



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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November 15, 2004

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence H. Norton
General Counsel

Rosemary C. Smith
Associate General Counsel

Brad C. Deutsch
Assistant General Counsel

Cheryl A.F. Hemsley
Attorney

AGENDA ITEM
For Meeting of: 11-18-04

SUBMITTED LATE

SUBJECT: Final Rules: Technical Amendments to BCRA Rules and Explanation and Justification

Attached are draft final rules that would make technical amendments to correct certain BCRA final rules governing the definitions of "contribution" and "expenditure," personal use of campaign funds, and reporting. The document also makes corrections to the Explanation and Justification for the BCRA rules on disclaimers and personal use of campaign funds.

As technical amendments, these corrections are not substantive regulations requiring notice and comment under the Administrative Procedure Act. Additionally, under the "good cause" exception to the notice and comment requirements, the corrections would be effective upon publication in the *Federal Register*.

Recommendation:

The Office of the General Counsel recommends that the Commission approve the attached Final Rules and Explanation and Justification for publication in the *Federal Register*.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Parts 100, 104, 110, and 113**

3 **[NOTICE 2004 - >>]**

4 **Technical Amendments to BCRA Rules and Explanation and**
5 **Justification**

6 **AGENCY:** Federal Election Commission.

7 **ACTION:** Final rule; technical amendments.

8 **SUMMARY:** The Commission is making technical amendments to correct certain
9 citations and headings in the BCRA final rules governing the
10 definitions of “contribution” and “expenditure,” personal use of
11 campaign funds, and reporting. Corrections are also being made to the
12 Explanation and Justification for the BCRA rules on disclaimers and
13 personal use of campaign funds. Further information is provided in the
14 supplementary information that follows.

15 **EFFECTIVE DATE:** [Insert date of publication in the FEDERAL REGISTER].

16
17 **FOR FURTHER**
18 **INFORMATION**
19 **CONTACT:**

Mr. Brad C. Deutsch, Assistant General Counsel, or Ms. Cheryl A.F.
Hemsley, Attorney, 999 E Street, N.W., Washington, D.C. 20463,
(202) 694-1650 or (800) 424-9530.

22 **SUPPLEMENTARY**
23 **INFORMATION:**

24 The final rules and the Explanation and Justification that are the subject of these
25 corrections were published as part of a continuing series of regulations the Commission
26 promulgated implementing the Bipartisan Campaign Reform Act of 2002 (Pub. L. 107-155, 116

1 Stat. 81 (March 27, 2002)) (“BCRA”). Because these corrections are merely technical and
2 nonsubstantive, they are not a substantive rule requiring notice and comment under the
3 Administrative Procedure Act, 5 U.S.C. 553. Under the “good cause” exception to the notice
4 and comment requirements, 5 U.S.C. 553(b)(B) and 553(d)(3), the final rules are effective upon
5 publication. Thus the corrected final rules are effective [insert date of publication in the
6 FEDERAL REGISTER].

7 **I. Corrections to BCRA rules in Title 11 of the Code of Federal Regulations**

8 A. Correction to 11 CFR 100.77

9 The Commission is correcting two citations containing typographical errors in this
10 section. Specifically, the references to sections 100.65 and 100.66 were erroneous and are being
11 changed to sections 100.75 and 100.76, respectively.

12 B. Correction to 11 CFR 100.89

13 The Commission is correcting the title of this section. Specifically, a parenthetical
14 contained in the title erroneously referred to a “‘coattails’ exception.” This parenthetical is being
15 removed.

16 C. Correction to 11 CFR 100.149

17 The Commission is correcting the title of this section. Specifically, a parenthetical
18 contained in the title erroneously referred to a “‘coattails’ exception.” This parenthetical is being
19 removed.

20 D. Correction to 11 CFR 104.5

21 The Commission is correcting two citations containing typographical errors in section
22 104.5(c)(3)(ii). Specifically, the references to paragraphs (a)(1)(i) and (a)(1)(ii) were erroneous
23 and are being changed to paragraphs (a)(1)(ii) and (a)(1)(iii), respectively.

1 E. Correction to 11 CFR Part 113

2 The title to 11 CFR Part 113 is also being corrected. On December 13, 2002, the title of
3 11 CFR Part 113 was changed to reflect the new post-BCRA regulations therein, i.e., “Use of
4 Campaign Accounts for Non-Campaign Purposes.” 67 Fed. Register 76962. However, on
5 December 26, 2002, the title of Part 113 was inadvertently changed back to its pre-BCRA
6 wording, i.e., “Excess Campaign Funds and Funds Donated to Support Federal Officeholder
7 Activities.” Accordingly, the Commission is now restoring the correct wording of the title.

8 **II. Corrections to BCRA Explanation and Justification regarding disclaimers and**
9 **personal use of campaign funds**

10 The Commission published a document in the Federal Register of December 13, 2002, at
11 67 Fed. Register 76962, containing final rules relating to disclaimers, fraudulent solicitations,
12 civil penalties, and personal use of campaign funds. The portions of the Explanation and
13 Justification regarding disclaimers and personal use of campaign funds contained (1) an instance
14 of erroneous language, (2) an erroneous reference and (3) an erroneous omission, each of which
15 is being corrected, as discussed below.

16 A. Correction to Explanation and Justification for 11 CFR 110.11 – Communications;
17 advertising; disclaimers

18 The published Explanation and Justification for 11 CFR 110.11(c)(4), concerning radio
19 and television communications, mistakenly included two sentences referring to a disclaimer for
20 communications transmitted through a telephone bank. See 67 Fed. Register at 76967.

21 Accordingly, these sentences are being removed.

22 Specifically, on page 76967, 67 Fed. Register at 76967, second column, the following
23 two sentences are being removed from lines twenty-four through thirty-four: “Paragraph (c)(4)

1 also requires that communications transmitted through a telephone bank, as defined in 11 CFR
2 100.28, carry the same statement. See discussion regarding the inclusion of telephone banks
3 within the term ‘public communication,’ above, and the discussion of specific requirements for
4 radio, telephone bank, and television communications authorized by candidates, above.”

5 B. Correction to Explanation and Justification for 11 CFR Part 113 – Use of Campaign
6 Accounts for Non-Campaign Purposes

7 Two corrections to the published Explanation and Justification for 11 CFR Part 113 are
8 necessary.

9 First, the published Explanation and Justification erroneously referred to a portion of the
10 pre-BCRA title of Part 113 in describing the title change being effected in the corresponding
11 regulations. See 67 Fed. Register at 76971. Accordingly, the reference to the title of Part 113 is
12 being corrected to reflect the post-BCRA wording. Specifically, on page 76971, first column,
13 lines nineteen through twenty-one, the reference to “Campaign Funds and Funds Donated to
14 Support Federal Officeholder Activities” is being corrected to read “Use of Campaign Accounts
15 for Non-Campaign Purposes.”

16 Second, although the text of the Explanation and Justification approved by the
17 Commission stated that “Authorized committees may not make contributions . . .” (emphasis
18 added), the published Explanation and Justification erroneously omitted the word “not” from this
19 sentence. See 67 Fed. Register at 76975. Accordingly, this sentence is being corrected to
20 include the omitted word.

21 Specifically, on page 76975, second column, lines three through ten, the sentence
22 “Authorized committees may make contributions to organizations other than those described in
23 section 170(c) of the Internal Revenue Code of 1986 and other authorized committees (subject to

1 the \$1,000 limit) unless those contributions are in connection with the campaign for Federal
2 office of the authorizing candidate” is being corrected to read “Authorized committees may not
3 make contributions to organizations other than those described in section 170(c) of the Internal
4 Revenue Code of 1986 and other authorized committees (subject to the \$1,000 limit) unless
5 those contributions are in connection with the campaign for Federal office of the authorizing
6 candidate.”

7 **Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)**

8 The attached rules will not have a significant economic impact on a substantial number of
9 small entities. The amendments in this final rule are all technical and nonsubstantive in nature
10 and do not have any economic impact on any entity subject to the underlying regulations.

1 **Correction of Publication**

2 In FR Doc 02-31521, published on December 13, 2002 (67 Fed. Register 76962), make
3 the following corrections.

4 On page 76967, in the second column, in lines twenty-four through thirty-four, remove
5 “Paragraph (c)(4) also requires that communications transmitted through a telephone bank, as
6 defined in 11 CFR 100.28, carry the same statement. See discussion regarding the inclusion of
7 telephone banks within the term “public communication,” above, and the discussion of specific
8 requirements for radio, telephone bank, and television communications authorized by candidates,
9 above.”

10 On page 76971, in the first column, in lines nineteen through twenty-one, replace
11 “Campaign Funds and Funds Donated to Support Federal Officeholder Activities” with “Use of
12 Campaign Accounts for Non-Campaign Purposes.”

13 On page 76975, in the second column, in lines three through ten, replace the sentence
14 “Authorized committees may make contributions to organizations other than those described in
15 section 170(c) of the Internal Revenue Code of 1986 and other authorized committees (subject to
16 the \$1,000 limit) unless those contributions are in connection with the campaign for Federal
17 office of the authorizing candidate” with “Authorized committees may not make contributions
18 to organizations other than those described in section 170(c) of the Internal Revenue Code of
19 1986 and other authorized committees (subject to the \$1,000 limit) unless those contributions are
20 in connection with the campaign for Federal office of the authorizing candidate.”

- 1 **List of Subjects**
- 2 11 CFR Part 100
- 3 Elections.
- 4 11 CFR Part 104
- 5 Campaign funds, political committees and parties, reporting and recordkeeping requirements.
- 6
- 7 11 CFR Part 110
- 8 Campaign funds, and political committees and parties.
- 9 11 CFR Part 113
- 10 Campaign funds.
- 11

1 For the reasons set out in the preamble, subchapter A of chapter 1 of title 11 of the Code of
2 Federal Regulations is amended as follows:

3 **PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)**

4 1. The authority citation for part 100 continues to read as follows:

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

6 2. In the table below, for each section indicated in the left column, remove the citation
7 indicated in the middle column, and replace it with the citation indicated in the right column:

Section	Remove	Add
100.77.....	100.65.....	100.75
100.77.....	100.66.....	100.76

8

9 3. Section 100.89 is amended by revising the heading to read as follows:

10 **§ 100.89 Voter registration and get-out-the-vote activities for Presidential candidates**
11 **(~~“coattails”~~ exception).**

12 * * * * *

13 4. Section 100.149 is amended by revising the heading to read as follows:

14 **§ 100.149 Voter registration and get-out-the-vote activities for Presidential candidates**
15 **(~~“coattails”~~ exception).**

16 * * * * *

17 **PART 104—REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS (2**
18 **U.S.C. 434)**

19 5. The authority citation for part 104 continues to read as follows:

1 Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), 439a, 441a, and 36
2 U.S.C. 510.

3 6. In the table below, for each section indicated in the left column, remove the citation
4 indicated in the middle column, and replace it with the citation indicated in the right column:

Section	Remove	Add
104.5(c)(3)(ii).....	104.5(a)(1)(i).....	104.5(a)(1)(ii)
104.5(c)(3)(ii).....	104.5(a)(1)(ii).....	104.5(a)(1)(iii)

5

6 7. Part 113 is amended by revising the heading to read as follows:

7 ~~**PART 113—EXCESS CAMPAIGN FUNDS AND FUNDS DONATED TO SUPPORT**~~
8 ~~**FEDERAL OFFICESHODER ACTIVITIES**~~ **USE OF CAMPAIGN ACCOUNTS FOR**
9 **NON-CAMPAIGN PURPOSES (2 U.S.C. 439a).**

10 8. The authority for part 113 continues to read as follows:

11 Authority: 2 U.S.C. 432(h), 438(a)(8), 439a, 441a.

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20 DATED: _____

21 BILLING CODE: 6715-01-U

Bradley A. Smith
Chairman
Federal Election Commission