

tax-exempt organizations, see 300.65. 109.21(g)(1) and (2).

In-kind Contribution vs. Party Coordinated Expenditure

Party coordinated communications must be treated by the party committee as either an in-kind contribution to the candidate or as a coordinated party expenditure to the general election campaign of the candidate. 109.37(b). See page 44.

2. Communications Coordinated with a Party Committee

In addition to the rules regarding “party coordinated communications” discussed above, there are also rules governing communications that are paid for by an outside group or individual and are coordinated with a party committee. If these communications meet the three-pronged test for coordination, then the payment for the communication is an in-kind contribution to the party committee. 109.21(a).

Determining Coordination

Communications that are coordinated with a party committee satisfy a similar three-pronged test for coordination. However, there are three important differences. First, the communication is paid for in whole or in part by a person other than the political party committee. 109.21(a)(1). Second, electioneering communications satisfy the content prong. 109.21(c)(1). Third, the content prong includes a standard that addresses references to political parties. If the public communication refers to a political party, does not refer to a clearly identified federal candidate and is publicly distributed or otherwise publicly disseminated in a jurisdiction where one or more candidates of that political party will appear on the ballot, then the content standard for a communication that is coordinated with a party committee will be met. 109.21(c)(4)(iii).

3. Independent Expenditures

Party committees may support (or oppose) candidates by making independent expenditures. Independent expenditures are not contributions and are not subject to contribution limits. (However, contributions made to a committee or to another person making independent expenditures are subject to limits, as explained at the end of this section.)

Independent expenditures must be paid for with federally permissible funds.

Defined

An independent expenditure is an expenditure for a communication, such as a website, newspaper, TV or direct mail advertisement, that:

- Expressly advocates the election or defeat of a clearly identified federal candidate; and
- Is not coordinated with a candidate, candidate’s committee, party committee or their agents. (See above.) 100.16(a).

Clearly Identified Candidate

A candidate is “clearly identified” if the candidate’s name, nickname or image appears, or the identity of the candidate is otherwise apparent. Examples include: “the President,” “your Congressman,” “the Democratic Presidential nominee,” “the Republican candidate for Senate in the State of Georgia.” 100.17.

Express Advocacy

“Express advocacy” means that the communication includes a message that unmistakably urges election or defeat of one or more clearly identified candidate(s). There are two ways that a communication can be considered express advocacy: by use of certain explicit words of advocacy of election or defeat and by the “only reasonable interpretation” test. 100.22.

Explicit words of advocacy of election or defeat

The following words are examples of those that convey a message of express advocacy (see 100.22(a) for more examples):

- “Vote for the President,” “re-elect your Congressman,” “support the Democratic nominee,” “cast your ballot for the Republican challenger for the U.S. Senate in Georgia,” “Smith for Congress,” “Bill McKay in ‘08”;

- Words urging action with respect to candidates associated with a particular issue, e.g., “vote Pro-Life”/ “vote Pro-Choice,” when accompanied by names or photographs of candidates identified as either supporting or opposing the issue;
- “Defeat” accompanied by a photograph of the opposed candidate, the opposed candidate’s name or “reject the incumbent”; and
- Campaign slogan(s) or word(s), e.g., on posters, bumper stickers and advertisements, that in context can have no other reasonable meaning than to support or oppose a clearly identified candidate, for example, “Nixon’s the One,” “Carter ’76,” “Reagan/Bush.” 100.22(a).

“Only Reasonable Interpretation” Test

In the absence of such explicit words of advocacy of election or defeat, express advocacy (candidate advocacy) is found in a communication that, when taken as a whole and with limited reference to external events, such as the proximity to the election, can only be interpreted by a “reasonable person” as advocating the election or defeat of one or more clearly identified candidate(s). 100.22(b)(1) and (2).

This test requires advocacy of a candidate that is unmistakable, unambiguous and suggestive of only one meaning (that being the election or defeat of a candidate). 100.22(b)(1).

Note that the author’s intent is irrelevant. The test is how a “reasonable” receiver of the communication objectively interprets the message. If reasonable minds could not differ as to the unambiguous electoral advocacy of the communication, it is express advocacy (candidate advocacy) regardless of what the author intended. 100.22(b)(2).

Disclaimer Notice Required

A communication representing an independent expenditure must display a disclaimer notice. See “Disclaimers” section later in this chapter for more information.

Allocation Among Candidates

When an independent expenditure is made on behalf of more than one clearly identified candidate, the committee must allocate the expenditure among the candidates in proportion to the benefit that each is expected to receive. For example, in the case of a published or broadcast communication, the attribution should be determined by the

proportion of space or time devoted to each candidate in comparison with the total space or time devoted to all the candidates. 106.1(a).

Reporting Requirements

A party committee must report all independent expenditures. Reporting requirements are explained on page 87.

Contributing to Committees That Make Independent Expenditures

A contribution by a party committee to a committee that makes independent expenditures is subject to the \$5,000 per calendar year limit. 110.2(d).

Contributions to a candidate or his authorized committee and to a political committee that supports or anticipates supporting that candidate in the same election, however, are subject to the committee’s per candidate, per election limit. 110.2(h).

4. Communications that are Federal Election Activity

Certain activities are restricted under the Act when they qualify as federal election activity (FEA). The restrictions include certain communications.

A public communication that refers to a clearly identified candidate for federal office and that promotes, attacks, supports or opposes any candidate for federal office is FEA. The communication does not need to expressly advocate the election or defeat of the federal candidate to qualify as federal election activity. FEA requires specific payment methods.

For further information on all types of federal election activity, see Chapter 8.

5. Electioneering Communications

An electioneering communication is any broadcast, cable or satellite communication that 1) refers to a clearly identified federal candidate, 2) is publicly distributed within 60 days of a general election or 30 days of a primary and 3) in the case of House