

# Rules and Regulations

Federal Register

Vol. 74, No. 248

Tuesday, December 29, 2009

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## FEDERAL ELECTION COMMISSION

### 11 CFR Parts 100 and 106

[Notice 2009–30]

#### Funds Received in Response to Solicitations; Allocation of Expenses by Separate Segregated Funds and Nonconnected Committees

**AGENCY:** Federal Election Commission.

**ACTION:** Interim final rule.

**SUMMARY:** The United States District Court for the District of Columbia ordered that the Federal Election Commission's ("Commission") rules regarding funds received in response to solicitations and the allocation of certain expenses by separate segregated funds and nonconnected committees are vacated. The Commission is inserting a note to these regulations that reflects the court's decision. The Commission will engage in a separate notice of rulemaking to remove these rules from the Code of Federal Regulations. Further information is provided in the supplementary information that follows.

**DATES:** The interim final rule is effective on December 29, 2009. Comments must be received on or before January 28, 2010.

**ADDRESSES:** All comments must be in writing, must be addressed to Mr. Robert M. Knop, Assistant General Counsel, and must be submitted in either e-mail, facsimile, or paper copy form. Commenters are strongly encouraged to submit comments by e-mail to ensure timely receipt and consideration. E-mail comments must be sent to [ifrnote@fec.gov](mailto:ifrnote@fec.gov). If e-mail comments include an attachment, the attachment must be in either Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments must be sent to (202) 219–3923, with paper copy follow-up. Paper comments and paper copy follow-up of faxed comments must be

sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered. The Commission will post all comments on its Web site after the comment period ends.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Knop, Assistant General Counsel, or Mr. Neven F. Stipanovic, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** On September 18, 2009, the United States Court of Appeals for the DC Circuit ("DC Circuit Court") ruled that 11 CFR 100.57, 106.6(c), and 106.6(f) violated the First Amendment of the United States Constitution. *See EMILY's List v. FEC*, 581 F.3d 1 (DC Cir. 2009). The court also ruled that 11 CFR 100.57 and 106.6(f), as well as one provision of 106.6(c), exceeded the Commission's authority under the Federal Election Campaign Act ("Act"). *See id.* At the direction of the DC Circuit Court, the United States District Court for the District of Columbia ordered that these rules are vacated. *See Final Order, EMILY's List v. FEC*, No. 05–0049 (D.D.C. Nov. 30, 2009). The Commission is now inserting a note to 11 CFR 100.57, 106.6(c), and 106.6(f) that reflects this court order.

The Commission will issue a separate notice of rulemaking document to implement the court's order vacating 11 CFR 100.57, 106.6(c), and 106.6(f) from the regulations pursuant to the *EMILY's List* decision. The Commission is first inserting a note to give the public immediate guidance that these provisions were vacated by court order while the Commission completes the rulemaking process of implementing the *EMILY's List* decision.

#### Administrative Procedure Act

The Commission is issuing this rule as an interim final rule. This interim final rule will take effect immediately upon publication in the Federal Register. The public nonetheless may comment on this interim final rule and the Commission may address any comments received in a later rulemaking document.

The Administrative Procedure Act ("APA") requires an agency

promulgating regulations to publish a notice of a proposed rulemaking in the **Federal Register**. 5 U.S.C. 553(b). The notice and comment requirement does not apply, however, "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). The notice and comment requirement in this case is unnecessary because the Commission action is merely to insert language reciting the fact that the DC District Court has ordered that the aforementioned regulations are vacated. The result of the court's order is that neither public notice nor a comment period is likely to benefit the Commission in this rulemaking. This interim final rule is merely an informational amendment indicating that a court has issued an order concerning these rules.

Moreover, the notice and comment period may be contrary to the public interest. The Commission notes that the 2010 elections for Federal office are scheduled to begin as early as February 2010, when some States begin holding their primary elections. The State of Illinois, for example, will hold its 2010 primary election on February 2, 2010. *See <http://www.elections.il.gov/Votinginformation/2010GPGE.aspx>*. It is urgent, therefore, to give immediate notice to the public that these rules have been vacated by court order. The additional delay that would be incurred by providing notice and an opportunity to comment could be contrary to the public interest.

For the same reasons, this interim final rule is not subject to the APA's thirty day delayed effective date requirement under the "good cause" exemption to the delayed effective date requirement. 5 U.S.C. 553(d)(3).

#### Regulatory Flexibility Act

Because this interim final rule is exempt from the notice and comment procedure under 5 U.S.C. 553(b), the Commission is not required to conduct a regulatory flexibility analysis under 5 U.S.C. 603 and 604 (Regulatory Flexibility Act). *See* 5 U.S.C. 601(2) and 604(a).

**List of Subjects****11 CFR Part 100**

Elections.

**11 CFR Part 106**

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

■ For the reasons set out in the preamble, the Commission is amending Subchapter A of Chapter I of Title 11 of the *Code of Federal Regulations* as follows:

**PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)**

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

**Authority:** 2 U.S.C. 431, 434, 438(a)(8), and 439a(c).

■ 2. Section 100.57 is amended by adding a note to read as follows:

**§ 100.57 Funds received in response to solicitations.**

\* \* \* \*

**Note to § 100.57:** On November 30, 2009, the United States District Court for the District of Columbia ordered that § 100.57 is vacated. *See Final Order, EMILY's List v. FEC*, No. 05–0049 (D.D.C. Nov. 30, 2009).

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

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

**Authority:** 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

■ 4. Section 106.6 is amended by adding a note to read as follows:

**§ 106.6 Allocation of expenses between federal and non-federal activities by separate segregated funds and nonconnected committees.**

\* \* \* \*

**Note to 11 CFR 106.6:** On November 30, 2009, the United States District Court for the District of Columbia ordered that paragraphs (c) and (f) of § 106.6 are vacated. *See Final Order, EMILY's List v. FEC*, No. 05–0049 (D.D.C. Nov. 30, 2009).

Dated: December 21, 2009.

On behalf of the Commission,

**Steven T. Walther,**

*Chairman, Federal Election Commission.*

[FR Doc. E9–30767 Filed 12–28–09; 8:45 am]

**BILLING CODE 6715–01–P**

**DEPARTMENT OF THE TREASURY****Office of the Comptroller of the Currency****12 CFR Part 25**

[Docket ID OCC–2009–0019]

RIN 1557–AD29

**FEDERAL RESERVE SYSTEM****12 CFR Part 228**

[Regulation BB; Docket No. R–1380]

**FEDERAL DEPOSIT INSURANCE CORPORATION****12 CFR Part 345**

RIN 3064–AD54

**DEPARTMENT OF THE TREASURY****Office of Thrift Supervision****12 CFR Part 563e**

[Docket ID OTS–2009–0022]

RIN 1550–AC37

**Community Reinvestment Act Regulations**

**AGENCIES:** Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS).

**ACTION:** Joint final rule; technical amendment.

**SUMMARY:** The OCC, the Board, the FDIC, and the OTS (collectively, the “agencies”) are amending their Community Reinvestment Act (CRA) regulations to adjust the asset-size thresholds used to define “small bank” or “small savings association” and “intermediate small bank” or “intermediate small savings association.” As required by the CRA regulations, the adjustment to the threshold amount is based on the annual percentage change in the Consumer Price Index.

**DATES:** *Effective Date:* January 1, 2010.

**FOR FURTHER INFORMATION CONTACT:**

OCC: Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874–5750; or Gregory Nagel or Brian Borkowicz, National Bank Examiners, Compliance Policy Division, (202) 874–4428, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Rebecca Lassman, Supervisory Consumer Financial Services Analyst,

(202) 452–3946; or Brent Lattin, Attorney, (202) 452–3667, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Janet R. Gordon, Senior Policy Analyst, Division of Supervision and Consumer Protection, Compliance Policy Branch, (202) 898–3850; or Susan van den Toorn, Counsel, Legal Division, (202) 898–8707, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Stephanie M. Caputo, Senior Compliance Program Analyst, Compliance and Consumer Protection, (202) 906–6549; or Richard Bennett, Senior Compliance Counsel, Regulations and Legislation Division, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:****Background and Description of the Joint Final Rule**

The agencies’ CRA regulations establish CRA performance standards for small and intermediate small banks and savings associations. The regulations define small and intermediate small institutions by reference to asset-size criteria expressed in dollar amounts, and they further require the agencies to publish annual adjustments to these dollar figures based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW), not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million. 12 CFR 25.12(u)(2), 228.12(u)(2), 345.12(u)(2), and 563e.12(u)(2).

The threshold for small banks and small savings associations was revised most recently effective January 1, 2009 (73 FR 78153 (Dec. 22, 2008)). The CRA regulations, as revised on December 22, 2008, provide that banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.109 billion are “small banks” or “small savings associations.” Small banks and small savings associations with assets of at least \$277 million as of December 31 of both of the prior two calendar years and less than \$1.109 billion as of December 31 of either of the prior two calendar years are “intermediate small banks” or “intermediate small savings associations.” 12 CFR 25.12(u)(1), 228.12(u)(1), 345.12(u)(1), 563e.12(u)(1). This joint final rule further revises these thresholds.