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October 20, 2006

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Re: Advisory Opinion Request

Dear Commissioners:

On behalf of our clients, the National Association of Realtors® ("NAR") and its separate segregated fund Realtors® Political Action Committee ("RPAC"), we respectfully request an advisory opinion from the Federal Election Commission ("Commission" or "FEC") pursuant to 2 U.S.C. § 437f regarding certain activities by NAR and its affiliated organizations to solicit and collect voluntary contributions to RPAC.

FACTS

1. NAR is an Illinois not-for-profit corporation exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code and having its principal place of business in Chicago, Illinois. NAR engages in a variety of activities intended to improve business conditions in the real estate industry, and to serve its members, as permitted by Section 501(c)(6). RPAC is the separate segregated fund of NAR, registered with the Commission as a multi-candidate political committee.

2. In each state there is a state association of Realtors® affiliated with NAR ("State Associations"). Approximately 1,500 local associations of Realtors® are also affiliated with NAR and with the State Associations of the states in which such local associations are located. The FEC has ruled that NAR and its affiliates constitute a "federation of trade associations" pursuant to 11 C.F.R. § 114.8(g). Advisory Opinion 1995-17.

3. NAR participates with the State and local associations, acting as collecting agents, to conduct joint fundraising activities to solicit and collect from NAR members and their families voluntary contributions to RPAC and to the non-

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federal political action committees ("State PACs") operated by such State Associations, as described in Advisory Opinions 1977-20 and 1981-59. Three State Associations also operate separate segregated funds that are registered with the FEC. Such State Association federal PACs do not generally make contributions to federal candidates but only operate such committees for administrative convenience of collecting and reporting such contributions, and transferring to RPAC the appropriate amounts contributed pursuant to such joint fundraising campaigns. Such State Association separate segregated funds affiliated with RPAC make discretionary transfers to RPAC as permitted by 2 U.S.C. § 441a(a) and 11 C.F.R. § 110.3(c)(1).

4. With respect to all but one State Association, the NAR-State/local association joint fundraising activities are conducted pursuant to a written agreement between the respective organizations that currently provides (with certain exceptions not relevant to this request) for 70% of each personal contribution to be retained by the State Association's non-federal PAC, and the remaining 30% to be provided to RPAC for its use in connection with federal elections. Contributors are advised of these respective percentages of their contributions provided to RPAC and to the State PAC at the time they are solicited for contributions. The State Association with which NAR has not entered into such a written agreement operates an affiliated separate segregated fund, and from time to time such separate segregated fund makes discretionary transfers to RPAC in amounts determined by the State Association.

5. NAR will encourage State Associations to enter into new agreements in which the percentage of contributions to RPAC will be more than 30%. NAR will encourage the State Association with which NAR has not entered into such a written agreement to increase the amount transferred to RPAC from the affiliated PAC. As an incentive to agree to higher percentages and transfers, NAR proposes to offer to provide to such State Associations or (where desired by the State Association and permitted by state law) their State PACs, monies from NAR treasury funds. Such "incentive payments" will be used by the State Association or State PAC for any lawful purpose including use in connection with state or local elections or other related political activities. The amount given by NAR to a State Association would be approximately equal to the amount of joint fundraising contributions provided to RPAC in excess of the 30% customarily provided to RPAC or the increased amount of transfers.

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6. Individual contributors who make voluntary contributions to RPAC through the joint solicitation efforts will be advised when solicited of the percentage of any donation that will be sent to RPAC. Solicitations will include all legally required notices pursuant to 11 C.F.R. § 114.5. Furthermore, individual contributors will not receive directly or indirectly any portion of the incentive payments by NAR to the State Associations nor will they receive any other benefit as a result of the incentive payments.

QUESTIONS PRESENTED

1. *Whether the above proposed incentive payments by NAR to State Associations or their State PACs constitute "establishment, administration, and solicitation costs" as defined in 11 C.F.R. § 114.1(b)?*

2. *Whether the above proposed incentive payments by NAR to State Associations or their State PACs are subject to the "one-third rule" of 11 C.F.R. § 114.5(b)?*

DISCUSSION

The Federal Election Campaign Act, as amended, ("Act") provides that a corporation may pay for "the establishment, administration, and solicitation of contributions to a separate segregated fund." ("Administrative Costs") 2 U.S.C § 441b(b)(2)(C). FEC regulations state that such costs "means the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, fund-raising and other expenses incurred in setting up and running a separate segregated fund." 11 C.F.R. § 114.1(b).

The Incentive Payments to Affiliates are PAC Administrative Costs

The Commission has recognized a vast array of expenses that qualify as Administrative Costs. The expenses are related directly or indirectly to the operation of a PAC and efforts to raise voluntary contributions to the PAC. Previously recognized Administrative Costs include the items referenced in the regulation as well as premiums for liability insurance (Advisory Opinion 1979-42), indemnification (Advisory Opinion 1980-135), gifts to donors (Advisory Opinion

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1981-50), and banking fees such as Automatic Clearing House charges (Advisory Opinion 1999-35).

Expenses directly or indirectly related to fundraising consistently have been categorized as Administrative Costs. For example, a corporation may pay for printing, mailing, room charges, food, service, and even a speaker's honorarium fee for a fundraising event (Advisory Opinion 1988-27). A corporation may pay the travel expenses of a representative to attend a political party committee event (Advisory Opinion 1991-36). Moreover, incentive payments have been permitted to third parties. Specifically, the Commission approved the payment of a "premium gift" to employees who succeed in persuading fellow employees to sign up for PAC payroll deductions (Advisory Opinion 1999-31). The recipients of "premium gifts" were not necessarily PAC contributors themselves.

The proposed incentive payments are expressly in connection with fundraising. In this regard the payments are similar to previously approved fundraising expenses. They also resemble so-called "charitable matching" payments by associations which match voluntary PAC contributions with equal payments by the corporation to a charity. This practice has been repeatedly approved by the FEC over the course of decades as a permissible fundraising expense by the corporation for the separate segregated fund. *See* Advisory Opinion 1994-6.

However, unlike the charitable match programs, the NAR incentive payments while related to PAC fundraising are not payments to unaffiliated third parties, nor are they an inducement to the PAC contributor. Because the NAR and its state and local associations are a federation of trade associations payments between or among these affiliated entities in effect constitute internal payments to themselves. Such asset allocation is virtually an internal budgeting matter constituting a decision by the federation of how much and how it will spend its resources for PAC fundraising. The FEC has acknowledged such discretionary spending by the NAR in Advisory Opinion 1995-17 in which it permitted RPAC to pay to constituent associations certain costs of fundraising. Specifically, the FEC permitted RPAC to pay constituent associations any amounts required by the one-third rule. Conversely, the FEC has permitted another federation's local units to pay fundraising expenses of the national association's segregated fund. Advisory Opinion 2003-29; *see also* Advisory Opinion 1999-35 (Associated Builders and Contractors may pay ACH bank fees of local affiliates).

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Moreover, the incentive payments are not intended to serve as an inducement for the contributor to give more to RPAC, but rather they will be an inducement for the affiliated State Association to agree to increase transfers or increase the current percentage of a contributor's donation that will be transmitted to RPAC. A contributor, who will be notified of the percentage, presumably will contribute the exact same amount although it may be divided differently between RPAC and any State PAC.

The Incentive Payments to Affiliates are not Subject to the One-Third Rule

The proposed incentive payments are not subject to the "one-third rule." A PAC contributor does not receive any benefit from any NAR payment to a state association. Any payment is to the State Association or State PAC and not to any contributor. Accordingly, the incentive payments are not an "exchange" of treasury money with a donor of a voluntary PAC contribution which is the basis for invoking the one-third rule.

CONCLUSION

For the foregoing reasons, we respectfully request an advisory opinion confirming the lawfulness of the fundraising activities described above.

Sincerely,



Jan Witold Baran