

**FEDERAL ELECTION COMMISSION**

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

[Notice 2023–20]

**Technological Modernization**

**AGENCY:** Federal Election Commission.

**ACTION:** Final rule.

**SUMMARY:** These final rules modernize Federal Election Commission regulations in light of technological advances in communications, recordkeeping, and financial transactions, such as the making of contributions and expenditures through internet-based payment processors or text messaging. These final rules also eliminate and update references to outdated technologies and address similar technological issues.

**DATES:** Effective March 1, 2024.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Rothstein, Assistant General Counsel, or Ms. Joanna S. Waldstreicher or Mr. Tony Buckley, Attorneys, 1050 First Street NE, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** The Federal Election Commission is revising its regulations at 11 CFR chapter I to address electronic communications and transactions, such as contributions made using credit cards, by text messages, or through internet-based payment processors. The Commission is also making 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 revisions eliminate or update references to outmoded technologies.

**Transmitting Final Rules to Congress**

Before promulgating rules or regulations to carry out the provisions of the Federal Election Campaign Act, the Commission transmits the rules or regulations to the Speaker of the House of Representatives and the President of

the Senate for a thirty-legislative-day review period. 52 U.S.C. 30111(d). These final rules were transmitted to Congress on December 14, 2023.

**Explanation and Justification***A. Rulemaking History*

On May 2, 2013, the Commission published in the **Federal Register** an Advance Notice of Proposed Rulemaking (“ANPRM”) soliciting comment on whether and how it should revise its regulations to reflect technological advances.<sup>2</sup> The Commission then published a Notice of Proposed Rulemaking (“NPRM”) in the **Federal Register** on November 2, 2016.<sup>3</sup> The NPRM comment period ended on December 2, 2016. The Commission received three substantive comments in response to the ANPRM and three substantive comments in response to the NPRM; these are discussed in relevant part below.<sup>4</sup> The Commission published a Request for Additional Comment in the **Federal Register** on Sept. 8, 2022, seeking updated information on specific technological questions, and received four comments.<sup>5</sup> The Commission also published a Supplemental Notice of Proposed Rulemaking in the **Federal Register** on December 9, 2022, and received six substantive comments in response.<sup>6</sup>

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

Electronic financial transactions are increasingly commonplace. According to a recent triennial study conducted by the Federal Reserve System, data collected in recent years “largely show a continuation of past payment trends, with card and ACH both gaining share at the expense of checks,” and increases in the use of newer ways to make payments, such as digital wallets and P2P payments.<sup>7</sup>

Coinciding with the increased use of electronic payments is the regular use of electronic records, including transactional records, and electronic communications. A 2020 U.S. Government Accountability Office report on the U.S. Postal Service found that “[a]s online communication and payments have expanded, USPS continues to face decreases in mail volume, its primary revenue source. First-Class Mail volume has declined 44 percent since fiscal year 2006,” and “USPS Marketing Mail—which comprises most other mail volume—declined 27 percent from fiscal year 2007 to fiscal year 2019, in part due to electronic advertising alternatives.”<sup>8</sup> Indeed, in a section of the USPS website devoted to political mailing, one page addresses “aligning your digital communications with direct mail delivery is a powerful way to integrate your channels to help voters feel more connected to your campaign.”<sup>9</sup>

At the same time, the federal government also has been transitioning to electronic records management and communication. In 2014, the Federal Records Act was amended to require the National Archive and Records Administration to establish “standards for the reproduction of records by photographic, microphotographic, or digital processes with a view to the disposal of the original records.”<sup>10</sup> In 2022, the Office of Management and Budget issued a memorandum stating that “[t]ransitioning Federal agencies to an electronic—or ‘paperless’—environment is a priority to enable and increase the ability of the public to engage with Government in new and more efficient and effective ways. It is critical that Federal agencies move beyond paper-based processes and embrace the opportunities afforded to improve Government by transitioning fully to an electronic environment.”<sup>11</sup>

The Commission has recognized this trend towards electronic records management and communication by

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

<sup>3</sup> Technological Modernization, 81 FR 76416 (Nov. 2, 2016).

<sup>4</sup> The Internal Revenue Service also commented that it sees no conflict between this rulemaking and the Internal Revenue Code or Treasury regulations. See 52 U.S.C. 30111(f).

<sup>5</sup> Technological Modernization, 87 FR 54915 (Sept. 8, 2022) (“Request for Additional Comment”).

<sup>6</sup> Technological Modernization, 87 FR 75518 (Dec. 9, 2022) (“SNPRM”).

<sup>7</sup> Fed. Reserve Sys., Developments in Noncash Payments for 2019 and 2020: Findings from the Federal Reserve Payments Study at 2, 11–14, (Dec. 2021), <https://www.federalreserve.gov/publications/files/developments-in-noncash-payments-for-2019-and-2020-20211222.pdf> (“Developments in Noncash Payments”); see also Fed. Reserve Sys., *The Federal Reserve Payments Study: 2022 Triennial Initial Data Release* (Apr. 21, 2023),

<https://www.federalreserve.gov/paymentsystems/fr-payments-study.htm>; Fed. Reserve Sys., *The Federal Reserve Payments Study 2016* at 2 (2016), <https://www.federalreserve.gov/paymentsystems/files/2016-payments-study-20161222.pdf> (“2016 Study”).

<sup>8</sup> U.S. Gen. Accounting Office, GAO–20–385 USPS: Congressional Action Is Essential to Enable a Sustainable Business Model 8–9 (2020).

<sup>9</sup> See U.S. Postal Service, *Informed Visibility Feature for Political Campaigns*, <https://www.deliverthewin.com/content-library/informed-visibility-for-informed-political-campaigns/> (last visited Nov. 9, 2023).

<sup>10</sup> 44 U.S.C. 3302(3).

<sup>11</sup> OMB, Memorandum for the Heads of Executive Departments and Agencies (Dec. 23, 2022), [https://www.whitehouse.gov/wp-content/uploads/2022/12/M\\_23\\_07-M-Memo-Electronic-Records\\_final.pdf](https://www.whitehouse.gov/wp-content/uploads/2022/12/M_23_07-M-Memo-Electronic-Records_final.pdf).

<sup>1</sup> See generally, Jeffrey S. Lubbers, *A Guide to Federal Agency Rulemaking* 404–411 (6th ed. 2018) (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”).

establishing procedures for the public to electronically submit Freedom of Information Act (“FOIA”) requests, comments on rulemakings, and comments on draft advisory opinions.<sup>12</sup> In addition, certain political committees are required to file their reports electronically with the Commission,<sup>13</sup> while the Commission encourages committees that are not required to file electronically to do so regardless.<sup>14</sup> During the COVID-19 pandemic, the Commission adopted further procedures utilizing electronic communications and records, including encouraging email submission of advisory opinion requests, financial disclosures for presidential and vice-presidential candidates, and inspector general complaints; electronic signatures and notarizations on enforcement complaints; and email transmittal of enforcement and litigation documents.

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. 30101–45 (“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 by cash, check, or “draft,” without addressing 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 updating its regulations, as described below.

### C. General Definitions

Many of the Commission’s current regulations do not account for technological developments in how electronic documents are created, maintained, and submitted, particularly in the context of electronic transactions. The Commission is therefore revising its regulations to encompass electronic documents and transactions. Specifically, the Commission is adding

new general definitions to 11 CFR part 100—for the terms “record,” “written, writing, and a writing,” and “signature and signed”—and revising the existing definition of “file, filed, and filing” at 11 CFR 100.19. Each of these definitions will 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>15</sup> These new and revised definitions are designed to be broad enough to encompass both traditional (paper) and electronic documents and flexible enough to remain relevant as new forms of electronic documentation emerge in the future.

#### 1. New Definition of “Record”—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>16</sup> The Funding Acts similarly require that certain records be kept, and furnished to the Commission on request.<sup>17</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>18</sup> The Commission has therefore received numerous requests for guidance regarding how its recordkeeping provisions apply to electronic records.<sup>19</sup>

<sup>15</sup> See 11 CFR 9001.1, 9031.1 (applying definitions in part 100 to public finance regulations unless expressly stated otherwise). Unless expressly incorporated, the new part 100 definitions will 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.

<sup>16</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>17</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), 9039(b).

<sup>18</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>19</sup> See, e.g., Advisory Opinion 1995–09 (NewtWatch 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* 87 (2021), [www.fec.gov/pdf/candgui.pdf](https://www.fec.gov/pdf/candgui.pdf) (describing recordkeeping for credit card disbursements).

As proposed in the NPRM, the Commission now adds a general definition of “record” at 11 CFR 100.34 that expressly includes both paper and electronic records. New 11 CFR 100.34 has two components.

First, § 100.34(a) defines “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 Dictionary,<sup>20</sup> the Federal Rules of Evidence,<sup>21</sup> Federal Rules of Civil Procedure,<sup>22</sup> the Electronic Signatures in Global and National Commerce Act (also known as the E-Sign Act),<sup>23</sup> and the Uniform Electronic Transactions Act (“UETA”).<sup>24</sup> The new definition uses the term “information” (as do the Black’s Law Dictionary, E-Sign Act, and UETA definitions of “record”) rather

<sup>20</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>21</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>22</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>23</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>24</sup> See Unif. Elec. Transactions Act 2(7) (Nat’l Conference of Comm’rs on Unif. State Laws 1999), <https://www.uniformlaws.org/committees/community-home/librarydocuments?communitykey=2c04b76c-2b7d-4399-977e-d5876ba7e034&LibraryFolderKey=&DefaultView=> (“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 49 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

<sup>12</sup> See, e.g., FEC, *Freedom of Information Act*, <https://www.fec.gov/freedom-information-act/> (last visited Nov. 9, 2023); FEC, *Procedures Regarding Draft Advisory Opinions*, [www.fec.gov/law/draftaos.shtml](https://www.fec.gov/law/draftaos.shtml) (last visited Nov. 9, 2023); FEC, *Submit Comments on Ongoing Rulemakings, sers.fec.gov/fosers* (last visited Nov. 9, 2023).

<sup>13</sup> See 11 CFR 104.18(a).

<sup>14</sup> See FEC, *Electronic Filing Overview*, <https://www.fec.gov/help-candidates-and-committees/filing-reports/electronic-filing/> (last visited Nov. 9, 2023).

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 using 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 is including 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 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 new definition requires 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 new definition requires 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 definition will 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.

Second, new 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 new 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 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. Because the Commission is adopting new § 100.34(b), it is removing the separate requirements in 11 CFR 102.9(a)(4)(ii) and 9036.2(b)(1)(vi).

In conjunction with the new definition, the Commission is making conforming amendments to a number of regulations.

First, the Commission is making 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), 100.82(e)(2)(ii), 100.93(j)(1) through (3), 100.142(e)(1)(i), 100.142(e)(2)(ii), 102.9(b)(2)(i)(B) and (b)(2)(ii), 102.9(f), 102.11, 104.10(a)(4), 104.10(b)(5), 104.14(b)(4)(iv) and (v), 104.17(a)(4), 104.17(b)(4), 106.2(a)(1), 106.2(b)(2)(ii), 106.2(b)(2)(v), 110.1(l)(1), 110.1(l)(4)(i), 110.1(l)(6), 111.4(d)(4), 111.12(a) and (b),<sup>25</sup> 111.15(c), 111.35(e), 111.36(b) through (e), 114.8(d)(2) and (3), 9003.1(b)(2) through (5), 9003.5, 9003.5(b), (b)(1)(ii)(A) and (B), (b)(1)(iii) and (iv), (b)(4), and (c), 9003.6(c), 9004.7(b)(5)(iv) and (v), 9004.9(d)(1)(i) and (e), 9007.1(b)(1)(iv) and (c)(2), 9033.1(b)(2) through (6), 9033.2(c), 9033.11, 9033.11(b), (b)(1)(ii)(A) and (B), (b)(1)(iii) and (iv), (b)(4), and (c), 9033.12(c), 9034.2(c)(1)(iii), 9034.5(c)(1) and (d), 9034.7(b)(5)(iv) and (v), 9034.8(b)(4), 9035.1(c)(3), 9036.1(b)(3), (4), and (7), 9036.2(b)(1)(vi) and (vii), 9036.3(b), (b)(4), and (d), 9036.4(b)(4), 9036.5(c)(1), 9038.1(b)(1)(iv) and (c)(2), 9038.2(b)(3), 9039.2(a)(3) and (b), and 9039.3(b)(2)(vi). The Commission’s regulations will now use 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 refer only to paper materials or to mean something other than what is meant by “record.”<sup>26</sup>

<sup>25</sup> The revisions to 11 CFR 111.12(a) and 111.15(c) render these provisions consistent with the equivalent provisions of the Federal Rules of Civil Procedure, which were amended in 2006 to explicitly include “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).

<sup>26</sup> The Commission is also replacing the term “document” in certain regulations with “writing,” as discussed below. The Commission is not revising 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

Second, the Commission is replacing 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.”<sup>27</sup> Recognizing that such records may reasonably be retained in forms other than “a full-size photocopy,” the Commission is amending 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. The Commission is not revising 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.

Finally, the Commission is making conforming revisions to two provisions that describe the administrative record in public finance matters. The Commission is adding “records” to the lists of materials that comprise the administrative record for final determinations in §§ 9007.7(a) and 9038.7(a).

The Commission has decided not to change the standalone definition of “records” in the lobbyist bundling rule at 11 CFR 104.22(a)(6)(ii)(A), as that provision is already relatively expansive and is consistent with the new general definition the Commission is adopting.

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

FECA requires certain reports, statements, and other materials to be “written” or “in writing.”<sup>28</sup> The Funding Acts have similar “writing” and “written” requirements.<sup>29</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>30</sup> The Commission has, however, interpreted at least one of these regulations to encompass certain categories of electronic documents.<sup>31</sup>

documented”), 4.1(j) (including “paper copy” in definition of “duplication” under FOIA).

<sup>27</sup> 11 CFR 110.1(l)(1), (l)(4)(ii); see also 11 CFR 9036.1(b)(5), (6) (referring to records that include “full-size photocopy” of contribution checks).

<sup>28</sup> See, e.g., 52 U.S.C. 30101(8)(B)(vii)(II), 30101(9)(A)(ii), 30102(e)(1), 30103(d)(1), 30104(a)(6)(A), 30108(a), 30109(a)(1), 30109(a)(12)(A), 30118(b)(4)(B); see also 52 U.S.C. 30107(a)(1), 30124(a).

<sup>29</sup> See, e.g., 26 U.S.C. 9002(1), 9003(a), 9032(1), 9032(9), 9033(a), 9034(a); see also 26 U.S.C. 9009(b), 9039(b).

<sup>30</sup> See, e.g., 11 CFR 102.7(c), 109.33(a), 110.1(b), 9003.3(a)(1)(i)(C), 9007.2(c).

<sup>31</sup> See, e.g., Electronic Contributor Redesignations, 76 FR 16233 (Mar. 23, 2011) (noting internet-based redesignation method that

To clarify that “written” material or material “in writing” can be either tangible or electronic, the Commission is adding a new general definition at 11 CFR 100.35.<sup>32</sup> The new definition essentially replicates 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>33</sup> In this 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 or GIFs) used in lieu of text—that may arise as new forms of electronic writing emerge in the future. As in the definition of “record,” the regulation will now provide that “writing” may be set down in any medium or form, including electronic. The examples in the 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.

In conjunction with the new definition, the Commission is making conforming changes to a number of regulations, as described below.

First, the Commission is amending 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.<sup>34</sup> These references to “electronic mail” are redundant with the 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 is removing these three references to electronic mail.

Second, the Commission is making conforming changes regarding notifications, reports, and other communications that, under existing regulations, must be made by “letter.” In light of the new broad definition of “writing,” and to avoid implying that the communications described in those provisions must be on paper, the Commission is replacing each reference to “letter” with “writing” in the following provisions: 11 CFR 100.3(a)(3), 110.6(c)(1)(v), 111.9(a) and (b), 111.17(a) and (b), 111.18(d), 111.37(a) and (b), 111.40(a), 116.8(b), 9003.1(a)(1), 9032.2(d), 9033.1(b)(8), and 9033.5(a)(2).

Similarly, the Commission is revising 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 is now revising 11 CFR 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 is similarly replacing each reference to “letter” or “mailing” in the following provisions: 11 CFR 110.6(c)(1)(ii), 111.6(a), 111.23(a) and (b), 114.8, 116.8(b), 200.3(a)(2), 200.3(a)(3), 200.4(b), 201.3(b)(1), 201.3(b)(2)(i), 9003.1(a)(2), 9033.1(a)(1), and 9033.2(a)(1).

The Commission is also revising some uses of “letter” in administrative regulations to which the new definition of “writing” would not apply. Specifically, the Commission is making the following revisions to its public disclosure and Rehabilitation Act regulations: (1) replace “Letter requests” with “Requests” in 11 CFR 5.4(a)(5); (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 foregoing change by replacing that section’s reference to “the letter”

required by § 6.170(g) with “the notification.”

Third, the Commission is replacing 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 is making 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) had provided 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>35</sup> Thus, to avoid suggesting that the new definition of “written” alters the substantive application of § 300.64, the Commission is conforming 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 has decided not to exclude the term “written instrument” from the new definition.<sup>36</sup> The Commission judges that “written instrument” is generally understood to be a term of art referring to a check, money order, or negotiable instrument; as a term of art, it will not be affected by the new definition of “written.”

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

FECA and the Funding Acts require certain documents to be signed,<sup>37</sup> sworn, notarized, submitted under oath, or certified under penalty of perjury.<sup>38</sup> In Commission regulations, the terms “sign,” “signed,” and “signature” (and variants thereof) appear more than 50 times. Only some of these references provide for electronic signatures,<sup>39</sup>

<sup>35</sup> See 11 CFR 110.11(c)(2).

<sup>36</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>37</sup> See 52 U.S.C. 30109(a)(1), 30109(a)(4)(B)(ii); see also 52 U.S.C. 30104(a)(1), 30104(a)(11)(C), 30104(d)(3).

<sup>38</sup> See 52 U.S.C. 30104(b)(6)(B)(iii), 30104(c)(2)(B), 30104(f)(2), 30107(a)(1), 30109(a)(1), 26 U.S.C. 9003(b)–(c), 9004(d); see also 52 U.S.C. 30104(a)(11)(C), 30104(d)(3).

<sup>39</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).

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)).

<sup>32</sup> Some Commission regulations that require a document to be “in writing” or “written” also require the document to be signed. The Commission is adopting a new definition of “signed,” discussed below.

<sup>33</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>34</sup> See 11 CFR 110.1(b)(5)(ii)(B)(6), (C)(7), 110.1(k)(3)(ii)(B)(3).

although the Commission has interpreted at least one of the regulations that does not so provide to nonetheless allow certain electronic signatures.<sup>40</sup> Similarly, only some of the Commission regulations requiring certification under penalty of perjury provide for electronic certifications.<sup>41</sup>

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

New 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>42</sup> It also incorporates the terms “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 11 CFR 100.34 and 100.35, discussed above. Unlike at least one source definition,<sup>43</sup> the definition of “signature” 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 is adopting an objective definition with which compliance can be initially determined on the face of the signed writing or record. New paragraph (a) also provides that, unless otherwise specified, the definition of “signature” includes an “electronic signature.”

New paragraph (b) of 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>44</sup> the E-Sign Act,<sup>45</sup> UETA,<sup>46</sup> and the Commission’s interpretive rule concerning electronic redesignations of contributions.<sup>47</sup> New paragraph (b) follows all 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 is including “word” and “image” as methods of electronic signature, based on the examples in Black’s Law Dictionary, to make clear that a writing or record can be signed by these means (such as by inserting a digital image of a person’s handwritten signature). And as with new paragraph (a), new paragraph (b) incorporates the terms “writing” and “record” to be consistent with the new definitions in 11 CFR 100.34 and 100.35. The new definition thus encompasses forms that electronic signatures may take as new technologies emerge.

The new definition intentionally differs from the source definitions in certain respects. For example, the new 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 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>48</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 definition of “signature” need not differentiate between digital and electronic signatures.

New 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 not an exhaustive list.

As noted above, the new regulation provides that electronic signatures are valid signatures “unless otherwise specified.” This language allows the Commission to require more specific forms of electronic signatures, or even to prohibit electronic signatures, in certain circumstances. 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.

In light of the new definition of “signature,” the Commission is making conforming changes to regulations that have more specific signature requirements. For example, 11 CFR 104.4(d)(2) and 109.10(e)(2)(ii) have specified 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 is revising 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 is revising 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 is

<sup>40</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>41</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), 100.93(g)(3), 102.2(a)(3), 104.3(b)(3)(vii)(B), 104.3(d)(1)(v), 300.11(d), 300.37(d).

<sup>42</sup> See *Signature*, Black’s Law Dictionary (11th ed. 2019) (defining “signature” to include 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*, 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”).

<sup>43</sup> See *Signature*, Black’s Law Dictionary (11th ed. 2019).

<sup>44</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 (11th ed. 2019). 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>45</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>46</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>47</sup> See Electronic Contributor Redesignations, 76 FR 16233. To the extent that this interpretive rule’s approach to a “signature” could be construed to conflict with the new definition of “signature,” it is superseded.

<sup>48</sup> See *Digital Signature*, Black’s Law Dictionary (11th ed. 2019) (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”).

making other changes to that section as described further below.<sup>49</sup>

New paragraph (c) of 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 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.”<sup>50</sup> This proposal therefore provides sufficient safeguards of integrity and authenticity for material that must be sworn or otherwise verified.

Finally, new 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>51</sup> Commission practice currently refers to a state’s law to determine the validity of a notarization from that state. The Commission received no comments on this aspect of the rulemaking and has determined to continue accepting documents notarized under state law.

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

The Commission is revising 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 is making conforming amendments throughout 11 CFR chapter I.

Section 100.19 has defined “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 under 11 CFR parts 101, 102, 104, 105, 107, 108, and 109. As such, the rule has addressed 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 refer to<sup>52</sup> the Commission’s mailing address as set out in 11 CFR 1.2.<sup>53</sup> This implied that the submissions had to 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 is adding 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 “in person or by mail, including priority mail or express mail, or overnight delivery service, with the Federal Election Commission, or by any alternative means, including electronic, that the Commission may prescribe.” The Commission intends to build upon this change by adopting such procedures for receiving electronic submissions—such as through online forms<sup>54</sup> or email<sup>55</sup>—as the Commission determines to be appropriate for the various categories of documents.

The Commission also is revising the introductory paragraph of 11 CFR 100.19 to explicitly note the scope of new paragraph (g). This change will not affect the existing rules on documents governed by paragraphs (a) through (f).

Given that neither FECA nor the Funding Acts require paper mailing addresses, the Commission is further amending 11 CFR 100.19(a) to delete the cross-reference to the street address for the Commission.

Similarly, the Commission is making conforming amendments corresponding

to those discussed in the NPRM by replacing the references to the Commission’s street address as set out in 11 CFR 1.2<sup>56</sup> 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 references to the Commission’s street address from other regulations.<sup>57</sup> These regulations are 11 CFR 1.3(b), 1.4(a), 4.5(a)(4)(i), 4.5(a)(4)(iv), 4.7(b)(1), 4.8(c), 5.5(a),<sup>58</sup> 5.5(c), 6.170(d)(3), 6.170(i), 104.2(b), 104.3(e)(5), 104.21(c)(3),<sup>59</sup> 111.4(a), 111.15(a), 111.16(c), 112.1(e), 112.3(d), and 200.2(b)(5).

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

- Sections 4.5(a)(4)(i) and 4.8(b) 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 will 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) 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 will 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) provides that a solicitation of contributions to a separate segregated fund may be included “in” a bill for membership

<sup>56</sup> As discussed in note 50, *supra*, the Commission has already replaced the street address in these provisions with a cross-reference to 11 CFR 1.2. See Change of Address Final Rule, 82 FR at 60852. Thus, these final rules replace the cross-references to § 1.2, rather than the street address itself.

<sup>57</sup> Because the definitions in part 100 of the Commission’s regulations generally do not apply to parts 1–8 of the regulations, the new references to “filing” in parts 1–8 explicitly cross-reference new 11 CFR 100.19(g).

<sup>58</sup> In the NPRM, the Commission proposed retaining the reference to “999 E Street NW” in 11 CFR 5.5(a) along with the hours of the public disclosure division. However, given that the Commission subsequently revised this provision by replacing the street address with a cross-reference to 11 CFR 1.2, the Commission is removing the cross-reference and office hours.

<sup>59</sup> In the NPRM, the Commission did not include the three provisions of part 104 now included in this list. The Commission has decided to remove the cross-references to the street address as set out in § 1.2 from these three provisions for the same reasons it is being removed from the other listed provisions.

<sup>49</sup> See *infra* Section (E)(3).

<sup>50</sup> 15 U.S.C. 7001(g); see also UETA 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>51</sup> The National Association of Secretaries of State notes that 38 states currently permit some form of electronic notarization, and 34 of those have laws permitting remote electronic notarization, while additional states and Washington, DC have issued emergency regulations or guidance permitting remote electronic notarization due to the COVID–19 pandemic. See Nat’l Assoc. of Secs. of State, *Remote Electronic Notarization*, <https://www.nass.org/initiatives/remoted-electronic-notarization> (last visited Nov. 9, 2023).

<sup>52</sup> The NPRM proposed removing the street address from these provisions because at that time, each of these provisions included the street address. However, in the interim, the Commission published a final rule in the *Federal Register*, updating the Commission’s street address in 11 CFR 1.2 and replacing the Commission’s street address with a cross-reference to 11 CFR 1.2 wherever else it appeared in Title 11. Change of Address; Technical Amendments, 82 FR 60852 (Dec. 26, 2017) (“Change of Address Final Rule”).

<sup>53</sup> See, e.g., 11 CFR 1.3(b), 111.4(a), 111.15(a), 112.1(e), 112.3(d).

<sup>54</sup> See, e.g., FEC, *Searchable Electronic Rulemaking System—Basic Search*, [sers.fec.gov/fosers](https://sers.fec.gov/fosers) (release date June 14, 2013) (web portal for commenting on rulemakings).

<sup>55</sup> See, e.g., FEC, *The Advisory Opinion Process*, [www.fec.gov/law/draftaots.shtml](https://www.fec.gov/law/draftaots.shtml) (establishing email address for comments on draft advisory opinions) (last visited Nov. 9, 2023).

dues. Because such bills are now sometimes delivered electronically, rather than in paper form, the Commission is changing “in” to “with.” The substantive requirements for soliciting contributions to a separate segregated fund are not changing.<sup>60</sup>

- In § 114.1(g), which provides a non-exhaustive list of the manner in which a solicitation may be made, the Commission is adding “emails” to the existing list of “mailings, oral requests . . . , and hand distribution of pamphlets” to recognize that solicitations may be made electronically.<sup>61</sup>

- In § 116.9(a)(2), which describes what constitutes a political committee’s reasonable diligence in attempting to locate a creditor, the Commission is adding email as a valid means of attempting to contact the creditor.

- Sections 9003.1(b)(7) and 9033.1(b)(8) require submission of the “name and mailing address” of the person entitled to receive public fund payments on behalf of a candidate. The Commission is amending these 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 is revising part 111 of its regulations. First, the Commission is removing or limiting requirements to file multiple copies of documents where multiple copies are no longer necessary. In 11 CFR 111.4(a), the Commission is clarifying 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 is deleting the provisions that state that a respondent “should . . . if possible” file multiple copies of a motion or brief.

Second, the Commission is revising the following regulations that currently refer to “enclos[ing]” a copy of a document: 11 CFR 111.5(a), 111.5(b), and 111.16(b). As revised, the regulations state that the Commission shall “provide” a copy of the relevant document.

<sup>60</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 Commission is not amending the reference to “mail” in section 114.6(c), and the change to 11 CFR 102.6(c)(2), which allows for solicitations by means other than mail, does not apply to these twice-yearly solicitations.

<sup>61</sup> The Commission is not adding 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 is revising 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 is revising this last clause to read “by any other method, including electronically, whereby actual notice is given.”<sup>62</sup>

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

The Commission intends these 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.

#### D. Electronic Contributions

The Commission is also revising 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 the transaction; (2) when the entity processing the payment (the “payment processor”) transfers the contribution to the recipient political committee; and (3) when the recipient political committee deposits the funds into its campaign depository. The Commission is revising its rules in these areas in light of its understanding 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 methods by which vendors and payment processors verify a payor’s identity, attribute payments, and collect, maintain, and transmit transaction records;<sup>64</sup> and the Commission’s understanding of the

<sup>62</sup> The Commission is not making 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.

<sup>63</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>64</sup> See, e.g., *Online Person-to-Person (P2P), Account-to-Account Payments and Electronic Cash*, Fed. Fin. Inst. Examination Council, <https://itandbook.ffiec.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 Nov. 30, 2023).

operators and users of established and emerging electronic payment platforms—such as PayPal, Venmo, Square, Zelle, and other electronic wallet, P2P, mobile app, and social media payment platforms.

#### 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.”<sup>65</sup> The regulations further specify that a contribution that is mailed is considered to be made on the date of the postmark.<sup>66</sup>

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.<sup>67</sup> 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.’”<sup>68</sup>

The Commission is revising 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 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.” The revised regulations do not 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—because the Commission has

<sup>65</sup> 11 CFR 110.1(b)(6); see also *id.* 110.2(b)(6).

<sup>66</sup> *Id.* 110.1(b)(6); see also *id.* 110.2(b)(6).

<sup>67</sup> 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).

<sup>68</sup> 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.



determined that examples distinguishing between electronic and non-electronic transactions are not necessary; in fact, examples tied to specific technologies might be unduly limiting or risk becoming rapidly obsolete. The Commission does not intend for the new regulation to alter the existing approach the Commission takes in determining the dates on which electronic payments are made pursuant to recurring monthly payment authorizations.<sup>69</sup>

Like the existing regulations regarding when a contribution is “made,” the regulations concerning when a contribution is “received” focus on possession. The current regulations provide that the “date of receipt” of a contribution is the date a person “obtains possession of the contribution.”<sup>70</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.”<sup>71</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 is revising 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.” The Commission is not including in the regulatory text any technology-specific examples of when a contribution is “received” for the same reasons given above for not including technology-specific examples of when a contribution is “made.”

## 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 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>72</sup> or via web-based platforms.<sup>73</sup> The Commission is revising 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. 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.<sup>74</sup> Under the revised definition of “receipt,” discussed above,

this forwarding requirement is 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>75</sup> the Commission is adding 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 new 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 to candidates and committees by transmitting the funds, the payment processor must meet this forwarding requirement in its ordinary course of business.<sup>76</sup> The revised rule thus reflects 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>77</sup>

<sup>75</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, e.g., Visa, Frequently Asked Questions—How do Visa transactions work?*, <https://usa.visa.com/run-your-business/accept-visa-payments.html> (follow “Learn how Visa transactions work” hyperlink and click play arrow) (last visited Nov. 9, 2023). 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).

<sup>76</sup> *See, e.g.,* 11 CFR 116.3; Advisory Opinion 2012–26 (m-Qube II); Advisory Opinion 2012–31 (AT&T).

<sup>77</sup> This revision codifies the application of the forwarding requirements of 52 U.S.C. 30102(b) and 11 CFR 102.8 to contributions made by text message and web-based platforms, as set forth in Advisory Opinion 2012–26 (m-Qube II). The revision supersedes Advisory Opinion 2012–17 (m-Qube I) to the extent it concluded that contributions made by text message were not subject to the forwarding requirements. Factored payments from payment processors to political committees as described in Advisory Opinion 2012–17 (m-Qube I) and Advisory Opinion 2012–26 (m-Qube II) are one means of satisfying the forwarding requirements if made within 10 or 30 days of the contributor’s authorization, as applicable. *See* 52 U.S.C. 30102(b); 11 CFR 102.8; *see also* Advisory Opinion 2012–35 (Global Transaction Services Group) at 4 (approving proposal where processor transmitted contributions to political committees within ten days); Advisory

<sup>69</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>70</sup> 11 CFR 102.8(a); *see also id.* 102.8(b)(2) (same description of “receipt”); *id.* 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).

<sup>71</sup> Advisory Opinion 1990–04 (American Veterinary Medical Association PAC) at 2–3; *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 25 (2021), <https://www.fec.gov/resources/cms-content/documents/candgui.pdf>.

<sup>72</sup> *See, e.g.,* Advisory Opinion 2012–30 (Revolution Messaging); Advisory Opinion 2012–28 (CTIA—The Wireless Association) (“CTIA I”); 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>73</sup> *See, e.g.,* Advisory Opinion 2018–05 (CaringCent); Advisory Opinion 2017–06 (Stein and Gottlieb); 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 (Atlas); Advisory Opinion 2006–08 (Brooks).

<sup>74</sup> 52 U.S.C. 30102(b)(2).



The Commission is not adopting regulatory language to define “ordinary course of business,” but the term will 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.

The Commission received a comment in response to the NPRM regarding direct carrier billing (“DCB”), which is a particular form of commercial payment processing that enables customers to pay for goods and services by charging them to a wireless bill. The comment asked the Commission to adopt a detailed rule specifically to address DCB, proposing, for example, that a contribution that is forwarded by DCB should be deemed “made” only “when a wireless company transfers funds from its accounts to a connection aggregator.”<sup>78</sup> As the Commission has noted throughout this rulemaking, however, the Commission is revising its regulations in part to move away from technology-specific rules, in favor of technology-neutral language.<sup>79</sup> The Commission therefore declines to promulgate regulatory text that would govern this single payment practice. Any person uncertain as to the effect of the revised regulations on a particular technology may seek additional guidance through the Commission’s advisory opinion process.

#### b. Revisions to Earmarking Rule, 11 CFR 110.6

FECA provides that, for purposes of 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 treated as contributions from such person to such candidate.”<sup>80</sup> 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 or a candidate’s authorized committee.”<sup>81</sup> Because FECA prohibits corporations from making contributions to candidate committees,<sup>82</sup> and because persons prohibited from making contributions and expenditures are also prohibited from being conduits or intermediaries who receive and forward earmarked contributions to a candidate,<sup>83</sup> a corporation generally may not receive and forward earmarked contributions.

Commission regulations provide for certain exceptions to the earmarking rule,<sup>84</sup> but these exceptions do not squarely apply to payments made through online processors that the Commission has addressed in several advisory opinions. 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>85</sup> In other opinions, the Commission approved the transactions under the rationale that the corporations were providing services to the contributors.<sup>86</sup> And in Advisory Opinion 2012–22 (skimmerhat), the Commission determined expressly that contributions made through a for-profit corporation’s website were “direct contributions to the candidate . . . via a commercial processing service” and “not contributions to an intermediary and earmarked for a candidate.”<sup>87</sup> The Commission explained that “certain electronic transactional 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.’”<sup>88</sup>

In the NPRM, the Commission proposed two alternatives to amend 11 CFR 110.6(b) by exempting commercial payment processors from the definition of “conduit or intermediary” in 11 CFR 110.6(b)(2). Proposed alternatives A and B both would have exempted “commercial payment processors” from the earmarking rule, defining a “commercial payment processor” as 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; proposed alternative A would have additionally required that such a processor not exercise direction or control over the choice of the recipient candidate or authorized committee. The Commission also asked, though, whether it should 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)—by, for example, clarifying that the definition of “earmark” does not generally include a contributor’s authorization to initiate an electronic transaction.<sup>89</sup>

After further consideration, the Commission has decided to adopt this latter approach to revising the earmarking rule. Specifically, the Commission is revising § 110.6 to clarify in the definition of “earmarked” in 11 CFR 110.6(b)(1) that a “contributor’s authorization that a commercial payment processor, whose usual and normal business is to process payments, transmit funds from the contributor to the designated candidate or authorized committee in the commercial payment processor’s ordinary course of business does not in itself constitute an earmark.” This final rule adopts the description of “commercial payment processor” proposed in both alternatives A and B, *i.e.*, an entity whose usual and normal business is to process payments and which does so in the ordinary course of business. However, because

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).

<sup>78</sup> CTIA, Comment at 16 (Dec. 2, 2016), <http://sers.fec.gov/fosers/showpdf.htm?docid=354000>.

<sup>79</sup> The same commenter also acknowledged in a more recent comment that “a shift in mobile fundraising by political committees . . . has obviated the need to charge political contributions to a wireless user’s bill and to process the contributions by DCB.” CTIA, Comment at 3 (Oct. 11, 2022), <https://sers.fec.gov/fosers/showpdf.htm?docid=420616>.

<sup>80</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). 52 U.S.C. 30116(a)(8).

<sup>81</sup> 11 CFR 110.6(b)(1).

<sup>82</sup> See 52 U.S.C. 30118.

<sup>83</sup> 11 CFR 110.6(b)(2).

<sup>84</sup> See 11 CFR 110.6(b)(2)(i).

<sup>85</sup> See Advisory Opinion 2021–10 (Retail Benefits, Inc.); Advisory Opinion 2018–05 (CaringCent); Advisory Opinion 2007–04 (Atlatl); Advisory Opinion 2004–19 (DollarVote.org); see also Advisory Opinion 2012–09 (Points for Politics).

<sup>86</sup> See Advisory Opinion 2021–07 (PACMS); Advisory Opinion 2019–04 (Prytany); Advisory Opinion 2017–06 (Stein and Gottlieb); Advisory Opinion 2011–19 (GivingSphere); Advisory Opinion 2011–06 (Democracy Engine); Advisory Opinion 2006–08 (Brooks).

<sup>87</sup> Advisory Opinion 2012–22 (skimmerhat) at 10.

<sup>88</sup> *Id.* (citing Advisory Opinion 2011–06 (Democracy Engine)); see also Advisory Opinion 2016–08 (eBundler.com) at 8 (“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); Advisory Opinion 2014–07 (Crowdpac) (approving commercial processor’s transmission of contributions to candidates); ActBlue, Comment at 5, [sers.fec.gov/fosers/showpdf.htm?docid=297360](https://sers.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”).

<sup>89</sup> NPRM, 81 FR 76427.

the new rule presents an exception to the definition of “earmark” rather than an exception to the definition of “conduit or intermediary,” the new rule focuses on the contributor’s authorization of the transaction rather than on the payment processor’s actions. This approach is consistent with the changes the Commission is making to “authorization” of transactions in 11 CFR 102.8, discussed above.

As mentioned in the NPRM, the new rule clarifies that a contributor’s authorization to initiate an electronic transaction through a payment processor does not “in itself” constitute an earmark. This regulatory language is intended to recognize that a contribution that is otherwise earmarked within the meaning of the Commission’s regulations is not excluded from treatment as an earmark merely because the transaction includes an authorization to a payment processor. The Commission anticipates that specific applications of the revised definition of “earmark,” including instances where a processor exercises direction or control over the contribution, will be informed by the Commission’s existing precedents.

The term “commercial payment processors” is not intended to 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 encompasses 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>90</sup> The Commission anticipates, however, that the distinction will remain relevant to determine whether fees associated with contributions made through commercial payment processors are 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 incur,” the fee would be considered a contribution.<sup>91</sup>

<sup>90</sup> Because the new rule does not turn on the incorporation status of a payment processor, it does not affect the ability of a limited liability company that opts to be treated like a partnership for tax purposes to process contributions to candidates in the ordinary course of business. See Advisory Opinion 2012–09 (Points for Politics).

<sup>91</sup> See, e.g., Advisory Opinion 2017–06 (Stein and Gottlieb) at 5; Advisory Opinion 2015–15

The Commission intends the revision to 11 CFR 110.6(b)(1) 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.

### *3. When a Political Committee Deposits the Contribution: Campaign Depositories, Merchant Accounts, and Recordkeeping*

Once a political committee has received a contribution, it must deposit that receipt in an account at a campaign depository within ten days.<sup>92</sup> The campaign depository must be a state bank, federally chartered depository institution, or depository institution with accounts insured by certain federal agencies.<sup>93</sup>

The Commission is revising several regulations to address issues related to the deposit into campaign depositories of contributions made electronically. First, the Commission is revising 11 CFR 103.3(a) to clarify the campaign depository requirements for joint merchant accounts. Second, the Commission is revising 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.

#### *a. 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.”<sup>94</sup> 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.”<sup>95</sup>

Merchant accounts operated and controlled by a payment processor may contain contributions for several

(WeSupportThat.com) at 5 (quoting Advisory Opinion 2014–07 (Crowdpac) and Advisory Opinion 2011–06 (Democracy Engine)).

<sup>92</sup> 52 U.S.C. 30102(h)(1); 11 CFR 103.3(a).

<sup>93</sup> 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).

<sup>94</sup> ActBlue, Comment at 2, *sers.fec.gov/fosers/showpdf.htm?docid=297360*.

<sup>95</sup> *Id.* at 4.

different political committees.<sup>96</sup> 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.<sup>97</sup>

The Commission has now reconsidered its earlier guidance that political committees 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.<sup>98</sup> The Commission is therefore amending 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 a merchant account of a payment processor described in new 11 CFR 102.8(d) are not “receipts” of the recipient political committee, but are, instead, contributions to be forwarded by the processor under 11 CFR 102.8.<sup>99</sup> Together with the revisions to § 102.8 discussed above, this amendment aims to ensure that electronic payments passing through merchant accounts comply with 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.

The new merchant account regulation applies to merchant accounts held in

<sup>96</sup> See Advisory Opinion 1995–34 (Politechs) n.6 (describing processing of contributions for multiple committees through one merchant account).

<sup>97</sup> *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).

<sup>98</sup> See Advisory Opinion 2017–02 (War Chest) (concluding that committee need not report as campaign depositories those accounts held by trust in sub-custodian bank accounts in trust’s name and over which committee has no control); ActBlue, Comment at 4, *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”).

<sup>99</sup> For ease of reading, the Commission is also dividing § 103.3(a) into two subparts to address the two distinct issues (receipts and disbursements) addressed therein.

the ordinary course of business by payment processors described in new 11 CFR 102.8(d) and not, therefore, to accounts of political committees. Thus, if a political committee administers or otherwise controls a merchant account, that account constitutes and must be reported as a campaign account as it always has.

In conjunction with the change to 11 CFR 103.3(a), the Commission is superseding 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 interpreted FECA as requiring political committees to treat joint merchant accounts over which the recipient political committees exercise no control as their own campaign depository accounts.

**b. 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.<sup>100</sup> 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 is revising 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) are being replaced with a new paragraph (4), which requires political committees to maintain a "record" of each contribution received. For checks or written instruments in excess of \$50, the revised rule still requires treasurers to maintain an image of the instrument. For all contributions, the revised rule adds 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 also removes the requirement that committees provide the Commission with the electronic means to read such records because that requirement appears in the new definition of "record" discussed above.

The Commission is adopting 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 is adding, 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."

*E. Other Considerations in Electronic Contributions and Disbursements*

The Commission is revising 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>101</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>102</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.<sup>103</sup> Thus, Congress limited contributions of currency to \$100.<sup>104</sup> Commission regulations also prohibit the use in federal elections of any portion of an anonymous "cash" contribution that exceeds \$50.<sup>105</sup>

The Commission invited comment several times on payment methods that share some of the characteristics of cash and received only a few comments addressing this topic. In the ANPRM, the Commission asked "whether prepaid debit, credit, banking, and gift cards are functionally the same as cash" and whether the Commission should amend its regulations to prohibit contributions in excess of \$100 using those methods.<sup>106</sup> The Commission received one comment that addressed prepaid cards, from an entity that processes online contributions. In the NPRM, the Commission noted again that some electronic payment methods, particularly prepaid cards and some forms of cryptocurrency, have certain characteristics that are similar to cash.<sup>107</sup> Like currency, prepaid cards and some forms of cryptocurrency are easily transferable and relatively untraceable; all that is needed to acquire and use them is sufficient cash to purchase them. The Commission therefore proposed 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.<sup>108</sup> No commenters addressed this proposal. Most recently, the Commission sought comment about prepaid card transactions in the Request for Additional Comment, but did not receive any comments in response.<sup>109</sup>

The Commission also asked in the NPRM whether it should restrict contributions of cryptocurrency such as bitcoin to the "cash" contribution limit at 11 CFR 110.4(c). Alternatively, the Commission asked whether it should

<sup>103</sup> 120 Cong. Rec. H7832 (daily ed. Aug. 7, 1974) (statement of Rep. Boland).

<sup>104</sup> 52 U.S.C. 30123; *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>105</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).

<sup>106</sup> ANPRM, 78 FR at 25638.

<sup>107</sup> NPRM, 81 FR at 76429.

<sup>108</sup> *Id.*

<sup>109</sup> Request for Additional Comment, 87 FR at 54916–17.

<sup>101</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>102</sup> 11 CFR 100.52(c); *see also id.* 100.111(d) (corresponding provision for expenditures).

<sup>100</sup> 52 U.S.C. 30102(b)(2); 11 CFR 102.8(a).

treat receipts and disbursements of cryptocurrency as in-kind contributions because they cannot be deposited in campaign depositories.<sup>110</sup> Two commenters, an advocacy center focused on blockchain technologies and a cryptocurrency exchange, discussed the use of cryptocurrency in response to the NPRM. Both opined that the Commission should not treat cryptocurrency contributions the same as cash contributions.

The Commission has determined not to amend its rules at this time to address prepaid cards or cryptocurrency. These payment methods involve potentially complex commercial and technological issues that are beyond the Commission's current expertise. To understand fully the potential effects that any regulatory changes might have on industry practices, it is important for the Commission to hear from those who regularly use and implement these payment methods. Few commenters have shared their perspectives on the feasibility or potential implications of amending Commission regulations to address prepaid cards or cryptocurrency. Because any regulatory changes concerning these payment methods would benefit from a more focused inquiry and expertise on these rapidly evolving technologies, the Commission has decided not to amend its regulations as proposed at this time.

## 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."<sup>111</sup> 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.<sup>112</sup> The Commission has further interpreted the term "similar draft" to include certain forms of electronic disbursement.<sup>113</sup> Consistent with these prior interpretations and in

light of the increasing use of electronic transactions in the campaign finance arena, the Commission is revising 11 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; revising 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 revising 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."

### b. Recordkeeping for Disbursements by Electronic Transfer

In light of the regulatory revisions for disbursements by electronic transfer, and because current technology allows checks to be processed electronically without the creation of a canceled check (such as depositing a check using a smartphone app), the Commission is revising the recordkeeping requirements for political committee disbursements. Section 102.9(b) describes the records that political committees must keep of their disbursements. The Commission is revising 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 is removing 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 is no longer necessary in light of changes to the recordkeeping provisions in other parts of § 102.9.

Sections 9003.5(b) and 9033.11(b) contain the disbursement documentation requirements for publicly financed candidates. The Commission is revising 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.

### c. Electronic Funds Transfers Related to Separate Segregated Fund Administration

The Commission is making similar revisions to two regulations relating to contributions by "check" to a separate segregated fund ("SSF"). First, the Commission is 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."<sup>114</sup> 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 is revising 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>115</sup> The rule retains 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."

Second, the Commission is revising 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 revisions concerning disbursements from campaign depositories, the Commission is revising 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 has determined not to 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

<sup>110</sup> See 11 CFR 102.10 (requiring committee disbursements be made by check from campaign depositories), 103.3(a) (setting campaign depository requirements for receipts and disbursements).

<sup>111</sup> 52 U.S.C. 30102(h)(1).

<sup>112</sup> 11 CFR 102.10; see also *id.* 103.3(a) (same).

<sup>113</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").

<sup>114</sup> 11 CFR 102.6(c)(3).

<sup>115</sup> See *id.* (describing combined payments under payroll deduction plan).

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. The Commission asked in the NPRM whether such transactions occur, but it received no comments in response. Given the lack of information before the Commission on this question, the Commission is not making changes at this time.

### 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.”<sup>116</sup> The Commission is revising 11 CFR 9034.2, which 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>117</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 also to contain the contributor’s “signature,” which is defined for these purposes as “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>118</sup> Payment industry standards limit the storage and retention of payment card information in order to safeguard consumers and the payment

system from fraud.<sup>119</sup> 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>120</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 is revising 11 CFR 9034.2(b) and (c) by removing the 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 will 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.

At this time, the Commission is not revising 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>121</sup> The Commission explained that an oral authorization of a credit or debit card contribution is not a “written instrument” for purposes of the Funding Acts, because the only record of such a transaction is “created wholly by the recipient committee,” whereas for written authorizations “it is the signatory’s . . . act of entering his or her own name that represents a legal act.”<sup>122</sup> Although an electronic record of a credit or debit card contribution authorized orally—such as an audio recording of the authorization—constitutes a “written” “record” under FECA,<sup>123</sup> such a record is created by the

recipient committee and thus does not constitute a “written instrument” sufficient to meet the Funding Acts’ prerequisite for a candidate’s receipt of public funds, 26 U.S.C. 9034(a).

Finally, the Commission is revising 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 is adding a parallel provision for the electronic equivalent of bounced checks by requiring committees to provide a list of “credit or debit card or other electronic payment chargebacks.” The Commission is not adding 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.

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

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

First, the Commission is revising 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>124</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 that 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 is removing 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).

Similarly, the Commission is revising 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

could “incorporate[] procedural safeguards and recordkeeping mechanisms equivalent to . . . a handwritten signature on a paper document” (internal quotations omitted).

<sup>124</sup> Section 9003.3(a) concerns contributions to a publicly funded presidential candidate’s general election legal and accounting (“GELAC”) account.

<sup>116</sup> 26 U.S.C. 9034(a).

<sup>117</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>118</sup> See ActBlue, Comment at 2, *sers.fec.gov/fosers/showpdf.htm?docid=297360*; Perkins Coie, Comment at 2, *sers.fec.gov/fosers/showpdf.htm?docid=297359*; Visa, Comment at 1–3, *sers.fec.gov/fosers/showpdf.htm?docid=297361*.

<sup>119</sup> Visa, Comment at 2, *sers.fec.gov/fosers/showpdf.htm?docid=297361*.

<sup>120</sup> *Id.* at 2–3.

<sup>121</sup> See Matching Credit Card and Debit Card Contributions in Presidential Campaigns, 64 FR 32394, 32395–96 (June 17, 1999).

<sup>122</sup> *Id.* at 32396.

<sup>123</sup> See, e.g., Advisory Opinion 2013–12 (Service Employees International Union COPE) (noting that “a telephone-based authorization system that included computer-based (and retrievable) records”

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 is removing that reference to how a contribution is made from 11 CFR 110.1(k)(1). The revised regulation requires 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 is adding to this section a provision governing the attribution of matchable contributions made by credit and debit cards. Specifically, new § 9034.2(c)(8)(iii) parallels the joint attribution principles that apply to contributions by check,<sup>125</sup> 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 updating its regulations to reflect technological advances and to remove certain references to outmoded technologies. These revisions do not affect the substance of any of the revised regulations.

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

The Commission is removing 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>126</sup>

For the same reason, the Commission is replacing the reference to “typewriters” with “computers” in 11 CFR 114.9(d) and removing the references to “typewriters” (without substituting a new term) in 11 CFR

9004.6(a) and 9034.6(a). The word “computer” in these contexts includes not only PCs, but also tablets, smartphones, and similar devices.

Similarly, the Commission is adding “internet service” to non-exhaustive illustrative lists that include “telephone service” in 11 CFR 106.2(b)(2)(iii)(D), 9004.6(a) and (b), and 9034.6(a) and (b).

Because most recording is now digital rather than on magnetic tape, the Commission is replacing all regulatory references to “tapes,” as in, for example, “audio tapes,” with references to “recordings” in 11 CFR 200.6(a)(5), 9007.7(b)(2), and 9038.7(b)(2).

The Commission also is revising 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, removing 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.”<sup>127</sup>

##### 2. Microfilm and Obsolete Computer References

The Commission is removing 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 and Media Relations Division. Specifically, the Commission is making the following revisions, none of which is substantive:

- remove the references to “microform,” “computer tape or microfilm,” “computerized,” and “Computerized Magnetic Media Requirements” in 11 CFR 4.1(j), 4.9(c)(5), 9007.1(b)(1), 9036.2(b)(1)(vi), and 9038.1(b)(1);
- 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), 4.9(a)(3), 9003.1(b)(4), 9003.6(a), 9033.1(b)(5), 9033.12(a), and 9036.1(b)(2);
- 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 from 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 is revising and simplifying the fee structures at 11 CFR 4.9 and 5.6, which concern fees for FOIA and Public Disclosure. Specifically, the Commission is removing 11 CFR 4.9(a)(2) (imposing \$25 per hour computer access FOIA fee); revising 11 CFR 4.9(c)(4) and 5.6(a) to reduce the fee for document certification; removing 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>128</sup> removing the specified staff charges from § 4.9(c)(4) and adding a provision to charge the “direct costs,” including staff and digital storage devices on which records are produced; removing from 11 CFR 5.6(a) the fees for professional “research time/photocopying time”; removing 11 CFR 5.6(b), which establishes fees for providing Commission publications; and removing from 11 CFR 5.6(c) the reference to use of a contractor for microfilm and computer tape duplication. The Commission also is making 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 and Media Relations Division.

In the NPRM, the Commission sought 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

<sup>125</sup> See 11 CFR 9034.2(c)(1)(ii).

<sup>126</sup> See Chenda Ngak, *Last telegram ever to be sent July 14*, CBS News, (June 18, 2013), <https://www.cbsnews.com/news/last-telegram-ever-to-be-sent-july-14/> (reporting that India’s state-run telecommunications company, “the last large-scale telegraph system in the world,” was slated to shut down telegraph service “because that part of its business is not commercially viable”).

<sup>127</sup> 52 U.S.C. 30101(23).

<sup>128</sup> The Commission is not changing 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).

21 of the vertical blanking interval.”<sup>129</sup> Commission regulations implement this requirement essentially verbatim at 11 CFR 9003.1(b)(10) and 9033.1(b)(12). The Commission asked whether there is a “successor technology” that should now be recognized in these provisions, such as technologies that might not apply to traditional broadcast television but are used for cable, satellite, or internet-based television (e.g., Hulu or Netflix). The Commission received no comments in this area and has decided not to revise these rules at this time.

### 3. Websites

The Commission is revising 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, when the Commission initiated this rulemaking, the definition of “public communication” in 11 CFR 100.26 referred to communications placed for a fee on another person’s “website.”<sup>130</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.”<sup>131</sup> The Commission focused on websites because that was the predominant means of paid internet advertising in 2006.<sup>132</sup>

In both the NPRM for this rulemaking and in an NPRM published in 2018 addressing internet communications

disclaimers and the definition of “public communication” (“internet Communications Disclaimers NPRM”), the Commission proposed updating the definition to include a reference to an “internet-enabled device or application.”<sup>133</sup> In each case, the Commission asked whether such terms were “sufficiently clear and technically accurate” to describe “the various media through which paid internet communications can be sent and received.”<sup>134</sup> In response to the internet Communications Disclaimers NPRM, the Commission received numerous comments addressing the proposed revision to the definition of “public communication.”<sup>135</sup> Most who commented on the issue supported the proposed revision.

The Commission amended the definition of “public communication” in the Internet Communications Disclaimers rulemaking to include “communications placed for a fee on another person’s website, digital device, application, or advertising platform.”<sup>136</sup> In that rulemaking, the Commission also adopted a new defined term, “internet public communication,” which is defined similarly as “any public communication over the internet that is placed for a fee on another person’s website, digital device, application, or advertising platform.”<sup>137</sup>

The Commission asked in the Supplemental Notice of Proposed Rulemaking published in this rulemaking (“SNPRM”) whether the definitions of “public communication” and “internet public communication” should also include communications that are “promoted for a fee” on another person’s website, digital device, application, or advertising platform, and whether such communications that are “promoted for a fee” should be subject to the Commission’s disclaimer requirements.<sup>138</sup>

The Commission received six substantive comments in response to the SNPRM. Three commenters supported the proposal and three opposed it. Those commenters that supported the

proposal generally did so on the grounds that it better reflects the current advertising landscape and would increase the transparency of sponsored content, so that voters can more readily discern paid communications and determine the source of such messages. The commenters that opposed the proposal expressed concerns about chilling ordinary citizens’ speech, and that the proposed language could be read to extend to political committees’ internal staff and technology costs. One such commenter suggested modifying the proposed definition to cover communications “promoted for a fee paid to another person’s website, digital device, application, or advertising platform.”

Based on the comments received, the Commission is amending the definition of “public communication” at 11 CFR 100.26 and the definition of “internet public communication” at 11 CFR 110.11(c)(5)(i) to include communications over the internet that are “placed or promoted for a fee on another person’s website, digital device, application, or advertising platform. A public communication is promoted for a fee where a payment is made to a website, digital device, application, or advertising platform in order to increase the circulation, prominence, or availability of the communication on that website, digital device, application, or advertising platform.”

The updated definitions of “public communication” and “internet public communication” better reflect the wide and rapidly expanding array of paid internet advertising options. These amendments will increase transparency by helping to ensure that political committees and others properly disclose their paid internet communications.<sup>139</sup> In 2006, the court in *Shays v. Federal Election Commission* concluded that “[w]hile all internet communications do not fall within [the scope of ‘any other form of general public political advertising’], some clearly do,”<sup>140</sup> and directed the Commission to determine what constitutes “general public political advertising” in the context of internet communications. In amending the definition of “public communication” in response to the *Shays* decision to include paid internet advertising, the Commission acknowledged that the internet is “a unique and evolving mode of mass communication and political

<sup>129</sup> 26 U.S.C. 9003(e).

<sup>130</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.

<sup>131</sup> See internet Communications, 71 FR 18589, 18594 (Apr. 12, 2006); 52 U.S.C. 30101(22).

<sup>132</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>133</sup> See Internet Communication Disclaimers and Definition of “Public Communication”, 83 FR 12864, 12868 (March 26, 2018).

<sup>134</sup> NPRM, 81 FR at 76433–34; Internet Communication Disclaimers and Definition of “Public Communication”, 83 FR at 12865, 12868.

<sup>135</sup> The Commission received only one comment addressing the proposal to revise the definition of “public communication” in response to the NPRM for the Technological Modernization rulemaking. That comment is discussed further below.

<sup>136</sup> Internet Communication Disclaimers and Definition of “Public Communication”, 87 FR 77467, 77471 (Dec. 19, 2022).

<sup>137</sup> *Id.* at 77473.

<sup>138</sup> SNPRM, 87 FR 75518 (Dec. 9, 2022).

<sup>139</sup> See Internet Communications, 71 FR 18589 (Apr. 12, 2006).

<sup>140</sup> *Shays v. FEC*, 337 F. Supp. 2d 28, 67 (D.D.C. 2004), *aff’d*, 414 F.3d 76 (D.C. Cir. 2005), *reh’g en banc denied* (Oct. 21, 2005).



speech.”<sup>141</sup> As the internet has continued to evolve since that time, so have the available forms of paid internet advertising, and the Commission is updating its regulations to keep pace.

The amended definitions will also help to prevent the circumvention of disclaimer requirements on paid internet communications.<sup>142</sup> Under the former regulations, arguably a political advertisement placed for free on a social media platform would not require a disclaimer even if the advertiser then pays the platform to promote the communication to a wider audience, while the same communication placed for a fee on the same social media platform to reach the same audience would require a disclaimer. The amended definitions of “public communication” and “internet public communication” will forestall such an argument by aligning the treatment of these two forms of paid political ads.

Certain commenters opined that the definitions proposed in the SNPRM were too broad because they arguably expanded the definitions of “public communication” and “internet public communication” beyond paid advertising. The commenters were concerned that, as proposed, the definitions could be read to capture political communications placed or promoted for free on a third party’s platform if the speaker incurs staffing, technology, or design costs to create the communication. The revised definitions, however, apply only where the speaker pays a third party’s website, digital device, application or advertising platform to increase the communication’s visibility on that website, device, application, or platform. They do not apply to communications where the speaker’s only costs are to create the communication or to place or promote the communication “using a forum that he or she controls to establish his or her own audience.”<sup>143</sup>

In the SNPRM, the Commission sought comments about whether any distinction should be made between several types of communications that are sometimes described as “promoted.” One type was a communication where “a website, digital device, application, or advertising platform is paid directly to ‘boost’ or expand the scope of viewership of content containing express advocacy or soliciting a

contribution in order to increase the circulation or prominence of that content.”<sup>144</sup> After reviewing the comments received, the Commission has decided that this type of communication is analogous to the traditional forms of paid advertising identified in FECA as a “public communication”<sup>145</sup> because the speaker pays the entity that owns or controls the medium of communication to distribute the communication on the speaker’s behalf. Accordingly, the updated definitions of “public communication” and “internet public communication” include this type of “promoted” communication. Thus, for example, if a political committee posts a video solicitation for free on a social media platform and pays the platform to boost the video’s viewership, the video is both a “public communication” and an “internet public communication.”

In contrast, the updated definitions of “public communication” and “internet public communication” do not apply to the other types of communications described in the SNPRM, where an individual is paid to create or share political content.<sup>146</sup> The definitions do not encompass instances where individuals make decisions about what content to share with their own audiences. For example, if a political committee posts a video soliciting contributions on a social media site for free and then pays an individual to post the video on that individual’s social media page to share with the individual’s followers, the video is neither a “public communication” nor an “internet public communication” under Commission regulations. The same result occurs if the political committee pays an individual to create and post a communication online for the individual’s audience. In both situations, the individual would be communicating with the individual’s own followers who have sought out such communications, which the Commission has determined are not “public communications.”<sup>147</sup>

Some commenters were concerned that the amended definitions of “public communication” and “internet public communication” could affect individuals’ political activity and speech on the internet more broadly. The Commission does not share this concern. Other than the disclaimer requirements discussed above, the

amended definitions apply only to communications by entities that are already subject to Commission regulation or that coordinate with candidates or political parties already subject to regulation.<sup>148</sup>

Communications by individuals, even when political in nature, should not be affected by the revised definitions other than in the disclaimer context.

Second, the Commission also proposed to revise the disclaimer provision in 11 CFR 110.11, which refers to political committees’ “internet websites” that are available to the general public.<sup>149</sup> When the Commission revised the disclaimer requirements in 2002 to apply to political committees’ websites, it noted “the widespread use of this technology in modern campaigning, and the relatively nonintrusive nature of disclaimer requirements.”<sup>150</sup> 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.”<sup>151</sup> 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 is revising it to refer to political committees’ “websites and internet applications.”

Third, the Commission is updating 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.<sup>152</sup> Previously, the definition of “federal election activity” excluded *de minimis* costs associated with posting certain general voting information on the “website” of a state, district, or local party committee or association of state or local

<sup>141</sup> Internet Communications, 71 FR 18589 (Apr. 12, 2006).

<sup>142</sup> See *id.* at 18593 (recognizing “the important purpose of BCRA in preventing actual and apparent corruption and the circumvention of [FECA]”).

<sup>143</sup> Internet Communications, 71 FR 18589, 18594–95 (Apr. 12, 2006).

<sup>144</sup> SNPRM, 87 FR at 75519.

<sup>145</sup> 52 U.S.C. 30101(22); see also *id.* 30120(a); 11 CFR 110.26.

<sup>146</sup> SNPRM, 87 FR at 75519.

<sup>147</sup> See Internet Communications, 71 FR at 18594–95.

<sup>148</sup> Other than disclaimer requirements, the changes affect the following regulatory provisions: the restrictions on funding of Federal election activity by political party committees and State and local candidates (52 U.S.C. 30101(20)); the allocation of costs of certain communications by some political committees under 11 CFR 106.6(b); and the determination that certain communications must be treated as contributions if coordinated with a Federal candidate or political party committee under 11 CFR 109.21 and 109.37.

<sup>149</sup> See 11 CFR 110.11(a)(1).

<sup>150</sup> Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 FR 76962, 76964 (Dec. 13, 2002).

<sup>151</sup> *Id.*

<sup>152</sup> 11 CFR 100.24.

candidates.<sup>153</sup> 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.<sup>154</sup> 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.”<sup>155</sup> The Commission now is updating 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.

Finally, the Commission is revising 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, 104.22(b)(2)(i) and (ii), 110.1(c)(1)(iii), 110.2(e)(2), and 110.17(e)(1) and (2); “internet website” 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 affect a substantive change in the regulations.

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

The Commission certifies that the attached rules would not have a significant economic impact on a substantial number of small entities. The 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 rules would not impose new recordkeeping, reporting, or financial obligations on political committees or commercial vendors. The Commission therefore certifies that the rules 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 4**

Freedom of information.

##### **11 CFR Part 5**

Archives and records.

##### **11 CFR Part 6**

Civil rights, Individuals with disabilities.

##### **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 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 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 amends 11 CFR chapter I as follows:

#### **PART 1—PRIVACY ACT**

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

<sup>153</sup> 11 CFR 100.24(c)(7)(i)–(iii).

<sup>154</sup> See Definition of Federal Election Activity, 75 FR 55257, 55265 (Sept. 10, 2010).

<sup>155</sup> *Id.*

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

### § 1.3 [Amended]

■ 2. In § 1.3, amend paragraph (b) by removing the phrase “request assistance by mail or in person from the Commission’s Chief Privacy Officer during the hours of 9 a.m. to 5:30 p.m. at the street address identified in the definition of “Commission” in § 1.2” and adding in its place the phrase “request assistance either in person from the Chief Privacy Officer during the hours of 9 a.m. to 5:30 p.m. or by filing a request for assistance, addressed to the Chief Privacy Officer, pursuant to 11 CFR 100.19(g)”.

### § 1.4 [Amended]

■ 3. In § 1.4, amend paragraph (a) removing the phrase “made at the Federal Election Commission at the street address identified in the definition of “Commission” in § 1.2, 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 the phrase “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 4—PUBLIC RECORDS AND THE FREEDOM OF INFORMATION ACT

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

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

### § 4.1 [Amended]

■ 5. In § 4.1 amend paragraph (j) as follows:

■ a. Remove the word “microform,”; and

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

### § 4.4 [Amended]

■ 6. In § 4.4 amend paragraph (g) by removing “World Wide website” and adding in its place “website”.

### § 4.5 [Amended]

■ 7. Amend § 4.5 as follows:

■ a. In paragraph (a)(4)(i), remove the phrase “addressed to the Chief FOIA Officer, Federal Election Commission, at the street address identified in the definition of “Commission” in § 1.2, and shall indicate clearly on the envelope” and add in its place the phrase “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 the phrase “addressed to the Chief FOIA Officer, Federal Election Commission, at the street address identified in the definition of “Commission” in § 1.2” and add in its place the phrase “addressed to the Chief FOIA Officer and filed pursuant to 11 CFR 100.19(g)”.

### § 4.7 [Amended]

■ 8. In § 4.7 amend paragraph (b)(1) by removing the phrase “addressed to Chief FOIA Officer, Federal Election Commission, at the street address identified in the definition of “Commission” in § 1.2” and adding in its place the phrase “addressed to the Chief FOIA Officer and filed pursuant to 11 CFR 100.19(g)”.

### § 4.8 [Amended]

■ 9. Amend § 4.8 as follows:

■ a. In paragraph (b), remove the phrase “envelope or other cover and at the top of the first page” and add in its place the phrase “envelope or subject line, or in a similarly prominent location,”; and

■ b. In paragraph (c), remove the phrase “delivered or addressed to the Chief FOIA Officer, Federal Election Commission, at the street address identified in the definition of “Commission” in § 1.2” and add in its place the phrase “addressed to the Chief FOIA Officer and filed pursuant to 11 CFR 100.19(g)”.

■ 10. Amend § 4.9 by:

■ a. Removing paragraph (a)(2);

■ b. Redesignating paragraphs (a)(3) and (4) as paragraphs (a)(2) and (3), respectively;

■ c. In newly redesignated paragraph (a)(2), removing the phrase “computer disks” and adding in its place the phrase “digital storage devices”; and

■ d. Revising 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.

\* \* \* \* \*

## PART 5—ACCESS TO PUBLIC DISCLOSURE AND MEDIA RELATIONS DIVISION DOCUMENTS

■ 11. 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]

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

### § 5.5 [Amended]

■ 13. Amend § 5.5 as follows:

■ a. In paragraph (a), remove the phrase “mail. The Public Disclosure and Media Relations Division is open Monday through Friday between the hours of 9 a.m. and 5 p.m. and is located at the Federal Election Commission at the street address identified in the definition of “Commission” in § 1.2” and add in its place the phrase “filing a request pursuant to 11 CFR 100.19(g)”; and

■ b. In paragraph (c), remove the phrase “addressed to the Chief FOIA Officer, Federal Election Commission, at the street address identified in the definition of “Commission” in § 1.2” and add in its place the phrase “addressed to the Chief FOIA Officer and filed pursuant to 11 CFR 100.19(g)”.

■ 14. 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; \$.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.

\* \* \* \* \*

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

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

**Authority:** 29 U.S.C. 794.

### § 6.170 [Amended]

■ 16. Amend § 6.170 as follows:

■ a. In paragraph (d)(3), remove the phrase “filed under this part shall be addressed to the Rehabilitation Act Officer, Federal Election Commission, at the street address identified in the definition of “Commission” in § 1.2” and add in its place the phrase “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 the phrase “in a letter containing” and add in its place the phrase “in writing. This notification will contain”;

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

■ d. In paragraph (i), remove the phrase “, Federal Election Commission, at the street address identified in the definition of “Commission” in § 1.2” and add in its place the phrase “and filed pursuant to 11 CFR 100.19(g)”.

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

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

**Authority:** 52 U.S.C. 30101, 30102(g), 30104, 30111(a)(8), and 30114(c).

### § 100.3 [Amended]

■ 18. Amend § 100.3(a)(3) by removing the phrase “by letter” and adding in its place “in writing”.

■ 19. In § 100.19, revise the introductory text and paragraph (a) 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 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.

(a) *Where to deliver reports.* Except for documents electronically filed under paragraph (c) of this section, a document is timely filed upon delivery to the Federal Election Commission as required by 11 CFR part 105, by the close of business on the prescribed filing date.

\* \* \* \* \*

(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, or by any alternative means, including electronic, that the Commission may prescribe.

### § 100.24 [Amended]

■ 20. Amend § 100.24 as follows:

■ a. In paragraph (c)(7)(i), by removing the terms “Web site” and “web page” and adding in their places the phrase “website or internet application” wherever they appear; and

■ b. In paragraphs (c)(7)(ii) and (iii), by removing the term “Web site” and adding in its place the phrase “website or internet application” wherever it appears.

■ 21. Amend § 100.26 by revising the second sentence and adding a third sentence to read as follows:

### § 100.26 Public communications (52 U.S.C. 30101(22)).

\* \* \* The term *general public political advertising* shall not include communications over the internet, except for communications placed or promoted for a fee on another person's website, digital device, application, or

advertising platform. A public communication is promoted for a fee where a payment is made to a website, digital device, application, or advertising platform in order to increase the circulation, prominence, or availability of the communication on that website, digital device, application, or advertising platform.

### § 100.29 [Amended]

■ 22. Amend § 100.29 as follows:

■ a. In paragraphs (b)(6)(i) and (ii), remove the term “Web site” and add in its place the term “website” wherever it appears; and

■ b. In paragraph (b)(6)(ii)(A), remove the phrase “written documentation” and add in its place the phrase “a writing”.

■ 23. 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.

■ 24. 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.

■ 25. 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]**

■ 26. Amend the introductory text of § 100.73 by removing the term “Web site” and adding in its place the term “website”.

#### **§ 100.82 [Amended]**

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

#### **§ 100.93 [Amended]**

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

#### **§ 100.94 [Amended]**

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

#### **§ 100.132 [Amended]**

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

#### **§ 100.142 [Amended]**

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

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

■ 32. 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.

■ 33. Amend § 102.6 as follows:

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

\* \* \* \* \*

■ 34. In § 102.8, revise the last sentence of paragraph (a) and 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.

■ 35. Amend § 102.9 by:

■ a. Revising paragraph (a)(4);

■ b. In paragraph (b)(2) introductory text, paragraphs (b)(2)(i)(B) and (b)(2)(ii), removing the phrase “cancelled check” and adding in its place the phrase “canceled check or record of electronic transfer”;

■ c. In paragraph (b)(2)(i)(B), removing the word “documentation” and adding in its place the word “record”;

■ d. In paragraph (b)(2)(ii), removing the word “documentation” and adding in its place the words “a record”;

■ f. Removing paragraph (b)(2)(iii); and

■ g. Revising 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]**

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

#### **§ 102.11 [Amended]**

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

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

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

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

■ 39. 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 a merchant account of a payment processor described in 11 CFR 102.8(d) in the ordinary course of that payment processor's business are not receipts by the committee, but are, instead, contributions to be forwarded by that payment processor 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)**

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

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

##### **§ 104.2 [Amended]**

■ 41. Amend § 104.2(b) by removing the phrase “or at the street address identified in the definition of “Commission” in § 1.2”.

##### **§ 104.3 [Amended]**

■ 42. Amend § 104.3(e)(5) by removing the phrase “at the street address identified in the definition of “Commission” in § 1.2”.

##### **§ 104.4 [Amended]**

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

##### **§ 104.6 [Amended]**

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

##### **§ 104.10 [Amended]**

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

##### **§ 104.14 [Amended]**

■ 46. Amend § 104.14 as follows:

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

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

##### **§ 104.17 [Amended]**

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

##### **§ 104.21 [Amended]**

■ 48. Amend § 104.21(c)(3) by removing the phrase “at the street address identified in the definition of “Commission” in § 1.2”.

##### **§ 104.22 [Amended]**

■ 49. Amend § 104.22 as follows:

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

■ b. In paragraphs (b)(2)(i) and (ii), remove the words “Web sites” and add in its place the word “websites” wherever it appears; and

■ c. In paragraph (b)(2)(ii), remove the words “Web site” and add in its place the word “website” wherever it appears.

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

■ 50. 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]**

■ 51. Amend § 106.2 as follows:

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

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

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

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

**Authority:** 52 U.S.C. 30102(g), 30104(a)(2), 30111(a)(8), 30113, 30143.

##### **§ 108.6 [Amended]**

■ 53. In § 108.6(b), remove the phrase “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))**

■ 54. 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]**

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

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

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

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

■ 57. Amend § 110.1 by:

■ a. In paragraph (b)(3)(i)(A), removing the phrase “using a committee check or draft” and adding in its place the phrase “using a committee check or similar draft, including electronic transfer”;

■ b. In paragraph (b)(4)(i), removing the phrase “is made by check, money order, or other negotiable instrument which”;

■ c. In paragraph (b)(5)(ii)(B)(6), removing the phrase “including electronic mail”;

■ d. In paragraph (b)(5)(ii)(C)(7), removing the phrase “, including electronic mail”;

■ e. In paragraph (b)(6), adding a new fifth sentence after “11 CFR 110.1(l)(4).”;

■ f. In paragraph (c)(1)(iii), removing the term “Web site” and add, in its place the term “website”;

■ g. In paragraph (k)(1), removing the phrase “include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing” and adding in its place the phrase “be indicated by the signature of each contributor in writing”;

■ h. In paragraph (k)(3)(ii)(B)(3), removing “, including electronic mail”;

■ i. In paragraph (l)(1), removing the phrases “copy” and “full-size photocopy of the check or written instrument” and adding in their places the phrases “record” and “record that contains a complete image of that instrument”, respectively;

■ j. In paragraph (l)(4)(i), removing the word “copy” and adding in its place the word “record”;

- k. In paragraph (l)(4)(ii), removing the phrase “full-size photocopy of” and adding in its place the phrase “record that contains a complete image of”; and
- l. In paragraph (l)(6), removing the word “documentation” and adding in its place the words “a record” wherever it appears, and removing the word “copy” and add in its place the word “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. \* \* \*

\* \* \* \* \*

■ 58. Amend § 110.2 by:

- 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(l)(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. \* \* \*

\* \* \* \* \*

■ 59. Amend § 110.6 by:

- a. Revising paragraph (b)(1);
- b. In paragraph (c)(1)(ii), removing the phrase “by letter” and adding in its place the phrase “the report shall be provided in writing”;
- c. In paragraph (c)(1)(iv)(C), removing the phrase “cash or by the contributor’s check or by the conduit’s check” and adding in its place the phrase “cash, by the contributor’s check, by the conduit’s check, or by electronic transfer”; and
- d. In paragraph (c)(1)(v), removing the phrase “by letter” and adding in its place the phrase “in writing”.

The revision reads as follows:

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

\* \* \* \* \*

(b) \* \* \*

(1) For purposes of this section, *earmarked* means 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 or expenditure being made to, or expended

on behalf of, a clearly identified candidate or a candidate’s authorized committee. A contributor’s authorization that a commercial payment processor, whose usual and normal business is to process payments, transmit funds from the contributor to the designated candidate or authorized committee in the commercial payment processor’s ordinary course of business does not in itself constitute an earmark.

\* \* \* \* \*

■ 60. Amend § 110.11 by:

- a. In paragraph (a)(1), removing the phrase “Internet websites” and adding in its place the phrase “websites and internet applications”;
- b. In paragraph (b)(3), removing the phrase “World Wide Web address” and adding in its place the phrase “website address”; and
- c. Revising paragraph (c)(5)(i).

The revision reads as follows:

**§ 110.11 Communications; advertising; disclaimers (52 U.S.C. 30120).**

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

(i) For purposes of this section, *internet public communication* means any public communication over the internet that is placed or promoted for a fee on another person’s website, digital device, application, or advertising platform. A public communication is promoted for a fee where a payment is made to a website, digital device, application, or advertising platform in order to increase the circulation, prominence, or availability of the communication on that website, digital device, application, or advertising platform.

\* \* \* \* \*

**§ 110.17 [Amended]**

- 61. Amend § 110.17(e)(1) and (2) by removing the words “Web site” and adding in their place the word “website” wherever it appears.

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

- 62. 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]**

- 63. Amend § 111.4 as follows:
- a. In paragraph (a), remove the phrase “to the General Counsel of the Federal Election Commission at the street address identified in the definition of

“Commission” in § 1.2” and add in its place the phrase “addressed to the General Counsel”; and remove the phrase “three (3) copies” and add in its place “three (3) copies of any complaint not filed electronically”; and

- b. In paragraph (d)(4), remove the phrase “documentation supporting the facts alleged if such documentation is” and add in its place the phrase “records supporting the facts alleged if such records are”.

**§ 111.5 [Amended]**

- 64. Amend § 111.5 as follows:

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

**§ 111.6 [Amended]**

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

**§ 111.9 [Amended]**

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

**§ 111.12 [Amended]**

- 67. Amend § 111.12 as follows:
- a. In paragraph (a), remove the phrase “documentary or other tangible” and add in its place the phrase “records or other”; and
- b. In paragraph (b), remove the word “documents” and add in its place the word “records”.

**§ 111.13 [Amended]**

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

**§ 111.15 [Amended]**

- 69. Amend § 111.15 as follows:
- a. In paragraph (a), remove the phrase “of the Federal Election Commission at the street address identified in the definition of “Commission” in § 1.2. If possible, three (3) copies should be submitted”; and
- b. In paragraph (c), remove the word “documents” and add in its place the word “records”.

■ 70. Amend § 111.16 by:

- a. In paragraph (b), removing the word “enclose” and adding in its place the word “provide”;
- b. Revising 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]**

■ 71. Amend § 111.17(a) and (b) by removing the phrase “by letter” and adding in its place the phrase “in writing” wherever it appears.

**§ 111.18 [Amended]**

■ 72. Amend § 111.18(d) by removing the phrase “by letter” and adding in its place the phrase “in writing”.

**§ 111.23 [Amended]**

■ 73. Amend § 111.23 as follows:

- a. In the introductory text to paragraph (a), remove the phrase “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 the phrase “give the Commission a written notice of representation signed by the respondent, which shall include”;
- b. In paragraph (a)(1), remove the word “address” and add in its place the words “address, email address”; and
- c. In paragraph (b), remove the phrase “a letter of representation” and add in its place the phrase “this notice”.

**§ 111.35 [Amended]**

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

**§ 111.36 [Amended]**

■ 75. Amend § 111.36 as follows:

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

**§ 111.37 [Amended]**

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

**§ 111.40 [Amended]**

■ 77. Amend § 111.40(a) by removing the phrase “by letter” and adding in its place the phrase “in writing”.

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

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

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

**§ 112.1 [Amended]**

■ 79. Amend § 112.1(e) by removing the phrase “sent to the Federal Election Commission, Office of General Counsel, at the street address identified in the definition of “Commission” in § 1.2” and adding in its place the phrase “addressed to the Office of General Counsel and filed with the Commission”.

**§ 112.2 [Amended]**

■ 80. Amend § 112.2(b) by removing the phrase “and purchase at the Public Disclosure and Media Relations Division of the Commission” and adding in its place the phrase “at the Public Disclosure and Media Relations Division of the Commission and on the Commission's website”.

**§ 112.3 [Amended]**

■ 81. Amend § 112.3(d) by removing the phrase “sent to the Federal Election Commission, Office of General Counsel, at the street address identified in the definition of “Commission” in § 1.2” and adding in its place the phrase “filed with the Office of General Counsel”.

**§ 112.4 [Amended]**

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

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

■ 83. 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]**

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

**§ 114.6 [Amended]**

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

**§ 114.8 [Amended]**

■ 86. Amend § 114.8 as follows:

- a. In paragraphs (d)(2) and (3), remove the word “copy” and add in its place the word “record”; and
- b. In paragraph (d)(3), remove the word “mailing” and add in its place the word “solicitation”.

**§ 114.9 [Amended]**

■ 87. Amend § 114.9(d) by removing the word “typewriters” and adding in its place the word “computers”.

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

■ 88. 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]**

■ 89. Amend § 116.8 as follows:

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

**§ 116.9 [Amended]**

■ 90. Amend § 116.9(a)(2) by removing the phrase “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 the phrase “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**

■ 91. 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]**

■ 92. Amend § 200.2(b)(5) by removing the phrase “addressed and submitted to the Federal Election Commission, Office of General Counsel, at the street address identified in the definition of “Commission” in § 1.2” and adding in its place the phrase “addressed to the Office of General Counsel and filed pursuant to 11 CFR 100.19(g)”.

**§ 200.3 [Amended]**

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

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

#### § 200.4 [Amended]

■ 94. Amend § 200.4(b) by removing the phrase “sending a letter to” and adding in its place the word “notifying”.

#### § 200.6 [Amended]

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

### PART 201—EX PARTE COMMUNICATIONS

■ 96. 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]

■ 97. Amend § 201.3 as follows:

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

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

### PART 300—NON-FEDERAL FUNDS

■ 98. 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]

■ 99. Amend § 300.2 in paragraph (m)(1)(iii), by removing the phrase “Web address” and adding in its place the phrase “website address”; and removing the phrase “Web page” and adding in its place the phrase “web page”.

#### § 300.64 [Amended]

■ 100. Amend § 300.64 as follows:

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

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

■ c. In paragraphs (c)(3)(v)(A) and (B), remove the word “written” wherever it appears.

### PART 9003—ELIGIBILITY FOR PAYMENTS

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

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

#### § 9003.1 [Amended]

■ 102. Amend § 9003.1 as follows:

■ a. In paragraph (a)(1), remove the word “letter” and add in its place the word “writing”;

■ b. In paragraph (a)(2), remove the word “letter” and add in its place the word “agreement” wherever it appears;

■ c. In paragraphs (b)(2) and (3), remove the word “documentation” and add in its place the word “record” wherever it appears;

■ d. In paragraph (b)(4), remove the phrase “computerized magnetic media, such as magnetic tapes or magnetic diskettes” and add in its place the phrase “digital storage devices”;

■ e. In paragraphs (b)(4) and (5), remove the word “documentation” and add in its place the word “records” wherever it appears; and

■ f. In paragraph (b)(7), remove the phrase “name and mailing address” and add in its place the phrase “name, email address, and mailing address”.

■ 103. 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]

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

■ 105. Amend § 9003.5 by:

■ a. Revising the section heading;

■ b. Revising the paragraph heading of paragraph (b);

■ c. In paragraphs (b)(1) and (b)(2)(ii), removing the phrase “canceled check negotiated by the payee” and adding in its place the phrase “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), removing the word “documents” and adding in its place the word “records” wherever it appears;

■ e. In paragraph (b)(1)(iii), removing the word “documentation” and adding in its place the word “record”;

■ f. In paragraphs (b)(1)(iv), (b)(4), and (c), removing the word “documentation” and adding in its place the word “records” wherever it appears; and

■ g. In paragraph (b)(1)(iv), removing the phrase “canceled check negotiated by the payee” and adding in its place the phrase “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]

■ 106. Amend § 9003.6 as follows:

■ a. In paragraph (a), remove the phrase “computerized magnetic media, such as magnetic tapes or magnetic diskettes” and add in its place the phrase “digital storage devices”;

■ b. Remove paragraph (b) and redesignate paragraph (c) as paragraph (b); and

■ c. In newly redesignated paragraph (b), remove the word “documentation” and add in its place the word “records”.

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

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

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

#### § 9004.6 [Amended]

■ 108. Amend § 9004.6 as follows:

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

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

#### § 9004.7 [Amended]

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

**§ 9004.9 [Amended]**

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

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

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

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

**§ 9007.1 [Amended]**

■ 112. Amend § 9007.1 as follows:

- a. In paragraph (b)(1) introductory text, remove the phrase “the Commission may request additional or updated computerized information” and add in its place the phrase “the Commission may request additional or updated information”; and
- b. In paragraphs (b)(1)(iv) and (c)(2), remove the word “documentation” and add in its place the word “records” wherever it appears.

**§ 9007.7 [Amended]**

■ 113. Amend § 9007.7 as follows:

- a. In paragraph (a), remove the word “documents” and add in its place the words “documents, records,” wherever it appears; and
- b. In paragraph (b)(2), remove the word “tapes” and add in its place the word “recordings” wherever it appears.

**PART 9032—DEFINITIONS**

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

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

**§ 9032.2 [Amended]**

■ 115. Amend § 9032.2(d) by removing the phrase “by letter” and adding in its place the phrase “in writing”.

**PART 9033—ELIGIBILITY FOR PAYMENTS**

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

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

■ 117. Amend § 9033.1 by:

- a. Revising paragraph (a)(1);
- b. In paragraphs (b)(2) through (6), removing the word “documentation” and adding in its place the word “records” wherever it appears;
- c. In paragraph (b)(5), removing the phrase “computerized magnetic media, such as magnetic tapes or magnetic diskettes” and adding in its place the phrase “digital storage devices”; and
- d. Revising 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]**

■ 118. Amend § 9033.2 as follows:

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

**§ 9033.5 [Amended]**

■ 119. Amend paragraph (a)(2) of § 9033.5 by removing “by letter” and adding in its place “in writing”.

■ 120. Amend § 9033.11 by:

- a. Revising the section heading;
- b. Revising the paragraph heading of paragraph (b);
- c. In the introductory text to paragraph (b)(1), adding the phrase “or a record of electronic transfer” after the words “canceled check negotiated by the payee”;
- d. In paragraphs (b)(1)(ii)(A) and (B), removing the word “documents” and adding in its place the word “records” wherever it appears;
- e. In the introductory text to paragraph (b)(1)(iii) and paragraph (b)(1)(iv), removing the word “documentation” and adding in its place the word “record” wherever it appears;
- f. In paragraph (b)(1)(iv), removing “the payee” and adding in its place “the

payee or the record of electronic transfer”;

- g. In paragraph (b)(2)(ii), adding the phrase “or a record of electronic transfer” after the words “canceled check negotiated by the payee”; and
- h. In paragraphs (b)(4) and (c), removing the word “documentation” and add in its place the word “records” wherever it appears.

The revisions read as follows:

**§ 9033.11 Records of disbursements.**

\* \* \* \* \*

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

\* \* \* \* \*

**§ 9033.12 [Amended]**

■ 121. Amend § 9033.12 as follows:

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

**PART 9034—ENTITLEMENTS**

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

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

■ 123. Amend § 9034.2 by:

- a. In paragraph (b), removing the words “and the card number” from the last sentence;
- b. In the introductory text to paragraph (c), removing the words “and card number” from the last sentence;
- c. In paragraph (c)(1)(i), removing the words “written document” and adding in its place the word “writing”;
- d. In paragraph (c)(1)(iii), removing the word “documentation” and adding in its place the word “records”; and
- e. Adding 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]**

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

**§ 9034.6 [Amended]**

- 125. Amend § 9034.6 as follows:
- a. In paragraph (a)(1), remove the phrase “telephone service, typewriters, and computers” and add in its place the phrase “telephone and internet service, and computers or other electronic devices”; and
- b. In paragraph (b)(3), remove the phrase “telephone service” and add in its place the phrase “telephone and internet service”.

**§ 9034.7 [Amended]**

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

**§ 9034.8 [Amended]**

- 127. Amend § 9034.8(b)(4) by removing the words “recordkeeping, reporting and documentation” and adding in their place the words “recordkeeping and reporting”.

**PART 9035—EXPENDITURE LIMITATIONS**

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

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

**§ 9035.1 [Amended]**

- 129. Amend § 9035.1(c)(3) by removing the word “documentation” and adding in its place the word “records”.

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

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

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

**§ 9036.1 [Amended]**

- 131. Amend § 9036.1 as follows:
- a. In paragraph (b)(2), remove the phrase “computerized magnetic media, such as magnetic tapes or magnetic diskettes” and add in its place the phrase “digital storage devices”;
- b. In paragraphs (b)(3) and (4), remove the word “documentation” and add in its place the word “records” wherever it appears;
- c. In paragraph (b)(4), add the phrase “, 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 the phrase “full-size photocopy of each unpaid check, and copies of” and add

in its place the phrase “record that contains a complete image of each unpaid check and”;

- e. In paragraph (b)(6), remove the words “full-size photocopy” and add in their place the words “record that contains a complete image”; and
- f. In paragraph (b)(7), remove the word “documentation” and add in its place the word “records” wherever it appears.

**§ 9036.2 [Amended]**

- 132. Amend § 9036.2 as follows:

- a. In paragraph (b)(1)(ii), remove the phrase “either solely in magnetic media from or in both printed and magnetic media forms” and add in its place the phrase “in printed or digital form or a combination of printed and digital forms”;
- b. In paragraph (b)(1)(iii), remove the words “checks returned unpaid” and add in their place the phrase “checks returned unpaid or credit or debit card or other electronic payment chargebacks”;
- c. In paragraph (b)(1)(vi), remove the phrase “as specified in the Computerized Magnetic Media Requirements” from the second sentence;
- d. In paragraph (b)(1)(vi), remove the phrase “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 the words “documentation” and add in its place the word “records” wherever it appears.

- 133. Amend § 9036.3 by:

- a. Revising the section heading; and
- b. In the introductory text, paragraphs (b) introductory text, (b)(4), and (d) by removing the word “documentation” and adding in its place the word “records” wherever it appears.

The revision reads as follows:

**§ 9036.3 Submission errors and insufficient records.**

\* \* \* \* \*

**§ 9036.4 [Amended]**

- 134. Amend § 9036.4(b)(4) by removing the word “documentation” and adding in its place the word “records”.

**§ 9036.5 [Amended]**

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

**PART 9038—EXAMINATIONS AND AUDITS**

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

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

**§ 9038.1 [Amended]**

- 137. Amend § 9038.1 as follows:

- a. In the introductory text to paragraph (b)(1), remove the phrase “the Commission may request additional or updated computerized information” and add in its place the phrase “the Commission may request additional or updated information”; and
- b. In paragraphs (b)(1)(iv) and (c)(2), remove the word “documentation” and add in its place the word “records” wherever it appears.

**§ 9038.2 [Amended]**

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

**§ 9038.7 [Amended]**

- 139. Amend § 9038.7 as follows:

- a. In paragraph (a), remove the word “documents” and add in its place the words “documents, records,” wherever it appears; and
- b. In paragraph (b)(2), remove the word “tapes” and add in its place the word “recordings” wherever it appears.

**PART 9039—REVIEW AND INVESTIGATION AUTHORITY**

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

Authority: 26 U.S.C. 9039.

**§ 9039.2 [Amended]**

- 141. Amend § 9039.2 as follows:

- a. In paragraph (a)(3), remove the word “documents” and add in its place the words “documents or records”; and
- b. In paragraph (b), remove the word “documentation” and add in its place the word “records”.

**§ 9039.3 [Amended]**

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

Dated: December 14, 2023.

On behalf of the Commission,

**Dara Lindenbaum,**

*Chair, Federal Election Commission.*

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