



11 CFR Parts 102, 104, 110

[NOTICE 2024-11]

Contributions from Corporations and Other Organizations to Political Committees

AGENCY: Federal Election Commission.

ACTION: Notification of disposition of petition for rulemaking.

SUMMARY: The Commission announces its disposition of a Petition for Rulemaking filed on May 14, 2015. The Petition asks the Commission to revise existing rules concerning the reporting of contributions to political committees from corporations and other organizations. For the reasons described below, the Commission is not initiating a rulemaking at this time.

DATES: [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Mr. Luis M. Lipchak, Attorney, 1050 First Street, NE., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act, 52 U.S.C. 30101-45 (the “Act”), and Commission regulations require all political committees to abide by certain organizational, record-keeping, and reporting requirements.¹ This includes maintaining records of contribution receipts and disbursements, reporting independent expenditures, and filing periodic disclosure reports that identify the source of each contribution exceeding \$200.² Commission regulations also require every person who makes electioneering communications aggregating in excess of \$10,000 in a calendar year and every person (other than a political committee)

¹ See 52 U.S.C. 30102, 30103, 30104; 11 CFR 102.1, 102.2, 102.7, 104.3.

² See 11 CFR 104.3(a)(4)(i), 104.4, 104.5(c).

that makes independent expenditures in excess of \$250 with respect to a given election in a calendar year to report certain information to the Commission.³

On May 14, 2015, the Federal Election Commission received a Petition for Rulemaking from Make Your Laws PAC, Inc. and Make Your Laws Advocacy, Inc. (“Petition”). The Petition asked the Commission to modify its regulations requiring disclosure of contributions from corporations and other organizations to political committees. The Petition requested that the Commission establish a new rule requiring that “any person, other than a natural person, contributing an aggregate of more than \$1,000 in any calendar year to any political committee, whether directly or indirectly” (emphasis omitted), must do so from an account subject to certain reporting requirements. Specifically, the Petition asked the Commission to require that these accounts disclose “the original source of all election-related contributions and expenditures, traceable through all intermediary entities to a natural person, regardless of the amounts or entities involved” (emphasis omitted). The Petition also asked the Commission to apply to these accounts the identification requirements of 11 CFR 100.12; the Act’s prohibition on foreign national contributions, 52 U.S.C. 30121; allocation rules for administrative expenses; and, in some circumstances, the Act’s limitations on contributions to political committees.

The Petition argued that for disclosure requirements to be effective, disclosure must be required for “the *original* source of *all* election-related contributions and expenditures, traceable through *all* intermediary entities to a natural person, regardless of the amounts or entities involved” (footnote omitted).⁴ The Petition asserted that under existing regulations independent expenditure only political committees can hide the “original source” of contributions because they are permitted to receive contributions

³ 11 CFR 104.20(b) and (c), 109.10(b), (e); 52 U.S.C. 30104(c)(1) and (2), (f).

⁴ Petition at 4.

from corporations, including 501(c)(4) corporations, that are not subject to reporting obligations under the Act.⁵ The Petition argued that these sources can make political contributions while hiding the “true source” of contributions because “the FEC only requires political committees to report the identity of the *proximate* source of a contribution, rather than the *original* source.”⁶ Furthermore, the Petition asserted that foreign nationals could circumvent the prohibition on indirect political contributions by foreign nationals by making contributions to 501(c)(4) corporations knowing that their funds will be used to make contributions to political committees.⁷

The Commission published a Notice of Availability (“NOA”) on July 29, 2015, asking for public comment on the Petition.⁸ The Commission received 13 substantive comments on the Petition and one non-substantive comment (from an individual commenting on a tangential matter). Of the 13 substantive comments, three were from individuals supporting the Petition and 10 were from commenters who opposed the Petition. The three comments supporting the Petition included a broad statement of support for the Petition, and two of those individual commenters expressed general concern about the influence of corporate contributions on the political process.

The 10 comments opposed to initiating a rulemaking were received from four individuals and six organizations/professionals. Of the four comments from individuals opposing the Petition, one was from an individual who broadly opposed the proposed rulemaking, two were from individuals who contended that the proposed rules were beyond the Commission’s statutory authority, and one was from an individual who believed the proposed rules did not address the issue raised by the Petition of identifying

⁵ Petition at 2.

⁶ *Id.*

⁷ *See id.*

⁸ *See* Notice of Availability, 80 FR 45115 (July 29, 2015).

the original source of funds contributed to independent expenditure-only political committees. The primary and common themes of the organizational/professional comments were that the Petition sought to address a problem that does not exist, that promulgating new regulations would lead to confusion and burdens that would unnecessarily implicate the First Amendment, and that the Commission lacked the statutory authority to promulgate the proposed regulations.

In deciding whether to initiate a rulemaking in response to a petition, the Commission generally considers five factors: (1) the Commission’s statutory authority; (2) policy considerations; (3) the desirability of proceeding on a case-by-case basis; (4) the necessity or desirability of statutory revision; and (5) available agency resources.⁹ After considering these factors and reviewing the comments received on the petition, the Commission has decided not to initiate a rulemaking at this time.

First, and most significantly, the Commission lacks the statutory authority to promulgate a rule sought by the Petition. The Act empowers the Commission to “make, amend, or repeal such rules . . . as are necessary to carry out the provisions of [the] Act.”¹⁰ And as the Petition acknowledges, the Act does not require corporations and other organizations (except for political committees) to make contributions from a separate account subject to the prohibitions and reporting requirements of the Act.¹¹ Nor does the Act require such entities to disclose, as the Petition proposes, “the original source of all election-related contributions and expenditures, traceable through all

⁹ 11 CFR 200.5.

¹⁰ 52 U.S.C. 30107(a)(8).

¹¹ Corporations and labor organizations are prohibited from making contributions to candidates and party committees. 52 U.S.C. 30118(a), (b)(2); 11 CFR 114.2(b). Corporations may, however, make contributions to nonconnected political committees that make only independent expenditures and to non-contribution accounts of hybrid political committees. *See, e.g., Citizens United v. FEC*, 558 U.S. 310 (2010); *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*); Advisory Opinion 2011-11 (Colbert).

intermediary entities to a natural person.” The Commission may not impose such requirements without a statutory mandate to do so.

Second, the vast majority of the commenters, across the political spectrum, opposed the Petition. Given the public opposition to the Petition, and the fact that the Commission lacks statutory authority to implement the Petition’s proposal, there is no policy interest in pursuing a rulemaking, nor would it be a good use of Commission resources.

Furthermore, declining to pursue the proposed rulemaking will not require the Commission to proceed on a case-by-case-basis because the information sought by the petition is not required to be disclosed under the Act and Commission regulations.¹²

Lastly, the “necessity or desirability of statutory revision” weighs against pursuing the proposed rulemaking because the changes sought by Petitioners would require a statutory revision given that the Commission lacks the statutory authority to promulgate the rules proposed by Petitioners.¹³ Accordingly, after considering the comments received regarding the Petition and in consideration of each of the factors discussed, the Commission declines to initiate a rulemaking in response to the Petition.

Copies of the comments and the Petition for Rulemaking are available on the Commission’s website, <https://www.fec.gov/fosers/> (REG 2015-03 Contributions from Corporations and Other Organizations to Political Committees (2015)) and at the Commission’s Public Records Office, 1050 First Street NE., Washington, D.C. 20463, Monday through Friday between the hours of 9 a.m. and 5 p.m.

Dated: April 18, 2024.

On behalf of the Commission,

¹² 52 U.S.C. 30104, 30116, 30118, 30119, 30121, 30122; *see also* 11 CFR part 104, 11 CFR 110.1, 110.4, 110.20, 114.2, 115.2.

¹³ 11 CFR 200.5.

Sean J. Cooksey,

Chairman,

Federal Election Commission.

[FR Doc. 2024-08695 Filed: 4/23/2024 8:45 am; Publication Date: 4/24/2024]