

communication that disseminates, distributes, or republishes campaign material prepared by a candidate, the candidate's authorized committee, or an agent of either, and that satisfies one of the conduct standards in section 109.21(d), is a coordinated communication. Under 11 CFR 109.21(b), and by implication from paragraph (a) of section 109.23, the financing of such a "coordinated communication" is an in-kind contribution received by the candidate, authorized committee, or political party committee with whom or with which it was coordinated. In other words, the person financing the dissemination, distribution, or republication of candidate campaign material has provided something of value to the candidate, authorized committee, or political party committee. See 2 U.S.C. 431(8)(A)(i). Note that this is the same result under former section 109.1(d)(1). Even though the candidate, authorized committee, or political party committee does not receive cash-in-hand, the practical effect of this constructive receipt is that the candidate, authorized committee, or political party committee must report the in-kind contribution in accordance with 11 CFR 104.13, meaning that it must report the amount of the payment as a receipt under 11 CFR 104.3(a) and also as an expenditure under 11 CFR 104.3(b).

To the extent that the financing of the dissemination, distribution, or republication of campaign materials finances does not qualify as a coordinated communication, the candidate or authorized committee that originally prepared the campaign materials has no reporting responsibilities and has not received or accepted an in-kind contribution. However, whether or not the dissemination, distribution, or republication qualifies as a coordinated communication under 11 CFR 109.21, paragraph (a) of section 109.23, like former section 109.1(d)(1), requires the person financing such dissemination, distribution, or republication always to treat that financing, for the purposes of that person's contribution limits and reporting requirements, as an in-kind contribution made to the candidate who initially prepared the campaign material. In other words, the person financing the communication must report the payment for that communication if that person is a political committee or is otherwise required to report contributions. Furthermore, that person must count the amount of the payment towards that person's contribution limits with

respect to that candidate under 11 CFR 110.1 (persons other than political committees) or 11 CFR 110.2 (multicandidate political committees), and with respect to the aggregate bi-annual contribution limitations for individuals set forth in 11 CFR 110.5.

Although paragraph (a) of 11 CFR 109.23 is nearly otherwise unchanged from former 11 CFR 109.1(d)(1), the new reference to 11 CFR 109.21 has an important impact because new section 109.21 reflects Congress's decision in post-BCRA 2 U.S.C. 441a(a)(7)(B)(ii) that expenditures may be coordinated with a political party committee. Therefore, the republication of campaign material may be coordinated with a political party committee. As explained above, the financing "by any person of the dissemination, distribution, or republication of campaign material prepared by a candidate *qualifies as an expenditure for the purposes of 2 U.S.C. 441a(a)(7)(B)(ii).*" See 2 U.S.C. 441a(a)(7)(B)(iii) (emphasis added.) Under 2 U.S.C. 441a(a)(7)(B)(ii), "expenditures" that are coordinated with a political party committee "shall be considered to be contributions made to such party committee." Thus, reading 2 U.S.C. 441a(a)(7)(B)(ii) and (iii) together, the Commission concludes that when a person coordinates with a political party committee to finance the dissemination, distribution, or republication of a candidate's campaign material, that financing constitutes a contribution to the political party committee. Therefore, under paragraph (a) of section 109.23, the financing of the dissemination, distribution, or republication of campaign material prepared by a candidate constitutes an in-kind contribution to a political party committee with which it was coordinated, and the amount of that financing must be reported by that political party committee as both an in-kind contribution received and an expenditure made. See 11 CFR 104.13. The Commission notes that section 109.23 does not encompass in this respect the dissemination, distribution, or republication of campaign material prepared by the political party committee, but only campaign material prepared by a candidate.

2. 11 CFR 109.23(b) Exceptions

In the NPRM, the Commission proposed several exceptions to the general "republication" rule proposed 11 CFR 100.57. Proposed 11 CFR 100.57(b) would have clarified that five listed uses of campaign material prepared by a candidate would not qualify as a contribution under proposed 11 CFR 100.57(a). The

exceptions were largely drawn from uses already permitted by other rules.

Several commenters focused on the proposed exceptions or proposed additional exemptions. One commenter proposed that republication should not be considered a contribution unless there is coordination. The Commission does not discern any instruction from Congress, nor any other basis, that justifies such a departure from the Commission's longstanding interpretation of the underlying republication provision in the Act, now set forth at 2 U.S.C. 441a(a)(7)(B)(iii). The same commenter also inquired as to whether a corporation or labor organization may pay for the republication of campaign materials for use outside its restricted class, so long as that republication is not coordinated with a candidate under the applicable conduct standards set forth in 11 CFR 109.21(d) (see below). The Commission normally addresses specific inquiries about the application of particular provisions through its Advisory Opinion process, rather than in the rulemaking context, but the Commission takes this opportunity to emphasize that this rulemaking is not intended to change existing law with respect to the practices of corporations or labor organizations. See 11 CFR 109.22. Both the pre- and post-BCRA regulations provide that the financing of the dissemination, distribution, or republication of a candidate's campaign material constitutes a contribution to that candidate. Furthermore, such financing for activities outside the restricted class of a corporation or labor organization would also constitute an expenditure by the labor organization or corporation made in connection with an election for Federal office that would therefore be prohibited by 2 U.S.C. 441b(a). Therefore, a corporation or labor organization may not disseminate, distribute, or republish campaign materials except as provided in 11 CFR 114.3(c)(1).

The same commenter also proposed additional exceptions for paragraph (b) to cover republication and distribution of original campaign material that already exists in the public domain, such as presentations made by candidates, biographies, positions on issues or voting records. The Commission declines to promulgate a "public domain" exception because such an exception could "swallow the rule," given that virtually all campaign material that could be republished could be considered to be "in the public domain." In the event that a campaign retains the copyright to its campaign materials, and the campaign materials