

of voter guide must give all candidates in the election (except for Presidential candidates) an equal opportunity to respond to the questions posed. Moreover, no candidate may receive greater prominence or substantially more space than other candidates participating in the voter guide. This requirement is similar to the candidate debate situation in which the forum may not be structured to promote one candidate over others.

The second type of voter guide must not contain an electioneering message. See, *Federal Election Commission v. Colorado Republican Federal Campaign Committee*, 59 F. 3d 1015 (1st Cir. 1995), *petition for cert. filed*, No. 95-489 (Sept. 21, 1995) (statement that an office holder has a right to run for the Senate, but doesn't have the right to change the facts constituted an electioneering message); and AOs 1985-14 and 1984-15. Similarly, the voter guide must not score or rate the candidates' responses in a way that conveys an electioneering message, such as by indicating that certain responses are "right" or "wrong" or receive a higher or lower grade than others.

7. Endorsements

The NPRM proposed adding new paragraph (c)(6) to section 114.4 to reflect the Commission's policy regarding public endorsements of candidates by corporations and labor organizations. In AO 1984-23, the Commission permitted a corporation to include an endorsement in a publication directed to its restricted class. In addition, the NPRM indicated that the endorsement could be made during the candidate's appearance before the restricted class. One comment objected to enhancing the publicity corporate endorsements will receive. Another comment opposed these restrictions on corporate endorsements because labor organization endorsements receive wider media coverage. The Commission believes these concerns are misplaced. Media coverage of endorsements by corporations or labor organizations is similar to media coverage of candidate appearances in that both are governed by the news media's determination as to the newsworthiness of the event.

The NPRM also sought comment on two alternative approaches regarding further corporate or labor efforts to publicize the endorsement through press releases and press conferences. Alternative D-1 sought to follow AO 1984-23 by allowing the corporation or labor organization to spend a *de minimis* amount to issue a press release regarding the endorsement to its usual media contacts. This language also

explicitly recognized that the press release may be accompanied by a routine press conference. In contrast, Alternative D-2 would have permitted the corporation or labor organization to publicize the endorsement only by responding to questions posed during a routine press conference.

Several comments preferred Alternative D-1, believing that Alternative D-2 could be easily manipulated, and is an artificial distinction. The Commission agrees, and has therefore decided to adopt Alternative D-1.

The proposed rules would also have permitted corporations and labor organizations to have contact with candidates to the limited extent necessary to make the endorsement, without treating these communications as impermissible in-kind contributions. The Commission sought comment, however, on whether this limitation on candidate contact would inhibit the corporation's or labor organization's ability to obtain the information needed to make an endorsement decision. While one commenter expressed concern that these discussions with candidates and their campaign staff were unnecessary and provided an opportunity to coordinate endorsements with candidates, another commenter believed that organizations need to know the nature and viability and organization of the campaign, and thus the candidate's likelihood of success.

The Commission agrees that organizations need to discuss various issues with candidates and their staff when deciding who to endorse. Hence, the language in section 114.4(c)(6)(ii) has been revised to allow a greater range of discussion with the candidate or campaign staff prior to the endorsement. However, the public announcement of the endorsement may not be coordinated with the candidate or the candidate's agents or authorized committee.

Finally, the new rules advise consulting the Internal Revenue Code and IRS regulations regarding restrictions and prohibitions on endorsements by nonprofit corporations. The Internal Revenue Service indicated in its comment that nonprofit corporations organized under 26 U.S.C. 501(c)(3) cannot endorse candidates.

8. Candidate Appearances on Educational Institution Premises

The FECA prohibits corporations from making contributions to or giving anything of value to a federal candidate, including free use of facilities, such as halls and auditoriums. Since most

private colleges and universities are incorporated, this prohibition applies to them. The NPRM included draft provisions to clarify the Commission's interpretation of this statutory prohibition as it applies to incorporated educational institutions. In the proposed rules, section 114.4(c)(7) included an exception to permit colleges, universities, and other incorporated nonprofit educational institutions which are exempt from federal taxation under 26 U.S.C. 501(c)(3) to make their premises available to groups that are associated with the school and wish to invite candidates to address students, faculty and the general public, under certain conditions.

Several comments and witnesses expressed an overall concern that the Commission was attempting to over-regulate political speech on campuses. They pointed out that historically, universities have sought to promote the free exchange and debate of ideas in an intellectual environment, and have tried to stimulate student interest in democratic processes and institutions. They were also concerned that the new rules could affect classroom discussions. The Internal Revenue Service indicated that the proposed FEC rules were more specific than the "facts and circumstances" test used by the IRS, but did not conflict with that test.

The Commission has now revised new paragraph (c)(7) of section 114.4 in a number of respects to clarify the intent of the new rules. First, language has been added at paragraph (c)(7)(i) to clarify that educational institutions may continue to charge candidates the usual and normal charge for the use of their facilities. Secondly, private colleges, universities, and other incorporated nonprofit educational institutions may make their premises available to candidates who wish to address students, faculty, the academic community, or the general public (whomever is invited) at no cost or for less than the usual and normal charge. See 11 CFR 114.4(c)(7)(ii). However, the school must make reasonable efforts to ensure that the appearances are conducted as speeches, question and answer sessions, or other academic events, and do not constitute campaign rallies. Incorporated educational institutions may also continue to allow individuals who are candidates to appear in another capacity, such as officeholders or prominent speakers on particular issues, if they do not refer to the campaign or their status as candidates. See, e.g., AO 1992-6. The new rules also do not prevent candidates from participating in campus