

**West Virginia State Election Commission
Response to Public Comment**

Rule: CSR 146-01. Corporate and Membership Organization Political Activity

Type: Legislative

Comment Period: June 6, 2019 – July 10, 2019

Commenter: Austin Graham with the Campaign Legal Center (Washington, D.C.) in conjunction with WV Citizens for Clean Elections.

COMMENT:

Definition of “Restricted Group”:

In the proposed rule, “restricted group” is defined as “the membership organization’s members and the executive or administrative personnel of the membership organization and their families.” The definition marks the limited class of individuals from whom membership organizations may solicit and receive contributions for their separate segregated funds, in accordance with the Code’s requirements.¹ However, the Code also includes analogous requirements for a separate segregated fund established by a corporation, which may only solicit and receive political contributions for the fund from its stockholders, executive or administrative personnel, and the immediate family members of those individuals.²

Because the definition of “restricted group” is relevant for corporations as well for membership organizations, we recommend amending the definition in the final rule to clarify that it includes certain individuals employed by or affiliated with a corporation, including its executive or administrative personnel, shareholders, and the immediate family members of those individuals. Elsewhere, § 146-3-5.3.1.d of the proposed rule defines “restricted classes,” for purposes of contribution restrictions for corporations and membership organizations, to include a corporation’s stockholders and executive or administrative personnel, along with their family members; § 146-3-5.3.1’s definition of “restricted classes” does not explain who comprises the “restricted classes” of membership organizations, however.

Accordingly, the final rule should include a single, comprehensive definition that sets forth the meaning of “restricted group or classes” for both corporations and membership organizations.³ For guidance in formulating this definition, we suggest the Commission review the FEC’s regulation defining restricted classes of corporations and membership organizations.⁴

RESPONSE:

¹ See W. Va. Code § 3-8-1a(10) (defining “corporate political action committee” as a “a separate segregated fund of a corporation that may only accept contributions from its restricted group as outlined by the rules of the State Election Commission.”) (emphasis added); see also id. § 3-8-8(c)(2)(D)-(E).

² W. Va. Code § 3-8-8(c)(2)(D)-(E).

³ Alternatively, since corporate and membership organizations’ political activity currently is the subject of a separate rulemaking, the Commission could move provisions applicable to corporations and membership organizations in § 146-3 to § 146-1 as part of its amendments. See Notice of Public Comment Period, Amendment to C.S.R. § 146-1, “Corporate & Membership Organization Political Activity”, Vol. XXXVI, W. Va. Reg., Issue No. 23 (June 7, 2019).

⁴ 11 C.F.R. § 114.1(j).

For consistency and to avoid confusion, the term “restricted class” will be removed and replaced uniformly with the term “restricted group,” and will incorporate membership organizations and corporations, their associated personnel, stockholders, etc. and their families.