MEMORANDUM

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

FROM: Vice Chairman Robert E. Lenhard
       Commissioner Steven T. Walther
       Commissioner Ellen L. Weintraub

DATE: February 22, 2006


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.
PART 300 – NON-FEDERAL FUNDS

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

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

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

   § 300.2 Definitions.

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   (m) **To solicit.** For the purposes of part 300, to solicit means to ask, suggest, or recommend that another person make a contribution, donation, or transfer of funds, or otherwise provide anything of value, whether it the contribution, donation, or transfer of funds, or thing of value, 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 reasonably understood in the context in which it was made. The context may include the conduct of the persons present or otherwise involved in the communication.** A solicitation does not include merely providing information or guidance as to the requirement of particular law.

   (1) **Examples of solicitations.**

   a. **A solicitation can be direct.** For example, a candidate may ask directly for a contribution: “Please give $100,000 to Group X,” or “It is important for our State party to receive at least $100,000 from each of you in this election.”

   Similarly, a candidate may directly recommend a contribution: “Group X has always helped me in my elections. Keep them in mind this fall,” or “X is an effective State party organization; it needs to obtain as many $100,000 donations as possible.”
b. A solicitation can be indirect. For example, a candidate may suggest that a
contribution be made: "Giving $100,000 to Group X would be a very smart
idea." If a solicitation is indirect, the context may be important to understand
what the candidate intended to convey. For example, the statement, "Group X
has always been there for me" is not a solicitation if said incidentally by a
candidate at a rally for Group X. However, it would be a solicitation if said
by a candidate immediately after the head of Group X makes a solicitation.

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

d. A solicitation can be made by informing a person how to contribute. For
example:
(i) "Send all contributions to the following address..."

(ii) "I am not permitted to ask for contributions, but unsolicited contributions will be accepted at the following address..."

(iii) "Group X is having a fundraiser this week, you should come."

(iv) "You have reached the limit of what you may contribute directly to my campaign, but you can further help my campaign by assisting the State party."

(v) A mailing that is not a solicitation in itself, but is accompanied by a separate card, envelope, or reply device that contains an address to which funds may be sent and allows contributors or donors to indicate the dollar amount of their contribution or donation.

(vi) A communication that provides a phone number specifically dedicated to facilitating the making of contributions or donations.

(vii) A communication that identifies a web address that is specifically dedicated to facilitating the making of contributions or donations, or automatically redirects the user to such a page, or exclusively displays a link to such a page.

e. A solicitation can be made by implying that a potential donor will incur a benefit if he or she makes a contribution. For example:
(i) A candidate hands a potential donor a list of people who have contributed to a group and the amounts of their contributions. The candidate says, "I see you are not on the list."

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

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

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

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

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

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

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

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