



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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MEMORANDUM

TO: The Commission

OCT - 8 2002

THROUGH: James A. Pehrkon
Staff Director

AJP

FROM: Lawrence H. Norton
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Rosemary C. Smith
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AGENDA ITEM
For Meeting of: 10-10-02
SUBMITTED LATE

SUBJECT: Draft Notice of Proposed Rulemaking on Consolidated BCRA Reporting

Attached is a draft Notice of Proposed Rulemaking ("NPRM") addressing reporting issues raised in the Bipartisan Campaign Reform Act of 2002 ("BCRA").

This draft encompasses four areas of reporting: (1) Reporting of independent expenditures; (2) Reporting of electioneering communications; (3) Reporting schedules for national committees of political parties and for the principal campaign committees of candidates for the House of Representatives and Senate; and (4) Reporting of funds for party office buildings. A number of these issues have previously been addressed and put out for comment in earlier BCRA rulemakings.

Recommendation:

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

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Parts 100, 104, 105, and 109**

3 **[Notice 2002 - >]**

4 **BCRA Reporting**

5 **AGENCY:** Federal Election Commission.

6 **ACTION:** Notice of Proposed Rulemaking.

7 **SUMMARY:** The Federal Election Commission seeks comments on the proposed
8 regulations relating to new requirements for the reporting of electioneering
9 communications and independent expenditures, monthly reporting by
10 national political party committees and quarterly reporting by the principal
11 campaign committees of candidates for the House of Representatives and
12 Senate, as well as reporting related to building funds. These regulations
13 would implement several requirements in the Bipartisan Campaign
14 Reform Act of 2002 ("BCRA") that significantly amend the Federal
15 Election Campaign Act of 1971, as amended ("FECA" or "the Act").
16 Please note that the Commission has not made a final decision on any of
17 these proposals. Further information is contained in the Supplementary
18 Information that follows.

19 **DATES:** Comments must be received on or before November 8, 2002.

20 **ADDRESSES:** All comments should be addressed to Mr. John Vergelli, Acting Assistant
21 General Counsel, and must be submitted in either electronic or written
22 form. Electronic mail comments should be sent to BCRAreport@fec.gov
23 and must include the full name, electronic mail address, and postal service

1 address of the commenter. Electronic mail comments that do not contain
2 the full name, electronic mail address, and postal service address of the
3 commenter will not be considered. Faxed comments should be sent to
4 (202) 219-3923, with printed copy follow-up to ensure legibility. Written
5 comments and printed copies of faxed comments should be sent to the
6 Federal Election Commission, 999 E Street, N.W., Washington, D.C.,
7 20463. Commenters are strongly encouraged to submit comments
8 electronically to ensure timely receipt and consideration. The
9 Commission will make every effort to post public comments on its web
10 site within ten business days of the close of the comment period.

11 **FOR FURTHER**
12 **INFORMATION**
13 **CONTACT:**

Mr. John Vergelli, Acting Assistant General Counsel, or Ms. Cheryl
Fowle, Attorney, 999 E Street, N.W., Washington, D.C., 20463, (202)
694-1650 or (800) 424-9530.

16 **SUPPLEMENTARY**

17 **INFORMATION:** The Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-
18 155, 116 Stat. 81 (March 27, 2002), contains extensive and detailed amendments to the Federal
19 Election Campaign Act of 1971, as amended, 2 U.S.C. 431 et seq. This is one in a series of
20 Notices of Proposed Rulemakings ("NPRM") the Commission has recently published to meet the
21 rulemaking deadlines set out in BCRA. The deadline for the promulgation of these rules is 270
22 days after the date of enactment, which is December 22, 2002.

1 **Introduction**

2 This NPRM addresses: (1) reporting of electioneering communications; (2) reporting of
3 independent expenditures; (3) quarterly reporting by the principal campaign committees of
4 candidates for the House of Representatives and the Senate; (4) monthly reporting by political
5 party committees; and (5) the reporting of funds for political party committee office buildings.

6 The Commission sought comments on two of these topics previously in Notices of
7 Proposed Rulemakings on "Electioneering Communications," 67 Fed. Register 51,131 (August
8 7, 2002); and "Coordinated and Independent Expenditures," 67 Fed. Register, 60,042 (September
9 25, 2002). Another topic, addressing the reporting of funds for the purchase or construction of
10 party office buildings, is based on a recently published final rule ("Prohibited and Excessive
11 Contributions: Non-Federal Funds or Soft Money; Final Rule," 67 Fed. Register, 49,123 and
12 49,127 (July 29, 2002)). The last two topics addressing the schedule of reporting for national
13 political party committees and the principal campaign committees of House and Senate
14 candidates have not previously been addressed in a BCRA-related NPRM.

15 In BCRA, Congress required the Commission to promulgate standards for reporting
16 software, and also imposed certain other requirements on the Commission, and on various
17 persons who file reports with the Commission, that will take effect when that computer software
18 becomes available. 2 U.S.C. 434(a)(12). Although these Congressional mandates are related to
19 reporting, which is the subject of this NPRM, the Commission does not propose to address the
20 mandates here. The computer software standards will depend largely upon the results of this
21 reporting rulemaking, and on the development of reporting forms following the completion of
22 this rulemaking. Therefore, the Commission proposes to address the mandates in 2 U.S.C.
23 434(a)(12) as soon as feasible, and will solicit public comments on the mandates at that time.

1 **INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS**

2 **Proposed 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. Paragraph
4 (a) of section 100.19 would be unaffected by this rulemaking, except for a new heading.

5 Proposed paragraph (b) of section 100.19 would retain the pre-BCRA general rule that a
6 document is considered timely filed if it is: (1) delivered to the appropriate filing office (either
7 the 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 – except
9 for pre-election reports. The proposed revisions to paragraph (b) of section 100.19 would clarify
10 that paragraph (b) is the general rule, but does not apply to reports addressed by paragraph (c)
11 through proposed new paragraph (f).

12 Those exceptions would be as follows: Paragraph (c) for electronic filing – “filed” means
13 received by the Commission at or before 11:59 p.m. Eastern Standard/Daylight Time on the
14 filing date; paragraph (d) for 24-hour and 48-hour reports of independent expenditures – “filed”
15 means received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time of
16 the day following (24-hour reports) or the second day following (48-hour reports) the date on
17 which the spending threshold is reached in accordance with 11 CFR 104.4(f); paragraph (e) for
18 “48-hour notices of last-minute contributions” (48-hour notices filed by authorized committees
19 of candidates of contributions of \$1,000 or more received after the 20th day but more than 48
20 hours before 12:01 a.m. of the day of an election) – “filed” means received by the Commission
21 or the Secretary of the Senate within 48 hours of the receipt of a “last-minute” contribution of
22 \$1,000 or more; proposed paragraph (f) for 24-hour statements of electioneering communications

1 – “filed” means received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time of
2 the day following the disclosure date (see 11 CFR 104.20).

3 Paragraphs (c) and (e) of section 100.19 would remain unchanged, except for new
4 headings.

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

19 Under 2 U.S.C. 434(f)(1), electioneering communications must be reported within
20 24 hours of the “disclosure date.” See 11 CFR 104.19. The Commission proposes to add new

¹ Note that BCRA, as passed on February 14, 2002, in the House of Representatives 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.R. Con. Res. 361, March 22, 2002.

1 paragraph (f) to 11 CFR 100.19 to require these 24-hour statements to be received by the
2 Commission no later than 11:59 p.m. Eastern Standard/Daylight Time of the day following the
3 disclosure date, rather than filed by that time. In addition, to assist filers with meeting this
4 deadline, the proposed rule would allow them to file their 24-hour statements by facsimile
5 machine or electronic mail. For the same reasons that are discussed with regard to proposed
6 paragraph (d) of 11 CFR 100.19, this proposed paragraph would follow the timing and filing
7 methods of 24-hour reports for independent expenditures.

8

9 **11 CFR 104.5(g) and (j) Filing dates (2 U.S.C. 434(a)(2))**

10 Proposed paragraph (g) of 11 CFR 104.5 would move the pre-BCRA contents of
11 paragraph (g) to proposed paragraph (g)(2) with revisions, and would add a new paragraph
12 (g)(1), which would require that 48-hour reports of independent expenditures must be received
13 by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time of the second day
14 following the date on which a communication is publicly distributed or otherwise publicly
15 disseminated. Note that the term “publicly distributed” refers to communications distributed by
16 radio or television (see 11 CFR 100.29(a)(5)) and the term “publicly disseminated” refers to
17 communications that are made public via other media, e.g., newspaper, magazines, handbills.
18 Pre-BCRA paragraph (g) of 11 CFR 104.5 states that 24-hour reports of independent
19 expenditures must be received by the appropriate officers no later than 24 hours after such
20 independent expenditure is made.

21 Proposed paragraph (j) of section 104.5 would address the filing dates for electioneering
22 communications. Specifically, it would provide that the 24-hour statements must be received by

1 the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date of
2 disclosure.

3
4 **11 CFR 105.2 Place of filing; Senate candidates, their principal campaign committees, and**
5 **committees supporting only Senate candidates (2 U.S.C. 434(g)(3))**

6 The Commission's pre-BCRA regulations require that 24-hour reports of independent
7 expenditures supporting or opposing Senate candidates be filed with the Secretary of the Senate.
8 See pre-BCRA 11 CFR 104.4(c), 109.2(b). In BCRA, Congress establishes the Commission as
9 the place of filing for both 24- and 48-hour reports of independent expenditures, regardless of the
10 office being sought by the clearly identified candidate. 2 U.S.C. 434(g)(3)(A). The proposed
11 revisions to section 105.2 would place the text of pre-BCRA 11 CFR 105.2 in proposed
12 paragraph (a), adding the heading, "General Rule." New proposed paragraph (b) of 11 CFR
13 105.2 would be headed, "Exception," and would state that 24- and 48-hour reports of
14 independent expenditures, must be filed with the Commission even if the communication refers
15 to a candidate for the Senate. 2 U.S.C. 434(f).

16
17 **11 CFR 104.4 Independent expenditures by political committees (2 U.S.C. 434(b), (g))**

18 The Commission has established reporting requirements for political committees making
19 independent expenditures in accordance with 2 U.S.C. 434(b) and (g). See pre-BCRA 11 CFR
20 104.4. Paragraph (a) of section 104.4 would be unaffected, other than the addition of a new
21 heading, a grammatical correction, and an updated cross-reference.

22 Proposed new paragraph (b) would address reports of independent expenditures made by
23 a political committee at any point in the campaign up to and including the 20th day before an

1 election. Proposed paragraph (b)(1) would address independent expenditures aggregating less
2 than \$10,000 with respect to a given election during the calendar year, up to and including the
3 20th day before an election. This calendar year aggregation would be based on 2 U.S.C.
4 434(b)(4), which requires calendar year aggregation for reports of independent expenditures by
5 political committees. Under this calendar year approach, political committees would report the
6 independent expenditures on Schedule E of FEC Form 3X, filed no later than the regular
7 reporting date under 11 CFR 104.5. The Commission would interpret 2 U.S.C. 434(g), added to
8 the Act by BCRA, to require aggregation toward the various thresholds for independent
9 expenditure reporting to be done on a per election basis within the calendar year. For example, if
10 a political committee made \$5,000 in independent expenditures with respect to a Senate race, and
11 \$5,000 in independent expenditures with respect to a House race, and both of these events
12 occurred before the 20th day before the election, that political committee would not be required
13 to file 48-hour reports, but would be required to disclose the independent expenditures in its
14 regularly scheduled reports. If the political committee makes \$5,000 in independent
15 expenditures with respect to a clearly identified candidate in the primary, and an additional
16 \$5,000 in independent expenditures with respect to the same candidate in the general election, no
17 48-hour reports would be required; but again the committee would be required to disclose the
18 independent expenditures in its regularly scheduled reports. The Commission requests
19 comments on whether a different time period, such as an election cycle, should be employed
20 instead of the calendar year period.

21 Paragraph (b)(2) would address independent expenditures aggregating \$10,000 or more
22 during the calendar year up to and including the 20th day before an election. These reports
23 would also be filed on Schedule E of FEC Form 3X. However, these reports would be required

1 to be received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time of
2 the second day following the date on which a communication that constitutes an independent
3 expenditure is publicly distributed or otherwise publicly disseminated. Further, political
4 committees would have to file an additional 48-hour report each time subsequent independent
5 expenditures reach the \$10,000 threshold with respect to the same election to which the first
6 report related.

7 The Commission proposes revisions to renumbered paragraph (c) (i.e., pre-BCRA 11
8 CFR 104.4(b)) stating that 24-hour reports must be received by the Commission no later than
9 11:59 p.m. Eastern Standard/Daylight Time of the day following the date on which the \$1,000
10 threshold is reached during the final 20 days before the election. Further, proposed revisions to
11 this paragraph would specifically state that additional 24-hour reports must be filed each time
12 during the 24-hour reporting period in which subsequent independent expenditures reach or
13 exceed the \$1,000 threshold with respect to the same election to which the previous report
14 related.

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

18 Proposed paragraph (e) would largely restate pre-BCRA paragraph (c) of section 104.4.
19 The most significant proposed change to this paragraph would be to make the Commission and
20 not the Secretary of the Senate the place of filing for 24- and 48-hour reports of independent
21 expenditures relating to Senate candidates. 2 U.S.C. 434(g)(3). See the discussion of 11 CFR
22 105.2, above.

1 Proposed paragraph (f) of 11 CFR 104.4 would address aggregation of independent
2 expenditures for reporting purposes. The provisions of pre-BCRA 11 CFR 109.1(f) would be
3 redesignated and revised to explain when and how political committees and other persons
4 making independent expenditures must aggregate independent expenditures for purposes of
5 determining whether 48-hour and 24-hour reports must be filed. Note that this proposed
6 aggregation rule would apply to independent expenditures by political committees, as well as
7 other persons; proposed 11 CFR 109.10(c) and (d) would cross-refer to this paragraph. Proposed
8 paragraph (f) would establish that every date on which a communication that constitutes an
9 independent expenditure is “publicly distributed” or otherwise publicly disseminated serves as
10 the date that every person must use to determine whether the total amount of independent
11 expenditures has, in the aggregate, reached or exceeded the threshold reporting amounts (\$1,000
12 for 24-hour reports or \$10,000 for 48-hour reports). The term “publicly distributed” would have
13 the same meaning as in new 11 CFR 100.29(b)(6), which the Commission is promulgating as
14 part of a separate rulemaking. Thus, proposed paragraph (f) would set the same date as the
15 starting date from which a person would have one or two days, where applicable, to file a 24-
16 hour or 48-hour report on independent expenditures.

17 In addition, Congress changed the reporting requirements by adding the phrase “or
18 contracts to make” to the statute. 2 U.S.C. 434(g)(1), (2). BCRA ties 24-hour and 48-hour
19 reporting of independent expenditures to the time when a person “makes or contracts to make
20 independent expenditures . . . ” aggregating at or above the \$1,000 and \$10,000 thresholds,
21 respectively. 2 U.S.C. 434(g)(4). Therefore, under proposed 11 CFR 104.4(f), each person
22 would be required to include as of the proposed trigger date, in the calculation of the aggregate
23 amount of independent expenditures, both disbursements for independent expenditures and all

1 contracts obligating funds for disbursement for independent expenditures. Under this approach
2 and the proposed timing requirements described above, once a communication that constitutes an
3 independent expenditure is publicly distributed or disseminated as explained above, the person
4 who paid for, or who contracted to pay for, the communication would be able to determine
5 whether the communication satisfied the “express advocacy” requirement of the definition of an
6 independent expenditure (see 11 CFR 100.16) and would therefore be able to determine whether
7 the disbursement for that communication constituted an independent expenditure. A person
8 reaching or exceeding the applicable reporting threshold would be responsible for submitting a
9 report by 11:59 p.m. Eastern Standard/Daylight Time of the day after, for 24-hour reporting, or
10 two days after, for 48-hour reporting, the date of the public distribution or dissemination of that
11 communication. Please note that under the proposed rules, independent expenditures would be
12 reported by political committees after a disbursement is made, or a debt reportable under 11 CFR
13 104.11(b) is incurred, for an independent expenditure, but no later than 11:59 p.m. of the day
14 following the day on which the independent expenditure is first publicly distributed or otherwise
15 publicly disseminated.

16 In some situations, a political committee will not make payment or incur a reportable
17 debt before the communication underlying the independent expenditure is publicly distributed or
18 otherwise publicly disseminated. If the communication is both publicly distributed or otherwise
19 publicly disseminated and paid for in the same reporting period, then the committee would report
20 the independent expenditure on Schedule E for that reporting period. If the communication is
21 aired in one reporting period (e.g., during the 24-hour reporting period) and payment is made in a
22 later reporting period (e.g., during the post-general election period), then the committee would

1 report the independent expenditure as a memo entry on Schedule E in the reporting period in
2 which payment is made.

3 In other situations, however, a political committee may pay the production and
4 distribution costs associated with an independent expenditure in one reporting period, but not
5 publicly distribute or otherwise publicly disseminate it until a later reporting period. In this case,
6 the committee would report the payment as a disbursement on Schedule B for operating
7 expenditures. When, in a subsequent reporting period, the communication is publicly distributed
8 or otherwise publicly disseminated, the committee would file a Schedule E for the independent
9 expenditure referencing the earlier Schedule B transaction. The committee would also report the
10 disbursement for the independent expenditure as a negative entry on Schedule B so the total
11 disbursements are not inflated. Alternatively, if the committee wishes to disclose the
12 independent expenditure before the communication is publicly disseminated, it could report the
13 independent expenditure on Schedule E for the reporting period in which the disbursement is
14 made, with no further reporting obligation except for the 48-hour report if the total
15 disbursements for independent expenditures equal or exceed \$10,000 at the time the
16 communication is publicly distributed or otherwise publicly disseminated.

17 Obligations incurred but not yet paid (that are reportable debts), must be reported on
18 Schedule D. When, in a subsequent reporting period, the communication is publicly distributed
19 or otherwise publicly disseminated, the committee must file a Schedule E referencing the debt on
20 Schedule D. The committee must continue to report the debt on Schedule D (and any payment
21 on it on Schedule E), until the debt is extinguished.

22 The Commission seeks comment on its proposed interpretation of BCRA's "makes or
23 contracts to make" language and the triggering mechanism for 24-hour and 48-hour reports.

1 Specifically, the Commission seeks comment on an alternative interpretation that would make
2 the actual disbursement or the execution of the contract to make the disbursement for an
3 independent expenditure, rather than the public distribution or dissemination of the resulting
4 communication, the triggering mechanism for the reporting requirements once the disbursements
5 and obligations equal or exceed the respective thresholds. This change would require earlier
6 reporting than is currently required or proposed (i.e., when the communication is publicly
7 disseminated). The policy reasons for adopting this alternative interpretation would be similar to
8 those described in the NPRM on the reporting of electioneering communications. See
9 “Electioneering Communications” NPRM, 67 Fed. Register 51,131 (Aug. 7, 2002).

10

11 **Proposed 11 CFR 109.10 Independent expenditure by persons other than political**
12 **committees**

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

18 Proposed paragraph (a) of 11 CFR 109.10 would provide a cross-reference to 11 CFR
19 104.4 for political committees, under which they must report independent expenditures.

20 Paragraph (a) of pre-BCRA 11 CFR 109.2 would be moved to proposed paragraphs (b) and (c)
21 of section 109.10.

22 Proposed paragraph (c) would address reports of independent expenditures aggregating
23 \$10,000 or more with respect to a given election from the beginning of the calendar year up to

1 and including the 20th day before an election. This proposed paragraph would require that 48-
2 hour reports of independent expenditures be received rather than filed by 11:59 pm of the second
3 day after the date on which the \$10,000 threshold is reached. See discussion of received versus
4 filed in section 100.19, above. Pre-BCRA paragraph (b) of section 109.2 indicates that 24-hour
5 reports must be received after a disbursement is made for an independent expenditure, but no
6 later than 24 hours after an independent expenditure is “made” under pre-BCRA paragraph
7 109.1(f). See the discussion of proposed 11 CFR 104.4(f), above. Under the proposed rules,
8 paragraph (b) of pre-BCRA section 109.2 would be moved to new paragraph (d) of 11 CFR
9 109.10 and revised to reflect the modification to the aggregation and filing requirements in
10 proposed 11 CFR 100.19(d) and 104.4 that are discussed above.

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

14 Proposed paragraph (e) of 11 CFR 109.10 (i.e., pre-BCRA 11 CFR 109.2(a)(1) and (c))
15 would address the contents and verification of statements filed in lieu of FEC Form 5. Proposed
16 paragraph (e) would include one significant change from pre-BCRA 109.2(a)(1) and (c): a
17 person making an independent expenditure would now be required to certify that the expenditure
18 was made independently from a political party committee and its agents, in addition to the pre-
19 BCRA requirement of certification that the expenditure was not coordinated with a candidate, the
20 candidate’s authorized committee, or an agent of either of the foregoing. This change reflects
21 the addition of political party committees to the definition of “independent expenditure” in 2
22 U.S.C. 431(17) and the description of coordination in 2 U.S.C. 441a(a)(7)(B)(ii) under BCRA.
23 For the same reasons explained with reference to the definition of “independent expenditure” in

1 proposed 11 CFR 100.16, the Commission would continue to include “consultation” in the
2 description of activity that would cause an expenditure to lose its independence (i.e., “in
3 cooperation, consultation, or concert with” a candidate or political party committee) even though
4 the statutory definition in 2 U.S.C. 431(17) does not retain the term.

6 **Proposed 11 CFR 104.20 – Reporting electioneering communications**

7 1. Introduction

8 In the Electioneering Communications Final Rules, 67 Fed. Register (October >>, 2002),
9 the Commission stated it would revise the proposed rules on reporting electioneering
10 communications and re-propose the rules as part of this rulemaking.² Id. at >>. Consequently,
11 these proposed rules include the reporting requirements for electioneering communications.
12 Although, the Electioneering Communications NPRM originally would have designated the
13 reporting of electioneering communications as section 104.19, the proposed rules would
14 designate reporting of electioneering communications as section proposed 104.20. Please note
15 that in the narrative that follows, citations to 104.19 refer to the original proposed rules in the
16 Electioneering Communications NPRM, and citations to 104.20 refer to the proposed rules in
17 this Consolidated Reporting NPRM.

18 2. Disclosure date

19 BCRA requires persons who make electioneering communications costing more than
20 \$10,000 to file disclosure statements with the FEC within 24 hours of the disclosure date. 2
21 U.S.C. 434(f)(1). In the Electioneering Communications NPRM, proposed section 104.19(b)

² The original proposed rules were part of the Electioneering Communications NPRM. See 67 Fed. Register
51,131, 51,145 (Aug. 7, 2002).

1 would have defined “disclosure date” as “the first date by which a person has made one or more
2 disbursements, or has executed one or more contracts to make disbursements, for the direct costs
3 of producing or airing electioneering communications aggregating in excess of \$10,000; . . .” 67
4 Fed. Register at 51,145 (August 7, 2002). The Electioneering Communications NPRM,
5 however, sought comment on whether the disclosure date should be the date on which the
6 electioneering communication aired. Thus, under this proposal, an organization could make
7 disbursements or enter into a contract to make disbursements that exceed \$10,000, but would not
8 be required to disclose the disbursements or contract until the electioneering communication is
9 aired. Although BCRA uses the term “airing,” the Commission has determined that “publicly
10 distributed” more accurately encompasses how electioneering communications are disseminated
11 to the public, including the airing of these communications. In the Electioneering
12 Communications Final Rules, the Commission defines “publicly distributed” to mean “aired,
13 broadcast, cablecast, or otherwise disseminated through the facilities of a television station, radio
14 station, cable television system, or satellite system.” 11 CFR 100.29(b)(6). Therefore, the
15 proposed section 104.20(a)(5) would adopt the definition of “publicly distributed” in 11 CFR
16 100.29(b)(6) and the term “publicly distributed” would be used throughout the proposed rules
17 instead of “airing.”

18 All of the commenters who addressed this issue disagreed with the proposed rule and
19 advocated adopting a final rule that would define “disclosure date” as the date of the public
20 distribution of the electioneering communication.³ They argued that there is no electioneering

³ Two commenters, submitting joint written comments, originally supported a two-step reporting process – a general report when there is a disbursement or a contract followed later by a specific report when the electioneering communication is aired. While testifying at the Commission’s public hearing, these commenters agreed that defining “disclosure date” as the date of airing is an acceptable alternative.

1 communication, and therefore no reporting requirement, until the communication is actually
2 publicly distributed. One witness at the August 28, 2002 public hearing on electioneering
3 communications did acknowledge that in some cases it may be difficult to ascertain when an
4 electioneering communication is publicly distributed for purposes of triggering the 24 hour
5 reporting period because the contract may not specify a precise time that the communication will
6 be publicly distributed or because in some instances the broadcaster does not air the
7 communication during the block of time specified in the contract. In addition, the Commission
8 believes that there could be legal and practical concerns with compelling disclosure of potential
9 electioneering communications before they are finalized and publicly distributed, particularly
10 when such disclosure could force reporting entities to divulge confidential strategic and political
11 information about their possible future activities.

12 Taking into consideration the comments described above, the Commission proposes to
13 make the date that an electioneering communication is publicly distributed as the disclosure date
14 under proposed section 104.20(a)(1). The Commission's proposal reflects its concerns that there
15 are legal and practical issues associated with compelling disclosure of potential electioneering
16 communications before they are finalized and publicly distributed. To address the concern that a
17 person may not know the exact time an electioneering communication will be publicly
18 distributed during the day that it is scheduled to air, the Commission is proposing to interpret the
19 24-hour period in which to report the electioneering communication as starting at the end of the
20 day in which the communication is publicly distributed. Therefore, proposed section 104.20(b)
21 would require reporting of an electioneering communication by the end of the following day.
22 The Commission seeks comment on this interpretation.

23 3. Aggregation of direct costs of producing or airing electioneering communications

1 In the Electioneering Communications NPRM, proposed section 104.19(a) would have
2 required every person who makes a disbursement, or executes a contract, for the direct costs of
3 producing or airing electioneering communications that aggregate in excess of \$10,000 during a
4 calendar year to file a statement with the Commission. Furthermore, proposed section
5 104.19(a)(2) would have included a non-exhaustive list of what constitutes direct costs of
6 electioneering communications. The Commission sought comment on two issues relating to this
7 proposed requirement. The first was whether the list in proposed section 104.19(a)(2) was
8 adequate and whether the list should be exhaustive. The second issue was whether the direct
9 costs of producing an electioneering communication and the direct costs of airing it should be
10 aggregated separately or together to determine whether the \$10,000 threshold has been reached.

11 The commenters to the Electioneering Communications NPRM were split on the issue of
12 whether the list of direct costs in proposed section 104.19(a)(2) should be exhaustive or non-
13 exhaustive. One commenter who supported an exhaustive list argued that it is clear what is
14 involved in producing a communication, and the proposed rule adequately addresses that.
15 Another commenter recommended a non-exhaustive list so that the Commission could retain
16 flexibility to identify other costs associated with producing and airing communications not listed
17 in the proposed rules.

18 In order to provide clear guidance on this issue, proposed 11 CFR 104.20(a)(2) would
19 include an exhaustive list of direct costs associated with producing or airing electioneering
20 communications within the proposed definition of "direct costs of producing or airing
21 electioneering communications." The Commission seeks comments on whether there are other
22 direct costs associated with producing or airing electioneering communications that should be

1 included in the proposed definition. The Commission also welcomes additional comments on
2 whether the list in proposed section 104.20(a)(2) should be exhaustive.

3 The commenters also disagreed on the question of the aggregation of direct costs of
4 producing or airing electioneering communications. Some commenters argued that BCRA
5 should be read to require that these costs should be aggregated separately. Under this
6 interpretation, if it costs a person \$7,000 to produce the electioneering communication and
7 \$7,000 to air it, the threshold has not been met because neither the direct costs of producing or
8 airing the electioneering communication reached \$10,000. In contrast, other commenters argued
9 that BCRA mandates that the direct costs of producing and airing the electioneering
10 communication be aggregated. Under this approach, the example above would result in the
11 \$10,000 threshold being met because the direct costs of producing and airing would be \$14,000.

12 The language in proposed section 104.20(b) would be identical to the language originally
13 proposed in section 104.19(a). Thus, when the direct costs of producing or airing an
14 electioneering communication exceed \$10,000 when aggregated together, the person who is
15 making the electioneering communication would be required to file a statement with the
16 Commission when the electioneering communication is publicly distributed.

17 4. Direction or control

18 The Electioneering Communication NPRM included two proposed alternatives, identified
19 as Alternative 4-A and Alternative 4-B, to implement the BCRA requirement to disclose “any
20 person sharing or exercising direction or control over the activities” of the person making the
21 disbursement for electioneering communications. See 2 U.S.C. 434(f)(2)(A). Many of the
22 commenters expressed concern that both alternatives are vague and could encompass a large
23 number of people, especially for electioneering communications made by membership

1 organizations. Some of the commenters were also concerned that disclosing this information
2 may reveal sensitive or confidential information and the decision-making processes of
3 organizations, especially non-profit organizations, thereby placing them at a competitive
4 disadvantage. For these reasons, these commenters argued that the Commission should require
5 limited, if any, disclosure of persons who share or exercise direction or control over the person
6 who makes disbursements for electioneering communications or the activities involved in
7 making electioneering communications.

8 In contrast, several commenters, including the Congressional sponsors of BCRA,
9 disagreed with both alternatives because in their view neither would disclose sufficiently the
10 information required by BCRA. See id. They argued that the purpose of this disclosure
11 requirement is to reveal not only those who have direction or control over the electioneering
12 communications, but also those who have direction or control over the organization that makes
13 the electioneering communications.

14 While the Commission appreciates the concerns of those who objected to disclosure of
15 the decision-making process of their organizations, BCRA requires persons who make
16 electioneering communication to disclose those who share or exercise direction or control over
17 the person making the disbursement for electioneering communications. 2 U.S.C. 434(f)(2)(A).
18 Because neither Alternative 4-A nor Alternative 4-B in the Electioneering Communications
19 NPRM appear to encompass the disclosure required by BCRA, proposed section 104.20(c)(2)
20 would not incorporate either of the two alternatives. Instead, proposed paragraph (c)(2) would
21 adopt the language of 2 U.S.C. 434(f)(2)(A).

22 The Electioneering Communications NPRM sought comment on whether the proposed
23 rules should define “direction or control over the activities” and whether such definition should

1 draw upon the existing earmarking regulations at 11 CFR 110.6(d) or the definition of “to direct”
2 at 11 CFR 300.2(n). A commenter suggested that the definition should be broadly defined and
3 should include those persons with the ability to influence the decision-making process
4 concerning electioneering communications. While this same commenter agreed that the
5 definition of “to direct” could be modified for inclusion into the definition of “direction or
6 control over the activities,” another commenter stated that it is unsuitable to use the definition of
7 “to direct” or the earmarking regulations in this context.

8 To provide further guidance on proposed section 104.20(c)(2), the proposed rules would
9 include a definition of “sharing or exercising direction or control.” Because it appears that
10 “direction or control” in the context of 2 U.S.C. 434(f)(2)(A) refers to the management or
11 decision-making process of an organization or a qualified nonprofit corporation (“QNC”),
12 proposed section 104.20(a)(3) would define “sharing or exercising direction or control” to mean
13 exercising authority or responsibility for policy formulation, day-to-day management, obligation
14 of funds, or hiring or firing employees. The Commission believes that these functions would
15 provide sufficient scope to capture responsible persons and entities without sweeping too
16 broadly.

17 In the alternative, the Commission could define “sharing or exercising direction or
18 control” to mean the officers, directors, partners, or any other individuals who have the authority
19 to bind the organization, entity, or person making the disbursement for electioneering
20 communication. This alternative, which is not reflected in the proposed rules, seeks a more
21 objective, bright-line definition of “direction or control” and would focus the definition on those
22 persons who have the authority to act on behalf of the organization. The Commission seeks
23 comments on these approaches to implementing 2 U.S.C. 434(f)(2)(A). The Commission also

1 seeks comments on how these proposals would apply to individuals making electioneering
2 communications.

3 5. Identification of candidates and elections

4 Under 2 U.S.C. 434(f)(2)(D), the elections to which the electioneering communications
5 pertain, as well as the names of all clearly identified candidates referred to in the
6 communications, must be disclosed. The Electioneering Communications NPRM provided two
7 alternatives to proposed 11 CFR 104.19(b)(5), identified as Alternative 5-A and Alternative 5-B,
8 which would implement this statutory provision. 67 Fed. Register 51,146. Both alternatives
9 would require disclosure of the election and all clearly identified candidates who are referred to
10 in the electioneering communication, but contain different language. Commenters preferred the
11 language of Alternative 5-B because it would be easier to read and would be more consistent
12 with 2 U.S.C. 434(f)(2)(D). Alternative 5-B arguably also is more consistent with what the
13 Commission is proposing as the disclosure date, see above, as there is no doubt as to the names
14 of clearly identified candidates appearing in a communication once a communication is publicly
15 distributed. Accordingly, proposed section 104.20(c)(5) would incorporate the language of
16 Alternative 5-B of the Electioneering Communications NPRM.

17 6. Disclosure of donors

18 BCRA requires persons who make electioneering communications and create segregated
19 bank accounts for electioneering communications to disclose the names and addresses of
20 contributors who contribute an aggregate of \$1,000 or more to that segregated account. 2 U.S.C.
21 434(f)(2)(E). If the organization that makes electioneering communications does not use a
22 segregated bank account, then it would be required to disclose the names and addresses of

1 contributors who contribute an aggregate of \$1,000 or more to that organization from the
2 beginning of the preceding year through the disclosure date. 2 U.S.C. 434(f)(2)(F).

3 A. Contributions/contributors v. donations/donors

4 In the Electioneering Communications NPRM, the Commission sought comment on
5 whether amounts given to persons who make disbursements for electioneering communications
6 are contributions subject to the limitations, prohibitions, and reporting requirements of the Act.
7 The Commission proposed to treat amounts given to political committees as contributions
8 because BCRA refers to “funds contributed” and “contributors.” See 2 U.S.C. 434(f)(2)(E) and
9 (F). Conversely, amounts given to persons who are not political committees would not be
10 considered contributions. Comments on this issue were generally favorable to the Commission’s
11 approach.⁴

12 Upon further analysis of this issue, the Commission proposes a different approach as to
13 the question of whether amounts given for electioneering communications are contributions or
14 donations. As stated in the Electioneering Communications Final Rules, the definition of
15 “electioneering communications” does not include expenditures or independent expenditures that
16 are subject to the limitations, prohibitions, and reporting requirements of the Act and the
17 Commission’s regulations. 11 CFR 100.29(c)(3). Communications made by political
18 committees that would otherwise qualify as electioneering communications would be reported as
19 expenditures or independent expenditures because they are made in connection with Federal
20 elections. By operation of the exemption of expenditures and independent expenditures from the

⁴ Further, one commenter, in response to the Commission’s question concerning treatment of amounts given to non-Federal accounts of a separate segregated fund or to non-connected committees, argued that amounts given to non-Federal accounts should not be treated as contributions subject to the prohibitions against corporations and labor organization funding electioneering communications.

1 definition of “electioneering communications,” these communications would not be considered
2 electioneering communications. Therefore, political committees, by definition, do not make
3 electioneering communications. Consequently, only persons who are not political committees
4 would make disbursements for electioneering communications.

5 As stated above and in the Electioneering Communications NPRM, the Commission
6 proposed to designate amounts given for electioneering communications purposes to persons
7 who are not political committees as “donations.” The Commission believes that amounts given
8 to entities that are not political committees for electioneering communications should not be
9 treated as contributions and should not count towards political committee status, unless these
10 amounts would otherwise constitute a contribution under subparts B and C of part 100.

11 Although the statutory language of BCRA uses the terms “contributor” and “contributed,” it does
12 not use the term “contribution” nor does it amend the definition of “contribution” in 2 U.S.C.
13 431(8). Thus, it appears that Congress did not intend these amounts to be contributions
14 automatically to persons who are not political committees, especially in light of the statutory
15 exemption for expenditures and independent expenditures from the definition of “electioneering
16 communications.” Accordingly, proposed section 104.20(c) refers to amounts given for
17 electioneering communications as “donations” and the givers of the amounts as “donors.”
18 Additionally, all comments on the Electioneering Communications NPRM on this issue favored
19 this approach. The Commission again seeks comment on this approach.

20 B. Disclosure requirements

21 In reading 2 U.S.C. 434(f)(2)(E) and (F) together with 2 U.S.C. 441b(c)(3)(B), the
22 Commission stated in the Electioneering Communications NPRM that these disclosure
23 requirements for segregated bank accounts appear to apply only to qualified nonprofit

1 corporations organized under 26 U.S.C. 501(c)(4). See 67 Fed. Register 51,143. Therefore,
2 proposed 11 CFR 104.19(b)(6) would have required only QNCs to disclose their contributors for
3 purposes of electioneering communications. See 11 CFR 114.10 for QNC status.

4 The Electioneering Communications NPRM narrative that explained proposed section
5 104.19(b)(7) clearly states that all persons who make electioneering communications, including
6 QNCs that do not use segregated bank accounts, would be required to disclose their contributors
7 who contribute an aggregate of over \$1,000 during the prescribed time period. 67 Fed. Register
8 51,143. Nevertheless, some commenters interpreted proposed section 104.19(b)(7) to apply only
9 to QNCs and objected to limiting the disclosure requirements to only QNCs. They argued that
10 BCRA does not limit the requirements of 2 U.S.C. 434(f)(2)(E) and (F) to just QNCs.
11 Consequently, they recommended that all persons who make electioneering communications
12 should be required to disclose their contributors under proposed section 104.19(b)(7) and the
13 option for segregated bank accounts in proposed section 104.19(b)(6) should be extended to all
14 persons who make electioneering communications. Additionally, some commenters expressed
15 concern as to the requirement that organizations would be required to disclose their donors
16 because donors may become inhibited from making donations aggregating over \$1,000.

17 Because the Commission sees merit in these arguments, the revised proposed rules reflect
18 the commenters' suggestions and would make clear that the application of proposed sections
19 104.20(c)(7) and (8) would include all persons who make electioneering communications, not
20 just QNCs. Proposed paragraphs (c)(7) and (8) would incorporate the language in proposed
21 sections 104.19(b)(6) and (7) with modifications as discussed below.

22 (1) Disclosure of donors when exclusively using segregated bank accounts to
23 make disbursements for electioneering communications

1 Under proposed section 104.19(b)(6) in the Electioneering Communications NPRM,
2 QNCs that use segregated bank accounts to make disbursements for electioneering
3 communications would be required to disclose only contributors who contributed an aggregate in
4 excess of \$1,000 to that segregated bank account. As stated above, the Commission agrees with
5 the suggestion that this option should be made available to all persons who may make
6 electioneering communications. Accordingly, proposed section 104.20(c)(7) would allow all
7 such persons to establish a separate bank account to limit their reporting of the identities of their
8 donors of \$1,000 or more to those who have donated directly to that bank account, as long as
9 only funds from the separate bank account are used to pay for electioneering communications.
10 Additionally, the Commission notes that the final rules at 11 CFR 114.14(d) provide such
11 persons that are not QNCs with the option of establishing a segregated bank account similar to
12 that allowed to QNCs.

13 (2) Disclosure of donors when not exclusively using segregated bank accounts
14 to make disbursements for electioneering communications

15 Because there was some confusion as to the scope of the reporting requirement in
16 proposed 11 CFR 104.19(b)(7), proposed 11 CFR 104.20(c)(8) would differ from proposed
17 section 104.19(b)(7) in that it would remove the reference to QNCs. Thus, proposed section
18 104.20(c)(8) would make clear that all persons who make electioneering communications would
19 be required to disclose their donors who donate over \$1,000 in the aggregate, if they do not use
20 segregated bank accounts.

21 One commenter to the Electioneering Communications NPRM argued that the members
22 of the organizations it represented could be subject to negative consequences if their names are
23 disclosed in connection with an electioneering communication. The FECA provides for an

1 advisory opinion process concerning the application of any of the statutes within the
2 Commission's jurisdiction or any regulations promulgated by the Commission, and such a group
3 could also seek an advisory opinion from the Commission to determine if the group would be
4 entitled to an exemption from disclosure that would be analogous to the exemption provided to
5 the Socialist Workers Party in Advisory Opinions 1990-13 and 1996-46 (both of which allowed
6 the Socialist Workers Party to withhold the identities of its contributors and persons to whom it
7 had disbursed funds because of a reasonable probability that the compelled disclosure of the
8 party's contributors' names would subject them to threats, harassment, or reprisals from either
9 Government officials or private parties.). BCRA's legislative history recognizes the need for
10 limited exceptions in these circumstances. See 148 Cong. Rec. S2136 (daily ed. Mar. 20, 2002)
11 (remarks of Sen. Snowe).

12 7. Other content requirements

13 Proposed section 104.20(c) would require disclosure of additional information, not
14 described above, in connections with the reporting of electioneering communications as
15 mandated by BCRA. See 2 U.S.C. 434(f)(2)(A) and (C). Proposed paragraph (c)(1) would
16 require identification of the person making the disbursement or the person's principal place of
17 business. Proposed paragraph (c)(3) would require identification of the custodian of the books
18 and accounts. Proposed paragraph (c)(4) would require disclosure of information about
19 disbursements that exceed \$200. Proposed paragraph (c)(6) would require identifying the
20 disclosure date.

21 8. Recordkeeping requirement

22 Proposed 11 CFR 104.20(d) would require all persons who make electioneering
23 communications or accept donations for the purpose of making electioneering communications

1 to maintain records in accordance with 11 CFR 104.14. In the Electioneering Communications
2 NPRM, proposed section 104.19(c) would have exempted QNCs from the recordkeeping
3 requirements. The commenters who addressed this issue were split on whether QNCs should be
4 exempted from the recordkeeping requirements. A commenter who did not support the
5 exemption argued that because these entities are required to report their electioneering
6 communications, they should also be required to maintain records that relate to the electioneering
7 communications in order to support their reports.

8 In determining that all of the reporting and recordkeeping requirements for political
9 committees were too burdensome for QNCs making independent expenditures, the Supreme
10 Court in FEC v. Massachusetts Citizens For Life, Inc. ("MCFL") noted that MCFL, Inc. was
11 subject to more "extensive requirements and more stringent restrictions" than unincorporated
12 nonprofit organizations. 479 U.S. 238, 254-255 (1986). In contrast, proposed section 104.20(d)
13 would require QNCs to maintain only those records that pertain to their electioneering
14 communications which should not be burdensome for them. Additionally, this recordkeeping
15 requirement is no different than what is required of any other person, including unincorporated
16 nonprofit organizations, that make disbursements for electioneering communications.
17 Furthermore, the availability of these records would be necessary to assess the accuracy of the
18 electioneering communications reports filed by QNCs. Therefore, proposed paragraph (d) would
19 not include an exemption for QNCs. The Commission welcomes further comments on this issue.

20 9. Proposed amendment to 11 CFR 105.2

21 The Electioneering Communications NPRM proposed amending current 11 CFR 105.2 to
22 require principal campaign committees of Senatorial candidates and other political committees
23 that support only Senatorial candidates to file their statements of electioneering with the

1 Commission. The Commission, however, has determined that political committees do not make
2 electioneering communications by operation of the definition of “electioneering
3 communications” in 11 CFR 100.29. Therefore, proposed section 105.2(b) would not
4 incorporate the language from the electioneering communications NPRM or include mention of
5 statements of electioneering communications.

6
7 **PRINCIPAL CAMPAIGN COMMITTEE AND NATIONAL POLITICAL PARTY**
8 **COMMITTEE REPORTING SCHEDULES**

9 **Proposed 11 CFR 104.5(a)—Principal campaign committees of House and Senate**
10 **candidates**

11 Proposed 11 CFR 104.5(a) would set forth the new reporting schedule for the principal
12 campaign committees of House of Representatives and Senate candidates. Prior to BCRA, the
13 principal campaign committees of House and Senate candidates were allowed, in the non-
14 election years, to file semi-annually. After November 6, 2002, excluding reports for runoff
15 elections, principal campaign committees of House and Senate candidates must file quarterly in
16 non-election years, as well as in the election year. 2 U.S.C. 434(a)(2)(B). Proposed revised
17 section 104.5(a)(1) would state that these committees must file quarterly. Like other quarterly
18 reports, these must be complete as of March 31, June 30, September 30, and December 31, and
19 must filed by April 15, July 15, October 15, and January 31 of the following year, respectively.
20 Proposed paragraph (a)(2) of 11 CFR 104.5 would set forth the requirements for pre-election and
21 post-general election reports in the election year, which would be identical to paragraphs (a)(1)(i)
22 and (ii) of the pre-BCRA section. The rules regarding semi-annual reporting (in pre-BCRA

1 section 104.5(a)) would be deleted. Please note that these new reporting dates do not affect the
2 principal campaign committees or other authorized committees of Presidential candidates.

3
4 **Proposed 11 CFR 104.5(c) – Committees other than authorized committees of candidates**

5 Proposed revisions to the introductory language for paragraph (c) would clarify that while
6 non-authorized political committees may choose to file quarterly or monthly, a national
7 committee of a political party must report monthly under proposed 11 CFR 104.5(c)(4).

8 Proposed 11 CFR 104.5(c)(4) would be a new provision implementing the BCRA
9 requirement that national political party committees must report on a monthly basis.
10 2 U.S.C. 434(a)(4)(B). Previously, national party committees were allowed to file quarterly in
11 the election year and semi-annually in the non-election years. The changes to the Act by BCRA
12 specifically state that national political party committees must file monthly, including pre-
13 general election and post-general election reports. These changes may have been intended to
14 remove any doubt as to whether national political party committees that filed quarterly had to file
15 these reports if they did not make any contributions or expenditures on behalf of candidates in
16 these elections during pre-BCRA election reporting periods. These rules would implement
17 BCRA's amendment.

18 The proposed rules would apply to the Congressional campaign committees of the
19 political parties as national political party committees. The Commission seeks comments on
20 whether Congressional campaign committees should so specifically be included in the
21 regulations.

22

1 **11 CFR 104.3(g) – Funds for party office buildings**

2 Before BCRA, the Act and Commission regulations provide an exception to the
3 definition of contribution and expenditure for donations to a national or State party committee
4 that are specifically designated to defray any cost incurred for the construction or purchase of its
5 office facility. Pre-BCRA 2 U.S.C 431(8)(B)(vii); pre-BCRA 11 CFR 100.7(b)(12). This
6 exception is reflected in current 11 CFR 104.3(g), which provides that funds or anything of value
7 that were designated for party office building funds and received by a party committee must be
8 reported as memo entries.

9 To implement BCRA, the Commission adopted new regulations at 11 CFR 300.12 and
10 300.35, which eliminate this exception for national party committees and provide that the source
11 and reporting of donations used for the costs incurred by a State, district, or local party
12 committee for the purchase or construction of its office building are subject to State law if
13 donated to a non-Federal account of the committee. “Prohibited and Excessive Contributions:
14 Non-Federal Funds or Soft Money; Final Rule,” 67 Fed. Register, 49,123 and 49,127. However,
15 if funds or things of value are contributed to (or for use by) the Federal account of a State,
16 district, or local party committee for the purchase or construction of its office building, then the
17 amounts donated are contributions under the Act. Consequently, proposed paragraph (g) of 11
18 CFR 104.3 would make it clear that any funds or things of value received by a Federal account
19 and used for the purchase or construction of an office building, regardless of a specific
20 contributor designation, are contributions and are not treated differently from other funds or
21 things of value donated to a Federal account.

22
23 **Certification of no effect pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)**

1 The Commission certifies that the attached proposed rules, if promulgated, would not
2 have a significant economic impact on a substantial number of small entities. The bases of this
3 certification are several. There are four areas in which new rules are being proposed. The
4 economic impact on small entities of each subject of new proposed rules is addressed below.

5 Independent expenditure reporting First, with regard to the proposed new rules
6 addressing independent expenditures that the national, State, and local party committees of the
7 two major political parties, and other political committees are not small entities under 5 U.S.C.
8 601 because they are not small businesses, small organizations, or small governmental
9 jurisdictions. Further, individual citizens operating under these rules are not small entities.

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

17 Electioneering communications Second, with regard to the proposed rules addressing
18 electioneering communications, the only burden the proposed rules impose is on persons who
19 make electioneering communications, and that burden is a minimal one, requiring persons who
20 make such communications to provide the names and addresses of those who made donations to
21 that person when the costs of the electioneering communication exceed \$10,000. If that person
22 is a corporation that qualifies as a QNC, then it must also certify that it meets that status. The
23 number of small entities affected by the proposed rules is not substantial.

1 The Commission would adopt several rules that seek to reduce any burden that might
2 accrue to persons who must file reports. First, the Commission would interpret the reporting
3 requirement such that no reporting is required until after an electioneering communication is
4 publicly distributed. More than likely, this would only require that person to file one report with
5 the Commission. Also, the Commission would allow all persons paying for electioneering
6 communications to establish segregated accounts, and to report the names and addresses of only
7 those persons who contributed to those accounts. Further, the Commission would interpret the
8 statute to not require that a certification of QNC status be filed until the person is also required to
9 file a disclosure report. These are significant steps the Commission would take to reduce the
10 burden on those who would make electioneering communications. The overall burden on the
11 small entities affected by these proposed rules for reporting electioneering communications
12 would not amount to \$100 million on an annual basis. Moreover, these proposed rules would be
13 no more than what is strictly necessary to comply with the new statute enacted by Congress.

14 Reporting schedules for house and senate candidates Third, regarding the new rules
15 requiring a different non-election year reporting schedule for the authorized committees of
16 House and Senate candidates, the reporting frequencies have increased, however, the burden
17 would not amount to \$100 million on an annual basis. Moreover, these proposed rules would be
18 no more than what is strictly necessary to comply with the new statute enacted by Congress.

19 Reporting schedules for national committees of political parties Fourth, regarding the
20 new rules requiring a different reporting schedule for national committees of political parties, as
21 noted above, the two major national party committees are not small entities under 5 U.S.C. 601.
22

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
6 requirements.

7 11 CFR Part 105

8 Document filing.

9 11 CFR Part 109

10 Elections, reporting and recordkeeping requirements.

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

PART 100 – SCOPE AND DEFINITIONS

1. The authority citation for part 100 would continue to read as follows:

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

2. Section 100.19 would be revised to read as follows:

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

With respect to documents required to be filed under 11 CFR parts 101, 102, 104, 105, 107, 108, and 109, and any modifications or amendments thereto, the terms file, filed, and filing mean one of the actions set forth in paragraphs (a) through (e) of this section. For purposes of this section, document means any report, statement, notice, or designation required by the Act to be filed with the Commission or the Secretary of the Senate.

(a) Where to deliver reports. * * *

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

1 Documents sent by first class mail must be received by the close of business on the prescribed
2 filing date to be timely filed.

3 (c) Electronically filed reports. For electronic filing purposes, a document is timely filed
4 when it is received and validated by the Federal Election Commission at or before 11:59 p.m.
5 Eastern Standard/Daylight Time on the filing date.

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

7 (1) 48-hour reports of independent expenditures. A 48-hour report of independent
8 expenditures under 11 CFR 104.4(b) or 109.10(c) is timely filed when it is
9 received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight
10 Time of the second day following the date on which independent expenditures
11 aggregate \$10,000 or more in accordance with 11 CFR 104.4(f), any time during
12 the calendar year up to and including the 20th day before an election.

13 (2) 24-hour reports of independent expenditures. A 24-hour report of independent
14 expenditures under 11 CFR 104.4(b) or 109.2(e)10(d) is timely filed when it is
15 received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight
16 Time of the day following the date on which appropriate filing officer as listed in
17 11 CFR 104.4(e) after a disbursement is made, or, in the case of a political
18 committee, a debt reportable under 11 CFR 104.11(b) is incurred, for an
19 independent expenditure, but no later than 24 hours from the time the independent
20 expenditures aggregate at least \$1,000, in accordance with 11 CFR 104.4(f),
21 during the period less than 20 days but more than 24 hours before an election.

1 (3) Permissible means of filing. In addition to other permissible means of filing, a
2 24-hour report or 48-hour report of independent expenditures may be filed using a
3 facsimile machine or by electronic mail if the filer is not required to file
4 electronically in accordance with 11 CFR 104.18.

5 (e) 48-hour statements of last-minute contributions. In addition to other permissible means
6 of filing, authorized committees that are not required to file electronically may file 48-hour
7 notifications of contributions using facsimile machines. All authorized committees that file with
8 the Commission, including electronic filers, may use the Commission's web site's on-line
9 program to file 48-hour notifications of contributions. See 11 CFR 104.5(f).

10 (f) 24-hour statements of electioneering communications. A 24-hour statement of
11 electioneering communications under 11 CFR 104.20 is timely filed when it is received by the
12 Commission within 24 hours of the disclosure date (see 11 CFR 104.20(a)(1)). In addition to
13 other permissible means of filing, a 24-hour statement of electioneering communications may be
14 filed using a facsimile machine or by electronic mail if the filer is not required to file
15 electronically in accordance with 11 CFR 104.18.

16
17 **PART 104 – REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)**

18 3. The authority citation for part 104 would continue to read as follows:

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

20 4. In §104.3, paragraph (g) would be revised as follows:

21 **§ 104.3 Contents of reports (2 U.S.C. 434(b), 439a).**

22 * * * * *

1 ~~(g) Building funds. Gifts, subscriptions, loans, advances, deposits of money or anything of value~~
2 ~~made to defray costs of construction or purchase of office facilities received by a political~~
3 ~~committee in accordance with 11 CFR 100.7(b)(12) shall be reported as a memo entry on~~
4 ~~Schedule A.~~

5 (g) Building funds.

6 (1) A political party committee must report gifts, subscriptions, loans, advances,
7 deposits of money, or anything of value that are used by the political party
8 committee's Federal accounts to defray the costs of construction or purchase of
9 the committee's office building. See 11 CFR 300.35. Such a receipt is a
10 contribution subject to the limitations and prohibitions of the Act and reportable
11 as a contribution, regardless of whether the contributor has designated the funds
12 or things of value for such purpose and regardless of whether such funds are
13 deposited in a separate Federal account dedicated to that purpose.

14 (2) Gifts, subscriptions, loans, advances, deposits of money, or anything of value that
15 are donated to a non-Federal account of a State, district, or local party committee
16 and are used by that account for the purchase or construction of its office building
17 are not contributions subject to the reporting requirements of the Act. The
18 reporting of such funds or things of value is subject to State law.

19 (3) Gifts, subscriptions, loans, advances, deposits of money, or anything of value that
20 are used by a national committee of a political party to defray the costs of
21 construction or purchase of the national committee's office building are
22 contributions subject to the requirements of paragraph (g)(1) of this section.

23 * * * * *
24

1 5. Section 104.4 would be revised to read as follows:

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

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

7 (b) Reports of independent expenditures made at any time up to and including the 20th day
8 before an election.

9 (1) Independent expenditures aggregating less than \$10,000 in a calendar year.
10 Political committees must report on Schedule E of FEC Form 3X at the time of
11 their regular reports in accordance with 11 CFR 104.3, 104.5 and 104.9, all
12 independent expenditures aggregating less than \$10,000 with respect to a given
13 election any time during the calendar year up to and including the 20th day before
14 an election.

15 (2) Independent expenditures aggregating \$10,000 or more in a calendar year.
16 Political committees must report on Schedule E of FEC Form 3X all independent
17 expenditures aggregating \$10,000 or more with respect to a given election any
18 time during the calendar year up to and including the 20th day before an election.
19 Political committees must ensure that the Commission receives these reports no
20 later than 11:59 p.m. Eastern Standard/Daylight Time of the second day following
21 the date on which a communication that constitutes an independent expenditure is
22 publicly distributed or otherwise publicly disseminated. Each time subsequent
23 independent expenditures relating to the same election aggregate an additional

1 \$10,000 or more, the political committee must ensure that the Commission
2 receives a new 48-hour report of the subsequent independent expenditures. See
3 11 CFR 104.4(f) for aggregation. Each 48-hour report must contain the
4 information required by 11 CFR 104.3(b)(3)(vii) indicating whether the
5 independent expenditure is made in support of, or in opposition to, the candidate
6 involved. In addition to other permissible means of filing, a political committee
7 may file the 48-hour reports under this section by any of the means permissible
8 under 11 CFR 100.19(d)(3).

9 (c) Reports of independent expenditures made less than 20 days, but more than 24 hours

10 before the day of an election. Political committees must ensure that their reports the

11 Commission receives reports of any independent expenditures aggregating \$1,000 or more with

12 respect to a given election, made after the 20th day, but more than 24 hours, before 12:01 a.m. of

13 the day of the election, shall be received by no later than 11:59 p.m. Eastern Standard/Daylight

14 Time of the day following the date on which a communication is publicly distributed or

15 otherwise publicly disseminated.-(the appropriate officers listed in paragraph (e) of this section

16 after a disbursement is made, or a debt reportable under 11 CFR 104.11(b) is incurred, for an

17 independent expenditure, but no later than 24 hours after such independent expenditures

18 aggregate \$1,000 or more.] Each time subsequent independent expenditures relating to the same

19 election aggregate \$1,000 or more, the political committee must ensure that the Commission

20 must receives a new 24-hour report of the subsequent independent expenditures. Such Each 24-

21 hour report filed in accordance with this section shall contain the information required by 11

22 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in

23 opposition to, the candidate involved. Political committees may file Reports filed under this

1 section ~~may be filed~~ by any of the means permissible under 11 CFR 100.19(d)(3). ~~In addition to~~
2 ~~other permissible means of filing, a 24-hour report may be filed using a facsimile machine or~~
3 ~~electronic mail if the filer is not required to file electronically in accordance with 11 CFR 104.18.~~
4 ~~Such report shall be verified by one of the methods stated in paragraph (b)(1)(i) or (ii) or (b)(2)~~
5 ~~of this section. Any report verified under either of these methods shall be treated for all purposes~~
6 ~~(including penalties for perjury) in the same manner as a document verified by signature.~~

7 (d) Verification. ~~Such report~~ Political committees shall must verify reports of independent
8 expenditures filed under paragraph (b) or (c) of this section shall be verified by one of the
9 methods stated in paragraph ~~(e)(1) or (2) or (b)(2)~~ of this section. Any report verified under
10 either of these methods shall be treated for all purposes (including penalties for perjury) in the
11 same manner as a document verified by signature.

12 (1) For reports filed on paper (e.g., by hand-delivery, U.S. Mail or facsimile
13 machine), the treasurer of the political committee that made the independent
14 expenditure shall must certify, under penalty of perjury, the independence of the
15 expenditure by handwritten signature immediately following the certification
16 required by 11 CFR 104.3(b)(3)(vii), ~~shall be immediately followed by the~~
17 ~~handwritten signature of the treasurer of the political committee that made the~~
18 ~~independent expenditure and who certifies, under penalty of perjury, its~~
19 ~~independence.~~

20 (2) For reports filed by electronic mail, the treasurer of the political committee that
21 made the independent expenditure shall certify, under penalty of perjury, the
22 independence of the expenditure by typing the treasurer's name immediately
23 following the certification required by 11 CFR 104.3(b)(3)(vii), ~~shall be~~

1 immediately followed by the typewritten name of the treasurer of the political-
2 committee that made the independent expenditure and who certifies, under
3 penalty of perjury, its independence.

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

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

10 (2) For independent expenditures in support of, or in opposition to, a candidate for
11 the Senate or the House of Representatives: with the ~~Secretary of the Senate~~
12 Commission and the Secretary of State for the State in which the candidate is
13 seeking election.

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

17 (f) Aggregating independent expenditures for reporting purposes. For purposes of
18 determining whether 24-hour and 48-hour reports must be filed in accordance with paragraphs
19 (b) and (c) of this section and 11 CFR 109.10(c) and (d), aggregations of independent
20 expenditures must be calculated as of the first date during the calendar year on which a
21 communication that constitutes an independent expenditure is publicly distributed or otherwise
22 publicly disseminated, and as of the date that any such communication with respect to the same
23 election is subsequently publicly distributed or otherwise publicly disseminated. Every person

1 must include in the aggregate total all disbursements for independent expenditures, and all
2 enforceable contracts, either oral or written, obligating funds for disbursements for independent
3 expenditures, made with respect to any communication that has been publicly distributed or
4 otherwise publicly disseminated, during the calendar year, with respect to a given election for
5 Federal office.

6 6. In § 104.5, paragraphs (a) and (g) would be revised to read as follows, and introductory
7 language to paragraph (c), and paragraphs (c)(4) and (j) would be added to read as follows:

8 **§ 104.5 Filing dates (2 U.S.C. 434(a)(2)).**

9 ~~a) — *Principal Campaign Committee of House or Senate Candidate.* Each treasurer of a~~
10 ~~principal campaign committee supporting a candidate for the House of Representatives or to the~~
11 ~~Senate shall file reports on the dates specified at 11 CFR 104.5(a) (1) and (2).~~

12 (1) — ~~*Election year reports*~~—

13 (i) — ~~*Pre-election reports*~~—

14 (A) — ~~Pre-election reports for the primary and general election shall be~~
15 ~~filed no later than 12 days before any primary or general election~~
16 ~~in which the candidate seeks election. If sent by registered or~~
17 ~~certified mail, the report shall be mailed no later than the 15th day~~
18 ~~before any election.~~

19 (B) — ~~The report shall disclose all receipts and disbursements as of the~~
20 ~~20th day before a primary or general election.~~

21 (ii) — ~~*Post-general election report*~~—

22 (A) — ~~The post-general election report shall be filed no later than 30 days~~
23 ~~after any general election in which the candidate seeks election.~~

1 ~~(B) — The report shall be complete as of the 20th day after the general~~
2 ~~election.~~

3 ~~(iii) — Quarterly reports.~~

4 ~~(A) — Quarterly reports shall be filed no later than the 15th day following~~
5 ~~the close of the immediately preceding calendar quarter (on April~~
6 ~~15, July 15, and October 15), except that the report for the final~~
7 ~~calendar quarter of the year shall be filed on January 31 of the~~
8 ~~following calendar year.~~

9 ~~(B) — The report shall be complete as of the last day of each calendar~~
10 ~~quarter.~~

11 ~~(C) — The requirement for a quarterly report shall be waived if, under 11~~
12 ~~CFR 104.5(a)(1)(i), a pre-election report is required to be filed~~
13 ~~during the period beginning on the fifth day after the close of the~~
14 ~~calendar quarter and ending on the fifteenth day after the close of~~
15 ~~the calendar quarter.~~

16 ~~(2) — Non-election year reports —~~

17 ~~(i) Semi-annual reports.~~

18 ~~(A) — The first report shall cover January 1 through June 30, and shall be~~
19 ~~filed no later than July 31.~~

20 ~~(B) — The second report shall cover July 1 through December 31, and~~
21 ~~shall be filed no later than January 31 of the following year.~~

1 (a) Principal campaign committee of House or Senate candidate. Each treasurer of a
2 principal campaign committee supporting a candidate for the House of Representatives or for the
3 Senate must file reports on the dates specified at paragraph (a)(1) of this section in election years
4 and non-election years, and paragraph (2) of this section in election years.

5 (1) Quarterly reports.

6 (i) Quarterly reports must be filed no later than the 15th day following the
7 close of the immediately preceding calendar quarter (on April 15, July 15,
8 and October 15), except that the report for the final calendar quarter of the
9 year must be filed no later than January 31 of the following calendar year.

10 (ii) The report must be complete as of the last day of each calendar quarter.

11 (iii) The requirement for a quarterly report shall be waived if, under paragraph
12 (a)(2) of this section, a pre-election report is required to be filed during the
13 period beginning on the 5th day after the close of the calendar quarter and
14 ending on the 15th day after the close of the calendar quarter.

15 (2) Additional reports in the election year.

16 (i) Pre-election reports.

17 (A) Pre-election reports for the primary and general election must be
18 filed no later than 12 days before any primary or general election
19 in which the candidate seeks election. If sent by registered or
20 certified mail, the report must be mailed no later than the 15th day
21 before any election.

1 (B) The pre-election report must disclose all receipts and
2 disbursements as of the 20th day before a primary or general
3 election.

4 (ii) Post-general election report.

5 (A) The post-general election report must be filed no later than 30 days
6 after any general election in which the candidate seeks election.

7 (B) The post-general election report must be complete as of the 20th
8 day after the general election.

9
10 * * * * *

11 (c) Committees other than authorized committees of candidates. Each political committee
12 which that is not the authorized committee of a candidate, except for a national committee of a
13 political party (including the national Congressional campaign committees of a political party),
14 which must comply with paragraph (c)(4) of this section, shall must file either: election year and
15 non-election year reports as prescribed at ~~11 CFR 104.5~~paragraphs (c)(1) and (2) of this section;
16 or monthly reports as prescribed at ~~11 CFR 104.5~~paragraph (c)(3) of this section. A political
17 committee reporting under 11 CFR 104.5(c), except for a national committee of a political party
18 (including the national Congressional campaign committees of a political party), may elect to
19 change the frequency of its reporting from monthly to quarterly and semi-annually or vice versa.
20 A committee, except for national committee of a political party (including the national
21 Congressional campaign committees of a political party), may change its filing frequency only
22 after notifying the Commission in writing of its intention at the time it files a required report
23 under its current filing frequency. Such committee will then be required to file the next required

1 report under its new filing frequency. A committee may change its filing frequency no more
2 than once per calendar year.

3 * * * * *

4 (4) A national committee of a political party, including a national Congressional
5 campaign committee, must report monthly in accordance with 11 CFR 104.5 paragraph (c)(3) of
6 this section.

7 * * * * *

8 (g) Reports of independent expenditures.

9 (1) 48-hour reports of independent expenditures. Every person who or which must
10 file a 48-hour report under 11 CFR 104.4(b) must ensure the Commission
11 receives the report no later than 11:59 p.m. Eastern Standard/Daylight Time of the
12 second day following the date on which a communication that constitutes an
13 independent expenditure is publicly distributed or otherwise publicly
14 disseminated. Each time subsequent independent expenditures by that person
15 relating to the same election as that to which the previous report relates aggregate
16 \$10,000 or more, that person must ensure that the Commission receives a new 48-
17 hour report of the subsequent independent expenditures no later than 11:59 p.m.
18 Eastern Standard/Daylight Time of the second day following the date on which
19 the \$10,000 threshold is reached or exceeded. See 11 CFR 104.4(f) for
20 aggregation.

21 (2) 24-hour report of independent expenditures. Every person who or which must file
22 a 24-hour report under 11 CFR 104.4(c) must ensure that the Commission
23 receives the report no later than 11:59 p.m. Eastern Standard/Daylight Time of the

1 day following the date on which a communication that constitutes an independent
2 expenditure is publicly distributed or otherwise publicly disseminated. Statements
3 disclosing any independent expenditures must be received by the appropriate
4 officers listed in 11 CFR 104.4(e) aggregating \$1,000 or more with respect to a
5 given election after the 20th day, but more than 24 hours, before 12:01 a.m. of
6 the day of the election, must be received by the appropriate officers listed in 11
7 CFR 104.4(e) after a disbursement is made, or in the case of a political
8 committee, a debt reportable under 11 CFR 104.11(b) is incurred, but no later
9 than 24 hours after such independent expenditure is made. Each time subsequent
10 independent expenditures by that person relating to the same election as that to
11 which the previous report relates aggregate \$1,000 or more, that person must
12 ensure that the Commission receives a 24-hour report of the subsequent
13 independent expenditures no later than 11:59 p.m. Eastern Standard/Daylight
14 Time of the day following the date on which the \$1,000 threshold is reached or
15 exceeded. See 11 CFR 104.4(f) for aggregation.

16 (3) Such Each 24-hour or 48-hour report of independent expenditures statement filed
17 under this section shall contain the information required by 11 CFR
18 104.3(b)(3)(vii) indicating whether the independent expenditure is made in
19 support of, or in opposition to, the candidate involved.

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

22 * * * * *

1 (j) 24-hour statements of electioneering communications. Every person who has made a
2 disbursement or who has executed a contract to make a disbursement for the direct costs of
3 producing or airing electioneering communications as defined in 11 CFR 100.29 aggregating in
4 excess of \$10,000 during any calendar year shall file a statement with the Commission by 11:59
5 p.m. Eastern Standard/Daylight Time of the day following the disclosure date. The statement
6 shall be filed under penalty of perjury and in accordance with 11 CFR 104.20.

7 7. Section 104.19 would be added and reserved.

8 **§ 104.19 Reserved.**

9 8. Section 104.20 would be added to read as follows:

10 **§ 104.20 Reporting electioneering communications (2 U.S.C. 434(f)).**

11 **(a) Definitions:**

12 **(1) Disclosure date means:**

13 **(i) The first date during the calendar year on which an electioneering**
14 **communication is publicly distributed provided that the person making the**
15 **electioneering communication has made one or more disbursements, or**
16 **has executed one or more contracts to make disbursements, for the direct**
17 **costs of producing or airing electioneering communications aggregating in**
18 **excess of \$10,000; or**

19 **(ii) Any other date during the same calendar year on which an electioneering**
20 **communication is publicly distributed provided that the person making the**
21 **electioneering communication has made one or more disbursements, or**
22 **has executed one or more contracts to make disbursements, for the direct**
23 **costs of producing or airing electioneering communications aggregating in**

1 excess of \$10,000 since the most recent disclosure date during such
2 calendar year.

3 (2) Direct costs of producing or airing electioneering communications include the
4 following:

5 (i) Costs associated with producing the communication in-house;

6 (ii) Costs charged by a production company, such as studio rental time, staff
7 salaries, costs of video or audio recording media, and talent; and

8 (iii) The cost of airtime on broadcast, cable or satellite radio and television
9 stations, and the charges for a broker to purchase the airtime.

10 (3) Sharing or exercising direction or control means exercising authority or
11 responsibility for:

12 (i) Development, establishment, or change of policy for the organization or
13 corporation;

14 (ii) Day-to-day management of the organization or corporation;

15 (iii) Obligation of funds or signing contracts; or

16 (iv) Hiring or firing employees.

17 (4) Identification has the same meaning as in 11 CFR 100.12.

18 (5) Publicly distributed has the same meaning as in 11 CFR 100.29(a)(5).

19 (b) Who must report. Every person who has made a disbursement or who has executed a
20 contract to make a disbursement for the direct costs of producing or airing electioneering
21 communications, as defined in 11 CFR 100.29, aggregating in excess of \$10,000 during any
22 calendar year shall file a statement with the Commission by 11:59 p.m. Eastern
23 Standard/Daylight Time of the day following the disclosure date. The statement shall be filed

1 under penalty of perjury and contain the information set forth in paragraph (c) of this section.

2 Persons other than political committees must file these 24-hour statements on FEC Form 9.

3 (c) Contents of statement. Every person described in paragraph (b) of this section shall
4 disclose the following information:

5 (1) The identification of the person who made the disbursement, or who executed a
6 contract to make a disbursement, and, if the person is not an individual, the
7 person's principal place of business;

8 (2) The identification of any person sharing or exercising direction or control over the
9 activities of the person who made the disbursement, or who executed a contract to
10 make a disbursement, for electioneering communications;

11 (3) The identification of the custodian of the books and accounts from which the
12 disbursements for electioneering communications were made;

13 (4) The amount of each disbursement, or amount obligated, of more than \$200 during
14 the period covered by the statement, the date the disbursement was made, or the
15 contract was executed, and the identification of the person to whom that
16 disbursement was made;

17 (5) All clearly identified candidates referred to in the communication and the
18 elections in which they are candidates;

19 (6) The disclosure date as defined in this section.

20 (7) If the disbursements were paid exclusively out of a segregated bank account
21 consisting of funds provided solely by individuals who are United States citizens,
22 United States nationals, or who are lawfully admitted for permanent residence
23 under 8 U.S.C. 1101(a)(20), the name and address of each donor who donated an

1 amount aggregating \$1,000 or more to the segregated bank account, aggregating
2 since the first day of the preceding calendar year; and

3 (8) If the disbursements were not paid exclusively from the segregated bank account,
4 the name and address of each donor who donated an amount aggregating \$1,000
5 or more to the person making the disbursement, aggregating since the first day of
6 the preceding calendar year.

7 (d) Recordkeeping. All persons who make electioneering communications or who accept
8 donations for the purpose of making electioneering communications, must maintain records in
9 accordance with 11 CFR 104.14.

10
11 **PART 105 – DOCUMENT FILING (2 U.S.C. 432(g))**

12 9. The authority citation for part 105 would be revised to read as follows:

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

14 10. Section 105.2 is revised to read as follows:

15 **§ 105.2 Place of filing; Senate candidates, their principal campaign committees, and**
16 **committees supporting only Senate candidates (2 U.S.C. 432(g)(2), 434(g)(3)).**

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

1 (b) Exception. 24-hour and 48-hour reports of independent expenditures must be filed with
2 the Commission and not with the Secretary of the Senate, even if the communication refers to a
3 Senate candidate:

4
5 **PART 109 – COORDINATED AND INDEPENDENT EXPENDITURES (2 U.S.C. 431(17),**
6 **441a, Pub. L. 107-155 sec. 214(c) (March 27, 2002).**

7 11. The authority citation for part 109 continues to read as follows:

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

9 12. Section 109.2 would be removed and reserved.

10 ~~§ 109.2 Reporting of independent expenditures by persons other than a political committee~~
11 ~~(2 U.S.C. 434(e)).~~

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

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

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

19 ~~(ii) — The identification (name and mailing address) of the person to whom the~~
20 ~~expenditure was made;~~

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

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

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

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

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

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

22 **§ 109.2 [Removed and reserved]**

23 13. Section 109.10 would be added to read as follows:

1 § 109.10 How do political committees and other persons report independent
2 expenditures?

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

5 (b) Every person, other than a political committee, who makes independent
6 expenditures aggregating in excess of \$250 with respect to a given election in a calendar
7 year shall file a verified statement, or report on FEC Form 5 with the Commission or
8 Secretary of the Senate containing the information required by paragraph (e) of this
9 section. Every person filing a report or statement under this section shall do so at the end
10 of the reporting period during which any such independent expenditures that aggregate in
11 excess of \$250 are made and in any reporting period thereafter in which additional
12 independent expenditures are made.

13 (c) Every person, other than a political committee, who makes independent expenditures
14 aggregating \$10,000 or more with respect to a given election any time during the calendar year
15 up to and including the 20th day before an election, must report the independent expenditures on
16 FEC Form 5, or by signed statement if the person is not otherwise required to file electronically
17 under 11 CFR 104.18. (See 11 CFR 104.4(f) for aggregation). The person making the
18 independent expenditures aggregating \$10,000 or more must ensure that the Commission
19 receives the report or statement no later than 11:59 p.m. Eastern Standard/Daylight Time of the
20 second day following the date on which a communication is publicly distributed or otherwise
21 publicly disseminated. Each time subsequent independent expenditures relating to the same
22 election aggregate an additional \$10,000 or more, the person making the independent
23 expenditures must ensure that the Commission receives a new 48-hour report of the subsequent

1 independent expenditures. Each 48-hour report must contain the information required by
2 paragraph (e)(1) of this section.

3 (d) Every person making, after the 20th day, but more than 24 hours before 12:01 a.m. of the
4 day of an election, independent expenditures aggregating \$1,000 or more with respect to a given
5 election must report those independent expenditures and ensure that the Commission receives the
6 report or signed statement no later than 11:59 p.m. Eastern Standard/Daylight Time of the day
7 following the date on which a communication is publicly distributed or otherwise publicly
8 disseminated. Each time subsequent independent expenditures relating to the same election
9 aggregate \$1,000 or more, the person making the independent expenditures must ensure that the
10 Commission receives a new 24-hour report of the subsequent independent expenditures. See 11
11 CFR 104.4(f) for aggregation. Such report or statement shall contain the information required by
12 paragraph (e) of this section.

13 (e) Content of verified statements and verification of reports and statements.

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

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

18 (ii) The identification (name and mailing address) of the person to whom the
19 expenditure was made;

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

21 (iv) A statement that indicates whether such expenditure was in support of, or
22 in opposition to a candidate, together with the candidate's name and office
23 sought;

1 (v) A verified certification under penalty of perjury as to whether such
2 expenditure was made in cooperation, consultation, or concert with, or at
3 the request or suggestion of a candidate, a candidate's authorized
4 committee, or their agents, or a political party committee or its agents; and

5 (vi) The identification of each person who made a contribution in excess of
6 \$200 to the person filing such report, which contribution was made for the
7 purpose of furthering the reported independent expenditure.

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

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

19 (ii) For reports or statements filed by electronic mail, the person who made
20 the independent expenditure shall certify, under penalty of perjury, the
21 independence of the expenditure by typing the treasurer's name
22 immediately following the certification required by paragraph (e)(1)(v) of
23 this section.

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David. M. Mason
Chairman
Federal Election Commission

DATED: _____
BILLING CODE: 6715-01-P