

11 CFR 104.3(g) are no longer appropriate. New section 104.3(g) should be read in conjunction with 11 CFR 300.12(b)(3) and (d), 300.13, and 300.35. The Commission received no comments on this section.

11 CFR 104.4 Independent Expenditures by Political Committees (2 U.S.C. 434(b), (d) and (g))

1. Introduction

Prior to BCRA, the Commission had established reporting requirements for political committees making independent expenditures in accordance with 2 U.S.C. 434(b) and (g). See pre-BCRA 11 CFR 104.4. In the NPRM, the Commission proposed to revise the rules for political committees reporting independent expenditures made less than 20 days but more than 24 hours before an election and proposed to add new rules regarding the 48-hour reports of independent expenditures during the rest of the calendar year to implement BCRA's new reporting requirements for such independent expenditures. See 2 U.S.C. 434g.

The Commission received one comment on this section in the Reporting NPRM and one, from the same commenter, when these rules were published for comment in the Coordinated and Independent Expenditures NPRM, 67 FR 60,042 (Sept. 25, 2002). The commenter agreed with the proposal that 24-hour and 48-hour reports of independent expenditures need not be filed until the communications are publicly distributed or otherwise publicly disseminated. With the exception of certain clarifying changes suggested by the commenter, the final rules mirror those proposed in the NPRM.

2. 11 CFR 104.4(a) Regularly Scheduled Reporting

Paragraph (a) of section 104.4 is unaffected, other than the addition of a new heading, minor clarifications, a grammatical correction, and an updated cross-reference.

3. 11 CFR 104.4(b) Reports of Independent Expenditures Made at Any Time Up To and Including the 20th Day Before an Election

New paragraph (b) addresses reports of independent expenditures made by a political committee at any point in the campaign up to and including the 20th day before an election.

A. 11 CFR 104.4(b)(1) Independent Expenditures Aggregating Less Than \$10,000

New paragraph (b)(1) addresses independent expenditures aggregating less than \$10,000 with respect to a given election during the calendar year, up to and including the 20th day before an election. This calendar-year aggregation is based on 2 U.S.C. 434(b)(4), which requires calendar-year aggregation for reports of independent expenditures by political committees. Under the new rule, political committees must report the independent expenditures on Schedule E of FEC Form 3X, filed no later than the regular reporting date under 11 CFR 104.5. The Commission interprets 2 U.S.C. 434(g), added to the Act by BCRA, to require aggregation toward the various thresholds for independent expenditure reporting to be calculated on a per-election basis within the calendar year. For example, if a political committee makes \$5,000 in independent expenditures with respect to a Senate candidate, and \$5,000 in independent expenditures with respect to a House of Representatives candidate, and both of these ads are publicly distributed before the 20th day before the primary election, that political committee is not required to file 48-hour reports, but must disclose the independent expenditures on its regularly scheduled reports. If the political committee makes \$5,000 in independent expenditures with respect to a clearly identified candidate in the primary, and an additional \$5,000 in independent expenditures with respect to the same candidate in the general election but outside the 20-day window, no 48-hour reports are required; but again the political committee must disclose the independent expenditures on its regularly scheduled reports. If, however, the political committee made \$6,000 in independent expenditures supporting a Senate candidate in the primary election, and \$4,000 in independent expenditures opposing that Senate candidate's opponent in the primary, and these communications are published in a newspaper more than twenty days before the primary, the political committee must file a 48-hour report. The Commission received no comments on the interpretation implemented by this paragraph.

B. 11 CFR 104.4(b)(2) Independent Expenditures Aggregating \$10,000 or More

New paragraph (b)(2) addresses independent expenditures aggregating \$10,000 or more during the calendar year up to and including the 20th day

before an election. Political committees must file these reports on Schedule E of FEC Form 3X. These reports must be received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Further, political committees must file an additional 48-hour report each time subsequent independent expenditures reach or exceed the \$10,000 threshold with respect to the same election to which the first report related.

4. 11 CFR 104.4(c) Reports of Independent Expenditures Made Less Than 20 Days, But More Than 24 Hours Before the Day of an Election

Revisions to renumbered paragraph (c) (which was pre-BCRA 11 CFR 104.4(b)) state that 24-hour reports must be received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which the \$1,000 threshold is reached during the final 20 days before the election. Further, revisions to this paragraph also indicate that additional 24-hour reports must be filed each time during the 24-hour reporting period in which subsequent independent expenditures reach or exceed the \$1,000 threshold with respect to the same election to which the previous report related.

5. 11 CFR 104.4(d) Verification

New paragraph (d) contains the report verification information previously found in pre-BCRA paragraph (b) of section 104.4. There are non-substantive grammatical changes to conform this paragraph to the rest of section 104.4.

6. 11 CFR 104.4(e) Where to File

New paragraph (e) largely restates pre-BCRA paragraph (c) of section 104.4. However, this paragraph has been reorganized since it was published in the Reporting NPRM. In the Reporting NPRM, paragraph (e)(2) would have addressed independent expenditures related to both Senate and House of Representatives candidates, and it would have omitted reference to the Secretary of Senate. In the final rule, paragraph (e)(2) addresses independent expenditures related to Senate candidates, and it retains the former requirement in 11 CFR 104.4(c) that regularly scheduled reports of independent expenditures related to Senate candidates must be filed with the Secretary of Senate. 11 CFR 104.4(e)(2)(i). However, with respect to