

FEC Amends Coordination Rules Effective December 1, 2010

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As previously reported in the November 2009 edition of *Election Law News*, the Federal Election Commission (FEC) has been working on amending its coordination rules to conform them to a court order. At the FEC's August 26, 2010, meeting, it approved amendments to the coordination rules that are scheduled to become effective December 1, 2010.

Under the campaign finance laws, certain public communications that are coordinated with a federal candidate or political party are treated as contributions to the candidate or political party. This means that persons who are prohibited by federal law from contributing to candidates and political parties—e.g., corporations and labor unions—are also prohibited from coordinating these public communications with candidates and political parties. Similarly, persons who are permitted to contribute within federally imposed limits; e.g., individuals and political committees—may only spend money on coordinated communications that do not exceed those limits.

The FEC's amendments to its coordination rules make two principal changes. First, the amendments expand the types of public communications that can be subject to coordination to include those that are the "functional equivalent of express advocacy." The amendments explain that these include communications "susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate." This is a concept that the FEC borrowed from the Supreme Court of the United States in its *FEC v. Wisconsin Right to Life, Inc.*, decision. Second, the amendments include an exemption from the coordination regulations for public communications involving purely commercial transactions.

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These new coordination rules will certainly have an impact. The Supreme Court's decision in *Citizens United v. FEC* earlier this year permits corporations and labor unions more leeway to engage in express advocacy and electioneering communications that may be subject to the coordination rules. However, corporate and labor union spending for these communications is impermissible if the corporations and labor unions engage in coordinating conduct. Political opponents will be on the lookout for coordinating conduct that is very fact specific and can be a trap for the unwary. Importantly, persons engaged in public communications that may be subject to the coordination rules should ensure that they have legally sufficient firewalls and safeguards in place to avoid coordinating conduct.