presented any significant danger of corruption or the appearance of corruption.

The FEC said that a communication through one's own website is analogous to a communication made from a soapbox in a public square.

Bipartisan California Commission on Internet Political Practices

The BCCIPP found that the Internet has become increasingly important to modern campaigns and that Internet websites allow individuals and groups that do not typically volunteer in political campaigns or buy broadcast or print advertising to participate in electoral and legislative policy dialogue and debate.

The BCCIPP's approach to the regulation of Internet political activities was designed to promote online political activity that helps to achieve: 1) allowing more citizens to influence public policy and political debate, 2) enabling transparency in governance and campaigning, 3) reducing the costs of campaigning, and 4) promoting access to information about candidates, ballot measures, and legislation.

The BCCIPP believed that most online political activity should remain unregulated.

As part of the BCCIPP recommendations it proposed:

- Creating a safe harbor for campaigns with respect to the online activities of others by exempting from regulation providing hyperlinks, sending e-mail, using a site's interactive functionality, and downloading materials from another website.
- Extending current laws that allow independent activities (volunteer activities under a certain monetary threshold) to online campaigning and establish a regulatory presumption that individual use of the Internet for political advocacy is not prohibited or reportable.
- Protecting online media coverage by declaring that news coverage from online media outlets is exempt from regulation.
- Removing liability for third party political content by exempting websites that provide interactive opportunities.
- Promoting the expansion of access to online political participation.

Federal Election Commission Rulemaking

On March 27, 2006, the FEC approved new regulations governing certain types of Internet communications.

The FEC took six actions:

- (1) revised its definition of “public communications”;
- (2) re-promulgated the definition of “generic campaign activity” without revision;
- (3) revised the disclaimer requirements;
- (4) added an exception for uncompensated individual Internet activities;
- (5) revised the “media exemption;” and,
- (6) added a new provision regarding the use of corporate and labor organization computers and other equipment for Internet activities by certain individuals.

The final rules provide that the majority of Internet communications are free from campaign finance regulation.

Internet activities include e-mailing, including forwarding; linking, including providing a link or hyperlink to a candidate’s, authorized committee’s or party committee’s website; distributing banner messages; blogging; hosting an Internet site; and any other form of communication distributed over the Internet.

Internet Advertising

The new federal definition of “public communications” continues to exclude communications over the Internet, except for advertisements placed on another person’s website. Paid advertisements are the only Internet activity covered by the new FEC definition.

The FEC reasoned that when paying for advertisements the advertiser is paying for access to an established audience using a forum controlled by another person, rather than using a forum that he or she controls to establish his or her own audience.

Internet Activity by Individuals

The Internet activities of unpaid individuals or groups of individuals are exempt from FEC regulation. The ability to develop WebPages, send electronic messages, provide hyperlinks, forward materials that have been cut and pasted from political websites, or otherwise use computer or Internet resources for political activity are all exempt from regulation.

E-Mail Activity

The FEC does not consider e-mail to be a form of “general public political advertising” because there is virtually no cost associated with sending e-mail communications. The FEC does not view e-mail in the same manner as mass mailings.

Regardless of content, an individual or group does not need to put a disclaimer on its e-mail unless the individual or group is a registered political committee. Under FEC rules, a political committee must place disclaimers on all e-mails of more than 500 which are substantially similar.

Bloggers’ Activity

Uncompensated bloggers are not regulated under the new FEC rules. Under the new rules, a blogger who receives compensation is not required to disclose payments, but the campaigns making the expenditure must continue to report disbursements on their filings to the FEC.

Media Exemption

The FEC indicated that news stories, commentaries and editorials that otherwise would be entitled to the media exemption are exempt when they are distributed using the Internet.

The FEC stated that bloggers and others who communicate on the Internet are entitled to the press exemption in the same way as traditional media entities. They may also be entitled to the exemption for individuals using the Internet.

Websites

The FEC has said that regardless of the content that appears on an individual or group’s website, a disclaimer is not required unless the individual or group is a registered political committee. Political committees must place disclaimers on all of their websites that are available to the general public.

Workplace Computer Use

The new FEC rules allow employees to use work computers both at and away from the workplace for volunteer political activity, as long as they do so on their own time. This provision does not govern public agency employees’ computers.

Both the BCCIPP and the FEC have taken a broad view toward empowering Internet political activity and enhancing the breadth and depth of democratic participation in the electoral process.

Internet Communications Rulemaking

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Attachments:

Internet Panel

FEC Internet Rules

Internet Chart – FEC and PDC

Advertising on the Internet

Possible Decision Making Timeline on Internet Rules

Reference:

Election 2006 Online, January 2006, Pew Internet & American Life Project Lee

Rainie, Director and John Horrigan, Associate Director for Research

Report of the Bipartisan California Internet Political Practices Commission,

December, 2003, Geoffrey Cowan, Chairman

Federal Election Commission, BCRA Regulations, *The Internet: Definitions of*

“Public Communications” and “Generic Campaign Activity” and Disclaimers

(2006). Found at www.fec.gov .

Internet Panel

Bob Stern was named president of the Center for Governmental Studies in 2000. He has served as General Counsel of CGS since its founding in 1983. He has co-authored a number of CGS reports in the areas of campaign finance reform, the initiative process, and electronic filing of disclosure statements. Before joining CGS, he was General Counsel of the California Fair Political Practices Commission for nine years

David Postman is the chief political reporter for *The Seattle Times*, where he has worked since 1994. He writes about all levels of politics from the Seattle mayor's race to the presidential election. Since May 2006, he has been blogging full time for the paper. Postman began his journalism career in public radio, at KLCC-FM in Eugene and later moved to the Alaska Public Radio Network. His formative newspaper years were spent at the Anchorage Daily News.

Stefan Sharkansky is the founder of the SoundPolitics.com website, a group blog which comments on state and local politics from a "small-L" libertarian Republican perspective. He earns his living as a self-employed software developer. He has degrees in mathematics and computer science from the University of Wisconsin and Stanford University and lives in Seattle with his wife and children.

Steve Hoersting is the Vice President and Co-Founder of the Center for Competitive Politics and served as General Counsel to the National Republican Senatorial Committee under its Chairman, Senator George Allen (R-Va.), during the 2003 - 2004 election cycle. As a former Counsel to then Vice Chairman Bradley A. Smith of the Federal Election Commission, Mr. Hoersting has a detailed understanding of campaign finance law, its jurisprudence, and the enforcement and regulatory processes of the Federal Election Commission. Mr. Hoersting earned a J.D. from Capital University Law School, cum laude, in 1996, and a B.A. in Economics from The Ohio State University in 1990. He is an alumnus of the Institute for Humane Studies, and served as The Federalist Society's Publications Chairman for the Free Speech and Election Law Practice Group. He is currently Of Counsel to the law firm of Siff & Cerda, LLP.

long as the campaign activity does not, as one witness stated, "interfere with their normal work," *i.e.* the normal amount of work that the employee usually performs, no contribution will result.

The reference to 11 CFR 100.54 applies to the safe harbors at 11 CFR 114.9(a)(2) and (b)(2). Thus, while there is no specific time limit on Internet activities, employees must complete their normal work in order to avail themselves of these safe harbors. A corporation or labor organization may not subsidize the activity by, for example, reducing an employee's workload to provide extra time for campaign activities at corporate or labor organization expense. Subject to those conditions, there is no ceiling on the amount of time that an employee may spend in a given day or week engaging in online political activities.

In addition to the safe harbors for the use of corporate or labor organization facilities to engage in Internet activities, the Commission is also preserving the one hour per week/four hours per month safe harbors, which will continue to apply across-the-board to usage of all types of corporate and labor organization facilities. See 11 CFR 114.9(a)(2)(i) and 114.9(b)(2)(i).

In the *NPRM*, the Commission sought comment on whether additional rules would be necessary to ensure that corporations and labor organizations did not "coerce" their employees or others into engaging in campaign activities over the Internet. The Commission received unanimous agreement from commenters addressing this issue that the current rules prohibiting corporate and labor organization coercion for contributions or fundraising activities are sufficient to prevent such behavior regarding Internet activities. Since the new safeguards for individual Internet activity encompass more than fundraising activities, however, the Commission is adding new provisions at 11 CFR 114.9(a)(2)(ii)(C) and (b)(2)(ii)(C) to ensure that every individual is free to express his or her own views, without fear of reprisal. The Commission notes that corporations and labor organizations providing their facilities to their employees, stockholders, officials, or members remain subject to the prohibitions contained in 11 CFR 114.2, which includes a prohibition on the use of coercion, including threat of detrimental job action, any other financial reprisal, or force, to urge any individual to make a contribution or engage in fundraising activities on behalf of a candidate or political committee. See 11 CFR 114.2(f)(2)(iv); see also 2 U.S.C. 441b(b)(3). The

Commission is also adding new paragraph (e) to § 114.9 to indicate that this section does not alter other provisions of 11 CFR part 114 regarding communications to and beyond a corporation's or labor organization's restricted class.

The Commission is also making technical amendments to 11 CFR 114.9 to restructure the format of the existing safe harbor. This change does not alter the substance of the rule or the existing safe harbor, but merely provides a clearer rule structure to accommodate the new safe harbor provision.

Certification of No Effect Pursuant to 5 U.S.C. 605(b)

Regulatory Flexibility Act

The Commission certifies that the attached final rules will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the individuals and not-for-profit entities affected by these proposed rules are not "small entities" under 5 U.S.C. 601. The definition of "small entity" does not include individuals, but classifies a not-for-profit enterprise as a "small organization" if it is independently owned and operated and not dominant in its field. 5 U.S.C. 601(4).

State, district, and local party committees affected by these proposed rules are not-for-profit committees that do not meet the definition of "small organization." State political party committees are not independently owned and operated because they are not financed and controlled by a small identifiable group of individuals, and they are affiliated with the larger national political party organizations. In addition, the State political party committees representing the Democratic and Republican parties have a major controlling influence within the political arena of their State and are thus dominant in their field. District and local party committees are generally considered affiliated with the State committees and need not be considered separately.

Separate segregated funds affected by these proposed rules are not-for-profit political committees that do not meet the definition of "small organization" because they are financed by a combination of individual contributions and financial support for certain expenses from corporations, labor organizations, membership organizations, or trade associations, and therefore are not independently owned and operated.

Most other political committees affected by these rules are not-for-profit

committees that do not meet the definition of "small organization." Most political committees are not independently owned and operated because they are not financed by a small identifiable group of individuals. Most political committees rely on contributions from a large number of individuals to fund the committees' operations and activities.

To the extent that any State party committees representing minor political parties or any other political committees might be considered "small organizations," the number affected by this proposed rule is not substantial. Additionally, the proposed rule preserves the Commission's general exclusion of Internet communications from the scope of regulation, and only State, district, and local political parties and candidates could be subject to different funding requirements for certain communications. Accordingly, to the extent that any other entities may fall within the definition of "small entities," any economic impact of complying with these rules will not be significant.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 114

Business and industry, elections, labor.

■ For the reasons set out in the preamble, the Federal Election Commission amends Subchapter A of Chapter 1 of Title 11 of the *Code of Federal Regulations* as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 434, and 438(a)(8).

■ 2. Section 100.25 is republished to read as follows:

§ 100.25 Generic campaign activity (2 U.S.C. 431(21)).

Generic campaign activity means a public communication that promotes or opposes a political party and does not promote or oppose a clearly identified Federal candidate or a non-Federal candidate.

■ 3. Section 100.26 is revised to read as follows:

§ 100.26 Public communication (2 U.S.C. 431(22)).

Public communication means a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising. The term *general public political advertising* shall not include communications over the Internet, except for communications placed for a fee on another person's Web site.

■ 4. The introductory text of § 100.73 is revised to read as follows:

§ 100.73 News story, commentary, or editorial by the media.

Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), Web site, newspaper, magazine, or other periodical publication, including any Internet or electronic publication, is not a contribution unless the facility is owned or controlled by any political party, political committee, or candidate, in which case the costs for a news story:

* * * * *

■ 5. Section 100.94 is added to subpart C to read as follows:

§ 100.94 Uncompensated Internet activity by individuals that is not a contribution.

(a) When an individual or a group of individuals, acting independently or in coordination with any candidate, authorized committee, or political party committee, engages in Internet activities for the purpose of influencing a Federal election, neither of the following is a contribution by that individual or group of individuals:

- (1) The individual's uncompensated personal services related to such Internet activities;
- (2) The individual's use of equipment or services for uncompensated Internet activities, regardless of who owns the equipment and services.

(b) *Internet activities*. For the purposes of this section, the term "Internet activities" includes, but is not limited to: Sending or forwarding electronic messages; providing a hyperlink or other direct access to another person's Web site; blogging; creating, maintaining or hosting a Web site; paying a nominal fee for the use of another person's Web site; and any other form of communication distributed over the Internet.

(c) *Equipment and services*. For the purposes of this section, the term "equipment and services" includes, but

is not limited to: Computers, software, Internet domain names, Internet Service Providers (ISP), and any other technology that is used to provide access to or use of the Internet.

(d) Paragraph (a) of this section also applies to any corporation that is wholly owned by one or more individuals, that engages primarily in Internet activities, and that does not derive a substantial portion of its revenues from sources other than income from its Internet activities.

(e) This section does not exempt from the definition of contribution:

- (1) Any payment for a public communication (as defined in 11 CFR 100.26) other than a nominal fee;
- (2) Any payment for the purchase or rental of an e-mail address list made at the direction of a political committee; or
- (3) Any payment for an e-mail address list that is transferred to a political committee.

■ 6. The introductory text of § 100.132 is revised to read as follows:

§ 100.132 News story, commentary, or editorial by the media.

Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), Web site, newspaper, magazine, or other periodical publication, including any Internet or electronic publication, is not an expenditure unless the facility is owned or controlled by any political party, political committee, or candidate, in which case the cost for a news story:

* * * * *

■ 7. Section 100.155 is added to read as follows:

§ 100.155 Uncompensated Internet activity by individuals that is not an expenditure.

(a) When an individual or a group of individuals, acting independently or in coordination with any candidate, authorized committee, or political party committee, engages in Internet activities for the purpose of influencing a Federal election, neither of the following is an expenditure by that individual or group of individuals:

- (1) The individual's uncompensated personal services related to such Internet activities;
- (2) The individual's use of equipment or services for uncompensated Internet activities, regardless of who owns the equipment and services.

(b) *Internet activities*. For the purposes of this section, the term "Internet activities" includes, but is not limited to: Sending or forwarding electronic messages; providing a hyperlink or other direct access to

another person's website; blogging; creating, maintaining or hosting a website; paying a nominal fee for the use of another person's website; and any other form of communication distributed over the Internet.

(c) *Equipment and services*. For the purposes of this section, the term "equipment and services" includes, but is not limited to: Computers, software, Internet domain names, Internet Service Providers (ISP), and any other technology that is used to provide access to or use of the Internet.

(d) Paragraph (a) of this section also applies to any corporation that is wholly owned by one or more individuals, that engages primarily in Internet activities, and that does not derive a substantial portion of its revenues from sources other than income from its Internet activities.

(e) This section does not exempt from the definition of expenditure:

- (1) Any payment for a public communication (as defined in 11 CFR 100.26) other than a nominal fee;
- (2) Any payment for the purchase or rental of an e-mail address list made at the direction of a political committee; or
- (3) Any payment for an e-mail address list that is transferred to a political committee.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

■ 8. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h, and 36 U.S.C. 510.

■ 9. Paragraph (a) of § 110.11 is revised to read as follows:

§ 110.11 Communications; advertising; disclaimers (2 U.S.C. 441d).

(a) *Scope*. The following communications must include disclaimers, as specified in this section:

- (1) All public communications, as defined in 11 CFR 100.26, made by a political committee; electronic mail of more than 500 substantially similar communications when sent by a political committee; and all Internet websites of political committees available to the general public.
- (2) All public communications, as defined in 11 CFR 100.26, by any person that expressly advocate the election or defeat of a clearly identified candidate.
- (3) All public communications, as defined in 11 CFR 100.26, by any person that solicit any contribution.
- (4) All electioneering communications by any person.

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PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

■ 10. The authority citation for part 114 is revised to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432, 434, 437d(a)(8), 438(a)(8), 441b.

■ 11. In § 114.9, paragraphs (a) and (b) are revised and new paragraph (e) is added to read as follows:

§ 114.9 Use of corporate or labor organization facilities.

(a) *Use of corporate facilities for individual volunteer activity by stockholders and employees.*

(1) Stockholders and employees of the corporation may, subject to the rules and practices of the corporation and 11 CFR 100.54, make occasional, isolated, or incidental use of the facilities of a corporation for individual volunteer activity in connection with a Federal election and will be required to reimburse the corporation only to the extent that the overhead or operating costs of the corporation are increased. A corporation may not condition the availability of its facilities on their being used for political activity, or on support for or opposition to any particular candidate or political party. As used in this paragraph, *occasional, isolated, or incidental use* generally means—

(i) When used by employees during working hours, an amount of activity which does not prevent the employee from completing the normal amount of work which that employee usually carries out during such work period; or

(ii) When used by stockholders other than employees during the working period, such use does not interfere with the corporation in carrying out its normal activities.

(2) *Safe harbor.* For the purposes of paragraph (a)(1) of this section, the following shall be considered occasional, isolated, or incidental use of corporate facilities:

(i) Any individual volunteer activity that does not exceed one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours; or

(ii) Any such activity that constitutes voluntary individual Internet activities (as defined in 11 CFR 100.94), in excess of one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours, provided that:

(A) As specified in 11 CFR 100.54, the activity does not prevent the employee from completing the normal amount of work for which the employee is paid or is expected to perform;

(B) The activity does not increase the overhead or operating costs of the corporation; and

(C) The activity is not performed under coercion.

(3) A stockholder or employee who makes more than occasional, isolated, or incidental use of a corporation's facilities for individual volunteer activities in connection with a Federal election is required to reimburse the corporation within a commercially reasonable time for the normal and usual rental charge, as defined in 11 CFR 100.52(d)(2), for the use of such facilities.

(b) *Use of labor organization facilities for individual volunteer activity by officials, members, and employees.*

(1) The officials, members, and employees of a labor organization may, subject to the rules and practices of the labor organization and 11 CFR 100.54, make occasional, isolated, or incidental use of the facilities of a labor organization for individual volunteer activity in connection with a Federal election and will be required to reimburse the labor organization only to the extent that the overhead or operating costs of the labor organization are increased. A labor organization may not condition the availability of its facilities on their being used for political activity, or on support for or opposition to any particular candidate or political party. As used in this paragraph, *occasional, isolated, or incidental use* generally means—

(i) When used by employees during working hours, an amount of activity during any particular work period which does not prevent the employee from completing the normal amount of work which that employee usually carries out during such work period; or

(ii) When used by members other than employees during the working period, such use does not interfere with the labor organization in carrying out its normal activities.

(2) *Safe harbor.* For the purposes of paragraph (b)(1) of this section, the following shall be considered occasional, isolated, or incidental use of labor organization facilities:

(i) Any individual volunteer activity that does not exceed one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours; or

(ii) Any such activity that constitutes voluntary individual Internet activities (as defined in 11 CFR 100.94), in excess of one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours, provided that:

(A) As specified in 11 CFR 100.54, the activity does not prevent the employee from completing the normal amount of work for which the employee is paid or is expected to perform;

(B) The activity does not increase the overhead or operating costs of the labor organization; and

(C) The activity is not performed under coercion.

(3) The officials, members, and employees who make more than occasional, isolated, or incidental use of a labor organization's facilities for individual volunteer activities in connection with a Federal election are required to reimburse the labor organization within a commercially reasonable time for the normal and usual rental charge, as defined in 11 CFR 100.52(d)(2), for the use of such facilities.

* * * * *

(e) Nothing in this section shall be construed to alter the provisions in 11 CFR Part 114 regarding communications to and beyond a restricted class.

Dated: March 27, 2006.

Michael E. Toner,

Chairman, Federal Election Commission.

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DEPARTMENT OF THE TREASURY**Office of Thrift Supervision****12 CFR Part 563e**

[No. 2006-16]

RIN 1550-AB48

Community Reinvestment Act—Community Development

AGENCY: Office of Thrift Supervision, Treasury (OTS).

ACTION: Final rule.

SUMMARY: In this final rule, OTS is revising the definition of "community development" in its Community Reinvestment Act (CRA) regulations to reduce burden and provide greater flexibility to meet community needs. The change is designed to encourage savings associations to increase their community development lending, qualified investments, and community development services in distressed or underserved rural areas and designated disaster areas. This change will make OTS's definition of "community development" and the definition of the other federal banking agencies uniform. OTS is also making a technical change to conform the lettering of its definitions

long as the campaign activity does not, as one witness stated, "interfere with their normal work," *i.e.* the normal amount of work that the employee usually performs, no contribution will result.

The reference to 11 CFR 100.54 applies to the safe harbors at 11 CFR 114.9(a)(2) and (b)(2). Thus, while there is no specific time limit on Internet activities, employees must complete their normal work in order to avail themselves of these safe harbors. A corporation or labor organization may not subsidize the activity by, for example, reducing an employee's workload to provide extra time for campaign activities at corporate or labor organization expense. Subject to those conditions, there is no ceiling on the amount of time that an employee may spend in a given day or week engaging in online political activities.

In addition to the safe harbors for the use of corporate or labor organization facilities to engage in Internet activities, the Commission is also preserving the one hour per week/four hours per month safe harbors, which will continue to apply across-the-board to usage of all types of corporate and labor organization facilities. See 11 CFR 114.9(a)(2)(i) and 114.9(b)(2)(i).

In the *NPRM*, the Commission sought comment on whether additional rules would be necessary to ensure that corporations and labor organizations did not "coerce" their employees or others into engaging in campaign activities over the Internet. The Commission received unanimous agreement from commenters addressing this issue that the current rules prohibiting corporate and labor organization coercion for contributions or fundraising activities are sufficient to prevent such behavior regarding Internet activities. Since the new safeguards for individual Internet activity encompass more than fundraising activities, however, the Commission is adding new provisions at 11 CFR 114.9(a)(2)(ii)(C) and (b)(2)(ii)(C) to ensure that every individual is free to express his or her own views, without fear of reprisal. The Commission notes that corporations and labor organizations providing their facilities to their employees, stockholders, officials, or members remain subject to the prohibitions contained in 11 CFR 114.2, which includes a prohibition on the use of coercion, including threat of detrimental job action, any other financial reprisal, or force, to urge any individual to make a contribution or engage in fundraising activities on behalf of a candidate or political committee. See 11 CFR 114.2(f)(2)(iv); see also 2 U.S.C. 441b(b)(3). The

Commission is also adding new paragraph (e) to § 114.9 to indicate that this section does not alter other provisions of 11 CFR part 114 regarding communications to and beyond a corporation's or labor organization's restricted class.

The Commission is also making technical amendments to 11 CFR 114.9 to restructure the format of the existing safe harbor. This change does not alter the substance of the rule or the existing safe harbor, but merely provides a clearer rule structure to accommodate the new safe harbor provision.

Certification of No Effect Pursuant to 5 U.S.C. 605(b)

Regulatory Flexibility Act

The Commission certifies that the attached final rules will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the individuals and not-for-profit entities affected by these proposed rules are not "small entities" under 5 U.S.C. 601. The definition of "small entity" does not include individuals, but classifies a not-for-profit enterprise as a "small organization" if it is independently owned and operated and not dominant in its field. 5 U.S.C. 601(4).

State, district, and local party committees affected by these proposed rules are not-for-profit committees that do not meet the definition of "small organization." State political party committees are not independently owned and operated because they are not financed and controlled by a small identifiable group of individuals, and they are affiliated with the larger national political party organizations. In addition, the State political party committees representing the Democratic and Republican parties have a major controlling influence within the political arena of their State and are thus dominant in their field. District and local party committees are generally considered affiliated with the State committees and need not be considered separately.

Separate segregated funds affected by these proposed rules are not-for-profit political committees that do not meet the definition of "small organization" because they are financed by a combination of individual contributions and financial support for certain expenses from corporations, labor organizations, membership organizations, or trade associations, and therefore are not independently owned and operated.

Most other political committees affected by these rules are not-for-profit

committees that do not meet the definition of "small organization." Most political committees are not independently owned and operated because they are not financed by a small identifiable group of individuals. Most political committees rely on contributions from a large number of individuals to fund the committees' operations and activities.

To the extent that any State party committees representing minor political parties or any other political committees might be considered "small organizations," the number affected by this proposed rule is not substantial. Additionally, the proposed rule preserves the Commission's general exclusion of Internet communications from the scope of regulation, and only State, district, and local political parties and candidates could be subject to different funding requirements for certain communications. Accordingly, to the extent that any other entities may fall within the definition of "small entities," any economic impact of complying with these rules will not be significant.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 114

Business and industry, elections, labor.

■ For the reasons set out in the preamble, the Federal Election Commission amends Subchapter A of Chapter 1 of Title 11 of the *Code of Federal Regulations* as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 434, and 438(a)(8).

■ 2. Section 100.25 is republished to read as follows:

§ 100.25 Generic campaign activity (2 U.S.C. 431(21)).

Generic campaign activity means a public communication that promotes or opposes a political party and does not promote or oppose a clearly identified Federal candidate or a non-Federal candidate.

■ 3. Section 100.26 is revised to read as follows:

§ 100.26 Public communication (2 U.S.C. 431(22)).

Public communication means a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising. The term *general public political advertising* shall not include communications over the Internet, except for communications placed for a fee on another person's Web site.

■ 4. The introductory text of § 100.73 is revised to read as follows:

§ 100.73 News story, commentary, or editorial by the media.

Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), Web site, newspaper, magazine, or other periodical publication, including any Internet or electronic publication, is not a contribution unless the facility is owned or controlled by any political party, political committee, or candidate, in which case the costs for a news story:

* * * * *

■ 5. Section 100.94 is added to subpart C to read as follows:

§ 100.94 Uncompensated Internet activity by individuals that is not a contribution.

(a) When an individual or a group of individuals, acting independently or in coordination with any candidate, authorized committee, or political party committee, engages in Internet activities for the purpose of influencing a Federal election, neither of the following is a contribution by that individual or group of individuals:

- (1) The individual's uncompensated personal services related to such Internet activities;
- (2) The individual's use of equipment or services for uncompensated Internet activities, regardless of who owns the equipment and services.

(b) *Internet activities*. For the purposes of this section, the term "Internet activities" includes, but is not limited to: Sending or forwarding electronic messages; providing a hyperlink or other direct access to another person's Web site; blogging; creating, maintaining or hosting a Web site; paying a nominal fee for the use of another person's Web site; and any other form of communication distributed over the Internet.

(c) *Equipment and services*. For the purposes of this section, the term "equipment and services" includes, but

is not limited to: Computers, software, Internet domain names, Internet Service Providers (ISP), and any other technology that is used to provide access to or use of the Internet.

(d) Paragraph (a) of this section also applies to any corporation that is wholly owned by one or more individuals, that engages primarily in Internet activities, and that does not derive a substantial portion of its revenues from sources other than income from its Internet activities.

(e) This section does not exempt from the definition of contribution:

- (1) Any payment for a public communication (as defined in 11 CFR 100.26) other than a nominal fee;
- (2) Any payment for the purchase or rental of an e-mail address list made at the direction of a political committee; or
- (3) Any payment for an e-mail address list that is transferred to a political committee.

■ 6. The introductory text of § 100.132 is revised to read as follows:

§ 100.132 News story, commentary, or editorial by the media.

Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), Web site, newspaper, magazine, or other periodical publication, including any Internet or electronic publication, is not an expenditure unless the facility is owned or controlled by any political party, political committee, or candidate, in which case the cost for a news story:

* * * * *

■ 7. Section 100.155 is added to read as follows:

§ 100.155 Uncompensated Internet activity by individuals that is not an expenditure.

(a) When an individual or a group of individuals, acting independently or in coordination with any candidate, authorized committee, or political party committee, engages in Internet activities for the purpose of influencing a Federal election, neither of the following is an expenditure by that individual or group of individuals:

- (1) The individual's uncompensated personal services related to such Internet activities;
- (2) The individual's use of equipment or services for uncompensated Internet activities, regardless of who owns the equipment and services.

(b) *Internet activities*. For the purposes of this section, the term "Internet activities" includes, but is not limited to: Sending or forwarding electronic messages; providing a hyperlink or other direct access to

another person's website; blogging; creating, maintaining or hosting a website; paying a nominal fee for the use of another person's website; and any other form of communication distributed over the Internet.

(c) *Equipment and services*. For the purposes of this section, the term "equipment and services" includes, but is not limited to: Computers, software, Internet domain names, Internet Service Providers (ISP), and any other technology that is used to provide access to or use of the Internet.

(d) Paragraph (a) of this section also applies to any corporation that is wholly owned by one or more individuals, that engages primarily in Internet activities, and that does not derive a substantial portion of its revenues from sources other than income from its Internet activities.

(e) This section does not exempt from the definition of expenditure:

- (1) Any payment for a public communication (as defined in 11 CFR 100.26) other than a nominal fee;
- (2) Any payment for the purchase or rental of an e-mail address list made at the direction of a political committee; or
- (3) Any payment for an e-mail address list that is transferred to a political committee.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

■ 8. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h, and 36 U.S.C. 510.

■ 9. Paragraph (a) of § 110.11 is revised to read as follows:

§ 110.11 Communications; advertising; disclaimers (2 U.S.C. 441d).

(a) *Scope*. The following communications must include disclaimers, as specified in this section:

- (1) All public communications, as defined in 11 CFR 100.26, made by a political committee; electronic mail of more than 500 substantially similar communications when sent by a political committee; and all Internet websites of political committees available to the general public.
- (2) All public communications, as defined in 11 CFR 100.26, by any person that expressly advocate the election or defeat of a clearly identified candidate.
- (3) All public communications, as defined in 11 CFR 100.26, by any person that solicit any contribution.
- (4) All electioneering communications by any person.

* * * * *

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

■ 10. The authority citation for part 114 is revised to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432, 434, 437d(a)(8), 438(a)(8), 441b.

■ 11. In § 114.9, paragraphs (a) and (b) are revised and new paragraph (e) is added to read as follows:

§ 114.9 Use of corporate or labor organization facilities.

(a) *Use of corporate facilities for individual volunteer activity by stockholders and employees.*

(1) Stockholders and employees of the corporation may, subject to the rules and practices of the corporation and 11 CFR 100.54, make occasional, isolated, or incidental use of the facilities of a corporation for individual volunteer activity in connection with a Federal election and will be required to reimburse the corporation only to the extent that the overhead or operating costs of the corporation are increased. A corporation may not condition the availability of its facilities on their being used for political activity, or on support for or opposition to any particular candidate or political party. As used in this paragraph, *occasional, isolated, or incidental use* generally means—

(i) When used by employees during working hours, an amount of activity which does not prevent the employee from completing the normal amount of work which that employee usually carries out during such work period; or

(ii) When used by stockholders other than employees during the working period, such use does not interfere with the corporation in carrying out its normal activities.

(2) *Safe harbor.* For the purposes of paragraph (a)(1) of this section, the following shall be considered occasional, isolated, or incidental use of corporate facilities:

(i) Any individual volunteer activity that does not exceed one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours; or

(ii) Any such activity that constitutes voluntary individual Internet activities (as defined in 11 CFR 100.94), in excess of one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours, provided that:

(A) As specified in 11 CFR 100.54, the activity does not prevent the employee from completing the normal amount of work for which the employee is paid or is expected to perform;

(B) The activity does not increase the overhead or operating costs of the corporation; and

(C) The activity is not performed under coercion.

(3) A stockholder or employee who makes more than occasional, isolated, or incidental use of a corporation's facilities for individual volunteer activities in connection with a Federal election is required to reimburse the corporation within a commercially reasonable time for the normal and usual rental charge, as defined in 11 CFR 100.52(d)(2), for the use of such facilities.

(b) *Use of labor organization facilities for individual volunteer activity by officials, members, and employees.*

(1) The officials, members, and employees of a labor organization may, subject to the rules and practices of the labor organization and 11 CFR 100.54, make occasional, isolated, or incidental use of the facilities of a labor organization for individual volunteer activity in connection with a Federal election and will be required to reimburse the labor organization only to the extent that the overhead or operating costs of the labor organization are increased. A labor organization may not condition the availability of its facilities on their being used for political activity, or on support for or opposition to any particular candidate or political party. As used in this paragraph, *occasional, isolated, or incidental use* generally means—

(i) When used by employees during working hours, an amount of activity during any particular work period which does not prevent the employee from completing the normal amount of work which that employee usually carries out during such work period; or

(ii) When used by members other than employees during the working period, such use does not interfere with the labor organization in carrying out its normal activities.

(2) *Safe harbor.* For the purposes of paragraph (b)(1) of this section, the following shall be considered occasional, isolated, or incidental use of labor organization facilities:

(i) Any individual volunteer activity that does not exceed one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours; or

(ii) Any such activity that constitutes voluntary individual Internet activities (as defined in 11 CFR 100.94), in excess of one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours, provided that:

(A) As specified in 11 CFR 100.54, the activity does not prevent the employee from completing the normal amount of work for which the employee is paid or is expected to perform;

(B) The activity does not increase the overhead or operating costs of the labor organization; and

(C) The activity is not performed under coercion.

(3) The officials, members, and employees who make more than occasional, isolated, or incidental use of a labor organization's facilities for individual volunteer activities in connection with a Federal election are required to reimburse the labor organization within a commercially reasonable time for the normal and usual rental charge, as defined in 11 CFR 100.52(d)(2), for the use of such facilities.

* * * * *

(e) Nothing in this section shall be construed to alter the provisions in 11 CFR Part 114 regarding communications to and beyond a restricted class.

Dated: March 27, 2006.

Michael E. Toner,

Chairman, Federal Election Commission.

[FR Doc. 06-3190 Filed 4-11-06; 8:45 am]

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DEPARTMENT OF THE TREASURY**Office of Thrift Supervision****12 CFR Part 563e**

[No. 2006-16]

RIN 1550-AB48

Community Reinvestment Act—Community Development

AGENCY: Office of Thrift Supervision, Treasury (OTS).

ACTION: Final rule.

SUMMARY: In this final rule, OTS is revising the definition of "community development" in its Community Reinvestment Act (CRA) regulations to reduce burden and provide greater flexibility to meet community needs. The change is designed to encourage savings associations to increase their community development lending, qualified investments, and community development services in distressed or underserved rural areas and designated disaster areas. This change will make OTS's definition of "community development" and the definition of the other federal banking agencies uniform. OTS is also making a technical change to conform the lettering of its definitions

Internet Activity: FEC and PDC

Preliminary Summary of Current Status

Activity	FEC	PDC
Internet Advertising	Only paid advertising placed on another person's website must be disclosed as public communication and requires a disclaimer.	Statutory definition of "political advertising" does not distinguish between Internet forum and other methods of advertising. Expenditures are reportable. RCW 42.17.510 says, in part, all written political advertising . . . shall include the sponsor's name and address.
E-Mails	Only political committees that disseminate 500 substantially similar communications must include disclaimer. No disclaimer needed for individuals or groups of individuals.	Staff has informally advised persons seeking direction that mass e-mails appear to satisfy definition of political advertising are subject to reporting and require a disclaimer.
Websites	Only political committee websites require disclaimers or reporting.	Staff has informally advised webpage hosts (committees and individuals) to provide disclaimers if political advertising is displayed and that any identifiable costs associated with hosting a political ad are subject to reporting.
Bloggers	Bloggers are not regulated.	No formal or informal advice has been given.
Media Exemption	The media exemption extends to Internet-only media, as well as to the online components of traditional media.	No formal or informal advice has been given re application of media exemption to on-line communications.
Workplace Computers	<p>No reporting of uncompensated computer use regardless of who owns the equipment or where the equipment is located.</p> <p>[However, other federal laws or regulations, including the Hatch Act and ethics laws/ rules may prohibit using federal government equipment or other resources to engage in political activity.]</p>	<p>Regarding public employees, RCW 42.17.130 prohibits use of public resources to assist campaigns, including computers.</p> <p>No formal or informal advice has been given re uncompensated individuals using a workplace computer to generate emails or conduct other on-line activity that benefits a candidate or political committee.</p>

Advertising on the Internet

Advertising on the Internet has dramatically increased in the past few years. Advertising revenue in 2006 totaled \$16.9 billion, a 35% increase from 2005 and totaled \$4.9 billion in the first quarter of 2007.

However, political advertising on the Internet represented only \$7.2 million in 2004 according to TNS Media Intelligence/CMR, a company that tracks political ad spending.

Of the political advertising funds spent on the Internet, 41.5% was spent on the Presidential election, 27.1% on Federal campaigns, 17% was spent on state and local ballot measures and 14.4% on state and local campaigns.

If the projections are any indication of how Internet political advertising will fair in 2008, spending will increase dramatically. According to the Wall Street Journal, online political advertising is expected to hit \$80 million for the 2008 Presidential campaign.

The following are some of the types of advertising models that are used on the Internet:

Pay-Per-Click Advertising

Advertisers pay a fee for each time a visitor clicks on their advertisement and enters their website, the owner of a blog or website is paid for each click. The range goes from \$.05 to \$50 per click.

Ad Exchange

A marketplace in which publishers and advertisers can participate in an auction-based system for buying and selling online display advertising. Publishers (websites and bloggers) offer unused ad space and advertisers bid on the open market for placement.

Search Engine Submission and Promotion

Advertisers pay a flat monthly fee to have their website placed in a priority position on search engines.

Keyword Advertising

This type of advertising uses keywords to trigger ads. Typically, advertisers select a set of keywords related to the product or service they wish to advertise and the ads are then displayed when a search engine user enters the specific

words or phrases. Payment is made for each time the advertisement is accessed.

Cost Per Action

Online advertising in which payment is based solely on qualifying actions such as sales or registrations. In this type of advertising the publisher is taking most of the advertising risk since no payment is made unless the user takes some type of action.

Pop-up and Pop-Under Advertising

These ads refer to browser windows that are silently opened either over the top of or behind a current web surfer's viewing window. Advertisers can select which websites they want their pop ads to appear on.

As the use of Internet political advertising increases, new and innovative ways to reach a particular audience will surface.

Possible Decision Making Timeline on Internet Rules

August 15 th	Meeting - General Input and Panel Discussion
September 27 th	Meeting - Provide Staff with General Direction
October	File CR 101 Preproposal Filing – Prior to Oct 24 th
October 25 th	Meeting – Review Draft Language
December	Meeting – Adopt Draft Language
	File CR 102 Proposed Rule Making – Prior to Dec 19 th
January	Meeting – Public Hearing Final Approval
	File CR 103 Rule Making Order – After Jan 23 rd
February	Effective Date – 31 Days after Filing CR 103