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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

2 CFR Part 1882

14 CFR Parts 1267, 1274

RIN 2700-AE15

NASA Implementation of OMB Guidance for Drug-Free Workplace Requirements (Financial Assistance); Technical Amendments

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: On September 22, 2014, the National Aeronautics and Space Administration (NASA) published a direct final rule which rearranged existing drug-free workplace requirements for financial assistance in the Code of Federal Regulations (CFR). The action was consistent with the Office of Management and Budget's (OMB) guidance on drug-free workplace requirements for financial assistance. This rule makes amendments for editorial purposes.

DATES: *Effective:* October 21, 2014.

FOR FURTHER INFORMATION CONTACT: Leigh Pomponio via email at leigh.pomponio@NASA.gov, or (202) 358-0592.

SUPPLEMENTARY INFORMATION: A direct final rule was published in the **Federal Register** on September 22, 2014 (79 FR 56486-56488). In order to correct certain elements in 2 CFR part 1882, this document makes editorial changes to the NASA Implementation of OMB Guidance for Drug-Free Workplace Requirements (Financial Assistance). The table of contents for added part 1882 contained an entry for § 1882.510, but no text for that section was provided. NASA did not intend for that section to be added. It is removed from

the September 22, 2014, **Federal Register** issue by this correction.

In addition, § 1882.5 is listed incorrectly in the table of contents as § 1882.100. This document correctly redesignates § 1882.100 as § 1882.5.

List of Subjects in 2 CFR Part 1882

Grants and agreements, Administrative practice and procedure, Drug-free workplace, Grant programs, Reporting and recordkeeping requirements.

Correction

Therefore, in FR Doc. No. 22365, in the issue of September 22, 2014, make the following correction:

1. On page 56487, in the third column, in the table of contents for added part 1882, remove the entry for 1882.510.

Cynthia Boots,

Alternate Federal Register Liaison.

Therefore, NASA amends 2 CFR part 1882 with the following correction:

PART 1882—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

■ 1. The authority citation for part 1882 continues to read as follows:

Authority: 41 U.S.C. 701 *et seq.*; 51 U.S.C. 20113(e).

§ 1882.100 [Redesignated as § 1882.5]

■ 2. Section 1882.100 is redesignated as § 1882.5.

[FR Doc. 2014-23943 Filed 10-20-14; 8:45 am]

BILLING CODE 7510-13-P

FEDERAL ELECTION COMMISSION

11 CFR Parts 104 and 114

[Notice 2014-10]

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 Web site at <http://www.fec.gov/fosers/> (REG 2010-01 Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations (Citizens United)).

SUPPLEMENTARY INFORMATION: The Commission is revising its regulations at 11 CFR Part 114 concerning the making of independent expenditures and electioneering communications by corporations and labor organizations. The Commission is: (1) Removing the prohibitions in 11 CFR 114.2 on the use of corporate and labor organization general treasury funds to finance independent expenditures and electioneering communications; (2) removing the prohibitions in 11 CFR 114.4 regarding express advocacy communications to the general public and revising the standards in 11 CFR 114.3 for voter registration and get-out-the-vote ("GOTV") drives, while revising these sections to maintain certain existing exemptions for the activities addressed therein; (3) revising the regulation at 11 CFR 114.10, which currently governs the making of independent expenditures and electioneering communications by qualified nonprofit corporations; (4) removing 11 CFR 114.14 and 114.15, which prohibit corporations and labor organizations from making certain electioneering communications; and (5) revising certain provisions in 11 CFR 104.20 that govern the reporting of electioneering communications. The Commission is also making technical and conforming changes to 11 CFR 114.1 and 114.2. The Commission is

not, at this time, revising 11 CFR 114.9, which governs the use of corporate and labor organization facilities for political activity.

Transmission of Final Rules to Congress

Before final promulgation of any rules or regulations to carry out the provisions of the Federal Election Campaign Act, the Commission transmits the rules or regulations to the Speaker of the House of Representatives and the President of the Senate for a thirty-legislative-day review period. 52 U.S.C. 30111(d) (formerly 2 U.S.C. 438(d)). The final rules that follow were transmitted to Congress on October 10, 2014.

Explanation and Justification

I. Background

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

The Bipartisan Campaign Reform Act of 2002² (“BCRA”) amended the Act also to prohibit corporations and labor organizations from using general treasury funds to make electioneering communications. 52 U.S.C. 30118(b)(2) (formerly 2 U.S.C. 441b(b)(2)). Electioneering communications are broadcast, cable, or satellite

communications that refer to a clearly identified candidate for federal office, are publicly distributed within 60 days before a general election or 30 days before a primary election, and are targeted to the relevant electorate. 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)–(3).

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

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

A. The Rulemaking Record

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

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

from 21 commenters in response to the NPRM.

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

B. *Citizens United*

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

Citizens United filed suit, arguing that the ban on corporate electioneering communications at 52 U.S.C. 30118(b)(2) (formerly 2 U.S.C. 441b(b)(2)) was unconstitutional as applied to payments to make the film available through video-on-demand. *Citizens United* also argued that the disclosure and disclaimer requirements at 52 U.S.C. 30104(f) and 30120 (formerly 2 U.S.C. 434(f) and 441d) were unconstitutional as applied to payments for the film and for three planned advertisements for the movie.

The Supreme Court invalidated section 30118’s (formerly 2 U.S.C. 441b) restrictions on corporate independent expenditures and electioneering communications. 558 U.S. at 365. The Court held that the prohibition on corporate independent expenditures and electioneering communications was a ban on speech and concluded that section 30118 (formerly 2 U.S.C. 441b) was therefore “subject to strict scrutiny.” *Id.* at 339–40.

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

² Public Law 107–155, 116 Stat. 81 (2002).

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

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

Citizens United also challenged the Act’s disclaimer and disclosure provisions at sections 30104(f) and 30120 (formerly 2 U.S.C. 434(f) and 441d) as applied to the film and three advertisements for the film. Under the Act, electioneering communications must include a statement identifying the person responsible for payment for the advertisement. 52 U.S.C. 30120(a) (formerly 2 U.S.C. 441d(a)). Also, any person who spends more than \$10,000 on electioneering communications within a calendar year must file a disclosure statement with the Commission providing information

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

about the person making the electioneering communication, the election to which the communication pertains, and certain contributors who gave \$1,000 or more within a specified time period. 52 U.S.C. 30104(f)(2) (formerly 2 U.S.C. 434(f)(2)).

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

II. Revised 11 CFR 114.2—Prohibitions on Contributions, Expenditures and Electioneering Communications

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

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.

A. Removal of 11 CFR 114.2(b)(2)(i)—Prohibition on Corporate and Labor Organization Expenditures

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

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

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

In contrast, Alternative B proposed amending the prohibition on corporate and labor organization expenditures to permit independent expenditures from

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).

general treasury funds for non-coordinated communications, but this proposal would have continued to prohibit non-communicative expenditures (including in-kind contributions) and coordinated communications. Alternative B, therefore, would have distinguished expenditures for communications from other types of expenditures.⁸

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

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

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

Based on the comments and testimony received and the Commission’s reading of *Citizens United* and the existing regulations, the Commission concludes that the Court’s holding applies to all non-coordinated corporate and labor organization expenditures, regardless of whether they fall within the narrower statutory

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

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

The Commission is, however, appending a note to 11 CFR 114.2 to reflect the fact that corporations and labor organizations may make contributions to non-connected political committees that make only independent expenditures, and to separate accounts maintained by non-connected political committees for making only independent expenditures, notwithstanding 11 CFR 114.2(b). In two cases, courts held that the contribution limits at 52 U.S.C. 30116 (formerly 2 U.S.C. 441a) may not be applied to these “independent-expenditure-only” political committees and accounts. *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc) (holding

contribution limits inapplicable to individual contributions to non-connected political committees making only independent expenditures); *Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011) (enjoining application of contribution limits to contributions to separate accounts maintained by non-connected political committees for the purpose of making only independent expenditures). In light of these decisions and the Supreme Court’s decision in *Citizens United*, the Commission has recognized that the statutory and regulatory prohibitions on contributions by corporations and labor organizations to such independent-expenditure-only political committees and accounts are no longer enforceable. See Advisory Opinion 2010–11 (Commonsense Ten); see also FEC Statement on *Carey v. FEC*, Oct. 5, 2011, available at <http://www.fec.gov/press/press2011/20111006postcarey.shtml>. The Commission intends to engage in a separate rulemaking in response to the *SpeechNow* and *Carey* decisions, but to avoid confusion regarding the prohibition on contributions by corporations and labor organizations, the Commission is now appending a note to 11 CFR 114.2—and to the parallel provision in 11 CFR 114.10, discussed below—to accurately reflect the scope of that prohibition.

B. Removal of 11 CFR 114.2(b)(2)(ii) and (b)(3)—Prohibitions on Corporate and Labor Organization Express Advocacy Communications and Electioneering Communications to Those Outside the Restricted Class

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

Similarly, current 11 CFR 114.2(b)(3) prohibits corporations and labor organizations “from making payments for electioneering communications to those outside their restricted classes unless permissible under 11 CFR 114.10 or 114.15.” Because *Citizens United* held that corporations may make electioneering communications to the

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).

general public, the Commission proposed in the NPRM to remove paragraph (b)(3) of section 114.2.

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

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

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

The Commission is also revising section 114.2(c) to conform with changes the Commission is making to sections 114.3 and 114.4, as described below. Current section 114.2(c) provides that disbursements for "activities described in 11 CFR 114.3 and 114.4 will not cause those activities to be contributions or expenditures, even when coordinated with [candidates or

political party committees] to the extent permitted in those sections." Because some of the activities conducted under revised sections 114.3 and 114.4 may constitute expenditures, *see infra* Sections III–IV, the Commission is revising section 114.2(c) to remove this reference to expenditures, while preserving the existing rule that disbursements for activities described in sections 114.3 and 114.4 may be coordinated with candidates or political parties to the extent currently permitted under those sections without constituting contributions. In addition, the Commission is shortening the second sentence of section 114.2(c), which currently provides that "[c]oordination beyond that described in 11 CFR 114.3 and 114.4 shall not cause subsequent activities directed at the restricted class to be considered contributions or expenditures." For clarity, the Commission is removing "or expenditures" from this sentence to reflect that the regulatory criteria for coordinated expenditures and communications are used to determine whether the entity making the disbursement has made a contribution, not whether the entity has made an expenditure. *See* 11 CFR 109.20(b) (providing that a coordinated expenditure is an in-kind contribution), 109.21(b) (providing that coordinated communication is in-kind contribution). This latter revision is merely a technical clarification and is not intended to substantively amend the rule in any way.

III. Revised 11 CFR 114.3— Disbursements for Communications to the Restricted Class by Corporations and Labor Organizations in Connection With a Federal Election

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

disbursements for communications to the restricted class in 11 CFR 114.3(b).

A. Structure of 11 CFR 114.3 and 114.4

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

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

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

The Commission received comments from two commenters on the structure of 11 CFR 114.3 and 114.4. One commenter said that 11 CFR 114.3 and 114.4 could be made more understandable by combining and shortening the provisions. Another commenter, however, recommended that the Commission maintain the current division. That commenter noted that important reporting and coordination-related distinctions remain between how corporations and labor organizations communicate with their restricted classes and with the general public. The commenter said that the current division between the provisions provides useful clarity to corporations and labor organizations.

The Commission has decided that the regulations should continue to distinguish between communications to the restricted class and communications to the general public because, as the commenter noted, the Act imposes differing reporting regimes for each such

communication. Therefore, while the Commission is revising both 11 CFR 114.3 and 114.4, it is maintaining the structure of those provisions.

B. Revised 11 CFR 114.3(b)—Reporting of Disbursements for Communications to the Restricted Class

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

For communications beyond the restricted class, section 30104(c) of Title 52 (formerly 2 U.S.C. 434(c)) requires that "every person (other than a political committee) who makes independent expenditures in an aggregate amount or value in excess of \$250 during a calendar year" report such expenditures to the Commission. Because corporations and labor organizations are "persons" under the Act, they are subject to the reporting requirements of 52 U.S.C. 30104(c) (formerly 2 U.S.C. 434(c)).

The NPRM did not propose any changes to 11 CFR 114.3(b) because *Citizens United* did not affect the provision of the Act at 52 U.S.C. 30101(9)(B)(iii) (formerly 2 U.S.C. 431(9)(B)(iii)) that exempts disbursements for express advocacy communications to the restricted class from the definition of "expenditure" and establishes the reporting requirement for such communications. The NPRM sought comments, however, on how a corporation or labor organization should report spending for express advocacy communications directed both to the restricted class and outside the restricted class. Specifically, the NPRM asked whether a single disbursement for an express advocacy communication that is made both to the general public and the restricted class

results in the entire disbursement being treated as an independent expenditure for reporting purposes, or whether instead the disbursement should be allocated between the cost of reaching the restricted class and the cost of reaching outside the restricted class. Under the latter approach, the corporation or labor organization would report the allocated expenses separately under the two reporting regimes.

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

One commenter said that when an independent expenditure reaches both the general public and members of the restricted class the entire disbursement should be treated as an independent expenditure. Another commenter opined that most organizations will report broadcast communications to the general public as independent expenditures because even if the communication reaches members of the restricted class, the majority of recipients will be members of the general public. A third commenter pointed out that independent expenditures by separate segregated funds already likely reach members of the restricted class, yet there is no suggestion that these communications should be subject to any special reporting requirement. This commenter suggested that, as a practical matter, any non-targeted mass communication (such as broadcast communications) should be reported as an independent expenditure, while targeted communications can be allocated. Another commenter, however, disagreed and argued that because, by statute, communications to the restricted class are neither contributions nor expenditures, mass communications should not be automatically reported entirely as independent expenditures but perhaps should be subject to some form of allocation.

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

Several commenters said that allocating between restricted class communications and communications

to the general public would not be difficult for targeted communications, such as email, direct mail, and telephone calls. One of these commenters recommended that if the Commission were to require allocation for communications that reach both the restricted class and the general public, such a requirement should be subject to several exceptions. First, any allocation should require only a reasonable estimation of the numbers of potential recipients of each class. Second, because qualified non-profit corporations ("QNCs"), discussed further below, were permitted to make express advocacy communications both to the restricted class and to the general public prior to *Citizens United*, they should remain able to do so and not be subject to mandatory allocation. Third, if an express advocacy communication is not specifically targeted to the restricted class, the corporation or labor organization should not be required to allocate and should have the option of treating the entire cost as an independent expenditure. Finally, this commenter recommended that any allocation regulation include a safe harbor provision that would specify that a communication to the restricted class that entails *de minimis* dissemination to the public may be treated entirely as a disbursement for a communication to the restricted class.

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

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

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

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

C. Revised 11 CFR 114.3(c)(4)—Voter Drives and Get-Out-the-Vote Activity Directed at the Restricted Class

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

For purposes of the Act's corporate and labor organization prohibitions, "contribution or expenditure" is defined to exclude "nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families, or by a labor organization aimed at its members and their families." 52 U.S.C. 30118(b)(2)(B) (formerly 2 U.S.C. 441b(b)(2)(B)). The Act further excludes from the definition of "expenditure" "communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject." 52 U.S.C. 30118(b)(2)(A) (formerly 2 U.S.C. 441b(b)(2)(A)).

Current 11 CFR 114.3(c)(4) provides that a corporation or a labor organization may conduct voter registration and GOTV drives "aimed at its restricted class." Section 114.3(c)(4) states that voter registration and GOTV drives include providing transportation to the place of registration and to the polls. The current provision further permits such drives to include express advocacy communications, "such as

urging individuals to register with a particular political party or to vote for a particular candidate." 11 CFR 114.3(c)(4). The current provision, however, also prohibits corporations and labor organizations from withholding or refusing to give information and other assistance regarding registering or voting "on the basis of support for or opposition to particular candidates, or a particular political party." *Id.*

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

1. Alternative A

This alternative proposed to permit voter registration and GOTV activities in which the corporation or labor organization withholds or refuses to provide information or other assistance regarding registering or voting based on support for or opposition to particular candidates or a particular party—*i.e.*, activities that do not qualify as "nonpartisan." Instead, Alternative A proposed to prohibit corporations and labor organizations from acting in "cooperation, consultation, or concert with, or at the request or suggestion of" any candidate or political party in conducting voter registration or GOTV drives.

Alternative A also would have retained nonpartisan voter registration and GOTV drives as an exception to the definition of "contribution or expenditure." See 52 U.S.C. 30118(b)(2)(B) (formerly 2 U.S.C. 441b(b)(2)(B)). Corporations and labor organizations currently do not have to report to the Commission under 52 U.S.C. 30104(c)(1) (formerly 2 U.S.C. 434(c)(1)) disbursements for nonpartisan voter registration and GOTV, since such disbursements are not expenditures. Thus, voter registration and GOTV drives would have been permissible under Alternative A, regardless of whether the drives met the conditions of the statutory "nonpartisan" exception, but corporations or labor organizations conducting nonpartisan drives would not have been required to report disbursements for them (unless they otherwise met the requirement to be

reported as disbursements for express advocacy communications to the restricted class under 52 U.S.C. 30101(9)(B)(iii) (formerly 2 U.S.C. 431(9)(B)(iii))).

2. Alternative B

Alternative B proposed making no changes to the existing regulation at 11 CFR 114.3(c)(4). Thus, under Alternative B, as under Alternative A, a corporation or labor organization would have continued to be able to make voter registration or GOTV *communications*, including express advocacy, to its restricted class under 11 CFR 114.3(c)(4). Furthermore, under both alternatives, voter registration and GOTV drives conducted in accordance with proposed 11 CFR 114.3(c)(4) would have remained exempt from the definition of "expenditure" under 52 U.S.C. 30118(b)(2)(B) (formerly 2 U.S.C. 441b(b)(2)(B)). Alternative B, however, would have maintained the prohibition on withholding or refusing to provide information or other assistance regarding registration or voting based on support for or opposition to particular candidates or a particular party. Additionally, corporations and labor organizations would have continued to be prohibited from engaging in non-communicative *activities* related to voter registration and GOTV drives other than those conducted in accordance with proposed 11 CFR 114.3(c)(4).

As discussed in Section II.A, above, one alternative proposed in the NPRM for conforming the Commission's regulation at 11 CFR 114.2(b)(2)(i) to the decision in *Citizens United* was to specifically exclude expenditures for communications (*i.e.*, "independent expenditures") from the broader prohibition on expenditures, while still prohibiting corporate and labor organization in-kind contributions, coordinated expenditures, and expenditures that do not involve communications. In promulgating the current regulation at 11 CFR 114.3(c)(4), the Commission similarly distinguished between the "'pure speech' aspects of the drives [that] may be partisan," and the non-speech activity aspects of the drives that "must be conducted in a nonpartisan manner." Explanation and Justification for Part 114, H.R. Doc. No. 95-44, at 105 (1977) ("1977 E&J"). The Commission's implementation of section 30118(b)(2)(B)'s (formerly U.S.C. 441b(b)(2)(B)) nonpartisan requirement reflects this distinction between "pure speech" and non-speech elements of voter registration and GOTV drives. Thus, as with proposed Alternative B for 11 CFR 114.2(b)(2)(i) discussed

above, Alternative B for 11 CFR 114.3(c)(4) would have distinguished between speech and non-speech activity by leaving intact the regulation's current distinction between communicative advocacy and other advocacy.

The Commission received six comments on the proposed revisions to 11 CFR 114.3(c)(4). The majority of the commenters supported Alternative A, arguing that it was consistent with the Court's decision and rationale in *Citizens United*. Several of these commenters argued that Alternative B was not consistent with *Citizens United* because its holding extends to both communicative and non-communicative forms of independent expenditures. One commenter stated that the distinction between communicative and non-communicative expenditures was "particularly inapplicable to the targeting of voters based on likely political preferences" for voter registration and GOTV drives, given that such activity expressing support for or opposition to a candidate or party is inherently communicative. Another commenter also stated that voter registration activity is highly regulated at the federal, state, and local levels under other laws, and that the Commission should defer to those laws and bodies in regulating voter registration activity. Another commenter noted that voter registration drives and GOTV activity implicate associational rights.

One commenter opined that the proposal in Alternative A that would exempt only nonpartisan voter drives and GOTV activities aimed at the restricted class from the definition of expenditure was inconsistent with the statute. That commenter argued that the Act permits a corporation or labor organization to communicate with its restricted class on *any* subject. The commenter further noted that 11 CFR 114.3(c)(4) has long provided that voter registration and GOTV drives "may include communications containing express advocacy, such as urging individuals to register with a particular party or to vote for a particular party or to vote for a particular candidate," and that such activities may be coordinated with candidates and political parties. The commenter went on to state that Alternative A erred in suggesting that the Commission can require a corporation or labor organization to report its spending on voter registration or GOTV activity directed at the restricted class that failed to meet the nonpartisan criteria at proposed 11 CFR 114.3(c)(4)(ii). The commenter argued that absent express advocacy, there is no requirement under the Act that a

corporation or labor organization report its voter registration or GOTV activities aimed at the restricted class.

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

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

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

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

The Commission agrees with the commenter that the Act exempts from the definition of "contribution or expenditure" communications on any subject (including communications that

are express advocacy) between a corporation or a labor organization and its restricted class. 52 U.S.C. 30118(b)(2)(A) (formerly 2 U.S.C. 441b(b)(2)(A)). However, because the Act specifically exempts only *nonpartisan* voter registration and GOTV drives aimed at the restricted class from the definition of "contribution or expenditure," 52 U.S.C. 30118(b)(2)(B) (formerly 2 U.S.C. 441b(b)(2)(B)), the Commission concludes that such nonpartisan voter registration and GOTV drives must be treated differently from other drives. Thus, new section 114.3(c)(4)(iii) affirms that corporations and labor organizations may make disbursements for voter registration and GOTV drives aimed at the restricted class that do not qualify as nonpartisan, but the revised regulation does not categorically exempt these disbursements from the definition of "expenditure."

Although 11 CFR 114.3(c)(4) does not expressly address reporting, express advocacy communications to the restricted class are subject to the requirements at 52 U.S.C. 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)-(ii), (c)(1)); 11 CFR 100.134(a) (requiring reporting when disbursements for express advocacy communications to restricted class aggregate in excess of \$2000 per election), 104.6 (same), 114.3(b) (same). Disbursements made under new section 114.3(c)(4), therefore, will be reported as express advocacy communications to the restricted class if the activity includes express advocacy (and exceeds the \$2000 reporting threshold).

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

IV. Revised 11 CFR 114.4—Disbursements for Communications in Connection With a Federal Election by Corporations and Labor Organizations Beyond the Restricted Class

The Commission is revising 11 CFR 114.4, which covers disbursements for communications by corporations and labor organizations beyond the

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

restricted class in connection with a federal election. Prior to *Citizens United*, corporations and labor organizations were prohibited from making independent expenditures and electioneering communications. Current section 114.4 carves out certain communications from that prohibition and the prohibition on coordinated communications by corporate and labor organizations. The regulation permits certain communications and activities directed outside the restricted class, both to employees outside the restricted class and to the general public. This section also permits certain communications made to those outside the restricted class to be coordinated, to a limited extent, with candidates. For example, section 114.4(b) covers candidate and party appearances on corporate or labor organization premises or at a meeting, convention, or other function that is attended by employees outside the restricted class, 114.4(c)(6) covers endorsements, and 114.4(c)(7) covers candidate appearances at certain educational institutions.

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

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

A. Revised 11 CFR 114.4(a)—General

The Commission is making minor clarifying changes to paragraph (a). Current 11 CFR 114.4(a) provides that any communications that a corporation or labor organization makes to the general public may also be made to the restricted class and to its employees outside the restricted class. Current paragraph (a) also provides that

114.4 may be coordinated with candidates and political committees only to the extent permitted in section 114.4.

The NPRM proposed reorganizing paragraph (a) and making several clarifying language changes. The Commission received one comment on the proposal to revise 11 CFR 114.4(a). The commenter agreed with the proposal and suggested inserting “the phrase ‘among others’ before ‘the general public’ in proposed [section] 114.4(a) . . . [i]n order to conform with the general division of individuals between the ‘restricted class’ and the ‘general public.’”

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

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

B. Revised 11 CFR 114.4(c)—Communications by a Corporation or Labor Organization to the General Public

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

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

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

1. Revised 11 CFR 114.4(c)—Communications by a Corporation or Labor Organization to the General Public

The NPRM proposed adding to paragraph (c)(1) a general prohibition on corporations or labor organizations acting in cooperation, consultation, or concert with or at the request or suggestion of a candidate, a candidate's committee or agent, or a political party committee or its agent regarding the preparation, content, and distribution of any of the specific types of communications described at proposed 11 CFR 114.4(c)(2)–(6). The proposed general prohibition would replace the separate prohibitions on coordination contained in each paragraph of current 11 CFR 114.4(c)(2)–(6).

Current 11 CFR 114.4(c)(2)–(6) govern voter registration and GOTV communications; official voter registration and voting information; voting records; voter guides; and endorsements. The NPRM proposed generally retaining these paragraphs to

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

provide specific information about some of the types of communications that corporations and labor organizations might wish to make. The current versions of these paragraphs, however, each prohibit corporations or labor organizations from expressly advocating the election or defeat of clearly identified candidates in these communications. Proposed 11 CFR 114.4(c)(2)–(6) would have eliminated the prohibition on express advocacy in each paragraph for communications that are not coordinated with any candidate or political party.

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

Several commenters did not favor the proposed changes to 11 CFR 114.4(c)(1) and (c)(2)–(6), instead preferring removal of 11 CFR 114.4(c)(2)–(6). These commenters reasoned that a list of certain permissible communications to the general public is no longer necessary because corporations and labor organizations may now make independent expenditures and electioneering communications. Because Commission regulations already contain criteria for when a communication is “coordinated,” these commenters further argued, adding a prohibition on coordination is unnecessary. One commenter contended that 11 CFR 114.4(c)(1) should be revised to include a reference to the regulations that set out the tests for coordinated expenditures and coordinated communications, at 11 CFR 109.20 and 109.21, respectively. The commenter expressed concern that the proposed regulation appeared to create a new coordination test for activities relating particularly to the communications in 114.4(c)(2)–(6).

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

The Commission is revising 11 CFR 114.4(c)(1) by removing the explicit

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

Additionally, the Commission is adding to 11 CFR 114.4(c)(1) a general reference to the existing prohibition on corporations and labor organizations coordinating with candidates or political party committees, as provided for in the Commission's coordination regulations, in making any of the communications covered by 11 CFR 114.4(c)(2)–(6). Revised section 114.4(c)(1) does not alter the status quo with respect to the coordination of activities described in section 114.4(c)(2)–(6).¹² The Commission is not extending the coordination restriction to the activities permitted in paragraph 114.4(c)(2)(7) because that provision—which governs “candidate appearances on educational institution premises”—necessarily entails a certain amount of coordination between the hosting institution and a candidate. *See* 11 CFR 114.4(c)(7)(ii)(A) (requiring institution to “make [] reasonable efforts to ensure” that certain aspects of candidate's appearance “are not conducted as campaign rallies or events”). Pursuant to revised section 114.4(a), discussed above, these candidate appearances at educational

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.

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).

institutions “may be coordinated with candidates and political committees only to the extent permitted” by paragraph 114.4(c)(7).

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

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

All five of these paragraphs currently prohibit corporations or labor organizations from expressly advocating the election or defeat of clearly identified candidates in these communications and from coordinating with candidates or political party committees in making the communications. The Commission is removing the prohibitions on express advocacy in 11 CFR 114.4(c)(2)–(6) but continuing the prohibition on corporations and labor organizations coordinating with any candidate or political party in making these

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.

communications. The Commission agrees with the commenter that the revisions are consistent with the decision in *Citizens United*.

2. Revised 11 CFR 114.4(c)(2)—Voter Registration and Get-Out-The-Vote Communications

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

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

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

The Commission is also revising 11 CFR 114.4(c)(2) by removing the list of media currently in that provision. Current 11 CFR 114.4(c)(2) contains a list of media through which corporations and labor organizations may make voter registration and GOTV communications to the general public. The list currently includes: “posters, billboards, broadcasting media, newspapers, newsletter[s], brochures, or similar means of communication with the general public.” 11 CFR 114.4(c)(2).

The NPRM proposed adding to the list mail, Internet communications, emails, text messages, and telephone calls, and

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

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

3. Revised 11 CFR 114.4(c)(3)—Official Registration and Voting Information and Revised 11 CFR 114.4(c)(4)—Voting Records

Other than the comments on the general proposal to revise 114.4(c), described above, the Commission did not receive comments on the specific proposed revisions to 114.4(c)(3) and (c)(4). For the reasons explained above, the Commission is revising the provisions at 11 CFR 114.4(c)(3) and (c)(4) to remove the prohibitions on express advocacy, consistent with *Citizens United*. Additionally, as discussed in Section IV.B.1 above, the Commission is removing the prohibitions on coordination in the making of such communications because those specific prohibitions are unnecessary in light of the general prohibition on coordinated communications and coordinated expenditures in the final rule at 11 CFR 114.4(c)(1).

Revised 11 CFR 114.4(c)(3) and (c)(4) do, however, maintain the existing exemptions from the definition of contribution and expenditure for the corporate and labor organization activity addressed in those provisions. Thus, under both current and revised 11 CFR 114.4(c)(3), a payment by a corporation or labor organization for the distribution of official voter registration or voting information does not constitute a contribution or expenditure, provided

that the corporation or labor organization does not, in connection with such activity (1) expressly advocate the election or defeat of a clearly identified federal candidate or candidates of a clearly identified political party, (2) encourage registration with any particular political party, or (3) coordinate with any candidate or political party concerning the reproduction and distribution of the information. Similarly, the preparation and distribution of voting records under 11 CFR 114.4(c)(4) is not a contribution or expenditure, provided that the voting records do not expressly advocate the election or defeat of a clearly identified federal candidate or candidates of a clearly identified political party, and that the corporation or labor organization does not coordinate with any candidate, group of candidates, or political party as to the content and distribution of such voting records. The final rules thus reflect that after *Citizens United*, corporations and labor organizations may make independent expenditures and electioneering communications, while the final rules also maintain the status quo regarding the communications that, under the regulations, are not contributions or expenditures.

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

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

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

In addition to the comments on the general proposal to revise 11 CFR 114.4(c)(2)–(6), discussed above, the Commission received comments on its

proposed changes to 11 CFR 114.4(c)(5) from one commenter. The commenter supported the proposed changes on the basis that they are consistent with *Citizens United*.

The Commission agrees and is adopting the revisions proposed in the NPRM, with certain changes. As discussed above, the Commission believes that maintaining a non-exhaustive list of types of communications that corporations and labor organizations may wish to make to the general public may provide guidance to corporations and labor organizations. However, the Commission is removing the requirements and restrictions in current 114.4(c)(5), as proposed, to reflect that after *Citizens United* corporations and labor organizations may make independent expenditures and electioneering communications. Additionally, as discussed in Section IV.B.1 above, the Commission is removing the prohibitions on coordination in the making of such communications because a prohibition on coordinated communications and coordinated expenditures is in the final rule at 11 CFR 114.4(c)(1).

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

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

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

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

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

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

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

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

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

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

Current 11 CFR 114.4(c)(8) permits corporations and labor organizations to make electioneering communications to the general public only to the extent permitted under current 11 CFR 114.15. Section 114.15, in turn, permits corporations and labor organizations to make electioneering communications unless the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified federal candidate. As discussed in Section VII.B below, the Commission is removing section 114.15. Current 11 CFR 114.4(c)(8) further permits QNCs to make electioneering communications to the general public in accordance with current 11 CFR 114.10. As discussed below, the Commission is also removing the portions of section 114.10 that address QNCs.

The NPRM proposed eliminating 11 CFR 114.4(c)(8) in its entirety because *Citizens United* struck down the prohibition on corporations and labor organizations making electioneering communications. The Commission received one comment in support of the

proposed deletion, stating that the proposal is consistent with *Citizens United*. The Commission agrees. Because *Citizens United* struck down the prohibition on corporations and labor organizations making electioneering communications, the exceptions to the prohibition at current 11 CFR 114.4(c)(8) are superfluous.

C. Revised 11 CFR 114.4(d)—Voter Registration and Get-Out-The-Vote Drives

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

For purposes of the prohibition on expenditures by corporations and labor organizations, the Act defines “expenditure” to include “any purchase, payment, distribution . . . or anything of value . . . for the purpose of influencing any election for Federal office.” 52 U.S.C. 30101(9)(A)(i), 30118(b)(2) (formerly 2 U.S.C. 431(9)(A)(i), 441b(b)(2)). The Act exempts from the definition of expenditure “nonpartisan activity designed to encourage individuals to vote or to register to vote.” 52 U.S.C. 30101(9)(B)(ii) (formerly 2 U.S.C. 431(9)(B)(ii)). Current 11 CFR 114.4(d) permits corporations and labor organizations to conduct voter registration and GOTV drives aimed at the general public and states that such drives include providing transportation to the place of registration and to the polls. The current provision prohibits such drives from including express advocacy communications and states that the drives may not be coordinated with any candidate or political party. The current provision also prohibits corporations or labor organizations from: (1) withholding or refusing to give information and other assistance regarding registering or voting on the basis of support for or opposition to particular candidates or a particular political party; (2) directing the drives primarily at individuals based on

registration with a particular party; and (3) paying individuals conducting such drives on the basis of number of individuals registered or transported to the polls who support a particular candidate or candidates or political party.

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

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

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

except where the Act explicitly imposes restraints on it.

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

The Commission agrees with the commenters that proposed Alternative A is consistent with the Court’s decision in *Citizens United* because that alternative reflects corporations’ and labor organizations’ right to now make independent expenditures and electioneering communications beyond the restricted class. The Commission is therefore revising 11 CFR 114.4(d) to remove the prohibition on express advocacy, as well as the other restrictions on corporations and labor organizations engaging in voter registration drives and GOTV activity directed at the general public. These restrictions are: withholding or refusing to provide assistance on the basis of support for or opposition to particular candidates or a particular party; directing the drives primarily at individuals based on registration with a particular party; and paying individuals conducting such drives on the basis of number of individuals registered or transported to the polls who support a particular candidate or candidates or political party. Revised 11 CFR 114.4(d) does not include a prohibition on coordination because, as discussed above, the prohibition on coordination in the context of voter registration and GOTV drives is addressed in 11 CFR 114.4(a).

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

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

V. No Changes to 11 CFR 114.9—Use of Corporate or Labor Organization Facilities

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

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

The Commission received two comments on 11 CFR 114.9. One commenter implied that the Commission should change its regulation because the Commission should not limit independent political speech after *Citizens United*. The other commenter urged the Commission to wait to consider any changes to 11 CFR

114.9 in a future rulemaking. The commenter contended that the regulation warrants revisiting after *Citizens United* but also recognized that the rule remains pertinent for setting guidelines for corporations and labor organizations to know when they must potentially report an individual's activity as an independent expenditure by the corporation or labor organization. The commenter further noted that to the extent that 11 CFR 114.9 implements the contribution prohibition at 52 U.S.C. 30118(a) (formerly 2 U.S.C. 441b(a)), it remains valid after *Citizens United*.

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

VI. Revised 11 CFR 114.10—Corporations and Labor Organizations Making Independent Expenditures and Electioneering Communications

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

The Commission promulgated current 11 CFR 114.10 primarily in response to the Supreme Court's decision in *Massachusetts Citizens For Life, Inc. v. FEC*, 479 U.S. 238 (1986) (“*MCFL*”). The Court there considered the application of the independent expenditure prohibition in 52 U.S.C. 30118 (formerly 2 U.S.C. 441b) to MCFL, a nonprofit corporation organized to promote certain ideological views. The Court concluded that nonprofit, ideological groups such as MCFL did not pose the potential for corruption through “unfair deployment of wealth for political purposes” and therefore did not implicate the concerns that prompted regulation of corporate electoral activity by Congress. See *MCFL*, 479 U.S. at

259–61. In response to *MCFL*, the Commission adopted 11 CFR 114.10, creating a regulatory exception to the independent expenditure ban in section 30118 (formerly 2 U.S.C. 441b) for organizations with the same characteristics as MCFL, referred to as QNCs. After Congress enacted BCRA's electioneering communications provisions in 2002, which included the prohibition on electioneering communications by corporations, the Commission added an exception in 11 CFR 114.10 to allow QNCs to make electioneering communications.

Because *Citizens United* made these exceptions for QNCs unnecessary, the NPRM proposed to revise 11 CFR 114.10, or, alternatively, to delete the regulation in its entirety. The NPRM specifically sought comments on a proposal to remove current paragraphs (a) through (c) and (e)(1), as these regulations specifically apply only to QNCs. The NPRM proposed to redesignate the provisions currently at 11 CFR 114.10(d), (e)(2), and (f) through (i)—each of which currently relates to permissible independent expenditures and electioneering communications by QNCs—and expand them to apply to all corporations and labor organizations that make independent expenditures and electioneering communications. These provisions include: (1) the reporting requirements for independent expenditures or electioneering communications at 11 CFR 114.10(e)(2); (2) the solicitation disclaimer requirement at 11 CFR 114.10(f); (3) the non-authorization disclaimer requirement at 11 CFR 114.10(g); (4) the provision in 11 CFR 114.10(h) permitting establishment of segregated bank accounts for electioneering communication disbursements; and (5) 11 CFR 114.10(i), which states that nothing in section 114.10 authorizes any organization exempt from taxation under 26 U.S.C. 501(a) to carry out any activity that it is prohibited from undertaking by the Internal Revenue Code. The NPRM asked whether maintaining these regulations, as revised to apply to corporations and labor organizations in general, would be necessary or appropriate.

The Commission received comments on the general proposal to delete and revise certain provisions of current 11 CFR 114.10 from three commenters. All three commenters expressed the view that the exception for QNCs is no longer necessary after *Citizens United*. One commenter generally supported the proposal to maintain certain provisions of 11 CFR 114.10 as a “guide” to corporations and labor organizations making independent expenditures and

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

electioneering communications. This commenter noted that “affirmatory regulatory language can serve important public information purposes.” The commenter did not agree with the proposed changes to current 11 CFR 114.10(c), discussed further below. Another commenter opined that to the extent that the Commission retained any of current 11 CFR 114.10(d)–(i), those provisions should be placed with similar provisions elsewhere in the regulations and combined to avoid repetition.

The Commission is revising 11 CFR 114.10 as described below.

A. Removal of Current 11 CFR 114.10(a)–(c)

The Commission is removing the provisions currently located at 11 CFR 114.10(a)–(c) in their entirety. These provisions currently contain the exemption for QNCs from the prior prohibition on corporations making independent expenditures and electioneering communications. Specifically, current 11 CFR 114.10(a) sets out the scope of section 114.10 as applying to “those nonprofit corporations that qualify for an exemption” from the corporate contribution and expenditure prohibition in 11 CFR 114.2. Current paragraph 114.10(b) defines certain terms and phrases relevant to the QNC exception, and current 11 CFR 114.10(c) sets out the criteria for being a QNC.

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

B. Revised 11 CFR 114.10(a)—Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations

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

Current 11 CFR 114.10(d) specifically permits QNCs to make independent expenditures and electioneering communications. The NPRM proposed expanding certain provisions of current 11 CFR 114.10(d) to cover all corporations and labor organizations. As discussed above, the NPRM sought

comments on whether it would be helpful for corporations and labor organizations to have a regulation explicitly recognizing their ability to make independent expenditures and electioneering communications. The NPRM asked whether the regulation should instead more broadly state that corporations and labor organizations may make any communication in connection with an election so long as it is not a coordinated communication under 11 CFR 109.21, or, alternatively, whether it would be sufficient to remove the current prohibitions in 11 CFR 114.2(b)(2) and (b)(3) on corporations and labor organizations making disbursements for independent expenditures and electioneering communications using general treasury funds.

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

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

certain regulatory requirements applicable to all entities that make such communications.

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

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

C. Revised 11 CFR 114.10(b)—Reporting Independent Expenditures and Electioneering Communications

The Commission is revising current 11 CFR 114.10(e)(2) by removing the reference to QNCs and by expanding the language of the provision to state that all corporations and labor organizations that make independent expenditures or electioneering communications above threshold amounts must file reports

according to other applicable regulations. The Commission is also redesignating 11 CFR 114.10(e)(2) as 11 CFR 114.10(b) and removing current 11 CFR 114.10(e)(1) in its entirety.

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

The Commission received comments from two commenters on the specific proposal to revise current 11 CFR 114.10(e). Both commenters supported the proposal, with one commenter arguing that it would communicate the application of current statutory and regulatory reporting requirements to corporate and labor organization independent expenditures and electioneering communications. The other commenter stated that corporations and labor organizations should be explicitly informed of their rights after *Citizens United*.

The Commission agrees with the commenters. Although the revised provision at 11 CFR 114.10(b) is not necessary given that the reporting requirements currently apply to corporations and labor organizations making independent expenditures or electioneering communications, the Commission has determined that it would be helpful to corporations and labor organizations making such communications to have a single provision at 11 CFR 114.10 that directs those entities to other relevant regulations. The Commission is therefore revising current 11 CFR 114.10(e)(2) and redesignating it as section 114.10(b) as proposed in the NPRM. New 11 CFR 114.10(b)(1) states that corporations and labor

organizations that make independent expenditures aggregating in excess of \$250 with respect to a given election in a calendar year must file reports according to 11 CFR part 114 and sections 104.4(a) and 109.10(b)–(e). Revised 11 CFR 114.10(b)(2) states that corporations or labor organizations that make electioneering communications aggregating in excess of \$10,000 in a calendar year must file the statements required by 11 CFR 104.20(b).

D. Removal of 11 CFR 114.10(f)—Solicitation; Disclosure of Use of Contributions for Political Purposes

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

The NPRM proposed revising 11 CFR 114.10(f) by maintaining this requirement and expanding it to cover solicitations for donations that may be used for political purposes where the solicitations are made by any corporation or labor organization. Even though the QNC exception is no longer necessary, the NPRM asked whether the current solicitation disclosure requirement for QNCs should be expanded to cover all corporations and labor organizations to ensure that recipients of solicitations have information about how their donations may be used, in order to make informed decisions. The NPRM further sought comment as to whether the Commission should require corporations and labor organizations to state in such disclosures that the funds received may be used specifically for independent expenditures or electioneering communications, as opposed to for “political purposes” generally.

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

The requirement at current section 114.10(f) derives from the Supreme Court’s decision in *MCFL*. Express

Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 FR 35292, 35303 (July 6, 1995). In holding the prohibition on corporate independent expenditures unconstitutional as applied to QNCs, the Supreme Court reasoned that “[t]he rationale for regulation is not compelling with respect to independent expenditures by [MCFL]” because “[i]ndividuals who contribute to [MCFL] are fully aware of its political purposes, and in fact contribute precisely because they support those purposes.” *MCFL*, 479 U.S. at 260–61. “Given a contributor’s awareness of the political activity of [MCFL], as well as the readily available remedy of refusing further donations, the interest [of] protecting contributors is simply insufficient to support § 441b’s [now 52 U.S.C. 30118’s] restriction on the independent spending of MCFL.” *Id.* at 262 (emphasis added).

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

The Commission received comments from four commenters on the Commission’s proposed retention and revision of current 11 CFR 114.10(f). None of the commenters supported the Commission’s proposal. Several commenters argued that the Commission lacks statutory authority to expand the disclaimer requirement for a number of reasons. First, the Act’s disclaimer requirement applies only to solicitations for contributions as defined under the Act, while the Commission’s proposal would also apply to

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

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

Another commenter noted that all so-called 501(c)(4), (c)(5), and (c)(6) organizations are permitted to engage in political campaign activity and therefore “‘may’ use the funds for that purpose.” The proposed disclaimer language would be misleading, this commenter contended, if the organization does not actually use the funds for political purposes. Yet another commenter discussed the operation of the proposed regulation alongside the requirement at 11 CFR 104.20(c)(9), which requires corporations that report electioneering communications to disclose each person who donates for the purpose of furthering such communications. The commenter stated that because of the reporting requirement at 11 CFR 104.20(c)(9), some corporations may specifically choose *not* to seek donations specifically for the purpose of furthering electioneering communications, yet the corporations would be required by the proposed regulation to inform potential donors that their donations may be used for political purposes such as supporting or

opposing candidates. This commenter further contended that an interest in protecting donors from funding speech with which they disagree is not a valid basis for regulation after *Citizens United*.

Several commenters also expressed concern about the difficulty of implementing the Commission’s proposal. These commenters opined that several of the terms proposed by the Commission were vague or overbroad. Specifically, commenters stated that “solicitation,” “donation,” and “political purposes” are not clearly defined in the Act and Commission regulations for purposes of the proposed disclaimer. One commenter stated that the proposed regulation did not define “donation,” and that although “contribution” is defined, the Act does not require a solicitation of a contribution to include any statements concerning the potential use of the funds solicited. The commenter noted that “donation” is defined in the Commission’s regulations, but that this definition applies only to 11 CFR part 300. *See* 11 CFR 300.2(e). Moreover, the commenter opined, the definition is broad and does not require any nexus to an election: As defined, the term “donation” could “reach even union solicitations of dues payments from members.” The commenter went on to state that this application “would intrude upon a complex and longstanding federal labor law framework.” The commenter further stated that the proposed use of “solicit” was unclear. In the commenter’s view, the broad definition of that term provided in the candidate/party context in BCRA and applied to solicitations of contributions to separate segregated funds could turn routine statements by labor organizations during organizing campaigns and other non-election related contexts into “solicitations” that would trigger the proposed disclaimer. Finally, the commenter argued that the term “political purposes,” if undefined, would fail to correspond with any of the “precise categories of political behavior” that the Act identifies and regulates, such as independent expenditures and electioneering communications.

Another commenter indicated that the proposal might be acceptable if it were limited to requiring disclosure by those who might use donations for independent expenditures and electioneering communications. The commenter asserted that this would be consistent with the decision in *FEC v. Survival Education Fund*, 65 F.3d 285 (2d Cir. 1995), which allowed requiring disclosure of contributions earmarked

for political speech that the Supreme Court has held may be regulated, even where the speaker is not a political committee.

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

The Commission concludes that it should not maintain the disclaimer requirement of current section 114.10(f) or expand it to cover solicitations made by other corporations or labor organizations. The Commission agrees with the commenters who noted that the proposed disclaimer requirement, which previously applied only to QNCs, is unclear. There is also no longer any reason to specifically regulate the activities of QNCs (as discussed above). Therefore, the Commission is not adopting the revised regulation as proposed in the NPRM, and is removing current 11 CFR 114.10(f).

E. Revised 11 CFR 114.10(c)—Non-Authorization Notice

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

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

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

The Commission received one comment on the specific proposal to revise current 11 CFR 114.10(g). The commenter supported the proposal because it would succinctly communicate the disclaimer requirement applicable to corporations and labor organizations making express advocacy public communications and electioneering communications.

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

F. Revised 11 CFR 114.10(d)—Segregated Bank Account

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

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

accounts. Aside from this reporting requirement, however, the Act does not otherwise affirmatively state that a person may establish such a segregated account. Furthermore, 11 CFR 114.10(h) is the only place in the current regulations that affirmatively states that a person may, but is not required to, set up such a segregated bank account, and this regulation is limited to QNCs.

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

The Commission received one comment on the specific proposal to revise current 11 CFR 114.10(h). The commenter agreed with the Commission’s proposal to revise the provision to explicitly provide the segregated-account option to all corporations or labor organizations that make disbursements for electioneering communications. The Commission also received one comment stating that the Commission should not create a requirement that persons must use a segregated bank account for funds used to make electioneering communications. The commenter opined that the Act explicitly makes such an account permissive, rather than mandatory. The commenter went on to state that even as to voluntary segregated bank accounts, the Act contemplates such accounts only for electioneering communications and not for independent expenditures. The commenter argued that requiring the use of such accounts would be “highly burdensome.” Finally, the commenter noted that even without such a segregated account, corporations and labor organizations are subject to the Act’s reporting and disclaimer requirements for independent expenditures and electioneering communications.

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

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

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

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

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

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

VII. Removal of 11 CFR 114.14 and 114.15

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

A. Removal of 11 CFR 114.14—Restrictions on Corporate and Labor Organization Funds

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

As a result of *Citizens United*, corporations and labor organizations may now finance electioneering communications. Section 114.14, which prohibits corporations and labor organizations from providing funds to other persons for the purpose of making electioneering communications, is therefore no longer necessary as a means of preventing circumvention of the prohibition on corporate and labor organization electioneering communications. The Commission is removing that section.

B. Removal of 11 CFR 114.15—Permissible Use of Corporate and Labor Organization Funds for Certain Electioneering Communications

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

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

The Commission is removing section 114.15. Because *Citizens United* invalidated the prohibition on corporations and labor organizations making electioneering communications, this section’s delineation between permissible and impermissible electioneering communications is no longer necessary.

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

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

In sum, the Commission is removing section 114.15. As discussed in Section IX, below, the Commission is also revising the reporting regulations at 11 CFR 104.20(c) to reflect the removal of section 114.15 and to otherwise

implement the Court’s decision in *Citizens United*.

VIII. Revised 11 CFR 114.1(a)—Definitions

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

In addition, the Commission is removing the reference in 11 CFR 114.1(a) to the Public Utility Holding Company Act (formerly 15 U.S.C. 79l(h)), as that statute was repealed in 2005. Public Law 109–58, section 1263, 119 Stat. 974 (2005).

IX. Revised 11 CFR 104.20(c)—Contents of Electioneering Communication Disclosure Statements

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

Current section 104.20(c) specifies the contents of reports that persons making electioneering communications must file. The information that must be reported under that section varies depending on how the electioneering communication is financed. *See* 11 CFR 104.20 (c)(1)–(9).¹⁶ Specifically,

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

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

The Commission requested comments on whether section 104.20(c)(7) should continue to distinguish funds donated by individuals from those donated by corporations or labor organizations. The Commission received one comment in response to this request. The commenter questioned the basis for any continued distinction after *Citizens United’s* holding that corporations and labor organizations may finance electioneering communications. The Commission agrees with the commenter that the current division of section 104.20(c)(7) into separate provisions distinguishing individual funds from corporate and labor organization funds is no longer necessary. Because an electioneering communication—regardless of whether it is functionally equivalent to express advocacy—may now be financed with individual, corporate, or labor organization funds,

(c)(8), to implement the Supreme Court’s decision in *WRTL*, 551 U.S. 449.

there is no longer any need for the Commission’s regulations to distinguish accounts based on which persons contribute to them or whether the electioneering communications they finance are functionally equivalent to express advocacy.

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

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

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

The Commission certifies that the rules will not have a significant economic impact on a substantial number of small entities. There are some small entities that will be affected by these rules,¹⁸ but the rules will not have a significant economic impact on them. The primary impact of the changes is to relieve a funding restriction that had applied to labor organizations and most corporations. To the extent that any of these affected

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.

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).

entities are small entities, the rules will allow them to engage in activity that they were previously prohibited from funding with their general treasury funds. While one likely effect of the rules will be to increase the number of corporations and labor organizations that use general treasury funds to make independent expenditures or electioneering communications, these entities will do so voluntarily and not because of any new requirement in these rules. The affected entities will incur some costs in complying with the reporting requirements for independent expenditures and electioneering communications, but these costs will not constitute a “significant economic impact” for purposes of the Regulatory Flexibility Act. Further, the reporting obligations of entities that currently meet the criteria for treatment as qualified non-profit corporations will not become more burdensome because of this rulemaking. Therefore, the attached rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 114

Business and industry, Elections, Labor.

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

PART 104—REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS (52 U.S.C. 30104)

- 1. The authority citation for part 104 is revised to read as follows:

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

- 2. Revise the part heading to read as shown above.

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

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

* * * * *

(c) * * *

(7) If the disbursements were paid exclusively from a segregated bank account consisting of funds provided solely by persons other than national banks, corporations organized by authority of any law of Congress, or

foreign nationals as defined in 11 CFR 110.20(a)(3), the name and address of each donor who donated an amount aggregating \$1,000 or more to the segregated bank account, aggregating since the first day of the preceding calendar year.

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

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

* * * * *

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

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

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

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

§ 114.1 Definitions.

(a) For purposes of part 114—

* * * * *

(2) * * *

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

* * * * *

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

* * * * *

■ 6. Section 114.2 is amended by:

- a. Revising paragraph (a)(1);
- b. Removing paragraphs (b)(2) and (b)(3);
- c. Redesignating paragraph (b)(1) as (b);
- d. Adding a note to paragraph (b); and
- e. Revising paragraph (c).

The revisions and additions read as follows:

§ 114.2 Prohibitions on contributions, expenditures and electioneering communications.

(a) * * *

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

* * * * *

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

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

* * * * *

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

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

* * * * *

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

(c) * * *

(4) *Registration and get-out-the-vote drives.* (i) A corporation or labor organization may conduct voter registration and get-out-the-vote drives aimed at its restricted class, except as provided in paragraph (c)(4)(iii) of this section. Voter registration and get-out-the-vote drives include providing transportation to the place of registration and to the polls. Such drives may include communications containing express advocacy, such as urging individuals to register with a particular party or to vote for a particular candidate or candidates.

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

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

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

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

(a) *General.* A corporation or labor organization may communicate beyond the restricted class in accordance with

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

* * * * *

(c) *Communications by a corporation or labor organization to the general public*—(1) *General*. A corporation or labor organization may make independent expenditures or electioneering communications pursuant to 11 CFR 114.10. This section addresses specific communications, described in paragraphs (c)(2) through (c)(7) of this section, that a corporation or labor organization may make to the general public. The general public includes anyone who is not in the corporation's or labor organization's restricted class. The preparation, contents, and distribution of any of the communications described in paragraphs (2) through (6) below must not include coordinated expenditures as defined in 11 CFR 109.20, coordinated communications as defined in 11 CFR 109.21, or contributions as defined in 11 CFR part 100, subpart B. *See also* note to 11 CFR 114.2(b), 114.10(a).

(2) *Voter registration and get-out-the-vote communications*. (i) A corporation or labor organization may make voter

registration and get-out-the-vote communications to the general public.

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

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

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

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

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

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

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

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

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

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

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

(A) The voting records of Members of Congress and all communications distributed with it do not expressly advocate the election or defeat of any

clearly identified candidate(s) or candidates of a clearly identified political party; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * * * *

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

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

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

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

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

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

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

* * * * *

■ 9. Section 114.10 is revised to read as follows:

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

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

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

(b) *Reporting independent expenditures and electioneering*

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

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

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

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

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

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

On behalf of the Commission,
Dated: October 9, 2014.

Lee E. Goodman,

Chairman, Federal Election Commission.

[FR Doc. 2014–24666 Filed 10–20–14; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245–AG57

Small Business Investment Companies—Investments in Passive Businesses

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: In this final rule, the U.S. Small Business Administration (SBA) is revising the regulations for the Small Business Investment Company (SBIC) program concerning investments in