

## 8. Additional Requirements in the Internal Revenue Code

The Commission received one comment from the Internal Revenue Service ("IRS") on the coordinated and independent expenditure NPRM, which noted generally that even though some entities that are political organizations within the meaning of section 527 of the Internal Revenue Code may not be obliged to report contributions or expenditures to the Commission, these entities may still be required to report to the IRS. The IRS offered the following explanation, which the Commission is including here to provide additional guidance regarding the potential overlap between the Internal Revenue Code and the Commission's regulations. Section 527(j) of the Internal Revenue Code requires the reporting on IRS Form 8872 of certain contributions received and expenditures made by a tax-exempt political organization unless (i) the organization reports under the FECA as a political committee; (ii) the organization is a State or local committee of a political party or political committee of a State or local candidate; (iii) the organization is a qualified State or local political organization within the meaning of section 527(e)(5) of the Internal Revenue Code; (iv) the organization reasonably anticipates that it will not have gross receipts of \$25,000 or more for any taxable year; (v) the organization is otherwise exempt from Federal income taxation under section 501(a) of the Internal Revenue Code because it is described in section 501(c) of the Internal Revenue Code; or (vi) the expenditure made is treated as an independent expenditure under the FECA. In certain situations this could require a tax-exempt political organization making coordinated expenditures to report such expenditures on IRS Form 8872 even though that organization would not be required to report such items to the Commission. Moreover, a tax-exempt political organization that is required to report one or more independent expenditures to the Commission might also have to report certain contributions received and other expenditures to the IRS.

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

Section 104.5 sets forth filing dates for all reporting entities, including political committees. The NPRM proposed revisions to the rules for 24-hour reports of independent expenditures and proposed adding provisions for 24-hour reports of electioneering

communications and 48-hour reports of independent expenditures. The final rules in section 104.5 track the proposed rules, with the changes described below.

Section 104.5(a) is being revised to set forth the new reporting schedule for the principal campaign committees of House of Representatives and Senate candidates. Prior to BCRA, the principal campaign committees of these candidates were allowed to file semi-annually in non-election years. After November 5, 2002, excluding reports for 2002 runoff elections, principal campaign committees of House of Representatives and Senate candidates must file quarterly reports in non-election years, as well as in the election year. 2 U.S.C. 434(a)(2)(B). Revised paragraphs (a) and (a)(1) of section 104.5 now state that these committees must file quarterly reports. Like other quarterly reports, these must be complete as of March 31, June 30, September 30, and December 31, and must be filed by April 15, July 15, October 15, and January 31 of the following year, respectively. Paragraph (a)(2) of 11 CFR 104.5 sets forth the requirements for pre-election and post-general election reports in the election year and is identical to paragraphs (a)(1)(i) and (ii) of pre-BCRA 11 CFR 104.5. The rules regarding semi-annual reporting from pre-BCRA section 104.5(a) are being deleted. Please note that these new reporting dates do not affect the principal campaign committees or other authorized committees of Presidential candidates.

Revisions to paragraph (c) state that while unauthorized political committees may choose to file quarterly or monthly, a national committee of a political party must report monthly under new 11 CFR 104.5(c)(4), which is discussed below. Consequently, national party committees are no longer permitted to change their filing frequency. Paragraphs (c) and (c)(4) have been revised since the NPRM to consolidate the references to the national party committees, including the national congressional campaign committees.

Paragraph (c)(4) of 11 CFR 104.5 is a new provision implementing the BCRA requirement that all national political party committees must report on a monthly basis. 2 U.S.C. 434(a)(4)(B). Previously, national party committees were allowed to file quarterly in the election year and semi-annually in the non-election years. Under the changes to the Act made by BCRA, national political party committees must file monthly, and must file pre-general election and post-general election reports. BCRA's changes to FECA in this

regard may be intended to remove any doubt as to whether national political party committees that file quarterly must file these pre-election reports if they do not make any contributions or expenditures on behalf of candidates in these elections during pre-election reporting periods. These rules implement BCRA's amendment. No commenters addressed this topic.

The Commission sought, but received no comments on whether the national Congressional campaign committees of the political parties should be included in this new monthly filing requirement for national political party committees. The final rules require the Congressional campaign committees of national parties to file monthly for several reasons. First, Congressional campaign committees are treated as committees of a national political party elsewhere in the Act and the regulations. For example, 11 CFR 110.1 specifically includes the Congressional campaign committees as committees that are "established and maintained by a national political party." Further, the Supreme Court in *FEC v. Democratic Senate Campaign Committee*, 454 U.S. 27, 39 (1981), stated that the National Republican Senatorial Committee is part of the Republican Party organization. By analogy, the other Congressional campaign committees are also a part of their national party organizations. Moreover, the Commission notes that BCRA included a committee of a national political party in this monthly filing requirement, rather than the committee of a national political party. The wording seems to foreclose the argument that Congress intended to include only the national committees of the political parties in the monthly filing requirement.

Paragraph (g) of 11 CFR 104.5 moves the pre-BCRA contents of paragraph (g) to new paragraph (g)(2) with revisions, and adds a new paragraph (g)(1), which requires that 48-hour reports of independent expenditures 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 is publicly distributed or otherwise publicly disseminated. The Commission received one comment on paragraph (g) of section 104.5, which urged the Commission to clarify that the filing requirements for subsequent reports of independent expenditures (24-hour and 48-hour reports) would be triggered by the public dissemination or distribution of the communication (as with the initial reports). Note that the term "publicly distributed" refers to communications distributed by radio or