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Updated March 25, 2019

Foreign Money and U.S. Campaign Finance Policy

Introduction

Federal campaign finance law and regulation prohibits foreign money in U.S. elections. The public record reveals little evidence that foreign money has intruded into U.S. campaigns systematically or decisively. Prohibited funds surreptitiously affecting campaigns in the United States nonetheless remains a policy concern. Some policymakers argue that existing disclosure requirements and the 2010 *Citizens United* Supreme Court ruling increase the risk for untraceable foreign funds to affect U.S. campaigns. Others counter that existing prohibitions clearly bar foreign funds and that hypothetical concerns are exaggerated, and that proposed restrictions on corporate spending could target particular companies or types of speech, or both. For additional detail, see CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*, by R. Sam Garrett; and CRS Legal Sidebar WSLG1857, *Foreign Money and U.S. Elections*, by L. Paige Whitaker.

Foreign National Prohibition in FECA

The Federal Election Campaign Act (FECA) prohibits foreign nationals from making contributions or expenditures in U.S. elections. This prohibition applies not only to federal elections, but also to state and local ones. The foreign national prohibition is broad, restricting avenues for foreign funds to flow to or be accepted by political campaigns, parties, or political action committees (PACs).

FECA bars foreign nationals from "directly or indirectly" making contributions or donating another "thing of value" in any federal, state, or local election; and prohibits contributions to political parties or other political committees (52 U.S.C. §30121(a)(1)). Any "person" (e.g., a U.S. citizen) may not "solicit or accept" a contribution or donation from a foreign national (52 U.S.C. §30121(a)(2)). Foreign nationals may not make expenditures, including independent expenditures (IEs, which call for election or defeat of candidates) or electioneering communications (ECs, which mention candidates during pre-election periods but do not expressly advocate election or defeat).

Federal Election Commission (FEC) regulations (11 C.F.R. §110.20) bar foreign nationals from participating in decisions about how U.S. unions, corporations, or political committees (e.g., parties) participate in American campaigns. Other provisions in FECA or FEC regulations, such as those concerning coordination between campaigns and other entities, could be relevant in specific circumstances.

The FEC is responsible for civil enforcement of federal campaign finance law and regulation. The agency may refer cases of suspected "knowing and willful" violations (52 U.S.C. §30109(a)(5)(C)), including regarding foreign funds, to the U.S. Attorney General for criminal investigation.

U.S. Subsidiaries of Foreign Corporations

Two different parts of FECA restrict foreign corporations' and domestic subsidiaries' campaign involvement. FECA prohibits a foreign-parent corporation from making *expenditures or contributions* to influence U.S. elections. Separately, the law also prohibits corporations and unions from using their treasury funds (e.g., revenues from profits or dues) to make *contributions*. These provisions mean that foreign corporations may have no involvement in U.S. elections, but their domestic subsidiaries may do so as discussed below. The domestic subsidiary of the foreign parent could have at least two options for influencing elections.

First, the subsidiary could spend funds independently of a campaign. After the Supreme Court's 2010 *Citizens United* decision, corporations (including domestic subsidiaries) and unions may use their treasury funds to engage in express advocacy through independent expenditures. They also could make electioneering communications. The subsidiary also could provide treasury funds to other entities, such as super PACs or a trade association (groups primarily regulated under Section 501(c)(6) of the *Internal Revenue Code*), for use in those entities' IEs or ECs.

Second, the domestic subsidiary could form a traditional PAC. PACs may make IEs or ECs, and they also may contribute directly to candidates, parties, or other PACs. Forming a PAC, however, does not permit the corporation to evade either the ban on treasury contributions or the foreign national ban. For example, the domestic subsidiary may provide minimal administrative support for the PAC, but any funds the PAC uses to affect elections must be raised through voluntary, limited contributions ($5,000 per election for contributions to candidate committees). In addition, FEC regulations require that only U.S. citizens or permanent resident aliens participate in any spending or contributions decisions that affect U.S. campaigns. Foreign nationals could not, for example, solicit PAC contributions or direct the domestic subsidiary's PAC to make an IE.

Existing disclosure requirements would make information about most of these activities publicly available. Specifically, the original sources of funds used in independent expenditures are not typically disclosed if those funds are routed through an intermediary, such as a super PAC or trade association. Any entity making an IE or EC, however, is required to report the expenditure even if its donors are not disclosed. Relevant reporting requirements address campaign contributions and expenditures generally, not just those that might be connected to foreign sources or domestic subsidiaries. Additional detail appears in other CRS products.

Selected Historical Examples of Prohibited or Questionable Foreign Funds

Despite the protections discussed above, the presence of foreign funds—or possibly undetected foreign funds—remains a policy concern. Modern concern dates at least to the early 1970s, when some cash discovered on the Watergate burglars (who worked for President Nixon's reelection campaign) was found to have been laundered through Mexico. Most episodes are less spectacular; they involve small amounts and apparently result from mistakes. The FEC often pursues these cases, underscoring that the prohibition applies regardless of amount. For example, in 2014, the agency assessed a $3,000 fine on a PAC that "self-reported" accepting annual contributions from a single foreign national. When intentional violations of the foreign-national prohibition occur, cases can be complex and prominent. They often involve other parts of FECA and other areas of law. Selected examples include the following.

- During the early and mid-1990s, allegations emerged that foreign governments or nationals were attempting to influence U.S. policy decisions through campaign contributions. In particular, throughout the 1996 cycle, a series of large contributions solicited or contributed by foreign nationals with ties to Asia flowed to the Democratic National Committee (DNC). This episode included a widely publicized fundraiser held at a California Buddhist temple. Questions also emerged about funds originating in Hong Kong that went to the Republican National Committee (RNC) during the mid-1990s. The Senate Governmental Affairs Committee and House Government Reform and Oversight Committee, and other committees, conducted extensive and sometimes controversial investigations during the 105th and 106th Congresses. Partially as a result, Congress banned "soft money" in federal elections through the 2002 Bipartisan Campaign Reform Act (BCRA). Before BCRA, both major parties relied heavily on unlimited soft money contributions for "party-building" activities.
- In 2010, a homeowners' association PAC paid a $300,000 fine after entering into a conciliation agreement with the FEC. Among other violations, the PAC acknowledged that it had not properly screened its donors for prohibited foreign contributions and that it had accepted prohibited contributions.
- In 2015, the FEC deadlocked in an enforcement case concerning whether FECA's foreign national prohibition applied to local ballot initiatives. In that case, a Luxembourg-based company and a domestic subsidiary contributed money to oppose a Los Angeles ballot initiative. A California state campaign finance agency fined the companies more than $60,000 after the FEC deadlocked.

Recent Legislative Activity

Legislation introduced in the 115th Congress, 116th Congress, or both, concerning foreign money would amend FECA to require additional verification of online credit card contributions; prohibit U.S. companies with various levels of foreign ownership or control from making campaign contributions or expenditures; require tax-exempt organizations to certify that they did not accept foreign funds for use in federal elections; and prohibit foreign nationals from making contributions or expenditures in state and local initiatives and referenda. Some of these provisions appear in H.R. 1, which the House passed in March 2019. Language in the bill also would clarify that foreign nationals may not participate in decisionmaking surrounding U.S. political contributions or expenditures, and that the prohibition applies to super PAC activity.

Other recent legislation does not specifically address foreign funds but could indirectly do so. For example, legislation that proposes additional disclosure requirements or tightens restrictions on coordination between campaigns and other entities, such as super PACs, could further discourage use of prohibited foreign funds or make them easier to detect. Supporters of such approaches argue that additional disclosure requirements and spending restrictions are a reasonable safeguard against questionable or prohibited funds from domestic and foreign sources. Opponents counter that although these requirements might provide additional protections, they also could uniquely burden certain types of organizations, such as those with foreign assets, and could restrict the political speech of these entities or their donors. Several congressional committees have investigated reported foreign influence in the 2016 elections.

Recent Federal Election Commission Activity

In response to reports of Russian interference with the 2016 elections, the FEC has debated whether to adopt a new policy statement, initiate a rulemaking, or pursue additional enforcement concerning foreign money. In September 2016, the FEC directed its general counsel to prioritize enforcement cases involving alleged foreign influence. Because FECA prohibits the FEC from publicizing enforcement information before cases are closed, it is unclear how significant pending civil enforcement cases might be. In March 2019, advocacy groups and media organizations reported that the FEC had reached conciliation agreements, including penalties totaling more than $900,000, with a super PAC and a domestic subsidiary of a foreign corporation concerning impermissible foreign-national involvement in 2016 electioneering.

Those supporting additional commission action generally focus on the fact that any substantive interference in an election would require raising or spending money, therefore potentially violating the FECA foreign national ban. From this perspective, the FEC has unique expertise in monitoring how those funds might affect elections. Those who are skeptical of additional FEC action have suggested that the agency should focus on specific enforcement cases rather than a new rulemaking, and have noted that the FEC's jurisdiction does not include broader voting and elections issues.

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