



FEDERAL ELECTION COMMISSION  
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**AGENDA ITEM**  
For Meeting of: 2-23-06

**SUBMITTED LATE**

MEMORANDUM

**TO:** The Commission  
General Counsel  
Staff Director  
Office of the Commission Secretary

**FROM:** Vice Chairman Robert *R* Lenhard  
Commissioner Steven T. Walther *STW*  
Commissioner Ellen L. Weintraub *ELW*

**DATE:** February 22, 2006

**RE:** Proposed Final Regulations – Definitions of “Solicit” and “Direct,” 11  
C.F.R. 300

Attached please find proposed final regulations regarding “to solicit” and “to direct” that we plan to offer at the Commission’s open session on February 23, 2006.

1 **PART 300 – NON-FEDERAL FUNDS**

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

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

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

5 **§ 300.2 Definitions.**

6 \* \* \* \* \*

7 (m) To solicit. For the purposes of part 300, to solicit means to ask, suggest, or  
8 recommend that another person make a contribution, donation, or transfer of funds, or  
9 otherwise provide anything of value, whether it the contribution, donation, transfer of  
10 funds, or thing of value, is to be made or provided directly or through a conduit or  
11 intermediary. A solicitation is a written or oral communication, whether explicit or  
12 implicit, construed as reasonably understood in the context in which it was made. The  
13 context may include the conduct of the persons present or otherwise involved in the  
14 communication. A solicitation does not include merely providing information or  
15 guidance as to the requirement of particular law.

16 (1) Examples of solicitations.

17 a. A solicitation can be direct. For example, a candidate may ask directly for a  
18 contribution: “Please give \$100,000 to Group X,” or “It is important for our  
19 State party to receive at least \$100,000 from each of you in this election.”  
20 Similarly, a candidate may directly recommend a contribution: “Group X has  
21 always helped me in my elections. Keep them in mind this fall,” or “X is an  
22 effective State party organization; it needs to obtain as many \$100,000  
23 donations as possible.”

1           b. A solicitation can be indirect. For example, a candidate may suggest that a  
2           contribution be made: "Giving \$100,000 to Group X would be a very smart  
3           idea." If a solicitation is indirect, the context may be important to understand  
4           what the candidate intended to convey. For example, the statement, "Group X  
5           has always been there for me" is not a solicitation if said incidentally by a  
6           candidate at a rally for Group X. However, it would be a solicitation if said  
7           by a candidate immediately after the head of Group X makes a solicitation.

8  
9           c. Conduct can provide context for determining whether a communication is a  
10          solicitation. While conduct is often ambiguous, sometimes it is not, and may  
11          provide a context for oral statements. For example, the head of Group X  
12          solicits a contribution from a potential donor in the presence of a candidate.  
13          The donor asks the candidate if the contribution to Group X would help the  
14          candidate's campaign. An affirmative nod by the candidate would convey the  
15          candidate's views as clearly as if the candidate had said the word "yes", and  
16          would constitute a solicitation by the candidate. In other contexts, for  
17          example, when a candidate sitting on a dais applauds during a local  
18          candidate's speech that includes a plea for contributions, the candidate's  
19          conduct is more a social courtesy than a suggestion that the audience make a  
20          contribution, and the candidate's conduct is not a solicitation.

21  
22          d. A solicitation can be made by informing a person how to contribute. For  
23          example:

- 1 (i) “Send all contributions to the following address...”
- 2 (ii) “I am not permitted to ask for contributions, but unsolicited
- 3 contributions will be accepted at the following address...”
- 4 (iii) “Group X is having a fundraiser this week, you should come.”
- 5 (iv) “You have reached the limit of what you may contribute directly
- 6 to my campaign, but you can further help my campaign by
- 7 assisting the State party.”
- 8 (v) A mailing that is not a solicitation in itself, but is accompanied
- 9 by a separate card, envelope, or reply device that contains an
- 10 address to which funds may be sent and allows contributors or
- 11 donors to indicate the dollar amount of their contribution or
- 12 donation.
- 13 (vi) A communication that provides a phone number specifically
- 14 dedicated to facilitating the making of contributions or donations.
- 15 (vii) A communication that identifies a web address that is
- 16 specifically dedicated to facilitating the making of contributions
- 17 or donations, or automatically redirects the user to such a page,
- 18 or exclusively displays a link to such a page.
- 19
- 20 e. A solicitation can be made by implying that a potential donor will incur a
- 21 benefit if he or she makes a contribution. For example:

1 (i) A candidate hands a potential donor a list of people who have  
2 contributed to a group and the amounts of their contributions.

3 The candidate says, "I see you are not on the list."

4 (ii) "I will not forget those who contribute at this crucial stage."

5 (iii) "The Senator will be very pleased if we can count on you for  
6 \$10,000."

7 (iv) "Your contribution to this project would mean a great deal to the  
8 entire party and to me personally."

9

10 f. A solicitation can be made by implying that a party or group will benefit from  
11 a contribution. For example:

12 (i) "All contributions will help the party's election prospects in  
13 November."

14 (ii) "The money we raise will allow us to communicate our message  
15 to the voters through Labor Day."

16 (iii) "I appreciate all you've done in the past for our party in this  
17 State. Looking ahead, we face some tough elections. I'd be very  
18 happy if you could maintain the same level of commitment to (or  
19 support for) our State party this year."

20

21 (n) To direct. For the purposes of part 300, to direct means to guide ask a person who  
22 has expressed an intent to make a contribution, donation, or transfer of funds, or

23 otherwise provide anything of value, by identifying a candidate, political committee or

1 organization, for the receipt of a contribution, donation, transfer of funds, or thing of  
2 value, to make that contribution, donation, transfer of funds, or provide that thing of  
3 value, including through a conduit or intermediary. The contribution, donation, transfer,  
4 or thing of value may be made or provided directly or through a conduit or intermediary.  
5 Direction does not include merely providing information or guidance as to the  
6 requirement of particular law.

7