

recommended that all persons who make electioneering communications should be required to disclose their contributors under proposed section 104.19(b)(7). Additionally, some commenters expressed concern as to the requirement that organizations would be required to disclose their donors because donors may become inhibited from making donations aggregating \$1,000 or more.

In order to eliminate the confusion, proposed 11 CFR 104.20(c)(8) in the Reporting NPRM differed from proposed section 104.19(b)(7) in the Electioneering Communications NPRM in that it removed the reference to QNCs. Thus, proposed section 104.20(c)(8) sought to clarify that all persons who make electioneering communications would be required to disclose their donors who donate \$1,000 or more in the aggregate during the prescribed period, if they do not use segregated bank accounts. Other than the commenters that objected to disclosure of their donors, discussed above, the Commission did not receive any comments on this requirement. Because BCRA at 2 U.S.C. 434(f)(2)(F) specifically mandates disclosure of this information, the final rule at 11 CFR 104.20(c)(8) is identical to the proposed rule in the Reporting NPRM.

I. Disclosure Requirements for Individuals Who Make Electioneering Communications

The Commission also sought comments on how the proposed rules would apply to individuals making electioneering communications. The Commission did not receive any comments on this topic. The Commission concludes that, in instances where an individual makes a disbursement for an electioneering communication, 11 CFR 104.20(c)(1) requires disclosure of the identification of the individual, which means his or her name, address, occupation, and employer.

New 11 CFR 104.20(c)(2) requires the identification of any person sharing or exercising direction or control over the activities of the person who made the disbursement, or who executed a contract to make a disbursement, which implements 2 U.S.C. 434(f)(2)(A). The term "direction or control" in 2 U.S.C. 434(f)(2)(A) refers to the management or decision-making process of an organization, as the Commission has noted. See Explanation and Justification for 11 CFR 104.20(c)(2), above, and Reporting NPRM, 67 FR at 64,560. Therefore, the Commission defines "sharing or exercising direction or control" in new 11 CFR 104.20(a)(3)

with a four-part test applicable only to organizations and entities. Individuals are required to disclose any person sharing or exercising direction or control over their electioneering communication activities.

For purposes of new 11 CFR 104.20(c)(7) and (8), individuals are required to disclose donations received, which does not include salary, wages, or other compensation for employment. Donations required to be disclosed do include, however, gifts of \$1,000 or more from any source. The remainder of 11 CFR 104.20(c) applies to individuals in the same manner it applies to any other persons making electioneering communications. See 11 CFR 104.20(c)(3) through (6).

8. 11 CFR 104.20(d) Recordkeeping Requirement

The final rules at 11 CFR 104.20(d) require all persons who make electioneering communications or accept donations for the purpose of making electioneering communications to maintain records in accordance with 11 CFR 104.14. In the Electioneering Communications NPRM, proposed section 104.19(c) would have exempted QNCs from the recordkeeping requirements. The commenters who addressed this issue were split on whether QNCs should be exempted from the recordkeeping requirements. A commenter who did not support the exemption argued that because these entities are required to report their electioneering communications, they should also be required to maintain records that relate to the electioneering communications to support their reports.

In determining that all of the reporting and recordkeeping requirements for political committees were too burdensome for QNCs making independent expenditures, the Supreme Court in *MCFL* noted that MCFL, Inc. was subject to more "extensive requirements and more stringent restrictions" than unincorporated nonprofit organizations. 479 U.S. at 254–255. For this reason, proposed section 104.20(d) in the Reporting NPRM required QNCs to maintain only those records that pertain to their electioneering communications, which is a much reduced obligation. Additionally, this recordkeeping requirement is identical to what is required of any other person, including unincorporated nonprofit organizations, that make disbursements for electioneering communications. Furthermore, the availability of these records is necessary to assess the accuracy of the electioneering

communications reports filed by QNCs. Thus, proposed paragraph (d) in the Reporting NPRM did not include an exemption for QNCs. No subsequent comments were received concerning this paragraph. After consideration of the reasons stated above and in the NPRM, the Commission has concluded that a QNC exemption from recordkeeping is unwarranted. Therefore, new section 104.20(d) requires all persons, including QNCs, who make or accept donations for electioneering communications to maintain records in accordance with 11 CFR 104.14.

9. 11 CFR 104.20(e) State Waivers

Paragraph (e), which was not included in the NPRM, repeats the information in 11 CFR 104.20(b) that the place of filing for statements of electioneering communications is the Commission. This paragraph also states that like all other reports or statements, copies of the statement filed with the Commission must also be filed with the appropriate State official unless the state has obtained a waiver under 11 CFR 108.1(b). The NPRM sought comment on whether this waiver should apply to statements of electioneering communications. The Commission received no comments on this issue. Because section 108.1 of 11 CFR applies to all reports and statements filed with the Commission (and when appropriate the Secretary of the Senate), statements of electioneering communications clearly fall within its rubric. See discussion of 11 CFR 108.1, below.

11 CFR 105.2 Place of Filing; Senate Candidates, Their Principal Campaign Committees, and Committees Supporting Only Senate Candidates (2 U.S.C. 434(g)(3))

The Commission's pre-BCRA regulations required that 24-hour reports of independent expenditures supporting or opposing Senate candidates be filed with the Secretary of the Senate. See pre-BCRA 11 CFR 104.4(c)(2), 105.2, and 109.2(b). Revisions to 11 CFR 105.2 place the text of pre-BCRA 11 CFR 105.2 in paragraph (a), and add the heading, "General Rule."

New paragraph (b) of 11 CFR 105.2, headed, "Exceptions," implements exceptions to this general rule created by BCRA. BCRA establishes the Commission as the place of filing for both 24-hour and 48-hour reports of independent expenditures, regardless of the office sought by the clearly identified candidate. 2 U.S.C. 434(g)(3)(A). In the Reporting NPRM, the proposed revisions to section 105.2