March 21, 2007

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan  
Acting General Counsel
Rosemary C. Smith  
Associate General Counsel
J. Duane Pugh Jr.  
Acting Assistant General Counsel
Robert M. Knop  
Attorney
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Law Clerk

SUBJECT: Draft Notice of Proposed Rulemaking for Standards of Conduct

Attached is a draft Notice of Proposed Rulemaking for Standards of Conduct.

The proposed rules would update the Commission’s regulations to reflect statutory changes enacted after the Standards of Conduct were originally promulgated and to conform to regulations issued by the Office of Government Ethics (“OGE”) and the Office of Personnel Management. In addition, the proposed rules include new rules to supplement the OGE’s Standards of Ethical Conduct that would be issued by the Commission with OGE’s approval.

We request that this draft be placed on the agenda for March 22, 2007.

Attachment
FEDERAL ELECTION COMMISSION

5 CFR Chapter XXXVII

11 CFR Part 7

STANDARDS OF CONDUCT

RIN 3209-AA15

[NOTICE 2007 - ]

AGENCY: Federal Election Commission

ACTION: Notice of Proposed Rulemaking

SUMMARY: The Federal Election Commission ("Commission" or "FEC"), with the concurrence of the Office of Government Ethics ("OGE"), seeks comments on proposed revisions to the "Standards of Conduct," which are the FEC rules that govern the conduct of Commissioners and Commission employees. The proposed rules would update the Commission's current regulations to reflect statutory changes enacted after the Standards of Conduct were originally promulgated in 1986, and to conform to regulations issued by OGE and the Office of Personnel Management ("OPM"). OGE's regulations establish a government-wide standard of ethical conduct for the Executive Branch and independent agencies, and are known as OGE's Standards of Ethical Conduct. In addition to the proposed revisions to the FEC's Standards of Conduct, the Commission, with OGE's concurrence, is also proposing new rules that would supplement OGE's Standards of Ethical Conduct. The proposed rules that
follow do not represent a final decision by the Commission or OGE on the issues presented by this rulemaking. The supplementary information that follows provides further information.

DATES:
Comments must be received on or before [insert date 30 days after the date of publication in the Federal Register].

ADDRESSES:
All comments must be in writing, must be addressed to Mr. J. Duane Pugh Jr., Acting Assistant General Counsel, and must be submitted in e-mail, facsimile, or paper copy form. Commenters are strongly encouraged to submit comments by e-mail or fax to ensure timely receipt and consideration. E-mail comments must be sent to ethicsrules@fec.gov. If e-mail comments include an attachment, the attachment must be in either Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments must be sent to (202) 219-3923, with paper copy follow-up. Paper comments and paper copy follow-up of faxed comments must be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered. The Commission will post comments on its website after the comment period ends.

FOR FURTHER INFORMATION CONTACT:
Mr. J. Duane Pugh Jr., Acting Assistant General Counsel, Mr. Robert M. Knop, Attorney, or Ms. Stacey J. Shin, Law Clerk, 999 E
SUPPLEMENTARY
INFORMATION:

I. OVERVIEW OF OGE RULES IMPLEMENTING THE ETHICS REFORM
ACT AND PROPOSED FEC SUPPLEMENTAL RULES

A. Legal Authority

The Ethics Reform Act of 1989\(^1\) applies to all Federal employees and includes restrictions on gifts, travel, outside activities, and outside employment. See Pub. L. 101-194, tit. III, VI, 103 Stat. 1716 (1989). It authorizes OGE to implement regulations concerning the conduct of executive branch employees. See 5 U.S.C. 7351(c). OGE has done so with regulations that establish uniform standards of ethical conduct for executive branch and independent agency employees, including FEC employees. See 5 CFR parts 2634, 2635 and 2640.\(^2\)

The OGE regulations implementing the Ethics Reform Act supersede any agency regulations previously issued and therefore supersede, with some exceptions, the Commission’s current regulations in 11 CFR part 7.\(^3\) Although agencies may still issue


\(^2\) Shortly before Congress passed the Ethics Reform Act, the President issued Executive Order 12674, which sets forth basic principles of ethical conduct for Federal employees and requires OGE to promulgate “regulations that establish a single, comprehensive, and clear set of executive-branch standards of conduct.” E.O. 12674, 54 FR 15159, 15160 (Apr. 12, 1989). This Executive Order was later modified. E.O. 12731, 55 FR 42547 (Oct. 17, 1990). OGE’s regulations also implement Executive Order 12674, as modified by Executive Order 12731. See E.O. 12731, 55 FR 42547 (Oct. 17, 1990); E.O. 12674, 54 FR 15159 (Apr. 12, 1989).

\(^3\) Prior to the Ethics Reform Act of 1989, the Ethics in Government Act of 1978, Public Law 95-521, required agencies to promulgate regulations implementing that Act and other laws and regulations addressing Federal standards of conduct. See Pub. L. 95-521, 92 Stat. 1824 (1978). Thus, executive branch agencies and independent agencies had their own standards of conduct regulations. The Commission promulgated
regulations to supplement OGE’s regulations in order to accommodate specific agency
needs, such regulations must be issued in accordance with OGE’s rules, and must be
submitted to OGE for prior approval. See 5 CFR 2635.105(a) and (b). Agencies may,
however, retain any regulations based on their own separate statutory authority.

B. Topics Addressed in OGE and OPM Regulations

OGE regulations address gifts from outside sources, gifts between employees,
conflicting financial interests, impartiality in performing official duties, pursuit of other
employment, misuse of position, and outside activities. See 5 CFR part 2635. These rules
set forth the following basic principles.4

A Federal employee may not solicit or accept gifts that are offered because of the
employee’s official position or gifts from any person that: seeks official action by the
employee’s agency, conducts activities regulated by the employee’s agency, does business,
or seeks to do business, with the employee’s agency. See 5 CFR 2635.101 and 2635.201
through 2635.205. An employee may not give or solicit donations for a gift to an official
superior or accept a gift from a lower-paid employee, unless the two employees are
personal friends who are not in a superior-subordinate relationship. See 5 CFR 2635.301
through 2635.304.

A Federal employee may not participate in matters likely to affect the employee’s
financial interest, and Federal employees must take certain steps to avoid an appearance of
the loss of impartiality in performing official duties. See 5 CFR 2635.401

such regulations in current 11 CFR part 7. See generally Final Rule on Standards of Conduct for Agency
Employees, 51 FR 34440 (Sept. 29, 1986).

4 The remainder of this section is only a brief summary. Important additional restrictions and
exceptions may apply. Readers should consult the cited regulations for further information.
through 2635.403, and 2635.601 through 2635.603. When seeking other employment, a
Federal employee may not participate in particular matters that would affect the financial
interest of a prospective employer. See 5 CFR 2635.601 through 2635.606. Federal
employees may not use their public offices, nonpublic information, Government property,
or official time, for private gain, either their own gain or the gain of others. See
5 CFR 2635.701 through 2635.705. Lastly, OGE rules address outside employment and
outside activities of Federal employees. See 5 CFR 2635.801 through 2635.809.

In addition to OGE’s Standards of Conduct, Commission employees are subject to
certain rules concerning employee responsibilities and conduct issued by OPM. See 5 CFR
part 735. These OPM rules address restrictions on certain gambling activities, conduct
prejudicial to the government, and unauthorized examination training for individuals
preparing to take civil and Foreign Service examinations. See 5 CFR part 735.

The FEC is proposing new rules in 5 CFR part 4701 and revisions to 11 CFR part 7
that would conform the Commission’s regulations to the OGE and OPM regulations,
without compromising the Commission’s essential independence in its core mission of
administering Federal campaign finance laws.

II. PROPOSED REGULATIONS

The following discussion explains the Commission’s proposal to amend the rules
that govern the conduct of Commissioners and Commission employees by adding
supplemental regulations to 5 CFR part 4701 and by revising the Commission’s Standards
A. Proposed Supplemental Regulations in 5 CFR Part 4701

1. Proposed 5 CFR 4701.101 – Scope

Proposed 5 CFR 4701.101 would state the authority for the supplemental regulations, which includes 2 U.S.C. 437c(a)(3), 5 U.S.C. 7301 and 5 U.S.C. App. (Ethics in Government Act of 1978). Proposed 5 CFR 4701.101(a) would indicate that the regulations of 5 CFR part 4701 apply to both members of the Commission (Commissioners) and employees of the Commission. Proposed 5 CFR 4701.101(b) would list some of the other regulations in Title 5 and 11 CFR part 7 that would govern the ethical conduct of Commissioners and employees.

2. Proposed 5 CFR 4701.102 – Prior approval for certain outside activities

The OGE Standards of Ethical Conduct now supersede the Commission’s current regulation at 11 CFR 7.9(f) concerning prior approval for outside employment. However, agencies may issue regulations jointly with OGE that require the agencies’ employees to obtain approval before engaging in outside employment or activities. See 5 CFR 2635.105 and 2635.803.

The Commission has found the current approval requirement for outside employment or activities useful in ensuring that the outside employment and activities of its employees conform to all applicable laws and regulations. Because that requirement is necessary to the administration of its ethics program, the Commission, with the concurrence of OGE, proposes to renew its requirement for prior approval of certain outside activities and to issue a supplemental regulation in accordance with 5 CFR 2635.803 at proposed 5 CFR 4701.102.
Proposed section 4701.102 would differ significantly from current 11 CFR 7.9(f).

The major difference is in the scope of the outside activities covered by the proposed regulation. Current 11 CFR 7.9(f) requires Commission employees to obtain prior approval for all outside employment. The term “outside employment or other outside activity” is defined broadly at current 11 CFR 7.2(h) to include “any work, service or other activity performed by an employee.” In contrast, proposed 5 CFR 4701.102 would require prior approval from the Designated Agency Ethics Official (“DAEO”) only for outside activities that are related to the employee’s official duties or involve the application of the same specialized skills or the same educational background as used in the performance of the employee’s official duties. This rule, which draws on portions of prior approval regulations adopted by several other Federal agencies, is narrowly constructed to address agency concerns, while limiting the administrative burdens placed on employees. See, e.g., 5 CFR 3801.106 (Department of Justice); 5 CFR 4501.103 (OPM); and 5 CFR 6301.102 (Department of Education); and 5 CFR 8601.102 (Federal Retirement Thrift Investment Board).

Proposed 5 CFR 4701.102(a) would set out the definitions of the terms used in proposed 5 CFR 4701.102(b). The definitions for “active participant,” “employee,” and “related to the employee’s official duties” refer back to the definitions of these terms used in the general standards of conduct regulations issued by OGE.

Proposed 5 CFR 4701.102(a)(2) would define “employee” as defined in OGE’s regulation at 5 CFR 2635.102(h), which includes “any officer or employee of an agency.” This definition includes Commissioners. However, proposed section 4701.102(b) would exclude Commissioners and members of their staffs from its procedures. Instead, proposed
11 CFR 7.6, discussed below, would address outside employment and activities by
Commissioners, and proposed section 4701.102(e) would address outside activities by
members of Commissioners’ staffs. In addition, proposed section 4701.102(a)(2) would
make it clear OGE’s definition of “employee,” which is limited to government employees,
does not apply to use of the term “employee” in the proposed definition of “outside
activities.” Instead, the “outside activities” definition uses “employee” to include
employees of any employer.

Proposed 5 CFR 4701.102(a)(3) would define “outside activities” to mean
providing any services, with or without compensation, other than in the discharge of
official duties. The proposed definition provides a non-exhaustive list of services that
constitute outside activities, such as serving as a lawyer, officer, director, trustee,
employee, agent, consultant, contractor, general partner, active participant, teacher,
speaker, or writer. This proposed definition of “outside activities” is similar to those
adopted by other Federal agencies and is designed to cover a broad range of outside
activities in which a Commission employee may seek to engage. See, e.g., 5 CFR
3801.106 (Department of Justice) and 5 CFR 5701.101 (Federal Trade Commission).

Proposed 5 CFR 4701.102(b) would state that a Commission employee must obtain
prior, written approval from the DAEO before engaging in outside activities with or
without compensation where the services provided are related to the employee’s official
duties or involve the application of the same specialized skills or the same educational
background as used in the performance of the employee’s official duties. Accordingly,
Commission employees would be required to obtain prior, written approval only when they
sought to engage in outside activities that are related, in one of those respects, to their
official duties. For example, a Commission attorney wishing to engage in weekend
employment as a salesperson for a retail organization would not need to seek prior
approval because such employment would not be related to his or her official duties or
involve the application of the same specialized skills or educational background as used in
his or her position at the Commission. On the other hand, a Commission attorney wishing
to represent a relative in a lawsuit filed against a private party in State court would be
required to seek prior approval because such representation would involve the application
of the same specialized skill or same educational background as used in his or her position
with the Commission.

Proposed section 5 CFR 4701.102(c) would establish the procedure for the
submission of approval requests to the DAEO. It would require that the request be
submitted through all of the employee’s supervisors. For purposes of this section, the Staff
Director, the General Counsel, the Inspector General, or, in appropriate cases, a
Commissioner or the Commission would be considered the final level of supervision for all
Commission employees. A request would need to provide certain information, including
the identity of the person, group, or organizations for which the employee intends to
provide services. Additional procedures for seeking and obtaining approval are also set
forth in the Commission’s Labor – Management Agreement.

Proposed 5 CFR 4701.102(d) would set forth the standard for approval of an
employee’s request regarding outside activities, which is not in current 11 CFR 7.9(f).
Approval would be granted upon a determination that the outside activity would not
involve conduct prohibited by statute or Federal regulations. In making this determination,
the regulations to be considered would include those at 5 CFR part 2635. Therefore, the
approval would depend on whether the outside activity would create conflicting financial interests, or a lack of impartiality in performing official duties, or misuse of Government positions, and whether the employment or activity otherwise complies with 5 CFR part 2635.

Proposed 5 CFR 4701.102(e) would state that a member of a Commissioner's staff must obtain prior, written approval from his or her supervising Commissioner before engaging in outside activities, with or without compensation, where the services provided are related to the employee's official duties or involve the application of the same specialized skills or the same educational background as used in the performance of the employee's official duties. Under proposed section 4701.102(e), the supervising Commissioner would consult the DAEO in determining whether to approve the request.

The Commission invites comments on this proposal and on whether an alternative system of seeking prior approval is preferable to that proposed and, if so, how an alternative system should be structured.

B. Proposed Revisions to the Commission’s Standards of Conduct in 11 CFR Part 7

FECA provides authority for some of the Commission’s Standards of Conduct in current 11 CFR part 7 and, therefore, OGE’s regulations do not supplant these regulations. These regulations include current 11 CFR 7.14 and 7.15, which concern confidentiality of enforcement matters and are based on 2 U.S.C. 437g(a)(12). The Commission proposes to retain these rules. The Commission also proposes to retain provisions that are informational or procedural in nature, such as current 11 CFR 7.1 (purpose and applicability), 7.2 (definitions), 7.4 (interpretation and advisory service), 7.5 (reporting
suspected violations) and 7.6 (disciplinary and corrective actions). The revisions and clarifications proposed for these provisions are discussed below.

As explained above in the Overview of OGE Rules Implementing the Ethics Reform Act, many of the Commission's regulations in current 11 CFR part 7 have been supplanting OGE's regulations. Accordingly, the Commission proposes to remove the supplanting regulations from the Commission's Standards of Conduct in current 11 CFR part 7.

The Commission's current regulation concerning political activity by Commissioners and Commission employees has been supplanting the Hatch Act Reform Amendments of 1993. See Pub. L. 103-94, 107 Stat. 1001 (1993); current 11 CFR 7.11. Therefore, the Commission proposes to remove that regulation. See discussion below.
The regulations that the Commission proposes to retain and revise would also be redesignated. The following chart lists the removals, revisions, and redesignations proposed for current 11 CFR part 7.

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5 This entry refers to the portion of current 11 CFR 7.1(b) that separately includes special government employees. See also proposed 11 CFR 7.2(d).

6 This entry refers to the portion of current 11 CFR 7.1(b) that explains that current 11 CFR part 7 applies to Commission members and employees.

7 See also 5 CFR 2635.301—2635.304.

8 See also proposed 5 CFR part 4701.

9 See also 5 CFR 2635.501—2635.503; 2635.703.

10 See also discussion below.

11 See also 5 CFR 2635.502; 2635.704—2635.705; and discussion below.

12 The citation to current 11 CFR 7.15 in 11 CFR 201.1 would be revised to cite proposed 11 CFR 7.8.

13 See also proposed 11 CFR 7.2(d) (including Special Government employees).
1. **Proposed 11 CFR 7.1 – Scope**

   Proposed 11 CFR 7.1(a) would state that the regulations in revised 11 CFR part 7 apply to all members and employees of the Commission. Proposed 11 CFR 7.1(b) would list the other regulations in Title 5 and proposed 5 CFR part 4701 that would govern the ethical conduct of Commissioners and employees. Current 11 CFR 7.1(b), which states that the regulations in current 11 CFR part 7 apply to all employees and special Commission employees, would be removed. As explained below, proposed 11 CFR 7.2(d) would include special Government employees in the definition of “employee.” Because proposed 11 CFR 7.1(a) states that the regulations in revised 11 CFR part 7 apply to all Commission employees, which includes special Commission employees, current paragraph (b) is no longer necessary. Current 11 CFR 7.1(c), which states that the regulations in current 11 CFR part 7 must be construed in accordance with any applicable laws, regulations, and the Commission’s labor – management agreement also would be removed because it is unnecessary to state that other laws, regulations, and agreements apply.

2. **Proposed 11 CFR 7.2 – Definitions**

   Proposed 11 CFR 7.2 would continue to set forth the definitions used in 11 CFR part 7. The definition of “Commission” in current 11 CFR 7.2(a) would remain unchanged. The definition of “Commissioner” in current 11 CFR 7.2(b) would be revised slightly. Whereas current paragraph (b) of 11 CFR 7.2 defines “Commissioner,” in part, as “a voting member of the Federal Election Commission,” proposed 11 CFR 7.2(b) would

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14 See also discussion below.
delete the word “voting” from the definition. The word “voting” is no longer necessary
because all members of the Commission are currently voting members.

The definition of “conflict of interest” in current section 7.2(c) would be removed.
Instead, the Commission would rely on OGE regulations and regulatory definitions
regarding conflicts of interest, except for the provisions in proposed 11 CFR 7.6 governing
outside employment and activities of Commissioners. See, e.g., 5 CFR 2635.801
through 2635.809. Because proposed section 7.6 would not use the phrase “conflict of
interest,” a definition of that phrase specific to 11 CFR part 7 would no longer be needed.

The terms “Designated Agency Ethics Officer” and “Ethics Officer” in current
11 CFR 7.2(d) would be replaced with the term “Designated Agency Ethics Official” in
proposed section 7.2(c) and throughout the proposed regulations. See proposed
11 CFR 7.3, 7.4, and 7.5. These changes would make the Commission’s regulations
consistent with OGE’s regulations at 5 CFR 2638.104. Proposed 11 CFR 7.2(c) would
also include a provision from current 11 CFR 7.4 stating that the Commission’s General
Counsel serves as the Designated Agency Ethics Official.

In proposed 11 CFR 7.2(d), the definition of “employee” from current
11 CFR 7.2(e) would be amended to include a “special Government employee as defined in
18 U.S.C. 202.” OGE regulations at 5 CFR 2635.102(h) include “special Government
employee” within the general definition of “employee,” thus subjecting special
Government employees to the same Standards of Conduct as other employees. Proposed
section 7.2(d) would operate similarly.

Proposed section 7.2(e) would define “ex parte communication” for the purposes of
11 CFR part 7. This definition would be based on the definition of “ex parte
communication" at 11 CFR 201.2(a) applicable to non-enforcement situations. Like that
definition, proposed section 7.9(e) would define "ex parte communication" as any written
or oral communication by any person outside the agency to any Commissioner or any
member of any Commissioner's staff, but not to any other Commission employee, that
imparts information or argument regarding prospective Commission action or potential
action concerning any pending enforcement matter. Like current Commission regulations
at 11 CFR 111.22 and part 201, the proposed definition would be limited to
Commissioners and their staff members because the Commissioners are empowered to
make decisions on enforcement matters, and their staff members are their confidential
assistants on these matters. The Commission notes that "matter" as used in the proposed
rule would include enforcement Matters Under Review, Administrative Fines, and
Alternative Dispute Resolution cases ("ADR"). See also discussion of proposed 11 CFR
7.9, below.

Proposed section 7.2(f) would define the term "Inspector General." The definitions
of "former employee," "official responsibility," "person," and "special Commission
employee" at current 11 CFR 7.2(f), (g), (i), and (j), respectively, would be removed from
proposed section 7.2 as these definitions are no longer necessary. In addition, paragraph
(h) of current 11 CFR 7.2 defining "outside employment or other outside activity" would
be removed. Because the Commission proposes to replace much of current 11 CFR 7.9
(outside employment or activities by Commission employees) with a supplemental

\[15\] The treatment of ex parte communications in enforcement matters is addressed in 11 CFR 111.22. The treatment of ex parte communications in audits, rulemakings, advisory opinions, public funding cases, and litigation matters is covered by 11 CFR part 201.
regulation at 5 CFR 4701.102, paragraph (h) of current section 7.2 defining “outside employment or other outside activity” would be superfluous.

3. Proposed 11 CFR 7.3 – Interpretation and advisory service

Proposed 11 CFR 7.3 would be a revised version of current 11 CFR 7.4, which addresses interpretation and advisory service. Proposed 11 CFR 7.3(a) would add references to 5 CFR parts 735, 2634, 2635, 2640 and 4701 as subjects on which a Commissioner or employee may seek interpretation and advice. Also, proposed paragraph (a) would identify the DAEO as the person from whom advice should be sought. Proposed paragraph (b) would clarify that the DAEO, a Commissioner, or an employee may request an opinion from the Director of OGE concerning interpretations of 5 CFR parts 735, 2634, 2635, 2640, or 4701.

4. Proposed 11 CFR 7.4 – Reporting suspected violations

Proposed 11 CFR 7.4 would be a revised version of current 11 CFR 7.5 and would address the reporting of suspected violations of the FEC’s Standards of Conduct and OGE’s Standards of Ethical Conduct. Proposed section 7.4 would require the reporting of suspected violations of 5 CFR parts 735, 2634, 2635, 2640 and 4701 or revised 11 CFR part 7 to the DAEO, the Inspector General, or other appropriate law enforcement authorities.

5. Proposed 11 CFR 7.5 – Corrective action

Proposed 11 CFR 7.5 would inform employees that a violation of the FEC’s Standards of Conduct or OGE’s Standards of Ethical Conduct may be cause for appropriate corrective action, disciplinary action, or adverse action, in addition to any penalty prescribed by law, including criminal penalties. Proposed section 7.5 is based on current
section 7.6(a). Procedures for taking corrective, disciplinary, and adverse actions are set
forth in other authority. Accordingly, the procedures in current section 7.6(b) and (c) are
unnecessary and would be deleted.

6. Proposed 11 CFR 7.6 – Outside employment and activities by

Commissioners

Proposed 11 CFR 7.6 would address outside employment or activities of
Commissioners. FECA provides authority for additional restrictions on Commissioners’
outside employment and activities. See 2 U.S.C. 437c(a)(3).

Like the current rule at 11 CFR 7.9(a), proposed 11 CFR 7.6 would state that a
Commissioner shall not devote a substantial portion of his or her time to any other
business, vocation, or employment. This regulation would also retain the current rule’s
allowance of a 90-day period for a Commissioner, following the start of Commission
service, to limit such activity.

As noted in the 1986 Explanation and Justification for the current rule on
Commissioners’ outside activities, the use of the words “substantial portion” of a
Commissioner’s time to trigger the regulation’s prohibitions is based on the legislative
Employees, 51 FR 34440, 34442 (Sept. 29, 1986). The Conference Report that
accompanied the 1976 amendments to FECA discusses 2 U.S.C. 437c(a)(3): “the
conferees agree that the requirement is intended to apply to members who devote a
substantial portion of their time to such business, vocation, or employment activities.”

Outside activities of other FEC employees are addressed in OGE’s Standards of Ethical Conduct at
5 CFR 2635.801 through 2635.809, which supplant current 11 CFR 7.9(b) through (f).

7. Proposed 11 CFR 7.7 – Prohibition against making complaints and investigations public

FECA prohibits any person from making public “any notification or investigation” of a complaint under 2 U.S.C. 437g without the written consent of the person receiving the notification or with respect to whom the investigation is made. 2 U.S.C. 437g(a)(12)(A); 11 CFR 111.21. Proposed 11 CFR 7.7 would derive its authority from that provision of FECA. The proposed rule follows current 11 CFR 7.14.

8. Proposed 11 CFR 7.8 – Ex parte communications in enforcement actions

Proposed 11 CFR 7.8 would be a revised version of current 11 CFR 7.15 and would address ex parte communications. The title of proposed 11 CFR 7.8 would be clarified to apply specifically to ex parte communications in enforcement matters.

Proposed 11 CFR 7.8(a) and (d) would be revised to clarify that the prohibition on ex parte communications would apply only to Commissioners and any members of a Commissioner’s staff. These proposed changes would conform proposed 11 CFR 7.8 to the current ex parte rules in 11 CFR 111.22 and part 201. See also discussion of proposed 11 CFR 7.2(e), above. Proposed section 7.8 would also contain nonsubstantive revisions from paragraphs (a), (c) and (d) of current section 7.15. Finally, proposed 11 CFR 7.8 would add references to 11 CFR 111.22, governing ex parte communications made in connection with Commission enforcement actions, and 11 CFR part 201, governing ex parte communications made in connection with public funding, audits, litigation,
rulemakings, and advisory opinions. See proposed 11 CFR 7.8(e). The Commission seeks comment on these changes to its *ex parte* rules.


The Hatch Act Reform Amendments of 1993\(^{17}\) lifted many of the restrictions imposed by the original Hatch Act on most Federal employees with regard to participation in political campaigns. However, Congress specifically addressed the FEC in the Hatch Act Amendments and left all of the original Hatch Act’s restrictions in place for employees of the Commission, other than Commissioners. See 5 U.S.C. 7323(b)(1) and (2). In contrast to the Commissioners, Commission employees may not give a political contribution to a Member of Congress, an employee of the Executive Branch (other than the President or Vice President), or an officer of a uniformed service. 5 U.S.C. 7323(b)(1).

Additionally, Commission employees may not “take an active part in political management or political campaigns.” 5 U.S.C. 7323(b)(2)(A).

The Hatch Act, as amended, prohibits certain political activities by Commissioners such as (1) using official authority or influence to interfere with an election, (2) knowingly soliciting or discouraging political activity by anyone subject to a Commission audit or investigation, (3) soliciting or receiving political contributions (except in certain, narrowly limited circumstances), or (4) being a candidate for public office in a partisan election.

5 U.S.C. 7323(a).

OPM has authority to issue regulations regarding the Hatch Act Amendments, and OSC interprets and enforces those regulations. See 5 U.S.C 1103(a)(5) and 5 U.S.C. 7325.

No provisions in the Hatch Act Amendments empower any agencies other than OPM to issue regulations pursuant to the Hatch Act Amendments, and no provision in FECA directly refers to the Hatch Act Amendments or previous Hatch Act restrictions. OPM has issued a regulation expressly prescribing the extent to which the political activities of employees may be limited beyond the restrictions in the Hatch Act Amendments. This OPM regulation provides that: “No further proscriptions or restrictions may be imposed upon employees covered under this regulation except: (a) Employees who are appointed by the President by and with the advice and consent of the Senate; (b) Employees who are appointed by the President; (c) Non-career senior executive service members; (d) Schedule C employees, 5 CFR 213.3301, 213.3302; and (e) Any other employees who serve at the pleasure of the President.” See 5 CFR 734.104.

The Commission has received an advisory opinion from OSC as to the scope of the Commission’s authority to interpret the Hatch Act Amendments regarding Commissioners and Commission employees. The specific question asked was whether the Commission may adopt a regulation that would forbid a Commissioner or a Commission employee from publicly supporting, or working for, or contributing to, a candidate, political party, or political committee subject to the jurisdiction of the Commission, even if in the case of public support, the activity is not done in concert with the candidate, political party, or political committee. In its opinion, the OSC noted the OPM regulations cited above and stated with respect to employees that “the FEC cannot further restrict the political activity of its regular employees by forbidding them from publicly supporting or contributing to a

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A copy of the Office of Special Counsel’s opinion is available on the Commission’s website at http://www.fec.gov/law/law_rulemakings.shtml under “Standards of Conduct.”
candidate, political party, or political committee subject to the jurisdiction of the
Commission." U.S. Office of Special Counsel Advisory Opinion, OSC File No. AD-03-
0095, at 2 (Aug. 29, 2003). The OSC opinion also noted with respect to Commissioners
that "the FEC has no authority to adopt regulations that would forbid a Commissioner from
publicly supporting, working for, or contributing to a candidate, political party, or political
committee subject to the jurisdiction of the FEC." Id. at 2-3. Its final conclusion was that
"the FEC may not adopt regulations that would limit the political activity of FEC
employees or Commissioners beyond the restrictions set forth in the Hatch Act." Id. at 3.
Accordingly, the Commission proposes to delete current section 7.11 because it is
inconsistent with the Hatch Act Amendments.


The Commission proposes to remove current 11 CFR 7.12, which addresses
employee and Commissioner membership in associations. In 1991, OGE issued a Notice
of Proposed Rulemaking that included proposed regulations concerning participation in
professional associations. See Notice of Proposed Rule on Standards of Ethical Conduct
for Employees of the Executive Branch, 56 FR 33778 (July 23, 1991). OGE decided,
however, to reserve action in its final rule on this topic as a result of the overwhelming
response to its request for comments. See Final Rule on Standards of Ethical Conduct for
Employees of the Executive Branch, 57 FR 35006 (Aug. 7, 1992). Therefore, no OGE
rules supplant current 11 CFR 7.12. The Commission, however, believes that a specific
Commission regulation governing membership in associations is not advisable. The

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19 Under 5 U.S.C. 1212, the advisory opinion authority of the OSC is limited to matters related to the
Hatch Act. Therefore, the conclusions of the opinion are also limited to interpretations of the Hatch Act and
OPM regulations. They do not apply to any separate statutory authority under FECA.
Commission agrees with the position taken by OGE in its rulemaking that ethical concerns regarding membership in nongovernmental associations or organizations may be addressed under the more general standards in 5 CFR part 2635. See 57 FR at 35035. Among those general provisions that are applicable are 5 CFR 2635.402 (concerning disqualifying financial interests), 5 CFR 2635.502 (concerning personal and business relationships) and 5 CFR 2635.704 and 2635.705 (concerning use of government property and official time).


Current 11 CFR part 7, subpart D, concerns administrative procedures to be followed for investigations of post-employment conflict-of-interest violations by individuals who have left Commission employment. Subpart D was based on 18 U.S.C. 207 and 5 CFR parts 2637 and 2641. When subpart D was adopted, 18 U.S.C. 207(j) authorized agency proceedings against individuals who violated that section and required that “departments and agencies shall, in consultation with the Director of the Office of Government Ethics, establish procedures to carry out this subsection.”

Subsequently, however, 18 U.S.C. 207(j) was amended and the section authorizing administrative procedures and the authority to draft regulations regarding the procedures was removed and replaced. The Commission has no pending post-employment situations concerning employees who left service prior to the repeal of this provision. Accordingly, the Commission is proposing to remove entirely 11 CFR part 7, subpart D pertaining to proceedings regarding post-employment conflicts of interest. Please note that former

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employees would remain subject to Department of Justice criminal prosecution under 18

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

[Regulatory Flexibility Act]

The Commission certifies that the attached proposed rules, if promulgated, will
not have a significant economic impact on a substantial number of small entities. The
basis of this certification is that this rulemaking affects only the appointed members of the
Federal Election Commission and its employees. The members of the Commission and its
employees are individuals, and are not small entities under 5 U.S.C. 601.

List of Subjects

5 CFR Part 4701

Conflict of interest, Government employees, outside activities.

11 CFR Part 7

Administrative practice and procedure, Conflicts of interest, Government
employees, Political activities (government employees)
For the reasons set out in the preamble, the Federal Election Commission, with
the concurrence of the Office of Government Ethics, proposes to amend title 5 and Chapter
I of title 11 of the Code of Federal Regulations as follows:

TITLE 5 – GOVERNMENT ORGANIZATION AND EMPLOYEES

1. Chapter XXXVII consisting of part 4701 would be added to title 5 of the Code of
Federal Regulations to read as follows:

CHAPTER XXXVII – FEDERAL ELECTION COMMISSION

PART 4701 – SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR
EMPLOYEES OF THE FEDERAL ELECTION COMMISSION

Sec.

4701.101 Scope.

4701.102 Prior approval for certain outside activities.

Authority: 2 U.S.C. 437c(a)(3); 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in
Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR 1989 Comp., p. 215, as
modified by E.O. 12731, 55 FR 42547, 3 CFR 1990 Comp., p. 306; 5 CFR 2635.105,
2635.204, and 2635.803.

§ 4701.101 Scope.

(a) The regulations of this part set forth standards of conduct that apply to members
and employees of the Federal Election Commission (Commission).

(b) In addition, members and employees of the Commission are subject to the
following regulations:

(1) 5 CFR part 735 (Executive Branch Employee Responsibilities and
Conduct):
§ 4701.102 Prior approval for certain outside activities.

(a) Definitions. For purposes of this section:

(1) Active participant has the meaning set forth in 5 CFR 2635.502(b)(1)(v).

(2) Except as used in paragraph (a)(3) of this section, employee has the meaning set forth in 5 CFR 2635.102(h).

(3) Outside activities means the provision of any services, with or without compensation, other than in the discharge of official duties. Examples of outside activities include, but are not limited to, serving as a lawyer, officer, director, trustee, employee, agent, consultant, contractor, general partner, active participant, teacher, speaker, or writer.

(4) Related to the employee’s official duties means that the activity meets one or more of the tests described in 5 CFR 2635.807(a)(2)(i)(B) through (a)(2)(i)(E). Activities related to the employee’s official duties include:

(i) Activities an employee has been invited to participate in because of his or her official position rather than his or her expertise in the subject matter:
(ii) Activities in which an employee has been asked to participate by a person that has interests that may be substantially affected by the performance or nonperformance of the employee’s official duties;

(iii) Activities that convey information derived from nonpublic information gained during the course of government employment; and

(iv) Activities that deal in significant part with any matter to which the employee is or has been officially assigned in the last year, or any ongoing or announced Commission policy, program, or operation.

(b) Prior approval requirement. An employee of the Commission, including a special Government employee, but not a member of the Commission or a Commissioner’s staff, shall obtain written approval from the Designated Agency Ethics Official before engaging in outside activities with or without compensation where the services provided:

(1) Are related to the employee’s official duties; or

(2) Involve the application of the same specialized skills or the same educational background as used in the performance of the employee’s official duties.

(c) Submission of requests for approval.

(1) The request for approval shall be sent through all of the employee’s supervisors and shall state the name of the person, group, or organization for whom the outside activity is to be performed; the type of outside activity to be performed; and the proposed hours of and approximate dates of the outside activity.
(2) Upon a significant change in the nature or scope of the outside activity or in
the employee's official position, the employee shall submit a revised request
for approval.

(d) Standard for approval. Approval shall be granted upon a determination that the
outside activity is not expected to involve conduct prohibited by statute or Federal
regulation, including 5 CFR part 2635.

(e) Commissioner's staff. Any member of a Commissioner's staff who seeks to engage
in outside activities, with or without compensation, shall first obtain written approval from
his or her supervising Commissioner, who will consult with the Designated Agency Ethics
Official, in determining whether to approve the request, where the services provided:

(1) Are related to the employee's official duties; or

(2) Involve the application of the same specialized skills or the same
educational background as used in the performance of the employee's
official duties.
TITLE 11 – FEDERAL ELECTIONS

CHAPTER I – FEDERAL ELECTION COMMISSION

2. Part 7 would be revised to read as follows:

PART 7 – STANDARDS OF CONDUCT

Subpart A—General Provisions

Sec.

7.1 Scope—Purpose and applicability.

7.2 Definitions.

7.3 Interpretation and advisory service. Notification to employees and special—
Commission employees.

7.4 Reporting suspected violations. Interpretation and advisory service.

7.5 Corrective action. Reporting suspected violations.

7.6 Outside employment and activities by Commissioners. Disciplinary and other—
remedial action.

Subpart B—Conduct and Responsibilities of Employees or Commissioners.

7.7 Prohibition against making complaints and investigations public. Prohibited Conduct—
—General.

7.8 Ex parte communications in enforcement actions. Gifts, entertainment, and favors.

7.9 Outside employment or activities.

7.10 Financial interests.

7.11 Political and organization activity.

7.12 Membership in associations.

7.13 Use of Government property.
Subpart C—Conduct and Responsibilities of Special Commission Employees

Subpart D—Post-Employment Conflict of Interest: Procedures for Administrative Enforcement Proceedings

§ 7.1 Scope, purpose and applicability

(a) The regulations in this part apply to members and employees of the Federal Election Commission (Commission).

(b) In addition, members and employees of the Commission are subject to the following regulations:

(1) 5 CFR part 735 (Executive Branch Employee Responsibilities and Conduct);

(2) 5 CFR part 2634 (Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture);

(3) 5 CFR part 2635 (Standards of Ethical Conduct for Employees of the Executive Branch); and

(4) 5 CFR part 4701 (Supplemental Standards of Ethical Conduct for Members and Employees of the Federal Election Commission).

The avoidance of misconduct and conflicts of interest on the part of Commission employees through informed judgment is indispensable to the maintenance of these prescribed ethical standards. Attainment of these goals necessitates strict and absolute fairness and impartiality in the administration of the law.

(b) This part applies to all persons included within the terms employee and special Commission employees of the Commission as defined in 11 CFR 7.2, except to the extent otherwise indicated herein, and is consistent with Executive Order 11222 and part 735 of title 5, Code of Federal Regulations, relating to employee responsibilities and conduct.
(c) These Standards of Conduct shall be construed in accordance with any applicable laws, regulations and agreements between the Federal Election Commission and a labor organization.

§ 7.2 Definitions.

As used in this part:

(a) Commission means the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(b) Commissioner means a voting member of the Federal Election Commission, in accordance with 2 U.S.C. 437c.

(c) Conflict of interest means a situation in which an employee's private interest is inconsistent with the efficient and impartial conduct of his or her official duties and responsibilities.

(d) Designated Agency Ethics Officer or Ethics Officer Official means the employee designated by the Commission to administer the provisions of the Ethics in Government Act of 1978 (5 U.S.C. Appendix 4), as amended, and includes a designee of the Ethics Officer, Designated Agency Ethics Official. The General Counsel serves as the Commission's Designated Agency Ethics Official.

(e) Employee means an employee of the Federal Election Commission, but does not include a special Commission employee and includes a special Government employee as defined in 18 U.S.C. 202.

(e) Ex parte communication means any written or oral communication by any person outside the agency to any Commissioner or any member of any Commissioner's staff, but not to any other Commission employee, that imparts information or argument regarding
prospective Commission action or potential action concerning any pending enforcement matter.


(f) Former employee means one who was, and is no longer, an employee of the Commission.

(g) Official responsibility means the direct administrative or operating authority, whether intermediate or final, to approve, disapprove, or otherwise direct Commission action. Official responsibility may be exercised alone or with others and either personally or through subordinates.

(h) Outside employment or other outside activity means any work, service or other activity performed by an employee, but not a Commissioner, other than in the performance of the employee's official duties. It includes such activities as writing and editing, publishing, teaching, lecturing, consulting, self-employment, and other services or work performed, with or without compensation.

(i) Person means an individual, corporation, company, association, firm, partnership, society, joint stock company, political committee, or other group, organization, or institution.

(j) Special Commission employee means an individual who is retained, designated, appointed or employed by the Federal Election Commission to perform, with or without compensation, temporary duties either on a full-time or intermittent basis, for not to exceed 130 days during any period of 365 consecutive days, as defined at 18 U.S.C. 202.
§ 7.3 7.4—Interpretation and advisory service.

(a) A Commissioner or employee seeking advice and guidance on questions of conflict of interest and on other matters covered by this part or 5 CFR parts 735, 2634, 2635, 2640 or 4701 should consult with the Commission’s General Counsel, who serves as Ethics Officer—Designated Agency Ethics Official. The Ethics Officer—Designated Agency Ethics Official should be consulted before the undertaking of any action which might violate this part or 5 CFR parts 735, 2634, 2635, 2640 or 4701 governing the conduct of Commissioners or employees.

(b) The Designated Agency Ethics Official, a Commissioner, or an employee may request an opinion from the Director of the Office of Government Ethics regarding an interpretation of 5 CFR parts 735, 2634, 2635, 2640 or 4701.

§ 7.4 7.5—Reporting suspected violations.

Commissioners and employees shall disclose immediately any suspected violation of a statute or of a rule set forth in this part or of a rule set forth in 5 CFR parts 735, 2634, 2635, 2640 or 4701 to the Designated Agency Ethics Official, the Office of Inspector General, or other appropriate law enforcement authorities.

(a) Personnel who have information which causes them to believe that there has been a violation of a statute or of a policy set forth in this part should promptly report such incident to the Ethics Officer. If a report is made orally, the Ethics Officer shall require a written report from the complainant before proceeding further.

(b) When information available to the Commission indicates a conflict between the interests of an employee or special Commission employee and the performance of his or
her Commission duties, the employee or special Commission employee shall be provided an opportunity to explain the conflict or appearance of conflict in writing.

§ 7.6 Disciplinary and other remedial Corrective action.

(a) A violation of this part or 5 CFR parts 735, 2634, 2635, 2640 or 4701 by an employee or special Commission employee may be cause for appropriate corrective, disciplinary, or adverse disciplinary action which may be in addition to any penalty prescribed by law.

(b) When the Ethics Officer determines that an employee may have or appears to have a conflict of interest, the Ethics Officer, the employee's supervisor, the employee's division head, and the Staff Director or General Counsel may question the employee in the matter and gather other information. The Ethics Officer, the employee's supervisor, the employee's division head, and the Staff Director or General Counsel shall discuss with the employee possible ways of eliminating the conflict or appearance of conflict. If the Ethics Officer, after consultation with the employee's supervisor, the employee's division head, and the Staff Director or General Counsel, concludes that remedial corrective action should be taken, he or she shall refer a statement to the Commission containing his or her recommendation for such action. The Commission, after consideration of the employee's explanation and the results of any investigation, may direct appropriate remedial action as it deems necessary.

(c) Remedial action pursuant to paragraph (b) of this section may include, but is not limited to:

(1) Changes in assigned duties;

(2) Divestment by the employee of his or her conflicting interest;
— (3) Disqualification for a particular action; or

— (4) Disciplinary action.

§ 7.6 7.9 Outside employment and activities by Commissioners.

(a) A member of the Commission shall not devote a substantial portion of his or her
time to any other business, vocation, or employment. Any individual who is engaging
substantially in any other business, vocation, or employment at the time such individual
begins to serve as a member of the Commission shall appropriately limit such activity no
later than 90 days after beginning to serve as such a member.

(b) An employee shall not engage in outside employment that is not compatible with
the full discharge of his or her Government employment and not in compliance with any-
labor-management agreement between the Federal Election Commission and a labor-
organization. Incompatible outside employment or other activities include but are not-
limited to:

(1) Outside employment or other activities which would involve the violation
of a Federal or State statute, local ordinance, Executive Order, or regulation
to which the employee is subject;

(2) Outside employment or other activities which would give rise to a real or-
apparent conflict of interest situation even though no violation of a specific-
statutory provision was involved;

(3) Acceptance of a fee, compensation, gift, payment of expense, or any other-
thing of monetary value in circumstances where acceptance may result in, or
create the appearance of, a conflict of interest;
(4) Outside employment or other activities that might bring discredit upon the Government or Commission;

(5) Outside employment or other activities that establish relationships or property interests that may result in a conflict between the employee's private interests and official duties;

(6) Outside employment or other activities which would involve any contractor or subcontractor connected with any work performed for the Commission or would involve any person or organization in a position to gain advantage in its dealings with the Government through the employee's exercise of his or her official duties;

(7) Outside employment of other activities that may be construed by the public to be the official acts of the Federal Election Commission. In any permissible outside employment, care shall be taken to ensure that names and titles of employees are not used to give the impression that the activity is officially endorsed or approved by the Commission or is part of the Commission's activities;

(8) Outside employment or other activities which would involve use by an employee of his or her official-duty time; use of official facilities, including office space, machines, or supplies, at any time; or use of the services of other employees during their official-duty hours;

(9) Outside employment or other activities which tend to impair the employee's mental or physical capacities to perform Commission duties and responsibilities in an acceptable manner; or
(10) Use of information obtained as a result of Government employment which
is not freely available to the general public or would not be made available
upon request. However, written authorization for the use of any such
information may be given when the Commission determines that such use
would be in the public interest.

(e) An employee shall not receive any salary or anything of monetary value from a
private source as compensation for his or her services to the Government in violation of 18

(d) Employees are encouraged to engage in teaching, lecturing, and writing that is not
prohibited by law, Executive Order 11222, or this part. However, an employee shall not,
either for or without compensation, engage in teaching or writing that is dependent on
information obtained as a result of his or her Commission employment, except when that
information has been made available to the general public or will be made available on
request, or when the Commission gives written authorization for the use of nonpublic
information on the basis that the use is in the public interest.

(e) This section does not preclude an individual from participation in the affairs of or
acceptance of an award for meritorious public contribution or achievement given by a
charitable, religious, professional, social, fraternal, nonprofit educational, recreational,
public service or civic organization.

(f) An employee of the Office of General Counsel who intends to engage in outside
employment shall obtain the approval of the General Counsel/Ethics Officer. All other
employees who intend to engage in outside employment shall obtain the approval of the
Staff Director prior to review and approval by the Ethics Officer. The request shall include
the name of the person, group, or organization for whom the work is to be performed, the
nature of the services to be rendered, the proposed hours of work, or approximate dates of
employment, and the employee's certification as to whether the outside employment
(including teaching, writing or lecturing) will depend in any way on information obtained
as a result of the employee's official Government position. The employee will receive
notice of approval or disapproval of any written request in accordance with any labor-
management agreement between the Commission and a labor organization. A record of the
approval shall be placed in each employee's official personnel folder.

§ 7.7.7.14 Prohibition against making complaints and investigations public.

(a) Commission employees are warned that they are subject to criminal penalties if
they discuss or otherwise make public any matters pertaining to a complaint or
investigation under 2 U.S.C. 437g, without the written permission of the person
complained against or being investigated. Such communications are prohibited by

(b) 2 U.S.C. Section 437g(a)(12)(B) of Title 2 of the United States Code provides as
follows: "Any member or employee of the Commission, or any other person, who violates
the provisions of subparagraph (A) [2 U.S.C. 437g(a)(12)(A)] shall be fined not more than
$2,000. Any such member, employee, or other person who knowingly and willfully
violates this subsection the provisions of [2 U.S.C. 437g(a)(12)(A)] shall be fined not more
than $5,000."
§ 7.8 7.15 Ex parte communications in enforcement actions.

In order to avoid the possibility of prejudice, real or apparent, to the public interest in enforcement actions pending before the Commission pursuant to 2 U.S.C. 437g(a)(1) or (2):

(a) Except to the extent required for the disposition of ex parte enforcement matters as required by law (as, for example, during the normal course of an investigation or a conciliation effort), no Commissioner, or member of any Commissioner's staff or employee involved in the decisional process shall make or entertain any ex parte communications.

(b) The prohibition of this section shall apply from the time a proper complaint is filed with the Commission pursuant to 2 U.S.C. 437g(a)(1) or from the time that the Commission determines on the basis of information ascertained in the normal course of its supervisory responsibilities that it has reason to believe that a violation has occurred or may occur pursuant to 2 U.S.C. 437g(a)(2), and shall remain in force until the Commission has concluded all action with respect to the enforcement matter in question.

(c) Any written communication prohibited by paragraph (a) of this section shall be delivered to the Ethics Officer of the Commission General Counsel, who shall place the communication in the case file of the case.

(d) A Commissioner or member of any Commissioner's staff employee, other than the employee assigned to the case, involved in handling enforcement actions who receives an oral offer to make an oral communication or any communication concerning any enforcement action pending before the Commission as described in paragraph (a) of this section, shall decline to listen to such communication. If unsuccessful in preventing the
communication, the Commissioner or employee shall advise the person making the
communication that he or she will not consider the communication and shall prepare a
statement setting forth the substance and circumstances of the communication within.
Within 48 hours of receipt of the communication and, the Commissioner or any member of
any Commissioner's staff shall deliver a statement setting forth the substance
and circumstances of the communication and shall deliver the statement to the Ethics-
Officer General Counsel for placing in the file in the manner set forth in paragraph (c) of
this section.

(e) Additional rules governing ex parte communications made in connection with
Commission enforcement actions are found at 11 CFR 111.22. Rules governing ex parte
communications made in connection with public funding, Commission audits, litigation,
rulemakings, and advisory opinions are found at 11 CFR part 201.

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Robert D. Lenhard
Chairman
Federal Election Commission

DATED: ________________
BILLING CODE: 6715-01-U

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Robert I. Cusick
Director, Office of Government Ethics

DATED: ________________