

publicly distribute communications that refer to Federal candidates (such as public service announcements, public access programming, and lobbying ads) during the electioneering communications windows would decrease available funds, or hamper fundraising, or otherwise economically disadvantage these organizations. Therefore, the Commission certifies that the attached rules will not have a significant economic impact on a substantial number of small entities.

## List of Subjects

### 11 CFR Part 100

Elections.

- For reasons set out in the preamble, Subchapter A of Chapter 1 of title 11 of the *Code of Federal Regulations* is amended as follows:

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

- 1. The authority citation for 11 CFR part 100 continues to read as follows:

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

- 2. Section 100.29 is amended by:
  - (a) Revising paragraph (b)(3)(i);
  - (b) Revising the introductory text of paragraph (c);
  - (c) Adding the word “or” to follow the semi-colon in paragraph (c)(4);
  - (d) Revising paragraph (c)(5); and
  - (e) Removing paragraph (c)(6).

Revisions read as follows:

### § 100.29 Electioneering communication (2 U.S.C. 434(f)(3)).

\* \* \* \* \*

(b) \* \* \*

(3)(i) *Publicly distributed* means aired, broadcast, cablecast or otherwise disseminated through the facilities of a television station, radio station, cable television system, or satellite system.

\* \* \* \* \*

(c) The following communications are exempt from the definition of *electioneering communication*. Any communication that:

\* \* \* \* \*

(5) Is paid for by a candidate for State or local office in connection with an election to State or local office, provided that the communication does not promote, support, attack or oppose any Federal candidate. See 11 CFR 300.71 for communications paid for by a candidate for State or local office that promotes, supports, attacks or opposes a Federal candidate.

Dated: December 15, 2005.

**Scott E. Thomas,**

*Chairman, Federal Election Commission.*

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## FEDERAL ELECTION COMMISSION

### 11 CFR Part 111

#### [Notice 2005-30]

## Extension of Administrative Fines Program

**AGENCY:** Federal Election Commission.  
**ACTION:** Final rule and transmittal of rules to congress.

**SUMMARY:** Section 721 of the Transportation, Treasury, Housing and Urban Development, Judiciary, District of Columbia, and Independent Agencies Appropriations Act, 2006 (“2006 Appropriations Act”) amended the Treasury and General Government Appropriations Act, 2000, to extend the expiration date for the Administrative Fines Program (“AFP”). Under the AFP, the Federal Election Commission (“Commission”) may assess civil monetary penalties for violations of the reporting requirements of section 434(a) of the Federal Election Campaign Act (“Act” or “FECA”). Accordingly, the Commission is extending the applicability of its rules and penalty schedules in implementing the AFP. Further information is provided in the Supplementary Information that follows.

**DATES:** *Effective Date:* December 21, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mai T. Dinh, Assistant General Counsel, or Ms. Margaret G. Perl, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

## SUPPLEMENTARY INFORMATION:

### Explanation and Justification for 11 CFR 111.30

Section 640 of the Treasury and General Government Appropriations Act, 2000, Public Law 106-58, 113 Stat. 430, 476-77 (1999) (“2000 Appropriations Act”), amended 2 U.S.C. 437g(a)(4) to provide for a modified enforcement process for violations of certain reporting requirements. Under 2 U.S.C. 437g(a)(4)(C), the Commission may assess a civil monetary penalty for violations of the reporting requirements of 2 U.S.C. 434(a). These amendments to 2 U.S.C. 437g(a)(4) originally applied only to violations occurring between January 1, 2000 and December 31, 2001. See 2000 Appropriations Act, § 640(c). Congress, however, extended authorization for the AFP several times, with the most recent extension expiring on December 31, 2005. See Consolidated Appropriations Act, 2004, Public Law 108-199, § 639, 118 Stat. 3, 359 (2004).

Commission regulations governing the AFP can be found at 11 CFR part 111, subpart B. The Commission incorporated the legislative sunset date into its rule describing the applicability of the AFP in 11 CFR 111.30, and has consistently revised section 111.30 to extend the AFP sunset date in accordance with these statutory amendments. See, e.g., *Final Rule on Extension of Administrative Fines Program*, 69 FR 6525 (Feb. 11, 2004) (changing sunset date in 11 CFR 111.30 to December 31, 2005).

Section 721 of the 2006

Appropriations Act amended the 2000 Appropriations Act by extending the sunset date to include most reports that cover activity between July 14, 2000 and December 31, 2008. See 2006

Appropriations Act, Public Law 109-115, 119 Stat. 2396 (Nov. 30, 2005). This final rule amends 11 CFR 111.30 to reflect the extended sunset date of December 31, 2008. The Commission is not making any other revisions to the AFP rules at this time.

The Commission is promulgating this final rule without notice or an opportunity for comment because it falls under the “good cause” exemption in the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B). This exemption allows agencies to dispense with notice and comment when “impracticable, unnecessary, or contrary to the public interest.” *Id.* The 2006 Appropriations Act was enacted only a month before the AFP’s sunset date of December 31, 2005. A notice and comment period for this final rule is impracticable because it would result in a gap in the applicability of the AFP between when the current regulation expires on December 31, 2005 and the date when a new final rule could be effective after additional notice and comment. See *Administrative Procedure Act: Legislative History*, S. Doc. No. 248 200 (1946) (“‘Impracticable’ means a situation in which the due and required execution of the agency functions would be unavoidably prevented by its undertaking public rule-making proceedings”).

In addition, this final rule merely extends the applicability of the AFP and does not change the substantive regulations themselves. Those regulations were already subject to notice and comment when they were proposed in March 2000, 65 FR 16534, and adopted in May 2000, 65 FR 31787, and again when substantive revisions to the AFP were proposed in April 2002, 67 FR 20461, and adopted in March 2003, 68 FR 12572. Thus, this final rule satisfies the “good cause” exemption, and it is appropriate and necessary for

the Commission to publish this final rule without providing a notice and comment period.

The Commission is making this final rule effective immediately upon publication in the **Federal Register** because it falls within the “good cause” exception to the thirty-day delayed effective date requirement set forth at section 553(d)(3) of the Administrative Procedure Act. *See* 5 U.S.C. 553(d)(3). The same reasons that justify the promulgation of this final rule without a notice and comment period, as set forth above, also justify making this final rule effective without the thirty-day delay. Otherwise, a thirty-day delay of the effective date would create a gap in the AFP between December 31, 2005, when the current regulation sunsets, and the delayed effective date.

The Commission is submitting this final rule to the Speaker of the House of Representatives and the President of the Senate pursuant to the Congressional Review of Agency Regulations Act, 5 U.S.C. 801(a)(1)(A), on December 15, 2005. Since this is a non-major rule, it is not subject to the delayed effective date provisions of 5 U.S.C. 801(a)(3).

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

The provisions of the Regulatory Flexibility Act are not applicable to this final rule because the Commission was not required to publish a notice of proposed rulemaking or to seek public comment under 5 U.S.C. 553 or any other laws. 5 U.S.C. 603(a) and 604(a). Therefore, no regulatory flexibility analysis is required.

#### **List of Subjects in 11 CFR Part 111**

Administrative practice and procedures, Elections, Law enforcement.

- For the reasons set out in the preamble, subchapter A, Chapter I of Title 11 of the Code of Federal Regulations is amended as follows:

#### **PART 111—COMPLIANCE PROCEDURES (2 U.S.C. 437g, 437d(a))**

- 1. The authority for part 111 continues to read as follows:

**Authority:** 2 U.S.C. 437g, 437d(a), 438(a)(8); 28 U.S.C. 2461 nt.

- 2. Section 111.30 is revised to read as follows:

#### **§ 111.30 When will subpart B apply?**

Subpart B applies to violations of the reporting requirements of 2 U.S.C. 434(a) committed by political committees and their treasurers that relate to the reporting periods that begin

on or after July 14, 2000 and end on or before December 31, 2008. This subpart, however, does not apply to reports that were due between January 1, 2004 and February 10, 2004 and that relate to reporting periods that begin and end between January 1, 2004 and February 10, 2004.

Dated: December 15, 2005.

**Scott E. Thomas,**  
*Chairman, Federal Election Commission.*  
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## **FEDERAL RESERVE SYSTEM**

### **12 CFR Part 203**

#### **[Regulation C; Docket No. R-1245]**

#### **Home Mortgage Disclosure**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule; staff commentary.

**SUMMARY:** The Board is publishing a final rule amending the staff commentary that interprets the requirements of Regulation C (Home Mortgage Disclosure). The staff commentary is amended to increase the asset-size exemption threshold for depository institutions based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers. The adjustment from \$34 million to \$35 million reflects the increase of that index by 3.51 percent during the twelve-month period ending in November 2005. Thus, depository institutions with assets of \$35 million or less as of December 31, 2005, are exempt from data collection in 2006.

**DATES:** Effective January 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** John C. Wood, Kathleen C. Ryan, or Dan S. Sokolov, Counsels, Division of Consumer and Community Affairs, at (202) 452-3667; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

**SUPPLEMENTARY INFORMATION:** The Home Mortgage Disclosure Act (HMDA; 12 U.S.C. 2801 *et seq.*) requires most mortgage lenders located in metropolitan areas to collect data about their housing-related lending activity. Annually, lenders must report that data to their federal supervisory agencies and make the data available to the public. The Board’s Regulation C (12 CFR part 203) implements HMDA.

Provisions of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (codified at 12 U.S.C.

2808(b)) amended HMDA to expand the exemption for small depository institutions. Prior to 1997, HMDA exempted depository institutions with assets totaling \$10 million or less, as of the preceding year-end. The statutory amendment increased the asset-size exemption threshold by requiring a one-time adjustment of the \$10 million figure based on the percentage by which the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW) for 1996 exceeded the CPIW for 1975, and provided for annual adjustments thereafter based on the annual percentage increase in the CPIW. The one-time adjustment increased the exemption threshold to \$28 million for 1997 data collection.

Section 203.2(e)(1)(i) of Regulation C provides that the Board will adjust the threshold based on the year-to-year change in the average of the CPIW, not seasonally adjusted, for each twelve-month period ending in November, rounded to the nearest million. Pursuant to this section, the Board has adjusted the threshold annually, as appropriate. In 2005, the Board raised the threshold to \$34 million.

During the period ending November 2005, the CPIW increased by 3.51 percent. As a result, the exemption threshold is raised to \$35 million. Thus, depository institutions with assets of \$35 million or less as of December 31, 2005, are exempt from data collection in 2006. An institution’s exemption from collecting data in 2006 does not affect its responsibility to report the data it was required to collect in 2005.

#### **Final Rule**

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Board finds that notice and public comment are unnecessary. 5 U.S.C. 553(b)(3)(B). The amendment in this notice is technical. Comment 2(e)-2 to section 203.2 of the regulation is amended to implement the increase in the exemption threshold. This amendment merely applies the formula established by Regulation C for determining adjustments to the exemption threshold. For these reasons, the Board has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendment is adopted in final form.

#### **List of Subjects in 12 CFR Part 203**

Banks, Banking, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.