

109.35(b), in its final rule formulation, and section 109.35(c) referenced within section 109.33, serve to maintain the prohibition against circumvention through assignments of coordination party expenditure authority under section 109.33.

Finally, the Commission is making a non-substantive change from the NPRM in the title of section 109.33 in the final rule. The Commission is changing the word "limit" to "authority" in order to match the text of the rule. The only other changes to the NPRM aside from the addition of paragraph (c) are non-substantive changes to paragraphs (a) and (b).

*11 CFR 109.34 When May a Political Party Committee Make Coordinated Party Expenditures?*

Section 109.34 restates without substantive revision the pre-BCRA rule in 11 CFR 110.7(d) permitting a political party committee to make coordinated party expenditures in connection with the general election campaign before or after its candidate has been nominated. All pre-nomination coordinated expenditures continue to be subject to the coordinated party expenditure limitations, whether or not the candidate on whose behalf they are made receives the party's nomination. The Commission received one comment on this section, which supported the proposed rule.

*11 CFR 109.35 What Are the Restrictions on a Political Party Committee Making Both Independent Expenditures and Coordinated Party Expenditures in Connection With the General Election of a Candidate?*

In BCRA, Congress prohibits political party committees, under certain conditions, from making both coordinated party expenditures and independent expenditures with respect to the same candidate, and from making transfers and assignments to other political party committees. 2 U.S.C. 441a(d)(4). A critical threshold issue is identifying the political party committees to which these prohibitions apply. Congress provided that for the purposes of these new prohibitions, "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." 2 U.S.C. 441a(d)(4)(B). Congress plainly intended to combine certain political party committees into a collective entity or

entities for purposes of these prohibitions. 2 U.S.C. 441a(d)(4)(B).

*1. 11 CFR 109.35(a) Applicability*

In the NPRM, the Commission proposed a rule that divided a political party into a national group of political committees and various State and local groups of political committees for the purposes of implementing the BCRA provisions governing independent and coordinated expenditures by a political party. See 2 U.S.C. 441a(d)(4). The NPRM acknowledged the legislative history supporting a "single committee" interpretation that combined the national, State and local party committees, but proposed the "dual groups" interpretation in order to give the fullest possible effect to the transfer and assignment provision of the same statute. 67 FR at 60,054 (September 24, 2002). Under the transfer and assignment provision, a "committee of a political party" that makes coordinated party expenditures under 2 U.S.C. 441a(d) in connection with the general election campaign of a candidate must not, during that election cycle, transfer any funds to, assign authority to make coordinated party expenditures to, or receive a transfer from, "a committee of the political party" that has made or intends to make an independent expenditure with respect to that candidate. 2 U.S.C. 441a(d)(4)(C). The NPRM questioned whether, without more than one group or aggregation of political party committees, transfers or assignments between political party committees could occur as contemplated in section 441a(d)(4)(C).

Several commenters, including BCRA's principal sponsors, urged that the Commission adopt the "single committee" approach, asserting that it followed from the statutory language as well as the legislative history.

One commenter criticized the "single committee" approach as contrary to *Colorado I*, asserting that this Supreme Court decision permitted political party committees to make both coordinated and independent expenditures.

Several witnesses testifying at the hearing argued that treating all party committees as a single entity is impractical because party committees at the national or State level do not control party committees at lower levels in their organizations. These commenters complained that a local party committee under the "single committee" approach, by making an independent expenditure with respect to a candidate, could preclude the State or national party committee from making coordinated party expenditures with respect to that candidate.

No comments were received that supported the NPRM's "dual groups" approach, although two witnesses testified at the hearing that the dual approach would be preferable to the "single committee" approach (one of these commenters, however, also testified that the BCRA sponsors intended the "single committee" approach).

Commenters favoring the "single committee" approach suggested examples of how the transfer and assignment provision could be given meaningful effect. One commenter proposed that the transfer and assignment provision may apply prior to nomination, unlike the prohibition on making both coordinated and independent expenditures with respect to a candidate, which applies only after nomination. Two commenters suggested that the transfer and assignment provision could be read to prohibit a national party from making coordinated party expenditures with respect to a candidate prior to nomination and then transferring funds to a State party committee that would then try to make supposedly independent expenditures with respect to that candidate.

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).

*2. 11 CFR 109.35(b) Restrictions on Certain Coordinated and Independent Expenditures*

Congress provided in BCRA that on or after the date on which a political party nominates a candidate, no "committee of the political party" may make: (1) Any coordinated expenditure under 2 U.S.C. 441a(d) 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 2 U.S.C. 441a(d) with respect to the candidate during the election cycle. 2 U.S.C. 441a(d)(4)(A).

Section 109.35(b) generally tracks the statute.

As noted above, the result that any political party committee within the "single committee" could bind all the political party committees within the "single committee" was criticized by several commenters at the hearing. These commenters asserted that this result would preclude a national or State committee of a political party from making a coordinated party expenditure with respect to a nominee if a local