



TEXAS ETHICS COMMISSION
RECOMMENDATIONS FOR STATUTORY CHANGES



TEXAS ETHICS COMMISSION
ROSS FISCHER, CHAIR

DECEMBER 2008

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RECOMMENDATIONS FOR STATUTORY CHANGES
TO THE 81ST TEXAS LEGISLATURE
PURSUANT TO GOVERNMENT CODE § 571.073

TEXAS ETHICS COMMISSION

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"Let all the laws be clear, uniform and precise. To interpret laws is almost always to corrupt them." - Voltaire

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TASK FORCE RECOMMENDATIONS

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Title 15 of the Election Code

Attached for your reference are the relevant statutes and rule. ([Exhibit A](#)).

Recommendation No. 1: Statewide Electronic Filing System

In order to further public disclosure and to increase coordinated disclosure among all levels of Texas government, the Ethics Commission suggests the creation of a statewide filing initiative, which would allow local governments - including municipalities, counties, and school districts - to utilize Ethics Commission software and hardware to file required reports online. The Ethics Commission website would serve as an ethics portal for the state of Texas, allowing the public access to all levels of filings through one site. The commission would enter into agreements with local entities for the purposes of developing software, accepting and posting filings, and providing technical support. A statewide filing initiative would require additional agency resources, which may be garnered through contracts with local governments, specific appropriations, retention of commission revenue, or other state financing mechanisms.

Recommendation No. 2: Payments Made to a Business in Which Spouse Has an Interest

Clarification of Section 253.041 of the Election Code, which in relevant part prohibits a candidate or officeholder from using political funds for personal services rendered by the candidate or officeholder or by the spouse or dependent child of the candidate or officeholder to: a business in which the candidate or officeholder has a participating interest of more than 10 percent, or holds a position on the governing body of the business, or serves as an officer of the business.

The question that often arises is whether the prohibition should also apply to a payment made to a business in which the spouse of the candidate or officeholder has a participating interest of more than 10 percent, or holds a position on the governing body of the business, or serves as an officer of the business.

Recommendation No. 3: Corporate Administrative Expenses

Clarification of Section 253.100(a) of the Election Code, which authorizes a corporation to make expenditures to finance the establishment or administration of a general-purpose political committee.

A corporation is prohibited from making a political contribution or a political expenditure that is not specifically authorized. A violation of the law is a felony of the third degree.

The question that often arises is whether a corporate expenditure constitutes an administrative expenditure that is permissible under Section 253.100(a) of the Election Code. The legislature, the courts, and the commission have struggled with questions in this area. The commission has issued several advisory opinions providing a standard and guidance regarding specific fact situations.¹

Recommendation No. 4: Restrictions on Personal Use of Contributions

Clarification of Section 253.035 of the Election Code, which provides that a candidate or officeholder may not convert political contributions to a personal use but may use political contributions for purposes connected with the performance of duties or activities as a candidate for or holder of a public office. Title 15 of the Election Code contains a number of prohibitions on the use of political contributions, but no restriction on the use of political contributions to pay fines. The commission has issued several advisory opinions permitting such use.²

In sworn complaints in which the commission makes a determination that a respondent converted political funds to a personal use, the commission requires that the respondent use personal funds to return to the political account the amount converted to personal use. This is not more restrictive than the statute because the amounts converted to personal use were not connected with the performance of duties or activities as a candidate for or holder of a public office.

The question that often arises is whether other fines imposed by the commission should be paid out of personal funds. Individuals against whom fines are imposed (i.e., appointed officials required to file a personal financial statement) and who do not have political funds must pay fines out of personal funds.

¹ Ethics Advisory Opinion Nos. 132 (1993), 176 (1993), 216 (1994), 272 (1995), 340 (1996), and 468 (2006).

² The commission has issued numerous opinions regarding the use of political funds to pay fines. In Ethics Advisory Opinion No. 206 (1994), the commission concluded that a late fine is an obligation that is connected with the performance of duties or activities as a candidate and that therefore payment of the fine is a political expenditure that could be made from political contributions. Similarly, in Ethics Advisory Opinion No. 315 (1996), the commission concluded that a general-purpose political committee may use political contributions to pay a late fine imposed on the committee's campaign treasurer. In Ethics Advisory Opinion No. 216 (1994), the commission concluded that a corporation may use treasury funds to pay an administrative fine assessed under Title 15 of the Election Code against the treasurer of a general-purpose political committee that the corporation sponsors.

Recommendation No. 5: Amount Reported as Loan to Campaign

Clarification as to whether the legislature intended to allow a candidate or officeholder to report as a loan to his or her campaign an amount greater than what is expended in the reporting period. In other words, did the legislature intend to allow candidates and officeholders to report a \$500,000 loan from themselves in a reporting period in which they do not spend any of that amount (or less than that amount)?

The law currently provides two methods for reporting political expenditures made from personal funds for which a candidate or officeholder intends to seek reimbursement. The easier of the two methods is to report a political expenditure from personal funds on Schedule G (used to report political expenditures made from personal funds), and indicate that reimbursement is intended. ELEC. CODE §§ 253.035(h).

In the alternative, the candidate may report the amount *expended* as a loan. ELEC. CODE § 253.0351(a). (The candidate or officeholder would then report the expenditures made from those funds.)

Based on the plain wording of the statute, the commission has consistently interpreted the law to mean that a candidate or officeholder may report as a loan only the amount *expended* in the reporting period.³

Recommendation No. 6: Contributions Maintained

Clarification of Sections 254.031(a)(8) and 254.0611(a)(1) of the Election Code, which require the disclosure of the total amount of contributions accepted and maintained in an account. At its June 10, 2008, meeting the commission adopted Ethics Commission Rule § 20.50 clarifying what is required to be included in that total.

³ In Ethics Advisory Opinion No. 258 (1995), the commission stated that if a candidate transfers money from a personal account to an account used for candidate purposes, no reportable transaction has occurred.

In Ethics Advisory Opinion 391 (1998), the commission stated:

The requestor specifically asks about “loans” he made to his campaign. Technically speaking, a candidate does not “loan” himself money. Ethics Advisory Opinion No. 258 (1995). It is important to note that a candidate or officeholder may not pay himself or herself interest on money that he or she has merely transferred from a “personal account” to a “political account.” Such a transfer does not effect a change in the personal nature of the funds and is not, by itself, an “expenditure.” Rather, a political expenditure from the transferred personal funds would occur if a payment for political purposes were made from the transferred funds. *See generally* ELEC. CODE § 253.0351 (allowing candidate or officeholder to report political expenditure from personal funds as “loan”); Ethics Advisory Opinion No. 230 (1994).

Contributions that are accepted but not maintained in an account (i.e., contributions in the form of cash or a check that are accepted but never deposited) are not required to be included in the total.⁴

POSSIBLE OPTION

Amend statute to require that political contributions “on hand” be disclosed regardless of whether or not deposited in an account.

Recommendation No. 7: Disclosing Purchase of Investments

Clarification regarding whether the use of political contributions to purchase an investment is required to be reported as a political expenditure under Section 254.031 of the Election Code. The commission staff’s longstanding interpretation has been that a purchase of an investment is reportable as a political expenditure.⁵

POSSIBLE OPTION

Amend the statute to explicitly require the disclosure of the use of political contributions to purchase an investment.

Recommendation No. 8: Disclosing Liquidation of Investments

The law does not require a person to disclose the liquidation of investments purchased with political contributions. Consequently, the public does not know the nature of the investments purchased with those funds. A person filing a campaign finance report may nonetheless disclose that information on a “Credits” schedule, which was created by commission staff to allow persons to disclose information that is not required to be disclosed.

POSSIBLE OPTION

Amend the statute to require the disclosure of the liquidation of investments purchased with political contributions.

⁴ Those contributions are required to be disclosed on the reporting schedule used to report contributions accepted during the reporting period but they would not be added to the “contributions maintained total.” Section 254.031(a)(1) of the Election Code.

⁵ The term expenditure is defined in Section 251.001(6) of the Election Code. The terms political expenditure, campaign expenditure, and officeholder expenditure are defined in Sections 251.001(10), (7), and (4) of the Election Code, respectively.

Recommendation No. 9: Notice to Filers of Requirement to File Reports

Section 251.033 of the Election Code requires the commission to notify persons responsible for filing reports with the commission of the filing deadlines. The commission satisfies this mandate by mailing written notices to each filer. The number of notices in a year varies depending on whether it is an election year.

Due to the increase in postage and budgetary constraints, the commission is considering alternative ways to provide notice. Specifically, the commission is considering providing notice by electronic mail (e-mail). Although the law does not specify the method by which a notice must be given, communications by e-mail were not commonly used when the law at issue was written.

POSSIBLE OPTION

Amend Section 251.033 of the Election Code to explicitly allow the commission to provide notice by e-mail and to provide that Chapter 552 of the Government Code (the Public Information Act) does not apply to e-mails provided to the commission under this section.

Recommendation No. 10: Notice to Filers Regarding Late Reports

Section 254.042 of the Election Code requires the commission to notify a filer that a report is late. The second notice regarding lateness is required to be sent by registered mail. The current cost of registered mail is approximately \$10. Due to the increase in postage and budgetary constraints, the commission would like to be allowed to send the second notice by other methods of delivery such as by certified mail, the cost of which is currently \$2.70.

POSSIBLE OPTION

Amend Section 254.042 of the Election Code to allow the commission to provide notice by certified mail.

Recommendation No. 11: 8-Day Before Runoff Election Report by Political Committees

A political committee (including a specific-purpose political committee and a general-purpose political committee) is required to file a report due eight days before a runoff election ONLY IF the committee is involved in both the initial election AND the ensuing runoff election. Sections 254.124(e) and 254.154(e) of the Election Code. As a consequence, a political committee that does not participate in the initial election but is significantly involved in the runoff election is not required to file a pre-election report before the runoff election.

POSSIBLE OPTIONS

1. Amend Sections 254.124(e) and 254.154(e) of the Election Code to require a political committee to file an 8-day before runoff election report if the committee is involved in the runoff election regardless of whether the committee was involved in the initial election.
2. Amend Sections 254.124(e) and 254.154(e) of the Election Code to require a political committee that participates in the initial election to file an 8-day before runoff report even if the committee does not participate in the runoff election.

Recommendation No. 12: Political Advertising Disclosure Statement on Blogs

Clarification of Section 251.001(16) of the Election Code, which defines “political advertising” in pertinent part as a communication supporting or opposing a candidate for nomination or election to a public office, that appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication or on an Internet website.

Certain types of political advertising are required to include a disclosure statement and certain types of political advertising are excluded from that requirement.⁶ The issue that often arises is whether blogs constitute political advertising and if so, whether they are required to include a disclosure statement.

In July 2006, the commission adopted a rule stating that the definition of political advertising does not include communications made by e-mail and consequently those communications are not required to include a disclosure statement. The rule was principally based on the legislative intent of the 78th Regular Legislative Session in H.B. 1606.⁷ In its Task Force Recommendations for statutory changes to the 80th legislature, the commission presented the “e-mail” issue and notified the legislature of the commission rule. The 80th legislature did not amend the statute, which validated the commission’s determination that the legislature did not intend e-mails to be included in the definition of political advertising.

⁶ Section 255.001 of the Election Code.

⁷ The current version of Section 251.001(1) of the Election Code defining political advertising was added by H.B. 1606 during the 78th Regular Legislative Session. The originally introduced version of the bill included the definition of political advertising communications made by e-mail. Several amendments were made to that definition during the session. The version of the bill that became law did not include e-mails in the definition of political advertising.

POSSIBLE OPTIONS

1. Amend the definition of political advertising to expressly include blogs. If the legislature wants to include blogs in the definition of political advertising, the legislature may want to consider the Federal Election Commission (FEC) rules for addressing the issue. ([Exhibits B and C](#)). Under the FEC standard, most blogs are not regulated. Generally, the types of blogs that are not regulated under the FEC rules are those from: (1) uncompensated individual Internet activities, (2) entities covered by the press exemption,⁸ including qualified online publications, and (3) certain corporate and labor organizations. Generally, the types of blogs that are regulated under the FEC rules are those: (1) from political committees, (2) that are placed on another person's website for a fee, and (3) from certain corporations.
2. Amend the definition of political advertising to expressly state that the definition of political advertising does not include blogs.

⁸ Unlike federal law, Texas statutes do not have a press exemption to corporate activity prohibitions. The relevant federal statute is 2 U.S.C. § 431 (9)(b)(1) and the relevant rule is 11 CFR 100.73.

Chapter 305 of the Government Code

Attached for your reference are the relevant statutes. ([Exhibit D](#)).

Recommendation No. 13: Contingent Fees

Clarification of Section 305.022 of the Government Code, which provides that it is illegal for a person to retain or employ another to influence legislation or administrative action, when compensation for that employment or service is totally or partially contingent on the passage or defeat of any legislation, the governor’s approval or veto of any legislation, or the outcome of any administrative action.

Subsection (c) of Section 305.022 provides that the *prohibition does not apply to contingent fees payable to an employee of a vendor of a product. (Emphasis added.)*⁹ This subsection has been interpreted to allow contingent fees for efforts to influence a state agency’s purchasing decisions. This subsection has also been interpreted to allow contingent fees in efforts to influence a state agency’s selection of a service provider. The question is whether the legislature intended this provision to be interpreted in this manner.

The law would benefit from clarification on what is meant by “a vendor of a product.” The legislature may want to consider: whether this exception applies to efforts to influence purchasing decisions; whether it applies to purchasing decisions in response to a request for a proposal (RFP); whether purchasing decisions apply simply to the purchase of goods, or also to the purchase of services; and, whether the selection of a service provider constitutes a purchasing decision.

POSSIBLE OPTIONS

1. Define the terms “vendor” and “product” for purposes of Section 305.022 of the Government Code.
2. Consider whether the prohibition applies to a response to a state agency’s RFP and other methods of procurement.

Recommendation No. 14. Update to Lobby Reporting Provision

Update of Section 305.0062(d) of the Government Code, which requires an expenditure for an event to which all legislators are invited to be reported under subsection (a)(7) and not under any other subsection. The proper subsection to report this type of expenditure is (a)(8). This section was recently amended and due to an oversight the reference to (a)(7) was not changed to (a)(8).

⁹ Additionally, subsection (d) provides that the contingent fee prohibition does not prohibit payment or acceptance of compensation that is expressly authorized by some other law or compensation for legal representation before a state administrative agency in a contested hearing or similar adversarial proceeding prescribed by law.

Chapter 571 of the Government Code

Attached for your reference are the relevant statutes. ([Exhibit E](#)).

Recommendation No. 15: Mailing of Notices

Section 571.032 of the Government Code requires certain notices, including sworn complaint notices, to be mailed by registered or certified mail, restricted delivery, return receipt requested. The fees for such notices are as follows: registered mail is \$10.00, certified mail is \$2.70, restricted delivery is \$4.30, and return receipt is \$2.20. In addition to that is the cost of the postage/weight of the envelope. Due to the increase in sworn complaints and the increase in postage, sending notices in the required method has resulted in budgetary constraints.

POSSIBLE OPTION

Amend Section 571.032 of the Government Code to provide that the first notice must be mailed as required by current law (registered or certified mail, restricted delivery, return receipt requested) and to allow the commission to send future notices by regular mail unless the person provides written notice to the commission that they want to continue to receive notice by registered or certified mail, restricted delivery, return receipt requested.

Recommendation No. 16: Confidentiality of Sworn Complaints

Clarification of Section 571.140(a) of the Government Code, which relates to sworn complaints and states in relevant part that most proceedings and documents related to sworn complaints are confidential and may not be disclosed unless “entered into the record of a formal hearing or a judicial proceeding.” The question that often arises is whether a grand jury subpoena constitutes a judicial proceeding for purposes of the confidentiality provision. To ensure adherence to the confidential process enacted by the legislature and to encourage candid cooperation from respondents involved in the sworn complaint process, the legislature may want to clarify that a grand jury subpoena does not constitute a judicial proceeding.

POSSIBLE OPTION

Amend Section 571.140(a) of the Government Code to expressly state that a grand jury subpoena does not constitute a judicial proceeding.

EXHIBIT A

TEXAS ETHICS COMMISSION RULES

Chapter 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

Subchapter B: General Reporting Rules

§ 20.50. Total Political Contributions Maintained

(a) For purposes of Election Code §§ 254.031(a)(8) and 254.0611(a)(1), the total amount of political contributions maintained in one or more accounts includes the following:

(1) Balance on deposit in banks, savings and loan institutions and other depository institutions; and

(2) The present value of any investments that can be readily converted to cash, such as certificates of deposit, money market accounts, stocks, bonds, treasury bills, etc.

(b) For purposes of Election Code §§ 254.031(a)(8) and 254.0611(a)(1), the total amount of political contributions maintained does not include personal funds that the filer intends to use for political expenditures.

EXHIBIT A

TITLE 15. REGULATING POLITICAL FUNDS AND CAMPAIGNS

CHAPTER 251. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

§ 251.001. Definitions

In this title:

(1) “Candidate” means a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. Examples of affirmative action include:

(A) the filing of a campaign treasurer appointment, except that the filing does not constitute candidacy or an announcement of candidacy for purposes of the automatic resignation provisions of Article XVI, Section 65, or Article XI, Section 11, of the Texas Constitution;

(B) the filing of an application for a place on the ballot;

(C) the filing of an application for nomination by convention;

(D) the filing of a declaration of intent to become an independent candidate or a declaration of write-in candidacy;

(E) the making of a public announcement of a definite intent to run for public office in a particular election, regardless of whether the specific office is mentioned in the announcement;

(F) before a public announcement of intent, the making of a statement of definite intent to run for public office and the soliciting of support by letter or other mode of communication;

(G) the soliciting or accepting of a campaign contribution or the making of a campaign expenditure; and

(H) the seeking of the nomination of an executive committee of a political party to fill a vacancy.

(2) “Contribution” means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by this subdivision, and a guarantee of a loan or extension of credit, including a loan described by this subdivision. The term does not include:

- (A) a loan made in the due course of business by a corporation that is legally engaged in the business of lending money and that has conducted the business continuously for more than one year before the loan is made; or
 - (B) an expenditure required to be reported under Section 305.006(b), Government Code.
- (3) “Campaign contribution” means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution.
- (4) “Officeholder contribution” means a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that:
- (A) are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office; and
 - (B) are not reimbursable with public money.
- (5) “Political contribution” means a campaign contribution or an officeholder contribution.
- (6) “Expenditure” means a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment.
- (7) “Campaign expenditure” means an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure.
- (8) “Direct campaign expenditure” means a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure.
- (9) “Officeholder expenditure” means an expenditure made by any person to defray expenses that:
- (A) are incurred by an officeholder in performing a duty or engaging in an activity in connection with the office; and
 - (B) are not reimbursable with public money.
- (10) “Political expenditure” means a campaign expenditure or an officeholder expenditure.
- (11) “Reportable activity” means a political contribution, political expenditure, or other activity required to be reported under this title.
- (12) “Political committee” means a group of persons that has as a principal purpose accepting political contributions or making political expenditures.

(13) “Specific-purpose committee” means a political committee that does not have among its principal purposes those of a general-purpose committee but does have among its principal purposes:

(A) supporting or opposing one or more:

(i) candidates, all of whom are identified and are seeking offices that are known;
or

(ii) measures, all of which are identified;

(B) assisting one or more officeholders, all of whom are identified; or

(C) supporting or opposing only one candidate who is unidentified or who is seeking an office that is unknown.

(14) “General-purpose committee” means a political committee that has among its principal purposes:

(A) supporting or opposing:

(i) two or more candidates who are unidentified or are seeking offices that are unknown; or

(ii) one or more measures that are unidentified; or

(B) assisting two or more officeholders who are unidentified.

(15) “Out-of-state political committee” means a political committee that:

(A) makes political expenditures outside this state; and

(B) in the 12 months immediately preceding the making of a political expenditure by the committee inside this state (other than an expenditure made in connection with a campaign for a federal office or made for a federal officeholder), makes 80 percent or more of the committee’s total political expenditures in any combination of elections outside this state and federal offices not voted on in this state.

(16) “Political advertising” means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that:

(A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or

(B) appears:

(i) in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or

(ii) on an Internet website.

(17) “Campaign communication” means a written or oral communication relating to a campaign for nomination or election to public office or office of a political party or to a campaign on a measure.

(18) “Labor organization” means an agency, committee, or any other organization in which employees participate that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(19) “Measure” means a question or proposal submitted in an election for an expression of the voters’ will and includes the circulation and submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters’ will.

(20) “Commission” means the Texas Ethics Commission.

SUBCHAPTER B. DUTIES OF COMMISSION

§ 251.033. Notification of Deadline for Filing Reports

(a) The commission shall notify each person responsible for filing a report with the commission under Subchapters C through F, Chapter 254, of the deadline for filing a report, except that notice of the deadline is not required for a political committee involved in an election other than a primary election or the general election for state and county officers.

(b) If the commission is unable to notify a person of a deadline after two attempts, the commission is not required to make any further attempts to notify the person of that deadline or any future deadlines until the person has notified the commission of the person’s current address.

**CHAPTER 253. RESTRICTIONS ON CONTRIBUTIONS
AND EXPENDITURES**

**SUBCHAPTER B. CANDIDATES, OFFICEHOLDERS,
AND POLITICAL COMMITTEES**

§ 253.035. Restrictions on Personal Use of Contributions

(a) A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use.

(b) A specific-purpose committee that accepts a political contribution may not convert the contribution to the personal use of a candidate, officeholder, or former candidate or officeholder.

(c) The prohibitions prescribed by Subsections (a) and (b) include the personal use of an asset purchased with the contribution and the personal use of any interest and other income earned on the contribution.

(d) In this section, “personal use” means a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. The term does not include:

(1) payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder, including payment of rent, utility, and other reasonable housing or household expenses incurred in maintaining a residence in Travis County by members of the legislature who do not ordinarily reside in Travis County, but excluding payments prohibited under Section 253.038; or

(2) payments of federal income taxes due on interest and other income earned on political contributions.

(e) Subsection (a) applies only to political contributions accepted on or after September 1, 1983. Subsection (b) applies only to political contributions accepted on or after September 1, 1987.

(f) A person who converts a political contribution to the person’s personal use in violation of this section is civilly liable to the state for an amount equal to the amount of the converted contribution plus reasonable court costs.

(g) A specific-purpose committee that converts a political contribution to the personal use of a candidate, officeholder, or former candidate or officeholder in violation of this section is civilly liable to the state for an amount equal to the amount of the converted contribution plus reasonable court costs.

(h) Except as provided by Section 253.0351 or 253.042, a candidate or officeholder who makes political expenditures from the candidate's or officeholder's personal funds may reimburse those personal funds from political contributions in the amount of those expenditures only if:

(1) the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, in the report required to be filed under this title that covers the period in which the expenditures from personal funds were made; and

(2) the report on which the expenditures from personal funds are disclosed clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement.

(i) "Personal use" does not include the use of contributions for:

(1) defending a criminal action or prosecuting or defending a civil action brought by or against the person in the person's status as a candidate or officeholder; or

(2) participating in an election contest or participating in a civil action to determine a person's eligibility to be a candidate for, or elected or appointed to, a public office in this state.

§ 253.0351. Loans From Personal Funds

(a) A candidate or officeholder who makes political expenditures from the candidate's or officeholder's personal funds may report the amount expended as a loan and may reimburse those personal funds from political contributions in the amount of the reported loan.

(b) Section 253.035(h) applies if the person does not report an amount as a loan as authorized by Subsection (a).

§ 253.041. Restrictions on Certain Payments

(a) A candidate or officeholder or a specific-purpose committee for supporting, opposing, or assisting the candidate or officeholder may not knowingly make or authorize a payment from a political contribution if the payment is made for personal services rendered by the candidate or officeholder or by the spouse or dependent child of the candidate or officeholder to:

(1) a business in which the candidate or officeholder has a participating interest of more than 10 percent, holds a position on the governing body of the business, or serves as an officer of the business; or

(2) the candidate or officeholder or the spouse or dependent child of the candidate or officeholder.

(b) A payment that is made from a political contribution to a business described by Subsection (a) and that is not prohibited by that subsection may not exceed the amount necessary to reimburse the business for actual expenditures made by the business.

(c) A person who violates this section commits an offense. An offense under this subsection is a Class A misdemeanor.

SUBCHAPTER D. CORPORATIONS AND LABOR ORGANIZATIONS

§ 253.100. Expenditures for General-Purpose Committee

(a) A corporation, acting alone or with one or more other corporations, may make one or more political expenditures to finance the establishment or administration of a general-purpose committee.

(b) A corporation may make political expenditures to finance the solicitation of political contributions to a general-purpose committee assisted under Subsection (a) from the stockholders, employees, or families of stockholders or employees of one or more corporations.

(c) A labor organization may engage in activity authorized for a corporation by Subsections (a) and (b). For purposes of this section, the members of a labor organization are considered to be corporate stockholders.

Subsection (d) repealed by Acts 2003, 78th Leg., R.S., H.B. 1606, § 2.26, eff. Sept. 1, 2003.

CHAPTER 254. POLITICAL REPORTING

SUBCHAPTER B. POLITICAL REPORTING GENERALLY

§ 254.031. General Contents of Reports

(a) Except as otherwise provided by this chapter, each report filed under this chapter must include:

(1) the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions;

(2) the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person or committee required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period;

(3) the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures;

(4) the amount of each payment made during the reporting period from a political contribution if the payment is not a political expenditure, the full name and address of the person to whom the payment is made, and the date and purpose of the payment;

(5) the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period;

(6) the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period;

(7) the name of each candidate or officeholder who benefits from a direct campaign expenditure made during the reporting period by the person or committee required to file the report, and the office sought or held, excluding a direct campaign expenditure that is made by the principal political committee of a political party on behalf of a slate of two or more nominees of that party; and

(8) as of the last day of a reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period.

(a-1) A *de minimis* error in calculating or reporting a cash balance under Subsection (a)(8) is not a violation of this section.

(b) If no reportable activity occurs during a reporting period, the person required to file a report shall indicate that fact in the report.

§ 254.042. Civil Penalty for Late Report

(a) The commission shall determine from any available evidence whether a report required to be filed with the commission under this chapter is late. On making that determination, the commission shall immediately mail a notice of the determination to the person required to file the report.

(b) If a report other than a report under Section 254.064(c), 254.124(c), or 254.154(c) or the first report under Section 254.063 or 254.123 that is required to be filed following the primary or general election is determined to be late, the person required to file the report is liable to the state for a civil penalty of \$500. If a report under Section 254.064(c), 254.124(c), or 254.154(c) or the first report under Section 254.063 or 254.153 that is required to be filed following the primary or general election is determined to be late, the person required to file the report is liable to the state for a civil penalty of \$500 for the first day the report is late and \$100 for each day thereafter that the report is late. If a report is more than 30 days late, the commission shall issue a warning of liability by registered mail to the person required to file the report. If the penalty is not paid before the 10th day after the date on which the warning is received, the person is liable for a civil penalty in an amount determined by commission rule, but not to exceed \$10,000.

(c) A penalty paid voluntarily under this section shall be deposited in the State Treasury to the credit of the General Revenue Fund.

SUBCHAPTER C. REPORTING BY CANDIDATE

§ 254.0611. Additional Contents of Reports by Certain Judicial Candidates

(a) In addition to the contents required by Sections 254.031 and 254.061, each report by a candidate for a judicial office covered by Subchapter F, Chapter 253, must include:

(1) the total amount of political contributions, including interest or other income, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period;

(2) for each individual from whom the person filing the report has accepted political contributions that in the aggregate exceed \$50 and that are accepted during the reporting period:

(A) the principal occupation and job title of the individual and the full name of the employer of the individual or of the law firm of which the individual or the individual's spouse is a member, if any; or

(B) if the individual is a child, the full name of the law firm of which either of the individual's parents is a member, if any;

(3) a specific listing of each asset valued at \$500 or more that was purchased with political contributions and on hand as of the last day of the reporting period;

(4) for each political contribution accepted by the person filing the report but not received as of the last day of the reporting period:

(A) the full name and address of the person making the contribution;

(B) the amount of the contribution; and

(C) the date of the contribution; and

(5) for each outstanding loan to the person filing the report as of the last day of the reporting period:

(A) the full name and address of the person or financial institution making the loan; and

(B) the full name and address of each guarantor of the loan other than the candidate.

(b) In this section:

(1) "Child" has the meaning assigned by Section 253.158.

(2) "Law firm" and "member" have the meanings assigned by Section 253.157.

SUBCHAPTER E. REPORTING BY SPECIFIC-PURPOSE COMMITTEE

§ 254.124. Additional Reports of Committee for Supporting or Opposing Candidate or Measure

(a) In addition to other required reports, for each election in which a specific-purpose committee supports or opposes a candidate or measure, the committee's campaign treasurer shall file two reports.

(b) The first report *must be received by the authority with whom the report is required to be filed* not later than the 30th day before election day. The report covers the period beginning the day the committee's campaign treasurer appointment is filed or the first day after the

period covered by the committee's last required report, as applicable, and continuing through the 40th day before election day.

(c) The second report *must be received by the authority with whom the report is required to be filed* not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day.

(d) If a specific-purpose committee supports or opposes a candidate or measure in an election after a reporting period prescribed by Subsection (b) or (c), the first report *must be received by the authority with whom the report is required to be filed* not later than the regular deadline for the report covering the period during which the committee becomes involved in the election. The period covered by the first report begins the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, as applicable.

(e) In addition to other required reports, the campaign treasurer of a specific-purpose committee that supports or opposes a candidate in an election and an ensuing runoff election shall file one report for the runoff election. The runoff election report *must be received by the authority with whom the report is required to be filed* not later than the eighth day before runoff election day. The report covers the period beginning the ninth day before the date of the main election and continuing through the 10th day before runoff election day.

(f) This section does not apply to a specific-purpose committee supporting only candidates who do not have opponents whose names are to appear on the ballot.

SUBCHAPTER F. REPORTING BY GENERAL-PURPOSE COMMITTEE

§ 254.154. Additional Reports of Committee Involved in Election

(a) In addition to other required reports, for each election in which a general-purpose committee is involved, the committee's campaign treasurer shall file two reports.

(b) The first report *must be received by the authority with whom the report is required to be filed* not later than the 30th day before election day. The report covers the period beginning the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, as applicable, and continuing through the 40th day before election day.

(c) The second report *must be received by the authority with whom the report is required to be filed* not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day.

(d) If a general-purpose committee becomes involved in an election after a reporting period prescribed by Subsection (b) or (c), the first report *must be received by the authority with*

whom the report is required to be filed not later than the regular deadline for the report covering the period during which the committee becomes involved in the election. The period covered by the first report begins the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, as applicable.

(e) In addition to other required reports, the campaign treasurer of a general-purpose committee involved in an election and an ensuing runoff election shall file one report for the runoff election. The runoff election report *must be received by the authority with whom the report is required to be filed* not earlier than the 10th day or later than the eighth day before runoff election day. The report covers the period beginning the ninth day before the date of the main election and continuing through the 10th day before runoff election day.

CHAPTER 255. REGULATING POLITICAL ADVERTISING AND CAMPAIGN COMMUNICATIONS

§ 255.001. Required Disclosure on Political Advertising

(a) A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising:

(1) that it is political advertising; and

(2) the full name of:

(A) the person who paid for the political advertising;

(B) the political committee authorizing the political advertising; or

(C) the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate.

(b) Political advertising that is authorized by a candidate, an agent of a candidate, or a political committee filing reports under this title shall be deemed to contain express advocacy.

(c) A person may not knowingly use, cause or permit to be used, or continue to use any published, distributed, or broadcast political advertising containing express advocacy that the person knows does not include the disclosure required by Subsection (a). A person is presumed to know that the use of political advertising is prohibited by this subsection if the commission notifies the person in writing that the use is prohibited. A person who learns that political advertising signs, as defined by Section 255.007, that have been distributed do not include the disclosure required by Subsection (a) or include a disclosure that does not comply with Subsection (a) does not commit a continuing violation of this subsection if the person makes a good faith attempt to remove or correct those signs. A person who learns that printed political advertising other than a political advertising sign that has been distributed does not include the disclosure required by Subsection (a) or includes a disclosure that does not comply with Subsection (a) is not required to attempt to recover the political advertising and does not commit a continuing violation of this subsection as to any previously distributed political advertising.

(d) This section does not apply to:

(1) tickets or invitations to political fund-raising events;

(2) campaign buttons, pins, hats, or similar campaign materials; or

(3) circulars or flyers that cost in the aggregate less than \$500 to publish and distribute.

(e) A person who violates this section is liable to the state for a civil penalty in an amount determined by the commission not to exceed \$4,000.

800 Line Internet Communications and Activity

On March 27, 2006, the Commission approved new regulations governing certain types of Internet communications. The rules took effect May 12, 2006. 71 FR 18589 (4/12/06). The questions and answers that follow address not only those new regulations, but also past Commission precedents regarding use of the Internet in connection with federal elections. Copies of both the new regulations and the cited advisory opinions (AOs) are available via the FEC's web site at <http://www.fec.gov/>.

If you have any questions after reading this, please call or write:

Federal Election Commission:
999 E Street, N.W.
Washington, D.C.
800/424-9530
202/694-1100 (local)
202/219-3336 (for the hearing impaired)
info@fec.gov

Internet Activity Conducted by Individuals

Can I use my computer for political activity in connection with federal elections? How about a library computer, school computer, or neighbor's computer?

Yes. An uncompensated individual or group of individuals may engage in Internet activities for the purpose of influencing a federal election without restriction. The activity would not result in a "contribution" or an "expenditure" under the Act, and would not trigger any registration or reporting requirements with the FEC. This exemption applies to individuals acting with or without the knowledge or consent of a campaign or a political party committee.¹ 11 CFR 100.94 and 100.155. Possible Internet activities include, but are not limited to, sending or forwarding electronic mail, providing a hyperlink to a web site, creating, maintaining or hosting a web site and paying a nominal fee for the use of a web site. 11 CFR 100.94(b). Please note that these exemptions apply regardless of whether the individual owns the computer in use.

What are the rules for sending personal e-mails regarding political topics or federal elections?

Basically, there are no rules for individuals. Individuals may send unlimited e-mails on any political topic without identifying who they are or whether their messages have been authorized by any party or campaign committee. 11 CFR 110.11(a).

¹ Because the activity is exempt from the definitions of "contribution" and "expenditure", a group of individuals that spends more than \$1,000 on such activity does not trigger political committee status under the Act and FEC regulations. See 11 CFR 100.5.

May I post comments to a blog in connection with a federal election?

Yes. Uncompensated blogging, whether done by individuals or a group of individuals, incorporated or unincorporated, is exempt from regulation. See 11 CFR 100.94 and 100.155. This exception applies even in those cases where a nominal fee is paid. See also "How has the Commission applied the Act to online news media?" under Press Entities, below.

Are the rules different if I pay to place an ad on someone else's web site?

Yes. Internet communications placed on another person's web site for a fee are considered "general public political advertising," and are thus "public communications" under the law. 11 CFR 100.26. As such, paying to place a communication on another person's web site may result in contributions or expenditures under the Act. Other regulations regarding coordinated communications, 11 CFR 109.21 and 109.37, and disclaimer requirements, 11 CFR 110.11(a), would also apply.

May I use my work computer for online political activity?

Yes, this is permissible subject to your employer's rules for personal use of computers and Internet access, and so long as you are not compensated for the activity. 11 CFR 100.94 and 114.9(a) and (b). See "May a corporation or union allow its employees or members to use their work computers for individual volunteer activity?" under Use by Corporations/Labor Organizations/Trade Associations, below.

Internet Activity Conducted by Federal Political Committees

Is a disclaimer required on e-mail or our web site?

Yes. The Act and regulations require FEC-registered political committees to place disclaimers on their public web sites. Moreover, if a political committee sends more than 500 substantially similar e-mails, each message must include a disclaimer. 11 CFR 110.11(a). For specific disclaimer requirements, see 11 CFR 110.11(b) and the Commission's brochure "Special Notices on Political Ads and Solicitations," available online at <http://www.fec.gov/pages/brochures/notices.shtml>,

Do the new regulations affect online fundraising by our committee?

No. Over the years, the Commission has issued several opinions concerning online fundraising by political committees. The AOs make it clear that political committees must adapt online fundraising to comply with the Act's recordkeeping and reporting provisions.

First, committees using the Internet for fundraising must make "best efforts" to obtain and report the identification of donors who contribute more than \$200 during a calendar year. Committees must maintain electronic records and contributor data for three years after the date on which it reported the contributions. AOs 1999-22 and 1995-9.

Second, to avoid receiving prohibited contributions, web sites soliciting contributions in connection with a federal election must inform potential contributors of all of the Act's prohibitions, including the prohibitions on contributions from corporations, labor

organizations, federal government contractors and foreign nationals,² and the restrictions at 11 CFR 110.19 on contributions from minors. AOs 1999-22, 1999-9 and 1995-9 contain detailed examples of Commission-approved language and mechanisms for vetting contributors.

Third, in several AOs, the Commission has said that online contributions may be made via credit card or electronic checks. Such contributions are acceptable for publicly funded Presidential campaigns and are matchable provided that the correct documentation is provided to the Commission. See 11 CFR 9034.2(c)(8) and AOs 1999-36, 1999-22, 1999-9 and 1995-9. The Commission has also permitted businesses to administer online fundraising for political committees, so long as they provide their services at the usual and normal charge and in their ordinary course of business. See below.

Finally, separate segregated funds established by corporations, labor organizations or trade associations should consult "Are there special rules for online fundraising by corporate/labor/trade association PACs?" under Internet Activity by Corporations/Labor Organizations/Trade Associations, below.

Internet Activity Conducted by Corporations/Labor Organizations/Trade Associations

Our corporation normally provides commercial services online – may we do so for candidates and political committees?

Yes, this is permissible as long as the corporation charges the usual and normal fee for its services. Failure to do so could result in a prohibited contribution. For example, in AO 2004-6, an online service offering a web platform for arranging local gatherings was permitted to provide both its free and fee-based services to federal candidates and political committees as long as it did so on the same terms it offered to all similarly situated persons in the general public. In contrast, in AO 1996-2, the Commission concluded that a corporation could not provide online accounts--for which it normally charged a fee--to candidates free of charge.

May our corporation/labor union/trade association send out an e-mail to endorse a federal candidate or place an endorsement on its web site?

It depends. As has long been the case, a corporation, union or trade association may only direct express advocacy communications to its restricted class. So, if the organization addressed its e-mail endorsing a federal candidate only to individuals within its restricted class, it would be permissible. By contrast, the organization generally cannot place endorsements or solicitations for a candidate on its web site, unless access to those portions of the site is limited to members of the restricted class.³ See AO 1997-16, 2 U.S.C. §441b(b)(2)(A) and 11 CFR 114.3.

² See 2 U.S.C. §§441b, 441c and 441e.

³ If the organization routinely posts press releases on its web site, it may post a release announcing its endorsement of a federal candidate in the same manner. 11 CFR 114.4(c)(6).

Are there special rules concerning online fundraising for corporate/labor/trade association PACs?

Yes. Since a corporate/labor/trade association PAC may only solicit contributions from its restricted class, access to online solicitations must be limited to members of that group (e.g., password protected).⁴ 2 U.S.C. §441b(b)(4). Alternatively, a corporation/labor organization/trade association could maintain an e-mail list serve--i.e., mailing list--to send PAC solicitations to members of the organization's restricted class. AO 2000-7.

May a corporation or union allow its employees or members to use their work computers for individual volunteer activity?

Yes, a corporation or a labor organization may permit its employees, shareholders, officials and members to use its computer and Internet facilities for individual volunteer Internet activity, without making a prohibited contribution. This exemption is contingent on the individual completing the normal amount of work for which the employee is paid, or is expected to perform, that the activity would not increase the overhead or operating costs of the organization, and that the activity is not coerced. The organization may not condition the availability of the Internet or the computer on their being used for political activity or for support for or opposition to any particular candidate or political party. Revised 11 CFR 114.9(a)(2) and (b)(2).

By Press Entities and Bloggers

How has the Commission applied the Act to online news media?

Under the Act and FEC regulations, a media entity's costs for carrying news stories, commentary and editorials are not considered "contributions" or "expenditures." See 2 U.S.C. §431(9)(B)(i) and 11 CFR 100.73 and 100.132. This exemption, commonly known as the "news story exemption" or the "media exemption" now extends to media entities that cover or carry news stories, commentary and editorials on the Internet, including web sites or any other Internet or electronic publication. See also AOs 2005-16, 2004-7 and 2000-13.

The media exemption applies to the same extent to entities with only an online presence as those media outlets that maintain both an offline and an online presence. See the explanation and justification for revised regulations 11 CFR 100.73 and 100.32.

Are bloggers considered press entities?

Bloggers and others who communicate on the Internet are entitled to the press exemption in the same way as traditional media entities. However, the Commission has decided not to change its rules regarding the media exemption so as to specifically include *all* blogging activity within the "media exemption." Many bloggers may also be entitled to the new Internet activities exemptions for individuals. 11 CFR 100.94 and 100.155. This includes incorporated blogs that are wholly-owned by an individual, are engaged primarily

⁴ See 11 CFR 114.5(g), 114.7(a) and 114.8(c).

in Internet activities and derive a substantial portion of their income from their Internet activities. See the explanation and justification for revised 11 CFR 100.73 and 100.32 and AO 2005-16. Whether covered by the media exemption or the individual activity exemption, blogging will generally not be subject to FEC regulation.

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

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

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

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

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

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

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

Regulatory Flexibility Act

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

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

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

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

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

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

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 114

Business and industry, elections, labor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

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

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

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

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

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

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

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

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

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

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

§ 114.9 Use of corporate or labor organization facilities.

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

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

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

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

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

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

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

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

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

(C) The activity is not performed under coercion.

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

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

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

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

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

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

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

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

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

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

(C) The activity is not performed under coercion.

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

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

Dated: March 27, 2006.

Michael E. Toner,
Chairman, Federal Election Commission.
[FR Doc. 06-3190 Filed 4-11-06; 8:45 am]
BILLING CODE 5715-01-P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[No. 2006-16]

RIN 1550-AB48

**Community Reinvestment Act—
Community Development**

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

ACTION: Final rule.

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

EXHIBIT D
CHAPTER 305, GOVERNMENT CODE
REGISTRATION OF LOBBYISTS

SUBCHAPTER A. GENERAL PROVISIONS; REGISTRATION

§ 305.0062. Expenditures Attributable to Groups

(a) The report filed under Section 305.006 must also contain the total expenditures described by Section 305.006(b) that are directly attributable to members of the legislative or executive branch. The expenditures must be stated in only one of the following categories:

- (1) state senators;
- (2) state representatives;
- (3) elected or appointed state officers, other than those described by Subdivision (1) or (2);
- (4) legislative agency employees;
- (5) executive agency employees;
- (6) the immediate family of a member of the legislative or executive branch; and
- (7) guests, when invited by an individual described by Subdivision (1), (2), (3), (4), or (5); and
- (8) events to which all legislators are invited.

(b) For purposes of Subsection (a), an expenditure is directly attributable to the person who consumed the food or beverage, to the person for whom admission, transportation, or lodging expenses were paid, or to the person to whom the gift, award, or memento was given.

(c) All expenditures made by a registrant or a person on the registrant's behalf and with the registrant's consent or ratification that benefit members of the immediate family of members of the legislative or executive branch shall be aggregated and reported under Subsection (a)(6).

(d) If a registrant cannot reasonably determine the amount of an expenditure under Section 305.006(b) that is directly attributable to a member of the legislative or executive branch as required by Subsection (a), the registrant shall apportion the expenditure made by that registrant or by others on the registrant's behalf and with the registrant's consent or ratification according to the total number of persons in attendance. However, if an expenditure is for an event to which all legislators are invited, the registrant shall report the expenditure under Subsection (a)(7) and not under any other subdivision of that subsection or any other provision of this chapter.

SUBCHAPTER B. PROHIBITED ACTIVITIES

§ 305.022. Contingent Fees

(a) A person may not retain or employ another person to influence legislation or administrative action for compensation that is totally or partially contingent on the passage or defeat of any legislation, the governor's approval or veto of any legislation, or the outcome of any administrative action.

(b) A person may not accept any employment or render any service to influence legislation or administrative action for compensation contingent on the passage or defeat of any legislation, the governor's approval or veto of any legislation, or the outcome of any administrative action.

(c) For purposes of this section, a sales commission payable to an employee of a vendor of a product is not considered compensation contingent on the outcome of administrative action.

(d) This section does not prohibit the payment or acceptance of contingent fees:

(1) expressly authorized by other law; or

(2) for legal representation before state administrative agencies in contested hearings or similar adversarial proceedings prescribed by law or administrative rules.

EXHIBIT E

CHAPTER 571, GOVERNMENT CODE TEXAS ETHICS COMMISSION

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 571.032. Mailing of Notices, Decisions, and Reports

Each written notice, decision, and report required to be sent under this chapter shall be sent by registered or certified mail, restricted delivery, return receipt requested.

SUBCHAPTER C. GENERAL POWERS AND DUTIES

§ 571.073. Report

On or before December 31 of each even-numbered year, the commission shall report to the governor and legislature. The report must include:

- (1) each advisory opinion issued by the commission under Subchapter D in the preceding two years;
- (2) a summary of commission activities in the preceding two years, including:
 - (A) the number of sworn complaints filed with the commission;
 - (B) the number of sworn complaints dismissed for noncompliance with statutory form requirements;
 - (C) the number of sworn complaints dismissed for lack of jurisdiction;
 - (D) the number of sworn complaints dismissed after a finding of no credible evidence of a violation;
 - (E) the number of sworn complaints dismissed after a finding of a lack of sufficient evidence to determine whether a violation within the jurisdiction of the commission has occurred;
 - (F) the number of sworn complaints resolved by the commission through an agreed order;
 - (G) the number of sworn complaints in which the commission issued an order finding a violation and the resulting penalties, if any; and

(H) the number and amount of civil penalties imposed for failure to timely file a statement or report, the number and amount of those civil penalties fully paid, the number and amount of those civil penalties partially paid, and the number and amount of those civil penalties no part of which has been paid, for each of the following category of statements and reports, listed separately:

(i) financial statements required to be filed under Chapter 572;

(ii) political contribution and expenditure reports required to be filed under Section 254.063, 254.093, 254.123, 254.153, or 254.157, Election Code;

(iii) political contribution and expenditure reports required to be filed under Section 254.064(b), 254.124(b), or 254.154(b), Election Code;

(iv) political contribution and expenditure reports required to be filed under Section 254.064(c), 254.124(c), or 254.154(c), Election Code;

(v) political contribution and expenditure reports required to be filed under Section 254.038 or 254.039, Election Code; and

(vi) political contribution and expenditure reports required to be filed under Section 254.0391, Election Code; and

(3) recommendations for any necessary statutory changes.

SUBCHAPTER E. COMPLAINT PROCEDURES AND HEARINGS

§ 571.140. Confidentiality; Offense

(a) Except as provided by Subsection (b) or (b-1) or by Section 571.171, proceedings at a preliminary review hearing performed by the commission, a sworn complaint, and documents and any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint or motion are confidential and may not be disclosed unless entered into the record of a formal hearing or a judicial proceeding, except that a document or statement that was previously public information remains public information.

(b) An order issued by the commission after the completion of a preliminary review or hearing determining that a violation other than a technical or *de minimis* violation has occurred is not confidential.

(b-1) A commission employee may, for the purpose of investigating a sworn complaint or motion, disclose to the complainant, the respondent, or a witness information that is otherwise confidential and relates to the sworn complaint if:

- (1) the employee makes a good faith determination that the disclosure is necessary to conduct the investigation;
- (2) the employee's determination under Subdivision (1) is objectively reasonable;
- (3) the executive director authorizes the disclosure; and
- (4) the employee discloses only the information necessary to conduct the investigation.

(c) A person commits an offense if the person discloses information made confidential by this section. An offense under this subsection is a Class C misdemeanor.

(d) In addition to other penalties, a person who discloses information made confidential by this section is civilly liable to the respondent in an amount equal to the greater of \$10,000 or the amount of actual damages incurred by the respondent, including court costs and attorney fees.

(e) The commission shall terminate the employment of a commission employee who violates Subsection (a).

(f) A commission employee who discloses confidential information in compliance with Subsection (b-1) is not subject to Subsections (c), (d), and (e).