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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO.** 18-23-A  
**AGENDA ITEM**  
**For meeting of** May 10, 2018  
**SUBMITTED LATE**

May 9, 2018

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *LJS by ERC*  
Acting General Counsel

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Acting Assistant General Counsel

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SUBJECT: Draft Disclaimer Proposals Applied to Sample Internet Ads for REG  
2011-02 (Internet Communication Disclaimers)

Attached is the Draft Disclaimer Proposals Applied to Sample Internet Ads for REG 2011-02 (Internet Communication Disclaimers). We request that this draft be placed on the agenda for May 10, 2018.

Attachment



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

**Disclaimer Proposals Applied to Sample Internet Ads<sup>1</sup>**  
**for**  
**REG 2011-02: Internet Communication Disclaimers**  
**and Definition of "Public Communication"**

**EXAMPLE 1: LARGE RECTANGLE – FULL DISCLAIMER – 10% OF AD**

**Ad attributes:**

**Ad size:** 720 x 300 px

**Payor Name:** Federal Election Committee PAC

**Other attributes:** 10% of ad space is taken up by disclaimer.



**Alternative A:**

Does the full disclaimer appear on the face of this ad? Yes.

Is the full disclaimer of sufficient type size to be clearly readable? Yes.

Does the disclaimer satisfy the requirements under Alternative A? Yes.

<sup>1</sup> The Commission has proposed amendments to its regulations on internet communication disclaimers. See Internet Communication Disclaimers and Definition of "Public Communication," 83 Fed. Reg. 12864 (Mar. 26, 2018). These examples show the application of the proposed amendments to simulated internet ads. Changes to the ads' appearance, such as those caused by variations in color, format, size, typography, and medium of display, could affect the conclusions presented.

Does Alternative A require that the full disclaimer be used here? Yes, because no external character or space constraints preclude this advertisement from accommodating a full disclaimer on its face.

**Alternative B:**

Full disclaimer: Does the full disclaimer appear on the face of this ad? Yes.

Is the full disclaimer clear and conspicuous? Yes.

Does the disclaimer satisfy the requirements under Alternative B? Yes.

Does Alternative B require that the full disclaimer be used here? Yes, because a clear and conspicuous disclaimer does not take up more than 10% of the ad.

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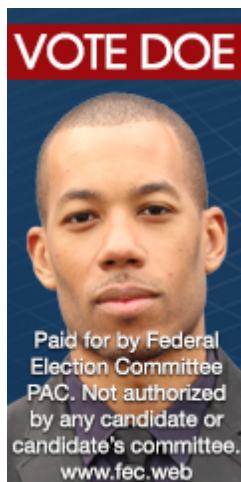
**EXAMPLE 2: VERTICAL BANNER – FULL DISCLAIMER – 34% OF AD**

**Ad attributes:**

**Ad size:** 120 x 240px

**Payor Name:** Federal Election Committee PAC

**Other attributes:** 34% of ad space is taken up by disclaimer.



**Alternative A:**

Does the full disclaimer appear on the face of this ad? Yes.

Is the full disclaimer of sufficient type size to be clearly readable? Yes.

Does the disclaimer satisfy the requirements under Alternative A? Yes.



Does Alternative A require that the full disclaimer be used here? No; the advertisement “cannot, due to external character or space constraints, practically include a full disclaimer on [its] face.”<sup>2</sup> An adapted disclaimer may instead be used.

#### Alternative B:

Full disclaimer: Does the full disclaimer appear on the face of this ad? Yes.

Is the full disclaimer clear and conspicuous? Yes.

Does the disclaimer satisfy the requirements under Alternative B? Yes.

Does Alternative B require the full disclaimer as it appears here to be used? No; a full disclaimer is not required to take up more than 10% of the ad under Alternative B. If the full disclaimer would need to take up more than 10% of the ad to be clear and conspicuous, then an adapted disclaimer may instead be used.

#### EXAMPLE 3: VERTICAL BANNER – FULL DISCLAIMER – 10% OF AD

##### Ad attributes:

**Ad size:** 120 x 240px

**Payor Name:** Federal Election Committee PAC

**Other attributes:** 10% of ad space is taken up by disclaimer.



#### Alternative A:

<sup>2</sup> Internet Communication Disclaimers and Definition of “Public Communication,” 83 Fed. Reg. 12864, 12874 (referring to “text and graphic internet advertisements that cannot, due to external character or space constraints, practically include a full disclaimer on the face of the communication,” and citing to Advisory Opinion 2004-10 (Metro Networks) at 3).



Does the full disclaimer appear on the face of this ad? Yes.

Is the full disclaimer of sufficient type size to be clearly readable? No.

Does the disclaimer satisfy the requirements under Alternative A? No.

**Alternative B:**

Full disclaimer: Does the full disclaimer appear on the face of this ad? Yes.

Is the full disclaimer clear and conspicuous? No.

Does the disclaimer satisfy the requirements under Alternative B? No.

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**EXAMPLE 4: VERTICAL BANNER – ADAPTED DISCLAIMER 1**

**Ad attributes:**

**Ad size:** 120 x 240px

**Payor Name:** Federal Election Committee PAC

**Other attributes:** 25% of ad space is taken up by adapted disclaimer.  
Ad links to full disclaimer for the Federal Election Committee PAC.



**Alternative A:**

Does the full disclaimer appear on the face of this ad? No.



Does Alternative A require that the full disclaimer appear on the face of this ad? No; the advertisement cannot, due to external character or space constraints, practically include a full disclaimer on its face.<sup>3</sup>

Does the disclaimer satisfy the requirements under Alternative A? While an adapted disclaimer would be appropriate here, this does not meet the requirements under Alternative A. It does not give the reader, observer, or listener adequate notice that further disclaimer information is available by a technological mechanism.

#### **Alternative B:**

Full disclaimer: Does the full disclaimer appear on the face of this ad? No.

Does Alternative B require that the full disclaimer be used here? No; a full disclaimer that takes up 10% of the ad would not be clear and conspicuous (see Example 3).

Adapted Disclaimer, Tier 1: Do the payor's full name or a clearly recognized abbreviation, acronym, or other unique identifier by which the payor is commonly known, and an indicator appear on the face of the ad? Yes (the indicator is "Paid for by").

Is the Tier 1 adapted disclaimer clear and conspicuous? Yes.

Is the full disclaimer available through a technological mechanism? Yes.

Does the disclaimer satisfy the requirements under Alternative B? Yes.

Does Alternative B require the Tier 1 adapted disclaimer as it appears here to be used? No; a Tier 1 adapted disclaimer is not required to take up more than 10% of the ad under Alternative B. If the Tier 1 adapted disclaimer would need to take up more than 10% of the ad to be clear and conspicuous, a Tier 2 adapted disclaimer may instead be used.

#### **EXAMPLE 5: VERTICAL BANNER – ADAPTED DISCLAIMER 1**

##### **Ad attributes:**

**Ad size:** 120 x 240px

**Payor Name:** Federal Election Committee PAC

**Other attributes:** 20% of ad space is taken up by adapted disclaimer.  
Ad links to full disclaimer for the Federal Election  
Committee PAC.

<sup>3</sup> See n. 2.





### Alternative A:

Does the full disclaimer appear on the face of this ad? No.

Does Alternative A require that the full disclaimer appear on the face of this ad? No; the advertisement cannot, due to external character or space constraints, practically include a full disclaimer on its face.<sup>4</sup> An adapted disclaimer may instead be used.

Does the adapted disclaimer satisfy the requirements under Alternative A? Yes.

### Alternative B:

Full disclaimer: Does the full disclaimer appear on the face of this ad? No.

Does Alternative B require that the full disclaimer be used here? No; a full disclaimer that takes up 10% of the ad would not be clear and conspicuous (see Example 3).

Adapted Disclaimer, Tier 1: Do the payor's full name or a clearly recognized abbreviation, acronym, or other unique identifier by which the payor is commonly known, and an indicator appear on the face of the ad? Yes (the indicator is "Paid for by").

Is the Tier 1 adapted disclaimer clear and conspicuous? Yes.

Is the full disclaimer available through a technological mechanism? Yes.

Does the disclaimer satisfy the requirements under Alternative B? Yes.

Does Alternative B require the Tier 1 adapted disclaimer as it appears here to be used? No; a Tier 1 adapted disclaimer is not required to take up more than 10% of the ad under Alternative B. If a Tier 1 adapted disclaimer would need to take up more than 10% of the ad to be clear and conspicuous, then a Tier 2 adapted disclaimer may be used.

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<sup>4</sup> See n. 2.



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**EXAMPLE 6: VERTICAL BANNER – ADAPTED DISCLAIMER 2 – INDICATOR ONLY**
**Ad attributes:****Ad size:** 120 x 240px**Payor Name:** Federal Election Committee PAC**Other attributes:** Ad links to full disclaimer for the Federal Election Committee PAC.**Alternative A:**

Does the full disclaimer appear on the face of this ad? No.

Does Alternative A require that the full disclaimer appear on the face of this ad? No; the advertisement cannot, due to external character or space constraints, practically include a full disclaimer on its face.<sup>5</sup> An adapted disclaimer may instead be used.

Does the disclaimer satisfy the requirements under Alternative A? While an adapted disclaimer would be appropriate here, this does not meet the requirements under Alternative A. The full name of the committee is not shown.

**Alternative B:**

Full disclaimer: Does the full disclaimer appear on the face of this ad? No.

Does Alternative B require a full disclaimer to be used here? No, because a full disclaimer that takes up 10% of the ad would not be clear and conspicuous (see Example 3).

Adapted Disclaimer, Tier 1: Do the payor's full name or a clearly recognized abbreviation, acronym, or other unique identifier by which the payor is commonly known, and an indicator appear on the face of the ad? No.

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<sup>5</sup> See n. 2.





Adapted Disclaimer, Tier 2: Does an indicator appear on the face of the ad? Yes.

Is the indicator clear and conspicuous? Yes.

Is the full disclaimer available through a technological mechanism? Yes.

Does the disclaimer satisfy the requirements under Alternative B? Yes, if a Tier 1 adapted disclaimer would need to take up more than 10% of the ad to be clear and conspicuous.

#### EXAMPLE 7: FULL BANNER – FULL DISCLAIMER – 35% OF AD

##### Ad attributes:

**Ad size:** 468 x 60px

**Payor Name:** Federal Election Committee PAC

**Other attributes:** 35% of ad space is taken up by disclaimer.



##### Alternative A:

Does the full disclaimer appear on the face of this ad? Yes.

Is the full disclaimer of sufficient type size to be clearly readable? Yes.

Does this disclaimer satisfy the requirements under Alternative A? Yes.

Does Alternative A require that the full disclaimer appear on the face of this ad? No; the advertisement cannot, due to external character or space constraints, practically include a full disclaimer on its face.<sup>6</sup> An adapted disclaimer may instead be used.

##### Alternative B:

Full disclaimer: Does the full disclaimer appear on the face of this ad? Yes.

Is the full disclaimer clear and conspicuous? Yes.

Does the disclaimer satisfy the requirements under Alternative B? Yes.

Does Alternative B require the full disclaimer as it appears here to be used? No, because the full disclaimer takes up more than 10% of the ad. If the full disclaimer would need to take up more than 10% of the ad to be clear and conspicuous, then a Tier 1 adapted disclaimer may be used.

<sup>6</sup> See n. 2.



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**EXAMPLE 8: FULL BANNER – FULL DISCLAIMER – 10% OF AD**

**Ad attributes:**

**Ad size:** 120 x 240px

**Payor Name:** Federal Election Committee PAC

**Other attributes:** 10% of ad space is taken up by disclaimer.



**Alternative A:**

Does the full disclaimer appear on the face of this ad? Yes.

Is the full disclaimer of sufficient type size to be clearly readable? No.

Does this disclaimer satisfy the requirements under Alternative A? No.

**Alternative B:**

Full disclaimer: Does the full disclaimer appear on the face of this ad? Yes.

Is the full disclaimer clear and conspicuous? No.

Does Alternative B require that the full disclaimer be used here? No, because the full disclaimer would need to take up more than 10% of the ad to be clear and conspicuous.

Does the disclaimer satisfy the requirements under Alternative B? No; the ad must have a clear and conspicuous full disclaimer or adapted disclaimer.



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**EXAMPLE 9: RECTANGLE – FULL DISCLAIMER – 10% OF AD**

**Ad attributes:**

**Ad size:** 180 x 150px

**Payor Name:** Federal Election Committee PAC

**Other attributes:** 10% of ad space is taken up by full disclaimer.



**Alternative A:**

Does the full disclaimer appear on the face of this ad? Yes.

Is the disclaimer of sufficient type size to be clearly readable? No.

Does the disclaimer satisfy the requirements under Alternative A? No.

**Alternative B:**

Full disclaimer: Does the full disclaimer appear on the face of this ad? Yes.

Is the full disclaimer clear and conspicuous? No.

Does the disclaimer satisfy the requirements under Alternative B? No; the ad must have a clear and conspicuous full disclaimer or adapted disclaimer.



**EXAMPLE 10: SQUARE – TYPICAL COMMITTEE-NAME LENGTH – FULL DISCLAIMER – 25% OF AD****Ad attributes:****Ad size:** 250 x 250 px**Payor Name:** NOVA Election Association Political Action Committee (a name the same length as the national average for SSFs)**Other attributes:** Committee has policy of not abbreviating its name.  
25% of ad space is taken up by disclaimer.**Alternative A:**

Does the full disclaimer appear on the face of this ad? Yes.

Is the full disclaimer of sufficient type size to be clearly readable? Yes.

Does the disclaimer satisfy the requirements under Alternative A? Yes.

Does Alternative A require the full disclaimer to appear on the face of this ad? Yes.

**Alternative B:**

Full Disclaimer: Does the full disclaimer appear on the face of this ad? Yes.

Is the full disclaimer clear and conspicuous? Yes.

Does the disclaimer satisfy the requirements under Alternative B? Yes.

Does Alternative B require the full disclaimer as it appears here to be used? No. If a full disclaimer would need to take up more than 10% of the ad to be clear and conspicuous, an adapted disclaimer may be used.



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**EXAMPLE 11: SQUARE – TYPICAL COMMITTEE-NAME LENGTH – FULL DISCLAIMER – 10% OF AD**
**Ad attributes:****Ad size:** 250 x 250 px**Payor Name:** NOVA Election Association Political Action Committee (a name the same length as the national average for SSFs)**Other attributes:** Committee has policy of not abbreviating its name  
Disclaimer takes up 10% of ad**Alternative A:**

Does the full disclaimer appear on the face of this ad? Yes.

Is the full disclaimer of sufficient type size to be clearly readable? No.

Does the disclaimer satisfy the requirements under Alternative A? No.

**Alternative B:**

Full Disclaimer: Does the full disclaimer appear on the face of this ad? Yes.

Is the full disclaimer clear and conspicuous? No.

Does the disclaimer satisfy the requirements under Alternative B? No.



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**EXAMPLE 12: SQUARE – TYPICAL COMMITTEE-NAME LENGTH – ADAPTED DISCLAIMER – 11% OF AD**

**Ad attributes:**

**Ad size:** 250 x 250 px

**Payor Name:** NOVA Election Association Political Action Committee (a name the same length as the national average for SSFs)

**Other attributes:** Committee has policy of not abbreviating its name.  
Ad links to full disclaimer  
11% of ad space is taken up by adapted disclaimer.



**Alternative A:**

Does the full disclaimer appear on the face of this ad? No.

Do external character or space constraints preclude this advertisement from accommodating a full disclaimer on its face? No (see Example 10).

Does the disclaimer satisfy the requirements under Alternative A? No. Because no external character or space constraints preclude this advertisement from accommodating a full disclaimer on its face, the full disclaimer must be used.

**Alternative B:**

Full disclaimer: Does the full disclaimer appear on the face of this ad? No.



Would a full disclaimer that takes up 10% of the ad be clear and conspicuous? No (see Example 11).

Adapted Disclaimer, Tier 1: Does the payor's full name or a clearly recognized abbreviation, acronym, or other unique identifier by which the payor is commonly known, and an indicator appear on the face of the ad? Yes.

Is the Tier 1 adapted disclaimer clear and conspicuous? Yes.

Is the full disclaimer available through a technological mechanism? Yes.

Does the disclaimer satisfy the requirements under Alternative B? Yes.

Does Alternative B require the Tier 1 adapted disclaimer as it appears here to be used? No; a Tier 1 adapted disclaimer is not required to take up more than 10% of the ad under Alternative B. If the Tier 1 adapted disclaimer would need to take up more than 10% of the ad to be clear and conspicuous, a Tier 2 adapted disclaimer may be used.



**EXAMPLE 13: FACEBOOK AD - DESKTOP NEWS FEED<sup>7</sup>****Ad attributes:****Payor Name:** Federal Election Committee PAC

Desktop News Feed 3 of 4

**Federal Election Committee PAC**  
Sponsored · 🌐 Like Page

Paid for by Federal Election Committee PAC. Not authorized by any candidate or candidate's committee.

**VOTE JOHN DOE**  
on November 8

**John Doe Will Protect Taxpayer Dollars**  
Vote JOHN DOE on Nov. 8!  
FEC.PAC.ORG

Like Comment Share

**Alternative A:**

Does the full disclaimer appear on the face of this ad? Yes.

Is the full disclaimer of sufficient type size to be clearly readable? Yes.

Does the disclaimer satisfy the requirements under Alternative A? Yes.

<sup>7</sup> Facebook recently announced that it plans to change its procedures for running political ads and issue ads. See Blog Post by Mark Zuckerberg, Chief Executive Officer, Facebook, Inc. (April 6, 2018), <https://www.facebook.com/zuck/posts/10104784125525891>. The sample ads in Examples 13-15 were created before these changes went into effect, using online tools available at <https://www.facebook.com/ads/creativehub/home/create/link/> (Facebook ads), [https://www.facebook.com/ads/creativehub/home/create/instagram\\_image/](https://www.facebook.com/ads/creativehub/home/create/instagram_image/) (Instagram ads).





**Alternative B:**

Full disclaimer: Does the full disclaimer appear on the face of this ad? Yes.

Is the full disclaimer clear and conspicuous? Yes.

Does the disclaimer satisfy the requirements under Alternative B? Yes.

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**EXAMPLE 14: FACEBOOK AD - MOBILE NEWS FEED**

**Ad attributes:**

**Payor Name:** Federal Election Committee PAC



**Alternative A:**

Does the full disclaimer appear on the face of this ad? Yes.

Is the full disclaimer of sufficient type size to be clearly readable? Yes.

Does the disclaimer satisfy the requirements under Alternative A? Yes.

**Alternative B:**

Full disclaimer: Does the full disclaimer appear on the face of this ad? Yes.

Is the full disclaimer clear and conspicuous? Yes.

Does the disclaimer satisfy the requirements under Alternative B? Yes.



**EXAMPLE 15: INSTAGRAM AD**

**Ad attributes:**

**Payor Name:** Federal Election Committee PAC



**Alternative A:**

Does the full disclaimer appear on the face of this ad? Yes.

Is the full disclaimer of sufficient type size to be clearly readable? Yes.

Does the disclaimer satisfy the requirements under Alternative A? Yes.

**Alternative B:**

Full disclaimer: Does the full disclaimer appear on the face of this ad? Yes.

Is the full disclaimer clear and conspicuous? Yes.

Does the disclaimer satisfy the requirements under Alternative B? Yes.



**EXAMPLE 16: MICRO BAR – FULL DISCLAIMER – 9% OF AD**

**Ad attributes:**

**Ad size:** 88 X 31px

**Payor Name:** Federal Election Committee PAC

**Other attributes:** Full disclaimer takes up 9% of ad



**Alternative A:**

Does the full disclaimer appear on the face of this ad? Yes.

Is the full disclaimer of sufficient type size to be clearly readable? No.

Does the disclaimer satisfy the requirements under Alternative A? No.

**Alternative B:**

Full Disclaimer: Does the full disclaimer appear on the face of this ad? Yes.

Is the full disclaimer clear and conspicuous? No.

Does the disclaimer meet the requirements of Alternative B? No.

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**EXAMPLE 17: MICRO BAR – ADAPTED DISCLAIMER 1**

**Ad attributes:**

**Ad size:** 88 X 31px

**Payor Name:** Federal Election Committee PAC

**Other attributes:** Payor's name and indicator on face of ad  
Adapted disclaimer takes up 11% of ad  
Full disclaimer available through technological mechanism



**Alternative A:**

Does the full disclaimer appear on the face of the ad? No.

Do external character or space constraints preclude this advertisement from accommodating a full disclaimer on its face? Yes (see Example 16).



Does Alternative A require that the full disclaimer be used here? No.

Does an adapted disclaimer appear on the face of the ad? Yes.

Does the adapted disclaimer indicate the person or persons who paid for the communication in letters of sufficient size to be clearly readable? No.

Does the adapted disclaimer meet the requirements of Alternative A? No.

### **Alternative B:**

Full Disclaimer: Does the full disclaimer appear on the face of this ad? No.

Would a full disclaimer that takes up 10% of the ad be clear and conspicuous? No (see Example 16).

Does Alternative B require the full disclaimer to be used here? No.

Adapted Disclaimer, Tier 1: Does the payor's full name or a clearly recognized abbreviation, acronym, or other unique identifier by which the payor is commonly known, and an indicator appear on the face of the ad? Yes.

Is the Tier 1 adapted disclaimer clear and conspicuous? No.

Does the adapted disclaimer comply with the requirements of Alternative B? No.

### **EXAMPLE 18: MICRO BAR – ADAPTED DISCLAIMER 2 – INDICATOR ONLY**



#### **Ad attributes:**

**Ad size:** 88 X 31px

**Payor Name:** Federal Election Committee PAC

**Other attributes:** Indicator on face of ad  
Full disclaimer available through technological mechanism

#### **Alternative A:**

Does the full disclaimer appear on the face of the ad? No.

Do external character or space constraints preclude this advertisement from accommodating a full disclaimer on its face? Yes (see Example 16).

Does Alternative A require that the full disclaimer be used here? No.

Does an adapted disclaimer appear on the face of the ad? No; under Alternative A, an adapted disclaimer must indicate the person or persons who paid for the communication in letters of sufficient size to be clearly readable.



Does the disclaimer satisfy the requirements under Alternative A? No.

**Alternative B:**

Full Disclaimer: Does the full disclaimer appear on the face of this ad? No.

Does Alternative B require a full disclaimer to be used here? No, because a full disclaimer that takes up 10% of the ad would not be clear and conspicuous (see Example 16).

Adapted Disclaimer, Tier 1: Do the payor's full name or a clearly recognized abbreviation, acronym, or other unique identifier by which the payor is commonly known, and an indicator appear on the face of the ad? No.

Could the payor's name, abbreviation, acronym, or other unique identifier appear clearly and conspicuously on the face of the ad without exceeding 10% of the overall ad? No (see Example 17).

Adapted Disclaimer, Tier 2: Does an indicator appear on the face of the ad? Yes.

Is the indicator clear and conspicuous? Yes.

Is the full disclaimer available through a technological mechanism? Yes.

Does the adapted disclaimer meet the requirements of Alternative B? Yes.

