



## **FEDERAL ELECTION COMMISSION**

**11 CFR Parts 1, 2, 4, 5, 6, 7, 100, 102, 103, 104, 105, 106, 108, 109, 110, 111, 112, 114, 116, 200, 201, 300, 9002, 9003, 9004, 9007, 9032, 9033, 9034, 9035, 9036, 9038, and 9039**

**[Notice 2016-12]**

### **Technological Modernization**

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Election Commission requests comment on proposed changes to its regulations to address contributions and expenditures that are made by electronic means, such as through internet-based payment processors or text messaging; to eliminate and update references to outdated technologies; and to address similar issues. The Commission has not made any final decisions about the issues and proposals presented in this rulemaking.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The Commission will determine at a later date whether to hold a public hearing on this proposed rule. Anyone wishing to testify at such a hearing must file timely written comments and must include in the written comments a request to testify. If a hearing is to be held, the Commission will publish a document in the Federal Register announcing the date and time of the hearing.

**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 2013-01, or by email to [techmod@fec.gov](mailto:techmod@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.

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

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

**SUPPLEMENTARY INFORMATION:** The Federal Election Commission is proposing to revise its regulations at 11 CFR chapter I to address electronic transactions, such as contributions made using credit cards, by text messages, or through internet-based payment processors. The Commission is also proposing regulatory revisions to facilitate electronic accounting, recordkeeping, reporting, and redesignation by political committees. Additionally, as a retrospective assessment of Commission regulations,<sup>1</sup> the proposed revisions would eliminate or

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<sup>1</sup> See generally, Jeffrey S. Lubbers, A Guide to Federal Agency Rulemaking 355-361 (5th ed. 2012) (summarizing "lookback" efforts designed to update or remove outdated or ineffective regulations); Adoption of Recommendations, 79 FR 75114, 75114-17 (Dec. 17, 2014) (Administrative Conference of the United States framework for agencies' retrospective reviews of their regulations); Special Committee to Review the Government in the Sunshine Act, 60 FR 43108, 43109-10 (Aug. 18, 1995) (recognizing agencies' "need to review regulations already adopted to ensure that they remain current, effective and appropriate").

update references to outmoded technologies and would enable interested parties to communicate electronically with the Commission for certain purposes.

#### A. Rulemaking History

On May 2, 2013, the Commission published in the Federal Register an Advance Notice of Proposed Rulemaking (“ANPRM”).<sup>2</sup> In the ANPRM, the Commission solicited comment on topics such as whether and how it should revise its regulations to reflect technological advances, whether industry standards in processing electronic transactions would be relevant to any such revisions, and how political committees and other persons engage in electronic transactions and recordkeeping.

The Commission received three substantive comments in response to the ANPRM.<sup>3</sup> Two commenters stated that the Commission should update its regulations by replacing technology-specific references with broader criteria that are less likely to grow stale as technology develops. One commenter suggested that the Commission could continue its current practice of using advisory opinions to address specific technologies. The commenters also provided comments regarding specific regulations, as discussed in more detail below.

After reviewing these comments and engaging in additional deliberation, the Commission is now proposing the changes described in this document. The Commission seeks comment on these proposals.

#### B. The Growing Use of Electronic Transactions, Records, and Communications

Electronic financial transactions are commonplace. According to the most recent triennial study conducted by the Federal Reserve System, “payments have become increasingly

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<sup>2</sup> Technological Modernization, 78 FR 25635 (May 2, 2013).

<sup>3</sup> The Internal Revenue Service also submitted comments indicating that it sees no conflict between this rulemaking and the Internal Revenue Code or Treasury regulations. See 52 U.S.C. 30111(f).

card-based,” “fewer checks enter the banking system as paper at all,” and the “number of noncash payments in the United States increased at a compound annual rate . . . of 4.4 percent” from 2009 to 2012.<sup>4</sup> Payments using prepaid cards increased at the fastest rate (15.8%) among payment types between 2009 and 2012.<sup>5</sup> In 2009, electronic payments — whether made by card (such as debit, credit, or prepaid) or through automated clearinghouses — “collectively exceed[ed] three-quarters of all noncash payments” in the United States.<sup>6</sup> And electronic financial transactions are occurring not only through desktop computers or credit card networks, but from consumers’ smartphones as well. A 2015 study of smartphone use showed that 64% of American adults own smartphones and that 57% of these people had used their smartphones in the past year for online banking.<sup>7</sup> Among 18-29 year old smartphone owners, about 70% had used smartphones in the past year for online banking.<sup>8</sup>

Consistent with general payment trends, people are increasingly using cards and electronic methods to contribute to political committees. A series of studies by the Pew Research Center of the internet and elections from 2006 to 2012 shows that online political contributions have become more common since 2008 (although most contributions are still made in person, over the phone, or by mail).<sup>9</sup> Among adults who donated to presidential candidates in

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<sup>4</sup> Fed. Reserve Sys., 2013 Federal Reserve Payments Study: Recent and Long-Term Payment Trends in the United States: 2003-2012, at 6-7 (2013) (“2013 Study”), [www.frbservices.org/files/communications/pdf/research/2013\\_payments\\_study\\_summary.pdf](http://www.frbservices.org/files/communications/pdf/research/2013_payments_study_summary.pdf). The 2013 Study notes that “the growth in the number of [credit, debit, and prepaid] card payments was driven by the replacement of both cash and checks.” Id. at 10. Moreover, even as more checks are being processed electronically, the total number of checks paid in 2012 was “less than half the number of checks that were paid in 2003,” for a total of only 15% of all payments in 2012. Id. at 8, 12.

<sup>5</sup> Id. at 8.

<sup>6</sup> Fed. Reserve Sys., 2010 Federal Reserve Payments Study: Noncash Payment Trends in the United States: 2006-2009, at 4 (2011), [www.frbservices.org/files/communications/pdf/press/2010\\_payments\\_study.pdf](http://www.frbservices.org/files/communications/pdf/press/2010_payments_study.pdf) (showing similar trends from 2006-2009).

<sup>7</sup> Pew Research Ctr., U.S. Smartphone Use in 2015, at 2, 5 (2015), available at [www.pewinternet.org/files/2015/03/PI\\_Smartphones\\_0401151.pdf](http://www.pewinternet.org/files/2015/03/PI_Smartphones_0401151.pdf).

<sup>8</sup> Id. at 5-6.

<sup>9</sup> Aaron Smith, Pew Research Ctr. Internet and Am. Life Project, Civic Engagement in the Digital Age 24 (2013), [www.pewinternet.org/files/old-media/Files/Reports/2013/PIP\\_CivicEngagementintheDigitalAge.pdf](http://www.pewinternet.org/files/old-media/Files/Reports/2013/PIP_CivicEngagementintheDigitalAge.pdf)

the 2012 election, 50% donated “online or via email.”<sup>10</sup> As of September 2012 — only a few months after the Commission had approved the use of text messaging to make contributions — 10% of those who made contributions to presidential candidates did so by “text message from their cell phone or using a cell phone app.”<sup>11</sup>

Coinciding with the increased use of electronic payments is the regular use of electronic records, including transactional records, and electronic communications. A Government Accounting Office report on the U.S. Postal Service in 2013 found that the postal service faces significant decreases in mail volume — the volume of first-class mail has declined 33 percent since 2001 and the volume of standard mail (primarily advertising) has declined 23 percent since 2007 — “as online communication and e-commerce expand.”<sup>12</sup> The report noted that “many businesses and consumers have moved to electronic payments over the past decade in lieu of using the mail to pay bills,” with fewer than 50% of all bills paid by paper mail in 2010.<sup>13</sup>

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(finding that, of 16% of Americans who had made political contribution in 2012, 23% had done so only over internet, while 60% had done so only offline); see also Aaron Smith, Pew Research Ctr. Internet and Am. Life Project, The Internet and Campaign 2010, at 21 (2011), [www.pewinternet.org/~media/Files/Reports/2011/Internet%20and%20Campaign%202010.pdf](http://www.pewinternet.org/~media/Files/Reports/2011/Internet%20and%20Campaign%202010.pdf) (finding that online contributions increased from three percent in 2006 mid-term elections to four percent in 2010); Aaron Smith, Pew Internet and Am. Life Project, The Internet’s Role in Campaign 2008, at 38-39 (2009), [www.pewinternet.org/~media/Files/Reports/2009/The\\_Internets\\_Role\\_in\\_Campaign\\_2008.pdf](http://www.pewinternet.org/~media/Files/Reports/2009/The_Internets_Role_in_Campaign_2008.pdf) (showing that nine percent made online contributions).

<sup>10</sup> Aaron Smith & Maeve Duggan, Pew Research Ctr. Internet and Am. Life Project, Presidential Campaign Donations in the Digital Age 2 (2012), [www.pewinternet.org/~media/Files/Reports/2012/PIP\\_State\\_of\\_the\\_2012\\_race\\_donations.pdf](http://www.pewinternet.org/~media/Files/Reports/2012/PIP_State_of_the_2012_race_donations.pdf) (finding that 67% contributed in person, over telephone, or through mail); see also Republican Nat’l Comm., Growth & Opportunity Project 58 (2013), [http://goproject.gop.com/rnc\\_growth\\_opportunity\\_book\\_2013.pdf](http://goproject.gop.com/rnc_growth_opportunity_book_2013.pdf) (noting that, in 2012, “email raised more than twice the percentage of total funds it raised in 2008”).

<sup>11</sup> Smith & Duggan, supra note 10, at 2.

<sup>12</sup> See U.S. Gov’t Accountability Office, GAO-13-562T, U.S. Postal Service: Urgent Action Needed to Achieve Financial Sustainability 2-3 (2013), [www.gao.gov/assets/660/653841.pdf](http://www.gao.gov/assets/660/653841.pdf). But see Lisa Rein, Federal Government Still Depends Heavily on Snail Mail, Wash. Post, June 5, 2011, [www.washingtonpost.com/politics/federal-government-still-depends-heavily-on-snail-mail/2011/06/05/AGIA8hJH\\_story.html](http://www.washingtonpost.com/politics/federal-government-still-depends-heavily-on-snail-mail/2011/06/05/AGIA8hJH_story.html) (describing increase in government use of first-class mail); Republican Nat’l Comm., Growth & Opportunity Project 59 (2013) (noting continuing relevance of direct mail in political fundraising as it “raised twice as much as the web” for Republican Party in 2012 presidential election).

<sup>13</sup> See U.S. Gov’t Accountability Office, supra note 12, at 3 (attributing decrease in paper mail to increase in “competition from electronic alternatives”).

The public is moving from paper to electronic methods in terms of obtaining government information as well. A 2015 study showed that 40% of smartphone owners had looked up government services or information from their phones in the past year.<sup>14</sup> At the same time, the federal government has also been transitioning to electronic records management. A 2011 Presidential Memorandum directed towards records management reform noted that “[d]ecades of technological advances have transformed agency operations, creating challenges and opportunities for agency records management. Greater reliance on electronic communication and systems has radically increased the volume and diversity of information that agencies must manage.”<sup>15</sup> Indeed, a bipartisan congressional group noted in 2014 that the “acceptance of electronic documents has become a cornerstone of internet commerce and is vital to our country’s economy” and urged federal government adoption of tools, such as electronic signatures, which “have reduced paper burdens for consumers and streamlined business operations throughout the United States, providing remarkable consumer gains in terms of convenience, ease of use, transaction speed and reduced costs.”<sup>16</sup>

In recent years, the Commission has recognized this trend towards electronic records and communication by establishing nonregulatory procedures for the public to electronically submit Freedom of Information Act (“FOIA”) requests, comments on rulemakings, and comments on draft advisory opinions.<sup>17</sup>

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<sup>14</sup> Pew Research Ctr., U.S. Smartphone Use in 2015, at 5 (2015), [www.pewinternet.org/files/2015/03/PI\\_Smartphones\\_0401151.pdf](http://www.pewinternet.org/files/2015/03/PI_Smartphones_0401151.pdf).

<sup>15</sup> Presidential Memorandum, Managing Government Records, 76 FR 75423, 75423 (Dec. 1, 2011); see also Office of Mgmt. & Budget & Nat’l Archives and Records Admin., M-12-18, Managing Government Records Directive (2012), [www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-18.pdf](http://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-18.pdf) (setting goals and steps for federal agencies to eliminate paper and use electronic recordkeeping).

<sup>16</sup> Julian Hatten, Lawmakers Want More E-signatures, The Hill, July 14, 2014, <http://www.thehill.com/policy/technology/212170-lawmakers-want-more-e-signatures>.

<sup>17</sup> See, e.g., FEC, Freedom of Information Act, [www.fec.gov/press/foia.shtml#search=FOIA](http://www.fec.gov/press/foia.shtml#search=FOIA) (last visited Oct. 5, 2016); FEC, Procedures Regarding Draft Advisory Opinions, [www.fec.gov/law/draftaos.shtml](http://www.fec.gov/law/draftaos.shtml) (last visited Oct. 5, 2016); FEC, Submit Comments on Ongoing Rulemakings, [www.fec.gov/fosers](http://www.fec.gov/fosers) (last visited Oct. 4, 2016).

The statutes that the Commission is charged with implementing — the Presidential Election Campaign Fund Act, 26 U.S.C. 9001-13, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031-42 (collectively, the “Funding Acts”), and the Federal Election Campaign Act, 52 U.S.C. 30101-46 (“FECA”) — largely predate this technological evolution, as do many of the Commission’s regulations. For example, these statutes and regulations generally contemplate contributions and disbursements being made only by cash, check, or “draft,” without taking into account electronic transactions, records, or communications. Thus, to implement FECA and the Funding Acts in a manner that accounts for the increased use of and reliance on newer technologies, the Commission is considering updates to its regulations, as described below.

### C. Proposed General Definitions

Many of the Commission’s current regulations do not account for technological developments in the creation, maintenance, and submission of electronic documentation, particularly in the context of electronic transactions. The Commission therefore proposes to revise its regulations to encompass electronic documents and transactions. Specifically, the Commission proposes to add new general definitions to 11 CFR part 100 — for the terms “record,” “written, writing, and a writing,” and “signature and signed” — and to revise the existing definition of “file, filed, and filing” at 11 CFR 100.19. The Commission intends each of these definitions to apply to all regulations implementing FECA and the Funding Acts in 11 CFR chapter 1, subchapters A-F (parts 100 through 300 and 9000 through 9042).<sup>18</sup> These new and revised definitions are designed to be broad enough to encompass both traditional (paper) and

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<sup>18</sup> See 11 CFR 9001.1 (applying definitions in part 100 to public finance regulations unless expressly stated otherwise), 9031.1 (same). The proposed part 100 definitions would not apply to the administrative regulations in parts 1-8 (such as those implementing the Privacy Act or FOIA), which generally have their own definition sections because they implement different statutes than the regulations in the remainder of 11 CFR chapter 1.

electronic documents and flexible enough to remain relevant as new forms of electronic documentation emerge in the future.

#### 1. New Definition of “Record” — Proposed 11 CFR 100.34

FECA requires each political committee to “keep an account of” its contributions and disbursements and to maintain and preserve certain records.<sup>19</sup> The Funding Acts similarly require that certain records be kept, and furnished to the Commission on request.<sup>20</sup> The Commission’s regulations implementing these requirements refer to “record(s)” almost 150 times, but few such references that include definitions or specific examples refer to electronic documentation.<sup>21</sup> The Commission has therefore received numerous requests for guidance regarding how its recordkeeping provisions apply to electronic records.<sup>22</sup>

The Commission now proposes to add a general definition of “record” at 11 CFR 100.34 that would expressly include both paper and electronic records. Proposed 11 CFR 100.34 has two components.

First, § 100.34(a) would define “record” broadly, as “information that is inscribed on a tangible medium or that is stored in an electronic or other medium from which the information can be retrieved and reviewed in visual or aural form.” The definition draws on several sources that describe a variety of paper and electronic records. These sources include Black’s Law

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<sup>19</sup> See 52 U.S.C. 30102(c), (d), (h)(2), (i); see also 52 U.S.C. 30104(i)(8)(A)(ii) (including in definition of “bundled contribution” contributions received and credited through “records,” among other methods).

<sup>20</sup> See 26 U.S.C. 9003(a)(2), 9012(d)(1)(B), 9033(a)(2), 9042(c)(1)(B); see also 26 U.S.C. 9009(b) (authorizing Commission to require keeping and submission of records), 9039(b) (same).

<sup>21</sup> See, e.g., 11 CFR 102.9(b)(2) (requiring records such as canceled checks, receipts, and carbon copies for disbursements over \$200), 102.9(d) (addressing best efforts to obtain “receipts, invoices, and cancelled checks”); but see 11 CFR 102.9(a)(4) (requiring photocopy of each check or written instrument or digital image of each check or written instrument), 104.22(a)(6)(ii)(A) (defining “record” for lobbyist bundling purposes to include electronic records).

<sup>22</sup> See, e.g., Advisory Opinion 1995-09 (NewWatch PAC) (approving proposal to maintain records supporting electronic fund transfers); Advisory Opinion 1993-04 (Christopher Cox Congressional Committee); Advisory Opinion 1994-40 (Alliance for American Leadership); see also FEC, Campaign Guide: Congressional Candidates and Committees 76 (2014), [www.fec.gov/pdf/candgui.pdf](http://www.fec.gov/pdf/candgui.pdf) (describing recordkeeping for credit card disbursements).

Dictionary,<sup>23</sup> the Federal Rules of Evidence,<sup>24</sup> Federal Rules of Civil Procedure,<sup>25</sup> the Electronic Signatures in Global and National Commerce Act (also known as the E-Sign Act),<sup>26</sup> and the Uniform Electronic Transactions Act (“UETA”).<sup>27</sup> The proposed definition uses the term “information” (as do the Black’s Law Dictionary, E-Sign Act, and UETA definitions of “record”) rather than more specific examples of the forms in which information may be presented (such as memoranda, reports, and other examples used in the Federal Rules of Evidence and Federal Rules of Civil Procedure definitions of “record”). By proposing to use this broader term, the Commission intends the definition to be flexible enough to encompass any new forms of memorializing information that may arise as new documentation technologies emerge.

Similarly, the Commission intends the definition of “record” to be flexible with respect to the media in which information may be memorialized. Thus, the Commission proposes to include in the definition information that is “inscribed on a tangible medium” or “stored in an electronic or other medium.” Similar language is used in the Black’s Law Dictionary, E-Sign

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<sup>23</sup> See Record, Black’s Law Dictionary (10th ed. 2014) (“record” is “[i]nformation that is inscribed on a tangible medium or that, having been stored in an electronic or other medium, is retrievable in perceivable form” (citing UCC 1-201(b)(31)).

<sup>24</sup> See Fed. R. Evid. 101(b)(4) (“record” includes “a memorandum, report, or data compilation”), 1001(b) (“‘recording’ consists of letters, words, numbers, or their equivalent recorded in any manner”), 1001(d) (“original” recording is “recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, ‘original’ means any printout — or other output readable by sight — if it accurately reflects the information.”).

<sup>25</sup> See Fed. R. Civ. P. 34(a)(1)(A) (party may serve discovery of “any designated documents or electronically stored information — including writings, drawings, graphics, charts, photographs, sound recordings, images, and other data or data compilation — stored in any medium from which information can be obtained directly or, if necessary, after translation by the responding party into a reasonably usable form”).

<sup>26</sup> See 15 U.S.C. 7006(9) (“record” is “information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form”), 7006(4) (“electronic record” is record “created, generated, sent, communicated, received, or stored by electronic means”).

<sup>27</sup> See Unif. Elec. Transactions Act 2(7) (Nat’l Conference of Comm’rs on Unif. State Laws 1999), [www.uniformlaws.org/shared/docs/electronic%20transactions/ueta\\_final\\_99.pdf](http://www.uniformlaws.org/shared/docs/electronic%20transactions/ueta_final_99.pdf) (“electronic record” is “record created, generated, sent, communicated, received, or stored by electronic means”), 2(13) (“record” is “information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form”); see also id. at 2(5) (“‘Electronic’ means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities”). The UETA is a model law developed by the National Conference of Commissioners on Uniform State Laws. It has been adopted in 47 states and the District of Columbia.

Act, UETA, and Federal Rules of Civil Procedure definitions of “record.” By including information stored in electronic “or other” media, the Commission intends the definition of “record” to be broad and flexible enough to address any new forms of media on which information may be stored as technology develops.

The Commission proposes to require any information stored on “electronic or other” (non-tangible) media to be retrievable and reviewable in visual or aural form. Most of the source definitions noted above similarly require information to be both retrievable and perceivable. The Commission proposes to require information to be retrievable in “visual or aural” form so that the Commission can review the record and, when appropriate, make it available to the public. In essence, therefore, the Commission intends the definition to enable any person to comply with the Commission’s recordkeeping regulations through the use of tangible or intangible media, so long as the information stored in such records can be retrieved and reviewed.

The Commission seeks comment on the proposed definition of “record.” Is it too narrow or too broad? Would the proposed definition benefit from providing specific examples of “records”? If so, what examples should the Commission add?

Second, proposed 11 CFR 100.34(b) requires any person who provides an electronic (or otherwise non-tangible) record to the Commission to provide the equipment and software needed to retrieve and review the information in the record, upon request by, and at no cost to, the Commission. The proposed regulation specifies that the Commission may request such equipment and software when the Commission is unable to review the record using the Commission’s existing equipment and software. A comparable requirement currently appears in 11 CFR 102.9(a)(4)(ii) for political committees that maintain digital images of checks or written

instruments for contributions exceeding \$50 and in 11 CFR 9036.2(b)(1)(vi) for publicly funded candidates submitting certain digital images. If the Commission adopts proposed § 100.34(b), it would remove the separate requirements in 11 CFR 102.9(a)(4)(ii) and 9036.2(b)(1)(vi).<sup>28</sup>

In conjunction with the proposed definition, the Commission proposes to make conforming amendments to a number of regulations.

First, the Commission proposes to make conforming changes by replacing references to “copy,” “journal,” “document,” or “documentation” with references to “record” in the following provisions: 11 CFR 100.82(e)(1)(i) (recordkeeping for bank loans), 100.82(e)(2)(ii) (same), 100.93(j)(1) through (3) (recordkeeping requirement for travel by aircraft and other conveyances), 100.142(e)(1)(i) (recordkeeping for bank loans), 100.142(e)(2)(ii) (same), 102.9(b)(2)(i)(B) and (b)(2)(ii) (recordkeeping for disbursements), 102.9(f) (recordkeeping requirements for designations, redesignations, attributions, and dates of contributions), 102.11 (written journal of disbursements from petty cash funds), 104.10(a)(4) (recordkeeping requirement in support of allocation), 104.10(b)(5) (same), 104.14(b)(4)(iv) and (v) (recordkeeping requirement for loan repayments), 104.17(a)(4) (recordkeeping requirement in support of allocation), 104.17(b)(4) (same), 106.2(a)(1) (same), 106.2(b)(2)(ii) (same), 106.2(b)(2)(v) (same), 110.1(l)(1) (recordkeeping for designations of contributions), 110.1(l)(4)(i) (recordkeeping for date contribution made, redesignation, and reattribution), 110.1(l)(6) (same), 111.4(d)(4) (enforcement complaints), 111.12(a) and (b) (subpoenas duces tecum in the enforcement process),<sup>29</sup> 111.15(c) (agreements regarding production of documents),

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<sup>28</sup> The Commission does not propose to remove or amend general requirements in the Funding Act regulations that political committees and other persons provide documentation (including user guides, technical manuals, formats, and layouts) and personnel, as necessary, to explain the capabilities of software produced to the Commission. See, e.g., 11 CFR 9003.1(b)(4), 9003.6(c), 9033.1(b)(5), 9033.12(c). These more extensive requirements remain necessary in the context of the mandatory audits of committees that receive public funds.

<sup>29</sup> The proposed revisions to 11 CFR 111.12(a) and 111.15(c) would render these provisions consistent with the equivalent provisions of the Federal Rules of Civil Procedure, which were amended in 2006 to explicitly include

111.35(e) (submissions challenging administrative fines), 111.36(b) through (e) (same), 114.8(d)(2) and (3) (trade association solicitation approvals), 9003.1(b)(2) through (5) (conditions for public funding eligibility), 9003.5 (recordkeeping for disbursements), 9003.5(b), (b)(1)(ii)(A) and (B), (b)(1)(iii) and (iv), (b)(4), and (c) (same), 9003.6(c) (production of computer information), 9004.7(b)(5)(iv) and (v) (recordkeeping for payments for accommodations and travel), 9004.9(d)(1)(i) and (e) (determining assets of publicly funded committees), 9007.1(b)(1)(iv) and (c)(2) (audits of publicly funded committees), 9033.1(b)(2) through (6) (conditions for public funding eligibility), 9033.2(c) (matching fund submissions), 9033.11 (recordkeeping for disbursements), 9033.11(b), (b)(1)(ii)(A) and (B), (b)(1)(iii) and (iv), (b)(4), and (c) (same), 9033.12(c) (production of computer information), 9034.2(c)(1)(iii) (recordkeeping for attribution of contributions), 9034.5(c)(1) and (d) (reporting debts), 9034.7(b)(5)(iv) and (v) (same), 9034.8(b)(4) (joint fundraising recordkeeping), 9035.1(c)(3) (publicly funded committee expenditure limitation compliance), 9036.1(b)(3), (4), and (7) (matching fund submissions), 9036.2(b)(1)(vi) and (vii) (same), 9036.3(b), (b)(4), and (d) (same), 9036.4(b)(4) (same), 9036.5(c)(1) (matching fund resubmissions), 9038.1(b)(1)(iv) and (c)(2) (audits of publicly funded committees), 9038.2(b)(3) (matching fund repayments), 9039.2(a)(3) and (b) (continuing review of publicly funded committees), and 9039.3(b)(2)(vi) (subpoenas). The Commission proposes to refer to the defined term “record” in these provisions to increase consistency in the regulatory terminology. Moreover, by changing these provisions’ references from “copy,” “document,” and “journal” to “record,” the Commission intends to avoid the implication that these provisions are intended to refer only to paper materials or to mean something other than what is meant by “record.” The Commission seeks comment on

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“electronically stored information” within the scope of material subject to document requests and subpoenas. See Fed. R. Civ. P. 34(a)(1)(A), 45(a)(1)(A)(iii).

whether these proposed conforming amendments will enhance the clarity of the amended regulations. In addition, are there other Commission regulations that should be revised to incorporate the defined term “record” in lieu of another term?<sup>30</sup>

Second, the Commission proposes to replace the regulatory requirements that a committee receiving a check or other written instrument designated for a specific election must retain “a full-size photocopy of the check or written instrument.” 11 CFR 110.1(l)(1) and (l)(4)(ii); see also 11 CFR 9036.1(b)(5) and (6) (referring to records that include “full-size photocopy” of contribution checks). Recognizing that such records may reasonably be retained in forms other than “a full-size photocopy,” the Commission proposes to amend 11 CFR 110.1(l)(1) and (l)(4)(ii) and 9036.1(b)(5) and (6) to require maintenance or submission, as appropriate, of a “record” that contains a complete image of that instrument. Are there other Commission regulations that similarly incorporate unnecessarily narrow record formats and should be expanded to include electronic records?

The Commission does not propose to revise the references to “full-size photocopies” in 11 CFR 9036.1(b)(3) because that section already provides two procedures for submission of records: one for paper records and another for digital records. The Commission welcomes comment on whether it should simplify § 9036.1(b)(3) to provide only one procedure applicable to all records.

Finally, the Commission proposes to make conforming revisions to two provisions that describe the administrative record in public finance matters. The Commission proposes to add

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<sup>30</sup> The Commission is also proposing to replace the term “document” in certain regulations with “writing,” as discussed below. The Commission is not proposing to revise the terms “copy,” “documentation,” and “document” when they are used as terms of art or as verbs or when they intentionally refer to paper. See, e.g., 11 CFR 100.134(e)(1)-(3) (“organizational documents” of membership organizations), 102.9(b)(2) (specifying how disbursements “shall be documented”), 4.1(j) (including “paper copy” in definition of “duplication” under FOIA).

“records” to the lists of materials that comprise the administrative record for final determinations in §§ 9007.7(a) and 9038.7(a).

What additional conforming amendments should the Commission make in conjunction with the proposed definition of “record”? For example, the Commission defines “records” for purposes of the lobbyist bundling rule in 11 CFR 104.22(a)(6)(ii)(A) as “written evidence (including writings, charts, computer files, tables, spreadsheets, databases, or other data or data compilations stored in any medium from which information can be obtained) that the reporting committee or candidate involved attributes to a lobbyist/registrant.” Should the Commission amend this or other provisions in light of the proposed definition of “record”?

## 2. New Definitions of “Writing” and “Written” — Proposed 11 CFR 100.35

FECA requires certain reports, statements, and other materials to be “written” or “in writing.”<sup>31</sup> The Funding Acts have similar “writing” and “written” requirements.<sup>32</sup> In the Commission’s regulations, the terms “written” and “writing” (or forms of these words) appear more than 200 times, usually without definition or example.<sup>33</sup> The Commission has, however, interpreted at least one of these regulations to encompass certain categories of electronic documents.<sup>34</sup>

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<sup>31</sup> See, e.g., 52 U.S.C. 30101(8)(B)(vii)(II) (instrument for loans), 30101(9)(A)(ii) (contract to make expenditure), 30102(e)(1) (designation of committee), 30103(d)(1) (termination statement), 30104(a)(6)(A) (48-hour notice), 30108(a) (advisory opinion requests and advisory opinions), 30109(a)(1) (enforcement complaints), 30109(a)(12)(A) (confidentiality waiver), 30118(b)(4)(B) (semiannual solicitations); see also 52 U.S.C. 30107(a)(1) (Commission authority to require reports), 30124(a) (fraudulent misrepresentation).

<sup>32</sup> See, e.g., 26 U.S.C. 9002(1) (authorization of committee), 9003(a) (agreement for eligibility for payment), 9032(1) (authorization of committee), 9032(9) (person authorized to incur expense), 9033(a) (agreement for eligibility for payment), 9034(a) (written instrument as contribution); see also 26 U.S.C. 9009(b) (Commission’s authority to require the keeping and submission of records), 9039(b) (same).

<sup>33</sup> See, e.g., 11 CFR 102.7(c) (treasurer’s authorization), 109.33(a) (assignments), 110.1(b) (redesignation of contribution), 9003.3(a)(1)(i)(C) (designations to GELAC), 9007.2(c) (disputing determinations).

<sup>34</sup> See, e.g., Electronic Contributor Redesignations, 76 FR 16233 (Mar. 23, 2011) (noting internet-based redesignation method that Commission found to be “in writing and be signed by the contributor” as required by 11 CFR 110.1(b)(5) and 110.2(b)(5)).

To clarify that “written” material or material “in writing” can be either tangible or electronic, the Commission is proposing to add a new general definition at 11 CFR 100.35.<sup>35</sup> The proposed definition would essentially replicate Rule 1001(a) of the Federal Rules of Evidence by defining the terms “written,” “in writing,” and “a writing” to mean “consisting of letters, words, numbers, or their equivalent set down in any medium or form, including paper, email or other electronic message, computer file, or digital storage device.”<sup>36</sup> In this proposed definition, the Commission intends “writing” and “written” to be broad enough to encompass not only letters and words, but also their equivalent — such as images or graphics (e.g., emojis) used in lieu of text — that may arise as new forms of electronic writing emerge in the future.<sup>37</sup> As in the definition of “record,” the Commission proposes that “writing” may be set down in any medium or form, including electronic. The examples in the proposed definition are drawn from examples in the Black’s Law Dictionary definition of “writing” and include those media that the Commission believes are most likely to be used by political committees. However, the examples are intended to be illustrative and not an exhaustive list.

The Commission seeks comment on the proposed definition. Is the definition broad enough to encompass writings in various media, while also specific enough to provide meaningful guidance? Is any part of the definition unnecessary or potentially problematic? Are the examples of “medi[a] and form[s]” helpful? Would the proposed definition benefit from different or additional examples? Should the Commission specifically require that a writing be

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<sup>35</sup> Some Commission regulations that require a document to be “in writing” or “written” also require the document to be signed. The Commission is proposing a new definition of “signed,” below.

<sup>36</sup> See Fed. R. Evid. 1001(a) (“writing” consists of letters, words, numbers, or their equivalent set down in any form”). The Federal Rules of Evidence separately clarify that “a reference to any kind of written material or any other medium includes electronically stored information.” Fed. R. Evid. 101(b)(6).

<sup>37</sup> See Elahe Izadi, *The Word of the Year Is Not Actually a Word. It’s this Emoji: [heart emoji]*, Wash. Post, Dec. 29, 2014, [www.washingtonpost.com/news/the-intersect/wp/2014/12/29/the-word-of-the-year-is-not-actually-a-word-its-this-emoji](http://www.washingtonpost.com/news/the-intersect/wp/2014/12/29/the-word-of-the-year-is-not-actually-a-word-its-this-emoji) (noting that 2014’s annual survey resulted in graphic symbol as most frequently used English “word” on internet).

reviewable<sup>38</sup> and/or reproducible,<sup>39</sup> or would that requirement be adequately encompassed by the proposed definition of “record,” as discussed above?

In conjunction with the proposed definition, the Commission proposes to make conforming changes to a number of regulations, as described below.

First, the Commission proposes to amend three regulations that refer to “electronic mail” as a “written method” of notification by which a political committee may notify a contributor that the committee has redesignated or reattributed a contribution. See 11 CFR 110.1(b)(5)(ii)(B)(6) (notification of redesignation), 110.1(b)(5)(ii)(C)(7) (same), 110.1(k)(3)(ii)(B)(3) (notification of reattribution). These references to “electronic mail” will be redundant if the Commission adopts the proposed new definition of “written.” Furthermore, the continued inclusion of these references might cause confusion regarding whether other Commission regulations that address “written” material without specifically mentioning “electronic mail” implicitly exclude email. To avoid such redundancy and confusion, the Commission proposes to remove these three references to electronic mail.

Second, the Commission proposes to make conforming changes regarding notifications, reports, and other communications that, under existing regulations, must be made by “letter.” In light of the proposed broad definition of “writing,” and to avoid an implication that the communications described in those provisions must be on paper, the Commission proposes to replace each reference to “letter” with “writing” in the following provisions: 11 CFR 100.3(a)(3) (candidate disavowal), 110.6(c)(1)(v) (conduit reporting), 111.9(a) and (b) (Commission

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<sup>38</sup> See Writing, Black’s Law Dictionary (10th ed. 2014) (defining “writing” as any “intentional recording of words . . . that may be viewed or heard with or without mechanical aids. This includes hard-copy documents, electronic documents on computer media, audio and videotapes, e-mails, and any other media on which words can be recorded.”).

<sup>39</sup> See 15 U.S.C. 7001(e) (providing that if statute or regulation requires certain records to “be in writing, the legal effect, validity, or enforceability of an electronic record of such . . . record may be denied if such electronic record is not in a form that is capable of being retained and accurately reproduced for later reference”).

notification of reason to believe finding), 111.17(a) and (b) (Commission notification of probable cause finding), 111.18(d) (respondent notification of desire to negotiate conciliation), 111.37(a) and (b) (Commission notification of administrative fine determination), 111.40(a) (same), 116.8(b) (creditor notification of intent to forgive debt), 9003.1(a)(1) (candidate agreement to comply with public funding conditions), 9032.2(d) (candidate disavowal), 9033.1(b)(8) (submission of information changes by publicly funded candidates), and 9033.5(a)(2) (publicly funded candidate notice of inactivity).

Similarly, the Commission proposes to revise several references to “letters” or “mailings” by replacing them with references to the type of information contained therein, such as “certification,” “report,” “notice,” or “agreement.” For example, 11 CFR 9003.2(d) currently states: “Major party candidates shall submit the certifications required under 11 CFR 9003.2 in a letter which shall be signed and submitted within 14 days after receiving the party’s nomination for election,” and the provision makes several additional references to “such letter.” The Commission proposes to revise § 9003.2(d) to read: “Major party candidates shall sign and submit the certifications required under 11 CFR 9003.2 within 14 days after receiving the party’s nomination for election,” and to replace further references to “such letter” with the phrase “such certification.” The Commission proposes to similarly replace each reference to “letter” or “mailing” in the following provisions: 11 CFR 110.6(c)(1)(ii) (conduit reporting), 111.6(a) (response to complaint in enforcement action), 111.23(a) and (b) (respondent notification of legal representation), 114.8 (trade association’s solicitation), 116.8(b) (creditor notification of intent to forgive debt), 200.3(a)(2) (Commission solicitation of comments from Commissioner of Internal Revenue on rulemaking petition), 200.3(a)(3) (Commission notification to rulemaking petitioner), 200.4(b) (same), 201.3(b)(1) (candidate submissions under public funding rules),

201.3(b)(2)(i) (Commission notifications under public funding rules), 9003.1(a)(2) (candidate agreement to comply with public funding conditions), 9033.1(a)(1) (candidate agreement to comply with public funding conditions), and 9033.2(a)(1) (publicly funded candidate certification).

The Commission is also proposing to revise some uses of “letter” in regulations to which the proposed definition of “writing” would not apply. See supra note 18. Specifically, the Commission proposes the following revisions to its public disclosure and Rehabilitation Act regulations: (1) replace “Letter requests” with “Requests” in 11 CFR 5.4(a)(5) (describing types of public disclosure records); (2) replace the reference to “a letter containing” certain Rehabilitation Act notifications with a requirement for the notifications to be “in writing,” 11 CFR 6.170(g); and (3) conform § 6.170(h) to the forgoing change by replacing that section’s reference to “the letter” required by § 6.170(g) with “the notification.”

Third, the Commission is proposing to replace the terms “written document” and “written documentation” with “writing” in 11 CFR 100.29(b)(6)(ii)(A) and 9034.2(c)(1)(i).

Finally, the Commission proposes conforming changes to account for the fact that the new general definition of “written” may create confusion when applied to the use of that term in 11 CFR 300.64(c)(3). Section 300.64(c)(3) provides that certain “written” material must satisfy the disclaimer requirements of 11 CFR 110.11(c)(2). Section 110.11, however, sets forth requirements such as font size and display type — requirements that, both on their face and under the explicit terms of the regulation, apply only to “printed” material.<sup>40</sup> See 11 CFR 110.11(c)(2). Thus, to avoid suggesting that the proposed new definition of “written” would

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<sup>40</sup> Most issues concerning the disclaimer requirements for electronic communications, such as the treatment of electronic materials as “printed,” are outside the scope of this rulemaking. They may be addressed in a separate rulemaking. See Internet Communication Disclaimers, 76 FR 63567 (Oct. 13, 2011); see also infra note 106. To review and comment on documents on that subject, visit [www.fec.gov/fosers](http://www.fec.gov/fosers), reference REG 2011-02.

alter the substantive application of § 300.64, the Commission proposes to conform that section to § 110.11 by replacing the word “written” with “printed” in § 300.64(c)(3)(ii) and (iii) and removing the word “written” from § 300.64(c)(3)(v).

The Commission seeks comment on the conforming changes proposed above.<sup>41</sup> Should the Commission make additional conforming amendments if it adopts the new definition?

The Commission also seeks comment on whether any existing regulatory references to “written,” “in writing,” or “a writing” should be excluded from the proposed new definition. For example, several Commission regulations use the term “written instrument” to mean a check, money order, or negotiable instrument. The Commission believes that “written instrument” is generally understood to be a term of art, such that it would not be affected by a new definition of “written,” but should the new definition of “written” nonetheless expressly exclude the term “written instrument”?<sup>42</sup> Are there other uses of “written” in the Commission’s regulations that should be excluded or defined separately from the proposed new general definition?

### 3. New Definition of “Signature” and “Electronic Signature” — Proposed 11 CFR 100.36

FECA and the Funding Acts require certain documents to be signed,<sup>43</sup> sworn, notarized, submitted under oath, or certified under penalty of perjury.<sup>44</sup> In Commission regulations, the

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<sup>41</sup> The Commission is not proposing to make conforming changes to the regulations regarding publicly funded nominating conventions, 11 CFR part 9008, because these regulations may be the subject of a separate rulemaking. See Press Release, FEC Issues Interim Reporting Guidance for National Party Committee Accounts, (Feb. 13, 2015), [www.fec.gov/press/press2015/news\\_releases/20150213release.shtml](http://www.fec.gov/press/press2015/news_releases/20150213release.shtml); see also Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, 128 Stat. 2130, 2772 (2014) (amending FECA with respect to national party convention funding); Gabriella Miller Kids First Research Act, Pub. L. No. 113-94, 128 Stat. 1085 (2014) (amending Funding Acts with respect to national party convention funding). To review and comment on documents on that subject, visit <http://www.fec.gov/fosers>, reference REG 2014-10.

<sup>42</sup> See 11 CFR 102.9(a)(4)(i)-(ii), 104.8(d)(1), 110.1(k)(3)(ii)(B)(1), 110.1(l)(1), 110.1(l)(4)(ii), 110.6(c)(1)(v), 110.20(a)(5)(iii), 9034.2(a)(1), 9034.2(a)(4), 9034.2(b), 9034.2(c), 9034.3(c), 9034.9(c)(7)(iv), 9036.1(b)(3), 9036.2(b)(1)(vi), 9036.3(b)(1)-(3), 9036.3(c)(3), 9036.5(c)(1).

<sup>43</sup> See 52 U.S.C. 30109(a)(1) (enforcement complaints), 30109(a)(4)(B)(ii) (conciliation agreements); see also 52 U.S.C. 30104(a)(1) (reports), 30104(a)(11)(C) (requiring Commission to provide method other than signature for verification of electronically filed reports), 30104(d)(3) (same).

terms “sign,” “signed,” and “signature” (and variants thereof) appear more than 50 times. Only some of these references provide for electronic signatures,<sup>45</sup> although the Commission has interpreted at least one of the regulations that does not so provide to nonetheless allow certain electronic signatures.<sup>46</sup> Similarly, only some of the Commission regulations requiring certification under penalty of perjury provide for electronic certifications.<sup>47</sup>

To clarify that the regulatory signature requirements may generally be met electronically, the Commission is proposing to add a general definition of “signature” at 11 CFR 100.36. The proposed definition contains three paragraphs.

Proposed paragraph (a) defines “signature” as “an individual’s name or mark on a writing or record that identifies the individual and authenticates the writing or record.” This definition draws on legal and other dictionary definitions of “signature.”<sup>48</sup> It also incorporates the terms

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<sup>44</sup> See 52 U.S.C. 30104(b)(6)(B)(iii) (independent expenditure reports), 30104(c)(2)(B) (same), 30104(f)(2) (electioneering communication reports), 30107(a)(1) (reports and answers), 30109(a)(1) (enforcement complaints), 26 U.S.C. 9003(b)-(c) (payment eligibility), 9004(d) (personal fund expenditures); see also 52 U.S.C. 30104(a)(11)(C) (requiring Commission to provide method for perjury certifications for electronically filed reports), 30104(d)(3) (same).

<sup>45</sup> See, e.g., 11 CFR 104.18(g) (providing for electronic signatures for reports), 111.4(b)(2) (complaints), 111.23(a) (designation of counsel), 300.37(d) (certifications by certain tax-exempt organizations), 9034.2(c) (allowing for alternative signatures for contributors over the internet).

<sup>46</sup> See, e.g., Electronic Contributor Redesignations, 76 FR 16233; see also Advisory Opinion 2013-12 (Service Employees International Union COPE) at 3-4 (discussing Commission’s history of approving “authorizations in a form other than the traditional written signature, where the use of technology would not compromise the intent of the [FECA] or Commission regulations”).

<sup>47</sup> Compare 11 CFR 104.4(d)(2) (electronic certification under penalty of perjury for reporting), 104.18(g) (same), and 109.10(e)(2)(ii) (same), with 11 CFR 111.4(b)-(c) (notarization requirement for complaints), and 111.11 (sworn answers). See also 11 CFR 100.93(a)(3)(iv)(A) (aircraft operator certificated by Federal Aviation Administration or foreign authority), 100.93(g)(3) (certification from aircraft service provider), 102.2(a)(3) (certification by committee of multicandidate committee criteria), 104.3(b)(3)(vii)(B) (committee’s certification, under penalty of perjury, in independent expenditure report), 104.3(d)(1)(v) (certification from lending institution concerning loans to political committee), 300.11(d) (signed written certification by 501(c) organization), 300.37(d) (same).

<sup>48</sup> See *Signature*, Black’s Law Dictionary (10th ed. 2014) (defining “signature” as any “name, mark, or writing used with the intention of authenticating a document” (citing U.C.C. 1-201(37) and 3-401(b) and Restatement (Second) of Contracts 134 (1979))); *Signature*, Oxford English Dictionary Online, www.oed.com (subscription required) (“A person’s name written (esp. in a distinctive way) so as to authenticate a document, authorize a transaction, or identify oneself as the writer or sender of a letter. Also: a distinctive mark or cross serving this purpose.”) (last visited Oct. 4, 2016); *Signature*, Random House Dictionary of the English Language, Unabridged (2nd ed. 1987) (defining “signature” as “a person’s name, or a mark representing it, as signed personally or by a deputy, as in subscribing a letter or other document”).

“writing” and “record,” as opposed to the source dictionaries’ use of the term “document,” to be consistent with the new definitions of those terms in proposed 11 CFR 100.34 and 100.35, discussed above. Unlike at least one source definition,<sup>49</sup> the definition of “signature” proposed here does not incorporate a subjective “intent” element, i.e., a requirement that a signature be affixed by the signer with a certain intention; rather, the Commission proposes an objective definition with which compliance can be initially determined on the face of the signed writing or record. The Commission seeks comment on this proposed definition of “signature.”

Proposed § 100.36(a) also provides that, unless otherwise specified, the definition of “signature” includes an “electronic signature.” Paragraph (b) of proposed 11 CFR 100.36 in turn defines an “electronic signature” as “an electronic word, image, symbol, or process that an individual attaches to or associates with a writing or record to identify the individual and authenticate the writing or record.” This definition is drawn from several sources, including Black’s Law Dictionary,<sup>50</sup> the E-Sign Act,<sup>51</sup> UETA,<sup>52</sup> and the Commission’s interpretive rule concerning electronic redesignations of contributions.<sup>53</sup> Proposed § 100.36(b) follows all of the source definitions of “electronic signature” in using the terms “symbol” and “process,” as well as in requiring that the electronic signature be attached to or associated with a writing or record. The Commission also proposes to include “word” and “image” as methods of electronic signature, based on the examples in Black’s Law Dictionary, to make clear that a writing or

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<sup>49</sup> See Signature, Black’s Law Dictionary (10th ed. 2014).

<sup>50</sup> This dictionary defines an “electronic signature” as an “electronic symbol, sound, or process that is either attached to or logically associated with a document (such as a contract or other record) and executed or adopted by a person with the intent to sign the document.” Electronic Signature, Black’s Law Dictionary (10th ed. 2014). The dictionary provides as examples “a typed name at the end of an email, a digital image of a handwritten signature, and the click of an ‘I accept’ button on an e-commerce site.” Id.

<sup>51</sup> See 15 U.S.C. 7006(5) (defining “electronic signature” as “an electronic sound, symbol, or process, attached to or logically associated with a . . . record and executed or adopted by a person with the intent to sign the record”).

<sup>52</sup> See UETA 2(8) (defining “electronic signature” as “an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record”).

<sup>53</sup> See Electronic Contributor Redesignations, 76 FR 16233.

record can be signed by these means (such as by inserting a digital image of a person's handwritten signature). And as with proposed § 100.36(a), proposed § 100.36(b) incorporates the terms "writing" and "record" to be consistent with the new definitions in proposed 11 CFR 100.34 and 100.35. The Commission thus intends the proposed definition to be flexible enough to encompass forms that electronic signatures may take as new technologies emerge.

The proposed definition intentionally differs from the source definitions in certain respects. For example, the proposed definition does not include "sound" as a form of electronic signature because the Commission's current and anticipated reporting technologies would not enable it to receive and make public audio signatures. Further, the Commission does not propose to distinguish between an "electronic signature" and a "digital signature." Black's Law Dictionary defines the latter as having a heightened level of security, integrity, and authenticity compared to an electronic signature,<sup>54</sup> but because the Commission utilizes other methods to ensure a heightened level of authenticity when required (such as notarization requirements, as discussed below), the Commission does not believe that the proposed definition of "signature" should differentiate between digital and electronic signatures.

Proposed paragraph (b) lists as examples of electronic signatures "a digital image of a handwritten signature" and "a secure, digital code attached to an electronically transmitted message that uniquely identifies and authenticates the sender." These examples are drawn from the definition of "digital signature" and examples of "electronic signature" in Black's Law Dictionary; the Commission believes them to be the forms of electronic signature most likely to be used by political committees. However, the examples are intended to be illustrative only and

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<sup>54</sup> See Digital Signature, Black's Law Dictionary (10th ed. 2014) (defining "digital signature" as "secure, digital code attached to an electronically transmitted message that uniquely identifies and authenticates the sender"), Electronic Signature, Black's Law Dictionary (10th ed. 2014) (stating that "electronic signature does not suggest or require the use of encryption, authentication, or identification measures").

not an exhaustive list. Are these examples helpful? Should other examples be included in the regulation?

As noted above, the proposed regulation would provide that electronic signatures are valid signatures “unless otherwise specified.” This language is intended to provide the Commission with flexibility to require more specific forms of electronic signatures, or even to prohibit electronic signatures, in certain circumstances. The Commission believes that preserving such flexibility is important because, as new technologies develop, some forms of electronic signatures may arise that are unreliable or otherwise not suitable for authenticating records. Are there Commission regulations for which the Commission should now require more specific forms of electronic signature in order to safeguard the integrity and authenticity of the signature?

In light of the proposed new definition of “signature,” the Commission also proposes conforming changes to regulations that currently have more specific signature requirements. For example, 11 CFR 104.4(d)(2) and 109.10(e)(2)(ii) currently specify that an independent expenditure report must be verified by one of two methods: by “handwritten signature” on reports filed on paper, or by “typing the treasurer’s name” on reports filed by electronic mail. The Commission proposes to revise these provisions to allow electronically filed independent expenditure reports to be verified by “electronic signature” (which might include, but would not be limited to, typing the treasurer’s name on the reports). The Commission also proposes to revise the electronic signature requirement at 11 CFR 9034.2(c), which defines “signature” for matchable presidential primary election payments made by credit or debit card, and to make other changes to that section as described further below. See *infra* Section (E)(3).

Paragraph (c) of proposed 11 CFR 100.36 provides that a “writing or record may be sworn, made under oath, or otherwise certified or verified under penalty of perjury, by electronic signature.” This proposal tracks the corresponding provision of the E-Sign Act, which provides that a legal requirement for a signature to be “acknowledged, verified, or made under oath” is “satisfied if the electronic signature of the person authorized to perform those acts . . . is attached to or logically associated with the signature or record.” 15 U.S.C. 7001(g).<sup>55</sup> The Commission seeks comment on whether this proposal provides sufficient safeguards of integrity and authenticity for material that must be sworn or otherwise verified. Should the Commission require additional safeguards? For example, in a recent interpretive rule, the Commission noted that a political committee could check a contributor’s electronic authorization against existing committee records to assure “the contributor’s identity and intent comparable to that of a written signature.”<sup>56</sup> Should all electronic oaths and certifications require some form of external verifiability (such as by reference to existing committee records as contemplated in the interpretive rule)? If so, how?

Finally, proposed paragraph (c) also states that “[a] writing or record may be notarized electronically pursuant to applicable State law.” A number of states currently allow for electronic notarization.<sup>57</sup> Is there any reason why the Commission should not accept documents notarized electronically pursuant to state law?

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<sup>55</sup> See also UETA sec. 11 (providing that notarization, acknowledgment, verification, or oath requirement is “satisfied if the electronic signature of the person authorized to perform those acts . . . is attached to or logically associated with the signature or record”).

<sup>56</sup> See Electronic Contributor Redesignations, 76 FR at 16233.

<sup>57</sup> The National Association of Secretaries of State issued a study in 2011 that examined electronic notarization as used in 16 states. See Nat’l Assoc. of Secs. of State, Issues and Trends in State Notary Regulation: NASS Report on State Notarization Policies and Practice 10-11 (2011); see also Electronic Notarization, Notary Pub. Adm’rs, [www.npa-section.com/electronicnotarization.html](http://www.npa-section.com/electronicnotarization.html) (last updated July 2016) (showing 23 states authorizing electronic notarization); Lisa Prevost, The E-Notary Public Is Slow to Catch On, N.Y. Times, May 22, 2015, [www.nytimes.com/2015/05/24/realestate/the-e-notary-public-is-slow-to-catch-on.html](http://www.nytimes.com/2015/05/24/realestate/the-e-notary-public-is-slow-to-catch-on.html) (discussing remote electronic notarization).

4. Revised Definition of “File, Filed, or Filing” — Proposed 11 CFR 100.19(g)

The Commission proposes to revise the definition of “file, filed, or filing” at 11 CFR 100.19 so that interested parties can more easily communicate electronically with the Commission. The Commission also proposes to make conforming amendments throughout 11 CFR chapter I.

Section 100.19 currently defines “file, filed or filing” to include certain forms of electronic submission, but only in the context of documents that must be filed with the Commission or the Secretary of the Senate under 11 CFR parts 101, 102, 104, 105, 107, 108, and 109. As such, the current rule addresses the filing of reports and statements only regarding independent expenditures, electioneering communications, and the organization, contributions, and disbursements of political committees. But, as described in more detail below, the Commission’s regulations also require or provide for the submission of numerous other documents to the Commission. Many of these current regulations regarding sending documents to the Commission specifically include the Commission’s mailing address (999 E Street, NW., Washington, DC 20463).<sup>58</sup> As such, the regulations suggest that the submissions must be made physically (such as by mail or hand-delivery), rather than electronically.

To provide the Commission with greater flexibility to accept documents electronically, the Commission proposes to add new paragraph (g) to 11 CFR 100.19. Under new paragraph (g), a document other than those already covered by paragraphs (a) through (f) may be filed with the Commission “in person or by mail, including priority mail or express mail, or overnight delivery service, [at the Commission’s street address], or by any alternative means, including electronic, that the Commission may prescribe.” The Commission intends to use this proposed

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<sup>58</sup> See, e.g., 11 CFR 1.3(b) (Privacy Act requests), 111.4(a) (complaints), 111.15(a) (motions to quash or modify subpoena), 112.1(e) (advisory opinion requests), 112.3(d) (comments on advisory opinion requests).

change to adopt such procedures for receiving electronic submissions — such as through online forms<sup>59</sup> or email<sup>60</sup> — as the Commission determines to be appropriate for the various categories of affected documents.

The Commission also proposes to revise the introductory paragraph of 11 CFR 100.19 to explicitly note the scope of new paragraph (g). This proposed change is not intended to have any effect on the existing rules with respect to documents governed by paragraphs (a) through (f).

Similarly, the Commission proposes to make conforming amendments by replacing the Commission’s street address in a number of regulations that refer to submissions to the Commission — or to a particular Commission officer, such as the Chief FOIA Officer — with references to “filing” and § 100.19(g), as appropriate, and by removing the Commission’s street address from the definition of “Commission.”<sup>61</sup> These regulations are 11 CFR 1.3(b) (Privacy Act requests), 1.4(a) (same), 2.2(a) (Sunshine Act), 4.5(a)(4)(i) (FOIA requests), 4.5(a)(4)(iv) (same), 4.7(b)(1) (same), 4.8(c) (FOIA appeals), 11 CFR 5.5(a) (Public Disclosure records requests), 5.5(c) (public disclosure requests via FOIA), 6.103(b) (Rehabilitation Act), 6.170(d)(3) (Rehabilitation Act complaints), 6.170(i) (Rehabilitation Act appeals), 7.2(a) (standards of conduct), 100.9 (definition of “Commission”), 102.2(a)(1) (statements of organization), 111.4(a) (enforcement complaints), 111.15(a) (motions to quash or modify subpoena), 111.16(c) (probable cause briefs), 112.1(e) (advisory opinion requests), 112.3(d) (advisory opinion comments), 200.2(b)(5) (petitions for rulemaking), 9002.3 (definition of “Commission”), and 9032.3 (same).

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<sup>59</sup> See, e.g., FEC, Searchable Electronic Rulemaking System – Basic Search, [sers.fec.gov/fosers](http://sers.fec.gov/fosers) (release date June 14, 2013) (web portal for commenting on rulemakings).

<sup>60</sup> See, e.g., FEC, Procedures Regarding Draft Advisory Opinions, [www.fec.gov/law/draftaos.shtml](http://www.fec.gov/law/draftaos.shtml) (establishing email address for comments on draft advisory opinions) (last visited Oct. 5, 2016).

<sup>61</sup> Because the definitions in part 100 of the Commission’s regulations generally do not apply to parts 1-8 of the regulations, the proposed references to “filing” in parts 1-8 would explicitly incorporate by reference new 11 CFR 100.19(g).

For the same reasons, the Commission also proposes to amend other regulatory requirements relating to communications by mail:

- Sections 4.5(a)(4)(i) and 4.8(b) currently require that certain information be included “on the envelope” in which a FOIA request or appeal is sent to the Commission. As revised, these regulations would state that such information must be clearly indicated on the “envelope or subject line, or in a similarly prominent location” of the communication.
- Section 112.4(g) currently provides that an advisory opinion must be “sent by mail, or personally delivered” by the Commission to the person who requested it. As revised, the provision would require only that the advisory opinion “be provided” by the Commission to the requestor, so as to encompass electronic transmission of the advisory opinion.
- Section 102.6(c)(2) currently provides that a solicitation of contributions to a separate segregated fund may be included “in” a bill for membership dues. Because such bills are now sometimes delivered electronically, rather than in paper form, the Commission proposes to change “in” to “with.” The substantive requirements for soliciting contributions to a separate segregated fund would not change.<sup>62</sup>
- In § 114.1(g), which provides a non-exhaustive list of the manner in which a solicitation may be made, the Commission proposes to add “emails” to the

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<sup>62</sup> The twice-annual solicitation of employees outside of the restricted class may be conducted only by mail sent to the employee’s residence. See 52 U.S.C. 30118(b)(4)(B); 11 CFR 114.6(c). Thus, the proposed change to 11 CFR 102.6(c)(2), which would allow for solicitations by means other than mail, would not apply to these twice-yearly solicitations.

existing list of “mailings, oral requests . . . , and hand distribution of pamphlets” to recognize that solicitations may be made electronically.<sup>63</sup>

- In § 116.9(a)(2), which describes what constitutes a political committee’s reasonable diligence in attempting to locate a creditor, the Commission proposes to add email as a valid means of attempting to contact the creditor.
- Sections 9003.1(b)(7) and 9033.1(b)(8) currently require submission of the “name and mailing address” of the person entitled to receive public fund payments on behalf of a candidate. The Commission proposes to require the person’s email address, as well.

To allow for electronic filing, notice, and service of documents and records in the Commission’s enforcement process, the Commission proposes several revisions to part 111 of its regulations. First, the Commission proposes to remove or limit requirements to file multiple copies of documents where multiple copies are no longer necessary. In 11 CFR 111.4(a), the Commission proposes to clarify that the requirement for a complainant to file three copies of a complaint applies to non-electronic filings only. In 11 CFR 111.15(a) and 111.16(c), the Commission proposes to delete the provisions that state that a respondent “should . . . if possible” file multiple copies of a motion or brief.

Second, the Commission proposes to revise the following regulations that currently refer to “enclos[ing]” a copy of a document: 11 CFR 111.5(a) (notification to respondent of complaint), 111.5(b) (same), and 111.16(b) (notification to respondent of probable cause recommendation). As revised, the regulations would provide that the Commission shall “provide” a copy of the relevant document.

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<sup>63</sup> The Commission does not propose to add an electronic reference to the non-exhaustive list at 11 CFR 114.1(f) of the manner in which a solicited contribution may be received because the list already includes payroll deduction, which may be accomplished electronically.

Third, the Commission proposes to revise 11 CFR 111.13(c) and (d), which govern the service of subpoenas, orders, and notifications, to add explicit electronic service options. The regulations currently allow for service by a number of means, including by mail, in person, and “by any other method whereby actual notice is given.” The Commission proposes to revise this last clause to read “by any other method, including electronically, whereby actual notice is given.”<sup>64</sup>

Finally, at 11 CFR 111.23(a)(1), the Commission proposes to add “email address” to the list of information about respondent’s counsel that must be provided to the Commission.

The Commission intends all of these proposed revisions to simplify and modernize the process by which it interacts with respondents and complainants during the enforcement process by providing options for electronic communications. Would these proposed revisions increase efficiency as intended? Would they create any additional burdens?

What other regulations would be implicated by the proposed revision to the definition of “file, filed, or filing” at 11 CFR 100.19? Should the Commission consider revising additional regulations to provide explicitly for electronic communications or for “filing” pursuant to the proposed definition?

#### D. Electronic Contributions

The Commission is proposing to revise its regulations to address electronic contributions. These revisions fall into three general categories that correspond to three stages in the electronic flow of funds from a contributor to a political committee: (1) when the contributor authorizes

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<sup>64</sup> The Commission does not propose to make any corresponding changes to 11 CFR 111.2(c) — which adds three days to each service period under part 111 for “any paper” served “by mail” — because electronic submissions are essentially immediate and therefore do not require extensions to account for delivery time.

the transaction; (2) when the entity processing the payment (the “payment processor”)<sup>65</sup> transfers the contribution to the recipient political committee; and (3) when the recipient political committee deposits the funds into its campaign depository. The Commission seeks comment on the proposed changes, especially in light of the standards and practices that vendors and payment processors use to process payments made by check, credit card, debit card, prepaid card, and other payment methods. The Commission is also seeking comment addressing the proposed rules in light of the methods by which vendors and payment processors verify a payor’s identity, attribute payments, and collect, maintain, and transmit transaction records.<sup>66</sup> The Commission is particularly interested in the perspectives of operators and users of established and emerging electronic payment platforms — such as PayPal, Venmo, BitPay, Square, and other electronic wallet, swipe P2P, mobile app, and social media payment platforms — as to the operation of these proposed rules on those platforms.<sup>67</sup> The Commission also seeks comment on the proposed rules in light of how these practices and standards might change as new technologies emerge.

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<sup>65</sup> Payment processors include, for example, such entities as First Data, PayPal, BitPay, m-Qube, and other commercial entities that process and transmit traditional, online, or text-message payments in the ordinary course of business.

<sup>66</sup> See, e.g., [Online Person-to-Person \(P2P\), Account-to-Account Payments and Electronic Cash](#), Fed. Fin. Inst. Examination Council, [ithandbook.ffeic.gov/it-booklets/retail-payment-systems/payment-instruments,-clearing,-and-settlement/card-based-electronic-payments/online-person-to-person-\(p2p\),-account-to-account-\(a2a\)-payments-and-electronic-cash.aspx](http://ithandbook.ffeic.gov/it-booklets/retail-payment-systems/payment-instruments,-clearing,-and-settlement/card-based-electronic-payments/online-person-to-person-(p2p),-account-to-account-(a2a)-payments-and-electronic-cash.aspx) (last visited Oct. 6, 2016).

<sup>67</sup> See, e.g., Vindu Goel, [Facebook Announces a Payments Feature for Its Messenger App](#), N.Y. Times, Mar. 17, 2015, [www.nytimes.com/2015/03/18/technology/facebook-announces-a-payments-feature-for-its-messenger-app.html](http://www.nytimes.com/2015/03/18/technology/facebook-announces-a-payments-feature-for-its-messenger-app.html); Mike Isaac, [As Apple Pay Arrives, Witnessing the Next Step in Money. Maybe.](#), N.Y. Times, Oct. 20, 2014, [www.nytimes.com/2014/10/21/technology/as-apple-pay-arrives-witnessing-the-next-step-in-money-maybe.html](http://www.nytimes.com/2014/10/21/technology/as-apple-pay-arrives-witnessing-the-next-step-in-money-maybe.html); Vindu Goel, [Twitter Begins Testing a ‘Buy’ Button for Instant Purchases by Its Users](#), N.Y. Times, Sept. 8, 2014, [nytimes.com/2014/09/09/technology/twitter-begins-testing-buy-button-for-posts.html](http://nytimes.com/2014/09/09/technology/twitter-begins-testing-buy-button-for-posts.html); Heather Kelly, [Twitter and Amex to Let You Pay with a Hashtag](#), CNN (Feb. 12, 2013, 4:15 PM), [www.cnn.com/2013/02/11/tech/social-media/twitter-hashtag-purchases](http://www.cnn.com/2013/02/11/tech/social-media/twitter-hashtag-purchases); see also [www.chirpify.com](http://www.chirpify.com) (last visited Oct. 5, 2016); but see Brian X. Chen, [Few Consumers Are Buying Promise of Mobile Wallets](#), N.Y. Times, Apr. 27, 2014, [www.nytimes.com/2014/04/28/technology/few-consumers-are-buying-promise-of-mobile-wallets.html](http://www.nytimes.com/2014/04/28/technology/few-consumers-are-buying-promise-of-mobile-wallets.html) (describing growth of mobile payment platforms as well as obstacles to wide public use).

1. When a Contributor Authorizes a Transaction: Contribution is “Made” and “Received”

For purposes of the contribution limits, Commission regulations specify that a contribution is made “when the contributor relinquishes control over the contribution”; control is relinquished when the contribution “is delivered by the contributor to the candidate, to the political committee, or to an agent of the political committee.” 11 CFR 110.1(b)(6); see also 11 CFR 110.2(b)(6). The regulations further specify that a contribution that is mailed is considered to be made on the date of the postmark. Id.

Although the regulations are silent as to when electronic contributions are “made,” the Commission has addressed the issue of when credit card contributions are made in several advisory opinions. See Advisory Opinion 2012-07 (Feinstein for Senate); Advisory Opinion 2008-08 (Zucker); Advisory Opinion 1991-01 (Deloitte & Touche PAC); Advisory Opinion 1990-14 (AT&T). Generally, the Commission has concluded that a credit card contribution is made “when the credit card or credit card number is presented, because at that point ‘[t]he contributor is strictly obligated by the card agreement to make payment of the credit card bill and incurs substantial penalties with possible collection fees and cancellation of future credit privileges for nonpayment.’” Advisory Opinion 2008-08 (Zucker) at 3 (quoting Advisory Opinion 1990-14 (AT&T)); see also Advisory Opinion 2012-07 (Feinstein for Senate) at 5.

The Commission proposes to revise 11 CFR 110.1(b)(6) and 110.2(b)(6) by adding a description of when electronic contributions — credit card or otherwise — are considered to be “made.” As revised, the regulations would build on the Commission’s conclusions in the above-referenced advisory opinions by providing that a contribution made in an electronic transaction “is considered to be made when the contributor authorizes the transaction.” Does this

description provide sufficient guidance? Should the regulations provide examples of specific types of “electronic transactions,” such as the physical presentation of a debit card; the entry of a credit or prepaid card number in an online form, in person, or by telephone; the transfer of a bitcoin; or the sending of a text message? Are such examples necessary to distinguish between electronic and non-electronic transactions? Would examples tied to specific technologies be limiting or risk becoming rapidly obsolete? The Commission is not proposing to specify how the new regulation would apply to electronic payments made long after they are authorized, such as those pursuant to recurring monthly payment authorizations.<sup>68</sup> Should the revised regulation address this scenario?

Like the existing regulations regarding when a contribution is “made,” the regulations concerning when a contribution is “received” focus on possession. The regulations provide that the “date of receipt” of a contribution is the date a person “obtains possession of the contribution.” 11 CFR 102.8(a); see also 11 CFR 102.8(b)(2) (same description of “receipt”).<sup>69</sup>

In the context of credit card contributions, the Commission has stated that a contribution is received when the contributor’s authorization to charge the credit card is received. “Inasmuch as such authorizations may be presented to [the recipient’s] bank in order to credit [the recipient’s] account, the receipt of such an authorization is the equivalent of the receipt of a check that may be deposited and, thus, the date this occurs is the date upon which [the recipient] obtains possession of the contribution.” Advisory Opinion 1990-04 (American Veterinary

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<sup>68</sup> For example, Advisory Opinion 1991-01 (Deloitte & Touche PAC) concerned a political committee’s proposal to obtain contributors’ credit card authorizations several months before charging their credit cards for contributions. The Commission concluded that, “[i]n view of the contributor’s ability to revoke the authorization” during this time period, each contributor would be deemed to relinquish control over a contribution, and thus to make the contribution, when the credit card was charged, rather than when the authorization occurred. Advisory Opinion 1991-01 (Deloitte & Touche PAC) at 4.

<sup>69</sup> See also 11 CFR 102.17(c)(3)(iii) (providing that political committee receives contribution through joint fundraising committee on date contribution is received by committee’s joint fundraising representative), 9034.8(c)(4)(iii) (same).

Medical Association PAC) at 2-3.<sup>70</sup> Because a commercial payment processor or the recipient political committee may receive the contributor’s authorization before obtaining actual possession of the contributor’s funds, the Commission proposes to revise 11 CFR 102.8(a) and (b)(2) to explicitly provide that the date of receipt is the date that a person either obtains possession of a contribution “or, for a contribution made in an electronic transaction in which the receipt of authorization precedes the receipt of funds, obtains the contributor’s authorization of the transaction.” Does this proposed language provide sufficient guidance? Should it include specific examples to show when a contribution is received in different types of electronic transactions, such as when a debit card is physically presented, a credit card number is entered in an online form or given over the telephone, or a text message is sent?

## 2. Commercial Payment Processors: Revisions to the Conduit and Forwarding Rules

Many contributions are first received not by the ultimate recipient political committees, but by commercial entities that process the payments. In several recent advisory opinions, the Commission has addressed the application of its regulations to the receipt of contributions via commercial entities that process contributions electronically — including entities that process contributions made by text message<sup>71</sup> or via web-based platforms.<sup>72</sup> The Commission proposes

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<sup>70</sup> See also Advisory Opinion 2012-35 (Global Transaction Services Group) (determining that contributions made by credit or debit card are received as of date credit or debit card holder authorizes card to be charged with contribution); Advisory Opinion 2012-17 (Red Blue T et al.) at 6 (“m-Qube I”) (“Under m-Qube’s proposed factoring arrangement, which is similar to how credit card contributions are handled, the Commission considers the contributions to be received at the time of the opt-in, as opposed to when the bill is paid.”); FEC, Campaign Guide: Congressional Candidates and Committees 23, 74 (2014), [www.fec.gov/pdf/candgui.pdf](http://www.fec.gov/pdf/candgui.pdf).

<sup>71</sup> See, e.g., Advisory Opinion 2012-30 (Revolution Messaging); Advisory Opinion 2012-28 (CTIA – The Wireless Association) (“CTIA II”); Advisory Opinion 2012-26 (Cooper for Congress et al.) (“m-Qube II”); Advisory Opinion 2012-17 (m-Qube I); Advisory Opinion 2010-23 (CTIA – The Wireless Association) (“CTIA I”).

<sup>72</sup> See, e.g., Advisory Opinion 2014-07 (Crowdpac); Advisory Opinion 2012-35 (Global Transaction Services Group); Advisory Opinion 2012-22 (skimmerhat); Advisory Opinion 2012-09 (Points for Politics); Advisory Opinion 2011-19 (GivingSphere); Advisory Opinion 2011-06 (Democracy Engine et al.); Advisory Opinion 2007-04 (Atlatl); Advisory Opinion 2006-08 (Brooks).

to revise its forwarding regulations at 11 CFR 102.8 and its earmarking regulations at 11 CFR 110.6 to codify some of the conclusions of these advisory opinions.

a. Proposed Revisions to Forwarding Rule, 11 CFR 102.8

Section 102.8 implements FECA's requirement that "[e]very person who receives a contribution" for a political committee must forward the contribution and information about the contributor to the recipient political committee within either 10 or 30 days, depending on whether the recipient is an authorized or unauthorized committee and the amount of the contribution. 52 U.S.C. 30102(b)(2). Under the proposed revisions to the definition of "receipt," discussed above, this forwarding requirement would be triggered when a commercial payment processor receives a contributor's authorization to make a contribution, even if the payment processor has not yet received the contributor's funds.

Because this scenario occurs frequently in modern electronic transactions,<sup>73</sup> the Commission proposes to add a new paragraph (d) to 11 CFR 102.8 to make clear that payment processors must satisfy FECA's forwarding requirement within 10 or 30 days of receiving a contributor's authorization of a contribution, even if the processor has not yet received the contributor's funds. Under proposed paragraph (d), a payment processor will satisfy the forwarding requirements of 52 U.S.C. 30102(b) if it transmits funds and contributor information to a recipient political committee within 10 or 30 days, as applicable, of the contributor's authorization of the transaction. To ensure that a payment processor does not make contributions

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<sup>73</sup> For example, when a credit card holder uses a credit card to purchase goods or services from a merchant, the merchant often receives payment for the goods and services before the credit card holder is even billed. See Visa, <https://usa.visa.com/run-your-business/accept-visa-payments.html> (follow "Learn how Visa transactions work" hyperlink and click play arrow) (last visited Oct. 5, 2016); What We Do, Mastercard, [www.mastercard.com/us/company/en/whatwedo/processing\\_behind\\_transaction.html](http://www.mastercard.com/us/company/en/whatwedo/processing_behind_transaction.html) (last visited Oct. 6, 2016). Similarly, in certain text message transactions, payment processors transmit funds to merchants before the mobile phone users pay bills with associated charges. See Advisory Opinion 2010-23 (CTIA I); Advisory Opinion 2012-17 (m-Qube I).

to candidates and committees by transmitting the funds, the payment processor must meet this forwarding requirement in its ordinary course of business. See, e.g., 11 CFR 116.3; Advisory Opinion 2012-26 (m-Qube II); Advisory Opinion 2012-31 (AT&T).

The proposal would thus reflect how modern transactions are conducted and ensures that FECA’s forwarding requirement is satisfied when contributors and political committees make and receive contributions electronically.<sup>74</sup> See Advisory Opinion 2012-35 (Global Transaction Services Group) at 4 (approving proposal where processor transmitted contributions to political committees within ten days); Advisory Opinion 2010-23 (CTIA I) at 6-7 (rejecting proposal to process contributions by text message because, in part, contributions would not be forwarded to recipient committees within timeframe required by 52 U.S.C. 30102(b) and 11 CFR 102.8).

Should the Commission adopt this approach? Is it consistent with how electronic transactions are conducted? The Commission is not proposing regulatory language to define “ordinary course of business” but expects that the term would be construed consistently with the definition of the same term in 11 CFR 116.3(c), which looks to the vendor’s past practices, as well as industry custom, to determine whether the vendor acted in the ordinary course of business. Should the Commission revise the proposed rule to reflect this expectation?

b. Proposed Revisions to Earmarking Rule, 11 CFR 110.6

FECA provides that, for purposes of the contribution limitations, “all contributions made by a person, either directly or indirectly . . . , including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be

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<sup>74</sup> In Advisory Opinion 2012-17 (m-Qube I), the Commission approved a proposal to process contributions made by text message, even though the processor would provide funds to the recipient political committees before the contributors had paid their mobile phone bills. Id. at 10. The Commission explained that the transmitted funds were extensions of credit in the ordinary course of business, “not contributions that [the processor] received and forwarded.” Id. at 7, 10. And because the forwarding requirements of 52 U.S.C. 30102(b) and 11 CFR 102.8 are triggered only upon the receipt of a contribution — not when a vendor extends credit — the payments “do not implicate the forwarding requirements.” Id. at 10. The Commission’s rationale in that advisory opinion applied the existing regulations, which the Commission here proposes to revise.

treated as contributions from such person to such candidate.”<sup>75</sup> 52 U.S.C. 30116(a)(8). The Commission defines “earmarked” to mean “a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution . . . being made to . . . a clearly identified candidate.” 11 CFR 110.6(b)(1).

Whether a person is a “conduit or intermediary” turns on whether the person “receives and forwards an earmarked contribution to a candidate.” 11 CFR 110.6(b)(2). Persons prohibited from making contributions and expenditures, however, are also prohibited from being conduits or intermediaries. 11 CFR 110.6(b)(2)(ii). Thus, because FECA prohibits corporations from making contributions to candidate committees, see 52 U.S.C. 30118, a corporation generally may not receive and forward earmarked contributions.

The Commission’s regulations provide for certain exceptions to this rule, see 11 CFR 110.6(b)(2)(i), but these exceptions do not squarely apply to the kinds of payment processors that the Commission has addressed in its recent advisory opinions regarding electronic contributions. In some of these opinions, the Commission concluded that the transactions were permissible because the corporations that processed the contributions were acting as commercial vendors to the political committee.<sup>76</sup> In other opinions, the Commission approved the transactions under the rationale that the corporations were providing services to the contributors.<sup>77</sup> And in Advisory Opinion 2012-22 (skimmerhat), the Commission determined expressly that a for-profit corporation that processed customers’ contributions to candidates via the corporation’s website was not a conduit. Id. at 5-6. The Commission explained that “certain electronic transactional

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<sup>75</sup> Thus, earmarked contributions are “subject to the original contributors’ limits on contributions to the candidate.” Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 FR 34098, 34105 (Aug. 17, 1989).

<sup>76</sup> See Advisory Opinion 2007-04 (Atlatl); Advisory Opinion 2004-19 (DollarVote.org); see also Advisory Opinion 2012-09 (Points for Politics).

<sup>77</sup> See Advisory Opinion 2011-19 (GivingSphere); Advisory Opinion 2011-06 (Democracy Engine); Advisory Opinion 2006-08 (Brooks).

services . . . do not run afoul of the prohibition on corporations acting as a conduit or intermediary for earmarked contributions because certain electronic transactional services are so essential to the flow of modern commerce that they are akin to ‘delivery services, bill-paying services, or check writing services.’” Id. at 10 (citing Advisory Opinion 2011-06 (Democracy Engine)); see also Advisory Opinion 2014-07 (Crowdpac) (approving commercial processor’s transmission of contributions to candidates); ActBlue, Comment at 5, [www.fec.gov/fosers/showpdf.htm?docid=297360](http://www.fec.gov/fosers/showpdf.htm?docid=297360) (stating that without electronic payment processors, “committees would not be able to raise campaign funds on the Internet or by credit card at all”).

The Commission now proposes to revise § 110.6 to clarify the regulatory status of electronic payment processors and bring the rule into line with the role of “certain electronic transactional services [that] are so essential to the flow of modern commerce.” Advisory Opinion 2012-22 (skimmerhat) at 10. The Commission proposes to do so by exempting commercial payment processors from the definition of “conduit or intermediary” in a proposed new paragraph (F) of 11 CFR 110.6(b)(2)(i). The Commission is proposing two alternative versions of new paragraph (F). Alternative A of proposed paragraph 110.6(b)(2)(i)(F) would provide that a commercial payment processor is any person whose usual and normal business is to process payments and who processes payments to candidates and authorized committees in the ordinary course of business without exercising direction or control over the choice of the recipient candidate or authorized committee. Alternative B of proposed § 110.6(b)(2)(i)(F) would differ only in that Alternative B would not expressly state that a commercial payment processor operates without exercising direction or control over the choice of the recipient candidate or authorized committee.

The Commission seeks comment on the alternatives. Specifically, does Alternative A accurately reflect and codify Commission determinations made in approving prior advisory opinions regarding commercial payment processors? See, e.g., Advisory Opinion 2014-07 (Crowdpac) at 4. Does Alternative B accurately reflect and codify Commission determinations that, for example, “where a commercial vendor provides contribution processing services to contributors, the contributions made through the platform . . . are . . . direct contributions to the candidate . . . made via a commercial processing service” and not earmarked contributions through a conduit or intermediary? Advisory Opinion 2016-08 (eBundler.com) at 8. Would the reference to “direction or control” in Alternative A be clear in light of the use of that term at § 110.6(d)? Would the omission of “direction or control” in Alternative B be clear in light of Commission determinations made in advisory opinions?

The Commission anticipates that specific applications of the exemption, regardless of which Alternative is selected, will be informed by its prior advisory opinions and refined through future advisory opinions. The proposed term “commercial payment processors” would not distinguish between persons who process contributions as a service to contributors and those who process contributions as a service to candidates and authorized committees. Thus, the term would encompass processors that transmit funds from wireless service providers to recipient committees, as well as online payment systems such as PayPal and Square, and the requestors in the advisory opinions in which the Commission has approved electronic payment processing.<sup>78</sup> The Commission anticipates, however, that the distinction will remain relevant to determine whether fees associated with contributions made through commercial payment processors are

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<sup>78</sup> Because the proposed clarification also does not turn on the incorporation status of a payment processor, a limited liability company that opts to be treated like a partnership for tax purposes could process contributions to candidates in the ordinary course of business without being considered a conduit or intermediary. See Advisory Opinion 2012-09 (Points for Politics).

considered part of the contributed amount. As the Commission has explained in several advisory opinions, where a contributor’s payment of a fee would “relieve the recipient political committee[] of a financial burden [it] would otherwise have had to pay,” the fee would be considered a contribution. See, e.g., Advisory Opinion 2015-15 (WeSupportThat.com) at 5 (quoting Advisory Opinion 2014-07 (Crowdpac) and Advisory Opinion 2011-06 (Democracy Engine)).

The Commission intends the proposed revision to 11 CFR 110.6(b)(2)(i) to clarify and codify its existing guidance on the issue, and thus to encourage the use of evolving and emerging technological innovations to process contributions electronically. Does the proposal provide sufficient guidance and clarity to the regulated community as to which persons are not considered conduits and intermediaries? Should the Commission bring § 110.6 in line with the flow of modern commerce by revising the definition of “earmarked” at 11 CFR 110.6(b)(1) rather than revising the definition of “conduit or intermediary” at 11 CFR 110.6(b)(2)? For example, should the Commission clarify that the definition of earmark does not generally include a contributor’s authorization to initiate an electronic transaction? Additionally, is existing guidance sufficient with respect to how political committees should report contributions received via commercial payment processors?

Furthermore, in addition to concluding that commercial payment processors are not conduits under 11 CFR 110.6, the Commission has also determined that where a commercial payment processor provides its services to its customers, as opposed to the political committees that receive the customers’ contributions, the processor itself would not make contributions to the recipient political committees. See, e.g., Advisory Opinion 2015-15 (WeSupportThat.com) at 4 (“Identifying candidates whose activities are of interest to its users, and processing users’

contributions to those candidates, are services that the requestor may permissibly provide to its users.”); Advisory Opinion 2014-07 (Crowdpac) at 6 (“Accordingly, Crowdpac’s proposal to match users with candidates and utilize the . . . platform to process and forward users’ contributions to candidates would not result in impermissible contributions by Crowdpac to federal candidate committees.”). The Commission seeks comment as to whether it should promulgate regulatory language that codifies these determinations, and if so, where in its regulations.

3. When a Political Committee Deposits the Contribution: Campaign Depositories, Merchant Accounts, Recordkeeping, and Internet-Based Alternative Mediums of Exchange

Once a political committee has received a contribution, it must deposit that receipt in an account at a campaign depository within ten days. 52 U.S.C. 30102(h)(1); 11 CFR 103.3(a). The campaign depository must be a state bank, federally chartered depository institution, or depository institution with accounts insured by certain federal agencies. See 52 U.S.C. 30102(h)(1); 11 CFR 103.2; see also 11 CFR 102.2(a)(1)(vi) (disclosure of campaign depositories).

The Commission is proposing to revise several regulations to address issues related to the deposit into campaign depositories of contributions made electronically. First, the Commission proposes to revise 11 CFR 103.3(a) to clarify the campaign depository requirements with respect to joint merchant accounts. Second, the Commission proposes to revise 11 CFR 102.9(a)(4) and 9036.1(b)(4) to address recordkeeping related to the electronic transfer of contributions from a payment processor to a political committee’s campaign depository. Finally, the Commission is considering whether to revise 11 CFR 103.3(a) and 102.10 to address how the requirements for

deposits to and disbursements from campaign depositories apply to contributions of internet-based alternative mediums of exchange, such as bitcoin.

a. Proposed Changes Regarding Campaign Depositories for Joint Merchant Accounts — 11 CFR 103.3

Many political committees and payment processors use merchant accounts to process contributions. As one commenter noted in response to the ANPRM: “In order to accept credit card contributions, the committee must have a merchant account with the payment processor which is connected to the website on the contribution end and to a specific bank account on the processing end.” ActBlue, Comment at 2, [sers.fec.gov/fosers/showpdf.htm?docid=297360](https://www.sers.fec.gov/fosers/showpdf.htm?docid=297360). The commenter characterized the merchant account system that is used for payment transfers as “nothing but an accounting tool which operates purely as a pass-through.” *Id.* at 4.

Merchant accounts operated and controlled by a payment processor may contain contributions for several different political committees. See Advisory Opinion 1995-34 (Politechs) n.6 (describing processing of contributions for multiple committees through one merchant account). The Commission has indicated that a political committee receiving funds through one of these merchant accounts should report and treat the merchant account as a campaign depository account. *Id.*; see also Advisory Opinion 1999-22 (Aristotle Publishing) (approving proposal under which recipient political committees would report payment processor’s FDIC-insured merchant account through which their contributions flowed as campaign depository accounts); Advisory Opinion 2012-07 (Feinstein for Senate) at 5 n.9 (reaffirming that “joint merchant account” of type described in Advisory Opinion 1999-22 (Aristotle Publishing) is campaign depository).

The Commission is now reconsidering its earlier requirement that political committees should report the joint merchant accounts through which their contributions flow as their own campaign depository accounts. The Commission is not convinced of the disclosure or compliance value of reporting a third party's pass-through account, which the recipient political committee does not own, operate, or control, as the committee's own account. See ActBlue, Comment at 4, [sers.fec.gov/fosers/showpdf.htm?docid=297360](https://www.sers.fec.gov/fosers/showpdf.htm?docid=297360) (noting that merchant accounts are standard aspect of credit card processing and arguing that therefore "there is no need to treat merchant accounts as campaign depositories which must be registered with the Commission").

The Commission proposes to amend 11 CFR 103.3(a), which governs the deposit of receipts in campaign depositories, to provide that contributions deposited in the ordinary course of business in the merchant account of a person whose usual and normal business involves the electronic processing and transmission of payments are not "receipts" of the recipient political committee, but are, instead, contributions to be forwarded by the processor under 11 CFR 102.8.<sup>79</sup> Together with the revisions to § 102.8 discussed above, this proposed amendment would ensure that electronic payments passing through merchant accounts comply with the FECA's forwarding requirements, while also adapting the campaign-depository rule to account for the ways in which electronic payments differ from the cash and check contributions that predominated when those requirements were enacted.

This proposed change is not intended to apply to merchant accounts over which a recipient political committee exercises control. Should the Commission make this limitation explicit, or does the reference to a payment processor's "ordinary course of business" suffice? Alternatively, should the Commission update its campaign-depository rules by revising 11 CFR

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<sup>79</sup> For ease of reading, the Commission also proposes to divide § 103.3(a) into two subparts to address the two distinct issues (receipts and disbursements) addressed therein.

103.2, which defines the term “campaign depository,” instead of 11 CFR 103.3(a)? Under either approach, should the Commission expressly supersede Advisory Opinion 1995-34 (Politechs), Advisory Opinion 1999-22 (Aristotle Publishing), and Advisory Opinion 2012-07 (Feinstein for Senate), to the extent that these advisory opinions can be read as requiring political committees to treat joint merchant accounts as their own campaign depository accounts?

b. Proposed Changes to Recordkeeping — 11 CFR 102.9(a)(4) and 9036.1(b)(4)

As noted above, FECA and Commission regulations require any person who receives a contribution for or on behalf of a political committee to forward the contribution and information about the contributor to the political committee within a certain period of time. 52 U.S.C. 30102(b)(2); 11 CFR 102.8(a). The Commission has seen, through its auditing function, that committees often receive contributions separately from contributors’ information; that is, payment processors often forward contributions as an aggregated amount but forward information about each individual contributor separately. Because of this, marrying individual contributor information with the recipient political committee’s records of receipts and deposits can be a challenge when committees are audited.

To address these challenges, the Commission proposes to revise 11 CFR 102.9(a)(4). Section 102.9(a)(4) currently requires political committees to maintain, for each contribution that they receive in excess of \$50, either (i) a full-size photocopy of the check or written instrument, or (ii) a digital image of the check or written instrument. As revised, paragraphs (4)(i) and (4)(ii) would be replaced with a new paragraph (4), which would require political committees to maintain a “record” of each contribution received. For checks or written instruments in excess of \$50, the revised rule would still require treasurers to maintain an image of the instrument. For

all contributions, the revised rule would add a requirement that a record of the receipt must include sufficient information associating that contribution with its deposit in the political committee's campaign depository, such as a batch number. The revised rule would also remove the requirement that committees provide the Commission with the electronic means to read such records because that requirement would appear in the proposed new definition of "record" discussed above.

The Commission proposes a similar revision to the recordkeeping provision at 11 CFR 9036.1(b)(4), which applies to bank documentation of deposits of publicly matched contributions. Section 9036.1(b)(4) requires a candidate to submit "bank documentation, such as bank-validated deposit slips or unvalidated deposit slips accompanied by the relevant bank statements, which indicate that the contributions were deposited into a designated campaign depository." The Commission proposes to add, after "relevant bank statements," language that would apply to electronic deposits: "or, for deposits made electronically, information associating contributions to their deposit in the designated campaign depository, such as a batch number."

The Commission invites comment on whether the proposed rule provides sufficient guidance to enable information about specific contributions and contributors to be matched to political committees' aggregated receipt and deposit of contributions. If so, is the proposed rule flexible enough to accommodate evolving methods of electronic transfers? The Commission is also interested in comment addressing whether the specificity required of records of checks and written instruments is still necessary in light of the new definition of "record," discussed above.

- c. Contributions of Internet-Based Alternative Mediums of Exchange —  
11 CFR 102.10 and 103.3

The Commission is considering whether to revise its rules regarding the receipt of contributions in the form of bitcoin and other internet-based alternative mediums of exchange that cannot currently be deposited in campaign depositories. In Advisory Opinion 2014-02 (Make Your Laws PAC), the Commission determined that a political committee could accept \$100 worth of bitcoin contributions per contributor per election. Bitcoin is a privately issued alternative medium of exchange that exists “only as a long string of numbers and letters in a user’s computer file.”<sup>80</sup> Users receive transfers of bitcoin into their online bitcoin “wallets” (essentially, encrypted computer files) and can transfer bitcoin from those “wallets” to other users, to merchants to purchase goods or services, or to exchanges to convert into government-issued currency.<sup>81</sup> At this time, the Commission is aware of no institution that meets the statutory criteria of a campaign depository, see 52 U.S.C. 30102(h), and that maintains bitcoin wallet “accounts” for its customers. The Commission seeks comment as to whether the unique nature of bitcoin and other internet-based alternative mediums of exchange pose any potential challenges under FECA, such as achieving meaningful disclosure, which necessitates regulatory amendment.

Current Commission regulations establish procedures for political committees to receive and report in-kind contributions of “stocks, bonds, art objects, and other similar items to be liquidated.” 11 CFR 104.13(b). Under this provision, political committees may accept such items as in-kind contributions and hold them as investments outside of their campaign depositories until later sale, without being subject to the 10-day deposit requirement. See

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<sup>80</sup> U.S. Gov’t Accountability Office, GAO-13-516, Virtual Economies and Currencies 5 (2013), [www.gao.gov/assets/660/654620.pdf](http://www.gao.gov/assets/660/654620.pdf).

<sup>81</sup> Id.; see also Francois R. Velde, Fed. Reserve Bank of Chi., No. 317, Bitcoin: A Primer 2 (2013), [www.chicagofed.org/digital\\_assets/publications/chicago\\_fed\\_letter/2013/cfldecember2013\\_317.pdf](http://www.chicagofed.org/digital_assets/publications/chicago_fed_letter/2013/cfldecember2013_317.pdf) (describing bitcoin wallet).

Advisory Opinion 2000-30 (pac.com) at 8 (citing Advisory Opinion 1989-06 (Friends of Sherwood Boehlert) and Advisory Opinion 1980-125 (Cogswell for Senate Committee 1980)).

The Commission is interested in comment on whether the inability to deposit bitcoin and other alternative mediums of exchange in a campaign depository necessitates treating contributions of such alternative mediums of exchange as in-kind contributions rather than contributions of money. Should the Commission revise 11 CFR 103.3 to clarify that all receipts by a political committee must be deposited in campaign depositories, except for in-kind contributions that cannot be deposited? The Commission seeks comment on how best to reconcile an interpretation allowing in-kind contributions to not be deposited in a campaign depository with FECA's requirement that "all receipts . . . shall be deposited" in an account at a campaign depository. See 52 U.S.C. 30102(h)(1).

Related to the question of whether in-kind receipts must be deposited in a campaign depository is the question of how to interpret the statutory requirement that all disbursements be made from a campaign depository. The Commission has reached differing conclusions in advisory opinions on whether in-kind contributions received and held outside of a campaign depository may be disbursed from outside of that depository or whether they must first be liquidated and deposited in a campaign depository prior to disbursement.<sup>82</sup> Should the Commission revise 11 CFR 102.10 to specify that a disbursement need not be made from a campaign depository if the asset being disbursed was not required to be deposited into a campaign depository? The Commission seeks comment on how best to reconcile an interpretation allowing the disbursement of assets held outside campaign depositories with the

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<sup>82</sup> Compare Advisory Opinion 1982-08 (Barter PAC) (allowing disbursement of "credit units" in that form), with Advisory Opinion 2000-30 (pac.com) (requiring liquidation and deposit prior to disbursement).

statutory requirement that “[n]o disbursements may be made . . . except by check drawn” on an account at a campaign depository. See 52 U.S.C. 30102(h)(1).

#### E. Other Considerations in Electronic Contributions and Disbursements

The Commission is considering revisions to other regulations to modernize requirements concerning the receipt of “currency” and “cash”; the receipt, disbursement, and transfer of funds; the records of contributions eligible for public matching funds; and the designation and attribution of contributions in light of electronic transactions and records.

##### 1. “Currency” and “Cash” — 11 CFR 110.4

The term “contribution” includes gifts, advances, and deposits of “money” by any person for the purpose of influencing a federal election.<sup>83</sup> The term “money” includes “currency of the United States or of any foreign nation,” as well as checks, money orders, and any other negotiable instrument payable on demand.<sup>84</sup>

The legislative history of FECA indicates that Congress was particularly concerned about the role of cash in federal elections. As one legislator noted, “cash offers too facile a medium for unethical and illegal activities”; its “untraceability” and “easy transferability” were of particular concern. 120 Cong. Rec. H7832 (daily ed. Aug. 7, 1974) (statement of Rep. Boland). Thus, Congress limited contributions of currency to \$100. 52 U.S.C. 30123.<sup>85</sup> Commission regulations also prohibit the use in federal elections of any portion of an anonymous “cash” contribution that exceeds \$50.<sup>86</sup>

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<sup>83</sup> 52 U.S.C. 30101(8)(A)(i); 11 CFR 100.52(a); see also 52 U.S.C. 30101(9)(A)(i); 11 CFR 100.111(a) (corresponding provisions for the term “expenditure”).

<sup>84</sup> 11 CFR 100.52(c); see also 11 CFR 100.111(d) (corresponding provision for expenditures).

<sup>85</sup> See also 11 CFR 110.4(c) (also referring to such contributions as “cash”), 9034.3(j) (disallowing matching funds for contributions of currency of United States or foreign country).

<sup>86</sup> 11 CFR 110.4(c)(3); see also 52 U.S.C. 30102(c)(2) (requiring name and address of contributors for contributions over \$50).

Some non-cash electronic payment methods — particularly prepaid cards and internet-based alternative mediums of exchange — have characteristics very similar to cash. Like currency, prepaid cards and some internet-based alternative mediums of exchange are easily transferable and relatively untraceable. They are not associated with a depository institution and thus are not subject to those institutions’ “know-your-customer” obligations under federal law.<sup>87</sup> All that a person needs to acquire and use prepaid cards in amounts within FECA’s contribution limits is sufficient cash to purchase the cards. Similarly, “all that is needed to complete a [bitcoin] transaction is a bitcoin address, which does not contain any personal identifying information.”<sup>88</sup>

Because prepaid cards present the same concerns as those noted by Congress when it limited contributions of currency to \$100, the Commission proposes to update its rules to apply the limitations on contributions of cash or currency at 11 CFR 110.4(c) to contributions made by prepaid cards. To accomplish this, the Commission proposes to add paragraph (c)(4) to 11 CFR 110.4 to clarify that a “cash contribution” includes a contribution (1) of currency of the United States or any foreign country, or (2) made using a prepaid card. The Commission also proposes to make a conforming change to 11 CFR 110.4(c)(1) by updating the current prohibition on making contributions aggregating more than \$100 in “currency of the United States, or of any foreign country” to apply to any “cash contribution,” as provided in proposed 11 CFR 110.4(c)(4).

The Commission intends the term “prepaid card” to mean a card, payment code, or device that is not linked to the contributor’s checking, savings, or other depository account but is

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<sup>87</sup> See, e.g., 31 CFR 1020.220(a) (setting forth customer identification programs for banks, credit unions, and other depository institutions, including through records of customer names and addresses).

<sup>88</sup> U.S. Gov’t Accountability Office, GAO-13-516, Virtual Economies and Currencies 8 (2013), available at [gao.gov/assets/660/654620.pdf](http://gao.gov/assets/660/654620.pdf).

instead purchased or loaded on a prepaid basis and honored, upon presentation, by merchants for goods or services, or at automated teller machines, as provided in federal electronic transfer consumer rights protection laws. See 15 U.S.C. 16931-1(a)(2)(A). The Commission seeks comment on whether it should define the term “prepaid card” in the regulations themselves or whether it should otherwise update its rules for cash contributions to apply to prepaid cards.

The Commission also seeks comment on any compliance challenges that might result from the proposed rule if adopted. In particular, one commenter noted in response to the ANPRM that a political committee that receives a contribution from a prepaid card “is unlikely to know that . . . a prepaid card” has been used to make the payment because “a prepaid card is treated the same as any other payment card” in the payment processing.<sup>89</sup> The Commission understands, however, that prepaid card issuers are able to exclude certain categories of merchants from receiving payments made by prepaid cards.<sup>90</sup> Could political committees, as a category of merchants,<sup>91</sup> use this or another mechanism (such as partial authorization) to decline contributions made by prepaid cards either entirely or in excess of \$100? Should the Commission create a safe harbor for committees that take certain steps to limit or exclude prepaid card contributions, whether by requiring contributor affirmations, by arranging with prepaid card issuers not to authorize prepaid card contributions to them exceeding \$100, or by some other means?

Although internet-based alternative mediums of exchange such as bitcoin are not currency of the United States or of any foreign country, as noted above, they have characteristics

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<sup>89</sup> See ActBlue, Comment at 6, [sers.fec.gov/fosers/showpdf.htm?docid=297360](https://www.fec.gov/fosers/showpdf.htm?docid=297360).

<sup>90</sup> See, e.g., Visa, Visa Core Rules and Visa Product and Service Rules 209 (2015), <https://usa.visa.com/dam/VCOM/download/about-visa/15-April-2015-Visa-Rules-Public.pdf> (indicating that selective authorization may be based on criteria including merchant category classification).

<sup>91</sup> See Visa, Visa Merchant Category Classification (MCC) Code Directory, [www.dm.usda.gov/procurement/card/card\\_x/mcc.pdf](http://www.dm.usda.gov/procurement/card/card_x/mcc.pdf) (noting MCC code of 8651 for political organizations) (last visited Oct. 6, 2016).

very similar to cash (e.g., easily transferrable and relatively untraceable). Other government entities and courts have grappled with whether internet-based alternative mediums of exchange such as bitcoin are “money,” and whether and how such alternative mediums of exchange should be subject to law in other contexts.<sup>92</sup> Should the Commission revise its regulations to treat contributions of bitcoin and other internet-based alternative mediums of exchange as cash contributions or, as discussed above, as in-kind contributions? If the Commission should revise its regulations to address internet-based alternative mediums of exchange, should the Commission treat contributions of internet-based alternative mediums of exchange in the same manner as it proposes to treat cash cards?

## 2. Updating References to Contributions and Disbursements by Check

### a. Committee Disbursements by Electronic Transfer

FECA requires each political committee to maintain at least one checking account and to make all disbursements (other than from petty cash) “by check.” 52 U.S.C. 30102(h)(1). The Commission has implemented this requirement in regulations that require all disbursements (other than petty cash disbursements) to be made “by check or similar draft drawn on” a campaign depository account. 11 CFR 102.10; see also 11 CFR 103.3(a) (same). The Commission has further interpreted the term “similar draft” to include certain forms of electronic disbursement.<sup>93</sup> Consistent with these prior interpretations and in light of the increasing use of electronic transactions in the campaign finance arena, the Commission proposes to revise 11

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<sup>92</sup> See, e.g., SEC v. Shavers, No. 4:13-CV-416, 2013 WL 4028182, at \*2 (E.D. Tex. Aug. 6, 2013); Craig K. Elwell et al., Cong. Research Serv., R43339, Bitcoin: Questions, Answers, and Analysis of Legal Issues (2015), [www.fas.org/sgp/crs/misc/R43339.pdf](http://www.fas.org/sgp/crs/misc/R43339.pdf) (providing overview of federal, state, and international legal issues); Fin. Crimes Enforcement Network, U.S. Dep’t of the Treasury, FIN-2013-G001, Application of FinCEN’s Regulations to Persons Administering, Exchanging, or Using Virtual Currencies (2013), [www.fincen.gov/statutes\\_regs/guidance/pdf/FIN-2013-G001.pdf](http://www.fincen.gov/statutes_regs/guidance/pdf/FIN-2013-G001.pdf).

<sup>93</sup> See, e.g., Advisory Opinion 1993-04 (Christopher Cox Congressional Committee) (approving “computer driven billpayer service” that disbursed funds by electronic transfer); Advisory Opinion 1982-25 (Barbara Sigmund for Congress Committee) (concluding that wire transfer qualifies as “similar draft”).

CFR 102.10 and 103.3(a) to provide that disbursements may be made by “check or similar draft, including electronic transfer” from a campaign depository; to revise 11 CFR 110.1(b)(3)(i)(A) to enable political committees to refund contributions by “committee check or similar draft, including electronic transfer”; and to revise 11 CFR 110.6(c)(1)(iv)(C) to require conduits and intermediaries to report earmarked contributions that are forwarded by electronic transfer, in addition to reporting earmarked contributions forwarded in cash or by the contributor’s or conduit’s check. The Commission intends these revisions to be consistent with the Commission’s prior interpretations of the terms “check” or “similar draft” and seeks comment on the proposed revisions.

b. Recordkeeping for Disbursements by Electronic Transfer

In light of the proposed regulatory revisions for disbursements by electronic transfer, and because checks may now be processed electronically without the creation of a canceled check,<sup>94</sup> the Commission proposes to revise the recordkeeping requirements for political committee disbursements. Section 102.9(b) describes the records that political committees must keep of their disbursements. The Commission proposes to revise 11 CFR 102.9(b)(2), (b)(2)(i)(B), and (b)(2)(ii), which currently require committees to keep a “cancelled check” to a payee or recipient (among other records of disbursements) to provide that a record of disbursement may consist of a “canceled check or record of electronic transfer” to the payee or recipient. The Commission also proposes to remove 11 CFR 102.9(b)(2)(iii), which requires political committees to document disbursements made by share drafts or checks drawn on credit union accounts, because this provision would no longer be necessary in light of proposed changes to the recordkeeping provisions in other parts of § 102.9.

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<sup>94</sup> See Susan Johnston Taylor, How to Deposit Checks With Your Smartphone, U.S. News and World Report, Oct. 9, 2012, <http://money.usnews.com/money/personal-finance/articles/2012/10/09/how-to-deposit-checks-with-your-smartphone>.

Sections 9003.5(b) and 9033.11(b) contain the disbursement documentation requirements for publicly financed candidates. The Commission proposes to revise 11 CFR 9003.5(b)(1), 9003.5(b)(1)(iv), 9003.5(b)(2)(ii), 9033.11(b)(1), 9033.11(b)(1)(iv), and 9033.11(b)(2)(ii) to provide explicitly that a record of disbursement may consist of a “record of electronic transfer to the payee,” in addition to canceled checks negotiated by the payee. The Commission seeks comment on these proposed changes.

c. Electronic Funds Transfers Related to Separate Segregated Fund Administration

The Commission intends to make similar revisions to two regulations relating to contributions by “check” to a separate segregated fund (“SSF”). First, the Commission proposes revising 11 CFR 102.6(c)(3), which provides that a contributor may “write a check” representing both a contribution to an SSF and a payment of dues or other fees “drawn on the contributor’s personal checking account or on a non-repayable corporate drawing account of the individual contributor.” 11 CFR 102.6(c)(3). In Advisory Opinion 1990-04 (American Veterinary Medical Association PAC), the Commission interpreted this provision as allowing a combined payment by credit card. Consistent with the approach in that advisory opinion, and because of the increasing use of electronic payments, the Commission proposes to revise 11 CFR 102.6(c)(3) to enable contributors to make combined payments to an SSF by credit card or electronic payment, as well as by check. The combined payment would still have to be made from the contributor’s personal account, irrespective of whether made by check or electronically, or through a payroll-deduction plan.<sup>95</sup> As proposed, the rule would retain the reference to “a non-repayable corporate drawing account of the individual,” because the Commission wants to retain the clarification that such accounts are, for purposes of 11 CFR 102.6(c)(3), “personal accounts.”

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<sup>95</sup> See 11 CFR 102.6(c)(3) (describing combined payments under payroll deduction plan).

Second, the Commission proposes to revise 11 CFR 114.6(d)(2)(iii), which requires the custodian of an SSF to forward to the SSF funds from certain separate accounts “by check drawn on” such accounts. Consistent with the proposed revisions concerning disbursements from campaign depositories, the Commission proposes to revise 11 CFR 114.6(d)(2)(iii) to allow such funds to be forwarded “by check or similar draft, including electronic transfer.”

#### d. Electronic Transfers of Earmarked Contributions

The Commission seeks comment on whether it should revise 11 CFR 110.6(c)(1)(v) to address a conduit or intermediary’s electronic forwarding of an earmarked contribution. Section 110.6(c)(1)(v) sets forth the mechanisms for reporting two categories of earmarked contributions: those that pass through a conduit or intermediary’s account, and those that the conduit or intermediary forwards to a committee “in the form of a contributor’s check or other written instrument” without first depositing them in the conduit’s or intermediary’s account. The regulation thus does not currently address earmarked contributions that the conduit or intermediary forwards electronically without those funds first passing through the conduit or intermediary’s account. Do such transactions occur? If so, then how should the Commission amend 11 CFR 110.6(c)(1)(v) to address reporting requirements for them?

### 3. Electronic Contributions to Publicly Funded Committees

The Funding Acts allow public fund matching only for contributions “made by a written instrument which identifies the person making the contribution by full name and mailing address.” 26 U.S.C. 9034(a). The Commission proposes to revise 11 CFR 9034.2, which currently defines “written instrument” in this context to include contributions by credit and debit card — but not when made over the telephone — to a participant in the primary matching fund

program.<sup>96</sup> Section 9034.2(b) allows a political committee to receive matching funds for contributions by credit card made over the internet only if the electronic record of that transaction includes “the name of the cardholder and the card number, which can be maintained electronically and reproduced in a written form.” And § 9034.2(c) requires the contribution to also contain the contributor’s “signature,” which is defined for these purposes to be “either an actual signature . . . or in the case of such a contribution . . . made over the Internet, the full name and card number of the cardholder who is the donor, entered and transmitted by the cardholder.”

Comments received on the ANPRM urged the Commission to bring the requirement that committees maintain the full card number of contributors in line with payment industry security standards.<sup>97</sup> Payment industry standards limit the storage and retention of payment card information in order to safeguard consumers and the payment system from fraud. Visa, Comment at 2, [sers.fec.gov/fosers/showpdf.htm?docid=297361](http://sers.fec.gov/fosers/showpdf.htm?docid=297361). Specifically, entities may not store the three-digit code printed on the back of payment cards and must render unreadable (by truncation, hashing, or encryption) the card number and expiration date where that information is stored.<sup>98</sup>

Because § 9034.2(b) and (c) require publicly funded candidates to retain the card number for each contribution by credit or debit card, some committees have historically viewed these regulations as inconsistent with payment industry security practices and requirements. Accordingly, and in recognition of the security risks that are attendant upon storing credit card numbers, the Commission proposes to revise 11 CFR 9034.2(b) and (c) by removing the

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<sup>96</sup> See 11 CFR 9034.2(c)(8) (permitting matching of credit and debit card contributions by written instrument as set forth in 11 CFR 9034.2(b) and (c), but not credit or debit card contributions made orally).

<sup>97</sup> See ActBlue, Comment at 2, [sers.fec.gov/fosers/showpdf.htm?docid=297360](http://sers.fec.gov/fosers/showpdf.htm?docid=297360); Perkins Coie, Comment at 2, [sers.fec.gov/fosers/showpdf.htm?docid=297359](http://sers.fec.gov/fosers/showpdf.htm?docid=297359); Visa, Comment at 1-3, [sers.fec.gov/fosers/showpdf.htm?docid=297361](http://sers.fec.gov/fosers/showpdf.htm?docid=297361).

<sup>98</sup> *Id.* at 2-3; see also Michael J. de la Merced, *The Credit Card of Tomorrow: Software, Not Plastic*, N.Y. Times, Apr. 1, 2014, <http://dealbook.nytimes.com/2014/04/01/the-credit-card-of-tomorrow-software-not-plastic> (discussing tokenization and credit card security measures).

requirements that the recipient must retain contributors' debit and credit card numbers to be eligible for matching funds. All of the regulation's other requirements would remain in effect, including the requirements that the recipient collect the full name and mailing address of each contributor and maintain a "record that can be reproduced on paper" of each electronic contribution. Would § 9034.2, as revised, provide the necessary level of assurance that a credit or debit card contribution made over the internet is eligible for matching funds?

Should the Commission also revise 11 CFR 9034.2(c)(8)(i), which prohibits public fund matching of credit and debit card contributions "where the cardholder's name and card number are given . . . only orally"? When § 9034.2(c) was first adopted, the Commission explained the exclusion of credit card "signatures" made over the telephone as consistent with the "written instrument" limitation on the definition of "contribution" in 26 U.S.C. 9034(a).<sup>99</sup> Could an electronic record of a credit or debit card contribution authorized orally — such as an audio recording of the authorization — constitute a "written instrument" under the Funding Acts, 26 U.S.C. 9034(a)? Cf. Advisory Opinion 2013-12 (Service Employees International Union COPE) (noting that "a telephone-based authorization system that included computer-based (and retrievable) records" could "incorporate[] procedural safeguards and recordkeeping mechanisms equivalent to . . . a handwritten signature on a paper document" (internal quotations omitted)). If so, should the Commission revise 11 CFR 9034.2 to permit public fund matching of these credit and debit card contributions?

Finally, the Commission proposes to revise 11 CFR 9036.2(b)(1)(iii), which requires committees to provide the Commission with a list of contribution "checks returned unpaid" (*i.e.*, "bounced"). The Commission proposes to add a parallel provision for the electronic equivalent

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<sup>99</sup> See Matching Credit Card and Debit Card Contributions in Presidential Campaigns, 64 FR 32394, 32395-96 (June 17, 1999).

of bounced checks by requiring committees to provide a list of “credit or debit card or other electronic payment chargebacks.” The Commission is not proposing to add a similar provision regarding chargebacks to 11 CFR 9036.1(b)(7), which concerns a committee’s initial submission for matching funds, because 11 CFR 9036.1(b)(4) already requires such initial submissions to include validation for each deposited contribution.

The Commission seeks comment on the foregoing proposals to update its public financing regulations to account for electronic transactions.

#### 4. Designation, Redesignation, and Attribution of Contributions

The Commission is proposing to revise several provisions concerning the written designation of contributions for particular elections and the attribution of contributions to particular contributors.

First, the Commission proposes to revise 11 CFR 110.1(b)(4), 110.2(b)(4), and 9003.3(a)(1)(vi), which define when contributions are “designated in writing.” Each of these rules now allows a contribution to be designated for a particular election (or account, in the case of 11 CFR 9003.3(a)(1)(vi))<sup>100</sup> if it is made: (1) by a check, money order, or negotiable instrument which clearly indicates it is made with respect to that election or account; or (2) with an accompanying writing signed by the contributor which clearly indicates it is made with respect to that election or account. To ensure that these regulations apply uniformly to electronic and non-electronic transactions, the Commission proposes to remove the reference to a “check, money order, or other negotiable instrument” from 11 CFR 110.1(b)(4)(i), 110.2(b)(4)(i), and 9003.3(a)(1)(vi)(A).

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<sup>100</sup> Section 9003.3(a) concerns contributions to a publicly funded presidential candidate’s general election legal and accounting (“GELAC”) account.

Similarly, the Commission proposes to revise 11 CFR 110.1(k)(1) and 9034.2(c), which govern attribution of joint contributions. Section 110.1(k)(1) provides that any contribution made by more than one person, other than a contribution by a partnership, “shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing.” Because many contributions are made electronically rather than “by check, money order, or other negotiable instrument,” the Commission proposes to remove that reference to how a contribution is made from 11 CFR 110.1(k)(1). The proposed regulation would require instead that any joint contribution be “indicated by the signature of each contributor in writing,” without reference to a particular written instrument.

In the matching-funds context, § 9034.2(c) details the manners in which joint contributions may be attributed, depending on the type of written instrument by which the contribution is made. The Commission proposes to add to this section a provision governing the attribution of matchable contributions made by credit and debit cards. Specifically, proposed § 9034.2(c)(8)(iii) would parallel the joint attribution principles that apply to contributions by check, see 11 CFR 9034.2(c)(1)(ii), by providing that, “to be attributed to more than one person, a signed written statement must accompany the credit or debit card contribution indicating that the contribution was made from each individual’s personal funds in the amount so attributed.”

#### F. Updating Other Technologically Outmoded References

The Commission is proposing to update its regulations to reflect technological advances and to remove certain references to outmoded technologies. These revisions are not intended to affect the substance of any of the revised regulations.

##### 1. Telegrams, Telephones, Typewriters, Audio Tapes, and Facsimiles

Under 11 CFR 104.6, membership organizations and corporations that spend more than

\$2,000 per election on express advocacy communications to their members or restricted class must file reports with the Commission that identify, among other things, the type of communication, “such as direct mail, telephone or telegram.” 11 CFR 104.6(c)(1). The Commission proposes to remove the reference to “telegram” in 11 CFR 104.6(c)(1) because telegrams are obsolete and therefore not useful to include in the regulation’s illustrative, non-exhaustive list of types of communications.<sup>101</sup>

For the same reason, the Commission also proposes to replace the reference to “typewriters” with “computers” in 11 CFR 114.9(d) (requiring reimbursement for use of labor organization or corporate facilities in connection with federal elections) and to remove the references to “typewriters” (without substituting a new term) in 11 CFR 9004.6(a) (identifying certain expenditures that are qualified campaign expenses) and 9034.6(a) (same). The Commission intends the word “computer” in these contexts to include not only PCs, but also tablets, smartphones, and similar devices. The Commission welcomes comment on whether alternative terms may more clearly encompass all of these computing devices.

Similarly, the Commission proposes to add “internet service” to five non-exhaustive illustrative lists that currently include “telephone service”: 11 CFR 106.2(b)(2)(iii)(D) (defining “overhead expenditures” to include utilities and “telephone service base charges”); 11 CFR 9004.6(a) and (b) (describing publicly financed candidates’ provision of “facilities” to the media, including “telephone service”); and 11 CFR 9034.6(a) and (b) (same).

Because most recording is now digital rather than on magnetic tape, the Commission proposes to replace all regulatory references to “tapes,” as in, for example, “audio tapes,” with references to “recordings”: 11 CFR 200.6(a)(5) (including “transcripts or audio tapes” of

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<sup>101</sup> See Shivam Vij, [India to End State-Run Telegram Service. Stop.](http://www.csmonitor.com/World/Asia-South-Central/2013/0614/India-to-send-world-s-last-telegram.-Stop), Christian Sci. Monitor, June 14, 2013, [www.csmonitor.com/World/Asia-South-Central/2013/0614/India-to-send-world-s-last-telegram.-Stop](http://www.csmonitor.com/World/Asia-South-Central/2013/0614/India-to-send-world-s-last-telegram.-Stop) (describing one person’s “spirited defense of the obsolete technology in the age of the smartphone”).

Commission hearings in administrative record); 11 CFR 9007.7(b)(2) (same); 11 CFR 9038.7(b)(2) (same).

The Commission proposes to revise 11 CFR 108.6(b), which requires state officers to preserve certain reports concerning federal elections, by replacing the phrase “in facsimile copy by microfilm or otherwise” with “by copy.” The Commission is not, however, currently proposing to remove all references to “facsimile” from its regulations. For example, certain uses of “facsimile” in the regulations are grounded in the use of the word in FECA, such as the definition of “mass mailing” in 11 CFR 100.27, which is drawn from FECA’s definition of “mass mailing” as including “a mailing by . . . facsimile.” 52 U.S.C. 30101(23). The Commission welcomes suggestions regarding whether any technological or conforming revisions are necessary in the definition of “mass mailing” in 11 CFR 100.27 or the separate definition of the same term at 11 CFR 106.2(b)(2)(ii).

The regulations use a similar term, “direct mail,” in reference to a nominating convention delegate’s activity. This term is defined at 11 CFR 110.14(f)(4) to include “any mailing(s) made from lists that were not developed by the delegate.” See also 11 CFR 110.14(i)(4) (parallel provision for delegate committees). Should the definitions of “direct mail” be revised to explicitly account for electronic mailings or mailing lists?

## 2. Microfilm and Obsolete Computer References

The Commission proposes to remove most references to “microfilm,” “computer tape,” “magnetic tape,” and similar terms from the regulations because these technologies are, for most purposes, obsolete. These references are largely found in the rules implementing the Funding Acts, FOIA, the Privacy Act, and the Commission’s Public Disclosure Division. Specifically,

the Commission proposes to make the following revisions, none of which is intended to be substantive:

- remove the references to “microform,” “computer tape or microfilm,” “computerized,” and “Computerized Magnetic Media Requirements” in 11 CFR 4.1(j) (presenting non-exhaustive list of forms of FOIA copies), 4.9(c)(5) (FOIA fees), 9007.1(b)(1) (public finance audits), 9036.2(b)(1)(vi) (public fund submission procedures), and 9038.1(b)(1) (audit procedures);
- replace references to “machine readable documentation,” “magnetic tape or disk,” “computer disk,” “magnetic tapes or magnetic diskettes,” and “computerized magnetic media” with “digital storage device” in 11 CFR 4.1(j) (non-exhaustive list of forms of FOIA copies), 4.9(a)(3) (FOIA fees), 9003.1(b)(4) (public fund eligibility conditions), 9003.6(a) (same), 9033.1(b)(5) (same), 9033.12(a) (same), and 9036.1(b)(2) (same);
- replace references to a “microfilmed copy” and “photocopy” with “copy” in 11 CFR 105.5(a) and (b);
- delete 11 CFR 9003.6(b) and 9033.12(b), which concern the organization of computer information according to technical specifications of a computer system the Commission no longer uses;
- replace “computers” with “computers or other electronic devices” in 11 CFR 9004.6(a)(1) and 9034.6(a)(1); and
- replace “either solely in magnetic media form or in both printed and magnetic media forms” with “in printed or digital form or a combination of printed and digital forms” in 11 CFR 9036.2(b)(1)(ii).

The Commission also proposes to revise and simplify the fee structures at 11 CFR 4.9 and 5.6, which concern fees for FOIA and Public Disclosure. Specifically, the Commission proposes to remove 11 CFR 4.9(a)(2) (imposing \$25 per hour computer access FOIA fee); revise 11 CFR 4.9(c)(4) and 5.6(a) to reduce the fee for document certification; remove from 11 CFR 4.9(c)(4) and 5.6(a) the fees for “microfilm reader-printer” and “microfilm-paper” copies, “reels of microfilm,” publications, computer tapes and indexes, professional research time, and transcripts;<sup>102</sup> remove the specified staff charges from § 4.9(c)(4) and add a provision to charge the “direct costs,” including staff and digital storage devices on which records are produced; remove from 11 CFR 5.6(a) the fees for professional “research time/photocopying time”; remove 11 CFR 5.6(b), which establishes fees for providing Commission publications; and remove from 11 CFR 5.6(c) the reference to use of a contractor for microfilm and computer tape duplication. The Commission also proposes to make a conforming revision to 11 CFR 112.2(b) by including a reference to the Commission’s website in conjunction with an existing reference to the Public Disclosure Division. The Commission welcomes comment on the proposed revisions.

The Commission seeks comment on two parallel provisions concerning accommodations for the hearing impaired in television commercials prepared and distributed by publicly financed candidates. The Funding Acts require such candidates to certify that any television advertisement “contains or is accompanied by closed captioning of the oral content of the commercial to be broadcast in line 21 of the vertical blanking interval, or is capable of being viewed by deaf and hearing impaired individuals via any comparable successor technology to line 21 of the vertical blanking interval.” 26 U.S.C. 9003(e). Commission regulations implement this requirement essentially verbatim at 11 CFR 9003.1(b)(10) and 9033.1(b)(12). Is

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<sup>102</sup> The Commission is not proposing to change regulatory references to microfilm that relate to older Commission records that are unavailable in other forms. See, e.g., 11 CFR 5.6(a)(1) (establishing fee for making paper copies from microfilm).

there a “successor technology” that the Commission should now recognize in these provisions? Are there other technologies that might not apply to traditional broadcast television but are used for cable, satellite, or internet-based television (e.g., Hulu or Netflix)?

Finally, the Commission seeks comment on other regulatory references to specific technologies: “computer column codes [and] the extent of computer tabulations” of polling data, 11 CFR 106.4(e)(1); software that is “provided or approved by the Commission,” see 11 CFR 102.5(a)(3)(ii), 106.7(b), 300.30(c)(3)(ii); and “programming . . . computers” to address envelopes or labels, 11 CFR 114.5(k)(2). Are these provisions outdated, such that they should be revised?

### 3. Websites

The Commission is considering whether to revise certain regulatory references to “websites” to accommodate newer technologies — such as mobile applications (“apps”) on smartphones and tablets, smart TV, interactive gaming dashboards, e-book readers, and wearable network-enabled devices such as smartwatches or headsets — that have taken many of the same roles and characteristics that the Commission previously ascribed to websites.

First, the Commission proposes to update the definition of “public communication” in 11 CFR 100.26, which currently refers to communications placed for fee on another person’s “Web site.”<sup>103</sup> When the Commission defined “public communication” in 2006 to include paid internet advertisements on websites, it analogized such advertisements to the other forms of mass communication enumerated in FECA’s definition of “public communication” — such as television, radio, and newspapers — because “each lends itself to distribution of content through an entity ordinarily owned or controlled by another person.” Internet Communications, 71 FR

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<sup>103</sup> The definition of “public communication” is relevant to the application of certain disclaimer requirements, 11 CFR 110.11(a), coordination rules, 11 CFR 109.21(c), and financing limitations, e.g., 11 CFR 100.24(b)(3), 300.32(a)(1)-(2), 300.71.

18589, 18594 (Apr. 12, 2006); 52 U.S.C. 30101(22). The Commission focused on websites because that was the predominant means of paid internet advertising in 2006.<sup>104</sup> The proposed revision would update § 100.26 to refer to an “internet-enabled device or application,” thereby reflecting subsequent changes in internet technology<sup>105</sup> and rendering the regulatory text more adaptable to the development of as-yet unknown future technologies.

The Commission seeks comment on this proposal. Is there any basis in law or fact to distinguish between paid website advertising and other paid internet advertising for purposes of the definition of “public communication”? Is the term “internet-enabled device or application” sufficiently clear and technically accurate, or is there a better way to refer to the various media through which paid internet communications can be sent and received? Would providing examples of such paid media be helpful?

Second, the Commission proposes to update the disclaimer provision in 11 CFR 110.11, which currently refers to political committees’ “Internet websites” that are available to the general public. 11 CFR 110.11(a)(1).<sup>106</sup> When the Commission revised the disclaimer requirements in 2002 to apply to political committees’ websites, it noted “the widespread use of

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<sup>104</sup> Even in the 2006 rulemaking, the Commission stated, albeit in a different context, that the “terms ‘website’ and ‘any Internet or electronic publication’ are meant to encompass a wide range of existing and developing technology, such as websites, ‘podcasts,’ etc.” Internet Communications, 71 FR at 18608 n.52 (citing 2005 testimony enumerating variety of “Internet communication technologies,” including instant messaging, “Internet Relay Chat,” social networking software, and widgets).

<sup>105</sup> See Amy Schatz, In Hot Pursuit of the Digital Voter, Wall St. J., Mar. 23, 2012, [www.wsj.com/articles/SB10001424052702303812904577299820064048072](http://www.wsj.com/articles/SB10001424052702303812904577299820064048072) (showing screenshots of 2012 presidential committee advertisements on Hulu and noting another campaign’s purchase of advertisements on Pandora internet radio); Tanzina Vega, The Next Political Battleground: Your Phone, CNN, May 29, 2015, [www.cnn.com/2015/05/29/politics/2016-presidential-campaigns-mobile-technology](http://www.cnn.com/2015/05/29/politics/2016-presidential-campaigns-mobile-technology) (noting that “voters should expect more political ads as they scroll through their phones next year – much as they’ll be bombarded with ads on television,” including ads using geolocation to “target[] potential voters who may have downloaded the candidate’s app”). Indeed, a recent study has shown that 19% of Americans access the internet exclusively or mostly through their smartphones as opposed to desktop or laptop computers. See Pew Research Ctr., U.S. Smartphone Use in 2015, at 3 (2015), [www.pewinternet.org/files/2015/03/PI\\_Smartphones\\_0401151.pdf](http://www.pewinternet.org/files/2015/03/PI_Smartphones_0401151.pdf).

<sup>106</sup> Issues concerning the substantive disclaimer requirements for electronic communications, such as modifications of or exemptions from disclaimer requirements for certain internet communications, are outside the scope of this rulemaking. They may be addressed in a separate rulemaking. See Internet Communication Disclaimers, 76 FR 63567; see also *supra* note 40. To review and comment on documents on that subject, visit <http://www.fec.gov/fosers>, reference REG 2011-02.

this technology in modern campaigning, and the relatively nonintrusive nature of disclaimer requirements.” Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 FR 76962, 76964 (Dec. 13, 2002). Disclaimers on political committee websites, the Commission stated, “will assure, for example, that a website created and paid for by an individual will not have to include a disclaimer” while the “use of . . . websites to conduct campaign activity will have to provide the public notice of who is responsible.” *Id.* As noted in the discussion of “public communication” above, the Commission used the term “website” here because that was the predominant means of public “campaign activity” on the internet at the time. To update the now-outdated terminology in this provision, the Commission proposes to revise it to refer to political committees’ “websites and internet applications.” The Commission welcomes comment on this proposal, including on whether there are terms other than “websites” and “applications” that may be better able to adapt to changing technological platforms of political committees. Is there a legal or factual basis for distinguishing between political committees’ public websites and their public apps for purposes of FECA’s disclaimer provisions? Do political committees have other devices or platforms for disseminating internet content comparable to websites and apps in modern campaigning?

Third, the Commission is proposing to update the definition of “federal election activity” to exclude de minimis costs incurred by a state, district, or local party committee for certain activities associated with apps. 11 CFR 100.24. Currently, the definition of “federal election activity” excludes de minimis costs associated with posting certain general voting information on the “Web site” of a state, district, or local party committee or association of state or local candidates. 11 CFR 100.24(c)(7)(i) through (iii). When the Commission adopted these exclusions in 2010, it recognized the “administrative complexities” that state, district, and local

party committees and associations of state and local candidates would face in tracking the “nominal, incidental” costs of the enumerated activities. See Definition of Federal Election Activity, 75 FR 55257, 55265 (Sept. 10, 2010). The Commission also recognized that many of these activities did not involve any costs and, for those that did, the costs would be “so small that — even aggregated over a long period of time — they would not result in any meaningful evasion of BCRA’s soft money restrictions.” Id. The Commission proposes now to update 11 CFR 100.24(c)(7) by providing that the de minimis exception also applies to the same enumerated activities when conducted via internet apps of state, district, and local party committees and associations of state and local candidates. The Commission believes that the reasons for excluding this activity from the definition of federal election activity when conducted on a party committee’s website — i.e., its de minimis incremental cost and the administrative difficulty of determining such cost — apply equally to making the specified information available on a party committee’s app. Is there any practical or legal reason to include one in the definition of “federal election activity” while excluding the other? Is the proposed revision sufficiently flexible for the de minimis exception to be applied to evolving technologies where appropriate without further textual revision?

Finally, the Commission is proposing to revise references to “World Wide Web site,” “Web site” or “web site” to read “website” in 11 CFR 4.4(g), 100.29(b)(6)(i) and (ii), 100.73, 100.94(b), 100.132, 102.2(a)(1)(vii), 104.22(b)(2)(i) and (ii), 110.1(c)(1)(iii), 110.2(e)(2), and 110.17(e)(1) and (2); “Internet Web site” to read “website” in 11 CFR 104.22(a)(6)(ii)(A)(2); “World Wide Web address” to read “website address” in 11 CFR 110.11(b)(3); and “Web address” and “Web page” to read “website address” and “web page” in 11 CFR 300.2(m)(1)(iii). As with the other terminological updates discussed above, none of these proposed revisions is

intended to effect a substantive change in the regulations. Would the proposed revisions modernize the regulatory language in a useful way?

G. Other Electronic Modernization Issues

In addition to inviting comment, including pertinent data, on the issues raised in this document, the Commission welcomes comment and data on any technological modernization issues that are not addressed in this document and that relate to the Commission's regulations implementing FECA, the Funding Acts, or other statutes that the Commission is charged with implementing.

**Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)**

The Commission certifies that the attached proposed rules, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed rules would clarify and update existing regulatory language, codify certain existing Commission precedent regarding electronic transactions and communications, and provide political committees and other entities with more flexibility in meeting FECA's recordkeeping and filing requirements. The proposed rules would not impose new recordkeeping, reporting, or financial obligations on political committees or commercial vendors. The Commission therefore certifies that the proposed rules, if adopted, would not have a significant economic impact on a substantial number of small entities.

**List of Subjects**

11 CFR Part 1

Privacy.

11 CFR Part 2

Sunshine Act.

11 CFR Part 4

Freedom of information.

11 CFR Part 5

Archives and records.

11 CFR Part 6

Civil rights, Individuals with disabilities.

11 CFR Part 7

Administrative practice and procedure, Conflict of interests.

11 CFR Part 100

Elections.

11 CFR Part 102

Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 103

Banks and banking, Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 105

Campaign funds, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 106

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 108

Elections, Reporting and recordkeeping requirements.

11 CFR Part 109

Coordinated and independent expenditures.

11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 111

Administrative practice and procedure, Elections, Law enforcement, Penalties.

11 CFR Part 112

Administrative practice and procedure, Elections.

11 CFR Part 114

Business and industry, Elections, Labor.

11 CFR Part 116

Administrative practice and procedure, Business and industry, Credit, Elections, Political candidates, Political committees and parties.

11 CFR Part 200

Administrative practice and procedure.

11 CFR Part 201

Administrative practice and procedure.

11 CFR Part 300

Campaign funds, Nonprofit organizations, Political committees and parties, Political candidates, Reporting and recordkeeping requirements.

11 CFR Part 9002

Campaign funds.

11 CFR Part 9003

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9004

Campaign funds.

11 CFR Part 9007

Administrative practice and procedure, Campaign funds.

11 CFR Part 9032

Campaign funds.

11 CFR Part 9033

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9034

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9035

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9036

Administrative practice and procedure, Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9038

Administrative practice and procedure, Campaign funds.

11 CFR Part 9039

Campaign funds, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Federal Election Commission proposes to amend 11 CFR chapter I as follows:

## **PART 1—PRIVACY ACT**

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 552a.

### **§ 1.3 [Amended]**

2. Amend paragraph (b) of § 1.3 by removing “request assistance by mail or in person from the Chief Privacy Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463 during the hours of 9 a.m. to 5:30 p.m.” and adding in its place “request assistance in person from the Chief Privacy Officer during the hours of 9 a.m. to 5:30 p.m. or file a request for assistance, addressed to the Chief Privacy Officer, pursuant to 11 CFR 100.19(g).”

### **§ 1.4 [Amended]**

3. Amend paragraph (a) of § 1.4 by removing “made at the Federal Election Commission, 999 E Street, NW., Washington, DC 20463 and to the system manager identified in the notice describing the systems of records, either in writing or in person” and adding in its place “addressed to the system manager identified in the notice describing the systems of records, either in person or by filing the request pursuant to 11 CFR 100.19(g).”

## **PART 2—SUNSHINE REGULATIONS; MEETINGS**

4. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 552b.

### **§ 2.2 [Amended]**

5. Amend § 2.2(a) by removing “, 999 E Street, NW., Washington, DC 20463”.

## **PART 4—PUBLIC RECORDS AND THE FREEDOM OF INFORMATION ACT**

6. The authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 552, as amended.

**§ 4.1 [Amended]**

7. Amend § 4.1(j) as follows:

a. Remove “microform,”; and

b. Remove “machine readable documentation (e.g., magnetic tape or disk)” and add in its place “digital storage device”.

**§ 4.4 [Amended]**

8. Amend § 4.4(g) by removing “World Wide Web site” and adding in its place “website”.

**§ 4.5 [Amended]**

9. Amend § 4.5 as follows:

a. In paragraph (a)(4)(i), remove “addressed to the Chief FOIA Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, and shall indicate clearly on the envelope” and add in its place “addressed to the Chief FOIA Officer and filed pursuant to 11 CFR 100.19(g), and shall indicate clearly on the envelope or subject line, or in a similarly prominent location,”; and

b. In paragraph (a)(4)(iv), remove “addressed to the Chief FOIA Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463” and add in its place “addressed to the Chief FOIA Officer and filed pursuant to 11 CFR 100.19(g)”.

**§ 4.7 [Amended]**

10. Amend paragraph (b)(1) of § 4.7 by removing “addressed to Chief FOIA Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463” and adding in its place “addressed to the Chief FOIA Officer and filed pursuant to 11 CFR 100.19(g)”.

**§ 4.8 [Amended]**

11. Amend § 4.8 as follows:

- a. In paragraph (b), remove “envelope or other cover and at the top of the first page” and add in its place “envelope or subject line, or in a similarly prominent location,”; and
- b. In paragraph (c), remove “delivered or addressed to the Chief FOIA Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463” and add in its place “addressed to the Chief FOIA Officer and filed pursuant to 11 CFR 100.19(g)”.

12. Amend § 4.9 as follows:

- a. Remove paragraph (a)(2);
- b. Redesignate paragraphs (a)(3) and (4) as paragraphs (a)(2) and (3), respectively;
- c. In newly redesignated paragraph (a)(2), remove “computer disks” and add in its place “digital storage devices”; and
- d. Revise paragraphs (c)(4) and (5).

The revisions read as follows:

**§ 4.9 Fees.**

\* \* \* \* \*

(c) \* \* \*

(4) For a paper photocopy of a record, the fee will be \$.07 per page, which has been calculated to include staff time. For other forms of duplication, including copies produced by computer, the Commission will charge the direct costs, including staff time and the actual cost of any digital storage device provided. The Commission will charge \$7.50 for certification of a document. The Commission will not charge a fee for ordinary packaging and mailing of records requested.

When a request for special mailing or delivery services is received the Commission will package the records requested. The requestor shall make all arrangements for pick-up and delivery of the requested materials. The requestor shall pay all costs associated with special mailing or delivery services directly to the courier or mail service.

- (5) The Commission will advise the requestor of the identity of any private contractor who will perform the duplication services. If fees are charged for such services, they shall be made payable to that private contractor and shall be forwarded to the Commission.

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#### **PART 5—ACCESS TO PUBLIC DISCLOSURE DIVISION DOCUMENTS**

13. The authority citation for part 5 continues to read as follows:

Authority: 52 U.S.C. 30108(d), 30109(a)(4)(B)(ii), 30111(a); 31 U.S.C. 9701.

#### **§ 5.4 [Amended]**

14. Amend § 5.4(a)(5) by removing “Letter requests” and adding in its place “Requests”.

#### **§ 5.5 [Amended]**

15. Amend § 5.5 as follows:
  - a. In paragraph (a), remove “mail” and add in its place “filing a request pursuant to 11 CFR 100.19(g)”; and
  - b. In paragraph (c), remove “addressed to the Chief FOIA Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463” and add in its place “addressed to the Chief FOIA Officer and filed pursuant to 11 CFR 100.19(g)”.
16. Amend § 5.6 as follows:

- a. Revise paragraph (a);
- b. Remove paragraph (b);
- c. Redesignate paragraphs (c) and (d) as paragraphs (b) and (c), respectively; and
- d. Revise newly redesignated paragraph (b).

The revisions read as follows:

**§ 5.6 Fees.**

- (a) Fees may be charged for copies of records which are furnished to a requester under this part and for the staff time spent in locating and reproducing such records at the rate of \$.05 per page for paper copies, including paper copies from microfilm; \$4.50 per half hour of staff time after the first half hour; and \$7.50 for certification of a document. Such fees shall not exceed the Commission's direct cost of processing requests for those records computed on the basis of the actual number of copies produced and the staff time expended in fulfilling the particular request.
- (b) In the event the anticipated fees for all pending requests from the same requester exceed \$25.00, records will not be searched, nor copies furnished, until the requester pays, or makes acceptable arrangements to pay, the total amount due. If any fee is not precisely ascertainable, an estimate will be made by the Commission and the requester will be required to forward the fee so estimated. In the event any advance payment differs from the actual fee, an appropriate adjustment will be made at the time the copies are made available by the Commission.

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**PART 6—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF  
HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL  
ELECTION COMMISSION**

17. The authority citation for part 6 continues to read as follows:

Authority: 29 U.S.C. 794.

**§ 6.103 [Amended]**

18. Amend § 6.103(b) by removing “, 999 E Street, NW., Washington, DC 20463”.

**§ 6.170 [Amended]**

19. Amend § 6.170 as follows:

a. In paragraph (d)(3), remove “filed under this part shall be addressed to the Rehabilitation Act Officer, 999 E Street, NW., Washington, DC 20463” and add in its place “under this part shall be addressed to the Rehabilitation Act Officer and filed pursuant to 11 CFR 100.19(g)”;

b. In paragraph (g), remove “in a letter containing” and add in its place “in writing. This notification will contain”;

c. In paragraph (h), remove “letter” and add in its place “notification”; and

d. In paragraph (i), remove “, Federal Election Commission, 999 E Street, NW., Washington, DC 20463” and add in its place “and filed pursuant to 11 CFR 100.19(g)”.

**PART 7—STANDARDS OF CONDUCT**

20. The authority citation for part 7 continues to read as follows:

Authority: 52 U.S.C. 30106, 30107, and 30111; 5 U.S.C. 7321 et seq. and app. 3.

**§ 7.2 [Amended]**

21. Amend § 7.2(a) by removing “, 999 E Street, NW., Washington, DC 20463”.

**PART 100—SCOPE AND DEFINITIONS (52 U.S.C. 30101)**

22. The authority citation for part 100 continues to read as follows:

Authority: 52 U.S.C. 30101, 30104, 30111(a)(8), and 30114(c).

**§ 100.3 [Amended]**

23. Amend § 100.3(a)(3) by removing “by letter” and adding in its place “in writing”.

**§ 100.9 [Amended]**

24. Amend § 100.9 by removing “, 999 E Street, NW., Washington, DC 20463”.

25. In § 100.19, revise the introductory paragraph and add paragraph (g) to read as follows:

**§ 100.19 File, filed, or filing (52 U.S.C. 30104(a)).**

With respect to documents required to be filed with the Commission or the Secretary of the Senate under 11 CFR parts 101, 102, 104, 105, 107, 108, and 109, and any modifications or amendments thereto, the terms file, filed, and filing mean one of the actions set forth in paragraphs (a) through (f) of this section. With respect to documents to be filed with the Commission under any other provision of 11 CFR, the terms file, filed, and filing mean one of the actions set forth in paragraph (g) of this section. For purposes of this section, document means any report, statement, notice, designation, request, petition, or other writing to be filed with the Commission or the Secretary of the Senate.

\* \* \* \* \*

(g) A document may be filed in person or by mail, including priority mail or express mail, or overnight delivery service, with the Federal Election Commission, 999 E Street NW., Washington, DC 20463, or by any alternative means, including electronic, that the Commission may prescribe.

**§ 100.24 [Amended]**

26. Amend § 100.24 as follows:
- a. In paragraph (c)(7)(i), by removing “Web site” and “web page” and adding in their places, “website or internet application” wherever they appear; and
  - b. In paragraphs (c)(7)(ii) and (iii), by removing “Web site” and adding in its place “website or internet application” wherever it appears.

**§ 100.26 [Amended]**

27. Amend § 100.26 by removing “Web site” and adding in its place “website or internet-enabled device or application”.

**§ 100.29 [Amended]**

28. Amend § 100.29 as follows:
- a. In paragraphs (b)(6)(i) and (ii), remove “Web site” and add in its place “website” wherever it appears; and
  - b. In paragraph (b)(6)(ii)(A), remove “written documentation” and add in its place “a writing”.
29. Add § 100.34 to subpart A to read as follows:

**§ 100.34 Record.**

- (a) A record is information that is inscribed on a tangible medium or that is stored in an electronic or other medium from which the information can be retrieved and reviewed in visual or aural form.
- (b) Any person who provides to the Commission a record stored in an electronic or other non-tangible medium shall, upon request of the Commission, provide at no cost to the Commission any equipment and software necessary to enable the Commission to retrieve and review the information in the record. The Commission may request such equipment

and software when the Commission cannot retrieve and review the information using the Commission's existing equipment and software.

30. Add § 100.35 to subpart A to read as follows:

**§ 100.35 Writing, written.**

Written, in writing, or a writing means consisting of letters, words, numbers, or their equivalent set down in any medium or form, including paper, email or other electronic message, computer file, or digital storage device.

31. Add § 100.36 to subpart A to read as follows:

**§ 100.36 Signature, electronic signature.**

- (a) A signature is an individual's name or mark on a writing or record that identifies the individual and authenticates the writing or record. A signature includes an electronic signature, unless otherwise specified.
- (b) An electronic signature is an electronic word, image, symbol, or process that an individual attaches to or associates with a writing or record to identify the individual and authenticate the writing or record. Examples of electronic signatures include a digital image of a handwritten signature, or a secure, digital code attached to an electronically transmitted message that uniquely identifies and authenticates the sender.
- (c) A writing or record may be sworn, made under oath, or otherwise certified or verified under penalty of perjury, by electronic signature. A writing or record may be notarized electronically pursuant to applicable State law.

**§ 100.73 [Amended]**

32. Amend the introductory text of § 100.73 by removing "Web site" and adding in its place "website".

**§ 100.82 [Amended]**

33. Amend § 100.82(e)(1)(i) and (e)(2)(ii) by removing “documentation” and adding in its place “records” wherever it appears.

**§ 100.93 [Amended]**

34. Amend the introductory text of § 100.93(j)(1), (2), and (3) by removing “documentation” and adding in its place “a record” wherever it appears.

**§ 100.94 [Amended]**

35. Amend § 100.94(b) by removing “Web site” and adding in its place “website” wherever it appears.

**§ 100.132 [Amended]**

36. Amend the introductory text of § 100.132 by removing “Web site” and adding in its place “website”.

**§ 100.142 [Amended]**

37. Amend § 100.142(e)(1)(i) and (e)(2)(ii) by removing “documentation” and adding in its place “records” wherever it appears.

**PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY  
POLITICAL COMMITTEES (52 U.S.C. 30103)**

38. The authority citation for part 102 continues to read as follows:

Authority: 52 U.S.C. 30102, 30103, 30104(a)(11), 30111(a)(8), and 30120.

**§ 102.2 [Amended]**

39. Amend § 102.2 as follows:

a. In the introductory text to paragraph (a)(1), remove “, 999 E Street, NW., Washington, DC 20463”; and

b. In paragraph (a)(1)(vii), remove “web site” and add in its place “website”.

40. Amend § 102.6 as follows:

a. In the introductory text of paragraph (c)(2), remove “fund in a bill” and add in its place “fund with a bill”; and

b. Revise paragraph (c)(3).

The revision reads as follows:

**§ 102.6 Transfers of funds; collecting agents.**

\* \* \* \* \*

(c) \* \* \*

(3) *Combining contributions with other payments.* A contributor may write a check or authorize a credit card or electronic payment that represents both a contribution and payment of dues or other fees. The combined payment must be made from the contributor’s personal account or on a non-repayable corporate drawing account of the individual contributor. Under a payroll deduction plan, an employer may make a payment on behalf of its employees to a union or its agent that represents a combined payment of voluntary contributions to the union’s separate segregated fund and union dues or other employee deductions.

\* \* \* \* \*

41. In § 102.8, revise the last sentence of paragraph (a), revise the last sentence of paragraph (b)(2), and add paragraph (d) to read as follows:

**§ 102.8 Receipt of contributions (52 U.S.C. 30102(b)).**

(a) \* \* \* Date of receipt shall be the date such person obtains possession of the contribution or, for a contribution made in an electronic transaction in which the receipt of

authorization precedes the receipt of funds, obtains the contributor's authorization of the transaction.

(b) \* \* \*

(2) \* \* \* Date of receipt shall be the date such person obtains possession of the contribution or, for a contribution made in an electronic transaction in which the receipt of authorization precedes the receipt of funds, obtains the contributor's authorization of the transaction.

\* \* \* \* \*

(d) Every person whose usual and normal business involves the processing and transmission of payments and who processes a contribution to a political committee in the ordinary course of its business will satisfy the requirements of paragraphs (a) and (b) of this section if such person transmits funds and contributor information to the recipient political committee within the time periods prescribed in paragraphs (a) and (b) of this section for forwarding contributions.

42. Amend § 102.9 as follows:

- a. Revise paragraph (a)(4);
- b. In the introductory text of paragraph (b)(2) and paragraphs (b)(2)(i)(B) and (b)(2)(ii), remove "cancelled check" and add in its place "canceled check or record of electronic transfer";
- c. In paragraph (b)(2)(i)(B), remove "documentation" and add in its place "record";
- d. In paragraph (b)(2)(ii), remove "documentation" and add in its place "a record";
- f. Remove paragraph (b)(2)(iii); and
- g. Revise paragraph (f).

The revisions read as follows:

**§ 102.9 Accounting for contributions and expenditures (52 U.S.C. 30102(c)).**

\* \* \* \* \*

(a) \* \* \*

(4) In addition to the account to be kept under paragraph (a)(1) of this section, for contributions in excess of \$50, the treasurer of a political committee or an agent authorized by the treasurer shall maintain a record of each contribution received. A record of a contribution by check or written instrument must contain an image of that instrument. A record of the receipt of a contribution must include sufficient information to associate that contribution with its deposit in the political committee's campaign depository, such as, for example, a batch number.

\* \* \* \* \*

(f) The treasurer shall maintain the records required by 11 CFR 110.1(l), concerning designations, redesignations, reattributions, and the dates of contributions. If the treasurer does not maintain these records, 11 CFR 110.1(l)(5) shall apply.

**§ 102.10 [Amended]**

43. Amend § 102.10 by removing “check or similar draft drawn on” and adding in its place “check or similar draft, including electronic transfer, from”.

**§ 102.11 [Amended]**

44. Amend § 102.11 by removing “journal” and add in its place “record” wherever it appears.

**PART 103—CAMPAIGN DEPOSITORIES (52 U.S.C. 30102(H))**

45. The authority citation for part 103 continues to read as follows:

Authority: 52 U.S.C. 30102(h), 30111(a)(8).

46. Revise § 103.3(a) to read as follows:

**§ 103.3 Deposit of receipts and disbursements (52 U.S.C. 30102(h)(1)).**

(a)(1) All receipts by a political committee shall be deposited in account(s) established pursuant to 11 CFR 103.2, except that any contribution may be, within 10 days of the treasurer's receipt, returned to the contributor without being deposited. The treasurer of the committee shall be responsible for making such deposits. All deposits shall be made within 10 days of the treasurer's receipt. Contributions deposited in the merchant account of a person described in 11 CFR 102.8(d) in the ordinary course of that person's business are not receipts by the committee, but are, instead, contributions to be forwarded by that person under 11 CFR 102.8.

(2) A committee shall make all disbursements by check or similar draft, including electronic transfer, from an account at its designated campaign depository, except for expenditures of \$100 or less made from a petty cash fund maintained pursuant to 11 CFR 102.11. Funds may be transferred from the depository for investment purposes, but shall be returned to the depository before such funds are used to make expenditures.

\* \* \* \* \*

**PART 104—REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS (52 U.S.C. 30104)**

47. The authority citation for part 104 continues to read as follows:

Authority: 52 U.S.C. 30101(1), 30101(8), 30101(9), 30102(i), 30104, 30111(a)(8) and (b), 30114, 30116, 36 U.S.C. 510.

**§ 104.4 [Amended]**

48. Amend § 104.4(d)(2) by removing “typing the treasurer’s name” and adding in its place “electronic signature”.

**§ 104.6 [Amended]**

49. Amend § 104.6(c)(1) by removing “, telephone or telegram” and adding in its place “or telephone”.

**§ 104.10 [Amended]**

50. Amend § 104.10(a)(4) and (b)(5) by removing “documents” and adding in its place “records”.

**§ 104.14 [Amended]**

51. Amend § 104.14 as follows:

a. In paragraph (b)(4)(iv), remove “documentation” and add in its place “records”;  
and

b. In paragraph (b)(4)(v), remove “Documentation for” and add in its place “Records of”.

**§ 104.17 [Amended]**

52. Amend § 104.17(a)(4) and (b)(4) by removing “documents” and adding in its place “records” wherever it appears.

**§ 104.22 [Amended]**

53. Amend § 104.22 as follows:

a. In paragraph (a)(6)(ii)(A)(2), remove “Internet Web site” and add in its place “website”;

- b. In paragraphs (b)(2)(i) and (ii), remove “Web sites” and add in its place “websites” wherever it appears; and
- c. In paragraph (b)(2)(ii), remove “Web site” and add in its place “website” wherever it appears.

**PART 105—DOCUMENT FILING (52 U.S.C. 30102(G))**

54. The authority citation for part 105 continues to read as follows:

Authority: 52 U.S.C. 30102(g), 30104, 30111(a)(8).

**§ 105.5 [Amended]**

55. Amend § 105.5 as follows:

- a. Remove “microfilm copies and photocopies” from the section heading and add in its place “copies”;
- b. In paragraph (a), remove “Either a microfilmed copy or photocopy” and add in its place “A copy”; and
- c. In paragraph (b), remove “microfilm copy and a photocopy” and add in its place “copy”.

**PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES**

56. The authority citation for part 106 continues to read as follows:

Authority: 52 U.S.C. 30111(a)(8), 30116(b), 30116(g).

**§ 106.2 [Amended]**

57. Amend § 106.2 as follows:

- a. In paragraphs (a)(1), (b)(2)(ii), and (b)(2)(v), remove “documentation” and add in its place “records”; and

- b. In paragraph (b)(2)(iii)(D), remove “supplies, and telephone” and add in its place “supplies, internet service, and telephone”.

**PART 108—FILING COPIES OF REPORTS AND STATEMENTS WITH STATE OFFICERS (52 U.S.C. 30113)**

58. The authority citation for part 108 continues to read as follows:

Authority: 52 U.S.C. 30104(a)(2), 30111(a)(8), 30113, 30143.

**§ 108.6 [Amended]**

59. In § 108.6(b), remove “in facsimile copy by microfilm or otherwise” and add in its place “by copy”.

**PART 109—COORDINATED AND INDEPENDENT EXPENDITURES (52 U.S.C. 30101(17), 30116(A) AND (D), AND PUB. L. 107-155 SEC. 214(C))**

60. The authority citation for part 109 continues to read as follows:

Authority: 52 U.S.C. 30101(17), 30104(c), 30111(a)(8), 30116, 30120; Sec. 214(c), Pub. L. 107-155, 116 Stat. 81.

**§ 109.10 [Amended]**

61. In § 109.10(e)(2)(ii), remove “typing the treasurer’s name” and add in its place “electronic signature”.

**PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS**

62. The authority citation for part 110 continues to read as follows:

Authority: 52 U.S.C. 30101(8), 30101(9), 30102(c)(2), 30104(i)(3), 30111(a)(8), 30116, 30118, 30120, 30121, 30122, 30123, 30124, and 36 U.S.C. 510.

63. Amend § 110.1 as follows:

- a. In paragraph (b)(3)(i)(A), remove “using a committee check or draft” and add in its place “using a committee check or similar draft, including electronic transfer”;
- b. In paragraph (b)(4)(i), remove “is made by check, money order, or other negotiable instrument which”;
- c. In paragraph (b)(5)(ii)(B)(6), remove “including electronic mail”;
- d. In paragraph (b)(5)(ii)(C)(7), remove “, including electronic mail”;
- e. In paragraph (b)(6), add a fifth sentence after “11 CFR 110.1(l)(4).”;
- f. In paragraph (c)(1)(iii), remove “Web site” and add, in its place, “website”;
- g. In paragraph (k)(1), remove “include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing” and add in its place “be indicated by the signature of each contributor in writing”;
- h. In paragraph (k)(3)(ii)(B)(3), remove “including electronic mail”;
- i. In paragraph (l)(1), remove “copy” and “full-size photocopy of the check or written instrument” and add in their places “record” and “record that contains a complete image of that instrument”, respectively;
- j. In paragraph (l)(4)(i), remove “copy” and add in its place “record”;
- k. In paragraph (l)(4)(ii), remove “full-size photocopy of” and add in its place “record that contains a complete image of”; and
- l. In paragraph (l)(6), remove “documentation” and add in its place “a record” wherever it appears.

The addition reads as follows:

**§ 110.1 Contributions by persons other than multicandidate political committees (52 U.S.C. 30116(a)(1)).**

\* \* \* \* \*

(b) \* \* \*

(6) \* \* \* A contribution made in an electronic transaction is considered to be made when the contributor authorizes the transaction. \* \* \*

\* \* \* \* \*

64. Amend § 110.2 as follows:

- a. In paragraph (b)(4)(i), remove “is made by check, money order, or other negotiable instrument which”;
- b. In paragraph (b)(6), add a fifth sentence after “11 CFR 110.1(1)(4).”; and
- c. In paragraph (e)(2), remove “Web site” and add in its place “website”.

The addition reads as follows:

**§ 110.2 Contributions by multicandidate political committees (52 U.S.C. 30116(a)(2)).**

\* \* \* \* \*

(b) \* \* \*

(6) \* \* \* A contribution made in an electronic transaction is considered to be made when the contributor authorizes the transaction. \* \* \*

\* \* \* \* \*

65. Amend § 110.4 as follows:

- a. In paragraph (c)(1), remove “make contributions to a candidate or political committee of currency of the United States, or of any foreign country” and add in its place “make cash contributions to a candidate or political committee”; and
- b. Add paragraph (c)(4).

The addition reads as follows:

**§ 110.4 Contributions in the name of another; cash contributions (52 U.S.C. 30122, 30123, 30102(c)(2)).**

\* \* \* \* \*

(c) \* \* \*

(4) For purposes of this section, a cash contribution includes a contribution of currency of the United States or of any foreign country, and a contribution made by prepaid card.

66. Amend § 110.6 as follows:

- a. In paragraph (b)(2)(i)(D), remove “and”;
- b. In paragraph (b)(2)(i)(E), remove “contributions.” and add in its place “contributions; and”;
- c. Add paragraph (b)(2)(i)(F);
- d. In paragraph (c)(1)(ii), remove “by letter” and add in its place “the report shall be provided in writing”;
- e. In paragraph (c)(1)(iv)(C), remove “cash or by the contributor’s check or by the conduit’s check” and add in its place “cash, by the contributor’s check, by the conduit’s check, or by electronic transfer”; and
- f. In paragraph (c)(1)(v), remove “by letter” and add in its place “in writing”.

The addition reads as follows:

**Alternative A**

**§ 110.6 Earmarked contributions (52 U.S.C. 30116(a)(8)).**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) \* \* \*

(F) A commercial payment processor, which is any person whose usual and normal business is to process payments and who processes payments to candidates and authorized committees in the ordinary course of business without exercising direction or control over the choice of the recipient candidate or authorized committee.

\* \* \* \* \*

**Alternative B**

**§ 110.6 Earmarked contributions (52 U.S.C. 30116(a)(8)).**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) \* \* \*

(F) A commercial payment processor, which is any person whose usual and normal business is to process payments and who processes payments to candidates and authorized committees in the ordinary course of business.

\* \* \* \* \*

**§ 110.11 [Amended]**

67. Amend § 110.11 as follows:

a. In paragraph (a)(1), remove “Internet websites” and add in its place “websites and internet applications”; and

b. In paragraph (b)(3), remove “World Wide Web address” and add in its place “website address”.

**§ 110.17 [Amended]**

68. Amend § 110.17(e)(1) and (2) by removing “Web site” and adding in its place “website” wherever it appears.

**PART 111—COMPLIANCE PROCEDURE (52 U.S.C. 30109, 30107(A))**

69. The authority citation for part 111 continues to read as follows:

Authority: 52 U.S.C. 30102(i), 30109, 30107(a), 30111(a)(8); 28 U.S.C. 2461 note; 31 U.S.C. 3701, 3711, 3716-3719, and 3720A, as amended; 31 CFR parts 285 and 900-904.

**§ 111.4 [Amended]**

70. Amend § 111.4 as follows:

- a. In paragraph (a), remove “to the General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463” and add in its place “addressed to the General Counsel”;
- b. In paragraph (a), remove “three (3) copies” and add in its place “three (3) copies of any complaint not filed electronically”; and
- c. In paragraph (d)(4), remove “documentation supporting the facts alleged if such documentation is” and add in its place “records supporting the facts alleged if such records are”.

**§ 111.5 [Amended]**

71. Amend § 111.5 as follows:

- a. In paragraph (a), remove “enclose” and add in its place “provide”; and
- b. In paragraph (b), remove “enclosed” and add in its place “provided”.

**§ 111.6 [Amended]**

72. Amend § 111.6(a) by removing “a letter or memorandum” and adding in its place “a written response”.

**§ 111.9 [Amended]**

73. Amend § 111.9(a) and (b) by removing “by letter” and adding in its place “in writing” wherever it appears.

**§ 111.12 [Amended]**

74. Amend § 111.12 as follows:

- a. In paragraph (a), remove “documentary or other tangible” and add in its place “records or other”; and
- b. In paragraph (b), remove “documents” and add in its place “records”.

**§ 111.13 [Amended]**

75. Amend § 111.13(c) and (d) by removing “method whereby” and adding in its place “method, including electronically, whereby” wherever it appears.

**§ 111.15 [Amended]**

76. Amend § 111.15 as follows:

- a. In paragraph (a), remove “, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. If possible, three (3) copies should be submitted”; and
- b. In paragraph (c), remove “documents” and add in its place “records”.

77. Amend § 111.16 as follows:

- a. In paragraph (b), remove “enclose” and add in its place “provide”;
- b. Revise paragraph (c).

The revision reads as follows:

**§ 111.16 The probable cause to believe recommendation; briefing procedures (52 U.S.C. 30109 (a)(3)).**

\* \* \* \* \*

(c) Within fifteen (15) days from receipt of the General Counsel's brief, respondent may file a brief with the Commission Secretary, setting forth respondent's position on the factual and legal issues of the case.

\* \* \* \* \*

**§ 111.17 [Amended]**

78. Amend § 111.17(a) and (b) by removing "by letter" and adding in its place "in writing" wherever it appears.

**§ 111.18 [Amended]**

79. Amend § 111.18(d) by removing "by letter" and adding in its place "in writing".

**§ 111.23 [Amended]**

80. Amend § 111.23 as follows:

- a. In the introductory text to paragraph (a), remove "so advise the Commission by sending a letter of representation signed by the respondent, which letter shall state the following" and add in its place "give the Commission a written notice of representation signed by the respondent, which shall include";
- b. In paragraph (a)(1), remove "address" and add in its place "address, email address"; and
- c. In paragraph (b), remove "a letter of representation" and add in its place "this notice".

**§ 111.35 [Amended]**

81. Amend § 111.35(e) by removing “documentation” and adding in its place “records”.

**§ 111.36 [Amended]**

82. Amend § 111.36 as follows:

- a. In paragraph (b), remove “documentation” and add in its place “records” wherever it appears;
- b. In paragraphs (c) and (d), remove “documents” and add in its place “records” wherever it appears; and
- c. In paragraph (d), remove “document(s)” and add in its place “records”.
- d. In paragraph (e), remove “documents” and add in its place “records”.

**§ 111.37 [Amended]**

83. Amend § 111.37(a) and (b) by removing “by letter” and adding in its place “in writing” wherever it appears.

**§ 111.40 [Amended]**

84. Amend § 111.40(a) by removing “by letter” and adding in its place “in writing”.

**PART 112—ADVISORY OPINIONS (52 U.S.C. 30108)**

85. The authority citation for part 112 continues to read as follows:

Authority: 52 U.S.C. 30108, 30111(a)(8).

**§ 112.1 [Amended]**

86. Amend § 112.1(e) by removing “sent to the Federal Election Commission, Office of General Counsel, 999 E Street, NW., Washington, DC 20463” and adding in its place “addressed to the Office of General Counsel and filed with the Commission”.

**§ 112.2 [Amended]**

87. Amend § 112.2(b) by removing “and purchase at the Public Disclosure Division of the Commission” and adding in its place “at the Public Disclosure Division of the Commission and on the Commission’s website”.

**§ 112.3 [Amended]**

88. Amend § 112.3(d) by removing “sent to the Federal Election Commission, Office of General Counsel, 999 E Street, NW., Washington, DC 20463” and adding in its place “filed with the Office of General Counsel”.

**§ 112.4 [Amended]**

89. Amend § 112.4(g) by removing “sent by mail, or personally delivered” and adding in its place “be provided”.

**PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY**

90. The authority citation for part 114 continues to read as follows:

Authority: 52 U.S.C. 30101(8), 30101(9), 30102, 30104, 30107(a)(8), 30111(a)(8), 30118.

**§ 114.1 [Amended]**

91. Amend § 114.1(g) by removing “mailings, oral requests” and adding in its place “mailings, emails, oral requests”.

**§ 114.6 [Amended]**

92. Amend § 114.6(d)(2)(iii) by removing “check drawn on that account” and adding in its place “check or similar draft, including electronic transfer”.

**§ 114.8 [Amended]**

93. Amend § 114.8 as follows:

- a. In paragraphs (d)(2) and (3), remove “copy” and add in its place “record”; and

- b. In paragraph (d)(3), remove “mailing” and add in its place “solicitation”.

**§ 114.9 [Amended]**

- 94. Amend § 114.9(d) by removing “typewriters” and adding in its place “computers”.

**PART 116—DEBTS OWED BY CANDIDATES AND POLITICAL COMMITTEES**

- 95. The authority citation for part 116 continues to read as follows:

Authority: 52 U.S.C. 30103(d), 30104(b)(8), 30111(a)(8), 30116, 30118, and 30141.

**§ 116.8 [Amended]**

- 96. Amend § 116.8 as follows:

- a. In the introductory text of paragraph (b), remove “by letter” and add in its place “in writing”; and

- b. In the introductory text of paragraph (b), remove “The letter” and add in its place “The notification” wherever it appears.

**§ 116.9 [Amended]**

- 97. Amend § 116.9(a)(2) by removing “current address and telephone number, and has attempted to contact the creditor by registered or certified mail, and either in person or by telephone” and adding in its place “current address, telephone number, and email address, and has attempted to contact the creditor by registered or certified mail, and either in person, by telephone, or by email”.

**PART 200—PETITIONS FOR RULEMAKING**

- 98. The authority citation for part 200 is amended to read as follows:

Authority: 52 U.S.C. 30107(a)(8), 30111(a)(8); 5 U.S.C. 553(e).

**§ 200.2 [Amended]**

99. Amend § 200.2(b)(5) by removing “addressed and submitted to the Federal Election Commission, Office of General Counsel, 999 E Street, NW., Washington, DC 20463” and adding in its place “addressed to the Office of General Counsel and filed pursuant to 11 CFR 100.19(g)”.

**§ 200.3 [Amended]**

100. Amend § 200.3 as follows:

a. In paragraph (a)(2), remove “Send a letter to the Commissioner of Internal Revenue, pursuant to 52 U.S.C. 30111(f), seeking the IRS’s” and add in its place

“Pursuant to 52 U.S.C. 30111(f), seek the Internal Revenue Service’s”; and

b. In paragraph (a)(3), remove “Send a letter to” and add in its place “Notify”.

**§ 200.4 [Amended]**

101. Amend § 200.4(b) by removing “sending a letter to” and adding in its place “notifying”.

**§ 200.6 [Amended]**

102. Amend § 200.6(a)(5) by removing “audio tapes” and adding in its place “audio recordings”.

**PART 201—EX PARTE COMMUNICATIONS**

103. The authority citation for part 201 continues to read as follows:

Authority: 52 U.S.C. 30107(a)(8), 30108, 30111(a)(8), and 30111(b); 26 U.S.C. 9007, 9008, 9009(b), 9038, and 9039(b).

**§ 201.3 [Amended]**

104. Amend § 201.3 as follows:

a. In paragraph (b)(1), remove “the letter” and add in its place “the agreement” wherever it appears; and

- b. In paragraph (b)(2)(i), remove “letter” and add in its place “notification”.

## **PART 300—NON-FEDERAL FUNDS**

105. The authority citation for part 300 continues to read as follows:

Authority: 52 U.S.C. 30104(e), 30111(a)(8), 30116(a), 30125, and 30143.

### **§ 300.2 [Amended]**

106. Amend § 300.2 as follows:

- a. In paragraph (m)(1)(iii), remove “Web address” and add in its place “website address”; and

- b. In paragraph (m)(1)(iii), remove “Web page” and add in its place “web page”.

### **§ 300.64 [Amended]**

107. Amend § 300.64 as follows:

- a. In paragraphs (c)(3)(ii) and (iii), remove “written” and add in its place “printed” wherever it appears;

- b. In paragraph (c)(3)(iii), remove “non-written” and add in its place “non-printed”; and

- c. In paragraph (c)(3)(v), remove all references to “written”.

## **PART 9002—DEFINITIONS**

108. The authority citation for part 9002 continues to read as follows:

Authority: 26 U.S.C. 9002 and 9009(b).

### **§ 9002.3 [Amended]**

109. Amend § 9002.3 by removing “, 999 E Street, NW., Washington, DC 20463”.

## **PART 9003—ELIGIBILITY FOR PAYMENTS**

110. The authority citation for part 9003 continues to read as follows:

Authority: 26 U.S.C. 9003 and 9009(b).

**§ 9003.1 [Amended]**

111. Amend § 9003.1 as follows:

- a. In paragraph (a)(1), remove “letter” and add in its place “writing”;
- b. In paragraph (a)(2), remove “letter” and add in its place “agreement” wherever it appears;
- c. In paragraphs (b)(2) and (3), remove “documentation” and add in its place “record” wherever it appears;
- d. In paragraph (b)(4), remove “computerized magnetic media, such as magnetic tapes or magnetic diskettes” and add in its place “digital storage devices”;
- e. In paragraphs (b)(4) and (5), remove “documentation” and add in its place “records” wherever it appears; and
- f. In paragraph (b)(7), remove “name and mailing address” and add in its place “name, email address, and mailing address”.

112. Revise § 9003.2(d) to read as follows:

**§ 9003.2 Candidate certifications.**

\* \* \* \* \*

- (d) Form. Major party candidates shall sign and submit the certifications required under 11 CFR 9003.2 within 14 days after receiving the party’s nomination for election. Minor and new party candidates shall sign and submit such certification within 14 days after such candidates have qualified to appear on the general election ballot in 10 or more States pursuant to 11 CFR 9002.2(a)(2). The Commission, upon written request by a minor or new party candidate made at any time prior to the date of the general election,

may extend the deadline for filing such certification, except that the deadline shall be a date prior to the day of the general election.

**§ 9003.3 [Amended]**

113. Amend § 9003.3(a)(1)(vi)(A) by removing “is made by check, money order, or other negotiable instrument which”.

114. Amend § 9003.5 as follows:

- a. Revise the section heading;
- b. Revise the paragraph heading of paragraph (b);
- c. In paragraphs (b)(1) and (b)(2)(ii), remove “canceled check negotiated by the payee” and add in its place “canceled check negotiated by the payee or a record of electronic transfer to the payee” wherever it appears;
- d. In paragraphs (b)(1)(ii)(A) and (B), remove “documents” and add in its place “records” wherever it appears;
- e. In paragraph (b)(1)(iii), remove “documentation” and add in its place “record”;
- f. In paragraphs (b)(1)(iv), (b)(4), and (c), remove “documentation” and add in its place “records” wherever it appears; and
- g. In paragraph (b)(1)(iv), remove “canceled check negotiated by the payee” and add in its place “canceled check negotiated by the payee or the record of electronic transfer to the payee”.

The revisions read as follows:

**§ 9003.5 Records of disbursements.**

\* \* \* \* \*

(b) *Records required.* \* \* \*

\* \* \* \* \*

**§ 9003.6 [Amended]**

115. Amend § 9003.6 as follows:

- a. In paragraph (a), remove “computerized magnetic media, such as magnetic tapes or magnetic diskettes” and add in its place “digital storage devices”;
- b. Remove paragraph (b) and redesignate paragraph (c) as paragraph (b); and
- c. In newly redesignated paragraph (b), remove “documentation” and add in its place “records”.

**PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS**

116. The authority citation for part 9004 continues to read as follows:

Authority: 26 U.S.C. 9004 and 9009(b).

**§ 9004.6 [Amended]**

117. Amend § 9004.6 as follows:

- a. In paragraph (a)(1), remove “telephone service, typewriters, and computers” and add in its place “telephone and internet service, and computers or other electronic devices”; and
- b. In paragraph (b)(3), remove “telephone service” and add in its place “telephone and internet service”.

**§ 9004.7 [Amended]**

118. Amend § 9004.7(b)(5)(iv) and (v) by removing “documentation” and adding in its place “records” wherever it appears.

**§ 9004.9 [Amended]**

119. Amend § 9004.9(d)(1)(i) and (e) by removing “documentation” and adding in its place “records” wherever it appears.

**PART 9007—EXAMINATIONS AND AUDITS; REPAYMENTS**

120. The authority citation for part 9007 continues to read as follows:

Authority: 26 U.S.C. 9007 and 9009(b).

**§ 9007.1 [Amended]**

121. Amend § 9007.1 as follows:

a. In paragraph (b)(1), remove “the Commission may request additional or updated computerized information” and add in its place “the Commission may request additional or updated information”; and

b. In paragraphs (b)(1)(iv) and (c)(2), remove “documentation” and add in its place “records” wherever it appears.

**§ 9007.7 [Amended]**

122. Amend § 9007.7 as follows:

a. In paragraph (a), remove “documents” and add in its place “documents, records,” wherever it appears; and

b. In paragraph (b)(2), remove “tapes” and add in its place “recordings” wherever it appears.

**PART 9032—DEFINITIONS**

123. The authority citation for part 9032 continues to read as follows:

Authority: 26 U.S.C. 9032 and 9039(b).

**§ 9032.2 [Amended]**

124. Amend § 9032.2(d) by removing “by letter” and adding in its place “in writing”.

**§ 9032.3 [Amended]**

125. Amend § 9032.3 by removing “, 999 E Street NW., Washington, DC 20463”.

**PART 9033—ELIGIBILITY FOR PAYMENTS**

126. The authority citation for part 9033 continues to read as follows:

Authority: 26 U.S.C. 9003(e), 9033 and 9039(b).

127. Amend § 9033.1 as follows:

- a. Revise paragraph (a)(1);
- b. In paragraphs (b)(2) through (6), remove “documentation” and add in its place “records” wherever it appears;
- c. In paragraph (b)(5), remove “computerized magnetic media, such as magnetic tapes or magnetic diskettes” and add in its place “digital storage devices”; and
- d. Revise paragraph (b)(8).

The revisions read as follows:

**§ 9033.1 Candidate and committee agreements.**

(a) \* \* \*

(1) A candidate seeking to become eligible to receive Presidential primary matching fund payments shall agree in a writing signed by the candidate to the Commission that the candidate and the candidate’s authorized committee(s) will comply with the conditions set forth in 11 CFR 9033.1(b). The candidate may submit the written agreement required by this section at any time after January 1 of the year immediately preceding the Presidential election year.

\* \* \* \* \*

(b) \* \* \*

(8) The candidate and the candidate's authorized committee(s) will submit the name, email address, and mailing address of the person who is entitled to receive matching fund payments on behalf of the candidate and the name and address of the campaign depository designated by the candidate as required by 11 CFR part 103 and 11 CFR 9037.3. Changes in the information required by this paragraph shall not be effective until submitted to the Commission in a writing signed by the candidate or the Committee treasurer.

\* \* \* \* \*

**§ 9033.2 [Amended]**

128. Amend § 9033.2 as follows:

- a. In paragraph (a)(1), remove "letter containing the required certifications" and add in its place "certifications"; and
- b. In paragraph (c), remove "documentation" and add in its place "records".

**§ 9033.5 [Amended]**

129. Amend paragraph (a)(2) of § 9033.5 by removing "by letter" and adding in its place "in writing".

130. Amend § 9033.11 as follows:

- a. Revise the section heading;
- b. Revise the paragraph heading of paragraph (b);
- c. In the introductory text to paragraph (b)(1), add "or a record of electronic transfer" after the words "canceled check negotiated by the payee".;
- d. In paragraphs (b)(1)(ii)(A) and (B), remove "documents" and add in its place "records" wherever it appears;

- e. In the introductory text to paragraph (b)(1)(iii) and paragraph (b)(1)(iv), remove “documentation” and add in its place “record” wherever it appears;
- f. In paragraph (b)(1)(iv), remove “the payee” and add in its place “the payee or the record of electronic transfer”;
- g. In paragraph (b)(2)(ii), add “or a record of electronic transfer” after the words “canceled check negotiated by the payee”;
- and
- h. In paragraphs (b)(4) and (c), remove “documentation” and add in its place “records” wherever it appears.

The revisions read as follows:

**§ 9033.11 Records of disbursements.**

\* \* \* \* \*

(b) *Records required.* \* \* \*

\* \* \* \* \*

**§ 9033.12 [Amended]**

131. Amend § 9033.12 as follows:

- a. In paragraph (a), remove “computerized magnetic media, such as magnetic tapes or magnetic diskettes” and add in its place “digital storage devices”;
- b. Remove paragraph (b) and redesignate paragraph (c) as paragraph (b); and
- c. In newly redesignated paragraph (b), remove “documentation” and add in its place “records”.

**PART 9034—ENTITLEMENTS**

132. The authority citation for part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

133. Amend § 9034.2 as follows:

- a. In paragraph (b), remove “and the card number” from the last sentence;
- b. In the introductory text to paragraph (c), remove “and card number” from the last sentence;
- c. In paragraph (c)(1)(i), remove “written document” and add in its place “writing”;
- d. In paragraph (c)(1)(iii), remove “documentation” and add in its place “records”;  
and
- e. Add paragraph (c)(8)(iii).

The addition reads as follows:

**§ 9034.2 Matchable contributions.**

\* \* \* \* \*  
(c) \* \* \*  
(8) \* \* \*

- (iii) To be attributed to more than one person, a signed written statement must accompany the credit or debit card contribution indicating that the contribution was made from each individual’s personal funds in the amount so attributed.

**§ 9034.5 [Amended]**

134. Amend § 9034.5(c)(1) and (d) by removing “documentation” and adding in its place “records” wherever it appears.

**§ 9034.6 [Amended]**

135. Amend § 9034.6 as follows:

a. In paragraph (a)(1), remove “telephone service, typewriters, and computers” and add in its place “telephone and internet service, and computers or other electronic devices”; and

b. In paragraph (b)(3), remove “telephone service” and add in its place “telephone and internet service”.

**§ 9034.7 [Amended]**

136. Amend § 9034.7(b)(5)(iv) and (v) by removing “documentation” and adding in its place “records” wherever it appears.

**§ 9034.8 [Amended]**

137. Amend § 9034.8(b)(4) by removing “recordkeeping, reporting and documentation” and adding in its place “recordkeeping and reporting”.

**PART 9035—EXPENDITURE LIMITATIONS**

138. The authority citation for part 9035 continues to read as follows:

Authority: 26 U.S.C. 9035 and 9039(b).

**§ 9035.1 [Amended]**

139. Amend § 9035.1(c)(3) by removing “documentation” and adding in its place “records”.

**PART 9036—REVIEW OF MATCHING FUND SUBMISSIONS AND CERTIFICATION OF PAYMENTS BY COMMISSION**

140. The authority citation for part 9036 continues to read as follows:

Authority: 26 U.S.C. 9036 and 9039(b).

**§ 9036.1 [Amended]**

141. Amend § 9036.1 as follows:

- a. In paragraph (b)(2), remove “computerized magnetic media, such as magnetic tapes or magnetic diskettes” and add in its place “digital storage devices”;
- b. In paragraphs (b)(3) and (4), remove “documentation” and add in its place “records” wherever it appears;
- c. In paragraph (b)(4), add “, or, for deposits made electronically, information associating contributions to their deposit in the designated campaign depository, such as a batch number” after the words “bank statements”;
- d. In paragraph (b)(5), remove “full-size photocopy of each unpaid check, and copies of” and add in its place “record that contains a complete image of each unpaid check and”; and
- e. In paragraph (b)(6), remove “full-size photocopy” and add in its place “record that contains a complete image”.
- f. In paragraph (b)(7), remove “documentation” and add in its place “records” wherever it appears;

**§ 9036.2 [Amended]**

142. Amend § 9036.2 as follows:

- a. In paragraph (b)(1)(ii), remove “either solely in magnetic media from or in both printed and magnetic media forms” and add in its place “in printed or digital form or a combination of printed and digital forms”;
- b. In paragraph (b)(1)(iii), remove “checks returned unpaid” and add in its place “checks returned unpaid or credit or debit card or other electronic payment chargebacks”;

- c. In paragraph (b)(1)(vi), remove “as specified in the Computerized Magnetic Media Requirements” from the second sentence;
- d. In paragraph (b)(1)(vi), remove “shall provide the computer equipment and software needed to retrieve and read the digital images, if necessary, at no cost to the Commission, and” from the fourth sentence; and
- e. In paragraphs (b)(1)(vi) and (vii), remove “documentation” and add in its place “records” wherever it appears.

**§ 9036.3 [Amended]**

143. Amend the heading, introductory paragraph, and paragraphs (b), (b)(4), and (d) of § 9036.3 by removing “documentation” and adding in its place, “records” wherever it appears.

**§ 9036.4 [Amended]**

144. Amend § 9036.4(b)(4) by removing “documentation” and adding in its place “records”.

**§ 9036.5 [Amended]**

145. Amend § 9036.5(c)(1) by removing “documentation” and adding in its place “records” wherever it appears.

**PART 9038—EXAMINATIONS AND AUDITS**

146. The authority citation for part 9038 continues to read as follows:

Authority: 26 U.S.C. 9038 and 9039(b).

**§ 9038.1 [Amended]**

147. Amend § 9038.1 as follows:

- a. In the introductory text to paragraph (b)(1), remove “the Commission may request additional or updated computerized information” and add in its place “the Commission may request additional or updated information”; and

- b. In paragraphs (b)(1)(iv) and (c)(2), remove “documentation” and add in its place “records” wherever it appears.

**§ 9038.2 [Amended]**

- 148. Amend § 9038.2(b)(3) by removing “documentation” from the paragraph heading and adding in its place “records”.

**§ 9038.7 [Amended]**

- 149. Amend § 9038.7 as follows:
  - a. In paragraph (a), remove “documents” and add in its place “documents, records,” wherever it appears; and
  - b. In paragraph (b)(2), remove “tapes” and add in its place “recordings” wherever it appears.

**PART 9039—REVIEW AND INVESTIGATION AUTHORITY**

- 150. The authority citation for part 9039 continues to read as follows:

Authority: 26 U.S.C. 9039.

**§ 9039.2 [Amended]**

- 151. Amend § 9039.2 as follows:
  - a. In paragraph (a)(3), remove “documents” and add in its place “documents or records”; and
  - b. In paragraph (b), remove “documentation” and add in its place “records”.

**§ 9039.3 [Amended]**

- 152. Amend § 9039.3(b)(2)(vi) by removing “documents” and adding in its place “records”.

On behalf of the Commission,

Matthew S. Petersen,  
Chairman,  
Federal Election Commission.

Dated: October 11, 2016.

[FR Doc. 2016-25102 Filed: 11/1/2016 8:45 am; Publication Date: 11/2/2016]