

FEC Approves Final Coordination Rules

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In final rules promulgated on December 5, 2002, the Federal Election Commission defined the parameters of coordination in light of the mandates contained in the Bipartisan Campaign Reform Act of 2002. Under the new rules, both content and conduct standards must be implicated in order for the FEC to find that a communication was impermissibly coordinated with a candidate, an authorized committee, or a political party committee. This definition of coordination is important because, if coordination is found, a communication by a third party such as a PAC or a corporation becomes an in-kind contribution to a candidate or party and subject to the limitations and prohibitions of the Federal Election Campaign Act. In short, a coordinated corporate communication becomes an illegal corporate contribution.

Under the content prong of the FEC's two-part test, a communication must be one of the following types in order to be subject to the coordination analysis:

- An electioneering communication
- Express advocacy
- Republication, redistribution, and dissemination of campaign materials
- A public communication that refers to a political party or a clearly identified candidate for federal office and is disseminated within 120 days of an election, convention or caucus
- If the content of the communication is covered by one of the categories above, then the communication will be considered to be coordinated if any of the following types of conduct has occurred:

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- The covered communication was created, produced, or distributed *at the request or suggestion of* a candidate, authorized committee, political party committee or agent of any of the foregoing.
- A candidate, authorized committee, political party committee, or agent of any of the foregoing was *materially involved* in decisions regarding the content, intended audience, size, prominence, duration, timing, or frequency of the covered communication, the means or mode of communication or the specific media outlet used for the covered communication.
- The covered communication was created, produced, or distributed *after one or more substantial discussions* about the covered communication between the person paying for the communication (or its employees or agents) and the candidate who is clearly identified in the communication, his or her authorized committee, his or her opponent or opponent's authorized committee, a political party committee or an agent of any of the foregoing.
- A *political or media vendor common*, during the current election cycle, to the person paying for the communication and the candidate who is clearly identified in the covered communication, his or her opponent or the opponent's authorized committee, or a political party committee or an agent of any of the foregoing *uses or conveys to the person paying for the covered communication*: i) information about the clearly identified candidate's campaign plans, projects, activities, or needs or his or her opponent's campaign plans, projects, activities or needs; or ii) information used previously by the common vendor in providing services to the candidate who is clearly identified in the covered communication or his or her authorized committee, opponent or opponent's authorized committee, a political party committee or agent of any of the foregoing. *This information must be material to the creation, production or distribution of the covered communication.*
- A *former employee or independent contractor* of the candidate who is clearly identified in the covered communication, his or her opponent or the opponent's authorized committee, or a political party committee or an agent of any of the foregoing *uses or conveys to the person making the covered communication*: i) information about the clearly identified candidate's campaign plans, projects, activities, or needs or his or her opponent's campaign plans, projects, activities or needs; or ii) information used by the former employee or independent contractor in providing services to the candidate who is clearly identified in the covered communication or his or her authorized committee, or opponent, or opponent's authorized committee, political party committee or agent of any of the foregoing. *This information must be material to the creation, production or distribution of the covered communication.*