

Electioneering Communications

Federal Election Commission

June 2004

Introduction

This brochure focuses on the rules pertaining to electioneering communications—television or radio communications that refer to a clearly identified federal candidate and are distributed to the relevant electorate within 60 days prior to the general election or 30 days prior to a primary.¹ In general, these rules require that electioneering communications be financed using funds from sources permissible under the federal campaign finance law; but neither the funds raised nor those spent are subject to the law's contribution limits.² Once payments for electioneering communications exceed \$10,000, the disbursements and the sources of the funds used must be disclosed within 24 hours.

If you have any questions after reading this brochure, please call, write or visit:

Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463
800/424-9530
202/694-1100 (local)
202/219-3336 (for the hearing impaired)
<http://www.fec.gov>
info@fec.gov

Electioneering Communications

An electioneering communication is any broadcast, cable or satellite communication that fulfills **each** of the following conditions:

1. The communication refers to a clearly identified candidate;
2. The communication is publicly distributed shortly before an election for the office that candidate is seeking; and
3. The communication is targeted to the relevant electorate (U.S. House and Senate candidates only).

Clearly Identified Candidate

A communication refers to a clearly identified federal candidate if it contains the candidate's name, nickname or image, or makes any unambiguous reference to the person or their status as a candidate, such as "the Democratic candidate for Senate."

11 CFR 100.29(b)(2).

¹ Citations contained in this brochure refer to Federal Election Commission (FEC) regulations, contained in title 11 of the Code of Federal Regulations (11 CFR). The reader should not rely solely on this brochure, but should also consult Commission regulations and advisory opinions. These materials can be viewed on the FEC web site at <http://www.fec.gov>.

² A payment that qualifies as a "coordinated communication" under 11 CFR 109.21 results in an in-kind contribution, and is subject to the contribution limits.

Publicly Distributed Shortly Before Election

Generally, a communication is publicly distributed if it is disseminated for a fee by a television station, radio station, cable television system or satellite system.

Electioneering communications are limited to paid programming. The station must seek or receive payment for distribution of the communication. Both infomercials and commercials are included within the definition. 11 CFR 100.29(b)(3)(i).

The electioneering communications rules apply only to communications that are transmitted within 60 days prior to a general election or 30 days prior to a primary election for the federal office sought by the candidate, including elections in which the candidate is unopposed. A “primary election” includes any caucus or convention of a political party which has the authority to nominate a candidate to federal office. 11 CFR 100.29(a)(2). This condition regarding the timing of the communication applies only to elections in which the candidate referred to is seeking office.

A list of the events in each state that trigger the 30-day period for congressional candidates can be found on the FEC website at www.fec.gov/pages/charts_ec_dates_cong.htm.

In the case of Presidential and Vice-Presidential primary candidates, the communication is publicly distributed if it can be received by 50,000 or more people:

- In a state where a primary election or caucus is being held within 30 days; or
- Anywhere in the United States during the period between 30 days prior to the nominating convention and the conclusion of that convention.

11 CFR 100.29(a)(2).

A list of the events in each state that trigger the 30-day period for Presidential and Vice-Presidential candidates can be found on the FEC website at www.fec.gov/info/charts_ec_dates.shtml.

Targeted to the Relevant Electorate

The communication targets the relevant electorate if it can be received by 50,000 or more people in the district (in the case of a U.S. House candidate) or state (in the case of a Senate candidate) that the candidate seeks to represent. 11 CFR 100.29(b)(5).

The Federal Communications Commission (FCC) provides on its web site the information necessary to determine whether a communication can be received by 50,000 people. See <http://gullfoss2.fcc.gov/ecd>.

Exemptions

The regulations at 11 CFR 100.29(c)(1) through (6) exempt certain communications from the definition of “electioneering communication”:

- A communication that is disseminated through a means other than a broadcast station, radio station, cable television system or satellite system. For example, neither printed media—including newspapers, magazines, bumper stickers, yard signs and billboards—nor communications over the internet, e-mail or the telephone are included;

- A news story, commentary or editorial broadcast by a television station, radio station, cable television system or satellite system. However, if the facilities are owned or controlled by a political party, political committee or candidate, the communication must satisfy the exemption for news stories at 11 CFR 100.132(a) and (b) to be exempt;
- Expenditures or independent expenditures that must otherwise be reported to the Commission;
- A candidate debate or forum or a communication that solely promotes a debate or forum. Communications promoting the debate or forum must be made by or on behalf of the sponsor;
- Communications by state or local candidates that do not promote, support, attack or oppose federal candidates; and
- Communications by 501(c)(3) organizations. However, these organizations are still barred from participating in partisan political activity by the Internal Revenue Code.³

Application

Political Committees

As noted above, expenditures that must otherwise be reported to the FEC are not considered electioneering communications, even if they would otherwise qualify. 11 CFR 100.29(c)(3) and 104.20(b). Generally, political committees registered with the FEC are not subject to the electioneering communications rules.

Corporations and Labor Organizations

Corporations and labor organizations are prohibited from making or financing electioneering communications to those outside of their restricted class. 11 CFR 114.2(b)(2)(iii).⁴

Further, they may not provide funds to any person if they know, have reason to know, or are willfully blind to the fact that the funds are for the purpose of making electioneering communications. 11 CFR 114.14(a).

If a communication which otherwise fits the criteria of an electioneering communication is paid for by the separate segregated fund (PAC) of a corporation, it is reportable as an expenditure – not as an electioneering communication. 11 CFR 104.20(b).

³ For further information on 501(c)(3) organizations, contact the Exempt Organizations Technical Division of the IRS at 1-877-829-5500.

⁴ Generally, the restricted class comprises the executive and administrative personnel and their families. It also includes a corporation's stockholders and their families, or a labor or membership organization's members and their families. See 11 CFR 114.1(c), (e) and (j).

Qualified Nonprofit Corporations

Qualified Nonprofit Corporations (QNCs) may make electioneering communications. To qualify, the entity must be a nonprofit corporation incorporated under 26 U.S.C. §501(c)(4) that is ideological in nature and qualifies for exemptions under 11 CFR 114.10.

If a QNC makes electioneering communications that aggregate in excess of \$10,000 in a calendar year, it must certify that it is eligible for the QNC exemption. The certification must include the name and address of the corporation and the signature and printed name of the individual making the qualifying statement. It must also certify that the corporation meets the standards of a QNC, either by satisfying all of the qualifications at 11 CFR 114.10(c)(1)-(5), or through a court ruling pursuant to 11 CFR 114.10(e)(1)(i)(B). The certification is due no later than when the first electioneering communications report is required to be filed. 11 CFR 114.10(e)(1)(ii)(A).

QNCs can neither make contributions to federal political committees, nor accept any funds from corporations or labor organizations. 11 CFR 114.10(c)(4)(ii) and (d)(2) and (3). Also, these regulations do not supercede any section of the Internal Revenue Code regarding 501(c)(4) organizations. 11 CFR 114.10(i).

“527” Organizations

The prohibition against the use of corporate funds to make or finance electioneering communications does not apply to certain organizations incorporated under 26 U.S.C. §527.

Incorporated state party committees and state candidate committees registered as “527” organizations are exempt from the corporate prohibition provided that the committee:

- Is not a political committee, as defined at 11 CFR 100.5;
- Incorporates for liability purposes only;
- Does not use any funds donated by corporations or labor organizations to fund the electioneering communication; and
- Complies with the FEC’s reporting requirements for electioneering communications. 11 CFR 114.2(b)(2)(iii).

Unincorporated, unregistered “527” organizations may also make electioneering communications, subject to the disclosure requirements and the prohibition against corporate and labor funds.

Individuals and Partnerships

Individuals and partnerships may make or finance electioneering communications, provided that certain conditions are met. Those that accept funds provided by corporations or labor organizations may neither use those funds to pay for electioneering communications, nor give them to another to defray the costs of making an electioneering communication. 11 CFR 114.14(b).

They must be able to demonstrate through a reasonable accounting procedure that no prohibited funds were used to pay for the electioneering communication. 11 CFR 114.14(d).

Disclosure Requirements

When to File

Persons who make electioneering communications that aggregate more than \$10,000 in the calendar year must file the “24 Hour Notice of Disbursements/Obligations for Electioneering Communications” (FEC Form 9) with the Commission within 24 hours of the disclosure date. 11 CFR 104.20(b). FEC Form 9 must be *received* by the Commission by 11:59 p.m. on the day following the disclosure date.

Disclosure Date

The regulations define “disclosure date” as:

- The first date on which an electioneering communication is publicly distributed, provided that the person making the electioneering communication has made disbursement(s), or has executed contract(s) to make disbursements, for the direct costs of producing or airing⁵ one or more electioneering communication aggregating in excess of \$10,000; or
- Any other date during the same calendar year on which an electioneering communication is publicly distributed, provided that the person making the communication has made disbursement(s) or executed contract(s) to make disbursements for the direct costs of airing one or more electioneering communications aggregating in excess of \$10,000 since the most recent disclosure date. 11 CFR 104.20(a)(1)(i) and (ii).

Accordingly, the definition of “disclosure date” requires continuous reporting. After the first disclosure report, each time the direct costs of electioneering communications aggregate in excess of \$10,000, an additional disclosure report is due within 24 hours of the public distribution of an electioneering communication.

Disbursements made at any time for the direct costs of producing or airing the publicly-distributed electioneering communication, or other unreported electioneering communications, count toward the threshold. However, costs already reported for earlier electioneering communications are not included.

Where to File

FEC Form 9 (or a Commission-approved, computer-produced form) must be signed and filed with the FEC and in the state where the candidate is running if that state has not qualified for a waiver.⁶ In the case of Presidential and Vice-Presidential candidates, a copy of Form 9 must be filed in the state where the expenditure is made, except in those states that have qualified for the Commission’s state filing waiver 11 CFR 104.20(e) and 108.1(b). A list of the qualified states and territories may be found on the FEC web site at www.fec.gov/pages/statefiling.shtml.

⁵ The direct costs of producing or airing electioneering communications are defined as the costs charged by a vendor, such as studio rental time, staff salaries, costs of video or audio recording media and talent, or the cost of airtime on broadcast, cable and satellite radio and television stations, studio time, material costs and the charges for a broker to purchase the airtime. 11 CFR 104.20(a)(2).

⁶ As of June 2004, only Montana, Guam and Puerto Rico had not qualified for a waiver.

Electronic filers must file these notices electronically. 11 CFR 100.19(f). Paper filers may submit the notice by mail to the FEC (for mailing address, see page 1 of the brochure) but are encouraged to file by fax - 202/219-0174, or via e-mail - 2022190174@fec.gov, to ensure compliance with the 24-hour filing deadline. Form 9 is available on the FEC's web site at www.fec.gov/reporting.html; via the agency's automated Faxline - 202/501-3413; or through the mail by calling 800/424-9530.

Content of Disclosure

Each statement disclosing electioneering communications must include:

- The identification of the person who made the disbursement, or who executed a contract to make a disbursement, and the person's principal place of business if the person is not an individual;
- The identification of any person sharing or exercising direction or control⁷ over the activities of the person who made the disbursement or executed the contract;
- The identification of the custodian of books and accounts from which the disbursements were made;
- The amount of each disbursement or amount obligated in excess of \$200 during the period covered by the statement, the date of the disbursement, or the date the contract was executed, and the person who received the funds;
- All clearly-identified candidates referred to in the electioneering communication and the elections in which they are candidates;
- The disclosure date, as defined by 104.20(a)(1);
- The name and address of each donor who, since the first day of the preceding calendar year, has donated in the aggregate \$1,000 or more to the person making the disbursements, or to the separate segregated bank account if the disbursements were paid exclusively from that bank account. 11 CFR 104.20(c).

⁷ Persons sharing or exercising direction or control means officers, directors, executive directors or their equivalent, partners, and, in the case of unincorporated organizations, owners of the entity or person making the disbursement for the electioneering communication. 11 CFR 104.20(a)(3).