Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 102, 103, 104, 106, 107, 109, 110, 114, and 116

[Notice 1999—24]

Use of the Internet for Campaign Activity

AGENCY: Federal Election Commission.

ACTION: Notice of inquiry and request for comments.

SUMMARY: The Commission is currently examining the issues raised by the use of the Internet to conduct campaign activity. The Commission is conducting this review in order to assess the applicability of the Federal Election Campaign Act and the Commission's current regulations to campaign activity conducted using this medium. In order to assist in its review, the Commission invites comments on the application of the Act and the current regulations to Internet campaign activity. The Commission will use the comments received to determine whether or not to issue a Notice of Proposed Rulemaking (''NPRM''), which may include proposed changes to its regulations. An NPRM would seek further comment on any proposed revisions to the Commission's rules. The Commission has made no final decisions regarding the issues discussed in this notice, and may ultimately decide to take no action. Further information is provided in the supplementary information that follows.

DATES: Comments must be submitted on or before January 4, 2000.

ADDRESSES: All comments should be addressed to Rosemary C. Smith, Acting Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, N.W., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow up. Electronic mail comments should be sent to internetnoi@fec.gov, and should include the full name, electronic mail address and postal service address of the commenter. Additional information on electronic submission is provided below.

FOR FURTHER INFORMATION CONTACT: Rosemary C. Smith, Acting Assistant General Counsel, or Paul Sanford, Staff Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: In recent years, there has been a dramatic increase in the use of the Internet to conduct campaign activity related to federal elections. Candidates, parties and political action committees (''PACs'') have apparently concluded that the Internet is a powerful campaign tool with the potential to significantly influence the outcome of federal elections. Individuals and other organizations have also used the Internet to participate directly in election campaigns, taking advantage of the medium's capacity to reach large numbers of people at very little cost.

The dramatic increase in campaign activity conducted on the Internet raises a number of issues regarding the applicability of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* (''FECA'' or ''the Act''). The Act requires candidates, parties and PACs to file disclosure reports regarding their election-related activity, and also imposes restrictions and limitations on the amounts that may be contributed to candidates, parties and PACs by individuals, corporations, labor organizations and other committees.

Although the FECA was enacted long before widespread use of the Internet, and has, in some instances, been narrowed by court decisions, *see e.g., Buckley* v. *Valeo,* 424 U.S. 1 (1976), *FEC* v. *Massachusetts Citizens for Life,* 479 U.S. 238 (1986), it remains broad enough to potentially encompass some election-related activity conducted on the Internet. For example, section 431(8) states that the term ''contribution'' includes ''any gift, subscription, loan, advance or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.'' 2 U.S.C. 431(8)(A)(i), 11 CFR 100.7(a)(1). The Commission has historically interpreted the phrase ''anything of value'' in section 431(8)(A)(i) to include in-kind contributions, i.e., the provision of goods or services without charge or at less than the usual or normal charge. 11 CFR 100.7(a)(1)(iii). The term ''contribution'' also includes ''the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose.'' 2 U.S.C. 431(8)(A)(ii), 11 CFR 100.7(a)(3).

Similarly, section 431(9) states that the term ''expenditure'' includes ''any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.'' 2 U.S.C. 431(9)(A), 11 CFR 100.8(a). In-kind contributions are also expenditures. 11 CFR 100.8(a)(1)(iv).

Section 441b of the Act generally prohibits contributions and expenditures by corporations and labor organizations, and states that, for the purposes of this prohibition, the term ''contribution or expenditure'' includes any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party in connection with any election to any federal office. *Id.*

Thus, the Act, and in particular, the contribution and expenditure definitions, are at least facially applicable to a wide range of activity, including some activity that could be conducted on the Internet. However, the Act also contains a number of exemptions from the contribution and expenditure definitions. For example, the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee is not a contribution. 2 U.S.C. 431(8)(B)(i). The Act also excludes costs incurred by state and local party committees for (1) slate cards and sample ballots, (2) campaign materials (such as pins, bumper stickers, brochures, yard signs, etc.) used in connection with volunteer activities, and (3) voter registration and get-out-the-vote activities on behalf of Presidential and Vice Presidential nominees, under certain circumstances. 2 U.S.C. 431(8)(B)(v), (x), (xii), (9)(B)(iv), (viii), (ix).

News stories, commentaries and editorials distributed by a broadcasting station, newspaper, magazine or other periodical publication are not expenditures, unless the broadcaster or publisher is owned or controlled by a candidate, political committee or political party. 2 U.S.C. 431(9)(B)(i). In addition, communications on any subject between a corporation and its stockholders, executive and administrative personnel, and their families, and between a labor organization, its members and their families, are not expenditures under the Act. 2 U.S.C. 441b(b)(2)(A). Costs incurred by publicly funded Presidential primary candidates ''in connection with the solicitation of contributions'' are also exempt from the expenditure definition. 2 U.S.C. 431(9)(B)(vi).

Although there are no minimum dollar thresholds for something of value to be considered a contribution or expenditure, the Act excludes activity that falls below certain dollar thresholds from some of the reporting requirements. For example, individuals that make independent expenditures are not required to submit disclosure reports unless their expenditures aggregate in excess of $250 during a calendar year. 2 U.S.C. 434(c). Similarly, organizations are not required to register and report as political committees until their contributions or expenditures aggregate in excess of $1000 in a calendar year. 2 U.S.C. § 431(4). Political committees are only required to provide the identification (name, mailing address, occupation, name of employer, 2 U.S.C. 431(13)) of those contributors whose contributions aggregate in excess of $200 in a calendar year. 2 U.S.C. 434(b)(3)(A).

As the agency responsible for administering the Federal Election Campaign Act, the Federal Election Commission (''FEC'' or ''Commission''), must determine the extent to which the Act applies to campaign activity conducted on the Internet. In an effort to begin the process of making this determination, the Commission requests comments on the application of the Act and the Commission's current regulations to Internet campaign activity.

One threshold question upon which the Commission invites comments is whether campaign activity conducted on the Internet should be subject to the Act and the Commission's regulations at all. Are Internet campaign activities analogous to campaign activities conducted in other contexts, or do they differ to such a degree as to require different rules?

In addition, commenters are encouraged to discuss aspects of the Commission's current regulations that may affect or inhibit the use of the Internet in ways that may not have been anticipated or intended when the regulations were promulgated, and which may now be inappropriate when applied to Internet activity. Commenters are also encouraged to identify and discuss provisions of the FECA or the regulations the application of which is unclear in the context of political activity conducted on the Internet.

Several significant issues relating to the use of the Internet are discussed in detail below. Comments are also welcome on any other Internet-related issues that should be addressed in the regulations.

Internet Activities as Contributions or Expenditures

1. Introduction

The threshold question raised when the Internet is used for activity relating to federal candidates and elections is whether that activity should be treated as a contribution or an expenditure under the Act. If so, under what circumstances? The contribution and expenditure definitions are summarized above. The Commission invites general comments on the application of these definitions to candidate and election-related activity conducted on the Internet. The Commission is also interested in comments on the issues raised by these definitions in the particular situations described below.

2. Candidate Web Sites

Increasing numbers of candidates are establishing web sites to support their campaigns. The most basic question raised is how the candidate's committee should treat costs associated with establishing a campaign web site. Are these costs expenditures under the Act? Or, should they be treated as some other type of committee disbursement?

The Commission is also interested in comments on several specific issues that arise in relation to hyperlinks on candidate web sites. A hyperlink is an electronic link to another web site. If a candidate's site contains a hyperlink to the site of another candidate or a political party, should that link be treated as a contribution from the candidate who operates the originating site to the linked candidate or party committee? If so, how should the value of that contribution be determined? When does that contribution occur? If the link remains on the site for an extended period, does the contribution occur in each reporting period during which it remains on the site? When should it be reported? (Reporting issues will be discussed more extensively below.)

What if the candidate's web site contains a link to the site of a vendor that sells items such as pins, T-shirts, bumper stickers, etc., that express support for the candidate? In this situation, the link serves as a form of advertising for the vendor. Are there circumstances under which this would raise issues under the FECA? What if the vendor is a corporation, and is paying the campaign to provide the link? Would this payment be a contribution, or should the committee treat it as a permissible ''other receipt?'' Is it a contribution only if the vendor pays more than the usual and normal charge for the link?

3. Web Sites of Publicly Funded Candidates

The Commission invites comments on whether there are special considerations involving web sites established by Presidential candidates who accept public funding under the Presidential Election Campaign Fund Act, 26 U.S.C. 9001 *et seq.*, or the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 *et seq.* What issues arise when publicly funded Presidential candidates use the Internet to promote their candidacies?

For example, the Commission recently reversed a long-standing policy to allow for matching of credit card contributions received by Presidential primary candidates via the Internet. 64 FR 32,394 (June 17, 1999). This raises an issue regarding solicitation costs incurred by publicly funded candidates.

Under 2 U.S.C. 431(9)(B)(vi) and 11 CFR 100.8(b)(21), costs incurred by publicly funded Presidential primary candidates ''in connection with the solicitation of contributions'' are not expenditures under the Act. Similarly, solicitation costs incurred by publicly funded general election candidates are not expenditures if contributions are being solicited to make up for deficiencies in amounts received from Presidential Election Campaign Fund. *Id.* As a result, these costs do not count toward the expenditure limits set out in section 441a(b). *See* 2 U.S.C. 431(9)(B)(vi), 26 U.S.C. 9003(b)(1), 9033(b)(1). If a publicly funded candidate uses its web site to solicit contributions, should a portion of the cost of establishing and maintaining the site be exempt from the definition of expenditure under this provision? If so, how should the exempt amount be determined?

The Commission invites comments on this issue and any other issues raised by the use of the Internet by publicly funded candidates.

4. Web sites created by individuals

a. Text and other materials

Many web sites created by individuals contain references to candidates and political parties. Some sites, often referred to as ''fan sites,'' are devoted entirely to urging support for or opposition to one or more candidates. In other situations, only a portion of an individual's web site might be devoted to candidate advocacy.

The FECA distinguishes between activities conducted by individuals in cooperation or consultation with a candidate, and activities undertaken independently of a candidate. Generally, if an individual conducts campaign activity in cooperation or consultation with a candidate, the cost of that activity is an in-kind contribution. 2 U.S.C. 431(8)(A)(ii), 431(17). An individual may make no more than $1000 in contributions to a candidate per election. 2 U.S.C. 441a(a)(1)(A). In addition, the receipt of in-kind contributions must be reported by the candidate. 2 U.S.C. 434(b), 11 CFR 104.3(a)(4)(i).

In contrast, if an individual conducts activity ''without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate,'' that activity is not a contribution. However, if the activity expressly advocates the election or defeat of a candidate, the expenses incurred in that activity are an independent expenditure. 2 U.S.C. 431(17). Although individuals may make unlimited independent expenditures on behalf of a candidate, ''every person (other than a political committee) who makes independent expenditures in an aggregate amount or value in excess of $250 during a calendar year'' must file disclosure reports. 2 U.S.C. 434(c).

How should these definitions be applied to web sites created by individuals that contain references to candidates or political parties? Are costs incurred by individuals in posting materials relating to candidates or parties covered by the FECA? If so, how should the value of the individual's contribution or independent expenditure be determined? What costs should be taken into account? Should the individual posting the materials be required to treat a portion of the initial cost of the computer hardware used to operate the web site as part of the contribution or expenditure? Should the individual be required to treat any other expenses, such as the costs of software purchased to create the site and fees paid to maintain it, as a contribution or expenditure?

What if the site contains both candidate or party-related materials and other unrelated materials? Should a portion of the costs of the site be treated as a contribution or expenditure? What if an individual who already owns a computer and already has access to the Internet posts candidate or party-related materials on the Internet? An individual in this situation may incur little or no additional cost in posting these materials. Does this mean that no contribution or expenditure has occurred?

With regard to the issue of whether an individual's Internet activities should be treated as an in-kind contribution or independent expenditure, 2 U.S.C. 431(17) states that ''[t]he term 'independent expenditure' means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate.'' What types of contacts between an individual and a candidate should be regarded as ''cooperation or consultation,'' often referred to as ''coordination,'' with the candidate within the meaning of this section? Should the types of contact considered coordination with a candidate be different for Internet activities than for activities that take place in other contexts? The Commission is currently engaged in a rulemaking on the issue of coordination with a candidate, and has published two Notices of Proposed Rulemaking seeking comments on this issue. 63 FR 69,523 (Dec. 16, 1998), 62 FR 24,367 (May 5, 1997). Two recent court decisions also discussed the concept of coordination. *Federal Election Commission* v. *Christian Coalition,* 52 F. Supp. 2d (D.D.C. 1999), *Federal Election Commission* v. *Public Citizen,* 1999 WL 731056 (N.D.Ga. 1999). *See also, Clifton* v. *Federal Election Commission,* 114 F.3d 1309 (1st Cir. 1997) *cert. denied* 118 S. Ct. 1036 (1998), *Colorado Republican Federal Campaign Committee* v. *FEC,* 518 U.S. 604 (1996). Comments are invited on how coordination should be defined in the context of campaign activity conducted on the Internet.

How should the regulations address the republication of candidate-generated materials on web sites created by individuals? For example, a visitor to a candidate's web site might download files known as ''banners'' that can be posted like electronic bumper stickers on the visitor's own site. In other cases, a visitor might download textual materials, such as speeches or position papers, and make these materials available on his or her own site. Ordinarily, the republication of campaign materials prepared by the candidate would be an in-kind contribution. 2 U.S.C. 441a(a)(7)(B), 11 CFR 109.1(d)(1). Should this rule apply to republication of materials on the Internet? If so, how should the in-kind contribution be valued for FECA purposes? Or, should the Commission create an exception to this rule for the republication of materials on the Internet, since the marginal cost to the individual of adding a banner or other downloaded material to his or her web site is near zero?

If an individual posts candidate-related materials on the Internet without cooperation or consultation with the candidate, the question raised is whether the candidate-related content should be treated as an independent expenditure. Generally, a communication must contain express advocacy in order to be an independent expenditure. 2 U.S.C. 431(17). How should this test be applied to the contents of a web site? Should the test be applied to the site as a whole, or should it be applied separately to different areas of the site?

b. Hyperlinks

Some web sites created by individuals contain hyperlinks to a candidate's site or to the site of another political committee. Under what circumstances should posting a hyperlink be treated as a contribution or independent expenditure?

A hyperlink on an individual's web site may have value to the linked candidate, since the link will inevitably steer visitors from the individual's site to the candidate's site. If the individual has been in contact with the campaign and has agreed to provide the link at no charge or less than the usual and normal charge, the link could be regarded as an in-kind contribution. On the other hand, the costs of providing the link are often negligible or nonexistent. In addition, the practice in some areas of the Internet industry may be to place no value on these links. Thus, the usual and normal charge for providing a link may be zero.

How widespread is the practice of providing free links? Should the result be that no contribution or expenditure occurs when an individual posts a hyperlink to a candidate or party web site?

If the individual that posts the link does so without any consultation or coordination with the linked candidate's campaign, the link would not be a contribution to the candidate's campaign. In these circumstances, the issue is whether the link should be treated as an independent expenditure. Generally, a communication must contain express advocacy in order to be an independent expenditure. 2 U.S.C. 431(17). Should the express advocacy test be applied to the text of the hyperlink itself, or to the contents of the candidate's site? Would a hyperlink that appears as ''JonesMiller2000'' be express advocacy? What if the text of the hyperlink does not constitute express advocacy, but the linked site contains express advocacy?

Assuming that the text of the link contains express advocacy, how should the value of the independent expenditure be determined? As explained above regarding possible contributions, the owner of the site may incur little or no additional cost in posting the link. Thus, although the link might fall within the definition of ''independent expenditure,'' it may fall below the $250 reporting threshold in 2 U.S.C. 434(c). Should the fact that the cost of the link is incremental relieve the individual of his or her reporting obligation?

c. Web Sites Created by Campaign Volunteers

The Commission invites comments on the extent to which Internet services provided by volunteers should be covered by the volunteer exemption in section 431(8)(B)(ii) of the Act. Section 431(8)(B)(ii) exempts ''the use of real or personal property * * * voluntarily provided by an individual to any candidate or any political committee of a political party in rendering voluntary personal services on the individual's residential premises.'' Are Internet services covered by this section?

d. Disclaimers

Section 441d of the FECA states that ''[w]henever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising,'' the communication must contain a disclaimer statement. *See also* 11 CFR 110.11. Generally, this statement must indicate who paid for the advertisement and whether it was authorized by a candidate or candidate's committee. If so, the candidate or committee must also be identified.

In Advisory Opinion 1998–22, an independent voter sought guidance on the application of the disclaimer requirement to a web site that urged the election of a candidate and the defeat of that candidate's opponent. The Commission noted its conclusion in previous advisory opinions that, because of the Internet's general availability, a web site would be considered general public political advertising. Since the site expressly advocated the election and defeat of candidates, it was an independent expenditure that required a disclaimer under section 441d. *See also* Advisory Opinions 1995–9 and 1995–35.

The Commission is interested in comments on the conclusion reached in Advisory Opinion 1998–22, and on the application of the disclaimer requirement to the Internet. Should web sites created and maintained by individuals be considered general public political advertising within the meaning of section 441d? Internet users generally have to take the affirmative step of directing their browsers to a web site in order to view the contents of that site. In contrast, individuals are often exposed to broadcast messages, newspaper advertisements and direct mail involuntarily, without any deliberate action on their part. Should web sites be treated differently than newspapers and broadcast stations for this reason? The Commission invites comments on this issue.

5. Nonconnected Committees and Other Unincorporated Organizations

Since nonconnected political committees (other than multicandidate committees) and other unincorporated organizations are treated the same as individuals under the FECA, many of the same issues arise when these entities use the Internet for candidate-related activity. The Commission invites commenters to discuss the issues raised above as they apply to these entities.

The Commission is also interested in comments on the circumstances under which the inclusion of a hyperlink on the web site of a nonconnected committee or other unincorporated organization should be treated as ''nonpartisan activity designed to encourage individuals to vote or to register to vote'' under section 431(9)(B)(ii). In Advisory Opinion 1999–7, the Commission responded to a inquiry from a state government agency that posted hyperlinks to candidates on its web site. The Commission concluded that providing information about all ballot-qualified candidates in a nonpartisan manner without first attempting to determine recipients' candidate or party preferences falls within section 431(9)(B)(ii) and 11 CFR 100.8(b)(3). Section 100.8(b)(3) states that ''[a]ny cost incurred for activity designed to encourage individuals to register to vote or to vote is not an expenditure if no effort is or has been made to determine the party or candidate preference of individuals before encouraging them to register to vote or to vote.''

Should the Commission revise the regulations to specifically exclude hyperlinks posted in this manner from the definition of ''expenditure?'' In its opinion, the Commission noted that the state agency's site already included candidate mailing addresses and telephone numbers, and concluded that ''[t]he addition of campaign web addresses in the form of hyperlinks does not change this analysis.'' Should hyperlinks be treated as the equivalent of campaign mailing addresses in all circumstances?

Commenters are also welcome to raise any other issues relating to the use of the Internet by nonconnected committees and other unincorporated organizations.

6. Corporations and Labor Organizations

a. Communications

Many corporations and labor organizations operate web sites to communicate with the general public. Section 441b of the Act prohibits corporations and labor organizations from making contributions or expenditures in connection with federal elections. Thus, the Act generally prohibits these entities from using their web sites to assist or advocate on behalf of any federal candidate.

The question raised is under what circumstances should a candidate or election-related communication on a corporate or labor organization be treated as a prohibited contribution or independent expenditure? If the election-related communication is in the form of a hyperlink to the web site of a candidate or party committee, the issues that arise are similar to those discussed in section 4(b), above, regarding hyperlinks posted on an individual's web site. The Commission invites comments on these issues, as

they arise in the context of web sites operated by corporations and labor organizations.

The FECA also contains a number of exceptions from the contribution and expenditure definitions that enable a corporation or labor organization to engage in certain election-related activity without violating the Act. For example, the Act exempts ''communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject.'' 2 U.S.C. 441b(b)(2)(A). The Commission's regulations refer to these groups as the ''restricted class'' of a corporation or labor organization. 11 CFR 114.1(j).

Section 114.4(c) of the regulations also contains a series of exceptions that allow corporations and labor organizations to distribute certain candidate and election-related materials to the general public without violating section 441b. Under this section, a corporation or labor organization may make registration and get-out-the vote communications to the general public, provided that: (1) They do not expressly advocate the election or defeat of any clearly identified candidate or candidates of a clearly identified political party, and (2) they do not coordinate their efforts with any candidate or political party. 11 CFR 114.4(c)(2). Similarly, a corporation or labor organization may also distribute officially-produced registration or voting information, official registration-by-mail forms, and absentee ballots, provided the corporation or labor organization does not expressly advocate, does not coordinate, and does not encourage registration with any particular political party. 11 CFR 114.4(c)(3).

A corporation or labor organization may also prepare and distribute the voting records of Members of Congress, provided that the voting record and all communications distributed with it do not expressly advocate, and that decisions on content and distribution of the record are not coordinated with any candidate, group of candidates or political party. 11 CFR 114.4(c)(4). *But see Clifton* v. *Federal Election Commission,* 114 F.3d 1309 (1st Cir. 1997) *cert. denied* 118 S. Ct. 1036 (1998). A corporation or labor organization may also prepare and distribute voter guides consisting of two or more candidates' positions on campaign issues under certain conditions set out in the section 114.4(c)(5). Finally, the rules allow a corporation or labor organization to endorse a candidate and announce the endorsement to the general public through a press release and press conference, so long as the press release and notice of the press conference are distributed only to the representatives of the news media that the corporation or labor organization customarily contacts when issuing nonpolitical press releases or holding press conferences for other purposes. 11 CFR 114.4(c)(6).

The Commission invites comments on the issues raised by corporate and labor organization use of the Internet for communication of candidate and election-related information. One threshold issue is whether, and under what circumstances, communication via the Internet should be regarded as communication to the general public, and when it should be treated as communication to a more limited audience. Advisory Opinion 1997–16 involved, *inter alia*, a corporate endorsement posted on the corporation's web site. The Commission concluded that communication of the endorsement via the web site would, in effect, be communication with the general public for purposes of section 441b, unless access was limited to members of the restricted class using a password or similar method. Should the Commission incorporate this interpretation into the regulations? Under what circumstances should the Commission treat information posted on a web site as communication to the restricted class? Under what circumstances should it be treated as distribution to the general public?

If the web site is treated as communication to the general public, under what circumstances should a candidate or election-related communication on a corporate or labor organization web site be treated as a prohibited contribution or independent expenditure? If the election-related communication is in the form of a hyperlink to the web site of a candidate or party committee, the issues that arise are similar to those discussed in section 4(b), above, regarding hyperlinks posted on an individual's web site. The Commission invites comments on these issues, as they arise in the context of web sites operated by corporations and labor organizations.

With regard to the types of communication permitted under section 114.4(c) of the regulations, what special issues arise? How does the use of the Internet to distribute voter guides, voting records, absentee ballots or other registration or voting information impact the current regulations? Are there aspects of these regulations that should be revised?

For example, the Commission is interested in comments on several issues that arise within the specific context of endorsements. As explained above, the rules allow a corporation or labor organization to announce an endorsement to the general public through a press release and press conference, so long as distribution of the press release and notice of the press conference is limited to those media representatives that the organization ordinarily contacts when issuing press releases or holding press conferences. 11 CFR 114.4(c)(6). Should a corporation or labor organization that routinely posts press releases on the Internet be allowed to post a press release announcing a candidate endorsement? Would it matter if the corporation or labor organization posts the endorsement release more prominently than it posts other press releases? What if the release received no special prominence or treatment? Or, should the endorsement be made accessible only to members of the restricted class and other employees?

The Commission invites comments on these issues, and any other issues raised by corporate and labor organization communication via the Internet.

b. Internet Services as In-kind Contributions

Some corporations are in the business of providing Internet-related services, such as Internet access, web site creation and maintenance, technical support, etc. The Commission is interested in comments on whether, and under what circumstances, the costs of Internet-related services should be treated as in-kind contributions.

For example, in Advisory Opinion 1996–2, a corporation that provided Internet services and other on-line information services proposed to provide free member accounts to federal candidates on a nonpartisan basis, and asked whether these accounts would be prohibited in-kind contributions under the Act. The Commission concluded that the accounts would be in-kind contributions unless the corporation could show that it provided the accounts to nonpolitical customers in the ordinary course of business and on the same terms and conditions, *i.e.*, the ''usual and normal charge.'' The Commission also said that even if the corporation could show that it provided free accounts in the ordinary course of business, the promotional value derived by the vendor in the form of prestige, goodwill, and increased usage by other members did not constitute adequate consideration to satisfy the ''usual and normal charge'' requirement.

The Commission invites comments on whether this conclusion should be revised or incorporated into the regulations, and on whether there are circumstances under which the provision of Internet services at less than the usual and normal charge should not be regarded as a contribution or expenditure.

c. Use of Corporate Facilities

Section 114.9 of the regulations places limits on the extent to which the stockholders and employees of a corporation, or the officials, members and employees of a labor organization, may make use of the facilities of the corporation or labor organization for individual volunteer activities in connection with federal elections. Generally, the rule allows occasional, isolated or incidental use of the facilities, and requires users to reimburse the corporation or labor organization only to the extent that the corporation or labor organization's overhead costs are increased. The rule provides additional guidance as to what will be considered occasional, isolated or incidental use in particular situations.

The Commission is interested in comments on the application of this rule to the use of corporate or labor organization facilities for Internet activities conducted in connection with federal elections. To what extent should a computer network be treated as part of a corporation or labor organization's facilities within the meaning of this provision? What level of use of such a network should be considered occasional, isolated or incidental use? How should this be determined?

If a corporation allows an employee to post candidate-related materials on a web site that resides on the corporation's computer network, should the employee be required to reimburse the corporation for the costs of the site? What if the corporation's network has enough surplus capacity that the web site would not increase its overhead or operating costs? What if an employee uses the corporation or labor organization's computer network to send an electronic mail message soliciting contributions or expressly advocating the election or defeat of a candidate? Has the corporation or labor organization provided something of value?

7. News Organizations

a. On-line Publications

The Act contains an exception from the definition of ''expenditure'' for ''any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate.'' 2 U.S.C. 431(9)(B)(i). Section 100.8(b)(2) of the regulations also excludes ''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), newspaper, magazine, or other periodical publication'' from the definition of ''contribution,'' unless the media outlet is owned or controlled by a political party, political committee, or candidate.

The Commission is interested in comments on how these provisions, generally referred to collectively as the ''news story exemption,'' should be applied to the Internet. Under what circumstances should the Commission regard an Internet site as a ''newspaper, magazine, or other periodical publication'' within the meaning of the exemption in section 431(9)(B)(i)? Should it make a difference whether the site owner also produces a broadcast or print publication? Should a site be treated as a periodical publication if the owner regularly revises or updates the site? What, if any, additional characteristics should be required?

Some Internet publishers use ''list serves'' or other types of electronic mailing lists that enable the publisher to send the publication to all subscribers using a bulk e-mail message. Using this method, the publisher can distribute the publication to a large number of subscribers instantly, at very little cost. The Commission is interested in comments on whether publication and distribution via a list serve or other widely-distributed electronic mail communication should fall within the news story exemption? Should it make a difference whether recipients receive these communications without requesting them, only after requesting them, or only after paying a subscription fee? The Commission invites comments on these issues.

Questions also arise as to whether and when information distributed via these sites would be a ''news story, commentary or editorial'' within in the meaning of the exemption. A similar issue arose in *Reader's Digest Association* v. *Federal Election Commission*, 509 F. Supp. 1210 (S.D.N.Y. 1981), in which Reader's Digest Association, a magazine publisher, produced a videotape that featured a federal candidate, and distributed it to various television stations and networks. The videotape related to a story to be run in its print edition. The court noted that the news story exemption ''would seem to exempt only those kinds of distribution that fall broadly within the press entity's legitimate press function.'' *Id.* at 1214. The court concluded that the Commission was entitled to investigate the question of whether Reader's Digest Association was acting as a press entity when it produced and distributed the videotape.

The Commission invites comments on whether new rules are needed to determine whether a news organization's Internet activities fall within its legitimate press function. Are there types of web site content that should be regarded as unrelated to the press function?

b. Candidate Appearances

The Commission is interested in comments on how the Act and regulations should be applied when candidates make public appearances via a web site operated by a news organization. These appearances can take many different forms. New technologies make it possible for candidates to appear on the Internet and interact with viewers in real time. In some cases, the candidate might make a speech that is broadcast on-line using streaming video technology. In other cases, a web site or Internet service provider might invite its members, subscribers, or the general public to attend a real-time on-line interview with a candidate, and may also invite viewers to submit questions for the candidate by electronic mail. It is also possible that, in the future, candidate debates will either be conducted entirely on-line, or will be simulcast on-line. In either case, viewers may be invited to submit questions or comments to the participating candidates.

The Commission addressed some of the issues raised by this activity in Advisory Opinion 1996–16, in which a news and information service proposed to invite presidential candidates to appear in a series of electronic town meetings with the news service's subscribers. During these town meetings, the candidates were linked via two-way television to a live audience consisting of subscribers and other invited guests. The candidates made brief introductory remarks and then answered questions from the live audience. Other subscribers were able to listen by telephone line and submit questions by electronic mail. Later, they could view a multimedia version of the program on the service's dedicated computer terminals.

The Commission concluded that town meetings fall within the press exemption when the news service is a *bona fide* press entity. The Commission reiterated two relevant considerations set out in the statute: (1) Whether the press entity is owned by a political party or candidate; and (2) whether the press entity is acting as a press entity in performing the media activity. The Commission noted that the media entity planned the meetings and therefore controlled the means of presentation, the duration, and the format of the candidates' appearances. Thus, the activity fell within the scope of the news story exemption. The Commission invites comments on whether this conclusion should be revised or incorporated into the regulations, and on other issues raised by candidate appearances on the Internet.

c. On-line Discussions

Another area of campaign-related activity on the Internet is the use of ''chat rooms'' and other fora for interactive discussions of issues and candidates. Are there circumstances under which the sponsor of such a forum should be responsible for statements made by persons participating in the discussion? Does the sponsor make an expenditure by providing a venue for individuals to expressly advocate on behalf of a candidate?

8. Party Committees

The Commission is interested in comments on the impact of the Act and regulations on the use of the Internet by political party committees. One area in which the rules may impact party committee use of the Internet is in the allocation of expenses between candidates under 11 CFR 106.1. Section 106.1(a) states that

> [e]xpenditures, including in-kind contributions, independent expenditures, and coordinated expenditures made on behalf of more than one clearly identified federal candidate shall be attributed to each such candidate according to the benefit reasonably expected to be derived. For example, in the case of a publication or broadcast communication, the attribution shall be determined by the proportion of space or time devoted to each candidate as compared to the total space or time devoted to all candidates. In the case of a fundraising program or event where funds are collected by one committee for more than one clearly identified candidate, the attribution shall be determined by the proportion of funds received by each candidate as compared to the total receipts by all candidates. These methods shall also be used to allocate payments involving both expenditures on behalf of one or more clearly identified federal candidates and disbursements on behalf of one or more clearly identified non-federal candidates.

Party committee web sites often contain references to multiple candidates. Should party committees be required to allocate the costs of their web sites to the candidates mentioned on the site? If so, should the ''time-space'' allocation method set out in section 106.1(a) be applied? Should a party committee be required to take any reference to a candidate, no matter how brief, into account in allocating the web site's costs? Or, should the committee be able to limit its allocation to more extensive references, and exclude candidates to whom only minimal reference is made? Would it be adequate to exempt hyperlinks to candidate web sites from the time-space allocation of a web site, but include more extensive references?

Alternatively, should some or all of the expenses of a web site be treated as ''overhead, general administrative, fund-raising, and other day-to-day costs of political committees'' that need not be attributed to individual candidates under section 106.1(c)(1)? The Commission invites comments on these issues.

The Commission is also interested in the related issue of whether the costs associated with references to candidates on a party committee web site should count toward the party committee's coordinated expenditure limit. Section 441a(d) of the Act states that the national committee of a political party and a state committee of a political party may make expenditures in connection with the general election campaign of candidates for Federal office, up to certain dollar limits. These limits apply to expenditures that are coordinated with the party's candidates. *See Colorado Republican Federal Campaign Committee* v. *FEC,* 518 U.S. 604 (1996). Under what circumstances should a party committee's Internet expenditures count toward this limit?

Finally, the Commission encourages commenters to discuss any other issues relating to the use of the Internet by party committees.

Reporting and Recordkeeping

The use of new avenues for conducting campaign activity often raises reporting issues. Consequently, the Commission is interested in comments on how the use of the Internet impacts the disclosure process.

1. Contributions Received Via the Internet

a. Reporting

In Advisory Opinion 1995–9, the Commission concluded that a political committee could use the Internet to solicit and accept contributions so long as the recordkeeping and reporting requirements were met. The Commission cited previous advisory opinions in which it ''recognized that the Act and regulations allow lawful contributions to be made not only by personal check, but also in other ways, including properly documented use of credit cards (Advisory Opinions 1978–68 and 1984–45).'' As discussed above, the Commission also recently revised its regulations to allow for matching of credit card contributions received by Presidential primary candidates via the Internet. 64 FR 32,394 (June 17, 1999). See also Advisory Opinion 1999–9.

The Commission listed the reporting requirements that the nonconnected committee in Advisory Opinion 1995–9 was required to follow. The committee was required to itemize its receipts, and use best efforts to obtain and submit the full name, mailing address, occupation and name of employer of any person who makes contributions that aggregate in excess of $200 in a calendar year. The Commission also said that if a credit card company or other processing entity deducts fees from the contribution before forwarding it to the committee, those fees would be operating expenses of the committee, and must be reported as such. (Note that, for publicly funded candidates, these fees would be exempt fundraising expenses under 11 CFR 100.8(b)(21)). The committee was also required to report the full amount paid by the contributor as a contribution, notwithstanding any deductions by the credit card company. *See* 2 U.S.C. 434(b)(5)(A), 11 CFR 104.3(b)(3).

The Commission invites comments on whether these conclusions should be revised or incorporated into the regulations, and on whether any additional reporting requirements should be imposed on committees that receive contributions via the Internet.

b. Screening prohibited and excessive contributions

Section 103.3(b) of the regulations states that the treasurer of a political committee shall be responsible for examining all contributions received for evidence of illegality and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the contribution limitations of 11 CFR 110.1 or 110.2.

The Commission is interested in comments on whether additional safeguards are needed to ensure that contributions received via the Internet do not come from sources that are prohibited from making contributions

under the Act, and do not exceed the contributions limits. Should the regulations regarding the process of the screening contributions be revised? Are more specific processing requirements needed to screen out contributions from foreign nationals?

In Advisory Opinion 1995–9, the Commission endorsed a screening procedure in which the web site soliciting contributions would list the prohibitions in the Act, and ask contributors to specifically attest that their contributions were both voluntary and permissible under each prohibition. Potential contributors that did not do so would receive a message stating that Federal law prohibits their contribution, and inviting those who think they have filled out the contribution form incorrectly to try again. The Commission also addressed the issue of screening procedures in Advisory Opinion 1999–9. Should aspects of the screening procedures described in these advisory opinions be incorporated into the regulations? Should these procedures be modified? The Commission invites comments on these issues.

2. Disbursements for Expenses Incurred in Internet Activity

The Commission is interested in comments on whether or not disbursements for Internet-related expenses should be subject to the reporting requirements? If so, how should costs associated with establishing a campaign web site be reported? Should they be operating expenses, or as some other type of expense? If the committee of a publicly funded candidate uses its web site to solicit contributions, should a portion of the cost of establishing and maintaining the site be treated as exempt fundraising expenses under 2 U.S.C. 431(9)(B)(vi) and 11 CFR 100.8(b)(21)? How should a committee report the initial costs of the computer hardware obtained to host the site? What about the costs of software purchased to create and maintain the site? How should fees paid to Internet service providers be reported?

Comments are also welcome on whether the reporting requirements should be applied to a web site that is only partially devoted to candidate advocacy. If so, how should the costs associated with the candidate-related portion of the site be determined and reported?

Similar issues arise in relation to a multicandidate committee web site that mentions several candidates. As discussed above in relation to party committees, section 106.1 of the Commission's current regulations requires multicandidate committees to attribute expenditures made on behalf of more than one candidate to each candidate according to the benefit reasonably expected to be derived. 11 CFR 106.1(a)(1). Should a multicandidate committee whose web site expresses support for several candidates be required to allocate the costs of the site? If so, should the time-space allocation method in section 106.1(a)(1) be used to allocate those costs between the specifically identified candidates? Or, should the costs of the web site be treated the same as the committee's other administrative expenses, and allocated in accordance with 11 CFR 106.6(c)?

3. Recordkeeping

The use of the Internet for campaign activity also raises questions regarding the retention of campaign records. Sections 432(c) and (d) of the FECA require treasurers to create and maintain records of committee transactions, and preserve those records for three years after filing the associated report. In the case of reports filed electronically, machine-readable copies of committee reports must be maintained for three years.

In Advisory Opinion 1995–9, discussed above, the Commission concluded that the requesting committee could maintain records of contributions received via the Internet in non-paper form so long as the electronic records contained the information required by the statute, and were retained for three years.

The Commission is interested in comments on the types of records committees should be required to keep regarding transactions conducted via the Internet. Should these records be maintained differently than those made using traditional media? Should the conclusion reached in Advisory Opinion 1995–9 regarding retention of records be revised or explicitly stated in the regulations?

Other Issues

1. Electronic Mail

Many aspects of the campaign finance process involve the use of the mail. The Commission is interested in comments on how broadly it should treat electronic mail as a substitute for regular mail.

For example, section 432(i) of the FECA requires treasurers of political committees to exercise ''best efforts'' to report the complete identification of each contributor whose contributions aggregate more than $200 per calendar year. 2 U.S.C. 434(b)(3)(A). For an individual, ''identification'' means the full name, mailing address, occupation and employer. 2 U.S.C. 431(13). If a contributor fails to provide this information, the Commission's rules require the recipient committee to make one oral or written follow-up attempt to obtain the contributor information for any contribution that exceeds $200 per calendar year. 11 CFR 104.7(b)(2)

The threshold question presented is whether a follow-up attempt sent by electronic mail should satisfy the best efforts requirement. In Advisory Opinion 1995–9, the Commission determined that, in the case of a contribution received via the Internet, the follow-up request could consist of an electronic message sent to the contributor's e-mail address. However, the request must be sent after the committee received the credit card company's confirmation of the contribution, and must meet the specific ''best efforts'' requirements set forth in 11 CFR 104.7(b)(2).

The Commission is interested in comments on whether the conclusion reached in Advisory Opinion 1995–9 regarding the use of electronic mail for best efforts follow-up communications should be revised or incorporated into the regulations. If so, how should the rules address situations where a committee's follow-up request is not successfully delivered to the contributor? For example, if the contributor has changed his or her e-mail address, he or she would not receive the follow-up request directly. Furthermore, if the contributor has not arranged for e-mail sent to his or her old address to be forwarded, he or she may not receive the request at all. In addition, the committee's follow-up request might reach the contributor's former address before that account has been completely deactivated by the Internet service provider. In that case, the committee would not receive an error message indicating that its follow-up request was undeliverable, and thus might not be aware that its follow-up request had not reached the contributor. How should the rules address these situations?

Should the Commission extend Advisory Opinion 1995–9 to allow committees to use electronic mail to follow up on contributions received by regular mail? Are contributors more likely to provide information when prompted to do so by a computer than they are when they are prompted by regular mail or a phone call?

Finally, the Commission is interested in comments on whether there are circumstances in which the disclaimer requirement should apply to electronic

mail. As explained above, section 441d of the FECA states that ''[w]henever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising,'' the communication must contain a disclaimer statement. *See also* 11 CFR 110.11. Comments are welcome on the question of whether list serves or other forms of electronic mail that are distributed to large numbers of recipients in bulk should be regarded as general public political advertisements for which a disclaimer is required.

The Commission is also interested in comments on any other issues raised by the use of electronic mail for candidate or election-related activity.

2. Membership

Section 441b(b)(4)(A) prohibits a corporation and its separate segregated fund from soliciting contributions from persons other than its stockholders and their families or its executive or administrative personnel and their families. However, under paragraph (b)(4)(C), a membership organization or its the separate segregated fund may solicit contributions from ''members'' of the organization. The Commission recently approved new rules defining the term ''member.'' 64 FR 41,266 (Jul. 30, 1999). These rules are currently before Congress pending legislative review.

Because of the increasing availability of the Internet, there may now be organizations that exist almost entirely on-line. Persons visiting the web site of such an organization may be invited to become members of the organization. Are there special considerations in determining whether these organizations qualify as ''membership organizations?'' Are there additional factors in evaluating whether someone is a ''member'' of an on-line membership organization?

3. Draft Committees

Periodically, groups form to encourage, or ''draft,'' someone to become a candidate for a particular office. The Internet may be the ideal vehicle for draft committees to use to generate support for their prospective candidates.

The Commission is interested in comments on the use of the Internet by draft committees. The current rules contain only one provision that is directed specifically at draft committees. Section 102.14(b)(2) states that ''[a] political committee established solely to draft an individual or to encourage him or her to become a candidate may include the name of such individual in the name of the committee provided the committee's name clearly indicates that it is a draft committee.'' Should the rules be revised to address other aspects of draft committee activities? Do web sites established by draft committees raise any special issues under the FECA? The Commission is interested in comments on these issues.

Conclusion

The Commission invites comments on these issues, and on any other issues related to the use of the Internet for campaign activity.

Dated: November 1, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–28982 Filed 11–4–99; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1050]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z. The proposed update addresses short-term cash advances commonly called ''payday loans'' and includes technical revisions.

DATES: Comments must be received on or before January 10, 2000.

ADDRESSES: Comments, which should refer to Docket No. R–1050, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP–500 in the Board's Martin Building between 9:00 a.m. and 5:00 p.m., pursuant to the Board's Rules Regarding the Availability of Information, 12 CFR part 261.

FOR FURTHER INFORMATION CONTACT: Natalie E. Taylor, Michael E. Hentrel, or David A. Stein, Staff Attorneys; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) *only*, contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA; 15 U.S.C. 1601 *et seq.*) is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate. Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping for credit. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwelling. In addition, the act regulates certain practices of creditors. The act is implemented by the Board's Regulation Z (12 CFR part 226).

The Board's official staff commentary (12 CFR part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions. The commentary is a substitute for individual staff interpretations; it is updated periodically to address significant questions that arise. The Board expects to adopt revisions to the commentary in final form in March 2000; to the extent the revisions impose new requirements on creditors, compliance would be optional until October 1, 2000, the effective date for mandatory compliance.

II. Proposed Revisions

Subpart A—General

Section 226.2—Definitions and Rules of Construction

2(a) Definitions
2(a)(14) Credit

The Board has been asked to clarify whether ''payday loans''—also known as ''cash advance loans,'' ''check advance loans,'' and ''post-dated check loans''—constitute credit for purposes of TILA. Typically in such transactions, a short-term cash advance is made to a consumer in exchange for the consumer's personal check in the