

## Federal Election Commission

## § 114.2

CFR 100.5 (g)(2), (3) and (4) shall be used to determine whether entities are affiliated for purposes of this paragraph.

(6) The status of a membership organization, and of members, for purposes of this part, shall be determined pursuant to paragraph (e)(1) of this section and not by provisions of state law governing trade associations, cooperatives, corporations without capital stock, or labor organizations.

(f) *Method of facilitating the making of contributions* means the manner in which the contributions are received or collected such as, but not limited to, payroll deduction or checkoff systems, other periodic payment plans, or return envelopes enclosed in a solicitation request.

(g) *Method of soliciting voluntary contributions* means the manner in which the solicitation is undertaken including, but not limited to, mailings, oral requests for contributions, and hand distribution of pamphlets.

(h) *Stockholder* means a person who has a vested beneficial interest in stock, has the power to direct how that stock shall be voted, if it is voting stock, and has the right to receive dividends.

(i) *Voluntary contributions* are contributions which have been obtained by the separate segregated fund of a corporation or labor organization in a manner which is in compliance with § 114.5(a) and which is in accordance with other provisions of the Act.

(j) *Restricted class.* A corporation's restricted class is its stockholders and executive or administrative personnel, and their families, and the executive and administrative personnel of its subsidiaries, branches, divisions, and departments and their families. A labor organization's restricted class is its members and executive or administrative personnel, and their families. For communications under 11 CFR 114.3, the restricted class of an incorporated membership organization, incorporated trade association, incorporated cooperative or corporation without capital stock is its members and executive or administrative personnel, and their families. (The solicitable class of a membership organization, cooperative, corporation without capital stock or trade association, as described in 11

CFR 114.7 and 114.8, may include some persons who are not considered part of the organization's restricted class, and may exclude some persons who are in the restricted class.)

(52 U.S.C. 30101(8)(B)(iii), 30102(c)(3), 30107(a)(8), 30111(a)(8), 30118)

[41 FR 35955, Aug. 25, 1976, as amended at 44 FR 63045, Nov. 1, 1979; 45 FR 15125, Mar. 7, 1980; 45 FR 21210, Apr. 1, 1980; 48 FR 50508, Nov. 2, 1983; 57 FR 1640, Jan. 15, 1992; 58 FR 45775, Aug. 30, 1993; 59 FR 33615, June 29, 1994; 60 FR 64273, Dec. 14, 1995; 64 FR 41273, July 30, 1999; 67 FR 49120, July 29, 2002; 67 FR 78681, Dec. 26, 2002; 79 FR 77849, Dec. 29, 2014; 80 FR 62817, Oct. 21, 2014]

### § 114.2 Prohibitions on contributions, expenditures and electioneering communications.

(a) National banks and corporations organized by authority of any law of Congress are prohibited from making a contribution, as defined in 11 CFR 114.1(a), in connection with any election to any political office, including local, State and Federal offices, or in connection with any primary election or political convention or caucus held to select candidates for any political office, including any local, State or Federal office. National banks and corporations organized by authority of any law of Congress are prohibited from making expenditures as defined in 11 CFR 114.1(a) for communications to those outside the restricted class expressly advocating the election or defeat of one or more clearly identified candidate(s) or the candidates of a clearly identified political party, with respect to an election to any political office, including any local, State, or Federal office.

(1) Such national banks and corporations may engage in the activities permitted by 11 CFR part 114, except to the extent that such activity constitutes a contribution, expenditure, or electioneering communication or is foreclosed by provisions of law other than the Act.

(2) The provisions of 11 CFR part 114 apply to the activities of a national bank, or a corporation organized by any law of Congress, in connection with local, State and Federal elections.

(b) Any corporation whatever or any labor organization is prohibited from making a contribution as defined in 11

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CFR part 100, subpart B. Any corporation whatever or any labor organization is prohibited from making a contribution as defined in 11 CFR 114.1(a) in connection with any Federal election.

NOTE TO PARAGRAPH (b): Pursuant to *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc), and *Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011), corporations and labor organizations may make contributions to nonconnected political committees that make only independent expenditures, or to separate accounts maintained by nonconnected political committees for making only independent expenditures, notwithstanding 11 CFR 114.2(b) and 11 CFR 114.10(a). The Commission has not conducted a rulemaking in response to these cases.

(c) Disbursements by corporations and labor organizations for the election-related activities described in 11 CFR 114.3 and 114.4 will not cause those activities to be contributions when coordinated with any candidate, candidate's agent, candidate's authorized committee(s) or any party committee to the extent permitted in those sections. Coordination beyond that described in 11 CFR 114.3 and 114.4 shall not cause subsequent activities directed at the restricted class to be considered contributions. However, such coordination may be considered evidence that could negate the independence of subsequent communications to those outside the restricted class by the corporation, labor organization or its separate segregated fund, and could result in an in-kind contribution. See 11 CFR 100.16 regarding independent expenditures and coordination with candidates.

(d) A candidate, political committee, or other person is prohibited from knowingly accepting or receiving any contribution prohibited by this section.

(e) No officer or director of any corporation or any national bank, and no officer of any labor organization shall consent to any contribution or expenditure by the corporation, national bank, or labor organization prohibited by this section.

(f) *Facilitating the making of contributions.* (1) Corporations and labor organizations (including officers, directors or other representatives acting as agents of corporations and labor organizations) are prohibited from facilitating

the making of contributions to candidates or political committees, other than to the separate segregated funds of the corporations and labor organizations. Facilitation means using corporate or labor organization resources or facilities to engage in fundraising activities in connection with any federal election, such as activities which go beyond the limited exemptions set forth in 11 CFR part 100, subparts B and C, part 100, subparts D and E, 114.9(a) through (c) and 114.13. A corporation does not facilitate the making of a contribution to a candidate or political committee if it provides goods or services in the ordinary course of its business as a commercial vendor in accordance with 11 CFR part 116 at the usual and normal charge.

(2) Examples of facilitating the making of contributions include but are not limited to—

(i) Fundraising activities by corporations (except commercial vendors) or labor organizations that involve—

(A) Officials or employees of the corporation or labor organization ordering or directing subordinates or support staff (who therefore are not acting as volunteers) to plan, organize or carry out the fundraising project as a part of their work responsibilities using corporate or labor organization resources, unless the corporation or labor organization receives advance payment for the fair market value of such services;

(B) Failure to reimburse a corporation or labor organization within a commercially reasonable time for the use of corporate facilities described in 11 CFR 114.9(d) in connection with such fundraising activities;

(C) Using a corporate or labor organization list of customers, clients, vendors or others who are not in the restricted class to solicit contributions or distribute invitations to the fundraiser, unless the corporation or labor organization receives advance payment for the fair market value of the list;

(D) Using meeting rooms that are not customarily made available to clubs, civic or community organizations or other groups; or

(E) Providing catering or other food services operated or obtained by the

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corporation or labor organization, unless the corporation or labor organization receives advance payment for the fair market value of the services;

(ii) Providing materials for the purpose of transmitting or delivering contributions, such as stamps, envelopes addressed to a candidate or political committee other than the corporation's or labor organization's separate segregated fund, or other similar items which would assist in transmitting or delivering contributions, but not including providing the address of the candidate or political committee;

(iii) Soliciting contributions earmarked for a candidate that are to be collected and forwarded by the corporation's or labor organization's separate segregated fund, except to the extent such contributions also are treated as contributions to and by the separate segregated fund; or

(iv) Using coercion, such as the threat of a detrimental job action, the threat of any other financial reprisal, or the threat of force, to urge any individual to make a contribution or engage in fundraising activities on behalf of a candidate or political committee.

(3) Facilitating the making of contributions does not include the following activities if conducted by a separate segregated fund—

(i) Any activity specifically permitted under 11 CFR 110.1, 110.2, or 114.5 through 114.8, including soliciting contributions to a candidate or political committee, and making in kind contributions to a candidate or political committee; and

(ii) Collecting and forwarding contributions earmarked to a candidate in accordance with 11 CFR 110.6.

(4) Facilitating the making of contributions also does not include the following activities if conducted by a corporation or labor organization—

(i) Enrolling members of a corporation's or labor organization's restricted class in a payroll deduction plan or check-off system which deducts contributions from dividend or payroll checks to make contributions to the corporation's or labor organization's separate segregated fund or an employee participation plan pursuant to 11 CFR 114.11;

(ii) Soliciting contributions to be sent directly to candidates if the solicitation is directed to the restricted class, *see* 11 CFR 114.1(a)(2)(i); and

(iii) Soliciting contributions earmarked for a candidate that are to be collected and forwarded by the corporation's or labor organization's separate segregated fund, to the extent such contributions also are treated as contributions to and by the separate segregated fund.

(5) Facilitating the making of contributions also does not include the provision of incidental services by a corporation to collect and forward contributions from its employee stockholders and executive and administrative personnel to the separate segregated fund of a trade association of which the corporation is a member, including collection through a payroll deduction or check-off system, pursuant to 11 CFR 114.8(e)(4).

[60 FR 64274, Dec. 14, 1995, as amended at 67 FR 65211, Oct. 23, 2002; 67 FR 78681, Dec. 26, 2002; 70 FR 41944, July 21, 2005; 72 FR 72913, Dec. 26, 2007; 79 FR 62817, Oct. 21, 2014; 81 FR 34864, June 1, 2016]

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

(a) *General.* (1) Corporations and labor organizations may make communications on any subject, including communications containing express advocacy, to their restricted class or any part of that class. Corporations and labor organizations may also make the communications permitted under 11 CFR 114.4 to their restricted class or any part of that class. The activities permitted under this section may involve election-related coordination with candidates and political committees. *See* 11 CFR 100.16 and 114.2(c) regarding independent expenditures and coordination with candidates.

(2) Incorporated membership organizations, incorporated trade associations, incorporated cooperatives and corporations without capital stock may make communications to their restricted class, or any part of that class as permitted in paragraphs (a)(1) and (c) of this section.

(b) *Reporting communications containing express advocacy to the restricted*