

The revisions clarify the classes of persons to whom nonpartisan communications may be made under each section and indicate the types of communications which are permissible. They also expand the types of publications which may be distributed to the general public by corporations and labor organizations to include nonpartisan voting records and voter guides. Further information on the revised regulations is contained in the supplementary information which follows.

EFFECTIVE DATE: Further action, including the announcement of an effective date, will be taken by the Commission after these regulations have been before the Congress 30 legislative days in accordance with 2 U.S.C. 438(d).

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SUPPLEMENTARY INFORMATION: The Commission has considered public comments received in response to its Advance Notice of Proposed Rulemaking (45 FR 56349; August 25, 1980) and Notice of Proposed Rulemaking (46 FR 44964; September 8, 1981). The proposed regulations were first transmitted to Congress on March 1, 1983, (48 FR 9236; March 4, 1983); but were withdrawn on April 21, 1983, to seek further public comment (48 FR 17566; April 22, 1983). Following the close of the comment period on the Commission's Second Notice of Proposed Rulemaking (48 FR 17567; April 22, 1983), the Commission held a second round of public hearings on August 9 and 10, 1983.

The Commission notes that many commentators raised issues that cannot be resolved in the context of this rulemaking. For instance, concern was expressed over perceived differences between the Commission's proposed rules and those of the Internal Revenue Service in this area. While efforts have been made to make the Commission's rules consistent with those of the IRS, any remaining differences result from the fact that the mandate and jurisdiction of each agency is different. See, 2 U.S.C. 438(f). Concern was also raised regarding the inclusion of corporations that are exempt from federal taxation under section 501 (c) (3) or (c) (4) of the Internal Revenue Code. However, the Act does not specifically exclude such nonprofit corporations from the broad prohibition against contributions and expenditures by corporations in connection with federal

FEDERAL ELECTION COMMISSION

11 CFR Part 114

[Notice 1983-28]

Nonpartisan Communications by Corporations and Labor Organizations

AGENCY: Federal Election Commission.

ACTION: Final rule; Transmittal of Regulations to Congress.

SUMMARY: The Federal Election Commission regulations at 11 CFR 114.3 and 114.4 governing contributions and expenditures by corporations and labor organizations for nonpartisan communications have been revised and transmitted to Congress pursuant to 2 U.S.C. 438(d). The revisions were initiated in response to issues raised in several advisory opinions which the Commission has issued in this area.

elections. As that statutory prohibition is the basis for these regulations, the Commission may not exempt nonprofit corporations from the scope of the regulations in the absence of a clear legislative intent to do so.

2 U.S.C. 438(d) requires that any rule or regulation prescribed by the Commission to carry out the provisions of Title 2, United States Code, be transmitted to the Speaker of the House of Representatives and the President of the Senate prior to final promulgation. The following regulations were transmitted to Congress on October 27, 1983.

Explanation and Justification of 11 CFR 114.3 and 114.4.

Section 114.3 Disbursements for Communications in Connection with a Federal Election to Restricted Class.

Section 114.3(a) General.

Paragraph (a)(1) sets forth the basic rule of 2 U.S.C. 441b(b)(2)(A), which allows corporations and labor organizations to communicate with their restricted class on any subject. A corporation's restricted class includes its stockholders, executive and administrative personnel and their families. The restricted class of labor organizations has been redefined in this paragraph to include the organizations' executive and administrative personnel and their families, as well as members and their families. This inclusion is consistent with the legislative intent "that unions, insofar as they are employers, stand in the same shoes as corporations." See generally, H.R. Conf. Rep. No. 1057, 94th Cong., 2d Sess. 64 (1976).

This paragraph also distinguishes between the communications that may be made to the restricted class and those that may be made to the general public as permitted under 11 CFR 114.4. Finally, language has been added to paragraph (a)(1) to make it clear that national banks and corporations organized pursuant to a Congressional enactment may not make contributions or expenditures for partisan communications to the general public in connection with any election, including State and local elections.

Paragraph (a)(2) clarifies the application of § 114.3 to incorporated membership organizations, incorporated trade associations, incorporated cooperatives, and corporations without capital stock. The restricted class of these organizations has been redefined to include families of members. This addition is consistent with the provisions defining the restricted classes of corporations and unions under 2

U.S.C. 441b, both of which include families.

Section 114.3(b) Reporting Partisan Communications.

This paragraph generally follows current § 114.3(b) while clarifying which disbursements for communications to the restricted class must be reported.

Section 114.3(c) Means of Making Partisan Communications.

This paragraph generally follows current § 114.3(c), but explains that the kinds of communications listed in this subsection are examples of those for which disbursements must be reported under paragraph (b).

Section 114.3(c)(1) Partisan Publications.

Paragraph (c)(1) generally follows current § 114.3(c)(1). However, section (c)(1)(ii) has been revised to state that a corporation or labor organization may use brief quotations from speeches or other materials prepared by a candidate in expressing its own views under this section.

Section 114.3(c)(2) Partisan Candidate and Party Appearances.

Paragraph (c)(2) expands current § 114.3(c)(2) by eliminating the requirements that a meeting at which a candidate or party representative appears to address members of the sponsor's restricted class be one that is "regularly scheduled" and "primarily held for other purposes." In addition, this paragraph now permits the presence of employees who are outside the restricted class, a limited number of invited guests and observers, and representatives of the news media at such meetings. At the Commission's public hearing on these regulations the presence of such persons was described as a necessary element of such meetings and, therefore, the Commission was urged to provide an exception for them under this section. The Commission notes, however, that this provision is limited to those employees necessary to administer the meeting. Similarly, the presence of invited guests and observers is limited to speakers, recipients of awards, and other persons specially invited to attend such a meeting and is not intended to permit a sponsor to invite large numbers of persons outside the solicitable class, such as rank and file employees of a corporation, whose presence would otherwise trigger the rules governing nonpartisan appearances under § 114.4.

Section 114.3(c)(3) Partisan Phone Banks.

Paragraph (c)(3) generally follows current § 114.3(c)(3).

Section 114.3(c)(4) Partisan Registration and Get-Out-The-Vote Drives.

Paragraph (c)(4) generally follows current § 114.3(c)(4).

Section 114.4 Expenditures for Communications in Connection with a Federal Election to the Restricted Class and the General Public.

Section 114.4(a) Nonpartisan Communications by a Corporation or Labor Organization to its Restricted Class.

Section 114.4(a)(1) General.

Paragraph (a)(1)(i) makes clear that corporations and labor organizations may make the nonpartisan communications permitted under this section just to their restricted class if they so choose. It also clarifies the distinction between this section and § 114.3, which describes communications that may only be made to the restricted class. As in § 114.3, this section adds "executive and administrative personnel" to the restricted class of labor organizations.

Paragraph (a)(1)(ii) was added to clarify the application of this section to incorporated membership organizations, incorporated trade associations, incorporated cooperatives and corporations without capital stock. These organizations are treated as corporations for the purpose of making the communications to the general public permitted under § 114.4 (b) and (c). As in § 114.3, the restricted class of these organizations has been expanded to include families of members.

Section 114.4(a)(2) Nonpartisan Candidate and Party Appearances on Corporate Premises or at a Meeting, Convention or Other Function.

This section generally follows current § 114.4(b)(1) but has been revised to include meetings, conventions or other functions sponsored by the corporation, regardless of whether they are held on corporate premises. Also, the category of Presidential and Vice Presidential candidates that may request to appear at such meetings is more specifically defined under paragraph (a)(2)(ii) than in the current regulations to reduce the burden on sponsoring organizations that must provide a forum under this rule.

It should be noted that the operation of this subsection involves appearances in connection with a federal election.

Such appearances can be distinguished from those in which an incumbent, who may also be a "candidate" under the Act, is requested to appear in his or her capacity as an officeholder at a public meeting sponsored by a corporation or labor organization. If the discussion at the meeting is limited to issues of concern to the sponsoring organization or its industry and avoids any reference to campaign activity, the sponsor may finance the meeting without triggering the "same opportunity to appear" requirements of this paragraph. See e.g., Advisory Opinion 1980-22.

Section 114.4(a)(3) Nonpartisan Candidate and Party Appearances on Labor Organization Premises or at a Meeting, Convention or Other Function.

This section generally follows current § 114.4(b)(2) and, like § 114.4(a)(2), has been expanded to include nonpartisan candidate and party appearances at meetings, conventions or other functions sponsored by the labor organization which are not held on its premises.

Section 114.4(b) Nonpartisan Communications by Corporations and Labor Organizations to the General Public.

Section 114.4(b)(1) General.

This paragraph clarifies that the communications described in § 114.4(b) may be made to the general public. It also permits the sponsor of a communication made under this section to identify itself or include its logo on materials prepared and distributed under this section, consistent with the Commission's decision in Advisory Opinion 1980-55.

Section 114.4(b)(2) Nonpartisan Registration and Voting Communications.

This paragraph has been added to incorporate the Commission's decision in Advisory Opinion 1980-20 into the regulations. It broadens the class of persons to whom a nonpartisan registration or voting communication may be made to include members of the general public. Under current § 114.4(c)(1), such communications are limited to employees of the corporation or labor organization.

Paragraph (b)(2)(i) contains three factors that the Commission may consider in determining whether a communication made under this section is nonpartisan. The first two factors generally follow current § 114.4(c)(1)(ii) but permit the list of candidates, if included, to name only those running for a particular seat or office rather than requiring the sponsor to print all the

candidates on the official ballot. The third factor generally follows current § 114.4(c)(1)(i).

Paragraph (b)(2)(iii) expands the list of media through which a communication may be made under this section from that set forth in current § 114.4(c)(1).

Section 114.4(b)(3) Official Registration and Voting Information.

This subsection generally follows the provisions of current § 114.4(c)(2). Paragraph (b)(3)(iii) has been included consistent with the Commission's decision in Advisory Opinion 1980-55. That paragraph provides that a corporation or labor organization may donate funds to State or local election administrators to pay for the printing and distribution costs of official registration materials and voter information.

Section 114.4(b)(4) Voting Records.

This paragraph permits corporations and labor organizations to prepare and distribute nonpartisan voting records which contain a factual recital of an incumbent's or candidate's vote on bills and other measures. Voting records that contain indices or scores of votes on specific issues would be permissible if they are based on an individual's actual vote on a bill or other legislative measure. The preparation and distribution of such voting records under this subsection may not be for the purpose of influencing a Federal election.

Section 114.4(b)(5) Voter Guides.

Under paragraph (b)(5)(i), corporations and labor organizations may prepare and distribute nonpartisan voter guides which describe a candidate's position on campaign issues. Corporations and labor organizations may submit questions to candidates on one or more campaign issues and then print their responses. To ensure the nonpartisanship of such publications, this subsection lists six factors which the Commission may consider in determining whether a particular voter guide is nonpartisan. These factors are intended to be illustrative, not exhaustive, and are based in part upon factors articulated by the Internal Revenue Service in Revenue Rulings 78-248 and 80-282. The first factor in paragraph (b)(5)(i)(A) is whether the questionnaires are sent to all candidates running for a particular office. With regard to Presidential and Vice Presidential candidates however, only those candidates seeking a major party's nomination or who are on the general election ballot in enough States to win a majority of the electoral votes need be

included. While permitting the sponsoring organization to impose restrictions on the length of the candidates' responses, paragraph (b)(5)(i)(B) requires that the sponsor reprint the candidates' responses without change or additional comment. If the candidates' responses exceed the stated word limit, the sponsor may choose to print the responses either in their entirety or after deleting that part of each response which exceeds the word limit.

Furthermore, under paragraph (b)(5)(i)(C), the Commission may consider whether the wording of the questions is slanted to suggest the sponsor's viewpoint on any issue. The next factor, in paragraph (b)(5)(i)(D), concerns whether the voter guide expresses an editorial opinion or indicates support for or opposition to any candidate or political party. Paragraph (b)(5)(i)(E) would permit the inclusion of biographical information on each candidate in the voter guide, such as schools attended, degrees earned, past employment and any office held. The sponsoring organization would also be allowed to limit the number of words on this information. Finally, paragraph (b)(5)(i)(F) concerns whether the voter guide is distributed in the geographic area in which the sponsoring organization normally operates.

Paragraph (b)(5)(ii) follows current § 114.4(c)(3). The reference to civic and nonprofit organizations in the current provisions of § 114.4(c)(3) has been changed to "nonprofit organization which is exempt from federal taxation under 26 U.S.C. 501(c) (3) or (4) and which does not support, endorse or oppose candidates or political parties." Publications obtained from such organizations need not comply with the guidelines set forth at paragraphs (b)(5)(i) (A) through (F); however, they may not favor one candidate or political party over another.

Section 114.(c) Nonpartisan Registration and Get-Out-The-Vote Drives.

Section 114.(c)(1) Requirements for Conducting Nonpartisan Drives.

This paragraph generally follows current § 114.4(d). References to civic and nonprofit organizations in the current provisions of § 114.4(d) have been changed in the revised regulations to "nonprofit organization which is exempt from federal taxation under 26 U.S.C. 501(c) (3) or (4) and which does not support, endorse or oppose candidates or political parties." In addition, this paragraph now permits co-

sponsorship by a State or local election agency. To meet the requirement that the drive be "conducted" by the tax-exempt organization or election agency, one or more persons from such co-sponsors must participate in the administration of the drive. This requirement does not preclude, however, the presence of corporate or labor organization personnel or members to assist in the activity. Paragraph (c)(1)(ii) allows corporations and labor organizations to set up a table or rack on their own premises for distributing official voting information without co-sponsorship with a tax-exempt organization.

Section 114.4(c)(2) *Donation of Funds.*

This paragraph incorporates the Commission's decision in Advisory Opinion 1980-55 into the regulations by providing that corporations and labor organizations may donate funds to State or local election administrators and nonpartisan tax-exempt organizations to defray the costs of registration and voting drives conducted by such officials and organizations.

Section 114.4(c)(3) *Use of Personnel and Facilities.*

This paragraph generally follows the provisions of current § 114.4(d)(3).

Section 114.4(c)(4) *When Co-sponsorship Not Required.*

This paragraph has been added to incorporate the Commission's decision in Advisory Opinion 1980-45. Pursuant to this paragraph, a nonpartisan tax-exempt organization may conduct registration and voting drives without the need for a co-sponsor.

Section 114.4(c)(5) *Identification of Drive Sponsors.*

This paragraph requires that any materials produced for use in connection with a registration or get-out-the-vote drive aimed at the general public contain the names of all the sponsors of the drive.

Section 114.4(d) *Incorporated Membership Organizations, Incorporated Trade Associations, Incorporated Cooperatives and Corporations Without Capital Stock.*

This paragraph permits corporations without capital stock, and incorporated membership organizations, trade associations and cooperatives to invite candidates, their representatives or the representatives of political parties to address the members or employees of the organization subject to the requirements of § 114.4(a)(2).

Conforming Amendments

Several conforming amendments have been made to other sections of Part 114. These amendments reflect the addition of a labor organization's executive and administrative personnel and the families of members of a membership organization to the restricted class of each type of organization.