

FEC Advisory Opinion Corner

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The Federal Election Commission (FEC) recently took action on several advisory opinion requests. Four recent opinions are discussed in detail below.

Payroll Deduction: Advisory Opinion 2012-15 (American Physical Therapy Association)

In Advisory Opinion 2012-15, the FEC determined that the American Physical Therapy Association (APTA) may solicit, via payroll deduction, contributions to its separate, segregated fund from its individual members who are employees of companies owned by other individual members so long as APTA or its PAC pays the payroll deduction costs in advance.

The APTA is a 501(c)(6) organization with individual members, some of whom own corporations involved in providing physical therapy. Additional individual members of the APTA work at these member-owned corporations. APTA would like to solicit contributions from members employed at member-owned corporations to its PAC through a payroll deduction system. The FEC determined that APTA may solicit these member-employees. However, concerning the proposed payroll deduction plan, corporations are prohibited from facilitating contributions except to the separate, segregated fund of the corporation itself. Thus, the FEC concluded that APTA or its PAC must pay-in advance—the corporations' costs of the payroll deduction. These costs may not later be reimbursed.

Administrative Costs: Advisory Opinion 2012-18 (National Right to Life Committee)

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In Advisory Opinion 2012-18, the National Right to Life Committee, a 501(c)(4) organization, explained its intent to make payments to the Victory Fund (an independent expenditure-only political committee established by its separate, segregated fund) for establishment, administration and solicitation costs.

The FEC declared that such payments are reportable contributions to the independent expenditure-only political committee under federal campaign finance rules. Although the costs of establishing, administering or soliciting contributions to a corporation's separate, segregated fund are not contributions for purposes of federal campaign finance rules, the FEC stated that such payments by a corporation to an independent expenditure-only political committee are not similarly exempt.

Electioneering Communications: Advisory Opinion 2012-19 (American Future Fund)

In Advisory Opinion 2012-19, the FEC considered whether eight proposed television ads were electioneering communications. An electioneering communication is a communication that refers to a clearly identified candidate, is publicly distributed within 60 days before a general election or 30 days before a primary election or a convention or caucus of a political party, and is targeted to the relevant electorate.

The FEC determined that two of the eight advertisements did refer to a clearly identified candidate and, thus, were electioneering communications. One of these advertisements referenced "Obamacare" in reference to the Patient Protection and Affordable Care Act and the other advertisement referred to "Romneycare" in reference to health care reform in Massachusetts. The FEC ruled that these advertisements referenced clearly identified candidates for a federal office—President Barack Obama and former Massachusetts Governor Mitt Romney. The FEC noted that a reference to the name of a candidate in the context of legislation is still a reference to the candidate.

A third advertisement referred to Secretary of Health and Human Services Kathleen Sebelius. The FEC concluded that since Secretary Sebelius is not a federal candidate, the advertisement does not include a reference to a clearly identified candidate and is not an electioneering communication.

Finally, the FEC could not reach an opinion as to five other advertisements. These other advertisements contained references to the "Administration," "the White House," "the government" and "government run healthcare" and also inclusions of President Obama's voice.

Disaffiliation: Advisory Opinion 2012-21 (Primerica)

In Advisory Opinion 2012-21, the FEC considered the disaffiliation of Primerica, Inc. and Citigroup, Inc. In 2009, Primerica, Inc. was created by Citigroup, Inc. but was spun off in April 2010. Political committees established, financed, maintained or controlled by certain entities are affiliated and contributions to or by all such political committees are treated as made to or by a single political committee. While some political committees are considered *per se* affiliated (such as political committees of a corporation and its subsidiaries), in the absence of *per se* affiliation, the FEC uses 10 non-exhaustive factors to determine whether organizations are affiliated.

After reviewing the 10 factors for Primerica, Inc. and Citigroup, Inc., the FEC concluded that Primerica, Inc. and Citigroup, Inc. are not affiliated. In examining the factors with respect to these entities, the FEC noted that Citigroup does not currently own Primerica stock, does not control the day-to-day operations of Primerica, has only one representative on Primerica's Board of Directors and has contracts with Primerica that reflect arm's length transactions and that are standard in the industry.