



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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March 10, 2006

MEMORANDUM

TO: The Commission
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SUBJECT: Draft Revised Final Rules and Explanation and Justification for the Definitions of "To Solicit" and "To Direct" (11 CFR 300.2(m) and (n)).

Attached is a draft Revised Final Rules and their Explanation and Justification for the definitions of "to solicit" and "to direct" (11 CFR 300.2(m) and (n)) in order to comply with the District Court's decision in *Shays v. FEC*, 337 F.Supp.2d 28 (D.D.C. 2004), *aff'd*, 414 F.3d 76 (D.C. Cir. 2005), *reh'g en banc denied*, No. 04-5352 (Oct. 21, 2005).

The Office of General Counsel requests that this draft be placed on the agenda for the continuation of the March 9, 2006 Open Session scheduled for March 13, 2006.

Attachment

AGENDA ITEM
For Meeting of: 3-09-06
(CONTINUED ON MARCH 13, 2006)
SUBMITTED LATE

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Part 300**

3 **[Notice 2006 –]**

4 **Definitions of “Solicit” and “Direct”**

5 **AGENCY:** Federal Election Commission.

6 **ACTION:** Final Rules and Transmittal of Rules to Congress.

7 **SUMMARY:** The Federal Election Commission is revising its definitions of the
8 terms “to solicit” and “to direct” for its regulations on raising and
9 spending Federal and non-Federal funds. The new definition of
10 “to solicit” encompasses written and oral communications that,
11 construed as reasonably understood in the context in which they
12 are made, contain a clear message asking, requesting, or
13 recommending, explicitly or implicitly, that another person make a
14 contribution, donation, transfer of funds, or otherwise provide
15 something of value. Mere statements of political support and mere
16 guidance as to the application of the law are not included. The
17 revised definition also contains a list of examples, to provide
18 practical guidance to Federal candidates, officeholders, political
19 committee officials, and others. The new definition of “to direct”
20 focuses on guidance provided directly or indirectly to a person who
21 has expressed an intent to make a contribution, donation, or
22 transfer of funds. Further information is provided in the
23 supplementary information that follows.

1 **DATES:** The revised rules at 11 CFR 300.2(m) and (n) are effective on
2 [Insert date 30 days after the date of publication in the FEDERAL
3 REGISTER].

4 **FOR FURTHER**
5 **INFORMATION**

6 **CONTACT:** Mr. Brad C. Deutsch, Assistant General Counsel, 999 E Street,
7 NW, Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

8 **SUPPLEMENTARY**

9 **INFORMATION:** The Bipartisan Campaign Reform Act of 2002 (“BCRA”), Pub. L.
10 107-155, 116 Stat. 81 (2002), amended the Federal Election Campaign Act of 1971, as
11 amended, 2 U.S.C. 431 et seq. (the “Act”), by adding to the Act new restrictions and
12 prohibitions on the solicitation, receipt, and use of certain types of non-Federal funds
13 (i.e., funds that do not comply with the amount limits, source prohibitions, and reporting
14 requirements of the Act),¹ which are commonly referred to as “soft money.”

15 The terms “to solicit” and “to direct” are central to three core provisions of
16 BCRA. First, national parties “may not solicit . . . or direct” non-Federal funds. 2 U.S.C.
17 441i(a)(1). Second, national, State, district, and local party committees may not solicit
18 any non-Federal funds or direct any donations to certain entities organized under chapter
19 501(c) or 527 of the Internal Revenue Code. 2 U.S.C. 441i(d); 11 CFR 300.11 and
20 300.37. Third, Federal candidates and officeholders “shall not . . . solicit” or “direct”
21 funds in connection with any election unless the funds comply with the Act’s
22 contribution limits and prohibitions. 2 U.S.C. 441i(e)(1)(A) and (B); see also 2 U.S.C.
23 441i(e)(2)-(4). In addition, BCRA added prohibitions on soliciting contributions or
24 donations from foreign nationals and on fraudulent solicitations. 2 U.S.C. 441e(a)(2) and

¹ See 11 CFR 300.2(k).

1 441h(b). Neither BCRA nor FECA contains a definition of either “to solicit” or “to
2 direct.”

3 On July 29, 2002, the Commission promulgated regulations implementing
4 BCRA’s new limits on raising and spending non-Federal funds by party committees, and
5 Federal candidates and officeholders. Final Rules and Explanation and Justification for
6 Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 FR 49064
7 (July 29, 2002) (“Soft Money Final Rules”). The 2002 rules defined “to solicit” as “to
8 ask that another person make a contribution, donation, transfer of funds, or otherwise
9 provide anything of value, whether the contribution, donation, transfer of funds, or thing
10 of value, is to be made or provided directly, or through a conduit or intermediary.” 11
11 CFR 300.2(m) (2002). The 2002 rules defined “to direct” as “to ask a person who has
12 expressed an intent to make a contribution, donation, or transfer of funds, or to provide
13 anything of value, to make that contribution, donation, or transfer of funds, or to provide
14 that thing of value, including through a conduit or intermediary.” 11 CFR
15 300.2(n)(2002).

16 In Shays v. FEC, 337 F. Supp. 2d 28 (D.D.C. 2004) (“Shays District”), aff’d,
17 Shays v. FEC, 414 F.3d 76 (D.C. Cir. 2005) (“Shays Appeal”), reh’g en banc denied (Oct.
18 21, 2005), the District Court held that the Commission’s definitions of “to solicit” and “to
19

1 direct” did not survive the second step of Chevron review.² Shays District at 77, 79. The
2 Court of Appeals for the D.C. Circuit affirmed the District Court’s decision on slightly
3 different grounds, holding that the Commission’s definitions of “to solicit” and “to
4 direct” did not survive the first step of Chevron review. Shays Appeal at 105-07.

5 The Court of Appeals found that the Commission’s definition of “to solicit” was
6 limited to explicit, direct requests for money and, consequently, left “unregulated a ‘wide
7 array of activity’ . . . that the term ‘solicit’ could plausibly cover.” Id. at 104.
8 Specifically, the Court of Appeals determined that the Commission’s definition excluded
9 implicit requests for money, impermissibly required that a candidate or officeholder use
10 certain “magic words” to satisfy the definition, and did not allow for any consideration of
11 the non-verbal actions accompanying a communication or any other aspect of the context
12 in which the communication was made. Id. at 104-106.

13 As to the term “to direct,” the District Court held that the Commission’s definition
14 was not a permissible construction of the statute because the Commission’s definition of
15 “to direct” did not comport with any dictionary definition of the term and was subsumed
16 within the definition of “to solicit.” Shays District at 76 and 77. Subsequently, the Court
17 of Appeals held that the Commission’s definition of “to direct” was invalid because it
18 effectively defined “to direct” as “to ask” (namely, to ask someone who has expressed an
19 intent to make a contribution or donation) and thus, like the definition of “to solicit” and
20 contrary to Congress’s intent, limited “to direct” to explicit requests for funds. The Court
21 of Appeals did not reach the question of whether “to avoid statutory redundancy, ‘direct’

² The first step of the Chevron analysis, which courts use to review an agency’s regulations, asks whether Congress has directly spoken to the precise questions at issue. The second step considers whether the agency’s resolution of an issue not addressed in the statute is based on a permissible construction of the statute. See Shays District at 51-52 (citing Chevron, U.S.A., Inc. v. Natural Res. Def. Council, 467 U.S. 837, 842-43 (1984).)

1 must mean more than ‘ask in response,’ when ‘solicit’ means ‘ask’ plain and simple.”
2 Shays Appeal at 107.

3 The Court of Appeals affirmed the District Court’s order that had remanded both
4 definitions to the Commission for further action consistent with its opinion. Id.

5 In response to the Court of Appeals’ decision, the Commission published a Notice
6 of Proposed Rulemaking (“NPRM”) on September 28, 2005 in which it sought comment
7 on a number of different ways in which the definitions of “to solicit” and “to direct”
8 could be amended, which are discussed below. 70 FR 56599 (September 28, 2005). The
9 comment period closed on October 28, 2005. The Commission received written
10 comments from twelve commenters.³ The Commission held a public hearing on
11 November 15, 2005, at which seven witnesses testified. The comments and a transcript
12 of the public hearing are available at
13 <www.fec.gov/law/law_rulemakings.shtml#def_solicit>.⁴

14 While the Commission believes its regulations have been construed more
15 narrowly than intended, it is issuing final rules adopting a revised definition of “to
16 solicit” that (1) encompasses both explicit and implicit written or oral communications
17 that contain clear messages asking, requesting, or recommending that funds or anything
18 of value be provided, (2) provides an objective test that requires that written or oral
19 communications be reasonably construed in the context in which they are made, and (3)
20 does not rely on any “magic words” or specific statements. The Commission is also
21 adopting a revised definition of “to direct” that distinguishes between “to solicit” and “to

³ These included a comment from the Internal Revenue Service stating that “the proposed rules do not pose a conflict with the Internal Revenue Code or the regulations thereunder.”

⁴ For purposes of this document, the terms “comment” and “commenter” apply to both written comments and oral testimony at the public hearing.

1 direct” by defining the latter as “to guide.” These new definitions further the purpose of
2 BCRA in preventing corruption or the appearance of corruption and they provide
3 guidance that is designed to address the practical, real-life situations that Federal
4 candidates, officeholders, and others face on a daily basis.

5 Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional
6 Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules
7 to the Speaker of the House of Representatives and the President of the Senate and
8 publish them in the Federal Register at least 30 calendar days before they take effect.
9 The final rules that follow were transmitted to Congress on __, 2006.

10 **Explanation and Justification**

11 **I. 11 CFR 300.2(m) – Definition of “To Solicit”**

12 A. The Revised Definition

13 The Commission is revising 11 CFR 300.2(m) by providing a modified version of
14 the rule proposed in the NPRM.⁵ By using the phrase “ask, request, or recommend,
15 explicitly or implicitly” the revised definition of “to solicit” is properly broad in scope to
16 prevent corruption or the appearance of corruption. 11 CFR 300.2(m). At the same time,
17 the definition sets forth an objective test that focuses on the communications in context,
18 and does not turn on subjective interpretations by the person making the communication
19 or its recipient. Specifically, the definition provides:

⁵ In the NPRM, the Commission proposed defining “to solicit” as “to ask, suggest, or recommend that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value, whether it is to be made or provided directly or through a conduit or intermediary. A solicitation is a written or oral communication, whether explicit or implicit, construed as a reasonable person would understand it in context.” The NPRM also sought comment on five additional alternatives for defining “to solicit.”

1 [T]o solicit means to ask, request, or recommend, explicitly or implicitly,
2 that another person make a contribution, donation, transfer of funds, or
3 otherwise provide anything of value. A solicitation is an oral or written
4 communication that, construed as reasonably understood in the context in
5 which it is made, contains a clear message asking, requesting, or
6 recommending that another person make a contribution, donation, transfer
7 of funds, or otherwise provide anything of value. A solicitation may be
8 made directly or indirectly. The context includes the conduct of persons
9 involved in the communication. A solicitation does not include mere
10 statements of political support or mere guidance as to the applicability of a
11 particular law or regulation.

12 1) By including the phrases “ask, request, or recommend, explicitly or implicitly”
13 and “directly or indirectly,” the revised definition of “to solicit” furthers the
14 purposes of BCRA by covering not only communications that explicitly or
15 directly request contributions or donations, but also communications that
16 implicitly or indirectly seek to elicit a contribution or donation

17 The Commission is including the phrases “explicitly or implicitly” and “directly
18 or indirectly” in the revised definition of “to solicit” to clarify that the definition of “to
19 solicit” covers not only communications that explicitly or directly request contributions
20 or donations, but also communications that implicitly or indirectly seek to elicit a
21 contribution or donation, and does not depend on the use of certain “magic words.”

22 Importantly, the revised definition implements and reinforces BCRA's direct
23 prohibitions on soliciting or directing non-Federal funds. The revised definition ensures

1 that candidates and parties may not, implicitly or indirectly, raise unregulated funds for
2 either themselves or, subject to statutory exceptions, “friendly outsiders.” See Shays
3 Appeal at 106. By covering implicit and indirect requests and recommendations, the new
4 definition forecloses parties and candidates from using circumlocutions “that make their
5 intention clear without overtly ‘asking’ for money.” Id. The revised definition of “to
6 solicit” also squarely addresses the central concern of the Court of Appeals in Shays that
7 “indirect” as well as “direct” requests for funds or anything of value must be covered.
8 See Shays Appeal at 105. The changes to the definition also ensure that it encompasses
9 communications such as the following, which were cited by the Court of Appeals: (1)
10 “It’s important for our State party to receive at least \$100,000 from each of you in this
11 election” and (2) “X is an effective State party organization; it needs to get as many
12 \$100,000 contributions as possible.” Shays Appeal at 103.

13 One group of commenters urged the Commission to adopt the language
14 proposed in the NPRM, which defined “to solicit” as “to ask, suggest, or recommend”
15 that another person provide funds. Other commenters, however, opposed the inclusion of
16 this phrase because of its potential to encompass words or actions that do not convey a
17 clear message asking, requesting, or recommending that funds or other things of value be
18 provided. The Commission is not including “to suggest.” The word “suggest” is
19 unnecessary because the revised definition already covers “implicit” statements. The
20 Commission also concludes that including “suggest” could contribute to vagueness rather
21 than clarifying the statutory restriction. The term “suggest” is generally defined to
22 include meanings that imply a concrete proposal for action, but also to include a mental
23 process of association. The American Heritage College Dictionary 1358 (3d ed. 1997).

1 The former constitutes a solicitation, but the latter definition, encompassing a largely or
2 wholly subjective process, does not. Including a term which has a range of meanings,
3 some of which are intended to be encompassed within the regulatory definition of
4 “solicit” but others of which necessarily are excluded, is unhelpful in defining and
5 explaining the reach of the solicitation prohibition. Although the revised definition does
6 not include “to suggest,” the Commission notes that a statement such as “I suggest that
7 you give \$30,000” would nonetheless be an implicit request for funds covered by the
8 definition.

9 2) A solicitation is a communication that, construed as reasonably understood in
10 the context in which it is made, contains a clear message asking, requesting, or
11 recommending that another person provide funds or something of value, and a
12 solicitation does not encompass mere statements of political support or mere
13 guidance about a particular law

14 Federal candidates and officeholders, as a natural consequence of campaigning or
15 carrying out their official duties, are continuously involved in meeting and greeting
16 voters and potential donors and promoting legislative agendas. The sheer number of
17 interactions and similarity in the messages for these different purposes may sometimes
18 give rise to situations where a candidate’s request for electoral or legislative support is
19 misconstrued as a request for financial support. See Thomas v. Collins, 323 U.S. 516,
20 534–35 (1945) (“[g]eneral words create different and often particular impressions on
21 different minds. No speaker, however careful, can convey exactly his meaning, or the
22 same meaning, to the different members of an audience * * * [I]t blankets with
23 uncertainty whatever may be said. It compels the speaker to hedge and trim”). For

1 example, Federal candidates and officeholders routinely thank attendees for their support
2 at campaign rallies and other events. Absent a requirement that a communication
3 contains a clear message asking, requesting, or recommending that another person
4 provide funds or something of value, such a statement might be inappropriately captured
5 by the definition of “to solicit.”

6 In addition, the revised definition of “to solicit” in 11 CFR 300.2(m) covers only
7 those communications that ask, request or recommend that a contribution or donation be
8 provided, and does not cover mere statements of political support or mere statements
9 seeking political support, such as a request to vote for, or volunteer on behalf of, a
10 candidate. As noted above, the solicitation can be made “explicitly or implicitly,” or
11 “directly or indirectly,” so the definition unequivocally extends beyond overt requests for
12 money or in-kind contributions.

13 Moreover, the Commission emphasizes that the definition of “to solicit” is not
14 tied in any way to a candidate’s use of particular “magic words” or specific phrases. The
15 revised definition merely requires that whatever communication is used must contain a
16 clear message asking, requesting, or recommending that another person make a
17 contribution, donation, transfer of funds, or otherwise provide anything of value. See
18 Shays Appeal at 106 (regulations must encompass a communication that “makes [a
19 candidate’s or political party’s] intention clear without overtly ‘asking’ for money if
20 imaginative advertisers are able to make their meaning clear without employing express
21 terms like ‘vote for’ and ‘vote against,’ savvy politicians will surely be able to convey
22 fundraising desires without explicitly asking for money.”) (emphasis added).

1 For example, at a ticket-wide rally, the candidate says: “It is critical that we
2 support the entire Democratic ticket in November.” Such a statement would not, by
3 itself, constitute a solicitation because the statement is reasonably interpreted as an appeal
4 for continuing political, rather than financial, support. See 11 CFR 300.2(m)(3)(v). On
5 the other hand, a solicitation would result where a candidate states, “I will be very
6 pleased if we can count on you for \$10,000.” 11 CFR 300.2(m)(2)(xii). Although
7 implicit, the solicitation of funds is nevertheless clear.

8 3) By specifying that a communication must be construed as reasonably
9 understood in the context in which it is made, the definition of “to solicit”
10 contains an objective test that takes into account all appropriate information and
11 circumstances while avoiding subjective interpretations

12 The revised definition retains the requirement that a communication must contain
13 some affirmative verbalization, whether oral or in writing, to be a solicitation. In
14 addition, the Commission believes that it is necessary to reasonably construe the
15 communication in context, rather than hinging the application of the law on subjective
16 interpretations of the Federal candidates or officeholder’s communications or on the
17 varied understandings of the listener. The revised definition reflects the need to account
18 for the context of the communication and the necessity of doing so through an objective
19 test. See 11 CFR 300.2(m).

20 The context of a communication is often important because words that would not,
21 by their literal meaning, convey a solicitation, may in some contexts be reasonably
22 understood as one. Conversely, words that would by their plain meaning normally be
23 understood as a solicitation, may not be a solicitation when considered in context, such as

1 when the words are used as part of a joke or parody. The following example illustrates
2 the importance of the context in which a communication is conveyed: Fundraiser
3 introduces Donor to Senator, saying: "Senator, I'd like you to meet Joe Donor. Joe's
4 been a longtime supporter of X Organization." Senator: "Joe, it's great to meet you. I
5 really appreciate your support of X Organization's fine work." At this point, the Senator
6 has merely expressed political support for X Organization; he has not made a solicitation.
7 Fundraiser continues: "I've been trying to persuade Joe to commit to giving X another
8 \$50,000. Wouldn't that be great, Senator?" The Senator replies: "Joe, X is a very
9 worthy organization. It's always been very helpful to me." In the context of the entire
10 conversation, and particularly, the Fundraiser's last statement and question, the Senator's
11 response now constitutes a solicitation.

12 Despite the potential for differing interpretations of candidate communications,
13 the Act imposes stiff penalties, including potential criminal liability, on a Federal
14 candidate or officeholder who is found to knowingly and willfully violate the prohibition
15 on the solicitation of non-Federal funds. 2 U.S.C. 437g(d) and 441i(e). Moreover, as one
16 commenter warned, complaints are often filed for purely partisan political reasons, so it is
17 likely that all public appearances would be dissected by opponents or interest groups to
18 find a few phrases or words that could be perceived as suggesting that members of the
19 audience make a contribution or donation; this, in turn, would form the basis for filing a
20 complaint with the Commission. To address these concerns, the Commission has
21 historically sought to develop clear standards that provide adequate notice of whether
22 communications constitute solicitations; anything less would place Federal candidates,
23 officeholders, and party officials at the mercy of the various understandings of third

1 parties. Accordingly, for a solicitation to be made under revised 11 CFR 300.2(m), the
2 communication must be “construed as reasonably understood in the context in which it is
3 made.” The mere fact that the recipient of a communication subjectively believes that he
4 or she has been solicited is not a sufficient basis for finding that a solicitation has taken
5 place. See, e.g., Phantom Touring, Inc. v. Affiliated Publications, 953 F.2d 724, 727 (1st
6 Cir. 1992) (“For example, a theater critic who wrote that, ‘The producer who decided to
7 charge admission for that show is committing highway robbery,’ would be immune from
8 liability because no reasonable listener would understand the speaker to be accusing the
9 producer of the actual crime of robbery.”) Rather, under revised 11 CFR 300.2(m), the
10 Commission’s objective standard hinges on whether the recipient should have reasonably
11 understood that a solicitation was made. This will allow Federal candidates and
12 officeholders and political party officials to determine with reasonable certainty whether
13 a communication is a solicitation.

14 The conduct of the speaker or other persons involved in a communication may
15 also be relevant to the meaning of a written or oral communication in certain situations.
16 For example, the following exchange would result in a solicitation by the candidate:
17 “The head of Group X solicits a contribution from a potential donor in the presence of a
18 candidate. The donor asks the candidate if the contribution to Group X would be a good
19 idea and would help the candidate’s campaign. The candidate nods affirmatively.” See
20 11 CFR 300.2(m)(2)(xvi). Therefore, revised 11 CFR 300.2(m) expressly provides that
21 the context of a written or oral communication “includes the conduct of persons involved
22 in the communication.”

1 In the NPRM, the proposed definition of “to solicit” also included an objective
2 standard: the communication was to be construed “as a reasonable person would
3 understand it in context.” 70 FR at 56606. All of the commenters agreed that an
4 objective standard was appropriate. Some of the commenters disagreed over the
5 particular language of the standard, but one commenter accurately observed that the
6 debate over the language of the objective standard was “a little bit of a kind of false
7 dilemma, because . . . inevitably the Commission is going to construe its regulations by a
8 reasonable understanding of what the words mean . . . whether you put it in the rule or
9 not, I think that's essentially the only sensible way to go about it.”

10 4) Because it focuses on the delivery of contributions or donations, rather than
11 how a solicitation is made, the 2002 language relating to the provision of funds or
12 things of value through conduits or intermediaries is superfluous.

13 The 2002 definition of “to solicit” stated that a solicitation would result where
14 “the contribution, donation, transfer of funds, or thing of value is to be made or provided
15 directly, or through a conduit or intermediary.” See 11 CFR 300.2(m) (2002). This
16 statement focuses on the delivery of the funds or thing of value after the solicitation has
17 taken place, as opposed to how a solicitation is made. The Commission has decided to
18 remove that language because it is unnecessary. It is true that a Federal candidate,
19 officeholder, or other person would make a solicitation by asking, requesting, or
20 recommending that funds be provided to himself or herself or to another entity, regardless
21 of whether the funds are ultimately delivered directly through a conduit or intermediary
22 or some other method. However, the delivery of funds is already addressed through other

1 provisions in the Act and Commission regulations, such as the Commission's earmarking
2 rules at 11 CFR 110.6 implementing 2 U.S.C. 441a(a)(8).

3 B. Other Alternatives Proposed in the NPRM

4 In the NPRM, the Commission sought comment on five alternatives for defining
5 "to solicit" in addition to the proposed rule. Of these five alternatives, the only one that
6 received any support from commenters was Alternative Three, which was to retain the
7 2002 definition of "to solicit" while revising the Explanation and Justification to explain
8 that "to solicit" includes implied or indirect requests for funds. Commenters who
9 supported Alternative Three did so primarily on three grounds. First, notwithstanding the
10 Court of Appeals's interpretation of the Commission's 2002 definition of "to solicit,"
11 some of those seeking to comply with the Commission's solicitation rules had understood
12 that definition to cover not only express, but also implied or indirect requests for funds.
13 Second, retaining the 2002 rule would create the least instability and avoid the
14 uncertainty associated with the introduction of new terms. Lastly, a revised Explanation
15 and Justification would provide notice that this definition will be interpreted in
16 accordance with the Shays decisions. However, other commenters opposed retaining the
17 2002 definition of "to solicit" because the rule would continue to be construed to be
18 overly narrow and therefore would not comply with the Shays decisions, even if
19 explained differently.

20 Although the Commission agrees with the commenters that the 2002 definition of
21 "to solicit" was broader than the Court of Appeals understood it to be, the Commission
22 has decided not to retain the 2002 definition because, given the fact that both the District
23 Court and the Court of Appeals construed the 2002 definition to be narrow, there is a

1 significant lack of certainty regarding the scope of that definition. Thus, the most
2 straightforward and effective way of removing ambiguity and providing the necessary
3 guidance to those subject to BCRA is to clarify the scope of the definition of “to solicit”
4 in the regulation itself. Moreover, because the Court of Appeals in Shays Appeal struck
5 down the 2002 definition under the first step of Chevron,⁶ the court might find that
6 retaining that definition of “to solicit” as “to ask,” even with a revised Explanation and
7 Justification, is not fully responsive to the court’s ruling.

8 Regarding the other alternatives, none of which received any support from
9 commenters, Alternative One would have modified the revised definition of “to solicit”
10 proposed in the NPRM by excluding the requirement that a communication be construed
11 objectively in the context in which it is made. As explained above, the Commission
12 believes it is important to specify in the definition of “to solicit” that a communication
13 must be “construed reasonably in the context in which it is made” in order to make clear
14 that the determination of whether a communication is a solicitation is an objective test
15 and does not turn on subjective interpretations of the communication.

16 Alternative Two would have modified the 2002 definition to make clear in the
17 regulation itself that “to solicit” covers not only explicit requests or communications that
18 use certain “magic words” but also indirect, implied requests for contributions or
19 donations. This alternative would have provided that “to solicit means to ask, explicitly
20 or implicitly, that another person make a contribution, donation, transfer of funds, or
21 otherwise provide anything of value.” Alternative Two did not include the words
22 “request” or “recommend” or the requirement that the communication be construed
23 objectively and in context. The Commission did not choose this alternative for two

⁶ See note 2, above.

1 reasons. First, inclusion of the words “request” and “recommend” are more effective in
2 putting those subject to BCRA’s restrictions on notice that indirect requests for funds are
3 covered by the revised definition of “to solicit.” Second, incorporation of the
4 requirement that the communication be construed objectively and in context is important
5 for the reasons discussed above.

6 Alternative Four was premised on the Commission prevailing on a rehearing by
7 the full Court of Appeals. Alternative Four would have adopted a definition that limits
8 solicitations to explicit requests for contributions or donations. Because the
9 Commission’s petition for a rehearing en banc was denied, this alternative is no longer
10 viable.

11 Alternative Five was to provide no definition of “to solicit” in the rules. Under
12 this alternative, those seeking guidance would have had to rely on the Court of Appeals
13 decision, previous advisory opinions, and future applications by the courts and the
14 Commission. Although one commenter indicated that this alternative would not be
15 inconsistent with the Court of Appeals decision, another commenter asserted that a case-
16 by-case approach would not provide adequate notice and guidance in this area. The
17 Commission believes that defining the term “to solicit” is the most straightforward and
18 effective way of providing guidance.

19 C. Disclaimer Requirements for Attendance and Participation at Fundraising Events

20 In the NPRM, the Commission sought comment regarding Advisory Opinions
21 2003-03 (Rep. Eric Cantor), 2003-05 (National Association of Home Builders), and
22 2003-36 (Republican Governors Association). These advisory opinions permitted
23 Federal candidates or officeholders to attend and participate in a fundraising event for

1 non-Federal funds held by State and local candidates, or by non-Federal political
2 organizations, so long as the solicitations made by the Federal candidate or officeholder
3 included, or were accompanied by, certain disclaimers.⁷

4 The Commission sought comment on whether the principles enunciated in these
5 advisory opinions should be incorporated into the Commission's regulations or should be
6 superseded. All of the commenters who addressed the application of the disclaimer
7 requirements, as articulated in the advisory opinions, agreed that Federal candidates and
8 officeholders should be permitted to attend and participate in these non-Federal
9 fundraising events, subject to the disclaimer guidelines. One commenter favorably
10 characterized the disclaimers as a "safe harbor" enabling Federal candidates to participate
11 and speak at such events "in a way that complies with the statute." Another commenter
12 warned that superseding the advisory opinions would "chill" the activities of Federal
13 candidates and officeholders at the State and local, or "grassroots," level.

14 Some commenters urged the Commission to incorporate the disclaimers into
15 regulations and observed that the advisory opinions provided detailed guidance "without
16 having caused any known abuse or confusion."

17 The incorporation of the disclaimer requirements into a rule applicable to non-
18 party committee fundraisers was first addressed in the rulemaking on Federal candidate
19 solicitations at party fundraising events. See Revised Explanation and Justification for
20 Final Rules on Candidate Solicitation at State, District, and Local Party Fundraising
21 Events, 70 FR 37649 (June 30, 2005) ("Party Committee Events Final Rules"). During

⁷ This analysis has not been applied to appearances and speeches by Federal candidates and officeholders at State, district, or local party fundraising events because the Act and Commission regulations allow those individuals to attend and speak at such events without restriction or regulation. 2 U.S.C. 441i(e)(3); 11 CFR 300.64.

1 the hearings on that rulemaking, a commenter observed that the disclaimer requirements
2 are “understood” and “the community is complying with them,” a view echoed in the
3 current rulemaking. In the Explanation and Justification for the Party Committee Events
4 Final Rules, the Commission indicated that it was not necessary “to initiate a rulemaking
5 to address the issues in Advisory Opinions 2003-03, 2003-05, and 2003-36 at this time.”
6 70 FR at 37654. The Commission continues to stand by that determination.

7 D. 11 CFR 300.2(m)(1) – Types of communications that are solicitations

8 Several commenters urged the Commission to specifically address
9 communications that include reply envelopes, phone numbers, or Web pages dedicated to
10 facilitating the making of contributions or donations. The Commission is therefore
11 adding new 11 CFR 300.2(m)(1) to specify three types of “solicitation” that result from
12 components of a communication that are intended to provide instructions about how to
13 contribute or otherwise facilitate the making of a contribution. Specifically, paragraph
14 (m)(1) provides that the following are solicitations: (1) A written communication that
15 provides a method of making a contribution or donation, such as a reply card or envelope
16 that permits a contributor or donor to indicate the amount of a contribution, regardless of
17 the other text of the communication; (2) a communication that provides instructions on
18 how or where to send contributions or donations, including providing a phone number
19 specifically dedicated to facilitating the making of contributions or donations; and (3) a
20 communication that identifies a Web address where the Web page displayed is
21 specifically dedicated to facilitating the making of a contribution or donation, or
22 automatically redirects the Internet user to such a page, or exclusively displays a link to
23 such a page. See 11 CFR 300.2(m)(1)(i)-(iii).

1 However, 11 CFR 300.2(m)(1)(ii) and (iii) expressly state that a communication
2 does not become a solicitation simply by providing a mailing address, phone number, or
3 Web address unless the address or number is specifically dedicated to facilitating the
4 making of a contribution or donation. This clarification is intended to ensure that an
5 organization's attempt to publicize its own contact information for non-fundraising
6 purposes will not be treated as a solicitation.

7 E. Examples of Solicitations

8 In order to provide Federal candidates and officeholders, and political committees
9 and others operating under BCRA, with additional guidance on how the new standard
10 will be applied, the Commission proposed, in the NPRM, to incorporate into either the
11 final rule or the Explanation and Justification examples of communications that are
12 solicitations, and examples of communications that are not. The NPRM sought comment
13 on whether some or all of these examples should be included in the regulation itself or in
14 the Explanation and Justification.

15 The commenters generally agreed that all the examples set out in the NPRM
16 should be included. Some commenters believed that the examples should be included in
17 the Explanation and Justification while others expressed a preference for including the
18 examples in the regulation itself. Because the Commission recognizes that Federal
19 candidates and officeholders require clear guidance that can be readily applied in practice
20 to their day-to-day activities, the Commission concludes that the examples are such an
21 integral component of the definition of "to solicit" that they are best included in the
22 regulation itself. The inclusion of the examples in the rules makes these examples more
23 accessible to those seeking to comply with the Commission's rules.

1 Similar versions of some of these examples were set forth in the NPRM. Several
2 of these examples have been altered slightly to provide further clarity. Furthermore,
3 given the unanimous agreement of the commenters that examples are helpful in applying
4 the rule in real-life situations, the Commission is providing several new examples in
5 addition to those included in the NPRM. The Commission emphasizes that the lists are
6 integral to the application of the definition of “to solicit” in particular situations, but are
7 not intended to be exhaustive.

8 Revised 11 CFR 300.2(m)(2) lists several communications that are solicitations.
9 Some of these examples represent explicit requests, such as “Please give \$100,000 to
10 Group X.” 11 CFR 300.2(m)(2)(i). Others examples are implicit, such as “X is an
11 effective State party organization; it needs to obtain as many \$100,000 donations as
12 possible,” and “Giving \$100,000 to Group X would be a very smart idea.” 11 CFR
13 300.2(m)(2)(iv) and (v). Several of the examples also demonstrate how a simple
14 statement can be a solicitation in a particular context, such as the following: A candidate
15 hands a potential donor a list of people who have contributed to a group and the amounts
16 of their contributions. The candidate says, “I see you are not on the list.” 11 CFR
17 300.2(m)(2)(x).

18 In contrast, 11 CFR 300.2(m)(3) includes examples of communications that are
19 not, in and of themselves, “solicitations” under the revised definition. These statements
20 are specific to the context in which they are made, and similar statements may result in
21 solicitations in other situations. Some of these examples consist of statements indicating
22 general support or electoral support, rather than a clear request for funds or something of
23 value, such as a candidate’s statement of “thank you for your continuing support” at a

1 get-out-the-vote (GOTV) rally, or “It is critical that we support the entire Democratic
2 ticket in November” at a ticket-wide rally. See 11 CFR 300.2(m)(3)(iv) and (v). Other
3 examples refer to legislative achievements, such as the following statement by a Federal
4 officeholder: “Our Senator has done a great job for us this year. The policies she has
5 vigorously promoted in the Senate have really helped the economy of the State.” 11 CFR
6 300.2(m)(3)(vi).

7 F. 11 CFR Part 114 – Corporate and Labor Organization Activity

8 Several regulations concerning corporate and labor organization activity in 11
9 CFR Part 114 use the terms “to solicit” and “solicitation” without defining them. See,
10 e.g., 11 CFR 114.5(g), 114.6, 114.7, and 114.8; see also 11 CFR 104.7(b)(2). The NPRM
11 sought comment on whether the Commission should continue to leave the terms “to
12 solicit” and “solicitation” undefined in these regulations, or whether these rules should
13 include the same definition of “to solicit” as the regulations regarding non-Federal funds.
14 Five commenters urged the Commission not to expand this rulemaking by promulgating
15 definitions of “to solicit” and “solicitation” with respect to corporate and labor
16 organization activity in 11 CFR Part 114. Because, as three of these commenters
17 observed, a rule defining “solicitation” for 11 CFR Part 114 is not required by the Shays
18 Appeal, the Commission has decided to leave the words “solicitation” and “to solicit”
19 undefined in the regulations governing corporate and labor organization activity. The
20 Commission also notes that there are a number of advisory opinions that already explain
21 what would or would not constitute a solicitation of contributions to a corporation’s
22 separate segregated fund (“SSF”). See, e.g., Advisory Opinions 2003-14, 2000-07, 1999-
23 06, 1991-03, 1988-02, 1983-38, 1982-65, and 1979-13.

1 **G. 11 CFR 110.20(a)(6) – Foreign Nationals**

2 The Commission’s regulations at 11 CFR 110.20(a)(6) prohibiting contributions,
3 donations, expenditures, independent expenditures, and disbursements by foreign
4 nationals incorporate the definition of “to solicit” in 11 CFR 300.2(m). See 11 CFR
5 110.20(a)(6). The NPRM proposed to continue to use the same definition of “to solicit”
6 for both the regulations regarding non-Federal funds and the foreign national
7 prohibitions, but also invited comment on whether there are reasons for providing two
8 different, independent definitions of the term. All three of the commenters who
9 addressed this issue urged the Commission to use the same definition for both
10 regulations. The Commission agrees, and concludes that it is appropriate to continue to
11 use the same definition of “to solicit” for both the regulations regarding non-Federal
12 funds and the foreign national prohibitions.

13 **II. 11 CFR 300.2(n) – Definition of “To Direct”**

14 The Commission is revising the definition of “to direct” in 11 CFR 300.2(n) to
15 mean the following: “to guide, directly or indirectly, a person who has expressed an
16 intent to make a contribution, donation, transfer of funds, or otherwise provide anything
17 of value, by identifying a candidate, political committee or organization, for the receipt of
18 such funds, or things of value. The contribution, donation, transfer, or thing of value may
19 be made or provided directly or through a conduit or intermediary.” The Commission’s
20 final rule adopts the revised definition of “to direct” proposed in the NPRM, with the
21 additional clarification that the guidance can be provided directly or indirectly. The
22 inclusion of “directly or indirectly” makes clear that the rule covers not only explicit
23 guidance, but implicit guidance as well.

1 The final rule at 11 CFR 300.2(n) also includes the statement that “merely
2 providing information or guidance as to the applicability of a particular law or
3 regulation” is not direction. This statement is nearly identical to the statement included
4 in the 2002 rule, with only technical changes intended to promote clarity in the meaning
5 of the rule.

6 As indicated above, although the Court of Appeals held that the Commission’s
7 definition of “to direct” was invalid because it effectively defined “to direct” as “to ask”
8 and thus, like the definition of “to solicit,” limited “to direct” to explicit requests for
9 funds, the court did not provide guidance on how “to direct” should be defined.
10 However, the District Court did provide guidance. Specifically, the District Court
11 observed that the term “to direct” has more than one meaning. It “can mean ‘[t]o guide
12 (something or someone),’ as in to inform someone of where he or she can make a
13 donation. The word can also mean ‘[t]o instruct (someone) with authority,’ as in to order
14 someone to make a donation.” Shays District at 76 (quoting Black’s Law Dictionary 471
15 (7th ed. 1999)).

16 Defining “to direct” as “to guide” is consistent with BCRA’s statutory language,
17 which states in relevant part that the national committee of a political party may not
18 “direct to another person a contribution, donation, or transfer of funds or anything of
19 value.” 2 U.S.C. 441i(a)(1) (emphasis added). See also 2 U.S.C. 441i(d) (“A national,
20 State, district, or local committee of a political party ... shall not solicit any funds ... or
21 direct any donations to [an entity]”) (emphasis added). The preposition “to”
22 following the term “to direct” in these statutory provisions would appear to indicate that

1 Congress intended the use of “to direct” in BCRA to mean “to guide.”⁸ The revised
2 definition is also fully responsive to the holding in Shays District by ensuring that “to
3 solicit” and “to direct” cover distinct, though potentially overlapping, sets of
4 communications.

5 Specifically, under the revised rule, “to direct” encompasses situations where a
6 person has already expressed an intent to make a contribution or donation, but lacks the
7 identity of an appropriate candidate, political committee or organization to which to make
8 that contribution or donation. The act of direction consists of providing the contributor
9 with the identity of an appropriate recipient for the contribution or donation. Examples
10 of such direction include providing the names of such candidates, political committees, or
11 organizations, as well as providing any other sufficiently detailed contact information
12 such as a web or mailing address, phone number, or the name or other contact
13 information of a committee’s treasurer, campaign manager, or finance director.

14 Even though, as explained above, providing a mailing address, telephone number,
15 or Web address is, in certain circumstances, in and of itself, a solicitation, the revised
16 definition of “to solicit” does not cover many other situations in which a Federal
17 candidate or officeholder or party official merely provides information about possible
18 recipients to someone who has already expressed an intent to contribute or donate. For
19 example, Donor approaches Candidate stating: “I have \$10,000 and I want to contribute it
20 to the party for the next election. Where would it be of most use?” Candidate replies:

⁸ To define “to direct,” based on the second meaning of “to direct” identified by the District Court (i.e., “to instruct with authority”), would effectively subsume the definition of “to direct” within the definition of “to solicit,” because “instructing with authority” is a form of asking or requesting – the terms the revised 11 CFR 300.2(m) uses to define “to solicit.” In other words, to the extent that “instructing someone with authority” to make a contribution or donation is reasonably understood to be asking or requesting that a contribution or donation be made, it is already encompassed by the amended definition of “to solicit.” Thus, defining “to direct” as to “instruct someone with authority” would deprive the term of a meaningful role in the regulation by subsuming it under the meaning of “to solicit.” See Shays District at 77.

1 "The New York State Republican Party." Merely providing Donor with the name of an
2 organization to which to donate funds is not a solicitation even under the revised and
3 expanded definition of "to solicit," but is direction under the revised definition of "to
4 direct." Thus, even though the revised definitions of "to direct" and "to solicit" overlap,
5 in certain circumstances, the revised definition of "to direct" also covers a substantial
6 range of actions that are not covered by the revised definition of "to solicit," and
7 therefore is not redundant.

8 The NPRM invited comments on whether the proposed definition would be too
9 broad or too narrow, whether it would reduce the opportunities for circumvention of the
10 Act or for actual or apparent corruption, and whether it would affect the exercise of
11 political activity. The majority of those who commented on this issue supported the
12 Commission's proposed revision to the rule and indicated that it would reduce the
13 opportunities for circumvention of BCRA's soft money restrictions, and would provide
14 sufficient guidance to candidates, officeholders, and political committees.

15 Some commenters asserted that because the proposed rule would apply only to
16 persons who had already "expressed an intent" to make a contribution, donation, transfer
17 of funds, or otherwise provide anything of value, the proposed rule would be too narrow
18 and could lead to circumvention of the Act. These commenters suggested modifying the
19 rule by removing the phrase "who has expressed an intent."

20 The Commission disagrees with these commenters. If the phrase "who has
21 expressed an intent" were removed, the definition of "to direct" would include merely
22 providing the identity of an appropriate recipient, without any attempt to motivate
23 another person to contribute or donate funds. Thus, this rule would appear to be

1 substantially broader than the revised definition of “to solicit” at 11 CFR 300.2(m), and
2 would subsume that definition.

3 The NPRM also asked whether it was even necessary to provide a regulatory
4 definition for the term “to direct” for the purposes of 11 CFR part 300, as long as it was
5 made clear in the Explanation and Justification that the term means “to guide.” This
6 would have allowed the definition to develop through the advisory opinion and
7 enforcement processes. Some commenters objected to this approach, arguing that
8 adopting a regulatory definition adds clarity to the law and provides guidance to Federal
9 candidates and officeholders and political party officers. Taking this into consideration,
10 the Commission agrees that it is preferable to provide guidance, and therefore is adopting
11 the revised definition.

12 In the NPRM, the Commission noted that the words “directed” and “direction”
13 appear in the Commission’s earmarking rules regarding contributions directed through a
14 conduit or intermediary under 2 U.S.C. 441a(a)(8). See 11 CFR 110.6(a). Although
15 these terms are not defined in the Act or in Commission regulations, the Explanation and
16 Justification for 11 CFR 110.6 states that in determining whether a person has direction
17 or control, “the Commission has considered such factors as whether the conduit [or
18 intermediary] controlled the amount and timing of the contribution, and whether the
19 conduit selected the intended recipient.” Final Rules for Affiliated Committees,
20 Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked
21 Contributions, 54 FR 34098, 34108 (August 17, 1989). Thus, the word “direction” in the
22 earmarking rules essentially means “instructing with authority.” The Commission sought

1 comment on whether this was an appropriate definition of the term “to direct” in the
2 context of 11 CFR part 300.

3 Some commenters believed that this interpretation would be inconsistent with the
4 purposes and intent of BCRA, and would improperly narrow BCRA’s otherwise broad
5 prohibition on Federal candidates, officeholders and political party committees
6 participation in the raising or spending of non-Federal funds. The Commission notes
7 that, as discussed above, under this interpretation the term “to direct” would appear to be
8 subsumed by the revised definition of “to solicit.” Any activity that could be construed
9 as “directing with authority” could also be categorized as “to ask, request or recommend”
10 that another person make a contribution or donation. Therefore the Commission declines
11 to adopt a definition of “to direct” reflecting this interpretation.

12

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

14 **[Regulatory Flexibility Act]**

15 The Commission certifies that the attached final rules do not have a significant
16 economic impact on a substantial number of small entities. The basis for this
17 certification is that the organizations affected by these rules are the national, State,
18 district, and local party committees of the two major political parties and other political
19 committees, which are not small entities under 5 U.S.C. 601 because they are not small
20 businesses, small organizations, or small governmental jurisdictions. National, State,
21 district, and local party committees and any other political committees affected by these
22 proposed rules are not-for-profit committees that do not meet the definition of “small
23 organization,” which requires that the enterprise be independently owned and operated

1 and not dominant in its field. State political party committees are not independently
2 owned and operated because they are not financed and controlled by a small identifiable
3 group of individuals, and they are affiliated with the larger national political party
4 organizations. In addition, the national and State political party committees representing
5 the Democratic and Republican parties have a major controlling influence within the
6 political arena of their State and are thus dominant in their field. District and local party
7 committees are generally considered affiliated with the State committees and need not be
8 considered separately.

9 Most other political committees affected by these rules are not-for-profit
10 committees that do not meet the definition of "small organization." Most political
11 committees are not independently owned and operated because they are not financed by a
12 small identifiable group of individuals. Most political committees rely on contributions
13 from a large number of individuals to fund the committees' operations and activities.

14 To the extent that any State party committees representing minor political parties
15 or any other political committees might be considered "small organizations," the number
16 affected by these rules is not substantial.

17 Finally, candidates and other individuals operating under these rules are not small
18 entities.

19

20 **List of Subjects**

21 **11 CFR Part 300**

22 Campaign funds, Nonprofit organizations, Political candidates, Political committees and
23 parties, Reporting and recordkeeping requirements.

1 For the reasons set out in the preamble, the Federal Election Commission is amending
2 Subchapter C of Chapter I of Title 11 of the Code of Federal Regulations as follows:

3 **PART 300 – NON-FEDERAL FUNDS**

4 1. The authority citation for Part 300 continues to read as follows:

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

6 2. Section 300.2 is amended by revising paragraphs (m) and (n) to read as follows:

7 **§ 300.2 Definitions.**

8 * * * * *

9 (m) To solicit. For the purposes of Part 300, to solicit means to ask, request, or
10 recommend, explicitly or implicitly, that another person make a contribution, donation,
11 transfer of funds, or otherwise provide anything of value, ~~whether the contribution,~~
12 ~~donation, transfer of funds, or thing of value is to be made or provided directly, or~~
13 ~~through a conduit or intermediary.~~ A solicitation is an oral or written communication
14 that, construed as reasonably understood in the context in which it is made, contains a
15 clear message asking, requesting, or recommending that another person make a
16 contribution, donation, transfer of funds, or otherwise provide anything of value. A
17 solicitation may be made directly or indirectly. The context includes the conduct of
18 persons involved in the communication. A solicitation does not include ~~merely providing~~
19 ~~information or mere statements of political support or mere guidance as to the~~
20 ~~requirement-applicability of a particular law or regulation.~~

21 (1) The following types of communications constitute solicitations:

22 (i) A communication that provides a method of making a contribution
23 or donation, regardless of the communication. This includes, but is

1 not limited to, providing a separate card, envelope, or reply device
2 that contains an address to which funds may be sent and allows
3 contributors or donors to indicate the dollar amount of their
4 contribution or donation to the candidate, political committee, or
5 other organization.

6 (ii) A communication that provides instructions on how or where to
7 send contributions or donations, including providing a phone
8 number specifically dedicated to facilitating the making of
9 contributions or donations. However, a communication does not,
10 in and of itself, satisfy the definition of “to solicit” merely because
11 it includes a mailing address or phone number that is not
12 specifically dedicated to facilitating the making of contributions or
13 donations.

14 (iii) A communication that identifies a Web address where the Web
15 page displayed is specifically dedicated to facilitating the making
16 of a contribution or donation, or automatically redirects the
17 Internet user to such a page, or exclusively displays a link to such a
18 page. However, a communication does not, in and of itself, satisfy
19 the definition of “to solicit” merely because it includes the address
20 of a Web page that is not specifically dedicated to facilitating the
21 making of a contribution or donation.

22 (2) The following statements constitute solicitations:

23 (i) “Please give \$100,000 to Group X.”

- 1 (ii) "It is important for our State party to receive at least \$100,000
2 from each of you in this election."
- 3 (iii) "Group X has always helped me financially in my elections. Keep
4 them in mind this fall."
- 5 (iv) "X is an effective State party organization; it needs to obtain as
6 many \$100,000 donations as possible."
- 7 (v) "Giving \$100,000 to Group X would be a very smart idea."
- 8 (vi) "Send all contributions to the following address..."
- 9 (vii) "I am not permitted to ask for contributions, but unsolicited
10 contributions will be accepted at the following address..."
- 11 (viii) "Group X is having a fundraiser this week; you should go."
- 12 (ix) "You have reached the limit of what you may contribute directly to
13 my campaign, but you can further help my campaign by assisting
14 the State party."
- 15 (x) A candidate hands a potential donor a list of people who have
16 contributed to a group and the amounts of their contributions. The
17 candidate says, "I see you are not on the list."
- 18 (xi) "I will not forget those who contribute at this crucial stage."
- 19 (xii) "The candidate will be very pleased if we can count on you for
20 \$10,000."
- 21 (xiii) "Your contribution to this campaign would mean a great deal to
22 the entire party and to me personally."

1 (xiv) Candidate says to potential donor: “The money you will help us
2 raise will allow us to communicate our message to the voters
3 through Labor Day.”

4 (xv) “I appreciate all you’ve done in the past for our party in this State.
5 Looking ahead, we face some tough elections. I’d be very happy if
6 you could maintain the same level of financial support for our
7 State party this year.”

8 (xvi) The head of Group X solicits a contribution from a potential donor
9 in the presence of a candidate. The donor asks the candidate if the
10 contribution to Group X would be a good idea and would help the
11 candidate’s campaign. The candidate nods affirmatively.

12 (3) The following statements do not constitute solicitations:

13 (i) During a policy speech, the candidate says: “Thank you for your
14 support of the Democratic Party.”

15 (ii) At a ticket-wide rally, the candidate says: “Thank you for your
16 support of my campaign.”

17 (iii) At a Labor Day rally, the candidate says: “Thank you for your past
18 financial support of the Republican Party.”

19 (iv) At a GOTV rally, the candidate says: “Thank you for your
20 continuing support.”

21 (v) At a ticket-wide rally, the candidate says: “It is critical that we
22 support the entire Democratic ticket in November.”

1 (vi) A Federal officeholder says: "Our Senator has done a great job for
2 us this year. The policies she has vigorously promoted in the
3 Senate have really helped the economy of the State."

4 (vii) A candidate says: "Thanks to your contributions we have been able
5 to support our President, Senator and Representative during the
6 past election cycle."

7 (n) To direct. For the purposes of part 300, to direct means to ~~ask~~ guide, directly or
8 indirectly, a person who has expressed an intent to make a contribution, donation, transfer
9 of funds, or otherwise provide anything of value, by identifying a candidate, political
10 committee or organization, for the receipt of such funds, or things of value, ~~to make that~~
11 ~~contribution, donation, transfer of funds, or to provide that thing of value, including~~
12 ~~through a conduit or intermediary.~~ The contribution, donation, transfer, or thing of value
13 may be made or provided directly or through a conduit or intermediary. Direction does
14 not include merely providing information or guidance as to the ~~requirement~~ applicability
15 of a particular law or regulation.

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Michael E. Toner
Chairman
Federal Election Commission

24 DATED _____
25 BILLING CODE: 6715-01-U