



CUNA & Affiliates
A Member of the Credit Union System

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December 3, 2001

Ms. Rosemary C. Smith
Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: Comments to Notice of Proposed Rulemaking, 11 CFR Parts 100, 114, and 117
The Internet and Federal Elections

Dear Ms. Smith:

The Credit Union National Association, Inc. (CUNA) appreciates the opportunity to comment on the Commission's notice of proposed rulemaking (NPRM) on the use of the Internet for campaign activity.

By way of background, CUNA is a trade association that represents over 90% of the nation's more than 10,400 state and federal credit unions. CUNA was organized, among other things, to promote and improve business conditions relating to the operation of state league members and direct credit union members. Fifty-one of CUNA's members are leagues representing the fifty states and the District of Columbia. All members of the state leagues are state or federally chartered credit unions. Thirteen of the state leagues have federal political action committees (PACs). The Credit Union Legislative Action Council (CULAC) is the federal PAC established and administered by CUNA.

The nation's credit unions have over 82 million members who can access the public portion of CUNA's web site (www.cuna.org). CUNA's web site is divided into public and member only sections. The public portion of the site carries a link to Reuters Financial Services Newswire as well as other news, consumer, research, and financial information. The password protected, member only sections of the site are available exclusively to member credit unions and state leagues.

I. INTRODUCTION

As the number of Americans who regularly go online for news and information continues to expand, so does the Internet's potential as an instrument for increasing public involvement in the political process. By means of this electronic medium, a person can obtain vast amounts of information about political candidates and important public issues and communicate with others regarding political matters using e-mail, chat rooms, and message boards.

A number of unique characteristics distinguish the Internet from traditional modes of communication, such as radio, television, and the print media. To begin, Internet communication involves virtually no incremental



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costs. Any person who owns a computer and a modem can create a web site, post a message on an online bulletin board, or send an e-mail using mere keystrokes, which in themselves have no measurable value. Next, unlike radio, television, and direct mail—all of which display their messages to captive audiences without providing advance notice—the Internet is a non-invasive medium. In other words, an online user encounters particular content only after he or she has taken deliberate steps to obtain such information. Finally, unlike traditional media, the Internet is a virtually unlimited resource where the speech of one person does not interfere with the speech of another.

CUNA believes that because of the Internet's distinctive features, the application of the Federal Election Campaign Act ("FECA")¹—which "is based on the traditional mass media model, where [speakers] must buy advertisements or rely on news coverage to reach the public"²—to Internet political communications raises serious concerns.

In an attempt to adapt the FECA to the realities of the Internet, the Commission proposes the following new rules:

- (1) exempt Internet political activity by individuals from FEC regulation;
- (2) allow corporations and labor organizations to place on their web sites hyperlinks to candidate and party committee web sites; and
- (3) permit corporations and labor organizations to post press releases announcing candidate endorsements on their web sites.

In general, CUNA supports liberal use of the Internet for activities related to fundraising and partisan communications. CUNA also supports a flexible regulatory approach so that this innovative and expansive medium can continue to provide access to information to a wide audience at minimal cost. CUNA believes that the Commission's proposed rules are overly narrow in scope and, thus, do not adequately deregulate Internet political communications. CUNA's specific comments on the sections of the proposal are set forth below.

II. SECTION 117.2, HYPERLINKS FROM CORPORATION OR LABOR ORGANIZATION WEB SITES

The Commission proposes exempt hyperlinks from corporation or labor organizations' web sites to the web site of a candidate, political or party committee from the definition of "contribution"³ or "expenditure"⁴ provided that:

- ◆ the corporation or labor organization does not charge or nominally charges for providing the hyperlink;
- ◆ the hyperlink is not coordinated general public political communications under Section 100.23; and
- ◆ the following materials do not expressly advocate under Section 100.22: (i) the image or graphic material to which the hyperlink is anchored; and(ii) the text surrounding the hyperlink on the corporation or labor organization's web site.

¹ 2 U.S.C. § 431-55.

² 66 Fed. Reg. at 50,360.

³ 2 U.S.C. § 431(8).

⁴ 2 U.S.C. § 431(9).

CUNA believes that this section fails to fully confront the fact that the Internet is user-driven nature and involves *de minimis* costs. By restricting the manner in which corporations and labor organizations may display political information on their web sites, the proposed rules impose burdens on Internet political communications that are wholly unjustified in this context.

This section of the proposed rule would, if implemented, raise more questions than they would answer. For example, the hyperlinks rule would forbid a corporate or labor organization web site from anchoring a hyperlink to words or graphics that include express advocacy but would allow a hyperlink to be anchored to a URL that contains express advocacy. There is no apparent justification for treating identical language in such an unequal manner. CUNA maintains that the Commission should modify its proposed rules to allow for greater dissemination of political information on web sites, including the use of hyperlinks with no conditions.

III. SECTION 117.3, CORPORATE AND LABOR ORGANIZATION ENDORSEMENT PRESS RELEASES

The proposal states that corporations and labor organizations may make a press release announcing a candidate's endorsement on the general public portion of a web site, provided that:

- ◆ the corporation or labor organization ordinarily makes press releases available to the general public on its web site;
- ◆ the press release is limited to an announcement of the corporation or labor organization's endorsement or pending endorsement and a statement of the reasons therefore;
- ◆ the press release is made available in the same manner as other press releases made available on the web site; and
- ◆ the costs of making the press release available on the web site are *de minimus*.

CUNA maintains several regular news publications that are posted to its web site. The daily publication, *News Now*, is posted to CUNA's homepage and is available for general public viewing. CUNA's biweekly news release, *NewsWatch*, is also posted on CUNA's web site but is password protected and available for viewing by member credit unions and leagues only. CUNA has reporters and editorial staff whose jobs are devoted to writing, reporting and editing stories for these publications. No subscription fee is charged to access *News Now* and CUNA is not owned or controlled by a political party, committee or candidate.

While CUNA supports the direction taken by the Commission in this section, CUNA maintains that this section, like the hyperlink provisions, still imposes burdens on Internet political communications that are wholly unjustified in this context. Again, more questions than answers would result from this proposal. For example, with respect to the press release rule a candidate endorsement that contains a hyperlink anchored in a URL containing express advocacy may be an impermissible call to action by the corporation or labor organization. If so, the rule would force the Commission to judge the legality of a hyperlink based on where it is placed on a publicly accessible web site.

Rather than go down this troublesome route, the Commission should modify its proposed rules to allow for greater dissemination of political information on web sites, including use of links and posting of press releases with no conditions.

IV. OTHER ISSUES

CUNA also strongly supports comments submitted by the National Association of Business Political Action Committees (NABPAC) regarding expansion of the Commission's rules on electronic acquisition of prior approvals. Under the Commission's current regulations, a trade association PAC may solicit contributions from the restricted class of a member corporation only if:

- (1) "[t]he member corporation involved has *separately and specifically approved* the solicitation," and
- (2) "[t]he member corporation has not approved a solicitation by any other trade association for the same calendar year."⁵

After receiving written prior approval designating the calendar year during which solicitations are authorized from a member corporation, a trade association PAC must maintain a copy of the approval for three years.⁶

In Advisory Opinion 2000-22, the Commission allowed a trade association to obtain prior approvals either by:

- (1) "send[ing] an electronic mail message to the corporate representative requesting the corporation's approval with an attached . . . solicitation approval form" and then "send[ing] a confirmation e- mail to each corporate representative upon receipt of a form executed with [an] electronic signature"; or
- (2) "mak[ing] the corporate approval forms available to the corporate representatives on the secured 'members-only' portions of its Internet web site" and then having "[t]he corporate representative . . . provide written approval via an electronic signature."

In these cases, the records of the electronic prior approvals were required to "be retained in a retrievable manner so as to be readily available for review by the Commission in the event of an audit or investigation."

CUNA concurs with NABPAC's comments that the Commission needs to expand upon this ruling by issuing a regulation that permits a member corporation to obtain and execute a trade association PAC's prior approval form electronically, provided the trade association is able to verify that the prior approval form was executed by a corporate representative (e.g., by sending a confirmation e- mail) and preserves an electronic record pursuant to 11 C.F.R. § 114.8(d)(2). Under such a regulation, a trade association like CUNA would not necessarily have to post its prior approval forms on a password-protected portion of its web site, nor would it have to maintain hard copies of executed prior approval forms, so long as the two conditions listed above were met.

This proposed regulation would allow CUNA and other trade associations to develop any electronic method for obtaining and executing prior approval forms that meet the two conditions and will avoid the necessity of having to seek Commission advisory opinions to ensure that each method complies with the FECA. Such changes would also provide clearer guidance to trade associations, while freeing the Commission from the burdensome administrative task of analyzing varying methods for obtaining and executing prior approval forms electronically.

⁵ 11 C.F.R. § 114.8(c).

⁶ *Id.* § 114.8(d)(2).

CUNA appreciates the opportunity to comment on this proposed rulemaking. If you have any questions on these comments, please call me at 202/508-6731.

Sincerely,

Christiane G. Hyland (handwritten)

Christiane G. Hyland
Regulatory Staff Attorney