



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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**MEMORANDUM**

**TO:** The Commission

**THROUGH:** James A. Pehrkon  
Staff Director

**FROM:** Lawrence H. Norton  
General Counsel

Rosemary C. Smith  
Acting Associate General Counsel

John C. Vergelli  
Acting Assistant General Counsel

Mark Allen  
Attorney

Anthony Buckley  
Attorney

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Attorney

Richard Ewell  
Attorney

**SUBJECT:** Draft Notice of Proposed Rulemaking on Coordinated and Independent Expenditures

SEP 10 2002

**AGENDA ITEM**  
For Meeting of: 9-12-02

**SUBMITTED LATE**

Attached is a draft Notice of Proposed Rulemaking ("NPRM") addressing issues related to Coordinated and Independent Expenditures raised in the Bipartisan Campaign Reform Act of 2002. This draft reflects discussion on these issues during the Regulations Committee meeting on August 26, 2002.

**Recommendation:**

The Office of the General Counsel recommends that the Commission approve the attached NPRM for publication in the *Federal Register*.

Attachment

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**FEDERAL ELECTION COMMISSION**

**11 CFR Parts 100, 102, 104, 105, 109, 110, and 114**

**[Notice 2002 - >]**

**Coordinated and Independent Expenditures**

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Federal Election Commission seeks comments on proposed changes to its rules relating to payments for communications that are coordinated with a candidate, a candidate’s authorized committee, or a political party committee. The proposed rules would also address independent expenditures and expenditures by political party committees that are made either in coordination with, or independently from, candidates. These regulations would implement several requirements in the Bipartisan Campaign Reform Act of 2002 (“BCRA”) that significantly amend the Federal Election Campaign Act of 1971, as amended (“FECA” or the “Act”). Further information is contained in the Supplementary Information that follows. Please note that the Commission has not made a final decision on any of these proposals.

**DATES:** Comments must be received on or before October 11, 2002. The Commission will hold a hearing on these proposed rules on October 23 and 24, 2002, at 9:30 a.m. Commenters wishing to testify at the hearing must submit written or electronic comments

1 no later than October 11, 2002, and must so-indicate in their  
2 comments.  
3 **ADDRESSES:** All comments should be addressed to Mr. John Vergelli, Acting  
4 Assistant General Counsel, and must be submitted in either  
5 electronic or written form. Electronic mail comments should be  
6 sent to BCRAcoord@fec.gov and must include the full name,  
7 electronic mail address, and postal service address of the  
8 commenter. Electronic mail comments that do not contain the full  
9 name, electronic mail address, and postal service address of the  
10 commenter will not be considered. Faxed comments should be  
11 sent to (202) 219-3923, with printed copy follow-up to ensure  
12 legibility. Written comments and printed copies of faxed  
13 comments should be sent to the Federal Election Commission, 999  
14 E Street, N.W., Washington, D.C., 20463. Commenters are  
15 strongly encouraged to submit comments electronically to ensure  
16 timely receipt and consideration. The Commission will make  
17 every effort to post public comments on its website within ten (10)  
18 business days of the close of the comment period. The hearing  
19 will be held in the Commission's ninth floor meeting room, 999 E  
20 St. N.W., Washington, D.C.

21 **FOR FURTHER**  
22 **INFORMATION**  
23 **CONTACT:**

Mr. John Vergelli, Acting Assistant General Counsel, or Attorneys  
24 Mark Allen (coordinated party expenditures), Richard Ewell

1 (coordinated communications paid for by other political  
2 committees and other persons), Tony Buckley (electioneering  
3 communications), or Cheryl Fowle (reporting requirements), 999 E  
4 Street N.W., Washington, D.C., 20463, (202) 694-1650 or (800)  
5 424-9530.

6 **SUPPLEMENTARY**

7 **INFORMATION:** The Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L.  
8 107-155, 116 Stat. 81 (March 27, 2002), contains extensive and detailed amendments to  
9 the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"),  
10 2 U.S.C. 431 et seq. This is one of a series of Notices of Proposed Rulemakings  
11 ("NPRM") the Commission is publishing over the next several months in order to meet  
12 the rulemaking deadlines set out in BCRA. The deadline for the promulgation of these  
13 rules is 270 days after the date of enactment of BCRA, or December 22, 2002.

14 This NPRM primarily addresses communications that are made independently  
15 from, or in coordination with, a candidate, an authorized committee of a candidate, or a  
16 political party committee. The proposed regulations would set forth the meaning of  
17 "coordination." They would also set forth statutory requirements for political party  
18 committees with respect to the permitted timing of independent and coordinated  
19 expenditures, and transfers and assignments.

20  
21 **Introduction**

22 **I. Statutory Overview**

23 FECA limits the amount of contributions to Federal candidates, their authorized  
24 committees, and other political committees. 2 U.S.C. 441a(a). Under FECA and the

1 Commission's regulations, these contributions may take the form of money or "anything  
2 of value" (the latter would be an "in-kind contribution" provided to a candidate or  
3 political committee. See 11 CFR 100.52(d)(1). Candidates must disclose all  
4 contributions they receive. 2 U.S.C. 434(b)(2). Since the recipient does not actually  
5 receive a cash payment from an in-kind contribution, the recipient must report the value  
6 of an in-kind contribution as both a contribution received and an expenditure made so  
7 that the receipt of the contribution will be reported without overstating the cash-on-hand  
8 in the committee's treasury. See 11 CFR 104.13.

## 9 II. Overview of BCRA Changes to FECA and Commission Regulations

10 In BCRA, Congress revised FECA's definition of "independent expenditure."  
11 2 U.S.C. 431(17). The revision added a reference to political party committees and their  
12 agents and reworked other aspects of the former language. Corresponding revisions  
13 would be made to the regulations in 11 CFR 100.16.

14 Congress repealed the Commission's pre-BCRA regulations regarding  
15 "coordinated general public political communications" (at pre-BCRA 11 CFR 100.23)  
16 and directed the Commission to adopt new regulations on "coordinated communications"  
17 in their place. Pub. L. 107-155, sec. 214(b), (c) (March 27, 2002). The Commission  
18 proposes a new section 11 CFR 109.21 to implement the Congressional mandate.

19 In addition, the proposed rules would implement several new restrictions found in  
20 BCRA on the timing of independent and coordinated expenditures made by committees  
21 of political parties. 2 U.S.C. 441a(d)(4). Those regulations would be in new 11 CFR part  
22 109, subpart D. Similarly, Congress established new restrictions on transfers between  
23 committees of a political party. 2 U.S.C. 441a(d)(4). Those changes, as well as

1 amendments to the rules on the assignment of coordinated party expenditure authority in  
2 pre-BCRA 11 CFR 110.7, would also be reflected in new 11 CFR part 109, subpart D.

3 Finally, Congress established new reporting obligations for independent  
4 expenditures. 2 U.S.C. 434(a)(5) and (g). See proposed 11 CFR 100.19, 104.4, 104.5,  
5 105.2, and 109.10.

### 6 7 **Definition of Independent Expenditure**

8 The Commission proposes several changes to the definition of “independent  
9 expenditure” in 11 CFR 100.16 in light of several Congressional changes to the statutory  
10 definition of the same term at 2 U.S.C. 431(17). Most significantly, the statutory  
11 definition of “independent expenditure” was modified to exclude coordination with a  
12 political party committee or its agents (in addition to the pre-BCRA exclusion of  
13 coordination with candidates). Ibid.

14 Proposed section 100.16 would contain two paragraphs. Proposed paragraph (a)  
15 would include the revised pre-BCRA section 100.16. The first sentence of proposed  
16 paragraph (a) would be changed by adding a reference to political party committees and  
17 their agents, tracking BCRA’s changes in 2 U.S.C. 431(17).

18 In BCRA, Congress deleted the term “consultation” from the list of activities that  
19 compromise the independence of expenditures. See 2 U.S.C. 431(17)(B). Proposed  
20 paragraph (a), however, would retain the term because it remains, post-BCRA, in other  
21 related provisions of the Act. Expenditures that are made in “cooperation, consultation,  
22 or concert with, or at the request or suggestion of” candidates, political committees, and  
23 agents thereof are contributions. See 2 U.S.C. 441a(a)(7)(B)(i) (emphasis added). Most

1 importantly, the term “consultation” is used in a closely related provision added by  
2 BCRA itself. See 2 U.S.C. 441a(7)(B)(ii) as amended by Pub. L. 107-155, sec. 214(a)  
3 (expenditures made in “cooperation, consultation, or concert, with, or at the request or  
4 suggestion of, a national, State, or local committee of a political party”). Thus, the  
5 proposed rules would retain the term “consultation” as an element in the regulatory  
6 definition of “independent expenditure.”

7 Similarly, the Commission notes that while Congress referred to expenditures  
8 “not made in concert or cooperation with . . . a political party committee or its agents” in  
9 2 U.S.C. 431(17) (emphasis added), it did not refer to agents of a party committee in  
10 2 U.S.C. 441a(7)(B)(ii) when describing coordination with a party committee. The  
11 Commission would include agents of political party committees as persons who might  
12 take actions that would cause a communication to be coordinated with that party  
13 committee.

14 In BCRA, Congress repealed the pre-BCRA regulatory definition of “coordinated  
15 general public political communication.” See 11 CFR 100.23, repealed by Pub. L. 107-  
16 155, section 214(b) (March 27, 2002). Therefore, proposed paragraph (a) of section  
17 100.16 would delete the term “coordinated general public political communication,” and  
18 replace it with references to “coordinated communications” from proposed section  
19 109.21 and “party coordinated communications” from proposed section 109.37.

20 The Commission would move to proposed paragraph (b) of section 100.16,  
21 without other changes, the rule that expenditures made by a candidate’s authorized  
22 committee on behalf of that candidate would never qualify as an independent

1 expenditure. This rule, which is found at pre-BCRA 11 CFR 109.1(e), clarifies the basic  
2 definition of “independent expenditure.”

3

#### 4 **Proposed Reorganization of 11 CFR Part 109**

5 The Commission proposes to reorganize 11 CFR part 109 into four subparts.

6 Subpart A would explain the scope of part 109 and define a key term. Subpart B would  
7 address reporting of independent expenditures. Subpart C would address coordination  
8 between a candidate or a political party and a person making a communication. Subpart  
9 D would set forth provisions applicable only to political party committees, including  
10 some pertaining to independent expenditures and support of candidates through  
11 coordinated party expenditures. See 2 U.S.C. 441a(d). The special authority for  
12 coordinated expenditures by political party committees, previously set forth in pre-BCRA  
13 11 CFR 110.7, would be relocated to proposed 11 CFR 109.32 and other sections in  
14 subpart D.

15

#### 16 **Proposed Subpart A of Part 109: Scope and Definitions.**

17 Proposed new section 109.1 would introduce the scope of part 109. A definition  
18 found in pre-BCRA section 109.1 would be revised and moved to proposed section  
19 109.3. The Commission would move the reporting requirements of pre-BCRA  
20 11 CFR 109.2 to proposed 11 CFR 109.10, reserving section 109.2 to avoid potential  
21 confusion regarding this move.

22 Proposed 11 CFR 109.3 would define the term “agent” for use throughout part  
23 109. This definition of “agent” would be based on the same concept that the Commission



1 used in framing the definition of “agent” in the non-Federal funds or “Soft Money”  
2 rulemaking completed earlier this year. Final Rules and Explanation and Justification,  
3 “Prohibited and Excessive Contributions: Non-Federal Funds of Soft Money,” 67 Fed.  
4 Register 49,081 (July 29, 2002). The definition identifies the principal and enumerates  
5 particular activities in which the agent may engage on behalf of the principal. In order to  
6 preclude confusion with other regulatory definitions of “agent” (e.g., 11 CFR 300.2(b)),  
7 this definition would be explicitly limited to 11 CFR part 109. The definition would  
8 differ in several respects from its pre-BCRA form in 11 CFR 109.1(b)(5). The proposed  
9 definition would encompass political party committees because the Act, as amended by  
10 BCRA, specifically covers, in the context of coordination, payments made by a person on  
11 behalf of political party committees. See 2 U.S.C. 441a(a)(7)(B)(ii).

12 The proposed revised definition of “agent” would focus on whether a purported  
13 agent has “actual authority, either express or implied,” to engage in one or more specified  
14 activities on behalf of specified principals. The specified activities would vary slightly  
15 depending on whether the agent engages in those activities on behalf of a national, State,  
16 district, or local committee of a party committee, or on behalf of a Federal candidate or  
17 officeholder. See proposed 11 CFR 109.3(a) and (b), respectively. The activities  
18 specified in the proposed rule would closely parallel activities associated with  
19 coordinated communications, as described in proposed 11 CFR 109.21(b), and would  
20 include the solicitation or receipt of contributions or other transfers of funds, making or  
21 authorizing certain campaign-related communications, and material involvement in  
22 decisions regarding specific aspects of communications. See proposed 11 CFR  
23 109.3(a)(1) through (5) and (b)(1) through (5). Thus, a person would be an agent when

1 (1) expressly authorized by a specific principal to engage in specific activities; (2)  
2 engages in those activities on behalf of that specific principal; and (3) those activities  
3 would result in a coordinated communication if done directly by the candidate or a  
4 political party official.

5 The Commission seeks comments on whether the scope of the definition of  
6 “agent” should explicitly state that a person must be “acting within the scope of his or her  
7 authority as an agent” while engaged in the action in question (e.g., making a request,  
8 participating in a substantial discussion) before he or she is considered an agent? Should  
9 the person be required to convey information that was only available to that person  
10 because of his or her role as an agent for the candidate or political party committee?  
11 Should a person be considered an agent if he or she bases his or her recommendations to  
12 a third party on information that was gained only due to that person’s role as an agent for  
13 the campaign?

14 The Commission’s pre-BCRA regulations include a special definition of “person”  
15 for part 109. 11 CFR 109.1(b)(1). The Commission has not included this separate  
16 definition of the term “person” in this Notice of Proposed Rulemaking because the term  
17 is already defined in pre-BCRA 11 CFR 100.10. Furthermore, the Commission is  
18 concerned that a separate definition of “person” in part 109 might be confusing or  
19 misinterpreted to permit labor organizations, corporations not qualified under 11 CFR  
20 114.10(c), or other entities or individuals to pay for coordinated communications or to  
21 make independent expenditures where these entities and individuals are otherwise  
22 prohibited from making contributions or expenditures under the Act and Commission  
23 regulations. See, e.g., 11 CFR 110.4 and 114.2. While the Commission would propose

1 to specifically address these prohibitions in proposed 11 CFR 109.22, below, the  
2 Commission seeks comment on whether, and if so, how, the term “person” should be  
3 defined separately for the purposes of part 109.

4  
5 **Proposed Subpart B of Part 109: Independent Expenditures; Other Reporting**  
6 **Rules; Disclaimers.**

7 Under the Act, independent expenditures must be reported as follows: Political  
8 committees must report all independent expenditures on their regularly scheduled reports.  
9 In contrast, persons other than political committees must report independent expenditures  
10 that aggregate in excess of \$250 in a calendar year. 2 U.S.C. 434(b)(4)(H)(iii), (c), (d),  
11 and (g). Political committees and other persons must file additional reports of  
12 independent expenditures (“24-hour reports”) when independent expenditures totaling  
13 \$1,000 or more are made less than 20 days but more than 24 hours before an election  
14 (i.e., primary, general, special, or runoff; see 11 CFR 100.2). BCRA moved the 24-hour  
15 reporting provisions from 2 U.S.C. 434(c)(2)(C) to 2 U.S.C. 434(g)(1). These reports  
16 must be received within 24 hours of the time the independent expenditures aggregate  
17 \$1,000 or more. 2 U.S.C. 434(g)(1).

18 BCRA also adds a third type of report for certain independent expenditures. New  
19 “48-hour reports” are required when independent expenditures made at any time during  
20 the campaign, up to and including the 20<sup>th</sup> day before an election, aggregate \$10,000 or  
21 more. 2 U.S.C. 434(g)(2). To implement BCRA’s new reporting requirements for  
22 independent expenditures, the Commission is proposing changes to pre-BCRA 11 CFR  
23 100.19, 104.4, 104.5, 105.2, and 109.2, which are discussed below.

1 I. When Must Reports of Independent Expenditures be Filed?

2 A. 11 CFR 100.19 File, Filed, or Filing (2 U.S.C. 434(a))

3 The Commission's regulations at 11 CFR 100.19 define file, filed, and filing.

4 Paragraph (a) of section 100.19 would be unaffected by this rulemaking. Proposed  
5 paragraph (b) of section 100.19 would retain the pre-BCRA general rule that a document  
6 is considered timely filed if it is: (1) delivered to the appropriate filing office (either the  
7 Commission or the Secretary of the Senate), or (2) sent by registered or certified mail and  
8 postmarked by 11:59 p.m. Eastern Standard/Daylight Time of the prescribed filing date –  
9 except for pre-election reports. The proposed revisions to paragraph (b) of section  
10 100.19 would clarify that paragraph (b) is the general rule, but does not apply to reports  
11 addressed by paragraph (c) through proposed new paragraph (f). In pre-BCRA paragraph  
12 (b), the Commission notes that this general rule does not apply to 24-hour reports of  
13 independent expenditures, although the other exceptions are not mentioned.

14 Those exceptions would be as follows: Paragraph (c) for electronic filing –  
15 “filed” means received by the Commission at or before 11:59 p.m. Eastern  
16 Standard/Daylight Time on the filing date; paragraph (d) for 24-hour and 48-hour reports  
17 of independent expenditures – “filed” means received by the Commission no later than  
18 11:59 p.m. Eastern Standard/Daylight Time of the day following (24-hour reports) or the  
19 second day following (48-hour reports) the date on which the spending threshold is  
20 reached in accordance with 11 CFR 104.4(f); paragraph (e) for 48-hour notices of last-  
21 minute contributions – “filed” means received by the Commission or the Secretary of the  
22 Senate within 48 hours of the receipt of a “last-minute” contribution of \$1,000 or more.

23 Paragraph (c) of section 100.19 would remain unchanged.

1 Proposed revisions to paragraph (d) of section 100.19 would also require that the  
2 new 48-hour reports of independent expenditures, like the 24-hour reports, must be  
3 received rather than filed by the filing deadline. The proposed 48-hour reporting  
4 provision would allow filers to submit their reports using facsimile machines or  
5 electronic mail, as long as they are not required under 11 CFR 104.18 to file  
6 electronically. Under pre-BCRA paragraph (d) of section 100.19, 24-hour reports of  
7 independent expenditures are only considered timely filed if they are received by the  
8 Commission or Secretary of the Senate within 24 hours of the time the expenditure is  
9 made.<sup>1</sup> Thus, sending 24-hour reports by mail is not a viable option because it is unlikely  
10 that these reports will be received by the Commission within 24 hours of the making of  
11 the expenditure. See Final Rules and Explanation and Justification for 11 CFR 100.19,  
12 67 Fed. Register 12,834 (March 20, 2002.) Pre-BCRA paragraph (d) also states that 24-  
13 hour reports may be filed by facsimile machine or electronic mail, in addition to other  
14 permissible means of filing (e.g., hand delivery or overnight courier). Because the  
15 reasons behind the handling of 24-hour reports apply equally to the essentially similar 48-  
16 hour reports, the Commission is proposing this parallel rule.

17 Additional proposed changes to 11 CFR 100.19 are being addressed by the  
18 Commission in a separate rulemaking. See "Electioneering Communications" Notice of  
19 Proposed Rulemaking, 67 Fed. Register 51,131 (Aug. 7, 2002).

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<sup>1</sup> Note that BCRA, as passed on February 14, 2002, in the House and on March 20, 2002, in the Senate,  
would have required 24-hour reports to be filed rather than received within 24 hours of the time the  
independent expenditure was made. In technical corrections to BCRA, Congress amended section 212 of  
BCRA by reinstating the received requirement. H. Con. Res. 361.

1 B. 11 CFR 104.5 Filing Dates (2 U.S.C. 434(a)(2))

2 Proposed paragraph (g) of 11 CFR 104.5 would move the pre-BCRA contents of  
3 paragraph (g) to proposed paragraph (g)(2) with revisions, and would add a new  
4 paragraph (g)(1), which would require that 48-hour reports of independent expenditures  
5 must be received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight  
6 Time of the second day following the date on which a communication is publicly  
7 distributed or otherwise publicly disseminated. Pre-BCRA paragraph (g) of 11 CFR  
8 104.5 states that 24-hour reports of independent expenditures must be received by the  
9 appropriate officers no later than 24 hours after such independent expenditure is made.

10 II. Where Must Reports be Filed? 11 CFR 105.2 Place of Filing: Senate

11 Candidates, their Principal Campaign Committees, and Committees Supporting Only

12 Senate Candidates (2 U.S.C. 434(g)(3))

13 The Commission's pre-BCRA regulations require that 24-hour reports of  
14 independent expenditures supporting or opposing Senate candidates be filed with the  
15 Secretary of the Senate. See pre-BCRA 11 CFR 104.4(c), 109.2(b). In BCRA, Congress  
16 establishes the Commission as the place of filing for both 24- and 48-hour reports of  
17 independent expenditures, regardless of the office being sought by the clearly identified  
18 candidate. 2 U.S.C. 434(g)(3)(A). The proposed revisions to section 105.2 would place  
19 the text of pre-BCRA 11 CFR 105.2 in proposed paragraph (a), adding the heading,  
20 "General Rule." New proposed paragraph (b) of 11 CFR 105.2 would be headed,  
21 "Exceptions," and would state that 24- and 48-hour reports of independent expenditures,  
22 and electioneering communications, see 11 CFR 104.19, must be filed with the  
23 Commission even if the candidate supported or opposed is running for the Senate.

1 2 U.S.C. 434(f).

2 III. 11 CFR 104.4 Independent Expenditures by Political Committees

3 (2 U.S.C. 434(b), (g))

4 The Commission has established reporting requirements for political committees  
5 making independent expenditures in accordance with 2 U.S.C. 434(b) and (g). See pre-  
6 BCRA 11 CFR 104.4. Paragraph (a) of section 104.4 would be unaffected, other than the  
7 addition of a new heading, a grammatical correction and an updated cross-reference.

8 Proposed new paragraph (b) would address reports of independent expenditures  
9 made at any point in the campaign up to and including the 20<sup>th</sup> day before an election.

10 Proposed paragraph (b)(1) would address independent expenditures aggregating less than  
11 \$10,000 with respect to a given election during the calendar year, up to and including the  
12 20<sup>th</sup> day before an election. This calendar year aggregation would be based on 2 U.S.C.  
13 434(b)(4), which requires calendar year aggregation for reports of independent  
14 expenditures by political committees. In this circumstance, political committees would  
15 report the independent expenditures on Schedule E of FEC Form 3X, filed no later than  
16 the regular reporting date under 11 CFR 104.5. The Commission would interpret 2  
17 U.S.C. 434(g), added to the Act by BCRA, to require aggregation toward the various  
18 thresholds for independent expenditure reporting to be done on a per election basis within  
19 the calendar year. For example, if a political committee made \$5,000 in independent  
20 expenditures with respect to a Senate race, and \$5,000 in independent expenditures with  
21 respect to a House race, and both of these events occurred before the twentieth day before  
22 the election, that political committee would not be required to file 48-hour reports, but  
23 would be required to disclose the independent expenditures in its regularly scheduled

1 reports. If the political committee makes \$5,000 in independent expenditures with  
2 respect to a clearly identified candidate in the primary, and an additional \$5,000 in  
3 independent expenditures with respect to the same candidate in the general election, no  
4 48-hour reports would be required; but again the committee would be required to disclose  
5 the independent expenditures in its regularly scheduled reports.

6 Paragraph (b)(2) would address independent expenditures aggregating \$10,000 or  
7 more during the calendar year up to and including the 20<sup>th</sup> day before an election. These  
8 reports would also be filed on Schedule E of FEC Form 3X. However, these reports  
9 would be required to be received by the Commission no later than 11:59 p.m. Eastern  
10 Standard/Daylight Time of the second day following the date on which a communication  
11 which constitutes an independent expenditure is publicly distributed or otherwise publicly  
12 disseminated. Further, political committees would have to file an additional 48-hour  
13 report each time subsequent independent expenditures reach the \$10,000 threshold with  
14 respect to the same election to which the first report related.

15 The Commission proposes revisions to renumbered paragraph (c) (i.e., pre-BCRA  
16 11 CFR 104.4(b)) stating that 24-hour reports must be received by the Commission no  
17 later than 11:59 p.m. Eastern Standard/Daylight Time of the day following the date on  
18 which the \$1,000 threshold is reached during the final twenty days before the election.  
19 Further, proposed revisions to this paragraph would specifically state that additional 24-  
20 hour reports must be filed each time during the 24-hour reporting period that subsequent  
21 independent expenditures reach or exceed the \$1,000 threshold with respect to the same  
22 election to which the previous report related.



1 Proposed paragraph (d) would contain the report verification information  
2 currently found in pre-BCRA paragraph (b) of section 104.4. There would be non-  
3 substantive grammatical changes to conform this paragraph to other changes in the  
4 overall section.

5 Proposed paragraph (e) would largely restate pre-BCRA paragraph (c) of section  
6 104.4. The most significant proposed change to this paragraph would be to make the  
7 Commission and not the Secretary of the Senate the place of filing for 24- and 48-hour  
8 reports of independent expenditures relating to Senate candidates. 2 U.S.C. 434(g)(3).  
9 See the discussion of 11 CFR 105.2, above.

10 Proposed paragraph (f) of 11 CFR 104.4 would address aggregation of  
11 independent expenditures for reporting purposes. The provisions of pre-BCRA 11 CFR  
12 109.1(f) would be redesignated and revised to explain when and how political  
13 committees and other persons making independent expenditures must aggregate  
14 independent expenditures for purposes of determining whether 48-hour and 24-hour  
15 reports must be filed. Note that this proposed aggregation rule would apply to  
16 independent expenditures by political committees, as well as other persons; proposed 11  
17 CFR 109.10(c) and (d) would cross-refer to this paragraph. Proposed paragraph (f)  
18 would establish that every date on which a communication that constitutes an  
19 independent expenditure is “publicly distributed” or otherwise publicly disseminated  
20 serves as the date that every person must use to determine whether the total amount of  
21 independent expenditures has, in the aggregate, reached or exceeded the threshold  
22 reporting amounts (\$1,000 for 24-hour reports or \$10,000 for 48-hour reports). The term  
23 “publicly distributed” would have the same meaning as in proposed

1 100.29(b)(6), which the Commission has proposed as part of a separate rulemaking. See  
2 “Electioneering Communications” Notice of Proposed Rulemaking, 67 Fed. Register  
3 51,131 (Aug. 7, 2002). Thus, proposed paragraph (f) would set the same date as the  
4 starting date from which a person would have one or two days, where applicable, to file a  
5 24-hour or 48-hour report on independent expenditures.

6 In addition, Congress changed the reporting requirements by adding the phrase  
7 “or contracts to make” to the statute. 2 U.S.C. 434(g)(1), (2). BCRA ties 24-hour and  
8 48-hour reporting of independent expenditures to the time when a person “makes or  
9 contracts to make independent expenditures . . .” aggregating at or above the \$1,000 and  
10 \$10,000 thresholds, respectively. 2 U.S.C. 434(g)(4). Therefore, under proposed 11 CFR  
11 104.4(f), each person would be required to include as of the proposed trigger date, in the  
12 calculation of the aggregate amount of independent expenditures both disbursements for  
13 independent expenditures and all contracts obligating funds for disbursement for  
14 independent expenditures. Under this approach and the proposed timing requirements  
15 described above, once a communication that constitutes an independent expenditure is  
16 publicly distributed or disseminated as explained above, the person who paid for, or who  
17 contracted to pay for, the communication would be able to determine whether the  
18 communication satisfied the “express advocacy” requirement of the definition of an  
19 independent expenditure (See 11 CFR 100.16) and would be therefore be able to  
20 determine whether the disbursement for that communication constituted an independent  
21 expenditure. A person reaching or exceeding the applicable reporting threshold would be  
22 responsible for submitting a report by 11:59 p.m. Eastern Standard/Daylight Time of the

1 day after, for 24-hour reporting, or two days after, for 48-hour reporting, the date of the  
2 public distribution or dissemination of that communication.

3 The Commission seeks comment on its proposed interpretation of BCRA's  
4 "makes or contracts to make" language and the triggering mechanism for 24-hour and 48-  
5 hour reports. Specifically, the Commission seeks comment on an alternative  
6 interpretation that would make the actual disbursement or the execution of the contract to  
7 make the disbursement for an independent expenditure, rather than the public distribution  
8 or dissemination of the resulting communication, the triggering mechanism for the  
9 reporting requirements once the disbursements and obligations equal or exceed the  
10 respective thresholds. This change would require earlier reporting than is currently  
11 required or proposed (i.e., when the communication is publicly disseminated). The  
12 policy reasons for adopting this alternative interpretation would be similar to those  
13 described in the NPRM on reporting of electioneering communications. See  
14 "Electioneering Communications" Notice of Proposed Rulemaking, 67 Fed. Register  
15 51,131 (Aug. 7, 2002).

16 IV. Proposed 11 CFR 109.10 How Do Persons Other Than Political Committees  
17 Report Independent Expenditures (2 U.S.C. 434(c), (d), and (g))?

18 Proposed new section 109.10 would set forth the revised reporting requirements  
19 of pre-BCRA section 109.2. Under proposed new section 109.10, persons other than  
20 political committees would have to report their independent expenditures on either FEC  
21 Form 5 or in a signed statement containing certain information regarding the person who  
22 made the independent expenditure and the nature of the expenditure itself.

1 Proposed paragraph (a) of 11 CFR 109.10 would provide a cross-reference to 11  
2 CFR 104.4 for political committees, under which they must report independent  
3 expenditures. Paragraph (a) of pre-BCRA 11 CFR 109.2 would be moved to proposed  
4 paragraphs (b) and (c) of section 109.10.

5 Proposed paragraph (c) would address reports of independent expenditures  
6 aggregating \$10,000 or more with respect to a given election from the beginning of the  
7 calendar year up to and including the 20<sup>th</sup> day before an election. This proposed  
8 paragraph would require that 48-hour reports of independent expenditures be received  
9 rather than filed by 11:59 pm of the second day after the date on which the \$10,000  
10 threshold is reached. See discussion of received versus filed in section 100.19, above.  
11 Pre-BCRA paragraph (b) of section 109.2 indicates that 24-hour reports must be received  
12 after a disbursement is made for an independent expenditure, but no later than 24 hours  
13 after an independent expenditure is “made” under pre-BCRA paragraph 109.1(f). See the  
14 discussion of proposed 11 CFR 104.4(f), above. Under the proposed rules, paragraph (b)  
15 of pre-BCRA section 109.2 would be moved to new paragraph (d) of 11 CFR 109.10 and  
16 revised to reflect the modification to the aggregation and filing requirements in proposed  
17 11 CFR 100.19(d) and 104.4 that are discussed above.

18 Proposed revisions to paragraph (d) of 11 CFR 109.10 (pre-BCRA 11 CFR  
19 109.2(b)) would also mirror the changes in 11 CFR 104.4(c) as to when 24-hour reports  
20 of independent expenditures aggregating \$1,000 or more after the 20th day before the  
21 election.

22 Proposed paragraph (e) of 11 CFR 109.10 (i.e., pre-BCRA 11 CFR 109.2(a)(1)  
23 and (c)) would address the contents and verification of statements filed in lieu of FEC

1 Form 5. Proposed paragraph (e) would include one significant change from pre-BCRA  
2 109.2(a)(1) and (c): a person making an independent expenditure would now be required  
3 to certify that the expenditure was made independently from a political party committee  
4 and its agents, in addition to the pre-BCRA requirement of certification that the  
5 expenditure was not coordinated with a candidate, the candidate's authorized committee,  
6 or an agent of either of the foregoing. This change reflects the addition of political party  
7 committees to the definition of "independent expenditure" in 2 U.S.C. 431(17) and the  
8 description of coordination in 2 U.S.C. 441a(a)(7)(B)(ii) under BCRA. For the same  
9 reasons explained with reference to the definition of "independent expenditure" in  
10 proposed 11 CFR 100.16, the Commission would continue to include "consultation" in  
11 the description of activity that would cause an expenditure to lose its independence (*ie.*,  
12 "in cooperation, consultation, or concert with" a candidate or political party committee)  
13 even though the statutory definition in 2 U.S.C. 431(17) does not retain the term.

14

15 **§ 109.11 Non-Authorization Notice (Disclaimers) (2 U.S.C. 441d)**

16 The Commission would move the disclaimer requirement for independent  
17 expenditure communications from pre-BCRA 11 CFR 109.3 to proposed section 109.11.  
18 There would be no substantive changes to this section. Proposed changes to 11 CFR  
19 110.11 itself will be forthcoming in a separate rulemaking, in light of BCRA's changes to  
20 the statutory disclaimer requirement. See 2 U.S.C. 441d.

21

1 **Proposed Subpart C of Part 109 -- Coordination**

2 **I. Proposed 11 CFR 109.20 What Does "Coordinated" Mean?**

3 Congress did not define the term "coordinated" directly in FECA or in BCRA, but  
4 it did provide that an expenditure is considered to be a contribution to a candidate when it  
5 is "made by any person in cooperation, consultation, or concert, with, or at the request or  
6 suggestion of," that candidate, the authorized committee of that candidate, or their agents.

7 2 U.S.C. 441a(a)(7)(B)(i). Likewise, in BCRA, Congress added a new paragraph to  
8 section 441a(a)(7)(B) to require that expenditures "made by any person (other than a  
9 candidate or candidate's authorized committee) in cooperation, consultation, or concert,  
10 with, or at the request or suggestion of, a national, State, or local committee of a political  
11 party shall be considered to be contributions made to such party committee."

12 2 U.S.C. 441a(a)(7)(B)(ii). Also, as explained above, an expenditure would not be  
13 "independent" if it is "made in cooperation, consultation, or concert, with, or at the  
14 request or suggestion of," a candidate or a political party committee. See proposed  
15 11 CFR 100.16.

16 Proposed section 109.20 would incorporate the language in 2 U.S.C.  
17 441a(a)(7)(B)(i) and (ii) into the Commission's regulations. While the definition of  
18 "coordinated" in proposed paragraph 109.20(a) would potentially encompass a variety of  
19 payments made by a person on behalf of a candidate or party committee, the Commission  
20 recognizes that the majority of issues regarding coordination involve communications.  
21 Therefore, the proposed regulations in 11 CFR 109.21 and 109.37 would specifically  
22 address the meaning of the phrase "made in cooperation, consultation, or concert, with, or  
23 at the request or suggestion of" in the context of communications.

1 In addition, proposed paragraph 109.20(b) would address expenditures that are  
2 not made for communications but that are coordinated with a candidate or political party  
3 committee. The Commission proposes to move pre-BCRA 11 CFR 109.1(c), to proposed  
4 paragraph (b). This provision would also be revised to make it clear that these other  
5 expenditures, when coordinated, are also in-kind contributions (or coordinated party  
6 expenditures, if a political party committee so elects) to the candidate or political party  
7 committee with whom or with which they are coordinated. The exceptions contained in  
8 11 CFR part 100, subpart C (exceptions to the definition of "contribution") and subpart E  
9 (exceptions to the definition of "expenditure") would continue to apply. The  
10 Commission requests comment on whether these non-communication expenditures  
11 should be further addressed in a later rulemaking.

## 12 II. Background: The Commission's Pre-BCRA Coordination Regulations

13 Prior to the enactment of BCRA, the Commission initiated a series of rulemakings  
14 in response to the Supreme Court's ruling on the appropriate application of the so-called  
15 "coordinated party expenditure" provisions of FECA. See Colorado Republican Federal  
16 Campaign Committee v. Federal Election Commission, 518 U.S. 604 (1996) ("Colorado  
17 I"). For example, the Commission addressed the issue of coordination when it  
18 promulgated 11 CFR 100.23 in December 2000. See Explanation and Justification of  
19 General Public Political Communications Coordinated with Candidates and Party  
20 Committees; Independent Expenditures, 65 Fed. Register 76,138 (Dec. 6, 2000). Section  
21 100.23 defined a new term, "coordinated general public political communication,"  
22 drawing from judicial guidance in Federal Election Commission v. The Christian  
23 Coalition, 52 F.Supp.2d 45, 85 (D.D.C. 1999) ("Christian Coalition"), to determine

1 whether expenditures for communications by unauthorized committees, advocacy groups,  
2 and individuals were coordinated with candidates or qualified as independent  
3 expenditures. Consistent with Christian Coalition, id. at 92, the Commission's  
4 regulations stated that such coordination could be found when candidates or their  
5 representatives influenced the creation or distribution of the communications by making  
6 requests or suggestions regarding, or exercising control or decision-making authority  
7 over, or engaging in "substantial discussion or negotiation" regarding, various aspects of  
8 the communications. 11 CFR 100.23(c)(2). The regulations explained that "substantial  
9 discussion or negotiation may be evidenced by one or more meetings, conversations or  
10 conferences regarding the value or importance of the communication for a particular  
11 election." 11 CFR 100.23(c)(2)(iii).

12 III. Proposed 11 CFR 109.21 What is a "Coordinated Communication"?

13 In BCRA, Congress expressly repealed 11 CFR 100.23, Pub. L. 107-155, sec.  
14 214(b) (March 27, 2002), and instructed the Commission to promulgate new regulations  
15 on "coordinated communications paid for by persons other than candidates, authorized  
16 committees of candidates, and party committees." Pub. L. 107-155, sec. 214(c) (March  
17 27, 2002). Congress also mandated that the new regulations address four specific aspects  
18 of coordinated communications: republication of campaign materials; the use of a  
19 common vendor; communications directed or made by a former employee of a candidate  
20 or political party; and communications made after substantial discussion about the  
21 communication with a candidate or party. See Pub. L. 107-155, sec. 214(c)(1) through  
22 (4) (March 27, 2002).



1            A. Basic Elements of a “Coordinated Communication”

2            Proposed paragraph (a) of section 109.21 would set forth the three required  
3 elements of a “coordinated communication,” which would comprise a three-part test. For  
4 a communication to be “coordinated” under the proposed rule, all three parts of the test  
5 would have to be satisfied. While no one of these elements standing alone fully answers  
6 the question of whether a communication is for the purpose of influencing a Federal  
7 election, see 11 CFR 100.52(a), 100.111(a), the Commission proposes that the  
8 satisfaction of all of the three specific tests set out in the proposed regulation justifies the  
9 conclusion that payments for the coordinated communication are for the purpose of  
10 influencing a Federal election.

11           The first part of the three-part test, in proposed paragraph (a)(1), would be that the  
12 communication would have to be paid for by someone other than a candidate, an  
13 authorized committee, or a political party committee. However, a person’s status as a  
14 candidate would not exempt him or her from the coordination regulations with respect to  
15 payments he or she makes on behalf of a different candidate. Under proposed paragraph  
16 (a)(2), the second part of the three-part test would be a “content standard” regarding the  
17 subject matter of the communication. The content standards would be addressed in detail  
18 in proposed paragraph (c) of this section. Under proposed paragraph (a)(3), the final part  
19 of the test would be a “conduct standard” regarding the interactions between the person  
20 paying for the communication and the candidate or political party committee. The  
21 conduct standards would be addressed in detail in proposed paragraph (d).

1 B. Treatment of Coordinated Communications as In-Kind Contributions

2 Proposed paragraph (b) of section 109.21 would provide that a payment for a  
3 coordinated communication would be made “for the purpose of influencing” an election  
4 for Federal office, a phrase used by Congress in the definition of both “expenditure” and  
5 “contribution.” 2 U.S.C. 431(8)(A) and (9)(A). Thus, the Commission would make a  
6 determination that satisfying the content and conduct standards of proposed  
7 11 CFR 109.21 would, in turn, satisfy the statutory requirements for an expenditure and a  
8 contribution.

9 Proposed paragraph (b)(1) would state the general rule that a payment for a  
10 coordinated communication would constitute an in-kind contribution to the candidate or  
11 political party committee with whom or with which it is coordinated, unless excepted  
12 under subpart C of 11 CFR part 100. Please note that this section encompasses  
13 communications described in 11 CFR 100.29(a)(1) (electioneering communications) in  
14 addition to other communications. Congress expressly provided that when these  
15 communications are coordinated with a candidate or political party committee, they must  
16 be treated like other coordinated communications in that disbursements for these  
17 communications are in-kind contributions to the candidate or party committee with whom  
18 or which they were coordinated. See 2 U.S.C. 441a(a)(7)(C).

19 Proposed paragraph (b)(2) would create an exception to the general rule of  
20 proposed paragraph (b)(1). Under the general rule in proposed paragraph (b)(1), a  
21 candidate or a political party committee would be deemed to receive an in-kind  
22 contribution, subject to the contribution limits, prohibitions, and reporting requirements  
23 of the Act. As explained below, two of the conduct standards, found in proposed

1 paragraphs (d)(4) and (d)(5) of section 109.21, would not focus on the conduct of the  
2 candidate, his or her authorized committee, or his or her agents, but would focus on the  
3 conduct of the person paying for the communication, a common vendor, or a former  
4 employee. To avoid the result where a candidate or political party committee might be  
5 held responsible for receiving or accepting an in-kind contribution that did not result  
6 from its conduct or the conduct of its agents, the Commission proposes to explicitly  
7 provide that the candidate or political party committee would not receive or accept in-  
8 kind contributions that result from conduct described in the proposed conduct standards  
9 of paragraphs (d)(4) and (d)(5) of section 109.21. This treatment would be generally  
10 analogous to the handling of republished campaign materials under the Commission's  
11 current regulations. See 11 CFR 109.1(d)(1). However, please note that the person  
12 paying for a communication that is coordinated because of conduct described in proposed  
13 paragraphs (d)(4) or (d)(5) would still be responsible for making an in-kind contribution  
14 for purposes of the contribution limitations, prohibitions, and reporting requirements of  
15 the Act.

16 Proposed paragraph (b)(3) of 11 CFR 109.21 would provide that a political  
17 committee, other than a political party committee (which would be covered in proposed  
18 subpart D), must report payments for coordinated communications as in-kind  
19 contributions to the candidate or political party committee with whom or which they are  
20 coordinated. Proposed paragraph (b) would also clarify that a political party committee  
21 with which a communication is coordinated must report that communication as an in-kind  
22 contribution received under 11 CFR 104.13. The recipient political party committee must  
23 also report making a corresponding expenditure in the same amount. 11 CFR 104.13.

1            C.     Content Standards

2            The Commission proposes to include “content standards” in the definition  
3 of “coordinated communication.” Such content standards would serve to limit 11  
4 CFR 109.21 to communications whose subject matter is reasonably related to an  
5 election. The purpose of the content standards would not be to definitively decide  
6 if the content of the communication is for the purpose of influencing a Federal  
7 election. Answering that larger question would be the purpose of the three-part  
8 test of which the content standard would be one part.

9            Proposed paragraph (c) would set out four possible content standards. A  
10 communication that satisfies any one of the four would be deemed to satisfy the  
11 “content” requirement of the proposed regulation.

12           Under proposed paragraph (c)(1), the first content standard would be  
13 whether the communication satisfies the requirements of a communication  
14 described in proposed 11 CFR 100.29 or communication that would otherwise be  
15 “electioneering communication.” Notice of Proposed Rulemaking,  
16 “Electioneering Communications,” 67 Fed. Register 51,131 (Aug. 7, 2002).

17           The second proposed content standard addresses the Congressional requirement  
18 that the Commission’s new rules on coordinated communications address the  
19 “republication of campaign materials.” See Pub. L. 107-155, sec. 214(c)(1) (March 27,  
20 2002). The Commission proposes to satisfy this mandate by providing, in proposed  
21 paragraph (c)(2) of section 109.21 that the republication of candidate materials in a  
22 communication would satisfy the content standard if the republication, dissemination, or

1 distribution, in whole or in part, amounts to a contribution under proposed 11 CFR  
2 100.57 (discussed below).

3         In light of the candidate's initial role in preparing the campaign material that is  
4 subsequently incorporated into a different, "republished" communication, it is possible  
5 that the candidate's involvement in the original preparation of part or all of that content  
6 might be construed as triggering one or more of the proposed conduct standards in  
7 paragraph (d) of this section. To avoid this result, the Commission would clarify that the  
8 candidate's actions in preparing the original campaign materials are not to be considered  
9 in the conduct analysis of proposed paragraph (d). Instead, the proposed rules in 11 CFR  
10 109.21(d)(6) would only focus on the conduct of the candidate that occurs after the initial  
11 preparation the campaign materials. For example, if a candidate requests or suggests that  
12 a supporter pay for the republication of a campaign ad, the resulting communication paid  
13 for by the supporter would satisfy both a content standard (republication) and conduct  
14 standard (request or suggestion, see discussion of proposed 11 CFR 109.21(d)(1) below)  
15 and would therefore be a coordinated communication. The Commission also proposes a  
16 second sentence in proposed paragraph (a)(3) of section 109.21 indicating that that the  
17 republication content standard of proposed paragraph (c)(2) is evaluated under the  
18 conduct standard in proposed paragraph (d)(6).

19         The third content standard in proposed paragraph (c)(3) of section 109.21  
20 would state that a communication would also satisfy the content standard if it  
21 "expressly advocates" the election or defeat of a clearly identified candidate for  
22 Federal office.

1           In addition to electioneering communications described in proposed 11 CFR  
2 100.29, communications that republish campaign materials, and communications that  
3 “expressly advocate” the election or defeat of a clearly identified candidate, the  
4 Commission is considering a number of other possible content standards. In this NPRM,  
5 the Commission presents and discusses three other possible content standards, which are  
6 labeled Alternatives A through C in the proposed rules. Any, all, or none of these  
7 alternatives could be adopted in the final rules.

8           Each of these alternatives is framed in terms of a “public communication,” a term  
9 added to the Act by BCRA. 2 U.S.C. 431(22); 11 CFR 100.26. The use of the term  
10 “public communication” would provide consistency within the regulations and would  
11 distinguish covered communications from, for example, private correspondence and  
12 internal communications between a corporation or labor organization and its restricted  
13 class. In addition, although the term “public communication” covers a broad range of  
14 communications, it does not cover some forms of communications, such as those  
15 transmitted using the Internet and electronic mail. 11 CFR 100.26. The Commission  
16 seeks comment on whether it is appropriate to limit the scope of coordinated  
17 communications through the use of the term “public communication,” or whether it  
18 would be adequate for this purpose to require only that the communication be “made  
19 available to the public.” The Commission also seeks comment on these three  
20 alternatives, as well as any other possible standards.

21           Alternative A

22           The first alternative, labeled “Alternative A” in the proposed rules, would require  
23 that the communication be a public communication, as defined in 11 CFR 100.26, and

1 that it clearly identify a Federal candidate. The terms “clearly identified” and  
2 “candidate” are defined in 11 CFR 100.17 and 100.3, respectively. This alternative  
3 would seem to cover the widest range of public communications of all the alternatives.

#### 4 Alternative B

5 The second alternative, labeled “Alternative B” in the proposed rules, would  
6 require that the communication promote or support or attack or oppose a clearly  
7 identified candidate. This standard would be modeled on one of the definitions of  
8 “Federal election activity” added to the Act by BCRA. 2 U.S.C. 431(20)(A)(iii), 11 CFR  
9 100.24. A public communication that refers to a clearly identified Federal candidate, and  
10 “that promotes or supports . . . or attacks or opposes” the candidate or his or her opponent  
11 is one type of Federal election activity. The phrase “promote or support, or attack or  
12 oppose” is also the key component of the alternative statutory definition of  
13 “electioneering communication.” See 2 U.S.C. 434(f)(3)(A)(ii).

14 The content standards set out in proposed paragraph (c) would apply to any  
15 person who or which pays for a communication, including political party committees.  
16 See proposed 11 CFR 109.37(a)(2), discussed below, which would cover coordination of  
17 communications paid for by political party committees. The Commission seeks comment  
18 on whether, in the context of coordination, communications paid for by political party  
19 committees should be analyzed under different or additional content standards. For  
20 example, should the promote-or-support-or attack-or-oppose content standard set out in  
21 Alternative B apply only to communications paid for by political party committees, and  
22 not to other persons? Should it be the only content standard applicable to  
23 communications paid for by political party committees?

1           Alternative C

2           The third alternative, labeled "Alternative C" in the proposed rules, would  
3 represent a new approach. This possible content standard would attempt to focus as  
4 much as possible on the face of the public communication or on facts on the public  
5 record. This latter point is important. The intent would be to require as little  
6 characterization of the meaning or the content of communication, or inquiry into the  
7 subjective effect of the communication on the reader, viewer, or listener as possible. See  
8 Buckley v. Valeo, 424 U.S. 1, 42-44 (1975). For example, it should not require inquiry  
9 into whether the communication "garners or diminishes support" for the candidate or was  
10 designed to urge the public to elect a certain candidate or party. Cf. AO 1984-15 and  
11 1985-14 (the former "electioneering message" standard). Alternative C would be applied  
12 by asking if certain things are true or false about the face of the public communication or  
13 with limited reference to external facts on the public record.

14           The proposed content standard would consist of a test based on three factors. If  
15 the public communication satisfies all three factors of the test, it would be deemed to  
16 satisfy the content standard.

17           The first factor would be proximity in time to a Federal election. Proposed  
18 paragraph (c)(4)(i) would require that the public communication must be made 120 days  
19 or fewer before either a primary election or a general election in which a Federal  
20 candidate appears on the ballot. The 120-day time-frame would be borrowed from  
21 2 U.S.C. 431(20)(A)(i) (see 11 CFR 100.24(b)(1)), and it would have several advantages.  
22 First, it would be a "bright-line" rule. Second, it would focus the regulation on activity  
23 reasonably close to an election, but not so distant from the election as to implicate



1 political discussion at other times. The Commission seeks comment on what, if any,  
2 regulation should apply more than 120 days from an election in this context.

3         The second factor would relate to the intended audience of the public  
4 communication. Proposed paragraph (c)(4)(ii) would provide that a public  
5 communication must be “directed to voters in the jurisdiction of the clearly identified  
6 Federal candidate.” For example, a public communication that otherwise makes express  
7 statements about promoting or attacking Representative X or Senator Y for their stance  
8 on the “X-Y Bill” would not satisfy this requirement if it were only broadcast in  
9 Washington, D.C., and not in either member’s district or State. For purposes of this  
10 paragraph, “jurisdiction” would mean a member of Congress’ district, the State of a U.S.  
11 Senator, and the entire United States for the President and Vice President in the general  
12 election or before the national nominating convention.

13         The third factor, which would be in paragraph (c)(4)(iii), would focus on public  
14 communications that are specifically linked to a clearly identified candidate. This factor  
15 would look to whether the public communication, on its face, makes express statements  
16 about the record or position or views on an issue, or the character, or the qualifications or  
17 fitness for office, or party affiliation of a clearly identified candidate. If this factor is  
18 satisfied, in a context where the factors in proposed paragraphs (c)(4)(i) and (ii) are also  
19 satisfied, the combination of these factors would lead to the conclusion that the public  
20 communication satisfies the content standard.

21         The Commission seeks comment on whether the third factor in Alternative C  
22 should be deleted from this proposed content standard. By deleting the third factor, the  
23 resulting content standard would resemble the “electioneering communication” content

1 standard in proposed paragraph (c)(1), but with a broader time frame (120 days compared  
2 with 30 or 60 days) and with a different “targeting” requirement. Eliminating the third  
3 factor from Alternative C would allow for coordination to be established in the case of a  
4 communication that does not refer to a candidate’s position on an issue, but rather refers  
5 specifically to a candidate along with his or her party’s position on the issue or with the  
6 stand of another politician on the issue.

7 The Commission notes that most of the proposed content standards would require  
8 that a communication refer to a clearly identified candidate. The Commission seeks  
9 comment on whether a person whose interactions with a political party committee satisfy  
10 the conduct standard, and who pays for a communication that merely says “Vote  
11 Democratic” or “Vote Republican,” should be deemed to have made a coordinated  
12 communication, even though no specific candidate is mentioned. Should proposed 11  
13 CFR 109.21(c) include a content standard that would cover this type of communication?

14 D. Conduct Standards

15 Proposed paragraph (d) of section 109.21 would list special types of conduct that  
16 would satisfy the “conduct standard” of the proposed, three-part coordination formula.  
17 Under the proposed rules, if one of these types of conduct is present, and the other  
18 requirements described in paragraphs (a) and (c) are satisfied, the communication would  
19 not be made “totally independently” from the candidate or party committee, see Buckley,  
20 424 U.S. at 47, and thus would be coordinated. The Commission emphasizes that the  
21 conduct standards in proposed paragraph (d) would only apply if the communication in  
22 question also satisfies one or more of the “content standards” in proposed paragraph (c)  
23 of section 109.21. The introductory sentence of proposed paragraph (d) would

1 implement a Congressional mandate in BCRA that the coordination regulation not  
2 require “agreement or formal collaboration.” Pub. L. 107-155, sec. 214(c) (March 27,  
3 2002); see more complete discussion below.

4 1. Request or Suggestion

5 Under the Act, as amended by BCRA, an expenditure made by any person at the  
6 “request or suggestion” of a candidate, an authorized committee, a political party  
7 committee, or an agent of any of the foregoing is a contribution to the candidate or  
8 political party committee. 2 U.S.C. 441a(a)(7)(B)(i), (ii). The first proposed conduct  
9 standard, in proposed 11 CFR 109.21(d)(1), would implement this “request or  
10 suggestion” statutory language, which would have two prongs. Satisfying either prong  
11 would satisfy the proposed conduct standard.

12 The first prong, in proposed paragraph (d)(1)(i), would be satisfied if the person  
13 creating, producing, or distributing the communication does so at the request or  
14 suggestion of a candidate, authorized committee, political party committee, or agent of  
15 any of the foregoing. The Buckley court originally drew on the 1974 House and Senate  
16 reports accompanying the 1974 Amendments to the Act when it upheld language in that  
17 Act that distinguished a communication made “at the request or suggestion” of the  
18 candidate or political party committee from those that are made “totally independently  
19 from the candidate and his campaign.” Buckley, 424 U.S. at 47 (citing H.R. Rep. No. 93-  
20 1239, p. 6 (1974) and S. Rep. No. 93-689, p. 18 (1974)). A “request or suggestion” is  
21 therefore a form of coordination under the Act, as approved by Buckley. A request or  
22 suggestion encompasses the most direct form of coordination, given that the candidate or  
23 political party committee communicates desires to another person who effectuates them.

1           The Commission notes that this provision, for example, would not apply to  
2 general appeals for support, such as a speech at a campaign rally, but, in appropriate  
3 cases, would apply to requests or suggestions to specific individuals or small groups for  
4 the creation, production, or distribution of communications.

5           The second prong of the proposed “request or suggestion” conduct standard  
6 (proposed paragraph (d)(1)(ii)) would be satisfied if a person paying for the  
7 communication suggests the creation, production, or distribution of the communication to  
8 the candidate, authorized committee, political party committee, or agent of any of the  
9 foregoing, and the candidate or political party committee assents to the suggestion. This  
10 second prong of the proposed conduct standard would be intended to prevent  
11 circumvention of the statutory “request or suggestion” language (2 U.S.C.  
12 441a(a)(7)(B)(i), (ii)) by, for example, the expedient of implicit understandings that a  
13 candidate or political party committee never formally requests or suggests a  
14 communication, but nonetheless creates the expectation that the suggestion should be  
15 made by a person paying for the communication.

16           The requirement of assent would limit the reach of the proposed regulation. A  
17 candidate or a political party committee would have accepted an in-kind contribution  
18 only if there is assent to the suggestion; by rejecting the suggestion, the candidate or  
19 political party committee may unilaterally avoid any coordination. The Commission  
20 requests comments on whether “express” assent should be required. Should the rule  
21 cover situations where assent is implied, and if so, how?

22           As discussed above, the Buckley Court expressly recognized a request or  
23 suggestion by a candidate as a direct form of coordination resulting in a contribution.

1 Buckley, 424 U.S. at 47. The Commission seeks comment on whether this unique nature  
2 of requests or suggestions by candidates or political party committees indicates that such  
3 conduct should be handled differently under the proposed coordination regulations.  
4 Specifically, should a request or suggestion for a communication by a candidate or  
5 political party committee be viewed as a special case, and as sufficient, in and of itself  
6 and without reference to a “content standard,” to establish coordination?

7 2. Materially Involved in Decisions

8 The second conduct standard proposed 11 CFR 109.21(d)(2), would address  
9 situations in which a candidate, authorized committee, or a political party committee is  
10 “materially involved in decisions” regarding specific aspects of a public communication  
11 paid for by someone else. Those specific aspects would be listed in proposed paragraphs  
12 (i) through (vi) of paragraph (d)(2): (i) the content of the communication; (ii) the  
13 intended audience; (iii) the means and mode of the communication; (iv) the specific  
14 media outlet used; (v) the timing or frequency of the communication; or (vi) the size or  
15 prominence of a printed communication or duration of a communication on a television,  
16 radio, or cable station or by telephone.

17 In this proposed regulation, “material” would have its ordinary legal meaning,  
18 which is “important; more or less necessary; having influence or effect; going to the  
19 merits.” Black’s Law Dict. (6<sup>th</sup> ed. 1990) p. 976. Thus, the term “materially involved in  
20 decisions” would not be intended to encompass all interactions, only those which are  
21 important to the communication. In addition to the materiality of the candidate’s  
22 involvement in decisions regarding the communication under proposed paragraph (d)(3)

1 through (d)(5), the Commission would focus on the materiality of the information  
2 conveyed, and its specific use.

3 A candidate or political party committee would be considered “materially  
4 involved” in the decisions enumerated in paragraph (d)(2) if either shares material  
5 information about campaign plans, projects, activities, or needs with the person making  
6 the communication. Likewise, a candidate or political party committee would be  
7 “materially involved in decisions” if the candidate, political party committee, or agent  
8 conveys approval or disapproval of the other person’s plans. The Commission notes,  
9 however, that as with the “request or suggest” standard, the “materially involved”  
10 standard would not apply to general appeals for support, such as a speech, but specifically  
11 to the creation, production, or distribution of communications.

12 The Commission invites comments on the wording and scope of this standard. In  
13 particular, the Commission welcomes comment on whether, and if so, how, the phrases  
14 “materially involved” and “decisions” should be further defined in the rules.

### 15 3. Substantial Discussion

16 In BCRA, Congress also directed the Commission to address “payments for  
17 communications made by a person after substantial discussion about the communication  
18 with a candidate or political party.” Pub. L. 107-155, sec. 214(c)(4) (March 27, 2002).  
19 Under proposed paragraph (d)(3) of 11 CFR 109.21, a communication would meet the  
20 conduct standard if it is created, produced, or distributed after one or more substantial  
21 discussions between the person paying for the communication, or the person’s agents,  
22 and the candidate clearly identified in the communication, his or her authorized  
23 committee, his or her opponent, or the opponent’s authorized committee, a political party

1 committee, or their agents. Proposed paragraph (d)(3) would explain that a “discussion”  
2 would be “substantial” if information about the plans, projects, activities, or needs of the  
3 candidate or political party committee that is material to the creation, production or  
4 distribution of the communication is conveyed to a person paying for the communication.  
5 “Discuss” would have its plain and ordinary meaning, which the Commission  
6 understands to mean an interactive exchange of views or information. “Material” would  
7 have the meaning explained above in the context of proposed paragraph (d)(2) of section  
8 109.21 (“material involvement”). In other words, the substantiality of the discussion  
9 would be measured by the materiality of the information conveyed in the discussion. The  
10 Commission seeks comments as to whether additional explanation or examples should be  
11 provided to further refine the term “substantial discussion.”

#### 12 4. Employment of Common Vendor

13 In BCRA, Congress required the Commission to address “the use of a common  
14 vendor” in the context of coordination. Pub. L. 107-155, sec. 214(c)(2) (March 27,  
15 2002). Proposed paragraph (d)(4) of section 109.21 would create a conduct standard to  
16 implement this Congressional mandate. It would explain what a common vendor is, and  
17 provide that the use of a common vendor in the creation, production, or distribution of a  
18 communication satisfies the conduct standard if three conditions are all met.

19 The first condition, in proposed paragraph (d)(4)(i), would be that the person  
20 paying for the communication, or the agent of such a person, must contract with, or  
21 employ, a “commercial vendor” to create, produce, or distribute the communication. The  
22 term “commercial vendor” is defined in the Commission’s pre-BCRA regulations as “any  
23 person[] providing goods or services to a candidate or political committee whose usual

1 and normal business involves the sale, rental, lease, or provision of those goods or  
2 services.” 11 CFR 116.1(c). Thus, this standard would only apply to a vendor whose  
3 usual and normal business includes the creation, production, or distribution of  
4 communications, and would not apply to the activities of persons who do not create,  
5 produce, or distribute communications as a commercial venture.

6 The second condition, in proposed paragraph (d)(4)(ii), would be that the  
7 commercial vendor must have a previous or current relationship with the candidate or  
8 political party committee that puts the commercial vendor in a position to acquire  
9 material information about the plans, projects, activities, or needs of the candidate or  
10 political party committee. This previous or current relationship would be defined in  
11 terms of nine specific services related to campaigning and campaign communications,  
12 which would be enumerated in proposed paragraphs (d)(4)(ii)(A) through (I). Note that  
13 these services would have to have been rendered during the current election cycle. Such  
14 a previous or current relationship, as defined, would put the “common vendor” in a  
15 position to convey material information about the plans, projects, activities, or needs of  
16 the candidate or political party committee to the person paying for the communication.

17 The proposed regulation refers to the current election cycle as a temporal limit on  
18 the operation of the regulation. “Election cycle” would have the meaning defined in 11  
19 CFR 100.3. The Commission seeks comment on whether a different time period, such as  
20 a fixed two-year period, would more accurately align the proposed rule with existing  
21 campaign practices. Or, should the time limit be the “the current election cycle, but not  
22 more than the previous two years of that election cycle”?



1           The third condition, in proposed paragraph (d)(4)(iii), would require that the  
2 commercial vendor make use of or convey material information about, the plans,  
3 projects, activities, or needs of the candidate or political party committee, or material  
4 information used by the commercial vendor in serving the candidate or political party  
5 committee, to the person paying for the communication. This requirement would be  
6 intended to encompass situations in which the vendor assumes the role of a conduit of  
7 information between a candidate or political party committee and the person making or  
8 paying for the communication, as well as situations in which the vendor makes use of the  
9 information received from the candidate or political party committee without actually  
10 transferring that information to another person.

11           The Commission seeks comment about whether the conduct standard in proposed  
12 paragraph (d)(4) would adequately address the Congressional mandate in section  
13 214(c)(2) of BCRA. The Commission also seeks comment on whether purchasing  
14 advertising time slots for television, radio, or other media should be added to the list of  
15 common vendor services covered in proposed paragraph (d)(4)(ii).

16           5. Former Employee/Independent Contractor

17           In BCRA, Congress required the Commission to address “persons who previously  
18 served as an employee of” a candidate or political party committee in the context of  
19 coordination. Pub. L. 107-155, sec. 214(c)(3) (March 27, 2002). Proposed paragraph  
20 (d)(5) of section 109.21 would create a conduct standard to implement this Congressional  
21 mandate.

22           Proposed paragraph (d)(5) would apply to communications paid for by a person  
23 who was previously an employee or an independent contractor of a candidate, authorized

1 committee, or political party committee, or by the employer of such a person. Note that  
2 this employment or independent contractor relationship would have to exist during the  
3 current election cycle, as a temporal limit on the operation of the regulation. "Election  
4 cycle" would have the meaning defined in 11 CFR 100.3. As discussed above with  
5 regard to proposed paragraph (d)(4) on common vendors, the Commission requests  
6 comments on whether this time period should be a fixed two-year period, or the same  
7 election cycle, but not more than two years.

8         This proposed conduct standard would expressly extend to a person who had  
9 previously served as an "independent contractor" of a candidate or political party  
10 committee to preclude circumvention of the rule by the expedient of characterizing an  
11 "employee" as an "independent contractor" where the characterization makes no  
12 difference in the person's relationship with the candidate or political party committee.  
13 This proposed coordination standard would also apply to the employer of a person who  
14 was an employee or independent contractor of a candidate, authorized committee, or  
15 political party committee. The Commission interprets the Congressional intent behind  
16 section 214(c)(3) of BCRA to encompass situations in which former employees, who by  
17 virtue of their former employment have been in a position to acquire material information  
18 about the plans, projects, activities, or needs of the candidate or political party committee,  
19 may subsequently use that information or convey it to a person paying for a  
20 communication.

21         Proposed paragraph (d)(5) would require that the former employee actually make  
22 use of, or convey material information about, the plans, projects, activities, or needs of  
23 the candidate or political party committee, or material information used by the former

1 employee in serving the candidate or political party committee, to the person paying for  
2 the communication. As with the proposed conduct standard covering common vendors,  
3 this requirement would be intended to encompass both situations in which the former  
4 employee assumes the role of a conduit of information and situations in which the former  
5 employee makes use of the information but does not share it with the person who is  
6 paying for the communication.

7 The Commission seeks comment about whether this proposed conduct standard  
8 should be extended to volunteers, such as “fundraising partners,” who by virtue of their  
9 relationship with a candidate or a political party committee, have been in a position to  
10 acquire material information about the plans, projects, activities, or needs of the  
11 candidate or political party committee.

12 E. No Requirement of Agreement or Formal Collaboration

13 When Congress, in BCRA, required the Commission to promulgate new  
14 regulations on coordinated communications, it specifically barred any regulatory  
15 requirement of “agreement or formal collaboration” to establish coordination. Pub. L.  
16 107-155, sec. 214(c) (March 27, 2002). The proposed regulation at 11 CFR 109.21(e)  
17 would explicitly implement that Congressional mandate. Although Congress did not  
18 define this term, the Commission notes that earlier versions of BCRA stated that  
19 “collaboration or agreement” would not be required to show coordination. See S. 27,  
20 107th Cong., 1<sup>st</sup> Sess. (as passed by the Senate and transferred to the House, 478 Cong.  
21 Rec. H2547 (May 22, 2001)). The phrase “agreement or formal collaboration” reached  
22 its final form through a substitute amendment to H.R. 2356 offered by Representative  
23 Shays. See H. Amdt. 417, 478 Cong. Rec. H393 through H492 (February 13, 2002).

1           The Commission would therefore attach significance to the addition of the term  
2 “formal” as it modifies the term “collaboration.” Thus, the conduct standards proposed  
3 in paragraph (d) of section 109.21 would require some degree of collaboration. However,  
4 proposed paragraph (e) would state that this collaboration need not be “formal,” in the  
5 sense of being planned or systematically approved or executed.

6           Under proposed paragraph (e), the word “agreement” would be explained as well.  
7 A finding of coordination under proposed section 109.21 would not require a showing of  
8 a mutual understanding or meeting of the minds as to all, or even most, of the material  
9 aspects of a communication. Even a minimal amount of agreement would mean the  
10 communication would not be made “totally independently” from the candidate or party.  
11 See Buckley, 424 U.S. at 47. In the case of a request or suggestion under proposed  
12 paragraph (d)(1) of section 109.21, agreement is not required at all.

13           F. Should Exceptions Apply to the Content and Conduct Standards?

14           Proposed 11 CFR 109.21 does not include any exceptions. The Commission  
15 seeks comment on whether exceptions to the proposed content or conduct standards  
16 should be included in the final rule. For example, should there be an exception to the  
17 content standards for communications that refer to the “popular name” of a bill or law  
18 that includes the name of a Federal candidate who was a sponsor of the bill or law?  
19 Should there be an exception to the conduct standards for a candidate’s response to an  
20 inquiry about his or her position on legislative or policy issues?

21           IV. Proposed 109.22 Who is Prohibited from Making Coordinated Communications?

22           The Commission proposes a separate section to make it clear that any person who  
23 is otherwise prohibited from making a contribution or expenditure is also prohibited from

1 making a coordinated communication. The Commission seeks comment on whether it is  
2 necessary to include this separate section.

3

4 **Proposed Subpart D of Part 109 -- Special Provisions for Political Party Committees**

5 I. Proposed 11 CFR 109.30 How are Political Party Committees Treated for  
6 Purposes of Coordinated and Independent Expenditures?

7 National, State, and subordinate committees of political parties may make  
8 expenditures up to prescribed limits in connection with the general election campaigns of  
9 Federal candidates without counting such expenditures against the committees'  
10 contribution limits. See 2 U.S.C. 441a(d). These expenditures are commonly referred to  
11 as "coordinated party expenditures." Political party committees, however, need not  
12 demonstrate actual coordination with their candidates to avail themselves of this  
13 additional spending authority.

14 In BCRA, Congress sets certain new restrictions on these "coordinated party  
15 expenditures" and related restrictions on political party committee independent  
16 expenditures. There are also certain new restrictions on transfers and assignments of  
17 coordinated party expenditure authorizations between party committees. 2 U.S.C.  
18 441a(d)(4)(A) through (C).

19 The Commission proposes an introduction to subpart D of part 109 that would  
20 state how political party committees are treated for purposes of coordinated and  
21 independent expenditures. Proposed section 109.30 would first clarify that party  
22 committees may make independent expenditures subject to the provisions of proposed  
23 sections 109.35 and 109.36. (See discussion below.) Second, proposed section 109.30

1 would explain that political party committees may support candidates with “coordinated  
2 party expenditures,” a term that would be defined at proposed 11 CFR 109.31, and would  
3 state that these coordinated party expenditures are subject to limits that are separate from  
4 and in addition to the contribution limits at 11 CFR 110.1 and 110.2.

5 II. Proposed 11 CFR 109.31 What is a “Coordinated Party Expenditure”?

6 FECA provides a special expenditure authority for coordinated party expenditures  
7 that is available only to certain political party committees. 2 U.S.C. 441a(d). The  
8 Commission would, in proposed section 109.31, define “coordinated party expenditures”  
9 to include payments made by a national committee of a political party and a State  
10 committee of a political party, including any subordinate committee of a State committee,  
11 for something of value in connection with the general election campaign of a candidate.  
12 Proposed section 109.31 would also introduce the term “party coordinated  
13 communication” (which would be defined in proposed section 109.37) as an example of  
14 something of value for which political party committees may make a coordinated party  
15 expenditure.

16 III. Proposed 11 CFR 109.32 What are the Coordinated Party Expenditure Limits?

17 The Commission proposes to move the coordinated party expenditure limits found  
18 at pre-BCRA 11 CFR 110.7(a) and (b) to proposed section 11 CFR 109.32. This new  
19 section would retain the basic organizational structure of paragraphs (a) and (b) of pre-  
20 BCRA section 110.7.

21 The Commission would set forth in proposed paragraph (a), in amended fashion,  
22 the coordinated party expenditure limit for the national committee of a political party for  
23 presidential elections that appears at pre-BCRA section 110.7(a). Because political party

1 committees may also make independent expenditures, Colorado I, 518 U.S. at 618, the  
2 Commission would clarify that the “expenditures” referred to in proposed section 109.32  
3 are “coordinated party expenditures.” This change also appears in proposed paragraphs  
4 (a)(1), (2), (3), and (4) of section 109.32. In addition, proposed paragraph (a)(2), setting  
5 out the coordinated party expenditure limit at two cents multiplied by the voting age  
6 population of the United States, would state that this limit shall be increased in  
7 accordance with 11 CFR 110.17, which would amend pre-BCRA 11 CFR 110.9(c). See  
8 Notice of Proposed Rulemaking, Contribution Limitations and Prohibitions, 67 Fed.  
9 Register 54,366 (August 22, 2002.) In addition, proposed paragraph (a)(2) of section  
10 109.32 would refer to the term “voting age population” at proposed 11 CFR 110.18,  
11 discussed below.

12 Further, proposed 11 CFR 109.32(a)(4), to which pre-BCRA 11 CFR 110.7(a)(6)  
13 would be moved, would provide that coordinated party expenditures on behalf of  
14 presidential candidates do not count against the candidate’s expenditure limitations under  
15 11 CFR 110.8. Proposed paragraph (a)(4) of section 109.32 would also state that the  
16 national party committee may make such expenditures and may assign their spending  
17 authority to other political party committees to do so under proposed section 109.33,  
18 which is discussed below.

19 Proposed paragraph (b) would set forth, and make minor changes to, the  
20 regulations, pre-BCRA, at 11 CFR 110.7(b) addressing coordinated party expenditure  
21 limits of the national committee of a political party and a State committee of a political  
22 party, including any subordinate committee of a State committee, for Federal elections  
23 other than presidential elections. As in proposed paragraph (a) above, proposed

1 paragraph (b) would specify that the “expenditures” referred to in paragraphs (b)(1), (2),  
2 and (4) are coordinated party expenditures. In addition, proposed paragraph (b)(2),  
3 setting out the coordinated party expenditure limits of two cents multiplied by the voting  
4 age population of the United States and dollar figures of \$10,000 and \$20,000, would be  
5 subject to proposed paragraphs (b)(3) and (b)(4) regarding inflation adjustments and the  
6 relationship with contribution limits.

7 IV. Proposed 11 CFR 109.33 May a Political Party Committee Assign its  
8 Coordinated Party Expenditure Authority to Another Political Party Committee?

9 Proposed 11 CFR 109.33 would continue the pre-BCRA rule permitting  
10 assignment of coordinated party expenditure authority between political party committees  
11 by consolidating the authorizing provisions found in the pre-BCRA regulations at  
12 11 CFR 110.7(a)(4) and (c). Such assignments, however, would be prohibited under  
13 certain circumstances in which the assigning political party committee had made  
14 coordinated party expenditures (using part of the spending authority) and the intended  
15 assignee political party committee had made or intends to make independent expenditures  
16 with respect to the same candidate during an election cycle. See 2 U.S.C. 441a(d)(4)(C)  
17 and proposed 11 CFR 109.35(c).

18 Proposed paragraph (a) of section 109.33 would also restate the Commission’s  
19 longstanding policy that a political party committee with authority to make coordinated  
20 party expenditures may assign all or part of that authority to other political party  
21 committees, and that this interpretation extends to both national and State committees of  
22 political parties. See Campaign Guide for Political Party Committees at p.16 (1996).

23 Proposed paragraph (a) of section 109.33 would also state that coordinated party



1 expenditure authority may be assigned only to other political party committees. See 2  
2 U.S.C. 441a(d), and pre-BCRA 11 CFR 110.7(a)(4), which indicates that coordinated  
3 expenditures may be made “through any designated agent, including State and  
4 subordinate party committees.” The Commission makes this change to preclude  
5 confusion, and possible circumvention of the restrictions on transfers and assignments  
6 between political party committees found in BCRA. 2 U.S.C. 441a(d)(4)(B), (C).

7 Proposed paragraph (a) would provide that whenever a political party committee  
8 authorized to make coordinated party expenditures assigns another political party  
9 committee to use part or all of its spending authority, the assignment must be in writing,  
10 must specify a dollar amount, and must be made before the assigned party committee  
11 actually makes the coordinated party expenditure. See Campaign Guide for Political  
12 Party Committees at p.16 (1996). This would apply to both national and State party  
13 committees.

14 Proposed paragraph (b) of section 109.33 would continue the pre-BCRA rule in  
15 11 CFR 110.7(c) that, for purposes of the coordinated spending limits, a State committee  
16 includes subordinate committees of the State committee. Proposed paragraph (b) of  
17 section 109.33 would add district and local political party committees (see 11 CFR  
18 100.14(b)) to the extent that they are assigned authority to make coordinated party  
19 expenditures by another political party committee.

20 Finally, proposed paragraphs (b)(1) and (2) of section 109.33 would contain the  
21 pre-BCRA rule in 11 CFR 110.7(c)(1) and (2) setting out State committees’ methods of  
22 administering the coordinated party expenditure authority.

1           The Commission seeks comments on whether to require political party  
2 committees to attach copies of written assignments to reports they file with the  
3 Commission, or to fax or e-mail them if they are electronic filers.

4 V. Proposed 11 CFR 109.34 When May a Political Party Committee Make  
5 Coordinated Party Expenditures?

6           Proposed 11 CFR 109.34 would continue the pre-BCRA rule in 11 CFR 110.7(d)  
7 permitting a political party committee to make coordinated party expenditures in  
8 connection with the general election campaign before or after its candidate has been  
9 nominated. All pre-nomination coordinated expenditures would continue to be subject to  
10 the coordinated party expenditure limitations, whether or not the candidate on whose  
11 behalf they are made receives the party's nomination.

12 VI. Proposed 11 CFR 109.35 What are the Restrictions on a Political Party  
13 Committee Making Both Independent Expenditures and Coordinated Party Expenditures  
14 in Connection with a Candidate's Campaign?

15           Under BCRA, Congress prohibits political party committees, under certain  
16 conditions, from making coordinated party expenditures, independent expenditures, and  
17 transfers and assignments to other political party committees. 2 U.S.C. 441a(d)(4).  
18 Congress plainly intended to combine certain political party committees into a collective  
19 entity or entities for purposes of these prohibitions. 2 U.S.C. 441a(d)(4)(B). The  
20 statutory language and legislative history raise a significant threshold question of  
21 statutory interpretation: Whether an entire, nationwide political party is to be treated as a  
22 single entity or as separate national and State political party entities for the purposes of  
23 these restrictions. The Commission would adopt the latter approach in proposed 11 CFR

1 109.35. This interpretation, in turn, raises additional issues regarding which political  
2 party committees are to be included in certain defined groups of political party  
3 committees for the purposes of the new restrictions in BCRA.

4 A. Applicability of Prohibitions

5 1. Statutory Interpretation

6 Congress provided that for the purposes of these new prohibitions, “all political  
7 committees established and maintained by a national political party (including all  
8 Congressional campaign committees) and all political committees established and  
9 maintained by a State political party (including any subordinate committee of a State  
10 committee) shall be considered to be a single political committee.” 2 U.S.C.  
11 441a(d)(4)(B).

12 One reading of this statutory provision would combine all committees established  
13 and maintained by a political party at all levels into “a single political committee” for the  
14 purposes of the prohibitions discussed below. An alternative reading would provide that  
15 all committees established and maintained by a national political party, including  
16 Congressional campaign committees, would be “a single political committee,” while all  
17 committees established and maintained by a given State political party, including any  
18 subordinate committee of a State committee, would be another “single political  
19 committee.” The Commission notes that the Senate sponsors of BCRA stated that all  
20 national and State committees of a political party are considered to be one entity for the  
21 purposes of the prohibitions codified at 2 U.S.C. 441a(d)(4). See 148 Cong. Rec. S1993  
22 (daily ed. March 18, 2002) (section-by-section analysis included by Sen. Feingold in the  
23 Record); 148 Cong. Rec. S2144 (daily ed. March 20, 2002) (statement of Sen. McCain).

1           One of the new prohibitions, regarding political party committee transfers and  
2 assignments, would appear to imply that political parties are inherently divisible into  
3 different groups of political committees. See 2 U.S.C. 441a(d)(4)(C). This is because,  
4 without more than one group of political party committees, no transfers or assignments  
5 between political party committee groups could occur. In other words, if there were only  
6 a single group, there could be no transfers or assignments and thus this provision would  
7 be without effect. See Colautti v. Franklin, 439 U.S. 379, 392 (1979) (it is an  
8 “elementary canon of construction that a statute should be interpreted so as not to render  
9 one part inoperative”). Therefore, to give the transfers and assignments provision effect,  
10 the Commission believes that BCRA may contemplate multiple groups of political party  
11 committees. See 2 U.S.C. 441a(d)(4). The Commission seeks comment on this  
12 interpretation of the statute.

## 13                   2. Proposed Rule

14           In light of the foregoing statutory interpretation, proposed 11 CFR 109.35 would  
15 contemplate multiple political party committee groups. Proposed paragraphs (a)(1) and  
16 (a)(2) would apply this interpretation by combining all political committees established  
17 and maintained by a national political party into one group and all political committees  
18 established and maintained by a given State political party into another group. See  
19 2 U.S.C. 441a(d)(4)(B). The Commission would use these “political party groups” to  
20 implement the prohibitions discussed below.

21           Under proposed paragraph (a)(1), the national “political party group” would  
22 combine the national committee of a given political party, all Congressional campaign  
23 committees of that political party, and all political committees established, financed,

1 maintained, or controlled by any of the foregoing. The Commission notes that the  
2 phrase, “established, financed, maintained, or controlled” would differ from the statutory  
3 phrase, “established and maintained.” The proposed formulation, however, would be  
4 consistent with, and serve the same purposes as, the analogous anti-proliferation  
5 provision in FECA. 2 U.S.C. 441a(a)(5). Under section 441a(a)(5), for the purposes of  
6 the contribution limitations, all contributions made by political committees “established  
7 or financed or maintained or controlled” by the same person or entity shall be considered  
8 to have been made by a single political committee. 2 U.S.C. 441a(a)(5).

9 A State “political party group” would combine the State committee of a given  
10 political party in a given State, all subordinate committees of that State committee, and  
11 all district or local committees of that political party within that State that meet the  
12 definition of “political committee” under 11 CFR 100.5. See proposed 11 CFR  
13 109.35(a)(2). Subordinate committees are expressly mentioned in the statute. 2 U.S.C.  
14 441a(d)(4)(B).

15 The Commission notes that the prohibitions discussed below would appear to  
16 apply to district or local committees because those prohibitions apply to any “committee  
17 of a political party.” See 2 U.S.C. 441a(d)(4)(A) and (C). The regulatory definition of  
18 district and local committee includes the requirement that the organization be part of the  
19 “official party structure.” 11 CFR 100.14(b).

20 The Commission notes that the phrase “established, financed, maintained, or  
21 controlled” would differ from the statutory phrase “established and maintained.” See  
22 2 U.S.C. 441a(d)(4)(B). The proposed rule would be based on the Commission’s  
23 definitions of “State committee” and “subordinate committee” at 11 CFR 100.14(a) and

1 (c), which both use the phrase “established, financed, maintained, or controlled,” given  
2 that both would be included in the proposed State political party group.

3 The Commission seeks comment on the proposed combinations of committees of  
4 a political party into a national political party group and into State political party groups.  
5 For example, should the State political party group in a given State include district or  
6 local committees in that State only to the extent that the State party exercises functional  
7 control over them?

8 B. Prohibition on Certain Coordinated and Independent Expenditures

9 Congress provided in BCRA that on or after the date on which a political party  
10 nominates a candidate, no “committee of the political party” may make: 1) any  
11 coordinated expenditure under 2 U.S.C. 441a(d) with respect to the candidate during the  
12 election cycle at any time after “it” makes any independent expenditure with respect to  
13 the candidate during the election cycle; or 2) any independent expenditure with respect to  
14 the candidate during the election cycle at any time after “it” makes any coordinated  
15 expenditure under 2 U.S.C. 441a(d) with respect to the candidate during the election  
16 cycle. 2 U.S.C. 441a(d)(4)(A).

17 Arguably, the use of the pronoun “it” in the statute is ambiguous in that it could  
18 be construed to refer either to the entire political party or to only a committee within the  
19 party. However, as explained above, the Commission would interpret the statute in terms  
20 of national and State “political party groups.” In the terms of this proposed  
21 interpretation, “it” would be construed to mean a given “political party group.” Thus, the  
22 Commission would interpret the prohibition on making both independent and coordinated

1 expenditures with respect to a given candidate after nomination as applying to the  
2 “political party groups” defined above, and not to the party as a whole.

3 The language of proposed paragraph (b) would generally track the statutory  
4 language, but would employ new terms in places to clarify its application. Proposed  
5 11 CFR 109.35(b)(1) would prohibit a political committee within a political party group  
6 from making any post-nomination coordinated party expenditure under section 109.32 in  
7 connection with the general election campaign of a candidate at any time after any  
8 committee within that political party group makes any post-nomination independent  
9 expenditure with respect to that candidate. 2 U.S.C. 441a(d)(4). Proposed paragraph  
10 (b)(2) would prohibit a political committee within a political party group from making  
11 any post-nomination independent expenditure with respect to a candidate at any time  
12 after any political committee within that political party group makes any post-nomination  
13 coordinated expenditure under section 109.32 in connection with the general election  
14 campaign of that candidate. As soon as a political committee within a political party  
15 group makes an independent expenditure or a coordinated party expenditure with respect  
16 to a candidate after nomination, all political committees within that political party group  
17 are bound during the remainder of the election cycle to whichever type of expenditure the  
18 first political committee makes. 2 U.S.C. 441a(d)(4).

19 The restrictions in proposed paragraphs (b)(1) and (b)(2) would apply “during the  
20 remainder of the election cycle.” See 2 U.S.C. 441a(d)(4)(A). This would clarify that  
21 proposed paragraph (b) would apply to exclusively post-nomination events through the  
22 end of the election cycle. The prohibitions would apply to political committees within a  
23 political party group upon the first post-nomination independent or coordinated

1 expenditure by a committee within that political party group and would run until the end  
2 of the election cycle.

3 The Commission notes that coordinated party expenditures and independent  
4 expenditures made by a political committee within a political party group before  
5 nomination would have no bearing on the application of proposed paragraph (b).

6 Under proposed paragraph (e)(2) of section 109.35, the term "election cycle" has  
7 the meaning in 11 CFR 100.3(b), except that the election cycle ends on the date of the  
8 general election runoff, if one is held. For purposes of 11 CFR 109.35, "election cycle"  
9 would thus begin on the first day following the date of the previous general election for  
10 the office or seat which the candidate seeks and ending on the date on which the general  
11 election for the office or seat that the individual seeks is held, or on the date of any  
12 general election runoff is held. Since proposed paragraph (b) of section 109.35 would  
13 only apply after nomination, see 2 U.S.C. 441a(d)(4), the "election cycle" period for this  
14 provision would effectively extend from nomination through the general election or  
15 general election runoff. Finally, the Commission notes that the political party of a  
16 candidate running in a general election runoff would not be permitted an additional  
17 coordinated party expenditure authority with respect to that candidate for the runoff. See  
18 Democratic Senatorial Campaign Committee v. FEC, No. 93-1321 (D.D.C., November  
19 14, 1994.)

20 In proposed paragraph (e)(1), the Commission would define when independent  
21 expenditures that are made by a political party committee are "with respect to" a  
22 candidate, for purposes of section 109.35. Independent expenditures made "with respect  
23 to" a candidate would include those independent expenditures expressly advocating the



1 defeat of any other candidate seeking nomination for election, or election, to the Federal  
2 office sought by that party's candidate. The Commission's proposed definition would  
3 facilitate the appropriate coverage, and help avoid circumvention, of the prohibitions at  
4 proposed paragraph (b) of section 109.35 discussed above and proposed paragraph (c) of  
5 section 109.35 discussed below. See proposed 11 CFR 100.16 (definition of express  
6 advocacy that includes communications expressly advocating the "election or defeat" of a  
7 clearly identified candidate).

8 C. Prohibition on Certain Transfers and Assignments

9 Congress provided in BCRA that a "committee of a political party" that makes  
10 coordinated party expenditures with respect to a candidate shall not, during an election  
11 cycle, transfer any funds to, assign authority to make coordinated party expenditures  
12 under 2 U.S.C. 441a(d) to, or receive a transfer of funds from, a "committee of the  
13 political party" that has made or intends to make an independent expenditure with respect  
14 to the candidate. 2 U.S.C. 441a(d)(4)(C). Congress apparently intended to prevent a  
15 circumvention of the prohibition against making both coordinated and independent  
16 expenditures by means of transfers or assignments. On its face, this prohibition applies  
17 only to a "committee of a political party" that is making coordinated party expenditures  
18 with respect to a candidate. Although Congress prohibits transfers in either direction  
19 between a party committee making coordinated party expenditures and a political party  
20 committee making or intending to make independent expenditures with respect to the  
21 same candidate, Congress prohibits assignments of coordinated party expenditure  
22 spending authority only from the political party committee making coordinated

1 expenditures to a political party committee making or intending to make independent  
2 expenditures, and not in the other direction.

3 Proposed paragraph (c) of 11 CFR 109.35 would generally track the statutory  
4 language in 2 U.S.C. 441a(d)(4)(C), employing the terms defined in proposed section  
5 109.35. It would prohibit transfers of funds and some assignments of authority to make  
6 coordinated party expenditures between political committees in different political party  
7 groups after the occurrence of two events: 1) a political committee within a political  
8 party group makes a coordinated party expenditure in connection with the general  
9 election campaign of a candidate, and 2) a political committee within another political  
10 party group makes an independent expenditure or declares its intention to do so with  
11 respect to the same candidate. After these two events take place, no political committee  
12 within one political party group would be able make any transfers to, or receive any  
13 transfers from, any political committee within the other political party group during the  
14 remainder of the election cycle. Also, after these two events take place, no political  
15 committee within a political party group electing to make coordinated party expenditures  
16 would be able to assign authority to make coordinated party expenditures in connection  
17 with the general election campaign of a candidate to any political committee within the  
18 political party group electing to make independent expenditures during the remainder of  
19 the election cycle. This proposed provision would not, however, prohibit transfers and  
20 assignments between committees within a given political party group.

21 The Commission seeks comment on the approach in proposed 11 CFR 109.35(c).  
22 Should the Commission set forth rules requiring party committees to keep track of the  
23 expenditure activities of other party committees, within the same or another political

1 party group? Cf. proposed section 109.33, pre-BCRA 11 CFR 110.7(c), which places  
2 responsibility on the State committee to insure that the coordinated party expenditures of  
3 the entire party organization are within the limitations.

4 In proposed 11 CFR 109.35(c), the Commission would replace the statutory  
5 phrase “during the election cycle” in the statute with “during the remainder of the  
6 election cycle.” See 2 U.S.C. 441a(d)(4)(C). As noted above, the transfer prohibitions  
7 would only go into effect after the occurrence of the two specific events. Thus, the  
8 period during which the prohibitions would apply would start after the occurrence of both  
9 events and run until the end of the election cycle.

10 In contrast to the prohibition on a party committee making both independent and  
11 coordinated expenditures with respect to a candidate, that is expressly limited to the post-  
12 nomination period, the transfers and assignments provision does not include the same  
13 restriction and thus could apply prior to nomination as well as after nomination. See  
14 2 U.S.C. 441a(d)(4)(A) and (C); proposed 11 CFR 109.34, which would be renumbered  
15 from 11 CFR 110.7(d) (party committees may make coordinated expenditures in  
16 connection with the general election campaign before their candidates have been  
17 nominated); see also Colorado I (involved pre-nomination independent expenditures by a  
18 State party committee). Indeed, the Commission’s proposed rules regarding “election  
19 cycle” would clarify that the prohibitions in proposed 11 CFR 109.35(c) could take effect  
20 prior to nomination. As noted above, “election cycle” begins on the first day following  
21 the date of the previous general election, and may span a two, four, or six year period  
22 depending on the office sought, although in practice it would be unusual for the  
23 prohibitions of proposed 11 CFR 109.35(c) to go into effect far before the date of

1 nomination. In addition, such prohibitions would only go into effect. After a committee  
2 within one political party group made a coordinated party expenditure with respect to the  
3 candidate and a committee within another political party group made or intended to make  
4 an independent expenditure with respect to the same candidate. See proposed 11 CFR  
5 109.35(c).

6 Comment is sought on the distinction between the post-nomination application of  
7 proposed 11 CFR 109.35(b) and the pre- and post-nomination application of proposed 11  
8 CFR 109.35(c). As an alternative approach, is there an interpretation of the transfers and  
9 assignments provision in the statute such that the prohibitions would only apply after  
10 nomination? See 2 U.S.C. 441a(d)(4)(C).

11 Comment is also sought on whether the prohibitions in proposed paragraph (c)  
12 should only go into effect after the occurrence of the two specified expenditures. Is there  
13 an interpretation of 2 U.S.C. 441a(d)(4)(C) that would restrict transfers and assignments  
14 prior to a political party group making coordinated expenditures with respect to a  
15 candidate and the other political party group making or intending to make independent  
16 expenditures with respect to the candidate?

17 The Commission also proposes that the intention of a political committee within a  
18 political party group to make an independent expenditure with respect to a candidate  
19 should be memorialized in a written declaration from the political committee to a  
20 specified committee within another political party group. See proposed 11 CFR  
21 109.35(c) and (d). The Commission notes that such declarations would be voluntary; that  
22 is, a political party committee would not be required to make such a declaration in  
23 advance of making an independent expenditure. In addition, a declaration would not bind

1 the declaring political party committee to make the intended independent expenditure.  
2 However, under proposed sections 109.35(c) and (d), such a declaration by a party  
3 committee would, like the making of an independent expenditure, trigger the prohibitions  
4 on transfers and assignments if a committee within the other political party group made  
5 coordinated expenditures with respect to the same candidate during an election cycle.

6 First, the Commission would identify the party committee to which the written  
7 declaration must be provided, based on 1) the office sought by the candidate, and 2)  
8 whether the declaring committee is within a State or national political party group. See  
9 proposed 11 CFR 109.35(d)(1) and (2). The Commission would require a political  
10 party's national committee and State committees to serve as the points of receipt for these  
11 written declarations. Regarding candidates in presidential elections, a committee within a  
12 State political party group intending to make an independent expenditure would provide  
13 the written declaration to the national committee of the political party. See proposed 11  
14 CFR 109.35(d)(1)(i). A committee within the national political party group intending to  
15 make an independent expenditure would provide the written declaration to each State  
16 committee of the political party where a committee within that State political party group  
17 has been assigned any portion of the national committee's authority to make coordinated  
18 party expenditures under 11 CFR 109.32. See proposed 11 CFR 109.35(d)(1)(ii). Only  
19 the national committee of a political party, and not the State committees, is authorized to  
20 make coordinated party expenditures in connection with the general election campaign of  
21 presidential candidates. See 2 U.S.C. 441a(d)(2); proposed 11 CFR 109.32(a). Thus, the  
22 only circumstance in which a committee within a State political party group would make  
23 a coordinated party expenditure with respect to a presidential candidate -- and thus

1 possibly encounter the prohibitions on transfers and assignments – would be if the  
2 national committee had designated part or all of its coordinated party expenditure to that  
3 State committee. See proposed 11 CFR 109.35(d)(1)(ii) and 11 CFR 109.33.

4       Regarding candidates in other Federal elections, a committee within a State  
5 political party group intending to make an independent expenditure would provide the  
6 written declaration to the national committee of the political party. See proposed 11 CFR  
7 109.35(d)(2)(i).

8       A committee within a State political party group declaring an intention to make an  
9 independent expenditure with respect to the candidate, if the candidate is running for  
10 election in another State, would provide the written statement to the State committee of  
11 the political party in the State in which the candidate is running for election. See  
12 proposed 11 CFR 109.35(d)(2)(ii).

13       A committee within the national political party group intending to make an  
14 independent expenditure would provide the written declaration to the State committee of  
15 the political party in the State in which the candidate is running for election. See  
16 proposed 11 CFR 109.35(d)(2)(iii).

17       The Commission would require the declaring committee to provide its written  
18 declaration in advance of the making of the independent expenditure to the party  
19 committee or committees as appropriate under proposed 11 CFR 109.35(d)(1), (2), and  
20 (3).

21       The Commission would identify the information to be provided in such written  
22 declarations, the name of the declaring committee, the name of the candidate and the

1 office sought by the candidate, and the date of the declaration. See proposed 11 CFR  
2 109.35(d)(4).

3 Comment is sought on this proposed procedure for written declarations. Are the  
4 appropriate party committees identified that would serve as recipients of the written  
5 declarations? In light of the voluntary – and non-binding – nature of the declarations of  
6 intent as proposed, comment is sought on whether the declarations should be more  
7 specific than the proposed declaration as to the amount the party committee intends to  
8 spend or the intended dates of the independent expenditures. Comment is also sought on  
9 how to treat the written declaration. Should there be a formal duty of recordkeeping on  
10 the part of the party committee to which the declaration is provided? For example,  
11 should a three-year recordkeeping requirement apply, such that the declarations would be  
12 preserved and kept available for audit, inspection, or examination by the Commission for  
13 a period of not less than three years? See 11 CFR 104.14(b)(3) and 102.9(c). Further,  
14 should copies of such written declarations be provided to the Commission? See proposed  
15 11 CFR 109.33 regarding the written assignment of coordinated party expenditure  
16 authority. Finally, as an alternative approach to the proposed declaration, should the  
17 Commission instead implement the statutory provision of the intention to make an  
18 independent expenditure by considering public statements, correspondence or other  
19 evidence of a political party committee's intent. See 11 CFR 110.3(c)(4)(iv).

20 D. Impact of Political Party Committee Activity Carried Out Pursuant to  
21 Contribution Limits

22 2 U.S.C. 441a(d)(4) applies to coordinated party expenditures and to political  
23 party committee independent expenditures. Congress did not directly address political

1 party committees' monetary and in-kind contributions to candidates that are subject to the  
2 contribution limits under 2 U.S.C. 441a(a) and 441a(h). See 2 U.S.C 441a(d)(1)  
3 ("Notwithstanding any other provision of law with respect to . . . limitations on  
4 contributions, [political party committees] may make expenditures in connection with the  
5 general election campaign of candidates for Federal office, subject to the limitations  
6 contained [in this subsection]" [emphasis added]). See also proposed 11 CFR 109.30,  
7 109.32.

8 Political party committees may make in-kind contributions to a candidate in the  
9 form of party coordinated communications, as addressed in proposed 11 CFR 109.37.  
10 The Commission notes that such coordination between political party committee and  
11 candidate may compromise the actual independence of any simultaneous or subsequent  
12 independent expenditures the political party committee may attempt with respect to that  
13 candidate. See Buckley v. Valeo, 424 U.S. at 47 (in striking down limits on independent  
14 expenditures, the Court described such expenditures as made "totally independently of  
15 the candidate and his campaign" [emphasis added]). Comment is sought on this analysis.

16 E. Transfers under 11 CFR 102.6(a)(1)(ii)

17 As a result of the enactment of 2 U.S.C. 441a(d)(4) and other provisions from  
18 BCRA affecting transfers between political party committees, the Commission proposes  
19 to revise 11 CFR 102.6(a)(1)(ii) to clarify the interaction of this section with certain  
20 provisions of BCRA. Before BCRA, the Commission permits unlimited transfers  
21 between or among national party committees, State party committees and/or any  
22 subordinate committees. See pre-BCRA 11 CFR 102.6(a)(1)(ii).



1 First, in BCRA, Congress provided that a national committee of a political party,  
2 including a national Congressional campaign committee of a political party, may not  
3 solicit, receive, or direct to another person a contribution, donation, or transfer of funds or  
4 other thing of value, or spend any funds, that are not subject to the limitations,  
5 prohibitions, and reporting requirements of FECA. 2 U.S.C. 441i(a); see Explanation and  
6 Justification for 11 CFR 300.10(a), 67 Fed. Register 49,122 (July 29, 2002).

7 Second, in the "Levin Amendment," Congress placed restrictions on how State,  
8 district, and local party committees raise "Levin funds" and prohibited certain transfers  
9 between political party committees. See 2 U.S.C. 441i(b)(2)(C)(i); Explanation and  
10 Justification for 11 CFR 300.31, 67 Fed. Register 49,124 (July 29, 2002).

11 Third, also in the Levin Amendment, Congress provided that a State, district, or  
12 local committee of a political party that spends Federal funds and Levin funds for Federal  
13 election activity must raise those funds solely by itself. These committees may not  
14 receive or use transferred funds in contravention of such requirements. 2 U.S.C.  
15 441i(b)(2)(B)(iv); see Explanation and Justification for 11 CFR 300.34(a) and (b), 67  
16 Fed. Register 49,127 (July 29, 2002).

17 Fourth, Congress provided in BCRA that a committee of a political party that  
18 makes coordinated party expenditures under 2 U.S.C. 441a(d) in connection with the  
19 general election campaign of a candidate shall not, during that election cycle, transfer any  
20 funds to, assign authority to make coordinated party expenditures under this subsection  
21 to, or receive a transfer from, a committee of the political party that has made or intends  
22 to make an independent expenditure with respect to the candidate. 2 U.S.C.  
23 441a(d)(4)(C); see proposed 11 CFR 109.35(c), discussed above.

1           The Commission proposes the addition of a new opening clause in paragraph  
2 (a)(1)(ii) of section 102.6 incorporating these restrictions by reference into the rules  
3 regarding the transfer of funds and the use of transferred funds.

4 VII. Proposed 11 CFR 109.36. Are There Additional Circumstances Under Which a  
5 Party Committee is Prohibited from Making Independent Expenditures?

6           Prior to the enactment of BCRA, a national committee of a political party was  
7 prohibited from making independent expenditures in connection with the general election  
8 campaign of a candidate for President. See 11 CFR 110.7(a)(5). In Colorado I, the  
9 Supreme Court held that political party committees may make independent expenditures,  
10 but indicated that its decision involved only Congressional races, and did not address  
11 issues that might grow out of the public funding of presidential campaigns. 518 U.S. at  
12 611-612. Of course, not all presidential campaigns are publicly-funded, thus raising an  
13 additional category of circumstances not addressed by the Court in Colorado I.

14           However, Congress may have effectively repealed the prohibition at  
15 11 CFR 110.7(a)(5). See 2 U.S.C. 441a(d)(4). Under a new statutory provision,  
16 Congress prohibits political party committees from making both post-nomination  
17 independent expenditures and post-nomination coordinated expenditures in support of a  
18 candidate. See 2 U.S.C. 441a(d)(4)(A). A national party committee could thus make  
19 independent expenditures with respect to a candidate after nomination unless the  
20 committee had already made post-nomination coordinated expenditures with respect to  
21 that candidate. Because this provision appears to equally apply to party committee  
22 expenditures in support of presidential or Congressional candidates, a national party  
23 committee would appear able to make independent expenditures with respect to a

1 presidential candidate. Thus, Congress appears to have superseded 11 CFR 110.7(a)(5).  
2 Finally, this interpretation appears to apply regardless of whether a presidential candidate  
3 accepts public funding. The legislative history of BCRA does not appear to address the  
4 issue of prohibitions on independent expenditures by national party committees in  
5 connection with presidential elections.

6 Rather than completely delete the prohibition at 11 CFR 110.7(a)(5), however, the  
7 Commission proposes to limit its application to certain limited circumstances in which  
8 the national committee of a political party serves as the principal campaign committee or  
9 authorized committee of its presidential candidate, as permitted under 2 U.S.C.  
10 432(e)(3)(A)(i) and 441a(d)(2). See 11 CFR 102.12(c)(1) and 9002.1(c). Such a  
11 prohibition would be consistent with proposed 11 CFR 100.16(b) (redesignated from pre-  
12 BCRA section 109.1(e)) providing that no expenditure by an authorized committee of a  
13 candidate on behalf of that candidate shall qualify as an independent expenditure.

14 Comments are sought on whether the prohibition at pre-BCRA 11 CFR  
15 110.7(a)(5) should be limited to the circumstances identified in proposed 11 CFR 109.36  
16 or whether the prohibition should be removed completely.

17 VIII. Proposed 11 CFR 109.37 What is a “Party Coordinated Communication”?

18 In BCRA, Congress requires the Commission to promulgate new regulations on  
19 “coordinated communications” that are paid for by persons other than candidates,  
20 authorized committees of candidates, and party committees. Pub. L. 107-155, sec.  
21 214(b), (c); see proposed 11 CFR 109.21 above. Although Congress did not specifically  
22 direct the Commission to address coordinated communications paid for by political party

1 committees, the Commission proposes to do so to give clear guidance to those affected  
2 by BCRA.

3 Proposed section 109.37 would generally apply the same regulatory analysis to  
4 communications paid for by the political party committees that would be applied to  
5 communications paid for by other persons. See proposed 11 CFR 109.21(a) through (e).  
6 This analysis would determine when communications paid for by a political party  
7 committee would be considered to be coordinated with a candidate, a candidate's  
8 authorized committee, or their agents. The Commission bases the proposed similarity of  
9 coordination standards on two Supreme Court cases, Colorado I and Federal Election  
10 Commission v. Colorado Republican Federal Campaign Committee, 533 U.S. 431 (2001)  
11 ("Colorado II"). In Colorado I, the Supreme Court in a plurality opinion concluded that  
12 political parties, like other persons paying for political communications, are capable of  
13 making independent expenditures on behalf of their candidates for Federal office, and  
14 that it would violate the First Amendment to subject such independent expenditures to the  
15 2 U.S.C. 441a(d) expenditure limits. Colorado I, 518 U.S. at 615-616. Subsequently in  
16 Colorado II, the Supreme Court, in upholding the constitutionality of coordinated party  
17 expenditure limits at 2 U.S.C. 441a(d), stated that political parties are in the same  
18 position as other persons who have contribution limits potentially affected by  
19 coordination. Colorado II, 533 U.S. at 455.

20 Comment is sought on this approach. Should political party committee  
21 communications be subject to the same conduct standards at proposed 11 CFR 109.21(d)  
22 for coordination with candidates as are communications by other persons? Should the  
23 "content standards" at proposed 11 CFR 109.21(c) be the same for political party

1 committee communications as for communications by other persons? If not, how should  
2 the standards vary? Would such variations be confusing? Are any of the possible  
3 content standards set forth at proposed 11 CFR 109.21(c)(4) alternatives (A) through (C)  
4 appropriate for political party committees? In light of the relationship between political  
5 party committees and candidates, should any of the conduct standards set forth at  
6 proposed 11 CFR 109.21(d) be excluded from application to political party committee  
7 communications? On the other hand, in light of such relationship, should there be  
8 additional or different conduct standards that would only apply to political party  
9 committees? Should any exceptions apply to party committee communications? Should  
10 the conduct standards set forth at proposed 11 CFR 109.21(d) vary depending on whether  
11 the party communication was made prior to nomination or after nomination? Finally,  
12 should the "content" standard of communications other than electioneering  
13 communications vary depending on whether the political party communication was made  
14 prior to nomination or after nomination?

15       Following proposed 11 CFR 109.21(a), proposed section 109.37(a) would define  
16 the circumstances in which communications paid for by political party committees would  
17 be considered to be coordinated with a candidate, a candidate's authorized committee, or  
18 agents thereof. Under proposed 11 CFR 109.37(a)(1) through (3), such communications  
19 would be deemed to be "party coordinated communications" when they were paid for by  
20 a political party committee or its agent, satisfy at least one of the content standards in 11  
21 CFR 109.21(c), and satisfy at least one of the conduct standards in 11 CFR 109.21(d).

22       For the content standards for party coordinated communications, in proposed  
23 paragraph (a)(2) of section 109.37, the Commission would refer to the content standards

1 proposed in 11 CFR 109.21(c). The Commission also proposes a second sentence in  
2 proposed paragraph (a)(2) of section 109.37 indicating that the republication content  
3 standard of proposed 11 CFR 109.21(c)(2) is evaluated under the conduct standard in  
4 proposed 11 CFR 109.21(d)(6). See the discussion above of proposed 11 CFR 109.21(c).

5 For the conduct standards for party coordinated communications, in proposed  
6 paragraph (a)(3) of section 109.37, the Commission would refer to the conduct standards  
7 proposed in 11 CFR 109.21(d). As in proposed 11 CFR 109.21(d), agreement or formal  
8 collaboration would not be necessary for a finding that a communication is coordinated.  
9 See the discussion above of proposed 11 CFR 109.21(d) and (e). The Commission also  
10 proposes a second sentence in proposed paragraph (a)(3) of section 109.37 addressing  
11 circumstances in which the in-kind contribution results solely from conduct in 11 CFR  
12 109.21(d)(4) or (d)(5). Under these circumstances, the candidate would not receive or  
13 accept an in-kind contribution. See the discussion above regarding proposed 11 CFR  
14 109.21(b)(2).

15 Proposed 11 CFR 109.37(b) would explain the treatment of party coordinated  
16 communications. This paragraph would provide that political party committees must  
17 treat payments for communications coordinated with candidates as either in-kind  
18 contributions or coordinated party expenditures.

19 The Commission would except from proposed 11 CFR 109.37(b) such payments  
20 that are otherwise excepted from the definitions of "contribution" and "expenditure"  
21 found at 11 CFR part 100 subparts C and E. For example, the payment by a State or local  
22 committee of a political party of the costs of preparation, display, or mailing or other  
23 distribution incurred by such committee with respect to a printed slate card, sample

1 ballot, palm card, or other printed listing(s) of three or more candidates for any public  
2 office for which an election is held in the State in which the committee is organized is not  
3 a contribution or an expenditure. 11 CFR 100.80 and 100.140. Thus, if such  
4 communications were coordinated with candidates, the payments for such  
5 communications would not be treated as either in-kind contributions or as coordinated  
6 party expenditures.

7 For such a payment that a political party committee treats as an in-kind  
8 contribution, proposed paragraph (b)(1) of section 109.37 would state that it is made for  
9 the purpose of influencing a Federal election. See the discussion above regarding  
10 proposed 11 CFR 109.21(b).

11 For such a payment that a political party committee treats as a coordinated party  
12 expenditure, proposed paragraph (b)(2) of section 109.37 would state that such  
13 expenditure is made pursuant to coordinated party expenditure authority under proposed  
14 11 CFR 109.32 in connection with the general election campaign of the candidate with  
15 whom it was coordinated.

16 Finally, proposed paragraphs (b)(1) and (b)(2) of section 109.37 would each refer  
17 to the reporting obligations flowing from party coordinated communications under 11  
18 CFR part 104.

19  
20 **Additional Proposed Regulatory Changes**

21 Proposed 11 CFR 100.57 Dissemination, Distribution, or Republication of Candidate  
22 Campaign Materials

1           The FECA categorizes a payment of the dissemination, distribution, or  
2 republication of campaign materials created by a candidate as an expenditure made by the  
3 person making the payment. See 2 U.S.C. 441a(7)(B)(iii) (redesignated from pre-BCRA  
4 2 U.S.C. 441a(7)(B)(ii)). In addition, when such an expenditure is coordinated with a  
5 candidate, it is treated as an in-kind contribution received by the candidate with whom  
6 the communication was coordinated. See 2 U.S.C. 441a(7)(B)(i). Likewise, under  
7 BCRA, when such an expenditure is coordinated with a political party committee, it is  
8 also a contribution received by the political party committee with which it is coordinated.  
9 See 2 U.S.C. 441a(7)(B)(ii). Thus, payments for the dissemination, distribution, or  
10 republication of the campaign material count against the contribution limits of the person  
11 financing the dissemination, distribution, or republication, and political committees and  
12 any other person who is otherwise required to report expenditures are required to report  
13 the payment in the same manner as other expenditures, regardless of whether  
14 coordination occurred. Under the pre-BCRA regulations at 11 CFR 109.1(d)(1), a  
15 candidate does not incur any reporting obligations regarding the dissemination,  
16 distribution, or republication of campaign material by another person in the absence of  
17 coordination.

18           The Commission's pre-BCRA regulation at 11 CFR 109.1(d)(1) would be moved  
19 to the definition of contribution at proposed 11 CFR 100.57 as part of the proposed  
20 reorganization of 11 CFR part 109. The Commission would make changes to reflect  
21 Congress's determination that dissemination, distribution, or republication of campaign  
22 material in coordination with a political party committee, as well as with a candidate,  
23 constitutes a contribution. In addition, the dissemination, distribution, or republication of



1 campaign material would be coordinated if the dissemination, distribution, or  
2 republication satisfies the conduct standards set forth in proposed 11 CFR 109.21(d)(6).  
3 The only other substantive change would be the addition of several exceptions explained  
4 below. The Commission seeks comment on the proposed location of the new regulation,  
5 and whether a corresponding provision should be added to the definition of an  
6 "expenditure" in 11 CFR part 100, subpart D, to maintain a parallel structure with the  
7 contribution definition.

8 In addition, the Commission notes that 2 U.S.C. 441a(a)(7)(B)(iii) refers to  
9 "campaign materials prepared by the candidate, his campaign committees, or their  
10 authorized agents," but does not include campaign materials prepared by political party  
11 committees. The Commission requests comment on whether the latter campaign  
12 materials should be included in light of the fact that Congress now considers coordination  
13 with a political party committee to result in a contribution. 2 U.S.C. 441a(a)(7)(B)(ii).

14 In proposed 11 CFR 100.57, the Commission would include new exceptions for  
15 different types of republication of campaign material so that they would not constitute  
16 contributions. In proposed 11 CFR 100.57(b)(1), the Commission would make it clear  
17 that candidates and political party committees are permitted to republish or disseminate  
18 their own materials without making a contribution. Proposed paragraph (b)(2) would  
19 exempt the use of material when it is used to advocate the defeat of the candidate or party  
20 who prepared the material. For example, Person A would not make a contribution to  
21 Candidate B if Person A incorporates part of Candidate B's campaign material into its  
22 own public communication that advocates the defeat of Candidate B. However, if the  
23 same public communication also urged the election of Candidate B's opponent,

1 Candidate C, and incorporated a picture or quote that had been prepared by Candidate  
2 C's campaign, then the result would constitute a contribution to Candidate C.

3 A third exception in paragraph (b)(3) would make it clear that campaign material  
4 may be republished as part of a bona fide news story as provided in 11 CFR 100.73 or  
5 11 CFR 100.132. In proposed paragraph (b)(4), the Commission would continue to allow  
6 a corporation or labor organization to make limited use of candidate materials in  
7 communications to its restricted class, as provided in 11 CFR 114.3(c)(1).

8 Finally, in proposed paragraph (b)(5), the Commission would recognize that a  
9 national, State, or subordinate committee of a political party would make a coordinated  
10 party expenditure rather than an in-kind contribution when it pays for the dissemination,  
11 distribution, or republication of campaign material using coordinated party expenditure  
12 authority under 11 CFR 109.32. This proposed rule is somewhat broader than pre-BCRA  
13 11 CFR 109.1(d)(2), which provided that a State or subordinate party committee could  
14 engage in such dissemination, distribution, or republication as agents designated by a  
15 national committee pursuant to 11 CFR 110.7(a)(4).

16 The Commission seeks comments on whether the dissemination, distribution, or  
17 republication of campaign materials should be made a part of the definition of a  
18 contribution. Furthermore, the Commission seeks comment on whether any additional  
19 exceptions should be added in proposed paragraph (b), and whether the proposed  
20 exceptions are appropriate.

1  
2 **Contribution and Expenditure Limitations and Prohibitions**

3 **I. Proposed 11 CFR 110.1 and 110.2 Limits on Contributions Made to Political**  
4 **Committees Making Independent Expenditures**

5 The Commission proposes to clarify that the section 110.1 and 110.2 limitations  
6 on contributions to political committees making independent expenditures would apply to  
7 contributions made by multicandidate committees and other persons to political party  
8 committees that make independent expenditures. See proposed 11 CFR 110.1(n) and  
9 110.2(k). Paragraphs 110.1(n) and 110.2(k) would apply to contributions by  
10 multicandidate committees and contributions by persons other than multicandidate  
11 committees, respectively. These two proposed paragraphs would replace pre-BCRA  
12 paragraphs (d)(2) of sections 110.1 and 110.2 regarding the application of the  
13 contribution limits to contributions to committees that make independent expenditures.

14 These sections need to be updated because under pre-BCRA paragraphs (d)(2) of  
15 each section, the Commission recognized that political committees other than party  
16 committees may make independent expenditures, but did not contemplate party  
17 committees doing so. See Colorado I, 518 U.S. at 618. For example, national party  
18 committees may receive contributions aggregating \$20,000 per year from individuals, a  
19 contribution limit that Congress increased to \$25,000 for contributions made on or after  
20 January 1, 2003. See 2 U.S.C. 441a(a)(1)(B). Consequently, under the proposed new  
21 language, the \$20,000 (\$25,000) contribution limit would continue to apply when the  
22 recipient national party committee uses the contribution to make independent  
23 expenditures. The Commission notes that 11 CFR 110.1(h) regarding contributions to

1 political committees supporting the same candidate, remains in effect and unchanged  
2 except to the extent that the support to candidates by political party committees may now  
3 include independent expenditures. The Commission requests comments on proposed  
4 new paragraph (n) of section 110.1 and new paragraph (k) of section 110.2.

5 Additional proposed changes to 11 CFR 110.1 and 110.2 are being addressed in a  
6 separate rulemaking on BCRA's increased contribution limits. See Notice of Proposed  
7 Rulemaking, 67 Fed. Register 54,366 (August 22, 2002).

## 8 II. Proposed 11 CFR 110.7 Removed and Reserved

9 The pre-BCRA regulations at 11 CFR 110.7 contain the coordinated party  
10 expenditure limits and related provisions. As noted above, the Commission proposes to  
11 incorporate section 110.7, in amended form, into 11 CFR part 109, subpart D.

12 Specifically, the provisions in section 110.7 would be revised and redesignated as  
13 follows: 11 CFR 110.7(a) and (b) to 11 CFR 109.32(a) and (b) and 109.36; section  
14 110.7(c) to section 109.33; and section 110.7(d) to section 109.34.

## 16 **Presidential Candidate Expenditure Limitations**

### 17 Proposed 11 CFR 110.8 Presidential Candidate Expenditure Limitations

18 As in proposed 11 CFR 109.32(a) and (b) discussed above, the Commission  
19 would clarify that the expenditure limits for publicly funded Presidential candidates  
20 would be increased in accordance with 11 CFR 110.9(c). See proposed 11 CFR  
21 110.8(a)(2). To accommodate this proposed new section 110.8(a)(2), the Commission  
22 proposes to re-designate pre-BCRA paragraphs (a)(1) and (a)(2) as (a)(1)(i) and (a)(1)(ii),  
23 respectively.

1 In proposed 11 CFR 110.8(a)(3), the Commission would reference the definition  
2 of “voting age population” at proposed 11 CFR 110.18. The voting age population is a  
3 factor in the calculation of expenditure limitations in 11 CFR 110.8(a). Finally, the  
4 Commission is proposing additional changes to 11 CFR 110.9(c) in a separate  
5 rulemaking. See Notice of Proposed Rulemaking, 67 Fed. Register 54,366 (August 22,  
6 2002). Comment is sought on these proposals.

7  
8 **Voting Age Population**

9 Proposed 11 CFR 110.18 Voting Age Population

10 The Commission proposes a redesignation of pre-BCRA section 110.9(d)  
11 regarding voting age population (“VAP”) to proposed 11 CFR 110.18 as part of a  
12 reorganization of section 110.9. This provision is referenced in proposed paragraphs  
13 109.32(a) and (b) (coordinated party expenditure limits) and 110.8(a)(3) (presidential  
14 candidate expenditure limits) where the VAP is used as a factor in calculating the limits.  
15 Proposed section 110.18 would be revised from pre-BCRA section 110.9(d) only by  
16 noting the fact of, rather than the Commission assuring, that the Secretary of Commerce  
17 shall each year certify to the Commission and publish in the Federal Register an estimate  
18 of the VAP pursuant to 2 U.S.C. 441a(e). Proposed changes to the other provisions of  
19 section 110.9, including section 110.9(c) as noted above, are included in a separate  
20 rulemaking. See Notice of Proposed Rulemaking, 67 Fed. Register 54,366 (August 22,  
21 2002). Comment is sought on this proposal.

1 **Corporate and Labor Organization Activity**

2 Proposed 11 CFR 114.4(c)(5) Voter Guides

3 Paragraph (c)(5) of section 114.4 pertains to voter guides paid for by corporations  
4 and labor organizations. The Commission proposes several changes to this paragraph to  
5 conform with other regulatory changes proposed in response to BCRA.

6 The pre-BCRA version of paragraphs (c)(5)(i) and (ii) of section 114.4 provides  
7 that a corporation or labor organization must not, among other things, “contact” a  
8 candidate in the preparation of a voter guide, except in writing. In this rulemaking, the  
9 Commission proposes coordination rules that would allow a person, such as a corporation  
10 or labor union, to contact a candidate to inquire about the candidate’s positions on the  
11 issues without a subsequent communication paid for by that person being deemed  
12 coordinated with the candidate (assuming there was no other evidence of coordination).  
13 See 109.21(f). Accordingly, proposed paragraphs (c)(5)(i) and (ii) of section 114.4  
14 would be amended to delete the prohibition against any contact with a candidate in the  
15 preparation of a voter guide.

16 Pre-BCRA paragraph (c)(5)(ii) of section 114.4 provides that a corporation or a  
17 labor union preparing a voter guide may direct questions in writing to a candidate. In the  
18 coordination rules proposed in this rulemaking, a person, such as a corporation or labor  
19 union, may informally contact a candidate to inquire about the candidate’s positions on  
20 the issues without a subsequent communication paid for by that person being deemed  
21 coordinated with the candidate (assuming there was no other evidence of coordination).  
22 See 109.21(f). That is, the inquiry would not need be in writing. Accordingly, proposed

1 paragraph (c)(5)(ii) of section 114.4 would be amended to delete the requirement that  
2 contact with the candidate be in writing.

3 The Commission would also make several non-substantive changes to proposed  
4 paragraphs (c)(5)(i) and (ii) to conform these provisions to the statutory provisions on  
5 which they are based. Compare 2 U.S.C. 441a(a)(7)(B) with 11 CFR 114.5(c)(5)(i) and  
6 (ii).

7 The Commission notes that an appeals court in one circuit has invalidated  
8 portions of pre-BCRA 11 CFR 114.4(c)(5). See Clifton v. Federal Election Commission,  
9 927 F.Supp. 493 (D. Me. 1996), modified in part and remanded in part, 114 F.3d 1309  
10 (1<sup>st</sup> Cir. 1997), cert. denied, 522 U.S. 1108 (1998). Subsequently, in 1999, the  
11 Commission received a Petition for Rulemaking asking the Commission to repeal its  
12 voter guide regulation. The Commission published a Notice of Availability. See 64 Fed.  
13 Register 46,319 (Aug. 25, 1999). The Commission's present rulemaking proposes  
14 changes necessitated by BCRA, and the Commission would reserve any additional  
15 changes to the voter guide regulations to a future rulemaking. Comment is sought on this  
16 approach.

17

#### 18 **Certification of No Effect Pursuant to 5 U.S.C. 605(b)**

#### 19 **[Regulatory Flexibility Act]**

20 The Commission certifies that the attached proposed rules, if promulgated, will  
21 not have a significant economic impact on a substantial number of small entities. The  
22 basis of this certification is that the national, State, and local party committees of the two  
23 major political parties, and other political committees are not small entities under

1 5 U.S.C. 601 because they are not small businesses, small organizations, or small  
2 governmental jurisdictions. Further, individual citizens operating under these rules are  
3 not small entities.

4 To the extent that any political committee may fall within the definition of "small  
5 entities," their numbers are not substantial, particularly the number that would coordinate  
6 expenditures with candidates or political party committees in connection with a Federal  
7 election.

8 In addition, the small entities to which the rules would apply would not be unduly  
9 burdened by the proposed rules because there is no significant extra cost involved, as  
10 independent expenditures must already be reported. Collectively, the differential costs  
11 will not exceed 100 million dollars per year. In addition, new reporting requirements  
12 would not significantly increase costs, as they only apply to those spending \$10,000 or  
13 more on independent expenditures, and the actual reporting requirements are the  
14 minimum necessary to comply with the new statute enacted by Congress.

15



1	List of Subjects
2	<u>11 CFR Part 100</u>
3	Elections
4	<u>11 CFR Part 102</u>
5	Political committees and parties, reporting and recordkeeping requirements.
6	<u>11 CFR Part 104</u>
7	Campaign funds, political committees and parties, reporting and recordkeeping
8	requirements.
9	<u>11 CFR Part 105</u>
10	Document filing.
11	<u>11 CFR Part 109</u>
12	Elections, reporting and recordkeeping requirements.
13	<u>11 CFR Part 110</u>
14	Campaign funds, political committees and parties.
15	<u>11 CFR Part 114</u>
16	Business and industry, elections, labor.
17	

1 For the reasons set out in the preamble, the Federal Election Commission  
2 proposes to amend subchapter A of chapter 1 of title 11 of the Code of Federal  
3 Regulations as follows:

4  
5 **PART 100 – SCOPE AND DEFINITIONS**

6 1. The authority citation for part 100 would be revised to read as follows:

7 Authority: 2 U.S.C. 431, 434, and 438(a)(8).

8 2. Section 100.16 would be revised to read as follows:

9 **§ 100.16 Independent expenditure (2 U.S.C. 431(17)).**

10 (a) The term independent expenditure means an expenditure by a person for a  
11 communication expressly advocating the election or defeat of a clearly identified  
12 candidate that is not made ~~with the~~ in cooperation, ~~of or in,~~ consultation, ~~with,~~ or concert  
13 with, or at the request or suggestion of, a candidate, the candidate's authorized political  
14 committee, or their agents, or a political party committee or its agents, or any agent or  
15 ~~authorized committee of such candidate.~~ A communication is "made ~~with the~~ in  
16 cooperation, ~~of or in,~~ consultation, ~~with,~~ or concert with, or at the request or suggestion  
17 of, a candidate ~~or any agent or authorized committee of such candidate,"~~ the candidate's  
18 authorized political committee, or their agents, or a political party committee or its  
19 agents" if it is a coordinated general public political communication under 11 CFR-  
20 ~~100.23. See 11 CFR 109.1, 11 CFR 109.21 or a party coordinated communication under~~  
21 11 CFR 109.37.

22 (b) No expenditure by an authorized committee of a candidate on behalf of that  
23 candidate shall qualify as an independent expenditure.

1 3. In section 100.19, paragraphs (b) and (d) would be revised to read as follows:

2 **§ 100.19 File, filed or filing (2 U.S.C. 434(a)).**

3 \* \* \* \* \*

4 (b) Timely filed. General rule. A document other than those addressed in paragraphs  
5 (c) through (f) of this section, ~~a 24-hour report of an independent expenditure, under 11-~~  
6 ~~CFR 104.4(b) or 109.2(b) or (e), or a 24-hour statement of an electioneering-~~  
7 ~~communication under 11 CFR 104.19~~ is timely filed upon deposit as registered or  
8 certified mail in an established U.S. Post Office and postmarked no later than 11:59 p.m.  
9 Eastern Standard/Daylight Time of the day of the filing date, except that pre-election  
10 reports so mailed must be postmarked no later than 11:59 p.m. Eastern Standard/Daylight  
11 Time of the fifteenth day before the date of the election. Documents sent by first class  
12 mail must be received by the close of business on the prescribed filing date to be timely  
13 filed.

14 \* \* \* \* \*

15 (d) 48-hour and 24-hour reports of independent expenditures.

16 (1) 48-hour reports of independent expenditures. A 48-hour report of  
17 independent expenditures under 11 CFR 104.4(b) or 109.10(c) is timely  
18 filed when it is received by the Commission no later than 11:59 p.m.  
19 Eastern Standard/Daylight Time of the second day following the date on  
20 which independent expenditures aggregate \$10,000 or more in accordance  
21 with 11 CFR 104.4(f), any time during the calendar year up to and  
22 including the 20<sup>th</sup> day before an election.

1 (2) 24-hour reports of independent expenditures. A 24-hour report of  
2 independent expenditures under 11 CFR 104.4(b) or 109.2(c) is timely  
3 filed when it is received by the Commission no later than 11:59 p.m.  
4 Eastern Standard/Daylight Time of the day following the date on which  
5 appropriate filing officer as listed in 11 CFR 104.4(e) after a disbursement  
6 is made, or, in the case of a political committee, a debt reportable under 11  
7 CFR 104.11(b) is incurred, for an independent expenditure, but no later  
8 than 24 hours from the time the independent expenditures aggregate at  
9 least \$1,000, in accordance with 11 CFR 104.4(f), during the period less  
10 than 20 days but more than 24 hours before an election.

11 (3) Permissible means of filing. In addition to other permissible means of  
12 filing, a 24-hour report or 48-hour report of independent expenditures may  
13 be filed using a facsimile machine or by electronic mail if the filer is not  
14 required to file electronically in accordance with 11 CFR 104.18.

15 \* \* \* \* \*

16 4. Part 100 would be revised by removing and reserving section 100.23 to read as  
17 follows:

18 **§ 100.23 [Removed and reserved.]**

19 5. Part 100, subpart B would be revised by adding section 100.57 to read as follows:

20 **§ 100.57 Dissemination, distribution, or republication of candidate campaign**  
21 **materials (2 U.S.C. 441a(a)(7)(B)(iii)).**

22 (a) Except as provided in paragraph (b) of this section, a payment for the  
23 dissemination, distribution, or republication, in whole or in part, of any broadcast or of

1 any written, graphic, or other form of campaign materials prepared by a candidate, the  
2 candidate's authorized committee, or an agent of any of the foregoing is a contribution to  
3 the candidate or political party committee if the dissemination, distribution, or  
4 republication or campaign materials satisfies any of the conduct standards set forth in 11  
5 CFR 109.21(d)(6) with respect to any conduct other than the original preparation of  
6 campaign materials. If the dissemination, distribution, or republication of campaign  
7 materials is not coordinated with a candidate or political party committee, then the  
8 payment for such dissemination, distribution, or republication is a contribution by the  
9 person making the payment for the purposes of that person's contribution limits and  
10 reporting requirements. The candidate who prepared the campaign material does not  
11 receive or accept an in-kind contribution that results solely from the dissemination,  
12 distribution, or republication of campaign material originally prepared by that candidate,  
13 unless the dissemination, distribution, or republication of the campaign materials is  
14 coordinated with that candidate or a political party committee as a result of conduct other  
15 than the original preparation of campaign materials.

16 (b) The following uses of campaign materials do not constitute a contribution to the  
17 candidate who originally prepared the materials:

- 18 (1) The campaign material is disseminated, distributed, or republished by the  
19 candidate, the candidate's authorized committee, or an agent of either of  
20 the foregoing who prepared that material;
- 21 (2) The campaign material is incorporated into a communication that  
22 advocates the defeat of the candidate or party that prepared the material;

- 1 (3) The campaign material is disseminated, distributed, or republished in a  
 2 news story, commentary, or editorial exempted under 11 CFR 100.73 or  
 3 11 CFR 100.132;
- 4 (4) The campaign material used consists of a brief quote or portions of  
 5 materials that demonstrate a candidate's position as part of a corporation's  
 6 or labor organization's expression of its own views to its restricted class  
 7 under 11 CFR 114.3(c)(1); or
- 8 (5) A national political party committee or a State or subordinate political  
 9 party committee pays for such dissemination, distribution, or republication  
 10 of campaign materials using coordinated party expenditure authority under  
 11 11 CFR 109.32.

12 **PART 102 – REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY**  
 13 **POLITICAL COMMITTEES (2 U.S.C. 433)**

14 6. The authority citation for Part 102 would continue to read as follows:

15 Authority: 2 U.S.C. 432, 433 434(a)(11), 438(a)(8), and 441d.

16 7. Section 102.6(a)(1)(ii) would be revised to read as follows:

17 **§ 102.6 Transfers of funds; collecting agents.**

18 (a) \* \* \*

19 (1) \* \* \*

20 (ii) Subject to the restrictions set forth at 11 CFR 109.35(c), 300.10(a),  
 21 300.31, 300.34(a) and (b), transfers of funds may be made without  
 22 limit on amount between or among a national party committee, a

1 State party committee and/or any subordinate party committee  
2 whether or not they are political committees under  
3 11 CFR 100.5 and whether or not such committees are affiliated.

4 \* \* \* \* \*

5  
6 **PART 104 -- REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)**

7 8. The authority citation for part 104 would continue to read as follows:

8 Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), and  
9 439a.

10 9. Section 104.4 would be revised to read as follows:

11 **§ 104.4 Independent expenditures by political committees (2 U.S.C. 434(b), (d) and**  
12 **(g)).**

13 (a) Regularly scheduled reporting. Every political committee ~~which~~that makes  
14 independent expenditures must report all such independent expenditures on Schedule E in  
15 accordance with 11 CFR 104.3(b)(3)(vii). Every person (other than a political  
16 committee) ~~shall~~must report independent expenditures in accordance with 11 CFR ~~part-~~  
17 ~~109~~109.10.

18 (b) Reports of independent expenditures made at any time up to and including the  
19 20<sup>th</sup> day before an election.

20 (1) Independent expenditures aggregating less than \$10,000 in a calendar  
21 year. Political committees must report on Schedule E of FEC Form 3X at  
22 the time of their regular reports in accordance with 11 CFR 104.3, 104.5  
23 and 104.9, all independent expenditures aggregating less than \$10,000

1 with respect to a given election any time during the calendar year up to  
2 and including the 20<sup>th</sup> day before an election.

3 (2) Independent expenditures aggregating \$10,000 or more in a calendar year.

4 Political committees must report on Schedule E of FEC Form 3X all  
5 independent expenditures aggregating \$10,000 or more with respect to a  
6 given election any time during the calendar year up to and including the  
7 20<sup>th</sup> day before an election. Political committees must ensure that the  
8 Commission receives these reports no later than 11:59 p.m. Eastern  
9 Standard/Daylight Time of the second day following the date on which a  
10 communication that constitutes an independent expenditure is publicly  
11 distributed or otherwise publicly disseminated. Each time subsequent  
12 independent expenditures relating to the same election aggregate an  
13 additional \$10,000 or more, the political committee must ensure that the  
14 Commission receives a new 48-hour report of the subsequent independent  
15 expenditures. See 11 CFR 104.4(f) for aggregation. Each 48-hour report  
16 must contain the information required by 11 CFR 104.3(b)(3)(vii)  
17 indicating whether the independent expenditure is made in support of, or  
18 in opposition to, the candidate involved. In addition to other permissible  
19 means of filing, a political committee may file the 48-hour reports under  
20 this section by any of the means permissible under 11 CFR 100.19(d)(3).

21 (c) Reports of independent expenditures made less than 20 days, but more than 24  
22 hours before the day of an election. Political committees must ensure that their reports  
23 the Commission receives reports of any independent expenditures aggregating \$1,000 or



1 more with respect to a given election, ~~made~~ after the 20th day, but more than 24 hours,  
2 before 12:01 a.m. of the day of the election, ~~shall be received by~~ no later than 11:59 p.m.  
3 Eastern Standard/Daylight Time of the day following the date on which a communication  
4 is publicly distributed or otherwise publicly disseminated. ~~[the appropriate officers listed~~  
5 ~~in paragraph (c) of this section after a disbursement is made, or a debt reportable under~~  
6 ~~11 CFR 104.11(b) is incurred, for an independent expenditure, but no later than 24 hours~~  
7 ~~after such independent expenditures aggregate \$1,000 or more.]~~ Each time subsequent  
8 independent expenditures relating to the same election aggregate \$1,000 or more, the  
9 political committee must ensure that the Commission ~~must~~ receives a new 24-hour report  
10 of the subsequent independent expenditures. ~~Such~~ Each 24-hour report filed in  
11 ~~accordance with this section~~ shall contain the information required by 11 CFR  
12 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or  
13 in opposition to, the candidate involved. Political committees may file ~~Reports filed~~  
14 ~~under this section may be filed~~ by any of the means permissible under 11 CFR  
15 100.19(d)(3). ~~In addition to other permissible means of filing, a 24-hour report may be~~  
16 ~~filed using a facsimile machine or electronic mail if the filer is not required to file~~  
17 ~~electronically in accordance with 11 CFR 104.18. Such report shall be verified by one of~~  
18 ~~the methods stated in paragraph (b)(1)(i) or (ii) or (b)(2) of this section. Any report~~  
19 ~~verified under either of these methods shall be treated for all purposes (including~~  
20 ~~penalties for perjury) in the same manner as a document verified by signature.~~  
21 (d) Verification. ~~Such report~~ Political committees shall verify reports of  
22 independent expenditures filed under paragraph (b) or (c) of this section shall be verified  
23 by one of the methods stated in paragraph ~~(ed)~~ (1) or (2) or (b)(2) of this section. Any

1 report verified under either of these methods shall be treated for all purposes (including  
2 penalties for perjury) in the same manner as a document verified by signature.

3 (1) For reports filed on paper (e.g., by hand delivery, U.S. Mail or facsimile  
4 machine), the treasurer of the political committee that made the  
5 independent expenditure shall certify, under penalty of perjury, the  
6 independence of the expenditure by handwritten signature immediately  
7 following the certification required by 11 CFR 104.3(b)(3)(vii), shall be  
8 immediately followed by the handwritten signature of the treasurer of the  
9 political committee that made the independent expenditure and who  
10 certifies, under penalty of perjury, its independence.

11 (2) For reports filed by electronic mail, the treasurer of the political committee  
12 that made the independent expenditure shall certify, under penalty of  
13 perjury, the independence of the expenditure by typing the treasurer's  
14 name immediately following the certification required by 11 CFR  
15 104.3(b)(3)(vii), shall be immediately followed by the typewritten name  
16 of the treasurer of the political committee that made the independent  
17 expenditure and who certifies, under penalty of perjury, its independence.

18 (ee) Where to file. Political committees must file Reports of independent  
19 expenditures under this section and part 109 shall be filed as set forth at paragraphs (c)(1)  
20 and (2) through (3) of this section.

21 (1) For independent expenditures in support of or in opposition to, a candidate  
22 for President or Vice President: with the Commission and the Secretary of  
23 State for the State in which the expenditure is made.

1 (2) For independent expenditures in support of, or in opposition to, a  
2 candidate for the Senate or the House of Representatives: with the  
3 Secretary of the Senate Commission and the Secretary of State for the  
4 State in which the candidate is seeking election.

5 ~~(3) For independent expenditures in support of, or in opposition to, a~~  
6 ~~candidate for the House of Representatives: with the Federal Election~~  
7 ~~Commission and the Secretary of State for the State in which the candidate is~~  
8 ~~seeking election.~~

9 (f) Aggregating independent expenditures for reporting purposes. For purposes of  
10 determining whether 24-hour and 48-hour reports must be filed in accordance with  
11 paragraphs (b) and (c) of this section and 11 CFR 109.10(c) and (d), aggregations of  
12 independent expenditures must be calculated as of the first date during the calendar year  
13 on which a communication that constitutes an independent expenditure is publicly  
14 distributed or otherwise publicly disseminated, and as of the date that any such  
15 communication with respect to the same election is subsequently publicly distributed or  
16 otherwise publicly disseminated. Every person must include in the aggregate total all  
17 disbursements for independent expenditures, and all enforceable contracts, either oral or  
18 written, obligating funds for disbursements for independent expenditures, made with  
19 respect to any communication that has been publicly distributed or otherwise publicly  
20 disseminated, during the calendar year, with respect to a given election for Federal office.

21 10. In section 104.5, paragraph (g) would be revised as follows:

22 **§ 104.5 Filing dates (2 U.S.C. 434(a)(2)).**

23 \* \* \* \* \*

1 (g) Reports of independent expenditures.

2 (1) 48-hour reports of independent expenditures. Every person who or which  
3 must file a 48-hour report under 11 CFR 104.4(b) must ensure the  
4 Commission receives the report no later than 11:59 p.m. Eastern  
5 Standard/Daylight Time of the second day following the date on which a  
6 communication that constitutes an independent expenditure is publicly  
7 distributed or otherwise publicly disseminated. Each time subsequent  
8 independent expenditures by that person relating to the same election as  
9 that to which the previous report relates aggregate \$10,000 or more, that  
10 person must ensure that the Commission receives a new 48-hour report of  
11 the subsequent independent expenditures no later than 11:59 p.m. Eastern  
12 Standard/Daylight Time of the second day following the date on which the  
13 \$10,000 threshold is reached or exceeded. See 11 CFR 104.4(f) for  
14 aggregation.

15 (2) 24-hour report of independent expenditures. Statements~~Every person who~~  
16 or which must file a 24-hour report under 11 CFR 104.4(c) must ensure  
17 that the Commission receives the report no later than 11:59 p.m. Eastern  
18 Standard/Daylight Time of the day following the date on which a  
19 communication that constitutes an independent expenditure is publicly  
20 distributed or otherwise publicly disseminated, disclosing any independent  
21 expenditures must be received by the appropriate officers listed in 11 CFR  
22 104.4(e) aggregating \$1,000 or more with respect to a given election after  
23 the 20th day, but more than 24 hours, before 12:01 a.m. of the day of the

1 election, must be received by the appropriate officers listed in 11 CFR  
2 104.4(e) after a disbursement is made, or in the case of a political  
3 committee, a debt reportable under 11 CFR 104.11(b) is incurred, but no  
4 later than 24 hours after such independent expenditure is made. Each time  
5 subsequent independent expenditures by that person relating to the same  
6 election as that to which the previous report relates aggregate \$1,000 or  
7 more, that person must ensure that the Commission receives a 24-hour  
8 report of the subsequent independent expenditures no later than 11:59 p.m.  
9 Eastern Standard/Daylight Time of the day following the date on which  
10 the \$1,000 threshold is reached or exceeded. See 11 CFR 104.4(f) for  
11 aggregation.

12 (3) Such Each 24-hour or 48-hour report of independent expenditures  
13 statement filed under this section shall contain the information required by  
14 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is  
15 made in support of, or in opposition to, the candidate involved.

16 (4) For purposes of this part, a communication that is mailed to its intended  
17 audience is publicly disseminated when it is relinquished to the U.S.  
18 Postal Service.

19 \* \* \* \* \*

20  
21 **PART 105 – DOCUMENT FILING (2 U.S.C. 432(g))**

22 11. The authority citation for part 105 would be revised to read as follows:

23 Authority: 2 U.S.C. 432(g), 434, 438(a)(8).

1 12. Section 105.2 would be revised to read as follows:

2 **§ 105.2 Place of filing; Senate candidates, their principal campaign**  
3 **committees, and committees supporting only Senate candidates (2 U.S.C.**  
4 **432(g)(2), 434(g)(3)).**

5 (a) General Rule. Except as provided in paragraph (b) of this section, aAll  
6 designations, statements, reports, and notices as well as any modification(s) or  
7 amendment(s) thereto, required to be filed under 11 CFR parts 101, 102, and 104 by a  
8 candidate for nomination or election to the office of United States Senator, by his or her  
9 principal campaign committee or by any other political committee(s) ~~which~~that supports  
10 only candidates for nomination for election or election to the Senate of the United States  
11 shall be filed in original form with, and received by, the Secretary of the Senate, as  
12 custodian for the Federal Election Commission.

13 (b) Exceptions. The following statements and reports must be filed with the  
14 Commission and not with the Secretary of the Senate, even if the communication refers  
15 to a Senatorial candidate:

- 16 (1) 48-hour statements of electioneering communications; and  
17 (2) 24-hour and 48-hour reports of independent expenditures.

18 13. Part 109 would be revised to read as follows:

19 **PART 109 – COORDINATED AND INDEPENDENT EXPENDITURES (2 U.S.C.**  
20 **431(17), 441a, Pub. L. 107-155 sec. 214(c) (March 27, 2002)).**

21 Sec.

22 **Subpart A – Scope and Definitions**

23 § 109.1 When will this part apply?

1 § 109.2 [Removed and reserved]

2 § 109.3 Definitions.

3 **Subpart B – Independent Expenditures**

4 § 109.10 How do political committees and other persons report independent  
5 expenditures?

6 § 109.11 When is a “non-authorization notice” (disclaimer) required?

7 **Subpart C – Coordination**

8 § 109.20 What does “coordinated” mean?

9 § 109.21 What is a “coordinated communication”?

10 § 109.22 Who is prohibited from making coordinated communications?

11 **Subpart D – Special Provisions for Political Party Committees**

12 § 109.30 How are political party committees treated for purposes of independent  
13 expenditures and coordination?

14 § 109.31 What is a “coordinated party expenditure”?

15 § 109.32 What are the coordinated party expenditure limits?

16 § 109.33 May a political party committee assign its coordinated party expenditure limit  
17 to another political party committee?

18 § 109.34 When can a political party committee make coordinated party expenditures?

19 § 109.35 What are the restrictions on a political party making both independent  
20 expenditures and coordinated party expenditures in connection with a candidate?

21 § 109.36 Are there additional circumstances under which a political party committee is  
22 prohibited from making independent expenditures?

23 § 109.37 What is a “party coordinated communication”?

1 Authority: 2 U.S.C. 431(17), 434(c), 441a; Pub. L. 155-107 214(c).

2 ~~§ 109.1 Definitions (2 U.S.C. 431(17)).~~

3 (a) ~~Independent expenditure means an expenditure by a person for a communication~~  
4 ~~expressly advocating the election or defeat of a clearly identified candidate that is not~~  
5 ~~made with the cooperation of, or in consultation with, or in concert with, or at the request~~  
6 ~~or suggestion of, a candidate or any agent or authorized committee of such candidate.~~

7 (b) ~~For purposes of this definition—~~

8 (1) ~~Person means an individual, partnership, committee, association, qualified~~  
9 ~~nonprofit corporation under 11 CFR 114.10(e), or any organization or~~  
10 ~~group of persons, including a separate segregated fund established by a~~  
11 ~~labor organization, corporation, or national bank (see part 114) but does~~  
12 ~~not mean a labor organization, corporation not qualified under 11 CFR~~  
13 ~~114.10(e), or national bank.~~

14 (2) ~~Expressly advocating shall have the same meaning as set forth at 11 CFR~~  
15 ~~100.22.~~

16 (3) ~~Clearly identified shall have the same meaning as set forth at 11 CFR~~  
17 ~~100.17.~~

18 (4) ~~A communication is "made with the cooperation of, or in consultation~~  
19 ~~with, or in concert with, or at the request or suggestion of, a candidate or~~  
20 ~~any agent or authorized committee of such candidate" if it is a coordinated~~  
21 ~~general public political communication under 11 CFR 100.23.~~

22 (5) ~~Agent means any person who has actual oral or written authority, either~~  
23 ~~express or implied, to make or to authorize the making of expenditures on-~~



1           ~~behalf of a candidate, or means any person who has been placed in a~~  
2           ~~position within the campaign organization where it would reasonably~~  
3           ~~appear that in the ordinary course of campaign-related activities he or she~~  
4           ~~may authorize expenditures.~~

5 ~~(e) — An expenditure not qualifying under this section as an independent expenditure~~  
6 ~~shall be a contribution in kind to the candidate and an expenditure by the candidate,~~  
7 ~~unless otherwise exempted.~~

8 ~~(d) — (1) — The financing of the dissemination, distribution, or republication, in whole~~  
9           ~~or in part, of any broadcast or any written, graphic, or other form of~~  
10           ~~campaign materials prepared by the candidate, his campaign committees,~~  
11           ~~or their authorized agents shall be considered a contribution for the~~  
12           ~~purposes of contribution limitations and reporting responsibilities by the~~  
13           ~~person making the expenditure but shall not be considered an expenditure~~  
14           ~~by the candidate or his authorized committees unless the dissemination,~~  
15           ~~distribution, or republication of campaign materials is a coordinated~~  
16           ~~general public political communication under 11 CFR 100.23.~~

17           ~~(2) — This paragraph does not affect the right of a State or subordinate party~~  
18           ~~committee to engage in such dissemination, distribution, or republication~~  
19           ~~as agents designated by the national committee pursuant to § 110.7(a)(4).~~

20 ~~(e) — No expenditure by an authorized committee of a candidate on behalf of that~~  
21 ~~candidate shall qualify as an independent expenditure.~~

1

2 **Subpart A – Scope and Definitions**

3 **§ 109.1 When will this part apply?**

4 This part applies to expenditures that are made independently from a candidate,  
5 an authorized committee, a political party committee, or their agents, and to those  
6 payments that are made in coordination with a candidate, a political party committee, or  
7 their agents. The regulations in this part explain the differences between the two kinds of  
8 payments and state how each type of payment must be reported and who must report it.  
9 In addition, subpart D of part 109 describes procedures and limits that apply only to  
10 payments, transfers, and assignments made by political party committees.

11 ~~**§ 109.2 Reporting of independent expenditures by persons other than a political**~~  
12 ~~**committee (2 U.S.C. 434(e)).**~~

13 ~~(a) Every person other than a political committee, who makes independent~~  
14 ~~expenditures aggregating in excess of \$250 during a calendar year shall file a report on~~  
15 ~~FEC Form 5 or, if the person is not required to file electronically under 11 CFR 104.18, a~~  
16 ~~signed statement with the Commission or Secretary of the Senate in accordance with 11~~  
17 ~~CFR 104.4(e).~~

18 ~~(1) If a signed statement is submitted, the statement shall include:~~

19 ~~(i) The reporting person's name, mailing address, occupation, and the~~  
20 ~~name of his or her employer, if any;~~

21 ~~(ii) The identification (name and mailing address) of the person to~~  
22 ~~whom the expenditure was made;~~

23 ~~(iii) The amount, date, and purpose of each expenditure;~~

1           ~~(iv) — A statement which indicates whether such expenditure was in~~  
2                     ~~support of, or in opposition to a candidate, together with the~~  
3                     ~~candidate's name and office sought;~~

4           ~~(v) — A notarized certification under penalty of perjury as to whether~~  
5                     ~~such expenditure was made in cooperation, consultation, or concert~~  
6                     ~~with, or at the request of suggestion of any candidate or any~~  
7                     ~~authorized committee or agent thereof, and~~

8           ~~(vi) — The identification of each person who made a contribution in~~  
9                     ~~excess of \$200 to the person filing such report, which contribution~~  
10                    ~~was made for the purpose of furthering the reported independent~~  
11                    ~~expenditure.~~

12           ~~(1) — Reports or statements filed under this section shall be filed at the end of~~  
13                     ~~the reporting period (quarterly, pre-election, post-election, semi-annual,~~  
14                     ~~annual) (see 11 CFR 104.5) during which any independent expenditure~~  
15                     ~~which aggregates in excess of \$250 is made and in any reporting period~~  
16                     ~~thereafter in which additional independent expenditures are made.~~

17           ~~(b) — Independent expenditures aggregating \$1,000 or more made by any person after~~  
18                     ~~the twentieth day, but more than 24 hours before 12:01 a.m. of the day of an election~~  
19                     ~~shall be reported within 24 hours after such independent expenditure is made. Such~~  
20                     ~~report or statement shall contain the information required by 11 CFR 109.2(a) indicating~~  
21                     ~~whether the independent expenditure is made in support of, or in opposition to, a~~  
22                     ~~particular candidate and shall be filed with the appropriate officers in accordance with 11~~  
23                     ~~CFR 104.4(e).~~

1 § 109.2 [Removed and reserved]

2 ~~§ 109.3 Non-authorization notice (2 U.S.C. 441d).~~

3 ~~Whenever any person makes an independent expenditure for the purpose of~~  
4 ~~financing communications expressly advocating the election or defeat of a clearly~~  
5 ~~identified candidate, such person shall comply with the requirements of 11 CFR 110.11.~~

6 § 109.3 Definitions.

7 For the purposes of 11 CFR part 109 only, agent means any person who has actual  
8 authority, either express or implied, to engage in any of the following activities on behalf  
9 of the specified persons:

10 (a) In the case of a national, State, district, or local committee of a political party, any  
11 one or more of the activities listed in paragraphs (a)(1) through (a)(5) of this section:

12 (1) To solicit, direct, or receive any contribution, donation, or transfer of  
13 funds.

14 (2) To make or authorize any communication described in 11 CFR  
15 100.29(a)(1), or to make or authorize a public communication that meets  
16 the content standard set forth in 11 CFR 109.21(c).

17 (3) To create, produce, or distribute any communication at the request or  
18 suggestion of a candidate.

19 (4) To be materially involved in decisions regarding:

20 (i) The content of the communication;

21 (ii) The intended audience;

22 (iii) The specific media outlet used;

23 (iv) The timing or frequency of the communication;

- 1 (v) The size or prominence of a printed communication or duration of  
2 a communication on a television, radio, or cable station or by telephone;  
3 or,  
4 (vi) The script of a telephone message.
- 5 (5) To make or direct a communication that is created, produced, or  
6 distributed with the use of material or information derived from a  
7 substantial discussion about the communication with a candidate.
- 8 (b) In the case of an individual who is a Federal candidate or an individual holding  
9 Federal office, any one or more of the activities listed in paragraphs (b)(i) through  
10 (b)(5) of this section:
- 11 (1) To solicit, direct, or receive any contribution, donation, or transfer of  
12 funds.
- 13 (2) To make or authorize any communication described in 11 CFR  
14 100.29(a)(1), or to make or authorize a public communication that meets  
15 the content criteria set forth in 11 CFR 109.21(c).
- 16 (3) To request or suggest that any other person create, produce, or distribute  
17 any communication.
- 18 (4) To be materially involved in decisions regarding:
- 19 (i) The content of the communication;  
20 (ii) The intended audience;  
21 (iii) The specific media outlet used;  
22 (iv) The timing or frequency of the communication;

1 (v) The size or prominence of a printed communication or duration of  
2 a communication on a television, radio, or cable station or by  
3 telephone; or,

4 (vi) The script of a telephone message.

5 (5) To provide material or information to assist another person in the creation,  
6 production, or distribution of any communication.

7  
8 **Subpart B – Independent Expenditures**

9 **§ 109.10 How do political committees and other persons report independent**  
10 **expenditures?**

11 (a) Political committees, including political party committees, must report  
12 independent expenditures under 11 CFR 104.4.

13 (b) Every person, other than a political committee, who makes independent  
14 expenditures aggregating in excess of \$250 with respect to a given election in a  
15 calendar year shall file a verified statement, or report on FEC Form 5 with the  
16 Commission or Secretary of the Senate containing the information required by  
17 paragraph (e) of this section. ~~Every person filing a r~~Reports or statements filed  
18 under this section shall ~~be filed~~ do so at the end of the reporting period during  
19 which any such independent expenditures that aggregate in excess of \$250 is  
20 made and in any reporting period thereafter in which additional independent  
21 expenditures are made.

22 (c) Every person, other than a political committee, who makes independent  
23 expenditures aggregating \$10,000 or more with respect to a given election any time

1 during the calendar year up to and including the 20th day before an election, must report  
2 the independent expenditures on FEC Form 5, or by signed statement if the person is not  
3 otherwise required to file electronically under 11 CFR 104.18. (See 11 CFR 104.4(f) for  
4 aggregation). The person making the independent expenditures aggregating \$10,000 or  
5 more must ensure that the Commission receives the report or statement no later than  
6 11:59 p.m. Eastern Standard/Daylight Time of the second day following the date on  
7 which a communication is publicly distributed or otherwise publicly disseminated. Each  
8 time subsequent independent expenditures relating to the same election aggregate an  
9 additional \$10,000 or more, the person making the independent expenditures must ensure  
10 that the Commission receives a new 48-hour report of the subsequent independent  
11 expenditures. Each 48-hour report must contain the information required by paragraph  
12 (e)(1) of this section.

13 (bd) Reports of Every person making, after the 20th day, but more than 24 hours  
14 before 12:01 a.m. of the day of an election, independent expenditures aggregating \$1,000  
15 or more with respect to a given election made by any person after the twentieth20th day,  
16 but more than 24 hours before 12:01 a.m. of the day of an election must report those  
17 independent expenditures and ensure that the Commission be received by the  
18 appropriate officers as listed in paragraph (e) of this section after a disbursement is made  
19 for an independent expenditure, but no later than 24 hours after the report or signed  
20 statement no later than 11:59 p.m. Eastern Standard/Daylight Time of the day following  
21 the date on which a communication is publicly distributed or otherwise publicly  
22 disseminated, such independent expenditure is made. Each time subsequent independent  
23 expenditures relating to the same election aggregate \$1,000 or more, the person making

1 the independent expenditures must ensure that the Commission receives a new 24-hour  
2 report of the subsequent independent expenditures. See 11 CFR 104.4(f) for aggregation.

3 Such report or statement shall contain the information required by paragraph (e) of this  
4 section.

5 (ee) Verified statements.

6 (1) Contents of verified statement. If a signed statement is submitted, the  
7 statement shall include:

- 8 (i) The reporting person's name, mailing address, occupation, and the  
9 name of his or her employer, if any;
- 10 (ii) The identification (name and mailing address) of the person to  
11 whom the expenditure was made;
- 12 (iii) The amount, date and purpose of each expenditure;
- 13 (iv) A statement that indicates whether such expenditure was in support  
14 of, or in opposition to a candidate, together with the candidate's  
15 name and office sought;
- 16 (v) A verified certification under penalty of perjury as to whether such  
17 expenditure was made in cooperation, consultation or concert with,  
18 or at the request or suggestion of ~~any candidate or any authorized~~  
19 ~~committee or agent thereof~~ a candidate, a candidate's authorized  
20 committee, or their agents, or a political party committee or its  
21 agents; and
- 22 (vi) The identification of each person who made a contribution in  
23 excess of \$200 to the person filing such report, which contribution



1 was made for the purpose of furthering the reported independent  
2 expenditure.

3 ~~(2) Verification of independent expenditure statements and reports. For reports filed~~  
4 ~~on paper (e.g., by hand delivery, U.S. Mail or facsimile machine), the certification~~  
5 ~~required by paragraph (e)(1)(v) of this section must be immediately followed by the~~  
6 ~~handwritten signature of the person who made the independent expenditure and who~~  
7 ~~certifies, under penalty of perjury, its independence. For reports filed by electronic mail,~~  
8 ~~the certification required by paragraph (e)(1)(v) of this section must be immediately~~  
9 ~~followed by the typewritten name of the person who made the independent expenditure~~  
10 ~~and who certifies, under penalty of perjury, its independence.~~

11 (2) Verification of independent expenditure statements and reports. Every person  
12 shall verify reports of independent expenditures filed pursuant to the requirements of this  
13 section by one of the methods stated in paragraph (2)(i) or (ii) of this section. Any report  
14 verified under either of these methods shall be treated for all purposes (including  
15 penalties for perjury) in the same manner as a document verified by signature.

16 (i) For reports filed on paper (e.g., by hand delivery, U.S. Mail or facsimile  
17 machine), the person who made the independent expenditure shall certify,  
18 under penalty of perjury, the independence of the expenditure by  
19 handwritten signature immediately following the certification required by  
20 paragraph (e)(1)(v) of this section.

21 (ii) For reports filed by electronic mail, the person who made the independent  
22 expenditure shall certify, under penalty of perjury, the independence of the

1 expenditure by typing the treasurer's name immediately following the  
2 certification required by paragraph (e)(1)(v) of this section.

3 **§ 109.11 When is a “non-authorization notice” (disclaimer) required?**

4 Whenever any person makes an independent expenditure for the purpose of  
5 financing communications expressly advocating the election or defeat of a clearly  
6 identified candidate, such person shall comply with the requirements of 11 CFR 110.11.

7 **Subpart C – Coordination**

8 **§ 109.20 What does “coordinated” mean?**

9 (a) Coordinated means made in cooperation, consultation or concert with, or at the  
10 request or suggestion of, a candidate, a candidate's authorized committee, or their agents,  
11 or a political party committee or its agents.

12 (b) Any expenditure that is coordinated within the meaning of paragraph (a) of this  
13 section, but is not made for a coordinated communication under 11 CFR 109.21 or a  
14 party coordinated communication under 11 CFR 109.37, is an in-kind contribution or a  
15 coordinated party expenditure with respect to the candidate or political party committee  
16 with whom or with which it was coordinated, unless otherwise exempted under 11 CFR  
17 part 100, subparts C or E.

18  
19 **§ 109.21 What is a “coordinated communication”?**

20 (a) Definition. Except as provided in paragraph (f) of this section, a communication  
21 is coordinated with a candidate, an authorized committee, or their agents, or a political  
22 party committee or its agents when the communication:

- 1 (1) Is paid for by a person other than that candidate, or an authorized  
2 committee, a political party committee, or agent of any of the foregoing;
- 3 (2) Satisfies at least one of the content standards in paragraph (c) of this  
4 section; and
- 5 (3) Satisfies at least one of the conduct standards in paragraph (d) of this  
6 section. For a communication that satisfies the content standard in  
7 paragraph (c)(2) of this section, the conduct standard in paragraph (d)(6)  
8 of this section must be satisfied for the communication to be deemed  
9 coordinated.

10 (b) Treatment as an in-kind contribution; Reporting.

- 11 (1) General rule. A payment for a communication that is coordinated with a  
12 candidate or political party committee is made for the purpose of  
13 influencing a Federal election, and is an in-kind contribution under 11  
14 CFR 100.52(d) to the candidate or political party committee with whom or  
15 which it was coordinated, unless excepted under 11 CFR part 100, subpart  
16 C.
- 17 (2) In-kind contributions resulting from conduct described in paragraphs  
18 (d)(4) or (d)(5) of this section. Notwithstanding paragraph (b)(1) of this  
19 section, the candidate, authorized committee, or political party committee  
20 with whom or which a communication is coordinated does not receive or  
21 accept an in-kind contribution that results from conduct described in  
22 paragraphs (d)(4) or (d)(5) of this section, unless the candidate, authorized

1 committee, or political party committee engages in conduct described in  
2 paragraphs (d)(1) through (d)(3) of this section.

- 3 (3) Reporting of coordinated communications. A political committee, other  
4 than a political party committee, that makes a coordinated communication  
5 must report the payments for the communication as a contribution made to  
6 the candidate or political party committee with whom or which it was  
7 coordinated and as an expenditure in accordance with 11 CFR  
8 104.3(b)(1)(v). A political party committee with which a communication  
9 paid for by another person is coordinated must report the usual and normal  
10 value of the communication as an in-kind contribution received and as an  
11 expenditure in accordance with 11 CFR 104.13.

12 (c) Content standards. Any one of the following types of content satisfies the content  
13 standard of this section:

- 14 (1) The communication would otherwise be considered an electioneering  
15 communication under 11 CFR 100.29; or  
16 (2) The communication disseminates, distributes, or republishes, in whole or  
17 in part, campaign materials prepared by a candidate, the candidate's  
18 authorized committee, or an agent of any of the foregoing, unless the  
19 dissemination, distribution, or republication is excepted under 11 CFR  
20 100.57(b); or  
21 (3) The public communication expressly advocates the election or defeat of a  
22 clearly identified candidate for Federal office; or

23 Alternative A:

1           (4)    The communication is a public communication, as defined in  
2                   11 CFR 100.26, that refers to a clearly identified candidate for Federal  
3                   office.

4   Alternative B:

5           (4)    The communication is a public communication, as defined in  
6                   11 CFR 100.26, that promotes or supports or attacks or opposes a clearly  
7                   identified candidate for Federal office.

8   Alternative C:

9           (4)    The communication is a public communication, as defined in  
10                  11 CFR 100.26, and each of the following statements in paragraphs  
11                  (c)(4)(i), (ii), and (iii) of this section are true.

12           (i)    The public communication is made 120 days or fewer before a  
13                   general, special, or runoff election, or 120 days or fewer before a  
14                   primary or preference election, or a convention or caucus of a  
15                   political party that has authority to nominate a candidate;

16           (ii)   The public communication is directed to voters in the jurisdiction  
17                   of the clearly identified candidate; and

18           (iii)  The public communication makes express statements about the  
19                   record or position or views on an issue, or the character, or the  
20                   qualifications or fitness for office, or party affiliation, of a clearly  
21                   identified Federal candidate.

1 (d) Conduct standards. Any one of the following types of conduct satisfies the  
2 conduct standard of this section whether or not there is agreement or formal  
3 collaboration, as defined in paragraph (e) of this section:

4 (1) Request or suggestion.

5 (i) The communication is created, produced, or distributed at the  
6 request or suggestion of a candidate or an authorized committee,  
7 political party committee, or agent of any of the foregoing; or

8 (ii) The communication is created, produced, or distributed at the  
9 suggestion of a person paying for the communication and the  
10 candidate, authorized committee, political party committee, or  
11 agent of any of the foregoing, assents to the suggestion.

12 (2) Material involvement. A candidate, an authorized committee, a political  
13 party committee, or an agent of any of the foregoing, is materially  
14 involved in decisions regarding:

15 (i) The content of the communication;

16 (ii) The intended audience for the communication;

17 (iii) The means or mode of the communication;

18 (iv) The specific media outlet used for the communication;

19 (v) The timing or frequency of the communication; or

20 (vi) The size or prominence of a printed communication, or duration of  
21 a communication by means of broadcast, cable, or satellite.

22 (3) Substantial discussion. The communication is created, produced, or  
23 distributed after one or more substantial discussion about the

1 communication between the person paying for the communication, or the  
2 employees or agents of the person paying for the communication, and the  
3 candidate who is clearly identified in the communication, or his or her  
4 authorized committee, or his or her opponent or the opponent's authorized  
5 committee, or a political party committee, or an agent of any of the  
6 foregoing. A discussion is substantial within the meaning of this  
7 paragraph if information about the plans, projects, activities, or needs of  
8 the candidate or political party committee is conveyed to a person paying  
9 for the communication, and that information is material to the creation,  
10 production, or distribution of the communication.

11 (4) Common vendor. All of the following statements in paragraphs (d)(4)(i)  
12 through (d)(4)(iii) of this section are true:

- 13 (i) The person paying for the communication, or an agent of such  
14 person, contracts with or employs a commercial vendor to create,  
15 produce, or distribute the communication;
- 16 (ii) That commercial vendor, including any employee of the  
17 commercial vendor, has provided any of the following services to  
18 the candidate who is clearly identified in the communication, or his  
19 or her authorized committee, or his or her opponent or the  
20 opponent's authorized committee, or a political party committee,  
21 or an agent of any of the foregoing, in the current election cycle:

22 (A) Development of media strategy;

23 (B) Selection of audiences;

- 1 (C) Polling;
- 2 (D) Fundraising;
- 3 (E) Developing the content of a public communication;
- 4 (F) Producing a public communication;
- 5 (G) Identifying or developing voter lists, mailing lists, or donor
- 6 lists;
- 7 (H) Selecting personnel, contractors, or subcontractors; or
- 8 (I) Consulting or otherwise providing political or media
- 9 advice; and
- 10 (iii) That commercial vendor makes use of or conveys to the person
- 11 paying for the communication:
- 12 (A) Material information about the plans, projects, activities, or
- 13 needs of the candidate who is clearly identified in the
- 14 communication, or his or her authorized committee, or his
- 15 or her opponent or the opponent's authorized committee, or
- 16 a political party committee, or an agent of any of the
- 17 foregoing; or
- 18 (B) Material information used previously by the commercial
- 19 vendor in providing services to the candidate who is clearly
- 20 identified in the communication, or his or her authorized
- 21 committee, or his or her opponent or the opponent's
- 22 authorized committee, or a political party committee, or an
- 23 agent of any of the foregoing.



1           (5) Former employee or independent contractor. Both of the following

2 statements in paragraph (d)(5)(i) and (d)(5)(ii) of this section are true:

3           (i) The communication is paid for by a person, or by the employer of  
4 a person, who was an employee or independent contractor of the  
5 candidate who is clearly identified in the communication, or his or  
6 her authorized committee, or his or her opponent or the opponent's  
7 authorized committee, or a political party committee, or an agent  
8 of any of the foregoing, during the current election cycle; and,

9           (ii) That former employee or independent contractor makes use of or  
10 conveys to the person paying for the communication:

11           (A) Material information about the plans, projects, activities, or  
12 needs of the candidate who is clearly identified in the  
13 communication, or his or her authorized committee, or his  
14 or her opponent or the opponent's authorized committee, or  
15 a political party committee, or an agent of any of the  
16 foregoing; or

17           (B) Material information used by the former employee or  
18 independent contractor in providing services to the  
19 candidate who is clearly identified in the communication,  
20 or his or her authorized committee, or his or her opponent  
21 or the opponent's authorized committee, or a political party  
22 committee, or an agent of any of the foregoing.

1 (6) Conduct pertaining to communications that disseminate, distribute, or  
2 republish campaign material prepared by a candidate. A communication  
3 that satisfies the content requirement of paragraph (c)(2) of this section  
4 shall only be considered to satisfy one or more of the conduct standards of  
5 this section if the candidate or authorized committee that initially prepared  
6 the campaign material engages in any of the conduct described in  
7 paragraphs (d)(1) through (d)(5) of this section with respect to the  
8 subsequent dissemination, distribution, or republication of the campaign  
9 materials.

10 (e) Agreement or formal collaboration. Agreement or formal collaboration between  
11 the person paying for the communication and the candidate clearly identified in the  
12 communication, his or her authorized committee, his or her opponent, or the opponent's  
13 authorized committee, a political party committee, or an agent of any of the foregoing, is  
14 not required for a communication to be considered a coordinated communication.

15 Agreement means a mutual understanding or meeting of the minds on all or any part of  
16 the material aspects of the communication or its dissemination. Formal collaboration  
17 means planned, or systematically organized, work on the communication.

18 **109.22 Who is prohibited from making coordinated communications?**

19 Any person who is otherwise prohibited from making contributions or  
20 expenditures under any part of the Act or Commission regulations is prohibited from  
21 paying for a coordinated communication.

22 **Subpart D – Special Provisions for Political Party Committees**

1 **§ 109.30 How are political party committees treated for purposes of coordinated**  
2 **and independent expenditures?**

3 Political party committees may make independent expenditures subject to the  
4 provisions in this subpart. See 11 CFR 109.35 and 109.36. Political party committees  
5 may also make coordinated party expenditures in connection with the general election  
6 campaign of a candidate, subject to the limits and other provisions in this subpart. See 11  
7 CFR 109.31 through 11 CFR 109.35.

8 **§ 109.31 What is a “coordinated party expenditure”?**

9 Coordinated party expenditures include payments made by a national committee  
10 of a political party, including a national Congressional campaign committee, or a State  
11 committee of a political party, including any subordinate committee of a State committee,  
12 under 2 U.S.C. 441 a(d) for anything of value in connection with the general election  
13 campaign of a candidate, including party coordinated communications defined at 11 CFR  
14 109.37.

15 **§ 109.32 What are the coordinated party expenditure limits?**

16 (a) Coordinated party expenditures in presidential elections.

17 (1) The national committee of a political party may make coordinated party  
18 expenditures in connection with the general election campaign of the  
19 party’s candidate for President of the United States affiliated with the  
20 party.

21 (2) The coordinated party expenditures shall not exceed an amount equal to  
22 two cents multiplied by the voting age population of the United States.

1           See 11 CFR 110.18. This limitation shall be increased in accordance with  
2           11 CFR 110.17.

3           (3) Any coordinated party expenditure under paragraph (a) of this section  
4           shall be in addition to--

5           (i) Any expenditure by a national committee of a political party  
6           serving as the principal campaign committee of a candidate for  
7           President of the United States; and

8           (ii) Any contribution by the national committee to the candidate  
9           permissible under 11 CFR 110.1 or 110.2.

10          (4) Any coordinated party expenditures made by the national committee of a  
11          political party pursuant to paragraph (a) of this section, or made by any  
12          other party committee designated by a national committee of a political  
13          party under 11 CFR 109.33, on behalf of that party's presidential  
14          candidate shall not count against the candidate's expenditure limitations  
15          under 11 CFR 110.8.

16          (b) Coordinated party expenditures in other Federal elections.

17          (1) The national committee of a political party, and a State committee  
18          of a political party, including any subordinate committee of a State  
19          committee, may each make coordinated party expenditures in connection  
20          with the general election campaign of the party's candidate for Federal  
21          office in that State.

22          (2) The coordinated party expenditures shall not exceed:

- 1 (i) In the case of a candidate for election to the office of Senator, or of  
2 Representative from a State which is entitled to only one  
3 Representative, the greater of--  
4 (A) Two cents multiplied by the voting age population of the  
5 State (see 11 CFR 110.18); or  
6 (B) Twenty thousand dollars.  
7 (ii) In the case of a candidate for election to the office of  
8 Representative, Delegate, or Resident Commissioner in any other  
9 State, \$10,000.  
10 (3) The limitations in paragraph (b)(2) of this section shall be increased in  
11 accordance with 11 CFR 110.17(c).  
12 (4) Any coordinated party expenditure under paragraph (b) of this section  
13 shall be in addition to any contribution by a political party committee to  
14 the candidate permissible under 11 CFR 110.1 or 110.2.

15 **§ 109.33 May a political party committee assign its coordinated party expenditure**  
16 **limit to another political party committee?**

- 17 (a) Except as provided in 11 CFR 109.35(c), the national committee of a political  
18 party and a State committee of a political party, including any subordinate committee of a  
19 State committee, may assign its authority to make coordinated party expenditures  
20 authorized in 11 CFR 109.32 to another political party committee, provided that before  
21 the coordinated party expenditure is made, the national or State committee specifies in  
22 writing to the assigned political party committee the amount the assigned political party  
23 committee may spend.

1 (b) For purposes of the coordinated party expenditure limits, State committee  
2 includes a subordinate committee of a State committee and includes a district or local  
3 committee. State committees and subordinate State committees and district or local  
4 committees combined shall not exceed the coordinated party expenditure limits set forth  
5 in 11 CFR 109.32. The State committee shall administer the limitation in one of the  
6 following ways:

- 7 (1) The State committee shall be responsible for insuring that the  
8 coordinated party expenditures of the entire party organization are within  
9 the coordinated party expenditure limits, including receiving reports from  
10 any subordinate committee of a State committee or district or local  
11 committee making coordinated party expenditures under 11 CFR 109.32,  
12 and filing consolidated reports showing all coordinated party expenditures  
13 in the State with the Commission; or
- 14 (2) Any other method, submitted in advance and approved by the  
15 Commission, that permits control over coordinated party expenditures.

16 **§ 109.34 When may a political party committee make coordinated party**  
17 **expenditures?**

18 A political party committee authorized to make coordinated party expenditures  
19 may make such expenditures in connection with the general election campaign before or  
20 after its candidate has been nominated. All pre-nomination coordinated party  
21 expenditures shall be subject to the coordinated party expenditure limitations of this  
22 subpart, whether or not the candidate on whose behalf they are made receives the party's  
23 nomination.

1 § 109.35 What are the restrictions on a political party committee making both  
2 independent expenditures and coordinated party expenditures in connection with  
3 the general election of a candidate?

4 (a) Applicability. For the purposes of this subpart:

5 (1) The national committee of a given political party, all Congressional  
6 campaign committees of that political party, and all political committees  
7 established, financed, maintained, or controlled by any of the foregoing,  
8 together comprise a political party group.

9 (2) The State committee of a given political party in a given State, all  
10 subordinate committees of that State committee, and all district or local  
11 committees of that political party within that State that meet the definition  
12 of political committee under 11 CFR 100.5, together comprise a political  
13 party group. See 11 CFR 100.14.

14 (b) Restrictions on certain expenditures. On or after the date on which a political  
15 party nominates a candidate for election to Federal office, no political committee within a  
16 given political party group may do any of the following during the remainder of the  
17 election cycle:

18 (1) Make any coordinated party expenditure under 11 CFR 109.32 in  
19 connection with the general election campaign of that candidate at any  
20 time after any political committee within that political party group makes  
21 any independent expenditure with respect to that candidate; or

22 (2) Make any independent expenditure with respect to that candidate at any  
23 time after any political committee within that political party group makes

1 any coordinated party expenditure under 11 CFR 109.32 in connection  
2 with the general election campaign of that candidate.

3 (c) Restrictions on certain transfers and assignments. On or after the date that a  
4 political committee within a political party group makes any coordinated party  
5 expenditure under 11 CFR 109.32 in connection with the general election campaign of a  
6 candidate, no political committee within that same political party group may do any of  
7 the following during the remainder of the election cycle:

8 (1) Transfer any funds to, or receive a transfer of any funds from, any political  
9 committee within another political party group if any political committee  
10 within that other political party group has declared an intention to make an  
11 independent expenditure with respect to that candidate under paragraph  
12 (d) of this section, or has made an independent expenditure with respect to  
13 that candidate; or

14 (2) Assign all or any portion of its authority to make coordinated party  
15 expenditures under 11 CFR 109.32 in connection with the general election  
16 campaign of that candidate to any political committee within another  
17 political party group if any political committee within that other political  
18 party group has declared an intention to make an independent expenditure  
19 with respect to that candidate, under paragraph (d) of this section, or has  
20 made an independent expenditure with respect to that candidate. See  
21 11 CFR 109.33.

22 (d) Declaring an intention to make an independent expenditure. A committee within  
23 a political party group declares an intention to make an independent expenditure with



1 respect to a candidate by providing a written statement to the party committee or  
2 committees specified in paragraph (d)(1) or (d)(2) of this section stating the declaring  
3 committee's intention to make an independent expenditure with respect to the candidate.

4 (1) Regarding presidential candidates in elections:

5 (i) A committee within a State political party group provides the  
6 written statement declaring an intention to make an independent  
7 expenditure with respect to the presidential candidate to the  
8 national committee of the political party.

9 (ii) A committee within a national political party group provides the  
10 written statement declaring an intention to make an independent  
11 expenditure with respect to the presidential candidate to each State  
12 committee of the political party where a committee within that  
13 State political party group has been assigned any portion of the  
14 national party committee's authority to make coordinated party  
15 expenditures under 11 CFR 109.32.

16 (2) Regarding other Federal candidates in elections:

17 (i) A committee within a State political party group provides the  
18 written statement declaring an intention to make an independent  
19 expenditure with respect to the candidate to the national committee  
20 of the political party.

21 (ii) A committee within a State political party group declaring an  
22 intention to make an independent expenditure with respect to the  
23 candidate, if the candidate is running for election in another State,

1 provides the written statement to the State committee of the  
2 political party in the State in which the candidate is running for  
3 election.

4 (iii) A committee within a national political party group provides the  
5 written statement declaring an intention to make an independent  
6 expenditure with respect to the candidate to the State committee of  
7 the political party in the State in which the candidate is running for  
8 election.

9 (3) The written statement declaring an intention to make an independent  
10 expenditure with respect to the candidate must be provided to the party  
11 committee or committees identified in paragraph (d)(1) or (d)(2) of this  
12 section in advance of the making of the independent expenditure.

13 (4) The written statement declaring an intention to make an independent  
14 expenditure with respect to the candidate must include:

- 15 (i) The name of the declaring committee;
- 16 (ii) The name of the candidate and the office sought by the candidate;
- 17 and
- 18 (iii) The date of the declaration.

19 (e) Definitions. For the purposes of this section:

20 (1) An independent expenditure made by a political party committee with  
21 respect to a candidate includes independent expenditures expressly  
22 advocating the election of that party's candidate, as well as independent  
23 expenditures expressly advocating the defeat of any other candidate

1 seeking nomination for election, or election, to the Federal office sought  
2 by that party's candidate.

- 3 (2) Election cycle has the meaning in 11 CFR 100.3(b), except that the  
4 election cycle ends on the date of the general election runoff, if any.

5 **§ 109.36 Are there additional circumstances under which a political party**  
6 **committee is prohibited from making independent expenditures?**

7 The national committee of a political party must not make independent  
8 expenditures in connection with the general election campaign of a candidate for  
9 President of the United States if the national committee of a political party is designated  
10 as the authorized committee of its presidential candidate pursuant to 11 CFR 9002.1(c).

11 **§ 109.37 What is a "party coordinated communication"?**

12 (a) Definition. A political party communication is coordinated with a candidate, a  
13 candidate's authorized committee, or their agents, when the communication satisfies the  
14 conditions set forth in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

15 (1) The communication is paid for by a political party committee or its agent.

16 (2) The communication satisfies at least one of the content standards in 11  
17 CFR 109.21(c). For a communication that satisfies the content standard in  
18 11 CFR 109.21(c)(2), the conduct standard in 11 CFR 109.21(d)(6) must  
19 be satisfied before the communication shall be deemed coordinated.

20 (3) The communication satisfies at least one of the conduct standards in 11  
21 CFR 109.21(d). Notwithstanding paragraph (b)(1) of this section, the  
22 candidate with whom a party coordinated communication is coordinated  
23 does not receive or accept an in-kind contribution that results from

1           conduct described in 11 CFR 109.21(d)(4) or (d)(5), unless the candidate  
2           or authorized committee engages in conduct described in 11 CFR 109.21  
3           d)(1) through (d)(3).

4 (b) Treatment of a party coordinated communication. A payment by a political party  
5 committee for a communication that is coordinated with a candidate, and that is not  
6 otherwise exempted under 11 CFR part 100, subpart C or E, must be treated by the  
7 political party committee making the payment as either:

8       (1) An in-kind contribution for the purpose of influencing a Federal election  
9       under 11 CFR 100.52(d) to the candidate with whom it was coordinated,  
10       which must be reported under 11 CFR part 104; or

11       (2) A coordinated party expenditure pursuant to coordinated party expenditure  
12       authority under 11 CFR 109.32 in connection with the general election  
13       campaign of the candidate with whom it was coordinated, which must be  
14       reported under 11 CFR part 104.

15 **PART 110 – CONTRIBUTION AND EXPENDITURE LIMITATIONS AND**  
16 **PROHIBITIONS**

17 14. The authority citation for part 110 would be revised to read as follows:

18       Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 441a, 441b, 441d,  
19 441e, 441f, 441g, 441h, and 441k.

20 15. In section 110.1, paragraph (d) would be revised and paragraph (n) would be added  
21 to read as follows:

22 **§ 110.1 Contributions by persons other than multicandidate political committees.**

23 \* \* \* \* \*

1 (d) Contributions to other political committees.~~(4)~~ No person shall make  
2 contributions to any other political committee in any calendar year which, in the  
3 aggregate, exceed \$5,000.

4 ~~(2) — The limitation on contributions of this paragraph also applies to~~  
5 ~~contributions made to political committees making independent~~  
6 ~~expenditures under 11 CFR Part 109.~~

7 \* \* \* \* \*

8 (n) Contributions to committees making independent expenditures. The limitations  
9 on contributions of this section also apply to contributions made to political committees  
10 making independent expenditures under 11 CFR Part 109.

11 16. In section 110.2, paragraph (d) would be revised and paragraph (k) would be added  
12 to read as follows:

13 **§ 110.2 Contributions by multicandidate political committees.**

14 \* \* \* \* \*

15 (d) Contributions to other political committees.~~(4)~~ No multicandidate political  
16 committee shall make contributions to any other political committee in any calendar year  
17 which, in the aggregate, exceed \$5,000.

18 ~~(2) — The limitation on contributions of this paragraph also applies to~~  
19 ~~contributions made to political committees making independent~~  
20 ~~expenditures under 11 CFR Part 109.~~

21 \* \* \* \* \*

22 (k) Contributions to multicandidate political committees making independent  
23 expenditures. The limitations on contributions of this section also apply to contributions

1 made to multicandidate political committees making independent expenditures under  
2 11 CFR Part 109.

3 17. Section 110.7 would be removed and reserved.

4 ~~§ 110.7 Party committee expenditure limitations (2 U.S.C. 441a(d)).~~

5 (a) ~~(1) The national committee of a political party may make expenditures in~~  
6 ~~connection with the general election campaign of any candidate for President of the~~  
7 ~~United States affiliated with the party.~~

8 ~~(2) The expenditures shall not exceed an amount equal to 2 cents multiplied~~  
9 ~~by the voting age population of the United States.~~

10 ~~(3) Any expenditure under this paragraph (a) shall be in addition to—~~

11 ~~(i) Any expenditure by a national committee of a political party~~  
12 ~~servicing as the principal campaign committee of a candidate for~~  
13 ~~President of the United States; and~~

14 ~~(ii) Any contribution by the national committee to the candidate~~  
15 ~~permissible under § 110.1 or § 110.2.~~

16 ~~(1) The national committee of a political party may make expenditures~~  
17 ~~authorized by this section through any designated agent, including State~~  
18 ~~and subordinate party committees.~~

19 ~~(2) The national committee of a political party may not make independent~~  
20 ~~expenditures (see part 109) in connection with the general election~~  
21 ~~campaign of a candidate for President of the United States.~~

22 ~~(3) Any expenditures made by the national, State, and subordinate committees~~  
23 ~~of a political party pursuant to 11 CFR 110.7(a) on behalf of that party's~~

1 Presidential candidate shall not count against the candidate's expenditure  
2 limitations under 11 CFR 110.8.

3 ~~(b) (1) The national committee of a political party, and a State committee of a~~  
4 ~~political party, including any subordinate committee of a State committee,~~  
5 ~~may each make expenditures in connection with the general election~~  
6 ~~campaign of a candidate for Federal office in that State who is affiliated~~  
7 ~~with the party.~~

8 ~~(2) The expenditures shall not exceed—~~

9 ~~(i) In the case of a candidate for election to the office of Senator, or~~  
10 ~~the Representative from a State which is entitled to only one~~  
11 ~~Representative, the greater of—~~

12 ~~(A) Two cents multiplied by the voting age population of the~~  
13 ~~State; or~~

14 ~~(B) Twenty thousand dollars; and~~

15 ~~(iii) In the case of a candidate for election to the office of~~  
16 ~~Representative, Delegate, or Resident Commissioner in any other~~  
17 ~~State, \$10,000.~~

18 ~~(3) Any expenditure under paragraph (b) shall be in addition to any~~  
19 ~~contribution by a committee to the candidate permissible under § 110.1 or~~  
20 ~~§ 110.2.~~

21 ~~(e) For limitation purposes, State committee includes subordinate State committees.~~  
22 ~~State committees and subordinate State committees combined shall not exceed the~~  
23 ~~limits in paragraph (b)(2) of this section. To ensure compliance with the~~

1           ~~limitations, the State committee shall administer the limitation in one of the~~  
2           ~~following ways:~~

3           ~~(1) The State central committee shall be responsible for insuring that the~~  
4           ~~expenditures of the entire party organization are within the limitations,~~  
5           ~~including receiving reports from any subordinate committee making~~  
6           ~~expenditures under paragraph (b) of this section, and filing consolidated~~  
7           ~~reports showing all expenditures in the State with the Commission; or~~

8           ~~(2) Any other method, submitted in advance and approved by the Commission~~  
9           ~~which permits control over expenditures.~~

10          ~~(d) Timing. Party committees may make coordinated expenditures in connection~~  
11          ~~with the general election campaign before their candidates have been nominated. All pre-~~  
12          ~~nomination coordinated expenditures shall be subject to the coordinated expenditure~~  
13          ~~limitations of this section, whether or not the candidate with whom they are coordinated~~  
14          ~~receives the party's nomination.~~

15          **§ 110.7 [Removed and reserved].**

16          18. In section 110.8, paragraph (a) would be amended as follows:

17          (a) The introductory text would be redesignated as paragraph (a)(1);

18          (b) Paragraph (a)(1) would be redesignated as paragraph (a)(1)(i);

19          (c) Paragraph (a)(2) would be redesignated as paragraph (a)(1)(ii);

20          (d) Paragraph (a)(2) would be revised to read as follows; and

21          (e) A paragraph (a)(3) would be added to read as follows:

22          **§ 110.8 Presidential candidate expenditure limitations.**

23          (a)       \*       \*       \*



1           (2) The expenditure limitations in paragraph (a)(1) of this section shall be  
2                           increased in accordance with 11 CFR 110.9(c).

3           (3) Voting age population is defined at 11 CFR 110.18.

4           \*       \*       \*       \*       \*

5           19. In part 110 section 110.18 would be added to read as follows:

6           **§ 110.18 Voting Age Population.**

7           There is annually published by the Department of Commerce in the Federal  
8           Register an estimate of the voting age population based on an estimate of the voting age  
9           population of the United States, of each State, and of each Congressional district. The  
10          term voting age population means resident population, 18 years of age or older.

11

12          **PART 114 – CORPORATE AND LABOR ORGANIZATION ACTIVITY**

13          20. The authority citation for part 114 would continue to read as follows:

14                 Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434(a)(11), 437d(a)(8), 438(a)(8),  
15          and 441b.

16          21. In section 114.4, paragraphs (c)(5)(i) and (c)(5)(ii)(A) would be revised to read as  
17          follows:

18          **§ 114.4 Disbursements for communications beyond the restricted class in**  
19          **connection with a Federal election.**

20          \*       \*       \*

21          (c)       Communications by a corporation or labor organization to the general public.

22          \*       \*       \*

23                 (5)       Voter guides.

1 \* \* \*

2 (i) The corporation or labor organization must ~~shall~~ not ~~contact or in~~  
3 ~~any other way~~ act in cooperation, ~~coordination,~~ or consultation or  
4 concert with or at the request or suggestion of the candidates, the  
5 candidates' committees or agents regarding the preparation,  
6 contents and distribution of the voter guide, and no portion of the  
7 voter guide may expressly advocate the election or defeat of one or  
8 more clearly identified candidate(s) or candidates of any clearly  
9 identified political party.

10 (ii) (A) The corporation or labor organization must ~~shall~~ not  
11 ~~contact or in any other way~~ act in cooperation,  
12 ~~coordination,~~ or consultation or concert with or at the  
13 request or suggestion of the candidates, the candidates'  
14 committees or agents regarding the preparation, contents  
15 and distribution of the voter guide, ~~except that questions~~  
16 ~~may be directed in writing to the candidates included in the~~  
17 ~~voter guide and the candidates may respond in writing;~~

18 \* \* \* \* \*

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David. M. Mason  
Chairman  
Federal Election Commission

1 DATED: \_\_\_\_\_  
2 BILLING CODE: 6715-01-P