



**CUNA & Affiliates**

VIA E-MAIL: [electioneering@fec.gov](mailto:electioneering@fec.gov)

August 29, 2002

Ms. Mai T. Dinh  
Acting Assistant General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

RE: Notice 2002-13  
Comments to Notice of Proposed Rulemaking, 11 CFR Parts 100, 104, 105, and 114  
Electioneering Communications

Dear Ms. Dinh:

The Credit Union National Association, Inc. (CUNA) appreciates the opportunity to comment on the Commission's notice of proposed rulemaking (NPRM) on electioneering communications. The proposed rules implement the Bipartisan Campaign Reform Act of 2002 (BCRA), which adds to the Federal Election Campaign Act (FECA) new provisions regarding "electioneering communications." This term includes broadcast, cable, or satellite communications: (1) that refer to a clearly identified Federal candidate; (2) that are transmitted within 30 days before a primary election or 60 days before a general, special, or runoff election; and (3) that are "targeted to the relevant electorate," that is, the relevant congressional district or State that candidates for the U.S. House of Representatives or the U.S. Senate seek to represent.

By way of background, CUNA is a trade association that represents over 90% of the nation's more than 10,400 state and federal credit unions. CUNA was organized, among other things, to promote and improve business conditions relating to the operation of state league members and direct credit union members. Fifty-one of CUNA's members are leagues representing the fifty states and the District of Columbia. All members of the state leagues are state or federally chartered credit unions. Thirteen of the state leagues have federal political action committees (PACs). The Credit Union Legislative Action Council (CULAC) is the federal PAC established and administered by CUNA.

Because of the scope, length, and subject matter of the proposal, we will limit our comments to two specific concerns. Our comments do not discuss the constitutionality of the BCRA sections at issue. However, CUNA does believe that the notion that the government can ban certain entities from sponsoring speech simply because the speech is made over broadcast, cable or satellite

communications within a given number of days of a federal election and mentions a federal elected official or candidate is unconstitutional. CUNA urges the Commission to be mindful of the constitutional issues present and to formulate regulations that are narrowly tailored in the spirit that the courts will uphold part of what the Commission promulgates.

CUNA's comments on two particular sections of the proposed rulemaking appear below.

**Section 100.29(c)(3)**

This proposed section implements language in BCRA [2 U.S.C. 434(f)(3)(B)(ii)] excluding communications that are "expenditures" or "independent expenditures" from the definition of "electioneering communications." The Commission is proposing two alternatives and seeks comments on the issues to reconcile the exclusion of expenditures and independent expenditures from the definition of "electioneering communication" with the FECA's treatment of expenditures and independent expenditures.

CUNA supports the Alternative 2-A suggested by the Commission. This interpretation provides that any disbursement of funds for a communication that constitutes an expenditure or an independent expenditure under FECA is not an "electioneering communication." CUNA believes that this alternative most closely tracks the plain language of the BCRA. Moreover, BCRA's "electioneering communications" were intended to apply to previously unregulated communications.<sup>1</sup> Since the FECA already regulates expenditures and independent expenditures by requiring that they should be reported, BCRA should not be interpreted to require duplicative reporting requirements.

**Section 100.29(c)(6)**

The Commission proposes four alternatives for this section that would exempt communications that are devoted to urging support for or opposition to particular pending legislation or other matters and where the communications request recipients to contact various categories of public officials regarding the issue from the definition of "electioneering communications." The Commission seeks comment on which alternative is most consonant with the language and purposes of BCRA.

CUNA strongly supports an exception for grassroots lobbying efforts that involve communications urging support for or opposition to particular pending legislation or general public policy issue. We believe Alternative 3-C is the most appropriate exemption for such communications. This alternative provides the broadest recognition of citizens' and organizations' First Amendment rights to express their opinions on how the government operates.<sup>2</sup> It also appropriately balances the Commission's goals of regulating so-called sham issue ads with the need to protect attempts to inform citizens on genuine legislative or administrative public policy issues and seeking citizen participation in the resolution of such issues.

CUNA recognizes that BCRA would permit organizations to run broadcast ads mentioning candidates outside of the 30- or 60-day "electioneering communications" time windows; however, many legislative issues are determined at the end of the congressional session and in close proximity to

<sup>1</sup> NPRM at 51135.

<sup>2</sup> See generally, *Buckley v. Valeo*, 424 U.S. 1 (1976).

elections. Moreover, such communications are far less effective to stimulate grassroots efforts when they do not urge supporters to focus their attention on the key legislators who will help resolve the issue at hand. CUNA urges the Commission to adopt Alternative 3-C as the most appropriate exception to "electioneering communications" for lobbying efforts.

CUNA appreciates the opportunity to comment on this proposed rulemaking. If you have any questions on these comments, please call me at 202/508-6731.

Sincerely,

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