



DISCLAIMER

New Internet Communications Rules Issued in Time for 2024 Election

12.06.2022 | By [William A. Powers](#), [Mariel E. Turner](#)

More than 15 years after the Federal Election Commission (FEC) issued its first Internet Communications regulations, and 11 years after the start of the current Internet Communications Disclaimer rulemaking, the FEC voted 5-0 with one abstention to require disclaimers on additional web-based communications. Previously, only ads placed for a fee on another person's website or on a social media platform required a disclaimer. This essentially encompassed "banner ads" and paid social media advertising but little else. Campaigns, Super PACs and advocacy groups spending money on advertising in 2024 will now be subject to a more stringent FEC disclaimer rule for their web-based campaigning.

The FEC's Road to New Rules

The FEC will now require "a clear and conspicuous disclaimer identifying any person or persons that pays to place an internet public communication" be added to all communications using the internet that are placed for a fee on another person's website, digital device, application or advertising platform.

Before it voted on the approved rule, however, the FEC declined to adopt part of the initially proposed Final Rule that would also have applied disclaimer requirements to communications that were "promoted" by third parties using the internet. Rather than include that language, the FEC approved a further 30-day comment period in which the public may comment on whether to include such promoted communications in its definition of a "public communication," thereby triggering the FECA's disclaimer requirements. The disclaimer requirement for "promoting" activity on the internet would apply to any person or persons that pay to place the communication on the internet, irrespective of who originally created, produced or distributed the communication.

What will now be required?

Under the new rules, the disclaimer appearing on an internet public communication must comply with the following requirements:

- **Type size:** sufficient size to be clearly readable by the recipient and disclaimer text that is at least as large as the majority of the other text
- **Color:** reasonable degree of contrast between the background and the text. For example, black text on a white background
- **Text or graphics:** disclaimer must be viewable without end user action
- **Video:** disclaimer must be visible for at least 4 seconds and viewable without end user action
- **Audio:** absent video, graphic or text, the disclaimer must be within the audio content

The amended rule allows some communications to use an “adapted disclaimer,” when space or character constraints would cause the full disclaimer to occupy more than 25% of the communication, or when the full disclaimer cannot be provided. The adapted disclaimer allows for identifying the funder of the public communication using a commonly understood abbreviation or acronym, so long as the full disclaimer is available via scrolling or hover-over text, pup-up screens, rotating panels or hyperlinks to a landing page.

When will the rule take effect?

The rule will become effective 30 days after it is submitted to Congress for a legislative review period, so it will not take effect until January 2023 at the earliest. As mentioned, the FEC could tweak the rule after its new comment period on “promoted” internet communications, so we will be following developments and changes that could affect internet advocacy communications in the 2024 election cycle and beyond, and make you aware of any changes in a future eAlert.