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COUNSEL

VIA FACSIMILE AND REGULAR MAIL: 202/219-3923

January 4, 2000

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

RE: Use of the Internet for Campaign Activity

Dear Ms. Smith:

The Credit Union National Association, Inc. (CUNA) appreciates the opportunity to comment on the Commission's notice of inquiry and request for comments on use of the Internet for campaign activity. The notice appeared in the *Federal Register* on November 5, 1999.

By way of background, CUNA is a trade association that represents over 90 percent of the nation's more than 11,000 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 chartered or federally chartered credit unions. Thirteen of the state leagues have federal PACs, while the rest do not. The Credit Union Legislative Action Committee (CULAC) is the federal PAC established and administered by CUNA pursuant to 11 CFR 114.5(b).

The nation's credit unions have over 77 million members who can access the public section 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 site has won numerous awards including a "Best of the Web" award from "Snap! Online" and the "Select Site" designation of the *Dow Jones Business Directory* among others. The password protected, member only sections of the site are available exclusively to member credit unions and state leagues. Recent statistics on the site show approximately 2.5 million page views in 1999 and more than an 80% rate of growth in the site over 1998.

General Comments:

In general, CUNA supports liberal use of the Internet for activities related to fundraising and partisan communications. CUNA believes that while some of the current regulations promulgated by the FEC may be appropriately applied to such activity, there are certain aspects of the Internet, such as hyperlinks, banner ads and other communications, that should not be unduly limited by regulation.

CUNA urges the Commission to proceed slowly as it considers the issues raised in the notice. CUNA also encourages the Commission to adopt 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. The rest of our comments are limited to the specific issues applicable to the fundraising and communication activities CULAC and its member state leagues and credit unions undertake.

Specific comments:

"6. Corporations and Labor Organizations, a. Communications"

The Commission seeks comment on when a candidate or election-related communication in the form of a hyperlink to a candidate or party committee's web site should be treated as a prohibited contribution or expenditure by a corporation.

CUNA, on behalf of CULAC, maintains a portion of its web site for regular communication with its member leagues and credit unions. This section of CUNA's web site is password protected and is not available to the general public. The information provided includes CULAC's goals, policies, fundraising and grassroots activity information.

CUNA firmly believes that any hyperlinks on the password-protected portion of CUNA's web site would fall within the exceptions from the contribution and expenditure definitions of the Federal Election Campaign Act (Act). Specifically, Section 441b(b)(2) of the Act exempts "communications by a corporation to its stockholders and executive or administrative personnel and their families . . . on any subject."

In Advisory Opinion 1998-18 (AO 1998-19), CUNA sought approval from the Commission for a new fundraising program called "Deduct-A-Buck." In the AO, the Commission reaffirmed that CUNA was a membership organization with "members" who qualified as such under the Act. More particularly, the Commission noted that individual credit union members of CUNA, like the state leagues, would be considered "members" for purposes of the Act and Commission regulations. In AO 1998-19, the Commission also reaffirmed that CUNA is a federation of trade associations given the numerous links between CUNA, the state leagues and the member credit unions of those leagues. CUNA recognizes that prior approval is required by the Act before such member credit unions can be solicited for contributions to CULAC.

However, CUNA maintains that any communications it makes on the password-protected portions of its web site to its member leagues and credit unions fall within the expenditure and contribution exceptions under the Act. Moreover, CUNA believes that member credit unions that have web sites can also include political information for their members on those sites under these exceptions. All communications that would fall within the exceptions should include, CUNA believes, any hyperlinks to a candidate or party committee's web site.

The Commission also seeks comments on Internet applicability of the rules permitting corporations to endorse a candidate and announce the endorsement to the general public through a press release pursuant to 11 CFR 114.4(c)(6). The rules permit corporations to distribute such press releases only to the representatives of the news media that the corporation customarily contacts when issuing nonpolitical press releases.

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 viewing by the general public. CUNA's weekly news release, *NewsWatch*, is also posted on CUNA's web site but is password protected and available for viewing by member credit unions and state 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, political committee, or candidate.

Many of CUNA's member state leagues and credit unions forward press releases on their endorsement of candidates to CUNA as a "representative of the news media" for purposes of distributing press releases, both nonpolitical and political. CUNA would normally post such releases on the public *News Now* section of its web site.

In AO 1997-16, the Commission concluded that communication of an endorsement via the web site would be a communication with the general public unless access was limited to members of the restricted class using a password or similar method. CUNA believes that corporations should be allowed to fully utilize the exemption in 11 CFR 114.4(c)(6). Thus, CUNA supports the ability of a corporation, like a state league, that routinely posts press releases on the Internet to post a press release announcing a candidate endorsement. CUNA believes this analysis does not depend on how prominent the press release appears on the web site.

CUNA urges the Commission to reexamine the inconsistency in its AO 1997-16 ruling with the existing exemption for press releases set forth in 11 CFR 114.4(c)(6). CUNA encourages the Commission to permit corporations like member credit unions and state leagues to post such press releases on their own web sites within the exemption. Moreover, if a state league forwards a press release announcing a candidate endorsement to CUNA, as it would with any other press release, then CUNA's posting of the press release on *News Now*, should also be exempt from the definition of "expenditure. The nature of the public sections of CUNA's web site is comparable to any other news gathering organization and, therefore, posting of member league and credit union

candidate endorsements should fall under the "news story" exemption" pursuant to 2 U.S.C. 431(9)(b)(i). This issue is discussed in greater depth under "7. News Organizations" below.

The Commission also requests comments on whether a candidate or election-related communication in the form of a hyperlink to the web site of a candidate or party committee should be construed as a prohibited corporate contribution or independent expenditure. CUNA believes that such a hyperlink should not be construed as a prohibited corporate contribution or independent expenditure given that the costs of providing such a link are negligible. Moreover, CUNA believes that while providing a banner ad or a hyperlink on a web site may show support for a particular candidate or committee, it does not rise to the level of a prohibited contribution or expenditure. CUNA urges the Commission to reconsider its position on this issue.

Finally, CUNA believes that the use of the Internet to distribute voter guides, voting records and other registration or voting information should continue to fall within the exceptions from contribution and expenditure definitions contained in the Act. CUNA does not support revisions to these sections of the regulations.

"7. News Organizations, a. On-line Publications"

The Commission seeks comment the circumstances under which it should regard an Internet site as a "newspaper, magazine, or other periodical publication" within the meaning of the exception in 2 U.S.C. 431(9)(b)(i). That section of the Act contains an exception from the definition of "expenditure" for "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee or candidate."

CUNA has reviewed the Commission's interpretations of what constitutes a "news service" for purposes of the exemption (AOs 1996-16, 1980-90 and 1980-109). CUNA notes that, with the burgeoning of the Internet, what constitutes a form of "recognized public media" has expanded far beyond the purview of the facts contained in the AOs. As stated above, CUNA's web site and its daily publication *News Now*, produces a wealth of information for the public on financial news as well as important consumer information. In today's electronic age, web sites, such as "Yahoo!," "AltaVista," or CUNA can be deemed recognized public media. CUNA strongly urges the FEC to reconsider and broaden its definition of a "newspaper, magazine or other periodical publication."

As explained above, CUNA employs reporters and editorial staff whose function is to produce and edit the content of these and other publications. Moreover, many of CUNA's member state leagues and credit unions forward press releases on their endorsement of candidates to CUNA as a "representative of the news media" for purposes of distributing press releases, both nonpolitical and political. CUNA would normally post such releases on the public *News Now* section of its web site.

CUNA maintains that, if a state league forwards a press release announcing a candidate endorsement to CUNA, as it would with any other press release, CUNA should be able to post such a press release to its web site on *News Now* within the "news story exemption." Thus, costs associated with such a posting, if any, would be excluded from the definition of "expenditure" under the Act and regulations. Again, CUNA encourages the Commission to broaden its interpretation of this exemption.

"Reporting and Recordkeeping, 3. Recordkeeping"

The Commission seeks comments on the types of records committees should be required to keep regarding transactions conducted via the Internet. CUNA supports the Commission's conclusion in AO 1995-9 that a committee, such as CULAC, could maintain records of contributions received via the Internet in non-paper form so long as such records were retained for three years.

"Other Issues, 1. Electronic Mail"

The Commission seeks comments on whether the conclusion reached in AO 1995-9 regarding the use of electronic mail for "best efforts" follow-up communications should be revised or incorporated into the regulations. CUNA supports the Commission's analysis and believes that a follow-up request should consist of an electronic message sent to the contributor's e-mail address. In the case of CUNA's Deduct-A-Buck program, such follow-up would occur when a credit union had confirmed the first automatic deduction from an individual's account. If contributions were solicited other than through the Deduct-A-Buck program, CUNA concurs with the Commission's conclusion that the follow-up request should be sent after confirmation that the contribution was made. CUNA believes that the cost effectiveness and efficiencies of the Internet also strongly support adoption of e-mail as a legitimate tool to meet the "best efforts" rule.

CUNA does not believe that the regulations need to address instances where a contributor has changed e-mail address or deactivated an address. The same logistical hurdles in meeting the "best efforts" test currently apply to the use of regular mail or telephone. PAC Treasurers today face the challenge of tracking down a contributor who has changed addresses or telephone numbers. CUNA maintains that the existing guidance on the "best efforts" rule is sufficient for applicability to Internet-based transactions.

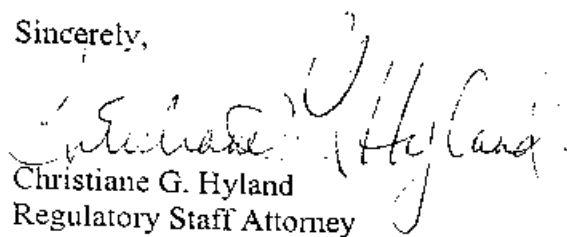
The Commission also requests comment on whether AO 1995-9 should be extended to allow committees to use electronic mail to follow up on contributions received by regular mail. As the Commission is aware, other federal regulators are working to address how applicable disclosure rules should be provided over the Internet. Specifically, the Federal Reserve has sought comment on several of its regulations regarding the electronic delivery of disclosures. The Federal Reserve's proposed rules include the information that would have to be given to borrowers and would require that borrowers affirmatively indicate their consent. These rules also provide lenders with the option of delivering the disclosures to an e-mail address designated by the borrower or making the disclosures available at another location, such as the lender's web site.

In its comments to the Federal Reserve, CUNA supported the proposal to allow lenders to provide the required disclosures electronically. Because credit unions are owned and operated by their members, they want to provide the most efficient service for their members and providing disclosures electronically would help credit unions reach this goal.

In that same vein, CUNA supports the Commission's proposal to extend AO 1995-9 to allow committees to use electronic mail to follow-up on contributions received by regular mail. Because state leagues, member credit unions and consumers who are credit union members are becoming increasingly comfortable with obtaining retail, financial, and other services electronically, we believe that the Commission should permit the electronic delivery of all types of communications. Additionally, committees should have the flexibility to use other communications tools, such as phone and facsimiles, depending on the particular circumstances to meet the "best efforts" rule.

CUNA appreciates the opportunity to comment on this important topic and looks forward to working with the Commission on these issues as they continue to develop.

Sincerely,



Christiane G. Hyland
Regulatory Staff Attorney

CGH/jh

cc: CULAC Trustees
League Presidents