

communications by other persons in 11 CFR 109.21(c)(2).

The second content standard, at paragraph (a)(2)(ii) of section 109.37, is a public communication that expressly advocates the election or defeat of a clearly identified candidate for Federal office. This content standard for party coordinated communications is identical to the standard set forth for coordinated communications by other persons in 11 CFR 109.21(c)(3).

The third content standard, at paragraph (a)(2)(iii) of section 109.37, is a public communication that (1) refers to a clearly identified candidate for Federal office; (2) is publicly distributed or otherwise publicly disseminated 120 days or fewer before a general, special, or runoff election, or 120 days or fewer before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate; and (3) is directed to voters in the jurisdiction of the clearly identified candidate. 11 CFR 109.37(a)(2)(iii)(A)–(C). See the discussion above of 11 CFR 109.21(c)(4). This content standard at section 109.37(a)(2)(iii) is based on the content standard at section 109.21(c)(4) but limits its coverage to communications that refer to a clearly identified candidate for Federal office.

Finally, the Commission notes that the content standard at 11 CFR 109.21(c)(1), coordinated electioneering communications, is not applied to party coordinated communications because electioneering communications, as defined, exclude communications which constitute expenditures under the Act, which includes political party committee expenditures. See 2 U.S.C. 434(f)(3)(B)(ii); 11 CFR 100.29(c)(3).

For the conduct standards for party coordinated communications, in paragraph (a)(3) of section 109.37, the Commission refers to the conduct standards set forth in 11 CFR 109.21(d)(1) through (d)(6), subject to the provisions of 11 CFR 109.21(e) and other conditions. As in 11 CFR 109.21(d), agreement or formal collaboration is not necessary for a finding that a communication is coordinated. See the discussion above of 11 CFR 109.21(d) and (e). Further, paragraph (a)(3) of section 109.37 provides that a candidate's response to an inquiry about that candidate's positions on legislative or policy issues, but not including a discussion of campaign plans, projects, activities, or needs, does not satisfy any of the conduct standards in 11 CFR 109.21(d)(1) through (d)(6). This safe harbor parallels the safe harbor at 11

CFR 109.21(f). See the discussion above of 11 CFR 109.21(f).

The Commission also addresses in paragraph (a)(3) of section 109.37 circumstances in which the in-kind contribution results solely from conduct in 11 CFR 109.21(d)(4) or (d)(5). Under these circumstances, the candidate does not receive or accept an in-kind contribution and is not required to report an expenditure. See the discussion above regarding 11 CFR 109.21(b)(2).

Paragraph (b) of section 109.37 explains the treatment of party coordinated communications. This paragraph provides that political party committees must treat payments for communications coordinated with candidates as either in-kind contributions or coordinated party expenditures.

The Commission excepts from 11 CFR 109.37(b) such payments that are otherwise excepted from the definitions of "contribution" and "expenditure" found at 11 CFR part 100 subparts C and E. For example, the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card, sample ballot, palm card, or other printed listing(s) of three or more candidates for any public office for which an election is held in the State in which the committee is organized is not a contribution or an expenditure. 11 CFR 100.80 and 100.140. Thus, if such communications were coordinated with candidates, the payments for such communications would not be treated as either in-kind contributions or as coordinated party expenditures.

For such a payment that a political party committee treats as an in-kind contribution, paragraph (b)(1) of section 109.37 states that it is made for the purpose of influencing a Federal election. See the discussion above regarding 11 CFR 109.21(b).

For such a payment that a political party committee treats as a coordinated party expenditure, paragraph (b)(2) of section 109.37 states that such expenditure is made pursuant to coordinated party expenditure authority under 11 CFR 109.32 in connection with the general election campaign of the candidate with whom it was coordinated.

Finally, paragraphs (b)(1) and (b)(2) of section 109.37 each refer to the reporting obligations flowing from party coordinated communications under 11 CFR part 104.

#### *11 CFR 110.1 Contributions by Persons Other Than Multicandidate Political Committees*

The Commission clarifies that the section 110.1 limitations on contributions to political committees making independent expenditures apply to contributions made by persons other than multicandidate committees to political party committees that make independent expenditures. See 11 CFR 110.1(n). Paragraph 110.1(n) replaces pre-BCRA paragraph (d)(2) of section 110.1 regarding the application of the contribution limits to contributions to committees that make independent expenditures.

This section is being updated because under pre-BCRA paragraph (d)(2) of section 110.1, the Commission recognized that political committees other than party committees may make independent expenditures, but did not contemplate party committees doing so. See *Colorado I*, 518 U.S. at 618. For example, national party committees may receive contributions aggregating \$20,000 per year from individuals, a contribution limit that Congress increased to \$25,000 for contributions made on or after January 1, 2003. See 2 U.S.C. 441a(a)(1)(B). Consequently, under BCRA, the \$20,000 (\$25,000) contribution limit continues to apply when the recipient national party committee uses the contribution to make independent expenditures. The Commission notes that 11 CFR 110.1(h) regarding contributions to political committees supporting the same candidate, remains unchanged except to state that the support to candidates by political party committees may include independent expenditures. The Commission received no comments on this section.

Additional changes to 11 CFR 110.1 are addressed in a separate rulemaking on BCRA's increased contribution limits. See Final Rules and Explanation and Justification for Contribution Limitations and Prohibitions, 67 FR 69,928 (November 19, 2002).

#### *11 CFR 110.2 Contributions by Multicandidate Political Committees*

The Commission clarifies that the section 110.2 limitations on contributions to political committees making independent expenditures apply to contributions made by multicandidate committees to political party committees that make independent expenditures. See 11 CFR 110.2(k). Paragraph 110.2(k) replaces pre-BCRA paragraph (d)(2) of section 110.2 regarding the application of the contribution limits to contributions to