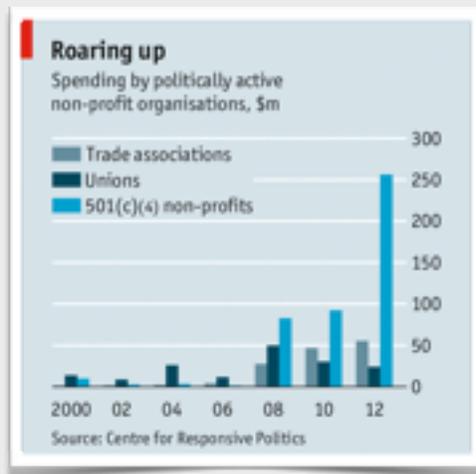


NONPROFITS IN THE NEWS

IRS Rule Changes on 'Candidate Related Political Activity'

Political Expenditures



“Since the Supreme Court's 2010 Citizens United ruling, nonprofit organizations, particularly social welfare nonprofits organized under section 501(c)(4) of the tax code and trade associations organized under section 501(c)(6), have radically increased their reported political spending. In 2012, these groups reported to the Federal Election Commission spending in excess of \$300 million. That was up from \$69 million in 2008 and nearly \$6 million in 2004.”

Source: Nicholas Confessore, New Rules Would Rein In Nonprofits Political Role, New York Times, November 26, 2013.

Money, Politics, NonProfits

The IRS and Treasury Department are proposing a new set of guidelines for social welfare organizations §501(c)(4). The bulk of the new rules are specifically related to the term ‘candidate-related political activity’.

Current rules are vague as to the amount of political activity a social welfare organization can engage in. The regulatory interpretation of the laws governing 501(c)(4) organizations dictate that these group’s activities must ‘primarily’ be towards the social welfare purpose. If adopted, the new rules would not allow any ‘candidate-related political activity’, and defines this term more explicitly.

This shift in policy will alter the review rubric for the IRS when looking at social welfare organizations and the work they conduct. Currently, a facts and circumstances test is used, which is both resource heavy, and can lead to accusations of inconsistent outcomes. If adopted, the proposed regulations would provide investigators with a more clear and definitive list of activities that are impermissible. These activities, which would constitute candidate-related political activity, were created using federal and state elections law, and other existing IRS provisions. They are provided on the next page.



Under the proposed guidelines, candidate-related political activity includes:

1. Communications

- a. Communications that expressly advocate for a clearly identified political candidate or candidates of a political party.
- b. Communications that are made within 60 days of a general election (or within 30 days of a primary election) and clearly identify a candidate or political party.
- c. Communications expenditures that must be reported to the Federal Election Commission.

2. Grants and Contributions

- a. Any contribution that is recognized under campaign finance law as a reportable contribution.
- b. Grants to section 527 political organizations and other tax-exempt organizations that conduct candidate-related political activities (note that a grantor can rely on a written certification from a grantee stating that it does not engage in, and will not use grant funds for, candidate-related political activity).

3. Activities Closely Related to Elections or Candidates

- a. Voter registration drives and "get-out-the-vote" drives.
- b. Distribution of any material prepared by or on behalf of a candidate or by a section 527 political organization.
- c. Preparation or distribution of voter guides that refer to candidates (or, in a general election, to political parties).
- d. Holding an event within 60 days of a general election (or within 30 days of a primary election) at which a candidate appears as part of the program.