

## FEC issues final rules on independent expenditures and electioneering communications

October 16, 2014

In response to the U.S. Supreme Court's decision in *Citizens United v. FEC*, the Federal Election Commission (FEC) has revised its regulations for corporations and labor organizations. Decided on January 21, 2010, *Citizens United* held that corporations and labor unions have a First Amendment right to participate in certain election activities and struck down federal laws prohibiting corporate and labor union participation in independent expenditures and electioneering communications. Federal laws prohibiting direct corporate and labor union contributions to candidates and requiring disclaimers and reporting of such activity were upheld.

The FEC's previous attempts to implement new rules in response to *Citizens United* have been stymied by litigation and other obstacles. However, on October 10, 2014, the new final rules regulating corporate and labor union involvement were announced. These rules focus on two types of political activity — independent expenditures and electioneering communications.

1. "Independent expenditures" are expenditures expressly advocating the election or defeat of a clearly identified candidate. Independent expenditures are not made in concert or cooperation with, or at the request or suggestion of, a clearly identified candidate or the candidate's campaign, political party or agents.
2. "Electioneering communications" are broadcast, cable or satellite communications that refer to a clearly identified candidate for federal office. Electioneering communications are publicly distributed within 60 days before a general election or 30 days before a primary election and are targeted to the relevant electorate.

The new rules, which are subject to a 30-day period of legislative review before they go into effect, will make five significant changes to current regulations:

1. Eliminate prohibitions on the use of corporate and labor organization funds to finance independent expenditures and electioneering communications. Under the old rules, corporations and labor unions were prohibited from making any expenditure to further a political communication or other activity. The new rules clarify that independent activity is now permitted, but direct, in-kind and coordinated expenditures are still prohibited. Similarly, prohibitions on certain election activities carried out by national banks and federally chartered corporations remain. The FEC further clarifies, consistent with several court opinions issued since *Citizens United*, that the new rules do not prohibit corporations and labor organizations from making contributions to PACs that only make independent expenditures.
2. Remove prohibitions regarding express advocacy communications and revise the standards for voter registration and get-out-the-vote (GOTV) drives. Before *Citizens United*, corporations' and labor organizations' express advocacy communications could only target their restricted classes; FEC rules reflected this prohibition. The new rules continue to distinguish between communications directed to the restricted classes and the general public and impose different reporting requirements when communication is directed to both audiences.

Similarly, the rules that limited a corporation's ability to conduct nonpartisan voter registration and GOTV drives to their restricted classes have been modified. General prohibitions against direct participation remain, and voter registration

and GOTV activities sponsored by corporations may not constitute coordinated expenditures, coordinated communications or contributions.

Finally, the old rules created limited exceptions and placed restrictions on express advocacy communications, such as making endorsements, publishing voter guides and hosting candidate appearances, outside a restricted class. The new rules remove those restrictions, but include a prohibition against coordination with candidates or parties on such express advocacy that constitutes a contribution or expenditure.

3. Revise the regulation governing independent expenditures and electioneering communications by qualified nonprofit corporations. The old rules established a separate regulatory system and exceptions for independent expenditures and electioneering communications by certain nonprofit ideological group or qualified nonprofit corporations (QNCs). Citizens United lifted the ban on such communications for all corporations, making exceptions for QNCs unnecessary. The new rules delete certain provisions related to QNCs, but broaden and redesignate other provisions to include all corporations and labor unions. The revisions are not meant to create new regulations for QNCs but do make some changes intended to bring all corporations under the same rubric.
4. Eliminate prohibitions against corporations and labor organizations making certain electioneering communications. Past rules distinguished between permissible and impermissible electioneering communications by prohibiting corporations and labor organizations from using general treasury funds to finance electioneering communications that were the functional equivalent of express advocacy. Because Citizens United allows electioneering communications by corporations and labor unions, these rules have been removed.
5. Revise the reporting requirements for electioneering communications. Current rules specified the contents of electioneering communications based on whether the electioneering communication was financed. The new rules remove these distinctions and require reporting entities to disclose the name and address of each person, labor organization or corporation that donated at least \$1,000 to the account or fund since the first day of the preceding calendar year, as under the current regulation.

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