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By Commission Secretary's Office at 5:52 pm, Oct 08, 2014



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Agenda Document No. 14-53-A
AGENDA ITEM
For the Meeting of October 9, 2014
SUBMITTED LATE

October 8, 2014

MEMORANDUM

TO: The Commission

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SUBJECT: Final Rules: Independent Expenditures and Electioneering
Communications by Corporations and Labor Organizations

Attached are draft final rules and an explanation and justification that would amend certain Commission regulations in response to the decision of the Supreme Court in *Citizens United v. FEC*. We request that this draft be placed on the agenda for October 9, 2014.

Attachment

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FEDERAL ELECTION COMMISSION

11 CFR Parts 104, 114

[Notice 2014–XX]

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

AGENCY: Federal Election Commission.

ACTION: Final Rules.

SUMMARY: The Federal Election Commission is revising its rules regarding corporate and labor organization funding of expenditures, independent expenditures, and electioneering communications. The Commission is issuing these rules in response to a Petition for Rulemaking filed by the James Madison Center for Free Speech petitioning the Commission to amend its regulations in response to the decision of the Supreme Court in Citizens United v. FEC.

DATES: These rules will be effective once they have been before Congress for 30 legislative days. 52 U.S.C. 30111(d) (formerly 2 U.S.C. 438(d)). A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Attorneys Ms. Esther D. Gyory, Ms. Cheryl A.F. Hemsley, or Ms. Joanna S. Waldstreicher, 999 E Street, NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530. Documents relating to the rulemaking record are available on the Commission’s website at <http://www.fec.gov/fosers/> (REG 2010-01 Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations (2010)).

1 **SUPPLEMENTARY INFORMATION:** The Commission is revising its regulations at 11
2 CFR Part 114 concerning the making of independent expenditures and electioneering
3 communications by corporations and labor organizations. The Commission is: (1) removing the
4 prohibitions in 11 CFR 114.2 on the use of corporate and labor organization general treasury
5 funds to finance independent expenditures and electioneering communications; (2) removing the
6 prohibitions in 11 CFR 114.4 regarding express advocacy communications to the general public
7 and revising the standards in 11 CFR 114.3 for voter registration and get-out-the-vote (“GOTV”)
8 drives, while revising these sections to maintain certain existing exemptions for the activities
9 addressed therein; (3) revising the regulation at 11 CFR 114.10, which currently governs the
10 making of independent expenditures and electioneering communications by qualified nonprofit
11 corporations; (4) removing 11 CFR 114.14 and 114.15, which prohibit corporations and labor
12 organizations from making certain electioneering communications; and (5) revising certain
13 provisions in 11 CFR 104.20 that govern the reporting of electioneering communications. The
14 Commission is also making technical and conforming changes to 11 CFR 114.1 and 114.2. The
15 Commission is not, at this time, revising 11 CFR 114.9, which governs the use of corporate and
16 labor organization facilities for political activity.

17 **Transmission of Final Rules to Congress**

18 Before final promulgation of any rules or regulations to carry out the provisions of the
19 Federal Election Campaign Act, the Commission transmits the rules or regulations to the Speaker
20 of the House of Representatives and the President of the Senate for a thirty-legislative-day
21 review period. 52 U.S.C. 30111(d) (formerly 2 U.S.C. 438(d)). The final rules that follow were
22 transmitted to Congress on [date].

1 **Explanation and Justification**

2 **I. Background**

3 The Federal Election Campaign Act of 1971, as amended¹ (the “Act”), prohibits
4 corporations and labor organizations from using general treasury funds to make contributions or
5 expenditures in connection with federal elections. 52 U.S.C. 30118 (formerly 2 U.S.C. 441b).
6 The term “contribution or expenditure” includes any “direct or indirect payment, distribution,
7 loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any
8 candidate, campaign committee, or political party or organization,” in connection with any
9 federal election. 52 U.S.C. 30118(b)(2) (formerly 2 U.S.C. 441b(b)(2)); 11 CFR 114.1(a)(1); see
10 also 52 U.S.C. 30101(8)(A), (9)(A) (formerly 2 U.S.C. 431(8)(A), (9)(A)); 11 CFR 100.52,
11 100.111. As enacted, the Act’s prohibition on expenditures by corporations and labor
12 organizations included “independent expenditures,” which are expenditures expressly advocating
13 the election or defeat of a clearly identified candidate that are not made in concert or cooperation
14 with, or at the request or suggestion of, a clearly identified candidate, the candidate’s authorized
15 political committee, or their agents, or a political party committee and its agents. 52 U.S.C.
16 30101(17) (formerly 2 U.S.C. 431(17)); 11 CFR 100.16(a).

17 The Bipartisan Campaign Reform Act of 2002² (“BCRA”) amended the Act also to
18 prohibit corporations and labor organizations from using general treasury funds to make
19 electioneering communications. 52 U.S.C. 30118(b)(2) (formerly 2 U.S.C. 441b(b)(2)).
20 Electioneering communications are broadcast, cable, or satellite communications that refer to a
21 clearly identified candidate for federal office, are publicly distributed within 60 days before a
22 general election or 30 days before a primary election, and are targeted to the relevant electorate.

¹ 52 U.S.C. 30101-30146 (formerly 2 U.S.C. 431-457).

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

1 52 U.S.C. 30104(f)(3)(A)(i), (C) (formerly 2 U.S.C. 434(f)(3)(A)(i), (C)); 11 CFR 100.29(a)(1)-
2 (3).

3 The Commission's regulations implementing the prohibitions on independent
4 expenditures and electioneering communications by corporations and labor organizations are
5 found at 11 CFR part 114.

6 The Act and Commission regulations require entities that make independent expenditures
7 and electioneering communications to report certain information to the Commission, which then
8 places the reports on the public record. 52 U.S.C. 30104(c), (f) (formerly 2 U.S.C. 434(c), (f));
9 11 CFR 104.20, 109.10. The Act and Commission regulations also require communications
10 expressly advocating the election or defeat of a clearly identified candidate, as well as
11 electioneering communications, to include disclaimers stating who paid for the communication
12 and whether the communication was authorized by a federal candidate or a federal candidate's
13 authorized political committee or its agents. 52 U.S.C. 30120(a) (formerly 2 U.S.C. 441d(a)); 11
14 CFR 110.11.

15 A. The Rulemaking Record

16 These final rules respond to a Petition for Rulemaking filed on behalf of the James
17 Madison Center for Free Speech and to the decision of the Supreme Court in Citizens United v.
18 FEC, 558 U.S. 310 (2010), discussed below. The Commission published a Notice of
19 Availability seeking public comment on the Petition for Rulemaking in the Federal Register on
20 June 21, 2011. Independent Expenditures and Electioneering Communications by Corporations
21 and Labor Organizations, 76 FR 36001 (June 21, 2011). The comment period closed on August
22 22, 2011. The Commission received three comments in response to the Notice of Availability.

1 The Commission published a Notice of Proposed Rulemaking (“NPRM”) in the Federal
2 Register on December 27, 2011. Independent Expenditures and Electioneering Communications
3 by Corporations and Labor Organizations, 76 FR 80803 (Dec. 27, 2011). The NPRM comment
4 period ended on February 3, 2012, and the reply comment period ended on February 17, 2012.
5 The Commission received nine comments from 21 commenters in response to the NPRM.

6 The Commission held a public hearing on March 7, 2012. Five commenters testified.

7 B. Citizens United

8 In Citizens United, the Supreme Court held that the Act’s prohibitions on financing
9 independent expenditures and electioneering communications with corporate general treasury
10 funds were unconstitutional.³ Citizens United, a non-profit corporation, released a film in
11 January 2008 in theaters and on DVD about then-Senator Hillary Clinton, who was a candidate
12 in the Democratic Party’s 2008 presidential primary elections. Citizens United wanted to pay
13 cable companies to make the film available to digital cable subscribers for free through video-on-
14 demand, which allows subscribers to view programming, including movies. Citizens United
15 planned to make the film available within 30 days before the 2008 primary elections.

16 Citizens United filed suit, arguing that the ban on corporate electioneering
17 communications at 52 U.S.C. 30118(b)(2) (formerly 2 U.S.C. 441b(b)(2)) was unconstitutional
18 as applied to payments to make the film available through video-on-demand. Citizens United
19 also argued that the disclosure and disclaimer requirements at 52 U.S.C. 30104(f) and 30120

³ Although Citizens United did not directly address whether labor organizations also have a First Amendment right to use their general treasury funds for independent expenditures and electioneering communications, the Act and Commission regulations generally treat labor organizations similarly to corporations. See 52 U.S.C. 30118 (formerly 2 U.S.C. 441b); see generally 11 CFR part 114; see also Advisory Opinion 2010-11 (Commonsense Ten) at n.3. When addressing corporations, the Court in Citizens United often referred to labor organizations, see, e.g., 558 U.S. at 318, 343, and the Court provided no basis for treating labor organization communications differently than corporate communications under the First Amendment. Therefore, as proposed in the NPRM, the final rules make the same regulatory changes for both corporations and labor organizations.

1 (formerly 2 U.S.C. 434(f) and 441d) were unconstitutional as applied to payments for the film
2 and for three planned advertisements for the movie.

3 The Supreme Court invalidated section 30118's (formerly 2 U.S.C. 441b) restrictions on
4 corporate independent expenditures and electioneering communications. 558 U.S. at 365. The
5 Court held that the prohibition on corporate independent expenditures and electioneering
6 communications was a ban on speech and concluded that section 30118 (formerly 2 U.S.C.
7 441b) was therefore "subject to strict scrutiny." Id. at 339-40.

8 The Court noted that "[p]olitical speech is 'indispensable to decisionmaking in a
9 democracy, and this is no less true because the speech comes from a corporation rather than an
10 individual.'" Id. at 349 (quoting First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 777
11 (1978)). The Court stated that the anti-distortion rationale previously used to justify restrictions
12 on corporate speech "interferes with the 'open marketplace of ideas' protected by the First
13 Amendment." Id. at 354.⁴ The Supreme Court also found that corporate independent
14 expenditures could not be limited in order to protect dissenting shareholders from being
15 compelled to fund corporate political speech. Id. at 361-62. Such disagreements, the Court
16 found, could be corrected by shareholders through the procedures of corporate democracy. Id.
17 "All speakers, including individuals and the media, use money amassed from the economic
18 marketplace to fund their speech, and the First Amendment protects the resulting speech." Id. at
19 351. Accordingly, the Supreme Court held that "the rule that political speech cannot be limited
20 based on a speaker's wealth is a necessary consequence of the premise that the First Amendment
21 generally prohibits the suppression of political speech based on the speaker's identity." Id. at
22 350.

⁴ The Court therefore overruled its previous decisions in Austin v. Mich. Chamber of Commerce, 494 U.S. 652 (1990), and, in part, McConnell v. FEC, 540 U.S. 93, 203-09 (2003).

1 The Supreme Court further held that, while the government has a compelling interest in
2 preventing corruption or the appearance of corruption, “independent expenditures, including
3 those made by corporations, do not give rise to corruption or the appearance of corruption.” Id.
4 at 357. Thus, the Court invalidated section 30118’s (formerly 2 U.S.C. 441b) restrictions on
5 corporate independent expenditures and electioneering communications. Id. at 365.

6 Citizens United also challenged the Act’s disclaimer and disclosure provisions at sections
7 30104(f) and 30120 (formerly 2 U.S.C. 434(f) and 441d) as applied to the film and three
8 advertisements for the film. Under the Act, electioneering communications must include a
9 statement identifying the person responsible for payment for the advertisement. 52 U.S.C.
10 30120(a) (formerly 2 U.S.C. 441d(a)). Also, any person who spends more than \$10,000 on
11 electioneering communications within a calendar year must file a disclosure statement with the
12 Commission providing information about the person making the electioneering communication,
13 the election to which the communication pertains, and certain contributors who gave \$1,000 or
14 more within a specified time period. 52 U.S.C. 30104(f)(2) (formerly 2 U.S.C. 434(f)(2)).

15 The Court rejected the challenge to these statutory requirements and upheld the reporting
16 provisions because “transparency enables the electorate to make informed decisions and give
17 proper weight to different speakers and messages.” Citizens United, 558 U.S. at 366-71. The
18 Court recognized that the Commission’s current disclaimer and disclosure requirements advance
19 the public’s “interest in knowing who is speaking about a candidate shortly before an election.”
20 Id. at 369. “Prompt disclosure of expenditures can provide shareholders and citizens with the
21 information needed to hold corporations and elected officials accountable for their positions and
22 supporters.” Id. at 370.

1 **II. Revised 11 CFR 114.2 — Prohibitions on contributions, expenditures and**
2 **electioneering communications**

3 The existing Commission regulation at 11 CFR 114.2(b) implements 52 U.S.C. 30118(a)
4 (formerly 2 U.S.C. 441b(a)) by prohibiting corporations and labor organizations from making
5 expenditures, including independent expenditures.⁵ See 52 U.S.C. 30101(17) (formerly 2 U.S.C.
6 431(17)); see also 11 CFR 100.16(a). This rule also prohibits corporations and labor
7 organizations from making payments for electioneering communications unless certain criteria
8 are met. As a result of the Supreme Court’s invalidation of the prohibitions on corporate
9 independent expenditures and electioneering communications in 52 U.S.C. 30118(a) (formerly
10 2 U.S.C. 441b(a)),⁶ certain portions of 11 CFR 114.2(b) are no longer valid. Accordingly, the
11 Commission is revising this regulation to remove the prohibitions on independent expenditures
12 and electioneering communications.

13 A. Removal of 11 CFR 114.2(b)(2)(i) — Prohibition on corporate and labor organization
14 expenditures

15 Current section 114.2(b)(2)(i) prohibits corporations and labor organizations from
16 making “expenditures,” as defined in 11 CFR part 100, subpart D. With certain exceptions, this
17 prohibition applies to all expenditures, whether they are independent, coordinated, or any other
18 form of expenditure, including in-kind contributions.⁷

⁵ An “independent expenditure” is defined by the Act as “an expenditure by a person— (A) expressly advocating the election or defeat of a clearly identified candidate; and (B) that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate’s authorized political committee, or their agents, or a political party committee or its agents.” 52 U.S.C. 30101(17) (formerly 2 U.S.C. 431(17)); see also 11 CFR 100.16(a). “Expressly advocating” is defined in 11 CFR 100.22.

⁶ See note 3, above, regarding the applicability of the Citizens United holding to labor organizations.

⁷ An in-kind contribution is an expenditure. 11 CFR 100.111(e)(1). Except as discussed below in the context of independent-expenditure-only committees and accounts, corporate and labor organization contributions, including in-kind contributions, continue to be prohibited after Citizens United. United States v. Danielczyk, 683 F.3d 611, 614 (4th Cir. 2012). Coordinated communications and coordinated expenditures continue to be prohibited because they are forms of in-kind contributions. 52 U.S.C. 30116(a)(7)(B), 30118(a), (b)(2) (formerly 2 U.S.C. 441a(a)(7)(B), 441b(a), (b)(2)); 11 CFR 109.20(b), 109.21(b).

1 In the NPRM, the Commission proposed two alternatives for revising 11 CFR
2 114.2(b)(2)(i). Both alternatives proposed to permit corporations and labor organizations to
3 make expenditures from their general treasury funds for communications that are not coordinated
4 with a candidate or political party, and both alternatives proposed to maintain the prohibition on
5 corporate and labor organization expenditures for all communications and other activities that are
6 coordinated with a candidate or political party as defined in 11 CFR 109.20 or 109.21.

7 The alternatives differed in that Alternative A proposed removing the existing broad
8 prohibition on corporate and labor organization expenditures from general treasury funds and
9 replacing it with a regulation specifically prohibiting only (a) expenditures that are coordinated
10 with a candidate or a political party committee and (b) coordinated communications. This would
11 have permitted all corporate and labor organization communications that are made without
12 coordinating with a candidate, a candidate's authorized committee, or a political party
13 committee, regardless of whether the communications are express advocacy. Alternative A also
14 proposed permitting expenditures that are not for communications as long as they were not in-
15 kind contributions, such as expenditures that are coordinated with candidates or political party
16 committees.

17 In contrast, Alternative B proposed amending the prohibition on corporate and labor
18 organization expenditures to permit independent expenditures from general treasury funds for
19 non-coordinated communications, but this proposal would have continued to prohibit non-
20 communicative expenditures (including in-kind contributions) and coordinated communications.

1 Alternative B, therefore, would have distinguished expenditures for communications from other
2 types of expenditures.⁸

3 The Commission sought comment on which of the two alternatives was consistent with
4 Citizens United. The Commission also sought comment on whether each alternative eliminated
5 too much or too little of the prohibition on corporate and labor organization expenditures, and
6 whether each alternative provided clear guidance on the types of expenditures that corporations
7 and labor organizations may make in accordance with Citizens United.

8 The majority of commenters who addressed the two proposed alternatives for section
9 114.2(b)(2)(i) supported Alternative A, on the ground that Citizens United did not distinguish
10 between speech and non-speech activities. The only relevant distinction, those commenters
11 argued, is whether spending is coordinated with a candidate or political party. One commenter
12 argued that Citizens United stands for the principle “that activities independent of a campaign
13 lack the potential corruptive influence of coordinated activities” and therefore all independent
14 spending is entitled to First Amendment protection. Another commenter posited that “the
15 distinction between ‘non-expressive’ or ‘non-speech’ and ‘communicative’ elements of political
16 activities is illusory and constitutionally impermissible.”

17 Another commenter argued, however, that the Commission should adopt Alternative B,
18 permitting corporations and labor organizations to make independent communicative
19 expenditures only, because Citizens United’s holding protects only political speech.

20 Based on the comments and testimony received and the Commission’s reading of
21 Citizens United and the existing regulations, the Commission concludes that the Court’s holding
22 applies to all non-coordinated corporate and labor organization expenditures, regardless of

⁸ The Commission’s coordination regulations distinguish between communications (e.g., advertisements, mass mailings, phone banks), 11 CFR 109.21, and “non-communication” expenditures (e.g., rent or computers), 11 CFR 109.20(b). See Coordinated and Independent Expenditures, 68 FR 425-26 (Jan. 3, 2003).

1 whether they fall within the narrower statutory definition of an “independent expenditure.” The
2 primary basis for this conclusion is the Supreme Court’s finding that expenditures that are not
3 coordinated with candidates or political party committees are not sufficiently corruptive to
4 constitutionally justify their prohibition. Accordingly, the Commission has decided that the
5 regulations should not contain a prohibition on non-communicative expenditures by corporations
6 and labor organizations. Rather than adopt Alternative A, which would have revised paragraph
7 114.2(b)(2)(i), however, the Commission is removing this paragraph. This will prevent any
8 potential for confusion over what types of expenditures corporations and labor organizations are
9 permitted to make, consistent with the Court’s holding that such entities may not constitutionally
10 be prohibited from making independent expenditures.

11 Proposed Alternative A included language that would have prohibited corporations and
12 labor organizations from making expenditures for communications or other expenditures in
13 coordination with a candidate, a candidate’s authorized committee, or a political party
14 committee. The Commission believes that it is unnecessary to include these prohibitions in this
15 section. In-kind contributions, coordinated expenditures, and coordinated communications
16 constitute contributions under the existing regulations at sections 100.52(d)(1), 109.20, and
17 109.21, respectively, and the prohibition on corporate and labor organization contributions at
18 current section 114.2(b)(1) (redesignated as section 114.2(b) by this final rule) remains in force
19 (except as indicated in the new note to section 114.2(b), discussed below). Adding the proposed
20 language to section 114.2(b)(2)(i) therefore would be redundant.

21 The Commission is, however, appending a note to 11 CFR 114.2 to reflect the fact that
22 corporations and labor organizations may make contributions to non-connected political
23 committees that make only independent expenditures, and to separate accounts maintained by

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1 non-connected political committees for making only independent expenditures, notwithstanding
2 11 CFR 114.2(b). In two cases, courts held that the contribution limits at 52 U.S.C. 30116
3 (formerly 2 U.S.C. 441a) may not be applied to contributions from individuals to these
4 “independent-expenditure-only” political committees and accounts. SpeechNow.org v. FEC,
5 599 F.3d 686 (D.C. Cir. 2010) (en banc) (holding contribution limits inapplicable to individual
6 contributions to non-connected political committees making only independent expenditures);
7 Carey v. FEC, 791 F. Supp. 2d 121 (D.D.C. 2011) (enjoining application of contribution limits to
8 contributions to separate accounts maintained by non-connected political committees for the
9 purpose of making only independent expenditures). In light of these decisions and the Supreme
10 Court’s decision in Citizens United, the Commission has recognized that the statutory and
11 regulatory prohibitions on contributions by corporations and labor organizations to such
12 independent-expenditure-only political committees and accounts are no longer enforceable. See
13 Advisory Opinion 2010-11 (Commonsense Ten); see also FEC Statement on Carey v. FEC,
14 Oct. 5, 2011, available at <http://www.fec.gov/press/press2011/20111006postcarey.shtml>. The
15 Commission intends to engage in a separate rulemaking in response to the SpeechNow and
16 Carey decisions, but to avoid confusion regarding the prohibition on contributions by
17 corporations and labor organizations, the Commission is now appending a note to 11 CFR 114.2
18 — and to the parallel provision in 11 CFR 114.10, discussed below — to accurately reflect the
19 scope of that prohibition.

1 B. Removal of 11 CFR 114.2(b)(2)(ii) and (b)(3) — Prohibitions on corporate and labor
2 organization express advocacy communications and electioneering communications to those
3 outside the restricted class

4 Current 11 CFR 114.2(b)(2)(ii) prohibits corporations and labor organizations from
5 “making expenditures with respect to a Federal election . . . for communications to those outside
6 the restricted class that expressly advocate the election or defeat of one or more clearly identified
7 candidate(s) or the candidates of a clearly identified political party.” Because the Supreme Court
8 held in Citizens United that corporations and labor organizations have a constitutional right to
9 make expenditures for express advocacy communications to the general public, the Commission
10 proposed in the NPRM to remove paragraph (b)(2)(ii) of section 114.2.

11 Similarly, current 11 CFR 114.2(b)(3) prohibits corporations and labor organizations
12 “from making payments for electioneering communications to those outside their restricted
13 classes unless permissible under 11 CFR 114.10 or 114.15.” Because Citizens United held that
14 corporations may make electioneering communications to the general public, the Commission
15 proposed in the NPRM to remove paragraph (b)(3) of section 114.2.

16 The few commenters who addressed the proposed removal of paragraphs (b)(2)(ii) and
17 (b)(3) all supported removal.

18 The Commission is removing 11 CFR 114.2(b)(2)(ii) because that paragraph’s
19 prohibition of corporate and labor organization expenditures for express advocacy
20 communications was invalidated by Citizens United. Likewise, because Citizens United
21 invalidated the prohibition on corporate and labor organization payments for electioneering
22 communications, the Commission is removing 11 CFR 114.2(b)(3). The remaining provision at
23 current 11 CFR 114.2(b)(1) is being redesignated as 114.2(b).

1 The Commission is also making a technical revision to section 114.2(a)(1) to maintain
2 the existing prohibitions on certain activity by national banks and federally chartered
3 corporations. Current section 114.2(a) provides that national banks and federally chartered
4 corporations are prohibited from making contributions and expenditures, while paragraph (a)(2)
5 provides that such national banks and corporations are generally subject to the provisions of part
6 114. Thus, the current prohibitions on expenditures, electioneering communications, and other
7 activity in 11 CFR 114.2(b)(2) and (3) have applied to national banks and federally chartered
8 corporations by reference through section 114.2(a)(2). As discussed above, however, the
9 Commission is removing 11 CFR 114.2(b)(2) and (3) to permit a wider range of activities by
10 corporations and labor organizations and to exclude certain such activities from the definitions of
11 contributions and expenditures. In order to retain the existing prohibition on national banks and
12 federally chartered corporations making contributions, expenditures, or electioneering
13 communications, therefore, the Commission is revising section 114.2(a)(1) to provide that such
14 entities may engage in activities permitted by part 114 except to the extent that they constitute
15 contributions, expenditures, or electioneering communications.

16 The Commission is also revising section 114.2(c) to conform with changes the
17 Commission is making to sections 114.3 and 114.4, as described below. Current section
18 114.2(c) provides that disbursements for “activities described in 11 CFR 114.3 and 114.4 will
19 not cause those activities to be contributions or expenditures, even when coordinated with
20 [candidates or political party committees] to the extent permitted in those sections.” Because
21 some of the activities conducted under revised sections 114.3 and 114.4 may constitute
22 expenditures, see infra Sections III-IV, the Commission is revising section 114.2(c) to remove
23 this reference to expenditures, while preserving the existing rule that disbursements for activities

1 described in sections 114.3 and 114.4 may be coordinated with candidates or political parties to
2 the extent currently permitted under those sections without constituting contributions. In
3 addition, the Commission is shortening the second sentence of section 114.2(c), which currently
4 provides that “[c]oordination beyond that described in 11 CFR 114.3 and 114.4 shall not cause
5 subsequent activities directed at the restricted class to be considered contributions or
6 expenditures.” For clarity, the Commission is removing “or expenditures” from this sentence to
7 reflect that the regulatory criteria for coordinated expenditures and communications are used to
8 determine whether the entity making the disbursement has made a contribution, not whether the
9 entity has made an expenditure. See 11 CFR 109.20(b) (providing that a coordinated
10 expenditure is an in-kind contribution), 109.21(b) (providing that coordinated communication is
11 in-kind contribution). This latter revision is merely a technical clarification and is not intended
12 to substantively amend the rule in any way.

13 **III. Revised 11 CFR 114.3 — Disbursements for communications to the restricted class**
14 **by corporations and labor organizations in connection with a Federal election**

15 The Commission is revising the regulations at 11 CFR 114.3 covering disbursements by
16 corporations and labor organizations for communications with their restricted classes. The
17 Commission is maintaining the existing regulatory structure that covers disbursements for
18 communications to the restricted class in 11 CFR 114.3 and expenditures for communications
19 beyond the restricted class in 11 CFR 114.4. The Commission is removing the requirement
20 currently at 11 CFR 114.3(c)(4) that corporations and labor organizations not make decisions
21 regarding whether to provide voter registration or GOTV assistance on the basis of support for or
22 opposition to particular candidates or a particular political party. The Commission is not making
23 any substantive changes to the reporting requirements for disbursements for communications to
24 the restricted class in 11 CFR 114.3(b).

1 A. Structure of 11 CFR 114.3 and 114.4

2 Current 11 CFR 114.3 implements certain statutory exceptions to the general ban on
3 contributions and expenditures by corporations and labor organizations. Before Citizens United,
4 corporations and labor organizations could make express advocacy communications only to their
5 restricted classes. 52 U.S.C. 30118(a), (b)(2)(A) (formerly 2 U.S.C. 441b(a), (b)(2)(A)). Section
6 114.3 implements these provisions of the Act and sets out the requirements for and restrictions
7 on restricted-class communications, including publications; candidate and party appearances;
8 phone banks; and voter registration and GOTV drives. The Act establishes specific reporting
9 requirements for communications made by corporations and labor organizations to their
10 restricted classes and exempts disbursements for such communications from the definition of
11 expenditure, regardless of whether the communications are express advocacy. 52 U.S.C.
12 30101(9)(B)(iii) (formerly 2 U.S.C. 431(9)(B)(iii)).

13 The Commission's current regulation at 11 CFR 114.4 sets out the restrictions and
14 prohibitions for communications by corporations and labor organizations outside of the restricted
15 class.

16 The NPRM proposed maintaining the current structure, with 11 CFR 114.3 addressing
17 disbursements for communications made to the restricted class and 11 CFR 114.4 addressing
18 disbursements for communications outside the restricted class.

19 The Commission received comments from two commenters on the structure of 11 CFR
20 114.3 and 114.4. One commenter said that 11 CFR 114.3 and 114.4 could be made more
21 understandable by combining and shortening the provisions. Another commenter, however,
22 recommended that the Commission maintain the current division. That commenter noted that
23 important reporting and coordination-related distinctions remain between how corporations and

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1 labor organizations communicate with their restricted classes and with the general public. The
2 commenter said that the current division between the provisions provides useful clarity to
3 corporations and labor organizations.

4 The Commission has decided that the regulations should continue to distinguish between
5 communications to the restricted class and communications to the general public because, as the
6 commenter noted, the Act imposes differing reporting regimes for each such communication.
7 Therefore, while the Commission is revising both 11 CFR 114.3 and 114.4, it is maintaining the
8 structure of those provisions.

9 B. Revised 11 CFR 114.3(b) — Reporting of disbursements for communications to the
10 restricted class

11 Section 114.3(b) of the Commission’s regulations requires that corporations and labor
12 organizations report, in accordance with 11 CFR 100.134 and 104.6, disbursements for express
13 advocacy communications made to the restricted class. The Act exempts express advocacy
14 communications made by corporations and labor organizations to their restricted class from the
15 definition of “expenditure.” 52 U.S.C. 30101(9)(B)(iii) (formerly 2 U.S.C. 431(9)(B)(iii)). The
16 Act requires, however, that corporations and labor organizations that make disbursements for
17 express advocacy communications to their restricted class in excess of \$2,000 for any election
18 file quarterly reports in an election year and pre-election reports for any general election. 52
19 U.S.C. 30101(9)(B)(iii), 30104(a)(4)(A)(i), (ii) (formerly 2 U.S.C. 431(9)(B)(iii),
20 434(a)(4)(A)(i), (ii)). This statutory requirement is implemented in the Commission’s
21 regulations at current 11 CFR 100.134(a), 104.6(a), and 114.3(b).

22 For communications beyond the restricted class, section 30104(c) of Title 52 (formerly 2
23 U.S.C. 434(c)) requires that “every person (other than a political committee) who makes

1 independent expenditures in an aggregate amount or value in excess of \$250 during a calendar
2 year” report such expenditures to the Commission. Because corporations and labor
3 organizations are “persons” under the Act, they are subject to the reporting requirements of 52
4 U.S.C. 30104(c) (formerly 2 U.S.C. 434(c)).

5 The NPRM did not propose any changes to 11 CFR 114.3(b) because Citizens United did
6 not affect the provision of the Act at 52 U.S.C. 30101(9)(B)(iii) (formerly 2 U.S.C.
7 431(9)(B)(iii)) that exempts disbursements for express advocacy communications to the
8 restricted class from the definition of “expenditure” and establishes the reporting requirement for
9 such communications. The NPRM sought comments, however, on how a corporation or labor
10 organization should report spending for express advocacy communications directed both to the
11 restricted class and outside the restricted class. Specifically, the NPRM asked whether a single
12 disbursement for an express advocacy communication that is made both to the general public and
13 the restricted class results in the entire disbursement being treated as an independent expenditure
14 for reporting purposes, or whether instead the disbursement should be allocated between the cost
15 of reaching the restricted class and the cost of reaching outside the restricted class. Under the
16 latter approach, the corporation or labor organization would report the allocated expenses
17 separately under the two reporting regimes.

18 The Commission received comments on this topic from four commenters. None
19 recommended eliminating or revising 11 CFR 114.3(b).

20 One commenter said that when an independent expenditure reaches both the general
21 public and members of the restricted class the entire disbursement should be treated as an
22 independent expenditure. Another commenter opined that most organizations will report
23 broadcast communications to the general public as independent expenditures because even if the

1 communication reaches members of the restricted class, the majority of recipients will be
2 members of the general public. A third commenter pointed out that independent expenditures by
3 separate segregated funds already likely reach members of the restricted class, yet there is no
4 suggestion that these communications should be subject to any special reporting requirement.
5 This commenter suggested that, as a practical matter, any non-targeted mass communication
6 (such as broadcast communications) should be reported as an independent expenditure, while
7 targeted communications can be allocated. Another commenter, however, disagreed and argued
8 that because, by statute, communications to the restricted class are neither contributions nor
9 expenditures, mass communications should not be automatically reported entirely as independent
10 expenditures but perhaps should be subject to some form of allocation.

11 Several of the commenters said that allocating between disbursements for
12 communications to the restricted class and independent expenditures would not be burdensome.
13 Most of the commenters, however, emphasized that organizations already are allocating between
14 these types of communications, and suggested that the Commission need not create a mandatory
15 allocation regime. One commenter noted that under section 501(c) of the Internal Revenue
16 Code, many organizations currently track communications to their members for tax reporting
17 reasons.

18 Several commenters said that allocating between restricted class communications and
19 communications to the general public would not be difficult for targeted communications, such
20 as email, direct mail, and telephone calls. One of these commenters recommended that if the
21 Commission were to require allocation for communications that reach both the restricted class
22 and the general public, such a requirement should be subject to several exceptions. First, any
23 allocation should require only a reasonable estimation of the numbers of potential recipients of

1 each class. Second, because qualified non-profit corporations (“QNCs”), discussed further
2 below, were permitted to make express advocacy communications both to the restricted class and
3 to the general public prior to Citizens United, they should remain able to do so and not be subject
4 to mandatory allocation. Third, if an express advocacy communication is not specifically
5 targeted to the restricted class, the corporation or labor organization should not be required to
6 allocate and should have the option of treating the entire cost as an independent expenditure.
7 Finally, this commenter recommended that any allocation regulation include a safe harbor
8 provision that would specify that a communication to the restricted class that entails de minimis
9 dissemination to the public may be treated entirely as a disbursement for a communication to the
10 restricted class.

11 One of the commenters addressed the actual mechanics of reporting payments for both
12 types of communications to the Commission. The commenter stated that having corporations
13 and labor organizations report disbursements for communications to the restricted class and
14 independent expenditures together on the same form would be confusing because filers are
15 required to certify on Form 5 (the form for reporting independent expenditures by persons other
16 than political committees) that independent expenditures are not coordinated with any candidate
17 or party, while communications to the restricted class may be coordinated. The commenter also
18 pointed out that unlike some independent expenditures, disbursements for communications to the
19 restricted class are not required to be reported within 24 or 48 hours of when they are made.

20 The Commission is sensitive to the concerns of many of the commenters that imposing
21 any rigid allocation regime would complicate reporting for many corporations and labor
22 organizations. The Commission is therefore not revising the reporting requirements at 11 CFR
23 114.3(b). The Commission notes that allocation is possible only for express advocacy

1 communications that are specially targeted to known recipients in the restricted class.
2 Communications such as telephone, direct mail, and email communications may be so targeted
3 since the recipients are generally known and can be identified either as members of the restricted
4 class or as members of the general public. Therefore, these communications may be allocated.
5 In contrast, communications such as some broadcast, print, Internet, and outdoor advertising
6 cannot be suitably targeted, since the recipients are not identifiable. For such communications,
7 the entire cost should be reported as an independent expenditure.

8 The final rule does include a minor change to the heading of 11 CFR 114.3(b) to clarify
9 that the provision applies only to express advocacy communications that are made to the
10 restricted class.

11 C. Revised 11 CFR 114.3(c)(4) — Voter drives and get-out-the-vote activity directed at the
12 restricted class

13 The Commission is revising 11 CFR 114.3(c)(4) to remove the requirement that
14 corporations and labor organizations conducting voter registration or GOTV drives aimed at the
15 restricted class not make decisions regarding whether to provide assistance on the basis of
16 support for or opposition to particular candidates or a particular political party.

17 For purposes of the Act’s corporate and labor organization prohibitions, “contribution or
18 expenditure” is defined to exclude “nonpartisan registration and get-out-the-vote campaigns by a
19 corporation aimed at its stockholders and executive or administrative personnel and their
20 families, or by a labor organization aimed at its members and their families.” 52 U.S.C.
21 30118(b)(2)(B) (formerly 2 U.S.C. 441b(b)(2)(B)). The Act further excludes from the definition
22 of “expenditure” “communications by a corporation to its stockholders and executive or

1 administrative personnel and their families or by a labor organization to its members and their
2 families on any subject.” 52 U.S.C. 30118(b)(2)(A) (formerly 2 U.S.C. 441b(b)(2)(A)).

3 Current 11 CFR 114.3(c)(4) provides that a corporation or a labor organization may
4 conduct voter registration and GOTV drives “aimed at its restricted class.” Section 114.3(c)(4)
5 states that voter registration and GOTV drives include providing transportation to the place of
6 registration and to the polls. The current provision further permits such drives to include express
7 advocacy communications, “such as urging individuals to register with a particular political party
8 or to vote for a particular candidate.” 11 CFR 114.3(c)(4). The current provision, however, also
9 prohibits corporations and labor organizations from withholding or refusing to give information
10 and other assistance regarding registering or voting “on the basis of support for or opposition to
11 particular candidates, or a particular political party.” Id.

12 The NPRM proposed two alternatives to revise paragraph (c)(4). Alternative A proposed
13 removing the existing prohibition on corporations and labor organizations withholding or
14 refusing to give information or other assistance on the basis of support for or opposition to
15 particular candidates or a particular political party. Alternative B would not have made any
16 changes to current 11 CFR 114.3(c)(4) and therefore would have retained the current prohibition
17 on tying the provision of information and other assistance to positions on candidates or political
18 parties.

19 1. Alternative A

20 This alternative proposed to permit voter registration and GOTV activities in which the
21 corporation or labor organization withholds or refuses to provide information or other assistance
22 regarding registering or voting based on support for or opposition to particular candidates or a
23 particular party — i.e., activities that do not qualify as “nonpartisan.” Instead, Alternative A

1 proposed to prohibit corporations and labor organizations from acting in “cooperation,
2 consultation, or concert with, or at the request or suggestion of” any candidate or political party
3 in conducting voter registration or GOTV drives.

4 Alternative A also would have retained nonpartisan voter registration and GOTV drives
5 as an exception to the definition of “contribution or expenditure.” See 52 U.S.C.
6 30118(b)(2)(B) (formerly 2 U.S.C. 441b(b)(2)(B)). Corporations and labor organizations
7 currently do not have to report to the Commission under 52 U.S.C. 30104(c)(1) (formerly 2
8 U.S.C. 434(c)(1)) disbursements for nonpartisan voter registration and GOTV, since such
9 disbursements are not expenditures. Thus, voter registration and GOTV drives would have been
10 permissible under Alternative A, regardless of whether the drives met the conditions of the
11 statutory “nonpartisan” exception, but corporations or labor organizations conducting
12 nonpartisan drives would not have been required to report disbursements for them (unless they
13 otherwise met the requirement to be reported as disbursements for express advocacy
14 communications to the restricted class under 52 U.S.C. 30101(9)(B)(iii) (formerly 2 U.S.C.
15 431(9)(B)(iii))).

16 2. Alternative B

17 Alternative B proposed making no changes to the existing regulation at
18 11 CFR 114.3(c)(4). Thus, under Alternative B, as under Alternative A, a corporation or labor
19 organization would have continued to be able to make voter registration or GOTV
20 communications, including express advocacy, to its restricted class under 11 CFR 114.3(c)(4).
21 Furthermore, under both alternatives, voter registration and GOTV drives conducted in
22 accordance with proposed 11 CFR 114.3(c)(4) would have remained exempt from the definition
23 of “expenditure” under 52 U.S.C. 30118(b)(2)(B) (formerly 2 U.S.C. 441b(b)(2)(B)).

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1 Alternative B, however, would have maintained the prohibition on withholding or refusing to
2 provide information or other assistance regarding registration or voting based on support for or
3 opposition to particular candidates or a particular party. Additionally, corporations and labor
4 organizations would have continued to be prohibited from engaging in non-communicative
5 activities related to voter registration and GOTV drives other than those conducted in accordance
6 with proposed 11 CFR 114.3(c)(4).

7 As discussed in Section II.A, above, one alternative proposed in the NPRM for
8 conforming the Commission’s regulation at 11 CFR 114.2(b)(2)(i) to the decision in Citizens
9 United was to specifically exclude expenditures for communications (i.e., “independent
10 expenditures”) from the broader prohibition on expenditures, while still prohibiting corporate
11 and labor organization in-kind contributions, coordinated expenditures, and expenditures that do
12 not involve communications. In promulgating the current regulation at 11 CFR 114.3(c)(4), the
13 Commission similarly distinguished between the “‘pure speech’ aspects of the drives [that] may
14 be partisan,” and the non-speech activity aspects of the drives that “must be conducted in a
15 nonpartisan manner.” Explanation and Justification for Part 114, H.R. DOC. No. 95-44, at 105
16 (1977) (“1977 E&J”). The Commission’s implementation of section 30118(b)(2)(B)’s (formerly
17 U.S.C. 441b(b)(2)(B)) nonpartisan requirement reflects this distinction between “pure speech”
18 and non-speech elements of voter registration and GOTV drives. Thus, as with proposed
19 Alternative B for 11 CFR 114.2(b)(2)(i) discussed above, Alternative B for 11 CFR 114.3(c)(4)
20 would have distinguished between speech and non-speech activity by leaving intact the
21 regulation’s current distinction between communicative advocacy and other advocacy.

22 The Commission received six comments on the proposed revisions to 11 CFR
23 114.3(c)(4). The majority of the commenters supported Alternative A, arguing that it was

1 consistent with the Court’s decision and rationale in Citizens United. Several of these
2 commenters argued that Alternative B was not consistent with Citizens United because its
3 holding extends to both communicative and non-communicative forms of independent
4 expenditures. One commenter stated that the distinction between communicative and non-
5 communicative expenditures was “particularly inapplicable to the targeting of voters based on
6 likely political preferences” for voter registration and GOTV drives, given that such activity
7 expressing support for or opposition to a candidate or party is inherently communicative.
8 Another commenter also stated that voter registration activity is highly regulated at the federal,
9 state, and local levels under other laws, and that the Commission should defer to those laws and
10 bodies in regulating voter registration activity. Another commenter noted that voter registration
11 drives and GOTV activity implicate associational rights.

12 One commenter opined that the proposal in Alternative A that would exempt only
13 nonpartisan voter drives and GOTV activities aimed at the restricted class from the definition of
14 expenditure was inconsistent with the statute. That commenter argued that the Act permits a
15 corporation or labor organization to communicate with its restricted class on any subject. The
16 commenter further noted that 11 CFR 114.3(c)(4) has long provided that voter registration and
17 GOTV drives “may include communications containing express advocacy, such as urging
18 individuals to register with a particular party or to vote for a particular party or to vote for a
19 particular candidate,” and that such activities may be coordinated with candidates and political
20 parties. The commenter went on to state that Alternative A erred in suggesting that the
21 Commission can require a corporation or labor organization to report its spending on voter
22 registration or GOTV activity directed at the restricted class that failed to meet the nonpartisan
23 criteria at proposed 11 CFR 114.3(c)(4)(ii). The commenter argued that absent express

1 advocacy, there is no requirement under the Act that a corporation or labor organization report its
2 voter registration or GOTV activities aimed at the restricted class.

3 One commenter supported Alternative B, stating that corporations and labor
4 organizations should have a strong incentive to provide voter registration and GOTV activities
5 without regard for candidate or party preference because minority and low-income voters
6 frequently register to vote through non-governmental voter registration drives. The commenter
7 also opined that nonpartisan GOTV activities are more effective than partisan ones. The
8 commenter went on to argue that Alternative B is consistent with the holding in Citizens United
9 because voter registration and GOTV activities are non-communicative, and the holding in
10 Citizens United applies only to speech.

11 As discussed above, the Commission finds that the holding in Citizens United applies to
12 all corporate and labor organization expenditures that are not coordinated and do not otherwise
13 constitute in-kind contributions. Therefore, the Commission is removing the requirement that
14 corporations and labor organizations not withhold or refuse to provide information or other
15 assistance regarding registering or voting based on support for or opposition to particular
16 candidates or a particular party.

17 Accordingly, the Commission is revising 11 CFR 114.3(c)(4) to follow the approach in
18 proposed Alternative A, although the final rule is not identical to the language proposed in
19 Alternative A. Revised section 114.3(c)(4)(i) tracks the language of current 11 CFR 114.3(c)(4),
20 stating that corporations and labor organizations may conduct voter registration and GOTV
21 drives aimed at the restricted class, that such drives include providing transportation to the place
22 of registration or to the polls, and that these drives may include express advocacy.

1 Revised section 114.3(c)(4)(ii) sets out the exemption for nonpartisan drives from the
2 definition of “contributions or expenditures” pursuant to 52 U.S.C. 30118(b)(2)(B) (formerly 2
3 U.S.C. 441b(b)(2)(B)). The paragraph describes nonpartisan drives in the same way as the
4 current regulation: To qualify for the exemption, the drive must be conducted so that
5 information and other assistance in registering or voting is not withheld or refused based on
6 support for or opposition to particular candidates or a particular party.

7 The Commission agrees with the commenter that the Act exempts from the definition of
8 “contribution or expenditure” communications on any subject (including communications that
9 are express advocacy) between a corporation or a labor organization and its restricted class. 52
10 U.S.C. 30118(b)(2)(A) (formerly 2 U.S.C. 441b(b)(2)(A)). However, because the Act
11 specifically exempts only nonpartisan voter registration and GOTV drives aimed at the restricted
12 class from the definition of “contribution or expenditure,” 52 U.S.C. 30118(b)(2)(B) (formerly 2
13 U.S.C. 441b(b)(2)(B)), the Commission concludes that such nonpartisan voter registration and
14 GOTV drives must be treated differently from other drives. Thus, new section 114.3(c)(4)(iii)
15 affirms that corporations and labor organizations may make disbursements for voter registration
16 and GOTV drives aimed at the restricted class that do not qualify as nonpartisan, but the revised
17 regulation does not categorically exempt these disbursements from the definition of
18 “expenditure.”

19 Although 11 CFR 114.3(c)(4) does not expressly address reporting, express advocacy
20 communications to the restricted class are subject to the requirements at 52 U.S.C.
21 30101(9)(B)(iii), 30104(a)(4)(A)(i)-(ii), (c)(1) (formerly 2 U.S.C. 431(9)(B)(iii), 434(a)(4)(A)(i)-
22 (ii), (c)(1)); 11 CFR 100.134(a) (requiring reporting when disbursements for express advocacy
23 communications to restricted class aggregate in excess of \$2000 per election), 104.6 (same),

1 114.3(b) (same). Disbursements made under new section 114.3(c)(4), therefore, will be reported
2 as express advocacy communications to the restricted class if the activity includes express
3 advocacy (and exceeds the \$2000 reporting threshold).

4 Because the Act still prohibits corporations and labor organizations from making
5 contributions,⁹ new paragraph (c)(4)(iii) provides that disbursements by corporations and labor
6 organizations for voter registration and GOTV drives may not constitute coordinated
7 expenditures, coordinated communications, or contributions, as those terms are defined in
8 Commission regulations.

9 **IV. Revised 11 CFR 114.4 — Disbursements for communications in connection with a**
10 **Federal election by corporations and labor organizations beyond the restricted class**

11 The Commission is revising 11 CFR 114.4, which covers disbursements for
12 communications by corporations and labor organizations beyond the restricted class in
13 connection with a federal election. Prior to Citizens United, corporations and labor organizations
14 were prohibited from making independent expenditures and electioneering communications.
15 Current section 114.4 carves out certain communications from that prohibition and the
16 prohibition on coordinated communications by corporate and labor organizations. The
17 regulation permits certain communications and activities directed outside the restricted class,
18 both to employees outside the restricted class and to the general public. This section also permits
19 certain communications made to those outside the restricted class to be coordinated, to a limited
20 extent, with candidates. For example, section 114.4(b) covers candidate and party appearances
21 on corporate or labor organization premises or at a meeting, convention, or other function that is
22 attended by employees outside the restricted class, 114.4(c)(6) covers endorsements, and
23 114.4(c)(7) covers candidate appearances at certain educational institutions.

⁹ As discussed in Section II.A, above, corporations and labor organizations may make contributions to independent-expenditure-only committees and accounts.

1 Current section 114.4(c) identifies the types of communications that corporations and
2 labor organizations are permitted to make to the general public: (1) voter registration and voting
3 communications; (2) official registration and voting information; (3) voting records; (4) voter
4 guides; (5) endorsements; (6) candidate appearances on educational institution premises; and (7)
5 electioneering communications. It also sets forth the relevant requirements and restrictions that
6 apply to each of these types of communication.

7 The Commission is removing all prohibitions on express advocacy in the
8 communications described in 11 CFR 114.4(c). The Commission is also reorganizing 11 CFR
9 114.4(c) to include an explicit prohibition on corporations and labor organizations coordinating
10 with candidates or party committees, pursuant to the Commission’s coordination regulations, on
11 communications to the general public. Finally, the Commission is making several minor
12 revisions to 11 CFR 114.4, discussed below.

13 A. Revised 11 CFR 114.4(a) — General

14 The Commission is making minor clarifying changes to paragraph (a). Current 11 CFR
15 114.4(a) provides that any communications that a corporation or labor organization makes to the
16 general public may also be made to the restricted class and to its employees outside the restricted
17 class. Current paragraph (a) also provides that communications described in section 114.4 may
18 be coordinated with candidates and political committees only to the extent permitted in section
19 114.4.

20 The NPRM proposed reorganizing paragraph (a) and making several clarifying language
21 changes. The Commission received one comment on the proposal to revise 11 CFR 114.4(a).
22 The commenter agreed with the proposal and suggested inserting “the phrase ‘among others’

1 before ‘the general public’ in proposed [section] 114.4(a) . . . [i]n order to conform with the
2 general division of individuals between the ‘restricted class’ and the ‘general public.’”

3 The Commission is adopting the changes proposed in the NPRM without the additional
4 language proposed by the commenter. Although the Commission agrees with the commenter
5 that communications made to the general public as described in 11 CFR 114.4 may also be made
6 to the restricted class, the Commission believes that 11 CFR 114.4(a) already makes this clear.
7 Like current 11 CFR 114.4(a), the revised provision states that communications by a corporation
8 or labor organization beyond its restricted class, addressed in paragraphs (b) and (c), may be
9 coordinated with candidates and political committees only to the extent permitted by section
10 114.4.

11 Revised 11 CFR 114.4(a) also states that voter registration and GOTV drives, further
12 addressed in paragraph (d), may not include coordinated expenditures, coordinated
13 communications, or contributions, as those terms are defined in Commission regulations. This
14 language is meant to indicate that corporations and labor organizations remain prohibited from
15 making contributions under the Act and Commission regulations.¹⁰ 52 U.S.C. 30118(a), (b)(2)
16 (formerly 2 U.S.C. 441b(a), (b)(2)); 11 CFR 114.2(a).

17 B. Revised 11 CFR 114.4(c) — Communications by a corporation or labor organization to
18 the general public

19 The Commission is making several revisions to 11 CFR 114.4(c). The Commission is
20 removing the prohibitions on express advocacy and is adding a provision to explicitly state that
21 corporations and labor organizations may make independent expenditures and electioneering
22 communications. The Commission is also consolidating into revised section 114.4(c)(1) the

¹⁰ As discussed in Section II.A, above, corporations and labor organizations may make contributions to independent-expenditure-only committees and accounts.

1 prohibition on corporations and labor organizations coordinating with candidates and political
2 party committees in making communications to the general public, thereby replacing the
3 multiple references to this prohibition in current section 11 CFR 114.4(c). However, the final
4 rules maintain the existing exemption from the definitions of contribution and expenditure for
5 activities that meet certain criteria, such as not constituting express advocacy and not being
6 coordinated with any candidate or political party. The final rules thus reflect the fact that
7 corporations and labor organizations may make independent expenditures and electioneering
8 communications after Citizens United, while the final rules also maintain the status quo
9 regarding the activities that, under the current regulations, are not contributions or expenditures.
10 See infra Section VIII (discussing conforming amendment to 11 CFR 114.1(a)(2)(x)). Finally,
11 the Commission is removing 11 CFR 114.4(c)(8), which states that corporations and labor
12 organizations may make only certain electioneering communications.

13 Current 11 CFR 114.4(c) addresses communications by corporations and labor
14 organizations to the general public and includes specific provisions on seven types of such
15 communications, listed above. With certain exceptions, each of the provisions within paragraph
16 (c) currently prohibits coordinating any such communication with a candidate or a candidate's
17 committee or agent.

18 1. Revised 11 CFR 114.4(c) — Communications by a corporation or labor
19 organization to the general public

20 The NPRM proposed adding to paragraph (c)(1) a general prohibition on corporations or
21 labor organizations acting in cooperation, consultation, or concert with or at the request or
22 suggestion of a candidate, a candidate's committee or agent, or a political party committee or its
23 agent regarding the preparation, content, and distribution of any of the specific types of

1 communications described at proposed 11 CFR 114.4(c)(2)-(6). The proposed general
2 prohibition would replace the separate prohibitions on coordination contained in each paragraph
3 of current 11 CFR 114.4(c)(2)-(6).

4 Current 11 CFR 114.4(c)(2)-(6) govern voter registration and GOTV communications;
5 official voter registration and voting information; voting records; voter guides; and
6 endorsements. The NPRM proposed generally retaining these paragraphs to provide specific
7 information about some of the types of communications that corporations and labor
8 organizations might wish to make. The current versions of these paragraphs, however, each
9 prohibit corporations or labor organizations from expressly advocating the election or defeat of
10 clearly identified candidates in these communications. Proposed 11 CFR 114.4(c)(2)-(6) would
11 have eliminated the prohibition on express advocacy in each paragraph for communications that
12 are not coordinated with any candidate or political party.

13 Four commenters commented on the proposed changes to 11 CFR 114.4(c). One
14 commenter supported the proposed sentence stating that corporations and labor organizations
15 may make independent expenditures and electioneering communications because a change is
16 required by Citizens United. Another commenter did not support adding that proposed sentence,
17 believing it superfluous given the Commission's proposal to add similar language in 11 CFR
18 114.10.

19 Several commenters did not favor the proposed changes to 11 CFR 114.4(c)(1) and
20 (c)(2)-(6), instead preferring removal of 11 CFR 114.4(c)(2)-(6). These commenters reasoned
21 that a list of certain permissible communications to the general public is no longer necessary
22 because corporations and labor organizations may now make independent expenditures and
23 electioneering communications. Because Commission regulations already contain criteria for

1 when a communication is “coordinated,” these commenters further argued, adding a prohibition
2 on coordination is unnecessary. One commenter contended that 11 CFR 114.4(c)(1) should be
3 revised to include a reference to the regulations that set out the tests for coordinated expenditures
4 and coordinated communications, at 11 CFR 109.20 and 109.21, respectively. The commenter
5 expressed concern that the proposed regulation appeared to create a new coordination test for
6 activities relating particularly to the communications in 114.4(c)(2)-(6).

7 Another commenter suggested that to the extent that the Commission retains text from
8 current 11 CFR 114.4(c)(2)-(6), it should be placed with similar provisions elsewhere in the
9 regulations and combined to avoid redundancy. Another commenter said that the Commission
10 should clarify that communications of the types listed in 11 CFR 114.4(c)(2)-(6) are not subject
11 to reporting, absent express advocacy.

12 The Commission is revising 11 CFR 114.4(c)(1) by removing the explicit authorization
13 for QNCs (as defined at 11 CFR 114.10(c)) to make communications containing express
14 advocacy to the general public. See infra Section VI. After Citizens United, corporations and
15 labor organizations may make express advocacy communications to the general public that are
16 not coordinated with candidates or political parties. Hence, this permission for QNCs is now
17 superfluous. In its place, the Commission is adding an explicit regulatory acknowledgment that
18 corporations and labor organizations may make independent expenditures and electioneering
19 communications and directing corporations and labor organizations to revised 11 CFR 114.10.¹¹

20 Additionally, the Commission is adding to 11 CFR 114.4(c)(1) a general reference to the
21 existing prohibition on corporations and labor organizations coordinating with candidates or

¹¹ As discussed further in Section VI, below, the Commission is revising 11 CFR 114.10 to provide clear guidance on the regulatory requirements applicable to corporations and labor organizations that make independent expenditures and electioneering communications, including reporting and disclaimers.

1 political party committees, as provided for in the Commission’s coordination regulations, in
2 making any of the communications covered by 11 CFR 114.4(c)(2)-(6). Revised section
3 114.4(c)(1) does not alter the status quo with respect to the coordination of activities described in
4 section 114.4(c)(2)-(6).¹² The Commission is not extending the coordination restriction to the
5 activities permitted in paragraph 114.4(c)(2)(7) because that provision — which governs
6 “candidate appearances on educational institution premises” — necessarily entails a certain
7 amount of coordination between the hosting institution and a candidate. See 11 CFR
8 114.4(c)(7)(ii)(A) (requiring institution to “make[] reasonable efforts to ensure” that certain
9 aspects of candidate’s appearance “are not conducted as campaign rallies or events”). Pursuant
10 to revised section 114.4(a), discussed above, these candidate appearances at educational
11 institutions “may be coordinated with candidates and political committees only to the extent
12 permitted” by paragraph 114.4(c)(7).

13 The Commission recognizes that, after Citizens United, corporations and labor
14 organizations are free to make independent expenditures and electioneering communications,
15 even without regulatory language to that effect. Nonetheless, the Commission believes that the
16 language being added to 11 CFR 114.4(c)(1) to codify and implement the primary holding of
17 Citizens United makes the regulations more clear in this regard.

18 The Commission is retaining paragraphs (c)(2)-(6) to provide specific information about
19 some of the other types of communications that corporations and labor organizations might

¹² In addition, as to 11 CFR 114.4(c)(6), concerning a corporation’s or labor organization’s endorsement of a candidate, the Commission notes that the prohibition on coordinating with a candidate or political party committee applies to the communication of that endorsement to the general public. See infra Section IV.B.5 (explaining how the general prohibition on coordination does not apply to endorsement-related communications to the restricted class). However, the Commission has previously recognized “organizations need to discuss various issues with candidates and their staff when deciding [whom] to endorse.” Corporate and Labor Organization Activity; Express Advocacy and Coordination with Candidates, 60 FR 64260, 64270 (Dec. 14, 1995).

1 make.¹³ The Commission agrees with the commenters that corporations and labor organizations
2 are not limited to the types of communications enumerated in paragraphs (c)(2)-(6). The
3 Commission believes, however, that it is helpful to corporations and labor organizations to retain
4 a non-exhaustive list of types of communications that corporations and labor organizations might
5 permissibly make. The Commission also intends these regulations, as revised, to make clear that
6 the activities that have been exempt from the definitions of contribution and expenditure under
7 the current regulations remain exempt under the revised regulations. Corporations and labor
8 organizations that were previously familiar with the regulations setting out constraints on making
9 certain communications may find it helpful to have an affirmative acknowledgment of their
10 ability to make the listed communications, as well as clarification regarding the continuing
11 exemption from the definition of contribution and expenditure for activities that were exempt
12 even before Citizens United.

13 All five of these paragraphs currently prohibit corporations or labor organizations from
14 expressly advocating the election or defeat of clearly identified candidates in these
15 communications and from coordinating with candidates or political party committees in making
16 the communications. The Commission is removing the prohibitions on express advocacy in 11
17 CFR 114.4(c)(2)-(6) but continuing the prohibition on corporations and labor organizations
18 coordinating with any candidate or political party in making these communications. The
19 Commission agrees with the commenter that the revisions are consistent with the decision in
20 Citizens United.

¹³ The NPRM did not propose any changes to paragraph 11 CFR 114.4(c)(7), and the Commission is retaining this provision, as well.

1 2. Revised 11 CFR 114.4(c)(2) — Voter registration and get-out-the-vote
2 communications

3 The Commission is maintaining the provision at 114.4(c)(2), which states that
4 corporations and labor organizations may make voter registration and GOTV communications to
5 the general public, but is making several revisions to the provision.

6 For the reasons previously stated, the Commission agrees with the commenters that
7 corporations and labor organizations are not limited to the types of communications set out in
8 114.4(c)(2)-(6), including voter registration and GOTV communications. The Commission
9 believes, however, that maintaining this list of types of communications as revised may provide
10 helpful guidance. Thus, the Commission is revising and retaining 11 CFR 114.4(c)(2) in the
11 final rules.

12 As discussed above, the Commission is revising 11 CFR 114.4(c)(2) to remove the
13 prohibitions on express advocacy and coordination in voter registration and GOTV
14 communications made by corporations and labor organizations. However, the final rules
15 maintain the existing exemption from the definition of contribution and expenditure for voter
16 registration and GOTV communications that do not constitute express advocacy and that are not
17 coordinated with any candidate or political party regarding the preparation and distribution of
18 such communications. The final rule thus reflects that, after Citizens United, corporations and
19 labor organizations may make independent expenditures and electioneering communications,
20 while the final rule also maintains the status quo regarding the communications that, under the
21 current regulations, are not contributions or expenditures.

22 The Commission is also revising 11 CFR 114.4(c)(2) by removing the list of media
23 currently in that provision. Current 11 CFR 114.4(c)(2) contains a list of media through which

1 corporations and labor organizations may make voter registration and GOTV communications to
2 the general public. The list currently includes: “posters, billboards, broadcasting media,
3 newspapers, newsletter[s], brochures, or similar means of communication with the general
4 public.” 11 CFR 114.4(c)(2).

5 The NPRM proposed adding to the list mail, Internet communications, emails, text
6 messages, and telephone calls, and sought comment on whether any other methods of
7 communications should be included. The NPRM also asked whether a list of media through
8 which corporations and labor organizations may make voter registration and GOTV
9 communications to the general public is necessary at all, or whether the Commission should
10 simply state generically that such communications to the general public are permissible. Besides
11 the comments on the general proposal to revise 11 CFR 114.4(c), discussed above, the
12 Commission did not receive comments on the specific proposed changes to 11 CFR 114.4(c)(2).

13 The Commission recognizes that corporations are free to make any independent
14 expenditures or electioneering communications to the general public, including voter registration
15 and GOTV communications. A list of certain media through which corporations and labor
16 organizations might make these communications — a list that would likely need to be
17 periodically updated as technology and media evolve — is not necessary. Therefore, the final
18 rule at 11 CFR 114.4(c)(2) does not include the list that appears in the current provision.

19 3. Revised 11 CFR 114.4(c)(3) — Official registration and voting information and
20 revised 11 CFR 114.4(c)(4) — Voting records

21 Other than the comments on the general proposal to revise 114.4(c), described above, the
22 Commission did not receive comments on the specific proposed revisions to 114.4(c)(3) and
23 (c)(4). For the reasons explained above, the Commission is revising the provisions at 11 CFR

1 114.4(c)(3) and (c)(4) to remove the prohibitions on express advocacy, consistent with Citizens
2 United. Additionally, as discussed in Section IV.B.1 above, the Commission is removing the
3 prohibitions on coordination in the making of such communications because those specific
4 prohibitions are unnecessary in light of the general prohibition on coordinated communications
5 and coordinated expenditures in the final rule at 11 CFR 114.4(c)(1).

6 Revised 11 CFR 114.4(c)(3) and (c)(4) do, however, maintain the existing exemptions
7 from the definition of contribution and expenditure for the corporate and labor organization
8 activity addressed in those provisions. Thus, under both current and revised 11 CFR 114.4(c)(3),
9 a payment by a corporation or labor organization for the distribution of official voter registration
10 or voting information does not constitute a contribution or expenditure, provided that the
11 corporation or labor organization does not, in connection with such activity (1) expressly
12 advocate the election or defeat of a clearly identified federal candidate or candidates of a clearly
13 identified political party, (2) encourage registration with any particular political party, or
14 (3) coordinate with any candidate or political party concerning the reproduction and distribution
15 of the information. Similarly, the preparation and distribution of voting records under 11 CFR
16 114.4(c)(4) is not a contribution or expenditure, provided that the voting records do not expressly
17 advocate the election or defeat of a clearly identified federal candidate or candidates of a clearly
18 identified political party, and that the corporation or labor organization does not coordinate with
19 any candidate, group of candidates, or political party as to the content and distribution of such
20 voting records. The final rules thus reflect that after Citizens United, corporations and labor
21 organizations may make independent expenditures and electioneering communications, while the
22 final rules also maintain the status quo regarding the communications that, under the regulations,
23 are not contributions or expenditures.

1 4. Revised 11 CFR 114.4(c)(5) — Voter guides

2 The Commission is making several revisions to conform the voter guide rules in 11 CFR
3 114.4(c)(5) to the decision in Citizens United that corporations and labor organizations may
4 make independent expenditures and electioneering communications to the general public.

5 Current 11 CFR 114.4(c)(5) sets forth certain requirements for and restrictions on the
6 preparation and distribution to the general public of voter guides by corporations and labor
7 organizations. This provision currently requires that voter guides present the positions of two or
8 more candidates on campaign issues and requires that all candidates for a particular seat or office
9 be given an equal opportunity to respond. It further prohibits the corporation or labor
10 organization from giving greater prominence to any one candidate or substantially more space
11 for a candidate’s responses, and from including an electioneering message in the voter guide or
12 accompanying materials. The NPRM proposed eliminating each of these requirements and
13 prohibitions.

14 In addition to the comments on the general proposal to revise 11 CFR 114.4(c)(2)-(6),
15 discussed above, the Commission received comments on its proposed changes to 11 CFR
16 114.4(c)(5) from one commenter. The commenter supported the proposed changes on the basis
17 that they are consistent with Citizens United.

18 The Commission agrees and is adopting the revisions proposed in the NPRM, with
19 certain changes. As discussed above, the Commission believes that maintaining a non-
20 exhaustive list of types of communications that corporations and labor organizations may wish to
21 make to the general public may provide guidance to corporations and labor organizations.
22 However, the Commission is removing the requirements and restrictions in current 114.4(c)(5),
23 as proposed, to reflect that after Citizens United corporations and labor organizations may make

1 independent expenditures and electioneering communications. Additionally, as discussed in
2 Section IV.B.1 above, the Commission is removing the prohibitions on coordination in the
3 making of such communications because a prohibition on coordinated communications and
4 coordinated expenditures is in the final rule at 11 CFR 114.4(c)(1).

5 However, the final rule maintains the existing exemption from the definition of
6 contribution and expenditure for payments by a corporation or labor organization for the
7 preparation and distribution of voter guides that meet the historical criteria for permissibility
8 under current 11 CFR 114.4(c)(5)(i) and (ii). The Commission is transferring these criteria to
9 paragraph (c)(5)(ii) and rewording them to account for their revised purpose — that is, to
10 determine whether the activity is exempt from the definitions of contribution or expenditure,
11 rather than to determine whether the activity is permissible — but is otherwise leaving the
12 provisions unchanged. The final rule thus reflects that after Citizens United, corporations and
13 labor organizations may make independent expenditures and electioneering communications,
14 while the final rule also maintains the status quo regarding the communications that, under the
15 current regulations, are not contributions or expenditures.

16 5. Revised 11 CFR 114.4(c)(6) — Endorsements

17 The Commission is making several revisions to conform its rule on endorsements to the
18 decision in Citizens United that corporations and labor organizations may make independent
19 expenditures and electioneering communications targeted to the general public.

20 Current 11 CFR 114.4(c)(6) permits endorsement of candidates by corporations and labor
21 organizations and sets out certain requirements for and restrictions on such endorsements.
22 Current 11 CFR 114.4(c)(6) permits a corporation or labor organization to communicate the
23 endorsement only to its restricted class through specific types of publications and prohibits these
24 publications from being distributed to the general public other than at a de minimis level.

1 Current 11 CFR 114.4(c)(6) then sets out the circumstances under which a corporation and labor
2 organization may announce an endorsement to the general public.

3 The NPRM proposed removing the restrictions on the manner of announcing a
4 corporation's or labor organization's endorsement of a candidate and the reference to publishing
5 endorsements only to the restricted class to conform to the Court's decision in Citizens United.

6 The Commission received comments on its proposed changes to 11 CFR 114.4(c)(6)
7 from two commenters. One commenter agreed with the proposed changes because the
8 commenter said they are consistent with Citizens United. The other commenter disagreed with
9 the proposal to keep the list of types of communication at 11 CFR 114.4(c)(2)-(6) generally,
10 because, after Citizens United, there is no reason to enumerate specific examples of permissible
11 communications. The commenter went on to state, however, that to the extent that the
12 Commission were to decide to retain the list, 11 CFR 114.4(c)(6) should be revised to remove
13 the reference to communications with the restricted class. The commenter noted that section
14 114.4 addresses communications to the general public, and therefore the reference to the
15 restricted class is misplaced. Furthermore, because of the proposed language in 11 CFR
16 114.4(c)(1) that would prohibit coordination in the making of the communications listed in 11
17 CFR 114.4(c)(2)-(6), the regulation, as proposed, could be read to prohibit coordination in
18 coordinating endorsements to the restricted class.

19 The Commission agrees with the commenter that supported the revisions because they
20 were consistent with the decision in Citizens United. As discussed above, the Commission
21 believes that it is helpful to corporations and labor organizations to maintain a non-exhaustive
22 list of types of communications corporations and labor organizations may wish to make to the
23 general public. Thus, the Commission is adopting the revisions proposed in the NPRM, with

1 several changes. First, the Commission agrees with the commenter that argued that the reference
2 to communications with the restricted class in 11 CFR 114.4(c)(6) could be read to prohibit
3 coordination in communicating endorsements to the restricted class. Accordingly, the
4 Commission is revising this provision to note that communications of endorsements to the
5 restricted class may be coordinated as provided in 11 CFR 114.3(a). Second, the final rule
6 maintains the existing exemption from the definitions of contribution and expenditure for
7 disbursements to finance public announcements of endorsements by a corporation or labor
8 organization. Under the final rule, such disbursements that meet the historical criteria for
9 permissibility under current 11 CFR 114.4(c)(6) — criteria relating to the manner of announcing
10 the endorsement and restricting coordination thereof — will remain exempt from the definitions
11 of contribution and expenditure. The final rule thus reflects that after Citizens United,
12 corporations and labor organizations may make independent expenditures and electioneering
13 communications, while the final rule also maintains the status quo regarding the communications
14 that, under the current regulations, are not contributions or expenditures.

15 6. Removal of 11 CFR 114.4(c)(8) — Electioneering communications

16 The Commission is removing 11 CFR 114.4(c)(8) to conform the regulations to the
17 decision in Citizens United.

18 Current 11 CFR 114.4(c)(8) permits corporations and labor organizations to make
19 electioneering communications to the general public only to the extent permitted under current
20 11 CFR 114.15. Section 114.15, in turn, permits corporations and labor organizations to make
21 electioneering communications unless the communication is susceptible of no reasonable
22 interpretation other than as an appeal to vote for or against a clearly identified federal candidate.
23 As discussed in Section VII.B below, the Commission is removing section 114.15. Current 11

1 CFR 114.4(c)(8) further permits QNCs to make electioneering communications to the general
2 public in accordance with current 11 CFR 114.10. As discussed below, the Commission is also
3 removing the portions of section 114.10 that address QNCs.

4 The NPRM proposed eliminating 11 CFR 114.4(c)(8) in its entirety because Citizens
5 United struck down the prohibition on corporations and labor organizations making
6 electioneering communications. The Commission received one comment in support of the
7 proposed deletion, stating that the proposal is consistent with Citizens United. The Commission
8 agrees. Because Citizens United struck down the prohibition on corporations and labor
9 organizations making electioneering communications, the exceptions to the prohibition at current
10 11 CFR 114.4(c)(8) are superfluous.

11 C. Revised 11 CFR 114.4(d) — Voter registration and get-out-the-vote drives

12 The Commission is revising 11 CFR 114.4(d) to remove the requirements that
13 corporations and labor organizations engaging in voter registration or GOTV drives directed at
14 the general public: (1) not withhold or refuse to provide assistance on the basis of support for or
15 opposition to particular candidates or a particular political party; and (2) not make any
16 communication expressly advocating the election or defeat of any clearly identified candidate or
17 political party as part of those drives. The final rules will continue to exempt nonpartisan voter
18 registration and GOTV drives from the definition of “expenditure,” in accordance with 52 U.S.C.
19 30101(9)(B)(ii) (formerly 2 U.S.C. 431(9)(B)(ii)).

20 For purposes of the prohibition on expenditures by corporations and labor organizations,
21 the Act defines “expenditure” to include “any purchase, payment, distribution . . . or anything of
22 value . . . for the purpose of influencing any election for Federal office.” 52 U.S.C.
23 30101(9)(A)(i), 30118(b)(2) (formerly 2 U.S.C. 431(9)(A)(i), 441b(b)(2)). The Act exempts

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1 from the definition of expenditure “nonpartisan activity designed to encourage individuals to
2 vote or to register to vote.” 52 U.S.C. 30101(9)(B)(ii) (formerly 2 U.S.C. 431(9)(B)(ii)).
3 Current 11 CFR 114.4(d) permits corporations and labor organizations to conduct voter
4 registration and GOTV drives aimed at the general public and states that such drives include
5 providing transportation to the place of registration and to the polls. The current provision
6 prohibits such drives from including express advocacy communications and states that the drives
7 may not be coordinated with any candidate or political party. The current provision also
8 prohibits corporations or labor organizations from: (1) withholding or refusing to give
9 information and other assistance regarding registering or voting on the basis of support for or
10 opposition to particular candidates or a particular political party; (2) directing the drives
11 primarily at individuals based on registration with a particular party; and (3) paying individuals
12 conducting such drives on the basis of number of individuals registered or transported to the
13 polls who support a particular candidate or candidates or political party.

14 The NPRM proposed two alternatives to revise 11 CFR 114.4(d). Both alternatives
15 would have removed the prohibition on communications expressly advocating the election or
16 defeat of candidates or political parties made in connection with a voter registration or GOTV
17 drive. Alternative A, which the Commission is adopting in part as its final rule, also would have
18 removed all of the existing requirements and prohibitions regarding voter registration and GOTV
19 drives, with the exception of the prohibition on coordination with candidates or political parties.
20 Alternative A also would have maintained the exemption from the definition of “expenditure”
21 under 52 U.S.C. 30101(9)(B)(ii) (formerly 2 U.S.C. 431(9)(B)(ii)) for voter registration and
22 GOTV drives that meet the existing requirements and prohibitions.

1 Alternative B would have made no changes to the existing regulation at 11 CFR 114.4(d),
2 except to remove the prohibition on corporations and labor organizations making
3 communications expressly advocating the election or defeat of clearly identified candidates
4 currently at 11 CFR 114.4(d)(1).

5 The Commission received comments from five commenters on the proposed changes to
6 11 CFR 114.4(d). All five of the commenters generally supported Alternative A over Alternative
7 B, although several commenters expressed concerns with Alternative A, as discussed further
8 below. None of the commenters supported Alternative B. Many of the commenters noted that
9 after Citizens United corporations and labor organizations are free to engage in independent
10 political spending. One commenter stated that the Commission has no statutory basis to treat
11 voter registration or GOTV activity that is not “nonpartisan” as an expenditure, absent express
12 advocacy. This commenter argued that Alternative A was thus incorrect to the extent that it
13 proposed to do so. One commenter contended that voter registration is subject to extensive
14 regulation at both the federal and state levels, and that the Commission should defer to these
15 other laws absent a clear directive. The commenter went on to argue that as a matter of policy,
16 the Commission should craft its rules to promote civic engagement and political participation by
17 giving “wide berth” to voter registration and GOTV activity, except where the Act explicitly
18 imposes restraints on it.

19 Two commenters stated that Alternative B was not consistent with the Court’s decision in
20 Citizens United.

21 The Commission agrees with the commenters that proposed Alternative A is consistent
22 with the Court’s decision in Citizens United because that alternative reflects corporations’ and
23 labor organizations’ right to now make independent expenditures and electioneering

1 communications beyond the restricted class. The Commission is therefore revising 11 CFR
2 114.4(d) to remove the prohibition on express advocacy, as well as the other restrictions on
3 corporations and labor organizations engaging in voter registration drives and GOTV activity
4 directed at the general public. These restrictions are: withholding or refusing to provide
5 assistance on the basis of support for or opposition to particular candidates or a particular party;
6 directing the drives primarily at individuals based on registration with a particular party; and
7 paying individuals conducting such drives on the basis of number of individuals registered or
8 transported to the polls who support a particular candidate or candidates or political party.
9 Revised 11 CFR 114.4(d) does not include a prohibition on coordination because, as discussed
10 above, the prohibition on coordination in the context of voter registration and GOTV drives is
11 addressed in 11 CFR 114.4(a).

12 Additionally, the Commission notes that 52 U.S.C. 30101(9)(B)(ii) (formerly 2 U.S.C.
13 431(9)(B)(ii)) exempts “nonpartisan” voter registration drives and GOTV activity from the
14 definition of “expenditure.” Therefore, the Commission is also revising 11 CFR 114.4(d) to
15 implement that statutory exemption by providing that voter registration and GOTV drives that
16 meet the historical criteria for permissibility under current paragraphs 114.4(d)(1)-(6) (which,
17 except for the coordination prohibition being consolidated in section 114.4(a), are being
18 transferred to paragraphs 114.4(d)(2)(i)-(v)) continue to constitute nonpartisan activity exempt
19 from the definition of “expenditure.” This revision is not intended to indicate that all voter
20 registration and GOTV drives falling outside the “nonpartisan” exemption are necessarily
21 expenditures or that they must always be reported. Voter registration and GOTV drives that are
22 not “nonpartisan” are governed by the general statutory and regulatory definitions of
23 “expenditure” and any attendant reporting obligations in the Act and Commission regulations.

1 See 52 U.S.C. 30101(9)(A), 30104(c), 30118(b)(2) (formerly 2 U.S.C. 431(9)(A), 434(c),
2 441b(b)(2)); 11 CFR 100.111(a), 104.4(a), 109.10(b)-(e).

3 **V. No Changes to 11 CFR 114.9 — Use of corporate or labor organization facilities**

4 The Commission is not, at this time, revising 11 CFR 114.9, which governs the use of
5 corporate and labor organization facilities for political activity. The NPRM did not propose any
6 changes to the regulation but asked whether 11 CFR 114.9 should be revised in light of Citizens
7 United.

8 The Commission’s regulations generally treat the unreimbursed use of corporate or labor
9 organization facilities in connection with federal elections as expenditures and, in certain
10 circumstances, contributions. See 11 CFR 114.9(a)-(d) (detailing reimbursement requirements
11 for use of corporate or labor organization facilities). Such expenditures and contributions were
12 generally prohibited before Citizens United. See 52 U.S.C. 30118(a) (formerly 2 U.S.C.
13 441b(a)). Section 114.9, however, established certain limited exceptions to the prohibition,
14 allowing minimal usage of these facilities by certain individuals. For more than minimal usage,
15 section 114.9 requires corporations and labor organizations to obtain reimbursement from
16 individuals who use these facilities in connection with federal elections. 1977 E&J, H.R. DOC.
17 No. 95-44, at 115; see also Internet Communications, 71 FR 18589, 18611 (Apr. 12, 2006);
18 Advisory Opinion 1985-26 (General Mills) (concluding that employee’s failure to reimburse
19 corporation for corporation’s distribution of campaign materials could result in prohibited
20 corporate expenditure). Though Citizens United invalidated the prohibition on independent
21 expenditures by corporations and labor organizations, it did not call into question the prohibition
22 on contributions by corporations and labor organizations.¹⁴ 558 U.S. at 358.

¹⁴ As discussed in Section II.A, above, corporations and labor organizations may make contributions to independent-expenditure only committees and accounts.

1 The Commission received two comments on 11 CFR 114.9. One commenter implied that
2 the Commission should change its regulation because the Commission should not limit
3 independent political speech after Citizens United. The other commenter urged the Commission
4 to wait to consider any changes to 11 CFR 114.9 in a future rulemaking. The commenter
5 contended that the regulation warrants revisiting after Citizens United but also recognized that
6 the rule remains pertinent for setting guidelines for corporations and labor organizations to know
7 when they must potentially report an individual’s activity as an independent expenditure by the
8 corporation or labor organization. The commenter further noted that to the extent that 11 CFR
9 114.9 implements the contribution prohibition at 52 U.S.C. 30118(a) (formerly 2 U.S.C.
10 441b(a)), it remains valid after Citizens United.

11 The Commission agrees that 11 CFR 114.9 remains relevant after Citizens United and
12 that changes are not necessary at this time. The holding of Citizens United, however, moots the
13 application of 11 CFR 114.9 as an exception to the independent expenditure ban struck down in
14 that case.

15 **VI. Revised 11 CFR 114.10 — Corporations and labor organizations making**
16 **independent expenditures and electioneering communications**

17 The Commission is revising 11 CFR 114.10 to provide cross-references to the regulations
18 applicable to corporate and labor organization independent expenditures and electioneering
19 communications. Such independent expenditures and electioneering communications are now
20 subject to various requirements, including reporting obligations and disclaimers, and the
21 Commission intends to facilitate the identification of the relevant regulations on these topics by
22 listing them in revised section 114.10. The revised regulation is not designed to impose any new
23 requirements on the making of independent expenditures and electioneering communications,
24 but simply to provide a single regulation that will outline the various requirements.

1 The Commission promulgated current 11 CFR 114.10 primarily in response to the
2 Supreme Court’s decision in Massachusetts Citizens For Life, Inc. v. FEC, 479 U.S. 238 (1986)
3 (“MCFL”). The Court there considered the application of the independent expenditure
4 prohibition in 52 U.S.C. 30118 (formerly 2 U.S.C. 441b) to MCFL, a nonprofit corporation
5 organized to promote certain ideological views. The Court concluded that nonprofit, ideological
6 groups such as MCFL did not pose the potential for corruption through “unfair deployment of
7 wealth for political purposes” and therefore did not implicate the concerns that prompted
8 regulation of corporate electoral activity by Congress. See MCFL, 479 U.S. at 259-61. In
9 response to MCFL, the Commission adopted 11 CFR 114.10, creating a regulatory exception to
10 the independent expenditure ban in section 30118 (formerly 2 U.S.C. 441b) for organizations
11 with the same characteristics as MCFL, referred to as QNCs. After Congress enacted BCRA’s
12 electioneering communications provisions in 2002, which included the prohibition on
13 electioneering communications by corporations, the Commission added an exception in 11 CFR
14 114.10 to allow QNCs to make electioneering communications.

15 Because Citizens United made these exceptions for QNCs unnecessary, the NPRM
16 proposed to revise 11 CFR 114.10, or, alternatively, to delete the regulation in its entirety. The
17 NPRM specifically sought comments on a proposal to remove current paragraphs (a) through (c)
18 and (e)(1), as these regulations specifically apply only to QNCs. The NPRM proposed to
19 redesignate the provisions currently at 11 CFR 114.10(d), (e)(2), and (f) through (i) — each of
20 which currently relates to permissible independent expenditures and electioneering
21 communications by QNCs — and expand them to apply to all corporations and labor
22 organizations that make independent expenditures and electioneering communications. These
23 provisions include: (1) the reporting requirements for independent expenditures or

1 electioneering communications at 11 CFR 114.10(e)(2); (2) the solicitation disclaimer
2 requirement at 11 CFR 114.10(f); (3) the non-authorization disclaimer requirement at 11 CFR
3 114.10(g); (4) the provision in 11 CFR 114.10(h) permitting establishment of segregated bank
4 accounts for electioneering communication disbursements; and (5) 11 CFR 114.10(i), which
5 states that nothing in section 114.10 authorizes any organization exempt from taxation under 26
6 U.S.C. 501(a) to carry out any activity that it is prohibited from undertaking by the Internal
7 Revenue Code. The NPRM asked whether maintaining these regulations, as revised to apply to
8 corporations and labor organizations in general, would be necessary or appropriate.

9 The Commission received comments on the general proposal to delete and revise certain
10 provisions of current 11 CFR 114.10 from three commenters. All three commenters expressed
11 the view that the exception for QNCs is no longer necessary after Citizens United. One
12 commenter generally supported the proposal to maintain certain provisions of 11 CFR 114.10 as
13 a “guide” to corporations and labor organizations making independent expenditures and
14 electioneering communications. This commenter noted that “affirmatory regulatory language
15 can serve important public information purposes.” The commenter did not agree with the
16 proposed changes to current 11 CFR 114.10(c), discussed further below. Another commenter
17 opined that to the extent that the Commission retained any of current 11 CFR 114.10(d)-(i), those
18 provisions should be placed with similar provisions elsewhere in the regulations and combined to
19 avoid repetition.

20 The Commission is revising 11 CFR 114.10 as described below.

21 A. Removal of current 11 CFR 114.10(a)-(c)

22 The Commission is removing the provisions currently located at 11 CFR 114.10(a)-(c) in
23 their entirety. These provisions currently contain the exemption for QNCs from the prior

1 prohibition on corporations making independent expenditures and electioneering
2 communications. Specifically, current 11 CFR 114.10(a) sets out the scope of section 114.10 as
3 applying to “those nonprofit corporations that qualify for an exemption” from the corporate
4 contribution and expenditure prohibition in 11 CFR 114.2. Current paragraph 114.10(b) defines
5 certain terms and phrases relevant to the QNC exception, and current 11 CFR 114.10(c) sets out
6 the criteria for being a QNC.

7 As discussed above, several commenters noted that an exception to the ban on
8 independent expenditures and electioneering communications for QNCs is not necessary after
9 Citizens United. The Commission agrees. Because Citizens United struck down the statutory
10 bans on independent expenditures and electioneering communications for all corporations and
11 labor organizations, the regulatory exceptions for QNCs are now superfluous. The Commission
12 is therefore removing current 11 CFR 114.10(a)-(c).

13 B. Revised 11 CFR 114.10(a) — Independent expenditures and electioneering
14 communications by corporations and labor organizations

15 The Commission is revising current 11 CFR 114.10(d) and redesignating it as 11 CFR
16 114.10(a).

17 Current 11 CFR 114.10(d) specifically permits QNCs to make independent expenditures
18 and electioneering communications. The NPRM proposed expanding certain provisions of
19 current 11 CFR 114.10(d) to cover all corporations and labor organizations. As discussed above,
20 the NPRM sought comments on whether it would be helpful for corporations and labor
21 organizations to have a regulation explicitly recognizing their ability to make independent
22 expenditures and electioneering communications. The NPRM asked whether the regulation
23 should instead more broadly state that corporations and labor organizations may make any

1 communication in connection with an election so long as it is not a coordinated communication
2 under 11 CFR 109.21, or, alternatively, whether it would be sufficient to remove the current
3 prohibitions in 11 CFR 114.2(b)(2) and (b)(3) on corporations and labor organizations making
4 disbursements for independent expenditures and electioneering communications using general
5 treasury funds.

6 The Commission received comments from two commenters on the specific proposal to
7 recognize explicitly that corporations and labor organizations are free to make independent
8 expenditures and electioneering communications. One commenter argued that such a provision
9 would be helpful even if explicit regulatory recognition was not necessary. The commenter
10 expressed the view that the Commission’s proposal would help the public understand how the
11 law has changed after Citizens United and could provide reassurance to those seeking to engage
12 in political speech. The other commenter also supported the Commission’s proposal, stating that
13 the proposed revision would succinctly communicate the core holding of Citizens United. The
14 commenter also suggested that the Commission add language to proposed 11 CFR 114.10(a) to
15 state that corporations and labor organizations may make “other public communications as
16 defined in 11 CFR [100.26] in connection with an election,” in addition to independent
17 expenditures and electioneering communications.

18 The Commission agrees that a regulation stating that corporations and labor organizations
19 may make independent expenditures and electioneering communications is not necessary. The
20 Commission also agrees, however, that providing such a regulation alongside the other new
21 regulations will provide guidance and reassurance to entities seeking to engage in political
22 speech after Citizens United. The Commission is therefore revising current 11 CFR 114.10(d) to
23 state explicitly that corporations and labor organizations may make independent expenditures

1 and electioneering communications and to indicate that such communications are subject to
2 certain regulatory requirements applicable to all entities that make such communications.

3 The Commission is not, however, adding the language suggested by the commenter to
4 specifically state that corporations and labor organizations may make “other public
5 communications” as that term is defined in 11 CFR 100.26. Unlike independent expenditures
6 and electioneering communications, which are specific categories of communications subject to
7 regulation under the Act and Commission regulations, the term “public communication” merely
8 identifies certain means of communication. Compare 11 CFR 100.26 (definition of “public
9 communication”), with 11 CFR 100.16 (definition of “independent expenditure”), and 100.29
10 (definition of “electioneering communication”). Although some public communications may
11 constitute independent expenditures or electioneering communications based upon other
12 characteristics of the communications, no provision of the Act or Commission regulations
13 addresses the permissibility of public communications per se. Thus, the Commission determines
14 that it is unnecessary to include specific language permitting corporations and labor
15 organizations to make public communications.

16 Revised 11 CFR 114.10(d) (now being redesignated paragraph 114.10(a), as proposed in
17 the NPRM) also restates the prohibition on corporations and labor organizations making
18 coordinated expenditures, coordinated communication, or contributions, as those terms are
19 defined in Commission regulations. As discussed in Section II.A, above, the Commission is
20 appending a note to section 114.10 to reflect the fact that this prohibition (regarding which the
21 Commission intends to undertake a separate rulemaking) does not apply to contributions to non-
22 connected political committees that make only independent expenditures or to separate accounts
23 maintained by non-connected political committees for making only independent expenditures.

1 C. Revised 11 CFR 114.10(b) — Reporting independent expenditures and electioneering
2 communications

3 The Commission is revising current 11 CFR 114.10(e)(2) by removing the reference to
4 QNCs and by expanding the language of the provision to state that all corporations and labor
5 organizations that make independent expenditures or electioneering communications above
6 threshold amounts must file reports according to other applicable regulations. The Commission
7 is also redesignating 11 CFR 114.10(e)(2) as 11 CFR 114.10(b) and removing current 11 CFR
8 114.10(e)(1) in its entirety.

9 Current 11 CFR 114.10(e)(1) sets out the procedures for demonstrating QNC status.
10 Current 11 CFR 114.10(e)(2) sets forth the reporting requirements for QNCs making
11 independent expenditures or electioneering communications. The NPRM proposed expanding
12 the language in current 11 CFR 114.10(e)(2) to include independent expenditures and
13 electioneering communications made by all corporations and labor organizations and to remove
14 the reference to QNCs. The reporting regulations cross-referenced in proposed 11 CFR
15 114.10(e) apply to “every person” who makes independent expenditures or electioneering
16 communications in excess of certain amounts. 11 CFR 104.4(a), 104.20(b). The definition of
17 “person” includes corporations and labor organizations. See 52 U.S.C. 30101(11) (formerly 2
18 U.S.C. 431(11)); 11 CFR 100.10. The NPRM asked whether is it necessary or helpful to have an
19 additional regulation that specifically states that corporations and labor organizations are subject
20 to these reporting requirements.

21 The Commission received comments from two commenters on the specific proposal to
22 revise current 11 CFR 114.10(e). Both commenters supported the proposal, with one commenter
23 arguing that it would communicate the application of current statutory and regulatory reporting

1 requirements to corporate and labor organization independent expenditures and electioneering
2 communications. The other commenter stated that corporations and labor organizations should
3 be explicitly informed of their rights after Citizens United.

4 The Commission agrees with the commenters. Although the revised provision at 11 CFR
5 114.10(b) is not necessary given that the reporting requirements currently apply to corporations
6 and labor organizations making independent expenditures or electioneering communications, the
7 Commission has determined that it would be helpful to corporations and labor organizations
8 making such communications to have a single provision at 11 CFR 114.10 that directs those
9 entities to other relevant regulations. The Commission is therefore revising current 11 CFR
10 114.10(e)(2) and redesignating it as section 114.10(b) as proposed in the NPRM. New 11 CFR
11 114.10(b)(1) states that corporations and labor organizations that make independent expenditures
12 aggregating in excess of \$250 with respect to a given election in a calendar year must file reports
13 according to 11 CFR part 114 and sections 104.4(a) and 109.10(b)-(e). Revised 11 CFR
14 114.10(b)(2) states that corporations or labor organizations that make electioneering
15 communications aggregating in excess of \$10,000 in a calendar year must file the statements
16 required by 11 CFR 104.20(b).

17 D. Removal of 11 CFR 114.10(f) — Solicitation; disclosure of use of contributions for
18 political purposes

19 Current 11 CFR 114.10(f) requires that a QNC's solicitations for donations disclose to
20 potential donors that their donations may be used for political purposes, such as supporting or
21 opposing candidates.

22 The NPRM proposed revising 11 CFR 114.10(f) by maintaining this requirement and
23 expanding it to cover solicitations for donations that may be used for political purposes where

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1 the solicitations are made by any corporation or labor organization. Even though the QNC
2 exception is no longer necessary, the NPRM asked whether the current solicitation disclosure
3 requirement for QNCs should be expanded to cover all corporations and labor organizations to
4 ensure that recipients of solicitations have information about how their donations may be used, in
5 order to make informed decisions. The NPRM further sought comment as to whether the
6 Commission should require corporations and labor organizations to state in such disclosures that
7 the funds received may be used specifically for independent expenditures or electioneering
8 communications, as opposed to for “political purposes” generally.

9 The NPRM also asked whether the regulatory requirement that QNC solicitations include
10 disclaimers is now superfluous in light of Citizens United and should be deleted in its entirety or
11 whether language in that opinion regarding disclosure and disclaimers means that the
12 Commission may and should continue to specifically require that QNCs disclose to potential
13 donors and contributors the potential uses of their funds. The NPRM then asked whether, if the
14 Commission were to retain the solicitation disclaimer requirement for QNCs, it should also retain
15 the definition of “QNC” at current 11 CFR 114.10(c) to identify the corporations subject to the
16 disclaimer requirement.

17 The requirement at current section 114.10(f) derives from the Supreme Court’s decision
18 in MCFL. Express Advocacy; Independent Expenditures; Corporate and Labor Organization
19 Expenditures, 60 FR 35292, 35303 (July 6, 1995). In holding the prohibition on corporate
20 independent expenditures unconstitutional as applied to QNCs, the Supreme Court reasoned that
21 “[t]he rationale for regulation is not compelling with respect to independent expenditures by
22 [MCFL]” because “[i]ndividuals who contribute to [MCFL] are fully aware of its political
23 purposes, and in fact contribute precisely because they support those purposes.” MCFL, 479

1 U.S. at 260-61. “Given a contributor’s awareness of the political activity of [MCFL], as well as
2 the readily available remedy of refusing further donations, the interest [of] protecting
3 contributors is simply insufficient to support § 441b’s [now 52 U.S.C. 30118’s] restriction on the
4 independent spending of MCFL.” Id. at 262 (emphasis added).

5 In Citizens United, the Court upheld the disclaimer requirements of 52 U.S.C.
6 30120(d)(2) (formerly 2 U.S.C. 441d(d)(2)) and the disclosure requirements of 52 U.S.C.
7 30104(f) (formerly 2 U.S.C. 434(f)). 558 U.S. at 366-71. In analyzing the disclaimer
8 requirements, the Court recognized that “[t]he disclaimers required by [section 30120(d)(2)]
9 ‘provide the electorate with information,’ McConnell [v. FEC], 540 U.S. 93,196 (2003)], and
10 thereby ‘insure that the voters are fully informed’ about the person or group who is speaking,
11 Buckley [v. Valeo], 424 U.S. 1,76 (1976).” Citizens United, 558 U.S. at 368 (additional citation
12 omitted). Regarding disclosure requirements, the Court reiterated its previous explanation that
13 “disclosure is a less restrictive alternative to more comprehensive regulations of speech.” Id. at
14 369 (citing MCFL, 479 U.S. at 262). The Court further recognized that “disclosure permits
15 citizens and shareholders to react to the [political] speech of corporate entities in a proper way.
16 This transparency enables the electorate to make informed decisions and give proper weight to
17 different speakers and messages.” Id. at 371.

18 The Commission received comments from four commenters on the Commission’s
19 proposed retention and revision of current 11 CFR 114.10(f). None of the commenters supported
20 the Commission’s proposal. Several commenters argued that the Commission lacks statutory
21 authority to expand the disclaimer requirement for a number of reasons. First, the Act’s
22 disclaimer requirement applies only to solicitations for contributions as defined under the Act,
23 while the Commission’s proposal would also apply to solicitations for donations that are not

1 contributions. Furthermore, the proposed disclaimer that funds may be used for “political
2 purposes” would go beyond the information required by the Act, namely, that a solicitation state
3 who paid for the solicitation and whether it was authorized by a candidate or a candidate’s
4 political committee. One commenter opined that the Court’s upholding of the disclaimer
5 requirements at issue in Citizens United cannot be read to approve the imposition of “new
6 disclaimer requirements whenever [the Commission] believes there is a reason to do so.”

7 One commenter argued that the characteristics of QNCs that made the current disclaimer
8 requirement important — that QNCs are “established specifically ‘for the promotion of political
9 ideas’” (quoting 60 FR at 35297) — do not apply to other types of organizations that would be
10 covered by the proposed regulation. The commenter went on to note that contrary to the Court’s
11 observation in MCFL that the class of organizations affected by the Court’s decision “may . . . be
12 small,” 479 U.S. at 264, the proposed solicitation rule would apply to every corporation and
13 labor organization, “many and perhaps most of which will not use their funds for ‘political
14 purposes’ however that term is defined.” Another commenter argued that the existing
15 requirements of 11 CFR 114.10(f) were neither based on a statutory directive nor compelled by
16 the Supreme Court’s decision in MCFL.

17 Another commenter noted that all so-called 501(c)(4), (c)(5), and (c)(6) organizations are
18 permitted to engage in political campaign activity and therefore “‘may’ use the funds for that
19 purpose.” The proposed disclaimer language would be misleading, this commenter contended, if
20 the organization does not actually use the funds for political purposes. Yet another commenter
21 discussed the operation of the proposed regulation alongside the requirement at 11 CFR
22 104.20(c)(9), which requires corporations that report electioneering communications to disclose
23 each person who donates for the purpose of furthering such communications. The commenter

1 stated that because of the reporting requirement at 11 CFR 104.20(c)(9), some corporations may
2 specifically choose not to seek donations specifically for the purpose of furthering electioneering
3 communications, yet the corporations would be required by the proposed regulation to inform
4 potential donors that their donations may be used for political purposes such as supporting or
5 opposing candidates. This commenter further contended that an interest in protecting donors
6 from funding speech with which they disagree is not a valid basis for regulation after Citizens
7 United.

8 Several commenters also expressed concern about the difficulty of implementing the
9 Commission’s proposal. These commenters opined that several of the terms proposed by the
10 Commission were vague or overbroad. Specifically, commenters stated that “solicitation,”
11 “donation,” and “political purposes” are not clearly defined in the Act and Commission
12 regulations for purposes of the proposed disclaimer. One commenter stated that the proposed
13 regulation did not define “donation,” and that although “contribution” is defined, the Act does
14 not require a solicitation of a contribution to include any statements concerning the potential use
15 of the funds solicited. The commenter noted that “donation” is defined in the Commission’s
16 regulations, but that this definition applies only to 11 CFR part 300. See 11 CFR 300.2(e).
17 Moreover, the commenter opined, the definition is broad and does not require any nexus to an
18 election: As defined, the term “donation” could “reach even union solicitations of dues
19 payments from members.” The commenter went on to state that this application “would intrude
20 upon a complex and longstanding federal labor law framework.” The commenter further stated
21 that the proposed use of “solicit” was unclear. In the commenter’s view, the broad definition of
22 that term provided in the candidate/party context in BCRA and applied to solicitations of
23 contributions to separate segregated funds could turn routine statements by labor organizations

1 during organizing campaigns and other non-election related contexts into “solicitations” that
2 would trigger the proposed disclaimer. Finally, the commenter argued that the term “political
3 purposes,” if undefined, would fail to correspond with any of the “precise categories of political
4 behavior” that the Act identifies and regulates, such as independent expenditures and
5 electioneering communications.

6 Another commenter indicated that the proposal might be acceptable if it were limited to
7 requiring disclosure by those who might use donations for independent expenditures and
8 electioneering communications. The commenter asserted that this would be consistent with the
9 decision in FEC v. Survival Education Fund, 65 F.3d 285 (2d Cir. 1995), which allowed
10 requiring disclosure of contributions earmarked for political speech that the Supreme Court has
11 held may be regulated, even where the speaker is not a political committee.

12 Finally, the Commission received one comment in response to the NPRM’s question as to
13 whether to retain the disclaimer requirement applicable only to QNCs. The commenter did not
14 support that approach, stating that “retaining a solicitation disclaimer for organizations that could
15 have qualified for QNCs in the past would be confusing at best.” The commenter went on to
16 state that there is no reason why a 501(c)(4) organization would be treated differently in this
17 context from other nonprofit organizations, business corporations, and labor organizations.

18 The Commission concludes that it should not maintain the disclaimer requirement of
19 current section 114.10(f) or expand it to cover solicitations made by other corporations or labor
20 organizations. The Commission agrees with the commenters who noted that the proposed
21 disclaimer requirement, which previously applied only to QNCs, is unclear. There is also no
22 longer any reason to specifically regulate the activities of QNCs (as discussed above).

1 Therefore, the Commission is not adopting the revised regulation as proposed in the NPRM, and
2 is removing current 11 CFR 114.10(f).

3 E. Revised 11 CFR 114.10(c) — Non-authorization notice

4 The Commission is revising current 11 CFR 114.10(g) as described below and
5 redesignating the provision as 11 CFR 114.10(c).

6 Current 11 CFR 114.10(g) requires that QNCs comply with the disclaimer requirements
7 of 11 CFR 110.11. Section 110.11, in turn, implements 52 U.S.C. 30120 (formerly 2 U.S.C.
8 441d), which requires that certain communications identify the person who paid for the
9 communication and state whether the communication is authorized by any candidate or
10 candidate’s committee, and which sets out the technical requirements for these disclaimers. The
11 requirements of 52 U.S.C. 30120 (formerly 2 U.S.C. 441d) and 11 CFR 110.11 apply to express
12 advocacy public communications and to electioneering communications made by any person.
13 Because the Act defines “person” to include corporations and labor organizations, these
14 provisions apply equally to corporations and labor organizations. 52 U.S.C. 30101(11) (formerly
15 2 U.S.C. 431(11)). The Court in Citizens United upheld the disclaimer provisions of 52 U.S.C.
16 30120 (formerly 2 U.S.C. 441d). 558 U.S. at 366-72.

17 The NPRM proposed revising current 11 CFR 114.10(g) by expanding it to require that
18 all corporations and labor organizations comply with 11 CFR 110.11. The NPRM asked whether
19 such a regulation would be useful, given that the requirements at 52 U.S.C. 30120 (formerly 2
20 U.S.C. 441d) and 11 CFR 110.11 already apply to corporations and labor organizations because
21 they are “persons” under the Act.

22 The Commission received one comment on the specific proposal to revise current 11
23 CFR 114.10(g). The commenter supported the proposal because it would succinctly

1 communicate the disclaimer requirement applicable to corporations and labor organizations
2 making express advocacy public communications and electioneering communications.

3 The Commission is revising the regulation at current 11 CFR 114.10(g) as proposed in
4 the NPRM. As noted above, the Commission acknowledges that 52 U.S.C. 30120 (formerly 2
5 U.S.C. 441d) and the corresponding regulatory provision at 11 CFR 110.11 already apply to “any
6 person” making express advocacy public communications or electioneering communications,
7 and so a specific regulation stating that corporations and labor organizations are subject to the
8 disclaimer requirements at 11 CFR 110.11 is not necessary. The Commission agrees with the
9 commenter, however, that including such a provision in the list of applicable provisions at 11
10 CFR 114.10 would be a helpful guide for corporations and labor organizations. The Commission
11 is also redesignating current 11 CFR 114.10(g) as 11 CFR 114.10(c).

12 F. Revised 11 CFR 114.10(d) — Segregated bank account

13 The Commission is revising current 11 CFR 114.10(h) to state that a corporation or labor
14 organization may establish a segregated bank account for funds to be used for the making of
15 electioneering communications. The Commission is also redesignating current 11 CFR
16 114.10(h) as 11 CFR 114.10(d).

17 Current 11 CFR 114.10(h) states that a QNC “may, but is not required to, establish a
18 segregated bank account into which it deposits only funds donated or otherwise provided by
19 individuals, as described in 11 CFR part 104, from which it makes disbursements for
20 electioneering communications.” The current regulation at 11 CFR 114.10(h) implements 52
21 U.S.C. 30104(f)(2)(E) (formerly 2 U.S.C. 434(f)(2)(E)), which sets out the reporting
22 requirements for disbursements to pay for electioneering communications out of segregated bank
23 accounts. Aside from this reporting requirement, however, the Act does not otherwise

1 affirmatively state that a person may establish such a segregated account. Furthermore,
2 11 CFR 114.10(h) is the only place in the current regulations that affirmatively states that a
3 person may, but is not required to, set up such a segregated bank account, and this regulation is
4 limited to QNCs.

5 The NPRM proposed revising current 11 CFR 114.10(h) by removing the reference to
6 QNCs and by expanding the provision to state that all corporations or labor organizations may
7 establish such accounts. The NPRM asked whether such a regulation is necessary, given that the
8 reporting requirements in the Act already contemplate the existence of these segregated bank
9 accounts. The NPRM further asked whether the Commission should adopt a broader regulation
10 that would permit, but not require, any person (other than a political committee¹⁵) to establish
11 such an account. Finally, the NPRM asked whether, in the alternative, the Commission should
12 require corporations and labor organizations that make independent expenditures and
13 electioneering communications to use a segregated bank account.

14 The Commission received one comment on the specific proposal to revise current 11
15 CFR 114.10(h). The commenter agreed with the Commission's proposal to revise the provision
16 to explicitly provide the segregated-account option to all corporations or labor organizations that
17 make disbursements for electioneering communications. The Commission also received one
18 comment stating that the Commission should not create a requirement that persons must use a
19 segregated bank account for funds used to make electioneering communications. The
20 commenter opined that the Act explicitly makes such an account permissive, rather than
21 mandatory. The commenter went on to state that even as to voluntary segregated bank accounts,
22 the Act contemplates such accounts only for electioneering communications and not for
23 independent expenditures. The commenter argued that requiring the use of such accounts would

¹⁵ Political committees do not file electioneering communication reports. See 11 CFR 104.20(b).

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1 be “highly burdensome.” Finally, the commenter noted that even without such a segregated
2 account, corporations and labor organizations are subject to the Act’s reporting and disclaimer
3 requirements for independent expenditures and electioneering communications.

4 The Commission agrees with the commenter who supported the proposed changes to 11
5 CFR 114.10(h) and shares many of the concerns of the commenter who advised against making
6 the use of segregated bank accounts mandatory. The Commission is therefore revising current
7 11 CFR 114.10(h) as proposed in the NPRM to state affirmatively that a corporation or labor
8 organization may establish a segregated bank account for funds to be disbursed for
9 electioneering communications. For the reasons stated above, the Commission is also removing
10 the reference to QNCs and redesignating the provision as 11 CFR 114.10(d), and, as explained
11 below in Section IX, is conforming this paragraph to section 104.20(c)’s clarification regarding
12 the sources of funds that permissibly may be deposited into such accounts.

13 G. Revised 11 CFR 114.10(e) — Activities prohibited by the Internal Revenue Code

14 The Commission is revising current 11 CFR 114.10(i) by removing the reference to
15 QNCs, and by redesignating the provision as 11 CFR 114.10(e).

16 Current 11 CFR 114.10(i) states that nothing in section 114.10 shall be construed to
17 authorize any organization exempt from taxation under 26 U.S.C. 501(a), “including any
18 [QNC],” to carry out any activity that the organization is prohibited from undertaking by the
19 Internal Revenue Code. The NPRM proposed the removal of the reference to QNCs because, as
20 discussed above, maintaining QNCs as a separate category of entity is unnecessary after Citizens
21 United.

1 The Commission received no comments on the specific proposal to revise current 11
2 CFR 114.10(i). The Commission is now adopting that proposal for the reasons stated above and
3 in the NPRM.

4 **VII. Removal of 11 CFR 114.14 and 114.15**

5 In the NPRM, the Commission proposed to remove existing 11 CFR 114.14 and 114.15
6 in their entirety. These sections prohibit corporations and labor organizations from using general
7 treasury funds to finance electioneering communications that are the functional equivalent of
8 express advocacy and permit using such funds to finance other electioneering communications.
9 Because Citizens United held that corporations and labor organizations may use their general
10 treasury funds to make all electioneering communications, the Commission is removing these
11 sections that distinguished between permissible and impermissible electioneering
12 communications.

13 **A. Removal of 11 CFR 114.14 — Restrictions on corporate and labor organization funds**

14 The Commission is removing section 114.14 from the regulations. Section 114.14
15 provides that corporations and labor organizations may not give or provide funds to any person
16 for the purpose of paying for electioneering communications that are not permissible under 11
17 CFR 114.15, i.e., for electioneering communications that are functionally equivalent to express
18 advocacy. Because section 114.14 is a prophylactic regulation designed to prohibit corporations
19 and labor organizations from doing through other persons what they could not do directly, the
20 decision in Citizens United has rendered the prohibition unnecessary. The Commission therefore
21 proposed in the NPRM to remove this section. The Commission received one comment
22 addressing the proposed removal of section 114.14, which supported the proposed removal.

23 As a result of Citizens United, corporations and labor organizations may now finance
24 electioneering communications. Section 114.14, which prohibits corporations and labor

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1 organizations from providing funds to other persons for the purpose of making electioneering
2 communications, is therefore no longer necessary as a means of preventing circumvention of the
3 prohibition on corporate and labor organization electioneering communications. The
4 Commission is removing that section.

5 B. Removal of 11 CFR 114.15 — Permissible use of corporate and labor organization funds
6 for certain electioneering communications

7 The Commission is removing section 114.15 from the regulations. This section currently
8 sets forth the criteria for electioneering communications that corporations and labor
9 organizations may permissibly finance from their general treasuries because they are not the
10 “functional equivalent” of express advocacy. See generally Wis. Right to Life, Inc. v. FEC, 551
11 U.S. 449 (2007) (“WRTL”). Because corporations and labor organizations are no longer
12 prohibited from making electioneering communications following Citizens United, the
13 Commission sought comment on whether this section or portions of it should be removed. The
14 NPRM noted that a number of other regulations contain references to section 114.15 and sought
15 comment on whether such cross-references should be removed.

16 The Commission received three comments addressing the proposed removal of section
17 114.15. Two commenters supported removal because the “functional equivalent” test codified in
18 that provision is no longer relevant to whether a corporation or labor organization may make an
19 electioneering communication. One commenter argued that the Commission should retain the
20 “functional equivalent” test because the concept is utilized but not fully set forth at 11 CFR
21 109.21, as discussed below.

22 The Commission is removing section 114.15. Because Citizens United invalidated the
23 prohibition on corporations and labor organizations making electioneering communications, this

1 section’s delineation between permissible and impermissible electioneering communications is
2 no longer necessary.

3 One commenter addressed the issue of cross-references to section 114.15 in other
4 regulations and stated that the multi-factor test set forth in section 114.15 for determining
5 whether communications constitute the functional equivalent of express advocacy would still be
6 useful for purposes of determining when communications are coordinated with a candidate or
7 political party committee under 11 CFR 109.21. The commenter argued that section 109.21
8 relies on a test similar to section 114.15 to determine whether speech is the functional equivalent
9 of express advocacy. Retaining the test at section 114.15, the commenter continued, would be
10 helpful because section 109.21 does not contain the same test set forth at section 114.15.

11 Although section 109.21 includes “the functional equivalent of express advocacy” as part
12 of the “content” prong of the Commission’s coordination standard, that section does not refer to
13 section 114.15. When the Commission added the “functional equivalent” language to section
14 109.21, the Commission stated that it would “be guided by the Supreme Court’s reasoning and
15 application of the test” as explained in WRTL and Citizens United, and declined to incorporate
16 into section 109.21 the factors set forth at section 114.15. Coordinated Communications, 75 FR
17 55947, 55953-94 (Sept. 15, 2010). The Commission therefore concludes that no change to
18 section 109.21 is necessary.

19 In sum, the Commission is removing section 114.15. As discussed in Section IX, below,
20 the Commission is also revising the reporting regulations at 11 CFR 104.20(c) to reflect the
21 removal of section 114.15 and to otherwise implement the Court’s decision in Citizens United.

22 **VIII. Revised 11 CFR 114.1(a) – Definitions**

1 The Commission is making two technical revisions to the general provisions of 11 CFR
2 114.1(a) to conform this regulation to the other changes to part 114 described above. First, the
3 Commission is revising 11 CFR 114.1(a)(2)(ii) to clarify the cross-reference to certain voter
4 registration and GOTV activity that is exempt from the definitions of “contribution” and
5 “expenditure”; the reference will now be to revised paragraph 114.3(c)(4)(ii), rather than to
6 section 114.3. See supra Section III.C. Second, the Commission is revising paragraph
7 114.1(a)(2)(x) to reflect the revisions throughout part 114 regarding permissible corporate and
8 labor organization activity. As revised, paragraph 114.1(a)(2)(x) will continue to provide that
9 activity that was permissible under part 114 prior to these revisions (such as activity specified in
10 paragraphs 114.4(b) and 114.4(c)(7)) remains exempt from the definitions of “contribution” and
11 “expenditure,” and therefore from the definition of “independent expenditure,” while previously
12 impermissible activity that is now permissible pursuant to Citizens United and the instant
13 revisions will be subject to this definitional exemption only as provided in the revised provisions
14 themselves.

15 In addition, the Commission is removing the reference in 11 CFR 114.1(a) to the Public
16 Utility Holding Company Act (formerly 15 U.S.C. 791(h)), as that statute was repealed in 2005.
17 Pub. L. No. 109-58, § 1263, 119 Stat. 974 (2005).

18 **IX. Revised 11 CFR 104.20(c) — Contents of electioneering communication disclosure**
19 **statements**

20 In the NPRM, the Commission requested comments on whether it should amend its
21 disclosure rules for electioneering communications, 11 CFR 104.20, in light of Citizens United.

22 Current section 104.20(c) specifies the contents of reports that persons making
23 electioneering communications must file. The information that must be reported under that
24 section varies depending on how the electioneering communication is financed. See 11 CFR

1 104.20 (c)(1)-(9).¹⁶ Specifically, paragraph (c)(7)(i) provides that if the electioneering
2 communication disbursements are paid from a segregated bank account consisting solely of
3 funds contributed by individuals (other than foreign nationals), the reporting entity must disclose
4 the name and address of each person who donated at least \$1,000 to that segregated bank account
5 since the first day of the preceding calendar year. Paragraph (c)(7)(ii) also applies to
6 electioneering communication disbursements paid from a segregated bank account and requires
7 the same disclosure but permits the reporting entity to receive funds into the account from labor
8 organizations and corporations, provided that any electioneering communications financed from
9 the account do not constitute the functional equivalent of express advocacy under current section
10 114.15. Paragraph (c)(8) provides that if a person other than a corporation or labor organization
11 makes an electioneering communication without using the segregated account option under
12 paragraph (c)(7), the person must disclose the name and address of each donor who donated at
13 least \$1,000 to the reporting person since the first day of the preceding calendar year. Finally,
14 paragraph (c)(9) requires corporations and labor organizations that make electioneering
15 communications “pursuant to 11 CFR 114.15” to disclose the name and address of each donor
16 who donated at least \$1,000 to the corporation or labor organization since the first day of the
17 preceding calendar year for the purpose of furthering electioneering communications.

18 The Commission requested comments on whether section 104.20(c)(7) should continue
19 to distinguish funds donated by individuals from those donated by corporations or labor
20 organizations. The Commission received one comment in response to this request. The
21 commenter questioned the basis for any continued distinction after Citizens United’s holding that
22 corporations and labor organizations may finance electioneering communications. The

¹⁶ Paragraphs (c)(7)(i) and (c)(8) were promulgated as part of the implementation of the electioneering communication provisions of BCRA. The Commission later added paragraphs (c)(7)(ii) and (c)(9), and slightly revised paragraphs (c)(7)(i) and (c)(8), to implement the Supreme Court’s decision in WRTL, 551 U.S. 449.

1 Commission agrees with the commenter that the current division of section 104.20(c)(7) into
2 separate provisions distinguishing individual funds from corporate and labor organization funds
3 is no longer necessary. Because an electioneering communication — regardless of whether it is
4 functionally equivalent to express advocacy — may now be financed with individual, corporate,
5 or labor organization funds, there is no longer any need for the Commission’s regulations to
6 distinguish accounts based on which persons contribute to them or whether the electioneering
7 communications they finance are functionally equivalent to express advocacy.

8 Accordingly, the Commission is combining paragraphs (c)(7)(i) and (c)(7)(ii) into new
9 paragraph (c)(7). As revised, paragraph (c)(7) permits any person (including a corporation or
10 labor organization) making electioneering communications to do so from a segregated account
11 consisting of donations from all persons who may lawfully finance electioneering
12 communications. A reporting entity using this option would report the name and address of each
13 person who donated at least \$1,000 to the segregated account since the first day of the preceding
14 calendar year, as under the current regulation. For clarity, the revised regulation also specifically
15 lists the entities that may not contribute to the segregated accounts because they are prohibited
16 from financing electioneering communications: foreign nationals (as defined at 11 CFR
17 110.2(a)(3)), national banks, and corporations created by a law of Congress.¹⁷

18 In paragraphs 104.20(c)(8) and (9), the Commission is removing the references to 11
19 CFR 114.15 to conform the paragraphs to the removal of 11 CFR 114.15, discussed in Section
20 VII, above. Finally, the Commission is adding language to paragraph 104.20(c)(9) to clarify that
21 that paragraph applies when the reporting entity does not use the segregated account option of
22 paragraph (c)(7).

¹⁷ 52 U.S.C. 30118(a), (b)(2), 30121(a) (formerly 2 U.S.C. 441b(a), (b)(2), 441e(a)); 11 CFR 114.2(a), 110.20. Rather than restating the relevant portion of the definition of “foreign national,” as does current section 104.20(c)(7)(i), the revised regulation simply cross-references that definition.

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

2 The Commission certifies that the rules will not have a significant economic impact on a
3 substantial number of small entities. There are some small entities that will be affected by these
4 rules,¹⁸ but the rules will not have a significant economic impact on them. The primary impact
5 of the changes is to relieve a funding restriction that had applied to labor organizations and most
6 corporations. To the extent that any of these affected entities are small entities, the rules will
7 allow them to engage in activity that they were previously prohibited from funding with their
8 general treasury funds. While one likely effect of the rules will be to increase the number of
9 corporations and labor organizations that use general treasury funds to make independent
10 expenditures or electioneering communications, these entities will do so voluntarily and not
11 because of any new requirement in these rules. The affected entities will incur some costs in
12 complying with the reporting requirements for independent expenditures and electioneering
13 communications, but these costs will not constitute a “significant economic impact” for purposes
14 of the Regulatory Flexibility Act. Further, the reporting obligations of entities that currently
15 meet the criteria for treatment as qualified non-profit corporations will not become more
16 burdensome because of this rulemaking. Therefore, the attached rule will not have a significant
17 economic impact on a substantial number of small entities.

¹⁸ The Commission’s revisions may affect some for-profit corporations, labor organizations, individuals, and some non-profit organizations. Individuals and labor organizations are not “small entities” under 5 U.S.C. 601(6).

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1 **List of Subjects**

2 11 CFR Part 104

3 Campaign funds, political committees and parties, reporting and recordkeeping
4 requirements.

5 11 CFR Part 114

6 Business and industry, elections, labor.

1 For the reasons set out in the preamble, Subchapter A of Chapter 1 of Title 11 of the Code of
2 Federal Regulations is amended as follows:

3 **PART 104 – REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS (52**
4 **U.S.C. 30104)**

5 1. Revise the part heading to read as shown above.

6 2. The authority citation for part 104 is revised to read as follows:

7 Authority: 52 U.S.C. 30101(1), 30101(8), 30101(9), 30102(i), 30104, 30111(a)(8) and
8 (b), 30114, 30116, 36 U.S.C. 510.

9 3. In section 104.20, the heading and paragraphs (c)(7) through (c)(9) are revised to
10 read as follows:

11 **§ 104.20 Reporting electioneering communications (52 U.S.C. 30104(f)).**

12 * * * * *

13 (c) * * *

14 (7) If the disbursements were paid exclusively from a segregated bank account
15 consisting of funds provided solely by persons other than national banks, corporations organized
16 by authority of any law of Congress, or foreign nationals as defined in 11 CFR 110.20(a)(3), the
17 name and address of each donor who donated an amount aggregating \$1,000 or more to the
18 segregated bank account, aggregating since the first day of the preceding calendar year.

19 (8) If the disbursements were not paid exclusively from a segregated bank account
20 described in paragraph (c)(7) of this section and were not made by a corporation or labor
21 organization, the name and address of each donor who donated an amount aggregating \$1,000 or
22 more to the person making the disbursement, aggregating since the first day of the preceding
23 calendar year.

1 (9) If the disbursements were made by a corporation or labor organization and were
2 not paid exclusively from a segregated bank account described in paragraph (c)(7) of this
3 section, the name and address of each person who made a donation aggregating \$1,000 or more
4 to the corporation or labor organization, aggregating since the first day of the preceding calendar
5 year, which was made for the purpose of furthering electioneering communications.

6 * * * * *

7 **PART 114 – CORPORATE AND LABOR ORGANIZATION ACTIVITY**

8 4. The authority citation for part 114 is revised to read as follows:

9 Authority: 52 U.S.C. 30101(8), 30101(9), 30102, 30104, 30107(a)(8), 30111(a)(8),
10 30118.

11 5. Section 114.1 is amended by revising the introductory text in paragraph (a) and
12 paragraphs (a)(2)(ii) and (a)(2)(x) to read as follows:

13 **§ 114.1 Definitions.**

14 (a) For purposes of part 114 –

15 * * *

16 (2) * * *

17 (ii) Registration and get-out-the-vote campaigns by a corporation aimed at its
18 stockholders and executive or administrative personnel, and their families, or by a labor
19 organization aimed at its members and executive or administrative personnel, and their families,
20 as described in 11 CFR 114.3(c)(4)(ii);

21 * * * * *

1 (x) Any activity that is specifically permitted by part 114, but this exception does not
2 apply to activities permitted by 11 CFR 114.3(c)(4), 114.4(a), (c)(1)-(6), and (d), and 114.10(a),
3 other than as provided specifically in those sections.

4 * * * * *

5 6. Section 114.2 is amended by:

- 6 (a) Revising paragraph (a)(1);
- 7 (b) Removing paragraphs (b)(2) and (b)(3);
- 8 (c) Redesignating paragraph (b)(1) as (b);
- 9 (d) Revising paragraph (c); and
- 10 (e) Adding a note.

11 The revisions and additions read as follows:

12 **§ 114.2 Prohibitions on contributions, expenditures and electioneering communications.**

13 (a) * * *

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

17 * * * * *

18 (c) Disbursements by corporations and labor organizations for the election-related
19 activities described in 11 CFR 114.3 and 114.4 will not cause those activities to be contributions
20 when coordinated with any candidate, candidate's agent, candidate's authorized committee(s) or
21 any party committee to the extent permitted in those sections. Coordination beyond that
22 described in 11 CFR 114.3 and 114.4 shall not cause subsequent activities directed at the
23 restricted class to be considered contributions. However, such coordination may be considered

1 evidence that could negate the independence of subsequent communications to those outside the
2 restricted class by the corporation, labor organization or its separate segregated fund, and could
3 result in an in-kind contribution. See 11 CFR 100.16 regarding independent expenditures and
4 coordination with candidates.

5 * * * * *

6 **Note to 11 CFR 114.2(b):** Pursuant to SpeechNow.org v. FEC, 599 F.3d 686 (D.C. Cir.
7 2010) (en banc), and Carey v. FEC, 791 F. Supp. 2d 121 (D.D.C. 2011), corporations and labor
8 organizations may make contributions to non-connected political committees that make only
9 independent expenditures, or to separate accounts maintained by non-connected political
10 committees for making only independent expenditures, notwithstanding 11 CFR 114.2(b) and 11
11 CFR 114.10(a). The Commission has not conducted a rulemaking in response to these cases.

12 7. Section 114.3 is amended by revising paragraphs (b) and (c)(4) to read as follows:

13 **§ 114.3 Disbursements for communications to the restricted class in connection with a**
14 **Federal election.**

15 * * * * *

16 (b) Reporting communications containing express advocacy to the restricted class.
17 Disbursements for communications expressly advocating the election or defeat of one or more
18 clearly identified candidate(s) made by a corporation, including a corporation described in
19 paragraph (a)(2) of this section, or labor organization to its restricted class shall be reported in
20 accordance with 11 CFR 100.134(a) and 104.6.

21 (c) * * *

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

23 (i) A corporation or labor organization may conduct voter registration and get-out-
24 the-vote drives aimed at its restricted class, except as provided in paragraph (c)(4)(iii) of this

1 section. Voter registration and get-out-the-vote drives include providing transportation to the
2 place of registration and to the polls. Such drives may include communications containing
3 express advocacy, such as urging individuals to register with a particular party or to vote for a
4 particular candidate or candidates.

5 (ii) Disbursements for a voter registration or get-out-the-vote drive conducted under
6 paragraph (c)(4)(i) of this section are not contributions or expenditures if the drive is
7 nonpartisan. See 52 U.S.C. 30118(b)(2)(B). A drive is nonpartisan if it is conducted so that
8 information and other assistance regarding registering or voting, including transportation and
9 other services offered, is not withheld or refused on the basis of support for or opposition to
10 particular candidates or a particular political party.

11 (iii) A corporation or labor organization may make disbursements to conduct voter
12 registration and get-out-the-vote drives that are aimed at its restricted class and that do not
13 qualify as nonpartisan under paragraph (c)(4)(ii) of this section, provided that the disbursements
14 do not constitute coordinated expenditures as defined in 11 CFR 109.20, coordinated
15 communications as defined in 11 CFR 109.21, or contributions as defined in 11 CFR part 100,
16 subpart B. See also note to 11 CFR 114.2(b), 114.10(a).

17 8. Section 114.4 is amended by removing paragraph (c)(8) and by revising
18 paragraphs (a), (c)(1) through (c)(6), and (d) to read as follows:

19 **§ 114.4 Disbursements for communications by corporations and labor organizations**
20 **beyond the restricted class in connection with a Federal election.**

21 (a) General. A corporation or labor organization may communicate beyond the
22 restricted class in accordance with this section. Communications that a corporation or labor
23 organization may make only to its employees (including its restricted class) and their families,

1 but not to the general public, are set forth in paragraph (b) of this section. Any communications
2 that a corporation or labor organization may make to the general public under paragraph (c) of
3 this section may also be made to the corporation's or labor organization's restricted class and to
4 other employees and their families. Communications that a corporation or labor organization
5 may make only to its restricted class are set forth at 11 CFR 114.3. The activities described in
6 paragraphs (b) and (c) of this section may be coordinated with candidates and political
7 committees only to the extent permitted by this section. For the otherwise applicable regulations
8 regarding independent expenditures and coordination with candidates, see 11 CFR 100.16,
9 109.21, and 114.2(c). Voter registration and get-out-the-vote drives as described in paragraph
10 (d) of this section must not include coordinated expenditures as defined in 11 CFR 109.20,
11 coordinated communications as defined in 11 CFR 109.21, or contributions as defined in 11 CFR
12 part 100, subpart B. See also note to 11 CFR 114.2(b), 114.10(a). Incorporated membership
13 organizations, incorporated trade associations, incorporated cooperatives, and corporations
14 without capital stock will be treated as corporations for the purpose of this section.

15 * * * * *

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

17 (1) General. A corporation or labor organization may make independent
18 expenditures or electioneering communications pursuant to 11 CFR 114.10. This section
19 addresses specific communications, described in paragraphs (c)(2) through (c)(7) of this section,
20 that a corporation or labor organization may make to the general public. The general public
21 includes anyone who is not in the corporation's or labor organization's restricted class. The
22 preparation, contents, and distribution of any of the communications described in paragraphs (2)
23 through (6) below must not include coordinated expenditures as defined in 11 CFR 109.20,

1 coordinated communications as defined in 11 CFR 109.21, or contributions as defined in 11 CFR
2 part 100, subpart B. See also note to 11 CFR 114.2(b), 114.10(a).

3 (2) Voter registration and get-out-the-vote communications.

4 (i) A corporation or labor organization may make voter registration and get-out-the-
5 vote communications to the general public.

6 (ii) Disbursements for the activity described in paragraph (c)(2)(i) of this section are
7 not contributions or expenditures, provided that:

8 (A) The voter registration and get-out-the-vote communications to the general public
9 do not expressly advocate the election or defeat of any clearly identified candidate(s) or
10 candidates of a clearly identified political party; and

11 (B) The preparation and distribution of voter registration and get-out-the-vote
12 communications is not coordinated with any candidate(s) or political party.

13 (3) Official registration and voting information.

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

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

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

1 (iv) Disbursements for the activity described in paragraphs (c)(3)(i)-(iii) of this section
2 are not contributions or expenditures, provided that:

3 (A) The corporation or labor organization does not, in connection with any such
4 activity, expressly advocate the election or defeat of any clearly identified candidate(s) or
5 candidates of a clearly identified political party and does not encourage registration with any
6 particular political party; and

7 (B) The reproduction and distribution of registration or voting information and forms
8 is not coordinated with any candidate(s) or political party.

9 (4) Voting records.

10 (i) A corporation or labor organization may prepare and distribute to the general
11 public the voting records of Members of Congress.

12 (ii) Disbursements for the activity described in paragraph (c)(4)(i) of this section are
13 not contributions or expenditures, provided that:

14 (A) The voting records of Members of Congress and all communications distributed
15 with it do not expressly advocate the election or defeat of any clearly identified candidate(s) or
16 candidates of a clearly identified political party; and

17 (B) The decision on content and the distribution of voting records is not coordinated
18 with any candidate, group of candidates, or political party.

19 (5) Voter guides.

20 (i) A corporation or labor organization may prepare and distribute to the general
21 public voter guides, including voter guides obtained from a nonprofit organization that is
22 described in 26 U.S.C. 501(c)(3) or (c)(4).

1 (ii) Disbursements for the activity described in paragraph (c)(5)(i) of this section are
2 not contributions or expenditures, provided that the voter guides comply with either paragraph
3 (c)(5)(ii)(A) or (c)(5)(ii)(B)(1) through (5) of this section:

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

9 (B)(1) The corporation or labor organization does not act in cooperation, consultation, or
10 concert with or at the request or suggestion of the candidates, the candidates' committees or
11 agents regarding the preparation, contents and distribution of the voter guide;

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

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

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

21 (3) No candidate receives greater prominence in the voter guide than other
22 participating candidates, or substantially more space for responses;

1 (4) The voter guide and its accompanying materials do not contain an electioneering
2 message; and

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

5 (6) Endorsements.

6 (i) A corporation or labor organization may endorse a candidate, and may
7 communicate the endorsement to the restricted class and the general public. The Internal
8 Revenue Code and regulations promulgated thereunder should be consulted regarding
9 restrictions or prohibitions on endorsements by nonprofit corporations described in 26 U.S.C.
10 501(c)(3).

11 (ii) Disbursements for announcements of endorsements to the general public are not
12 contributions or expenditures, provided that:

13 (A) The public announcement is not coordinated with a candidate, a candidate's
14 authorized committee, or their agents; and

15 (B) Disbursements for any press release or press conference to announce the
16 endorsement are de minimis. Such disbursements shall be considered de minimis if the press
17 release and notice of the press conference are distributed only to the representatives of the news
18 media that the corporation or labor organization customarily contacts when issuing non-political
19 press releases or holding press conferences for other purposes.

20 (iii) Disbursements for announcements of endorsements to the restricted class may be
21 coordinated pursuant to 114.3(a) and are not contributions or expenditures provided that no more
22 than a de minimis number of copies of the publication that includes the endorsement are
23 circulated beyond the restricted class.

1 * * * * *

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

3 (1) Voter registration and get-out-the-vote drives permitted. A corporation or labor
4 organization may support or conduct voter registration and get-out-the-vote drives that are aimed
5 at employees outside its restricted class and the general public. Voter registration and get-out-
6 the-vote drives include providing transportation to the polls or to the place of registration.

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

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

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

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

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

4 (v) The corporation or labor organization shall notify those receiving information or
5 assistance of the requirements of paragraph (d)(2)(iii) of this section. The notification shall be
6 made in writing at the time of the registration or get-out-the-vote drive.

7 * * * * *

8 9. Section 114.10 is amended, and a note is added, to read as follows:

9 **§ 114.10 Corporations and labor organizations making independent expenditures and**
10 **electioneering communications.**

11 (a) General. Corporations and labor organizations may make independent
12 expenditures, as defined in 11 CFR 100.16, and electioneering communications, as defined in 11
13 CFR 100.29. Corporations and labor organizations are prohibited from making coordinated
14 expenditures as defined in 11 CFR 109.20, coordinated communications as defined in 11 CFR
15 109.21, or contributions as defined in 11 CFR part 100, subpart B.

16 (b) Reporting independent expenditures and electioneering communications.

17 (1) Corporations and labor organizations that make independent expenditures
18 aggregating in excess of \$250 with respect to a given election in a calendar year shall file reports
19 as required by 11 CFR part 114, 104.4(a), and 109.10(b)-(e).

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

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1 (c) Non-authorization notice. Corporations or labor organizations making
2 independent expenditures or electioneering communications shall comply with the requirements
3 of 11 CFR 110.11.

4 (d) Segregated bank account. A corporation or labor organization may, but is not
5 required to, establish a segregated bank account into which it deposits only funds donated or
6 otherwise provided by persons other than national banks, corporations organized by authority of
7 any law of Congress, or foreign nationals (as defined in 11 CFR 110.20(a)(3)), as described in 11
8 CFR 104.20(c)(7), from which it makes disbursements for electioneering communications.

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

13 **Note to 11 CFR 114.10(a):** Pursuant to SpeechNow.org v. FEC, 599 F.3d 686 (D.C. Cir.
14 2010) (en banc), and Carey v. FEC, 791 F. Supp. 2d 121 (D.D.C. 2011), corporations and labor
15 organizations may make contributions to non-connected political committees that make only
16 independent expenditures, or to separate accounts maintained by non-connected political
17 committees for making only independent expenditures, notwithstanding 11 CFR 114.2(b) and 11
18 CFR 114.10(a). The Commission has not conducted a rulemaking in response to these cases.

19 10. Sections 114.14 and 114.15 are removed and reserved.

20 On behalf of the Commission,
21

22 Lee E. Goodman,
23 Chairman,
24 Federal Election Commission.

25 DATED: _____
26 BILLING CODE: 6715-01-P