



FEDERAL ELECTION COMMISSION
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AGENDA ITEM

For Meeting of: 12-05-02

MEMORANDUM

TO: The Commission
FROM: Vice Chairman Karl J. Sandstrom
DATE: 12/05/2002

SUBMITTED LATE

SUBJECT: Proposed Amendments to Agenda Document No. 02-90 (Coordinated and Independent Expenditures)

1. *The following proposed amendments relate to clarifying in 109.23(a) that a candidate does not receive or accept an in-kind contribution of republished campaign materials unless there is coordination.*

- p. 84, line 8: After "BCRA)", add "a clarification that a candidate does not receive or accept an in-kind contribution unless there is coordination,"
- p. 84, line 13: Delete "an expenditure" and replace with "an in-kind contribution received or an expenditure made"
- p. 85, line 19: After "responsibilities", add "and has not received or accepted an in-kind contribution."
- p. 152, line 14: "Delete "but need not be reported as an expenditure by the candidate or the candidate's authorized committee" and replace with ". The candidate who prepared the campaign material does not receive or accept an in-kind contribution, and is not required to report an expenditure,"

2. *The following proposed amendments relate to amending 109.35 so that it more closely tracks the statutory language of 2 U.S.C. 441a(d)(4):*

- p. 101, line 12: Delete rest of line after "109.35(b)" and insert ".".
- p. 101, line 13: Delete "below, the" and replace with "The"
- p. 104, lines 4-23: Delete.
- p. 105: Delete in its entirety.
- p. 106, lines 1-19 and lines 22-23 (beginning with "The Commission"): Delete.
- p. 107, lines 1-5 and lines 12-23 (beginning with "The Commission"): Delete.
- p. 108, lines 1-3, lines 12-15 (beginning with "While the"), lines 20-23 (beginning with "The Commission"): Delete.
- pp. 109-111: Delete in their entirety.
- p. 112, lines 1-7, lines 17-19 (beginning with "The Commission"): Delete.

- p. 112, line 8: Add “In the final rules, paragraph (a) of 11 CFR 109.35 generally tracks the statutory language in 2 U.S.C. 441a(d)(4)(B).”
- p. 112, lines 20-23 (beginning with “but employs”): Delete and insert “.”.
- p. 113: Delete in its entirety.
- p. 114, lines 7-12: Delete from “In response” through “Beyond this, the” and replace with “The”
- p. 114, lines 15-23: Delete.
- p. 115: Delete in its entirety.
- p. 116, lines 8-18 (beginning with “Congress”): Delete.
- p. 116, lines 20-22 (beginning with “, employing”): Delete and replace with “.”.
- pp. 117-119: Delete in their entirety.
- p. 120, lines 1-9 and 16-23: Delete.
- p. 121: Delete in its entirety.
- p. 122, line 1: Change “5.” to “4.”.
- p. 125, line 1: Delete “unless” and replace with “, if not prohibited under section 441a(d)(4)(A). See 11 CFR 109.35(a).”
- p. 125, lines 2-4, through “candidate.”: Delete.
- p. 161, lines 14-20: After “section,” delete through line 20 and replace with the following:
 - all political committees established and maintained by a national political party (including all congressional campaign committees) and all political committees established and maintained by a State political party (including any subordinate committee of a State committee) shall be considered to be a single political committee.
- p. 161, line 22: Delete last “a”
- p. 162, lines 1-10: Delete and replace with: “no committee of the political party may make:
 - (1) Any coordinated party expenditure under 11 CFR 109.32 with respect to the candidate during the election cycle at any time after it makes any independent expenditure with respect to the candidate during the election cycle; or
 - (2) Any independent expenditure with respect to the candidate during the election cycle at any time after it makes any coordinated expenditure under 11 CFR 109.32 with respect to the candidate during the election cycle.”
- p. 162, line 11 to p. 163, line 13: After “assignments.” delete through p. 163, line 13 and replace with the following:
 - A committee of a political party that makes coordinated expenditures under 11 CFR 109.32 with respect to a candidate shall not, during the election cycle, transfer any funds to, assign authority to make coordinated expenditures under 11 CFR 109.32 to, or receive a transfer of funds from, a committee of the political party that has made or intends to make an independent expenditure with respect to the candidate.

3. *The following proposed amendment would add a new section to 11 CFR 100.16: on p. 137, line 21:*

- On p. 137, line 21: Add the following:

(c) No expenditure shall be considered independent if the person making the expenditure allows a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents to become materially involved in decisions regarding the communication as described in 11 CFR 109.21(d)(2), or shares financial responsibility for the costs of production or dissemination with any such person.

- On p. 7, line 9: Add the following: "The Commission is adding a new paragraph (c) to provide examples of activities that would disqualify a communication from being treated as an independent expenditure. This provision does not in any way change the scope of the definition of coordinated communication in 11 CFR 109.21; it is merely intended to provide additional guidance.