

AGENDA DOCUMENT NO. 11-73



FEDERAL ELECTION COMMISSION
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December 14, 2011

MEMORANDUM

AGENDA ITEM

TO: The Commission

For the Meeting of 12-15-11

FROM: Anthony Herman
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SUBMITTED LATE

SUBJECT: Draft Notice of Proposed Rulemaking on Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations

Attached is a draft Notice of Proposed Rulemaking in response to the Petition for Rulemaking from the James Madison Center for Free Speech. We have been asked to place this draft on the agenda for December 15, 2011.

Attachment

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FEDERAL ELECTION COMMISSION

11 CFR Part 114

[Notice 2011 – XX]

**Independent Expenditures and Electioneering Communications by Corporations
and Labor Organizations**

AGENCY: Federal Election Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Election Commission seeks comments on proposed changes to its rules regarding corporate and labor organization funding of expenditures, independent expenditures and electioneering communications. These and other proposed changes are in response to a Petition for Rulemaking filed by the James Madison Center for Free Speech urging the Commission to amend its regulations in response to the decision of the Supreme Court in Citizens United v. FEC. The Commission has made no final decision on the issues presented in this rulemaking.

DATES: Comments must be received on or before February 3, 2012. Reply comments must be limited to the issues raised in the initial comments and must be received on or before February 17, 2012. The Commission will hold a hearing on these proposed rules and any modifications or amendments

1 thereto that may be proposed on March 7, 2012. Anyone
2 wishing to testify at the hearing must file written comments
3 by the due date and must include a request to testify in the
4 written comments.

5 **ADDRESSES:**

All comments must be in writing. Comments may be
6 submitted electronically via the Commission's website at
7 <http://www.fec.gov/fosers/>. Commenters are encouraged to
8 submit comments electronically to ensure timely receipt
9 and consideration. Alternatively, comments may be
10 submitted in paper form. Paper comments must be sent to
11 the Federal Election Commission, Attn.: Robert M. Knop,
12 Assistant General Counsel, 999 E Street, NW.,
13 Washington, DC 20463. All comments must include the
14 full name and postal service address of the commenter, and
15 of each commenter if filed jointly, or they will not be
16 considered. The Commission will post comments on its
17 Web site at the conclusion of the comment period.

18 **FOR FURTHER**
19 **INFORMATION**
20 **CONTACT:**

Mr. Robert M. Knop, Assistant General Counsel, or
21 Attorneys Ms. Esther D. Heiden, Mr. Theodore M. Lutz, or
22 Ms. Joanna S. Waldstreicher, 999 E Street, NW.,
23 Washington, DC 20463, (202) 694-1650 or (800) 424-
24 9530.

1 **SUPPLEMENTARY**
2 **INFORMATION:**

3 The Federal Election Campaign Act of 1971,¹ as amended, (“the Act”) prohibits
4 corporations and labor organizations from using general treasury funds to make
5 contributions or expenditures in connection with Federal elections. 2 U.S.C. 441b. The
6 term “contribution or expenditure” includes any “direct or indirect payment, distribution,
7 loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any
8 candidate, campaign committee, or political party or organization,” in connection with
9 any Federal election. 2 U.S.C. 441b(b)(2); 11 CFR 114.1(a)(1); see also 2 U.S.C.
10 431(8)(A) and (9)(A); 11 CFR 100.52 and 100.111. The Act’s prohibition on
11 expenditures by corporations and labor organizations includes “independent
12 expenditures,” which are expenditures expressly advocating the election or defeat of a
13 clearly identified candidate that are not made in concert or cooperation with, or at the
14 request or suggestion of, a clearly identified candidate, the candidate’s authorized
15 political committee, or their agents, or a political party committee and its agents.
16 2 U.S.C. 431(17); 11 CFR 100.16(a).

17 The Bipartisan Campaign Reform Act of 2002² (“BCRA”) amended the Act to
18 also prohibit corporations and labor organizations from using general treasury funds to
19 make electioneering communications. 2 U.S.C. 441b(b)(2). Electioneering
20 communications are broadcast, cable, or satellite communications that refer to a clearly
21 identified candidate for Federal office, are publicly distributed within sixty days before a
22 general election or thirty days before a primary election, and are targeted to the relevant

¹ Pub. L. No. 92-225, 86 Stat. 3 (1971); 2 U.S.C. 431 et seq.

² Pub. L. No. 107-155, 116 Stat. 81 (2002).

1 electorate. 2 U.S.C. 434(f)(3)(A)(i) and (f)(3)(C); 11 CFR 100.29(a)(1)-(3). The
2 Commission's regulations prohibiting independent expenditures and electioneering
3 communication made by corporations and labor organizations are found at 11 CFR part
4 114. The Act and Commission regulations also require entities that make independent
5 expenditures and electioneering communications to report certain information to the
6 Commission, which the Commission then places on the public record. 2 U.S.C. 434(c)
7 and 434(f); 11 CFR 104.20 and 109.10. In addition, the Act and Commission regulations
8 require communications expressly advocating the election or defeat of a clearly identified
9 candidate, as well as electioneering communications, to include disclaimers stating who
10 paid for the communication and whether the communication was authorized by a Federal
11 candidate or a Federal candidate's authorized political committee or its agents. 2 U.S.C.
12 441d(a); 11 CFR 110.11.

13 In Citizens United v. FEC, the Supreme Court held that the two statutory
14 provisions prohibiting corporations from making independent expenditures and
15 electioneering communications violate the First Amendment. 558 U.S. ___,
16 130 S. Ct. 876 (2010). At the same time, the Supreme Court reaffirmed the validity of
17 the Act's reporting, disclosure, and disclaimer requirements for independent expenditures
18 and electioneering communications at 2 U.S.C. 434(f) and 441d(a)(3) and (d)(2). Id. at
19 913-16.³

³ Although Citizens United did not directly address whether labor organizations also have a First Amendment right to use their general treasury funds for independent expenditures and electioneering communications, the Act and Commission regulations treat labor organizations in a similar manner to corporations. See 2 U.S.C. 441b; see generally CFR part 114; see also Advisory Opinion 2010-11 (Commonsense Ten) at n.3. When addressing corporations, the Court in Citizens United often referred to labor organizations, and provided no basis for treating labor organization communications differently than corporate communications under the First Amendment. Therefore, the Commission proposes to make the same regulatory changes discussed in this Notice of Proposed Rulemaking for both corporations and labor organizations.

1 The James Madison Center for Free Speech filed a Petition for Rulemaking
2 urging the Commission to amend its regulations to conform to the decision in Citizens
3 United. Specifically, the Petition for Rulemaking asked the Commission to remove
4 11 CFR 114.2, 114.4, 114.9, and 114.14 to the extent that these regulations implement
5 the Act’s ban on the use of general treasury funds by corporations and labor organizations
6 to make independent expenditures and electioneering communications. The Petition for
7 Rulemaking also asked the Commission to remove 11 CFR 114.10, because that
8 regulation implements an exception to the prohibition on independent expenditures and
9 electioneering communications by corporations that is no longer necessary after Citizens
10 United. Finally, the petitioners requested that the Commission remove 11 CFR 114.15,
11 because that regulation relating to certain permissible communications by corporations
12 and labor organizations is also no longer necessary after Citizens United.

13 On June 21, 2011, the Commission published a Notice of Availability seeking
14 public comment on the Petition for Rulemaking. Notice of Availability on Independent
15 Expenditures and Electioneering Communications by Corporations and Labor
16 Organizations, 76 FR 36001 (June 21, 2011). The Commission received three comments
17 in response to the Notice of Availability.

18 Two commenters urged the Commission to adopt the changes recommended in
19 the Petition for Rulemaking. One of these two comments urged the Commission to
20 repeal portions of 11 CFR 114.2, 114.3, 114.4, 114.9 and 114.14, insofar as these
21 regulations implement the 2 U.S.C. 441b bans on independent expenditures and
22 electioneering communications. The comment went on to request that the Commission
23 either clarify or repeal sections 114.10 and 114.15. The other comment supporting the

1 petition asked the Commission to remove portions of sections 114.2, 114.3, 114.4, 114.9
2 and 114.14 to the extent that they are invalid after the Court’s decision in Citizens
3 United. Both of these commenters further stated that any NPRM issued in response to
4 the Citizens United decision and the Petition for Rulemaking should address only those
5 regulations clearly invalidated by the Court decision, and should address no other issues.

6 One of the two commenters supporting the petition stated that further rulemaking
7 is not appropriate at this time because the Commission has had only brief experience with
8 the post-Citizens United legal landscape. That commenter suggested that the
9 Commission should wait until “expert research” is conducted on a number of issues
10 before engaging in broader rulemaking. Both commenters also suggested that the
11 Commission should limit its rulemaking to those regulations directly affected by Citizens
12 United so that the Commission can reach consensus.

13 A third commenter urged the Commission not to amend or remove its regulations
14 in response to the Petition for Rulemaking or Citizens United. That commenter noted
15 that the Citizens United decision was not unanimous and suggested that the Court’s
16 rationale was incorrect. The commenter expressed concern that the Court’s decision and
17 any subsequent rulemaking implementing the decision would reduce transparency of
18 corporate spending on Federal elections.

19 The Commission is issuing this Notice of Proposed Rulemaking to address certain
20 regulations implicated by the Citizens United decision and raised by the Petition for
21 Rulemaking, and the comments received in response to its Notice of Availability. The
22 Commission seeks comment on: (1) eliminating the prohibitions in 11 CFR 114.2 and
23 114.14 on the use of corporate and labor organization general treasury funds to finance

1 independent expenditures and electioneering communications; (2) eliminating 11 CFR
2 114.15, which permits corporations and labor organizations to make electioneering
3 communications that are not the functional equivalent of express advocacy;
4 (3) eliminating the prohibitions in 11 CFR 114.3 and 114.4 regarding express advocacy
5 in communications to the general public and revising the standards for voter registration
6 and get-out-the-vote (“GOTV”) drives; (4) revising 11 CFR 114.9, which governs the use
7 of corporate and labor organization facilities for political activity; and (5) eliminating or
8 amending the regulation at 11 CFR 114.10, which governs the making of independent
9 expenditures and electioneering communications by qualified nonprofit corporations.

10 I. Background

11 The Act and Commission regulations prohibit corporations and labor
12 organizations from using general treasury funds to make expenditures, including
13 independent expenditures. 2 U.S.C. 441b(a) and (b)(2); 11 CFR 114.2(b)(2).

14 In enacting section 203 of BCRA, Congress extended the Act’s prohibitions on
15 the use of general treasury funds for corporate and labor organization expenditures under
16 2 U.S.C. 441b to include electioneering communications. 2 U.S.C. 441b(b)(2); see also
17 2 U.S.C. 434(f)(3); 11 CFR 100.29, 104.3, 114.2, 114.10, and 114.14.

18 In Citizens United, the Supreme Court held that the Act’s prohibitions on
19 financing independent expenditures and electioneering communications with corporate
20 general treasury funds were unconstitutional. Citizens United, a non-profit corporation,
21 in January 2008 released a film in theaters and on DVD about then-Senator Hillary
22 Clinton, who was a candidate in the Democratic Party’s 2008 Presidential primary
23 elections. Citizens United wanted to pay cable companies to make the film available to

1 digital cable subscribers for free through video-on-demand, which allows subscribers to
2 view programming, including movies. Citizens United planned to make the film
3 available within thirty days of the 2008 primary elections.

4 Citizens United filed suit seeking a preliminary injunction, arguing that the ban on
5 corporate electioneering communications at 2 U.S.C. 441b(b)(2) was unconstitutional as
6 applied to payments to make the film available through video-on-demand and that the
7 disclosure and disclaimer requirements at 2 U.S.C. 434(f) and 441d were unconstitutional
8 as applied to payments for the film and for three planned advertisements for the movie.
9 The district court denied the request for a preliminary injunction and granted the
10 Commission's motion for summary judgment. 530 F. Supp. 2d 274 (D.D.C. 2008).

11 The Supreme Court invalidated section 441b's restrictions on corporate
12 independent expenditures and electioneering communications. 130 S.Ct. at 913. The
13 Supreme Court held that the prohibition on corporate independent expenditures and
14 electioneering communications is a ban on speech and concluded that section 441b was
15 therefore "subject to strict scrutiny." *Id.* at 898.

16 The Court noted that "[p]olitical speech is 'indispensable to decisionmaking in a
17 democracy, and this is no less true because the speech comes from a corporation rather
18 than an individual.'" *Id.* at 904 (quoting *First Nat'l Bank of Boston v. Bellotti*, 435 U.S.
19 765, 777 (1978)). The Court stated that the anti-distortion rationale previously used to
20 justify restrictions on corporate speech "interferes with the 'open marketplace of ideas'
21 protected by the First Amendment." *Id.* at 906.⁴ The Supreme Court also disagreed that
22 corporate independent expenditures can be limited because of an interest in protecting

⁴ The Court therefore overruled its previous decisions in *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), and, in part, *McConnell*.

1 dissenting shareholders from being compelled to fund corporate political speech and held
2 that such disagreements may be corrected by shareholders through the procedures of
3 corporate democracy. Id. at 911. “All speakers, including individuals and the media, use
4 money amassed from the economic marketplace to fund their speech, and the First
5 Amendment protects the resulting speech.” Id. at 905. Accordingly, the Supreme Court
6 held that “the rule that political speech cannot be limited based on a speaker’s wealth is a
7 necessary consequence of the premise that the First Amendment generally prohibits the
8 suppression of political speech based on the speaker’s identity.” Id.

9 The Supreme Court further held that, while the government has a compelling
10 interest in preventing corruption or the appearance of corruption, “independent
11 expenditures, including those made by corporations, do not give rise to corruption or the
12 appearance of corruption.” Id. at 909. Thus, the Court invalidated section 441b’s
13 restrictions on corporate independent expenditures and electioneering communications.
14 Id. at 913.

15 Citizens United also challenged the Act’s disclaimer and disclosure provisions at
16 sections 434(f) and 441d as applied to the film and three advertisements for the film.
17 Under the Act, electioneering communications must include a statement identifying the
18 person responsible for payment for the advertisement. 2 U.S.C. 441d(a). Also, any
19 person who spends more than \$10,000 on electioneering communications within a
20 calendar year must file a disclosure statement with the Commission identifying the
21 person making the electioneering communication, the election to which the
22 communication pertains, and providing information about certain contributors who gave
23 \$1000 or more within a specified time period. 2 U.S.C. 434(f)(2). The Court rejected the

1 challenge to the statutory requirement and upheld the reporting provisions because
2 “transparency enables the electorate to make informed decisions and give proper weight
3 to different speakers and messages.” Citizens United, 130 S. Ct. at 913-16. The Court
4 recognized that disclaimer and disclosure requirements impose no ceiling on campaign
5 activities, do not prevent anyone from speaking, and advance the public’s “interest in
6 knowing who is speaking about a candidate shortly before an election.” Id. at 914-15.
7 “Prompt disclosure of expenditures can provide shareholders and citizens with the
8 information needed to hold corporations and elected officials accountable for their
9 positions and supporters.” Id. at 916.

10 II. Overview of Changes to 11 CFR Part 114: Corporate and Labor Organization
11 Activity

12 Commission regulations implementing the statutory provisions struck down by
13 Citizens United are no longer valid. The Commission previously released a statement
14 saying that it would no longer enforce statutory provisions or regulations prohibiting
15 corporations and labor organizations from making independent expenditures and
16 electioneering communications. FEC Statement on the Supreme Court’s Decision in
17 Citizens United v. FEC (Feb. 5, 2010) (available at
18 <http://www.fec.gov/press/press2010/20100205CitizensUnited.shtml>). These regulations
19 include portions of current 11 CFR part 114, which concern corporate and labor
20 organization activity. In this rulemaking, the Commission proposes to amend 11 CFR
21 114.2, 114.3, 114.4, and 114.10, and to remove 11 CFR 114.14, and 114.15. The
22 Commission has not made any determination as to which, if any, of the proposed
23 alternatives it should adopt in its final rules.

1 The Commission proposes to change 11 CFR part 114 by: (1) modifying specific
2 language within sections of part 114 that prohibit corporations and labor organizations
3 from using general treasury funds to finance independent expenditures and electioneering
4 communications, and (2) removing language that may be superfluous, given the
5 permissible uses of general treasury funds under Citizens United.

6 Among the Commission’s proposals are alternatives for modifying current
7 11 CFR 114.2(b)(2)(i), which prohibits corporations and labor organizations from making
8 expenditures, including independent expenditures. The Commission proposes to modify
9 11 CFR 114.2(b)(2)(i) in one of two ways: (1) narrow the prohibition to allow all
10 expenditures except those that are coordinated with a candidate or a political party
11 committee, including coordinated communications, or (2) narrow the prohibition to allow
12 only communications that are not coordinated with a candidate or a political party
13 committee, while continuing to prohibit expenditures that are not made for
14 communications. These alternative approaches would also apply to the expenditure
15 prohibition for voter registration and GOTV drives, discussed below in the proposed
16 changes to section 114.3 (with respect to the restricted class) and section 114.4 (with
17 respect to the general public).

18 With respect to 11 CFR 114.4, the Commission proposes to remove the
19 prohibition on making express advocacy communications to those outside the restricted
20 class, but would maintain the restrictions on coordinating with candidates and political
21 parties when making communications to those outside the restricted class. Regarding
22 11 CFR 114.9, the Commission seeks comment on whether 11 CFR 114.9 should be

1 revised and, if so, how.⁵ Additionally, the Commission seeks comment on whether to
2 repeal or revise certain provisions of 11 CFR 114.10. These provisions currently exempt
3 qualified nonprofit corporations (“QNC”) from the pre-Citizens United ban on corporate
4 independent expenditures and electioneering communications. The proposed revisions
5 would apply to all corporations and labor organizations, not limited to QNCs, making
6 independent expenditures and electioneering communications.⁶ The existing provisions
7 currently reference other Commission regulations that apply to QNCs making
8 independent expenditures or electioneering communications, including references to the
9 reporting requirements for independent expenditures and electioneering communications
10 under 11 CFR 104.4(a), 109.10(b), and 104.20(b), and the disclaimer provisions of
11 11 CFR 110.11. The Commission seeks comment on whether to remove section 114.10
12 or to revise section 114.10 to expand these rules to apply to all corporations and labor
13 organizations that make such independent expenditures or electioneering
14 communications. Finally, the Commission proposes to remove 11 CFR 114.14, and
15 114.15, which implement exceptions to the general prohibition against corporate and
16 labor organization funding of independent expenditures and electioneering
17 communications.

18

⁵ While the Commission proposes to retain the reporting requirements currently at 11 CFR 114.3(b), which require corporations and labor organizations to report disbursements for communications containing express advocacy made to the restricted class, it recognizes that a communication containing express advocacy may now be made both to the general public and the restricted class, thereby triggering different thresholds for reporting obligations.

⁶ Corporations that are foreign nationals, government contractors, or national banks, and corporations that are organized by authority of any law of Congress continue to be prohibited from making independent expenditures or electioneering communications. 2 U.S.C. 441b, 441c and 441e.

1 III. Proposed 11 CFR 114.2(b) – Prohibitions on certain expenditures

2 The Commission regulation at 11 CFR 114.2(b) implements 2 U.S.C. 441b(a) by
3 prohibiting corporations and labor organizations from making expenditures, including
4 independent expenditures.⁷ This rule also prohibits corporations and labor organizations
5 from making payments for electioneering communications unless certain criteria are met.
6 The Supreme Court’s decision in Citizens United invalidated the prohibitions on
7 corporate independent expenditures and electioneering communications in 2 U.S.C.
8 441b(a).⁸ Accordingly, certain portions of 11 CFR 114.2(b) are no longer valid. The
9 Commission therefore proposes to revise this regulation to remove the prohibitions on
10 independent expenditures and electioneering communications.

11 A. 11 CFR 114.2(b)(2)(i) – Prohibition on Corporate and Labor Organization
12 Expenditures

13 Current 11 CFR 114.2(b)(2)(i) prohibits corporations and labor organizations
14 from making “expenditures,” as defined in 11 CFR part 100, subpart D. With certain

⁷ An “independent expenditure” is defined by the Act as “an expenditure by a person— (A) expressly advocating the election or defeat of a clearly identified candidate; and (B) that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate’s authorized political committee, or their agents, or a political party committee or its agents.” 2 U.S.C. 431(17); *see also* 11 CFR 100.16(a). Express advocacy is defined in 11 CFR 100.22 as “any communication that—(a) Uses phrases such as “vote for the President,” “re-elect your Congressman,” “support the Democratic nominee,” “cast your ballot for the Republican challenger for U.S. Senate in Georgia,” “Smith for Congress,” “Bill McKay in ’94,” “vote Pro-Life” or “vote Pro-Choice” accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, vote against Old Hickory,” “defeat” accompanied by a picture of one or more candidate(s), “reject the incumbent,” or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say “Nixon’s the One,” “Carter ’76,” “Reagan/Bush” or “Mondale!”; or (b) When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because— (1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and (2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.”

⁸ See discussion above regarding the applicability of the Citizens United holding to labor organizations.

1 exceptions, this prohibition applies to all expenditures, whether they are independent,
2 coordinated, or any other form of expenditure, including in-kind contributions.⁹

3 The Commission is considering two alternatives for revising
4 11 CFR 114.2(b)(2)(i). Both alternatives would permit corporations and labor
5 organizations to make expenditures from their general treasury funds for communications
6 that are not coordinated with a candidate or political party, and both alternatives would
7 maintain the prohibition on corporate and labor organization expenditures for all
8 activities that are coordinated with a candidate or political party as defined in
9 11 CFR 109.20 or 109.21. The alternatives differ in that Alternative A would permit
10 corporations and labor organizations to make all types of expenditures from their general
11 treasuries for any non-coordinated activities, whether or not they are communications,
12 while Alternative B would maintain the prohibition on non-expressive expenditures by
13 corporations and labor organizations regardless of whether they are coordinated with a
14 candidate or political party.

15 Alternative A proposes treating all expenditures the same on the ground that
16 Citizens United did not distinguish among different types of expenditures so long as they
17 are made independently of any campaign or political party. By contrast, Alternative B
18 suggests distinguishing between expenditures for communications and other types of
19 expenditures, on the ground that the Court’s holding in Citizens United struck down
20 prohibitions on political speech as inconsistent with the First Amendment, but did not
21 address non-communicative conduct because “independent expenditures” are defined as

⁹ An in-kind contribution is an expenditure. 11 CFR 100.111(e)(1). All corporate and labor organization contributions, including in-kind contributions, continue to be prohibited after Citizens United. Coordinated communications and coordinated expenditures continue to be prohibited because they are a form of in-kind contribution. 11 CFR 109.20(b) and 109.21(b).

1 communications. The Commission invites comment on which of the two approaches
2 reflects the more appropriate response to Citizens United and why. In considering both
3 alternatives, the Commission seeks comment on whether it should distinguish between
4 communicative and non-communicative expenditures and how. For example, how
5 should the Commission treat corporate or labor organization expenditures for transporting
6 voters to polling places as part of a non-coordinated get-out-the-vote (“GOTV”)
7 campaign supporting or opposing a specific candidate which includes both
8 communicative and non-communicative elements? Such expenses might include the
9 driver’s salary, vehicle rental, and fuel, and, if workers were brought in from another
10 geographical area to assist in the efforts, the payment for their travel, lodging, and food
11 costs.

12 Alternative A – Permit Corporations and Labor Organizations to Make
13 Expenditures Except for Coordinated Expenditures and Coordinated
14 Communications

15 Alternative A would remove the existing broad prohibition on corporate and labor
16 organization expenditures from general treasury funds and replace it with a regulation
17 specifically prohibiting only (a) expenditures that are coordinated with a candidate or a
18 political party committee and (b) coordinated communications. Alternative A would
19 permit independent corporate and labor organization communications that contain
20 express advocacy, which is one component of the statutory and regulatory definition of
21 an “independent expenditure” (e.g., a television advertisement that urges its audience to
22 vote for a clearly identified Senate candidate), and those that do not contain express
23 advocacy (e.g., a mass mailing that exhorts readers to vote for unspecified candidates

1 who support a particular cause). Expenditures that are not for communications would
2 also be permitted under Alternative A as long as these expenditures are not in-kind
3 contributions, such as expenditures that are coordinated with candidates or political party
4 committees. Permissible expenditures would include: (a) payment for transportation of
5 volunteers to campaign events, (b) payment for expenses of voter registration drives,
6 (c) the provision of food to campaign volunteers, or (d) the provision of babysitting
7 services to enable voters supporting a particular candidate or political party to vote.

8 The Commission seeks comment on Alternative A. Does Alternative A eliminate
9 too much or too little of the prohibition on corporate and labor organization
10 expenditures? Does Alternative A provide clear guidance on the types of expenditures
11 corporations and labor organizations may make in accordance with Citizens United?

12 The Commission also seeks comment on whether Alternative A should
13 distinguish between expenditures for communications and other types of non-coordinated
14 expenditures. If spending by corporations or labor organizations—whether for
15 communicative or non-communicative expenditures—is neither coordinated with a
16 federal candidate or political party nor is an in-kind contribution, can it be banned post-
17 Citizens United? Does Alternative A’s removal of the ban on non-coordinated corporate
18 and labor organization expenditures accurately reflect the Court’s holding and rationale?

19 Alternative B - Permit Corporations and Labor Organizations to Make
20 Independent Expenditures but not Coordinated Communications or Non-
21 Communicative Expenditures

22 Alternative B would amend the prohibition on corporate and labor organization
23 expenditures to permit independent expenditures from general treasury funds for non-

1 coordinated communications, but would continue to prohibit non-communicative
2 expenditures (including in-kind contributions) and coordinated communications.
3 Alternative B would distinguish expenditures for communications from other types of
4 expenditures. Under Alternative B, corporations and labor organizations would be
5 permitted to make expenditures from general treasury funds solely for “political speech
6 presented to the electorate that is not coordinated with a candidate.” Citizens United,
7 130 S. Ct. at 910. Coordinated communications as well as all non-communicative
8 expenditures would continue to be prohibited.

9 The Commission seeks comment on whether the decision in Citizens United
10 should be read to apply to non-communicative activities, and whether Alternative B is
11 consistent with Citizens United. Is Alternative B specific enough as to the types of
12 expenditures corporations and labor organizations may make? To what extent does the
13 Act contemplate the distinction between speech and non-speech expenditures? Would
14 maintaining the ban on non-speech expenditures further the government’s interest in
15 preventing corruption or the appearance of corruption?

16 B. 11 CFR 114.2(b)(2)(ii) and (b)(3) – Prohibition on Corporate and Labor
17 Organization Express Advocacy Communications and Electioneering Communications to
18 Those Outside the Restricted Class

19 Currently, 11 CFR 114.2(b)(2)(ii) prohibits corporations and labor organizations
20 from “making expenditures with respect to a Federal election . . . for communications to
21 those outside the restricted class that expressly advocate the election or defeat of one or
22 more clearly identified candidate(s) or the candidates of a clearly identified political
23 party.” Because the Supreme Court held in Citizens United that corporations and labor

1 organizations have a constitutional right to make expenditures for communications
2 containing express advocacy to those not in their restricted classes, the Commission
3 proposes to remove paragraph (b)(2)(ii).

4 Similarly, 11 CFR 114.2(b)(3) prohibits corporations and labor organizations
5 from making payments for electioneering communications to those outside their
6 restricted classes unless permissible under 11 CFR 114.10 or 114.15.¹⁰ Because Citizens
7 United held that corporations may make electioneering communications, including to
8 audiences outside their restricted classes, the Commission proposes to remove paragraph
9 (b)(3) of section 114.2. The Commission seeks comment on this proposal.

10 IV. Proposed 11 CFR 114.3 – Disbursements for communications to the restricted
11 class by corporations and labor organizations in connection with a Federal election

12 Current 11 CFR 114.3 implements certain statutory exceptions to the general ban
13 on contributions and expenditures by corporations and labor organizations. Before
14 Citizens United was decided, corporations and labor organizations could make
15 communications containing express advocacy only to their restricted classes.
16 2 U.S.C. 441b(a) and (b)(2)(A). Section 114.3 implements these provisions of the Act,
17 and sets out the requirements and restrictions on those communications to the restricted
18 class, including publications; candidate and party appearances; phone banks; and voter
19 registration and GOTV drives.

¹⁰ This provision does not apply to State party committees and State candidate committees that incorporate under 26 U.S.C. 527(e)(1), provided that: (1) the committee is not a political committee as defined in 11 CFR 100.5; (2) the committee incorporated for liability purposes only; (3) the committee does not use any funds donated by corporations or labor organizations to make electioneering communications; and (4) the committee complies with the reporting requirements for electioneering communications at 11 CFR part 104.

1 The Commission’s current regulations at 11 CFR 114.4 set out the restrictions and
2 prohibitions for communications by corporations and labor organizations beyond the
3 restricted class. The Act establishes specific reporting requirements for communications
4 made by corporations and labor organizations to their restricted class and exempts
5 disbursements for such communications from the definition of expenditure, whether or
6 not the communications contain express advocacy. 2 U.S.C. 431(9)(B)(iii). The
7 Commission proposes to maintain the current structure in which 11 CFR 114.3 addresses
8 disbursements for communications made to the restricted class and 11 CFR 114.4
9 addresses disbursements for communications made to those outside the restricted class,
10 with certain proposed changes discussed below. The Commission requests comment on
11 this approach. Should the Commission maintain the separate regulations as they are now,
12 or divide them in a different way? Would combining 11 CFR 114.3 and 114.4 be more
13 readily understandable to the public now that corporations and labor organizations can
14 make express advocacy communications beyond the restricted class?

15 A. 11 CFR 114.3(b) – Reporting of disbursements for express advocacy
16 communications

17 1. Reporting of disbursements for express advocacy communications solely to the
18 restricted class under current 11 CFR 114.3(b)

19 The proposed rules would not change the requirement, currently at
20 11 CFR 114.3(b), that corporations and labor organizations report disbursements for
21 communications containing express advocacy made to the restricted class in accordance
22 with 11 CFR 100.134 and 104.6. The Act exempts express advocacy communications
23 made by corporations and labor organizations to their restricted class from the definition

1 of “expenditure.” 2 U.S.C. 431(9)(B)(iii). However, the Act requires that corporations
2 and labor organizations that make disbursements for express advocacy communications
3 to the restricted class in excess of \$2,000 for any election file quarterly reports in an
4 election year and pre-election reports for any general election. 2 U.S.C. 431(9)(B)(iii),
5 434(a)(4)(A)(i) and (ii). This statutory requirement is implemented in the Commission
6 regulations at current 11 CFR 100.134(a), 104.6(a), and 114.3(b).

7 2. Reporting of disbursements for express advocacy communications beyond the
8 restricted class

9 As discussed in Section VII.B below, proposed 11 CFR 114.10(b) would require
10 corporations and labor organizations that make independent expenditures for
11 communications to persons outside the restricted class to report these independent
12 expenditures under 2 U.S.C. 434(c). This provision requires that “every person (other
13 than a political committee) who makes independent expenditures in an aggregate amount
14 or value in excess of \$250 during a calendar year” report such expenditures to the
15 Commission.

16 The Commission does not propose to change the language of current 11 CFR
17 114.3(b) because Citizens United upheld disclosure requirements, and did not affect the
18 provision of the Act at 2 U.S.C. 431(9)(B)(iii) that exempts disbursements for express
19 advocacy communications to the restricted class from the definition of “expenditure” and
20 establishes the reporting requirement for such communications. The Commission
21 requests comment on this approach.

22

1 3. Reporting of express advocacy communications both to the restricted class and
2 outside the restricted class

3 Prior to Citizens United, corporations and labor organizations were prohibited
4 from making payments for independent expenditures directed to individuals outside of
5 the restricted class. Now that the Court has struck down the prohibition on independent
6 expenditures, the Commission seeks comment on how a corporation or labor organization
7 should report spending for communications containing express advocacy directed both to
8 the restricted class and outside the restricted class. If a corporation or labor organization
9 makes a single disbursement for a communication containing express advocacy that is
10 made both to the general public, which is an independent expenditure, and the restricted
11 class, which is exempt from the definition of expenditure, should the fact that the
12 communication went outside the restricted class result in the entire disbursement being
13 treated as an independent expenditure, subject to the relevant reporting requirements?
14 Alternatively, should the corporation or labor organization allocate the expense between
15 the cost of the communication made to the restricted class and the cost of the
16 communication made outside the restricted class and report the allocated expenses
17 separately under the two reporting regimes?

18 B. Proposed 11 CFR 114.3(c)(4) – Voter registration and get-out-the-vote drives

19 Current 11 CFR 114.3(c)(4) provides that a corporation or a labor organization
20 may conduct voter registration and GOTV drives “aimed at its restricted class.” Section
21 114.3(c)(4) states that voter registration and GOTV drives include providing
22 transportation to the place of registration and to the polls. The current provision further
23 permits such drives to include communications containing express advocacy, “such as

1 urging individuals to register with a particular political party or to vote for a particular
2 candidate.” 11 CFR 114.3(c)(4). However, the current provision prohibits corporations
3 and labor organizations from withholding or refusing to give information and other
4 assistance regarding registering or voting “on the basis of support for or opposition to
5 particular candidates, or a particular political party.” Id.

6 The Commission is proposing two alternatives to revise paragraph (c)(4).
7 Alternative A would also remove the existing requirement that corporations or labor
8 organizations may not withhold or refuse to give information or other assistance on the
9 basis of support for, or opposition to, particular candidates or a particular political party,
10 but maintain the exemption from the definition of “contribution or expenditure” under
11 2 U.S.C. 441b(b)(2)(B) for voter registration and GOTV drives that meet that
12 requirement. Alternative B would not make any changes to current 11 CFR 114.3(c)(4)
13 except the technical change, and therefore retain the current prohibition on withholding
14 or refusing to give information and other assistance regarding registering or voting “on
15 the basis of support for or opposition to particular candidates, or a particular political
16 party.” The Commission invites comment on which, if either, of the two proposals better
17 comports with Citizens United and the Act.

18 Alternative A – Remove requirement that corporations and labor organizations
19 not withhold or refuse to provide assistance on the basis of support for, or
20 opposition to, particular candidates or a particular party

21 This alternative would remove the prohibition on withholding or refusing to
22 provide information or other assistance regarding registering or voting based on support
23 for or opposition to particular candidates, or a particular party. Instead, Alternative A

1 would prohibit corporations and labor organizations from conducting voter registration or
2 GOTV drives only if the activity is coordinated with a candidate or political party. As
3 discussed in Section III.A above, one approach to revising the Commission’s regulations
4 would be to eliminate the existing broad prohibition on corporate and labor organization
5 expenditures, and instead prohibit only those expenditures that are coordinated with a
6 candidate or a political party committee. Similarly, Alternative A would permit
7 corporations and labor organizations to conduct voter registration and GOTV drives
8 without restriction, so long as they were not coordinated with a candidate or political
9 party.

10 Alternative A, however, would adhere to the statutory exception to the definition
11 of “contribution or expenditure” for nonpartisan voter registration and GOTV drives. See
12 2 U.S.C. 441b(b)(2)(B). Under existing regulations, corporations and labor organizations
13 do not have to report to the Commission disbursements for voter registration and GOTV
14 drives that meet the conditions of the statutory exception, since such disbursements are
15 neither contributions nor expenditures. While voter registration and GOTV drives are
16 permissible under Alternative A, regardless of whether the drives meet the conditions of
17 the statutory exception, corporations or labor organizations conducting drives that meet
18 those conditions are not required to report disbursements for those drives. Thus,
19 Alternative A would specify that disbursements for voter registration and GOTV drives
20 are not contributions or expenditures if the drives are conducted in such a manner that the
21 corporation or labor organization does not withhold or refuse to provide information or
22 other assistance regarding registering or voting on the basis of support for or opposition

1 to particular candidates or a particular political party, consistent with the statutory
2 exception in 2 U.S.C. 441b(b)(2)(B).

3 The Commission requests comment on this proposal. Is Alternative A consistent
4 with Citizens United? Does the proposal eliminate too much or too little in implementing
5 the remaining prohibitions on corporate and labor organization expenditures? Is this
6 consistent with the uniform treatment of all expenditures under Alternative A? Should
7 this reporting regime inform the Commission’s choice of alternatives for amending
8 section 114.4?

9 In Citizens United, the Court rejected an “intricate case-by-case determination” to
10 determine whether political speech is banned, given that a corporation has a
11 constitutional right to speak. 130 S. Ct. at 892. By not weighing the expressive elements
12 of expenditures, does Alternative A avoid the need for such “intricate case-by-case
13 determinations”?

14 Alternative B – Retain existing regulation at 11 CFR 114.3(c)(4)

15 Alternative B would make no changes to the existing regulation at
16 11 CFR 114.3(c)(4) other than the technical change discussed above. As discussed in
17 Section III.A above, one alternative for revising the Commission’s regulations to comply
18 with the decision in Citizens United would be to specifically exclude expenditures for
19 communications (i.e., “independent expenditures”) from the broader prohibition on
20 expenditures, while still prohibiting corporate and labor organization expenditures such
21 as in-kind contributions, coordinated expenditures, or expenditures that do not involve
22 communications. Like proposed Alternative B for 11 CFR 114.2(b)(2)(i) discussed

1 above, Alternative B for 11 CFR 114.3(c)(4) would also distinguish between speech and
2 non-speech activity.

3 In promulgating the current regulation at 11 CFR 114.3(c)(4), the Commission
4 distinguished between the “‘pure speech’ aspects of the drives [that] may be partisan,”
5 and the non-speech activity aspects of the drives that “‘must be conducted in a nonpartisan
6 manner.’” 1977 E&J at 105 (1977). The Commission’s implementation of the
7 nonpartisan requirement of 2 U.S.C. 441b(b)(2)(B) reflects this distinction between “‘pure
8 speech” and non-speech elements of voter registration and GOTV drives. Because
9 Alternative B takes the approach that Citizens United did not overturn the prohibition on
10 corporate and labor organization disbursements that do not involve political speech in the
11 form of independent expenditures and electioneering communications, under Alternative
12 B the Commission would continue to regulate the non-speech aspects of voter registration
13 and GOTV drives in order to implement 2 U.S.C. 441b. These expenses might include,
14 for example, the driver’s salary, vehicle rental and fuel, and travel, lodging, and food
15 costs in instances where volunteers or workers were brought in from other locations to
16 participate in a voter registration or GOTV drive. These expenses might also include
17 office leasing and other general office costs, as well as child care costs for voter
18 registration and GOTV workers and for voters.

19 In Alternative B, as in Alternative A, a corporation or labor organization would
20 continue to be able to make voter registration or GOTV communications, including
21 express advocacy, to its restricted class under 11 CFR 114.3(c)(4). Furthermore, in
22 Alternative B, as in Alternative A, voter registration and GOTV drives conducted in
23 accordance with proposed 11 CFR 114.3(c)(4) would remain exempt from the definition

1 of “expenditure” under 2 U.S.C. 441b(b)(2)(B). However, Alternative B would maintain
2 the prohibition on withholding or refusing to provide information or other assistance
3 regarding registering or voting based on support for or opposition to particular
4 candidates, or a particular party. Additionally, under Alternative B, corporations and
5 labor organizations would remain prohibited from engaging in non-communicative
6 activities related to voter registration and GOTV drives other than those conducted in
7 accordance with proposed 11 CFR 114.3(c)(4).

8 The Commission also notes the significance of this reporting regime for the
9 Commission’s choice of alternatives for amending section 114.4, discussed below.
10 Corporations and labor organizations are not required to report disbursements associated
11 with qualifying voter registration or GOTV drives, such as driver salaries and the cost of
12 fuel, while persons who file reports with the Commission must report all expenditures for
13 communications (both independent expenditures and electioneering communications).
14 Does the statute implicitly distinguish between communications and voter registration
15 and GOTV drives?

16 The Commission requests comments on this approach. Is Alternative B consistent
17 with the holding in Citizens United? Is it appropriate to interpret Citizens United’s
18 holding as related only to pure speech and therefore not to extend these holdings to these
19 types of non-communicative conduct? Alternatively, do all aspects of voter registration
20 and GOTV drives possess inherently communicative qualities that would prohibit such
21 regulation? The Commission seeks comment on where voter registration and GOTV
22 drives fall on the spectrum ranging from speech to conduct.

1 V. Proposed 11 CFR 114.4 – Disbursements for communications by corporations
2 and labor organizations beyond the restricted class in connection with a Federal election

3 Current 11 CFR 114.4 sets out a number of exceptions to the prohibitions on
4 corporations and labor organizations making expenditures. The regulation permits
5 certain communications and activities directed outside the restricted class, both to
6 employees outside the restricted class and the general public. This section also permits
7 certain communications made to those outside the restricted class to be coordinated, to a
8 limited extent, with candidates. Specifically, section 114.4(b) covers candidate and party
9 appearances on corporate or labor organization premises or at a meeting, convention, or
10 other function that is attended by employees outside the restricted class.

11 Current section 114.4(c) identifies the types of communications that corporations
12 and labor organizations can make to the general public, namely: (1) voter registration and
13 voting communications; (2) official registration and voting information; (3) voting
14 records; (4) voter guides; (5) endorsements; (6) candidate appearances on educational
15 institution premises; and (7) electioneering communications, and the relevant
16 requirements and restrictions that apply to each. The proposed changes to 11 CFR 114.4
17 would eliminate the prohibition on express advocacy communications made outside the
18 restricted class, but would maintain the restrictions on coordination with candidates and
19 political parties in communications outside the restricted class.

20 A. Proposed 11 CFR 114.4(a) – General

21 Current 11 CFR 114.4(a) provides that any communications that a corporation or
22 labor organization makes to the general public may also be made to the restricted class
23 and to its employees outside the restricted class. Paragraph (a) also provides that

1 communications described in section 114.4 may be coordinated with candidates and
2 political committees only to the extent permitted in section 114.4. The Commission is
3 proposing minor changes to the language of paragraph (a) to clarify the meaning of the
4 provisions.

5 B. Proposed 11 CFR 114.4(c) – Communications by a corporation or labor
6 organization to the general public

7 Current 11 CFR 114.4(c) addresses communications by corporations and labor
8 organizations to the general public, and currently includes specific provisions on seven
9 types of communications, listed above, that corporations and labor organizations may
10 make to the general public. Each of the provisions within paragraph (c) prohibits
11 coordinating the communication with a candidate or a candidate’s committee or agent,
12 with the exception of paragraph (c)(7) addressing candidate appearances on incorporated
13 non-profit educational institution premises and paragraph (c)(8) regarding electioneering
14 communications. The Commission proposes to restructure paragraph (c) by adding to
15 paragraph (c)(1) a general prohibition on a corporation or labor organization acting in
16 cooperation, consultation, or concert with or at the request or suggestion of a candidate, a
17 candidate’s committee or agent, or a political party committee or its agent regarding the
18 preparation, contents, and distribution of any of the specific types of communications
19 described at proposed 11 CFR 114.4(c)(2) through (c)(6). This language would replace
20 the separate prohibitions on coordination contained in each of the specific paragraphs at
21 current 11 CFR 114.4(c)(2) through (c)(6). The Commission seeks comment on this
22 approach.

23

1 1. Removal of express advocacy prohibition

2 Proposed 11 CFR 114.4(c)(1) would remove the current language specifically
3 permitting qualified nonprofit corporations (“QNCs”) under 11 CFR 114.10(c) to include
4 express advocacy in any communication made to the general public. See Section VII,
5 below. After Citizens United, all corporations and labor organizations may include
6 express advocacy in any communication made to the general public so long as the
7 communication is not coordinated with candidates or political parties. Hence, this
8 language is now superfluous.

9 Current 11 CFR 114.4(c)(2) through (c)(6) govern several types of
10 communications that corporations and labor organizations may make to the general
11 public and set out the conditions under which corporations and labor organizations may
12 make them. These communications are: voter registration and GOTV communications;
13 official voter registration and voting information; voting records; voter guides; and
14 endorsements. Proposed 11 CFR 114.4(c)(1) would include a reference to proposed
15 11 CFR 114.10 to make clear that corporations and labor organizations are no longer
16 limited to the specific types of communications listed in these paragraphs. Nonetheless,
17 the Commission proposes to retain these paragraphs to provide specific information about
18 some of the types of election-related communications that corporations and labor
19 organizations may make. All five of these paragraphs currently prohibit corporations or
20 labor organizations from expressly advocating the election or defeat of clearly identified
21 candidates in these communications. Proposed 11 CFR 114.4(c)(2) through (6) would
22 eliminate the prohibition on express advocacy contained in each of the current paragraphs

1 when these communications are not coordinated with any candidate or political party.

2 The Commission requests comment on these proposed deletions.

3 2. Proposed 11 CFR 114.4(c)(2) – Voter registration and GOTV
4 communications

5 Current 11 CFR 114.4(c)(2) contains a list of media through which corporations
6 and labor organizations may make voter registration and voting communications to the
7 general public. The list currently includes: posters; billboards; broadcasting media;
8 newspapers; newsletters; brochures; and “similar means of communication with the
9 general public.” 11 CFR 114.4(c)(2). The Commission proposes to add mail, Internet
10 communications, emails, text messages, and telephone calls to the list. These changes are
11 intended to reflect additional common means of political communication. The
12 Commission requests comment on these proposed additions. Are there any other
13 methods of communications that should specifically be included in the list?
14 Alternatively, is a list of media through which corporations and labor organizations may
15 make registration and voting communications to the general public necessary at all or,
16 should the Commission modify the regulation simply to state generically that such
17 communications to the general public are permissible?

18 3. Proposed 11 CFR 114.4(c)(5) – Voter guides

19 Current 11 CFR 114.4(c)(5) sets forth certain requirements for and restrictions on
20 the preparation and distribution of voter guides by corporations and labor organizations to
21 the general public. This provision currently requires that voter guides present the
22 positions of two or more candidates on campaign issues. It further requires that all
23 candidates for a particular seat or office be given an equal opportunity to respond, and

1 prohibits the corporation or labor organization from giving greater prominence to any one
2 candidate or substantially more space for a candidate's responses, and from including an
3 electioneering message in the voter guide or accompanying materials. Paragraph (c)(5)
4 would be revised by eliminating the requirement that the voter guide contain the positions
5 of two or more candidates, or that all candidates for a particular office or seat be
6 permitted to respond. The prohibitions on giving one candidate more prominence or
7 space on electioneering communications would also be removed. The Commission
8 proposes these deletions to conform its voter guide rules to the holding in Citizens United
9 that corporations and labor organizations may expressly advocate the election or defeat of
10 candidates in communications to the general public and may make electioneering
11 communications so long as such communications are not coordinated with candidates.
12 The Commission requests comments on these proposed changes.

13 4. Proposed 11 CFR 114.4(c)(6) – Endorsements

14 Current 11 CFR 114.4(c)(6) permits corporations and labor organization to
15 endorse candidates, and sets out certain requirements and restrictions on such
16 endorsements. Current 11 CFR 114.4(c)(6) permits a corporation or labor organization to
17 communicate the endorsement only to its restricted class through specific types of
18 publications, and prohibits these publications from being distributed to the general public
19 other than at a de minimis level. Current 11 CFR 114.4(c)(6) then sets out the
20 circumstances under which a corporation and labor organization may announce an
21 endorsement to the general public. The Commission proposes to remove these
22 restrictions on the manner of announcing a corporation or labor organization's

1 endorsement of a candidate in proposed 11 CFR 114.4(c)(6) consistent with Citizens
2 United. The Commission requests comments on these proposed deletions.

3 5. Proposed 11 CFR 114.4(c)(8) – Electioneering communications

4 Current 11 CFR 114.4(c)(8) permits corporations and labor organizations to make
5 electioneering communications to the general public only to the extent permitted under
6 current 11 CFR 114.15. Section 114.15 permits corporations and labor organizations to
7 make electioneering communications, unless the communication is susceptible of no
8 reasonable interpretation other than as an appeal to vote for or against a clearly identified
9 Federal candidate. As noted below, the Commission proposes to remove Section 114.15.

10 Current 11 CFR 114.4(c)(8) further permits QNCs to make electioneering
11 communications to the general public in accordance with current 11 CFR 114.10.
12 Section 114.10(d)(2), in turn, permits QNCs to make any electioneering communication.
13 Because Citizens United struck down the prohibition on corporations and labor
14 organizations making electioneering communications, the exception to the prohibition on
15 electioneering communications at 11 CFR 114.4(c)(8) is superfluous. Therefore, the
16 Commission proposes to eliminate current 11 CFR 114.4(c)(8) in its entirety. The
17 Commission seeks comment on this approach.

18 C. Proposed 11 CFR 114.4(d) – Voter registration and GOTV drives

19 Current 11 CFR 114.4(d) permits corporations and labor organizations to conduct
20 voter registration and GOTV drives aimed at the general public. It states that registration
21 and GOTV drives include providing transportation to the place of registration and to the
22 polls. The current provision prohibits such drives from including communications
23 containing express advocacy and states that the drives may not be coordinated with any

1 candidate or political party. The current provision also prohibits corporations or labor
2 organizations (1) from withholding or refusing to give information and other assistance
3 regarding registering or voting on the basis of support for, or opposition to, particular
4 candidates or a particular political party; (2) from directing the drives primarily at
5 individuals based on registration with a particular party; and (3) from paying individuals
6 conducting such drives on the basis of number of individuals registered or transported to
7 the polls who support a particular candidate or candidates or political party.

8 In light of Citizens United, the Commission is proposing two alternatives to revise
9 11 CFR 114.4(d). Both Alternatives A and B would remove the prohibition on
10 communications expressly advocating the election or defeat of candidates or political
11 parties made in connection with a voter registration or GOTV drive. Alternative A,
12 however, as discussed in more detail below, would also remove all of the existing
13 requirements and prohibitions regarding voter registration and GOTV drives, with the
14 exception of the prohibition on coordination with candidates or political parties.

15 Alternative A would maintain the exemption from the definition of “expenditure” under
16 2 U.S.C. 431(9)(B)(ii) and 11 CFR 100.133 for voter registration and GOTV drives that
17 meet the existing requirements and prohibitions. In contrast, as discussed in more detail
18 below, Alternative B would retain current 11 CFR 114.4(d), except that it would remove
19 the prohibition on express advocacy currently at 11 CFR 114.4(d)(1). The Commission
20 invites comment on which, if either, of the two proposals better comports with Citizens
21 United and why.

22

1 Alternative A – Remove all restrictions on voter registration and GOTV drives
2 except for the prohibition on coordinating with candidates and political parties

3 This alternative would remove all the requirements for and restrictions on voter
4 registration and GOTV drives at current 11 CFR 114.4(d)(3) through (6), while retaining
5 the prohibition on coordinating drives with candidates or political parties, currently at
6 11 CFR 114.4(d)(2). As discussed in Sections III.A and IV.E above, one approach to
7 revising the Commission’s regulations to make them consistent with Citizens United
8 would be to eliminate the existing broad prohibition on corporate and labor organization
9 expenditures, and instead prohibit only those expenditures that are coordinated with a
10 candidate or a political party committee, including coordinated communications, or in-
11 kind contributions. Similarly, Alternative A would permit corporations and labor
12 organizations to conduct voter registration and GOTV drives without restriction, as long
13 as they were not coordinated with a candidate or political party.

14 Alternative A, however, would maintain the statutory exemption from the
15 definition of “expenditure” at 2 U.S.C. 431(9)(B)(ii) for voter registration and GOTV
16 drives. Under the Commission’s existing rules, corporations and labor organizations do
17 not have to report to the Commission disbursements for voter registration and GOTV
18 drives that meet the conditions of the statutory exception because such disbursements are
19 neither contributions nor expenditures. While voter registration and GOTV drives are
20 permissible under Alternative A regardless of whether the drives meet the conditions of
21 the statutory exception, corporations or labor organizations conducting drives that meet
22 those conditions are not required to report disbursements for those drives. Proposed
23 Alternative A would state that disbursements for voter registration and GOTV drives are

1 not expenditures if the drive meets the requirements for, and restrictions on, voter
2 registration and GOTV drives that are currently located at 11 CFR 114.4(d)(1) and
3 (3)-(6). These requirements would include the prohibition on express advocacy, as well
4 as the prohibition on withholding or refusing to provide information or other assistance
5 regarding registration or voting on the basis of support for, or opposition to, particular
6 candidates or a particular political party.

7 The Commission requests comment on this proposal. Is this alternative
8 appropriately consistent with Citizens United? Does the proposal eliminate too much or
9 too little in implementing the remaining prohibitions on corporate and labor organization
10 expenditures?

11 Alternative B – Retain existing regulation at 11 CFR 114.4(d) except for the
12 prohibition on express advocacy

13 Alternative B would make no changes to the existing regulation at
14 11 CFR 114.4(d), except to remove the prohibition on corporations and labor
15 organizations making communications expressly advocating the election or defeat of
16 clearly identified candidates currently at 11 CFR 114.4(d)(1). As discussed in Sections
17 III.A and IV.E above, Alternative B would exclude expenditures for communications
18 from the prohibition on expenditures, while still prohibiting other corporate and labor
19 organization expenditures, such as in-kind contributions, coordinated expenditures, and
20 expenditures that are not for communications.

21 After Citizens United, corporations and labor organizations are no longer
22 prohibited from making independent expenditures for communications. Because
23 Alternative B is based on the interpretation that Citizens United did not disturb the

1 prohibition on corporate and labor organization expenditures that do not involve
2 communications, Alternative B would continue to implement the Act’s restrictions on the
3 non-speech aspects of voter registration and GOTV drives, such as the costs associated
4 with driving voters to registration sites or the polls or “providing babysitting services to
5 enable voters to go to the polls.” 1977 E&J at 106. Therefore, under Alternative B, three
6 current prohibitions would remain in effect: (1) directing voter drives at individuals based
7 on party affiliation; (2) withholding or refusing to provide information or other assistance
8 regarding registration or voting on the basis of support for, or opposition to, particular
9 candidates or a particular political party; and (3) paying individuals conducting voter
10 drives based on the number of individuals registered or transported who support a
11 particular candidate or political party. Voter registration and GOTV drives conducted in
12 accordance with proposed Alternative B would remain exempt from the definition of
13 “expenditure” under 2 U.S.C. 431(9)(B)(ii).

14 The current rule at 11 CFR 114.4, like the rule at 114.3, recognizes the distinction
15 between expenditures for communications and for non-communicative activities. Current
16 114.4(c)(2) specifically allows for voter registration or GOTV communications to the
17 general public, provided that the communications do not contain express advocacy, while
18 current 114.4(d), following 2 U.S.C. 441b(b)(2)(B), exempts voter registration and
19 GOTV drives conducted in a nonpartisan manner from the definition of “expenditure.”
20 In Alternative B, as in Alternative A, a corporation or labor organization would be able to
21 make voter registration or GOTV communications, including express advocacy, to the
22 general public under proposed 11 CFR 114.4(c)(2). Furthermore, under both Alternative
23 A and Alternative B, voter registration and GOTV drives conducted in accordance with

1 proposed 11 CFR 114.4(d) would remain exempt from the definition of “expenditure” in
2 2 U.S.C. 441b(b)(2)(B). However, under Alternative B, corporations and labor
3 organizations would continue to be prohibited from engaging in non-communicative
4 activities related to voter registration and GOTV drives other than those conducted in
5 accordance with proposed 11 CFR 114.4(d).

6 The Commission request comments on this proposal. Is this alternative consistent with
7 Citizens United? Does the proposal eliminate too much or too little in implementing the
8 remaining prohibitions on corporate and labor organization expenditures?

9 VI. Proposed 11 CFR 114.9 – Use of corporate and labor organization facilities

10 The use of corporate or labor organization facilities in connection with Federal
11 elections is generally treated as both a contribution and an expenditure under the Act.
12 Section 114.9 establishes certain limited exceptions to this requirement for minimal usage
13 of these facilities by certain individuals, and also requires corporations and labor
14 organization to obtain reimbursement from individuals who use their facilities in
15 connection with Federal elections for more than minimal usage. 1977 E&J at 115; see
16 also Explanation and Justification for Final Rules for Internet Communications, 71 FR
17 18589, 18611 (Apr. 12, 2006); Advisory Opinion 1985-26 (General Mills) (concluding
18 that, under 114.9(c), an employee’s failure to reimburse a corporation for the
19 corporation’s distribution of campaign materials could result in prohibited corporate
20 expenditure). Citizens United invalidated the prohibition on corporate and labor
21 organization independent expenditures at 2 U.S.C. 441b(a). The Citizens United decision
22 did not address the prohibition on contributions by corporations and labor organizations
23 at 2 U.S.C. 441b.

1 The Commission seeks comment on whether 11 CFR 114.9 should be revised in
2 light of the Citizens United decision. If so, how should the Commission revise the
3 regulation? To what extent should 11 CFR 114.9 be revised, if at all, to account for the
4 continued validity of the contribution ban at 2 U.S.C. 441b?

5 VII. Proposed revision of 11 CFR 114.10 – Corporations and labor organizations
6 making independent expenditures and electioneering communications

7 The Commission promulgated 11 CFR 114.10 primarily in response to the
8 Supreme Court’s decision in MCFL v. FEC, 479 U.S. 238 (1986). In MCFL, the Court
9 considered the application of the independent expenditure prohibition in 2 U.S.C. 441b to
10 MCFL, a nonprofit corporation organized to promote certain ideological views. The
11 Court concluded that, because MCFL did not have the potential to corrupt the electoral
12 process, it did not implicate the concerns that prompted regulation of corporations by
13 Congress. See MCFL, 479 U.S. at 259. In response to MCFL, the Commission adopted
14 11 CFR 114.10, creating a regulatory exception to the independent expenditure ban in
15 section 441b for organizations with the same characteristics as MCFL, referred to as
16 “qualified nonprofit corporations” or “QNCs.” After Congress enacted BCRA’s
17 electioneering communications provisions in 2002, the Commission added an exception
18 in 11 CFR 114.10 for QNCs making electioneering communications. Because Citizens
19 United struck down the statutory bans on independent expenditures and electioneering
20 communications for all corporations and labor organizations, the regulatory exceptions
21 for QNCs are now superfluous.

22 To determine if the Commission should revise 11 CFR 114.10, or remove the
23 provision in its entirety, the Commission seeks comments on a proposal to remove

1 current paragraphs (a) through (c) and (e)(1), as these regulations specifically apply only
2 to QNCs. The Commission proposes to redesignate the provision currently at 11 CFR
3 114.10(d) and revise it to recognize explicitly the right of all corporations and labor
4 organizations to make independent expenditures and electioneering communications.
5 The Commission further proposes to retain and redesignate the regulations at 11 CFR
6 114.10(e)(2) through (i), and would expand them to apply to all corporations and labor
7 organizations that make independent expenditures and electioneering communications.
8 These provisions include: (1) the reporting requirements for QNCs making independent
9 expenditures or electioneering communications at 11 CFR 114.10(e); (2) the solicitation
10 disclaimer requirement at 11 CFR 114.10(f); (3) the non-authorization disclaimer
11 requirement at 11 CFR 114.10(g); (4) the provision in 11 CFR 114.10(h) permitting
12 QNCs to establish segregated bank accounts for disbursements for electioneering
13 communications; and (5) 11 CFR 114.10(i), which states that nothing in section 114.10
14 authorizes any organization exempt from taxation under 26 U.S.C. 501(a) to carry out
15 any activity that it is prohibited from undertaking by the Internal Revenue Code. The
16 Commission seeks comment as to whether maintaining any or all of these regulations is
17 necessary or appropriate.

18 A. Proposed 11 CFR 114.10(a) - Independent expenditures and electioneering
19 communications by corporations and labor organizations

20 Current 11 CFR 114.10(d) specifically permits QNCs to make independent
21 expenditures and electioneering communications. Because Citizens United made
22 independent expenditures and electioneering communications permissible for all
23 corporations and labor organizations, proposed 11 CFR 114.10(a) would expand certain

1 provisions of current 11 CFR 114.10(d) to cover all corporations and labor organizations.
2 As discussed above, the Commission seeks comments on whether it would it be helpful
3 for corporations and labor organizations to have a regulation explicitly permitting them to
4 make independent expenditures and electioneering communications. Should the
5 regulation instead more broadly state that corporations and labor organizations may make
6 any communication in connection with an election so long as it is not a coordinated
7 communication under 11 CFR 109.21? Alternatively, would it be sufficient to remove
8 the current prohibitions in 11 CFR 114.2(b)(2) and (b)(3) on corporations and labor
9 organizations making disbursements for independent expenditures and electioneering
10 communications from general treasury funds?

11 B. Proposed 11 CFR 114.10(b) - Reporting independent expenditures and
12 electioneering communications

13 Current 11 CFR 114.10(e)(2) sets forth the reporting requirements for QNCs
14 making independent expenditures and electioneering communications. Proposed
15 11 CFR 114.10(b) would expand this language to include independent expenditures and
16 electioneering communications made by all corporations and labor organizations.
17 Proposed 11 CFR 114.10(b)(1) would state that corporations and labor organizations that
18 make independent expenditures aggregating in excess of \$250 with respect to a given
19 election in a calendar year must file reports according to 11 CFR 104.4(a) and 109.10(b)
20 through (e). Section 104.4(a) requires that “every person that is not a political committee
21 must report independent expenditures in accordance with paragraphs (e) and (f) of this
22 section and 11 CFR 109.10” (emphasis added).

1 Proposed 11 CFR 114.10(b)(2) would state that corporations or labor
2 organizations that make electioneering communications aggregating in excess of \$10,000
3 in a calendar year must file statements as required by 11 CFR 104.20(b). Section
4 104.20(b), in turn, requires that “every person who has made an electioneering
5 communication . . . aggregating in excess of \$10,000 during any calendar year” file a
6 statement on FEC Form 9, disclosing information set out in paragraph (c) of that section
7 (emphasis added). Given that the definition of “person” already covers corporations and
8 labor organizations, is it necessary or helpful to have an additional regulation that
9 specifically states that corporations and labor organizations are subject to these
10 requirements? See 2 U.S.C. 431(11); 11 CFR 100.10.

11 C. Proposed 11 CFR 114.10(c) - Solicitation; disclosure of use of contributions for
12 political purposes

13 Current 11 CFR 114.10(f) requires that solicitations for donations by QNCs
14 disclose to potential donors that their donations may be used for political purposes, such
15 as supporting or opposing candidates.

16 . Proposed 11 CFR 114.10(c) would maintain this requirement, and would
17 expand it to cover solicitations for donations that may be used for political purposes
18 where the solicitations are made by any corporation or labor organization.

19 The requirement at current section 114.10(f) derives from the Supreme Court’s
20 decision in MCFL. Explanation and Justification for Final Rules on Express Advocacy;
21 Independent Expenditures; Corporate and Labor Organization Expenditures, 60 FR
22 35292, 35303 (July 6, 1995). In holding the prohibition on independent expenditures
23 unconstitutional as applied to QNCs, the Supreme Court reasoned that “[t]he rationale for

1 regulation is not compelling with respect to independent expenditures by [MCFL]”
2 because “[i]ndividuals who contribute to appellee are fully aware of its political purposes,
3 and in fact contribute precisely because they support those purposes.” MCFL, 479 U.S.
4 at 260-61. “Given a contributor’s awareness of the political activity of [MCFL], as well
5 as the readily available remedy of refusing further donations, the interest [of] protecting
6 contributors is simply insufficient to support § 441b’s restriction on the independent
7 spending of MCFL.” Id. at 262 (emphasis added).

8 In Citizens United, the Court upheld the disclaimer requirements of
9 2 U.S.C. 441d(d)(2) and the disclosure requirements of 2 U.S.C. 434(f). In analyzing the
10 disclaimer requirements, the Court recognized that “[t]he disclaimers required by
11 [BCRA] § 311 ‘provide the electorate with information,’ McConnell, 540 U.S. at 196,
12 and thereby ‘insure that the voters are fully informed’ about the person or group who is
13 speaking, Buckley, 424 U.S. at 76.” Citizens United, 130 S. Ct. at 915 (additional
14 citation omitted). Regarding disclosure requirements, the Court cited its previous
15 explanation that “disclosure is a less restrictive alternative to more comprehensive
16 regulations of speech.” Id. The Court further recognized that “disclosure permits
17 citizens and shareholders to react to the [political] speech of corporate entities in a proper
18 way. This transparency enables the electorate to make informed decisions and give
19 proper weight to different speakers and messages.” Id. at 916.

20 Although the Supreme Court’s decision in Citizens United to strike down the
21 independent expenditure and electioneering communications ban in section 441b appears
22 to have rendered the QNC exception unnecessary, is the solicitation disclosure
23 requirement in MCFL still important in ensuring that those solicited have the information

1 necessary to make informed decisions about how their donations may be used? The
2 Commission seeks comment as to whether any or all of these proposed regulations are
3 necessary. If the statutory basis for such a requirement remains sound, does language in
4 the Court’s opinion in Citizens United regarding disclosure and disclaimers mean that the
5 Commission may and should continue to have a specific requirement that QNCs provide
6 disclosure to potential donors and contributors? If so, should the rules at current 11 CFR
7 114.10(c) defining “QNC” be retained so that these entities will be apprised of this
8 requirement? Should the Commission establish a broader disclosure requirement so that
9 all corporations and labor organizations must disclose to those they solicit that any
10 money given to the corporation or labor organization may be used for political purposes,
11 such as making communications supporting or opposing candidates? Should the
12 Commission require corporations and labor organizations to state in such disclosures that
13 the funds received may be used specifically for independent expenditures or
14 electioneering communications, as opposed to for “political purposes” generally?

15 Because Citizens United struck down the statutory bans on independent
16 expenditures and electioneering communications for all corporations and labor
17 organizations, is the regulatory requirement that QNC include a solicitation disclaimer
18 now superfluous? Should the Commission remove 11 CFR 114.10(f) in its entirety
19 instead of revising it?

20 D. Proposed 11 CFR 114.10(d) - Non-authorization notice

21 Current 11 CFR 114.10(g) requires that QNCs comply with the disclaimer
22 requirements of 11 CFR 110.11. The Court in Citizens United upheld the disclaimer
23 provisions of 2 U.S.C. 441d. 130 S. Ct. at 914-16. Section 441d(a) requires that certain

1 communications include statements identifying the person who paid for the
2 communication and whether the communication is authorized by any candidate or
3 candidate’s committee, and sets out the requirements for such statements. These
4 communications include all public communications by any person that expressly
5 advocate the election or defeat of a clearly identified candidate, and all electioneering
6 communications by any person. 2 U.S.C. 441d(a). The Act defines “person” to include
7 corporations and labor organizations. 2 U.S.C. 431(11).

8 Section 110.11 implements the requirements of 2 U.S.C. 441d. Because the
9 requirements of 2 U.S.C. 441d and 11 CFR 110.11 apply to public communications
10 containing express advocacy and electioneering communications made by any person, the
11 provision applies equally to corporations and labor organizations. Therefore, if a
12 corporation or labor organization makes an independent expenditure or electioneering
13 communication as permitted after Citizens United, the communication must include a
14 statement identifying, among other things, the name and address of the corporation or
15 labor organization that paid for the communication. Proposed 11 CFR 114.10(d) would
16 follow current 11 CFR 114.10(g), but would expand it to require that all corporations and
17 labor organizations comply with 11 CFR 110.11. Although the requirements at 2 U.S.C.
18 441d and 11 CFR 110.11 already apply to corporations and labor organizations because
19 they are considered “persons” under the Act, should proposed section 114.10(d)
20 explicitly state that all corporations and labor organizations must comply with the
21 requirements of 11 CFR 110.11?

22

1 E. Proposed 11 CFR 114.10(e) - Segregated bank account

2 The Commission proposes a regulation to state affirmatively that a corporation or
3 labor organization may establish a segregated bank account for funds to be used for the
4 making of electioneering communications. This regulation would not affect other
5 restrictions and limitations applicable to those that make electioneering communications.
6 Current 11 CFR 114.10(h) states that a QNC may, but is not required to, establish a
7 segregated bank account into which it deposits only funds donated or otherwise provided
8 by individuals, as described in 11 CFR part 104, and from which it makes disbursements
9 for electioneering communications. Proposed 11 CFR 114.10(e) would adopt this
10 language and expand it to state that all corporations or labor organizations may establish
11 such accounts.¹¹ The current regulation at 11 CFR 114.10(h) implements 2 U.S.C.
12 434(f)(2)(E) and (F), which sets out the reporting requirements for every person making
13 disbursements for electioneering communications paid out of segregated bank accounts.
14 Aside from this reporting requirement, however, the Act does not otherwise affirmatively
15 state that a person may establish such a segregated account. Furthermore,
16 11 CFR 114.10(h) is the only place in the current regulations that affirmatively states that
17 a person may, but is not required to, set up such a segregated bank account, and this
18 regulation is limited to QNCs.

19 The Commission requests comment on the proposed regulation that would
20 affirmatively state that any corporation or labor organization may, but is not required to,
21 set up a segregated bank account for the purpose of making electioneering
22 communications, as described in 2 U.S.C. 434(f)(2)(E). Is such a regulation necessary,

¹¹ This provision applies to corporation and labor organizations but not to political committees, because, by definition, political committees do not make electioneering communications. 2 U.S.C. 434(f)(3); see also 11 CFR 104.20(b).

1 given that the reporting requirements in the Act already contemplate the existence of such
2 a segregated bank account? Should the Commission adopt a broader regulation that
3 would permit, but not require, any person (other than a political committee) to set up such
4 an account? Alternatively, should the Commission require corporations and labor
5 organizations that make independent expenditures and electioneering communications to
6 use a segregated bank account?

7 F. Proposed 11 CFR 114.10(f) - Activities prohibited by the Internal Revenue Code

8 Current 11 CFR 114.10(i) states that nothing in section 114.10 shall be construed
9 to authorize any organization exempt from taxation under 26 U.S.C. 501(a) to carry out
10 any activity that it is prohibited from undertaking by the Internal Revenue Code. The
11 Commission proposes to move this provision to new section 114.10(f). The language
12 referring specifically to QNCs would be removed, for the reasons discussed above. The
13 Commission requests comments on this proposed change.

14 VIII. Proposed removal of 11 CFR 114.14 and 114.15

15 The Commission proposes to remove existing 11 CFR 114.14 and 114.15 in their
16 entirety. Together, these sections prohibit corporations and labor organizations from
17 providing general treasury funds to other persons to make electioneering communications
18 that are the functional equivalent of express advocacy.

19 The Court held in Citizens United that corporations may make electioneering
20 communications. Because 11 CFR 114.14 is a prophylactic regulation designed to
21 prohibit corporations and labor organizations from doing through other persons what the
22 corporation or labor organization could not do directly, the decision in Citizens United
23 could be interpreted to have rendered unnecessary the prohibition in 11 CFR 114.14. The

1 Commission therefore seeks comment on whether it should remove the prohibition in this
2 section.

3 In considering this issue, the Commission notes that section 434(f) of the Act
4 requires that entities making electioneering communications report certain information to
5 the Commission, including the identification of persons who have provided funds to
6 segregated bank accounts for the purpose of making such communications. 2 U.S.C.
7 434(f). The Commission promulgated 11 CFR 104.20(c)(7) to implement this statutory
8 requirement. Explanation and Justification for Final Rules on Bipartisan Campaign
9 Reform Act of 2002 Reporting, 68 FR 404, 413 (Jan. 3, 2003). In doing so, the
10 Commission interpreted the statute to treat funds provided for the purpose of making
11 electioneering communications as “donations,” rather than as “contributions” under the
12 Act. Id. Should this same interpretation of section 434(f) apply to corporate and labor
13 organization funds provided to other persons for the purpose of making electioneering
14 communications? If such funds are donations, they would not violate the prohibition on
15 corporate and labor organization contributions in section 441b(a) of the Act. The
16 Commission seeks comment on whether there should be a distinction drawn between the
17 treatment of funds provided by individuals to other persons for electioneering
18 communications as donations in 11 CFR 104.20(c)(7) and the treatment of funds
19 provided by corporations and labor organizations to other persons for electioneering
20 communications as contributions in 2 U.S.C. 441b(b)(2). If so, why, and if not, why not?

21 In addition to current section 114.14, the Commission seeks comment on the
22 proposed removal of section 114.15, which provides a safe harbor for certain
23 electioneering communications made by corporations and labor organizations. If the

1 prohibition in section 114.14 is removed as proposed, should any portion of section
2 114.15 be retained? Is section 114.15 relevant to any remaining valid Commission
3 regulations, such that they should not be removed? The Commission notes that, if the
4 Commission decides to remove section 114.15, references to this section in other rules
5 will need to be deleted. If the Commission decides to remove section 114.15, should the
6 Commission consider revising other relevant cross-references?

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

8 The Commission certifies that the attached proposed rules, if adopted, would not
9 have a significant economic impact on a substantial number of small entities. There are
10 two bases for this certification. First, there are few small entities that would be affected
11 by these proposed rules. The Commission’s proposed revisions may affect some for-
12 profit corporations, labor organizations, individuals, and some non-profit organizations.
13 Individuals and labor organizations are not “small entities” under 5 U.S.C. 601(6). Many
14 non-profit organizations that might use general treasury funds to make independent
15 expenditures or electioneering communications are not “small organizations” under
16 5 U.S.C. 601(4) because they are not financed by a small identifiable group of
17 individuals, but rather rely on contributions from a large number of individuals to fund
18 operations and activities.

19 Second, the proposed rules would not have a significant economic impact on the
20 small entities affected by this rulemaking. Overall, the proposed rules would relieve a
21 funding restriction that the current rules place on some corporations and labor
22 organizations. The proposed rules would allow small entities to engage in activity they
23 were previously prohibited from funding with corporation or labor organization funds.

1 Thus, while one effect of the proposed rule would be to increase substantially the number
2 of corporations and labor organizations that use general treasury funds to make
3 independent expenditures or electioneering communications, these entities will do so
4 voluntarily and not because of any new Federal requirement to do so. Although they
5 would incur some costs in complying with the obligation to report independent
6 expenditures and electioneering communications, these costs would not be very great and
7 thus would not have a significant economic impact on the small entities affected by this
8 rulemaking. In fact, the obligation for corporations and labor organizations to report
9 electioneering communications should not be burdensome because the trigger to report
10 electioneering communications remains high. Further, because qualified non-profit
11 corporations would continue to be able to make independent expenditures and
12 electioneering communications just as they have done before, their reporting obligations
13 will not change or become more burdensome because of this rulemaking. Therefore, the
14 attached rule would not have a significant economic impact on a substantial number of
15 small entities.

16 **List of Subjects**

17 11 CFR Part 114

18 Business and industry, elections, labor.

19

1 For the reasons set out in the preamble, the Federal Election Commission proposes to
2 amend Subchapter A of Chapter 1 of Title 11 of the Code of Federal Regulations as
3 follows:

4 **PART 114 – CORPORATE AND LABOR ORGANIZATION ACTIVITY (2 U.S.C**
5 **431(8), 431(9), 432, 434, 437d(a)(8), 438(a)(8), and 441b)**

6 1. The authority citation for part 114 continues to read as follows:

7 Authority: 2 U.S.C. 431(8), 431(9), 432, 434, 437d(a)(8), 438(a)(8), 441b.

8 2. In section 114.2, paragraph (b) would be revised to read as follows:

9 **§114.2 Prohibitions on contributions, and expenditures ~~and electioneering~~**
10 **communications.**

11 * * * * *

12 (b) * * *

13 **ALTERNATIVE A for 114.2(b)(2)**

14 (2) ~~Except as provided at 11 CFR 114.10, e~~Corporations and labor
15 organizations are prohibited from:

16 (i) ~~M~~making coordinated expenditures as defined in 11 CFR ~~part 100,~~
17 ~~subpart D-109.20 and coordinated communications as defined in~~
18 ~~11 CFR 109.21;~~ ~~or~~

19 (ii) ~~Making expenditures with respect to a Federal election (as defined~~
20 ~~in 11 CFR 114.1(a)), for communications to those outside the~~
21 ~~restricted class that expressly advocate the election or defeat of one~~
22 ~~or more clearly identified candidate(s) or the candidates of a~~
23 ~~clearly identified political party.~~

1 **ALTERNATIVE B for 114.2(b)(2)**

2 (2) ~~Except as provided at 11 CFR 114.10, eCorporations and labor~~

3 ~~organizations are prohibited from:~~

4 (i) ~~— Making expenditures as defined in 11 CFR part 100, subpart D;~~

5 ~~except for payments for communications that are not coordinated~~

6 ~~communications as defined in 11 CFR 109.21. or~~

7 (ii) ~~— Making expenditures with respect to a Federal election (as defined~~

8 ~~in 11 CFR 114.1(a)), for communications to those outside the~~

9 ~~restricted class that expressly advocate the election or defeat of one~~

10 ~~or more clearly identified candidate(s) or the candidates of a~~

11 ~~clearly identified political party.~~

12 **ALTERNATIVES A and B for 114.2(b)(3)**

13 (3) ~~— Corporations and labor organizations are prohibited from making~~

14 ~~payments for an electioneering communication to those outside the~~

15 ~~restricted class unless permissible under 11 CFR 114.10 or 114.15.~~

16 ~~However, this paragraph (b)(3) shall not apply to State party committees~~

17 ~~and State candidate committees that incorporate under 26 U.S.C.~~

18 ~~527(e)(1), provided that:~~

19 (i) ~~— The committee is not a political committee as defined in 11 CFR~~

20 ~~100.5;~~

21 (ii) ~~— The committee incorporated for liability purposes only;~~

22 (iii) ~~— The committee does not use any funds donated by corporations or~~

23 ~~labor organizations to make electioneering communications; and~~

1 (iv) ~~The committee complies with the reporting requirements for~~
2 ~~electioneering communications at 11 CFR part 104.~~

3 3. In section 114.3, paragraphs (a) and (c) would be revised to read as
4 follows:

5 **§ 114.3 Disbursements for communications to the restricted class in connection with**
6 **a Federal election.**

7 * * * * *

8 **ALTERNATIVE A for 114.3(c)(4)**

9 (4) Registration and get-out-the-vote drives.

10 (i) Voter registration and get-out-the-vote drives permitted. A

11 corporation or a labor organization may conduct registration and
12 get-out-the-vote drives aimed at its restricted class. Registration
13 and get-out-the-vote drives include providing transportation to the
14 place of registration and to the polls. The corporation or labor
15 organization must not act in cooperation, consultation, or concert
16 with or at the request or suggestion of any candidates, candidates'
17 committees or agents, or political party regarding the planning,
18 organization, timing, or administration of a voter registration or
19 get-out-the-vote drive.

20 (ii) Disbursements for certain voter registration and get-out-the-vote
21 drives not expenditures or contributions. Disbursements for voter
22 registration and get-out-the-vote drives are not contributions or
23 expenditures, provided that the drive is conducted so that

1 information and other assistance regarding registering or voting,
2 including transportation and other services offered, shall is not be
3 withheld or refused on the basis of support for or opposition to
4 particular candidates, or a particular political party. See 2 U.S.C.
5 441b(b)(2)(B). Such drives may include communications
6 containing express advocacy, such as urging individuals to register
7 with a particular party or to vote for a particular candidate or
8 candidates. ~~Information and other assistance regarding registering~~
9 ~~or voting, including transportation and other services offered, shall~~
10 ~~not be withheld or refused on the basis of support for or opposition~~
11 ~~to particular candidates, or a particular political party.~~

12 **ALTERNATIVE B for 114.3(c)(4)**

- 13 (4) Registration and get-out-the-vote drives. A corporation or a labor
14 organization may conduct registration and get-out-the-vote drives aimed at
15 its restricted class. Registration and get-out-the-vote drives include
16 providing transportation to the place of registration and to the polls. Such
17 drives may include communications containing express advocacy, such as
18 urging individuals to register with a particular party or to vote for a
19 particular candidate or candidates. Information and other assistance
20 regarding registering or voting, including transportation and other services
21 offered, shall not be withheld or refused on the basis of support for or
22 opposition to particular candidates, or a particular political party.

1 4. Section 114.4 would be amended by revising paragraphs (a), (c)(1), (c)(2),
2 (c)(3)(i), (c)(4), (c)(5), (c)(6) and (d), and by removing paragraphs (c)(3)(iv), (c)(3)(v),
3 (c)(5)(i), (c)(5)(ii), (c)(6)(i), (c)(6)(ii), and (c)(8) to read as follows:

4 **§ 114.4 Disbursements for communications by corporations and labor organizations**
5 **beyond the restricted class in connection with a Federal election.**

6 (a) General. A corporation or labor organization may communicate beyond the
7 restricted class in accordance with this section. ~~Any communications that a corporation~~
8 ~~or labor organization may make to the general public under paragraph (c) of this section,~~
9 ~~and may also be made to the corporation's or labor organization's restricted class and to~~
10 ~~other employees and their families.~~ Communications ~~which~~ that a corporation or labor
11 organization may make only to its employees (including its restricted class) and their
12 families, but not to the general public, are set forth in paragraph (b) of this section. Any
13 communications that a corporation or labor organization may make to the general public
14 are set forth in paragraph (c) of this section, and may also be made to the corporation's or
15 labor organization's restricted class and to other employees and their families.

16 Communications ~~which~~ that a corporation or labor organization may make only to its
17 restricted class are set forth at 11 CFR 114.3. The activities ~~permitted under~~ described in
18 paragraphs (b) and (c) of this section may ~~involve election-related coordination~~ be
19 coordinated with candidates and political committees only to the extent permitted by this
20 section. See 11 CFR 100.16, 109.21, and 114.2(c) regarding independent expenditures
21 and coordination with candidates. Incorporated membership organizations, incorporated
22 trade associations, incorporated cooperatives, and corporations without capital stock will

1 be treated as corporations for the purpose of ~~making communications beyond the~~
2 ~~restricted class under~~ this section.

3 * * * * *

4 (c) Communications by a corporation or labor organization to the general public.

5 (1) General. A corporation or labor organization may make independent
6 expenditures or electioneering communications pursuant to 11 CFR
7 114.10. This section addresses specific ~~the~~ communications, described in
8 paragraphs (c)(2) through (c)(~~5~~7) of this section, a corporation or labor
9 organization may make to the general public. The general public includes
10 anyone who is not in the corporation's or labor organization's restricted
11 class. The corporation or labor organization must not act in cooperation,
12 consultation, or concert with or at the request or suggestion of any
13 candidates, candidates' committees or agents, or political party committee
14 or party committee's agent regarding the preparation, contents and
15 distribution of any of the communications described in paragraphs (2)
16 through (7) below. ~~The provisions of paragraph (c) of this section shall~~
17 ~~not prevent a qualified nonprofit corporation under 11 CFR 114.10(e)~~
18 ~~from including express advocacy in any communication made to the~~
19 ~~general public under paragraphs (c)(2) through (c)(5)(i) of this section.~~

20 (2) Voter registration and get-out-the-vote ~~voting~~ communications. A
21 corporation or labor organization may make voter registration and get-out-
22 the-vote communications to the general public, ~~provided that the~~
23 ~~communications do not expressly advocate the election or defeat of any~~

1 ~~clearly identified candidate(s) or candidates of a clearly identified political~~
2 ~~party. The preparation and distribution or registration and get-out-the-vote~~
3 ~~communications shall not be coordinated with any candidate(s) or political~~
4 ~~party.~~ A corporation or labor organization may make communications
5 permitted under this section paragraph (c)(2) through posters, billboards,
6 broadcasting media, newspapers, newsletter, brochures, mail, Internet
7 communications, emails, text messages, telephone calls, or similar means
8 of communication with the general public.

9 (3) Official registration and voting information.

10 (i) A corporation or labor organization may distribute to the general
11 public, or reprint in whole and distribute to the general public, any
12 registration or voting information, such as instructional materials,
13 ~~which~~ that has been produced by the official election
14 administrators.

15 (ii) A corporation or labor organization may distribute official
16 registration-by-mail forms to the general public. A corporation or
17 labor organization may distribute absentee ballots to the general
18 public if permitted by the applicable State law.

19 (iii) A corporation or labor organization may donate funds to State or
20 local government agencies responsible for the administration of
21 elections to help defray the costs of printing or distributing voter
22 registration or voting information and forms.

1 ~~(iv) — The corporation or labor organization shall not, in connection with~~
2 ~~any such distribution, expressly advocate the election or defeat of~~
3 ~~any clearly identified candidate(s) or candidates of a clearly~~
4 ~~identified political party and shall not encourage registration with~~
5 ~~any particular political party.~~

6 ~~(v) — The reproduction and distribution of registration or voting~~
7 ~~information and forms shall not be coordinated with any~~
8 ~~candidate(s) or political party.~~

9 (4) Voting records. A corporation or labor organization may prepare and
10 distribute to the general public the voting records of Members of
11 Congress, ~~provided that the voting record and all communications~~
12 ~~distributed with it do not expressly advocate the election or defeat of any~~
13 ~~clearly identified candidate, clearly identified group of candidates or~~
14 ~~candidates of a clearly identified political party. The decision on content~~
15 ~~and the distribution of voting records shall not be coordinated with any~~
16 ~~candidate, group of candidates or political party.~~

17 (5) Voter guides. A corporation or labor organization may prepare and
18 distribute to the general public voter guides ~~consisting of two or more~~
19 ~~candidates' positions on campaign issues, including voter guides obtained~~
20 ~~from a nonprofit organization that is described in 26 U.S.C. 501 (c)(3) or~~
21 ~~(c)(4), provided that the voter guides comply with either paragraph~~
22 ~~(c)(5)(i) or (c)(5)(ii) (A) through (E) of this section. The sponsor may~~
23 ~~include in the voter guide biographical information on each candidate,~~

1 such as education, employment positions, offices held, and community
2 involvement.

3 (i) — The corporation or labor organization must not act in cooperation,
4 consultation, or concert with or at the request or suggestion of the
5 candidates, the candidates' committees or agents regarding the
6 preparation, contents and distribution of the voter guide, and no
7 portion of the voter guide may expressly advocate the election or
8 defeat of one or more clearly identified candidate(s) or candidates
9 of any clearly identified political party.

10 (ii) (A) The corporation or labor organization must not act in cooperation,
11 consultation, or concert with or at the request or suggestion of the
12 candidates, the candidates' committees or agents regarding the
13 preparation, contents and distribution of the voter guide;

14 (B) — All of the candidates for a particular seat or office shall be
15 provided an equal opportunity to respond, except that in the
16 case of Presidential and Vice Presidential candidates the
17 corporation or labor organization may choose to direct the
18 questions only to those candidates who —

19 (1) — Are seeking the nomination of a particular political
20 party in a contested primary election; or

21 (2) — Appear on the general election ballot in the state(s)
22 where the voter guide is distributed or appear on the

1 (i) ~~—The public announcement of the endorsement may be made~~
2 ~~through a press release and press conference. Disbursements for~~
3 ~~the press release and press conference shall be de minimis. The~~
4 ~~disbursements shall be considered de minimis if the press release~~
5 ~~and notice of the press conference is distributed only to the~~
6 ~~representatives of the news media that the corporation or labor~~
7 ~~organization customarily contacts when issuing non-political press~~
8 ~~releases or holding press conferences for other purposes.~~

9 (ii) ~~—The public announcement of the endorsement may not be~~
10 ~~coordinated with the candidate, the candidate's agents or the~~
11 ~~candidate's authorized committee(s).~~

12 * * * * *

13 (8) ~~—Electioneering communications. Any corporation or labor organization~~
14 ~~may make electioneering communications to the general public that are~~
15 ~~permissible under 11 CFR 114.15. Qualified nonprofit corporations, as~~
16 ~~defined in 11 CFR 114.10(c), may make electioneering communications in~~
17 ~~accordance with 11 CFR 114.10(d).~~

18 **ALTERNATIVE A for 114.4(d)**

19 (d) Voter registration and get-out-the-vote drives.

20 (1) Voter registration and get-out-the-vote drives permitted. A corporation or
21 labor organization may support or conduct voter registration and get-out-
22 the-vote drives ~~which~~ that are aimed at employees outside its restricted
23 class and the general public ~~in accordance with the conditions set forth in~~

1 paragraphs ~~(d)(1) through (d)(6)~~ of this section. The corporation or labor
2 organization must not act in cooperation, consultation, or concert with or
3 at the request or suggestion of any candidates, candidates' committees or
4 agents, or political party regarding the planning, organization, timing, or
5 administration of a voter registration or get-out-the-vote drive. Voter
6 registration and get-out-the-vote drives include providing transportation to
7 the polls or to the place of registration.

8 (2) Disbursements for certain voter registration and get-out-the-vote drives
9 not expenditures. Voter registration or get-out-the-vote drives that are
10 conducted in accordance with paragraphs (d)(2)(i) through (d)(2)(v) of this
11 section are not expenditures.

12 ~~(1)(i)~~ The corporation or labor organization shall not make any
13 communication expressly advocating the election or defeat of any
14 clearly identified candidate(s) or candidates of a clearly identified
15 political party as part of the voter registration or get-out-the-vote
16 drive.

17 ~~(2) The registration or get-out-the-vote drive shall not be~~
18 ~~coordinated with any candidate(s) or political party.~~

19 ~~(i)3~~ The voter registration drive shall not be directed primarily to
20 individuals previously registered with, or intending to register
21 with, the political party favored by the corporation or labor
22 organization. The get-out-the-vote drive shall not be directed

1 primarily to individuals currently registered with the political party
2 favored by the corporation or labor organization.

3 (iii)4) These services shall be made available without regard to the
4 voter's political preference. Information and other assistance
5 regarding registering or voting, including transportation and other
6 services offered, shall not be withheld or refused on the basis of
7 support for or opposition to particular candidates or a particular
8 political party.

9 (iv)5) Individuals conducting the voter registration or get-out-the-vote
10 drive shall not be paid on the basis of the number of individuals
11 registered or transported who support one or more particular
12 candidates or political party.

13 (v)6) The corporation or labor organization shall notify those receiving
14 information or assistance of the requirements of paragraph (d)(4)
15 of this section. The notification shall be made in writing at the
16 time of the registration or get-out-the-vote drive.

17 **ALTERNATIVE B for 114.4(d)**

18 (d) Voter registration and get-out-the-vote drives. A corporation or labor
19 organization may support or conduct voter registration and get-out-the-vote drives ~~which~~
20 that are aimed at employees outside its restricted class and the general public in
21 accordance with the conditions set forth in paragraphs (d)(1) through (d)(~~6~~ 5) of this
22 section. Voter registration and get-out-the-vote drives include providing transportation to
23 the polls or to the place of registration.

1 ~~(1) The corporation or labor organization shall not make any communication~~
2 ~~expressly advocating the election or defeat of any clearly identified~~
3 ~~candidate(s) or candidates of a clearly identified political party as part of~~
4 ~~the voter registration or get-out-the-vote drive.~~

5 (21) ~~The registration or get-out-the-vote drive shall not be coordinated with any~~
6 ~~candidate(s) or political party. The corporation or labor organization must~~
7 ~~not act in cooperation, consultation, or concert with or at the request or~~
8 ~~suggestion of any candidates, candidates' committees or agents, or~~
9 ~~political party regarding the planning, organization, timing, or~~
10 ~~administration of a voter registration or get-out-the-vote drive.~~

11 (32) The voter registration drive shall not be directed primarily to individuals
12 previously registered with, or intending to register with, the political party
13 favored by the corporation or labor organization. The get-out-the-vote
14 drive shall not be directed primarily to individuals currently registered
15 with the political party favored by the corporation or labor organization.

16 (43) These services shall be made available without regard to the voter's
17 political preference. Information and other assistance regarding
18 registering or voting, including transportation and other services offered,
19 shall not be withheld or refused on the basis of support for or opposition to
20 particular candidates or a particular political party.

21 (54) Individuals conducting the voter registration or get-out-the-vote drive shall
22 not be paid on the basis of the number of individuals registered or

1 transported who support one or more particular candidates or political
2 party.

3 (65) The corporation or labor organization shall notify those receiving
4 information or assistance of the requirements of paragraph (d)(43) of this
5 section. The notification shall be made in writing at the time of the
6 registration or get-out-the-vote drive.

7 5. Section 114.10 would be amended by revising paragraphs (d), (e)(2), and (f)
8 through (i), removing paragraphs (a), (b), (c), and (e)(1), and redesignating paragraph (d)
9 as (a), (e)(2)(i) as (b)(1), (e)(2)(ii) as (b)(2), and (f) through (i) as (c) through (f) to read
10 as follows:

11 **§ 114.10 Nonprofit corporations exempt from the prohibitions on Corporations and**
12 **labor organizations making independent expenditures and electioneering**
13 **communications.**

14 (a) — Scope. This section describes those nonprofit corporations that qualify for an
15 exemption in 11 CFR 114.2. It sets out the procedures for demonstrating qualified
16 nonprofit corporation status, for reporting independent expenditures and electioneering
17 communications, and for disclosing the potential use of donations for political purposes.

18 (b) — Definitions. For the purposes of this section —

19 (1) — The promotion of political ideas includes issue advocacy, election
20 influencing activity, and research, training or educational activity that is
21 expressly tied to the organization's political goals.

22 (2) — A corporation's express purpose includes:

1 (i) ~~The corporation's purpose as stated in its charter, articles of~~
2 ~~incorporation, or bylaws, except that a statement such as "any~~
3 ~~lawful purpose," "any lawful activity," or other comparable~~
4 ~~statement will not preclude a finding under paragraph (c) of this~~
5 ~~section that the corporation's only express purpose is the~~
6 ~~promotion of political ideas;~~

7 (ii) ~~The corporation's purpose as publicly stated by the corporation or~~
8 ~~its agents; and~~

9 (iii) ~~Purposes evidenced by activities in which the corporation actually~~
10 ~~engages.~~

11 (3)(i) ~~The term business activities includes but is not limited to:~~

12 (A) ~~Any provision of goods or services that results in income to~~
13 ~~the corporation; and~~

14 (B) ~~Advertising or promotional activity which results in income~~
15 ~~to the corporation, other than in the form of membership~~
16 ~~dues or donations.~~

17 (ii) ~~The term business activities does not include fundraising activities~~
18 ~~that are expressly described as requests for donations that may be~~
19 ~~used for political purposes, such as supporting or opposing~~
20 ~~candidates.~~

21 (4) ~~The term shareholder has the same meaning as the term stockholder, as~~
22 ~~defined in 11 CFR 114.1(h).~~

1 ~~(c) — Qualified nonprofit corporations. For the purposes of this section, a qualified~~
2 ~~nonprofit corporation is a corporation that has all the characteristics set forth in~~
3 ~~paragraphs (c)(1) through (c)(5) of this section:~~

4 ~~(1) — Its only express purpose is the promotion of political ideas, as defined in~~
5 ~~paragraph (b)(1) of this section;~~

6 ~~(2) — It cannot engage in business activities~~

7 ~~(3) — It has:~~

8 ~~(i) — No shareholders or other persons, other than employees and~~
9 ~~creditors with no ownership interest, affiliated in any way that~~
10 ~~could allow them to make a claim on the organization's assets or~~
11 ~~earnings; and~~

12 ~~(ii) — No persons who are offered or who receive any benefit that is a~~
13 ~~disincentive for them to disassociate themselves with the~~
14 ~~corporation on the basis of the corporation's position on a political~~
15 ~~issue. Such benefits include but are not limited to:~~

16 ~~(A) — Credit cards, insurance policies or savings plans; and~~

17 ~~(B) — Training, education, or business information, other than~~

18 ~~that which is necessary to enable recipients to engage in the~~
19 ~~promotion of the group's political ideas.~~

20 ~~(4) — It:~~

21 ~~(i) — Was not established by a business corporation or labor~~
22 ~~organization;~~

1 (ii) — Does not directly or indirectly accept donations of anything of
2 value from business corporations, or labor organizations; and

3 (iii) — If unable, for good cause, to demonstrate through accounting
4 records that paragraph (c)(4)(ii) of this section is satisfied, has a
5 written policy against accepting donations from business
6 corporations or labor organizations; and

7 (5) — It is described in 26 U.S.C. 501(e)(4).

8 (da) ~~Permitted corporate independent expenditures and electioneering communications~~

9 General. (1) ~~A qualified nonprofit corporation~~ Corporations and labor organizations

10 may make independent expenditures, as defined in 11 CFR 100.16, and electioneering

11 communications, as defined in 11 CFR 100.29 ~~without violating the prohibitions against~~

12 ~~corporation expenditures contained in 11 CFR part 114.~~

13 (2) — ~~A qualified nonprofit corporation may make electioneering~~

14 ~~communications, as defined in 11 CFR 100.29, without violating the~~

15 ~~prohibitions against corporate expenditures contained in 11 CFR part 114.~~

16 (3) — ~~Except as provided in paragraphs (d)(1) and (d)(2) of this section,~~

17 ~~qualified nonprofit corporations remain subject to the requirements and~~

18 ~~limitations of 11 CFR part 114, including those provisions prohibiting~~

19 ~~corporate contributions, whether monetary or in-kind.~~

20 (e) ~~Qualified nonprofit corporations; reporting requirements~~ (1) Procedures for

21 demonstrating qualified nonprofit corporation status. (i) ~~If a corporation makes~~

22 ~~independent expenditures under paragraph (d)(1) of this section that aggregate in excess~~

23 ~~of \$250 in a calendar year, the corporation shall certify, in accordance with paragraph~~

1 ~~(e)(1)(i)(B) of this section, that it is eligible for an exemption from the prohibitions~~
2 ~~against corporate expenditures contained in 11 CFR part 114.~~

3 ~~(A) — This certification is due no later than the due date of the~~
4 ~~first independent expenditures report required under~~
5 ~~paragraph (e)(2)(i) of this section.~~

6 ~~(B) — This certification may be made either as part of filing FEC~~
7 ~~Form 5 (independent expenditure form) or, if the~~
8 ~~corporation is not required to file electronically under 11~~
9 ~~CFR 104.18, by submitting a letter in lieu of the form. The~~
10 ~~letter shall contain the name and address of the corporation~~
11 ~~and the signature and printed name of the individual filing~~
12 ~~the qualifying statement. The letter shall also certify that~~
13 ~~the corporation has the characteristics set forth in~~
14 ~~paragraphs (e)(1) through (e)(5) of this section. A~~
15 ~~corporation that does not have all of the characteristics set~~
16 ~~forth in paragraphs (e)(1) through (e)(5) of this section, but~~
17 ~~has nonetheless been deemed entitled to qualified nonprofit~~
18 ~~corporation status by a court of competent jurisdiction in a~~
19 ~~case in which the same corporation was a party, may certify~~
20 ~~that application of the court's ruling to the corporation's~~
21 ~~activities in a subsequent year entitles the corporation to~~
22 ~~qualified nonprofit corporation status. Such certification~~

1 shall be included in the letter submitted in lieu of the FEC
2 form.

3 (ii) ~~If a corporation makes electioneering communications under~~
4 ~~paragraph (d)(2) of this section that aggregate in excess of \$10,000~~
5 ~~in a calendar year, the corporation shall certify, in accordance with~~
6 ~~paragraph (e)(1)(ii)(B) of this section, that it is eligible for an~~
7 ~~exemption from the prohibitions against corporate expenditures~~
8 ~~contained in 11 CFR part 114.~~

9 (A) ~~This certification is due no later than the due date of the~~
10 ~~first electioneering communication statement required~~
11 ~~under paragraph (e)(2)(ii) of this section.~~

12 (B) ~~This certification must be made as part of filing FEC Form~~
13 ~~9 (electioneering communication form).~~

14 (2b) Reporting independent expenditures and electioneering communications.

15 (i1) ~~Qualified nonprofit corporations~~ Corporations and labor
16 organizations that make independent expenditures aggregating in excess of
17 \$250 with respect to a given election in a calendar year shall file reports as
18 required by 11 CFR ~~part 114~~ 104.4(a) and 109.10(b) – (e).

19 (ii2) ~~Qualified nonprofit corporations~~ Corporations and labor
20 organizations that make electioneering communications
21 aggregating in excess of \$10,000 in a calendar year shall file the
22 statements required by 11 CFR 104.20(b).

1 (fc) Solicitation; disclosure of use of contributions for political purposes. Whenever
2 a ~~qualified nonprofit~~ corporation or labor organization solicits donations; that may be
3 used for political purposes, the solicitation shall inform potential donors that their
4 donations may be used for political purposes, such as supporting or opposing candidates.

5 (gd) Non-authorization notice. ~~Qualified nonprofit corporations~~ Corporations or labor
6 organizations making independent expenditures or electioneering communications ~~under~~
7 ~~this section~~ shall comply with the requirements of 11 CFR 110.11.

8 (he) Segregated bank account. A ~~qualified nonprofit~~ corporation or labor organization
9 may, but is not required to, establish a segregated bank account into which it deposits
10 only funds donated or otherwise provided by individuals, as described in 11 CFR part
11 104, from which it makes disbursements for electioneering communications.

12 (if) Activities prohibited by the Internal Revenue Code. Nothing in this section shall
13 be construed to authorize any organization exempt from taxation under 26 U.S.C. 501(a)
14 to carry out any activity that it is prohibited from undertaking by the Internal Revenue
15 Code, 26 U.S.C. 501, et seq.

16

1 6. Section 114.14 would be removed and reserved.

2 **§ 114.14 [Removed and reserved].**

3 7. Section 114.15 would be removed and reserved.

4 **§ 114.15 [Removed and reserved].**

5

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On behalf of the Commission,

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9

Cynthia L. Bauerly
Chair
Federal Election Commission

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15 DATED: _____

16 BILLING CODE: 6715-01-P

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