



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

2016 SEP 28 PM 5:27

**AGENDA ITEM**

For Meeting of 9-29-16

September 28, 2016

MEMORANDUM

**SUBMITTED LATE**

TO: The Commission

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

Adav Noti *AN*  
Associate General Counsel

Neven F. Stipanovic *NFS by AN*  
Acting Assistant General Counsel

Jessica Selinkoff *[Signature]*  
Attorney

SUBJECT: Draft Federal Register Notice on Internet Communication Disclaimers

Attached is a draft Federal Register Notice on REG 2011-02, Internet Communication Disclaimers. We ask that this be placed on the agenda of the September 29, 2016, open meeting.

Attachment

**FEDERAL ELECTION COMMISSION**

**11 CFR Part 110**

**[Notice 2016-XX]**

**Internet Communication Disclaimers**

**AGENCY:** Federal Election Commission.

**ACTION:** Reopening of comment period and notice of hearing.

**SUMMARY:** On October 13, 2011, the Federal Election Commission published an Advance Notice of Proposed Rulemaking seeking comment on whether to begin a rulemaking to revise its regulations concerning disclaimers on certain internet communications and, if so, on what changes should be made to those rules. The Commission has decided to reopen the comment period to receive additional comments in light of legal and technological developments since that notice was published. The Commission is also announcing a public hearing.

**DATES:** Comments must be received on or before [insert date 60 days after date of publication in the Federal Register]. The Commission will hold a hearing on these issues on [insert date approximately one month after the close of comment period]. Anyone wishing to testify at the hearing must file timely written comments and must include in the written comments a request to testify.

**ADDRESSES:** All comments must be in writing. Commenters are encouraged to submit comments electronically via the Commission's website at <http://www.fec.gov/fosers>, reference REG 2011-02, or by email to [address]@fec.gov. Alternatively, commenters may submit comments in paper form, addressed to the Federal Election Commission, Attn.: Neven F. Stipanovic, Acting Assistant General Counsel, 999 E Street, NW., Washington, DC 20463.

1           Each commenter must provide, at a minimum, his or her first name, last name, city, state,  
2 and zip code. All properly submitted comments, including attachments, will become part of the  
3 public record, and the Commission will make comments available for public viewing on the  
4 Commission’s website and in the Commission’s Public Records Office. Accordingly,  
5 commenters should not provide in their comments any information that they do not wish to make  
6 public, such as a home street address, personal email address, date of birth, phone number, social  
7 security number, driver’s license number, or any information that is restricted from disclosure,  
8 such as trade secrets or commercial or financial information that is privileged or confidential.

9   **FOR FURTHER INFORMATION CONTACT:** Mr. Neven F. Stipanovic, Acting Assistant  
10 General Counsel, or Ms. Jessica Selinkoff, Attorney, 999 E Street NW., Washington, DC 20463,  
11 (202) 694-1650 or (800) 424-9530.

12   **SUPPLEMENTARY INFORMATION:** On October 13, 2011, the Commission published in  
13 the Federal Register an Advance Notice of Proposed Rulemaking (“ANPRM”) seeking comment  
14 on whether and how to revise the rules at 11 CFR 110.11 regarding disclaimers on internet  
15 communications.<sup>1</sup> Specifically, the Commission was considering whether to modify the  
16 disclaimer requirements for certain internet communications, or to provide exceptions thereto,  
17 consistent with the Federal Election Campaign Act, 52 U.S.C. 30101-46 (“the Act”). The  
18 Commission received seven substantive comments in response to the ANPRM. All but one of  
19 the commenters agreed that the Commission should update the disclaimer rules through a  
20 rulemaking, though commenters differed on how the Commission should do so. In light of  
21 subsequent legal and technological developments, the Commission is reopening the comment  
22 period and will hold a hearing.

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<sup>1</sup> See Internet Communication Disclaimers, 76 FR 63567 (Oct. 13, 2011).

1 As discussed in the ANPRM, a “disclaimer” is a statement that must appear on certain  
2 communications to identify who paid for it and, where applicable, whether the communication  
3 was authorized by a candidate. 52 U.S.C. 30120(a); 11 CFR 110.11. With some exceptions, the  
4 Act and Commission regulations require disclaimers for public communications: (1) made by a  
5 political committee; (2) that expressly advocate the election or defeat of a clearly identified  
6 federal candidate; or (3) that solicit a contribution. 52 U.S.C. 30120(a); 11 CFR 110.11(a).  
7 While the term “public communication” generally does not include internet communications, it  
8 does include “communications placed for a fee on another person’s Web site.” 11 CFR 100.26.<sup>2</sup>  
9 In addition to these internet public communications, “electronic mail of more than 500  
10 substantially similar communications when sent by a political committee . . . and all Internet  
11 websites of political committees available to the general public” also must have disclaimers.  
12 11 CFR 110.11(a).

13 Commission regulations set forth certain exceptions to the general disclaimer  
14 requirements. For example, disclaimers are not required for communications placed on  
15 “[b]umper stickers, pins, buttons, pens, and similar small items upon which the disclaimer cannot  
16 be conveniently printed.” 11 CFR 110.11(f)(1)(i) (the “small items exception”). Nor are  
17 disclaimers required for “[s]kywriting, water towers, wearing apparel, or other means of  
18 displaying an advertisement of such a nature that the inclusion of a disclaimer would be  
19 impracticable.” 11 CFR 110.11(f)(1)(ii) (the “impracticable exception”).

20 As discussed in the ANPRM, some internet advertisements are so character-limited that  
21 providing all the disclaimer information required by the Act may take up much of the available  
22 ad characters. See Advisory Opinion 2010-19 (Google) (describing 95-character search result

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<sup>2</sup> The Commission is currently proposing amendments intended to modernize a number of regulations, including 11 CFR 100.26. To review those proposals and other Commission rulemaking documents, visit <http://www.fec.gov/fosers>, reference REG 2013-01.

1 advertisements); cf. Advisory Opinion Request 2011-09 (Facebook) (describing several  
2 categories of advertisements ranging from zero to 160 characters).<sup>3</sup> However, the ANPRM  
3 noted that technological options may allow for the display of disclaimers when a user “hovers”  
4 or “rolls” over the advertisement, or on the landing page to which the user is taken after clicking  
5 the advertisement.<sup>4</sup>

6 Since the publication of the ANPRM, the Commission has considered these issues in new  
7 factual contexts. See, e.g., Advisory Opinion Request 2013-18 (Revolution Messaging) (asking  
8 whether “banner ads” viewed on mobile phones, either in website or app, required disclaimers);  
9 MUR 6911 (Frankel) (considering whether candidates’ and political parties’ Twitter profiles and  
10 individual tweets required disclaimers). The Commission seeks comments on how the issues and  
11 possible approaches discussed in the ANPRM might or might not apply to these new  
12 technological presentations. The Commission also notes that, since the ANPRM was published,  
13 at least one additional state has joined California in adopting regulations to address small internet  
14 advertisements.<sup>5</sup> The Commission seeks comments addressing persons’ experiences in  
15 complying with (and receiving disclosure from) these state rules as well as other disclosure  
16 regimes. The Commission is also interested in comments that address:

- 17 • how campaigns, parties, and other political committees, voters, and others disseminate  
18 and receive electoral information via the internet and other technologies, including any  
19 data or experiences in purchasing, selling, or distributing small or character-limited  
20 advertisements on websites, apps, and mobile devices;

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<sup>3</sup> Documents related to Commission advisory opinions are available at [www.fec.gov/searchao](http://www.fec.gov/searchao).

<sup>4</sup> See, e.g., Contents of Disclosure Statements. Advertisement Disclosure, Cal. Code Regs. tit. 2, sec. 18450.4(b)(3)(G)(1) (California small internet ad disclosure rule discussed in ANPRM).

<sup>5</sup> See Electronic Media, Requirements, Md. Code Regs. 33.13.07.02(D)(2)(b).

- 1 • any challenges in complying with the existing disclaimer rules as applied to internet  
2 communications;
- 3 • the technological or other characteristics that might define a “small” internet  
4 advertisement;
- 5 • how a disclaimer requirement or exception for “small” internet advertisements might be  
6 implemented;
- 7 • the informational benefits of disclaimers on internet communications to assist voters in  
8 identifying the source of advertising so they are better able to evaluate the arguments to  
9 which they are being subjected;<sup>6</sup>
- 10 • the informational benefits of disclaimers on internet communications, including websites  
11 and social media pages, to avoid voter confusion and reduce the incidence of solicitations  
12 that appear to be for candidates but are actually for non-candidate committees; and
- 13 • the extent to which the Commission’s consideration of disclaimer requirements should  
14 take into account current or anticipated models of internet advertising.

15 The Commission also invites additional comments on any issues discussed in the  
16 ANPRM and is particularly interested in comments addressing advertisements on internet-  
17 enabled applications and devices (such as apps, eReaders, and wearable technology). Given the  
18 speed at which technological advances are developing, the Commission welcomes comments  
19 that address possible regulatory approaches that might minimize the need for serial revisions to  
20 the Commission’s rules in order to adapt to new or emerging technologies.

21 On behalf of the Commission,

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<sup>6</sup> Citizens United v. FEC, 558 U.S. 310, 368 (2010) (citing First Nat’l Bank of Boston v. Bellotti, 435 U.S. 765, 792 n.32 (1978)).

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Matthew S. Petersen,  
Chairman,  
Federal Election Commission.

DATED: \_\_\_\_\_  
BILLING CODE: 6715-01-P