

**AGENDA DOCUMENT NO. 11-46**



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

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August 1, 2011

**AGENDA ITEM**

**MEMORANDUM**

TO: The Commission

For Meeting of 8-4-11

FROM: Christopher Hughey  
Acting General Counsel

**SUBMITTED LATE**

Rosemary C. Smith *RCS*  
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Subject: Draft AO 2011-14 (Utah Bankers Association) – Drafts A and B

Attached are two alternative proposed drafts of the subject advisory opinion. We have been asked to place these drafts on the Open Session agenda for August 4, 2011.

Attachment

1 ADVISORY OPINION 2011-14

2

3 Kirk Jowers, Esq.

4 Matthew T. Sanderson, Esq.

5 Caplin & Drysdale, Chartered

6 One Thomas Circle, NW, Suite 1100

7 Washington, DC 20005

8

9 Dear Messrs. Jowers and Sanderson:

**DRAFT A**

10 We are responding to your advisory opinion request on behalf of Utah Bankers  
11 Association and its separate segregated fund (“SSF”), Utah Bankers Association Action  
12 PAC (“UBAAPAC”), concerning the application of the Federal Election Campaign Act  
13 of 1971, as amended (the “Act”), and Commission regulations to certain proposed  
14 activities relating to Friends of Traditional Banking (the “Project”), a planned project of  
15 UBAAPAC. The Project will solicit individuals in the general public via email and the  
16 Project’s website to make contributions directly to certain recommended Federal  
17 candidates.

18 The Commission concludes that costs of the Project’s solicitations via email and  
19 website will not be in-kind contributions to the recommended candidates because the  
20 solicitations will not be “coordinated communications.” The Commission further  
21 concludes that the proposed method of funding the Project’s administrative and  
22 communication costs would be permissible under the Act and Commission regulations,  
23 under certain conditions. The Commission also concludes that paid employees of State  
24 bankers associations that are affiliated with Utah Bankers Association, as well as  
25 individuals working in their personal capacities as volunteers, may serve on the Project’s  
26 leadership councils under certain conditions, and may forward the Project’s email  
27 solicitations to their personal friends and acquaintances, without the value of their

1 services constituting a contribution to UBAAPAC. Finally, the Commission concludes  
2 that the Project need not add any disclaimers to its email or website solicitations beyond  
3 those proposed in the request, but will need to revise the proposed disclaimer language.

4 ***Background***

5 The facts presented in this advisory opinion are based on your letter received on  
6 June 13, 2011, your emails received on June 27, 2011 and July 22, 2011, and political  
7 committee reports filed with the Commission that are available on the Commission's  
8 website.

9 Utah Bankers Association is a professional and trade association for Utah's  
10 commercial banks, savings banks, and industrial loan corporations. It is an incorporated  
11 tax-exempt trade association described in section 501(c)(6) of the Internal Revenue Code.  
12 26 U.S.C. 501(c)(6). Utah Bankers Association is a State affiliate of the American  
13 Bankers Association. The American Bankers Association's SSF has identified  
14 UBAAPAC as one of more than 40 affiliated political committees.<sup>1</sup> Similarly,  
15 UBAAPAC has identified American Bankers Association PAC as an affiliated  
16 committee.<sup>2</sup>

17 The Project will be a specially branded communication of UBAAPAC consisting  
18 of a public website and an email list that will reach the general public. The Project will  
19 not be a separate legal entity and will not have a separate bank account or separate office

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<sup>1</sup> See Statement of Organization of the American Bankers Association PAC (March 24, 2009), available at <http://query.nictusa.com/pdf/222/29991789222/29991789222.pdf#navpanes=0>.

<sup>2</sup> See Statement of Organization of the Utah Bankers Association Action PAC (July 23, 2003), available at <http://query.nictusa.com/cgi-bin/fecimg/?C00374371>.

1 space from UBAAPAC. The Project's disbursements will be reported to the Commission  
2 on UBAAPAC's Form 3X.

3           The Project will solicit individual members of the public via email and the  
4 Project's website to make contributions from their personal funds to particular Federal  
5 candidates during each election cycle. The Project will also encourage email recipients to  
6 forward its emails to other individuals and to refer other individuals to its website. The  
7 Project will provide the website and mailing address of the recommended Federal  
8 candidates so that any interested individuals receiving the Project's communications can  
9 send their contributions directly to the candidates. The Project will not accept or forward  
10 earmarked contributions to a candidate or a candidate's authorized committee. Nor will  
11 the Project solicit contributions to itself or to UBAAPAC, or make any monetary  
12 contributions to candidates.

13           UBAAPAC will assemble two groups to lead the Project: the Advisory Council  
14 and the Traditional Banking Council (collectively referred to as the "Councils"). The  
15 Advisory Council will identify Federal candidates who support policies favorable to  
16 traditional banking. The Traditional Banking Council will then select a small number of  
17 candidates from the Advisory Council's list to be included in the Project's  
18 communications.

19           UBAAPAC plans to invite employees of other State bankers associations related  
20 to the American Bankers Association to serve on the Councils. These individuals will  
21 serve on the Councils as part of their regular employment responsibilities with the State  
22 bankers associations and will be compensated accordingly by the State bankers  
23 associations. For purposes of this advisory opinion, the requestors have asked the

1 Commission to assume that the State bankers associations are affiliated with Utah  
2 Bankers Association and are incorporated.

3         The Councils' membership will also include individuals who are not employed by  
4 State bankers associations, but who may themselves be members of State bankers  
5 associations. These individuals will not serve on the Councils as part of their  
6 employment responsibilities and will not be compensated for their services. The Project  
7 will inform these individuals that they may not serve on the Councils at the invitation of  
8 their supervisors at work, use their work subordinates' time to participate in the Project,  
9 or use more than four hours of work time per month to volunteer for the Project. Any  
10 communication of the Project that lists these Councils' members will also state that their  
11 corporate titles are for identification purposes only.

12         The Project intends to conduct its activities independently of Federal candidates  
13 and political party committees. To maintain this independence, the Project will  
14 implement a formal Policy on Interactions with Federal Candidates and Political Party  
15 Representatives (the "Policy"). *See* Request, Exhibit A.

16         The Project will encourage members of the Councils to forward periodically the  
17 Project's emails to their friends and acquaintances, using the members' personal contact  
18 lists. Corporate-maintained vendor and contact lists will not be used for these personal  
19 email messages. The Project plans to cover the costs of forwarding these emails for each  
20 Council member who works at a State bankers association by making an annual advance  
21 payment of fifty dollars to that member's association.

22         UBAAPAC will pay for the Project's website and email expenses (including staff  
23 time spent creating email and website content, Internet vendor costs, and server time).

1 To cover these costs, UBAAPAC may use funds transferred from UBAAPAC's affiliated  
2 political committees. The Utah Bankers Association will pay directly the Project's  
3 administrative costs, including legal and phone costs, and will accept payments from  
4 affiliated incorporated State bankers associations to help defray the Project's  
5 administrative costs. The Project will not solicit contributions to fund its activities.

6 Finally, the Project's website and emails will contain a disclaimer stating, in a  
7 printed box, that the communications are "Paid for by Friends of Traditional Banking, a  
8 project of Utah Bankers Association Action PAC. Not authorized by any candidate or  
9 candidate's committee. [www.FriendsOfTraditionalBanking.com](http://www.FriendsOfTraditionalBanking.com)." The website and  
10 emails will also state that the Project is not soliciting funds for itself or any affiliated  
11 entity and will not collect or "bundle" and forward contributions to candidates.

12 ***Questions Presented***

13 *1. Will the Project's website and email communications to the general public*  
14 *soliciting contributions to certain Federal candidates result in in-kind contributions to*  
15 *those Federal candidates?*

16 *2. Is the requestors' proposed method of funding the Project's administrative and*  
17 *communication costs permissible?*

18 *3. May employees of incorporated State bankers associations that are affiliated*  
19 *with Utah Bankers Association serve on the Councils as part of their regular employment*  
20 *responsibilities, without the value of their services constituting a contribution to*  
21 *UBAAPAC?*

1           4. *Would individuals who are not employees of the State bankers associations*  
2 *and who serve on the Councils under the conditions described in the request be*  
3 *considered to serve in their personal capacities as volunteers?*

4           5. *May Council members forward the Project's email solicitations to their*  
5 *personal friends and acquaintances at the suggestion of the Project as described in the*  
6 *request without making a contribution to UBAAPAC?*

7           6. *If the Project asks recipients of its email solicitations to forward the emails to*  
8 *others and to refer others to its website, must it add any disclaimers to its email*  
9 *communications and website beyond those proposed in the request?*

10  
11 ***Legal Analysis and Conclusions***

12  
13 *Question 1. Will the Project's website and email communications to the general public*  
14 *soliciting contributions to certain Federal candidates result in in-kind contributions to*  
15 *those Federal candidates?*

16           No, the Project's website and email communications to the general public  
17 soliciting contributions to certain Federal candidates will not result in in-kind  
18 contributions to those Federal candidates, because the communications will not be  
19 "coordinated communications" under the Act and Commission regulations.

20           Corporations, including incorporated trade associations, are prohibited from  
21 making contributions or facilitating the making of contributions in connection with a  
22 Federal election. 2 U.S.C. 441b(a); 11 CFR 114.2(a), (b), (f), and 114.8(b). The term  
23 "contribution" includes a gift, subscription, loan, advance, or deposit of money or  
24 anything of value made by any person for the purpose of influencing any Federal

1 election. 2 U.S.C. 431(8) and 441b(b)(2); 11 CFR 100.52, 114.2(a) and (b). It also  
2 includes the “payment by any person of compensation for the personal services of  
3 another person which are rendered to a political committee without charge for any  
4 purpose.” 2 U.S.C. 431(8)(A)(ii); 11 CFR 100.54.

5       SSFs may nonetheless use voluntary contributions to fund communications to the  
6 general public on any subject, including communications that solicit contributions to a  
7 Federal candidate, so long as the communications do not also solicit contributions to any  
8 SSF. *See* 2 U.S.C. 441b(b)(4)(A)(i); 11 CFR 114.5(i). Moreover, soliciting contributions  
9 directly to a Federal candidate is not facilitating the making of contributions if the  
10 solicitation is conducted by an SSF. *See* 11 CFR 114.2(f)(3)(i).<sup>3</sup> Accordingly,  
11 UBAAPAC, as an SSF, may include solicitations on the Project’s website and in its  
12 emails for contributions to be sent directly to Federal candidates, provided that the  
13 communications are paid for with voluntary contributions and do not also solicit  
14 contributions to any SSF, including UBAAPAC.

15       Although permissible under the Act and Commission regulations, the costs  
16 incurred by UBAAPAC in making communications to the general public that solicit  
17 contributions to Federal candidates will be in-kind contributions from UBAAPAC to the  
18 candidates if the communications are “coordinated communications.” 2 U.S.C.  
19 441a(a)(7)(B)(i); 11 CFR 109.21(b).<sup>4</sup> Commission regulations provide a three-prong test  
20 to determine if a communication is a coordinated communication. 11 CFR 109.21(a).

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<sup>3</sup> The Commission expresses no opinion at this time as to whether, in light of the Supreme Court’s decision in *Citizens United v. FEC*, 130 S. Ct. 876 (2010), corporations may independently solicit contributions directly to a Federal candidate, without such solicitations having to be conducted by an SSF.

<sup>4</sup> Similarly, any other expenditures, if coordinated, would be in-kind contributions to the candidates with whom they are coordinated. 11 C.F.R. 109.20(b).



1 First, the communication must be paid for, in whole or in part, by a person other than the  
2 Federal candidate, the candidate's authorized committee or the political party committee  
3 (the payment prong). 11 CFR 109.21(a)(1). Second, the communication must satisfy one  
4 of the five content standards (the content prong). 11 CFR 109.21(a)(2) and (c). Third,  
5 the communication must satisfy one of the five conduct standards (the conduct prong).  
6 11 CFR 109.21(a)(3) and (d). A payment for a communication satisfying all three prongs  
7 of the test is made for the purpose of influencing a Federal election, and therefore is an  
8 in-kind contribution.

9 The Commission concludes that the Project's communications will not be  
10 "coordinated communications" because they will not meet the content prong in 11 CFR  
11 109.21(c).<sup>5</sup> To meet the content prong, a communication must be either a "public  
12 communication" as defined in 2 U.S.C. 431(22) and 11 CFR 100.26, or an  
13 "electioneering communication" as defined in 2 U.S.C. 434(f)(3) and 11 CFR 100.29.  
14 Because the Project's communications will appear only on the Project's own website and  
15 by email, the communications will not be either public communications or electioneering  
16 communications. *See* 11 CFR 100.26 (an Internet communication that is not placed for a  
17 fee on another person's website is not a public communication); 11 CFR 100.29  
18 (electioneering communications are limited to broadcast, cable, or satellite  
19 communications). Because the content prong is not satisfied, the Project's  
20 communications via email and on its own website will not be coordinated  
21 communications under 11 CFR 109.21. Accordingly, the costs of these communications  
22 will not be in-kind contributions to those candidates by UBAAPAC.

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<sup>5</sup> Because the communications would not satisfy the content prong of the coordinated communication test, the Commission need not and has not examined the other two prongs of the test.

1 *Question 2. Is the requestors' proposed method of funding the Project's administrative*  
2 *and communication costs permissible?*

3 Yes, the requestors' proposed method of funding the administrative and  
4 communication costs of the Project is permissible. If the corporate affiliates of Utah  
5 Bankers Association pay the Project's administrative costs, however, then UBAAPAC  
6 will need to identify them as connected organizations on its Statement of Organization  
7 and revise its name accordingly.

8 Although the Act and Commission regulations prohibit a corporation from  
9 making contributions in connection with any Federal election, the definition of  
10 "contribution" does not include expenses paid by a corporation for "the establishment,  
11 administration, and solicitation of contributions to" the corporation's SSF. 2 U.S.C.  
12 441b(a) and (b)(2)(C); 11 CFR 114.2(a). These establishment, administration and  
13 solicitation costs are "the cost of office space, phones, salaries, utilities, supplies, legal  
14 and accounting fees, fundraising and other expenses incurred in setting up and running a  
15 separate segregated fund established by a corporation." 11 CFR 114.1(b). Under the  
16 requestors' proposal, UBAAPAC would finance the Project's communications costs,  
17 including the Project's website and email expenses, and defray these costs through  
18 payments from UBAAPAC's affiliated political committees.<sup>6</sup> Affiliated political  
19 committees share contribution limits and may transfer funds freely among themselves.  
20 2 U.S.C. 441a(a)(5); 11 CFR 100.5(g)(2), 102.6(a)(1), 110.3(a)(1), and 110.3(c)(1).  
21 Because the Project is not a separately established legal entity but is, rather, a specially

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<sup>6</sup> For the purposes of this advisory opinion, the Commission assumes without deciding that the political committees are affiliated with UBAAPAC under 11 CFR 100.5(g) and 110.3(a).

1 named undertaking of UBAAPAC that is funded by UBAAPAC, and UBAAPAC may  
2 accept unlimited transfers of funds from its affiliated political committees, the  
3 Commission concludes that UBAAPAC may receive unlimited transfers of funds from its  
4 affiliated political committees to help defray the Project's costs.

5         The Utah Bankers Association also proposes to pay directly the Project's  
6 administrative costs and to accept payments from its affiliated State bankers associations<sup>7</sup>  
7 to help defray these costs. As the connected organization of UBAAPAC, Utah Bankers  
8 Association may use its general treasury funds to pay the Project's administrative costs  
9 without those payments being contributions to UBAAPAC. 2 U.S.C. 431(7) and  
10 441b(b)(2)(C); 11 CFR 114.1(b) and 100.6(a).

11         As to whether Utah Bankers Association may also accept payments from its  
12 affiliated State bankers associations to help pay the Project's administrative costs, the  
13 Commission has previously determined that a corporation that is affiliated with another  
14 corporation may pay the administration and solicitation costs of the latter corporation's  
15 SSF. *See, e.g.* Advisory Opinions 2010-16 (Emblem Health Services Company LLC),  
16 2009-14 (Mercedes Benz-USA/Sterling), 2001-07 (NMC PAC), 1997-13 (USA PAC),  
17 1996-26 (FTD Association). In each of these prior instances, however, the corporation  
18 that provided financial support to its affiliate's SSF was also a connected organization of  
19 that SSF. A connected organization includes any corporation or trade association "which  
20 is not a political committee but which directly or indirectly establishes, administers, or  
21 financially supports a political committee." 11 CFR 100.6(a). Thus, Utah Bankers  
22 Association may receive financial support from its affiliated corporate State bankers

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<sup>7</sup> For the purposes of this advisory opinion, the Commission assumes without deciding that the State bankers associations are affiliated with Utah Bankers Association under 11 CFR 100.5(g) and 110.3(a).

1 associations to help pay the costs of administering the Project, but it would have to  
2 amend its Statement of Organization to identify them as connected organizations.  
3 2 U.S.C. 433(b)(2); 11 CFR 102.2(a)(1)(ii) and (b)(2); *see also* Advisory Opinions 2002-  
4 15 (UROPAC), 1997-13 (USA PAC), 1996-38 (ASHA), and 1992-17 (Du Pont Merck).  
5 The name of an SSF must also generally include the names of the SSF's connected  
6 organizations. 2 U.S.C. 432(e)(5); 11 CFR 102.14(c); *see also* Advisory Opinions 2002-  
7 15 (UROPAC) and 1988-14 (Atlantic Marine).

8  
9 *Question 3. May employees of incorporated State bankers associations that are affiliated*  
10 *with Utah Bankers Association serve on the Councils as part of their regular employment*  
11 *responsibilities, without the value of their services constituting a contribution to*  
12 *UBAAPAC?*

13 Yes, employees of incorporated State bankers associations that are affiliated with  
14 Utah Bankers Association may serve on the Councils as part of their regular employment  
15 responsibilities, without the value of their services constituting a contribution to  
16 UBAAPAC. UBAAPAC would have to amend its Statement of Organization to identify  
17 their corporate employers as connected organizations and revise its name accordingly.

18 As noted above, corporations are prohibited from making contributions in  
19 connection with any Federal election, and a contribution includes the payment by any  
20 person of compensation for the personal services of another person that are rendered to a  
21 political committee without charge for any purpose. 2 U.S.C. 431(8)(A)(ii); 11 CFR  
22 100.54. A contribution does not include the cost to a corporation of establishing,  
23 administering, or soliciting contributions to its own SSF, or to the SSF of an affiliated

1 corporation for which it serves as a connected organization. 2 U.S.C. 441b(b)(2)(C);  
2 Advisory Opinion 1997-13 (USA PAC). These costs include expenses incurred in  
3 “setting up and running” an SSF. 11 CFR 114.1(b).

4 As described in the request, the Councils will lead the Project. They will identify  
5 Federal candidates who support policies favorable to traditional banking, and will then  
6 select a small number of these candidates on whose behalf the Project will solicit  
7 contributions. Thus, the State bankers association employees who serve on the Councils  
8 will help to run the Project. Because the Project is an undertaking of UBAAPAC, the  
9 costs of these employees’ salaries while serving on the Councils will be an administrative  
10 cost of running UBAAPAC. As noted above, the Commission has previously concluded  
11 that a corporation may serve as the connected organization of an affiliated corporation’s  
12 SSF and pay that SSF’s administrative costs. Thus, the affiliated State bankers  
13 associations that provide support to UBAAPAC by compensating their employees for  
14 serving on the Councils would need to be identified as connected organizations on  
15 UBAAPAC’s Statement of Organization and UBAAPAC would need to revise its name  
16 accordingly. 2 U.S.C. 432(e)(5) and 433(b)(2); 11 CFR 102.2(a)(1)(ii) and (b)(2), and  
17 102.14(c).

18  
19 *Question 4. Would individuals who are not employees of the State bankers associations*  
20 *and who serve on the Councils under the conditions described in the request be*  
21 *considered to serve in their personal capacities as volunteers?*

22 Yes, individuals who are not employees of the State bankers associations and who  
23 serve on the Councils under the conditions described in the request would be considered

1 to serve in their personal capacities as volunteers, provided that they do not receive any  
2 payment or other form of compensation for their service on the Councils. As such, the  
3 value of their service on the Councils would not be a contribution to UBAAPAC.

4 The term “contribution” does not include “the value of services provided without  
5 compensation by any individual who volunteers on behalf of a candidate or political  
6 committee.” 2 U.S.C. 431(8)(B)(i); 11 CFR 100.74. Thus, “a person's time and services, if  
7 donated, without payment or compensation, to or on behalf of a [political] committee will not  
8 constitute a ‘contribution’ under the Act.” Advisory Opinion 1980-88 (Citizens for Election  
9 of Harry Davis as President Committee); *see also* Advisory Opinions 2007-08 (King) (the  
10 value of uncompensated volunteer services provided by an individual in arranging for  
11 entertainers to appear at Federal candidate and political party committee fundraisers, and the  
12 value of uncompensated services provided by entertainers at the fundraisers, are not  
13 contributions) and 1982-04 (Apodaca) (uncompensated volunteer services provided by  
14 carpenters, plumbers, electricians, carpet-layers, and other tradesmen in renovating political  
15 committee building were not contributions).

16 Here, the requestors propose that the Project will inform the individuals who it  
17 invites to serve on the Councils that they may not serve at the invitation of their superiors  
18 or use their work subordinates’ time to participate in the Project. This safeguard will help  
19 to ensure that the individuals are acting as volunteers, such that the value of their services  
20 would not be a contribution to UBAAPAC. *See* 11 CFR 114.2(f)(2)(i)(A) (corporate  
21 subordinates or support staff who are ordered or directed by corporate officials or employees  
22 to plan, organize or carry out a fundraising project as a part of their work responsibilities  
23 are not acting as volunteers). The Commission assumes, in addition, that the Project will

1 inform these individuals that they may not receive any payment or other form of  
2 compensation for serving on the Councils. *See* 2 U.S.C. 431(8)(B)(i); 11 CFR 100.74. If  
3 these conditions are met, then the Commission concludes that the individuals would be  
4 serving on the Councils in their personal capacities as volunteers, such that the value of  
5 their service on the Councils would not be a contribution to UBAAPAC.<sup>8</sup>

6 In addition, the requestors propose that the Project would inform the individuals  
7 that they may not use more than four hours of work time each month to volunteer for the  
8 Project. Although this limitation is not required by Commission regulations,<sup>9</sup> the  
9 Commission has previously determined that such a limitation is adequate to ensure that  
10 the individuals are not compensated by their employers for serving on the Councils.

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12

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<sup>8</sup> Requestors state that any Project communications that list the members of the Councils would include the members' corporate titles for identification purposes only. Although the use of the members' corporate titles would not affect their status as volunteers, the Commission previously has determined that corporate names, trademarks, and service marks are corporate resources. *See* Advisory Opinion 2007-10 (Reyes). "By approving or accepting the use of the corporation's resources, the employee ratifies this use as an agent of the corporation." *Id.* As the Commission explained, "neither a corporation nor its agents may authorize the use of the corporation's name, trademark, or service mark to facilitate the making of contributions to a Federal candidate." *Id.*; *see* 11 CFR 114.2(f). Therefore, use of the volunteers' corporate titles, even for identification purposes, may result in the making of a prohibited corporate contribution.

<sup>9</sup> Commission regulations establish a four hour per month safe harbor for *the use of corporate facilities* by corporate employees and stockholders for their individual volunteer activities in connection with a Federal election. 11 CFR 114.9. Under the safe harbor, the use of corporate facilities for no more than one hour per week or four hours per month for individual volunteer activities in connection with a Federal election will not result in a corporate contribution, so long as the individuals reimburse the corporation for any increase in its overhead or operating expenses. 11 CFR 114.9(a)(2). Corporate employees and stockholders who make more than the "occasional, isolated, or incidental use of corporate facilities" for their individual volunteer activities in connection with a Federal election, however, must reimburse the corporation for the fair rental value of its facilities to avoid a corporate contribution. 11 CFR 114.9(a)(3).

1 *Question 5. May Council members forward the Project's email solicitations to their*  
2 *personal friends and acquaintances at the suggestion of the Project as described in the*  
3 *request without making a contribution to UBAAPAC?*

4 Yes, Council members may forward the Project's email solicitations to their  
5 personal friends and acquaintances at the suggestion of the Project as described in the  
6 request without making a contribution to UBAAPAC.

7 Under the requestors' proposal, the Project will suggest that members of the  
8 Councils forward the Project's email solicitations to their personal friends and  
9 acquaintances. Although Council members will use only the contact lists that they  
10 personally maintain, they will likely forward at least some of these solicitations via their  
11 corporate employers' computers.

12 The Commission concludes that individuals who serve on the Councils in their  
13 personal capacities as volunteers would not make a contribution to UBAAPAC by  
14 forwarding the Project's solicitation emails as proposed. The term "contribution" does  
15 not include the use by individuals of equipment or services for uncompensated Internet  
16 activities, regardless of who owns the equipment and services. 11 CFR 100.94. Internet  
17 activities include sending and forwarding emails. 11 CFR 100.94(b). Thus, so long as  
18 the Councils' members forward the emails as uncompensated volunteers, the value of  
19 their services would not be a contribution to UBAAPAC.

20 Nor would the proposed use by volunteer Council members of their corporate  
21 employers' computer equipment and services to forward the Project's solicitation emails  
22 to their personal friends and acquaintances result in a contribution by their corporate  
23 employers to UBAAPAC. The Commission has established a safe harbor for the use of



1 corporate computer equipment and Internet facilities. Under this safe harbor,  
2 corporations may allow their employees to use corporate computer and Internet facilities  
3 to engage in voluntary individual Internet activities, as defined in 11 CFR 100.94,  
4 without a corporate contribution resulting, provided that the activity does not prevent the  
5 employee from completing the normal amount of work for which the employee is paid or  
6 is expected to perform, does not increase the corporation's overhead or operating costs,  
7 and is not coerced. 11 CFR 114.9(a)(2)(ii); *see also* Explanation and Justification for  
8 Final Rules on Internet Communications, 71 FR 18589, 18611 (Apr. 12, 2006). Under  
9 these conditions, no corporate contribution would result.

10 State association employees who serve on the Councils may also forward the  
11 Project's solicitation emails to their personal friends and acquaintances as proposed in the  
12 request. Under the requestors' proposal, UBAAPAC will make an advance annual  
13 payment of fifty dollars to each Council member's State association to cover possible  
14 costs associated with the member's forwarding of Project email solicitations. Assuming  
15 that fifty dollars is the fair market value of the Council member's services, the  
16 Commission concludes that no facilitation would result. 11 CFR 114.2(f)(2)(i)(A).

17  
18 *Question 6. If the Project asks recipients of its email solicitations to forward the emails*  
19 *to others and to refer others to its website, must it add any disclaimers to its email*  
20 *communications and website beyond those proposed in the request?*

21 The proposed disclaimer language must be revised to comply with the Act and  
22 Commission regulations, as explained below; however, the Project need not add any  
23 further disclaimers to its email communications and website beyond those proposed in

1 the request, even if it asks recipients of its email solicitations to forward the emails and to  
2 refer others to its website.

3 Any “public communication,” as defined in 11 CFR 100.26, made by a political  
4 committee, electronic mail of more than 500 substantially similar communications when  
5 sent by a political committee, and all Internet websites of political committees available  
6 to the general public must include a disclaimer identifying who paid for and, where  
7 applicable, who authorized the communication. 11 CFR 110.11(a); *see also* 2 U.S.C.  
8 441d(a), 431(22). If the communication is not authorized by a candidate, an authorized  
9 committee of a candidate, or an agent of either, the disclaimer must “clearly state the full  
10 name and permanent street address, telephone number, or World Wide Web address of  
11 the person who paid for the communication, and that the communication is not authorized  
12 by any candidate or candidate’s committee.” 11 CFR 110.11(b)(3); *see also* 2 U.S.C.  
13 441d(a)(3). The disclaimer “must be presented in a clear and conspicuous manner, to  
14 give the reader, observer, or listener adequate notice of the identity of the person or  
15 political committee that paid for . . . the communication.”<sup>10</sup> 11 CFR 110.11(c)(1).  
16 Disclaimers on printed communications must also be of sufficient type size to be clearly  
17 readable, have a reasonable degree of color contrast between text and background, and be  
18 contained in a box set apart from the rest of the communication. 2 U.S.C. 441d(c); 11  
19 CFR 110.11(c)(2)(i)-(iii).

20 In this case, both the Project’s emails and its website will contain disclaimers.  
21 The disclaimer in each case will be in a printed box and will state that the

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<sup>10</sup> Because the Project’s communications will solicit only contributions to be sent directly by contributors to candidates and their authorized committees, they are not subject to 11 CFR 104.7(b)(1)(i) (requiring political committees to make their “best efforts” to gather certain information about contributors); *see also* 11 CFR 102.5(a)(2) (requiring additional statements regarding contributions).

1 communications are “Paid for by Friends of Traditional Banking, a project of Utah  
2 Bankers Association Action PAC. Not authorized by any candidate or candidate’s  
3 committee. [www.FriendsOfTraditionalBanking.com](http://www.FriendsOfTraditionalBanking.com).”

4           Although UBAAPAC is the entity that will pay for the Project’s email and  
5 website communications, the proposed disclaimer identifies the Project, rather than  
6 UBAAPAC, as the payor, and does not provide UBAAPAC’s permanent street address,  
7 telephone number or website address. Because a disclaimer must clearly state the full  
8 name and permanent street address, telephone number, or World Wide Web address of  
9 the person who paid for the communication, the disclaimer must be revised to show  
10 UBAAPAC as the payor and include UBAAPAC’s permanent street address, telephone  
11 number or website address. The requestors may retain a reference to the Project in the  
12 revised disclaimer should they wish to do so, as long as the identity of the payor is clear.  
13 For example, a disclaimer stating that “This communication was made by Friends of  
14 Traditional Banking, a project of Utah Bankers Association PAC, and was paid for by  
15 Utah Bankers Association Action PAC. Not authorized by any candidate or candidate’s  
16 committee,” would satisfy the Act and Commission regulations if it also provided  
17 UBAAPAC’s permanent street address, telephone number, or website address, either  
18 alone or in addition to such information about the Project.

19           Although the Act, Commission regulations, and prior advisory opinions do not  
20 directly address the question of whether a political committee must include additional  
21 disclaimers in its email communications in contemplation of their being forwarded by the  
22 intended recipients, the Commission’s decision in Advisory Opinion 1999-37 (X-PAC)  
23 indicates that no such obligation exists. In Advisory Opinion 1999-37 (X-PAC), the

1 Commission concluded that X-PAC would not have to collect information from  
2 recipients who forwarded its email independent expenditures, stating that the Act and  
3 Commission regulations “do not require that a political committee or individual making  
4 independent expenditures collect information from others who might replicate or utilize  
5 that committee’s or person’s political message even if they do so at the committee’s (or  
6 individual’s) behest.” Advisory Opinion 1999-37 (X-PAC). Consistent with this  
7 approach, the Commission concludes that the Project need not add disclaimers beyond  
8 those proposed in the request to its email solicitations in anticipation of their being  
9 forwarded by the intended recipients to other individuals.

10         This response constitutes an advisory opinion concerning the application of the  
11 Act and Commission regulations to the specific transaction or activity set forth in your  
12 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any  
13 of the facts or assumptions presented, and such facts or assumptions are material to a  
14 conclusion presented in this advisory opinion, then the requestors may not rely on that  
15 conclusion as support for its proposed activity. Any person involved in any specific  
16 transaction or activity which is indistinguishable in all its material aspects from the  
17 transaction or activity with respect to which this advisory opinion is rendered may rely on  
18 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note the analysis or  
19 conclusions in this advisory opinion may be affected by subsequent developments in the  
20 law including, but not limited to, statutes, regulations, advisory opinions, and case law.  
21

1 The cited advisory opinions are available on the Commission's Web site at,  
2 [www.fec.gov](http://www.fec.gov), or directly from the Commission's Advisory Opinion searchable database  
3 at <http://www.fec.gov/searchao>.

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On behalf of the Commission,

Cynthia L. Bauerly  
Chair

1 ADVISORY OPINION 2011-14

2  
3 Kirk Jowers, Esq.  
4 Matthew T. Sanderson, Esq.  
5 Caplin & Drysdale, Chartered  
6 One Thomas Circle, NW, Suite 1100  
7 Washington, DC 20005

**DRAFT B**

8  
9 Dear Messrs. Jowers and Sanderson:

10 We are responding to your advisory opinion request on behalf of Utah Bankers  
11 Association and its separate segregated fund (“SSF”), Utah Bankers Association Action  
12 PAC (“UBAAPAC”), concerning the application of the Federal Election Campaign Act  
13 of 1971, as amended (the “Act”), and Commission regulations to certain proposed  
14 activities relating to Friends of Traditional Banking (the “Project”), a planned project of  
15 UBAAPAC. The Project will solicit individuals in the general public via email and the  
16 Project’s website to make contributions directly to certain recommended Federal  
17 candidates.

18 The Commission concludes that costs of the Project’s solicitations via email and  
19 website will not be in-kind contributions to the recommended candidates because the  
20 solicitations will not be “coordinated communications.” The Commission further  
21 concludes that the proposed method of funding the Project’s administrative and  
22 communication costs would be permissible under the Act and Commission regulations,  
23 under certain conditions. The Commission also concludes that paid employees of State  
24 bankers associations that are affiliated with Utah Bankers Association, as well as  
25 individuals working in their personal capacities as volunteers, may serve on the Project’s  
26 leadership councils under certain conditions, and may forward the Project’s email  
27 solicitations to their personal friends and acquaintances, without the value of their

1 services constituting a contribution to UBAAPAC. Finally, the Commission concludes  
2 that the Project need not add any disclaimers to its email or website solicitations beyond  
3 those proposed in the request, but will need to revise the proposed disclaimer language.

4 ***Background***

5 The facts presented in this advisory opinion are based on your letter received on  
6 June 13, 2011, your emails received on June 27, 2011 and July 22, 2011, and political  
7 committee reports filed with the Commission that are available on the Commission's  
8 website.

9 Utah Bankers Association is a professional and trade association for Utah's  
10 commercial banks, savings banks, and industrial loan corporations. It is an incorporated  
11 tax-exempt trade association described in section 501(c)(6) of the Internal Revenue Code.  
12 26 U.S.C. 501(c)(6). Utah Bankers Association is a State affiliate of the American  
13 Bankers Association. The American Bankers Association's SSF has identified  
14 UBAAPAC as one of more than 40 affiliated political committees.<sup>1</sup> Similarly,  
15 UBAAPAC has identified American Bankers Association PAC as an affiliated  
16 committee.<sup>2</sup>

17 The Project will be a specially branded communication of UBAAPAC consisting  
18 of a public website and an email list that will reach the general public. The Project will  
19 not be a separate legal entity and will not have a separate bank account or separate office

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<sup>1</sup> See Statement of Organization of the American Bankers Association PAC (March 24, 2009), available at <http://query.nictusa.com/pdf/222/29991789222/29991789222.pdf#navpanes=0>.

<sup>2</sup> See Statement of Organization of the Utah Bankers Association Action PAC (July 23, 2003), available at <http://query.nictusa.com/cgi-bin/fecimg/?C00374371>.

1 space from UBAAPAC. The Project's disbursements will be reported to the Commission  
2 on UBAAPAC's Form 3X.

3 The Project will solicit individual members of the public via email and the  
4 Project's website to make contributions from their personal funds to particular Federal  
5 candidates during each election cycle. The Project will also encourage email recipients to  
6 forward its emails to other individuals and to refer other individuals to its website. The  
7 Project will provide the website and mailing address of the recommended Federal  
8 candidates so that any interested individuals receiving the Project's communications can  
9 send their contributions directly to the candidates. The Project will not accept or forward  
10 earmarked contributions to a candidate or a candidate's authorized committee. Nor will  
11 the Project solicit contributions to itself or to UBAAPAC, or make any monetary  
12 contributions to candidates.

13 UBAAPAC will assemble two groups to lead the Project: the Advisory Council  
14 and the Traditional Banking Council (collectively referred to as the "Councils"). The  
15 Advisory Council will identify Federal candidates who support policies favorable to  
16 traditional banking. The Traditional Banking Council will then select a small number of  
17 candidates from the Advisory Council's list to be included in the Project's  
18 communications.

19 UBAAPAC plans to invite employees of other State bankers associations related  
20 to the American Bankers Association to serve on the Councils. These individuals will  
21 serve on the Councils as part of their regular employment responsibilities with the State  
22 bankers associations and will be compensated accordingly by the State bankers  
23 associations. For purposes of this advisory opinion, the requestors have asked the



1 Commission to assume that the State bankers associations are affiliated with Utah  
2 Bankers Association and are incorporated.

3         The Councils' membership will also include individuals who are not employed by  
4 State bankers associations, but who may themselves be members of State bankers  
5 associations. These individuals will not serve on the Councils as part of their  
6 employment responsibilities and will not be compensated for their services. The Project  
7 will inform these individuals that they may not serve on the Councils at the invitation of  
8 their supervisors at work, use their work subordinates' time to participate in the Project,  
9 or use more than four hours of work time per month to volunteer for the Project. Any  
10 communication of the Project that lists these Councils' members will also state that their  
11 corporate titles are for identification purposes only.

12         The Project intends to conduct its activities independently of Federal candidates  
13 and political party committees. To maintain this independence, the Project will  
14 implement a formal Policy on Interactions with Federal Candidates and Political Party  
15 Representatives (the "Policy"). *See* Request, Exhibit A.

16         The Project will encourage members of the Councils to forward periodically the  
17 Project's emails to their friends and acquaintances, using the members' personal contact  
18 lists. Corporate-maintained vendor and contact lists will not be used for these personal  
19 email messages. The Project plans to cover the costs of forwarding these emails for each  
20 Council member who works at a State bankers association by making an annual advance  
21 payment of fifty dollars to that member's association.

22         UBAAPAC will pay for the Project's website and email expenses (including staff  
23 time spent creating email and website content, Internet vendor costs, and server time).

1 To cover these costs, UBAAPAC may use funds transferred from UBAAPAC's affiliated  
2 political committees. The Utah Bankers Association will pay directly the Project's  
3 administrative costs, including legal and phone costs, and will accept payments from  
4 affiliated incorporated State bankers associations to help defray the Project's  
5 administrative costs. The Project will not solicit contributions to fund its activities.

6 Finally, the Project's website and emails will contain a disclaimer stating, in a  
7 printed box, that the communications are "Paid for by Friends of Traditional Banking, a  
8 project of Utah Bankers Association Action PAC. Not authorized by any candidate or  
9 candidate's committee. [www.FriendsOfTraditionalBanking.com](http://www.FriendsOfTraditionalBanking.com)." The website and  
10 emails will also state that the Project is not soliciting funds for itself or any affiliated  
11 entity and will not collect or "bundle" and forward contributions to candidates.

12 ***Questions Presented***

13 *1. Will the Project's website and email communications to the general public*  
14 *soliciting contributions to certain Federal candidates result in in-kind contributions to*  
15 *those Federal candidates?*

16 *2. Is the requestors' proposed method of funding the Project's administrative and*  
17 *communication costs permissible?*

18 *3. May employees of incorporated State bankers associations that are affiliated*  
19 *with Utah Bankers Association serve on the Councils as part of their regular employment*  
20 *responsibilities, without the value of their services constituting a contribution to*  
21 *UBAAPAC?*

1           4. *Would individuals who are not employees of the State bankers associations*  
2 *and who serve on the Councils under the conditions described in the request be*  
3 *considered to serve in their personal capacities as volunteers?*

4           5. *May Council members forward the Project's email solicitations to their*  
5 *personal friends and acquaintances at the suggestion of the Project as described in the*  
6 *request without making a contribution to UBAAPAC?*

7           6. *If the Project asks recipients of its email solicitations to forward the emails to*  
8 *others and to refer others to its website, must it add any disclaimers to its email*  
9 *communications and website beyond those proposed in the request?*

10  
11 ***Legal Analysis and Conclusions***

12  
13 *Question 1. Will the Project's website and email communications to the general public*  
14 *soliciting contributions to certain Federal candidates result in in-kind contributions to*  
15 *those Federal candidates?*

16           No, the Project's website and email communications to the general public  
17 soliciting contributions to certain Federal candidates will not result in in-kind  
18 contributions to those Federal candidates, because the communications will not be  
19 "coordinated communications" under the Act and Commission regulations.

20           Corporations, including incorporated trade associations, are prohibited from  
21 making contributions or facilitating the making of contributions in connection with a  
22 Federal election. 2 U.S.C. 441b(a); 11 CFR 114.2(a), (b), (f), and 114.8(b). The term  
23 "contribution" includes a gift, subscription, loan, advance, or deposit of money or  
24 anything of value made by any person for the purpose of influencing any Federal

1 election. 2 U.S.C. 431(8) and 441b(b)(2); 11 CFR 100.52, 114.2(a) and (b). It also  
2 includes the “payment by any person of compensation for the personal services of  
3 another person which are rendered to a political committee without charge for any  
4 purpose.” 2 U.S.C. 431(8)(A)(ii); 11 CFR 100.54.

5       SSFs may nonetheless use voluntary contributions to fund communications to the  
6 general public on any subject, including communications that solicit contributions to a  
7 Federal candidate, so long as the communications do not also solicit contributions to any  
8 SSF. *See* 2 U.S.C. 441b(b)(4)(A)(i); 11 CFR 114.5(i). Moreover, soliciting contributions  
9 directly to a Federal candidate is not facilitating the making of contributions if the  
10 solicitation is conducted by an SSF. *See* 11 CFR 114.2(f)(3)(i).<sup>3</sup> Accordingly,  
11 UBAAPAC, as an SSF, may include solicitations on the Project’s website and in its  
12 emails for contributions to be sent directly to Federal candidates, provided that the  
13 communications are paid for with voluntary contributions and do not also solicit  
14 contributions to any SSF, including UBAAPAC.

15       Although permissible under the Act and Commission regulations, the costs  
16 incurred by UBAAPAC in making communications to the general public that solicit  
17 contributions to Federal candidates will be in-kind contributions from UBAAPAC to the  
18 candidates if the communications are “coordinated communications.” 2 U.S.C.  
19 441a(a)(7)(B)(i); 11 CFR 109.21(b).<sup>4</sup> Commission regulations provide a three-prong test  
20 to determine if a communication is a coordinated communication. 11 CFR 109.21(a).

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<sup>3</sup> The Commission expresses no opinion at this time as to whether, in light of the Supreme Court’s decision in *Citizens United v. FEC*, 130 S. Ct. 876 (2010), corporations may independently solicit contributions directly to a Federal candidate, without such solicitations having to be conducted by an SSF.

<sup>4</sup> Similarly, any other expenditures, if coordinated, would be in-kind contributions to the candidates with whom they are coordinated. 11 C.F.R. 109.20(b).

1 First, the communication must be paid for, in whole or in part, by a person other than the  
2 Federal candidate, the candidate's authorized committee or the political party committee  
3 (the payment prong). 11 CFR 109.21(a)(1). Second, the communication must satisfy one  
4 of the five content standards (the content prong). 11 CFR 109.21(a)(2) and (c). Third,  
5 the communication must satisfy one of the five conduct standards (the conduct prong).  
6 11 CFR 109.21(a)(3) and (d). A payment for a communication satisfying all three prongs  
7 of the test is made for the purpose of influencing a Federal election, and therefore is an  
8 in-kind contribution.

9 The Commission concludes that the Project's communications will not be  
10 "coordinated communications" because they will not meet the content prong in 11 CFR  
11 109.21(c).<sup>5</sup> To meet the content prong, a communication must be either a "public  
12 communication" as defined in 2 U.S.C. 431(22) and 11 CFR 100.26, or an  
13 "electioneering communication" as defined in 2 U.S.C. 434(f)(3) and 11 CFR 100.29.  
14 Because the Project's communications will appear only on the Project's own website and  
15 by email, the communications will not be either public communications or electioneering  
16 communications. *See* 11 CFR 100.26 (an Internet communication that is not placed for a  
17 fee on another person's website is not a public communication); 11 CFR 100.29  
18 (electioneering communications are limited to broadcast, cable, or satellite  
19 communications). Because the content prong is not satisfied, the Project's  
20 communications via email and on its own website will not be coordinated  
21 communications under 11 CFR 109.21. Accordingly, the costs of these communications  
22 will not be in-kind contributions to those candidates by UBAAPAC.

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<sup>5</sup> Because the communications would not satisfy the content prong of the coordinated communication test, the Commission need not and has not examined the other two prongs of the test.

1 *Question 2. Is the requestors' proposed method of funding the Project's administrative*  
2 *and communication costs permissible?*

3 Yes, the requestors' proposed method of funding the administrative and  
4 communication costs of the Project is permissible. If the corporate affiliates of Utah  
5 Bankers Association pay the Project's administrative costs, however, then UBAAPAC  
6 will need to identify them as connected organizations on its Statement of Organization  
7 and revise its name accordingly.

8 Although the Act and Commission regulations prohibit a corporation from  
9 making contributions in connection with any Federal election, the definition of  
10 "contribution" does not include expenses paid by a corporation for "the establishment,  
11 administration, and solicitation of contributions to" the corporation's SSF. 2 U.S.C.  
12 441b(a) and (b)(2)(C); 11 CFR 114.2(a). These establishment, administration and  
13 solicitation costs are "the cost of office space, phones, salaries, utilities, supplies, legal  
14 and accounting fees, fundraising and other expenses incurred in setting up and running a  
15 separate segregated fund established by a corporation." 11 CFR 114.1(b). Under the  
16 requestors' proposal, UBAAPAC would finance the Project's communications costs,  
17 including the Project's website and email expenses, and defray these costs through  
18 payments from UBAAPAC's affiliated political committees.<sup>6</sup> Affiliated political  
19 committees share contribution limits and may transfer funds freely among themselves.  
20 2 U.S.C. 441a(a)(5); 11 CFR 100.5(g)(2), 102.6(a)(1), 110.3(a)(1), and 110.3(c)(1).  
21 Because the Project is not a separately established legal entity but is, rather, a specially

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<sup>6</sup> For the purposes of this advisory opinion, the Commission assumes without deciding that the political committees are affiliated with UBAAPAC under 11 CFR 100.5(g) and 110.3(a).

1 named undertaking of UBAAPAC that is funded by UBAAPAC, and UBAAPAC may  
2 accept unlimited transfers of funds from its affiliated political committees, the  
3 Commission concludes that UBAAPAC may receive unlimited transfers of funds from its  
4 affiliated political committees to help defray the Project's costs.

5 The Utah Bankers Association also proposes to pay directly the Project's  
6 administrative costs and to accept payments from its affiliated State bankers associations<sup>7</sup>  
7 to help defray these costs. As the connected organization of UBAAPAC, Utah Bankers  
8 Association may use its general treasury funds to pay the Project's administrative costs  
9 without those payments being contributions to UBAAPAC. 2 U.S.C. 431(7) and  
10 441b(b)(2)(C); 11 CFR 114.1(b) and 100.6(a).

11 As to whether Utah Bankers Association may also accept payments from its  
12 affiliated State bankers associations to help pay the Project's administrative costs, the  
13 Commission has previously determined that a corporation that is affiliated with another  
14 corporation may pay the administration and solicitation costs of the latter corporation's  
15 SSF. *See, e.g.* Advisory Opinions 2010-16 (Emblem Health Services Company LLC),  
16 2009-14 (Mercedes Benz-USA/Sterling), 2001-07 (NMC PAC), 1997-13 (USA PAC),  
17 1996-26 (FTD Association). In each of these prior instances, however, the corporation  
18 that provided financial support to its affiliate's SSF was also a connected organization of  
19 that SSF. A connected organization includes any corporation or trade association "which  
20 is not a political committee but which directly or indirectly establishes, administers, or  
21 financially supports a political committee." 11 CFR 100.6(a). Thus, Utah Bankers  
22 Association may receive financial support from its affiliated corporate State bankers

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<sup>7</sup> For the purposes of this advisory opinion, the Commission assumes without deciding that the State bankers associations are affiliated with Utah Bankers Association under 11 CFR 100.5(g) and 110.3(a).

1 associations to help pay the costs of administering the Project, but it would have to  
2 amend its Statement of Organization to identify them as connected organizations.  
3 2 U.S.C. 433(b)(2); 11 CFR 102.2(a)(1)(ii) and (b)(2); *see also* Advisory Opinions 2002-  
4 15 (UROPAC), 1997-13 (USA PAC), 1996-38 (ASHA), and 1992-17 (Du Pont Merck).  
5 The name of an SSF must also generally include the names of the SSF's connected  
6 organizations. 2 U.S.C. 432(e)(5); 11 CFR 102.14(c); *see also* Advisory Opinions 2002-  
7 15 (UROPAC) and 1988-14 (Atlantic Marine).

8  
9 *Question 3. May employees of incorporated State bankers associations that are affiliated*  
10 *with Utah Bankers Association serve on the Councils as part of their regular employment*  
11 *responsibilities, without the value of their services constituting a contribution to*  
12 *UBAAPAC?*

13 Yes, employees of incorporated State bankers associations that are affiliated with  
14 Utah Bankers Association may serve on the Councils as part of their regular employment  
15 responsibilities, without the value of their services constituting a contribution to  
16 UBAAPAC. UBAAPAC would have to amend its Statement of Organization to identify  
17 their corporate employers as connected organizations and revise its name accordingly.

18 As noted above, corporations are prohibited from making contributions in  
19 connection with any Federal election, and a contribution includes the payment by any  
20 person of compensation for the personal services of another person that are rendered to a  
21 political committee without charge for any purpose. 2 U.S.C. 431(8)(A)(ii); 11 CFR  
22 100.54. A contribution does not include the cost to a corporation of establishing,  
23 administering, or soliciting contributions to its own SSF, or to the SSF of an affiliated



1 corporation for which it serves as a connected organization. 2 U.S.C. 441b(b)(2)(C);  
2 Advisory Opinion 1997-13 (USA PAC). These costs include expenses incurred in  
3 “setting up and running” an SSF. 11 CFR 114.1(b).

4 As described in the request, the Councils will lead the Project. They will identify  
5 Federal candidates who support policies favorable to traditional banking, and will then  
6 select a small number of these candidates on whose behalf the Project will solicit  
7 contributions. Thus, the State bankers association employees who serve on the Councils  
8 will help to run the Project. Because the Project is an undertaking of UBAAPAC, the  
9 costs of these employees’ salaries while serving on the Councils will be an administrative  
10 cost of running UBAAPAC. As noted above, the Commission has previously concluded  
11 that a corporation may serve as the connected organization of an affiliated corporation’s  
12 SSF and pay that SSF’s administrative costs. Thus, the affiliated State bankers  
13 associations that provide support to UBAAPAC by compensating their employees for  
14 serving on the Councils would need to be identified as connected organizations on  
15 UBAAPAC’s Statement of Organization and UBAAPAC would need to revise its name  
16 accordingly. 2 U.S.C. 432(e)(5) and 433(b)(2); 11 CFR 102.2(a)(1)(ii) and (b)(2), and  
17 102.14(c).

18  
19 *Question 4. Would individuals who are not employees of the State bankers associations*  
20 *and who serve on the Councils under the conditions described in the request be*  
21 *considered to serve in their personal capacities as volunteers?*

22 Yes, individuals who are not employees of the State bankers associations and who  
23 serve on the Councils under the conditions described in the request would be considered

1 to serve in their personal capacities as volunteers, provided that they do not receive any  
2 payment or other form of compensation for their service on the Councils. As such, the  
3 value of their service on the Councils would not be a contribution to UBAAPAC.

4         The term “contribution” does not include “the value of services provided without  
5 compensation by any individual who volunteers on behalf of a candidate or political  
6 committee.” 2 U.S.C. 431(8)(B)(i); 11 CFR 100.74. Thus, “a person's time and services, if  
7 donated, without payment or compensation, to or on behalf of a [political] committee will not  
8 constitute a ‘contribution’ under the Act.” Advisory Opinion 1980-88 (Citizens for Election  
9 of Harry Davis as President Committee); *see also* Advisory Opinions 2007-08 (King) (the  
10 value of uncompensated volunteer services provided by an individual in arranging for  
11 entertainers to appear at Federal candidate and political party committee fundraisers, and the  
12 value of uncompensated services provided by entertainers at the fundraisers, are not  
13 contributions) and 1982-04 (Apodaca) (uncompensated volunteer services provided by  
14 carpenters, plumbers, electricians, carpet-layers, and other tradesmen in renovating political  
15 committee building were not contributions).

16         Here, the requestors propose that the Project will inform the individuals who it  
17 invites to serve on the Councils that they may not serve at the invitation of their superiors  
18 or use their work subordinates’ time to participate in the Project. This safeguard will help  
19 to ensure that the individuals are acting as volunteers, such that the value of their services  
20 would not be a contribution to UBAAPAC. *See* 11 CFR 114.2(f)(2)(i)(A) (corporate  
21 subordinates or support staff who are ordered or directed by corporate officials or employees  
22 to plan, organize or carry out a fundraising project as a part of their work responsibilities  
23 are not acting as volunteers). The Commission assumes, in addition, that the Project will

1 inform these individuals that they may not receive any payment or other form of  
2 compensation for serving on the Councils. *See* 2 U.S.C. 431(8)(B)(i); 11 CFR 100.74. If  
3 these conditions are met, then the Commission concludes that the individuals would be  
4 serving on the Councils in their personal capacities as volunteers, such that the value of  
5 their service on the Councils would not be a contribution to UBAAPAC.<sup>8</sup>

6 In addition, the requestors propose that the Project would inform the individuals  
7 that they may not use more than four hours of work time each month to volunteer for the  
8 Project. Although this limitation is not required by Commission regulations,<sup>9</sup> the  
9 Commission has previously determined that such a limitation is adequate to ensure that  
10 the individuals are not compensated by their employers for serving on the Councils.

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<sup>8</sup> Under the requestors' proposal, any Project communications that list the members of the Councils would include the members' corporate titles for identification purposes only. The use of such titles would not constitute corporate facilitation of contributions. The facts presented here are distinguishable from Advisory Opinion 2007-10 (Reyes). There, the Commission concluded that the use of individual contributors' corporate titles, corporate names, and trademarks or service marks would constitute prohibited corporate contributions when used for the purpose of sponsoring a fundraising event for a candidate's principal campaign committee. Here, the individuals whose corporate titles will be used will serve on the Advisory Council and Traditional Banking Council, whose role is to identify Federal candidates for UBAAPAC to support and to be included in the Project's communications, and not to acknowledge the contributors themselves. Additionally, the conclusion in the Reyes AO is called into question by the Supreme Court's ruling in *Citizens United v. FEC*, 130 S. Ct. 876 (2010).

<sup>9</sup> Commission regulations establish a four hour per month safe harbor for *the use of corporate facilities* by corporate employees and stockholders for their individual volunteer activities in connection with a Federal election. 11 CFR 114.9. Under the safe harbor, the use of corporate facilities for no more than one hour per week or four hours per month for individual volunteer activities in connection with a Federal election will not result in a corporate contribution, so long as the individuals reimburse the corporation for any increase in its overhead or operating expenses. 11 CFR 114.9(a)(2). Corporate employees and stockholders who make more than the "occasional, isolated, or incidental use of corporate facilities" for their individual volunteer activities in connection with a Federal election, however, must reimburse the corporation for the fair rental value of its facilities to avoid a corporate contribution. 11 CFR 114.9(a)(3).

1 *Question 5. May Council members forward the Project's email solicitations to their*  
2 *personal friends and acquaintances at the suggestion of the Project as described in the*  
3 *request without making a contribution to UBAAPAC?*

4 Yes, Council members may forward the Project's email solicitations to their  
5 personal friends and acquaintances at the suggestion of the Project as described in the  
6 request without making a contribution to UBAAPAC.

7 Under the requestors' proposal, the Project will suggest that members of the  
8 Councils forward the Project's email solicitations to their personal friends and  
9 acquaintances. Although Council members will use only the contact lists that they  
10 personally maintain, they will likely forward at least some of these solicitations via their  
11 corporate employers' computers.

12 The Commission concludes that individuals who serve on the Councils in their  
13 personal capacities as volunteers would not make a contribution to UBAAPAC by  
14 forwarding the Project's solicitation emails as proposed. The term "contribution" does  
15 not include the use by individuals of equipment or services for uncompensated Internet  
16 activities, regardless of who owns the equipment and services. 11 CFR 100.94. Internet  
17 activities include sending and forwarding emails. 11 CFR 100.94(b). Thus, so long as  
18 the Councils' members forward the emails as uncompensated volunteers, the value of  
19 their services would not be a contribution to UBAAPAC.

20 Nor would the proposed use by volunteer Council members of their corporate  
21 employers' computer equipment and services to forward the Project's solicitation emails  
22 to their personal friends and acquaintances result in a contribution by their corporate  
23 employers to UBAAPAC. The Commission has established a safe harbor for the use of

1 corporate computer equipment and Internet facilities. Under this safe harbor,  
2 corporations may allow their employees to use corporate computer and Internet facilities  
3 to engage in voluntary individual Internet activities, as defined in 11 CFR 100.94,  
4 without a corporate contribution resulting, provided that the activity does not prevent the  
5 employee from completing the normal amount of work for which the employee is paid or  
6 is expected to perform, does not increase the corporation's overhead or operating costs,  
7 and is not coerced. 11 CFR 114.9(a)(2)(ii); *see also* Explanation and Justification for  
8 Final Rules on Internet Communications, 71 FR 18589, 18611 (Apr. 12, 2006). Under  
9 these conditions, no corporate contribution would result.

10 State association employees who serve on the Councils may also forward the  
11 Project's solicitation emails to their personal friends and acquaintances as proposed in the  
12 request. Under the requestors' proposal, UBAAPAC will make an advance annual  
13 payment of fifty dollars to each Council member's State association to cover possible  
14 costs associated with the member's forwarding of Project email solicitations. Assuming  
15 that fifty dollars is the fair market value of the Council member's services, the  
16 Commission concludes that no facilitation would result. 11 CFR 114.2(f)(2)(i)(A).

17  
18 *Question 6. If the Project asks recipients of its email solicitations to forward the emails*  
19 *to others and to refer others to its website, must it add any disclaimers to its email*  
20 *communications and website beyond those proposed in the request?*

21 The proposed disclaimer language must be revised to comply with the Act and  
22 Commission regulations, as explained below, however the Project need not add any  
23 further disclaimers to its email communications and website beyond those proposed in

1 the request, even if it asks recipients of its email solicitations to forward the emails and to  
2 refer others to its website.

3 Any “public communication,” as defined in 11 CFR 100.26, made by a political  
4 committee, electronic mail of more than 500 substantially similar communications when  
5 sent by a political committee, and all Internet websites of political committees available  
6 to the general public must include a disclaimer identifying who paid for and, where  
7 applicable, who authorized the communication. 11 CFR 110.11(a); *see also* 2 U.S.C.  
8 441d(a), 431(22). If the communication is not authorized by a candidate, an authorized  
9 committee of a candidate, or an agent of either, the disclaimer must “clearly state the full  
10 name and permanent street address, telephone number, or World Wide Web address of  
11 the person who paid for the communication, and that the communication is not authorized  
12 by any candidate or candidate’s committee.” 11 CFR 110.11(b)(3); *see also* 2 U.S.C.  
13 441d(a)(3). The disclaimer “must be presented in a clear and conspicuous manner, to  
14 give the reader, observer, or listener adequate notice of the identity of the person or  
15 political committee that paid for . . . the communication.”<sup>10</sup> 11 CFR 110.11(c)(1).  
16 Disclaimers on printed communications must also be of sufficient type size to be clearly  
17 readable, have a reasonable degree of color contrast between text and background, and be  
18 contained in a box set apart from the rest of the communication. 2 U.S.C. 441d(c); 11  
19 CFR 110.11(c)(2)(i)-(iii).

20 In this case, both the Project’s emails and its website will contain disclaimers.  
21 The disclaimer in each case will be in a printed box and will state that the

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<sup>10</sup> Because the Project’s communications will solicit only contributions to be sent directly by contributors to candidates and their authorized committees, they are not subject to 11 CFR 104.7(b)(1)(i) (requiring political committees to make their “best efforts” to gather certain information about contributors); *see also* 11 CFR 102.5(a)(2) (requiring additional statements regarding contributions).

1 communications are “Paid for by Friends of Traditional Banking, a project of Utah  
2 Bankers Association Action PAC. Not authorized by any candidate or candidate’s  
3 committee. [www.FriendsOfTraditionalBanking.com](http://www.FriendsOfTraditionalBanking.com).”

4         Although UBAAPAC is the entity that will pay for the Project’s email and  
5 website communications, the proposed disclaimer identifies the Project, rather than  
6 UBAAPAC, as the payor, and does not provide UBAAPAC’s permanent street address,  
7 telephone number or website address. Because a disclaimer must clearly state the full  
8 name and permanent street address, telephone number, or World Wide Web address of  
9 the person who paid for the communication, the disclaimer must be revised to show  
10 UBAAPAC as the payor and include UBAAPAC’s permanent street address, telephone  
11 number or website address. The requestors may retain a reference to the Project in the  
12 revised disclaimer should they wish to do so, as long as the identity of the payor is clear.  
13 For example, a disclaimer stating that “This communication was made by Friends of  
14 Traditional Banking, a project of Utah Bankers Association PAC, and was paid for by  
15 Utah Bankers Association Action PAC. Not authorized by any candidate or candidate’s  
16 committee,” would satisfy the Act and Commission regulations if it also provided  
17 UBAAPAC’s permanent street address, telephone number, or website address, either  
18 alone or in addition to such information about the Project.

19         Although the Act, Commission regulations, and prior advisory opinions do not  
20 directly address the question of whether a political committee must include additional  
21 disclaimers in its email communications in contemplation of their being forwarded by the  
22 intended recipients, the Commission’s decision in Advisory Opinion 1999-37 (X-PAC)  
23 indicates that no such obligation exists. In Advisory Opinion 1999-37 (X-PAC), the

1 Commission concluded that X-PAC would not have to collect information from  
2 recipients who forwarded its email independent expenditures, stating that the Act and  
3 Commission regulations “do not require that a political committee or individual making  
4 independent expenditures collect information from others who might replicate or utilize  
5 that committee’s or person’s political message even if they do so at the committee’s (or  
6 individual’s) behest.” Advisory Opinion 1999-37 (X-PAC). Consistent with this  
7 approach, the Commission concludes that the Project need not add disclaimers beyond  
8 those proposed in the request to its email solicitations in anticipation of their being  
9 forwarded by the intended recipients to other individuals.

10 This response constitutes an advisory opinion concerning the application of the  
11 Act and Commission regulations to the specific transaction or activity set forth in your  
12 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any  
13 of the facts or assumptions presented, and such facts or assumptions are material to a  
14 conclusion presented in this advisory opinion, then the requestors may not rely on that  
15 conclusion as support for its proposed activity. Any person involved in any specific  
16 transaction or activity which is indistinguishable in all its material aspects from the  
17 transaction or activity with respect to which this advisory opinion is rendered may rely on  
18 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note the analysis or  
19 conclusions in this advisory opinion may be affected by subsequent developments in the  
20 law including, but not limited to, statutes, regulations, advisory opinions, and case law.



1 The cited advisory opinions are available on the Commission's Web site at,  
2 [www.fec.gov](http://www.fec.gov), or directly from the Commission's Advisory Opinion searchable database  
3 at <http://www.fec.gov/searchao>.

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On behalf of the Commission,

Cynthia L. Bauerly  
Chair