

FEDERAL ELECTION COMMISSION**11 CFR Parts 100, 102, 109, 110, and 114**

[Notice 1995-23]

Corporate and Labor Organization Activity; Express Advocacy and Coordination With Candidates**AGENCY:** Federal Election Commission.**ACTION:** Final rule and transmittal of regulations to Congress.

SUMMARY: The Commission is issuing revised regulations regarding expenditures by corporations and labor organizations. The new rules implement the Supreme Court's opinion in *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) (*MCFL*), by substituting an express advocacy standard for the previous partisan/nonpartisan standard with respect to corporate and labor organization expenditures. Consequently, in many respects, the revised rules permit corporations and labor organizations to engage in a broader range of activities than was permitted under the previous rules. New provisions are also being added to provide corporations and labor organizations with guidance regarding endorsements of candidates, activities which facilitate the making of contributions, and candidate appearances at colleges and universities.

DATES: Further action, including the publication of a document in the Federal Register announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d).

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rosemary C. Smith, Senior Attorney, 999 E Street NW., Washington, D.C. 20463, (202) 219-3690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations at 11 CFR 109.1(b)(4), 110.12, 110.13, 114.1 (a) and (j), 114.2, 114.3, 114.4, 114.12(b) and 114.13. These provisions implement 2 U.S.C. 431(17) and 441b, provisions of the Federal Election Campaign Act of 1971, as amended (the Act or FECA), 2 U.S.C. 431 *et seq.* Also included are conforming amendments to 11 CFR 100.7(b)(21), 100.8 (b)(3) and (b)(23) and 102.4(c)(1). Section 438(d) of Title 2, United States Code, requires that any rule or regulations prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be

transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on December 8, 1995.

Explanation and Justification

The new and revised rules reflect recent judicial and Commission interpretations of 2 U.S.C. 441b. This section of the FECA prohibits corporations and labor organizations from using general treasury monies to make contributions or expenditures in connection with federal elections. The new and amended rules contain the following changes:

1. The partisan/nonpartisan standards in previous 11 CFR part 114 have been replaced by new language at section 114.2, 114.3, and 114.4, prohibiting corporations and labor organizations from making expenditures for communications to the general public expressly advocating the election or defeat of federal candidates. This new language applies only to expenditures.

2. The provisions regarding candidate debates, candidate appearances, distributing registration and voting information, voter guides, voting records, and conducting voter registration and get-out-vote drives in sections 110.13, 114.3, 114.4 and 114.13 have been revised and updated.

3. New provisions have been added to sections 110.12, 114.1., 114.2, and 114.4 to define "restricted class," and to address candidate appearances at colleges and universities, endorsements of candidates, and activities which facilitate the making of contributions.

4. New language has been added to 11 CFR 114.2, 114.3 and 114.4 to address the question of when coordination between a candidate and a corporation or labor organization will cause an activity to become a prohibited contribution.

Please note that at an earlier stage of this rulemaking, the Commission revised the definition of express advocacy in accordance with the judicial interpretations found in *Buckley v. Valeo*, 424 U.S. 1, 44 n. 52 (1976) (*Buckley*, *MCFL* and *Federal Election Commission v. Furgatch*, 807 F.2d 857 (9th Cir.), *cert. denied*, 484 U.S. 850 (1987) (*Furgatch*) and moved it to 11 CFR 100.22. See Explanation and Justification for 11 CFR 100.17, 100.22, 106.1, 109.1 and 114.10, 60 FR 35292 (July 6, 1995). At that time, the definition of "clearly identified," in 11 CFR 100.17, was also updated. In addition, new section 114.10 was added to allow qualified nonprofit corporations possessing certain essential

features to use general treasury funds for independent expenditures, and to set out reporting obligations for qualified nonprofit corporations making independent expenditures. Section 114.10 implements the Supreme Court's decisions in *MCFL* and *Austin v. Michigan Chamber of Commerce*, 494 U.S.C. 652 (1990) (*Austin*).

The history of this rulemaking, including the Petition for Rulemaking and the comments and public testimony, are discussed in more detail in the previously published Explanation and Justification at 60 FR 35292 (July 6, 1995), and in the Notice of Proposed Rulemaking at 57 FR 33548 (July 29, 1992) (Notice or NPRM). The promulgation of these regulations, after the close of the thirty legislative day period, will complete the Commission's consideration of the National Right to Work Committee's Petition for Rulemaking.

Section 100.7(b)(21) Contribution

Paragraph (b)(21) of this section is being amended by removing the term "nonpartisan" in describing candidate debates because that term is no longer used in the debate rules at 11 CFR 110.13. In addition, the cite to section 114.4(e) is being changed to 111.4(f) to correspond to the renumbering of that section.

Section 100.8 (b)(3) and (b)(23) Expenditure

Paragraph (b)(3) of section 100.8 is being amended to delete the term "nonpartisan" in describing the type of voter drive activity which fall outside the definition of "expenditure." In order for this exception to apply, such activity must still be conducted without any effort to determine party or candidate preference. A reference to section 114.3(c)(4) has also been added for the convenience of readers concerned with corporate or labor organization voter drives aimed at the restricted class.

Paragraph (b)(23) of this section is being amended by removing the term "nonpartisan" in describing candidate debates because that term is no longer used in the debate rules at 11 CFR 110.13. In addition, the cite to section 114.4(e) is being changed to 114.4(f) to correspond to the renumbering of that section.

Section 102.4(c)(1) Administrative Termination

The citation to the rules governing debt settlement procedures is being changed from 11 CFR 114.10 to 11 CFR part 116. Section 114.10 now covers qualified nonprofit corporations, not debt settlement.

Section 109.1(b)(4) Coordination with Candidates

The Notice suggested revising 11 CFR 109.1(b)(4) to indicate that the limited types of communication with candidates and their campaign staff which are described in 11 CFR 114.2(c), 114.3 and 114.4 do not constitute coordination if they comply with the requirements of those sections. Upon further reflection, this proposal has been dropped because 11 CFR part 109 covers all persons, and the Commission's concerns regarding the coordination of corporate or labor organization activity is more appropriately addressed in 11 CFR 114.2 through 114.4, which are discussed below.

Section 110.12 Candidate Appearance on Public Educational Institution Premises

New section 110.12 of the regulations addresses candidate appearances on the premises of public educational institutions. This section generally follows new paragraph (c)(7) of section 114.4, which is discussed more fully below. It has been included in the regulations so that public colleges and universities may continue to invite candidates to appear and address either the academic community or the general public in the same manner as incorporated private colleges and universities. A number of commenters pointed out that private schools should be treated the same as public educational institutions. Please note, however, that these institutions are also governed by state law which may impose additional requirements in this area.

Section 110.13 Candidate Debates

The Commission has revised its regulations at 11 CFR 110.13 governing the staging of candidate debates in several respects. First, the previous requirement that debates be "nonpartisan" has been removed. However, the rules continue to specify that candidate debates may not be structured to promote or advance a particular candidate. Also, debates may not be coordinated with a candidate in a manner that would result in the making of an in-kind contribution.

In the NPRM, the Commission has proposed several additional requirements, such as a restriction on discussing campaign strategy and tactics with the candidate or agents of the candidate. The NPRM also included restrictions on giving one candidate more time during the debate or more advance information as to the questions to be asked. Several commenters were

critical of these proposals. While this language has been deleted from the final rules, these restrictions are subsumed within the requirement that the debate not be structured to promote or advance a particular candidate over the others.

The Commission also considered including language stating that staging organizations may not expressly advocate the election or defeat of any clearly identified candidate during the debates. That language does not need to be included in the final rule because the rules already state that the debates may not be structured to promote or advance one candidate over another. Please note that no portion of the entire event, including any pre-debate or post-debate commentary and analysis, may be structured to promote or advance a particular candidate. Nevertheless, a news organization that stages a candidate debate may produce a separate editorial containing express advocacy under the news story exception to the definitions of contribution and expenditure in 11 CFR 100.7(b)(2) and 100.8(b)(2).

1. Definition of Staging Organization

Section 110.13(a) addresses several issues that have been raised regarding nonprofit groups and media organizations that wish to be staging organizations for candidate debates. First, this provision was rewritten to clarify that nonprofit organizations described in 26 U.S.C. 501 (c)(3) and (c)(4) may stage debates even if they have not received official confirmation from the Internal Revenue Service of their status as nonprofit organizations. In addition, the previous language may have been confusing because it described these entities as "exempt from Federal taxation", when they may be required to pay taxes on their nonexempt function income. Please note that under section 110.13, it is possible for a candidate debate to be sponsored by multiple staging organizations. The Internal Revenue Service commented that while the requirements in the FEC's rules are not identical to the factors the IRS considers, they do not conflict with the IRS's rules regarding political activity carried out by 501(c) organizations. Another commenter questioned the reason for disqualifying nonprofit organizations from staging debates if they endorsed candidates, as long as the debate is fair. The Commission is retaining this requirement because it is needed to ensure the integrity of candidate debates.

Section 110.13(a)(2) follows the previous provision by indicating that broadcasters and the print media may

stage candidate debates, but it does not indicate whether local cable stations or cable networks may stage debates. However, questions involving cable debates will be addressed in a separate NPRM. This area is currently subject to many changes, and the Commission intends to consult further with the Federal Communications Commission before addressing it.

Two comments questioned the use of the term "*bona fide*" to describe newspapers who may qualify as debate staging organizations, and the Commission's authority to determine what is a *bona fide* newspaper or magazine under the First Amendment guarantee of freedom of the press. *Bona fide* newspapers and magazines include publications of general circulation containing news, information, opinion, and entertainment, which appear at regular intervals and derive their revenues from subscriptions and advertising. This term is explained in more detail in the Explanation and Justification for the 1979 rules on funding and sponsorship of federal candidate debates. See 44 FR 76734 (December 27, 1979). These rules were transmitted to Congress on December 20, 1979, together with the Explanation and Justification. They became effective on April 1, 1980, after neither house of Congress disapproved them under 2 U.S.C. 438(d)(2). (An earlier version of the candidate debate rules was disapproved by Congress on September 18, 1979. See 44 FR 39348 (July 5, 1979).) This is, as the Supreme Court has noted, an "indication that Congress does not look favorably" upon the Commission's construction of the Act. *FEC v. Democratic Senatorial Campaign Committee*, 454 U.S. 27, 34 (1981). See also, e.g., *Sibbach v. Wilson*, 312 U.S. 1, 16 (1941) ("That no adverse action was taken by Congress indicates, at least, that no transgression of legislative policy was found"). Accordingly, the revised rules follow the previous provisions by retaining the term "*bona fide*" to describe newspapers and magazines that may stage candidate debates.

Finally, please note that the purpose of section 110.13 and 114.4(f) is to provide a specific exception so that certain nonprofit organizations and the news media may stage debates, without being deemed to have made prohibited corporate contributions to the candidates taking part in debates. This exception is consistent with the traditional role these organizations have played in the political process. Individuals and unincorporated entities wishing to stage debates are not covered by the exception.

2. Debate Structure and Selection of Candidates

The rules in section 110.13(b)(1) continue the previous policy of permitting staging organizations to decide which candidates to include in a debate, so long as the debate includes at least two candidates. Please note that a face-to-face appearance or confrontation by the candidates is an inherent element of a debate. Hence, a debate does not consist of a series of candidates appearances at separate times over the course of a longer event. See AO 1986-37. Nevertheless, the requirement of including two candidates would be satisfied, for example, if two candidates were invited and accepted, but one was unable to reach the debate site due to bad weather conditions, and the staging organization held the debate with only the other candidate present. Other situations will be addressed on a case-by-case basis. The Commission does not intend to penalize staging organizations for going forward with debates when circumstances beyond their control result in only one candidate being present and it is not feasible to reschedule. Please note that in some situations, the rules in 11 CFR 114.4 regarding candidate appearance may also be applicable.

Many comments, and much public testimony, was received on whether the Commission should establish reasonable, objective, nondiscriminatory criteria to be used by staging organizations in determining who must be invited to participate in candidate debates. In the alternative, it was suggested that the Commission could allow staging organizations to use their own pre-established sets of reasonable, objective, nondiscriminatory criteria, provided the criteria are subject to Commission review and are announced to the candidates in advance.

In response to the comments and testimony, new paragraph (c) has been added to section 110.13 to require all staging organizations to use pre-established objective criteria to determine which candidates are allowed to participate in debates. Given that the rules permit corporate funding of candidate debates, it is appropriate that staging organizations use pre-established objective criteria to avoid the real or apparent potential for a *quid pro quo*, and to ensure the integrity and fairness of the process. The choice of which objective criteria to use is largely left to the discretion of the staging organization. The suggestion that the criteria be "reasonable" is not needed because reasonableness is implied.

Similarly, the revised rules are not intended to permit the use of discriminatory criteria such as race, creed, color, religion, sex or national origin.

Although the new rules do not require staging organizations to do so, those staging debates would be well advised to reduce their objective criteria to writing and to make the criteria available to all candidates before the debate. This will enable staging organizations to show how they decided which candidates to invite to the debate. Staging organizations must be able to show that their objective criteria were used to pick the participants, and that the criteria were not designed to result in the selection of certain pre-chosen participants. The objective criteria may be set to control the number of candidates participating in a debate if the staging organization believes there are too many candidates to conduct a meaningful debate.

Under the new rules, nomination by a particular political party, such as a major party, may not be the sole criterion used to bar a candidate from participating in a general election debate. But, in situations where, for example, candidates must satisfy three of five objective criteria, nomination by a major party may be one of the criteria. This is a change from the Explanation and Justification for the previous rules, which had expressly allowed staging organizations to restrict general election debates to major party candidates. See Explanation and Justification, 44 FR 76735 (December 27, 1979). In contrast, the new rules do not allow a staging organization to bar minor party candidates or independent candidates from participating simply because they have not been nominated by a major party.

The final rules which follow also continue the previous policy that sponsoring a primary debate for candidates of one political party does not require the staging organization to hold a debate for the candidates of any other party. See Explanation and Justification, 44 FR 76735 (December 27, 1979).

Section 114.1 Definitions

1. Contribution and Expenditure

The revised regulations in 11 CFR 114.1 (a)(1) and (a)(2) recognize that the *MCFL* decision necessitates certain distinctions between the terms "contribution" and "expenditure." The previous rules had treated these terms as coextensive. The distinction arises because the Court read an express advocacy standard into the 2 U.S.C.

441b definition of expenditure. However, payments which are coordinated with candidates constitute expenditures and in-kind contributions to those candidates even if the communications do not contain express advocacy. See AO 1988-22.

One commenter urged the Commission to continue to interpret the term "contribution or expenditure" to cover the same disbursements. The comment argued that the *MCFL* decision applies equally to contributions and expenditures. The Commission disagrees with this interpretation of *MCFL*, given that the case only involved the issue of whether corporate expenditures were made. In *MCFL*, the parties did not raise, and the Supreme Court did not resolve, the factual question of whether corporate contributions had been made by *MCFL*, Inc. However, the *MCFL* Court reaffirmed the First Amendment distinction between independent expenditures and contributions, which was recognized in the *Buckley* opinion. In *Buckley*, the Supreme Court generally struck down the Act's limitations on independent campaign expenditures by individuals and organizations (*Buckley*, 424 U.S. at 39-51), but upheld the constitutionality of the Act's restrictions on contributions to candidates. *Id.* at 23-38. Subsequently, the Court stated in *NCPAC* that "there was a fundamental constitutional difference between money spent to advertise one's views independently of the candidate's campaign and money contributed to the candidate to be spent on his campaign." *Federal Election Commission v. National Conservation PAC*, 470 U.S. 480, 497 (1985). Similarly, the Court indicated that "a corporation's expenditures to propagate its views on issues of general public interest are of a different constitutional stature than corporate contributions to candidates." *Id.*, at 495-96. In light of this judicially-recognized distinction, the final version of section 114.1(a)(1) and (a)(2) is being modified to recognize that the terms "contribution" and "expenditure" are not coextensive.

The attached rules also include two technical amendments to section 114.1(a)(1). First, the reference to the National (sic) Savings and Loan Insurance Corporation has been deleted, because that entity no longer exists. Paragraph (a)(2)(ii) of section 114.1 is also being amended to remove the reference to "nonpartisan" voter drives.

2. Restricted Class

New paragraph (j) of section 114.1 contains a definition of "restricted class" for purposes of receiving

corporate or labor organization communications containing express advocacy. It has been included to avoid describing everyone in the restricted class in numerous places throughout the regulations where it would be more convenient to simply use the term "restricted class." The definition does not change who is considered to be within the restricted class. It also does not change who is an executive or administrative employee under section 114.1(c) or who is a member of a membership association under section 114.1(e).

For most corporations and labor organizations, the restricted class is the same as the solicitable class. However, for incorporated trade associations and certain cooperatives, there are differences in who can receive solicitations and who can receive express advocacy communications. For example, a trade association's restricted class includes member corporations who are not in its solicitable class, since corporations may not make contributions under section 441b of the FECA. Conversely, however, a trade association may solicit its member corporations' stockholders and executive and administrative personnel, even though these individuals are not in its restricted class, if the member corporations have approved the solicitations. See, e.g., AO 1991-24 and 11 CFR 114.8.

Section 114.2 Prohibitions on Contributions and Expenditures

1. Express Advocacy

The final rules incorporate an express advocacy standard in several sections of 11 CFR part 114. First, new language in paragraphs (a) and (b) of section 114.2 prohibits corporations and labor organizations from making expenditures for communications to the general public that expressly advocate the election or defeat of one or more clearly identified candidates. Please note that some portions of the regulations refer to "communications containing express advocacy." This term has the same meaning as the references elsewhere to "communications expressly advocating the election or defeat of one or more clearly identified candidates."

For the reasons explained above, the express advocacy standard in the revised rules applies to independent expenditures, but not contributions. The prohibition against contributions made by corporations and labor organizations in connection with federal elections remains unaffected by *MCFL*. Most, but not all, commenters supported the adoption of an express advocacy

standard for evaluating independent expenditures under section 441b of the FECA.

The provision prohibiting expenditures for communications containing express advocacy applies to all corporations and labor organizations except for qualified nonprofit corporations meeting the criteria set out in new section 114.10. Thus, these qualified nonprofit corporations may use general treasury funds to make independent expenditure communications to the general public which contain express advocacy. These could include registration and voting communications, official registration and voting information, voting records and voter guides. See also 11 CFR 114.4(c)(1)(i) and (ii).

2. Coordination With Candidates

A new paragraph (c) has been added to 11 CFR 114.2 to address the topic of coordination of corporate or labor organization activity with candidates or their authorized committees or agents, which results in the making of an in-kind contribution. Previous paragraphs (c) and (d) have been redesignated as paragraphs (d) and (e), respectively.

a. Initial Proposals. In *Buckley v. Valeo*, the Supreme Court made a distinction between independent expenditures and contributions. The Court observed, "[u]nlike contributions, such independent expenditures may well provide little assistance to the candidate's campaign and indeed may prove counterproductive. The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate." *Buckley*, 424 U.S. at 47. Thus, *Buckley* could be interpreted to prohibit all contacts with candidates. However, the NPRM recognized that it is justifiable to allow some forms of contact to preserve the previous range of permissible activity, such as sponsoring candidate appearances. The prohibition against corporate contributions was expressly reaffirmed in *MCFL*. 479 U.S. at 260. Therefore, the NPRM sought to draw a distinction between permissible contacts with candidates which are necessary to conduct these activities, and more extensive coordination that will result in in-kind contributions in some circumstances. The proposals in the NPRM would have defined coordination to include discussions of specific campaign strategy or tactics.

The proposed rules include new language in section 114.2(c) indicating

when corporate and labor organization disbursements will be treated as impermissible in-kind contributions to particular candidates. Prior to the *MCFL* decision, the Commission had not needed to examine the extent to which such payments by corporations and labor organizations could be treated as in-kind contributions, because they were simply treated as prohibited corporate or labor organization expenditures in connection with federal elections, unless permitted by a specific exemption.

b. Comments and Testimony.

Numerous commenters expressed a wide variety of views on this topic. Many were confused as to how such a standard would work in practice. Some pointed out that this was an area not addressed by the *MCFL* decision, and that it appeared as though the Commission was trying to find a way to impose new requirements that would be at least as restrictive as the former partisan/nonpartisan standard. They argued that section 441b(b)(2)(A) of the FECA excludes communications with the restricted class on any subject from the definition of contribution or expenditures. Others favored a more restrictive rule allowing no contacts except for arranging the logistics of candidate debates and appearances, or obtaining responses for voter guides.

c. Revised Rules. In response to these concerns, new section 114.2(c) has been rewritten to clarify what types of contacts with candidates are considered impermissible coordination, and what types are permissible. The comments received in response to these proposals illustrated the need to clarify and simplify the operation of these provisions. Under revised section 114.2, a corporation or labor organization that only makes communications to its restricted class does not run the risk of having its expenditures treated as in-kind contributions. On the other hand, a corporation or labor organization that engages in election-related activities directed at the general public must avoid most forms of coordination with candidates, as this will generally result in prohibited in-kind contributions, and will compromise the independence of future communications to the general public. For example, a prohibited in-kind contribution would result if a voter guide is prepared and distributed after consulting with the candidate regarding his or her plans, projects or needs regarding the campaign. Please note that, in the case of a communication just to the restricted class, coordination will not cause that activity or future communications to the restricted class to be considered in-kind contributions.

However, such coordination may compromise the ability of a corporation's or labor organization's separate segregated fund to make independent expenditures to those outside the restricted class in the future.

Additional changes to the rules covering candidate debates, candidate appearances, colleges and universities, voting records, voting guides, voter registration and get-out-the-vote drives, endorsements, trademarks and letterhead, and facilitation are described below.

3. Facilitating the Making of Contributions

As part of the revisions to 11 CFR Part 114, the Commission has reassessed the prohibition against corporations and labor organizations facilitating the making of contributions, and is adding a new provision which modifies its prior interpretation. Previously, in AOs 1987-29, 1986-4 and 1982-2, MUR 3540 and in the 1989 and 1977 Explanation and Justifications of sections 110.6 and 114.3, the Commission has stated that corporations and labor organizations may not facilitate the making of contributions to particular candidates or political committees other than their own separate segregated funds. *Explanation and Justification of Regulations*, H. Doc. No. 95-44, 95th Cong., 1st Sess. at 104-105 (1977); 54 F.R. 34106 (Aug. 17, 1989).

The NPRM contemplated adding new language to 11 CFR 114.3(d) to set forth the current policies regarding facilitating the making of contributions. Please note that the new facilitation rules have been relocated to 11 CFR 114.2(f), since section 114.3 covers activities involving only the restricted class, and facilitation can involve activities that are directed to the restricted class or that go beyond the restricted class.

The comments addressing this topic reflected a diversity of opinion. Some felt it was helpful to include the Commission's policies on facilitation in the regulations. Others felt the proposals would restrict the ability of corporations to engage in activities that were permissible, and would drive political fundraising underground, and thwart public disclosure. Another concern was that the rules would discourage corporations and labor organization from supporting the political activities of their employees in situations where the corporation or labor organizations does not take a position on the election. The Internal Revenue Service found no conflict with its requirements covering nonprofit corporations.

The revised facilitation provisions attempt to address a variety of concerns. First, section 114.2(f)(1) sets out the general prohibition, and explains that facilitation means using corporate resources or facilities to engage in fundraising for candidates. However, this is not intended to negate the range of permissible activities found in other portions of the rules. For example, individual volunteer activity using corporate or labor organization facilities is still permissible under 11 CFR 100.7, 1008, and 114.9 (a), (b), and (c), provided it meets the conditions set forth in those rules. Similarly, there are no changes to the regulations governing the rental or use of corporate or labor organization facilities or aircraft by other persons. 11 CFR 114.9 (d) and (e).

The new rules at 11 CFR 114.2(f)(1) also explain that commercial vendors, such as hotels or caterers, would not facilitate the making of corporate contributions if in the ordinary course of their business they provide meeting rooms or food for a candidate's fundraiser and receive the usual and normal charge. The term "commercial vendor" is defined in 11 CFR 116.1(c).

In the past, the Commission has also addressed situations where a candidate owns or operates a corporation. *E.g.* AOs 1995-8, 1994-8 and 1992-24. Nothing in the new facilitation rules would modify the conclusions of these opinions that these corporations may serve as a commercial vendor or lessor to the candidate's committee as long as the transactions are consistent with the corporation's ordinary course of business.

New paragraph (f)(2) of section 114.2 gives several examples of facilitation. Some of these include activities that do not fall within the "safe harbors" provided by other regulations. For example, facilitation would occur if a corporation or labor organization makes its meeting room available for a candidate's fundraiser, but has not made the room available for community or civic groups. *Compare* 11 CFR 114.2(f)(2)(i)(D) with 11 CFR 114.13. The permissibility of using such room when the corporation or labor organization receives payment would be governed by 11 CFR 114.9(a), (b) or (d). Similarly, facilitation would result if other facilities, such as telephones and copiers, are used by campaign committee staff for a fundraiser, and the corporation is not reimbursed within a commercially reasonable time for the normal and usual rental charge. *Compare* 11 CFR 114.2(f)(2)(i)(B) with 11 CFR 114.9(d).

Other examples of facilitation include directing corporate or union employees

to work on a fundraiser for a candidate; using a mailing, telephone or computer list of customers, vendors, or others outside the restricted class to distribute invitations and solicit contributions; and providing in-house or external catering and food services for the fundraiser. 11 CFR 114.2(f)(2)(i) (A), (C), and (E). However, in these three situations, the new rules allow either the candidate, or the organization's separate segregated fund, or the official directing the activity to pay the corporation or labor organization in advance for the fair market value of the services or the list. Such payment by a separate segregated fund or official would constitute an in-kind contribution subject to the individual's or the separate segregated fund's contribution limits, and is not treated as facilitation. The candidate's authorized committee must report receiving these in-kind contributions.

A more limited advance payment method was approved by the Commission with regard to employee services in AO 1984-37. The new rules go beyond this advisory opinion with regard to the source of the advance payment and the types of services for which advance payment may be made. "In advance" means prior to when the list is provided, or the catering or food services are obtained, or the employees perform the work. Fair market value consists of the price that would normally be paid in the marketplace where the corporation or labor organization would normally obtain these goods or services, if reasonably ascertainable. However, in no case is the fair market value less than the corporation's or labor organization's actual cost, which includes total compensation earned by all employees directed or ordered to engage in fundraising, plus benefits and overhead.

These new rules modify, to some extent, the interpretation applied in prior enforcement matters, including MUR 3540. The conciliation agreement for MUR 3540 stated that, "[t]he 'individual volunteer activity' exemption does not, however, extend to collective enterprises where the top executives of a corporation direct their subordinates in fundraising projects, use the resources of the corporation, such as lists of vendors and customers, or solicit whole classes of corporate executives and employees. See MURs 1690 and 2668. The individual volunteer activity exemption also does not apply when an employee uses the facilities of a corporation in connection with a Federal election and the corporation is reimbursed by a political committee or

a candidate's committee [emphasis added]. See MUR 2185."

However, the new facilitation regulations now provide another exemption where an individual or a candidate's committee or other political committee pays in advance for the use of corporate personnel who are directed to organize or conduct a fundraiser for the candidate as part of their job, and hence are not volunteers. Although employees may be asked to undertake such activity, under new language in paragraph (f)(2)(iv) of this section, it is not permissible to use coercion, threats, force or reprisal to urge any individual to contribute to a candidate or engage in fundraising activities. Thus, employees who are unwilling to perform these services as part of their job have a right to refuse to do so.

Under new paragraphs (f)(2)(iii) and (f)(4)(iii), facilitation includes corporate or labor organization solicitation of earmarked contributions that will be collected and forwarded by the organization's separate segregated fund (whether or not deposited in the separate segregated fund's account), unless the earmarked contributions are treated as contributions both by and to that separate segregated fund. The corporation or labor organization may name in the solicitation the candidate(s) for whom an earmarked contribution is sought. Space may be left on the contribution response card for contributors to designate candidates of their choice, but no candidates are suggested in the accompanying solicitation materials. The latter situation was presented in AO 1995-15. In both cases, under new paragraphs (f)(2)(iii) and (f)(4)(iii), the contributions must be counted against the separate segregated fund's limits to avoid facilitation, which is impermissible. Hence these new provisions supersede those portions of AOs 1991-29, 1981-57 and 1981-21 which indicate that a conduit separate segregated fund's contribution limits under 2 U.S.C. 441a are only affected if it exercises direction or control over the choice of the recipient candidate. Please note that 11 CFR 110.6(b)(2)(ii) has not been changed, and therefore continues to prohibit corporations or labor organizations, themselves, from acting as conduits for contributions earmarked to candidates. See AO 1986-4. However, in AO 1983-18, the Commission recognized that a trade association political action committee may collect and forward contributions to other trade association political action committees where directed by member corporation executives. A corporation or union employee may still utilize the volunteer

exemption found at 11 CFR 100.7(b)(3) to collect earmarked contributions on their own time and forward such contributions to a specific candidate or committee. Such earmarked contributions would not be considered as contributions by the separate segregated fund.

Paragraph (f)(3) lists two examples of separate segregated fund activity that do not constitute corporate or labor organization facilitation. First, separate segregated funds may continue to solicit or make contributions in accordance with the requirements of 11 CFR 110.1, 110.2, and 114.5 through 114.8. Secondly, separate segregated funds may continue to solicit, collect and forward earmarked contributions to candidates under 11 CFR 110.6. The money expended by the separate segregated fund to solicit earmarked contributions must come from permissible funds received under the FECA, and will count against the separate segregated fund's contribution limit for the candidate(s) involved. These examples contrast with new paragraphs (f)(2)(iii) and (f)(4)(iii), under which a solicitation by the corporation or labor organization would either constitute facilitation or result in the contribution being counted against the separate segregated fund's contribution limits.

In addition to the latter example discussed above, paragraph (f)(4) lists two other examples of corporate or labor organization activity which do not result in facilitation. The first preserves the practice of enrolling the restricted class in a payroll deduction plan or check-off system, or an employee participation plan. No changes are being made in the operation of employee participation plans under 11 CFR 114.11 or payroll deduction plans. The second example permits solicitations of the restricted class for contributions that contributors will send directly to candidates, without being bundled or forwarded through the separate segregated fund. This situation was presented in AO 1989-29, and falls within the corporation's or labor organization's right to communicate with its restricted class on any subject under 2 U.S.C. 441b(b)(2)(A).

Section 114.3 Disbursements for Communications to the Restricted Class in Connection With a Federal Election

1. Express Advocacy, Coordination, and Reporting Internal Communications

The revised rules preserve several distinctions between communications and other activities directed solely to the restricted class (set forth at 11 CFR

114.3) and those directed to the general public or other individuals outside the restricted class (set forth at 11 CFR 114.4). Section 114.3 continues to recognize that the FECA permits corporations and labor organizations to communicate with their restricted classes on any subject. 2 U.S.C. 441b(b)(2)(A). However, in light of the *MCFI* decision, the references to "partisan" activities have been replaced with narrower provisions that only apply to communications containing express advocacy. For example, in paragraph (c) of section 114.3, revised language makes clear that communications directed solely to the restricted class may contain express advocacy. In addition, amended section 114.3(b) now states more explicitly that only communications expressly advocating the election or defeat of a clearly identified candidate are subject to the reporting requirements of 11 CFR 100.8(b)(4) and 104.6. Similarly, the revisions delete the more restrictive language in previous section 114.3(a)(1) that had prohibited corporate and labor organization expenditures for "partisan" communications to the general public because revised section 114.4 establishes that such communications are only prohibited if they contain express advocacy or are impermissibly coordinated with candidates or political committees.

In contrast, under revised section 114.3(a)(1), communications directed solely to the restricted class may be coordinated with candidates and political committees. For example, they may involve discussions with campaign staff regarding a candidate's plans, projects, or needs. Such coordination will not transform that restricted class communication into an in-kind contribution. Nor will it affect subsequent activities directed only to the restricted class. However, communications to the restricted class that are based on a candidate's plans, projects and needs may jeopardize the independence of subsequent communications or activities, including those financed from the separate segregated fund, which extend to anyone outside the restricted class.

One witness at the hearing objected to labor organizations' use of general treasury funds which could come from compulsory union dues to subsidize new forms of election-related activity, or even the activities set out in sections 114.3 and 114.4. This is an area over which the Department of Labor has jurisdiction, and recently it issued final rules removing 29 CFR part 470, in response to Executive Order 12836 revoking Executive Order 12800. 58 FR

15402 (March 22, 1993). The Commission does not have jurisdiction over whether dues and assessments are paid as a condition of employment or whether they are voluntary.

2. Candidate Appearances

Paragraph (c)(2) of 11 CFR 114.3 governs corporate and labor organization funding of candidate appearances before the restricted class. The NPRM sought to resolve several issues not addressed in the previous rules and to clarify language on which the Commission has received a number of questions. For example, the Notice proposed that instead of allowing "limited invited guests and observers" to attend candidate appearances, the rule should refer to guests who are being honored or speaking or participating in the event. This is intended to cover individuals who are part of the program.

One commenter was concerned that this language would interfere with its ability to allow its members to attend a candidate appearance. Under these provisions, which have been retained in the final rules, all those who qualify as members, and are therefore in an organization's restricted class, may attend. As noted above, nothing in the attached revisions to the rules affects the definition of who is a member.

In addition, these amendments do not adversely affect the ability of corporations or labor organizations to invite their restricted class, other employees or the general public to attend a speech given by an officeholder or other prominent individual who is also a federal candidate, if the speech is not campaign-related and the individual is not appearing in his or her capacity as a candidate for Federal office. See, e.g., AOs 1980-22 and 1992-6.

Two issues which generated considerable debate in this area were the solicitation and collection of contributions, and the presence of the news media, during restricted class candidate appearances.

a. Collection of Contributions by Candidates and Party Representatives During the Appearance

The NPRM sought comment on whether candidates and party representatives should continue to be able to solicit contributions during an appearance before the restricted class. This had been specifically allowed under previous section 114.3(c)(2) for appearances before the restricted class. The NPRM sought comments on whether the candidate should be able to collect contributions at appearances, such as by "passing the hat" or placing donation boxes in the meeting room.

Given that the proposed rules sought to incorporate the Commission's established policy that corporations and labor organizations are not permitted to facilitate the making of contributions to candidates or political committees other than their separate segregated funds, the NPRM questioned whether allowing candidates to accept contributions during their appearances should be viewed as impermissible facilitation.

Some comments supported allowing candidates to request contributions. The Internal Revenue Service found no conflict between the provisions regarding candidate appearances and its rules.

Section 114.3(c)(2) of the final rules provides that a candidate or party representative may ask for and collect contributions before, during or after the appearance while on corporate or union premises. Candidates and party representatives may also provide information on how to make contributions, such as by giving out a phone number or mailing address or by leaving envelopes or other campaign materials. However, this provision also specifies that corporate or labor organization officials may not collect contributions during the event. The collection of contributions by such officials would go beyond the right to communicate with the restricted class on any subject, and in essence, turn the candidate appearance into a fundraising event sponsored by the corporation or labor organization. As explained above, under new section 114.2(f), corporations and labor organizations may not facilitate the making of contributions to candidates.

b. Presence of the News Media

Several issues have arisen regarding section 114.3(c)(2), which governs the presence of news media representatives at candidate appearances before only the restricted class. For example, a news organization may wish to reprint or broadcast the candidate's appearance in its entirety. Concerns have been raised that a candidate appearance before a corporation's or labor organization's restricted class would be transformed by this type of gavel-to-gavel coverage into a general public appearance. Accordingly, the Commission sought comments on two alternative proposals. Under Alternative C-1, such coverage was contemplated for appearances before the restricted class, provided that two conditions were met. First, if the corporation or labor organization permits one media representative to cover the appearance, all *bona fide* media organizations who request to cover the appearance must be given the

opportunity to do so. This could be accomplished through pooling arrangements, if necessary. Secondly, if the corporation or labor organization permits the news media to cover an appearance by one candidate, the news media must be given the opportunity to cover all other candidates who appear on the same or different occasions. Alternative C-2 indicated that the corporation or labor organization may not permit the media to cover such candidate appearances before just the restricted class. Instead, under Alternative C-2, in addition to the two requirements on media access, media coverage of candidate appearances would be permissible only if all rank and file employees may also attend, all candidates for the same seat who request to appear are given a similar opportunity, and the corporation or labor organization does not expressly advocate, or encourage the audience to expressly advocate, the election or defeat of any candidate.

One commenter felt that gavel-to-gavel coverage indicated that the candidate's speech is newsworthy, and that there is no evidence of a problem involving the exclusion of the news media. Others objected that the proposed rule would interfere with their ability to have officeholders address employees on topics of interest to the employees when the officeholders are candidates for office.

The Commission has concluded that a modified version of Alternative C-1 is preferable and has been included in section 114.3(c)(2)(iv). The proposed language of Alternative C-2 which would have required the organization open the event to all rank and file employees, not just the restricted class, has been dropped because this would be administratively difficult to accomplish. However, the requirements in Alternative C-1 that candidates for the same office be treated similarly, and that different news organizations also be treated fairly, have been retained. These new provisions are intended to ensure that the corporation or labor organization does not manipulate the news media coverage of newsworthy events that are subsequently broadcast to the general public in a way that ensures favorable coverage for certain candidates, and no coverage or unfavorable coverage for others. Please note, however, that nothing in the amended rules will force corporations or labor organizations to invite the media to events that they would otherwise prefer to limit to the restricted class.

3. Registration and Get-Out-the-Vote Drives

Section 114.3(c)(4) sets forth provisions governing voter registration and get-out-the-vote drives aimed at a corporation's or labor organization's restricted class. The NPRM included one revision to this provision. The proposed language stated explicitly that express advocacy is permissible in voter drive communications aimed solely at a corporation's or labor organization's restricted class. Consequently, the proposed revisions to section 114.3(c)(4) also retained the former language specifically permitting voter drive communications to urge the restricted class to vote for particular candidates and to register with a particular party. The proposed rules also contemplated continuing the long-standing policy that information and assistance in registering and voting shall not be withheld on the basis of support for or opposition to particular candidates or political parties.

The Internal Revenue Service indicated that while the FEC's proposed rules regarding candidate appearances are more specific than theirs, they do not impinge upon the Internal Revenue Service's "facts and circumstances" test.

Some commenters opposed removing the "nonpartisan" requirement from section 114.3(c)(4) because section 441b(b)(2)(B) of the Act requires that drives aimed at a corporation's or labor organization's restricted class be nonpartisan. The Commission believes the basic purpose of this statutory provision will be maintained by continuing to require corporations and labor organizations to make the same voter registration and voter drive services available to those who do not support the organization's preferred candidates or political party. Consequently, the final voter drive rules in this section follow the previous proposals, with one change. The revised rules specify that voter registration efforts may include transportation to the place of registration in addition to transportation to the polls.

Section 114.4 Disbursement for Communications Beyond the Restricted Class in Connection With a Federal Election

1. Express Advocacy and Coordination

The provisions of section 114.4 regarding communications by corporations and labor organizations to persons outside the restricted class have also been substantially revised and reorganized. First, the nonpartisan standards found in the previous regulations have been replaced by

language prohibiting corporations and labor organizations from including express advocacy in communications directed outside the restricted class when: (1) holding candidate appearances; (2) issuing registration and get-out-the-vote communications; (3) distributing registration and voting information, forms, or absentee ballots; (4) producing voter guides or voting records; or (5) conducting voter registration and get-out-the-vote drives.

Second, in response to the concerns expressed by several commenters which are discussed above, the Commission has substantially revised the concept of coordination in section 114.4. The *MCFL* decision addressed the scope of the FECA's prohibition against corporate expenditures. However, the prohibition against corporate contributions was expressly reaffirmed in *MCFL*, 479 U.S. at 260. Accordingly, the final rules which follow preserve the statutory ban on contributions made by corporations and labor organizations in connection with federal elections. Prohibited contributions include in-kind contributions resulting from the coordination of election-related corporate or union communications with candidates, except for certain activities described in this section and 11 CFR 114.3, which may involve limited types of coordination with candidates.

Under revised section 114.4(a), communications to the general public or to employees outside the restricted class that are based on information about a candidate's plans, projects and needs provided by the candidate or the candidate's agent are considered coordinated, and hence, in-kind contributions. Such coordination may also jeopardize the independence of subsequent communications to the general public, but will not affect future communications to the restricted class.

Qualified nonprofit corporations under 11 CFR 114.10 are subject to the same restriction on coordinating their communications directed to the general public. Consequently, they may not include express advocacy in coordinated communications directed beyond the restricted class. Conversely, if they do include express advocacy in communications to the general public, these communications may not be coordinated with any candidate or political party. The purpose of the limited exception the Supreme Court recognized in *MCFL* was to avoid impermissibly infringing on these organizations' First Amendment rights when making independent expenditures.

2. Candidate and Party Appearances

The NPRM sought comments on several questions and possible amendments regarding corporate and labor organization funding of candidate appearances before employees who are not in the restricted class. Section 114.4(b), as set out in the Notice, followed the previous rules at 11 CFR 114.4(a)(2) by allowing rank and file employees who are not in the restricted class to attend candidate appearances organized by corporations or labor organizations. Please note that corporate appearances are covered in paragraph (b)(1), and parallel provisions for labor organizations are found in paragraph (b)(2).

As explained above, certain contacts with the candidate's campaign may be necessary to arrange the appearance. However, because these communications are being made beyond the restricted class, discussions of the candidate's plans, projects or needs relating to the campaign go beyond the permissible level of coordination, and hence would transform the appearance into an in-kind contribution. Likewise, corporations and labor organizations are also not permitted to expressly advocate the election or defeat of any clearly identified candidates in conjunction with the appearance. Nor should they promote or encourage express advocacy by the audience, thereby transforming the appearance into little more than a campaign rally.

a. Notifying and Inviting Other Candidates; Audience

In situations where one candidate appears at a corporate or labor organization event, the proposed rules in section 114.4(b) would have followed the previous provisions by requiring corporations and labor organizations to let the other candidates for that office come and speak if they so request. However, comments were sought on possibly requiring a corporation to notify the other candidates in advance whenever they invite a candidate to appear. The commenters expressed concern that such a requirement would be unworkable. Accordingly, the final rules do not contain a prior notice provision.

Instead, the final rules on candidate appearances generally follow the candidate debate rules in the case of Presidential candidates by requiring corporations and labor organizations to establish, in advance, objective criteria for deciding which Presidential and Vice Presidential candidates may appear, upon request. Under section 114.4(b)(1)(i), appearances by House

and Senate candidates remain subject to the requirement that all candidates for the seat must be given a similar opportunity to appear, upon request. Similarly, the provisions governing appearances by political party representatives in paragraph (b)(1)(iii) generally follow the previous regulations.

Comments were also requested on new language in section 114.4(b)(1)(vi) that would not allow the corporation or labor organization to favor one candidate through the structure or format of the candidate appearance. One example cited was giving rank and file employees time off to listen to one candidate but not to listen to others. Another example arises where candidates receive unequal time or facilities, unless it is clearly impractical to provide all candidates with similar opportunities, such as where a candidate requests to appear after a labor organization's convention is over. In response to another comment which objected to consideration of the format and timing of a candidate appearance, the Commission is revising the language in section 114.4(b)(1)(vi) to clarify that candidates cannot be given unequal amounts of time or substantially different locations for their appearances, unless the corporation can show it is impractical to give each candidate a similar time and location.

In addition, paragraph (b)(1) of section 114.4 allows guests who are being honored or speaking or participating in the event (i.e. those who are part of the program), to be present during the candidate appearance. This provision follows similar language in 11 CFR 114.3(c)(2)(i).

b. Collection of Contributions by Candidates and Party Representatives During the Appearance

A question presented in the NPRM was whether the candidate or party representative may solicit and collect contributions during an appearance before employees who are not in the restricted class. Although this has been specifically allowed under section 114.3(c)(2) for appearances before the restricted class, there was no provision in former section 114.4 either allowing or disallowing this practice when the audience extends to all employees. The NPRM sought comments on whether the candidate should be able to pass the hat or place donation boxes in the room.

Some comments supported allowing candidates to request contributions, but indicated that the rules needed to clarify that this would not constitute facilitation by the corporation or labor organization. The Internal Revenue

Service found no conflict between the provisions regarding candidate appearances and its rules.

Section 114.4(b)(1)(iv) of the final rules provides that a candidate or party representative may ask for contributions, may provide information on how to make contributions, and may leave campaign materials and envelopes for making contributions. See, e.g., AO 1987-29, n. 2. However, this provision also specifies that candidates and party representatives may not collect contributions during the event.

Moreover, the corporation or labor organization, and its officers and employees, may not solicit or collect these contributions. This restriction includes corporate and union officials who may also serve on a fundraising committee for the candidate or otherwise be active in the campaign. The collection of contributions by corporate or union officials would, in essence, turn the candidate appearance into a general fundraising event sponsored by the corporation or labor organization, in violation of the new facilitation regulations of section 114.2(f).

c. Presence of the News Media

The Notice presented several issues regarding the presence of news media at candidate appearances before employees outside the restricted class. For the reasons stated above, the final rules regarding these appearances follow the new regulations applicable to appearances before the restricted class. See discussion of 11 CFR 114.3(c)(2)(iv), including NPRM and comments, *supra*.

3. Use of Logos, Trademarks and Letterhead

Another topic addressed in this rulemaking concerns the use of corporate or labor organization logos, trademarks and letterhead. The Commission has encountered situations in which executives of corporations or labor organizations use official corporate or labor organization stationery, whether or not reproduced at the executive's personal expense, to solicit funds or support for a candidate. E.g., MURs 3066, 1690 and 1261. The question presented in the NPRM was whether such a logo, trademark or letterhead may be used if the corporation or labor organization is reimbursed for the intangible value of the item(s), or whether their use (except through ordinary commercial transactions in the usual course of business) should be prohibited.

Comments were sought on two alternative approaches. The first option, Alternative B-1, was to amend the

definition in section 114.1(a)(1) to treat logos, trademarks and letterhead as something of value and a contribution or expenditure if provided without charge or at less than the fair market value. That approach would have allowed individuals and candidates to reimburse corporations and labor organizations for the cost of the stationery plus the value of using the corporate or union symbol, name, etc. One difficulty, however, would have been ascertaining the fair market value, given subjective consideration such as goodwill. Thus, the second option, which was set forth as Alternative B-2 in section 114.4(c)(1), was to prohibit such uses, whether or not the corporation or labor organization is reimbursed, with four exceptions for: corporations qualifying for the *MCFL* exception; communications to the restricted class, as described under 11 CFR 114.3; communications beyond the restricted class, as permitted under 11 CFR 114.4; and solicitations made in accordance with 11 CFR 114.5 through 114.8.

The Commission received comments supporting and opposing both options. The Internal Revenue Service stated that alternative B-1 may conflict with the Internal Revenue Code requirements applicable to section 501(c)(3) corporations. Other commenters claimed that logos and letterhead were not corporate resources, or were of no value or of *de minimis* value, or that it is too difficult to assign a monetary value.

The Commission considered the alternatives regarding the use of logos, letterhead and trademarks when it prepared the final rules, but could not reach a majority decision by the required four affirmative votes. See 2 U.S.C. 437c(c). Consequently, neither alternative has been included in the final rules.

Both alternatives in the NPRM also indicated that when individuals make communications either by using personal stationery or by appearing in a campaign ad, the letter or advertisement cannot indicate that the individual is acting on behalf of the corporation or labor organization, and cannot include references to the individual's official title at that organization. Thus, these proposals were intended to preclude an individual from including an identification such as "Vice President of XYZ Automobile Corporation." However, a general identification such as "auto maker" would be acceptable.

Several commenters opposed this restriction on various grounds, including that the corporate title is part of the individual's identity, the use of

the title enhances disclosure of those who are making the communication and it would encourage fraud if identifications were not allowed, and because the speech of people associated with nonprofit groups would be inhibited.

The Commission considered the use of corporate or labor organization titles in individual communications and advertisements on behalf of a candidate when it prepared the final rules, but could not reach a majority decision by the required four affirmative votes. See 2 U.S.C. 437c(c). Consequently, the proposed language has not been included in the final rules.

4. Registration and Voting Communications; Official Registration and Voting Information

The provisions of previous paragraphs (b)(2) and (b)(3) of section 114.4 regarding the distribution of registration and voting communications and information to the general public have been moved to new paragraphs (c)(2) and (c)(3), respectively. In addition to the changes regarding express advocacy and coordination with candidates, which are discussed above, revised paragraph (c)(3)(ii) no longer contains a reference to "applicable state law" permitting voter registration by mail. That language was made obsolete by the National Voter Registration Act of 1993, 42 U.S.C. 1973gg-1 *et seq.*

Please also note that section 114.4(c)(2), regarding voting communications, does not change the Commission's decision in AO 1980-20 that corporations may place newspaper or magazine advertisements simply urging the general public to register to vote.

5. Voting Records

Provisions regarding the dissemination of voting records of Members of Congress are being moved from previous section 114.4(b)(4) to new section 114.4(c)(4). In response to the *MCFL* decision, the NPRM proposed modifying these rules in two respects. First, new language was put forth prohibiting voting records, and all accompanying communications to the general public, from expressly advocating the election or defeat of one or more clearly identified candidates or the candidates of a clearly identified political party. The proposed amendments also sought to disallow coordination with candidates in distributing voting records. The Internal Revenue Service commented that although their standards were different than the FEC's, the FEC's proposed rules do not impinge on the test used by the

Internal Revenue Service to determine whether voting records or voter guides constitute political activity. Another commenter believed there was no need to discuss these matters with candidates.

The revised version of section 114.4(c)(4) is substantially similar to the proposed rules. However, new language has been included to indicate that the decision as to the content of a voting record also may not be coordinated with a candidate or political party. The NPRM raised the question of whether to include language preventing corporations and labor organizations from obtaining voting record information directly from Members of Congress or political parties. The Commission has decided not to include such a restriction in the revised regulations.

6. Voter Guides

In *Faucher v. Federal Election Commission*, 928 F.2d 468 (1st Cir. 1991), *cert. denied sub nom. Federal Election Commission v. Keefer et al.*, 502 U.S. 820 (1991), the Court of Appeals for the First Circuit invalidated the Commission's previous voter guide regulations at 11 CFR 114.4(b)(5)(i). The Court concluded that the previous provisions of section 114.4(b)(5)(i) exceed the regulatory boundaries imposed by the FECA as interpreted by the Supreme Court. 928 F.2d at 472.

Consequently, the NPRM proposed revisions, located in section 114.4(c)(5), to allow corporations and labor organizations to prepare and distribute to the general public their own voter guides or to obtain voter guides prepared by nonprofit organizations that are tax-exempt under 26 U.S.C. 501(c)(3) or (c)(4). The proposed rules would have required that the same amount of space be provided for each candidate's response, that the voter guide not contain express advocacy, and that contact with candidates be limited to the preparations reasonably necessary to produce the guide, such as written communications regarding the candidate's positions on issues. The proposed revisions also sought to eliminate the previous restrictions on the geographic area in which voter guides could be distributed, and to prohibit coordination of the distribution of voter guides with candidates.

Several commenters and witnesses challenged these proposals as contrary to the intent of the court in *Faucher*. In particular, they questioned the need to reprint the candidates' responses verbatim, the restriction that contacts with campaigns be in writing, the prohibition on coordinating the

distribution of the guides, and the prohibition on distributing voter guides prepared by 501(c) organizations that endorse candidates, when the corporation or labor organization can make its own endorsements.

In view of these comments, the Commission has substantially revised the final rules to provide a choice of two different ways of issuing and distributing voter guides, which are intended to comport with *Faucher*. Revised section 114.4(c)(5) begins by explaining that voter guides consist of candidates' positions on campaign issues, and may include biographical information on the candidates. Voter guides are similar to candidate debates in that they must include at least two candidates in the same election. However, no particular format is required for either type of voter guide.

Under the new rules, both types of voter guides may be obtained from nonprofit organizations described in 26 U.S.C. 501(c)(3) or (c)(4), regardless of whether the nonprofit group endorses candidates. Please note however, that a comment from the Internal Revenue Service indicates that nonprofit corporations organized under 26 U.S.C. 501(c)(3) cannot endorse candidates. The previous rules referred to these groups as "tax exempt," which may be confusing given that they may pay tax on certain categories of income.

The first type of permissible voter guide, which is described in paragraph (c)(5)(i), is one that is prepared and distributed without any contact, cooperation, coordination or consultation with the candidate, the candidate's campaign or the candidate's agent. Hence, the information regarding the candidate's position on issues must be obtained from news articles, voting records, or other non-campaign sources. The voter guide also must not expressly advocate the election or defeat of any clearly identified candidate.

The second type of permissible voter guide, which is described in paragraph (c)(5)(ii), is subject to further restrictions because it contemplates limited written contact with the candidate's campaign committee to obtain the candidate's responses to issues included in the voter guide. For example, further coordination with a candidate or his or her agents, such as a discussion of the candidate's plans, projects, or needs relating to the campaign, does not fall within this limited exception, and would thus result in an in-kind contribution. The *Faucher* decision does not mandate eliminating all restrictions on voter guides save for the prohibition on express advocacy. Accordingly, organizations preparing the second type

of voter guide must give all candidates in the election (except for Presidential candidates) an equal opportunity to respond to the questions posed. Moreover, no candidate may receive greater prominence or substantially more space than other candidates participating in the voter guide. This requirement is similar to the candidate debate situation in which the forum may not be structured to promote one candidate over others.

The second type of voter guide must not contain an electioneering message. See, *Federal Election Commission v. Colorado Republican Federal Campaign Committee*, 59 F. 3d 1015 (1st Cir. 1995), *petition for cert. filed*, No. 95-489 (Sept. 21, 1995) (statement that an office holder has a right to run for the Senate, but doesn't have the right to change the facts constituted an electioneering message); and AOs 1985-14 and 1984-15. Similarly, the voter guide must not score or rate the candidates' responses in a way that conveys an electioneering message, such as by indicating that certain responses are "right" or "wrong" or receive a higher or lower grade than others.

7. Endorsements

The NPRM proposed adding new paragraph (c)(6) to section 114.4 to reflect the Commission's policy regarding public endorsements of candidates by corporations and labor organizations. In AO 1984-23, the Commission permitted a corporation to include an endorsement in a publication directed to its restricted class. In addition, the NPRM indicated that the endorsement could be made during the candidate's appearance before the restricted class. One comment objected to enhancing the publicity corporate endorsements will receive. Another comment opposed these restrictions on corporate endorsements because labor organization endorsements receive wider media coverage. The Commission believes these concerns are misplaced. Media coverage of endorsements by corporations or labor organizations is similar to media coverage of candidate appearances in that both are governed by the news media's determination as to the newsworthiness of the event.

The NPRM also sought comment on two alternative approaches regarding further corporate or labor efforts to publicize the endorsement through press releases and press conferences. Alternative D-1 sought to follow AO 1984-23 by allowing the corporation or labor organization to spend a *de minimis* amount to issue a press release regarding the endorsement to its usual media contacts. This language also

explicitly recognized that the press release may be accompanied by a routine press conference. In contrast, Alternative D-2 would have permitted the corporation or labor organization to publicize the endorsement only by responding to questions posed during a routine press conference.

Several comments preferred Alternative D-1, believing that Alternative D-2 could be easily manipulated, and is an artificial distinction. The Commission agrees, and has therefore decided to adopt Alternative D-1.

The proposed rules would also have permitted corporations and labor organizations to have contact with candidates to the limited extent necessary to make the endorsement, without treating these communications as impermissible in-kind contributions. The Commission sought comment, however, on whether this limitation on candidate contact would inhibit the corporation's or labor organization's ability to obtain the information needed to make an endorsement decision. While one commenter expressed concern that these discussions with candidates and their campaign staff were unnecessary and provided an opportunity to coordinate endorsements with candidates, another commenter believed that organizations need to know the nature and viability and organization of the campaign, and thus the candidate's likelihood of success.

The Commission agrees that organizations need to discuss various issues with candidates and their staff when deciding who to endorse. Hence, the language in section 114.4(c)(6)(ii) has been revised to allow a greater range of discussion with the candidate or campaign staff prior to the endorsement. However, the public announcement of the endorsement may not be coordinated with the candidate or the candidate's agents or authorized committee.

Finally, the new rules advise consulting the Internal Revenue Code and IRS regulations regarding restrictions and prohibitions on endorsements by nonprofit corporations. The Internal Revenue Service indicated in its comment that nonprofit corporations organized under 26 U.S.C. 501(c)(3) cannot endorse candidates.

8. Candidate Appearances on Educational Institution Premises

The FECA prohibits corporations from making contributions to or giving anything of value to a federal candidate, including free use of facilities, such as halls and auditoriums. Since most

private colleges and universities are incorporated, this prohibition applies to them. The NPRM included draft provisions to clarify the Commission's interpretation of this statutory prohibition as it applies to incorporated educational institutions. In the proposed rules, section 114.4(c)(7) included an exception to permit colleges, universities, and other incorporated nonprofit educational institutions which are exempt from federal taxation under 26 U.S.C. 501(c)(3) to make their premises available to groups that are associated with the school and wish to invite candidates to address students, faculty and the general public, under certain conditions.

Several comments and witnesses expressed an overall concern that the Commission was attempting to over-regulate political speech on campuses. They pointed out that historically, universities have sought to promote the free exchange and debate of ideas in an intellectual environment, and have tried to stimulate student interest in democratic processes and institutions. They were also concerned that the new rules could affect classroom discussions. The Internal Revenue Service indicated that the proposed FEC rules were more specific than the "facts and circumstances" test used by the IRS, but did not conflict with that test.

The Commission has now revised new paragraph (c)(7) of section 114.4 in a number of respects to clarify the intent of the new rules. First, language has been added at paragraph (c)(7)(i) to clarify that educational institutions may continue to charge candidates the usual and normal charge for the use of their facilities. Secondly, private colleges, universities, and other incorporated nonprofit educational institutions may make their premises available to candidates who wish to address students, faculty, the academic community, or the general public (whomever is invited) at no cost or for less than the usual and normal charge. See 11 CFR 114.4(c)(7)(ii). However, the school must make reasonable efforts to ensure that the appearances are conducted as speeches, question and answer sessions, or other academic events, and do not constitute campaign rallies. Incorporated educational institutions may also continue to allow individuals who are candidates to appear in another capacity, such as officeholders or prominent speakers on particular issues, if they do not refer to the campaign or their status as candidates. See, e.g., AO 1992-6. The new rules also do not prevent candidates from participating in campus

events in other capacities, such as when the candidate is also a faculty member.

Although the proposed rules in the Notice covered candidate appearances on college campuses, they did not specifically address candidate debates. As noted by the commenters, there is a long tradition of holding candidate debates in college auditoriums. The Commission did not intend to curtail this practice, and the final rules do not prevent such debates from being held. Colleges and universities that qualify for tax-exempt status under 26 U.S.C. 501(c)(3) may stage candidate debates in accordance with the requirements set out in 11 CFR 110.13 and 114.4(f).

The proposed rules in section 114.4(c)(7)(i) would have required educational institutions to have an established policy allowing associated organizations, such as student groups, to sponsor candidate appearances so long as the policy does not favor one candidate or party over any other. Several commenters questioned the need for such a policy, and expressed concern that colleges and universities would be forced to grant access to their facilities to groups not connected with the educational institution. Consequently, the language in new section 114.4(c)(7) is being amended to include a more general requirement that the educational institution does not favor any one candidate or political party in allowing the appearances.

The proposed rules also sought to ensure that admission to a candidate's appearance would not be based on party affiliation, or any other indications of support for or opposition to the candidate by requiring either the educational institution or the sponsoring group to control access to the facility, rather than the candidate's campaign committee. This proposal has been dropped as impracticable.

The NPRM indicated that one objective was to ensure that these candidate appearances will not become campaign rallies, fundraising events, or opportunities for the school or group issuing the invitation to expressly advocate, or encourage the audience to expressly advocate, the election or defeat of the candidate who is appearing. Accordingly, the proposals sought to restrict the presence of campaign banners, posters, balloons and other similar items which would be viewed as indicative of a campaign rally. Several commenters and witnesses recognized the necessity for educational institutions to refrain from express advocacy, so as to avoid jeopardizing their nonprofit status. However, the comments also emphasized the practical difficulties in trying to control

expressions of support or opposition by the audience, and trying to ensure that a campaign rally atmosphere does not ensue. They also questioned distinctions between posters and hats or buttons. Finally, they argued that colleges are public fora, and the government's ability to restrict speech in public fora is limited.

The revised rules in paragraph (c)(7)(ii)(B) retain the prohibition against the educational institution engaging in express advocacy. However, the language regarding a campaign rally atmosphere has been modified to require the educational institution to make reasonable efforts to ensure that the appearance does not turn into a campaign rally. This does not require the college or university to monitor buttons or campaign materials brought in or worn by members of the audience. These provisions are consistent with the requirement that exempt organizations under 26 U.S.C. 501(c)(3) refrain from participating in or intervening in political campaigns.

The NPRM also proposed a prohibition against candidates collecting contributions during the appearance, coupled with language allowing candidates to ask for contributions to be sent to their campaign committees. The Notice also suggested a provision barring educational institutions from soliciting contributions. The comments generally supported these proposals as consistent with the nonprofit status of these educational institutions under the Internal Revenue Code. They also suggested that candidates be informed in advance that they may not collect contributions.

It is not necessary to include in the final rules these restrictions on soliciting and collecting contributions. They are already subsumed within the requirement that the educational institution make a reasonable effort to ensure the candidate appearance does not become a campaign rally. In addition, candidate appearances at incorporated private colleges and universities are already subject to additional requirements under the Internal Revenue Code and regulations issued thereunder.

The NPRM also included provisions allowing educational institutions to invite the media to cover these candidate appearances and to broadcast them to the general public, provided the schools follow the same guidelines that would apply to other corporations, as set forth in section 114.3(c)(2)(iii) and section 114.4(b)(1)(viii). The Commission has decided not to include this provision in the final rules and to

allow educational institutions and the news media to work out their own arrangements.

9. Candidate Appearances in Churches

The NPRM presented the possibility of issuing rules regarding candidate appearances in churches and religious facilities. However, this topic received little attention from the commenters. The large number of other more immediate issues in this rulemaking may have overshadowed considerations of candidate appearances in religious settings. At this point, the Commission has decided to defer this matter for further consideration.

10. Registration and Get-Out-The-Vote Drives

Voter registration and get-out-the-vote drives aimed at the general public or at employees outside the restricted class have been moved from previous paragraph (c) to renumbered paragraph (d) of section 114.4. The NPRM included several revisions to this provision, most of which are included in the attached final rules. First, the regulations distinguish between the speech and nonspeech components of voter drives. Thus, the rules conform to the MCFL decision by applying an express advocacy standard to the speech components of voter drives. Hence, new language in paragraph (d)(1) indicates that communications containing express advocacy may not be made during voter drives aimed at employees outside the restricted class, or during voter drives aimed more broadly at the general public.

The revised voter drive rules also include changes regarding the nonspeech components of voter drives. Under section 114.4(d), corporations and labor organizations may conduct voter registration and get-out-the-vote drives without the involvement of a nonprofit organization which is described in 26 U.S.C. 501 (c)(3) or (c)(4). To the extent that AO 1978-102 indicates that such drives must be jointly sponsored with a civic or nonprofit organization, that opinion is superseded by the regulatory changes to this section. However, the validity of AO 1980-45, which affirmed the ability of a 501(c)(3) nonprofit corporation to conduct a voter registration drive, is not affected by the revised rules. Paragraph (d)(2) specifies that these drives cannot be coordinated with any candidate or political party. Moreover, under paragraph (d)(5), workers cannot be paid only to register voters supporting a particular candidate or political party.

Both the proposed and the final rules in section 114.4(d)(4) contemplate

continuing the long-standing policy that information and assistance in registering and voting shall not be withheld on the basis of support for or opposition to particular candidates or political parties. New language in paragraph (d)(6) indicates that those receiving information or assistance must be notified in writing that their party or candidate preferences may not be a basis for refusing them assistance. This requirement can be easily satisfied simply by posting a sign at a voter registration table or in a vehicle used to take voters to the polls.

The comments and testimony revealed little, if any, consensus regarding these proposals. There was opposition to section 114.4(d) on the grounds that voter drives are something of value to candidates, and are therefore contributions or expenditures. There was also concern that the proposals did not contain sufficient safeguards against electioneering and coordination with candidates. On the other hand, others believed that the Commission has no authority to prohibit coordinating voter registration and get-out-the-vote drive communications with candidates, and that the only restriction on this activity should be that the organization must refrain from express advocacy. The provisions requiring certain notifications to the targets of the drive were thought to be unnecessary and expensive. The Internal Revenue Service indicated that while the FEC's rules are more specific than theirs, they do not impinge upon the Internal Revenue Service's "facts and circumstances" test.

After carefully considering the comments, the Commission has decided that the proposals in the NPRM are in keeping with the FECA and the *MCFL* decision. Thus, the final rules follow the proposed rules, with two minor changes. First, paragraph (d)(3) has been modified to clarify that voter registration and get-out-the-vote drives cannot be targeted primarily at individuals who will register with, or vote for, the party preferred by the drive sponsor. Second, the rules specify that voter registration efforts may include transportation to the place of registration in addition to transportation to the polls.

11. Membership Organizations, Trade Associations, Cooperatives and Corporations Without Capital Stock

Paragraph (e) of section 114.4 generally follows previous paragraph (d) by specifying that these organizations may hold candidate appearances under the same conditions as other corporations.

12. Candidate Debates

Provisions governing the funding of candidate debates, which were previously located in section 114.4(e), are now located in section 114.4(f). These rules have been revised in two respects. First, these debates are no longer referred to as "nonpartisan." Second, the term "bona fide" has been moved so that it modifies "newspaper, magazine and other periodical publication," instead of modifying "broadcaster." This change conforms to the wording of the candidate debate rules in 11 CFR 110.13.

Section 114.12 Incorporation of Political Committees; Payment of Fringe Benefits

This section has been renamed to make it easier for the reader to locate the topics covered. In addition, paragraph (b) of section 114.12, which pertains to candidates using corporate and labor organization meeting rooms, has been moved to new section 114.13.

Section 114.13 Use of Meeting Rooms

This new section replaces previous 11 CFR 114.12(b). It permits corporations and labor organizations to make meeting rooms available to a candidate or political committee if the room is customarily made available to clubs, civic or community groups, and if the rooms are made available to any other candidate or committee upon request. It differs from the previous rule, however, in that it does not refer to making rooms available on a "nonpartisan basis." One commenter objected to this provision arguing that it sanctions the political use of labor organization facilities paid for, in part, with the forced dues of employees. Issues involving compulsory union dues are more properly within the jurisdiction of the Department of Labor.

Certification of no Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that, few, if any, small entities will be affected by these final rules. In addition, any small entities affected are already required to comply with the requirements of the Federal Election Campaign Act.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 102

Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 109

Elections, Reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 114

Business and industry, Elections, Labor.

For the reasons set out in the preamble, Subchapter A, Chapter I of Title 11 of the *Code of Federal Regulations* is amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for Part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. 11 CFR part 100 is amended by revising paragraph (b)(21) of section 100.7 to read as follows:

§ 100.7 Contribution (2 U.S.C. 431(8)).

* * * * *

(b) * * *

(21) Funds provided to defray costs incurred in staging candidate debates in accordance with the provisions of 11 CFR 110.13 and 114.4(f).

* * * * *

3. 11 CFR Part 100 is amended by revising paragraphs (b)(3) and (b)(23) of section 100.8 to read as follows:

§ 100.8 Expenditure (2 U.S.C. 431(9)).

* * * * *

(b) * * *

(3) Any cost incurred for activity designed to encourage individuals to register to vote or to vote is not an expenditure if no effort is or has been made to determine the party or candidate preference of individuals before encouraging them to register to vote or to vote, except that corporations and labor organizations shall engage in such activity in accordance with 11 CFR 114.4 (c) and (d). *See also* 11 CFR 114.3(c)(4).

* * * * *

(23) Funds used to defray costs incurred in staging candidate debates in accordance with the provisions of 11 CFR 110.13 and 114.4(f).

* * * * *

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

4. The authority citation for Part 102 continues to read as follows:

Authority: 2 U.S.C. 432, 433, 438(a)(8), 441d.

5. 11 CFR part 102 is amended by revising paragraph (c)(1) of section 102.4 to read as follows:

§ 102.4 Administrative termination (2 U.S.C. 433(d)(2)).

* * * * *

(c) * * *

(1) The committee has complied with the debt settlement procedures set forth at 11 CFR part 116.

* * * * *

PART 109—INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 434(c))

6. The authority citation for part 109 continues to read as follows:

Authority: 2 U.S.C. 431(17), 434(c), 438(a)(8), 441d.

7. 11 CFR part 109 is amended by revising paragraph (b)(4) of section 109.1 to read as follows:

§ 109.1 Definitions (2 U.S.C. 431(17)).

* * * * *

(b) * * *

(4) *Made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate—*

(i) Means any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication. An expenditure will be presumed to be so made when it is—

(A) Based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate, or by the candidate's agents, with a view toward having an expenditure made; or

(B) Made by or through any person who is, or has been, authorized to raise or expend funds, who is, or has been, an officer of an authorized committee, or who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate's committee or agent;

(ii) But does not include providing to the expending person upon request Commission guidelines on independent expenditures.

* * * * *

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

8. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(98), 441a, 441b, 441d, 441e, 441f, 441g and 441h.

9. 11 CFR part 110 is amended by adding new section 110.12 to read as follows:

§ 110.12 Candidate appearances on public educational institution premises.

(a) *Rental of facilities at usual and normal charge.* Any unincorporated public educational institution exempt from federal taxation under 26 U.S.C. 115, such as a school, college or university, may make its facilities available to any candidate or political committee in the ordinary course of business and at the usual and normal charge. In this event, the requirements of paragraph (b) of this section are not applicable.

(b) *Use of facilities at no charge or at less than the usual and normal charge.* An unincorporated public educational institution exempt from federal taxation under 26 U.S.C. 115, such as a school, college or university, may sponsor appearances by candidates, candidates' representatives or representatives of political parties at which such individuals address or meet the institution's academic community or the general public (whichever is invited) on the educational institution's premises at no charge or at less than the usual and normal charge, if:

(1) The educational institution makes reasonable efforts to ensure that the appearances constitute speeches, question and answer sessions, or similar communications in an academic setting, and makes reasonable efforts to ensure that the appearances are not conducted as campaign rallies or events; and

(2) The educational institution does not, in conjunction with the appearance, expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party, and does not favor any one candidate or political party over any other in allowing such appearances.

10. 11 CFR part 110 is amended by revising section 110.13 to read as follows:

§ 110.13 Candidate debates.

(a) *Staging organizations.* (1) Nonprofit organizations described in 26 U.S.C. 501 (c)(3) or (c)(4) and which do not endorse, support, or oppose political candidates or political parties may stage

candidate debates in accordance with this section and 11 CFR 114.4(f).

(2) Broadcasters, *bona fide* newspapers, magazines and other periodical publications may stage candidate debates in accordance with this section and 11 CFR 114.4(f).

(b) *Debate structure.* The structure of debates staged in accordance with this section and 11 CFR 114.4(f) is left to the discretion of the staging organization(s), provided that:

(1) Such debates include at least two candidates; and

(2) The staging organization(s) does not structure the debates to promote or advance one candidate over another.

(c) *Criteria for candidate selection.* For all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate. For general election debates, staging organization(s) shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate. For debates held prior to a primary election, caucus or convention, staging organizations may restrict candidate participation to candidates seeking the nomination of one party, and need not stage a debate for candidates seeking the nomination of any other political party or independent candidates.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

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

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

12. 11 CFR part 114 is amended by revising paragraphs (a)(1), (a)(2) introductory text and (a)(2)(ii), and by adding paragraph (j) to section 114.1 as follows.

§ 114.1 Definitions.

(a) For purposes of part 114 and section 12(h) of the Public Utility Holding Company Act (15 U.S.C. 791(h))—

(1) The terms *contribution* and *expenditure* shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, if such loan is made in accordance with 11 CFR 100.7(b)(11)) to any candidate, political

party or committee, organization, or any other person in connection with any election to any of the offices referred to in 11 CFR 114.2 (a) or (b) as applicable.

(2) The terms *contribution* and *expenditure* shall *not* include—

(i) * * *

(ii) Registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel, and their families, or by a labor organization aimed at its members and executive or administrative personnel, and their families, as described in 11 CFR 114.3;

* * * * *

(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.)

13. 11 CFR part 114 is amended by revising section 114.2 to read as follows:

§ 114.2 Prohibitions on contributions and expenditures.

(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 FR 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 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 CFR 114.1(a) in connection with any Federal election. Except as provided at 11 CFR 114.10, corporations and labor organizations are prohibited from making expenditures with respect to a Federal election (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.

(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 or expenditures, even 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 or expenditures. 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 109.1 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 100.7, 100.8, 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 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.

14. 11 CFR part 114 is amended by revising section 114.3 to read as follows:

§ 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 109.1 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.* Disbursements for communications expressly advocating the election or defeat of one or more clearly identified candidate(s) made by a corporation, including a corporation described in paragraph (a)(2) of this section, or labor organization to its restricted class shall be reported in accordance with 11 CFR 100.8(b)(4) and 104.6.

(c) *Communications containing express advocacy.* Communications containing express advocacy which may be made to the restricted class include, but are not limited to, the examples set forth in paragraphs (c)(1) through (c)(4) of this section.

(1) *Publications.* Printed material expressly advocating the election or defeat of one or more clearly identified candidate(s) or candidates of a clearly identified political party may be distributed by a corporation or by a labor organization to its restricted class, provided that:

(i) The material is produced at the expense of the corporation or labor organization; and

(ii) The material constitutes a communications of the views of the corporation or the labor organization, and is not the republication or reproduction, in whole or in part, of any broadcast, transcript or tape or any written, graphic, or other form of campaign materials prepared by the candidate, his or her campaign committees, or their authorized agents.

A corporation or labor organization may, under this section, use brief quotations from speeches or other materials of a candidate that demonstrate the candidate's position as part of the corporation's or labor

organization's expression of its own views.

(2) *Candidate and party appearances.*

(i) A corporation may allow a candidate, candidate's representative or party representative to address its restricted class at a meeting, convention or other function of the corporation, but is not required to do so. A labor organization may allow a candidate or party representative to address its restricted class at a meeting, convention, or other function of the labor organization, but is not required to do so. A corporation or labor organization may bar other candidates for the same office or a different office and their representatives, and representatives of other parties addressing the restricted class. A corporation or labor organization may allow the presence of employees outside the restricted class of the corporation or labor organization who are necessary to administer the meeting, other guests of the corporation or labor organization who are being honored or speaking or participating in the event, and representatives of the news media.

(ii) The candidate, candidate's representative or party representative may ask for contributions to his or her campaign or party, or ask that contributions to the separate segregated fund of the corporation or labor organization be designated for his or her campaign or party. The incidental solicitation of persons outside the corporation's or labor organization's restricted class who may be present at the meeting as permitted by this section will not be a violation of 11 CFR part 114. The candidate's representative or party representative (other than an officer, director or other representative of a corporation or official, member or employee of a labor organization) or the candidate, may accept contributions before, during or after the appearance at the meeting, convention or other function of the corporation or labor organization.

(iii) The corporation or labor organization may suggest that members of its restricted class contribute to the candidate or party committee, but the collection of contributions by any officer, director or other representative of the corporation or labor organization before, during, or after the appearance while at the meeting, is an example of a prohibited facilitation of contributions under 11 CFR 114.2(f).

(iv) If the corporation or labor organization permits more than one candidate for the same office, or more than one candidate's representative or party representative, to address its restricted class, and permits the news

media to cover or carry an appearance by one candidate or candidate's representative or party representative, the corporation or labor organization shall also permit the news media to cover or carry the appearances by the other candidate(s) for that office, or the other candidates' representatives or party representatives. If the corporation or labor organization permits a representative of the news media to cover or carry a candidate or candidate's representative or party representative appearance, the corporation or labor organization shall provide all other representatives of the news media with equal access for covering or carrying that appearance. Equal access is provided by—

(A) Providing advance information regarding the appearance to the representatives of the news media whom the corporation or labor organization customarily contacts and other representatives of the news media upon request; and

(B) Allowing all representatives of the news media to cover or carry the appearance, through the use of pooling arrangements if necessary.

(3) *Phone banks.* A corporation or a labor organization may establish and operate phone banks to communicate with its restricted class, urging them to register and/or vote for a particular candidate or candidates, or to register with a particular political party.

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

15. 11 CFR part 114 is amended by revising section 114.4 to read as follows:

§ 114.4 Disbursements for communications beyond the restricted class in connection with a Federal election.

(a) *General.* A corporation or labor organization may communicate beyond the restricted class in accordance with this section. Any communications which a corporation or labor organization may make to the general

public under paragraph (c) of this section may also be made to the corporation's or labor organization's restricted class and to other employees and their families. Communications which a corporation or labor organization may make only to its employees (including its restricted class) and their families, but not to the general public, are found in paragraph (b) of this section. Communications which a corporation or labor organization may make only to its restricted class are found at 11 CFR 114.3. The activities permitted under paragraphs (b) and (c) of this section may involve election-related coordination with candidates and political committees only to the extent permitted by this section. See 11 CFR 109.1 and 114.2(c) regarding independent expenditures and coordination with candidates. Incorporated membership organizations, incorporated trade associations, incorporated cooperatives and corporations without capital stock will be treated as corporations for the purpose of making communications beyond the restricted class under this section.

(b) *Communications by a corporation or labor organization to employees beyond its restricted class—* (1) *Candidate and party appearances on corporate premises or at a meeting, convention or other function.* Corporations may permit candidates, candidates' representatives or representatives of political parties on corporate premises or at a meeting, convention, or other function of the corporation to address or meet its restricted class and other employees of the corporation and their families, in accordance with the conditions set forth in paragraphs (b)(1)(i) through (b)(1)(viii) of this section. Other guests of the corporation who are being honored or speaking or participating in the event and representatives of the news media may be present. A corporation may bar all candidates, candidates' representatives and representatives of political parties from addressing or meeting its restricted class and other employees of the corporation and their families on corporate premises or at any meeting, convention or other function of the corporation.

(i) If a candidate for the House or Senate or a candidate's representative is permitted to address or meet employees, all candidates for that seat who request to appear must be given a similar opportunity to appear;

(ii) If a Presidential or Vice Presidential candidate or candidate's representative is permitted to address or

meet employees, all candidates for that office who are seeking the nomination or election, and who meet pre-established objective criteria under 11 CFR 110.13(c), and who request to appear must be given a similar opportunity to appear;

(iii) If representatives of a political party are permitted to address or meet employees, representatives of all political parties which had a candidate or candidates on the ballot in the last general election or which are actively engaged in placing or will have a candidate or candidates on the ballot in the next general election and who request to appear must be given a similar opportunity to appear;

(iv) The candidate's representative or party representative (other than an officer, director or other representative of a corporation) or the candidate, may ask for contributions to his or her campaign or party, or ask that contributions to the separate segregated fund of the corporation be designated for his or her campaign or party. The candidate, candidate's representative or party representative shall not accept contributions before, during or after the appearance while at the meeting, convention or other function of the corporation, but may leave campaign materials or envelopes for members of the audience. A corporation, its restricted class, or other employees of the corporation or its separate segregated fund shall not, either orally or in writing, solicit or direct or control contributions by members of the audience to any candidate or party in conjunction with any appearance by any candidate or party representative under this section, and shall not facilitate the making of contributions to any such candidate or party (see 11 CFR 114.2(f));

(v) A corporation or its separate segregated fund shall not, in conjunction with any candidate, candidate representative or party representative appearance under this section, expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party and shall not promote or encourage express advocacy by employees;

(vi) No candidate, candidate's representative or party representative shall be provided with more time or a substantially better location than other candidates, candidates' representatives or party representatives who appear, unless the corporation is able to demonstrate that it is clearly impractical to provide all candidates, candidates' representatives and party representatives with similar times or locations;

(vii) Coordination with each candidate, candidate's agent, and candidate's authorized committee(s) may include discussions of the structure, format and timing of the candidate appearance and the candidate's positions on issues, but shall not include discussions of the candidate's plans, projects, or needs relating to the campaign; and

(viii) Representatives of the news media may be allowed to be present during a candidate, candidate representative or party representative appearance under this section, in accordance with the procedures set forth at 11 CFR 114.3(c)(2)(iv).

(2) *Candidate and party appearances on labor organization premises or at a meeting, convention or other function.* A labor organization may permit candidates, candidates' representatives or representatives of political parties on the labor organization's premises or at a meeting, convention, or other function of the labor organization to address or meet its restricted class and other employees of the labor organization, and their families, in accordance with the conditions set forth in paragraphs (b)(1)(i) through (iii), (vi) through (viii), and paragraphs (b)(2)(i) and (ii) of this section. Other guests of the labor organization who are being honored or speaking or participating in the event and representatives of the news media may be present. A labor organization may bar all candidates, candidates' representatives and representatives of political parties from addressing or meeting its restricted class and other employees of the labor organization and their families on the labor organization's premises or at any meeting, convention or other function of the labor organization.

(i) The candidate's representative or party representative (other than an official, member or employee of a labor organization) or the candidate, may ask for contributions to his or her campaign or party, or ask that contributions to the separate segregated fund of the labor organization be designated for his or her campaign or party. The candidate, candidate's representative or party representative shall not accept contributions before, during or after the appearance while at the meeting, convention or other function of the labor organization, but may leave campaign materials or envelopes for members of the audience. No official, member, or employee of a labor organization or its separate segregated fund shall, either orally or in writing, solicit or direct or control contributions by members of the audience to any candidate or party representative under

this section, and shall not facilitate the making of contributions to any such candidate or party. See 11 CFR 114.2(f).

(ii) A labor organization or its separate segregated fund shall not, in conjunction with any candidate or party representative appearance under this section, expressly advocate the election or defeat of any clearly identified candidate(s), and shall not promote or encourage express advocacy by its members or employees.

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

(1) *General.* A corporation or labor organization may make the communications described in paragraphs (c)(2) through (c)(5) of this section to the general public. The general public includes anyone who is not in the corporation's or labor organization's restricted class. The provisions of paragraph (c) of this section shall not prevent a qualified nonprofit corporation under 11 CFR 114.10(c) from including express advocacy in any communication made to the general public under paragraphs (c)(2) through (c)(5)(i) of this section.

(2) *Registration and voting communications.* A corporation or labor organization may make registration and get-out-the vote communications to the general public, provided that the communications do not expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party. The preparation and distribution or registration and get-out-the-vote communications shall not be coordinated with any candidate(s) or political party. A corporation or labor organization may make communications permitted under this section through posters, billboards, broadcasting media, newspapers, newsletter, brochures, or similar means of communication with the general public.

(3) *Official registration and voting information.*

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

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

(iii) A corporation or labor organization may donate funds to State or local government agencies

responsible for the administration of elections to help defray the costs of printing or distributing registration or voting information and forms.

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

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

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

(5) *Voter guides.* A corporation or labor organization may prepare and distribute to the general public voter guides consisting of two or more candidates' positions on campaign issues, including voter guides obtained from a nonprofit organization which is described in 26 U.S.C. 501 (c)(3) or (c)(4), provided that the voter guides comply with either paragraph (c)(5)(i) or (c)(5)(ii) (A) through (E) of this section. The sponsor may include in the voter guide biographical information on each candidate, such as education, employment positions, offices held, and community involvement.

(i) The corporation or labor organization shall not contact or in any other way act in cooperation, coordination, or consultation with or at the request or suggestion of the candidates, the candidates' committees or agents regarding the preparation, contents and distribution of the voter guide, and no portion of the voter guide may expressly advocate the election or defeat of one or more clearly identified candidate(s) or candidates of any clearly identified political party.

(ii) (A) The corporation or labor organization shall not contact or in any other way act in cooperation, coordination, or consultation with or at the request or suggestion of the candidates, the candidates' committees or agents regarding the preparation, contents and distribution of the voter

guide, except that questions may be directed in writing to the candidates included in the voter guide and the candidates may respond in writing;

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

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

(2) Appear on the general election ballot in the state(s) where the voter guide is distributed or appear on the general election ballot in enough states to win a majority of the electoral votes;

(C) No candidate may receive greater prominence in the voter guide than other participating candidates, or substantially more space for responses;

(D) The voter guide and its accompanying materials shall not contain an electioneering message; and

(E) The voter guide and its accompanying materials shall not score or rate the candidates' responses in such a way as to convey an electioneering message.

(6) *Endorsements.* A corporation or labor organization may endorse a candidate and may communicate the endorsement to its restricted class through the publications described in 11 CFR 114.3(c)(1) or during a candidate appearance under 11 CFR 114.3(c)(2), provided that no more than a de minimis number of copies of the publication which includes the endorsement are circulated beyond the restricted class. The corporation or labor organization may publicly announce the endorsement and state the reasons therefor, in accordance with the conditions set forth in paragraphs (c)(6)(i) and (ii) of this section. The Internal Revenue Code and regulations promulgated thereunder should be consulted regarding restrictions or prohibitions on endorsements by nonprofit corporations described in 26 U.S.C. 501(c)(3).

(i) The public announcement of the endorsement may be made through a press release and press conference. Disbursements for the press release and press conference shall be de minimis. The disbursements shall be considered de minimis if the press release and notice of the press conference is distributed only to the representatives of the news media that the corporation or labor organization customarily contacts when issuing non-political press

releases or holding press conferences for other purposes.

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

(7) *Candidate appearances on educational institution premises—(i) Rental of facilities at usual and normal charge.* Any incorporated nonprofit educational institution exempt from federal taxation under 26 U.S.C. 501(c)(3), such as a school, college or university, may make its facilities available to any candidate or political committee in the ordinary course of business and at the usual and normal charge. In this event, the requirements of paragraph (c)(7)(ii) of this section are not applicable.

(ii) *Use of facilities at no charge or at less than the usual and normal charge.* An incorporated nonprofit educational institution exempt from federal taxation under 26 U.S.C. 501(c)(3), such as a school, college or university, may sponsor appearances by candidates, candidates' representatives or representatives of political parties at which such individuals address or meet the institution's academic community or the general public (whichever is invited) on the educational institution's premises at no charge or at less than the usual and normal charge, if:

(A) The educational institution makes reasonable efforts to ensure that the appearances constitute speeches, question and answer sessions, or similar communications in an academic setting, and makes reasonable efforts to ensure that the appearances are not conducted as campaign rallies or events; and

(B) The educational institution does not, in conjunction with the appearance, expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party, and does not favor any one candidate or political party over any other in allowing such appearances.

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

(1) The corporation or labor organization shall not make any communication expressly advocating the election or defeat of any clearly identified candidate(s) or candidates of

a clearly identified political party as part of the voter registration or get-out-the-vote drive.

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

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

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

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

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

(e) *Incorporated membership organizations, incorporated trade associations, incorporated cooperatives and corporations without capital stock.* An incorporated membership organization, incorporated trade association, incorporated cooperative or corporation without capital stock may permit candidates, candidates' representatives or representatives of political parties to address or meet members and employees of the organization, and their families, on the organization's premises or at a meeting, convention or other function of the organization, in accordance with the conditions set forth in paragraphs (b)(1) (i) through (viii) of this section.

(f) *Candidate debates.* (1) A nonprofit organization described in 11 CFR 110.13(a)(1) may use its own funds and may accept funds donated by corporations or labor organizations under paragraph (f)(3) of this section to defray costs incurred in staging candidate debates held in accordance with 11 CFR 110.13.

(2) A broadcaster, *bona fide* newspaper, magazine or other periodical publication may use its own

funds to defray costs incurred in staging public candidate debates held in accordance with 11 CFR 110.13.

(3) A corporation or labor organization may donate funds to nonprofit organizations qualified under 11 CFR 110.13(a)(1) to stage candidate debates held in accordance with 11 CFR 110.13 and 114.4(f).

16. 11 CFR part 114 is amended by revising the title of section 114.12, and by removing and reserving paragraph (b) of section 114.12 to read as follows:

§ 114.12 Incorporation of political committees; Payment of fringe benefits.

* * * * *

(b) [Reserved]

* * * * *

17. 11 CFR part 114 is amended by adding section 114.13 to read as follows:

§ 114.13 Use of meeting rooms.

Notwithstanding any other provisions of part 114, a corporation or labor organization which customarily makes its meeting rooms available to clubs, civic or community organizations, or

other groups may make such facilities available to a political committee or candidate if the meeting rooms are made available to any candidate or political committee upon request and on the same terms given to other groups using the meeting rooms.

Dated: December 8, 1995.

Danny L. McDonald,

Chairman, Federal Election Commission.

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