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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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June 15, 2000

**MEMORANDUM**

**AGENDA ITEM**

For Meeting of: 6-22-00

TO: The Commission

THROUGH: James A. Pehrkon  
Staff Director

FROM: Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

Michael G. Marinelli  
Staff Attorney

SUBJECT: Draft AO 2000-10

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for June 22, 2000.

Attachment

1 ADVISORY OPINION 2000-10

2  
3 Matthew D. Smyth, Director  
4 America's Community Bankers PAC  
5 900 Nineteenth St. NW, Suite 400  
6 Washington, DC 20006

**DRAFT**

7  
8 Dear Mr. Smyth:

9  
10 This refers to your letter dated May 9, 2000, requesting an advisory opinion  
11 concerning the application of the Federal Election Campaign Act of 1971, as amended  
12 ("the Act"), and Commission regulations regarding use of the website of America's  
13 Community Bankers ("ACB") to obtain permission from its corporate members so that  
14 the qualified personnel of those corporations may be solicited for contributions to ACB's  
15 PAC.

16 ***FACTUAL BACKGROUND***

17 You state that America's Community Bankers Community Campaign Committee  
18 (COMPAC) is the political action committee (or separate segregated fund) of ACB. You  
19 explain that ACB is an incorporated trade association that represents the nation's  
20 community banks of all charter types and sizes, and whose members pursue progressive,  
21 entrepreneurial and service oriented strategies in providing financial services to benefit  
22 their customers and communities.<sup>1</sup>

23 You further state that ACB is redesigning its existing webpage to create an  
24 informational, "members-only" page for COMPAC. As part of that page, COMPAC  
25 proposes to include the "permission to solicit form" in a manner that would allow  
26 members to download and print it. You explain that the form would not be interactive;

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<sup>1</sup> ACB is an Illinois not-for-profit, 501 (c)(6) corporation, doing business in the District of Columbia as a foreign corporation. It is the result of a merger of two prior trade associations in 1992.

1 that is, a member could not complete the form on the web and send it to COMPAC.  
2 Instead, a member would have to print the form and return it, with his or her signature, to  
3 COMPAC.<sup>2</sup>

4 An introductory paragraph explaining the purpose and necessity of the form  
5 would be on the COMPAC page. The introductory paragraph would state:

6  
7 ACB's political action committee, COMPAC, was created with the stated purpose of  
8 providing individuals interested in the future of the savings and community bank  
9 business with an avenue to contribute to the support of worthy candidates for Federal  
10 office. Participation is voluntary and contributions are not tax-deductible. In order to  
11 allow COMPAC to solicit your contribution for Federal election campaigns, we must  
12 receive your permission. You may click on the form icon below and print the form.  
13 Because we need your signature, we ask that you fax or mail the form to us at the noted  
14 address.

15  
16 We encourage you to be an active participant in the legislative process and to be an  
17 example to your senior staff and board of directors. By returning a completed consent  
18 form below, you take up the challenge of democracy and make your voice heard. If you  
19 have any questions, feel free to contact me at e-mail [msmyth@acbankers.org](mailto:msmyth@acbankers.org) or by  
20 telephone at (202) 857-5578.

21  
22 Your request also includes a copy of the COMPAC solicitation authorization  
23 form. This form states:

24  
25 America's Community Bankers Political Action Committee (COMPAC) can only solicit  
26 voluntary contributions from executive, administrative personnel and directors of member  
27 institutions. Authorization of such a solicitation can be given to only one trade  
28 association-affiliated, federal political action committee per calendar year. In order to  
29 authorize ACB-COMPAC to solicit your directors and employees, please complete the  
30 following.

31  
32 The form then requests information regarding the managing officer, the member  
33 institution and its address. The form includes five separate authorized signature lines for  
34 each calendar year up to 2004. The form gives the managing officer the option to receive

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<sup>2</sup> In a further communication to Commission staff, you indicated that all the members of ACB are corporations. The password to allow access to the "members-only" page would be given to the contact person representing the member corporation to ACB who would normally receive the Association's communications.

1 COMPAC solicitation materials and to provide a list of the institution's executive and  
2 administrative personnel and its directors.

3 You assert that this type of activity would not trigger the disclaimer requirement  
4 of 2 U.S.C. §441d as the "solicitation would not request specific contributions for the  
5 purpose of electing or defeating any particular candidate." You also assert that your  
6 proposal would "not qualify as an in-kind contribution as again, no particular candidate  
7 would be the focus of the solicitation and no hyperlinks to candidate-specific sites would  
8 be included."

9 You further state your view that this "solicitation" would differ from Advisory  
10 Opinion 1995-9 in that no contributions would be received as a result of the solicitation.  
11 Because of this, you believe that the "screening procedures described in AO 1995-9 and  
12 1999-9 would not be required." Rather, a member of ACB with access to the "members-  
13 only," passworded portion of the website would be required to select the COMPAC area  
14 and download the solicitation consent form for execution and return via the U.S. mail or  
15 facsimile transmission.

16 In addition, you explain that COMPAC could receive "improper" contributions or  
17 inquiries in three ways: telephone inquiries, e-mail, and through the U.S. mail. It is  
18 COMPAC's policy and practice to inform individuals of the need to execute a consent-to-  
19 solicit form in advance of any contribution. This, you state, has been COMPAC's  
20 practice and policy, and it will continue to be COMPAC's policy and practice. Checks  
21 received from "improper sources" will be returned with an explanation including the need  
22 to execute an authorization/consent-to-solicit form. You explain that such a check will

1 not be deposited, nor will it be held until the consent form is received. The check will be  
2 returned to the sender.

3 In the alternative, or as an adjunct to the above activity, COMPAC proposes to  
4 place an informational notice on the ACB website accessible to the general, web-  
5 browsing public that would direct COMPAC inquiries to you. This notice would read as  
6 follows:

7  
8 If you are a member of ACB and would like more information about COMPAC, ACB's  
9 political action committee, please contact:

10  
11 Matthew Smyth, Director  
12 America's Community Bankers  
13 telephone: (202) 857-5578, fax: (202) 296-8716  
14 e-mail: msmyth@acbankers.org  
15

16 As with your original proposal, you believe that as no active solicitation on behalf  
17 of any particular candidate and no contributions are solicited by the informational listing,  
18 the quoted language should not trigger the Act's disclosure or other restrictions.

19 ***ACT AND COMMISSION REGULATIONS***  
20

21 In an exception to the general prohibition on corporate contributions, the Act and  
22 Commission regulations provide that a corporation, including an incorporated trade  
23 association, may use general treasury funds for the establishment, administration, and  
24 solicitation of contributions to its separate segregated fund ("SSF"). 2 U.S.C.  
25 §441b(b)(2)(C); 11 CFR 114.1(a)(2)(iii) and 114.5(b). An organization such as an  
26 incorporated trade association, which is not itself a political committee, but which  
27 directly or indirectly establishes, administers, or financially supports a political committee  
28 is a "connected organization" of that committee. 2 U.S.C. §431(7); 11 CFR 100.6(a).

1           The connected organization and its SSF are subject to restrictions as to the  
2 personnel who may be solicited for contributions to the SSF. 2 U.S.C. §441b(b)(4)(A),  
3 (C), and (D); 11 CFR 114.5(g)(1), 114.7(a), and 114.8(c). Specifically, an incorporated  
4 trade association and its SSF may solicit the association's executive and administrative  
5 personnel, and the families of such personnel. They may also solicit the stockholders and  
6 executive and administrative personnel, and the families of such stockholders and  
7 personnel, of the member corporations that separately and specifically approve the  
8 solicitations and that have not approved a solicitation by any other trade association for  
9 the same calendar year. Moreover, they may solicit members of the association that are  
10 not incorporated, without any need to seek a prior approval. 11 CFR 114.7(a), 114.7(c),  
11 and 114.8(c).

12           The requirements for separate and specific approval are described in  
13 11 CFR 114.8(d) and (e). A trade association must make a written request to the member  
14 corporation for permission to solicit the member's restricted class. (The request may be  
15 sent to the corporate representative with whom the association normally conducts its  
16 activities.) This request for approval must inform the member corporation that: (1)  
17 corporate approval is necessary before the trade association or its SSF may conduct a  
18 solicitation; and (2) the corporation may not approve solicitations by another trade  
19 association for the same calendar year. *Id.*<sup>3</sup>

20           Before a trade association may solicit the restricted class of any corporate  
21 member, the association must obtain written authorization from the member corporation.

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<sup>3</sup> The trade association may enclose a copy of proposed solicitation materials in its request for approval. Moreover, the trade association may note that it intends to limit the scope of the solicitation (e.g., to just executive and administrative personnel). 11 CFR 114.8(d)(3) and (d)(5).

1 The member must designate the calendar year for which the solicitations are authorized;  
2 the authorization automatically expires on December 31 of the designated year. There is  
3 no limit on the number of companies from which a trade association can obtain  
4 solicitation approvals. In a particular calendar year, however, a corporation may  
5 authorize only one trade association to solicit its restricted class. 11 CFR 114.8(d).

6 A member corporation may grant its approval for several years in advance; how-  
7 ever, the company must provide the trade association with a separate approval for each  
8 year. For example, a trade association could ask a member corporation to approve  
9 solicitations for five consecutive years. The corporation would have to submit a signed  
10 statement for each year approved; the five statements and signatures could appear on one  
11 form or on five separate forms. 11 CFR 114.8(c)(2), 114.8(d)(1) and (4); Advisory  
12 Opinion 1984-61.

### 13 ***APPLICATION TO PROPOSAL***

14  
15 Under the Act and Commission regulations a distinction can be drawn between a  
16 solicitation for contributions to a PAC and a request for corporate approval of a  
17 solicitation.<sup>4</sup> The draft language of your first proposal would be only informational and  
18 does not go beyond asking for the required approval before ACB or COMPAC may  
19 solicit contributions from the restricted personnel group of ACB's corporate members.  
20 See Advisory Opinions 1980-65 and 1981-41. Your second alternative, which is not a  
21 request for approval to solicit contributions, likewise would not be a solicitation since it  
22 also is purely informational and contains no language soliciting a contribution. The

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<sup>4</sup> In Advisory Opinions 1980-65 and 1981-41, the Commission when examining proposed requests for corporate approval of SSF solicitations noted that as long as the language of the request was specific enough, the request for approval would not thereby become a solicitation for contributions.

1 Commission also notes and relies on your statement that contribution checks received  
2 from "improper sources" will not be deposited and will be returned. (The Commission  
3 understands that your reference to "improper sources" includes individuals who may not  
4 be solicited for COMPAC contributions until the related corporation member of ACB has  
5 given the requisite approval described above.)

6 The Commission has recently examined whether a corporation may include on its  
7 website certain informational matters about its SSF that did not solicit or encourage  
8 contributions. The Commission therefore concluded that placing such information on the  
9 corporation's web page was permissible under the Act and Commission regulations. See  
10 Advisory Opinion 2000-07. Similarly, the Commission concludes here that placing a  
11 request for permission to solicit its corporate members on ACB's web page would also be  
12 permissible, if the request did not otherwise constitute a PAC solicitation.<sup>5</sup> It also follows  
13 that COMPAC would not be required to place any §441d disclaimer notice on the web  
14 page; use of the web page for this purpose would also not be a contribution to COMPAC  
15 or to any candidate.

16 The Commission notes that the solicitation authorization form used with the first  
17 proposed message on the ACB website includes all the elements required by section  
18 114.8, including a separate signature line for each separate year that the PAC seeks  
19 permission to solicit the restricted class of the corporate member. However, a slight  
20 modification of this form is necessary before it can be utilized. The form asks that the  
21 reader provide the names of "executive, administrative personnel and directors employed

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<sup>5</sup> In Advisory Opinion 1980-65, the request for prior solicitation approval was placed in the trade association's magazine which was distributed to 7,000 readers, including individuals who were not members of the association. The Commission concluded that publishing the request for approval in the

1 by my institution.” The Commission notes that directors are not automatically considered  
2 members of a corporation’s executive and administrative class. *See* 11 CFR 114.5(g)(1),  
3 114.1(c)(1)–(c)(3). In past opinions, the Commission has determined that a director must  
4 be paid a salary or stipend in order to be solicited (assuming the director is not otherwise  
5 solicitable as a stockholder or as an executive employee of the corporation). *See*  
6 Advisory Opinions 1992-9 and 1985-35. Therefore, with the above modification, either  
7 version of your web page would be permissible under the Act and Commission  
8 regulations.<sup>6</sup>

9 This response constitutes an advisory opinion concerning the application of the  
10 Act, or regulations prescribed by the Commission, to the specific transaction or activity  
11 set forth in your request. *See* 2 U.S.C. §437f.

12 Sincerely,

13  
14 Darryl R. Wold  
15 Chairman  
16

17 Enclosure (AOs 2000-07, 1992-9, 1985-35, 1984-61, 1981-41 and 1980-65)  
18

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trade association magazine was permissible.

<sup>6</sup> Your request indicates that COMPAC apparently asks for permission to solicit from each individual contributor, as well as from its corporate members, before it accepts a contribution from the individual contributor. The Commission notes that this not required by the Act or Commission regulations. Once COMPAC receives permission to solicit the restricted classes of its corporate members, it does not need to secure the permission of each individual within the restricted classes before it can solicit those persons. *See* 11 CFR 114.8 (c), (d) and (e).

