



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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March 23, 2005

MEMORANDUM

**AGENDA ITEM**  
For Meeting of: 03-24-05  
**SUBMITTED LATE**

**TO:** The Commission

**THROUGH:** James A. Pehrkon *JAP*  
Staff Director

**FROM:** Lawrence H. Norton *LHN*  
General Counsel

Rosemary C. Smith *RCS*  
Associate General Counsel

Brad C. Deutsch *BCD*  
Assistant General Counsel

Amy L. Rothstein *ALR*  
Attorney

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Attorney

Esa L. Sferra *ESL*  
Attorney

**SUBJECT:** Draft Notice of Proposed Rulemaking on Internet Communications

Attached is a draft Notice of Proposed Rulemaking ("NPRM") regarding communications over the Internet. The Office of the General Counsel has been asked to transmit this NPRM to the Commission Secretary in anticipation of tomorrow's Open Session.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Parts 100, 110 and 114**

3 **[Notice 2005 – X]**

4 **Internet Communications**

5  
6 **AGENCY:** Federal Election Commission.

7 **ACTION:** Notice of Proposed Rulemaking.

8 **SUMMARY:** The Federal Election Commission requests comments on proposed  
9 changes to its rule that would include paid advertisements on the  
10 Internet in the definition of “public communication.” These  
11 changes to the Commission’s rule would implement the recent  
12 decision of the U.S. District Court for the District of Columbia in  
13 Shays v. Federal Election Commission, which held that the current  
14 definition of “public communication” impermissibly excludes all  
15 Internet communications. Comment is also sought on the related  
16 definition of “generic campaign activity” and on proposed changes  
17 to the disclaimer regulations. Additionally, comment is sought on  
18 proposed new exceptions to the definitions of “contribution” and  
19 “expenditure” for certain Internet activities and communications  
20 that would qualify as individual volunteer activity or that would  
21 qualify for the “press exemption.” These proposals are intended to  
22 ensure that political committees properly finance and disclose their  
23 Internet communications, without impeding individual citizens

1 from using the Internet to speak freely regarding candidates and  
2 elections. The Commission has made no final decision on the  
3 issues raised in this rulemaking. Further information appears in  
4 the supplementary information that follows.

5 **DATES:**

6 Comments must be received on or before [INSERT DATE 60  
7 DAYS AFTER THE DATE OF PUBLICATION IN THE  
8 FEDERAL REGISTER]. The Commission will hold a hearing on  
9 the proposed rules on [INSERT DATE OF HEARING] at 9:30  
10 a.m. Anyone wishing to testify at the hearing must file written  
11 comments by the due date and must include a request to testify in  
the written comments.

12 **ADDRESSES:**

13 All comments must be in writing, must be addressed to Mr. Brad  
14 C. Deutsch, Assistant General Counsel, and must be submitted in  
15 either electronic, facsimile, or hard copy form. Commenters are  
16 strongly encouraged to submit comments electronically to ensure  
17 timely receipt and consideration. Electronic comments must be  
18 sent to either [internet@fec.gov](mailto:internet@fec.gov) or submitted through the Federal  
19 eRegulations Portal at [www.regulations.gov](http://www.regulations.gov). Any commenters  
20 who submit electronic comments and wish to testify at the hearing  
21 on this rulemaking must also send a copy of their comments to  
22 [internettestify@fec.gov](mailto:internettestify@fec.gov). If the electronic comments include an  
23 attachment, the attachment must be in the Adobe Acrobat (.pdf) or  
Microsoft Word (.doc) format. Faxed comments must be sent to

1 (202) 219-3923, with hard copy follow-up. Hard copy comments  
2 and hard copy follow-up of faxed comments must be sent to the  
3 Federal Election Commission, 999 E Street, N.W., Washington,  
4 D.C. 20463. All comments must include the full name and postal  
5 service address of the commenter or they will not be considered.  
6 The Commission will post comments on its website after the  
7 comment period ends. The hearing will be held in the  
8 Commission's ninth floor meeting room, 999 E Street, N.W.,  
9 Washington, D.C.

10 **FOR FURTHER**  
11 **INFORMATION**  
12 **CONTACT:**

Mr. Brad C. Deutsch, Assistant General Counsel, Ms. Amy L.  
13 Rothstein, Mr. Richard T. Ewell, or Ms. Esa L. Sferra, Attorneys,  
14 999 E Street, N.W., Washington, D.C. 20463, (202) 694-1650 or  
15 (800) 424-9530.

16 **SUPPLEMENTARY**  
17 **INFORMATION:**

18 **I. Introduction**

19 The Bipartisan Campaign Reform Act of 2002, Pub. L. 107-155, 116 Stat. 81  
20 (March 27, 2002) ("BCRA"), amended the Federal Election Campaign Act of 1971, as  
21 amended, 2 U.S.C. 431 et seq. (the "Act"), in many respects. Four of these amendments  
22 are germane to this rulemaking.

1 First, section 441i(b) of BCRA requires State, district, and local political party  
2 committees to use only Federal funds<sup>1</sup> for certain types of “Federal election activity,”  
3 including for any “public communication that refers to a clearly identified candidate for  
4 Federal office . . . and that promotes or supports a candidate for that office, or attacks or  
5 opposes a candidate for that office[.]”<sup>2</sup> 2 U.S.C. 431(20)(A)(iii) (emphasis added).  
6 BCRA defines a “public communication” as “a communication by means of any  
7 broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising  
8 facility, mass mailing, or telephone bank to the general public, or any other form of  
9 general public political advertising.” 2 U.S.C. 431(22) (emphasis added).

10 Second, section 441i(b) of BCRA also restricts the funds that State, district, and  
11 local political party committees may use for certain “generic campaign activity.”  
12 2 U.S.C. 431(20)(A)(ii); 11 CFR 100.24(2)(ii). BCRA defines “generic campaign  
13 activity” as “campaign activity that promotes a political party and does not promote a  
14 [Federal] candidate or non-Federal candidate.” 2 U.S.C. 431(21). “Generic campaign  
15 activity” by State, district, and local party committees conducted in connection with an  
16 election in which a candidate for Federal office appears on the ballot (regardless of  
17 whether a candidate for State or local office also appears on the ballot) must be paid for

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<sup>1</sup> “Federal funds” are funds subject to the limitations, prohibitions, and reporting requirements of the Act. See 11 CFR 300.2(g). “Non-Federal funds” are funds not subject to the limitations and prohibitions of the Act. See 11 CFR 300.2(k).

<sup>2</sup> There are four types of “Federal election activity”: Type 1 - Voter registration activity during the period that begins on the date that is 120 days before a regularly scheduled Federal election is held and ends on the date of the election; Type 2 - Voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot; Type 3 - A public communication that refers to a clearly identified candidate for Federal office; and Type 4 - Services provided during any month by an employee of a State, district, or local committee of a political party who spends more than 25 percent of that individual’s compensated time during that month on activities in connection with a Federal election. See 2 U.S.C. 431(20) and 11 CFR 100.24.

1 either entirely with Federal funds or with an allocated mix of Federal funds and Levin  
2 funds.<sup>3</sup> See 2 U.S.C. 441i(b)(2)(A); 11 CFR 300.32(b)(1)(ii), 300.32(c) and 300.33.

3 Third, BCRA expressly repealed the Commission's then-existing rules on  
4 "coordinated general public political communication" at former 11 CFR 100.23, Public  
5 Law 107-155, sec. 214(b) (March 27, 2002), and instructed the Commission to  
6 promulgate new regulations on "coordinated communications paid for by persons other  
7 than candidates, authorized committees of candidates, and party committees." Public  
8 Law 107-155, sec. 214(c) (March 27, 2002).

9 Fourth, Congress revised the "disclaimer" requirements in 2 U.S.C. 441d, by  
10 requiring a disclaimer when a "disbursement" (rather than an "expenditure") is made for  
11 certain communications.

12 The Commission promulgated regulations in 2002 to implement BCRA's  
13 provisions regarding (1) "public communication," (2) "generic campaign activity," (3)  
14 coordination with candidates and political parties, and (4) disclaimers. See Final Rules  
15 on Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money, 67 FR  
16 49,064 (July 29, 2002) ("Soft Money Final Rules"); Coordinated and Independent  
17 Expenditures, 68 FR 421 (Jan. 3, 2003); Disclaimers, Fraudulent Solicitation, Civil  
18 Penalties, and Personal Use of Campaign Funds, 67 FR 76,962 (Dec. 13, 2002).

19 In Shays v. Federal Election Commission, 337 F.Supp.2d 28 (D.D.C.) appeal  
20 filed, No. 04-5352 (D.C. Cir. Sept. 28, 2004) ("Shays"), the United States District Court

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<sup>3</sup> Levin funds are a type of non-Federal funds created by BCRA that may be raised and spent by State, district, and local party committees and organizations to pay for the allocable portion of Types 1 and 2 Federal election activity. See 2 U.S.C. 441i(b)(2)(A) and (B); 11 CFR 300.2(i), 300.32(b). These funds may include donations from some sources ordinarily prohibited by Federal law (e.g., corporations, labor organizations and Federal contractors) to the extent permitted by State law, but are limited to \$10,000 per calendar year from any source or to the limits set by state law – whichever limit is lower. See 11 CFR 300.31.

1 for the District of Columbia overturned some of these regulations. First, the district court  
2 held that excluding all Internet communications from the Commission’s rule defining  
3 “public communication” in 11 CFR 100.26 was inconsistent with Congress’s use of the  
4 phrase “or any other form of general public political advertising” in BCRA’s definition of  
5 “public communication.”<sup>4</sup> Shays at 69. The district court concluded that “[w]hile all  
6 Internet communications do not fall within [the scope of ‘any other form of general  
7 public political advertising’], some clearly do.” Id. at 67. The court left it to the  
8 Commission to determine “what constitutes ‘general public political advertising’ in the  
9 world of the Internet,” and thus should be treated as a “public communication”. Id. at 70.

10 Second, the district court found the Commission’s rule defining the term “generic  
11 campaign activity” to be “an impermissible construction of the Act,” to the extent it  
12 incorporated the regulatory definition of “public communication,” which excludes all  
13 forms of Internet communications. Id. at 112. Although the court specifically approved  
14 the definition of “generic campaign activity” as a “public communication”, the Shays  
15 court found that the 2002 Notice of Proposed Rulemaking for “generic campaign  
16 activity” did not provide adequate notice to the public that the Commission might define  
17 “generic campaign activity” as a “public communication” in the final rules. Id. at 112;  
18 Notice of Proposed Rulemaking on Prohibited and Excessive Contributions; Non-Federal  
19 Funds or Soft Money, 67 FR 35,654, 35,675 (May 20, 2002).

20 Third, the district court invalidated the “content prong” of the Commission’s  
21 coordinated communications rule at 11 CFR 109.21(c), which incorporates the definition

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<sup>4</sup> The court found that this rule did not satisfy step one of the test set out by the Supreme Court in Chevron, U.S.A., Inc. v. National Res. Def. Council, 467 U.S. 837 (1984) (“Chevron”). The Shays court stated that, in the alternative, the regulatory definition of “public communication” as applied to the “content prong” of the coordinated communication regulations in 11 CFR 109.21(c) is inconsistent with the Act and, therefore, provides an independent basis for invalidation under step two of the Chevron test. See Shays at 70-71.

1 of “public communication” at 11 CFR 100.26. The Shays court found that expenditures  
2 for communications that have been coordinated with a candidate, a candidate’s  
3 authorized committee, or a political party committee have value for, and therefore are in-  
4 kind contributions to, that candidate or committee, regardless of the content, timing, or  
5 geographic reach of the communications. Shays at 63-64. Accordingly, the court held  
6 that certain regulatory exclusions contained in the “content prong” “undercut [the Act’s]  
7 statutory purpose of regulating campaign finance and preventing circumvention of the  
8 campaign finance rules.” Id. at 63.

9         The district court remanded each of these rules to the Commission for further  
10 action consistent with its opinion. Accordingly, the Commission is issuing this Notice of  
11 Proposed Rulemaking (“NPRM”), which addresses several topics. First, the proposed  
12 rules in 11 CFR 100.26 would identify the types of Internet communications that are  
13 forms of “general public political advertising” and that therefore would qualify as public  
14 communications. Specifically, the Commission proposes to retain a general exclusion of  
15 Internet communications from the definition of “public communication,” except for those  
16 advertisements where another person or entity has been paid to carry the advertisement  
17 on its website, because these communications would constitute “general public political  
18 advertising.” This proposed change addresses the Shays court’s concern about the  
19 wholesale exclusion of all Internet communications from the definition of “public  
20 communication.” Because only Internet communications that constitute “general public  
21 political advertising,” as defined by the regulation, would be included in the proposed  
22 definition of “public communication” in section 100.26, the Commission anticipates that  
23 the proposed definition would have an extremely limited impact, if any, on the use of the



1 Internet by individuals as a means of communicating their political views, obtaining  
2 information regarding candidates and elections, and participating in political campaigns.

3 Second, this NPRM republishes and invites comment on the current definition of  
4 “generic campaign activity” in section 100.25, which includes the term “public  
5 communication.” The Commission notes that any changes to the underlying definition of  
6 “public communication” pertaining to the Internet would automatically apply to “generic  
7 campaign activity.”

8 Third, the Commission proposes to modify somewhat its rules at 11 CFR  
9 110.11(a) as to which Internet communications require disclaimers. Political committee  
10 websites would continue to need disclaimers. Individuals and entities other than political  
11 committees, however, would need to place disclaimers only on paid Internet  
12 advertisements (i.e., Internet communications that constitute “general public political  
13 advertising” under the proposed definition of “public communication”) if the  
14 advertisements either solicit contributions or expressly advocate the election or defeat of  
15 a clearly identified candidate for Federal office. The Commission also proposes to clarify  
16 the current requirement that disclaimers be included in “unsolicited electronic mail of  
17 more than 500 substantially similar communications” by defining “unsolicited” as “those  
18 e-mails that are sent to electronic mail addresses purchased from a third party.” The goal  
19 of this proposed change would be to continue to require disclaimers on political “spam,”  
20 without interfering with individuals who participate in large on-line communities.

21 In addition, the Commission is proposing to add new rules specifically excepting  
22 certain volunteer activity on the Internet from the definitions of “contribution” and  
23 “expenditure,” and by clarifying that the rules in section 114.9 regarding the use of

1 corporate or labor organization facilities apply to the use of computer equipment and  
2 Internet services. Lastly, the proposed rules seek to establish an Internet exception from  
3 the definitions of "contribution" and "expenditure" for certain media activity.

4 The Commission has announced plans to initiate a separate rulemaking on certain  
5 non-Internet aspects of the coordinated communication rules at 11 CFR 109.21(c) in the  
6 coming months. For purposes of this rulemaking, the coordinated communication rules  
7 are referenced only to provide notice that the proposed changes to the definition of  
8 "public communication" in 11 CFR 100.26 would have an impact on the scope of the  
9 coordinated communication rules.

## 10 **II. 11 CFR 100.26 – Definition of "Public Communication"**

11 BCRA defines a "public communication" as "a communication by means of any  
12 broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising  
13 facility, mass mailing or telephone bank to the general public, or any other form of  
14 general public political advertising." 2 U.S.C. 431(22). The Commission's current rules  
15 at 11 CFR 100.26 track the statutory definition, except that the definition in the rules  
16 explicitly excludes all communications over the Internet.

17 As a consequence, Internet communications are excluded from other rules  
18 governing the funding of a "public communication." For example, State, district, and  
19 local political party committees and organizations must use only Federal funds for any  
20 "public communication" that promotes, supports, attacks or opposes a Federal candidate.  
21 See 2 U.S.C. 431(20)(A)(iii) and 441i(b); 11 CFR 100.24(b)(3) and (c)(1), 300.32(a)(1)  
22 and (2). In addition, these party committees must use all Federal funds or an allocable  
23 mix of Federal funds and Levin funds for any "public communication" that constitutes

1 “generic campaign activity” in connection with an election in which a candidate for  
2 Federal office appears on the ballot. See 11 CFR 100.25; 11 CFR 300.33(a)(2).

3 The term “public communication” is also used to determine whether a disclaimer  
4 is needed on certain communications under 11 CFR 110.11. Moreover, the “public  
5 communication” definition is one key element in determining what qualifies as a  
6 coordinated communication under 11 CFR 109.21 and a party coordinated  
7 communication under 11 CFR 109.37. “Public communication” may also be used to  
8 determine whether a person is an agent of a candidate for State or local office in 11 CFR  
9 300.2(b)(4), and whether certain expenses must be allocated between Federal and non-  
10 Federal accounts by separate segregated funds (“SSFs”) and nonconnected committees  
11 under 11 CFR 106.6(b) and (f).

12 In light of the Shays decision, the Commission is reconsidering which Internet  
13 communications would qualify as “general public political advertising,” and thus would  
14 be a “public communication.” The Commission’s proposed rule attempts to strike a  
15 balance between provisions of the Act that regulate “general public political advertising”  
16 and significant public policy considerations that encourage the Internet as a forum for  
17 free or low-cost speech and open information exchange.

#### 18 A. The Internet and the 2004 Elections

19 The Internet has unique characteristics that distinguish it from traditional media.<sup>5</sup>  
20 Unlike traditional media, “the Internet can hardly be considered a ‘scarce’ expressive

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<sup>5</sup> See Enrique Armijo, Public Airwaves, Private Mergers: Analyzing the FCC’s Faulty Justification for the 2003 Media Ownership Rule Change, N.C. L. REV. 1482, 1494 (May 2004) (discussing broadcast media and the Internet as “imperfect substitutes”); see also Ryan Z. Watts, Independent Expenditures on the Internet: Federal Election Law and Political Speech on the World Wide Web, 8 COMM.LAW CONSP. 149, 160 (Winter 2000) (discussing Reno v. ACLU, 521 U.S. 844 (1997) and the Internet’s differences from traditional media).

1 commodity. It provides relatively unlimited, low-cost capacity for communication of all  
2 kinds.” Reno v. ACLU, 521 U.S. 844, 870 (1997) (“Reno”). Additionally, because an  
3 Internet communication is not limited in format and is not necessarily limited in duration,  
4 unlike television and radio programming, the Internet provides a means to communicate  
5 with a large and geographically widespread audience, often at little cost.<sup>6</sup>

6 The Internet also differs from traditional media because individuals must  
7 generally be proactive in order to access information over the Internet, unlike users of  
8 traditional media. The Supreme Court has found that communications over the Internet  
9 are not as “invasive” as communications through traditional media. Reno at 870. In  
10 further contrast to passive, one-way traditional media, the Internet can provide  
11 interactive, real-time, two-way communications.

12 The Internet’s accessibility, low-cost, and interactive features make it a popular  
13 choice for sending and receiving information. In 2004, an estimated 201 million people  
14 in the United States used the Internet.<sup>7</sup> At the end of 2004, an estimated 63 percent of the  
15 adult American population, and 81 percent of American teenagers, used the Internet; on  
16 average, some 70 million American adults logged onto the Internet daily.<sup>8</sup>

17 A growing segment of the American population uses the Internet as a supplement  
18 to, or as a replacement for, more traditional sources of information and entertainment,

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<sup>6</sup> See Edward L. Carter, Esq., Outlaw Speech on the Internet: Examining the Link Between Unique Characteristics of Online Media and Criminal Libel Prosecutions, 21 SANTA CLARA COMPUTER & HIGH TECH. L.J. 289, 316-17 (January 2005) (“Internet is unlike traditional print or broadcast media in that messages can have a long shelf life--an Internet message can circulate via e-mail or remain posted somewhere even long after the message's creator has tried to retract it.”).

<sup>7</sup> See Internet World Stats available at <[www.internetworldstats.com/stats2.htm](http://www.internetworldstats.com/stats2.htm)> (last visited 3/7/2005).

<sup>8</sup> See Pew Internet & American Life Project, Trends 2005, Chapter 4, Internet: The Mainstreaming of Online Life, p. 58 (2005) available at <[www.pewinternet.org/pdfs/Internet\\_Status\\_2005.pdf](http://www.pewinternet.org/pdfs/Internet_Status_2005.pdf)> (last visited 3/7/2005).

1 such as newspapers, magazines, television, and radio. In mid-2004, 92 million  
2 Americans reported obtaining news from the Internet.<sup>9</sup>

3 As the public has turned increasingly to the Internet for information and  
4 entertainment, advertisers have embraced the Internet and its new marketing  
5 opportunities. Internet advertising revenue increased by 21 percent between 2002 and  
6 2003 and reached \$4.6 billion in the first six months of 2004.<sup>10</sup>

7 The 2004 election cycle marked a dramatic shift in the scope and manner in which  
8 citizens used websites, blogs,<sup>11</sup> listservs,<sup>12</sup> and other Internet communications to obtain  
9 information on a wide range of issues and candidates.<sup>13</sup> The number of Americans who  
10 used the Internet as a source of campaign news more than doubled between 2000 and  
11 2004, from 30 million to 63 million.<sup>14</sup> An estimated 11 million people relied on  
12 politically oriented blogs as a primary source of information during the 2004 presidential  
13 campaign,<sup>15</sup> and a full 18 percent of all Americans cited the Internet as their leading  
14 source of news about the 2004 presidential election.<sup>16</sup>

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<sup>9</sup> See Pew Internet & American Life Project and the University of Michigan School of Information, *The Internet and the Democratic Debate*, p. 2 (October 27, 2004) available at <[www.pewinternet.org/pdfs/PIP\\_Political\\_Info\\_Report.pdf](http://www.pewinternet.org/pdfs/PIP_Political_Info_Report.pdf)> (last visited 3/7/2005).

<sup>10</sup> See PriceWaterhouseCoopers and Interactive Advertising Bureau, *IAB Internet Advertising Revenue Report* (April 2004 and September 2004), available at <[www.iab.net/resources/ad\\_revenue.asp](http://www.iab.net/resources/ad_revenue.asp)> (last visited 3/7/2005).

<sup>11</sup> The word "blog" derives from the term "Web log" and is defined as "a Web site that contains an online personal journal with reflections, comments and often hyperlinks provided by the writer." <[www.merriam-webster.com](http://www.merriam-webster.com)> (last visited 3/7/2005). People who maintain blogs are known as "bloggers."

<sup>12</sup> A "listserv" is a software program that automatically sends electronic mail messages to multiple e-mail addresses on an electronic mailing list. See, e.g., <[www.lsoft.com/products/listserv.asp](http://www.lsoft.com/products/listserv.asp)> (last visited 3/7/2005). The term "listserv" is commonly used, however, to denote the electronic mailing list itself or the automated forwarding to all addresses on the mailing list of an e-mail sent only to the listserv's e-mail address.

<sup>13</sup> See Pew Internet & American Life Project, *The Internet and Campaign 2004*, available at <[http://www.pewinternet.org/pdfs/PIP\\_2004\\_Campaign.pdf](http://www.pewinternet.org/pdfs/PIP_2004_Campaign.pdf)> (last visited 3/17/2005).

<sup>14</sup> See note 9, above, *The Internet and Democratic Debate*, p. 2. During the same time period, the number of people reporting television as their primary source of campaign information declined. *Id.*

<sup>15</sup> See Jessica Mintz, *When Bloggers Make News - - As Their Count Increases, Web Diarists Are Asking: Just What Are the Rules?* WALL ST. J., Jan. 21, 2005 at B1.

<sup>16</sup> See note 8, above, *The Mainstreaming of Online Life*, p. 2.

1            B. Internet Communications – Proposed 11 CFR 100.26

2            Because the Internet is a unique form of communication, the Commission  
3 proposes to preserve the general exclusion of Internet communications from the  
4 definition of “public communication” in 11 CFR 100.26.

5            At the same time, however, the Commission recognizes that Internet  
6 communications may, in some circumstances, constitute “general public political  
7 advertising” within the definition of “public communication” in 11 CFR 100.26.

8            Accordingly, the Commission proposes to amend 11 CFR 100.26 to include  
9 “general public political advertising” in the form of paid Internet advertisements placed  
10 on another individual’s or entity’s website. Such advertisements could take the form, for  
11 example, of streaming video that appears in banner advertisements or “pop-up”  
12 advertisements.<sup>17</sup>

13            The Commission invites comment on whether announcements placed for a fee on  
14 another entity’s website should be considered “general public political advertising,” and  
15 therefore, a “public communication” under 11 CFR 100.26. Is this approach consistent  
16 with BCRA’s definition of “public communication” to include broadcast, cable or  
17 satellite communications, newspaper, magazines and outdoor advertising facilities, all of  
18 which typically charge fees to those who run political advertisements?

19            If a mode of communication does not cost any money, can it be “general public  
20 political advertising” and therefore a “public communication” within the meaning of the

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<sup>17</sup> “Pop-up” advertisements usually appear in a separate browser window from the one being viewed. The advertisements are superimposed over the window being viewed, and require the viewer to take some action, such as closing the window in which the pop-up advertisement appears, to continue viewing the underlying browser window. See <[www.netlingo.com/lookup.cfm?term=pop%2Dup%20ad](http://www.netlingo.com/lookup.cfm?term=pop%2Dup%20ad)> (last visited 3/7/2005). Although pop-up advertisements technically are not part of the underlying website or account, the Commission seeks comment on whether they should be considered to “appear on” the website for purposes of this rulemaking.

1 statute? For example, a person might appear in a public square and give a campaign  
2 speech before 500 or more people. If such a public speech does not cost any money to  
3 undertake, is it outside the scope of “general public political advertising” under the  
4 statute and therefore not a “public communication”? Likewise, is such a public speech  
5 outside the scope of an “expenditure” or “contribution” under the statute? Also, should  
6 “general public political advertising” include Internet advertisements where the  
7 advertising space was provided for something of value other than a monetary payment,  
8 for example through an exchange of comparable advertising? Although the Commission  
9 rule excludes Internet activity that is not placed for a fee, should the Commission amend  
10 its regulation to explicitly state that it is not including “bloggers” in the definition of  
11 “public communication”?

12         The Act and Commission regulations recognize that corporations and labor  
13 organizations can communicate with their restricted class, but not with the general public,  
14 on “any subject,” and that membership organizations may similarly communicate with  
15 their members. See 2 U.S.C. 431(9)(B)(iii) and 441b(b)(2)(A); 11 CFR 100.134(a) and  
16 114.3(c)(3); see also AO 1997-16. Should the Commission consider excluding from the  
17 definition of “general public political advertising” paid advertisements appearing on  
18 corporate and labor organization websites if access to those sites is restricted to the  
19 restricted class of a corporation or labor organization, or to only the members of a  
20 membership organization?

21

1            C. Effect of Proposed Definition of "Public Communication" on Federal Election  
2            Activity by State, District, and Local Party Committees under 11 CFR  
3            100.24(b) and (c)

4            BCRA defines "Federal election activity" to include "a public communication that  
5 refers to a clearly identified candidate for Federal office . . . and that promotes or  
6 supports a candidate for that office, or attacks or opposes a candidate for that office[.]" 2  
7 U.S.C. 431(20)(A)(iii); see also 11 CFR 100.24(b)(3). State, district, and local political  
8 party committees and organizations, State and local officeholders and candidates, and  
9 their agents, are prohibited from using non-Federal funds to pay for this type of Federal  
10 election activity. See 2 U.S.C. 441i(b) and (f); 11 CFR 100.24(b)(3) and (c)(1),  
11 300.32(a)(1) and (2), and 300.71.

12            The Commission notes that the original definition of 100.26 was promulgated to  
13 permit State, district, and local committees to make references to their Federal candidates  
14 on the committees' official websites without automatically federalizing the year-round  
15 costs of maintaining such a site. It should be noted that this effect of the Internet  
16 exclusion was not rejected by the Shays court. The proposed rule would continue to  
17 allow this exclusion for these websites, while requiring that state, district, and local party  
18 committees use exclusively Federal dollars to place advertisements that promote, support,  
19 attack, or oppose ("PASO") a Federal candidate on another individual's or entity's  
20 website. State, district, and local committee websites must still maintain disclaimers as  
21 required under 11 CFR 110.11(a)(1).

22            The Commission invites comment on this approach and on whether the  
23 Commission should consider further changing its definition of "public communication."



1 If a mere PASO reference to a Federal candidate on a State, district, or local committee's  
2 website were to constitute a public communication, does that require that the entire  
3 website be paid for with hard dollars? If not, the Commission seeks comment on how to  
4 allocate that portion of the website that must be paid for with hard dollars — for example,  
5 based on the time and space of the website that contains PASO communications as  
6 compared to the site overall, or should another allocation method be required? In  
7 addition, what costs should be included in the allocation calculations — all of the costs  
8 associated with establishing and maintaining the website, or only the marginal costs of  
9 creating and maintaining the PASO communication, or some other formulation?

10 The Commission seeks comment on whether any payment by a State, district, or  
11 local party to an outside vendor for content that PASO's a Federal candidate that is  
12 exclusively placed on the party's website should constitute "general public political  
13 advertising" and be deemed a "public communication," thus requiring regulation under 2  
14 U.S.C. 441i(b)(1).

### 15 **III. 11 CFR 100.25 – Definition of "Generic Campaign Activity"**

16 "Federal election activity" includes "generic campaign activity" conducted in  
17 connection with an election in which a candidate for Federal office appears on the ballot.  
18 2 U.S.C. 431(20(A) and 11 CFR 100.24. BCRA defines "generic campaign activity" to  
19 mean "campaign activity that promotes a political party and does not promote a candidate  
20 or non-Federal candidate." The Commission's regulations construe this statutory term to  
21 mean "a public communication that promotes or opposes a political party and does not  
22 promote or oppose a clearly identified Federal candidate or a non-Federal candidate." 11  
23 CFR 100.25 (emphasis added).

1           As noted above, the Shays court rejected the Commission’s definition of “generic  
2 campaign activity” on two grounds: first, that it improperly excluded all Internet  
3 communications and, second, for lack of notice to the public that it would be limited to  
4 “public communications” as defined in 11 CFR 100.26. The Commission proposes to  
5 address the district court’s first concern by revising the definition of “public  
6 communication” to remove the wholesale exclusion of all Internet communications and  
7 to replace it with a more limited exclusion, as explained above. The Commission is  
8 addressing the court’s second concern by providing the public with notice and an  
9 opportunity to comment at this time on whether the Commission should continue to  
10 define the term “generic campaign activity” as “a public communication,” which, as  
11 proposed, would include some types of Internet advertisements. Given that Shays  
12 specifically approved the existing definition of “generic campaign activity,” except for  
13 the exclusion of Internet communications and the notice issue, the Commission is not  
14 proposing to revise the definition of “generic campaign activity” at this time. The  
15 Commission invites comments on this approach.

16 **IV. 11 CFR 110.11 – Communications; advertising; disclaimers (2 U.S.C. 441d)**

17           With its relatively low-cost, wide availability, and ease of access, the Internet is  
18 used by millions of individuals daily to share information and air their views on a variety  
19 of subjects. The Commission recognizes that significant policy reasons support the  
20 continued exclusion of most Internet communications from the disclaimer requirements.

21           As the Commission has stated previously, the Internet “is a medium that allows  
22 almost limitless, inexpensive communication across the broadest possible cross-section of  
23 the American population. Unlike media such as television and radio, where the

1 constraints of the medium make access financially prohibitive for the general population,  
2 the Internet is by definition a bastion of free political speech, where any individual has  
3 access to almost limitless political expression with minimal cost.” Soft Money Final  
4 Rules, 67 FR at 49,072. To this extent, the Internet can be the modern equivalent of a  
5 soapbox in a public square. See Reno v. ACLU, 521 U.S. 844, 870 (1997) (“Through the  
6 use of chat rooms, any person with a phone line can become a town crier with a voice  
7 that resonates farther than it could from any soapbox. Through the use of Web pages,  
8 mail exploders, and newsgroups, the same individual can become a pamphleteer.”)

9         The Commission notes that with respect to most Internet websites and blogs, the  
10 burden of complying with a disclaimer requirement, and the resources needed for the  
11 Commission to monitor such a requirement could outweigh the value of disclosure. This  
12 is particularly true given that the identity of the sponsor of an Internet communication is  
13 often already apparent from the face of the communication. The Commission seeks  
14 comment on these policy rationales and alternative approaches to the disclaimer  
15 requirement.

16         The Act and the Commission’s rules require certain communications to include  
17 clear and conspicuous statements to the public regarding the sources of their funding.  
18 See 2 U.S.C. 441d; 11 CFR 110.11. This disclaimer notice must identify the payor and  
19 disclose either the name of the candidate’s committee that authorized the communication  
20 or the fact that no candidate or candidate’s committee authorized the communication.  
21 See 2 U.S.C. 441d(a); 11 CFR 110.11(b). If the disclaimer notice states that the  
22 communication was not authorized by a candidate or candidate’s committee, the notice  
23 must disclose the payor’s full name and street address, telephone number, or World Wide

1 Web address. See 2 U.S.C. 441d(a)(3); 11 CFR 110.11(b)(3). Political committees must  
2 include a disclaimer on any “public communication” for which they make disbursements.  
3 See 11 CFR 110.11(a)(1). For all other persons, a disclaimer is required for any “public  
4 communication” that expressly advocates the election or defeat of a clearly identified  
5 candidate for Federal office or that solicits contributions. See 11 CFR 110.11(a)(2) and  
6 (3).<sup>18</sup> The Commission notes that the lack of an affirmative disclaimer requirement for  
7 most Internet activities does not alleviate a duty to comply with 2 U.S.C. 441h  
8 prohibitions against fraudulent misrepresentation. The Commission originally  
9 promulgated these regulations to focus on what is commonly referred to as “spam” e-  
10 mail.

11 A. Scope of Disclaimer Requirements – Proposed 11 CFR 110.11(a)

12 In the existing disclaimer regulations in section 110.11(a), the term “public  
13 communication” differs slightly from the term “public communication” as defined in 11  
14 CFR 100.26. Specifically, “public communication” as defined in current 11 CFR 100.26  
15 expressly excludes Internet communications, whereas “public communication” as defined  
16 in the current disclaimer regulations includes “unsolicited electronic mail of more than  
17 500 substantially similar communications and Internet websites of political committees  
18 available to the general public.” 11 CFR 110.11(a). Thus, political committees must  
19 include disclaimers on their websites available to the general public, and in unsolicited  
20 e-mail of more than 500 substantially similar communications. Other persons must also  
21 provide disclaimers in unsolicited e-mail of more than 500 substantially similar  
22 communications that expressly advocate the election or defeat of a clearly identified  
23 Federal candidate or solicit a contribution.

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<sup>18</sup> Electioneering communications also require a disclaimer. See 11 CFR 110.11(a)(4).

1           The Commission is concerned that the current regulation emphasizes the number  
2 of e-mail communications sent, rather than focusing on whether an expenditure was made  
3 that would justify governmental regulation. The Commission notes that the statute  
4 generally seems to be predicated on an “expenditure” or “disbursement” being made.  
5 The Commission is not interested in requiring disclaimers on the personal  
6 communications of private citizens. The Commission is concerned that the lack of  
7 definition for the term “unsolicited,” could have the effect of discouraging individuals  
8 from engaging in discussion and advocacy that is core political speech protected by the  
9 First Amendment and that is virtually cost-free.

10           Therefore, the Commission is proposing to change the disclaimer requirement in  
11 11 CFR 110.11(a) to focus on those e-mail communications for which the e-mail  
12 addresses of the recipients were acquired through a commercial transaction. Such a  
13 disclaimer requirement is intended to strike a balance between the disclosure purposes of  
14 the Act and regulation of expenditures, and the protection of individual free speech and  
15 robust communication. The Commission seeks comment on this approach. Should the  
16 Commission continue to include a 500-e-mail threshold? Given the ease of sending large  
17 numbers of e-mail, would a larger numerical threshold be appropriate? The Commission  
18 also seeks comment on whether a minimum cost should be included in this disclaimer  
19 requirement, such as the \$250 threshold contained in the statute for independent  
20 expenditures. See 2 U.S.C. 434(c)(1). Should a dollar threshold be included in concert  
21 with or in lieu of the 500-piece requirement? Is there a more appropriate definition of  
22 “unsolicited” e-mail in this context? Should “unsolicited” e-mail include e-mail where  
23 the recipients’ e-mail addresses were acquired from a third party in a non-cash

1 transaction, either through an e-mail list “swap,” or other multi-party transactions where  
2 list of e-mail addresses is acquired at no cost? The Commission, alternatively, seeks  
3 comments on whether the disclaimer requirement for e-mail should be removed entirely  
4 from the regulation.

5         The revisions to the disclaimer provisions in 11 CFR 110.11(a) would still require  
6 disclaimers for any “public communication” as defined at 11 CFR 100.26 made by a  
7 political committee, and for any “public communication” by any person that expressly  
8 advocates the election or defeat of a clearly identified Federal candidate or that solicits a  
9 contribution. See 11 CFR 110.11(a). The proposed definition of “public  
10 communication” in section 100.26 would have the effect of expanding the scope of the  
11 disclaimer requirements in section 110.11 to any advertisement placed for a fee on  
12 another party’s website that expressly advocates the election or defeat of a clearly  
13 identified Federal candidate or solicits a contribution. In addition, political committees  
14 would continue to be required to post disclaimers on their websites provided that they are  
15 “available to the general public.”

16         The Commission seeks comments on these proposed revisions to 11 CFR  
17 110.11(a).

#### 18         B. Bloggers Paid By Candidates

19         News reports indicate that in the 2004 elections some individual bloggers  
20 received significant fees from the campaign committees of at least one presidential  
21 candidate and one Senate candidate to promote the candidates’ campaigns on their

1 blogs.<sup>19</sup> For example, the operator of the ninth most “linked” blog on the Internet, which  
2 received as many as one million visits daily, reportedly received \$12,000 over a four-  
3 month period from one presidential candidate.<sup>20</sup> The news reports further indicate that  
4 not all of the bloggers disclosed the payments to the blogs’ readers.

5         The Commission notes that its current rules require a political committee to  
6 disclose this type of disbursement on its publicly available reports filed with the  
7 Commission. The Commission does not therefore propose to change the disclaimer  
8 regulation in 11 CFR 110.11(a) to require bloggers to disclose payments from a  
9 candidate, a campaign, or a political committee. The Commission seeks comment on this  
10 approach. Should bloggers be required to disclose such payments? Should a blogger be  
11 required to disclose payments only if the blogger expressly advocates the election or  
12 defeat of a clearly identified candidate or solicits a contribution? Would a payment by a  
13 political committee to a blogger for promotional content on the blog constitute “general  
14 public political advertising” within the meaning of 100.26?

## 15 **V. 11 CFR 109.21 and 109.37 – Coordinated Communications**

### 16 **A. Content Standards for Coordinated Communications – 11 CFR 109.21(c)**

17         Payments for certain communications that are coordinated with a candidate, a  
18 candidate’s authorized committee, a political party committee, or any of their agents, are  
19 treated as in-kind contributions to the candidate, the candidate’s authorized committee, or  
20 the political party committee. See 2 U.S.C. 441a(a)(7); 11 CFR 109.21. The  
21 Commission’s regulations set out a three-pronged test for determining whether a

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<sup>19</sup> See, e.g., William M. Bulkely and James Bandler, Dean Campaign Made Payments to Two Bloggers, WALL ST. J., Jan. 14, 2005 at B2; Charles Babington and Brian Faler, A Committee Post and a Pledge Drive - - Bloggers on the Payroll, WASH. POST, Dec. 17, 2004, at A16.

<sup>20</sup> See William M. Bulkely and James Bandler, Dean Campaign Made Payments to Two Bloggers, WALL ST. J., Jan. 14, 2005 at B2.

1 communication has been “coordinated.” See 11 CFR 109.21. The three-pronged test  
2 looks, in part, at whether the communication satisfies the “content prong” of 11 CFR  
3 109.21(c).<sup>21</sup> To satisfy the “content prong” of the coordinated communication test, a  
4 communication must: (1) be an electioneering communication, as defined in 11 CFR  
5 100.29; (2) be a public communication that disseminates, distributes, or republishes, in  
6 whole or in part, campaign materials prepared by a Federal candidate, the candidate’s  
7 authorized committee, or their agents; (3) be a public communication that expressly  
8 advocates the election or defeat of a clearly identified candidate for Federal office; or (4)  
9 be a public communication that refers to a political party or a clearly identified candidate  
10 for Federal office, is publicly distributed or disseminated within 120 days of an election  
11 for Federal office, and is directed to voters within the jurisdiction of the clearly identified  
12 candidate or to voters in a jurisdiction in which one or more candidates of the political  
13 party appear on the ballot. See 11 CFR 109.21(c)(1)-(c)(4).

14 In Shays, the court struck down the “content prong” of the coordinated  
15 communication test. The Commission announced its intention to propose changes  
16 regarding the non-Internet aspects of the coordinated communication regulations in a  
17 separate rulemaking to take place in May 2005, with final rules pending the outcome of  
18 the appeal.

19 Because of the pending appeal and the upcoming rulemaking on coordinated  
20 communications, the Commission is not proposing to revise 11 CFR 109.21 in this  
21 rulemaking. The Commission notes, however, that revising the definition of “public

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<sup>21</sup> The other two prongs of the coordinated communication test are (1) whether someone other than the candidate, the candidate’s authorized committee, a political party committee, or any of their agents paid for the communication in question; and (2) whether the communication satisfies the “conduct prong” of 11 CFR 109.21(d).



1 communication” to include certain Internet communications would render such Internet  
2 communications subject to the current coordinated communication provisions of section  
3 109.21<sup>22</sup> The Commission invites comments on this approach.

4 The Commission’s rule would exempt from the coordinated communication rules  
5 advertisements that require payments to outside vendors to create, but that are placed  
6 only on the payor’s own website. This could include a corporation or other prohibited  
7 source. The Commission seeks comment on whether this approach is appropriate, and on  
8 whether any other parts of the Commission’s regulations, e.g. those provisions at 11  
9 C.F.R. 114.4 that deal with corporate and labor communications beyond the restricted  
10 class, can be interpreted to nonetheless place restrictions on such activity. The  
11 Commission’s rule would also exempt from the coordinated communication rules  
12 advertisements that are placed on a prohibited source’s website for free, even though a  
13 fee would normally be charged. Is this an appropriate course? Do any of the  
14 Commission’s other rules already regulate this so that such activity would be prohibited?

15 B. Dissemination, Distribution, or Republication on the Internet – 11 CFR 109.21

16 Under the current Commission regulations, a person makes a contribution by  
17 financing a public communication that disseminates, distributes, or republishes, in whole  
18 or in part, campaign materials prepared by a candidate, the candidate’s authorized  
19 committee, or an agent of any of the foregoing, unless certain exceptions apply. 11 CFR  
20 109.21(c)(2). A candidate’s principal campaign committee need not report the  
21 dissemination, distribution, or republication of its campaign materials as an in-kind

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<sup>22</sup> In addition to its use in connection with the “content prong,” the term “public communication” is used in connection with the “conduct prong” of the coordinated communication regulations involving the use of a “common vendor.” See 11 CFR 109.21(d)(4)(ii)(E) and (F).

1 contribution, however, unless such activity is a “coordinated communication” under 11  
2 CFR 109.21. See 11 CFR 109.23(a).

3 The Commission notes that changes to the definition of public communication  
4 would expand the reach of this regulation to individuals or entities that place  
5 announcements for a fee on another individual’s or entity’s website, when the  
6 advertisement content otherwise constitutes a republication regulated under 11 C.F.R.  
7 109.21(c)(6).

8 The Commission notes that the change to the definition of “public  
9 communication” would not affect content placed by an individual on his or her own  
10 website, blog, or e-mail. Because republishing campaign materials on one’s own  
11 website, blog, or e-mail would not be a public communication, it would not be a  
12 contribution to the candidate under 11 CFR 109.21. The Commission notes that Senator  
13 Russ Feingold, one of BCRA’s sponsors, stated recently that “linking campaign websites,  
14 quoting from, or republishing campaign materials and even providing a link for donations  
15 to a candidate, if done without compensation, should not cause a blogger to be deemed to  
16 have made a contribution to a campaign or trigger reporting requirements.”<sup>23</sup> Should the  
17 Commission amend 11 CFR 109.21(c)(2) to exempt all dissemination, distribution, or  
18 republication of campaign materials on the Internet generally, or keep the reference in the  
19 regulation to “public communication”?

20 C. Political Party Coordinated Communications – 11 CFR 109.37

21 The “party coordinated communication” rule at 11 CFR 109.37(a) sets out a  
22 three-pronged test for determining whether payments by a political party committee for

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<sup>23</sup> Senator Russ Feingold, “Blogs Don’t Need Big Government” available at  
<<http://mydd.com/story/2005/3/10/112323/534>> (last visited 3/17/2005).

1 communications are “coordinated” with a candidate for Federal office, a candidate’s  
2 authorized committee, or an agent of either of the foregoing. This test parallels the three-  
3 pronged test in the “coordinated communication” regulations in 11 CFR 109.21.  
4 Therefore, as with the coordinated communication regulation, the proposed change to the  
5 definition of “public communication” in 11 CFR 100.26 would expand the scope of  
6 communications covered by the party coordinated communication regulation to include  
7 certain communications over the Internet. The Commission seeks comment on this  
8 result.

9 **VI. Other Uses of the Term “Public Communication” in the Commission’s**  
10 **Regulations**

11 The term “public communication” is also used in 11 CFR 106.6 and 300.2. Thus,  
12 any changes to the definition of “public communication” or “general public political  
13 advertising” in proposed 11 CFR 100.26 to include certain Internet advertisements would  
14 affect the application of these two sections.

15 A. Allocation of Expenses Between Federal and Non-Federal Activities by  
16 Separate Segregated Funds and Nonconnected Political Committees – 11 CFR  
17 106.6

18 The Commission recently promulgated revisions to its rules on the allocation of  
19 certain expenses by SSFs and nonconnected committees. See 11 CFR 106.6(b)(1), (b)(2),  
20 and (f) (2005); Allocation Final Rules, 69 FR 68,056 (Nov. 23, 2004). These revised  
21 regulations require SSFs and nonconnected committees to allocate between their Federal  
22 and non-Federal accounts the costs of certain public communications, such as those that  
23 refer to a political party and clearly identified Federal and non-Federal candidates. In

1 addition, the new regulations set forth requirements as to which public communications  
2 these committees may pay for using non-Federal funds.

3 The effect of the proposed revisions to the definition of “public communication”  
4 in 11 CFR 100.26 would require SSFs and nonconnected committees to use Federal funds  
5 to pay for some public communications over the Internet. The Commission invites  
6 comment on this result.

7 B. Definition of “Agent” – 11 CFR 300.2

8 BCRA prohibits candidates for State and local offices, and their agents, from  
9 using non-Federal funds to pay for any “public communication” that PASOs a candidate  
10 for Federal office. See 2 U.S.C. 441i(f). Under the Commission’s regulations, an  
11 “agent” includes any person who is authorized by a candidate for State or local office to  
12 “spend funds for a public communication,” as defined in 11 CFR 100.26. 11 CFR  
13 300.2(b)(4). Thus, as a result of the proposed change to the definition of “public  
14 communication,” a person would be an agent of a State or local candidate if he or she is  
15 authorized by that non-Federal candidate to pay for any Internet communication that is a  
16 “public communication” under proposed 11 CFR 100.26. The Commission invites  
17 comments on this result and whether it should consider further changing its proposed  
18 definition of “general public political advertising” or “public communication” in 11 CFR  
19 100.26 in light of this result.

20 **VII. 11 CFR 100.73 and 100.132 – Exception for news story, commentary, or**  
21 **editorial by the media.**

22 The Commission is also considering whether expressly to extend the protections  
23 of the exception for news stories, commentaries and editorials to media activities that

1 occur on the Internet. In the Act, Congress exempted from the definition of  
2 “expenditure” “any news story, commentary, or editorial distributed through the facilities  
3 of any broadcasting station, newspaper, magazine, or other periodical publication, unless  
4 such facilities are owned or controlled by any political party, political committee, or  
5 candidate.” 2 U.S.C. 431(9)(B)(i). In enacting the statutory exemption for the media,  
6 Congress intended to assure “the unfettered right of the newspapers, television networks,  
7 and other media to cover and comment on political campaigns.” H.R. Rep. No. 93-1239,  
8 93d Congress, 2d Session at 4 (1974) (emphasis added). The Commission has  
9 implemented this statutory exemption in its regulations. See 11 CFR 100.73 and  
10 100.132.

11 Many aspects of the contemporary media did not exist, or were not as prevalent,  
12 when Congress enacted the statutory exemption in the Act in the 1970s. In the past,  
13 however, the Commission has made clear that the statutory exemption applies to new and  
14 emerging forms of mass media, even if they did not exist or were not widespread when  
15 Congress passed the Act. For example, recognizing that cable programming utilized the  
16 same aspects of speech and communication of ideas as broadcast stations, the  
17 Commission modified its regulations to make clear that the Act’s statutory exemption  
18 applied to cable programming. The Commission noted that “although the cable  
19 television industry was much less developed when Congress expressed this intent, it is  
20 reasonable to conclude that cable operators, programmers and producers, when operating  
21 in their capacity as news producers and distributors, would be precisely the type of ‘other  
22 media’ appropriately included within this exemption.” 61 FR 18,050 (Apr. 24, 1996).  
23 Accordingly, cable programming is included in the Commission’s current regulations

1 implementing the statutory exemption. See 11 CFR 100.73 and 100.132. See also  
2 Turner Broadcasting System, v. FEC, 512 U.S. 622 (1994); Medlock v. Leathers, 499  
3 U.S. 439, 444 (1991) (stating that cable television provides news, information, and  
4 entertainment and is, in much of its operation, part of the press).

5 The Commission is now considering whether to amend its regulations to make  
6 clear that the statutory exemption also applies to media activities on the Internet.  
7 Specifically, the Commission is proposing to amend sections 100.73 and 100.132 of its  
8 regulations to indicate that any media activities that otherwise would be entitled to the  
9 statutory exemption are likewise exempt when they are transmitted over the Internet. In  
10 so doing, the Commission recognizes that media operations increasingly take place on the  
11 Internet. The proposed revision would allow for the application of the media exemption  
12 to all forms of media activities on the Internet, whether it be through a website, e-mail, or  
13 some other form of Internet communication.

14 The Commission seeks comment on the proposed revisions to its regulatory  
15 media exemption for news stories, commentaries, and editorials. The Commission also  
16 seeks comment on whether the proposed revisions are consistent with or required by the  
17 statutory language of the Act. The Commission further seeks comment on the  
18 appropriate breadth of the exemption to media activities over the Internet. Should the  
19 exemption be limited to entities who are media entities and who are covering or carrying  
20 a news story, commentary, or editorial? Should the exemption be limited only to the  
21 Internet activities of media entities that also have off-line media operations? The  
22 Commission notes that the proposed regulation expressly rejects a policy that only a bona

1     vide press entity with an off-line component is entitled to protection in their on-line news  
2     stories, commentaries, and editorials.

3             The proposed revision would extend the media exemption to media entities whose  
4     activities exist solely on-line, without a print or broadcast component, as well as to media  
5     entities who have a broadcast or print component as well as an on-line presence. For  
6     example, Salon.com, Slate.com, and Drudgereport.com do not publish off-line. Such on-  
7     line sites provide direct access to political news and events and offer commentary on  
8     current affairs. The Commission recognizes that on-line sites are as accessible as printed  
9     periodicals or news programs and therefore proposes to clarify that the media exemption  
10    extends to those entities who may solely have an on-line presence as well as to those  
11    entities who have an on-line component in addition to their broadcast or print activities.  
12    The Commission seeks comment on this approach. The Commission notes that it has  
13    applied the media exemption on a case-by-case basis in a wide variety of contexts. See  
14    A0s 2004-7, 2003-34, 2000-13, 1996-48, 1996-41, 1996-16, 1992-26, 1988-22, 1987-08,  
15    1982-44, 1982-58, 1980-90, 1980-109, and 1978-76.

16            The Commission also seeks comment on whether bloggers, whether acting as  
17    individuals or through incorporated or unincorporated entities, are entitled to the statutory  
18    exemption. Can on-line blogs be treated as “periodical publications” within the meaning  
19    of the exemption? See 2 U.S.C. 431(9)(B)(i). If not, why not? Is the media exemption  
20    to be limited to traditional business models, meaning entities that finance operations with  
21    subscriptions or advertising revenue? The Commission also seeks comment on whether  
22    on-line forums qualify for the exemption.

1           The Commission further seeks comment on whether it makes any difference  
2 under the Act if a blogger receives compensation or any other form of payment from any  
3 candidate, political party, or political committee for his or her editorial content? Would  
4 any such payments mean that the blogger is “controlled” by a candidate or political party  
5 within the meaning of 2 U.S.C. 431(9)(B)(i), and therefore is not entitled to the  
6 exemption? The Commission has previously determined that “commentary was intended  
7 to allow third persons access to the media to discuss issues.” See AO 1982-44. Should  
8 bloggers’ activity be considered commentary or editorializing, or news story activity?

9           Lastly, the Commission seeks comment on any other issue pertinent to the  
10 Commission’s consideration of whether to extend the protections of this statutory  
11 exemption to media activities on the Internet.

12 **VIII. Proposed 11 CFR 117.1 – Exceptions to the Definitions of “Contribution”**  
13 **and “Expenditure” for Individual or Volunteer Activity on the Internet**

14           Although the Internet is generally a free or low-cost medium for communication,  
15 the Act’s definitions of “contribution” and “expenditure” are broad enough to apply to  
16 some Internet activity. For example, section 431(8) of the Act states that the term  
17 “contribution” includes “any gift, subscription, loan, advance or deposit of money or  
18 anything of value made by any person for the purpose of influencing any election for  
19 Federal office.” 2 U.S.C. 431(8)(A)(i). Similarly, section 431(9) states that the term  
20 “expenditure” includes “any purchase, payment, distribution, loan, advance, deposit, gift  
21 of money or anything of value, made by any person for the purpose of influencing any  
22 election for Federal office.” 2 U.S.C. 431(9)(A). These definitions have been  
23 incorporated into subparts B and D of 11 CFR part 100.



1 Similarly, the Act's definition of "independent expenditure" is broad enough to  
2 apply to some Internet activity. Section 431(17) of the Act states that "the term  
3 'independent expenditure' means an expenditure by a person expressly advocating the  
4 election or defeat of a clearly identified candidate which is made without cooperation or  
5 consultation with any candidate, or any authorized committee or agent of such candidate,  
6 and which is not made in concert with, or at the request or suggestion of, any candidate,  
7 or any authorized committee or agent of such candidate." 2 U.S.C. 431(17); see also 11  
8 CFR 100.16.

9 However, the definition of "contribution" in the Act and Commission regulations  
10 does not include "the value of services provided without compensation by any individual  
11 who volunteers on behalf of a candidate or political committee." 2 U.S.C. 431(8)(B)(i);  
12 11 CFR 100.74. Furthermore, the definition of a "contribution" does not include:

13 the use of real or personal property, including a church or community  
14 room used on a regular basis by members of a community for  
15 noncommercial purposes, . . . voluntarily provided by an individual to any  
16 candidate or any political committee of a political party in rendering  
17 voluntary personal services on the individual's residential premises or in  
18 the church or community room for candidate-related or political party-  
19 related activities . . . .

20 2 U.S.C. 431(8)(B)(ii). See also 11 CFR 100.75 and 100.76. The Commission's  
21 regulations contain a parallel exception to the definition of "expenditure":

22 [n]o expenditure results where an individual, in the course of volunteering  
23 personal services on his or her residential premises to any candidate or

1 political committee of a political party, provides the use of his or her real  
2 or personal property to such candidate for candidate-related activity or to  
3 such political committee of a political party for party-related activity.

4 11 CFR 100.135. See also 11 CFR 100.136.

5 A. Exceptions for Internet Activity by Individuals or Volunteers – Proposed 11  
6 CFR 100.94 and 100.155

7 The Commission is proposing new rules to address the treatment of  
8 uncompensated individual or volunteer campaign activity on the Internet. Specifically,  
9 the Commission proposes the addition of two new sections to 11 CFR Part 100 to provide  
10 new exceptions from the definition of “contribution” and “expenditure.” Proposed 11  
11 CFR 100.94 would create an exception to the definition of “contribution” for certain  
12 uncompensated individual or volunteer Internet activity, while proposed 11 CFR 100.155  
13 would create a parallel exception to the definition of “expenditure” for the same activity.

14 Under proposed 11 CFR 100.94 and 100.155, an uncompensated individual acting  
15 independently or as a volunteer would not make a contribution or expenditure simply by  
16 using computer equipment or Internet services to engage in Internet activities for the  
17 purpose of influencing an election for Federal office. The Commission notes that the  
18 proposed rule would only apply to computer and other facilities to which the individual  
19 would otherwise have access. The proposed rule would not permit the purchase of  
20 equipment by an individual or entity solely for the purposes of allowing another  
21 individual to participate in volunteer activity. The Commission seeks comment on this  
22 approach.

1           In AO 1998-22, the Commission concluded that even if an individual acting  
2 independently incurs no additional costs in creating a website that contains express  
3 advocacy of a clearly identified candidate, at least some portion of the underlying costs of  
4 creating and maintaining that website is an expenditure under the Act and must be  
5 reported if it exceeds \$250 in a calendar year. In contrast, in AO 1999-17, the  
6 Commission concluded that costs incurred by a campaign volunteer in preparing a  
7 website on behalf of a candidate on the volunteer's home computer are exempt from the  
8 definition of "contribution" under the volunteer exception contained in section 100.75 of  
9 the regulations (formerly section 100.7(b)(4)). The Commission stated that the volunteer  
10 exception applies to "individuals known to the campaign who, with the campaign's  
11 permission (at some level) engage in volunteer activity." Id. The Commission also  
12 determined that the costs of e-mail messages sent by a campaign volunteer using his or  
13 her own computer equipment would be covered by the volunteer exception, and thus  
14 would not result in a contribution to the campaign. Id.

15           The proposed rules in new sections 100.94 and 100.155 would supersede AO  
16 1998-22 to the extent that it treats an individual's independent use of existing computer  
17 or Internet services for Internet activity as an expenditure. The proposed rules would also  
18 extend beyond the specific guidance provided in AO 1999-17 to clarify that these  
19 exceptions would apply to an uncompensated individual acting independently or as a  
20 volunteer without regard to whether the individual or another person owns the computer  
21 being used or where the volunteer activity is taking place. For example, the proposed  
22 rule would permit a volunteer to use a computer or Internet service provided at a public  
23 facility, such as a library or school, or provided by a friend, without such activity being a

1 contribution or expenditure. The Commission, however, would continue to view the  
2 purchase of mailing lists (including e-mail lists) for the purposes of forwarding candidate  
3 and political committee communications as expenditures or contributions. The  
4 Commission seeks comment on this approach. If the computer or Internet service is  
5 provided by a corporation or labor organization, the rules at 11 CFR 114.9 would apply.  
6 The proposed rules would thereby avoid disparate treatment of individuals or volunteers  
7 who may not be able to afford the purchase or maintenance of their own computers or  
8 websites. The Commission invites comments on this approach. The Commission also  
9 seeks comments on whether this exception should be extended to volunteers who receive  
10 some form of payment or reimbursement from a candidate or a political committee, such  
11 as transportation, subsistence, or supplies. Additionally, the Commission seeks  
12 comments on whether the entirety of AOs 1998-22 and 1999-17, or any additional AOs,  
13 should be superseded or whether there is any aspect of those AOs that should remain  
14 valid.

15 Under the proposed rules, individuals acting independently or as volunteers would  
16 come within this exception when using any “computer equipment or Internet services” to  
17 engage in “Internet activities.” Specific examples of “computer equipment or Internet  
18 service” would be listed in paragraph (c) of each section and would include, but would  
19 not be limited to, computers, software, Internet domain names, and Internet Service  
20 Provider (ISP) services (e.g., connecting to the Internet). “Internet activities” would be  
21 defined in paragraphs (b) of each section to include, but not be limited to, creating and  
22 sending e-mail or producing and maintaining a website or a blog. Furthermore, because  
23 many individuals who use the Internet cannot, or do not, maintain their own websites, or

1 simply wish to post a blog in a place where it is more likely to be seen by others, there  
2 are a number of blog “hosts” that provide space on a website for other individuals to post  
3 their own blogs or other commentary. Individuals acting independently or as volunteers  
4 posting blogs or other content on the websites of these hosts would be entitled to the  
5 exception just as if the content were posted on their own website. However, the  
6 exceptions would not apply to paid advertising or other payments for the use of another  
7 person’s website, other than a nominal fee. See proposed 11 CFR 100.94(c)(3) and  
8 100.155(c)(3); see also current 11 CFR 100.75 and 100.135 (a volunteer’s payment of a  
9 nominal fee in the course of providing personal services does not constitute a  
10 contribution or expenditure).

11 Thus, an individual or volunteer producing or maintaining a website or blog, or  
12 conducting other grassroots campaign activity on the Internet, from that individual's own  
13 home or elsewhere, would not make a contribution or expenditure and would not incur  
14 any reporting responsibilities as the result of that activity. For example, if an individual  
15 downloaded materials from a candidate or party website, such as campaign packets, yard  
16 signs, and other items, the downloading of such items would not constitute republication  
17 of campaign materials. In addition, even when the Internet activity is made in  
18 cooperation, consultation, or concert with a candidate or a political party committee, no  
19 contribution or expenditure would result and neither the candidate nor the political party  
20 committee would incur any reporting responsibilities. Furthermore, if an individual  
21 forwarded an e-mail received from a political committee, the forwarding of that e-mail  
22 would not constitute republication of campaign materials or be an in-kind contribution.  
23 The Commission invites comments on this approach.

1           The Commission notes that existing Commission regulations regarding volunteer  
2 activity use the concept of volunteer in the context of an individual volunteering personal  
3 services to a candidate, political committee, or political party. The proposed regulations  
4 would apply regardless of whether the individual's activities were known to a candidate,  
5 political party, or political committee. The Commission seeks comment on whether it  
6 has authority to do this and whether the word "individual" or "volunteer" more accurately  
7 conveys the concept of when an individual, whether known or unbeknownst to the  
8 campaign, engages in Internet activity.

9   **IX.   11 CFR 114.9 – Use of Corporate or Labor Organization Facilities and**  
10 **Means of Transportation**

11           The Commission's rules at 11 CFR 114.9 permits employees and stockholders of  
12 a corporation, as well as officials, members, and employees of a labor organization, to  
13 use corporate or labor organization "facilities" for individual volunteer activities in  
14 connection with a Federal election, so long as that use is "occasional, isolated, or  
15 incidental." 11 CFR 114.9(a)(1) and (b)(1).<sup>24</sup> In order to clarify that corporate and labor  
16 organization "facilities" includes computer equipment and Internet services that could be  
17 used to exchange e-mail, produce or maintain websites, or engage in other activities over  
18 the Internet, the Commission proposes to amend 11 CFR 114.9(a)(1) and (b)(1) to  
19 expressly include "computer equipment and Internet services," as defined in 11 CFR

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<sup>24</sup> The use of equipment or services is "occasional, isolated, or incidental" during the workday if it does not prevent the individual from carrying out her normal duties or interfere with the corporation or labor organization carrying out its normal activities. See 11 CFR 114.9(a)(1)(i) and (ii) and (b)(1)(i) and (ii). The Commission has established a safe harbor such that an individual's activity during or outside working hours is considered "occasional, isolated, or incidental" if it does not exceed one hour per week or four hours per month. 11 CFR 114.9(a)(1)(iii) and (b)(1)(iii). The examples of "occasional, isolated, or incidental" use are not exhaustive, and other uses may also qualify.

1 100.94(c), within the meaning of “facilities.” The Commission invites comments on this  
2 proposed revision.

3 In addition, the Commission notes that many corporations and labor organizations  
4 now permit individuals to take laptops home and to use computers and other Internet  
5 services for non-work purposes. The Commission notes that a volunteer’s use of a  
6 corporate or labor organization computer or Internet service for campaign activity over  
7 the Internet at home, or at locations outside of work, is still subject to the “occasional,  
8 isolated, or incidental” use restriction.

9 The Commission further notes that corporations and labor organizations are  
10 prohibited from “[u]sing coercion, such as the threat of a detrimental job action, the threat  
11 of any other financial reprisal, or the threat of force, to urge any individual to make a  
12 contribution or engage in fundraising activities on behalf of a candidate or political  
13 committee.” 11 CFR 114.2(f)(2)(iv) (emphasis added); see also 2 U.S.C. 441b(b)(3).  
14 Because the proposed revisions to 11 CFR 114.9(a) and (b) would expressly except the  
15 use of corporate or labor organization computers and Internet services from the definition  
16 of “contribution,” the Commission seeks comment on whether additional rules are  
17 necessary to ensure that corporations and labor organizations do not “coerce” their  
18 employees or others into engaging in Internet activities on behalf of a candidate or  
19 political committee. Should such an exemption be avoided in that it could lead to  
20 inherently coercive situations? Should it be premised on the corporation or union not  
21 directing the individual to engage in activity on behalf of a certain candidate or political  
22 committee?

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

2 **[Regulatory Flexibility Act]**

3           The Commission certifies that the attached proposed rules, if promulgated, would  
4 not have a significant economic impact on a substantial number of small entities. The  
5 basis for this certification is that State, district, and local party committees of the two  
6 major political parties; individual candidates, Federal office holders, and their agents; and  
7 other individuals who communicate over the Internet are not “small entities” under 5  
8 U.S.C. 601, because they are not small businesses, small organizations, or small  
9 governmental jurisdictions. To the extent that other entities may fall within the definition  
10 of “small entities,” the economic impact of complying with these rules will not be  
11 significant.

12

13



- 1 **List of Subjects**
- 2 11 CFR Part 100
- 3       Elections.
- 4 11 CFR Part 110
- 5       Campaign funds.
- 6       Political committees and parties.
- 7 11 CFR Part 114
- 8       Business and industry, elections, labor.

1 For the reasons set out in the preamble, the Federal Election Commission  
2 proposes to amend subchapter A of chapter 1 of title 11 of the Code of Federal  
3 Regulations as follows:

4 **PART 100 – SCOPE AND DEFINITIONS (2 U.S.C. 431)**

5 1. The authority citation for part 100 would continue to read as follows:

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

7 2. Section 100.25 would continue to read as follows:

8 **§ 100.25 Generic campaign activity (2 U.S.C. 431(21)).**

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

12 3. Section 100.26 would be revised to read as follows:

13 **§ 100.26 Public communication (2 U.S.C. 431(22)).**

14 (a) General definition of public communication. Public communication means a  
15 communication by means of any broadcast, cable, or satellite communication, newspaper,  
16 magazine, outdoor advertising facility, mass mailing, or telephone bank to the general  
17 public, or any other form of general public political advertising. The term “general  
18 public political advertising” shall not include communications over the Internet, except  
19 for announcements placed for a fee on another person’s or entity’s website.

20  
21 4. In section 100.73, the introductory text would be revised to read as follows:  
22  
23

1    **§ 100.73 News story, commentary, or editorial by the media.**

2    Any cost incurred in covering or carrying a news story, commentary, or editorial by any  
3    broadcasting station (including a cable television operator, programmer or producer),  
4    newspaper, magazine, or other periodical publication, whether the news story,  
5    commentary, or editorial appears in print or over the Internet, is not a contribution unless  
6    the facility is owned or controlled by any political party, political committee, or  
7    candidate. . .

8  
9    **§ 100.132 News story, commentary, or editorial by the media.**

10   Any cost incurred in covering or carrying a news story, commentary, or editorial by any  
11   broadcasting station (including a cable television operator, programmer or producer),  
12   newspaper, magazine, or other periodical publication, whether the news story,  
13   commentary, or editorial appears in print or over the Internet, is not an expenditure unless  
14   the facility is owned or controlled by any political party, political committee, or candidate  
15   . . .

16  
17   **§ 100.94 Uncompensated individual or volunteer activity that is not a contribution**

18   (a) *Contribution.*

19   (1)       No contribution results where an individual, acting independently or as a  
20   volunteer, without receiving compensation, performs Internet activities using computer  
21   equipment and services that he or she personally owns for the purpose of influencing any  
22   Federal election, whether or not the individual's activities are known to or coordinated  
23   with any candidate, authorized committee or party committee.

1 (2) No contribution results where an individual, acting independently or as a  
2 volunteer, without receiving compensation, performs Internet activities using computer  
3 equipment and services available at any public facility for the purpose of influencing any  
4 Federal election, whether or not the individual's activities are known to or coordinated  
5 with any candidate, authorized committee or party committee. The term "public facility"  
6 within the meaning of this section shall include, but is not limited to, public libraries,  
7 public schools, community centers, and Internet cafes.

8 (3) No contribution results where an individual, acting independently or as a  
9 volunteer, without receiving compensation, performs Internet activities using computer  
10 equipment and services in his or her residential premises for the purpose of influencing  
11 any Federal election, whether or not the individual's activities are known to or  
12 coordinated with any candidate, authorized committee or party committee.

13  
14 (b) *Internet activities.* "Internet activities" within the meaning of this section shall  
15 include, but are not limited to: e-mailing, including forwarding; linking, including  
16 providing a link or hyperlink to a candidate's, authorized committee's or party  
17 committee's website; distributing banner messages; blogging; and hosting an Internet  
18 site.

19  
20 (c) *Computer equipment and services.* "Computer equipment and services"  
21 within the meaning of this section shall include, but are not limited to, computers,  
22 software, Internet domain names, and Internet Service Provider (ISP) services.

23

1    **§ 100.155 Uncompensated individual or volunteer activity that is not an**  
2    **expenditure.**

3    (a) *Expenditure.*

4    (1)       No expenditure results where an individual, acting independently or as a  
5    volunteer, without receiving compensation, performs Internet activities using computer  
6    equipment and services that he or she personally owns for the purpose of influencing any  
7    Federal election, whether or not the individual’s activities are known to or coordinated  
8    with any candidate, authorized committee or party committee.

9    (2)       No expenditure results where an individual, acting independently or as a  
10   volunteer, without receiving compensation, performs Internet activities using computer  
11   equipment and services available at any public facility for the purpose of influencing any  
12   Federal election, whether or not the individual’s activities are known to or coordinated  
13   with any candidate, authorized committee or party committee. The term “public facility”  
14   within the meaning of this section shall include, but is not limited to, public libraries,  
15   public schools, community centers, and Internet cafes.

16   (3)       No expenditure results where an individual acting independently or as a  
17   volunteer, without receiving compensation, performs Internet activities using computer  
18   equipment and services in his or her residential premises for the purpose of influencing  
19   any Federal election, whether or not the individual’s activities are known to or  
20   coordinated with any candidate, authorized committee or party committee.

21  
22   (b) *Internet activities.* “Internet activities” within the meaning of this section shall  
23   include, but are not limited to: e-mailing, including forwarding; linking, including

1 providing a link or hyperlink to a candidate's, authorized committee's or party  
2 committee's website; distributing banner messages; blogging; and hosting an Internet  
3 site.

4  
5 (c) *Computer equipment and services.* "Computer equipment and services"  
6 within the meaning of this section shall include, but are not limited to, computers,  
7 software, Internet domain names, and Internet Service Provider (ISP) services.

8

9 **PART 114 – CORPORATE AND LABOR ORGANIZATION ACTIVITY**

10 **§ 114.9 Use of corporate or labor organization facilities and means of**  
11 **transportation.**

12 (a) *Use of corporate facilities for individual volunteer activity by stockholders and*  
13 *employees.* (1) Stockholders and employees of the corporation may, subject to the rules  
14 and practices of the corporation, make occasional, isolated, or incidental use of the  
15 facilities of a corporation for individual volunteer activities in connection with a Federal  
16 election and will be required to reimburse the corporation only to the extent that the  
17 overhead or operating costs of the corporation are increased. The facilities of a  
18 corporation within the meaning of this subsection include computers, software, and other  
19 Internet equipment and services. As used in this paragraph, *occasional, isolated, or*  
20 *incidental use* generally means . . .

21

\* \* \* \*

22 (b) *Use of labor organization facilities for individual volunteer activity by officials,*  
23 *members, and employees.* (1) The officials, members, and employees of a labor

1 organization may, subject to the rules and practices of the labor organization, make  
2 occasional, isolated, or incidental use of the facilities of a labor organization for  
3 individual volunteer activities in connection with a Federal election and will be required  
4 to reimburse the labor organization only to the extent that the overhead or operating costs  
5 of the organization are increased. The facilities of a labor organization within the  
6 meaning of this subsection include computers, software, and other Internet equipment  
7 and services. As used in this paragraph, *occasional, isolated, or incidental use* generally  
8 means. . .

9  
10 \* \* \* \*

11 **PART 110 – CONTRIBUTION AND EXPENDITURE LIMITATIONS AND**  
12 **PROHIBITIONS**

13 8. The authority citation for part 110 would continue to read as follows:

14 Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e,  
15 441f, 441g, 441h, and 36 U.S.C. 510.

16 9. Section 110.11 would be amended by revising the first sentence of the  
17 introductory text in paragraph (a) to read as follows:

18 **§ 110.11 Communications; advertising; disclaimers (2 U.S.C. 441d).**

19 (a) *Scope.* Public communications are those defined by 11 CFR 100.26. For the  
20 purposes of this section, Public Communications will also include 500 unsolicited  
21 substantially similar electronic mail communications; Internet websites of political  
22 committees available to the general public; and electioneering communications as defined

1 in 11 CFR 100.29. "Unsolicited" e-mail shall be defined as those e-mail that are sent to  
2 electronic mail addresses purchased from a third party

3

4 \* \* \* \* \*

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DATED: \_\_\_\_\_  
BILLING CODE: 6715-01-U

\_\_\_\_\_  
Scott E. Thomas  
Chairman  
Federal Election Commission